START

TITLE: FEDERAL REGISTER.

VOLUME: 58 ISSUES: 125 - 137
PAGES: 35357 - 38910

DATE: JULY 1 - JULY 20, 1993

PUBLICATION NO: 2575.00 REEL No: 1 of 10

NOTES: Includes:
INDEX VOLUME 58 (1993)

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INDEX

VOL

58

1993

UMI

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Volume 58—Numbers 1-249
Pages 1-69684

federal register

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INDEX

VOL
58

1993

UMI

Volume 58—Numbers 1-249
Pages 1-69684

federal register

January-December 1993
ANNUAL

Index

INDEX

VOL 58

1993

UMI

THIS INDEX is based on a consolidation of contents entries appearing in the January—December issues of the FEDERAL REGISTER together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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TABLE OF CONTENTS

Entries / **1**
Guide to Freedom of Information Indexes, / **139**
Federal Register Pages and Dates / **151**

FEDERAL REGISTER INDEX, January--December, 1993

Acquired Immune Deficiency Syndrome, National Commission

See National Commission on Acquired Immune Deficiency Syndrome

ACTION

PROPOSED RULES

Foster grandparent and senior companion programs; income eligibility levels, 46602
Correction, 48424
Regulatory agenda, 24982, 56982

NOTICES

Agency information collection activities under OMB review, 30141, 34408, 34558, 37903, 42052, 44807, 58146
Foster grandparent and senior companion programs; income eligibility levels, 13735, 40405
Grants and cooperative agreements; availability, etc.:
Special volunteer programs—
Drug alliance, 12019
Senior Executive Service:
Performance Review Board; membership, 53705
VISTA program guidelines, 28853

Actuaries, Joint Board for Enrollment

See Joint Board for Enrollment of Actuaries

Administration Office, Executive Office of the President

PROPOSED RULES

Freedom of Information Act; implementation, 51255
Privacy Act; implementation, 51256

Administration on Aging

See Aging Administration

Administrative Committee of the Federal Register

See Federal Register, Administrative Committee

Administrative Conference of the United States

RULES

Conflict of interests, 58935
Recommendations:
Administrative practice and procedure, 4295, 45409, 54271

PROPOSED RULES

Recommendations:
Discretionary grants award; peer review, 16375

NOTICES

Agency adjudications; model procedure and practice regulations, 6382
Meetings:
Adjudication Committee, 7878, 51608
Administration Committee, 7878
Assembly of Administrative Conference, 30012, 63155
Governmental Processes Committee, 12926, 59445
International Assistance in Administrative Law Special Committee, 15134
Judicial Review Committee, 11829, 19232
Regulation Committee, 11829, 51608
Regulation Committee et al., 46624
Rulemaking Committee, 7528, 12219, 17204, 40405, 51608

Administrative Office of United States Courts

NOTICES

Court interpreters; Spanish/English certification examination, 13736
Fee schedule; miscellaneous amendments, 51312

Advisory Council on Historic Preservation

See Historic Preservation, Advisory Council

African Development Foundation

NOTICES

Meetings; Sunshine Act, 11097, 33300, 54645

Agency for Health Care Policy and Research

NOTICES

Advisory committees; annual reports; availability, 11413
Clinical practice guidelines development:
Selection criteria; comment request, 49308
Committees; establishment, renewal, termination, etc.:
Clinical practice guidelines development panel—
Cataract in adults; functional impairment management, 42326
Chronic pain; headache, 68416
Colorectal cancer screening, 43643
Nosocomial urinary tract infection, 43636
Health Care Policy and Research Special Emphasis Panel, 47277
Medical technology assessments:
Health care technology assessments; coverage recommendations, 63988
Peripheral stem cells used to reconstitute bone marrow in patients treated with high-dose chemotherapy safety and effectiveness, 51827
Meetings:
Clinical practice guidelines development—
Alzheimer's and related dementias screening, 7565
Cardiac rehabilitation, 9564
Chest pain due to unstable angina; diagnosis and treatment, 7566
Chronic pain; headache, 42556
Mammography quality determinations, 7567
Nosocomial urinary tract infections, 42556
Urinary incontinence in adults; update, 45108
Health Care Policy, Research, and Evaluation National Advisory Council, 28588, 44344, 45340, 68418
HIV-infected persons; provision and utilization of health and related support services; study, 32536
Meetings; advisory committees:
February, 5734
April, 19126
May, 21310
June, 26981, 31717
August, 42327
October, 47745
Organization, functions, and authority delegations, 16534
Privacy Act:
Systems of records, 33098, 68992

Agency for International Development

RULES

Acquisition regulations:
Miscellaneous amendments, 8701, 42254, 58596
Countries ineligible for foreign assistance procurement; list changes, 48796
Israel loan guarantee standard terms and conditions, 14148

PROPOSED RULES

Regulatory agenda, 24988, 56988

NOTICES

Agency information collection activities under OMB review, 3966, 18110, 33462, 39232, 44194, 54325, 60422
Committees; establishment, renewal, termination, etc.:
International Food and Agricultural Development and Economic Development and Economic Cooperation Board, 16551
Voluntary Foreign Aid Advisory Committee, 7815
FY 1994 Public Law 480, Title II voluntary agency program plan and section 202(e) grant proposal draft guidance; document availability, 3966
Grants and cooperative agreements; availability, etc.:
Central and Eastern Europe; technical training programs, 60423
Housing guaranty program:
Indonesia, 28992
Jordan, 34818
Morocco, 12050, 12051
Panama, 58178
Poland, 48632
Tunisia, 30068, 60875
Meetings:
International Food and Agricultural Development and Economic Cooperation Board, 6131, 18416, 30182, 41486, 60209
Malaria Vaccine Program Advisory Committee, 18109
Voluntary Foreign Aid Advisory Committee, 27266
Senior Executive Service:
Performance Review Board; membership, 65599

INDEX
VOL
58
1993
UMI

Agency for Toxic Substances and Disease Registry

NOTICES

Committees; establishment, renewal, termination, etc.:
Peer reviewers, 4437
Grants and cooperative agreements; availability, etc.:
Chemical exposure in humans, carcinogenesis determination; single large dose animal testing programs acceptability assessment; research program, 42075
Environmental health education activities, 34806
Exposure-dose reconstruction research program, 37487
Genetic toxicology screens utility assessment as predictors of long-term health consequences; research program, 42077
Great Lakes human health effects research program, 40651
Health studies initiative of priority health conditions, 34809
National Academy of Sciences, Institute of Medicine, 44680
Site-specific health activities; State health departments and public health agencies, 42327
Waste incineration health effects study, 44681
Hazardous substances releases and facilities; public health assessments and effects:
Quarterly listing, 12586, 33821, 50006, 68146
Meetings:
ATSDR-Community Public Health Assessment Workshop, 8765, 33634
Chemical sensitivity and low level chemical exposure, 12040, 16196
Public health implications of human exposure to wastes contaminated by polychlorinated biphenyls (PCBs); evaluation; workshop, 44344
Scientific Counselors Board, 28970, 51083
Standardized test battery for birth defects and reproductive disorders for use in environmental health field studies, workshop, 12244
Privacy Act:
Systems of records, 69055
Public health advisory procedures; availability, 42732
Public health assessments; environmental data; guidance document, 12306
Public health assessments at Defense Department and Energy Department facilities; priorities for conducting, 49517
Reports; availability, etc.:
Health effects studies, 29413
Software package, 63378
Superfund program:
Hazardous substances; criteria for selecting toxicological profiles, 27286
Hazardous substances priority list (toxicological profiles), 16410, 19823, 46196, 51352, 53739

Aging Administration

NOTICES

Grants and cooperative agreements; availability, etc.:
Discretionary funds program, 29256, 38409, 46974

Agricultural Marketing Service

See Packers and Stockyards Administration

RULES

Agricultural and vegetable seeds; quality inspection and certification; testing fees, 64101
Almonds grown in California, 33021, 34694, 37636, 43500, 64105
Avocados grown in Florida, 7972, 8533, 33757, 34683, 34684, 42187, 46759
Beans, canned green and wax; grade standards, 4295
Correction, 7607
Beef promotion and research:
Cattlemen's Beef Promotion and Research (Board); changes in cattle inventories and cattle and beef imports, 12997
Celery grown in Florida, 38276, 38277, 52402, 62033
Cherries, sweet, grown in designated counties in Washington, 30696, 43246
Cotton:
Classification, testing, and standards—User fees, 41991
Cotton research and promotion order:
Supplemental assessment rates, 52215
Correction, 58231
Cranberries grown in Massachusetts et al., 42493
Dairy products; grading, inspection, and standards:
Dairy plants; expanded drug residue monitoring program, 26911
Dates (domestic) produced or packed in California, 13695, 37638
Egg research and promotion orders, 34696
Eggs and egg products:
Inspection and grading; fees and charges increase, 57537
Filberts/hazelnuts grown in Oregon and Washington, 28770, 32595
Fluid milk promotion program, 46761
Order, 62501
Fruits; import regulations:
Avocados, grapefruit, kiwifruit, etc., 69182
Fruit, vegetables, and other products, processed; inspection and certification; fee schedules, 11185
Grapefruit, imported, 39428, 41124, 59933
Grapes (Tokay) grown in California, 33012, 60364
Grapes (Tokay), imported, 60366
Grapes grown in California, 8893, 21535, 34688, 44103
Grapes, imported, 21536, 44104
Kiwifruit grown in California, 3069, 28336, 28337, 43243, 45232, 60363, 65101
Lemons grown in California and Arizona, 38271, 52401
Lime research, promotion, and consumer information order, 3366
Limes grown in Florida, 8533, 33757, 42187
Marketing orders; expenses and rates of assessment, 4570, 33883, 38272, 43066, 43241, 47025, 50507, 54926, 57957, 64103
Meats, prepared meats, and meat products:
Meat grading and certification services; fee increase, 48591, 64669
Melons grown in Texas, 4572, 28768, 50510
Milk marketing orders:
Central Arkansas, 36859
Chicago Regional, 40037, 48953
Eastern Colorado, 40729
Eastern Ohio-Western Pennsylvania, 40724
Georgia, 40723, 43067
Great Basin, 32434
Greater Louisiana, 63031
Memphis, TN, 35359
Memphis, TN, et al., 6679
Middle Atlantic, 45417, 52404, 52405
Nashville, TN, 35361, 40726
New England et al., 5255, 17946, 27774, 63283, 64110
New Mexico-West Texas, 57961
New York-New Jersey, 51982
New York-New Jersey et al., 50511
Ohio Valley et al., 43504
Paducah, KY, 35362, 43518
Southwest Plains, 8894, 14307, 60542
Tennessee Valley, 17947
Texas, 40727
Mushroom promotion, research, and consumer information order, 3446, 8194
Nectarines grown in California, 8534, 29099, 45231
Olives grown in California, 8538, 28339, 33013, 45234, 48592, 60363
Olives, imported, 48595
Onions (Vidalia) grown in Georgia, 47023
Onions grown in—
Idaho and Oregon, 32594, 60367
Texas, 28767, 50509
Oranges (navel) grown in Arizona and California, 7964, 33010, 33187, 53112, 53114, 57955
Oranges (Valencia) grown in Arizona and California, 7964, 33010, 33187, 53112, 53114, 57955
Oranges and grapefruit grown in Texas, 37635, 52400, 53111, 54925
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 31465, 33756, 40719, 59931, 65538
Organization, functions, and authority delegations:
Analytical testing services; agency reorganization, 42408
Correction, 45946
Papayas grown in Hawaii, 4302, 33759, 43065, 53117
Peaches grown in—
California, 45231
Georgia, 8209
Washington, 220
Peanuts, domestically produced, 32600, 34863, 34865, 64109, 67304
Pears (Bartlett) grown in Oregon et al., 40720, 53119
Pears (winter) grown in Oregon et al., 8536, 34689, 42491
Pears, fresh, and peaches grown in—
California, 32591, 43499
Pecan promotion and research plan, 3362, 38278, 41023, 51568
Pork promotion, research, and consumer information, 47204
Potatoes (Irish) grown in—
California, 33018, 33760, 46760
Colorado, 8539, 33019, 33762, 34691
Idaho, 33014, 38274, 44605
Oregon, 33014, 33018, 33760, 38274, 44605, 46760
Southeastern States, 34692
Washington, 32592, 33016, 45415
Potatoes; fresh Irish round white potato diversion program, 29097
Potato research and promotion plan, 3358
Poultry and rabbit products:
Inspection and grading; fees and charges increase, 57537
Prunes (dried), imported, 33320
Prunes (dried) produced in California, 13697, 32003, 40721
Raisins produced from grapes grown in California, 32598, 47028, 48274, 64106, 64107
Restricted use pesticides, recordkeeping by certified applicators; surveys and reports, 19014
Soybean promotion, research, and consumer information, 40730, 47983, 60543, 64670
Modifying or exempting petitions; rules of practice, 32436
Spearmint oil produced in Far West, 28340, 32596

Tobacco inspection:
Inspection, price support services, and sales, 21343
Tomatoes grown in Florida, 57718, 57719
Vegetables and specialty crops; import regulations:
Potatoes, onions, tomatoes, etc., 69186
Walnuts grown in California, 57959
Watermelon research and promotion plan, 3354

PROPOSED RULES

Agricultural and vegetable seeds; inspection and certification testing [illegible]32617
Almonds grown in Ca[illegible]nia, 43565, 64175
Blueberries; grade standards, 61033
Cherries, tart, grown in—
Michigan et al., 63108, 68065
Cotton:
Classification services; user fees, 32454
Cotton research and promotion:
Cotton Board rules and regulations; imported cotton value, 32066
Dairy products:
Promotion and research order, 25785
Dairy products; grading, inspection, and standards:
Colby cheese, 34993
Fee increases, 57567
Whipped butter, 34937
Egg research and promotion orders, 65939
Eggs and egg products; inspection and grading:
Fees and charges increase, 37872, 38602
Refrigeration and labeling requirements; shell eggs, 3234
Fluid milk promotion program, 21512, 25900
Order, 46877
Frozen cauliflower; grade standards, 3816, 29985
Correction, 7296
Grapes (Tokay) grown in California, 40756
Grapes (Tokay), imported, 40758
Kiwifruit grown in California, 33035, 34940
Meats, prepared meats, and meat products:
Meat grading and certification services; fee increase, 32616
Milk marketing orders:
Central Arizona, 67703
Chicago Regional, 32464, 42258
Eastern Colorado, 32467
Eastern Ohio-Western Pennsylvania, 33039
Georgia, 33038, 34946, 65135
Georgia et al., 47653
Great Basin, 7996
Greater Louisiana, 54530
Louisville-Lexington-Evansville, 50526
Memphis, TN, 25576
Middle Atlantic, 34725, 42881, 43572
Nashville, TN, 25577, 34230
New England et al., 10993, 12634, 29133, 33347, 58112, 67380
New Mexico-West Texas, 45295
Ohio Valley et al., 33347
Pacific Northwest et al., 53439
Paducah, KY, 25577
Southern Michigan, 6447, 64176
Southwest Plains, 8559, 53438, 63120
Tennessee Valley et al., 57970
Texas, 32465, 53436
Olives grown in California, 8558
Onions grown in—
Idaho, 34944
Idaho et al., 3234
Oregon, 34944, 58105
Washington, 58105
Oranges (navel) grown in Arizona and California, 8912
Oranges (Valencia) grown in Arizona and California, 8912
Organization, functions, and authority delegations:
Commodity laboratory testing programs; establishment, 13130
Pecan promotion and research:
Referendum, determination of representative period for voter eligibility; and designation of referendum agent, etc., 41203
Pork promotion, research, and consumer information, 32468
Potatoes (Irish) grown in—
Idaho, 33037, 42696
Oregon, 33037, 42696
Poultry and rabbit products; inspection and grading:
Fees and charges increase, 37872, 38602
Soybean promotion, research, and consumer information; referendum procedures, 26933
Spearmint oil produced in Far West, 67378
Tobacco inspection:
Inspection, price support services, and sales, 3233
Tomatoes grown in Florida, 44780
Tomato sauce; grade standards, 47071, 14344

NOTICES

Grants and cooperative agreements; availability, etc.:
Federal-State marketing improvement program, 3250.
Meetings:
Burley Tobacco Advisory Committee, 6108, 31939
Cotton Marketing National Advisory Committee, 14376
Flue-Cured Tobacco Advisory Committee, 21556, 31939
National Organic Standards Board, 26734, 31491, 47112
Organic livestock and livestock products, 69315
Tobacco auction market establishment, Williamston et al., NC, 58535
Tobacco Inspection Services National Advisory Committee, 15467
Milk; manufacturing, production, and processing; recommended State requirements, 26950

Agricultural Research Service

RULES

Biotechnology risk assessment research grants program; administrative provisions, 65646

PROPOSED RULES

Biotechnology risk assessment research grants program; administrative provisions, 11910

NOTICES

Grants and cooperative agreements; availability, etc.:
Biotechnology risk assessment research program, 19528
Inventions, Government-owned; availability for licensing, 4147, 21138, 39523, 49965
Meetings:
National Arboretum Advisory Council, 26286
National Genetic Resources Advisory Council, 16649, 59445
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Berry Holding Corp., 28545
British Technology Group USA, 17826
Dynic Corp., 4977
E.I. du Pont de Nemours & Co., Inc., 7063
EcoScience Corp., 58321
Jack M. Berry, Inc., 58321
Monell Chemical Senses Center, 21701
Neogen Corp., 55037
North Star Technologies, 45093
Perten Instruments North America, Inc., 16169
Phytotechnologies, Inc., 58322

Agricultural Stabilization and Conservation Service

RULES

Conservation and environmental programs:
Colorado River Basin salinity control program, 11783
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 11962, 57717
Tobacco, 11959, 36853
Special programs:
Agricultural Foreign Investment Disclosure Act; land used for forestry production, 48273

PROPOSED RULES

Conservation and environmental programs
Non-emergency haying and grazing on conservation reserve program grasslands, 66308
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 63106
Tobacco, 3869, 67376
Federal claims collection, 33029
Special programs:
Agricultural Foreign Investment Disclosure Act; land used for forestry production, 3871
Tobacco inspection:
Inspection, price support services, and sales, 3233
Warehouses:
Electronic cotton receipts use, 43298

NOTICES

Cotton marketing system, electronic; Government's role and regulatory authority, 64288
Feed grain donations:
Blackfeet Tribe of Blackfeet Indian Reservation, MT, 6202
Colville Indian Reservation, WA, 13444
Fort Berthold Indian Reservation, ND, 11207
Spokane Indian Reservation, WA, 13445
Marketing quotas and acreage allotments:
Tobacco, 36633
Meetings:
National Conservation Review Group, 3932, 55037
Warehouses, licensed; list availability, 13444
Warehouses, user fees for licensing and examining, 44320

Agricultural Workers Commission

See Commission on Agricultural Workers

Agriculture Department

See Agricultural Marketing Service; Agricultural Research Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Cooperative State Research Service; Economic Research Service; Extension Service, USDA; Farmers Home Administration; Federal Crop Insurance Corporation; Federal Grain Inspection Service; Food and Nutrition Service; Food Safety and Inspection Service; Foreign Agricultural Service; Forest Service; Human Nutrition Information Service; National Agricultural Statistics Service; Packers and Stockyards Administration; Rural Electrification Administration; Rural Telephone Bank; Soil Conservation Service

RULES

Administrative regulations:
Formal adjudicatory proceedings; post-hearing procedure; CFR correction, 30696

INDEX
VOL
58
1993
UMI

Agriculture

Audits of institutions of higher education and other nonprofit institutions, 41410
Meat import limitations:
Australia and New Zealand, 18143
Nondiscrimination on basis of handicap in federally conducted programs or activities; enforcement, 57690
Organization, functions, and authority delegations:
Alternative Agricultural Research and Commercialization Board, 26679
Assistant Secretary for Administration et al., 11954, 11955
Assistant Secretary for Economics et al., 4569
Assistant Secretary for Marketing and Inspection Services et al., 42841
Assistant Secretary for Natural Resources and Environment et al., 60541
Assistant Secretary for Science and Education et al., 35359, 51211
Practice and procedure:
Agency employees appearing as witnesses in judicial or administrative proceedings, 62495
Correction, 64353

PROPOSED RULES

Milk; excessive manufacturing (make) allowances in State marketing orders, 58299
Regulatory agenda, 24008, 56008

NOTICES

Agency information collection activities under OMB review, 4404, 6382, 7063, 7878, 9143, 11393, 12354, 13444, 14554, 16169, 18199, 19646, 21437, 25964, 26734, 28387, 29384, 30748, 31689, 32508, 33429, 34239, 35425, 36633, 37903, 39192, 40787, 41457, 42937, 44158, 45092, 46156, 47431, 48353, 49469, 51046, 51608, 53185, 54325, 57984, 58835, 59983, 60832, 62093, 63331, 64395, 65697, 68114, 68849
Agricultural commodities, overseas donations; types and quantities, 343, 52258, 52946
Committees; establishment, renewal, termination, etc.:
Agricultural Advisory Committee for Trade et al., 6473
Cotton Marketing National Advisory Committee, 3249
Dietary Guidelines Advisory Committee, 38576
Environmental statements; availability, etc.:
Beltsville, MD; office complex construction, 68628
Grant and cooperative agreement awards:
CARE, 28853
Coordination in Development (CODEL), Inc., 12926
Midwest Universities Consortium for International Affairs (MUCIA), 12926
World Resources Institute, 12926
Grants and cooperative agreements; availability, etc.:
Alternative agricultural research and commercialization center program, 32093
Import quotas and fees:
Meat import limitations; quarterly estimates, 536, 17825, 38114, 52742
Sugars, syrups, and molasses, 28545
Meetings:
Agricultural Biotechnology Research Advisory Committee, 8034, 29384, 58146
National nutrition monitoring and related research program; ten-year comprehensive plan; availability, 32752
National Wilderness Preservation System:
Water rights interpretation, 68629
Privacy Act:
Computer matching programs, 33246, 62634
Systems of records, 6105, 7179, 38738, 42279, 47106, 48633
Program payments; income tax exclusion; primary purpose determinations:
Montana Department of Fish, Wildlife and Parks upland game bird habitat enhancement program, 19801
New York City Environmental Protection Department watershed agricultural program, 19802
Oregon Oil Heat Commission environmental protection fund program, 19803
South Carolina Hugo incentives program, 35425
Wisconsin Petroleum and Fire Inspection Bureau, 32343
Reports; availability, etc.:
World Agricultural Outlook Board; market sensitive reports; release times, 51050
Senior Executive Service:
Performance Review Boards; membership, 53910
United States-Canada Free-Trade Agreement; fresh fruit and vegetable imports:
Cauliflower from Canada, 48353
Potatoes from Canada, 16394, 34558
World Declaration and Plan of Action for Nutrition; availability and comment solicitation, 35426

Air Force Department

RULES

Special investigation:
Acquisition of information concerning persons and organizations not affiliated with Defense Department; CFR Part removed, 4902
Weather modification; CFR Part removed, 13007

PROPOSED RULES

Acquisition regulations:
Contract management—
Aircraft accidents; toxicological testing; withdrawn, 6771
Aircraft:
U.S. Air Force airfields; civil aircraft use; policies, responsibilities, and procedures, 49951

NOTICES

Acquisition regulations:
Factory simulation; policy statement, 44808
Active military service and discharge determinations:
Civilian female employees of U.S. Army Nurse Corps while serving in defense of Bataan and Corregidor (January 2, 1942-June 12, 1945), 32523
Civilian flight crew and aviation ground support employees of Northwest Airlines, who served as result of contract with Air Transport Command (December 14, 1941-August 14, 1945), 32523
Environmental statements; availability, etc.:
Alaska; high-frequency active auroral research program, 57991
Alaska; military operations areas improvements, 36948
Andersen AFB, GU; solid waste management complex, 34572
Base realignment and closure—
Gentile Air Force Station, OH, et al., 57991
George AFB, CA, 11400, 58543
Homestead AFB, FL, 38751, 44173
McGuire AFB, NJ, 52102
Travis AFB, CA, 51621
Bradley International Airport, CT, et al.; aircraft conversions, etc., 15329
Buckley Air National Guard Base, CO; 140th Fighter Wing, Colorado Air National Guard; military special use airspace modification, 36948
Palmdale Regional Airport, CA; commercial operations increase, 15843
Pope Air Force Base, NC, 32523
Training range, Elmore County, ID, 65971
Meetings:
Air Force Academy Board of Visitors, 44809
Air University Board of Visitors, 9151
Community College Board of Visitors, 12942, 57991
Reserve Officer Training Corps Advisory Committee, 11400
Scientific Advisory Board, 3266, 4156, 4415, 4416, 5717, 5718, 6481, 7550, 7551, 8588, 8743, 8934, 11400, 11848, 12942, 13061, 13453, 17210, 18207, 18208, 19237, 19238, 19663, 27715, 28396, 29397, 28565, 30153, 31696, 32523, 34785, 36949, 41086, 44808, 48354, 48355, 54333, 59452, 63158, 65585, 65972
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Beam Tech Corp., 9152
Delta Research Corp., 57991
Semiconductor Laser International Corp., 63158
Privacy Act:
Systems of records, 12942, 13453, 29206, 30029, 61864, 65973
Senior Executive Service:
Performance Review Boards; membership, 43868, 47433

Alaska Power Administration

NOTICES

Wholesale power rates:
Eklutna Project, 47726, 59022

Alcohol, Tobacco and Firearms Bureau

RULES

Alcohol; viticultural area designations:
Mt. Veeder, CA, 65123
Oakville, CA, 35877
Rutherford, CA, 35865
Spring Mountain District, CA, 28348
Texas High Plains, TX, 11964
Yolo County, CA, 28351
Alcoholic beverages:
Beer; brewer's operation reports; filing frequency change, 40355
Bonded wine premises operations reports and wine excise tax returns; filing frequency change, 19062
Correction, 48424
Bulk process sparkling wines; labeling, 5608, 11886
Malt liquor, labeling and advertising—
Alcoholic content labeling, 21228
Malt beverage labels, disclosure statement for aspartame, 44131
Vodka, identity standard—
Compliance date deferral, 45251
Wine; production materials and processes authorization and alcohol tolerance change on labels of wine under 7 percent alcohol by volume, 52222
Alcohol, tobacco, and other excise taxes:
Nonimportable firearms; domestic assembly, 40587
Distribution and use of tax-free alcohol:
Special (occupational) tax exemption for certain educational institutions, 19060

Firearms:
Arms, ammunition, and implements of war; importation, 47831
Miscellaneous amendments, 40353

PROPOSED RULES

Alcohol; viticultural area designations:
Hames Valley, CA, 57764
Lake Wisconsin, WI, 49949
Napa County, CA, 44152
Spring Mountain, CA, 8726
Correction, 11290
Alcoholic beverages:
Distilled spirits, labeling and advertising—
Vodka, 46141, 53682
Malt liquor, labeling and advertising—
Alcoholic content labeling, 21228, 21233, 38543
Identity standards, 21126, 38542
Malt beverage labels, aspertame disclosure statement, 21130
Wine and distilled spirits; standards of fill, 35908, 44629
Wine, distilled spirits, and malt beverages; nutrition labeling, 42517, 57763
Wine, labeling and advertising—
Multistate appellations of origin for contiguous States, 65295
Alcohol, tobacco, and other excise taxes:
Tobacco products and cigarette papers, tubes; exportation without payment of tax or with drawback of tax, 3247
Regulatory agenda, 24783, 56795

NOTICES

Commerce in explosives:
Explosive materials list, 4736
Organization, functions, and authority delegations:
Associate Director (Compliance Operations), 5058, 8090

American Indian, Alaskan Native and Hawaiian Native Housing, National Commission

See National Commission on American Indian, Alaskan Native and Hawaiian Native Housing

Animal and Plant Health Inspection Service

RULES

Agricultural quarantine and inspection services; user fees (United States), 14305, 32433, 59354
Animal welfare:
Dogs and cats—
Pounds and shelters, private entities, and research facilities; pre-sale care and treatment requirements, etc., 39124, 45040
Direct final rulemaking policy; establishment, 47206
Exportation and importation of animals and animal products:
Animal casings from countries with African swine fever or bovine spongiform encephalopathy, 47029
Animal semen importation, 37642
Bovine spongiform encephalopathy (BSE); animal products and byproducts prohibitions and restrictions—
Denmark removed from list, 4306, 36594
Portugal added to list, 65103
Cattle from Canada, 37641
Cattle from Mexico; identification requirements, 68508
Garbage that can introduce diseases or pests of livestock, poultry, or plants, 66247
Gelatin, 50250
Horses from Mexico; quarantine requirements, 45236
Pork and pork products from Denmark, 36593
Ports designation—
Baudette, MN, 38282
Louisville, KY, et al., 58098
Port Canaveral, FL, 37642
Ports of embarkation and export inspection facilities—
Tacoma, WA, 37639
Rinderpest and foot-and-mouth disease; disease status change—
France, 36594
Netherlands, 28343
New Caledonia, 58751
Spain, 11365, 13698
Genetically engineered organisms:
Introduction of certain regulated articles and petitions for nonregulated status, 17044
Hawaiian and territorial quarantine notices:
Sharwil avocados from Hawaii, 57955
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications, 4360, 36593
Brucellosis in swine—
State and area classifications, 11364, 28342, 34700, 43068, 68505
Brucellosis ring test, 48445
Official pseudorabies tests, 68506
Tuberculosis in cattle and bison—
State and area classifications, 34699, 57962
Livestock and poultry disease control:
Animals destroyed because of brucellosis; CFR correction, 47984
Tuberculosis reactor cattle and bison; indemnity claims for herd additions, 34697
Overtime services relating to imports and exports:
Commuted traveltime allowances, 219, 28345, 60101
Phytosanitary certificates; issuance; State fees, 38269
Plant Protection and Quarantine Treatment Manual; incorporation by reference, 52399
Plant-related quarantine, domestic:
Black stem rust, 8820
Fire ant, imported, 57952, 67627
Fruits and vegetables from Hawaii et al., 7953, 40190
Gypsy moth, 39418
Mediterranean fruit fly, 6343, 39123, 42489, 49186, 53105, 63027, 67627
Mexican fruit fly, 217, 28335, 64102
Oriental fruit fly, 8517, 29028, 36589, 51982, 57951
Pine shoot beetle, 6346, 28333, 34681, 63024
Pink bollworm, 36591, 39417
Witchweed, 215, 11099, 36590, 51979
Plant-related quarantine, foreign:
Corn seed from New Zealand, 44743
Fruit and vegetables, importation, 43493, 69176
Hass avocados from Mexico; 40033
Honeydew melons from Brazil, 11363
Monterey pine and Douglas-fir logs from New Zealand, 8524, 59348
Monterey pine logs from Chile, 59348
Postentry quarantine of plants, 38263
Correction, 41124
Potatoes from Canada, 11957
Practice and procedure:
Veterinary diagnostic services; user fees, 38954
Veterinarian accreditation; correction, 8820
Veterinary services, import- and export-related; user fees, 67647
Viruses, serums, toxins, etc.:
Hemadsorbing agents test; elimination of need to use human type "O" red blood cells, 50251
Veterinary biologics, 11367, 29028

PROPOSED RULES

Animal semen importation, 266
Animal welfare:
Licensing and records; dealers, exhibitors, and auction sales operators, 68559
Marine mammals—
Humane care and transportation of marine mammals used for exhibition and research, 39438
Exportation and importation of animals and animal products:
Animal embryo and semen importation, 36625
Animal semen importation, 55026
Cattle from Mexico, 67709
Identification requirements, 47084, 59963
Cooked meat from countries where rinderpest or foot-and-mouth disease exists, 38316
Garbage that can introduce diseases or pests of livestock, poultry, or plants, 38308
Gelatin, 38314
Harry S. Truman Animal Import Center (HSRAIC), 37878
Hoof importation, 37669
Horses from Portugal; African horse sickness, 58304
Horses, ruminants, and swine; quarantine fee, 48003
Ports designation—
Baudette, MN, 4361
Dallas-Ft. Worth, TX, 59962
Louisville, KY, et al., 37667, 43301
Port Canaveral, FL, 4362
Ports of embarkation and export inspection facilities—
Tacoma, WA, 262
Quarantine facilities for birds, 41204
Rinderpest and foot-and-mouth disease; disease status change—
Belgium, 47834, 57971
Chile, et al., 41643, 50527
France, 14174, 15901, 17642
Netherlands, 264
New Caledonia, 36624
South Korea, 63122
Ruminants and horses imported from Canada; importation of wild ruminants and wild swine, 59414
Swine vesicular disease; pork and pork products from countries where disease is known to exist, 60146
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
D-Tec Brucella A test; addition to official test list, 50290
Brucellosis in swine—
States seeking brucellosis free validation; testing requirements standardization and simplification, 39458, 47222
Brucellosis ring test, 37665
Cattle from Mexico; certification requirements, 59959, 67708
Chicken disease caused by salmonella enteritidis, 41048, 50527
Hearing, 46569, 52240
Official pseudorabies tests, 37666
Scrapie in sheep and goats, 59955
Tuberculosis in cattle and bison—
Accredited-free status States; definition, 43086

Animal

Livestock and poultry disease control:
Animals destroyed because of brucellosis, 68561
Overtime services relating to imports and exports:
Phytosanitary certificates; issuance by States, 260
Plant-related quarantine, domestic:
Pink bollworm, 21113
Unshu oranges from Japan, 66304
Plant-related quarantine, foreign:
Apples, apricots, peaches, persimmons, pomegranates, and citrus from Sonora, 44779
Corn seed from New Zealand, 32456
Fruits and vegetables; importation, 11383, 42504, 59953
Nursery stock, plants, roots, bulbs, etc., 57969
Plants established in growing media; importation, 47074
Potatoes from Canada, 66305
Unshu oranges from Japan, 66304
Poultry improvement:
National Poultry Improvement Plan and auxiliary provisions—
Administrative and laboratory procedures for examining and testing participating flocks and preventing disease outbreak, 44782
Practice and procedure:
Veterinary diagnostic services; user fees, 15292
Veterinary services, import- and export-related; user fees, 39163
Viruses, serums, toxins, etc.:
Analogous products—
Packaging and labeling, 25786
Restrictions and use, 15301
Antibody products, 39462
Dog safety tests; standard requirements, 39467
Hemadsorbing agents test; elimination of need to use human type "O" red blood cells, 21114
Immunogenicity; in vitro in place of animal tests, 12187
Withdrawn, 47222
Pasterella multocida vaccine, avian isolate, 37670

NOTICES

Calgene, Inc.; genetically engineered cotton lines; regulatory status determination; petition receipt, 47249
Committees; establishment, renewal, termination, etc.:
National Poultry Improvement Plan General Conference Committee, 60592
Environmental statements; availability, etc.:
Animal damage control program, 4404, 8252, 16520
Genetically engineered organisms; field test permits—
Bentgrass plants, etc., 48031
Cantaloupe, etc., 28387, 40190, 43317
Carrot plants, 58146
Corn, 7208
Corn plants, etc., 28948
Lettuce plants, 49016
Petunia plants, 11582
Potatoes, etc., 31939
Potato plants, 53185
Pseudomonas syringae, etc., 34985
Rapeseed plants, 47250, 58320
Rapeseed plants, etc., 42280
Rice, etc., 34986
Soybean plants, etc., 4405, 11099, 19232, 26095
Sugar beet plants, 37903, 58147
Tobacco plants, etc., 16646, 19804, 32642, 39725
Tomato plants, etc., 12354, 12927
Interstate movement and field testing of biological control agents—
Aphthona lacertosa, etc., 47250
Pythium rostratum, 31689
John F. Kennedy International Airport, NY; comprehensive gull hazard management program; meeting, 19234
Logs, lumber, and other unmanufactured wood articles; importation, 39726
Medfly cooperative eradication program, 18366, 31007, 62322
Veterinary services program, 16520
Veterinary unlicensed biological product for field testing; shipment, 64287
Genetically engineered organisms for release into environment; permit applications, 4406, 7208, 7209, 11582, 12355, 12928, 16647, 17825, 19233, 21701, 28388, 28950, 32643, 33145, 33247, 36634, 38354, 39727, 42281, 43318, 47251, 58148
Harry S. Truman Animal Import Center; importation procedures; application period and lottery, 36635
Meetings:
Animal Welfare Act; farm animal issues, 47852
Foreign Animal and Poultry Disease Advisory Committee, 21138
In vitro potency testing, 47252
National Animal Damage Control Advisory Committee, 50540
Veterinary biological products; manufacture, distribution, and use, 19234, 38354, 41239, 67390
Monsanto Co.; genetically engineered soybean line; nonregulated status determination; petition receipt, 64287
Upjohn Co.; ZW-20 virus resistant squash regulatory status determination; interpretive ruling, 15323
Veterinary biological products; production and establishment licenses, 5353, 11829, 15466, 25601, 30748, 34987, 38355, 45092, 48031, 58321, 67390

Antitrust Division

NOTICES

Competitive impact statements and proposed consent judgments:
Airline Tariff Publishing Co. et al., 3971, 27338
American Machine & Foundry Co., Inc., et al., 47478
Canstar Sports USA, Inc., 16695, 46991
Cookson Group, PLC, et al., 6298
Hospital Association of Greater Des Moines, Inc., et al., 6013, 11422
Primestar Partners, L.P., et al., 33944, 60672
Reno Merchant Plumbing & Heating Contractors, Inc., et al., 13090
Southern Pine Association et al., 16698
Texas Commerce Bancshares, Inc., et al., 15361
USAir Group, Inc., 16698, 36996
Eastman Kodak Co.; final antitrust decree termination, 65398
National cooperative research notifications:
ABB Atom AB et al., 8429, 8977
Advanced Display Manufacturers of America, 14425
Advanced Lead-Acid Battery Consortium, 5758, 15882, 34590, 51382
Air Products & Chemicals, Inc., 51102
Amrep Inc., 39040
Appliance Industry-Government CFC Replacement Consortium, Inc., 43655
ATM Forum, 31415, 63586
Bell Communications Research, Inc., 6808-6809, 12371, 13091, 21596, 26158, 30814, 38585, 39040, 43654, 51102, 51103, 57622, 60879
Bellcore Ventures, Inc., 21597
Biotechnology Research and Development Corp et al., 43654, 63586
Cable Television Laboratories, Inc., 66022
Cable Television Laboratories, Inc., et al., 4185, 12371, 33951, 51103
CAD Framework Initiative, Inc., 3980, 13802, 21597
Center for Emissions Control, Inc., 33952
Center for Manufacturing Competitiveness, Inc., 45531, 51651
Chevron Research & Technology Co., 68662
Climatology and Simulation of Eddies Joint Industry Project, 59736
Composite Materials Characterization, Inc., 38585
Conductus, 4185
Consortium for Advanced Manufacturing-International, Inc., 7580
Corporation for National Research Initiatives, 66022
Corporation for Open Systems International, 7158, 43376, 49527
DowBrands, Inc., 51103
Financial Services Technology Consortium, Inc., 65399
Frame Relay Forum, 6986, 21597, 45532, 61717
Fuel Cell Commercialization Group, 68662
Gas Utilization Research Forum, 52508
General Electric Co., 51103
General Instrument Corp. et al., 8429, 8977
General Motors Corp., 14425, 33955
Genosensor Consortium, 49059
Global Industries, Ltd., 13091, 68663
Great Lakes Composites Consortium, Inc., 5758, 60060
GTE Mobile Communications Service Corp., 26350
H.B. Fuller Co., 43654
Halon Alternatives Research Corp., Inc, 26350
Hewlett-Packard Co. et al., 33952
Horizontal Well Gravel Pack Program (1993), 60060
Human Genome Sciences, Inc., et al., 51103
Huntington Laboratories, Inc., 43376
IBACoS, Inc., 12371, 33284, 65399
Industrial Macromolecular Crystallography Association, 16703
Inter Company Collaboration for Aids Drug Development, 36223
International Business Machines, 3980
International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA-227 (IPACT-II), 25657
InterOperable System Project Foundation, 49529
Kaleida Labs, Inc., 28899
Lynn, Sharon, et al., 49528
Massachusetts Institute of Technology, 33953, 52327
MCNC, 28899
Michigan Materials and Processing Institute, 43655, 62375
Microelectronics & Computer Technology Corp., 6014, 6420, 16703, 28900, 45532, 58019
Minnesota Mining & Manufacturing Co., 33469
Mortgage Loss Prevention Forum, 58180
National Center for Manufacturing Sciences, Inc., 8429, 8977, 13504, 33953, 49530, 66022
National Information Technology Center of Maryland, Inc., 21598, 38140, 52508, 68663

UMI

Network Management Forum, 13091, 31416, 59736
OAS Joint Venture, 49059
Ohio Aerospace Institute, 30814
Open Software Foundation, Inc., 3980, 14591, 30815, 46652
OSINET Corp., 58019
Pacific Telesis Group et al., 28900
PDES Inc., 41104
Petroleum Environmental Research Forum, 3980, 13505, 18228, 21476, 21598, 30815, 31416, 33488, 33953, 33954, 33955, 49059, 49530, 51104, 61717
Petrotechnical Open Software Corp., 8062, 28900, 43655, 60880
Pixel International S.A., 61717
Portable Power Equipment Manufacturers Association, 51104
Portland Cement Association, 19141, 33284, 52120, 60880
PowerOpen Association, Inc., 33954, 43911, 65399
Reckitt & Colman Household Products Inc., 38586
SciMed Life Systems, Inc., 52508
Semiconductor Research Corp., 6529, 8430, 8978, 21318, 26350, 40448, 69409
Smart House, L.P., 7581
Software Productivity Consortium, 60880
Southwest Research Institute, 6015, 13283, 21318, 21598, 25351, 33955, 68663, 69409
Spectra Diode Laboratories, Inc., et al., 4185
Spray Drift Task Force, 7582, 43376, 66023
SQL Access Group, Inc., et al., 37026, 59736
Sumitomo Light Metal Industries, Ltd., et al., 3980
Switched Multi-Megabit Data Service Interest Group, 28901, 58019
Thermoplastic Engineering Design Venture, 33284
UNIX International, Inc., 16703, 31417
Westinghouse Electric Corp., 8430, 8978
Witco Corp., 38586
X Consortium, Inc., 59737
Pilot business review program, 6132

Appalachian States Low-Level Radioactive Waste Commission

NOTICES
Meetings, 31940

Architectural and Transportation Barriers Compliance Board

RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Automated teller and fare vending machines, 38204

PROPOSED RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Buildings and facilities; State and local government facilities; correction, 3069
Children's environments, 6924, 17175
Detectable warnings, 37052
Regulatory agenda, 24990, 56992

NOTICES
Americans with Disabilities Act:
Research priorities 1993 and 1994 FY, 37058
Committees; establishment, renewal, termination, etc.:
Recreation Access Advisory Committee, 6949
Meetings, 11207, 25603, 34781, 57582, 69328
Recreation Access Advisory Committee, 32511, 49284, 69328

Arctic Research Commission

RULES
Nondiscrimination on basis of handicap in federally conducted programs or activities; enforcement, 57690

NOTICES
Meetings, 12024, 26531, 42719, 59446

Armed Forces Retirement Home

RULES
Organization, functions, and authority delegations:
United States Soldiers' and Airmen's Home and United States Naval Home: agencies incorporated, 68505

NOTICES
Privacy Act:
Systems of records, 68629

Arms Control and Disarmament Agency

NOTICES
Grants and cooperative agreements; availability, etc.:
Hubert H. Humphrey fellowship competition, 50328
William C. Foster fellows visiting scholars program, 57583
Meetings:
Chemical Weapons Convention (CWC); chemical and related industry; seminars, 3933
Senior Executive Service:
Performance Review Boards; membership, 60177

Army Department

See Engineers Corps

RULES
Military traffic management:
Freight motor carriers, exempt surface freight forwarders, and shipper agents qualification program, 44404
Personnel:
Panama Canal Employment System (PCES); personnel policy, 5615
Privacy Act; implementation, 51011
Correction, 61027
Procurement:
Supplies and services; CFR Subchapter removed, 6715

PROPOSED RULES
Civil authorities and public relations:
Civil disturbances, 37770
Law enforcement and criminal investigations:
Absentee deserter apprehension program and surrender of military personnel to civilian law enforcement agencies, 31070
Military reservations and national cemeteries:
Fort Jackson, SC—
Improper associations of personnel, 37774
Prohibited personnel practices, 40611
Procurement:
Freight and personal property carriers; new payment system affecting invoicing procedures, 42518

NOTICES
Armaments, munitions, and chemical command (AMCCOM); contractor performance certification program, 5365
Committees; establishment, renewal, termination, etc.:
Inland Waterways Users Board, 42304
DECCA electronic navigation lattices; removal from new chart editions, 68879
Environmental statements; availability, etc.:
Base realignment and closure—
Cape St. George Military Reservation, FL, 14204
Detroit Arsenal, MI, et al., 48041
Fort George G. Meade, MD, 66353
Fort Ord, CA, 36949
Hamilton Army Airfield, CA, 4416
Letterkenny Army Depot, PA, 61894
Redstone Arsenal, AL, 14205, 31696
Rock Island Arsenal, IL, 8045
Fort Belvoir Engineer Proving Ground, VA, development, 15487, 31511
Fort Bliss, TX, et al.; Roving Sands joint training exercise, 14204
Fort Lewis, WA; mechanized or armored combat forces, 17578, 58542
Fort McCoy, WI; master plan update, 64733
Ground based radar family of strategic and theater radars, 36187
Hamilton Army Airfield, CA, 18082
Life Sciences Test Facility, Dugway Proving Ground, UT, 25978
Military Ocean Terminal, NC; deep-draft dredging, 7770
Red Butte Dam, UT; disposition, 32107
Red-cockaded woodpecker; management guidelines development, 8588
Theater missile defense (TMD) and sensor programs; test range areas, 18082
Western Army National Guard Aviation Training Site, AZ, 13254
White Sands Missile Range, NM; future testing projects, 21708
Woodbridge Research Facility, VA; electromagnetic pulse simulators relocation, 61895
Meetings
Armed Forces Epidemiological Board, 4156, 19805, 51325
Coastal Engineering Research Board, 29393
Historical Advisory Committee, 54334
Military Personal Property Claims Symposium, 6780, 16653, 44809
Rifle Practice Promotion National Board, 54123, 59019
Science Board, 92, 5960, 6780, 8045, 11221, 12030, 13462, 15330, 16817, 21708, 21974, 25975, 28397, 30153, 34428, 34785, 39009, 43869, 45102, 49038, 54334, 60427, 60611, 61074, 64298, 68636, 69356
U.S. Military Academy, Board of Visitors, 3540, 17209, 52103
Yakima Training Center Cultural and Natural Resources Committee, 52950, 54335
Memorandums of agreement
Environmental Protection Agency; 1987 Corps of Engineers wetlands delineation manual; wetlands determinations, 4995
Military traffic management
Carrier liability limitation increase in international through government bill of lading program, 12361
Carriers participating in one-time-only household goods and unaccompanied baggage program; change, 21562
Defense Transportation Tracking System (DTTS), 36188, 52951
Division 1.1, 1.2, and 1.3 ammunition and explosives shipments; transloading, 47717, 65973

INDEX
VOL
58
1993
UMI

DOD sponsored household goods, 4984
Freight and personal property carriers; new payment system affecting invoicing procedures, 50542
Freight motor carriers, exempt surface freight forwarders, and shipping agents; qualifying program, 44174
Freight traffic by motor carrier; rates and charges for overweight and over dimensional shipments, 14563
Freight traffic shipments; full valuation, 34785
Household goods and unaccompanied baggage, international through Government bill of lading program, 19805
Intrastate personal property rate program; procurement change, 58543
Motor carrier driveaway and towaway service; rates, 12362
Overdimensional and overweight hauling permits, 68879
Personal property shipping and storage program; inclusion of DOD non-appropriated fund employees, 11401, 40628
Personal property traffic management regulation; household goods shipping containers; rate solicitation, 47433
Procedures governing disqualification and nonuse of carriers of DOD traffic, 38258
Security seals for transportation of sensitive DOD cargo, 38121
Total quality assurance program, 47717, 52950, 67780
Trip leasing program, 54123
Patent applications; secrecy orders, 3540
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Alpha 1 Biomedicals, Inc., 30153, 43342
Automated inspection of manufactured products, 14205
Cannon projectile stabilizer, 31697
Device for surface heated water intake trash rack, 19092
Dry soup mix, 44174
Elan Pharmaceutical Research Corp., 3540
Hiller Technologies, a Limited Partnership, 59452
Leakage-free linearly varying axial permanent magnet field source, etc., 17868
Malaria parasites, plasma-free medium for cultivation, 11402
Mercer Scientific International Corp., 30154
Method of assessing thermal processing of food using intrinsically-created compounds, etc., 60007
Nerve agent antidotes preparation, 11402
Phase gradient contrast microscope, 30154
Restraining movement of objects; rapidly deployable volume-displacement system, 19806
Sartomer Co., Inc., 42305
Self heating individual meal module, etc., 38121
Spread spectrum multiplexed noise codes and methods to eliminate interference among them, etc., 49478, 52747
Stern et al., 44174
Typhoid fever, rapid diagnosis, 11402
Youden, et al.; grinding apparatus, 36188
Privacy Act:
Systems of records, 3936, 25813, 29207, 40115, 45488
Procurement:
Freight and personal property carriers; new payment system affecting invoicing procedures, 52103
Senior Executive Service:
Performance Review Boards; membership, 39198, 40409, 44402

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Barry M. Goldwater Scholarship and Excellence in Education Foundation

NOTICES
Meetings; Sunshine Act, 13126

Blackstone River Valley National Heritage Corridor Commission

NOTICES
Meetings; Sunshine Act, 25702, 58591

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Bonneville Power Administration

NOTICES
Billing credit policy, 37918
Billing credits contracts:
Decision to sign, 11592, 32922
Intent to sign, 8048
Billing credits pilot program:
Seattle City Light; South Fork Tolt River Hydroelectric Project, 3941
Billing credits solicitation:
Proposed conservation projects, 8263
Bonneville purchasing and power assistance instructions; document availability, 49039
Environmental statements; availability, etc.:
Columbia and Snake Rivers flow improvement measures for salmon, 40002
Columbia River Treaty between Canada and U.S.; downstream power benefits entitlement delivery to Canada, 29811
Coyote Springs Cogeneration Project, OR, 36663
Hermiston Generating Project, OR, 59248
Pacific Northwest commercial services and rates, 42306
Resource programs, 26740
Satsop Combustion Turbine Project, WA, et al., 48357
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Eastern Washington Main Grid Support Project, WA, 39801
Hot Springs-Garrison tap line project, MT, 46953
Taylor Lakes area relocation project, OR, 21564
Umatilla County, OR; hatchery support facilities, 30044, 44333
Pacific Northwest Electric Power Planning and Conservation Act:
Policy review, 35922
Resource contingency program; preconstruction and investigation expenses payments to selected sponsors, 19238
Tenaska Washington II generation project; firm electric energy acquisition, 13256, 44666
Transmission rates
Proposed modification, 4416
Wholesale power rates:
Proposed modification, 4662

Canada and United States-International Joint Commission

See International Joint Commission-United States and Canada

Census Bureau

RULES
Age search and citizenship information; fee structure; cost increase, 4077
Foreign trade statistics, vessels in foreign and domestic trades, and air commerce regulations:
Shipper's export declarations and outward cargo manifests for shipments to Puerto Rico; procedures for submittal, 41422
NOTICES
Design alternatives, 2000 Census; assessment criteria, 16171, 38742
Meetings:
Agriculture Statistics Advisory Committee, 28393, 60178
American Economic Association Advisory Committee et al., 16812
Homeless population coverage improvement in 2000 census; research issues; conference, 48505
Surveys, determinations, etc.:
Manufacturing area; annual, 6386, 50541
Motor freight transportation and warehousing, 60423
Multiestablishment company organization survey, 58536
Post enumeration survey base adjustment for intercensal population estimates, 69
Retail trade; annual, 63334
Service industries; annual, 59447
Wholesale trade; annual, 58837
Voting age population for 1992; estimates, 16649

Centers for Disease Control and Prevention

NOTICES
Aerosol samplers sampling efficiency; NIOSH meeting, 8054
Agricultural workers; efforts to prevent injury and disease; NIOSH meeting, 37744
Airborne particulate lead, analysis; NIOSH meeting, 6125
Anti-tuberculosis activity; new and experimental compounds screening, 53740
Asphalt fume fractionation and identification of genotoxic components; NIOSH meeting, 33445
Asphalt products; occupational exposure, carcinogenic potential; scientific review of current intelligence bulletin; NIOSH meeting, 60202
Auditory effects of exposure to noise and industrial chemicals; NIOSH meeting, 7787
Childhood leukemia and paternal ionizing radiation exposure; epidemiology study; NIOSH meeting, 17894
Commercial dry cleaners; control of chemical exposures and ergonomic risk factors; NIOSH meeting, 60202
Committees; establishment, renewal, termination, etc.:
Prevention of HIV Infection Advisory Committee subcommittees, 19261
Workers' Family Protection Task Force, 49311
Concentrations of air contaminants that are immediately dangerous to life and health; comments and secondary data request, 63379

Control of air contaminants during manual dye weigh-out operations; NIOSH meeting, 54595
Engineering controls for preventing airborne infections in workers in health care and related facilities workshop; NIOSH meeting, 33445
Environmental protocol for methods determination for obtaining respiratory wood dust exposure levels by task in construction industry; NIOSH meeting, 17894
Glove liners puncture resistance study; NIOSH meeting, 65355
Grant and cooperative agreement awards:
  Albert Einstein College of Medicine, 39209
  Association of Maternal and Child Health Programs, 42733
  Association of State and Territorial Health Officials, 41283
  Colorado Department of Health, 43361
  Michigan Public Health Department, 28970
  National Association of County Health Officials, 21463
  Pan American Health Organization, 38428, 48658
  State and Territorial Health Officials Association, 38578
  World Health Organization, 50928
Grants and cooperative agreements; availability, etc.:
  Acquired Immunodeficiency Syndrome (AIDS)—
    AIDS and HIV infection; epidemiologic research studies, 27734
    Education programs; written materials, pictorials, audiovisuals, etc.; content requirements, 59726
  Antibacterial peptide constructed of amino acids capable of killing in vitro and in vivo broad spectrum of bacterial strains; development, 42556
  Bicycle injuries, State and community-based prevention programs, 40654
  Breast and cervical cancer—
    Early detection and control program, 41281, 45494
    Early detection program, 37954
  County-based medical examiners jurisdiction office information system; establishment, 19126
  Diarrheal disease in children; demonstration project to reduce hospitalizations, 44345
  Elevated blood-lead (PbB) levels surveillance in children, 37489
  Farm populations cancer control project demonstration program, 43362
  Hantavirus surveillance and prevention, 50926
  Health promotion and disease prevention research centers, 31718
  Hemophilia complications surveillance, 39210
  Human immunodeficiency virus (HIV)—
    Infection reporting systems evaluation, 47143
    Prevention projects for minority community-based projects program, 16535, 21457, 21727
    Public health conference support program for prevention, 64328
  Injury control research centers, 57830
  Lyme disease; research, treatment, and education programs, 65721
  Model TB prevention and control centers, 39213
  National/regional minority organizations HIV/STD prevention, immunization, and TB projects, 31719, 31721
  Nucleic acid and/or recombinant protein based diagnostic assays for detection of acute measles virus infection and determination of antibody seroprevalence, 44682, 49051
  Occupational lung disease prevention research program, 39029
  Occupational safety and health—
    Clinics; research, prevention education, and clinical services, 26140
    Concurrent engineering systems and technologies research, design, and development, 42332
    EARTALK system, 34466
    Education programs, 29414
    Lead poisoning prevention; States in collaboration with local health departments, 42330
    Occupational health nurses in agricultural communities, 42334
    Postdoctoral research associateship program, 28972
    Transportation equipment manufacturing and related industries; work-related musculoskeletal disorders and cardiovascular diseases reduction among workers, 42336
    Tuberculosis and tuberculous infection in health-care workers, 41482
  Periconceptional folic acid supplements use to prevent spina bifida and anencephaly; evaluation of community intervention in China, 60038
  Preventive health and health services block grants; data management within Government agencies designated as recipients, 55074
  Preventive health services—
    Sexually transmitted diseases accelerated prevention campaigns project, 28973, 63993
  Prostate cancer early detection programs, 47148
  Protease inhibitors in natural and biotechnological products; kits for use in separation, detection, and quantification, 48524
  Public health conference support program, 58008
  Radiation studies and research, 28978
  Research and development—
    DNA detection-based diagnostic tests for fungal septicemia, 5735
    Innovative ways for collecting urine from infants for subsequent analysis for presence of viruses, 34057
  Resident postdoctoral research program, 42557
  School health programs and youth health problems prevention, 46974, 48368
  Specific youth violence interventions evaluation, 37491
  State and community-based childhood lead poisoning prevention program, 21310
  State-based tobacco control programs, 36413
  State health promotion and chronic disease prevention databases/clearinghouses development program, 41283
  State level fatality surveillance and field investigations; NIOSH; fatality assessment and control evaluation model, 41791
  Unintentional injury prevention and control research, 21466, 27575
Heat stress in waste abatement workers; NIOSH meeting, 19673
Idaho National Engineering Laboratory; epidemiologic study of workers; NIOSH meeting, 50929
Impact noise effects on hearing; NIOSH meeting, 13067
Meetings:
  Advisory Committee to Director, 32709, 63995
  Childhood blood lead surveillance cooperative agreement recipients, 7141
  Childhood Lead Poisoning Prevention Advisory Committee, 28981, 68916
  Childhood lead poisoning prevention program grantee workshop, 7141
  Chronic Disease Prevention and Control National Conference, 47903
  Chronic fatigue syndrome research case definition, 44188
  Clinical Laboratory Improvement Advisory Committee, 4173, 6284, 19461, 31963, 40431, 62673
  Diabetes Translation and Community Control Programs Technical Advisory Committee, 37744, 51353
  Energy-Related Epidemiologic Research Advisory Committee, 14401, 60665
  Fernald, OH—
    Community epidemiological studies near former feed materials processing center; workshop, 26142
    Dosimetry reconstruction project workshop, 7142, 58172
  Fetal alcohol syndrome prevention technical assistance workshop for cooperative agreement recipients, 7142
  Folic acid consumption; possible adverse effects surveillance, 40149
  Hanford Thyroid Morbidity Study Advisory Committee, 7232, 50929
  HIV counseling standards, guidelines, and options; consultation, 16535
  HIV prevention community planning process, 49053, 52314
  Hospital Infection Control Practices Advisory Committee, 31215, 55075
  Idaho Community Forum for HHS Energy-Related Health Research, 36416
  Idaho National Engineering Laboratory, 42338
    Environmental Dose Reconstruction Project, 19824, 61915
  Immunization Practices Advisory Committee, 5997, 28981, 47903
  Injury Prevention and Control Advisory Committee, 12587, 39557
  Injury Research Grant Review Committee, 3330, 27287, 67794
  Mine Health Research Advisory Committee, 21172, 62128
  National and regional minority organizations HIV/sexually transmitted disease prevention, immunization, and tuberculosis projects; cooperative agreements preapplication workshop, 29227
  National Center for Environmental Health, 11238, 46977, 65355
  National Center for Infectious Diseases, 19461, 60665
  National Institute for Occupational Safety and Health; Scientific Counselors Board, 7787, 47146
  Poverty-associated retardation prevention technical assistance workshop, 11058, 48524
  Prevention Centers Grant Review Committee, 33445, 42339
  Prevention of HIV Infection Advisory Committee, 19261, 19823, 21982, 25994, 26142, 26325, 26982, 28981, 31406, 31407, 32709, 33634, 37744, 41285, 44346, 52314, 58553, 68916
  Records and Statistics Public Health Conference, 11058
  Savannah River Site environmental dose reconstruction project, 31963, 67794
  Smoking and Health Interagency Committee, 29227

Tuberculosis Elimination Advisory Council, 4173, 17591, 53207
Twenty-seventh National Immunization Conference, 21313
Vessel sanitation program (cruise ship industry, etc.); current status, 69367
Vital and Health Statistics National Committee, 3951, 3952, 5735, 6125, 7232, 9566, 13783, 16536, 17894, 21314, 29228, 31964, 39557, 44346, 44347, 45899, 47903, 53936, 67795
Occupational traumatic injury surveillance of farmers project; NIOSH meeting, 37744
Passenger cruise ships; sanitation inspection:
Fee collection, 51964
Power hand tool ergonomics research strategy; design, selection, installation, and use within automotive industry; NIOSH meeting, 61915
Prevention of HIV Infection Advisory Committee; comments request:
Developing partnerships for HIV prevention, 39816
Improving public understanding of HIV epidemic, 39817
Monitoring HIV/AIDS epidemic, 39817
Preventing risk behaviors among school students, 39818
Promoting knowledge of serostatus (counseling, testing, referral, and partner notification), 39818
Prevention of transmission of HIV through human tissue and organs transplantation guidelines; availability, 14402
Prevention of tuberculosis transmission in health care facilities; guidelines availability and comment request, 52810
Privacy Act:
Systems of records, 69048
Respirable coal mine dust; occupational exposure; NIOSH meeting, 36691
Respiratory tract deposition variability in workers; NIOSH meeting, 43897, 45377
Self-contained breathing apparatus in hot environment, wearing; physiological effects study; NIOSH meeting, 52314
Uranium conversion and enrichment workers; mortality patterns epidemiologic study; NIOSH meeting, 35006
Vaccines for children program; list and schedules of pediatric vaccines to be purchased and administered, 65725
Virginia convenience stores; violent crime study; NIOSH meeting, 12040
Workers' Family Protection Act; implementation; existing information request, 60202, 36690

Central Intelligence Agency

NOTICES
Freedom of Information Act; reading room availability, 65964

Children and Families Administration

RULES
Adoption and foster care data collection under Titles IV-B and IV-E of Social Security Act, 67912
Grants:
Social services block grant program; reporting and recordkeeping requirements, 60118
Head Start program:
Children with disabilities, performance standards, services to grantees, current and prospective delegate agencies, 5492
Development and administrative costs; limitation to 15 percent of total costs; reporting and recordkeeping requirements, 26918
Grantees and current and prospective delegate agencies; appeal procedures; correction, 13019
Public assistance programs:
Aid to families with dependent children (AFDC)—
Essential persons; eligibility coverage and conditions, 60134
Omnibus Budget Reconciliation Act; implementation of certain provisions; legal guardian term elimination, child abuse and neglect reporting, etc., 49218
State plan requirements:
Automated child welfare information systems, 67939
Income withholding, immediate; review and adjustment of child support orders; assigned support collected; correction, 7040
PROPOSED RULES
Family violence prevention and services programs; requirements, 64920
State plan requirements:
Child support enforcement program and audit regulations; revision, 47417
NOTICES
Agency information collection activities under OMB review, 4172, 4703, 5995, 5996, 5997, 14213, 14577, 18217, 21310, 26328, 28407, 28408, 28969, 28970, 29830, 31406, 32360, 34056, 36966, 38409, 38576, 38577, 41098, 42734, 46195, 47744, 51351, 51352, 54154, 54155, 54360, 54361, 66002
Aid to Families with Dependent Children:
State plan amendments, reconsideration; hearings—
Ohio, 42734
Committees; establishment, renewal, termination, etc.:
Child Abuse and Neglect Advisory Board, 25652
Head Start Quality and Expansion Advisory Committee, 33277
Federal financial participation in State assistance expenditures; Federal percentages and Federal medical assistance percentages; correction, 46196
Grants and cooperative agreements; availability, etc.:
Adoption opportunities program, 28572
Alaskan Native social and economic development projects, 59130
Child abuse and neglect prevention and treatment, 28021
Community Services Office training and technical assistance program, 38410
Developmental disabilities—
Basic support and protection and advocacy formula grant programs, 32135
Expenditures; basic support, protection, and advocacy funds; State allotments, 11607, 16685, 29254
Projects of national significance, 34624
Discretionary programs, 38232, 40431
Family resource and support programs, 34449
Family support center and gateway demonstration programs, 38886
Family violence prevention and services program, 32137
Discretionary funds, 35740
State domestic violence coalitions, 32137
States, Indian tribes, and Tribal organizations, 30170
Head Start enrollment expansion, 31304
Head Start public and Indian housing child care demonstration project, 66363
Mitigation of environmental impacts to Indian lands due to Defense Department activities, 69106
Native American social and economic development projects, 47590
Parents' fair share demonstration program, 64310
Runaway and homeless youth program, 29030, 33633, 68419
Social services block grants; State allotments, 58340
Head Start program:
Smoke-free environment requirement for program participants, 68914
Meetings:
Child Abuse and Neglect Advisory Board, 5397, 26981, 53517
Developmental Disabilities Interagency Committee, 16687, 39555
Head Start Quality and Expansion Advisory Committee, 33277, 46644, 54156, 58171
President's Committee on Mental Retardation, 8053, 11608
Researchers and evaluators for family preservation, family support, and child welfare, 52781
Organization, functions, and authority delegations:
Information Systems Management Office, 40431
Office of Assistant Secretary for Children and Families et al., 6494
Regional Administrator et al., 44343
Privacy Act:
Computer matching program, 39556
Systems of records, 31715

Children, National Commission

See National Commission on Children

Child Support Enforcement Office

RULES
Program operation standards:
Federal claims collection; information safeguarding procedures; Federal income tax refund offset, 41432
PROPOSED RULES
Program operations standards:
Child support enforcement program—
Paternity establishment, 62599
State plan requirements:
Child support enforcement program—
Paternity establishment, 62599

Christopher Columbus Quincentenary Jubilee Commission

NOTICES
Meetings, 26534

Civil Rights Commission

RULES
Federal claims collection; salary offset, 4350
PROPOSED RULES
Regulatory agenda, 24994, 56996
NOTICES
Meetings; State advisory committees:
Alabama, 6112, 69328
Alaska, 44159
Arizona, 61673
Arizona et al., 14556
Arkansas, 27994

INDEX VOL 58 1993 UMI

California, 52946, 61673, 62094
Colorado, 8584
Connecticut, 34782
Delaware, 41709
District of Columbia, 12358
Florida, 13251, 15323, 47714, 68851
Georgia, 25968, 53498
Hawaii, 53498, 68115
Idaho, 27994
Illinois, 14556, 47714
Indiana, 28951, 59446
Kansas, 21440
Kentucky, 18200, 57807
Louisiana, 14556, 41709
Maine, 536, 43865, 57986
Michigan, 30013, 59446
Minnesota, 4410, 31496, 57986
Mississippi, 46946, 60178
Montana, 5955
Nebraska, 18201, 57808
Nevada, 21141
New Hampshire, 14376, 57986
New Jersey, 19648
New Mexico, 32512, 61673
New York, 53499
North Carolina, 9144, 33795
North Dakota, 9144, 60427
Ohio, 12359, 39195
Oklahoma, 41709, 52946, 68115
Oregon, 47714
Rhode Island, 8584
South Carolina, 14376, 44652
South Dakota, 13049, 44652, 49016
Tennessee, 11207, 60841
Texas, 61673
Utah, 18201, 60427
Vermont, 32095
Washington, 21142
West Virginia, 7065, 19648, 69328
Wisconsin, 16649
Wyoming, 32095
Meetings; Sunshine Act, 8818, 13524, 14624, 21216, 28656, 32568, 38462, 47317, 53021, 59785, 62413, 63624
Racial and ethnic tensions in American communities:
Los Angeles, CA, 26958
Senior Executive Service:
Performance Review Board; membership, 48033

Coast Guard

RULES

Anchorage regulations:
Florida, 36356
New York, 12539, 21103, 21104, 40739
Ohio, 65285
Wisconsin, 9543
Boating safety:
Equipment requirements, 41602
Correction, 51576
Chemical drug and alcohol testing of commercial vessel personnel; information collection and reporting, 68274
Class II civil penalties, 17926
Deepwater ports:
Administrative rules, 11193
Drawbridge operations:
California, 33337, 33338, 39145
Delaware, 16499
District of Columbia, 47068
Florida, 6717, 15419, 15420, 15421, 25560, 29536, 31473, 32292, 36357, 39145, 60554, 60555, 65668
Illinois, 27933, 33191, 42856, 54289, 62532
Louisiana, 11192, 12540, 29972, 43264
Massachusetts, 38056, 47067
Michigan, 52441
New Jersey, 40590
New Jersey et al., 39146
New York, 42858
North Carolina, 39146
Operation requirements; temporary deviations, 46080
Oregon, 44613
Virginia, 16122
Washington, 44612
Waterborne emergency vessels, 19
Equipment, construction, and materials:
Personal flotation device components, 29488, 32416
Inland navigation rules:
Implementing rules—
Gulf Intracoastal-Coastal Waterway defined as specified waters, 27624
International navigation rules:
COLREGS demarcation lines, 65667
Merchant marine officers and seamen:, 15901
Commercial vessel personnel; chemical drug and alcohol testing programs; pre-employment and periodic testing exemption, 31104
Manning requirements—
Crewmember citizenship requirements waiver, 21
Marine licensing, certification of registry, and merchant marine documentation; user fees, 15228
Correction, 15901
Navigation aids:
U.S. Aids to Navigation System; nonconforming private aids; conformance deadline, 64153
Omnibus Transportation Employee Testing Act of 1991:
Workplace drug testing programs; management information system, 68194
Organization, functions, and authority delegations:
Captain of the Port zone boundaries, 51726
Correction, 59364, 67909
Houston and Galveston, TX; marine inspection and Captain of the Port zones realignment, 6716
Pollution:
Ballast water management for vessels entering Great Lakes, 18330
Facility response plans and required pollution response equipment, 7330, 13550
Hazardous materials; transfer hoses marking, 39660
Offshore cargo lightering operations, 48434
Oil pollution placard language, 62261
Vessel response plans, 7376, 13708
Vessels carrying oil; discharge removal equipment, 67988
Ports and waterways safety:
Boston Inner Harbor, MA; safety zone, 33765, 47990, 52442, 69233
Braddock Bay et al., NY, 28354
Cape Fear River, NC, 34223, 46082
Chesapeake Bay, MD; safety zone, 25946
Connecticut River, CT; safety zone, 40741
East River, NY; safety zone, 51243, 53884, 69232
Gaviota Marine Terminal; safety zone, 40361
Gunpowder Falls State Park, MD; safety zone, 33339
Inland waterways navigation regulations—
Ambrose Channel, NY; deletion, 69231
Blue Water Bridge area, St. Clair River; vessel class restrictions, 59364
Lake Huron to Lake Erie; speed limits; establishment, 17526
Kaskaskia River, MO; safety zone, 40359
Kill Van Kull, NJ and NY; safety zone, 15089, 30987, 39150, 68307, 68308
Kings Bay, GA; regulated navigation area, 38056
Los Angeles/Long Beach, CA; safety zone, 68305
Los Angeles/Long Beach Harbor, CA; safety zone, 39662
Los Angeles/Long Beach Ports, CA; security zone, 48967
Lower Hudson River, NY; safety zone, 47991
Lower Lake Huron, St. Clair River, and Black River, MI; safety zone, 36357
Lower Mississippi River; safety zone, 44614
M/V Empire Knight, Boon Island, ME, 47988
Monongahela River, PA; regulated navigation area, 59951
Monongahela River, PA; safety zone, 40360
Mount Hope Bay, RI; safety zone, 40743
New Bedford Harbor, MA; safety zone, 68306
New London, CT; safety zone, 36868
New London Harbor, CT; security zone, 36597
New York Harbor, NY; Vessel Traffic Service New York (VTSNY) boundary expansion, 46081
Ohio River, PA; safety zone, 43264, 48967, 58497
Patapsco River Inner Harbor, MD; safety zone, 66279
Patapsco River, MD; safety zone, 32294
Providence River, RI; safety zone, 14151, 65669
Puget Sound, WA; security/safety zone, 60556, 60557
Route 450 Severn River Bridge, MD; safety zone, 47989
Safety and security zones, etc.; list of temporary rules, 8543, 29104, 46078, 59948
San Francisco Bay, CA; safety zone, 31474
Santa Cruz Island, CA; security zone, 17526, 47987, 59171
Sister's Creek, FL; safety zone, 47069
Tankers; automatic pilot use, unattended machinery spaces, and second officer on bridge; requirements, 27628
Tankers; autopilots expanded use in integrated navigation systems; suspension, 36141
Upper Mississippi River; safety zone, 2988, 9543, 15775, 30988, 32293, 32294, 38302, 39151, 39663, 40740, 44615, 46083, 51243, 69234
Westhampton Beach, NY; safety zone, 40742
Woodlawn Beach, NY; safety zone, 40362
Practice and procedure:
Enforcement; civil and criminal penalty proceedings, 65665
Prince William Sound pilotage, 13360
Recreational vessels; fees, 8884
Regattas and marine parades:
3rd Annual International Submarine Races, 25558
53d Annual National Sweepstakes Regatta, 36355
Annual Safety-at-Sea Seminar, 9118
Augusta Port Authority Invitational Rowing Regatta, 13214
Augusta Southern Nationals Drag Boat Races, 38299
Barnegat Bay Classic, 38053
Beaufort Water Festival, 38298
Big Sioux Rubber Duck Race, 38299
Blackbeard Pirate Jamboree, 38054
Blessing of the Fleet, 16121
Blue Angels Airshow, 19351, 57740
Budweiser Sailfish Regatta, 28353

Coast Guard

Buick Watersports Weekend, 28923
Chesapeake Bay Offshore Challenge, 17525
Cock Island Race, 38054
Connecticut River Raft Race, 29968
Crawford Bay Crew Classic, 9118
Downtown Georgetown Revitalization Association's Harborwalk Boat Races, 28922
Fireworks on the Mississippi, 33334
First Chattanooga Head Race, 52440
Great Chesapeake Bay Swim Event, 7492
Greater Jacksonville Kingfish Tournament, 38055
Great Kennebec River Whatever Race, 33024
Great Lakes annual marine events, 40737
Hampton Bay Days Festival, 38053
Harvard-Yale Regatta, 29968
Head of the Connecticut Regatta, 50260
Hendersonville Noon Sertoma Drag Boat Races, 30986
Holidays in the City Boat Parade and Fireworks Display, 62035
International Bay City River Roar, 25559
Key West Super Boat Race, 57741
Lacrosse Thunderfest, 39144
Lake Worth Sunfest '93, 18008
Marine events within Second Coast Guard District, annual, 26428
Miami Beach Super Boat Race, 18009
Miami Offshore Grand Prix, 28922
Miller Genuine Draft Offshore Challenge, 29971
Montauk Grand Prix, 29970
Newburyport Grand Prix, 33335
New Jersey Offshore Powerboat Race, 38301
New Year's Eve Celebration Fireworks, VA, 66279
Night in Venice Boat Parade, 38053
Norfolk Harborfest, 30985
Oakmont Yacht Club Regatta, 38300
Pittsburgh Light-Up Night, 59170
Pony Penning Swim, 16357
Portland Grand Prix, 40358
River Race Augusta, 32292
San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration, 50261, 51242
Sharptown Outboard Regatta, 29969
Virginia Beach Offshore Grand Prix, 41428
Welcome America Fireworks Display, 34222
Wheeling Symphony Regatta, 33336
World's Playground Grand Prix, 30984
Stability design and operational regulations for inspected vessels; domestic passenger vessel damage stability standards, 36601, 45264
Correction, 47784
Subdivision and stability:
Dry cargo vessels, 17316
Tank vessels:
Vessels that carry oil cargoes; longitudinal strength, plate thickness, and periodic gauging; minimum standards, 52598
Uninspected vessels:
Emergency position indicating radio beacons, 13364, 27658
Vessel documentation and measurement:
Vessel documentation, instruments recording practices, and fees, 60256
Correction, 65130, 65243
Water ballast exemption; policy statement, 57747
Correction, 60731
Vessel traffic management:
Prince William Sound automated dependent surveillance system; equipment carriage requirement, 26066
Vocational rehabilitation and education:
Veterans education—
Reservists education and Montgomery GI Bill-Selected Reserve, 51780
Veterans' Educational Assistance Amendments; implementation, 51781
Veterans Nurse Pay Act of 1990 and Montgomery GI Bill-Selected Reserve; education program changes, 50845

PROPOSED RULES

Anchorage regulations:
Florida, 38100, 38101
Louisiana, 59425
Maryland, 57769
Wisconsin, 65140
Dangerous cargoes:
Bulk hazardous materials, 29890
Drawbridge operations:
California, 7497, 7498, 53896
District of Columbia, 6766
Florida, 6767, 26280, 59426, 68093
Illinois, 67745
Louisiana, 12568, 66321, 66322, 66323
Michigan, 38102
Minnesota et al., 52466
New York, 27504
Operation requirements; temporary deviations, 47
Oregon, 18358, 62302
Unnecessary openings, 36629
Virginia, 44155, 62303
Washington, 58518, 62302
Lifesaving equipment:
Inflatable personal flotation devices, 59428
Marine pollution financial responsibility and compensation:
Water pollution financial responsibility; preliminary regulatory impact analysis (vessels); availability, 38993
Merchant marine officers and seamen:
Five-year term of validity for certificates of registry and merchant mariner's documents, 48572, 51408
Foreign trade vessels; Federal pilotage requirement, 36914, 40468
Merchant vessels, U.S.; proof of commitment of employment, 64278
Overfill devices for tank vessels that carry oil as their primary cargo; meeting, 54315
Passenger vessels (domestic) damage stability standards; regulations applicability, 36374
Pollution:
Existing tank vessels without double hulls; structural and operational measures to reduce oil spills, 54870
Correction, 61143, 65298
Meeting, 65683
Gulf of Mexico; lightering zones, 63544, 65683, 69313
Hazardous materials; transfer hoses marking, 8918
Noxious liquid substances list, 29940
Offshore cargo lightering operations, 452
Overfill devices; minimum standards establishment, 4040
Refuse discharges from ships; reporting and recordkeeping requirements, 29482
Ports and waterways safety:
Annapolis, MD; safety zone, 7500
Boston Inner Harbor, MA; safety zone, 28942
Bristol Harbor, RI; safety zone, 29562
California coast port access routes; vessel traffic regulations for offshore national marine sanctuaries; study, 44634, 65686
Cape Fear River, NC; safety zone, 50303
Fairfield, CT; safety zone, 18189
Hillsborough Bay, FL; regulated navigation area, 59974
Inland waterways navigation regulations—
Ambrose Channel, NY; deletion, 46144
Blue Water Bridge area, St. Clair River; vessel class restrictions, 42913
Lake Huron to Lake Erie; speed limits; establishment, 4130
Lower Hudson River, NJ and NY; safety zone, 27969, 27970
Mount Misery Fireworks Display, 32317
Narragansett Bay, RI; safety zone, 15821, 15822
New York Harbor, NJ and NY; safety zone, 19790
New York Harbor, NY; safety zone, 17567
New York Harbor, NY; Vessel Traffic Service New York (VTSNY) boundary expansion, 30098
North Hempstead Memorial Day Fireworks, NY; safety zone, 19791
Prince William Sound, AK, et al.; escort vessels for oil tankers, 16391
Hearings, 25959, 29157
Providence River, RI; regulated navigation area, 65684
San Pedro Bay, CA; regulated navigation area, 62300
Stratford, CT; safety zone, 19074
Tampa Bay, FL; regulated navigation area, 59975
Three Mile Harbor, NY; safety zone, 29561
United States navigable waters; escort requirements for vessels, 25766
Upper Hudson River, NY; safety zone, 27506
Westport, CT; safety zone, 21132
Regattas and marine parades:
Blue Angels Airshow, 41449
Gateway Powerboat Regatta, 25957
New Jersey Offshore Powerboat Race, 25588
Quake on the Lake, 31488
Virginia Beach Offshore Grand Prix, 47099
Tank vessels:
Vessels that carry oil cargoes; longitudinal strength, plate thickness, and periodic gauging; minimum standards, 15740
Uninspected vessels:
Commercial fishing industry regulations—
Correction, 630
Immersion suits for vessels operating in coastal waters that are only seasonally cold, 29502
Vessel documentation and measurement:
Controlling interest; withdrawn, 12352
Vessel rebuild standards; meeting, 51298
Vessel identification system, 51920
Correction, 53624
Waterfront facilities:
Break-bulk, containerized, and dry bulk hazardous materials; handling, 4127
Liquefied hazardous gas handling, 51906

NOTICES

Aquatic resources trust fund, boat safety account; financial assistance availability, 5795
Bridges:
Devine, IL; Elgin, Joliet & Eastern Railroad bridge; hearing, 11434
Hilton Head Island, NC; construction; hearing, 8443
Commercial vessels; regulatory compliance options (maritime regulatory reform); meeting, 44202
Committees; establishment, renewal, termination, etc.:
Alternative voluntary advisory group certification in lieu of Regional Citizens' Advisory Council, 36504

UMI

Chemical Transportation Advisory Committee, 32411, 59509
Coastal zone area committees, 38156
Commercial Fishing Industry Vessel Advisory Committee, 26377
Cook Inlet Regional Citizens' Advisory Council, 34295
Lower Mississippi River Waterway Safety Advisory Committee, 15891, 33137
Merchant Marine Personnel Advisory Committee, 49080
National Boating Safety Advisory Council, 38158, 39092
National Offshore Safety Advisory Committee, 7291
New England Commerical Fishing Enforcement Advisory Group, 50385
Prince William Sound Regional Citizens' Advisory Council, 4193, 34296
Towing Safety Advisory Committee, 12058, 64791
Distress and safety communications:
Medium frequency (MF) Morse radiotelegraphy services; discontinuance, 4194
Environmental statements; availability, etc.:
Arthur Kill, NJ and NY, 62179
Haiku Valley, Oahu, HI; housing project, 69441
Long Beach, CA, 28087
Niagara Falls, NY, 16442
International Regulations for Preventing Collisions at Sea (72 COLREGS):
Certificates of alternative compliance; listing, 50386
Marine navigation safety; local notice to mariners study, 36507
Meetings:
Chemical Transportation Advisory Committee, 371, 15396, 33851, 39846, 62180
Coast Guard Academy Advisory Committee, 6836
Commercial Fishing Industry Vessel Advisory Committee, 26377, 65756
Houston/Galveston Navigation Safety Advisory Committee, 15891, 15892, 44203, 44204, 68457
Johns Island, Charleston County, SC; Atlantic Intracoastal Waterway (AIWW); hearing, 38159
Lower Mississippi River Waterway Safety Advisory Committee, 15892, 26582, 37046, 68458
Merchant Marine Personnel Advisory Committee, 11286, 51398
National Boating Safety Advisory Council, 26582, 26583, 45369, 52524, 52525
National Offshore Safety Advisory Committee, 15892, 59293
National preparedness for response exercise program; exercise evaluation workshop, 65421
Navigation Safety Advisory Council, 11286, 15396, 53987
New York Harbor Traffic Management Advisory Committee, 9589, 12978, 16569, 33851, 50386, 68189
Oil pollution response training; workshop, 38450
Oil spill removal organization classification; workshop, 64791
Response exercise; workshops, 12624, 33851, 39272
Second Coast Guard District Industry Day Program, 4194
Towing Safety Advisory Committee, 33137, 57892
National preparedness for response exercise program; guidelines availability, 53990
Navy Western Pacific composite fleet/general Morse telegraphy NAVAREX XII and meteorological information broadcast; discontinuance, 33851
Northwest Pacific Loran-C; transfer/closure, 7293
Organization, functions, and authority delegations:
Communication Station Guam; closure, 44204
Pollution:
American underpressure oil spill prevention system testing, 36508
MARPOL 73/78 Annex I; pollution prevention requirements; amendment of oil discharge criteria, 60080
Oil record book required for vessels; amendments, 59293
Regattas and marine parades:
Marine events within Second Coast Guard District, annual, 26432
Regulatory development review process; meeting, 44731, 47013
Tank level or pressure monitoring devices; technical feasibility study, 7292
Tank vessels carrying oil in bulk; double hull standards; U.S. position on international standards for tank vessel design, 39087

Commerce Department

See Census Bureau; Economic Analysis Bureau; Economic Development Administration; Economics and Statistics Administration; Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency, National Institute of Standards and Technology; National Oceanic and Atmospheric Administration; National Technical Information Service; National Telecommunications and Information Administration; Patent and Trademark Office; Technology Administration; Travel and Tourism Administration

RULES
Federal claims collection; Federal tax refund offset, 39652, 59946

PROPOSED RULES
Regulatory agenda, 24100, 56132

NOTICES
Advisory committees; reports on closed meetings, availability, 21703
Agency information collection activities under OMB review, 3007, 3250, 4410, 5707, 5708, 5956, 6473, 7767, 8735, 8929, 11832, 12930, 13251, 13252, 13583, 15840, 16521, 16811, 17379, 18078, 18367, 21142, 21440, 21560, 25603, 26098, 26286, 26287, 27520, 27707, 28548, 28951, 29808, 30013, 31009, 32644, 33070, 33071, 33433, 34409, 34988, 36389, 38360, 38742, 39196, 41082, 42287, 43322, 43323, 45095, 45481, 46160, 48820, 49017, 51609, 52261, 52743, 53187, 57808, 58682, 59985, 59986, 60423, 62094, 63333, 63571, 64293, 64719, 65576, 68851
Committees; establishment, renewal, termination, etc.:
Future of Worker-Management Relations Commission, 27311
Organization, functions, and authority delegations:
Summary; 1992 CY, 11833
Privacy Act:
System of records, 37460
Senior Executive Service:
Performance Review Boards; membership, 52261, 60841, 62094

Commercial Space Transportation Office

RULES
Licensing:
User fees; removal, 3826

Commission of Fine Arts

NOTICES
Grants and cooperative agreements; availability, etc.:
National Capital arts and cultural affairs program, 9149, 65346
Meetings, 6388, 25972, 44173, 52261, 54551, 64557

Commission on Agricultural Workers

NOTICES
Report to Congress, 7215

Commission on Immigration Reform

NOTICES
Meetings, 8972, 18081, 47260, 64395, 64969

Commission on National and Community Service

NOTICES
Agency information collection activities under OMB review, 29810, 37916
Grants and cooperative agreements; availability, etc
Defense conversion assistance program, 36945
Summer of Service program, 12990
Summer of Service youth corps program, 12995
Meetings; Sunshine Act, 21331, 33487

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES
Agency information collection activities under OMB review, 52261
Procurement list; additions and deletions, 89, 90, 3262, 4656, 4657, 5959, 6476, 6477, 7215, 8260, 9150, 9151, 11589, 11590, 12579, 13586, 15136, 15137, 16401, 16402, 17385, 17386, 18377, 18378, 18379, 19805, 21706, 21707, 26124, 27271, 27272, 28562, 28563, 28564, 29568, 29569, 29570, 31016, 31017, 31694, 31695, 32654, 32655, 32656, 33621, 33622, 34424, 34425, 34426, 35915, 35916, 36944, 38362, 38363, 39526, 39527, 39797, 40797-40800, 42055, 43096, 43097, 44328, 44329, 45316, 45317, 46946, 46947, 47716, 48635, 48636, 48637, 49980, 49981, 51317, 51319, 52478, 53501, 53502, 53503, 54558, 54559, 58155, 59015, 60180, 60181, 61072, 61073, 62645, 62646, 62647, 63929, 64931, 64932, 65970, 68397, 68398

Committee for the Implementation of Textile Agreements

PROPOSED RULES
Appeal Procedures for Violations of Special Access and Special Regime Program Requirements, 41215

NOTICES
Bilateral agreement negotiations (1993), 89
Cotton, wool, and man-made textiles:
Argentina, 28858
Bahrain, 11219, 64395, 64376

Bangladesh, 86, 5958, 6117, 6624, 16524, 42949, 45098, 54554, 60607, 68634
Brazil, 6248, 13744, 14381, 31189, 34568
Bulgaria, 11220, 15485, 54555, 64557
China, 13743, 26962, 33255, 33256, 34568, 34990, 39795, 42300, 42949, 46162, 49474, 51619, 55044, 58154, 58539, 58844, 61677
Colombia, 59452, 65579
Costa Rica, 31189, 34991, 52276
Czech Republic, 33256
Dominican Republic, 3539, 5716, 8036, 41244, 54555, 58154, 59240, 61071, 67396, 67397
Egypt, 7126, 43615, 55045
El Salvador, 6249, 61071
Former Czech and Slovak Federal Republic, 3936
Former Yugoslav Republic of Macedonia, 31509
Guam, 58540
Guatemala, 42950, 45099, 54556, 61678, 61679, 65158
Hong Kong, 537
Hungary, 42950
India, 7548, 34569, 45100, 45882, 51063, 60607, 66353
Indonesia, 5360, 6952, 13585, 16525, 17208, 18205, 27271, 29392, 31190, 33799, 58540, 65579
Jamaica, 7549, 53188, 61071, 62328, 63337
Korea, 28395, 53500, 65347, 65967, 67398
Laos, 8037, 17384, 49037, 57811
Lebanon, 4656
Lesotho, 61679
Macau, 34569, 42951, 67398
Malaysia, 34991, 54556, 58541, 65159, 65580
Mauritius, 57812
Mexico, 88, 31510, 34992, 41244, 47888, 57813, 68877
Myanmar, 13744, 41737, 41738
Nepal, 58542
Oman, 12029, 30027, 48039, 59994, 65160
Pakistan, 21446, 33085, 33257, 33258, 47889, 47890, 48039, 52277, 54332, 54557, 65581
Panama, 14560
Philippines, 28562, 39796, 40626, 51063, 60608
Poland, 31191, 60608, 61680
Qatar, 33933, 39797, 48040
Romania, 15329, 65968
Singapore, 59241, 65582
Slovak Republic, 33259
Sri Lanka, 12941, 17863, 18376, 21286, 34570, 55046, 65161
Taiwan, 34571, 36943, 51620, 58542, 65347, 65583
Thailand, 14382, 15328, 28396, 35434, 36655, 53501, 59241, 64397, 67399
United Arab Emirates, 344, 13060, 26120, 28858, 44506, 47126, 49474, 57813, 65160
Uruguay, 34427
Various countries, 34572
Export visa requirements; certification, waivers, etc.:
Bahrain, 9149
China, 16653, 29393, 49475, 62645
Dominican Republic, 61072, 68396
Egypt, 5361
Guatemala, 45100
Hong Kong, 87, 6677
India, 41245
Indonesia, 5717
Korea, 67399
Lesotho, 26121, 43616
Mexico, 69350
Oman, 49036
Sri Lanka, 32107
Illegal transshipments; new U.S. policy, 34993
Special access and special regime programs; participation denial:
Bond requirement for participants, 41245, 48851, 58329
Implementation delay, 54332
Fashion Enterprises, Inc., 52277
I. Appel Corp., 26121
Tollgate Garment Co., 58686
Special regime program; textile products from Mexico; ITA-370P form requirement termination, 68878
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 7126, 9150, 41248, 62645, 64557
Export visa and quota requirements for certain textile products re-imported from various countries following repairs and alterations, 68122
Part-categories for cotton textile products produced or manufactured in various countries, 62329
Textile consultation; review of trade:
Argentina, 13057
China, 14561, 60609
Colombia, 13058
Costa Rica, 13059
El Salvador, 42951
Guatemala, 32521
Indonesia, 5362
Korea, 54557
Pakistan, 15486, 18081, 19656, 33258
Sri Lanka, 8586
United Arab Emirates, 5363, 42952, 7125

Commodity Credit Corporation

RULES
Conservation reserve program; amended, 4063
Disaster payment and tree assistance programs; amendments, 51757
Export programs:
Emerging democracies facilities guarantees, 11786, 15901
Correction, 13684, 21218
Loan and purchase programs:
Agricultural market promotion program, 60549
Disaster payment program (1990-1992), 9107, 19767
Emergency livestock assistance, 62510
Extra long staple cotton; acreage reduction percentage, 12332
Correction, 18304
Feed grain acreage reduction, paid land diversion program, feed grain and oilseed price support rates (1993 crops), 4303
Feed grains, rice, upland and extra long staple cotton, wheat, and related programs (1991-1995 crops), 12329
Acreage conservation reserve requirements, 57721
Grains and similarly handled commodities, 14495
Crop wheat as collateral; corection, 28446
Farmer-Owned Reserve Program eligibility requirements; correction, 45039, 68016
Feed grains farmer-owned reserve program, 38509
Oilseed prevailing world price calculations, loan origination fees, and loan maturity date; and farm storage facilities; CFR Part removed, 57722
Price support loan program; farmer-owned reserve program eligibility requirements, 62509
Milk marketed by producers for commercial use; price reduction, 61000
Price support levels—
Cotton, 15261
Grains and similarly handled commodities, 58739
Peanuts, 33884, 41625, 62509
Rice, 15416
Tobacco, 11960, 36857, 36861
Sugar and crystalline fructose; marketing allotments (1992-1996 FYs), 36120, 41996
Tobacco; importer assessments, 68017
Tree assistance program, 9107
Upland and extra long staple cotton; bale packaging materials specifications (1993), 51986, 65102
Upland cotton program—
Adjusted world price; coarse count adjustment, 41994, 57724
User marketing certificate program, 42841, 57724
Wheat and feed grain (1993-1995 crops), 38663
Upland cotton user marketing certificate provisions, 15755
PROPOSED RULES
Conservation and environmental programs:
Non-emergency haying and grazing on conservation reserve program grasslands, 66308
Loan and purchase programs:
Extra long staple cotton; acreage reduction percentage, 52928
Feed grains, rice, upland and extra long staple cotton, wheat, and related programs (1994 crops), 46886, 51934
Grains and similarly handled commodities
Oilseed prevailing world price calculations, 38311
Peanuts; price support and poundage quota programs; 1994 crop, 63106
Price support levels—
Feed grain acreage reduction; 1994 program, 41641
Peanuts, 3514, 42882
Shorn wool, wool on unshorn lambs, and mohair, 37876
Rice (1994); acreage reduction percentage, 52686
Sugar and crystalline fructose; marketing allotments (1992-1996 FYs), 16126
Wheat acreage reduction; 1994 program, 17807
Wheat and feed grain (1993-1995 crops), 12338
NOTICES
Chicago Board of Trade; options pilot program, 21876
Feed grain donations:
Blackfeet Tribe of Blackfeet Indian Reservation, MT, 6202
Colville Indian Reservation, WA, 13444
Fort Berthold Indian Reservation, ND, 11207
Spokane Indian Reservation, WA, 13445
Sugar and crystalline fructose; marketing allotments, 38355
Upland cotton user marketing certificate program, 44320, 48353

Commodity Futures Trading Commission

RULES
Broker associations; registration requirements, 31167
Commodity customer protection; risk disclosure by futures commission merchants and introducing brokers; bankruptcy disclosure, 17495

INDEX
VOL 58
1993
UMI

Correction, 22020
Commodity Exchange Act:
Financial reporting by introducing brokers; customer funds investments valuation by futures commission merchants, 10949, 12988
Insider trading prohibition, 54966
Correction, 58651, 58729
Self-regulatory organization governing boards and major disciplinary committees; composition, 37644, 42361
Commodity options; prohibited trading, 68518
Commodity option transactions; futures commission merchants; discretionary accounts; requirements, 30701
Commodity pool operators and commodity trading advisors:
Computation of rate-of-return for commodity trading advisors and presentation of rate-of-return in past performance tables, 8226
Exclusion of regulated persons from commodity pool operator definition, 6371, 43791
Conflict of interests, 52637, 52656
Correction, 58593
Contract market designation; application fee schedule, 19769
Contract market emergency actions, 26229
Domestic exchange-traded commodity options; recordkeeping requirements, 28500
Federal speculative position limits, 17973
Foreign futures and options transactions:
Option contracts permitted to be offered or sold in United States, 10953
Sydney Futures Exchange, 19209
Futures Trading Practices Act of 1992; contemporaneous written records of orders placed with contract market members by other members present on floor, 31162
Hybrid instruments:
Securities or depository instruments containing features similar to commodity futures or commodity option contracts, 5580
Organization, functions, and authority delegations:
Eastern regional office; address change; correction, 7040
Practice and procedure:
Floor traders, registration; mandatory ethics training for registrants and suspension of registrants and suspension of registrants charged with felonies, 19575
Correction, 21776
No-action, interpretative and exemption letters and other written communications; public availability; correction, 6677
Registered futures associations and exchange rule enforcement and financial reviews; fee schedule, 42643
Recordkeeping; computer generated reports on optical disk substituted for hard copy reports, 27458, 27465
Reporting requirements:
Commodity pools, commodity trading advisors, and partnerships; futures positions; financial interest definition and controlled accounts information, 33327
Speculative position limits exemption for positions with common owner but independently controlled; correction, 6854
Swap agreements; exemption, 5587
Trading standards:
Dual trading by floor brokers; prohibition, 40335

PROPOSED RULES

Bankruptcy; futures commission merchant in cross-margining program; property distribution, 68580
Commodity Exchange Act:
Account identification for orders submitted on behalf of multiple customer accounts, 26270
Domestic exchange-traded commodity options; recordkeeping requirements, 14348
Insider trading prohibition, 44470
Self-regulatory organization governing boards and major disciplinary committees; composition, 13565
Commodity options; prohibited trading, 43087
Commodity pool operators and commodity trading advisors:
Exclusion of otherwise regulated persons from commodity pool operator definition, 32314
Complaints against registered persons; class action suits, 17369
Contract market emergency actions, 7056
Domestic exchange-traded commodity option transactions:
Futures commission merchants; disciplinary actions notification requirement, 4948
Federal speculative position limits, 18057
Practice and procedure:
Floor traders, registration; mandatory ethics training for registrants and suspension of registrants charged with felonies, 6748
Registered futures associations and exchange rule enforcement and financial reviews; fee schedule, 28365
Regulatory agenda, 25258, 57260
Reparation proceedings; revisions, 44623
Reporting requirements:
Commodity pools, commodity trading advisors, and partnerships; futures positions; financial interest definition and controlled accounts information, 13716
Trading standards:
Dual trading by floor brokers; prohibition, 13025, 13684

NOTICES

Committees; establishment, renewal, termination, etc.:
Agricultural Advisory Committee, 27998
Financial Products Advisory Committee, 25812
Contract market proposals:
Chicago Board of Trade—
Catastrophe insurance, 91
Flexible options proposal, 52278
International edible oils, 60851
Non-member officials of member firms and non-member parent firms; registration, 91, 11591
Structural panel index futures and futures option contracts, 45882
Chicago Mercantile Exchange, Inc., et al.—
Cross-margining programs, 4412
Chicago Mercantile Exchange, Inc.—
Australian dollar; rolling spot, 34993
Canadian dollar, etc.; rolling spot futures and options, 16177
Clearing firms retention of profits from trades in excess of prescribed limits, 8741
French franc and rolling spot French franc, 39527
Live cattle, etc., 19236
Rolling spot pound sterling, 6952
Standard & Poor's 500 Stock Price Index, 19090
Chicago Mercantile Exchange—
Live cattle, 51320, 54122
Major market index, 39798
One-year U.S. Treasury bill, 68879
Standard and Poor's 500 Stock Price Index, etc., 26534
Coffee, Sugar & Cocoa Exchange, Inc.—
Cheddar cheese and nonfat dry milk, 5960
Commodity Exchange, Inc.—
Copper, 27544
Minneapolis Grain Exchange—
Frozen shrimp, 8261, 48637
New York Cotton Exchange—
Cotton No. 2, 3015, 18206
New York Futures Exchange—
Utility index, 31191
New York Mercantile Exchange—
Electronic trading system access, 21560
New York Harbor No. 2 heating oil, 52279
Non-member officials of member firms and non-member parent firms; registration, 6388
Energy products; exemption for certain contracts, 6250, 21286
Ethics training programs, approval applications, 47890
Exchange-traded futures and options contracts; exemptions, 43414, 44402, 52948, 67777, 67778
Meetings:
Agricultural Advisory Committee, 25813, 53188
Financial Products Advisory Committee, 11220, 34784, 39008, 60852
Regulatory Coordination Advisory Committee, 27273
Meetings; Sunshine Act, 375, 4201, 5059, 6676, 7178, 9242, 11097, 11448, 12452, 12984, 13682, 15178, 15521, 17304, 17641, 19150, 21331, 26812, 28092, 29452, 32171, 33145, 33855, 36250, 39090, 41323, 43676, 47317, 50085, 52138, 54645, 58727, 64439, 66396
National Futures Association:
Registration processing functions performance with respect to floor traders and brokers, 19657
Privacy Act:
Systems of records, 19659
Senior Executive Service:
Performance Review Board; membership, 34784

Community Services Office

NOTICES

Grants and cooperative agreements; availability, etc.:
Job opportunities for low-income individuals program, 28310
State median income estimates for four-person families (1994 FY), 18220

Competitiveness Policy Council

NOTICES

Meetings, 36398, 63337

Comptroller of the Currency

RULES

Community development corporation and project investments, 68464
Corporate activities; rules, policies, and procedures:
Directors and senior executive officers; changes, 27443
Intangible assets; capital treatment, 16481
Interpretive rulings:
Messenger services, 4070
Investment securities, 27443
National bank insiders; credit extensions, 27453
Real estate appraisals:
Real estate lending standards; correction, 4460
Real estate lending and appraisals:
Other real estate owned (OREO); national bank treatment, 46529
Requirement exceptions in major disaster areas, 42640

INDEX
VOL
58
1993
UMI

Comptroller

Rules, policies and procedures for corporate activities:
National banks; mergers or consolidations with Federal savings associations; establishment, 6441

PROPOSED RULES
Capital adequacy; national banks, deferred tax assets, 68065
Community development corporation and project investments, 38474
Community Reinvestment Act; implementation; hearings, 44138
Community Reinvestment Act regulations, 67466
Fair housing home loan data system, 27484
Federal Deposit Insurance Act:
Safety and soundness standards, 60802
National bank securities, offers and sales; disclosure requirements; extension, 4600
Organization, functions, and authority delegations:
Minority, women and individuals with disabilities-owned business contracting outreach program; office, procedures, and public information description, 59686
Real estate lending and appraisals:
Other real estate owned (OREO); national bank treatment, 26695
Threshold level, 31878, 59688
Regulatory agenda, 24791, 56803
Risk-based capital:
Collateralized transactions, 43822
Interest rate risk, 48206
Correction, 52808

NOTICES
Federal banking and thrift agencies; capital and accounting standards differences; report to Congress, 13675
Financial institutions, U.S.; foreign treatment, 48088
Insured depository institutions; branch closings; policy statement, 49083

Congressional Budget Office

NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration final report for 1994 FY transmittal to Congress and OMB, 64454
Sequestration preview report for 1994 FY transmittal to Congress and OMB, 17576
Sequestration update report for 1994 FY transmittal to Congress and OMB, 43476

Conservation and Renewable Energy Office

RULES
Schools, hospitals, and buildings owned by local government units and public care institutions; grant programs, 9424
Weatherization assistance program for low-income persons, 12514

NOTICES
Consumer products; energy conservation program:
Residential energy resources; average unit costs, 345
Grants and cooperative agreements; availability, etc.:
Export Council for Renewable Energy, 13260
National industrial competitiveness through efficiency, energy, environment, and economics State program, 15492
Innovative utility communications technology; congressional report on proposal to demonstrate, 4987
Meetings:
State Energy Advisory Board, 16191

Consumer Affairs Office

NOTICES
National Information Infrastructure; privacy preservation; hearings, 69372

Consumer Product Safety Commission

RULES
Conflict of interests, 12335
Consumer Product Safety Act:
Cigarette lighter safety standard, 37557
Correction, 67671
Cigarette lighters, child resistant, 37554
Consumer product involved in death or grievous bodily injury; reporting requirements; interpretative rule, 16119
Flammable Fabrics Act:
Children's sleepwear (Sizes 0-6X and 7-14) flammability standards; stay enforcement, 4078
Hazardous substances
Electrically operated toys or other electrically operated articles intended for use by children; video game exemption, 40330
Organization, functions, and authority delegations:
Headquarters and Western Regional Center relocation; address changes, 64119
Poison prevention packaging
Products containing loperamide; child-resistant packaging requirements, 38961

PROPOSED RULES
Cigarette lighters, child-resistant, 8565
Flammable Fabrics Act:
Children's sleepwear (sizes 0-6X and 7-14); flammability standards for tight fitting and infant garments, 4111
Hazardous substances:
Choking hazards—
Balloons; withdrawn, 8023
Marbles; withdrawn, 8020
Small balls; withdrawn, 8016
Toys and other articles for children over 3 years; small parts presenting choking, aspiration, or ingestion hazards; withdrawn, 8013
Clacker balls; definition and maximum ball-weight, cord length and minimum safety factor specifications, 34385
Lead in paint; regulatory investigation termination, 63311
Regulatory agenda, 25268, 57268
Regulatory Flexibility Act; review of existing rules:
Omnidirectional citizens band base station antennas, 15815

NOTICES
Agency information collection activities under OMB review, 6624, 7881, 13745, 31945
Backyard play set standards; petition requesting issuance, 54560
Commission's long range plan; public hearing, 13746
Flammability standard for upholstered furniture; petition, 42301
Meetings:
Cigarette Fire Safety Technical Advisory Group, 3263, 18082, 30776, 34038, 37470
Meetings; Sunshine Act, 3990, 8653, 12631, 13825, 17304, 17641, 19150, 21626, 26183, 27619, 29025, 29855, 32002, 33143, 34125, 34841, 37990, 38601, 43676, 48711, 49351, 52138, 53623, 55113, 58591, 60901
Senior Executive Service:
Performance Review Board; membership, 29199
Settlement agreements:
Berman Mattress Co., Inc., et al., 59242, 62415
Caribe Marketing & Sales Co. Inc., 17864
Chattem, Inc., 58845
Dial Manufacturing, Inc., 59707
Ektelon, Inc., 17866
Franco-American Novelty Co., Inc., 13747
Newco, Inc., 26125
Polly Gaz International Corp., 25972
Regency Merchandise, Inc., 52280
Unique Industries, Inc., 29200
Winston Toy Corp., 59708
York International Corp., 59016
Yuchius Morality, Inc., 52282, 52283

Cooperative State Research Service

RULES
Biotechnology risk assessment research grants program; administrative provisions, 65646
Rangeland research grants program; administration, 21852

PROPOSED RULES
Administrative manual for Federal excess personal property loaned to State cooperative research activities, 53153
Biotechnology risk assessment research grants program; administrative procedures, 11910

NOTICES
Grants and cooperative agreements; availability, etc.:
Beef carcass trimming versus washing study, 33925
Biotechnology risk assessment research program, 19528
National competitive research initiative program, 47184, 52570
Rangeland research program, 13332, 68488
Small business innovation research program, 34239
Special research programs—
Aquaculture research, 7182
Wood utilization research, 11144
Meetings:
Agricultural Research and Extension Users National Advisory Board, 5705, 26529
Agricultural Science and Technology Review Board, 13737, 33794, 59445
Committee of Nine, 14376, 42527, 61859
Food and Agricultural Sciences Joint Council, 43094
National Sustainable Agriculture Advisory Council, 31188

Copyright Office, Library of Congress

RULES
Cable compulsory license:
Cable system definition, 45263
Multichannel Multipoint Distribution Services (MMDS) status, 40363
Claims registration:
Daily newspapers; group registration; correction, 17778
Digital audio recording devices and media; statements of account, 9544
Organization, functions, and authority delegations:
Copyright Royalty Tribunal; transfer and adoption of regulations, 67690
Practice and procedure rules:
Computer shareware and donation of public domain software; registry of documents, 29105

PROPOSED RULES
Cable and satellite carrier royalty refunds, 34544

Digital audio recording devices and media; statements of account; auditing and confidential access, 27251

NOTICES

Cable compulsory license; major television market list, 34594
Computer program rental by libraries; report, 37757
Copyright protection duration; public hearing, 40838, 54378
Document cover sheet availability, 3297
Meetings:
Audio Home Recording Act; implementation; statements of account, 29001, 31067
Privacy Act:
Systems of records, 43377

Copyright Royalty Tribunal

RULES

Digital Audio Recording Technology Act; implementation, 6441, 13413, 53822
Correction, 8655, 59658
Noncommercial broadcasting; copyrighted works use; royalty fees, 7051, 8820
Cost of living adjustment, 63294
Organization, functions, and authority delegations, 5616
Phonorecords; mechanical royalty adjustment, 58282
Correction, 60787

NOTICES

Audio home recording royalty fees:
Distribution proceedings, 29810, 52478, 60610, 62330
Cable royalty fees:
Distribution proceedings, 17387, 29571, 36656, 49038
Digital Audio Recording Technology Act; implementation
Reconsideration petition, 61681
Meetings; Sunshine Act, 34497, 36514, 51902
Satellite carrier royalty fees:
Distribution proceedings, 7845, 17576

Corporation for National and Community Service

RULES

State Commissions on National and Community Service; requirements and funding, 60978

Council on Environmental Quality

NOTICES

Endangered Species Act exemption; annual report availability, 68635
National Environmental Policy Act; pollution prevention, 6478

Customs Service

RULES

Administrative rulings:
Desktop IV computer monitors; country of origin markings; final determination, 21538
Air commerce:
Private aircraft designated landing locations; list additions—
Douglas Municipal Airport, AZ, 44443
Articles conditionally free, subject to reduced rate, etc.:
Aircraft reciprocal privileges—
Singapore, 18146
Strategic and Critical Materials Stock Piling Act; certifications, 34522
Works of art imported free of duty; declarations requirements, 68741
Centralized examination stations, 5596
Correction, 6574
Customs bonds:
Duty-free stores designation as warehouses; effective date delay rescinded, 29349
Customs inspectional services; pay reform, 68520
Designated public international organizations; list changes, 35862, 38167
Financial and accounting procedures:
Importer record number freeze program, 34366
User fees, 54271
Correction, 59298
Fingerprints submission; fees, 15770
Foreign trade statistics, vessels in foreign and domestic trades, and air commerce regulations:
Shipper's export declarations and outward cargo manifests for shipments to Puerto Rico; procedures for submittal, 41422
Merchandise entry:
Liquidated damages assessment for failure to deposit estimated duties, taxes and charges, or to remit passenger processing fees to Customs, 30979
Special summary steel invoice elimination, 16349
Wool and hair examination, 37853
Merchandise, special classes:
Import sanctions—
Bolivia; antique ceremonial textiles, 29348
Mali; significant archaeological artifacts; import restrictions, 49428
Textiles and textile products from U.S. insular possessions; country of origin, 19347, 29454
Correction, 21334
North American Free Trade Agreement (NAFTA); implementation, 69460
Organization and functions; field organization, ports of entry, etc.:
Lehigh Valley, PA, 49922
Morgan City, LA, 21350
Norfolk and Newport News, and Richmond-Petersburg, VA, 41633
Portland, ME, 40352
Reedville and Cape Charles City, VA, 21349
Vicksburg, MS; port limits extension, 25933, 27336
Washington District realignment, 21350
Petitions by domestic interested parties:
Frozen produce packages; country of origin marking, 68743
Technical amendments, 44128
Trademarks, trade names, and copyrights:
Copyright infringement actions; exchange of briefs, 57738
Vessels in foreign and domestic trades:
Conforming amendments, 13195, 50255
Reciprocal privileges—
Brazil; removal, 12538
Vessel repair applications for relief from duty, 39654
Vessel repair duties; remission or refund, 44127
Vessels, vehicles, and individuals; reporting requirements, 67312

PROPOSED RULES

Air commerce:
Private aircraft designated landing locations; list additions—
Douglas Municipal Airport, AZ, 19366
Articles conditionally free, subject to reduced rate, etc.:
Special tariff treatment provisions and programs; certain documentation requirements elimination, 4615
Correction, 6677
Articles imported from U.S. insular possessions; duty-free treatment, 40095
Correction, 52246
Automated Broker Interface entry filers; Customs Forms 28 and 29 electronic transmission; withdrawn, 31487
Country of origin marking:
Frozen produce, 47413
Customs bonds:
Automated surety interface, 5680, 16632
Entry process:
Entry documentation prefiling, 65135
Filer codes and identity of individuals, brokers, or importers assigned codes; list publication, 4115
Organization and functions; field organization, ports of entry, etc.:
Lehigh Valley, PA, 28803
Petitions by domestic interested parties:
Down comforters; classification, 30726
Flat goods with outer surface of reinforced or laminated plastics; classification, 69301
Protest filers identification; permitted methods, 50300
Regulatory agenda, 24803, 56814
Trademarks, trade names, and copyrights:
Information disclosure, 44476
Trademarks, trade names, copyrights, mask works, and patents:
Semiconductor chip products, protection enforcement; and patent surveys; withdrawn, 37884
Vessels in foreign and domestic trades:
Vessel repair applications for relief from duty, 4114

NOTICES

Camera lenses imported in same shipment with camera bodies; tariff classification, 64423
Commercial gauger
Approval—
Inchcape Testing Services-Caleb Brett, Inc., 50389
Marine Chemist Service, Inc., 52134
Sanson Marine, Inc., 50082
Saybolt, Inc., 48539, 53023
Unimar, Inc., International, 14612
Revocation of approval—
John A. Steer, Inc., 65618
Commercial laboratory accreditations:
Marine Chemist Service, Inc., 52134
United Chemical Testing, Inc., 35506
Copyright, trademark, and trade name recordations; public inspection, 21772
Country of origin marking:
Czech Republic et al., 15519
Eritrea, 47527
Customhouse broker license cancellation, suspension, etc.:
Anderson, Kenneth A., Jr., 3586
Arain, Laurel B., 37988
Hanebrink, Richard, 60083
Jacovina, Joseph, 38809
Wismann, Enrique, 38810
Wood, Niebuhr & Co., 38810
Generalized System of Preferences; expiration procedures, 35506, 40464
IRS interest rate use in calculating interest on overdue accounts and refunds, 21622, 33140
Jewelry from U.S. Virgin Islands; duty-free treatment eligibility, 36512
Meetings:
Electronic data interchange for global trade; conference, 27056
Merchandise, special classes:
China; importation of convict, forced, or indentured labor made goods—
Beijing Qinghe Hosiery Factory, 65235
Qinghai Hide & Garment Factory, 32746

INDEX
VOL 58
1993
UMI

Customs

Organization, functions, and authority delegations:
Director, Trade Operations Office, 39856
Pressed and toughened (specially tempered) glassware; testing; comments solicitation, 31786, 52135
Related party transactions; transfer pricing, 5445
Senior Executive Service:
Performance Review Boards; membership, 33140
Tariff rate quotas:
Tuna fish, 18301
Trade name recordation applications:
California Silk Collection, 57894
Dovex Inc., 18446, 46267
Modular Computer Systems, Inc.; rescission, 15896
NLC, Inc., 21772, 36005
Redco Sales Co., 34298, 50082
Superior Seedless Grape Co., 57894
U.S. Rope Co., 12629, 12630
U.S. Rope et al., 32169
Wemco, Inc., 15896

Defense Department

See Air Force Department; Army Department; Defense Information Systems Agency; Defense Intelligence Agency; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; Engineers Corps; Navy Department; Strategic Environmental Research and Development Program Scientific Advisory Board; Uniformed Services University of the Health Sciences

RULES

Acquisition regulations:
Authority citation revision, 37868
Incremental funding of fixed-price contracts, 46091
Industrial modernization incentive program, 32062
Miscellaneous amendments, 28458, 32416, 40387
Ozone-depleting substances; elimination, 32061
Program termination or reduction; contractor notification, 43285
Progress payment rates reduction; large businesses, 62045
Correction, 64353
Recoupment of nonrecurring costs on sales or licensing of U.S. items, 16782
Correction, 18448
Administrative amendments:
Redesignation of CFR Parts, 39360
Civil defense:
Military support to civil authorities (MSCA), 52667
Civilian health and medical program of uniformed services (CHAMPUS):
Mental health services; partial hospitalization, 35400, 59364
Reimbursement of providers, claims filing, and participating provider program, 51227
Correction, 53411
Specialized treatment services program; nonavailability statements; peer review organization program; supplemental care, 58955
Conflict of interests, 47619, 51780
Contracting:
Contractors receiving contract awards ($10 million or more), 239
Recoupment of nonrecurring costs on sales of U.S. items, 16497
DOD cooperation with civilian law enforcement officials; American Forces Radio and Television Service (AFRTS); Armed Forces Institute of Pathology (AFIP); CFR Parts removed, 25776
Federal Acquisition Regulation (FAR):
Federal construction contracts; open bidding, 12140
Nonmanufacturer rule; correction, 3850
U.S. and European Economic Community; memorandum of understanding; government procurement and sanctions imposed on European Community, 31140
Freedom of Information Act; implementation:
Defense Contract Audit Agency, 63084
National Reconnaissance Office, 60382
Gifts from foreign governments; minimum value requirement for reporting, 63293
Individuals with Disabilities Education Act (IDEA); implementation:
Infants and toddlers with disabilities, and Section 6 Schools, early intervention schools, 51996
Military service obligation fulfillment, etc.; CFR Parts removed, 27205
Organization, functions, and authority delegations:
Assistant Secretary of Defense for Democracy and Peacekeeping, 39366
Assistant Secretary of Defense for Nuclear Security and Counterproliferation, 39365
Assistant Secretary of Defense for Personnel and Readiness, 48306
Assistant Secretary of Defense for Policy and Plans, 39363
Assistant Secretary of Defense for Regional Security Affairs, 39362, 48308
Assistant Secretary of Defense for Strategy, Requirements, and Resources, 39361
Assistant to Secretary for Public Affairs, 69229
Deputy Secretary of Defense, 39368
Director of Net Assessment, 39360
Navy Department; Defense Printing Service, 5293
Principal Deputy Under Secretary of Defense for Policy, 39368
Under Secretary of Defense for Policy, 39368
Personnel:
Senior Reserve Officers Training Corps program; CFR Part removed, 13550
Privacy Act; implementation, 59658
Reserve components, military standby air travel, and industrial preparedness planning; CFR Parts removed, 21927
Sale of military equipment to law enforcement and firefighting agencies, etc.; CFR Parts removed, 7865
Security:
Defense child care services personnel; criminal history background checks, 52010
Defense industrial personnel security clearance program, 42855
Personnel security program regulation, 61024
Vocational rehabilitation and education:
Veterans education—
Disenrollment from Post-Vietnam Era Veterans' Educational Assistance Program, 38057, 40468
Educational assistance test program; rates payable increase, 50844
Post-Vietnam Era Veterans' Educational Assistance Program, 31910, 34526, 46865
Reservists education and Montgomery GI Bill-Selected Reserve, 51780
Veterans' Educational Assistance Amendments; implementation, 34368, 51781
Veterans Nurse Pay Act of 1990 and Montgomery GI Bill-Selected Reserve; education program changes, 50845

PROPOSED RULES

Acquisition pilot program policy, 63542
Acquisition regulations:
Contractor accounting controls, 49958, 58315
Correction, 60244
Contractor insurance/pension review, 49960, 58317
Essential contractor services; continuation during crises, 51033
Food, clothing, fabrics, specialty metals, and hand or measuring tools; restriction exceptions, 48484
Machine tools and powered and non-powered valves; restrictions, 47243
Correction, 48545
Organizational conflict of interest, 58316
Correction, 60244
Price competition in dual source acquisitions, 47242
Streamlined research and development contracting procedures, 58673
Undefinitized contractual actions, 58317
Civilian health and medical program of uniformed services (CHAMPUS)
Hospice care, 47692
Improved dependents' dental plan, 48473
Specialized treatment services program; nonavailability statements; peer review organization program; supplemental care, 27692
Federal Acquisition Regulation (FAR):
Debarment and suspension offenses; tax evasion, 63494
Defective cost or pricing data in postaward audits, 64824
Electronic contracting, 69588
Food products; blanket purchase agreements invoicing, 59616
Inconsistencies; termination for convenience of Government (fixed price); clarification, 64826
Postponement of bid openings or closing dates, 59618
Regulatory agenda, 25238, 57242
Sealed bid qualification requirements, 63492
Freedom of Information Act; implementation:
National Reconnaissance Office, 41679
Personnel:
Science, mathematics, and engineering education, 65956
Regulatory agenda, 24176, 56210
Stars and Stripes newspaper and business operations, 41671

NOTICES

Agency information collection activities under OMB review, 92, 3017, 4415, 4658, 4659, 7127, 8038, 9562, 13587, 14203, 15841, 15842, 16815, 16816, 17577, 19090, 21145, 29201, 30028, 30029, 31946, 32346, 33086, 33800, 34245, 34784, 35434, 35921, 36656, 37470, 38119, 39009, 39198, 39528, 40114, 41263, 42302, 42721, 42722, 43868, 44329, 50904, 51811, 52283, 52284, 53918, 53926, 55047, 59995, 63157, 63930, 64932, 65584, 65585, 68637, 69352
Base closures and realignments:
List additions, 21561, 31192
Recommendations, 14002, 31192
Civilian health and medical program of uniformed services (CHAMPUS):
DRG-based payment system; 1994 FY, 55047, 61143
Mental health per diem rates; 1994 FY, 51064
Partial hospitalization per diem rates; 1994 FY, 51811
Rate revision, 6254, 13253

Reform initiative demonstration project, 26289
Tidewater managed care demonstration project (TRICARE), 52094
Committees; establishment, renewal, termination, etc.:
Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee, 35434
Cultural and Natural Resources Committee, 35435
Depot Maintenance Consolidation Study Group, 5364
DOD Government-Industry Technical Data Committee, 26127
Environmental Response Task Force, 32522
Government-Industry Advisory Committee on Operation and Modernization of National Defense Stockpile, 21296
Government-Industry Technical Data Committee, 61864
Investigative Capability of DOD Advisory Board, 60007
Joint Military Intelligence College, Board of Visitors, 65585
Strategic Environmental Research and Development Program Scientific Advisory Board, 38120
Cosmetic surgery reimbursement rates, 14562
Courts-Martial Manual; amendments, 19409
Defense Base Closure and Realignment Commission, 13587, 15238, 16526, 21297, 26963, 30028, 33933
Defense Technology Transfer Working Group; inputs, 42301
DoD directives system annual index; availability, 14563, 35435, 48354
Environmental statements; availability, etc.:
Ballistic Missile Defense Organization balloon program, 39799
Ballistic Missile Defense Organization RAPTOR/TALON program, 39798
Marine Corps Base Camp Lejeune, NC; solid waste alternatives; hearing, 58330
Theater missile defense lethality program, 42953
Theater missile defense program, 21561
Yuma Training Range Complex, CA and AZ; military training procedures, facilities construction, and airspace utilization reconfiguration, 28859
Federal Acquisition Regulation (FAR):
1993 consolidated reprint; looseleaf edition, 54890
Agency information collection activities under OMB review, 539, 5962, 6389, 6481, 7549, 8046, 8588, 12945, 12946, 13252, 15489, 15490, 15844, 16653, 19664, 32108, 33435, 33436, 46948, 49477, 51621, 57587, 57588, 65162, 68636
Federal telecommunications standards:
Federal buildings telecommunication infrastructure, 19663
HF radio modems; proof-of-concept testing of prototype equipment, 21297
Foreign assistance determinations:
Ecuador, 4658
Kuwait, 39009
Foreign military financing for direct commercial contracts termination; effective date extension, 64932
Foreign operations:
Excess landing craft; transfer to Colombia, 12941
Excess trucks and trailers; transfer to Paraguay, 34428
Grants and cooperative agreements; availability, etc.:
Advanced planning grants for States with communities economically dependent on DOD spending, 40626
Defense technology conversion, reinvestment, and transition assistance program, 15842, 29202
Local educational agencies assistance, 35435
National Guard youth opportunities pilot program, 31371
Planning grants for States with communities economically dependent on DOD spending, 40627
Technology reinvestment project; regional briefings, 18379
Medical and dental reimbursement rates; 1994 FY, 53713
Meetings:
Ada Board, 17209
Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force, 42302, 54122
Ballistic Missile Defense Advisory Committee, 52102, 63930
Defense Environmental Response task force, 47717
Defense Information School Board of Visitors, 19664
Defense Intelligence Agency Scientific Advisory Board, 29571, 38120, 40800, 48852
Defense Intelligence College Board of Visitors, 31946, 68122
Defense Systems Management College Board of Visitors, 27999
Dependents' Education Advisory Council, 13060, 45101
DIA Advisory Board, 7216
DISA Scientific Advisory Group, 46947
DOD/DOE System Safety Red Team Advisory Committee, 6625, 42954, 59019
DOD Government-Industry Technical Data Committee, 52284
Education Benefits Board of Actuaries, 34785
Education of Dependents with Disabilities National Advisory Panel, 21561
Electron Devices Advisory Group, 6625, 12222, 16526, 19091, 28565, 32522, 35920, 44507, 50904, 50905, 57990, 62330, 68122, 68123
Federal Wireless Users Forum, 19663
Government-Industry Technical Data Committee, 6117, 11592, 26127, 29206, 29393, 32523, 44507, 47892, 61864
Investigative Capability Advisory Board, 68635
Military Justice Joint Service Committee, 19410
Military Personnel Testing Advisory Committee, 13061, 34246, 58847
National Security Education Board advisors, 60181
National Security Telecommunications Advisory Committee, 17576, 26739
Nuclear Weapons Surety Joint Advisory Committee, 15138, 25632, 47892, 65703
Retirement Board of Actuaries, 34785
Science Board, 7550, 31372, 58847
Science Board task forces, 4658, 5364, 7550, 8742, 8743, 12942, 14205, 17868, 21146, 21974, 26963, 30028, 31371, 31946, 36657, 37717, 46633, 52478, 57990, 58847, 61073, 63930, 64733, 68635
Scientific Advisory Board, 4415, 26739, 53503
Scientific Advisory Group on Effects, 26127
Service Academy Athletic Programs Defense Advisory Committee, 65703
Strategic Command Strategic Advisory Group, 13588, 51324
Telecommunications Service Priority System Oversight Committee, 25976, 49287, 52285
U.S. Court of Military Appeals Code Committee, 25975
Wage Committee, 92, 19091, 26963, 31511, 37717, 41458, 47127, 51324, 61074, 65161
Women in Services Advisory Committee, 8742, 34246, 17209
Militarily critical technologies list; availability, 38120
Organization, functions, and authority delegations:
Army Department Secretary et al., 45317
Defense Finance and Accounting Service; address change, 65585
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Jointed conveyor, etc., 54122
Privacy Act:
Systems of records, 10002, 21146, 41248, 42302, 45318, 49287, 52948, 54560
Senior Executive Service:
Performance Review Boards; membership, 33934, 34246, 34427, 40800
Travel per diem rates, civilian personnel; changes, 3263, 26964, 31946, 35917, 47260, 52285, 60181

Defense Information Systems Agency

NOTICES
Senior Executive Service
Performance Review Board; membership, 40628

Defense Intelligence Agency

NOTICES
Senior Executive Service:
Performance Review Committee; membership, 35438

Defense Logistics Agency

NOTICES
Contract administration services, improvement; agency guidance, 62331
Government Bill of Lading (GBL) distribution reduction test termination, 52283
Meetings:
Science Board task forces, 31696
Privacy Act:
Computer matching programs, 29397, 47127, 49288, 53718, 61074, 61076, 61077, 64442
Systems of records, 3939, 13462, 25819, 31697, 49290, 60428
Senior Executive Service
Performance Review Boards; membership, 38364, 48507

Defense Mapping Agency

NOTICES
Senior Executive Service
Performance Review Board; membership, 43617

Defense Nuclear Agency

NOTICES
Privacy Act:
Systems of records, 61896
Senior Executive Service
Performance Review Board; membership, 44174

Defense Nuclear Facilities Safety Board

RULES
Conflict of interests; organizational and consultant; correction, 13684
Freedom of Information Act; implementation
Fee schedule, 21241
NOTICES
Conflict of interests, 64558

Defense

Conflict of interests resolution:
Pearlstein, Dr. Sol, 4413
Sanford Cohen & Associates, Inc., 52479
Meetings; Sunshine Act, 375, 3990, 4201, 6335, 33855, 40859, 47782, 53758
Privacy Act:
Systems of records, 7129
Recommendations:
Critical experiment capability need, 16654
Defense nuclear facilities complex; maintaining access to nuclear weapons expertise, 68123
Energy Department defense nuclear facilities; technical capability improvement, 6389, 32109
Environmental restoration management contracts; health and safety factors, 34247
Hanford Site, WA—
High level waste storage tanks waste characterization program, 40409
Secretary of Energy; trip reports transmittal and other safety information; policy statement, 4659

Delaware River Basin Commission

PROPOSED RULES

Practice and procedure rules:
Administrative manual—
Nonpoint sources of pollution; special protection waters; hearings, 18352

NOTICES

Comprehensive plan and water code; and administrative manual; amendments, 18380
Hearings, 3940, 7882, 14384, 21446, 29399, 33260, 40411, 48356, 54335, 62332

Drug Enforcement Administration

RULES

Diversion control program; registration application fee schedule; adjustment, 15272
Manufacturers, distributors, and dispensers of controlled substances; registration, etc.:
Mid-level practitioners; definition and registration, 31171
Correction, 31907
Schedules of controlled substances:
Alpha-ethyltryptamine, 13533
Aminorex, 44611
Cathinone and 2,5-dimethoxy-4-ethylamphetamine, 4316
Exempt anabolic steroid products, 16772, 34707, 34708, 49923
Exempt chemical preparations, 17106
Levo-alphacetylmethadol, 43795
Methcathinone, 25934, 53404
Veterinary anabolic steroid implant products, 15088
Zolpidem, 7186

PROPOSED RULES

Controlled substance prescriptions; facsimile transmission, 49453
Manufacturers, distributors, and dispensers of controlled substances; registration, etc.:
Administrative hearing regulations, 52246
Federal, State, or local government operated hospital/clinics; employees fee exemption, 31180
Psychotropic substances reporting, 53680
Precursor and essential chemical export/import declaration; copy 3 disposition, 49455
Precursor and essential chemicals; imports and exports, 42894
Schedules of controlled substances:
4-Bromo-2,5-dimethoxyphenethylamine; temporary placement into Schedule I, 58819
Alpha-ethyltryptamine, 4370
Aminorex, 44311
Levo-alphacetylmethadol, 25790
Methcathinone, 25788

NOTICES

Schedules of controlled substances; production quotas:
Noroxymorphone, 27751, 44381
Schedule I—
1993 aggregate, 68157
1993 proposed aggregate, 40159, 47918, 51382, 52327
1994 aggregate, 52508
1994 proposed aggregate, 40158, 52510
Schedule II—
1993 aggregate, 68157
1993 proposed aggregate, 40159, 47918, 51382, 52327
1994 aggregate, 52508
1994 proposed aggregate, 40158, 52510
Applications, hearings, determinations, etc.:
Abbott Laboratories, 39040, 50369
Achalla, Lakshmi N., Murty, M.D., 14426
Adams, Barton J., D.O., 68952
Alford, William L., Jr., M.D., 7246
Alpert, Norman, M.D., 67420
Ambadgis, Theodore T., M.D., 5759
Angiolicchio, Ruggero, M.D., 14426
Anys, Inc., 65734
Applied Science Labs, 39040, 50369
Arenol Chemical Corp., 37970, 47478
Associated Pharmaceutical Group, Inc., 58181
B&B Medical Supplies, 51383
Balgobin, Carlyle, D.D.S., 46992
Ben-Eliezer, Carmel, M.D., 65400
Benke, Gary D., M.D., 65734
Beukenkamp, Cornelius J., Jr., M.D., 28416
Binding Site, Inc., 14427, 26351, 68664
Blakely, Guy Smith, M.D., 28993
Bridgeway Trading Corp., 7817, 46656
Brown, Gary L., M.D., 26351
Brown, William E., D.O., 64004
Bunch, John Dallas, III, M.D., 44381
Cambridge Isotope Lab, 46216, 57623
Celgene Corp., 46656
Chemical Dependence Associates of Houston, 37505
Chen, Kuen H., M.D., 65401
Ciba-Geigy Corp., 58878
Constant, Fred G., M.D., 28038
Cullen, Robert H., M.D., 46992
Cuong, Tran Trong, M.D., 37506
Doell, William E., D.O., 37506
Dupont Merck Pharmaceutical Co., 39041, 50369
DuPont Pharmaceuticals, 7817, 14427
Eli Lilly Industries, Inc., 57623, 68664
Gaber, Ahmed, M.D., 15377
Gamad, Romulo Robleda, Jr., M.D., 7247
Gandotra, Suresh, M.D., 64781
Ganes Chemical, Inc., 15378, 26559
Gillis, David H., M.D., 37507
Grasso, Louis, D.V.M., 46993
Harris, Leonard C., M.D., 65402
Headley, David M., M.D., 58183
High Standard Products, 68663
Hoffman-LaRoche Inc., 58878
Janssen, Inc., 12974, 26352
Johnson Matthey, Inc., 3560, 17284, 25848, 35466, 46216, 50956, 53561, 57624
Kirk, Lowell O., M.D., 15378
Knight Seed Co., Inc., 5416
Knoll Pharmaceuticals, 12974, 26352
Konstantin, Karl, M.D., 15379
Kunkel, Alan B., M.D., 58185
Landry Pharmaceutical, Inc., 44382
Lonza Riverside, 26352
Mallinckrodt Specialty Chemicals Co., 12053, 12974, 26352, 47479
Mauskar, Anant N., M.D., 51385
MD Pharmaceutical, Inc., 12053
Med-Physics, Inc., 12053, 30184
Miller, Myrtle L., D.O., 64005
Minn-Dak Growers Ltd., 6313, 13505
Monroe, Elliott F., M.D., 16704
Moore, Sam F., D.V.M., 14428
Motamed, Michael, M.D., 15882
Noramco of Delaware, Inc., 14429, 26352, 26353
North Pacific Trading Co., 583, 58878
OMB Pharmaceutical Partners, 64338
Orpharm, Inc., 11063, 26353, 68664
Osafo, George D., M.D., 37508
Penick Corp., 48898, 58565, 59070, 60061, 68665
Perzik, John David, M.D., 14429
Prust, James, 25848
Radian Corp., 26353, 26559, 32722, 35466, 42987, 50370
Rahmati, Ben, D.D.S., 21187
Ramirez-Gonzalez, Nelson, M.D., 52787
Ramirez, Rodrigo I., M.D., 15381
Red River Foods, Inc., 5759
Research Biochemicals Inc., 583, 11424
Ricci, Dominick A., M.D., 51104
Riverside, Lonza, 14430
Roberts Laboratories Inc., 30184, 61097
Roche Diagnostic Systems, Inc., 27310, 35466
Rucker, R. James, Jr., D.D.S., 28417
Ryan, Charles H., M.D., 14430
Ryan, Paul R., M.D., 37970
Sanofi Winthrop Pharmaceutical, 12975, 35467
Schumacher, Michael, General Television, 60061
Shah, Arunkumar J., M.D., 7247
Sigma Chemical Co., 17285, 30184
Smith, Nelson A., D.D.S., 65403
Stanford, Gary E., M.D., 14430
Stanford Seed Co., 17285, 30185
Stepan Co., 46217, 57624
Sterling Organics, 11870, 32722, 57624, 68664
Takos, Robert, M.D., 53940
Topel, Steven I., M.D., 37509
Toxi-Lab, Inc., 584
U.S. Drug Testing, Inc., 49320
Upjohn Co., 584, 64338
Vogler, Robert L., D.D.S., 51385
Vo, Thuong, M.D., 46994
Watson, Lloyd, M.D., 5759
Watts, Bobby, M.D., 46995
Wildlife Laboratories, Inc., 39041, 50370
Williamson, Gary A., D.D.S., 44383
Womack, James C., M.D., 7248
Zachary, Floyd, D.D.S., 16704

Economic Analysis Bureau

RULES

International services surveys:
Foreign direct investments in U.S.—
BE-15(LF); long form filing exemption level; annual survey, 53124
BE-605; transactions with foreign parent; quarterly survey, 38289

PROPOSED RULES

International services surveys:
Foreign direct investments in U.S.—
BE-15(LF); long form filing exemption level; annual survey, 38324
BE-605; transactions with foreign parent; quarterly survey, 12912

NOTICES

Economic areas boundaries; revision, 13049

UMI

Economic Development Administration

RULES

Organization, functions, and authority delegations; and reporting and recordkeeping requirements, 61804

NOTICES

Grants and cooperative agreements; availability, etc.:
  Economic development assistance programs, 3800, 27188, 54008, 69102
Project specific environmental documents; availability, 18078
Senior Executive Service:
  Performance Review Board; membership, 46161
Trade adjustment assistance eligibility determination petitions:
  CTS Corp. et al., 12024
  Custom Products of Litchfield, Inc., et al., 6776
  DVH Corp. et al., 40111
  G&G Uniform Co., Inc., et al., 30014
  Geo. E. Keith Co., Inc., et al., 15840
  H.G. Weber, Co., Inc., et al., 50328
  Hobart Machined Products, Inc., et al., 57584
  Ioline Corp. et al., 68852
  Neilsen Manufacturing, Inc., et al., 45095
  Optenberg, Inc., et al., 63911
  Sandvik Rock Tools, Inc., et al., 34988
  Sholdt Jewelers, Inc., et al., 25604

Economic Regulatory Administration

NOTICES

Consent orders:
  Dane Energy Co., 58157, 65705
  Dobyns, Richard E., 32923, 40416

Economic Research Service

NOTICES

Meetings:
  National Agricultural Cost of Production Standards Review Board, 8252

Economics and Statistics Administration

NOTICES

Economic aspects of U.S. patent system; hearings and comment request, 68394
Meetings:
  Designing the Year 2000 Census and Census Related Activities for 2000-2009 Task Force Advisory Committee, 9144, 27707, 46626, 62635
Senior Executive Service:
  Performance Review Board; membership, 46161

Education Department

RULES

Acquisition regulations:
  Metric system use, 30088
    Effective date, 51020
  Miscellaneous amendments, 32614
Age Discrimination Act; implementation, 40194
Conflict of interests, 32996
Demands for testimony or records in legal proceedings; reporting and recordkeeping requirements, 7860
Educational research and improvement:
  Library education and human resource development program, 45210
  Library research and demonstration, improving access to research library resources, and college library technology and cooperation grants programs, 40246
  Library Services and Construction Act; State-administered program; "State aid" definition, 11166
  National diffusion network; program effectiveness panel, 35354
Effective date announcement, 36869
Elementary and secondary education:
  Drug-free schools and communities counselor training grants program, 13176
  Drug-free schools and communities emergency grants program, 46756
  Educational agencies affected by Federal activities or unable to provide suitable free public education; assistance; CFR correction, 26524
  Schoolwide projects; fiscal requirements, 11920
  Special educational programs for students whose families are engaged in migrant and other seasonal farmwork; high school equivalency and college assistance migrant programs; correction, 11538
  Territories and freely associated states educational grant program, 5174
Equal Access to Justice Act; implementation, 47192
Family educational rights and privacy:
  Postsecondary education—
    Disclosure of results of disciplinary proceeding against alleged perpetrator to alleged victim, 3188
General Education Provisions Act; enforcement:
  Administrative Law Judges Office procedural regulations and operating efficiency, 43472
  Correction, 51013
Postsecondary education:
  Campus sexual offenses education and prevention program; implementation, 43265
  College facilities loan program, 42626
  Cooperative education program, 42651
  Drug prevention programs in higher education; amendment, 27140
  Endowment challenge grant program, 11162
  Family education loan program, 9119
    Default reduction initiative, 3174, 19211
    Statutory and regulatory provisions, waivers and modifications, 21860
  Federal TRIO programs, Upward Bound program, and student support services program; training program, 51518
  Fund for improvement of postsecondary education, 27144
  Graduate assistance in areas of national need, 65838
  Historically black colleges and universities and historically black graduate institutions programs, 38711
  Institutional eligibility under Higher Education Act of 1965 and student assistance general provisions—
    Emergency sanctions, 13336, 15523
  International education programs, 32574
  Jacob K. Javits fellowship program, 58084
  National direct student loan program, 36088
  Patricia Roberts Harris fellowship program, 42860
    Correction, 47069
  Paul Douglas teacher scholarship program, 42824
  Pell grant program—
    Statutory and regulatory provisions, waivers and modifications, 21860
  Perkins loan program—
    Statutory and regulatory provisions, waivers and modifications, 21860
  Robert C. Byrd honors scholarship program, 42665
  School, college, and university partnerships program, 50166
  Student assistance general provisions—
    Abuse elimination, 39618, 69594
    Federal loan, work-study, and grant programs; regulatory relief for institutions and individuals who suffered financial harm from 1993 Midwest flood, 52194
    Fine, limitations, suspensions, and termination proceedings and appeal procedures for audit and program review determinations; amendments, 14152, 21660
    Noncitizen applicants immigration status; determination system, 3180, 26674
    Technical amendments; correction, 32188
  Supplemental educational opportunity grant program—
    Statutory and regulatory provisions, waivers and modifications, 21860
  Talent search program, 59144
  Urban community service program, 42662
  Various CFR Parts removed, 28504
  Work study program—
    Statutory and regulatory provisions, waivers and modifications, 21860
    Opportunity and Pell grants programs; statutory and regulatory provisions, waivers and modification
Privacy Act; implementation, 44422
Special education and rehabilitative services:
  Children with disabilities education program and preschool grants; assistance to States; reporting and recordkeeping requirements, 13528
  Demonstration projects to increase client choice program, 40706
  Individuals with disabilities; projects for initiating special recreational programs, 35762
  Individuals with Disabilities Education Act; implementation—
    Regional resource and Federal centers, 9462
  Infants and toddlers with disabilities; early intervention program, 40958
  National Institute on Disability and Rehabilitation Research—
    Technical amendments, 49418
  Protection and advocacy of individual rights program, 43018
  Training personnel for education of individuals with disabilities program, 27440

PROPOSED RULES

Educational research and improvement
  Library education and human resource development program, 32828
  Library research and demonstration, improving access to research library resources, and college library technology and cooperation grants programs, 21052
Elementary and secondary education:
  Drug-free schools and communities emergency grants program, 15748
Family educational rights and privacy:
  Law enforcement unit records, 42836, 65298
Grants and cooperative agreements to State and local governments:
  Uniform administrative requirements (OMB A-102)
    Liquidation of obligations period; withdrawn, 44736
Postsecondary education:
  Campus sexual offenses education and prevention program; implementation, 18307
  College facilities loan program, 19298
  Cooperative education program, 29157, 38504

INDEX
VOL 58
1993
UMI

Educational opportunity centers program, 57704
Family education loan program, 13356
Graduate assistance in areas of national need, 33224
Higher Education Amendments of 1992—
Negotiated rulemaking meetings, 25590, 43608
Historically Black colleges and universities program and Historically Black graduate institutions program—
Higher Education Act Amendments; implementation, 11158
Jacob K. Javits Fellowship program, 37890
National direct student loan program, 17472
Patricia Roberts Harris fellowship program, 11928, 15824, 33308
Paul Douglas teacher scholarship program, 28530
Perkins loan program, 13356
Robert C. Byrd honors scholarship program, 28538
Ronald E. McNair Postbaccalaureate Achievement program, 63870
School, college, and university partnerships program, 32014
State student incentive grant program, 36110
Strengthening institutions program, 48478
Student assistance general provisions—
Consumer information; disclosure requirements, 54902
Student eligibility under 1992 Higher Education Amendments, 51712
Talent search program, 32580
Urban community service program, 29373
Regulatory agenda, 24218, 56246
Special education and rehabilitative services:
Centers for independent living program, 57942, 67383
Client assistance program, 52614
Demonstration projects to increase client choice program, 17308
Individuals with disabilities; projects for initiating special recreational programs, 28448
Individuals with Disabilities Education Act; implementation—
Serious emotional disturbance definition, 7938, 11776
Nomenclature changes, 57938
Protection and advocacy of individual rights program, 26890
Rehabilitation Act Amendments of 1992; implementation; meeting, 26281
Rehabilitation long-term training, 52606
State vocational rehabilitation services program, 8688, 9458, 28530, 38482, 44638
State-administered programs and Federal, State, and local partnership for educational improvement; State plan filing deadlines and pre-award costs, 65856
U.S. exchange visitor program; waiver of 2-year foreign residence requirement, 11924
Vocational and adult education:
Direct Student Loan Regulations and Guaranty Agency Reserves Regulations; negotiated rulemaking advisory committees; establishment, 68619
State-administered and national workplace literacy programs, 30916

NOTICES

Administrative dispute resolution in connection with agency actions; policy statement, 62486
Administrative Law Judges Office hearings:
Arizona State Education Department, 28565
Claim compromises—
Arizona Department of Library, Archives and Public Records, 8047
South Dakota Education Department, 31952
Agency information collection activities under OMB review, 92, 3018, 4660, 5962, 7132, 8744, 12222, 13588, 15490, 16179, 17221, 21563, 25978, 26127, 28566, 28954, 28955, 29399, 29400, 30776, 30777, 31372, 31511, 31698, 31952, 32111, 33261, 33623, 34249, 34573, 36399, 37917, 39201, 40115, 41086, 42530, 43098, 43618, 44809, 45102, 46633, 47724, 47820, 49981, 51065, 51066, 53504, 57589, 58848, 60429, 61682, 62336, 63158, 63931, 64933, 65975, 67781, 68637
Committees; establishment, renewal, termination, etc.:
National Assessment Governing Board, 53189
Contracts, grants, and cooperative agreements; cash expenditures reporting and payment requests submission for expiring Federal funds, 41136
Data acquisition activities involving educational agencies and institutions; list, 8261
Discretionary grants; regulatory process improvement; comment request, 40629
Educational research and improvement:
Educationally at-risk students; comment solicitation, 6267
Elementary and secondary education:
Drug-free schools and communities; annual conference, 59019
Grantback arrangements; award of funds:
Illinois, 21708
Michigan, 34573
New York, 12030
Washington, 64084
Grants and cooperative agreements; availability, etc.:
Accounting and financial management service reporting of final expenditures for expired discretionary grants, 31876
Bilingual education and minority languages affairs—
Academic excellence program, 40554
Bilingual vocational instructor training program, 41918
Developmental bilingual education program, 40554
Discretionary grant programs; field readers, 32914
Educational personnel training program, 40555
Family English literacy program, 40556
Fellowship program, 40556
Short-term training program, 40557
Special alternative instructional program, 40557
Special populations program, 40559
Transitional bilingual education program, 40559
Braille training program, 27999
Children and youth with serious emotional disturbance program, 53370
Children with deaf-blindness services program, 49039, 49160
Children with disabilities early education program, 34178, 48548, 48554
Children with severe disabilities, 34188
Statewide systems change awards, 21050
Children with severe disabilities program, 49394
Client choice program demonstration projects, 32523
Community education development centers program, 43742
Cooperative demonstration program—
Community education employment centers, 65430, 65434
Cooperative education program, 38506
Desegregation of public education—
Direct grant and fellowship programs, 21864
Direct grants programs and fellowship programs, 50138, 68638, 68880, 68881
Disabled individuals; protection and advocacy of rights, 34786
Distance learning through telecommunications program, 28000
Drug-free schools and communities discretionary programs, 62647
Drug prevention programs in higher education, 5963
Dwight D. Eisenhower leadership development program, etc., 31080, 40412
Dwight D. Eisenhower national program for mathematics and science education, 60007
Early childhood education and violence counseling; recruitment and training program, 26192
Educational media research, production, distribution, and training program, 34168, 54434
Educational research and development centers program, 51690
Educational research and improvement; library programs, 40992
Educational research program, 3540, 45883
Education of individuals with disabilities—
Personnel training program, 31512
Emergency immigrant education program, 8744
Endowment challenge programs, 50220
Federal Perkins loan program, 52370
Federal Perkins loan program, etc.—
Fiscal operations report and application, 46072
Institutional eligibility and certification application, 61682
FIRST—Schools and teachers program, 58478
Foreign language materials acquisition program, 65703
Foreign periodicals program, 28956
Fulbright-Hays—
Faculty research abroad and doctoral dissertation research abroad programs, 42530
Group projects abroad program, 40412
Fund for innovation in education—
Comprehensive school health education program, 64933
Computer-based instruction program, 4660
Innovation in education program, 6267, 14274
Technology education program-teacher networking project, 60009
Graduate assistance in areas of national need program, 60010, 65838
Independent living centers, 21630, 27716, 34788, 35720, 42820
Indian education program—
Even Start program, 9152
Formula grants, 65349
Indian vocational education training program, 15052
Individuals with disabilities—
Education program, etc., 36576
Education research program, 4864, 4866, 9597, 40700, 60928
Parent information and training programs, 28001, 39202
Personnel training program, 31102, 45884
Projects for initiating special recreational programs, 35767
Special studies program, 53366
Technology, educational media, and materials program, 48041, 48246
Transportation services demonstration projects, 5963
Individuals with most severe disabilities; supported employment services and

technical assistance projects and demonstrations, 34194, 49982, 59453, 62336
Institutional quality assurance program; participation deadline and selection criteria revision, 30922
Integration of vocational and academic learning program; demonstration projects, 32808
International education programs, 40413
International research and studies program, 50542
Jacob K. Javits fellowship program, 7771, 58090
Library education and human resource development program, 47800
Library research and demonstration program; online and dial-in access to statewide multitype library database demonstration project, 12314
Life skills for State and local prisoners program, 14278, 18381
Magnet schools assistance program, 7771
Minority students teaching programs, 31019
National assessment of educational progress data reporting program, 21974, 32656, 50134, 50135, 63008
National assessment of educational progress trial State assessment; independent evaluation, 59610
National Institute on Disability and Rehabilitation Research—
Knowledge dissemination and utilization program, 46710, 64298, 64356
Rehabilitation research and training centers, 5524, 5535, 9422, 11940, 11941, 13302, 13313, 34994, 41910, 54004, 54006, 66218, 66228
Rehabilitative engineering research centers, 41010, 60096, 60099
Research and demonstration projects, etc., 36554, 46714, 64642
National resource centers program for foreign language and area studies, etc., 26534, 46948
National science scholars program, 40801
Patricia Roberts Harris fellowship program, 32657, 33312
Paul Douglas teacher scholarship program, 42834
Pell grant program, etc.—
Need analysis methodology (1994-95 award year), 30910
Postsecondary education improvement fund—
Comprehensive program, 61080
Innovative projects for community service program, 25980
Special focus competition (invitational priority; higher education collaboration and exchange between United States and European Community), 25821
Postsecondary education—
Programs for individuals with disabilities, 32570, 48042, 48250
Rehabilitation continuing education programs, 40414
Rehabilitation short-term training program, 47188, 59606
Robert C. Byrd honors scholarship program, 42055
School construction in areas affected by Federal activities program, 18381
School-to-work opportunities systems, 53388
Services for children with deaf-blindness program, 15138, 34174
Special studies program, 29571
Star schools program, 51960
State postsecondary review program, 38022, 52951, 65976
State student incentive program, 68398
State vocational rehabilitation services program, etc.; reporting requirements, 68125
State vocational rehabilitation unit in-service training program, 14564
Strengthening institutions programs, 13465, 50220
Student financial assistance programs; application forms, 58250
Student Literacy Corps and Student Mentoring Corps program, 14206, 26535, 43618, 50543
Talent search program, 59153
Technology, educational media, and materials for individuals with disabilities program, 32206, 43190
Territories and freely associated states educational program, 14565
Urban community service program, 37718
Youth with disabilities secondary education and transitional services program, 34184, 49152
Meetings:
Children with Disabilities Federal Interagency Coordinating Council, 39594
Educational Research and Improvement National Advisory Council, 7216, 54125
Education Statistics Advisory Council, 6267, 25979, 42056, 44536
Federal Interagency Coordinating Council, 54125, 68638
Fund for Improvement and Reform of Schools and Teaching Board, 4157, 26300
Indian Education National Advisory Council, 6481, 14205, 17874, 29811, 58330, 58854, 61900, 68639
National Assessment Governing Board, 3540, 5964, 7133, 9152, 13748, 15491, 16526, 25979, 32525, 33437, 33438, 34039, 34995, 38559, 40630, 45883, 46949, 53719, 55061, 57992, 59245, 68639
National Education Goals Panel, 5718, 9153, 16655, 30043, 36657, 39009, 43869, 58156
Non-competing continuation grant award process, 40630
Postsecondary Education Improvement Fund National Board, 49478, 62106
Student Financial Assistance Advisory Committee, 3941, 12581, 34428, 46634
Time and Learning National Education Commission, 12223, 13255, 19410, 25822, 31372, 47264, 53720, 67782
National Education Goals Panel; report availability; news conference, 48509
Nurse and public postsecondary vocational education; recognition of accrediting agencies and State agencies for approval, 64559
Postsecondary education:
College facilities loan program, 31616
Cooperative education program; technical assistance workshops, 15491
Federal Perkins loan, Federal work-study, and Federal supplemental educational opportunity programs—
Fiscal operations report and participation application; electronic submission hardware requirements, 40702
National defense and Perkins (national direct) student loan programs; directory of designated low-income schools; revised directory, 34575
National direct student loan program, 47816, 68690
Privacy Act:
Systems of records, 6482, 30777, 44330
Senior Executive Service:
Performance Review Board; membership, 40415
Special education and rehabilitative services:
Assistance to States for education of individuals with disabilities—
Written findings and decisions and compliance agreements, 40252
Blind vending facilities; arbitration panel decisions under Randolph-Sheppard Act, 41738, 41739, 41740, 41741, 41742, 41743
Private schools serving publicly placed children with disabilities; personnel standards requirements, 32994
State educational agencies; submission of data, 8745
Talent search and educational opportunity centers programs; technical assistance workshops, 53926

Employment and Training Administration

RULES
Ex-service unemployment compensation regulations; miscellaneous amendments, 43782
Job Training Partnership Act:
Job Corps program under Title IV-B, 69098
Miscellaneous amendments, 31471
North American Free Trade Agreement (NAFTA):
Aliens on H-1B visas temporarily employed in specialty occupations and as fashion models; labor condition applications and requirements for employers, 69226
PROPOSED RULES
Alien permanent employment labor certification process:
Labor market information pilot program, 15242, 26077
Aliens on H-1B visas temporarily employed in specialty occupations; labor condition applications and requirements for employers, 52152, 58994
Job Training Partnership Act:
Job Corps program under Title IV-B, 33000
NOTICES
Adjustment assistance:
A&A Materials, 54604
ABB Power T&D Co., Inc., et al., 38441
Agrico Chemical Co., 47762, 52789
Airfoil Forging Textron, 39234
Airfoil Forging Textron, Inc., 49062, 51882
Airfoil Textron, 32549
Alcoa Electronic Packaging, 49062, 51885
Allied Signal, 8769
Allied Signal, Inc., 43656
Alphabet, Inc., 51882
Altoona Steel, 16417
Aluminum Co. of America et al., 43124, 49061
Alyeska Pipeline Service Co., 45918
American International Manufacturing Co. et al., 42577
American National Can Co. et al., 21319
American National Can Co., 30070
American Optical Corp., 6987, 8062
American Welding & Manufacturing Co. et al., 16417
Ametek et al., 44698
Anadrill, 25657
Anchor Woven Label Co. et al., 43656
Anchor Woven Label Co., 48677, 49062
Anderson Sportswear, 19276
ARCO Alaska, Inc., et al., 6809
Ardyne, Inc., 17430
Ardyne, Inc., et al., 13803

INDEX
VOL
58
1993
UMI

Employment

Arkla Exploration Co., 11249, 17430
Armor Elevator Co., 6019
AT&T Technologies, 15381
Augat Automotive, 54376
B T.F., 30071
Baker Hughes Production Tools, Inc., 13092
Baker Oil Tools et al., 34482
Baker Oil Tools, 19276
Baker-Hughes Tubular Services, 21320
Baroid Management Co., 30070
Bear Creek Operations, Inc., et al., 38786
Beaver Dam Products, 19846, 25658
Bell Hellicopter, 12372
BethEnergy Mines, Inc., 6020, 6987
Bethlehem Steel Corp., 17430, 30070, 33120, 52328
Betten Manufacturing Co., Inc., 60464
Big Three Industries, Inc., 58352
Bird Products Corp. et al., 8063
Black Eagle Petroleum, 13804
Boeing Co.,
BP Exploration & Oil, Inc., 6420
Brazier Forest Industries, Inc., et al., 12372
Briggs & Straton Corp. et al., 53215
Brown Shoe Co. et al., 59489
Bull HN Information Systems, 54376
Cable Electric Products, Inc., 32550
Callaway Safety Equipment Co., Inc., 31417
Camco Products & Services et al., 27311
Carborundum Co., 60464, 65196
Cas Refining, Inc., 13283
Charm Corp. et al., 36421
Chevron Petroleum Technology Co., 26559
Chevron U.S.A. Production Co. et al., 34592
Chevron U.S.A. Production Co., 33671, 50567
Chuska Energy Co. et al., 46996, 58879, 61099
Ciba-Geigy Corp., 36421
Cleveland Pneumatic Co. et al., 62375
Colonial Corp. of America, 59490
Coltec Industries, Inc., 13283
Communications Instruments, Inc., 37027
Complete Auto Transit, Inc., 43657
Conemaugh & Black Lick Railroad Co., 33121
Cowan Sportswear et al., 45919
Cox Exploration Co., 25658
Crawford Home Fashions, 64007
Crucible Specialty Metals Corp., 38442
Cyprus Sierrita Corp., 67422
Cyprus Thompson Creek Mining Co., 16848, 19277
D&H Manufacturers, Inc., 8770
Dahlstrom Manufacturing Co., Inc., et al., 59490
Dale Electronics Inc., 6020
Digital Equipment Corp. et al., 40159
Digital Equipment Corp., 43657, 48677
Douglas Aircraft Co., 15381, 28040, 47762
Dover Electronics Co. et al., 17909
Dow Chemical Corp., 68440
Dowty Aerospace Yakima, 30071, 32550
Dunbar Slag Co., Inc., 58353
Dunbar Slag Corp. et al., 53658
Durametal Corp. et al., 47762
Eastern Associated Coal Corp. et al., 31417
Eastern Associated Coal Corp., 53216
Eastern Stainless Corp. et al., 58187
Eastman Teleco, 11250
Eddy Potash et al., 33672
Enron Corp. et al., 57624
Enron Liquid Fuels Co., 43125
Enserch Exploration, Inc., 26167
Ethicon, Inc., et al., 65404
Exxon Corp., 30071
Five Sons Coats, 17910
Frost Dress Manufacturer, 59490
G&L Machine, 52789, 53942
G.E. Motors et al., 19277
G.E.O., Inc., 37027
Gainco, Inc., et al., 51882
Gencorp Automotive et al., 26353
General Atronics Corp., 40160
General Dynamics, 47763, 65194
General Electric Aerospace Electronic Systems, 38443
General Electric Co. et al., 17286
General Electric Co., 30186, 36421, 43658
General Electro Mechanical Corp., 60464
Geotrace Technologies, Inc., 47763
Gerber Childrenswear, Inc., et al., 58349
GLG Energy, L.P., 19846
Good Quality Sewing Co. et al., 62375
Goulds Pumps, Inc., 68668
Grant Tensor Geophysical Corp., 21320, 40160
GRL Production Services, Inc., 59492
GTI Corp., 47763
H&P Garment, 12373
H.F.S. Apparel Manufacturing, Inc., 60464
H.W. Jan Enterprises, Inc., 48677
Harken Energy Corp., 46996
Hawkins Oil & Gas, Inc., 13804
Hayes Wheels International et al., 30071
Henson Kickernick, 15382
Hermitage Hospital Products, 68952
Hewlett-Packard Co., 28614
Highland Co. et al., 36421
Hill Acme Co. & Loma Machine, 30073
Hilti Steel Industry Division & SISCO, Inc., 41293
Hilti Steel Industry Division et al., 43659
Holden Manufacturing Co. et al., 33121
Homco International, Inc., et al., 34482, 68440
Horizon Potash Corp., 52329
Hurlock Sportswear et al., 26560
I.C. Rainbows et al., 41293
IBM Corp., 43659
ICI Americas, Inc., 39234
IMC-Agrico Co., 48677
Intel Corp., 31418
JC & Me et al., 65194
Jockey International, 46996
Jones & Lamson Waterbury Farrell Corp., 65195, 68668
Julie Fashion I et al., 47763
Kaiser Aluminum & Chemical Corp., 68440
Koch Gathering Systems et al., 25658
Lake Shore, Inc., 51885
Lally Manufacturing Corp., 585
Laurel Metal Processing, Inc., 34593
Leslie Fay, 57625, 65195
Leviton Manufacturing, 53942
Logic Sciences, Inc., 34593
Lucas Aerospace Power Transmission Corp., 19278
M-I Drilling Fluids, 13804
Magnetek Century Electric, Inc., 53216
Marilyn Fashions, Inc., 5421, 8770
Martin Marietta - Ocean, Radar & Sensor Systems, 58350
Maynard Oil Co., 32550
MCM Co., Inc., 19278
Merrow Machine Co., 16418
Middle Atlantic Warehouse Distributor, Inc., 12373
Midessa Drilling Co. et al., 6421
Midwest Portland Cement Co. et al., 5421
Miss Alma, Inc., et al., 50568
Mobil Mining & Mineral Co. et al., 54376
Moench Tanning Co., 44699, 45918
Monessen, Inc., 6988, 17430
Morristown Manufacturing Co., Inc., et al., 16419
Neles-Jamesbury, Inc., 62376
Nerco Coal Corp., 51883
NERCO Minerals Co. et al., 46997
Nerco Oil & Gas, Inc., 17908, 43659, 52329
NERCO, Inc., 47764
Nestle Beverage Co., 46997
Nokia-Maillefer, 6421
Northrup Corp., 38787
Oberdorfor High Tex, 53215
Occidental Chemical Corp., 62683, 67422
Octagon Corp. et al., 28995
Optek Technology, 21320
Outokumpu Copper Kenosha, Inc., et al., 45357
Parker Hannifin, 62376
Penetrators, Inc., 68440
Penn Footwear Co., 54604
Pennshire Stores, 35979
Pennzoil Sulphur Co., 7249
Petroleum Testing Service, Inc., 58879
Philips Consumer et al., 585
Phillips Petroleum Co. et al., 16849
Pictsweet Frozen Foods, 52789
Pierce Corp. et al., 46997
PPG Industries, Inc., et al., 67422
Praxair, Inc., et al., 6810
Precision Castparts Corp. et al., 35980
Princeton Packaging, Inc., 35982
PS Industries, Inc., et al., 38443
Pyke Manufacturing Co., 33123
Quiet Valley Forest Products, Inc., et al., 62683
Radiometer Technology, Inc., 68668
RAMCO Oil & Gas, Inc., 32550
Rogue Valley Printed Circuits, Inc., 38444
Saha-Union International (GA), Inc., 67423
San Patricio Corp., 60465
Santa Fe Drilling Co., 64007
SDI Technologies Inc., 31418
Season-All Industries, Inc., et al., 64007
Shenango, Inc., et al., 37027
SIA America, 64008
Simonds Industries, Inc., et al., 68668
Smarte Carte, Inc., 53217
Smith Energy Services, 46998
Sonny Styles, Inc., 53942
South Texas Drilling & Exploration, Inc., 19846
Spaulding Composites Co. Inc., 7249
Speciality Industries & Sales, 34483
Standard Tool & Manufacturing Co. et al., 15382
Stanley Smith Security, Inc., 35982
Sundor Brands, Inc., 11250, 12373
Sundstrand Electrical Power Systems et al., 54377
Synergy Consultants, Inc., et al., 62684
Syntron, Inc., et al., 26561
Tanya A. Marie, Inc., 19278
Tanya A. Marie, Inc., et al., 12374
Target Sportswear, Inc., 47765
Tektronix, Inc., et al., 12599
Teledyne Vasco Colonial Plant et al., 15383
Tetley, Inc., 12600
Texaco Exploration & Production, Inc., 12374, 13092, 13283, 21599, 25659, 26561
Texaco, Inc., 30073
Texas Instruments, Inc., et al., 67423
Thiokol Corp. et al., 4185
Thumb Plastics-McAllen, Inc., et al., 4186
Timco Services, Inc., et al., 4187
Transco Energy Corp. et al., 25660
Tri-State Optical Co., Inc., et al., 28997
Trimac Transportation Services (Western), Inc., 58350
Triumph-Lor, Inc., et al., 40160
Tubeco Steel Manufacturing, Inc., et al., 8063
Tuckes Drilling Co., Inc., et al., 19847
U-Brand Corp., 19848
United Technologies Corp. et al., 48678

UNOCAL Corp., 4187, 8064
Upjohn Co., 67424
Valley Dress Manufacturing Co. et al., 11250
Variety Knit et al., 60465
Vassar Fibercoating & Metalizing et al., 7818
Villa Fashions, Inc., 47765, 48079
Vought Aircraft Co., 57626
Wang Laboratories, Inc., 61099
Wang Laboratories, Inc., et al., 34483
Wayne Corp. et al., 13506
Wayne H. Mullin Shoe Patterns, 8064
WCI Steel et al., 30073
Welchem, Inc., 11250
Western Gas Resources, Inc., et al., 32726
Weyerhaeuser, 6811
Willamette Industries, Inc., et al., 21320
Wilson Hydrocarbon, Inc., et al., 51884
Winters Industries, 53943, 58353
Wyman Gordon Co., Aerospace Forging, et al., 68669
X'lt Diskette Products et al., 58351
Yankee Atomic Electric Co., 26355
Zebulon Manufacturing et al., 49321

Alien temporary employment labor certification process:
Agricultural and logging; adverse effect wage rates and meal charges, 6643

Committees; establishment, renewal, termination, etc.:
Apprenticeship Federal Committee, 65405, 65406
Job Training Partnership Act Native American Programs' Advisory Committee, 6645
Native American Employment and Training Council, 15385, 40836

Emergency unemployment compensation program:
Benefit periods in all States, 28998
Extended benefit periods; changes, 15165, 44385
General administration letters—
1991 amendments; operating instructions, 34484

Environmental statements; availability, etc.:
Charleston Job Corps Center, WV, 13092
Connecticut Job Corps Center, CT, 13093
New Orleans Job Corps Center, LA, 13093

Federal-State unemployment compensation program:
Benefits quality control annual report availability, 40836
Federal Unemployment Tax Act—
Certifications relating to credits, 59071
State employment services program; acquisition, use, and disposition of real property by States, 68158
Unemployment insurance program letters—
Federal unemployment insurance law interpretation, 52790

Grant and cooperative agreement awards:
Job Training Partnership Act—
Association for Manufacturing Technology, 586
Bay State Center for Applied Technology of Boston, 586
Contact Center, Inc., 28998
Manpower Demonstration Research Corp., 19278, 22020
United Auto Workers Labor Employment and Training Co. of New York, 587

Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Defense conversion adjustment program; retraining and readjustment services for dislocated workers; demonstration projects, 31540
Defense diversification program, 38604
Farmworker housing assistance program, 68441
Migrant and seasonal farmworker programs, 6988
National Center for the Workplace, 17287, 31219
National workforce assistance collaborative, 17286, 31219
Youth fair chance demonstration projects, 67814

Job Training Partnership Act
Allotments and preliminary planning estimates (1993 PY), 11063
Dislocated workers employment and training assistance—
Title III funds reallotment, 63396
Dislocated worker units; State designations; list, 60213
Job Corps program; centers sites selection, 33988
Migrant and seasonal farmworker programs—
State planning estimates and allocation formula, 19279
Native American programs—
Regular and summer youth employment and training programs; allocations, etc., 5021
Service delivery areas; guidance letter, 18114
Targeted jobs tax credit program—
Lower living standard income level; economically disadvantaged, definition, 15506
Reauthorization, 47765
Training and employment guidance letters—
Governor's coordination and special services plans and statewide job training plans; modifications, 16849

Labor surplus areas classifications:
Annual list, 53943, 62141
Additions, 31220, 36422, 43660, 62141

Meetings:
Job Training Partnership Act Native American Employment and Training Council, 54173
Job Training Partnership Act Native American Programs' Advisory Committee, 29435
Unemployment Compensation Advisory Council, 17908, 42109, 42110, 58188, 64969, 65196

Nonimmigrant aliens employed as registered nurses; attestations by facilities; list, 26355, 28998, 32723, 40162, 48534, 52793, 60064

Nonimmigrant aliens temporarily employed as registered nurses; attestations by facilities; list, 6645, 7819, 13284, 43125

Organization, functions, and authority delegations:
Director, Unemployment Insurance Service, 64008

Unemployment compensation:
Ex-servicemembers; remuneration schedules, 6135, 6136
General administration letter—
Extended benefits law; 1992 amendment, 21477

Wagner-Peyser Act:
Allotments and planning estimates (1993 PY), 11063, 30815

Applications, hearings, determinations, etc.:
Callaway Safety Equipment Co., Inc., 27312
Kearney & Trecker Corp., 28041
Oloffson Corp., 27312
Pennsylvania Optical Co., 28041
Reynolds Cable Plant, 27313, 41293

Employment Policy, National Commission

See National Commission for Employment Policy

Employment Standards Administration

See Wage and Hour Division

RULES

Federal Employees' Compensation Act:
Claims; social security numbers disclosure, 68031

Longshore and Harbor Workers' Compensation Act:
Claims; social security numbers disclosure, 68031

NOTICES

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 118, 3296, 4718, 5760, 7250, 8430, 11631, 11641, 12600, 13648, 15166, 16421, 17431, 18418, 19844, 21754, 26167, 27313, 28039, 29639, 31052, 31757, 32722, 33672, 34488, 35978, 37028, 38440, 39568, 40835, 42108, 43128, 44385, 45358, 46998, 47761, 48676, 50052, 51386, 52510, 53562, 54604, 58188, 59072, 60061, 61098, 62377, 64009, 64970, 66028, 68444

Energy Department

See Alaska Power Administration; Bonneville Power Administration; Conservation and Renewable Energy Office; Economic Regulatory Administration; Energy Efficiency and Renewable Energy Office; Energy Information Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Southeastern Power Administration; Southwestern Power Administration; Western Area Power Administration

RULES

Acquisition regulations:
Collective bargaining agreements, arbitration for protection services and management and operating contracts, 36149
Contractor employee protection program; implementation, 39679
Foreign controlled contractors; awards restrictions, 59682
Major Fraud Act of 1988; management and operating contracts; implementation, 61625
Management and operating contracts—
Facilities management, 34924, 43287
Miscellaneous amendments, 32306
Nuclear hot cell services, 8909, 42688
Correction, 39679
Research opportunity announcement; solicitation procedures, 37868
Technical amendments, 36363

Energy Department property; trespassing; criminal fines, 47984

Foreign atomic energy activities; assistance, 39635

Nuclear activities; procedural rules, 43680

Patent Compensation Board regulations; North American Free Trade Agreement (NAFTA) compliance, 68732

Protective force personnel; security skills training and qualifications standards, 45787

Correction, 60102
Radiation protection for occupational workers, 65458
Correction, 67442
Uranium enrichment decontamination and decommissioning fund; domestic utilities special assessment procedures, 41160

PROPOSED RULES

Acquisition regulations:
Federal information processing resources acquisition by contracting, 63556
Interagency agreements, 36918
Major Fraud Act of 1988; management and operating contracts; implementation, 4141
Organizational conflicts of interest regulations; alterations, 38340
Updated coverage, etc., 63553
Assistance regulations:
Epidemiology and other health studies financial assistance program, 53671
Seismic safety standards, 63123
Classified matter or special nuclear material; criteria and procedures for determining eligibility for access, 64509
Foreign atomic energy activities; assistance, 13427, 15441
Radiation protection of public and environment, 16268
Regulatory agenda, 24246, 56268
Reimbursement for costs of remedial action at active uranium and thorium processing sites, 42450
Uranium enrichment decontamination and decommissioning fund; domestic utilities special assessment procedures, 41164
Correction, 49445
Hearing, 43573

NOTICES

Alternative fuel use; feasibility and economic impact; analytical methodology availability, 51622
Atomic energy agreements; subsequent arrangements, 3266, 6632, 8590, 12363, 15846, 19248, 26128, 28009, 28402, 30784, 31961, 35441, 37475, 37720, 38121, 41087, 42306, 43098, 47137, 50353, 50543, 53722, 59460, 63162, 65352, 65976
Civilian Radioactive Waste Management Office; alternative program strategy; task force report availability, 38364
Coal and coal technology export resources industry directory; international distribution, 13260
Coal combustion byproducts utilization study; information solicitation, 47725
Committees; establishment, renewal, termination, etc.:
Environment, Safety and Health Advisory Committee, 4416
Fusion Energy Advisory Committee, 49479
National Coal Council, 64734
National Petroleum Council, 64735
Conflict of interests:
Contract awards; potential organizational conflict of interest, 33262
Supervisory employees; compensation prohibitions, 6627
Supervisory employees; divestiture requirements waivers, 19238, 45326, 45327
Domestic uranium exportation promotion; report to Congress; availability, 26740
Electricity export and import authorizations, permits, etc.:
Central Power & Light Co., 8262, 17880
Citizens Utilities, 17881
Detroit Edison Co., 69356
Detroit Edison Co. et al., 6632
Minnesota Power & Light Co., 44507
New England Power Pool, 12364
Northern States Power Co., 40415
Portland General Electric Co., 62342
San Diego Gas & Electric Co., 65163
Washington Water Power Co., 64735
Energy facility siting; report availability, 65703
Environmental restoration and waste management, 4692, 38751
Albany Research Center, OR; radiological conditions, certification, 11041
Elza Gate property, TN; radiological and chemical condition certification; decontamination, 59020
Interim mixed waste inventory report; waste streams, treatment capacities, and technologies; availability, 25822
Mixed waste, plans for treating; submission schedules; Federal Facility Compliance Act implementation, 17875, 26185
Environmental statements; availability, etc.:
Advanced Neutron Source, TN, 31019
Bangor Hydro-Electric Co., ME; construction and operation of new electric energy transmission facilities, 67400
B-Factory particle accelerator (asymmetric electron positron collider), 48874, 68881
Foreign research reactor spent nuclear fuel of U.S. origin; acceptance policy, 54336
Hanford Site, WA; eight surplus production reactors decommissioning, 4690, 48509
Idaho National Engineering Laboratory, ID; environmental restoration and waste management activities, 46951, 47725
Knolls Site Low Level Radioactive Material Processing Facility, NY; construction and operation, 60852
Lawrence Livermore National Laboratory/ Sandia National Laboratories, Livermore, CA, 6268
Nuclear Weapons Complex—
Nonnuclear component consolidation, 36658, 48043
Reconfiguration, 39528, 43098
Strategic Petroleum Reserve; expansion, 6953, 33801
Uranium mill tailings remedial action project, NM, 7551
Weldon Spring Site Remedial Action Project, MO, 5365, 59718
York County Cogeneration Facility, PA; construction and operation, 40631, 48639
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
East Fork Poplar Creek pilot treatability study, TN, 59245
Fernald Environmental Management Project, OH, 29401, 62647, 64561
Marginulina Sand project, TX, 42056
Middlesex Sampling Plant et al., NJ, 36192
Oak Ridge, TN, 11042, 29401, 31373, 32658, 44810, 51624, 51813, 60011, 63572
Paducah Gaseous Diffusion Plant, KY, 51812
Pantex Plant, TX, 65350
Portsmouth Gaseous Diffusion Plant, OH, 51813
Project Chariot Site, AK, 37719
Rocky Flats Plant, CO, 6273, 13826
Savannah River Site, SC, 37719, 45327, 51066
Tonawanda Site, NY, 59021
Wabash River Generating Station, IN, 9153
West Hackberry Tertiary Project, LA, 42058
Grant and cooperative agreement awards:
7th International Conference on Coal Science, 13755
Advanced Fuel Research, Inc., 33935
Air Products & Chemicals, Inc., 26967
Alaska, 40123
Albers Air Conditioning Corp., 43619
Alliance to Save Energy, 48640
Aluminum Co. of America, 49983
American Council for an Energy-Efficient Economy, 39009
American Foundrymen's Society, 47129
American Iron & Steel Institute, 6484
American Public Power Association, 67400
American Solar Network Limited, 43619
Associated Western Universities, Inc., 31953
Barriess Associates, 26967
Benedict College, 26968
Bleil, Carl, Dr., Energy Materials Research, 42531
BP Research, 12946
California Environmental Protection Agency, 49479
California Institute of Technology, 45328, 47434
CER Corp., 18085
Clark County School District, 49039
Coastal Zone Foundation, 35922
Colorado State University, 42533
Columbia Basin College, 60443
Community College Southern Nevada, 35439
Conference of Radiation Control Program Directors, 33086
Consortium for Fossil Fuel Liquefaction Science, 13755
Con-Tech Industries, Inc., 43619
Council of State Governments, Midwestern Office, 64937
Durability, Inc., 47265
East-West Center, 32921
East-West Center, Resource Systems Institute, 19411
Electric Power Research Institute, 15330, 47725
Energy Concepts Co., 42306
Enterprise Corp. of Tampa Bay, 55061
EOP Foundation, Inc., 43343
Fred Hutchinson Cancer Center, 52292
G2 Systems Corporation, 43619
Gas Technology Information, Inc., 17387
Georgia Energy Resources Office, 30154
Georgia Institute of Technology, 49479
Georgia Tech Research Corp., 39010
Geotechnical Board, 15138
Global Outpost, Inc., 53189
Golden Technologies Co. Inc., 40123
Governors' Ethanol Coalition (Nebraska), 29572
Great Lakes Governors Council, 43343
Health Physics Society, 58854
Hlavacek, Vladimir, 33935
Industra Inc., 47435
Institute for Paper Science and Technology, 48053
Jackson State University et al., 43100
Jefferson County School District R-1, 6628
Kansas City Support Office, 30154
Kansas State University, 39010
Kelastic Mine Beam Co., 45488
Lake County, ID, 16526
Lawrence Livermore National Laboratory-Site, 00, 7216
Lof Energy Systems, Inc., 43344
Lower Savannah Council of Governments, 43620
Manufacturing & Technology Conversion International, Inc., 18208
Marine Safety Systems, Inc., 40802
Massachusetts Institute of Technology, 17222
Michigan State University, 35439
Minnesota Department of Public Service, 29572

INDEX VOL 58 1993 UMI

Mississippi State University, 33934
Montana College of Mineral Science and Technology, 48640
National Academy of Sciences, 47129
National Association of Regulatory Utility Commissioners, 40802
National Association of State Energy Officials, 48640
National Conference of State Legislatures, 43344
National Council on Radiation Protection and Measurements, 11042
National Govenors' Association, 36192
National Hispanic University, 29402
New Mexico, 21564
New Mexico Institute of Mining and Technology, 61684
New Mexico Mathematics, Engineering, Science Achievement Inc., 57590
New Mexico Mines and Mineral Resources Bureau, 30780
Nez Perce Tribe, 51814
North Carolina Agriculture and Technical State University, 47726
North Carolina Alternative Energy Corp., 44664
Northeast Sustainable Energy Association, 27718
Ohio State University Research Foundation, 36950
Oklahoma Geological Survey, 44663
Oregon Energy Department, 68128
Oregon Graduate Institute for Science and Technology, 40124
Osmotek Inc., 17222
Pacific Gas & Electric, 36662
Pacific International Center for High Technology Research, 44811
Pennsylvania Energy Office, 48641
Petroleum Engineering Society, 31699
Philadelphia clean cities program, 48641
Philadelphia School District, 48641
Pittsburgh Energy Technology Center, 26740
Regulatory Assistance Project, 33936
Research Foundation of State University of New York, 39010
Research Triangle Institute, 6391
Reservoir Engineering Research Institute, 40125
Sarkeys Energy Center, University of Oklahoma, 14385
S-Cal Corporation, 43620
Shoshone-Bannock Tribes, 6485
Society of Automotive Engineers, 48642
Society of Petroleum Engineers, 19807, 59021
Solar Energy Industries Association, 43344
South Carolina Research Authority, 13255
Southeastern Consortium for Minorities in Engineering, 47265
Southern States Energy Board, 27545, 44665
SouthFace Energy Institute, 44664
Southwest Research Institute, 47435, 49984
SPARKTECH, 43620
Stanford University, 5965
Structural Insulated Panel Association, 47436
Sun Refining and Marketing (SUN), Applied Research and Development, 5971
Superkinetic, Inc., 38365
Surface/Interface, Inc., 43621
Syracuse University, 36662
Texaco, Inc., 12363
Texas A & M University, 43621
Thane-Coat, Inc., 38365
Thermally Modified Sand, Inc., 45489
THERMECON, 33936
Transcom Co., 45489
Trutna, William R., 44665
Tufts University, 14206
U.S.-ASEAN Council, 40803
Ultraflo Corp., 45489
United States Association for Renewable Energy and Energy Efficiency Development, 38365
University and Community College System of Nevada, 17223
University of—
Alabama-Birmingham, 42305
Arizona, 4432
California, 11221
Colorado, 34575
Florida, 26968
Idaho, 48642
Maryland, 26968
Massachusetts, 14207
Nevada, 30043, 35440, 40123
North Dakota, Energy and Environmental Research Center, 4984
Oklahoma, 65976
Rochester, 35440
Texas at Austin, 16179
Utah, 35441, 43621
Wisconsin, 42533
USA-ROC Economic Council, 16179
User Scale Applications Photovoltaics, Inc., 47730
Virginia Polytechnic Institute and State University, 29573, 43869
Washington, 47266
Welch, James, 33936
Western Governors' Association, 30155
Western Interstate Energy Board, 28001
Wisconsin Center for Demand-Side Research, 39011
Yakima Indian Nation, 11592
Grants and cooperative agreements; availability, etc.:
Advanced coal research program at U.S. colleges and universities, 51325
Advanced fossil resource utilization research at historically black colleges and universities, 64934
Basic energy sciences et al., 53510
Coke oven emission control; research, development and demonstration, 8047
Competitive research stimulation; experimental program, 61900
Electric power or heat generated from geothermal energy in hot dry rock; prototype production and marketing facility development project, 48052, 54125
Energy-related inventions program, 62648
Environmental restoration and waste management program, 13465
Environmental technology community college educational bridge program, 48053
Heavy duty State/municipal vehicle alternative fuel demonstration program, 19411
High performance parallel processor computing; collaborative research and development projects, 26129
Industrial waste reduction program, 47729
Molten carbonate fuel cells (MCFC) production design improvement; research and development, 30043
Museum education program, 65704
Nuclear power and propulsion technologies for use in space, 63931
Oil from slope and basin clastic (Class III) reservoirs; economic producibility maximization; cost-shared projects, 55061, 59021
Partnership for global competiveness, 42954
Pulp and paper industry; research, development and demonstration advanced technologies, 31953
Rural education enrichment program, 7133
University research instrumentation program, 51327
Utilization of advanced coal technology combustion/desulfurization solid by-products, 27718
Weatherization assistance program, 26969
Greenhouse gas emissions and reductions, and carbon sequestration; voluntary reporting guidelines, 40116, 43622, 53720, 62106
Initiation of consultation with affected industries and interested parties; report to Congress, 26302
Inventions available for license, 26535, 54126, 60012
Meetings
Basic Energy Sciences Advisory Committee, 53931
Carbon sequestration—
Voluntary reporting guidelines; workshops, 53720, 58156, 64567
Civilian radioactive waste management; public involvement workshop, 39537
Clean coal international technology transfer program, 65980
Contracting policies and practices, 44176
Environmental Restoration and Waste Management Advisory Committee, 9154, 16817, 27273, 31514, 31954, 46167, 62107
Environment, Safety and Health Advisory Committee, 14565
Federal Fleet Conversion Task Force, 31373, 38560, 52292
Greenhouse gas emissions and reductions—
Climate-wise voluntary greenhouse gas emissions reduction recognition program; workshop, 63574
Voluntary reporting guidelines; workshops, 53720, 58156, 64567
Human health risk assessment of remediation and waste management activities; environmental transport computer models workshop, 58165
Hydrogen Technical Advisory Panel, 11848, 46168
Inertial Confinement Fusion Advisory Committee/Defense Programs, 8746, 39202, 67782
International Energy Agency Industry Advisory Board, 8935, 12581, 32112, 54126
Multi-purpose canister conceptual design workshop, 33270
National advanced manufacturing technologies initiative; 5-year program plan; workshop, 31199
National Coal Council, 26317, 48886, 51629, 58547
National Electric and Magnetic Fields Advisory Committee, 38752, 54126
National Petroleum Council, 42309, 45329, 52484
Nuclear waste management plan report, 7217
Pantex Plant, Amarillo, TX; plutonium components interim storage; preapproval environmental assessment comments, 61901
Secretary of Energy Advisory Board, 68399
Secretary of Energy Advisory Board task forces, 33263
Yucca Mountain waste package development workshop, 37720
Mined geologic disposal system (MGDS) license applications preparation annotated outline; transmittal to NRC, 31699, 63572
Monitored retrievable storage (MRS) facility, license application annotated outline; transmittal to NRC, 39800

Natural gas exportation and importation:
AGE Marketing Co., 6279
AIG Trading Corp., 30161
AIG Trading Corporation, Inc., 40810
Alcan Aluminum Corp., 6487
Altresco Pittsfield, L.P., 59028
Amerada Hess Corp., 12583, 14570
American Hunter Exploration Ltd., 12364, 21163, 35446
Amoco Energy Trading Corp., 40640, 51071
Anadarko Trading Co., 11051
ANR Gas Supply Co., 59028, 64753
Aquila Energy Marketing Corp., 11051
Aquila Southwest Marketing Corp., 6489, 13260
Associated Natural Gas, Inc., 40641, 51071
Bay State Gas Co., 41761
Bonus Gas Processors, Inc., 49297
BridgeGas U.S.A., Inc., 28956, 64753
Brymore Energy Inc., 38566
CanStates Petroleum Marketing, 68902
Canton-Potsdam Hospital, 5726
CanWest Gas Supply U.S.A., Inc., 549
Cascade Natural Gas Corp., 34791, 37476, 64399
Centra Gas Ontario Inc., 15846
Chevron Natural Gas Services, Inc., 6487, 17229
Cielo Gas Marketing Co., 6397
CoEnergy Ventures, Inc., 17229
Conoco, Inc., 39011, 41463, 46967
Consumers Gas Co. Ltd., 54131, 67784
Crestar Energy Marketing Corp., 11848, 52959
Dartmouth Power Associates L.P., 27719
DEKALB Energy Co., 27273
Development Associates, Inc., 42533
El Paso Gas Marketing Co., 26317, 28956, 35446
Enron Gas Marketing Canada Inc., 8051, 19248
Gas Co. of New Mexico, 347
Goetz Energy Corp., 6398
Grand Valley Gas Co., 29216, 59028
Granite State Gas Transmission, Inc., 52960, 59029
Great West Energy Ltd., 35932
Hesse Gas Co., 64403
Husky Gas Marketing, Inc., 32349, 64753
IGI Resources, Inc., 64403
Indeck Oswego, L.P., et al., 13589
Indeck-Yerkes, L.P., 8051
Inland Natural Gas Marketing Ltd., 33628
Iroquois Energy Management, Inc., 38566
JMC Fuel Services, Inc., 68902
Jonan Gas Marketing Inc., 41761
Kamine/Besicorp Natural Dam L.P., 348
KCS Energy Marketing, Inc., 17579
Lenape Resources Corp., 13061
MCV Gas Acquisition General Partnership, 6121
Meridian Marketing & Transmission Corp., 25634, 35446
Mexus Trading Co., 16656, 28956
Midcon Gas Services Corp., 29817
Midland Cogeneration Venture, L.P., 51071
Midwest Gas, 64403
Mobil Natural Gas Inc., 42533, 44814, 51072
Mock Resources, Inc., 13061
Montana Power Co., 3274, 59029
Murphy Gas Gathering Inc., 64403
Natural Gas Clearinghouse, 42063, 42961, 51072
New York State Electric and Gas Corp., 13261
Nortech Energy Corp., 38567, 40641
North American Resource Co., 58001
Northern California Power Agency, 54131
Northern Natural Gas Co. et al., 59029
Northern Utilities, Inc., 41761
Northridge Gas Marketing Inc., 67785
Northstar Energy Corp., 36682
O&R Energy, Inc., 64403
Ocean State Power, 67785
Pacific Gas & Electric Co., 52959
Pacific Gas Transmission Co., 54131
Pan-Alberta Gas (U.S.), Inc., 26974
Panhandle Eastern Pipe Line Co., 59029
Pawtucket Power Associates, L.P., 27563, 68902
Peoples Natural Gas Co., 43350
Petro-Canada Hydrocarbons Inc., 15492
Philbro Oil & Gas, Inc., 52959
Phillips Alaska Natural Gas Corp. et al., 6488, 16191
Poco Petroleum, Inc., 68902
Portal Municipal Gas, 15341
ProGas U.S.A., Inc., 59029
Rochester Gas & Electric Corp., 93, 3275
Rotterdam Generating Co., L.P., 5727
Salmon Resources Ltd., 68902
SaskEnergy Inc., 67785
Selkirk Cogen Partners, L.P., 93, 6121
Sierra Pacific Power Co., 59030
Sonat Marketing Co., 31700, 38756, 43630
Tennessee Gas Pipeline Co., 34262, 41761, 44814, 52959
Tenngasco Corp., 11051, 14570, 28863
Texaco Gas Marketing Inc., 30161, 36682
Texas International Gas & Oil Co., 34045, 41762
TM Star Fuel Co., 11051
TransCanada PipeLines Ltd., 13590
TransCanada Pipelines Ltd. et al., 27563
Transco Energy Marketing Co., 32665
UMC Petroleum Corp., 68903
Unigas Energy, Inc., 14571
Utility-2000 Energy Corp., 42962
Valero Industrial Gas, L.P., 42534, 52757
Vector Energy (U.S.A.), Inc., 35933
Vermont Gas Systems, Inc., 52960
Vesta Energy Co., 44335
Victoria Gas Corp., 15341, 15342, 29409
Washington Energy Exploration, Inc., 58001
Washington Energy Exploration, Inc., et al., 28956
Washington Natural Gas Co., 64753
Washington Water Power Co., 40417
Western Gas Resources, Inc., 21975, 27274, 35933
Western Natural Gas & Transmission Corp., 7889
Wisconsin Fuel & Light Co., 52960
Wisconsin Gas Co., 52960
Wisconsin Natural Gas Co., 54132
Wisconsin Power & Light Co., 58002
Wisconsin Public Service Corp., 52960, 52484
Natural gas sale; naval petroleum reserves, CA, 6785
Nuclear waste management:
Waste isolation pilot plant—
Test phase plan and waste retrieval plan; availability, 15845
Transportation of transuranic waste; emergency response training and and equipment activities; report availability, 12946
Withdrawal area management plan; availability, 61902
Nuclear waste management plan report preparation, 33802
Office of Science and Technology; integration of research and development programs; request for comments, 6632
Organization, functions, and authority delegations:
Deputy Secretary of Energy; power marketing administration power and transmission rates approval, 59716
Freedom of Information program; Chicago Field Office; public document reading room relocation, 8746
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Media & Process Technology, Inc., 63933
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Auburndale Power Partners, L.P., 16657
Camden Cogen, L.P., 19249
Carson Energy Group, 17578
Central Florida Power, L.P., 42535
Eagle Point Cogeneration Partnership et al., 4430
Freehold Cogeneration Associates, L.P., 19414
Gordonsville Energy, L.P., 7138
Harriman Energy Partners, Ltd., 15846
Idaho Falls Cogeneration Partners et al., 64753
Kamine/Besicorp Allegany L.P., 25981
Las Vegas Cogeneration, L.P., 32665
Orange Cogeneration, L.P., et al., 63163
Portland General Electric Co., 61081
Sacramento Power, Inc., 38366
Tenaska Washington Partners II, L.P., 39203
Yuma Cogeneration Associates, 59722
Presidential permit applications:
Boise Cascade Corp., 48648
Detroit Edison Co., 69356
Minnesota Power & Light Co., 44508
Minnkota Power Cooperative, 45490
Northern States Power Co., 31193
Vermont Electric Power Co., Inc., 43346
Washington Water Power Co., 14389
Privacy Act:
Systems of records, 34040, 39535, 45329, 47436, 59246
Public road work funding policy; availability, 33804
Public Utility Regulatory Policies Act:
Gas and electric utilities covered in 1993; list, 94
Gas and electric utilities covered in 1994; list, 65169
Radiological health and safety policy statement; availability, 33804
Recommendations by Defense Nuclear Facilities Safety Board:
Critical experiment capability need, 31699
Defense nuclear facilities; standards utilization, 27546
Defense nuclear facilities; upgrade training programs for personnel and supervisors, 6390
Defense nuclear facilities programs; technical capability improvement, 42059
Discipline of operations in changing defense nuclear facilities complex, 3266, 7883
Environmental restoration management contracts; health and safety factors, 42956
Hanford Site, WA—
High level storage tanks waste characterization program, 47438
Secretary of Energy Advisory Board task force; report availability, 3541
Senior Executive Service:
Performance Review Board; membership, 49293
Small businesses; technology transfer guidelines, 32914
Technology development; exhibition, 38561

Energy Efficiency and Renewable Energy Office

PROPOSED RULES
Consumer products; energy conservation program:
Central air conditioners and central air conditioning heat pumps; furnaces; and

UMI

refrigerators, refrigerator-freezers, and freezers, 47326, 59418
Clothes washers; test procedure, 67710
Furnaces/boilers, vented home heating equipment, and pool heaters; test procedures, 44538, 48800, 59417

NOTICES
Consumer products; energy conservation program:
Consolidated Technology Corp.; single package air conditioning systems, 42957
Representative average unit costs of energy, 68901
Consumer product test procedures; waiver petitions:
Amana Refrigeration, Inc., 50906, 68130
ASKO Inc., 47130
Carrier Corp., 50908, 50910, 68131, 68133, 68400
Consolidated Industries, 34249
Consolidated Industries Corp., 44509
Ducane Co. Inc., 46170, 68134
Lennox Industries Inc., 46172, 62107, 68136, 68137
New Harmony Systems Corp., 33089
Trane Co., 58163, 68138
York International, 34043, 44511
Electric and magnetic field effects research and public information dissemination program; solicitation of non-Federal financial contributions, 59461, 64404
Investor-owned utilities; net income neutrality certification applications, 42308, 52952
Meetings:
Quality metrics, 61900
State Energy Advisory Board, 55063
Renewable energy and energy efficiency technologies program (demonstration and commercial application) management plan; availability, 58856, 68462
Residential buildings, new non-Federal; voluntary energy conservation performance standards; withdrawn, 42959

Energy Information Administration

NOTICES
Agency information collection activities under OMB review, 539, 540, 4985, 7217, 15139, 21147, 21298, 21447, 21710, 26535, 30155, 35441, 37924, 40416, 40634, 40803, 42956, 44333, 47438, 48054, 53504, 54127, 57590, 64562, 64567, 65586, 68128, 68883
Crude oil and refined petroleum product information; revision and comment solicitation, 68129
Electric power information publications; availability, 15139
Energy Policy Act:
Data needs and user requirements examination, 26536
Forms; availability, etc.:
Coordinated regional bulk power supply program report, 16655
Financial reporting system, 26749
Natural gas program package, 17579
Nuclear and uranium data program package, 64399
Petroleum marketing survey, 16818
Residential transportation energy consumption survey, 21711
Standard contract for disposal of spent nuclear fuel and/or high-level radioactive waste, 37721
Meetings:
American Statistical Association Committee on Energy Statistics, 16180, 53189
Reporting and recordkeeping requirements, 68883
Reports; availability, etc.:
Cost, safety, and environmental analysis of effects of residential heating and cooling by heating oil, natural gas, and electricity, 57814

Energy Research Office

NOTICES
Committees; establishment, renewal, termination, etc.:
Basic Energy Sciences Advisory Committee, 4429
Health and Environmental Research Advisory Committee, 62342
High Energy Physics Advisory Panel, 5389
Grants and cooperative agreements; availability, etc.:
Advanced battery technology research and development, 58544
Atmospheric ozone, ultraviolet-B (UV-B), and aerosol research, 40128
Computer hardware advanced mathematics and climate physics program, 64937, 68462
Energy biosciences program, 63162
Experimental program to stimulate competitive research, 3266.
Human genome program, 8746, 8747
Mid-latitude atmospheric ozone/UV-B survey; trends, distributions, and chemical determinants; evaluation, 3541
National Biomedical Tracer Facility; project definition study, 53197
Radon; health effects research, 40129
Special research program—
Atmospheric radiation measurement program, 17223
Molecular biological techniques in ocean margins system, 11221
Pre-freshman enrichment program, 37475
University reactor instrumentation program, 3267
University reactor sharing program, 3268
International Thermonuclear Experimental Reactor project, U.S. Home Team; task area leader applications, 30156
Meetings:
Fusion Energy Advisory Committee, 8051, 16821
Health and Environmental Research Advisory Committee, 11849
High Energy Physics Advisory Panel, 11849, 50915

Engineers Corps

RULES
Danger zones and restricted areas:
Back River, VA, 47788
Behm Canal near Ketchikan, AK, 6718
Chesapeake Bay, VA, 53427
Definitions, procedural type requirements, etc., 37606
Gulf Coast Homeports at Ingleside, TX, 6718
Kuluk Bay near Adak, AK, 26046, 42237
Pacific Ocean, HI, 53427
Pacific Ocean offshore Camp Pendleton, CA, 53426
San Francisco Bay, CA, 64383
San Nicholas Island, CA, 21226, 42237
San Pedro Bay, CA, 42237
Water pollution control:
Clean Water Act—
Regulatory programs; United States and navigable waters definition; discharge of dredged or fill material; and prior converted croplands policy, 45008, 48424

PROPOSED RULES
Danger zones and restricted areas:
Atlantic Ocean south of Chesapeake Bay entrance, VA, 17373
Back River, VA, 37889
Cooper River and tributaries, SC, 47786
Kuluk Bay near Adak, AK, 6768
Norfolk Naval Shipyard, VA, 17374

NOTICES
Committees; establishment, renewal, termination, etc.:
Abiquiu Lake Citizens Advisory Council, 21562
Contracting officers; role of District Commander in management oversight, 50542
Environmental statements; availability, etc.
Abiquiu Reservoir land purchase, NM, 21563
Adam's Rib Recreation Area, CO; wetlands, permit to fill, 33436
Anacostia River and tributaries, DC and MD, fish and wildlife restoration actions; feasibility study, 47718
Auburn, WA; thoroughbred horse racing facility, 67779
Baltimore Harbor anchorages and channels, MD; feasibility study, 69352
Big Sunflower River Basin Project, MS; flood control study, 36189, 44507
Central City municipal water supply project, CO, 5960
Corpus Christi, TX; deepwater port, 34038
Humboldt Harbor and Bay deepening project, CA, 65974
Jefferson Parish, LA; public golf course and residential and commercial development, 64397
Livingston Parish flood study, LA, 6953
Lower Snake River, ID and WA; juvenile salmon biological drawdown test, 25976
Mainstem Passaic River, NJ; flood protection plan, 28954
McClellan Air Force Base and City of Sacramento, CA; Magpie Creek diversion improvement project, 16402
McCook Reservoir, IL; Chicagoland underflow plan, 59019
Missouri River Levee System, MO; construction feasibility reevaluation study, 29394
Portugues Dam and Reservoir, Rio Portugues, PR, 16178
Red River of the North, MN; impoundments cumulative impact evaluation study, 68635
Richmond Harbor, CA; deep-draft navigation improvements, 18083
Rio Anton Ruiz, PR; flood control study; withdrawn, 12361
Rio Fajardo, PR; flood control project, 69353
San Clemente Creek, Corte Madera, CA; Marin County shoreline study, 44175, 44807
San Diego emergency storage reservoir project, CA, 14564
Terrebonne Parish, LA; hurricane and wetland protection, 18084
Water Supply Improvement Project, CA; terminated, 13254
Westwego to Harvey Canal, LA; hurricane protection project post authorization change study, 29394
White River, IN; flood control project, 61894
Willamette River Basin, OR; temperature control facilities installation, 11401
Yazoo Backwater Area, LA, 52103
Grants and cooperative agreements; availability, etc.:
Construction productivity advancement research program, 69354
Little Goose and Lower Granite Projects, Snake River, WA; reservoir drawdown; damage

claims filing and processing procedures, 16403
Meetings:
Coastal Engineering Research Board, 11221, 12580, 50905
Environmental Advisory Board, 6388
Inland Waterways Users Board, 12580, 36189, 36949, 37718, 50906
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Weld quality monitor, etc., 64398
Recreational user fees, 51325
Regulatory guidance letters, 17209, 29395, 47719, 52290
Reports; availability, etc.:
Wetlands in New Jersey's Hackensack Meadowlands; advanced identification basis, 3555
Subcontractor claims; Aircraft Maintenance Management Facility, Eielson Air Force Base, AK, 16178
Water resource development projects; recreational user fees, 52747
Wetland delineation certification program; training, 19806

Engraving and Printing Bureau

PROPOSED RULES

United States currency and other securities; distinctive paper, 59973

Environmental Protection Agency

RULES

Acquisition regulations:
Cost proposals submission by offerors, 45843, 45845
Air pollutants, hazardous; national emission standards:
Asbestos, 51784
Benzene waste operations, 3072
Coke oven batteries, 57898
Early reductions of hazardous air pollutants; compliance extensions, 26916, 62539
Montana, 5294, 64158
North Dakota, 5294
Perchloroethylene emissions from dry cleaning facilities, 49354, 66287
South Dakota, 5294
State programs approval and Federal authorities delegation, 62262
Wyoming, 5294
Air pollution; standards of performance for new stationary sources:
Calciners and dryers in mineral industries; correction, 40591
Newton Power Station, Central Illinois Public Service; alternative compliance method, 28780
Volatile organic compound (VOC) emissions—
Synthetic organic chemical manufacturing industry reactor processes, 45948
Air pollution control; new motor vehicles and engines:
Clean fuel fleet credit programs, transportation control measure exemptions, and related provisions, 11888
Gasoline- and methanol-fueled light-duty vehicles and trucks and heavy-duty vehicles; evaporative emission regulations, 16002
Correction, 34535
Public workshop, 19211
Heavy duty engines; retrofit/rebuild requirements for 1993 and earlier urban buses; and nitrogen oxides emissions and on-highway diesel fuel, sulphur content, 21359
Heavy-duty engines and vehicles, including heavy light-duty trucks; nonconformance penalties, 65832
Highway diesel fuel, sulphur content; and heavy-duty diesel engines, nitrogen oxides emissions, etc.; meeting, 13413
Light-duty vehicles and trucks—
Durability testing procedures and allowable maintenance; 1994 and later model years, 3994
Gaseous and particulate emissions, 33207
Short test emission and revised performance warranty regulations; 1996 and later model years, 58382
On-board diagnostic systems on 1994 and later model year light-duty vehicles and trucks, 9468
On-highway heavy-duty diesel engine smoke standards; certification testing and selective enforcement audit testing waivers, 66289
Urban buses; particulate emissions standards; and heavy-duty engines; nitrogen oxides emissions standards, 15781
Urban bus retrofit/rebuild equipment certification; 1993 and earlier model years; public workshop, 36871
Air programs:
Acid rain program—
Quarterly electronic and magnetic data reporting for continuous emissions monitoring (CEM) rule; meeting, 67692
Ambient air quality standards for sulphur oxides, 21351
Ambient air quality standards, national; ozone, 13008
Clean Air Act—
Special exemptions; Guam, 43042
Outer Continental Shelf regulations, 14157, 44616
Consistency update, 16625, 59172
Correction, 47398
Corresponding onshore area designation; reconsideration petition denied, 61027
Particulate matter (PM 10) prevention of significant deterioration; maximum allowable increases, 31622, 34903
Stratospheric ozone protection—
Class I ozone-depleting substances; nonessential products ban, 4768, 8820, 69672
Class II ozone-depleting substances; nonessential products ban, 69638
Labeling requirements, 8136
Ozone-depleting chemicals; substitutes evaluation and regulation and significant new alternatives policy program, 54892
Ozone-depleting substances; accelerated phaseout schedule; baseline production and consumption allowances, 40048, 65018, 69235
Refrigerant recycling, 28660, 36516
Air programs; fuel and fuel additives:
Emissions control system performance warranty regulations and voluntary aftermarket part certification program, 65552
Gasoline and alcohol blends; Federal Reid Vapor Pressure (RVP) volatility standard—
Colorado, 26067, 46508
Gasoline and alcohol blends volatility, 14476
Correction, 19152
Guam; diesel fuel sulfur requirement; exemption petition, 48968
Air programs; State authority delegations:
Georgia, 20
Montana, 5294
North Dakota, 5294
South Carolina, 33025
South Dakota, 5294
Tennessee, 7189
Wyoming, 5294
Air quality implementation plans:
Ambient air quality surveillance; ozone and nitrogen oxides and volatile organic compounds (including aldehydes) and meteorological parameters monitoring, 8452
Preparation, adoption, and submittal—
Air quality models guideline, 38816
General Federal actions; conformity to Federal or State implementation plans; correction, 63214, 67442
Sources categories list and regulatory schedules for air emissions from other solid waste incinerators; availability, 58498
Vehicle inspection and maintenance program requirements, 59366
Transportation plans, programs, and projects; Federal or State implementation plan conformity, 62188
Air quality implementation plans; approval and promulgation; various States:
Alabama, 21542, 25566, 33769, 45439, 50262
Alaska, 43084
California, 8545, 15282, 28354, 28356, 28357, 28926, 33194, 33196, 34904, 34906, 37421, 43798, 45440, 45442, 45444, 45445, 47831, 50850, 62532, 64157, 66280, 66282, 66283, 66285, 66286
Colorado, 49434, 50269, 68036
Connecticut, 10957, 65930
Delaware, 40065
Florida, 15277, 37658
Georgia, 6093
Idaho, 39445
Illinois, 3841, 3844, 12541, 17780, 31653, 34907, 45448, 47379, 48312, 54291
Indiana, 6606, 18161, 33201, 33340, 43083, 46541, 62534
Iowa, 6093, 27939, 50266
Kansas, 3847
Kentucky, 54516
Louisiana, 38058
Maine, 15281, 15422, 33767
Maryland, 18010, 28926, 40060, 63085
Maryland et al., 50846
Massachusetts, 3492, 10964, 14153, 34908, 48315
Michigan, 28359, 34227, 44456, 64678
Minnesota, 15431, 34529
Missouri, 45451, 57563
Montana, 5294, 6056, 41430, 52237, 64158, 67324
Nebraska, 45452
New Hampshire, 4902, 29973
New Jersey, 29975
New Mexico, 10970, 10977, 27937, 47383, 62535, 67326, 67330
New York, 40057, 40062, 50851
North Carolina, 47391
North Dakota, 5294, 54041
Ohio, 11967, 15278, 32057, 33914, 42671, 46867, 47211, 50516, 54513, 65286, 65933
Correction, 61143
Oklahoma, 38060
Oregon, 10972, 31654, 47385, 50848, 64161, 65934
Pennsylvania, 17778, 19066, 28362, 33192, 33197, 33200, 33203, 34911, 50517, 53885, 57561

INDEX VOL 58 1993 UMI

Rhode Island, 65930
South Dakota, 5294, 37423
Tennessee, 10980, 18011, 25776, 25777, 50271
Texas, 45454
Virginia, 10982, 11374, 33205, 45457
Washington, 4578, 37426, 40056, 40059
West Virginia, 28924, 34526, 48309
Wisconsin, 28361, 29537, 29783, 29787, 34225, 34226, 34528, 43080, 64155
Wyoming, 5294
Air quality planning purposes; designation of areas
Alabama, 3848
California, 62544
Colorado, 68036
Illinois, 25567, 47379
Minnesota, 15776, 34532, 50275, 60495
Moderate PM-10 nonattainment areas in California and Nevada; reclassification to serious areas, 3334
Montana, 53886
Montana et al., 53888
New Mexico, 47383
New York, 50851
North Carolina, 47391
Oregon, 47385, 49931, 64161
PM-10 and sulfur dioxide national ambient air quality standards; redesignation of certain areas as nonattainment areas, 67334
Tennessee, 17783, 50271, 69235
Washington, 64490
Wyoming, 4348, 17892
Clean Air Act:
Acid rain program—
Allocations and reserves, 15634, 33769
Allowance system, continuous emissions monitoring and excess emissions, 3590, 34126, 40746
Allowance tracking system; manual recordation of allowance transfers, 48318
Clean fuel fleet emission standards, 64679
Drinking water:
National primary drinking water regulations—
Anlytical techniques; trihalomethanes, 41344
Safe Drinking Water Act; underground injection control program; wells authorized by rule, etc., 63890
Freedom of Information Act; implementation:
Disclosure of confidential information to responsible parties, 458
Correction, 5061
Hazardous waste:
Corrective action management units and temporary units, 8658
Identification and listing—
Boilers and industrial furnaces; burning of hazardous wastes, 6607, 59598
Exclusions, 40067, 42238
Four large-volume wastes from electric utility power plants coal combustion, 42466
Toxicity characteristics; correction, 6854
Used oil, 26420, 33341
Land disposal restrictions—
Ignitable and corrosive characteristic wastes treatment standards vacated, 29860
Newly identified and listed wastes and contaminated debris, 28506
Third third wastes; cyanide and sulfide reactive wastes, 14317
Oil, gas, and geothermal energy exploration, development, and production waste determinations, 15284
Solid waste disposal facility criteria (landfills), 51536
Correction, 53136
State underground storage tank program approvals—
New Hampshire, 58624
Rhode Island, 6894
Washington, 47217
Testing and monitoring activities, 46040
Underground storage tanks—
Financial responsibility requirements (petroleum), 9026
Hazardous waste program authorizations:
Alabama, 14319, 49932
Arizona, 57745
Arkansas, 52674
Florida, 59367
Georgia, 9120, 11539, 12174, 60388
Guam, 15806
Michigan, 51244
Minnesota, 500, 14321
Mississippi, 18162, 54044
Missouri, 3497
New Jersey, 59370
New Mexico, 52677
North Carolina, 31474
Oklahoma, 50854, 52679
South Carolina, 7865
South Dakota, 47216
Utah, 8232, 26689
Vermont, 26242, 31911
Virginia, 32855
Wisconsin, 31344, 49199
Indian Environmental General Assistance Program Act (1992), Indian tribal government environmental protection program grants, 63876
Pesticide programs:
Pesticide export policy, 9062
Pesticide residue removal compliance programs, interim adequacy determination, 43994
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
1[[2-(2,4-Dichlorophenyl)-4-propyl-1, 3-dixolan-2-yl]methyl]-1H-1,2, 4-tri azole, etc., 8697, 29549, 42672
2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, 15803
2-Butenedioic acid(Z)-, polymer with ethenol and ethenyl acetate, sodium salt, 50853
2-Methyl-4-isothiazolin-3-one, etc., 59662
2-[methyl[(perfluoralkyl)alkyl(C2-C8)sulfonyl]amino]alkyl(C2-C8)acrylate-alkyl(C2-C8)methacrylates-N-methyloacrylamids copolymer, 64495
4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, 32300
Acetic acid, etc., 47214
Acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer, 25782
Aldicarb, 34712
Aluminum tris(o-ethylphosphonate), 19352
Amitraz, 14314
Azadirachtin, 8695
Benomyl, etc., 37862
Reinstatement, 48456
Beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, 46084, 62038
Boric acid and its salts, etc., 44282
Bufencarb, 32303
Captan, 41430
Carbon disulfide, 33770
Chlorpyrifos, 19354
Clomazone, 8696
Clopyralid, 54296
Cross-linked polyurea-type encapsulating polymer, 38977
Crufomate, 32302
Cyromazine, 44766, 54043
Dicamba, 62039
Dichlorvos, 59663
Dimethenamid, 14316
Dimethoate, 63294
Dinoseb, 47215
Dry bulb onions, 64496
Endrin, 32296
EPN (O-ethyl-O-p-nitrophenyl benzene thiophosphonate), 32297
Ethoxylated polyarylalkylphenols, 25780
Ethylene dibromide, 65554
FD&C Red No., 0, 32295
Fensulfothion, 60558
Fenpropathrin, 19357
Flumetsulam, 57966
Fluoride compounds, 26687
Correction, 37867
Fumaric acid-isophthalic acid styrene-ethylene/propylene glycol copolymer, 32301
Glyphosate, 36358, 62036
Hexakis(2-methyl-2-phenylpropyl)distannoxane, 48320
Hexane, etc., 54294
Imazalil, 30120
Imazethapyr, 64492
Metalaxyl, 15804, 16776, 30122
Metarhizium anisopliae strain ESF1, 29119
Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer, 15802
Nitrapyrin, 32303
N,n-diethyl-2-(1-naphthalenyloxy)propionamide, 34913
Norflurazon, 36359
Paraquat, 33554
Pendimethalin, 11377, 33772
Pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate, 48322
Perfluidone, 32299
Phorate, 62037
Polyvinyl acetate-polyvinyl alcohol copolymer, etc., 40364
Profluralin, 32298
Propionic acid, 6893
Puccinia canaliculata (ATCC 40199), 51013
Semiochemical dispensers, 64493
Silvex, 33211
Sodium arsenite, 39153
Sodium bisulfate, 25779
Spod-X bioinsecticide, 25783
Streptomyces sp. strain K61, 21402
Terbufos, 29118, 30220
Tetrapotassium pyrophosphate, 8699
Thiodicarb, 42673
Titanium dioxide, 34914
Tolerance processing fees, increase, 16094
Tomato pinworm insect pheromone, 34375
Toxaphene, 46087
Trimethylolpropane, etc., 44764
Urea-formaldehyde copolymer, 34376
Vinyl acetate-allyl acetate-monomethyl maleate copolymer, etc., 37861
Public information:
Senior environmental employment program; confidentiality of business information, 7187
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; environmental protection standards, 66398
Uranium and thorium mill tailings; health and environmental standards, 60340
Reporting and recordkeeping requirements; technical amendments, 18014, 27472, 34198, 34369
Solid wastes:
Corrective action management units and temporary units, 8658

150-255 O - 94 - 2 (3)

EPA

Sewage sludge; use and disposal standards, 9248
Superfund program:
CERCLA administrative hearing procedures for claims asserted against Superfund, 7704
Hazardous substances, pollutants, and contaminants; response claims procedures, 5460
Hazardous substances releases; reimbursement to local governments for emergency response, 4816
Lead metal, lead compounds, lead-containing hazardous wastes, and methyl isocyanate; reportable quantity adjustments, 35314
National oil and hazardous substances contingency plan—
National priorities list update, 7189, 7492, 12142, 15287, 30989, 46087, 52018, 54297, 59369, 61029, 63531, 69238
Off-site response actions; procedures for planning and implementing, 49200
Toxic chemical release reporting; community right-to-know—
Acetophenone, etc., 63500
Di-n-octyl phthalate, 51785
Freon-113, etc.; correction, 32304
Ozone depleting chemicals, 63496
Toxic substances:
Asbestos; manufacture, importation, processing, and distribution; commerce prohibitions, 58964
Export notifications; reporting and recordkeeping requirements, 40238
Health and safety data reporting rule—
List; terminations, 42675
Polychlorinated biphenyls (PCBs)—
Asbestos; nomenclature change, 15808
Disposal and storage of waste; notification requirements, 59372
Waste oil use, 15435, 32060
Preliminary assessment information and health and safety data reporting rules—
List additions, 13556, 28511, 47647, 68311, 68317
Significant new use rule; amendment, 29946
Significant new uses—
1-Butene, polymer with 2-butene and 2-methyl-1-propene, epoxidized, 26691
2-Butenedioic acid (Z), mono (2-((1-oxopropenyloxy))ethyl) ester, etc.; correction, 7190
Alkali metal nitrites, 27940
Benzoic acid, etc., 26690
Coconut oil; reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid, 27205
Halogenated phosphate ester, etc., 51694, 68310
Heterocyclic aldehyde imine, 27206
Phenol, 4,4'-(9H-fluoren-9-ylidene)bis-, 27207
Polymer of substituted aryl olefin; withdrawn, 45842
Silicone ester polyacrylate, etc., 51672
Substituted ethyl alkenamide, etc., 32228
Testing requirements—
Chloroethane, etc. (drinking water contaminants), 59667
Neurotoxicity, 40262
N-methylpyrrolidone, 61814
Refractory ceramic fibers, 28517
Test rules and consent orders; test standards and schedules; modifications, 30989
Water pollution; effluent guidelines for point source categories:
Oil and gas extraction, offshore, 12454
Organic chemicals, plastics, and synthetic fibers category, 36872
Water pollution control:
Clean Water Act—
Indian tribes; qualification for treatment as States under Section 404 State program regulations, 8172
Regulatory programs; United States and navigable waters definition; discharge of dredged or fill material; and prior converted croplands policy, 45008, 48424
Treatment of Indian tribes as States, 67966
National pollutant discharge elimination system—
State sewage sludge management program requirements, 9404
Ocean dumping; site designations—
Atlantic Ocean offshore Fort Pierce, FL, 46544
Massachusetts Bay, 42496
Matagorda Ship Channel, TX, 64497
Norfolk, VA, 35884
Pesticide chemical manufacturing category effluent limitations guidelines pretreatment and new source performance standards, 50637
Water quality standards; priority toxic pollutants, numeric criteria; State compliance, 31177, 34499, 36141

PROPOSED RULES

Air programs:
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards, 66078
Air pollutants, hazardous; national emission standards:
Benzene waste operations, 15457
Chromium compounds; industrial process cooling tower emissions, 43028
Chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks, 65768
Coke oven batteries
Hearing, 328
General provisions, etc., 42760
Halogenated solvent cleaning, 62566
Halogenated solvent emissions from organic solvent cleaners, 16808
Hazardous air pollutants list; additions and deletions, 45081
Off site waste operations, 66336
Perchloroethylene emissions from dry cleaning facilities
Meeting, 53900
State programs approval and Federal authorities delegation, 29296, 33242
Synthetic organic chemical manufacturing industry and seven other processes, 11201, 11667, 53478
Wood furniture manufacturing; volatile organic emissions; proposed rules and/or guidelines development; meetings, 4391, 12352, 13571, 21276
Air pollution; standards of performance for new stationary sources:
Appendix A; test methods 18, 26, and 26A; correction, 11709
Municipal solid waste landfills; new sources control and emission guidelines for existing sources, 33790
Air pollution control; new motor vehicles and engines:
Emission defect reporting requirements
Public workshop, 34970
Emissions of oxides of nitrogen and smoke from new nonroad compression-ignition engines at or above 50 horsepower, 28809, 51595
Federal emission test procedure review; public workshop, 11202
Heavy-duty engines and vehicles, including heavy light-duty trucks; nonconformance penalties, 19087
Light-duty vehicles and trucks; gaseous and particulate emission and revised performance warranty regulations; 1994 and later model years, 3380, 13730
Methanol-fueled motor vehicles and engines and petroleum-fueled motor vehicles, 11816
On-board diagnostic systems on 1994 and later model year light-duty vehicles and trucks; workshop, 34013
Refueling emissions for light-duty vehicles and trucks and heavy-duty vehicles, 30731, 33417
Small Non-Road Engines Emissions Control Negotiated Rulemaking Advisory Committee; meetings, 4392, 33061, 34389, 47414, 55033
Air programs:
Accidental release prevention; regulated substances and thresholds list; petition requirements, 5102, 13174
Acid rain program—
Continuous Emission Monitoring (CEM) Data Acquisition and Handling Systems (DAHS) certification, and electronic and magnetic data reporting; meeting, 32318
Sulfur dioxide combustion sources; allowance market participation; opt-in rule, 50088, 63134
Architectural and Industrial Maintenance Coatings Negotiated Rulemaking Advisory Committee; meetings, 6200, 18062, 30007, 33578, 37450, 60572
Chemical accidental release prevention; risk management programs, 54190, 60419
Hearing, 65311
Clean Air Act—
Citizen suits brought on their own behalf, 7870
Clean fuel fleet emission standards, 32474, 35420
Federal operating permit programs—
Early reductions sources permits, 68804
Outer Continental Shelf regulations, 33589
Consistency update, 48619
Corresponding onshore area designations for OCS platforms, 61041
Protection of stratospheric ozone, 19080
Pulp, paper, and paperboard industry rulemaking; meetings, 6609, 26946, 31685
Stratospheric ozone protection—
Class II ozone-depleting substances; nonessential products ban, 50464
Labeling requirements, 69568
Ozone-depleting chemicals; substitutes evaluation and regulation and significant new alternatives policy program; correction, 28094, 33488
Ozone-depleting substances; accelerated phaseout schedule; baseline production and consumption allowances, 15014, 25793, 59630
Reporting and recordkeeping requirements, 38735
Special exemptions; Guam, 13579
Air programs; fuel and fuel additives:
Alaska; diesel fuel sulfur requirement exemption petition, 45307

INDEX VOL 58 1993 UMI

150-255 O - 94 - 2 (3)

California pilot test program and clean-fuel standards (CFVs) for light-duty vehicles and trucks, 34727, 42266
Deposit control additives specifications; consent decree, 54547
Deposit control gasoline additive standards, 64213
Reformulated gasoline; renewable oxygenate requirement, 68343
Air quality implementation plans:
Clean Air Act sanctions, 51270
Preparation, adoption, and submittal—
Economic incentive program rules, 11110
Economic incentive program rules; etc., 28542
General Federal actions; conformity to Federal or State implementation plans, 13836
Sources categories list and regulatory schedule for air emissions from other solid waste incinerators; availability, 31358
Visible emissions; methods for measurement, 61640
Transportation plans, programs, and projects; Federal or State implementation plan conformity, 3768
Air quality implementation plans; approval and promulgation; various States:
Alaska, 13572, 67754
Arizona, 34547, 64530
California, 322, 324, 8245, 12914, 27253, 27971, 28944, 34553, 36905, 39717, 45469, 45471, 45473, 45474, 47101, 47705, 50884, 50886, 51591, 63545, 65959, 66324
Colorado, 49001, 62304, 66326, 68094
Connecticut, 61040
Connecticut et al., 31928, 47707, 50304
Delaware, 11555, 62307
Delaware et al., 45874
Florida, 65307
Illinois, 5319, 12006, 12913, 15824, 16639, 28376, 33578, 47414, 49254, 49258, 51279, 57575, 62309, 63547, 65686, 65688, 65691
Indiana, 7762, 8247, 11200, 37450, 47415, 47701, 59427, 62067, 63549
Louisiana, 49464
Maine, 63316
Maryland, 8565, 50307, 51028, 62065, 65309
Massachusetts, 10998, 47103
Michigan, 40759, 47239, 48811, 49463
Minnesota, 34397, 47840, 49952, 49956
Missouri, 30730
Montana, 48339, 50530, 54081
New Hampshire, 5695
New Jersey, 38326
New Mexico, 18190, 48344
New York, 38108, 40107
North Dakota, 44799
Ohio, 19075, 31929, 32081, 37453, 41218, 48999, 49458, 49954, 59698, 66334
Oregon, 13230, 34394, 54086
Pennsylvania, 16639, 42914, 62560, 62563
Texas, 50311, 52467, 53693, 54089
Utah, 44802
Virginia, 34392, 43609, 57573
Washington, 13575, 14194, 21133
Wisconsin, 326, 41451, 48812, 51593
Air quality planning purposes; designation of areas:
Alaska, 13572, 67754
Arizona, 34547, 64530
California, 322, 324, 8245, 12914, 27253, 27971, 28944, 34553, 36905, 39717, 45469, 45471, 45473, 45474, 47101, 47705, 50884, 50886, 51591, 38331, 63545, 65959, 66324
Colorado, 49001, 62304, 66326, 68094
Connecticut, 61040
Connecticut et al., 31928, 47707, 50304
Delaware, 11555, 62307
Delaware et al., 45874
Florida, 44641, 65307
Illinois, 5319, 12006, 12913, 15824, 16639, 28376, 33578, 47414, 49254, 49258, 51279, 57575, 62309, 63547, 65686, 65688, 65691
Indiana, 7762, 8247, 11200, 37450, 47415, 47701, 59427, 62067, 63549
Iowa, 44639, 49467, 58999
Louisiana, 49464
Maine, 63316
Maryland, 8565, 50307, 51028, 62065, 65309
Massachusetts, 10998, 47103
Michigan, 40759, 47239, 48811, 49463
Minnesota, 34397, 47840, 49952, 49956
Missouri, 30730
Montana, 36908, 48339, 50530, 54081
New Hampshire, 5695
New Jersey, 38326
New Mexico, 18190, 48344
New York, 38108, 40107
North Dakota, 44799
Ohio, 19075, 31929, 32081, 37453, 41218, 48999, 49458, 49954, 59698, 49954, 59698, 66334
Oregon, 13230, 34394, 34403, 54086
Pennsylvania, 16639, 42914, 62560, 62563
Tennessee, 16806
Texas, 50311, 52467, 53693, 54089
Utah, 44802
Virginia, 34392, 43609, 57573
Washington, 13575, 14194, 21133
Wisconsin, 326, 41451, 48812, 51593
Clean Air Act:
Acid rain program—
Allowance allocations and reserves, 44482
Allowance system; substitution and reduced utilization plans, 69314
Nitrogen oxides emission reduction program, 5950
Permits and allowance system; substitution and reduced utilization plans, 60950
Enhanced monitoring program, 54648, 65573
Fuel and fuel additives; reformulated gasoline, 11722
Hearing, 17175
Workshop, 28946
Hazardous air pollution; control technology determinations for major sources; requirements; equivalent emission limitations by permit, 37778, 45476
Lead nonattainment areas; State implementation plans, 67748
Small business stationary source technical and environmental compliance assistance program for Region 2 States, 67383
Drinking water:
Disinfection By-Products Negotiated Rulemaking Advisory Committee meetings, 3002, 8565, 12199, 18062, 21276, 32474
National primary and secondary drinking water regulations—
Fluoride, 68826
Regulated drinking water contaminants; analytical methods, 65622
Grants, State and local assistance:
Ohio; maintenance of effort reduction, 40106
Hazardous waste:
Hazardous waste management system; recycling regulatory program, 8028, 18197
Hazardous Waste Manifest Rulemaking Committee; meeting, 7501, 13730, 25591, 30049, 37991, 44799, 60572
Identification and listing—
Exclusions, 6925, 58521, 67389
Treatability studies sample exclusion, 36367
Wood surface protection processes, identification, listing, treatment, storage, and disposal, 25706, 34977
Land disposal restrictions—
Newly identified and listed hazardous wastes and soil, 48092, 59976
Third third wastes; response to court decision, 4972
Petroleum-contaminated media and debris from underground storage tanks; exemption, 8504
Reportable quantity adjustments, 54836
Solid waste and hazardous waste recycling definition; meeting, 16517, 32881, 42711, 53688, 58315
Solid waste disposal facility criteria (landfills); compliance date delay, 40568
State underground storage tank program approvals—
Washington, 21135
Testing and monitoring activities, 46052
Wood Furniture Manufacturing Industry Negotiated Rulemaking Advisory Committee; meetings, 34011, 42518, 60419
Pesticide programs:
Federal Insecticide, Fungicide and Rodenticide Act requirements; natural cedar pesticides exemption, 42711
Microbial pesticides; experimental use permits and notifications, 5878, 16762
Natural cedar pesticides exemption; notification to Agriculture Secretary, 34404
Pesticide management and disposal, 26856
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities
1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]-1H-1,2,4-triazole, etc., 32620
2-Butenedioic acid(Z)-, polymer with ethenol and ethenyl acetate, sodium salt, 40394
2-Methyl[(perfluoroalkyl) sulfonyl]amino]alkyl(C2-C8)acrylate-alkyl(C2-C8)methacrylates-N-methylolacrylamid copolymer, etc., 13239
4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, 19387
Acetyl tributyl citrate, 59700
Acorn squash, etc., 44990
Acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer, 12199
Acrylonitrile-styrene-hydroxyporoyl methacrylate copolymer, 62069
Arthropod pheromones, 64538
Beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, 49265
Boric acid and its salts, etc., 34972
C.I. pigment violet no. 23, etc., 34973
Carbophenothion, 54316
Chlorpyrifos, 67759, 68621
Clethodim, 62075
Clopyralid, 41452
Cross-linked polyurea-type encapsulating polymer, 25792
Cypermethrin, 54092
Cyromazine, 34975
Definitions and interpretations, etc.—
Sorghum, 62074
Diallate, 51031
Dimethoate, 46147

Dry bulb onions, 49263
Ethoxylated polyarylalkylphenols, 8728
Ethyl 4,4'-dichlorobenzilate (chlorobenzilate), etc., 32320
Ethylene dibromide, 32319
FD&C Red No., 0, 12200
Fensulfothion, 37893
Food commodities; portion to be analyzed for pesticide residues, 50888
Fumaric acid-isophthalic acid styrene-ethylene/propylene glycol copolymer, 13238
Glyphosate, 26725, 43828
Hexakis [2-methyl-2-phenylpropyl] distannoxane, 36366
Hexane, etc., 4131
Metalaxyl, 13241
Metsulfuron methyl, 64536
N,N-Bis 2-(omega-hydroxypolyoxyethylene/polyoxypropylene) ethyl alkylamine, 59699
N,N-diethyl-2-(1-naphthalenyloxy) propionamide, 19391
Orthoarsenic acid, 49267
Paraquat, 13234
Pendimethalin, 19389
Pentachloronitrobenzene, 49264
Pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate, 39180
Permethrin, etc., 54094
Phorate, 46149
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer, 68827
Polyvinyl acetate-polyvinyl alcohol copolymer, etc., 30131
Ronnel, 60573
Semiochemical dispensers, 43830
Sodium bisulfate, 8729
Sodium salt of acifluorfen, 40395
Terbufos, 13236
Trimethylolpropane, 62071
Trimethylolpropane, etc., 27974
Urea-formaldehyde copolymer, 21432
Vinyl acetate-allyl acetate-monomethyl maleate copolymer, etc., 27973
Vinyl acetate-ethylene copolymer, 62072
Privacy Act; implementation, 61638
Radiation protection programs:
Compliance certification criteria, 8029
Hearings and dockets, 8028, 13731
Radionuclides-contaminated site cleanup level requirements, 54474
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; environmental protection standards, 7924, 8029, 15320
Uranium and thorium mill tailings; health and environmental standards, 32174
Regulatory agenda, 24996, 56998
Solid wastes:
Municipal solid waste landfill facilities; local government owners and operators; financial assurance mechanisms, 68353
Paper and paper products containing recovered materials; Federal procurement guidelines; public forum, 9554
Superfund program:
National oil and hazardous substances contingency plan—
Cooperative agreements and State contracts for Superfund response actions, 53688
National priorities list update, 18197, 27507, 34018, 37693, 42519, 42916, 44804, 45082, 50893, 60825, 63551, 64539
Revisions, 54702
Radionuclide releases; administrative reporting exemptions, 6056, 12876
Solid waste and hazardous waste recycling; definition—
Meetings, 38546, 48012
Toxic chemical release reporting; community right-to-know—
Barium sulfate, 32622
Chromium, etc., 34738, 46596
Di-n-octyl phthalate, 4133
Facilities coverage, 19308
Formic acid, etc., 47709
Glycol ethers category, 36180, 60574
Sulfuric acid and hydrochloric acid
Meeting, 11002
Meeting and comment extension, 6609
Toxic substances:
Asbestos-containing materials in schools—
State waiver requests, 8926
Battery recycling deposit requirement; citizens' petition denied, 46921
Chemical substances manufactured in quantities of 1,000 kilograms or less per year; premanufacture notification exemption, 7646
Comprehensive assessment information rule; amendments, 63134
Hexavalent chromium-based water treatment chemicals prohibition in comfort cooling towers, 63148
Pollution prevention—
Lead; dangerous levels identification rule; meetings, 31686
Polychlorinated biphenyls (PCBs)—
Disposal and storage of waste; notification requirements, 6184, 12352, 13128
Reclassification of PCB and PCB-contaminated transformers, 60970
Polymers; premanufacture notification, 7679
Premanufacture notification regulations—
Hearing, 17040
Revision, 7661
Significant new uses—
2,3,5,6,-tetrachloro-2,5-cyclohexadiene-1,4-dione, 27980
2,5-Dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate, 48346
Acrylate esters, 61649
Adipic acid, etc., 26727
Aluminum cross-linked sodium carboxymethylcellulose, 32628, 46921
Amide of polyamine and organic acid, 27255
Benezenepropanoic acid, etc., 50896
Dialkyldialkoxysilane; withdrawn, 33792
Ethane, 1,1-dichloro-1-fluoro-, 48347
Expedited process for issuing significant new use rules, 7676
Fluorene substituted aromatic amine, 40397
Hydrogenated arylated polydecene, 49271
Methane, bromodifluoro-, 48348
Phosphorylated oxoheteromonocycle polyoxyethylene alkyl ether, etc., 50895
Polymer of substituted aryl olefin, 45871
Pyridines, 32222
Sulfur bridged substituted phenols, 49269
Tetrafluoroalkenes, etc., 30741
Testing requirements—
Acetophenone, etc., 61654
Waste management, solid:
Degradable plastic ring carriers, 18062
Underground storage tanks containing petroleum; financial responsibility requirements, 43770
Water pollution; effluent guidelines for point source categories:
Pesticides chemicals manufacturing, 19392
Water pollution control:
Great Lakes System; water quality guidance, 20802, 42266
Correction, 21046
Meeting, 53168
Report availability, 47845
National pollutant discharge elimination system; State programs—
South Dakota, 46145, 47417
Ocean dumping; site designations—
Atlantic Ocean offshore Fort Pierce, FL, 12569
List reorganization, 32322
Lower Chesapeake Bay, VA, 27976
Massachusetts Bay, MA, 10999
Matagorda ship channel, TX, 43090
Oil pollution prevention—
Non-transportation-related onshore facilities, 8824, 19030
Water programs.
Pulp, paper, and paperboard industry rulemaking; meetings, 6609, 26946, 31685
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards, 66078

NOTICES

1987 Chesapeake Bay Agreement; exotic species; report availability, 51345
Agency information collection activities under OMB review, 549, 3948, 5971, 6633, 6786, 6954, 7779, 8593, 8594, 11409, 11599, 11600, 12033, 12034, 12227, 12964, 13591, 14209, 14397, 15872, 16664, 17230, 17891, 18216, 19249, 19419, 19666, 21453, 21978, 21979, 25639, 25830, 25986, 26135, 26136, 26541, 27279, 27280, 27281, 27729, 28014, 28863, 28864, 29574, 29827, 30048, 30049, 30165, 31378, 31383, 31384, 31519, 31520, 32530, 33093, 33271, 33628, 33629, 34046, 34582, 35000, 35449, 36407, 37733, 38756, 39203, 39541, 40131, 40642, 41470, 42320, 42726, 42962, 43106, 43350, 43889, 43890, 44517, 44670, 45106, 45887, 46189, 46640, 46967, 49507, 49994, 49995, 50546, 50547, 50918, 51341, 52106, 52757, 58166, 58696, 59260, 60625, 63344, 63940, 65181, 65182, 65590, 65709, 68642, 69359
Air pollutants, hazardous; national emission standards:
Asbestos; authority delegation to Virginia, 54135
Asbestos; roof removal operations; settlement agreement, 30784
Diethylene glycol monobutyl ether, etc.; deletion from list; petition denied, 4164
Early reductions compliance extensions; list, 11054, 47739
Promulgation schedule, 63941
Radon emissions from phosphogypsum stacks; proposed settlement agreement, 53198
Air pollution control; consent judgments:
Sulfur oxides; national primary ambient air quality standards, 31520
Air pollution control; new motor vehicles and engines:
California pollution control standards; Federal preemption waiver, 4166
Federal test procedure modifications; status report availability, 9563
Federal test procedure review; preliminary technical report, 29826

INDEX
VOL 58
1993
UMI

Air programs:
Ambient air monitoring reference and equivalent methods—
Advanced Pollution Instrumentation, Inc; Model 300 Gas Filter Correlation CO Analyzer, 47446, 58166
Columbia Scientific Industries Corp.; Model 5700 Sulfur Dioxide Analyzer, 64766
Control techniques guideline document: offset lithographic printing, 59261
Determination of lead concentration in ambient particulate matter by inductively coupled plasma optical emission spectrometry, 61902
Lear Siegler Measurement Controls Corp.; Monitor Labs Models 9810 Ozone Analyzer and 9850 Sulfur Dioxide Analyzer, 6964, 61909
Citizen suit settlement, 350
Clean Air Act—
Marine vessel loading operations; listing, 60021
Reasonably available control technology; guidelines, 54136
Control techniques guidelines document—
Batch processes, 68905
Industrial wastewater, 68906
Volatile organic compound (VOC) emissions; reactor processes and distillation operations; control techniques guidelines document availability, 60197
Air programs; fuel and fuel additive waivers:
Ethyl Corp., 35950, 64761
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 35450, 46189
Region VI, 13594
Alternative fuels research strategy; document availability, 4991, 17395
Atmospheric programs:
Halons; firefighting and explosion protection; essential uses, 6786, 53722
Clean Air Act:
Acid rain provisions—
National Allowance Data Base version 2.1, etc.; availability, 15720
Program allowance system; conservation verification protocols; availability, 14397
Retired unit exemptions, 51072, 61688
State permits, 32667, 34582, 38370, 39542, 39809, 40811, 40813, 42064, 42069, 43106, 46968, 48649, 51072, 57825, 58548, 61088
Sulfur dioxide control program; transferable allowances auctions and sales, 6962, 14210, 27563
Air pollution control; motor vehicle emission factors; model (MOBILES) availability, 7780, 29409
Citizens suits; proposed settlements, 17230, 33814, 35451, 38602, 41474, 69361
Employee commute options guidance; document availability, 13596
Hydrogen fluoride study; preliminary findings and meeting, 33441
Hydrogen fluoride study; report to Congress; availability, 58548
Mobile source emission reduction credits generation; guidance, 11134
Model Title V operating permits; draft availability, 25639
Montreal Protocol; CFCs, methyl chloroform, carbon tetrachloride, and HBFCs; essential use exemption nominations, 29410
Motor vehicle program; final agency actions, 42542
Oxygenated gasoline waiver applications—
California, 21719
Utah, 32531
Sulphur oxides; ambient air quality standards; availability, 44339
Urban bus testing program; advisory circular availability, 32121
Clean Air Act; consent decrees:
Environmental Defense Fund, Inc., 13595
Hydrochlorofluorocarbons (HCFCs), 58167
Methyl bromide, 58168
Natural Resources Defense Council, 33813
Nitrogen dioxide, 11859
Clean Water Act:
Coastal nonpoint source pollution State program guidance documents; availability, 5182
Section 404 permit program; dredged or fill material discharge—
New Jersey, 36958, 46190
Committees; establishment, renewal, termination, etc.:
Architectural and Industrial Maintenance Coatings Negotiated Rulemaking Advisory Committee et al., 48887
Clean Air Act Advisory Committee, 36407, 43110
Clean Air Scientific Advisory Committee et al., 34263
Environmental Financial Advisory Board, 12227
Environmental Policy and Technology National Advisory Council, 40813
FIFRA Scientific Advisory Panel, 11229
Hazardous Waste Identification Committee, 36200
Mining Wastes Policy Dialogue Committee, 29828
National Environmental Justice Advisory Council, 59723
Confidential business information and data transfer to contractors, 4992, 4993, 7225, 7783, 19250, 19423, 19667, 21722, 21980, 25641, 25642, 25834, 26322, 26542, 26974, 29219, 30050, 31026, 32943, 33272, 33629, 33814, 33815, 34582, 35952, 38567, 38758, 43890, 43892, 44518, 44519, 44816, 44817, 44818, 44819, 46639, 47446, 50359, 50360, 51630, 54145, 54347, 60198, 62121, 64307, 64575, 65709, 65710
Confidential business information claims policies and regulations; meeting, 31711
Drinking water:
Michigan; Class II injection wells; maximum allowable liquid pressure, 42543
Public water supply supervision program—
Arizona, 36960
California, 31024, 36961
Connecticut, 36685, 60855
Georgia, 31200
Hawaii, 33442, 45491
Idaho, 34047
Illinois, 26977
Indiana, 40815
Kansas, 64765
Louisiana, 5729
Maryland, 17395
Massachusetts, 34583, 66359
Michigan, 35451
Minnesota, 53932
Mississippi, 21170
Nebraska, 36686
Nevada, 21168, 45491
New Hampshire, 21719, 31024, 34800
New Jersey, 40816, 42543
New Mexico, 5729
New York, 40816, 61088
North Carolina, 31201, 45888, 58336
North Dakota, 17891
Northern Mariana Islands, 49508
Ohio, 37476, 39809
Oregon, 21579, 42320
Pennsylvania, 8594, 54588
Rhode Island, 60855
Tennessee, 31201
Utah, 12583
Virginia, 65980
Virgin Islands, 40817
Washington, 41471
Wisconsin, 31378
Underground injection control program—
Michigan, 57598, 61909, 65711
Environmental leadership program; proposed establishment, 4802
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 3279, 4697, 5727, 5728, 6490, 7226, 8271, 9173, 11601, 12584, 13596, 15144, 16406, 17396, 18392, 19822, 21720, 26137, 27282, 28567, 29576, 31027, 31710, 32670, 33630, 34433, 35952, 36961, 38375, 39545, 40814, 42069, 43111, 44340, 45337, 46968, 47741, 48649, 49995, 51342, 52485, 53512, 54588, 58168, 59032, 60022, 61089, 63955, 64945, 65981, 68142, 69361
Weekly receipts, 3280, 4697, 5728, 6491, 7226, 8273, 9172, 11600, 12583, 13597, 15145, 16407, 17397, 18394, 19823, 21721, 26137, 27282, 28568, 29578, 31026, 31710, 32670, 33630, 34434, 35953, 36962, 38376, 39545, 40814, 42070, 43111, 44339, 45338, 46969, 47741, 48650, 49996, 51342, 52485, 53513, 54589, 58169, 59032, 60022, 61090, 62345, 63954, 64945, 65982, 68143, 69362
Eagle Pass Mine, TX, 64945
San Francisco Bay/Sacramento-San Joaquin Delta Esturary, CA; dredging and dredged material disposal, 39548
Tampa Electric Co. Polk Power Station, FL, 29577
Texas and Louisiana territorial seas oil and gas operations (NPDES), 8273
Federal Facility Compliance Act; enforcement authorities implementation; supplementary information, 49044
Grants and cooperative agreements; availability, etc.
Environmental justice program; community groups, 63955

INDEX
VOL
58
1993
UMI

Exploratory research grants in biology, chemistry, physics, etc., 53199
Financial assistance programs—
Emergency planning and community right-to-know; States and Indian tribes, 16668
Grants, State and local assistance:
Environmental education and training programs, 27567, 40298
Environmental monitoring and assessment program, 6788
Experimental program to stimulate competitive research, 7781
Grantee performance evaluation reports—
Alabama et al., 26780
Missouri et al., 31711
Lead-based paint abatement workers; training grants, 19419
Pollution prevention incentives for States program, 16664
State water pollution control revolving fund program, 3552
Green Page listing of U.S. suppliers of environmental products and services, 13597
Hazardous waste.
Electric utility power plants; coal combustion wastes; report to Congress, 8273
Identification and listing—
Guidance document; availability, 19250
Land disposal restrictions; exemptions—
Allied-Signal, Inc., 11601
American Cyanamid, 40133
BASF Corp., 64575
BP Chemicals, Inc., 30926, 50920
Disposal Systems, Inc., 51631
Exxon Co., U.S.A., 40134
Gibraltar Chemical Resources, Inc., 8944
Morton International, Inc., 68907
Oxy Petrochemicals, Inc., 54148
Witco Corp., 8275
Underground (sti-P3) storage tanks; external corrosion potential evaluation and cathodic protection monitoring review, 55066
Wood Furniture Manufacturing Industry Negotiated Rulemaking Advisory Committee; meetings, 50361
Hazardous waste generators; waste minimization program elements; guidance availability, 31114, 41274
Human monitoring specimens archive; disposition to private sector or other governmental party; availability, 60625
Indirect exposure assessment; guidance document availability, 61688
Inventions, Government-owned; availability for licensing, 21979
Low-level radioactive mixed waste; national profile availability (NUREG/CR-5938), 7265
Meetings:
Benchmark dose methodology; workshop, 49297
Biological and health effects of radiofrequency radiation; conference, 18093
Biotechnology issues, agency's current thinking; discussion, 62346
Biotechnology Science Advisory Committee, 34047
Biotechnology Science Advisory Committee et al., 68144
California Air Resources Board, 35452
Carpet emissions; animal testing, 46969
Clean Air Act Advisory Committee, 17892, 21301, 46190, 50360, 54148, 64766
Clean Air Scientific Advisory Committee, 60628, 63345
Climate-wise voluntary greenhouse gas emissions reduction recognition program; workshop, 63574
Developmental neurotoxic effects associated with PCBs exposure; workshop, 41273
Dioxin; health assessment document draft; peer-review workshop, 43112
Ecological risk assessment issues for 2,3,7,8-tetrachlorodibenzo-p-dioxin; report; workshop, 46641
Effluent Guidelines Task Force, 4698, 25986, 28569, 40426, 50361
Emergency Planning and Community Right-to-Know Act; Train-the-Trainers workshops, 9173
Environmental Financial Advisory Board, 5390, 53725
Environmental leadership program, 16826
Environmental Policy and Technology National Advisory Council, 6788, 11603, 14398, 17231, 21169, 28960, 32671, 43891, 46190, 47138, 47274, 48363, 48364, 48521, 52961, 54590, 55069, 63963, 65982
Environmental Requirements for Local Governments Policy Dialogue Advisory Committee, 59463, 63963
Environmental Statistics Technical Advisory Committee, 38567, 69362
EPA Border Environmental Plan Public Advisory Committee, 29578
Exposure factors handbook, 37735
Federal Facilities Environmental Restoration Dialogue Committee, 47447
FIFRA/Scientific Advisory Panel, 13598, 41472
Grand Canyon Visibility Transport Commission, 349, 13756, 32532, 42545, 64575
Gulf of Mexico Program Citizens Advisory Committee, 21721, 53725
Gulf of Mexico Program Management Committee, 21301, 21721, 60444
Gulf of Mexico Program Policy Review Board, 21722, 69362
Gulf of Mexico Program Technical Advisory Committee, 59463
Hazardous Waste Identification Committee, 58696
Hazardous Waste Identification System, 6121, 8275, 13757, 16408, 21979
Health and Environmental Assessment Office; public workshops, 35454
Lawn Care Pesticide Advisory Committee, 7890
Mining Wastes Policy Dialogue Committee, 5972
Municipal solid waste flow control, 37477
National Drinking Water Advisory Council, 19422, 60199
New source review simplification; workshop, 11602
Office of Water; strategic plan review, 12584
Oil and grease workshop, 32122
Ozone and related photochemical oxidants; air quality criteria; workshops, 48063
Ozone Transport Commission, 349, 28960, 53933, 60628
PCBs in fish tissues; national technical workshop, 14399
Phosphoric Acid Production Waste Dialogue Committee, 3553, 12035, 41770, 54590
Pollutants analysis in environment; annual conference, 21169
Sale of 1995 and subsequent model year California vehicles; policy; workshop, 39204
Science Advisory Board, 107, 4992, 6491, 7561, 9563, 13065, 13757, 16826, 17231, 18393, 18395, 25831, 27567, 28960, 32122, 32673, 33094, 33631, 34435, 35454, 36686, 37479, 40646, 40818, 43114, 45888, 45889, 45890, 48063, 48064, 49297, 57599, 57600, 59033, 61689, 62346, 63963, 63964, 67407
Science Advisory Board et al., 3018, 59034
State and Tribal Toxics Action Forum Coordinating Committee and Projects, 11603, 28959, 49046
State FIFRA Issues Research and Evaluation Group, 5390, 26138, 30785, 34799, 47742, 53725, 62670
Sugarcane borer control in Louisiana, 4433
Technical Bases for Yucca Mountain Standards Committee, 28016
Technology Innovation and Economics Committee, 6788
Urban soil lead abatement demonstration project integrated report; workshop, 41276
Waste minimization and combustion strategy, 53933
Waste Technologies Inc. incinerator risk issues; technical workshop, 60628, 31201
Memorandums of agreement.
Army Department; 1987 Corps of Engineers wetlands delineation manual; wetlands determinations, 4995
Memorandums of understanding:
Coast Guard; Clean Water Act; enforcement, 19420
Food and Drug Administration; liquid chemical germicides for use on medical devices, regulation; meeting, 33496
National lead laboratory accreditation program; requirements; availability, 38656
Motor vehicle-related air toxics study; availability, 4165, 27283
Municipal solid waste landfill permit programs; adequacy determinations:
Alabama, 65982
Arkansas, 44819, 47319, 59463
California, 34797, 52300
Colorado, 39809, 51343
Connecticut, 42071, 65591
Delaware, 60199
Georgia, 41767, 49046
Idaho, 27568, 49048
Illinois, 54145
Indiana, 39546, 59261
Kansas, 44833, 52302
Kentucky, 26543, 35454, 38602
Louisiana, 58860
Michigan, 67786
Minnesota, 31027, 43350
Mississippi, 42963, 52304
Missouri, 61090
Montana, 49509, 67408
Nebraska, 51819, 65985
Nevada, 69362
North Carolina, 41765, 52305
North Dakota, 40643, 51821
Oklahoma, 48516, 68643
Oregon, 28960, 52308
Pennsylvania, 58862
South Carolina, 41274, 48518
South Dakota, 52486
Tennessee, 41768, 48519
Texas, 44821, 65986
Utah, 42965, 52489
Wyoming, 42967, 52491
National preparedness for response exercise program; guidelines availability, 53990 .
Neurotoxicity risk assessment guidelines peer review workshop report; availability, 8595
Organization, functions, and authority delegations:
Air and Radiation Docket and Information Center; hours of operation, 64576
Air and Radiation Office; air docket management, 45492, 47900

Headquarters library and INFOTERRA; new opening hours, 349
Resource Conservation and Recovery Act—
Docket information center; relocation, 28569
Underground Storage Tanks Docket Office; relocation, 28569
Toxic Substances Control Act confidential business and nonconfidential information centers; reduction of hours and mail code change, 62122
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Center for Environment and Development, 48364
Pesticide applicator certification; Federal and State plans.
Texas, 43115
Pesticide, food, and feed additive petitions:
Biologic, Inc., et al., 41472
Ciba-Geigy Corp., 13261, 36409, 43892
DowElanco, 15873
E.I. du Pont de Nemours & Co., 63575
E.I. du Pont de Nemours & Co. et al., 29318
Hoechst Celanese Corp. et al., 6958
Monsanto Co., 19425
Monsanto Co. et al., 64582
Rhone Poulenc Ag. Co., 33631
Rohm & Haas Co., 40426
Sandoz Agro, Inc., 52757
Uniroyal Chemical Co., 54350
Valent U.S.A. Corp. et al., 13262
Zeneca Ag Products et al., 62123
Pesticide programs:
2,4,5-T and silvex; Federal disposal program closure, 49301
Agriculture Department—
Nonindigenous microbial pesticide; field test, 59723
AgriVirion Inc.—
Genetically altered microbial pesticide; field test, 34583
American Cyanamid Co.—
Genetically altered microbial pesticide; field test, 40423
Boyce Thompson Institute for Plant Research—
Genetically modified microbial pesticide; field test, 14400
Ciba-Geigy Corp.—
Genetically modified microbial pesticide; field test, 30165
Nonindigenous microbial pesticides; field test, 28018, 32354, 43891
Cornell University—
Genetically modified microbial pesticide; field test, 30166
Crisis exemptions; annual report, 57825, 67788
Inert ingredients in pesticide products—
Name disclosure, 52106
Inorganic arsenicals; special review conclusion, 64579
Pesticide assessment guidelines—
Dermal absorption studies (Section 85-3); humans and domestic animals (Subdivision F hazard evaluation), 54350
Reduced-risk pesticides; development and registration incentives, 5854
Reregistration eligibility documents availability, 50924
Residue chemistry guidelines; availability, 5390, 30785
Sandoz Agro, Inc.—
Genetically engineered microbial pesticide; field test, 34584
Sodium pentachlorophenate non-wood use; special review termination, 7848
Stag's Leap Wine Cellars—
Nonindigenous mibrobial pesticide; field test, 36409
State pesticide residue removal compliance programs, 65989, 68145
University of Minnesota—
Nonindigenous microbial pesticide; field test, 37479
ZENECA Ag Products—
Nonindigenous microbial pesticide; field test, 37480
Pesticide registration, cancellation, etc.:
10,10'-Oxybisphenoxarsine, 47275
2,4-D, Dimethylemine salt, etc., 44828
Abbott Laboratories, 50921
Air Products & Chemicals et al., 62347
AKZO Chemicals, Inc., 62121
Alkyl amine hydrochloride, 36408
Amitrole, 5858
Arsenic acid, 26975, 39205
BASF Corp. et al., 47274
Beacon Herbicide, etc., 64576
Becker Microbial Products, Inc., 8945
Bonide Flower-Vegetable 4-in-1 Spray, etc., 60633
Bonide Fruit Tree Spray, etc., 65593
Bonide Products Inc. et al., 41770
Calo-Clor, etc., 60629
Cancer-causing pesticides in processed foods, 7470, 19546
Carbon dioxide, etc., 12229
Ciba-Geigy Corp., 25832, 50922
Ciba-Geigy Corp. et al., 32533, 54351
Destruxol tender leaf plant spray, etc., 54148
Dexol benomyl systemic fungicide, etc., 29216
DowElanco et al., 21454
Du Pont Benomyl 50W, etc., 18093
Du Pont Tersan 1991 Turf Fungicide, etc., 31387
Ethion 4 miscible insecticide/miticide, etc., 44823
Flair, etc., 12237, 16828
Florel Brand Plant Growth Regulator, etc., 64578
Grace Sierra Chemical Co., Inc., 29579, 64579
Health Care Products, Inc., 53934
Hydroxytetracycline monohydrochloride, etc., 18217
Iron salts, 16831
J.J. Mauget Co., 67790
Kemira Biotech, 35001
Kill-KO 5% Cythion Dust, etc., 6961
Krenite S Brush Control Agent, etc., 31382
Lindane Crystals Insecticide, etc., 60630
Mauri Laboratories et al., 67791
McLaughlin Gormley King Co. et al., 8945
Methazole, 4167, 30166
Methyl Parathion 5 Spray, etc., 13261
Milazzo Brand Animal Chaser, etc., 6958
Milban, 38567
Miller's Malathion 25W, etc., 44824
Mite-a-Salt, 15873
Monsanto Co., 64583
Nosema locustae, 19425
Plato Industries, Inc., 50923
R.C.G., Inc., 50923
Rigo benomyl systematic fungicide, etc., 11234
Sandoz Agro, Inc., 25832
Silver and Biobor, 46192
Simazine 90 DF, etc., 44825
Sirlene feed grade propylene glycol, etc., 44826
Sporicidin Cold Sterilizing Solution, 37931
Talstar 10WP Insecticide/Miticide, etc., 31384, 49298
Terrazole 4 Flowable Fungicide, etc., 16832
Tifton Innovation Corp., 65594
Union Carbide Chemicals & Plastics Co., Inc., 41776
Unocal Corp., 54352
WipeOut Cold Sterilizing Disinfecting Solution, 41779
Zinc phosphide bait, etc., 51345
Pesticide residues information system enhancement; document availability, 41471
Pesticides; emergency exemptions, etc
Acephate, 12228
Arizona Department of Agriculture, 40424
Benomyl, 11232, 68144
Bifenthrin, etc., 42727, 54348, 60631
CheckMate MRB (Z-13-octadecenyl acetate,Z-11-hexadecenyl acetate and Z-13-octadecenal), 30168
Dicamba, etc., 12235
Difenoconazole, 48364
Fenoxycarb, 4435, 68907
Fenpropathrin, 12237
Hydrogen cyanamide, etc., 29218
Hymexazol, 59724
Imidacloprid, 32534, 45890, 60636
Lindane, 26781
Mancozeb, 26782, 28017
Permit, 19426
Propazine, 68908
Pseudomonas fluorescens, 43893
Pyrithiobac-sodium, 68909
Sethoxydim, etc., 50919
Tebuconazole, 18095, 25833
Triclopyr, etc., 35002
Pesticides; experimental use permits, etc.
American Cyanamid Co. et al., 46191
Ciba-Geigy Corp., 27284, 68409
Ciba-Geigy Corp. et al., 4434, 16827
Consep Membranes, Inc., et al., 26780
Crop Genetics International, 12234
Dow Elanco et al., 19424
Monsanto Co., 8758, 8759, 33815, 37481
Pesticides; receipts of State registration, 12239, 31379, 51073
Pesticides; temporary tolerances:
Acetochlor, 14399
Consep Membranes Inc., 13263, 68909
Deltamethrin, 62122
E.I. du Pont de Nemours & Co., Inc., 30169
Entomopathogen beauvaria bassiana, 15872, 41473
Fenbuconazole, 11233
Fenoxaprop-ethyl, 29217
Flumetsulam, 19427
Iprodione, 4699, 57827
Miles Inc., 40425
Miles, Inc., et al., 54353
Mitsui Petrochemicals Ltd., 15872, 30169
Monsanto Agricultural Co., 32535, 49298
NOR-AM Chemical Co., 42728
Pseudomonas fluorescens, 40425
Privacy Act:
Systems of records, 13599, 29821
Pseudomonas cepacia; genetic manipulation; research assistance request, 53934
Pulp and paper sludge land application environmental stewardship program; public administration record establishment, 45891
Reports; availability, etc.:
Ecological assessment case studies review from risk assessment perspective, 41276
Electric and magnetic fields; perspective on research needs and priorities for improving health risk assessment, 11409
Fuelon power gasoline fuel additive; fuel economy retrofit device evaluation, 48365
Greenhouse gas emissions and sinks estimation (1990), 33818
High capacity fossil fuel-fired plants; student handbook and statement of intent to develop training and certification programs for operators, 52106

Integrated Risk Information System (IRIS), 11490
Neurotoxicity risk assessment principles, 41556
Ozone precursors role in tropospheric ozone formation and control, 11603
Pesticides in ground water database, 31646
Tetrachlorodibenzo-p-Dioxin (TCDD) risks to aquatic organisms and associated wildlife; assessment data and methods, 25987
Wetlands in New Jersey's Hackensack Meadowlands; advanced identification basis, 3555
Superfund; response and remedial actions, proposed settlements, etc.:
Beaunit Circular Knit and Dying Plant Site, FL, 57828, 62354
BFI-Rockingham Landfill Site, VT, 38376
Border Area Drums Site, CA, 43353
Calmet Site, CO, 5729
Capitol Assay Laboratories Site, MD, 65182
Carter Industrials, Inc., Site, MI, 8275
Chadbourn Tire Fire Site, NC, 43115
Commercial Oil Services Site, OH, 67791
Croydon "TCE" Site, PA, 64584
Duffield Avenue Trailer Site, NJ, 49049
Elsinore Drum Site, CA, 47447
Endicott Wellfield Site, NY, 65183
Enterprise Recovery Systems Site, MS, 57828
Fairchild Semiconductor, Inc. Site, CA, 11055
Gallup's Quarry Site, CT, 69364
Great Lakes Asphalt Facility, IN, 12585
Greenback Industries, Inc. Site, TN, 60637
Haynes Warehouse Fire Site, ND, 6633
Hooper Sands Site, ME, 3554
Industrial Waste Processing Site, CA, 50548
Intel Santa Clara 3, CA, 12585
International Depository, Inc. Site, RI, 42969
Intersil, Inc./Siemens Components, Inc. Site, CA, 49511
J.H. Baxter Site, CA, 62123
L.E. MacNair Building Site, ME, 3554
Lowry Landfill, CO, 42073
M.T. Richards Site, IL, 12241, 33272
Mexam Trucking Removal Site, CA, 31712
Mid-Atlantic Wood Preservers Site, MD, 64766
National Smelting & Refining Site et al., GA, 62671
National Smelting & Refining Site, GA, et al., 4992
Old City of York Site, PA, 25834
Old Springfield Landfill Site, VT, 7227
Operating Industries, Inc. Site, CA, 7784
Para-Chem Southern Inc. Site, SC, 52961
Philmar Electronics Site, NY, 57601
Pompey Site, NY, 38761
Reese Air Force Base, 36201
Rock Hill Chemical Co. Site, SC, 62354
Route 52 Site, WV, 3555, 8820
Sapp Battery Co. Site, FL, 60637
Schmidt Hole 2, WI, 41276
Shore Realty Site, NY, 17231
South Macomb Disposal Authority Sites 9 and 9a, MI, 44183, 51346
Sunbelt Site, TX, 34047
Sunbelt Site, TX, et al., 26783
Tonolli Corp. Site, PA, 52961, 66359
Union Scrap Iron & Metal Site, MN, 8954
United Refrigerated Services, Inc., 36202
Valley Plating Site, VA, 35456
Walled Lake Mercury Site, MI, 53935
Western Sand & Gravel Site, RI, 13599
Wilson Concepts of Florida Site, FL, 40646
Yttrium Processing Plant, WY, 12585
Zenith Chemical Co. Site, GA, 50361
Superfund program:
Capacity assurance planning guidance; availability, 38761
Early de minimis waste contributor settlements, 45492
Federal Agency Hazardous Waste Compliance Docket; Federal facilities, list update, 7298, 59790
Groundwater monitoring; technical guidance availability, 54151
Removal actions and removal response activities; model administrative orders; documents availability, 21980
Response action contractor indemnification, 5972
Risk assessment evaluation report; availability, 13757, 47275
Toxic chemical release reporting; community right-to-know—
Reporting forms; availability, 11056
Toxic and hazardous substances control:
Asbestos—
National Directory of AHERA Accredited Courses; availability, 11604, 31029, 45892, 63163
Chemical substance inventory—
Removal of 36 incorrectly reported chemical substances, 52493
Removal of 39 reported chemical substances, 19251
Chemical substances releases and detection, environmental media; clarification and comment, 37735, 46970
Chemical testing—
Conditional exemptions, 3949
Data receipt, 350, 7784, 9174, 21302, 32122, 35953, 40427, 48366, 57602, 65353
Policy statement, 28736
Confidential business information security manual, revised; availability, 19667
Interagency Testing Committee—
Report, 26898, 38490, 47900
Polychlorinated biphenyls (PCBs); applications for disposal approval, 17397
Polychlorinated biphenyls (PCBs); incinerator definition amendment; petition denied, 51816
Premanufacture exemption applications, 8947, 48653
Premanufacture exemption approvals, 5988, 6963, 12964, 15145, 16668, 16670, 16671, 21454, 28864, 30788, 32123, 33094, 36962, 43352, 53734, 57602, 57603, 58864, 58865, 59465, 65990, 65995, 65996
Premanufacture notices; monthly status reports, 9092, 9096, 21070, 28486, 32586, 47616, 48740, 53810, 54000
Premanufacture notices receipts, 4993, 6280, 8946, 8947, 8955, 15343, 15494, 19093, 19094, 21723, 26544, 28865, 30786, 30787, 32123, 32127, 47276, 47448, 47453, 48650, 48651, 48652, 48653, 51077, 53726, 53731, 53735, 65991, 65994, 68410, 68415
Radon levels in new buildings; model construction standards and techniques, 19097
Testing consent agreement development—
Listed chemical substances; interested parties solicitation, 43893
Tier I chemical substances; meetings, 16669
Tier II and III chemical substances, 19253
Toxic Substances Control Act Confidential and Nonconfidential Business Information Centers; temporary closure, 15146
Volatile organic liquid storage in floating and fixed roof tanks; control techniques guideline; availability, 63577
Water pollution; discharge of pollutants (NPDES):
Combined sewer overflow control policy; guidance availability, 4994
Concentrated animal feeding operations; general permit and reporting requirements, 7610
Gulf of Mexico OCS operations, 41474, 53200, 63964
Marine sanitation device standard; petitions—
New York, 59465
Storm water discharges from industrial activity; fact sheets for multi-sector general permit, 61146
Storm water discharge sources controls; meetings, 8595
Water pollution control:
Clean Water Act—
Class I administrative penalty assessments, 48366, 49512, 50924, 52962
Class II administrative penalty assessments, 47454, 48366, 49512, 51824, 52963
State water quality standards; approval and disapproval lists and individual control strategies; availability, 18395, 19254, 21724, 28569, 28570, 44671, 50361, 50548, 58548, 62124, 64584
Total maximum daily loads; lists of waters; availability, 17892
Ground water contamination; pesticides and ground water State management plans; guidance availablity, 65593
Marine sanitation device standard; petitions—
Rhode Island, 12964, 31202
National pollutant discharge elimination system; State programs—
Louisiana and Texas, 6964, 49126
Maryland, 59724
New York, 12035
Ohio, 7889
Puerto Rico, 19427, 49996
Water pollution control; sole source aquifer determinations:
Massachusetts, 28402
Water quality criteria:
Ambient water quality criteria—
Protection of aquatic life; documents availability, 61910
Protection of aquatic life from metals, 32131

Environmental Quality Council

See Council on Environmental Quality

Equal Employment Opportunity Commission

RULES

Employment discrimination:
Charges; designation of State and local fair employment practices agencies (706 agencies)—
Youngstown (OH) Human Relations Commission, 19210
Records and reports for State and local governments, 29536
Reports and records:
Local union report (EEO-3); filing deadline extended, 239

PROPOSED RULES

Discrimination because of religion; guidelines, 49456
Harassment based on race, color, religion, gender, national origin, age, or disability; guidelines, 51266
Regulatory agenda, 25092, 57098

NOTICES

Agency information collection activities under OMB review, 17398, 48064, 60023
Alternative dispute resolution and negotiated rulemaking procedures; comment request, 39023

INDEX
VOL 58
1993
UMI

Meetings; Sunshine Act, 126, 629, 4201, 14624, 16444, 26183, 27771, 31066, 35074, 38462, 46674, 48544, 52138, 54401, 59295, 60730, 69456
Senior Executive Service:
Performance Review Board; membership, 54591

Executive Office of the President

See Administration Office, Executive Office of the President; Central Intelligence Agency; Council on Environmental Quality; Management and Budget Office; National Drug Control Policy Office; Office of Policy Development; Presidential Commission on Assignment of Women in the Armed Forces; Presidential Documents; Trade Representative, Office of United States

Export Administration Bureau

RULES
Commerce control list:
Commercial communications satellites, 47322
Items transfer from munitions list and foreign policy controls imposition, 57549
Navigation and avionics, 34211
Revisions, clarifications, and corrections; correction, 6574, 32003
Enforcement and administrative proceedings; editorial clarifications and corrections, 65540
Export administration regulations:
Officials deciding appeals from administrative actions, 58483
Export licensing:
Afghanistan exports; special country policies, 485
Commerce control list, and nuclear non-proliferation—
Computers, 52169
Commerce control list—
Biological weapons production equipment, 21925
Digital computers, of national security-based validated license requirements removed, 64674
National security-controlled entries; revision, 52166
Oil well perforators; foreign availability determination and general license GFW eligibility, 61806
Voice band modems; general license GFW eligibility; foreign availability determination, , 27930, 48302
Weapons delivery systems; commodities, software, and technology; export control commodity numbers, 59163
Editorial clarifications and corrections, 68740
Foreign availability determinations—
General license GFW eligibility for voice band modems, etc., 27930
Foreign trade statistics; Shipper's Export Declarations, 3222
Import and end-user certificates and statement by ultimate consignee and purchaser; uniform validity period, 36353
Metric system conversion, 33509
Miscellaneous amendments, 47051
Petroleum and petroleum products produced from Naval Petroleum Reserves; clarifications and revisions, 47049
Science-based Industrial Park, Hsinchu, Taiwan; import certificate/delivery verification procedure establishment, 25553
Validated license requirements based on missile or chemical and biological weapons end-uses; U.S. persons activities; guidance availability, 68029
Vietnam and Czech and Slovak Republics; miscellaneous amendments, 47052
Western red cedar; export provisions, 487
Special licensing procedures:
Computers, 52168

PROPOSED RULES
Export licensing:
Foreign policy-based export controls effects, 54074

NOTICES
Export privileges, actions affecting:
Amiri, Reza Panjtan, et al., 31361, 51610
Applied Medical Systems, Inc., 26958
ASB Traders, Inc., 59986
Baxter International, Inc., 16813
Burger, Peter, et al., 18368
Danesh, Mohammad, 58535
Dyi, Alex Jiann, et al., 19649
Goh Sian Lake et al., 48821
Haak, Eddie, et al., 25968
Hardimon, William, 14556
Holmquist, Stephen A., 50902
Instrubel, N.V., et al., 59447
Iran Air, 49284
Katsuta, Keisuke, 42719
Martin Brothers International, 64545
Nachtrab, Gunther R., 17571
O'Hara, Daniel J., 11024
Oshima, Yuzo, et al., 7767
Pan Aviation, Inc., 21703
Pervez, Arshad Z., 21281
Pietkiewicz, Andrew, 59985
Rotler, Doron, et al., 62095
Soghanalian, Sarkis, G., 21704
Sound You Co., Ltd, et al., 60593
Trzaskowski, Roman, et al., 5354
Tsai, Rudy Yujen, 51052
Wedell, Gunnar, 47113
Klaus Westphal, 34240
Yousefi, Ali Reza Foyuzi, 60842
Zandian, Reza, et al., 21969, 25800
Foreign availability assessments:
Advanced high speed modems, 3531
Computers, 21440
Digital computers, 46160
Oil well perforators, 40407
Telecommunications transmission equipment, 46625
Meetings:
Computer Systems Technical Advisory Committee, 7528, 17379, 46626, 59986
Electronics Technical Advisory Committee, 9144, 31941, 48820
Materials Processing Equipment Technical Advisory Committee, 19235, 44490
Materials Technical Advisory Committee, 12577, 19405, 45481
President's Export Council, 343, 47857, 57584
Regulations and Procedures Technical Advisory Committee, 3251, 11585, 26099, 37704, 50328, 63334
Sensors Technical Advisory Committee, 5957, 19089, 30014, 47857, 61673
Telecommunications Equipment Technical Advisory Committee, 5957, 18368, 40110, 54327
Transportation and Related Equipment Technical Advisory Committee, 5957, 26100, 37704, 52947
National Defense Stockpile; market impact of proposed disposals of excess commodities, 6775, 59450
National security import investigations:
Ceramic semiconductor packages, 48033
Timber, unprocessed from Arizona, etc.; general order prohibiting exports, 55038

Export-Import Bank

NOTICES
Agency information collection activities under OMB review, 18095, 29828
Meetings:
Advisory Committee, 17232, 29828, 49049, 61911
Meetings; Sunshine Act, 44733
Privacy Act:
Systems of records, 48521

Extension Service, USDA

NOTICES
Grants and cooperative agreements; availability, etc.:
Rural technology and cooperative development program, 27910
Socially disadvantaged farmers and ranchers, 11172
Meetings
National Sustainable Agriculture Advisory Council, 31188

Family Support Administration

See Child Support Enforcement Office; Community Services Office; Family Assistance Office; Refugee Resettlement Office

Farm Credit Administration

RULES
Conflict of interests, 5919, 12333
Equal Access to Justice Act:
Application for award of fees and other expenses; implementation, 10945
Farm credit system:
Accounting and reporting requirements, problem loan accounting, etc., 48780, 67664
Correction, 52888
Administrative expenses; assessments and apportionment, 10939, 16104
Disclosure to shareholders—
Quarterly reports certification, 27922, 33189
Funding and fiscal affairs, loan policies and operations, and funding operations—
Investment activities; investment management, liquidity, interest rate risk, and eligible investments, 63034
Information release by directors, officers, and employees, 51993
Effective date, 59161
Loan policies and operations—
Borrower rights notices for distressed loans; content, 62513
Lending authorities, etc. appraisal standards, participations, and lending limits, 11371, 11792, 40311, 67665
Organization—
Director compensation, 6604
Personnel administration—
Human resources, and retirement and thrift savings plans; regulations removed, 6605
Title V conservators and receivers, 10945

PROPOSED RULES
Conflict of interests:
Federal Agricultural Mortgage Corporation, 53161
Farm credit system:
Accounting and reporting requirements, 32071
Disclosure to shareholders—
Association annual meeting information statement and director positions nominating process, 47836
Quarterly reports certification, 3872

Funding and fiscal affairs, loan policies and operations, and funding operations—
Banks and associations; permanent capital components, 34004
First lien existence; documentation, 52701
Loan policies and operations—
Borrower rights notices for distressed loans; content, 38091
Organization, general provisions, and disclosure to shareholders; miscellaneous amendments, 68069
Organization—
System institutions; reorganization authorities; correction, 15099, 39684, 64442
Personnel administration—
Conflict of interests, 44139
Regulatory burden; statement, 34003
Federal claims collection, 58137
Regulatory agenda, 25278, 57276

NOTICES
Meetings; Sunshine Act, 4201, 6335, 7843, 8818, 11289, 12984, 13127, 16739, 17469, 19294, 26036, 32171, 34619, 37990, 43015, 44535, 47782, 50085, 53021, 61142, 63440, 64352
Orders revocation, 66360
Organization, functions, and authority delegations:
Farm Credit System Assistance Board; charter cancellation, 8955
National Special Asset Council; dissolution, 8955
Out-of-territory financially related services; policy statement, 36410
Privacy Act:
Systems of records, 62354
Receiver appointments:
REW Enterprises, Inc., 28963
William E. Harvey & Associates, Inc., 28962
Transaction of business of the Farm Credit Administration Board; policy statement, 6633

Farm Credit System Insurance Corporation

PROPOSED RULES
Federal claims collection, 59215
Freedom of Information Act; implementation, 59210

NOTICES
Assistance to operating insured system banks; policy statements, 27285, 35953

Farmers Home Administration

RULES
Congregate housing services program
Correction, 14509
Reporting and recordkeeping requirements, 14509
Food, Agriculture, Conservation, and Trade Act of 1990; soil and water loan program; revised instructions, 15071
Organization, functions, and authority delegations:
State Directors; exception authority, 4066
Program regulations:
Agency assistance to employees, relatives, and associates; processing and servicing, 222
Agricultural Credit Improvement Act of 1992; guaranteed loan and loan mediation programs, 65871
Associations—
Community facility loans, 30101
Borrower training, 69190
Business and industrial loan program, 38951, 41171
Feasibility studies, 40039
Certified lender program, 34302, 40190
Community facility loans and grants, 5564, 12632, 42637
Debt settlement, 21344
Direct and guaranteed operating and farm ownership loan and related instructions, etc., 48275
Farm operating, farm ownership, and soil and water loans, direct and guaranteed; five-year eligibility certification, 44745
Farms and leasehold interests appraisal, 44748
Federal statute of limitations—
Real estate title clearance and loan closing; correction, 34868
Housing application packaging grants, 58641
Housing preservation grant program; repair and rehabilitation assistance, 21891, 30102
Insured farmer program loans; real estate appraisals, etc., 26679
Internal processing of appeals cases; reporting authorities, 4065
Inventory farm property management and disposal, 58647
Loan and grant program funds allocation; methodology and formulas, 54485
Loan applications; receiving and processing loans, 68717
Multiple family housing borrowers and grant recipients; management and supervision, 40862
Nonprofit set aside funds, 38949
NonProgram loans; uniform handling, 52644
Correction, 64455
Personal property—
Chattel security; servicing and liquidation, 46074
Property management—
Inventory property disposal, 38948
Lease with option to purchase farmer program farm real estate properties; additional notice to Indian tribes and tribal members, 68722
Rural housing—
Rural rental housing assistance; preapplications processing, 44255
Section 502 loan policies, procedures, and authorizations, 48300
Rural rental housing displacement prevention and labor housing, 38913
Servicing and collections—
Borrowers loan servicing; 60-day deadline extension; State Director exception, 15417
Delinquent farm borrowers; farmer program account servicing policies, 30102
Single family housing security servicing; correction, 4067

PROPOSED RULES
Program regulations:
Debt settlement—
Community Facility hospital or health care program loans, 4095
Housing—
Farm labor housing loan and grant policies, procedures, and authorizations, 48330
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 69274
Property management—
Indian trust lands; security interests transfer and inventory sales, 53891
Rural housing—
Guaranteed rural housing loans, 46889
Section 502 loan policies, procedures, and authorizations, 507

NOTICES
Agency information collection activities under OMB review, 17827
Environmental statements; availability, etc.:
Springhill subdivision project, WV, 34987
Grants and cooperative agreements; availability, etc.:
Housing preservation program, 8582
Multi and single family housing programs; State allocations, 60165
Rural housing targeting set aside funds, 8732
Rural rental housing diversity demonstration program, 51312
Socially disadvantaged farmers and ranchers, 35911
Organization, functions, and authority delegations:
Director, Large Loan Servicing Group, 62093
Section 515 loan funds recipients (1992 FY), 3250
Program regulations:
Rural rental housing displacement prevention and labor housing, 41171

Federal Aviation Administration

RULES
Air carrier certification and operations:
Commercial passenger or cargo operations; certification and operating requirements (SFAR No. 38-2), 34514
Ground icing conditions; training and checking, 69620
Miscellaneous operational amendments (approved child restraint systems use, etc.); correction, 12158
Protective breathing equipment training, 46500
Airmen certification:
Recreational pilots and noninstrument-rated private pilots with fewer than 400 hours flight time; annual and biennial flight review requirements, 40562
Airport radar service areas, 7738, 11886, 12157
Airspace designations; incorporation by reference, 36298
Airspace modification, 50253
Airspace reclassification, 32838, 40736, 42643, 43553, 44126, 48793, 50254
Airspace terminal reconfiguration, 15252
Air traffic operating and flight rules:
Airplane operator security; security directives and information circulars, 36802
Airport noise control; Stage 2 airplanes operating in 48 contiguous United States and District of Columbia; phaseout and nonaddition (transition to all Stage 3), 18138
Airspace overlying waters between 3 and 12 nautical miles from U.S. coast; warning areas establishment, 69128
High density traffic airports; air carrier and commuter operator slots, allocation and transfer methods, 21095
Policy statement, 229
Noise-restricted aircraft (SFAR 64), 31640, 59360
Correction, 33189, 62035
O'Hare International Airport; jet aircraft operation in commuter slots, 39610
Prohibition against certain flights between United States and Yugoslavia, 45220
Special visual flight rules (SVFR) operations, 51966
Correction, 57549
Airworthiness directives:
ACS Products Co. et al., 16109
Aerospatiale, 18337, 21914, 42642, 43552, 47033, 53853, 59936, 61611, 61613
Aerostar Aircraft, 46771
Aerostar Aircraft Corp., 36131
Aerostar International, Inc., 49917

INDEX VOL 58 1993 UMI

Airbus Industrie, 4, 16110, 16763, 18338, 27457, 27923, 27924, 31159, 39440, 41172, 47034, 47825, 54937, 59940, 60771, 64112, 64876
Allied-Signal Aerospace Co., 16113, 32835, 40732
Allied-Signal Inc., 32603, 34880, 44437
Allison, 68025
AMI Industries, Inc., 18340
Avco Lycoming, 39442
Avions Mudry & Cie, 31342
Ayres Corp., 54031, 54032
Beech, 4892, 5578, 5923, 5924, 6080, 6369, 9113, 11188, 28917, 40389, 47826, 53636, 63523, 66276
Bell, 7479, 11523, 13700, 15757, 33892, 45833, 65282
Boeing, 480, 483, 5574, 5920, 6705, 6879, 7481, 8693, 11190, 14513, 14515, 16107, 16115, 16764, 19322, 19571, 21243, 27454, 27927, 29102, 31650, 36863, 36865, 41177, 42190, 42192, 43547, 43550, 45041, 45044, 45827, 45831, 47035, 47827, 47986, 48946, 50839, 53855, 54940, 54945, 57543, 69221
British Aerospace, 6081-6084, 8224, 9114, 9115, 18341, 21920, 26913, 35860, 39435, 42194, 46769, 46770, 46772, 47036, 47828, 54939, 59937, 67310, 67665
Canadair, 46766, 52889, 59161
Cessna, 5580, 7862, 13406, 15758, 36130, 66268 de Havilland, 66270, 66271
Corporate Jets Ltd., 32836, 61013, 62514, 64487, 65888, 67306
Dassault, 27456
Dassault Aviation, 26058, 38516
de Havilland, 6, 5256, 6077-6079, 6703, 6881, 7861, 11186, 19049, 19328, 21923, 25546, 25549, 28526, 30106, 33895, 33903, 33904, 42196, 47209, 52220
Dowty Aerospace Gloucester Ltd., 50837
Essex PB&R Corp., 41179
Fairchild, 21242, 21922, 26682, 40584, 40734, 51771
Fokker, 5257, 6877, 7185, 7982, 16769, 18342, 19326, 25551, 25552, 26059, 28920, 33893, 38283, 38513, 53852, 57544, 59941, 60369, 60370, 60373, 60774, 67311
Garrett, 3491, 12152, 21917
General Dynamics, 13701, 17972, 57546, 65890
General Electric Co., 39437, 41175, 64874
Gulfstream, 6878, 65662
Gulfstream Aerospace, 31160
Hamilton Standard, 44441
Hamilton Standard et al., 32606
Hartzell, 16347, 39139, 50840
Hartzell Propeller Inc., 67307
Israel Aircraft Industries, Ltd., 59942, 66273
Jetstream, 38285, 54944, 60372, 60772, 61619
Learjet, 63060, 65894
Lockheed, 54947, 60775, 64877
McDonnell Douglas, 5259, 5576, 6707, 7482, 11525, 15760, 16105, 16770, 19327, 21916, 26061, 26063, 29347, 32055, 32278, 32281, 33896, 33898, 33905, 38511, 41421, 53635, 53857, 54949, 59939, 61616, 64114, 68026
McDonnell Douglas et al., 60374
Mitsubishi, 21346
Nordskog, 61618
Pacific Scientific Co., 21912, 27651
Piper, 7737, 14311, 16118, 21537, 29965, 63524, 65104, 65115, 66274, 68028
Pratt & Whitney, 6191, 31649, 31902, 32602, 39644, 39647, 40324, 50252, 51212, 54034, 54935, 65895, 67666
Precise Flight, Inc., 34365
Precision Airmotive, 50843, 51215
Puritan Bennett, 65283
Rigging Innovations, Inc., 25548
Rockwell, 12155
Rolls-Royce plc, 44439
SAAB-SCANIA, 9117, 33906, 43789
Schweizer Aircraft Corp. et al., 26055, 51770, 59944
Schweizer et al., 53120
Short Brothers, 39439
Short Brothers, plc, 5261, 6083, 6085, 7983, 27928, 38510, 42197, 46767, 46768, 57547, 68291
Teledyne Continental Motors, 31904, 33901, 34521, 40326, 62515, 62517
Textron Lycoming, 12153, 19768, 26056, 31647, 32608, 34366, 41419, 47038
Turbomeca, 63031, 46076

Airworthiness standards:
Aircraft engines; electrical and electronic engine control systems, 29088
Airplanes, small—
Stall speed greater than 61 knots, 38634
Normal, utility, acrobatic, and commuter category airplanes—
Airframe and flight standard changes, 42136, 51970
Powerplant and equipment standards, 18958, 27060
Special conditions—
Advanced Aerodynamics and Structures, Inc Jetcruzer 450 airplane, 28494
Aerospatiale model SA–365N1 and AS–365N2 Dauphin helicopters, 57542
Airbus Industrie model A330 series airplanes, 58263
Airbus Industrie model A340 series airplanes, 19553
Bell Helicopter Textron, Inc. model 230 helicopter, 38702, 38703
Boeing model 727, 727-100, 727C, 727-100C, and 727-200 series airplanes, 46536
Boeing model 777 series airplane, 59646
Cessna 500 series airplane, modified, 36352
Cessna model 650 airplanes, 36350
Dassault-Aviation Mystere-Falcon model 50 airplane, modified, 12537
Dassult-Aviation Mystere-Falcon models 50 and 900 airplanes, 36345
Dornier model 328-100 airplane, 47628
Gulfstream Aerospace Corp. G-1159 airplanes, 16486
Gulfstream American model 1159 series airplanes, 36348
Hamilton Standard model 247F–1 propeller, 3214
Hartzell Propeller, Inc. model HD-E6C-3( )/ E13482K dual acting propeller, 15262
Light Helicopter Turbine Engine Co. model CTS800 turboshaft engine, 39643
Lockheed model 1329 series airplanes, 33325
Piper Model PA-31T1 airplane, 8222
SAAB model 2000 airplane, 5571
Turbomeca model Makila 1A2 turboshaft engine, 6875
Transport category airplanes—
Emergency evacuation demonstration procedures, exit handle illumination requirements, and public address systems, 45224
Nitrogen or other inert gas use for tire inflation in lieu of air, 11778

Class B airspace, 48722, 52140, 60552, 64444
Class C airspace, 61621, 65897
Class D airspace, 45050, 47041, 47044, 47371, 47372, 48792, 50513, 53123, 54952, 54953, 60552, 63885, 64116, 64879, 64880, 67669
Class E airspace, 41181, 45047, 47041, 47042, 47043, 47044, 47045, 47044, 47371-47374, 49424, 50514, 51773, 53123, 53394, 53395, 53859, 54952, 54954, 57964, 58277, 58593, 59357, 59358, 60552, 61729, 62034, 63063, 63293, 63885, 63886, 64117, 64488, 64879, 65897, 65900, 67668, 67670, 68740
Control areas, 17494, 31652, 33907
Control zones, 3217, 4314, 6886, 7179, 11373, 13006, 14517, 17322, 19573, 19574
Control zones and transition areas, 11373, 45051
IFR altitudes, 6887, 16489, 30107, 34700, 45053, 53860, 65901
Jet routes, 6371, 6884, 6886, 15763, 16488, 18344, 44125, 47375, 47633, 48301, 59656, 60552
Jet routes, VOR Federal airways, and low altitude reporting points, 45049
Navigational facilities
Airport traffic control services and navigational facilities; establishment and discontinuance criteria—
LORAN-C nonprecision approach procedures, 42814
Omnibus Transportation Employee Testing Act of 1991:
Anti-drug program for personnel engaged in specified aviation activities, 68198
Workplace drug testing programs; management information system, 68194
Passenger facility charges; enforcement policy change, 64118
Practice and procedure:
Investigative and enforcement procedures; civil penalty actions; separation of functions, 50240
Restricted areas, 6884, 17323, 18345, 21249, 26225, 27652, 29522, 38287, 39649, 45051, 45052, 52890, 54486, 59359, 59945
Special use airspace, 42001
Standard instrument approach procedures, 3218, 3220, 4893, 4895, 6709, 6712, 7485, 7746, 10945, 10947, 15265, 15266, 15268, 15270, 17324, 17325, 26225, 26227, 27653, 27654, 28496, 28498, 30976, 30978, 32840, 32842, 34704, 34706, 38288, 38518, 40327, 40329, 44274, 44275, 45056, 45057, 47046, 47048, 48958, 51774, 51776, 53863, 54487, 58277, 58279, 60376, 60377, 63063, 63065, 65904, 65905, 68515, 68516
Terminal areas, 12128, 63274
Terminal control areas, 16611
Transition areas, 3216, 4315, 6709, 8896, 11373, 13703, 13704, 14517, 15264, 17494, 18344, 19152, 19575, 36596, 43070
VOR Federal airways, 7484, 19208, 45046, 47039, 47040, 47631, 47635, 47829, 47830, 51010, 52808, 53122, 58593, 59356, 59656, 60552, 63211
VOR Federal airways, control areas, and jet routes, 15762, 16488
VOR Federal airways, jet routes, and reporting points, 46539
VOR Federal airways, reporting points, and jet routes, 44273

PROPOSED RULES

Air carrier certification and operations:
Age 60 rule, 21336, 33316
Aging airplane safety, 51944
Extended overwater operations with single high frequency communication system (HF) and single long-range navigation system (LRNS), 51938

FAA

Flight attendant duty period limitations and rest requirements, 17024
Ground icing conditions; training and checking, 49164
Major repair data development (SFAR No. 36-6), 54478
Correction, 58512
Passenger carrying and cargo air operations for compensation or hire, 32248
Pilot operating and experience requirements, 15730
Protective breathing equipment, 16584
Transport category airplanes; rejected takeoff and landing performance standards, 36738
Air carrier certification and operations, etc.
Transport category airplanes; reduced V1 methodology for takeoff on wet and contaminated runways, 36116
Airmen certification
Aircraft flight simulator and flight training devices use in pilot training, testing, and checking and at training centers; clarification; correction, 9514
Flight instructor certificates renewal; approved flight instructor refresher course, 48748
Niagara Falls, NY; flight rules in vicinity, 7950
Airspace establishment, 42037
Airspace reclassification, 21122, 21123, 36157, 36158, 39479
Air traffic operating and flight rules
O'Hare International Airport; jet aircraft operation in commuter slots, 280
Special visual flight rules (SVFR) operations, 32244
Airworthiness directives:
Aerospatiale, 15441, 18051, 21955, 21959, 27954, 28939, 29800, 34009, 61038
Airbus, 35899, 40077
Airbus Industrie, 515, 5947, 7196, 7759, 12190, 18347, 19068, 19787, 25954, 28525, 28938, 29802, 30721, 30722, 39475, 44149, 46914, 47837, 48009, 51793, 52041, 59965, 61037, 64200, 68786
Allied-Signal Aerospace Co., 47405, 51587, 64705
Avions Mudry & Cie, 4366
Ayres Corp., 33920, 34383
Beech, 8916, 11996, 12194, 16137, 19788, 32877, 38731, 40389, 40398, 46135, 47678, 47839, 57760, 58310, 59223, 63305
Bell, 6056, 15444, 31916, 35902, 45858, 48989, 59967
Boeing, 6198, 6740, 8719, 8723, 9131, 11997, 12195, 15305, 21692, 25956, 26074, 27217, 28936, 29998, 31003, 31481, 39688, 42032, 42034, 42513, 43301, 44466, 44468, 45861, 45863, 47085, 47224, 47225, 48616, 48617, 48983, 51589, 52243, 53457, 53678, 60415, 64198, 64386, 64707, 65567, 65943, 68787
British Aerospace, 11999, 15114, 21957, 25579, 27955, 28801, 30000, 32469, 36627, 38732, 42259, 42699, 46916, 52929, 54310
Canadair, 12192, 26076, 52931, 68789
Cessna, 7494, 19069, 44621, 49943
Corporate Jets, Ltd., 12002, 35904, 39689, 41066, 42700, 44795, 62557
Dassault Aviation, 6742, 7495, 61636
de Havilland, 5671, 6746, 12349, 14182, 14187, 14189, 28526, 30001, 31917, 43304, 50868, 52714, 55031, 57758, 68575
Dowty Aerospace Gloucester Ltd., 33783
EROS, 41441
Fairchild, 15309, 27957, 51583
Fokker, 3873, 6743-6745, 8721, 8914, 13430, 28527; 30725, 31681, 35413, 35905, 38984, 39474, 39691, 40078, 41210, 42361, 43303, 46136, 46139, 54312, 58307, 59418, 59968, 59970
General Dynamics, 31350, 31352
General Electric Co., 9552, 49944, 53893, 58667
Glaser-Dirks Flugzeugbau GmbH, 21546
GROB Luft und Raumfahrt, 13710
Gulfstream, 12004, 18347, 57756
Hamilton Standard, 69298
Honeywell, 47407
International Aero, 63307
Israel Aircraft Industries Ltd., 38985, 46137
Jetstream, 58305, 61635, 64199, 65569
Learjet, 42262
Lockheed, 6906, 14181, 48984, 50869
Luscombe, 69299
McDonnell Douglas, 4367, 9133, 15813, 16505, 30003, 31354, 32471, 33574, 38321, 42261, 44150, 46917, 49946, 50871, 52240, 52717, 52932, 57568, 58807, 58808, 61853, 64708, 67723
McDonnell Douglas et al., 15445
Piper, 14184, 40391, 42702, 47227
Pratt & Whitney, 275, 19634, 31347, 31356, 31920, 40079, 40083, 58669, 62296, 68570, 68572
Precise Flight, Inc., 16377
Precision Airmotive, 19635, 67381
PTC Aerospace, 48986
Puritan Bennett, 34382
Rigging Innovations, Inc., 4600
Rockwell International, 47409
Rockwell International/Collins, 42705
Rockwell International/Collins Air Transport Division, 5949
Rolls-Royce plc, 51585
SAAB-SCANIA, 15116, 19071, 48010, 60413
Schweizer Aircraft Corp. et al., 15448, 35900, 41444
Schweizer et al., 26264
Short Brothers, 28529, 43306
Short Brothers, plc, 15450, 16507, 18053, 19073, 33576, 58992
Sikorsky, 45859
Sikorsky Aircraft, 41442
Societe Nationale Industrielle Aerospatiale et al., 31922
Teledyne Continental Motors, 31348, 39476, 39478, 41645, 48987, 54072
Textron Lycoming, 13711, 13713, 14185
Twin Commander Aircraft Corp., 34950, 34952, 34955, 34957, 34959, 38540
Wytwornia Sprzetu Komunikacyjnego, 278
Airworthiness standards:
Commuter category airplanes; accelerated stalls, 32034
Commuter category airplanes; occupant protection standards, 38028
Correction, 40389
Manned free balloon burner testing, 64450
Rotorcraft; normal and transport category—
Turboshaft engine rotor burst protection, 4566
Special conditions—
Advanced Aerodynamics & Structures, Inc. Jetcruzer 450 airplane, 10994
Aerospatiale models AS-365N1 and AS-365N2 helicopters, 35411
Agusta model A109C helicopter, 60569
Airbus Industrie model A-330 series airplanes, 44291
Bell Helicopter Textron model 230 helicopter, 5669
Boeing model 777 series airplanes, 13216, 26710
Cessna Aircraft Co. model 550 Block Point Change, S.N. 560-0260 and on, airplanes, 62051
Cessna Aircraft Co. model 750 (Citation X) airplane, 59689
Cessna model 526 airplane, 52702
Dassault-Aviation Mystere Falcon models 50 and 900 airplanes, modified, 12563
Eurocopter Germany model BO-108 (EC135) helicopter, 5666
European Helicopter Industries, Ltd. model EH-101 helicopter, 3239
General Electric models GE90-75B/-85B/-76B turbofan engines, 57754, 63902
Learjet, Inc. model 45 airplane, 67716
Light Helicopter Turbine Engine Co. model CTS800 turboshaft engine, 26262
Pratt & Whitney models PW4073, PW4084, and PW4088 turbofan engines, 68784
SAAB model 2000 airplane, 64700
Transport category airplanes; damage-tolerant structure fatigue requirements, 38642
Class B airspace, 54073, 60082
Class C airspace, 42623, 65950
Class D airspace, 38734, 43412, 49451, 58311, 62054, 62056, 62057, 63904, 64387, 65945, 65946
Class E airspace, 41211, 45079, 46586, 47411, 49450, 50873, 51256, 51257, 53167, 55116, 57570, 62054, 62055, 62058, 62059, 62061, 62062, 62298, 63125, 63127, 63128, 63129, 63130, 63308, 63309, 63903, 63905, 64710, 65947, 65948, 65949, 67725, 67726, 67727, 68328, 68329, 68577
Control areas, 29370
Control zones, 4946, 6911, 11801, 14190, 26266, 26267, 31483, 31485, 31486, 33054, 43573, 43575
Control zones and transition areas, 39693, 39694
Jet routes, 34, 6375, 15117, 17541, 18349, 26265, 32313, 42038, 47413, 47680, 48331, 53166, 57571, 59422, 63211, 63906, 67728, 67909
Offshore airspace area, 64525
Omnibus Transportation Employee Testing Act of 1991:
Alcohol use by transportation workers, limitation, 7197
Anti-drug program and alcohol misuse prevention program for employees of foreign air carriers engaged in specified aviation activities, 8917
Restricted areas, 18351, 33223, 38323, 41214, 54531, 61854, 63908
Rulemaking petitions; summary and disposition, 5947, 8244, 8719, 11391, 11554, 16798, 19634, 21274, 26709, 27953, 33783, 36626, 42698, 46585, 47405, 47678, 57754, 58512, 63125
Terminal control areas, 33878
Transition areas, 3241, 3242, 3875, 8244, 8725, 11553, 11802, 11803, 12197, 12566, 12567, 13715, 16508, 16914, 17543, 18054, 18055, 19214, 19637, 21411, 26268, 26269, 27680, 31484, 33054, 36628, 43576, 43826

INDEX
VOL 58
1993
UMI

VOR Federal airways, 5303, 9134, 15118, 18350, 28941, 33053, 38322, 44469, 47087, 53164, 53459, 58312
VOR Federal airways, control areas, and jet routes, 5301
VOR Federal airways, reporting points, and jet routes, 8724

NOTICES
Advisory circulars; availability, etc
Aircraft—
Civil turbojet noise abatement departure profiles, 59510
Composite propeller blade fatigue substantiation, 29851, 50386
Engine type certification handbook, 38804
Flightcrew sleeping quarters/facilities, 65002
Global positioning system navigation equipment; airworthiness approval, 43398
Ground deicing and anti-icing program, 69631
In-flight radiation exposure; crewmember training, 26808
Noise abatement departure profiles; civil turbojet airplanes, 51665
Normal and transport category rotorcraft; certification, 67893
Pilot compartment view design considerations, 18132
Portable electronic devices aboard aircraft, 8088
Primary category aircraft; certification procedures, 68981
Traffic alert and collision avoidance systems, airworthiness approval, 32986
Airport lighting equipment certification program, 58035
Airports without control towers; traffic patterns and aeronautical operations, 51398
Airport traffic control towers; operating procedures, 40462
Helicopter simulator qualification, 53015
Navigation or flight management systems integrating multiple navigation sensors; airworthiness approval, 43398
Part 21 gliders (sailplanes) and Part 23 airplanes, 67893
Part 23 airplanes—
Automobile gasoline for airplanes with reciprocating engines; type certification, 59092
Commuter category airplanes; accelerated stalls, 32037
Converted from reciprocating engine to turbine engine-powered; type certification basis, 34493
Flight in icing conditions, etc., 371
Flight test guide for certification; change, 59510
Transport category airplanes—
Damage-tolerance and fatigue evaluation of structure, 53987
Flightcrew sleeping quarters/facilities; design and installation criteria, 62402
Minimum flightcrew determination; certification requirements, 29022
Takeoff configuration warning systems, 29022
Aeronautical mobile satellite services; minimum operational performance standards; document change, 58374
Airplanes and rotorcraft; non halon fire suppression agents/systems; halon replacement performance testing, 33477
Airport noise compatibility program:
Bismarck Municipal Airport, ND, 31995
Capital Airport, IL, 18132
Chicago Midway Airport, IL, 39848
Cincinnati/Northern Kentucky International Airport, KY, 60724
Dane County Regional Airport, WI, 8444
Decatur Airport, IL, 21620
Des Moines International Airport, IA, 26377, 61940
Detroit Metropolitan Wayne County Airport, MI, 39846
Glynco Jetport, GA, 9230, 50068
Gulfport-Biloxi Regional Airport, MS, 54631
Hartsfield Atlanta International Airport, GA, 3986
Indianapolis International Airport, IN, 31062
Kent County International Airport, MI, 60478
Melbourne Regional Airport, FL, 27764, 64020
Midland International Airport, TX, 31577
Montgomery County Airpark, MD, 45146
Noise exposure map—
Ann Arbor Municipal Airport, MI, 15394
Bishop International Airport, MI, 13814
Capital City Airport, MI, 39847, 42356
Central Florida Regional Airport, FL, 50387
Chico Municipal Airport, CA, 26378
Cincinnati/Northern Kentucky International Airport, KY, 27763
Gulfport-Biloxi Regional Airport, MS, 31996
Hawthorne Municipal Airport, CA, 66061
Hilo International Airport, HI, 61941
Kalamazoo/Battle Creek International Airport, MI, 13815
Kent County International Airport, MI, 15397
Long Island MacArthur Airport, NY, 13816
Modesto City-County Airport, CA, 13815
Norwood Memorial Airport, MA, 48927
Palm Beach International Airport, FL, 8806
Palo Alto Airport, CA, 15518
Savannah International Airport, GA, 47171
Seattle-Tacoma International Airport, WA, 25695
Shreveport Regional Airport, LA, 8807
Smyrna Airport, TN, 61942
St. Augustine/St. Johns County Airport, FL, 6660
Standiford Field Airport, KY, 59092
Wittman Regional Airport, WI, 47521
Palo Alto Airport, CA, 31578, 66062
Pueblo Memorial Airport, CO, 17466
Reno Cannon International Airport, NV, 14464, 50069
Roanoke Regional Airport, VA, 63201
Seattle-Tacoma International Airport, WA, 64022
St. Augustine/St. Johns County Airport, FL, 41546
Stockton Metropolitan Airport, CA, 33138
Airport noise effects; report to Congress, 16569
Artisan liens on aircraft; recordability, 50387
Civil penalty actions; Administrator's decisions and orders; index availability, 5044, 21199, 42119, 58218
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 9230, 13817, 13819, 16572, 16573, 16574, 47172, 61943, 62403
Civil Tiltrotor Development Advisory Committee, 40462
Pilot and Aviation Maintenance Technician Shortage—Blue Ribbon Panel Advisory Committee, 49541
System Capacity Advisory Committee, 34493
Detroit Metro Terminal Airspace; delegation modification, 32746
Environmental statements; availability, etc.:
Dane County Regional Airport, WI, 34495
Greater Rockford Airport, IL, 21622, 27765
John F. Kennedy International Airport/ LaGuardia Airport access program, 29682
Kent County International Airport, MI, 15398
LaGuardia Airport, NY; Second Grand Central Parkway, etc., 43669, 50619
Newark International Airport, NJ, 16576, 48928
Newark International Airport, NJ; ground access automated people mover-northeast corridor connection project, 43979
New Jersey; aircraft flight patterns, effects of changes, 14302, 33138, 42636, 52624
Northwest Arkansas Regional Airport, AR, 30839
Plymouth Municipal Airport, MA; runway extensions, 64422
Provincetown Municipal Airport, MA; airport master plan improvements, 50070
Santa Barbara Municipal Airport, CA, 42751
Tulsa International Airport, OK; runway and associated projects, 40462
Exemption petitions; summary and disposition, 376, 3325, 3326, 4450, 6321, 6428, 7030, 7031, 8445, 8808, 11434, 11435, 11884, 12625, 13818, 14465, 16576, 17300, 17467, 19696, 21334, 21761, 21762, 26379, 26808, 28088, 29685, 30840, 31063, 31782, 32412, 33852, 33853, 36000, 36731, 37047, 39272, 39849, 41311, 41549, 42752, 44398, 46670, 47522, 47776, 48929, 50625, 53016, 53613, 54632, 57893, 58587, 59513, 60478, 61943, 63201, 65223, 67894
Experimental airworthiness certificates, issuance; exhibition or air racing and special flight authorizations, 68982
Explosive detection systems; certification criteria, 3192, 33967, 47804
Management plan; availability, 58374
General aviation activity and avionics survey; improvements, 21329, 35000
Grants and cooperative agreements; availability, etc
Airway science program, 21763, 36243
National Airspace System (NAS) long-term technical needs, 11436
Low performance personal aircraft design standards; acceptance under primary category rule, 65422
Meetings.
Air Traffic Procedures Advisory Committee, 14466, 32746, 48930, 64423
Aviation Rulemaking Advisory Committee, 5057, 6322, 6661, 7032, 7601, 9230, 12298, 12978, 15518, 16577, 21506, 21768, 25696, 26380, 26809, 27614, 28089, 28647, 29685, 31579, 32165, 38451, 39850, 39851, 42999, 45369, 48414, 49542, 51399, 54633, 55108, 57663, 57893, 58374, 58588, 60081, 60480, 61944, 62404, 68458
Aviation Security Advisory Committee, 5795, 19697, 62404, 66063
General aviation community forum, 39851
Grand Canyon National Park; airspace carrying capacity report, 31997
Hawaii; flight safety, aircraft noise, and possible intrusive flights of helicopters, 68983
Informal airspace meetings—
Arizona, 29022
Florida, 120, 16578
Massachusetts, 43399
Texas, 60081
National Aviation Weather Users' Forum, 57893
Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel, 120, 7032, 14240

Research, Engineering, and Development Advisory Committee, 8811, 8812, 16907, 27765, 28089, 28090, 33481, 42128, 50071, 52525
RTCA, Inc., 4451, 32413, 42357, 42753, 45942, 46671, 50071, 50072, 52525, 52526, 53988, 58375, 59510, 61944, 61945, 61946, 64423, 66063
Vertical separation minimum between flight levels 290 and 410; implementation of 1,000 foot rule, 39273
Microlite class aircraft; design standards, 26810
Military airport program participation; designation criteria, 13294
Organization, functions, and authority delegations:
Anchorage, AK, 33854
Barrow, AK, 27614
Big Delta, AK, 26380
Crescent City, CA, 18134
Cut Bank, MT, 12979
Honolulu, HI, 8809
King Salmon, AK, 29023
Lewistown, MT, 8446
Livingston, MT, 5443
Long Beach, CA, 26808
McGrath, AK, 16578
Miles City, MT, 6046
San Francisco, CA, 26380
Santa Barbara, CA, 18134
Youngstown, OH, 21199
Passenger facility charges; applications, etc.:
Albany County Airport, NY, 51399
Aspen-Pitkin County Airport/Sardy Field, CO, 38804
Barkley Regional Airport, KY, 45370
Baton Rouge Metropolitan Airport, LA, 5058
Bellingham International Airport, WA, 7032
Benedum Airport, WV, 62405
Billings-Logan International Airport, MT, 55109
Binghamton Regional Airport, NY, 33139
Bishop International Airport, MI, 14469
Blair County Airport Authority, PA, et al., 14467
Blue Grass Airport, KY, 30840
Bradley International Airport, CT, 21506, 67895
Brainerd-Crow Wing County Regional Airport/ Walter F. Wieland Field, MN, 21209, 27336
Capital Airport, IL, 7602, 9245, 45942
Capital City Airport et al., MI, 29686
Central Wisconsin Airport, WI, 29686
Charlottesville-Albermarle Airport, VA, 47173
Chautauqua County/Jamestown Airport, NY, 4451
Cheyenne Airport, WY, 27614
Chicago Midway Airport, IL, 18439
Chicago O'Hare International Airport, IL, 18438
Chico Municipal Airport, CA, 39852
Cleveland Hopkins International Airport, OH, 67894
Clinton County Airport, NY, 12626
Columbia Metropolitan Airport, SC, 28648, 30841
Columbus Airport Commission, GA, et al., 63202
Columbus Metropolitan Airport, GA, 38805
Corpus Christi International Airport, TX, 44399, 55110
Dallas-Fort Worth International Airport, TX, 68458
Dane County Regional Airport, WI, 14470
Daytona Beach International Airport, FL, 6568
Des Moines International Airport, IA, 45370
Dubuque Regional Airport, IA, 61945
Eagle County Regional Airport, CO, 14240
Fort Collins-Loveland Municipal Airport, CO, 25696
Fort Wayne-Allen County Airport Authority, IN, et al., 30841
Friedman Memorial Airport, ID, 14241
Gallatin Field Airport, MT, 8812
General Edward Lawrence Logan International Airport, MA, 34493
Gillette-Campbell County Airport, WY, 17638
Glacier Park International Airport, MT, 34494
Gogebic County Airport, MI, 14470
Greater Rockford Airport Authority, IL, et al., 54633
Greater Rockford Airport, IL, 31998
Great Falls International Airport, MT, 14241
Guam International Air Terminal-Agana NAS, GU, 62405
Gulfport-Biloxi Regional Airport Authority, MS, et al., 67896
Gulfport-Biloxi Regional Airport, MS, 39852
Gunnison County Airport, CO, 38806
Helena Regional Airport, MT, et al., 8809
Hilton Head Island Airport, SC, 45371, 51400
Huntsville International-Carl T. Jones Field Airport, AL, 13819
Huntsville-Madison County Airport Authority, AL, et al., 38451
Indianapolis International Airport, IN, 18439
Jackson Hole Airport, WY, 11658
Jacksonville International Airport, FL, 60725
Johnstown-Cambria County Airport, PA, 39275
Key Field, MS, 36732
Laredo International Airport, TX, 21507
Lee County Port Authority, FL, et al., 36000
Lewiston-Nez Perce County Airport, ID, 61946
Long Beach Municipal Airport, CA, 53989
Los Angeles Department of Airports, CA, et al., 21210
Los Angeles International Airport, CA, 4732, 8446
Lubbock International Airport, TX, 17467, 58375
Luis Munoz Marin International Airport, PR, 47777
Mahlon Sweet Field, OR, 30845
McCarran International Airport, NV, 14471
McGhee Tyson Airport, TN, 36732
Medford-Jackson County Airport, OR, 6323
Memphis International Airport, TN, 54638
Metropolitan Oakland International Airport, CA, 65225
Minot International Airport, ND, 52800
Monterey Peninsula Airport, CA, 43980
Montrose Regional Airport, CO, 28648
Muskegon County Airport, MI, 66063
Natrona County International Airport, WY, 15173
New Hanover International Airport, NC, 42357
New Orleans International Airport, LA, 42129
North Bend Municipal Airport, OR, 47173
Ontario International Airport, CA, 4733, 8446
Orlando International Airport, FL, 36733
Palm Beach International Airport/North County General Aviation Airport, FL, 53989
Panama City-Bay County International Airport, FL, 47776
Pangborn Memorial Airport, WA, 9231
Philadelphia International Airport, PA, 16578
Phoenix Sky Harbor International Airport, AZ, 7033, 11439
Port Columbus International Airport et al., OH, 47174
Port Columbus International Airport, OH, 30212
Portland International Jetport, ME, 47925
Pueblo Memorial Airport, CO, 28649
Pullman-Moscow Regional Airport, WA, 68985
Redmond Municipal Airport, OR, 18440
Redmond, OR, et al., 43000, 49081
Reno Cannon International Airport et al., NV, 43399
Rhinelander-Oneida County Airport, WI, 29687
Richmond International Airport, VA, 65226
Robert Mueller Municipal Airport, TX, 11084
San Jose International Airport, CA, 18441
Seattle-Tacoma International Airport, WA, 41313
Shreveport Regional Airport, LA, 42129
Southwest Florida Regional Airport, FL, 3327
Spokane International Airport, WA, 121
Springfield Regional Airport, MO, 31579
T.F. Green State Airport, RI, 48930
Tallahassee Regional Airport, FL, 51898
Tampa International Airport, FL, 26380
Toledo Express Airport, OH, 21213
Tri-Cities Airport, WA, 29688
Tulsa International Airport, OK, 42130
Tweed-New Haven Airport, CT, 35500
Tyler Pounds Field, TX, 50388
Virgin Islands Port Authority, VI, et al., 6563
Walla Walla Regional Airport, WA, 27765
Walla Walla Regional Airport, WA, et al., 50072, 66064
Washington Dulles International Airport, VA, 40849
Washington National Airport, DC, 34495
Waterloo Municipal Airport, IA, 66064
Wilkes-Barre-Scranton International Airport, PA, 44204
William R. Fairchild International Airport, WA, 8812, 13122
Yampa Valley Regional Airport, CO, 29688
Youngstown-Warren Regional Airport, OH, 66064
Yuma County International Airport, AZ, 35501
Sportplane design standards; primary category rule acceptance availability, 33297
Technical standard orders:
Anti-blocked channel devices used in two-way radio communications due to simultaneous transmissions, 41550
Personnel parachute assemblies, 61946
Powerplant fire detection instruments (thermal and flame contact types), 30213
Safety belts, 46671

Federal Bureau of Investigation

NOTICES
Committees; establishment, renewal, termination, etc.:
National Crime Information Center Advisory Policy Board, 12054
Uniform Crime Reporting Data Providers Advisory Policy Board, 16848
Meetings:
National Crime Information Center Advisory Policy Board, 27752, 60212
National Stolen Auto Part Information System Federal Advisory Committee, 54173
Uniform Crime Reporting Data Providers Advisory Policy Board, 11424, 42349

Federal Communications Commission

RULES
Commercial radio operator licenses; privatization of examinations, 9123, 12632
Common carrier services:
2.1 and 2.5 GHz bands frequencies use, 11795
Access charges—
800 service; policy statement, 16628
General support facility costs allocation, 30994
Local exchange carriers; 800 service access, 7867, 8908, 9550
Local exchange carriers subject to rate of return regulation; reform, 36145
Transport rate structure and pricing, 41184, 45266

UMI

Antidrug Abuse Act, 1988—
Certification requirements; Federal, State, or local governmental entities exemptions, 8701
Depreciation prescription process simplification, 58788
Domestic nondominant common carriers; tariff filing requirements, 44457
Correction, 48323
Domestic satellite service; licensing policies and procedures, 68053
Extension of lines and discontinuance, reduction, outage and impairment of service by common carriers, etc., 44460
Filing and review of open network architecture plans, 11195
International accounting rates; reporting and recordkeeping requirements, 4354
Interstate 900 telecommunications services, 17167
Interstate interexchange marketplace competition; reconsideration petition denied, 21407
Interstate pay-per-call services—
Separate display of all charges, 62044
Telephone subscribers' protection, 44769
Local telephone company facilities; expanded interconnection, 5936, 48752, 48756
Multipoint distribution service, multichannel multipoint distribution service, instructional television fixed service, service, private operational-microwave fixed service, and cable television relay service; CFR correction, 13709
Name and address billing; tariff requirements, 36143, 42253
New telecommunications technologies use; spectrum redevelopment to encourage innovation, 49220
Open network architecture access charge subelemnets and dominant carriers rates policy and rules, 17166, 38536
Open network architecture tariffing policies, 29791
Operator services access and pay telephone compensation, 21408, 57748
Public mobile services—
Cellular geographic service areas; boundary determination, 11799
Cellular radio general licensing procedures and application filing and processing in unserved areas; correction, 27213
Cellular radio telecommunications service; comparative renewal proceedings standards, 21928
Rural service areas; limited transfers and assignments of applications; correction, 34228
Satellite communications—
Alien carrier interference, reduction, 13417
Service disruptions notification, 64167
Tariffs—
Billing name and address; tariffing requirements, 65669
Dominant carrier rates; policy and rules; price caps, promotional rates exclusion vacated, 31914
Interstate interexchange marketplace competition; AT&T's 800 services, 29551
Interstate long-distance marketplace competition, 42251
Telecommunications companies; uniform system of accounts—
Litigation; accounting for judgments and other costs, 50287
Telecommunications relay services, 39671
Interstate cost recovery program implementation, 53663
Telecommunications service off Puerto Rico, 14329
Telecommunications services for hearing and speech disabled; amendments, 12175
Telephones; hearing aid compatibility; suspension, 26692
Uniform systems of account for record carriers, 36142
Universal Service Fund for local exchange telephone carriers; jurisdictional separations, 69239
Communications equipment:
Radio frequency devices—
Digital device standards and international standards; harmonization, 51247
Electromagnetic emissions measurement, intentional and unintentional radiators, , 37429
Global Maritime Distress and Safety System bands; low power non-licensed transmitter operating restrictions, 33774
Radio scanners that receive cellular telephone transmissions, 25574, 29454
Frequency allocations and radio treaty matters:
Low-earth orbit satellites below 1 GHz, 16360
Mobile-satellite services, spectrum, 34920
New telecommunications technologies; redevelopment of spectrum to encourage innovation, 46547
Organization, functions, and authority delegations:
Chief, Field Operations Bureau, 68053
Field Operations Bureau and Private Radio Bureau, 13019
Mass media and common carrier application processing functions transfer to Gettysburg, PA, 19771
Practice and procedure:
Broadcast licensing proceedings—
Forfeitures, standards for assessing; policy statement, 44767
Complaints, applications, tariffs, and reports involving common carriers; copies to copy contractor, 51246
Forfeiture proceedings, 6895, 27472
Formal complaints against common carriers, 25569
Metric conversion, 44892
Correction, 52021
New services allocation; pioneer's performance; procedures establishment, 14328
Oral arguments in rulemaking procedures; notice of proceedings, 66299
Overseas communications facilities between or among U.S. carriers; conveyances of capital interests; petition for reconsideration, 37867
Pleadings and documents; format requirements, 63087
Ship inspections; collection of fees, 68540
Specialized mobile radio service applicant rules; waivers, 63086
Tariff filing petitions, 17528
Telecommunication Authorization Act—
Schedule of charges; amendment, 9128
Privacy Act; implementation, 11549
Radio and television broadcasting:
Broadcast services; editorial amendments, 34377
Radio broadcasting:
AM broadcast stations—
Technical assistance criteria, 27944
Broadcast indecency; prohibitions enforcement, 5937
Editorial amendments, 51250
FM channel and class modifications by application, 38534
FM translator stations, 42020
Personal communications services establishment, 59174
Reporting and recordkeeping requirements, 48323
Rulemaking petitions to amend FM table of allotments and applications for new or modified FM facilities, conflicts; procedural changes, 38536
Single AM stereophonic transmitting standard, establishment, 66300
Radio services, special:
Amateur services—
222-225 MHz frequency band use, 64384
Club and military recreation stations; call sign administrators; establishment, 30716
Permissible communications scope restrictions; relaxation, 43071, 47218
Station location on application form; deletion, 53138
Transceivers capable of reception beyond amateur service frequency allocations; federal preemption of State and local laws; declaratory ruling, 48459
Volunteer-examiner coordinator examination system; novice class operator license examinations inclusion, 29126
Aviation services—
Aircraft earth services, 45946
Emergency locator transmitters; 406 MHz frequency use authorization, 30126
Remote communications outlets and radionavigation land test stations; requirements, 67695
Editorial amendments, 51250
Emergency medical radio service, 12177
Maritime services—
406.025 MHz emergency position indicating radio beacons; requirements waiver, 58790
Class emergency position indicating radio beacons, 33343
Marine VHF Channel 77 use; temporary waiver of rules for ship-to-coast operations, 29983
Vessel Traffic Services systems list; San Francisco, CA, addition, 16503
Narrowband personal communications services, 42681
Personal radio services—
Interactive video and data service; declaratory ruling, 14161
Interactive video and data service applications; petition denied, 48459
Interactive video and data service fees and application process, 25951

INDEX
VOL
58
1993
UMI

Private land mobile services—
220-222 MHz frequency band use, 36362
450-470 MHz band; secondary fixed operations, 33212
896-901/935-940 MHz bands; 200 channels use, 12176, 31345
Co-channel protection criteria above 800 MHz, 53431, 58729, 59298, 61843
Construction, licensing, and operation, and finder's preference program, 51251, 53245
Fire call box operations, 30128
Frequencies in 72-976 MHz band; low-power mobile use; correction, 376, 38537
Motion picture radio service eligibility, 31476
Private carrier paging service to individuals, 40368
Qualified private carrier paging systems at 900 MHz; channel exclusivity, 17787, 21110
Qualified private carrier paging systems at 929-930 MHz; channel exclusivity, 62289
Secondary fixed signaling and alarm operations, 30995
Slow growth construction requirements, 34378
Specialized mobile radio license applicants; 800 MHz general category channels frequency coordination options, 31477
Station ID for wireless microphones, 39450
Private operational-fixed microwave service—
Federal access to low power 18 GHz systems, 29792
Multiple address station frequencies; grandfathering provisions reinstatement licensees, 25950
Private radio application signature requirement modification
Technical assignment criteria, 21405
Private radio services; burdensome regulations reexamination, 68061
Radio stations; table of assignments:
Alabama, 16779, 58506
Alabama et al., 16780, 38087
Alaska, 62288, 65672
Alaska et al., 46090
Arizona, 15289, 16781, 48614, 58506
Arkansas, 16503, 17786, 19359, 41045, 51787
California, 16781, 17786, 41638, 42020, 63295, 63536, 65672
California et al., 15439
Colorado, 41046, 58507
Delaware, 35410
Florida, 4943, 7194, 17349, 17786, 21259, 26252, 35409, 45267, 48324, 63296
Florida et al., 16780
Georgia, 21106, 21107, 26918, 45268, 65132
Georgia et al., 7194, 40365
Hawaii, 33999, 46550, 46551, 59374
Idaho, 31657, 34537
Idaho et al., 53665, 54522
Illinois, 4944, 16502, 33918, 34000, 53664
Indiana, 11197
Iowa, 5299, 7869, 16779
Kansas, 15439, 53665
Kentucky, 8233, 26524, 48325
Kentucky et al., 16502
Louisiana, 11196, 34538, 51787
Maryland, 34000
Massachusetts, 62555
Michigan, 42502, 42878
Minnesota, 4943, 11197, 25950, 26919, 31657, 40366, 59375
Mississippi, 4355, 31178, 40365, 45267, 65673
Missouri, 4355, 4944, 31178, 38088, 51578, 62289
Missouri et al., 7195
Montana, 12902, 50287, 51787
Nebraska, 63296
Nebraska et al., 33917
New Mexico, 8233, 8235, 15289, 42688
New York, 5300, 6193, 8234, 15288, 48325, 65671
New York et al., 15289
North Dakota, 31658
Oklahoma, 16780, 25949, 26525, 27214, 31658, 65132
Oregon, 5300, 21106, 27473, 33917, 35410, 46090, 58507, 58790
Pennsylvania, 37431
South Carolina, 65673
Tennessee, 32306, 41638, 65133
Texas, 11196, 12903, 13423, 13424, 15440, 26525, 29792, 32449, 41046, 51579
Vermont, 40365
Virginia, 48326
Washington, 8234, 15290, 27473, 53665
Washington et al., 15440
West Virginia, 59375, 62289
Wisconsin, 4944, 6193, 21106, 26069, 32305
Wyoming, 37431
Reporting and recordkeeping requirements, 55023
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Buy-through prohibition, 19627
Consumer protection and customer service standards, 21107
Home shopping broadcast stations, 39156
Horizontal and vertical ownership limits, cross-ownership limitations and anti-trafficking provisions, 42013, 45064, 50856, 60135
Indecent programming, etc., or cable excess channels, 7990, 19623
Must-carry and retransmission consent provisions, 17350, 32449, 32452, 36604, 40366, 53429
Rate regulation, 29553
Video sports programming migration from broadcast to subscription television; Section 26 implementation, 38088
Cable television systems—
Home wiring, 11970
Major television markets; list, 30995, 64168, 67694, 68322, 68541, 68542
National television networks; common ownership prohibition elimination, 11972, 27677
Program distribution and carriage agreements; unfair or discriminatory practices prohibition, 27658
Rate regulation; basic and cable programming services tiers, 63087
Regulated cable services; operators, subscribers, local franchising authorities and Commission, 46718
Regulated cable services; rate regulation (rate freeze, etc.), 17530, 19626, 21929, 29736, 33560, 41042, 43816, 60141
Equal employment opportunity rules and policies, 42247
Financial interest and syndication regulations; evaluation, 28927, 45842
Financial interest and syndication rules, 62547, 65132
Program distribution and carriage agreements; 1992 Cable Act, 60390
Reporting and recordkeeping requirements, 48323
Transmission standards; enhanced closed-captioning service and ghost-cancelling reference signal transmission, 29981
Television stations; table of assignments:
Kansas, 51578
Nebraska, 26525
Virgin Islands, 12903

PROPOSED RULES

Common carrier services:
27.5—29.5 GHz frequency band, redesignation; local multipoint distribution service, 6376
Access charges—
Interstate access tariff and revenue distribution processes, 11203
Allowance for funds used during construction; accounting and ratemaking treatment, 16163
Depreciation prescription process simplification, 530, 62083
Domestic nondominant common carriers; tariff filing requirements, 17813
Domestic radio services; revised application and reporting requirements, 12202
Domestic satellite service; licensing policies and procedures, 14532
Expanded interconnection with local telephone company facilities; transport rate structure and pricing, 13435
GTE Corp.; enhanced services; open network architecture and nondiscrimination safeguards application, 9137
International accounting rates regulation, 3522
International circuit status reports; filing requirements, 42922
Interstate common carriers; tariff filing requirements, 14369
Interstate pay-per-call services; telephone subscribers' protection, 14371
Local exchange carrier expanded interconnection costs and revenues, allocation between State and Federal jurisdictions; joint board establishment, 52254
Local exchange carriers; intelligent networks, 48623
Metric conversion of tariff publications and supporting information, 26087
MSS Above 1 GHz Negotiated Rulemaking Committee; meetings, 4139, 5319, 6937, 7062, 8927, 8928, 12915, 13041, 15461
Operator services access and pay telephone compensation, 21434
Pensions and benefits; reporting and filing requirements, 7764
Personal communications services; establishment, 31183
Preemption of local zoning of earth stations, 31182
Public mobile service—
Paging stations operating in 931 MHz band; power limits, 25962
Rate of return represcription and enforcement processes; reform; correction, 4637
Redevelopment of spectrum to encourage innovation in use of new telecommunications technologies, 31686
Satellite communications—
Alien carrier interference, reduction, 13432
International receive-only Earth stations; filing requirements, 13433
Service disruptions notification, 64280
Tariffs—
AT&T price cap, 44157
Dominant carrier rates; policy and rules; price caps, promotional rates exclusion, 31936
Price cap regulation, local exchange carriers; return sharing and lower formula adjustment rate, 37894

Telecommunications companies; uniform system of accounts—
Income taxes; liability method of accounting, 14535
Litigation; accounting for judgments and other costs, 49276
Telecommunications services for hearing and speech disabled; amendments, 12204
Telephone network; hearing-aid compatibility requirements, 14375
Toll fraud; policies and rules, 65153
Transactions between carriers and their nonregulated affiliates, 62080
Treatment of operator services under price cap regulation, 33061
Universal Service Fund for local exchange telephone carriers; jurisdictional separations, 48815
Communications equipment:
Radio frequency devices—
Radio scanners that receive cellular telephone transmissions, 6769
Conflict of interests, 34405
Frequency allocations and radio treaty matters:
Wind profiler radar systems spectrum, 19644
Frequency allocations table amendments; new emerging technologies spectrum, 4974
International Telecommunication Union World Radiocommunication Conferences; agendas preparation, 36630
Maritime mobile and maritime mobile-satellite radio services; accounting authorities administration, 68373
Practice and procedure:
27.5—29.5 GHz frequency band, redesignation; local multipoint distribution service, 6376
Electromagnetic spectrum auctions; competitive bidding, 53489
Pioneer's preference rule; regulatory review, 57578
Radiofrequency radiation; environmental effects evaluation guidelines, 43091, 60827
Radiofrequency radiation exposure guidelines, 19393
Radio broadcasting:
AM directional antennas; proof-of-performance evaluation policies and procedures, 36184, 45311, 68843
Children's television programming, 14367, 19216
Comparative broadcast hearings policy statement; reexamination, 44484, 48349
Distance separation calculations; rounding restrictions, 49278
Experimental, auxiliary, and special broadcast and other program distributional services—
Aural broadcast auxiliary stations, 33923
Instructional television fixed service; purpose and permissible service, 42522
Low power television service; application acceptance standard; major changes definition; four-letter call signs, 25794
Modulation levels; AM, FM and TV aural, 44483
Reporting and recordkeeping requirements, 3002
Single AM stereophonic transmitting standard; establishment, 5320
Radio services, special:
Amateur services—
219-220 MHz; use allocation, 17180
Message forwarding systems, 17375
Temporary operating authority for new amateur operators, 59701
Aviation services—
406 MHz radiobeacons; registration requirements, 31185
Amendments, 17568
Instruments landing system receivers and VHF Omnirange Radio receivers; technical requirements, 39722
Maritime services—
406 MHz radiobeacons; registration requirements, 31185
Amendments, 17568
Increase in efficiency, 6381
Mobile services; regulatory treatment, 53169
Oceangoing cargo vessels and small passenger vessels; general exemption, 29174
Private land mobile services—
800 MHz wide area operations, 33062
896-901/935-940 MHz bands; 200 channels use, 12205
Automatic vehicle monitoring systems, 21276, 38549
Cordless telephones; additional operation frequencies, 51299, 59977
Major policy changes for bands below 512 MHz, 8731, 39721
Mobile satellite services in 1525-1530 MHz frequency band; efficiency enhancement and WARC-92 implementation changes, 34404
Private carrier paging service to individuals, 15131
Qualified private carrier paging systems at 900 MHz; channel exclusivity, 17819
Private operational-fixed microwave service—
Amendments, 17568
Public land mobile services—
Co-channel protection criteria above 800 MHz, 19396
Radio stations; table of assignments:
Alabama, 37696, 50313, 63152
Alabama et al., 65155
Alaska, 32339, 42521
Arizona, 17816, 17817, 17818, 19394, 26088, 34025, 40399
Arkansas, 13435, 52735, 63318
California, 12916, 13436, 16809, 17816, 19395, 39493, 39494, 45877, 46152, 65155
California et al., 63553
Colorado, 12916, 31183, 31687, 37696
Delaware, 15321
Florida, 4974, 19395, 26947, 32339, 32503, 39494, 42713, 42923, 52734, 58834
Georgia, 26089, 36375, 39494, 58671
Hawaii, 15461, 26947, 32503, 52733
Idaho, 4392, 8248, 15462, 38111
Idaho et al., 34555, 38547
Illinois, 34555, 52734
Iowa, 58533
Kansas, 35420
Kentucky, 31687, 52733, 63319
Louisiana, 15321, 32504, 41681, 63320, 63321
Maine, 38547, 39722
Maryland, 6201, 16644
Massachusetts, 40400
Michigan, 25592, 31184, 42714
Minnesota, 6201, 12916, 25592, 35421, 40400, 42521, 48819, 62318
Mississippi, 25592, 26089, 31688, 34025
Mississippi et al., 63320
Missouri, 11204, 16643, 25593, 34555, 35421, 38548, 40400, 42522, 42714, 58533
Montana, 33922, 36376
Nebraska, 32340
Nevada, 61671, 62319, 62320, 63319, 63320
New Mexico, 5322, 7874, 16518
New York, 11204, 19396, 26089, 33923, 41680, 46152
North Carolina, 37455, 40401, 51799
North Dakota, 5323
Ohio, 34025, 51603
Oklahoma, 32340, 51603
Oregon, 11205, 21137, 26088, 26528, 40399
Pennsylvania, 5323, 52735
South Carolina, 16518, 34556
South Dakota et al., 42714
Tennessee, 7874, 15462, 31184, 59431
Texas, 4392, 13436, 17818, 25593, 27256, 36374, 58672, 58833
Vermont, 27699
Virginia, 11205, 13437
Washington, 7875, 34026, 36376, 37696, 42520, 46605
West Virginia, 34026, 40398, 40402
Wisconsin, 4974, 7875, 25594, 40401, 42715
Wyoming, 11206
Regulatory agenda, 25286, 57286
Rules and regulations; plan for periodic review, 15120
Television broadcasting
Advanced television (ATV) systems
Implementation; correction, 6677
Cable Television Consumer Protection and Competition Act of 1992—
Compatibility between cable systems and consumer electronics equipment, 64541
Direct broadcast satellite public service obligations; implementation, 12917, 34980
Home shopping broadcast stations, 7205, 7875
Horizontal and vertical ownership limits, cross-ownership limitations and anti-trafficking provisions, 3523, 12921, 42047
Rate regulation, 48
Video sports programming migration from broadcast to subscription television; Section 26 implementation, , 8248
Cable television systems—
Cost-of-service requirements, 40762
Major television markets; list, 3005, 39184, 42275, 45084, 45312, 53696, 62085, 62320, 68844
Program distribution and carriage agreements, 328
Rate regulation; low penetration areas elimination, 29769
Regulated cable services; addition or deletion of channels, etc., 46737
Regulated cable services; rate freeze; limited, temporary stay, 43853
Commercial programming practices, 53902, 63153
Equal employment opportunity rules and policies, 3929
Experimental, auxiliary, and special broadcast and other program distribution services; instructional television fixed service; purpose and permissible services, 12011, 26728, 52256
Financial interest and syndication rules, 4139
Reporting and recordkeeping requirements, 3002
Satellite cable programming; encryption technology, 6471
Transmission standards; enhanced closed-captioning service and ghost-cancelling reference signal transmission, 3004
Television stations; table of assignments:
California, 31686, 58833
Colorado, 38548
Florida, 46152
Kansas, 36374, 36375
Washington, 58672
Wisconsin, 4393

NOTICES

Agency information collection activities under OMB review, 550, 4699, 5729, 5989, 6282, 6399, 6636, 6965, 7139, 8276, 8760, 8955, 8956, 12965, 13264, 13492, 13600, 15498,

16191, 16533, 16833, 17399, 17893, 19434, 19668, 21724, 21725, 25835, 25987, 26138, 27285, 27569, 27729, 28018, 28404, 29220, 29581, 31030, 31203, 31521, 31713, 32355, 32674, 32944, 33095, 33937, 34263, 34584, 35457, 36410, 36688, 36963, 38125, 38377, 39025, 39205, 39811, 39812, 41787, 41788, 42545, 43353, 44341, 44342, 45338, 45492, 46641, 47138, 48367, 48658, 49301, 50362, 50925, 51824, 52311, 53203, 53204, 54357, 54591, 55069, 58552, 59034, 59265, 60023, 60024, 60444, 60856, 63577, 64308, 64585, 64767, 65595, 66360, 67410, 67793, 68644, 68910
Automated Reporting Management Information Systems (ARMIS); revision, 17588
Committees; establishment, renewal, termination, etc
Advanced Television Service Advisory Committee, 52495
Common carrier services:
Enhanced services—
Nonstructural safeguards; further cost allocation uniformity; implementation, 38568
Interstate telecommunications service between Alaska and contiguous States and Hawaii; market structure recommendation, 31204, 63345
Local multipoint distribution service, 6399
Personal communications services; industry proposals, 36963
Point-to-point microwave radio service; waiver applications denied, 6400
Postemployment benefits, uniform accounting; letter of availability, 34048
Public mobile services—
Cellular radio unserved areas applications; date and filing requirements, 12364
Phase 2 unserved area applications; new transmittal sheet, 39025
Telecommunications relay services; State certifications, 41277
Interactive video and data service; lottery, 40427
International accounting rates:
Benchmark settlement rates for Europe, Asia, and other regions, 6282
Lottery for 220-222 MHz nationwide commercial private radio land mobile channels, 9174, 26322
Meetings:
Advanced Television Service Advisory Committee, 4700, 6412, 7139, 14571, 16533, 21726, 58002
Alaska Federal-State Joint Board, 35457, 54924
Federal-State Joint Board, 59725
Network Reliability Council, 11605, 16672
Meetings; Sunshine Act, 3990, 7605, 12984, 16581, 27620, 33984, 34497, 37767, 41123, 48944, 49545, 50390, 53996, 55113, 59097, 60242, 64795
Mellon Bank stamp and receipt procedures for feeable applications; clarification, 6966
Proposed Emergency Broadcast System (EBS) technology; field testing, 7890
Public safety radio communications plans:
Alaska, 16672, 34048
Arkansas, 5730, 17399
Buffalo area, 11604
El Paso area, 11605
Florida, 40818, 51347
Hawaii, 16408, 34049, 65712
Idaho, 32133, 43354
Iowa, 11605
Kentucky, 28018, 42545
Louisiana, 40818
Minnesota, 28019, 40429
Missouri, 28019, 40429
Montana, 6790
Nevada, 6790, 32705
New Mexico, 17399, 33938
North Carolina, 43354
North Dakota, 16192, 33938
Oregon, 6791
Philadelphia area, 40819
Puerto Rico, 16672, 34049
South Carolina, 16192, 34049
South Dakota, 14571, 31030
Tennessee, 14571, 31030
Virgin Islands, 19669, 35002
Washington, DC, area, 65712
Western Pennsylvania area, 8760
West Virginia, 16408, 34050
Wisconsin, 34050
Radio broadcasting
AM broadcast stations—
Technical assignment criteria, 21455
Commercial operator license examination manager filing window, 19669
Emergency alerting systems; test results, 54358
Personal communication service; unlicensed broadband devices, 58697
Radio services, special:
Aviation services—
Additional VHF channels for aircraft use; waiver, 51080
Digital audio radio service satellite systems applications; pioneer's preference requests, 11605, 27569
Private radio application signature requirements; electronic filing trial, 48522
Rulemaking proceedings; petitions filed, granted, denied, etc., 4996, 6413, 12364, 12586, 13758, 17894, 26323, 28404, 28865, 29582, 31521, 33818, 34800, 36203, 37481, 39551, 40647, 44835, 46193, 47454, 48368, 49303, 50363, 50926, 51347, 52311, 52312, 52495, 53204, 53624, 54591, 59265, 59266, 59725, 61911, 62126, 64309, 64404, 65595, 66360, 68649
Telecommunications between United States and Cuba; applicant criteria, 46193
Television broadcasting:
Low power television and television translator filing window (March 29—April 2, 1993), 8956
Satellite cable programming; encryption technology, 26978
Travel reimbursement program; summary report, 7227, 27570, 42546, 60444
Applications, hearings, determinations, etc.:
Americom, 19434
Atkins Broadcasting et al., 7229
Bott, Richard P., II, 33819
Bryan, Darrell, et al., 47139, 54403
C. Devine Media, Inc. et al., 21726
California State University et al., 59466
Calvary Educational Broadcasting Network, Inc., 7139
Capitol Radiotelephone Inc., 51825
Cavan Communications Corp., 64309
Clanton, Raymond W., et al., 19434
Community TV of Southern California et al., 19255
Concord-Carlisle Regional School District et al., 25642
David Lee Communications, Inc., 64309
Delta Radio, Inc., 54592
DeSoto Broadcasting Corp. et al., 54592
Dolgoff, Howard B., et al., 35457
Double W, Inc., et al., 40430
DuRoss, Frank B., et al., 54592
EZ Communications, Inc., et al., 19106
Farmer, Charles A., et al., 66360
Flanders, H. Gibbs, Jr., 25643
Gaf Broadcasting Co., Inc., et al., 14571
Hilding, Eric R., et al., 19435
Huber, Martha J., et al., 14572
KB Broadcasting, Inc., et al., 50363
KR Partners et al., 25643
Land Rush Communications et al., 27730
Lehigh Valley Community Broadcasters Board of Directors et al., 13758
Local Television Associates, Inc., et al., 5391
Meredith, Stephen O., et al., 66361
Metrocomo, Inc., 35458
Moenkopi Communications, Inc., 33819
Ojeda Broadcasting, Inc., 13758
Palmetto Communications Co., 63164
Petroleum V. Nasby Corp., 34050
Pike, David, et al., 47139
Pine Tree Media, Inc., 58169
Quadras, Inc., 63164
Quality Communications, Inc., 54592
Rex Co., 33819
Richards, Richard, 36411
Ringer, David A., et al., 21580
Rivertown Communications Co., Inc., et al., 7890
Rural Initiatives for Shelter and Education et al., 13759, 18304, 19435
Sadlier-Gill, Kay, et al., 6413
Scantland, Janice M., et al., 27731
Scripps Howard Broadcasting Co. et al., 19255
Shain, Honus, 25643
Spectrum Broadcasting Co. et al., 12037
Sunkissed Broadcasting, Inc., et al., 5391
TMC Long Distance et al., 37481
Toccoa Falls College et al., 28405
Trinity Broadcasting Network et al., 37742
Trinity Broadcasting of Florida, Inc., et al., 19255
Turner County Broadcasting, Inc., 63164
Unicorn Slide et al., 5392
Union Broadcasting, Inc., 21580
VORAD Safety Systems Inc., 34585
Yates, Stephen W., 35458

Federal Contract Compliance Programs Office

NOTICES

Contracts; eligible bidders:
Layton Construction Co., Inc.; debarment, 61922

Federal Crop Insurance Corporation

RULES

Administrative regulations:
Crop insurance application; 1993 and succeeding crop years regulations, 17943
Disaster Assistance Act, 1988; implementation, 36592
Food Security Act of 1985; implementation, 17944
Fraud, misrepresentation, false claims, etc.; sanctions, 53109
Late planting agreement option; applicability to crops insured, 64872
Mutual consent cancellation criteria, 67303
OMB control numbers, 13531
Social Security account numbers and employer identification numbers collection and storage, 47203
Crop insurance; various commodities:
Hybrid seed, 67644
Sugar beets; correction, 66249
Crop insurance endorsements, etc.:
Corn, 21241

INDEX VOL 58 1993 UMI

Corn, grain sorghum, and soybeans, 3202
Corn, grain sorghum, soybeans, etc.; late and prevented planting provisions; 1994 and succeeding crop years, 67630
Forage production, etc., 33507
Rice, 33506
Wheat, barley, rye, and oats, 53393
Crop insurance regulations
Certified seed potato option, ID; 1993 crop year; exclusion, 1
Common crop insurance, 58262
Late planting agreement option and prevented planting endorsement, 64873
Nursery crop, 46073

PROPOSED RULES

Administrative regulations:
Actual production history coverage insurance program, 53150
Fraud, misrepresentation, false claims, etc.; sanctions, 37874
Crop insurance regulations
Small grains crop, 32458

NOTICES

Standard reinsurance agreement:
Termination, 68628

Federal Deposit Insurance Corporation

RULES

Apparent crimes affecting insured nonmember banks; reports, 28772
Assessments:
Bank Insurance Fund recapitalization, 31150
Correction, 3069
Risk-based assessment system, 34357
Capital maintenance:
Purchased mortgage servicing rights, 6363
Risk-based capital guidelines, multifamily housing loans; policy statement, 12149
Technical amendments, 60102
Conflict of interests, 39625
Corporate powers extension:
State savings banks; restrictions, 64460
Deposit insurance coverage; rights and capacities review, 29952, 40688
Insured state banks:
Activities and investments, 59787, 64462
Powers inconsistent with purposes of Federal deposit insurance law; CFR Part removed, 64458
Practice and procedure:
Annual independent audits and reporting requirements, 31332
Applications, authority delegations, capital maintenance, and prompt corrective action, 8210
Significant risk and equity security; definitions, 64455
Unsafe and unsound banking practices—
Brokered deposits acceptance; definitions, 54932
Real estate lending and appraisals:
Real estate lending standards; correction, 4460
Requirement exceptions in major disaster areas, 42640
Receivership rules:
Least-cost resolution of failed and failing depository institutions, 67662
National depositor preference, 43069
Truth in Savings (Regulation DD):
Advertisements soliciting deposits by State nonmember banks; CFR Section removed, 27921

PROPOSED RULES

Apparent crimes affecting insured nonmember banks; reports, 3237
Applications, requests, submittals, authority delegations, and control acquisition notices:
Merger transaction application filing, 33050
Assessments:
Bank Insurance Fund recapitalization, 17533
Capital maintenance:
Deferred tax assets limitation; insured state nonmember banks, 26701
Leverage and risk-based capital standards, 68781
Community Reinvestment Act; implementation; hearings, 44138
Community Reinvestment Act regulations, 67466
Cost, feasibility, and privacy implications of tracking deposits, 6903, 16798
Federal Deposit Insurance Act:
Safety and soundness standards, 60802
Foreign banks:
Insured State branches conducting activities not permissible for Federal branches; applications, 11992
General policy:
Deposit insurance coverage, 64521
Powers inconsistent with purposes of Federal deposit insurance law; CFR Part removed, 6448
Insured State banks:
Activities and investments, 6452, 25953
Restrictions removed, 6450
Practice and procedure rules
Applications and publication requirements, 48979
Significant risk and equity security; definitions, 26259
Unsafe and unsound banking practices—
Brokered deposits acceptance; definitions, 26705
Real estate lending and appraisals:
Threshold level, 31878, 59688
Receivership rules:
Least-cost resolution of failed and failing depository institutions, 55027
Regulatory agenda, 25304, 57302
Risk-based capital:
Interest rate risk, 48206
Correction, 52808

NOTICES

Agency information collection activities under OMB review, 4168, 7562, 12242, 13066, 13601, 14572, 19669, 21170, 27572, 32535, 42728, 42970, 45107, 48065, 55070, 61092
Coastal Barrier Improvement Act; property availability:
BEECAVE2, TX, 13066
Boot Key, FL, 29412
Chambers Tract, TX, 4168
Davis Hill Ranch, TX, 21456
Lakline Property, TX, 13066
Lohman Ford Road and Austin Boulevard Tract, TX, 33273
Prince George Joint Venture Tract, SC, 6966
Ruidoso, NM, 32355
Contracting with outside firms; policy statement, 28866
Deposits; advertising of interest and dividends; policy statement withdrawn, 28019
Federal banking and thrift agencies; capital and accounting standards differences; report to Congress, 4996
Foreclosure consent and redemption rights:
Liquidation update list, 6122, 14573, 29412, 39026, 50549, 65183
Insured depository institutions; branch closings; policy statement, 49083
Meetings; Sunshine Act, 3067, 3328, 6052, 6435, 7178, 7920, 9242, 11665, 12452, 14624, 15178, 16265, 17469, 18302, 19873, 21216, 21774, 26036, 26183, 27058, 28092, 28656, 29692, 30086, 31066, 31790, 32748, 32989, 33984, 34299, 36736, 38462, 39591, 40859, 41848, 42360, 43154, 43676, 44210, 45153, 48544, 48711, 50085, 51129, 53243, 53996, 54401, 58229, 58900, 60242, 61141, 62713, 63624, 64639, 64795, 65238, 65766, 66073, 66396, 67441
Pilot reinsurance program, 6966, 25644
Powers of attorney; issuance, 42728, 49512
Security interests in assets of insured depository institutions; treatment by FDIC as conservator or receiver, policy statement, 16833

Federal Election Commission

RULES

Advisory opinions:
Comment procedure revision, 62259
Policy statement, 59642
Contribution and expenditure limitations and prohibitions:
Transfers of funds from State to Federal campaigns; transmittal to Congress, 3474, 17967
Implementation plan change, 14310
Corporate and labor organization activity, membership association "member" definition, 45770
Effective date, 59641
Ex parte communications, 59642
Hearing, 6875, 14510
Multicandidate political committees, 42172
Effective date, 59641
Political committees recordkeeping and reporting; best efforts, 57725
Correction, 60244
Regulations and forms ratification, 59640

PROPOSED RULES

Contribution and expenditure limitations and prohibitions:
Campaign funds; conversion to personal use, 45463, 52040, 64190
Federal Election Campaign Act of 1971; compliance procedures, 36764
Multicandidate political committees, 12189
National Voter Registration Act:
National voter mail registration form, report to Congress, 51132
Political committees recordkeeping and reporting; best efforts:
Hearing, 4110, 14530
Presidential nominating conventions, publicly financed, 43046
Hearing, 52700
Rulemaking petitions:
Citizens against David Duke, 12189
Special fundraising projects and other use of candidate name by unauthorized committees, 65559

NOTICES

Committees; establishment, renewal, termination, etc.:
Clearinghouse Advisory Panel, 34435
Meetings
Clearinghouse Advisory Panel, 12966
Clearinghouse on Election Administration, 33442
Meetings; Sunshine Act, 3067, 5798, 6435, 6573, 9023, 11448, 12352, 12985, 14625, 16265, 18302, 19700, 21626, 26036, 27059, 28445, 29452, 31594, 32568, 33487, 34299, 38166, 39591, 40687, 41848, 43015, 44210, 47530, 48544, 49545, 51129, 53243, 54401, 58038, 58900, 59097, 60085, 62413, 63624, 64796, 65619

INDEX
VOL
58
1993
UMI

Special elections; filing dates:
California, 8959
Michigan, 46642
Mississippi, 8052
Ohio, 7230
Texas, 7785, 29413
Wisconsin, 12966

Federal Emergency Management Agency

RULES
Conflict of interests; CFR Part removed, 47218
Disaster assistance:
Costs eligibility, 47994
Private nonprofit facilities eligibility, 47992
Public elementary and secondary school facilities, 55021
Federal crime insurance program:
Availability; Tennessee jurisdiction list, 34919
Flood elevation determinations:
Alabama et al., 8549, 15091, 30123, 32861
Alaska et al., 19618
Arizona et al., 11540, 11544, 14325, 43806, 68046
Arkansas et al., 8551, 29121, 32857, 38305, 43805, 68039
California et al., 8553, 11542, 14323, 19617, 32859, 38083, 38303, 51016
Colorado et al., 43803
Connecticut et al., 19620, 68049
Florida et al., 68041, 68043
Georgia, 51015
Indiana et al., 51018
Kansas et al., 68044
Pennsylvania et al., 29123
Wisconsin, 30126
Flood insurance; communities eligible for sale:
Connecticut et al., 11193
Florida, 4084
Illinois et al., 16500, 52019
Indiana et al., 4082
Iowa et al., 33555
Maine et al., 19612, 29977, 51576
Minnesota, 25568
Missouri et al., 19614, 30992
Nebraska et al., 33556, 39667
New Hampshire et al., 43801
New York et al., 33558, 39669, 45062
North Carolina et al., 6096
North Dakota et al., 58969
Pennsylvania et al., 11968
Rhode Island et al., 63899
South Dakota et al., 14159, 58653
Tennessee et al., 29979
Texas et al., 9121
Vermont et al., 39671
Virginia et al., 501
West Virginia et al., 58655
Flood insurance program:
Communities eligible for sale of flood insurance; list, 67692
General provisions and insurance coverage, 62420
Organization, functions, and authority delegations:
Financial Management Office, 45061
Preparedness:
Offsite radiological emergency preparedness program; service fees, 35770
Radiological emergency planning preparedness; memorandum of understanding with NRC, 47996

PROPOSED RULES
Flood elevation determinations:
Alabama et al., 11556
Arizona, 31929, 32749
Arizona et al., 14350, 19641
Arkansas et al., 51598
Connecticut, 30133
Florida et al., 68101
Louisiana et al., 32881
Maine et al., 8568, 38333
Maryland et al., 43847
Mississippi et al., 29168
New York, 51032
Texas, 68105
Radiological emergency planning and preparedness, 41154
Regulatory agenda, 25096, 57102

NOTICES
Agency information collection activities under OMB review, 6122, 8277, 15874, 16533, 19256, 19257, 26323, 29225, 32705, 32706, 47742, 47743, 48887, 49303, 53204, 57828, 57829, 59035, 59466, 59467, 61092
Disaster and emergency areas:
Alabama, 16673, 28405, 29582
Arizona, 6798, 6969, 8277, 11235, 14210
California, 8277, 11235, 12037, 13492, 26783, 31031, 32706, 58697, 59035, 63578
Connecticut, 16673
Delaware, 6122, 16674
District of Columbia, 16674
Florida, 550, 16674, 16675, 17400, 17589, 19257
Georgia, 14210, 16675, 17400, 25647, 25835, 26783, 30050
Illinois, 38761, 39206, 39812, 41088, 42970, 44183, 44342, 44835, 46195, 46643, 50004, 51081, 52496, 52964, 58697, 60638
Indiana, 48887, 51081
Iowa, 28405, 29225, 29582, 32706, 38762, 39207, 40647, 41088, 42322, 43354, 45107, 51080, 52496, 52964, 60638
Kansas, 41088, 41278, 41788, 42322, 42323, 42549, 42970, 42971, 43115, 43355, 44183, 44342, 46194, 47140, 48065, 48888, 52108, 52963, 52964, 54593, 57603, 59035, 60638
Kentucky, 16676, 18096
Louisiana, 8278, 11235
Maine, 16676, 29583, 34051
Maryland, 16676, 18096
Massachusetts, 550, 5004, 5005, 6123, 16677
Minnesota, 35957, 38126, 38762, 39813, 40647, 44184, 44836, 46643, 47139, 52108, 52965
Missouri, 29583, 31713, 32706, 32707, 38763, 39207, 39813, 40647, 42549, 42971, 44184, 44342, 44835, 46195, 48065, 50004, 52109, 52496, 52965, 53204, 54593, 58698, 64946
Nebraska, 19670, 25835, 40647, 41278, 42549, 42971, 43115, 43355, 44343, 53205
New Hampshire, 16677
New Jersey, 550, 551, 5005, 6798, 16678, 47140, 49304
New Mexico, 34051
New York, 551, 6798, 6970, 16678, 19670, 47140
North Carolina, 16679, 28020, 29225, 49304, 51081
North Dakota, 41279, 42323, 42971, 44184, 46643, 51081, 52965, 65996
Oklahoma, 28020, 29226, 29583, 30050, 31713, 32707, 34052, 35003, 39207
Oregon, 28406, 34052, 57604
Pennsylvania, 16679
Rhode Island, 16680
South Dakota, 40648, 41264, 41279, 42550, 43632, 45107, 48066, 52966, 59467
Tennessee, 16680, 18096, 25836, 28406, 29226
Texas, 49304, 63578, 64946
Vermont, 29584, 32707
Virginia, 17400
Washington, 14211
West Virginia, 16681
Wisconsin, 38126, 38763, 39813, 40648, 42323, 42550, 43355, 45107, 46195, 48066, 52966
Emergency food and shelter national board program; list of localities funded, 13759
Environmental statements; availability, etc.:
Oakland City Administration Building, CA, 64586
Flood insurance program:
Flood map changes; fee charge system, 41089
Mortgage portfolio protection program, 15874
Write your own program; insurers' duties and obligations, 30050
Florida; Hurricane Andrew survivors; crisis counseling assistance and training; program extension, 64310
Grants and cooperative agreements; availability, etc.:
Anti-arson strategy program, 19671
Individual and family programs, and public assistance program; amounts adjustments, 52966
Hotel and Motel Fire Safety Act; national master list, 376, 6856, 11148, 17008, 26414, 31031, 34678, 40020, 45742, 51000, 57604, 62718, 68500
State contacts, 17020
Meetings:
Advisory Board, 47900, 62126
Emergency Management Institute Board of Visitors, 8053, 26783, 59467
National Fire Academy Board of Visitors, 16534, 49305
National Urban Search and Rescue Response System Advisory Committee, 28406, 68416
Offsite radiological emergency preparedness program; service fees, 65274
Privacy Act:
Systems of records, 8278, 63986
Radiological emergency planning and preparedness; regional implementation guidelines availability, 7562
Trojan Nuclear Plant, OR; offsite radiological emergency planning and preparedness discontinuation, 59468

Federal Energy Regulatory Commission

RULES
Disclosure of documents and information obtained in staff audits; interlocutory appeal denial and amending policy statement, 489, 38290
Electric utilities (Federal Power Act):
Annual charges; billing procedure revision, 15765
Annual charges, and fuel cost and purchased economic power adjustment clauses; technical amendment, 42494
Annual charges for Government lands use; fee schedule update, 54035
Approved forms; FERC-714, etc.:, 52420
New reporting requirements and conforming amendments, 65542
Special assessments; accounting and ratemaking treatment, 51217
Transmission services applications, 57735
Uniform systems of accounts; revisions to account for Clean Air Act allowances, etc., 17982
Filing fees:
Annual update, 7488, 26522
Elimination, 2968, 53654

Government ethics:
Ethical conduct principles, 7486
Natural gas companies (Natural Gas Act):
Interstate pipelines—
Facilities construction and replacement authorization; amendments withdrawn, 15418
Project cost limits under blanket certificates, 6893
Uniform systems of accounts; revisions to account for Clean Air Act allowances, etc., 17982
Natural Gas Policy Act:
Blanket marketer sales certificates; jurisdictional gas sales; denial of rehearing, 15087
Ceiling prices—
Tight formation gas qualifications for tax credit, 38528
Facilities construction and replacement, 57730
Interstate pipelines—
Facilities construction and replacement authorization; amendments withdrawn, 15418
"On behalf of" standard and blanket transportation certificates, 5595
Sales and transportation services; restructuring, 38524, 47636
Natural gas data collection system—
Electronic media; expansion of listing, 7985
Outer Continental Shelf Lands Act; implementation; open access, nondiscriminatory transportation of natural gas on OCS, 52660
Pipelines; gas supply annual report (Form 15) and gas supply and requirements report (Form 16), 26915
Rate schedule and tariff filings; form requirements; revision, 25555
Tight formation gas qualification for tax credit, 19607
Correction, 21509
Oil pipelines:
Rates; index use for setting rate ceilings, 58753
Organization, functions, and authority delegations:
Director, External Affairs Office; Freedom of Information Act requests, 62520
Hydropower Licensing Office, 51222
Practice and procedure:
Good faith requests for transmission services and good faith responses by transmitting utilities, 38964
Public Utility Holding Company Act:
Filing requirements and ministerial procedures for persons seeking exempt wholesale generator status, 8897, 11886, 21250
Correction, 25900
Regional transmission groups; policy statement, 41626
Rulemaking proceedings and petitions; termination, 51777

PROPOSED RULES

Electric utilities (Federal Power Act):
Approved forms; FERC-714, etc., 17544, 30005
Correction, 19876
Company-owned or controlled source fuel purchases; fuel cost adjustment clause regulation revision, 51259
Electricity sales-for-resale and transmission service, 519
Special assessments; accounting and ratemaking treatment, 36172
Transmission services applications, 41074
Hydropower projects:
Decommissioning after project license expires; inquiry, 48991, 59423
Hydropower licenses; reserved authority use to ameliorate cumulative impacts; policy statement, 48994, 59423
Natural Gas Policy Act:
Electronic Bulletin Boards Standards; informal conference, 14530, 15311, 19365, 25583, 27959, 32473, 41647, 48332, 58817, 59972, 60572
Filings, 37447, 53895
Outer Continental Shelf Lands Act; implementation; open access, nondiscriminatory transportation of natural gas on OCS, , 25583
Correction, 27691
Oil pipelines:
Cost-of-service filing and reporting requirements, 58817, 66310
Market-based ratemaking, 58814, 66309
Oil pipeline regulations revisions; staff proposal, 15816
Informal conference, 18185, 19215
Rates; index use for setting rate ceilings, 37671
Organization, functions, and authority delegations
Office of Hydropower Licensing, 35415
Practice and procedure:
Electronic and hard copy filing of FERC Form 580 interrogatories; treatment of responses, 63312
Electronic filing of FERC Form No. 1 and delegation to Chief Accountant, 40606
Regulatory agenda, 25314, 57312

NOTICES

Agency information collection activities under OMB review, 29813
Conduit exemption surrender:
Golden West Power, 26134
Weber Basin Water Conservancy District, 6780
Electric rate, small power production, and interlocking directorate filings, etc.:
Acme POSDEF Partners, L.P., 5718
AES Northside, Inc., 6485
Alabama Power Co. et al., 14207, 52293, 58544
Alcoa Generation Corp. et al., 33805
Arizona Public Service Co. et al., 36399
Auburndale Power Partners, L.P., 8748
Bayside Cogeneration, L.P., 58686
BCH Energy, L.P., 38752, 53190
Big Three Industries, Inc., 16660
Birchwood Power Partners, L.P., 37725, 49040
Boston Edison Co. et al., 37471, 45330, 48513, 49040
Brush Cogeneration Partners, 29814
Brush Cogeneration Partners et al., 35442
Calciner Industries, Inc., 51067
Calciner Industries, Inc., et al., 62337
Cambria CoGen Co., 13469
Camden Cogen L.P., 33267
Carolina Power & Light Co. et al., 11849, 13749, 62109
Catex Vitol Electric Inc. et al., 63338
Cedar Bay Generating Co., L.P., 33806, 53190
Central Florida Power, L.P., 5719
Central Illinois Public Service Co. et al., 60431
Cincinnati Gas & Electric Co. et al., 541
Citizens Utilities Co. et al., 47728, 47892
Cleveland Electric Illuminating Co. et al., 17580, 19876
Commonwealth Edison Co. et al., 39802, 41124
Consolidated Edison Co. of New York, Inc., et al., 60434, 64938
Coso Energy Developers, 35929
Coso Finance Partners, 35929
Coso Finance Partners et al., 49041
Coso Power Developers, 35929
Detroit Edison Co. et al., 26750
Dixie Valley, L.P., et al., 62649
Dixie Valley Ltd., L.P., 47266
Dutchess County Resource Recovery Agency, 58332
Eagle Point Cogeneration Partnership, 13469
Energy Department et al., 64736
Entergy Services, Inc., et.al., 37722
Florida Power & Light Co. et al., 19664, 21448, 43869, 45946, 50353
Florida Power Corp. et al., 29402, 31374, 33263, 48359, 57815, 57816
Freehold Cogeneration Associates, L.P., 31194
Georgia-Pacific Corp., 41459
Glen Park Associates, L.P., et al., 4157, 6167
Gordonsville Energy, L.P., 21148, 28402
Great Bay Power Corp. et al., 27719, 40417, 58332
Green Mountain Power Corp. et al., 11594
Gulf Power Co. et al., 14386
Gulf States Utilities Co. et al., 59453
HMDC Landfill Gas Energy Recovery Facility, 35931
Idaho Power Co. et al., 8264, 59455, 64299
Interstate Power Co. et al., 16657
Johnson, William W., et al., 7772
Kamine/Besicorp Allegany, L.P., 19666
Lakewood Cogeneration, L.P., et al., 26303
LG&E-Westmoreland Rensselaer, 52103
Lockhart Power Co. et al., 7218
Louis Dreyfus Electric Power, Inc., et al., 15847
Massachusetts Institute of Technology et al., 61082
Massachusetts REFUSETECH, Inc., et al., 6274
Midwest Power Systems Inc. et al., 65976
Montana-Dakota Utilities Co. et al., 50912
Montana Power Co. et al., 28399, 32659, 32927, 43100, 46163, 53927, 55062
Montaup Electric Co. et al., 29814, 31955, 34995
New England Power Co. et al., 60013, 68402
New England Power Service et al., 68887
New York State Electric & Gas Corp. et al., 65164
Niagara Mohawk Power Corp. et al., 38562, 44177, 47132
Nissequoque Cogen Partners et al., 13469
Northampton Generating Co., L.P., 33806
Northeast Utilities Service Co. et al., 4693, 49291
Northern Electric Power Co., L.P., 59720
Northern States Power Co. et al., 40635
Ohio Power Co. et al., 15330
Oklahoma Gas & Electric Co. et al., 11042
Onondaga Cogeneration Ltd., 7553
Orange Cogeneration, L.P., 49479
Pacific Gas & Electric Co. et al., 12224
PacifiCorp et al., 21149, 25900, 31194, 32346, 34251, 36664, 52748, 54340, 58729, 61903, 64736, 66354
Panther Creek Partners, 26539, 38121
Pennsylvania Electric Co. et al., 47439, 48424
Pennsylvania Power & Light Co. et al., 28002
Pioneer Energy Partners, L.P., 62337
Polk Power Partners, L.P., 37474, 49041, 51340, 52483
Pomona Cogeneration, L.P., 27546
Portland General Electric Co. et al., 41264, 61084
Potomac Edison Co. et al., 49292
Potomac Electric Power Co. et al., 33624
PSI Energy, Inc., et al., 50913
Puget Sound Power & Light Co. et al., 4159, 8266, 18209, 25824, 42537
Rochester Gas & Electric Corp. et al., 7553
Rye Patch, L.P., 33812
San Diego Gas & Electric Co. et al., 21714
Sho-Me Power Corp. et al., 13062
Southern California Edison Co. et al., 26134, 30781
Southern California Gas Co., 33806, 46638

Southern Electric Generating Co. et al., 65586
South Glens Falls Ltd., 16820
Staten Island Cogeneration Corp., 6118, 16405
Tampa Electric Co. et al., 11403, 28860, 38122, 50354
Tenaska Washington Partners, L.P., 53721
Thermo Cogeneration Partnership, L.P., 34790, 48360
Thermo Power & Electric, Inc., 16404
Tiger Bay, L.P., 51067
Tucson Electric Power Co. et al., 38366
UNIGAS Corp., 60611
Union Light Heat & Power Co. et al., 59023
Washington Water Power Co. et al., 44512
Waste Conversion Systems of Georgia, Inc., 31196
Western Resources, Inc., et al., 11223, 16527, 18304, 19239, 48643
Westmoreland-LG&E Partners, 37925
West Texas Utilities Co. et al., 18381
Wisconsin Electric Power Co., 54128
Wisconsin Electric Power Co. et al., 6391
Wisconsin Power & Light Co. et al., 8935
Wisconsin Public Service Corp. et al., 68890
Yuma Cogeneration Associates, 44812
Electric utilities (Federal Power Act):
Prior notice and filing requirements, 8748
Special assessments; accounting and ratemaking treatment, 36193, 51330
Transmission services; pricing policy; technical conference, 36400, 42726, 61684
Transmission services and responses by transmitting utilities; good faith requests; policy statement, 42725
Environmental compliance training courses, 6117, 19092
Environmental statements; availability, etc.:
Alabama Power Co., 47728, 49984, 52952
Androscoggin River, NH, 45103
Appalachian Power Co., 59249, 67783
Augusta et al., KY, 3543
B&C Energy, Inc., 33438
Bangor Hydroelectric Co., 19665, 33265, 36950
Beaver City Corp., 543
Black Creek Hydro, Inc., 57817
Blandin Paper Co., 6117, 12947
Cascade Power Co., 46954
Central Maine Power Co., 34429, 48642, 62649
Central Vermont Public Service Corp., 57992
CH2M Hill et al., 11404, 42060
Columbia Gas Transmission Corp., 65706
Columbia LNG Corp., 19411
Commonwealth Edison Co., 46954, 62111
Consumers Power Co., 18086, 18087, 48058, 59720, 64298
Contractors Power Group, Inc., 58854
Duke Power Co., 64401
Edwards Manufacturing Co., 21715, 27622
Emerson Falls Hydro, Inc., 45332
Energy Storage Partners, 18210
Energy Storage Partners, Inc., 11405
Evans, Daniel Nelson, Jr., 32929
Felts Mills Energy Partners, Ltd., 32525
Florida Gas Transmission Co. et al., 46635
Georgia Power Co., 15848, 31022
Grand River Dam Authority, 33265
Great Northern Paper, Inc., 21976, 43871
Hohman, Thomas, 50914
Idaho Power Co., 19239, 34429, 39805
Indiana Michigan Power Co., 11595
J&T Hydro Co., 65351
JDJ Energy Co.; meeting, 35929
Keck, T.A., III, et al., 53505, 62111
Kern River Gas Transmission Co., 21148
Ketchikan Public Utilities, 59250
Lansing, Michigan Water and Light Board, 50544
Liberty Pipeline Co. et al., 6394, 39012, 68891
Maine Public Service Co., 27547, 36402
Mayo Project, NC, 12947
Michiana Hydro-electric Power Corp, 53929
Minnesota Power & Light Co., 30157
Minnesota Power & Light et al., 38367
Minnesota Power Co., 33936, 37474
Montana Power Co., 66357
Nevada Irrigation District, CA, 42531
New State Electric & Gas Corp., 30046
Niagara Mohawk Power Co., 7884
Niagara Mohawk Power Corp., 48642
Nisqually Hydroelectric Project, WA, 58331
Northern States Power Co., 28957
Northwest Pipeline Corp. et al., 60430
Pacific Gas & Electric Co., 58160
Pacific Gas Transmission Co. et al., 61905
PacifiCorp Electric Operations, 34789, 47266
Potlatch Corp., 13063
Potomac Edison Co., 19807, 32929
Public Service Co. of—
New Hampshire, 60014
Public Utility District No. 1, WA, 7219
Puget Sound Power & Light Co., 36951
Rochester Gas & Electric Corp., 52293, 64402
Rumford Falls Power Co., 21976
Smith, Lawrence E., et al., 51067
Snoqualmie River Hydro, 63159
South Beloit Water, Gas, & Electric Co., 27547
South Carolina Public Service Authority, 15142
Southern California Edison Co., 17583, 25632
STS Hydropower, Ltd., et al., 51068
Tennessee Gas Pipeline Co., 54342, 67401
Turnbridge Mill Corp., 12947
Wallkill Transport Co., L.P., 64737
Washington Water Power, 19239
Washington Water Power Co., 33807
Wells Rural Electric Co., 7134
West Penn Power Co., 46635
Wisconsin Power & Light Co., 11850
Wisconsin Valley Improvement Co. et al., 26969
Wolverine Power Supply Cooperative, Inc., 19413
Yukon Pacific Co. L.P., 29403, 31701
Hydroelectric applications, 4160, 4201, 4985, 5059, 5720, 5966, 6118, 7178, 8050, 8097, 8750, 8751, 8818, 11224, 11225, 11851, 12225, 12582, 13127, 13471, 13477, 14625, 15333, 15400, 15900, 16180, 16405, 17388, 17389, 17469, 18304, 18384, 21152, 21298, 21716, 21976, 25981, 26307, 27548, 29209, 29404, 31701, 32626, 34253, 37925, 38753, 39013, 42309, 44812, 46954, 46958, 48876, 51333, 57993, 59720, 60187, 60611, 62337, 65165, 68894
Interstate natural gas pipelines, oil pipelines, and electric utilities; incentive ratemaking, 25825
Meetings:
Federal Power Act; notice and filing requirements, technical conference, 7135
Fish and Wildlife Service et al.; briefing, 26751
General Agreement on Parallel Paths, 37723
Hydropower licensing program; public outreach, 30047
Natural Gas Council, 54562
Natural Gas Pipeline Competition Task Force, 15142
Relicensing of St. Louis and Cloquet hydroelectric projects, 42060
Meetings; Sunshine Act, 3587, 6053, 7038, 7604, 9595, 11448, 12985, 13682, 15898, 16913, 19293, 21216, 22019, 26588, 27619, 28656, 29855, 30855, 32989, 33984, 34619, 36006, 37549, 40186, 47936, 50631, 51669, 52805, 55113, 58380, 59295, 60242, 61140, 62413, 65238, 66396
Memorandums of understanding:
Natural gas transportation facilities, 7884
Reclamation Bureau; non-federal hydroelectric power development; early resolution of issues; process establishment, 3269
National Register of Historic Places; programmatic agreement for managing properties, 32347
Natural gas certificate filings:
ANR Pipeline Co. et al., 19243, 21716, 28005, 60015
Arkla Energy Resources Co. et al., 6276, 17583, 46164, 62111, 64739
Black Marlin Pipeline Co. et al., 41266, 48514
Blue Ridge Pipeline Co. et al., 8936
CNG Transmission Corp. et al., 33087, 43622, 63340
Columbia Gas Transmission Corp. et al., 45103, 65167
Columbia LNG Corp. et al., 14386, 60436
El Paso Natural Gas Co. et al., 18087, 31955
Florida Gas Transmission Co. et al., 8268, 54562, 68405
Gateway Pipeline Co. et al., 26753
High Island Offshore System et al., 5366, 7774
Iroquois Gas Transmission System, Inc., et al., 5718
Kern River Gas Transmission Co. et al., 64569
KN Wattenberg Transmission Ltd. Liability Co. et al., 64568
Koch Gateway Pipeline Co. et al., 68896
Mississippi River Transmission Corp. et al., 65588
Mojave Pipeline Co. et al., 17224, 61085
Montana Power Co. et al., 53190
National Fuel Gas Supply Corp. et al., 11405, 62649, 64939, 65978
National Pipeline Co. et al., 48644
Natural Gas Pipeline Co. of America et al., 16529
Northern Natural Gas Co. et al., 13589, 15339, 33807, 68407
Northwest Pipeline Corp. et al., 5969, 37723
Ozark Gas Transmission System et al., 35443, 57817
Panhandle Eastern Pipe Line Co. et al., 40637
Questar Pipeline Co. et al., 30045
Southern Natural Gas Co. et al., 15863
Tennessee Gas Pipeline Co. et al., 4694, 6486, 48880
Texas Eastern Transmission Co. et al., 54343
Texas Eastern Transmission Corp. et al., 543, 4160, 6167
Texas Gas Transmission Corp. et al., 11044, 64301
Trunkline Gas Co. et al., 68897
United Gas Pipe Line Co. et al., 25826, 44179
Williams Natural Gas Co. et al., 7220, 7554, 11855, 26755, 62668
Natural gas companies (Natural Gas Act):
Natural gas data collection system—
Certificate applications; instructions, record formats, software and user/operations manual, 21565
Edit-checking software for FERC Form No. 2; availability, 18390
Interstate pipelines marketing affiliates; record formats and hardcopy filing requirements, 7773
Natural gas rate application filings; software, filing instructions and formats and user/operations manual; availability, , 8754
Underground gas storage report (FERC Form No. 8); filing instructions; revision, 8270
Natural gas gathering services performed by interstate pipelines and affiliates; service rates, terms, and conditions; public conference, 59250

INDEX
VOL 58
1993
UMI

Natural Gas Policy Act:
Natural gas data collection system—
Certificate applications; instructions, record formats, software and user/operations manual, 21565
Edit-checking software for FERC Form No. 2; availability, 18390
Electronic filing record formats and edit checks for FERC Form Nos. 2 and 2A; availability, 68897
Interstate pipelines marketing affiliates; record formats and hardcopy filing requirements, 7773
Natural gas rate application filings; software, filing instructions and record formats and user/operations manual; availability, 8754
Software for the FERC Form No. 2-A, 11595
Natural gas industry; electronic bulletin boards standards, 6485
Self-implementing transactions, 5367, 9155, 15849, 19807, 32929, 36666, 43871, 49480, 54564, 62651
State jurisdictional agencies tight formation recommendations; preliminary findings—
Arkansas Oil & Gas Commission, 58333
California Oil and Gas Division, 6119, 37929
California Oil, Gas and Geothermal Resources Division, 59025
Colorado Oil and Gas Conservation Commission, 6628, 6780, 52953
Kansas State Corporation Commission, 6628, 7776, 31706, 63159
Land Management Bureau, 6118, 12948, 13752, 30046, 32660, 33266, 33809, 35445, 38753, 39018, 40639, 40804, 41269, 41744, 41745, 42318, 42961, 44670, 44814, 45884, 45885, 47441, 48058, 48361, 48880, 49984, 53929, 57819
Louisiana Natural Resources Department, 4986, 8754, 17585, 18090, 19413, 27555, 29214, 31196
New Mexico Energy Department Oil Conservation Division, 8589
North Dakota Industrial Commission, 14388, 16406, 19820, 57820
Oklahoma Corporation Commission, 4986, 27274, 28957, 29215, 31376, 31957, 39018, 39019, 39538, 39805, 41087, 41124, 52955, 53505, 53929, 53930, 64301
Tennessee Oil & Gas Board, 58687
Texas Railroad Commission, 3945, 4986, 6119, 6278, 6629, 6781, 7135, 7219, 7220, 7885, 7886, 8269, 11406, 11407, 11596, 11597, 13256, 13483, 13484, 13756, 14566, 14567, 15865, 16189, 18090, 19413, 21449, 21567, 21717, 25633, 27275, 28006, 28957, 31514, 32112, 34040, 34041, 35444, 37728, 37930, 38368, 38566, 43886, 43887, 44670, 44670, 48516, 49495, 52104, 53930, 60615, 60853, 61907, 63159
Wyoming Oil and Gas Conservation Commission, 6278, 6486, 11597, 16406, 25827, 26312, 37730, 39538, 53192
Organization, functions, and authority delegations:
Secretary et al., 21977
Post-employment benefits other than pensions; policy statement; availability, 53505
Preliminary permits surrender:
B. Everett Jordan Hydro Associates, 45332
Clinton Pumped Storage Corp., 28957
Contractor's Power Group, Inc., 19820
Cowlitz Basin 3, L.P., 38123
Cowlitz Basin 6, L.P., 39806
Cowlitz Basin 8, L.P., 39806
Cowlitz Basin 9, L.P., 39806
Farmers Co-operative Irrigation Co., Ltd., 26313
H&G Power Co., 44181
Hammond Hydroelectric Co., 19820, 65351
Ida-West Energy Co., 65168
Iowa Hydropower Development Corp., 31707, 31708
Keiser, Michael L., 44181
Lewis Basin 2, L.P., 49496
Lewis Basin 6, L.P., 39806, 41124
Ochoco Irrigation District, 61907
Ohop Mutual Light Co., Inc., 60615
Russell Canyon Corp., 18391
Savannah Hydro Associates, 45333
Sunset Falls, L.P., 49496
Wayne County Water Conservancy District, 11597
Senior Executive Service:
Performance Review Board; membership, 37930
Transmission service applications; new docket prefix, 6631
Applications, hearings, determinations, etc.
Adirondack Hydro Development Corp., 67401
AES San Nicolas, S.A., 28007
Alabama Power Co., 58161
Alabama-Tennessee Natural Gas Co., 7135, 12948, 13484, 16532, 17883, 18212, 19244, 19820, 21299, 27275, 32112, 32113, 38753, 42060, 49496, 51625, 59254
Algonquin Gas Transmission Co., 545, 3543, 6629, 7556, 8050, 8939, 27275, 27276, 27555, 27556, 27721, 28567, 28958, 32113, 32942, 33267, 36402, 41745, 44666, 47267, 47894, 48059, 50355, 51339, 52749, 52750, 53193, 53721, 57999, 59025, 59255, 59721, 60438, 60615, 61684, 61729, 61907, 63159, 64740, 64940, 65168, 65589
Algonquin Gas Transmission Co. et al., 8938, 8939
Algonquin LNG, Inc., 25828, 58333
Algonquin LNG, Inc., et al., 8938
Allegheny Power Service Co., 41460
Allegheny Power Service Corp., 61684
American Electric Power Service Corp., 38754
American Municipal Power-Ohio, Inc., 58161
American REF-FUEL Co., 8756, 17227
ANR Pipeline Co., 3543, 3945, 4164, 7136, 8270, 8271, 16660, 18212, 25828, 26969, 26970, 27556, 29404, 30157, 32114, 33267, 34576, 37724, 37725, 41270, 41271, 42061, 44514, 45886, 46165, 52750, 52953, 53193, 59026, 59457, 60854, 61907, 64741, 64940, 65979
ANR Pipeline Co. et al., 49985, 51340, 59025
ANR Storage Co., 8756, 44814, 44815
Aquila Energy Marketing Corp. et al., 43887
Arizona Public Service Co., 34430, 39806, 44667, 45333
Arkansas Western Pipeline Co., 28567
Arkla Energy Resources, 49295
Arkla Energy Resources Co., 3945, 5387, 6629, 7556, 8589, 8756, 12949, 13063, 13257, 15493, 17585, 19245, 26970, 27276, 27557, 27721, 29404, 30047, 30783, 31196, 31376, 31514, 31515, 32527, 33088, 33625, 34258, 36952, 37930, 39538, 40125, 47267, 48059, 49985, 52751, 52953, 59721, 60194, 60616, 63160, 63343, 68140, 68898
Arkla Energy Resources Co. et al., 25633, 48882
Arkla Gathering Services Co., 58333
Bay Gas Storage Co., Ltd., 54579
Bedford, VA, et al., 34576
Belize Electric Co., Ltd., 25828
Big Sandy Gas Co. et al., 31376
Birchwood Development Corp. et al., 21451
Black Creek Hydro, Inc., 43626
Black Hills Corp., 52294
Black Marlin Pipeline Co., 7556, 34041, 37475, 43626, 47267, 47731, 64940
Blue Diamond Power Partners L.P., 41745
Blue Lake Gas Storage Co., 12582, 15142, 44815, 58855
Blue Mountain Power, L.P., 12949
Bonners Ferry, ID, 31022
Bonneville Power Administration, 42061, 52294, 59255, 60194
Boston Edison Co., 4986, 19413, 27722, 39807, 44667, 51068, 58546
Boundary Gas, Inc., 40125, 58687
Bridgeline Gas Distribution Co., 8589, 9171
Brooklyn Energy L.P., 64402
Burlington, VT, et al., 30783
Calciner Industries, Inc., 54129
Cambridge Electric Light Co., 47268, 54129
Canadian Association of Petroleum Producers et al., 27276
Canyon Creek Compression Co., 47731
Caprock Pipeline Co., 26970, 48060
Carnegie Natural Gas Co., 546, 7557, 12949, 18091, 26971, 27557, 27722, 31958, 32527, 32660, 33809, 34259, 34996, 35930, 36952, 37725, 40418, 40804, 47441, 47731, 47732, 57821, 60439, 61086, 65351
Carnegie Natural Gas Co. et al., 48060
Central Louisiana Electric Co., Inc., 15866, 17394
Central Maine Power Co., 7136, 41745
Central Maine Power Co. et al., 6278, 31022, 31196
Central Termica Alto Valle S.A. et al., 26314
Central Termica San Nicolas, S.A., 28007
Central Vermont Public Services Corp., 12950
Century Power Corp., 12950, 16532, 16660, 32347
Chandeleur Pipe Line Co., 47732, 52481
Chanute, KS, et al., 46165
Chapman, Hugh M., 45333
Chevron Pipe Line Co., 31023
Chevron U.S.A. Products Co., 42541
Cincinnati Gas & Electric Co. et al., 38368, 40805, 50915
Citizens Power & Light Corp., 28007, 53721, 67402
Citizens Utilities Co., 32661, 33438, 39539, 44514, 54579
Clarke Generating Co., L.p., et al., 27547
Clayton et al., DE, 31515
Clearfield Partners, L.P., 17881
Cleveland, OH, et al., 36403
CNG Transmission Corp., 7557, 7558, 8939, 11226, 12031, 12032, 13257, 14567, 15493, 15866, 16660, 17585, 17586, 18091, 19413, 26313, 27277, 29405, 29573, 32527, 34259, 34577, 35445, 35930, 44664, 47134, 47268, 47894, 48060, 50544, 53930, 59256, 59457, 64741, 68140
Colockum Transmission Co., Inc., 48646
Colorado Interstate Gas Co., 6630, 12032, 18211, 29405, 32348, 32943, 39807, 40126, 42318, 47268, 51625, 52296, 53194, 59256, 60854, 62113, 64940, 69357
Columbia Energy Services Corp, 39019
Columbia Gas Transmission Corp., 3543, 6781-6782, 7558, 7776, 8939, 12950, 13257, 14567, 17884, 19820, 21299, 27557,

INDEX
VOL 58
1993
UMI

28861, 29215, 31197, 31376, 32114, 36403, 36678, 37726, 41271, 43345, 43626, 44667, 47134, 47895, 48883, 52296, 52481, 58334, 59026, 59457, 60018, 60194, 60195, 60439, 64941, 65589
Columbia Gas Transmission Corp. et al., 3272, 41087, 54579, 60616, 64570, 64741
Columbia Gulf Transmission Co., 6630, 31023, 33810, 37726, 47895, 50544, 64742
Columbia LNG Corp., 29215, 31197
Connecticut Light & Power Co., 41460
Connecticut Yankee Atomic Power Co., 3018
Consolidated Edison Co. of New York, Inc., 28007, 39539
Consolidated Water Power Co., 16189, 40805, 43101
Consumers Power Co., 5388, 12951, 32661, 58161
Corpus Christi Transmission Co., a Limited Partnership, 63573
Crown Energy, L.P., 13756
CRSS Capital Cogeneration, Inc., 47135
CSW Nevada, Inc., 47135
Daggett Leasing Corp. et al., 29816
Dakota Gasification Co., 19821
DC Tie, Inc., 12032, 30157
Delano Energy Co., Inc., 65707
Delhi Gas Pipeline Corp. et al., 26756
Delmarva Power & Light Co., 3018, 45333
Diamond Energy Inc., 16819
DLS Energy, Inc., 46964
Dominion Management Argentina S.A., 30158, 41760
Dow Intrastate Gas Co., 33625
Duke Power Co., 27722
East Bench Irrigation District, 47132
Eastern Shore Natural Gas Co., 346, 7136, 12951, 15866, 18212, 18213, 26313, 26971, 36404, 37727, 40126, 47135, 47136, 47268, 49985, 59457, 64303, 64941
East Tennessee Natural Gas Co., 12951, 15866, 18213, 27722, 31197, 32114, 33810, 34997, 47732, 47895, 49497, 52751, 54130, 57821, 57822, 61685, 64941
Edison Electric Institute et al., 57591
Electric Energy, Inc., 52954, 53930, 61685
Elm Energy & Recycling Ltd., 17227
El Paso Electric Co., 32528
El Paso Electric Co. et al., 60616
El Paso Natural Gas Co., 3272, 3544, 3945, 6120, 6279, 7886, 8590, 11597, 13485, 15867, 17884, 19245, 26539, 27557, 27558, 29574, 31198, 32661, 38754, 47733, 49295, 52751, 52953, 58162, 58334, 59256, 60617, 64742, 64743, 64744
El Paso Natural Gas Co. et al., 26314
Energy Alternatives of North America, 16190
Enron Gas Storage Co., 63573
Enron Milford Operating Corp., 12951
Enron Power Marketing, Inc., 65707
Entergy Power, Inc., 28958, 30158
EPZ 93–1 Trust, 60617
Equitrans, Inc., 3545, 7558, 11226, 13064, 18213, 19245, 21452, 27277, 33810, 36952, 36953, 39019, 43627, 44667, 46636, 46963, 47896, 50356, 51626, 53508, 59458, 60018, 61086, 61087, 64742
EUA Power Corp. Official Bondholders' Committee, 31958
Field Gas Gathering Inc., 54580
Florida Gas Transmission Co., 3545, 6120, 9171, 13064, 13485, 16190, 19245, 27723, 29405, 32114, 32115, 36679, 36953, 39019, 39540, 41272, 42318, 45333, 47733, 47896, 51626, 54130, 57822, 57999, 60439, 64744, 67402, 68140
Florida Municipal Power Agency, 31515
Florida Municipal Power Authority et al., 38123
Florida Power & Light Co., 6631, 17884, 53721, 63160
Florida Power Corp., 12032, 58162
Forsyth, GA, 58687
Four Rent, Inc., 60440
Frontier Gas Storage Co., 18214, 27723, 46964, 60617
Gas Company of New Mexico, 3547
Gasdel Pipeline System, Inc., 47269
Gas Research Institute, 33626
Gas Transport, Inc., 31376
Gateway Pipeline Co., 47896, 51068
Genesee Power Station, L.P., 66358, 67783
Georgia Power Co., 43627
Glen Park Associates L. P., 11047
Granite State Gas Transmission, Inc., 546, 3273, 3545, 5719, 8940, 15142, 17227, 26315, 27558, 29574, 31198, 33267, 33439, 34997, 36404, 36679, 36680, 36954, 48883, 49041, 67402, 67783, 68141
Great Bay Power Corp., 17586, 34430, 34998
Great Lakes Gas Transmission L. P., 14567, 15867, 16820, 17586, 17885, 25633, 29405, 34577, 42532, 47441, 47733, 64745
Great Northern Paper, Inc., 46636
Gulf States Pipeline Corp., 47442
Gulf States Transmission Corp., 59721
Gulf States Utilities Co., 47269
Hamilton, OH, et al., 34577
Haralson Generating Co., L.P., 47269
Hardee Power Partners Ltd., 41460, 51068
Heber Light & Power Co., 52954
Hidroelectrica Cerros Colorados S.A., 38564
Hidroelectrica El Chocon S.A., 42318
High Island Offshore System, 3546, 6120, 7887, 14568, 29406, 31377, 33268, 35930, 36954, 42532, 47442, 61908
HNG Sulphur Mines Co., 49042
Hope Gas, Inc., et al., 43887
Humble Gas Pipeline Co., 48361
Idaho Power Co., 7136, 28861, 34578, 52954, 58546
Illinois Power Co., 11047, 46964
Indiana Generating Co., L.P., 46965
Indiana Michigan Power Co. et al., 34431
Indicated Shippers et al., 4696
Inland Gas Co., Inc., 34042
InterAmerican Energy Leasing Co., 7776, 29574
Iowa Electric Light & Power Co., 34431, 54347
Iowa-Illinois Gas & Electric Co., 51069
Iowa Southern Utilities Co., 34431, 44668, 51069, 68141
Iroquois Gas Transmission System L.P., 33626, 40419, 47734, 50915, 52954, 64572, 64573, 64745
Jersey Generating Co., L.P., et al., 12226
JMC Ocean State Corp., 8050
Jupiter Energy Corp., 47734
Kansas Gas & Electric Co., 59458
Kansas Gas Electric Co., 30784
KansOk Partnership, 68899
Kentucky Utilities Co., 5724, 41087
Kentucky West Virginia Gas Co., 3946, 13064, 13485, 16661, 19246, 27278, 37930, 47734, 64745
Kern River Gas Transmission Co., 5724, 13486, 17586, 32348, 64941
KN Energy, Inc., 7559, 11598, 11858, 12226, 17886, 19246, 27559, 29406, 30783, 33439, 36404, 36955, 38124, 40126, 43345
KN Interstate Gas Transmission Co., 49296, 61685, 64942
KN Wattenberg Transmission Limited Liability Co., 28008, 31024
Koch Gateway Pipeline Co., 47897, 48362, 48884, 49497, 51626, 52482, 52752, 58855, 60618, 63160
Lakewood Cogeneration, L.P., 42725
Las Vegas Energy Storage, L.P., 36680, 38813
Lewes, DE, et al., 44668
LFC Gas Co. et al., 44514
LG&E Power 20 Inc., 8940
LG&E Power Generation, L.P., 46636
Liberty Pipeline Co. et al., 6120
Louis Dreyfus Electric Power Inc., 59722
Louisiana Natural Gas Pipeline Inc., 15143
Louisiana-Nevada Transit Co., 7887, 52955
Louisiana State Gas Corp., 33626
Louisville Gas & Electric Co., 12952
Maine Public Service Co., 40805
Malacha Hydro Ltd., 6397, 21162
Massachusetts Electric Co., 25985, 26540
Massachusetts REFUSETECH, Inc., 9171
McCormick, William T., Jr., 34998
Mechanicville Corp., 28008
Meridian Oil Inc., 29406
Metropolitan Dade County, FL, et al., 32528
MG Electric Power Inc., 43627, 59458
Michigan Gas Storage Co., 29407, 41460, 43102
MidCon Texas Pipeline Corp., 19246
Mid Louisiana Gas Co., 7559, 11227, 27559, 29816, 37727, 39020, 40126, 48060
Midwestern Gas Transmission Co., 5725, 13486, 32115, 47897, 57999, 64746, 64942
Midwest Gas Storage Co., 49497
Midwest Power Systems, Inc., 16820, 57594
MIGC, Inc., 13257, 46637, 47734, 52482
Milford Power L. P., 12952, 14568
Minnesota Municipal Power Agency, 58546, 61087
Mississippi River Transmission Corp., 3546, 4986, 7559, 12952, 17886, 18091, 18214, 19247, 19666, 21300, 25828, 27560, 28958, 30158, 32116, 33268, 36680, 43346, 43347, 47442, 47735, 51627, 52297, 54130, 59722, 64746
Missouri Public Service Division of UtiliCorp United Inc. et al., 59026
Mitex, Inc., 26315
Mobile Bay Pipeline Co., 49498
Mojave Pipeline Co., 7887, 64942, 65979
Montana Power Co., 5388, 27560, 38565, 67402
Montaup Electric Co., 46637
Montenay Montgomery, L.P., 38565, 45334, 61686, 66358
Moraine Pipeline Co., 52104
Moraine Pipeline Co. et al., 32116
Muddy River, L.P., 47136
Multitrade, L.P., 31959
Multitrade of Pittsylvania County, L.P., 15868
Murphy Exploration & Production Co., 52104
Naheola Power, Inc., 47136
National Electric Associates L.P., 30158
National Fuel Gas Supply Corp., 3946, 6121, 12952, 18092, 19821, 25829, 26971, 27724, 29216, 32116, 32662, 36955, 41272, 41760, 43627, 44181, 47736, 48885, 52297, 53194, 59722, 60017, 64303, 64573, 68408
Natural Gas Pipeline Co. of America, 6487, 12953, 17587, 19821, 27724, 27725, 28861, 29216, 31708, 33268, 34042, 35931, 40127, 40639, 41461, 47269, 47735, 52482, 57594, 60854, 63160, 63161, 64746, 64747
Natural Gas Pipeline Co. of America et al., 49986
Natural Gas Processing Co. et al., 11227

Nebraska Gas Transport Co. et al., 42061, 43103
Nekoosa Papers, Inc., 43102, 43103
Nevada Cogeneration Associates no., 47270
Nevada Power Co., 58546
New England Power Co., 547, 17227, 32662, 60618
New England Power Service Co., 27725, 34578
New York State Electric & Gas Co., 41461
Niagara Mohawk Power Corp., 32662, 34431, 34432, 39807, 52752
Niagara of Wisconsin Paper Corp., 40806
Nora Transmission Co., 47271, 47736, 48885
Nordic Power of Southpoint I, L.P., 47442
North Atlantic Energy Corp., 41273
Northeast Utilities Service Co., 17394, 34432, 39808, 41269, 41461
Northern Border Pipeline Co., 16820, 30158, 32117, 54580, 63573, 68141
Northern Electric Power Co., L.P., 36194, 64403
Northern Illinois Gas Co., 33627
Northern Mindanao Power Corp., 59459
Northern Natural Gas Co., 548, 3547, 7137, 7888, 8940, 12033, 12227, 16532, 17886, 17887, 19247, 26540, 27725, 27726, 30159, 30784, 31377, 31708, 34042, 36405, 37727, 39807, 42319, 43628, 44668, 44815, 47737, 48362, 48885, 49042, 50356, 52298, 52753, 52754, 53194, 53508, 57822, 59257, 60440, 60441, 60619, 61686, 61908, 63574, 64747, 65352, 67403
Northern Natural Gas Co. et al., 57594
Northern States Power Co., 5388, 13486, 18391, 26541, 28008, 40806, 46637
Northern States Power Co. et al., 25985, 34432
North Penn Gas Co., 5725, 13486
Northwest Alaskan Pipeline Co., 30159, 54580, 57823, 63161
Northwestern Wisconsin Electric Co., 58163
Northwest Pipeline Co., 34043, 40639
Northwest Pipeline Corp., 346, 548, 3273, 3274, 4987, 6279, 7223, 8941, 12953, 13487, 16661, 21300, 27560, 27726, 28008, 28959, 31198, 31199, 31515, 32117, 33088, 33811, 35445, 36680, 36955, 37475, 38566, 38813, 43347, 43888, 46637, 46965, 47443, 47737, 49498, 49986, 49988, 50356, 52297, 54581, 57823, 59027, 64748, 64943, 301509
NW Energy (Williams Lake) L. P., 8051, 16406, 17394
Ocean State Power et al., 48647
Odgen Haverhill Associates, 6279, 17587
Ohio Edison Co., 45334
OkTex Pipeline Co., 43628, 51070
Old Dominion Electric Cooperative, 13487
Olson Electric Development Co., Inc., 34259
Orange & Rockland Utilities, Inc., 18391
Oswego, NY, 12227
Overthrust Pipeline Co., 47443
Ozark Gas Transmission System, 16190, 34259, 47737, 58000
Pacific Gas & Electric Co., 62669
Pacific Gas Transmission Co., 3946, 16660, 27727, 32529, 34998, 35932, 37728, 38369, 45885, 45886, 47136, 47443, 49990, 50545, 52483, 52755, 54581, 57823, 64943
Pacific Interstate Offshore Co., 21978, 47738
Pacific Offshore Pipeline Co., 21718
PacifiCorp, 32663, 33269
Paiute Pipeline Co., 12953, 15143, 16661, 21718, 28862, 44668, 48061, 57595
Pan-Alberta Gas (U.S.) Inc., 31377, 54581
Panhandle Eastern Pipe Line Co., 548, 3947, 5725, 6631, 7777, 11227, 11598, 13258, 15868, 15869, 18092, 19414, 21300, 26972, 27561, 30046, 32348, 36194, 36956, 37930, 38755, 43347, 44515, 45886, 47738, 47897, 49043, 50545, 51815, 52105, 52755, 52955, 53509, 58688, 58689, 61686, 62113, 64749
Panhandle Eastern Pipe Line Co. et al., 33440
Panhandle Gathering Co., 38369
Pan Pacific Hydro, Inc., 11598
Pemberton Power L. P., 17228
Pennsylvania Electric Co., 45334
Pennsylvania Power & Light Co., 27727, 44669
Penn-York Energy Corp., 44668
Pepperell Power Associates, L.P., 41462
Petal Gas Storage Co., 63161
Philadelphia Electric Co., 33811, 46966
Phillips Gas Pipeline Co., 15869
Phillips Petroleum Co. et al., 42062
PJM Interconnection Agreement, 51070
Polk Power Partners, L.P., 52483
Portland General Electric Co., 26315, 30160, 34432, 54131
Potomac Edison Co., 45335
Potomac Electric Power Co., 45335
Potomac Electric Power Co. et al., 28008
Providence Gas Co., 15143
PSI Energy, Inc., 34433, 48647, 51070
Public Service Co. of—
Colorado, 13065, 15869, 17394, 21162, 46966
New Hampshire et al., 51340
New Mexico, 33088, 51070
Public Service Electric & Gas Co., 18391, 21162, 43628
Public Service Electric & Gas Co. et al., 6782
Public Works Board of Lewes, DE, et al., 34576
Puget Sound Power & Light Co., 18391, 33089, 33811, 46966
Questar Pipeline Co., 7560, 8941, 11598, 18214, 27278, 33627, 38369, 42319, 45335, 47738, 50545, 52298, 59459, 60195, 63574, 64573
Raton Gas Transmission Co., 16662, 52298
Rayburn Country Electric Cooperative, Inc., 13065, 13488
Red Lake Energy Partners, 46966
Rhodes, James T., 34578
Richfield Gas Storage System, 15144, 18392, 46638, 59027
Rochester Gas & Electric Corp., 31709
S.D. Warren Co., 346
Sabine Pipe Line Co., 19248, 47271, 52299
Sacramento Municipal Utility District et al., 44669
San Diego Gas & Electric Co., 3548
San Diego Gas & Electric Co. et al., 60196
Seagull Shoreline System, 25829
Sea Robin Pipeline Co., 3548, 13258, 25633, 40127, 47898, 58000, 58689, 59459
Shell Western E&P Inc. et al., 62669
Sinclair Oil Corp., 60441
Sonat Marketing Co., 36195
South Brunswick CoGen, L.P., 15493
South Carolina Electric & Gas Co., 25829, 27060, 32663
South Carolina Generating Co., Inc., 9172
Southeastern Power Administration, 41273
Southern California Edison Co., 27727, 52956, 53509, 60619
Southern California Gas Co. et al., 3549
Southern California Utility Power Pool et al., 49499
Southern Companies Services, Inc., 50546
Southern Company Services, Inc., 16406, 50915
Southern Electric Wholesale Generators, Inc., 11858
Southern Illinois Power Co-operative, 50546
Southern Natural Gas Co., 7888, 11051, 16662, 18214, 19822, 21162, 27561, 27727, 28959, 29407, 31960, 34998, 47444, 62114, 64749, 65352
Southern Natural Gas Co. et al., 12954
South Georgia Natural Gas Co., 26972, 27561, 42063, 47271, 53194, 58001, 65352, 68899
Southwestern Electric Power Co., 34432
Southwestern Electric Power Co. et al., 48647
Southwest Gas Corp., 16662
Steuben Gas Storage Co., 44815
Stingray Pipeline Co., 38565, 44669, 45553, 47738
Sumas International Pipeline Inc., 32663, 50546, 52299
SunShine Interstate Transmission Co., 32118, 67403
Superior Offshore Pipeline Co., 7137, 21718, 25829, 45885, 54582
Swift Creek Power Co., Inc., 40806
System Energy Resources, Inc., 57824
Tampa Electric Co., 4429, 16663, 27728, 45335
Tarpon Transmission Co., 26316, 26972, 26973, 47272
TCPL Power Ltd., 8941
Tenaska Washington Partners II, L.P., 46967
Tenneco Power Generation Co., 46638
Tennessee Gas Pipeline Co., 6782, 7560, 8941, 12954, 16532, 16821, 18304, 19152, 25829, 26316, 26973, 28009, 30160, 31960, 32118, 33812, 34260, 34578, 35932, 37728, 37729, 38124, 38755, 40419, 43104, 43628, 43629, 43888, 44515, 44816, 46166, 47898, 48647, 49296, 49991, 50357, 51815, 51816, 53195, 58855, 59257, 61908, 64750, 64943, 65708, 68142, 68899
Tennessee Gas Pipeline Co. et al., 63933
Tennessee Natural Gas Co., 11858
Tenpeak Corp., 34433, 44334
Texaco Cortez Energy Co., 47272
Texas Cogeneration, L.P., 58335
Texas Eastern Transmission Corp., 3549, 3947, 5388, 7137, 7223, 7777, 7888, 8942, 11228, 13488, 14568, 14569, 16663, 21301, 25900, 26541, 27562, 29408, 31377, 31961, 32119, 32120, 32349, 36681, 36956, 37729, 42319, 43348, 43629, 44181, 44334, 44516, 44816, 47272, 47444, 47445, 48061, 48362, 49991, 51071, 51627, 52105, 52483, 52755, 52756, 53195, 53196, 54583, 54584, 58335, 59257, 59258, 59460, 60441, 60442, 60443, 60619, 60854, 62670, 64574, 64750, 65590, 65708, 69358
Texas Eastern Transmission Corp. et al., 69359
Texas Gas Transmission Corp., 3274, 3550, 5725, 11228, 13488, 18092, 18215, 26973, 27278, 27279, 29816, 30047, 36405, 36681, 37729, 37730, 38124, 38565, 39540, 41462, 45885, 47445, 47898, 48062, 50357, 52300, 53509, 59259, 64751
Texas Gas Transmission Corp. et al., 59027
Texas-New Mexico Power Co., 33089, 68408
Tex-La Electric Cooperative of Texas, Inc., 6632, 9172, 11858
Toledo Edison Co., 18392
Tomahawk Power & Pulp Co., 43104
Trailblazer Pipeline Co., 3550, 32529, 47738
Trans Alaska Pipeline System, 61686
Transcontinental Gas Pipe Line Corp., 346, 549, 3274, 4429, 5726, 7138, 11228, 12954,

12955, 12957, 13259, 13489, 14569, 15493, 15494, 16190, 16663, 19092, 21718, 26313, 26774, 28862, 29408, 29816, 32348, 32663, 32664, 32943, 33089, 33440, 33812, 34999, 36956, 36957, 37730, 41273, 43630, 44516, 45336, 45887, 46166, 47137, 48062, 50357, 51341, 51628, 52956, 54584, 58336, 60017, 60443, 60619, 61088, 62114, 62342, 62670, 64304, 64751, 64944, 67784, 68900
Transcontinental Gas Pipe Line Corp. et al., 29408
Transok, Inc., 59028, 67784
Transwestern Pipeline Co., 3551, 5726, 7778, 8942, 12955, 25830, 29216, 33627, 33813, 34579, 40419, 44183, 44335, 47898, 47899, 49992, 51627, 58689, 60620, 64574, 69359
Transwestern Pipeline Co. et al., 39540
Trunkline Gas Co., 4429, 5387, 7560, 7778, 8942, 8943, 11599, 17228, 17587, 18092, 19248, 27562, 27728, 32529, 34790, 44516, 47899, 50358, 51341, 52956, 62114, 62115, 64752, 68900
Trunkline Gas Co. et al., 33440, 48886, 52756, 61687
Tulsa Metropolitan Utility Authority, 11859
Turlock and Modesto Irrigation Districts, 347
Tuscarora Gas Transmission Co., 49992
UC Operating Services, 46638, 54131
Union Electric Co., 12956, 30160
Union Pacific Fuels, Inc., et al., 51628
United Gas Pipe Line, 52484
United Gas Pipe Line Co., 5389, 8271, 8756, 14208, 17887, 26974, 31024, 33441, 33813, 36957, 38755, 39020, 46167
United Illuminating Co., 41462, 61687
UtiliCorp United Inc., 27728
U-T Offshore System, 3551, 16821, 29408, 36406, 46167, 47446, 61688
Valero Interstate Transmission Co., 6121, 7560, 18215, 31199, 43104, 47739, 59259
Vermont Yankee Nuclear Power Corp. et al., 19666
Viking Gas Transmission Co., 13259, 31378, 36406, 48062, 52756, 64752, 68900
Vista Energy, L.P., 13756
Washington Water Power Co., 30160, 33269
WEL Energy Group Limited, 8943
Western Area Power Administration, 12956, 34999, 40127
Western Gas Interstate Co., 3947, 7889, 8943, 31709, 32529, 34790, 48062
Western Gas Resources Storage, Inc., 67784
Western Resources, 49297
Western Resources, Inc., 7138, 44669, 48647, 48648, 60620, 64305
Western Resources, Inc., et al., 53510
Western Systems Power Pool, 34043, 47899
Westmoreland-LG&E Partners, 36957
West Texas Gas, Inc., 9172, 14569, 32530, 33270, 43349, 64944
West Texas Utilities Co., 43630, 45336
Weyerhaeuser Paper Co., 44335
Wheeling, John J., et al., 48362
Williams Gas Processing-Wamsutter Co., 28863
Williams Natural Gas Co., 13259, 15869, 21452, 25830, 26316, 26974, 28567, 28828, 28862, 31378, 33270, 34043, 34260, 35000, 36406, 37730, 38370, 39808, 41462, 42063, 44335, 44517, 45336, 47739, 48063, 48516, 49993, 53197, 58001, 58690, 64944, 65590
Williams Natural Gas Co. et al., 60620
Williston Basin Interstate Pipeline Co., 3948, 12227, 12364, 12956, 18216, 19092, 30048, 32120, 32121, 32530, 33628, 35000, 36195, 36406, 39540, 42961, 43349, 46639, 47137, 53931, 57825, 60443, 60621, 62670, 63344, 64739, 64752, 65352, 67403
Wisconsin Electric Power Co., 21567, 28009, 39808, 40807
Wisconsin Power & Light Co., 32664, 34579, 40807, 45337, 52300
Wisconsin Public Service Corp., 40128
Wisconsin River Power Co., 28009
Wisconsin Valley Improvement Co., 36682, 43104
Wisconsin Valley Improvement Co. et al., 34261
Wolverine Hydroelectric Corp., 12225
Wyoming Interstate Co., Ltd., 45886, 46639, 61908, 68142
Wyoming Interstate Gas Co., Ltd., 17588
Yankee Atomic Electric Co., 58547
Young Gas Storage Co., Ltd., 38755

Federal Financial Institutions Examination Council

PROPOSED RULES

Appraiser regulation:
Freedom of Information Act; implementation, 55029

NOTICES

Agency information collection activities under OMB review, 54153
Community Reinvestment Act; interagency questions and answers, 9176
Insured depository institutions; supplemental disclosure of estimated fair values, 19257
Money laundering; large-value funds transfers use; policy statement, 14400
Northern Mariana Islands; State appraiser certification and licensure requirements; temporary waiver, 551, 11235
State certified or licensed appraisers; guidelines withdrawn, 44836

Federal Grain Inspection Service

RULES

Fees:
Official inspection and weighing services; fee increase, 3213
Grain standards:
Additive-treated grain certification, 3211
Official inspection and weighing services; fee increase, 5255
Rice, 68015
Vomitoxin testing services; availability and fee establishment, 49421

PROPOSED RULES

Grain inspection equipment; official performance requirements:
Wheat and soybean protein content; chemical reference method, 42257
Grain standards:
Beans, 14174, 49248
Flaxseed, mixed grain, oats, rye, sunflower seed, and triticale, 65939
Rice, 3511, 45295
Water addition prohibition, 41439

NOTICES

Agency designation actions:
Alabama, 46156, 58148
California, 51046
Georgia et al., 6382
Illinois, 5705, 25964, 47852, 51047, 58149
Illinois et al., 6383, 34893, 40787, 46157, 63331, 63332, 69316
Indiana, 51047
Indiana et al., 16810, 34983
Iowa, 5705, 25965, 69316
Iowa et al., 12022, 16810, 31491, 41082, 46157
Kentucky et al., 12023, 31492
Maine, 25965
Michigan, 52475, 63910
Missouri, 12023
Montana, 25965
Nebraska, 25965, 34894, 51048, 58149, 69317
New York, 25965, 33066, 40788, 51048
North Dakota et al., 31492
Ohio, 6384
South Dakota et al., 40788, 58150
Tennessee et al., 63332
Texas, 25966, 34894, 63333
Texas et al., 6384
Washington, 51046
Wyoming, 51047
Committees, establishment, renewal, termination, etc.:
Advisory Committee, 17204
Meetings:
Advisory Committee, 7063, 9557

Federal Highway Administration

RULES

Drug offender's driver's license suspension
Correction, 62415
Engineering and traffic operations:
Construction and maintenance—
General material requirements, 38973
Design standards for highways—
Geometric design metric values, 64895
Geometric design policy, 25939
Interstate system, 25934
Highway design standards—
Roadside barriers and safety appurtenances; Federal-aid projects, 38293
National bridge inspection standards; frequency of inspection and inventory, 52663
Speed limit enforcement certification, 54812
Uniform Traffic Control Devices Manual—
Work zone traffic control standards revision, 65084
Freedom of Information Act; implementation, 65824
Intermodal Surface Transportation Efficiency Act; implementation:
Safety belts and motorcycle helmets; compliance and transfer-of-fund procedures, 44754
Motor carrier safety standards:
Accident notification and reporting requirements; property damage, 6726
Commercial motor vehicles; radar detectors, 67370
Driver qualifications—
Insulin-using diabetics; waivers, 40690
Medical examinations, 59194
Motor carrier safety assistance program, 40599
Regulatory guidance; questions and answers, 60734
Technical amendment, 44463
Technical corrections, 33775
Omnibus Transportation Employee Testing Act of 1991:
Qualifications of drivers; recordkeeping and reporting requirements for controlled substances testing data, 68220
Workplace drug testing programs; management information system, 68194
Payment procedures:
Construction engineering costs; reimbursement, 39142

INDEX
VOL 58
1993
UMI

Reimbursement; temporary matching fund waiver, 6713
State highway safety programs; uniform procedures, 41025
Transportation infrastructure management:
Management and monitoring systems; implementation, 63442
Correction, 64374
Transportation plans and programs:
Metropolitan areas and Statewide planning regulations, 58040

PROPOSED RULES

Engineering and traffic operations:
Construction and maintenance—
Erosion and sediment control guidelines; Federal-aid highway projects, 11814
Highway design standards—
Roadside barriers and safety appurtenances; Federal-aid projects, 6914
Size and weight enforcement certification, 65830
Speed limit enforcement certification, 186, 54832
Truck size and weight—
Longer combination vehicles (LCV's) and vehicles with 2 or more cargo carrying units; restrictions, 11450, 19367
National Network for commercial vehicles; route additions in Georgia, 65677
Uniform Traffic Control Devices Manual—
Work zone traffic control standards revision, 288
Intermodal Surface Transportation Efficiency Act; implementation:
Forest highway program; public road access to National Forest System, 51794
Correction, 55033
Safety belts and motorcycle helmets; compliance and transfer-of-fund procedures, 4622
Management systems; implementation, 12096
Metropolitan planning, Statewide transportation planning, and management systems; meetings, 15816
Motor carrier safety standards:
Commercial motor vehicle drivers license program; State compliance, 34344
Commercial motor vehicle operators; out-of-service orders violations; penalties, 4640
Driver qualifications—
Hearing deficiencies, 65634
Hazardous materials transportation; motor carrier safety permits, 33418
Hours of service of drivers; on-duty time; withdrawn, 6937
Inspection, repair, and maintenance—
Rockwell disc brake; commercial motor vehicles; petition reconsideration, 64923
Intermodal transportation, 37895, 51800
Longer combination vehicles (LCVS) operators; mandatory minimum training requirements, 4638
Parts and accessories necessary for safe operation—
Intermodal cargo containers, 44485
Protection against shifting or falling cargo, 48624
Warning devices for stopped vehicles, 37900
Training for all entry level drivers of commercial motor vehicles, 33874
Omnibus Transportation Employee Testing Act of 1991:
Alcohol use by transportation workers, limitation, 7197
Right-of-way and environment:
Obsolete and redundant right-of-way requirements removed, 38987
State planning and research program administration, 67510
Transportation plans and programs:
Metropolitan areas, 12064
Statewide regulations, 12084

NOTICES

Control substances and alcohol testing pilot program; documents availability, 18441
Emergency vehicles on interstate system and water well drilling rigs transporters on public highways, regulation; studies of vehicle weight laws, 7168
Environmental statements; notice of intent:
Alexandria, VA, et al., 60480
Allegany County, MD, 5443
Allegheny and Washington Counties, PA, 6159, 43005
Allegheny County, PA, 6158, 35067
Anderson and Greenville Counties, SC, 18443
Asotin County, WA, 41832
Baldwin County, AL, 38159
Bay and Saginaw Counties, MI, 47777
Beaufort and Pitt Counties, NC, 3987
Bradford County, PA, 16259
Brunswick County, NC, 62406
Bucks County, PA, et al., 16734
Cabell County, WV, 30845
Carroll County, MD, 12441
Chesapeake, VA, 42358
Chittenden and Washington Counties, VT, 64638
Clark County, WA, 38806
Commercial motor vehicles maintenance and inspection; standardized diagnostic device feasibility, 50081
Crawford and Perry Counties, IN, 40849
Cumberland County et al., NC, 6568
Dade County, FL, 22014, 60895
Dare County, NC, 60082
Davis and Weber Counties, UT, 21768
Decatur County et al., TN, 7169
Denali Borough, AK, 28433
Desha County, AR, et al., 59093
Douglas County, KS, 59094
Emmet County, MI, 47778
Erie County, NY, 11287
Erie County, PA, 41551
Fairfield County, CT, 51400
Flathead County, MT, 6323
Fond du Lac County, WI, 7168
Forsyth County, NC, 15173
Fort Bend County et al., TX, 36004
Gila County, AZ, et al., 62406
Grant County et al., WV, 43005
Harris County, TX, 43006
Honolulu, HI, 33686
Jasper County, MO, 64792
Jo Daviess and Stephenson Counties, IL, 45943
Johnson County, KS, 33481
Kane County, IL,
Kern County, CA, 39853
Kitsap County, WA, 3062, 16258
Little River, AR, et al., 35501
Logan County et al., WV, 44205
Los Angeles County, CA, 37047, 65756
Lucas County, OH, 48415
Marin County, CA, 14242
Mason County, WV, 31783
Maui County, HI, 63610
McDowell County et al., WV, 44206
Mercer and Summers Counties, WV, 43006
Monroe County, NY, 62407
Monroe County, PA, 35502
Morgan County et al., MO, 58036
North Kona, HI, 13674
Oconto and Marinette Counties, WI, 50996
Okaloosa County, FL, 43007
Orange and San Diego Counties, CA, 65757
Pierce County, WA, 64792
Pointe Coupee and West Feliciana Parishes, LA, 66065
Prince of Wales Island, AK, 27055
Riverside County, CA, 45147
Rutland County, VT, 15398
Salt Lake County, UT, 29023
San Luis Obispo County, CA, 37545
Santa Barbara County, CA, 13295
Sauk and Columbia Counties, WI, 49088
Schenectady County, NY, 6046
Selby County et al., TN, 36244
Snohomish County, WA, 31783
Somerset County, PA, 67902
Southcentral Alaska, 68683
Stanislaus County, CA, 40686
Stillwater County, MT, 3063
Sutter and Yuba Counties, CA, 11439
Utah County, UT, 43981
Westmoreland County, PA, 6047, 7827, 17300
Windham County, VT, 65008
Ferryboat equipment and machinery; Buy America requirements waiver, 33295
Grants and cooperative agreements; availability, etc.:
Congestion pricing pilot program, 33293
Dwight David Eisenhower transportation fellowship program, 66394
Intelligent vehicle highway system program; Federal and State privacy laws analysis and privacy safeguards development, 29444
Work zone labor injury evaluation study, 37986
Intelligent vehicle-highway system (IVHS):
Early deployment program, 13122
Field operational test program; participation, 47310, 58227
National program plan development; public participation, 65814
Intermodal Surface Transportation Efficiency Act:
Implementation guidance, 128
Interstate Highway System; public transit buses; axle weights study, 60481
Overweight intermodal containers; study, 65818
Interstate maintenance program; transfer of funds, 12299
Meetings:
Intelligent Vehicle-Highway Society of America, 11885, 17301, 33296, 34611, 46264, 57671, 65758
National Motor Carrier Advisory Committee, 18297, 43152, 60483
National Recreational Trails Advisory Committee, 9589, 60483
Scenic Byways Advisory Committee, 121, 11658, 26028
Metric conversion of traffic control signs, 46036
Motor carrier safety standards:
Driver qualifications; hearing deficiencies; waivers, 65638
Motor carrier safety enforcement cases; orders, 16916, 62450
Private carriage; for-hire carriers of passengers; interpretation, 27328
Motor carrier safety standards; waiver petitions:
Domino's Pizza Distribution Corp., 372
Preservation of transportation corridors, 18297
Radioactive materials highway routing; preemption determinations:
Oregon, 31580

Federal Housing Finance Board

RULES

Affordable housing program; maximum subsidy limitations, 17968

Federal Housing

Federal home loan bank system:
Advance to nonmember mortgages, 29474
Directors; eligibility and financial disclosure, and conflict of interest requirements, 3487, 31899
Item processing services; pricing, 59935
Membership procedures, 43522
Correction, 47181, 53023, 58231
Reporting and recordkeeping requirements, 50836, 52808
Secured loans (advances), 29456, 40190
Freedom of Information Act; implementation, 19197
Government in Sunshine Act; implementation, 19202
Operations procedures; establishment, 19195
Privacy Act; implementation, 19204

PROPOSED RULES

Affordable housing program and community support requirements; definitions of very-low income household, etc., 58988
Federal home loan bank system
Advances to capital deficient members, 49446
Bank or trust company deposits; definition modification, 50867
Community support requirements for insurance company and credit union members, 46569, 58305
Correction, 48946
Study of role; hearing, 8563, 13565
Regulatory agenda, 25324, 57322

NOTICES

Federal home loan bank system:
Community support review—
Selection of members, 8281, 28868, 43355, 60448
Item processing services; pricing; methodology, 59468, 60731
Meetings; Sunshine Act, 21331, 27059, 29693, 31790, 33855, 34299, 35074, 39591, 43676, 44401, 45153, 46674, 48711, 50998, 54401, 58727, 59516, 62413, 65619
Organization, functions, and authority delegations:
Local public document room establishment; Washington, DC, 63366

Federal Labor Relations Authority

RULES

Organization, functions, and authority delegations:
Headquarters and regional offices relocation, 13695
New address, phone number, and hours of operation, 53105

NOTICES

Senior Executive Service:
Performance Review Board; membership, 48522

Federal Law Enforcement Training Center

NOTICES

Committees; establishment, renewal, termination, etc.:
National Center for State and Local Law Enforcement Training Advisory Committee, 60083

Federal Maritime Commission

RULES

Marine terminal services agreements; exemption, 5627
Maritime carriers in domestic offshore commerce:
Financial reports; carriers earning $25 million or less; complete report waiver eligibility expansion and waiver trade percentage requirement deletion, 13414
Maritime carriers in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
United States/foreign trade, 64909
United States/Korea trade, 7988, 44286
United States/Korea trade; removal, 50521
Free time and demurrage charges on import property and truck detention at Port of New York; CFR Parts removed, 10983
Non-vessel-operating common carriers; financial responsibility, 5618
Tariffs and service contracts, 25
Unpaid freight charges; adjudication jurisdiction, 7190
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Free time and demurrage charges on import property and truck detention at Port of New York;, 10983
Military rates; electronic filing; exemption, 28787
Tariffs and service contracts; electronic filing, 30709
Practice and procedure
Alternative dispute resolution, 38648
Domestic offshore trades; rate proceedings, 58970
Miscellaneous amendments, 27208

PROPOSED RULES

Maritime carriers in domestic offshore commerce:
Electronic filing of tariffs and service contracts, 7501
Maritime carriers in foreign commerce:
Anticompetitive agreements; injunction authorization, 62616
Coloading practices by non-vessel-operating common carriers; shipper affiliate access to service contracts, 62077
Conditions unfavorable to shipping, actions to adjust or meet—
United States/foreign trade, 52248
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Military rates; electronic filing; exemption, 4137
Correction, 6167
Practice and procedure:
Alternative dispute resolution, 16641
Domestic offshore trades; rate proceedings, 28379
Miscellaneous amendments, 7199, 42273
Private complaint actions, 68841
Regulatory agenda, 25330, 57328

NOTICES

Agency information collection activities under OMB review, 46643, 47900, 47901
Agreements filed, etc., 350, 3280, 3949, 3950, 4168, 4169, 4700, 5392, 6283, 6493, 6636, 6970, 7563, 7785, 7891, 8596, 8761, 9182, 11237, 11238, 11410, 11607, 11859, 12037, 12242, 12586, 12967, 13067, 13492, 13780, 14401, 15875, 17589, 19106, 19260, 19435, 21302, 21581, 21726, 25647, 26545, 26784, 27286, 27572, 27731, 27732, 28021, 28571, 28876, 28963, 29584, 29829, 30055, 30170, 31389, 31521, 31961, 32133, 32536, 32707, 33442, 33631, 33820, 33938, 34052, 34435, 34436, 34800, 36203, 36411, 36964, 37482, 38126, 38568, 39813, 40468, 40819, 41279, 41480, 41481, 42729, 43360, 44672, 44836, 47743, 48888, 49513, 51347, 51826, 52967, 53514, 54153, 57610, 58698, 59266, 59726, 60453, 62126, 63165, 64404, 65184, 66361, 68145, 68910
Anti-rebate certifications, failure to file; tariff, cancellations and license suspensions, 8960
Casualty and nonperformance certificates:
Alaska Sightseeing/Cruise West, 4701, 28876
Alaska Sightseeing/Cruise West et al., 28876
American Hawaii Cruises et al., 42550
Bunnys Adventure & Cruise Shipping Co. Ltd et al., 48522
Carnival Cruise Lines, Inc., 19436, 58170
Celebrity Cruises Inc. et al., 15349
Club Med Sales, Inc., et al., 26979, 33820, 46970
Commodore Cruise Line Ltd., 4701
Costa Cruise Lines N.V. et al., 19107, 26138, 58170, 64767
Crown Cruise Line, 13601
Crown Cruise Line et al., 13601
Delphin Seereisen GmbH, 15875
Delphin Seereisen GmbH et al., 15875
Discovery Cruise Line Partnership et al., 12243
Dolphin Cruises, Inc., et al., 41090, 45108
Epirotiki Lines, Inc., et al., 39208
Gold Star Cruises of Galveston, L.C., 59726
Gold Star Cruises of Galveston, L.C., et al., 59726
Hanseatic Tours Reisedienst G.m.b.H., 48522
Holland America Line et al., 58170
Maritz Inc. et al., 6798, 11860
Mitsui O.S.K. Passenger Line, Ltd., 65997
Mitsui O.S.K. Passenger Line, Ltd., et al., 65996
Neckermann Und Reisen, 3281
Neckermann Und Reisen et al., 3280
Norwegian Cruise Line et al., 4701, 29226
Palm Beach Cruise Line Inc. et al., 4701
Princess Cruises, Inc., et al., 32707, 33632
Regal Cruises et al., 32708, 45108
Regal Cruises, Inc., et al., 45108
Regal Cruises Ltd., et al., 29226
Regal Cruises Ltd., 11056
Regency Maritime Corp. et al., 6493
Royal Caribbean Cruises Ltd., 58170, 59266
Royal Cruise Line Ltd., 62671
Royal Viking Line, 64767
SeaEscape Cruises Ltd., 17894
SeaEscape Cruises Ltd. et al., 21456
Seafest Cruises, Inc., et al., 4701
Silversea Cruises, Ltd., 47743
Sun Fiesta Cruises, Inc., et al., 34436
Sun Line Cruises Inc. et al., 9183
Unicom Management Services (Cyprus) Ltd. et al., 16192
Complaints filed:
Alaskan Gold Seafood, Inc., et al., 50549
Best Homeware, Inc., et al., 9183
Deppe Linie GmbH & Co., 41789
Hecht, Stanley, et al., 53205
New York Export Co., Inc., 19436
Parts-Tires-Imports, Inc., 40148
Sun Lee, Inc., et al., 19436
Tropical Shipping & Construction Co., Ltd., et al., 11860
Waterman Steamship Corp. et al., 40649
Worldlink Logistics, Inc., et al., 35003
Freight forwarder licenses:
1959 Enterprise Inc. et al., 55070
A.P.C. International, Inc., 11056
Aero Expediting Inc. et al., 18096
Amcargo Line, Inc., et al., 28571, 30220
American Cargo & Steamship Agency, Inc., et al., 31034
Ask International, Inc., et al., 16192
Associated International Consultants, Inc. Texas, et al., 69364
Aviation Import-Export Inc. et al., 5989
Bernard J. McHale Co. et al., 8761

UMI

Bok Kun Chung et al., 37483
Cargo Express Inc. et al., 21170
Cargonauts, Inc., et al., 33632, 49305
Central Florida Freight Forwarders, Inc., et al., 38127
Eagle Freight Services, Inc., et al., 39814
Flamingo International, Inc., 51631
Fontana International, Inc., 62355
Frama International of Florida, Inc., et al., 49305
G.C. International Forwarding Co. et al., 52496
Geo. S. Bush & Co., Inc., et al., 62355
Hidalgo Inc. et al., 51826
J.B. Daman (U.S.A.) Ltd., 68649
John R. Soares & Co. et al., 41480
John V. Carr & Son, Ltd., et al., 3556
Kogel Overseas, Inc., et al., 43895
MDR Enterprises, Inc., 3556
Natural Freight Ltd. et al., 40649
Ocean Freight Express et al., 64946
Olympic International Freight Forwarders, Inc., et al., 6637
Panatrex Corp. et al., 11410
Pellkirk Services, Inc., et al., 36411
Posada International Cargo et al., 68649
Ranvar Corp. et al., 14573
Safa Shipping Co. et al., 6637
SCAC California Inc. et al., 25836
Sea Cargo International, Inc., 38127
Seaway Forwarding Corp. et al., 25837
Seiwa America, Inc., et al., 68416
Shipping Connection International, Inc., et al., 49514, 51631
Suntrans International, Inc. et al., 43361, 60454
TC International Marketing Network, Inc., et al., 45108
Trans-Global Enterprise, Ltd., et al., 50549
U.S. Atlantic and Gulf/Hispaniola Steamship Freight Association et al., 52758
U.S. International Transport, Inc., et al., 25837
United World International, Inc., et al., 54358
Van Esch Trading & Shipping et al., 29226
W. L. Richeson & Sons, Inc., et al., 33820
Worldwide Cargo Specialties et al., 53514
Zerda Forwarding et al., 8053
Investigations, hearings, petitions, etc.:
AEI Ocean Services Corp. et al., 33096
Australia/Eastern USA Shipping Conference et al., 28876, 31522
Bordelon Brothers Towing Co., 44519
Caribe Basin Services Inc., 33939
Container Development Group Corp. et al., 46643
Distribution-Publications, Inc., 34801
Distribution-Publications, Inc., et al., 42730
Distribution Services, Ltd., et al., 47743
European & General Shipping, Inc., 48888
Evergreen America Corp. et al., 64310
Finn Container Cargo Services, Inc., et al., 33443
Gateway Maritime Transport Corp. et al., 44837
Hoegh Lines et al., 64947
ISS Express Lines et al., 40148
Lalandia, Inc., et al., 50550
MAPCARGO International, 45493
Nippon Yusen Kaisha Line, 31525
Ocean Tariff Bureau, 37483, 52497
Pacific Coast Tariff Bureau, 52497
Pacific Coast Tariff Bureau et al., 33096, 47140
Paramount Tariff Service Ltd., 33632
Polar Bear Container Line et al., 36688
Seaboard Marine Ltd. et al., 60638
Seth Shipping Corp. et al., 47744
Sumner Tariff Service, Inc., et al., 33096
Trans-American Steamship Agency et al., 67411
Trans-Atlantic Trades, 42730
Transax Data, 43895, 47744, 50550, 54358
Tropical Shipping & Construction Co., Ltd., et al., 53935
Turkey/U.S. Atlantic and Gulf Rate Agreement et al., 40148
Union Transport Corp. et al., 31961
Venezuelan American Maritime Association et al., 54358
West Coast of South America Agreement, 58865
World Tariff Services, Inc., et al., 35003, 41279, 48889, 61092
World Transport et al., 42074
Yangming Marine Transport Corp., 61912
Zim Israel Navigation Co. et al., 57611
Meetings; Sunshine Act, 3067, 7295, 7843, 13299, 14473, 27335, 39090, 54402, 64029
Non-vessel operating common carriers complying with bonding requirements; list availability, 59726
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI)—
Firms certified for batch filing capability; list, 36964, 64405
Tariff cancellations, 50550, 69365
Organization, functions, and authority delegations:
Administration Bureau, Director, 47901
Tariffs Certification, and Licensing Bureau, Director, 36204, 41481
Practice and procedure:
Alternative dispute resolution; policy statement, 16681, 38651
Senior Executive Service:
Performance Review Board; membership, 39814
Shipping Act of 1984:
Controlled carriers listing; update, 34264

Federal Mediation and Conciliation Service

RULES
Agency ethics regulations; amendments, 18007, 35377

NOTICES
Agency information collection activities under OMB review, 53735, 54593
Grants and cooperative agreements; availability, etc.:
Labor-management cooperation program, 5005, 58336, 64768

Federal Mine Safety and Health Review Commission

RULES
Procedural rules, 12158

NOTICES
Meetings; Sunshine Act, 124, 3991, 7605, 8653, 15521, 16444, 17641, 19874, 25898, 26812, 27771, 33857, 34841, 36736, 39090, 42134, 43676, 47530, 48944, 52531, 53996, 54187, 58380, 58727, 60085, 64029, 66396

Federal Prison Industries

PROPOSED RULES
Inmate accident compensation, 39098

Federal Procurement Policy Office

RULES
Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting standards coverage; applicability and threshold, 58798, 61844, 65556

PROPOSED RULES
Acquisition regulations:
Cost Accounting Standards Board—
Composition, measurement, adjustment, and allocation of pension costs, 58999
Cost accounting standards coverage; applicability and thresholds, 18363
Cost accounting standards pension costs; changes, 6103

NOTICES
Acquisition regulations:
Cost Accounting Standards Board—
Capitalization of tangible capital assets, and depreciation of tangible capital assets, 58882
Organizational and cost accounting practices changes, 18428
Contract Disputes Act; claims certification for individuals within contractor's organization; policy letter, 5039
Government contractor selection:
Past performance review; policy letter, 3573
Use of past performance information in source selection process, 66039
Management oversight of service contracting; policy letter, 63593
Procurement regulatory activity report; availability, 15516
Procurement systems management; draft policy letter, 34489
Small business competitiveness demonstration program:
Policy directive, 13513
Subcontract reporting system test plan and reporting form, 13514, 19856, 54176, 57869, 65407
Value engineering (OMB Circular A-131), 32964

Federal Railroad Administration

RULES
Hazardous materials:
Tank cars; materials poisonous by inhalation, Federal requirements; enforcement policy statement, 47650
Hours of Service Act, agency interpretation; Ninth Circuit Court of Appeals decision, nationwide applicability; miscellaneous issues, 18163
Omnibus Transportation Employees Testing Act of 1991:
Control of alcohol and drug misuse in railroad operations; reporting requirements, 68232
Workplace drug testing programs; management information system, 68194
Railroad locomotive safety standards:
Event recorders, 36605, 40468
Locomotive conspicuity; auxiliary external lights minimum standards, 6899
Railroad operating rules:
Locomotive engineers; qualifications, 18982
Utility employee safety standards, 43287

PROPOSED RULES
Omnibus Transportation Employee Testing Act of 1991
Alcohol use by transportation workers, limitations, 7197
Railroad operating rules:
Grade crossing signal system malfunctions; timely response, 4400
Railroad police officers, 33593
Railroad safety enforcement procedures:
Remedial actions reporting, 33595
Track safety standards; miscellaneous amendments
Public workshops, 338, 4975, 8928

INDEX
VOL
58
1993
UMI

NOTICES
Emergency order; railroad tank car owners, 8647
Emergency orders; passenger service prohibition:
Florida East Coast Railway Co., 48415
Environmental statements; availability, etc.:
New Haven, CT to Boston, MA; Northeast Corridor electrification, 65422
Exemption petitions, etc.:
Burlington Northern Railroad, 59094, 60239
Burlington Northern Railroad Co., 17921
Burlington Northern Railroad Co. et al., 52133
Canadian Pacific Ltd., 28434
CSX Transportation, 626, 21213
Cuyahoga Valley Railway Co. et al., 45147
Duluth, Missabe & Iron Range Railway Co., 63610
Eastern Alabama Railway, 57664
Kansas City Southern Railway Co., 45547
Massachusetts Bay Transportation Corp., 9231
Michigan Shore Railroad et al., 4452
Minnesota Commercial Railway Co. et al., 28649
Monticello Railway Museum et al., 30082
National Railroad Passenger Corp. (Amtrak), 374, 25696, 30846, 32561, 60239
New Jersey Transit Railroad Operation et al., 41313
Nimishillen & Tuscarawas Railway Co. et al., 9590
Parr Terminal Railroad et al., 4453
Southeastern Pennsylvania Transportation Authority et al., 60240
Tennessee Valley Railroad et al., 21214
Texas Ltd. et al., 57663
Tri County Commuter Rail Authority, 9232
Union Pacific Railroad Co., 627, 6569, 9233, 46264
Wheeling & Lake Erie Railway Co., 4454, 18299
Meetings:
Northeast Corridor Safety Committee, 19698
Private highway-rail grade crossings safety guidelines, 33139
Railroad locomotive design features, 29689
Railroad user fees, 41832
Random drug testing rate evaluation; extension of experimental program, 33481
Traffic control systems; discontinuance and removal:
Burlington Northern Railroad Co., 9233
Burlington Northern Railroad Co. et al., 35503
Chicago & North Western Transportation Co. et al., 25697, 57664
Duluth Missabe & Iron Range Railway Co. et al., 9233
Kansas City Terminal Railway Co. et al., 58375
River Terminal Railway Co. et al., 45547
Southern Pacific Transportation Co. et al., 7169

Federal Register, Administrative Committee

See Federal Register Office

RULES
Federal Register publications price changes, 64871

Federal Register Office

NOTICES
American Institute in Taiwan and Coordinating Council for North American Affairs; agreements, 32355, 37535
Guide to Record Retention Requirements in CFR; supplement, 26450

Federal Reserve System

RULES
Agency regulations; heading revisions, 50512
Availability of funds and collection of checks (Regulation CC):
Technical corrections, 2
Bank holding companies and change in bank control (Regulation Y):
Bank holding company applications; review criteria, 471
Correction, 4073
Capital adequacy guidelines, 7973, 28491, 68735
Criminal activity reporting requirements; uniform multi-agency criminal referral form, 47206
Foreign Bank Supervision Enhancement Act; implementation, 6348
Real estate appraisals, 15076
Depository institutions; reserve requirements (Regulation D):
Transaction accounts; reserve requirement ratios, 61801
Correction, 64112
Equal credit opportunity (Regulation B):
Appraisals and enforcement, 65657
Correction, 68735
Equal opportunity rules; complaint processing, 9517
Extensions of credit by Federal Reserve banks (Regulation A):
Extension of credit limitations, 68509
Foreign gifts and decorations:
CFR correction, 38702
Minimal value; technical amendment, 57729
Home mortgage disclosure (Regulation C):
Exemption terminations, 1
Loan application data; availability, 13403
Metropolitan statistical area designations use for 1993 data collection, 6601
Metropolitan statistical area designations use for 1994 data collection, 50512
International banking operations (Regulation K):
Criminal activity reporting requirements; uniform multi-agency criminal referral form, 47206
Foreign Bank Supervision Enhancement Act; implementation, 6343, 46076
Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):
Loans to holding companies and affiliates, 26507, 28492, 61803
Membership of State banking institutions (Regulation H):
Capital adequacy guidelines, 7973, 28491, 68735
Criminal activity reporting requirements; uniform multi-agency criminal referral form, 47206
Organization, functions, and authority delegations:
Board of Governors General Counsel, 53393
Director, Consumer and Community Affairs Division, 65539
Secretary, Board of Governors et al., 26508
Procedure rules:
Applications for merger, consolidation, or acquisition of assets or assumption of liabilities; notice publication requirements, 47985
Prohibition against interest payment on demand deposits (Regulation Q), 15076
Real estate lending and appraisals:
Real estate lending standards; correction, 4460
Requirement exceptions in major disaster areas, 42640
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 6602, 25543, 39639, 54929
Truth in lending (Regulation Z):
Home-secured loans, rescission by consumers, waivers; preprinted form use by creditors, prohibition; exceptions due to flood emergency, 40582
Official staff commentary update, 17083
Truth in Savings (Regulation DD), 15077

PROPOSED RULES
Bank holding companies and change in bank control (Regulation Y):
Capital adequacy guidelines, 8007, 68563
Criminal activity reporting requirements; uniform multi-agency criminal referral form, 3235
Bank Secrecy Act; implementation:
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions, 45851, 46014, 46021
Collection of checks and other items from Federal Reserve banks and Fedwire funds transfers (Regulation J):
Warranties, etc., 68566
Community Reinvestment Act; implementation; hearings, 44138
Community Reinvestment Act regulations, 67466
Consumer leasing (Regulation M):
Review and comments solicitation, 61035
Electronic fund transfers (Regulation E), 8714
Extensions of credit by Federal Reserve banks (Regulation A):
Extension of credit limitations, 45851
Federal Deposit Insurance Act:
Safety and soundness standards, 60802
Financial institutions; netting eligibility (Regulation EE), 29149
Home mortgage disclosure (Regulation C):
Loan application data; availability, 31
International banking operations (Regulation K):
Criminal activity reporting requirements; uniform multi-agency criminal referral form, 3235
Foreign banks; charges for examinations of branches, agencies, and representative offices in the United States, 65560
State licensed branches and agencies of foreign banks; permissible activities, 513
Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):
Loans to holding companies and affiliates, 47400
Membership of State banking institutions (Regulation H):
Capital adequacy guidelines, 8007, 68563
Criminal activity reporting requirements; uniform multi-agency criminal referral form, 3235
Real estate lending and appraisals:
Threshold level, 31878, 59688
Regulatory agenda, 25338, 57334
Reimbursement for providing financial records (Regulation S):
Recordkeeping requirements for certain financial records, 46024
Risk-based capital:
Interest rate risk, 48206
Correction, 52808
Truth in Savings (Regulation DD):
Annual percentage yields calculation, 64190
Miscellaneous amendments, 271
Preemption determinations—
Wisconsin, 65293

NOTICES
Agency information collection activities under OMB review, 7786, 54594, 55071, 59036, 60638, 62671, 65999

Bank holding companies engaged in underwriting and dealing in securities; ten percent revenue limit, 28963
Bank holding company reporting requirements, 65997
Committees; establishment, renewal, termination, etc.:
Consumer Advisory Council, 34264
Consolidated financial statements; reporting requirements; changes, 6637, 13781
Electronic fund transfers:
Payments system risk reduction program—
Bankers' banks, Edge corporations, and limited-purpose trust companies, 44672, 50551
Self-assessment procedures, caps for U.S. branches and agencies of foreign banks, 44677, 50551
Federal banking and thrift agencies; capital and accounting standards differences; report to congressional committees, 3019
Federal Open Market Committee:
Domestic policy directives, 5008, 6413, 9564, 26546, 34801, 38568, 47454, 52967, 64947
Foreign currency operations—
Federal Reserve Bank of New York; authorization, 26546
Procedural instructions, 26546
Securities procedures; allocation, 26548
Federal Reserve bank services:
Fedwire funds transfer service—
Format expansion, 63366, 65355
Opening time; changes, 40430
Private sector adjustment factor, etc., 60639
Volume-based cash letter and envelope fees for noncash collection service use, etc.: approval, 60649, 64405
Federal Reserve Bank services; fee schedules and pricing principles:
Check collection—
Funds transfer service enhancements, 31525
Insured depository institutions; branch closings; policy statement, 49083
Meetings:
Consumer Advisory Council, 13264, 28965, 49306
Meetings; Sunshine Act., 124, 375, 629, 3328, 4201, 4459, 5798, 6054, 6335, 6676, 7038, 7295, 7920, 8448, 8818, 9243, 9596, 11098, 11448, 12061, 12631, 13126, 13299, 13524, 14244, 14473, 15178, 15521, 16444, 17304, 17924, 18302, 19294, 19295, 19700, 19874, 21332, 21774, 25898, 26183, 26184, 26588, 27335, 27771, 28445, 28912, 29025, 29452, 29693, 30219, 31066, 31438, 31594, 31791, 32171, 32568, 33143, 33688, 33984, 34498, 34621, 36250, 36514, 37050, 37767, 38462, 39090, 39591, 40186, 40859, 40860, 41323, 42134, 42757, 43154, 43677, 44888, 45375, 46674, 47317, 47782, 48090, 48711, 49545, 50998, 51129, 52139, 52343, 53021, 53623, 53996, 54645, 57895, 58229, 58728, 59785, 60085, 60242, 60243, 60493, 60901, 61142, 62186, 62413, 63210, 64439, 64440, 65016, 65241, 65426, 66073, 67908, 68460, 68685, 69456
Organization, functions, and authority delegations:
Commodity Futures Trading Commission, 26979
Priced secondary market purchases and sales of securities service; consolidation: proposal, 36412, 51348
Telecommunications service priority; national security and emergency preparedness functions, 38569
Applications, hearings, determinations, etc.:
ABC Employee Stock Ownership Plan et al., 5990
Algemene Maatschappij Voor Nijverheidskrediet N.V. et al., 3281
Aliant National Corp., 12365
Alliance Financial Corp. et al., 17590
Allied Bank Capital, Inc., et al., 54359
Allied Irish Banks Limited plc, 6123
Alpha-Omega Holding Co., 6283
AMBANC Corp., 13492
Amboy-Madison National Bank Employee Stock Ownership Plan, 33097, 41280
AMCORE Financial, Inc., 13493
AmSouth Bancorporation, 32708
AmSouth Bancorporation et al., 21581, 30788, 44837
Anchor Financial Corp. et al., 43116
Aspen Bancshares, Inc., 27573, 29829
Associated Banc-Corp et al., 59036
Atlantic Community Bancorp, Inc., et al., 52758
B.H. Cox Trust et al., 11056
Baer, John W., et al., 66000
Bailey Financial Corp. et al., 40649
Ballinger, T. Brent, et al., 53205
Banc One Corp., 39026
Banc One Corp. et al., 33443, 41090, 46971, 49306
Banco Santander, S.A., et al., 12038, 51081
BankAmerica Corp., 44838
Bank Corp. of Georgia et al., 16193
Bankers Trust New York Corp., 33444
Bankers Trust New York Corp. et al., 6639, 6970
Bank Holding Co. et al., 34585
Bank of—
Boston Corp. et al., 6640, 13265
Montreal et al., 3950
New York, 19107
New York Co., Inc., 62672
New York Co., Inc., et al., 19107
Bank South Corp., 6798, 39027
Bank South Corp. et al., 63578
BanPonce Corp. et al., 60024
Barmore, Elden G., 50551
Barnett Banks, Inc., 17401
Barnette, Beverly Alton, et al., 43895
Barnett Merger Corp. et al., 553
Batheke, Warren E., et al., 47455
BB&T Financial Corp. et al., 6284, 36204, 44184, 61912
Beaman Bancshares, Inc., et al., 3281
Beaty, Charles Hill, et al., 30055, 34585
Bergen North Financial, M.H.C., et al., 47455
Bluestem Financial Corp. et al., 39814
Boyd, Daniel Marcus, III, et al., 44185
Breeden, Douglas T., 36964
Britton & Koontz Capital Corp., 25647
Brunner, John A., Jr., 31713
BT Financial Corp. et al., 44839
Bullock, William R., Sr., 42323
Buquet, James Joseph, Jr., et al., 12365
Burgason, Jo Ann, et al., 64770
Burgason, Verle, et al., 28965, 58339
C.L.C. Enterprises, 16684
Caisse Nationale de Credit Agricole, 5990
Caisse Nationale de Credit Agricole S.A., 26548
Cameron, Lee D., et al., 57611
Canfield, Bruce N., et al., 31714
Cardinal Bancshares, Inc., et al., 16409, 42324, 64405
Cardwell, James Aubrey "Jack", et al., 26784
Cass Commercial Corp. et al., 33939
CB Bancshares, Inc., et al., 62672
CCB Financial Corp. et al., 36964, 39815
Central Bancompany, Inc., et al., 3282
Central Bancshares, Inc., et al., 50363
Central Bancshares of the South, Inc., 41280, 50004, 53514
Central National Bank Corp. et al., 63579
Centura Banks, Inc., 25648
Centura Banks, Inc., et al., 18396, 49514, 52109
Century South Banks, Inc., et al., 58002
Chemical Banking Corp., 16834, 52759, 64771
Chemical Banking Corp. et al., 59470
China Trust Holdings Corp. et al., 19671
Citizens Bancorp Investment, Inc., 18097
Citizens Bancshares Co., 5392
Citizens Bancshares, Inc., et al., 58865
Citizens Union Bancorp of Shelbyville, Inc., et al., 53515
City Bancshares, Inc. Employee Stock Ownership Plan et al., 6123
City Holding Co., 52109
City Holding Co. et al., 27573, 38574
Clampitt, Ronald Edward, et al., 39027
CNB Bancshares, Inc., et al., 35957, 44185
CNB Bankshares, Inc., 8596
CNB Preferred Partnership et al., 36689
Collins, Jason Leon, et al., 61690, 63579
Colonial BancGroup, Inc., et al., 48066
Columbia Banking System, Inc., 21171
Columbus Bancorp, Inc., et al., 41090
Comerica Inc., 15146, 16835, 62673
Comerica Inc et al., 18097
Comm. Bancorp, Inc., et al., 16683
Commerce Bancshares, Inc., 9183
CommFirst Bancorporation, Inc., et al., 7564
Community Banc-Corp. of Sheboygan, Inc., et al., 38574
Community Bank-Corp. of Sheboygan, Inc., et al., 4169
Community Bankers, Inc., 32133
Community Bankshares, Inc. Employee Stock Ownership Trust, 54359
Community Independent Bancorp, Inc., et al., 9184
Compagnie de Suez et al., 16836
Continental Bank Corp., 34436
Copperman, Harold, 42074
CoreStates Financial Corp. et al., 34052, 64771
Corporacion Bancaria de Espana et al., 46971
Corporacion Bancaria de Espana, S.A., et al., 31532
Covington, James Willis, et al., 25988
Creditanstalt-Bankverein et al., 4170, 16193, 57611
Credit Suisse et al., 32708
Crestar Financial Corp., 7564, 39815
Crestar Financial Corp. et al., 13782, 52110
CSB Bancorp, Inc., et al., 39028
Cullman Bancshares Employee Stock Ownership Plan et al., 58552
Dai-Ichi Kangyo Bank, 65596
Dai-Ichi Kangyo Bank, Ltd., 52760, 58339
Dakota Bancorp, Inc., 28877
Dauphin Deposit Corp. et al., 61912
Davison, James C., et al., 29584
Decatur Bancshares, Inc., et al., 62127
Delmar Bancorp, 13602
Deposit Guaranty Corp. et al., 6640
DFC Acquisition Corp. II, 52760
Dickinson Financial Corp., 36689
DIMECO, Inc., et al., 11410
Dresdner Bank AG et al., 26784
Drummond Banking Co. et al., 35958
Duft, Thelma Holmes, et al., 31533
East Dubuque Bancshares, Inc., et al., 32709
Eastman, Whitman T., et al., 60857
Edgemark Financial Corp., 27732, 60025
Edgemark Financial Corp. et al., 42324
Estrin, Melvyn J., et al., 46973
Evans Bancshares, Inc., 34437
F&A Financial Co. et al., 34437
F&M Bancorporation, Inc., et al., 33097

INDEX
VOL 58
1993
UMI

F&M National Corp. et al., 30055
F.N.B. Corp. et al., 34053
Fairbank Bancshares, Inc., et al., 53206
Farmers & Traders Bancshares, Inc., et al., 17401
FB&T Financial Corp. et al., 31389
FBOP Corp., 30789, 65353
Feaster, George Edward, et al., 18396
Federick, John W., et al., 34437
FF Bancorp, Inc., et al., 66000
Fidelity Southern Corp., 25988, 36965, 42730
Fifth Third Bancorp et al., 48523
Finn, Catherine, et al., 52312, 65597
First Alabama Bancshares, Inc., et al., 12365, 46972
First Alabama Bankshares, Inc., 34053
First American Corp. et al., 66000
Firstar Corp. et al., 6971, 28965, 67412
First Baird Bancshares, Inc., et al.; correction, 33098
First Bancorporation of Ohio et al., 68911
Firstbank of Illinois Co., 57612
First Bank System, Inc., 61690
First Bank System, Inc., et al., 4436, 48523
First Chicago Corp., 68911
First Citizens BancShares, Inc., et al., 67411
First Commerce Corp. et al., 47456
First Community Financial Group, Inc., et al., 7231
First Fidelity Bancorporation, 49050
First Fidelity Bancorporation et al., 4171
First Financial Bancorp, 59266
First Hawaiian, Inc., 25989
First Interstate Bancorp, 51082
First Lucedale Bancorp, Inc., et al., 59036
First Midwest Bancorp, Inc., 60454
First Mutual Bancorp, M.H.C., et al., 17590
First National Bank Shares, Ltd., 48067
First National Bank Shares, Ltd., et al., 38575
First Security Bancorp, Inc., et al., 29829
First Southern Bancorp, 44839
First Star Bancorp, Inc., et al., 42074
First State Bancorp, Inc., et al., 42731
First State BancShares, Inc., 4437
First State Bancshares of DeKalb County, Inc., 21171
First Union Corp., 26324, 41091, 59037, 63988
First Virginia Banks, Inc., 27732
First Virginia Banks, Inc., et al., 21981
Five Flags Banks, Inc., 63165
Flanagan, James M., 8597
Flanagan, Thomas D., et al., 7564
Fleet Financial Group, Inc., et al., 35003
Fleming, David W., et al., 62127
FMSB Bancorp, 19672
Fort Bancorp, Inc., et al., 21981
Fourth Financial Corp., 15147
Fuji Bank, Ltd., et al., 49307
Garwood, Robert H., et al., 553
Gatlin, James Richard, et al., 18098
George Mason Bankshares, Inc., 38127
GFH Corp. et al., 13602
Gloucester County Bankshares, Inc., et al., 52312
Golden Isles Financial Holdings, Inc., et al., 43896
Gordon Family Investment, L.P., 40430
Gore-Bronson Bancorp, Inc., et al., 58552
Graham, William T., 6641
Green Point Savings Bank Employee Stock Ownership Trust et al., 47456
Griggsville Bancshares, Inc., 41481
Grimaldi, John Andrew Rainier, et al., 33939
Grupo Financiero Prime Internacional S.A. de C.V., 42324
Guaranty Financial, M.H.C., 16194
Guaranty State Bancorp et al., 32134
Gulf Coast Bank Holding Co., Inc., et al., 15350
Gunn, Allen D., et al., 48067
Hallmark Capital Corp., 41481
Hall, Ralph M., 40431
Harris Financial, Inc., et al., 32358
Hartman, Dennis P., et al., 59471
Haskin, Jerry Richard, et al., 31389, 34054
Hasten Bancshares, 59267
Haugo Bancshares, Inc., 16409
Hawkeye Bancorporation et al., 61913
Heafy, Paul Gerard, 32134
Henry, Juanita B., et al., 40650
Herren, Anita, et al., 8761
Hibernia Corp. et al., 64772
HNB Financial Group, 51082
HNB Holding Co., Inc., et al., 18098
Hocking Valley Bancshares, Inc., 48523
Hollandale Capital Corp. et al., 25648
Horton, Earl Delbert, et al., 59038
Hubco, Inc., et al., 65597
Huntington Bancshares Inc. et al., 3282, 18098, 31962, 42075, 48067
Huxley Bancorp, 29830
Illing, Amy Blossman, et al., 36689
InterBank, Inc., et al., 51349
Intercounty Bancshares, Inc., et al., 37743
Internationale Nederlanden Group N.V., 19107, 37743
Iowa National Bancshares Corp., 8762
Iowa National Bankshares Corp., 64406
Irwin Financial Corp., 41091
J.P. Morgan & Co., Inc., 34054, 51349
JAM Family Partnership I, L.P., et al., 51083
Jay, John W., 41280
Jennings, Paul, et al., 49307
John R. Adams 1991 S Trust et al., 32358
Jones Bancshares, L.P., 52968
Josephine Bancshares, Inc., et al., 65353
Kempton and Grace Spooner Revocable Trust, 7231
Kentucky Bancshares, Inc., et al., 37743
KeyCorp et al., 11056, 36965
Keystone Financial, Inc., et al., 26785, 52761, 53206
Kootenai Bancorp, Inc., Employee Stock Ownership Trust, et al., 28877
Krumme, George W., et al., 12038
KSB Bancorp, Inc., et al., 16685
Kuehl, Donald E., et al., 50005
Laddie Cimpl Revocable Trust/Doris Cimpl Revocable Trust, 36205
Laramie Bankshares, 13783
Lee County Bancshares, Inc., et al., 53935
Lett, Bobbie Saxon, et al., 21582
Lincoln Trail Bancshares, Inc., et al., 8762
Long-Term Credit Bank of Japan, Ltd., et al., 29585
Luecke, Jimmie Michael, 41092
Lyon, Stephen J., et al., 15350
M.E. Black Dunklin et al., 5393
Maddox, Samuel Guy, et al., 15147
Magnolia State Corp., 41482, 43896
Magnolia State Corp. et al., 57612
Mahaska Investment Co. et al., 68912
Mainline Bancorp, Inc., et al., 6124
Markwell, James, et al., 65354
Marshall & Ilsley Corp., 68912
Marshall & Ilsley Corp. et al., 33939
Marti, George W., 25648
Matewan Bancshares, Inc., et al., 49514
MBNA Corp., 5991, 53935
McKinley, Hal B., et al., 64406
McKinstry, Inc., et al., 49515
MegaBank Financial Corp., 60857
Mellon Bank Corp. et al., 42731
Mercantile Bancorporation, Inc., 61691
Merchants New York Bancorp, Inc., et al., 553
Meridian Bancorp, Inc., 28878
Meridian Bancorp, Inc., et al., 9184, 37932
Merle Coile, 7891
Michigan National Corp., 7891
Mid Am, Inc., et al., 5393
Middletown Savings Bank Employee Stock Ownership Trust et al., 16195, 16409
Mixon, Margaret Ann Speight, et al., 13493
Mobile National Corp. et al., 25649
Monnig, Robert Timothy, et al., 39815
Montfort Bancorporation, Inc., et al., 18397
Montgomery, Dudley K., 6284
Moore, Ronald L., et al., 52313
Morgan, Bruce B., 25649
MSB Bancorp, Inc., 49050
Murphy, Dennis F., Jr., et al., 16837
Mylander, George A., et al., 60025
National Bank of Commerce of El Dorado Employee Stock Ownership Plan et al., 37932
National City Corp., 33940, 60857
National City Corp. et al., 66001
National Commerce Bancorporation, 30789
National Penn Bancshares, Inc., et al., 42325, 63165
NationsBank Corp., 25649, 30790, 33273, 41092
NationsBank Corp. et al., 28878, 47457, 54359
NBD Bancorp, Inc., 44840
Northern Illinois Financial Corp. et al., 49308
Northern Plains Investment, Inc., 50364
Northern Trust Corp., 13602, 63579
North Milwaukee Bancshares, Inc., et al., 31533
Northview Financial Corp. et al., 8597
Northwest Equity Corp. et al., 65597
Norwest Corp., 16195, 21172, 38763, 50552, 51349, 53207, 60025
Norwest Corp. et al., 7231, 38764, 49051, 52110
Norwest Financial, 49050
OBANKCORP, Inc., 38128
O'Halloran, Robert J., 33444
Ohlhausen, George M., et al., 38764
Olmsted Bancorporation, Inc., 15350
Omega Financial Corp., 59038
OnBancorp, Inc., et al., 29585
One Valley Bancorp of West Virginia, Inc., 62673
Oostburg Bancorp, Inc., et al., 7891
Orion Bancorporation, Inc., et al., 41280
Oswald, Norman Dean, et al., 30790
Otto Bremer Foundation et al., 11057
Panhandle Bancshares, Inc., 13493
Penn, Alice Barbara, et al., 12038
Peoples Holding Co., 50005
Peoples Savings Financial Corp. et al., 57613
Peoples State Bancshares, Inc., et al., 31533, 33098
PHSB Mutual Holding Co. et al., 38575
Pikeville National Corp. et al., 59038, 59787
PNC Banc Corp. et al., 46973
PNC Bank Corp., 31962
PNC Bank Corp. et al., 31714, 47457
Poca Valley Bankshares, Inc., et al., 43897
Popular International Bank, Inc., et al., 62128
Powhatan Point Community Bancshares, Inc., et al., 61691
Prestige Financial Corp. et al., 14211
Public Finance Service, Inc., 43897
Queens County Bancorp, Inc., et al., 42732
Queens County Savings Bank Employee Stock Ownership Trust and Queens County Savings Bank Incentive Savings Trust et al., 43116

Republic Bancorp Co., 65354
Republic Bancorp, Inc., et al., 12038
Republic New York Corp. et al., 26785
Resource Bancshares Corp., 53936
Rhon, Carlos Hank, 58866
Riverside Banking Co., 28879, 28966
RNYC Holdings, 13494
Robinson, Theodore G., et al., 27573
Rogers, Thomas and Melinda, 43117
Rogers, Thomas R., et al., 51350
Royal Bank of Scotland Group, plc, et al., 15147, 32359
Royal Bank of Scotland, plc; correction, 35004
Saban S.A., 15351
Saban, S.A., et al., 5393, 39028
Sakura Bank, Ltd., 3283
SBI Voting Trust et al., 49515
Scarborough, Rodney Barrett, et al., 68913
Scharpf, George E., et al., 27574
Security Capital Corp., 52313
Shawmut National Corp. et al., 33940
Sherwood, Lowell T., Jr., et al., 49051
Shierson, Fern R. et al., 19108
Shulman, Jeffrey, et al., 51083
Signal Bancshares, Inc., 50005
Signet Banking Corp., 27574
Signet Banking Corp. et al., 11411
Simmons, James G., et al., 44840
Snyder, Randall N., et al., 21172, 21982
Societe Generale et al., 32135
Society Corp., 35958
Society Corp. et al., 29586, 61691
Southern National Corp. et al., 50005
Southern Utah BanCorporation, 58340
Stanly Capital Corp. et al., 16684
Starner, Ray J., et al., 35004
State Financial Services Corp., 37933
Steinberg, Dr. William, et al., 52761
Stichting Prioriteit ABN AMRO Holding et al., 40650
Stuart, Jon R., et al., 7892, 9184
Sturm, Donald L., 65712
Sumitomo Bank, Ltd., 61913
Summit Bank Corp., 58866
SUN Bancorp, Inc., et al., 14212
SunTrust Banks, Inc., et al., 58003
Susquehanna Bancshares, Inc., 27574
Susquehanna Bancshares, Inc., et al., 25989
Switzer Deason, 38576
Teo, Alfred, et al., 63580
Tidwell, Randy G., 16684
Toronto-Dominion Bank, 47458
TR Financial Corp., 13266
TR Financial Corp. Employee Stock Ownership Trust et al., 63166
TR Financial Corp. et al., 12039
Trustmark Corp., 16837
U.S. Trust Corp. et al., 554, 31390
UJB Financial Corp. et al., 4436
Union Bancorp, Inc., et al., 33444
Union Planters Corp., 11412, 52313
United Bancshares, Inc., et al., 60455
UNITEDCORP et al., 65354
Van Buren Bancorporation, 36690
Van Buren Bancorporation Employee Stock Ownership Plan et al., 4171
Vermont Financial Services Corp. et al., 60858
Walthall, David, 6972
Walton, S. Robson, et. al., 52111
Watkins, James Edward, et al., 29830
Westbanco, Inc., et al., 59267
West Coast Bancorp, Inc., et al., 28879
West Tennessee Bancshares, Inc., 27733
Whitaker Bank Corp. of Kentucky, 31963
White Eagle Financial Group, Inc., 52497
Whitlock, Gary D., et al., 13783
Wilmington Trust Co., 35005
Wortman, G.E., et al., 61914
Wrightsville Bancshares, Inc., et al., 50552
Yoh, Harold Lionel, Jr., et al., 17591, 46195

Federal Retirement Thrift Investment Board

RULES

Conflict of interests, 31331
Nondiscrimination on basis of handicap in federally conducted programs or activities; enforcement, 57690
Thrift savings plan; funds withdrawal methods: Separation due to reduction in force, 45380

NOTICES

Meetings:
Employee Thrift Advisory Council, 53207, 55072
Meetings; Sunshine Act, 3991, 7295, 12631, 18302, 26812, 27335, 33143, 36736, 41849, 47530, 52806, 58727, 64796

Federal Trade Commission

RULES

Appliances, consumer; energy costs and consumption information in labeling and advertising:
Comparability ranges—
Clothes washers, 26684
Dishwashers, 15086
Furnaces, 59167
Plumbing products, 54955
Refrigerators, refrigerator-freezers, and freezers, 3224
Room air conditioners, 59166
Water heaters, 59168
Residential energy sources; average unit energy costs, 5925
Comprehensive Smokeless Tobacco Health Education Act:
Health warnings on point-of-sale and non point-of-sale promotional materials, rotation, 4874
Conflict of interests, 15763, 30695
Fallout shelters and radiation monitoring instruments; advertising guides; CFR Parts removed, 68292
Octane certification and posting:
Alternative liquid automotive fuels (including diesel fuel oil), 41356
Pay-per-call services; advertising, operation, billing, and collection procedures, 42364
Practice and procedure rules:
Miscellaneous rules; public disclosure, 40736
Privacy Act; implementation, 7047
Tire advertising and labeling guides; retreaded tires, 64881
Trade regulation rules:
Franchising and business opportunity ventures; disclosure requirements and prohibitions—
Earnings claim and preemption requirements; withdrawn, 69223
Uniform franchise offering circular guidelines; disclosures authorization, 69224
Mail or telephone order merchandise, 49096
Sleeping bags; advertising and labeling for size, 21095

PROPOSED RULES

Alternative fuels and alternative fueled vehicles; labeling requirements, 64914
Appliances, consumer; energy costs and consumption information in labeling and advertising, 12818, 18056
Comparability ranges—
General service fluorescent lamps, etc., 60147
Plumbing products, 26715
Pool heaters, etc., 7852
Comprehensive Smokeless Tobacco Health Education Act:
Health warnings in advertising on sponsored racing vehicles and other event-related objects, , 58810, 64388
Rotation of health warnings for promotional materials for smokeless tobacco products, 4875, 10997
Fair Packaging and Labeling Act:
Consumer commodities net quantity statement; customary inch/pound and metric measurement systems use, 43726
Industry guides:
Greeting card industry, discriminatory practices, 35414
Nursery industry guides; revisions, 16139, 29153
Octane certification and posting:
Alternative liquid automotive fuels (including diesel fuel oil), 16464, 25582
Pay-per-call services; advertising, operation, billing, and collection procedures, 13370
Regulatory agenda, 25356, 57350
Rules and guides; notice of intent to request comments, 11554
Trade regulation rules:
Extension ladders length; deceptive advertising and labeling, 21125
Men's and boys' tailored clothing industry; discriminatory practices, 35907
Sleeping bags; advertising and labeling for size, Correction, 25703
Tablecloths and related products size; deceptive advertising and labeling, 21124
Television receiving sets; deceptive advertising; viewable pictures shown sizes, 21125

NOTICES

Agency information collection activities under OMB review, 4877, 16479, 26786, 60652, 64948
Cigarettes, domestic; tar, nicotine, and carbon monoxide content; report availability, 45892
Devices that dispense automotive fuel to consumers; uniform national label; study availability, 34438
Interlocking directorates:
Clayton Act Section 8 jurisdictional thresholds, 11057
Meetings; Sunshine Act, 15900, 55115, 65242
Octane certification and posting; grant of partial exemption, 64406
Premerger notification waiting periods; early terminations, 4701, 5396, 6791, 8284, 11412, 13266, 15875, 18099, 25650, 27733, 30056, 31390, 32946, 35458, 37933, 42550, 43632, 45893, 49516, 50552, 54153, 58866, 59268, 63166, 63376, 67412
Prohibited trade practices:
Abbott Laboratories, 18397, 41093, 59471
AE Clevite, Inc., 17405, 35459
Alliant Techsystems Inc., 554, 26139
Alvey Holdings, Inc., et al., 65712
American Family Publishers, 8762
American Industrial Real Estate Association et al., 42552
American Psychological Association, 557
Archer Daniels Midland Co., 5394
ASFE, Association of Engineering Firms Practicing in Geosciences, 17401, 37483
Audio-Logics, 19108, 37484
Audio RX Hearing Aids, 19111, 37484
B&J School Bus Service, Inc., et al., 6792, 26787

150-255 O - 94 - 3 (3)

Baltimore Metropolitan Pharmaceutical Association, Inc., et al., 65718
Bay Colony Audiology Center et al., 19113, 37484
BPI Environmental, Inc., 19442
Brooklyn Audiology Assocs., P.C., et al., 19115, 37485
Brown-Potter Hearing Aid Center, 19118, 37485
CC Pollen Co. et al., 557, 26139
CDB Infotex et al., 26787
Center for Improved Communications et al., 19120, 37485
Citicorp Credit Services, Inc., 8763
Clinique Laboratories, Inc., 11413
Clorox Co., 32947
Collins Buick, Inc., et al., 11860, 31391
Columbia Hospital Corp. et al., 47458, 65721
Conair Corp., 18400, 37486
Consol, Inc., 37934, 59039
Cooper Industries, Inc., 37939, 64950
Del Dotto Enterprises, Inc., et al., 59473
DeMert & Dougherty, Inc., 19436, 47140
Dentsply International Inc., 6796
Diet Center, Inc., 52761
Dollar Rent-A-Car Systems, Inc., 26139
Dominican Santa Cruz Hospital et al., 14573
Fleetwood Manufacturing, Inc., et al., 13267, 32947
Flick, Gisela E., 31395, 59039
Fone Telecommunications, Inc., 17408, 37486
G.C Electronics, Inc., 41093, 59039
General Electric Co., 8763
General Motors Corp. et al., 64950
Gracewood Fruit Co., 21302, 64955
Griffin Bacal, Inc., 25989, 41789
Harcourt Companies, 559, 19460
Hasbro, Inc., 25992, 41789
Health Management Resources Corp., 18402, 47141
Hearing Care Associates-Arcadia et al., 19122, 37486
Homecare Oxygen & Medical Equipment Co. et al., 60653
Honickman, Harold A., et al., 14212
I.R.S.C., Inc., et al., 26788
Imperial Chemical Industries PLC et al., 37944
Inter-Fact, Inc., et al., 26788
Ion Systems, Inc., 28966, 43633
Isaly Klondike Co., 8763
Keds Corp., 52767
KKR Associates, L.P., et al., 31392
Levey, Michael S., et al., 38764, 59040
Lomas Mortgage U.S.A., Inc., 37951, 59040
Marshall Field & Co., 30057, 43633
McCormick & Co., Inc., 42552, 60664
McElhaney, James L., M.D., 31399, 59040
Medical Marketing Services, Inc., et al., 5991
Mobil Oil Corp., 11413
Monsanto Co., 30060, 50554
Mr. Coffee, Inc., 19439
National Association of Social Workers, 17411
National Media Corp. et al., 19446, 41095
National Society of Professional Engineers, 31392, 44841
Nationwide Industries, Inc., 33274, 50554
Nature's Cleanser, Inc., et al., 26549, 43634
North American Plastics Corp. et al., 19451
Numex Corp., 31402, 59041
Nutri/System, Inc., 52769
Occidental Petroleum Corp. et al., 26788
Orkin Exterminating Co., Inc., 19444
Osram Sylvania Inc., 47141, 65721
PerfectData Corp., 8285, 43634
Phone Programs, Inc., 562
Physicians Weight Loss Centers of America, Inc., et al., 52775
Presto Food Products, Inc., 64955
Promodes, S.A., et al., 33276
Redmond Products, Inc., et al., 60035
Revlon, Inc., et al., 47463, 68913
Right Start, Inc., et al., 21305, 41789
S.C. Johnson & Son, Inc., 562, 26140, 64957
Service Corporation International, 41096, 59041
Sharper Image Corp. et al., 21307, 42552
Site for Sore Eyes, Inc., 6796
Southeast Colorado Pharmacal Association, 6796
Synchronal Corp. et al., 32947, 59041
Tele-Communications, Inc., et al., 63167
Textron Inc., 60026
Texwipe Co., 41096, 59042
Trans Union Corp., 47466, 68914
United Real Estate Brokers of Rockland, Ltd., 39551, 59042
United States Golf Association, 5991
United Weight Control Corp., 18406, 41790
Valspar Corp. et al., 59479
Value Rent-A-Car, Inc., 26140
White Castle System, Inc., 55072
YKK (U.S.A.) Inc., 19454, 41790
Trade regulation rules; franchising and business opportunity ventures; disclosure requirements and prohibitions
Porsche Cars of North America, Inc., 6797

Federal Transit Administration

RULES
Bus testing facility program, 2989, 10989, 58732
Meeting, 11549
Charter services
Government, civic, charitable, and other community activities; transit needs; demonstration program, 36894
Correction, 52684
Heavy-duty buses; eligibility for funding of warranties; policy statement, 6446
Temporary local match waiver for Sections 9 and 18, 42690
Transportation infrastructure management:
Management and monitoring systems; implementation, 63442
Correction, 64374
Transportation plans and programs:
Metropolitan areas and Statewide planning regulations, 58040
Uniform system of accounts and records and reporting system, 4880

PROPOSED RULES
Major capital investment projects, eligibility for funding; withdrawn, 6948
Management systems; implementation, 12096
Metropolitan planning, Statewide transportation planning, and management systems; meetings, 15816
Omnibus Transportation Employee Testing Act of 1991:
Alcohol use by transportation workers, limitation, 7197
Rail fixed guideway systems; State safety oversight, 64856
Transportation plans and programs:
Metropolitan areas, 12064
Statewide regulations, 12084

NOTICES
Americans with Disabilities Act:
Equivalent facilitation for accessibility of transportation vehicles and facilities; determinations summary, 54864
Bus testing program; guidelines availability, 30213
Environmental statements; availability, etc.:
Clackamas and Multnomah Counties, OR, and Clark County, WA, 52800
Griffin Line Corridor, CT, 60896
Mission Valley East Light Rail Project, CA, 26029
Newark-Elizabeth Rail Link Project, NJ, 60484
New Eugene Transit Station, OR, 18299
San Juan Metropolitan Area, PR, 7170
St. Charles Corridor, MO, 58723
Vasona Corridor Light Rail Transit Project, CA, 48085
Grants; FTA sections 3 and 9 obligations, 4194, 8813, 16442, 27615, 32166, 34611, 38597, 43673, 48420
Grants: FTA sections 3, 9, 18, and 16 obligations: Formula grant apportionments and allocations; 1994 FY, 59300
Intermodal Surface Transportation Efficiency Act Interstate Highway System; public transit buses; axle weights study, 60481
Meetings:
Transit Technology Program Advisory Committee, 36244, 42621
Private enterprise participation guidance; rescission, 62407
Transfer of federally assisted land or facility:
Lane Transit District, OR, 37987
Massachusetts Bay Transportation Authority, MA, 37987
Niagara Frontier Transportation Authority, NY, 38458
Santa Clara County District, CA, 52801
Transit bus and van materials selection; fire safety practices, 54250

Financial Management Service

See Fiscal Service

Fine Arts Commission

See Commission of Fine Arts

Fiscal Service

RULES
Bonds and notes, U.S. Treasury:
Series E, EE, H, HH, and U.S. savings bonds and notes (Freedom Shares), 60936
Federal funds transfers; Cash Management Improvement Act of 1990 implementation; correction, 4460
Federal payments made through financial institutions by automated clearing house method; clarification, 21634
Financial management:
Foreign Claims Settlement Commission of the United States; awards, payment, 4578
Freedom of Information Act; implementation, 25943
Marketable book-entry Treasury bills, notes, and bonds; sale and issue, 412
Payment of unclaimed interest on certain awards of Mixed Claims Commission, U.S. and Germany; CFR Part removed, 25774
Payment on amount of awards and appraisals in favor of U.S. Nationals on claims against Mexico; CFR Part removed, 25775
Payment under Act of Congress approved August 30, 1962, on unpaid balances of awards of Philippine War Damage Commission; CFR Part removed, 25774
Refugee Relief Act of 1953; loans to public or private agencies; CFR Part removed, 25775
Savings bonds:
Qualified issuing agents presorting savings bonds delivered by mail; authorized payment of bonus, 63529
Treasury certificates of indebtedness, notes, and bonds; State and local government series, 31908

INDEX
VOL 58
1993
UMI

150-255 O - 94 - 3 (3)

Treasury tax and loan depositaries, 35395

PROPOSED RULES

Book-entry Treasury bonds, notes, and bills held in Treasury/Reserve Automated Debt Entry System (TRADES), 9134
  Withdrawn, 59972
Federal agency receipts management, disbursements, and cash management improvements fund operation, 41902
Payment to financial institutions for credit to accounts of employees and beneficiaries; miscellaneous amendments, 41449
Regulatory agenda, 24779, 56791

NOTICES

Bonds and notes, U.S. Treasury; guaranteed minimum investment yields, 12059
Book-entry Treasury securities held at Federal Reserve banks; 1994 fee schedule for transfer, 59782
Coupons under book-entry safekeeping (CUBES) program, 16910
Federal debt collection and discount evaluation; Treasury current value of funds rate, 58037
Interest rates:
  Renegotiation Board and prompt payment rates, 36511
Savings bonds:
  Qualified issuing agents presorting savings bonds delivered by mail; basis for authorized payment of bonus, 63617
Senior Executive Service:
  Performance Review Board; membership, 22018
Surety companies acceptable on Federal bonds:
  Acceleration National Insurance Co., 33141
  ACSTAR Insurance Co., 47527
  American Manufacturers Mutual Insurance Co., 6434
  American Resources Insurance Co., Inc., 11663
  Century Surety Co., 7174, 8092
  Contractors Bonding & Insurance Co., 7174
  Covenant Mutual Insurance Co., 15896, 28090
  Credit General Insurance Co., 57671
  Evanston Insurance Co., 41841
  Kentucky Central Insurance Co., 28654
  MCA Insurance Co., 6662
  Michigan Mutual Insurance Co., 26810
  Midwestern Indemnity Co., 52802
  Millers National Insurance Co., 58037
  NAC Reinsurance Corp., 7175
  National Automobile & Casualty Insurance Co., 38163
  Navigators Insurance Co., 15897
  Nobel Insurance Co., 31232
  Pacific States Casualty Co., 22018
  Pennsylvania General Insurance Co., 51406
  Pinnacle Insurance Co., 33141
  Ranger Insurance Co., 7602, 41841
  Regency Insurance Co., 6434
  Star Insurance Co., 8092
  Titan Indemnity Co., 11885
  Underwriters Reinsurance Co., 15897
  United Pacific Insurance Co., 48088
  United Surety & Indemnity Co., 17922
  Western Atlantic Reinsurance Corp., 68988
Surety companies acceptable on Federal bonds; annual list, 35778
Surety company application and renewal fees, 6434

Fish and Wildlife Service

RULES

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 17776, 31175, 31252
  Correction, 61810
Clean Vessel Act grant program; request for comments, 36619
Emergency closures:
  Swan Lake Zone, MO; Canadian geese hunting, 65656
Endangered and threatened species:
  Adiantum vivesii, etc. (four Puerto Rican ferns), 32308
  Apalachicola rosemary, etc. (five Florida plants), 37432
  Applegate's milk-vetch, 40547
  Aristida chaseae, etc. (three Puerto Rican plants), 25755
  Beach jacquemontia,
  Bruneau Hot Springsnail, 5938
  Captive-bred wildlife, 68323
  Carolina heelsplitter, 34926
  Cave crayfish, 25742
  Coastal California gnatcatcher, 16742, 65088
  Coffin Cave mold beetle et al., 43818
  Delhi Sands flower-loving fly, 49881
  Delta smelt, 12854
  Duskytail darter, etc., 25758
  Florida perforate cladonia, etc. (seven Central Florida plants), 25746
  Giant garter snake, 54053
  Homerus, Corsican, and Luzon peacock swallowtail butterflies, 4356
  Ka'u silversword, 18029
  Kodachrome bladderpod, 52027
  Leptocereus grantianus (cactus from Culebra Island, PR), 11550
  Louisiana pearlshell, 49935
  Manatees—
    Protection areas; Lake Woodruff National Wildlife Refuge, FL, 28381
    Sanctuaries in Kings Bay, FL, 5643, 31660
  Marsh sandwort, etc., 41378
  McKittrick pennyroyal, 49244
  Mexican spotted owl, 14248
  Nelson's checker-mallow, 8235
  Nile crocodile, 49870
  Northern riffleshell and club shell mussels, 5638
  Oregon chub, 53800
  Otay Mesa mint, etc., 41384
  Penland alpine fen mustard, 40539
    Correction, 44734
  Pima pineapple cactus, 49875
  Red wolves; CFR correction, 52031
  Relict and bluemask (=jewel) darters, 68480
  Saimaa seal, 40538
  Seabeach amaranth, 18035
  Siler pincushion cactus, 68476
  Silver rice rat; critical habitat, 46030
  Snake River chinook salmon, 49880
  Spectacled eider, 27474
  Spineless hedgehog cactus, 49242
  Star cactus, 53804
  Thelypteris inabonensis, etc. (three Puerto Rican ferns), 35887
  Tumamoc globeberry, 33562
  Upland combshell, etc. (11 freshwater mussels), 14330
  Western snowy plover, 12864
  Whooping cranes, 5647, 62046
Hunting and fishing:
  Open areas list additions and refuge-specific regulations, 29080
  Refuge-specific hunting and fishing; Sabine National Wildlife Refuge, 42879
  Refuge-specific regulations, 5064, 29072
Importation, exportation, and transportation of wildlife:
  Designated port status—
    Orlando, FL, 68542
  Fish or fish eggs; injurious wildlife, 58976
Marine mammals:
  Polar bears and walruses; incidental take during oil and gas exploration activities in Beaufort Sea and adjacent northern coast of Alaska, 60402
Migratory bird hunting:
  Federal Indian reservations and ceded lands, 46058, 50211
  National migratory bird harvest information program; establishment, 15093
  Seasons, limits, and shooting hours, establishment, etc., 44576, 45392, 50188, 50702
    Correction, 50211
Wild Bird Conservation Act of 1992; implementation, 60524

PROPOSED RULES

Alaska National Interest Lands Conservation Act, Title VIII implementation (subsistence priority), 46678
  Meeting, 14350, 40393
Alaska National Wildlife Refuges; free ranging wolf and wolverine hunting; airborne trapper or hunter prohibition, 68012
Endangered and threatened species:
  Alabama sturgeon, 33148, 40109, 44643, 47851, 55036
  Amaranthus brownii, etc. (three plants from Nihoa, HI), 15828
  Appalachian elktoe, 46940
  Arctic peregrine falcon, 51035
  Argali (wild sheep in Kyrgyzstan et al.), 25595
  Arizona willow, 8249
  Arroyo southwestern toad, 41231, 47428
  Asplenium fragile, etc. (four ferns from Hawaiian Islands), 34231
  Auerodendron pauciflorum (plant), 14541
  Beach jacquemontia, 14537
  Black-footed ferrets—
    North-central Montana; experimental population, 19220, 26949, 29805
  Cactus ferruginous pygmy owl, 13045
  California candidate plant species (category 1), 58534
  Captive-bred wildlife, 32632, 68383
  Cherokee darter, 53696
  Coastal California gnatcatcher, 8032, 16758, 38736
    Special rule; environmental statement availability, 65097
  Colorado River endangered fishes; razorback sucker, etc.; critical habitat, 6578, 12573, 13732, 48351, 59979
  Cuneate bidens (Hawaiian plant), 36387
  Del Mar manzanita, etc. (six plants from California and Mexico), 51302
  Delta smelt, 14199
  Desert tortoise (Mojave population); critical habitat determination, 45748
  Dugong, 41688
  Etowah darter, etc., 65696
  Findings on petitions, etc., 4975, 5341, 5701, 8250, 14169, 15901, 19216, 19401, 19402, 19795, 25594, 27260, 27986, 28543, 28849, 33606, 36184, 36924, 37699, 38549, 38552, 38553, 42717, 43856, 43857, 49467, 62623, 63328, 64828, 64927, 65325
  Flat-tailed horned lizard, 62624
  Hartweg's golden sunburst, etc., 17376
  Hawaiian hawk, 41684
  Hine's emerald dragonfly, 51604, 64927
  Holy Ghost ipomopsis; hearing, 4144
  Hungerford's crawling water beetle, 12013
  Kodachrome pepper-grass, 52058
  Kootenai River white sturgeon, 41237

INDEX
VOL
58
1993
UMI

Lake Erie water snake, 43857
Little Mariana fruit bat, etc. (six endangered forest species from Guam); critical habitat, 11821
Loch Lomond coyote-thistle, 62629
Louisiana black bear; critical habitat, 63560
Louisiana pearlshell, 11579
MacFarlane's four-o'clock, 45085
Manatees--
Protection areas; Kings Bay, FL, 28381
Sanctuaries in Kings Bay, FL, 34556
Mann's bluegrass, 18073
Melicope (three plants from Hawaii), 27699
Myrcia paganii, etc., 339
Northern copperbelly water snake, 43860
Northern copperbelly water snake, etc., 52740
'Olulu, etc. (23 plants from Kauai, Hawaii); hearing, 4145
Ortegon, etc. (Puerto Rican trees), 49960
Pahrump poolfish, 49279
Pamakani, 16164
Pendant kihi fern, etc. (12 Hawaiian plants), 48012
Plant taxa, 51144
Red wolves in North Carolina and Tennessee; experimental populations, 62086
Relict darter, 12353
Relict darter, etc.; correction, 4400
Rio Grande silvery minnow, 11821, 19220
Rock gnome lichen, 68623
Royal snail, etc., 41690
San Joaquin Valley Orcutt grass, etc. (eight plants from California), 41700, 52063
Siler pincushion cactus, 13244
Small whorled pogonia, 53904
Southwestern willow flycatcher, 39495, 53702
Spineless hedgehog cactus, 4401
Star cactus, 8249
Texas ayenia, etc., 41696
Virginia round-leaf birch, 64281
White sturgeon, 36379, 54549
Winkler cactus, 52059
Endangered Species Convention:
Appendices and amendments, 38112
Hunting and fishing:
Open areas list additions and refuge-specific regulations, 48732, 53703
Refuge-specific regulations, 49382
Importation, exportation, and transportation of wildlife:
Designated port status—
Boston, MA, 59978
Mobile, AL, et al., 39003
Orlando, FL, 36925
Migratory bird hunting:
Federal Indian reservations and ceded lands, 30138, 43192
Seasons, limits, and shooting hours; establishment, etc., 19008, 31244, 37828, 44590
Shotshells; length, size, and coating restrictions, 35332
Supplemental notice of review, 63488
Migratory bird permits:
Captive-reared mallards; release, 31247
Correction, 33160
Supplemental notice of review, 63488
Wild Bird Conservation Act of 1992; implementation; meeting, 16644, 42926

NOTICES

Agency information collection activities under OMB review, 3963, 16844, 16845, 42343, 45914, 47755, 53938, 62371
Alaskan marine mammals; management plans, 28608
Alaska public lands; fish and wildlife, subsistence takes, 5955, 13737, 48635
Clean Vessel Act:
Waste treatment facilities and pumpout stations; technical guidelines, 33447
Coastal Barrier Resource System:
Boundary modification process, 60288
Pacific study and maps availability, 66016
Damage assessment plans:
Coeur D'Alene Basin natural resource; injury determination phase; availability, 58562
Southern Lakes Trap and Skeet Club, Lake Geneva, WI, 39229
Endangered and threatened species:
Candidate categories relative to petition findings; policy, 28034
Recovery plans—
American peregrine falcon, 33457
Atlantic salt marsh snake, 35462
Bradshaw's lomatium, 18225
Bruneau hot springsnail, 40155
Caesalpinia kavaiensis, etc. (Kona Dryland forest plants), 41802
Carter's panicgrass, 64774
Chamaecrista glandulosa, 42343
Chamaesyce skottsbergii var. skottsbergii, etc. (two plants from Barber's Point, HI), 51842
Chisos Mountain hedgehog cactus, 26155
Clay reed-mustard, etc. (three reed-mustards in Utah), 49522
Clubshell and northern riffleshell mussels, 50366
Cochise pincushion cactus, 32959
Colorado squawfish, etc., 44188, 46990
Cooley's meadowrue, 42741
Desert pupfish, 6526
Desert tortoise (Mojave population), 16691, 28894
Duskytail darter, 51098
Florida panther, 9220, 42344
Greenback cutthroat trout, 26003
Grizzly bear, 43373, 60208
Hibiscadelphus distans, 39228
Houghton's goldenrod, 48670
Karst invertebrates (Bee Creek Cave harvestman, etc.), 3016, 39031
Ka'u silversword, 44846
Lahontan cutthroat trout, 11061
Lana'i plant cluster (Abutilon eremitopetalum, etc.), 51843
Large-flowered fiddleneck, 64963
Leedy's roseroot, 48671
Leopard darter, 26343
Lipochaeta venosa, etc., 36693
Little Aguja pondweed, 67808
Lost River sucker, etc., 5017
Magazine Mountain shagreen, 34268
Marsilea villosa (Hawaiian plant), 64593
Moapa dace, 51844, 68949
Morefield's leather flower, 64774
Northeastern beach tiger beetle, 38782
Ozark big-eared bat, 49056
Palo de rosa tree, 49057
Pelos de diablo grass, 49057
Plymouth redbelly turtle, 40675
Pohakuloa plants, 48896
Puritan tiger beetle, 38781
Roan Mountain bluet, 41801
Sand skink, etc., 27307
Schiedea adamantis, 38133
Schweinitz's sunflower, 51380
Sentry milk-vetch, 32960
Serianthes nelsonii, 37963
Terlingua Creek cats-eye, 44691
Uncompahgre fritillary butterfly, 13795
Wahiawa plant cluster (Cyanea undulata, etc.), 41291
Walker's Manioc, 32959
Whooping crane, 34269
Endangered and threatened species permit applications, 115, 3294, 4439, 6004, 7153, 7895, 11243, 12250, 13497, 14585, 16692, 18226, 26003, 26795, 28414, 31534, 32362, 33458, 34062, 35462, 36219, 36992, 37963, 39032, 39228, 41485, 42984, 44190, 44846, 46212, 47754, 48533, 49523, 51098, 52118, 53558, 54371, 58017, 58877, 60050, 60874, 63585, 64775, 68658
Endangered Species Convention:
African elephant sport-hunted trophy permits; guidelines, 7813
Appendices; listing criteria, 60873
Appendices and amendments, 33103
Environmental statements; availability, etc.:
Aquatic nuisance species program and meetings, 3556
Bayou Sauvage National Wildlife Refuge, LA; meeting, 36417
Black-footed ferrets—
Conata Basin/Badlands area, SD; reintroduction, 32719
Brazoria National Wildlife Refuge, TX, 18226
California condor release; Lion Canyon, CA, 31050
Coastal Sage Scrub Ecosystem et al., CA, 34270, 34271
Conata Basin/Badlands Area, SD; reintroduction of black-footed ferrets, 5707
Desert National Wildlife Range, OR; mineral withdrawal, 36992
Florida panther; potential genetic management options, 43651
Hart Mountain National Antelope Refuge, OR, 43118
Incidental take permits—
Beard Family Partnership, Austin, TX; golden-cheeked warbler, 21990
Canyon Ridge Subdivision, TX; golden-cheeked warbler, 44524
Coyote Hills East Project Site, CA; coastal California gnatcatcher, 39834
Hell Canyon Quarry, UT; peregrine falcon, 61094
Highlands County, FL; Florida scrub jay, etc., 5412
International Paper Timberlands Operating Co., Inc.; Conecuh and Monroe Counties, AL; Red Hills salamander, 41291
Lake Pointe development, Austin, TX; golden-cheeked warbler, 45353
Landfill near Pahrump, NV; Mojave desert tortoise, 28414
Murray Pacific Corp., Lewis County, WA; northern spotted owl, 32720
Nevada Division of State Parks, NV; desert tortoise, 53558
Riverside, CA; Stephens' kangaroo rat, 6526, 12049
Sea Mist, Inc.; Baldwin County, AL; Alabama beach mouse, 59730
Sunland Communities, Inc.; Victorville, CA; desert tortoise, 21750
Valley Community Chapel et al., Yucca Valley, CA; desert tortoise, 21991
Western Riverside County, CA; Stephens' kangaroo rat, 60874
Lower Florida Keys backcountry, FL; management plan, 8633
Migratory bird subsistence hunting in Alaska, 43119, 45915
National Wildlife Refuge System management, 13644, 17426
New Madrid National Wildlife Refuge, MO, 8634

Northern spotted owl; protective measures in California, Oregon, and Washington, 69132
Silvio Conte National Fish and Wildlife Refuge, CT, et al., 44190
Sport fish and wildlife restoration programs; Federal aid, 58347
Stephens' kangaroo rat; incidental taking; Riverside, CA, 6526, 12049
Tijuana Slough National Wildlife Refuge, CA, 38134
Tijuana Slough National Wildlife Refuge et al., CA, 7154
Upper Colorado River Basin; nonnative fish species stocking procedures; document availability, 45914
Yellowstone National Park and central Idaho; reintroduction of gray wolves, 38134, 42741, 58018
Grants and cooperative agreements; availability, etc.:
North American Wetlands Conservation Council; document availability, 13645
Sport fish and wildlife restoration projects; policy and procedures for selecting and funding, 36694
Lead fishing sinker use prohibition on National Wildlife Refuges and National Parks; petition consideration, 31740
Marine mammal permit applications, 7155, 7895, 13452, 30803, 31534, 32543, 39229, 41485, 51098
Meetings:
Aquatic Nuisance Species Task Force, 26558, 33280, 37503, 44524, 48533, 53212, 60051, 63181, 67417
Crystal River National Wildlife Refuge, FL; management, 41802
Federal Subsistence Regional Advisory Councils, 48634
Great Lakes Nonindigenous Aquatic Nuisance Species Panel, 7155
Klamath Fishery Management Council, 116, 11418, 16202, 45119
Klamath River Basin Fisheries Task Force, 14585, 30804, 47912
Polar bear habitat protection strategy, 68659
Sport Fishing and Boating Partnership Council, 57836
Zebra Mussel Coordination Committee, 13497
Migratory bird hunting and conservation stamp (Duck Stamp) contest, 6974
National Wildlife Refuge System units; public entrance and recreation user fees, 51512
Nonindigenous aquatic species; intentional introductions policy review; findings, conclusion, and recommendations; report availability, 45354
Privacy Act:
Systems of records, 41803
Wild Bird Conservation Act; prohibition on import of exotic birds:
African grey parrots, 44847
Agapornis nigrigenis, etc., 42573
Agapornis pullaria, etc., 19840
Indonesia, 59061
Senegal, 59063

Food and Drug Administration

RULES

Administrative practice and procedure:
Advisory committees—
List update, 41635
Name change, 62521
Procedural regulations; list update, 49190
Animal drugs, feeds, and related products:
Antibiotic drugs, etc., 17515
Bambermycins, 54286
Butonate liquid, etc., 41024
Chlortetracycline soluble powder, 61014
Diazepam injection, 499
Droncit (Praziquantel) feline cestode tablets, 7864
Fenbendazole, etc., 17346
Follicle stimulating hormone, 47376
Formalin solution, 59168
Gallimycin (erythromycin) injection, 43794
Gentamicin intrauterine solution, 14314
Hearing procedure; obsolete regulation removed, 51011
Isoflurane, 17346
Ivermectin, 58652
Ivermectin and pyrantel (as pamoate salt), 8541
Miblbemycin oxime, 5608
Monensin, 17516, 53882
Neomycin sulfate solution, 38971
New drug applications—
Lasalocid liquid, 43560
Otomax ointment (gentamicin sulfate, etc.), 38972
Oxfendazole paste, 39443
Oxytetracycline hydrochloride soluble, 43793
Penicillin G benzathine and penicillin G procaine sterile suspension, 65285
Penicillin G procaine aqueous suspension, 11964
Penicillin G procaine in oil, 500
Penicillin with streptomycin or dihydrostreptomycin, 30118
Phenylbutazone paste, 29777
Pichia pastoris dried yeast, 59169
Pirlimycin, 58486
Polyotic (tetracycline) soluble powder, 33330
Praziquantel/pyrantel pamoate tablets, 58651
Praziquantel tablets and injectable solution, 42852
Removal of obsolete regulations and recodification; correction, 18304
Roxarsone tablets and liquid, 65664
Selenium/vitamin E injection, 57556
Serum gonadotropin, etc., 52222
Sponsor name and address changes—
A.L. Laboratories, Inc., 63890
Agri-Bio Corp., 47056
Anaquest, Inc., 38971
Elanco Animal Health, 4316
Eon Labs Manufacturing, Inc., 30118
Farnam Companies, Inc., 44611
Fujisawa USA, Inc., 37855
Mid-Continent Agrimarketing, Inc., 5607
Norbrook Laboratories, Ltd., 61015
PM Ag Products, Inc., 26523
Sterile sometribove zinc suspension, 59946
Streptomycin oral solution, 47210
Sulfadimethoxine injectable, 38972
Sulfadimethoxine oral solution and soluble powder, 6092
Terramycin (oxytetracycline hydrochloride) soluble powder, 42853
Tiamulin liquid concentrate, 14313
Trimethoprin and sulfadiazine oral powder, 36134
Yohimbine injectable, 8542
Biological products:
New drug, antibiotic, and biological drug products; accelerated approval procedures; correction, 4078
Poliovirus vaccine live oral; additional standards, 19609
Chlorofluorocarbon propellants in self-pressurized containers; addition to list of essential uses, 6086
Color additives:
1,4-Bis[4-(2-methacryloxyethyl) phenylamino] anthraquineone copolymers; contact lens coloring, 17506, 41182
Correction, 36134
C.I. Reactive Red 180 copolymer, 9539, 33909, 41024
D&C Green No. 6; intraocular lens haptics coloring, 21538, 45841
D&C Violet No. 2, 60106
FD&C Blue No. 1, 17510, 41183
Vinyl alcohol/methyl methacrylate-C.I. reactive red 180 reaction product; contact lens coloring, 3225, 41183
Vinyl alcohol/methyl methacrylate-dye reaction products, 17508
Drug labeling:
Water-soluble gums as active ingredients in OTC drugs; warning statements, 45194
Drug labeling controls; manufacturing, processing, packing, or holding; current good manufacturing practices, 41348
Federal Food, Drug, and Cosmetic Act; misbranding sections; adequate implementation; lists, 2470
Correction, 17085
Food additives:
Adhesive coatings and components—
1-Hexene, 39655
5-Sulfo-1,3-benzenedicarboxylic acid, etc., 21256
Disodium 4-isodecyl sulfosuccinate, 21257
Adjuvants, production aids, and sanitizers—
1,1 difluoroethane, 64894
2-(2H-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol, 17514
Iodine, etc., 57554
N-methacryloyloxyethyl-N, etc., 57555
Oxidatively refined montan wax acids; polyhydric alcohol esters, 17512
Phosphoric acid, etc., 17512
Phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-tert-butylphenyl)ester, 37854
Sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, etc., 26684
Calcium disodium EDTA, 52221
Dimethyl dicarbonate, 6088
Feed and drinking water of animals—
Selenium, 47962
Irradiation in production, processing, and handling of animal feed and pet feed, ionizing radiation for treatment of laboratory animal diets, 18147
Modified food starch treated with beta-amylase enzyme, 21099
Paper and paperboard components—
2-Amino-2-methyl-1-propanol, 21100
Dimethylamine-epichlorohydrin coploymer; correction, 65284
Dimethylamine-epichlorohydrin copolymer, 51994
Polyamide-ethyleneimine-epichlorohydrin resin, 60109
Polymers—
2,2'-[1,2,-ethanediylbis(oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1H-b enzimidazol-5-yl)]-3-oxo-butanamide, 17513
Colorants, 67318
Dipentamethylenethiuram hexasulfide, 60553
Nylon 12; correction, 2976, 8820
Nylon 6/1, 32609
Olefin polymers, 21258
Styrene block polymers with 1,3-butadiene, hydrogenated, 65546
Zirconium oxide membrane, 48598
Food and color additives, substances generally recognized as safe, and prohibited substances; technical amendments and corrections, 17098

Food

Food for human consumption:
Aspartame as sweetener—
Baked goods, 21098
Frostings, toppings, fillings, etc., 48598
Hard and soft candy, 19770
Malt beverages, 21097
Nonalcoholic beverages, 21096
Bottled water; quality standards, 378
Cacao products; identity standards, 29523
Federal preemption; State petitions requesting exemption, 2462
Food labeling—
Antioxidant vitamins and cancer; health claims and label statements, 2622
Application date establishment, 2070, 44033
Butter nutrient content claims use, 2448, 17100
Calcium and osteoporosis; health claims, 2665, 17100
Dairy products and maple sirup; ingredients declaration, 2888, 17105
Dietary fiber and cancer; health claims and label statements, 2537
Dietary fiber and cardiovascular disease; health claims and label statements, 2552, 17100
Dietary lipids and cancer; health claims and label statements, 2787, 17343
Dietary saturated fat and cholesterol and coronary heart disease; health claims and label statements, 2739, 17102
Diluted juice beverages; ingredients declaration, 2897, 17102, 44059, 49190
Folic acid and neural tube defects; health claims and label statements, 2606, 17099
Foods named by nutrient content claim and standardized term; requirements, 2431, 17096
General principles, petitions, and definition of terms, 2302, 17341
Health claims; general requirements, 2478, 17097
Health claims; general requirements, etc., 44036, 59657
Ingredients declaration, 2850, 17103
Misleading containers; nonfunctional slack-fill, 27932, 64123
Nutrient content claims, 44020, 60105
Nutrition Labeling and Education Act of 1990; implementation; comments, 2066
Nutrition labeling, mandatory status; and nutrient content revision nutrition label format, 2079, 17328, 44063, 59363
Omega-3 fatty acids and coronary heart disease; health claims and label statements, 2682, 17101
Reference daily intakes and daily reference values, 2206, 17085
Regulatory impact analysis statement, 2927, 17096
Serving sizes, 2229, 17085, 19876, 44039, 60109
Sodium and hypertension; health claims and label statements, 2820, 17099
Special dietary use foods, 2427, 17104
State enforcement provisions, 2457, 17097
Zinc and immune function in elderly; health claims, 2661
Margarine; identity standard, 21648
Tomato concentrates, catsup, and tomato juice; identity standards and quality and fill of container, 16771
GRAS or prior-sanctioned ingredients:
Chymosin enzyme preparation, 27197, 30220
Human drugs:
Anorectal drug products (OTC); final monograph, 46746
Antacid drug products (OTC); final monograph, 45204
Antibiotic drugs—
Azithromycin, etc., 26655
Cefprozil, etc., 26658
Clarithromycin, etc., 26652
Idarubicin hydrochloride, 26662
Loracarbef, etc., 26665
Sterile imipenem monohydrate-cilastatin sodium, 26669
Tobramycin-fluorometholone acetate ophthalmic suspension, 26671
Antifungal products, topical (OTC); final monograph, 49890
Bioavailability and bioequivalence testing samples retention, 25918
Boil treatment products (OTC); safety concerns, 60332
Category II and III (OTC); active ingredients status list, 27636
Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
Antitussive drug products; final monograph, 54232
Bronchodilator drug products; final monograph, 54238
Digestive aid drug products (OTC); final monograph, 54450
Drugs for narcotic addiction treatment—
Levo-alpha-acetyl-methadol, 38704
Hormone-containing drug products, topically applied (OTC), 47608, 47611
Ingrown toenail relief drug products (OTC), 47602
Methadone; conditions for use in—
Maintenance treatment of narcotic addicts and human immunodeficiency virus disease counseling, 495
Nailbiting and thumbsucking deterrent drug products (OTC); final monograph, 46749
New drug applications; preapproval inspection requirements, 47340
Oral solid dosage form drug products; imprinting, 47948
Orphan drugs; correction, 6167
Pediculicide products (OTC); final monograph, 65452
Skin protectant products (OTC)—
Astringent products, 54458
Smoking deterrent products (OTC); final monograph, 31236
Topical antifungal drug products (OTC); labeling claims, 46744
Human tissue intended for transplantation, 65514
Medical devices:
Automated heparin analyzer; reclassification to class II, 51570
Device tracking, 43442
Correction, 52440
Device tracking; illustrative and designated lists, 43451, 48599
Device user facilities and distributors; death, illness, and serious injury reporting requirements, 46514
Comment opportunity, 46514
Hip joint metal/polymer/metal semi-constrained porous-coated uncemented prosthesis; reclassification and codification, 3227
Mammography facilities; quality standards and certification requirements, 67565
Mammography facilities; requirements for accrediting bodies, 67558
Microsurgical argon laser for rhinology and laryngology; reclassification, 29533
Natural nonabsorbable silk surgical suture; reclassification and codification, 57557
Physical medicine devices—
Mechanical automobile hand and foot driving control; classification revocation, 29535
Tracking requirements, 43442
Nutrition labeling; industry information exchange; meeting, 48597
Organization, functions, and authority delegations:
Agency organizational structure; headquarters and field offices addresses, 17091, 17105
Center Directors, 39141
Center for Biologics Evaluation and Research, 18346
Center for Drug Evaluation and Research, 41634
Change in organizational structure, evidentiary hearings, and division name, 17095
Commissioner of Food and Drugs, 17094, 64489
Criminal investigators; counterfeit drugs enforcement activities, 494, 42495
Deputy Commissioner for Operations, 17098
Deputy Commissioner for Operations et al., 34212
Deputy Director (Medical and Scientific Affairs), Center for Drug Evaluation and Research, 17093
Public information:
Agreements and understandings; exemption from full-text publication requirements, 48794
Criminal Investigations Office agreements and understandings; availability, 48793
New product approval, confidential commercial information; disclosure to foreign governments, 61598
Radiological health:
Diagnostic X-ray systems and major components; performance standard, 26386, 31067
Tea Importation Act:
Tea standards; establishment, 64137

PROPOSED RULES

Biological products:
Blood and blood components; consignee notification of increased HIV infection transmission risk, 34962
Civil money penalties; hearing procedures, 30680, 40103
Cosmetics:
Products containing certain hormone ingredients, 47611
Food additives:
Folic acid (Folacin), 53312
Irradiation in production, processing, and handling of food—
Frozen, packaged beefsteak for use in NASA space flight programs, 64526
Substances used in food-contact articles; regulation threshold, 52719, 65139
Food for human consumption:
Bottled water—
Identity standards, 393, 13041, 34010
Quality standards, 382, 389, 41612, 52042
Dietary supplement regulation, 33690, 43579
Correction, 34389, 40393
Enriched grain product identity standards; folic acid addition, 53305, 65276

UMI

Food labeling—
Dietary supplements; health claims requirements; correction, 33700, 53296, 54539, 68791
Dietary supplements of vitamins, minerals, herbs, etc.; nutrition labeling, 33715, 33731, 40104, 40190
Diluted juice beverages; ingredients declaration, 18057
Folate and neural tube defects; health claims and label statements, 53254
Food packages; nutrition labeling placement, 44091
Metric labeling requirements, 29716
Misleading containers; nonfunctional slack-fill, 2957, 17171, 64208
Nutrient content claims; "healthy" definition, 2944, 17171
Protein hydrolysates and vegetable broth in canned tuna; and "and/or" labeling for soft drinks; ingredients declaration, 2950, 17171, 29557
Restaurant foods; nutrient content and health claims, 33055
Frozen desserts; ice milk, goat's milk ice milk, ice cream, frozen custard, and goat's milk ice cream; identity standards, 520
Lead in evaporated milk and evaporated skim milk; withdrawn, 33871
Lead-soldered food cans, 33860
Correction, 40759
Margarine; identity standards; use of marine oil, 43580
Correction, 50301
GRAS or prior-sanctioned ingredients:
Gelatin, 27959, 59697
Human drugs:
Antacid drug products (OTC); final monograph, 49826
Anticaries drug product products (OTC); tentative final monograph; comment extension, 6102
Antiemetic drug products (OTC); monograph, 45216
Antiperspirant drug products (OTC); request for comments, 15452, 38541
Current good manufacturing practices—
Aseptic processing and terminal sterilization; meeting, 47088
Dandruff, seborrheic dermatitis, and psoriasis drug products (OTC); monograph amendment, 17554
Drug products (OTC) containing aspirin, buffered aspirin or aspirin in combination with antacid; labeling, 54224
Labeling of drug products (OTC)—
Application or abbreviated application approval, 59622
Interchangeable words; monograph requirement, 17553
Technical amendments, 59626
Laxative drug products (OTC); tentative final monograph, 46589
Nighttime sleep-aid drug products; final monograph, 45217
Oral and rectal drug products (OTC) containing aspirin and nonaspirin salicylates, 54228
Orally administered drug products; symptoms associated with overindulgence in food and drink, relief (OTC); final monograph, 26886
Orally ingested (OTC) drug products containing alcohol as an inactive ingredient; maximum concentration limit, 54466
Sunscreen drug products (OTC); tentative final monograph, 28194, 53460
Medical devices:
Cardiovascular devices; nonroller-type cardiopulmonary bypass blood pump; premarket approval, 36290, 46919
Clinical investigators disqualification, 52144, 64209
Correction, 53245
Current good manufacturing practice regulations, 61952
Correction, 64353
Gastroenterology-urology devices—
Penile inflatable implant; premarket approval requirement, 25902, 35416
Testicular prosthesis, 4116, 15119
Hearing aid requirements, 59695
Hearing, 59697
Intraocular lenses; investigational exemptions, 52142, 64209
Mammography quality standards; public conference, 45080
Neurological devices; cranial electrotherapy stimulators; premarket approval requirement, 45865
Premarket approval applications; temporary suspension of approval, 52729
Silicone inflatable breast prosthesis; premarket approval requirements, 3436, 13230
Metric labeling; quantity of contents labeling requirements for foods, human and animal drugs, animal foods, cosmetics, and medical devices, 67444
Proposed rules (10); intent to withdraw, 4953
Radiological health:
Diagnostic X-ray systems and major components; performance standard, 26407, 31067
Light-emitting products; performance standards, 27495
Registration of producers of drugs and listing of drugs in commercial distribution; drug listing compliance verification reports, 46587

NOTICES

Advisory committees; annual reports; availability, 7787
Animal drugs, feeds, and related products:
Animal drug user fee study, 25994
Anti-infective bovine mastitis products; target animal and human food safety, drug efficacy, environmental and manufacturing studies; guideline availability, 7893
Dairy and beef cattle; uniform labeling of drugs; guideline availability, 8054
Export applications—
Adequan Canine, 61712
Bacitracin zinc Type A medicated article for chicken, turkey, and swine feeds, 17895
Estradiol benzoate injection, 33636
Furazolidone aerosol powders, 12366, 16687
Interceptor (milbemycin oxime) dye-free tablets for dogs, 6284
Interceptor Chewables (milbemycin oxime), 3284
MOXIDEC (moxidectin) tablets, 38770
Lasalocid-containing feed; data availability, 39031
Neomycin sulfate; regulatory status, 11058
New drug applications—
Boehriger Ingelheim Animal Health, Inc.; approval withdrawn, 566
Daco Laboratories, Ltd.; proposal to withdraw approval; hearing, 43638
Manna Pro Corp.; approval withdrawn, 7789, 21582
Shulcon Industries, Inc.; approval withdrawn, 33445
Stevan M. Rogers Farm; approval withdrawn, 17412, 33941
TPC Products, Inc., proposal to withdraw approval, 25653
Zoecon Corp.; approval withdrawn, 41099
Patent extension; regulatory review period determinations—
Producil, 7787
Therapeutic use antimicrobial new animal drugs, flexible dose labeling; Center for Veterinary Medicine points to consider; document availability, 58010
Toxaphene; residues action levels; revocation, 60859
Tracers in animal feed; compliance policy guide; availability, 21731
Veterinary Medicine Center list of guidelines; availability, 17413
Biological product licenses
Alpha Plasma Center, 566
Hema Systems, Ltd., 28589
Houston Apheresis, Inc., 28982
Nashville Biologicals, Inc., 66381
Plasmatek of Victoria, Inc., 11609
Sclavo, S.p.A., 66380
Westmar Oceanside, Inc., 26982
Worldwide Biologicals, Inc., 15351
Biological products:
Cell lines used to produce biologicals, points to consider in characterization; document availability, 42974
Clinical Laboratory Improvement Amendments; in vitro analytical test systems manufacturers; premarket submissions preparation, , 3952, 12588
Export applications—
CHIRON RIBA HCV 3.0 SIA, 41484
Hepatitis C Virus-Encoded Antigen (Recombinant c100-3, HC-23, HC-29, and HC-34) Abbot MATRIX HCV, 17593
Microtrak II HIV-1/HIV-2 EIA, 21468
Ortho Antibody to HBsAg ELISA Test System, 50554
Ortho Blood Grouping Reagents Anti-A, Anti-B, Anti-D: (Monoclonal); Control, Reverse Diluent, Ortho BioVue System, 17592, 17593
Ortho Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K (Monoclonal); Control, Ortho BioVue System, 17895
Ortho Blood Grouping Reagents Anti-D, Anti-C, Anti-E, Anti-c, Anti-e: (Monoclonal); Control, Ortho BioVue System, 17592
Pulmozyme (dornase alfa), 42339
Human somatic cell therapy products and gene therapy products; application of current statutory authorities, 53248
Suspect adverse events and product problems with medications and devices, reporting form availability, 11768, 31596, 64001
Blood establishments, quality assurance guideline; availability, 35959
Chloral hydrate; comprehensive toxicological assessment, 39558
Chlorofluorocarbons and other ozone depleting substances; warning statements for medical and food products; alternative language, 34812, 40656
Color additive petitions:
BASF Corp., 42975
Bausch & Lomb, Inc., 58699

Kemira, Inc., 29230
Committees; establishment, renewal, termination, etc.
Advertising and Promotional Labeling Staff, 42340
Antiviral Drugs Advisory Committee, 13067
Center for Biologics Evaluation and Research public advisory committees, 51084
Center for Devices and Radiological Health, 21728, 21730
Center for Drug Evaluation and Research public advisory committees, 45109
Center for Drug Evaluation and Research standing committee to review use of refusal to file procedure, 28983
National Mammography Quality Assurance Advisory Committee, 41793
Nonprescription Drugs Advisory Committee, 51084
Tea Experts Board, 7788
Technical Electronic Product Radiation Safety Standards Committee, 7789
Veterinary Medicine Advisory Committee, 35960
Debarment orders:
Azeem, Mohammed, 21982, 26814
Bae, Kun Chae, 69368
Bansal, Padam C., 62674
Chang, Charles Y., 12967, 21983
Colton, Steven F., 33446
Desai, Kanubhai C., 52111
Dicola, Charles G., 59044
Donnelly, Mary, 62675
Finelli, Gena R., 21469
Fogari, Robert A., 36691
Hossain, Liaquat, 59046
Kalidindi, Sanyasi Raju, 21470
Long, Susan M., 68147
Mannan, Muhammad Z., 17896
Matkari, Raj, 54156
Pai, Daphne, 59048
Perkal, Mark B., 62676
Prasad, Kumar, 35006
Rivers, Jacob H., 19128
Rodriguez, Juan Manuel, 39819
Schetlick, Gloria H., 21983
Shah, Dilip, 45899
Shulman, Robert, 45340
Sturm, Jan T., 33941, 36252
Vegesna, Raju, 19129
Environmental statements; availability, etc.:
New drug applications—
Taxol, 3954
Federal preemption of State and local blood, blood component, and blood derivative standards; citizen petition, 45341
File Interchange System (FIS) Program User Reference Guide and Installation Manual; availability, 25995
Food additive petitions:
Allied-Signal, Inc., 26325
Asahi Denka Kogyo K.K., 40656
BASF Corp., 43898
Buckman Laboratories, Inc., 14577
Calgene, Inc., 38429
CdF Chimie SA, 38128
Ciba-Geigy Corp., 8289, 14402, 21173, 45895, 51631
Compagnia Italiana di Ricerca e Sviluppo, srl, 60859
Cytec Industries, 57613
Denki Kagaku Kogyo Kabushiki Kaisha, 21583
DeTer Co., Inc., 5736
Dow Corning Corp., 8290
DSM Engineering Plastics, 33447
E.I. du Pont de Nemours & Co., 13603, 26552
Ecolab, Inc., 28882
Enzyme Bio-Systems, Ltd., 63381
Exxon Chemical Co., 42976, 63381
Finegold, Leonard S., 66382
Food Techniques, Inc., 52971
General Electric Co., 21583
Hanover Foods Corp., 14403
Henkel Corp., 58172
Hercules, Inc., 15148
Hoechst Aktiengesellschaft, 3027, 53517
Hoechst Celanese Corp., 8290, 47746, 48659, 58172, 61093
Huls America, Inc., 63995
International Flour Sales Corp., 4703
Kalsec, Inc., 11609
Lonza, Inc., 28882, 42977, 44682, 60665
M. & G. Ricerche S.p.A., 42975
Milliken Chemical, 21583
Mitsubishi Gas Chemical Co., Inc., 29230
Mitsubishi Petrochemical Co., 13603
Morton International, Inc., 21583
National Aeronautics and Space Administration, 61093, 64442
National Starch & Chemical Co., 42977
Parexel International Corp., 21584
Petrolite Corp., 48659
Quantum Chemical Corp., 39031
R. T. Vanderbilt Co., Inc., 34058
Regutech Associates, 13604
Sandoz AG, 52315
Science Applications International Corp., 60860
SCM Chemicals, 7789
Sequa Chemicals, Inc., 53518
Shell Oil Co., 29231
Showa Denko K.K., 8290
Sumitomo Chemical America, Inc., 13604, 34058
Takeda Chemical Industries, Ltd., 13604
Victorian Chemical Co., Pty. Ltd., 3027
Witco Corp., 29231
Zeon Chemicals, Inc., 51632
Food for human consumption:
Food Chemicals Codex, 4th Edition; monograph changes, 38129
Food labeling—
Foods derived from new plant varieties; policy statement, 25837
Questions and answers; availability, 44096
Identity standards deviation; market testing permits—
White chocolate, 59050
Lead in food packed in lead-soldered cans; emergency action levels, 17233
National Shellfish Sanitation Program Manual of Operations—
Sanitation of shellfish growing areas, harvesting, processing and distribution; availability, 4174
Toxaphene; residues action levels; revocation, 60859
Food labeling regulations, regulatory flexibility analysis; availability, 36205
Gender differences in clinical evaluation of drugs; study and evaluation guideline availability, 39406
Grant and cooperative agreement awards:
Shellfish and seafood safety assistance project, 8054
Grants and cooperative agreements; availability, etc.:
Adverse effects of marketed drugs studies, 42735
Orphan drug products; safety and effectiveness in rare diseases and conditions; clinical studies, 43898, 50555, 50558
GRAS or prior-sanctioned ingredients:
ALKO Ltd. Biotechnology, 55076
Amaranth Institute, 28883
ConAgra, Inc., 21173
Donath-Kelterei; withdrawn, 36206
Enzyme Technical Association, 48889
Foreign Domestic Chemicals Corp., 63382
Market Basket, 28984
Monosodium glutamate (MSG); adverse reactions analysis; study, 13495
Olin Chemicals Corp., 8764
Purac America, Inc., 68437
Purac Biochem b.v., 47746
Quad Corp., 8291
Scienco/FAST, 6126
Teepak, Inc., 63996
Yandilla Mustard Oil Enterprise Pty. Ltd., 5736
Human and veterinary drug products.
Sterilization process validation in applications; submitting documentation; guidelines, 63996
Human drugs:
Albuquerque Substance Abuse Clinic; narcotic addiction treatment program; revocation of application for approval, 49519
Clinical evaluation of analgesic drugs; guideline availability, 7892
Export applications—
Alpha Therapeutic Corp., 54158
Botulinum Toxin Type A, 26983
CO2 Angiographic Injection System, 9566
Elmirón (sodium pentosan polysulfite) 100 mg capsules, 9567
Gabapentin (bulk), 9567, 15877
Nitro-Dur (nitroglycerin) 0.8 mg/hr (40 cm2) Patch, 59051
Novantrone, 48660
Prolixin Decanoate (fluphenazine decanoate) 25 mg/ml Injection, 9566
Questran tablets (cholestyramine resin) 1g., 9568
Triludan (terfenadine) 60-milligram "small" tablets, 58867

INDEX
VOL 58
1993
UMI

New drug applications—
Adria Laboratories, 7893
Barr Laboratories, Inc., 31035
Bel-Mar Laboratories, Inc.; approval withdrawn, 67415
Bel-Mar Laboratories, Inc.; proposal to withdraw, 34814
Carter-Wallace, Inc.; approval withdrawn, 50929
Clay-Park Labs, Inc., 62676
Computer-assisted new drug applications; guidance manual availability; procedures for revisions, 18218
Danbury Pharmacal, Inc., et al.; approval withdrawn, 4704
Forest Pharmaceuticals, Inc.; approval withdrawn, 27737, 58553
Forest Pharmaceuticals, Inc., et al.; approval withdrawn, 39819
Fujisawa USA, Inc., et al.; approval withdrawn, 27575
Guidance document on refusal to file; availability, 38770
Heather Drug Co. et al.; approval withdrawn, 12244, 21314
Lilly Research Laboratories et al.; approval withdrawn, 37960
Lyphomed; approval withdrawn, 12041, 42562
Lyphomed, Division of Fujisawa USA, Inc.; approval withdrawn, 61713, 65598
Lyphomed et al.; approval withdrawn, 567, 3027, 7789
Miles Inc.; approval withdrawn, 41099
Parke-Davis; approval withdrawn, 12042
Parke-Davis et al.; approval withdrawn, 34466
Par Pharmaceutical, Inc., et al., 44841
Pharmaderm et al.; approval withdrawn, 27736
Pioneer Pharmaceuticals, Inc.; approval withdrawn, 37960
Quad Pharmaceuticals, Inc., approval withdrawn, 27736
UpJohn Co. et al., 9568
Warner Chilcott Laboratories et al.; approval withdrawn, 9569
Nitroglycerin transdermal system; drug efficacy study implementation; final evaluation, 38129
Orphan drug and biological products—
Designations; cumulative listing, 12041
Patent extension; regulatory review period determinations—
Accupril, etc., 6285
Actinex cream, 14403
AMBIEN, 26142
Antihemophilic Factor Concentrate (Recombinant), 44520
Claritin, 45894
DAYPRO, 17416
Desogen, 14404
Imitrex injection, 42558
Lamisil cream, 28984
Lovenox, 62356
MANOPLAX, 44521
NORVASC, 7893
Omniscan injection, 42559
Paxil, 44522
PCD tachyarrythmia control device model 72171B, 42560
Pravachol, 568
Suprane, 7790
Tilade, 42561
ZEBETA, 7789
Suspect adverse events and product problems with medications and devices, reporting form availability, 11768, 31596, 64001
Industry-supported scientific and educational activities; policy statement, 6126
International harmonisation conference, 21086
Clinical safety data management; definitions and standards for expedited reporting; guidelines availability, 37408
Dose-response information to support drug registration; guideline availability, 37402
FDA task force report; availability, 7791
Human drug stability documentation submitting; guidelines availability, 21086
Medicinal products; reproduction toxicity detection; guidelines availability, 21074
Support of special population studies; geriatrics; guidelines availability, 21082
Lead in shellfish; guidance availability, 48368
Licensed biological products alternatives to lot releases; guidance availability, 38771
Medical device/radiological health policy statements and operating procedure guides; public docket establishment, 40150
Medical devices:
Patent extension; regulatory review period determinations—
Ventritex-Cadence Model V-100 Tiered Therapy Defibrillator System, 65356
Reference list, 57614
Suspect adverse events and product problems with medications and devices, reporting form availability, 11768, 31596, 64001
Medical devices; premarket approval:
3M Kennedy LAD Ligament Augmentation Device, 26327
ABIOMED BVS 5000 bi-ventricular support system, 35961
AIA-PACK AFP, 35460
AIA-PACK CEA, 19461
AIA-PACK PA, 42562
Cadence Tiered Therapy Defibrillator System, 39216
CarboMedicas prosthetic heart valve, 59487
Ciba 2000 Spherical (atlafilcon A) Soft (hydrophilic) Contact Lenses (clear), 26326
Ciba Vision Disinfecting Solution, 26552
Collagraft Bone Graft Matrix, 39216
Contigen Bard Collagen Implant, 64331
DePuy Unicompartmental Device Configuration of New Jersey LCS Total Knee System, 21984
Falope-Ring Band and Applicator Systems, 59727
Gelseal, 26326
Gianturco-Roubin Flex-Stent Coronary Stent, 39217
ISPAN Perfluoropropane (C3F8) Gas, 19463
ISPAN Sulfur Hexafluoride (SF6) Gas, 19462
IVT Coronary Atherectomy System, 40149
Meditronic PCD Tachyarrhythmia Control System, 17594
MFL5000 Lithotripter, 36206
PD 1343 Disinfecting Tablet with Unisol Saline, 59728
PRO OSTEON Implant 500 Coralline Hydroxyapatite Bone Void Filler, 21173
Reality Female Condom, 46197
Rotablator Rotational Angioplasty System, 38430
Spectranetics CVX-300 Excimer Laser System, 15877
Wesley-Jessen HS-16 Cleaning Solution, 46197
Meetings:
Advisory committees, panels, etc., 568, 3954, 5398, 5400, 7232, 8291, 8598, 11058, 11238, 13068, 13270, 15149, 15353, 15466, 15499, 19824, 21314, 21584, 21586, 26553, 26554, 26555, 27288, 28590, 28883, 29231, 30791, 33634, 34468, 38773, 39559, 44683, 44842, 49052, 49312, 50007, 53624, 54158, 54362, 58173, 60455, 60456, 60666, 66382, 68916
Antioxidant vitamins and cancer and cardiovascular disease risk; public conference, 54595
Blood establishment computer systems validation; workshop, 59488, 63382
Carcinogenicity of butylated hydroxyanisole (BHA); request for scientific data and information, 14405
Cardiovascular devices evaluation; clinical trials design and conduct; workshop, 30179
Center for Drug Evaluation and Research, 51354, 52497, 58231
Chemical contaminants in seafood; conference, 9185
Combined vaccines and simultaneous administration; international science workshop, 34469
Compressed medical gas industry workshops, 38132, 43640
Consumer information exchange, 4704
Food Chemicals Codex Committee; analytical methods for food ingredients, 36416
Harmonisation of vaccination adverse events reporting; workshop, 42976
Hemodialyzers for reuse; premarket testing and labeling issues; guidance availability and workshop, 62677
Industry information exchange, 18218, 26555
Investigational new drugs; clinical hold process, monitoring procedure; review committee, 32537
Medical device problem reporting, 34469
MEDWatch; medical products reporting program, 21587, 25995
Topical wound healing biologics, clinical trial issues; scientific workshop, 18219
User fee implementation; pharmaceutical industry, 43640
Memorandums of understanding:
Agreements between FDA and State or local government agencies; list availability, 48889, 59269
Association of Official Analytical Chemists Research Institute; animal drug residues in raw milk; tests screening, 3955
Fish and Wildlife Service; chemicals used in aquaculture; registration, 28408
University of Auburn; pharmacokinetics and drugs in food-producing and other animals, 63382
Organization, functions, and authority delegations
Center Directors Offices, 14214
Center for Biologics Evaluation and Research, Document Control Center relocation; biologics submissions; temporary deferment, 4173
Financial Management Office, 36692
Human Resources Management Office, 36692
International Policy Staff, Office of Policy, 58699
National Center for Toxicological Research, 53208
Surveillance and Biometrics Office, 35959
Pesticide registration, cancellation, etc.:
Endrin residues in food and feed; EPA action levels revocation, 40432
Position emission tomographic (PET) radiopharmaceuticals; hearing, 6126
Prescription Drug User Fee Act:
Prescription drug user fee revenues and rates, ..94 FY; establishment, 65184

Privacy Act:
Systems of records, 69056
Process validation requirements for drug products subject to pre-market approval (for human and animal use); compliance policy guide; availability, 47277
Proper drug use and residue avoidance by nonveterinarians; guidance availability, 39218
Reports; availability, etc.:
Nutrition labeling information for raw fruit and vegetables and raw fish; voluntary compliance by food retailers, 28985
Shellfish, arsenic, etc.; guidance documents, 11609
Silicone devices affected by withdrawal of Dow Corning silastic materials; alternative review procedure guidance availability, 36207, 47277
Stratospheric ozone protection:
Ozone-depleting substances, essential use exemption petitions, 68650
Target animal and human food safety, drug efficacy, environmental and manufacturing studies for teat antiseptic products; draft guidelines; availability, 7893
Toxicological principles for safety assessment of direct food additives and color additives used in food; availability, 16536, 40151

Food and Nutrition Service

RULES
Child nutrition programs:
Child and adult care food programs—
Adult meal pattern, 37847
National school lunch program—
Meal supplements, 42483
Women, infants, and children; special supplemental food program—
Drug and other harmful substance abuse information and referrals, 11497
Emergency funding rule, 37633
Fifteen percent capping provision rule, 51566
Infant formula cost containment contracts; national bid solicitation and selection, 47015
Food distribution programs:
Food donations—
Use in United States, territories, and possessions and areas under jurisdiction, 39113
Food stamp program:
Farm Bill (1990); food stamp application and income exclusion provisions, 213
Foster care individuals and payments; treatment, 58442
Homeless individuals, eligibility and benefits (Stewart B. McKinney Homeless Assistance Act); and third-party payments treatment (Food Security Act of 1985), 58444
Public assistance/supplemental security income households; resource exemption, 58455

PROPOSED RULES
Child nutrition programs:
Women, infants, and children; special supplemental food program—
Fifteen percent capping provision rule, 40755
Food distribution program:
Donation of foods for use in U.S., territories and possessions, and areas under jurisdiction; and national commodity processing program; uniformity, 29985
Food stamp program:
Food, Agriculture, Conservation, and Trade Act; miscellaneous provisions; and earned income tax credit provisions, 58458
Property rights forfeiture and denial, 64172
Quality control claims, State agency challenges; administrative review process, 5188
Correction, 7296
Student eligibility and treatment of education assistance, 58463

NOTICES
Child nutrition programs:
Child and adult care food programs—
Donated food value (July 1, 1993-June 30, 1994), 36635
National average payment rates; day care home food service payment rates, etc., 36636
Summer food service program; reimbursement rates, 69
Meals and milk, free and reduced price; income eligibility guidelines, 11393
National school lunch and school breakfast programs—
Nutrition objectives for school meals; hearings, 47853
National school lunch, special milk, and school breakfast programs—
National average payments/maximum reimbursement rates, 36637
Nutrient standard menu planning demonstration project, 17378
Women, infants, and children; special supplemental food program; poverty income guidelines, 15836
Food distribution programs:
Commodity supplemental food program; elderly poverty income guidelines, 15838
Emergency food assistance program; commodities donated to households, soup kitchens, and food banks (1994 FY); availability, 57807
Nutrition program for elderly; adjusted assistance level, 52075
Food stamp program:
Recipient claims collection; Federal income tax refund offset test; expansion, 42937
Vehicle exclusion limit demonstrations, 66340
Grants and cooperative agreements; availability, etc.:
Food stamp program; food stamp participation improvement, 21138
Meetings:
Commodity Distribution National Advisory Council, 6202
Maternal, Infant, and Fetal Nutrition National Advisory Council, 52260
Welfare Simplification and Coordination Advisory Committee, 11830

Food Safety and Inspection Service

RULES
Meat and poultry inspection:
Accreditation fees, standards, and procedures for FSIS accredited laboratories, 65254
Chicken, mechanically deboned; tricalcium phosphate use, 63033
Cured pork products—
Citric acid as color preserver, 45238
Sorbitol use, 63521
Fee increases, 33322
Meat patties, uncured; heat-processing procedures, cooking instructions, and cooling, handling, and storage requirements, 41138
Minor ingredients listing in other than descending order of predominance, 38046, 40468
Nutrition labeling—
Meat and poultry products, 632, 43787, 47624, 66075
Raw meat and poultry products labeling; mandatory safe handling statements, 43478, 52856, 58918
Smoke flavorings and artificial smoke flavorings; approval, 42188
Sodium and potassium lactate as flavor enhancers and flavoring agents, 4067
Sodium citrate as anticoagulant in fresh blood of livestock; increased level, 59934
Tocopherols and citric acid in various meat products, 45240

PROPOSED RULES
Meat and poultry inspection:
Accreditation fees, standards, and procedures for FSIS accredited laboratories, 44236
Beef, lamb and pork cuts; use of ascorbic acid, etc., 51581
Bird amenability determination, 38090
Calves and adult cattle; differentiating policy, 45296
Carbon dioxide use in humane swine slaughter, 47673
Cured pork products—
Citric acid as color preserver, 269
Export certification process centralization and automation, 54012
Fee increases, 14177
Labeling system; prior approval, 62014
Mechanically separated (species); labeling; withdrawn, 19781
Nutrition labeling—
Use of "healthy" and similar terms, 688, 8560
Poultry product produced by mechanical deboning and products in which same is used; labeling, 33040
Raw meat and poultry products labeling; mandatory safe handling statements, 58922

NOTICES
Meat and poultry inspection:
Food Labeling Division policy memoranda; semiannual listing, 61064
Rapid microbiological testing methods; evaluation criteria, 54325, 58231
Retail store exemptions; dollar limitations adjustment, 44158
Meetings:
Meat and Poultry Inspection National Advisory Committee, 15134
Meat and poultry regulatory program, 53705
Microbiological Criteria for Foods National Advisory Committee, 5353, 15134, 28389, 31007
Rulemaking petitions; submissions and review procedures, 63570
Strategic plan; development, 28389, 29254, 29695

Foreign Agricultural Service

RULES
Perishable products from Andean countries; duty-free imports, emergency relief, 16103

PROPOSED RULES
Tobacco exports; reporting and recordkeeping requirements, 65941

NOTICES
Agricultural Advisory Committee for Trade:
Appointment nominations, 51802
Committees; establishment, renewal, termination, etc.:
Agricultural Policy and Technical Advisory Committees for Trade, 51802
Import quotas and fees:
Chocolate crumb from Australia; country of origin quota adjustment, 52260

INDEX VOL 58 1993 UMI

Dairy import licenses, 43318
Meetings:
Emerging Democracies Advisory Committee, 53911

Foreign Assets Control Office

RULES
Cuba, Libya, Iraq, Haiti, Serbia and Montenegro assets control or sanctions regulations; amendments, 47643
Cuban assets control regulations:
Amendments, 34709
Telecommunications services between Cuba and United States, 45060
Federal Republic of Yugoslavia (Serbia and Montenegro) sanctions regulations, 13199, 35828
Foreign assets control regulations:
Training and orientation services provided by U.S. entities to Vietnamese nationals, 63083
Vietnam; international institutions' development projects; participation, 68529
Haitian transactions regulations, 3228, 4080, 40043, 46540, 54024
Libyan sanctions regulations
Services exportation prohibition; interpretation, 13198
Transaction control regulations, 13197
UNITA (Angola) sanctions regulations:
National Emergency declaration and sanctions against National Union for Total Independence of Angola (UNITA), 64904

NOTICES
Haiti; blocked individuals; list availability, 58480

Foreign Claims Settlement Commission

NOTICES
Claims against—
Iran; current addresses of claimants requested, 26158
Meetings; Sunshine Act, 6165, 7920, 12986, 17641, 28092, 33143, 40687, 50633, 58900, 64639

Foreign-Trade Zones Board

NOTICES
Applications, hearings, determinations, etc.:
Alaska, 48826, 51613
Flowline Alaska; energy pipeline insulation plant, 50329
Arizona, 37907, 51614
Intel Corp.; integrated circuits and computer products plant, 62635
Wal-Mart Stores, Inc.; distribution/processing facility, 28393
California, 6614, 44490, 44491, 47116, 65329
Alps Manufacturing (USA), Inc.; computer/telecommunication/video equipment and auto parts plants, 46627
Apple Computer, Inc.; electronic data processing and communications equipment manufacturing plant, 5355
Connecticut, 536, 50330, 65157
Florida, 3532, 8930, 11833, 31362, 36932, 68115
General Electric Co.; simulation, testing, and control systems plant, 16395
Group Technologies Corp.; electronic/computer/communication equipment plant, 41709
Reilly Dairy & Food Company dairy products plant, 43323
Hawaii, 5355
Idaho, 11834
Illinois
Chrysler Corp.; automobile plant, 59236
Maytag Corp.; refrigerator/freezer manufacturing plant, 33609
Sanofi Winthrop L.P.; warehouse/distribution facility, 36933
Indiana, 37908, 50330
Amoco Oil Co.; refinery/MTBE facility, 39006
Fairmont Homes, Inc./Gulf Stream, Inc.; manufactured housing and recreational vehicle manufacturing facilities, 25605
Mead Johnson & Co.; pharmaceutical and nutritional products manufacturing facilities, 78
Onkyo America, Inc.; electronic audio and acoustical products manufacturing facility, 32512
Toyota Industrial Equipment Manufacturing, Inc.; forklift truck manufacturing facility, 4147
Kansas, 6112
Sanofi Winthrop L.P.; pharmaceutical plant, 33609
Kentucky
General Electric Co.; home appliance manufacturing plant, 3532, 6614
Toyota Motor Manufacturing, U.S.A., Inc.; automobile manufacturing plant, 39006
Louisiana
Equitable Shipyards; shipbuilding facility, 7528
Trinity Marine Group/Equitable Shipyard; shipbuilding facility, 25606
Massachusetts, 33254, 36516
Michigan, 6614, 42288
BASF Corp.; chemical manufacturing facilities, 55040
Minnesota, 16650
American Feeds & Livestock Co., Inc.; animal feed manufacturing plant, 42288
Davisco International, Inc.; intermediate dairy products manufacturing facilities, 5355
Wirsbo Co.; polyethylene tubing manufacturing plant, 30143
Wisconsin Dairies Cooperative; infant formula/dairy products manufacturing plant, 11834
Mississippi, 46628
Chevron U.S.A. Products Co.; oil refinery, 41709
Cortelco USA, Inc.; telephone and computer equipment manufacturing facility, 31362
Peavey Electronics Corp.; electronic audio/acoustical products facilities, 46628
Missouri
Florsheim Shoe Co.; manufacturing and distribution facilities, 44652
General Motors Corp.; automobile manufacturing plant, 13583, 18304
Montana, 6615
Nebraska, 36389
Kawasaki Motors Manufacturing Corp., U.S.A.; motorcycles, jet skis, and all terrain vehicles manufacturing plant, 63335, 67909
Nevada, 26959
New Jersey, 19405
International Flavors & Fragances, Inc.; flavor and fragrance products plant, 78
New Mexico, 39006, 64546
Lukens Medical Corp.; medical sutures, 65329
New York, 36390, 59236
Bally, Inc.; shoe and accessory distribution/processing facility, 52743
Sanofi Winthrop L.P.; pharmaceutical plant, 33254
North Carolina
Carolmet, Inc.; germanium lens blank manufacturing operation, 40623
Merck & Co., Inc.; pharmaceutical plant, 44492
Ohio, 537, 30143, 35427
Consolidated Biscuit Co.; food products manufacturing plant, 62636
Ford Motor Co.; passenger and cargo vehicle manufacturing plant, 39007
Lincoln Electric Co.; arc welding equipment and supplies manufacturing plants, 51614
Mr. Coffee, Inc.; appliance/coffeemaker manufacturing facilities, 47858, 48946
Picker International, Inc., medical diagnostic equipment processing/distribution facility, , 42287
Oklahoma, 50330
Oregon, 61064
Colby Plastics Processors, Inc.; plastic pipe manufacturing plant, 21441
Tofle U.S.A., Inc.; stainless steel tubing plant, 537
Pennsylvania, 35428
Merck & Co., Inc.; pharmaceutical manufacturing facility, 38749
Puerto Rico
Merck Sharp & Dohme Quimica de Puerto Rico, Inc.; pharmaceutical plant, 44492, 47013, 47858
SmithKline Beecham Co.; pharmaceutical manufacturing facilities, 7529
Sterling Pharmaceuticals Inc.; pharmaceutical manufacturing facility, 29192, 36933
South Carolina, 50330, 59236, 62636
BMW Manufacturing Corp.; automobile manufacturing plant, 40623
Tennessee
Global Power Co.; nuclear equipment storage facilities, 58682
Nissan Motor Manufacturing Corp. U.S.A.; automobile and pickup truck manufacturing plant, 16650, 21334
Sharp Manufacturing Co. of America; portable personal computers manufacturing plant, 47859
SmithKline Beecham Corp., pharmaceutical plant, 61065
Tennessee et al., 68115
Texas, 3533, 16173, 48826
Amoco Oil Co.; refinery, petrochemical and MTBE complex, 16396
BASF Corp.; chemical manufacturing facilities, 8929
Dril-Quip, Inc.; oil field equipment manufacturing facilities, 28952
Mid States Pipe Fabricating, Inc.; steel pipe fabrication facilities, 63911
Oiltanking of Houston, Inc.; liquid bulk storage facilities, 3532
Sanden International (U.S.A.), Inc.; auto air conditioner components manufacturing plant, 78
Shell Oil Co.; crude oil refinery and petrochemical complex, 68116
Virginia
ABB Power Generation, Inc.; large turbine electric power generator facility, 16650
Amoco Oil Co.; refinery/MTBE facility, 31009
Merck & Co.; pharmaceutical manufacturing facility, 68116
Newport News Shipbuilding & Drydock Co., 36390

Foreign

Washington, 5356
Sharp Microelectronics Technology, Inc.; liquid crystal display manufacturing plant, 39196, 50331, 58593
Toray Composites (America), Inc.; carbon fiber composite materials manufacturing plant, 11208
Wisconsin, 4147, 26959, 30144, 32512

Forest Service

RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 17776, 31175, 31252
Correction, 61810
National Forest System projects and activities; notice, comment, and appeal procedures; and National Forest plans and project decisions; review request, 58904

PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 46678
Meeting, 14350, 40393
Land uses and prohibitions:
Noncommercial group uses, 26940
National Forest System projects and activities; notice, comment, and appeal procedures; and National Forest plans and project decisions; review request, 19369, 25959
National recreation areas:
Hells Canyon National Recreation Area, OR and ID; private lands maintenance, 65300
Range management:
Grazing and livestock use and grazing fees, 43202, 48808

NOTICES
Alaska public lands; fish and wildlife, subsistence takes, 5955, 13737, 48635
Appealable decisions; legal notice:
Eastern region, 28546
Intermountain region, 17570, 57984
Northern region, 26530, 68114
Pacific Northwest region, 26735, 62322
Southern Region, 25797, 58322
Southwestern region, 30750
Appeal exemptions; timber sales:
Angelina National Forest, TX, 33066
Black Hills National Forest, SD and WY, 39192
Boise National Forest, ID, 15134, 21437, 21438, 31008, 36639, 44489, 47712
Chattahoochee-Oconee National Forest, GA, 19404
Cherokee National Forest, GA, 21139
Cherokee National Forest, TN, 27991
Clearwater National Forest, ID, 39193, 43319, 45479, 57581
Clearwater National Forest, MT, 43864
Colville National Forest, WA, 30749, 43319, 53912
Coronado National Forest, AZ, 49469
Daniel Boone National Forest, KY, 45479, 48634
Dixie National Forest, UT, 43320, 47713, 50899, 52075
Eldorado National Forest, CA, 31690
Fishlake National Forest, UT, 21439
Flathead National Forest, MT, 36927
Fremont National Forest, OR, 30749, 34781
Gallatin National Forest, MT, 33429
George Washington National Forest, VA, 60421
Gila National Forest, NM, 53186
Helena National Forest, MT, 25967
Idaho Panhandle National Forests, ID, 4407, 12358, 27264, 28392, 32508, 32509, 32510, 33430, 36927, 43614, 45093, 45480, 47857
Jefferson National Forest, VA, 26529, 27264, 46157, 60421
Kaibab National Forest, AZ, 52946
Klamath National Forest, CA, 31691, 34408, 39523
Kootenai National Forest, MT, 26955, 29384, 33431, 36928, 36929, 36930, 37702, 37703, 39193, 43321, 43864, 44651, 45094, 45480, 46946, 47431, 50539, 51048, 51049
Lincoln National Forest, NM, 42282
Malheur National Forest, OR, 27265, 33794, 40789, 43321
Manti-La Sal National Forest, UT, 44489
Medicine Bow National Forest, WY, 50539
Modoc National Forest, CA, 51608
Nantahala National Forest, NC, 30012
Nez Perce National Forest, ID, 38114, 48032
Ocala National Forest, GA, 18199
Ochoco National Forest, OR, 6109, 13346
Okanogan National Forest, WA, 4407, 4408, 30750, 44321
Ouachita National Forest, AR, 47252
Payette National Forest, ID, 9557, 11022, 26955
Plumas National Forest, CA, 34559
Sabine National Forest, TX, 28548, 29807
Salmon National Forest, ID, 26956, 26957
Sawtooth National Forest, ID, 30142, 50900
Sequoia National Forest, CA, 8034, 12219, 12575, 59009
Stanislaus National Forest, CA, 11022
Tahoe National Forest, CA, 39194
Targhee National Forest, ID, 46158, 46159
Toiyabe National Forest, NV, 50900
Uinta National Forest, UT, 17858
Umatilla National Forest, OR, 6109-6111, 13445, 26737, 41457
Wallowa-Whitman National Forest, OR, 7064, 47432
Willamette National Forest, OR, 4409, 7064, 7065, 8253, 13446, 33794
Boundary establishment, descriptions, etc.:
Apalachicola National Forest, FL, 27992
Bagley Valley Purchase Unit, CA, 11395
Bayou Beouf Purchase Unit, LA, 42938
Bogachiel Purchase Unit, WA, 42524
Coeur D'Alene Purchase Unit, ID, 53912
Gory Hole Cave Purchase Unit, IN, 39524
Little Missouri and Cossatot National Wild and Scenic Rivers, AR, 59445
Nekoosa Purchase Unit, FL, 39524
Ouachita Purchase Unit, AR, 51313
Ozark Purchase Unit, AR, 42524, 45946
Quachita Purchase Unit, AR, 41239
Skagit Purchase Unit, WA, 35426, 50540
Sur Sur Purchase Unit, CA, 35427
Committees; establishment, renewal, termination, etc.:
Polyoxometalate Bleaching Consortium, 42282
Environmental statements; availability, etc.:
Angeles National Forest, CA, 6108
Ashley National Forest, UT, 21556
Beaverhead National Forest et al., MT, 37457
Bighorn National Forest, WY, 11830
Bitterroot National Forest, MT, 30751
Boise National Forest, ID, 16169, 17859, 40789
Bridger-Teton National Forest, WY, 43094
Caribou National Forest, ID, 64543
Cherokee National Forest, TN, et al., 34560
Chugach National Forest, AK, 6385
Clearwater National Forest, ID, 5706, 8582, 8733, 32643, 32903, 44159, 59704, 60833
Columbia River Gorge National Scenic Area, OR, 11023, 62325
Conata Basin/Badlands Area, SD; reintroduction of black-footed ferrets, 5707
Custer National Forest, MT, 59983
Deerlodge National Forest, MT, 11395
Dixie National Forest, UT, 21702, 28951, 31360
Eldorado National Forest et al., CA, 5353
Erambert and Black Creek Seed Orchards, MS, 52743
Flathead National Forest, MT, 7210, 26096
Gallatin National Forest, MT, 8035, 27992
Gila National Forest, NM, 21140
Grand Mesa, Uncompahgre, and Gunnison National Forests, CO, 31493, 33608
Helena National Forest et al., MT, 44159
Helena National Forest, MT, 38740, 43322, 60834
Homochitto National Forest, MS, 13738
Humboldt National Forest, NV, 11583, 12575
Idaho Panhandle National Forest, ID, 29807, 31493, 33431, 33432, 34240, 36930, 45879, 48503, 52742, 53913
Inyo National Forest, CA, 9143, 9557, 29566, 53185, 54109
Jefferson National Forest et al., VA, 33248
Jefferson National Forest, KY, et al., 34561
Kisatchie National Forest, LA, 41455
Kootenai National Forest, MT, 6385, 6772-6773, 19646, 27266, 30753, 30763
Lewis and Clark National Forest, MT, 40621
Los Padres National Forest, CA, 55037
Malheur National Forest, OR, 11831
Medicine Bow National Forest, WY et al., 13250
Modoc and Lassen Counties, CA; noxious weed control, 52258
Monongahela National Forest, WV, 60836
Mt. Baker-Snoqualmie National Forest, WA, 38358
Nez Perce National Forest, ID, 45880
Northern spotted owl; habitat management, 40444
Northern spotted owl management plan; national forests, CA, OR, and WA, 32343, 44651
Okanogan National Forest, WA, 19646
Pacific Northwest Region; nursery pest management, 65963
Pacific Southwest Region; California spotted owl, Sierran province management, 14554, 26531
Payette National Forest, ID, 16394, 27994, 30764, 30765, 33432, 69318
Plumas National Forest, CA, 4655, 68849
Red-cockaded woodpecker and habitat management; Southern Region, 60838
Rocky Mountain Region; nursery pest management, 49965
Roosevelt National Forest, CO, 49469, 50901, 51313
Routt National Forest, CO, 37904
Salmon National Forest, ID, 38556
Salmon National Forests, et al., ID, 21557
San Bernardino National Forest, CA, 11583
Santa Fe National Forest, NM, 16170
Sawtooth National Forest, ID, 42524
Sequoia National Forest, CA, 52259, 60832, 60840
Siuslaw National Forest, OR, 4410
Six Rivers National Forest, CA, 25601
Tahoe National Forest, CA, 25601, 25799, 31360, 65697
Targhee National Forest, ID and WY, 29567
Targhee National Forest, WY, 60840
Tongass National Forest, AK, 21559, 32904, 37458, 38557, 52076
Wallowa-Whitman National Forest, OR, 30766, 33932, 53913, 54326

UMI

Wasatch-Cache National Forest, UT, 64719
Wenatchee National Forest, WA, 12929
Willamette National Forest, OR, 6111, 12577
Forest five-year noxious weed control program; amendments:
Lewis and Clark National Forest, MT, 21560
Grants and cooperative agreements; availability, etc.:
Recycled fibers enzymatic deinking, 38115, 42283, 45095
Timber bridge research joint venture agreements, 42283
Jurisdiction transfer:
Georgia, 40406
Lostine Wild and Scenic River; management plan, 52077
Meetings:
Allegheny Wild and Scenic River Southern and Northern Advisory Councils, 3932, 7212, 12023, 17860, 26098, 31495, 36389, 41082, 47432, 54551
Federal Subsistence Regional Advisory Councils, 48364
Forest legacy program; implementation, 60841
Grand Island Advisory Commission, 37907, 41458, 52077
Hawaii Tropical Forest Recovery Task Force, 37703, 62094
National Urban and Community Forestry Advisory Council, 15135, 52077, 68629
Newberry National Volcanic Monument Advisory Council, 7212, 17204, 31008, 40407, 53498
Memorandums of understanding:
Animal damage management, 37704
National Forest System lands:
Electronic communication sites; rental fee schedule, 37840
Noxious weed management, 64289
Western livestock grazing fees, 4655
Northern goshawk in Southwestern Region; management guidelines, 63910
North Fork John Day Wild and Scenic River; management plan, 53498
Organic Administration Act:
Forest lieu selection lands; title, 69319
Organization, functions, and authority delegations:
Forest Supervisors, Pacific Northwest Region, 30766
Rocky Mountain region; sensitive species interim directive; availability, 19648

General Accounting Office

RULES

Practice and procedure:
Personnel Appeals Board, 61988

PROPOSED RULES

Practice and procedure:
Personnel Appeals Board, 25785

NOTICES

Accounting (Title 2); policy and procedures manual for guidance of Federal agencies; status letter availability, 64587
Committees; establishment, renewal, termination, etc.:
Federal Accounting Standards Advisory Board, 5992
Government Auditing Standards (''yellow book''); exposure draft availability, 40149
Meetings:
Federal Accounting Standards Advisory Board, 4703, 7232, 13269, 17232, 26980, 31035, 36205, 45493, 52968, 59269, 60202, 63378
Government Auditing Standards Advisory Council, 3284

General Services Administration

RULES

Acquisition regulations:
Amendments, 52442
Board of Contract Appeals; rules of procedure, procurement protests, and contract disputes, 69246
Contracting officer warrant program, 58283
Contractor inspection systems; international standards for quality management, 64693
Debarment and suspension; administrative records, 26919
Correction, 29254
Multiple award schedule contractors' submission and distribution of authorized pricelists, 54523
North American Free Trade Agreement (NAFTA)—
U.S. and European Economic Community; memorandum of understanding on government procurement and NAFTA, 69243
Service contracts; price adjustment clause, 47398.
CFR correction, 8235
Federal Acquisition Regulation (FAR):
Federal construction contracts; open bidding, 12140
Nonmanufacturer rule; correction, 3850
U.S. and European Economic Community; memorandum of understanding; government procurement and sanctions imposed on European Community, 31140
Federal property management:
Aviation, transportation, and motor vehicles—
Centralized household goods traffic management program, 48972, 53889
Fuel economy standards, motor vehicle acquisition procedures, and motor vehicle accident reporting form, 65288
Government aircraft documentation, approval, and use, 53660
Interagency fleet management system vehicles; use and care, 63531
Official travel cash use, 39664
Donation of personal property—
Federal surplus personal property donation to providers of assistance to homeless individuals, 39666
Public buildings and space—
Real property acquisition; leasing policy, 40592
Space utilization and assignment, 52917
State and local government grants and cooperative agreements; uniform administrative requirements, 43270
Supply and procurement—
Supply sources use priorities, 41637
Utilization, donation, and disposal of foreign gifts and decorations—
''Minimal value'' definition, 46088
Federal travel:
Commercial carrier accommodations, conference planning, actual subsistence expense reimbursement, indirect travel, new appointee relocation allowances, etc., 58234
Correction, 60390
Federal and State relocation income tax allowance tables, 8547
Puerto Rico et al., 15436
Per diem localities; maximum lodging and meal allowances, 12890, 58501, 67950
Real estate sale and purchase expenses; increase in maximum reimbursement limitations, 53137

PROPOSED RULES

Acquisition regulations:
Debarment and suspension factfinding, 26948
Multiple award schedule price reductions clause, 32890
Multiple award schedules program; cancellation, 32085
Proprietary information; disclosure and use, 42715
Federal Acquisition Regulation (FAR)
Debarment and suspension offenses; tax evasion, 63494
Defective cost or pricing data in postaward audits, 64824
Electronic contracting, 69588
Food products; blanket purchase agreements invoicing, 59616
Inconsistencies; termination for convenience of Government (fixed price); clarification, 64826
Postponement of bid openings or closing dates, 59618
Regulatory agenda, 25238, 57242
Sealed bid qualification requirements, 63492
Federal claims collection; tax refund offset, 46596
Federal Information Resources Management Regulation:
Delegations of procurement authority and justifications for other than full and open competition when using nonmandatory schedule contracts, 49005
Miscellaneous amendments, 64389
Federal property management
Supply and procurement—
Office copying machines selection, 39720
Regulatory agenda, 25106, 57112

NOTICES

Acquisition regulations:
Medical record-contributor's list of pathological material (SF 543); stocking change, 28407
Small business competitiveness demonstration program; solicitation procedures change, 69366
Agency information collection activities under OMB review, 5730, 7786, 14212, 14213, 19260, 30170, 31714, 31715, 32135, 33821, 36205
Child care and development programs
Child care providers in GSA-controlled space; special conditions to licensing agreements, 34801
Environmental statements; availability, etc.:
Atlanta, GA; Atlanta Federal Center, 42971
Boulder, CO; National Institute of Standards and Technology Advanced Technology Laboratory, 67794
Boulder, CO; National Oceanic and Atmospheric Administration Federal Building, 16195
Bowie, MD; Census Bureau data processing center, 44186
Calexico, CA; border station construction, 12243
Imperial County, CA; border station, 41791
Imperial County, CA; port of entry, 63580
Naval Station, Anacostia, DC; remote delivery site/vehicle maintenance facility, 44186
Sacramento, CA; U.S. Courthouse and Federal Building, 34586
San Francisco, CA; Federal building construction, 28969
Santa Ana, CA; Ronald Reagan Federal Building-U.S. Courthouse, 19672, 45493
Seattle, WA; Federal Courthouse Building, 34055
Suitland, MD; Suitland Federal Center, 69366

Washington, DC; Southeast Federal Center, 5992
Federal Acquisition Regulation (FAR):
1993 consolidated reprint; looseleaf edition, 54890
Agency information collection activities under OMB review, 539, 5962, 6389, 6481, 7549, 8046, 8588, 12945, 12946, 13252, 15489, 15490, 15844, 16653, 19664, 32108, 33435, 33436, 46948, 49477, 51621, 57587, 65162, 68636
Federal Supply Service; multiple award schedule program, 31215
Federal Supply Service orders:
Paper purchase and delivery orders; discontinuance, 5731, 51350
Federal telecommunications standards:
Telecommunications—
HF Radio Automatic Link Establishment, 53737
HF Radio Automatic Networking, etc., 53737
HF radio automatic operation in stressed environments, Section 1: linking protection, 39816
Federal travel:
Special actual subsistence expense reimbursement ceiling—
Augusta (Richmond County), GA, and Oshkosh (Winnebago County), WI, 19125
Florida disaster areas, 5730, 25651
Topeka (Shawnee County), KS, 52968
Grants and cooperative agreements; availability, etc.:
Small business competitiveness demonstration program, 8764, 35005
Interagency Committee for Medical Records (ICMR); medical standard forms cancellation, 16195
Intercity telecommunications services, 28880, 47902
Medical record-radiation therapy (SF 525); form cancellation, 46974
Meetings:
African Burial Ground Steering Committee, 16534, 21582, 38128, 59042, 65184
Business Advisory Board, 52314
Post-FTS2000 concept development conference, 45339
Multiple Award Federal Supply Schedule:
Erosion control fabric, 32135
Facsimile paper, 16196
Self-adhesive labels for dry and wet toners, 31534
Organization, functions, and authority delegations:
Interior Secretary, 19673
Transportation Secretary, 26325, 42732
Presidential appointees' offices; expenditures limitation guidelines, 3026
Privacy Act:
Systems of records, 6124, 39208, 53515, 64587
Property transfers:
Border station, Del Rio, TX, 6493
Ford Peck Lake Project, MT, 64589
Louisiana Army Ammunition Plant (portion), Webster Parish, LA, 47744
Senior Executive Service:
Performance Review Board; membership, 26980, 64589
Small business competitiveness demonstration program; solicitation procedures change, 17233, 53738

Geological Survey

RULES
State water research institute program, 27203

NOTICES
Agency information collection activities under OMB review, 7156, 18107, 18108, 48672, 67805
Digital Line Graph, Elevation Model, and Orthophotoquad data from topographic maps for entry into National Digital Cartographic Data Base, 49523
Freedom of Information Act; implementation, 8767
Grant and cooperative agreement awards:
Agriculture Department et al., 36219
CHIM Evaluation Consortium, 48372
Environmental Systems Research Institute, 41103
Etak, Inc., 52320
Unisys Corp., 52321
Grants and cooperative agreements; availability, etc.:
National earthquake hazards reduction program, 7240
Snow Gulch and Galena Creek, NV; mapping, 42984
Meetings:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 17623, 53213
Federal Geographic Data Committee, 34272, 51099
Monitoring Water Quality Intergovernmental Task Force, 26003
National Earthquake Prediction Evaluation Council, 29633
National Water-Quality Assessment Advisory Council, 60051
Water Data for Public Use Advisory Committee, 34589
National Environmental Policy Act; implementation, 15355, 47473
National Mineral Resources Assessment Program; volunteers; contribution acceptance, 21186
Privacy Act:
Systems of records, 30804, 39230, 43120
Survey plat filings:
Idaho, 42983

Government Ethics Office

RULES
Conflict of interests, 33755
Miscellaneous amendments, 69176
Executive Branch employees; financial disclosure, qualified trusts, and divestiture certificates, 38911, 63023
Organization, functions, and authority delegations; miscellaneous amendments, 69176

PROPOSED RULES
Executive Branch employees; financial disclosure, qualified trusts, and divestiture certificates, 46096
Regulatory agenda, 25146, 57152

NOTICES
Agency information collection activities under OMB review, 26790, 32359
International Conference on Government Ethics; request for support, 53994
Part-time career employment policy directive, 34283
Senior Executive Service:
Performance Review Board; membership, 14225

Government Printing Office

NOTICES
Meetings:
Depository Library Council, 21727, 50006
GPO Electronic Information Access Enhancement Act (1993) implementation, 52969

Harry S. Truman Scholarship Foundation

NOTICES
Meetings; Sunshine Act, 8097
Nominations from eligible two-year institutions of higher learning, 4172, 58003

Health and Human Services Department

See Agency for Health Care Policy and Research; Agency for Toxic Substances and Disease Registry; Aging Administration; Centers for Disease Control and Prevention; Children and Families Administration; Child Support Enforcement Office; Community Services Office; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration, Indian Health Service; Inspector General Office, Health and Human Services Department; National Institutes of Health; Public Health Service; Refugee Resettlement Office; Social Security Administration; Substance Abuse and Mental Health Services Administration

RULES
Block grants:
Social services program; reporting and recordkeeping requirements, 60118
Substance abuse prevention and treatment, 17062
Correction, 21218

PROPOSED RULES
Block grants:
Low-income home energy assistance program, etc., 60498
Substance abuse prevention and treatment; sale or distribution of tobacco products to individuals under 18 years, 45156
Regulatory agenda, 24272, 56294

NOTICES
Agency information collection activities under OMB review, 8287, 11607, 21727, 36966, 42974, 51350, 53517, 66362
Committees; establishment, renewal, termination, etc.:
Acquired Immune Deficiency Syndrome (AIDS) Drug Development National Task Force, 63582, 63583
Dietary Guidelines Advisory Committee, 38576
Family planning service projects ("gag rule"), human fetal tissue transplantation, and RU-486 (Mifepristine) importation; Secretary's actions in accordance with President's directives, 7468
Federal claims; interest rates on overdue debts, 5009, 17591, 38408, 53207
Grants and cooperative agreements; availability, etc.:
Emergency medical services for children; demonstration program, 16196
Meetings:
Health Promotion and Disease Prevention Council, 11863
National Nutrition Monitoring and Related Research Program; ten-year comprehensive plan; availability, 32752
Nondiscrimination on basis of handicap in federally-conducted programs and activities; self-evaluation report availability, 21456

INDEX VOL 58 1993 UMI

Organization, functions, and authority delegations:
Agency for Toxic Substances and Disease Registry, 7568
Aging Administration, 12040
Assistant Secretary for Health, 7565, 35460
Assistant Secretary for Health and Scientific Affairs, 35460
Assistant Secretary for Planning and Evaluation, 68649
Centers for Disease Control, 3963, 6167
Centers for Disease Control and Prevention, 45339
National immunization program, 59052
Departmental Appeals Board administrative law judges, 58170
Departmental Appeals Board Chair and members, 58171
Food and Drug Administration, 45111
Health Care Financing Administration, 42079
Indian Health Service, 36693
Inspector General Office, 12039, 44685
National Institutes of Health, 5731
Public Affairs Office, 52969
Poverty income guidelines; annual revision, 8287
Privacy Act:
Systems of records, 28880, 29228
Scientific misconduct findings; administrative actions:
Freisheim, James H., Ph.D., et al., 33830
Sugata, Fumihiko, M.D., 47143
Senior Executive Service:
Performance Review Boards; membership, 58170, 60858
Social security benefits:
Cost of living increase, SSI monthly benefit amounts increase, average of total wages, contribution and benefit base, etc., 19152, 58004
State assistance expenditures; Federal financial participation, 66362

Health Care Financing Administration

See Inspector General Office, Health and Human Services Department

RULES

Clinical laboratories improvement:
Laboratories regulations, 5215, 48323
Correction, 5212, 39154
Medicaid:
Alien eligibility—
Eligibility and coverage requirements, 4908, 9120, 26185, 44457
Correction, 39092, 50635, 51408
Laboratories regulations, 5215, 48323
Correction, 5212, 39154
Nursing facilities; individuals with mental illness and mental retardation; preadmission screening and annual resident review; correction, 25784
Paternity establishment and medical support and payments; exemption of poverty level pregnant women from cooperation requirement, 4904
Provider-related donations and health care-related taxes, and disproportionate share hospitals payments; limitations, 6095, 43156
Correction, 44536, 51130
Qualified family members; eligibility and definition, 48611
Revaluation of assets; correction, 17527
Medicare:
Customized wheelchairs; payment, 34916
Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); carrier claims jurisdiction, 60879
Essential access community and rural primary care hospitals, 30630
Correction, 49934
Health maintenance organizations (HMO); technical amendments, 38062
Hospital inpatient prospective payment systems and 1994 FY rates, 46270
Correction, 67350
Hospitals; uniform cost reporting system demonstration project, 54045
Intermediary and carrier checks that are lost, stolen, defaced, mutilated, destroyed or paid on forged endorsements, 65126
Laboratories regulations, 5215, 48323, Correction, 5212, 39154
National accreditation organizations; deeming authority granting and withdrawal, 61816
Nursing facilities; individuals with mental illness and mental retardation; preadmission screening and annual resident review; correction, 25784
Physician fee schedule (1994 CY); payment policies and relative value unit adjustments, 63626
Revaluation of assets; correction, 17527
Rural health clinics; required laboratory procedures, 63533
Self-implementing coverage and payments provisions, 58502

PROPOSED RULES

Medicaid:
Case management services; optional coverage, 53481
Child support enforcement agency referrals; medicaid agency requirements, 49272
Clinical diagnostic laboratory tests; fee schedules and payment policy, 43832
Early and periodic screening, diagnosis, and treatment (EPSDT) services defined, 51288
Extended medical assistance for certain families who lose AFDC eligibility, etc., 65312
Minimum physician qualifications for services to children under age 21 and pregnant women, 42041
Prepaid health care organizations; physician incentive plans requirements, 8568
Medicare:
Cervical cancer, early detection; screening pap smears coverage, 62312
Clinical diagnostic laboratory tests; fee schedules and payment policy, 43832
Clinical psychologist, other psychologist, and clinical social worker services; coverage and payment, 68829
Health maintenance organizations (HMO); organizational structure and services, 38170
Correction, 46925
HIV infectious blood and blood products; hospital standard, 34977
Hospital inpatient prospective payment systems and 1994 FY rates, 30222, 34742
Interest expense and income from zero coupon bonds; reporting by providers, 65150
Physician fee schedule; revisions to payment policies, 37994
Prepaid health care organizations; physician incentive plans requirements, 8568
Risk health maintenance organizations and competitive medical plans; retroactive enrollment and disenrollment, 68366

NOTICES

Agency information collection activities under OMB review, 7142, 7143, 21174, 29416, 38579, 46198, 47904, 54159, 59270, 60204, 62357, 67795
Clinical laboratories improvement:
Laboratories exemption; Washington State, 52112
Commission on Office Laboratory Accreditation; approval, 68148
Federal financial participation in State assistance expenditures; Federal percentages and Federal medical assistance percentages; correction, 46196
Health maintenance organizations (HMO) qualification determinations and compliance actions, 5402, 39820, 51632, 31407, 51833
Medicaid:
Disproportionate share hospitals; 1993 FY aggregate payments limitations, 43184
Joint Commission on Accreditation of Health Care; home care organization standards recognition, 35007
Management information systems; functional requirements, 61692
Program issuances and coverage decisions; quarterly listing, 3028, 9244, 16837, 36967, 46200, 67796
State plan amendments, reconsideration; hearings—
Arkansas, 14577
New York, 47905
Pennsylvania, 60039
Medicare
Ambulatory surgical centers; covered surgical procedures; list additions and deletions, implementation stay, 51355, 62128, 65357
Fiscal intermediaries and carriers—
Budgets; data, standards, and methodology, 33822
Criteria and standards for evaluating performance during 1994 FY, 51085
Data, standards, and methodology, 51827
Home health agency costs per visit; schedule of limits, 36748
Inpatient hospital deductible and hospital and extended care services coinsurance amounts; 1993 CY, 630, 58553
Joint Commission on Accreditation of Health Care; home care organization standards recognition, 35007
Monthly actuarial rates and supplementary medical insurance premium rates (1994 CY), 59271
Monthly hospital insurance premium (Part A premium) for uninsured aged, etc., 58555
Peer review organizations—
Contract obligation performance evaluation general criteria and standards, 65186
Contracts; in-State organizations statements of interest, 17417
Utilization and quality control; scopes of work, 12042
Physician fee schedule (1994 CY) and physician performance standard rates of increase (1994 FY), 63856
Physician fee schedule; final relative value units, 31964
Program issuances and coverage decisions; quarterly listing, 3028, 9244, 16837, 36967, 46200, 67796
Provider Reimbursement Review Board Hearing Manual; withdrawn, 60458
SELECT insurance policies; revised designation of States, 35017
Uniform hospital billing and payment mechanisms, 4705
Meetings
Practicing Physicians Advisory Council, 8291, 29831, 45343, 62357
Organization, functions, and authority delegations, 14579, 40434, 64772

Privacy Act:
Computer matching programs, 16687, 69370
Systems of records, 32145, 33826, 42341, 52971

Health Resources and Services Administration

See Public Health Service

NOTICES

Advisory committees; annual reports; availability, 7568, 12968, 16411, 26328, 32958, 34815, 59729, 60205, 62358, 63173, 68437
Committees; establishment, renewal, termination, etc.:
Childhood Vaccines Advisory Commission, 19261
Grant and cooperative agreement awards:
HIV care program; States and territories, 40434
HIV emergency relief program; eligible metropolitan areas, 40435
Philadelphia metropolitan area, 37744
Grants and cooperative agreements; availability, etc.:
Acquired Immune Deficiency Syndrome (AIDS)—
Dental reimbursement program, 38775
Non-acute care intermediate and long-term care facilities renovation, 34816
Outpatient early intervention services, 52315
Regional education and training centers program, 60860, 66075
Advanced nurse education program, 19262, 32710, 50943
Allied health project, 27288, 60863
Alzheimer's disease or related disorders State demonstration projects, 19463
Area health education centers program, 12245
Community and migrant health centers, 19130, 26328, 28027
Dentistry general practice; residency training and advanced education, 26791
Disadvantaged health professions faculty loan repayment program, 19264
Disadvantaged students scholarship program, 29417
Emergency medical services and trauma care in rural areas, 32147
Emergency medical services for children; demonstration program, 14406, 16196
Exceptional financial need and financial assistance for disadvantaged health professions students programs, 15501, 37494
Family medicine—
Departments establishment, 21175, 35019
Faculty development, 5736, 50945
Graduate training, 25842, 51834
Predoctoral training, 5739, 51836
General internal medicine and pediatrics—
Faculty development, 5737, 51090
Residency training, 25841, 51838
Geriatric education centers, 19825, 58700
Geriatric medicine and dentistry faculty training projects, 38776
Health administration traineeships and special projects program, 19269, 32711, 36516
Health careers opportunity program, 4707, 39822
Health education and training centers, 14411, 30066
Health professions and nursing programs—
Low income levels, 8764
Health services in Pacific Basin, 32148
Healthy start communications campaign, 38581
Homeless individuals and children; primary health and substance abuse services, 17599
Human immunodeficiency virus (HIV)—
Dental reimbursement program, 38775
Outpatient early intervention services, 14216, 17236, 19825, 44347, 52315
Maternal and child health community integrated service systems set-aside program, 14408, 17418, 18100, 19828, 60040
Migrant health centers; environmental and occupational health services for migrant and seasonal farmworkers, 5738
Minority health professions education centers of excellence, 14414
Model State-supported area health education centers program, 32150, 48068
National Health Service Corps loan repayment program and State loan repayment program, 39218
Nurse anesthetists—
Education programs, 21177, 40657
Faculty traineeship program, 21986, 40658
Traineeship program, 21985, 42079, 58701
Nurse practitioner and midwifery programs, 5009, 51092
Nursing education loan repayment agreements for services in certain health facilities, 21470
Nursing education opportunities for individuals from disadvantaged backgrounds program, 48892
Nursing special projects, 19270, 35020, 38778, 58342
Organ donation increase, 19673
Pediatric Acquired Immune Deficiency Syndrome (AIDS) health care demonstration projects, 17595
Primary Health Care Bureau selected programs, 19827
Professional nurse traineeships program, 19134, 32712, 58703
Public health traineeships to public health schools and other public and nonprofit private institutions, 19272, 26792, 32711
Public housing primary care program, 32151
Rural areas health care; interdisciplinary training, 5741
Rural health medical education demonstration projects, 43641
Rural health outreach demonstration program, 3959, 63173
Selected grant programs information submission requirements, 43642
Selected grant programs under Public Health Service Act, Titles VII and VIII; statutory general funding preference implementation methodology, 3284, 5061, 9570, 40659
Special projects of national significance program, 32958
Adolescents with HIV/AIDS or at high risk for infection; health and support services, 38430
State offices of rural health program, 14417
Trade association representing health maintenance organizations; model minority education demonstration program, 40152
Health education assistance loan (HEAL) program:
Defaulted borrowers; list, 45654
Quarterly interest rates, 6799, 21987
Health professions student loan (HPSL) program:
Primary care loan program; "residency training program in primary health care" definition, 11610, 29420
Meetings:
AIDS Advisory Committee, 62358
Rural Health Advisory Committee, 39824
Meetings; advisory committees:
February, 4707, 5742
March, 5743, 7233
April, 15353, 16688
May, 16411, 16689
June, 21732, 26143, 27289, 30180
September, 43117, 44522
October, 49316, 50008
November, 51094, 52116, 53937
December, 53518
January (1994), 62358, 68438
National vaccine injury compensation program:
Health insurance policy; average cost revision, 52782
Petitions received, 3284, 14579, 37497, 61915
Privacy Act:
Systems of records, 36972, 69052
United Network for Organ Sharing allocation principles; hearing, 63383
Veterans Health Care Act:
Drug purchases—
Covered entities; price limitation, 27289
Duplicate discounts and rebates, 27293, 34058

Hearings and Appeals Office, Energy Department

NOTICES

Cases filed, 3275, 4164, 4989, 6783, 7223-7224, 8591, 11052, 11407, 12957, 15869, 17229, 19414, 21568, 21712, 21713, 26775, 29817, 29818, 31516, 31517, 32665, 34791, 36195, 36958, 39021, 39022, 40419, 43343, 46169, 46174, 46175, 48042, 49499, 51629, 52484, 52957, 52958, 54132, 54585, 58856, 58857, 63934, 64754, 64755, 67785
Decisions and orders, 3276, 4990, 6784, 8756, 8943, 11408, 12958, 13489, 13752, 13754, 17882, 19416, 19417, 21164, 21167, 21713, 26300, 26776, 26778, 29819, 31517, 33624, 34792, 36197, 36199, 40420, 44336, 44338, 46170, 46174, 46177, 46180, 49500, 53510, 53931, 54133, 54586, 55064, 58002, 58858, 60621, 60623, 62115, 62117, 62118, 63935, 64756
Petroleum violation escrow funds; excess determination, 60018
Special refund procedures; implementation, 3276, 4430, 8591, 8758, 11052, 12961, 14392, 16822, 17887, 21569, 21572, 25635, 26318, 26319, 28009, 29821, 31701, 32349, 32666, 39022, 46181, 46186, 57595, 59030, 59461, 59462, 60196, 60197, 63935, 63937, 64758, 67403, 67405, 68639, 68903

Hearings and Appeals Office, Interior Department

RULES

Field offices; list update, 48973

Historic Preservation, Advisory Council

PROPOSED RULES

Regulatory agenda, 24986, 56986

NOTICES

Meetings, 31360
Senior Executive Service:
Performance Review Board; membership, 64331

Housing and Urban Development Department

RULES

Acquisition regulations:
Miscellaneous amendments, 49436

INDEX
VOL 58
1993
UMI

Agency personnel lobbying requirements:
State and local government exclusion, 47056
Building product standards and certification program; use of materials bulletins, 67671
Community facilities:
Poverty-level population; undue concentration determination; CFR correction, 61024
Shelter plus care program, 13884
Supportive housing demonstration program; services for homeless, 13870
Comprehensive Housing Affordability Strategies (CHAS), 13686
State and local government requirements to submit housing strategy; five-year-period waiver, 49156
Congregate housing services program, 14509
Fair housing:
Fair Housing Act; discriminatory conduct; residential real property, unlawful practices; CFR correction, 2988
Funding decisions; advance disclosure prohibition, 61016
Grant programs:
Nehemiah housing opportunity, 38530
Homeowner incentive, 58280
Low income housing:
Elderly or handicapped housing—
Elderly; supportive housing, 26836
Persons with disabilities; supportive housing, 26816
HOME investment partnerships program, 34130
HOPE program guidelines—
Single family units, 36518
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors, 4262, 11526
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation and rental voucher programs, 51410, 57964
Poverty-level population; undue concentration areas determination; withdrawn, 4272, 8186
Project-based accounting, 4318
Single room occupancy program for homeless individuals, 13828
Housing opportunities for persons with AIDS programs (HOPWA) entitlement and competitively awarded grants; correction, 17164
Rental rehabilitation program closeout requirements, 52566
Manufactured home construction and safety standards:
Energy conservation requirements, 54975
Energy conservation standards; availability, 54484
Materials release; exterior finish and insulation systems product standards and certification program, 34502
Minimum property standards; miscellaneous amendments, 60246
Mortgage and loan insurance programs:
90 percent-of-value criterion in Section 223 refinancing; deletion, 57558
Annual income definition; Holocaust reparations, 15773
Correction, 17164, 21657
Federal claims collection, 47377
Flexible subsidy program; amendments, 64138
HUD-owned multifamily projects and certain multifamily projects subject to HUD-held mortgages; management and disposition, 43708
Insured affordable multifamily project loans; housing finance agency risk-sharing program, 64032
Insured mortgages in default; technical amendment, 32057
Low-income housing mortgages; prepayment, 13007
Maximum loan and mortgage limits for high-cost areas; revision, 13950, 44760
Correction, 47319
Mortgagee approval reform and direct endorsement expansion; correction, 13534
Mortgages or property formerly held by Secretary; title waivers, 35369
Multifamily low income housing projects preservation, 4870, 37802
Multifamily mortgage limits; increase, 16773
Multifamily mortgages; nonjudicial foreclosure, 34882
Multifamily projects; operating loss loan program expansion, 43072
Multifamily subsidized projects; certification and recertification and subsidy billing; electronic transmission of required data, 61017
Correction, 62415
Resolution Trust Corporation multifamily properties; expedited processing procedures, 9541, 63067
Single family and manufactured home FHA insurance; miscellaneous amendments, 40996
Single family housing in subdivisions, 41328
Correction, 45553
Single family mortgage assumability and release requirements, 42645
Single family property disposition program, 54244
Title insurance policy; effect of acquisition of title by mortgagee or Secretary, 34213
Up-front premiums; electronic payment, 12901
Public and assisted housing; single person occupancy restrictions, elimination, 39658
Public and Indian housing:
Comprehensive improvement assistance program, 13916
Drug elimination program, 3160
Family self-sufficiency program guidelines, 30858, 30906
Housing assistance; budget authority allocation, 41426
Housing authority-owned insurance entities; financial standards, 51952
Indian housing; lease provisions and grievance procedures, 19349
Public and Indian housing projects; demolition or disposition, 58784, 64141
Section 5(h) homeownership program, 6092
Total development cost calculation; donations, 62522
Real Estate Settlement Procedures Act; implementation; correction, 13705, 17165
Escrow accounting methods statement; interpretive rule, 5520

PROPOSED RULES

Building product standards and certification program; use of materials bulletin, 26212
Community development block grants:
Joint community development program, 68795
Special purpose grants; community adjustment and economic diversification planning program, 43764
Community facilities:
Community development block grant sanctions, 60088
John Heinz neighborhood development program, 32210
Youthbuild program; development and implementation, 49830
Employment and business opportunity
Economic opportunities for low and very low-income persons, 52534, 52560, 59423
Fair housing:
Housing and Community Development Act—
Fair housing initiatives program implementation, 17172
Government National Mortgage Association; mortgage-backed securities program; issuer eligibility and integrity reforms, 64713
HUD-owned properties:
Single family property disposition; lease and sale for homeless, 42707
Low income housing:
HOME investment partnership programs, 26048
Housing assistance payments (Section 8)—
Assisted housing; preferences for admission, 44968
Contract rent annual adjustment factors, 68615
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation and housing voucher programs, 27062, 36175
Poverty-level population; undue concentration areas determination, 8187
Tenancy in new construction units; income eligibility, 35416
Tenant assistant designation, 53461
Manufactured home construction and safety standards:
Wind standards, 19536, 32316
Mortgage and loan insurance programs:
FHA multifamily processing; revision, 35724
Flexible subsidy program; amendments, 34506
HUD-owned multifamily projects and multifamily projects subject to HUD-held mortgages; management and disposition; preliminary regulatory impact analysis, 21960
Minimum property standards changes; seismic design for housing and swimming pools, 41445
Real estate appraisals and property valuation; minimum standards, 48556
Single family mortgage insurance; reimbursement limitation for preservation and protection expenditures, 60823
Tiered pricing, 37885
Privacy Act; implementation, 37598
Public and Indian housing:
Certificate and voucher programs; conforming rules, 11292
Choice in public housing management program, 27964
Emergency shelter grants program—
Indian tribes and Alaskan native villages, 17764
Lead-based paint; liability insurance coverage for housing authorities, 58513
Low-income housing; performance funding system; cooling degree days, 51261
Police officers and security personnel; eligibility requirements waiver, 32006
Vacancy reduction program, 29728
Real Estate Settlement Procedures Act; implementation:
Agency review and hearing, 36176
Escrow accounting procedures, 64066
Lending coverage, refinancing transactions, subordinate loans, etc., 28478
Regulatory agenda, 24382, 56402

NOTICES

Agency information collection activities under OMB review, 4708, 5405, 6496, 6517, 6972.

150-255 O - 94 - 4 (3)

Housing

7793, 7807, 7808, 8057, 13081-13085, 13271, 13784, 13785, 14583, 15152, 17236, 17241, 17242, 17243, 18221, 18222, 18223, 21743, 21744, 21745, 29425, 29426, 29427, 29428, 29429, 34266, 37500, 40443, 42563, 46644, 46648, 48369, 51841, 54163, 54165, 60045, 64590, 65373, 68008
Committees; establishment, renewal, termination, etc.:
Occupancy Standards in Public and Assisted Housing Task Force, 3039, 53937
Directives in catalog format; current listing; availability, 59100
Environmental statements; availability, etc.:
Oakland, CA, 33639, 42570
Fair housing:
Substantially equivalent agencies certification; list, 39561, 62678
Federally mandated exclusions from income, 41287
Grant and cooperative agreement awards:
Community development block grant program—
Indian tribes and Alaskan native villages, 48661
Community development technical assistance program, 5408
Congregate housing services program, 51639
Disaster relief housing counseling, 65376
Facilities to assist homeless—
Supplemental assistance program, 13786
Fair housing initiatives program, 13068
Flexible subsidy program; operating assistance and capital improvement; competition winners, 21746
Flexible subsidy program—
Operating assistance and capital improvement; competition winners, 68943
Historically black colleges and universities program, 32428
HOPE homeownership program—
Multifamily units program (HOPE 2), 60866
Housing counseling program, 65376
Housing for elderly and people with disabilities—
Service coordinators; regional hiring lotteries, 40667
Housing opportunities for persons with AIDS program, 6127
Indian HOME program, 58873
Lead-based paint risk assessments, 43647, 64773
Low and moderate-income private housing; lead-based paint abatement, 46209
Low income housing—
Allen Park Tenants Association et al., 53522
Drug elimination program, 65382
Lead-based paint abatement, 65373
Public and Indian housing—
Drug elimination program, 42572, 68929, 68936, 68945
Family self-sufficiency program, 8611, 13790
Family unification demonstration program, 8606
HOPE for elderly independence program, 8609
Urban revitalization demonstration program, 63180
Rent supplement and rental assistance program, 52500
Single room occupancy dwellings for homeless individuals moderate rehabilitation program, 65388
State community development block grant technical assistance awards program, 49054
Supportive housing programs—
Elderly, 53523
Elderly and persons with disabilities, 69373
Handicapped homeless persons; permanent housing, 13786
Persons disabled by human acquired immunodeficiency virus (HIV), set-aside, 58874
Persons with disabilities, 53523
Shelter plus care and section 8 moderate rehabilitation for single room occupancy dwellings for homeless individuals, 65390
Transitional housing program, 13788
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Disaster relief housing counseling, 5556, 15158
Indian tribes and Alaskan native villages, 45176
Small cities program, 31440, 32003
Community development work study program, 43645, 68925
Congregate housing services program, 4713
Elder cottage housing opportunity (ECHO) demonstration program, 45384
Emergency shelter grants program—
Indian tribes and Alaskan native villages, 17766
Facilities to assist homeless—
Excess and surplus Federal property, 3293, 4713, 5750, 6518, 7235, 8292, 9185, 11612, 12589, 13606, 15155, 16412, 17422, 18411, 19836, 21748, 26145, 27294, 28597, 29594, 31045, 31731, 32715, 33640, 34475, 35965, 36981, 38434, 39564, 40821, 42085, 43117, 44353, 45345, 46979, 47748, 48665, 50010, 51366, 52501, 53522, 54598, 58175, 59054, 60043, 61094, 62360, 64002, 64960, 66010, 68152, 69400
Lead-based paint hazard reduction in priority housing, 42739
Fair housing initiatives program, 68000
Flexible subsidy program—
Capital improvement loan component, 32424
Operating assistance and capital improvement loan components, 32022, 36217
Historically black colleges and universities program, 48716, 51647
HOME investment partnerships program—
Formula allocations (1993 FY), 6289, 6641
Indian applicants, 11102
HOPE homeownership program—
Multifamily units program (HOPE 2), 38466, 47278
Public and Indian housing, multifamily units, and single family homes programs (HOPE 1, 2 & 3), 46209
Single family homes program, 36546, 42571
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors; retroactive payments; claims procedures, 19137
Loan management set-aside program, 35965
Housing counseling, 21064
Housing opportunities for persons with AIDS program; correction, 5410
Innovative homeless initiatives demonstration program; project funding (1994 FY), 67616
Insured multifamily housing; housing finance agency risk-sharing program, 64054
John Heinz neighborhood development program, 32215
Lead-based paint hazard reduction in priority housing, 31848, 32958
Lead-based paint risk assessments, 31842
Low income housing—
Preservation technical assistance, outreach and training, and other preservation activity; funding methodology, 37819
Resident groups, community groups, community-based nonprofit organizations, and resident councils; technical assistance planning program, 8766
Neighborhood development demonstration program, 43648
Presidentially-declared disaster areas; modification of environmental comment period, 58559
Public and Indian housing—
Comprehensive improvement assistance program, 13939, 50562
Drug elimination program, 5150, 31870
Family unification demonstration program, 36266
Homeless veterans with severe psychiatric or substance abuse disorders; Section 8 rental voucher set-aside, 51192, 55077
Homeownership program (HOPE 1), 41126
HOPE for elderly independence multifamily project demonstration, 50768, 63181
HOPE for elderly independence nationwide demonstration program, 39372
Major reconstruction of obsolete public housing (MROP) development program, 47940
Moving to opportunity for fair housing demonstration program, 43458, 49522
Public housing development, 34670, 40830
Public housing resident management program, 32254, 42739
Rental voucher and certificate programs, 36808, 38813
Traditional Indian housing development program, 16546
Urban revitalization demonstration program, 436, 16590, 26556, 31217
Youth sports program, 36254
Supportive housing for elderly, 26843, 43901
Supportive housing for persons with disabilities, 26824, 43901
Supportive housing programs—
Shelter plus care and section 8 moderate rehabilitation for single room occupancy dwellings for homeless individuals, 13904, 33103
Youthbuild program; development and implementation, 49849
HUD-approved housing counseling agencies; list, 13071
HUD-owned single family properties leasing to State and local governments for law enforcement use, 46526
Interstate land sales; registration procedure changes, 5012
Lobbying of HUD personnel; reports, 17644
Low income housing:
Qualified census tracts and difficult development areas; statutorily mandated designation under 1986 Internal Revenue Code section 42 for tax credit, 19704, 63179
Meetings:
Lead-Based Paint Hazard Reduction and Financing Task Force, 52973
National Manufactured Home Advisory Council, 34586
Occupancy Standards in Public and Assisted Housing Task Force, 3041, 6642, 11415, 16690, 19838, 26984, 31739, 37501, 48371, 68153

UMI

150-255 O - 94 - 4 (3)

Metric policy and metrication program, 47280
Mortgage and loan insurance programs:
Debenture interest rates, 6128, 42740
Debenture recall, 14584, 21186, 50563
Exception to new 6-year limitation on eligibility for distributive shares, 19139
Federal Home Loan Mortgage Corporation; interim housing goals, 53072, 60867
Federal National Mortgage Association; interim housing goals, 53048, 60867
Interest rates, 52499
Section 235(r) interest rates, 18105
Mortgagee Review Board; administrative actions, 6803, 26556, 43901, 58343
Occupancy Standards in Public and Assisted Housing Task Force; report availability, 45905, 49317
Organization, functions, and authority delegations:
Acting Assistant Secretary for Community Planning and Development; order of succession, 28596
Acting Assistant Secretary for Fair Housing and Equal Opportunity; order of succession, 7809
Acting Field Office Manager; order of succession, 14583
Acting Regional Administrator, Region IV; order of succession, 45909
Agency ethics officials; designation, 8057
Assistant General Counsel for Fair Housing et al., 49055
Assistant Secretary for Administration; procurement authority, 13496
Assistant Secretary for Community Planning and Development; Youthbuild program, 45910
Assistant Secretary for Housing-Federal Housing Commissioner et al.; Section 8 rental housing projects, 45910, 45911, 53521, 63384
Associate General Counsel for Equal Opportunity and Administrative Law et al., 63385
Deputy Assistant Secretary for Operations, Community Planning and Development Office, et al., 65373
Deputy Secretary, 45911
Field Office Managers et al., 58560
Housing counseling program; toll-free telephone number change, 65390
Lender Activities and Land Sales Registration Office, Director, 34060
Office of Housing-Federal Housing Administration Comptroller et al.; Section 8 rental housing projects, 53553
Program Training and Technical Assistance Office, Director, 49055
Regional Administrators-Regional Housing Commissioners, 63386
Regional employees, 48667
Regional Housing Directors, 63386
Regional offices, etc.; order of succession—
Albany, 8632
Atlanta, 14584
Chicago, 21988
Cleveland, 45912
Fort Worth, 60047
Las Vegas, 8632
Milwaukee, 49054
Oklahoma City, 45912
Pittsburgh, 7809
Richmond, 64592
St. Louis, 45912
Tulsa, 64593
Privacy Act:
Systems of records, 21988, 37600
Public and Indian housing:
Housing assistance payments (Section 8)—
Moderate rehabilitation projects; Section 801 retroactive payment procedures, 45114
Lead-based paint; hazard identification and abatement; interim guidelines, 4175
Regulatory waiver requests; quarterly listing, 17263, 45496
Senior Executive Service:
Performance Review Board; membership, 60043
State housing finance agency demonstration program; multifamily property disposition, 48528

Human Nutrition Information Service

NOTICES
Meetings:
National Nutrition Monitoring Advisory Council, 25603, 51840

Immigration and Naturalization Service

RULES
Freedom of Information Act; implementation, 31147
Immigration:
Administrative naturalization, 49905
Aliens who have served honorably (or are enlisted to serve) in Armed Forces of United States; special immigrant status, 50835
Aliens—
Alien registration receipt card (Form I-551); establishment as exclusive registration form for lawful permanent residence, 48775
Immigrant investor pilot program, 44606
Legalization benefits; public charge determination, 45235
Temporary protected status, registration deadline exception; persons in valid immigrant or nonimmigrant status during initial registration period, 58935
Asylee and refugee-related applications; processing fees, 12146, 14145
Chinese Student Protection Act; implementation, 25832
Citizens of former Yugoslavia; visa requirement, 43438
Guam visa waiver program; Taiwan, 38045
Immigrant petitions—
Scientists of Commonwealth of Independent States of Former Soviet Union and Baltic States: classification as employment-based immigrants, 30699
Nonimmigrants bearing Iraqi and Kuwaiti travel documents; registration and fingerprinting requirements removal, 68024
Philippine natives naturalization; fee schedule, 30698
Ports of entry for aliens arriving by aircraft, 38045
Special immigrant status; certain aliens declared dependent on juvenile court, etc., 42843
Visa waiver pilot program; Brunei, 40581
Nationality:
Special classes of persons who may be naturalized based upon active duty service in U.S. Armed Forces during specific periods of hostilities—
Philippines natives during World War II, 45418
Nonimmigrant classes:
Attendance of nonimmigrant students; approval process for schools, 58097
Deportability grounds and procedures; CFR correction, 49905
U.S. transit without visas; prohibition of nationals from former Republic of Yugoslavia, 4891
North American Free Trade Agreement (NAFTA)
Temporary entry of business persons, facilitation, 69205
Organization, functions, and authority delegations
Border patrol sector number 3; name change from Mayaguez, PR, to Ramey, PR, 3487
Border patrol stations, New York, et al.; name changes, 471
PROPOSED RULES
Immigration:
Agricultural worker replenishment program; expiration, 64695
Aliens—
Alien registration receipt card (Form I-551); establishment as exclusive registration form for lawful permanent residence, 31000
Employment control, 61846
Asylum and withholding of deportation procedures; convictions for aggravated felonies, 38312
Immigrant petitions—
Adoption of foreign-born orphans by U.S citizens, 59200
Inspection services; reimbursement for certain salary costs and administrative overhead charges; correction, 6056
Nonimmigrant classes
B-1 visitor for business or B-2 visitor for pleasure classifications, 58982
NOTICES
Alien registration receipt card; Form I–151; rescission withdrawn, 28418
Asylum and asylum-related applications; mailing addresses, 13505
Asylum in United States, request (Form I-589), 39838
Dedicated commuter lanes potential usage; public opinion survey, 43375
El Salvador nationals; enforced departure deferral, 32157
Environmental statements; availability, etc.:
Defense Department Joint Task Force Six operations, 38140
Grants and cooperative agreements; availability, etc.:
Immigrant investor pilot program, 44698
Immigration:
Nonimmigrants bearing Iraqi and Sudanese travel documents; registration and fingerprinting requirements, 68157
Immigration user fee increase, 64969
Master exhibits for asylum applications; production guidelines availability, 26165
Meetings:
Immigration and Naturalization Service User Fee Advisory Committee, 19844
Naturalization applications; English language, American history, and civics; standardized test, 11248
Organization, functions, and authority delegations:
Los Angeles, CA; temporary asylum interview office closure, 48675
Strategic plan; stakeholders' workshop, 60212
Temporary protected status program designations:
Bosnia-Hercegovina, 40676
Lebanon, 7582
Liberia, 7898
Somalia, 48898

Indian Affairs Bureau

RULES
Heritage preservation:
Archaeological resources; protection, 65246

INDEX VOL 58 1993

Indian

Law and order on Indian reservation:
Courts of Indian Offenses; jurisdiction, 54406
Correction, 58729

PROPOSED RULES

Energy and minerals:
Indian lands; Federal programs, 15404
Osage reservation lands; leasing for oil and gas mining, 59142
Facilities management programs:
Education facilities construction, 53026
Human services:
Indian Child Welfare Act; discretionary grant process; changes, 4046

NOTICES

Agency information collection activities under OMB review, 17275, 65391, 67805
Contracts:
Non-procurement contracts; awarding official; definition, 44574
Education facilities construction priority list (1993 FY), 578
Employment, training, and related services provided by Indian tribes; integration, 41022
Environmental statements; availability, etc.:
El Rancho Substation Project, Santa Fe County, NM, 16336
Fish and wildlife:
Indian fishing; Yurok Indian Reservation; subsistence gill net fishing, 41342
Grants and cooperative agreements; availability, etc.
Contract support funds, 68694
Indian child welfare program, 21236, 33158
Small tribes program, 68696
Special tribal court discretionary funds program, 53374
Traffic safety projects on Indian reservations, 7946
Training and technical assistance and planning programs, 68702
Tribal self-governance demonstration project, 7809
Indian Child Welfare Act; designated tribal agents for service of notice; list, 16450, 21776
Indian entities recognized and eligible to receive services from BIA; list, 54364
Indian tribes, acknowledgment of existence determinations, etc.:
Chicora-Siouan-Indian-People, 16338
Chukchansi Yokotch Tribe, 46708
Colorado Winebagoes, 18328
Mohegan Tribe and Nation, CT, 5458
Ohlone/Costanoan Esselen Nation, CA, 6060
Ramapough Mountain Indians, Inc., 64662
Snoqualmie Indian Tribe, 27162
Swan Creek Black River Confederated Ojibwa Tribes of Michigan, Inc., 44190
Wintu Tribe of Northern California, 62012
Irrigation projects; operation and maintenance charges:
Blackfeet Irrigation Project, MT, 7944
Colorado River Indian Irrigation Project, AZ, 43986
Flathead Indian Irrigation Project, MT, 32040, 48430
Fort Peck Irrigation Project, MT, 5454
Salt River Indian Irrigation Project, AZ, 43992
San Carlos Indian Irrigation Project, AZ, 7942, 43990
Wind River Irrigation Project, WY, 7940, 31644
Judgment funds; plans for use and distribution:
Oglala Sioux Tribe, 40244
Soboba Band of Mission Indians, 40714
Juvenile detention facilities construction and planning of new institutions (PONI) study applications, 69586
Liquor and tobacco sale or distribution ordinance:
Chitimacha Tribe of Louisiana, 58474
Flandreau Santee Sioux Tribe, SD, 16330
Mississippi Band of Choctaw Indians, MS, 31618
Morongo Band of Mission Indians, CA, 66418
Omaha Tribe of Nebraska, 8888
Seneca Nation of Indians, NY, 6874
Upper Sioux Community, MN, 59138
Yankton Sioux Tribe, SD, 19520
Meetings:
Tribal consultation on Indian education topics, 25740, 48746
Metlakatla Indian Community, AK; child custody, jurisdiction reassumption, 11766, 16448
Near-reservation designations; list, 8882
Power rate adjustments:
Mission Valley Power Utility, MT, 5456, 31110, 48426, 48432
Rejected statute of limitations claims; list; correction, 17042
Tribal-State Compacts approval; Class III (casino) gambling:
AK-Chin Indian Community, AZ, 17006, 44004
Assiniboine and Sioux Tribes of Fort Peck Reservation, MT, 19526
Chehalis Reservation, 12534
Cheyenne River Sioux Tribe, SD, 64082
Chippewa Cree Tribe, MT, 54222
Chitimacha Tribe, LA, 36264
Cocopah Indian Tribe, AZ, 44006
Coeur d'Alene Tribe, ID, 8478
Crow Creek Sioux Tribe, SD, 18326
Crow Indian Tribe, MT, 37604, 50766, 62990
Devils Lake Sioux Tribe, ND, 43998
Fort McDowell Mohave-Apache Indian Community, AZ, 44008
Fort Mojave Indian Tribe, AZ, 59922
Gila River Indian Community, AZ, 44018
Grand Traverse Band of Ottawa and Chippewa Indians et al., MI, 63262
Jamestown S'Klallam Tribe, WA, 26440
Kootenai Tribe, ID, 59926
Lower Elwha Klallam Tribe, WA, 9212
Mescalero Apache Tribe of New Mexico, 5166
Mississippi Band of Choctaw Indians, 6600
Muckleshoot Indian Tribe, 27186
Northern Cheyenne Tribe, MT, 31535, 68492
Northern Cheyenne Tribe, WA, 26438
Oglala Sioux Tribe, SD, 58082
Oneida Indian Nation of New York, 33160
Pascua Yaqui Tribe, AZ, 44010
Rosebud Sioux Tribe, SD, 19518
San Carlos Apache Tribe, AZ, 59924
Sisseton-Wahpeton Sioux Tribe, ND, 6973
Sisseton-Wahpeton Sioux Tribe, SD, 52384
Squaxin Island Tribe, WA, 52382
St. Regis Mohawk Tribe, NY, 65272
Swinomish Indian Tribal Community, WA, 9466
Tohono O'odham Nation, AZ, 44000
Tonto Apache Tribe, AZ, 44012
Tulalip Tribes of Washington, 66424
Turtle Mountain Band of Chippewa Indians, ND, 40716
Upper Skagit Indian Tribe, 12536
White Mountain Apache Tribe, AZ, 44002
Yavapai-Apache Nation, AZ, 44014
Yavapai Prescott Indian Tribe, AZ, 44016
Absentee Shawnee Tribe, OK, 14298

Indian Health Service

NOTICES

Grant and cooperative agreement awards:
Indian health scholarship program; recipients list, 7144
Grants and cooperative agreements; availability, etc.:
American Indian/Alaska Native tribal organizations—
Tribal management program, 42738
American Indians/Alaska Natives—
Adolescent health centers, 29831, 39824
Mental health services; tribal demonstration projects, 26332
Tribal management program, 13605
Tribal recruitment and retention of health professionals into Indian health programs, 18100
Health professions preparatory, pregraduate, and Indian health professions scholarship program, 21471
Indian health service research program, 26334, 35021
Nursing recruitment program for Indians, 30791, 35025
National Environmental Policy Act; categorical exclusions, list, 569
Privacy Act:
Systems of records, 36208

Information Security Oversight Office

NOTICES

Meetings:
National Industrial Security Program Policy Advisory Committee, 48372
National security classification system changes; hearing, 29480

Inspector General Office, Health and Human Services Department

RULES

Medicaid programs:
Fraud and abuse—
Sanction and civil money penalty provisions; implementation, 5617, 40752
Medicare programs:
Fraud and abuse—
Health care plan protection; safe harbors; establishment, 2989
Sanction and civil money penalty provisions; implementation, 5617, 40752

PROPOSED RULES

Medicaid programs:
Civil money penalties for prohibited referrals to entities providing clinical laboratory services and prohibited arrangements and schemes, 54096
Fraud and abuse—
Anti-kickback statute; safe harbor provisions, 49008
Prepaid health care organizations; physician incentive plans requirements, 8568
Medicare programs:
Civil money penalties for prohibited referrals to entities providing clinical laboratory services and prohibited arrangements and schemes, 54096
Fraud and abuse—
Anti-kickback statute; safe harbor provisions, 49008
Prepaid health care organizations; physician incentive plans requirements, 8568

NOTICES

Program exclusions; list, 41794, 44685, 44686, 48073, 53519, 60205, 66007

Interagency Environmental Technology Export Group

NOTICES

Meetings:
Environmental technology development and export stakeholder meetings, 42104

UMI

Inter-American Foundation

NOTICES

Meetings; Sunshine Act, 17304, 36006, 58229, 59296, 68685

Interior Department

See Fish and Wildlife Service; Geological Survey; Hearings and Appeals Office, Interior Department; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Mines Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

RULES

Conflict of interests, 32446
Hearings and appeal procedures, 4939
Recreation management:
  Cave resources management, 51550

PROPOSED RULES

Assistance programs; administrative and audit requirements and cost principles:
  Buy American requirements, 42918
Freedom of Information Act:
  Employees as witnesses, and production of documents for judicial or administrative proceedings, 4635
Native American Graves Protection and Repatriation Act; implementation, 31122
Natural resource damage assessments, 39328, 45877
Regulatory agenda, 24442, 56456
Watch-duty exemption program:
  Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 65294

NOTICES

Air pollution; adverse impact determinations:
  Denali National Park and Preserve, AK, 8058
  Theodore Roosevelt National Park et al., 13639
Central Utah Water Conservancy District:
  Environmental statements; availability, etc.—
    Colorado River Storage Project; meetings, 47468
Committees; establishment, renewal, termination, etc.:
  Exxon Valdez Oil Spill Public Advisory Group, 25998
  National Cooperative Geologic Mapping Program Advisory Committee, 3963
  Sport Fishing and Boating Partnership Council, 6128
Grazing administration; 1993 grazing fee, 5014
Meetings:
  Central Utah irrigation and drainage system; scope and content of environmental statement, 45528
  Exxon Valdez Oil Spill Public Advisory Group, 4713, 14418, 25843, 33277, 43118, 53553, 59489, 64962
  Indian Affairs Bureau Reorganization Joint Tribal/BIA/DOI Advisory Task Force, 7570, 26340, 53046
National Environmental Policy Act; implementation, 13348, 34816
National Wild and Scenic Rivers system; Westfield River, MA, and tributaries, 60459
National Wilderness Preservation System:
  Water rights interpretation, 68629
Organization, functions, and authority delegations:
  National Biological Survey, 63387
Privacy Act:
  Systems of records, 43118
Senior Executive Service:
  Performance Review Board; membership, 39564
Take Pride in America program; donation and solicitation policy guidelines; establishment, 6000
Transactions between nonprofit organizations and Interior Department; guidelines withdrawn, 6003
Watches and watch movements; allocation of duty exemptions:
  Virgin Islands, 26119

Internal Revenue Service

RULES

Employment taxes and collection of income taxes at source:
  Tax liabilities; reporting and deposit, 68033
Excise taxes:
  Form 720 procedures, 6575
  Fuel floor stocks taxes, 62526
  Fuel floor stocks taxes and diesel fuel excise tax regulations, 68304
  Gasoline and diesel fuel registration requirements, 63069
  Ozone layer depleting chemicals and products containing chemicals; correction, 14517
  Vaccine floor stock tax, 62524
Federal regulatory review, 25556
  Correction, 26524
Income taxes:
  Accounting methods; cash receipts and disbursements accounting method, use limitation, 68297
  Active service in combat zone; compensation, 47639
  Affiliated group; definition, 7041, 16349, 29028
  Arbitrage and related restrictions—
    Tax-exempt bonds, 33510, 44451
  Bad debt reserves of banks, 68753
  Banks; tax accounting for bad debts, conclusive presumption, 53656
  Branch profits tax, 17166
  Capitalization and inclusion in inventory of certain costs, 42198
    Correction, 47784
    Method changes; hearing, 58101, 59657, 62260
  Casualty and theft losses and loss reimbursements, 13706
  Consolidated return regulations—
    Deferred gain or loss, 13409
  Corporate net operating loss carryforwards and corporate net operating loss; limitations, 51571
  Dual consolidated losses treatment, 13412
  Election, revocation, termination, and tax effect of Subchapter S status; correction, 3330, 15274
  Employer social security taxes paid on employee tips; credit, 68033
  Enhanced oil recovery credit, 6678, 7987
  Equity base computation, 47060
  Federal financial assistance received by financially troubled bank or thrift institution, or in connection with acquisition, 18148
  Foreign corporations; corporate distributions, 5927
    Correction, 11099
  Foreign earned income and housing cost amounts; valid election exclusion; extension, 34885
  Fringe benefits; taxation and exclusions from gross income (use of company cars, etc.)
    Correction, 7296
  Hedging transactions, 54037
  Indebtedness discharges; information reporting, 68301
  Intercompany transfer pricing regulations, 5263, 17775, 28921
  Interest reimbursements on qualified mortgages; information reporting, 68751
  Leased passenger automobiles and other listed property; inclusions in income, 19060
  Lobbying expense deductions; dues, 68294
  Low-income housing credit requirements—
    Monitoring compliance procedure, 7747
  Minimum funding requirements; plan restoration, 54489
  Mortgage credit certificate reissuance, 67689
  Mutual Life Insurance Company; differential earnings rate, etc., 64897
  Notional principal contract income and deductions, 53125
  Nuclear decommissioning fund qualification requirements, 7988
  Oil and gas wells; percentage depletion limitations, 6678
  Omnibus Budget Reconciliation Act; elections, 68300
  Passive activity losses and credits limitation, 11537
    Developer rule, 58787
    Technical amendments, 29535, 45059
  Passive foreign investment companies; shareholders (election under 1291), 13413
  Policy acquisition expenses; capitalization, 7987, 9245
  Property contributed to partnership; allocations reflecting built-in gain or loss, 67676, 67684
  Qualified business unit functional currency definition, 231
    Correction, 10997
  Qualified retirement plans, etc.—
    Cash or deferred arrangements, 18448
    Compensation; definition, 47061
    Minimum coverage requirements, 46835
    Miscellaneous amendments, 14150
    Nondiscrimination requirements, 14150, 46773
    Permitted disparity with respect to benefits and contributions, 46828
  Real estate mortgage investment conduits, 8098, 15089
  Regulated investment companies and real estate investment trusts; earnings and profits, 43797
    Correction, 49352
  Related foreign persons; owed amounts deductions, 235
    Correction, 8098
  Resident alien; definition, 17516
  Returns relating to cash in excess of $10,000 received in trade or business, 16496, 33763
  Securities dealers; mark to market, 68747
  Settlement funds, etc.; tax treatment, 7865
  TeleFile voice signature test; implementation, 4079, 68295
    Correction, 15089
Procedure and administration:
  Bank accounts subject to levy; 21-day holding period, 16
  Elections and relief applications; extension, 34886
  Levy, effect of honoring; and authority to release levy and return property, 3827
  Limited partnerships; continuity of life, 28501, 31343
  Time and place of examination, 17517

PROPOSED RULES

Employment taxes and collection of income taxes at source:
  Debt obligations; registration requirements, sanctions on issuers, etc., 5316

Railroad Retirement Tax Act regulations—
Supplemental annuity tax, 28371, 34519
Update, 28366, 35419
Railroad unemployment repayment tax; quarterly payments requirements, 28374, 44628
Tax liabilities, reporting and deposit, 58820
Underpayments; interest-free adjustments, 8726
Estate and gift taxes:
Generation-skipping transfer tax, 7497
Correction, 6854, 15314
Hearing, 4372, 6470
Marital deduction provisions; changes, 305
Correction, 15313
Hearing, 322, 4125
Excise taxes:
Diesel fuel, 45081
Fuel floor stocks taxes, 62526, 62559
Fuel floor stocks taxes and diesel fuel excise tax regulations, 68304, 68338
Gasoline and diesel fuel registration requirements, 63069, 63131
Marital deduction provisions; changes, 305
Hearing, 322, 4125
Ozone layer depleting chemicals; exports, 4625, 25791
Correction, 8099
Petroleum tax on natural gasoline, 21963
Tax-free exports of vaccines, 48801
Vaccine floor stock tax, 62524, 62558
Federal regulatory review; withdrawn, 25587
Income taxes:
Capitalization and inclusion in inventory of certain costs, 42263
Correction, 47013
Hearing, 58145, 59698, 62299
Consolidated return regulations—
Alternative minimum tax, 7845, 8027
Corporate net operating loss carryforwards; limitations, 7179, 10997, 27498
Correction, 7179, 10997
Hearing, 27503
Credit for qualified electric vehicles and deduction for clean-fuel vehicles and refueling property, 32317, 33986
Debt instruments with original issue discount; imputed interest on deferred payment sales or exchanges of property, 8098, 21692
Debt obligations; registration requirements, sanctions on issuers, etc., 5316
Discharge of indebtedness; hearing cancellation, 3522
Dividends received deduction holding period reduced for periods where risk of loss diminished, 30727
Hearing, 45080, 48801
Employee remuneration in excess of one million dollars; disallowance of deductions, 66310
Employer social security taxes paid on employee tips; credit, 68033, 68091
Equity base computation; cross reference, 47089
Foreign corporations; taxable year changes, 290
Foreign deferred compensation plans; deductions and reductions in earnings and profits (or accumulated profits), 27219, 34842
Correction, 34970
Hearing, 27250
Hedging transactions
Hearing, 54075
Income reflection, 54077
Income and loss allocations; periods before and after date of loss corporation ownership change
Hearing cancellation, 9553
Indebtedness discharges; information reporting, 68301, 68337
Intercompany transfer pricing regulations, 5310, 29028, 32473
Hearing, 27503
Life insurance, qualified accelerated death benefits, 6854
LIFO benefits recapture, 43827
Hearing, 43828, 53682
Lobbying activities; costs allocation, 68330
Lobbying expense deductions; dues, 68294, 68334
Low-income housing credit—
Administrative errors and omissions, etc.; hearing, 44, 47
Carryover allocations, 7497
State housing credit ceiling, 68799
Marital deduction provisions; changes, 305
Correction, 15313
Hearing, 322, 4125
Mortgage credit certificate reissuance, 67689, 67744
Notional principal contract income and deductions; mark-to-market dealer and trader election in derivative financial instruments; withdrawn, 53168
Nuclear power plant interest disposition, 15312
Omnibus Budget Reconciliation Act; elections, 68300, 68336
Partnerships; treatment as qualified tax exempt organization; hearing cancellation, 8027, 15818
Passive foreign investment companies; shareholders treatment, 14531, 25703
Points paid on residential mortgages; recipient reporting requirements, 7845, 8027
Preparer penalties; manual signature requirement, 21548
Correction, 29560
Property contributed to partnership; allocations reflecting built-in gain or loss, 6854, 67744
Qualified business unit; change to dollar approximate separate transactions accounting method, 300, 15313
Correction, 11290
Qualified retirement plans, etc.—
Annual compensation; limitation, 69302
Cash or deferred arrangements, 43, 8098, 15313, 25703
Compensation; definition, 21412, 21426
Minimum coverage requirements, 21417, 21426
Nondiscrimination requirements, 3876, 6103
Permitted disparity with respect to benefits and contributions, 21426
Qualified separate lines of business, 47090
Research or experimental expenditures, 15819
Hearing, 15818
Scholarships and fellowship grants; determining source special rules, 33060
Securities dealers; mark to market, 68747, 68798
Tax-exempt organizations' income from corporate sponsorship; taxation, 5687
Correction, 6923, 9597
Hearing, 5691
TeleFile voice signature test; implementation, 4079, 4125, 68295, 68335
Valuation misstatements; imposition of accuracy-related penalty, 5304
Valuation tables, 6922, 17557
Procedure and administration:
Civil actions by persons other than taxpayers, 68092
Passport and permanent residence applicants; information reporting, 6854
Place for filing lien on personal property, 21550
Correction, 29560
Taxable mortgage pools; hearing, 18185
Tax collection by levy and distraint, 3331, 7761
Tax liability payment in installments; agreements, 63541
Taxpayers involved in administrative proceedings; reasonable administrative costs recovery, 9597, 15314
Regulatory agenda, 24811, 56820
Statement of procedural rules; appeals functions, 48802

NOTICES

Art Advisory Panel; closed meetings; report availability, 13125
Capital construction fund, nonqualified withdrawals; interest rates, 40183
Committees; establishment, renewal, termination, etc.:
Commissioner of Internal Revenue Advisory Group, 58725
Information Reporting Program Advisory Committee, 21772, 64794
Debt Collection Act of 1982; delinquent Federal indebtedness disclosure to credit bureaus, 30217
Elderly tax counseling program; application packages; availability, 44732
Electronic/magnetic filing:
Forms 940, 941, and 941E, 29024
Information return of U.S. persons with respect to foreign corporations (Form 5471), 17640
Employee benefit plans; prohibited transaction exemptions:
Apollo Fund, L.P., 28614, 51111
Exported taxable substances; protective claims for refund of tax paid under section, 661, 31437
Facilities, programs, policies and practices; accommodation of individuals with disabilities; evaluation, 46267
Inflation adjustment factor and reference price:
Fuel credit, nonconventional sources, 17302
Renewable electricity production credit, 16737
Meetings:
Art Advisory Panel, 16443, 49089
Commissioner's Advisory Group, 32413, 44400
Information Reporting Program Advisory Committee, 26382, 58227
Public electronic communications consortium, 45944
Nationwide Tax Forum (1993); conferences and exhibitions, 36248
Organization, functions, and authority delegations:
Acting Commissioner, 6159
Assistant Commissioner (Employee Plans and Exempt Organizations), 13522
Claims Manager, National Office, et al., 51667
Commissioner of Internal Revenue, 33141
District Directors et al., 32567
Regional Commissioner, Southwest Region, 27770
Technical Assistant, 13824
Privacy Act:
Computer matching programs, 31587, 53991
Systems of records, 40464, 64350
Public electronic communications consortium; feasibility, 30218
Senior Executive Service:
Performance Review Board; membership, 6572
Taxable substances, imported:
2,2,4-trimethyl-1,3-pentanediol diisobutyrate, etc., 66072
Acetic acid, etc., 67439
Acetylene black, 43406
Adipic acid, 45149, 66068
Benzoic acid, etc., 45149
Butanol, 43406
Butanol, etc., 66069

INDEX
VOL 58
1993
UMI

Diphenylamine, etc., 45150
Hexamethylenediamine, 45150
Nylon 6/6 polymer, 45151
Pentaerythritol, etc., 43407, 66069
Perchloroethylene, etc.; correction, 27617
Poly (69/31 ethylene/cyclohexylenedimethylene terephthalate), etc., 66070
Propanol, 43408
Terephthalic acid, etc., 43406, 66071

International Boundary and Water Commission, United States and Mexico

NOTICES

Environmental statements; availability, etc.:
International Bridge of the Americas, El Paso, TX, and Ciudad Juarez, Chihuahua, Mexico; replacement agreement, 37965
Rio Grande American Canal extension project, El Paso, TX, 12250, 58377

International Broadcasting Board

NOTICES

Meetings; Sunshine Act, 6435, 50390, 68990

International Development Cooperation Agency

See Agency for International Development; Overseas Private Investment Corporation

International Joint Commission-United States and Canada

NOTICES

Great Lakes-St. Lawrence River Basin fluctuating water levels alleviation methods; hearing, 42747

International Trade Administration

RULES

Watch-duty exemption program:
Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 21347

PROPOSED RULES

Watch-duty exemption program:
Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 4947, 65294

NOTICES

Antidumping:
3.5-inch microdisks and coated media from—
Japan, 5358, 5838, 28549, 69339
64K dynamic random access memory components from—
Japan, 33619, 54552
Acetylsalicylic acid from—
Turkey, 11208
Acrylic sheet from—
Japan, 41710, 51614
Acrylic yarn (spun) from—
Japan, 30766
Active matrix liquid crystal high information content flat panel displays and display glass from—
Japan, 4979, 34409
Alloy and carbon hot-rolled bars, rods, and semifinished products of special bar quality engineered steel from—
Brazil, 3533, 8254, 31496
Aluminum rod from—
Venezuela, 41711, 64547
Anhydrous sodium metasilicate from—
France, 41741, 51615
Animal glue from—
Germany, 68390
Antifriction bearings (other than tapered roller bearings) and parts from—
France, 25606, 65576
France et al., 34563, 39729, 42288, 51055
Germany, 25610
Italy, 25613, 53914, 65576
Japan, 25616, 58838
Singapore, 25620
Sweden, 25622, 35428
Thailand, 25625
United Kingdom, 25627
Antifriction bearings from—
Japan, 60424
Thailand, 60179
United Kingdom, 60179, 60424
Aramid fiber formed of poly para-phenylene terephthalamide from—
Netherlands, 40623, 65699, 69329
Ball bearings and parts from—
Italy et al., 12932
Romania, 25630
Barbed wire and barbless fencing wire from—
Argentina, 5356, 64547
Barium carbonate from—
Germany, 33610, 44654
Bicycle speedometers from—
Japan, 27707, 42289, 54328
Brass sheet and strip from—
Canada, 6615, 33610
France, 11585
Japan, 41712, 51054
Brazing copper wire and rod from—
New Zealand, 69329
Butt-weld pipe fittings from—
Brazil, 68391
Cadmium from—
Japan, 41713
Calcium aluminate cement and cement clinker, etc., from—
France, 58683
Calcium aluminate cement and cement clinker from—
France, 44493
Calcium aluminate cement, cement clinker, and calcium aluminate flux from—
France, 60843
Calcium aluminate cement clinker from—
France, 21971
Candles from—
China, 41713, 64547
Canned bartlett pears from—
Australia, 11586
Carbon and alloy steel wire rod from—
Brazil, 62636
Canada, 62639
Japan, 62638
Carbon steel butt-weld pipe fittings from—
China, 47859
Japan, 8736, 17380
Carbon steel plate from—
Taiwan, 33618, 44654
Carton closing staples and stapling machines from—
Sweden, 12931
Cast iron pipe fittings from—
Japan, 36933, 51054
Chloropicrin from—
China, 11586, 44655
Circular pipes and tubes from—
Taiwan, 33795, 51055
Class 150 stainless steel threaded pipe fittings from—
Taiwan, 45482, 65577
Clear plate and float glass from—
Japan, 8736
Cold-rolled carbon steel flat products, etc., from—
Italy, 37152
Korea, 44159
Spain, 37211
Cold-rolled carbon steel flat products from—
Argentina, 7066, 8736, 37062
Austria, 7073, 37082
Belgium, 13056
Canada, 14557, 37099
Italy, 7100, 8254
Japan, 9559, 29385
Spain, 7120
Color negative photographic paper and chemical components from—
Japan, 50331
Netherlands, 50331
Color television receivers, except for video monitors, from—
Korea, 52262
Taiwan, 4148, 34415, 42291
Commercial grade amorphous silica filament fabric from—
Japan, 14200
Compact ductile iron waterworks fittings and accesories from—
China, 8930, 12220, 26960, 37908
Compact ductile iron waterworks fittings and glands from—
China, 47117
Corrosion-resistant carbon steel flat products from—
Australia, 26287, 28550, 37079, 44161
Canada, 44162, 48037
Japan, 9559, 44163
Mexico, 7071, 7111, 9559, 37192
Corrosion-resistant carbon steel products from—
Canada, 37099
Mexico, 11835
Cut-to-length carbon steel plate from—
Belgium, 44164
Brazil, 44164
Canada, 37099
Finland, 7090, 37122, 44165
Italy, 7100, 8254
Mexico, 14200, 44165
Poland, 7116, 21143, 37205, 44166, 65964
Romania, 7118, 12025, 28550, 37209, 44167
Spain, 7120, 44167
Sweden, 7122, 37213, 44168
United Kingdom, 7124, 37215, 44168
Defrost timers from—
Japan, 8255, 42938, 44655
Dry film photoresist from—
Japan, 13739
Dynamic random access memory semiconductors of one megabit and above from—
Korea, 15467, 27520
Electrical conductor aluminum redraw rod from—
Venezuela, 52743
Electrolytic manganese dioxide from—
Japan, 28551
Fabric expanded neophrene laminate from—
Japan, 36934
Ferrosilicon from—
Argentina, 27534
Brazil, 31363, 43323
Brazil et al., 7529
China, 5356, 13448
Egypt, 34564, 48037
Kazakhstan et al., 79, 13050, 18079
Russian Federation, 29192
Venezuela, 27522
Venezuela et al., 11586, 34243

INDEX
VOL
58
1993
UMI

Filament fabric from—
Japan, 47119
Fishnetting of man-made fiber from—
Japan, 42291
Forged stainless steel flanges from—
India, 29195, 41713, 68853
India and Taiwan, 44493
Taiwan, 30144, 41716, 68859
Forged steel crankshafts from—
United Kingdom, 41241, 41719
Fresh and chilled Atlantic salmon from—
Norway, 17380, 37912, 65333
Fresh cut flowers from—
Canada, 11587, 33616
Colombia, 31010, 65329
Ecuador, 31503, 44657
Grain-oriented electrical steel from—
Italy, 49017
Italy and Japan et al., 58838
Japan, 49017
Granular polytetrafluoroethylene resin from—
Italy, 26100
Japan, 44493
Gray portland cement and clinker from—
Japan, 21442, 48826, 53705
Mexico, 4980, 6113, 25803, 33071, 47253, 49471
Helical spring lock washers from—
China, 6619, 26112, 36392, 48833, 53914, 61859
Taiwan, 11027, 27709, 34567
High-capacity pagers from—
Japan, 46629
Hot-rolled carbon steel flat products, etc., from—
Belgium, 7075, 37083
Brazil, 7080, 18201, 28393, 37091
Canada, 7085, 12220, 37099
France, 7091, 12932, 37125, 44169
Germany, 7095, 37136, 44170
Japan, 7103, 21444, 37154
Korea, 7106, 37176, 41083
Netherlands, 7113, 37199, 44172
Hot-rolled carbon steel flat products from—
Japan, 9559
Korea, 14558
Hot-rolled, cold-rolled, and corrosion resistant carbon steel flat products from—
Japan, 31503
Hot-rolled lead and bismuth carbon steel products from—
Brazil, 6202
Brazil et al., 15324
France, 6203
France et al., 4981
Germany, 6205
United Kingdom, 6207
Impression fabric of man-made fiber from—
Japan, 33796, 51056
Industrial belts and components and parts, cured and uncured, from—
Japan, 6777, 30018, 44496, 53706, 58839
Singapore, 53707
Industrial nitrocellulose from—
Brazil, 27537, 38750
Industrial phosphoric acid from—
Belgium, 80, 41721, 51056
Israel, 59010
Large electric motors from—
Japan, 14558, 68391
Large power transformers from—
France, 44497, 59987
Italy, 33617, 51057
Japan, 44498
Light-scattering instruments and parts from—
Japan, 42293, 53707
Low-fuming brazing copper wire and rod from—
South Africa, 80, 11397
Magnesium, pure, from—
Canada, 62643
Malleable cast iron pipe fittings from—
Brazil, 33796, 51057
Taiwan, 21444
Malleable cast iron pipe fittings, other than grooved, from—
South Korea, 33796, 51057
Mechanical transfer presses from—
Japan, 47860, 60843, 68117
Melamine from—
Japan, 8737, 17382
New steel rail, except light rail, from—
United Kingdom, 9145
New steel rail from—
Canada, 29385
Nitrile rubber from—
Japan, 33618, 44657
Nitrocellulose from—
France, 60845
Nitromethane from—
China, 33617, 59237, 62644
Oil country tubular goods from—
Taiwan, 33616, 44658
Oscillating and ceiling fans from—
China, 6474
Oscillating fans from—
China, 30026
Pads for woodwind instrument keys from—
Italy, 14558, 17382, 30015, 42295
Pagers from—
Japan, 41720
Paper clips from—
China, 59239
Pencils, cased, from—
China and Thailand, 64548
Photo albums and filler pages from—
Korea, 42298
Photo albums from—
Hong Kong, 68391
Phthalic anhydride from—
Brazil et al., 60847
Pipe fittings from—
Taiwan, 33797, 51058
Thailand, 41721, 51616
Pistachio nuts from—
Iran, 36934
Pistachio nuts, in-shell, from—
Iran, 51056
Polychloroprene rubber from—
Japan, 6619
Porcelain-on-steel cooking ware from—
Mexico, 32095, 43327
Taiwan, 8737
Portable electric typewriters from—
Japan, 32513
Singapore, 7534, 12025, 39786, 43334
Portland cement from—
Dominican Republic, 33797, 44658
Potassium chloride from—
Canada, 12220
Potassium permanganate from—
China, 69330
Pressure sensitive plastic tape from—
Italy, 40111, 43016, 51616
Professional electric cutting and sanding/grinding tools from—
Japan, 81, 4981, 30144
Professional electric cutting tools from—
Japan, 37461
Racing plates (alminum horseshoes) from—
Canada, 9559
Rayon staple fiber from—
Finland, 31504
Red raspberries from—
Canada, 58840, 65577
Roller chain, other than bicycle, from—
Japan, 11397, 30769, 52264, 52267, 52268, 63912
Saccharin from—
China, 65335
Korea, 65335
Sebacic acid from—
China, 43339
Self-propelled bituminous paving equipment, replacement parts, from—
Canada, 15481, 19405
Silicomanganese from—
Brazil et al., 64553
Silicon carbide from—
China, 38361, 64549
Silicon metal from—
Argentina, 38361, 44499, 65336
Brazil, 41721
China, 68119
Small business telephone systems and subassemblies from—
Korea, 8738, 44501
Taiwan, 6620
Small electric motors of 5 to 150 horsepower from—
Japan, 58536
Sodium thiosulfate from—
China, 12934
Solid urea from—
Armenia, 36938
Armenia et al., 51058
Azerbaijan, 36939
Belarus, 36940
Georgia, 36940
Kazakhstan, 36938
Kyrgyzstan, 36935
Moldova, 36935
Romania, 36935
Russia, 36938
Tajikistan, 36937
Turkmenistan, 36937
Ukraine, 36936
Uzbekistan, 36936
Sorbitol from—
France, 19406, 44658
Sparklers from—
China, 40624, 48849
Spun acrylic yarn from—
Japan, 19407
Stainless steel butt-weld pipe fittings from—
Korea, 11029
Taiwan, 4982, 28556
Stainless steel cooking ware from—
Taiwan, 80, 13584
Stainless steel flanges from—
India, 6619
Taiwan, 6619
Stainless steel hollow products from—
Sweden, 69332
Stainless steel plate from—
Sweden, 33619, 44659
Stainless steel welded pipe from—
Malaysia, 13742
Stainless steel wire rods from—
Brazil, 41723, 68862
Brazil et al., 6115, 26531, 44660
France, 41726, 68865
India, 41729, 54110, 63335, 67909
Standard carnations from—
Kenya, 19407, 44659
Staples and staple machines from—
Sweden, 68392
Steel jacks from—
Canada, 18201, 44659, 47119

Steel products from—
Argentina et al., 13056
Korea, 29568
Mexico, 29568
Steel wire rod from—
Brazil et al., 29195, 40112
Steel wire rope from —
Korea, 11029, 16397
Mexico, 7531, 16173
Steel wire strand from—
Japan, 68392
Sugar and syrups from—
Canada, 19407, 44660
Sugar from—
Belgium, 33620
Belgium et al., 44660
France, 33620
Germany, 33620
Sulfanilic acid from—
Hungary, 8256
India, 3251, 12025
Sulfur dyes, including sulfur vat dyes, from—
China, 7537
India, 6212, 11835, 26532
United Kingdom, 3253
Sweaters wholly or in chief weight of man-made fiber from—
Hong Kong, 63917
Korea, 63920
Korea et al., 59987
Taiwan, 32644, 63913
Synthetic methionine from—
Japan, 36939, 51061
Tapered roller bearings and parts, finished and unfinished, from—
Hungary, 47861, 61861
Japan, 51058, 64720
Tapered roller bearings, four inches or less in outside diameter, and components, from—
Japan, 69336
Tapered roller bearings from—
Yugoslavia, 41732
Television receivers, monochrome and color, from—
Japan, 11211, 39788
Titanium sponge from—
Armenia et al., 60848
Japan, 18202, 63155
Tuners from—
Japan, 68393
Uranium from—
Kazakhstan et al., 19650, 52744
Tajikistan, 29197
Ukraine, 21144, 45483
Ukraine et al., 36640
Welded carbon steel small diameter and light-walled rectangular pipes and tubes from—
Singapore, 18203, 64555
Welded stainless steel butt-weld pipe fittings from—
Taiwan, 33250
Welded stainless steel pipe from—
Malaysia, 37462, 47120, 48849
Japan, 58536
Antidumping and countervailing duties:
Administrative protective orders; violations sanctions, 25631, 34415, 41083, 48849, 55040
Administrative review requests, 4148, 8739, 11026, 12931, 13583, 16397, 18374, 25802, 26960, 30767, 31941, 34414, 36391, 39007, 41239, 44653, 47116, 51053, 53710, 58682, 60600, 62326, 65964
Certified Trade Missions program; support of overseas trade missions organized by States, industry associations, and Federal agencies, 58151
Cheese quota; foreign government subsidies:
Annual list, 69341
Quarterly update, 17205, 35914, 52268
Committees; establishment, renewal, termination, etc.:
Automotive Parts Advisory Committee, 42528
United States-Canada Free-Trade Agreement; binational review panels and extraordinary challenge committees, 11210, 59705, 60601
Countervailing duties:
Acetylsalicylic acid (aspirin) from—
Turkey, 6213
Antifriction bearings (other than tapered roller bearings) and parts from—
Singapore, 33251, 47122
Apparel from—
Thailand, 39789
Ball bearings and parts from—
Thailand, 16174, 36392
Brass sheet and strip from—
France, 11842, 29386
Carbon steel flat products from—
South Africa, 32515, 39790
Carbon steel products from—
Sweden, 61065
Carbon steel wire rod from—
Saudi Arabia, 58537
Zimbabwe, 41243, 49472
Castor oil products from—
Brazil, 11843, 29386
Ceramic tile from—
Mexico, 6778, 31505
Cold-rolled steel flat products from—
Korea, 45096
Corrosion-resistant carbon steel flat products from—
New Zealand, 18203, 37366
Cotton sheeting and sateen from—
Peru, 6474, 6622, 29386
Cotton shop towels from—
Pakistan, 32104, 48037
Cotton yarn from—
Brazil, 6779
Peru, 6475, 6623, 29386
Deformed steel concrete reinforcing bar from—
Peru, 84, 61069
Electrical conductor aluminum redraw rod from—
Venezuela, 52743
Extruded rubber thread from—
Malaysia, 41084
Ferrochrome from—
South Africa, 59988
Ferrosilicon from—
Venezuela, 27539, 36394
Fresh cut flowers from—
Peru, 32518
Grain-oriented electrical steel from—
Italy, 49018, 58838, 59990
Heavy-walled rectangular tubing from—
Argentina, 51617, 64553
Hot rolled lead and bismuth carbon steel products from—
Brazil, 85, 6213, 15324
France, 6221, 15326
France et al., 4981
Germany, 6233, 15325
United Kingdom, 6237, 15327
Industrial phosphoric acid from—
Israel, 57986
Lamb meat from—
New Zealand, 36395, 45097
Light-walled rectangular tubing from—
Argentina, 51617, 64553
Live swine from—
Canada, 26115, 47123, 54112
Low fuming brazing copper rod and wire from—
New Zealand, 41243, 49021
Miniature carnations from—
Colombia, 52269
Non-rubber footwear from—
Argentina, 69342
Oil country tubular goods from—
Israel, 11843, 29387
Phthalic anhydride from—
Israel et al., 60845
Pig iron from—
Brazil, 6246, 16398
Pistachios, in-shell, from—
Iran, 11844, 29387
Roses and other cut flowers from—
Colombia, 52272
Roses from—
Israel, 46629, 61673
Stainless steel cooking ware from—
Korea, 85, 18375, 69342
Taiwan, 85, 17206, 69343
Stainless steel wire rod from—
Spain, 39197, 69343
Standard carnations from—
Canada, 11844
Chile, 11844, 29387
Steel products from—
Austria, 37217
Austria et al., 12935
Belgium, 37273, 43749
Brazil, 37295, 43751
France, 37304, 43759
Germany, 19876, 37315, 43756, 44322
Italy, 37327, 45098
Korea, 14200, 27995, 37338, 43752
Mexico, 37352, 43755
South Africa, 47865, 62100
Spain, 37374, 43761
Sweden, 37385, 43758
United Kingdom, 37393, 43748
Steel wire from—
New Zealand, 46629, 61674
Sulfanilic acid from—
India, 3259, 12025, 12026
Textile mill products and apparel from—
Argentina, 4151
Mexico, 4151
Thailand, 4151
Textile mill products from—
Argentina et al., 4150
Colombia et al., 54552
Textiles and textile products (men's and boys' woolen garments) from—
Argentina, 86, 61069
Welded carbon steel pipe and tube products from—
Turkey, 11845, 29388, 17206
Export trade certificates of review, 3007, 4410, 6950, 7212, 8584, 13447, 15841, 17572, 19652, 27268, 29388, 31942, 33073, 34989, 34990, 37463, 39727, 41084, 42528, 43340, 44504, 46161, 47868, 51061, 52275, 53711, 57585, 58325, 59448, 61674, 66344, 66347, 68874
Foreign buyer program; domestic trade shows support, 30092
Grant and cooperative agreement awards:
Market development cooperator program, 49472
Grants and cooperative agreements; availability, etc.:
American business centers in newly independent states of former Soviet Union; establishment and operation, 36941
Consortia of American businesses in newly independent states program, 62105

International

Market development cooperator program, 4153
Special American business internship training program, 37463
Trade fair certification program, 34518
Meetings
Automotive Parts Advisory Committee, 6779, 19089, 42529
Exporters' Textile Advisory Committee, 12937, 15323
President's Export Council, 3261
Scope rulings; list, 11209, 27542, 59991
Senior Executive Service:
Performance Review Boards; membership, 42939
Special export permit determinations:
Machining center frames and machining centers, 3536
Trade fair certification program; support for privately organized international trade fairs, 26116
United States-Canada free-trade agreement; binational panel reviews:
Cold-rolled carbon steel flat products from—
Canada, 41733
Cold-rolled steel sheet from—
United States, 45484, 48850
Corrosion-resistant carbon steel flat products from—
Canada, 41733, 51062
Cut-to-length carbon steel products from—
Canada, 41734
Flat hot-rolled carbon steel sheet products from—
United States, 34421
Gypsum board from—
United States, 6951, 14377, 63336, 65345
Hot-rolled carbon steel flat products from—
Canada, 41734
Hot-rolled carbon steel plate and high-strength low-alloy plate from—
United States, 34420
Live swine from—
Canada, 7768, 21445, 21972, 34422, 45485
Machine tufted carpeting from—
United States, 33255, 53711, 59449
Magnesium from—
Canada, 47259
Magnesium, pure and alloy, from—
Canada, 45485, 59706, 69344
Magnesium, pure, from—
Canada, 53915
Preformed fiberglass pipe insulation with vapor barrier from—
United States, 67392
Self-propelled bituminous paving equipment from—
Canada, 14377
Softwood lumber products from—
Canada, 29809, 42939, 69344
Solder joint pipe fittings from—
United States, 59451
Solder joint pressure pipe fittings, etc., from—
United States, 67393
Tomato paste in containers larger than 100 fluid ounces from—
United States, 21445, 34423
Watches and watch movements; allocation of duty-exemptions:
Virgin Islands, 26119
Applications, hearings, determinations, etc.:
Agriculture Department et al., 34028, 61675, 65157
American Red Cross et al., 31012
Ames Laboratory, Energy Department, 55041
Ames Laboratory, Energy Department, Iowa State University, et al., 44653
Bowling Green State University et al., 49022
Brandeis University et al., 55041, 59012
Brooklyn College of City University of New York et al., 11587
Carnegie Mellon University, 49021
Centers for Disease Control et al., 31508
Chicago et al., 11588
Children's Medical Center, 44661
Children's Medical Center et al., 34029
Colorado State University et al., 12938
Columbia University et al., 47887
East Carolina University et al., 55042
Energy Department et al., 68120
Federal Highway Administration, 11588
Geological Survey, 31013, 63924
Geological Survey et al., 4977, 68875
Georgia Institute of Technology et al., 49022
Good Samaritan Hospital and Medical Center et al., 34030
Illinois Institute of Technology et al., 55042
Iowa State University et al., 39790
Kansas State University et al., 13449
Lehigh University et al., 60603
Loyola University Medical Center et al., 21972
Massachusetts Institute of Technology, 39791
Massachusetts Institute of Technology et al., 7545, 14559, 31363, 41085
Mayo Clinic et al., 31013
Michigan State University et al., 27266
National Institute of Standards and Technology, 53712
National Oceanic and Atmospheric Administration et al., 4978, 27267, 42940
Naval Hospital Oakland et al., 17861
North Carolina State University et al., 49021
Oklahoma State University et al., 49023
Pennington Biomedical Research Center, Louisiana State University, et al., 55042
Pennsylvania State University, 21282
Pennsylvania State University et al., 12938
Purdue University et al., 28953
Research & Education Institute, Inc., 59012
Research Foundation of SUNY at Albany et al., 31013
Rutgers University, 16176, 21282, 68120
Southwest Missouri State University et al., 34566
St. Jude Children's Research Hospital, et al., 53712
State University of New York et al., 13449, 46630
Texas A&M Research Foundation, 21282
Texas A&M Research Foundation et al., 42939
Texas A&M University, 34244
Texas A&M University et al., 63924
Transportation Department et al., 17861
University of—
Alaska et al., 55043
Arkansas et al., 60603
California, 21282, 21283, 55043, 60603
California at Los Angeles, 44661
California et al., 11588, 31363, 36396, 55042, 68875
California, Irvine, et al., 42299
Colorado, 21283
Colorado at Boulder et al., 53712
Connecticut, 26533
Florida et al., 63925
Georgia et al., 34030
Georgia Research Foundation et al., 17862
Hawaii et al., 63924
Illinois, 46630
Kansas, 55044
Minnesota, 39791
Minnesota et al., 51618, 68120
Nebraska et al., 59012
Nevada, 40113
New Mexico et al., 47887
Vanderbilt University, 7546
Washington University, 68121
Washington University et al., 7546, 21973, 44661
Wilford Hall Medical Center, 44662
Wilford Hall Medical Center et al., 31508
Woods Hole Oceanographic Institution et al., 39791
Yale University et al., 21283
Yale University School of Medicine, 47888, 55044

International Trade Commission

RULES
Practice and procedure:
Sunshine Act meetings; minimum notice period change, 64120

PROPOSED RULES
Practice and procedure:
Imports sold at less than fair value or subsidized exports to U.S.; injury to domestic industries; investigations, 19638
Investigations and related proceedings on unfair practices in import trade—
Access to confidential business information, 64711
Sunshine Act meetings; minimum notice period change, 49452

NOTICES
Agency information collection activities under OMB review, 30809, 42743
Alternative dispute resolution procedures and negotiated rulemaking procedures use, 58707
Import investigations:
Administrative protective orders—
Breaches investigation summary, 21991
Violations sanctions, 21752
Anisotropically etched one megabit and greater DRAMS, components, and products containing DRAMS, 8110, 42743, 47283, 47284, 49317, 52976, 57836
Anti-theft deactivatable resonant tags and components, 13277, 16202, 18110, 31538, 52323, 63391
Arab League boycott of Israel; effects on U.S businesses, 64594
Aramid fiber formed of poly para-phenylene terephthalamide from—
Netherlands, 37503, 44849
Bulk bags and process for making same, 6011, 6974, 8061, 12252
Calcium aluminate cement and cement clinker from—
France, 31051, 67809
Calcium aluminate cement clinker from—
France, 18227
Caribbean Basin Economic Recovery Act impact on U.S. industries and consumers; annual report, 31539
Circuit board testers, 7246, 14223, 16202, 21994, 29434, 35041, 54167
Class 150 stainless steel threaded pipe fittings from—
Taiwan, 42105, 49527
Color negative photographic paper and chemical components from—
Japan, 57837
Japan et al., 47475
Netherlands, 57837
Commercial food portioners, components, including software, and process, 12253, 16846, 35041
Compact ductile iron waterworks fittings and accessories from—
China, 13278, 44850

UMI

Condensers, parts thereof, and products containing same, including air conditioners for automobiles, 4717, 31978, 36701, 40833, 47284
Cordage products from—
Costa Rica et al., 3556, 41804, 44850
Cutting tools for flexible plastic conduit and components, 4180, 12253, 16203, 21994, 28446, 42744, 44850, 57837, 65730
Dairy products, 13279
Defrost timers from—
Japan, 6296, 14422, 48373
Devices for connecting computers via telephone lines, 60671
Dielectric miniature microwave filters and multiplexers containing same, 60876
Diltiazem hydrochloride and diltiazem preparations, 16846, 34063, 40834, 48374, 62372
Dry film photoresist from—
Japan, 4443, 26795
Dynamic random access memories of one megabit and above from—
Korea, 28036
Effects of antidumping and countervailing duty orders and suspension agreements, 37966
Enterprise for the Americas Initiative; regional economic trends and summary of likely effects of hemispheric free trade zone, 5414
Erasable programmable read only memories, components, products containing memories, and processes for making memories, 16203
Ethyl alcohol for fuel use, 67810
Extruded rubber thread, 4717
Ferrosilicon from—
Brazil, 5413, 45120
Brazil et al., 12973
China, 13503
Egypt, 5413, 39566, 58709
Kazakhstan and Ukraine, 16847
Russia et al., 34064
Flat-rolled carbon steel products, 35465, 36702
Flat-rolled carbon steel products from—
Argentina et al., 8974, 14590, 43905
Generalized System of Preferences—
Eligible articles list, etc., 57710, 58231, 58347, 60495
Grain-oriented silicon electrical steel from—
Italy, 46650
Italy et al., 54168
Japan, 46650
Gray portland cement and cement clinker from—
Japan, 32547
Greater economic integration within European Community; effects on United States, 39567
Harmonized Tariff Schedule—
Modifications; investigation and hearing, 29433
Helical spring lockwashers from—
China, 26347, 53747
Taiwan, 13280, 34590
High-information content flat panel displays and subassemblies from—
Japan, 7245
Honey from—
China, 54169
Hot-rolled lead and bismuth carbon steel products from—
Brazil et al., 4181, 14422
In-line roller skates with ventilated boots and with axle aperture plugs and component parts, 16204, 26796, 28036, 29434, 31539, 33281, 42744, 43907, 45355, 46651, 47285, 47286, 47475, 52321, 52322, 52323, 53214, 59734
Integrated circuit devices, processes for making same, components, and products containing same, 46213, 62136, 67810
Integrated circuit telecommunication chips and products containing same, including dialing apparatus, 4181, 11244, 16205, 21994, 33280, 35042
Internal mixing devices and components, 5756, 8973
Lens panels for lighting fixtures, kits containing same, and fixtures containing same, 36992, 59735
Magnetic switches for coaxial transmission lines and products containing same, 5414, 35043, 41805, 50953
Mechanical gear couplings and components, 30810, 36702, 42106, 45355, 47476
Metallurgical coke; baseline analysis of U.S. industry and imports, 31540
Methods of assembling plastic ball valves and components, 65731
Microcomputer memory controllers, components, and products containing same, 47286
Multifiber agreement; U.S. textiles and apparel imports; annual report, 34064
New steel rails from—
United Kingdom, 18110
Nitromethane from—
China, 31415, 39036, 63392
Pads for woodwind instrument keys from—
Italy, 33282, 50954
Paper clips from—
China, 54169, 64337
Pencils, cased, from—
China, 60670
Thailand, 60670
Personal computers with memory management information stored in external memory and related materials, 33283, 41486, 44851, 58709
Phthalic anhydride from—
Brazil et al., 58347, 65732
Plastic encapsulated integrated circuits, 6643, 36702
Portable electric typewriters from—
Singapore, 16205, 35043, 53748
Portable on-car disc brake lathes and components, 63393
Professional electric cutting and sanding/grinding tools from—
Japan, 6975, 37967
Recombinantly produced human growth hormones, 26796, 50954, 57838, 60672, 62136
Removable hard disk cartridges and products containing same, 30810, 58019, 66019, 68950
Saccharin from—
China and Korea, 62682
Sebacic acid from—
China, 39835, 47476
Silicomanganese from—
Brazil et al., 61919, 68950
Silicon carbide from—
China, 35044, 42744
Softwood lumber from—
Canada, 50051
Sparklers from—
China, 48374, 54170
Special quality carbon and alloy hot-rolled steel bars and semifinished products from—
Brazil, 6976, 38138
Specimen container systems and components including alignment indicator labels, and method of use, 12973, 18111
Sports sandals and components, 47476, 58019, 62137, 66020, 67811
Sputtered carbon coated computer disks and products containing same, including disk drives, 26797, 36703, 36704, 38138, 39836, 41487, 41488, 43908, 44851, 44852, 48375, 52323, 58709, 58710, 63394, 67811, 68950
Stainless steel butt-weld pipe fittings from—
Korea, 11245
Taiwan, 32363
Stainless steel flanges from—
India, 11245
India et al., 3967, 46212
Taiwan, 3967, 11245
Stainless steel plate from—
Sweden, 35044, 44852
Stainless steel wire rod from—
Brazil et al., 3966, 11245, 43908, 48375
India, 63394
Static random access memories, components, and products containing same, 4181, 6296, 6977, 47287, 52321
Steel wire rod from—
Brazil et al., 33280, 65732
Steel wire rope from—
Korea et al., 16206
Sulfanilic acid from—
Hungary, 353, 11246
India, 11246
Sulfur dyes from—
India, 4444, 13281, 19841
United Kingdom, 4444, 11246
Synthetic organic chemical report, 54171
Tape dispensers, 39036, 49317, 59735
U.S. environmental technology industries, global competitiveness; municipal and industrial water and wastewater, 62137
U.S. international trade relief laws; reorganization, 42745
U.S. trade shifts in selected commodity areas; annual reports, 47287
United States-Canada Free-Trade Agreement—
Immediate elimination of U.S. tariffs on Canadian articles; probable economic effect on U.S. industries and consumers, 64337
Uranium from—
Tajikistan, 29635
Tajikistan et al., 44853
Ukraine, 26798
Vehicle security systems and components, 44853, 57839
Welded stainless steel pipe from—
Malaysia, 11247, 49317
Woodworking accessories, 4718, 30811
Meetings; Sunshine Act, 7038, 7843, 8818, 11098, 12061, 13126, 15521, 16581, 16913, 18303, 19700, 21332, 27059, 29025, 30086, 31594, 32171, 33300, 34498, 39277, 40467, 40687, 41323, 44888, 47180, 47783, 48423, 50086, 50633, 51902, 52138, 52806, 57895, 60493, 62414, 64440, 66073, 68685
Senior Executive Service:
Performance Review Boards; membership, 35046
U.S. international trade relief laws; proposed reorganization study, 12253

Interstate Commerce Commission

RULES
Bills of lading, 60797
Conflict of interests, 41989, 42026
Contracts and exemptions:
Rail general exemption authority—
Commodity groups, 53433
Scrap paper, 53667
Transportation equipment, 4355
Used motor vehicles, 43817

Motor carriers:
Interpretations and routing regulations; incidental for-hire transportation, 11549, 16124
Single State insurance registration, 26693, 28932
Organization, functions, and authority delegations:
Proceedings Office et al., 29355
Practice and procedure:
Environmental rules; technical amendments, 44619
Fee billing and debt collection, 7748, 17788, 52027
Interest rate calculation; procedures revision, 19359
Licensing and related services; user fees, 43294
Railroad consolidation procedures—
Significant transactions; definition and requirements, 63103
Recyclable commodities, railroad rates; exemptions, 27951, 39679
Privacy Act; implementation, 15290, 28520
Rail carriers:
Car hire compensation, etc., 27678, 60144
Tariffs and schedules:
Nonoperating motor carriers; undercharges collection; CFR Part removed, 40601

PROPOSED RULES

Bills of lading, 34775, 39723
Correction, 43092
Contracts and exemptions:
Rail general exemption authority—
Carbon dioxide, 54323
Commodity groups, 8030
Grease or inedible tallow, etc., 54321
Hydraulic cement, 54317
Paints, enamels, lacquers, shellacs, etc., 54318
Rock salt and salt, 54320
Scrap paper, 18072
Used motor vehicle rail transportation, 6104
Motor carriers:
Household goods shippers; performance reports, 6912, 12573
Intercity motor common carrier passenger service adequacy, 51603, 57978
Practice and procedure:
Jurisdiction over motor finance transactions, 65695
Nonrail licensing procedures—
Licensing forms and corresponding regulations; revision, 48628
Railroad consolidation procedures—
Class exemption for transactions within corporate family, 6612
Single State insurance registration, 5951
Privacy Act; implementation, 531
Regulatory agenda, 25364, 57358
Rulemaking petitions:
Railroad abandonments; protection of surveying benchmarks, 51800, 60164, 68383
Tariffs and schedules:
Electronic tariff filing, 19795, 31490
Motor tariff regulations; review, 14198
Payment of discounts by motor carriers of property to nonpayer of freight charges, 32340, 41684, 44318
Range tariffs; fax filing, 42276
Special tariff authorities authorizing customer account codes publication in tariffs; reconsideration, 47104
Withdrawn, 68108
Tariff adoption publications filing, 64717
Tariff indexes, 3529, 42277

NOTICES

Agency information collection activities under OMB review, 5415, 15356, 15505, 29238, 40834, 42348
Agreements under sections 5a and 5b; applications for approval, etc.:
EC-MAC Motor Carriers Service Association, Inc., et al., 45121
Household Goods Carriers' Bureau, Inc., 36418
Middlewest Motor Freight Bureau, Inc., et al., 18417
Environmental statements; availability, etc.:
Boston & Maine Corp. et al., 37504, 64779
Burlington Northern Railroad Co., 12370, 13503, 28415, 34064, 47477
Burlington Northern Railroad Co. et al., 38139
Camp Lajeune Railroad Co. et al., 53559
Consolidated Rail Corp., 26799, 35046
Consolidated Rail Corp. et al., 66020
CSX Transportation, Inc., 26006, 33106, 42746
CSX Transportation, Inc., et al., 21595, 44854
Dakota, Minnesota & Eastern Railroad Corp., et al., 43909
Delta Southern Railroad Co. et al., 30812
Duluth, Missabe & Iron Range Railway Co. et al., 41805
Gateway Western Railway Co., 16415
Georgia Northern Railway Co. et al., 19467
Golden Cat Railroad Corp., 54373
Missouri Pacific Railroad Co et al., 68439
Norfolk & Western Railway Co. et al., 17282, 51099
Southern Pacific Transportation Co., 58877
Southern Pacific Transportation Co. et al., 52324, 60053, 62372
Tongue River Railroad Co., 64338
Union Pacific Railroad Co. et al., 46990
Vermont Railway, Inc., et al., 39232
West Virginia Northern Railroad, Ltd., 29238
General purpose costing system; review, 21475
Household goods transportation in interstate or foreign commerce; publication availability, 35047
Meetings; Sunshine Act, 8653, 14244, 21332, 29025, 33144, 38166, 42622, 47180, 52807, 60243
Motor carriers:
Adequacy of intercity bus service, 13282, 15506
Agricultural cooperative transportation filing notices, 27310, 29638, 32721, 47756, 54603
Compensated intercorporate hauling operations, 3557, 6297, 7575, 8975, 11624, 13646, 15506, 17428, 19841, 26156, 29636, 31051, 31753, 36993, 38437, 40835, 43120, 47756, 48672, 50051, 52507, 54603, 59065, 62682, 64967
Customer account codes in tariffs publication; special tariff authorities; reconsideration, 3558
Declaratory order petitions—
American Trucking Associations, 48673
Georgia-Pacific Corp., 17428
Hanson Natural Resources Co., 21595
New Jersey, 12052
Oneida Motor Freight, Inc., 26348
Towing & Recovery Association of America et al., 13089
Yellow Freight System, Inc. of Indiana, 35977, 41806
Finance applications, 3294, 26158, 28036
Household Goods Carriers' Bureau, Inc.; tariffs filed by non-participating carriers; cancellation, 11419
Insurance cancellation process; procedural change, 61095
Non-coal proceedings; rate guidelines, 18461, 19876
Range tariffs; show cause proceedings, 3559, 42348
Released rates authority; household goods, 18111
Tariff filings; monitoring, 14223
Practice and procedure:
Fee billing and debt collection, 11099
Privacy Act:
Systems of records, 580, 15357
Rail carriers:
Cost of capital; railroad industry's annual rate proceeding, 27310, 65598
Cost ratio for recyclables; determination, etc., 53560, 62138
Cost recovery percentage, 12254, 15881, 43374, 58564
Cost recovery procedures—
Adjustment factor, 15506, 34065, 49318, 59276, 61920, 64596, 66020
Declaratory order petitions—
Dallas, TX, et al., 62138
Durango & Silverton Narrow Gauge Railroad Co., 60877
Hanson Natural Resources Co., 12052, 18227, 25848, 26985, 38438
Direct service orders—
Decatur Junction Railway Co., 64967
Delaware-Lackawanna Railroad Co., Inc., 51649, 63185
Platt Valley Railway, 4444, 13646
National grain car supply; interested parties conference, 61096
Non-coal proceedings; rate guidelines, 3295, 8428, 12254, 18461, 19876
Passenger train operation—
Chicago & North Western Transportation Co., 45917, 59277
Railroad revenue adequacy determinations, 42349
State intrastate rail rate authority—
New Mexico, 17626
Waybill data; release for use, 35466, 40447, 48078, 52787, 54373, 55083
Railroad operation, acquisition, construction, etc.:
Alabama Great Southern Railroad Co., 38437, 39567, 61095
Albany Bridge Co., Inc., 4182
Atchison, Topeka & Santa Fe Railway Co., 4182
Atlantic & Gulf Railroad, 7816
Belt Railway Co. of Chicago, 14423, 62372
Blue Mountain Railroad, Inc., 59277
Bradford Industrial Rail, Inc., 12254
Broe Companies, Inc., 582
Broe Companies, Inc., et al., 57839
Broe, Patrick D., 63394
Burlington Northern Railroad Co., 3968, 6527, 13503, 16416
California Northern Railroad Co., L.P., 51845
Carey Short Line Corp., 7896
Central Kansas Railway, Inc., 3295
Central Michigan Railway Co., 65396
Central Vermont Railway, Inc., 4444
Chicago & North Western Transportation Co., 55083
Chicago & North Western Transportation Co. et al., 5757
Chicago Central & Pacific Railroad Co., 26799
Chicago SouthShore & South Bend Railroad, 60211
Claussen, H. Peter, et al., 6419
Colorado & Wyoming Railway Co., 16207
Columbus & Ohio River Rail Road Co. et al., 54603
Connecticut Central Railroad Co., 37504, 41103
Connecticut Rail Systems, Inc., 16552, 17625
Conrail Inc., 42985
Consolidated Grain & Barge Co., 8428

INDEX
VOL 58
1993
UMI

Consolidated Rail Corp., 7896, 27747
Corman, Richard J., 44379
CSX Corp. et al., 16848, 26157
CSX Transportation, Inc., 13504, 15163, 51846
Cundiff, Gregory B., 14423
Decatur Junction Railway Co., 53748
Decatur Terminal Railway Co., 39233
Delaware-Lackawanna Railroad Co., Inc., 48077
Dennis Washington & Washington Corporations, 46652
Denver Terminal Railroad Co., 50955
Depew, Lancaster & Western Railroad Co., Inc., 44195
Dubois County Railroad Corp., 39837
Durden, K. Earl, 66021
Eastern Idaho Railroad, Inc., 62372
EASX Railroad Corp., 47760
Fox River Valley Railroad Corp., 11625, 12255, 14423
Frick, Daniel R., 18112
Garden City, Gulf & Northern Railroad Co., et al., 69407
Gateway Eastern Railway Co., 35977
Gateway Western Railway Co., 34481
Genesee & Wyoming Industries, Inc., 11625, 16207
Genesee Valley Transportation Co., Inc., 48078
Georgia Northeastern Railroad Co., Inc., 57620
Georgia Southern & Florida Railway Co., 59067
Golden Triangle Railroad, 60878
Grand Rapids Eastern Railroad, Inc., 39837
Grand Trunk Corp., 4182
Grand Trunk Western Railroad, Inc., 4183
Great Western Railway of Oregon, Inc., 57839
Growth Resources of Wellsboro Foundation et al., 5415
Hanson Natural Resources Co., 16692
Hardin Southern Railroad, 53560
Hardin Southern Railroad, Inc., 54603
Honey Creek Railroads, Inc., 50052
Housatonic Transportation Co., 52325
Idaho Northern & Pacific Railroad Co., 64412
Illinois Central Railroad Co., 31753
Indiana & Ohio Railroad Co., Inc., 60053
Indiana Harbor Belt Railroad Co., 19468
Indiana Harbor Belt Railroad Co. et al., 52507
Indiana Hi-Rail Corp., 17282
Indiana Southern Railroad, Inc., 52977
Jackson, Gordonville & Delta Railroad Co., 42986, 62139
Kansas City Southern Railway Co., 21752, 39037, 48079
Kansas Southwestern Railway Co., 55084
Kokomo Rail Co., Inc., et al., 19843
Kulmer, Morris H., et al., 4184
Lakeside Transportation Co., 66021
Louisiana & Delta Railroad, Inc., 3044
LWR, Inc., 61920
Maine Coast Railroad Corp., 21753, 33944
Mohawk, Adirondack & Northern Railroad Corp., 44195
Molalla Western Railway, 13647
Nebraska Central Railroad Co., 38438
New Hampshire & Vermont Railroad Co., 17627
New Hampshire Central Railroad, Inc., 38139
New Hampshire Northcoast Corp., 47760
Nichols, K.R., 66021
Nobles Rock Railroad Co., 58348
Norfolk & Western Railroad Co., 65598
Norfolk & Western Railway Co., 21475, 26158, 29638
Norfolk Southern Railway Co. et al., 42176
North Carolina Ports Railway Commission, 60878
Oklahoma Transportation Department et al., 5757
Onondaga County Industrial Development Agency, 29435
Orange County Transportation Authority et al.,
Ozark Mountain Railroad, 8061
Panhandle Northern Railroad Co., 63395
Parkinson, David, et al., 51846
Peninsula Corridor Joint Powers Board, 32721, 52977, 54403
Pioneer Railcorp, 39233, 53748
Pioneer Valley Railroad Co., Inc., 28037, 43121
PL&W Railroad, Inc., 19468
Providence & Worcester Railroad Co., 29638, 48078
Public Service Co. of Colorado, 61921
R.J. Corman Railroad Co./Western Ohio Line, 44379
RailTex, Inc., 21753
Rail-West, Inc., 12599
Rio Grande Pacific Corp., 39567, 64413
Rio Valley Railroad, Inc., 14424
Robey, Richard D., 5416
Salt Lake City Southern Railroad Co., Inc., 21753
San Joaquin Valley Railroad Co., 52119
Soo Line Railroad Co., 353, 60879, 61716, 62373
Southern Central Rail Group, 29239
Southern Electric Railroad Co., 3970, 26799
Southern Gulf Railway Co., 47760
Southern Pacific Transportation Co., 32364, 53560
South Plains Lamesa Railroad, Ltd., 58878
SPCSL Corp., 32156, 45918
St. Louis Southwestern Railway Co., 34819
Steuben County Industrial Development Agency et al., 9574
Sunshine Mills, Inc., 45125, 52325
Texas Northeastern Division, Mid-Michigan Railroad, Inc., 13089
Three Rivers Railway Co., 62373
Transtar Holdings, L.P., 68951
TTX Co. et al., 30182
Tulare Valley Railroad Co., 4184
Union Pacific Corp. et al., 11626, 58178
Union Pacific Railroad Co., 33106
Union Railroad of Oregon, 28415
Vaughan Railroad Co., 59068
Walkersville Southern Railroad, Inc., 51100
Wallkill Valley Railroad, Inc., 64002
Webb, Charles R., 62374
Wheeling & Lake Erie Railway Co., 9220
Willamette & Pacific Railroad, Inc., 11629
Willamette Valley Railway Co., 12599
Winamac Southern Railway Co., 18113
Wisconsin & Southern Railroad Co., 60210
Wood, Donald R., Jr., et al., 59277, 117
Railroads and property and passenger motor carriers; annual operating revenues index, 44698
Railroad services abandonment:
Aroostook Valley Railroad Co., 13797
Austin & Northwestern Railroad Co., Inc., 18112
Bessemer & Lake Erie Railroad Co., 47759
Boston & Maine Corp., 62139
Boston & Maine Corp. et al., 30069, 36221, 36222, 62373, 64595
Buffalo & Pittsburgh Railroad, Inc., 60672
Burlington Northern Railroad Co., 6527, 6977, 17625, 26157, 28037, 30184, 36419, 37746, 38139, 45122, 45123, 45124, 45125, 45355
Camp Lejeune Railroad Co., 52324
Carrollton Railroad Co. et al., 48897
Chicago & North Western Transportation Co., 3968, 15356, 26348, 29838, 37505
Chicago Central & Pacific Railroad Co., 67811
Consolidated Rail Corp., 6528, 7576, 8975, 19140, 21595, 32721, 42575, 43375, 54171, 58179, 60877, 62374, 64595, 65733, 67418, 69408
CSX Transportation, Inc., 3969, 6807, 8428, 8635, 15357, 16416, 18112, 19468, 19842, 19843, 21596, 30069, 32364, 36419, 37968, 39232, 41488, 42746, 43120, 47288, 49319, 53560, 61096
Curtis Milburn & Eastern Railroad Co., 5018
Dakota, Minnesota & Eastern Railroad Corp., 5018, 41806
Delta Southern Railroad Co., 38786
Denver & Rio Grande Western Railroad Co., 48674
Duluth, Missabe & Iron Range Railway Co., 43121
Durham & South Carolina Railroad Co., 64596
Elgin, Joliet & Eastern Railway Co., 7816
Florida Central Railroad Co., Inc., 32961
Georgia Northern Railway Co., 17626, 21994
Golden Cat Railroad Corp., 61920
Illinois Central Railroad Co., 6528, 53561
Missouri Pacific Railroad Co., 582, 8769, 8975, 11626, 51382, 64412, 64968
Norfolk & Western Railway Co., 3560, 3970, 11419, 15162, 48674, 60211, 61096
Norfolk Southern Railway Co., 26349, 34481, 47915, 68951
Northwestern Oklahoma Railroad Co., 18113
Oregon Pacific & Eastern Railway Co., 61921
Red River Valley & Western Railroad Co., 42576
Southern Pacific Transportation Co., 582, 8636, 13647, 19843, 48675, 50566, 57840, 58349, 60210, 60463
St. Louis Southwestern Railway Co., 59278
T&P Railway, Inc., 25656
Union Pacific Railroad Co., 27583, 44380, 52976, 59735, 64413, 67418
Upper Merion & Plymouth Railroad, 59279
Vermont et al., 36993
Visalia Electric Railroad Co., 6297
West Virginia Northern Railroad, Ltd., 27748
Wheeling & Lake Erie Railway Co., 17627
Wisconsin Central, Ltd., 21317
Wisconsin Department of Transportation et al., 37748
Water carriers:
Finance applications, 3294, 26158, 28036

James Madison Memorial Fellowship Foundation

RULES

Nondiscrimination on basis of handicap in federally conducted programs or activities; enforcement, 57690

Joint Board for Enrollment of Actuaries

NOTICES

Meetings:
Actuarial Examinations Advisory Committee, 12974, 31754, 45126, 64414

150-255 O - 94 - 5 (3)

Judicial Conference of the United States

NOTICES

Meetings:
- Judicial Conference Advisory Committee on—
  - Appellate Procedure Rules, 5758, 7246, 44854, 67419
  - Bankruptcy Procedure Rules, 354, 11629, 44854, 67419
  - Civil Procedure Rules, 11630, 44854, 67419
  - Criminal Procedure Rules, 11629, 44855, 67420
  - Evidence Procedure Rules, 11630, 44855, 67420
  - Practice and Procedure Rules, 11630, 67420

Justice Assistance Bureau

NOTICES

Grants and cooperative agreements; availability, etc.:
- Discretionary programs (1993 FY)
  - Police hiring supplement program, 46653

Justice Department

See Antitrust Division; Drug Enforcement Administration; Federal Bureau of Investigation; Federal Prison Industries; Foreign Claims Settlement Commission; Immigration and Naturalization Service; Justice Assistance Bureau; Justice Programs Office; Justice Statistics Bureau; Juvenile Justice and Delinquency Prevention Office; National Institute of Corrections; National Institute of Justice; Parole Commission; Prisons Bureau; Victims of Crime Office

RULES

Acquisition regulations:
- Contracting authority and responsibilities, definitions, competition advocates, and acquisition planning, 68774

Americans with Disabilities Act; implementation:
- Nondiscrimination on basis of disability—
  - Public accommodations and commercial facilities, 17521
  - State and local government services, 17520

Criminal convictions:
- Documentary evidence and records admissable in proceedings before Immigration Judge, 38952

Criminal intelligence systems operating policies; revisions, 48448

Earthquake Hazards Reduction Act:
- Seismic safety program in Federal and federally assisted or regulated new building construction, 42875

Executive clemency; rules governing petitions, 53658

Federal claims collection; tax refund offset, 51223

Foreign Agents Registration Act:
- Covered activities statement; guidance to senior officials signing ethics pledges, , 39444
- Fee assessment and collection, 37417

Immigration:
- Unfair immigration-related employment practices; technical amendments, 59947

Organization, functions, and authority delegations:
- Administrator, Drug Enforcement Administration; personal injury or property damage claim settlement, 35371
- Civil Rights Division's Voting Section; relocation, 51225
- Investigative Agency Policies Office, 62260
- Veteran Affairs Secretary et al.; administrative claims, 36867

Practice and procedure:
- Death sentences in Federal cases; implementation, 4898

Privacy Act; implementation, 41038

Voting Rights Act; implementation:
- Minority language groups, 35371, 36516

PROPOSED RULES

Americans with Disabilities Act; implementation:
- Accessibility guidelines—
  - Detectable warnings, 37052
- Nondiscrimination on basis of disability—
  - Transportation facilities and accessible automated teller machines (ATMs), 17558

Earthquake Hazards Reduction Act:
- Seismic safety program in Federal and federally assisted or regulated new building construction, 18360

Immigration:
- Deportation proceedings; alien entrepreneurs; conditional permanent residence, 59953
- Emergency Federal law enforcement assistance; reimbursement to States and localities, 58994

Incarceration fee costs, 34541

Practice and procedure:
- Communications with represented persons, 39976

Privacy Act; implementation, 21963

Regulatory agenda, 24526, 56542

Trustee panels membership and standing trustee appointments; qualifications, 48472

NOTICES

Agency information collection activities under OMB review, 5019, 11248, 12255, 13089, 14590, 14591, 16552, 16693, 21994, 26986, 27748, 28894, 32962, 33462, 34277, 36705, 39837, 41103, 42576, 46214, 50052, 50956, 52119, 55084, 61716, 64003

Civil and administrative litigation reforms (Executive Order No. 12778); implementation; guidance memorandum, 6015

Grants and cooperative agreements; availability, etc.:
- Americans with Disabilities Act; technical assistance program, 13797, 15523
- Immigration related employment discrimination public education program, 21187

Pollution control; consent judgments:
- Accra Pac, Inc., et al., 46652
- Acme Solvents Reclaiming, Inc., et al., 16694, 37968, 37969
- Acme Tag Co. et al., 28416
- Acushnet Co. et al., 7577
- AFG Industries, Inc., 49528
- Alaqua et al., 3971
- Alaska Pulp Corp., 43653
- Alcan Aluminum Corp., 6012
- Alderman Dow Iron & Metal Co., Inc., et al., 60054
- Algoma City, WI, et al., 32364
- Allen-Bradley Co. et al., 39037
- AlliedSignal Inc. et al., 39037
- Alloyd Asbestos Abatement Co. et al., 43653, 47915
- Alpha Cellulose Corp., 15359
- Alumax Fabricated Products, Inc., et al., 3296
- Amelia Associates and Joey's Excavating, Inc., 42986
- American Felt & Filter Co., Inc., 31754
- American National Can Co. et al., 47915
- American Steel Drum Services et al., 7576
- Anchor Motor Freight et al., 11419, 49059
- Apache Energy & Mineral Co. et al., 11420, 36705, 40447, 51652
- Archer Rubber Co., 46215
- Arctic Fisheries, Inc., 62139
- Arizona Electric Power Cooperative, 6978
- Atlas Minerals & Chemicals, Inc., et al., 21596
- Automation Components, Inc., et al., 11420
- AVX Corp. et al., 7577
- B&B Wrecking & Excavating, Inc., et al., 6132
- B&G Associates et al., 65397
- Bankert, Jonathan W., Jr., et al., 7578
- Bank of Canton et al., 64780
- Beany's Mufflerland, Inc., 64339
- Bedford, NY, et al., 7577
- Belanger, Arthur, et al., 40447, 48533
- Berks Associates, Inc., et al., 50369
- Bethlehem Steel Corp. et al., 40157
- Bethlehem Village District, 45356
- Bliss, Russel Martin, et al., 52325
- Blue Earth Equipment Co. et al., 54374
- Board of Education, NY, et al., 7897
- Boliden Intertrade A.G. et al., 36994
- Boliden Metech, Inc., 16552
- Bond Corp. North America et al., 41807
- Browning-Ferris Industries et al., 54374
- Brown, Robert L., 63186
- Buchs, Donald E., et al., 40157
- Butte Water Co., 47916, 54172
- California State University et al., 68661
- Case Corp., 11421
- Charles George Trucking Co., Inc., 6419, 41807
- Charpiot, Arnold B., 47157
- Charter International Oil Co., 65397
- Chateaugay Corp. (LTV), 11421
- Chicago, IL, 118
- Chrysler Corp. et al., 7578
- Ciba-Geigy Corp., 27749, 59068
- Cimmino, Peter R., 65397
- Clarion Muffler Center, Inc., 44526
- Coated Sales, Inc., 28895
- Colbert, Jack, et al., 44526
- Coleman Trucking Co. et al., 17283
- Cole Muffler, Inc., 49528
- Columbia Aluminum Corp., 62140
- Concept West et al., 47917
- Connolly Development, 47916
- Consolidated Edison Co., 6012
- Consolidated Papers, Inc., 47917
- Cooper Industries, Inc., et al., 6297
- Coors Brewing Co., Inc., 65398
- Core Craft, Inc., et al., 53214
- Cressona Aluminum Co., Inc., 32547
- Cross, James D., et al., 44855
- Crown Cork & Seal Co., Inc. et al., 60054
- CSX Transportation, Inc., 54375
- Dana Corp., Perfect Circle Division, 8062
- Danto Environmental Corp. et al., 7897
- Davis, William, et al., 60212, 63211
- Denver, CO, et al., 41104
- DeSoto, Inc., et al.,
- DiBiase Salem Realty Trust et al., 44526
- D'Imperio et al., 67812
- Dover City, NH, et al., 27749
- E.I. du Pont de Nemours & Co. et al., 47917
- Eastern Environmental Services of the Southeast, Inc., 17284
- Easton Area Joint Sewer Authority et al., 18114
- Ebasco Constructors, Inc., 9221
- Electro-Voice, Inc., 52507
- Elf Atochem North America, Inc., 28038
- Elliot Drywall & Asbestos, Inc., 38584
- El Paso Natural Gas Co., 30812
- Endicott Johnson Corp. et al., 62140
- Energy Cooperative, Inc., 59068
- Environmental Waste Control, Inc., 44526
- Evcon Industries, Inc., et al., 67812
- Farber et al., 60212
- Fina Oil & Chemical Co., 15359, 49060

INDEX
VOL
58
1993
UMI

150-255 O - 94 - 5 (3)

Fiano, Lore, et al., 17429
Florida Steel Corp., 27749
Florida Tile Industries, Inc., 42747
Foodland Supermarket, Inc., et al., 64780
Ford Motor Co. et al., 42986
Garabedian, Martin, et al., 7579
Gary Steel Products Corp. et al., 59069
GEC Industries, Inc., 31754
General Chemical Corp. et al., 28895, 43909
General Foods Corp. et al., 53749
Georgia-Pacific Corp., 49319
Gershon, Jerald, et al., 41807
Giles Armature & Electric Works, Inc., et al., 67813
Global, Inc., et al., 38585
Gloucester, MA, 13283
GNB Inc., 9221
Group Dekko, Inc., 30813
Group Eight Technology, Inc., et al., 30812
Grumman St. Augustine Corp., 30813
GTE North Inc. et al., 7579
Hagadone Hospitality Co., 51101
Hanlin Group, Inc., 60879
Harris Corp., 25657
Hastings, FL, 32548
Hastings Irrigation Pipe Co., 49060
Hercules, Inc., 51100
Hobucken Gun Club, Inc., et al., 57621
Hranica, William, estate, et al., 29435
I. Jones Partnership et al., 36995
IMC Fertilizer, Inc., 28896
Industrial Resources, Inc., et al., 6978
Inland Steel Corp., 15360
In-Tek Constructors et al., 19469
International Crane Co., 16694
JFD Electronics Corp. et al., 59069
Johnson, Donald A., 53215
KDD Realty Corp., 58179
Kenner, LA, et al., 54373
Kerr-McGee Chemical Co., 11422
Klamut, Nicholas P., 51100
Laclede Steel Co., 54375
LaRoche Industries, Inc., 15360
Leith Jeep-Eagle, Inc., 26986
Lemoyne Borough, PA, et al., 28895
Leslie Salt Co., 11422
Lore Fiano et al., 7579, 17429
Louisiana-Pacific, Inc., et al., 34591
Lowe, 54373
Lowell, IN, 6979
Lucas Western, Inc., 63395
Marathon Battery Co. et al., 6298
Martech USA, Inc., 69408
Masco Corp., 31755
Meadow Gold Dairies, Inc., 45530
Metropolitan Dade County et al., 49320
Michael Co. et al., 6808
Middletown, OH, 68661
Midwest Solvent Recovery, Inc., 27750
Miller, Nancy, et al., 33469
Modine Manufacturing Co., 33283
Monitor Sugar Co., 42987
Morrison-Quirk Grain Corp., 13090
Motorola et al., 6013
MSA Manufacturing, Inc., 31755
MTD Products, Inc., et al., 36995
Muir, Jennie, et al., 7580
Nabisco, Inc., et al., 68661
National Presto Industries et al., 49529
Nautilus Motor Tanker Co., Ltd., 46216
Nelson, Richard, 32548
New Albany, IN, 7816
New Boston Coke Corp., 14424
New York City Board of Education et al., 58179
New York City, NY, et al., 67813
New York, NY, 9221
Niagara Falls, NY, 14424
Niagara Transformer Corp., 7580
NL Industries, Inc., et al., 17284
Oak Grove Sanitary Landfill Trust et al., 57621
Oconomowoc Electroplating Co., Inc., 36222
O'Donnell-Usen Fisheries Corp., 45356
Ohio Utilities Co., 7817
Oklahoma Ordnance Works Authority et al., 62140
Oriental Republic of Uruguay, 53215
Ottati & Goss, Inc., et al., 49529
Otto Skipper et al., 41104
Pacific Coast Producers, Inc., 36995
Pacific Hide & Fur Depot, Inc., et al., 45531, 51651
Pagano, Mary, et al., 49320
Pellazar, 36706
Pesses, Marvin, et al., 5531
Petersen Sand & Gravel Inc., 8976
Petro Power Insulation, Inc., et al., 54172, 64339
Philadelphia, PA, 63395
Philipp Brothers, Inc., et al., 57621
Phillips Industries, Inc., et al., 6808
Phoenix Union High School District et al., 21476
Pilot Industries of Texas, Inc., et al., 33842
Pit Stop, 58180
Port of Portland, 13802
Puerto Rico Industrial Development Co., 28037
Purolator Products Co., 26986
Reilly Industries, Inc., 44527
Reliable Equipment Corp., 6132
Residual Technologies, Inc., 44527
Re-Solve, Inc., et al., 65398
Ridge Developers, Inc., 21318
Rihr and Arizona Board of Regents, 63396
Roanoke County, VA, et al., 27750
Rohm & Haas et al., 6529
Rubicon Vista Associates, L.P., et al., 67813
S.T. Taylor Corp. et al., 5020
Sanders Lead Co. et al., 30813
Schmalz, Gregory A., et al., 35047
Seattle, WA, 6298
Selmer Co., L.P., et al., 43653
Shenango, Inc., 26349
Sherwood Medical Co. et al., 57622
Skipper, Otto, et al., 19469
Smith, Stanley, et al., 37969
Smuggler-Durant Mining Corp. et al., 7897
Stoeco Development, Ltd., et al., 39038
Stringfellow, J.B., Jr., et al., 32548
Sunshine Biscuits, Inc., et al., 62141
Superior Toy & Manufacturing Co., 54374
Takoma, WA, 44855
Telluride Co. et al., 59070
Tempcon Corp. et al., 69409
Texaco, Inc., 31755
Texas Eastern Gas Pipeline Co., 33843
Texas Tank Car, 19276
Thomas et al., 8976
Twin County Recycling Corp., 6979
U.S. Oil Co. et al., 9222
U.T. Alexander et al., 14425
Union Tank Car Co., 38140
United Technologies Corp., 46215
USX Corp., 11870
Walerko Tool & Engineering Corp., 52326
Washington Transportation Department et al., 51101, 60879
Waste Management of Illinois, Inc., et al., 43655
Western Mobile New Mexico, Inc., 60055
Westinghouse Bayside Communities, Inc., 6529
Wheaton Industries, 68662
Windward Properties, Inc., 16694
Young, Solomon, et al., 59070, 31219
Privacy Act
Systems of records, 6979, 21995, 28896, 39038, 51846, 60055
Senior Executive Service
Performance Review Boards; membership, 37969
Voting Rights Act certification
Scott County, MS, 29435

Justice Programs Office

NOTICES
Grants and cooperative agreements; availability, etc.
Discretionary programs, 7582

Justice Statistics Bureau

NOTICES
Grants and cooperative agreements; availability, etc
Statistical programs, 7818

Juvenile Justice and Delinquency Prevention Office

NOTICES
Grants and cooperative agreements; availability, etc
Competitive discretionary programs, etc., 27166, 33162
Comprehensive program plan, 5860
Missing Children's Assistance Act—
Discretionary grant programs, etc., 21058
Final program priorities, 11944
Meetings:
Coalition for Juvenile Justice, 16462

Labor Department

See Employment and Training Administration; Employment Standards Administration; Federal Contract Compliance Programs Office; Labor-Management Standards Office; Labor Statistics Bureau; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration; Veterans Employment and Training, Office of Assistant Secretary; Wage and Hour Division; Workers' Compensation Programs Office

RULES
Administrative Law Judges Office proceedings; settlement judges appointment, 38498
Federal service contracts; labor standards
Prevailing wages and fringe benefits; determinations, 49192
Job Training Partnership Act:
Nondiscrimination and equal opportunity requirements; implementation, 4742
Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions
Davis-Bacon helper regulations suspended; former regulation reinstated, 58954

PROPOSED RULES
Administrative Law Judges Office proceedings, settlement judges appointment, 3822
Conflict of interests, 34542
Farm labor protective statutes; coordinated enforcement, 5168
Labor organizations; annual financial reports, 49672
Regulatory agenda, 24562, 56580

Labor

NOTICES

Agency information collection activities under OMB review, 5420, 6134, 6987, 8978, 11249, 12371, 15163, 16417, 28611, 28994, 30185, 31052, 31756, 32157, 33107, 33111, 33120, 33956, 34591, 35978, 36420, 36706, 38438, 39233, 41105, 42106, 43122, 44384, 46217, 48899, 50567, 51881, 53941, 58186, 58565, 60063, 63399, 68665
NAFTA transitional adjustment assistance program, 65194
Committees; establishment, renewal, termination, etc.
Business Research Advisory Council, 21190
Employee Welfare and Pension Benefit Plans Advisory Council, 38440, 47479
Future of Worker-Management Relations Commission, 27311
Immigration Nursing Relief Advisory Committee, 16553
Labor Research Advisory Council, 21318
Work-Based Learning National Advisory Commission, 6134
Consumer price index; U.S. city average, 6135, 6420, 64006
Foreign industries utilizing child labor in industry or mining manufactured product export to U.S.; review and identification; request for information, 59279
Grants and cooperative agreements; availability, etc.,
Nontraditional Employment for Women Act demonstration programs, 28454
School-to-work opportunities systems, 53388
Meetings:
Future of Worker-Management Relations Commission, 27310, 31756, 37748, 46995, 54173, 62683, 64597
Glass Ceiling Commission, 584, 5421, 32549, 37748, 58351
Trade Negotiations and Trade Policy Labor Advisory Committee, 3561, 8769, 13802, 18418, 21599
National Award for Diversity and Excellence in American Executive Management; criteria and application process, 63186
Organization, functions, and authority delegations:
American Workplace Office, 42578
Assistant Secretary for Employment Standards, 21190
North American Agreement on Labor Cooperation; International Labor Affairs Bureau, National Administrative Office, 69410
Privacy Act:
Systems of records, 49548
Railroad or airline industries worker-management relations; hearing, 35048, 40677, 49060
Senior Executive Service:
Performance Review Board; membership, 53942, 64006, 64969

Labor-Management Standards Office

RULES

Employee rights notification; payment of union dues or fees; Executive Order 12800 implementation; CFR Part removal, 15402
Labor organization annual financial reports, 28304, 67594
Small labor organizations; abbreviated financial reports, 28304

PROPOSED RULES

Labor organization annual financial reports, 9418
Small labor organization abbreviated annual financial reports, 9418

Labor Statistics Bureau

NOTICES

Meetings:
Business Research Advisory Council, 17429, 47158, 61922
Labor Research Advisory Council, 19845, 61097

Land Management Bureau

RULES

Land resource management:
Exchange and appraisal procedures, 60904
Minerals management
Onshore oil and gas operations; Federal and Indian oil and gas leases—
Order No. 7; produced water disposal, 47354, 58505
Rental fees, mining claim recordation, and assessment work, 38186, 41325
Oil and gas leasing:
Federal onshore oil and gas competitive leasing, 40753
Onshore oil and gas unit agreements; unproven areas, 58630
Public land orders:
Alaska, 14323, 19212, 19612, 25948, 26251, 26252, 27060, 31475, 31655, 32857, 38083, 42246, 48458, 48545, 52683, 57566, 59098, 62041, 64166, 65130, 66299, 68462
Arizona, 53428, 64498, 65936
California, 25947, 52238, 58969
Colorado, 31475, 33999
Idaho, 4081, 6719, 18018, 26251, 31656, 64499, 64692, 64693, 69239
Montana, 11968, 33773, 50518, 53429, 58593, 58902, 64499
Nevada, 31655, 54049
New Mexico, 26917, 33773, 43800, 52238, 52682, 58968
North Dakota, 31656
Oregon, 19212, 25948, 25949, 26251, 33772, 35408, 38602, 42245, 43801, 44536, 48458
Utah, 7867, 35409, 52684
Washington, 3229, 18163, 64165
Wyoming, 16628, 32856, 33025, 61843, 62042, 64498

PROPOSED RULES

Coal management:
Federal coal management program—
Decisions remaining effective pending appeal to Land Appeals Board, 5697, 18362
Logical mining units; application procedures, approval criteria, diligence, and administration of operations, 64919
Forest management:
Forest products; sales—
Default risk on timber sale contracts; reduction, 47241
Forest product contracts administration and free use permits and law enforcement; prohibited acts, 47847
Land resource management:
Disposition; sales—
Federally-owned mineral interests conveyance; procedures streamlining and clarification, 50536
Minerals management:
Rental fees, mining claim recordation, and assessment work, 12878
Range management:
Grazing administration, 43208, 48814
Wild free-roaming horses and burros management—
Foals born to wild horses and burros after approval of private maintenance and care agreement; exclusion from definition, 51297
Recreation management:
Ukiah District, CA; occupancy and camping stay limits, 46151

NOTICES

Agency information collection activities under OMB review, 7156, 7241, 17275, 17276, 17277, 17278, 18105, 26795, 27580, 31976, 39033, 39222, 47155, 47156, 50563, 50564, 67805
Alaska; Paxson Campground fees, 7571
Alaska Native claims selection:
Akhiok-Kaguyak, Inc., 35037
Aleut Corp., 43649
Arctic Slope Regional Corp., 35037
Bering Straits Native Corp., 47913
Council Native Corp., 47913
Eyak Corp., 41101, 42573
Far West, Inc., 36983
Golovin Native Corp., 31535
Koniag, Inc., 4714, 48893, 50951
Kootznoowoo Inc., 14419
Kuugpik Corp., Inc., 36417
NANA Regional Corp., Inc., 34817
Natives of Kodiak, Inc., 45528
Ouzinkie Native Corp., 48894
Sealaska Corp., 12367, 17423
Shaan Seet Inc., 48894
Tanadgusix Corp., 21989
Tatitlek Corp., 68652
Unalakleet Native Corp., 16550, 38434
Arkansas Headwaters Recreation Area, CO; draft rationing plan for Arkansas River, 7156
Base land parcels relinquished to United States; initial list, 69402
Boundary establishment, descriptions, etc.,
Dickinson District, ND, et al., 60867
Lower Crooked River, OR, 36983
Middle Deschutes and Lower Crooked Rivers, OR, 36983
North Fork Crooked River, OR, 32361, 45913
Quartzville Creek, OR, 12973
Singer Geoglyphs Area, CA, 59058
Classification of public lands:
California, 29430
Nevada, 51375, 53553, 62367
Oregon, 9212
Closure of public lands:
Arizona, 4175, 12367, 18412, 68652
California, 4440, 6414, 6523, 30798, 32544, 41799, 48667, 63388, 68653
Colorado, 16197, 26151, 58011
Florida, 8424
Idaho, 48668
Montana, 32544, 58012
Nevada, 8424, 9573, 18412, 38134, 39034, 39565, 40831, 42742, 51375, 64332
New Mexico, 8424, 29430, 48668, 52786, 60048
North Dakota, 58176
Oregon, 6003, 11242, 32718, 39222, 41800, 47281, 57833
Wyoming, 40444, 44844
Coalbed methane ownership; affected States; list, 5410, 21589
Coal leases, exploration licenses, etc.:
Alabama, 15878
Colorado, 6129, 13497, 19682, 19683, 29622, 38434, 39034, 46649, 50046, 63389
Kentucky, 31412, 41100
Minnesota, 31413, 34842, 51130, 60495
Montana, 9213
North Dakota, 111, 19838
Oklahoma, 44524, 51095
Utah, 42344, 62129
Wyoming, 8425, 27738, 37502, 57618, 60459
Committees; establishment, renewal, termination, etc.:
Farmington District Advisory Council, 4176

UMI

Gila Box Riparian National Conservation Area Advisory Committee, 35973
San Pedro Riparian National Conservation Area Advisory Committee, 58345
Vale District Multiple-Use Advisory Council, 6973
Desert Tortoise Natural Area, CA; reptiles and amphibians collecting restrictions, 69405
Disclaimer of interest applications:
Alaska, 37961
Environmental statements; availability, etc.:
500kV transmission line in Arizona and California, 6414
Animal damage control activities authorization in Utah, 27739, 57833
Arizona rivers; national wild and scenic river systems; recommendations, 9213
Beaverhead National Forest, MT, et al., 37457
Bedell Flat pipelines rights-of-way, NV, 29622, 38135, 52116
Big Dry Resource Area, MT, 7571
Bolo Station Landfill, CA, 68948
Book Cliffs Resource Area, UT, 69405
Broward County, FL; exploratory well, 14419, 33458
Burley District; Southwest intertie project, 37961
Burley Field, Pinedale Resource Area, WY, 38583
Butte District, MT; predator management, 62679
Cajon Pipeline Project, CA, 50046
California Desert Conservation Area, CA, 112, 42573, 51375
California Desert District, CA, 36983, 38780
Chain of Craters Wilderness Study Unit, NM, 54369
Coal preference right lease, Rio Blanco, CO, 11415
Cortez Gold Mines, NV, 42742, 44191
Creston/Blue Gap Area, WY; infill development, 52319
Cyprus Casa Grande Mine, AZ, 65191, 66010
Dark Canyon, NM, 66010
Diamond Mountain Resource Area, UT, 43371
Eagle Mountain Landfill Project, CA, 57617
Elmore County, ID; training range, 60048, 65971.
Ehrenberg-Cibola Recreation Area, AZ, 25999
Fort Cady Minerals Corp. borate solution mining project, CA, 31745, 68154
Gila Resource Area, AZ, 18223
Grazing administration, rangeland management, 43234, 48894
Greater Wamsutter Area, WY, 68438
Green River Resource Area, WY, 13498, 60460
Hardisty, Alberta, Canada, to Casper, WY; crude oil pipeline, 47156
Henry Mountain Resource Area, UT, 12248
Hidden Valley Resources Residuals Repository, CA, 4714
Hub Butte Sanitary Landfill Project, ID, 13640, 27622
Inyo and Kern Counties, CA; soda ash processing facility, 33102
Jackpot Uranium Mine, WY, 64775
Kanab Resource Area, UT, 47750
Kettle River Key Project, WA, 25844
Klamath Falls Resource Area, OR, 57833
Lake County communities to Geysers Geothermal Field, CA; effluent pipeline, 13499, 47469
Leslie Gulch Area, OR, 64962
Lewis and Clark National Forest, MT, 7241
Lewistown District, MT; predator management, 62680
Manti-La Sal National Forest oil and gas leasing, UT, 15159
MetFuel Hanna Basin Coalbed Methane Project, WY, 7242
Miles City District, MT; predator management, 62681
Montana; animal damage control, 39223
National Training Center, Fort Irwin, CA, 6523
Newcastle Resource Area, WY, 68653
Newmont Gold Company's South Operations Area Project, NV, 29431, 64002
Northern spotted owl habitat management plan; National Forests, CA, OR, and WA, 32343, 40444, 44651
North Umpqua Resource Area, OR, et al., 46210
Oklahoma Resource Area, OK, 17423
Papago Indian Reservation, AZ, 60048, 62130
Parker Strip Special Recreation Management Area, CA, 58012
Phoenix Resource Area et al., AZ, 15879
Pony Express Resource Area, UT, 12249
Rand Project, CA, 17905, 26984
Rangeland management reform and proposed rulemaking, 37745
Robinson Mine Project, NV, 35974
Royal East Joint Venture Exploration Project, MT, 9214
Safford District, AZ, 16197
San Bernardino County, CA; indemnity selection and low-level radioactive waste facility, 50047
San Bernardino County et al., CA; heated crude oil pipeline, 52974
San Juan Resource Management Area, UT, 33101
Smoky Valley Common Operation, NV; mining plan of operations, 45913
South Coast Resource Area, CA, 12249
Squirrel River, AK, 68948
Stateline Resource Area, NV, 35974
Training range, Elmore County, ID, 65971, 60048
General Land Office; automated records project; patent data availability, 65191
Geothermal resource areas:
California, 48669
Idaho, 52786, 52787
Oregon, 48073
Utah, 17280
Goshute Indian Reservation, UT; public lands and interest, 48074, 53937
Jurisdiction transfers:
Utah, 34272
Land and resource management planning schedules, 5014
Management framework plans, etc.:
Nevada, 39826, 44846
Oregon, 34273, 48895, 60049, 67806
Oregon et al., 29623, 65391
Utah, 12597, 15160, 18413, 29837, 34273, 34817, 39565
Meetings:
Albuquerque District Advisory Council, 33102, 50367
Arizona Strip District Grazing Advisory Board, 4440, 29431, 44688
Bakersfield District Advisory Council, 6415
Battle Mountain District Advisory Council, 25656
Boise District Grazing Advisory Board, 5752, 13499
Burley District Grazing Advisory Board, 8059
Butte District Advisory Council, 19683
Butte Grazing Advisory Board, 19683
California Desert District Advisory Council, 12368, 15160, 28893, 53209
California Desert District Grazing Advisory Board, 6294, 34273
Canon City District Advisory Council, 8973
Canon City District Grazing Advisory Board, 12368, 45354
Carson City District Grazing Advisory Board, 38135
Casper District Grazing Advisory Board, 38135
Cedar City District Advisory Council, 4176, 19839
Cedar City District Grazing Advisory Board, 8059, 39826
Craig Colorado Advisory Council, 19683
Craig District Advisory Council, 9214, 36984, 45913
Craig District Grazing Advisory Board, 6524
Elko District Advisory Council, 30799
Elko District Grazing Advisory Board, 43903
Grand Junction District Advisory Council, 13499, 33459
Grand Junction District Grazing Advisory Board, 8973, 44191
Helicopters and motorized vehicles use for gathering wild horses and burros, 8632, 29623, 44376, 53211
Idaho Falls District Grazing Advisory Board, 5015, 27308
Kingman Resource Area Grazing Advisory Board, 11416
Lakeview District Grazing Advisory Board, 15879, 33102
Las Cruses District Grazing Advisory Board, 9214
Las Vegas District Advisory Council, 32545
Lewistown District Advisory Council, 16690, 48768
Lewistown District Grazing Advisory Board, 42982
Miles City District Advisory Council, 21590
Miles City District Grazing Advisory Board, 21749
Miles City District Office, MT, 9574
Montrose District Grazing Advisory Board, 11242, 45115
Northern Alaska Advisory Council, 8059, 33840
Phoenix District Advisory Council, 12047, 44192
Powder River Regional Coal Team, 27739
Prineville District Grazing Advisory Board, 15879
Rawlins District Advisory Council, 38136
Rawlins District Grazing Advisory Board, 41485
Richfield District Advisory Council, 6004
Richfield District Grazing Advisory Board, 45115
Rock Springs District Advisory Council, 7573
Rock Springs District Grazing Advisory Board, 42095
Roswell District Grazing Advisory Board, 38583
Safford District Advisory Council, 13641
Safford District Grazing Advisory Board, 113, 19684, 40832
Salmon District Advisory Council, 14586, 34061
Salt Lake District Grazing Advisory Board, 39565
San Juan River Regional Coal Team, 52975
San Pedro Riparian National Conservation Area Advisory Committee, 16198
Shoshone District Advisory Council, 13641
Shoshone District Grazing Advisory Board, 7895
Southeast New Mexico Playa Lakes Coordinating Committee, 32545, 42981, 62130

Susanville District Advisory Council, 30180, 47750
Susanville District Grazing Advisory Board, 44688
Uinta Southwestern Utah Regional Coal Team, 25844
Ukiah District Advisory Council, 8632, 31217
Vale District Multiple-Use Advisory Council, 5016, 17623
Winnemucca District Grazing Advisory Board, 6004, 44192
Winnemucca District Multiple Use Advisory Council, 37502
Worland District Grazing Advisory Board, 15355
Yuma District Advisory Council, 51376
Motor vehicle use restrictions:
Bishop Canyon to Pine Forest Mountain Range, NV, 62130
California, 21474, 36984, 48669, 53554
Colorado, 13792, 17623, 31745, 38781, 44845, 46211, 46985, 54166
Idaho, 16198
Montana, 40445, 47469, 50951, 51376
Nevada, 42981, 53554
Oregon, 13500, 21590, 39223, 41800, 48530
Wyoming, 51095
Oil and gas leases:
California, 39224, 41800, 46985
Colorado, 12368, 16198, 17278, 42345, 53555, 67415
Michigan, 27581
Montana, 46211
New Mexico, 6415, 12048, 12597, 32961, 36984, 42743, 53555, 64002, 64776
Ohio, 36985
South Dakota, 52504
Utah, 48531, 58877
Wyoming, 31747, 34274, 49524, 51095, 51376, 52320, 52504, 53937, 58562, 59058, 60869, 64776
Opening of public lands:
Alaska, 21590, 30800, 37961, 44525, 47913
California, 13500, 46985, 48669, 49524, 53744
Colorado, 64776
Idaho, 3042, 6167, 6574, 7573, 12368, 19684, 33459, 36985, 58012, 69406
Montana, 14586, 16413, 21334
Nevada, 5016, 11622, 13501, 13642, 25999, 28409, 39827, 60206, 63584
New Mexico, 14420, 21334, 29431, 38435, 59058
Oregon, 6336, 17424, 33840, 34274, 39035, 39224, 40153, 43903, 43904, 45115, 45116, 46986, 47319, 47470, 47471, 47750, 48713, 64776
South Dakota, 3042
Washington, 6336, 26001, 44192, 47471
Wyoming, 31748, 47751
Organization, functions, and authority delegations:
Carlsbad Resource Area Office; address change, 31217
Eastern States; public room hours of operation change, 60207
Pipeline right-of-way applications:
New Mexico, 46987
Realty actions; sales, leases, etc.:
Alaska, 6129, 6416, 26000, 44376, 58345
Arizona, 7179, 8655, 11242, 11243, 13501, 14421, 16550, 16551, 18224, 21315, 25656, 26340, 27308, 28410, 28990, 29772, 31976, 32545, 32749, 33278, 33460, 36985, 38136, 38435, 38583, 39035, 40671, 42096, 42346, 44193, 47751, 50367, 51096, 53209, 54166, 60207, 60731, 62368, 67909, 68654, 68655, 69406
California, 113, 4177, 4714, 5752, 7812, 8059, 8060, 9214, 12048, 16198, 16413, 16843, 28609, 28893, 31748, 32961, 35463, 38435, 39224, 40671, 42346, 42982, 43649, 44689, 45116, 47155, 47472, 48531, 48532, 50952, 54599, 54600, 58013, 60050, 60460, 60731, 64333, 64962, 65727, 66011
Colorado, 114, 6416, 17906, 18106, 19684, 19685, 36218, 36698, 41101, 44845, 50047, 50564, 59059, 59729, 60461, 60870
Florida, 21749
Idaho, 4177, 5411, 5755, 6294, 7040, 9215, 9597, 11416, 11622, 12369, 14587, 15879, 25845, 29623, 31535, 31536, 34274, 36986, 39827, 40673, 41102, 48532, 54370, 59059, 64353
Michigan, 351, 32361
Minnesota, 30800
Montana, 3330, 4715, 7156, 7607, 13642, 19685, 33278, 34479, 35463, 36991, 42758, 47752, 53555, 60870, 68154
Nevada, 6524, 6525, 6677, 6973, 7157, 7812, 8425, 9215, 9574, 11417, 13502, 16199, 16414, 17278, 17279, 18413, 18414, 19839, 19840, 26152, 26341, 27740, 28032, 28412, 30181, 30220, 30800, 31751, 32546, 34275, 35037, 35038, 35039, 36986, 38136, 38137, 40673, 42623, 42983, 44193, 44845, 45914, 46988, 47472, 50952, 51647, 52504, 53210, 53745, 53938, 54371, 54403, 54600, 58561, 58705, 59059, 59729, 61715, 62131, 63389, 63390, 66012, 68655
Nevada et al., 61715
New Mexico, 5016, 8449, 14587, 17906, 18415, 21509, 21990, 28410, 28412, 28609, 29454, 29624, 30801, 31750, 32719, 33460, 48075, 51096, 52505, 58014, 58176, 58729, 64777, 67415
North Dakota, 15880, 26000
Oregon, 9216, 13275, 14588, 14589, 15160, 16200, 19876, 26342, 28990, 32416, 34061, 35039, 36986, 39225, 40673, 42981, 45117, 48532, 52116, 54602, 57835, 59730, 68656
Utah, 13086, 25845, 26001, 26152, 28033, 28412, 28990, 30802, 33103, 33278, 33460, 35975, 36989, 40154, 43372, 43373, 47282, 48076, 48670, 50048, 51647, 52117, 64334, 68155, 68656
Washington, 26001
Wisconsin, 34275, 53556, 60495
Wyoming, 6130, 7573, 13643, 15504, 17279, 21591, 26814, 27740, 28752, 29431, 29625, 31536, 33669, 37962, 42983, 47913, 48074, 50048, 54371, 60049, 65392
Recreation management restrictions, etc.:
Arkansas Headwaters Recreation Area, CO; commercial boating use decision record and rationing plan, 36990
Big Dry Resource Area, MT; seasonal hunting access restrictions, 46988
Boise District, ID, 6525
Caliente Resource Area, CA—
Camping and occupancy stay limits, 35464
Rock outcrops visitation, 18106
El Mirage Cooperative Management Area, CA; prohibition of glass beverage containers and discharge of firearms, 33461
Glennallen District, AK; camping stay limits, 7574
Headwaters Resource Area, MT; recreation site fees, 28032
Hot Well Dunes Recreation Area, AZ; livestock grazing, camping, etc., 45354
Imperial Sand Dunes Recreation Area, CA, 33841
Keyesville/Kern River Special Recreation Management Area, CA, 13793
Moab District, UT; alcoholic beverage restrictions, 31751
Palm Springs Resource Area, CA; camping prohibition, 33841
Public lands managed by BLM, NV and CA; occupancy stay limits, 51841
Red Rock Canyon National Conservation Area, NV; fund solicitation, 26153
South Bear Trap Road and Bear Trap Canyon Wilderness, MT; firearms discharge prohibition, 67416
Ukiah District, CA; occupancy and camping stay limits, 60461
Wild Horse Corral Facility, OR, 29432
Yuma District, AZ, et al.; long-term visitor area program, 34586, 47013
Recreation use permit system:
Colorado River, etc., CO, 17424
East Mojave National Scenic Area, CA; campsite fee adjustment, 39226
Resource management plans, etc.
Arizona Strip District, AZ, 5016, 52505
Big Dry Resource Area, MT, 62368
Box Elder Resource Area, UT, 17907
Cascade Resource Area, ID, 40832
Cedar/Beaver/Garfield/Antimony (CBGA) plan, UT, 13087, 33279
Cody Resource Area, WY, 14421
Elkhorns Cooperative Management Area, MT, 31976
Escalante and Kanab Resource Areas, UT, 48895
Garnet Resource Area, MT, 39227
Grand Junction Resource Area, CO, 18414, 68657
Grand Resource Area, UT, 115
Grants Pass Resource Area, OR, 51377
Great Falls Resource Area, MT, 29432, 45117, 48670
Gunnison Resource Area, CO, 9217
Hollister Resource Area, CA, 62369, 63585
House Range Resource Area et al., UT, 19686
House Range Resource Area, UT, 48896
Jefferson County, ID, 64594
Lahontan Resource Area, NV, 3964
Las Vegas District, NV, 53557
Mimbres Resource Area, NM, 33842
Oklahoma Resource Area, OK, 59276
Red Rock Canyon National Conservation Area, NV, 29625
Royal Gorge Resource Area, CO, 51378
Safford District Resource Area, AZ, 64778
Salt Lake Meridian, UT, 29433
Sevier River Resource Area, UT, 13087
South Coast Resource Area, CA, 14418
Spokane Resource Area, WA, 13793
Tonopah Resource Area, NV, 34275
Uncompahgre Basin Resource Area, CO, 18224
Wells Resource Area, NV, 28610
West HiLine Resource Area, MT, 19686
Yuma District, AZ, 9218
Road rights-of-way claims; report to Congress; meetings, 14220
Sodium leases, exploration licenses, etc.:
Wyoming, 53556
Supplementary rule establishment; persons under 21 possessing alcoholic beverages on public land; prohibition, 17425
Survey plat filings:
Arizona, 6416, 26001, 32416, 40445, 58014
Arkansas, 40154, 40832, 43650, 43904
California, 11623, 27309, 44377, 46989, 67806

INDEX
VOL
58
1993
UMI

Colorado, 4178, 8060, 21749, 28991, 34276, 38436, 44193, 58015, 69407
District of Columbia, 68657, 68949
Florida, 8633, 40674, 41288, 43650, 43904
Idaho, 6130, 7242, 9219, 11623, 16844, 21592, 26985, 28611, 29633, 30802, 35975, 36990, 41485, 42983, 45118, 46650, 49317, 49525, 53557, 57836, 59060, 60461, 62130, 62369, 64778
Louisiana, 32546
Minnesota, 40154
Missouri, 43905
Montana, 4440, 46989
Nevada, 16412, 46989
New Mexico, 6525, 19274, 40446, 52320, 59060, 68155
Oregon, 6806, 12048, 17426, 28413, 60870
Oregon and Washington, 33670, 42984, 49526, 51097, 68658
Rhode Island, 21315
Utah, 38584
Washington, 12048, 17426, 28413, 60870
Wisconsin, 8633, 40675
Wyoming, 13794, 41800, 48372, 68156
Utah Land Management Bureau; boundary maps availability, 64334, 67807
Vernal District Advisory Council; tour of acquired land, 35975
Washington public lands; supplementary rules establishment, 36699
Wilderness study areas; characteristics, inventories, etc.:
Utah, 45528
Withdrawal and reservation of lands:
Alaska, 6417, 9244, 11417, 16690, 33842
Arizona, 14221, 16201, 21592, 47752, 47754, 58346, 60871, 62369, 65392, 66012, 68156
California, 7812, 9219, 13502, 26002, 30181, 31752, 36991, 38137, 40688, 50367, 53211, 58015, 60731, 60872, 64353
Colorado, 3294, 8060, 9244, 11290, 15504, 27581, 34277, 41289, 50952, 51647, 53557, 54646, 58176, 60495, 67807
Idaho, 4177, 4178, 4715, 16201, 16414, 19686, 19687, 35040, 45118, 66015
Montana, 21474, 41289, 48424
Nevada, 7040, 13794, 21592, 31977, 35464, 40154, 53745, 58729, 59060, 68949, 69407
New Mexico, 4715, 6677, 8426, 11418, 14589, 30181, 31752, 31753, 33461, 42097, 45118, 60208, 62131, 63389, 64778, 64779, 66015
Oregon, 17280, 26153, 27582, 29254, 31537, 33145, 34277, 38138, 41801, 44378, 47473, 50635, 51379, 52320, 59276
Utah, 18106, 62132
Washington, 6418, 34062, 51379, 58346
Wyoming, 6418, 12370, 31538, 34499, 68438
Yuma District's concession review program manual; availability, 33279

Legal Services Corporation

RULES
Aliens; legal assistance restrictions, 6608
Freedom of Information Act; implementation Disclosure procedures, 52918, 65291
Legal assistance eligibility; income levels, 12335
Lobbying and other activities; restrictions, 21403
PROPOSED RULES
Fee-generating cases; attorney's fees, etc.; withdrawn, 6612
Freedom of information Act; implementation Disclosure procedures, 36910
Recipient governing bodies; withdrawn, 6611
Use of funds from sources other than Corporation; eligibility; withdrawn, 21434
NOTICES
Grant and cooperative agreement awards:
Central Florida Legal Services et al., 45135
Farmworker Legal Services of New York et al., 34593
Indian Law Support Center, 45533
Kisatchie Legal Services, 60466
Legal Aid Foundation of Los Angeles et al., 45135
Legal Aid Society of Hawaii, Inc., 9223
Legal Aid Society of Hawaii, Inc., et al., 60466
New York Public Utility Law, 11073
Pennsylvania Legal Services, 45136
Texas Legal Services Center, 6530
University of California/Berkeley et al., 34593
Grants and cooperative agreements; availability, etc.:
Kentucky migrant farmworkers; civil legal services, 31432
Law school civil clinical programs, 11425
Migrant alternative dispute resolution projects, 13109
Meetings; Sunshine Act, 4740, 5059, 5450, 8819, 13682, 21216, 21217, 29025, 29452, 29693, 33856, 33857, 45375, 45376, 48944, 50390, 58591, 62713, 62714, 65242, 65619, 66073, 68460, 68685, 68686, 68687, 69456

Libraries and Information Science, National Commission

See National Commission on Libraries and Information Science

Library of Congress

See Copyright Office, Library of Congress
RULES
National Film Registry; film selection criteria and public participation procedures, 30708
NOTICES
Meetings:
American Folklife Center Board of Trustees, 7158, 21320
National Film Preservation Board, 30818

Management and Budget Office

See Federal Procurement Policy Office
PROPOSED RULES
Regulatory agenda, 25152, 57158
NOTICES
Advisory and assistance services use guidelines (Circular A-120); rescission, 63593
Agency information collection activities under OMB review, 16248, 60471
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings)
Sequestration update report; transmittal to President and Congress, 44529, 65201
Budget rescissions and deferrals, 3368, 16324, 17298, 27192, 33164, 54256, 59517, 63264
Cumulative reports, 4840, 11156, 14226, 21220, 29015, 33490, 38628, 43391, 48948, 64848, 67548
Circulars, etc.:
A-21, 39996
A-25, 38142
A-45, 57678
A-76, 18120
A-87, 44212
A-110, 62992
A-119, 57643
A-120, 63593
A-127, 5776, 41014
A-129, 5765
A-130, 36068, 47790
A-131, 31056
A-134, 30830
Cost principles for educational institutions (Circular A-21), 39996
Cost principles for State and local governments (Circular A-87), 44212
Designated Federal entities and Federal entities; list, 42749
Economic classification system; issues papers, 16990
Executive branch financial management systems (Circular A-127), 41014
Federal credit programs and non-tax receivables, policies (Circular A-129), 5765
Federal financial accounting standards for national direct loans and loan guarantees; document availability, 66039
Federal financial reporting concepts statement; objectives; document availability, 50059
Federal information resources management (Circular A-130), 36068, 47790
Government Information Locator Service (GILS); establishment, 61109
Federal participation in development and use of voluntary standards (Circular A-119), 57643
Financial accounting principles and standards (Circular A-134), 5440, 30830
Financial management systems (Circular A-127), 5776
Higher education institutions, hospitals, and nonprofit organizations; uniform administrative requirements for grants and agreements (Circular A-110), 62992
Hospital, medical care, and treatment furnished by United States, costs; rates recovery from tortiously liable third persons, 57638
Inventory and related property; accounting standards; availability, 62696
Procurement
Commercial activities, performance (Circular A-76), 18120
Regulatory review, 6074
Rental and construction of Government quarters (Circular A-45), 57678
Selected assets and liabilities; accounting standards; availability, 32553
User charges (Circular A-25), 38142
Value engineering (Circular A-131), 31056

Marine Mammal Commission

NOTICES
Meetings; Sunshine Act, 29694, 54187

Maritime Administration

RULES
Maritime carriers and related activities
Uniform financial reporting requirements, 62043
Correction, 64798
National shipping authority
Agency agreements and appointments of agents, 44283
National defense operations; shipping services, containers, and port facilities and services; priority use and allocations, 29351
Practice and procedure
Claims against Maritime Administration, 29350
Subsidized vessels and operators
Bulk cargo vessels; operating-differential subsidy; maintenance and repair subsidy rates; calculation, 17346
PROPOSED RULES
National Shipping Authority
Agency agreements and appointment of agents, 9135

INDEX
VOL
58
1993
UMI

NOTICES
Capital construction fund, nonqualified withdrawals; interest rates, 40183
Mortgagees and trustees; applicants approval, disapproval, etc.:
Ameritrust Texas N.A., 34615
Bank One, Texas, National Association, 31784
Chase Lincoln First Bank, National Association, 8649
First Bank, National Association, 8649
Shawmut Bank Connecticut, National Association, 12626
Society National Bank, 34615
Trustmark National Bank Corporate Trust, 29023
Subsidized operators; circular letters status, 15174
Voluntary Tanker Agreement; status, 42754, 45946
Applications, hearings, determinations, etc.:
American President Lines, Ltd., 4734, 11659, 27617, 36509, 45371
First American Bulk Carrier Corp., 41833
Lykes Bros. Steamship Co., Inc., 21329, 35067
Lykes Bros. Steamship Co., Ltd., 38600

Martin Luther King, Jr. Federal Holiday Commission

NOTICES
Meetings, 13806, 25849, 40448

Merit Systems Protection Board

RULES
Organization, functions, and authority delegations:
Regional Offices; relocation, etc., 28917, 31234
Practice and procedure:
Commercial overnight delivery, 36345
National security information procedures; CFR Part removed, 61611
Whistleblowing:
Commercial overnight delivery added as filing method for appeals and stay requests, 36345

PROPOSED RULES
Regulatory agenda, 57124

NOTICES
Meetings; Sunshine Act, 45153
Questions and answers; publication availability; call for riders:
"A Question of Equity: Women and the Glass Ceiling in the Federal Government", 3044
Whistleblower appeals, 47479
Senior Executive Service:
Performance Review Board; membership, 46662

Mexico and United States, International Boundary and Water Commission

See International Boundary and Water Commission, United States and Mexico

Minerals Management Service

RULES
Outer Continental Shelf; minerals and rights-of-way management:
Surety bond coverage for sulfur or oil and gas leasing, 45255
Outer Continental Shelf; oil, gas, and sulphur operations:
Drilling and production—
Date and information availability to public, 44762
Reporting and recordkeeping requirements, 49924
Oil spill prevention and response; offshore facilities including State submerged lands and pipelines, 7489
Royalty management:
Collection of royalties, rentals, bonuses, and other monies due Federal Government; payment method; CFR correction, 8907
Failure to submit payment of proper amount with report or bill or to provide adequate information; assessment against payors, 45434
Oil surety requirements, reporting and recordkeeping requirements, and addresses, 64899
Oklahoma; oil and gas product valuation, 37420
Onshore Federal and Indian oil and gas leases; production accounting responsibility transfer from Land Management Bureau to MMS, 45252

PROPOSED RULES
Federal claims collection; administrative offset, 43583, 50301
Outer Continental Shelf; oil, gas, and sulfphur operations:
Blowout preventer testing and maintenance requirements; workshop, 33921
Oil spill financial responsibility; offshore facilities including State submerged lands and pipelines, 44797, 52050, 66320
Meeting, 58517, 66320
Royalty management:
Collection of royalties, rentals, bonuses, and other monies due the Federal Government, 53470
Federal and Indian mineral leases; credit adjustments submitted by lessees and other royalty payors; limitations, 43588
Incorrect reports; assessment, 43582
Solid minerals and geothermal leases; late payment or underpayment of monies due; interest rate, 33414

NOTICES
Agency information collection activities under OMB review, 5413, 6005, 15881, 17280, 17281, 17282, 18108, 19687, 28035, 41804, 42347, 42348, 42743, 45119, 50953, 51380, 51381, 67808
Committees; establishment, renewal, termination, etc.:
Royalty Management Advisory Committee, 37746
Environmental statements; availability, etc.:
Alaska OCS—
Lease sales, 64964
Oil and gas operations, 58563
Gulf of Mexico OCS—
Lease sales, 21593, 26188, 60461
Oil and gas operations, 30804
Outer Continental Shelf natural gas and oil resource management program, 30804
Meetings:
Outer Continental Shelf Advisory Board, 14590, 48672, 49526, 53559, 60462
Royalty Management Advisory Committee, 44849, 58705
Royalty obligations on contract settlement proceeds, 26004
Seismic reassessment of offshore platforms; workshop, 53938
National preparedness for response exercise program; guidelines availability, 53990
Organization, functions, and authority delegations:
Royalty management activities—
New Mexico, 37502
Outer Continental Shelf operations:
Alaska OCS—
Lease sales, 64964
Central and Western Gulf of Mexico—
Leasing policies, 64409
Gulf of Mexico—
Lease sales, 9490, 26004, 26188
Leasing systems, 9512
Official protraction diagrams; availability, 4716, 21594
Oil and gas information program; report availability, 352, 4441
Oil and gas lease sales; restricted joint bidders list, 18416, 52505
Western Gulf of Mexico—
Lease sales, 42098, 44734
Leasing systems, 42097
Royalty management:
Assessment rates; incorrect or late reports and failure to report, 21594, 6005
Archaeological resource surveys and reports on Outer Continental Shelf lease tracts, 52731

Mine Safety and Health Administration

RULES
Coal mine safety and health:
Refuse piles and waste impoundment dams; CFR correction, 8543
Respirable dust samples; transmission by operator; mailing address change, 63528
Underground coal mine ventilation; safety standards, 21103, 31908, 33996
Metal mine safety and health:
Explosives, 31908, 69596
Mine accidents; notification, investigation, preservation of evidence; immediate notification by mine operators; telephone number change, 63528
Nonmetal mine safety and health:
Explosives, 69596

PROPOSED RULES
Coal mine safety and health:
Flame-resistant conveyor belts; requirements for approval, 8028
Underground coal mines:
Ventilation; safety standards, 69312
Underground coal mines—
Machinery and equipment operation and maintenance, 9554, 16517
Metal mine safety and health:
Explosives, 14492
Nonmetal mine safety and health:
Explosives, 14492

NOTICES
Hazardous conditions reporting by miners; telephone number change, 63586
Mining products; testing, evaluation, and approval fees, 5026, 6056, 68953
Petitions for safety standard modifications; summary of affirmative decisions, 28041
Safety standard petitions:
B&B Coal Co. et al., 29640
Baylor Rush, Inc., et al., 18419, 46218
BHP Mineral International, Inc., et al., 39234
Clinchfield Coal Co. et al., 41294
Coal Miners, Inc., et al., 26166
Consolidation Coal Co. et al., 13804, 16553
Costain Coal, Inc., et al., 32727
Dominion Coal Corp. et al., 59073
Double "B" Mining, Inc., et al., 64971
Eastern Associated Coal Corp. et al., 44700
Enlow Fork Mining Co. et al., 5760, 68670
G&G Coal Co., Inc., et al., 59076
Headache Coal Co., Inc., et al., 8065
Helen Mining Co. et al., 9575
Interstate Thermal Energy Conversion Corp. et al., 61100

J&T Mining, Inc., et al., 4203
Jim Walter Resources, Inc., 51388
Mountain Coal Co. et al., 58565
Neumeister Coal Co. et al., 47766
Peabody Coal Co. et al., 62378
Philippi Development, Inc., et al., 50054
S&T Coal Co. et al., 57626
U.S. Steel Mining Co., Inc., et al., 39569

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

Mines Bureau

NOTICES
Agency information collection activities under OMB review, 18225, 19466, 32155, 47756, 54167, 60872
Meetings:
Mining and Mineral Resources Research Advisory Committee, 26155, 51842

Minority Business Development Agency

NOTICES
Business development center program applications:
Alabama, 65965
Arkansas, 42720, 59706, 60604
California, 9147, 12360, 64293
California et al., 38115, 39197, 57989, 58325
Colorado, 6475
Georgia, 18203
Idaho, 52092
Indiana, 40790
Kentucky, 42941
Louisiana, 12221, 37705, 59707, 60605
Michigan, 54329
Mississippi, 42943
Missouri, 54330
Missouri et al., 45486
New Jersey, 42052
New York, 48505
North Carolina, 42944, 59992
Ohio, 29388, 43095
Ohio et al., 61675
Oregon, 52092
South Carolina, 13450
Texas, 11845, 14559, 26969, 37706, 47714
Virginia, 14378, 30774
Virgin Islands, 3261, 4411, 8584, 16814
Washington, 52092

Mississippi River Commission

NOTICES
Meetings; Sunshine Act, 16265, 44888

National Acid Precipitation Assessment Program

NOTICES
Meetings, 29009

National Advisory Council on the Public Service

NOTICES
Federal Government as employer; hearing, 3570, 16422, 28418
Meetings, 9223, 11425, 30818

National Aeronautics and Space Administration

RULES
Acquisition regulations:
Acquisition planning; procurement plan preparation; dollar thresholds increase, 48974
Acquisition planning and competitive source selection processes; streamlining techniques, 61629
Contract Appeals Board discontinuance and merger with Armed Services Contract Appeals Board, 44462, 53138
Contract financing; milestone billing arrangements, 4086
Contract financing payments, 48614
Contractors; printing and duplication restrictions, 47219
Cost-plus-award-fee contracts coverage, 52446
Discussions and negotiation with multiple offerors; approval authorities for conducting multiple rounds, 54299
Federal information processing resources contracts; delivery to all NASA installations, 59188
Correction, 62556
Liability clauses cross-waiver in NASA contracts, 54050
Major system acquisition process; streamlining, 58791
Correction, 68687
MidRange procurement procedures; test notification, 54300
Miscellaneous amendments, 51136
North American Free Trade Agreement (NAFTA) expedited implementation; synopsizing requirements, 69245
Pension portability, 44463
Total set-aside subcontracts; minority educational institutions eligibility, 42878
Unclassified contracts; security requirements, 51019
Administrative authority and policy:
Small business policy, 43554
Federal Acquisition Regulation (FAR):
Federal construction contracts; open bidding, 12140
Nonmanufacturer rule; correction, 3850
U.S. and European Economic Community; memorandum of understanding; government procurement and sanctions imposed on European Community, 31140
Grants and cooperative agreements; revision of award and administration requirements, 53638
NASA seal and other devices, and Congressional Space Medal of Honor, 58944
Security programs; arrest authority and use of force by NASA security force personnel, 5263
Tracking and data relay satellite system; use and reimbursement policy for non-U.S. Government users; service rates, 50515

PROPOSED RULES
Acquisition regulations:
Contractor and subcontractor compensation; reasonableness review, 47244
Contractor employees; drug and alcohol testing, 37697
Cost-plus-award-fee contracts, 19398
Civil Space Employee Testing Act of 1991; implementation:
Alcohol and drug testing programs, 36159
Federal Acquisition Regulation (FAR):
Debarment and suspension offenses; tax evasion, 63494
Defective cost or pricing data in postaward audits, 64824
Electronic contracting, 69588
Federal information processing resources contracts; delivery to all NASA installations, 43854
Food products; blanket purchase agreements invoicing, 59616
Inconsistencies; termination for convenience of Government (fixed price); clarification, 64826
Postponement of bid openings or closing dates, 59618
Regulatory agenda, 25238, 57242
Sealed bid qualification requirements, 63492
Regulatory agenda, 25120, 57126

NOTICES
Advisory committees; report on closed meetings; availability, 60467
Agency information collection activities under OMB review, 7821, 28631, 44702, 45136, 45533, 47480, 51888, 52977, 54174, 54605
Committees; establishment, renewal, termination, etc.:
Advisory Council et al., 45921
NASA-NIH Advisory Committee on Biomedical and Behavioral Research, 6020
Redesign of Space Station Advisory Committee, 21321
Federal Acquisition Regulation (FAR):
1993 consolidated reprint; looseleaf edition, 54890
Agency information collection activities under OMB review, 539, 5962, 6389, 6481, 7549, 8046, 8588, 12945, 12946, 13252, 15489, 15490, 15844, 16653, 19664, 32108, 33435, 33436, 46948, 49477, 51621, 57587, 65162, 68636
Inventions, Government-owned; availability for licensing, 63400, 63401
Landsat program management; advisory process, 587
Meetings:
Advisory Council, 27752, 39571, 42349, 44386
Advisory Council task forces, 5034, 7822, 11073, 12375, 16715, 27752, 32963, 35984, 41299, 47480, 60467
Aeronautics Advisory Committee, 6812, 16422, 17432, 26168, 29436, 36423, 40448, 43389, 58020, 60222, 63401, 68968
Aerospace Medicine Advisory Committee, 8431, 38444
Aerospace Safety Advisory Panel, 7263, 13806
History Advisory Committee, 12374
Minority Business Resource Advisory Committee, 15385, 28901, 44387, 50057
NASA-NIH Advisory Committee on Biomedical and Behavioral Research, 32159
NASA-NIH Advisory Panel on Biomedical and Behavioral Research, 66384
National facilities study; space operations and space research and development facilities, 31759
Redesign of Space Station Advisory Committee, 21321
Space Science Advisory Committee, 51113, 68671, 68968, 69411
Space Science and Applications Advisory Committee, 5762, 6020, 6812, 7158, 7822, 9223, 11870, 17432, 26800, 27584, 27752, 28901, 33123, 34278
Space Station Advisory Committee, 19470, 32963
Space Station Redesign Advisory Committee, 25849, 28632
Space Systems and Technology Advisory Committee, 8770

Wage Committee, 5034, 21321, 33673
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Advanced High Temperature Strain Sensors, 30074
ITAC Systems Inc., 8431
JP Technologies, Inc., 30074
Magnetic Power, Inc., 29239
Pinnacle Imaging, Inc., 46662
Qvinta, Inc., 47481
Shinko Boeki Co., Ltd., 6313
Synthecon, Inc., 30074
Umpqua Research Co., 49063
University of Maryland, 11871
Vector Research, Inc., 30075
Volinsky, Fred, 58020
Research and development contracts; increased contractor liability, 16715
Self-evaluation and transition plan draft document; comment procedures, 33123

National Agricultural Statistics Service

NOTICES
Cattle on feed; report changes, 59446
Wool procedures monthly estimates; discontinuance, 38359

National Archives and Records Administration

See Federal Register Office
RULES
Audiovisual records management, 28506
Records management:
Micrographic records management, 49193
PROPOSED RULES
Public availability and use:
NARA research facilities; locations and hours, 49251, 63133
Records and donated historical materials; public use, 54540
Records management:
Agency program evaluations, 64915
Micrographic records management; correction, 376
Regulatory agenda, 25130, 57134
NOTICES
Agency information collection activities under OMB review, 15513, 37758
Agency records schedules; availability, 3044, 7263, 8065, 12054, 13649, 17432, 19141, 25674, 29009, 31221, 33124, 38586, 43660, 47766, 51652, 58200, 62147, 65599, 68967
Committees; establishment, renewal, termination, etc.:
Preservation Advisory Committee, 42110
Maryland Environment Department; boilers installation:
Tentative determination, 39041, 48900, 50956
Meetings:
Preservation Advisory Committee, 34596
Presidential Libraries Advisory Committee, 60467
Records of Congress Advisory Committee, 19690, 62685
Nixon Presidential historical materials; opening of materials, 17433, 31548, 35983, 52121
Organization, functions, and authority delegations:
Move to Archives II, College Park, MD—
Nontextual Archives Division, Cartographic and Architectural Branch, 49330
Nontextual Archives Division, Motion Picture, Sound, and Video Branch, 50957
Nontextual Archives Division, Still Picture Branch, 50957
Presidential Libraries Office, Nixon Presidential Materials Staff, 49331
Privacy Act:
Records transfer, 28632
Systems of records, 44856, 57631, 59076, 59098
Reference service on certain textual records; temporary closure, 65735
Senior Executive Service:
Performance Review Board; membership, 50057
Applications, hearings, determinations, etc.:
Maryland Environment Department, 40165

National Capital Planning Commission

NOTICES
Senior Executive Service:
Performance Review Board; membership, 46222

National Commission for Employment Policy

NOTICES
Meetings, 14224, 26800, 47295, 48536

National Commission on Acquired Immune Deficiency Syndrome

NOTICES
Meetings, 7264, 8636, 19470

National Commission on American Indian, Alaskan Native and Native Hawaiian Housing

NOTICES
Meetings, 3570, 13508, 26987, 38587

National Commission on Children

NOTICES
Commission terminated, 12375

National Commission on Financial Institution Reform, Recovery, and Enforcement

NOTICES
Meetings, 38796

National Commission on Judicial Discipline and Removal

NOTICES
Hearings, 5422
Meetings, 5422, 8770, 13650, 27753, 33125, 36224, 38444, 39243

National Commission on Libraries and Information Science

NOTICES
Meetings; Sunshine Act, 19515, 25898, 38462, 39090, 51669, 61727

National Commission on Manufactured Housing

NOTICES
Meetings, 3571, 6314, 11642, 16208, 30186, 35472, 42580, 48679, 63187, 64339

National Commission To Ensure Strong Competitive Airline Industry

NOTICES
Meetings, 28754, 32551
Policy statement deadline, 38444

National Council on Disability

RULES
Nondiscrimination on basis of handicap in federally conducted programs or activities; enforcement, 57690
NOTICES
Meetings; Sunshine Act, 16581, 36250, 50998, 64440

National Credit Union Administration

RULES
Agency office descriptions and agency action request procedures, 45430
Credit unions:
Community development revolving loan program, 21642
Corporate credit unions; fidelity bond coverage purchase options, higher deductibles, and higher limits, 57539
Definitions, organization and operation, and appraisals; miscellaneous amendments, 40040
Insurance requirements; call report requirement, 5570
Investment and deposit authority, 34868
Correction, 41419
Investments and deposits; prohibitions; correction, 16763
Loan interest rates, 6075
Management official interlocks, 39434
Correction, 58263
Organization and operations—
Supervisory committee audits and verifications, 39430
Report of crime or catastrophic act and Bank Secrecy Act compliance; uniform multi-agency criminal referral form, 17491
Share, share draft, and share certificate accounts; dividends clarification; and Truth in Savings Act; implementation, 50394
Voluntary liquidation, 35363
Employee responsibility and conduct; CFR Part removed, 6605
Items heard at closed Board meetings withheld from public or made available after meetings; determination procedure, 17492
Real estate lending and appraisals:
Requirement exceptions in major disaster areas, 42640
PROPOSED RULES
Credit unions:
Chartering and membership policy field; interpretive ruling and policy statement, 40470
Definitions, organization and operation, and appraisals; miscellaneous amendments, 21953
Field of membership and chartering policy; interpretive ruling and policy statement, 42698
Investment and deposit authority, 5664
Management official interlocks, 12910
Organization and operations—
Corporate credit unions; fidelity bond coverage purchase options, higher deductibles, and higher limits, 30719, 33783
Supervisory committee audits and verifications, 17808

Report of crime or catastrophic act and Bank Secrecy Act compliance; uniform multi-agency criminal referral form, 5663
Share, share draft, and share certificate accounts; dividends clarification; withdrawn; and Truth in Savings Act; implementation, 11801
Regulatory agenda, 25370, 57366

NOTICES
Agency information collection activities under OMB review, 4187, 30075
Meetings; Sunshine Act, 3328, 9023, 14473, 15900, 19150, 28092, 29453, 32415, 36006, 37550, 39091, 39592, 47012, 51669, 53758, 59516, 64796, 65426

National Drug Control Policy Office

RULES
Grants and cooperative agreements; uniform administrative requirements; correction, 26185

National Foundation on the Arts and the Humanities

PROPOSED RULES
Museum Services Institute:
Technical assistance grants, 48622
Regulatory agenda:
National Endowment for the Arts, 25136, 57140
National Endowment for the Humanities, 25140, 57144

NOTICES
Agency information collection activities under OMB review, 3045, 5034, 6136, 6422, 6530, 6531, 6989, 7159, 14592, 15385, 17910, 19280, 26168, 26800, 27753, 31055, 32159, 33957, 34278, 37759, 37971, 39042, 41107, 44527, 45922, 49530, 50571, 58879, 60467, 64340, 66384
Committees; establishment, renewal, termination, etc.:
Arts in Education Advisory Panel, 7583
Challenge/Advancement Advisory Panel, 7583
Dance Advisory Panel, 7583
Design Arts Advisory Panel, 7583
Expansion Arts Advisory Panel, 7584
Folk Arts Advisory Panel, 7584
Literature Advisory Panel, 7584
Media Arts Advisory Panel, 7584
Museum Advisory Panel, 7585
Music Advisory Panel, 7585
Opera-Musical Theater Advisory Panel, 7585
Presenting and Commissioning Advisory Panel, 7585
Public Partnership Office Advisory Panel, 7585
Theater Advisory Panel, 7586
Visual Arts Advisory Panel, 7586
Declined general applications for Federal assistance; reconsideration; correction, 3330
Grants and cooperative agreements; availability, etc.:
Arts and education meetings, etc., 32729
Arts in education newsletter, 52977
Arts plus initiative, 48376
Arts teachers fellowship program, 59076
Chamber music rural residencies, 27584
Expansion arts program; on-site evaluations and technical assistance, 12375
General operating support program, etc., 60066
Literature field overview study, 34279
Mayors' institute on city design, 19281
Museum leadership initiatives program, 9223
Visual arts program; payments to readers of visual art periodicals, 31432
Meetings:
Arts and Artifacts Indemnity Panel, 27754, 58711
Arts in Education Advisory Council, 47296
Arts in Education Advisory Panel, 6990, 33125
Arts National Council, 5423, 26562, 39042, 54378
Challenge/Advancement Advisory Panel, 5763, 6647, 13109, 33125, 33126, 36708, 38587, 39043, 42110, 43137, 44528, 45922, 47296, 49331, 60880, 60881, 68169
Dance Advisory Panel, 26562, 34596, 43137, 47297
Dance Program Dance Heritage Study Group, 46222
Design advancement and Federal design improvement; Federal Government and private sector representatives, ad hoc group, 28419
Design Arts Advisory Panel, 7159, 12255, 33126, 45923, 58569
Expansion Arts Advisory Panel, 5423, 6990, 17288, 26169, 28419, 30818, 52978, 60881, 67425
Folk Arts Advisory Panel, 7586, 26563, 60881
Humanities National Council, 5762, 18228, 39839, 55085, 55086
Humanities Panel, 4719, 6314, 8637, 13806, 16716, 18228, 19690, 19691, 21479, 27754, 29009, 32963, 33285, 34279, 38588, 45136, 47297, 48536, 50572, 52978, 53749, 55086, 61105, 65196, 68672
International Advisory Panel, 5762, 30075, 30818, 58569
International Exhibitions Federal Advisory Committee, 47297
Literature Advisory Panel, 6020, 11073, 28419, 50057, 50058, 60882
Local Arts Agencies Advisory Panel, 21755
Local Arts Agency Advisory Panel, 60882
Media Arts Advisory Panel, 6136, 6422, 7159, 8997, 13109, 40165, 63188, 67426
Museum Advisory Panel, 6990, 7264, 17288, 21479, 21480, 40166, 50058, 50059
Music Advisory Panel, 6422, 11074, 11871, 13110, 15386, 17289, 19470, 30076, 48079, 53956, 60882
National Museum Services Board, 18229
Opera-Musical Theater Advisory Panel, 40166, 40167, 60883, 63188
Presenting and Commissioning Advisory Panel, 6648, 11074, 15386, 17434, 29840, 32551, 34597, 36708, 39043, 42111, 45923, 58570
Public Partnership Advisory Panel, 29436, 30818
Public Partnership Office Advisory Panel, 11074, 12375, 12975, 63188
Theater Advisory Panel, 11075, 13110, 28420, 28901, 28902, 32551
Theater Program Task Force, 43137, 48080
Visual Arts Advisory Panel, 8771, 15883, 21322, 28902, 33127, 45921, 54379
Meetings; Sunshine Act, 18229, 21217, 36514, 58901
Senior Executive Service:
Performance Review Board; membership, 29641

National Highway Traffic Safety Administration

RULES
Anthropomorphic test dummies:
Newborn infant; design and performance specifications, 3229
Drug offender's driver's license suspension Correction, 62415
Drunk driving prevention programs; incentive grant criteria, 21649
Engineering and traffic operations
Speed limit enforcement certification, 54812
Fuel economy standards
Light trucks; 1995 model year, 18019
Passenger automobiles; 1995 and 1996 model years, 62294
Insurance cost information regulation, 12545
Intermodal Surface Transportation Efficiency Act; implementation:
Safety belts and motorcycle helmets; compliance and transfer-of-fund procedures, 44754
Motor vehicle safety standards
Air and hydraulic brake systems—
Heavy duty vehicles; burnish procedures, 45459
Air brake systems—
Burnish procedures and recovery requirements, 36615
Child restraint systems—
Add-on (portable) child restraint system; labeling flexibility, 36152
Built-in child restraint system, 19776, 25900
Owner registration program; petition denied, 31658
Convex cross view mirrors on school buses, 53666
Fuel system integrity—
Alcohol fuels, 5633, 51788
Glazing materials—
Rigid plastic, 17787
Lamps, reflective devices, and associated equipment—
Daytime running lamps, 3500, 65673
Motorcycle turn signals and stop or taillamps, 13023
Reflective material use on large trucks and trailers for conspicuity increase, 11974, 52021
Replaceable light source dimensional information; lower beam headlighting requirements; correction, 3856, 64168
Round sealed beam headlamps, 12183
Type HB2 standardized replaceable light bulb ring for headlamps, 3853
Windshield wiping and washing systems, 13021
Nonconforming vehicles importation—
Registered importers; prepaid mandatory service insurance policy, 30996
Occupant crash protection—
Air bag requirements; implementation, 46551
Hybrid III test dummy; compliance testing, 59189
Lap or lap/shoulder belts; requirements for child safety seats, 52922
Light trucks, buses, and multipurpose passenger vehicles; side impact protection; petition denied, 19628
Manual safety belts; trucks and multipurpose vehicles driven by persons with disabilities, 11975
Power-operated window, partition, and roof panel systems, 16782
Rearview mirrors—
School bus pedestrian safety devices; convex cross view mirrors, 60399
Roof crush resistance, 5632
School bus emergency exits, 45065
School bus passenger seating and crash protection; students in wheelchairs, 4586, 46873
Side impact protection—
Test procedures and performance requirements; quasi-static door strength, 14162

Steering assembly control system; impact protection for driver, 26526, 63302
Theft prevention standard compliance, temporary exemptions, 58103
Tire selection and rims for vehicles other than passenger cars, 13424
Tires, new pneumatic; 18 and 19-inch tires testing, 41638
Vehicle and equipment importation, 12905, 32614
Wheel nuts, wheel discs, and hub caps; winged projections, 4582
Motor vehicle theft prevention standard:
High theft lines for 1993 model year; listing, 3850
Correction, 44775
High theft lines for 1994 model year; listing, 63296
Insurer reporting requirements; list of companies, 63299
Vehicle and equipment importation, 12905, 32614
National Traffic and Motor Vehicle Safety Act; fee schedule, 51021
Organization, functions, and authority delegations:
Managing Director, 12545
State highway safety programs; uniform procedures, 41025

PROPOSED RULES

Automobile Fuel Efficiency Act; relief petitions and plans; corporate average fuel economy program, 29378
Defect and noncompliance responsibility; rulemaking terminated, 40402
Engineering and traffic operations:
Speed limit enforcement certification, 186, 54832
Fuel economy standards:
Passenger automobiles—
1990 model year; withdrawn, 6939
1995 and 1996 model years, 41228
Insurer reporting requirements; list of insurers required to file reports, 21277
Intermodal Surface Transportation Efficiency Act; implementation:
Safety belts and motorcycle helmets; compliance and transfer-of-funds, 4622
Motor vehicle content labeling; domestic and foreign equipment, 61042
Correction, 62415, 63327
Motor vehicle safety standards:
Air and hydraulic brake systems—
Heavy duty vehicles; burnish procedures, 45476
Stability and control of medium and heavy vehicles during braking, 50738, 65156
Stopping distance performance requirements; reinstatement, 30746
Air brake systems—
Air applied, mechanically held brake systems, 13437
Antilock malfunction indicator, 50732
Long-stroke brake chambers, 41078
Stopping distance performance requirements; reinstatement, 11009
Trailer supply line pressure requirement; petition denied, 41077
Automatic crash protection requirements; altered light trucks or vans exclusion; petition denied, 32630
Brake hoses; oil resistance requirements; exclusion, 38346
Child restraint systems—
Booster seat safety, 46928
Rear-facing child restraint system; dynamic compliance testing, 30134
Rear-facing child restraint systems; interactions between child restraints and air bags; warning labels, 19792
Compressed natural gas fuel containers, 68846
Designated seating position; definition, 57975
Electric vehicles—
Controls, displays, and windshield defrosting and defogging systems, 4644
Passenger car brake systems, 4649
Fuel system integrity, 7206
Compressed natural gas, 5323, 15463
Fuel tank integrity, 15463
Compressed natural gas, 5323
Glazing materials—
Plastic, glass, and glass plastic used in areas not requisite for driving visibility, 28847
Hydraulic brake systems—
Stopping distance performance requirements; establishment, 11003, 21435, 21436
Lamps, reflective devices, and associated equipment—
Dashboard indicator for center high-mounted stop lamps; petition denied, 51034
Plastic materials used in lenses; haze limitation, 13042
Reflective material use on large trucks and trailers for conspicuity increase, 5699, 21553
Replaceable bulb headlamp systems, 13243, 15132
Replaceable lens in replaceable bulb headlamp, 42924
Lift systems for accessible transportation, 11562
Manufacturers' obligations to provide notificaton and remedy without charge to owners of vehicles or items not complying with safety standards, 50314, 60419
Motor vehicle brake fluids; petition denied, 45312
Occupant crash protection—
Automatic safety belts; rulemaking terminated, 47426
Seat belt assemblies, 27517
Warning light for unfastened automatic safety belts; petition denied, 47427
Occupant protection in interior impact—
Head impact protection, 7506, 54099
School bus emergency exits and window retention and release, 63321
Correction, 67909
Seating systems; pedestal seats, 12921
Side impact protection—
Anthropomorphic test dummies; rulemaking terminated, 48350
Temporary exemptions; theft prevention standard compliance, 32091
Thermal locking safety radiator caps, 32504
Tire selection and rims for vehicles other than passenger cars, 46938
Tires, new pneumatic, 59226
Trailer hitches; installation to unit body vehicles; petition denied, 57579
Warning devices, 27514
Motor vehicle theft prevention standard:
High theft lines exemption, 35422
Light-duty-trucks; designation as high theft lines, 36376
Lines subject to theft prevention standard; selection procedures, 38999
National Traffic and Motor Vehicle Safety Act; fee schedule, 41681
Negotiated rulemaking; future rulemaking proposals as suitable candidates, 60828

NOTICES

Alternate odometer disclosure requirements; approval petitions, 15893
Committees; establishment, renewal, termination, etc.:
Motor Vehicle Titling, Registration, and Salvage Committee, 28651
Emergency medical services:
"Star of Life" symbol; use by State and Federal agencies; criteria, 41316
Fuel economy program, automotive; annual report to Congress, 6837
Grants and cooperative agreements; availability, etc.:
Anti-collision devices using IVHS technologies; potential health hazards from wide-spread usage, 40183
Collision avoidance systems; development, evaluation, and deployment, 27766
Highway traffic safety intern program, 34612
Traffic safety for young adults at job training sites, 38160
Traffic safety materials development for State/local officials, 34615
Highway safety program; breath alcohol testing devices:
Model specifications and conforming products list—
Calibrating units, 26030
Evidential devices, 26030
Insurance cost information booklet; availability, 16098
Meetings:
International Harmonization of Safety Standards, 17301
Motor Vehicle Safety Research Advisory Committee, 5444, 41833
Motor Vehicle Titling, Registration, and Salvage Advisory Committee, 34121, 45549, 53237, 61947
Research and development programs, 28909, 31998, 49089, 51900, 52341, 61138
Rulemaking, research, and enforcement programs, 11287, 12441, 29852, 44206, 60726
Motor vehicle defect proceedings; petitions, etc.:
AM-Safe, Inc., 26032
Grim, Frederick E., 34123
McCullough, Elaine, 9018
Meng, Eugene W., et al., 30214
Ralph Hoar & Associates, 27768
Skelton, Darlene E., 45372
Splayt, Linda J., 6569
Motor vehicle safety standards:
Motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc.; failure to comply; meeting, 43981, 45943
Motorcycle helmets manufactured by Fla's Choice Lite Lids Inc.; failure to comply; meeting, 47174
Motorcycle helmet standard compliance test demonstration, 13520
Nonconforming vehicles—
Importation eligibility; determinations, 4196, 4734, 5796, 6047, 6661, 11085-11088, 12301, 12979, 12980, 12981, 14242, 17639, 19147, 22014, 22016, 22017, 26179, 26180, 26583, 26584, 26586, 30216, 32561, 34121, 34122, 35068, 35069, 35070, 36246, 39855, 47175, 47176, 47177, 47524, 47525, 48086, 48704, 49542, 51125, 53017, 57666-57669, 60485, 60486, 60487, 60488, 60897, 65009, 65010, 65011, 67903, 67904, 67905, 69441
Motor vehicle safety standards; exemption petitions, etc.:
American Honda Motor Co., Inc., 29689
B.A.T., Inc., 30214, 45549
Babyhood Manufacturing, Inc., 58895
Blue Bird Body Co., 9235
Bugatti Automobili, S.p.A., 65008
Century Products Co., 68985

INDEX
VOL
58
1993
UMI

Chrysler Corp., 41315, 51400
Cosco, Inc., 36510
Diamond Coach Corp., 32987, 51666
Fisher-Price, Inc., 59511
Ford Motor Co., 3063, 16907, 25699, 44207, 44532, 58895
Freightliner Corp., 28653, 51899
General Motors, 9236, 16735, 18134, 32167, 33296
General Motors Corp., 31784, 48421
General Tire, Inc., 13296, 32564, 64793
Goodyear Tire & Rubber Co., 31999, 43008
Hackney & Sons, Inc., 36244
Kewet Industri, 7905
Mazda (North America), Inc., 8650
Nissan Motor Co., Ltd., 8651
Panoz Auto Development Co., 32168, 43007
Porsche Cars North America, Inc., 41321, 65617
Rover Group Ltd., 59780
Sekurit-Glas Union GmbH, 51126
Solectria Corp., 68189
Subaru of America, Inc., 7033, 16736
Suzuki Motor Corp., 16259
Suzuki Motor Corp., Inc., 32564
Thomas Built Buses, Inc., 60240
Toyota Motor Corp., 28910
Toyota Motor Corporate Services of North America, Inc., 51900
Tradewinds Conversions, Inc., 51667
Transportation Manufacturing Corp., 4197
TRW Inc., 7171
Volkswagen of America, Inc., 12442, 32565
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (1990–1991 CYs), 41834
Motor vehicle theft prevention standard; exemption petitions, etc.:
General Motors Corp., 11659, 44872
Saab Cars USA, Inc., 39853
Volkswagen of America, Inc., 28434
National Award for Advancement of Motor Vehicle Research and Development; eligibility requirements and request for nominations, 62180
Older persons, traffic safety plan; and younger and older drivers, safety issues, report to Congress; publications availability, 30084
Omnibus Transportation Employee Testing Act of 1991:
Devices to measure breath alcohol; model specifications, 48705
Safety standards, etc.; cost estimating marketing report; availability, 33482
Truck splash and spray reduction; report to Congress, 58589
Uniform Emergency Medical Services (EMS); pre-hospital data conference, 6048
Speed limit enforcement certification, 186

National Indian Gaming Commission

RULES
Freedom of Information Act; implementation, 44445
Indian Gaming Regulatory Act:
Class II and Class III gaming ordinances; approval, and background investigations and gaming licenses, 5802
Correction, 8449
Compliance and enforcement procedures, 5833
Correction, 8449
Editorial amendments, 16493
Management contract requirements and procedures, 5818
Correction, 8449
Reporting and recordkeeping requirements, 16495
Privacy Act; implementation, 5814
Correction, 8449
PROPOSED RULES
National Environmental Policy Act; implementation, 18353, 27967
Regulatory agenda, 25380, 57374
NOTICES
Annual fees payable by Class II gaming operations; fee rates, 12601, 59492, 65406
Indian Gaming Regulatory Act
Class III tribal gaming ordinances; approval, 48900, 65406

National Institute for Literacy

NOTICES
Agency information collection activities under OMB review, 31759, 36709
Grants and cooperative agreements; availability, etc.:
National Center for Adult Literacy and Learning Disabilities; establishment, 36782, 38589
State literacy resource centers—
Adult literacy staff development, 41962
Interagency performance measurement and reporting systems, 41940
Meetings, 6991, 8431, 16208, 21192, 30186, 40167
Advisory Board, 15167, 54174

National Institute of Corrections

NOTICES
Grants and cooperative agreements; availability, etc.:
Jail and mental health service linkages resource center, 33843
Program plan (1994 FY), 41808
Meetings:
Advisory Board, 6530, 31756, 52510

National Institute of Justice

NOTICES
Grants and cooperative agreements; availability, etc.:
Program plan (1993 FY), 16416

National Institute of Standards and Technology

PROPOSED RULES
Advanced technology program; implementation, 46919
National Voluntary Conformity Assessment System Evaluation (NVCASE) program; establishment, 39486
National Voluntary Laboratory Accreditation Program, 40087
NOTICES
Grants and cooperative agreements; availability, etc.:
Fire research program, 14379
Interoperability testing on BACnet communication protocol implementations; cooperative research and development consortium, 41735
Liposome immunoanalysis, 17206
Materials Science and Engineering Laboratory; ceramics, metallurgy, etc., 69346
Precision measurement program, 64295
Secure software encryption development consortium; integrated cryptographic key escrowing techniques, 44662
Standard reference data program, 60849
Information processing standards, Federal
Advanced data communication control procedures; proposed withdrawal, 60425
Applications portability profile; user interface component, 52475
Automated password generator, 51802
Computer graphics metafile; revision, 27710
Computer programs and automated data systems software summary, description, and computer magnetic tape file properties, description; forms withdrawn, 67396
Database language SQL, 31364, 33986
Data encryption standard, 69347
Escrowed encryption standard, 40791
Input/output interface standards, proposed withdrawal, 27712
Integrated services digital network (ISDN), 51804
Integration definitions for function modeling (IDEFO) and information modeling (IDEF1X), 67393
Massachusetts General Hospital Utility Multi-Programming System (MUMPS), 32518
POSIX; portable operating system interface for computer environments; revision, 27995, 29254
Raster graphics validation test service; one-year trial period, 60426
Secure hash standard, 27712
Spatial data transfer standard, 39792
Inventions, Government-owned; availability for licensing, 14201, 28854, 39793, 41736, 43614
Laboratory Accreditation Program, National Voluntary:
Calibration laboratories—
Program handbook development workshop, 21145
Technical guide workshop, 52947
Energy efficient lighting products program, 46624
Fasteners and metals testing and inspection laboratories; workshop, 8586
NVLAP commercial products testing program, 43865
Meetings:
Advanced technology program, 50903
Advanced Technology Visiting Committee, 8258, 25631, 44663, 60425
Computer System Security and Privacy Advisory Board, 11210, 14202, 28855, 37465, 43095, 44734, 58685
Fastener Quality Act Advisory Committee, 8258
In situ burning oil spill workshop, 67396
Lead-containing reference materials production; guidelines, 68631
Malcolm Baldrige National Quality Awards—
Board of Overseers, 3933, 53916
Panel of Judges, 3933, 28858, 39525, 49472
Open System Environments computer standards; implementors' workshops, 61863
Organic coating systems service life prediction improvement; cooperative research and development consortium, 68876
Weights and Measures National Conference, 34423, 68631
National Fire Codes
Fire safety standards, 40794, 63925
Technical committee reports, 40795, 63927
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Public Key Partners, 32105
Techtrol Cyclonetics, Inc., 26533
University of Maryland, 65346
Petroleum storage tanks; safe entry and cleaning standards; revision, 3934

INDEX
VOL
58
1993
UMI

Senior Executive Service:
Performance Review Board; membership, 31014
Voluntary product standards:
American softwood lumber standard, 40797

National Institutes of Health

RULES
Grants:
National Heart, Lung, and Blood Institute; prevention and control projects, 54297

NOTICES
AIDS and HIV-related disease; investigational new drugs expanded availability through parallel track mechanism; d4T (trade name Stavudine) IRB review waiver, 8600
Cognitive function and hypoglycemia in children with IDDM; protocol study, 40819
Committees; establishment, renewal, termination, etc.:
Alternative Medicine Program Advisory Committee, 8969
Alternative Medicine Program Advisory Council, 65727
Multidisciplinary Special Emphasis Panel, 11059
National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, 3962
Sickle Cell Disease Advisory Committee, 60667
Sleep Disorders Research Advisory Board, 57833
Grant and cooperative agreement awards:
Reckitt & Colman Pharmaceuticals, Inc., 28031
Grants and cooperative agreements; availability, etc.:
Adenosine derivatives biomedical use, 48069
Conocurvone; preclinical, clinical, and commercial development as antiviral agent in treatment of AIDS; license availability, 45901
Hormone interaction with novel hepatic orphan nuclear receptor; identification, 54362
Human respiratory syncytial virus; live attenuated vaccine viruses development, 47468
Novel heparin-binding peptides; scientific and commercial development, 32154
Recombinant toxin to treat cancer; scientific and commercial development, 19465, 52318
Scientific and commercial development of vaccine to prevent human genital tract infection by human papillomaviruses, 18103
Stabilized nitric oxide complexes; biomedical use, 5743
Inventions, Government-owned; availability for licensing, 7792, 8600, 11863, 19135, 19674, 25654, 31728, 38579, 39825, 43898, 45494, 48070, 54160, 58556, 68917
Meetings:
Acquired Immunodeficiency Syndrome Program Advisory Committee, 14582
Advisory Committee to Director, 27737, 28886, 33277, 44687, 60865
Alternative Medicine Ad Hoc Panel, 16537
Alternative Medicine Office, 34470
Bionutrition Group, 26793
Disease prevention research at NIH: an agenda for all; conference, 49053
Early identification of hearing impairment in infants and young children; consensus development conference, 8601
Fogarty International Center Advisory Board, 572, 19826, 43364, 68920
Genome Research Review Committee, 11059, 32713, 64589
Human Genome Research National Advisory Council, 572, 21732, 42978, 64959
National Cancer Institute, 572, 3037, 3288, 5010, 5997, 5998, 6287, 7151, 7793, 8969-8971, 13605, 13783, 15503, 16689, 17419, 17420, 21587, 21734, 26339, 28590, 28591, 28592, 30793, 33277, 35962, 42080, 42980, 43364, 43365, 47150, 48071, 48072, 48893, 51634, 53742, 54161, 54162, 58174, 58868, 58869, 62359, 65189, 68920
National Center for Nursing Research, 573, 29234, 31043
National Center for Research Resources, 5745, 5746, 6801, 29837, 40820, 42080, 51634
National Eye Institute, 573, 11240, 31216, 42979, 54363
National Heart, Lung, and Blood Institute, 573, 574, 5745, 6641, 6801-6803, 8601, 8602, 11060, 11413, 11414, 12047, 17421, 18219, 18220, 19675, 21735, 21736, 26144, 28986, 29237, 29836, 31216, 31412, 34471, 35024, 36416, 39826, 42979, 46208, 51094, 51364, 51635, 53741, 54162, 54596, 58341, 60667, 61713, 61714, 68921
National Institute of Allergy and Infectious Diseases, 3289, 3962, 5011, 21733, 27576, 29234, 29834, 44688, 45903, 48071, 61714, 66005
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6800, 8602, 16196, 29235, 32714, 35961, 58558
National Institute of Child Health and Human Development, 6800, 18410, 25655, 27576, 43365, 50946, 58341, 61715
National Institute of Dental Research, 3291, 5011, 5998, 13496, 29236, 29835, 43365, 50364, 58870, 68921
National Institute of Diabetes and Digestive and Kidney Diseases, 3289, 3963, 7151, 8600, 11059, 16197, 18219, 19136, 19137, 19826, 25996, 27577, 29236, 32539, 35023, 37961, 42081, 42980, 42981, 50947, 50948, 58559, 58871
National Institute of Environmental Health Sciences, 574, 13784, 18220, 27577, 35024, 42978, 50949, 54363
National Institute of General Medical Sciences, 574, 5010, 5011, 17421, 29237, 38132, 47151, 66005
National Institute of Mental Health, 575, 5011, 5999, 6287, 8971, 17897, 21736, 21737, 28592, 28593, 29422, 32360, 32539, 33828, 45905, 47152, 50364, 50949, 53519, 66006
National Institute of Neurological Disorders and Stroke, 576, 21588, 25655, 35024, 47153, 66006
National Institute of Nursing Research, 42979, 50365
National Institute on Aging, 3288, 11239, 12246, 19826, 21733, 29834, 32538, 35023, 42978, 42980, 44687, 46208, 50009, 51365, 58559, 62678
National Institute on Alcohol Abuse and Alcoholism, 3288, 5744, 8969, 28594, 28595, 30793, 45902, 45903, 58174
National Institute on Deafness and Other Communication Disorders, 577, 3290, 5745, 7152, 11059, 11060, 13496, 14218, 15504, 17421, 19136, 19826, 21734, 21735, 29235, 29835, 31043, 31044, 32538, 32539, 35023, 38132, 39825, 43366, 45904, 48072, 48660, 50561, 50947, 51635, 53519, 55076, 58870, 64959, 66007, 68921
National Institute on Drug Abuse, 3290, 8971, 14583, 21735, 30794, 35023, 47154, 50948, 54162, 55076, 68922
National Library of Medicine, 577, 7152, 18220, 19827, 29238, 42082, 44347, 45904, 45905, 47154, 50365, 50949, 60865, 66005
Office of Research on Women's Health, 12366, 34471
President's Cancer Panel, 8602, 14583, 16689, 34471, 36416, 44688, 58175, 68920
Recombinant DNA Advisory Committee, 8500, 26676, 31045, 44098, 59612
Research Grants Division Advisory Committee, 11414, 50950
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 8292, 11240, 14416, 15354, 19273, 32714, 33829, 35025, 36417, 38580, 39221, 39826, 40661, 43366, 43644, 50365, 52319, 53208, 57617, 58705, 62129, 62359, 64408, 64960, 67803
Research Grants Division study sections, 3291, 7153, 27577, 31044, 43367, 47154, 66002
Sponsored Research Agreements Forum, 69369
Warren Grant Magnuson Clinical Center, Scientific Counselors Board, 51636
Women's Health Initiative Program Advisory Committee, 19676, 52319
National Center for Research Resources strategic plan, 27294
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Advanced Peptides, Inc., et al., 8603
Alpha platelet-derived growth factor (PDGF) receptor gene, 6287
Antigen-specific T-cell death for treatment of autoimmune disorders and graft rejection, 60667
Anti-viral agent, 42082
Biocine Co., 39222
Conocurvone as antiviral agent useful in treatment of acquired immunodeficiency syndrome (AIDS), 64960
Endotracheal tubing; apparatus and method of making, etc., 48072
Fort Dodge Laboratories, 578
HIV DNA integration; assay system for identifying potential anti-retroviral (anti-HIV) drugs, 43900
Kowa Co., Ltd., 62677
Modified adeno-associated virus vector, 42081
Recombinant pseudomonas exotoxin immunoconjugate specifically directed against the Lewis Y antigen, 38580, 38581
Sanyo-Kokusaku Pulp Co., Ltd., 8603
Privacy Act:
Systems of records, 4206, 31967, 45111, 69003
Public Health Service 398, etc., research grant application kits; committee to revise, 17897
Recombinant DNA molecules research:
Actions under guidelines, 9102, 21737, 47906, 47907, 53814
Proposed, 8500, 26676, 31045, 44098, 59612
Therapeutic human fetal tissue transplantation research; support and conduct; guidelines withdrawn, 45495

National Labor Relations Board

RULES
Privacy Act; implementation, 42234

PROPOSED RULES
Court decisions; union fees and dues; exaction limitations, 7199, 10997, 15314
Privacy Act; implementation, 57572

NOTICES
Meetings; Sunshine Act, 36006
Organization, functions, and authority delegations:
General Counsel et al., 64340
Privacy Act:
Systems of records, 50957, 57633
Senior Executive Service:
Performance Review Boards; membership, 4447

National Mediation Board

NOTICES
Senior Executive Service:
Performance Review Board; membership, 30819

National Oceanic and Atmospheric Administration

RULES
Antarctic living marine resources catches; harvesting and reporting; conservation and management measures, 39451
Civil procedures:
Civil penalties; ability to pay, 58484
Endangered and threatened species:
Sacramento River winter-run chinook salmon, 33212
Saimaa seal, 26920
Sea turtle conservation; approved turtle excluder devices, 54066
Sea turtle conservation; shark gill net fisheries—
Observer requirement, 33220
Sea turtle conservation; shrimp trawling requirements, 2990, 43820
Leatherback sea turtles; fishery activities restrictions, 28790
Tow-time limits, 48975
Turtle excluder device exemption, 19631, 28793, 33219, 38537
Turtle excluder devices; list additions, 28795
Sea turtle conservation; summer flounder trawling requirements—
Temporary turtle excluder device requirements, 4088, 8554, 48797
Sea turtle conservation requirements; gill net fisheries, 17364
Snake River sockeye salmon, etc.—
Critical habitat designation, 68543
Steller sea lion—
Buffer zone exemptions, 5642
Critical habitat designation, 45269, 53138, 58594
Navigational transit through rookery buffer zones, 16369
Fishery conservation and management:
Alaska high seas salmon; CFR correction, 12336
American lobster, 34001, 68555
Atlantic mackerel, squid, and butterfish, 38980
Atlantic sea scallop, 4944, 7040
Atlantic shark, 21931, 27336, 27482, 40075, 40076, 68556
Atlantic surf clam and ocean quahog, 11198, 14340, 59197
Atlantic swordfish, 32311, 33568, 37443, 42880, 58507
Atlantic tuna, 48464
Bering Sea and Aleutian Islands groundfish, 504, 5660, 5662, 7040, 8703-8712, 9129, 11199, 11381, 11986, 12336, 13561, 13826, 14172, 14524, 15291, 16374, 16446, 16797, 17196, 17366, 17367, 19213, 21627, 21951, 25952, 26072, 27216, 28522, 28799, 29362, 29793, 30130, 30997, 32003, 32615, 32874, 34380, 34381, 34724, 34932, 35897, 37660, 39162, 39680, 41325, 42031, 42695, 42758, 43297, 43412, 44136, 44465, 45076, 45377, 45849, 47221, 47833, 50289, 50856, 50857, 51253, 52033, 52451, 53148, 54529, 57752, 58297, 58593, 58802, 59413, 60145, 61031, 65292, 65556, 69273
Bering Sea and Aleutian Islands king and tanner crab, 36900, 38727
Foreign fishing—
Western Pacific Region pelagic; longline fishing, 49438
Gulf of Alaska groundfish, 503, 504, 5660, 11985, 11986, 13214, 13561, 16372, 16373, 16786, 16787, 16797, 17196, 17806, 21218, 21545, 28520, 28799, 30129, 31679, 31680, 32003, 32064, 33345, 33778, 34002, 34380, 34723, 35897, 37660, 37870, 37871, 38167, 39456, 39457, 39680, 40075, 40601, 41191, 41438, 41640, 42255, 42256, 42503, 42694, 42758, 43412, 44287, 44889, 45849, 46095, 51791, 52032, 53148, 53668, 57752, 60801, 65556
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 3330, 4093, 4599, 10990, 11198, 16785, 45847, 51579, 51789, 58509, 68327, 69273
Gulf of Mexico and South Atlantic coral and coral reefs, etc., 29554
Gulf of Mexico and South Atlantic spiny lobster, 38978, 61845
Gulf of Mexico reef fish, 13560, 16371, 29556, 33025, 68325
Gulf of Mexico shrimp, 17169, 35897
Northeast multispecies, 32062, 33028, 33344, 49940, 55116
Northern anchovy, 38726, 45847
Ocean salmon off coasts of Washington, Oregon, and California, 26922, 31664, 39161, 42030, 43562, 44776, 46093, 48001, 50524, 53143, 59197, 68063
Pacific Coast groundfish, 2990, 3330, 11984, 16124, 16629, 21261, 21263, 21265, 21949, 27480, 31179, 31345, 46094, 47651, 49941, 52031, 64169
Pacific halibut, 17791, 51253
Pacific halibut, and Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; limited access management of fisheries of Alaska, 59375
Puerto Rico and U.S. Virgin Islands reef fish, 53145
Regional fishery management councils; consecutive terms served by voting members, 29553
South Atlantic shrimp, 57750
South Atlantic snapper-grouper, 11979, 21111, 35895, 36155, 41438
South Atlantic snapper-grouper; correction, 38813
Summer flounder, 5658, 8557, 11381, 13560, 21261, 27214, 27215, 31234, 35891, 39680, 40072, 41191, 45075, 49937, 52685, 59196, 61844, 62050, 62556, 65134, 65936, 68555
Western Pacific bottomfish and seamount groundfish, 26255, 29454
Western Pacific crustacean, 21409
Western Pacific Region pelagic, 14170, 17642, 67699, 26255
Marine mammals:
Bottlenose dolphins in U.S. Mid-Atlantic coastal-migratory stock depletion; taking and importation restrictions, 17789
Commercial fishing operations—
Tuna (yellowfin) caught with purse seines in eastern tropical Pacific Ocean; incidental taking and importation, 29127, 42030, 63536
Eastern spinner dolphins; listing as depleted, 45066
Incidental taking—
Legislative environmental impact statement and regime to govern interactions, 51788
On-ice seismic activity; ringed seals, 4091
Northern offshore spotted dolphin; listing as depleted, 58285
North Pacific fur seals—
Subsistence taking; Pribilof Islands, AK, 42027, 58297
Steller sea lion—
Buffer zone exemptions, 5642
Critical habitat designation, 45269, 53138
Navigational transit through rookery buffer zones, 16369
Protection areas, 53138
Taking and importing; moratorium waiver, 65133
Marine sanctuaries:
Flower Garden Banks National Marine Sanctuary, LA and TX, 65664
Monterey Bay National Marine Sanctuary, CA, 15271
Stellwagen Bank National Marine Sanctuary, MA, 53865
National estuarine research reserve system program regulations, 38214
National Marine Sanctuary program regulations, 60778
National Weather Service modernization, 64088
Pacific Salmon Commission:
Fraser River sockeye and pink salmon, 54307
Regional fishery management council guidelines; meetings conduct; voting procedures, 50288, 57968
Tuna, Atlantic bluefin fisheries, 26921, 32872, 36154, 44776, 45074, 45286, 49437, 50523, 53434, 53668, 63104
Tuna, South Pacific fisheries, 33565

PROPOSED RULES
Atlantic shark, tuna, and swordfish fisheries; issues; meetings, 45878, 46153, 59008
Endangered and threatened species
Central California coho salmon; status review, 33605
Deer Creek summer steelhead; critical habitat designation, 68108
Findings on petitions, etc., 34779
Harbor porpoise; Gulf of Maine population, 3108, 17569, 59230
Hearing, 31490
Johnson's seagrass, 48326
Correction, 49352
Mid-Columbia River summer chinook salmon; critical habitat designation, 46944
North and South Umpqua River sea-run cutthroat trout, 38554, 65961
Northern right whale—
Critical habitat designation, 29186, 38553, 41454
Oregon coho salmon; critical habitat designation, 57770
Sacramento River winter-run chinook salmon, 31688, 47710, 53703
Sea turtle conservation; shrimp trawling requirements—
Tow time limits; permanent compliance, 30007
Snake River sockeye salmon, etc.—
Critical habitat designation, 7206

National Park

INDEX
VOL
58
1993
UMI

Steller sea lion—
Critical habitat designation, 17181, 21218, 34238
Status review and request for information, 58318
Fishery conservation and management:
Atlantic sea scallop, 42522, 46606, 63329
Atlantic surf clam and ocean quahog, 31938, 58681
Atlantic swordfish, 68109
Bering Sea and Aleutian Islands groundfish, 17196, 17200, 17821, 19087, 21695, 29564, 40617, 44643, 45878, 53497, 57803, 57979, 59980, 60584, 65574, 68386, 68848
Gulf of Alaska groundfish, 532, 6574, 6677, 17193, 17196, 17821, 29381, 29564, 40617, 44643, 57979, 59980, 60575, 64798, 68848
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 36632, 40613, 47428, 54108
Gulf of Mexico and South Atlantic coral and coral reefs, 65327
Gulf of Mexico and South Atlantic spiny lobster, 32639
Gulf of Mexico reef fish, 12018, 15132, 19152, 29805, 48502, 52063, 52073, 52474, 57771, 59230, 68385
Correction, 55116
Incidental taking—
Dolphin safe research program, 31186
Gulf of Mexico; bottlenose and spotted dolphins, 33425
Underwater detonation of conventional explosives; pinnipeds and cetaceans; meetings, 53491
Northeast multispecies, 26091, 52073, 57774, 59232, 61671
Northeast Region general fisheries permit and reporting procedures, 53172
Ocean salmon off coasts of Washington, Oregon, and California, 57978
Pacific Coast groundfish, 126, 4146, 7525, 14543, 14549
Pacific halibut, 9138, 67762
Puerto Rico and U.S. Virgin Islands reef fish, 34982, 39186
South Atlantic shrimp, 37456, 40614
South Atlantic snapper-grouper, 13732, 31005, 53183
Summer flounder, 12017, 15463, 16519, 18365, 27987, 28386, 30140, 33243, 44318, 47245, 64393
Western Pacific Region pelagic, 26090
Marine mammals:
North Pacific fur seals—
Subsistence taking; Pribilof Islands, AK, 32892
Protected species special exception permits, 53320, 64285, 68848
Meetings, 58680
Taking and importing; fisheries certificate of origin; reporting and recordkeeping requirements, 60829
Whales, dolphins, porpoises, seals, and sea lions; guidelines for approach by people, vessels, and aircraft; withdrawn, 16519
Yellowfin tuna; import definition, 59007
Marine sanctuaries:
Vessel traffic regulations for offshore California national marine sanctuaries; port of access routes; study, 44634, 65686
National Weather Service modernization, 18316
Criteria, 64202
Oil Pollution Act:
Natural resource damage assessments; status report, 4601
Rulemaking petitions:
Center for Marine Conservation, 21967, 34981
National Fishing Association; Atlantic highly migratory species, 67761
Tuna, Atlantic bluefin fisheries, 32894, 33793, 34981

NOTICES

Capital construction fund, nonqualified withdrawals; interest rates, 40183
Chesapeake Bay National Estuarine Research Reserve, VA; component sites consideration, 31014
Coastal nonpoint source pollution State program guidance documents; availability, 5182
Coastal Zone Management Act:
Public participation; policy guidance issuance, 58840
Coastal zone management programs and estuarine sanctuaries:
Boundary recommendation information; availability, 18079
Consistency appeals—
Barceloneta Municipality, 5958
Chevron U.S.A., Inc., 12027
Colon, Carlos A. Cruz, 59013
Crosby, Henry, 5958
Guerrero-Calderon, Jorge L., 25970
Harris, Robert E., 86
Mobil Exploration & Production U.S. Inc., 12028
Pappas, Claire, 3934
Union Exploration Partners, Ltd., et al., 12028
Virginia Electric & Power Co., 6247
State programs—
Evaluation findings availability, 4982, 42054, 46630
Intent to evaluate performance, 4982, 12361, 21705, 50349, 68390
Committees; establishment, renewal, termination, etc.:
Modernization Transition Committee, 38117
Sea Grant Review Panel, 52275
White House Science and Technology Policy Office Environmental Technology Working Group, 68393
Deep seabed mining; exploration licenses, 33933
Application receipt, 34782
Endangered and threatened species:
Gray whale, 3121
Illinois River winter steelhead in Oregon; status review, 29390
Northern offshore spotted dolphin, 3136
Northern right whale; critical habitat designation, 63157
Pacific salmon; artificial propagation policy, 17573
Recovery plans—
Steller (northern) sea lion, 3008
Snake River sockeye salmon, 8258
Steller sea lion—
Rookeries; buffer zone, 4156, 31943
Environmental statements; availability, etc.:
American lobster fishery, 64929
Atlantic bluefin tuna fishery, 343
Atlantic mackerel, etc., 3012
Electromagnetic radiation effects, 38117
Ohio coastal management program, 58842
Tilefish fishery, 11217
Weakfish under U.S. jurisdiction, 57808
Fishery conservation and management:
Gulf of Alaska groundfish, 39794, 42758, 54553
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 35914
Highly migratory species; management process, 49966
Pacific Coast groundfish, 36397
Pacific halibut, etc., 33798, 38167
Tilefish fishery entry control date, 33081
Western Pacific bottomfish and seamount groundfish, 68631
Fishery management councils; hearings:
Gulf of Mexico—
Coastal migratory pelagic resources, 60606, 60851
Mid-Atlantic—
Summer flounder, 3935, 54554
New England and Mid-Atlantic—
Goosefish, 7879
New England—
American lobster, 58327
Atlantic sea scallop, 11846
Northeast multispecies, 61070
South Atlantic—
Coastal migratory pelagic resources, 60606
Fishery product inspection and certification; fees and charges, 16399
Western Pacific—
Bottomfish, 7881
Galveston Bay oil spill; State/Federal natural resource damage assessment plan; document availability, 12938
Grants and cooperative agreements; availability, etc.:
Antarctic marine ecosystem, projects to provide information on, 37465, 38558
Climate and global change program, 35428
Fishing industry research and development projects—
Gulf of Mexico and South Atlantic (North Carolina to Florida); fishery resources use, 5708, 33082, 67768
Saltonstall-Kennedy grant program, 37707
John A. Knauss Marine Policy fellowship, 43341
National estuarine research reserve system, 34031
Nondiscretionary financial assistance guidelines, 45487
Oyster disease research, 51806
Marine mammals:
Commercial fishing operations; incidental taking and importing—
Fisheries associated with exemption procedures; list, 32905
Yellowfin tuna, 3013, 3014
Incidental taking; authorization letters, etc.—
ARCO Alaska, Inc., 27998, 51315
Western Geophysical et al., 11399
Meetings:
Alaska groundfish fisheries—
Catch measurement, 63571
National Marine Fisheries Service observer program, 50350
Caribbean Fishery Management Council, 6476, 16176, 30151, 41085, 51619, 57810
Climate and global change program; conference, 50904
Crab Interim Action Committee, 32654
Delaware National Estuarine Research Reserve; management plan, 26738
Florida Keys National Marine Sanctuary Advisory Council, 8259, 26738, 31188, 38118
Gulf of Mexico Fishery Management Council, 537, 8933, 9148, 11399, 21283, 21284, 26287, 32106, 34424, 34783, 36653, 41243, 45314, 46631, 53499, 53916, 54331, 58327, 58328, 58842, 65966, 67776, 68632
Hawaiian Islands Humpback Whale National Marine Sanctuary, HI, 12359

Hudson River National Estuarine Research Reserve, NY; final management plan, 6623
International Whaling Commission, 6951
Marine Fisheries Advisory Committee, 3015, 47888
Mid-Atlantic Fishery Management Council, 8934, 16176, 19653, 29198, 32345, 33085, 34783, 42721, 44172, 49473, 57810, 60180, 62105
National Weather Service, Modernization Transition Committee, 60851, 68631
New England Fishery Management Council, 3015, 9149, 16401, 27715, 34037, 41085, 49473, 52746, 57811, 63928
North Pacific Fishery Management Council, 3015, 13451, 16401, 17207, 18375, 19235, 31509, 33253, 33434, 41086, 44173, 45098, 46631, 50904, 58328, 58843, 62327, 64556, 68632, 68633
Pacific Fishery Management Council, 4411, 4984, 6476, 7547, 8259, 12029, 12939, 16176, 17207, 27544, 31015, 33085, 33799, 38751, 42946, 45314, 46632, 50350, 52746, 53916, 57811, 57989, 58843, 63336, 68876
Sea Grant Review Panel, 59013
South Atlantic Fishery Management Council, 4412, 18080, 29198, 32345, 40113, 42300, 45315, 58329, 65967, 68877
Striped bass emergency research study progress, 54332
Western Pacific Fishery Management Council, 4983, 12939, 13743, 14560, 19235, 21974, 31015, 33434, 42946, 43342, 44505, 47126, 48506, 58328, 60180, 61070, 63336
National Marine Mammal Tissue Bank; protocol and access policy; availability, 19653
National Weather Service; modernization; report, 344
Organization, functions, and authority delegations:
Mid-Atlantic Fishery Management Council, 58844
Permits:
Endangered and threatened species, 3935, 6116, 7213, 7547, 7769, 8740, 8741, 11039, 11040, 12578, 14202, 16522, 16523, 16524, 16650, 17383, 18205, 19089, 19654, 21284, 21285, 25810, 25811, 25971, 26288, 26739, 28394, 28561, 29392, 30775, 31188, 31368, 31369, 31370, 31944, 32913, 33434, 34037, 34244, 36187, 36653, 37715, 40113, 40114, 41736, 41737, 43867, 45881, 47433, 48354, 52477, 54121, 57989, 59014, 61864, 62328, 64556, 65346, 65702
Experimental fishing, 5716, 11399, 15484, 42947, 64296
Foreign fishing, 32345, 37470, 49473
Marine mammals, 3261, 4983, 5360, 6116, 6247, 6248, 6387, 7214, 7548, 7770, 8934, 11040, 11847, 12579, 13451, 14202, 14203, 14560, 16651, 16652, 16815, 17208, 17383, 17384, 18081, 18375, 19408, 21285, 25632, 25812, 26288, 27269, 27270, 28395, 28953, 29199, 29568, 29810, 31370, 31693, 31944, 31945, 32520, 32543, 32913, 33085, 33434, 33435, 33621, 33799, 34038, 34424, 34783, 35433, 36398, 36654, 36655, 37715, 37716, 38118, 38558, 39197, 39525, 39795, 40114, 40408, 41458, 42054, 42300, 42721, 42946, 42947, 43867, 44173, 44323, 44505, 45315, 45881, 47126, 47259, 48039, 48507, 48851, 49024, 52746, 53499, 53713, 54554, 57587, 57811, 58686, 59014, 60426, 60850, 61676, 62105, 64297, 64556, 65158, 65702, 67776, 68633
Rookery Bay National Estuarine Research Reserve, FL; management plan, 32521
Satellite-based fishing vessel monitoring systems; standards, 49285
Seafood inspection program; hazard analysis critical control point-based service, 30151
Senior Executive Service:
Performance Review Boards; membership, 46632
Surveying and mapping activities; North American Vertical Datum of 1988 affirmation, 34245
Whaling Commission, International:
Bowhead whale; strike quota, 12940
Catch limit algorithm; independent scientific peer review, 38118

National Park Service

RULES
Concession contracts and permits:
Competitive renewal; address change, 36598
Special regulations:
Golden Gate National Recreation Area, CA; bicycle routes; correction, 28505
PROPOSED RULES
National parks; recreational rock climbing regulations, 32878
National Park System; solid waste disposal sites; restriction on new sites, 65141
Special regulations:
Yellowstone National Park, WY; commercial traffic on U.S. Highway, 91, 48336
NOTICES
Boundary establishment, descriptions, etc.:
Appalachian National Scenic Trail, VT; right-of-way, 44692, 58706
Big Thicket National Preserve, TX, 63182
Buffalo National River wilderness plan, AR, 53746
Carl Sandburg Home National Historic Site, NC, 63182
Everglades National Park, FL, 63182
Fort Frederica National Monument, GA, 38783
Great Smoky Mountains National Park, TN, 59731
Harpers Ferry National Historic Park, WV, 116
Indiana Dunes National Lakeshore, IN, 117
Keweenaw National Historical Park, MI, 62133
Little River Canyon National Preserve, AL, 31217
New Jersey Coastal Heritage Trail Route, NJ, 50049
Committees; establishment, renewal, termination, etc.:
Little Bighorn National Monument Advisory Committee, 4180
Manzanar National Historic Site Advisory Commission, 444525
Preservation Technology and Training Board, 34589
Concession contract negotiations:
Acadia National Park, ME, 52506
Bandelier National Monument, NM, 35976
Buffalo National River, AR, 64967
Cape Cod National Seashore, MA, 11244
Chesapeake and Ohio Canal National Historic Park, MD; Swain's Lock, 57618
Denali National Park and Preserve, AK, 34587
Gateway National Recreation Area, NJ and NY, 60052
Grand Canyon National Park, AZ; Colorado River running services, 4180
Independence National Historical Park, PA, 29634
Indiana Dunes National Lakeshore, IN, 63183
Lake Chelan National Recreation Area, WA, 59064
Concessions rate administration program; staff manual chapter availability, 64800
Cuyahoga Valley National Recreation Area, OH:
Lease of lands, 34480
Sale of lands, 6294, 16415
Delaware Water Gap National Recreation Area; Camp Mohican use proposals, 19274
Environmental statements; availability, etc.:
Ala Kahakai (Ancient Shoreline Trail), HI, 65395
Allegany County, MD, 5443
Anacostia Park, Washington, DC; stadium construction and operation, 13796, 26985
Appalachian National Scenic Trail, VT, 44695
Bent's Old Fort National Historic Site, CO, 63390
Big and Little Darby Creeks, OH, 37964
Cabrillo National Monument, CA, 46650
California National Historic Trail and Pony Express National Historic Trail, CA, 27746
Cape Cod National Seashore, MA, 17427
Capitol Reef National Park et al., UT; road improvement alternatives, 28611
Capitol Reef National Park, UT, 8634
City of Rocks National Reserve, ID, 63183
Conata Basin/Badlands Area, SD; reintroduction of black-footed ferrets, 5707
Crater Lake National Park, OR, 60052, 64411
Creve Coeur Lake Memorial Park, MO, 34480
Denali National Park and Preserve, AK, 36699, 53746
Edison National Historic Site, NJ; site development plan, 8426
Foothills Parkway, TN, 52975
Fort Clatsop National Memorial, OR, 58706
Fort Laramie National Historic Site, WY, 60668
Gettysburg National Military Park/Eisenhower National Historic Site, PA, 59731
Grant-Kohrs Ranch National Historic Site, MT, 33944
Great Basin National Park, NV, 3042, 13503
Great Kills Park, NY, 4716
Hagerman Fossil Beds National Monument, ID, 29634
Hamilton Grange National Memorial, NY, 48672
Hamilton Grange National Memorial, NY; meeting, 32155
Independence National Historical Park, PA, 62371
Jewel Cave National Monument, SD, 38436
Katmai National Park and Preserve, AK, 31977
Lake Mead National Recreation Area, AZ and NV, 26344, 59065
Lake Mead National Recreation Area, NV, 7244, 21751
Lake Meredith National Recreation Area, TX, 36700
Lava Beds National Monument, CA, 53746
Manzanar National Historic Site, CA, 21751
Mississippi National River and Recreation Area, 32546
Palo Alto Battlefield National Historic Site, TX, 65729
Petrified Forest National Park, AZ, 13645, 26344
Presidio of San Francisco, Golden Gate National Recreation Area, CA, 54372
Prince William Forest Park, VA; meeting, 7157
Rock Creek Park Tennis Center, Washington, DC, 7574
Saguaro National Monument, AZ, 65395
Shenandoah National Park, VA, 45529

National Park

Statue of Liberty National Monument, NY; bridge to Ellis Island, 57618
Timpanogos Cave National Monument, UT, 17427, 63391
Tumacacori National Historical Park, AZ, 47282
Washington, DC; stadium construction and operation, 58706
Westfield River, MA, 8427
White House and President's Park; comprehensive design plan, 15161
Wind Cave National Park, SD, 38437
Wolf Trap Farm Park, VA, 62134
Yosemite National Park, CA, 53213, 65395
Grants and cooperative agreements; availability, etc.:
Urban park and recreation recovery rehabilitation and innovation program, 65191
Lead fishing sinker use prohibition on National Wildlife Refuges and National Parks; petition consideration, 31740
Management and land protection plans; availability, etc.:
Floodplain management guideline, 45119
Manassas Battlefield Park, VA, 18226
Natchez National Historical Park, MS, 26345
Trail of Tears National Historic Trail, 11623
Meetings:
Acadia National Park Advisory Commission, 19274, 42103, 60668
Cape Cod National Seashore Advisory Commission, 352, 8972, 12598, 26345, 45529, 60669
Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions, 36700
Chesapeake and Ohio Canal National Historical Park Commission, 3043, 17428, 44696, 64411
Civil War Sites Advisory Commission, 11869, 19140, 33280
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 16692, 29635, 36700, 50050, 60875
Delaware Water Gap National Recreation Area Citizens Advisory Commission, 19687, 21751, 58707
Delta Region Preservation Commission, 7244, 29634, 44378, 62371
Denali National Park Subsistence Resource Commission, 31978, 60669
Elwha River ecosystem and native anadromous fisheries restoration; availability and workshop, 52119
Farmington River Study Committee, 19275
Federal Subsistence Board; sheep season, 38783
Gates of Arctic National Park Subsistence Resource Commission, 15505, 38784, 53939
Gauley River National Recreation Area Advisory Committee, 7896, 11869, 13087
Gettysburg National Military Park/Eisenhower National Historic Site, PA; white-tailed deer management program, 6419, 59731
Gettysburg National Military Park Advisory Commission, 3043, 17907, 51381, 65730
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 26345, 30067, 34589, 40446, 53747
Gulf Islands National Seashore Advisory Commission, 42985
Jimmy Carter National Historic Site Advisory Commission, 15162, 54372
Lake Clark National Park Subsistence Resource Commission, 21751
Maine Acadian Culture Preservation Commission, 12598, 26346, 45530, 57620
Mississippi River Coordinating Commission, 6295, 11062, 25846, 43651, 50050, 58018, 68439
Mississippi River Corridor Study Commission, 15355, 33842, 51381
Missouri National Recreational River Advisory Group, 11061, 31218, 42574, 60209
Natchez National Historical Park Advisory Commission, 28413
National Capital Memorial Commission, 11418, 44194, 63184
National Capital Region; 1993 Christmas Pageant of Peace, 53747
National Park System Advisory Board, 34062, 39571, 65193, 65730
Native American Graves Protection and Repatriation Review Committee, 4441, 42103
Niobrara Scenic River Advisory Commission, 21186, 35976, 48373
Petroglyph National Monument Advisory Commission, 12598, 47756, 60209
Preservation of the White House Committee, 57620
Salt River Bay National Historical Park and Ecological Preserve at St. Croix, VI Commission, 43652, 58018
San Francisco Maritime National Historical Park Advisory Commission, 7244, 59731
Santa Fe National Historic Trail Advisory Council, 51381
Sleeping Bear Dunes National Lakeshore Advisory Commission, 32362, 68439
Sudbury, Assabet and Concord Rivers Study Committee, 12598, 26346, 34063, 42103, 60669
Trail of Tears National Historic Trail Advisory Council, 21752
U.S.S. Cairo; preservation measures, 28415
Underground Railroad Advisory Committee, 13645, 36700, 50051
Upper Delaware Citizens Advisory Council, 36701, 47914
Vancouver Historical Study Commission, 6974
Wrangell-St. Elias National Park Subsistence Resource Commission, 15162, 41486
Mining plans of operation; availability, etc.:
Bering Land Bridge National Preserve, AK, 6005
Lake Meredith National Recreation Area, TX, 16845
Wrangell-St. Elias National Park and Preserve, AK, 7245
Minute Man National Historical Park, MA; compatibility guidelines availability, 45530
National Register of Historic Places:
Eligibility determinations, 33105
National Historic Landmarks; boundaries establishment, 4180, 43905
Pending nominations, 352, 3964, 5018, 6130, 6807, 7815, 8634, 11062, 12049, 13088, 14221, 15505, 16845, 17907, 19275, 21315, 25846, 26558, 27746, 28992, 30067, 31218, 32155, 33106, 33943, 34588, 36220, 37965, 38784, 40155, 41292, 42574, 43652, 44697, 45916, 47157, 48077, 49058, 50565, 51844, 52976, 53939, 57619, 58564, 59732, 60463, 62135, 63184, 64411, 65396, 67417, 68659
Native American human remains and associated funerary objects:
Chugach region, AK, 19688
Field Museum of Natural History, IL; Sun Dance wheel, 44696
Gunther Island, CA; inventory, 6295
Hawaiian Islands, 19688
Heard Museum, AZ, 34818
Navajo County, AZ; inventory, 7574
Oahu, HI; inventory, 7575
Peabody and Essex Museum, MA; Hawaiian inventory, 579, 44697
Peabody Museum of Archaeology and Ethnology; inventory, 27309, 51845
Peabody Museum of Archaeology and Ethnology; Zuni war god figurine, 13796
Portland Art Museum, OR, 34818
Sand Creek, CO; inventory, 58177
Waimanalo, Oahu, HI; Phoebe Hearst Museum of Anthropology; inventory, 19689, 31414
New Bedford, MA; special resource study; document availability, 60670
Organization, functions, and authority delegations:
Land Resources Office, Chief, et al., 48077
Southwest Region; Superintenuents et al., 45119
Standard concession contract language; revision, 3140
Systemwide archeological inventory program; publication availability, 3965
World heritage properties list:
U.S. nomination process, 19689

National Science Foundation

RULES
Antarctic animals and plants, conservation; waste management and disposal regulations; enforcement and hearing procedures, 34713
Correction, 54522
Federal claims collection:
Administrative offset, 68772
Salary offset, 68769
PROPOSED RULES
Federal claims collection:
Administrative offset, 46600
Salary offset, 46597
Regulatory agenda, 25144, 57148
NOTICES
Agency information collection activities under OMB review, 21996, 34829, 39043, 39572, 41499, 42580, 43138, 43911, 47481, 51888
Antarctic Conservation Act of 1978; permit applications, etc., 119, 365, 5424, 7586, 8432, 25674, 28902, 29010, 30187, 33958, 35472, 37030, 37031, 39572, 41499, 42580, 42747, 43138, 43918, 45533, 45534, 47767, 48679, 49063, 50370, 51389, 51390, 51653, 53585, 53957, 54606, 59076, 59077, 59280, 59493, 60703, 62383, 63402, 64340, 64986, 64987, 68968, 69412
Committees; establishment, renewal, termination, etc.:
Astronomical Sciences Advisory Committee et al., 34280
Biological Sciences Advisory Committee et al., 47158
Ecological Studies Advisory Panel et al., 47158
Federal Networking Council Advisory Committee, 21599
High Performance Computing Blue Ribbon Panel, 119
Environmental statements; availability, etc.:
Antarctic program's food wastes management at McMurdo Station, Antarctica, 5763
Associated Universities, Inc., 12601
Hanford site, Richland, WA; Laser Interferometer Gravitational-Wave Observatory, 52979
Grant policy manual; changes, 51113
Grants and cooperative agreements; availability, etc.:
Advanced Technological Education, 44857

UMI

Graduate research traineeships program, 172889
Human Resource Development Division minority-focused programs, 45137
Undergraduate chemistry curriculum; systemic changes, 32729
Undergraduate education and human resources directorate, 68169
Meetings:
Advanced Scientific Computing Special Emphasis Panel, 46663
Alan T. Waterman Award Committee, 11426
Antarctic tour operators, 33845
Anthropological and Geographic Sciences Advisory Panel, 53217
Archaeology Advisory Panel, 17290
Archaeometry and Systematic Anthropological Collections Advisory Panel, 18229
Arctic Research Plan, third biennial revision, 16423
Arctic system science, 44195
Astronomical Sciences Advisory Committee, 17290
Astronomical Sciences Special Emphasis Panel, 16208, 46663, 54379
Atmospheric Sciences Advisory Committee, 18229
Atmospheric Sciences Special Emphasis Panel, 19874
Biochemistry and Molecular Structure and Function Advisory Panel, 16208, 17291, 51113, 52330
Biological and Critical Systems Special Emphasis Panel, 13508, 14592, 16209, 16212, 17291, 31978, 33469, 35473, 36709, 45137, 46663
Biological Instrumentation and Resources Special Emphasis Panel, 8066, 8997, 11426, 12256, 12376
Biological Sciences Advisory Committee, 26563, 29840, 35473, 38141, 60068
Biological Sciences Special Emphasis Panel, 60069, 63402
Cell Biology Advisory Panel, 16209, 21599, 52330, 54379
Chemical and Thermal Systems Special Emphasis Panel, 16209, 16210, 17291, 17434, 44196
Chemistry Advisory Committee, 13508, 14592
Chemistry Special Emphasis Panel, 3302, 18230, 44196
Cognitive, Psychological and Language Sciences Advisory Panel, 51114
Computer and Computation Research Division Special Emphasis Panel, 47298
Computer and Computation Research Special Emphasis Panel, 12376
Computer and Information Science and Engineering Advisory Committee, 7264, 26801, 52330, 60703, 63189
Critical issues in advanced science and engineering technician education; workshop, 21600
Cross-Disciplinary Activities Special Emphasis Panel, 16210, 17292, 19470, 21600, 51114, 60069, 65737
Cultural Anthropology Advisory Panel, 16210
Decision, Risk, and Management Science Advisory Panel, 18230
Design and Manufacturing Systems Advisory Committee, 28420
Design and Manufacturing Systems Special Emphasis Panel, 12376, 16851, 28420, 28421, 45138, 46663, 60069, 60070
Developmental Mechanisms Advisory Panel, 51114
DOE/NSF Nuclear Science Advisory Committee, 7160, 16210, 51114
Earth Sciences Advisory Committee, 7160, 34280
Earth Sciences Proposal Review Board, 45138
Earth Sciences Proposal Review Panel, 49063
Earth Sciences Special Emphasis Panel, 5763, 8997, 8998, 12602, 44196, 44197, 45138
Ecological Studies Advisory Panel et al., 48903
Ecology Advisory Panel, 12376
Economics Advisory Panel, 13508, 14224
Economics, Decision, Risk and Management Sciences Advisory Panel, 54380
Education and Human Resources Advisory Committee, 28421, 28637, 30819, 33469, 34281, 54380, 61105
Education and Human Resources Directorate; diversity in scientific and technological workforce; conference, 51115
Electrical and Communications Systems Advisory Committee, 8998
Electrical and Communications Systems Special Emphasis Panel, 18230, 19471, 19692, 21600, 26007, 27314, 30819, 34281, 34597, 35474, 46663, 47918, 60068
Elementary, Secondary, and Informal Education Division Special Emphasis Panel, et al., 44197
Elementary, Secondary, and Informal Education Special Emphasis Panel, 16423, 19692, 35474
Engineering Advisory Committee, 16717, 48537
Engineering Education and Centers Special Emphasis Panel, 13508, 16210, 19692, 31548, 54380, 65737
Environmental Biology Special Emphasis Panel, 12376, 12377, 14592, 21600, 44197
Equal Opportunities in Science and Engineering Committee, 5764, 31549, 53217
Experimental Programs to Stimulate Competitive Research Special Emphasis Panel, 19692, 26007, 32552
Federal Network Council Advisory Committee, 16211
Federal Networking Council Advisory Committee, 51115
Genetics Advisory Panel, 51115
Genetics and Nucleic Acids Advisory Panel, 18230, 19692, 26007, 52331
Geography and Regional Science Advisory Panel, 11873, 17292
Geosciences Special Emphasis Panel, 54380, 57842, 60070, 60071, 60704, 68170
Graduate Education and Research Development Special Emphasis Panel, 42111
High Performance Computing Blue Ribbon Panel, 365, 11075, 16717
History and Philosophy of Science Advisory Panel, 19693
Human Cognition and Perception Advisory Panel, 18230
Human Resource Development Special Emphasis Panel, 5764, 7160, 8066, 13509, 17292, 18231, 26007, 36710, 58880
Industrial Innovation Interface Special Emphasis Panel, 28421, 31549, 42111, 51115
Information, Robotics, and Intelligent Systems Special Emphasis Panel, 8067, 16211, 17292
Instrumentation and Instrument Development Advisory Panel, 59078
Integrative Biology and Neuroscience Special Emphasis Panel, 8067
Interagency Arctic Research Policy Committee, 16423, 32730
International Programs Special Emphasis Panel, 26563, 68170
Law and Social Science Advisory Panel, 18232, 21601
Linguistics Advisory Panel, 18232
Materials Research Advisory Committee, 31549
Materials Research Special Emphasis Panel, 3302, 4447, 7160, 13509, 16211, 17292, 18231, 26008, 28421, 32552, 33470, 44197, 48537, 54380, 62148
Mathematical and Physical Sciences Advisory Committee, 14593, 48903, 62148
Mathematical Sciences Advisory Committee, 21601
Mathematical Sciences Special Emphasis Panel, 3045, 5764, 12377, 17293, 48080, 48537, 51115, 62148
Mechanical and Structural Systems Special Emphasis Panel, 12055, 14593, 27315, 33470, 68170
Mechanical Systems Special Emphasis Panel, 45138
Microelectronic Information Processing Systems Special Emphasis Panel, 12377, 42112
Molecular and Cellular Biosciences Special Emphasis Panel, 8998, 16211, 44197
Networking and Communications Research and Infrastructure Special Emphasis Panel, 3981, 4447, 11873, 16212, 17293, 29436, 34597, 35474, 40677, 48904, 51116, 63189
Neuroscience Advisory Panel, 16212, 18232, 21996, 54381, 55086, 60068, 60071
Ocean Sciences Advisory Committee, 26008
Ocean Sciences Review Panel, 18233, 36710, 38141
Physical Anthropology Advisory Panel, 16212
Physics Advisory Committee, 21601
Physics Special Emphasis Panel, 3302, 13509, 26008, 29437, 57842
Physiology and Behavior Advisory Panel, 13509, 16212, 48903, 51116, 52512
Polar Programs Office Affairs Emphasis Panel, 44198
Polar Programs Office Committee of Visitors, 13509
Polar Programs Office Special Emphasis Panel, 45138
Polar Programs Special Emphasis Panel, 35474, 42112, 46664, 60071
Political Science Advisory Panel, 19693
Presidential Faculty Fellows Advisory Panel, 3302
President's Committee on National Medal of Science, 54381
Research, Evaluation, and Dissemination Special Emphasis Panel, 7160, 18233, 29641, 65737, 68968
Research on digital libraries initiative, 59078
Science and Technology Infrastructure Special Emphasis Panel, 32552, 35474
Science, Engineering, and Technology Federal Coordinating Council and Education and Human Resources Advisory Committee Expert Panel, 4448, 11075
Science Resources Studies Special Emphasis Panel, 8067, 44198, 57842, 68968
Small Business Innovation Research Special Emphasis Panel, 44198
Social and Economic Sciences Special Emphasis Panel, 16213, 21322, 28637
Social and Political Sciences Advisory Panel, 54381
Social, Behavioral and Economic Sciences Advisory Committee, 21601, 60071
Social Psychology Advisory Panel, 14593
Sociology Advisory Panel, 16213
Systematic Biology Advisory Panel, 16213
Systemic Reform Special Emphasis Panel, 65737
Undergraduate Education Special Emphasis Panel, 38141, 48537, 48905, 60068, 60072

INDEX
VOL
58
1993

National Science

Meetings; Sunshine Act, 3067, 6573, 7843, 12987, 26588, 32171, 41554, 52343, 60085
Organization, functions, and authority delegations, 7587
  Grants and Agreements Division et al., 30819
Privacy Act:
  Systems of records, 33673
Senior Executive Service:
  Performance Review Board; membership, 52512, 60069

National Technical Information Service

PROPOSED RULES
Scientific, technical, and engineering information; transfer by Federal agencies to NTIS, 27681

NOTICES
Inventions, Government-owned; availability for licensing, 19655, 39795
Meetings:
  Advisory Board, 7214, 25971, 39525, 62644
Patent licenses; non-exclusive, exclusive, or partially exclusive:
  Custom Industrial Analysis Laboratories, 52094, 68634
  Del Mar Environmental Technologies, Inc., 60607
  Kyowa Pharmaceutical, Inc., 16177
  Landon Resources Group, Inc., 59015
  Magainin Pharmaceutical, Inc., 30152
  NORAMCO Engineering Corp., 21285
  Organon International B.V. et al., 19655

National Telecommunications and Information Administration

RULES
Federal Radio Frequency Management Regulations and Procedures Manual; incorporation by reference, 44134

NOTICES
Committees; establishment, renewal, termination, etc.:
  Spectrum Planning Advisory Committee, 37717
Grants and cooperative agreements; availability, etc.:
  National Endowment for Children's Educational Television, 15222
  Public telecommunications facilities planning and construction program, 16072
International telecommunications services regulation; comprehensive examination, 4846
Meetings:
  Children's Educational Television Advisory Council, 3538
  Spectrum Planning Advisory Committee, 6388, 7881
  Spectrum Planning and Policy Advisory Committee, 40625
National information infrastructure:
  Agenda, 49025
  Universal service; hearing, 64395
Senior Executive Service:
  Performance Review Board; membership, 46162
Telecommunications role in hate crime study; report, 16340

National Transportation Safety Board

RULES
Equal Access to Justice; implementation:
  Attorney fees; cap adjustment, 21543
Practice rules:
  Civil penalty proceedings, 11379, 17531

PROPOSED RULES
Air safety proceedings; practice rules, 54102

NOTICES
Aircraft accidents; hearings, etc.:
  Guantanamo Bay NS, Cuba; American International Airways, Inc. accident, 62148
Highway accidents; hearings, etc.:
  New Orleans, LA; collision between towboat-pushed hopper barge and bridge, 51121
Meetings; Sunshine Act, 6165, 7844, 11097, 15521, 17924, 21332, 26812, 29026, 31438, 33144, 37767, 47180, 49351, 51902, 53997, 59516, 63210
Railroad accidents; hearings, etc.:
  Mobile, AL; AMTRAK Sunset Limited derailment, 53959

National Women's Business Council

NOTICES
Meetings; Sunshine Act, 13825, 26184, 50390

Navy Department

RULES
Navigation, COLREGS compliance exemptions:
  USS Ardent, 58102
  USS Barry, 51241
  USS Columbus, 44132
  USS Curtis Wilbur, 25945
  USS Cyclone, 8694
  USS Dextrous, 58103
  USS Gladiator, 28504
  USS Hartford et al., 61808
  USS Hurricane, 44133
  USS John Paul Jones, 4333
  USS John S. McCain, 50259
  USS Kearsarge, 4334
  USS Kidd, 64678
  USS Mississippi, 11191
  USS Monsoon, 60383
  USS Oldendorf, 36867
  USS Osprey, 50259
  USS Port Royal, 61809
  USS Rhode Island et al., 25944
  USS Santa Fe, 61809
  USS Tempest, 44455
  USS Typhoon, 60383
  USS Vella Gulf, 28503
Release of official information for litigation, 53883

NOTICES
Environmental statements; availability, etc.:
  Base realignment and closure—
    Dahlgren Division, Naval Surface Warfare Center, VA, 17873, 47722
    Marine Corps Air Station Cherry Point, NC, 60187
    Naval Air Station Lemoore, CA, 65162
    Naval Air Station, Pensacola, FL, 54123
    Naval Training Center, Great Lakes, IL, 52748
  Corpus Christi/Ingleside Naval Complex, TX; Navy Mine Warfare Center of Excellence establishment, 61079
  Davisville, RI; Naval Construction Battalion Center; disposal and reuse, 47723
  Element II, breakwater pier construction, Naval Station Everett, WA, 17873
  Guam from Philippines; facilities development and relocation of activities, 17874, 47434
  Long Beach Naval Hospital, CA; disposal and reuse, 27999
  Marine Corps; training in urban environment, 28397
  Marine Corps Base, Camp Lejeune, NC; wastewater treatment system upgrade, 33622
  Marine Corps Base Quantico, VA; solid waste management alternatives, 59716
  Naval Air Station Alameda et al., CA, 15488
  Naval Air Station Chase Field, TX; disposal and reuse decisions, 34994
  Naval Air Station North Island, CA; aircraft carrier construction facilities, 40409
  Naval Air Station Whidbey Island, WA; air operations management, 47724, 54124
  Naval Air Warfare Center Aircraft Division, Patuxent River, MD, 30041
  Naval Station, Mayport, FL; aircraft carrier facilities development, 52291
  Naval Station Puget Sound, WA; disposal and reuse, 61079, 62331
  Naval Weapons Station Earle, Colts Neck, NJ; fast combat support ships (AOE-6 Class) homeporting and support facilities construction, 6626
  San Diego, CA; dredged material disposal, 6627
Inventions, Government-owned; availability for licensing, 7127, 8934, 25974, 26966, 35438, 36189, 36191, 42725, 50351, 50353
Meetings:
  Chief of Naval Operations Executive Panel, 3017, 4984, 5961, 48355
  Chief of Naval Operations Executive Panel task forces, 5961, 9152, 11402, 13254, 13464, 14384, 18208, 25632, 25977, 26967, 27545, 28399, 30043, 31018, 33437, 34039, 34786, 40801, 43342, 48355, 48507, 49038, 52748
  Naval Academy, Board of Visitors, 15843, 48356, 64558
  Naval History Advisory Committee, 6780
  Naval Postgraduate School, Board of Advisors to Superintendant, 21563, 26300
  Naval Research Advisory Committee, 17578, 21146, 21297, 26967, 27715, 29571, 31019, 33437, 35922, 45882, 48639, 52291, 52479, 63337, 63930, 68880
  Naval War College, Board of Advisors to President, 25977
  Navy Exchange System Advisory Committee, 15844, 32109, 62331
  Planning and Steering Advisory Committee, 62106, 68880
Patent licenses; non-exclusive, exclusive, or partially exclusive:
  Brantner & Associates, 33934
  Etrema Products, Inc., 35439
  Extrema Products, Inc., 50353
  JohnCo Rental, Inc., 64734
  MarketPath Corp., 42725
  Medi-Train, Inc., 42305
  PMI Industries, Inc., 64734
  San'Doil Co., 36191
  SBS Engineering, Inc., 45102
  U.S. Alcohol Testing of America, Inc., 64734
  Wyle Laboratories, 58543
Privacy Act:
  Systems of records, 48852, 59710
Senior Executive Service:
  Performance Review Boards; membership, 48508

Neighborhood Reinvestment Corporation

NOTICES
Meetings; Sunshine Act, 8653, 28912, 47012, 68686

Nuclear Regulatory Commission

RULES
Acquisition regulations, 26253

UMI

Miscellaneous amendments, 47220
Acquisition regulations; correction, 8449, 12988
Byproduct material; domestic licensing:
Radiopharmaceutical reagent kits and elute radiopharmaceutical generators; use of radio pharmaceuticals for therapy, 39130
Combined construction permits and operating licenses; amendments, 69220
Conflict of interests, 3825, 29951
Criminal enforcement provisions; clarification; correction, 11886
Duplication fees, 38665
Export and import of nuclear equipment and materials:
High-enriched uranium used as fuel or target in nuclear research or test reactor, 57962
Fee schedules; revision, 44435
Fee schedules; revision; and U.S. Court of Appeals decision, 38666
Correction, 45553
Financial protection requirements and indemnity agreements; maximum standard deferred premium adjustment, 42851
Fitness-for-duty programs:
Strategic special nuclear material (Category I material) unirradiated formula quantities; licensees who possess, use, or transport, 31467
Licensed facilities decommissioning:
Recordkeeping and license termination; documentation requirements, 39628
Self-guarantee as additional financial assurance mechanism, 68726
Nuclear equipment and material; import and export:
Clarifying amendments, 12999
Operator licenses:
Nuclear power plants—
Personnel training and qualification, 21904, 39092
Organization, functions, and authority delegations:
Region III office, IL; telephone number and address change, 64110
Plants and materials; physical protection:
Facilities possessing strategic special nuclear material in unirradiated form; unannounced safeguards inspections to licensee and contractor personnel, 29521
Fixed sites and nonpower reactors; radiological sabotage protection clarification, 13699
Security personnel at Category I licensee fuel cycle facilities; day firing qualification courses, 45781
Correction, 48424
Practice rules:
Domestic licensing proceedings—
Policy statement, 14308, 17321
Production and utilization facilities; domestic licensing:
Nuclear power plants—
Final safety analysis report update submittals, 45243
Maintenance effectiveness monitoring, 33993
Nuclear power reactors; technical specifications improvements; policy statement, 39132
Radiation protection standards:
Irradiators, large; licensed radioactive material use; radiation safety and licensing requirements, 7715
Operations Center telephone number, 69219
Protection of individuals exposed to ionizing radiation from routine activities licensed by NRC; removal of expired material, 67657
Radioactive waste below regulatory concern; policy statements withdrawn, 44610
Correction, 50635
Waste oil disposal by incineration; correction, 11290
Radioactive wastes; land disposal licensing requirements:
Above ground disposal facilities, quality assurance program, etc., 33886
Spent fuel storage casks, approved; list additions, 17948, 51762
Whistleblower protection provision, 52406
Correction, 54646

PROPOSED RULES

Byproduct material; domestic licensing:
Radiopharmaceutical reagent kits and elute radiopharmaceutical generators; use of radiopharmaceuticals for therapy, 26938
Byproduct material; medical use:
Preparation, transfer for commercial distribution, and use of byproduct material for medical use, 33396
Emergency planning licensing requirements for independent spent fuel storage facilities (ISFSI) and monitored retrievable storage facilities, 29795, 45463
Equal Access to Justice Act; implementation, 41061
Export and import of nuclear equipment and materials:
Specific licensing of alpha-emitting radionuclides and byproduct material, 14344
Fee policy; changes, 21116, 39174
Fee schedules; revision; and U.S. Court of Appeals decision, 21662, 28801, 29454
Nonprofit educational institutions; generic exemption from annual fees, restoration, 50859
Fitness-for-duty program requirements; modifications, 15810
High-level radioactive wastes disposal, geologic repositories:
Investigation and evaluation of potentially adverse conditions, 36902
Licensed facilities decommissioning:
Self-guarantee as additional financial assurance mechanism, 3515
Licensee data submissal in computer readable form, 6098
License revocation, modification, or suspension, proceedings; workshop, 34726
Light water reactor designs, evolutionary; standard certification procedures, 58664
Operator licenses:
Comprehensive requalification written examination and operating tests, 29366
Plants and materials; physical protection:
Malevolent use of vehicles at nuclear power plants, 58804
Correction, 59965
Radiological sabotage; design basis threat review; meeting, 21546
Security personnel at Category I licensee fuel cycle facilities; annual physical fitness performance testing, 52035
Practice rules:
Domestic licensing proceedings—
Materials licensing adjudications; informal hearing procedures, 50858
Radiological criteria for decommissioning of NRC-licensed utilities; workshops, 8560, 19784, 29998
Production and utilization facilities; domestic licensing:
Alternating current power, loss; withdrawn, 37884
Emergency planning and preparedness; exercise requirements, 34539
Event reporting systems; NRC systems and guidelines clarification; meeting, 18167
Materials facilities decontamination and decommissioning timeliness, 4099
Nuclear power plants; final safety analysis report update submittals, 28523
Nuclear power plants; maintenance effectiveness monitoring, 15303
Prematurely shut down power reactors licensees, spent fuel management and funding plans, 34947
Public and radiation worker safety protection; workshop, 54531
Radiation protection standards:
Low-level waste shipment manifest information and reporting; meeting, 25578
NRC-licensed facilities; radiological criteria for decommissioning—
Generic environmental impact statement, 4363, 11839, 14178, 18049, 33570, 42882
Workshop, 4363, 11389, 14178, 18049, 26257
Radioactive waste below regulatory concern; withdrawn, 44620
Radioactive waste; procedures and criteria for on-site storage of low-level waste, 6730
Radioactive wastes; licensing requirements
Independent spent fuel storage installations and monitored retrievable storage installation; notification of events, 48004
Reactor site criteria:
Nuclear power plants; seismic and geologic siting criteria; Appendix A revision; meeting, 4946
Seismic and earthquake engineering criteria for nuclear power plants, 271, 16377
Regulatory agenda, 25384, 28523, 57378
Quarterly report, 11389, 42032, 60413
Requirements marginal to safety; elimination
Public workshop, 6196
Rulemaking petitions
Amersham Corp.; withdrawn, 44466
Envirocare of Utah, Inc., 9552
Grill, Richard P., 7757
Maryland Safe Energy Coalition, 47222
Mb-microtec (USA), 53670
Northeast Ohio Regional Sewer District, 54071
Nuclear Management and Resources Council, 53159
Schiager, Keith J., Ph.D., et al., 47676
University of Utah, 39173
Virginia Electric & Power Co., 12339
Washington and Oregon; high-level radioactive waste, definition revision; petition denied, 12342
Safety regulations, amendments; meeting, 27953
Source material; domestic licensing
Uranium mill tailings disposal; conforming requirements to Environmental Protection Agency standards, 58657
Spent fuel storage casks, approved; list additions, 5301, 19786
Spent nuclear fuel and high-level radioactive waste; independent storage licensing requirements
Interim storage in independent installation; site-specific license to qualified applicant, 31478, 48004
Whistleblower protection provisions, 33042

NOTICES

Abnormal occurrence reports:
Periodic reports to Congress, 6314, 26563, 38445, 54381
Quarterly reports to Congress, 3571, 21997, 37031, 52512

Nuclear

Agency information collection activities under OMB review, 366, 367, 3046, 3573, 3981, 5424, 5764, 6021, 6137, 6314, 6423, 6812, 6991, 6992, 12275, 12377, 13650, 15884, 16214, 18427, 19848, 25675, 26008, 26359, 26987, 28421, 29840, 29841, 31056, 32730, 49064, 50960, 51391, 52331, 54174, 54175, 59078, 59743, 64597, 64987, 67426
Committees; establishment, renewal, termination, etc.:
  Licensing Support System Advisory Review Panel, 68672
  Medical Uses of Isotopes Advisory Committee, 66384
  Reactor Safeguards Advisory Committee, 51118
  Three Mile Island, Unit 2 Decontamination Advisory Panel, 13288
Environmental statements; availability, etc.:
  Army Materials Technology Laboratory, 51654
  Atlas Corp., 52516
  Atlas Minerals Corp., 38796
  Babcock & Wilcox Co., 58711
  Bingham Engineering, 33675
  Boston Edison Co., 26169, 68672
  Carolina Power & Light Co. et al., 6813, 45535
  Cimarron Corp., 8432
  Cintichem, Inc., 66037
  Cleveland Electric Illuminating Co. et al., 65197, 65737
  Combustion Engineering, Inc., 6813
  Commonwealth Edison Co., 6814, 9576, 16717, 16880, 45923, 47001, 57635, 69412
  Connecticut Yankee Atomic Power Co., 31760, 43661
  Consolidated Edison Co. of New York, Inc., 67871
  Dairyland Power Cooperative, 61928
  Detroit Edison Co., 61928
  DowElanco, 28638
  Duke Power Co., 587, 588
  Duke Power Co. et al., 588
  Duquesne Light Co. et al., 58201
  Entergy Operations, Inc., 34829
  Envirocare of Utah, Inc., 11642, 47767
  Ferret Exploration Co. of Nebraska, Inc., 13651
  Florida Power & Light Co., 27584, 62685
  Florida Power Corp., 60468, 64987, 66385
  General Electric Co., 61929, 62383
  General Public Utilities Nuclear Corp., 60704
  Georgia Power Co. et al., 13806, 54606
  GPU Nuclear Corp., 6814, 12975, 68673
  GPU Nuclear Corp. et al., 47768
  Gulf States Utilities Co., 58201, 68969
  Hardened wetwell venting installation, 12276
  Hecla Mining Co., 29641
  Homestake Mining Co., 32734, 39584
  Houston Lighting & Power Co., 42112
  Houston Lighting & Power Co. et al., 68445
  Illinois Power Co. et al., 16555, 31549, 35475
  Indiana Michigan Power Co., 16555, 35984
  Iowa Electric Light & Power Co., 68179
  Iowa Electric Light & Power Co. et al., 28422
  Kerr-McGee Corp., 16718
  Long Island Power Authority, 49332, 60469, 61930, 68675
  Louisiana Energy Services, L.P., 62148, 68969
  Nebraska Public Power District, 33286
  Niagara Mohawk Power Corp., 37759
  North Atlantic Energy Service Corp. et al., 41525
  Northeast Nuclear Energy Co., 589, 5035, 17627, 29642
  Northern States Power Co., 45536
  Nuclear Fuel Services, Inc., 41809, 41810
  Omaha Public Power District, 5765, 21480, 41811
  Pacific Gas & Electric Co., 7899
  Petrotomics Co., 120, 12378, 27315
  Philadelphia Electric Co., 29010, 61930
  Philadelphia Electric Co. et al., 45536
  Portland General Electric Co., 16556, 19142
  Portland General Electric Co. et al., 33958, 51116, 51117, 60705, 61106
  Power Authority of State of New York, 5424, 37972, 41812
  Public Service Co. of—
    Colorado, 19693, 61931
  Public Service Electric & Gas Co., 48904
  Public Service Electric & Gas Co. et al., 62686
  Quivira Mining Co., 4720
  Rio Algom Mining Corp., 45139
  RMI Titanium Co., 59079
  Sacramento Municipal Utility District, 34065, 47481, 60883
  Shieldalloy Metallurgical Corp., 62384, 62387
  Southern California Edison Co., 61106
  Tennessee Valley Authority, 6423, 19281, 21602, 33676, 60470, 65423
  Texas Utilities Electric Co., 34065
  Toledo Edison Co. et al., 8068, 59080
  TU Electric Utilities Co., 5035, 5036
  Union Electric Co., 36482
  University of—
    California, 68445
    Kansas, 51655
    Texas, 53001
  Virginia Electric & Power Co., 6424, 11873, 11874, 14224, 28423, 40840, 52331
  Western Nuclear Inc., 33285
  Wolf Creek Nuclear Operating Corp., 55086
  Yankee Atomic Electric Co., 61107, 61108
Export and import license applications for nuclear facilities or materials, 7014, 12603, 15884, 30187, 65407
Generic letters:
  Acceptable inservice testing programs development; guidance, 65738
  Augmented inservice inspection requirements for Mark I and Mark II steel containments, refueling cavities, and associated drainage, 3302
  Design bases information; availability and adequacy, 15885, 64414
  Emergency diesel generators; accelerated testing and special reporting requirements removal from plant technical specifications, 44387
  Fire barrier systems used to separate redundant safe shutdown trains within same fire area; fire endurance acceptance criteria, , 39572
  Inaccuracy of motor-operated valve diagnostic equipment, 35476
  Instrument response time limits technical specification relocation tables, 18118
  Line-item technical specification improvements to reduce surveillance requirements for testing durin„ power operation, 16881, 58712
  Safety-related motor-operated valve testing and surveillance; meeting, 62687
  Schedule and grouping information, and staff responses to public questions, 39243
  Standards for protection against radiation, 68170
  Technical specification administrative control requirements for emergency and security plans, 17293
  Thermal-hydraulic instabilities in boiling water reactors; long-term solutions and upgrade of interim corrective actions, 39044, 44861
Geologic repository operations area underground facility, thermal loads; staff technical position availability, 4448
High-level waste pre-licensing program; bi-weekly notification of meetings, 7595
Low-level radioactive mixed waste; national profile availability (NUREG/CR-5938), 7265
Low-level radioactive waste disposal facilities; revisions to the license application review plan, 37529
Meetings:
  Advanced light water reactors; use of experience data, 29012, 39580
  American Nuclear Insurers policy; coverage for nuclear power plant emergency conditions, 58712
  Commercial grade procurement and dedication; workshop, 15167
  Compatibility of agreement State regulatory programs; public workshop, 35050
  CONTAIN Peer Review Committee, 26564, 42748
  Digital systems reliability and nuclear safety workshop, 37034, 47298
  Environmental qualification of electric equipment; workshop, 51891
  Evolutionary light water reactor designs certification; workshop, 53002
  Former Defense Logistics Agency property in Curtis Bay, MD; remediation, 27754
  Intergranular stress corrosion cracking; inspector training and qualification requirements, 57636
  International Nuclear Event Scale (INES) reporting system; NRC participation, 17911
  Licensing Support System Advisory Review Panel, 49064
  Medical Uses of Isotopes Advisory Committee, 7823, 21322, 34830, 53957
  Nuclear fuel cycle facilities integrated safety analysis; workshop, 40167
  Nuclear Management and Resources Council, 60706
  Nuclear Safety Research Review Committee, 15514, 30820, 34066, 34831, 47482, 52515, 59280, 61109, 67872
  Nuclear Utility Management and Resources Committee, 6815
  Nuclear Waste Advisory Committee, 3982, 6315, 7899, 13286, 13287, 28903, 33470, 34281, 37529, 40448, 44702, 47919, 53958, 62165, 63189, 63402, 63403, 66037
    Proposed schedule, 5426, 11258, 16124, 25849
  Plant components, aging and degradation research studies, 8998
  Power plant license renewal; workshop, 42987
  Reactor pressure vessel fluence evaluation; technical issues, 8999
  Reactor pressure vessel integrity issues; presentations on regulatory guides, 60471
  Reactor Safeguards Advisory Committee, 5425, 6021, 6022, 6315, 8999, 11258, 11874, 12279, 13110, 13287, 17295, 17434, 26170, 26171, 26359, 30188, 30820, 30821, 31221, 33846, 33959, 33960, 34831, 36483, 37034, 38797, 38798, 40168, 41112, 44704, 44861, 46248, 49064, 49332, 49531, 51391, 53001, 53749, 54384, 58020, 58713, 60223, 62149, 62165, 62391, 63189, 63190, 65600
    Proposed schedule, 5426, 11258, 16124, 25849, 34067, 39251, 43918, 54382, 68180
  Regulatory information conference, 14593
  Regulatory Review Group, 17911
  Seismic hazard estimates for eastern U.S. power plants, 11875
  State Liaison Officers, 46664
  Three Mile Island, Unit 2 Decontamination Advisory Panel, 47768

UMI

Water reactor safety information, 48537
Westinghouse Owners Group plans to re-evaluate fluence values for surveillance capsules, 42748
Whistleblower protection activities, 47299
Meetings; Sunshine Act, 124, 3328, 3330, 5450, 6165, 6853, 7038, 7295, 7844, 9023, 11097, 11665, 12304, 13126, 13682, 14244, 15521, 16739, 17305, 17924, 19295, 21332, 26036, 26813, 28912, 29027, 29253, 30086, 31233, 31438, 32172, 33144, 33985, 34841, 36514, 37768, 38463, 38811, 40186, 41323, 42360, 43410, 44733, 45376, 45552, 45945, 47317, 48090, 49092, 50390, 51902, 53021, 53997, 57675, 58592, 59296, 60730, 61727, 62414, 63210, 64352, 64440, 65426, 67441, 68686
Memorandums of understanding:
Food and Drug Administration; medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material; regulatory programs, 47300
NRC emergency response data system utilization—
Arizona, 26801
Arkansas, 65198
Maryland, 13510
Massachusetts, 36710, 37761
New Jersey, 21603
New York, 21605
Tennessee, 43920
Non-power reactors; licensing applications format and content, and safety analysis report review plan and acceptance criteria; chapters availability, 42581
NRC-licensed facilities decomissioning radiological criteria; enhanced participatory rulemaking electronic bulletin board and 800 number; availability, 37760
Nuclear power plant operating licenses renewal requirements; workshop results and staff proposals; paper availability, 67873
Nuclear waste and spent fuel shipments:
Governors' designees receiving advance notification; list, 35050
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 590, 5427, 6992, 8771, 12256, 14433, 15886, 16215, 16851, 19471, 25851, 26987, 28050, 30189, 31222, 32376, 34069, 36423, 39046, 41499, 43922, 46222, 48376, 50960, 52333, 52979, 57843, 59743, 62149, 64598, 67840
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
Combustion Engineering, Inc.; Hematite, MO, 17435
La Crosse Boiling Water Reactor, WI, 25676
Rancho Seco Nuclear Generating Station; Central Library, Sacramento, CA, 36484
Three Rivers Community-Technical College, CT, 67427
Uranium Recovery Field Office, CO; closure, 62688
Petitions; Director's decisions:
Advanced Medical Systems, Inc., 19282, 64341
All boiling water reactors, 60884
Arizona Public Service Co. et al., 367, 38445
Baltimore Gas & Electric Co., 12378, 44863
Boston Edison Co., 35053, 63192, 67427
Carolina Power & Light Co., 67873
Cleveland Electric Illuminating Co. et al., 50371
Detroit Edison Co., 18233
Energy Department, 64783
Florida Power & Light Co., 16558, 33286, 47919
Georgia Power Co. et al., 26360
Gundersen, Arnold, 62688
Houston Lighting & Power Co., 38446
Interstate Nuclear Services, Inc., 28423
Northeast Utilities, 44529, 46249, 47769, 48679, 63192
Nuclear Information and Resource Service, 8637, 31223
Nuclear Information and Resource Service et al., 7595
Philadelphia Electric Co. et al., 58203
Rosemount, Inc., 8796
Sequoyah Fuels Corp., 21481
Texas Utilities Electric Co., 6137, 6138, 35476
Vermont Yankee Nuclear Power Corp., 34832, 67428
Vermont Yankee Nuclear Power Station, 53958
Privacy Act:
Systems of records, 36455
Radiation exposure monitoring and information transmittal system; software package availability, 41526
Regulatory guides; issuance, availability, and withdrawal, 6022, 8796, 17628, 21606, 29239, 33675, 35985, 40169, 41299, 41526, 41813, 42748, 47159, 51392, 61932, 64598
Regulatory Review Group; draft material; comments request, 13808
Reports; availability, etc.:
Fault displacement and seismic hazards at geologic repository, investigations to identify; staff technical position, 14594
Livermore seismic hazard estimates for nuclear power plant sites east of Rocky Mountains, 57842
Radioactive waste classification; concentration averaging and encapsulation; staff technical position, 49333
Reactor vessel water level instrumentation in BWRs; issues resolution, 36712
Reference pressurized water reactor power station decommissioning, revised analyses; etc., 54385, 66386
Regulatory Review Group; report, 29012, 33285, 45139
Site investigation and characterization of sites for geologic repositories; proceedural agreement with DOE, 33470
Voltage-based interim plugging criteria for steam generator tubes, 35985
Safety analysis and evaluation reports; availability, etc.:
Tennessee Valley Authority, 22003, 66039
Senior Executive Service:
Performance Review Boards; membership, 29437
Staff meetings open to public; policy statement, 48080
Uranium mill tailing sites, reclamation plans; license amendment requests:
Pathfinder Mines Corp., 42990
Whistleblower protection; comment request, 41108
Applications, hearings, determinations, etc.:
ABC Testing, 30821
Advanced Medical Systems, Inc., 59493
Agriculture Department, 17436, 35053
Amax, Inc., 15886
American Testing & Inspection, Inc., 19500
Anchor/Darling Valve Co., 30822
Arizona Public Service Co., 60223, 62166
Army Department, 6815, 62167
Army Materials Technology Laboratory, 52798
Babcock & Wilcox, 46252
Baker Testing Services, Inc., 30823
Ball Memorial Hospital, 57636
Baltimore Gas & Electric Co., 14594, 39253
Baystate Medical Center, Inc., 5037
Boston Edison Co., 26171, 32552
Cameo Diagnostic Centre, Inc., 64341
Capital Materials Testing, Inc., 7903, 26564
Carolina Power & Light Co., 7904, 53218, 58021
Carolina Power & Light Co. et al., 8068
Castle Medical Center, 37530
Chemetron Corp., 58570
Chevron U.S.A., Inc., et al., 38446
Cleveland Electric Illuminating Co. et al., 13511, 17628
Cobin, Rhoda H., M.D., 32731
Columbus, OH, 38798
Commonwealth Edison Co., 606, 17914, 36485, 47769, 47920, 58571, 59493, 59495, 63403, 67873
Community Hospital South, 43947
Connecticut Yankee Atomic Power Co., 12379, 12976, 29012, 31979, 41814, 46249, 63405
Consolidated Edison Co. of New York, Inc., 32734
Consumers Power Co., 8638
Cooper Nuclear Station, 26988
Cramer & Lindell Engineering, Inc., 30824
Dairyland Power Cooperative, 63587
Detroit Edison Co., 46664, 49065, 57869, 63588
Duke Power Co., 11260, 29642, 39581, 53219, 62589
Duquesne Light Co., 17912, 25676
Duquesne Light Co. et al., 7161, 47303
Eastern Testing & Inspection, Inc., 6819, 38800
Edwards Pipeline Testing, Inc., 65601
Energy Fuels Nuclear, Inc., 43138
Entergy Operations, Inc., 44863, 51655, 54607
Envirocare of Utah, Inc., 62690
Florida Power & Light Co., 25678, 25874, 29013, 64344
Florida Power Corp., 64989, 68969, 69413
Gardecki, Richard J., 27755
General Electric Co., 63588
General Public Utilities Nuclear Corp., 62168
GE Nuclear Energy, 31761
Georgia Power Co., 37534, 52796
Georgia Power Co. et al., 6820, 8434, 8999, 42350, 47001, 58572, 59081, 60072, 60706
GPU Nuclear Corp., 19282, 42352, 48680, 60885
GPU Nuclear Corp. et al., 13809
Gulf States Utilities, 16246
Gulf States Utilities Co., 39255, 45139
Gulf States Utilities Co. et al., 47002, 54175, 65200
Gulf States Utilities Entergy Corp. et al., 68182
Houston Lighting & Power Co. et al., 34832
Illinois Power Co., 48396
Illinois Power Co. et al , 11264, 39259, 50572
Indiana Michigan Power Co., 13111, 18119, 39583, 42113
Indiana Regional Cancer Center, 61932, 67427
Innovative Weaponry, Inc., 34598, 38589
Iowa Electric Light & Power Co., 32735, 40841
Long Island Power Authority, 63589, 63590
Maine Yankee Atomic Power Co., 16423, 37972
Mallinckrodt Medical, Inc., 66386
Mayo Foundation, 45924
Minnesota Valley Engineering, 30825
N.V. Enterprises, 61718
Nebraska Public Power District, 26174, 35056, 35477
Niagara Mohawk Power Corp., 368, 28904, 43952, 47771
North Atlantic Energy Service Co. et al., 47773
North Atlantic Energy Service Corp., 46256
Northeast Nuclear Energy Co., 5038, 6023, 7265-7267, 19142, 26988, 31761, 42581, 49333, 51657, 59497, 60072, 65200

Northern States Power Co., 57638
Omaha Public Power District, 6822, 19144, 26009, 59280
Oncology Services Corp., 6825, 9224, 31056
Pacific Gas & Electric Co., 6827, 26177, 37974
Palo Verde Nuclear Generating Station, (Unit 1), 53585
Philadelphia Electric Co., 63591
Philadelphia Electric Co. et al., 17296, 47160
Pike Community Hospital, 31551
Portland General Electric Co., 7824, 16891, 21193, 46665, 52333
Portland General Electric Co., et al., 368, 17629, 35058, 52334, 62169, 62691
Power Authority of State of New York, 7596, 11871, 47162, 48082, 53959
Public Service Co. of Colorado, 26361, 63592
Public Service Electric & Gas Co., 34833, 46250
Radiation Oncology Center, 13810
Rhode Island Atomic Energy Commission, 15514
Sacramento Municipal Utility District, 34103, 47306, 51119, 51657, 62391
Safety Light Corp. et al., 7268, 12602
Sam-Son Inspection & Tech. Services, Inc., 30825
Sequoyah Fuels Corp., 6828, 8638, 50572, 55087, 63406
Shepherd, George D., 58880
South Carolina Electric & Gas Co., 11643
South Carolina Electric & Gas Co. et al., 37975
Southern California Edison Co., 62692
Southern California Edison Co. et al., 35986, 37534
Southern Nuclear Operating Co., Inc., 51889
Tennessee Valley Authority, 17296, 18233, 21481, 25680, 34281, 40677, 51120, 58203, 68182
Texas Utilities Electric Co., 7822, 21323, 37976
Texas Utilities Electric Co. et al., 19282
Toledo Edison Co. et al., 14225
Transnuclear, Inc., 42991
Trutom LTD., 30826
TU Electric Co., 30827
Tulsa Gamma Ray, Inc., 64345
Twin City Testing Corp., 30829
Twin Falls Clinic & Hospital, ID, 43390, 47002
Union Electric Co., 12602, 16247, 38448
University of Missouri Curators, 34103
University of—
  Kansas, 52798
  Missouri, 32736
  Texas at Austin, 54176
  Virginia, 26989
Velasquez, Guillermo, M.D., 41112
Venegas Industrial Testing Laboratory, 30830
Vermont Yankee Nuclear Power Corp., 13651, 16892
Veterans Affairs Department Medical Center, 50371
Virginia Electric & Power Co., 7014, 13652, 29841, 37535, 38449, 43662
Wahiawa General Hospital, 32400
Western Technologies, Inc., 16558
Westinghouse Electric Corp., 3982
Wisconsin Public Service Corp. et al., 9224, 58882, 65739
Wolf Creek Nuclear Operating Corp., 26565, 60887
Yale-New Haven Hospital, 26566
Yankee Atomic Electric Co., 19501, 62694, 62695

Nuclear Waste Technical Review Board

NOTICES
Meetings, 14452, 32376, 47775, 62695
Yucca Mountain site, NV; DOE's environmental activities, 53003
Yucca Mountain site, NV; Environmental and Public Health Panel's tour, 14452

Occupational Safety and Health Administration

RULES
Agriculture occupational safety and health standards:
  Cadmium; occupational exposure; correction, 21778
Construction safety and health standards:
  General industry safety and health standards applicable to construction work; incorporation, 35076, 40468
  Lead; occupational exposure, 26590
    Reporting and recordkeeping requirements, 34218
General industry and construction safety standards; amendments, 35306
Safety and health standards:
  Air contaminants, 35338, 40191
  Cadmium; occupational exposure; correction, 21778
  Confined spaces, permit-required, 4462, 34844
  Explosives and blasting agents; CFR correction, 16496
  Hazardous energy sources control (lockout/tagout), 16612
  Liquefied petroleum gases; storage and handling; CFR correction, 15089
Shipyard employment construction safety and health standards:
  Cadmium; occupational exposure; correction, 21778
Shipyard employment safety and health standards:
  Threshold limit values and toxic substance standards, 35512
PROPOSED RULES
Construction safety and health standards:
  Fall protection, 16515
  Scaffolds, 16509, 30131
Safety and health standards:
  2-methoxyethanol, 2-ethoxyethanol and their acetates (glycol ethers), 15526, 31923
Safety and health standards, etc.:
  Hazardous materials; markings, placards, and labels retention, 47690
NOTICES
Committees; establishment, renewal, termination, etc.:
  Construction Safety and Health Advisory Committee, 60702
  Occupational Safety and Health National Advisory Committee, 31220, 36423
Grants and cooperative agreements; availability, etc.:
  OSHA Training Institute education centers; pilot program, 62378
  Targeted training program, 29838, 35048
Meetings:
  Construction Safety and Health Advisory Committee, 6989, 25660, 35982, 41808, 48375, 66029
  Shipyard Employment Standards Advisory Committee, 4446, 17288, 32158
Nationally recognized testing laboratories, etc.:
  American Gas Association Laboratories, 47000
  Canadian Standards Association, 64973
  ETL Testing laboratories, Inc., 37749, 47001
  GTE TestMark Laboratories, 37750, 52795
  MET Laboratories, Inc., 37752, 61100
  Southwest Research Institute, 37752
  TUV Rheinland of North America, Inc., 61101
  Underwriters Laboratories Inc. et al., 37030
  United States Testing Co., Inc., 15509
State plans; standards approval, etc.:
  Connecticut, 51388
  Iowa, 51885
  Maryland, 34488, 45920
  Michigan, 52120
  New Mexico, 58189
  Oregon, 57628
  Utah, 37755
  Vermont, 58568
  Wyoming, 37756
Variance applications, etc.:
  Envirosafe Services, Inc., 50568

Occupational Safety and Health Review Commission

RULES
Organization, functions, and authority delegations:
  Address and phone number changes, 26065
NOTICES
Meetings; Sunshine Act, 9243, 52531, 53997, 60243

Office of Management and Budget

See Management and Budget Office

Office of Policy Development

NOTICES
Meetings:
  President's Council on Sustainable Development, 36249, 50373

Office of the Special Counsel

NOTICES
Agency information collection activities under OMB review, 609
Privacy Act:
  Systems of records, 62394

Office of United States Trade Representative

See Trade Representative, Office of United States

Overseas Private Investment Corporation

RULES
Conflict of interests, 33319
NOTICES
Agency information collection activities under OMB review, 32362, 32363, 47283, 53559
Hearings, 62171
Meetings; Sunshine Act, 124, 19515, 36006, 47783, 62715

Pacific Northwest Electric Power and Conservation Planning Council

NOTICES
Policy statement; amendments, 19694
Power plan amendments:
  Columbia River Basin fish and wildlife program, 30832, 64017

Packers and Stockyards Administration

RULES
Packers and Stockyards Act:
  Trade practices, scale test instructions, and advertising allowance guidelines, 52884
  Correction, 58902

INDEX VOL 58 1993 UMI

NOTICES
Central filing system; State certifications:
Minnesota, 36389
Oklahoma, 9558, 19404
Stockyards; posting and deposting:
Alamosa Auction, CO, et al., 42527
Barstow Sales Yard, CA, et al., 34028
Capital Stockyard, Inc., AL, 18367
Cash and Carry Livestock Sale, CA, et al., 51314
Clay County Livestock, Inc., AL, et al., 31495
Dairyman's & Cattleman's Beef Auction, CA, et al., 34028
Dill's Auction Service, DE, et al., 34028
Granger Trading Barn, MS, 18367
H Bar M Horse Auction, TN, et al., 54551
Kinder Livestock Auction, LA, et al., 9558
London Auction Barn, AR, et al., 18367, 42528
Osborn Livestock Auction, MO, 9558
Sand Mountain Feeder Pig Association, Inc., AL, et al., 31495
Southwind Horse Auction, SC, 35427
Tri County Marketing, NC, et al., 54551

Panama Canal Commission

PROPOSED RULES
Privacy Act; implementation, 53897
Regulatory agenda, 25186, 57186
NOTICES
Privacy Act:
Systems of records, 53966

Parole Commission

RULES
Federal prisoners; paroling and releasing, etc.:
Prisoners transferred to U.S. under prisoner-exchange treaties, 30703, 65547
Recorded audio and visual material consideration at parole hearings, 16612
Regional office file, disclosure, 51779
PROPOSED RULES
Federal prisoners; paroling and releasing, etc.:
Parole-eligible prisoners convicted of first-degree murder, 65572
Prisoners transferred to U.S. under prisoner-exchange treaties, 4126
Unlawful possession and distribution of ammunition by a prohibited person; offense behavior severity ratings, 65571
NOTICES
Meetings; Sunshine Act, 6165, 6676, 7606, 7843, 11665, 19515, 19700, 25898, 38811, 41554, 51669, 53243

Patent and Trademark Office

RULES
Patent cases
Abandoned patent applications revival and reinstatement of patents, 44277
Burden of proof, 49432
Correspondence practice changes; signature and filing requirements, 54494
Correction, 64154
Patent Cooperation Treaty provisions, 4335
Patent drawing standards, 38719, 45841
Practice and procedure; miscellaneous amendments, 54504
Correction, 64155
Trademark cases:
Correspondence practice changes; signature and filing requirements, 54494
Correction, 64154
PROPOSED RULES
Patent cases
Burden of proof, 528
Cross-appeals in disciplinary proceedings, 38994
Patent interference practice; separate claims patentability, 39704
Trademark cases:
Cross-appeals in disciplinary proceedings, 38994
Fee revisions, 39102
NOTICES
Economic aspects of U.S. patent system; hearings and comment request, 68394
Fastener Quality Act; recordation requirements implementation; information request, 42948
Meetings:
Trademark Affairs Public Advisory Committee, 6624, 47259
National information infrastructure initiative; intellectual property issues; hearing and comment request, 53917
Omnibus Trade and Competitiveness Act; process patent amendments; adverse effects on domestic industries; information request, 61677
Patent law harmonization; hearings and comment requests, 44323
Secrecy order inventions foreign filing; designated countries; Korea, 43615
Senior Executive Service:
Performance Review Board; membership, 50350
Software-related inventions; patent protection; hearings, 66347

Peace Corps

RULES
Federal claim collection; administrative offset, 2977
Privacy Act; implementation, 39656
PROPOSED RULES
Privacy Act; implementation, 31181
Regulatory agenda, 25190, 57190
NOTICES
Agency information collection activities under OMB review, 13515, 21324, 33471, 33960, 40844, 42991, 42992, 65201
Privacy Act:
Systems of records, 31223, 39839

Pennsylvania Avenue Development Corporation

PROPOSED RULES
Regulatory agenda, 25194, 57194
NOTICES
Agency information collection activities under OMB review, 44705
Meetings; Sunshine Act, 12631, 32568, 47783, 62186

Pension and Welfare Benefits Administration

PROPOSED RULES
Employee Retirement Income Security Act:
Qualified domestic relations orders; information request, 54444
Plan information disclosure to participants and beneficiaries; information request, 68339
NOTICES
Employee benefit plans; class exemptions:
Individual retirement accounts (IRAs) or retirement plans for self-employed individuals (Keogh Plans), 3561-3567, 31053, 61103
Employee benefit plans; prohibited transaction exemptions:
Ackman, Marek, Boyd & Simutis Profit Sharing Plan et al., 64010
American Express Co. et al., 38787
Apollo Fund, L.P., 28614, 51111
Atlanta Beverage Co., 51105
Bentley Nevada Corp. et al., 34820
Boor, John William, M.D., et al., 34824
Building Services 32B-J Health Fund et al., 8979
Chicago Corp. (TCC) et al., 31419
Chicago Corp. et al., 49322
Clow Stamping Co. et al., 5026
Day Runner, Inc., et al., 25660
Digital Wizards, Inc., et al., 5028
Dime Savings Bank of New York, FSB, 59737
Donohoe Restated Profit Sharing Plan & Trust et al., 62142
ELK Promotions, Inc., et al., 7251
Federal Paper Board Co., Inc., et al., 47288
Fletcher Printing Co. et al., 31430
Fred Hervey Interests et al., 18420
G. Robert Taylor Individual Retirement Account et al., 68957
Gary Tax Advantaged Savings Program & Profit Sharing Plan, 62146
Goldman Sachs Group, L.P., 59740
Goodman-Gable-Gould Co. et al., 59737
Hazlehurst & Associates, Inc., et al., 46656
IDS Financial Corp. et al., 53563
Junaluska Animal Hospital, P.A., et al., 28619
Kimball International, Inc., et al., 37510
Massachusetts Mutual Life Insurance Co. et al., 13094
Metropolitan Life Insurance Co., 354
Metropolitan Life Insurance Co. et al., 16709, 32365, 41489
Mid-Hudson Medical Group P.C. Profit Sharing Trust et al., 11251
NationsBank Corp. et al., 8981
Navistar International Transportation Corp. et al., 35467, 51105
Nomura Securities International, Inc., et al., 13098
Northern Trust Co. et al., 64973
Operating Engineers Pension Trust et al., 58190
Penn Central Corp. Master Trust et al., 28043
Peoples National Bank of Lebanon, 41489
Peoples National Bank of Lebanon et al., 28626
Pro Golf Discount/Distributors of Atlanta, Inc., et al., 46660
Prudential Insurance co. of America, 53565
Robert W. McCurdy Medical Corp. et al., 60215
Scios Nova Inc. et al., 66029
Society National Bank et al., 16705, 38793
Southwest-Tex Leasing Co., Inc., et al., 37512
Standard Bank Employees et al., 41492
Tenneco, Inc., et al., 60216
Texas Instrument Employees Pension Plan et al., 53578
Texas Instruments et al., 68964
UIU Health Welfare Plan et al., 49326
Union Labor Life Insurance Co. et al., 7255
United Co. et al., 25672
Welborn Clinic et al., 18426
Western Asset Management Co. et al., 43130
Zero Corp. et al., 57840
Employee Retirement Income Security Act:
Welfare plans with participant contributions; enforcement policy, 45359
Form 5500 Schedule G filing requirement, deferral, 50571
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 32158, 36707, 39838,

40164, 40165, 45532, 45920, 45921, 51887, 51888, 53955, 53956, 67425

Pension Benefit Guaranty Corporation

RULES

Election of single-employer plan status; CFR Part removed, 29349
Multiemployer plans:
  Late premium payments and employer liability underpayments and overpayments; interest rates, 19609
  Valuation of plan benefits and plan assets following mass withdrawal—
    Interest rates, 4576, 8231, 13707, 19611, 28502, 33023, 38052, 43079, 48306, 60116
    Mortality assumptions, interest rate structure, etc., 50812
  Withdrawal liability; notice and collection; interest rates, 4577, 19610, 38051, 53410
Organization, functions, and authority delegations:
  Agency relocation; address and telephone number changes, 63080
Responsibility and ethical conduct of employees:
  Appearances in certain proceedings, 4318
Single-employer plans:
  Administrative review of agency decisions and standard terminations of single-employer plans; exceptions due to Midwestern flood disaster, 44738
    Correction, 48600
  Distress and standard terminations, 6605, 34709
    Correction, 4203
  Guaranteed benefits limitation, 65551
  Late premium payments and employer liability underpayments and overpayments; interest rates, 4574, 38049, 53406, 196109
  Miscellaneous amendments, 35377
    Correction, 37991
  Valuation of plan benefits—
    Expected retirement age, 66277
    Interest rates and factors, 4575, 8230, 13706, 38050, 48305, 53407, 60116, 65548
    Mortality assumptions, interest rate structure, etc., 50812

PROPOSED RULES

Regulatory agenda, 25196, 57196
Single employer plans:
  Valuation of plan benefits—
    Mortality assumptions, interest rate structure, etc., 5128
    Valuation following mass withdrawal, 7921, 15315

NOTICES

Agency information collection activities under OMB review, 34835, 40844
Employee Retirement Income Security Act:
  Premium refunds paid for non-covered plans; time limitations, 63406
Midwestern flood disaster relief; waivers of penalties for late payments of premiums, etc., 44741, 48680
Minimum vesting standards; guarantee of benefits; interpretation, 5781
Multiemployer plans:
  Bond/escrow requirement; exemption requests—
    Detroit Tigers, Inc., 26363, 64783
    Plaid Holdings Corp., 28646, 60707
Negotiated rulemaking use; policy development, 38146
Organization, functions, and authority delegations:
  Agency relocation; address and telephone number changes, 63192

Personnel Management Office

RULES

Acquisition regulations:
  Federal Employees' Group Life Insurance program; policies identification, 40369
Allowances and differentials:
  Cost-of-living allowances and post differentials (nonforeign areas), 33501
  Separate maintenance allowance for duty at Johnston Island, 51565
Basic life insurance, Federal employees:
  Iraq, Kuwait, and Lebanon; benefits for hostages, 18142
Child support and/or alimony; garnishment orders; processing, 35845
Conversion to metric system, 32273
Debarment and suspension (nonprocurement), 28759
Employment:
  Promotion and internal placement—
    Full consideration of displaced Defense employees; job listings, 18139
    Time-limited promotion authority, 59345
  Recruitment, selection, and placement—
    Full consideration of displaced Defense employees; job listings, 18139
  Reduction in force—
    60 days specific notice exception, 32046
    Permissive temporary exceptions, 5561
Excepted service:
  Performance based reduction in grade, removal actions, and adverse actions; Civil Service Due Process Amendments implementation, 13191
Family and medical leave, 39596
Federal claims collection:
  Administrative offset, 60991
  Salary offset, 60993
Freedom of Information Act; implementation:
  Confidential commercial information; disclosure procedures, 32043, 52877
Group life insurance, Federal employees:
  Election of optional coverage upon divorce or death of spouse, 45415
  Premium rate reduction and open enrollment period, 11953, 47823
Health benefits, Federal employees:
  Family enrollment change opportunity, 33009
  Inpatient hospital charges and program benefit payments; limitations, 4569, 38661
  Temporary employees coverage, 47823
    Correction, 48946
Pay administration:
  Aggregate limitation on pay, 50247
  Airborne fibers hazards, General Schedule employees exposed to; eight percent hazard pay differential, 32048
  Pay advances to newly appointed employees, 41623
  Payments during evacuations caused by natural disasters, 33501
  Performance management and recognition system; correction, 6056
  Recruitment and relocation bonuses; retention allowances; supervisory differentials; CFR correction, 29777
Pay rates and systems:
  Law enforcement officers; special pay entitlements, 3199
Pay under General Schedule:
  Locality-based comparability payments, 69169
  Metropolitan area definition; changes, 33497
Pay under General Schedule; CFR correction, 29777
Performance management and recognition system; termination, 65531
Personnel actions; agency authority, 36119
Prevailing rate systems, 12146, 13193, 13194, 15415, 33499, 38263, 45413, 51211, 59639, 64365, 68716
Privacy Act; implementation; correction, 16446
Retirement:
  Civil Service Retirement System—
    Children's survivor annuities during school attendance, 32051
    Court order affecting retirement benefits; correction, 3201
    Disability retirement, 49177
    Law enforcement officers and firefighters, 64366, 65243
    Survivor deposits payment by actuarial reduction, 52877
  Federal Employees Retirement System—
    Children's survivor annuities during school attendance, 32051
    Court order affecting retirement benefits; correction, 3201
    Deemed elections of coverage, 47821
    Reemployment of annuitants; effect on future CSRS and FERS benefits, 48265
  Miscellaneous amendments, 43491
Senior Executive Service:
  Senior Executive Service Improvements Act; implementation, 58257
Veterans readjustment appointments:
  Vietnam-era veterans; restoration of eligibility for Federal employment, 12145, 44743
Voting rights program:
  Mississippi, 29791

PROPOSED RULES

Acquisition regulations:
  Health benefits, Federal employees—
    Miscellaneous changes, 34769
Allowances and differentials:
  Cost-of-living allowances and post differentials (nonforeign areas), 45556
  Uniform allowance rate, 26694
Debarment and suspension (nonprocurement), 7052
Employment:
  Executive, management, and supervisory development, 11988
  Reduction in force—
    Assignment rights, 44778
Pay under General Schedule:
  Locality-based comparability payments, 46064
Regulatory agenda, 25164, 57168
Retirement:
  Civil Service Retirement System—
    Recomputed annuities of former members of Congress who perform additional service after retirement; cost-of-living adjustments and cap method, 59685
Training of Federal employees, 3508, 8912

NOTICES

Agency information collection activities under OMB review, 3303, 6828, 8796, 9576, 12604, 14227, 16559, 26362, 26363, 28645, 28646, 29645, 31432, 31980, 32402, 33287, 34599, 35059, 35478, 40449, 40679, 41299, 43139, 44704, 44705, 45537, 45538, 50059, 53587, 54178, 58573, 59498, 65602, 68676
Allowances and differentials:
  Cost-of-living allowances and post differentials (nonforeign areas and Washington, D.C.); 1992/1993 surveys report availability, 45558
Excepted service:
  Schedules A, B, and C; positions placed or revoked—
    Consolidated list, 50573
    Update, 3303, 8434, 12055, 19144, 26802, 31554, 36224, 41114, 45539, 50599, 58353

INDEX VOL 58 1993 UMI

Health benefits, Federal employees:
Medically underserved areas, 42750
Meetings:
Federal Prevailing Rate Advisory Committee, 11076, 26363, 32737, 42114, 43139, 47920, 51392, 58882, 60707
Federal Salary Council, 9581, 26363, 33287, 40844, 45541, 50601, 52799, 58356, 68676
Hispanic Federal Employment Advisory Group, 26804
Historically Black Colleges and Universities Federal Employment Advisory Group, 3307, 60472
National Partnership Council, 59082, 60707, 64347
Privacy Act:
Computer matching programs, 6025, 19145, 68676
Systems of records, 19154, 41300, 47002, 60226
Retirement:
Federal Employees Retirement System—Normal cost percentages, 49066
Senior Executive Service:
Career reserved positions; list, 12380
Performance Review Board; membership, 28904, 36712, 47163

Physician Payment Review Commission

NOTICES
Grants and cooperative agreements; availability, etc.:
Changes in health care system; telephone interview survey of physicians, 31980
Medicare program and fee schedule; telephone interview survey of physicians, 27315
National data programming services, 27317
Research and analysis to support Commission's advice to Congress in specific policy areas, 26568
Meetings, 7165, 25874, 31435, 37977, 47004, 51393, 52121, 61110

Postal Rate Commission

RULES
Conflict of interests, 42873
Practice and procedure rules:
Domestic mail classification and rate schedules; pre-barcoded flats discounts, 33996
Domestic mail classification schedule; pre-barcoded mail definition, 54511
Miscellaneous amendments, 38975
PROPOSED RULES
Practice and procedure rules:
Domestic mail revenues; forecast data and procedures, description, 58519
Postal rates and fees changes; four-year strategic rate cycle; implementation; withdrawn; and potential improvements, 16392
Rate and classification schedules; complexity in rates inquiry, 6769, 12198
NOTICES
Complaints filed:
United Parcel Service (UPS), 630
Meetings:
Direct marketing economic study; briefing on results, 50602
Meetings; Sunshine Act, 33144, 33688, 38601, 53243, 61728, 64639
Post office closings; petitions for appeal:
Beaverlett, VA, 9001
Boone, NE, 68446
Cataract, WI, 51893
Colfax, ND, 12604
Extension, LA., 54607
Gray, IA, 49534
Inavale, NE, 64018
Ithaca, NY, 16559
Lille, ME, 29437
Lodi, TX, 25681
McAdams, MS, 13111
Morrison, IA, 49533
Waka, TX, 54179
Winchester, TX, 16720
Visits to facilities, 26365, 29645, 30076, 48397, 54608, 59082, 59499, 62394, 63193

Postal Service

RULES
Domestic Mail Manual:
Neighborhood delivery and collection box units (NDCBUs) and parcel lockers; procurement, 31177
Pre-barcoding of letter-size mail, 13551, 42012
Restructuring and revision, 34887
Inspection Service; mail cover law enforcement technique, 36598
International Mail Manual:
International surface air lift service; small packets, 57742
Mexico direct service; implementation, 60787
International postal rates and fees:
International customized mail service, 29778
Preferred postage rates; second-, third-, and fourth-class mail; changes, 60386
Privacy Act; implementation, 62036
PROPOSED RULES
Domestic Mail Manual:
Letter-size ZIP+4 and barcoded rate mailings; preparation requirements, 49402
Neighborhood delivery and collection box units (NDCBUs) and parcel lockers; procurement, 18190
Postcards, maximum thickness, 19075
Pre-barcoding of letter-size mail, 8921
Prescription medicines containing narcotic drugs and other controlled substances, 67747
Special bulk third-class eligibility restrictions, 64918, 65959
International Mail Manual:
Items mailed by or on behalf of senders in U.S. and other countries, 25959
Organization and administration:
Information release; address disclosure, 48808
Privacy Act; implementation, 16806
NOTICES
Domestic rates, fees, and mail classifications:
Letter-size mail; pre-barcoding, 42114
Pre-barcoded letter-size mail, 12605
International postal rates and fees:
Money orders; fee change, 50982
Meetings; Sunshine Act, 5798, 9243, 15522, 21775, 30219, 33985, 36514, 39858, 44401, 45153, 47318, 50633, 57675, 62414, 65426, 68460
Privacy Act:
Computer matching programs, 30207, 40170, 50982, 63598
Systems of records, 31556, 51659, 61718, 62171

Presidential Commission on Assignment of Women in the Armed Forces

NOTICES
Meetings, 5441

Presidential Documents

See Management and Budget Office
PROCLAMATIONS
Canada-U.S. trade agreement implementation; acceleration (Proc. 6579), 36839
Generalized System of Preferences; amendments (Procs. 6544, 6575), 19547, 34855, 36516, 51561
Haiti, return to constitutional rule; suspension of entry of persons who formulate policies that seek to impede progress of negotiations (Proc 6569), 31897
Hurricanes Andrew and Iniki-ravaged areas, revocation of suspension of Davis-Bacon Act provisions for clean-up (Proc. 6534), 13189
Imports and exports:
Canada—
Plywood tariff modifications (Proc. 6519), 13189
Textile articles, woven or knitted; rules of origin extension, (Proc. 6543), 19319
Dairy products importation modification (Proc. 6640), 65867
NAFTA; tariff schedule implementation (Proc. 6641), 66867
Correction, 68191
Kyrgyzstan; designation as a beneficiary developing country for purposes of the GSP (Proc. 6635), 65279
Nigeria; suspension of entry into U.S. of persons formulating policies that impede transition to democracy (Proc. 6636), 65525
Peru; designation as a beneficiary developing country (Proc. 6585), 43239
Romania; trade agreement with U.S. (Proc. 6577), 36301
Zaire; suspension of entry of persons who formulate policies that are impeding the transition to democracy (Proc. 6574), 34209
Special observances:
Adoption Week, National, 1993 and 1994 (Proc 6629), 63021
Agriculture Day, National (Proc. 6538), 15753
American Red Cross Month (Proc. 6535), 15411
American Wine Appreciation Week (Proc. 6530), 11361
Arbor Day, National (Proc. 6554), 26501
Asian/Pacific American Heritage Month (Proc. 6557), 26909
Be Kind to Animals and National Pet Week (Proc. 6560), 27919
Biomedical Research Day, National (Proc 6616), 54909
Black Colleges and Universities Week, National (Proc. 6594), 49901
Braille Literacy Week (Proc. 6522), 3193
Breast Cancer Awareness Month, National (Proc. 6600), 51721
Cancer Control Month (Proc. 6549), 25541
Captive Nations Week (Proc. 6580), 38659
Chavez, Cesar; death of (Proc. 6552), 26223
Child Health Day (Proc. 6602), 52205
Children's Day, National (Proc. 6626), 61797
Citizenship Day and Constitution Week (Proc. 6593), 49173
Columbus Day (Proc. 6608), 53099
Commodore John Barry Day (Proc. 6589), 48585
Consumers Week, National (Proc. 6617), 57535
Country Music Month (Proc. 6606), 52875
Credit Education Week, National (Proc. 6547), 25537
Crime Victims' Rights Week, National (Proc. 6551), 26221
Day of Prayer, National (Proc. 6553), 26499

INDEX
VOL
58
1993
UMI

Defense Transportation Day and Week, National (Proc. 6562), 29519
Disability Employment Awareness Month, National (Proc. 6605), 52627
Domestic Violence Awareness Month, National (Proc. 6619), 58255
Doolittle, General James H.; death of (Proc. 6598), 51559
Down Syndrome Awareness Month, National (Proc. 6611), 53831
Drug Abuse Resistance Education Day, National, 1993 and 1994 (Proc. 6588), 47981
Drunk and Drugged Driving Prevention Month, National (Proc. 6633), 64363
Education and Sharing Day, U.S.A. (Proc. 6540), 17773
Emergency Medical Services Week, 1993 and 1994 (Proc. 6567), 31893
Energy Awareness Month (Proc. 6597), 50245
Family Week, National, 1993 and 1994 (Proc. 6628), 62257
Farm-City Week, National (Proc. 6624), 61607
Farm Safety and Health Week, National (Proc. 6595), 49903
Father's Day (Proc. 6573), 33753
Fellowship and Hope, National Day of (Proc. 6525), 5917
Fifth Anniversary Day of Remembrance for the Victims of the Bombing of Pan Am Flight 103 (Proc. 6642), 67625
Firefighters Day, National (Proc. 6639), 65865
Fire Prevention Week (Proc. 6601), 51723
Flag Day and National Flag Week (Proc. 6572), 33185
Forest Products Week, National (Proc. 6614), 54027
Former Prisoner of War Recognition Day, National (Proc. 6541), 19315
Future Farmers of America Organization Awareness Week, National (Proc. 6531), 11951
General Pulaski Memorial Day (Proc. 6610), 53103
Geography Awareness Week, 1993 and 1994 (Proc. 6623), 60769
German-American Day (Proc. 6604), 52389
Gold Star Mother's Day (Proc. 6590), 48587
Good Teen Day, National (Proc. 6520), 467
Greek Independence Day: A National Day of Celebration of Greek and American Democracy (Proc. 6539), 16609
Health Information Management Week, National (Proc. 6620), 59157
Heart Month, American (Proc. 6528), 8691
Helsinki Human Rights Day (Proc. 6584), 41621
Hispanic Heritage Month, National (Proc. 6592), 48771
Home Care Week, National, 1993 and 1994 (Proc. 6631), 63279
Hospice Month, National, 1993 and 1994 (Proc. 6630), 63277
Human Rights Day, Bill of Rights Day, and Human Rights Week (Proc. 6637), 65527
International Year of the Family, 1994 (Proc. 6634), 64667
Irish-American Heritage Month (Proc. 6533), 13187
Jewish Heritage Week (Proc. 6550), 26219
Korean Armistice 40th anniversary (Proc. 6582), 40717
Law Day, U.S.A. (Proc. 6555), 26503
Law Enforcement Training Week, National (Proc. 6523), 3195, 68289
Leif Erikson Day (Proc. 6607), 53097
Literacy Day, National, 1993 and 1994 (Proc. 6578), 36585
Loyalty Day (Proc. 6556), 26505
Lyme Disease Awareness Week, 1993 and 1994 (Proc. 6571), 32267
Mammography Day, National (Proc. 6615), 54269
Maritime Day, National (Proc. 6564), 29949
Marshall, Thurgood; death of (Procs. 6525, 6526), 6187, 6436
Martin Luther King, Jr., Federal Holiday (Proc. 6524), 4293
Mental Illness Awareness Week (Proc. 6603), 52387
Military Families Recognition Day, National (Proc. 6627), 61799
Minority Enterprise Development Week (Proc. 6591), 48589
Mother's Day (Proc. 6559), 27917
Nancy Thurmond Moore National Organ and Tissue Donor Awareness Week (Proc. 6548), 25539
Older Americans Month (Proc. 6565), 30935
Pan American Day and Pan American Week (Proc. 6545), 21093
Poison Prevention Week, National (Proc. 6536), 15413
POW/MIA Recognition Day, National (Proc. 6587), 47199
Prayer for Peace, Memorial Day (Proc. 6566), 31325
Preschool Immunization Week, National (Proc. 6542), 19317
Rehabilitation Week, National, 1993 and 1994 (Proc. 6596), 50243
Ridgway, Matthew B., death of (Proc. 6583), 41169
Safe Boating Week, National (Proc. 6570), 32041
Sanctity of Human Life Day, National (Proc. 6521), 469
Save Your Vision Week (Proc. 6532), 13185
School Lunch Week, National (Proc. 6609), 53101
Small Business Week (Proc. 6561), 28915
Thanksgiving Day (Proc. 6625), 61609
United Nations Day (Proc. 6618), 57715
Veterans Day (Proc. 6621), 59637
Veterans Golden Age Games Week, National (Proc. 6581), 40031
Visiting Nurse Associations Week, National (Proc. 6529), 10937
Volunteer Week, National (Proc. 6546), 21341
Walking Week, National (Proc. 6558), 27649
White Cane Safety Day (Proc. 6612), 53833
Women and Girls in Sports Day, National (Proc. 6527), 7477
Women Veterans Recognition Week, National (Proc. 6622), 60359
Women's Equality Day (Proc. 6586), 44433
Women's History Month (Proc. 6537), 15751
World AIDS Day (Proc. 6632), 63883
World Food Day, 1993 and 1994 (Proc. 6613), 54025
World Trade Week (Proc. 6563), 29775
World War II fiftieth anniversary national observance (Proc. 6568), 31895
Wright Brothers Day (Proc. 6638), 65529
Youth Sports Program Day, National (Proc. 6576), 36117

EXECUTIVE ORDERS

Angola; prohibiting certain transactions involving UNITA (EO 12865), 51005
Armed Forces
  Military Outstanding Volunteer Service Medal; establishment (EO 12830), 4061
Budget control (EO 12857), 42181
China, People's Republic of, renewal of most-favored-nation trade status in 1994; conditions (EO 12850), 31327
Committees; establishment, renewal, terminations, etc.:
  Continuance of certain Federal advisory committees (EO 12869), 51751
  Council on Sustainable Development, President's (EO 12852), 35841
  Domestic Policy Council; establishment (EO 12859), 44101
  Economic Council, National; establishment (EO 12835), 6189
  Emergency board to investigate dispute between the Long Island Rail Road and certain of its employees (EO 12874), 54921
  Entitlement Reform, Bipartisan Commission on; amendment (EO 12887), 68713
  Entitlement Reform, Bipartisan Commission on; establishment (EO 12878), 59343
  Federal advisory committees; termination and limitation (EO 12838), 8207
  Foreign Intelligence Advisory Board, President's; establishment (EO 12863), 48441
  Foreign Investment in the United States, Committee on; member addition (EO 12860), 47201
  Historically Black Colleges and Universities, President's Board of Advisors (EO 12876), 58735
  Information Infrastructure, U.S. Advisory Council on, National; establishment (EO 12864), 48773
  Research Council, National; amendments (EO 12832), 5905
  Science and Technology Council, National; establishment (EO 12881), 62491
  Science and Technology, President's Committee of Advisors on; establishment (EO 12882), 62493
  Sustainable Development, President's Council on; membership change (EO 12855), 39107
  Trade Promotion Coordinating Committee; establishment (EO 12870), 51753
  Urban Families, National Commission on America's; reporting period extension (EO 12827), 211
Compact of Free Association with the Marshall Islands, Micronesia, and Palau, management; amendment (EO 12877), 59159
Construction projects, Federal; revocation of project agreements prohibition and mandatory posting of notice stating that workers are not required to join union (EO 12836), 7045
Courts-Martial Manual, United States, 1984; amendments (EO 12888), 69153
Cuban Democracy Act implementation (EO 12854), 36587
Defense Department:
  Uniformed services; pay and allowances; adjustments (EO 12886), 68709
Deficit reduction fund; establishment (EO 12858), 42185
Drug Control Program, National (EO 12880), 60989
EURATOM; U.S. nuclear cooperation (EO 12840), 13401
European Community-U.S. agreement on reciprocal Government procurement (EO 12849), 30931
Export controls, termination of emergency authority for certain items (EO 12867), 51747
Facilities construction and maintenance on U.S. borders; amendment (EO 12847), 29511

Foreign assistance; delegations of authority (EO 12884), 64099
Government agencies and employees:
Alternative-fueled vehicles; Federal Government use (EO 12844), 21885
Energy-efficient computer equipment purchase requirement (EO 12845), 21887
Executive branch appointees ethics commitments (EO 12834), 5911
Executive branch internal regulations; elimination of one-half (EO 12861), 48255
Executive Schedule (Levels IV and V); adjustments (EO 12841), 13529
Executive Schedule (Level V); addition (EO 12833), 5907
Federal acquisition, recycling, and waste prevention (EO 12873), 54911
Federal agency procurement requirements for ozone-depleting substances (EO 12843), 21881
Federal Government productivity improvement and deficit control (EO 12837), 8205
Federal pay administration authority; delegation (EO 12883), 63281
Intergovernmental enhancement partnership (EO 12875), 58093
Personnel management authorities; delegation (EO 12828), 2965
Reduction of 100,000 Federal positions (EO 12839), 8515
Setting customer service standards (EO 12862), 48257
Haiti:
Blockage of government property in U.S. and prohibition of transactions (EO 12853), 35843
Blockage of property in U.S. of persons obstructing democracy in Haiti (EO 12872), 54029
Homelessness; Federal plan to break its cycle (EO 12848), 29517
Industrial Security Program, National (EO 12829), 3479
Amendments (EO 12885), 65863
International Development Law Institute; designation as public international organization (EO 12842), 17081
Labor-management partnerships (EO 12871), 52201
Navy Department; succession of authority to act as Secretary of the Navy (EO 12879), 59929
North American Free Trade Agreement (NAFTA); implementation (EO 12889), 69681
Pollution prevention requirements and right-to-know laws; Federal compliance (EO 12856), 41981
Regulatory planning and review (EO 12866), 51735
Weapons:
Chemical and biological, proliferation and use; sanctions and export control (EO 12851), 33181
Nuclear, biological and chemical, proliferation activities; measures to restrict participation by United States persons (EO 12868), 51749
Yugoslavia, Federal Republic of (Serbia and Montenegro):
Economic sanctions (EO 12846), 25771
Foreign assets control (EO 12831), 5253

ADMINISTRATIVE ORDERS

Abortion:
(Privately funded) at military hospitals; authorization (Memorandum of January 22, 1993), 6439
Counseling in family-planning clinics (suspension of "gag rule") (Memorandum of January 22, 1993), 7455
RU-486 (Mifepristine) drug; personal use importation into U.S. (Memorandum of January 22, 1993), 7459
Africa; refugee assistance (Presidential Determination No. 94-5 of December 3, 1993), 45777, 65277
Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan; continuation of waiver of Trade Act of 1974 restrictions (Presidential Determination No. 93-25 of June 2, 1993), 33005
Angola; certification of free, fair, and democratic elections (Presidential Determination No. 93-32 of July 19, 1993), 40309
Arms Control and Disarmament Agency 1992 annual activity report; authority delegation (Memorandum of January 15, 1993), 6339
Assault pistol importation (Memorandum of August 11, 1993), 50831
Bosnia and Croatia refugees and conflict victims; assistance (Presidential Determination No. 93-22 of May 19, 1993), 31463
Bulgaria; certification of compliance with emigration standards (Presidential Determination No. 93-26 of June 3, 1993), 33007
Bulgaria-U.S. nuclear energy cooperation agreement (Presidential Determination No. 93-37 of September 2, 1993), 48263
Canada-U.S. international railway tunnel; construction authorization to Canadian National Railway Co. and Grand Trunk Corp. and their subsidiaries (Permit of May 17, 1993), 29513
Chemical and biological weapons; continuation of export control regulations (Notice of November 12, 1993), 60361
China:
Export-Import Bank loan extension (Presidential Determination No. 93-19 of April 15, 1993), 21889
Most-favored-nation trade status renewal (Presidential Determination No. 93-23 of May 28, 1993), 31329
Cook Islands; eligibility to receive defense articles and services (Presidential Determination No. 93-10 of January 6, 1993), 5245
Ecuador; drawdown of DOD articles and supplies for international disaster assistance (Presidential Determination No. 93-27 of June 24, 1993), 49175
EPA; authority delegation to Administrator to review emergency release authorities and transmit message to Congress (Memorandum of August 19, 1993), 52397
Federal energy conservation annual report; authority delegation to Secretary of Energy (Memorandum of June 23, 1993), 34519
Fetal tissue transplantation research; Federal funding (Memorandum of January 22, 1993), 7457
Foreign Operations, Export Financing, and Related Programs Appropriations Act:
Funds expenditure (Presidential Determination No. 93-7 of January 5, 1993), 4059
Funds withholding (Presidential Determination No. 94-4 of November 19, 1993), 63519
Generalized System of Preferences; amendments (Memorandum of June 25, 1993), 34861
Government agencies and employees:
Executive branch management reform (Memorandum of October 1, 1993), 52393
General Schedule employees; comparability payment rate schedule and localities (Memorandum of December 1, 1993), 64097
Negotiated rulemaking (Memorandum of September 30, 1993), 52391
Procurement through electronic commerce; streamlining initiative (Memorandum of October 26, 1993), 58095
Public Health Service commissioned officers; award of military ribbons, medals, and decorations (Memorandum of December 30, 1992), 3485
Streamlining the bureaucracy (Memorandum of September 11, 1993), 48583
Gun dealer licensing (Memorandum of August 11, 1993), 50833
Guyana; eligibility to receive defense articles and services (Presidential Determination 93-35 of August 30, 1993), 48259
Haiti:
Continuation of Haitian emergency (Notice of September 30, 1993), 51563
Reconstruction and reconciliation (Presidential Determination No. 93-28 of June 25, 1993), 37631
Refugee assistance (Presidential Determination No. 93-15 of February 27, 1993), 13183
Horn of Africa assistance; authority delegation of reporting requirement to Administrator of Agency for International Development (Memorandum of July 19, 1993), 39109
Iran emergency; continuation (Notice of November 1, 1993), 58639
Iraqi emergency; continuation (Notice of July 20, 1993), 39111
Ireland and Northern Ireland; contributions to international fund (Presidential Determination No. 93-42 of September 30, 1993), 52629
Israel:
Loan guarantees (Presidential Determination No. 93-44 of September 30, 1993), 52209
Military assistance (Presidential Determination No. 93-17 of March 30), 19193
Japan:
Certification of nondiscrimination in procurement of U.S. products for government use; authority delegation to U.S. Trade Representative (Presidential Determination No. 93-29 of June 29, 1993), 35357
Trade restrictions, delegation of authority (Presidential Determination No. 94-3 of October 29, 1993), 58637
Jordan; assistance (Presidential Determination No. 93-39 of September 17, 1993), 51973
Laos; military drawdown to locate and repatriate POWs and MIAs (Presidential Determination No. 93-45 of September 30, 1993), 52211
Liberia; economic support for regional peacekeeping (Presidential Determination No. 93-41 of September 29, 1993), 51977
Libya; continuation of state of emergency with U.S. (Notice of December 2, 1993), 64361
Lithuania, Latvia and Estonia; certification of substantial withdrawal of Russian armed forces (Presidential Determination No. 93-24 of May 31, 1993), 32269
Marshall Islands; eligibility to receive defense articles and services (Presidential Determination No. 93-9 of January 6, 1993), 5243
Mexico:
Assistance (Presidential Determination No. 93-40 of September 28, 1993), 51975
Motor carrier licenses issued to nationals, modification of moratorium (Memorandum of May 6, 1993), 27647

INDEX
VOL 58
1993
UMI

Micronesia; eligibility to receive defense articles and services (Presidential Determination No. 93-8 of January 6, 1993), 5241
Morocco; certification of cooperation with U.N. in Western Sahara self-determination settlement plan (Presidential Determination No. 93-21 of May 12, 1993), 31461
Mozambique; refugee assistance (Presidential Determination No. 93-34 of August 9, 1993), 45777
Narcotics, major producing and transit countries; certifications (Presidential Determination No. 93-18 of March 31, 1993), 19033
Nuclear reactor safety initiatives report to Congress; authority delegation to Secretary of State (Memorandum of March 4, 1993), 14303
Refugees admissions numbers (Presidential Determination No. 94-1 of October 1, 1993), 52213
Romania:
  Determination and waiver under Atomic Energy Act of 1954 to receive nuclear exports (Presidential Determination No.93-36 of August 30, 1993), 48261
  Trade agreement (Presidential Determination No. 93-30 of July 2, 1993), 43785
Russia and Emerging Eurasian Democracies disarmament programs facilitation; authority delegation (Memorandum of December 30, 1992), 3193
Russian military exports reports; authority delegation (Memorandum of February 3, 1993), 8203
Solomon Islands; eligibility to receive defense articles and services (Presidential Determination No. 93-11 of January 6, 1993), 5247
Somalia; drawdown of commodities and services from DOD to support establishment of a police force (Presidential Determination No. 93-43 of September 30, 1993), 52207
Soviet Union, former, Independent States of, assistance program (Presidential Determination No. 94-6 of December 6, 1993), 65099
Soviet Union, former, Independent States of, report assessing effectiveness of U.S. assistance; authority delegation (Memorandum of January 29, 1993), 8201
Sweden; sale of depleted uranium antitank ammunition (Presidential Determination No. 93-31 of July 14, 1993), 40307
Tajikistan; refugee assistance (Presidential Determination No. 93-14 of January 19, 1993), 6341
Trade:
  European Community discriminatory trade policy against certain U.S. goods determination of existence and subsequent application or suspension of retaliatory measures; authority delegation to U.S. trade representative (Presidential Determination No. 93-16 of March 20, 1993), 16345
Trading With the Enemy Act; extension of the exercise of certain authorities (Presidential Determination No. 93-38 of September 13, 1993), 51209
Uruguay Round of Multilateral Trade Negotiations; Executive summary of benefits to U.S. (Memorandum of December 15, 1993), 67263
  Correction, 68191
Vanuatu; eligibility to receive defense articles and services (Presidential Determination No. 93-12 of January 6, 1993), 5249
Western Samoa; eligibility to receive defense articles and services (Presidential Determination No. 93-13 of January 6, 1993), 5251
Yugoslavia, Federal Republic of (Serbia and Montenegro):
  Continuation of emergency status (Notice of May 25, 1993), 30693
  Sanctions enforcement operations account, transfer of $5 million (Presidential Determination No. 93-20 of May 3, 1993), 28757

President's Commission on Model State Drug Laws

NOTICES
Hearings, 16249
Meetings, 15386

President's Commission on White House Fellowships

NOTICES
Meetings, 13811, 50982

President's Council on Sustainable Development

NOTICES
Meetings, 68446

President's Task Force on National Health Care Reform

NOTICES
Hearings, 16264
Meetings, 15177, 21330, 28655, 29854

Prisons Bureau

RULES
Inmate control, custody, care, etc.:
  Administrative remedy procedures; coverage extension to inmates designated to contract Community Corrections Centers, 58246
  Donations acceptance, 60768
  Education, recreation, and library programs annual survey; regulations removed, 58247
  Education, training, and leisure-time program standards, 65851
  Inmate recreation programs, 65850
  Marriages; Community Corrections Manager authority, 58247
  Offenders transfer to or from foreign countries, 47976
  Production or disclosure of Federal Bureau of Investigations/National Crime Information Center information, 68765
  Visiting regulations, 39094
  Volunteer community service projects, 5210
  Work/study release; regulations removed, 58248
  Youth Corrections Act institutions and programs, 50808
Organization, functions, and authority delegations:
  Central Office et al., 44428
PROPOSED RULES
Inmate control, custody, care, etc.:
  Telephone regulations and inmate financial responsibility, 39096
NOTICES
Environmental statements; availability, etc.:
  King County, WA, 9222
  Oahu Island, HI, 11630
  Philadelphia, PA, 13647
  Worcester County, MA, 36223
Prison institutions; list modification, 44429

Prospective Payment Assessment Commission

NOTICES
American health care system, Medicare, and prospective payment system for hospitals; proposal request, 40170
Meetings, 369, 13652, 16721, 31557, 52799, 64347

Public Health Service

See Agency for Health Care Policy and Research; Agency for Toxic Substances and Disease Registry; Centers for Disease Control and Prevention; Food and Drug Administration; Health Resources and Services Administration; Indian Health Service; National Institutes of Health; Substance Abuse and Mental Health Services Administration
RULES
Grants:
  Family planning service projects; abortion-related services; compliance standards; "gag rule" suspension, 7462
  Health education assistance loan program; bankruptcies, 67346
  Minority biomedical research support program, 61029
  Sterilization of persons in federally assisted family planning projects, 33342
  Teaching facilities construction, educational improvements, scholarships, and student loans, 66297
National vaccine program:
  Information and education; vaccine information materials, 30123
PROPOSED RULES
Fellowships, internships, training:
  Agency for Health Care Policy and Research grants and contracts, 60510
  Correction, 63909
  National Institutes of Health research traineeships, 42039
Grants:
  Family planning service projects; abortion-related services; compliance standards; "gag-rule" revocation, 7464, 34024
  Maternal and child health project grants, 38995
  National Institute of Environmental Health Sciences hazardous waste worker training, 50897
Medical facility construction and modernization; requirements for provision of services to persons unable to pay, 58828
National Institutes of Health; special volunteer services, 42270
NOTICES
Agency information collection activities under OMB review, 3292, 4708, 6495, 8056, 12588, 16411, 18411, 21741, 26144, 28595, 31728, 32714, 36974, 38433, 40820, 42083, 44347, 45344, 46977, 47747, 48661, 51365, 52498, 54597, 58175, 60041, 62360, 66009, 68151
Clinical Laboratories Improvement Act:
  Laboratory test systems, assays, and examinations, specific list; categorization by complexity, 39860
Committees; establishment, renewal, termination, etc.:
  Health Promotion and Disease Prevention Council, 7140

National Vaccine Advisory Committee, 50009
Research Integrity Commission, 66009
Exceptional Achievement in Orphan Product Development Award; nominations solicitation, 63583
Grant and cooperative agreement awards:
Howard University, 50009
National Academy of Sciences, 47747
Grants and cooperative agreements; availability, etc.:
Bilingual/bicultural service demonstration projects in minority health, 31298
Family planning services, 33832, 59126
Healthy People 2000; national health promotion and disease prevention objectives and related prevention policy initiatives; implementation, 3037
National prevention education program, 33637
Indian Health Service facilities; inpatient and outpatient medical care
1993 CY reimbursement rates, 17422
Medical care:
Indian Health Service—
Contract health service delivery area redesignation, 17602
Contract health services; reimbursement rates; evaluation, and establishment; Portland Pilot Project; termination date extended, 11864
Meetings
Chronic Fatigue Syndrome Interagency Coordinating Committee, 44188, 59052
Health Promotion and Disease Prevention Council, 6127
ICD-9-CM Coordination and Maintenance Committee, 15878, 34472, 57617
National Nutrition Monitoring Advisory Council, 25603, 51840
National Toxicology Program; Scientific Counselors Board, 19466, 30794, 32539, 51636, 53742
National Vaccine Advisory Committee, 6496, 11241, 33639, 42738, 64590, 67414
Orphan Products Board, 5999
Research Integrity Advisory Committee, 8597
National practitioner data bank:
User fees, 31215
National toxicology program:
Toxicology and carcinogenesis studies—
4,4'-Diamino-2,2'-stilbenedisulfonic acid, disodium salt, 14219
Allyl acetate, etc., 51637
C.I. Direct Blue, 5, 14219
C.I. Pigment Red, 3, 63384
HC Yellow, 14219
Quercetin, 14220
Resorcinol, 14220
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention, 7568, 21743, 59043, 59052, 59054, 63584
Commissioner of Food and Drugs, 32543
Director, Centers for Disease Control and Prevention, 578, 7791
Emergency Preparedness Office, 58871
Federal Occupational Health Division, 30066
Health Resources and Services Administration, 6803, 9573, 11612
Primary Health Care Bureau, 19137, 34265
Indian Health Service, 17236, 38582
Minority Health Office, 7140
National Institutes of Health, 4438, 6288, 8603-8606, 19466, 33942, 36214, 64408
Research Integrity Office et al., 7140
Substance Abuse and Mental Health Services Administration, Administrator, 7792
Women's Health Office, 107, 4460
President's Council on Physical Fitness and Sports; memorandum of agreement; termination, 36215
Privacy Act:
Systems of records, 12589, 12968, 16537, 68992
Scientific misconduct findings; policies and procedures, 5012, 38409
Vaccine information materials:
Diphtheria, tetanus, and pertussis (DTP) pamphlet; addendum availability, 17603, 27622
Veterans Health Care Act:
Limitation on prices of drugs purchased by covered entities, 68922

Railroad Retirement Board

RULES
Conflict of interests; CFR Part removed, 48597
Federal claims collection; tax refund offset, 31343
Railroad Retirement Act:
Compensation reporting methods, 45249
Social security overall minimum guarantee, 53396
Railroad Unemployment Insurance Act:
Benefits registration, 45840
PROPOSED RULES
Railroad Retirement Act:
Compensation reporting methods, 11811
Selection, payment, responsibilities, and monitoring representative payees, 13225
Social security overall minimum guarantee, 16155
Survivor annuities computation, 51024
Railroad Unemployment Insurance Act:
Benefits registration, 12005
Normal and extended benefits; duration, 43577
Regulatory agenda, 25206, 57206
NOTICES
Agency information collection activities under OMB review, 612, 3307, 6046, 7272, 8072, 14597, 16721, 17630, 19503, 19861, 31557, 31762, 34103, 35059, 45140, 47004, 49335, 51122, 52335, 52516, 53587, 54385, 60075, 63600, 68677
Meetings; Sunshine Act, 5798, 6676, 17305, 53244
Privacy Act:
Computer matching programs, 13288, 32402
Railroad Unemployment Insurance Act:
Employer contribution rates, 5441, 65409
Loan repayment from railroad unemployment insurance account to railroad retirement account, 41814
Monthly compensation base and other determinations— 1994 CY, 64785
Regional Rail Reorganization Act; benefit program; termination, 35987
Supplemental annuity program; determination of quarterly rate of excise tax, 13111, 32553, 47005, 69413

Reclamation Bureau

PROPOSED RULES
Acreage limitation; landholder requirements for eligibility to receive irrigation water from reclamation projects, 59437
Arid lands; reclamation by United States; rescission, 65692
Emergency Drought Act policies, procedures, and authorizations; rescission, 65694
Exchange or amendment of farm units on Federal reclamation projects; rescission, 65693
Public Works Appropriation Act for Teton Dam; administrative claims; rescission, 65693
Reclamation Reform Act of 1982; implementation in Western States, 64277
NOTICES
Agency information collection activities under OMB review, 60053, 65394
Colorado River reservoirs; coordinated long-range operation, 11864
Contract negotiations:
Quarterly status tabulation of water service and repayment, 6006, 27740, 39828, 55077
Environmental statements; availability, etc.
Arrowwood National Wildlife Refuge, ND, water management capabilities, 64335
Cachuma Project, CA, 52118
Central Valley Project, CA, 7242, 13276, 25846, 25847
Central Valley Project, CA, water service contracts to El Dorado County Water Agency, 28034
Columbia Basin Project, WA, 50048
Elephant Butte and Caballo Reservoirs et al., NM, 66383
Glenn-Colusa Irrigation District fish screening facilities improvements, CA, 52506
Los Vaqueros Project, CA, 62132
Reclamation Reform Act of 1982, implementation in Western States, 64336
Rio Grande floodway projects, NM, 7243
Rio Grande River maintenance program, NM, 4179, 11869, 39227
Rogue River Basin Project, OR, 39834
Salinas Valley Seawater Intrusion Program, CA, 17624
Tongue River Dam Project, MT, 66016
Westside Irrigation Project, WY, 33943
Yellowtail Afterbay Dam water quality study, MT, 30181, 30803
Meetings:
Colorado River Basin Salinity Control Advisory Council, 52504
Stillwater Area remediation plan, NV, 64779
Trinity River Basin Fish and Wildlife Task Force, 38436
Motor vehicle use restrictions:
American Falls Dam, ID, 68658
Realty actions; sales, leases, etc.:
Arizona, 40832, 44194
Water resources planning, discount rate change, 5411

Refugee Resettlement Office

RULES
Refugee resettlement program
Cash and medical assistance, 11793, 16777, 29981, 46089, 64499
Withdrawn, 16777, 40754
State legalization impact assistance grants, 31912
PROPOSED RULES
Refugee resettlement program
Cash and medical assistance, 39181
NOTICES
Grants and cooperative agreements; availability, etc
Refugee resettlement program, 40437
Social services for refugees; State allocations, 29586

Regulatory Information Service Center

PROPOSED RULES
Unified agenda of Federal regulations, 24002, 56002

Research and Special Programs Administration

RULES

Hazardous materials:
- Cargo tank motor vehicles; frequently asked questions concerning requirements, 53626
- Cargo tanks; manufacture, operation, etc.; requirements; compliance date extension, 12904
- Cargo tanks; registered inspectors and design certifying engineers registration; grandfather provision, 46872
- Editorial corrections and clarifications, 51524
- Elevated temperature materials, 3344
- Hazardous materials transportation—
  - Bulk packagings containing oil; oil spill prevention and response plans; correction, 6864, 8820, 33302, 33918
  - Miscellaneous amendments, 50496
  - Registration and fee assessment program; technical revision, 12543
- International Civil Aviation Organization's Technical Instructions for Safe Transportation of Dangerous Goods by Air; implementation, 50492
- Performance-oriented packaging standards—
  - Infectious substances, including regulated medical waste, 12182, 66302
  - Miscellaneous amendments, 50224
- Registration and fee assessment program, 10985
- Safe transportation training, 5850

Omnibus Transportation Employee Testing Act of 1991:
- Workplace drug testing programs; management information system, 68194

Pipeline safety:
- Incorporation by reference; standards update, 14519
  - Correction, 45268
- Leakage surveys on distribution lines located outside business districts, 54524
- Natural gas transportation, etc.—
  - Compressor station buildings; gas detection and monitoring, 48460

Omnibus Transportation Employee Testing Act of 1991—
- Drug and alcohol testing data, information collection and reporting, 68258

Onshore oil pipelines; response plans, 244, 21260

State grants; allocation formula, 10985

PROPOSED RULES

Food safety regulations:
- Safeguarding food from contamination during transportation, 29698

Hazardous materials:
- Cargo tanks; manufacture, qualification, and maintenance, 12316
- Container-on-flatcar and trailer-on-flatcar services; hazardous materials transportation, 27257
- Intrastate shippers and carriers; regulations compliance, 36920, 38111
- Performance oriented packaging standards—
  - Infectious substances, including regulated medical waste, 12207
  - Miscellaneous amendments, 37612
- Poisonous materials labeling requirements, 59224
- Tank cars; crashworthiness protection requirements, 52574
- Tank car tanks; cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects; detection and repair, 48485

Omnibus Transportation Employee Testing Act of 1991:
- Alcohol use by transportation workers, limitation, 7197

Pipeline safety:
- Gas pipeline safety standards; NAPSR report on recommendations for revision; regulatory review, 59431, 68382
- Hazardous liquid transportation; pipelines operating at 20 percent or less of specified minimum yield strength, 12213
- Natural gas transportation, etc.—
  - Service lines; excess flow valve installation, 21524, 33064

Property and passenger tariffs; electronic filing, 287, 12350

NOTICES

Composite cylinders used in self-contained breathing apparatus or other services; service life; safety advisory, 60899

Federal Radionavigation Plan (1992 edition); availability, 39856

Form 41 financial schedules; voluntary automated reporting on diskette or magnetic tape cartridge, 16260

Gas distribution and gas transmission facilities owners and operators; advisory bulletin, 18443

Hazardous liquid and natural gas pipeline facilities in flood areas; advisory bulletin to owners and operators, 41321, 61138

Hazardous materials:
- Applications; exemptions, renewals, etc., 4735, 6170, 6176, 7906, 8814, 8815, 13820, 13821, 19869, 19870, 29250, 29251, 33483, 33484, 33968, 36248, 38458, 38460, 43400, 43401, 48931, 53237, 60726, 60728, 65758, 65759
- Bulk tank carriers transporting flammable material; audible back-up alarm; Massachusetts requirement; preemption determination, 62707
- Cargo tanks transporting flammable and combustible liquids; California requirements, 48933
- International standards on transport of dangerous goods—
  - Competent authority ruling, 69447
- Registration and fee assesment program, 26040
- Tank cars; excepted thermal protection systems list, 28436

Hazardous materials transportation; preemption determinations, 32418

High pressure aluminum SCUBA cylinder rupture; safety advisory, 42620

High pressure composite hoop wrapped cylinders; safety advisory, 15895

Meetings:
- Aviation, Marine and Land Radionavigation Users Conferences, 48942
- International standards on transport of dangerous goods, 13521, 32168, 34840, 48087, 58376, 61139, 69448
- Pipeline Safety Advisory Committees, 38807
- Pipeline Safety Office; risk based prioritization planning, 3987

Memorandums of understanding:
- Natural gas transportation facilities, 7884

Metric system conversion policy, 4197

National preparedness for response exercise program; guidelines availability, 53990

Pipeline safety:
- Drug testing information; advisory bulletin to pipeline operators and contractors, 65011
- Risk assessment prioritization, 51402
- Snow accumulation on pipeline facilities, 7034
- User fees, 43982

Pipeline safety; waiver petitions:
- ARCO Oil & Gas Co., 26381, 65423
- Panhandle Eastern Corp., 13823

Reports; availability, etc.:
- High-level radioactive waste and spent nuclear fuel, shipping; identification of factors for selecting modes and routes, 69450

Applications, hearings, determinations, etc.:
- Chemical Waste Transportation Institute, 53614, 65226
- Chemical Waste Transportation Institute et al., 29322
- HASA, Inc., et al., 53239
- National Solid Wastes Management Association, 11176
- New York, NY, 9237, 19148
- Swimming Pool Chemical Manufacturers Association, 8480, 8488, 8494

Resolution Trust Corporation

RULES

Government ethical conduct standards, 8220

Investigation procedures, 58938

Privacy Act; implementation, 476

Program Fraud Civil Remedies Act; implementation, 34870

Service of process, 18144
- Correction, 21627

PROPOSED RULES

Regulatory agenda, 25412, 57406

NOTICES

Coastal Barrier Improvement Act; property availability:
- Arlington Timberlakes, TX, 29841
- Blackstone Open Space Parcel, CA, 42750
- Brookside Meadows, CA, 12606
- Campobello Island Estates, Canada, 34835
- Camp Verde Property, AZ, and Vallejo Property, CA, 58022
- Carmel Valley Ranch/Open Space, CA, 14597
- Carmel Valley Ranch/Residential, CA, 14598
- Denton County-Lakeview property, TX, 19862
- Dominion, TX, 29842
- FM 1382/Cedar Hill, TX, 12606
- Forest Lakes Village, CO, 11875
- Forges Field Development, MA, 17438
- Giannini Land, CA, 14598
- Green Valley, AZ, 19863
- Hunter's Glen at Jefferson, NJ, 19862
- Inland Pacific, CA, et al., 52335
- Joe Pool/108, TX, 19863
- Kiawah Island Resort/Ocean Course, SC, 14599
- Kiawah Island Resort/Seabrook, SC, 14599
- Lake Ridge/330, TX, 12607
- Moon River, FL, 33677
- Mountain Creek, TX, 11876
- Mountain Lakes Estates, NJ, 33678
- Northern Parcels of Tuscany Hills, CA, 29843
- Oak Summit, CA, 17439
- Oak Tree West, CA, 14600
- Orinda Oaks, CA, 14600
- Pariso Cumbres, CA, 34836
- Rams Hill Country Club, CA, 29843
- Rancho La Quinta Partners, CA, 14601
- South Dade Agro property, FL, 30832
- Stallion Springs and Sky Mountain Resort, CA, 58023
- Sumter County Land, FL, 43663
- Sunset Hammock, FL, 30833
- Tract 17413-4 and Parcel 14 of PM 23910, Riverside County, CA, 33678
- Wyemoor/Harbor Point and Buckeystown/Dudrow, MD, 60075

Contracting with firms party to lawsuits with RTC, FDIC, and FSLIC; policy statement, 61933

Contracting with firms with related entity defaults on financial obligations; policy statement; three-part list, 18234, 21776, 27318

INDEX VOL 58 1993 UMI

Rural Development Administration

RULES

Rural development:
- Community facility loans and grants, 5564, 12362, 42637

Rural Electrification Administration

RULES

Electric loans:
- Borrower accounting requirements, 59822
- Borrower investments, 52639
- Federal Financing Bank loans; refinancing and prepayment guidelines, 51007
  - Correction, 58729
- Lien accommodations and subordinations, 53835
- Pre-loan policies and procedures, 66260

Electric standards and specifications:
- Electric and telephone systems; timber products acceptable for use, 41394

Federal statutes, regulations, and executive orders; compliance:
- New building construction; seismic safety, 32438

Rural development:
- Distance learning and medical link grant program, 11507, 13194, 67306
- Loan payments for rural development projects; deferments, 21637

Telecommunications standards and specifications:
- Digital, stored program controlled central office equipment (Form 522); general specification, 30937
  - Correction, 36252
- Filled telephone cables, 29327, 29336, 32749
- Materials, equipment and construction; specifications for filled buried wires, 61002

Telephone loans:
- Borrower investments, 52639
- Federal Financing Bank loans; refinancing and prepayment guidelines, 51007
  - Correction, 58729
- Policies, procedures, and requirements; tiered or multi-level system and telecommunications modernization plan establishment, 66250

PROPOSED RULES

Electric loans:
- Borrower fidelity and insurance requirements, 25786
- Discounted prepayments, 48465
- General and pre-loan policies and procedures common to insured and guaranteed electric loans; long-range financial forecasts, 44288
  - Correction, 48800
- Lien accommodations and subordinations, 12552
- REA borrowers; audit policy; certified public accountant requirement, 49442
- Title evidence policies and procedures, 21661

Local account computations, procedures and policies, 18043

Rural development:
- Rural economic development loan and grant program, 52688

Telecommunications:
- Software license agreement, 29363

Telecommunications standards and specifications:
- Filled fiber optic cables, specification, 46097
- Outside plant housings and serving area interface systems; specification, 46110
- Terminating cables specification, 60560

Telephone loans:
- Borrower fidelity and insurance requirements, 25786
- Loan security documents; adjusted net worth to asset requirements in mortgage between REA and its borrowers, 68780
- Title evidence policies and procedures, 21661

NOTICES

Environmental statements; availability, etc.:
- Arizona Electric Power Cooperative, Inc., 8253
- Associated Electric Cooperative, Inc., 17860
- Butler Rural Electric Cooperative, Inc., 21969
- Cape Hatteras Electric Membership Corp., 67768
- Central Virginia Electric Cooperative, 6775
- Golden Valley Electric Association, Inc., 57582, 64353
- Joe Wheeler Electric Membership Corp., 30013
- Palmetto Electric Cooperative, Inc., 16170
- Seminole Electric Cooperative, Inc., 60592
- Western Farmers Electric Cooperative, 68850
- Wright-Hennepin Cooperative Electric Association, 59704

Grants and cooperative agreements; availability, etc.:
- Distance learning and medical link program, 33067, 67391

Rural Telephone Bank

RULES

Telephone loans:
- Policies, procedures, and requirements; tiered or multi-level system and telecommunications modernization plan establishment, 66250

NOTICES

Loan policies:
- Interest rates, 58835, 61673

Meetings; Sunshine Act, 14624, 26181, 27058, 40188, 55109

Saint Lawrence Seaway Development Corporation

PROPOSED RULES

Tariff of tolls, 29372
- Meetings, 68618

Secret Service

NOTICES

Senior Executive Service:
- Performance Review Boards; membership, 28911

Securities and Exchange Commission

RULES

Accounting bulletins, staff:
- Accounting and disclosures related to loss contingencies, 32843
- Accounting and disclosures relating to discontinued operations, 59361

Federal claims collection:
- Administrative offset, tax refund offset and collection services, credit bureau reporting, 64369
- Salary offset, 38519

Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
- Filing fees instructions, 15009
- Operational phase implementation—
  - Corporation Finance and Investment Management Divisions; correction, 14628, 16771, 21348, 21509, 26383, 27467
  - Investment and business development companies and institutional investment managers, 14848, 17327

Investment companies:
- Acquisitions of securities issued by persons engaged in securities-related businesses; exemption, 49425
- Boards of directors; annual review requirements revision, 49919
- Closed-end management investment companies periodic repurchases; and open-end management investment companies and registered separate accounts, redemption; and staff guidelines, 19330
  - Correction, 29695
- Financial statements; safe harbor rule, 7984
- "Interested" and "affiliated" persons definitions; exemptions of general and limited partners, 45834
  - Correction, 64353
- Mutual fund performance and portfolio managers; disclosure, 19050
  - Correction, 21927

Multijurisdictional disclosure and modifications to the current registration and reporting system for Canadian issuers; CFR correction, 58651

Organization, functions, and authority delegations:
- Director, Market Regulation Division, 11792, 25773, 68520
- General Counsel Office, 8541
- Regional Administrators; CFR correction, 60380

Photocopying services; price increase, 64120

Public utility holding companies, 14999
- Exempt wholesale generators and foreign utility companies; acquisitions financing, 51488

Securities:
- Access to nonpublic information, 52416
- Blank check rule; penny stock definition, 58099
- Broker-dealer compliance with self-regulatory organization qualification standards, 27656
- Broker-dealer registration and reporting; uniform form, 11
- Broker-dealers and investment advisers; registration of successors, 7
  - Correction, 21334
- Broker-dealer transactions settlement timeframe, 11806, 52891

Brokers and dealers; net capital requirements, 43555

Canadian issuers, multijurisdictional disclosure system; forms; amendments, 35367

Distribution of foreign securities to qualified institutional buyers, 60324

Employee benefit plan exemptive rules; phase-in period extension, 36866

Executive compensation disclosure; securityholder list and mailing requests, 63010

Foreign government issuers—
- Financial statements; age rule and form requirements, 60304

Foreign issuers; trading practices exemptions during distributions in United States; policy statement, 60326

Multijurisdictional disclosure; British Columbia trustees eligibility and trust indentures exemption from specific provisions of Trust Indenture Act, 33189

Multijurisdictional disclosure system for Canadian issuers; amendments, 62028

Mutual fund performance and portfolio managers; disclosure, 19050
- Correction, 21927

Net capital declines; early warning, 37655

Passive market making, 19598

Penny stock sales practice and disclosure rules, 37413

Preliminary proxy materials; elimination of filing requirements, 69225

150-255 O - 94 - 6 (3)

Reporting requirements for brokers or dealers; time extensions, 45838
Restricted securities; resale; correction, 67312
Securities registrants; appropriate filing places; form revisions, 65541
Small business initiatives; financing facilitation and reporting requirements compliance, 26509
Solicitation of purchases on exchange to facilitate distribution of securities; Rule 10b–2 rescission, 18145

PROPOSED RULES

Accounting bulletins, staff:
Accounting and disclosures related to loss contingencies, 34842
Investment companies:
Acquisition of securities issued by persons engaged in securities-related business; exemption, 3243
Boards of directors; revision of requirements, 2999
Exemptive orders and expanded delegated authority; expedited procedure, 16799
Correction, 18352
Investment company proxy statements; information requirements, 67729
Open-end management; off-the-page prospectuses, 16141
Open-end management companies issuing multiple classes of shares, exemption; multiple class and master-feeder funds disclosure, 68074
Registration statements; post-effective amendments, 50291
Research and development companies; safe harbor exclusion from investment company status, 38095
Risk-limiting conditions imposed on tax exempt money market funds, 68585
Practice and procedure:
Administrative proceedings; evidentiary hearings before administrative law judges, etc., 61732
Public utility holding companies:
Exempt wholesale generators and foreign utility companies; acquisitions financing, 13719
Intrasystem service, sales, and construction contracts involving exempt wholesale generators and foreign utility companies, 51508
Regulatory agenda, 25416, 57410
Regulatory Flexibility Act; rules scheduled for review; list, 68578
Securities:
Blank check rule; penny stock definition, 37445
Broker-dealer compliance with self-regulatory organization qualification standards, 16151
Broker-dealer transactions settlement timeframe, 11806
Brokers and dealers, reporting requirements; employment of optical storage technology, 38092
Closed-end management investment companies, continuous or delayed offerings; registration statements and post-effective amendments, automatic effectiveness, 19361
Customer confirmations, annual account statements, and new accounts; enhanced order flow payment disclosure, 52934
Distribution of foreign securities to qualified institutional buyers, 27686
Executive compensation disclosure; securityholder list and mailing requests, 42882
Foreign company registration and reporting requirements simplification, etc., 60307
Multijurisdictional disclosure system for Canadian issuers; amendments, , 26442
Correction, 27486
Net capital rule—
Broker-dealer participation in derivative products markets, 27486, 49452
Foreign equity securities treatment, 44310
Preliminary proxy materials; elimination of filing requirements, 63017
Reporting requirements for brokers or dealers; time extensions, 11804
Spain; securities exemption for trading futures contracts, 27684

NOTICES

Agency information collection activities under OMB review, 369, 613, 8638, 8639, 11876, 13112, 18429, 18430, 19503, 21756, 27756, 31226, 32403, 36485, 38147, 42116, 42992, 43664, 44864, 49336, 53969, 53970, 54608, 60226, 60887, 61110, 62172, 68447
Alternative dispute resolution policy, 6531, 18430
Consolidated tape association plan and consolidated quotation plan; amendments, 50984, 66040
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Corporation Finance Division; phase-in changes and corrections, 35987, 57877
Filer Manual availability, 18638
Financial data schedules deferral, 51659
Phase-in changes and corrections, 37036
Joint industry plan:
Intermarket trading system plan; amendments, 14227
Meetings:
Market Transactions Advisory Committee, 4720, 7824, 14601, 48905
Meetings; Sunshine Act, 629, 3991, 6166, 6573, 7920, 8653, 9596, 11665, 13524, 15400, 16266, 16445, 17469, 19150, 21333, 21775, 25899, 26184, 26813, 27335, 28656, 29694, 30219, 32415, 33144, 34497, 34498, 35074, 36515, 38601, 40467, 40860, 41554, 42360, 44535, 46674, 47783, 49092, 51670, 54402, 58229, 58901, 60086, 60493, 61727, 63440, 64029, 64796, 66073
Options price reporting authority, 21481, 25874, 44865, 59499
Privacy Act:
Systems of records, 64414
Securities:
Foreign issuers; registration and reporting requirements exemptions; list, 43953
Foreign securities; cooling-off periods under rule 10b-6; exemption, 13288
German issuers; trading rule exemptions; list, 53220
Securities uniformity law; annual conference, 17915
Self regulatory organizations:
Clearing agency registration applications—
Clearing Corp. for Options and Securities, 34105
Delta Government Options Corp., 9005
Government Securities Clearing Corp., 28075, 32405
Intermarket Clearing Corp., 18277
International Securities Clearing Corp., 48368, 63195
MBS Clearing Corp., 6424, 64989, 68183
Participants Trust Co., 8642
Options disclosure documents—
Options Clearing Corp., 12286
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 4720, 6138, 6542, 6653, 7272, 7273, 8434, 8796, 9004, 11078, 11265, 12607, 16892, 17918, 18120, 18431, 18432, 19516, 21327, 25681, 26009, 26992, 28071, 28073, 30078, 30833, 31558, 32159, 32967, 33960, 35060, 36227, 36228, 36485, 37041, 37980, 38148, 40171, 43394, 44705, 45360, 45553, 45926, 48680, 48906, 49066, 49336, 52122, 53588, 53592, 53750, 57648, 58357, 60888, 61111, 61114, 61719, 62696, 63193, 64347, 64622, 65201, 65409, 65603, 65605, 65607, 65740, 65742, 66041
American Stock Exchange, Inc., et al., 16893, 19516, 33679, 59503, 62173, 64416
Boston Stock Exchange Clearing Corp., 14602, 37982
Boston Stock Exchange, Inc., 6026, 11267, 11647, 17462, 18121, 18433, 21482, 21492, 21607, 26011, 29646, 30076, 30079, 31560, 36229, 36712, 36714, 36716, 41538, 44707, 44709, 49337, 49534, 51393, 53595, 58205, 60708, 60709, 62174, 64625, 67875, 69413
Chicago Board Options Exchange, Inc., 3307, 3309, 4448, 4722, 6140, 7165, 7274, 8639, 9002, 11269, 12280, 14228, 14453, 14602, 15886, 18122, 18288, 19864, 26013, 26014, 26996, 27000, 27005, 27008, 27012, 27016, 27020, 27024, 27596, 32404, 32553, 32737, 32969, 33471, 33850, 34104, 35060, 35990, 36487, 36720, 38149, 38449, 39067, 41300, 41528, 41814, 41817, 48398, 48912, 49068, 49339, 50061, 50602, 50603, 50984, 51660, 51893, 53003, 53005, 53006, 53598, 53599, 55093, 58208, 58356, 58358, 59282, 59500, 59763, 60226, 60710, 60889, 61115, 61117, 61934, 62175, 63600, 65204, 65207, 65744, 69415, 69417
Chicago Board Options Exchange, Inc., et al., 12056, 57651
Chicago Stock Exchange, Inc., 43664, 48914, 49341, 51394, 54386, 54387, 54388, 54608, 54610, 63407, 65744, 66042, 69416
Cincinnati Stock Exchange, Inc., 11268, 17919, 18123, 22006, 26804, 28424, 36231, 39841
Delta Government Options Corp., 6648, 26366, 28076, 31057, 35990
Depository Trust Co., 3046, 13291, 13652-13654, 15887, 19283, 22003, 22005, 26366, 32162, 35991, 39585, 44865, 48915, 51395, 53007, 59283, 64626, 66043, 67878, 68971
Depository Trust Co. et al., 59766
Government Securities Clearing Corp., 8072, 13659, 14229, 14603, 14605, 15387, 18289, 26367, 31981, 31983, 31985, 39842, 42584, 42993, 43966, 63408, 63410, 63412, 63414
Intermarket Clearing Corp., 15389, 31986, 37983, 42585, 43666
International Securities Clearing Corp., 17920, 33846, 36722, 44712
MBS Clearing Corp., 3310, 3312, 11081, 33288, 33289, 38814,43967, 48915, 64990
Midwest Clearing Corp., 9581, 26371, 44529, 47163, 54620, 60076, 68971
Midwest Securities Trust Co., 3049-3051, 6318, 7276, 11076, 11079, 14453, 14455, 27605, 29240, 29243, 29438, 36232, 40451, 43668, 44198, 65209
Midwest Stock Exchange, Inc., 6543, 9227, 11271, 14230, 15888, 18124, 21325, 21483, 28077, 31563, 32554, 33681, 34112, 34284, 34285, 39069, 40449, 49072, 68972

INDEX VOL 58 1993 UMI

150-255 O - 94 - 6 (3)

MSB Clearing Corp., 35994
Municipal Securities Rulemaking Board, 11272, 11273, 18290, 22006, 27599, 27757, 31987, 34113, 34115, 37984, 39260, 45365, 45931, 47306, 64992, 67882
National Association of Securities Dealers, Inc., 370, 3052, 3314, 3317, 3576, 4189, 4725, 5788, 5791, 5988, 35995, 6029, 6030-6033, 6829, 7016-7019, 7598, 8640, 8799, 9244, 9584, 11275, 12286, 12608, 14232, 14234, 16249, 16428, 16436, 16560, 16562, 16721, 18125, 18126, 18277, 18279, 18291, 19505, 21484, 21494, 21609, 21613, 22009, 22010, 25684, 26805, 27598, 27601, 27603, 27760, 28079, 28905, 29017, 29442, 29647, 29655, 29672, 30208, 30836, 31766, 31768, 31770, 31773, 32971, 33127, 33962, 33963, 33965, 34836, 36489, 36723, 36725, 36726, 38150, 39070, 39072, 39262, 42590, 43667, 43968, 44714, 44868, 45541, 45932, 47921, 48684, 48685, 48686, 50373, 50604, 50608, 50609, 52124, 53600, 53752, 54389, 54616, 54617, 54621, 57881, 58363, 58573, 58576, 58883, 59083, 59084, 59504, 59773, 60472, 60712, 60890, 63195, 64990, 64994, 65210, 65214, 65746, 66388, 67884, 68448, 68974, 69419
National Securities Clearing Corp., 1..0, 6319, 6649, 9582, 11082, 12609, 13656, 14456, 26570, 36727, 43395, 44530, 44713, 47483, 49535, 59772, 60077, 63602
National Securities Clearing Corp. et al., 36491
New York Stock Exchange, Inc., 613, 3579, 4726, 6034, 6036, 6543, 6650, 7277, 7281, 7282, 8075, 8436, 9244, 11276, 11277, 16563, 16895, 16896, 17630, 17634, 18128, 18295, 19284, 19516, 21616, 21617, 28905, 29019, 30209, 31565, 31568, 32972, 32973, 33128, 33131, 33290, 34116, 34837, 34838, 39586, 41539, 41819, 44715, 44716, 45140, 45366, 46260, 47164, 47484, 47485, 48687, 48916, 49073, 49537, 50985, 51123, 52126, 54179, 57654, 58883, 59085, 59285, 60078, 60227, 61119, 65215, 66045, 68975, 69430
Options Clearing Corp., 5041, 7027, 8077, 11878, 11879, 14457, 14459, 14606, 15889, 16438, 31435, 31989, 33472, 33848, 36232, 38590, 38800, 39264, 41302, 42586, 43412, 60229, 63195, 63419, 66046
Options Clearing Corp. et al., 3318, 35992, 36234, 36238, 39587, 53231, 64997, 67885
Pacific Clearing Corp., 26372
Pacific Stock Exchange Inc., 5042, 6651, 7283, 8078, 8801, 11279, 12611, 13661, 16566, 18296, 25685, 29246, 29675, 31570, 32975, 34118, 35491, 35496, 36489, 36492, 36493, 40679, 41305, 42117, 42588, 45368, 45542, 47169, 48920, 49076, 49343, 51661, 57655, 58210, 58365, 58368, 60714, 60892, 65218, 67887, 67888, 68184, 68185
Participants Trust Co., 6319, 7284, 7824, 12295, 16253, 26373, 26573, 31990, 44869, 59501, 69433
Philadelphia Depository Trust Co., 27028, 31058, 37977
Philadelphia Depository Trust Co., Inc., 13658
Philadelphia Stock Exchange, Inc., 3054, 5043, 11280, 13662, 14238, 15168, 15516, 17633, 18129, 22011, 25686, 25687, 25689, 25876, 27029, 28908, 29653, 31573, 31574, 31765, 32976, 33473, 36239, 36240, 36495, 36496, 37978, 38153, 38803, 41305, 41527, 41529, 41532, 41535, 41821, 42591, 46263, 48921, 49078, 49345, 50062, 50380, 51662, 52337, 52339, 52517, 52518, 53009, 53010, 53602, 53604, 54619, 55097, 57658, 58584, 58593, 59286, 59502, 59769, 59770, 60715, 62176, 63421, 63604, 64628, 65221, 65609, 65610, 65611, 65613
Stock Clearing Corp. of Philadelphia, 27031, 37979, 54181
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 4722, 6026, 7014, 8642, 11076, 16427, 26012, 27606, 31991, 32737, 33287, 38154, 41536, 45543, 48682, 53970, 54182, 58211, 61935, 64419
Chicago Board Options Exchange, Inc., 48083
Chicago Stock Exchange, Inc., 38589, 39259, 41536, 42116, 42117, 44710, 45928, 46667, 47308, 47775, 48683, 51122, 52336, 53970, 54182, 58211, 59507, 59766, 61723, 61935, 64419, 64998, 65609, 66047, 67428, 67878, 68447
Cincinnati Stock Exchange, Inc., 4723, 6028, 7015, 8802, 12285, 14607, 16427, 18285, 21492, 21757, 26365, 27595, 30837, 32405, 32408, 32738, 33288, 38154, 44711, 45543, 45928, 47489, 48683, 51122, 52336, 53971, 54182, 62394, 64415, 64786, 67429, 67878
Midwest Stock Exchange, Inc., 3580, 3581, 4724, 6029, 7015, 7285, 8643, 12289, 12608, 13515, 14608, 16428, 17634, 18287, 18434, 19148, 21484, 21757, 26015, 26371, 27757, 29677, 31992, 32406, 32407, 33290, 33684, 33962, 35061, 35994, 38154
Pacific Stock Exchange, Inc., 4727, 6038, 7277, 7285, 8643, 11078, 12295, 16439, 21491, 25875, 26015, 30837, 32407, 32739, 33292, 34490, 38589, 39268, 44718, 51124, 53971, 54183, 58212
Philadelphia Stock Exchange, Inc., 4728, 6038, 6142, 7028, 7166, 7285, 8080, 8644, 11078, 12297, 15390, 16439, 18284, 21491, 25823, 26015, 26374, 27605, 29677, 30838, 31992, 32407, 32739, 33292, 33966, 35997, 38155, 38591, 39268, 41537, 44718, 45544, 45933, 47306, 48690, 51124, 52336, 53971, 54183, 58212, 59769, 61123, 61936, 64416, 64992, 67429, 67890, 17635
Applications, hearings, determinations, etc.:
A.T. Ohio Tax-Free Money Fund et al., 51894
ABC Investment Co., 11082
Acacia National Variable Annuity Account A, 13811
Acacia National Variable Life Insurance Account B, 12612
Advisors Fund L.P. et al., 27606
AEGON NV et al., 63422
Affiliated Fund, Inc., et al., 34119
AIM Convertible Securties, Inc., 8644
AIM Funds Group et al., 34490, 36497
Air Methods Corp., 48083
Alaska Air Group, Inc., 29020
Alex. Brown Cash Reserve Fund, Inc., et al., 48924
Alliance Fund, Inc., et al., 3320, 14459
Allied Capital Corp. et al., 58023
Allmerica Funds et al., 6652
Alpine Meadows of Tahoe, Inc., 37045
American Capital Comstock Fund, Inc., et al., 9006, 46256, 46257
American Capital Government Target Series et al., 614, 16898
American Express Variable Annuity Fund, Inc., 47922
American General Equity Accumulation Fund, Inc., 26574
American General Fixed-Income Accumulation Fund, Inc., 4192
American Healthcare Management, Inc., 29844
American Investors Growth Fund, Inc., 28081
American Investors Income Fund, Inc., 28082
American Investors Money Fund, Inc., 28081
American Life Insurance Co. of New York et al., 57884
American Medical Holding, Inc., 26374
American National Insurance Co. et al., 64420
American National Money Market Fund, Inc., 16723
American Pacific Corp., 14608
American Skandia Life Assurance Corp. et al., 53972, 53973
AmSouth Mutual Funds et al., 61123
Apollonius Institutional Investment Fund, Inc., 34600
Ark Funds et al., 58025
Associated Planners Stock Fund, Inc., 27761
ATC Environmental, Inc., 32408
Axe-Houghton Funds, Inc., 14461
Bando McGlocklin Capital Corp. et al., 40452
Bayfield Low Income Housing, L.P., et al., 37763
Benchmark Funds et al., 26575
Benton Oil & Gas Co., 53605
Berliner Handels- und Frankfurter Bank et al., 41541
Beverage Group Acquisition Corp. et al., 33685
BioSafety Systems, Inc., 48084
Bison Money Market Fund, 26177
Bombay Co., Inc., 37045
Boston Capital Tax Credit Fund IV L.P. et al., 62698
Boston Financial Tax Credit Fund VIII, a Limited Partnership, et al., 52519
Brazilian Equity Fund, Inc., et al., 41533
Brazilian Investment Fund, Inc., 12613
Bull & Bear Capital Growth Fund, Inc., 8083
Bull & Bear Equity-Income Fund, Inc., 8084
Bull & Bear Financial News Composite Fund, Inc., et al., 65410
Burnham Fund Inc. et al., 43139
California Energy Co., Inc., 44389
Calvert First Government Money Market Fund et al., 33132
Calvert Fund et al., 69434
Canada Life Insurance Co. of America et al., 8081
Canada Life Insurance Co. of New York et al., 38592
Capital Corp. of America, 14462
Capital Investments, Inc., 33134
Capital Value Fund, Inc., et al., 26019
Cash Reserve Management, Inc., 40680
CBC Cornerstone Funds, 14608
Centennial Connecticut Tax Exempt Trust, 40456
Chancellor Funds, Inc., 14463
Charter National Life Insurance Co. et al., 32740
China Growth Fund, Inc.,
Citizens Acquisition Fund, L.P., 40457
Collective Investment Trust for Citibank IRA's, 60230
College Retirement Equities Fund et al., 40681
Colonial Advanced Strategies Gold Trust, 46260
Colonial California Tax-Exempt Trust, 44719
Colonial Corporate Cash Trust I, 21495

Colonial Fund, 21496
Colonial Government Securities Plus Trust, 21497
Colonial Government Trust, 47490
Colonial Income Trust, 44719
Colonial Michigan Tax-Exempt Trust, 44720
Colonial Minnesota Tax-Exempt Trust, 44721
Colonial New York Tax-Exempt Trust, 54183
Colonial Ohio Tax-Exempt Trust, 54184
Colonial Strategic Income Trust, 21497
Colonial Tax-Exempt Money Market Trust, 21498
Colonial Trust I et al., 12287
Colonial U.S. Government Trust, 44721
Comerica Bank et al., 68449
Comstock Partners Strategy Fund, Inc., et al., 53753
Connecticut Mutual Investment Accounts, Inc., et al., 18130
Co-operative Bank Investment Fund, 63425
Crown America Separate Account A, 64629
Crown America Separate Account D, 64629
CSS Industries, Inc., 38592
Customedix Corp., 17636
Daily Money Fund et al., 41116, 62395
Dean Witter American Value Fund et al., 28083
Dean Witter Select Equity Trust, Selected Opportunities Series, 63196
Defined Asset Funds—Equity Income Fund, Select Ten Portfolio (1993 Winter Series), 19285
Delaware Group Trend Fund, Inc., et al., 17636
Digitran Systems, Inc., 30212
Dreyfus Arizona Municipal Bond Fund, 31226
Dreyfus Liquid Reserve Fund, Inc., 19511
Dreyfus Long-Term Government Fund, 19512
Dreyfus Special Government Money Market Fund, 19512
Dreyfus Strategic World Income, 19513
Dreyfus U.S. Government Income Fund, 4729
Early, John Harvey, 58212
EBI Series Trust, 59089
Emerald Funds et al., 59774
Empire Fidelity Investments Life Insurance Co. et al., 19287
Enrotek Properties Inc., 7905
Environment One Corp., 21194
Equitable Capital Partners, L.P., et al., 25877
Equitable Funds et al., 15390
Equitable Life Assurance Society of United States et al., 39075, 48691
Farm Bureau Life Insurance Co. et al., 54623
Federated Variable Rate Mortgage Securities Trust, 7167
FFB Funds Trust et al., 34601
Fidelity Investments Life Insurance Co. et al., 6654
Fidelity Systematic Investment Plans et al., 58885
Financial Tax-Free Money Fund, Inc., 48693
First Boston Investment Funds, Inc., et al., 58576
First Connecticut Capital Corp., 32164
First Investors Corp. et al., 68451
First Investors Corp., Inc., et al., 13664
First Prairie Cash Management et al., 37535
First Prairie Money Market Fund et al., 616
First Transamerica Life Insurance Co. et al., 7286, 7287
First Trust Special Situations Trust, Series, 9, 61127
Fixed Income Securities, Inc., et al., 27761
Fortis Advantage Portfolios, Inc., et al., 9009
Franklin Corp. SBIC, 47308
Frozen Food Express Industries, Inc., 42597
Fruit of the Loom, Inc., 65614
Future Communications, Inc., 50063
Galaxy VIP Fund et al., 9012
GE Funds et al., 50988
Gintel Capital Appreciation Fund, 8084
Glenbrook Life & Annuity Co. et al., 28425
GMO Investment Trust, 48399
GNA Investors Trust et al., 44389
Goldman, Sachs & Co., 48925
Goldman Sachs Equity Portfolios, Inc., et al., 6830, 8438
Government Securities Equity Trust et al., 42597
Great American Reserve Insurance Co. et al., 13112
Great Hall Investment Funds, Inc., et al., 28085
Great Hall Value Ten Trust, Series 1, et al., 41307
Great Hall Value Trust-Series, 61128
Greece Fund, Inc., 49347
Ground Round Restaurants, Inc., 34839
Gruntal & Co., Inc., 54625
Guardian Cash Management Trust, 47490
Guardian Insurance & Annuity Co., Inc., 35061
Guardian Park Ave. Fund, 52128
Hanover Funds, Inc., et al., 53977
Hartford Life & Accident Insurance Co. et al., 55100
Hartford Life Insurance Co. et al., 48694
Harvest Funds, Inc., 13515
Health Care REIT, Inc., 16440
Hecla Mining Co., 21194
High Plains Corp., 17637
High Rollers Gaming Sector Fund, Inc., 68678
Hubco, Inc., 14609
Hudson Fund, Inc., 35064
Huntington Investment Trust, 34608
IBM International Finance, N.V., et al., 36502
ICOS Corp., 11426, 15392
Identix Inc., 29844
IDEX II Series Fund et al., 47491
IDS Nuveen Income Trust, Series, 59507
Insteel Industries, Inc., 16440
Instrument Systems Corp., 16440
Insurance Management Series et al., 64786
Integrity Portfolios, Inc., 65412
International Fund for Institutions, 29248
International Life Investors Insurance Co. et al., 39077
Intervisual Books, Inc., 12057
Invesco Variable Investment Funds, Inc., et al., 64630
Investors Life Insurance Co. of Nebraska et al., 48695
ITT Life Insurance Corp. et al., 15169, 27032
Ivy Fund et al., 13116
J.W. Gant Fund, Inc. et al., 25690
Jackson Fund, Inc., 4729
Janus Income Series, 16899
Janus Twenty Fund, Inc., 16901
Janus Venture Fund, Inc., 16900
Jennifer Convertibles, Inc., 37045
John Hancock Asset Allocation Fund, 67430
John Hancock Asset Allocation Fund et al., 48697
John Hancock Mutual Variable Life Insurance Account UV et al., 47495, 47501
John Hancock Variable Life Insurance Co. et al., 58580
Key Energy Group, Inc., 12977
Keyport Life Insurance Co., 44722
Keyport Life Insurance Co. et al., 21499
Keystone Custodian Fund, Series B-1, et al., 59287
Kidder Peabody California Tax Exempt Money Fund et al., 6545
Kidder, Peabody Exchange Money Fund, 65747
Kidder, Peabody MarketGuard Appreciation Fund, 13293
Kleinwort Benson Investment Strategies, 58030
Kotrozo Mutual Fund Group, Inc., 47923
Kroger Co., 12057
Lancashire Trust, 29249
Latin America Investment Fund, Inc., et al., 57886
Lehman Brothers Inc., 50063
Levi Strauss Associates Inc., 28426
Lexington Technical Strategy Fund, Inc., 31059
Liberty All-Star Equity Fund et al., 26579
Liberty Financial Trust et al., 61936
Lincoln Benefit Life Co. et al., 47504
Lincoln National Convertible Securities Fund, Inc., et al., 60231
Liquid Green Government Trust, 45929
Liquid Green Tax-Free Trust, 45930
Liquid Green Trust, 45929
LMS Money Fund, 11882
LTV Aerospace Creditors Liquidating Trust, 41308
Lutheran Brotherhood et al., 53606
M.S.D. & T. Funds, Inc. et al., 58887
Marcette Fund, Inc., 40457
MAS Pooled Trust Fund et al., 18285
Massachusetts Investors Trust et al., 34287, 57889
Maxim Series Fund, Inc., et al., 43142
May Department Stores Co., 26375
McLaughlin, Piven, Vogel Securities, Inc., 8440
Medchem Products, Inc., 6425
Merrill Lynch Equi-Bond I Fund, Inc., 26375
Merrill Lynch Life Insurance Co. et al., 29844
Merrill Lynch Series Fund, Inc., et al., 11650
MetLife-State Street Equity Trust et al., 6550
MFS California Municipal Bond Fund, 54629
MFS Emerging Growth Fund, 60722
MFS High Yield Municipal Bond Fund, 62178
MFS Lifetime Capital Growth Fund, 60722
MFS Lifetime Gold & Natural Resources Fund, 54628
MFS Lifetime Gold & Natural Resources Fund et al., 11282
MFS Lifetime Government Mortgage Fund, 60721
MFS Lifetime Government Securities Fund, 60723
MFS Lifetime High Income Fund, 60717
MFS Lifetime Intermediate Fund, 63197
MFS Lifetime Money Market Fund, 60717
MFS Lifetime Municipal Bond Fund, 60718
MFS Lifetime Total Return Fund, 60719
MFS Lifetime Worldwide Equity Fund, 60719
MFS Managed Municipal Bond Trust, 60720
MFS Managed Sectors Fund, 54627
MFS Municipal Bond Trust, 63198
MFS Research Fund, 63199
MFS Special Fund, 54628
MFS Utilities Fund, 54626
Michigan National Bank et al., 68453
Midland National Life Insurance Co. et al., 44724
Midwest Strategic Trust et al., 34605
Monmouth Capital Corp., 34609
Montgomery Funds et al., 31774
Munder Funds, Inc., et al., 3055, 31776
Mutual Fund Group, et al., 34292, 53607
Mutual of America Life Insurance Co. et al., 57660
National Multi-Sector Fixed Income Fund et al., 43969
Nations Fund, Inc., et al., 48400
Nations Fund Trust et al., 12290
Nationwide Life Insurance Co. et al., 51663
Nautilus Fund, Inc., 42600

INDEX
VOL 58
1993
UMI

NBD Bank, N.A., et al., 68455
Neuwirth Fund, Inc., 11283
New Century Fund Inc. et al., 6554
New England Funds et al., 43973
New England Mutual Life Insurance Co. et al., 6038, 50613, 66047
New Germany Fund, Inc., et al., 16723
New Street Capital Corp. et al., 30081
Newton Growth Fund, Inc., 31780
Newton Income Fund, Inc., 31781
New York Life Insurance & Annuity Corp. et al., 58714
New York Life VLI Series Fund, Inc., 13293
Niagara Share Corp., 67891
Nicholas-Applegate Capital Management et al., 44726
Nicholas-Applegate Mutual Funds et al., 13516
Noddings Investment Trust, 7167
North American Security Life Insurance Co. et al., 8085
North Coast Energy, Inc., 22012
Northwestern Mutual Capital Appreciation Stock Fund, Inc., et al., 12614
Northwestern National Life Insurance Co. et al., 58371
Nuveen Income Fund, 40458
OFFITBANK Investment Fund, Inc., et al., 69438
Ohio National Life Assurance Corp. et al., 6425
Olympus Investment Trust, 67892
One Group et al., 21502, 53981
Oneita Industries, Inc., 16441
Oppenheimer Blue Chip Fund, 40459
Oppenheimer Management Corp. et al., 58717
Oppenheimer Value Stock Fund et al., 12294
Overland Express Funds, Inc., et al., 25879
Pacific Mutual Life Insurance Co. et al., 48702
PaineWebber Life Insurance Co. et al., 42600, 42603
Park Avenue Portfolio, 619
Parker & Parsley Petroleum Co., 14610
Participants Trust Co., 16902
Pasadena Investment Trust et al., 61130
PB-SB Investment Partnership I et al., 39079
PEC Israel Economic Corp., 6427
PFL Life Insurance Co. et al., 11283, 11653, 43977
Pine Street Fund, Inc., 33475
Pioneer Fund et al., 63427
Piper Funds Inc. et al., 48402
PMC Capital, Inc., et al., 58891, 59289
PMI Fund, Inc., 32978
Poland Fund, Inc., 27763
Pollution Research & Control Corp., 27608
Preferred Group of Mutual Funds, 26581
Preferred Health Care, Ltd., 16902
Prime Value Funds, Inc., et al., 13664, 13666
Protective Life Insurance Co. et al., 68678
Providentmutual Life & Annuity Co. of America et al., 47506
Provident Mutual Life Insurance Co. of Philadelphia et al., 31992, 32742
Prudential Adjustable Rate Securities Fund, Inc., et al., 21194
Prudential Insurance Co. of America et al., 59290
Public utility holding company filings, 620, 4728, 4730, 6044, 8442, 9586, 11655, 12614, 12617, 13670, 15170, 16254, 16255, 17463, 18435, 19866, 19867, 21758, 22012, 26178, 27608, 28427, 29678, 31060, 31762, 32555, 33475, 34293, 35997, 37538, 37985, 39268, 41822, 43145, 44393, 44728, 45142, 47005, 47508, 48690, 50065, 51396, 51397, 52521, 54630, 58031, 58214, 59089, 60235, 61134, 62699, 63607, 64999, 66053, 68680
Putnam Adjustable Rate U.S. Government Fund et al., 65614
Putnam Capital Manager Trust et al., 64633
Putnam Equity Income Fund, 65413
Quest for Value Accumulation Trust et al., 47509
Quest for Value Fund, Inc., et al., 41826
Ranson Equity & Treasury Securities Trust, Series 1 and Subsequent Series, et al., 36729
RBB Fund, Inc., et al., 66055
Reserve Equity Trust, 16568
Resurgens Communications Group, Inc., 50619
Robinson, Donald J., et al., 27610
Sagamore Funds Trust et al., 18436
Salomon Brothers Investment Funds Inc., 42605
Scudder Variable Life Investment Fund et al., 6655
Security Action Fund, 47512
Security Benefit Life Insurance Co. et al., 32408
Security Equity Fund et al., 50993
Security First Life Insurance Co. et al., 6143, 7599, 54391
SEI Liquid Asset Trust et al., 48403
Seligman Capital Fund, Inc., et al., 16903
Separate Account ANA of National Integrity Life Insurance Co., 16726
Shearson Daily Dividend Inc. et al., 25691
Shearson Lehman Brothers Multiple Opportunities Portfolio L.P., 53755
Shearson Lehman Daily Dividend Inc. et al., 47513, 47515
Shearson VIP Separate Account of First Capital Life Insurance Co.-In Conservation, 31226
Siebel Capital Partners, Inc., 11285
SLH High Yield Fund Inc., 63432
Smith Barney, Harris Upham & Co., Inc., 29848, 37539
Smith Barney Shearson Fundamental Value Fund Inc. et al., 62400
Society Funds et al., 48408
Southwestern Property Trust, Inc., 43397
Special Situations Fund, L.P., et al., 58721
Spectrum Signal Processing Inc., 34839
Sport Supply Group, Inc., 32411
St. Clair Equity Fund, Inc., 19290
St. Clair Tax-Free Fund, Inc., 19289
Stagecoach Funds, Inc., et al., 26015
Standard Chartered Bank, 68681
State Mutual Life Assurance Co. of America et al., 65748, 65750
State Street Bank & Trust Co., 53983
Steadman Financial Fund, 6656
Stone Street Fund 1984 et al., 63432
SunAmerica Capital Appreciation Fund, Inc., 67431
SunAmerica Capital Appreciation Fund, Inc., et al., 40175
SunAmerica Multi-Asset Portfolios, Inc., 68979
SunAmerica Series Trust et al., 32557
Sunrise Technologies, Inc., 7601
SwissKey Funds et al., 53011
TCW High Grade Fixed Income, L.P., et al., 657
Technigen Corp., 28428
Technology Funding Medical Partners I, L.P., et al., 620, 43148
Tee-Comm Electronics, Inc., 67431
Templeton Variable Products Series Fund et al., 55103
Texas Employees Tax Exempt Money Market Mutual Fund, 41830
Thomson Fund Group et al., 17464
Thoroughbred Group, 40683
Time Warner Entertainment Co., L.P., et al., 58894
Titan Institutional Investments, Inc., 3056
Total Growth Trust, Treasuries and Growth Stock Series I, 50068
Transamerica Occidental Life Insurance Co. et al., 47516
Transportation Capital Corp., 65616
Travelers Growth and Income Stock Account for Variable Annuities et al., 623, 8087
Triarc Companies, Inc., 65615
Trinity Assets Trust, 53013
Turkish Growth Fund, Inc., 49348
Tyler Cabot Mortgage Securities Fund, Inc., 47309
Unified Funds, 45933
Union Central Life Insurance Co. et al., 47168
United Financial Group, Inc., 60237
United International Holdings, Inc., 11429
United States Banknote Corp., 14610
United States Filter Corp., 54630
USF&G Money Market Funds, Inc., 6658
USF&G Tax-Exempt Money Market Funds, Inc., 14464
Vanguard Group, Inc., et al., 21618
Van Kampen Merritt Insured Tax Free Income Fund, Inc., 11656
Van Kampen Merritt Tax Free High Income Fund, Inc., 11657
Van Kampen Merritt Trust et al., 37541
Variable Annunity Life Insurance Co. et al., 25881
Voyageur Tax Free Funds, Inc., et al., 65752
Washington Square Cash Fund, Inc., 44395
Waterhouse Investor Services, Inc., 6428
Weitz Partners, Inc., et al., 59778
Werconn, L.P., et al., 39080
Westcore Trust et al., 31229
Westcorp, 42605
Western-Southern Life Assurance Co. et al., 16727
White River Corp., 60473
Wilson Fund, 35064
WNC Housing Tax Credit Fund IV, L.P., et al., 41830
Zapata Corp., 44395

Selective Service System

PROPOSED RULES

Regulatory agenda, 25212, 57212

NOTICES

Agency information collection activities under OMB review, 11432, 21504, 32559
Health care personnel delivery system; development, 17439
Privacy Act;
Computer matching programs:, 42995

Sentencing Commission, United States

See United States Sentencing Commission

Small Business Administration

RULES

Business loan policy
Guaranteed lending programs; late payment fees, preferred lenders, interest rates, etc.; and microloan demonstration program, 49422
Loan making policy, 45247
Business loans
Guaranteed lending programs; late payment fees, preferred lenders, interest rates, etc., and microloan demonstration program, 49422

INDEX
VOL
58
1993
UMI

Disaster-physical disaster and economic injury loans:
Homeowners or businesses wishing to voluntarily relocate outside disaster area; direct loans prohibition, 32053
Major source of employment redefinition and higher disaster loan limit, 64672
Loans to State and local development companies, 15756, 45245
Organization, functions, and authority delegations:
Claims review committees, 2967
Field officers; loan approval authority, 44436
Correction, 53120
Regional Administrators et al.; other financial and guaranty programs, 19321
Privacy Act; implementation, 14145, 14147
Small business investment companies:
Auditing standards, 47031
Small business size standards:
Business loan program; alternative size standard criterion, 12334
Environmental services, 4074, 52415
Nonmanufacturer rule; waivers—
Computer disk drives; termination, 11372
Mainframe computers and associated peripheral equipment, 9112, 29346
Photographic film and video cassette recorders, 7479
Xerographic printing paper, 9113
Nonmanufacturer rule waiver procedures, 48954
Procurement automated source system; information reliability, 47371, 58650
Size Policy Board; membership, etc., 65281
Size standards table and size standards under Section 8(d) subcontracting program, 25929

PROPOSED RULES

Business and disaster loans:
Federal claims collection, 29152
Business loans:
Defense economic assistance, 45078
Disaster-physical disaster and economic injury loans:
Major source of employment redefinition and higher disaster loan limit, 45855
Regulatory agenda, 25214, 57214
Small business investment companies:
Definitions, limited partnerships, fees and interest charges, etc., 41882, 57568
Leverage, participating securities, and conditions affecting good standing of licensees, 41852, 57568
Small business size standards:
Business loan program; alternate size standard criterion, 44793
Environmental services, 52452
Fixed size standard levels, 9131, 46573
Nonmanufacturer rule waiver procedures, 48981
Numerical size standard for determining small entity, 44620, 52929
Small business investment companies; size standard increase of small business concerns eligible for assistance, 40603
Surety bond guarantee program, 45300
Correction, 47181

NOTICES

Agency information collection activities under OMB review, 4193, 4732, 5795, 6659, 11286, 11432, 11882, 13518, 13674, 13812, 16441, 18297, 19291, 21327, 21504, 27327, 31436, 31436, 45369, 47518, 47519, 48084, 48703, 50381, 53014, 53984, 53985, 54393, 54631, 55108, 57662, 57890, 59292, 59508, 64018, 64636, 64789
Disaster business loan limit; increase, 44871
Disaster loan areas:
Alabama, 19291, 29850
Arizona, 8803, 12621, 15517
Arizona et al., 7289
Arkansas et al., 64019
California, 12621, 13518, 15517, 28086, 31436, 32978, 60079
California et al., 8803
Connecticut et al., 3983
Florida, 3983, 7289, 8804, 13518, 29249, 29850, 63199
Florida et al., 17921, 19513
Georgia, 3983
Georgia et al., 3983, 15517
Guam, 3984, 44730
Hawaii, 7289
Illinois, 40179, 40460, 42354, 44871, 45544, 47519, 50382, 53756, 59091
Illinois et al., 29850, 34295, 64019, 68186
Indiana, 49539, 53756
Iowa, 29249, 40180, 48084, 59091
Iowa et al., 30212
Kansas, 41543, 42606, 42996, 43397, 44730, 45544, 48085, 49539, 54394, 57662, 59091, 64019
Louisiana, 8804
Louisiana et al., 12621, 38155
Marshall Islands, 3984
Massachusetts, 8804, 58031
Massachusetts et al., 7290
Minnesota, 40181, 42606, 45544, 47519, 48085, 54394
Mississippi, 50382
Mississippi et al., 3984, 42606
Missouri, 29850, 31436, 32978, 40180, 42355, 42996, 44871, 45545, 48085, 52799, 54394, 57662, 59091, 64637, 66056
Nebraska, 40460, 42606, 43397, 44871, 45545, 48085
New Jersey, 3984, 7290, 12622
New York, 3985, 8804, 12622, 26023, 28086, 29020
New York et al., 13519, 34295
North Carolina, 49540
North Carolina et al., 6557, 29851
North Dakota, 42607, 42996, 44872, 45545, 47519, 52799
Northern Mariana Islands, 45545
Ohio et al., 35999, 40180
Oklahoma, 28908, 30838, 33685, 35999
Oklahoma et al., 54394
Oregon, 19868, 53756, 58215, 66057, 68980
Oregon et al., 28087
Pennsylvania, 8804, 26807
Pennsylvania et al., 12622, 19291, 26024, 47520
South Carolina et al., 44730
South Dakota, 13812, 40460, 42607, 43397, 44872, 47520, 49540, 64637
Tennessee, 12622
Texas, 3985, 33685, 47520, 53756
Virginia, 48926
Washington, 26807, 44730
Wisconsin, 40181, 42607, 42996, 44872, 47520, 50382
Wisconsin et al., 39844
Guaranty loans; Region VI pilot to streamline loan application process, 62401
Interest rate policy change, 68682
Interest rates; quarterly determinations, 6557, 11432, 17921, 26179, 34295, 38156, 52799, 68980
Intergovernmental review of agency programs and activities, 35065, 41543
License surrenders:
Alpha Capital Venture Partners, L.P., 11432
AMF Financial, Inc., 65414
Amistad DOT Venture Capital, Inc., 33476
BNP Venture Capital Corp., 58723
Brentwood Capital Corp., 45546
Bridger Capital Corp., 57662
City Ventures, Inc., 12622
Dixie Business Investment Co., 35498
Equitable Capital Corp., 47011
FCA Investment Co., 53014
Financial Resources, Inc., 29020
First Maryland Capital, Inc., 8805
First of Nebraska Investment Corp., 35498
First United Small Business Investment Co., Inc., 8805
Heritage Capital Corp., 59091
Interstate Capital Co., Inc., 27327
Ivanhoe Venture Capital Limited, 33476
James River Capital Associates, L.P., 47520
Kitty Hawk Capital, L.P., 27327
Mariner Venture Capital Corp., 6557
Monmouth Capital Corp., 12622
Old Stone Capital Corp., 17921
PCF Venture Capital Corp., 21760
Rubber City Capital Corp., 64637
Shared Ventures, Inc., 5442
Southeast SBIC, Inc., 7290
Valley National Investors, Inc., 26807
Walnut Street Capital Co., 33685
Westamco Investment Co., 7290
Yuzary Capital Funding, Inc., 12623
Meetings:
Investment Advisory Council, 14610, 44872
National Small Business Development Center Advisory Board, 12623, 15890, 29020, 43398
Meetings; district and regional advisory councils:
Arizona, 17638
Arkansas, 18437
California, 5442, 12623, 13813, 14610, 29851, 33292
Connecticut, 6558, 13519, 45546, 65617
Georgia, 15172, 53985
Hawaii, 11433, 21620, 42997, 54394
Idaho, 16906
Illinois, 13674, 42997
Indiana, 11433, 58585
Iowa, 7291, 8805
Kentucky, 58032
Louisiana, 8805
Maine, 18437
Massachusetts, 49540
Michigan, 16906
Minnesota, 17638, 49080
Mississippi, 16907
Missouri, 15172, 33477
Montana, 7291
New Hampshire, 7291
New Jersey, 5442, 47521
New Mexico, 7290
New York, 13519, 53014
Ohio, 54395
Oklahoma, 33477
Oregon, 22013, 60894
Rhode Island, 6558, 62402
South Carolina, 7291
Texas, 5442, 7291, 11433, 13674, 21620, 45546, 53014
Vermont, 5442, 6558, 21504
Virginia, 22013
West Virginia, 18438, 53985
Wyoming, 26376, 53015
Organization, functions, and authority delegations:
Assistant Administrator for Disaster Assistance, 57891, 64019
Assistant Administrator for Financial Assistance et al., 8805

Associate Deputy Administrator for Business Development et al., 35067
Branch claims review committees, 31576
Branch offices; branch claims review committee; establishment, 3057
Counselor to Administrator et al., 6144
Field officers; loan approval authority, 11883
Privacy Act:
Systems of records, 13519, 58585
Senior Executive Service:
Performance Review Boards; membership, 63200
Small business competitiveness demonstration programs:, 13513
Policy letter, 19840
Small business innovation research program policy directive, 6144, 25883, 42607
Small business investment companies:
4% preferred stock; financial reporting, 6558
Small Business Size Standards:
Environmental services, 42355
Applications, hearings, determinations, etc.:
Anker Capital Corp., 59508
BancFirst Investment Corp., 49080
Byrd Business Investments, L.P., 29020, 63200
Capital Fund, Inc., 50996
Center City Mesbic, Inc., 16256
CFB Venture Fund II, L. P., 16907
CI Capital Group, Inc., 59509
CIP/QED Capital L.P., 42997
Cordova Capitals Partners, L.P.-Enhanced Appreciation, 65414
Exeter Venture Lenders, L.P., 64637
First Legacy Fund, Inc., 12623
First New England Capital, L.P., 12623
First Security Business Investment Corp., 35498, 59509
Green Mountain Capital, L.P., 27327
KOKO Capital Co., L.P., 48704
Legacy Fund. L.P., 42998
Opportunity Capital Partners II, L.P., 31577
Pacific Mezzanine Fund, L.P., 39845, 67432
Phoenix Capital Partners, L.P., 8806
Polaris Capital Corp., 11433
Stratford Capital Group, Inc., 64790
Transportation Capital Corp., 63200
Triad Capital Corp. of New York, 62402
United Financial Resources Corp., 11433, 38594, 42355
WestVen, L.P., 13813, 64020
Zenia Capital Corp., 22014

Social Security Administration

RULES
Social security benefits:
Claimants for benefits; representation, 64883
Coal Industry Retiree Health Benefit Act; administrative review procedures, 52914
Dependents; suspension of benefits when worker is in extended period of eligibility, 64882
Disability and blindness determinations—
Cardiovascular system listing; expiration date extension, 36133
Endocrine and multiple body systems; immune system, 36008
Mental disorders in adults; listing, 44444
Respiratory system listings; expiration date extension, 31906, 52346
Various body system impairment listings; expiration date extension; correction, 64121, 65243
Railroad Retirement Act applications considered as social security benefits applications, 60381
Spouse deemed and legal; continued entitlement to benefits; treatments of divorce in invalid marriage and multiple entitlements under family maximum, 64890
Suspension of benefits if individual is deported; exemption from social security because of religious beliefs, 64886
Supplemental security income:
Benefits due deceased recipients; payment to survivors, 52909
Children of overseas armed forces personnel; benefits eligibility, 4896
Correction, 9597
Children under age 18; disability determinations, 47532
Correction, 49431
Claimants for benefits; representation, 64883
Commercial transportation tickets, gifts; exclusion from income, 63887
Disability and blindness determinations—
Respiratory system listings; expiration date extension, 52346
Disposition of resources; time limits, 60103
Earned income tax credits exclusion from income and resources; exclusion, 63888
Eligibility redeterminations, 64892
Institutional care maximum payment limit, 64893
Presumptive disability and blindness; human immunodeficiency virus (HIV) infection, 36059
Residence and citizenship; temporary protected status, 41181
PROPOSED RULES
Social security benefits:
Deemed application date based on misinformation, 5687
Disability and blindness determinations—
Musculoskeletal system listing, 67574
Disability determination procedures; testing modifications, 54532, 64207
Travel expenses limitations for representation of claimants at administrative proceedings, 4950
Supplemental security income:
Aged, blind, and disabled—
Benefit continuation and special eligibility for severely impaired recipients who work, 52458
Currently available reliable information for determining benefit amounts, 14191
Correction, 26383
Deemed application date based on misinformation, 5687
Disability determination procedures; testing modifications, 54532, 64207
Mass change resulting in reduction, suspension, or termination of State supplementary payments; appeal rights, 42514
Parent-to-child deeming for certain disabled children; waiver, 49249
Promissory notes in home replacement situations, treatment, 52943
Royalties and honoraria treatment, 52464
Travel expenses limitations for representation of claimants at administrative proceedings, 4950
NOTICES
Agency information collection activities under OMB review, 5747, 7234, 11241, 15150, 19835, 26339, 28596, 33636, 42084, 46644, 53521, 60041, 63991, 68651
Automated services availability in State offices making disability determinations for SSA; questionnaire, 16537
Grants and cooperative agreements; availability, etc.:
Aged, blind, and disabled outreach demonstration program, 34154
Federal old-age, survivors, and disability insurance; research grants, 34472
Organization, functions, and authority delegations, 107, 26144, 28032, 44348, 50950
Deputy Commissioner for Finance et al., 47748
Privacy Act:
Computer matching programs, 60042
Systems of records, 28886, 35025, 45895, 48525, 52782
Social security; foreign insurance or pension system:
Estonia, 11612
Ireland, 46978
Latvia, 40821
Social security acquiescence rulings
Akers v. Secretary of Health and Human Services; benefits paid to social security claimants; attorney's fees, 40662
Branham v. Heckler; Flowers v. HHS; additional and significant work-related limitation of function, 25996
Brewster on Behalf of Keller v. Sullivan; presumption of death regulation interpretation, 43369
Condon and Brodner v. Bowen; continued benefits paid to social security claimants; attorney's fees, 40663
Conley v. Bowen; individual with disabling impairment; substantial gainful activity determination, 28887
Schisler v. Sullivan; medical evidence provided by treating sources; rescission, 60042
Shoemaker v. Bowen; continued benefits paid to social security claimants; attorney's fees, 40665
Social security acquiescence rulings; list, 67803
Social security benefits:
Cost of living increase, SSI monthly benefit amounts increase, average of total wages, contribution and benefit base, etc., 19152, 58004
Social security rulings:
Child beneficiary disappearance; restriction against payment to missing beneficiary, 65190
Disability insurance benefits—
Florida; workers' compensation offset; offset of wage loss benefits, 45344
Human immunodeficiency virus (HIV) infection evaluation, 52973
Human immunodeficiency virus (HIV) infection evaluation; rescission, 36065
Mental deficiency-intelligence testing; rescission, 16545
Representative payee; exercise of discretionary authority to select payee; legal guardian as payee; rescission, 15151

Soil Conservation Service

RULES
Water resources:
Emergency wetlands reserve program, 62495
NOTICES
Environmental statements; availability, etc.:
Allison Draw Watershed, WY, 42052
Argyle Lake Watershed, IL, 26098
Belfield Watershed, ND, 67768
Cedar Run Watershed,. VA, 46159
Colorado River Salinity Control program, NV, 11584
Five Points Area Watershed, GA, 34240

Gooding Constructed Wetland, ID, 42286
Gould Portion of Grady-Gould Watershed, AR, 59010
Indian Creek-Van Buren Watershed, IA, 30143
Indian Creek Watershed, CA, 37460
Kagman Watershed, Saipan, Northern Mariana Islands, 40110, 59704
Largo-Agua Fria Watershed, NM, 49470
Lick Creek Watershed, TN, 62325
Little Kentucky River Watershed, KY, 49966
Lolo/Ford's Creek Agricultural Pollution Abatement Plan, ID, 16395
Lower Pavette River Water Quality Planning Project, ID, 16395
Main Branch Meduxnekeag River Watershed, ME, 18200
Marshland Watershed Project, WA, 62326
Mosher-Anderson Creeks Watershed, WI, 64544
Mud Creek Watershed, MI, 3932
Muddy Fork of Silver Creek Watershed, IN, 16170
Nichols Watershed, SC, 15136
North East Middle Swannee River Area Watershed, FL, 11024
North Fork Hughes River Watershed, WV, 32510
North West Middle Suwannee River Area Watershed, FL, 11584
Oven Run Project Area, PA, 31692
South East Middle Suwannee River Area Watershed, FL, 9143
South West Middle Suwannee River Area Watershed, FL, 11396
Taylor Watershed, ND, 65698
Tenmile Creek Watershed, WA, 36640
Toby Tubby Creek Watershed, MS, 17204
T or C-Williamsburg Arroyos Watershed, NM, 51049
Town Fork Creek Watershed, NC, 9558
UpCountry Maui Watershed, HI, 28853
Upper Buffalo Creek Watershed, WV, 31692
Upper Delaware and Tributaries Watershed, KS, 25967
Upper Killbuck Creek Watershed, OR, 36932
Upper Piscataquis River Watershed, ME, 59705
Hydric soils of United States; list availability, 52078
Meetings:
Shaping the Third RCA Appraisal and National Conservation Program, 59705
Watershed projects; deauthorization of funds:
East Wenatchee Watershed, WA, 48504
Lower Caney Bayou Watershed, AR, 39195, 57986

Southeastern Power Administration

NOTICES
Cumberland System of Projects; power marketing policy, 41762
Power rates:
Florida Power Co., 48887
Florida Power Corp., 47272
Georgia-Alabama-South Carolina System of Projects, 18392, 40807, 47273, 50916

Southwestern Power Administration

NOTICES
Power rates:
Robert D. Willis Project, TX, 34794
Sam Rayburn Dam Project, TX, 34796

Special Counsel Office

See Office of the Special Counsel
PROPOSED RULES
Regulatory agenda, 25184

State Department

RULES
Angola; domestic arms embargo; removal, 35864
International Traffic in Arms regulations; amendments, 39280, 47636, 60112, 60115
Longshore work by U.S. nationals; foreign prohibitions, 65118
Visas; immigrant documentation:
Armed Forces members; special immigrant status, 48446
Employment-based immigrants subject to numerical limitations, 48446
Immigrants subject and not subject to numerical limitations, 48446
Immigrant visa classification symbols table, etc., 48447
Visas; nonimmigrant documentation:
Citizens of former Yugoslavia; visa requirement, 43438
North American Free Trade Agreement (NAFTA); professional classification; treaty traders, investors, intracompany transferees, etc., 68526
Visa waiver pilot program; Brunei, 40585
PROPOSED RULES
Privacy Act; implementation, 57974
Regulatory agenda, 24612, 56626
Visas; immigrant documentation:
Diversity immigrants; annual numerical limitation, 68791
Visas; nonimmigrant documentation:
Temporary visitors for business or pleasure, 40024, 49456, 61856
NOTICES
AA-1 immigrant visa program; registration, 6559
Agency information collection activities under OMB review, 12297, 16729, 19146, 19696, 26025, 37046, 39845, 53613
Antarctic fishing; conservation measures, 3057, 65414
Arms Export Control Act; determinations, 40685, 65001
Bridge permit applications:
Brownsville, TX, 58372, 69440
Progreso, TX, 69441
Cattle crossing, international; Douglas, AZ, 64790
Climate change action plan; U.S. initiative on joint implementation; groundrules availability, 66057
Committees; establishment, renewal, termination, etc.:
Secretary of State's Panel on El Salvador, 26808
Environmental statements; availability, etc.:
International Falls, MN; Boise Cascade Corp. water pipeline, 68682
Los Tomates/Matamoros International Bridge III and U.S. 77/83, TX, 54395
Port Huron, MI and Sarnia, Ontario, Canada; cross-border railroad tunnel, 30081
Explorer's declaration and government certification requirement:
Shrimp, 26025
Export Administration Act; determination; addition of Sudan to list, 52523
Foreign assistance determinations:
Cambodia, 53612
Gifts to Federal employees from foreign governments; listing, 69058
Grant and cooperative agreement awards:
American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study et al., 12057
Grants and cooperative agreements; availability, etc.:
Central and Eastern Europe; telecommunications regulation training, 60895
Discretionary grant programs; Russian, Eurasian, and East European research and training program, 38594
Man and biosphere program, 625, 41310
Russian-American Enterprise Fund et al., 69441
International conferences:
Private-sector representatives on U.S. delegations, 27034
International contractual arrangements law; Organization of American States convention, 47170
International Covenant on Civil and Political Rights; U.S. ratification, 45934
International shipment of household effects; transportation procurement procedures, 33967
International Traffic in Arms regulations; statutory debarment, 6835, 12440, 13519, 26028, 50382, 58586
Meetings:
Defense Trade Advisory Group, 45144
Fine Arts Committee, 19146, 45546
Historical Diplomatic Documentation Advisory Committee, 6045, 25896, 37046, 52523
Inter-American Tropical Tuna Commission, United States Section Advisory Committee, 16256, 19695
International Commission for Conservation of Atlantic Tunas, United States Section Advisory Committee, 48927
International Communications and Information Policy Advisory Committee, 3582, 17299
International Law Advisory Committee, 62707
International Radio Consultative Committee, 6559, 7291, 15890, 21620, 28428, 32559, 37046, 45145, 60239, 61724
International Radio Consultative Committee et al., 26024
International Telecommunication Union World Telecommunication Development Conference, 40845
International Telegraph and Telephone Consultative Committee, 4732, 9228, 21199, 26024, 27054, 30838, 30839, 34120, 40684, 53612, 54185, 57663, 58373, 60239
Overseas Schools Advisory Council, 28908, 66059
Overseas Security Advisory Council, 6045, 30839, 54185
Private International Law Advisory Committee, 31577, 45546, 47171
Russian, Eurasian, and East European Studies Advisory Committee, 51397
Secretary of State's Panel on El Salvador, 27054, 27327, 29021, 31436
Shipping Coordinating Committee, 3325, 9228, 12441, 13520, 13814, 16257, 25694, 27054, 27055, 28908, 32165, 33850, 35499, 40181, 40685, 42998, 45145, 47521, 48538, 51398, 53236, 53237, 58373, 61724, 63437, 66059, 68980
Working Groups on U.S. Input to International Telecommunication Union Regional Development Conference for Asia and the Pacific (AS-RDC), 6045
Missile technology proliferation; sanctions:
Chinese and Pakistani entities, 45408
Munitions export licenses suspension:
Armour of America, Inc., et al., 4450
Burma, 33293
Cohen, Eliyahu, et al., 53015
Guatemala, 38597

INDEX VOL 58 1993 UMI

Industrias Cardoen Limitada et al., 49540
Nigeria, 40845
Zaire, 26024
North American Free Trade Agreement (NAFTA); notices and other arbitration documents delivery, 68457
Organization, functions, and authority delegations:
Deputy legal advisers, 49541
Deputy Secretary, 18132, 64790
Deputy Secretary et al., 49541
Foreign Missions Office, Director, 64790
Senior IRM Manager, 8646
Passport travel restrictions; U.S.:
Iraq, 11883
Lebanon, 11286
Libya, 61137
Privacy Act:
Systems of records, 32560, 44398, 58032
Property claims:
Albania, 40461
Senior Executive Service:
Performance Review Board; membership, 46264
Shrimp trawl fishing; turtle protection guidelines; certifications, 9015, 28428, 30082, 40685
Sovereign immunity; convention (multilateral international agreement), 16729

State Justice Institute

NOTICES

Grants, cooperative agreements, and contracts; guidelines, 45976, 53762
Meetings; Sunshine Act, 11097, 19701, 36736, 47012, 59297

Statistical Reporting Service

See National Agricultural Statistics Service

Strategic Environmental Research and Development Program Scientific Advisory Board

NOTICES

Meetings:
Scientific Advisory Board, 19237

Substance Abuse and Mental Health Services Administration

RULES

Human drugs:
Methadone; conditions for use in—
Maintenance treatment of narcotic addicts and human immunodeficiency virus disease counseling, 495

NOTICES

Children with serious emotional disturbance, and adults with serious mental illness; definitions, 29422
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 110, 7569, 12246, 17897, 26793, 31729, 36215, 41285, 47146, 51637, 58871, 63991
Suspensions, 19835
Federal workplace drug testing programs; mandatory guidelines, 6062, 11886
Grant and cooperative agreement applications and contract proposals; peer review and advisory council review policy and procedures, 5747, 34059, 35962
Grant and cooperative agreement awards:
Metropolitan Washington Council of Governments, 35461
Grants and cooperative agreements; availability, etc.:
Addiction training centers, 30795
Beneficiaries disabled due to alcohol and other drug addictions; managed care demonstration models, 31970
Center for Substance Abuse treatment programs; 1994 FY application receipt dates, 58011, 66009
Child and adolescent service system program infrastructure development demonstration grants, 33835
Community-based primary care, substance abuse, HIV/AIDS, and mental health treatment services; linkage demonstration program, 28986
Community care and effective services and supports (access) for homeless persons with severe mental illness; demonstration projects, 17899
Community partnership demonstration program, 33835
Comprehensive community health services for children and adolescents with serious emotional disturbances, 19676
Correctional populations; model comprehensive substance abuse treatment program, 21178
Critical populations demonstration grant program, 17606
Homeless individuals demonstration program, 36975
Mental health services for Cuban entrants, 44349
Mental health systems change evaluation; technical assistance centers, 29591
Non-incarcerated criminal and juvenile justice populations; model comprehensive substance abuse treatment programs, 21182
Residential treatment for pregnant and postpartum women services program, 17610
Residential treatment for women and children; demonstration program, 17614
SSI beneficiaries disabled due to alcohol and other drug addictions; managed care demonstration models, 36413
Statewide family networks; demonstration grants, 28889
Substance abuse treatment and recovery systems; rural and culturally distinct populations, 31972
Target cities cooperative agreement demonstration program, 17618
Meetings:
Drug Testing Advisory Board, 6972
Substance Abuse Prevention Center, 27580, 43117, 65727
Meetings; advisory committees:
January, 4439
Privacy Act:
Systems of records, 68993

Surface Mining Reclamation and Enforcement Office

RULES

Initial and permanent regulatory programs:
State standards adoption and State enforcement activities; CFR Parts removed, 41936
Surface coal mining and reclamation operations—
Previously mined area definition; and off-site coal preparation plans; performance standards; correction, 3466, 8655
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 3830, 54287
Arkansas, 38532
Illinois, 4320, 46845, 48961
Indiana, 4322, 28775, 34218, 41039, 43248, 46857, 48963, 60783
Kansas, 32847, 33986, 34126, 45438
Kentucky, 3833, 16350, 32283, 42001, 51225
Maryland, 15275, 28778, 33331, 33910, 36135
Missouri, 64142
Montana, 33553
New Mexico, 65907
North Dakota, 50257
Ohio, 3838, 4324, 4326, 21658, 32611, 33912, 43261, 46861
Oklahoma, 64374
Pennsylvania, 4331, 18149, 36139, 64151
Utah, 16623, 48600
Virginia, 49928, 52666
West Virginia, 16353
Wyoming, 44453, 52232, 58487

PROPOSED RULES

Abandoned mine land reclamation:
Coal formation fire control, 68494
Grant procedures; miscellaneous amendments, 59334
Reclamation fund fee collection and coal production reporting; electronic transfer payment requirements, 7761, 8655, 12913, 45736
Bond and insurance requirements:
Alternative bonding system; provisions and requirements, 47598
Definitions; anthracite, etc., 52374, 63316
Hearings, 61856
Initial and permanent regulatory programs
Definitions, permits information requirements, applicant/violator system, and civil penalties for owners, etc., 45303, 49457
Surface coal mining and reclamation operations—
Abandoned sites; minimum inspection frequency; changes, 3248
Definitions; requirements for permits for special categories of mining; coal preparation plants; performance standards; withdrawn, 11555
Definitions, permits information requirements, applicant/violator system, and civil penalties for owners, etc., 34652
Federal inspection and enforcement authority, 43594, 48332
Indian lands; Federal programs, 15404
Land use information, 3458
Underground mining activities—
Permit application requirements and performance standards, 19215, 50174, 57766, 58518, 59424, 61638
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 40104, 54313
Arkansas, 21552, 26078, 44477, 58313
Colorado, 19367, 27967, 38989, 45467, 64210
Illinois, 28804, 32003, 38543, 47237
Illinois et al., 48333
Indiana, 3928, 4372, 4374, 16379, 16381, 21693, 28806, 38545, 41669, 48996, 64212, 65679
Iowa, 4376, 16632, 38991, 58997
Kansas, 4381, 37447, 50302
Kentucky, 4384, 4386, 32618, 57767, 58997
Maryland, 16383, 16384, 16386, 29560, 33578, 48998
Mississippi, 4387
Missouri, 53683, 53686
Montana, 44479, 45303
North Dakota, 29153, 29155, 37449, 61857, 64528, 68617
Ohio, 4388, 15315, 16388, 17173, 17372, 18185, 21274, 33416, 36177, 36178, 58824

Oklahoma, 42900
Pennsylvania, 15456, 16389, 21965, 31925, 31926
Texas, 16634, 33785, 42901, 43308
Utah, 4390, 18187, 40608, 45305, 64529
Virginia, 30005, 58827
West Virginia, 42903, 46676
Wyoming, 15318, 15319, 16636, 16637, 17811, 26079, 44480, 54540, 65681
Permits and coal exploration systems:
Surface effects area in Indiana; permit application review process, public participation, right-of-entry, and proposed land uses, 44630

NOTICES
Agency information collection activities under OMB review, 3069, 4442, 4443, 5756, 8427, 18108, 18109, 21316, 21317, 33671, 45120, 45917, 49526, 54167, 58564
Environmental statements; availability, etc.:
Surface Mining Control and Reclamation Act; State and tribal program grants, 13277
Privacy Act:
Systems of records, 28413
Valid existing rights determinations:
Kelly, Charles et al.; Monongahela National Forest, WV, 40156

Technology Administration

PROPOSED RULES
Advanced technology program; implementation, 41069

NOTICES
Committees; establishment, renewal, termination, etc.:
National Medal of Technology Nomination Evaluation Committee, 51063
Economic aspects of U.S. patent system; hearings and comment request, 68394
Meetings:
Cooperation between TA and Industrial Science and Technology Agency of Japan, 68877
Government-owned inventions; licensing, 51062
National Medal of Technology Nomination Evaluation Committee, 16171
Nonprofit organizations and small business firms; rights to inventions, 44505, 49474

Tennessee Valley Authority

RULES
Contract documents or actions; general conditions and certifications for incorporation, 25930
Freedom of Information Act; implementation, 53656

PROPOSED RULES
Freedom of Information Act; implementation, 17553
Privacy Act; implementation, 57972
Regulatory agenda, 25232, 57234

NOTICES
Agency information collection activities under OMB review, 9229, 16257
Environmental statements; availability, etc.:
Aquatic plant management program, 46667
Tennessee River; chip mill terminals, 28429
Meetings; Sunshine Act, 5059, 12987, 19151, 27620, 43410, 50633, 53758, 60494
Privacy Act:
Systems of records, 58033

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Thrift Depositor Protection Oversight Board

PROPOSED RULES
Regulatory agenda, 25442, 57436

NOTICES
Meetings:
National Advisory Board, 9018, 27612, 50383, 61725
National Housing Advisory Board, 9018, 27612, 50384, 61725
Meetings; regional advisory boards:
Regions I through VI, 3582, 16441, 43150, 53985, 60895

Thrift Supervision Office

RULES
Federal regulatory review, 4308
Correction, 11186
Practice and procedure:
Minority, women, and disabled business outreach program; contracting for goods and services, 33323
Real estate lending and appraisals:
Real estate lending standards; correction, 4460
Requirement exceptions in major disaster areas, 42640
Savings associations:
Capital—
Interest rate risk component, 45799
Troubled, collateral-dependent loans and foreclosed assets, 474
Directors and senior executive officers; agency disapproval authority, 45421
Correction, 52140
Federal Home Loan Bank System; membership requirements, 14510
Mutual holding companies, 44105
Operations—
Small and medium-sized business and farm loan documentation; qualifying association exemption, 28346
Qualified thrift lender test, 15082
Risk-based capital—
Equity investments, 15085

PROPOSED RULES
Community Reinvestment Act; implementation; hearings, 44138
Community Reinvestment Act regulations, 67466
Educational, scientific and cultural material; worldwide free flow (export-import) of audio-visual materials, 42896
Federal Deposit Insurance Act:
Safety and soundness standards, 60802
Practice and procedure:
Release of unpublished information, 64695
Real estate lending and appraisals:
Threshold level, 31878, 59688
Regulatory agenda, 24937, 56940
Savings associations:
Control acquisition; applications, approval standards and procedural requirements, 61850
Operations—
Special mention assets, 38730

NOTICES
Capital and accounting standards; report availability, 41841
Conservator appointments:
Guardian Bank, a Federal Savings Bank, 16911
Western Federal Savings Bank, 33141
Insured depository institutions; branch closings; policy statement, 49083
Receiver appointments:
Alpha Indian Rock Federal Savings & Loan Association, 39087
Birmingham Federal Savings Bank, 44533
Crestline Federal Savings & Loan Association, 45374
First American Federal Savings Bank, 53992
First Federal Savings & Loan Association of—
Russell County, 44533
First Federal Savings Bank of Georgia, F.A., 62711
First Home Federal Savings Association, 28654
First South Savings Bank, F.S.B., 57671
Irvington Federal Savings Bank, 45374
Palm Beach Federal Savings Association, 53992
Standard Federal Savings & Loan Association, 57671
Surety Federal Savings & Loan Association, 53992
Vista Federal Savings Association, 33141
Western Federal Savings & Loan Association, 33141
Applications, hearings, determinations, etc.:
Albion Federal Savings & Loan Association, 29691
Astoria Federal Savings & Loan Association, 53993
Avondale Federal Savings Bank, 43408
Blue River Federal Savings Bank, 16911
Brevard Federal Savings & Loan Association, 11288
Capital Savings Bank, FSB, 59782
Carolina Savings Bank et al., 29691
Chase Federal Bank, a Federal Savings Bank, 53993
Columbia Federal Savings Bank, 29691
Co-operative Savings Bank, 37048
Coral Gables Federal Savings & Loan Association, 7175
Crossland Federal Savings Bank, 53993
Delta Federal Savings, F.S.B., 7175
Equitable Federal Savings Bank, 53993
Federal Savings Bank, 57672
Fidelity Federal Savings Bank, 57672
Fidelity New York, F.S.B., 16912
Financial Federal Savings & Loan Association, 53993
First Federal Bank for Savings, 44533
First Federal Bank for Savings—
Columbus, MS, 28655
First Federal Savings & Loan Association of—
Anderson, 43409
Belvidere, 43408
Englewood, 39087
Independence, 43008
Kane, 59783
Lake County, 59783
New Castle, 7175
Peru, 62711
Storm Lake, 43408
Thibodaux, 45374
West Palm Beaches, 44533
Wood County, 39087
First Federal Savings Bank of—
Marion, 7175
Maryville, 3586
Wabash, 8816
Youngstown, 28655
First Home Savings Bank, 59782
Fox Cities Bank, F.S.B., 37049
Glenway Loan & Deposit Co., 37049
Greater Boston Bank, A Co-operative Bank, 53993
Grinnell Federal Savings Bank, 57672
Guernsey Bank, a Federal Savings Bank, 11288
Hamilton Federal Savings, F.A., 8816
Jefferson Savings & Loan Association, 8817
Kentucky Enterprise Bank, F.S.B., 57672
Leader Federal Bank for Savings, 33142

UMI

Macon Building & Loan Association, 21773
Mutual Federal Savings Bank, 43409
Natchez First Federal Savings Bank, 28655
New Jersey Savings & Loan Association, 43008
North Federal Savings Bank, 59783
Northwestern Savings Bank, F.S.B., 59783
Peoples Federal Savings & Loan Association of Chicago, 29691
Peoples Savings Bank, 62711
Plaistow Co-Operative Bank, 19699
Potters Savings & Loan Co. of East Liverpool, 62711
Quaker City Federal Savings & Loan Association, 59783
Sentinel Federal Savings & Loan Association of Kansas City, 59784
Seven Hills Savings Association, 59784
St. Francis Bank, F.S.B., 21773
St. Francois County Savings & Loan Association, 59783
State Federal Savings & Loan Association of Des Moines, 57672
Stillwater Federal Savings Bank, 28655
Suburban Federal Savings Bank, 43009
Third Savings & Loan Co., 8817
Tri-County Federal Savings & Loan Association, 44534
Washington Savings Bank, 59784
Washington Savings Bank, FSB, 62711
Western Federal Savings Bank of Montana, 62711
Williamsburg Building & Loan Co., 62711

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Trade and Development Agency

NOTICES
Agency information collection activities under OMB review, 66060
Senior Executive Service:
Performance Review Board; membership, 58723, 62178

Trade Representative, Office of United States

NOTICES
Caribbean Basin Economic Recovery Act (CBERA); report to Congress, 21505
Committees; establishment, renewal, termination, etc.:
U.S. automobile taxes and corporate average fuel economy (CAFE) requirements; dispute settlement panel, 31788
Ultra-high temperature (UHT) milk import restrictions, dispute settlement panel, 6316
European Community:
Products and services from Member States; contract award prohibition, 7163, 17299, 25695, 31136
Foreign trade barriers; national trade estimate report, 53219
General Agreement on Tariffs and Trade (GATT); accession:
Poland, 6662
Generalized System of Preferences.
Annual review (1992)—
Country practice reviews; hearings, 50060
Withdrawal of petitions, 7905
Annual review (1993)—
Petitions accepted, 53959
Withdrawal of petitions, 58254
Articles eligible for duty-free treatment, etc., 6026, 27585, 37034
Cyprus; beneficiary developing country designation criteria, 49090, 50981
Imports information during first 10 months (1992), 6664
Kyrgyzstan; beneficiary developing country designation criteria, 50627
Romania and Kazakhstan; beneficiary developing country designation criteria, 60471
Russian Federation; beneficiary developing country designation criteria, 21755
Ukraine; beneficiary developing country designation criteria, 47482
Government-funded construction projects; countries denying market opportunities, list, 29239
Indonesia:
Pencil slats exportation; policies and practices investigation, 610
Intellectual property rights protection, countries denying; policies and practices:
Brazil, 31788, 64351
Priority foreign countries identification, 612
Japan:
Omnibus Trade and Competitiveness Act of 1988; contract awards by Federal agencies for products and services; prohibition, 36227, 58379
Supercomputer agreement, 41552, 58898
Meetings:
Trade Policy and Negotiations Advisory Committee, 35073
North American Free Trade Agreement (NAFTA):
Accelerated tariff elimination provision implementation, 68186
Priority foreign countries, identification:
Brazil et al., 26991
Procurement; foreign government discrimination against U.S. products and services; annual report compilation, 9593
Russia, Ukraine, Azerbaijan, and Tajikistan:
Primary aluminum production activities, 50061
Senior Executive Service:
Performance Review Board; membership, 52516
Tariff-rate quota amount determinations:
Imported sugars, syrups, and molasses for other specified countries and areas, 34610
Thailand:
Priority foreign country designation revocation, 49090
Trade relations agreements:
Belarus, 11096
Georgia, 44389
Kazakhstan, 11647
Romania, 60226
Tajikistan, 65424
Turkmenistan, 58713
Unfair trade practices, petitions, etc.:
Canada; beer and malt beverage importation, 43674
Extruded rubber thread imports; Presidential decision, 6317
Japan; construction, architectural, and engineering services procurement, 36226
Russia et al.; potassium chloride exports, 34284
United States-Canada Free-Trade Agreement:
Accelerated tariff elimination provision implementation, 27586, 59498
Non-wool fabrics and made-up goods; tariff rate quotas extension, 6317
Petition receipts—
Vista Chemical Co., 45359, 16249

Transportation Department

See Coast Guard; Commercial Space Transportation Office; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Federal Transit Administration; Maritime Administration, National Highway Traffic Safety Administration; Research and Special Programs Administration; Saint Lawrence Seaway Development Corporation

RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Automated teller and fare vending machines, 38204
Transportation for individuals with disabilities, 63092
Conflict of interests; executive branch employees, 7993
Legal proceedings; testimony of employees and production of records, 6719
Omnibus Transportation Employee Testing Act of 1991:
Workplace drug testing programs; management information system, 68194
Organization, functions, and authority delegations.
Administrators, 6898
Administrators and Assistant Secretary for Administration, 6897
Associate Deputy Secretary, 6897
Coast Guard, Commandant, 12543
Commandant, Coast Guard, et al., 6193
Commercial Space Transportation Office, Director, 18018
Federal Highway Administrator, 502
Research and Special Programs Administration, Administrator, 5631, 16914
Secretary, 6896
Practice and procedure:
Scheduled airline operations applications; DOT decisionmaker, 34882
Privacy Act; implementation, 67696
Seismic safety; Federal and federally assisted or regulated new building construction, 32867
Uniform relocation assistance and real property acquisition for Federal and federally assisted programs, 26070

PROPOSED RULES
Airline service quality performance standards:
On-time disclosure rule; amendments; correction, 4370
Alaska; unfair competition by commonly owned carriers; withdrawn, 7053
Americans with Disabilities Act; implementation.
Accessibility guidelines—
Detectable warnings, 37052
Transportation for individuals with disabilities, 6471
Over-the-road buses; accessibility, 52735
Computer reservations systems, 41068
Conflict of interests; department proceedings, 516
Correction, 7040
Disadvantaged business enterprise participation in agency programs, 12207, 52050, 63153
Nondiscrimination on basis of handicap in federally assisted programs and activities and in air travel, 47681, 63154
Omnibus Transportation Employee Testing Act of 1991
Alcohol use by transportation workers, limitation, 7197
Workplace drug and alcohol testing programs, procedures, 7506
Procedural regulations
Aviation Form 41 Schedules B-7 and B-43; confidential treatment; withdrawn, 35
Property and passenger tariffs; electronic filing, withdrawn, 12350

INDEX
VOL 58
1993
UMI

Transportation

Regulatory agenda, 24618, 56632
Seismic safety; Federal and federally assisted or regulated new building construction; CFR Part added, 4393

NOTICES

Agency information collection activities under OMB review, 6561, 32978, 40846, 52128, 58215, 67433
Aviation proceedings:
  Agreements filed; weekly receipts, 625, 3985, 5442, 6158, 6563, 7825, 8646, 11083, 11884, 12624, 14239, 15395, 16568, 17466, 21328, 26376, 28909, 29851, 31232, 31994, 33135, 33686, 35499, 36242, 39271, 39590, 40182, 41120, 42355, 43151, 45145, 49082, 50384, 51665, 52524, 53986, 58034, 58587, 59091, 60477, 62179, 62707, 64421, 65001, 67432, 68980
  Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 625, 3986, 7826, 8647, 11083, 11884, 12624, 14239, 15396, 16568, 17465, 19147, 21328, 21761, 26376, 28087, 28909, 29851, 31232, 31994, 33136, 33686, 35499, 36242, 39272, 39589, 40182, 41120, 42356, 43151, 45146, 47011, 48411, 49082, 50384, 51665, 53986, 58034, 58587, 59092, 60477, 62179, 62707, 64421, 65002, 67432, 68981
  Hearings, etc.—
    Air Florida Express, Inc., 16733
    Air Wisconsin Airlines Corp., 65423
    American Flight Group, Inc., 29021
    Atlantic North Airlines, 14240
    Atlantic Southeast Airlines, Inc., 6836
    Aviation Sales, Inc., 16258
    Capitol Air Express, Inc., 50384
    CaribAir, 60477
    Chicago Express Airlines, Inc., 36243
    Chicago-Greece combination air services, 21328
    Columbia Pacific Airlines, 16734
    Eagle Airlines, 27614
    Eastwind Capital Partners, Inc., 60477
    Fine Airlines, Inc., 33967
    Four Star Aviation, Inc., 16734
    Friendship Airlines, Inc., 27055
    Gorda Aero Service, Inc., 47925
    Grant Avration, Inc., 64422
    Guam/Saipan-Osaka combination air service, 34121
    Kitty Hawk Aircargo, Inc., 32745
    Leisure Air, 51665
    Northwest Seaplanes, Inc., 36731
    Omni Air Express, 12298
    Pennsylvania Commuter Airlines, Inc., 44202
    Polar Air Cargo, 32745
    Promech, Inc., 19868
    Ram Aviation, 64422
    Renown Aviation, Inc., 45145
    Salair, Inc., 33293
    Sky-Jet Airlines, 29444
    Sky King, Inc., 60478
    Sun Jet International, Inc., 42999
    UFS, Inc., 36243
    ValuJet Airlines, Inc., 51125
    Washington, D.C. (Dulles)-Ottawa service case, 16734
    Wrangler Aviation, Inc., 39845
Intelligent vehicle-highway systems (IVHS) implementation; potential nontechnical constraints, 7029
International cargo rate flexibility level:
  Standard foreign fare level—
    Index adjustment factors, 9229, 18438, 31995, 41315, 52524, 66060
International tourist trade development; markets selection, 51316, 57587
Meetings:
  Aircraft Accessibility Federal Advisory Committee, 12977
  Aviation Security Advisory Committee, 43151
  Commercial Space Transportation Advisory Committee, 18438, 47521
  Travel and Tourism Advisory Board, 52276
Senior Executive Service:
  Performance Review Boards; membership, 29021, 48412
Small business competitiveness demonstration program; implementation, 27613

Travel and Tourism Administration

PROPOSED RULES

International tourism trade development:
  Cooperative tourism marketing programs; financial assistance, 5672, 8564

NOTICES

Meetings:
  Travel and Tourism Advisory Board, 8741, 58539

Treasury Department

See Alcohol, Tobacco and Firearms Bureau; Comptroller of the Currency; Customs Service; Engraving and Printing Bureau; Federal Law Enforcement Training Center; Fiscal Service; Foreign Assests Control Office; Foreign Assets Control Office; Internal Revenue Service; Secret Service; Thrift Supervision Office; United States Mint

RULES

Bank Secrecy Act:
  Administrative rulings, 7047
Benchmark survey of U.S. ownership of foreign long-term securities; reporting requirements and survey forms and instructions availability, 68528
Currency and foreign transactions; financial reporting and recordkeeping requirements:
  Bank Secrecy Act; implementation—
    Casinos, 13538, 45263
International capital and foreign currency transactions and positions; reporting and recordkeeping requirements, 58494
Portfolio investment survey reporting, 30707
Vending facilities operated by blind on Federal property under Treasury Department control, 57560

PROPOSED RULES

Conflict of interests, 41193
Currency and foreign transactions; financial reporting and recordkeeping requirements:
  Bank Secrecy Act; implementation—
    Funds transfers and transmittals (wire transfers); transmittal orders by financial institutions, 46014, 46021, 46024, 51269
Privacy Act; implementation, 43312, 44481
Regulatory agenda, 24776, 56788

NOTICES

Agency information collection activities under OMB review, 122, 627, 3585, 3988, 4198, 4199, 4455, 4456, 5444, 5445, 6051, 6571, 6572, 6851, 7035, 7036, 7173, 7293, 7294, 7841, 8089, 8447, 9019, 9020, 9590, 11089, 11662, 12443, 12444, 12627, 12628, 13296, 13297, 14611, 15174, 15895, 16263, 16579, 16737, 17577, 17639, 18134, 18135, 18136, 18300, 18301, 18444, 19149, 19291, 19513, 19698, 19871, 21769, 21770, 21771, 25896, 25897, 26033, 26034, 26181, 26586, 26587, 27330, 27331, 27617, 27770, 28654, 29447, 29690, 29691, 30085, 30216, 30848, 31064, 32000, 32169, 32566, 32987, 33298, 33299, 33686, 33982, 34296, 34297, 34618, 35071, 35504, 36248, 36511, 36734, 37048, 37546, 37988, 38163, 38807, 38808, 39275, 40463, 40850, 41551, 41552, 41840, 41841, 42358, 42754, 44207, 44208, 44731, 45149, 45374, 46265, 46266, 46671, 46672, 47178, 47179, 47779, 47780, 48538, 48942, 50081, 50082, 50997, 51127, 51405, 51406, 52133, 52134, 52526, 52527, 53018, 53019, 53020, 53757, 54639, 54642, 58036, 58377, 58724, 58725, 59095, 59514, 59781, 59782, 60082, 60083, 61947, 62181, 62410, 62411, 63611, 63612, 65228, 65232, 65233, 65234, 65761, 66065, 66066, 67905, 67906, 68683, 68684, 69450
Bonds, Treasury:
  2023 series, 7827, 9593
  Redemption calls; 7 percent bonds of 1993-1998, 4736
Boycotts, international:
  Countries requiring cooperation; list, 28090, 37546, 53621, 68987
Committees; establishment, renewal, termination, etc.:
  Bank Secrecy Act Advisory Group on Reporting Requirements, 31785
  Data Integrity Board, 65761
  Public Securities Association Borrowing Advisory Committee, 38808
  Public Securities Association Treasury Borrowing Committee, 35072
Meetings:
  Customs Service Commercial Operations Advisory Committee, 12981, 19699, 32567, 36512, 48421, 61948
  Debt Management Advisory Committee, 3989, 13521, 17640, 30849, 36734, 52802
  National Center for State and Local Law Enforcement Training Advisory Committee, 48538
Notes, Treasury:
  A-2003 series, 7832, 9593
  AH-1994 series, 3066
  E-2000 series, 3582
  J-1998 series, 6328
  K-1998 series, 11089, 13298
  S-1995 series, 6331
  T-1995 series, 11093, 13298
  U-1997 series, 3066
  X-1996 series, 7837, 9593
Organization, functions, and authority delegations:
  Assistant Secretary (Enforcement), 33297
  Assistant Secretary (Enforcement) et al., 6324
  Assistant Secretary (Fiscal); order of succession, 13125
  Assistant Secretary (Management)/Chief Financial Officer et al., 6326, 6327, 6429
  Commissioner, Financial Management Service, 6056
  Commissioner of Public Debt, 16264
  Deputy Assistant Secretary (Information Systems) et al., 26181
  Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) et al., 36005
  Financial Management Service, Commissioner, 25700
  Fiscal Assistant Secretary, 12445
  Foreign Assets Control Office, Director, 19871, 43403, 50626
  General Counsel, 5797
  Reporting relationships and supervision of officials, etc., 63615
  Secret Service, Director, 8090, 48539

Privacy Act:
Systems of records, 43404
Reimbursable services of customs in Virgin Islands; authorization, 19871
Senior Executive Service:
Combined Performance Review Board; membership, 17302
Departmental Performance Review Board; membership, 47925
Legal Division Performance Review Board; membership, 38600, 47780
Performance Review Board; membership, 43403

Truman, Harry S., Scholarship Foundation

See Harry S. Truman Scholarship Foundation

U.S. Commission on Improving Effectiveness of United Nations

NOTICES
Hearings, 17303
Meetings, 4738, 11439, 26125, 37049, 41552

Uniformed Services University of the Health Sciences

NOTICES
Meetings; Sunshine Act, 28656, 41849, 48090, 54645

United States Enrichment Corporation

NOTICES
Conflict of interests, 58896, 69451
National Environmental Policy Act; implementation, 44875, 64425

United States Information Agency

RULES
Exchange visitor program; regulatory and management practice reform, 15180
Correction, 18304, 48447

PROPOSED RULES
Freedom of Information Act; implementation, 60416
Correction, 61729
Regulatory agenda, 25236, 57238

NOTICES
Agency information collection activities under OMB review, 16738, 17922, 29448, 39088, 49348
Art objects; importation for exhibition:
Age of Baroque in Portugal, 48089
Age of Rubens, 43152
Art of Medieval Spain: A.D., 00-1200, 50997
Birth of Athenian Democracy, 28438
Currency of Fame: Portrait Medals of the Renaissance, 65235
Daumier Drawings, 7036
Eighteenth Century Dutch Watercolors from the Rijksmuseum Printroom, Amsterdam, 40851
From Elizabeth I to Elizabeth II: Master Drawings from the National Portrait Gallery, London, 42754
Gold of Meroe, 55111
Great Age of British Watercolors: 1750-1880, 14612, 18446
Great French Paintings from the Barnes Foundation: Impressionist, Post-Impressionist, and Early Modern, 14472
Joan Miro, 33687, 36249
In the Temple of Solomon and the Tomb of Caiaphas, 60241
Korean Arts of the Eighteenth Century Splendor and Simplicity, 42130
Lucian Freud: Recent Work, 60241
Ludovico Carracci, 64794
Painters of the Great Ming: The Imperial Court and the Zhe School, 8817
Sacred banner of Greek Revolution of 1821, 16443
Scrolls from the Dead Sea: The Ancient Library of Qumran and Modern Scholarship, 6852, 12303
Splendid Legacy: The Havemeyer Collection, 11663
St. John the Baptist, 65765
Teotihuacan: City of the Gods, 14472
Vatican Treasures: 2000 Years of Art and Culture in the Vatican and Italy, 33983
Verrocchio's Christ and Saint Thomas: A Masterpiece of Sculpture from Renaissance Florence, 21214
Cultural property:
Bolivia; emergency import restriction extension on antique ceremonial textiles, 26811
Mali; emergency import restriction on archaeological material from Niger River Valley and Bandiagara Escarpment (Cliff), 49543
Exchange visitor program:
Spain; deletion from skills list, 40466
Grants and cooperative agreements; availability, etc.:
American civilization workshop/seminar and research grants in China, 42131
Armenia et al.; local government and public administration training programs, 48539
Baltic countries, newly independent states, and Central and Eastern Europe; student exchange programs, 31589
Central and Eastern European citizens network initiative, 11440
Countries of former Yugoslavia; leaders in democratic transition program, 21622
Democracy in Africa program, 29449
Donated book projects, 14612
Eastern European English as a foreign language (EFL) fellows program, 4456
Edmund S. Muskie fellowship program, 64023
Washington workshop, 33485
Fulbright teacher exchange program, 13522
Hubert H. Humphrey fellowship program, 43009
Indonesia—
Alternative dispute resolution project, 43012
Human rights project, 43011
International creative arts exchanges for public and private non-profit organizations, 64026
International educational and cultural activities, 30849
Discretionary program, 65012
International visitor grantees; group projects, 47926
Internship capacity building; Central and Eastern Europe, Russia, and Central Asia Republics, 62182
National/provincial legislatures development in Yemen and Nepal, 11443
Newly Independent States (NIS) university partnerships program, 5447
Non-profit organization in support of quarterly journal publication for overseas educational advisers, 7175
Public and private non-profit organizations in support of international educational and cultural activities, 8094, 9021, 12445, 14614, 30852, 53621, 63618
Regional scholar exchange program in humanities and social sciences in Armenia et al., 28441
Rule of law for African audiences; public education exchange program, 14616
Russian Federation; college and university partnerships program, 69452
Russia, Ukraine, and Kyrgyzstan; local and regional self-government training programs, 14619
Samantha Smith memorial exchange program, 28439
Secondary school exchange initiative, 47933
Secondary school initiative for school linkages, 63621, 65765
Secondary school initiative for short term exchange projects, 47527
Summer institute for English-as-foreign language educators from Albania et al., [redacted]
Summer institute in history of United States for foreign university teachers, 54396
Summer institute in U.S. economy and public policy for foreign university teachers, 54398
U.S.-NIS secondary school two-way academic exchange iniative, 50083
U.S.-NIS summer language teacher exchange program, 35507
University affiliations program, 27331
University development program in business management for selected regions in Eastern and Central Europe, 9238
International Conference on Government Ethics; request for support, 53994
Meetings:
Cuba Broadcasting Advisory Board, 38164, 60900
English Teaching Advisory Panel, 51128
Public Diplomacy, U.S. Advisory Commission, 7602, 15177, 19149, 28090, 32414, 38164, 48542, 59515, 65235
Privacy Act:
Systems of records, 42755, 60729
Senior Executive Service:
Performance Review Board; membership, 52802

United States Institute of Peace

RULES
Nondiscrimination on basis of handicap in federally conducted programs or activities; enforcement, 57690

NOTICES
Grants and cooperative agreements; availability, etc.:
Solicited grants, 993, 42755
Meetings; Sunshine Act, 6055, 14625, 27771, 34841, 48090, 59785

United States Mint

NOTICES
Committees; establishment, renewal, termination, etc.:
Citizens Commemorative Coin Advisory Committee, 45550

United States Sentencing Commission

NOTICES
Sentencing guidelines and policy statements for Federal courts, 27148, 52527, 65764, 67522
Sentencing guidelines and priority areas for study, 37988

Veterans Affairs Department

RULES

Acquisition regulations:
Processing interagency agreements; procedure guidance, clarification, 31914
Solicitation provisions, contract clauses, and prescriptions; changes, 48973
Correction, 58730
Adjudication; pensions, compensation, dependency, etc.:
Benefit eligibility; reinstatement of benefits for remarried surviving spouses, service-connected disability evaluations of certain veterans, etc., 32442, 32443
Civil Liberties Act 1992 amendments; Japanese-American World War II internee restitution payments; income exclusion, 33766
Dependency and income computation; correction, 12174, 31909
Dependency and indemnity compensation for survivors, 25561, 27622
Diseases associated with service in Vietnam, 29107
Evidence requirements, 37856
Correction, 42623
Exchange of evidence; Social Security Administration and Veterans Affairs Department, 25562
Improved pension program; exclusions from income, 25563
Incompetents $1,500 estate cases; resumption and payment of withheld benefits, 34224
Ionizing radiation exposure claims; ovarian cancer and parathyroid adenoma, 16358
Post-traumatic stress disorder; service connection, 29109
Presumptive service connection for diseases resulting from exposure to ionizing radiation, 25563
Procedural due process and appellate rights, 16359, 59365
Radiation Exposure Compensation Act of 1990; implementation, 25564
Social security benefits; special allowance to restore, 34524
Stabilization of disability evaluations; amendments, 53659
Veterans' Benefits Programs Improvement Act of 1991—
Disability ratings and failure to report for VA examination, 46865
Zero percent disability evaluations, 52017
Board of Veterans Appeals:
Appeals regulations and rules of practice, 27934
Conflict of interests, 61811
Disabilities rating schedule:
Total disability ratings for compensation; correction, 39664
Federal claims collection:
Waiver of benefit and home loan program debts collection, 3840
Correction, 7296
Health care practitioners; reporting to State licensing boards; policy, 48455
Incompetency determinations, 37856
Legal Services, General Counsel:
Claims for cost of medical care and services; increase in settlement and waiver authority, 39152
Loan guaranty:
Direct housing loans to qualified Native American veterans on trust lands, 59658
Guaranteed manufactured home loans, home and condominium loans, and home improvement loans—
Veterans' Home Loan Program Improvements and Property Rehabilitation Act; compliance, 37857
Limited denial of participation in loan guaranty program, 60384
Servicing procedures, 29111
Medical benefits:
Home improvement and structural alterations; increase in limit, 25565
Hospital care and medical services in non-VA facilities, 32445
Presumptive service connection for diseases resulting from exposure to ionizing radiation, 41635
Organization, functions, and authority delegations:
Director, Office of Budget and Finance, et al., 32442
General Counsel et al.; Federal tort claims settlements, 40745
Vocational rehabilitation and education:
Rehabilitation criteria update, 68766
Training and rehabilitation programs; extension, 41636
Veterans education—
Dependents' education; enrollment verification by telephone, 26239
Disenrollment from post-Vietnam era veterans' educational assistance program, 38057, 40468
Educational assistance requirements under VEAP; monthly verification of enrollment; effective date delayed, 25565
Educational assistance test program; rates payable increase, 50844
Flight training, 49196
Montgomery GI Bill-Active Duty; nonduplication of benefits, 46866
Post-Vietnam Era Veterans' Educational Assistance Program, 31910, 34526, 46865
Programs standardization, 63529
Reservists education; procedural due process and Montgomery GI Bill-Selected Reserve, 51780, 65930
Veterans' Educational Assistance Amendments; implementation, 26239, 34368, 51781
Veterans Job Training Act; regulations removed, 67691
Veterans Nurse Pay Act of 1990 and Montgomery GI Bill-Selected Reserve; education program changes, 50845

PROPOSED RULES

Acquisition regulations:
Service contracting—
Indemnification and medical liability insurance, and nonpersonal health care; deviations, 54548
Solicitation provisions, contract clauses, and prescriptions; changes, 31937
Adjudication; pensions, compensation, dependency, etc.:
Disability due to impaired hearing, 48483
Diseases associated with exposure to herbicide agents, 50528
Life insurance policy cash surrender value which represents premiums return; exclusion from income, 65958
Presumptive service connection for diseases resulting from exposure to ionizing radiation, 51798
Procedural due process and appellate rights, 38103, 38104, 38106
Returned and cancelled checks, 46919
Zero percent disability evaluations, 28808
Board of Veterans Appeals:
Attorney and agent fees, 47100
Disabilities rating schedule:
Cardiovascular system, 4954
Dental and oral conditions, 4961
Endocrine system, 5691
Correction, 11099
Hemic and lymphatic systems, 26080
Muscle injuries, 33235
Respiratory system, 4962
Skin, 4969
Systemic conditions, 26083
Zero percent disability evaluations, 28808
Legal Services, General Counsel:
Testimony of Department personnel and production of Department records in legal proceedings, 39174
Loan guaranty:
Attorney fees increase, 49253
Guaranteed loan processing; credit underwriting standards and procedures, 50875
Limited denial of participation in loan guaranty program, 26282
Net value definition and pre-foreclosure debt waivers criteria; revisions, 49251
Medical benefits:
Alcohol and drug dependence disorders; contract program, 51799
Healthcare quality assurance reviews; confidentiality, 44313
Medical records confidentiality; drug abuse, alcoholism or alcohol abuse, HIV infection, and sickle cell anemia, 39706
Regulatory agenda, 24946, 56948
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty; eligibility criteria, 39488, 41325
Montgomery GI Bill-Active Duty; eligibility requirements; clarification, 50873
Programs standardization, 38106

NOTICES

Advisory committees; annual reports; availability, 15519, 19872, 27057
Agency information collection activities under OMB review, 122, 3066, 4199, 6160, 7036, 7841, 7842, 8096, 12448, 12981, 12982, 14472, 19699, 21215, 29024, 29852, 32000, 37546, 37547, 39856, 41121, 43152, 43675, 43982, 44534, 45551, 45944, 50627, 52803, 52804
Accidental injury in support of claim for compensation or pension report, 61949
Adjacent gravesite set-aside survey (1 year), 60489
Annual clothing allowance; application, 60489
Automatic manufactured home and/or lot loan report, 61949
Automobile or other conveyance and adaptive equipment; application, 60489
Daily report of workman and material—daily log-formal contract, 65237
Disinterment request, 53622
Educational assistance test program benefits application, 61948
Employment verification request, 61949
Home loan; release from personal liability to Government; application, 61950
Inquiry concerning applicant for employment, 65235
Loan account status; request to lender, 61950
Loan analysis, 67906
Management broker designation; application, 60490
Manufactured home unit; loan amount computation, 65236
Marital relationship; statement, 60490
Notice for election to convey and/or invoice for transfer of property, 65236
Pension claim questionnaire for farm income, 60490

INDEX VOL 58 1993 UMI

Request for determination of eligibility and available loan guaranty entitlement, 60491
Statement of accredited representative in appealed case, 53621
Student beneficiary report, 60491
Survivors' and dependents' educational assistance; application, 60491
Witness to accident; statement, 60492
Work study time record (veterans-student services), 60492
Committees; establishment, renewal, termination, etc.:
Cemeteries and Memorials Advisory Committee, 58898
Former Prisoners of War Advisory Committee, 61139
Persian Gulf Expert Scientific Committee, 63437
Wage Committee, 31064
Women Veterans Advisory Committee, 58898
Cost-of-living adjustments and headstone or marker allowance rate, 63437
Disciplinary Appeals Board Panel; roster of employees; availability, 49349
Environmental statements; availability, etc.:
Miami, FL; national cemetery site, 49349
Pittsburgh, PA; national cemetery site, 49349
Legal interpretations; General Counsel-precedent opinions:
Veterans' benefits under VA administered laws; summaries, 12449, 42755
Medical care reimbursement rates; 1994 FY, 63439
Meetings:
Career Development Committee, 17923
Cemeteries and Memorials Advisory Committee, 57672
Cooperative Studies Evaluation Committee, 14622, 48422
Cooperative Studies, Health Services, and Rehabilitative Research and Development Advisory Committee, 67906
Education Advisory Committee, 57673
Environmental Hazards Advisory Committee, 628, 15520, 34618, 53242
Former Prisoners of War Advisory Committee, 15520, 53995
Geriatrics and Gerontology Advisory Committee, 21215
Health Services Research and Development Scientific Review and Evaluation Board, 28443
Medical Research Service Merit Review Boards, 12059, 45151
Prosthetics and Special-Disabilities Program Advisory Committee, 31064
Rehabilitation Advisory Committee, 39857
Rehabilitation Research and Development Scientific Review and Evaluation Board, 15520, 67907
Secretary's Educational Assistance Advisory Committee, 40851
Special Medical Advisory Group, 12060, 62184
Vietnam and Other War Veterans Readjustment Advisory Committee, 17303, 62184
Voluntary Service National Advisory Committee, 14622, 43675
Wage Committee, 18446, 32567, 48422, 65765
Women Veterans Advisory Committee, 21215, 54643
Organization, functions, and authority delegations:
National Center for Veteran Analysis and Statistics; establishment, 33299
Privacy Act:
Computer matching programs, 36249, 40851, 68988
Systems of records, 21508, 29853, 38164, 39088, 40852, 50628, 50629, 52136, 54643, 57673, 57674
Procurement:
Veterans Health Administration; commercial activities, performance; cost comparison schedules (OMB A-76 implementation), 25701
Real property; enhanced-use leases:
West Palm Beach VA Medical Center development, 52137
Reports; availability, etc.:
Rural health care for elderly veterans in Western "Frontier" States, 45152
Senior Executive Service:
Performance Review Boards; membership, 54644
State home per diem rates for domiciliary, nursing home, and hospital care; 1993 FY, 7037

Veterans Employment and Training, Office of Assistant Secretary

NOTICES
Grants and cooperative agreements; availability, etc.:
Stewart B. McKinney Homeless Assistance Act—
Homeless veterans reintegration project, 18116, 21599, 39242

Victims of Crime Office

NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary programs (1993 FY), 3561, 5416
Native American discretionary programs—
Victims of Federal crime in Indian country; assistance, 584, 7582
Victims of Crime Act victim assistance program; guidelines, 45126
Victims of Crime Act victim compensation program; guidelines, 66023

Wage and Hour Division

RULES
American Samoa; special industry committees; per diem allowance, 34523
Family and Medical Leave Act; implementation, 31794, 32611, 45433
Industries in American Samoa; special industry committees; new minimum wage rates, 43561
North American Free Trade Agreement (NAFTA):
Aliens on H-1B visas temporarily employed in specialty occupations and as fashion models; labor condition applications and requirements for employers, 69226
Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:
Davis-Bacon helper regulations suspended; former regulation reinstated, 58954
PROPOSED RULES
Aliens on H-1B visas temporarily employed in specialty occupations; labor condition applications and requirements for employers, 52152, 58944
Fair Labor Standards Act; domestic service employees; minimum wage and overtime compensation exemptions, 69310
Family and Medical Leave Act; implementation, 13394
NOTICES
Committees; establishment, renewal, termination, etc.:
Special Industry Committee for All Industries in American Samoa, 26006
Meetings:
Special Industry Committee for All Industries in American Samoa, 26006

Western Area Power Administration

NOTICES
Central Valley Project; restoration fund payments; assessment and collection procedures, 62343
Environmental statements; availability, etc
Flatiron-Erie Transmission Line Project, CO, 59462
Navajo Transmission Line Project, AZ, 30162, 32666, 37730
Sacramento 2004 power marketing program, 42536, 43105
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Big George-Carter Mountain Transmission Line Rebuild Project, WY, 7139
Fort Morgan North 115-Kilovolt Tapline Project, CO, 51624
Fort Morgan Substation Rebuild Project, CO, 45887
Sterling Substation transformer and fuse replacement project, Logan County, CO, 14395
Summit-Watertown 115-kilovolt transmission line, SD, 7778
Grants and cooperative agreements; availability, etc.:
Integrated resource planning mutual assistance program, 49993
Power rate adjustments:
Amistad and Falcon Projects, TX, et al., 35446
Boulder Canyon Project, AZ and NV, 43631, 50916, 57598
Central Valley Project, CA, 35933
Loveland Area Project, CO, 36682
Loveland Area Projects, CO, et al., 58690
Parker-Davis Project, AZ, 37731, 43105, 50917
Pick-Sloan Missouri Basin Program, MT, 36684
Salt Lake City Area/Integrated Projects, UT, et al., 35449
Salt Lake City Area/Integrated Projects; Provo River Project inclusion, 65180
Transition from guidelines and acceptance criteria to integrated resource planning, 3552
Transmission rate adjustments:
Loveland Area Project, CO, 36682
Pacific Northwest-Pacific Southwest Intertie Project, 41463
Parker-Davis Project, AZ, 37731

White House Fellowships, President's Commission

See President's Commission on White House Fellowships

Workers' Compensation Programs Office

RULES
Federal Employees' Compensation Act:
Claims; social security numbers disclosure, 68031
Longshore and Harbor Workers' Compensation Act:
Claims; social security numbers disclosure, 68031
PROPOSED RULES
Federal Employees' Compensation Act:
Compensation claims—
Medical benefits, 62063

INDEX

VOL

58

1993

UMI

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Editorial Note: The Freedom of Information Act (5 U.S.C. 552) requires Government agencies to maintain and make available for inspection and copying current indexes that provide identifying information on certain matters issued, adopted, or promulgated after July 4, 1967. Public Law 93–502 (88 Stat. 1561) requires the publication (with exceptions) and distribution of these indexes quarterly. This guide has been compiled by the Office of the Federal Register from information submitted by agencies in order to notify the public of the availability of these indexes for sale or inspection.

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Department of Defense, Department of the Air Force	Numerical index of standard publications (AFIND2). July 2, 1993. Lists regulations, manuals, and pamphlets together under each subject series; list visual aids and recurring periodicals separately	National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.	Chief, Base Information Management at nearest Air Force installation
	Numerical index of departmental forms (AFIND9). July 1, 1993. Lists forms numerically within each category, including accountable forms, forms requiring storage safeguards, and obsolete forms		Chief, Base Information Management at nearest Air Force installation
Department of Defense, Department of the Army, Information Systems Command, Army Publications Command and Printing Command	DA pamphlet 25–30 (Consolidated Index of Army Publications and Blank Forms) September 30, 1990. Printed in microfiche only	National Technical Information Service, Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22161	Director, Army Publications and Printing Command, Hoffman Bldg Alexandria, VA 22331-0302
Department of Education (ED), Office of the Assistant Secretary for Legislation and Public Affairs	ED Index contains those records required by Public Law 90–23 (Freedom of Information Act). The index is a guide to ED policies, instruction memoranda, organization function statements, guidelines, decisions and procedures not published in the Federal Register. Contains records originated since May 4, 1980; updated quarterly	Freedom of Information Officer, Department of Education, Office of Legislation and Public Affairs, 400 Maryland Ave., SW., Washington, DC 20202	Office of Legislation and Public Affairs, Document Review Center, 400 Maryland Ave., SW., Washington, DC 20202 Telephone 245–8907 or 472–3850
Department of Energy, Bonneville Power Administration	BPA Manual Index dated 1-25-89 (12 pages). Policy, procedural, and directives material indexed by subject and BPA Manual chapter number	The public may review the index, obtain a copy of the index, without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Office of Media Relations, 905 NE. 11th Avenue, Portland, OR 97232, or the Washington, DC, Office, Forrestal Building, Room 8G-033, 1000 Independence Ave., SW., Washington, DC 20585	Bonneville Power Administration offices listed in previous column or BPA Areas and Districts at the following: 1500 NE. Irving, Portland, OR 97208; 201 Queen Anne Ave., N., Seattle, WA 98109; U.S. Cthse, West 920 Riverside Ave., Spokane, WA 99201; West 101 Poplar St., Walla Walla, WA 99362; U.S. Federal Bldg., 211 E. 7th Ave., Eugene, OR 97401; 800 Kensington, Missoula, MT 59801; U.S. Federal Bldg., 301 Yakima St., Wenatchee, WA 98807; 1650 Hollipark Dr., Idaho Falls, ID 83401; and 550 West Fort Street, Boise, ID 83724
Fish and Wildlife Service	U.S. Fish and Wildlife Service Manual Table of Contents Checklist	PDM/FWS, 4401 N. Fairfax Dr., MS-224, USFWS, Arlington, VA 22203 No charge	PDM No cost

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC)	CDC Freedom of Information Act (FOIA) Index contains those records required by the Freedom of Information Act (P.L. 90-23). This index provides identifying information, by program and subject, for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and not published in the Federal Register. Index is updated quarterly	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333.	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333
Department of Health and Human Services, Public Health Service, Food and Drug Administration (HHS/PHS/FDA)	Analyst Operations Manual: Training information, instructions and procedures for new laboratory personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Accession #PB85-211639: $46.50 for paper copy, $6.50 for microfiche	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857 (FDA/FOIS/HFI-35)
	Bio-research Monitoring Manual for Supervisory Investigators, NCTR Nonclinical: One-week course conducted by the National Center for Toxicological Research	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $41.00. Payable to the Food and Drug Administration	
	Center for Drugs and Biologics Staff Manual: Primarily concerned with the preparation and review of documents within the Center for Drugs and Biologics	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $96.00. Payable to the Food and Drug Administration	
	Center for Food Safety and Applied Nutrition Daily Operating Guide: Primarily concerned with the preparation and review of documents within the Center for Food Safety and Applied Nutrition	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $33.00. Payable to the Food and Drug Administration	
	Center for Veterinary Medicine Policy and Procedures Manual: Primarily concerned with the preparation and review of documents within the Center for Veterinary Medicine	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $42.70. Payable to the Food and Drug Administration	
	Compliance Policy Guides: Statements of FDA compliance policy, including those statements which contain regulatory action guidance information	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88–915499, $109.95; subscription accession #PB88–915400, $135.00	
	Compliance Program Guidance Manual: Programs, plans and instructions directed to FDA field operations for Program Management System (PMS) project implementation	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Entire manual accession #PB89-920499, $157.95; subscription accession #PB89-920-400, $425.00	
	Drug Autoanalysis Manual: A manual of automated methods which provides content uniformity test specifications in USP XVII and NF XII. Provides assurance of homogeneity within a single lot for a safe and effective drug supply. Specifications are for all table monographs where the active ingredient is present in low quantities (usually 50 mg. or less)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $56.00. Payable to the Food and Drug Administration	
	EDRO Data Codes Manual: Computer code information for program management system projects used for reporting project information into the Program Oriented Data System (PODS)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $100.00. Payable to the Food and Drug Administration	

INDEX VOL 58 1993 UMI

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Field Management Directives: FDA field policy in the areas of operations management, planning and budget, program management	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $35.00. Payable to the Food and Drug Administration	
	Inspection Operations Manual: Standard operating inspectional and investigational procedures and instructions used by FDA Investigational personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88-913399, $55.95; subscription accession #PB88-913300, $65.00	
	Inspector Training Manual: Basic training manual for food and drug inspectors and inspection techniques	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $24.00. Payable to the Food and Drug Administration	
	Inspector's Manual for State Food and Drug Officials: Two-part manual—Part (1): operations section contains inspectional and investigational procedures, Part (2): program section outlines the specific recommended inspectional procedures applicable to a particular problem area, commodity or regulated industry. Similar in content to the Inspection Operations Manual, except for FDA administrative procedures which are not relevant to State Food and Drug Officials	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $71.00. Payable to the Food and Drug Administration	
	Inspector's Technical Guide: Technical information for FDA inspectors, not previously available on a broad scale	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $18.00. Payable to the Food and Drug Administration	
	Pesticide Analytical Manual: Procedures and methods used in FDA laboratories for surveillance of the extent and significance of contamination of man and his environment by pesticides and their metabolites	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Volume I—Accession #PB88-911799, $62.95. Volume II—Accession #PB88-911999, $193.95. Entire Manual—Accession #PB86-911799, $230.00	
	Quantity of Contents Compendium: Contains information used to measure acceptance levels of shrinkage in food containers. Divided into two parts—(1) procedures for measuring fill-of-container, statistical evaluation acceptable common or usual declaration of quantity of contents; (2) information on sampling where special techniques are required	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $18.60. Payable to the Food and Drug Administration	
	Regulatory Procedures Manual: Guidance on regulatory policy and support processing procedures	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $142.80. Payable to the Food and Drug Administration	
	Staff Manual Guides—Organization and Delegations: Directives issued by FDA to establish policy, organization, procedures or responsibilities in the administrative area	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $259.00. Payable to the Food and Drug Administration	
	Supervisory Investigators Guide: Guidelines to assist supervisory inspectors in managing investigational groups	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $9.00. Payable to the Food and Drug Administration	

INDEX
VOL 58
1993

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index to Administrative Staff Manuals: Current listing of all staff manuals with indexes and/or table of contents	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $29.00 Payable to the Food and Drug Administration	
Department of Health and Human Services, Public Health Service, Health Services Administration (HHS/PHS/HSA)	HSA Freedom of Information Act (FOIA) Index: March 1975 to June 30, 1982. The HSA, FOIA Index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of June 30, 1982. The respective bureau level indexes are listed as follows: OA—OFFICE OF THE ADMINISTRATOR: OCPA—Public Affairs Management System Manual; OPEL—HSA forward plan, fiscal year 1979–83; OM/OCG—HSA procurement operating instructions; OM/OMP—HSA transmittal notices for supplements to HHS manuals; HSA Circulars; OM/OFS—policy decisions, procedures, and opinion. BMS—BUREAU OF MEDICAL SERVICES: Division of Hospitals and Clinics Operations Manual; BMS supplements to HHS manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; BMS circulars; Contract Physician's Guide. IHS—INDIAN HEALTH SERVICES: IHS circulars; IHS supplements to HHS manuals; IHS Operations Manual; General Counsel opinions; policy and procedural manual and circulars. BCHS—BUREAU OF COMMUNITY HEALTH SERVICES: BCHS administrative guide system; BCHS Operations Manual; Emergency Medical Service Systems Program Guidelines; BCHS Regional Memorandum Series. BHPDS—BUREAU OF HEALTH PERSONNEL DEVELOPMENT AND SERVICE: BHPDS supplements to the HHS manuals; BHPDS operations manuals which include memoranda, guidelines, handbooks and procedures	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A–39, 5600 Fishers Lane, Rockville, MD 20857. Checks payable to HHS/Public Health Service. Mail to HSA Collection Officer, HHS/PHS/HSA, Room 16–36, 5600 Fishers Lane, Rockville, MD 20857. Fees charged for research and reproduction of information are based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E)	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A–39, 5600 Fishers Lane, Rockville, MD 20857
Department of the Interior, Office of the Secretary	Departmental Manual Table of Contents, Checklist, and Subject Index dated May 31, 1989. Index of directives containing descriptions of central and field organizations of the Department, delegations of authority, internal policies, guidelines, procedures, and other administrative matters	Office of Information Resources Management, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	Office of Information Resources Management, U.S. Department of the Interior, Washington, DC 20240
	Checklist and Subject Index of Departmental Manual Additions to the FPM dated June 3, 1988. Index of Departmental personnel management directives which supplement the Federal Personnel Manual	Chief, Division of Program Management and Evaluation, Office of Personnel, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	Chief, Division of Program Management and Evaluation, Office of Personnel, U.S. Department of the Interior, Washington, DC 20240

UMI

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Listing of Secretary's Orders which are considered in effect with respect to current operations of the Department dated January 28, 1986	Office of Information Resources Management, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
Department of the Interior, Office of the Secretary, Office of Acquisition and Property Management	Departmental Manual Additions to the Federal Acquisition Regulation (FAR)	Division of Acquisition and Assistance, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 No charge	Division of Acquisition and Assistance, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 Telephone: (202) 343-6431
	400 DM - Departmental Manual Addition to the Interior Property Management Regulations (IPMR) Part 114-52	Division of Property Management, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 No charge	Division of Property Management, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 Telephone: (202) 343-3336
Department of the Interior, Office of the Secretary, Office of Aircraft Services	OAS Operational Procedures Memorandum No. 93-1, dated January 1, 1993. Subject: Index of Departmental Manual (Aviation Management) and Operational Procedures Memoranda Information.	Office of Aircraft Services, 3905 Vista Avenue, P.O. Box 15428, Boise, ID 83715-5428.	Office of Aircraft Services, 3905 Vista Avenue, P.O. Box 15428, Boise, ID 83715–5428
Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Manual Index and Table of Contents dated June 23, 1983	No charge Division of Management Support, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245 No charge	Division of Management Support, Bureau of Indian Affairs, Room 334–Interior South, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C.(202) 343-3577
Department of the Interior, Bureau of Land Management	Directives Digest Bulletin's dated – 1/31/90, 2/28/90, 3/31/90, 4/30/90, 5/31/90, 6/30/90, 7/31/90, 8/31/90, 9/31/90, 10/31/90, 11/30/90, 12/31/90	Department of the Interior, Bureau of Land Management, 1849 C Street, N.W., MIB 2454, Washington, DC 20240	Department of the Interior, Bureau of Land Management, 1849 C Street, N. W., MIB 2454, Washington, DC 20240 Telephone: (202) 208–6152
	Land Management Instructions and Manual Indexes	Department of the Interior, Bureau of Land Management, 1849 C Street, N. W., MIB 2454, Washington, DC 20240 Duplicate copies at 13 cents per page.	Section for Directives and Records Operations (W0873) Room 2454, MIB Telephone: (202) 208–6152
Department of the Interior, Bureau of Mines	Basic Bureau of Mines Manual General Table of Contents and Checklist–July 6, 1976	In accordance with fee schedule in 43 CFR 2, Appendix A	Elizabeth Knorr, Chief, Branch of Management Analysis, 810 7th Street, NW., MS-2193, Washington, DC 20241 Telephone 202–501–9248
	Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph	Bureau of Mines	
Department of the Interior, Bureau of Reclamation	Reclamation Instructions Index dated July 7, 1983.	Supply and Services Division, D-7923, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225. No charge	Records Management Policy Staff, Bureau of Reclamation, D-7924, P.O. Box 25007, Denver, CO 80225-0007 Telephone: (303) 236-6494
Department of the Interior, U.S. Geological Survey	Table of Contents, Checklist, and Subject Index relating to the Geological Survey Manual	Paperwork Management Officer, U.S. Geological Survey, 208 National Center, Reston, VA 22092 No charge	Paperwork Management Officer, U.S. Geological Survey; 208 National Center, Reston, VA 22092 Telephone 703-648-7309
Department of the Interior, Minerals Management Service	Table of Contents and Checklist to Basic Minerals Management Service Manual. Listed numerically by part, series, chapter, release number, date, and pages.	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Records and Mail Management Section, 381 Elden Street, MS 2050, Herndon, VA 22070 Telephone 703-787-1239
	Index of Director's appeal decisions	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Appeals Division, Minerals Management Service, Office of Policy and Management Improvement, 381 Elden Street, MS 9110, Herndon, VA 22070, Telephone 703-787-1275

INDEX
VOL 58
1993

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, National Park Service	Checklist of the NPS Guidelines and Directives Dated January 1, 1993	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division No charge	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division Telephone 202-523-5043
Department of the Interior, Office of Hearings and Appeals	Index-Digest -- Index of synopses for all decisions decided by OHA Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd. Arlington, VA 22203.Telephone 703–235–3791 Price: $475.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	
	Indian Citator — Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBCA). Initial publication covers volumes 1-15 of IBIA decisions. Annually.	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791 Price: $30.00 - initial cost Checks made payable to: "Department of the Interior". $15.00 – annual update	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791 Telephone (703) 235-3791
	Administrative Manual— Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks payable to Department of the Interior.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235-3791
Department of the Interior, Office of Inspector General	Inspector General Manual Index, December 17, 1992. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone: 202–208–4356
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated October 22, 1986	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C. (202) 343-2210
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone (202) 523-9277
Department of Transportation, Federal Highway Administration (FHWA)	CrossReference Index of current directives, The index is alphabetical by subject and within each subject, applicable directives are identified. The index also includes a three-part cross-reference for the FHPM, 23 U.S.C. and 23 CFR. The index is updated semi-annually (March and September)	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

UMI

Agency and subagency name	Index title: period covered, brief description of contents [1]	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to March 31, 1993. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, United States Savings Bond Division, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202-622-0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone: 202-245-1591

INDEX
VOL
58
1993

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through November 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202 254-6314
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545

UMI

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since April 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Program Policy and Evaluation Division, National Archives (NAA), Washington, DC 20408	Program Policy and Evaluation Division, Room 409, National Archives Building, 8th and Pennsylvania Ave., NW., Washington, DC. Mailing address: National Archives (NAA), Washington, DC 20408. 202/523-3214
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

INDEX
VOL
58
1993

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of January 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

UMI

Agency and subagency name	Index title: period covered, brief description of contents [4]	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
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	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and FPM Issuances, OPM-AG-PSD-01. As of December 1991. A listing of publications, periodicals, and FPM issuances arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room B464, 1900 E St. NW, Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
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Pension Benefit Guaranty Corporation, Legal Department	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006; Charge $0.10 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202–254–5527 (202–254–8010 for TTY and TDD), 2020 K St., NW., Washington, DC 20006
Pension Benefit Guaranty Corporation, Corporate Administrative Planning Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

INDEX
VOL
58
1993

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page, payable to Pension Benefit Guaranty Corp.	
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Veterans Administration	Veterans Administration Publication Index, I–03–1. All information is current as of Oct. 31, 1984. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the Veterans Administration Forms and Publications Depot, 6307 Gravel Ave., Alexandria, VA 22310, ATTN: Depot Officer (036B)	For inspection: VA Central Office, Editorial Section, Room C–4, 810 Vermont Ave., NW., Washington, DC 20420. Phone: (202) 389–3966 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Veterans Administration, or ask your Directory Assistance Operator for the number in your area.

UMI

FEDERAL REGISTER PAGES AND DATES—JANUARY—DECEMBER 1993

Pages	Date	(Issue No.)
1-212	Jan. 4	(1)
213-466	5	(2)
467-2964	6	(3)
2965-3192	7	(4)
3193-3484	8	(5)
3485-3824	11	(6)
3825-4058	12	(7)
4059-4294	13	(8)
4295-4568	14	(9)
4569-4890	15	(10)
4891-5252	19	(11)
5253-5560	21	(12)
5561-5918	22	(13)
5919-6074	25	(14)
6075-6186	26	(15)
6187-6342	27	(16)
6343-6440	28	(17)
6441-6600	29	(18)
6601-6678	Feb. 1	(19)
6679-6874	2	(20)
6875-7046	3	(21)
7047-7184	4	(22)
7185-7476	5	(23)
7477-7714	8	(24)
7715-7860	9	(25)
7861-7952	10	(26)
7953-8200	11	(27)
8201-8516	12	(28)
8517-8690	16	(29)
8691-8892	17	(30)
8893-9106	18	(31)
9107-9516	19	(32)
9517-10936	22	(33)
10937-11184	23	(34)
11185-11360	24	(35)
11361-11496	25	(36)
11497-11782	26	(37)
11783-11950	Mar. 1	(38)
11951-12144	2	(39)
12145-12328	3	(40)
12329-12536	4	(41)
12537-12900	5	(42)
12901-12996	8	(43)
12997-13188	9	(44)
13189-13400	10	(45)
13401-13528	11	(46)
13529-13694	12	(47)
13695-14144	15	(48)
14145-14302	16	(49)
14303-14494	17	(50)
14495-15070	18	(51)
15071-15260	19	(52)
15261-15414	22	(53)
15415-15750	23	(54)
15751-16102	24	(55)
16103-16344	25	(56)
16345-16480	26	(57)
16481-16610	29	(58)
16611-16762	30	(59)
16763-17080	31	(60)
17081-17320	Apr. 1	(61)
17321-17490	2	(62)
17491-17772	5	(63)
17773-17942	6	(64)
17943-18138	7	(65)
18139-18336	8	(66)
18337-19032	9	(67)
19033-19192	12	(68)
19193-19320	13	(69)
19321-19546	14	(70)
19547-19766	15	(71)
19767-21092	16	(72)
21093-21240	19	(73)
21241-21342	20	(74)
21343-21534	21	(75)
21535-21636	22	(76)
21637-21888	23	(77)
21889-25536	26	(78)
25537-25772	27	(79)
25773-25928	28	(80)
25929-26054	29	(81)
26055-26224	30	(82)
26225-26498	May 3	(83)
26499-26678	4	(84)
26679-26910	5	(85)
26911-27196	6	(86)
27197-27442	7	(87)
27443-27650	10	(88)
27651-27920	11	(89)
27921-28332	12	(90)
28333-28490	13	(91)
28491-28756	14	(92)
28757-28914	17	(93)
28915-29096	18	(94)
29097-29326	19	(95)
29327-29520	20	(96)
29521-29776	21	(97)
29777-29948	24	(98)
29949-30100	25	(99)
30101-30694	26	(100)
30695-30934	27	(101)
30935-31146	28	(102)
31147-31330	June 1	(103)
31331-31460	2	(104)
31461-31646	3	(105)
31647-31892	4	(106)
31893-32040	7	(107)
32041-32268	8	(108)
32269-32432	9	(109)
32433-32590	10	(110)
32591-32834	11	(111)
32835-33004	14	(112)
33005-33184	15	(113)
33185-33318	16	(114)
33319-33496	17	(115)
33497-33752	18	(116)
33753-33882	21	(117)
33883-33992	22	(118)
33993-34210	23	(119)
34211-34356	24	(120)
34357-34518	25	(121)
34519-34680	28	(122)
34681-34862	29	(123)
34863-35356	30	(124)
35357-35840	July 1	(125)
35841-36116	2	(126)
36117-36300	6	(127)
36301-36588	7	(128)
36589-36852	8	(129)
36853-37412	9	(130)
37413-37630	12	(131)
37631-37846	13	(132)
37847-38044	14	(133)
38045-38262	15	(134)
38263-38508	16	(135)
38509-38660	19	(136)
38661-38910	20	(137)
38911-39112	21	(138)
39113-39416	22	(139)
39417-39624	23	(140)
39625-40030	26	(141)
40031-40306	27	(142)
40307-40580	28	(143)
40581-40716	29	(144)
40717-41022	30	(145)
41023-41170	Aug. 2	(146)
41171-41418	3	(147)
41419-41620	4	(148)
41621-41980	5	(149)
41981-42186	6	(150)
42187-42482	9	(151)
42483-42636	10	(152)
42637-42838	11	(153)
42839-43064	12	(154)
43065-43238	13	(155)
43239-43490	16	(156)
43491-43784	17	(157)
43785-44100	18	(158)
44101-44254	19	(159)
44255-44434	20	(160)
44435-44604	23	(161)
44605-44742	24	(162)
44743-45038	25	(163)
45039-45230	26	(164)
45231-45408	27	(165)
45409-45776	30	(166)
45777-46072	31	(167)
46073-46528	Sept. 1	(168)
46529-46758	2	(169)
46759-47014	3	(170)
47015-47198	7	(171)
47199-47370	8	(172)
47371-47618	9	(173)
47619-47820	10	(174)
47821-47982	13	(175)
47983-48258	14	(176)
48259-48444	15	(177)
48445-48590	16	(178)
48591-48774	17	(179)
48775-48952	20	(180)
48953-49174	21	(181)
49175-49420	22	(182)
49421-49900	23	(183)
49901-50242	24	(184)
50243-50506	27	(185)
50507-50830	28	(186)
50831-51006	29	(187)
51007-51210	30	(188)
51211-51564	Oct. 1	(189)
51565-51756	4	(190)
51757-51972	5	(191)
51973-52206	6	(192)
52207-52396	7	(193)
52397-52628	8	(194)
52629-52874	12	(195)
52675-53096	13	(196)
53097-53392	14	(197)
53393-53634	15	(198)
53635-53832	18	(199)
53833-54024	19	(200)
54025-54270	20	(201)
54271-54484	21	(202)
54485-54924	22	(203)
54925-57534	25	(204)
57535-57716	26	(205)
57717-57950	27	(206)
57951-58096	28	(207)
58097-58254	29	(208)
58255-58482	Nov. 1	(209)
58483-58640	2	(210)
58641-58734	3	(211)
58735-58934	4	(212)
58935-59158	5	(213)
59159-59342	8	(214)
59343-59638	9	(215)
59639-59930	10	(216)
59931-60100	12	(217)
60101-60362	15	(218)
60363-60540	16	(219)
60541-60768	17	(220)
60769-60990	18	(221)
60991-61610	19	(222)
61611-61796	22	(223)
61797-62032	23	(224)
62033-62258	24	(225)
62259-62494	26	(226)
62495-63022	29	(227)
63023-63276	30	(228)
63277-63518	Dec. 1	(229)
63519-63884	2	(230)
63885-64100	3	(231)
64101-64364	6	(232)
64365-64454	7	(233)
64455-64668	8	(234)
64669-64870	9	(235)
64871-65098	10	(236)
65099-65276	13	(237)
65277-65526	14	(238)
65527-65656	15	(239)
65657-65864	16	(240)
65865-66246	17	(241)
66247-67302	20	(242)
66303-67624	21	(243)
67625-68014	22	(244)
68015-68290	23	(245)
68291-68504	27	(246)
68505-68714	28	(247)
68715-69168	29	(248)
69169-69684	30	(249)

INDEX

VOL

58

1993

UMI

INDEX

VOL 58

1993

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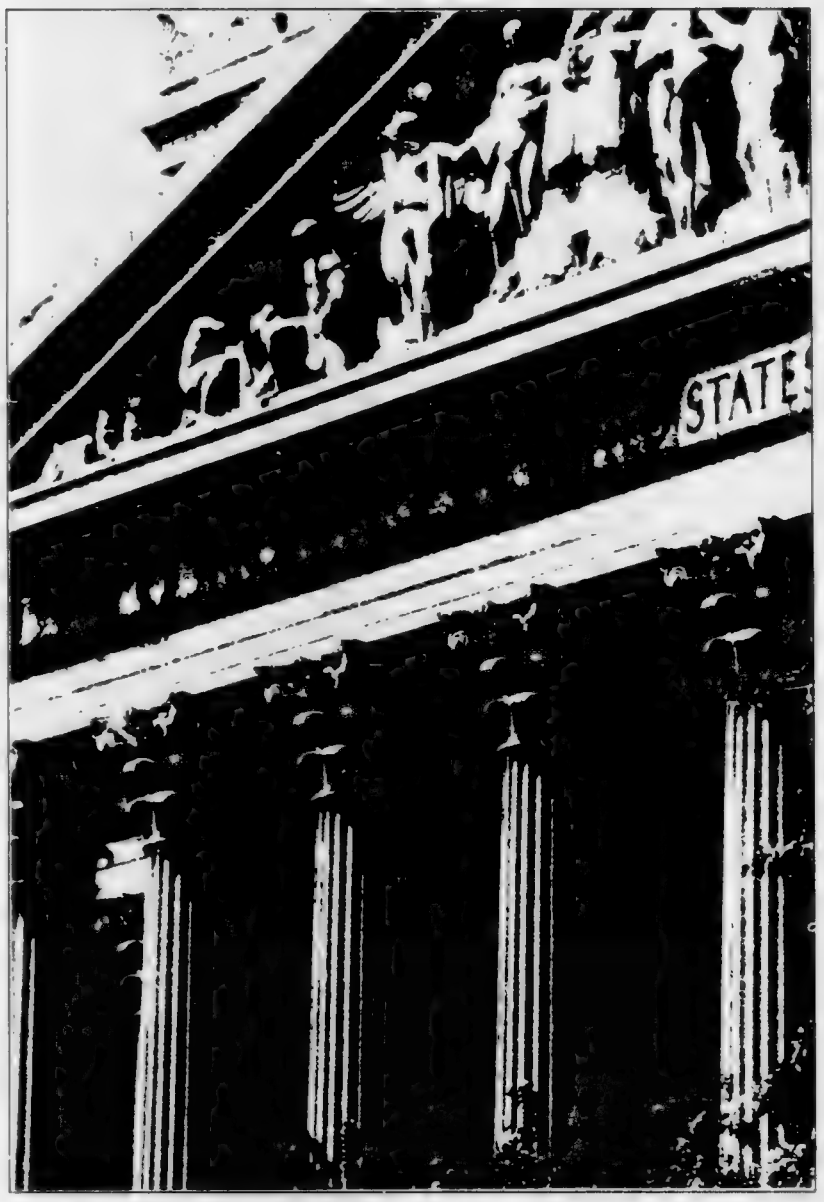

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UMI

INDEX

VOL

58

1993

UMI

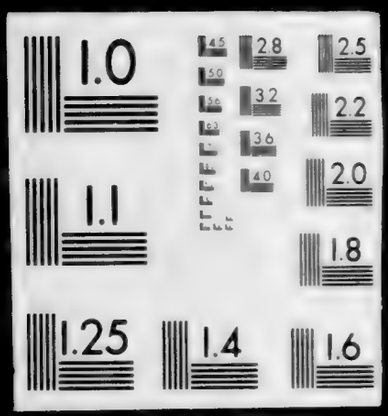
1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3

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VOL
58
ISS
125
JUL
1
1993
UMI

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7-1-93
Vol. 58

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7-1-93
Vol. 58 No. 125

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VOL
58
ISS
125
JL
1
1993
UMI

7-1-93
Vol. 58
Pages

300 N ZEEB RD
ANN ARBOR MI 48106

7-1-93
Vol. 58 No. 125
Pages 35357-35840

Federal Register

Thursday
July 1, 1993

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VOL
58
ISS
125
JL
1
1993
UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
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(two briefings)

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RESERVATIONS: 202–523–4538

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Contents

Federal Register

Vol. 58, No. 125

Thursday, July 1, 1993

Agricultural Marketing Service
See Packers and Stockyards Administration
RULES
Milk marketing orders:
Memphis, TN, 35359
Nashville, TN, 35361
Paducah, KY, 35362

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Packers and Stockyards Administration
RULES
Organization, functions, and authority delegations:
Assistant Secretary for Science and Education et al., 35359
NOTICES
Agency information collection activities under OMB review, 35425
Program payments; income tax exclusion; preliminary purpose determinations:
South Carolina Hugo incentives program, 35427
World Declaration and Plan of Action for Nutrition; availability and comment solicitation, 35426

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family violence prevention and services; discretionary funds program (1993 FY), 35740

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Thailand, 35434

Customs Service
NOTICES
Commercial laboratory accreditations:
United Chemical Testing, Inc., 35506
Generalized System of Preferences; procedures, 35506

Defense Department
See Defense Intelligence Agency
See Navy Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Mental health services, 35400
NOTICES
Agency information collection activities under OMB review, 35434
Committees; establishment, renewal, termination, etc.:
Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee, 35434
Cultural and Natural Resources Committee, 35435
DOD directives system annual index; availability, 35435
Grants and cooperative agreements; availability, etc.:
Local educational agencies assistance, 35435

Defense Intelligence Agency
NOTICES
Senior Executive Service:
Performance Review Committee; membership, 35438

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 35466
Radian Corp., 35466
Roche Diagnostic Systems, Inc., 35466
Sanofi Winthrop Pharmaceutical, 35467

Education Department
RULES
Special education and rehabilitation services:
Individuals with disabilities; projects for initiating special recreational programs, 35762
NOTICES
Grants and cooperative agreements; availability, etc.:
Independent living centers, 35720
Individuals with disabilities; projects for initiating special recreational programs, 35767

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Atomic energy agreements; subsequent arrangements, 35441
Grant and cooperative agreement awards:
Community College Southern Nevada, 35439
Michigan State University, 35439
University of—
Nevada, 35440
Rochester, 35440
Utah, 35441
Natural gas exportation and importation:
American Hunter Exploration Ltd., 35446
El Paso Gas Marketing Co., 35446
Meridian Marketing & Transmission Corp., 35446

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 35441

Environmental Protection Agency
PROPOSED RULES
Air pollution control:
Clean fuel fleet emission standards, 35420
NOTICES
Agency information collection activities under OMB review, 35449
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 35450
Clean Air Act:
Citizens suits; proposed settlements, 35451

Drinking water:
Public water supply supervision program—
Michigan, 35451
Meetings:
California Air Resources Board, 35452
Health and Environmental Assessment Office; public workshops, 35454
Science Advisory Board, 35454
Municipal solid waste landfill permit programs:
Kentucky, 35454
Superfund; response and remedial actions, proposed settlements, etc.:
Valley Plating Superfund Site, VA, 35456

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Fokker, 35413
Airworthiness standards:
Special conditions—
Aerospatiale models AS-365N1 and AS-365N2 helicopters, 35411
NOTICES
General aviation activity and avionics survey; improvements; meeting, 35000
Passenger facility charges; applications, etc.:
Tweed-New Haven Airport, CT, 35500
Yuma County International Airport, AZ, 35501

Federal Communications Commission
RULES
Radio stations; table of assignments:
Delaware, 35410
Florida, 35409
Oregon, 35410
PROPOSED RULES
Radio stations; table of assignments:
Kansas, 35420
Minnesota, 35421
Missouri, 35421
NOTICES
Agency information collection activities under OMB review, 35457
Meetings:
Alaska Federal-State Joint Board, 35457
Applications, hearings, determinations, etc.:
Dolgoff, Howard B., et al., 35457
Metrocomo, Inc., 35458
Yates, Stephen W., 35458

Federal Emergency Management Agency
RULES
Preparedness:
Offsite radiological emergency preparedness program; service fees, 35770

Federal Energy Regulatory Commission
PROPOSED RULES
Organization, functions, and authority delegations:
Office of Hydropower Licensing, 35415
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Brush Cogeneration Partners et al., 35442
Natural gas certificate filings:
Ozark Gas Transmission System et al., 35443
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Land Management Bureau, 35445
Texas Railroad Commission, 35444
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 35445
Northwest Pipeline Corp., 35445

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Little River, AR, et al., 35501
Monroe County, PA, 35502

Federal Mediation and Conciliation Service
RULES
Agency ethics regulations; amendments
Correction, 35377

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance and removal:
Burlington Northern Railroad Co. et al., 35503

Federal Trade Commission
PROPOSED RULES
Industry guides:
Greeting card industry, discriminatory practices, 35414
NOTICES
Premerger notification waiting periods; early terminations, 35458
Prohibited trade practices:
AE Clevite, Inc., 35459

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Treasury tax and loan depositaries, 35395
NOTICES
Surety companies acceptable on Federal bonds; annual list, 35778

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Atlantic salt marsh snake, 35462
Endangered and threatened species permit applications, 35462

Food and Drug Administration
PROPOSED RULES
Medical devices:
Gastroenterology-urology devices—
Penile inflatable implant; premarket approval requirement, 35416
NOTICES
Medical devices; premarket approval:
AIA-PACK AFP, 35460

Foreign Assets Control Office
RULES
Federal Republic of Yugoslavia (Serbia and Montenegro) sanctions regulations, 35828

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Ohio, 35427
Pennsylvania, 35428

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Skagit Purchase Unit, WA, 35426
Sur Sur Purchase Unit, CA, 35427

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Health, 35460
Assistant Secretary for Health and Scientific Affairs, 35460

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Mortgages or property formerly held by Secretary; title waivers, 35369
PROPOSED RULES
Low income housing:
Housing assistance payments (Section 8)—
Tenancy in new construction units; income eligibility, 35416
Mortgage and loan insurance programs:
FHA multifamily processing; revision, 35724

Immigration and Naturalization Service
RULES
Immigration:
Chinese Student Protection Act; implementation, 35832

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Employment taxes and collection of income taxes at source:
Railroad Retirement Tax Act regulations; update
Correction, 35419
Supplemental annuity tax; railroad retirement
Correction, 35419

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Sweden, 35428

International Trade Commission
NOTICES
Import investigations:
Flat-rolled carbon steel products, 35465

Interstate Commerce Commission
NOTICES
Rail carriers:
Waybill data; release for use, 35466

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
Administrator, Drug Enforcement Administration; personal injury or property damage claim settlement 35371
Voting Rights Act; implementation:
Minority language groups, 35371

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
RULES
Public land orders:
Oregon, 35408
Utah, 35409
NOTICES
Realty actions; sales, leases, etc.:
California, 35463
Montana, 35463
Recreation management restrictions, etc.:
Caliente Resource Area, CA; camping and occupancy stay limits, 35464
Withdrawal and reservation of lands:
Nevada, 35464

National Commission on Manufactured Housing
NOTICES
Meetings, 35472

National Credit Union Administration
RULES
Credit unions:
Voluntary liquidation, 35363

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle theft prevention standards.
High theft lines exemption, 35422

National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Climate and global change program, 35428
Permits:
Marine mammals, 35433

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 35472
Meetings:
Biological and Critical Systems Special Emphasis Panel, 35473
Biological Sciences Advisory Committee, 35473
Electrical and Communications Systems Special Emphasis Panel, 35474
Elementary, Secondary, and Informal Education Special Emphasis Panel, 35474
Networking and Communications Research and Infrastructure Special Emphasis Panel, 35474
Polar Programs Special Emphasis Panel, 35474
Science and Technology Infrastructure Special Emphasis Panel, 35474

VOL 58 ISS 125 JL 1 1993 UMI

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 35438
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Etrema Products, Inc., 35439

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Illinois Power Co. et al., 35475
Generic letters:
Inaccuracy of motor-operated valve diagnostic equipment, 35476
Petitions; Director's decisions:
Texas Utilities Electric Co., 35476
Applications, hearings, determinations, etc.:
Nebraska Public Power District, 35477

Occupational Safety and Health Administration
RULES
Shipyard employment safety and health standards:
Threshold limit values and toxic substance standards, 35512

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Southwind Horse Auction, SC, 35427

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Navistar International Transportation Corp. et al., 35647

Pension Benefit Guaranty Corporation
RULES
Single employer plans:
Miscellaneous amendments, 35377

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 35478

Presidential Documents
ADMINISTRATIVE ORDERS
Japan; certification of nondiscrimination in procurement of U.S. products for government use; authority delegation to U.S. Trade Representative (Presidential Determination No. 93-29 of June 29, 1993), 35357

Public Health Service
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
RULES
Securities:
Canadian issuers, multijurisdictional disclosure system; forms; amendments, 35367
NOTICES
Self-regulatory organizations; proposed rule changes:
Pacific Stock Exchange, Inc., 35491, 35496

Small Business Administration
NOTICES
License surrenders:
Dixie Business Investment Co., 35498
First of Nebraska Investment Corp., 35498
Applications, hearings, determinations, etc.:
First Security Business Investment Corp., 35498

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 35499

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
Metropolitan Washington Council of Governments, 35461

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 35499
Certification of public convenience and necessity and foreign air carrier permits; weekly applications, 35499

Treasury Department
See Customs Service
See Fiscal Service
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 35504

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
U.S.-NIS summer language teacher exchange program, 35507

Western Area Power Administration
NOTICES
Power rate adjustments:
Amistad and Falcon Projects, TX, et al., 35446
Salt Lake City Area Integrated Projects, UT, et al., 35449

Separate Parts In This Issue

Part II
Department of Labor, Occupational Safety and Health Administration, 35512

Part III
Department of Education, 35720

Part IV
Department of Housing and Urban Development, 35724

Part V
Department of Health and Human Services, Administration for Children and Families, 35740

Part VI
Department of Education, 35762

Part VII
Federal Emergency Management Agency, 35770

Part VIII
Department of the Treasury, Fiscal Service, 35778

Part IX
Department of the Treasury, Foreign Assets Control Office, 35828

Part X
Department of Justice, Immigration and Naturalization Service, 35832

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

VOL
58
ISS
125
JL
1
1993
UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

7 CFR
2.....35359
1097.....34359
1098.....35361
1099.....34362

8 CFR
245.....35832

12 CFR
710.....35363

14 CFR
Proposed Rules:
29.....35411
39.....35413

16 CFR
Proposed Rules:
244.....35414

17 CFR
239.....35367
249.....35367

18 CFR
Proposed Rules:
375.....35415

21 CFR
Proposed Rules:
876.....35416

24 CFR
203.....35369
Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416

26 CFR
Proposed Rules:
31 (2 documents).....35419

28 CFR
0.....35371
55.....35371

29 CFR
1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

31 CFR
203.....35395
585.....35828

32 CFR
199.....35400

34 CFR
378.....35762

40 CFR
Proposed Rules:
88.....35420

43 CFR
Public Land Orders:
6986.....35408
6988.....35409

44 CFR
354.....35770

47 CFR
73 (3 documents).....35409, 35410
Proposed Rules:
73 (3 documents).....35420, 35421

49 CFR
Proposed Rules:
543.....35422

Federal Register
Vol. 58, No. 125
Thursday, July 1, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–29 of June 29, 1993

Delegation of Authority To Modify or Terminate Title VII Trade Action Taken Against Japan

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. section 301, I hereby delegate to the United States Trade Representative the powers granted the President:

(1) in section 305(g)(1)(A) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)(A) (the Act)), to formally identify Japan as a country that discriminates against U.S. products or services in government procurement of construction, architectural, and engineering services; and

(2) in section 305(g)(2) of the Act to impose, modify, or restrict sanctions in response to the discrimination so identified.

This delegation of authority is effective until July 2, 1993. You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 29, 1993.

[FR Doc. 93–15789
Filed 6–29–93; 3:52 pm]
Billing code 3190–01–P

UMI
VOL
58
ISS
125
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Rules and Regulations

Federal Register
Vol. 58, No. 125
Thursday, July 1, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document cancels delegations of authority to the Assistant Secretary for Science and Education and the Administrator, Extension Service to provide education and outreach programs for socially disadvantaged farmers and ranchers under 7 U.S.C. 2279. The document delegates that authority to the Under Secretary for Small Community and Rural Development and to the Administrator, Farmers Home Administration. This action is being taken to provide outreach and technical assistance to socially disadvantaged farmers and ranchers to own and operate farms and ranches. The intended effect of this action is to encourage these farmers and ranchers to participate in agricultural programs.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lynn Pickinpaugh, Director, Special Programs, Office of Deputy Administrator for Program Operations, Farmers Home Administration, U.S. Department of Agriculture, room 4923, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone 202–720–0358.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is exempt from the notice and comment procedures of the Administrative Procedure Act, and this rule may be effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12778. This action is not a rule as defined by 5 U.S.C. 601 et seq. and thus is exempt from its provisions. This rule also is exempt from the requirements of the National Environmental Policy Act, as amended (42 U.S.C. chapter 35).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.23 is amended by revising the section heading and by adding paragraph (a)(5) to read as follows:

§ 2.23 Under Secretary for Small Community and Rural Development.

* * * * *

(a) * * *

(5) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

* * * * *

§ 2.30 [Amended]

3. Section 2.30 is amended by removing and reserving paragraph (a)(34).

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

4. Section 2.70 is amended by adding paragraph (a)(15) to read as follows:

§ 2.70 Administrator, Farmers Home Administration

(a) * * *

(15) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

* * * * *

Subpart N—Delegation of Authority by the Assistant Secretary for Science and Education

§ 2.108 [Amended]

5. Section 2.108 is amended by removing and reserving paragraph (a)(6).

For Subpart C. Mike Espy, *Secretary of Agriculture.*

Dated: June 22, 1993.

For Subpart I. Bob J. Nash, *Under Secretary for Small Community and Rural Development.*

Dated: May 17, 1993.

For Subpart N. R.D. Plowman, *Acting Assistant Secretary for Science and Education.*

Dated: May 11, 1993.

[FR Doc. 93–15476 Filed 6–30–93; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 1097

[DA–93–05]

Milk in the Memphis, Tennessee, Marketing Area; Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This document terminates all but certain administrative provisions of the Memphis, Tennessee, marketing order, effective midnight, July 31, 1993. The remaining administrative provisions will be terminated at a later date.

On the basis of a public hearing on proposed amendments to all Federal milk orders, the Department concluded that the order should be amended in several respects. In a referendum, the issuance of the proposed amended order was not approved by the required producer vote. Since the Department had determined from the hearing evidence that the order must be amended to carry out the purpose of the Act, and in view of insufficient producer support for the proposed amended order, the Department notified the public that termination of the present order was being considered.

VOL
58
ISS
125
JL
1
1993
UMI

Comments on the proposed termination were invited.

After reviewing the comments filed, and on the basis of the record of the public hearing and the results of the producer referendum, the Department has concluded that the present order should be terminated.

EFFECTIVE DATE: Midnight, July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding. Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 FR 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Extension of Time for Filing Exceptions: Issued December 24, 1991; published January 6, 1992 (57 FR 383).

Final Decision: Issued February 5, 1993; published March 5, 1993 (58 FR 12634).

Proposed Termination of order: Issued April 20, 1993; published April 27, 1993 (58 FR 25576).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action is expected to result in the dairy farmers and regulated handlers now subject to the Memphis order becoming subject to comparable regulatory provisions of orders regulating the handling of milk in adjacent marketing areas.

This action has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, *et seq.*), hereinafter referred to as the "Act," and of the current order regulating the handling of the milk in the Memphis, Tennessee, marketing area (7 CFR part 1097), it is hereby found and determined that:

(a) The terms and provisions of the current order do not tend to effectuate the declared policy of the Act.

A public hearing on proposed amendments to all Federal milk orders was held in September, October, and November 1990, pursuant to notice thereof issued July 11, 1990 (55 FR 29034). Following the issuance of a recommended decision and the opportunity for filing exceptions, the Acting Assistant Secretary for Marketing and Inspection Services issued on February 5, 1993 (58 FR 12364), a final decision on the issues considered at the hearing. The Department concluded that all of the orders, including the Memphis, Tennessee, order, should be amended in several respects and that the provisions of the proposed amended orders are necessary to effectuate the declared policy of the Act. The changes adopted provided for:

(1) Three uniform classes of milk use in all orders;

(2) Defining liquid concentrated milk (up to 50% solids) as a fluid milk product; and

(3) Reducing somewhat the payment required when nonfat dry milk (a Class III use) is reconstituted for disposition as Class I milk.

Having found on the basis of hearing evidence that certain provisions of the current order should be amended, it is found that the current provisions in question are not effectuating the declared policy of the Act and should be terminated pursuant to section 8c(16)(A) of the Act.

(b) The required number of producers do not favor the issuance of the proposed amended order as set forth in the February 5, 1993, decision.

A referendum was ordered in conjunction with the Final Decision issued on February 5, 1993, to determine whether producers approved the issuance of the order as proposed to be amended by the decision issued on February 5, 1993. Less than 50% of the producers who participated in the referendum favored the issuance of the proposed amended order. This is substantialy less than required before an amended order may be issued.

(c) The comments filed in response to the notice of the proposed termination (58 FR 25576) do not provide sufficient basis for not proceeding with the termination.

Numerous comments were received. A form letter was filed by many people stating opposition to termination of the Memphis, Tennessee, order.

Two other comments were received, one on behalf of a proprietary handler, a cooperative association and other dairy farmers, and the other one on behalf of two other cooperative associations. The latter comment supported termination of the Memphis, Tennessee, order and maintained that the Secretary must terminate an order whenever the requisite percentage of producers have not approved issuance of an amended order. This comment was filed jointly on behalf of Associated Milk Producers, Inc. (AMPI) and Dairymen, Inc.

The other comment, filed jointly on behalf of Turner Dairies, Inc., Arkansas Dairy Cooperative Association, Inc., and other dairy farmers (Turner, et al.), opposed termination of the order. This comment maintains that the order should not be terminated because the representative period determined by the Secretary for the purpose of determining whether producers favor issuance of the amended order was flawed. The comment contends that the market share of AMPI is declining and therefore the cooperative may not represent a majority of producers currently on the market. The comment contends that the producers supplying the market "* * * have changed quite dramatically since April 1992."

The comment on behalf of Turner, et al. is in error regarding the composition of the Memphis, Tennessee, market's producers. From April 1992 to April

1993 AMPI continuously represented a substantial majority of the market's producers and producer milk. Since AMPI is entitled to vote on behalf of its member producers, there is no way the order could be approved currently unless AMPI chose to vote in favor of the amended order. Because the order no longer effectuates the purposes of the Act and is not supported by the requisite producer vote, we must proceed to terminate the order.

List of Subjects in 7 CFR Part 1097

Milk marketing orders.

Order

It is therefore ordered, That the terms and provisions of the order, as amended, regulating the handling of milk in the Memphis, Tennessee, marketing area (7 CFR part 1097), except § 1097.1, which incorporates the General Provisions in part 1000, are hereby terminated effective at midnight, July 31, 1993.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR part 1097 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§§ 1097.2 through 1097.95 [Removed]

2. Sections 1097.2 through 1097.95 are removed.

EFFECTIVE DATE: Midnight, July 31, 1993.

Dated: June 25, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15544 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1098

[DA–93–10]

Milk in the Nashville, Tennessee, Marketing Area; Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This document terminates all but certain administrative provisions of the Nashville, Tennessee, marketing order, effective midnight, July 31, 1993. The remaining administrative provisions will be terminated at a later date.

On the basis of a public hearing on proposed amendments to all Federal milk orders, the Department concluded that the order should be amended in several respects. In a referendum, the issuance of the proposed amended order was not approved by the required two-thirds producer vote. Since the Department had determined from the hearing evidence that the order must be amended to carry out the applicable statutory authority, and in view of insufficient producer support for the proposed amended order, the Department notified the public that termination of the present order was being considered. Comments on the proposed termination were invited.

After reviewing the comments filed, and on the basis of the record of the public hearing and the results of the producer referendum, the Department has concluded that the present order should be terminated.

EFFECTIVE DATE: Midnight, July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding.

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 FR 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Extension of Time for Filing Exceptions: Issued December 24, 1991; published January 6, 1992 (57 FR 383).

Final Decision: Issued February 5, 1993; published March 5, 1993 (58 FR 12634).

Extension of time for Conducting Referendum on Proposed Amended Order: Issued March 11, 1993; published March 17, 1993 (58 FR 14344).

Proposed Termination of order: Issued April 20, 1993; published April 27, 1993 (58 FR 25577).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action is expected to result in the dairy farmers and regulated handlers now subject to the Nashville order becoming subject to comparable regulatory provisions of orders regulating the handling of milk in adjacent marketing areas.

This action has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, *et seq.*), hereinafter referred to as the "Act," and of the current order, regulating the handling of the milk in the Nashville, Tennessee, marketing area (7 CFR part 1098), it is hereby found and determined that:

(a) The terms and provisions of the current order do not tend to effectuate the declared policy of the Act.

A public hearing on proposed amendments to all Federal milk orders was held in September, October, and November 1990, pursuant to notice thereof issued July 11, 1990 (55 FR 29034). Following the issuance of a recommended decision and the opportunity for filing exceptions, the Acting Assistant Secretary for Marketing and Inspection Services issued on February 5, 1993 (58 FR 12364), a final decision on the issues considered at the hearing. It was concluded that all the

VOL 58 ISS 125 JL 1 1993 UMI

orders, including the Nashville, Tennessee, order, should be amended in several respects and that the provisions of the proposed amended orders are necessary to effectuate the declared policy of the Act. The changes adopted provided for:

(1) Three uniform classes of milk use in all the orders;

(2) Defining liquid concentrated milk (up to 50 percent solids) as a fluid milk product; and,

(3) Reducing somewhat the payment required when nonfat dry milk (a Class III use) is reconstituted for disposition as Class I milk.

Having found on the basis of the hearing evidence that certain provisions of the current order should be amended, it is found that the current provisions in question are not effectuating the declared policy of the Act and should be terminated pursuant to section 8c(16)(A) of the Act

(b) In a referendum concluded on March 25, 1993 the required producer approval was not obtained to enable the Department to issue the proposed order as set forth in the February 5, 1993, Final decision. The referendum was initially ordered in conjunction with the Final Decision. The Acting Assistant Secretary issued an order on April 20, 1993, extending until March 25, 1993, the time for conducting a referendum to determine whether producers approved the issuance of the order. Less than the required two-thirds approval by producers who participated in the referendum was obtained in favor of the proposed amended order. The Act requires approval by at least two-thirds of the producers voting in the referendum or by producers of at least two-thirds of the volume of milk represented by those voting in the referendum, before an amended order may be issued.

(c) The comments filed in response to the notice of the proposed termination (58 FR 25577) do not provide a sufficient basis for not proceeding with the termination.

Only one comment was received. A proprietary handler filed a comment stating that the Nashville order had served the market well and that the termination order will create chaotic marketing conditions in the area. The handler proposed delaying the termination of the order until proposals now being received by the Department to merge the Nashville order with several other southeastern orders have been considered and a merger of orders has become effective. In the alternative, the handler urged that if the Nashville order is terminated the Department should expedite the merger hearing process.

The handler did not provide sufficient support for delaying termination of the order. However, if a hearing on merger proposals is called, the question of expeditious action may be considered at that time.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

Order

It is therefore ordered, That the terms and provisions of the order, as amended, regulating the handling of milk in the Nashville, Tennessee, marketing area, (7 CFR part 1098) except § 1098.1, which incorporates the General Provisions in part 1000, are hereby terminated effective at midnight, July 31, 1993.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§§ 1098.2 through 1098.94 [Removed]

2. Sections 1098.2 through 1098.94 are removed.

Effective date: Midnight, July 31, 1993.

Dated: June 25, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15545 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1099

[Docket No. AO–183–A45; DA–90–017]

RIN 0581–AA37

Milk in the Paducah, Kentucky, Marketing Area; Referendum Order; Determination of Representative Period and Designation of Referendum Agent

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document orders that a new referendum be conducted to determine whether producers favor issuance of the amended order regulating the handling of milk in the Paducah, Kentucky, marketing area, as proposed in the final decision issued by the Acting Assistant Secretary on February 5, 1993.

DATES: The referendum is to be completed on or before 15 days after the issuance of this order.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/DAIRY DIVISION, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, 202/720–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 FR 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Extension of Time for Filing Exceptions: Issued December 24, 1991; published January 6, 1992 (57 FR 383).

Final Decision: Issued February 5, 1993; published March 6, 1993 (58 FR 12634).

Proposed Termination of Order: Issued April 20, 1993; published April 27, 1993 (58 FR 25577).

On February 5, 1993, the Acting Assistant Secretary, Marketing and Inspection Services, issued a final decision on proposed amendments to all Federal milk orders, including the Paducah, Kentucky, order. A referendum was then held to determine if affected producers favored the issuance of the proposed amended order for the Paducah market. April 1992 was the representative period. The proposed amended order failed to receive the required producer approval.

A notice of proposed termination of the order was then issued, inviting comments on why the order should not be terminated. On the basis of the comments received, it appears that there is widespread support by current producers on the market for the proposed amended order. Therefore, it is concluded that a new referendum should be conducted using May 1993 as a representative period.

It is hereby directed that a referendum be conducted to determine whether the issuance of the amended order regulating the handling of milk in the Paducah, Kentucky, marketing area, which was attached to the decision of the Acting Assistant Secretary issued February 5, 1993, is approved by at least the required two-thirds of the producers, or by producers who produced at least two-thirds of the total

milk produced during the representative period.

The month of May 1993 is hereby determined to be the representative period for the conduct of such referendum.

Donald R. Nicholson is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Such referendum shall be completed on or before 15 days from the issuance of this referendum order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR part 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 25, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15546 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 710

Voluntary Liquidation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is revising part 710 of its Rules and Regulations to update and streamline minimal procedures for voluntary liquidations of federal credit unions. This final rule is designed to assist a federal credit union's officials in the orderly dissolution of the institution and payment to members and provide NCUA with sufficient information to monitor the process and avoid losses to the National Credit Union Share Insurance Fund. It requires the development of a written liquidation plan, with a one year period for completing the liquidation; expands the notification to creditors requirement for federal credit unions with more than $500,000 in assets; eliminates certain reporting requirements; and expands the record retention period from three to five years to coincide with the Federal Credit Union Act's provision regarding destruction of records. For federally insured state credit unions, this rule only requires notification, with minimal reporting, to NCUA when the decision to voluntarily liquidate is made.

EFFECTIVE DATE: August 2, 1993

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Jerry L. Courson, Special Assistant to the President, Asset Liquidation Management Center, National Credit Union Administration, 4807 Spicewood Springs Road, suite 5100, Austin, Texas 78759–8490, telephone (512) 795–0999; or James J. Engel, Deputy General Counsel, Office of General Counsel, National Credit Union Administration, 1776 G Street, Northwest, Washington, DC 20456, telephone (202) 682–9630.

SUPPLEMENTARY INFORMATION:

Background

The procedures for voluntary liquidations have not been updated since June of 1972. Most voluntary liquidations involve small credit unions, and in many cases the credit unions are marginally solvent. A more efficient liquidation process will help maintain the solvency and avoid the necessity of involuntary liquidation and the resulting losses to the National Credit Union Share Insurance Fund (NCUSIF). Also, since members do not have access to their shares during the liquidation process, it is in the best interest of the members to effect liquidation within a short period of time.

On October 13, 1992, the NCUA Board requested comments on proposed changes to the voluntary liquidation regulation. 57 FR 47999, October 21, 1992. The comment period ended on December 21, 1992. The proposal added a definition of "voluntary liquidation", reduced the time for notification to NCUA in several provisions, required prompt action in obtaining the membership vote, added a provision that once the liquidation was approved by the members, it could only be rescinded with regional director approval, provided for resubmission to the membership if the original proposal to liquidate was rejected, expanded the provision on notification to creditors, expanded the record retention period from three to five years, and consolidated and streamlined several provisions. It also eliminated the requirement for regional director approval for partial distribution, verification of account balances, reports at commencement and during the liquidation and final reports.

Comments were requested on all aspects of the proposed rule, as well as other issues involving voluntary liquidations. Comments were specifically requested on the need for a liquidation plan, a possible time limit for completing the liquidation, and whether the rule or portions of it should apply to state chartered credit unions entering voluntary liquidation.

Six comment letters were received: two comments from Federal credit unions, two from state credit union leagues, and two from national credit union trade associations. All the comments expressed general support of the proposed regulation and the effort to make the liquidation process more efficient.

The NCUA Board is adopting the regulation as proposed with two substantial amendments and several minor changes. First, § 710.2(e) is added to require the board of directors or the liquidating agent to develop a written liquidation plan that will provide for the liquidation of the credit union within one year. Second, § 710.0 is amended and § 710.9 is added to address the voluntary liquidation of federally insured state credit unions. Federally insured state credit unions should be liquidated under the provisions of state law and this is reflected in § 710.0. Section 710.9 requires the regional director be notified when a federally insured state credit union enters liquidation. The regional director is to be provided with copies of financial statements and any liquidation plan. This information is needed since credit unions entering voluntary liquidation are frequently marginally solvent and could become insolvent during the liquidation process.

The final rule also eliminates the proposed requirement to publish a notice of liquidation for federal credit unions with assets under $500,000, and reduces the requirement to one publication for federal credit unions with assets from $500,000 to $5 million.

Other minor changes have been made to clarify that a non-natural person can be appointed as liquidating agent, to indicate when the liquidating agent can be appointed, to require an extended bond coverage period, to address share draft and credit card accounts, to reinstate regional director approval of partial distributions, to correct a paragraph numbering error, to eliminate a reference to even share dollars, and to change the title by eliminating "Federal Credit Union".

Comments

Plan for Liquidation of Assets and Payment of Shares (Liquidation Plan)

Five of the commenters supported a requirement to develop a liquidation plan—one of those stating that such a plan is critical to an orderly process—and one commenter stated that a

VOL 58 ISS 125 JL 1 1993 UMI

liquidation plan is not necessary due to the small size of most credit unions entering voluntary liquidation. The Board agrees that a plan is necessary, particularly in light of the fact that member access to accounts is limited during the liquidation process. Therefore, § 710.2(e) has been added requiring federal credit unions entering voluntary liquidation to develop a liquidation plan and provide a copy of the plan to the regional director within 30 days of the decision to present the question of liquidation to the members. The revised manual on voluntary liquidations will provide guidance on the development of a liquidation plan. It should be kept in mind that the 30 day period, as a deadline, only applies to submission of the plan to the regional director. Considering the fact that the transaction of business is suspended when the board decides to submit the question of liquidation to the members under § 710.4, it is in the interest of the members to complete the plan as quickly as possible. This will also provide information for responding to members' questions when seeking their approval.

Federally Insured State Chartered Credit Unions

Three commenters suggest that the regulation apply to federally insured state credit unions and two commenters indicate the regulation should exclude state credit unions. Section 710.0 was expanded and § 710.9 was added to deal with this issue.

The NCUA Board has decided not to extend the rule to cover federally insured state chartered credit unions, but to only require notification to the regional director. Due to the fact that voluntary liquidations apply to solvent credit unions, NCUA should not normally be involved from an insurance standpoint. However, since some credit unions recently entering voluntary liquidation were only marginally solvent, the financial condition must be carefully monitored during the liquidation process. Accordingly, § 710.9 has been added to require federally insured state credit unions entering voluntary liquidation to provide the regional director current financial statements and, if available or required by state law or directive, a copy of any liquidation plan. These documents will serve as a basis for the regional director to establish a plan to monitor solvency during the voluntary liquidation. Section 710.2(e) contains a similar requirement for federal credit unions to submit financial statements to enable the agency to access solvency. While this rule does not require state chartered credit unions to prepare a liquidation plan, the Board strongly suggests that they do so.

Section 710.0, Scope, has been amended to specifically recognize that voluntary liquidations of state credit unions are conducted in accordance with state law or procedures established by the state regulator. In addition, because the rule contains the notice requirement for federally insured state credit unions, the reference to federal credit unions was removed from the title of this part.

Time Limit for Completing Voluntary Liquidation

Five commenters agreed that voluntary liquidations should be completed within a period of time to be specified in the regulation. One commenter suggested a one year period be specified and another suggested one year as a flexible guideline. The NCUA Board agrees that a time period should be specified and that one year is reasonable. Members' shares are not available during the liquidation period and the liquidation should be conducted as quickly as possible. Also, since income is reduced during the liquidation process funds available for a liquidating dividend could be reduced, and continued solvency is a risk. Accordingly, § 710.2(e) requires that the liquidation plan provide for the liquidation of assets and payment of shareholders in one year. If the liquidation is projected to require more than one year, an explanation must be included in the liquidation plan.

Published Notice of Liquidation

Three comments expressed concern on the requirement to publish a notice of liquidation. The comments indicate the costs of publication in larger metropolitan areas can be excessive, and since many vendors are regional or national, the publication may not reach the intended audience. These comments have merit, but a reasonable effort must be made to notify creditors when a Federal credit union is closing. A newspaper's Legal Notices section is a common source for such notifications. Notifications published in local newspapers during involuntary liquidations do generate some response.

Since creditor claims are more likely to be filed against credit unions with more complex operations, the regulation was modified to require three publications only when the assets of a liquidating credit union exceed $5 million. Credit unions with assets between $500,000 and $5 million will be required to publish only one notice, and credit unions with assets under $500,000 will not be required to publish any notice. Also, in response to comments received, time frames were established for the publication. Publication is required within seven days of the liquidation date. Mailing of the liquidation notice has been changed to within 10 days of the liquidation date. Creditors have 30 days from the liquidation date to submit claims rather than the 30 days from the date of publication as originally proposed.

Other Comments; Amendments

Several other changes were made based on comments received, questions posed or staff recommendations. The following is a summary of the changes made and responses to comments.

In response to one comment, the definition of "liquidating agent" in § 710.1(c) was changed to clarify that the party appointed need not be an individual.

Section 710.2(b) was changed by deleting "NCUA or another person". That phrase is deemed unnecessary since NCUA is covered by the definition of "liquidating agent". In response to one commenter's question, NCUA is not required to accept appointment as liquidating agent but generally would do so. This provision was also changed to provide that the agent can be appointed as soon as the board votes to present the question of liquidation to the members.

Section 710.2(c) was changed to require that either bond coverage continue or the discovery period be extended for at least four months after the final distribution of assets. This is to provide a reasonable period for the discovery of actionable claims. Due to the fact that the liquidating credit union is solvent, any recoveries would benefit the members.

Section 710.2(d) as proposed has been changed. The regional director is responsible for monitoring the progress in completing the voluntary liquidation. Financial statements are used to determine the current financial condition and determine future follow-up plans. However, rather than continue the current requirement that quarterly reports must be filed, this subsection is amended to provide that reports only need to be provided upon request.

Section 710.3(c) is amended to eliminate the requirement that the board rescind its decision to liquidate if the members fail to vote favorably. As one commenter pointed out, this requirement is unnecessary. This subsection is also changed to allow the liquidating agent as well as the board of directors to resubmit the question of liquidation to the members.

Proposed § 710.3(d) is not changed. Once the board and the membership vote to liquidate the credit union, normal operation cannot be resumed until the regional director agrees that the financial condition and management is adequate to provide a sound basis for operations. The regional director needs to evaluate continued operation in light of factors giving rise to the initial determination to seek member approval.

Section 710.4 has been changed to specifically reference share draft accounts and credit cards.

As proposed, § 710.6(a) would have eliminated the current requirement of § 710.9 to obtain regional director approval for partial distributions. In final form, § 710.6(a) will continue the regional director approval requirement. This will aid the regional director in monitoring the liquidation, assist the credit union in adhering to its liquidation plan and assure protection of the members' interests. It is also amended to provide that any partial distribution must be on a pro rata basis but allows for the exclusion of accounts less than $25.00. Payment on those accounts may be withheld until final distribution. This will allow a credit union to avoid the expense of issuing more than one payment on small accounts. However, upon conclusion of the liquidation, the total payout of all distributions must result in a pro rata distribution to all members.

Section 710.6(d) is expanded to reference state law for procedures to escheat or trustee unclaimed funds. The subsection is necessary to provide a clear understanding that state procedures apply to disbursing unclaimed funds.

Section 710.7, as proposed, has not been changed. One commenter suggested that the current records retention period of three years be maintained instead of the proposed five year period as this would impose an undue burden on the appointed custodian. The three year period was used in the current regulation (§ 710.13) because, in accordance with section 120(b)(5) of the Federal Credit Union Act (12 U.S.C. 1766(b)(5)), the corporate existence of a federal credit union continues for that period from the date of cancellation of its charter. However, section 120(c) of the Act (12 U.S.C. 1766(c)) provides that the NCUA Board can only destroy records after five years from the date of cancellation of the charter. The Board believes the same requirement should apply in all federal credit union liquidations, even for records not in its possession, and therefore the five year period is retained in this final rule. Storage of records is not believed to be an unreasonable or burdensome requirement.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant impact any final regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). As this rule deals with the voluntary liquidation of all federal credit unions, it has no significant economic impact on small credit unions as ongoing, continuing concerns. Therefore, the NCUA Board has determined and certifies that the final amendment will not have a significant economic impact on a substantial numbers of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule reduces reporting requirements by eliminating: The notice of intent to resume operations; the filing of specified reports within 20 days of the liquidation date; the filing of quarterly reports (now on an as requested basis); and the filing of schedules and final reports after final distribution. It continues the current requirements regarding: notice to the regional director of decision to liquidate; notice to members for approval; notice to regional director of membership vote; the request for approval of partial distributions; request for regional director approval to sell assets at value insufficient to pay members at par; notice to creditors; notice to regional director of commencement of final distribution; and submission of dissolution certificate.

The final rule does add the new requirement that a federal credit union prepare and submit a liquidation plan to the regional director. It also requires a federally insured credit union to notify the regional director of its decision to liquidate. These paperwork requirements will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on these requirements should be forwarded to the OMB Desk Officer at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20530, ATTN: Gary Waxman. A notice of OMB approval will be published in the **Federal Register** once it is received.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The "procedures" part of this final rule applies only to federal credit unions. The regulation provides that voluntary liquidations be conducted in accordance with state law or the requirements of the state regulator. The only requirement is that the regional director be notified of any decision to liquidate a solvent federally insured state credit union, and that the regional director be provided copies of financial statements as of the month end before the decision to liquidate and a copy of any liquidation plan. The notification, financial statements, and liquidation plan are needed due to NCUA's insurance responsibilities and risk. If it appears the credit union may become insolvent during the liquidation process, NCUA could become involved, and if the liquidation progresses in a normal manner, NCUA must refund the insurance deposit. Therefore the regulation does not affect state interests.

List of Subjects in 12 CFR Part 710

Administrative practice and procedure, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 17, 1993.

Allan H. Meltzer,

Acting Secretary of the Board.

Accordingly, NCUA revises 12 CFR part 710 to read as follows:

PART 710—VOLUNTARY LIQUIDATION

Sec.

710.0 Scope.
710.1 Definitions.
710.2 Responsibility for conducting voluntary liquidation.
710.3 Approval of the liquidation proposal by members.
710.4 Transaction of business during liquidation.
710.5 Notice of liquidation to creditors.
710.6 Distribution of assets.
710.7 Retention of records.
710.8 Certificate of dissolution and liquidation.
710.9 Federally insured state credit unions.

Authority: 12 U.S.C. 1766(a), 1786, and 1787.

§ 710.0 Scope.

This part describes the requirements that must be followed to accomplish the voluntary liquidation of a Federal credit union. Federally insured state credit unions are only subject to the notification requirement provided in § 710.9; voluntary liquidation is to be accomplished in accordance with state

law or procedures established by the state regulatory authority.

§ 710.1 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Voluntary liquidation* means the dissolution of a solvent Federal credit union with the assets being sold or collected, liabilities paid, and shares distributed under the direction of the board of directors or its duly appointed liquidating agent.

(b) *Liquidation date* means the date the members vote to approve liquidation.

(c) *Liquidating agent* means the person or persons, including any legally recognized entity, appointed by the board of directors to liquidate the Federal credit union.

§ 710.2 Responsibility for conducting voluntary liquidation.

(a) The board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for equitable distribution of the assets to the members.

(b) After voting to present the question of liquidation to the members, the board of directors may appoint a liquidating agent and delegate all or part of the board's responsibility to such agent and authorize reasonable compensation for the services provided.

(c) The board of directors shall determine that the liquidating agent and all persons who handle or have access to funds of the Federal credit union are adequately covered by surety bond and that either such coverage remains in effect, or the discovery period is extended, for at least four months after final distribution of assets.

(d) Within three days after the decision of the board of directors to submit the question of liquidation to the members, the Regional Director will be notified in writing, setting forth in detail the reasons for the proposed action. A balance sheet and income statement as of the previous month-end will be included with the notification. During the liquidation process, financial statements will be submitted to the Regional Director as requested.

(e) Promptly after the decision to present the question of liquidation to the members, the board of directors or liquidating agency shall develop a written plan for the liquidation of the assets and payment of shares (liquidation plan). The plan should provide for the liquidation of assets and payment of creditors and shareholders within one year of the liquidation date. If the liquidation period is projected to exceed one year, an explanation must be provided in the liquidation plan. A copy of the liquidation plan will be mailed to the Regional Director within 30 days of the date the board of directors votes to present the question of liquidation to the members.

§ 710.3 Approval of the liquidation proposal by members.

(a) When the board of directors decides to present the question of liquidation to the members, it shall act promptly to obtain the members' approval. The members shall be given advance notice of the membership meeting at which the liquidation proposal is to be submitted, in accordance with the provisions of Article V of the Federal Credit Union Bylaws. The notice shall:

(1) Inform members that they have the right to vote on the liquidation proposal in person at the membership meeting called for that purpose or by written ballot to be received no later than the time and date indicated on the notice.

(2) Include or be accompanied by a ballot for the liquidation proposal.

(b) The liquidation proposal must be approved by the affirmative vote of a majority of the Federal credit union members who vote on the proposal.

(c) If the members do not approve the liquidation, the board of directors, or if delegated the authority, the liquidating agent, must decide within seven days whether the Federal credit union should resume operations or, if good cause exists, to resubmit the question of liquidation to the members.

(d) If the members approve the liquidation, neither the members nor the board of directors may rescind the decision to liquidate unless the Regional Director concurs in the recision.

(e) The Regional Director will be notified in writing of the results of the membership vote on the voluntary liquidation proposal within three days of the date of the vote.

§ 710.4 Transaction of business during liquidation.

(a) Immediately upon decision by the board of directors to present the question of liquidation to the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments shall be suspended pending action by the members on the proposal to liquidate. Collection of loans and interest, payment of necessary expenses, clearing of share drafts and credit card charges will continue.

(b) Upon approval of the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments shall be discontinued permanently. Collection of loans and interest and payment of necessary expenses will continue during the period of liquidation. Members will be notified to discontinue the use of share drafts and credit cards, and items will not be cleared 15 days from the liquidation date.

(c) Approval of the Regional Director must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders at par.

§ 710.5 Notice of liquidation to creditors.

(a) When approval for liquidation is obtained from the members, the board of directors or the liquidating agent shall cause notice to be given to creditors to present their claims.

(1) Federal credit unions with assets in excess of $5 million as of the month end prior to the liquidation date shall publish the notice once a week in each of three successive weeks, in a newspaper of general circulation, in each county in which the Federal credit union maintains an office or branch for the transaction of business on the liquidation date. The first notice shall be published within seven days of the liquidation date.

(2) Federal credit unions with assets in excess of $500,000 but less than $5 million as of the month end prior to the liquidation date shall publish the notice once, in a newspaper of general circulation, in each county in which the Federal credit union maintains an office or branch for the transaction of business on the liquidation date. The notice shall be published within seven days of the liquidation date.

(3) Federal credit unions with assets less than $500,000 as of the month end prior to the liquidation date shall not be required to publish the notice.

(b) Within 10 days of the liquidation date, a copy of the notice of liquidation shall be mailed to all creditors reflected on the records of the Federal credit union.

(c) Creditors shall be provided 30 days from the liquidation date to submit their claims.

§ 710.6 Distribution of assets.

(a) With the approval of the regional director, a partial pro rata distribution of the Federal credit union's assets may be made to its members from cash funds available on authorization by the board of directors or liquidating agent. Payment of a partial distribution may

exclude member accounts of less than $25.00.

(b) After all assets of the Federal credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectible and all obligations of the Federal credit union have been paid, with the exception of shares due its members, the books shall be closed and the pro rata distribution to the members shall be computed. The computation shall be based on the total amount in each share account.

(c) Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member. The checks shall be mailed to the members at their last known address or handed to them in person.

(d) Unclaimed share accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be trusteed or escheated in accordance with the laws of the state in which the member or creditor resides.

(e) The Regional Director will be notified in writing within three days when the final distribution of assets to the members is started.

§ 710.7 Retention of records.

(a) The board of directors or liquidating agent shall appoint a custodian for the Federal credit union's records which are to be retained after the final distribution of assets.

(b) All records of the liquidated Federal credit union necessary to establish that creditors were paid and that assets were equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

§ 710.8 Certificate of dissolution and liquidation.

Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Regional Director.

§ 710.9 Federally insured state credit unions.

A federal insured state credit union will notify the Regional Director in writing within three days after the board of directors' decision to liquidate is made. A balance sheet and income statement as of the previous month-end and a copy of any liquidation plan will be included with the notification to the Regional Director.

[FR Doc. 93-15518 Filed 6-30-93; 8:45 am]
BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 249

[Release Nos. 33-7004; 34-32531]
[File No. S7-16-93]

RIN 3235-AF83

International Series Release No. 556; Amendments to the Multijurisdictional Disclosure System for Canadian Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final Amendments to Forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") is adopting amendments to Form F-10 under the Securities Act of 1933 and Form 40-F under the Securities Exchange Act of 1934 in order to continue the requirement that financial statements presented in filings on such forms include a reconciliation to U.S. generally accepted accounting principles ("GAAP"). These amendments are being adopted in light of the Commission's experience with the multijurisdictional disclosure system and should continue to facilitate transnational capital formation.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Paul M. Dudek, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC. 20549.

SUPPLEMENTARY INFORMATION:

I. Amendments to Forms F-10 and 40-F

A. Discussion of Amendments

Forms F-10 [1] and 40-F [2] were adopted on June 21, 1991 as part of the multijurisdictional disclosure system ("MJDS") for Canadian issuers.[3] On April 28, 1993, the Commission proposed for comment certain amendments to the MJDS,[4] including amendments to Forms F-10 and 40-F which would continue the requirement that financial statements presented in filings on such forms include a reconciliation to U.S. GAAP. These amendments to Forms F-10 and 40-F are being adopted today as proposed. The Commission is rescinding the provisions of Forms F-10 and 40-F that would eliminate the requirement for reconciliation of the financial statements to U.S. GAAP in filings made on and after July 1, 1993.

B. Discussion of Comments and Other Matters

The Commission received six comment letters on the proposed amendments.[5] In addition, since the amendments were proposed, the Commission released a staff report regarding reconciliation of financial statements.[6] This report indicates that, based on the frequency, size and general nature of reconciling items reported by Canadian issuers in filings with the Commission, there continue to be significant differences in accounting principles and practices at this time between Canadian GAAP and U.S. GAAP.

Comments received recommended that, at least to some extent, the Commission should not retain the current reconciliation requirements under Form F-10 and Form 40-F. The Commission has considered these comments and continues to believe that there are qualitative and quantitative differences between Canadian GAAP and U.S. GAAP that materially affect reported financial position and results of operations and related trend information which warrant retention of the currently existing reconciliation requirements under Forms F-10 and 40-F.

Two commenters suggested that Form F-10 should require reconciliation in accordance with Item 17 of Form 20-F rather than Item 18 of Form 20-F,[7] and that such reconciliation should apply only to annual financial statements and

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[1] 17 CFR 239.40.

[2] 17 CFR 249.240f.

[3] Securities Act Release No 6902 (June 21, 1991) 56 FR 30036.

[4] Securities Act Release No 6997 (April 28, 1993) 58 FR 26442.

[5] See file no. S7-16-93. A report by the staff of the Ontario Securities Commission, "Study of Differences between Canadian and United States Generally Accepted Accounting Principles" dated May 1993 has also been included in the public comment file.

[6] "Survey of Financial Statement Reconciliations by Foreign Registrants" dated May 1, 1993 prepared by the Commission's Division of Corporation Finance. This report has also been included in the public comment file.

[7] Item 17 of Form 20-F (17 CFR 249.220f) permits an issuer to use its financial statements that are prepared on a comprehensive basis other than U.S. GAAP, but requires quantification of the material differences in the principles, practices and methods of accounting. An issuer complying with Item 18 of Form 20-F must satisfy the requirements of Item 17 and also must provide all other information required by U.S. GAAP and Regulation S-X (17 CFR 210 *et seq.*)

VOL 58 ISS 125 JL 1 1993 UMI

not to financial statements for interim periods after the end of the most recent fiscal year. The additional disclosures required under Item 18 of Form 20–F are warranted where a foreign issuer is offering common equity and non-investment grade securities to the public. Further, if financial information for the most recent fiscal period were not required to be reconciled, investors may not be able to base investment decisions upon the most recently available financial information presented on a comparable basis to the annual reconciled financial information.

II. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605), at the time the Commission issued its release proposing the amendments to Forms F–10 and 40–F being adopted hereby, the Chairman of the Commission certified that such amendments will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, was attached as an appendix to such release and was published in the **Federal Register**.

III. Cost-Benefit Analysis

No specific data were provided in response to the Commission's request regarding the costs and benefits of the amendments to Forms F–10 and 40–F. However, three commenters indicated that Canadian issuers incur additional costs or additional burdens in complying with the reconciliation requirement under these forms. It appears that the amendments will provide benefits, including continued investor access to financial information relating to Canadian companies which is comparable to financial information relating to U.S. companies. The Commission believes that any costs relating to the reconciliation requirements under Forms F–10 and 40–F are outweighed by these benefits.

IV. Effective Date

The effective date of these amendments shall be July 1, 1993. Pursuant to 5 U.S.C. 553(d), the Commission finds that good cause exists for making the revisions effective less than 30 days after publication in the **Federal Register**. The current requirement that financial statements presented in filings on Forms F–10 and 40–F include a reconciliation to U.S. GAAP will terminate on July 1, 1993. If the revisions adopted today continuing the reconciliation requirement were made effective later than July 1, 1993, there would be a brief period of time in which this requirement would not apply. The resulting discontinuity in the applicable regulatory requirements would be likely to cause confusion and would raise concerns about investor protection.

Because issuers using Forms F–10 and 40–F are currently required to reconcile to U.S. GAAP, the Commission does not believe that extending the reconciliation requirement, effective July 1, 1993, will cause hardship to affected issuers or require any period of adjustment. Further, issuers and other interested parties have been on notice since the Commission's issuance of the proposing release on April 28, 1993, of the possible extension of the reconciliation requirement beyond July 1.

V. Statutory Bases

Forms F–10 and 40–F are being amended by the Commission pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, and sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 239 and 249

Reporting and recordkeeping requirements; Securities.

Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37 unless otherwise noted.

* * * * *

2. By amending Form F–10 (§ 239.40) by revising Item 2 under Part I to read as follows:

Note: The text of Form F–10 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–10

* * * * *

PART I—INFORMATION TO BE DELIVERED TO OFFEREES OR PURCHASERS

* * * * *

Item 2. *Additional Information.*

The following information also shall be provided to offerees as part of the prospectus.

Financial Statements.

Any financial statements included in the home jurisdiction document must be reconciled to U.S. GAAP as required by Item 18 of Form 20–F under the Exchange Act.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, et seq., unless otherwise noted.

* * * * *

4. By amending Form 40–F (§ 249.240f) by revising paragraph 2 under General Instruction C. to read as follows:

Note: The text of Form 40–F does not and the amendments will not appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

C. Compliance With Auditor Independence and Reconciliation Requirements

* * * * *

(2) Any financial statements, other than interim financial statements, included in this Form by registrants registering securities pursuant to section 12 of the Exchange Act or reporting pursuant to the provisions of section 13(a) or 15(d) of the Exchange Act must be reconciled to U.S. GAAP as required by Item 17 of Form 20–F under the Exchange Act, unless this Form is filed with respect to securities that would be eligible for registration under the Securities Act on Form F–9, in which case no such reconciliation is required, or unless this Form is filed with respect to a reporting obligation under Section 15(d) that arose solely as a result of a filing made on Form F–7, F–8, F–9 or F–80, in which case no such reconciliation is required.

* * * * *

Dated: June 28, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15687 Filed 6–30–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–93–1590; FR–3103–F–01]

RIN No. 2502–AF51

Waiver of Title—Mortgages or Property Formerly Held by Secretary

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends HUD's regulation relating to the waiver of title requirements by the Secretary in cases where a single family mortgage or property was formerly held by the Secretary. The regulation is amended so that HUD is not required to accept title to properties that are encumbered by prior judgment liens emanating from its purchasers.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: John Coonts, Director, Single Family Development Division, room 9272, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2700. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Paragraph (b) of 24 CFR 203.390 deals with mortgages which finance the sales of Secretary-held properties. Paragraph (b)(1) currently provides that if a property held by the Secretary is sold and the Secretary insures a mortgage financing the sale, and the mortgage is later conveyed to the Secretary, he or she will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date the mortgage was filed for record. Paragraph (b)(2) provides that the Secretary will accept an assignment of a mortgage executed in connection with the sale of property by HUD, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or before the time the mortgage was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

Section 203.390 concerns purchase money mortgages financing the sale of Secretary-held properties. The titles to these properties are in a special category because of the operation of that section. The section assures mortgagees that if the property that secures an insured mortgage is one previously purchased from the Secretary and later conveyed to HUD in connection with a claim, then the Secretary will not object to the title "by reason of any lien or other adverse interest that was senior to the mortgage on the date such mortgage was filed for record."

Section 203.390 was made a part of HUD's regulations to facilitate the sales of Secretary-held properties financed by FHA-insured mortgages. The reason the regulation is able to give mortgagees this assurance as to title is the fact that when HUD acquires a property in connection with a mortgage insurance claim, the mortgagee must furnish title evidence to show that HUD is receiving good, marketable title to the conveyed property. This is required by 24 CFR 203.366. HUD creates no title defects during its tenure in title. Consequently, it may be safely assumed that the title that is conveyed by HUD to its purchaser is good and marketable. Additionally, a mortgage given by HUD's purchaser to finance the property sale would normally be a first lien of record because of the operation of state laws giving priority to purchase money mortgages.

This purchase money mortgage priority is of vital importance because of the effect of recorded judgment liens. A judgment lien properly recorded in a jurisdiction attaches immediately to all property owned of record in that jurisdiction by the judgment debtor. Consequently, whenever a prospective mortgagee is about to make a mortgage loan, it must first search the judgment records in the jurisdiction, to make sure that there are no recorded judgments against the mortgagor that are or will be attached to the property that is to be mortgaged and that will come ahead of the mortgage when it is recorded.

In part as a means of facilitating the financing of property sales, jursidictions have adopted laws known as the purchase money mortgage priority, hereinafter referred to as the "pump." The "pump" operates in the following manner: A mortgage or deed of trust which is given to secure the purchase of land and executed simultaneously with the conveyance to the mortgagor will have priority over any judgments which have been taken and are of record against the mortgagor before the conveyance—whether the mortgage is given by the vendee to the vendor himself or to a lender who advances the purchase money to the vendee.

It can easily be deduced that § 203.390 was adopted as a regulation only on the assumption that all jurisdictions had some form of a "pump" which would protect the priority of the purchase money mortgage, and indirectly proptect HUD. Standard authorities in real estate law seem to state that in all jurisdictions, a purchase money mortgage has priority (by virtue of statute or judicial decision) over all other private liens against the vendee. HUD knows that the titles to properties that it sells are good and marketable because it has been provided with title evidence showing this in the prior claim. HUD also knows that it does nothing to create title defects during the time that it is in title. What HUD cannot know, and what HUD has no control over, is whether it purchasers have any outstanding judgment lien recorded against them at the time these purchasers are taking title and giving back purchase money mortgages. This is why a "pump" is so essential for the proper operation of § 203.390. If the jurisdiction has a "pump," the purchase money mortgage that finances the sale of the Secretary-held property *must* be a first lien, even though the purchaser may have outstanding thousands of dollars worth of recorded judgment liens.

However, the Department recently learned that there are at least two Western states that have no "pump" laws. Furthermore, there are a few states that have only modified forms of "pump" laws that allow certain types of liens recorded against vendees to prime purchase money mortgages. In these states, HUD could be conveying marketable titles, but if the purchasers have judgment liens of record against them, these liens would be considered superior to the insured purchase money mortgages given to finance the sales. In effect, the FHA-insured mortgages would be second liens. The current § 203.390 would prevent HUD from objecting to the existence of the prior lien, and HUD would be required to pay mortgage insurance claims in full, even though it would not be receiving good title to the property being conveyed to it in the claim. If the prior judgment lien were large enough, the insured mortgage could be completely wiped out. Section 203.390(b)(2) would probably require HUD to accept an assignment of the mortgage if the prior judgment lien prevented the mortgagee from foreclosing on the mortgage.

The lack of "pump" protection in these few states makes it necessary to revise § 203.390(b), as is done in this rule, to exclude from coverage under its waiver provisions liens which have

VOL 58 ISS 125 JL 1 1993 UMI

already been recorded against the mortgagor. In these states, HUD cannot effectively prevent these liens from priming purchase money mortgages, and consequently cannot be expected to waive their effect.

This revision should not adversely affect the interests of any mortgagee or lender. Nor is it likely to cause mortgagees to make any changes in their existing loan closing and settlement procedures. Mortgagees in states like Arizona and Colorado that lack "pump" laws must be acutely aware that their jurisdictions lack "pump" protection, and of the title problems this can cause. Consequently, in order to be able to make the "first lien" certifications that are required for all FHA-insured loans, and in order to protect their purchase money mortgages, lenders in these states, when closing loans, must routinely check on the judgment lien status of all of the purchasers. If a prospective purchaser is found to have outstanding judgment liens recorded against him that would be superior to purchase money mortgage, the recordation of the deed and mortgage would be postponed until the matter could be resolved.

This routine examination of the judgment lien status of purchasers probably explains why the Department has never experienced any losses in connection with the waiver provisions of § 203.390(b) as it is currently written. Nevertheless, the revision needs to be made to preclude any such losses in the future. If a mortgagee were to record a mortgage which in fact is in second position to judgment liens against a purchaser, the only ground HUD might have to disallow the mortgage insurance claim would be on the basis of the mortgagee's having committed fraud or material misrepresentation in having the loan insured. Disallowance of the insurance claim would be dependent on HUD's showing that the mortgagee knew about the prior liens, originated the mortgage, and made the certification to HUD in spite of them. This possible recourse clearly does not provide HUD with much protection.

To provide this protection it is necessary to revise § 203.390(b), as is done in this rule, to exclude from coverage under its waiver provisions liens that have already been recorded against the mortgagor.

Nature of Rule Making

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines it is impracticable, unnecessary or contrary to the public interest. In this case, the Department finds that the solicitation of public comment before issuing this rule for effect is unnecessary and would serve no public purpose. The rule will not adversely affect the interests of any mortgagee, mortgagor or lender, nor should it require any changes in existing loan closing and settlement procedures. The rule essentially provides HUD with protection against a negligent examination of the judgment lien status of purchasers in those states where such examinations are necessary.

Procedural Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would apply only in very specific and limited situations and any entities that may be affected by the rule will have had a more than adequate opportunity to protect themselves.

This rule was listed as item number 1459 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24413), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical conditions of project areas or building sites, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Council, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have Federalism implications and, thus, are not subject to review under the Order. The rule does not change in any way existing relationships between HUD, the states and local governments.

Executive Order 12606, The Family

The General Council, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is technical in nature. It relates solely to the acceptance by the Secretary of mortgages on property formerly held by the Secretary.

The Catalog of Federal Domestic Assistance program number is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b; in addition, subpart C is also issued under 12 U.S.C. 1715u.

2. Paragraphs (b) of § 203.390 is revised to read as follows:

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

* * * * *

(b) *Property sold by the Secretary.* (1) If a property held by the Secretary is sold by the Secretary who also insures a mortgage financing the sale, and the mortgage is later reassigned to the Secretary or the property covered by the mortgage is later conveyed to the Secretary, the Secretary will not object to title by reason of any lien or other adverse interest arose from a lien or interest that had already been recorded against the mortgagor.

(2) The Secretary will accept an assignment of a mortgage executed in connection with the sale of property by the Secretary, where the mortgagee is

unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage was filed for record, except where the defect arose from a lien or interest that had already been recorded against the mortgagor on the date that the mortgage was filed for record. Except for the case of a lien or interest that had already been recorded against the mortgagor, the Secretary will not object to title by reason of any of the above defects.

Dated: June 17, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–15541 Filed 6–30–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Attorney General Order No. 1751–93]

Delegation of Authority to Settle Certain Claims Against the Drug Enforcement Administration

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule delegates to the Administrator of the Drug Enforcement Administration (DEA) the authority to settle certain personal injury or property damage claims arising out of the activities of DEA investigative and law enforcement personnel. This rule is enacted to improve the efficiency of the Department of Justice.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis F. Hoffman, Chief Counsel, Drug Enforcement Administration, Washington, DC 20537 (202) 307–8085.

SUPPLEMENTARY INFORMATION: Pursuant to 31 U.S.C. 3724, the Attorney General is authorized to settle claims, for not more than $50,000.00 in any one case, for personal injury or property damage "caused by an investigative or law enforcement officer * * * who is employed by the Department of Justice acting within the scope of employment," which cannot be paid under the Federal Tort Claims Act, 28 U.S.C. 2401(b), 2671–2680. In order to facilitate the settlement of such claims arising out of the actions of DEA personnel, the authority to settle such claims is being delegated to the Administrator of the DEA.

This rule relates to the internal management of the Department of Justice. Therefore, pursuant to 5 U.S.C. 553, it is exempt from the notice and comment requirements of the Administrative Procedure Act and may be effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities. With respect to Executive Order 12612, it is certified that this rule will have no Federalism impact. The delegation of claims settlement authority directly to DEA will facilitate the resolution of claims presented by the public.

List of Subjects in 28 CFR Part 0

Authority delegation (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

For the reasons set forth in the preamble, subpart R of 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.103a is added to read as follows:

§ 0.103a Delegations respecting claims against the Drug Enforcement Administration.

(a) The Administrator of DEA is authorized to exercise the power and authority vested in the Attorney General under the Act of December 7, 1989, Public Law 101–203, 103 Stat. 1805 (31 U.S.C. 3724) with regard to claims thereunder arising out of the lawful activities of DEA personnel in an amount not to exceed $50,000.00 in any one case.

(b) Notwithstanding the provisions of 28 CFR 0.104, the Administrator of DEA is authorized to redelegate the power and authority vested in him in paragraph (a) of this section to the Chief Counsel of DEA and the Chief Counsel's designee within the Office of Chief Counsel. This authority shall not be further redelegated below the Associate Chief Counsel level.

Dated: June 18, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–15059 Filed 6–30–93; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 55

[Attorney General Order No. 1752–93]

Amendment to the Attorney General's Minority Language Guidelines; New Coverage Determinations Under the Voting Rights Language Assistance Act of 1992

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule updates the Appendix to the Attorney General's interpretive guidelines under the minority language provisions of the Voting Rights Act to reflect the enactment of the Voting Rights Language Assistance Act of 1992 and the coverage determinations of the Director of the Census pursuant to that act. It also makes minor changes in the text of the guidelines to conform them to the new enactment and determinations. It does not reflect any change in the Attorney General's interpretation of the substantive requirements of the minority language provisions of the Voting Rights Act.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 22035–6128, 202–307–2898.

SUPPLEMENTARY INFORMATION: Pursuant to the Voting Rights Language Assistance Act of 1992 (the "1992 amendments"), Public Law 102–344, 106 Stat. 921, the Director of the Census published in the **Federal Register** on September 18, 1992, new determinations of coverage under section 203(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a(b). 57 FR 43213. This amendment conforms the Attorney General's minority language interpretive guidelines, 28 CFR part 55, to the new determinations of coverage and to the changes made in the Voting Rights Act by the 1992 amendments.

Section 203 of the Voting Rights Act, which requires covered jurisdictions to use minority languages in the electoral process, was added to the Voting Rights Act in 1975 and extended in 1982. The 1992 amendments extend section 203 until August 6, 2007, and expand the section's coverage formula.

Section 55.6 of these guidelines has been rewritten to reflect the altered coverage formula. The Appendix, which lists jurisdictions covered under the Voting Rights Act's minority language requirements, has been revised to reflect the determinations of the Director of the Census under the new formula, and minor changes have been made in other sections of these guidelines.

Coverage

As enacted in 1975, section 203 mandated the coverage of jurisdictions in which more than 5 percent of the citizen voting age population were members of a single language minority group and in which the illiteracy rate of the language minority group members was higher than the national illiteracy rate. This formula was retained in 1982, but the determinations made pursuant to the 1982 amendments were to include as members of a language minority group only those persons "who do not speak or understand English adequately enough to participate in the electoral process * * *." Under the 1992 amendments, this limitation is now part of section 203. The explanation of the 5 percent criterion (which includes two alternative approaches) has been simplified in § 55.6(a) and now is described as follows:

(1) *Political subdivision approach. A political subdivision is covered if—*

(i) More than 5 percent of its voting age citizens are members of a single language minority group and are limited-English proficient, and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(2) *State approach.* A political subdivision is covered if—

(i) It is located in a state in which more than 5 percent of the voting age citizens are members of a single language minority and are limited-English proficient;

(ii) The illiteracy rate of such language minority citizens in the state is higher than the national illiteracy rate; and

(iii) Five percent or more of the voting age citizens of the political subdivision are members of such language minority group and are limited-English proficient.

The 1992 amendments added two bases for coverage, one based on the number rather than the percentage of language minority group members, and the other based on the presence of Indian reservations satisfying certain criteria. The new bases are described as follows in § 55.6(a):

(3) *Numerical approach.* A political subdivision is covered if—

(i) More than 10,000 of its voting age citizens are members of a single language minority group and are limited-English proficient, and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(4) *Indian reservation approach.* A political subdivision is covered if there is located within its borders all or any part of an Indian reservation—

(i) In which more than 5 percent of the voting age American Indian or Alaska Native citizens are members of a single language minority group and are limited-English proficient, and

(ii) The illiteracy rate of such language minority citizens is higher than the national illiteracy rate.

Additional definitions used in coverage determinations provided by the 1992 amendments have been added to § 55.6(b).

Other Changes

The changes made in §§ 55.1, 55.7, 55.17, and 55.20 are self-explanatory. The change in § 55.13(b) eliminates a misleading reference.

Absence of Comment Period

Because this revision of the Attorney General's minority language guidelines only conforms the guidelines to the changes effected by the 1992 amendments and to the determinations of the Director of the Census of coverage under section 203(b), which under the terms of that section are not subject to judicial review, and makes other minor technical changes, it is an interpretive rule, and therefore is published without notice. Under § 55.24, comments and suggestions on these guidelines are welcome at any time.

Rulemaking Requirements

Under the definition of section 1(b) of E.O. 12291, this amendment does not constitute a major rule. Accordingly, a regulatory impact analysis has not been prepared. Because this amendment is excepted under 5 U.S.C. 553(b), a final regulatory flexibility analysis is not required under 5 U.S.C. 604. This rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612.

List of Subjects in 28 CFR Part 55

Administrative practice and procedure, Civil rights, Elections, Voting rights.

Dated: June 18, 1993.

Janet Reno,

Attorney General.

Accordingly, part 55 of title 28 of the Code of Federal Regulations is amended as set forth below.

PART 55—IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT REGARDING LANGUAGE MINORITY GROUPS

1. The authority citation for part 55 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1973b, 1973j(d), 1973aa–1a, 1973aa–2.

§ 55.1 [Amended]

2. Section 55.1 is amended in the definition of "Act" by removing, following the words "89 Stat. 400,", the word "and" and by adding, following the words "96 Stat. 131,", the words "and the Voting Rights Language Assistance Act of 1992, Public Law 102–344, 106 Stat. 921,".

3. Section 55.6 is revised to read as follows:

§ 55.6 Coverage under section 203(c).

(a) *Coverage formula.* There are four ways in which a political subdivision can become subject to section 203(c).[2]

(1) *Political subdivision approach.* A political subdivision is covered if—

(i) More than 5 percent of its voting age citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(2) *State approach.* A political subdivision is covered if—

(i) It is located in a state in which more than 5 percent of the voting age citizens are members of a single language minority and are limited-English proficient;

(ii) The illiteracy rate of such language minority citizens in the state is higher than the national illiteracy rate; and

(iii) Five percent or more of the voting age citizens of the political subdivision are members of such language minority group and are limited-English proficient.

(3) *Numerical approach.* A political subdivision is covered if—

(i) More than 10,000 of its voting age citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(4) *Indian reservation approach.* A political subdivision is covered if there is located within its borders all or any part of an Indian reservation—

(i) In which more than 5 percent of the voting age American Indian or

[2] The criteria for coverage are contained in section 203(b).

Alaska Native citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens is higher than the national illiteracy rate.

(b) *Definitions.* For the purpose of determinations of coverage under section 203(c), *limited-English proficient* means unable to speak or understand English adequately enough to participate in the electoral process; *Indian reservation* means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census; and *illiteracy* means the failure to complete the fifth primary grade.

(c) *Determinations.* Determinations of coverage under section 203(c) are made with regard to specific language groups of the language minorities listed in section 203(e).

§ 55.7 [Amended]

4. Section 55.7 is amended by removing, in paragraph (b), the word "1992" and adding, in its place, the word "2007".

§ 55.13 [Amended]

5. Section 55.13 is amended by removing, in paragraph (b), the words "pursuant to section 4(f)(4)".

§ 55.17 [Amended]

6. Section 55.17 is amended by removing, following the words "are provided to", the words "less than" and adding, in their place, the words "fewer than".

§ 55.20 [Amended]

7. Section 55.20 is amended by removing, in paragraph (c) following the words "by a person of", the word "his" and adding, in its place, the words "his or her".

8. The Appendix to part 55 is revised to read as follows:

Appendix to Part 55—Jurisdictions Covered Under Sections 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as Amended

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) [1]	Coverage under sec. 203(c) [2]
Alaska:		
Aleutians East Borough	Alaskan Natives (statewide)	
Aleutians West Census Area		Alaskan Natives (Eskimo).
Bethel Census Area		Alaskan Natives (Aleut).
		American Indian (Athapascan, Tanaina), Alaskan Natives (Eskimo).
Bristol Bay Borough		Alaskan Natives (Eskimo).
Dillingham Census Area		Alaskan Natives (Eskimo).
Kenai Peninsula Borough		Alaskan Natives (Eskimo).
Kodiak Island Borough		Alaskan Natives (Eskimo).
Lake and Peninsula Borough		Alaskan Natives (Aleut, Eskimo).
Nome Census Area		American Indian (Athapascan), Alaskan Natives (Aleut, Eskimo).
North Slope Borough		Alaskan Natives (Eskimo).
Northwest Arctic Borough		Alaskan Natives (Eskimo).
Skagway-Yakutat-Angoon Census Area		Alaskan Natives (Eskimo).
Southeast Fairbanks Census Area		American Indian (Tlinglit).
Valdez-Cordova Census Area		American Indian (Athapascan).
Wade Hampton Census Area		American Indian (Athapascan).
Yukon-Koyukuk Census Area		Alaskan Natives (Eskimo).
		American Indian (Athapascan, Kuchin), Alaskan Natives (Eskimo).
Arizona:		
Apache County	Spanish heritage (statewide)	
Coconino County	American Indian	American Indian (Apache, Navajo, Zuni).
Gila County	American Indian	American Indian (Havasupai, Hopi, Navajo).
Graham County		American Indian (Apache).
Greenlee County		American Indian (Apache).
Maricopa County		Spanish heritage.
		American Indian (Pima, Yavapai), Spanish heritage.
Navajo County	American Indian	American Indian (Apache, Hopi, Navajo).
Pima County		American Indian (Pima), Spanish heritage.
Pinal County	American Indian	American Indian (Apache, Pima).
Santa Cruz County		Spanish heritage.
Yuma County		American Indian (Delta River Yuma, Yuma), Spanish heritage.
California:		
Alameda County		Asian American (Chinese), Spanish heritage.
Colusa County		American Indian (Wintun).
Fresno County		Spanish heritage.
Imperial County		Spanish heritage.
Inyo County		American Indian (Spanish).
Kern County		Spanish heritage.
Kings County	Spanish heritage	Spanish heritage.
Lake County		American Indian (Spanish).
Los Angeles County		Asian American (Chinese, Filipino, Japanese, Vietnamese), Spanish heritage.
Merced County	Spanish heritage	
Monterey County		Spanish heritage.
Orange County		Asian American (Vietnamese), Spanish heritage.

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) [1]	Coverage under sec. 203(c) [2]
Riverside County		Spanish heritage.
San Benito County		Spanish heritage
San Bernardino County		Spanish heritage.
San Diego County		Spanish heritage.
San Francisco County		Asian American (Chinese).
Santa Clara County		Spanish heritage.
Tulare County		Spanish heritage.
Ventura County		Spanish heritage.
Yuba County	Spanish heritage	
Colorado:		
Alamosa County		Spanish heritage.
Archuleta County		Spanish heritage.
Bent County		Spanish heritage.
Conejos County		Spanish heritage.
Costilla County		Spanish heritage.
La Plata County		American Indian (Ute).
Las Animas County		Spanish heritage.
Montezuma County		American Indian (Ute).
Otero County		Spanish heritage.
Rio Grande County		Spanish heritage.
Saguache County		Spanish heritage.
Connecticut:		
Fairfield County: Bridgeport Town		Spanish heritage.
Hartford County:		
Hartford Town		Spanish heritage.
New Britain Town		Spanish heritage.
Windham County: Windham Town		Spanish heritage.
Florida:		
Broward County		American Indian (Mikasuki, Muskogee), Spanish heritage.
Collier County	Spanish heritage	American Indian (Mikasuki).
Dade County		American Indian (Mikasuki), Spanish heritage.
Glades County		American Indian (Muskogee).
Hardee County	Spanish heritage	Spanish heritage.
Hendry County	Spanish heritage	American Indian (Mikasuki, Muskogee).
Hillsborough County	Spanish heritage	Spanish heritage.
Orange County		Spanish heritage.
Monroe County	Spanish heritage	
Hawaii:		
Honolulu County		Asian American (Filipino, Japanese).
Kauai County		Asian American (Filipino).
Maui County		Asian American (Filipino).
Idaho:		
Bannock County		American Indian (Shoshoni).
Bingham County		American Indian (Shoshoni).
Owyhee County		American Indian (Shoshoni).
Power County		American Indian (Shoshoni).
Illinois: Cook County		Spanish heritage.
Iowa: Tama County		American Indian (Fox).
Louisiana: Avoyelles Parish		American Indian (French).
Massachusetts:		
Essex County: Lawrence City		Spanish heritage.
Hampden County:		
Holyoke City		Spanish heritage.
Springfield City		Spanish heritage.
Suffolk County:		
Boston City		Spanish heritage.
Chelsea City		Spanish heritage.
Michigan:		
Allegan County: Clyde Township	Spanish heritage	Spanish heritage.
Oceana County: Colfax Township		Spanish heritage.
Saginaw County:		
Buena Vista Township	Spanish heritage	
Zilwaukee Township		Spanish heritage.
Mississippi:		
Jones County		American Indian (Choctaw).
Kemper County		American Indian (Choctaw).
Leake County		American Indian (Choctaw).
Neshoba County		American Indian (Choctaw).
Newton County		American Indian (Choctaw).
Winston County		American Indian (Choctaw).
Nevada:		
Elko County		American Indian (Shoshoni).

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) [1]	Coverage under sec. 203(c) [2]
Humboldt County		American Indian (Paiute).
New Jersey:		
Essex County		Spanish heritage.
Hudson County		Spanish heritage.
Middlesex County		Spanish heritage.
Passaic County		Spanish heritage.
Union County		Spanish heritage.
New Mexico:		
Bernalillo County		American Indian (Keres, Navajo, Tiwa), Spanish heritage.
Chaves County		Spanish heritage.
Cibola County		American Indian (Keres, Navajo, Zuni), Spanish heritage.
Colfax County		Spanish heritage.
Dona Anna County		Spanish heritage.
Eddy County		Spanish heritage.
Grant County		Spanish heritage.
Guadalupe County		Spanish heritage.
Harding County		Spanish heritage.
Hidalgo County		Spanish heritage.
Lea County		Spanish heritage.
Luna County		Spanish heritage.
McKinley County		American Indian (Navajo, Zuni).
Mora County		Spanish heritage.
Quay County		Spanish heritage.
Rio Arriba County		American Indian (Jicarilla, Navajo), Spanish heritage.
Roosevelt County		Spanish heritage.
San Juan County		American Indian (Navajo).
San Miguel County		Spanish heritage.
Sandoval County		American Indian (Jicarilla, Keres, Navajo, Towa).
Santa Fe County		Spanish heritage.
Socorro County		American Indian (Navajo), Spanish heritage.
Taos County		American Indian (Tiwa), Spanish heritage.
Torrance County		Spanish heritage.
Union County		Spanish heritage.
Valencia County		American Indian (Keres, Tiwa), Spanish heritage.
New York:		
Bronx County	Spanish heritage	Spanish heritage.
Franklin County		American Indian (Mohawk).
Kings County	Spanish heritage	Asian American (Chinese), Spanish heritage.
New York County		Asian American (Chinese), Spanish heritage.
Queens County		Asian American (Chinese), Spanish heritage.
Suffolk County		Spanish heritage.
Westchester County		Spanish heritage.
North Carolina: Jackson County	American Indian	
North Dakota:		
Benson County		American Indian (Dakota).
Eddy County		American Indian (Dakota).
Ramsey County		American Indian (Dakota).
Oklahoma: Adair County		American Indian (Cherokee).
Oregon: Malheur County		American Indian (Paiute).
Pennsylvania: Philadelphia County		Spanish heritage.
Rhode Island:		
Providence County: Central Falls City		Spanish heritage.
South Dakota:		
Dewey County		American Indian (Dakota).
Gregory County		American Indian (Dakota).
Lyman County		American Indian (Dakota).
Mellette County	American Indian	
Shannon County	American Indian	
Todd County	American Indian	American Indian (Dakota).
Tripp County		American Indian (Dakota).
Ziebach County		American Indian (Dakota).
Texas	Spanish heritage (statewide)	
Andrews County		Spanish heritage.
Atascosa County		Spanish heritage.
Bailey County		Spanish heritage.
Bee County		Spanish heritage.
Bexar County		Spanish heritage.

VOL 58 ISS 125 JL 1 1993 UMI

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) [1]	Coverage under sec. 203(c) [2]
Brewster County		Spanish heritage.
Brooks County		Spanish heritage.
Caldwell County		Spanish heritage.
Calhoun County		Spanish heritage.
Cameron County		Spanish heritage.
Castro County		Spanish heritage.
Cochran County		Spanish heritage.
Comal County		Spanish heritage.
Concho County		Spanish heritage.
Crockett County		Spanish heritage.
Crosby County		Spanish heritage.
Culberson County		Spanish heritage.
Dallas County		Spanish heritage.
Dawson County		Spanish heritage.
Deaf Smith County		Spanish heritage.
Dewitt County		Spanish heritage.
Dickens County		Spanish heritage.
Dimmit County		Spanish heritage.
Duval County		Spanish heritage.
Ector County		Spanish heritage.
Edwards County		Spanish heritage.
El Paso County		American Indian (Spanish), Spanish heritage.
Floyd County		Spanish heritage.
Frio County		Spanish heritage.
Gaines County		Spanish heritage.
Garza County		Spanish heritage.
Glasscock County		Spanish heritage.
Goliad County		Spanish heritage.
Gonzales County		Spanish heritage.
Gaudalupe County		Spanish heritage.
Hale County		Spanish heritage.
Harris County		Spanish heritage.
Hays County		Spanish heritage.
Hidalgo County		Spanish heritage.
Hockley County		Spanish heritage.
Howard County		Spanish heritage.
Hudspeth County		Spanish heritage.
Irion County		Spanish heritage.
Jeff Davis County		Spanish heritage.
Jim Hogg County		Spanish heritage.
Jim Wells County		Spanish heritage.
Karnes County		Spanish heritage.
Kennedy County		Spanish heritage.
Kent County		Spanish heritage.
Kinney County		Spanish heritage.
Kleberg County		Spanish heritage.
La Salle County		Spanish heritage.
Lamb County		Spanish heritage.
Live Oak County		Spanish heritage.
Lubbock County		Spanish heritage.
Lynn County		Spanish heritage.
Martin County		Spanish heritage.
Maverick County		Spanish heritage.
McCulloch County		Spanish heritage.
McMullen County		Spanish heritage.
Medina County		Spanish heritage.
Menard County		Spanish heritage.
Midland County		Spanish heritage.
Mitchell County		Spanish heritage.
Moore County		Spanish heritage.
Nolan County		Spanish heritage.
Nueces County		Spanish heritage.
Parmer County		Spanish heritage.
Pecos County		Spanish heritage.
Polk County		Spanish heritage.
Presidio County		Spanish heritage.
Reagan County		Spanish heritage.
Reeves County		Spanish heritage.
Refugio County		Spanish heritage.
Runnels County		Spanish heritage.
San Patricio County		Spanish heritage.
Schleicher County		Spanish heritage.
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[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) [1]	Coverage under sec. 203(c) [2]
Scurry County		Spanish heritage.
Starr County		Spanish heritage.
Sutton County		Spanish heritage.
Swisher County		Spanish heritage.
Tarrant County		Spanish heritage.
Terrell County		Spanish heritage.
Terry County		Spanish heritage.
Tom Green County		Spanish heritage.
Travis County		Spanish heritage.
Upton County		Spanish heritage.
Uvalde County		Spanish heritage.
Val Verde County		Spanish heritage.
Victoria County		Spanish heritage.
Ward County		Spanish heritage.
Webb County		Spanish heritage.
Wharton County		Spanish heritage.
Willacy County		Spanish heritage.
Wilson County		Spanish heritage.
Winkler County		Spanish heritage.
Yoakum County		Spanish heritage.
Zapata County		Spanish heritage.
Zavala County		Spanish heritage.
Utah: San Juan County		American Indian (Navajo, Ute).
Wisconsin:		
Clark County: Curtiss Village		Spanish heritage.

[1] Coverage determinations were published at 40 FR 43746 (Sept. 23, 1975), 40 FR 49422 (Oct. 22, 1975), 41 FR 784 (Jan. 5, 1976) (corrected at 41 FR 1503 (Jan. 8, 1976)), and 41 FR 34329 (Aug. 13, 1976). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to section 4(a). See § 55.7(a) of this part.

[2] Coverage determinations were published at 57 FR 43213 (Sept. 18, 1992).

[FR Doc. 93–15462 Filed 6–30–93; 8:45 am]
BILLING CODE 4410–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1400

Repeal of Agency Promulgated Ethics Regulations; Correction

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule; correction.

SUMMARY: The Federal Mediation and Conciliation Service is correcting an error in amendments to the agency's ethics regulations. The amendments were published in the **Federal Register** on April 7, 1993 (58 FR 18007).

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Ted M. Chaskelson, Acting General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Telephone: 202–653–5270.

SUPPLEMENTARY INFORMATION: An agency final rule to repeal certain regulations on the ethical conduct of Federal Mediation and Conciliation Service (FMCS) employees was published in the **Federal Register** on April 7, 1993 (58 FR 18007). The reason for the rule was that the provisions were superseded by Office of Government Ethics (OGE) rules establishing uniform standards of conduct and financial disclosure requirements for executive branch employees. This document adds one technical change; i.e., to delete a reference in 29 CFR 1400.735–12 which refers to § 1400.735–11, as that section will no longer exist. This change will have no substantive effect.

Correction

The following correction is made to "Repeal of Agency Promulgated Ethics Regulations" published in the **Federal Register** on April 7, 1993 (58 FR 18007). The change reflects the deletion of a reference to a section (29 CFR 1400.735–11) that the agency has repealed.

On page 18008 in the third column, instructional paragraph 7, is added as follows:

7. The introductory text to 29 CFR 1400.735–12(a)(2) is revised to read as follows:

§ 1400.735–12 Outside employment, business activities, or interests (paid or unpaid).

(a) * * *

(2) Outside employment limitations in paragraph (a)(1) of this section do not preclude an employee from:

* * * * *

Dated: June 28, 1993.

Ted M. Chaskelson,

Acting General Counsel.

[FR Doc. 93–15556 Filed 6–30–93; 8:45 am]
BILLING CODE 6732–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2612, 2615, 2616, 2622, and 2623

[RIN 1212–AA40]

Miscellaneous Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Statutes amending the Employee Retirement Income Security Act of 1974 have made changes in procedures and other rules, including timing and definitional provisions, that affect and, in some cases, override several portions of the Pension Benefit Guaranty Corporation's regulations. This rule amend parts 2606, 2612, 2615, 2622, and 2623 of the regulations to conform them to current law. It also includes other, organizational and procedural amendments and clarifying and technical changes.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the

VOL 58 ISS 125 JL 1 1993 UMI

General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* In 1986 and 1987, respectively, Congress enacted the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") (Pub. L. 99–272) and the Pension Protection Act ("PPA") (which was part of the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87") (Pub. L. 100–203)) with the aim of better protecting promised pension benefits and better controlling the costs of the termination insurance program for single-employer plans. Among other things, SEPPAA and the PPA amended various title IV procedures and other rules, including timing and definitional provisions, in ways that affect and, in some cases, override several portions of the PBGC's regulations (29 CFR chapter XXVI). Certain title I amendments in the Retirement Equity Act of 1984 ("REA") (Pub. L. 98–397) and the Tax Reform Act of 1986 ("TRA '86") (Pub. L. 99–514) also affect provisions of these portions of the regulations, and Congress subsequently clarified a number of previous title IV amendments in the technical corrections enacted as subtitle H of title VII of the Omnibus Budget Reconciliation Act of 1989 ("OBRA '89") (Pub. L. 101–239).

Of particular relevance here are the substantial changes in the rules for voluntary plan termination under ERISA section 4041 (29 U.S.C. 1341) and the liability incurred upon termination under ERISA sections 4062 and 4064 (29 U.S.C. 1362 and 1364). Implementation of those rules necessitated the complete revision of parts 2616 and 2617 of the PBGC's regulations (57 FR 59206, December 14, 1992). (References to part 2616 or 2617 regulations are to the new provisions.)

Prior to SEPPAA, a plan administrator was free to terminate a plan under section 4041 at any time, subject to certain procedural requirements, and upon termination of an underfunded plan, title IV protected only benefits guaranteed by the PBGC. Moreover, plan termination enabled plan sponsors to shift liability for guaranteed benefits to the insurance program because section 4062 included a net worth limitation on liability for plan underfunding.

SEPPAA restricted the right to terminate a "single-employer plan" (*i.e.*, any defined benefit plan that is not a multiemployer plan (subsection (a)(15) of ERISA section 4001 (29 U.S.C. 1301)) and expanded liability upon termination, essentially transferring back to plan sponsors liability for funding promised pension benefits when they are financially able to bear these costs. If a plan is underfunded, the "contributing sponsor" (*i.e.*, the person entitled under subsection (a) of section 404 of the Internal Revenue Code of 1986 ("Code") (26 U.S.C. 404), or that would be so entitled except for the limitations in section 404(a), to receive a deduction for required contributions) and other members of the contributing sponsor's "controlled group" (*i.e.*, a contributing sponsor and all other persons under common control with that contributing sponsor) now must demonstrate that they are in such poor financial condition, or that their single-employer plan costs have become so burdensome, that they cannot realistically continue to maintain the plan for which termination is sought.[1] In other words, "standard termination" under section 4041(b) (for sufficient plans) and "distress termination" under section 4041(c) are the exclusive means of voluntary plan termination (section 4041(a)(1)). (See ERISA section 4042 (29 U.S.C. 1342) for the PBGC's authority to institute involuntary termination proceedings.) SEPPAA also revised a number of the procedural requirements for termination under section 4041, including timing and notification requirements.

The PPA further amended title IV requirements by, among other things, increasing the benefits that, in a standard termination, a plan must be able to satisfy to all "benefit liabilities" (*i.e.*, the benefits of participants and beneficiaries under the plan, within the meaning of subsection (a)(2) of Code section 401 (26 U.S.C. 401)). The PPA also modified the distress termination rules so that (consistent with the change for standard terminations) a contributing sponsor is liable, along with every member of its controlled group, for all unfunded benefit liabilities. In addition, the PPA further restricted the role of the net worth limitation (ERISA section 4062(b)(2)(B) and subsection (a) of section 4068 (29 U.S.C. 1368)).

Upon termination of a single-employer plan under ERISA section 4041(c) or 4042, the above liability now runs solely to the PBGC (ERISA section 4062(b)(1)). Under subsection (c) of ERISA section 4022 (29 U.S.C. 1322), the PBGC is to pay participants and beneficiaries a portion of their outstanding benefit liabilities (*i.e.*, unfunded benefit liabilities that are not guaranteed benefits; see ERISA section 4001(a)(19)) based on the values of its employer liability recoveries. The amounts paid are allocated in accordance with subsection (a) of ERISA section 4044 (29 U.S.C. 1344).

The PPA also enhanced the PBGC's enforcement authority by adding section 4071 (29 U.S.C. 1371) to ERISA. As clarified by OBRA '89, section 4071 authorizes the PBGC to assess a penalty when a person fails to provide any notice or other material information required under subtitle A, B, C, or D of title IV or section 302(f)(4) or 307(e) of Title I (29 U.S.C. 1082(f)(4) or 1085b(e)), or any regulations prescribed thereunder, within the applicable time limit specified therein. (The penalty is payable to the PBGC and may not exceed $1,000 for each day that the failure continues.) section 4071 applies to requirements in provisions of ERISA and PBGC regulations discussed below.

Proposed Rule

On December 14, 1992 (57 FR 59003), the PBGC proposed to amend parts 2606 (Rules for Administrative Review of Agency Decisions), 2612 (Trades or Businesses Under Common Control), 2615 (Certain Reporting and Notification Requirements), 2622 (Employer Liability for Withdrawals from and Terminations of Single-Employer Plans), and 2623 (Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments)[2] of the regulations to conform their provisions to current law. The proposed amendments also include minor clarifying and technical changes and modifications in rules of agency procedure or practice.

Although these objectives are limited, their attainment necessitates

[1] SEPPAA substituted "contributing sponsor" and "controlled group" for "employer" terminology in the title IV provisions that delineate termination requirements and liability. These provisions apply whether or not a single-employer plan is maintained by contributing sponsors that are members of more than one controlled group. (Although this distinction still is relevant for certain purposes, the PBGC no longer uses the term "single employer plan" to distinguish single-employer plans that are maintained by one or more trades or businesses under common control from single-employer plans maintained by trades or businesses not under common control.)

[2] The proposed updating of part 2623 terminology also would make a transition sentence in § 2616.4(c) unnecessary.

amendments to a large number of regulatory provisions. Therefore, to assure that, as amended, the regulations reflect current provisions of Title IV and are internally consistent, the PBGC published a notice of proposed rulemaking and specifically invited members of the public to express their views on the adequacy and appropriateness of the proposed amendments (57 FR 59005).

Final Rule

The PBGC received no comments during the comment period. This final rule amends the regulations as proposed, except for corrections and editorial changes.

Part 2606—Rules for Administrative Review of Agency Decisions

For the matters specified in § 2606.1(b), part 2606 of the PBGC's regulations sets forth procedural rules for issuing initial determinations (subpart B) and for administrative review of those determinations (reconsideration or appeal under subpart C or D, respectively). Regulatory changes since the adoption of these procedural rules (formerly part 2613; 44 FR 42181, July 19, 1979) necessitate technical and clarifying changes.

In § 2606.1, the PBGC is amending paragraph (b), which describes the scope of part 2606, as set forth in paragraph (b), to provide for the types of determinations that the agency decided to subject to the initial determination and administrative review procedures in subparts B through D. The PBGC also is removing an unnecessary sentence in paragraph (a) and clarifying paragraph (c) to state that nothing in part 2606 of the regulations limits the PBGC's authority to review a determination to which this part does not apply, either upon request or on its own initiative (*e.g.*, to correct an error), or the procedure utilized in such a review.

The amendments to paragraph (b) include updating the statutory provisions that pertain to various determinations. In paragraphs (b)(1) and (b)(5), the PBGC is deleting the reference to ERISA section 4082(b) (a transitional rule for plans terminating before September 2, 1974) as no longer necessary. In paragraphs (b)(6) and (b)(7), the PBGC is referencing additional ERISA provisions because title IV now addresses guaranteed benefits under multiemployer plans in section 4022A (29 U.S.C. 1322a) and includes the aggregate guaranteed benefit limit in section 4022B (29 U.S.C. 1322b). The PBGC also is amending these paragraphs to reflect the fact that its benefit entitlement decisions (paragraph (b)(6)) now include determinations (as the trustee of terminated plans) that a domestic relations order is or is not a "qualified domestic relations order" (see subsection (d)(3) of ERISA section 206 (29 U.S.C. 1056) and subsection (p) of Code section 414 (26 U.S.C. 414)), and its benefit entitlement and benefit amount decisions (paragraphs (b)(6) and (b)(7)) now include determinations, under ERISA section 4022(c), with respect to outstanding benefit liabilities.

In addition, the PBGC is amending paragraph (b)(3) and paragraphs (b)(9) through (b)(11) to reflect current statutory provisions. Revised paragraph (b)(3) includes the determinations that the PBGC may make in a standard or distress termination proceeding under subsection (b) or (c), respectively, of ERISA section 4041 (see parts 2616 and 2617 of the regulations). All such determinations are subject to reconsideration under subpart C. However, the PBGC has concluded that administrative review, upon contributing sponsor or controlled group member request, of determinations that the distress criteria in section 4041(c)(2)(B) are not met should be by the Executive Director (or his or her designee) rather than by an official of the Insurance Operations Department (the department that issues initial determinations in this area), and it is amending §§ 2606.34 and 2606.36 accordingly.

New paragraph (b)(9) combines previous paragraphs (b)(9) through (b)(11) to avoid unnecessary repetition in describing determinations as to the amount of liability under current law. It includes determinations under ERISA sections 4062(b)(1) and 4064 upon termination of a single-employer plan and under ERISA section 4063 (29 U.S.C. 1363) upon withdrawal of a substantial employer from a single-employer plan under multiple controlled groups. The regulation cites subsection (b)(1) of section 4062 as the provision that now defines the amount of liability to the PBGC upon termination. (Since persons are liable for the total "amount of unfunded benefit liabilities" (as defined in ERISA section 4001(a)(18)), agency determinations of the amount of liability under section 4062(b)(1) do not include net worth decisions (see amendments to part 2622 of the regulations). As indicated above, an aggrieved person still may request that the PBGC review such a decision.)

The amendments to several definitions in § 2606.2 are essentially technical. They reflect changes in the terminology that title IV uses to describe certain "aggrieved persons" (*i.e.*, persons that may be adversely affected by PBGC determinations), including, as a "beneficiary", an alternate payee (within the meaning of ERISA section 206(d)(3)(K)) under a qualified domestic relations order (as required by section 206(d)(3)(J)), a single-employer plan's "contributing sponsor", and members of the same "controlled group" as a contributing sponsor (see §§ 2612.2 and 2617.2). These amendments, and amendments to several other part 2606 provisions, also reflect changes in agency terminology, in particular, the PBGC's use of "department" (rather than "office") to describe its primary organizational units.

Other amendments clarify the intended scope of Part 2606 provisions. Thus, the PBGC is amending § 2606.3 to state that this section applies only to agency assistance in obtaining information (including data) or documents in the possession of a party other than the PBGC. (Access to PBGC records may be requested under the Freedom of Information Act (5 U.S.C 552) or the Privacy Act (5 U.S.C. 552a) in accordance with part 2603 or 2607, respectively, of the regulations.) Similarly, the PBGC is amending § 2606.22 to reflect the exception in § 2606.23(b): When the PBGC orders that an initial determination is effective on the date of issuance, the determination is to state that there is no obligation to exhaust administrative remedies by seeking PBGC review. (Aggrieved persons still may request that the agency review the determinations in such cases; however, the provisions of subparts C and D do not apply.)

Part 2612—Trades or Businesses Under Common Control

The PBGC promulgated part 2612 of the regulations to implement the title IV requirement that, under regulations consistent and coextensive with regulations prescribed under the Code by the Secretary of the Treasury, employees of trades or businesses (whether or not incorporated) which are under common control be treated as employed by a single employer and all such trades and businesses by treated as a single employer (currently ERISA section 4001(b)(1); previously section 4001(b) and erroneously cited in § 2612.1(a) as section 4001d(b)). After the PBGC adopted part 2612 (41 FR 12302, March 25, 1976, Congress redesignated this requirement and added a requirement that, for single-employer plans, the PBGC's common control determinations for "controlled

group" purposes be made under regulations consistent and coextensive with regulations prescribed under the Code by the Secretary of the Treasury (section 4001(a)(14)).

The PBGC is amending part 2612 to address the range of common control determinations that the agency must make (see revised paragraph (a) of § 2612.1). The amendments conform the regulations to accord with the current statutory provisions, replace the § 2612.2 definition of "trades or businesses (whether or not incorporated) which are under common control" with an expanded § 2612.3, remove unnecessary language from § 2612.1(b), and update, correct, and conform other definitions in § 2612.2.

Part 2615—Certain Reporting and Notification Requirements

The PBGC promulgated part 2615 of the regulations to implement ERISA section 4043 (29 U.S.C. 1343) (formerly part 2617; 45 FR 55636, August 20, 1980; now designated as subpart A of part 2615). Except to the extent that the PBGC exercises its waiver authority, section 4043 requires the reporting of various specified events and any other event that the PBGC determines may be indicative of a need to terminate the plan. Statutory changes since the PBGC's last rulemaking on these requirements (49 FR 22472, May 30, 1984) necessitate technical and clarifying changes. In particular, for consistency with current regulatory requirements and to avoid confusion about the applicability of a number of the reportable event requirements, the PBGC is making changes in terminology. (See, *e.g.*, amendments to § § 2615.3 (b) and (c), 2615.5, and 2615.23(a). In the proposed amendments to § 2615.3(c)(6), the PBGC inadvertently failed to remove ", as applicable" the second time it appears.) In addition, the PBGC is clarifying the purpose of subpart A by noting (in paragraph (a) of § 2615.1) the agency's decision, in a prior rulemaking, to waive section 4043 requirements with respect to multiemployer plans in view of the requirements of the Multiemployer Pension Plan Amendments Act of 1980 (49 FR 22472).

Based on pre-SEPPAA voluntary termination rules, the PBGC (in § 2615.1(b)) limited application of the reportable event requirements to plans "for which a Notice of Intent to Terminate under section 4041 * * * has not been filed with the PBGC." Under current law, however, the PBGC does not receive a notice of intent to terminate in a standard termination, and the notice of intent to terminate in a distress termination contains little of the information previously required. Moreover, under prior law, a plan administrator could file the Notice of Intent to terminate as little as 10 days before the proposed date of plan termination, whereas notices of intent to terminate now must be issued at least 60 days before the proposed termination date specified therein and the PBGC's regulations permit a plan administrator to extend that period (to up to 90 days) in the standard or distress termination notice subsequently filed with the PBGC. (See ERISA section 4041(a)(2)) and §§ 2616.2, 2616.22, 2616.26, 2617.2, 2617.22, and 2617.25.) Also, because section 4041(a)(3) now provides that the PBGC may not proceed with a plan termination that would violate the terms of an existing collective bargaining agreement, the PBGC will suspend a termination proceeding if timely advised that a formal challenge to plan termination has been initiated and, depending upon the final resolution of the challenge, either dismiss the proceeding or, should the plan administrator wish to do so, reactivate it (see §§ 2616.5 and 2617.5.)

In view of these developments, the PBGC is amending paragraph (b) of § 2615.1 to provide that subpart A applies to single-employer plans for which no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified in accordance with regulatory requirements. Also, if a termination proceeding is suspended pursuant to the regulations, subpart A will continue to apply unless and until the PBGC reactivates the proceeding, thereby accounting for the possibility that a significant period of time may pass before resolution of the challenge and a decision as to whether or not the proposed termination will go forward.

The PBGC's amendments to the definitions in § 2615.2 include changes that update statutory references (*e.g.*, the "Code" definition), assure consistency with other regulations (*e.g.*, the "participant", "controlled group", "irrevocable commitment", and "notice of intent to terminate" definitions), and delete unnecessary terms. (Certain of the deleted terms are not used in the regulations, either as now codified (*e.g.*, "Social Security benefits") or as amended (*e.g.*, "single employer plan"); others are unneccessary because the amended regulations adequately address terminology questions elsewhere (*e.g.*, the meaning of "bankruptcy case", in amended §§ 2615.3(c)(5) and 2615.21(a)(1)).)

The PBGCs judgment about whether an event may be indicative of the need to terminate a single-employer plan can differ depending on whether the plan is maintained by multiple "contributing sponsors" that are not members of the same "controlled group". Therefore, certain reportable event requirements distinguish plans which are not "maintained by two or more contributing sponsors that are members of more than one controlled group" from those which are so maintained. (As indicated above, the PBGC previously described the former category as "single employer plans".) The PBGC is retaining this distinction, describing plans in the former category as "maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group", in amended §§ 2615.3(c)(2), 2615.14(b)(2), 2615.21(a), 2615.22(a), and 2615.23(a), as well as in paragraph (c)(2) of § 2615.14, which replaces the definition of "active participant".

The PBGC has decided that the special usage of the term "active participant" should be in § 2615.14, the section that addresses the pertinent reportable event, rather than in § 2615.2. With respect to plans maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, paragraph (c)(2) of amended § 2615.14 includes the same individuals as those who until now have been described in the (a) portion of the § 2615.2 definition. With respect to plans maintained by two or more contributing sponsors that are members of more than one controlled group, the PBGC has concluded that a special provision no longer is needed because the (b) portion of the § 2615.2 definition covers the same individuals as those who generally are categorized as "active" participants (see § 2610.2, which is referenced in amended § 2615.2).

Other technical changes include updating amendments (*e.g.*, replacement of the statutory citation in § 2615.22(c) and the "Plan Number", PBGC organization, and form references in § § 2615.3(b)(4), 2615.3(e), and 2615.14(b) and 2615.16(b), in that order) and clarifying the date of distribution of an irrevocable commitment (§ 2615.18(d)). (For consistency with other filing requirements, the final uses Code 45900 in the Case Operations and Compliance Department's address.) They also include changes for consistency with the wording and structure of this subpart (*e.g.*, moving the waiver criterion from paragraph (a) to paragraph (b) of § 2615.14).

Part 2622—Employer Liability for Withdrawals from and Terminations of Single-Employer Plans

The PBGC adopted part 2622 of the regulations primarily to prescribe rules for "employer liability" determinations and recovery under ERISA section 4062 and section 4067 (29 U.S.C. 1367) (formerly part 2613; 46 FR 9520, January 28, 1981). Portions of this part also apply to determinations under the special rules of ERISA sections 4063 and 4064 for withdrawal of a "substantial employer" from or termination of a plan (other than a multiemployer plan) under which more than one "employer" made contributions.

Significant changes in part 2622 provisions are necessary to reflect subsequent statutory amendments. In particular, whenever a single-employer plan is terminated, "any person who is, on the termination date, a contributing sponsor * * * or a member of * * * a contributing sponsor's controlled group" is liable to the PBGC for the total amount of unfunded benefit liabilities, together with interest (section 4062 (a) and (b)). Moreover, the collective net worth of these persons is relevant only to whether the entire liability is payable as of the termination date (section 4062 (b)(2)(B)) and to the amount of the lien that ERISA section 4068(a) imposes for nonpayment. Other changes are being made in view of the current timing requirements for distress terminations under ERISA section 4041(c) and new part 2616 of the regulations and to update the terminology used in this part of the regulations.

Revised § 2622.1 summarizes current statutory provisions (paragraph (a)), focusing on liability to the PBGC under ERISA section 4062(b) upon single-employer plan termination and also describing the supplementary rules in ERISA sections 4063 and 4064 upon "substantial employer" withdrawal and termination for plans with two or more contributing sponsors at least two of whom are not under common control. The PBGC uses the term "multiple employer plan" to describe this category of single-employer plans and no longer uses the term "single employer plan" to describe other single-employer plans (see amendments to § 2622.22; see ERISA section 4001(a)(2) and § 2616.2 of the regulations).

The statutory rules on the amount of liability to the PBGC that are reflected in this portion of the rule apply with respect to plans for which voluntary or involuntary termination is initiated after December 17, 1987 (paragraph (b)). (For a termination initiated before that date but on or after January 1, 1986, see the discussion of liability under Title IV as amended by SEPPAA (for unfunded "benefit commitments" in excess of guaranteed benefits) in the PBGC's proposed rule on voluntary terminations (52 FR 33318, 33320, and 33327, September 2, 1987).)

In § 2622.2, the PBGC is adding the term "section 4062(b) liability" to describe the liability to the PBGC now imposed by ERISA section 4062 (see subsections (a) and (b)). The new term "collective net worth of persons subject to liability in connection with a plan termination" and the revised definitions of the terms "net worth" and "net worth record date" reflect the provisions of section 4062(d)(1), as implemented in amended § § 2622.4 and 2622.5. Other amendments to § 2622.2 add terms now used in subtitle D of title IV and/or part 2616 (*e.g.*, "proposed termination date"), delete terms that are not needed in this part of the regulations (*e.g.*, "employer" and "Title IV"), and make minor technical and editorial changes (*e.g.*, to the definition of "Act").

Revised § 2622.3 states, in paragraphs (a) and (b), respectively, the statutory rules on the amount of section 4062(b) liability and the payment of that liability, including the PBGC's authority to make alternative arrangements for the satisfaction of liability (see ERISA sections 4062(b)(3) and 4067). Since net worth does not affect the amount of liability, the revised section does not address net worth notification or determinations. (Similarly, the PBGC is deleting the last sentence of § 2622.6(c).)

The exception in paragraph (b) reflects the limitation on the general rule that section 4062(b) liability is due and payable as of the termination date: under section 4062(b)(2)(B), payment of so much of the liability as exceeds 30 percent of the collective net worth of all persons described in section 4062(a) is to be made under commercially reasonable terms prescribed by the PBGC. The statutory rules for such cases are set forth in paragraph (c) of § 2622.8.

The statutory definition of "collective net worth of persons subject to liability in connection with a plan termination" (section 4062(d)(1)) incorporates pre-SEPPAA rules, including the requirement that net worth determinations be computed without regard to any liability under section 4062 (subsection (d)(1)(C)). These statutory rules now are applied to each "person" that is subject to such liability. The PBGC is amending §§ 2622.4 through 2622.6 accordingly. (See also amendments to §§ 2622.7 through 2622.9, which include changes for consistency with other statutory phrasing as well.)

The collective net worth of such persons is the sum of the individual net worths of those with individual net worths that are greater than zero (subsection (d)(1)(A)). Revised paragraph (a) of § 2622.4 provides that the PBGC will determine individual net worths and collective net worth when liable persons notify the agency and submit net worth information (as it has until now). (See § 2622.6(c) regarding incomplete submissions.)

The statutory definition now also provides for the timing of net worth determinations (subsection (d)(1)(C)). Because the net worth record date requirements of § 2622.5 are consistent with the statutory rule that "determinations * * * be made as of a day chosen by the [PBGC] (during the 120-day period ending with the termination date)," the PBGC is making only technical and editorial amendments to this section.

The PBGC is expanding § 2622.6 to include in paragraph (a) net worth notification requirements (until now addressed in § 2622.3(b)), and it is moving the net worth information specifications (subparagraphs (1) through (7)) from paragraph (a) to paragraph (b) and making several editorial changes. The notification and information submission requirements apply to any contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination (*i.e.*, that the liability under section 4062(b) is subject to the exception to the general rule on payment) (paragraph (a)(1)). However, if a contributing sponsor or member of the contributing sponsor's controlled group complies, the PBGC will consider these requirements to be satisfied by all members of that controlled group, while reserving the authority to require any person subject to liability to submit information (paragraphs (a)(2) and (a)(3)).

As discussed above, the statutory requirements for voluntary termination of an insufficient plan, as now implemented in part 2616, are significantly different from those that applied when the PBGC promulgated this part of the regulations. A plan can terminate under ERISA section 4041(c) only if financial hardship is demonstrated and other requirements are met. Among other things, the notice of intent to terminate that is filed with the PBGC (PBGC Form 600) must identify the distress criterion that each

VOL 58 ISS 125 JL 1 1993 UMI

contributing sponsor and member of a contributing sponsor's controlled group expects to meet and must provide documentation regarding any relevant liquidation or reorganization proceedings; and the distress termination notice (PBGC Form 601), which is due by the 120th day after the proposed termination date (see § 2616.24(a)), must include the information required to prove each such person satisfies one of the distress criteria. Thus, substantial analysis of the financial condition of liable persons should have occurred by the time notices of intent to terminate are issued, either in planning for distress termination or as part of another proceeding, and further financial and other business information must be compiled within the next few months.

In view of the above, the PBGC has concluded that the time limits established in 1981 should be amended to reflect subsequent changes in the regulatory scheme and coordinate part 2622 with the requirements in part 2616 in future distress terminations. Amended § 2622.6(a)(1) requires contributing sponsors and controlled group members that believe section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination to so notify the agency by the 90th day after filing of the notice of intent to terminate with the PBGC and to submit net worth information by the 120th day after the proposed termination date (*i.e.*, by the deadline for filing the distress termination notice) (subparagraphs (1)(i) and (1)(ii)(A)). (As explained in the proposed rule (57 FR 59008), these periods will provide comparable time with respect to plans being terminated in distress terminations, and they are consistent with the agency's 1981 rationale for this part of the regulations.

The time limits established in 1981 continue to apply with respect to plans for which termination is initiated by the PBGC instituting proceedings under ERISA section 4042 (subparagraphs (1)(i) and (1)(ii)(B)). (Because, in the PBGC's judgment, the regulations no longer need to emphasize when a plan's termination date is established, amended § 2622.6(a)(1) does not include the last sentence of current § 2622.3(b).)

Amended paragraph (a)(3) of § 2622.6 addresses when the net worth information specified in this section must be submitted within a shorter period and when additional information must be submitted. It consolidates and streamlines existing regulatory provisions. (For example, the agency has concluded that the regulations need no longer state that one situation in which it may need additional information is when the PBGC establishes an earlier net worth record date after submission of the information specified in this section.) In addition, amended § 2622.6(a)(3) provides that the PBGC will specify the time within which a person subject to liability is required to submit information.

The distress termination requirements also increase the possibility that information required to be submitted pursuant to § 2622.6 already has been submitted to the PBGC. Therefore, to avoid duplicative efforts, paragraph (a)(4) provides that a person may respond to such a requirement by identifying a previous submission.

ERISA section 4062(b) now provides that liability to the PBGC includes "interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the [PBGC]." Because paragraphs (a) and (c) of § 2622.7 currently impose interest on the unpaid portion of the liability (if any) at the rate prescribed in Code section 6601(a), the PBGC is making only technical and editorial changes in these paragraphs. Other amendments update § 2622.7 by modifying the terminology and deleting provision for the calculation of pre-1983 interest (see also amended § 2622.8(d)).

As noted above, the PBGC is expanding § 2622.8 to address payment, under commercially reasonable terms, of the portion of section 4062(b) liability that exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination (see section 4062(b)(2)(B)), as well as the exercise of its discretion to defer payment of liability upon request. Revised paragraph (c) sets forth the rules for cases in which the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of all liable persons. The PBGC's standards and factors for determining what, if any, deferred payment or other terms for the satisfaction of liability to grant and the procedure for requesting such action are included in revised paragraph (b). The amended rules apply to persons that are or may become liable under ERISA section 4062, 4063, or 4064 and provide for updating information when a request is made one year or more after the net worth record date.

The PBGC also is amending paragraphs (a) and (b) of § 2622.9 to provide that its requests and demands for liability indicate that the agency will prescribe commercially reasonable terms for payment of so much of the liability that exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The amendments to this section and § 2622.10 include other updating and editorial changes. In particular, amended § 2622.10(b) requires that liability payments be sent to the address specified in the notification or demand for liability issued under § 2622.9 or, if not specified therein, to the address provided (upon request) by the PBGC's Investment Management Division.

Part 2623—Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments

The PBGC promulgated part 2623 of the regulations to minimize benefit overpayments by the administrators of plans that ultimately will be trusteed by the PBGC under ERISA section 4042 because they are insufficient for guaranteed benefits (subpart B) and to provide rules for the recoupment of benefit overpayments and reimbursement of benefit underpayments when the PBGC is appointed trustee (subpart C). As discussed above, when the agency adopted these regulations (50 FR 3892, January 29, 1985), the statutory requirements for voluntary termination were significantly different than they are today. Among other things, ERISA section 4041 did not address the payment of plan benefits after termination is initiated, and the proposed date of termination specified by a plan administrator might be only 10 days after the filing of a Notice of Intent to Terminate.

Section 4041(c)(3)(D) now includes specific requirements for plan administration during the pendency of a distress termination under ERISA section 4041(c), and the PBGC has implemented these requirements, as well as notice and information requirements, in part 2616 of the regulations. Therefore, this rule limits the functions of subpart B of part 2623 and coordinates its provisions with the requirements of section 4041(c) and part 2616. Among the amendments are changes to reflect current timing requirements and to update the terminology used in both subparts B and C.

In addition, as indicated in its Agenda of Regulations Under Development, the PBGC plans to propose a new part of the regulations on the payment of benefits in PBGC-trusteed plans (57 FR 52240). Because the PBGC believes that benefit payment regulations should address recoupment and reimbursement, it plans to transfer subpart C of part 2623

to that part of the regulations, and it expects to consider further amendments to subpart C provisions during the development of benefit payment regulations.

The PBGC is amending the title of part 2623 and § 2623.1 to reflect, in current terminology (see amendments to § 2623.2), the subjects addressed by this part of the regulations and to eliminate unnecessary language. As indicated by revised paragraph (a) of § 2623.1, the procedures in subpart B apply to plans that are terminating in a "distress termination" and, hence, generally are not expected to be "sufficient for guaranteed benefits"; those in subpart C apply to recoupment and reimbursement of benefit payments under any "PBGC-trusteed plan".

The amendments to § 2623.2 add several terms (*e.g.*, "guaranteed benefit") and replace terms no longer used. The PBGC is substituting "proposed termination date" for "section 4041(a) date of termination" and "termination date" for "section 4048 date of termination" (see amendments to §§ 2623.5, 2623.6, 2623.7, 2623.11, and 2623.12). (Since substituting "proposed termination date" for "section 4041(a) date of termination" makes the last sentence of § 2616.4(c) unnecessary, the PBGC is deleting it.)

Because paragraphs (b), (c), and (e) of § 2616.4 include the actions prohibited during distress termination proceedings and the rules for when "benefit payments" must be reduced, the PBGC is amending § 2623.5 by deleting paragraphs (e) and (f)(1) (and redesignating the remainder of paragraph (f) as paragraph (e)) and the timing and applicability conditions in paragraph (a). Revised § 2623.5(a) describes the restricted role that this subpart now plays: providing the methodology for determining benefits that plan administrators may not pay (§ 2623.5 (b) and (c) and must pay (§§ 2623.5(d), 2623.6, and 2623.7) when § 2616.4 requires that benefit payments be limited.

The PBGC is deleting references to when benefit payment limitations apply from paragraphs (b) through (d) of § 2623.5 as well. In addition, the rule includes updated examples in paragraph (g) (redesignated as paragraph (f)) of § 2623.5 and §§ 2623.6(e) and 2623.7(e).

Amended § 2623.5(d) continues to require that plan administrators "pay the monthly benefit * * * determined under § 2623.6 or § 2623.7, whichever produces the higher benefit." Therefore, the PBGC is removing the last sentence of paragraph (a) of § 2623.6 (the procedures for computing estimated guaranteed benefits) and the last sentence of paragraph (a) of § 2623.7 (the procedures for computing estimated title IV benefits) as redundant. Also, the PBGC is removing § 2623.8 because, in implementing the requirements of ERISA section 4041(a)(2) and (c) (1) and (2), the agency has addressed the information needs of both participants and the agency elsewhere (see part 2616).

Finally, the amendments to subpart C include, in addition to conforming terminology and timing changes, the substitution of "PBGC-trusteed plan" for "terminated insufficient plan" in § 2623.11 (a) and (b). The PBGC generally is appointed trustee when a plan is not sufficient for guaranteed benefits. However, the PBGC may be appointed trustee of a plan that is sufficient for guaranteed benefits, and the subpart C procedures are intended to apply in such situations.

E.O. 12291

The PBGC has determined that this final rule is not a "major rule" for the purposes of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The primary purpose of these amendments is to conform the regulations to existing statutory requirements. The rule also includes other, minor modifications of existing regulations.

List of Subjects

29 CFR Part 2606

Administrative practice and procedures, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Part 2612

Business and industry, Pension insurance, Pensions, Small businesses.

29 CFR Part 2615

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2616

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting requirements, Small businesses.

29 CFR Part 2623

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending 29 CFR Parts, 2606, 2612, 2615, 2616, 2622, and 2623 as follows:

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 2606 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3)

2. Paragraph (a) of § 2606.1 is amended by removing the last sentence.

3. Paragraphs (b) and (c) of § 2606.1 are amended by removing "or section 4082(b)" in paragraph (b)(1) and paragraph (b)(5); by adding "or (c) or section 4022A(a)" after "section 4022(a)" and by adding "and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of the Act and section 414(p) of the Code" after "covered plans" and before the semicolon in paragraph (b)(6); by adding "or (c), section 4022A (b) through (e), or section 4022B" after "section 4022(b)" and by removing "guaranteed benefits of" and adding, in its place, "benefits payable to" in paragraph (b)(7); by adding "and" at the end in paragraph (b)(8); by removing paragraph (b)(10) and paragraph (b)(11); and by revising paragraph (b)(3), (b)(9), and (c) to read as follows:

§ 2606.1 Purpose and scope.

* * * * *

(b) Scope. * * *

(3) Determinations with respect to voluntary terminations under subsection (b) (standard terminations) or subsection (c) (distress terminations) of section 4041 of the Act, including—

(i) A determination that a notice requirement under section 4041(b)(1)(A) and (B) or section 4041(c)(1)(A) or (B) or a certification requirement under section 4041(b)(3)(B) or section 4041(c)(3)(B) of the Act has not been met,

(ii) A determination that a contributing sponsor or a member of a contributing sponsor's controlled group does not meet the requirements for demonstrating distress under section 4041(c)(2)(B) of the Act, and

(iii) A determination under section 4041(b)(2) or section 4041(c)(3) of the Act with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits;

* * * * *

(9) Determinations of the amount of liability under section 4062(b)(1), section 4063, or section section 4064 of the Act.

(c) Matters not covered by this part. Nothing in this part limits—

(1) The authority of the PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, the PBGC determines that it would be appropriate to do so, or

(2) The procedure that the PBGC may utilize in reviewing any determination to which this part does not apply.

4. In § 2606.2, the definition of Act is amended by adding ", as amended" at the end before the period; the definition of Director or Office Director is amended by removing "Office" and adding, in its place, "Department" and by removing "office" and adding, in its place "department"; and the definition of aggrieved person is revised and a definition of Code is added to read as follows:

§ 2606.2 Definitions.

* * * * *

Aggrieved person means any participant, beneficiary, plan administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of the PBGC with respect to a pension plan in which such participant, beneficiary, plan administrator, contributing sponsor, controlled group member, plan sponsor, or employer has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of the Act) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of the Act). The term "contributing sponsor" includes only a person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to a single-employer plan under section 302 of the Act and section 412 of the Code. The term "controlled group" includes all persons under common control with a contributing sponsor and the term "employer" includes all trades or businesses under common control, as provided in subsections (a)(14) and (b)(1) of section 4001 of the Act and part 2612 of this chapter.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

* * * * *

§ 2603.3 [Amended]

5. Section 2606.3 is amended by removing "data" each time it appears and adding, in its place, "documents"; by removing "the information" at the end of the first sentence before the period and adding, in its place, "information or documents in the possession of a party other than the PBGC"; and by adding "or documents" at the end of the second sentence before the period.

§ 2606.7 [Amended]

6. Section 2606.7 is amended by removing "an Office" and adding, in its place, "a Department" and by removing "by the PBGC" at the end before the period.

§ 2606.9 [Amended]

7. Section 2606.9(b) is amended by removing "Office" and adding, in its place, "department".

§ 2606.22 [Amended]

8. Section 2606.22 is amended by adding ", except when effective on the date of issuance as provided in § 2606.23(b)," before "shall contain".

§ 2606.34 [Amended]

9. Section 2606.34 is amended by removing "office" and adding, in its place, "department" and by adding, at the end before the period, ", except that a request for reconsideration of a determination described in § 2606.1(b)(3)(ii) shall be submitted to the Executive Director".

§ 2606.36 [Amended]

10. Paragraph (a) of § 2606.36 is amended by removing "office" both times it appears and adding, in its place, "department"; by removing "an Office" and adding, in its place, "a Department"; by removing "the Office" both times it appears and adding, in its place, "the Department"; and by adding, at the end of the second sentence before the period, "of a determination other than one described in § 2606.1(b)(3)(ii), and the Executive Director (or an official designated by the Executive Director) will issue the final decision on a request for reconsideration of a determination described in § 2606.1(b)(3)(ii)".

§ 2606.51 [Amended]

11. Section 2606.51 is amended by removing "(11)" and adding, in its place, "(9)".

PART 2612—TRADES OR BUSINESSES UNDER COMMON CONTROL; CONTROLLED GROUPS

12. The authority citation for part 2612 is revised to read as follows:

Authority: 29 U.S.C. 1301(a)(14), 1301(b)(1), and 1302(b)(3).

13. The title of part 2612 is revised as set forth above.

14. Paragraph (a) of § 2612.1 is revised to read as follows:

§ 2612.1 Purpose and scope.

(a) Purpose. This part includes the regulations under which, for purposes of title IV of the Act, the PBGC determines the trades or businesses (whether or not incorporated) that are under common control and, hence, treated as a single employer and whether, in the case of a single-employer plan, two or more persons are under common control and, hence, members of the same controlled group. Section 4001 of the Act requires, in subsections (b)(1) and (a)(14), respectively, that the former and the latter determinations be made under PBGC regulations which are consistent and coextensive with regulations prescribed by the Secretary of the Treasury under section 414(c) and section 414 (b) and (c), respectively, of the Code.

* * * * *

§ 2612.1 [Amended]

15. Paragraph (b) of § 2612.1 is amended by adding "Scope." at the beginning after the paragraph (b) designation; by removing "(88 Stat. 1014)"; and by removing everything after "applies" and before the period.

16. In § 2612.2, the definition of Act is amended by removing "Means" and adding, in its place, "means" and by removing "(88 Stat. 829 *et seq.*)" and adding, in its place, ", as amended"; the definition of trades or businesses (whether or not incorporated) which are under common control is removed; and definitions of Code and single-employer plan are added, in alphabetical order, to read as follows:

§ 2612.2 Definitions.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

17. Section 2612.3 is amended by adding "; controlled groups" after "control" in the title; by removing the comma after "Act", adding a colon in its

place, and designating the remainder of the current text as paragraph (a)(2); and by adding new paragraphs (a)(1), (a)(3), and (b). As so revised, § 2612.3 reads as follows:

§ 2612.3 Trades or businesses under common control; controlled groups.

For purposes of title IV of the Act:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

(2) All employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with that person.

(2) The PBGC will determine that persons are under common control if they are members of a "controlled group of corporations", as defined in regulations prescribed under section 414(b) of the Code, or if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

PART 2615—CERTAIN REPORTING AND NOTIFICATION REQUIREMENTS

18. The authority citation for part 2615 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, and 1365.

19. In § 2615.1, paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 2615.1 Purpose and scope.

(a) Purpose. This subpart prescribes specific requirements for notification of the reportable events in section 4043 of the Act, including the reportable events specified in section 4043(b)(1) through (b)(8) and other events that the PBGC has determined, under section 4043(b)(9), may be indicative of a need to terminate the plan. It also implements the PBGC's authority to waive the requirement that plan administrators notify the PBGC with respect to certain reportable events and with respect to certain plans. (The PBGC has waived the requirements of section 4043 with respect to multiemployer plans.)

(b) Scope. This subpart applies with respect to any single-employer plan (within the meaning of section 4001(a)(15) of the Act) which is covered by section 4021 of the Act and for which either no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified under section 4041 (b) or (c) of the Act and part 2616 or 2617 of this subchapter; *provided, that,* if a termination proceeding is suspended pursuant to § 2616.5 or § 2617.5 of this subchapter, this subpart continues to apply unless and until the PBGC reactivates the termination proceeding. * * *

§ 2615.2 [Amended]

20. In § 2615.2, the definition of Act is amended by removing "(29 U.S.C. 1001 *et seq.* (1976))" and adding, in its place, ", as amended"; the definition of *active participant* is redesignated as paragraph (c)(2) of § 2615.14(c); the definition of *Code* is amended by removing "1954" and adding, in its place, "1986"; the definition of *irrevocable commitment* is amended by removing "which" the first time it appears and adding, in its place, "if the obligation", by removing "which" the second time it appears, and by removing "against the insurer"; the definition of *nonforfeitable benefits which are not funded* is amended by adding "section 4001(a)(8) of the Act and as provided in" after "as defined in"; the definition of *plan* is amended by removing "be a single employer, multiemployer, or multiple employer plan" and adding, in its place, "is maintained by one or more contributing sponsors"; the definition of *plan year* is amended by removing ", policy"; the definitions of *substantial owner* is amended by removing "4022(b)(6)(A)" and adding, in its place, "4022(b)(5)(A)"; the definitions of *bankruptcy case, break in service, employer, money purchase plan, normal retirement benefit, plan sponsor, Railroad Retirement benefits, single employer plan, Social Security benefits,* and *Title IV* are removed; and the definitions of *contributing sponsor, controlled group,* and *participant* are revised and definitions of *notice of intent to terminate* and *proposed termination date* are added, in alphabetical order, to read as follows:

§ 2615.2 Definitions.

* * * * *

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under part 2612 of this chapter.

* * * * *

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 or § 2617.22 of this subchapter.

* * * * *

Participant has the same meaning as in § 2610.2 of this chapter.

* * * * *

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice or the standard termination notice, in accordance with section 4041 of the Act and part 2616 or part 2617 of this subchapter.

* * * * *

§ 2615.3 [Amended]

21. Paragraph (b)(2) of § 2615.3 is amended by removing the word "plan" and adding, in its place, "contributing".

22. Paragraph (b)(4) of § 2615.3 is amended by removing "plan sponsor" both times it appears and adding, in its place, "contributing sponsor"; by removing "Plan Identification Number (PIN)" and adding, in its place, "Plan Number (PN)"; and by removing "EIN–PIN" both times it appears and adding, in its place, "EIN–PN".

23. Paragraph (c)(2) of § 2615.3 is amended by removing "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group,".

24. Paragraph (c)(5) of § 2615.3 is amended by removing "bankruptcy or liquidation" and adding, in its place, "bankruptcy, insolvency, or similar settlement".

25. Paragraph (c)(6) of § 2615.3 is amended by removing "of employer" and adding, in its place, "in the same controlled group as a contributing sponsor"; by removing ", or of the trade or business no longer controlled by the contributing sponsor, or of the new trade or business controlling" and

adding, in its place, "or of the person no longer under common control with"; and by removing ", and of the trade or business no longer controlled by the contributing sponsor, or the new trade or business controlling the contributing sponsor, as applicable" and adding, in its place, "and of the person no longer under common control with the contributing sponsor". As so revised, paragraph (c)(6) reads as follows:

§ 2615.3 Requirement of notice.

* * * * *

(c) Additional information. * * *

(6) For an event described in § 2615.23(a) (relating to a transaction involving a change in the same controlled group as a contributing sponsor):

The name, address, and telephone number of the new contributing sponsor or of the person no longer under common control with the contributing sponsor, as applicable; a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor before and after the transaction and of the person no longer under common control with the contributing sponsor (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

* * * * *

§ 2615.3 [Amended]

26. Paragraph (e) of § 2615.3 is amended by removing "Office of Program Operations" and adding, in its place, "Case Operations and Compliance Department" and by removing "Room 5300A" and adding, in its place, "room 5500 (Code 45000)".

§ 2615.5 [Amended]

27. Section 2615.5 is amended by removing "employer" and adding, in its place, "contributing sponsor" in the title and by removing "an employer making contributions" and adding, in its place, "a contributing sponsor" in the text.

§§ 2615.12, 2615.15 and 2615.16 [Amended]

28. Sections 2615.12(a), 2615.15(a), and 2615.16(a) are amended by removing "the plan" and adding, in its place, "a plan".

§ 2615.14 [Amended]

29. Paragraph (a) of § 2615.14 is amended by removing everything after "previous plan year" and before the period.

30. Paragraph (b) of § 2615.14 is amended by removing in the introductory text "either paragraph (b)(1) or (b)(2)" and adding, in its place, "paragraph (b)(1), (b)(2), or (b)(3)" and by adding a new paragraph (b)(3) to read as follows:

§ 2615.14 Active participant reduction.

* * * * *

(b) * * *

(3) The present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500–C/R) is less than $250,000.

* * * * *

31. Paragraph (b)(2) of § 2615.14 is amended by removing "single employer plan, as" and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, as" and by removing "the single employer plans covered by section 4021 that are maintained by the employer" and adding, in its place, "the plans covered by this part that are maintained by a contributing sponsor and all members of the same controlled group, if any, either"; and by removing "or not" and adding, in its place "or is not". As so revised, paragraph (b)(2) reads as follows:

* * * * *

(b) * * *

(2) With respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, as of the date of the event, the total number of active participants covered by all the plans covered by this part that are maintained by a contributing sponsor and all members of the same controlled group, if any, either is not less than 80 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's current plan year, or is not less than 75 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's previous plan year.

* * * * *

32. Paragraph (c) of § 2615.14 is amended by designating the sentence after the heading as paragraph (1) and by revising the definition of active participant, redesignated as paragraph (2), to read as follows:

* * * * *

(c) Determination of the number of active participants.

* * * * *

(2) For purposes of this section and information submitted pursuant to § 2615.3(c)(1), with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, include as "active" only a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

33. The first sentence of paragraph (b) of § 2615.16 is amended by removing "Forms 5500, 5500–C, 5500–K or 5500–R" and adding, in its place, "Form 5500 or Form 5500–C/R".

§ 2615.18 [Amended]

34. Paragraph (d) of § 2615.18 is amended by removing "effective date of the irrevocable commitment" in the first sentence and adding, in its place, "date on which the obligation to provide benefits passes from the plan to the insurer".

35. In paragraph (f) of § 2615.18, the heading is revised to read "Valuation of assets and benefits".

§ 2615.21 [Amended]

36. Paragraph (a) of § 2615.21 is amended by removing in the introductory text "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group" and by adding "(under Title 11, U.S.C.)" before ", or" in paragraph (a)(1).

§ 2615.22 [Amended]

37. In paragraph (a) of § 2615.22, the introductory text is amended by removing "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group".

38. Paragraph (c) of § 2615.22 is amended by removing "section 4062(d)" in the heading and adding, in its place, "section 4069(b)" and by removing "section 4062(d)" in the text and adding, in its place, "section 4069(b)".

§ 2615.23 [Amended]

39. The title of § 2615.23 is amended by removing "of employer" and adding, in its place, "in contributing sponsor or controlled group".

40. Paragraph (a) of § 2615.23 is amended by removing "a single

employer plan of a contributing sponsor" and adding, in its place, "a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group"; by removing "trade or business" each time it appears in paragraph (a)(1)(iii) and paragraph (a)(2) and adding, in its place, "person"; and by removing "the sponsor" in paragraph (a)(2) and adding, in its place, "the contributing sponsor". As so revised, paragraph (a) reads as follows:

§ 2615.23 Transaction involving a change in contributing sponsor or controlled group.

(a) Reportable event. Except as provided in paragraph (c) of this section, a reportable event with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group with nonforfeitable benefits which are not funded of $1 million or more when—

(1) As a result of a transaction involving a transfer of assets of or an ownership interest in a contributing sponsor—

(i) There is or will be a new contributing sponsor that is not a member of the controlled group of the previous contributing sponsor;

(ii) The contributing sponsor leaves or will leave the controlled group; or

(iii) The contributing sponsor becomes or will become a member of a different controlled group, except where the new controlled group is or will be the same, but for the addition of another person, as the contributing sponsor's controlled group before the transaction; or

(2) As a result of a transaction involving a transfer by a contributing sponsor of assets of or an ownership interest in another person, the contributing sponsor and that person are or will be no longer part of the same controlled group.

* * * * *

41. In paragraph (e) of § 2615.23, the heading is revised to read "Valuation of assets and benefits".

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

42. The authority citation for part 2616 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

43. Paragraph (c) of § 2616.4 is amended by removing the last sentence.

PART 2622—LIABILITY ON TERMINATION OF OR WITHDRAWAL FROM A SINGLE-EMPLOYER PLAN

44. The authority citation for part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, and 1367–1368.

45. The title of part 2622 is revised as set forth above.

46. Section 2622.1 is revised to read as follows:

§ 2622.1 Purpose and scope.

(a) Purpose. The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of the Act, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of the Act. This part also includes related rules regarding payment arrangements under section 4067 of the Act and the PBGC's lien under section 4068 of the Act with respect to liability arising under section 4062, 4063, or 4064.

When a single-employer plan is terminated under section 4041(c) or 4042 of the Act, section 4062 imposes joint and several liability, to the PBGC and the trustee appointed under section 4042 (b) or (c), on any person that, on the termination date, is a contributing sponsor or a member of a contributing sponsor's controlled group. Sections 4063 and 4064, in conjunction with section 4062, apply to liability determinations with respect to multiple employer plans. Under section 4063, the PBGC determines the conditional liability for withdrawal of a substantial employer; under section 4064, the PBGC determines the liability upon termination of persons that, within the 5 preceding plan years, contributed to the plan. Both sections provide for prorating or allocating liability among controlled groups after calculating the amount for the entire plan under section 4062(b), and section 4062(e) makes sections 4063 and 4064 applicable when there are certain cessations of operations at a facility. (See section 4069 of the Act regarding transactions to evade liability and certain corporate reorganizations.)

(b) Scope. The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of the Act is issued or proceedings to terminate under section 4042 of the Act are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

§ 2622.2 [Amended]

47. In § 2622.2, the definition of Act is amended by removing "is" and adding, in its place, "means" and by removing everything after "1974," and before the period and adding, in its place, "as amended"; the definition of *PBGC* is amended by removing "is" and adding, in its place, "means"; the definitions of *date of plan termination*, employer, plan asset insufficiency, *single employer plan*, and *Title IV* are removed; and the definitions of net worth and net worth record date are revised and definitions of *Code*, *collective net worth of persons subject to liability in connection with a plan termination*, *contributing sponsor*, *controlled group*, *multiple employer plan*, *notice of intent to terminate*, *proposed termination date*, *section 4062(b) liability*, *single-employer plan*, *and termination date* are added, in alphabetical order, to read as follows:

§ 2622.2 Definitions.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

Collective net worth of persons subject to liability in connection with a plan termination means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their collection groups, as determined in accordance with section 4062(d)(1) of the Act and § 2622.4 of this part.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under part 2612 of this subchapter.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

Net worth means the fair market value of a person liable under section 4062 of

VOL 58 ISS 125 JL 1 1993 UMI

the Act, as determined in accordance with section 4062(d)(1) of the Act and § 2622.4 of this part.

Net worth record date means the day, chosen by the PBGC in accordance with section 4062(d)(1) of the Act and § 2622.5 of this part, as of which the PBGC makes net worth determinations.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 of this subchapter.

* * * * *

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice, in accordance with section 4041 of the Act and part 2616 of this subchapter.

Section 4062(b) liability means, with respect to a single-employer plan terminated under section 4041(c) or section 4042 of the Act, the joint and several liability to the PBGC which is incurred by any person that, on the termination date, is a contributing sponsor of the plan or a member of a contributing sponsor's controlled group; the amount of this liability is determined in accordance with section 4062(b)(1) of the Act and § 2622.3(a) of this part.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Termination date means the date established pursuant to section 4048(a) of the Act.

§ 2622.3 [Amended]

48. Section 2622.3 is revised to read as follows:

§ 2622.3 Amount and payment of section 4062(b) liability.

(a) Amount of liability. (1) General rule. Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of the Act) to all participants and beneficiaries under the plan, together with interest calculated from the termination date in accordance with § 2622.7.

(2) Special rule in case of subsequent finding of inability to pay guaranteed benefits. In any distress termination proceeding under section 4041(c) of the Act and part 2616 of this subchapter in which (as described in section 4041(c)(3)(C)(ii) of the Act), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits (as defined in § 2616.2 of this subchapter), the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) Payment of liability. Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 2622.8(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination, and the PBGC may make alternative arrangements, as provided in § 2622.8(b).

49. The title and paragraph (a) of § 2622.4 are revised to read as follows:

§ 2622.4 Determinations of net worth and collective net worth.

(a) General rules. When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 2622.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 2622.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

* * * * *

50. Paragraphs (b) through (d) of § 2622.4 are amended by removing "an employer" each time it appears and adding, in its place, "a person"; by removing "An employer's" in the introductory text of paragraph (c) and the first sentence of paragraph (d) and adding, in its place, "A person's"; by removing "the employer's" each time it appears and adding, in its place, "the person's"; by removing "the employer" each time it appears and adding, in its place, "the person"; by removing "net record" in paragraph (c)(3) and adding, in its place, "net worth record"; by removing "The employer's" in paragraph (c)(5) and adding, in its place, "The person's"; by removing "proceeding under chapter 11 of the Bankruptcy Code of 1978 (or under chapter XI of the prior Bankruptcy Act)" in paragraph (c)(8) and adding, in its place, "case under title 11, United States Code, or any similar law of a state or political subdivision thereof"; and by removing "employer liability" in the first sentence of paragraph (d) and adding, in its place, "liability". As so revised, paragraphs (b) and (c) and the first sentence of paragraph (d) read as follows:

§ 2622.4 Determinations of net worth and collective net worth.

* * * * *

(b) Partnerships and sole proprietorships. In the case of a person that is a partnership or a sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for the assets included pursuant to paragraph (d) of this section. As used in this paragraph, "personal assets" are those assets which do not produce income for the business being valued or are not used in the business.

(c) Factors for determining net worth. A person's net worth is equal to its fair market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the person's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the person made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the person, made on or about the net worth record date.

(3) If stock in the person is publicly-traded, the price of such stock on or about the net worth record date.

(4) the price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The person's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the person's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the person's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of a person in a case under title 11, United States Code, or any similar law of a state or political subdivision thereof.

(9) Any other factor relevant in determining the person's net worth.

(d) Improper transfers. A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances, and with the effect of avoiding liability under this part. * * *

§ 2622.5 [Amended]

51. Paragraph (a) of § 2622.5 is amended by removing "date of plan termination established pursuant to section 4048 of the Act" and adding, in its place, "'plan's termination date".

52. Paragraph (b) of § 2622.5 is amended by removing everything in the first sentence after "establish" and before the period and adding, in its place, "as the net worth record date an earlier date during the 120-day period ending with the termination date."

53. Paragraph (c) of § 2622.5 is amended by removing "to the employer" in the heading; by removing "the employer" in the first sentence and adding, in its place, "liable person(s)"; and by removing "more information pursuant to § 2622.6(b)" in the second sentence and adding, in its place, "additional information, as provided in § 2622.6(a)(3).

§ 2622.6 [Amended]

54. In § 2622.6, paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (b)(1) through (b)(7), in that order; the introductory text of paragraph (a) is designated as paragraphs (a)(1) through (a)(4) and revised and the introductory text of paragraph (b) is revised; redesignated paragraphs (b)(1) through (b)(7) are amended by removing "The employer's" and adding, in its place, "An" and by removing "its" and adding, in its place, "the person's" in paragraph (b)(1); by removing "five (5)" and adding in its place, "5" and by removing ", and be" and adding, in its place, "and must be" in paragraph (b)(2); by removing "employers" and adding, in its place "person's" in paragraphs (b)(2), (b)(4), (b)(5), and (b)(6); removing "employer" both times it appears and adding, in its place, "the person's" in paragraph (b)(3); and by removing "proceeding under chapter 11 of the Bankruptcy Code of 1978 (or under chapter XI of the prior Bankruptcy Act)" and adding, in its place, "case under title 11, United States Code, or any similar law of a state or political subdivision thereof,", by removing "employer" and adding, in its place, "person", and by removing "five (5)" and adding, in its place, "5" in paragraph (b)(7); and paragraph (c) is revised. As so revised, § 2622.6 reads as follows:

§ 2622.6 Net worth notification and information.

(a) *General.* (1) A contribution sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of the Act, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of the Act, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of the contributing sponsor's controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

(1) An estimate, made in accordance with § 2622.4, of the person's net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the person's audited (or if not available, unaudited) financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position and must be accompanied by the annual reports, if available.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25 percent of the person's assets or at least 5 percent of the person's stock or partnership interest, made on or about the net worth record date.

(4) A statement of the person's current financial condition and business history.

(5) A statement of the person's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisal of the person's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) Incomplete submission. If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further remove from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

55. In § 2622.7, paragraph (d) is removed and the title and paragraphs (a) and (b) are revised to read as follows:

§ 2622.7 Calculating interest on liability and refunds of overpayments.

(a) Interest. Whether or not the PBGC has granted deferred payment terms pursuant to § 2622.8, the amount of

UMI
VOL
58
ISS
125
JL
1
1993
UMI

liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) Refunds. If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the termination date until the date of the refund and is compounded daily.

* * * * *

56. In paragraph (c) of § 2622.7, the first sentence is amended by removing "employer liability and refunds of employer liability" and adding, in its place, "liability under this part and refunds thereof" and by removing "Internal Revenue Code of 1954, as amended," and adding in its place, "Code".

57. The title and paragraphs (a), (b), (c), and (d) of § 2622.8 are revised to read as follows:

§ 2622.8 Arrangements for satisfying liability.

(a) General. The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) Upon request. If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of the Act and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC may, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of the Act at any time by filing a written request. The request must include the information specified in § 2622.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to "the net worth record date" in § 2622.6(b) shall be replaced by "the most recent annual anniversary of the net worth record date"; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) Liability exceeding 30 percent of collective net worth. If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of the Act) for such person's last full fiscal year ending during that year.

(d) Interest. Interest on unpaid liability is calculated in accordance with § 2622.7(a).

* * * * *

58. Paragraph (e) of § 2622.8 is amended by removing "an employer" and adding, in its place, "the liable person(s)".

§ 2622.9 [Amended]

59. The title of § 2622.9 is amended by removing "lien for employer liability" and adding, in its place, "demand for liability; lien".

60. In paragraph (a) of § 2622.9, the first sentence is amended by removing "an employer's liability" and adding, in its place, "the liability", by removing "PBGC shall"and adding, in its place, "the PBGC shall", and by removing "the employer" and adding, in its place, "liable person(s)"; the second sentence is amended by adding "and will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth or persons subject to liability in connection with a plan termination" at the end before the period; and the last sentence is amended by removing "employer's. As so revised, paragraph (a) reads as follows:

§ 2622.9 Notification of and demand for liability; lien.

(a) Notification of liability. Except as provided in paragraph (c) of this section, when the PBGC has determined the amount of the liability under this part and whether or not the liability has already been paid, the PBGC shall notify liable person(s) in writing of the amount of the liability. If the full liability has not yet been paid, the notification will include a request for payment of the full liability and will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. In all cases, the notification will include a statement of the right to appeal the assessment of liability pursuant to Part 2606 of this chapter.

* * * * *

61. Paragraph (b) of § 2622.9 is amended by removing "If the employer fails to pay its" and adding, in its place, "Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the" and by adding as

concluding text of paragraph (b): "The demand letter will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination." As so revised, the introductory text of paragraph (b) reads as follows:

* * * * *

(b) Demand for liability. Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the full liability and no appeal is filed or an appeal is filed and the decision on appeal finds liability, the PBGC will issue a demand letter for the liability——

* * * * *

62. In paragraph (c) of § 2622.9, the first sentence is amended by removing "an employer's after "payment of" and by removing "for an employer's liability" and adding, in its place, "for the liability"; and the last sentence is amended by removing "to appeal of the assessment of liability"and adding, in its place, "to an appeal".

63. Paragraph (d) of § 2622.9 is amended by removing "If the employer" and adding, in its place, "If any person liable to the PBGC under section 4062, 4063, or 4064 of the Act"; by removing "its liability" and adding, in its place, "such liability"; and by removing everything after "arising as of the" and before the period and adding, in its place, "plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of the Act". As so revised, paragraph (D) reads as follows:

* * * * *

(d) Lien. If any person liable to the PBGC under section 4062, 4063, or 4064 of the Act fails or refuses to pay the full amount of such liability within the time specified in the demand letter, the PBGC shall have a lien in the amount of the liability, including interest, arising as of the plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of the Act.

§ 2622.10 [Amended]

64. Paragraph (a) of § 2622.10 is amended by adding "(including information)" after "document" in the introductory text.

65. In paragraph (b) of § 2622.10, the first sentence is amended by removing "employer"; by removing", and shall be sent to the Division of the Treasurer, Office of Financial Operations" and adding, in its place,". Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 2622.9 or, if not so specified, to the address provided, upon request, by the Investment Management Division (Code 33500)"; and by adding "(202–778–8802)" at the end before the period; and the second sentence is amended by adding "(including information)" after "document" and by removing "Office of Program Operations" and adding, in its place, "Insurance Operations Department (Code 41000)". As so revised, the first two sentences of paragraph (b) read as follows:

§ 2622.10 Filing of documents.

* * * * *

(b) Where to file. Payments of liability shall be clearly designated as such and include the name of the plan. Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 2622.9 or, if not so specified, to the address provided, upon request, by the Investment Management Division (Code 33500), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, DC 20006 (202–778–8802). Any document (including information) required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Insurance Operations Department (Code 41000), Pension Benefit Guaranty Corporation, at the above address. * * *

PART 2623—BENEFIT REDUCTIONS IN TERMINATING PLANS; RECOUPMENT AND REIMBURSEMENT

66. The authority citation for Part 2623 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1322, 1322b, 1341(c)(3)(D), and 1344.

67. The title of part 2623 is revised as set forth above.

68. Section 2623.1 is revised to read as follows:

§ 2623.1 Purpose and scope.

(a) Purpose. The purpose of this part is to prescribe procedures that minimize the overpayment of benefits by plan administrators when terminating single-employer plans are not expected to be sufficient for guaranteed benefits and procedures for the recoupment of benefit overpayments from participants and beneficiaries entitled to annuities and the reimbursement of benefit underpayments to participants and beneficiaries in PBGC-trusteed plans.

(b) Scope. Subpart B of this part sets forth the rules for reducing benefit payments after initiating a distress termination; subpart C of this part sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of the Act and provides for reimbursement of benefit underpayments.

§ 2623.2 [Amended]

69. Section 2623.2 is amended by removing the definitions of insufficient plan, Title IV Benefit, section 4041(a) date of termination, and section 4048 date of termination and by adding, in alphabetical order, definitions of distress termination, guaranteed benefit, notice of intent to terminate, PBGC-trusteed plan, proposed termination date, single-employer plan, sufficient for guaranteed benefits, termination date, and title IV benefit to read as follows:

§ 2623.2 Definitions.

* * * * *

Distress termination means the voluntary termination, in accordance with section 4041(c) of the Act and part 2616 of this subchapter, of a single-employer plan.

Guaranteed benefit means a benefit that is guaranteed by the PBGC under section 4022(a) and (b) of the Act and Parts 2613 and 2621 of this chapter.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 or § 2617.22 of this subchapter.

* * * * *

PBGC-trusteed plan means a terminated plan for which the PBGC is appointed trustee under section 4042 of the Act.

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice or the standard termination notice, in accordance with section 4041 of the Act and part 2616 or part 2617 of this subchapter.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

* * * * *

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits (within

VOL 58 ISS 125 JL 1 1993 UMI

the meaning of section 4001(a)(17) of the Act).

Termination date means the date established pursuant to section 4048(a) of the Act.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of the Act and part 2618 of this subchapter.

§ 2623.5 [Amended]

70. The title of § 2623.5 is amended by removing "benefits payable" and adding, in its place, "benefit payments".

71. Paragraph (a) of § 2623.5 is revised to read as follows:

§ 2623.5 Limitations on benefit payments by plan administrator.

(a) General. When, during the pendency of a distress termination proceeding, § 2616.4 of this subchapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

* * * * *

72. Paragraph (b) of § 2623.5 is amended by removing "beginning on the section 4041(a) date of termination" in the first sentence and by adding "or her" after "his" in the second sentence.

73. Paragraph (c) of § 2623.5 is amended by removing "beginning on the section 4041(a) date of termination"; by removing "chapter" and adding, in its place "subchapter"; and by adding ", for the year of the proposed termination date" at the end before the period.

74. Paragraph (d) of § 2623.5 is amended by adding "payments" after "benefit" in the heading and by removing "Beginning on the thirtieth day after the section 4041(a) date of termination, or on the section 4041(a) date of termination if the Notice of Intent to Terminate proposes a date of termination that is more than thirty days after the Notice of Intent to Terminate was filed, a" and adding, in its place, "A".

75. Paragraph (3) of § 2623.5 is removed.

76. Paragraph (f) of § 2623.5 is amended by removing "deadlines and" in the heading; by removing subparagraph (1); by removing the colon after "may" in the introductory text; by removing the designation of paragraph (f)(2) and the word "Authorize" and adding, in its place, "authorize" and, as so amended, paragraph (f) is redesignated as paragraph (e).

77. Paragraph (g) of § 2623.5 is redesignated as paragraph (f) and the examples following the introductory text are revised in their entirety to read as follows:

* * * * *

(f) * * *

Example 1

Facts. On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of $2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (*i.e.*, $1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of Part 2621 of this subchapter. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is $2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 2621.4(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 2621.2. The required benefit reduction for this benefit form under § 2621.4(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 2621.4(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is $1,926.51 ($2,352.27x0.90x0.91) per month. Therefore, the plan administrator must reduce the participant's benefit payment from $2,500 to $1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse $963.26 (0.50x$1,926.51) per month.

Example 2

Facts. The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of $400 per month plus a temporary supplement of $400 per month payable until age 62 (*i.e.*, a step-down benefit). The participant's accrued benefit under the plan is $450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 2621.4(c) of this subchapter is $1,693.63 ($2,352.27×0.72) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 2621.4(d) for benefit form.

Benefit reductions. The plan benefit of $800 per month payable until age 62 exceeds the participant's accrued benefit at normal requirement age of $450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to $450 per month. Since the levelized benefit of $404.10 ((0.082×50)+$400) per month, determined under § 2621.4(f), is less than the adjusted maximum guaranteeable benefit of $1,693.63 per month, no further reduction in the $450 per month benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's estimated benefit under paragraph (d).

Example 3

Facts. A retired participant is receiving a reduced early retirement benefit of $1,100 per month plus a temporary supplement of $700 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $1,200 per month. The maximum guaranteeable benefit adjusted for age is $1,152.61 ($2,353.27×0.49) per month. A form adjustment is not required.

Benefit reductions. The plan benefit of $1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of $1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to $100 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of $1,100 per month and a temporary annuity supplement of $100 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of $100 per month is converted to a level-life annuity equivalent in accordance with § 2621.4(f) of this subchapter. The level-life annuity equivalent is $38.70 ($100×0.387). This, added to the life annuity of $1,100 per month, equals

$1,138.70. Since the maximum guaranteeable benefit of $1,152.61 per month exceeds $1,138.70 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit under paragraph (d). Assume that the estimated benefit under paragraph (d) is $780 per month until age 62 and $715 per month thereafter. The plan administrator would pay the participant $780 per month, reduced to $715 per month at age 62, subject to the final benefit determination made under title IV.

Example 4

Facts. A retired participant is receiving a reduced early retirement benefit of $2,650 per month plus a temporary supplement of $800 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is $1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

Benefit reductions. The plan benefit of $3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is $3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed $3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 2621.4(f) adjustment factor, is $2,785.45 (($350×0.387)+$2,650) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of $1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down benefit form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 37.24 percent ($1,037.35/$2,785.45). Thus, the plan administrator must reduce the participant's level-life benefit of $2,650 per month to $986.86 ($2,650×0.3724) and must further reduce the reduced temporary benefit of $350 per month to $130.34 ($350×0.3724). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is $1,117.20 ($986.86+$130.34) per month to age 62 and $986.86 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is $1,005.48 per month to age 62 and $888.17 per month thereafter. The plan administrator would reduce the participant's benefit from $3,450 per month to $1,005.48 per month and pay this amount until age 62, at which time the benefit payment would be reduced to $888.17 per month, subject to the final benefit determination made under title IV.

§ 2623.6 [Amended]

78. Paragraph (a) of § 2623.6 is amended by removing the last sentence.

79. Paragraph (b) of § 2623.6 is amended by removing "section 4041(a) date of termination" each time it appears (in the heading or the text) and adding, in its place, "proposed termination date"; by removing "was" and adding, in its place, "is" in paragraph (b)(1); and by adding "or her" after "his" in paragraph (b)(2).

80. Paragraph (c) of § 2623.6 is amended by adding "or her" after "his" both times it appears in paragraph (c)(1); by adding "or she"after "he" each time it appears; and by removing "section 4041(a) date of termination" each time it appears in paragraph (c)(2) and paragraph (c)(3) and adding, in its place, "proposed termination date".

81. Paragraph (d) of § 2623.6 is amended by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date" and by adding "or she" after "he" and "or her" after "his" in paragraph (d)(2)(ii).

82. The examples in paragraph (e) of § 2623.6 are revised to read as follows:

§ 2623.6 Estimated guaranteed benefit.

* * * * *

(e) * * *

Example 1

Facts. A participant who is not a substantial owner retired on December 31, 1991, at age 60 and began receiving a benefit of $600 per month. On January 1, 1989, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of 1/180th for each year by which his or her actual retirement age preceded age 65. On January 1, 1992, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 1992. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 1992.

Estimated guaranteed benefit. No reduction is required under § 2623.5 (b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

The amendment as of January 1, 1989, resulted in a "new benefit" because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by 5/12s, which is more than a 20 percent increase. The amendment of January 1, 1992, which increased the participant's benefit to $750 per month, is a "benefit improvement" because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether such an increase is a benefit improvement.)

The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I (because the last new benefit had been in effect for 3 full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the 1-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 (0.55 × $750) per month.

Example 2

Facts. A participant who is not a substantial owner terminated employment on December 31, 1990. On January 1, 1992, she reached age 65 and began receiving a benefit or $250 per month. She had completed 3 years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 1988. Under the schedule in effect before the amendment, a participant with 5 years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 1992.

Estimated guaranteed benefit. No reduction is required under § 2623.5 (b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for 4 full years before the proposed termination date, the second row of Table I is used to determine the applicable multiplier for estimating the amount of the

participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 (0.80 × $250) per month.

Example 3

Facts. A participant who is a substantial owner retired prior to the proposed termination date after 5½ years of active participation in the plan. The benefit under the terms of the plan when he first began active participation was $800 per month. On the proposed termination date of April 30, 1992, he was entitled to receive a benefit of $2000 per month. No reduction of this benefit is required under § 2623.5 (b) or (c).

Estimated guaranteed benefit. Paragraph (d)(2) of this section is used to compute the amount of the estimated guaranteed benefit of substantial owners with 5 or more years of active participation prior to the proposed termination date. Consequently, the amount of this participant's estimated guaranteed benefit is the lesser of—

(i) the amount calculated as if he had been an active participant in the plan for fewer than 5 full years on the proposed termination date, or $333.33 ($2000 × 5/30) per month, or

(ii) the amount to which he would have been entitled as of the proposed termination date under the terms of the plan when he first began participation, as limited by § 2623.5 (b) and (c), multiplied by 2 times the number of years of active participation and divided by 30, or $266.67 ($800 × 2 × 5/30) per month. Therefore, the amount of the participant's estimated guaranteed benefit is $266.67 per month.

§ 2623.7 [Amended]

83. The title of § 2623.7 is amended by removing "Title IV Benefit" and adding, in its place, "title IV benefit".

84. Paragraph (a) of § 2623.7 is amended by removing "Benefit" each time it appears and adding, in its place, "benefit" and by removing the last sentence.

85. Paragraph (b) of § 2623.7 is amended by removing "Benefits" both times it appears in the introductory text and adding, in its place, "benefits" and by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date".

86. Paragraph (c) of § 2623.7 is amended by removing *"Benefit"* in the heading and adding, in its place, *"benefit"*; by removing "Benefit" in the first sentence of the introductory text and adding, in its place, "benefit"; and by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date".

87. Paragraph (d) of § 2623.7 is amended by removing *"Benefit"* in the heading and adding, in its place, *"benefit"* and by adding "or she" after "he" in paragraph (d)(1).

88. The examples in paragraph (e) of § 2623.7 are revised to read as follows:

§ 2623.7 Estimated Title IV benefits.

* * * * *

(e) * * *

Example 1

Facts. A participant who is not a substantial owner was eligible to retire 3½ years before the proposed termination date. The participant retired 2 years before the proposed termination date with 20 years of service. Her final 5 years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 2623.5(b) or (c).

On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final 5 years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1½ percent. The amendments improving benefits were put into effect 3½ years prior to the proposed termination date. There were no other amendments during the 5-year period.

The participant's estimated guaranteed benefit computed under § 2623.8(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 2623.6(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the title IV benefit.

Estimated title IV benefit. For a participant who is not a substantial owner, the amount of the estimated title IV benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of (i) the normal retirement benefit under the provisions of the plan in effect 5 years before the proposed termination date and (ii) the normal retirement benefit under the plan provisions in effect on the proposed termination date.

Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan 5 years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated title IV benefit is $1,125 (0.015/0.020×$1,500) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 2623.5(d), the benefit payable to the participant is $1,350 per month.

Example 2

Facts. A participant who is a substantial owner retires at the plan's normal retirement age, having completed 5 years of active participation in the plan, on October 31, 1992, which is the proposed termination date. Under provisions of the plan in effect 5 years prior to the proposed termination date, the participant is entitled to a single life annuity of $500 per month. Under the most recent plan amendments, which were put into effect 1½ years prior to the proposed termination date, the participant is entitled to a single life annuity of $1,000 per month. The participant's estimated guaranteed benefit computed under § 2623.6(d)(2) is $166.67 per month.

It is assumed that all of the conditions in paragraph (b) of this section have been met Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

Estimated title IV benefit. Paragraph (d) of this section provides that the amount of the estimated title IV benefit payable with respect to a participant who is a substantial owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

Under paragraph (c), the participant's estimated priority category 3 benefit is $500 ($1,000×$500/$1000) per month.

Under paragraph (d), the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 2623.6(c) (*i.e.*, as if the participant were not a substantial owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i). The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 2623.6(c) is $1,000 per month times 0.90 (the factor from column (b) of Table I in § 2623.6(c)(2)), or $900 per month. Multiplying $900 by the category 4 funding ratio of 2/3 (($2 million—$1.5 million)/$0.75 million) produces an estimated category 4 benefit of $600 per month.

Because the estimated category 4 benefit so computed is greater than the estimated category 3 benefit so computed, the estimated category 4 benefit is the estimated title IV benefit. Because the estimated category 4 benefit so computed is greater than the estimated guaranteed benefit of $166.67 per month, in accordance with § 2623.5(d), the benefit payable to the participant is the estimated category 4 benefit of $600 per month.

§ 2623.8 [Removed]

89. Section 2623.8 is removed.

§ 2623.11 [Amended]

90. Paragraph (a) of § 2623.11 is amended by removing "terminated insufficient plan" in the first sentence and adding, in its place, "PBGC-trusteed plan"; by removing "he or his" the first time it appears in the first sentence and adding, in its place, "the participant or his or her"; by removing "he or his" the second time it appears in the first sentence and adding, in its place, "the participant or beneficiary"; by removing "recoupment under" and adding, in its place, "recouping in accordance with the rules in" in the second sentence; and by removing "section 4048 date of termination" and adding, in its place, "termination date" in the last sentence.

91. Paragraph (b) of § 2623.11 is amended by removing "terminated insufficient plan" and adding, in its place, "PBGC-trusteed plan" and by removing "he or his" and adding, in its place, "the participant or his or her".

92. Paragraph (c) of § 2623.11 is amended by removing everything after "on or after the latest of" and before "the date on which" and adding, in its place, "the proposed termination date, the termination date, or, if no notice of intent to terminate was issued,".

2623.12 [Amended]

93. Paragraph (a) of § 2623.12 is amended by removing "section 4048 date of termination" in paragraph (a)(1) and adding, in its place, "termination date" and by adding "or her" after "him" in paragraph (a)(3).

Issued in Washington, DC, this 25th day of June, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–15431 Filed 6–30–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AA22

Treasury Tax and Loan Depositaries, Depositaries for Federal Taxes

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This document revises the regulations found at 31 CFR part 203, Treasury tax and loan depositaries, to more accurately reflect current practices, expand certain sections to clarify their intent, incorporate related regulations that currently appear in part 214, and correct a number of editorial errors in the text.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Galligan, Director of the Cash Management Policy and Planning Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6590.

SUPPLEMENTARY INFORMATION: The intent of this rule is to amend by revising the regulations to more accurately reflect current practices. The Notice of Proposed Rulemaking was published on October 27, 1992. There are no substantive differences between the proposed rule and the final rule. No comments on the proposed rule were received. The changes being made and the reasons for them are:

1. Amend §§ 203.1 and 214.7(a)(2) by removing references to certain U.S. obligations. Remove §§ 203.5(a), 203.9(c)(1) and 203.9(c)(3). In a news release dated August 29, 1989, Treasury announced depositaries no longer are allowed to credit payment for public debt securities and U.S. Savings Bonds to the note account.

2. Add three new definitions for clarification: § 203.2(c) *Delivery of advices of credit*, § 203.2(d) *Depositary*, and § 203.2(1) *Procedural Instructions for Treasury Tax and Loan Depositaries*. Redesignate the remaining subsections accordingly. Correct the name of the Federal Reserve publication referenced at § 203.2(f) [formerly § 203.2(d)].

3. Revise § 203.2(k) [formerly § 203.2(i)] and § 203.14(a)(2) [formerly § 203.15(a)(2)] relating to collateral for special direct investments (SDIs). The types of collateral eligible for SDIs have been expanded.

4. Remove reference to the Federal Savings and Loan Insurance Corporation at § 203.2(m) [formerly § 203.2(j)] and § 203.3(b)(1)(ii) [formerly § 203.3(b)(1)(i)(B)]. Federal insurance for savings and loans now is provided by the Federal Deposit Insurance Corporation.

5. Revise § 203.3 referring to designation of Treasury tax and loan depositaries to make it more readable.

6. Remove § 203.5(b) and redesignate the regulations governing the processing of Federal tax deposits (FTDs) by depositaries and Federal Reserve Banks at §§ 214.6(a) and 214.7, respectively, as § 203.5. Remove part 214 from title 31. Regulations implemented in November 1978 require depositaries for Federal taxes to credit all Federal tax deposits to a Treasury tax and loan account. This regulatory change made a separate part in the CFR for depositaries for Federal taxes unnecessary.

7. Revise § 203.9 (Note Option) to make it consistent with § 203.10 (Remittance Option), which also is being revised.

8. Revise §§ 203.9(g) [formerly § 203.9(f)] and 203.14(a)(1) [formerly § 203.15(a)(1)] relating to maximum balances and the collateral requirements for note option depositaries. Effective October 3, 1991, note option depositaries are required to establish a maximum balance and, except for depositaries participating in direct investments, note option depositaries must fully collateralize their maximum balance at all times. This action was taken to reduce the number of potential collateral deficiencies, and thereby reduce Treasury's exposure to risk.

9. Remove § 203.10(b)(2)(ii) (analysis credits) and § 203.10(b)(2)(iii) (excessive flow). All Remittance Option depositaries now are treated the same with regard to the assessment of late fees.

10. Remove § 203.11. Redesignate the remaining sections accordingly. All special depositaries have been redesignated as Treasury tax and loan depositaries. Thus, a depositary which, as of the close of business in November 1, 1978, was authorized to maintain a tax and loan account, may elect to administer this account under the Note Option or the Remittance Option. If no election is made, the depositary will be presumed to be administering the account under the Remittance Option.

11. Remove specific collateral values at § 203.14(d) [formerly § 203.15(d)], to provide Treasury and the Federal Reserve more flexibility in valuing certain securities.

12. Remove the reference to the time to maturity of collateral covered at § 203.14(d)(9) [formerly § 203.15(d)(9)], to expand the pool of eligible collateral.

13. Make various corrections to grammar, punctuation, and lettering.

Treasury tax and loan depositaries have been advised of the changes referred to in numbers 1, 3, 8, 9, and 12 above directly by the Federal Reserve Banks. The corresponding sections of the Procedural Instructions for Treasury Tax and Loan Depositaries, issued by the Financial Management Service, have been updated.

This rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, and a regulatory impact analysis is not required. As explained above, this revision merely updates and clarifies existing practices. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a

VOL 58 ISS 125 JL 1 1993 UMI

regulatory flexibility analysis is not required. For the reasons previously explained, this revision will have very little or no impact on the way financial institutions affected by it conduct their affairs.

List of Subjects in 31 CFR Part 203

Banks, Banking, Taxes.

For the reasons set out in the preamble, title 31, part 203 of the Code of Federal Regulations, is revised as set forth below.

PART 203—TREASURY TAX AND LOAN DEPOSITARIES

Subpart A—General Information

Sec.
203.1 Scope.
203.2 Definitions.
203.3 Designation of financial institutions as Treasury tax and loan depositaries.
203.4 Sources of deposits.
203.5 Deposits of Federal taxes.
203.6 Parties to the contract.
203.7 Obligations of the depositary.

Subpart B—Options

203.8 General requirement.
203.9 Note option.
203.10 Remittance option.
203.11 Change of options.

Subpart C—Interest and Compensation

203.12 Rate of interest.
203.13 Compensation for services.

Subpart D—Collateral Security

203.14 Collateral security requirements.

Subpart E—Miscellaneous Provisions

203.15 Termination of contract.
203.16 Implementing instructions.
203.17 Effective date.

Authority: 31 U.S.C. 3122, 31 U.S.C. 323, 12 U.S.C. 265 and 12 U.S.C. 391.

Subpart A—General Information

§ 203.1 Scope.

The regulations in this part govern the designation of Treasury tax and loan depositaries and their contract with the Treasury Department to process deposits of Federal taxes and to maintain and administer separate accounts to be known as Treasury tax and loan accounts.

§ 203.2 Definitions.

As used in this part:

(a) *Advices of credit* means those Treasury forms which are supplied to depositaries to be used in supporting credits to Treasury tax and loan accounts.

(b) *Business day* means any day on which the Federal Reserve Bank of the district is open to the public.

(c) *Delivery of advices of credit* to the Federal Reserve Bank means delivery of the paper advice of credit form or electronic delivery by Fedline or Voice Response of the information on the advice of credit form.

(d) *Depositary* means a Treasury tax and loan depositary.

(e) *Election of option form* means a document supplied by the Federal Reserve Bank of each district, on which a depositary indicates the option under which it will administer its Treasury tax and loan account.

(f) *Federal funds rate* means the weekly Federal funds rate as published in the Federal Reserve Statistical Release, "H.15 Selected Interest Rates," which is published weekly by the Board of Governors of the Federal Reserve System.

(g) *Federal Reserve Bank of the district* means the Federal Reserve Bank which services the geographical area in which the depositary is located. Depositaries located in Puerto Rico, the Virgin Islands, and the Panama Canal Zone are included in the Second Federal Reserve District.

(h) *Federal tax deposit form* means a preinscribed form supplied to a taxpayer by the Treasury Department to accompany deposits of Federal taxes.

(i) *Federal taxes* means those Federal taxes specified by the Secretary of the Treasury or the Secretary's delegate as eligible for payment through the procedures prescribed in this part.

(j) *Note Option* means that choice available to a depositary under which funds debited from its Treasury tax and loan account are added by the Treasury to its investments in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note maintained at the Federal Reserve Bank of the district.

(k) *Off premises collateral arrangement* means a collateral custody arrangement established pursuant to § 203.14(c)(2) of this part wherein a depositary is permitted to hold in its possession for the Federal Reserve Bank collateral security for funds invested with the depositary as special direct investments.

(l) *Procedural Instructions for Treasury Tax and Loan Depositaries* means Volume IV of the Treasury Financial Manual, published by the Financial Management Service.

(m) *Recognized insurance coverage* means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund and insurance provided by insurance organizations specifically qualified by the Secretary of the Treasury pursuant to 31 CFR part 226.

(n) *Remittance Option* means that choice available to a depositary under which funds equivalent to the amount of deposits credited by the depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank immediately upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits.

(o) *Reporting cycle* means the time period established for reporting and computation purposes. A reporting cycle begins on the first Thursday of each month and ends on the Wednesday preceding the first Thursday of the following month.

(p) *Reserve account* means that account every member of the Federal Reserve System maintains at the Federal Reserve Bank of its district for reserve purposes pursuant to 12 CFR part 204.

(q) *Special depositary* means a depositary that had been designated under the provisions of 31 CFR part 203 prior to November 2, 1978. A depositary thereafter designated under this part shall be known as a Treasury tax and loan depositary.

(r) *Special direct investment* means the type of addition to a depositary's note account referred to in § 203.9(d) of this part, where the addition specifically is identified as a "special direct investment" and is secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.14(c)(2) of this part.

§ 203.3 Designation of financial institutions as Treasury tax and loan depositaries.

(a) *Previously authorized depositaries.* A special depositary which, at the close of business on November 1, 1978, was authorized to maintain a Treasury tax and loan account is hereby redesignated as a Treasury tax and loan depositary and subject to the provisions of the current part 203.

(b) *New designations.* In order to be designated as a Treasury tax and loan depositary, a financial institution is required to possess under its charter either general or specific authority permitting the maintenance of the Treasury tax and loan account, the balance of which is payable on demand without previous notice of intended withdrawal. A financial institution also is required to possess the authority to pledge collateral to secure Treasury tax and loan balances.

(1) *Eligible institutions.*

(i) Every incorporated bank and trust company in the United States, Puerto Rico, the Virgin Islands, every United States branch of a foreign banking corporation authorized by the State in which it is located to transact commercial banking business, and every Federal branch of a foreign banking

corporation, the establishment of which has been approved by the Comptroller of the Currency.

(ii) Every financial institution insured by the Federal Deposit Insurance Corporation.

(iii) Every credit union insured by the Administrator of the National Credit Union Administration.

(iv) Every savings and loan, building and loan, homestead association and credit union, created under the laws of any State, the deposits or accounts of which are insured by a State or agency thereof, or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of such financial institutions.

(2) *Application Procedures.* An eligible financial institution seeking designation as a depositary and, thereby, the authority to maintain a Treasury tax and loan account shall file with the Federal Reserve Bank of the district Financial Management Service Form 458 "Financial Institution Offer to Contract and Application for Designation as a Treasury Tax and Loan Depositary" and Financial Management Service Form 459 "Resolutions Authorizing the Financial Institution Offer to Contract and Application for Designation as a Treasury Tax and Loan Depositary" certified by its board of directors. Financial Management Service Forms 458 and 459 are available upon request from the Federal Reserve Bank of the district.

(3) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the Federal Reserve Bank of the district notification of its specific designation as a Treasury tax and loan depositary. A financial institution is not authorized to maintain a Treasury tax and loan account until it has been designated as a Treasury tax and loan depositary by the Federal Reserve Bank of the district.

§ 203.4 Sources of deposits.

A depositary shall credit to its Treasury tax and loan account deposits of Federal taxes and any public funds due to Treasury from the depositary and authorized by the Secretary of the Treasury by regulation to be paid by crediting the tax and loan account.

§ 203.5 Deposits of Federal taxes.

(a) *Deposits with depositaries.* A depositary shall, through any of its offices that accept deposits:

(1) Accept from a taxpayer cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes when accompanied by a Federal tax deposit form on which the amount of the deposit has been properly entered in the space provided. A depositary may accept, at its discretion, a check drawn on another financial institution, but it does so purely on a voluntary basis and absorbs for its own account any float involved.

(2) Issue a counter receipt when requested to do so by a taxpayer who makes a deposit of Federal taxes in cash over the counter.

(3) Place a stamp impression on the face of each Federal tax deposit form in the space provided, regardless of the form of payment. The stamp shall reflect the date on which the tax deposit was received and the name and location of the depositary. The timeliness of the tax payment will be determined by reference to the date stamp on the Federal tax deposit form.

(4) Credit on the date of receipt all deposits of Federal taxes to the Treasury tax and loan account and administer that account pursuant to the provisions of this part.

(5) Forward each day to the Internal Revenue Service Center servicing the geographical area in which the depositary is located the Federal tax deposit forms for all tax deposits received that day. Each submission of deposit information shall be on the prescribed Treasury form and in the aggregate amount of the Federal tax deposit forms.

(6) Establish an adequate record of all deposits of Federal taxes prior to transmittal to the Internal Revenue Service Center so the depositary will be able to identify deposits in the event tax deposit forms are lost in shipment between it and the Internal Revenue Service Center. For tracking purposes, a record shall be made of each deposit showing as a minimum the date of deposit, the taxpayer's identifying number and the amount of the deposit. The depositary's copies of transmittal letters may be used to provide the necessary information if individual deposits are listed separately showing date, taxpayer's identifying number and amount.

(7) Not accept compensation from taxpayers for accepting deposits of Federal taxes and handling them as required by this section.

(b) *Deposits with Federal Reserve Banks.* A Federal Reserve Bank shall, through any of its offices:

(1) Accept a tax deposit directly from a taxpayer when such tax deposit is:

(i) Mailed or delivered by a taxpayer located within that Bank's territorial boundaries; and

(ii) In the form of cash, a check drawn to the order of that Bank and considered to be an immediate credit item by that Bank, a postal money order drawn to the order of the Bank; and,

(iii) Accompanied by a Federal tax deposit form on which the amount of the tax deposit has been properly entered in the space provided.

(2) When requested to do so by a taxpayer who makes a deposit of Federal taxes in cash over the counter issue a counter receipt.

(3) When a deposit of Federal taxes is made in accordance with the requirements of paragraph (a) of this section, a Bank shall place in the space provided on the face of each Federal tax deposit form accepted directly from a taxpayer, a stamp impression reflecting the name of the Bank and the date on which the tax deposit was received by the Bank so that the timeliness of the Federal tax payment can be determined. However, if such a deposit is mailed to a Bank, it shall be subject to the "Timely Mailing treated as timely filing and paying" clause of section 7502 of the Internal Revenue Code (26 U.S.C. 7502).

(4) When a deposit of Federal taxes is not in accordance with the requirements governing form of payment set forth in paragraph (a) of this section, a Bank shall place in the space provided on the face of each Federal tax deposit form a stamp impression reflecting the name of the Bank and the date on which the proceeds of the accompanying payment instrument are collected by the Bank. This date shall be used for the purpose of determining the timeliness of the Federal tax payment.

§ 203.6 Parties to the contract.

A financial institution which is designated as a Treasury Tax and Loan depositary enters into a depositary contract with the Department of the Treasury. The parties to this contract are the Treasury, acting through the Federal Reserve Banks as fiscal agents of the United States, and each financial institution designated under § 203.3. The terms of the contract include all of the provisions of this part.

§ 203.7 Obligations of the depositary.

A depositary shall:

(a) Administer a Treasury tax and loan account in accordance with this part and any amendments or supplements thereto, and instructions issued pursuant thereto, including the Procedural Instructions for Treasury Tax and Loan Depositaries.

(b) Comply with the requirements of section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (3 CFR, 1964–1965 Comp.

p. 339), as amended by Executive Order 12086 (3 CFR, 1978 Comp. p.230), and the regulations issued thereunder at 41 CFR chapter 60, as amended. The Secretary of the Treasury may terminate the contract with a depositary for failure to comply with the terms of the contract set forth in this section relating to equal employment opportunity.

(c) Comply with the requirements of section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, and the regulations issued thereunder at 41 CFR parts 60–741, requiring Government contractors to take affirmative action to employ qualified handicapped individuals, and

(d) Comply with the requirements of section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701, and the regulations issued thereunder at 41 CFR parts 60–250, for the promotion of employment of disabled and Vietnam era veterans.

Subpart B—Options

§ 203.8 General requirement.

A Treasury tax and loan depositary shall administer its Treasury tax and loan account under either the Note Option or the Remittance Option.

§ 203.9 Note Option.

(a) *Classes.* Depositaries electing this option will be subdivided into Note Option Class A, B, or C depending upon the volume of deposits credited to their tax and loan accounts during the previous calendar year, as specified in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(b) *Additions.* The Treasury will invest funds in obligations of depositaries selecting the Note Option. Such obligations shall be in the form of open-ended notes and additions and reductions will be reflected on the books of the Federal Reserve Bank of the district. A depositary electing the Note Option shall debit, as of the first business day after crediting deposits to its tax and loan account, its tax and loan account in the amount of such deposits and simultaneously credit the note thereby reflecting an increase in like amount in Treasury's investment in obligations of the depositary.

(c) *Delivery.* A depositary administering its tax and loan account under the Note Option shall forward at the close of business each day its advices of credit for that day to the Federal Reserve Bank of the district via the most expeditious means reasonably available. This may include the U.S. Postal Service, in instances where the depositary does not use a faster method for other documents (e.g., checks) being remitted to the Federal Reserve Bank or Branch city.

(d) *Other Additions.* Other funds from the Treasury's operating cash may be offered from time to time to certain Note Option depositaries. Each such Note Option depositary shall have the opportunity to decide whether to receive from the Treasury such additional investments in its notes.

(e) *Withdrawals.* The amount of the note shall be payable on demand without previous notice. Calls for payment on the note will be by direction of the Secretary of the Treasury through the Federal Reserve Banks. A depositary shall arrange for the payment of calls on the payment date specified in the calls by a charge to the reserve account of the depositary or the reserve account of a member bank correspondent.

(f) *Interest.* A note shall bear interest at the rate specified in § 203.12. Such interest is payable monthly by a charge to the reserve account of the depositary or through the reserve account of a member bank correspondent. Specific details about the computations of the amount of interest due, the means of payment, payment dates, Federal Reserve Bank responsibilities, and other related details are described in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(g) *Maximum balance.* A depositary selecting the Note Option shall establish a maximum balance for its note account by providing notice to that effect in writing to the Federal Reserve Bank of the district. That portion of any advice of credit which, when posted at the Federal Reserve Bank, would cause the note balance to exceed the amount specified by the depositary will be withdrawn automatically by the Federal Reserve Bank. The maximum balance applies to that portion of the note account balance which is secured by collateral deposited in accordance with § 203.14(c)(1) with either Federal Reserve Banks or authorized third party custodians. Special direct investments, which are secured by collateral held by the depositary in accordance with § 203.14(c)(2) under off premises custody arrangements, shall not be considered in determining the amounts to be withdrawn automatically where a depositary's maximum balance is exceeded.

§ 203.10 Remittance Option

(a) *Remittance Option classes.* Depositaries electing this option will be subdivided into Remittance Option Class 1 or 2 depending upon the volume of deposits credited to their tax and loan accounts during the previous calendar year, as specified in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(b) *Delivery.* A Remittance Option depositary shall establish and maintain procedures to ensure timely delivery of its advices of credit at the Federal Reserve Bank of the district prior to the Federal Reserve Bank's cutoff time for processing such credits the next business day after the date of credit.

(c) *Late fee.* If an advice of credit does not arrive at the Federal Reserve Bank before the designated cutoff hour for receipt of such advices, a late fee in the form of interest at the rate specified at § 203.12 will be assessed for each day's delay in receipt of such advice. Such late fee assessments will be effected on a monthly basis through a depositary's reserve account or the reserve account of a member bank correspondent. Specific details and procedures are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(d) *Withdrawals.* For a depositary selecting the Remittance Option, funds equivalent to the amount of deposits credited by a depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits. A depositary shall arrange for the payment of withdrawals by an immediate charge to its reserve account or the reserve account of a member bank correspondent.

§ 203.11 Change of options.

A depositary is subject to the provisions of the option it has selected until such time as it provides notice to the Federal Reserve Bank requesting a change of option and receives formal notification from the Federal Reserve Bank of the effective date of the change of option. Specific details regarding changes of option are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

Subpart C—Interest and Compensation

§ 203.12 Rate of interest.

The rate of interest to be used in connection with the Note Option and the Remittance Option will be equal to the Federal funds rate less twenty-five basis points (i.e., ¼ of 1 percent). Details about the computation are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

§ 203.13 Compensation for services.

Except as provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, depositaries will not be

compensated for servicing the tax and loan account or for the bookkeeping costs of maintaining that account.

Subpart D—Collateral Security

§ 203.14 Collateral security requirements.

(a) *Note Option.*

(1) Before crediting deposits to its Treasury tax and loan account, a Note Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d) and (e) of this section in an amount that is sufficient to cover the sum of 100 percent of the pre-established maximum balance for the note account (see § 203.9(g) of this part), and the closing balance in its Treasury tax and loan account which exceeds recognized insurance coverage, minus the amount of the note balance attributable to special direct investments.

(2) Before special direct investments are credited to a depositary's note account, a Note Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(2) and (e) of this section, and in accordance with the instructions provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance Option.* Prior to crediting deposits to its Treasury tax and loan account, a Remittance Option depositary shall pledge collateral security in accordance with the requirements of paragraph (c)(1), (d), and (e) of this section in an amount which is sufficient to cover the maximum balance in the tax and loan account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.*

(1) Collateral security required under paragraphs (a)(1) and (b) of this section shall be deposited with the Federal Reserve Bank of the district, or with a custodian or custodians within the United States designated by the Federal Reserve Bank, under terms and conditions prescribed by the Federal Reserve Bank.

(2)(i) Collateral security required under paragraph (a)(2) of this section shall be pledged under a written security agreement on a form provided by the Federal Reserve Bank of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(2) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged under that agreement shall be provided by the depositary to the Federal Reserve Bank of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance written approval of the Federal Reserve Bank of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the Federal Reserve Bank of the district.

(ii) Treasury's security interest in collateral security pledged by a depository in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without the Treasury's taking possession of the collateral security for a period of not to exceed 21 days from the day of receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary of the Treasury, collateral security pledged under this section may be transferable securities of any of the classes listed below. Collateral will be accepted at values assigned by the Federal Reserve Bank of the district.

(1) Obligations issued or fully insured or guaranteed by the United States or any U.S. Government agency, and obligations of Government-sponsored corporations which under specific statute may be accepted as security for public funds.

(2) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank.

(3) Obligations partially insured or guaranteed by any U.S. Government agency.

(4) Notes representing loans to students in colleges or vocational schools which are insured either by Federal insurance or by a State agency or private nonprofit institution or organization administering a student loan insurance program in accordance with a formal agreement with the Commissioner of Education under the provisions of the Higher Education Act of 1965, as amended, 20 U.S.C. 1001, or the National Vocational Student Loan Insurance Act of 1965, as amended, 20 U.S.C. 981.

(5) Obligations issued by States of the United States.

(6) Obligations of Puerto Rico.

(7) Obligations of counties, cities, and other governmental authorities and instrumentalities which are not in default as to payments on principal or interest.

(8) Obligations of domestic corporations which may be purchased by banks as investment securities under the limitations established by Federal bank regulatory agencies.

(9) Commercial and agricultural paper and bankers' acceptances approved by the Federal Reserve Bank of the district.

(10) Zero-coupon obligations of the U.S. Treasury and the Resolution Funding Corporation.

(e) *Assignment of securities.* A tax and loan depositary that pledges securities which are not negotiable without its endorsement or assignment may furnish, in lieu of placing its unqualified endorsement on each security, an appropriate resolution and irrevocable power of attorney authorizing the Federal Reserve Bank to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the Federal Reserve Bank shall prescribe.

(f) *Effecting payments of principal and interest on securities pledged as collateral subsequent to the insolvency of a depositary.*

(1) *General.* In the event of the depositary's insolvency or closure, or in the event of the appointment of a receiver, conservator, liquidator or other similar officer to terminate its business, the depositary agrees that all principal and interest payments on any security pledged to protect the note account (if applicable) and the Treasury tax and loan account, due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.*

(i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the Federal Reserve Bank of the district, as fiscal agent of the United States, and in any event shall so remit no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section shall make each payment of principal and/or interest

VOL 58 ISS 125 JL 1 1993 UMI

due with respect to such security directly to the Federal Reserve Bank of the district, as fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2) (i) and (ii) of this section are hereby waived for only so long as a pledging depositary remains solvent. The foregoing waiver is terminated without further action immediately upon insolvency of a pledging depositary or, if earlier, upon notice by the Treasury or the Federal Reserve Bank of the district of such termination. For purposes of this paragraph, a depositary is insolvent when, voluntarily or by action of competent authority, it is closed because of present or prospective inability to meet the demands of its depositors or shareholders.

Subpart E—Miscellaneous Provisions

§ 203.15 Termination of contract.

(a) *Termination by the Treasury.* The Secretary of the Treasury may terminate the contract of a depositary at any time upon notice to that effect to that depositary effective on the date set forth in the notice.

(b) *Termination by the depositary.* A depositary may terminate its depositary contract by submitting notice to that effect in writing to the Federal Reserve Bank of the district effective at a prospective date set forth in the notice.

§ 203.16 Implementing instructions.

A Federal Reserve Bank is authorized to issue instructions consistent with these regulations for carrying out the requirements of this part that shall be binding upon depositaries located in its district.

§ 203.17 Effective date.

This revision of this part is proposed to be effective on August 2, 1993.

Russell D. Morris,

Commissioner.

[FR Doc. 93–14802 Filed 6–30–93; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA17

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Partial Hospitalization

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes a CHAMPUS benefit for partial hospitalization and makes corrections and clarifications on other mental health issues resulting from implementation of recent legislative changes. The partial hospitalization benefit is being added at the request of Congress to improve the availability of mental health services under CHAMPUS. The intent is to provide a needed service at a lower cost than the full hospitalization rate, and allow more efficient use of resources for needed mental health care. Facilities must be certified and enter into a participation agreement with CHAMPUS and obtain the required preauthorization prior to admitting CHAMPUS patients. Applications for facility approval may be obtained from the Director, OCHAMPUS, or a designee.

EFFECTIVE DATE: September 29, 1993.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, M.P.A., B.S., Health Care Policy Analyst, Program Development Branch, OCHAMPUS, telephone (303) 361–1178.

SUPPLEMENTARY INFORMATION: On July 8, 1991, CHAMPUS published a proposed rule regarding a number of mental health program changes, including establishment of a partial hospitalization benefit (**Federal Register** Vol. 56, No. 130). A partial hospitalization benefit has been the subject of study by OCHAMPUS for a number of years. The Department of Defense is committed to providing CHAMPUS beneficiaries with the most clinically appropriate and cost-effective mental health services available. We believe that partial hospitalization is a clinically appropriate treatment modality that will be an important enhancement to the available continuum of care in the CHAMPUS mental health program. We also believe that utilization management protocols now in place can effectively ensure the cost-effectiveness of this new benefit.

Included with this final rule are some modifications to the mental health policy resulting from publication of prior amendments and several technical revisions. They are as follows:

- Making a conforming amendment to increase the time allotted for development of a master treatment plan for acute care admissions from 72 hours to 5 days, as agreed upon in the final rule on mental health care published October 18, 1991 (**Federal Register** Vol. 56, No. 202). The number of days was changed in the final rule as a result of public comment, but the change was not reflected in a subsequent issuance on medical documentation published November 26, 1991 (**Federal Register** Vol. 56. No. 228). This rule revises the medical documentation provision § 199.7(b)(3)(iv)(B)(5), to conform to the current Program benefits provision (§ 199.4(b)(6)(iii)).
- Adding a series of technical revisions to § 199.6(b)(4)(x) to change the terminology referring to certain limited scope institutional providers as "specialized treatment facilities." The revision adopts the new term "special institutional providers" for these facilities in order to avoid confusion with a new DoD program called the Specialized Treatment Services Program, which involves the designation of certain military or civilian hospitals for concentration on organ transplants and certain other highly specialized medical or surgical procedures.

Following is a discussion of the comments we received regarding partial hospitalization, and the action we are taking in response.

1. Hospital-Based Programs Versus Freestanding

Proposed rule. The proposed rule established partial hospitalization programs as Specialized Treatment Facilities. It also limited partial hospitalization programs to those which are hospital-based. The following comments were received on this issue:

Comment 1A. One professional association provided information concerning section 4162, Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), November 5, 1990, amending the Social Security Act to establish partial hospitalization in community mental health centers as a Medicare benefit and provider category effective October 1, 1991. Prior to passage of the law, partial hospitalization services were covered only if the program was hospital-based or hospital affiliated.

Comment 1B. One nationally recognized association strongly objected to the exclusion of the appropriately accredited free-standing partial hospitalization program in this benefit. The commenter felt such an approach would impede development of new facilities by restricting the benefit to hospital-owned programs and be anti-competitive. The commenter indicated that no data is available which would indicate that quality of care or treatment effectiveness is less in the freestanding facility than in the hospital-based

program. Free-standing facilities are accredited under the Consolidated Standards Manual by JCAHO (now referred to as the Mental Health Manual); because the accreditation process surveys the freestanding facility as a single service unit, the survey is typically more detailed and intensive than the accreditation of a partial hospital component of a hospital system, which is surveyed as only one component among many in the hospital system.

Comment 1C. A national professional association supported expanding the benefit to include freestanding community mental health programs.

Comment 1D. A professional who has worked in day programs commented that limiting coverage to hospital-based programs limits access to the treatment which has proven cost-effective. She relayed that there are many freestanding providers who offer comparable services.

Comment 1E. One organization that operates several day care programs protested the exclusion of free-standing independent providers from reimbursement. The commenter objected stating that to exclude from CHAMPUS reimbursement all programs which are not hospital-based deprives patients from access to some of the most cost-effective, quality programs in the field. The commenter stated that determination of reimbursement eligibility should depend upon compliance with CHAMPUS criteria, in addition to state licensing and accreditation.

Comment 1F. One commenter wrote objecting to the fact that the proposal limited coverage to hospital-based partial programs. He indicated this would ensure that partial day programs would be used only as a last resort after more costly inpatient facilities and benefits have been exhausted. The commenter felt that inpatient providers have an obvious conflict of interest that is clearly to the detriment of partial day programs. The commenter indicated he appreciated the many quality concerns, but felt they could be easily addressed through regulations and accreditation guidelines.

Comment 1G. One partial hospital day program wrote objecting to the exclusion of free-standing providers from reimbursement, stating that JCAHO accreditation process takes 3 days to complete in a freestanding facility (Mental Health Manual standards) versus a walk through of partial facilities which are attached to a hospital (general hospital standards). The commenter pointed out that CHAMPUS currently provides coverage for alcohol rehabilitation in a freestanding, independent setting. The commenter requested that all programs meet demanding standards in terms of state licensure and accreditation to ensure efficient and cost-effective delivery of high quality day treatment.

Comment 1H. A residential treatment center (RTC) commented that RTC based partial programs can be utilized both as an alternative to residential treatment and as a means of shortening lengths of stays in RTCs. The commenter opined that keeping children in their homes with their families and out of hospitals is worthy of inclusion in the partial benefit and would result in savings from the reduced daily rate.

Comment 1I. Several comments recommended CHAMPUS recognize freestanding facilities as a primary method of hospital treatment, rather than a "step-down," to have success in cost containment efforts.

Comment 1J. One commenter stated by restricting coverage to only those programs that are hospital-based, well qualified programs that are possibly even more cost-effective are being excluded

Comment 1K. Two commenters supporting free-standing programs recommended quality be controlled by state certification and JCAHO standards.

Comment 1L. One commenter said that freestanding partial programs provided a unique perspective on the provision of services as an alternative to inpatient treatment rather than a transitional modality. Hospital-based programs, by design, may be structured without such intensity so as not to compete with their more lucrative inpatient programs. The commenter urged CHAMPUS to include freestanding programs for coverage and use regulatory requirements such as licensure and accreditation to monitor quality.

Response: Based on the above comments, CHAMPUS is allowing freestanding facilities to become authorized as CHAMPUS providers of partial hospitalization services and requiring that all partial hospitalization programs, whether freestanding or hospital-based, be accredited under the JCAHO Mental Health Manual (formerly Consolidated Standards). Rather than exclude hospital-based or freestanding providers from the CHAMPUS partial hospitalization program, we feel the quality of each program seeking CHAMPUS authorization should be evaluated on the quality of its program and not its organizational form. Extending provider eligibility will help promote beneficiary accessibility to partial hospitalization programs. Recognizing freestanding providers is consistent with the philosophy that partial hospitalization programs are a more appropriate treatment alternative to inpatient care for many patients, other than just as a step-down option following an inpatient stay.

2. Limit of 60 Days per Fiscal Year of Partial Hospitalization

Proposed rule. The proposed rule established a 60-day limit for partial hospitalization services, without waiver.

Comment 2A. One nationally recognized professional organization strongly recommended that partial hospitalization benefits should be linked to inpatient limits at a ratio of two days of partial hospitalization per one day of inpatient care. Use of partial hospitalization days would be applied against the inpatient yearly limits. The commenter stated this ratio has been used in both commercial benefit plans, as well as in a number of state-mandated benefits for partial hospitalization. This model for benefit design has the advantage of encouraging the flexible and clinically appropriate use of the continuum of care without offering incentives for overuse of hospitalization as might a benefit which supplies separate yearly limits for partial hospitalization and inpatient care. The commenter is concerned with the risk of encouraging overutilization through sequential use of benefits, such as the referral to partial hospitalization only after inpatient benefits had been exhausted or after utilization review has forced transfer to a less restrictive level of care. In essence, the commenter recommends that for the purpose of determining yearly limits for partial hospitalization that two days of partial hospitalization be provided for each one day of inpatient hospitalization. Partial hospitalization days would be applied against the yearly limits for hospitalization.

Comment 2B: Two professional groups asked that the partial hospitalization benefit be structured in a manner analogous to the available inpatient days designated, so that 60 days of partial hospitalization be available for adults (inpatient days legislatively limited to 30 days) and 90 days for children and adolescents (inpatient days legislatively limited to 45 days).

Comment 2C: One commenter said it is critical that, from the outset, the new benefit for partial hospitalization be viewed and used as an alternative to inpatient care. To achieve the goal of using partial programs to avoid or shorten psychiatric hospital stays, the partial program benefit cannot be

merely a transitional coverage from hospital care when the inpatient day limit is reached. The commenter recommended CHAMPUS use a trade-off between partial hospital coverage and existing mental health benefits at the rate of 2 to 1 (two partial days for one inpatient day). The commenter suggested the trade-off allow 90 days for adolescents and children.

Response: We agree with the commenters and are aware that partial hospitalization is frequently added as a "trade-off" benefit counted against the authorized limit for inpatient mental health care (e.g., a "2-for-1" approach). Although we favor a trade-off mechanism, we are precluded from structuring the benefit scheme in this manner because of the provisions of 10 U.S.C. 1079 (a)(6) and (i)(1). Instead, therefore, we will impose a limit of 60 days of care in a partial hospitalization program and use our utilization management program to control overutilization through preauthorization and concurrent review.

3. Maximum Rate of Reimbursement

Proposed Rule. The proposed rule suggested the reimbursement rate for full-day partial hospitalization be set at one-third of the average per diem rate that CHAMPUS pays for acute inpatient mental health care (low and high volume hospitals), adjusted for region of the country. A partial hospitalization program of less than six hours (but more than three hours) per treatment day would receive a per diem rate of 75 percent the rate for a full day program.. The basis of reimbursement was proposed to be an all-inclusive per diem rate encompassing institutional, as well as professional services. The term all-inclusive encompasses the charges of therapists who are not employed by or contracted with the partial hospitalization program.

Comment 3A. One commenter recommended that partial hospitalization be reimbursed at a rate of forty percent of the rate of the 80th percentile of high volume hospital-specific rates and that professional services be reimbursed separately from the facility per diem. Otherwise, professionals would be given an economic incentive to continue hospitalization in order to be reimbursed on a fee-for-service basis.

Comment 3B. One professional organization commented that it was essential to have an all-inclusive reimbursement, encompassing charges for psychotherapy by therapists not employed by or contracted with the partial hospitalization program. Fee-for-service billings for some services like psychotherapy would drive up the costs of partial hospitalization and not lead to better care. The commenter stated that partial hospitalization programs were more like residential treatment center care than acute care, in that the patient is stable but needs continuing interdisciplinary care at a lower intensity than the acute or RTC setting. From that perspective the per diem rate, when set at an appropriate level, is a better alternative. The net effect of paying separately for professional services is likely to result in the gradual evolvement of partial hospitalization programs to provide only ancillary staff services for the per diem rate, while therapy will be provided by outside staff for separate reimbursement. The commenter suggested that the reimbursement be all-inclusive (including nonaffiliated therapists), with the per diem set at 50 percent of the prevailing. To reimburse separately for any services would increase the cost of partial programs, without improving the access or quality of covered care.

Comment 3C. Several commenters objected to the reimbursement rate of one-third the rate of inpatient care and suggested an all-inclusive reimbursement rate (including psychotherapy by nonaffiliated therapists) of at least 50 percent of the rate payable for full hospitalization services in the same locality.

Comment 3D. A residential treatment center (RTC) commented that savings from partial programs comes not only from the reduced daily rate, but also the reduced number of days per week. The RTC can do partial services for about 40% of its RTC rate when the difference in days per week is factored in. If the rate is all-inclusive (including nonaffiliated therapists) and set at one-third of the acute care daily rate, it would create a fiscal disincentive to partial programs.

Comment 3E. Several commenters endorsed the concept of separate billing for individual professional services to meet all of the program requirements of the CHAMPUS medical model.

Comment 3F. One commenter, in support of the all-inclusive rate encompassing psychotherapy and other program services, recommended the rate be set at 55% of the daily rate for RTC care.

Response: Many partial hospitalization settings bill on an all inclusive basis including psychotherapy performed by therapists not employed by or contracted with the partial hospitalization program; however, in response to some of the public comments, separate billing will be allowed for individual or family psychotherapy rendered by an attending, CHAMPUS-authorized mental health professional who is not an employee or contracted with the partial hospitalization program. Also, separate billing will be allowed for otherwise covered non-mental health medical services. No further unbundling will be permitted. In addition, we are raising the program rate to 40 percent of the blended per diem rate, instead of the proposed one-third. Some managed care organizations pay partial hospitalization program providers as much as 50 percent of what they pay inpatient psychiatric facilities; however, these organizations typically receive substantial discounts for inpatient services. This maximum reimbursement rate should be sufficient to induce partial hospitalization program providers to participate in CHAMPUS, while at the same time serve DOD's need to control health care cost inflation. The maximum reimbursement rate for full-day (minimum of 6 hours) partial hospitalization will be at 40 percent of the average per diem amount weighted by the number of days at each rate paid to both high and low volume psychiatric hospitals and units by Federal census region (as defined in § 199.14(a)(2)) during fiscal year 1990. For each region a blended allowed amount per day will be calculated using high volume and regional low volume data. The blended allowed amount per day will be weighted by the covered patient days. The average will be based upon CHAMPUS claims processed to completion during fiscal year 1990 and updated to the current year using the same factors as used under the CHAMPUS mental health per diem reimbursement system (as described in § 199.14(a)(2). A partial hospitalization program of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for a full-day program.

Following is a table of maximum rates based on these calculations representing 40 percent of the FY93 blended per diem rate by census region.

TABLE OF FY 93 MAXIMUM RATES FOR PARTIAL HOSPITALIZATION PROGRAMS

United States Census Region	Rate (dollars)
Northeast:	
New England (ME, NH, VT, MA, RI, CT)	194
Mid-Atlantic (NY, NJ, PA)	211
Midwest:	
East North Central (OH, IN, IL, MI, WI)	188

TABLE OF FY 93 MAXIMUM RATES FOR PARTIAL HOSPITALIZATION PROGRAMS—Continued

United States Census Region	Rate (dollars)
West North Central (MN, IA, MO, ND, SD, NE, KS)	186
South:	
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	201
East South Central (KY, TN, AL, MS)	218
West South Central (AR, LA, TX, OK)	215
West:	
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	224
Pacific (WA, OR, CA, AK, HI)	220

4. Accreditation Standards

Proposed rule. The proposed rule requires that partial hospitalization programs be specifically accredited by and remain in compliance with standards issued by the Joint Commission on Accreditation of Healthcare Organizations and be licensed to provide partial hospitalization program services in the jurisdiction in which they operate. It also requires the program to comply with CHAMPUS Standards for Partial Hospitalization Programs and Facilities, as promulgated by the Director, OCHAMPUS.

Comment 4A. The proposed rule would require participating partial hospitalization programs to comply with standards promulgated by OCHAMPUS. The commenter hopes that OCHAMPUS will consult with members of the provider and practitioner community familiar with partial hospitalization programs in developing these standards. The commenter is requesting the standards be published for public review and comment.

Comment 4B. Several comments supported the partial hospitalization program standards of practice embraced by CHAMPUS and JCAHO as comprehensive and sufficient in addressing the boundaries of the service, the quality of the service and in defining appropriate access.

Comment 4C. Two organizations suggested that language be included in the regulation that CHAMPUS require JCAHO accreditation under the consolidated standards or "other accreditation approved by the Director, OCHAMPUS" in order to leave open the option, at CHAMPUS discretion, for an alternative to JCAHO accreditation.

Comment 4D. One commenter also pointed out that specific licensure for partial hospitalization is not available in all of the 50 states and recommended that the language of the regulation reflect that fact and require that licensure, where available, be obtained. The recommended accreditation by an external accrediting body, as well as by compliance with the internal CHAMPUS Standards for Partial Hospitalization represents an additional layer of scrutiny for quality of service in both hospital-based and freestanding programs. The commenter submits that this extensive accreditation process will screen out poor quality programs and furnish the degree of accountability and quality control necessary for the introduction of a new benefit. The restriction of the benefit to programs that have been in full operation for six months is generally reasonable but in special circumstances would inhibit the development of needed services. For example, a partial hospitalization program might be developed in conjunction with a military hospital, serving only CHAMPUS or DOD beneficiaries. Without an approved waiver to this requirement, such a program would by regulation be unable to obtain eligibility from CHAMPUS.

Comment 4E. One commenter recommended that fully operational for at least 6 months be defined to mean operating for 6 months with at least 25 percent capacity.

Response: The CHAMPUS-specific standards will encompass existing program requirements and guidelines. Additionally, we will require accreditation under JCAHO Mental Health Manual (formerly known as Consolidated Standards) as covered in the discussion on freestanding versus hospital-based programs. The language of the regulation is being revised, as suggested in public comment, to require that licensure, where available, be obtained. We will continue to require that the partial hospital program be fully operational and treating patients for at least six months with a minimum patient census of at least 30 percent capacity prior to submission of an application for certification. This requirement will help ensure that providers have a demonstrated record of service in the area of partial hospitalization before CHAMPUS authorization can be obtained. We do not feel the six-month period is unreasonable. It is considered more important to ensure that only fully qualified programs be approved, rather than consider waivers which might result in having to decertify those same facilities at a later date. Establishment of a partial hospitalization program at a military treatment facility (MTF) falls within the purview of the military services and under a program which is permitted to deviate from CHAMPUS requirements.

5. Cost-Sharing by Beneficiaries

Proposed rule. The proposed rule classified partial hospitalization as an inpatient level of care for the purposes of cost-sharing by beneficiaries.

Comment 5A. One national organization commented that partial hospitalization is most appropriately linked to inpatient benefits as cost-sharing is concerned, so the benefit plan does not introduce economic incentive or bias on the part of the beneficiary to choose a more expensive level of care (i.e., hospitalization) in order to reduce out of pocket responsibilities.

Response: Clearly, partial hospitalization is neither purely inpatient nor purely outpatient care. As operationally defined, the benefit lies somewhere between. Currently, several CHAMPUS demonstration projects which offer a partial hospitalization benefit (e.g., Contracted Provider Arrangement and some of the Catchment Area Management Demonstrations) cost-share services on an inpatient basis. Central to the concern over which cost-sharing approach is adopted is the higher cost-share associated with outpatient care for CHAMPUS beneficiaries. If partial hospitalization is cost-shared on an outpatient basis, out-of-pocket expenses could be substantially higher. Thus, a financial incentive would exist for beneficiaries to seek a higher level of care (i.e., acute or residential) than may be necessary. While utilization management procedures will help ensure certification of the appropriate level of care, the Department sees some added advantage in cost-sharing the benefit as inpatient care. Therefore, we will employ the authority granted to the Secretary to establish different cost-shares for mental health care (10 U.S.C. 1079 (i)(2)) and cost-share partial hospitalization services on an inpatient basis.

6. Waiver of the Partial Hospitalization Day Limit

In the proposed rule, no exceptions were proposed to the 60-day limit. Public comments were invited on whether a waiver should be allowed and, if so, the types of cases for which a waiver might be needed and the suggested criteria we might use to evaluate waiver requests.

Comment 6A. Several commenters stated that the 60-day benefit period is generally adequate for adult partial hospitalization, but that the proposed

limit was not adequate for the care of children and adolescents. With no waiver allowed, the more severely disturbed patients would ultimately move on to inpatient care. It seems more prudent to place the most stringent restrictions on length of stay on the most restrictive and expensive components of the continuum of care.

Comment 6B. One national association commented that partial hospitalization should be subject to the same waiver of the 60-day benefit limit as is available for acute care and residential treatment, as long as continued treatment is medically necessary. If a patient needs continued care but is unable to rely exclusively on outpatient therapy and is not eligible for inpatient care, continuation of partial hospitalization may be medically or psychologically necessary. Because the waiver is, by definition, an exceptions process, such decisions should be made only on a case-by-case basis. The association recommends that OCHAMPUS use the same waiver criteria as apply to acute inpatient psychiatric care.

Comment 6C. A program coordinator for partial hospitalization programs stated that the 60-day treatment limit should be adequate for most patients, but a waiver for additional time should be included. The coordinator reported experience that patients with certain diagnoses (e.g., borderline personality disorders) experience most lasting therapeutic gains with more time in a partial program. The partial program can decrease the use or shorten the stay for inpatient treatment for these patients who often become self-destructive.

Comment 6D. An RTC commented that the 60-day limit was not a refinement, but a blunt instrument and that decisions on length of care should be made clinically, not temporally.

Comment 6E. Several commenters recommended maintaining some flexibility in determining if the length of stay in treatment is sufficient. Even though it was acknowledged that a sixty day limit may be appropriate for many patients, there will be a need for exceptions in individual cases.

Response: As a result of public comment, the 60-day limit will be accompanied by a waiver. The availability of a waiver is consistent with the overall CHAMPUS health care benefit policy for other levels of care. Although the expectation is that the 60-day limit will be adequate to meet the needs of most patients enrolled in partial hospitalization programs, a waiver will be considered for cases in which a patient exhibits well-documented new symptoms or maladaptive behavior which have appeared in the partial hospitalization setting requiring additional days to complete necessary elements of the treatment plan prior to discharge.

7. Requirement for Preauthorization and Concurrent Review

Proposed rule. The proposed rule required preauthorization and concurrent review for all admissions to a partial hospitalization program. The proposed rule stipulated that no emergency admissions would be recognized.

Comment 7A. Two commenters recommended there should be exceptions when an admission to a partial hospital program would meet emergency criteria. The commenter stated that such instances could mean the difference between placing a patient in an inpatient hospital program or a less intensive partial program.

Response. The CHAMPUS definition of a psychiatric emergency is quoted in part: "the patient is at immediate risk of serious harm to self or others as a result of a mental disorder and requires immediate continuous skilled observation at the acute level of care." Such observation would not be available in a partial hospitalization setting. Crisis stabilization is an appropriate role for partial hospitalization programs, and this role is included in the range of benefits available.

8. Benefit Design

Proposed rule. Psychiatric partial hospitalization services will be considered necessary when: (1) The patient is unable to remain in the community at a sufficient level of functioning to permit an adequate course of therapy on an outpatient basis; (2) the patient is in need of crisis stabilization; or (3) the patient needs treatment of an acute mental health disorder or services as a transition from an inpatient hospital program. An interdisciplinary program is required which addresses assessment of the patient, social services evaluation, educational history and assessment, etc.

Comment 8A. One comment was received objecting to the requirement for the social services component as a part of the partial hospitalization program and objecting to paying for living arrangements for the patient.

Response. CHAMPUS will approve only the acute clinical model of partial hospitalization that is multi-disciplinary in nature. The program is expected to either provide or make arrangements for the provision of educational services, as well as community based support services. The hours devoted to education will not count, however, toward the therapeutic half or full day program. The physical, social, cultural, recreational, health maintenance and rehabilitation needs of the patients must be addressed.

Comment 8B. The commenter agreed with providing transportation to a hospital if hospitalization was required; however, the commenter did not feel the transportation needed to be in an ambulance, unless separate reimbursement was allowed.

Response. A partial program is expected to have a standard operating procedure for handling emergency services. Ambulance services for a bona fide emergency will be cost-shared separately.

Comment 8C. One national organization suggested that the criteria for admission to a partial hospitalization program allow transition from an inpatient hospital program, outpatient program or residential treatment center.

Response. The partial hospitalization benefit is generally viewed and designed as a trade-off to acute inpatient hospital care, but is considered a separate and distinct level of mental health care. Transition from another level of care is neither required nor prohibited.

Comment 8D. One commenter objected to occupational therapy services falling within an ancillary therapy category and requested they be covered as a core service in partial hospitalization.

Response. We appreciate the important role occupational therapy plays in mental health settings; however, separating our services which are considered an integral part of the partial hospitalization program is inappropriate. In essence, in covering partial hospitalization programs, CHAMPUS is purchasing a package of services. CHAMPUS has found it more economically and programmatically feasible to purchase a package of services, as compared to cost-sharing such services on a fragmented basis.

Comment 8E. One commenter suggested that a comprehensive functional assessment which addresses all aspects of human performance such as cognitive, biological and psychosocial components be incorporated.

Response. We agree and have added this requirement to the assessments.

Comment 8F. One organization suggested that all services be provided under the general direction of a psychiatrist to ensure medication and physical needs of all patients are taken into account since the program is

designed as an acute medical model of a partial hospitalization program.

Response. We agree and have made the recommended change, vesting medication and physical needs of the patient under the general oversight of a licensed psychiatrist employed by the partial hospitalization center. The primary therapist actually rendering the mental health services may be any one of the CHAMPUS qualified mental health providers operating within the scope of his or her license.

Comment 8G. One organization suggested there be 7 calendar days for either full-day or half-day programs to devise a master treatment plan.

Response. The limits were recently established through publication of a separate amendment on medical documentation (November 26, 1991 Vol. 567, No. 228) based on time frames that had been found appropriate. Grace Period for Accreditation under JCAHO Mental Health Manual (formerly consolidated Standards).

The partial hospitalization program shall be required to meet several certification requirements: (1) Be specifically accredited by and remain in substantial compliance with standards issued by the Joint Commission on Accreditation of Healthcare Organizations under the Mental Health Manual (formerly the Consolidated Standards Manual); (2) be licensed as a partial hospitalization program to provide PHP services in the jurisdiction in which they operate; (3) be fully operational for a period of at least six months (with 30 percent capacity) before an application for CHAMPUS authorization can be submitted; (4) enter into a participation agreement with the Director, OCHAMPUS; and (5) have a written transfer agreement with at least one CHAMPUS-approved hospital for emergency situations. Providers who are already certified under the JCAHO hospital standards can be certified and phased into the program if they are not covered initially under the JCAHO Mental Health Manual (formerly known as Consolidated Standards), but meet all other CHAMPUS requirements. CHAMPUS is granting a one-time grace period not to exceed April 1, 1994, only for the consolidated standard requirement if the provider is already accredited under the JCAHO hospital standards. The provider must agree not to accept any new admissions for CHAMPUS patients for care beyond April 1, 1994, if accreditation and substantial compliance under the JCAHO Mental Health Manual have not been obtained by that date.

Rulemaking Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

Section 605(b) of the Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider small entities to include all hospitals and third-party payers.

This final rule is not a major rule under Executive Order 12291. Also, we certify that this rule will not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. For the most part, this final rule would broaden the range of benefits available under CHAMPUS by adding coverage for a new provider category, enhancing the available continuum of care in the CHAMPUS mental health program. Beneficiaries and providers would be afforded an option to institutionalization. Preauthorization, continued stay reviews and other existing utilization management criteria will be extended for care under the partial hospitalization program.

This rule does impose minimal information collection requirements in the form of a provider application form for those partial hospitalization programs that choose to apply. Therefore, it does need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). This process is currently underway.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 1079, 1086.

2. Section 199.2(b) is amended by removing the definition for "Day or night care;" by revising the term "Other specialized treatment facilities" to read "other special institutional providers," and placing it in appropriate alphabetical order and by adding definition "Partial hospitalization" and placing it in alphabetical order, as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Partial hospitalization. A treatment setting capable of providing an interdisciplinary program of medical therapeutic services at least 3 hours per day, 5 days per week, which may embrace day, evening, night and weekend treatment programs which employ an integrated, comprehensive and complementary schedule of recognized treatment approaches. Partial hospitalization is a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated, and structured clinical services within a stable therapeutic environment. Partial hospitalization is an appropriate setting for crisis stabilization, treatment of partially stabilized mental health disorders, and a transition from an inpatient program when medically necessary. Such programs must enter into a participation agreement with CHAMPUS, and be accredited and in substantial compliance with the standards of the Mental Health Manual of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) (formerly known as the Consolidated Standards).

* * * * *

3. Section 199.4 is amended by revising the heading of paragraph (a)(12); in paragraph (a)(12)(i) by revising the words "outpatient care" to read "partial hospitalization;" by adding a new first sentence to paragraph (a)(12)(ii)(A); in paragraph (b)(6) introductory text by revising the words "specialized treatment facility" to read "special institutional provider;" by adding new paragraphs (b)(10), (f)(2)(v) and (f)(3)(iv) to read as follows:

§ 199.4 Basic program benefits.

(a) *General.*

(12) *Utilization review, quality assurance and reauthorization for inpatient mental health services and partial hospitalization.*

* * * * *

(ii) *Preadmission authorization.*

(A) This section generally requires peradmission authorization for all nonemergency inpatient mental health services and prompt continued stay authorization after emergency admissions. It also requires preadmission authorization for all admissions to a partial hospitalization program, without exception, as the

VOL 58 ISS 125 JL 1 1993 UMI

concept of an emergency admission does not pertain to a partial hospitalization level of care. * * *

* * * * *

(b) *Institutional Benefits.*

* * * * *

(10) *Psychiatric partial hospitalization services.*

(i) *In general.* Partial hospitalization services are those services furnished by a CHAMPUS-authorized partial hospitalization program and authorized mental health providers for the active treatment of a mental disorder. All services must follow a medical model and vest patient care under the general direction of a licensed psychiatrist employed by the partial hospitalization center to ensure medication and physical needs of all the patients are considered. The primary or attending provider must be a CHAMPUS authorized mental health provider, operating within the scope of his/her license. These categories include physicians, clinical psychologists, certified psychiatric nurse specialists, clinical social workers, marriage and family counselors, pastoral counselors and mental health counselors. Partial hospitalization services are covered as a basic program benefit only if they are provided in accordance with paragraph (b)(10) of this section.

(ii) *Criteria for determining medical or psychological necessity of psychiatric partial hospitalization services.* Psychiatric partial hospitalization services will be considered necessary only if all of the following conditions are present:

(A) The patient is suffering significant impairment from a mental disorder (as defined in § 199.2) which interferes with age appropriate functioning.

(B) The patient is unable to maintain himself or herself in the community, with appropriate support, at a sufficient level of functioning to permit an adequate course of therapy exclusively on an outpatient basis (but is able, with appropriate support, to maintain a basic level of functioning to permit partial hospitalization services and presents no substantial imminent risk of harm to self or others).

(C) The patient is in need of crisis stabilization, treatment of partially stabilized mental health disorders, or services as a transition from an inpatient program.

(D) The admission into the partial hospitalization program is based on the development of an individualized diagnosis and treatment plan expected to be effective for that patient and permit treatment at a less intensive level.

(iii) *Preauthorization and concurrent review requirements.* All preadmission authorization and concurrent review requirements and procedures applicable to acute mental health inpatient hospital care in paragraphs (a)(12) and (b) of this section are applicable to the partial hospitalization program, except that the criteria for considering medical or psychological necessity shall be those set forth in paragraph (b)(10)(ii) of this section, and no emergency admissions will be recognized.

(iv) *Institutional benefits limited to 60 days.* Benefits for institutional services for partial hospitalization are limited to 60 treatment days (whether a full day or partial day program) in a fiscal year or in an admission. This limit may be extended by waiver.

(v) *Waiver of the 60-day partial hospitalization program limit.* The Director, OCHAMPUS (or designee) may, in special cases, waive the 60-day partial hospitalization benefit and authorize payment for care beyond the 60-day limit.

(A) the criteria for waiver are set forth in paragraph (b)(10)(ii) of this section. In applying these criteria in the context of waiver request review, special emphasis is placed on determining whether additional days of partial hospitalization are medically/psychologically necessary to complete essential elements of the treatment plan prior to discharge. Consideration is also given in cases in which a patient exhibits well-documented new symptoms or maladaptive behaviors which have appeared in the partial hospitalization setting requiring significant revisions to the treatment plan.

(B) The clinician responsible for the patient's care is responsible for documenting the need for additional days and must establish an estimated length of stay beyond the date of the 60-day limit. There must be evidence of a coherent and specific plan for assessment, intervention and reassessment that reasonably can be accomplished within the time frame of the additional days of coverage requested under the waiver provisions.

(C) For patients in care at the time the partial hospitalization program limit is reached, a waiver must be requested prior to the limit. For patients being preadmitted after having received 60 days in the fiscal year, the waiver review will be conducted at the time of the preadmission authorization.

(vi) *Services and supplies.* The following services and supplies are included in the per diem rate approved for an authorized partial hospitalization program:

(A) *Board.* Includes use of the partial hospital facilities such as food service, supervised therapeutically constructed recreational and social activities, and other general services as considered appropriate by the Director, OCHAMPUS, or a designee.

(B) *Patient assessment.* Includes the assessment of each individual accepted by the facility, and must, at a minimum, consist of a physical examination; psychiatric examination; psychological assessment; assessment of physiological, biological and cognitive processes; developmental assessment; family history and assessment; social history and assessment; educational or vocational history and assessment; environmental assessment; and recreational/activities assessment. Assessments conducted within 30 days prior to admission to a partial program may be used if approved and deemed adequate to permit treatment planning by the partial hospital program.

(C) *Psychological testing.*

(D) *Treatment services.* All services, supplies, equipment and space necessary to fulfill the requirements of each patient's individualized diagnosis and treatment plan (with the exception of the five psychotherapy sessions per week which may be allowed separately for individual or family psychotherapy based upon the provisions of paragraph (b)(10)(vii) of this section). All mental health services must be provided by a CHAMPUS authorized individual professional provider of mental health services. [Exception: PHPs that employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the all-inclusive per diem rate but the individual must work under the clinical supervision of a fully qualified mental health provider employed by the PHP.]

(vii) *Social services required.* The facility must provide an active social services component which assures the patient appropriate living arrangements after treatment hours, transportation to and from the facility, arrangement of community based support services, referral of suspected child abuse to the appropriate state agencies, and effective after care arrangements, at a minimum.

(viii) *Educational services required.* Programs treating children and adolescents must ensure the provision of a state certified educational component which assures that patients do not fall behind in educational placement while receiving partial

hospital treatment. CHAMPUS will not fund the cost of educational services separately from the per diem rate. The hours devoted to education do not count toward the therapeutic half or full day program.

(ix) *Family therapy required.* The facility must ensure the provision of an active family therapy treatment component which assures that each patient and family participate at least weekly in family therapy provided by the institution and rendered by a CHAMPUS authorized individual professional provider of mental health services. There is no acceptable substitute for family therapy. An exception to this requirement may be granted on a case-by-case basis by the Director, OCHAMPUS, or designee, only if family therapy is clinically contraindicated.

(x) *Professional mental health benefits limited.* Professional mental health benefits are limited to a maximum of one session (60 minutes individual, 90 minutes family) per authorized treatment day not to exceed five sessions in any calendar week. These may be billed separately from the partial hospitalization per diem rate only when rendered by an attending, CHAMPUS-authorized mental health professional who is not an employee of, or under contract with, the partial hospitalization program for purposes of providing clinical patient care.

(xi) *Non-mental health related medical services.* Separate billing will be allowed for otherwise covered, non-mental health related medical services.

* * * * *

(f) * * *

(2) * * *

(v) *Psychiatric partial hospitalization services.* Institutional and professional services provided under the psychiatric partial hospitalization program authorized by paragraph (b)(10) of this section shall be cost shared as inpatient services.

(3) * * *

(iv) *Psychiatric partial hospitalization services.* Institutional and professional services provided under the psychiatric partial hospitalization program authorized by paragraph (b)(10) of this section shall be cost shared as inpatient services.

* * * * *

4. Section 199.6 is amended by revising the heading of paragraph (b)(4)(x), paragraph (b)(4)(x)(A)(*1*) introductory text, paragraph (b)(4)(x)(A)(*2*) introductory text, paragraphs (b)(4)(x)(A)(*2*)(*i*) and (*ii*), paragraph (b)(4)(x)(A)(*2*)(*vi*), paragraph (b)(4)(x)(A)(*3*) introductory text, (b)(4)(x)(B) introductory text, (b)(4)(x)(B)(*2*) and by adding new paragraph (b)(4)(xii), as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(x) *Other special institutional providers.*

(A) *General.*

(*1*) Care provided by certain special institutional providers (on either an inpatient or outpatient basis) may be cost-shared by CHAMPUS under specified circumstances and only if the provider is specifically identified in paragraph (b)(4)(x) of this section.

* * * * *

(*2*) To ensure that CHAMPUS beneficiaries are provided quality care at a reasonable cost when treated by a special institutional provider, the Director, OCHAMPUS may:

(*i*) Require prior approval of all admissions to special institutional providers.

(*ii*) Set appropriate standards for special institutional providers in addition to or in the absence of JCAHO accreditation.

* * * * *

(*vi*) Declare a special institutional provider not eligible for CHAMPUS payment if that facility has been found to have engaged in fraudulent or deceptive practices.

(*3*) In general, the following disclaimers apply to treatment by special institutional providers:

* * * * *

(B) *Types of providers.* The following is a list of facilities that have been designated specifically as special institutional providers.

* * * * *

(*2*) *PFTH facilities.* Special institutional providers also include facilities that seek approval to provide care authorized under the PFTH (see § 199.5).

* * * * *

(xii) *Psychiatric partial hospitalization programs.* Psychiatric partial hospitalization programs must be either a distinct part of an otherwise authorized institutional provider or a freestanding program. The treatment program must be under the general direction of a psychiatrist employed by the partial hospitalization program to ensure medication and physical needs of all the patients are considered. The primary or attending provider must be a CHAMPUS authorized mental health provider, operating within the scope of his/her license. These categories include physicians, clinical psychologists, certified psychiatric nurse specialists, clinical social workers, marriage and family counselors, pastoral counselors and mental health counselors. CHAMPUS reimbursement is limited to programs complying with all requirements of § 199.4(b)(10). In addition, in order for a partial hospitalization program (PHP) to be authorized, the PHP shall comply with the following requirements:

(A) The PHP shall comply with the CHAMPUS Standards for Partial Hospitalization Programs and Facilities, as promulgated by the Director, OCHAMPUS.

(B) The PHP shall be specifically accredited by and remain in substantial compliance with standards issued by the Joint Commission on Accreditation of Healthcare Organizations under the Mental Health Manual (formerly the Consolidated Standards).

Note: A one-time grace period is being allowed not to exceed April 1, 1994, for this provision only if the provider is already accredited under the JCAHO hospital standards. The provider must agree not to accept any new admissions for CHAMPUS patients for care beyond April 1, 1994, if accreditation and substantial compliance with the Mental Health Manual have not been obtained by that date.

(C) The PHP shall be licensed as a partial hospitalization program to provide PHP services within the applicable jurisdiction in which it operates.

(D) The PHP shall accept the CHAMPUS-allowable partial hospitalization program rate, as provided in § 199.14(a)(2)(ix) as payment in full for services provided.

(E) The PHP shall comply with all requirements of this section applicable to institutional providers generally concerning preauthorization, concurrent care review, claims processing, beneficiary liability, double coverage, utilization and quality review and other matters.

(F) The PHP must be fully operational and treating patients for a period of at least six months (with at least 30 percent minimum patient census) before an application for approval may be submitted. The PHP shall not be considered a CHAMPUS-authorized provider nor may any CHAMPUS benefits be paid to the facility for any services provided prior to the date the facility is approved by the Director, OCHAMPUS, or designee.

(G) All mental health services must be provided by a CHAMPUS-authorized mental health provider. [Exception: PHPs that employ individuals with master's or doctoral level degrees in a mental health discipline who do not

meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the all-inclusive per diem rate but the individual must work under the clinical supervision of a fully qualified mental health provider employed by the PHP.] All other program services shall be provided by trained, licensed staff.

(H) The PHP shall ensure the provision of an active family therapy treatment component which assures that each patient and family participate at least weekly in family therapy provided by the institution and rendered by a CHAMPUS authorized mental health provider.

(I) The PHP must have a written agreement with at least one backup CHAMPUS-authorized hospital which specifies that the hospital will accept any and all CHAMPUS beneficiaries transferred for emergency mental health or medical/surgical care. The PHP must have a written emergency transport agreement with at least one ambulance company which specifies the estimated transport time to each backup hospital.

(J) The PHP shall enter into a participation agreement with the Director, OCHAMPUS, which shall include but which shall not be limited to the following provisions:

(1) The PHP agrees not to bill the beneficiary for services in excess of the cost-share or services for which payment is disallowed for failure to comply with requirements for preauthorization or concurrent care review.

(2) The PHP agrees not to bill the beneficiary for services excluded on the basis of § 199.4, paragraphs (g)(1) (not medically necessary), (g)(3) (inappropriate level of care) or (g)(7) (custodial care), unless the beneficiary has agreed in writing to pay for the care, knowing the specific care in question had been determined noncovered by CHAMPUS. (A general statement signed at admission as to financial liability does not fulfill this requirement.)

5. Section 199.7 is amended by revising paragraph (b)(3)(iv)(B)(*5*) to read as follows:

§ 199.7 Claims submissions, review, and payment.

* * * * *

(b) * * *
(3) * * *
(iv) * * *
(B) * * *

(5) Master treatment plan within 5 calendar days of admission for acute care, 10 days for RTC care, 5 days for full-day partial programs and within 7 days for half-day partial programs.

* * * * *

6. Section 199.14 is amended by adding a new paragraph (a)(2)(ix), to read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *
(2) * * *

(ix) *Per diem payment for psychiatric partial hospitalization services.*

(A) *In general.* Psychiatric partial hospitalization services authorized by § 199.4(b)(10) and provided by institutional providers authorized under § 199.6(b)(4)(xii), are reimbursed on the basis of prospectively determined, all-inclusive per diem rates. The per diem payment amount must be accepted as payment in full for all institutional services provided, including board, routine nursing services, ancillary services (includes art, music, dance, occupational and other such therapies), psychological testing and assessments, overhead and any other services for which the customary practice among similar providers is included as part of the institutional charges.

(B) *Services which may be billed separately.* The following services are not considered as included within the per diem payment amount and may be separately billed when provided by an authorized independent professional provider:

(1) Psychotherapy sessions not included. Professional services provided by an authorized professional provider (who is not employed by or under contract with the partial hospitalization program) for purposes of providing clinical patient care to a patient in the partial hospitalization program are not included in the per diem rate. They may be separately billed. Professional mental health benefits are limited to a maximum of one session (60 minutes individual, 90 minutes family, etc.) per authorized treatment day not to exceed five sessions in any calendar week.

(2) Non-mental health related medical services. Those services not normally included in the evaluation and assessment of a partial hospitalization program, non-mental health related medical services, may be separately billed when provided by an authorized independent professional provider. This includes ambulance services when medically necessary for emergency transport.

(C) *Per diem rate.* For any full day partial hospitalization program (minimum of 6 hours), the maximum per diem payment amount is 40 percent of the average inpatient per diem amount per case paid to both high and low volume psychiatric hospitals and units (as defined in § 199.14(a)(2)) by Federal census region during fiscal year 1990. The average will be based upon CHAMPUS claims processed to completion during the above period and updated to the current year using the same factors as used under the CHAMPUS mental health per diem reimbursement system (as described in § 199.14(a)(2)). A partial hospitalization program of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for full-day program.

(D) *Other requirements.* No payment is due for leave days, for days in which treatment is not provided, or for days in which the duration of the program services was less than three hours.

* * * * *

Dated: June 28, 1993.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15540 Filed 6–30–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6986

[OR–943–4210–06; GP3–219; OR–47417]

Withdrawal of National Forest System Lands To Protect the Scenic Segment of the Illinois Wild and Scenic River; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,239.95 acres of National Forest System lands in the Siskiyou National Forest from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the scenic, recreational, and fish/wildlife habitat values in the scenic segment of the Illinois Wild and Scenic River near Cave Junction, Oregon. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988)), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest

System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988), but not from leasing under the mineral leasing laws, to protect the scenic, recreational, and fish/wildlife habitat values in the scenic section of the Illinois Wild and Scenic River between the mouth of Deer Creek and the mouth of Briggs Creek:

Willamette Meridian

Siskiyou National Forest

T. 38 S., R. 8 W.,
Sec. 7, SW¼NE¼, S½NW¼, N½SW¼, and SE¼SW¼, W½SE¼;
Sec. 18, N½NW¼NE¼ and N½NE¼NW¼.
T. 38 S., R. 9 W.,
Sec. 1, lot 9, SE¼SW¼, and S½SW¼SE¼;
Sec. 2, lots 2, 3, 4, and 7, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lots 1, 2, 3, and 4, S½N½, and N½N½S½;
Sec. 4, lots 1, 2, 3, and 4, NE¼SW¼NE¼, SE¼NE¼, and NE¼NE¼SE¼;
Sec. 5, lots 1 and 2;
Sec. 11, lot 1, NW¼NE¼, N½NE¼NW¼, and N½SE¼NE¼;
Sec. 12, lots 1 and 2, NW¼NE¼, NE¼NW¼, N½S½NW¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, and NE¼NE¼SE¼.
T. 37 S., R. 9 W.,
Sec. 6, SW¼SE¼ and SE¼SW¼;
Sec. 7, lots 2 and 5, SW¼NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8, lot 5 and lots 7 to 11, inclusive;
Sec. 16, SW¼NW¼SW¼, W½SW¼SW¼, and SE¼SW¼SW¼;
Sec. 17, lots 1 and 2, E½NE¼, SW¼NE¼, and SE¼;
Sec. 20, N½NE¼NE¼, SE¼NE¼NE¼, E½SE¼NE¼, E½SE¼, SE¼NW¼SE¼, and E½SW¼SE¼;
Sec. 21, W½E½NW¼, W½NW¼, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, and SW¼SW¼SW¼;
Sec. 28, W½W½NW¼ and W½NW¼SW¼;
Sec. 29, E½NE¼, E½W½NE¼, and SE¼;
Sec. 32, lots 1 to 6, inclusive, and N½NE¼;
Sec. 33, SW¼NW¼NW¼, SW¼NW¼, S½SE¼NW¼, SW¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼.

The areas described aggregate 4,239.95 acres in Josephine County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–14594 Filed 6–30–93; 8:45 am]

BILLING CODE 4310–33–M

43 CFR Public Land Order 6988

[UT–942–4214–06; UT–60665]

Withdrawal of Public Land for the Pavant Butte Area; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 930 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Pavant Butte area, near Fillmore, Utah. The withdrawal will protect the crucial raptor nesting habitat for the peregrine falcon, golden eagle, and the prairie falcon. It will also protect the unique geologic features of Pavant Butte for scientific and geologic studies. An additional 640 acres of non-Federal land, if acquired by the United States, would also be withdrawn by this order. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Pavant Butte area:

Salt Lake Meridian

T. 19 S., R. 6 W.,
Sec. 28, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 29, SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, S½NW¼, and S½;
Sec. 30, E½SE¼NE¼ and E½SE¼;
Sec. 31, E½NE¼, E½W½NE¼, NE¼SE¼, NE¼NW¼SE¼, and NE¼SE¼SE¼;
Sec. 33, W½NE¼NW¼, NW¼NW¼, N½SW¼NW¼, and SW¼SW¼NW¼.

The area described contains 930 acres in Millard County.

2. The following described non-Federal land, if subsequently acquired by the United States, will be subject to the terms and conditions of this withdrawal:

Salt Lake Meridian

T. 19 S., R. 6 W.,
Sec. 32.

The area described contains 640 acres in Millard County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: June 18, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–15466 Filed 6–30–93; 8:45 am]

BILLING CODE 4310–DQ–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–60; RM–7916]

Radio Broadcasting Services; Yankeetown, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Yankeetown, Florida, as that community's first local FM service, at the request of William R. Lacy. See 57 FR 11459, April 30, 1992. Channel 242A can be allotted to Yankeetown in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242A at Yankeetown are North Latitude 29–01–47 and West Longitude 82–42–58. With this action, this proceeding is terminated.

DATES: Effective August 9, 1993. The window period for filing applications for Channel 242A at Yankeetown, Florida, will open on August 10, 1993, and close on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

VOL 58 ISS 125 JUL 1 1993 UMI

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–60, adopted June 7, 1993, and released June 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, of 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Yankeetown, Channel 242A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15531 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–14; RM–8155]

Radio Broadcasting Services; Bethany Beach, DE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240B1 for Channel 240A at Bethany Beach, Delaware, at the request of Roger A. Akin and Banking Services Corp., Co-Receivers of KAT Broadcasting Corporation. See 58 FR 15321, March 22, 1993. Channel 240B1 can be allotted to Bethany Beach, Delaware, in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.1 kilometers (0.1 miles) northwest of the community. The coordinates are North Latitude 38–32–24 and West Longitude 75–03–23. With this action, this proceeding is terminated.

DATES: Effective August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–14, adopted June 8, 1993, and released June 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Delaware, is amended by removing Channel 240A and adding Channel 240B1 at Bethany Beach.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15532 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–18; RM–8173]

Radio Broadcasting Services; Coos Bay, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kenton Sturdevant, allots Channel 228A to Coos Bay, Oregon, as the community's third local FM service. See 58 FR 11205, February 24, 1993. Although the Notice of Proposed Rule Making proposed to allot Channel 271A to Coos Bay, the Commission is instead allotting Channel 228A to avoid a conflict with the pending application (BPH–930222IG) of Station KGAL–FM, Brownsville, Oregon, effectuating the upgrading of its facility from Channel 272A to Channel 272C1. Channel 228A can be allotted to Coos Bay in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43–22–00 and West Longitude 124–12–54. With this action, this proceeding is terminated.

DATE: Effective August 9, 1993. The window period for filing applications will open on August 10, 1993, and close on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–18, adopted June 17, 1993, and released June 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio braodcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 228A at Coos Bay.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15535 Filed 6–30–93; 8:45 am]

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DEPARTM

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14 CFR P

[Docket No
4–SW]

Special C
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AGENCY: F
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ACTION: N
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SUMMARY:
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Proposed Rules

Federal Register
Vol. 58, No. 125
Thursday, July 1, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 93–ASW–4; Notice No. SC–93–4–SW]

Special Condition; Aerospatiale Model AS–365N1 and AS–365N2 "Dauphin" Helicopters, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Aerospatiale Model AS–365N1 and AS–365N2 "Dauphin" helicopters modified by American Eurocopter Corporation. These helicopters will have a novel or unusual design feature associated with the Electronic Flight Instrument System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards for transport category rotorcraft of the Federal Aviation Regulations.

DATES: Comments must be received on or before August 2, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ASW–4, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked Docket No. 93–ASW–4. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Directorate, Policy and Procedures Group, Forth Worth, Texas 76193–0112; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special condition proposed in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ASW–4." The postcard will be date and time stamped and returned to the commenter.

Background

On April 26, 1993, American Eurocopter Corporation, Grand Prairie, Texas, notified the FAA that they intended to modify and issue a Supplemental Type Certificate under their Designated Alteration Station authorization for installation of an Electronic Flight Instrument System in Aerospatiale AS–365N1 and AS–365N2 "Dauphin" helicopters. Each one of these models is a 13 passenger, two engine, 9,370 pound transport category helicopter.

Type Certification Basis

The certification basis established for the Aerospatiale Model AS–365N1 and AS–365N2 "Dauphin" helicopters includes: Federal Aviation Regulation (FAR) § 21.29 and part 29 effective February 1, 1965, Amendments 29–1 through 29–11; Airworthiness Criteria for Helicopter Instrument Flight, dated December 15, 1978, for Instrument Flight Rule (IFR) certification; and Longitudinal Static Stability § 29.173. Aerospatiale has elected to comply with part 29 Amendments 29–12 through 29–16 except for § 29.397 relating to rotor brakes.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § § 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The Aerospatiale Model AS–365N1 and AS–365N2 "Dauphin" helicopters, at the time of the application for modification by American Eurocopter Corporation, were identified as incorporating one and possibly more electrical, electronic, or combination of electrical and electronic (electrical/electronic) systems that will perform functions critical to the continued safe flight and landing of the helicopters. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopters for IFR operations in instrument meteorological conditions. After the design is finalized, American Eurocopter Corporation will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems that are critical to the continued safe flight and landing of the helicopters.

Recent advances in technology have prompted the design of aircraft that include advanced electrical and electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high

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intensity radiated fields (HIRF) incident on the external surface of the helicopters. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical and electronic systems required for the continued safe flight and landing of the helicopters. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment and, in 1986, initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations. While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this proposed special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional factors must be considered.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotocraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those that have been, by past testing, shown to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general, do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth

of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KH_z	50	50
100–500	60	60
500–2000	70	70
2–30MH_z	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GH_z	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on two models of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopters.

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Aerospatiale Model AS–365N1 and AS–365N2 "Dauphin" helicopters.

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopters are exposed to high intensity radiated fields external to the helicopters.

Issued in Forth Worth, Texas, on June 23, 1993

Eric D. Bries,

Acting Manager, Aircraft Certification Service, Rotorcraft Directorate.

[FR Doc. 93–15562 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–194–AD]

Airworthiness Directives; Fokker Model F–27 Series Airplanes, Excluding Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Fokker Model F–27 series airplanes. That action would have required repetitive borescope inspections to detect fatigue-related cracks of the lower flange of the wing outer flap rib, repetitive high frequency eddy current (HFEC) inspections to detect fatigue-related cracks of the lower skin of the wing outer flaps, repair of cracked parts, and submission of an inspection report. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that the proposed inspections are unnecessary to provide an acceptable level of safety, and that the procedures currently required by a separate existing AD will preclude structural failure of the wing outer flaps. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to certain Fokker Model F–27 series airplanes, was published in the **Federal Register** on February 18, 1993 (58 FR 8914). The proposed rule would have required repetitive borescope inspections to detect fatigue-related cracks of the lower flange of the wing outer flap rib, repetitive high frequency eddy current (HFEC) inspections to detect fatigue-related cracks of the lower skin of the wing outer flaps, repair of cracked parts, and submission of an inspection report. That action was prompted by reports of fatigue-related cracks found in the lower skin and rib of the wing outer flaps. The proposed actions were intended to prevent structural failure of the wing outer flaps.

Since issuance of that proposal, the FAA has reconsidered its position on the action, based on comments submitted to the notice:

One commenter requests that the FAA withdraw the proposal, since it proposes to require the accomplishment of certain inspections that currently are required by a separate existing AD. This commenter points out that the proposed inspections are defined in the revised Fokker F–27 Structural Integrity Program (SIP) Document, and that the implementation of this document currently is required by AD 92–19–07, Amendment 39–8365 (57 FR 42693, September 16, 1992). The commenter also states that the November 1, 1991, revision to the F–27 SIP Document No. 27438, Part I, incorporates the inspection requirements of Fokker Service Bulletin F27/57–67, dated October 11, 1991, which was referenced in and would have been required by the proposal. The commenter asserts that since these inspections already are required by AD 92–19–07, the proposal would not provide a higher level of safety, but would cause an unnecessary administrative burden for operators.

Another commenter requests that the FAA withdraw the proposal, since the inspection and repair requirements of Netherlands Airworthiness Directive BLA 91–122, dated October 18, 1991, have been canceled because they are redundant to the inspections specified in the revised Fokker F–27 SIP Document.

Upon further consideration, the FAA concurs that the inspections that would have been required by the proposal have been incorporated into a revision of the Fokker F–27 SIP Document, the implementation of which is currently required by AD 92–19–07. The FAA has determined that these inspections currently provide an acceptable level of safety to preclude structural failure of the wing outer flaps. Accordingly, the proposed rule is considered unnecessary and is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action,

VOL 58 ISS 125 JL 1 1993 UMI

and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 92–NM–194–AD, published in the **Federal Register** on February 18, 1993 (58 FR 8914), is withdrawn.

Issued in Renton, Washington, on June 25, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 93–15506 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 244

Industry Guide: Guides for the Greeting Card Industry Relating to Discriminatory Practices

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on proposed repeal of guides.

SUMMARY: The Federal Trade Commission announces its intention to review the guides concerning discriminatory promotional allowances in the greeting card industry (the "Greeting Card Guides" or "Guides"). Since the Commission has recently published revised general guidelines on promotional allowances, it believes that the industry-specific guidelines no longer serve a useful purpose. The Commission invites public comment on how the Greeting Card Guides currently affect manufacturers, retailers, consumers, and others, and whether the Guides should remain in effect without changes or should be repealed.

DATES: Written comments will be accepted until August 2, 1993.

ADDRESSES: Written comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington DC 20580. All comments should be captioned "Comment—Greeting Card Guides."

FOR FURTHER INFORMATION CONTACT: Neil Averitt, Esq., Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580 (202) 326–2885.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is published pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; the Robinson-Patman Act, 15 U.S.C. 13; and the provisions of part 1, subpart A of the Commission's Rules of Practice, 16 CFR 1.6. This authority permits the Commission to promulgate, modify and repeal industry guides that will help members of the public identify and avoid methods of competition that are unfair within the meaning of section 5(a)(1) of the FTC Act, including methods of competition that would also violate the Robinson-Patman Act.

The Greeting Card Guides state that suppliers should not directly or indirectly discriminate in price between competing purchasers of greeting cards, except insofar as price differences may be justified by different costs of service or by the need to meet competitors' prices. The Guides also state that promotional assistance should be made available on proportionately equal terms to all competing customers. The Greeting Card Guides were adopted on October 18, 1968, and became effective on November 15, 1968.

Part B—Objectives and Analysis

The objective of this review is to determine whether the Commission's Greeting Card Guides should be repealed. In this connection the Commission seeks evidence on whether industry-specific guidelines such as the Greeting Card Guides are the most useful and efficient means of communicating enforcement policies. The Commission notes that the Greeting Card Guides consist largely of general statements of the law of price discrimination and relatively little industry-specific guidance. The Commission also notes that the section dealing with discriminatory promotional allowances may have been made less necessary by the subsequent publication of more general guidelines on that subject. See Guides for Advertising Allowances and Other Merchandising Payments and Services (the "Fred Meyer Guides"), 16 CFR part 240.

The Commission seeks evidence as to whether there are still benefits from the Guides, and, if so, whether those benefits are greater than their costs, in order to assist in reaching a determination on this matter.

The Commission is undertaking this review as part of its ongoing program of evaluating industry guides to determine their current effectiveness and impact. Based on the information currently in its possession, the Commission believes that the Guides no longer serve the public interest and should be repealed.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Greeting Card Guides or leaving them in effect in their present form.

Part D—Requests for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Greeting Card Guides. A comment that includes the reasoning or basis for a proposition is likely to be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. The list of issues below is designed to assist the public in commenting on relevant matters and should not be construed as a limitation on the issues or on the scope of public comment.

Questions

(1) Do members of the greeting card industry currently make use of the Guides for information about the standards applicable to price discrimination or discriminatory promotional allowances?

(2) Do the Guides contain information about price discrimination that is usefully tailored to the specific circumstances of the industry, or could equally helpful guidance be obtained from more general sources?

(3) Do the Guides contain information about promotional allowances that is usefully tailored to the specific circumstances of the industry, or could equally helpful guidance be obtained from the more general Fred Meyer Guides?

(4) What are the costs and benefits of the Greeting Card Guides?

(5) Should the Guides be kept in effect or should they be repealed?

Part E—Proposed Repeal of Industry Guide

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41 *et seq.*; the Robinson-Patman Act, 15 U.S.C. 13; and

the provisions of part 1, subpart A of the Commission's Procedures and Rules of Practice, 16 CFR 1.6, has initiated a proceeding for the repeal of the industry guide concerning discriminatory practices in the greeting card industry.

List of Subjects in 16 CFR Part 244

Greeting card industry, Trade practices, Price discrimination, Promotional allowances, Unfair methods of competition.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–15547 Filed 6–30–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM93–17–000]

License Termination

Issued June 24, 1993.

AGENCY: Federal Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations to authorize the Director of the Commission's Office of Hydropower Licensing to terminate a license for failure to commence construction after first giving the licensee 30 days' written notice. The current regulation requires 90 days' notice.

DATES: Comments are due on or before August 2, 1993.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM93–17–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to revise § 375.314(f)(1) of its regulations so as to authorize the Director of the Commission's Office of Hydropower Licensing (Director) to terminate a license for failure to commence construction after first giving the licensee 30 days' written notice. The current regulation requires 90 days' notice.

II. Background and Discussion

Part I of the Federal Power Act (FPA)[1] authorizes the Commission to issue licenses for the construction, maintenance, and operation of hydropower projects. Section 13 of the FPA(2) requires the licensee to commence construction of the project works within the time fixed in the license, which shall not be more than two years after issuance of the license. Section 13 also authorizes the Commission to grant one extension of that deadline, the extension to be for no more than two additional years. Section 13 further provides that if the licensee does not commence construction within the time prescribed in the license as it may have been extended by the Commission, then "after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the Commission."

Section 375.314(f) of the Commission's regulations authorizes the Director or the Director's designee to:

(f) Issue an order pursuant to section 13 of the Federal Power Act to terminate a license granted under Part I of the Federal Power Act if the licensee fails to commence actual construction of the project works within the time prescribed in the license, provided:

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 90 days prior to the issuance of the termination order, and

(2) The licensee does not oppose the issuance of the termination order.

The Commission proposes to revise paragraph (f)(1) so that the notice requirement would be 30 days rather than 90 days.

Most of the Commission's license termination proceeds are initiated for failure to commence construction after having received a one-time extension of two years in addition to the two-year period prescribed in the license. Thus, the notices are usually issued after a four-year period in which to commence construction has expired and no construction has occurred. By that time, the licensee's unwillingness or inability to commence construction has in virtually every case become common knowledge to both the licensee and the Commission's staff such that the notice becomes a procedural formality that confirms the obvious. Reducing the waiting period would expedite the processing of the Commission's license termination workload.

III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[3] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. The rule proposed herein is purely procedural in nature. The Commission certifies that this rule would not have a "significant economic impact on a substantial number of small entities."

IV. Environmental Statement

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[4] The proposed rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations.[5] Consequently, neither an environmental impact statement nor an environmental assessment is required.

[1] 16 U.S.C. 792–823(b).

[2] 16 U.S.C. 806.

[3] 5 U.S.C. 601–612.

[4] 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (codified at 18 CFR part 380).

[5] See 18 CFR 380.4(a)(1).

VOL 58 ISS 125 JL 1 1993 UMI

V. Comment Procedure

The Commission invites interested persons to submit written comments on the matters proposed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than August 2, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–17–000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Public Reference Room, at 825 North Capitol St., NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission proposes to amend part 375, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107–7532.

2. In § 375.314, paragraph (f)(1) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(f) * * *

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 30 days prior to the issuance of the termination order.

* * * * *

[FR Doc. 93–15484 Filed 6–30–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 92N–0445]

Gastroenterology-Urology Devices; Effective Date of the Requirement for Premarket Approval of the Penile Inflatable Implant; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on the proposed rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the penile inflatable implant, a medical device. FDA is taking this action in response to requests for an extension of the comment period.

DATES: Written comments must be submitted by August 27, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark O. Kramer, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1194.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 28, 1993 (58 FR 25902), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the penile inflatable implant. Interested persons were given until June 28, 1993, to submit written comments on the proposed rule.

FDA received two requests for an extension of the comment period for 120 days. The requests stated that additional time was needed to enable industry, consumer groups, physicians, patient groups, and professional associations to respond with meaningful comments in light of the complexity of the issues involved.

FDA agrees in part with the requests for an extension and is granting an additional 60 days for the preparation of comments. Considering the public health significance of the regulation, FDA believes that an extension of 120 days would not be justified.

Interested persons may, on or before August 27, 1993, submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15641 Filed 6–28–93; 4:57 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884, and 886

[Docket No. R–93–1664; FR–3413–P–01]

RIN 2502–AF41

Income Eligibility for Tenancy in New Construction Units

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the section 8 Housing Assistance Payments program regulations for new construction and substantial rehabilitation to comply with section 151 of the Housing and Community Development Act of 1992. Section 151 requires that the Secretary promulgate regulations to implement section 555 of the National Affordable Housing Act of 1990, which requires that section 8 newly constructed and substantially rehabilitated projects assisted under section 8(b)(2) as it existed before October 1, 1983, and with a contract for assistance under such section, be reserved for occupancy by low-income and very low-income families.

DATES: Comment due date: August 2, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above

docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 151 of the Housing and Community Development Act of 1992, Public Law 102–550, approved October 28, 1992, requires that the Secretary promulgate regulations implementing section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, Public Law 101–625, approved November 28, 1990 (NAHA). Section 555 of NAHA provides that any dwelling unit in any housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the U.S. Housing Act of 1937, as that section existed before October 1, 1983, and with a contract for assistance under that section, shall be reserved for occupancy by low-income and very low-income families.

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing, and which, are therefore, affected by section 555 of NAHA. They are: (1) The section 8 New Construction Program, 24 CFR part 880; (2) the Section 8 Substantial Rehabilitation Program, 24 CFR part 881; (3) the State Housing Agencies program (insofar as it involves new construction and substantial rehabilitation), 24 CFR part 883; (4) the New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; (5) the Section 202 Loans for Housing for the Elderly or Handicapped Program, 24 CFR part 885 (except for projects for the nonelderly handicapped receiving rental assistance payments pursuant to section 162 of the Housing and Community Development Act of 1987); and (6) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as it involves substantial rehabilitation), 24 CFR part 886.

Before 1981, owners could rent up to 10 percent (20 percent in the Set-Aside Program for Rural Rental Housing Projects) of assisted units to ineligible families. Moreover, before 1984, the Department's regulations did not require a reduction in assisted units under the contract until rental to ineligibles exceeded 10 percent (20 percent in the Set-Aside Program for Rural Rental Housing Projects).

Section 325(l) of the Housing and Community Development Amendments of 1981 amended section 8(b)(2) of the U.S. Housing Act of 1937 by adding the following provision:

> Each contract to make assistance payments for newly constructed or substantially rehabilitated housing assisted under this section entered into after the date of enactment of the Housing and Community Development Amendments of 1981 shall provide that during the term of the contract the owner shall make available for occupancy by families which are eligible for assistance under this section, at the time of their initial occupancy, the number of units for which assistance is committed under the contract.

As a result of the Housing and Community Development Amendments of 1981, the Department implemented the existing regulations governing section 8 substantial rehabilitation or new construction which require that owners make available all assisted units for eligible families for Housing Assistance Payment (HAP) Contracts entered into pursuant to an Agreement to enter into a HAP Contract (AHAP) executed on or after October 1, 1981. The existing regulations, however, exempt owners who entered into an AHAP prior to October 1, 1981, from the statutory requirement that owners make all assisted units available for leasing by eligible families.

The Department believes that the purpose of section 555 of NAHA was to remove the exemption for owners who entered into an AHAP prior to October 1, 1981. Accordingly, this change would require that owners make available for eligible families all vacant units which are assisted with a HAP Contract, regardless of when the Owner entered into the AHAP. The Department wants to emphasize that this change would only apply to future vacancies. Under this rule, an owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time, would continue to lease the unit to that family. However, when the ineligible family vacates the unit, this rule would require that the owner make the unit available for occupancy by an eligible family.

Another important aspect of this rule is that it only applies to those units in newly constructed and substantially rehabilitated projects with a contract for assistance. Some newly constructed or substantially rehabilitated projects have unassisted units and assisted units. (These projects are often referred to as partially assisted projects.) This rule would not apply to those unassisted units.

The Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects (24 CFR part 886, subpart C) involves existing housing in addition to substantially rehabilitated housing. The Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR part 886, subpart A) involves only existing housing. Under both subparts, the assistance is project based.

In implementing the existing regulations, the Department previously determined administratively that project-based assistance should be treated similarly to new construction and substantial rehabilitation for the purposes of this rule. As such, any contracts entered into after October 3, 1984 (the effective date of the current regulations) already are subject to the requirement that Owners make available all assisted units for eligible families. Since application of this proposed rule to an owner of existing housing is not mandated by section 555 of NAHA, this rule would not affect the obligation of a section 8 project owner of existing housing assisted under part 886 who executed a Contract before October 3, 1984.

Although this proposed rule does not change the section 202 program regulations, the Department is soliciting public comment on the section 202 elderly housing program. The changes proposed in this rule are consistent with the current regulations for the section 202 handicapped housing program, and so no changes are necessary for that program. However, when the Department publishes the management regulations for elderly housing projects as a final rule in the near future (the proposed rule was published on December 9, 1987 at 52 FR 46614), part 885 will contain a provision which is substantially similar to §§ 880.504 and 881.504 as those sections exist today. Because the final rule for this proposed rule will add the proposed changes to the elderly housing management regulations at that time, the Department believes that it is appropriate to solicit public comment at this time.

Finally, it is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, because of the statutory 180-day time limit for the production of

a proposed and final rule, the Department is shortening its usual 60-day public comment period to 30 days.

Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule reflects a statutory requirement which applies to all section 8 newly constructed or substantially rehabilitated housing without regard to the size of entities involved.

F. Regulatory Agenda

This proposed rule was listed as sequence number 1442 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24409) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance program number(s) are 14.156.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 880, 881, 883, 884, and 886 would be amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for 24 CFR part 880 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d).

2. Section 880.504(d) would be revised to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all Contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time shall continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

Part 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for 24 CFR part 881 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d).

4. Section 881.504(d) would be revised to read as follows:

§ 881.504 Leasing to eligible families.

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzales National Affordable Housing Act of 1990, paragraphs (a) and (b) apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time shall continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for 24 CFR part 883 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 1437f note; 42 U.S.C. 3535(d).

6. Section 883.605(d) would be revised to read as follows:

§ 883.605 Leasing to eligible families.

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time shall continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. The authority citation for 24 CFR part 884 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d).

8. Section 884.223(d) would be revised to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraph (a) and (b) apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time shall continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

9. The authority citation for 24 CFR part 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d).

10. Section 886.329(d) would be revised to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts involving substantial rehabilitation. These paragraphs apply to all other Contracts executed on or after October 3, 1984. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time shall continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

Dated: June 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–15491 Filed 6–30–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[EE–9–92]

RIN 1545–AR07

Supplemental Annuity Tax—Railroad Retirement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (EE–9–92), which was published in the **Federal Register** for Thursday, May 13, 1993 (58 FR 28371). The proposed regulations relate to supplemental annuity tax under the Railroad Retirement Tax Act.

FOR FURTHER INFORMATION CONTACT: Karin Loverud, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contain proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3211(b) and 3221(c) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (EE–9–92), which was the subject of FR Doc. 93–10746, is corrected as follows:

1. On page 28374, column 1, § 31.3221–3(d)(3), the language in the last 3 lines that read "However, for calendar year 1993, the election is made on the return filed for 1993." is removed.

2. On page 28374, column 1, § 31.3221–3(e), is corrected to read as follows:

§ 31.3221–3 Supplemental tax

* * * * *

(e) *Effective dates.* This § 31.3221–3 is generally effective for calendar years beginning after December 31, 1992. Taxpayers may apply the rules in paragraphs (a), (b), and (c) of this section before that date. Paragraph (d) is effective for calendar years beginning after December 31, 1993.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–15032 Filed 6–30–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 31

[EE–63–92]

RIN 1545–AR08

Update of Railroad Retirement Tax Act Regulations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (EE–63–92), which was published in the **Federal Register** for Thursday, May 13, 1993 (58 FR 28366). The proposed regulations relate to the Railroad Retirement Tax Act.

FOR FURTHER INFORMATION CONTACT: Jean M. Whalen, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contain proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3201 through 3231 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (EE–63–92), which was the subject of FR Doc. 93–10744, is corrected as follows:

1. On page 28367, column 3, in the preamble under the heading "Background", third full paragraph, fourth line from the bottom of the

VOL 58 ISS 125 JL 1 1993 UMI

paragraph, the language "organization is below a certain statutory" is corrected to read "organization employer is below a certain statutory".

2. On page 28369, column 1, the example in § 31.3201–2(b)(2), top of column, is corrected to read as follows.

§ 31.3201–2 Rates and computation of employee tax.

* * * * *

(b) * * *

(2) * * *

Example. In 1990, employee *A* received $1,000 as remuneration for services performed for employer *R* in 1989. The employee tax is payable at the rate of 12.55 percent (7.65 percent plus 4.90 percent) in effect for 1990 (the year the compensation was received), and not the 12.41 percent rate (7.51 percent plus 4.90 percent) in effect for 1989 (the year the services were performed)

* * * * *

3. On page 28370, column 1, § 31.3221–2(a)(3), last line of that paragraph, the reference "§ 31.3211–3." is corrected to read "§ 31.3221–3.".

4. On page 28370, bottom of column 1 and the top of column 2, the example in § 31.3221–2(b)(2), is corrected to read as follows:

§ 31.3221–2 Rates and computation of employer tax.

* * * * *

(b) * * *

(2) * * *

Example. In 1990, *R's* employee *A* received $1,000 as remuneration for services performed for *R* in 1989. The employer tax is payable at the rate of 23.75 percent (7.65 percent plus 16.10 percent) in effect for 1990 (the year the compensation was received) and not the 23.61 percent rate (7.51 percent plus 16.10 percent) in effect for 1989 (the year the services were performed).

* * * * *

5. On page 38371, column 1, the section heading, "§ 31.3231(e)–(2) Contribution base." is corrected to read "§ 31.3231(e)–2 Contribution base.".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–15033 Filed 6–30–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[AMS–FRL–4674–9]

Clean Fuel Fleet Emission Standards, Conversions, and General Provisions and Amended Heavy-Duty Averaging, Banking, and Trading Credit Accounting Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; clarification of comment period and opportunity to request public hearing.

SUMMARY: This action transmits a clarification to the preamble of the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** at (58 FR 32474) on June 10, 1993. Although a public hearing is scheduled to be held on July 15, 1993 on other provisions in that NPRM, EPA is not at this time planning to hold a public hearing for the proposed Averaging, Banking, and Trading (ABT) provisions in that document.

As such, the written comments on the proposed ABT provisions must be submitted on or before August 2, 1993, and not on or before 30 days from the conclusion of the public hearing on the other provisions in that NPRM.

However, at this time EPA is providing interested persons with the opportunity to request a public hearing on the proposed ABT provisions. If such a hearing is requested, it will be held on July 15, 1993 at the address noted below, and the comment period will be extended as noted below.

DATES: All requests for a hearing on the ABT provisions should be made to the contact below on or before July 8, 1993. If a hearing on the ABT provisions is requested, it will be held on July 15, 1993 at the address noted below.

Written comments on the proposed ABT provisions must be submitted on or before August 2, 1993, if no hearing is held on these provisions, or on or before 30 days from the conclusion of the hearing, if a hearing is held on these provisions.

ADDRESSES: As indicated in the original notice, interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–30 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

If a public hearing is requested, it will be held in conjunction with the hearing on the other provisions of the NPRM at Domino's Farms, 24 Frank Lloyd Wright Drive, Ann Arbor, MI 48105 (Telephone: (313) 930–4258) in the Ulrich Room at 9:00 a.m. on July 15, 1993. The contact listed below may be contacted to determine whether a public hearing has been requested and will be held on the ABT provisions.

FOR FURTHER INFORMATION CONTACT: Ms. Paulina Chen, U.S. EPA (6405J), Manufacturers Operations Division, 401 M Street, SW., Washington, DC, 20460, Telephone: (202) 233–9249.

Dated: June 28, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–15692 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–171, RM–8257]

Radio Broadcasting Services; Lindsborg and Sterling, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by E. Jerry Davies and Diane Davies d/b/a JD Communications proposing the substitution of Channel 238C3 for Channel 240A at Lindsborg, Kansas, and modification of the license for Station KQNS–FM to specify operation on Channel 238C3. The coordinates for Channel 238C3 are 38–40–00 and 97–41–30. To accommodate Channel 238C3 at Lindsborg we shall propose substituting Channel 234A for vacant Channel 239A at Sterling, Kansas, at coordinates 38–12–42 and 98–12–12. If no applications for Channel 239A at Sterling are filed during the comment period, we shall delete the channel and no substitute allotment will be made to Sterling. We shall propose to modify the license for Station KQNS–FM in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES Comments must be filed on or before August 16, 1993, and reply comments on or before August 31, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: E. Jerry Davies and Diane Davies, d/b/a JD Communications, P.O. Box 1069, McPherson, Kansas 67460.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–172, adopted June 9, 1993, and released June 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1991 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15534 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–170, RM–8250]

Radio Broadcasting Services; Bemidji, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Thomas J. Lijewski proposing the allotment of Channel 238C1 to Bemidji, Minnesota, as that community's third FM broadcast service. Channel 238C1 can be allotted to Bemidji without a site restriction at coordinates 47–28–49 and 94–52–49. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before August 16, 1993, and reply comments on or before August 31, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Timothy E. Welch, Dean George Hill & Welch, 1330 New Hampshire Avenue, NW., suite 113, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–170 adopted June 8, 1993, and released June 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15533 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–174, RM–8263]

Radio Broadcasting Services; Owensville and Versailles, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Twin Lakes Communications, Inc., proposing the substitution of Channel 236C3 for Channel 236A at Versailles, Missouri, and modification of the license for Station KLGS (FM) to specify operation on the higher class channel. The coordinates for Channel 236C3 at Versailles are 38–23–27 and 92–38–06. We shall propose to modify the license for Station KLGS (FM) in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. To accommodate the upgrade at Versailles, we shall propose to substitute Channel 237A for Channel 237C2 at Owensville, Missouri, at coordinates 38–15–22 and 91–32–04.

DATES: Comments must be filed on or before August 16, 1993, and reply comments on or before August 31, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–174, adopted June 10, 1993, and released June 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

VOL 58 ISS 125 JL 1 1993 UMI

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

[FR Doc. 93–15530 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 543

[Docket No. 93–46; Notice 1]

RIN 2127–AE66

Motor Vehicle Theft Prevention; Exemption From Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the agency regulation on exempting high theft lines to conform to the amendments made by the "Anti Car Theft Act of 1992" to Title VI ("Theft Prevention") of the Motor Vehicle Information and Cost Savings Act. As amended, Title VI limits the number of high theft motor vehicle lines that may be exempted from the parts marking requirements of the Federal Motor Vehicle Theft Prevention Standard. For each model year through model year 1996, a manufacturer may petition for exemptions for up to two additional lines of its passenger motor vehicles. For the four year period beginning with model year 1997 and ending with model year 2000, a manufacturer may petition for an exemption for only one additional line of its passenger motor vehicles for each year.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this notice and be submitted, preferably in 10 copies, to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740

SUPPLEMENTARY INFORMATION:

Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to Title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard." Part 541 establishes performance requirements for inscribing or affixing identification numbers onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 605 of Title VI permits manufacturers to petition NHTSA to exempt high theft vehicle lines from the Theft Prevention Standard. To be exempted, a high theft line must satisfy two conditions. First, a line must be equipped with an antitheft device as standard equipment on the entire line for which its manufacturer seeks an exemption. Second, NHTSA must determine that such antitheft device is likely to be as effective as parts marking in reducing and deterring motor vehicle theft. As originally enacted, section 605 allowed the agency to grant an exemption for not more than two lines of any manufacturer for the initial model year (model year 1987) to which the vehicle theft prevention standard applies, and two additional lines of any manufacturer for each subsequent model year.

Regulations governing the granting of exemptions are set forth in 49 CFR part 543, "Exemption from Vehicle Theft Prevention Standard." Part 543 sets out procedures for manufacturers to follow in preparing and submitting petitions for exemption from the parts marking requirements of part 541. It also sets forth procedures for NHTSA to follow in processing those petitions and determining whether they should be granted.

Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, amended Title VI of the Cost Savings Act. Title VI was amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of Title VI.) Before the amendment of Title VI, "passenger motor vehicle" was defined for the purposes of Title VI to include passenger cars only. The effect of the redefinition is that certain light-duty truck lines and multipurpose passenger vehicle lines may be determined to be likely high theft vehicles, and thus, may be subject to the parts marking requirements of the Federal Motor Vehicle Theft Prevention Standard (49 CFR part 541). If the lines are designated as high theft lines, manufacturers of certain light-duty trucks and multipurpose passenger vehicle lines may, under the procedures in part 543, petition for exemption of these lines from the parts marking requirements of part 541.

The Title VI amendment giving rise to this proposal restricts the number of exemptions from parts marking that may be granted to any manufacturer of high theft passenger motor vehicle lines. As a result of the amendments to section 605(a)(2) of Title VI, the agency may continue to grant exemptions for two high theft lines per manufacturer per year, from the present through MY 1996.

> For each subsequent model year through model year 1996, the Secretary may grant exemption for not more than 2 additional lines of any manufacturer * * *

However, for the next four years, Title VI states that:

> For MY 1997 through MY 2000, [NHTSA] may grant such an exemption for not more than 1 additional line of any manufacturer * * *

Amended Title VI also states that, after MY 2000, the granting of any further exemptions would be contingent on a determination by the U.S. Attorney General whether the antitheft devices are an effective substitute for parts marking in substantially inhibiting vehicle theft. If the Attorney General determines that the devices are not effective, no more exemptions from the parts marking requirements could be issued. If the Attorney General determines that the devices are effective, the determination is to be accompanied with a recommendation as to the number of exemptions which may be granted from the parts marking requirements. The Attorney General's determination must be made by December 1999. See section 602(f)(5) of Title VI.

In response to the amendments to section 605, NHTSA proposes to amend part 543 to conform it to the new statutory restrictions on the number of exemptions from the parts marking requirements of part 541. NHTSA proposes to amend part 543 to state the number of vehicle lines for which a manufacturer may petition for exemption for each model year through MY 2000. More specifically, NHTSA proposes that for each model year , through model year 1996, a manufacturer may petition for exemptions for up to two additional lines of its passenger motor vehicles.

For each model year from model year 1997 through model year 2000, the agency proposes that a manufacturer may petition for exemptions for only one additional line of its passenger motor vehicles. NHTSA recognizes that section 605 is less clear about the number of exemptions that may be granted for model years 1997 through 2000 than for the years preceding that period. While the sentence in the statute regarding exemptions for model years through model year 1996 explicitly states that two lines may be exempted "(f)or each subsequent model year," the sentence regarding the model years 1996 through 2000 period does not contain any similar language.

For guidance in resolving this ambiguity, the agency consulted the legislative history of the "Anti Car Theft Act of 1992." The following comments from Representative John Dingell, Chairman of the House Committee on Energy and Commerce expressly address the issue of how many exemptions from parts marking each manufacturer may petition for model years 1997 through 2000:

> * * * the legislation continues the present exemptions under Section 605(a) for antitheft devices and a manufacturer may add two care lines annually for 3 model years and then one additional car line *annually* for 4 more model years. (Emphasis added.) (See Congressional Record—House of Representatives October 5, 1992, at page H 1180.)

This legislative history is strong evidence that Congress intended to permit each manufacturer to petition NHTSA to grant an exemption for only one additional line of its passenger motor vehicles from parts marking for each of model years 1997 through 2000. Accordingly, in this notice, NHTSA proposes to amend 49 CFR part 543 to permit a manufacturer to petition NHTSA to grant an exemption for only one additional line of its passenger motor vehicles for each of model years 1997 through 2000.

NHTSA is not proposing to address exemptions for model years after MY 2000, since, as discussed above, any such exemptions are contingent upon the Attorney General's determination to be made in 1999.

Finally, NHTSA proposes that a minor amendment be made to reflect the fact that petitions could be submitted under part 543 for light-duty trucks and multipurpose passenger vehicles, as well as passenger cars.

This proposed rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Impacts

1. Executive Order 12291

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This proposal simply sets forth amendments conforming part 543 to the amendments to Title VI. The proposal itself would have no impacts on the manufacturers of passenger motor vehicles.

Accordingly, NHTSA does not believe that this proposed rulemaking would affect the impacts described in the regulatory evaluation prepared for the proposal leading to the establishment of part 541. Therefore, a separate regulatory evaluation has not been prepared for this proposed rule. Interested persons may wish to examine the regulatory evaluation for part 541 as originally proposed. Copies of that evaluation have been placed in Docket No. T–84–01; Notice 4, and may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated as a final rule, have a significant economic impact on a substantial number of small entities. As already noted, this proposal simply sets forth amendments conforming Part 543 to the amendments to Title VI. The proposal itself would have no impact on the manufacturers of passenger motor vehicles or on small organizations or governmental units that purchase passenger motor vehicles.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The procedures in this proposed rule for manufacturers to submit petitions for exemption from parts marking to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 543 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0542 ("Petitions for exemption from the vehicle theft prevention standard") and has been approved for use through July 31, 1995

5. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (See 49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential

VOL
58
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information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (See 49 CFR part 512.)

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 543

Administrative practice and procedure, National Highway Traffic Safety Administration, reporting requirements.

In consideration of the foregoing, it is proposed that 49 CFR part 543 be amended as follows:

PART 543—[AMENDED]

1. The authority citation for part 543 would continue to read as follows:

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

2. Section 543.5(a) would be revised to read as follows:

§ 543.5 Petition; General requirements.

(a) For each model year through model year 1996, a manufacturer may petition NHTSA to grant exemptions for up to two additional lines of its passenger motor vehicles from the requirements of Part 541. For each of model years 1997 through 2000, a manufacturer may petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of part 541.

* * * * *

3. Section 543.6(a) introductory text is republished for the convenience of the reader and paragraph (a)(1) would be revised to read as follows:

§ 543.6 Petition; specific content requirements.

(a) Each petition for exemption filed under this part must include:

(1) A statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which an exemption is sought;

* * * * *

Issued on: June 28, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–15536 Filed 6–30–93; 8:45 am]

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DEPARTME

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Notices

Federal Register
Vol. 58, No. 125
Thursday, July 1, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 25, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Reinstatement

- Forest Service
- Forest Industry Survey of California and Oregon
- One time only
- Businesses or other for-profit; small businesses or organizations; 500 responses; 250 hours
- George R. Sampson (907) 474–3303

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 93–15477 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

South Carolina Hugo Incentives Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all State cost-share payments made to individuals by the State of South Carolina under the South Carolina Hugo Incentives Program are made primarily for the purpose of restoring the environment, improving forests, and providing wildlife habitat in South Carolina. This determination is made pursuant to section 126 of the Internal Revenue Code and subject to a subsequent determination by the Secretary of the Treasury, will permit recipients of these cost-share payments to exclude them from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: F.A. Dorrell, Director, Cooperative Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1389.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978, and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under State cost-share conservation programs may be excluded from the recipient's gross income for Federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." To make a "primary purpose" determination, the Secretary evaluates a cost-share conservation program based on criteria set forth at 7 CFR part 14. Following a determination by the Secretary of Agriculture, the Secretary of the Treasury must then determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The South Carolina Hugo Incentives Program is a cost-share conservation program operated under the authority of South Carolina Code 48–23–90. It is funded through grants from the Forest Service, U.S. Department of Agriculture, under the authority of section 3 of the Cooperative Forestry Assistance Act of 1978, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 1201). Authority for funding of the program is from Public Law 101–512, Department of the Interior and Related Agencies Appropriation Act of 1990. The program provides financial assistance to nonindustrial private landowners to reforest timber stands damaged by Hurricane Hugo, primarily for the purpose of restoring the environment, improving forests, enhancing growth of forest products, and providing wildlife habitat. The program is administered by the State Forester under the auspices of the South Carolina Forestry Commission.

Program objectives are achieved through the development and implementation of forest management plan approved by a Commission forester for an eligible landowner. To obtain approval, the plan must include forest management practices that ensure both forest productivity and environmental protection of the lands to be treated under the management plan. Program objectives are further achieved through the installation of silvicultural practices, approved by the State Forester, aimed at regenerating and restoring commercial timber stands significantly damaged by Hurricane Hugo. Approved practices must include site preparation, natural and artificial reforestation, and control of undesirable vegetation for reforestation purposes.

Having carefully examined the authorizing legislation, regulations, and operating procedures for the South Carolina Hugo Incentives Program using the criteria set forth in 7 CFR part 14, the Secretary of Agriculture has concluded that the cost-share payments for implementing approved reforestation practices under this program are made to eligible persons primarily for the purposes of protecting or restoring the environment, improving forests, and providing wildlife habitat.

A copy of the primary purpose determination as signed by the Assistant Secretary for Natural Resources and

Environment on June 14, 1993, is set out at the end of this notice.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, the authorizing legislation, regulations, and operating procedures regarding the South Caroline Hugo Incentives Program have been examined in accordance with the criteria set out in 7 CFR part 14. Based on this examination, I hereby determine that those cost-share payments made for planning and installing reforestation practices under this program are primarily for the purpose of protecting or restoring the environment, improving forests, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by these payments, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of the cost-share payments made under said program to the extent allowed by the Internal Revenue Service.

Dated: June 14, 1993.

James R. Lyons,

Assistant, Secretary for Natural Resources & Environment.

[FR Doc. 93–15503 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–11–M

Office of the Assistant Secretary for Food and Consumer Services

Development of the United States Plan of Action for Nutrition in Response to the International Conference on Nutrition (ICN); Opportunity To Provide Written Comments, Meeting

AGENCY: Office of the Assistant Secretary for Food and Consumer Services, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA), the Department of Health and Human Services (DHHS), and the Agency for International Development (USAID) (a) announce the availability of the World Declaration and Plan of Action for Nutrition resulting from the International Conference on Nutrition; (b) announce a public meeting to solicit input for the development of the U.S. Plan of Action for Nutrition and (c) invite written public proposals and comments by September 7, 1993.

DATES: To be assured of consideration, written proposals for the U.S. Plan on Action for Nutrition should be postmarked no later than September 7, 1993. The public meeting will be held at the Department of Agriculture, 14th and Independence Ave., SW., Administration Bldg., room 107A, on August 4, 1993 from 9:30 am to 4 p.m.

ADDRESSES: Written proposals and comments on the U.S. Plan of Action for Nutrition should be sent to Frances Zorn, Food and Nutrition Service (USDA), room 206, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: (1) For a copy of the ICN World Declaration and Plan of Action for Nutrition, write to Floyd Miles, Food and Nutrition Service (USDA), room 206, 3101 Park Center Drive, Alexandria, VA 22302 or phone (703) 305–2115. (2) For additional information regarding the U.S. Plan of Action for Nutrition contact Jill Randell, Food and Nutrition Service (USDA), room 206, 3101 Park Center Drive, Alexandria, VA 22302 or phone (703) 305–1112; Neil Gallagher, Office of International Cooperation and Development, Department of Agriculture, room 3005 South Building, 14th and Independence Ave., SW., Washington, DC 20250–4300; (202) 690–1817, Linda Meyers, Office of Disease Prevention and Health Promotion, U.S. Public Health Service, DHHS, 330 C Street, SW., room 2132 Switzer Bldg., Washington, DC 20201, (202) 205–9007; or Eunyong Chung, Office of Nutrition, USAID, SA#18, room 411, Washington, DC 20523–1808, (703) 875–4074.

SUPPLEMENTARY INFORMATION: The International Conference on Nutrition (ICN) was held in Rome, Italy, in December 1992. It was jointly sponsored by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO).

The World Declaration and Plan of Action for Nutrition were submitted to the ICN and their contents were discussed, revised and unanimously approved by delegates from 159 countries and the European Economic Community. Nongovernment organizations and private business groups also participated in the discussions. The nine subject areas identified in the approved Plan of Action were: (1) Incorporating nutritional objectives, considerations, and components into development policies and programs; (2) Improving household food security; (3) Protecting consumers through improved food quality and safety; (4) Preventing and managing infectious diseases; (5) Promoting breastfeeding; (6) Caring for the socio-economically deprived and nutritionally vulnerable; (7) Preventing and controlling specific micronutrient deficiencies; (8) Promoting appropriate diets and healthy lifestyles; and (9) Assessing, analyzing and monitoring nutritional situations. All governments have been asked to prepare or improve national plans of action and policies based on the principles and strategies in the World Declaration and Plan of Action for Nutrition by the end of 1994.

Public input, on topics such as programs, policies and research activities, is requested for consideration in developing the U.S. Plan of Action for Nutrition. All written proposals, comments, and/or oral remarks should note specifically which of the above topics are being addressed. This notice is not published pursuant to the Administrative Procedures Act.

Dated: June 25, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.

[FR Doc. 93–15494 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Establishment of Skagit Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Skagit Purchase Unit.

SUMMARY: On May 21, 1993, the Secretary of Agriculture created the Skagit Purchase Unit. This purchase unit comprises 820 acres, more or less, within Skagit County, Washington. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was May 21, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated: June 22, 1993.

Jeff M. Sirmon,

Acting Chief.

Establishment of Skagit Purchase Unit, Skagit County, Washington

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) a purchase unit is being established and is described as follows:

Skagit County, Washington Willamette Meridian

T. 35 N., R. 10 E.
Sec. 19: E½
Sec. 20: NW¼
Sec. 30: Those lands lying north of State Highway 20

The area described aggregate 820 acres, more or less, and is adjacent to the Mt. Baker National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: May 21, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–15504 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–11–M

Establishment of Sur Sur Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Sur Sur Purchase Unit.

SUMMARY: On May 21, 1993, the Secretary of Agriculture created the Sur Sur Purchase Unit. This purchase unit comprises 1,714 acres, more or less, within Monterey and San Luis Obispo Counties, California. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was May 21, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated: June 22, 1993.

Jeff M. Sirmon,

Acting Chief.

Sur Sur Purchase Unit Monterey and San Luis Obispo Counties, California

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) a purchase unit is being established and is described as follows:

Monterey County, California, Mount Diablo Base and Meridian

T.24S., R. 6E.
Section 32: SE¼NE¼, E½SE¼, SW¼SE¼
Section 33: W½SE¼, W½

San Luis Obispo County, California, Mount Diablo Base and Meridian

T.25S., R.6E.
Section 3: NW¼, N½SW¼, SE¼, S½NE¼
Section 4: N½, N½S½
Section 5: Lots 1 and 5
Section 9: Pt. W½ as described in official plat thereof as granted to Haake Lands by deed recorded April 7, 1976, Book 1890, page 218

The area described aggregate 1,714 acres, more or less, and are adjacent to the Los Padres National Forest, California.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: May 21, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–15505 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Southwind Horse Auction, Westminister, South Carolina; Correction

On June 3, 1993, a notice was published in the **Federal Register** (47 FR 32177) giving notice of the deposting for certain stockyards listing their facility number, name and location.

This notice is to correct the date of posting assigned to Southwind Horse Auction, Westminister, South Carolina.

SC–149—Southwind Horse Auction, Westminister, South Carolina, April 1, 1991.

Done at Washington, DC, this 25th day of June, 1993

Harold W. Davis, Director,

Livestock Marketing Division.

[FR Doc. 93–15475 Filed 6–30–93; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–93]

Foreign-Trade Zone 138—Columbus, Ohio; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rickenbacker Port Authority (RPA), grantee of FTZ 138, requesting authority to expand its zone in Franklin County, Ohio, adjacent to the Columbus Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 24, 1993.

FTZ 138 was approved on March 13, 1987 (Board Order 351, 52 FR 9319; 3/24/87), and it currently consists of the Rickenbacker Air Industrial Park (1,642 acres), located at the Rickenbacker International Airport on Route 317 in Franklin County, Ohio, some 10 miles southeast of downtown Columbus.

The applicant is now requesting authority to expand the general-purpose zone to include a tract (286 acres) adjacent to the existing zone site, north of Route 317. RPA will operate the proposed expansion site as part of its Rickenbacker Air Industrial Park and zone project. A portion of the tract is owned by Spiegel Properties, Inc., which plans to construct a mail order distribution facility to be operated by one of its affiliates. Its initial use of zone procedures would be limited to warehousing/distribution activity.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is August 30, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 14, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Port Columbus International Airport, 4600 17th Avenue, room 221, Columbus, Ohio 43219.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716,

14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 24, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–15581 Filed 6–30–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 26–93]

Foreign-Trade Zone 35—Philadelphia, Pennsylvania; Application for Expansion and Application for Processing Meat Products for Export

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting authority to expand its zone in the Philadelphia, Pennsylvania, area, within the Philadelphia Customs port of entry, and requesting authority on behalf of American Foodservice Corporation to process meat products for export under zone procedures. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 21, 1993.

FTZ 35 was approved on March 24, 1978 (Board Order 128, 43 FR 14531; 4/6/78), and expanded on August 21, 1980 (Board Order 162, 45 FR 58388; 9/3/80). The zone project currently consists of three sites in the Philadelphia, Pennsylvania, area: *Site 1* (39 acres)—four facilities within Philadelphia port complex (*1A*—Pier 78 So.; *1B*—Pier 98 So. Annex; *1C*—Piers 38 & 40; *1D*—One Brown St. Warehouse); *Site 2* (22.36 acres)—Trans Freight Systems warehouse, 8415 Envoy Avenue; and *Site 3* (67 acres)—Byberry site, Townsend and McNulty Roads.

The applicant is now requesting authority to expand its zone to include a cold storage/food processing facility (2.7 acres) located at 400 Drew Court, King of Prussia, Pennsylvania, some 20 miles west of Philadelphia. The facility, which is owned and operated by American Foodservice Corporation (AFSC), includes a public cold storage area.

The application also requests authority on behalf of AFSC to process beef for export. The processing activity involves producing hamburger patties for restaurants. AFSC sources some 50 percent of its beef from abroad. All of the hamburger processed under zone procedures would be exported.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. U.S. Department of Agriculture officials will be consulted as part of the review.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is August 30, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 14, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Regional Office, 475 Allendale Road, suite 202, King of Prussia, Pennsylvania 19406.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: June 24, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–15582 Filed 6–30–93; 8:45 am]

BILLING CODE 3510–DS–PM

International Trade Administration

[A–401–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden; Partial Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of partial termination of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce initiated reviews for two manufacturers/exporters on July 6, 1992 for the period May 1, 1991 through April 30, 1992, (the POR). One of the firms we initiated reviews for was ITT Jabsco covering sales of ball bearings and parts thereof and cylindrical roller bearings and parts thereof. We received a timely request for withdrawal of these reviews for ITT Jabsco. Because there were no other requests for review of this company from any other interested parties, we are terminating these reviews with respect to ITT Jabsco.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo, Michael Diminich, or Richard Rimlinger; Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20900) the antidumping duty orders on ball bearings (BBs) and cylindrical roller bearings (CRBs) and parts thereof from Sweden. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991 through April 30, 1992 (57 FR 29791).

We had initiated reviews for ITT Jabsco covering sales of ball bearings and parts thereof and cylindrical roller bearings and parts thereof during the period of review. We received a timely request for withdrawal of these reviews for ITT Jabsco. Because there were no other requests for review of this company from any other interested parties, we are terminating these reviews with respect to ITT Jabsco, in accordance with 19 CFR 353.22(a)(5).

This partial termination notice is in accordance with section 353.22(a)(5) of the Department's Regulations.

Dated: June 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15583 Filed 6–30–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 930493–3093]

NOAA Climate and Global Change Program—Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change

Research Program (USGCRP), which is coordinated by the interagency Committee on Earth and Environmental Sciences. NOAA's program is designed to complement other agency contributions to that national effort.

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that 30–35% of the total resources available ($69.9 Million was requested in the President's FY94 budget) will support extramural efforts, particularly those involving the broad academic community. Approximately 35% will be applied toward extramural grants and cooperative agreements already in progress and those proposals submitted in FY93 that were recommended for funding in FY94. Remaining funds, approximately, $20 million will be available for new grants an cooperative agreements. This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, primarily over a one to two year period. Three year proposals will be considered for mature projects. Award decisions are made based upon independent peer review of each proposal. There is no established upper or lower limit on the awards; the range of grants and cooperative agreements may vary depending on many factors, including the actual budget and the types of proposals received relative to the priorities in the program. (In the past, grants and cooperative agreements ranging from below $10,000 to over $1 million have been funded.) Actual funding levels may be subject to change depending on the final FY94 budget appropriation. Funding for non-U.S. institutions is not available under this announcement.

DATES: Schedule for Submissions and Funding. The deadlines for submission to the FY 1994 process are: Letters of intent received at OGP on or before July 9, 1993. Full proposals received at OGP on or before August 9, 1993.

The time from target date to grant award varies with program area. We anticipate that review will occur during the fall of 1993 and funding should begin during the early spring of 1994 for most approved projects. March 1, 1994 should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within 3 to 6 months.

ADDRESSES: Proposals may be submitted to: Office of Global programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, suite 1225, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Irma duPree, The Office of Global Programs, National Oceanic and Atmospheric Administration, at the address given above, (301) 427–2089; OMNET: I.DUPREE.

SUPPLEMENTARY INFORMATION:

Program Authority

49 U.S.C. 1463; 15 U.S.C. Section 313; 15 U.S.C. 2901; and 15 U.S.C. 2921.

(CFDA No. 11.431—Climate and Global Change)

Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of climate change and associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that these time scales can be studied with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmosphere-land surface system will characterize NOAA's role in a successful national effort to deal with observed or anticipated changes in the global environment.

Program Priorities

In FY 1994, NOAA will give priority attention to individual proposals in the areas described below. Investigators are asked to specify clearly which of these areas is being pursued.

Atmospheric Chemistry

The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of atmospheric trace gases that influence the Earth's chemical and radiative balance. FY 1994 grants in Atmospheric Chemistry will focus on studies associated with the International Global Atmospheric Chemistry (IGAC) program of the IGBP. Proposals are solicited for the following: (i) (Highest priority) the Northern Atlantic Regional Study (NARE), with emphasis on intensive field studies and modeling; (ii) the International Support Activity: intercalibrations/intercomparisons, with emphasis on the Nonmethane Hydrocarbon Intercomparison Experiment; (iii) the East Asian/North Pacific Regional Experiment (APARE), with emphasis on coordination of ground-based chemical measurements and diagnostic analyses and modeling of regional chemical processes; and (iv) the Northern Wetlands Study (NOWES) and associated programs, with emphasis on atmospheric chemical processes. In addition, proposals are solicited for polar stratospheric ozone research, with an emphasis on airborne studies. For an information sheet containing further details, contact: Joel Levy, NOAA/Global Programs, 301–427–2089 ext. 756, OMNET: J. Levy, or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO; 303–497–5819

Long Term Ocean Observations

The Long-Term Ocean Observations (L–TOO) program has been created by merging and restructuring the previous program elements: Global Sea Level program and Surface and Upper Ocean Observations program (SUOOP). The long range goal of L–TOO is to develop and demonstrate methodologies for long-term ocean observations, analyses and interpretations as a continuing contribution to the climate module of the Global Ocean Observing system (GOOS); long-term observations currently part of L–TOO may ultimately become part of GOOS. GOOS will consist of regular global coverage provided by satellites and in situ measurements to monitor and document climatic variability and enable its prediction. In FY 1994, L–TOO priority will be given to sampling strategy, tradeoff, and sensitivity studies for the design and implementation of a long-term ocean observing system that will efficiently and affordably satisfy the observational needs for climate research and prediction, especially for international processes such as ENSO. The following parameters have been selected as the first priority for L–TOO observations: Relative sea level and related vertical land movement sea surface temperature, upper ocean temperature, surface winds, sea surface salinity, upper ocean salinity, surface temperature of the ice cover, sea ice thickness and change in land ice mass. As a lesser priority, L–TOO also seeks proposals for studies of interannual to decadal sea level variability, its meteorological and oceanographic causes and its effective removal from multi-decadal sea level records. For further information contact: William Woodward, NOAA/National Ocean Service, Rockville, MD, 301–443–8110, OMNET: W. Woodward, or Michele Bullock, NOAA/Global Programs, Silver Spring, MD, 301–427–2089 ext 716, OMNET: M. Bullock.

Atlantic Climate Change

The goal of this project is to determine the nature and influence of interactions between the meridional

circulation of the Atlantic Ocean, sea surface temperature and salinity, and the global atmosphere. Proposals are sought in the following areas: (i) Studies using models or historical data to examine variability in the climate system resulting from interactions between the global atmosphere and the Atlantic Ocean; (ii) modeling and field work, including satellite-derived analyses, that enhance our knowledge of the maintenance and variability of the relatively warm upper layer water in the Grant Banks region, and what role this may play in the larger scale atmospheric and oceanic climate system; (iii) use of conceptual and numerical models to synthesize near surface data (e.g. surface drifters, XBTs and sea level) and data from the full water column (e.g. hydrographic, tracer and other data sets); (iv) documentation of the general characteristics of decadal/century modes of Atlantic variability for model validation through synthesis of information from both instrumental and proxy sources.

For further information contact: David Goodrich, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 38, OMNET: D. Goodrich.

Tracers and WOCE Hydrography

As part of NOAA's contribution to the World Ocean Circulation Experiment (WOCE), proposals are sought for tracer observations on WOCE hydrographic cruises. Of particular interest are studies employing tracers operating on decadal to centennial time scales, including chlorofluorocarbons, helium-3/tritium, and carbon isotopes. WOCE-related proposals will be jointly reviewed by NOAA and the National Science Foundation (NSF) as part of the interagency WOCE Program Announcement. Proposals for this element should be submitted directly to the NSF Ocean Sciences Division, using NSF format. For further information contact: David Goodrich, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 38. OMNET: D. Goodrich.

Ocean-Atmosphere Carbon Fluxes

As part of NOAA's contribution to the Joint Global Ocean Flux Study (JGOFS) and as a continuing effort aimed at improving our understanding of the role of the ocean in sequestering the increasing burden of antropogenically derived carbon dioxide in the atmosphere, proposals are sought for the planned FY 1994 NOAA research cruise along 110 degrees West longitude in the South Pacific Ocean. Proposals addressing the measurement of specific chemical variables including alkalinity, pH, nutrients, dissolved organic carbon, dissolved organic nitrogen, primary productivity and carbon isotopes are encouraged. For an information sheet containing further details, contact: James F. Todd, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 32, OMNET: J. Todd.

Tropical Oceans and Global Atmosphere (TOGA)

The goal of the TOGA Program is to understand and model the coupled variations of the global atmospheric circulation and tropical ocean circulation for the purpose of predicting the interannual variability of the atmospheric regime. TOGA supports research in the areas of monitoring and data management, empirical studies, modeling and prediction as well as the computer infrastructure necessary to support this research. Proposals for TOBA COARE will be solicited under a separate announcement to be issued jointly by NOAA and NSF. For further information contact: Kenneth Mooney, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 14, OMNET: K. Mooney.

Operational Measurements

The overall goal of this program is to develop and generate continuing climate and global change information products from NOAA operational measurement systems including environmental satellite and in-situ observing systems. Emphasis will be placed on satellite-based or combined satellite/in-situ products representing the following variable suites: (i) Oceanic variables; (ii) land surface variables; (iii) earth radiation budget, atmospheric water vapor, clouds and aerosols; (iv) temperature, moisture and wind soundings; (v) stratospheric variables; and (vi) precipitation (see also Atmospheric and Land Surface Processes program). Supported activities are broad and include: instrument calibration; monitoring to meet climate and global change requirements; development and testing of remote sensing product algorithms; operational generation of data and information products; and product evaluation, application, and analysis. Priority for this year will be given to proposals that utilize satellite or combined satellite and in-situ operational data sets in numerical climate models, model validation, cloud/radiation problems, climate diagnostic studies, and time series analysis of climate variables. For further information, contact: Arnold Gruber, NOAA/NESDIS, Washington, DC 20233; 301–763–8127; OMNET: A. Gruber, or Bill Murray, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 26; OMNET: W. Murray.

Information Management

The goals of this project are: (i) To provide the organization and focus through which data producers, data managers and data users actively participate in the design, implementation and review of the NOAA Climate and Global Change (C&GC) information management system, (ii) to assist in construction of data and information (metadata) sets required by C&GC researchers, (iii) to provide users with easy access to C&GC data and information and (iv) to manage long-term C&GC data and information archives. Proposals are sought which support the data and information management goals of the NOAA C&GC Program. Priorities include construction of long-term climate and global change data sets and information products involving data assembly, digitization, quality control and data rescue, and support of information management applicable to national and international research programs. In particular, there will be continued and increased support for proposals that address the information management requirements of the C&GC Program science elements. Proposals to enhance system and infrastructure responsibilities without firm science driven objectives will not be considered. For further information contact: Christopher Miller, NOAA/NESDIS, Washington, DC 20235, 202–606–5012, OMNET: C.Miller.NOAA, or Bill Murry, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 26, OMNET: W.Murray.

Atmospheric and Land Surface Processes

This program supports research into the wide range of problems that limit our understanding of those atmospheric and land surface processes through which the overall energy and water balance of the Earth's climate system is maintained. Priority is given to proposals directed at understanding and modeling processes associated with: (i) Clouds, aerosols and water vapor, (ii) precipitation, and (iii) land surface hydrology. Proposals are encouraged which support the objectives of the Global Energy and Water Cycle Experiment (GEWEX), including the GEWEX Continental-Scale International Project (GCIP) which has the Mississippi Basin as its primary study area. Detailed science plans have been prepared for GEWEX and GCIP. In view of the strong interest in conducting and supporting research directed at programs in these areas, close

coordination in reviewing and funding proposals will be maintained between NOAA and other USGCRP funding agencies such as NASA and NSF. For further information contact: Michael Coughlan, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 40, OMNET: M.Coughlin.

Marine Ecosystem Response

The principal objective of the Marine Ecosystem Response Program is to determine the relationship between ecosystem dynamics and the climatic variability associated with global change. The majority of the resources of this program will be devoted to the USGCRP Global Ocean Ecosystem Dynamics (U.S. GLOBEC) program. A solicitation for proposals, separate from this announcement, will be issued by the jointly supported (NSF/NOAA) U.S. GLOBEC program, and will be directed primarily at the U.S. GLOBEC Northwest Atlantic Field Study. In addition to U.S. GLOBEC activities, some resources will be devoted to the early detection of climate change. Under this activity, modest proposals are sought for the development of coordinated, scientifically based monitoring of coral reef ecosystems and innovative pilot projects. For further information and to be added to a mailing list for the joint NSF/NOAA announcement, contact Bill Peterson, NOAA/National Marine Fisheries Service, Silver Spring, MD; 301–713–2055, OMNET: W.Peterson, or Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 710, OMNET: M.Eakin.

Paleoclimatology

The Paleoclimatology Program solicits proposals that will make significant advances in our understanding of decade-to century-scale variability in the climate system. This includes use of new, high-resolution time series from climatically-sensitive areas presently without adequate data coverage (e.g., the tropics and Southern Hemisphere), and large datasets that can be used to reconstruct large-scale historical patterns of climatic change. FY 1994 funds will also be available for the development of databases used to verify climate and ocean models. For further information contact Jonathan Overpeck of NOAA/National Geophysical Data Center, Boulder, CO; 303–497–6172, OMNET: J.Overpeck, or Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 710, OMNET: M.Eakin.

Economics

NOAA is supporting applied economics research on climate and global change that increases our understanding of (a) information and decision making under uncertainty and (b) impacts and adaptation. For FY 1994, proposals on the following topics are solicited: (1) Value of scientific and economic information for decisions relating to seasonal, annual, or decadal climate phenomenon, and (2) economic consequences of climate and global change, particularly on coastal areas including the Great Lakes Basin. For example, analyses of the value of reducing uncertainty in ENSO forecasts for improved regional decision-making are needed. In general, studies are encouraged that show a clear contribution to natural resource management. Interdisciplinary teams of researchers that include both physical and social scientists are strongly recommended. For an information sheet containing additional details contact: Sally Kane, NOAA's Economics Group, 1825 Connecticut Avenue, NW., suite 625, Washington, DC 20235, 202–606–4360; OMNET: S.Kane, Or Daphne Gemmill, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 20, OMNET: D.Gemmill.

Human Dimensions

This program complements the Economics program by focusing on understanding human dimensions of global change using the non-economic social sciences. The program encourages activities related to NOAA's mission that utilize the theories and methods of sociology, anthropology, geography, and the policy sciences to understand both the human forcing functions of environmental change and the impacts of global change on human society. Multidisciplinary approaches to understanding these issues are encouraged. In FY 1994 proposals are solicited to: (1) Understand the impact of global change along coastal margins and on climate sensitive ocean industries, and (2) contribute to our knowledge of past climate change and human adaptation via historical (including archaeological) disciplines. Funding for FY 1994 has been requested but has not yet been authorized. For further information contact: Shirley Fiske, NOAA/SEA Grant, Silver Spring, MD; 301–713–2431, OMNET: S.Fiske, BITNET: Fiske @ UMDD, or Daphne Gemmill, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 20, OMNET: D.Gemmill.

Education

The principal objective of the Climate and Global Change Education Program is to develop innovative and creative methods for educating community leaders and the general public concerning current knowledge on climate and global change issues, such as natural climate variability, ozone depletion, greenhouse warming, marine and terrestrial response, and sea level rise. In FY 1994 we will entertain proposals for development of a program to provide regional "training the trainer" programs for people such as library, aquarium, and museum staffs, NOAA employees, local extension educators, teachers and community leaders who can communicate complex climate and global change issues to audiences of other educators (both formal and informal), decision-makers and ultimately the general public. A secondary thrust is to fund a limited number of small, low-budget innovative projects usually involving state-of-the-art communication methods that have the ability to reach large audiences, either a high percentage of community leaders or the general public. Cooperative, leveraged programs with goal evaluative techniques are emphasized. Funding for FY 1994 has been requested but has not yet been authorized. For further information contact: Bernard Griswold, NOAA/National Sea Grant College Programs, Silver Spring, MD; 301–713–2431, OMNET: B.Griswold, or Daphne Gemmill, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 20, OMNET: D.Gemmill.

Solar Influences

The goals of this project are to quantify the physical and chemical responses of the mesosphere and upper stratosphere to the influx of energetic charged particles and short wavelength solar radiation and to assess the importance of those responses to the short and long-term behavior of Earth's atmosphere. The major resource available for this effort is 15 years of observations by NOAA satellite instrumentation of these forms of energy inputs to the atmosphere. The current emphasis in the program is the utilization of these observations as starting points for the quantitative modeling of their effects upon the upper atmosphere. An increase in funding for FY 1994 has been requested, in large part to support the modeling activities by means of a competitive grants program. However, such a funding increase has not yet been authorized. For further information contact: David

VOL 58 ISS 125 JL 1 1993 UMI

Evans, Space Environment Laboratory, Boulder, CO, 303–497–3269, or Daphne Gemmill, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 20, OMNET: D. Gemmill.

Letters of Intent

Letters of intent are being implemented as part of this announcement. Letters should be no more than two pages in length and include the name and institution of principal investigator(s), a statement of the problem, brief summary of work to be completed, approximate cost of project and program element(s) to which the proposal should be directed. These will be evaluated by program management, according to the selection criteria below, and applicants will be notified in writing in July 1993, whether they have been selected to submit a full proposal or not. It is in the best interest of applicants and their institutions to submit letters of intent. Projects deemed unsuitable during program review should not be submitted as full proposals. Full proposals submitted without prior submission in letter form will be subjected to program review before entering into the mail review process, thus delaying their review.

Selection Criteria

Criteria for Evaluation and Selection: Evaluation criteria (with approximate weights) are as follows:

- Scientific Merit (40%): Intrinsic scientific value of the study; importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.
- Methodology (20%): Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.
- Readiness (20%): Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.
- Linkages (10%): Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.
- Costs (10%): Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments. Matching funding is encouraged, but is not required.

Award decisions are made based upon independent peer review and programmatic review of each proposal. Unsatisfactory performance by a recipient under prior federal awards may result in an application not being considered for funding.

Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement. While not a prerequisite for funding, applicants are encouraged to consider conducting their research in one or more of the National Marine Estuarine Research Reserve System or National Marine Sanctuary sites. For further information on these field laboratory sites, contact Dr. Michael Crosby, NOAA/NOS, 202–606–4126.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

Proposals submitted to the NOAA Climate and Global Change Program must include the original and two copies of the proposal. Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Proposals should be sent to the NOAA Office of Global Programs at the above address. Facsimile transmissions of full proposals will not be accepted. All proposals should include the following elements:

1. Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address.

2. Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

3. Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of proposed project to the general public and the scientific community should be discussed. Results from related projects supported by NOAA and other agencies should be included. The statement of work, excluding figures and other visual materials, must not exceed 15 pages of text. Appended information may not be used to circumvent the page length limit. Investigators wishing to submit group proposals that may exceed the 15 page limit should discuss this possibility with the appropriate Program Officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 10 pages of overall project description plus up to 5 pages per person of individual project descriptions.

4. Budget: A detailed budget is required. Personnel costs, including salaries and fringe benefits, permanent equipment, expendable equipment, travel, publication costs, indirect costs and other costs such as those for supplies, printing, computer time or utilities must be included. The target start date for proposal submission is published in announcements describing program priorities and timetables. This date should be used in all submissions. A sample budget sheet is available upon request.

5. Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

6. Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

7. List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the Program Officer.

8. Other requirements:

(a) Application for Federal assistance must be submitted on Standard Form 424(Rev 4–88), Standard Form 424A (4–88), and Standard Form 424B(Rev 4–88).

(b) All primary applicants must submit the form CD–511 "Certifications regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying".

(i) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of Form CD–511.

(ii) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of Form CD–511.

(iii) *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352 "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of Form CD–511 apply to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(iv) *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(c) Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL Form CD–512 is intended for the use of recipients and should not be transmitted to NOAA. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NOAA in accordance with the instructions contained in the award document.

(d) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(e) Applicants that incur costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of the Department of Commerce to cover pre-award costs.

(f) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organization", and 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government", as applicable. This program is excluded from coverage under Executive Order 12372.

(g) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or is presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(h) Applicants are reminded that inclusion of false information on an application can provide grounds for denying or terminating funds. In addition, applicants who have outstanding debts with the Federal Government may not be considered for funding until these debts have been paid or arrangement satisfactory to the Department of Commerce are made.

(i) No award of Federal funds shall be made to an applicant who has an outstanding delinquent quent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received; or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

Date: May 20, 1993.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic Atmospheric Administration.

[FR Doc. 93–15525 Filed 6–30–93; 8:45 am]

BILLING CODE 3510–12–M

Marine Mammals; Permits.

AGENCY: National Marine Fisheries Service, (NMFS), NOAA. Commerce.

ACTION: Issuance of Permit No. 841 (P129J).

SUMMARY: On February 9, 1993, notice was published in the **Federal Register** (58 FR 7770) that Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296 and had filed an application for a Permit to harass up to 200 each of blue whales (*Balaenoptera musculus*), fin whales (*B. physalus*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*) of which 50 would be tagged with an Argos satellite-monitored radio transmitter and biopsy sampled over a 5-year period. No more than 15 whales of each species will be tagged in a single year.

Notice is hereby given that on June 24, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*), the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA of 1973. This Permit was issued in accordance with and is subject to parts 220–222 of title 50 CFR, the NMFS regulations governing endangered species permits.

ADDRESSES: Documents submitted in connection with this permit are available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289); Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526–6150); Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Rd.,

Suite 6 Juneau, AK 99802 (907/586–7221).

Dated: June 24, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–15507 Filed 6–30–93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53475, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 28, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 6, 1993, you are directed to amend the November 4, 1992 directive to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Thailand:

Category	Twelve-month limit [1]
Sublevels in Group II	
334/634	475,834 dozen.
335/635/835	382,656 dozen.
336/636	249,439 dozen.
342/642	461,463 dozen.
345	218,970 dozen.
640	398,207 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15580 Filed 6–30–93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Guidelines for Major Contractor Submission Independent Research and Development and Bid and Proposal Financial and Technical Information.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 100 hours.

Responses Per Respondent: 2.

Number of Respondents: 300.

Annual Burden Hours: 60,000.

Annual Responses: 600.

Needs and uses: The guidelines will be used to furnish the contractors guidance on financial information needed to support Independent Research and Development and Bid and Proposal costs and on technical information. The information collection will be used to support Independent Research and Development and Bid and Proposal from major contractors.

Affected Public: Businesses or other for-profit and Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer of DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15470 Filed 6–30–93; 8:45 am]

BILLING CODE 3000-04-M

Office of the Secretary

Establishment of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given the ARMS Executive Advisory Committee (hereinafter referred to as ARMS EAC) is being established within the Department of Defense (DoD). The ARMS EAC is authorized to be established in the

Conference Report accompanying Public Law 102–484, the National Defense Authorization Act for Fiscal Year 1993. Section 193 of the Authorization Act directs the Secretary of the Army to carry out an ARMS initative which encourages commercial firms to use government-owned-contractor-operated (GOCO) manufacturing facilities of the DoD for commercial purposes.

The ARMS EAC will provide a communications forum whereby a distinguished group of both industry and government experts will advise the Secretary of the Army concerning changing roles for GOCO Army ammunition plants. In studying the objectives of the ARMS initiative, the ARMS EAC will review and make recommendations regarding the Army plan for implementation. Specific tasks will include: Assessing government and industry expectations for the ARMS initiative; evaluating the incentives, eg., marketing, use of facilities and equipment, loan guarantees, planning grants, environmental concerns, free trade zones, for utilizing the idle capacity at industrial facilities for the manufacturing of government and commercial products; reviewing existing laws, regulations, and policies as to adequacy and possible need for revision or expansion; and, gauging the Army's plans for plant utilization, disposal of excess plant equipment, and allowance for contingencies.

The ARMS EAC will be comprised of approximately sixteen members, eight from the private sector and eight from government, who will be acknowledged experts and leaders in the diverse disciplines associated with industrial plant operations and processes. The common characteristic of the issues they will study is the management of change in the Army's ammunition industrial base. Consequently, the individuals selected to serve on the Committee must be accomplished in their ability to understand and manage change at the manufacturing level and have considerable experience in tooling processes to retain a viable ammunition production base alongside commercial ventures/products. Efforts will be made to ensure that the membership is well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding the ARMS EAC, please contact Mr. Dick Auger, telephone: 703–274–9573.

Dated: June 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15471 Filed 6–30–93; 8:45 am]

BILLING CODE 5000–04–M

Establishment of the Cultural and Natural Resources Committee for the Yakima Training Center and Expansion Area

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Cultural and Natural Resources Committee for the Yakima Training Center and Expansion Area (hereinafter referred to as the Yakima Committee) is being established within the Department of Defense (DoD). The Yakima Committee is authorized to be established in Conference Report 102–236 of the Fiscal Year 1992 Military Construction Appropriations Bill. In the Conference Report, the Secretary of the Army is directed to establish the Committee consisting of representatives from the Yakima Indian Nation, the Wanapum people, appropriate Federal agencies, and appropriate State agencies and local elected officials from the affected area appointed by the Governor of the State of Washington.

The Yakima Committee will provide advice to the Secretary of the Army and other senior Army officials concerning the proper management of all training center lands and provide a process to identify land management issues and appropriate mitigation, reclamation and resolution steps. Principally, the Yakima Committee will assist the Army in developing a comprehensive, integrated training strategy that addresses all factors affecting training and land use. This will include: Identifying cultural and resource conflicts and the means to overcome them; devising strategies to promote land management flexibility; developing work plans, time frames, and cost estimates for the completion of each event; and, reviewing and revising as necessary work plans annually, as well as surfacing additional issues related to the training and land reclamation efforts.

The Yakima Committee will be comprised of approximately 24 members with expertise in the fields of military training, wildlife, fish, water quality, range and vegetation, recreation, cultural resources, and information management. Members will be selected from both private and governmental agencies, as indicated in the opening paragraph above. Efforts will be made to ensure that the membership is well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding the ARMS EAC, please contact Ms. Sandra Riley, telephone: 703–697–6900.

Dated: June 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 93–15472 Filed 6–30–93; 8:45 am]

BILLING CODE 5000–04–M

Availability of Change 1 to DoD 5025.1–I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 1 to DoD 5025.1–I, "DoD Directives System Annual Index," dated January 1993. It is available, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650. The NTIS accession number for Change 1 to the Index is PB93–959521.

FOR FURTHER INFORMATION CONTACT: Ms. P. Toppings, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301–1155, telephone (202) 697–4111.

Dated: June 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15469 Filed 6–30–93; 8:45 am]

BILLING CODE 5000–04–M

Assistance to Local Educational Agencies (LEAs)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a program for providing financial assistance to LEAs.

SUMMARY: Pursuant to title II of Public Law 102–368 and to implement section 386 of Public Law 102–484, notice is hereby given of a program to provide financial assistance to eligible LEAs. Section 386(b) of Public Law 102–484 requires DoD to assist an LEA that cannot, without such aid, "provide [its] students * * * with a level of education that is equivalent to the minimum level of education available in schools of the

VOL 58 ISS 125 JL 1 1993 UMI

other local educational agencies of the same State," provided that the LEA meets one of the two criteria established by section 386(c). Title II of Public Law 102–368, as amended, requires DoD to assist eligible LEAs "where there are significant increases in the number of military dependent students as the result of relocation or realignment of Armed Forces personnel." For the purpose of this notice, the term "military dependent students" has the same meaning as in section 386(e) of Public Law 102–484. In making the necessary determination under section 386(b), the Secretary of Defense must consult the Secretary of Education.

DATES: July 1, 1993.

ADDRESSES: Deputy Assistant Secretary of Defense (Personnel Support, Families & Education), room 3E784, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez or Mr. John B. Shaver, Section 6 Schools, 1225 Jefferson Davis Highway, Crystal Gateway #2, suite 1500, Arlington, VA 22202; telephone (703) 746–7874 or 7875; facsimile number (703) 746–8103.

SUPPLEMENTARY INFORMATION: During fiscal year (FY) 1993, the Department of Defense shall provide 50 million dollars to assist LEAs that meet criteria in title II of Public Law 102–368 and section 386 of Public Law 102–484. (For the purposes of this program, DoD shall rely on data from the Department of Education).

Pursuant to subsection 386(c)(1) of Public Law 102–484, an LEA is eligible for assistance under this program if it satisfies subsection 386(b) and "at least 30 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of that agency in that fiscal year are military dependent students counted under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress; 20 U.S.C. 238)."

An alternate way of achieving eligibility for assistance is prescribed under subsection 386(c)(2) of Public Law 102–484. To qualify, the LEA must satisfy subsection 386(b) and "by reason of consolidation or reorganization of local educational agencies be a successor of [an LEA] that for fiscal year 1992," was eligible to receive payments under DoD Instruction 1342.18, dated June 3, 1991 (32 CFR part 240, 56 FR 28821), and at least 30 percent (as rounded to the nearest whole percent) of its students in average daily attendance must be military dependent students as counted under subsection (a) or (b) of section 3 of Public Law 81–874, as amended, 20 U.S.C. 238.

Additionally, an LEA is eligible for assistance if its average daily attendance (ADA) of military dependent students increased by 15 percent or more from FY 1991 to FY 1993 as a result of the relocation or realignment of Armed Forces personnel and "at least 30 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of that agency in that fiscal year are military dependent students counted under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress; 20 U.S.C. 238)."

For the purposes of this program, the following definitions are applicable:

(a) *Applicant.* Any LEA requesting assistance under this notice.

(b) *Current Expenditures.* "[E]xpenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and expenditures to cover deficits for food services and student body activities. The term does not include expenditures for community services, capital outlay, debt service, or any expenditures made from funds granted for the purpose of chapter 1 and 2 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701–2976). An expenditure for the replacement of equipment is considered to be either a current expenditure or capital outlay, whichever is in accordance with State accounting guidelines, law, or practice." 34 CFR 222.3.

(c) *DoD Contribution.* The amount of financial assistance an applicant shall receive under this notice.

(d) *Federal Property.* Real property that because of Federal law, agreement, or policy is exempt from taxation by a State or political subdivision of a State and that the United States owns in fee simple or leases from another party.

(e) *Local Education Agency (LEA).* A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(f) *Military Dependent Student.* A student that is a dependent child of a member of the Armed Forces or a dependent child or a civilian employee of the Department of Defense.

(g) *Military Personnel.* Members of the Armed Forces serving on active duty.

(h) *Military 3(a) Student.* A child who attends the school(s) of a LEA that provides free public education and who, while attending such school(s) of the LEA, resides on Federal property and has a parent who is on active duty in the Armed Forces (as defined in section 101(4) of 10 U.S.C.).

(i) *Military 3(b) Student.* A child who attends the schools of a LEA provides a free public education and who, while attending such school(s), has a parent who is on active duty in the Armed Forces (as defined in 10 U.S.C. 101(4) but such child does not reside on Federal property.

(j) *Parent.* The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands *in loco parentis* to that child and contributes at least one-half of the child's support.

(k) *Per-Pupil Expenditure (PPE).* The average current expenditure for an individual student.

The Department of Defense shall provide 50 million dollars to assist the LEAs that satisfy the requirements of this notice. This money shall be used only to supplement funding for the eligible LEAs operating schools that provide free public education to military dependent students for whom: (1) For the prior and current FYs, the LEA has applied for and received, or shall receive, financial assistance from all regular Federal and State educational aid programs available to it, including the Impact Aid Program (Pub. L. No. 81–874, section 3, as amended); (2) the eligibility of the LEA under State law for State aid for free public education and the amount of that aid are no different than the eligibility and amounts received by LEAs in that State without military dependent students; and (3) the LEA files with the Assistant Secretary of Defense for Force Management and Personnel (ASD (FM&P)) a letter of application (see Sample Letter at the end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY.

The eligible LEAs under this notice insofar as it implements subsection

386(c)(1) shall receive financial assistance for military dependent students. The eligible LEAs under this notice insofar as it implements subsection 386(c)(2) shall receive financial assistance only for military section 3(a) students. The eligible LEAs under this notice, insofar as it applies to those LEAs whose ADA of military dependent students increased by 15 percent or more from FY 1991 to FY 1993 as a result of the relocation or realignment of Armed Forces personnel, shall receive financial assistance for military dependent students. Applications for financial assistance must be received no later than July 30, 1993.

The amount of assistance (the DoD contribution) for the eligible LEAs under this notice may not exceed the amount derived from the following formula:

(1) Of the 50 million dollars available:

(i) Amounts of 30,115,385 dollars shall be obligated for military section 3(a) students to those eligible LEAs whose per-pupil expenditure (PPE) for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(ii) Amounts of 2,509,615 dollars shall be obligated for military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense to those eligible LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(iii) Amounts of 10,038,462 dollars shall be obligated for military section 3(a) students to those eligible LEAs whose PPE for the second preceding FY year was equal to, or greater than the average PPE in the State for the second preceding FY.

(iv) Amounts of 836,538 dollars shall be obligated for military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense to those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY.

(v) Amounts of 6,500,000 dollars shall be obligated to those eligible LEAs whose ADA of military dependent students increased by 15 percent or more from FY 1991 to FY 1993 as a result of the relocation or realignment of Armed Forces personnel.

(2) For military section 3(a) students in those eligible LEAs, whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1992–1993.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (30,115,385 dollars).

(iii) Divided by the sum of the ADAs for SY 1992–1993 of military section 3(a) students of those same eligible LEAs.

(3) For military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense in those eligible LEAs whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(b) and dependent children of a civilian employee of the Department of Defense ADA for SY 1992–1993.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (2,509,615 dollars).

(iii) Divided by the sum of the ADAs for SY 1992–1993 of military section 3(b) and dependent children of civilian employees of the Department of Defense students of those same eligible LEAs.

(4) For military section 3(a) students in those eligible LEAs whose PPE for the second preceding FY year was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1992—1993.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (10,038,462 dollars).

(iii) Divided by the sum of the ADAs for SY 1992—1993 of military section 3(a) students of those same eligible LEAs.

(5) For military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense in those eligible LEAs whose PPE for the second preceding FY year was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(b) and dependent children of a civilian employee of the Department of Defense ADA for SY 1992—1993.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (836,538 dollars).

(iii) Divided by the sum of the ADAs for SY 1992—1993 of military section 3(b) students and dependent children of civilian employees of the Department of Defense of those same eligible LEAs.

(6) For those military dependent students in those eligible LEAs whose ADA of military dependent students increased by 15 percent or more from FY 1991 to FY 1993 as a result of relocation or realignment of Armed Forces personnel, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military dependent student ADA for SY 1992—1993.

(ii) Multiplied by the quotient of the funds available to those LEAs (6,500,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1992—1993 of military dependent students of those same LEAs.

The LEAs that have qualified for assistance under (1)(v) above shall not be eligible for additional assistance under (1) (i) through (iv) above.

The ASD (FM&P) shall calculate the proposed contribution. The contribution may be used for all students in the LEA, at the discretion of the appropriate officials in the LEA. The ASD (FM&P) shall ensure the implementation of these policies and procedures and provide assistance, as required, to the potentially eligible LEAs. The General Counsel of the Department of Defense shall provide legal advice for the implementation of this program.

An applicant requesting assistance under this notice shall submit a letter of application (see sample letter at end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY, requesting a DoD contribution and assuring the ASD (FM&P) that the LEA has applied for, has received or shall receive all financial assistance from other sources for which it is qualified. Letters of application must be addressed as follows:

Assistant Secretary of Defense, (Force Management and Personnel), Washington, DC 20301–4000.

The applicant shall also file a copy of the letter of application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the above address) by August 20, 1993. Such comments shall be considered when

applications are reviewed by the OSD. The LEA's application and all required supporting information must reach the ASD (FM&P) no later than July 30, 1993.

Sample Letter of Application for Financial Assistance

Assistant Secretary of Defense (Force Management and Personnel), Washington, DC 20301–4000

Dear Mr./Ms. Assistant Secretary:

Pursuant to this "Notice of a Program for Providing Financial Assistance to LEAs," _____ **Federal Register** _____ (_____, 1993), the (name of the local educational agency (LEA)) requests financial assistance for the LEA for school year 1992—1993.

We certify that the LEA has applied for financial assistance from all sources, including the State/Commonwealth of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military section 3(a) and military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense, as these terms are defined in the "Notice of a Program for Providing Financial Assistance to LEAs." Enclosed find a copy of our independent audit "(Title)" prepared by (name of firm or agency). We have submitted a complete and timely application for section 3 impact aid assistance to the Secretary of Education. A copy of this letter, with the above supporting information, is being submitted to the State educational agency.

Sincerely,

(Authorized LEA Official)

Dated: June 28, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15539 Filed 6–30–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the PRC of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of the PRC membership is required by 10 U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of Defense Intelligence Senior Executive Service (DISES) performance appraisals and makes recommendations regarding performance, performance awards, and as applicable, recertification to the Director, Defense Intelligence Agency.

EFFECTIVE DATE: 1 July 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Human Resources Manager, Policy Division, Office for Human Resources, Defense Intelligence Agency (DAH–1), 3100 Clarendon Boulevard, Arlington, VA 22201–5322, (703) 284–1341.

Primary Members

Mr. Dennis M. Nagy, Deputy Director (Chairman)
Mr. A. Denis Clift, Chief of Staff
Ms. Dolores D. Greene, Associate Director for Estimates
Mr. John T. Berbrich, Director, National Military Intelligence Production Center
Mr. Jerry M. Magoulas, Deputy Director, National Military Intelligence Collection Center

Alternate Members

Mr. William J. Allard, General Counsel
Mr. John J. Sloan, Director for Policy Support
Mr. Martin Hurwitz, Director for Information Services
Ms. Margaret R. Munson, Director for Administration

Dated: June 28, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15538 Filed 6–30–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Titanium Metals Corp.; Intent To Grant Exclusive Patent License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant exclusive patent license; Titanium Metals Corporation.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Titanium Metals Corporation a revocable, nonassignable, exclusive license in the United States and certain foreign countries to practice the invention described in U.S. Patent Application Serial No. 08/018,394 entitled Titanium Alloy For Plate Applications, filed February 17, 1993 in which the Government owns an undivided interest.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

DATES: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 22, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15457 Filed 6–30–93; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of the patents cited are available from Commissioner of Patents and Trademarks, Washington, DC 20231 for $3.00 each. Requests for copies of patents must include the patent number.

DATES: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 4,923,402: Marksmanship Expert Trainer, filed 25 November 1988, patented 8 May 1990;

Patent 5,215,463: Disappearing Target, filed 5 November 1991; patented 1 June 1993;

Patent 5,215,465; Infrared Spot Tracker, filed 5 November 1991; patented 1 June 1993; and

Patent 5,213,503: Team Trainer, filed 5 November 1991; patented 25 May 1993.

Dated: June 19, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15458 Filed 6–30–93; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the

Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of the patents cited are available from Commissioner of Patents and Trademarks, Washington, DC 20231 for $3.00 each. Requests for copies of patents must include the patent number.

DATES: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,130,251: Stress-Resistant Bioluminescent Dinoflagellates, filed 3 September 1991; patented 14 July 1992, and

Patent 5,192,667: Method for Evaluating Anti-Fouling Paints; field 15 August 1989; patented 9 March 1993.

Dated: June 22, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15463 Filed 6–30–93; 8:45 am]

BILLING CODE 3810–AE–M

Etrema Products, Inc.; Intent To Grant Exclusive Patent License

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant exclusive patent license; Etrema Products, Inc., a wholly owned subsidiary of Edge Technologies, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Etrema Products, Inc., a wholly owned subsidiary of Edge Technologies, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 4,378,258 entitled "Rare Earth-Iron Magnetostrictive Materials and Device Using These Materials".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

DATES: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 22, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 93–15459 Filed 6–30–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Department of Energy, Nevada Operations Office (DOE/NV)

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is awarding a noncompetitive financial assistance grant to Community College Southern Nevada, Las Vegas for the Environmental Restoration Technologies Program.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Rudy Cruz, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the Environmental Restoration Technologies Program, Community College of Southern Nevada, Las Vegas.

The Environmental Restoration Technologies Program has quickly grown from zero students 2 years ago to over 200 in the current semester. The financial assistance will allow the program to hire another full-time faculty member, provide environmental technologies training, and the necessary budget to support degree granting status for the program. Students enrolled in this program will become the first part of a planned 2+2 environmental studies transfer program, 2 years at the Community College and 2 years at the University of Nevada, Las Vegas.

Eligibility for the award of this grant is being limited to the Community College of Southern Nevada, Las Vegas because of the unique program to further help develop an academic program that will train technicians, and also prepare environmental science majors for the environmental restoration and waste management missions at the Nevada Test Site.

The project period of this grant is for two years and will commence on July 1, 1993, through June 30, 1995. The total estimated cost of this award is $130,482.

Issued in Las Vegas, Nevada, on June 15, 1993.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office

[FR Doc. 93–15587 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center; Noncompetitive Financial Assistance Award

AGENCY: Metairie Site Office and Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Determination of noncompetitive financial assistance (Grant) award with Michigan State University.

SUMMARY: The U.S. Department of Energy (DOE). Metairie Site Office (MSO), announces that pursuant to 10 CFR 600.7 (b)(2)(i) criteria (B), it intends to award a Grant through the Pittsburgh Energy Technology Center (PETC) to Michigan State University for the participation in a Hydrocyclone Development Consortium.

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Karen S. Olean, Contract Specialist, (412) 892–6202.

SUPPLEMENTARY INFORMATION:

Grant No.

DE–FG22–93MT93002

Title of Research Effort

"Participation in a Hydrocyclone Development Consortium"

Awardee

Michigan State University

Term of Assistance Effort

Twelve (12) months

Cost of Assistance Effort

The total estimated value is $75,000.00.

Objective

The objective of this research, development, and technology transfer project is to enable DOE participation via Michigan State University in a multiple team of University, Industrial, and Government Researchers, organized as the Hydrocyclone Development Consortium (HDC). This grant award not only provides a timely mechanism to transfer the results of basic research into useful commercial products, but it also allows the user of the technology to

guide the development in order to meet the specific needs of oil/water cleanup.

Michigan State University has initiated a project designed to further develop a new class of hydrocyclones designed to remove a 'light' dispersed phase from a 'heavy' continuous phase in the removal of dispersed oil from water. A commercial prototype of the new concept described in U.S. Patent 4,855,066 is being developed and tested for cleaning oily water under conditions similar to actual field conditions.

This improved technology for de-oiling water on offshore platforms and elsewhere, provides a design to remove small amounts of dispersed oil (<3,000 wppm) from water. This compact hydrocyclone oil/water separator should be capable of meeting current and future environmental standards for discharge of production water into the ocean. Potential applications include cleaning oily water on offshore platforms, bilge and ballast water on ocean vessels, and other waste streams.

Current members of the hydrocyclone Development Consortium have funded approximately $675,000 to date for this research project over the last two years. This DOE grant award would provide Michigan State University with assistance for performance of the last year of this project.

In accordance with 10 CFR 600.7 (b)(2)(i) criteria (B), a noncompetitive Financial Assistance Award (Grant) to Michigan State University has been justified. This effort would be conducted by Michigan State University using their own resources and those of the Hydrocyclone Consortium; however, DOE support of the activity would enhance public benefits to be derived by allowing this research to be completed and the results transferred to the public. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

Dated: June 2, 1993.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–15589 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office, Department of Energy (DOE/NV).

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is awarding a noncompetitive financial assistance grant for the establishment of an Environmental Studies Cooperative Education Center at University of Nevada, Las Vegas.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Rudy Cruz, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the Environmental Studies Cooperative Education Center, at University of Nevada, Las Vegas in order to establish an Environmental Studies Cooperative Education Center. The Center is an extension of a very successful Environmental Studies Program that started 2 years ago with financial assistance from DOE/NV. This center will build upon the success of the students enrolled in the University and will help establish the first linkage in a planned 2+2 transfer program (2 years at the Community College of Southern Nevada and 2 years at University of Nevada, Las Vegas) with the Environmental Restoration Technology Program at the Community College of Southern Nevada.

This financial assistance award is a unique opportunity to further develop an academic program that will contribute to the environmental restoration and a waste management mission at the Nevada Test Site. Furthermore, the articulation agreement and work the University of Nevada, Las Vegas has undertaken with the Community College of Southern Nevada will help ensure that the Department has sufficient numbers of environmental scientists and technicians to restore the contaminated areas of Nevada Test Site.

Eligibility for the award of this grant is being limited to the University of Nevada, Las Vegas because of the uniqueness of the Environmental Studies Program at the University.

The project period of this grant is for 2 years and will commence on July 1, 1993, through June 30, 1995. The total estimated cost of this award is $196,000.

Issued in Las Vegas, Nevada, on June 15, 1993.

Nick C. Aquilina

Manager, DOE Nevada Operations Office.

[FR Doc. 93–15588 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Operations Office; Laser Fusion Research; Financial Assistance Award (Grant)

AGENCY: Department of Energy (DOE).

ACTION: Grant solicitation announcement for laser fusion research applications.

SUMMARY: The U.S. Department of Energy (DOE) San Francisco Operations Office (SF) announces its plan to conduct a technically competitive solicitation for basic research experiments in high energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester/Laboratory for Laser Energetics (UR/LLE). Universities or other higher education institutions, private sector non-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the Fiscal Year 1993 (FY93) cycle of this program is $700,000. It is anticipated that multiple grants will be awarded within the available funding.

GRANT SOLICITATION NUMBER: DE–PS03–93SF19241.

The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE.

The unique resources of the NLUF are available to scientists for state-of-the-art experiments primarily in the area of inertial fusion and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science and biology and chemistry will be considered on a secondary basis.

The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Currently available at the LLE for NLUF researchers is the Glass Development Laser (GDL), a 250 billion watt, single beam prototype for the OMEGA laser. The system is suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy. The NLUF Program for FY93 is to concentrate on experiments that can be done with the GDL laser at the University of Rochester and development of diagnostic techniques suitable for the OMEGA Upgrade system. The upgrade of the OMEGA laser is scheduled for completion in March of 1995. (The OMEGA laser is currently off-line while

construction is underway.) The OMEGA Upgrade laser system will be a 30 kJ UV laser system suitable for direct-drive ICF implosions. Measurements of the laser coupling, laser-plasma interaction, core temperature and core density are needed to determine the characteristics of the target implosion. Diagnostic techniques could include either new instrumentation development of analysis tools, or development of targets that are applicable for 30 kJ direct-drive implosions.

More technical information about the facilities and potential collaboration at NLUF can be obtained from: Dr. James Knauer, Manager, National Laser User's Facility, University of Rochester/LLE 250 East River Road, Rochester, NY 14623.

The solicitation document contains all the information relative to this acquisition for prospective applicants to this acquisition for prospective applicants. The solicitation is targeted for release in late June, 1993. Recipients of the NLUF solicitation during the last [FY92] NLUF solicitation will automatically receive a copy of the FY93 solicitation. New interested parties can obtain copies of the solicitation documents by submitting a written request to: Lee Renna, U.S. Department of Energy, San Francisco Operations Office, 1301 Clay Street, room 700N, Oakland, CA 94612–5208. (510) 637–1887.

Issued in Oakland, CA, June 9, 1993.

Joan Macrusky,

Branch Chief, ER/DP/EM.

[FR Doc. 93–15590 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office, Department of Energy, (DOE/NV).

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is awarding a noncompetitive financial assistance cooperative agreement for a research program to be conducted at the Thermoluminescence (TL) Laboratory of the University of Utah on the development of optically stimulated luminescence, imaging TL spectrometry, and electron spin resonance techniques for accident and environmental dosimetry.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: David L. Wheeler, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award is a renewal of an existing award to support the operations of the TL Laboratory and the development of new techniques for analysis of environmental materials which will expand the capability for rapid, accurate measurement of radiation dose delivered in accident situations. The optically Stimulated Luminescence technique is similar to TL spectrometry but uses photo rather than thermal stimulation. Recent results from the research laboratory indicated that, in fired quartz, doses as low as one rad can be measured. Development of this technique will enable the University to analyze ceramics and bricks containing feldspar crystals that cannot be analyzed using the TL technique. It will also be used in evaluating biological samples. Imaging TL Spectrometry addresses the problems of grain heterogeneity by providing single-grain imaging of TL samples. This technique provides a method by which grains of similar properties may be sorted using computer images to improve the signal output and speed up sample preparation. Development of this capability has facilitated the laboratory's capability for emergency response to a radiological accident.

The electron spin resonance technique will be used to examine dose measuring capabilities of biological materials such as bone and tooth enamel. Additional techniques will be investigated using low temperature traps in non-fired materials such as asphalt, sand, and concrete. This will permit early-time dosimetry following an accident in almost any location. Other applications are also possible to provide a greater public benefit.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because the TL Laboratory at the University is the only laboratory in the United States that is capable of doing this kind of work.

The renewal of this cooperative agreement is for 3 years and will commence on July 1, 1993, and end on June 30, 1996. The total estimated cost of this award is $1.15 million.

Issued in Las Vegas, Nevada, on June 11, 1993.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 93–15591 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/SW(EU)–156, for the transfer of 48 fuel assemblies from France to Sweden containing 21,815.676 kilograms of uranium containing 735.866 kilograms of uranium-235 (3.60 percent enrichment) for use as fuel in the Ringhals 4 power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on June 24, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–15586 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing

does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–567
3. 1902–0005
4. Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity
5. Extension
6. Annually
7. Mandatory
8. Businesses or other for-profit
9. 101 respondents
10. 1.366 responses
11. 85.12 hours per response
12. 11,747 hours
13. The Commission uses FERC–567 to process rate and certificate applications; to analyze transportation and depreciation of property costs; to analyze impacts of market expansions of facilities; to review and establish rates of depreciation for the facilities used in the production and transportation of natural gas; and to establish and enforce curtailment rules.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, June 24, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–15595 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF89–7–002, et al.]

Brush Cogeneration Partners, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 25, 1993.

Take notice that the following filings have been made with the Commission:

1. Brush Cogeneration Partners

[Docket No. QF89–7–002]

On June 22, 1993, Brush Cogeneration Partners tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: July 13, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa-Illinois Gas and Electric Company

[Docket No. ES93–42–000]

Take notice that on June 18, 1993, Iowa-Illinois Gas and Electric Company filed an application under § 204 of the Federal Power Act requesting authorization to issue not more than $100 million of unsecured short-term debt on or before June 30, 1995, with a final maturity date no later than June 30, 1996.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia-Pacific Corp.

[Docket No. QF93–115–000]

On June 21, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 25 MW small power production facility is located at Mill Street, Woodland, Maine. The facility consists of the #3 recovery boiler, and the #10 and #11 steam turbine generators. The primary energy source of the facility is biomass in the form of black liquor. The #3 recovery boiler was placed into service in July 1989. Installation of the steam turbine generators were completed in 1966 and 1970 respectively.

Comment date: August 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Georgia-Pacific Corp.

[Docket No. QF93–113–000]

On June 21, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 13 MW small power production facility is located at Market Street, Nekoosa, Wisconsin. The facility consists of the #14 recovery boiler and the associated steam turbine generator. The primary energy source of the facility is biomass in the form of black liquor. Construction of the facility was completed in 1991.

Comment date: August 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Georgia-Pacific Corp.

[Docket No. QF93–114–000]

On June 21, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 53 MW small power production facility is located at Georgia Highway 273 W.,

Cedar Springs, Georgia. The facility consists of the #1, #2 and #3 recovery boilers, and the No. 1 and No. 2 steam turbine generators. The primary energy source of the facility is biomass in the form of black liquor. Installation of the #1, #2 and #3 recovery boilers were completed in 1936, and 1974 respectively.

Comment date: August 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Georgia-Pacific Corp.

[Docket No. QF93–116–000]

On June 21, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 60 MW small power production facility is located at Buck Creek Road, New Augusta, Mississippi. The facility consists of a recovery boiler, a power boiler and two steam turbine generators. The primary energy source of the facility is biomass in the form of black liquor and tree bark. Operation of the facility began in 1984.

Comment date: August 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15482 Filed 6–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–493–000, et al.]

Ozark Gas Transmission System, et al., Natural Gas Certificate Filings

June 25, 1993.

Take notice that the following filings have been made with the Commission:

1. Ozark Gas Transmission System

[Docket No. CP–93–493–000 CP93–493–001]

Take notice that on June 14, 1993, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP93–493–000 an application, as amended on June 24, 1993, pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate a new compressor station, all as more fully set forth in the application on file with the Commission and open to public inspection.

Ozark proposes to install the Del Soto Compressor Station on its main line near Altus, in Franklin County, Arkansas, to receive natural gas from Arkansas Western Gas Company (AWG). Ozark states that the new station would be located adjacent to its existing 4-inch receipt meter station and also adjacent to AWG's Noah Davis Compressor Station. Ozark requests authorization to relocate a compressor from the Walker Compressor Station (Walker) to the proposed station, stating that the compressor would be abandoned at Walker under its blanket authorization. Ozark states that the station would contain the single relocated 300-horsepower reciprocating compressor that has a throughput capacity of 5 MMcf per day, based on 350 psig suction and 900 psig discharge pressures.

Ozark explains that these facilities would provide Ozark's shippers with an additional gas supply from which to market and/or transport natural gas. Ozark estimates that it would cost $69,600 to construct the proposed facilities, to be financed with equity funds.

Comment date: July 16, 1993, in accordance with Standard Paragraph F at the end of the notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP93–505–000]

Take notice that on June 22, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–505–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transmission pipeline segment and other facilities by transfer to Panhandle Gathering Company (PGC), all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle proposes to abandon certain facilities by transfer to PGC, as a contribution to the capital of PGC. It is stated that Panhandle is the sole shareholder of PGC. Panhandle states that PGC and Western Gas Resources, Inc. (WGR), have entered into an agreement to form a PGC–WGR Joint Venture (PGC–WGR) which, upon the Commission's approval of the proposed abandonment, would operate the facilities "behind-the-plant" as part of a non-regulated gathering and processing system.[1] Panhandle states that the original cost of the facilities is $38.5 million, and after allowances for depreciation, the net book value is $8.2 million.

More specifically, Panhandle proposes to abandon the following facilities.

- *A 19.4 mile segment of Panhandle's Elk City 24-inch transmission pipeline.* Panhandle states that the line segment extends from its Alva compressor station to its 2 Gate south of the Cimarron River, located in Major and Woods Counties, Oklahoma. Panhandle further states that the segment parallels a remaining 30-inch line loop which is capable of handling current and anticipated gas flow on the Elk City line. Panhandle advises that PGC–WGR would use the line segment to move gas to WGR's Chaney Dell Plant for processing.
- *The Canton/N.E. Seiling Gathering System.* Panhandle states that the system is comprised of approximately 90 miles of 4 to 10 inch gathering lines and two booster stations totaling 4,350 horsepower (six low suction pressure compressors), and is located in Blaine, Dewey, Woodward and Major Counties, Oklahoma. Panhandle advises that the N.E. Seiling booster station (two compressors) would be retired from service upon abandonment since the gathering lines to which it is connected would be rerouted to deliver gas to the Chester Processing Plant.
- *The Waynoka Gathering System.* Panhandle states that the system is comprised of approximately 270 miles of gathering lines (4 to 12 inches in size) and five booster stations (6,437 horsepower of small, low suction pressure compression), and is located in Woods, Woodward and Alfalfa Counties, Oklahoma. Panhandle advises that the booster station and the lines connected to it would be reconfigured to

[1] PGC filed in Docket No. CP–93–506–000 a petition for declaratory order disclaiming jurisdiction over the facilities it would acquire.

enable the gathering of gas for delivery to the Chaney Dell Processing Plant.

• *The Avard Gathering System.* Panhandle states that the system is comprised of approximately 80 miles of gathering lines (from 4 to 8 inches in size) and two booster stations (1,016 horsepower of small, low suction pressure compression) and is located in Woods and Alfalfa Counties, Oklahoma, and Barber County, Kansas. Panhandle advises that the booster stations would perform a behind-the-plant gathering function comparable to that of the Waynoka booster station.

Panhandle states that, with the advent of the restructuring mandated by the Commission in Order No. 636, *et seq.*, it no longer requires the facilities. Panhandle further states that divesting itself of these facilities would facilitate the continued flow of natural gas into Panhandle's main lines due to their reconfiguration as part of a non-regulated, low pressure system for gas to be processed. Panhandle also states that the divestiture would mitigate the potential for stranded investment and the resulting Order No. 636 transition costs.

Comment date: July 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP93–508–000]

Take notice that on June 22, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–508–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon five certificated gas transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to abandon the following certificated transportation services: (1) Rate Schedule T–37 with Caprock Pipeline Company; (2) Rate Schedule T–38 with Mountain Industrial Gas Company on behalf of Cominco American Incorporated; (3) Rate Schedule T–8 with Southwest Gas Corporation (Southwest); (4) Rate Schedule T–15 with Southwest; and (5) Rate Schedule T–22 with Texas Gas Transmission Corporation. El Paso states that all of the above-mentioned rate schedules are on file as part of El Paso's FERC Gas Tariff, Third Revised Volume No. 2. El Paso requests an effective date on March 1, 1993, for the first four listed services and an effective date of April 1, 1993, for the service for Texas Gas.

El Paso reports that its transition from a gas merchant to an open-access transporter of natural gas has prompted El Paso and its customers to address, among other things, gas purchase relationships with producers and the need to continue traditional section 7(c) certificated transportation and exchange services. As a result, El Paso and the parties to the services proposed to be abandoned have signed letter agreements providing that these case-specific, certificated transportation services should be terminated. El Paso indicates that, if requested, it would continue transportation services for these parties under subpart G of part 284 of the Regulations.

El Paso avers that it would continue to operate all of the related facilities to the extent necessary to provide part 284, subpart G transportation services. El Paso also indicates that all of the services to be abandoned are free of any imbalances.

Comment date: July 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commissions' Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15483 Filed 6–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–11510T Texas–142]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 25, 1993

Take notice that on June 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation, East 76 (Wilcox 8,900 Sand), underlying Duval County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of approximately 3,680 acres in all or portions of the following surveys:

Survey	Abstract No.	Acres
J. Poitevent	A–433	640
J. Poitevent	A–432	640
V.R. Guffy	A–2039	320
E. Rodriguez	A–1881	160
J. Poitevent	A–431	640
J. Poitevent	A–430	640
J. Poitevent	A–405	640

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15487 Filed 6–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93-11506T New Mexico-42]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 25, 1993.

Take notice that on June 21, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Gallup and Dakota Formations in a portion of the Northeast Ojito Gallup-Dakota Pool underlying a portion of Rio Arriba County, New Mexico, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 4,000 acres, all of which are Jicarilla Apache Indian Reservation Lands. The recommended area is described as follows:

Township 26 North, range 3 West

Section 22: SE/4
Sections 23-24: S/2
Sections 25-26: All
Sections 27 and 34: E/2
Sections 35-36: All

The notice of determination also contains BLM's findings that the referenced portion of the Gallup and Dakota Formations meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-15488 Filed 6-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-511-000]

CNG Transmission Corp.; Notice of Request Under Blanket Authorization

June 25, 1993.

Take notice that on June 22, 1993, CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301, filed a request for authorization pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212), to add an additional delivery point to an existing, certificated transportation service that CNG provides to two cogenerator customers, Northeast Energy Associates (Northeast) and North Jersey Energy Associates (North Jersey), as more fully described herein.

CNG states that pursuant to a certificate of public convenience and necessity issued by Commission Order on September 13, 1990, Docket No. CP88-195-000 *et al* (52 FERC ¶ 61,257), CNG is authorized to transport up to 50,000 Dt of natural gas per day for Northeast and 22,000 Dt of natural gas per day for North Jersey, pursuant to transportation agreements dated March 1, 1991. According to CNG, under the firm transportation agreements, CNG receives Northeast's and North Jersey's gas at an interconnection with TransCanada at Niagara Falls, Erie County, New York and then delivers such at one of the following existing delivery points:

(1) The interconnection between the facilities of CNG and the facilities of Transcontinental Gas Pipe Line Corporation in Clinton County, Pennsylvania, at a point known as Leidy.

(2) The interconnection between the facilities of CNG and Texas Eastern Transmission Corporation in Westmoreland County, Pennsylvania, at a point known as Oakford.

By this request, CNG seeks authorization to add one additional delivery point for Northeast and North Jersey at an existing interconnection between the facilities of CNG and Texas Eastern, in Franklin County, Pennsylvania, at a point known as Oakford.

CNG further states that this proposed additional delivery point gives CNG a third option in delivering these volumes, thereby increasing CNG's operating flexibility and that no new facilities are needed to effectuate the deliveries at Chambersburg.

Finally, CNG verifies that the following are true: (1) The total volumes to be delivered to a customer after the request do not exceed the total volumes authorized prior to the request; (2) The change is not prohibited by an existing tariff of the certificate holder; and (3) CNG will accomplish the deliveries to Northeast and North Jersey without detriment or disadvantage to its other customers.[1] The proposed additional delivery point will have a beneficial impact on CNG's system-wide peak day and annual deliveries by increasing CNG's operating flexibility. CNG verifies that the proposed facilities comply with the requirements of Subpart F of Part 157 of the Commission's Regulations under the Natural Gas Act.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-15485 Filed 6-30-93; 8:45 am]

BILLING CODE 6717-01-M

[1] CNG will deliver the Northeast and North Jersey volumes at Chambersburg only on days when sufficient capacity is available.

[Docket No. RP93-5-000]

Northwest Pipeline Corp., Notice of Informal Settlement Conference

June 25, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on July 7, 1993 at 9 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208-2215 or Kathleen M. Dias (202) 208-0524.

Lois D. Cashell,

Secretary.

[FR Doc. 93-15486 Filed 6-30-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93–12–NG]

American Hunter Exploration Ltd.; Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to American Hunter Exploration Ltd. to export up to 150 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 24, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15592 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–39–NG]

El Paso Gas Marketing Co.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting El Paso Gas Marketing Company authorization to export up to 75 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 24, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15593 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–35–NG]

Meridian Marketing & Transmission Corp.; Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Meridian Marketing & Transmission Corp. to export up to 72 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 24, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15594 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

[Rate Order No. WAPA–62]

Amistad and Falcon Projects Notice of a Rate Order No. WAPA–62

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a Rate Order—Amistad and Falcon Projects

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA–62 placing a rate extension into effect on an interim basis beginning on June 8, 1993, for power marketed by the Western Area Power Administration (Western) from the Amistad and Falcon Projects under contract No. 7–07–50–P0890. The rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it in effect on a final basis or until it is replaced by another rate.

The Amistad and Falcon Dams are international storage projects located on the Rio Grande River between Texas and Mexico. The power from these dams is marketed by Western under the terms of contract No. 7–07–50–P0890 dated August 9, 1977, and amended on April 10, 1986. The rate formula of that contract was approved by the Federal Power Commission, predecessor to the FERC, for a 5-year period beginning June 8, 1983, in Docket No. E–9566 on August 12, 1977.

A 5-year rate extension approving this same methodology through June 7, 1993, was ordered by FERC on July 20, 1988, in 44 FERC ¶ 62,058.

According to article 9(a) of that contract, Western calculates the annual installment to be paid by the South Texas Electric Cooperative, Inc., and the Medina Electric Cooperative, Inc. (STEC/MEC), for the power generated at the Amistad and Falcon Powerplants on or before August 31 of the year preceding the fiscal year to which it pertains.

Each annual installment pays the annual amortized portion of the United States investment in the Falcon and Amistad hydroelectric facilities with interest, and the associated operation, maintenance, and administrative costs.

This repayment schedule is not dependent upon the power and energy made available for sale or the rate of generation each year.

Western will continue to provide STEC/MEC with a revised exhibit A by August 31 of each year using the same methodology.

DATES: The rate extension will become effective on an interim basis, June 8, 1993; and will remain effective until FERC confirms, approves, and places the rate in effect on a final year basis for a 5-year period, or until this rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. John Harrington, Deputy Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

Ms. Deborah Linke Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1535.

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated: (1) the authority to develop long-term power and

transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835). This rate extension is issued pursuant to the Delegation Order and the rate extension procedures in 10 CFR Part 903.

Rate Order No. WAPA–62 confirming and approving a rate extension on an interim basis is hereby issued, and the rate will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, DC, June 9, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

June 9, 1993.

These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Falcon Project and the Amistad Project, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place into effect such rates on an interim basis to the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary); and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove those rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued pursuant to the delegation to the Administrator of Western and the Assistant Secretary and the rate adjustment procedures in 10 CFR part 903, published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

CPL: Central Power and Light Company.

DOE: Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.

FERC: Federal Energy Regulatory Commission.

FPC: Federal Power Commission.

FY: Fiscal year.

kWh: Kilowatthour.

MEC: Medina Electric Cooperative, Inc.

mills/kWh: Mills per kilowatthour.

NEPA: National Environmental Policy Act of 1969.

O&M: Operations and maintenance.

PRS: Power repayment study.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

STEC: South Texas Electric Cooperative, Inc.

U.S. Section: U.S. Section of the International Boundary and Water Commission.

Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

This extension will become effective on an interim basis on June 8, 1993, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

Paragraph 903.23(a) of 10 CFR part 903, for rate extensions, does not require a consultation and comment period, nor public information or comment forums. On March 11, 1993, Western notified the customers—Medina Electric Cooperation, Inc. (MEC), in Hondo, Texas, and South Texas Electric Cooperative, Inc. (STEC), in Nursery, Texas, of Western's intent to extend the rate. Western also discussed the rate extension, answered questions, and received comments and suggestions. No significant issues were raised. The customers expressed comfort with the methodology presently used and support for the rate extension.

Project History

On August 12, 1977, in Docket No. E–9566, the FPC approved for a 5-year period the rate formula contained in contract No. 7–07–50–P0890, between Reclamation and two electric cooperatives, to become effective on the date of initial operation of Amistad Powerplant (June 8, 1983). STEC and MEC agreed to purchase the output of the Amistad and Falcon Powerplants for a 50-year period, beginning when initial electric service became available from Amistad. The cooperatives agreed to take all Amistad and Falcon power and to pay the United States the following:

The amount of each annual installment shall be the sum of:

(1) A fixed annual payment of $313,178 as a contribution to the amortization of the United States investment in the Falcon hydroelectric facilities and in the penstocks at Amistad Dam. The annual payment shown above will be adjusted at the time this contract becomes effective; plus

(2) An amount necessary to repay in equal annual installments amortized over a 50-year period, the United States actual total investment costs, with interest, for hydroelectric power installation at Amistad Dam, not including penstocks, to be under the jurisdiction of the Section, including the costs of engineering plans, supervision, administration of construction, and interest during construction * * *; plus

(3) The annual operation, maintenance, replacement, administration costs of the Section and the administration costs of the Bureau related directly or indirectly to the United States power facilities at Amistad Dam and at Falcon Dam, provided that such costs shall be based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices.

The power marketing functions of Reclamation were transferred to Western on October 1, 1977, and Western became responsible for the administration of both of the above contracts.

Western, STEC, and MEC executed supplement No. 1 to contract No. 7–70–50–P0890 on April 10, 1986, to clarify the method for determining the annual installment consistent with DOE Order No. RA 6120.2. Those clarifications address repayment of Falcon hydroelectric facilities within the remaining period, establish interest during construction at 7 percent, capitalize major replacements and additions at current interest rates, and specify the actual date of initial service as June 8, 1983.

Supplement No. 1 requires that the amount of each annual installment be established in advance by the contracting officer in consultation with the U.S. Section and submitted to the cooperatives as exhibit A on or before August 31 of the year preceding the appropriate fiscal year in accordance with the following:

The amount of each annual installment shall be the sum of:

(1) An annual installment including interest, to amortize within the remaining

period, the unpaid United States investment in the Falcon hydroelectric facilities and in the penstocks at Amistad Dam; plus

(2) An annual installment to amortize over a 50-year period, the United States actual total investment costs with interest, for hydroelectric power facilities, not including penstocks, at Amistad Dam to be under the jurisdiction of the U.S. Section, including the costs of engineering plans, supervision, administration of construction, and interest during construction * * *, and

(3) The annual operation, maintenance, replacement, administration costs of the U.S. Section and the administration costs of Western related directly or indirectly to the United States power facilities at Amistad Dam and at Falcon Dam, provided that such costs shall be based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices * * *.

The billing procedures contained in supplement No. 1 require Western to submit bills to the cooperatives for each monthly payment on the annual installment on or before the tenth day of the month for which such payment is due. Payments are due and payable by the cooperatives on the first day of the following month. Western divides the calculated annual installment by 12 and bills the customer monthly for this amount.

In Rate Order No. WAPA–37, Western requested FERC approval of a 5-year extension of the rate terms of the contract. FERC approved the rate extension through June 7, 1993, in Docket No. EF88–5101–000 on July 20, 1988, at 44 FERC ¶ 62,058. The rate terms remain the same as those approved on July 20, 1988. FERC approval is now sought for another 5-year extension through June 7, 1988, of those same rate terms.

Paragraph 903.23(a) of 10 CFR part 903, for rate extensions, does not require a consultation and comment period, nor public information or comment forums. On March 11, 1993, Western notified the customers—Medina Electric Cooperative, Inc. (MEC), in Hondo, Texas, and South Texas Electric Cooperative, Inc. (STEC), in Nursery, Texas, of Western's intent to extend the rate formula. Western also discussed the rate extension, answered questions, and received comments and suggestions. No significant issues were raised. The customers expressed comfort with the methodology presently used and support for the rate extension.

Power Repayment Studies

Electric service contract No. 7–07–50–P0890, dated August 9, 1977, and supplements thereto (in article 6(a)) require that Western calculate the annual installment to be paid by STEC/MEC for the power generated at the Falcon and Amistad Powerplants, by consultation with the U.S. Section, and submit it to STEC/MEC in the form of a contract exhibit on or before August 31 of the year preceding the FY to which it pertains.

Because of the August 31 due date of the exhibit A and the contract requirements, it is necessary to cover 3 years in the annual installment. The previous FY reflects actual figures; the current year in which the annual installment is being calculated reflects updated estimates; and the first future year for which the annual installment is being calculated reflects projected estimates. The previous FY with actual data is a final calculation for that year and normally does not change on future calculations. Annual installments have been prepared each year and the same methodology has been followed since the contract became effective in 1983.

Statement of Revenue and Related Expenses

The following tables provide a summary of revenues and expense data for the previous 5 years and the future 5-year proposed rate approval period:

AMISTAD/FALCON COMPARISON OF 5-YEAR REVENUES AND EXPENSES

[$1,000]

	FY 1988–92 actual	FY 1988–92 projected	Difference
Total revenues	17,543	18,878	<1,355>
Revenue distribution:			
O&M	3,766	4,996	<1,230>
Interest	11,941	12,149	<208>
Investment repayment	1,842	2,025	<183>
Prior-year adjustment	5	0	<6>
Total	17,543	19,170	<1,627>

AMISTAD/FALCON 6-year Projections Revenues and Expenses

[$1,000]

	FY 1993–98 projected
Total revenues	20,445
Revenue Distribution:	
O&M	4,972
Interest	13,893
Investment Repayment	1,580

AMISTAD/FALCON 6-year Projections Revenues and Expenses—Continued

[$1,000]

	FY 1993–98 projected
Prior-Year Adjustment	
Total	20,445

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.; Council on Environmental Quality Regulations (40 CFR part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Executive Order 12291

DOE has determined that this action is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has an exemption from sections 3, 4, and 7 of that order and, therefore, will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate extension is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City, Utah 84111; in the Office of the Director, Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Assistant Administrator for Washington Liaison, room 8G–061, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Submission to FERC

The rate extension herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve and place in effect on an interim basis an extension of the rate provisions contained in contract No. 7–07–50–P0890 and supplement No. 1 to that contract effective on June 8, 1988.

The rate provisions shall remain in effect on an interim basis pending Federal Energy Regulatory Commission confirmation and approval of this or a substitute rate on a final basis or until superseded through June 7, 1998.

Issued in Washington, D.C., June 9, 1993.

Robert L. San Martin,

Acting Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 93–15598 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–P

Intent to Adjust the Salt Lake City Area Integrated Projects Firm Power Rate and Colorado River Storage Project Firm Transmission Rate, and Invitation for Public Participation

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to adjust the Salt Lake City Area Integrated Projects (Integrated Projects) firm power rate and Colorado River Storage Project (CRSP) firm transmission rate, and invitation for public participation.

SUMMARY: Western Area Power Administration (Western) plans to hold a series of public meetings in preparation for a public process to adjust the Integrated Projects firm power rate and CRSP firm transmission rate. Those who wish to be notified about the meetings, receive mailings, and/or be included in the public process may send a written request to be placed on the mailing list now being compiled for the rate adjustments.

Firm Power Rate: The implementation of Title II—Central Utah Project Completion Act and Title XVIII—Grand Canyon Protection Act of the Reclamation Projects Authorization and Adjustment Act of 1992, is expected to require an adjustment in the Integrated Projects firm power rate.

Firm Transmission Rate: Review of the current CRSP rate is being considered and may be revised as necessary.

FOR FURTHER INFORMATION CONTACT: Those persons or parties wishing to be notified of meetings, mailings, and/or the progress of the anticipated rate adjustment process should send a written request to:

Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606. (801) 524–6372

SUPPLEMENTARY INFORMATION: Power rates for the Integrated Projects, transmission rates for the CRSP, and related activities are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western in addition to the sections of the legislation specified in this notice for the purpose of developing the proposed rates for firm power and firm transmission service are and will be available for inspection and copying at Western's Salt Lake City Area Office, 257 East 200 South, suite 475, Salt Lake City, Utah 84111–2048.

Issued at Golden, Colorado, May 27, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–15597 Filed 6–30–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4672–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0597.05; Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients; OMB No. 2070–0024; was approved 05/21/93; expires 05/31/96.

EPA ICR No. 0328.03; Spill Prevention, Control, and Countermeasure Plans, OMB No. 2050–0021; was approved 05/21/93; expires 06/30/94.

EPA ICR No. 1420.03; Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers, Information Requirements; OMB No. 2060–0193; expires 05/31/96.

EPA ICR No. 1635.01; 1990 Baseline and Current Reduced Use of Methyl Chloroform and CFC–113 in the Manufacture Process of Products and 24-Hour Accessibility to Records by EPA; OMB No. 2060–0259; was approved 05/24/93; expires 05/31/96.

EPA ICR No. 0662.04; NSPS for Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry (Subpart VV); OMB No. 2060–0012; was approved 05/28/93; expires 05/31/96.

EPA ICR No. 1506.04; NSPS for Municipal Waste Combustors Information Requirements—(Subpart EA); OMB No. 2060–0210; was approved 05/20/93; expires 05/31/96.

EPA ICR No. 1011.03; Partial Updating of TSCA Inventory Data Base, Production and Site Reports; OMB No. 2070–0070; was approved 05/27/93; OMB No. 2070–0070; expires 05/31/95.

EPA ICR No. 1547.02; The Pesticides Enforcement and Applicator Certification Cooperative Agreements Output, Projections/Quarterly Accomplishments Reporting Form; OMB No. 2070–0113; was approved 05/31/93; expires 08/31/93.

EPA ICR No. 1636.01; Information Collection Request for the Notice of Rulemaking for Allowance Allocations, Reserves, and Related Issues; OMB No. 2060–0261; was approved 06/04/93; expires 01/31/96.

EPA ICR No. 0938.05; General Administrative Requirements for Assistance Programs; OMB No. 2030–0020; was approved 06/04/93; expires 06/30/96.

EPA ICR No. 1432.13; Recordkeeping and Periodic Reporting of the

Production Import, and Export and Feedstock Use of Ozone-Depleting Substances; Amendment to Establish Baselines for Newly Listed Ozone; OMB No. 2060–0170; was approved 06/08/93; expires 10/31/95.

OMB Disapprovals

EPA ICR No. 1591.02; Reformulated Gasoline and Anti-Dumping Regulations was disapproved 05/11/93.

OMB Extensions of Expiration Dates

EPA ICR No. 0111.06; National Emission Standard for Asbestos; OMB No. 2060–0101; expiration date was extended to 11/30/93.

OMB Amendment

EPA ICR No. 1602.01; Maximum Achievable Control Technology Standards Development Under Title III (Section 112) of the Clean Air Act Regulatory Development Program; was approved 03/20/92; OMB No. 2060–0239; expires 03/31/95. On 06/16/93, OMB amended the approval of this ICR to add burden hours for Asbestos Processing Area Source Category.

Dated: June 25, 1993.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 93–15572 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4673–4]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between August 31, 1992 and January 31, 1993, the United States Environmental Protection Agency (EPA) Region II Office, issued 3 final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued 9 final determinations, and the New Jersey Department of Environmental Protection and Energy (NJDEPE) issued 4 final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Maria N. Stanco of the Permitting and Toxics Support Section, Air Compliance Branch, Division of Air and Waste Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, room 505, New York, New York 10278, (212) 264–4726.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEPE have made final determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
Holtsville/Combined Cycle Plant.	Holtsville, New York.	150 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	PSD Permit	Sept. 1, 1992.
Lakewood Cogeneration, L.P.	Lakewood, New Jersey.	2—1190 MMBTU/hr combustion turbines, 131 MMBTU/hr auxiliary boiler and cooling tower. Minor changes in PM emission calculation, revised specifications cooling tower and change in stack location.	NJDEPE	PSD Permit Modification.	Sept. 4, 1992.
United American Energy	Fort Edward, New York.	100 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Nonapplicability	Sept. 30, 1992.
Rotterdam Generating Company L.P.	Rotterdam, New York.	230 MW combined cycle gas turbine cogeneration project firing natural gas. In addition, four emergency engine generators firing #2 oil will be utilized.	NYSDEC	Nonapplicability	Oct. 19, 1992.
Kamine/Besicorp Corning L.P.	Corning, New York.	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	PSD Permit	Nov. 5, 1992.
NYC Department of Sanitation, Southwest Incinerator Facility.	Brooklyn, New York.	Replacement of air pollution control equipment and exiting stack.	NYSDEC	Nonapplicability	Nov. 6, 1992.
Kamine/Besicorp Beaver Falls L.P.	Beaver Falls, New York.	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	PSD Permit	Nov. 9, 1992.
O'Shanter Resources Inc., Lakeview Cogeneration.	Lakeview, New York.	5500 KW Two 3890 HP dual fuel engines supplying electricity and steam to the Lakeview Correctional Facility.	NYSDEC	Nonapplicability	Nov. 11, 1992.
Nissequogue Cogeneration.	Nissequogue, New York.	40 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Nonapplicability	Nov. 12, 1992.
Sithe Independence Power Partners.	Oswego, New York.	1012 MW combined cycle gas turbine cogeneration project firing natural gas. In addition, two 250 MMBTU auxiliary boilers firing natural gas with #2 oil as backup fuel.	NYSDEC	PSD Permit	Nov. 24, 1992.
Hoechst-Celanese	Bridgewater, New Jersey.	3.8 MW Cogeneration Plant	NJDEPE	Nonapplicability	Dec. 16, 1992.
Ciba Geigy	Summit, New Jersey.	96 MMBTU/hr Package Boiler	NJDEPE	Nonapplicability	Dec. 23, 1992.
Virgin Islands Water and Power Authority Units 16, 17.	St. Croix, Virgin Islands.	2—Oil fired gas turbines (Unit 16–23 MW, Unit 17–20 MW).	EPA	PSD Permit	Dec. 28, 1992.
Eli Lilly Industries, Inc	Carolina, Puerto Rico.	Incorporate 39 ton NO_x emission limit increase and limitation on fuel use to 75% of capacity.	EPA	PSD Permit Modification.	Jan. 22, 1993.

Name	Location	Project	Agency	Final action	Date
Keystone Energy Service Co.	Logan Township, New Jersey.	Allow for use of either SNCR or SCR to control NO_X emissions.	NJDEPE	PSD Administrative Amendment.	Mar. 1, 1993.
Hess Oil Virgin Islands Corporation.	St. Croix, Virgin Islands.	25 MW gas turbine firing both gas and liquid fuel.	EPA	PSD Permit	Mar. 22, 1993.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Air Compliance Branch—room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

NJDEPE Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR part 124), judicial review of these determinations under section 307(b) (1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b) (2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 93–15523 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4673–7]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed partial consent order in the following three cases:

Sierra Club v. Carol M. Browner, No. 93–0124 (D.C.D.C.), Sierra Club v. Carol M. Browner, No. 93–0197 (D.C.D.C.), and Sierra Club v. Carol M. Browner and Federico M. Pena, No. 93–0564 (D.C.D.C.). These citizen suits were filed under section 304(a) of the Clean Air Act, 42 U.S.C. 7604, and allege that EPA failed to meet a variety of mandatory deadlines under Titles I, II, IV, and VI of the Act, as well as various deadlines under the Clean Air Act Amendments of 1990.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent order from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed order if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed order has been lodged with the clerk of the United States District Court for the District of Columbia. Copies are also available from Diane Weeks, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to John T. Hannon, Esq. at the above address and must be submitted on or before August 21, 1993.

Dated: June 18, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–15521 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4673–3]

Public Water System Supervision Program Revision for the State of Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Michigan is revising its Public Water System Supervision (PWSS) primacy program. The Michigan Department of Public Health (MDPH) has adopted: (1) Drinking water regulations for total coliform that correspond to the NPDWR for total coliform promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 29, 1989 (54 FR 27544–27568) and (2) drinking water regulations for the treatment of surface water that correspond to the NPDWR for surface water treatment promulgated by the U.S. EPA on June 29, 1989 (54 FR 27486–27541). The U.S. EPA has completed its review of Michigan's PWSS primacy program revision.

The U.S. EPA has determined that the current version of the Michigan Total Coliform rule revision substantially meets the requirements of the Federal rule. However, there are several changes that need to be made before the U.S. EPA can grant approval. The necessary changes have been documented in a Memorandum of Agreement (MOA) between the U.S. EPA and the MDPH (available at the State and the U.S. EPA offices listed at the end of this notice), and Michigan is incorporating them into its Total Coliform rule. Michigan's revised Total Coliform rule revision is scheduled to become effective no later than December 31, 1993. Upon notification that Michigan's revised regulations containing the agreed upon changes have become effective, the U.S. EPA will grant approval of the Michigan Total Coliform rule revision without further solicitation of public input.

The U.S. EPA has determined that the Michigan Surface Water Treatment rule revision meets the requirements of the Federal rule. Therefore, the U.S. EPA is proposing to approve the Surface Water Treatment rule revision.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before August 2, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time, following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Jennifer Kurtz Crooks (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, these determinations shall become effective 30 days from this Notice date.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Michigan. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Michigan. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on August 2, 1993. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Michigan Department of Public Health, Division of Water Supply, 3423 North Logan/Martin L. King Jr., Blvd., P.O. Box 30195, Lansing, Michigan 48909, State Docket Officer: Mr. James K. Cleland, (517) 335–9216

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Jennifer Kurtz Crooks, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–0244.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Signed this 18th day of June, 1993.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 93–15520 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4674–6]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and public comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has approved amendments to its evaporative emission standards, durability requirements, and testing procedures for passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty engines and vehicles, except petroleum-fueled diesel vehicles, for the 1995 model year. By letter dated May 5, 1993, California has requested EPA to grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for July 19, 1993, to consider CARB's request and to hear comments from the general public concerning CARB's request. In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of or in addition to submitting written comments, must notify EPA by July 7, 1993. If no party notifies EPA that it wishes to testify, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

It should be noted that these amendments are limited to California's evaporative emission test standards, durability requirements, and testing procedures for the 1995 model year. EPA anticipates a separate waiver request and proceeding regarding CARB's evaporative emission test procedures and standards for the 1996 model year and thereafter. Therefore, parties wishing to comment should confine the scope of their comments to issues pertaining to the 1995 model year.

DATES: EPA has tentatively scheduled a public hearing for July 19, 1993, beginning at 10 a.m., if any party notifies EPA by July 7, 1993, that it wishes to present oral testimony regarding CARB's requests. By July 9, 1993, any person who plans to attend the hearing should call David Dickinson of EPA's Manufacturers Operations Division at (202) 233–9256 to determine if a hearing will be held. Any party may submit written comments regarding CARB's request by August 23, 1993.

ADDRESSES: If EPA receives a request for a public hearing, EPA will hold the public hearing announced in this notice in the first floor conference room at 501 3rd Street, NW., Washington, DC. Parties wishing to present oral testimony at the public hearing should provide written notice to: Charles N. Freed, Director, Manufacturers Operations Division 6405J, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. In addition, written comments regarding the waiver request, should be sent, in duplicate, to Mr. Freed at the same address. Copies of material relevant to the waiver request (Docket No. A–92–05) will be available for public inspection during the working hours of 8:30 a.m. to 12:00 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at the U.S. Environmental Protection Agency, Air Docket (LE–131), Room M1500, First Floor Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Attorney/Advisor, Manufacturers Operations Division 6405J, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 233–9256.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or

registration of such motor vehicle, motor vehicle engine, or equipment."

The State of California may be exempted from the prohibitions of section 209(a) of the Act. Section 209(b) of the Act provides in part that the Administrator shall, after notice and opportunity for public hearing, waive application of the prohibitions of section 209(a) for California "if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has been granted a waiver of the application of the prohibitions of section 209(a) for its standards and accompanying enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving further waiver of Federal preemption.

By letter dated January 31, 1992, CARB submitted to EPA a request for waiver of Federal preemption for amendments to its evaporative emission standards, durability requirements, and test procedures. By letter dated May 5, 1993, CARB submitted a revised request for waiver of Federal preemption limiting the applicability of these amendments to the 1995 model year. These amendments which apply to all classes of passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines, except petroleum-fueled diesel vehicles:

a. Establish a test to quantify running loss evaporative emissions;

b. Establish a running loss standard of 0.05 grams per mile;

c. Expand the temperature range under which the running loss, diurnal heat build, and hot soak portions of the test are conducted;

d. Extend the duration of the diurnal test from 1 hour to 72 hours;

e. Set forth specific requirements for purging and loading the canister prior to testing; and,

f. Extend the "useful life" for passenger cars and light-duty trucks, medium-duty vehicles and heavy-duty vehicles from 50,000 miles to 100,000 miles, and from 50,000 to 120,000 miles, respectively.

Subsequent to CARB's adoption of its new evaporative standards and test procedures, EPA finalized its new evaporative standards and test procedures, which were published on March 24, 1993 (see 58 FR 16002). EPA's new standards and test procedures will be phased-in commencing 1996, with full compliance by 1999. EPA's present waiver consideration will only consider CARB's request for model year 1995. Therefore, in the context of the waiver criteria set forth in section 209(b), CARB's adopted 1995 standards and test procedures will be compared to EPA's current (pre-1996) standards and test procedures.

California states in its May 5, 1993 letter that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California, referencing its January 31, 1992 waiver request letter, states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California states that these amendments are consistent with section 202(a) of the Act. Section 202(a) requires that the procedures provide sufficient lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, EPA has held that section 202(a) prohibits the procedures from imposing inconsistent certification requirements such that manufacturers would be unable to demonstrate compliance with both the California and Federal requirements with the same test vehicle and using a single test sequence. California's request will be considered according to the procedures for a waiver determination, thus an opportunity for a public hearing is being provided. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than July 9, 1993. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until August 23, 1993. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information which she deems pertinent. All information will be available for inspection at the EPA Air Docket. (Docket No. A–92–05).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its waiver decision in part on a submission labeled as CBI, then a nonconfidential version of the document which summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: June 25, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–15573 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4674–4; ECAO–RTP–0746]

Peer-Review Workshops on the Health Effects of Ozone and Related Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Two peer-review workshops will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of the health chapters for an external review draft of the revised Air Quality Criteria for Ozone and Related Photochemical Oxidants.

DATES: The first peer-review workshop addresses toxicological effects and will be held on July 7–9, 1993, from 9 a.m. to 5 p.m. at the North Raleigh Hilton and Convention Center, 3415 Old Wake Forest Road, Raleigh, NC, telephone: 1–800–872–1982. The second peer-review workshop deals with human health effects and will be held on July 14–16, 1993, from 9 a.m. to 5 p.m. at the same location. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Judith A. Graham, coordinator for the toxicology and extrapolation chapters, U.S. Environmental Protection Agency, ECAO, MD–52, Research Triangle Park, NC 27711, telephone: 919–541–0349; or James A. Raub coordinator for the human health effects chapters, same address, telephone: 919–541–4157.

SUPPLEMENTARY INFORMATION: As discussed in a previous call for information (57 FR 38832, August 27, 1992), EPA is undertaking to review and, where appropriate, update and revise the Air Quality Criteria for Ozone and Related Photochemical Oxidants. As part of this review, the first workshop will cover a draft chapter on the toxicological effects of ozone as well as a related draft chapter on the extrapolation of animal toxicological data to humans. The second workshop will cover a draft chapter on the human health effects of ozone. Copies of the draft chapters will be made available to the public at the workshops, and members of the public will have an opportunity to make brief oral statements. Interested parties also are invited to assist the U.S. EPA in developing and refining the scientific information base for further updating of the air quality criteria for ozone by identifying and submitting new information on potential health and environmental effects of ozone. To be considered for inclusion in the criteria document, submitted information should be published or be accepted for publication in a peer-reviewed scientific journal.

The draft health chapters subsequently will be revised and released as part of an external review draft. Draft chapters on ozone air chemistry and the environmental effects of ozone will be reviewed at separate workshops to be announced later this year. Ample opportunity will be provided for public review and submission of written comments upon release of the entire external review draft.

Dated: June 24, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–15574 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board, Executive Committee Meeting; July 20–21, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee, will conduct a meeting on Tuesday and Wednesday, July 20–21, 1993. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. It will begin at 8:30 a.m. and adjourn not later than 5 p.m. on each day.

At this meeting, the Executive Committee plans to review reports from its Committees, including the following: Drinking Water Committee [radon cost engineering portion of Chafee-Lautenburg study; review of ambient water quality criteria]; Ecological Processes and Effects Committee [commentary on coastal programs; review of biotechnology research; review of biocriteria]; Radiation Advisory Committee [commentary on uncertainty analysis].

The Executive Committee also plans to consider a subcommittee draft of a joint SAB/Environmental Financial Advisory Board report on Principles to Consider in Environmental Decision-making.

Administrator Carol Browner is scheduled to meet with the Executive Committee for an hour during the meeting. Other new political appointees may also meet with the Board.

The Executive Committee will hear a description of the Agency's Futures Project and discuss whether, and how the SAB might assist the effort.

As time permits, other issues may be raised by Executive Committee members.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee (A–101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and at 202–260–4126; FAX 202–260–9232; and INTERNET BARNES.Don@EPAMAIL.EPA.GOV@IN. Limited unreserved seating will be available at the meeting.

Date: June 24, 1993.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 93–15576 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4673–8]

Kentucky: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the Commonwealth of Kentucky's Municipal Solid Waste Landfill Permit Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs.

The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

Kentucky applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed Kentucky's MSWLF application and proposed a determination that Kentucky's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received regarding the determination of adequacy, EPA is today issuing a final determination that Kentucky's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the Commonwealth of Kentucky shall be effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland St. NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD–RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

B. State of Kentucky

On February 14, 1992, the Commonwealth of Kentucky submitted a final application for adequacy determination for their MSWLF permit program. On May 4, 1993, EPA published a tentative determination of adequacy for all portions of Kentucky's program. Further background on the tentative determination of adequacy appears at Volume 58 No. 84 FR 26543, May 4, 1993.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of the public hearing on the application. The EPA Region IV and the Commonwealth of Kentucky held a public hearing at 7:30 p.m. on June 24, 1993, in Frankfort, Kentucky.

The Commonwealth of Kentucky has the authority to issue permits that incorporate the requirements of the Revised Federal MSWLF Criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands. In addition, Kentucky Revised Statute allows the Cabinet to implement conditions upon any MSWLF permit issued by the State in order to provide protection of human health and the environment.

The EPA has determined that the Commonwealth of Kentucky's statutes and administrative regulations provide for a state-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for Kentucky's MSWLF permit program.

One commenter asserted that it is unclear whether Kentucky prohibits field filtering of groundwater samples prior to laboratory analysis. The State requires the permit application to include a sampling and analytical plan. The State requires the issuance of a notice of deficiency on any application proposing field filtering as a part of the plan. EPA believes that this permit review process is equally effective as specific regulatory requirements.

One commenter supported the approval of the Kentucky MSWLF program as meeting or exceeding the Federal Criteria, however, expressed concern that the state should incorporate into its regulatory program certain permit requirements that will be covered by the state through permit conditions. Kentucky has demonstrated to EPA that they have authority through their statutes and regulations to establish and enforce the aforementioned permit conditions at MSWLFs. Also, the commenter was concerned that the state needed procedures in place to ensure full implementation of the National Historic Preservation Act Amendments and the Endangered Species Act in state permitting actions. 40 CFR 258.3 requires owners/operators of MSWLFs to comply with any other applicable Federal rules, laws or other requirements. Kentucky demonstrated this capability to EPA's satisfaction through statutes and regulations cited in their application. Further, the commenter requested that the state develop a staffing analysis and budget in order to determine program staff adequacy. Kentucky adequately addressed staff resources in the Program Description of the MSWLF permit application. Furthermore, EPA has no requirement that states/tribes provide an analysis of workload and budget as a part of their MSWLF permit program application.

The commenter requested that the state be required to modify the existing enforcement program to provide parties with the right to participate in the administrative enforcement process prior to the entry of administrative orders negotiated by the Cabinet and owners/operators. Under the draft State/Tribal Implementation Rule, states/tribes are required to ensure adequate opportunity for public participation through any one of three options. The third option, which is met by Kentucky,

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requires assurances that the state will provide notice and opportunity for public comment in all proposed settlements of civil enforcement actions. EPA is satisfied that Kentucky meets this requirement through the statutory authorities provided in its Program Description.

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that Kentucky's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted approval for all portions of its MSWLF permit program.

Kentucky will be using alternative, but equally effective methods, to ensure that provisions which are technically comparable to the revised federal criteria are being applied in Kentucky. To ensure compliance with all of the revised Federal Criteria, Kentucky will implement the following areas of its MSWLF permit program through enforceable permit conditions.

1. Kentucky will require as a permit condition that the owner/operator of all new units or lateral expansions of MSWLFs will notify the Federal Aviation Administration (FAA) as specified in 40 CFR 258.10(b). Kentucky will add all state airports and the FAA to their public notice mailing list to ensure compliance with 40 CFR 258.10 by October 9, 1993. In Kentucky, all new units and lateral expansions of MSWLFs are required by regulation to be public noticed before a permit will be issued.

2. Kentucky will require as a permit condition that the owner/operator of all MSWLFs will include in its detection monitoring program, the full list of Appendix I constituents as specified in 40 CFR 258.54(a). This permit condition will be enforced prior to October 9, 1993. Kentucky will also enforce through permit conditions, the criteria as specified in 40 CFR 258.53(g) for determining the adequacy of statistical methods. Kentucky will include the statistical methods criteria in the permit application for all MSWLFs prior to October 9, 1993.

3. Kentucky will include as a permit condition prior to October 9, 1993, the requirement that all MSWLFs meet the performance standard for the final cover criteria in 40 CFR 258.60(a)(1).

4. Kentucky will include as a permit condition prior to October 9, 1993, the requirements of 40 CFR 258.73, that all MSWLFs required to implement a corrective action program will provide financial assurance for any necessary corrective action. Under the authority of Kentucky House Bill 839, the state has the ability to utilize and enforce any of the financial assurance mechanisms promulgated pursuant to 40 CFR 258.73.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: June 25, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–15519 Filed 6–30–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4673–5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that a proposed administrative cost recovery settlement concerning the Valley Plating Superfund Site, Henrico County, VA was issued by the Agency on March 31, 1993 and was approved by the Assistant Attorney General of the United States on April 29, 1993, pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). The settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against the Valley Bumper Sales Inc., Valley Bumper Recycling, Inc., and the Estate of Robert Clifton, ("Settlors"). The settlement requires the Settlors to pay $283,000 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Settlement. The Agency's response to any comments received will be available for public inspeciton at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before thirty (30) days after the date of publication of this notice.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the "Valley Plating Superfund Site" and "EPA Docket No. III–93–07–DC" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Duchovnay, Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8252.

Dated: June 21, 1993.

William T. Wisniewski,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 93–15522 Filed 6–30–93; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 28, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0130

Title: Private Fixed, Mobile and Radiolocation Services Supplementary Information to FCC Form 574

Form Number: FCC Form 574–B

Action: Extension of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 300 responses; 1 hour average burden per response; 300 hours total annual burden

Needs and Uses: FCC Rules require the applicants operating on frequencies below 27.5 MHz file the FCC Form 574–B in conjunction with the FCC Form 574. This additional data will enable the FCC to comply with treaty agreements. The FCC Licensing Division will collect and maintain the data. Treaty personnel will report the data as required.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15601 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–755; CC Docket No. 83–1376]

Alaska Federal-State Joint Board to Convene a Hearing in Anchorage Alaska on Thursday, July 1, 1993

June 23, 1993.

The Alaska Federal-State Joint Board in CC Docket 83–1376 will convene a hearing on Thursday, July 1, 1993, at 9:30 a.m. in Anchorage, Alaska (1:30 p.m. e.d.t.). The hearing will be held to receive testimony from the citizens of Alaska and other interested persons on the following:

(1) The Tentative Recommendation and Order Inviting Comments, FCC 93J–1, released by the Federal-State Joint Board on May 17, 1993;

(2) The implementation plan filed by Alascom, Inc. on June 7, 1993;

(3) The American Telephone and Telegraph Company (AT&T) response filed on June 7, 1993; and

(4) The AT&T Petition to Terminate the Joint Services Agreement (AT&T Customer Benefit Plan) filed March 31, 1993.

FCC Chairman Quello and FCC Commissioners Duggan and Barrett will participate by means of videoconference facilities in Washington, DC. State Commissioners Susan Knowles (Alaska), Dean J. "Joe" Miller (Idaho), Bruce Hagen (North Dakota), and David Rolka (Pennsylvania) will also participate in the hearing.

The hearing will convene at the video conferencing facilities at 1049 W. 5th Ave., Anchorage, Alaska. Persons wishing to testify either in person or via audio links within the State of Alaska should contact Lorraine Kenyon, Alaska Public Utilities Commission, at (907) 276–6222. Space at the Anchorage videoconference facilities is limited. Members of the public interested in listening to the meeting may do so at the Alaska Public Utilities Commission, Public Hearing Room, Third Floor, 1016 W. 6th Avenue, Anchorage, Alaska. In Washington, DC, the public may listen to the meeting at the FCC, room 856, 1919 M Street, NW. Additional information concerning this hearing may be obtained from Lorraine Kenyon, Alaska Public Utilities Commission, at (907) 276–6222 or from Rose Crellin, Common Carrier Bureau, FCC, at (202) 632–1292.

Interested persons may also provide written testimony or other comments until July 12, 1993. An original and five copies should be filed with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Additional copies should be sent to the following: three copies to Peggy Reitzel, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554; and one copy to ITS, Inc. the Commission's contractor for public records duplication, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. Comments will be available for inspection and photoduplication in room 239, 1919 M Street, NW., Washington, DC 20554, 9 a.m. to 4:30 p.m. Monday–Friday. Copies may additionally be obtained from ITS, Inc.

Parties should also send copies of filings to the following Alaska Joint Board Members and their staffs: Hon. Bruce Hagen, North Dakota Public Service Commission, State Capitol Building, Bismarck, North Dakota 58505; Hon. Susan M. Knowles, Alaska Public Utilities Commission, 1016 West 6th Avenue, Suite 400, Anchorage, Alaska 99501; Hon. Dean J. "Joe" Miller, Idaho Public Utilities Commission, 472 West Washington, Boise, Idaho 83702; Hon. David Rolka, Pennsylvania Public Utilities Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105; Lorraine Kenyon, Alaska Public Utilities Commission, 1016 West 6th Avenue, Suite 400, Anchorage, Alaska 99501; Eileen Benner, Idaho Public Utilities Commission, 472 West Washington, Boise, Idaho, 83702; Debra Kriete, Pennsylvania Public Utilities Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105; Ronald G. Choura, c/o Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan, 48910; and Rowland Curry, Texas Public Service Commission, 7800 Shoal Creek Blvd. Suite 400N, Austin, Texas 78757.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15720 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. Howard B. Dolgoff, Miramar Beach, Fl..	BPH–911223ME	93–178
B. Marix and Renee Carter, Miramar Beach, Fl..	BPH–911224MD	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Air Hazard	A
2. Comparative	A, B
3. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. 2100 M Street, NW., suite 140, Washington, DC 20037; telephone (202) 857–3800.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–15527 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal Application Designated for Hearing

1. The Commission has before it the following application for renewal of license:

Applicant, city and state	File No.	MM docket No.
A. Metrocomoc, Inc., Berlin, NH.	BR–901130XE	93–190

(Seeking a renewal of the license of Station WBRL(AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether Metrocomco, Inc. has the capability and intent to expeditiously resume broadcast operations of WBRL(AM) consistent with the Commission's Rules.

2. To determine whether Metrocomco, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules;

3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–15528 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal Application Designated for Hearing

1. The Commission has before it the following application for renewal of license:

Applicant, city and state	File No.	MM docket No.
A. Stephen W. Yates, Lufkin, Texas.	BR–900402E6	93–189

(Seeking a renewal of the license of Station KSRK(AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether Stephen W. Yates has the capability and intent to expeditiously resume broadcast operations of KSRK(AM) consistent with the Commission's Rules.

2. To determine whether Stephen W. Yates has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules;

3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M. Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission

Larry D. Eads

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–15529 Filed 6–30–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under The Premerger Notification Rules

Section 7A of the Clayton Act, 5 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060793 AND 061893

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Southwestern Bell Corporation, Gustave M. Hauser, Montgomery Cablevision Limited Partnership	93-1073	06/07/93
Southwestern Bell Corporation, John D. Evans, Evanco, Inc	93-1074	06/07/93
George Soros, Falcon Drilling Company, Inc., Falcon Drilling Company, Inc	93-1094	06/07/93
Burlington Resources, Inc., Petrofina S.A., Fina Oil and Chemical Company	93-1097	06/07/93
Heywood Williams Group PLC, Beekman Settlement, LaSalle-Deitch Co., Inc	93-1106	06/07/93
Protective Life Corporation, Internationale Nederlanden Groep N.V., Wisconsin National Life Insurance Company	93-1111	06/07/93
Shamrock Holdings, Inc., Milton Maltz, Mairite Communications Group, Inc	93-1119	06/07/93
Trefoil Capital Investors, L.P., Roy E. Disney and Patricia A. Disney, Shamrock Holdings, Inc	93-1120	06/07/93
Roy E. Disney and Patricia A. Disney, Roy E. Disney and Patricia A. Disney, Big Country TV of Abilene, Inc	93-1121	06/07/93
Dort A. Cameron III, JWP Inc., JWP Information Services (East), Inc	93-1131	06/07/93
Ibrahim Morales, The Times Mirror Company, KDFW-TV, Inc. and KTBC-TV, Inc	93-1139	06/07/93
Anthony H. Reeves, The Olsten Corporation, The Olsten Corporation	93-1144	06/07/93
First Bank System, Inc., John J. Fauth, Republic Acceptance Corporation	93-1132	06/08/93
GATX Corporation, Westinghouse Electric Corporation, Westinghouse Electric Corporation	93-1149	06/08/93
D.D.I. Inc., First Mississippi Corporation, First Energy Corporation	93-1138	06/09/93
First American Capital, C.V., Commerce Clearing House, Inc., Facts on File, Inc	93-1103	06/10/93
Zions Bancorporation, Discount Corporation of New York, Discount Corporation of New York	93-1123	06/10/93
Acadia Partners, L.P., Major League Marketing, Inc., Major League Marketing, Inc	93-1134	06/10/93
International Semi-Tech Microelectronics, Inc., Semi-Tech (Global) Company Limited, The Singer Company N.V	93-1145	06/10/93
Newell Co., PI Industries, Inc., PI Industries, Inc	93-1153	06/10/93
The Morgan Stanley Real Estate Fund, L.P., BankAmerica Corporation, BankAmerica Corporation	93-1078	06/11/93
Warburg, Pincus Investors, L.P., The News Corporation Limited, Benson Music Group, Inc	93-1150	06/11/93
The Prudential Insurance Co. of America, BraeLoch Holdings, Inc., BraeLoch Holdings, Inc	93-1152	06/11/93
Devon Energy Corporation, Petrofina S.A., Fina Oil and Chemical Company	93-1155	06/11/93
Fleming Companies, Inc., John A. Catsimatidis, Florida Supermarkets, Inc	93-1156	06/11/93
Savannah Foods & Industries, Inc., Ed Newbern, King Packaging Company, Inc	93-1164	06/11/93
Safeguard Scientifics, Inc., JWP Inc., Maris Equipment Company	93-1181	06/11/93
PepsiCo, Inc., Alpac Investments, Inc., Alpac Investments, Inc	93-1063	06/14/93
Cargill, Incorporated, Exxon Corporation, Exxon Corporation	93-1069	06/14/93
Whole Foods Market, Inc., Mrs. Gooch's Natural Food Markets, Inc., Mrs. Gooch's Natural FoodMarkets, Inc	93-1066	06/15/93
Sandra V. Gooch, Whole Foods Market, Inc., Whole Foods Market, Inc	93-1067	06/15/93
Pechiney, S.A., The Stroh Companies, Inc., The Stroh Brewery Company	93-1095	06/15/93
Danny O. Volland, Whole Foods Market, Inc., Whole Foods Market, Inc	93-1112	06/15/93
International Multifoods Corporation, Joseph A. Amicone, J. Amicone Company, Inc	93-1136	06/15/93
Geo. A. Hormel & Company d.b.a. Hormel Foods Corp., Reckitt & Colman plc, Reckitt & Colman Inc	93-1159	06/15/93
Banc One Corporation, Dennis Lochmandy, Prime Bank, c/o Premier Financial Corp	93-1167	06/15/93
United HealthCare Corporation, HMO America, Inc., HMO America, Inc	93-1173	06/15/93
Union Pacific Corporation, Parker & Parsley Petroleum Company, Dorchester Master Limited Partnership	93-1174	06/15/93
Warburg, Pincus Capital Company, L.P., Aitrescco Financial, Inc., Aitresco Financial, Inc	93-1116	06/16/93
Leslie L. Dan, Hoechst Aktiengesellschaft, Granutec Inc	93-1133	06/16/93
Behr GmbH & Co., Behr America Holding, Inc., Behr America Holding, Inc	93-1083	06/17/93
AST Research Inc., Tandy Corporation, Tandy Corporation	93-1151	06/17/93
General Electric Company, GFC Financial Corporation, Verex Corporation	93-1158	06/17/93
George D. Behrakis, Glaxo Holdings, p.l.c., Glaxo, Inc. and Glaxo Group Ltd	93-1160	06/17/93
VEBA AG, Joseph H. Collie, Southchem, Inc	93-1161	06/17/93
Union Titanium Sponge Corporation, Tremont Corporation, Titanium Metals Corporation	93-1172	06/17/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-15549 Filed 6-30-93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3429]

AE Clevite, Inc.; Prohibited Trade Practices, and Affirmation Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Michigan manufacturer of locomotive engine bearings and its parent company, T&N PLC, from fixing prices or from inviting its competitors to fix or raise prices for locomotive engine bearings in the future. The consent order requires AE Clevite and T&N to provide copies of the FTC complaint and consent order to the directors and officers of the company, subsidiaries, and divisions engaged in the design, manufacture, marketing or sale of locomotive engine bearings in the United States.

DATES: Complaint and Order issued June 8, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/H-380, Washington, DC 20580. (202) 326-2610.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Friday, April 2, 1993, there was published in the **Federal Register**, 58 FR 17405, a proposed consent agreement with analysis In the Matter of AE Clevite, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–15550 Filed 6–30–93; 8.45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Recommendations for Anabolic Steroids Under Section 1903 of the Anabolic Steroids Control Act of 1990; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority vested in the Secretary of Health and Human Services under section 1903(a) of the Anabolic Steroids Control Act of 1990, title XIX of Public Law 101–647, as amended hereafter. This delegation excludes the authority to submit reports to Congress.

This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: June 22, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15604 Filed 6–30–93; 8:45 am]

BILLING CODE 4160–01–M

Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91–513, As Amended; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority to perform the functions for which the Secretary of Health and Human Services is responsible under the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91–513, as amended hereafter. This delegation excludes the authority to submit reports to Congress.

This delegation supersedes the November 28, 1972 delegation from the Secretary to the Assistant Secretary for Health and Scientific Affairs for the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91–513, as amended. This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: June 22, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15603 Filed 6–30–93; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration

[Docket No. 93M–0004]

Tosoh Medics, Inc.; Premarket Approval of AIA-PACK AFP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Tosoh Medics, Inc., South San Francisco, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of AIA-PACK AFP. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 18, 1992, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20857, 301–427–1034.

SUPPLEMENTARY INFORMATION: On September 27, 1991, Tosoh Medics, Inc., South San Francisco, CA 94080, submitted to CDRH an application for premarket approval of AIA-PACK AFP. The device is a immunoenzymometric assay and is indicated for the quantitative measurement of alpha-fetoprotein (AFP) in serum to aid in the management of patients with nonseminomatous testicular carcinoma.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Immunology Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On December 18, 1992, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33 (b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a

notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–15555 Filed 6–30–93; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Cooperative Agreement With the Metropolitan Washington Council of Governments (COG)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of intent to award a sole source, cost shared, demonstration cooperative agreement to support development of a model comprehensive substance abuse treatment program for the National Capital area.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public regarding a planned sole source, cost shared, cooperative agreement award to the Metropolitan Washington Council of Governments (COG) for the development and implementation of a model substance abuse treatment demonstration program. The project period is presently anticipated to be three years long. The first year will be funded with approximately $2,700,000 in Federal funds and approximately $1,350,000 in non-Federal cost sharing. This is not a request for applications. The cooperative agreement will only be made to the Metropolitan Washington Council of Governments.

AUTHORITY: The award will be made under the authority of section 571 of the Public Health Service (PHS) Act. That section requires the Secretary of Health and Human Services (HHS) to fund the establishment of a model comprehensive substance abuse treatment demonstration program in the National Capital Area. The National Capital Area, as defined in the legislation, includes the District of Columbia; the counties of Arlington and Fairfax in Virginia; the cities of Alexandria, Falls Church, and Fairfax in Virginia; and (d) the counties of Montgomery and Prince George's in Maryland (and the political subdivisions located in those counties). The authority to administer this program has been delegated to the Director, CSAT.

It is CSAT's best judgement that the award should be made on a sole source basis to COG since only COG is capable of fully satisfying the eligibility and performance requirements included in section 571 of the PHS Act. The statute limits eligibility to "an organization of the general-purpose local governments within the national capital area, or another public or nonprofit private entity, and the applicant submits to the Secretary assurances satisfactory to the Secretary that, with respect to the communities in which services will be offered, the local governments of the communities will participate in the program." The COG is both the only organization of general-purpose local governments for Metropolitan Washington (as defined in the law) and the only organization that can provide reasonable assurance of the participation of all the affected local governments. The statute requires a substantial level of non-Federal contributions: the applicant for the grant must agree, with respect to the costs to be incurred by the applicant in implementing the project, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to not less than $1 for each $2 of Federal funds provided. Accordingly, the recipient must be able to document the ability to contribute approximately $1,350,000 in cash or in kind in the first year alone.

CSAT believes it is implicit that the recipient of the funds must be an organization currently accepted as capable of truly representing the governmental interests of all the local jurisdictions in the Washington metropolitan area. Further, it is CSAT's best judgement that to succeed, the new program must receive wide support from government agencies dealing with addiction treatment. Again, COG is the only existing entity that satisfies the above requirements.

BACKGROUND: COG is the recognized regional planning organization for the Metropolitan Washington area. The organization has a long history of administering and coordinating complex projects supported by Federal funds, including several prior DHHS demonstration grants. COG serves as the Title X Family planning grant recipient for the District of Columbia (the only "State" that is a member) administering and coordinating services delivered by six delegate agencies. COG is the Federally designated Metropolitan Planning Organization for developing and implementing an area-wide regional transportation planning program. COG serves as the convener of committees in human services areas in addition to substance abuse that deal with inter-jurisdictional concerns (e.g., juvenile justice).

COG has a Drug Intervention, Treatment and Rehabilitation Committee that is comprised of the local government substance abuse administrators in the COG member jurisdictions. This committee has been very active in discussing inter-jurisdictional cooperation and has engaged in preliminary planning for joint programs. Their deliberations have been brought to the attention of the Congress and considered in the development of the authorizing statute. None of the units of State or local government are seen as appropriate, because of their limited geopolitical responsibilities and connections to a specific, sometimes limited systems of care and reimbursement. Nor is there a non-governmental treatment provider or any other planning or umbrella agency with authority, experience, or acceptability comparable to COG.

Each jurisdiction contains a variety of alcohol and drug abuse treatment programs. However, each jurisdiction does not necessarily include each type of treatment program. There is little existing inter-State planning of the extensive nature contemplated in the law, although a few of the jurisdictions do purchase specific services (for example, medical detoxification) from providers in neighboring jurisdictions, and several providers operate programs in more than one (but not all) of the affected jurisdictions.

We also note that during the recent period of cutbacks in funds available for substance abuse treatment in the three

VOL 58 ISS 125 JL 1 1993 UMI

States, which affected service availability, there was increased joint planning because of the migration of patients across the county and State lines (e.g., from DC to Prince George's County; from DC and Prince George's County to Alexandria and Fairfax County). The vehicle for these planning discussions was primarily the COG committee.

One of the potential benefits anticipated by the legislation was that this project would prove to be a general model for the United States. Councils of Governments are located throughout the United States. The susceptibility to replication of a program coordinated through a Council of Governments, especially when one of the major issues to be addressed is multi-jurisdictional coordination is thus greatly enhanced.

Again, in accordance with all the above considerations, CSAT has concluded that the Metropolitan Washington Council of Governments, a private, nonprofit organization whose membership is comprised of the local general purpose governments in the Metropolitan Washington area, is uniquely qualified to carry out the project as proposed.

USE OF COOPERATIVE AGREEMENT: As mentioned above, one goal of the legislation is to demonstrate a new service delivery model that can be used by other metropolitan communities in the United States to fund quality addiction treatment across jurisdictional lines. The cooperative agreement mechanism has been chosen to allow Federal participation in the planning and execution of the project, to better allow for transfer of the benefits of this experience to other metropolitan areas and to permit coordination of this project with other CSAT efforts to improve delivery systems in metropolitan areas. Accordingly, Federal staff will participate in the policy development and program planning sessions to assure the interests of replication are adequately represented, to advise of the need for, and participate in, the provision of mandatory technical assistance to participating third parties, and to better control the provision of data determined necessary to conduct the program evaluation mandated by the authorizing legislation.

FOR FURTHER INFORMATION CONTACT: Carol Rest-Mincberg, CSAT/SAMHSA, Rockwall II, room 880, 5600 Fishers Lane, Rockville, MD. 20857. Telephone (301) 443–3820.

Dated: June 25, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–15554 Filed 6–30–93; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Atlantic Salt Marsh Snake for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Atlantic Salt Marsh Snake. This species occurs in Volusia, Brevard, and Indian River Counties, Florida in brackish coastal marshes where glasswort and salt grass predominates. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received on or before August 30, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Dr. South, Suite 310, Jacksonville, FL 32216, or calling 904/232–2580. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the same address. Comments and materials received are available for public inspection, by appointment, during normal business hours at this address.

FOR FURTHER INFORMATION CONTACT: Linda Finger at the above address (904/232–2580).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved Recovery Plans.

The species considered in this draft plan is the Atlantic salt marsh snake (*Nerodia clarkii taeniata*). This snake, listed as a threatened species, may be restricted to the brackish, coastal marshes of Volusia County, Florida, but probably ranges into Brevard and Indian River Counties. The major threats to this species are habitat loss and the accompanying disruption of reproductive isolating mechanisms, which could lead to hybridization with freshwater broad-banded water snakes. Major objectives of this Recovery Plan include determining the taxonomic status and extent of hybridization, mapping the species' distribution and relative abundance in occupied habitats, determining the extent of current and historic habitat, identifying habitat protection measures, conducting basic ecological research, and educating the public and landowners about Atlantic salt marsh snakes.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authroity for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 23, 1993.

David J. Wesley,

Field Supervisor.

[FR Doc. 93–15552 Filed 6–30–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain

activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-667512

Applicant: Howard S. Shellhammer, San Jose State University, San Jose, CA.

The applicant requests a permit to live trap, ear-tag, and release of giant kangaroo rat (*Dipodomys ingens*), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and San Joaquin kit fox (*Vulpes macrotis mutica*) in the San Joaquin Valley to the east of San Jose, California, for the purpose of scientific research.

PRT-779984

Applicant: Kenneth Glander, Duke University Primate Center, Durham, NC.

The applicant requests a permit to import 22 skeletons and 27 fetuses and infant cadavers of wild Mantled howling monkey (*Alouatta palliata*) that died of natural causes in Costa Rica for scientific research aimed at the enhancement of survival of the species.

PRT-777425

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to purchase and ship in foreign commerce one male and one female Lion-tailed macaque (*Macaca silenus*) from the Assiniboine Park Zoo in Canada to the Seoul Grand Park Zoo in Korea for the purpose of enhancement of survival through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: June 25, 1993.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-15501 Filed 6-30-93; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CA-010-4210-04, CACA 32128]

Realty Action; Exchange of Public Land in Calaveras County, CA

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice.

SUMMARY: The following described public land (surface and mineral estate) is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

Calaveras County

T. 5N., R. 12E., M.D.M.
- Sec. 1: lot 4, W½NE¼SE¼ (including MS 3981)
- Sec. 2: lot 2, MS 2726, and SW¼ NE¼
- Sec. 12: NE¼NE¼
- Sec. 24: lot 2

T. 5N., R. 13E., M.D.M.
- Sec. 6: lot 4

T. 6N., R. 13E., M.D.M.
- Sec. 30: SW¼, All that portion of SW¼ lying Southerly of State Highway 26 and all public land within S½SE¼
- Sec. 31: all public lands
- Sec. 32: SW¼NW¼ (including lot 2)

Containing 900 acres, more or less.

The selected public land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register.**

The above land is being considered for possible transfer into private ownership through a nonprofit conservation organization. In exchange, the public would receive private land located on rivers such as the North Fork and South Fork of the American River, and the Merced River, or marshlands and waterfowl habitat located in the California Central Valley. This proposal is considered to be in the public interest and is consistent with current land use plans.

SUPPLEMENTARY INFORMATION: The above described Federal land would be transferred subject to a reservation to the United States for ditches and canals; also any rights-of-way of record would be identified as prior existing rights.

All necessary clearances including clearances for archaeology, and rare plants and animals would be completed prior to any conveyance of title by the U.S.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at (916) 985-4474 or at the address listed below.

ADDRESSES: For a period of 45 days from publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

D.K. Swickard,

Area Manager.

[FR Doc. 93-15465 Filed 6-30-93; 8:45 am]

BILLING CODE 4310-40-M

[MT-070-03-4210-04; M81796 & M81841]

Realty Action; Exchange of Public Lands in Missoula and Granite Counties, MT

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Designation of public lands in Missoula and Granite Counties, Montana, for transfer out of Federal ownership via exchange.

SUMMARY: In two prior Notices of Realty Action (19/9/92 and 12/14/92), BLM included isolated public land tracts to be considered in a direct exchange with Champion International and in a pooling exchange with Clearwater Investments, Inc. as the proponent. The goal of the proposed exchanges is more efficient management of the public land through consolidation of ownership and acquisition of lands with high natural resource values.

The following additional public land is being considered for these exchanges pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of January 24, 1988, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 12 N., R. 14 W.,
- Sec. 26, E½NE¼, SW¼NE¼, NW¼, S½
- Sec. 28, Lots 1-4, SW¼NE¼, S½NW¼, SW¼, W½SE¼
- Sec. 33, E½NE¼

T. 12 N., R. 15 W.,
- Sec. 34, W½W½

T. 13 N., R. 20 W.,
- Sec. 25, Lot 9

These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or 5 years from the date of this publication, whichever comes first.

Final determination of disposal will await completion of an Environmental Assessment. Upon completion of an Environmental Assessment, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

VOL
58
ISS
125
JL
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1993
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DATES: On or before August 16, 1993, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, MT 59702.

Dated: June 22, 1993.

James R. Owings,

District Manager.

[FR Doc. 93–15467 Filed 6–30–93; 8:45 am]

BILLING CODE 4310–DN–M

[CA–010–03–4332–03]

Temporary Camping and Occupancy Restriction Order for the Caliente Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary camping and occupancy stay limit restriction order for developed campgrounds and undeveloped lands within the Caliente Resource Area, Bakersfield District, California.

SUMMARY: Persons may camp within designated campgrounds or on undeveloped public lands not closed to camping with the Caliente Resource Area for a total period of not more than twenty-eight days during the calendar year. The previous restriction of fourteen days occupation during a one month period will still apply. The twenty-eight day limit may be reached through a number of separate visits or through two separate periods of continuous occupation consisting of fourteen days each. Camping or occupancy longer than the fourteen days during a one month period or longer than twenty-eight days during the calendar year is now allowed unless authorized by law. Under special circumstances and upon request, the authorized officer may give written permission for extension to the limits. Camping is defined as living in tents, vehicles or shelters such as cabins, huts, shacks, or lean-tos. Occupancy is defined as the taking or holding possession of a camp or residence on public land.

FOR FURTHER INFORMATION CONTACT: James Wesley Abbott, Caliente Resource Area Manager, Caliente Resource Office, 4301 Rosedale Highway, Bakersfield, California 93308.

DATES: This order is in effect on August 1, 1993.

SUPPLEMENTARY INFORMATION: This camping and occupancy stay limit restriction order is established to allow orderly use and administration of public lands and to discourage unauthorized occupancy. This order will expire upon completion and publication of the Record of Decision for the Caliente Resource Management Plan. Authority for this restriction order is contained in CFR title 43, chapter II, part 8360, subparts 8364.1 and 9365.1–2(a). Any person who fails to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR title 43, chapter II, part 8360, subpart 8360.0–7.

Dated: June 22, 1993.

Patricia Gradek,

Caliente Resource Area Manager, Acting.

[FR Doc. 93–15219 Filed 6–30–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–06; Nev-042819 and Nev-059798]

Proposed Continuation of Withdrawal; Nevada

June 21, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 148,223 acres of the Stillwater and Carson Lake Pasture areas of the Newlands Project withdrawal be continued for an additional 50 years and 9,967 acres of the Robert B. Griffith Water Project be continued for an additional 20 years. The lands will remain closed to surface entry and mining.

DATES: Comments should be received by September 29, 1993.

ADDRESSES: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–785–6526.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that a portion of the existing land withdrawals made by Secretarial Orders July 2, 1902; June 8, 1904; August 4, 1904; February 7, 1905; April 28, 1905; February 6, 1906; April 20, 1907; May 10, 1907; September 30, 1907; November 29, 1907; December 2, 1907; January 3, 1908; March 6, 1908; April 21, 1908; November 4, 1909; March 20, 1915; January 14, 1921; January 16, 1924; November 6, 1925; August 26, 1926; January 3, 1947; February 25, 1952, be continued for a period of 50 years and a portion of Public Land Order 3512 of December 7, 1964, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

Newlands Project—Stillwater Area (Nev-042819)

T. 19 N., R. 29 E.,
- Sec. 1, lots 1–3, S½NE¼, SE¼NW¼, S½;
- Sec. 3, SW¼;
- Sec. 4, SE¼;
- Sec. 5, lots 3 and 4, S½NW¼, SW¼;
- Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 7, lots 1–4, NE¼, E½NW¼, E½SW¼, W½SE¼;
- Sec. 9, E½E½;
- Sec. 10;
- Sec. 11, NW¼, S½;
- Sec. 12, NE¼, S½;
- Sec. 13, N½, N½S½;
- Sec. 14;
- Sec. 15, E½, E½W½;
- Sec. 16, SE¼SW¼, S½SE¼;
- Sec. 21, NW¼NE¼, S½NE¼, NE¼NW¼, S½NW¼, S½;
- Sec. 22, NE¼, NE¼NW¼, S½NW¼, SW¼, N½SE¼, W½NW¼SW¼SE¼;
- Sec. 23, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SE¼SE¼SE¼;
- Sec. 25, E½SE¼SE¼NE¼;
- Sec. 27, W½NE¼NW¼, NW¼NW¼, S½NW¼;
- Sec. 28, NE¼,N½NW¼, NW¼SW¼NW¼,N½SW¼SW¼NW¼, E½SW¼NW¼,SE¼NW¼;
- Sec. 36, S½SE¼.

T. 19 N., R. 30 E.,
- Sec. 2, lot 2, SW¼NW¼;
- Sec. 5, lots 1–4, S½N½, S½;
- Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 7, lots 1 and 2, NE¼, E½NW¼;
- Sec. 18, lot 1, NE¼NW¼;
- Sec. 25;
- Sec. 26, SE¼SE¼;
- Sec. 27, N½NW¼NW¼SW¼;
- Sec. 28, NW¼;
- Sec. 29, NE¼, S½NW¼;
- Sec. 31, lots 3 and 4, E½SW¼, SE¼;
- Sec. 32;
- Sec. 33, NE¼, W½NW¼, E½SW¼, SE¼;
- Sec. 34, S½NE¼, NW¼, S½;
- Sec. 35, NE¼, S½NW¼, S½;
- Sec. 36.

T. 20 N., R. 29 E.,
- Secs. 4, 6 and 8;
- Sec. 10, SE¼NE¼, N½NW¼, SW¼NW¼, NE¼SW¼, S½SW¼, SE¼;
- Sec. 12;
- Sec. 13, NE¼, NE¼NW¼, SW¼NW¼, S½;
- Sec. 14, E½, NW¼NW¼, SE¼NW¼, NE¼SW¼, S½SW¼;
- Sec. 15, NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, NW¼SE¼, SE¼SE¼;
- Sec. 16, W½;
- Secs. 18 and 20;
- Sec. 21, W½;
- Sec. 22, N½NE¼, NE¼NW¼;
- Secs. 23 to 26, inclusive;
- Sec. 27, E½E½, SW¼NE¼, S½NW¼, N½SW¼;
- Sec. 28, W½;
- Secs. 29, 30 and 31;

Sec. 32, N½, SW¼, N½SE¼;
Sec. 33, W½NE¼, NW¼, N½SW¼, N½S½SW¼, N½SE¼,SW¼NE¼;
Sec. 34, NE¼NE¼;
Sec. 35, N½N½N½;
Sec. 36.
T. 21 N., R. 29 E.,
Secs. 1 and 2;
Sec. 3, E½ (portion in Lake);
Secs. 4, 6, 8, and 10;
Sec. 11, N½ (portion);
Secs. 12, 14, 16, 18, and 20;
Sec. 22, E½E½, W½SW¼;
Sec. 26, N½, SW¼, N½SE¼, SW¼SE¼;
Secs. 28, 30, 32, and 34;
Sec. 36, NE¼, NE¼NW¼, S½NW¼, SW¼, E½SE¼.
T. 22 N., R. 29 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36.
T. 23 N., R. 29 E.,
Secs. 24, 26, 32, 34, and 36.
T. 20 N., R. 30 E.,
Secs. 1 to 5, inclusive;
Sec. 6, E½, NW¼NW¼, S½NW¼, S½SW¼;
Secs. 7 to 25, inclusive;
Sec. 26, NW¼, SE¼;
Secs. 27 to 32 inclusive;
Sec. 33, N½;
Sec. 34, NW¼;
Sec. 35, NW¼, E½SE¼;
Sec. 36, NW¼, N½SE¼.
T. 21 N., R. 30 E.,
Secs. 1 to 10, inclusive;
Sec. 11, all except lots 1–4;
Secs. 12 and 14;
Sec. 15, all except lots 1–5, SE¼NE¼, E½SE¼;
Sec. 16;
Sec. 17, all except lots 1–6;
Sec. 18, all except lots 1 and 2;
Secs. 20, 22, 24, 25, 26, and 28;
Sec. 30, lot 4, N½, SE¼;
Secs. 32, 34, 35, and 36.
T. 22 N., R. 30 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36.

The area described aggregates 103,394 acres in Churchill County.

Newlands Project—Carson Lake Pasture Area (Nev–042819)

T. 16 N., R. 29 E.,
Secs. 1 to 6, inclusive;
Sec. 7, Lots 1 and 2, NE¼, E½NW¼;
Secs. 8, 9, 10, 11, and 12 (portion lying within 1 mile of Carson Lake).
T. 17 N., R. 29 E.,
Secs. 1 and 2;
Sec. 3, all, except lots 1–3;
Sec. 9, all, except lots 1–4;
Secs. 10 to 16, inclusive;
Sec. 17, all, except lots 1–5;
Sec. 19, all, except lots 1–4;
Secs. 20 to 36, inclusive.
T. 18 N., R. 29 E.,
Sec. 2, lot 1, SE¼NE¼, N½SE¼;
Sec. 6, NE¼SE¼;
Sec. 12, lot 1, NE¼;
Sec. 18, SE¼SE¼SE¼;
Sec. 35, NE¼NE¼SE¼NW¼, SE¼SE¼SE¼SE¼NW¼, S½SE¼. T. 16 N., R. 30 E.,
Secs. 5 and 6.
T. 17 N., R. 30 E.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 32, inclusive.
T. 18 N., R. 30 E.,
Secs. 1 to 10, inclusive;
Secs. 16 and 17;
Sec. 18, lots 2–4, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, lot 1, E½, E½W½;
Sec. 20, N½, N½SW¼;
Sec. 29, S½;
Sec. 30, lots 3 and 4, E½, E½W½;
Sec. 31, lots 1, 3 and 4, NE¼, NE¼NW¼, E½SW¼, SE¼;
Sec. 32.

The area described aggregates approximately 44,629 acres in Churchill County.

Robert B. Griffith Water Project (Nev-059798)

T. 21 S., R. 62 E.,
Sec. 23, NE¼NE¼, E½SE¼;
Sec. 24;
Sec. 25, N½NE¼, SE¼NE¼, NE¼NW¼.
T. 21 S., R. 63 E.,
Sec. 19, lots 3 and 4, E½SW¼;
Sec. 25;
Sec. 26, lots 1 and 2, and two 250-foot-wide land corridors paralleling and contiguous to both sides of Lake Mead Drive road right-of-way;
Sec. 27, S½SE¼;
Sec. 28, SE¼NE¼, N½NW¼, SE¼SW¼, SE¼;
Sec. 29, N½NE¼, NW¼, S½SW¼;
Sec. 30, lots 1, 2, 4, NE¼, E½NW¼, SE¼SW¼, S½SE¼;
Sec. 34, lots 1 to 6, inclusive, SW¼NE¼, SE¼SE¼NW¼, S½SW¼NW¼, S½SW¼SE¼NW¼, E½SW¼, E½NW¼SW¼, S½NW¼NW¼SW¼, SW¼NW¼SW¼, and one 250-foot-wide land corridor paralleling and contiguous to the northerly side of the Lake Mead Drive road right-of-way;
Sec. 35, lots 1, 2, 3, 6, 7, SE¼SE¼;
Sec. 36, S½.
T. 22 S., R. 63 E.,
Sec. 1, lots 5, 6, 7, 8, S½N½, S½;
Sec. 2, lots 5, 6, 7, 8, S½N½, S½;
Sec. 3, lots 5, 6, 7, 8, S½N½, S½;
Sec. 10;
Sec. 14;
Sec. 15;
Sec. 23, W½;
Sec. 26, W½;
Sec. 35.
T. 23 S., R. 63 E.,
Sec. 2, lots 3, 5, 6, 7, 11 to 15, inclusive, S½SW¼;
Sec. 11, lot 1, that portion lying west of land deeded to the City of Boulder City, Nevada, by quitclaim deed dated January 4, 1960; lot 2.
T. 22 S., R. 63½ E.,
Sec. 1, lots 1 to 6, inclusive, S½NE¼, SE¼.

The area described aggregates approximately 9,967 acres in Clark County.

The Newlands Project was established to provide irrigation water from the Truckee and Carson Rivers for the lower Carson Valley near Fallon. The lands are used for the collection and ponding of drainage water from the Project. The Robert B. Griffith Water Project (formerly known as the Southern Nevada Water Project) was established to provide southern Nevada with water from the Colorado River or other sources for municipal and industrial users. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawals may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Robert G. Steele,
Deputy State Director, Operations.

[FR Doc. 93–15468 Filed 6–30–93; 8:45 am]
BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–319–332, 334, 336–342, 347–353; and 731–TA–573–579, 581–592, 594–597, 599–609, and 612–619]

Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

In the Matter of Certain Flat-Rolled Carbon Steel Products

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon motion of a group of respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for June 29 and 30, 1993, *in camera*. See Commission rules 201.13 and 201.35(b)(3) (19 C.F.R. § 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that unusual circumstances are present in these investigations so as to make it appropriate to hold a portion of the hearing *in camera*. In light of the desirability of affording a full discussion at the hearing of business proprietary information (BPI) concerning (1) allegations made by certain respondents in this investigation in a letter dated June 14, 1993; (2) confidential pricing data; (3) confidential data regarding niche products, the Commission has determined to reserve one hour of the time allotted for respondents presentation to the discussion of these matters. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible, its business should be conducted in public.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in the above-captioned investigation be closed to the public to prevent the disclosure of business proprietary information.

Issued: June 25, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15495 Filed 6–30–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from the DRI/McGraw-Hill for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the request (WB420—5/29/93) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15553 Filed 6–30–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated April 15, 1993, and published in the **Federal Register** on April 28, 1993, (58 FR 25848), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Hydromorphone (9150)	II
Morphine (9300)	II

A registered manufacturer did file a written request for a hearing with respect to Hydromorphone. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted with the exception of Hydromorphone.

Dated: June 22, 1993

Gener R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–15480 Filed 6–30–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 23, 1993, and published in the **Federal Register** on May 3, 1993, (58 FR 26353), Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
Aminorex (1585)	I
4-Methlaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxy- amphetamine (7400).	I
3,4-Methylenedioxy- methamphetamine (7405).	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodine (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Fentanyl (9801)	II

Registered manufacturers did file an objection to the registration of Radian Corporation with respect to hydromorphone and Methylphenidate. The firms subsequently withdrew their objection after Radian Corporation stated that it would only manufacture a small quantity of the deuterated form of hydromorphone and methylphenidate which will be sold as ananalytical reference standard. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 22, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–15481 Filed 6–30–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; registration

By Notice dated April 23, 1993, and published in the **Federal Register** on May 7, 1993, (58 FR 27310). Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Branchburg, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370) ...	I
Phencyclidine (7471)	II
Methadone (9250)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 22, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–15479 Filed 6–30–93; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated February 24, 1993, and published in the **Federal Register** on March 8, 1993, (58 FR 12975), Sanofi Winthrop LP, DBA Sanofi Winthrop Pharmaceutical, 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II
Fentanyl (9801)	II

A registered manufacturer did file a request for a hearing with respect to the controlled substances listed above. The firm subsequently withdrew its request after representatives of the firms signed a Stipulation. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 22, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–15478 Filed 6–30–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Application Nos. L–9393 and D–9394]

Navistar International Transportation Corporation (Navistar) Located in Chicago, IL and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) Located in Detroit, MI

AGENCY: Department of Labor

ACTION: Notice of Proposed Exemption

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act).

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 1, 1993.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before the expiration of August 16, 1993.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application Nos. L–9393 and D–9394. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act. The proposed exemption was requested in an application filed by Navistar and the UAW, pursuant to section 408(a) of the Act and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act shall not apply to (1) the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (the New Plan) of shares of Class B Common Stock and Series A Preference Stock of Navistar International Corporation (NIC); (2) the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares; (3) the extension of credit between Navistar and the New Plan, which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplemental Benefit Program Trust; and (4) the sale of shares of NIC Class B Common Stock by the New Plan to Navistar, provided that:

(a) All decisions regarding the management of the Supplemental Benefit Program Trust, including determinations affecting NIC stock held by such trust, are made by the Supplemental Program Committee;

(b) The Supplemental Program Committee will take whatever action is necessary to protect the New Plan's rights with respect to the proposed transaction;

(c) With respect to the sale of NIC Class B Common Stock by the New Plan to Navistar, each Class B share will be valued at the average closing price per share of NIC Common Stock during the 30 day trading period immediately prior to the date Navistar acquires the Class B Shares, but in no case will the price be less than adequate consideration as defined in section 3(18) of the Act;

(d) Navistar or NIC shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (e) below to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of NIC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than NIC or Navistar shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (e) below; and

(e)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (d) above shall be

unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The UAW or any duly authorized representative of the UAW;

(C) Any participant or beneficiary of the New Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B) and (C) of this paragraph (e) shall be authorized to examine the trade secrets of NIC or Navistar or commercial or financial information which is privileged or confidential.

For purposes of this exemption:

(1) The majority of the members of the Supplemental Program Committee will be individuals who:

(a) Are not affiliates of Navistar, NIC or the UAW;

(b) Do not have any ownership interest in Navistar or NIC,

(c) Are not officers, directors, or 5 percent or more shareholders or partners of a person in which NIC has any ownership interest;

(d) Have acknowledged in writing acceptance of fiduciary responsibility;

(e) Do not receive more than 5 percent of their annual gross income (excluding retirement income) for any taxable year in the aggregate from Navistar, UAW, any affiliates thereof; and

(f) Will not acquire any property from, sell any property to or borrow any funds from NIC, UAW, or any affiliate thereof, during the period that such individual serves as a member of the Supplemental Program Committee and continuing for a period of 6 months after such individual ceases to be a member of the Supplemental Program Committee or negotiate any such transaction during the period that such individual serves as a member of the Supplemental Program Committee.

(2) An Affiliate of another person means:

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

(3) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. International Harvester, the first large scale inventor of agricultural equipment and machinery, was founded in 1831 and is one of the oldest companies in America. In 1986, International Harvester sold its agricultural machinery business and was renamed Navistar. Navistar, a Delaware Corporation headquartered in Chicago, Illinois, is the largest North American manufacturer of large and medium size trucks and mid-range diesel engines.

2. Navistar International Corporation (NIC) is a publicly-traded corporation which wholly owns Navistar. In addition to Navistar, NIC wholly owns Navistar Financial Corporation, which provides both wholesale and retail financing for purchasers of Navistar products, and several small foreign finance and property insurance subsidiaries.

3. The International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) is an unincorporated labor association headquartered in Detroit, Michigan. The UAW is currently the lead negotiator with respect to a class action filed against Navistar on behalf of the retirees in the Navistar retiree welfare benefits plan. Navistar currently provides health and life insurance benefits to approximately 63,000 retirees, surviving spouses and dependents.[1]

The subject of the class action, described further in paragraph 11, is Navistar's proposed termination of its current retiree health and life insurance benefit program and the substitution of a new plan with a reduced schedule of benefits. The New Plan was negotiated between Navistar and the UAW in settlement of the class action filed against Navistar by the Navistar retirees.

4. During its early years, International Harvester, now Navistar, offered its employees a comprehensive retiree health benefits program as a reward for their dedication and years of service to the company. Navistar's current retiree population has accrued and earned those benefits which they believed were to be provided for their lives and the lives of their spouses. However, the Applicants represent that Navistar is on the brink of insolvency due to the burden of its current health benefits program. As a result of significant downsizing in the 1980's, Navistar is no longer large enough to generate sufficient income to pay for the benefits provided for under their current health benefits program. Navistar currently has a far greater number of retirees relative to its sales, asset base and the number of active employees than any of its competitors or suppliers because, as Navistar sold or closed its facilities, it retained its obligation to pay for health and life insurance benefits for retirees at those facilities. Navistar currently employs about 14,000 employees (down from 98,000 in 1979), but as noted above, provides health care benefits to approximately 63,000 retirees, surviving spouses and dependents. The ratio of Navistar active employees to retirees (excluding spouses and dependents) is 3.3 to 1. The current monthly outlay for the health and welfare benefits program is $13 million.

5. Navistar has historically accounted for its retiree health obligations on a pay as you go basis and has not pre-funded its retiree health liabilities. Independent actuarial consultants have calculated Navistar's Accumulated Post-Retirement Benefit Obligation (APBO) under statement of Financial Accounting Standards No. 106.—Employers' Accounting for Post-Retirement Benefits (SFAS 106) at $2.6 billion, an amount greater than 750 percent of Navistar's net worth.[2] By contrast, the APBO liability of most of Navistar's competitors ranges from 1 to 130 percent of their net worth.

6. The Applicants represent that in 1991 Navistar's EBRIT[3] profits were $59 million, and $138 million was spent on retiree health care. In 1992 EBRIT was $52 million, and $146 million was spent on retiree health care. Over the last three years, Navistar's retiree health costs have exceeded EBRIT by $548 million.

7. The applicants represent that at the end of October 1989, Navistar had a cash balance of $530 million. By October 31, 1992, this balance deteriorated to $250 million. As of January 31, 1993, Navistar's cash balance had declined to $150 million. If

[1] Approximately 36,000 of the 63,000 retirees (including their surviving spouses and dependents) were previously represented by the UAW, 20,000 were not represented by any union at the time of their retirement and 7,000 were previously represented by approximately 25 other unions.

[2] In its annual report for fiscal year 1992, Navistar showed a balance sheet net worth of $338 million.

[3] EBRIT, as used here, means earnings before retirement costs, interest and taxes, where retirement costs equal the sum of pension costs per active and retired employees and health care costs for retirees only.

Navistar is unable to reduce its retiree costs, the company will be insolvent prior to the end of 1993. If this occurs, the 63,000 Navistar retirees, surviving spouses and dependents will likely lose all company paid welfare benefits.

8. The applicants represent that Navistar's economic problems are not the result of its products or its marketing and service system. Navistar's financial performance during each of the last three fiscal years compares favorably to its competitors when measured by the results of operations exclusive of retiree costs. Navistar's EBRIT as a percentage of sales was 5.6 percent, which is comparable to the 5.8 percent figure shown by PACCAR (the only other truck company that reports operating income from truck manufacturing exclusively), and more favorable than the weighted average figure of 5.2 percent for the "Big Three" automobile manufacturers. Navistar's market position remains strong in all business segments, and it is particularly well-positioned in medium trucks and diesel engines. In 1991, Navistar captured a 38.3 percent share of the North American combined medium truck and bus market, the largest of any truck manufacturer, foreign or domestic. In 1992, it remained the North American Market leader with 36.9 percent. By comparison, its nearest competitor, General Motors, retained only 26.6 percent of the market. Among medium-sized diesel trucks, which now command 78.9 percent of the medium truck market (up from 60.7 percent in 1985), Navistar's market share totalled approximately 46.0 percent. Among heavy truck manufacturers Navistar is also a North American Market leader, with 23.0 percent of the market in 1991, and 21.3 percent in 1992. In addition, Navistar leads the world in production of mid-range diesel engines, producing 160,000 units in 1990.

9. Faced with the impending financial crisis described above, on July 28, 1992, Navistar announced the termination of its retiree health benefits program and the adoption of a new less costly plan. That same day, Navistar commenced a class action in federal district court in Chicago (*Navistar International Corporation* v. *Foster*, No. 92C4913 (N.D. Ill. July 28, 1992)) (*Foster*) seeking a declaratory judgment that Navistar was not obligated to continue to provide retiree health benefits and that its decision to terminate the existing program did not violate section 301 of the Labor Management Relations Act (LMRA) or section 502 of ERISA.

10. On August 23, 1992, the UAW, et. al. filed a competing class action against Navistar in federal district court in Ohio (*Shy* v. *Navistar International Corporation*, No. C–3–92–33 (S.D. Ohio August 23, 1992) *Shy*) seeking a declaratory judgment that Navistar's attempt to modify its retiree benefits package violated both section 301 of the LMRA and 502 of ERISA and that Navistar's retirees were entitled to continue to receive the existing health benefits package for life.

11. On October 18, 1992, Navistar and the UAW announced a protocol designed to lead to a negotiated settlement of all retiree health issues. It was also agreed that the UAW would act as the lead negotiator for all Navistar retirees, including the non-represented retirees and those formerly represented by other unions. In addition, Navistar agreed to a voluntary dismissal of *Foster*.

12. After several months of arm's length negotiations, in January 1993, Navistar and the UAW announced the design of a new uniform health benefits plan that would cover all current retirees as well as all currently active employees upon their retirement. The New Plan will constitute settlement of the *Shy* litigation. However, before the New Plan can be implemented, it must be approved by the *Shy* court as fair and reasonable and in the best interests of class members.[4] In addition, because implementation of the New Plan will result in violations of the prohibited transaction provisions of the Act, Navistar and the UAW have expressly conditioned implementation of the *Shy* settlement upon the Department's grant of the exemption described herein.[5]

On May 27, 1993, the *Shy* Court issued a comprehensive opinion in which it approved the terms of the settlement. The Court determined that the New Plan is fair and reasonable, and, as a whole, in the best interest of class members. The Court specifically concluded that the settlement agreement is less burdensome to Navistar's retirees than any other realistic alternative.[6]

14. Pursuant to the New Plan, the applicants represent that Navistar's SFAS 106 APBO will be reduced from $2.6 billion to $1.0 billion. Navistar believes that if it can maintain its SFAS 106 liability at an amount below $1.0 billion, short and long term capital will become available. Also, the pre-funding which is required under the terms of the New Plan will reduce the amount of the monthly contributions that Navistar is required to pay for annual benefits. Navistar's investment bankers believe that when the New Plan is implemented the market place will react favorably, viewing the company as wedding a strong product base to a new employee cost structure proportionate to its sales and asset size.

16. The New Plan will consist of two parts, a Base Benefits Program and the Supplemental Program, each of which will be funded through a separate trust designed to meet the requirements in section 501(c)(9) of the Code for voluntary employees' beneficiary associations (VEBAs).[7]

Under the Base Benefits Program, participants will receive health care benefits and life insurance coverage, but with more limited coverage than Navistar currently provides. Such benefits will be paid from the Base Trust which will be funded, in part, by Navistar's monthly payments for the full

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[4] On April 5, 1993, the Court certified a class action consisting of all current and future Navistar retirees and all current non-represented Navistar employees. Pursuant to Fed. R. Civ. P. 23(e), each class member who is a party to a class action is entitled to a notice that fully describes the terms of the proposed settlement and an opportunity to appear at a fairness hearing to discuss the merits of the proposed settlement. Navistar mailed the notice package to all class members on April 7, 1993. The package included (a) a memorandum from class counsel explaining the process that led to the settlement and its basic structure, (2) the notice from the Court discussing the nature of the lawsuit, the terms of the Settlement Agreement, and the right to appear at the May 7, 1993 hearing and object to any portion of the settlement, (3) the Settlement Agreement itself, (4) the ERISA-required summary plan descriptions outlining the terms and conditions of the new retiree health plan, and (5) a separate document that defines certain of the key terms used in the Settlement Agreement and New Plan. The applicants state that the class-counsel memorandum, the Court notice, and the SPDs—each drafted in a manner "calculated to be understood by the average plan participant," see ERISA section 102(a)(1)—will ensure that class members comprehend the terms and conditions of the New Plan and can make an informed judgment as to whether it is a fair and equitable arrangement in light of all the facts and circumstances.

[5] Under the terms of the Settlement Agreement, the New Plan will become effective after (1) the *Shy* Court enters a final judgment approving the Settlement; (2) the exemptions requested by this Application have been granted; (3) Navistar has received IRS private letter rulings or opinions of tax counsel that the Base Trust will receive favorable tax treatment; (4) collective bargaining agreements are ratified which provide that current represented employees will be eligible to participate in the New Plan; and (5) the shareholders of NIC have approved amendments to its Articles of Incorporation that are necessary to implement certain terms of the settlement. If an appeal is taken from the *Shy* Court's decision, and such appeal cannot be heard on an expedited basis, the New Plan may nonetheless be implemented unless a material aspect of the plan is enjoined or counsel opines that it is probable that such appeal will be successful.

[6] The ongoing operation of the New Plan, including the holding of NIC Class B Common Stock, NIC Common Stock and Series A Preference Stock, described in paragraph 19 herein, will be subject to the continuing jurisdiction of the District Court for the Southern District of Ohio.

[7] On May 21, 1993, the IRS issued a private letter ruling to Navistar concluding that the Base Trust and Supplemental Trust will be exempt from federal income tax under section 501(c)(9) of the Code.

cost of the premiums for the life insurance benefit, Navistar's monthly payments for premiums for its share of the health insurance benefit and New Plan participants' payments for their share of the premiums on the health insurance benefits portion of the Base Program. The Base Trust will be pre-funded by NIC with $100 million within six months after implementation of the New Plan.[8] In addition, within five years after implementation of the New Plan, NIC will use its best efforts to pre-fund the Base Trust with $500 million from sales of Common Stock, and, if such best efforts fail, NIC will contribute to the Base Trust the total net proceeds from all such stock sales.[9]

17. Notwithstanding the existence of the Base Trust, Navistar and NIC have irrevocably guaranteed the benefits to be provided under the Base Program. As guarantor, each of them is to act as a primary obligor. In addition, all current retirees, and all current active employees upon their retirement, as well as their dependents and surviving spouses, will receive the Base Program benefits for their lifetime (unless they lose their eligibility by, for example, terminating their dependent status or failing to meet their premium sharing obligations).

18. The Supplemental Program is designed to enable New Plan participants to reduce the costs shifted to them under the Base Benefits Program. The Supplemental Program grants retirees a sufficiently large equity stake in the Company so that they can benefit from the company's future profitability. Amounts in the Supplemental Trust may be used in the future to reduce premiums, deductibles, or co-payment obligations under the Base Benefit Program, or to provide additional benefit coverage.

19. Navistar and the UAW propose that the Supplemental Trust will be funded as follows:

Upon implementation of the New Plan, Navistar will transfer to the Supplemental Trust approximately 255 million shares of a new class of NIC stock (100% of the outstanding shares of this class), known as NIC Class B Common. This will give the Supplemental Trust a 50 percent interest in NIC on a fully diluted basis. For a limited period of time (the Lock-up Period), the NIC Class B Common generally will be restricted and will have no voting or transfer rights.[10] The NIC Class B Common stock certificates will bear a legend indicating that the stock has not been registered under the Securities Act of 1933 and may not be sold or transferred.[11]

Upon the earlier of five years following implementation of the New Plan, or three years following the date upon which Navistar has pre-funded the Base Trust (on an aggregate basis) for $500 million, the NIC Class B Common will automatically convert into shares of NIC Common Stock, with full voting rights and traded on the New York Stock Exchange. Following conversion, the Supplemental Program Committee may transfer and dispose of the shares of NIC Common Stock as they deem prudent.

In addition to the initial contribution of NIC Class B Common, Navistar also will be obligated to make annual cash contributions to the Supplemental Trust based upon net profits above a certain threshold (Profit Sharing Contributions). The threshold level, and the limits on the amount of the contribution if profits exceed that level, will be calculated pursuant to a specific formula described in the Supplemental Program. The formula employs a progressive rate structure to determine the particular percentage of the excess that must be contributed to the Supplemental Program Trust, with the highest rate capped at 16 percent above Navistar's net profits above the threshold amount.

Because of the restrictive nature of the NIC Class B Common, it cannot be used to offset retiree premium obligations, or other benefit payment obligations which retirees will be required to make under the New Plan. Therefore, during the Lock-up Period and prior to the effective registration of the Supplemental Trust's converted NIC Common Stock, the Supplemental Program Committee (described further in paragraph 20) will be authorized to make advanced funding requests to Navistar for up to $10 million annually. The Supplemental Program Committee will direct Navistar as to how the advanced funds may be used and will require Navistar to satisfy the cash contribution requirement in one of two ways. Navistar will either be directed to (1) purchase from the Supplemental Trust an equivalent amount of NIC Class B Common or (2) credit the cash contribution against current or future Profit Sharing Contributions. If NIC Class B Common Stock is purchased by Navistar from the Supplemental Trust, the purchase price of the NIC Class B Common will be equal to the average New York Stock Exchange closing price, per share, of NIC Common Stock on each of the 30 trading days prior to the date that the cash contribution is due, but in no event will such price be less than adequate consideration as defined in section 3(18) of the Act at the time of the sale.

Upon implementation of the New Plan, Navistar will also contribute to the Supplemental Trust the sole outstanding share of Series A Preference Stock. The Series A Preference Stock will entitle the Supplemental Trust to elect two members of the NIC Board of Directors (if the Trust's ownership interest in NIC is at least 20 percent, taking into account both NIC Common Stock and NIC Class B Common) or one Board member (if such ownership interest is between 10 and 20 percent). The Series A Stock will carry no other rights.

20. The right to manage the assets of the Supplemental Trust, will rest with a committee composed of five individuals, the Supplemental Program Committee.[12] All actions and decisions concerning the management of the assets of the Supplemental Trust will be subject to agreement by a majority of the

[8] Such pre-funding will occur within six months of plan implementation unless the NIC Board of Directors reasonably concludes that complying with such time limit would cause either NIC or Navistar to be unable to pay its obligations arising in the ordinary course of business when due.

[9] All pre-funded amounts will be invested on a diversified basis (excluding any investment in Navistar securities and real estate of any kind) and will be used to secure Navistar's Base Program obligations.

[10] There are several exceptions to the restrictions against transfer or voting. The Supplemental Trust may vote on any amendment to NIC's certificate of incorporation or any other action that would have the effect of eliminating or amending the rights of NIC Class B stockholders. The Trust also will have the right, as a NIC Class B stockholder, to vote on any transaction that under the terms of NIC's certificate of incorporation requires the vote of 85 percent of all shares of any class of NIC common stock, such as a merger, consolidation, or sale of substantially all NIC assets. The NIC Class B Common may be transferred pursuant to a transaction approved by the NIC Board of Directors, or without NIC Board of Director approval may be transferred pursuant to a tender or exchange offer, or pledged to a financial institution as security for an obligation of the Supplemental Trust.

[11] The applicants represent that the Lock-up Period is absolutely necessary to enable Navistar to satisfy its Base Trust pre-funding commitment through stock equity offerings. Without such restrictions, potential investors would fear that the Supplemental Trust's shares might be sold in massive blocks shortly thereafter, thereby causing Navistar's stock price to be discounted below the price they have just paid. The applicants state that the alternative, that the Trust's shares might be dribbled out to the market in small increments over a longer period of time, thereby creating a low ceiling on the stock's appreciation over the price paid by new investors, would also frighten the equity market.

[12] During the Lock-up Period, Navistar will compensate all Supplemental Program Committee members not employed by the UAW, as well as all Supplemental Committee Appointment Group members, for time spent on Committee matters, and reimburse the Committee for reasonable out-of-pocket expenses, including the expenses of outside professional advisors. These obligations are capped at $100,000 annually.

Committee members. The Supplemental Program Committee's management responsibilities include the right to direct the vote of NIC Common Stock and to dispose of or transfer those shares. The Supplemental Program Committee will also, in conjunction with its advisors, determine the amount of Supplemental Trust assets to be transferred to the Base Trust, and what percentage of such transferred assets should be used to reduce premiums, copayments or deductibles, Medicare premium payments or be used to provide additional benefits. In addition, the Supplemental Program Committee will be solely responsible for the making of advance funding requests to Navistar during the Lock-up Period, and for determining the manner in which that contribution requirement will be satisfied. Also, the Supplemental Program Committee is expressly authorized to engage consultants, investment advisors, actuaries and other professionals to assist it in managing the assets of the Trust. This authorization includes the appointment of an independent investment banker or corporate valuator to value the NIC Class B Common Stock.

Two of the members of the Supplemental Program Committee will be appointed by the UAW. The remaining three non-UAW members will be independent of Navistar, the UAW and each of their affiliates.[13] Specifically, the applicants represent that none of the three non-UAW Committee members, will be current employees of the UAW or retirees who were represented by the UAW at the time of their retirement. In addition, the applicants represent that none of the non-UAW members: (1) Will have any ownership interest in Navistar or NIC[14]; (2) are officers, directors or 5 percent or more shareholders or partners of any person(s) in which NIC has any ownership interest; and (3) will receive more than 5 percent of their annual gross income (excluding retirement income) for any taxable year in the aggregate from Navistar, UAW, or any affiliates thereof.

21. In order to ensure the Supplemental Program Committee's flexibility in liquidating sizeable blocks of NIC Common Stock after the Lock-up Period, the Supplemental Program restricts Navistar or NIC in the absence of approval from the Supplemental Program Committee, from transferring or disposing of stock if to do so would limit the amount of securities the Supplemental Trust can thereafter sell to an amount less than $500 million, minus all previous liquidations by that Trust (except that Navistar and NIC are free to transfer or dispose of up to $100 million of stock if required for working capital).

22. During the period beginning with the expiration of the Lock-up Period and concluding at the earlier of either (1) a period of equal duration or (2) when the Supplemental Trust has sold $500 million of NIC Common Stock (known as the "Window Period"), neither Navistar nor NIC has the ability to register or sell any NIC equity without the prior consent of the Supplemental Program Committee. There are exceptions to this Window Period prohibition, such as equity sales necessary to effect acquisitions or spin-offs of subsidiaries. The Window Period is intended to enable the Supplemental Program Committee to liquidate a large block of NIC Common Stock upon the conclusion of the Lock-up Period without interference from NIC or Navistar. Furthermore, if after the Window Period any NIC Common Stock remains in the Supplemental Trust, the Supplemental Trust will be entitled to participate in public offerings by Navistar or NIC up to 50 percent of the shares sold (this equal participation right is known as a "Piggy-Back Right"). This Piggy-Back Right will terminate when the Supplemental Trust is free to sell its shares of NIC Common Stock to the public without quantity limitations under applicable securities laws (estimated to be when the Supplemental Trust holds 5 percent or less of the outstanding NIC Common Stock).

23. In summary, the applicants state that the proposed transaction satisfies the statutory criteria of section 408(a) because (a) the District Court for the Southern District of Ohio determined in a written opinion after a full hearing that the terms of the New Plan are fair, reasonable and adequate for New Plan participants; (b) the ongoing operation of the New Plan will be subject to the continuing jurisdiction and guidance of the District Court for the Southern District of Ohio; (c) the implementation of the New Plan, as proposed, provides the only realistic solution to enable Navistar to return to economic health so that it can continue to provide meaningful health benefits to the 63,000 Navistar retirees, surviving spouses and their dependents; (d) the terms of the New Plan which require pre-funding of benefits provide for greater protection of the retirees' benefits than required by the Act; and (e) the assets of the Supplemental Trust will be managed by a five-member Supplemental Program Committee, the majority of whom will be independent of Navistar and the UAW and their affiliates.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the proposed exemption.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include all *Shy* class representatives, all current retirees of Navistar, their surviving spouses or dependents, as well as all current employees of Navistar, whether represented or non-represented (collectively, Interested Persons).

The Applicants represent that notice will be provided to the Interested Persons by mail, posting, and publication in daily newspapers. Navistar will mail a copy of the Notice, by first-class mail, to each Interested Person at his or her last known mailing address. The Notice will contain a photocopy of the formal Notice of Proposed Exemption published in the **Federal Register**, and will inform such Interested Persons of their right within a time specified in the Notice to comment or request a hearing.

In light of the experience provided by the recently undertaken *Shy* class action mailing, the Applicants believe that Navistar will be prepared to provide the Notice to Interested Persons within three business days after publication in the **Federal Register** of the Notice of Proposed Exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary

[13] After the initial appointment of the Supplemental Program Committee, which was approved by the *Shy* Court, Committee members will be appointed and replaced by a special committee according to procedures specified in the Supplemental Program. The applicants represent that subsequent appointments will also be brought to the Court for its approval.

[14] In addition, the non-UAW members will not acquire any property from, sell any property to or borrow any funds from NIC, UAW, or any affiliate thereof, during the period that such individual severs as a member of the Supplemental Program Committee and continuing for a period of 6 months after such individual ceases to be a member of the Committee or negotiated any such transaction during the period that such individual serves as a member of such Committee.

VOL 58 ISS 125 JL 1 1993 UMI

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act.

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. Furthermore, the fact that transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

All comments will be made a party of the record. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Signed at Washington, DC, this 28th day of June,

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–15606 Filed 6–30–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of Meeting.

SUMMARY: In announces with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES:

July 14, 1993, 8:30 a.m.—5 p.m., Public Hearing
July 15, 1993, 8:30 a.m.—5 p.m., Full Commission Meeting
July 16, 1993, 8:30 a.m.—3 p.m., Full Commission Meeting

ADDRESSES: Holiday Inn (Old Town Alexandria) 480 King Street Old Town Alexandria, VA 22314

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–15559 Filed 6–30–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

June 25, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 25, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specifically Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Dr. William R. Fraser, MSU Central States Office, 830 Hunt Farm Rd., Long Lake, MN 55356.

Activity for Which Permit Requested

Enter Specially Protected Area.

The applicant is a participant in the long term ecological research (LTER) program on the Antarctic peninsula during the August and September period of 1993, and will be in the vicinity of Dion Island, where bird populations have not been censused in approximately 20 years. The applicant is therefore seeking permission to land on Dion Island as opportunity arises to census the adult and chick population. No other work will be conducted on the island other than that described herein. The data obtained will be used to update the status of this population for the Antarctic Peninsula area.

Location

Dion Islands, Antarctic Peninsula, Access via Zodiac
From RV Polar Duke.

Dates

08/01/93–10/01/93

2. Dr. William R. Fraser, MSU Central States Office, 830 Hunt Farm Road, Long Lake, MN 55356.

Activity for Which Permit Requested

Taking. Importation into USA.

The applicant, as a participant in this long-term ecological research (LTER) program on the Antarctic Peninsula, is studying the relationships of variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment, especially the effects of sea ice on prey availability and/or abundance.

The specific action for which this permit is being sought is the taking limited numbers of penguins and flying birds for diet analysis. As has been true of the applicant's procedures in the past during other research projects, all penguins will be released unharmed after sampling, while flying birds will be imported to the U.S. and given to a

number of agencies (museums and laboratories) after we finish gut content analysis, measure body condition and assess reproductive status.

Location

LTER study site, including offshore areas near Palmer Station and the Bellingshausen Sea.

Dates

08/01/93–10/01/93.

3. Dr. William R. Fraser, MSU Central States Office, 830 Hunt Farm Road, Long Lake, Mn 55356.

Activity for Which Permit Requested

Enter Specially Protected Area.

The applicant is a participant in this type-term egological research (LTER) program on the Antarctic Peninsula, the applicant is studying the relationships between variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment, especially the effects of sea ice prey availability and/or abundance.

The applicant would like to visit Litchfield Island on foot 2 times per week (via Zodiac from Palmer Station) for 1–2 hours per visit to census penguins and other seabirds breeding on the island. The applicant's studies rely heavily on the ability to document weekly changes in penguin populations and breeding effort. The island has thus become a reliable source of long-term comparative data on penguin demography important to the hypotheses being tested by the LTER. As in past years, all visits will be restricted to the unvegetated parts of the island.

The applicant would like to visit Biscoe Point on foot (via Zodiac from Palmer Station) on 3 separate occasions to census penguins and other seabirds breeding on the island. Some of the penguins banded as chicks near Palmer Station are not returning to their natal colonies, but are instead moving to colonies on islands quite distant from Palmer. The applicant needs to document how pervasive trend is by finding previously banded birds so as to adequately incorporate them into our data on birds so as to adequately incorporate them into our data on survival and recruitment. Not doing so will potentially bias by underestimating annual survival and recruitment, which will then affect the interpretation and validity of demographic models being developed for the LTER.

Location

Litchfield Island, Arthur Harbor.

Dates

10/01/93–04/01/94.

4. Dr. William Fraser, MSU Central States Office, 830 Hunt Farm Road, Long Lake, Mn 55356.

Activity for Which Permit Requested

Taking.

The applicant and participants are in this long-term egological research (LTER) program on the Antarctic Peninsula, the applicant is interested in relating variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment, especially the effects of sea ice prey availability and/or abundance.

This will require taking by capture and release of penguins and flying seabirds for censusing, binding, stomach lavage, weighing, measuring, examining, and attaching and removing radio transmitters.

The location proposed is Palmer Station and other nearby islands and sites. A separate permit has been requested to enter specially protected areas in the vicinity. Not doing so will potentially bias by underestimating annual survival and recruitment, which will then affect the interpretation and validity of demographic models being developed for the LTER.

Location

Palmer Station and nearly islands.

Dates

10/01/93–04/01/94.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–15500 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: July 19–20, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation Annex, 1110 Vermont Avenue, NW., room 500A, Washington, DC.

Type of Meeting: Closed.

Contact Person: Karen Mudry, National Science Foundation, Program Director, Bioengineering and Aiding the Disabled Program, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357–7955.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biosystems Analysis and Control proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15508 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological Sciences; Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the Division of Molecular and Cellular Biosciences of the Biochemistry and Molecular Structure and Function Program.

Date and time: Monday, July 19, and Tuesday, July 20, 1993; 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, room 1242, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact Person: Maryanna Henkart, Acting Deputy Division Director for Molecular and Cellular Biosciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9400.

Purpose of meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Biochemistry and Molecular Structure and Function Program in the Division of Molecular & Cellular Biosciences.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15509 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: July 21, 1993; 9 a.m. to 5 p.m.

Place: Room 1133, NSF, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence Goldberg, Program Director, Quantum Electronics, Waves and Beams, ECS Division, National Science Foundation, 1800 G Street, NW., room 1151, Washington, DC 20550. Telephone: (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Quantum Electronics, Waves and Beams Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c) (4) and (6) the Government in the Sunshine Act.

Dated: June 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15510 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary, and Informal Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Young Scholars.

Date and Time: July 21, from 5 p.m. to 8 p.m. and July 22 and 23, from 8 a.m. to 5 p.m.

Place: St. James Hotel, 990 24th Street, N.W., Washington, DC 20037.

Type of Meeting: Closed.

Contact of Person: Dr. Julia V. Clark, Program Director, Young Scholars Program, 1800 G Street, N.W., Washington, DC 20550 Telephone: (202) 357–7538.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Young Scholars proposals as part of selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act

Dated: June 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

FR Doc. 93–15511 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary, and Informal Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Instructional Materials Development.

Dates and Times: July 30, 1993 from 8:30 a.m. to 5:30 p.m. and July 31, 1993 from 8:30 a.m. to 3:30 p.m.

Place: Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contract of Person: Ms. Alice B. Moses, Program Director, Instructional Materials Development Program, 1800 G Street, NW., room 635A, Washington, DC 20550 Telephone: (202) 257–7538.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15512 Filed 6–30–93; 8:45am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.

Date and time: July 20–21, 1993; 8:30 a.m. to 5 p.m.

Place: Room 500–B, National Science Foundation, 1110 Vermont Avenue, Washington, DC 20550.

Type of meeting: Closed.

Contact Person: Dr. Darleen Fisher, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the All-Optical Network and Communication, NSF 93–60.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15513 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs.

Date and time: July 23, 1993.

Place: Rm 609, National Science Foundation, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Guy G. Guthridge, Manager, Polar Information Program, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9422.

Purpose of Meeting: To manage requests from scholars in the humanities for access to Antarctica, NSF administers the Antarctic Artists and Writers Program. The panel will provide advice and recommendations concerning proposals submitted to NSF for access to Antarctica.

Agenda: To review and evaluate Antarctic Artists and Writers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15514 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science and Technology Infrastructure; Meetings

In accordance with the Federal Advisory Committee Act. (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name: Site Visits for Substantive Review of Twelve Science & Technology Centers.

Date	Place	Time
7/21–22/93	Kent State University, Kent, OH	8:30–5:00.
8/5–6/93	University of Virginia, Charlottesville, VA	8:30–5:00.
8/9–10/93	University of Pennsylvania, Philadelphia, PA	8:30–5:00.
8/9–10/93	University of Michigan, Ann Arbor, MI	8:30–5:00.
8/12–13/93	University of Texas, Austin, TX	8:30–5:00.
8/17–18/93	State University of New York, Stony Brook, NY	8:30–5:00.
8/26–27/93	University of Minnesota, Minneapolis, MN	8:30–5:00.
8/30–31/93	Carnegie Mellon University, Pittsburgh, PA	8:30–5:00.
9/1–2/93	University of California, Davis, CA	8:30–5:00.
9/1–2/93	University of Chicago, Chicago, IL	8:30–5:00.
9/2–3/93	University of Southern California, Los Angeles, CA	8:30–5:00.
9/13–14/93	University of Utah, Salt Lake City, UT	8:30–5:00.

Type of Meetings:

Contact: Dr. Sonja Sperlich, Associate Director, Science and Technology Centers, National Science Foundation, 1800 G Street, NW., room 533, Washington, DC 20550, 202–357–9808.

Purpose of Meetings: To determine future funding for the Centers.

Agenda: Review and evaluation of the Science and Technology Centers.

Reason for Closing: The awards being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: June 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15515 Filed 6–30–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Illinois Power Co., et al., Clinton Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to the Illinois Power Company, and the Soyland Power Cooperative, Inc. (the licensee), for operation of the Clinton Power Station (CPS), Unit 1, located in Dewitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed changes would simplify the CHANNEL FUNCTIONAL TEST requirements for the Low and High Power Setpoint (turbine first-stage pressure channels) associated with the Rod Pattern Control System (RPCS) in Table 4.3.6–1 of the CPS Technical Specifications (TS) and are consistent with the staff's Improved Standard Technical Specifications for BWR/6 facilities.

Specifically, the proposed changes are:

(1) Note (b) is associated with startup testing requirements and currently states that the channel functional tests shall be performed "Within 24 hours prior to startup, if not performed within the previous 7 days." Note (b) is being clarified to read, "Within 7 days prior to startup."

(2) The daily channel functional test requirements and its associated Note (c) are being eliminated. The rod pattern controller would be adequately tested in accordance with CPS Technical Specification 4.1.4.2.

(3) Note (d) is associated with monthly testing requirements and currently states, "At least once per 31 days while operation continues within a given power range above the RPCS low power setpoint." Note (d) is being eliminated to simplify monthly testing requirements.

(4) Note (e) is associated with both monthly and startup testing requirements and currently states, "Includes reactor manual control multiplexing system input." Note (e) is being eliminated because it is a carry-over from earlier versions of the BWR standard technical specifications and it will simplify monthly and startup testing. The RPCS for CPS automatically performs testing that satisfies the intent of note (e).

The proposed action is in accordance with the licensee's application for amendment dated October 30, 1987.

The Need for the Proposed Action

The proposed action is needed in order to clarify the existing TS and to make the CPS Technical Specifications consistent with the staff's Improved Standard TS for BWR/6 facilities.

Environmental Impacts of the Proposed Action

The proposed revision changes the surveillance requirements of the CHANNEL FUNCTIONAL TESTS and will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Commission has previously had published in the **Federal Register** a Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing (53 FR 4477). The Commission did not receive any requests for a hearing.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated May 1982, related to the operation of the Clinton Power Station, Unit 1.

Agencies and Persons Consulted

The staff consulted with the State of Illinois regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed changes to the CPS TS. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 30, 1987, which is available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 23rd day of June 1993.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Acting Director, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15565 Filed 6–30–93; 8:45 am]

BILLING CODE 7590–01–M

Generic Letter 89–10, Supplement 5, "Inaccuracy of Motor-Operated Valve Diagnostic Equipment," Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 89–10, Supplement 5, "Inaccuracy of Motor-Operated Valve Diagnostic Equipment." This generic letter supplement is available in the Public Document Rooms under accession number 930623009. The resolution of public comments received on this generic letter supplement is discussed in two memoranda to the Chairman of the Committee to Review Generic Requirements which are also available in the Public Document Rooms under accession numbers 9211060041 and 9302220364. This generic letter supplement is also discussed in Commission information paper SECY–93–168 which is also available in the Public Document Rooms under accession number 9306210065.

DATES: The generic letter supplement was issued on June 28, 1993.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Thomas G. Scarbrough at (301) 504–2794.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 25th day of June 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15567 Filed 6–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co., Comanche Peak Steam Electric Station, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has issued a "Director's Decision Pursuant to 10 CFR § 2.206" (Director's Decision) concerning a Petition filed with the U.S. Nuclear Regulatory Commission (NRC) by Messrs. Macktal and Hasan (Petitioners) on June 11, 1992. The Petition presented concerns regarding the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES) of the Texas Utilities Electric Company (TU Electric or Licensee). Petitioners submitted additional documents, which are considered supplements to the Petition, on October 6 and November 19, 1992.

The Petition alleged the discovery of new evidence of a continuing practice by the Licensee to pay "hush money" to keep significant information about CPSES from Petitioners and the NRC. Specifically, the Petition referred to a January 30, 1990, settlement agreement between the Licensee and the Tex-La Electric Cooperative of Texas, Inc. (Tex-La), a former co-owner of CPSES, that allegedly contains restrictive language in violation of section 211 of the Energy Reorganization Act (ERA) and 10 CFR 50.7. Petitioners further alleged that the settlement agreements have resulted in the suppression of information associated with the safe operation of CPSES and that the TU Electric response of October 16, 1992, to the Petition contained incorrect and misleading information to the point of being materially false.

On the basis of this information, Petitioners asked the NRC to suspend the TU Electric license to operate CPSES Unit 1 and its permit to construct CPSES Unit 2, and not to extend the expiration date of the permit to construct CPSES Unit 2. Petitioners also asked the NRC to take immediate actions, specifically that: (1) A licensing board be established to allow public scrutiny into TU Electric's alleged practice of paying "hush money"; (2) the NRC notify TU Electric and former co-owners that no settlement agreement can preclude employees, attorneys, agents, consultants, or others from providing information to persons involved in proceedings before the NRC; (3) copies of the TU Electric-former co-owner settlement agreements be made public and provided to Petitioners' counsel; and (4) the NRC notify the counsel to Tex-La that he and others are free to disclose safety-related information about CPSES to others.

In an acknowledgement letter of August 26, 1992, the Director of NRR informed Petitioners that the Petition was being considered pursuant to 10 CFR 2.206. The Director declined at that time to take any of the immediate actions requested in the Petition and stated that the NRC would take appropriate action on the specific issues raised in the Petition within a reasonable time.

The Petition has been considered under the provisions of 10 CFR 2.206. Notice of receipt of the Petition was published in the **Federal Register** on September 2, 1992 (57 FR 40231).

As stated in the Director's Decision, the Director has granted in part and denied in part Petitioners' requests. Petitioners sought that the NRC notify TU Electric and the former co-owners that no settlement agreement can preclude individuals and organizations from bringing safety information to the NRC. This was done. Petitioners also sought that copies of the settlement agreements be made public. This was done. Finally, Petitioners requested that the counsel for Tex-La be notified that he is free to disclose safety information to the NRC. The NRC has caused this to happen. The other relief sought by Petitioners has been denied.

The Director's Decision is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the Director's Decision will be filed with the Secretary of the Commission for review by the Commission in accordance with 10 CFR 2.206(c). The Director's Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 4th day of June 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-15568 Filed 6-30-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Exemption

In the Matter of Nebraska Public Power District (Cooper Nuclear Station)

I

Nebraska Public Power District (the licensee) is the holder of Operating License No. DPR-46, which authorizes operation of Cooper Nuclear Station (CNS). The operating license provides, among other things, that CNS is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site in Nemaha County, Nebraska.

II

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that the primary containment shall meet the leakage-test requirements set forth in 10 CFR part 50, appendix J, paragraph III.C.1: "Type C tests shall be performed by local pressurization. The pressure shall be applied in the same direction as that when the valve would be required to perform its safety function, unless it can be determined that the results from the tests for a pressure applied in a different direction will provide equivalent or more conservative results."

By letter dated June 7, 1993, the licensee requested a one-time schedular exemption from appendix J to 10 CFR part 50 to allow Type C (local leak-rate) testing of 10 containment isolation valves in the reverse direction. As stated above, paragraph III.C.1 of appendix J requires that for Type C testing the test pressure must generally be applied to the valve from the same side as that when the valve would be required to perform its safety function (i.e., the inside-containment side, also called the accident direction or the forward direction). However, the regulation allows an exception if it can be determined that testing with the pressure applied in the reverse direction provides equivalent or more conservative results. In its letter dated June 7, 1993, the licensee stated that 10 containment isolation valves cannot now be shown to satisfy the equivalent-or-more-conservative requirement that permits reverse-direction testing. The licensee is taking steps to comply with appendix J either by showing that the 10 valves meet the equivalent-or-more-conservative requirement or by modifying the plant to enable future Type C tests to be conducted by pressurization in the forward direction. To allow time for completion of these activities, the licensee has requested that these 10 valves be exempted from the forward-testing requirement until the next refueling outage, currently scheduled to begin in the fall of 1994. The licensee will then test them in the forward direction if it cannot show that reverse-direction testing is equivalent or more conservative.

III

The subject valves are PC-MOV-305MV, PC-MOV-1304MV, PC-MOV-1306MV, RCIC-MOV-M015, RHR-MOV-M016A, RHR-MOV-M016B, RHR-MOV-M021A, RHR-MOV-M021B, RHR-MOV-M031A, and RHR-MOV-M031B. The licensee has committed to comply with appendix J by making the plant modifications necessary to test these valves in the forward direction if the licensee cannot demonstrate that testing in the reverse direction is equivalent to or more conservative than testing in the forward direction. However, because there is insufficient time available to design, procure, and install these modifications prior to completion of the current refueling outage (currently scheduled to end in June 1993), the plant modifications will be made at the next refueling outage. Since the subject valves were tested in the reverse direction during the current outage, the exemption will allow testing in the forward direction to be deferred until the next refueling outage. The NRC staff has performed an evaluation of the exemption request and has determined that the licensee has provided adequate justification of the requested exemption.

IV

According to 10 CFR 50.12(a)(2), the Commission will not consider granting the exemption unless special circumstances are present. Pursuant to 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. The exemption would provide only temporary relief by permitting the licensee to delay compliance with the leakage test requirements set forth in 10 CFR part 50, appendix J, paragraph III.C.1, until the next refueling outage, currently scheduled to begin in the fall of 1994. The NRC staff believes that the licensee has taken prudent steps to improve the containment integrity and that, if compliance did not require extending the refueling outage, the licensee would comply with appendix J. The licensee has only recently found that its earlier determination, that reverse direction testing is equivalent or conservative, may not be correct. The licensee has not had enough time to make the modifications necessary to allow forward-direction testing without extending the current refueling outage.

Based on our evaluation, the NRC staff has concluded that the licensee has made a good-faith effort to comply with the requirements of appendix J and that special circumstances as described in 10 CFR 50.12(a)(2)(v) exist.

Therefore, the Commission has determined that the requested schedular exemption from the appendix J forward-direction testing requirements for the subject valves should be granted.

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that this exemption is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby approves the following exemption request.

A schedular exemption is granted from the requirements of Paragraph III.C.1 that a local leak-rate test be conducted in the forward direction for containment isolation valves PC-MOV-305MV, PC-MOV-1304MV, PC-MOV-1306MV, RCIC-MOV-M015, RHR-MOV-M016A, RHR-MOV-M016B, RHR-MOV-M021A, RHR-MOV-M001B, RHR-

VOL
58
ISS
125
JL
1
1993
UMI

MOV–M031A, and RHR–MOV–M031B. For good cause shown, this exemption will allow testing of the subject valves in the forward direction to be deferred until the end of the next refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact of the quality of the human environment (58 FR 33286).

This exemption becomes effective upon issuance.

Dated at Rockville, Maryland this 23rd day of June 1993.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15566 Filed 6–30–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection For Expedited OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44 U.S.C. chapter 35), this notice announces collection of information from the public that has been submitted to OMB for expedited clearance. It will be a blanket clearance to cover information collected from applicants, deans, and references in the selection of Presidential Management Interns to comply with Executive Order 12364 signed by President Reagan on May 24, 1982. We estimate 3300 respondents will expend 2216 burden hours annually to file these forms. Copies of the proposed forms are appended to this notice.

DATES: Comments on this proposal should be received within 7 calendar days from the date of this publication. OMB has been requested to take action within 10 days from the date of this publication.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW—CHP–500, Washington, DC 20415.

or

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

BILLING CODE 6325–01–M

APPLICATION FORM **The Presidential Management Intern Program**

Form Approved:
OMB No. 3206-0082

Important Note: Complete this form only after reading instructions on previous page.

A. PERSONAL INFORMATION

1. Last Name | 2. First Name | 3. M.I. | 4. Title

5. Social Security Number | 6. Legal Residence | 7. Geographic Availability | 8. Are you a U.S. Citizen? (Check one) ☐ YES ☐ NO | 9. Veterans' Preference | 10. Birthday (MM, DD, YY)

11. Completion Date of Current Degree (MM,YY) | 12a. Present Telephone–*Include Area Code* | 12b. Overseas Country City | 13. Permanent Telephone–*Include Area Code*

14. Mailing Address (*Items 14-18*)–*Street Number and Name, Apartment Number*

15. City | 16. State | 17. ZIP Code | 18. Foreign Country

18a. Overseas Postal Code | 19. Permanent Address (*Items 19-22*)–*Street Number and Name, Apartment Number*

20. City | 21. State | 22. ZIP Code

23. University
School
Department
City
State or Country
University Department

24. Graduate Degree

25. Other Grad. Degree

26. Undergrad. Degree

27a. If you will require special physical arrangements or assistance at the regional screening panel, please check this box. You will be contacted and preparations will be made in advance. ☐

27. Desired Regional Screening Panel Location (See Instructions, Please check only one regional location.)

Atlanta Region
- ☐ Atlanta, GA
- ☐ Jackson, MS
- ☐ Miami, FL
- ☐ Orlando, FL
- ☐ Raleigh, NC

Philadelphia Region
- ☐ Boston, MA
- ☐ New York, NY
- ☐ Philadelphia, PA
- ☐ Pittsburgh, PA
- ☐ San Juan, PR
- ☐ Syracuse, NY

Chicago Region
- ☐ Chicago, IL
- ☐ Dayton, OH
- ☐ Detroit, MI
- ☐ Indianapolis, IN
- ☐ Kansas City, MO
- ☐ St. Louis, MO
- ☐ Twin Cities, MN
- ☐ Wichita, KS

Dallas Region
- ☐ Albuquerque, NM
- ☐ Dallas, TX
- ☐ Denver, CO
- ☐ Houston, TX
- ☐ New Orleans, LA
- ☐ Oklahoma City, OK
- ☐ Phoenix, AZ
- ☐ San Antonio, TX

Washington, DC
- ☐ Washington, DC

Europe
- ☐ Federal Republic of Germany

San Francisco Region
- ☐ Los Angeles, CA
- ☐ San Francisco, CA
- ☐ Seattle, WA

OPM Form 1300
Revised June 1993

VOL 58 ISS 125 JL 1 1993 UMI

Name (Last, First, MI)

Social Security Number

B. KNOWLEDGE AND EXPERIENCE

28. List each of your graduate level courses. You may list courses you anticipate taking during the next academic term.

CORE CURRICULUM COURSES

EMPHASIS OR SPECIALTY COURSES

29. List the number of graduate level courses taken or projected by graduation in each subject area.

a. Public or Government Administration/Management
b. Community, City, and/or Regional Planning
c. Business Management/Administration
d. Natural Resources/Environmental Sciences and Policy
e. Information Systems Management
f. Computer Science/Application
g. Human Resources/Labor Relations
h. Technology/Engineering/Architecture
i. Finance/Budget/Accounting
j. Research Methods
k. Economics
l. Government Procurement/Contracts/Grants
m. International Affairs/Administration
n. Education
o. International Economics
p. Area Studies
q. Criminal Justice
r. Comparative Politics
s. Public Health or Health Administration
t. Urban, City, and/or Regional Administration/Management
u. Humanities
v. Other Subject Areas not listed

30. Was a public sector internship part of your graduate degree requirements? YES ☐ NO ☐

1. Give the actual or proposed subject of your thesis, dissertation, or major academic research work.

Name (Last, First, MI)

Social Security Number

32. **PROFESSIONAL EXPERIENCE** (See Instructions)

- ☐ a. **Federal** (Non-Military) (Includes Federal Government or Congressional Employment
- ☐ b. **Private Sector** (Includes Self-Employment)
- ☐ c. **State or Local** (Includes State and Local Governments and intergovernmental Public Agencies)
- ☐ d. **Educational** (Teaching, Graduate Assistantships and Educational Administration)
- ☐ e. **Not-For-Profit** (Organizations or Associations)
- ☐ f. **Armed Services**

33. If you have lived overseas for more than 3 months, check appropriate box:

☐ 3-5 months ☐ 6-11 months ☐ 1-3 years ☐ more than 3 years

34. Academic Knowledge

35. Applied Knowledge

36. Applied Knowledge Experience

37. List up to three (3) foreign languages and check your degree of proficiency.

		Spoken:			Written:		
		Excellent	Good	Fair	Excellent	Good	Fair
a.							
b.							
c.							

38. Please check your proficiency with the following types of computer software and programming languages:

	Excellent	Good	Fair		Excellent	Good	Fair
a. Word Processing				f. BASIC			
b. Database				g. PASCAL			
c. Spreadsheet				h. FORTRAN			
d. Graphics				i. COBOL			
e. Operating Systems (DOS, UNIX)				j. "C"			

Name (Last, First, MI)

Social Security Number

C. ACADEMIC BACKGROUND

40. Name and location (City, State, and ZIP Code, if known) of all colleges or universities attended, beginning with your current school and working back.	Dates Attended From	Dates Attended To	Credits Completed (Semester= S Quarter= Q)	Major Field of Study	GPA and Scale	Degree Title and Year Received, or Month and Year Experienced

D. WORK EXPERIENCE

41. In blocks a–e, describe in detail your work experience. Please account for ALL time over the past 10 years, or since high school, if applicable. Incorporate in your description of duties information about progression in your work assignments; the nature, variety, and complexity of your achievements; the scope and level of your responsibility and your relationship to other factors which help describe your job. Please list your work experience in chronological order, beginning with your most recent job. Do not submit agency or company position descriptions. Describe the experience in you own words.

May inquiry be made of your present employer regarding your character, qualifications, and record of employment? YES ☐ NO ☐

a. Name and Complete Address of Employer	Dates Employed From To	Salary or Earnings Beginning $ Per / Ending $ Per	Avg Hrs Per Wk
	If Federal Service, Civilian, or Military Series, Grade, or Rank, and Date of Last Promotion	Exact Title of Your Position	

Name and Phone Number of Immediate Supervisor	Number and Kind of Employees You Supervised	Kind of Business or Organization

Reason for Leaving:

Description of Duties:

VOL 58 ISS 125 JL 1 1993 UMI

Name (Last, First, MI)

Social Security Number

D. WORK EXPERIENCE Continued

b. Name and Complete Address of Employer	Dates Employed From To	Salary or Earnings Beginning $ Per / Ending $ Per	Avg Hrs Per Wk
	If Federal Service, Civilian, or Military Series, Grade, or Rank, and Date of Last Promotion	Exact Title of Your Position	
Name and Phone Number of Immediate Supervisor	Number and Kind of Employees You Supervised	Kind of Business or Organization	

Reason for Leaving:

Description of Duties:

c. Name and Complete Address of Employer	Dates Employed From To	Salary or Earnings Beginning $ Per / Ending $ Per	Avg Hrs Per Wk
	If Federal Service, Civilian, or Military Series, Grade, or Rank, and Date of Last Promotion	Exact Title of Your Position	
Name and Phone Number of Immediate Supervisor	Number and Kind of Employees You Supervised	Kind of Business or Organization	

Reason for Leaving:

Description of Duties:

VOL 58 ISS 125 JL 1 1993 UMI

Name (Last, First, MI)

Social Security Number

D. WORK EXPERIENCE Continued

d. Name and Complete Address of Employer	Dates Employed From To	Salary or Earnings Beginning $ Per / Ending $ Per	Avg Hrs Per Wk
	If Federal Service, Civilian, or Military Series, Grade, or Rank, and Date of Last Promotion	Exact Title of Your Position	

Name and Phone Number of Immediate Supervisor	Number and Kind of Employees You Supervised	Kind of Business or Organization

Reason for Leaving:

Description of Duties:

e. Name and Complete Address of Employer	Dates Employed From To	Salary or Earnings Beginning $ Per / Ending $ Per	Avg Hrs Per Wk
	If Federal Service, Civilian, or Military Series, Grade, or Rank, and Date of Last Promotion	Exact Title of Your Position	

Name and Phone Number of Immediate Supervisor	Number and Kind of Employees You Supervised	Kind of Business or Organization

Reason for Leaving:

Description of Duties:

Name (Last, First, MI)

Social Security Number

E. ACTIVITIES AND ACHIEVEMENTS

42. List the major college, civic, business, and professional activities in which you have participated during the past five years. Describe the extent, duration, and level of your involvement. Also, list any awards or special recognition you have received for these activities. Do not list any information that you included under Item 41–Work Experience.

43. List any outstanding accomplishements, such as awards or publications, not mentioned above. (Maximum 10)

VOL
58
ISS
125
JL
1
1993
UMI

Name (Last, First, MI)

Social Security Number

F. The following questions are designed to give the selection committee a sense of: (1) your professional interest in the Federal service and your motivation for a Presidential Management Internship; and (2) the quality of your thinking and writing about issues of public policy and program management. The answers to these questions must be typed in the blank space provided after each question (no additional sheets will be accepted).

Item 44: Explain why you are seeking entry to the Federal service, describe your career interests, and explain the ways in which you intend to contribute to public service.

Name (Last, First, MI)

Social Security Number

45: Select and analyze an issue of public policy or program management which is particular concern to you. Your discussion should be in the form of a policy recommendation and should include a factual description of the matter at issue, your opinion on it, your recommendations for changes, if any, and the reasons supporting your opinion and recommendations.

VOL 58 ISS 125 JL 1 1993 UMI

Name (Last, First, MI) _____ _____ Social Security Number

Answer items 46–50 by placing an "X" in the proper column.

	Yes	No
46. Veterans' Preference A. Have you served on active duty in the United States Military Service? If your only active duty was training in the Reserves or National Guard, answer "NO". If "NO", go to item 47		
B. Were you honorably discharged from the military service? If your discharge was changed to "honorable" or "general" by a Discharge Review Board, answer "YES". *If you received a clemency discharge, answer "NO". If "NO", explain in item 49 below *Include the date and type of discharge you received		
Note: A conviction or a firing does not necessarily mean you cannot be appointed.		
47. During the last 10 years, were you fired from any job for any reason, did you quit after being told that you would be fired, or did you leave by mutual agreement because of specific problems? If "YES", write in item 49 below for each job: (a) the name and address of the employer; (b) the approximate date you left the job; and (c) the reason(s) why you left.		
48. **When answering questions A, B, C, D, and E, include convictions resulting from a plea of nolo contendre (no contest). You may omit:** (1) traffic fines of $100.00 or less; (2) any violation of law committed before your 16th birthday; (3) any violation of law committed before your 18th birthday, if finally decided in juvenile court or under a Youth Offender law; (4) any conviction set aside under the Federal Youth Corrections Act or similar State law; (5) any conviction whose record was expunged under Federal or State law		
A. Have you **ever** been convicted of, or forfeited collateral for any **felony violation**? Generally, a felony is defined as any violation of law punishable by imprisonment of longer that one year, except for violations called misdemeanors under State law which are punishable by imprisonment of two years or less.		
B. Have you **ever** been convicted of or forfeited collateral for any **firearms** or **explosives** violations?		
C. Are you **now** under charges for **any** violation of law?		
D. During the **last 10 years** have you forfeited collateral, been convicted, been imprisoned, been on probation, or been on parole? Do not include violations reported in **A, B, or C** above		
E. Have you **ever** been convicted by a military court-martial? If no military service, answer "NO"		
F. Are you **delinquent** on any Federal debt? *(Include delinquencies arising from Federal taxes, loans, overpayment of benefits, and other debts to the U.S. Government plus defaults on Federal guaranteed or insured loans such as student and home mortgage loans)*		

IF YOU ANSWERED "YES" TO ANY PART OF ITEM 48 (A–E), GIVE DETAILS IN ITEM 49 BELOW. For each violation write the: (1) date; (2) charge; (3) place; (4) court; and (5) action taken. For question 48 (F), please explain the type, length and amount of the delinquency or default, and steps you are taking to correct error or repay the debt. Give any identification number associated with the debt and the address of the Federal agency involved.

49. Additional space for answers (Write the number to which each answer applies. If you need more space, include your name and SSN on attached sheets

50. Signature, Certification, and Release of Information

YOU MUST SIGN THIS APPLICATION. Read the following carefully before you sign.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, Title 18, Section 1001).

If you are a male born after December 31, 1959, you must be registered with the Selective Service System or have a valid exemption in order to be eligible for Federal employment. You will be required to certify as to your status at the time of appointment.

I understand that any information I give may be investigated as allowed by law or Presidential order, may be provided to agencies of the Federal Government, and may be used in support of the PMI selection process.

I consent to the release of information about my ability and fitness for Federal employment by employers, schools, law enforcement agencies and other individuals or organization, investigator, personnel staffing specialists, and other authorized employees of the Federal Government.

I consent to the release of information about the status of my application to university officials.

I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith.

Signature *(Sign each application in dark ink)* | Date Signed *(Month, Day, Year)*

BILLING CODE 6325-01-C

Form Approved: OMB No. 3206–0082

Institutional Nomination Form

The Presidential Management Intern Program

Important Note: This form must be completed for each nominee and attached to the student's Application Form.

1. Name of Nominee

Social Security Number

I certify that the above-named student, an applicant for the Presidential Management Intern Program, is a student in good standing of this university, that this person has shown a clear interest in and a commitment to a career in the public service, is currently enrolled and is expected to receive an advanced degree during the current academic year. Furthermore, I certify that this student has been selected using competitive nomination procedures and has demonstrated academic excellence, sound judgment, capacity for leadership, and potential for future professional growth and development. Finally, I certify that this individual is one of the very best students in this university program and upon completion of this program, will fully meet all the criteria to be a nominee for the Presidential Management Intern Program.

2. Full Name of Dean or Department Chairperson Making This Nomination

3. Name and Address of Academic Institution

4. Title

5. Name of Graduate School or Program

6. Signature of Nominating Official

7. Date (*month, day, year*)

8. Office Phone Number (*including area code*)

9. Why was this individual selected as a PMI nominee? What criteria were used for nominee selection and how does this candidate meet them?

10. What do you see as this student's greatest growth or improvement during the period of his/her graduate education? What, if any, are the student's weaknesses?

11. Please supply a brief narrative citing specific examples of the student's strengths in the areas of intellectual ability; judgment; leadership and willingness to assume responsibility; ability to work effectively with others; commitment to public service; and personal initiative, such as that demonstrated in overcoming social/economic barriers in achieving education.

Form Approved: OMB No. 3206–0082

Independent Evaluation

The Presidential Management Intern Program

Name of Applicant: _____

The Presidential Management Intern (PMI) Program seeks to attract to the Federal service outstanding men and women from a variety of academic disciplines who have a clear interest in, and commitment to, a career in public service.

The above-named individual has been nominated for the PMI Program. A limited number of finalists (approximately 400 in recent years) are selected each year. To assist in the selection of interns, the Office of Personnel Management and the PMI Review Committee would like your evaluation of the nominee's personal characteristics and potential for public service. On what criteria do your judgments rest? How does this candidate meet them? We urge you to be as candid as possible, citing any particular incidents that illustrate the nominee's maturity, initiative, and potential. Your prompt submission of this form will be most helpful, as the nominee can neither complete his or her application nor be considered without your remarks. You should be aware, however, that this form, including your identity, is subject to release under the Privacy Act and the Freedom of Information Act, and upon request will be shown to the applicant.

Your evaluation will become part of the nominee's confidential file, intended for use by the PMI Review Committee. Please return this form, plus any additional sheets, in a sealed envelope to the nominee, who will submit the sealed envelope as part of the completed application package.

Thank you for your cooperation.

Name (First, Last, Middle)

Address (Street, City, State and ZIP Code)

Title

Business or Occupation

How long have you known the nominee?

In what capacity have you known the nominee?

Signature

Date Signed

Please continue on reverse side of this page and use additional sheets if necessary.

PMI Survey Form

The Presidential Management Intern Program

Name (Last, First, Middle Initial)

Social Security Number (SSN)

Important Information

You are requested to complete this form. The data you supply will be used for statistical analysis only. Submission of this information is voluntary. Your failure to do so will have no effect on the processing of your application. This form is authorized for use by the Office of Personnel Management ONLY. This form will be separated from all other application materials at Educational Testing Service prior to any screening or evaluation of individual nominees. This information will not be transmitted to OPM until after the screening and selection phases of the PMI process have been completed.

Your Social Security Number (SSN) is requested under the authority of Executive Order 9397 (November 22, 1943) for the orderly administration of personnel records.

Public burden reporting for this collection of information is estimated to take approximately two minutes per response, including time for reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Office of Personnel Management, Reports and Forms Officer, Rm. 500, Court House Square, 2300 Clarendon Blvd., Arlington, VA 22201.

Race and/or National Origin

The categories below provide descriptions of race and national origins. Read the Definition of Category descriptions and then check the box next to the category with which you identify yourself. If you are of mixed race and/or national origin, select the category with which you most closely identify yourself. NOTE: Please mark only ONE box!

Name of category	Definition of category
☐ A. American Indian or Alaskan Native.	A person having origins in any of the original peoples of North America, and who maintains cultural identification through community recognition or tribal affiliation.
☐ B. Asian or Pacific Islander	A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. For example, this area includes China, India, Japan, Korea, the Philippine Islands and Samoa.
☐ C. Black, not of Hispanic origin	A person having origins in any of the Black racial groups of Africa. This does not include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins.
☐ D. Hispanic	A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins.

VOL 58 ISS 125 JL 1 1993 UMI

Name of category	Definition of category
☐ E. White, not of Hispanic origin	A person having origins in any of the original peoples of Europe, North America, or the Middle East. This does not include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins.
☐ F. Other	A person not included in another category.

Self-Identification of Handicap

(See instructions and Privacy Act information on reverse)

Last Name, First Name, Middle Initial

Birth Date (Mo./Yr.)

Social Security Number

Enter Code Here

Definition of a Handicap: A person is handicapped if he or she has a physical or mental impairment which substantially limits one or more major life activities: has a record of such impairment: or is regarded as having such impairment. Those handicaps that are to be reported are listed below (codes in numbers 13 through 94). In the case of multiple impairments, choose the code which describes the impairment that would result in the most substantial limitation.

To the Employee: Self-identification of handicap status is essential for effective data collection and analysis. The information you provide will be used for statistical purposes only and will not in any way affect you individually. While self identification is voluntary your cooperation in providing accurate information is critical.

01 I do not wish to identify my handicap status. *(Please read the employee note above and the reverse side of this form before using this code.)* (Note: Your personnel officer may use this code if, in his or her judgment, you used an incorrect code.)

05 I do not have a handicap.

06 I have a handicap but it is not listed below.

Speech Impairments

13 Severe speech malfunction or inability to speak; hearing is normal *(Examples: defects of articulation [unclear language sounds]; stuttering; aphasia [impaired language function]; laryngectomy [removal of the "voice box"])*

Hearing impairments

15 Hard of hearing *(Total deafness in one ear or inability to hear ordinary conversation, correctable with a hearing aid)*

16 Total deafness in both ears, with understandable speech

17 Total deafness in both ears, and unable to speak clearly

Vision Impairments

22 Ability to read ordinary size print with glasses, but with loss of peripheral (side) vision *(Restriction of the visual field to the extent that mobility is affected—"Tunnel vision")*

23 Inability to read ordinary size print, not correctable by glasses *(Can read oversized print or use assisting devices such as glass or projector modifier)*

24 Blind in one eye

25 Blind in both eyes *(Not usable vision, but may have some light perception)*

Missing Extremities

27 One hand

28 One arm

29 One foot

32 One leg

33 Both hands or arms

34 Both feet or legs

35 One hand or arm and one foot or leg

36 One hand or arm and both feet or legs

37 Both hands or arms and one foot or leg

38 Both hands or arms and both feet or legs

Nonparalytic Orthopedic Impairments

(Because of chronic pain, stiffness, or weakness in bones or joints, there is some loss of ability to move or use a part or parts of the body.)

44 One or both hands

45 One or both feet

46 One or both arms

47 One or both legs

48 Hip or pelvis

49 Back

57 Any combination of two or more parts of the body

Partial Paralysis

(Because of a brain, nerve, or muscle problem, including palsy and cerebral palsy, there is some loss of ability to move or use a part of the body, including legs, arms, and/or truck)

61 One Hand

62 One arm, any part

63 One leg, any part

64 Both hands

65 Both legs, any part

66 Both arms, any part

67 One side of body, including one arm and one leg

68 Three or more major parts of the body *(arms and legs)*

Complete Paralysis

(Because of a brain, nerve, or muscle problem, including palsy and cerebral palsy, there is a complete loss of ability to move or use a part of the body, including legs, arms, and/or trunk.)

70 One hand

71 Both hands

72 One arm

73 Both arms

74 One leg

75 Both legs

76 Lower half of body, including legs

77 One side of body, including one arm and one leg

78 Three or more major parts of the body *(arms and legs)*

Other impairments

80 Heart disease with no restriction or limitation of activity *(history of heart problems with complete recovery)*

81 Heart disease with restriction or limitation of activity

82 Convulsive disorder *(e.g., epilepsy)*

83 Blood disease *(e.g., sickle cell anemia, leukemia, hemophilia)*

84 Diabetes

86 Pulmonary or respiratory disorders *(e.g., tuberculosis, emphysema, asthma)*

87 Kidney dysfunctioning *(e.g., if dialysis [Use of an artificial kidney machine] is required)*

88 Cancer—a history of cancer with complete recovery

89 Cancer—undergoing surgical and/or medical treatment

90 Mental retardation *(A chronic and lifelong condition involving a limited ability to learn, to be educated, and to be trained for useful productive employment as certified by a State Vocational Rehabilitation agency under section 213.3102(t) of Schedule A)*

91 Mental or emotional illness *(A history of treatment for mental or emotional problems)*

92 Severe distortion of limbs and/or spine *(e.g., dwarfism, kyphosis [severe distortion of back])*

93 Disfigurement of face, hands, or feet *(e.g., distortion of features on skin, such as those caused by burns, gunshot injuries, and birth defects [gross facial birth-marks, club feet, etc.])*

94 Learning disability *(A disorder in one or more of the processes involved in understanding, perceiving, or using language or concepts [spoken or written]; e.g., dyslexia)*

The Rehabilitation Act of 1973 (P.L. 93–112) requires each agency in the Executive branch of the Federal Government to establish definite programs that will facilitate the hiring, placement and advancement of handicapped individuals. The best means of determining agency progress in this respect is through the production of reports at certain intervals showing such things as the number of handicapped employees hired, promoted, trained, or reassigned over a given time period, the percentage of handicapped employees in the work force and in various grades and occupations: etc. Such reports bring to the attention of agency top management, the Office of Personnel Management (OPM), and the Congress deficiencies within specific agencies or the Federal Government as a whole in the hiring, placement, and advancement of handicapped individuals and therefore, are the essential first step in improving these conditions and consequently meeting the requirements of the Rehabilitation Act.

The handicap data collected on employees will be used only in the production of reports

such as those previously mentioned and not for any purpose that will affect them individually. The only exception to this rule is that the records may be used for selective placement purposes and selecting special populations for mailing of voluntary personnel research surveys. In addition, every precaution will be taken to ensure that the information provided by each employee is kept in the strictest confidence and is known only to the one or two individuals in the agency Personnel Office who obtain and record the information for entry into the agency's and OPM's personnel systems. You should also be aware that participation in the handicap reporting system is entirely voluntary, with the exception of employees appointed under Schedule A, section 213.3103(t) (Mental Retardation); Schedule A, section 213.3102(u) (Severely Physically Handicapped); and Schedule B, section 213.3202(k) (Mentally Restored). These employees will be requested to identify their handicap status and if they decline to do so, their correct handicap code will be obtained from medical documentation used to support their appointment. No other employees will be required to identify their handicap status if they feel for any reason it is not in their best interest to have this information officially recorded outside of medical records. We request only that anyone not wishing to have this information entered in the agency's and OPM's personnel systems indicate this to their Personnel Office, rather than intentionally miscoding themselves, since false responses will seriously damage the statistical value of the reporting system.

[In those instances where the employee is or was hired under Schedule A, section 213.3102(t) (mental Retardation), the Personnel Director or his/her designee (a Vocational Rehabilitation Counselor may also be helpful) will assist the individual in completing this form and ensure that the employee fully understands the meaning of the form and the options available to him/her, as noted above.]

Employees will be given every opportunity to ensure that the handicap code carried in their agency's and OPM's personnel systems is accurate and is kept current. They may exercise this opportunity by asking their Personnel Officer to see a printout of the code and definition from their record, by notifying Personnel and any time their handicap status changes, and by initiating action in either of these cases to have the necessary changes made to their records. The code carried on employees in their agency's system will be identical to that carried in OPM's system, and any change to the agency records will result in the same change being made to OPM's records.

Your cooperation and assistance in establishing and maintaining an accurate and up-to-date handicap report system is sincerely appreciated.

Privacy Act Statement

Collection of the requested information is authorized by the Rehabilitation Act of 1973 (P.L. 93–112). The information you furnish will be used for the purpose of producing statistical reports to show agency progress in hiring, placement, and advancement of handicapped individuals to locate individuals for voluntary participation in surveys. The reports will be used to inform agency top management the Office of Personnel Management (OPM), the Congress, and the public of the status or programs for employment of the handicapped. All such reports will be in the form of aggregate totals and will not identify you in any way as an individual.

Solicitation of your Social Security Number (SSN) is authorized by Executive Order 9397, which requires agencies to use the SSN as the means for identifying individuals in personnel information systems. Your SSN will only be used to ensure that your correct handicap code is recorded along with the other employee information that your agency and OPM maintain on you. Furnishing your SSN or any other of the requested data for this collection effort is voluntary and failure to do so will have no effect on you. It should be noted, however, that where individuals decline to furnish their SSN, the SSN will be obtained from other records in order to ensure accurate and complete data.

Employees appointed under Schedule A, section 213.3102(t) (Mental Retardation), Schedule A, section 213. 3102(u) (Severely Physically Handicapped, or Schedule B, section 213.3202(k) (Mentally Restored) are requested to furnish an accurate handicap code, but failure to do so will have no effect on them. Where employees hired under one of these appointments fail to disclose their handicap, however, the appropriate code will be determined from the employee's existing records or medical documentation submitted to justify the appointment.

[FR Doc. 93–15388 Filed 6–30–93; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32510; File No. SR–PSE–92–15]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Amendments and Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Adjudication of Minor Rule Plan Violations

June 24, 1993.

I. Introduction

On April 17, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change which adds detailed procedures to the Exchange's Minor Rule Plan ("MRP")[3] and modifies the Exchange's summary sanction procedure.[4] The proposal also amends the following Exchange rules: (1) Exchange Rule 10.4 and other rules governing hearings and appeals; (2) Exchange Rule 6.2, governing admission to and conduct on the options trading floor; and (3) Exchange Rule 2.12, which establishes fines for the late filing of Financial and Operational Combined Uniform Single ("FOCUS") reports. The proposal also includes the late filing of Securities Investor Protection Corporation ("SIPC") reports in the Exchange's MRP.

The proposal was noticed for comment in Securities Exchange Act Release No. 31226 (September 23, 1992), 57 FR 45105.[5] No comments were received on the proposal.

Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor violation plans for the summary discipline and abbreviated

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] The Exchange's MRP was approved by the Commission in 1985. See Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (order approving File No. SR–PSE–85–24) ("MRP Approval Order").

[4] The Commission approved the PSE's summary sanction procedures in August 1989. See Securities Exchange Act Release No. 27162 (August 30, 1989), 54 FR 35969 (order approving File No. SR–PSE–89–08) ("Summary Sanction Approval Order").

[5] On September 30, 1992, the Exchange amended its proposal to (1) include a provision noting that changes in the Plan's Recommended Fine Schedule must be approved by the Commission; (2) delete from the MRP a rule prohibiting dual trading (violations of PSE Rule 6.28(a) will continue to be subject to full disciplinary proceedings); and (3) amend the MRP's Recommended Fine Schedule for position limit violations to conform the PSE's Recommended Fine Schedule to the schedule adopted by the Chicago Board Options Exchange, Inc. ("CBOE") for position limit violations. See Letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation ("Division") Commission, dated September 30, 1992 ("Amendment No. 1"). Subsequently, the PSE submitted an additional technical amendment. See Letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division, Commission, dated October 1, 1992 ("Amendment No. 2"). On November 1, 1992, the PSE submitted a third amendment, which modifies proposed Exchange Rule 10.13(j)(3) to include in the MRP only SIPC reports filed no later than five business days after the receipt of SIPC's final delinquency notice ("Amendment No. 3"). On May 21, 1993, the PSE submitted a fourth amendment to clarify that SIPC reports filed five days after a member's receipt of SIPC's final notice will result in formal disciplinary action. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, dated May 21, 1993 ("Amendment No. 4"). Finally, the Exchange modified its proposal by deleting a provision which would have included late FOCUS Reports in the MRP. Late FOCUS reports will continue to be governed by PSE Rule 2.12(b). See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, dated June 11, 1993 ("Amendment No. 5").

VOL
58
ISS
125
JL
1
1993
UMI

reporting of minor rule violations by exchange members and member organizations.[6] As noted above, the Commission approved the Exchange's MRP in 1985[7] and approved its summary sanction procedure in 1989.[8]

II. Description of the Proposal

1. Amendments to the MRP

The PSE's proposal is designed to streamline the Exchange's disciplinary process by allowing cases decided under the MRP to be resolved without the issuance of a formal complaint and without a formal hearing. Specifically, proposed PSE Rule 10.13, entitled "Minor Rule Plan," authorizes the PSE's Executive Committee, Ethics and Business Conduct Committee, Options Floor Trading Committee, and Equity Floor Trading Committee to impose a fine of up to $5,000 for violations of Exchange Rules included in the MRP.[9] Under the MRP, the PSE will serve a person or organization accused of a minor rule violation with a written statement setting forth: (1) The Exchange Rule(s) alleged to have been violated; (2) the act or omission constituting each violation; and (3) notice that the accused person or organization may submit a written statement to a designated committee for its consideration.[10]

The payment of a fine imposed under the MRP is deemed to be a waiver of any right to a disciplinary proceeding under Exchange Rule 10.11 and of any right to a review of the matter by the Exchange's Board of Governors. However, proposed PSE Rule 10.13(e) allows a person or organization fined under the MRP to contest the fine by filing a written application with the PSE's Compliance Department within five business days after receipt of written notification of the fine. A determination contested pursuant to paragraph (e) becomes a formal disciplinary action and penalties imposed by a hearing panel will be reported publicly to the Exchange membership after the decision has become "final" pursuant to Exchange Rule 10.7. Although the MRP provides recommended fines for each type of rule violation, the Exchange is not required to impose a fine according to the MRP. In addition, the proposal gives the Exchange discretion to determine that a violation is not minor in nature and commence a disciplinary proceeding under PSE Rule 10.3, rather than under the MRP.

The PSE proposes to add violations of the following Exchange rules to the MRP: (1) Failure to remain for a specified amount of time after trade processing (Exchange Rule 6.17); (2) failure to honor a ten-up market (Exchange Rule 6.86); (3) failure to identify an order as for a broker-dealer under the ten-up rule (Exchange Rule 6.86(a)); (4) improper vocalization of a trade (Exchange Rules 6.69, 6.73, an Options Floor Procedure Advice ("OFPA") G–10); (5) disruptive action involving physical contact while on the trading floor (Exchange Rule 6.2); (6) use of abusive language on the trading floor (Exchange Rule 6.2); (7) minor position limit violations (Exchange Rule 6.8); (8) minor exercise limit violations (Exchange Rule 6.9); (9) failure to submit trade data to the Exchange in a timely manner (Exchange Rule 10.2(c)); and (10) failure to file a SIPC Form SIPC–6 or Form SIPC–7 in a timely manner (Exchange Rule 2.12(a)).

As noted above, under proposed Exchange Rule 10.13(g), a floor official and/or an options OBO[11] may issue a floor citation for violations of the floor decorum and minor trading rules listed under the MRP in proposed Exchange Rule 10.13(h) and (i).[12] Paragraph (g) states that the circumstances underlying the issuance of each floor citation under the MRP shall be reviewed by a designated committee to determine the sufficiency of the evidence supporting the violation.

2. Recommend Fine Schedule for MRP Violations

The Recommended Fine Schedule for MRP violations was approved by the Commission in 1985[13] and amended in 1989.[14] The Exchange proposes to establish or increase the amount of the recommended fines for a number of MRP violations. For example, the Recommended Fine Schedule provides a maximum fine of $1,000 for disruptive action involving physical contact on the trading floor, and a maximum fine of $750 for failure to honor a ten-up

[6] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Under paragraph (c)(2) of Rule 19d–1, as amended, any disciplinary action taken by a self-regulatory organization ("SRO") for violation of the SRO's rules that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits SROs to report violations on a periodic basis rather than an immediate basis.

[7] See MRP Approval Order, *supra* note 3.

[8] See Summary Sanction Approval Order, *supra* note 4.

[9] As noted in proposed PSE Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly, any fine imposed in excess of $2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of section 19(d)(1) of the Act. See note 8, *supra*. See also Securities Exchange Act Release No. 30180 (January 22, 1992), 57 FR 59311 (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. ("NYSE") Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of section 19(d)(1) of the Act).

[10] As discussed more fully below, paragraph (g) of proposed PSE Rule 10.13 will allow a floor official and/or an options Order Book Official ("OBO") to issue a floor citation for violations of proposed paragraph (h), "Minor Rule Plan: Options Floor Decorum and Minor Trading Rule Violations," and proposed paragraph (i), "Minor Rule Plan: Equity Floor Decorum and Minor Trading Rule Violations." Under the proposal, citations issued pursuant to proposed paragraph (g) are reviewed by a designated committee which determines whether there is sufficient evidence to find a violation of the Exchange's rules. Proposed PSE Rule 10.14, "Summary Sanction Procedure," allows two floor officials to issue a citation and to impose a fine for violations of the rules specified in paragraphs (b) and (c) of proposed rule 10.14. Although several of the same rule violations are included in both proposed PSE Rule 10.13 and in proposed PSE Rule 10.14, proposed PSE Rule 10.13(g) provides that designated committees will review floor citations "Except as provided in PSE Rule 10.14 * * *." Thus, although several of the same violations are included in both proposed rules, proposed PSE Rule 10.13(g) prevents a member from being sanctioned under both proposed PSE Rule 10.13 and proposed PSE Rule 10.14 for the same offense. Telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulation, PSE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on June 23, 1993.

[11] Currently, on the options trading floor, a floor citation may only be issued by two floor officials. See PSE Rule 6.2, Commentary .05.

[12] Paragraph (h) lists 22 MRP violations, including, among other things, a floor broker's failure to use due diligence in the handling or execution of an order; a floor broker's failure to record a change in the limit or size of an order; a floor broker's improper execution of a cross transaction; a market maker's failure to respond to an OBO's call for market makers or to respond to demands for bids and/or offers; a member's inadvertent placement of a non-public order with an OBO; a member's failure to honor a ten-up market or to identify a broker-dealer order under the ten-up rule; improper communication on the floor by use of hand signals; improper vocalization of a trade; violations of standards of conduct or dress or disruptive action on the trading floor; and minor position and exercise limit violations. Under Exchange Rule 10.13(i), equity floor decorum violations involving, among other things, member conduct on the equity floor, use of badges on the equity floor, proper time stamping of trade tickets, and proper reporting of transactions executed at the Exchange, are also included in the MRP. See discussion, *supra*, on proposed additions to the MRP.

[13] See MRP Approval Order, *supra* note 3.

[14] See Securities Exchange Act Release No. 27162 (August 30, 1989), 54 FR 35969 (order approving File No. SR–PSE–89–08).

market and for improper communication on the trading floor. In addition, the Recommended Fine Schedule imposes the following sanctions for positions or exercise limit violations, each with a minimum letter of $100: (1) For one to three violations, an informal letter of caution plus $1 per contract over 5% of the applicable limit; (2) for four to six violations, $1 per contract over the limit; and (3) for seven or more violations, $5 per contract over the limit. While the Exchange does not intend to publish the Fine Schedule itself in the Rules of the Board of Governors, the PSE represents that the schedule will be circulated to the Exchange membership periodically.

3. Summary Sanction Procedure

Proposed Exchange rule 10.14, entitled "Summary Sanction Procedure," which applies to both the equity and the options floors, allows two floor officials to issue a floor citation for infractions involving, among other things, violations of a standard of conduct or dress on the trading floor, disruptive actions on the trading floor, failure to act in a professional manner, failure to time stamp an order ticket, and failure to report a transaction properly. When issuing a summary sanction, two floor officials must issue a floor citation and apprise the person cited of the alleged violation, notify the PSE's Compliance Department of the alleged violation, and indicate on the citation the amount of the fine. The violations subject to the Summary Sanction Procedure are also included in the MRP. Accordingly, the violations subject to the Summary Sanction Procedure may be adjudicated either through the summary procedures or through the MRP.[15] Sanctions imposed under proposed Exchange Rule 10.14 may be appealed pursuant to Exchange Rule 10.11.

4. Amendments to Rules Governing Hearings and Appeals

The PSE proposes to amend Exchange Rule 10.11, to be entitled "Appeal of Floor Citations and Minor Rule Plan Sanctions," to make Exchange Rule 10.11 applicable to MRP violations. Exchange Rule 10.11 allows an aggrieved person to apply to the Exchange's Compliance Department for review of a contested sanction. A person seeking review under Exchange Rule 10.11 may request permission to make an oral presentation or may request that the matter be reviewed solely on the basis of written documentation.

In addition, the PSE proposes to amend Exchange Rule 10.4, entitled "Hearing," to provide for: (1) 15 calendar days notice of the hearing date and statement of the matters to be considered; (2) an opportunity to object to the composition of the hearing panel; and (3) the furnishing to the parties of witness lists and documentary evidence.

5. Amendments to Rules Governing Admission to and Conduct on the Options Trading Floor

The PSE proposes to amend Exchange Rule 6.2, entitled "Admission to and Conduct on the Options Trading Floor," in order to make Exchange Rule 6.2 consistent with a similar rule (EFPA 1–B) governing conduct on the equity trading floor. In addition, the PSE proposes to delete OFPA F–4 from its rules and to incorporate its provisions, with minor revisions, into Exchange Rule 6.2.

The proposed amendments to Exchange Rule 6.2 make more specific the types of conduct prohibited in connection with the Exchange's standards of dress and conduct. In general, Exchange Rule 6.2 requires that all persons on the options trading floor be dressed in a manner appropriate for business purposes and that all persons on the options trading floor conduct themselves in a seemly and professional manner.

6. Fines and Charges for Late FOCUS and SIPC Reports

The Exchange proposes to amend Exchange Rule 2.12, entitled "Financial Reports," to double the charge imposed for a member organization's late filing of a Report of Financial Condition on SEC Form X–17A–5. Specifically, for reports 1–30 days late, the charge will increase from $100 to $200; for reports 31–60 days late, the charge will increase from $200 to $400; for reports 61–90 days late, the charge will increase from $400 to $800.[16]

The PSE proposes to include cases involving later filings of SIPC reports in the MRP.[17] Currently, those cases must be resolved by a hearing panel of the Ethics and Business Conduct Committee, unless the matter is resolved by offer of settlement or default judgment. The MRP's Recommended Fine Schedule imposes the following fines for late filings of Form SIPC–6 and Form SIPC–7 reports: first violation, $1,200; second violation $1,800; and third violation, $2,400.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, with the requirements of Sections 6(b)(5), 6(b)(6), and 6(b)(7) of the Act.[18]

Section 6(b)(5) of the Act requires that the rules of an exchange protect investors and the public interest. Section 6(b)(6) of the Act requires that the rules of the Exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. The Commission believes that amended MRP and the Summary Sanction Procedure should provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be unsuitable because such a proceeding would be costly and time-consuming in view of the minor nature of the violation.[19] In this regard, the Commission believes that because the rule violations contained in the MRP and the Summary Sanction Procedure are either objective or technical in nature, and are easily verifiable, they lend themselves to the use of expedited proceedings. For example, noncompliance with the Exchange's position and exercise limits, or the late filing of SIPC reports, are matters which may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings.

The Commission notes that the fine schedules proposed by the PSE are graduated to account for repeat offenders and that the Exchange may commence a formal disciplinary proceeding under Exchange Rule 10.3 if it determines that a violation otherwise

[15] As noted above, a member will not be prosecuted under both the MRP and the Summary Sanction Procedure for the same offense. See note 10, *supra*.

[16] The filing of later FOCUS reports will not be included in the PSE's MRP. See Amendment No. 5, *supra* note 5.

[17] As noted above, the PSE amended its proposal to provide that only SIPC reports filed no later than five business days after the receipt of SIPC's final notice will be included in the MRP, and to clarify that SIPC reports filed later than five business days after the receipt of SIPC's final notice will result in formal disciplinary proceedings. See Amendment Nos. 3 and 4, *supra* note 5.

[18] 15 U.S.C. 78f(b) (5), (6), and (7) (1988).

[19] The Commission notes that under both the MRP and the Summary Sanction Procedure, the Exchange retains the discretion to bring full disciplinary proceedings. The Commission expects the PSE to bring full disciplinary proceedings where appropriate, for example, in cases of egregious or repeated violations of rules subject to the MRP or the Summary Sanction Procedure.

covered by the MRP or the Summary Sanction Procedure is not minor in nature. Accordingly, the Commission believes that the proposed fine schedules will result in appropriate discipline, which should further ensure the protection of investors and the public interest. In addition, the PSE has represented that the Recommended Fine Schedule will be circulated periodically to members of the Exchange. The Commission believes that the publicizing of the fine schedule enhances the fairness of the MRP and the Summary Sanction Procedure.

Section 6(b)(7) of the Act requires the rules of the Exchange to "provide a fair procedure for the disciplining of members and persons associated with members * * *." The Commission believes that the PSE's amended MRP and Summary Sanction Procedure should allow the Exchange to impose prompt, effective and appropriate discipline without compromising respondents' rights to "fair procedures" in PSE disciplinary proceedings. As noted above, the rule violations included in the amended MRP and the Summary Sanction Procedure are easily verifiable, which reduces the risk that a fine would be imposed erroneously under the MRP or under the Summary Sanction Procedure. In addition, floor citations imposed pursuant to Exchange Rule 10.13(g) will be subject to committee review.

Further, the Commission notes that the MRP and the Summary Sanction Procedure provide procedural rights to persons who are fined (*i.e.*, notification of the rules allegedly violated, the act or omission constituting the violation and the fine imposed) and permits them to contest the imposition of the fine. Specifically, a person or organization fined under the MRP may contest the fine by filing a complaint with the PSE's Compliance Department pursuant to Exchange Rule 10.13(e) or by appealing the sanction in accordance with the procedures under Exchange Rule 10.11. A person or organization fined under the Summary Sanction Procedure may appeal the sanction under Exchange Rule 10.11. The Commission believes that the right to appeal sanctions imposed under both the MRP, including floor citations, and the Summary Sanction Procedure, will help to safeguard the procedural rights of sanctioned persons while preserving the Exchange's ability to adjudicate minor rule violations in a timely and efficient manner through the MRP and the Summary Sanction Procedure.

In addition, with regard to the Summary Sanction Procedure, the Commission continues to believe, as it did in approving the PSE's original summary sanction procedure proposal, that the safeguards built into the Exchange's summary sanctions (*i.e.*, the issuance of citations by two floor officials, the right to appeal summary sanctions, and the adherence to a Recommended Fine Schedule) adequately ensure that the due process rights of PSE members are not diminished.[20] The Commission notes, in addition, that the PSE's Summary Sanction Procedure is similar to procedures approved previously by the Commission.[21]

In summary, the Commission believes that the MRP and the Summary Sanction Procedure will provide effective deterrence and fair procedures for sanctioning members for minor rule violations. Specifically, the Commission believes that the amended MRP and the Summary Sanction Procedure will enhance the Exchange's enforcement capabilities by providing streamlined procedures for the adjudication of minor rule violations consistent with adequate due process. Moreover, by allowing minor rule violations to be processed in an expedited manner, the MRP and the Summary Sanction Procedure will permit more Exchange resources to be allocated to more complex and serious alleged violations of the Exchange's rules and the federal securities laws, and, therefore, will help to ensure that appropriate and fair discipline is imposed in those cases.

The Commission also believes that the amendments to Exchange Rule 10.4, which concern hearings in the course of formal disciplinary proceedings, providing for (1) 15 calendar days notice of the hearing date and statement of the matters to be considered, (2) and opportunity to object to the composition of the hearing panel, and (3) the furnishing to the parties of witness lists and documentary evidence, will help to ensure the procedural fairness of the Exchange's hearings. In particular, 15-day calendar notice of the matters to be considered, and the availability of witness lists and documentary evidence, should help to provide the parties with sufficient time to prepare their cases. In addition, providing parties with the opportunity to object to the composition of the hearing panel should help to ensure the integrity of the disciplinary process and that such hearings take place before qualified and impartial judges.

Finally, the Commission believes that the amendments to Exchange Rule 6.2, which make the rules governing conduct on the Exchange's options floor consistent with the rules governing conduct on the Exchange's equity floor, help to clarify and simplify the Exchange's rules by providing a uniform standard of conduct. The Commission also notes that standards of dress and conduct provided in the revised Exchange Rule 6.2 are similar to rules approved previously by the Commission.[22] The Commission believes that Exchange Rule 6.2, as amended, defines prohibited conduct with sufficient specificity to provide members with adequate notice of impermissible conduct. In addition, the Commission finds that the deletion of OFPA F–4, and its incorporation into Exchange Rule 6.2, helps to clarify the Exchange's rules and is consistent with the Exchange's plan to incorporate the OFPAs into the rules of the Exchange.[23]

Based on the above, the Commission has found that the rule changes are consistent with sections 69b)(5), (6), and (7) of the Act.

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, 4, and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, Amendment Nos. 1 and 5 remove several rules from the MRP and conform the PSE's Recommended Fine Schedule to the schedule adopted previously by the CBOE. The Commission believes that these amendments strengthen the PSE's proposal and do not raise new regulatory issues. Second, Amendment Nos. 3 and 4 clarify the proposal by providing that only SIPC reports filed later than five business days after the receipt of SIPC's final notice are included in the MRP, and that SIPC reports filed later than five days after the receipt of SIPC's final notice will be subject to formal disciplinary proceedings. Finally, Amendment No. 2 is a technical correction and raises no new regulatory issues. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments Nos. 1, 2, 3, 4, and 5 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos.

[20] See Summary Sanction Approval Order, *supra* note 4.

[21] See Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (order approving American Stock Exchange File No. 4–260).

[22] See CBOE Rule 6.20(b).

[23] See Securities Exchange Act Release No. 27903 (April 13, 1990), 55 FR 15075 (order approving File No. SR–PSE–89–24).

1, 2, 3, 4, and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 22, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (File No. SR–PSE–92–15) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15496 Filed 6–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32509; File No. SR–PSE–93–05]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Reduced Automated System Access Privilege ("ASAP") Membership Fees

June 24, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 16, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[24] 15 U.S.C. 78s(b)(2) (1982).

[25] 17 CFR 200.30–3(a)(12) (1992).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its General Membership Fees published in its Schedule of Exchange Rates by lowering its fee for Automated System Access Privilege ("ASAP") Membership.[1] The Exchange proposes to amend its fee schedule as follows:[2]

A. PSE GENERAL MEMBERSHIP FEES

ASAP MEMBERSHIP (Automated System Access Privilege): [$6,000 per year (nonrefundable)] $4,000 per year (nonrefundable)

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to lower its ASAP Membership fee from $6000 per year to $4,000 per year.[3] The Exchange is proposing this rule change in order to make its ASAP Membership Program more attractive to potential members and to make the Exchange a more competitive marketplace for the execution of securities transactions.

2. Statutory Basis

The proposed filing is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable charges among its members and persons using its facilities.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b) (3) (A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[1] On August 13, 1990, the Commission approved a PSE proposed rule change which created an electronic access membership, known as ASAP, for non-regular member broker-dealers. The ASAP system allows certain qualified broker-dealers ("ASAP Members") access to the Exchange's automated trading systems, including its electronic execution system, Securities Communication Order Routing and Execution System ("SCOREX") and its automated options trading system, Pacific Options Exchange Trading System ("POETS"), as well as any other electronic systems approved by the PSE Board of Governors. While an ASAP member is not a regular member of the Exchange, an ASAP member must be a broker-dealer registered under Section 15 of the Act, and must agree to abide by the Constitution, Rules, and Procedures of the Exchange, and consent to the disciplinary and arbitration jurisdiction of the Exchange, to the extent that such jurisdiction would relate to the dealings of the ASAP Member on the Exchange. See Securities Exchange Act Release No. 28335 (August 13, 1990), 55 FR 34106 (August 21, 1990) (order approving File No. SR–PSE–90–09).

[2] Underlining indicates material to be added; brackets indicate material to be deleted.

[3] In order to receive electronic access, the ASAP Member must pay a nonrefundable, nontransferable annual fee, which the Exchange's Board of Governors is empowered to amend each year. However, if an ASAP member becomes a regular member of the Exchange, the fee paid for the current year is subject to rebate, prorated to the date of approval. The ASAP Membership fee has been $6000 since its inception in 1990. See PSE Notice to Members Numbers ML–89–69, attached as Exhibit "A" to File No. SR–PSE–90–09.

[4] 15 U.S.C. 78f(b)(4) (1988).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–05 and should be submitted by July 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15497 Filed 6–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32514; File No. SR–PSE–92–42]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by Pacific Stock Exchange, Inc. Adopting Listing Requirements for Common Stock that Qualifies Under the Small Corporate Offering Registration Classification

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"] the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On April 23, 1993 the PSE submitted to the Commission Amendment No. 1 which includes new provisions and seeks to clarify the language of the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is submitting this rule filing in order to permit the Exchange listing and trading of common stock that qualifies under the Small Corporate Offering Registration ("SCOR") designation. The complete text of the proposed rule amendments was attached to this rule filing as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to list and trade common stock that, at the time of the offering, qualifies under the SCOR designation. Under the proposal, these securities will include all common stock of a class that has been (i) issued pursuant to Regulation A under the Securities Act of 1933 ("Securities Act"), or (ii) issued pursuant to Form U-7 of the North American Securities Administrative Association ("NSSAA")[2] (or a state variation of such form with substantially similar requirements) and issued pursuant to Rule 504 under the Securities Act. Since such securities are not currently listed or traded on any national securities exchange, the PSE believes that the implementation of the Exchange's proposal will facilitate the capital formation process for small companies and will supply much needed liquidity to public investors within a regulated marketplace. In addition, under the proposal, companies will be afforded all of the benefits of an Exchange listing, with the exception of the Blue Sky exemption from state securities registration requirements and automatic marginability.

In August 1992, the Commission adopted certain rules as part of its Small Business Initiatives program.[3] The program includes, in part, substantive changes to the "small issues" exemption from registration requirements under the Securities Act (Regulation A), as well as changes to the "seed capital" registration exemption pursuant to Rule 504 under the Securities Act. These revisions are designed to facilitate the access of small companies to capital markets and to reduce the costs of compliance with the federal securities laws.

Rule 504. The Commission's modifications to Rule 504 include the elimination of several restrictions and other changes that would allow small companies to conduct public offerings of up to $1 million in unrestricted securities during a twelve-month period. These changes are designed to allow small companies to market offerings directly to prospective investors by bypassing both the venture capital and small underwriting houses. At the state level. offerings may be registered using the SCOR registration form, Form U-7; however, such limited offering must also qualify under state Blue Sky laws that require delivery of a prospectus, offering circular, or disclosure document to all purchasers prior to sale. The Form U-7 has been supported by the American Bar Association as well as NASAA.

As of February 1993, the following thirty-one states have adopted regulations governing the registration of small corporate offerings using the Form U–7: Alaska, Arizona, California, Colorado, Connecticut, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin, and Wyoming. In addition, six states, Arkansas, Georgia, Louisiana, South Dakota, Virginia, and West Virginia, unofficially recognize the filing of Form U–7 to register small corporate offerings by qualification or by exemption.[4]

Regulation A. The Commission recently revised Regulation A to exempt from registration public offerings of up to $5 million in a twelve-month period. The disclosure requirements are embodied in the offering statement (SEC Form 1–A), and consists of three parts. The offering circular is contained in Part

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[1] See letter from Michael D. Pierson, Senior Attorney, PSE to Elizabeth M. Cosgrove, Esquire, Commission, dated April 20, 1993, which, among other things, adds: listing maintenance criteria, certain listing requirements relating to corporate governance, and a limit for issuers to one class of voting stock. Amendment No. 1 also makes a number of minor changes for stylistic and clarification purposes.

[2] In formulating the listing requirements set forth in this proposal, the Exchange consulted extensively with the Small Business Capital Formation Committee of NASAA, and many of their suggestions have been incorporated into the proposed program.

[3] See Securities and Exchange Commission Release Nos. 33–6949, 34–30968, 39–2287 (July 30, 1992), 57 FR 36442 (August 13, 1992).

[4] See Small Corporate Offering Registration Program and Form U–7, 1 Blue Sky Law Reporter (CCH) 6461 (February 1993).

II and may be prepared in three alternative formats, one of which permits the use of the same simplified disclosure statement (Form U–7) that is prescribed in SCOR offerings.

These changes to Regulations A and D, in conjunction with the efforts of several states that are in the forefront of the small business movement, will clearly benefit both the investing public as well as small companies seeking access to capital markets. The expanded use of the Form U–7 in Regulation A offerings will encourage a more effective and simplified system of raising capital. The collective efforts of federal and state agencies to streamline the registration process for small corporate offerings are especially important because the institutional venture capital industry has substantially abandoned the financing of small start-up companies, leaving them the private offering market as the only remaining source of capital. Therefore, the development of the SCOR program has made corporate offerings more flexible and less costly to small companies, without compromising investor protection.

Initial and Continued Listing Requirements. The Exchange has in place a regulatory program that will ensure close scrutiny of any company applying to list its common stock under the SCOR program. The listing qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. The merit review process is coordinated by the Exchange's Listing Department, which works directly with the Equity Listing Committee. This Committee, which is comprised of floor members, "upstairs" members and member firm representatives, has substantial collective experience in the evaluation of companies for possible listing on the Exchange.

The Exchange has developed special listing requirements that are designed to ensure a minimum level of financial performance by issuers under the SCOR program. First, at the time of application and formal request for listing, the initial offering must constitute at least 200,000 publicly held shares with an aggregate market value of at least $1 million. Second, the offering price per share must be at least $5.00 and have a minimum public distribution of 250 beneficial holders. Third, the company must have total net tangible assets of at least $500,000 or shareholders' equity of at least $1 million. Fourth, the issuer must have specific corporate governance policies which the PSE intends to propose in the future.[5] Fifth, a company listing its common stock under the SCOR designation is limited to one class of voting common stock, so that the number of shares for which the company applies is equal to the total number of shares currently issued and outstanding, plus the number of shares authorized for future issuance (for specific purposes). Finally, the issuer must either register the common stock with a state securities agency that has adopted the Form U–7 format or register it with the Commission pursuant to a Form 1–A offering statement (or substantially equivalent registration form).

In addition, under the proposal, once an issuer's common stock has been approved for listing under the SCOR program, the following requirements must also be met: First, the issuer's common stock must be registered under section 12(b) of the Act (before it may be traded on the Exchange). Second, the issuer must comply with the Exchange's listing policies and agreements, as well as the reporting and disclosure requirements of the Act. Third, in connection with any listing on the Exchange of additional shares of the company's common stock, the issuer must meet the applicable registration requirements of the Securities Act. Fourth, any sale of the company's common stock by an "affiliate" of the issuer, and any sale by any person of "restricted securities," must comply with the resale limitations of Rule 144 under the Securities Act. Fifth, an issuer listed under the SCOR program must comply with the Exchange's listing maintenance requirements set forth in Rule 3.5(h).[6] Finally, an issuer would have to meet either the Tier I or Tier II listing requirements for common stock under PSE Rule 3.2(c)[7] within 36 months after the effective date of the section 12(b) registration statement filed pursuant to the Act. The Exchange believes that such time frame is reasonable because the Tier I and Tier II listing criteria would require the issuer to have an operating history of at least three continuous years. (Once the company has been elevated to either Tier I or Tier II listing status, it would then be required to meet the applicable maintenance requirements set forth in PSE Rule 3.5(b).)[8]

Trading Environment and Transaction Reporting. The Exchange intends to allocate common stock listed under the SCOR program to a specialist for auction market trading. Any transactions in such securities would be reported on a real-time basis. Transactions in SCOR securities would be identified by a special suffix to the ticker symbol so that members, public investors and others can distinguish these securities from other securities traded on the Exchange. Finally, all of the Exchange's rules and equity surveillance procedures would be applicable to transactions in SCOR securities.

2. Statutory Basis

The Exchange states that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives in section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90

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[5] Although the Exchange currently does not have corporate governance standards, the Exchange intends to submit corporate governance standards to the Commission for approval. The PSE states that it plans to amend File No. SR–PSE–92–41, concerning equity listing and maintenance standards, to include corporate governance requirements relating to conflicts of interest, quorums, shareholder approval policies, shareholder and annual meetings, solicitations of proxies and consents, and shareholder voting rights. Telephone conversation between Michael D. Pierson, Senior Attorney, PSE, and Elizabeth Cosgrove, Attorney, Commission, on May 4, 1993.

[6] See supra note 1. The PSE included in Amendment No. 1 Rule 3.5(h) which proposed maintenance requirements for SCOR securities that include, among other things, numerical criteria for: publicly held shares, market value, beneficial holders, and bid price.

[7] See File No. SR–PSE–92–41. On November 9, 1992, the PSE submitted to the Commission a proposed rule change to amend, among other things, Rule 3.2(c).

[8] Id. File No. SR–PSE–92–41 also would amend PSE Rule 3.5(b).

days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–42 and should be submitted by July 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15569 Filed 6–30–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0173]

Dixie Business Investment Co.; License Surrender

Notice is hereby given that Dixie Business Investment Company ("DBIC"), a Louisiana corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). DBIC was licensed by the Small business Administration on August 21, 1974.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 19, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 23, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–15517 Filed 6–30–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 07/07–0093]

First of Nebraska Investment Corporation; License Surrender

Notice is hereby given that First of Nebraska Investment Corporation, One First National Center, Suite 701, Omaha, Nebraska, 68102–1596 has surrendered its license to operate as a Small Business Investment Company under the Small Business Investment Act of 1958, as amended (the Act). First of Nebraska Investment Corporation was licensed by the Small Business Administration on November 25, 1988.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on June 11, 1993 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 17, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–15537 Filed 6–30–93; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000084]

First Security Business Investment Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*), has been filed by First Security Business Investment Corporation (the Applicant), 79 South Main Street, suite 800, Salt Lake City, Utah 84111, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1993).

The proposed officers, directors and shareholders of the Applicant will be as follows:

Name	Title or position	Percent of ownership
First Security Corporation, 79 South Main Street, Salt Lake City, UT 84111	Shareholder	100.
Lynn Scott Nelson, 79 South Main Street, Salt Lake City, UT 84111	Chairman/Director	None.
Mark Douglas Howell, 79 South Main Street, Salt Lake City, UT 84111	President/Director	None.
Samuel Paul Jeppson, 79 South Main Street, Salt Lake City, UT 84111	Executive Vice Pres./Secretary/Director	None.
Louis Orin Alder, 79 South Main Street, Salt Lake City, UT 84111	Vice President/Gen. Manager	None.
Clark Rich Burbidge, 79 South Main Street, Salt Lake City, UT 84111	Vice President/Advisory Board Member	None.

The Applicant, a Utah Corporation, is expected to begin operations with $2,500,000 of private capital and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business activities in the states of Utah, Idaho, Wyoming, Nevada, Oregon, and New Mexico.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice,

submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Salt Lake City, Utah.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 21, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–15516 Filed 6–30–93; 8:45am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1825]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea and Associated Bodies et al.; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on July 16, 1993, at 9 a.m. in Room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to discuss the preparations for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 14 to 18, 1994.

Items of discussion will include the following: subdivision and damage stability standards of passenger ships; harmonization of probabilistic damage stability provisions for all ship types; the new Code of Intact Stability; technical revisions to the 1966 Load Line Convention; stability aspects of open-top container ships; and probabilistic oil outflow.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information on this SLF Working Group meeting, contact Mr. H.P. Cojeen or Mr. W.M. Hayden at (202) 267–2988; U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001.

Dated: June 23, 1993.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–15543 Filed 6–30–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 18, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48864.
Date filed: June 14, 1993.
Parties: Members of the International Air Transport Association.
Subject: Comp Telex Reso 024f—Sweden.
Proposed Effective Date: June 22, 1993

Docket Number: 48868.
Date filed: June 16, 1993.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/378 dated May 26, 1993.
Expedited Resolutions r-1 to r-9.
Proposed Effective Date: Expedited July 1, 1993.

Docket Number: 48869.
Date filed: June 16, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0542 dated June 4, 1993.
Japan-Korea Expedited Reso 002d.
Proposed Effective Date: Expedited November 1, 1993.

Docket Number: 48870.
Date filed: June 16, 1993.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Reso/P 0543 dated June 4, 1993.
Japan/Korea-South Asian subcontinent—r1–4.
TC3 Reso/P 0544 dated June 4, 1993.
Japan/Korea-Southeast Asia—r5–6.
TC3 Reso/P 0545 dated June 4, 1993.
Japan/Korea-Southeast Asia—r7–11.
TC3 Reso/P 0546 dated June 4, 1993.
Japan/Korea-Southwest Pacific—r12–14.
TC3 Reso/P 0547 dated June 4, 1993.
Japan/Korea-Southwest Pacific—r15–23.
Proposed Effective Date: Expedited July 1/August 1/October 16/November 1, 1993.

Docket Number: 48878.
Date filed: June 18, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C 0918 dated May 18, 1993.
Areawide (except USA/UST) Resos—r–1– 015aa & r–2–501.
Proposed Effective Date: October 1, 1993.

Docket Number: 48879.
Date filed: June 18, 1993.
Parties: Members of the International Air Transport Association.
Subject:
TC12 Reso/C 0920 dated May 18, 1993,
North Atlantic (except USA/UST) Resos.
Rates—TC12 Rates 0486 dated May 29, 1993, Minutes—TC12 Meet/C 0302 dated June 11, 1993, r–1–001aa, R–2–002, r–3–554a, r–4–584b, r–5–584cc, r–6–590.
Proposed Effective Date: October 1, 1993.

Docket Number: 48880.
Date filed: June 18, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC23 Telex Mail Vote 635—Australia-Europe fares.
Proposed Effective Date: July 15, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–15473 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 18, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48873.
Date filed: June 17, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 15, 1993.
Description: Application of Federal Express Corporation, pursuant to section 401 of the Act, and subpart Q of the Act, for a certificate of public convenience and necessity authorizing it to operate scheduled all-cargo foreign air transportation between the United States and Chile.

Docket Number: 48877.
Date filed: June 18, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 16, 1993.

VOL 58 ISS 125 JL 1 1993 UMI

Description: Application of Southeast Express Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests a fitness determination and issuance of a Certificate of Public Convenience and Necessity to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket Number: 48729.
Date filed: June 16, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 1993.
Description: Amendment No. 1 and Supplement To Application of Nations Air Express, Inc. (formerly M.W. McDonald, Inc.) d/b/a Miami Air Charter (Nations Air), (1) to request issuance of a certificate of public convenience and necessity to engage in scheduled, instead of charter only, interstate and overseas air transportation, and (2) to reflect the change of name of the applicant from M.W. McDonald, Inc. d/b/a Miami Air Charter to Nations Air Express, Inc. d/b/a Miami Air Charter.

Docket Number: 44992.
Date filed: June 17, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 15, 1993.
Description: Application of Compania De Aviacion "Faucett", S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies to amend its foreign air carrier permit to the extent necessary to authorize Faucett to provide once-per-week scheduled foreign air transportation of property and mail between the terminal point Lima, Peru, on the one hand, and the terminal point, Miami, Florida, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–15474 Filed 6–30–93; 8:45 am]
BILLING CODE 4910-62-P

Federal Aviation Administration

Improvements to the General Aviation Activity and Avionics Survey

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice.

SUMMARY: Notice is hereby given that the FAA intends to hold a public meeting to present and discuss proposed plans to improve the General Aviation Activity and Avionics Survey. The FAA plans to redesign this survey in response to suggestions for improvements in the amount and type of data collected, the frequency of collection, and actions to increase the statistical validity of the data.

DATES: Public meeting will be held at 2 p.m. on July 20, 1993, at the General Aviation Manufacturers Association, suite 801, 1400 K Street NW., Washington, DC 20005. The proposal will be sent to those who submitted written comments about the survey at least one week prior to the July 20 meeting. Any others wishing to receive the package should call or send a request to the address below.

ADDRESSES: Federal Aviation Administration, Office of Aviation Policy, Plans, and Management Analysis, (APO–110), 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Patricia Beardsley, FAA, Statistics and Forecast Branch, APO–110, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8032.

SUPPLEMENTARY INFORMATION: The FAA is evaluating the need for changes and improvements to the General Aviation Activity and Avionics Survey for survey data year 1993. FAA held a public meeting at 3 p.m. on May 3, 1993, at the General Aviation Manufacturers Association to provide information as to: the timetable for the 1993 survey, the FAA evaluation process, changes suggested to date, and preliminary criteria under consideration to evaluate change suggestions. All interested persons were invited to attend this meeting and submit written suggestions for changes and/or improvements to the survey design, the statistical analysis of the data, the frequency of collection, and any other related elements.

The FAA has evaluated these suggestions and has formulated a proposal for an improved survey. The purpose of the second meeting is to present and discuss the proposal with interested parties. Copies of the proposal will be sent to those who submitted written comments for their prior review. Other interested parties may request copies of this proposal from the FAA.

Penny L. Mefford,
Manager, Planning Analysis Division, (APO–100).
[FR Doc. 93–15560 Filed 6–30–93; 8:45 am]
BILLING CODE 4910-13-M

Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC); Tweed-New Haven Airport, CT

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Tweed-New Haven Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 2, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce H. Lawson, Airport Manager of the Tweed-New Haven Airport at the following address: Tweed-New Haven Airport, Terminal Building, 155 Burr Street, New Haven, Connecticut 06512.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of New Haven under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Tweed-New Haven Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 14, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of New Haven

was substantially complete within the requirements of § 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than September 11, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1994
Proposed charge expiration date: July 31, 1999
Total estimated PFC revenue: $2,490,450
Brief description of proposed project:
Land Acquisition

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On Demand Air Taxi/Charter Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tweed-New Haven Airport, Terminal Building, 155 Burr Street, New Haven, Connecticut 06512.

Issued in Burlington, Massachusetts on June 22, 1993.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 93–15561 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yuma County International Airport, Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yuma International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 2, 1993

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports Division, Standards Section, AWP—621, P.O. Box 92007, WWPC, Los Angeles, CA 90009.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. E. M. Thurmond, A.A.E. Airport Manager of the Yuma International Airport at the following address:

Yuma County Airport Authority, 2191 East 32nd Street, Yuma, Arizona 85365.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Yuma County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621, Federal Aviation Administration, P.O. Box 92007, WWPC, Los Angeles, CA 90009, (310) 297–1029.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invite public comment on the application to impose and use the revenue from a PFC at Yuma International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 10, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Yuma County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 9, 1993. The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: September 1, 1993
Proposed charge expiration date: August 31, 2003
Total estimated PFC revenue: $1,678,064.00
Brief description of proposed project(s):

Expand Large Aircraft Parking Apron; Construct a New Access Road; Install PAPIs on Each End of Runway 8/26; Construct two Heliports; Install PAPI on Runway 35; Erosion Protection/Soil Stabilization; Land Acquisition; Terminal Study; Terminal Design; Construct new Terminal Building; Remove Administration building; Construct Terminal Apron.

Class or Classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at:

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3024, Hawthorne, California 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yuma County Airport Authority.

Issued in Hawthorne, California on June 16, 1993.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western Pacific Region.

[FR Doc. 93–15563 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–13–P

Federal Highway Administration

Environmental Impact Statement; Little River, Miller, and Sevier Counties, AR, and Bowie County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a highway project in Little River, Miller, and Sevier Counties, Arkansas, and Bowie County, Texas.

FOR FURTHER INFORMATION CONTACT: Wendall L. Meyer, Environmental and Design Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas, 72201–3298, Telephone: (501) 324–6430; or Reid Beckel, Consultant Coordinator, Chief Engineer, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, Telephone: (501) 569–2163.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane, divided, fully controlled access facility located on new alignment. The project will serve southwest Arkansas and northeast Texas, including Little River, Miller, and Sevier Counties, Arkansas, and Bowie County, Texas. The proposed project along U.S. 71, from north of DeQueen, Arkansas, to Texarkana, Arkansas-Texas, includes

VOL 58 ISS 125 JL 1 1993 UMI

several alternatives based on new location corridors and varying termini. The approximate length of the project is 50 miles.

The proposed improvements would improve the capacity of the existing route and increase regional mobility along a proposed ultimate route extending from Kansas City, Missouri, to Shreveport, Louisiana. This project is one of several projects identified as "high priority corridors" on the National Highway System that would provide a transportation corridor of national significance from Kansas City to Shreveport. This proposed improvement will draw new traffic through southwest Arkansas and serve as both a short-term and long-term economic stimulus, promoting development in this currently rural area. Major metropolitan areas lying along this "high priority corridor" include Kansas City, Kansas-Missouri; Joplin, Missouri; Fayetteville, Arkansas; Fort Smith, Arkansas; Texarkansas-Texas; and Shreveport, Louisiana.

The northern terminus of the proposed improvements will connect to existing tow-lane U.S. 71 just north of DeQueen, Arkansas. U.S. 71, north from this point, is scheduled for replacement with a similar four-lane improvement soon after this 50-mile section. The southern terminus of this project will connect with either U.S. 59 or Loop 245 at I–30 on either the Texas or Arkansas side of Texarkana. Loop 151/245 in Texas/Arkansas is currently being designed from I–30 around the south side of Texarkana. South of this project, a four-lane improvement from Texarkana, south to the Louisiana State Line, is under study for U.S. 71 in parallel with this project.

Alternatives to be considered are: (1) the "Do-Nothing" Alternative, where roads are constructed according to the regional plan with the exception of the proposed faciility; (2) the "Reconstruction" Alternative, where existing U.S. 71 and roads on the regional plan are upgraded to handle traffic forecast for the proposed facility, but with less than full control of access; and (3) the "New Location" Alternative, considering several different alignments and full control of access.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past, and to major Arkansas and northeast Texas newspapers. A series of public involvement sessions will be held in the areas to be affected. In addition, a formal public hearing will be held. Public notice will be given of the time and place of the public involvement sessions and the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held. Date and location for the scoping meeting will be determined as the project progresses.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: June 21, 1993.

Wendall L. Meyer,

Environmental and Design Specialist, FHWA, Little Rock, Arkansas.

[FR Doc. 93–15460 Filed 6–30–93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Monroe County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monroe County.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1088, Harrisburg, Pennsylvania 17108–1088, Telephone: (717) 782–4422 or Robert J. Keller, Project Manager, Pennsylvania Department of Transportation, 2460 Parkwood Drive, Allentown, Pennsylvania, 18103, Telephone: (215) 791–6019.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement for a section of U.S. Route 209 in Monroe County, Pennsylvania. The area of study for this project encompasses an area that is bounded on the north by the developed limits of the Marshalls Creek Urbanized area and on the south by I–80. The western boundary is approximately one mile west of the Business Route 209 and US Route 209 intersection. The eastern boundary for this study might extend to the Monroe/Pike County line. This boundary will be more precisely defined as this environmental study progresses. The primary purpose of this project is to relieve congestion along U.S. Route 209, Business Route 209, PA Route 402, and Creek Road in the vicinity of Marshalls Creek, and eliminate back-ups onto I–80 from U.S. Route 209. The improved access should be consistent with the deficiencies that exist in capacity, safety and access as described in the Comprehensive Transportation Needs Analysis Report and will support the Monroe County and Local Township Comprehensive Plans.

PennDOT has recently completed a Comprehensive Needs Analysis for this project. The results of this study were published in a report titled: "Marshalls Creek Access Study, Statement of Project Need", Dated March 31, 1992. This study concluded that improvements to the U.S. Route 209 in the Marshalls Creek vicinity are needed to:

- Relieve congestion along U.S. Route 209, Business Route 209, PA Route 402 and Creek Road in the vicinity of Marshalls Creek, and eliminate back-ups onto I–80 from U.S. Route 209.
- Improve air quality by reducing fuel consumption and vehicle emissions.
- Facilitate travel through Marshalls Creek for local and through traffic.
- Provide reduced response time for emergency vehicles.
- Improve the quality of life for local residents of Monroe County.
- Provide traffic capacity improvements which will be compatible with planned local development, State and Federal transportation plans, and which consider county and local government goals and objectives.

A wide range of alternatives will be developed and investigated during this study. The array of alternatives to be addressed include:

- Transportation Systems Management (TSM)
- Capital Intensive Transit Alternative
- Reconstruction on Existing Roadway
- New location/new alignments
- No-Build

PennDOT's goal in developing these alternatives will be to ensure that all reasonable project alternatives will be considered in the Preliminary Alternative Study, and that the selection of alternatives to study in detail will have considered all reasonable

transportation proposals. A preliminary Alternative Analysis will evaluate all suggested alternatives against the need and environmental and engineering constraints. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to State and Federal agencies for those alternatives recommended as feasible by the Preliminary Alternative Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which best meets the need of the traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public comments. An active public participation program will be pursued during the project. At the beginning of the study, an advertisement will be placed in local newspapers and the Pennsylvania Bulletin informing the public and public agencies of the study and soliciting names of individuals, organizations and agencies interested in participating in the Study. A Citizens' Advisory Committee will meet regularly to provide liaison between the Commonwealth of Pennsylvania and local citizens, and participate in all aspects of the study.

Public Meetings will be held throughout the study to gather input to be used in the study and distribute information of the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to PennDOT or the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

Issued on: June 15, 1993.

George L. Hanner,

Assistant Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 93–15461 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3239

Applicants

Burlington Northern Railroad Company, Mr. William G. Peterson, Director, Control System Engineering, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136

Chicago and Central Pacific Railroad, Mr. John A. Adair, Chief Engineer, 1006 East Fourth Street, P.O. Box 1800, Waterloo, Iowa 50704

Burlington Northern Railroad Company (BN) and Chicago and Central Pacific Railroad (CCP) jointly seek approval of the proposed signal modifications and rearrangement, between Portage, milepost 172.30, and East Dubuque, Illinois, milepost 185.5, on the LaCrosse Division, Aurora Subdivision, associated with the installation of electronic coded track circuits and conversion to centralized traffic control operation.

The reason given for the proposed changes is BN's recent purchase of portions of the trackage from the CCP with the acquisition of all signals and controls, the interlocking equipment is obsolete and in need of replacement, and to conform with the BN standards for installation of electronic coded track circuits.

BS–AP—No. 3240

Applicant

CSX Transportation, Mr. W.J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

CSX Transportation seeks approval of the proposed discontinuance of the automatic block signal system on Track No. 10, between milepost CLS63.7 and milepost CLS64.6, near Peach Creek, West Virginia, Huntington Division, Logan Subdivision, consisting of the discontinuance and removal of two dwarf signals.

The reason given for the proposed changes is that the automatic block signal system is no longer needed for present day operation.

BS–AP—No. 3241

Applicant

CSX Transportation, Mr. W.J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

CSX Transportation seeks approval of the proposed modification of the signal system at "W&A 1096," milepost SG577.3, in Atlanta, Georgia, Atlanta Division, Abbeville Subdivision, consisting of the discontinuance and removal of one controlled signal.

The reason given for the proposed changes is that the controlled signal is no longer needed for present day operation.

BS–AP—No. 3242

Applicant

Norfolk Southern Corporation, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, SW., Atlanta, Georgia 30303

The Norfolk Southern Corporation seeks approval of the proposed modification of "Bannon" Interlocking, milepost N–698.5, near Columbus, Ohio, Lake Division, Columbus District, Northern Region, consisting of the conversion of power-operated switch 279 to hand operation and the relocation of controlled signals 278L and 278R to milepost N–698.7.

The reason given for the proposed change is to improve operations and increase efficiency.

BS–AP—No. 3243

Applicant

Three Rivers Railway Company, Mr. John M. Gibson, Jr., President, Suite 780 Commerce Court, Four Station Square, Pittsburgh, Pennsylvania 15219–1199

The Three Rivers Railway Company seeks approval of the proposed discontinuance and removal of the traffic control and automatic block signal systems on the single and double main tracks, between McKeesport, Pennsylvania, milepost 15.3M–Y and Newell, Pennsylvania, milepost 51.5M,

on the Mon Subdivision, a distance of approximately 36 miles.

The reason given for the proposed changes is that the traffic density does not warrant the retention of the signal system.

BS–AP—No. 3244

Applicant

CSX Transportation, Mr. W. J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202.

CSX Transportation seeks approval of the proposed modification of the signal system on the single main track between milepost CLS3.6, near Barboursville, West Virginia and milepost CLS33.7, near Ranger, West Virginia, Huntington Division, Logan Subdivision; consisting of the relocation of six automatic signals, numbers 78, 79, 144, 149, 280, and 281.

The reason given for the proposed changes is the installation of electronic coded track circuits associated with pole line elimination.

BS–AP—No. 3245

Applicant

New Orleans Public Belt Railroad, Mr. A. C. Marinello, Jr., Manager, Engineering and Maintenance, P. O. Box 51658, New Orleans, Louisiana 70151–1658

The New Orleans Public Belt Railroad seeks approval of the proposed discontinuance and removal of the automatic block signal system on the two main tracks between Lambert Junction, milepost J0.2 and Louisiana Avenue, milepost 5.5, near New Orleans, Louisiana; consisting of the discontinuance and removal of 19 block signals (55, 54, 51, 50, 45, 44, 41, 40, 33, 30, 23, 22, 15, 14, 13, 12, 5, 4, and 2).

The reason given for the proposed changes is that traffic patterns have changed, with traffic significantly reduced and reduction to a single main line operation with no longer having tenant lines between milepost 5.5 and milepost 3.5.

BS–AP—No. 3246

Applicant

Norfolk Southern Corporation, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, SW., Atlanta, Georgia 30303

The Norfolk Southern Corporation seeks approval of the proposed modification of the traffic control system, near Williamson, West Virginia, milepost 468.8, Pocahontas District, Pocahontas Division, Eastern Region; consisting of the discontinuance and removal of signal W–4.

The reason given for the proposed change is to improve operations and increase efficiency.

BS–AP–No. 3247

Applicant:

Burlington Northern Railroad Company, Mr. William. G. Peterson, Director Control System Engineering, 9401 Indian Creek Parkway, P. O. Box 29136, Overland Park, Kansas 66201–9136

The Burlington Northern Railroad Company seeks approval of the proposed discontinuance and removal of the manual interlocking and signals on the single main track between Whitmarsh, Washington, milepost 6.4 and Whitney, Washington, milepost 9.6, on the Cascade Division, Bellingham Subdivision, associated with the installation of one mile draw span signs, stop signs, and split point derails.

The reason given for the proposed changes is that the interlocking equipment is obsolete, and the cost to rehabilitate the interlocking is not warranted by its limited use.

Rules Standards & Instructions Application (RS&I-AP) No. 1088

Applicant:

The Atchison Topeka and Santa Fe Railway Company, Mr. M. W. Franke, Vice President-Maintenance, 1700 East Golf Road, Schaumburg, Illinois 60173–5860

The Atchison Topeka and Santa Fe Railway Company (ATSF) seeks relief from the requirements of 49 CFR part 236, Section 236.110 of the Rules, Standard and Instructions to the extent that ATSF be permitted to file electronic reports of test results instead of recording the test results on preprinted or computerized paper forms signed by the employee making the test.

Applicant's justification for relief: Implementation of an E-Mail reporting system would both reduce costs and provide an immediate increase in efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on June 25, 1993.

Phil Olekszyk

Deputy Associate Administrator for Safety

[FR Doc. 93–15564 Filed 6–30–93; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 25, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0074

Form Number: IRS Form 1040 and Schedules A, B, C, C–EZ, D, E, EIC, F, R, and SE

Type of Review: Revision

Title: U.S. Individual Income Tax Return

Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.

Respondents: Individuals or households

Estimated Number of Respondents/ Recordkeepers: 68,786,268

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1040	3 hr., 8 min	2 hr., 45 min	3 hr., 45 min	53 min.
Sch. A	2 hr., 32 min	24 min	1 hr., 9 min	27 min.
Sch. B	33 min	8 min	17 min	20 min.
Sch. C	6 hr., 26 min	1 hr., 10 min	2 hr., 4 min	35 min.
Sch. C–EZ	46 min	4 min	17 min	20 min.
Sch. D	51 min	43 min	1 hr., 13 min	48 min.
Sch. E	2 hr., 52 min	1 hr., 6 min	1 hr., 16 min	35 min.
Sch. EIC	40 min	19 min	49 min	55 min.
Sch. F:				
Cash method	4 hr., 2 min	34 min	1 hr., 14 min	20 min.
Accrual method	4 hr., 22 min	25 min	1 hr., 19 min	20 min.
Sch. R	20 min	15 min	22 min	35 min.
Sch. SE:				
Short	20 min	13 min	10 min	14 min.
Long	26 min	22 min	38 min	20 min.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,117,862,200 hours
OMB Number: 1545–0099
Form Number: IRS Form 1065, Schedule D (Form 1065) and Schedule K–1 (Form 1065)
Type of Review: Revision
Title: U.S. Partnership Return of Income (Form 1065) Capital Gains and Losses (Schedule D) Partner's Share of Income, Credits, Deductions, etc. (Schedule K–1)
Description: Internal Revenue Code (IRC) section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.
Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 1,610,000
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1065	Schedule D (Form 1065)	Schedule K–1 (Form 1065)
Recordkeeping	38 hr., 53 min	5 hr., 30 min	24 hr., 38 min.
Learing about the law or the form	17 hr., 35 min	1 hr., 12 min	8 hr., 9 min.
Preparing the form	30 hr., 19 min	1 hr., 20 min	8 hr., 55 min.
Copying, assembling, and sending the form to the IRS	3 hr., 13 min.		

Frequency of Response: Annually
Estimated Total Reporting/Recording Burden: 835,843,952 hours
OMB Number: 1545–0193
Form Number: IRS Form 4972
Type of Review: Revision
Title: Tax on Lump-Sum Distributions
Description: Internal Revenue Code (IRC) section 402(e) allows taxpayers to compute a separate tax on lump-sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The data is used to verify the correctness of the separate tax. Form 4972 is also used to make the special 20% capital gain election attributable to pre-1974 participation from the lump-sum distribution.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 140,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 33 minutes
Learning about the law or the form: 27 minutes
Preparing the form: 1 hour, 46 minutes
Copying, assembling, and sending the form to the IRS 35 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recording Burden: 467,600 hours
OMB Number: 1545–0988
Form Number: IRS Form 8069 and Schedule A (Form 8609)
Type of Review: Revision
Title: Low-Income Housing Credit Allocation Certification (8069) Annual Statement (Schedule A)
Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owners to certify necessary information required by the law.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 240,000
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8069	Schedule A
Record-keeping.	8 hr., 22 min ..	6 hr., 41 min.
Learing about the law or the form.	2 hr., 35 min ..	1 hr., 29 min.
Preparing the form to the IRS.	2 hr., 50 min ..	1 hr., 38 min.

Frequency of Response: Annually
Estimated Total Reporting/Recording Burden: 2,663,400 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-15551 Filed 6-30-93; 8:45 am]

BILLING CODE 6820-01-M

Customs Service

[T.D. 93-46]

Accreditation of United Chemical Testing, Inc. To Perform Certain Laboratory Analysis for Customs Purposes

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of accreditation of United Chemical Testing, Inc. to perform certain laboratory analysis for Customs purposes.

SUMMARY: United Chemical Testing, Inc. of Baytown, Texas has been given Customs accreditation under § 151.13 of the Customs Regulations (19 CFR 151.13) to perform the following laboratory analyses: API Gravity, Sediment and Water, Water by Distillation, Sediment by Extraction, Reid Vapor Pressure, Saybolt Universal Viscosity, Percent by Weight Sulfur, Percent by Weight Lead, Isomer Composition, Distillation Characteristics, Identity and Composition by Weight of Benzene, Toluene and Xylene.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, United Chemical Testing, Inc., 7503 Bayway Drive, Baytown, Texas 77520 is accredited to perform the laboratory analyses named above and report the results to all Customs districts.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant For Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, D.C. 20229 (202-927-1060).

Dated: June 25, 1993.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93-15579 Filed 6-30-93; 8:45 am]

BILLING CODE 4820-02-P

Procedures If Generalized System of Preferences Program Expires

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a preferential trade program that allows the products of many developing countries to enter the United States duty-free. The GSP is currently scheduled to expire at midnight on July 4, 1993, unless extended by law. This document is notice to importers that claims for duty-free treatment under GSP may not be made for merchandise entered or withdrawn from a warehouse on or after July 5, 1993, if the program is not extended before that date. The document also sets forth Customs mechanism to facilitate refunds, if GSP is renewed retroactively.

DATES: The plan set forth in this document will become effective as of July 5, 1993, if Congress does not extend the GSP program before that date.

FOR FURTHER INFORMATION CONTACT: For general operational aspects: Lisa Crosby, Office of Trade Operations, 202-927-0163; For specific questions relating to the Automated Commercial Systems: Iry Fisher, Office of Automated Commercial System, 202-927-1220.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465) (the Act) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive Order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974, as amended (19 U.S.C. 2462(a)(1), 2463(a)). Pursuant to 19 U.S.C. 2465, no duty-free treatment under GSP shall remain in effect after July 4, 1993.

Congress is currently considering whether to extend the GSP program. A provision to extend the GSP through September 30, 1994, was included in the 1993 Budget Reconciliation Act. This act was recently approved by the House of Representatives and is awaiting action by the Senate. The provision to extend GSP that was passed by the House would permit the refund of duties paid while the program was lapsed, upon the request of the importer.

If Congress does not pass legislation renewing GSP before midnight, July 4, 1993, no claims for duty-free treatment under the program may be made after that time. If Congress passes legislation after that date renewing the GSP retroactively, Customs will need to reliquidate numerous entries to make refunds.

Recognizing the impact that retroactive renewal and numerous reliquidations would have on both importers and Customs, Customs Headquarters consulted with regional offices, importers and Customs brokers to develop a mechanism to facilitate refunds, should GSP be renewed retroactively. Set forth below is Customs plan that will be implemented July 5, 1993, if the GSP has not been extended.

Claims Duties Must Be Deposited

No claims for duty-free treatment under the GSP may be made for merchandise entered or withdrawn from warehouse or withdrawn from warehouse on or after July 5, 1993. Duties at the most-favored-nation rate must be deposited, or a claim may be made under another preferential program for which the merchandise qualifies (e.g., Andean Trade Preference Act, Caribbean Basin Initiative, U.S.-Israel Free Trade Area Agreement).

While duty must be paid, all filers, other than those using the Automated Broker Interface (ABI) who file paperless entry summaries, may continue to file using the Special Program Indicator (SPI) for the GSP (the letter "A") as a prefix to the tariff number for all entries that would have qualified for GSP if GSP were still in effect. Customs Automated Commercial System (ACS) will be reprogrammed to accept the SPI "A" with the payment of duty.

Filers using the ABI may reprogram their software so that the SPI "A" can still be used as a prefix to the tariff number. While reprogramming is strictly voluntary, continued use of the SPI "A" has some benefits.

The benefits of continued use of the SPI "A" include that, if the filer also flags the entry summary with a blue cover sheet as discussed below, the filer will not have to write a letter to Customs requesting a refund if GSP is renewed retroactively. In other words, after July 4, 1993, the SPI "A", along with the blue cover sheet discussed below, will constitute an importer's request for a refund of duties paid for GSP line items, should the GSP be renewed retroactively. Other benefits are that ACS will perform its usual edits on the information transmitted by the filer, thereby ensuring GSP claims are for acceptable country/tariff combinations and the need for numerous statistical corrections will be eliminated.

Details on the programming changes required have been issued as an administrative message to all ABI filers.

Filers who do not wish to reprogram have two options. They can continue to use ABI, but not use the prefix "A" or they can file summaries off-line (non-ABI).

Filers continuing to use the SPI "A" may use it as they do now (e.g., for warehouse entries, for formal consumption entries, for both ABI and non-ABI entries).

A claim for a preferential rate under another trade program, however, will preclude use of the SPI "A" to request a refund. Thus, an importer entering merchandise using a reduced rate under the U.S. Israel Free Trade Area Agreement will be precluded from using the "A" to request that the U.S.-Israel FTA claim be converted to a GSP claim, should the GSP be renewed retroactively. Importers, however, may make such a request in writing if and when the GSP is renewed retroactively.

Customs stresses that to continue using the SPI "A", filers, as well as filing paper entry summaries, must flag the summary with a blue cover sheet indicating that the importer is requesting any GSP refund authorized by law. This blue cover sheet aids tracking of these summaries and serves as an audit trail to explain a later refund of duties. Suggested wording for the cover sheet is:

TO: U.S. Customs Service, _____District

The attached entry summary covers merchandise which meets the requirements of the Generalized System of Preferences (GSP). Please refund duties paid for line items identified with the prefix "A" if such refund is authorized by the 1993 Budget Reconciliation Act or other provision of law.

Customs emphasizes that those wishing to file paperless entry summaries may not use the SPI "A" and must request a refund in writing if and when the GSP is renewed retroactively.

Statistics

For statistical purposes, ACS will internally convert any "A" transmitted via ABI after July 4 into a "Q"; for non-ABI summaries, the Bureau of the Census will convert the "A" to a "Q". If the GSP is renewed retroactively, Census will convert all "Q" statistics into "A" statistics, thereby ensuring that next year's competitive need limitations under the GSP are accurate. This will also vastly reduce the number of statistical corrections that must be done by import specialists.

Acceptance of Entry Summaries

Upon acceptance, entry summaries will be reviewed according to existing summary selectivity.

Liquidated summaries will be rebatched using a special function that will flag the batch at the entry level with the letter "G" for "GSP" (e.g., 930706–I17E–001–G01).

If the entry summary cannot be liquidated because of some outstanding issue (e.g., antidumping duties), the summary will be placed in the appropriate holding code, according to the standard operating procedure.

If merchandise for which a GSP claim has been made is ineligible for GSP treatment, the import specialist shall issue a CF 29 ("Notice of Action") to the importer indicating that the claim has been denied. Because duties will have been deposited, it will be unnecessary to liquidate the summary with a change —the CF 29 will be the importer's only notification that the GSP claim has been denied. As always, importers may protest denied GSP claims under 19 U.S.C. 1514 and 19 CFR part 174.

Informal Entries

Informal entries filed via ABI on a Customs Form 7501 will be rebatched using the DOCG function and stored with the GSP duty-paid summaries. Separate procedures will be used for other kinds of informal entries.

Refunds

If the GSP is renewed retroactively, Customs Headquarters will issue instructions to reliquidate summaries in the GSP duty-paid batches with a refund for the GSP line items, and to provide administrative refunds for summaries that cannot be liquidated. Field locations shall not issue GSP refunds until instructed to do so by Customs Headquarters.

If a filer submitted an entry summary with both the SPI "A" and the blue cover sheet, no further action would need to be taken by the filer to request a refund; filing with the SPI "A" and the blue cover sheet constitutes a valid claim for a refund.

Refunds for summaries filed without the SPI "A" and the blue cover sheet must be requested in writing. Instructions on how to request a refund in writing will be issued if and when the GSP is renewed retroactively.

The GSP provision as currently written requires that importers request refunds within 180 days of the date of enactment of the Act. Customs will also process claims according to the requirements of 19 U.S.C. 1520(c). Of course, entry summaries filed using the SPI "A" and the cover sheet will receive refunds without further action, since the SPI and cover sheet constitute the importer's advance request for a refund.

Dated: June 28, 1993.

Samuel H. Banks,

Assistant Commissioner, Commercial Operations.

[FR Doc. 93–15558 Filed 6–30–93; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

U.S.–NIS Summer Language Teacher Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S.-based international exchange organizations, accredited U.S. institutions, or consortia of accredited U.S. institutions, for the development of a summer language teacher exchange program between the United States and selected countries in the Newly Independent States (NIS). The goal of this program is to improve the teaching of American English and culture in the NIS and the teaching of the languages and cultures of the countries within the NIS to the citizens of the U.S. The purpose of the program is to conduct an intensive summer language enhancement program through academic coursework, seminars, practica, and/or panel discussions, for up to 40 participants in each direction. Preference will be given to proposals that exchange participants, to the extent feasible, from all eligible countries in the NIS. These exchanges are subject to the availability of funding for Fiscal Year 1994.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Wednesday, September 8, 1993. Faxed documents will not be accepted, nor will documents postmarked on September 8, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline.

Duration: The exchange of participants for the U.S.-NIS Summer Language Teacher Exchange Program should be a minimum of five weeks in duration, but should not exceed a maximum of fourteen weeks. It is expected that the program will take place during the summer of 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted to: U.S. Information Agency, Reference: U.S.-NIS Summer, Language Teacher

VOL 58 ISS 125 JL 1 1993 UMI

Exchange Program, Grants Management Division, E/XE, room 336, 301 4th Street, S.W., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call: Mary Ann Garlic or Ted Kniker, U.S. Information Agency, 301 4th Street, S.W., European Branch, Academic Exchanges Division, E/AEE room 208, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the ACt is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Program Requirements

Support is offered for programs which bring citizens from the NIS who are English language educators to the U.S., and U.S. citizens who are language educators in one or more of the languages and cultures of the following eligible countries: Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan, for advanced language instruction. Grantees should make an effort to recruit from all eligible countries as feasible.

Programs must be two-way. While it is desirable to place American participants in as many countries as possible, strict reciprocity of placements is not required. Participants are expected to be placed as a group or in subgroups at one or more locations. The study program should focus on U.S. and NIS languages such as Slavic, Uralic, Altaic, Russian and other related languages.

The goal of this program is to improve the teaching of American English and culture in the NIS and the teaching of the various languages and cultures of the countries of the NIS to Americans. The type of language instruction should be described in detail in the proposal. The course work should enhance the knowledge of the NIS and U.S. participants. Course offered may include, but are not limited to, language teaching methodologies, grammar, phonetics, and conversation. The program should provide for an area studies component, details of which should be provided by the applicant in the proposal. The program should also provide professional development to the American and NIS language instructors.

It is expected that when each participant returns to his or her home country he or she will share his or her newly gained knowledge of the language and culture with students, colleagues, and future language teachers. Programs for study in fields other than language studies will not be considered. Programs in the U.S. are expected to be conducted in English. Programs in the NIS are expected to be conducted in the native or instructional language of the host country. Participants are expected to study and travel as a group or in subgroups.

*Please Note: Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities.

In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants.

Participant Selection

The proposal must include detailed descriptions of the selection processes for participants, both foreign and American. Participants must be citizens of the U.S. or one of the countries of the NIS and must be high school teachers or college faculty currently involved in the instruction of the language to be studied. U.S. and foreign participants must be recruited nationally. Priority will be given to projects that demonstrate the widest geographic representation of participant recruitment. A goal for this program is to select teachers and faculty from geographically diverse areas in the home country. Preference will be given to projects in which participants are recruited through open, merit-based competition.

Guidelines

Language qualifications: Participants should have sufficient fluency in the native or instructional language of the host country to be able to pursue university level study and be able to converse with citizens of the country without the aid of interpreters.

Institutional Commitment: Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partner institutions presidents, chancellors, or directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be accepted when appropriate, replacing individual documentation from each foreign educational institution involved.

Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions.

Orientation Programs

Participants should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these orientation programs, including costs, in detail.

General Requirements

Programs must comply with J visa regulations and should reference this adherence in the proposal narrative. Proposals must comply with reporting and witholding regulations for federal, state and local taxes as applicable. Applicants should demonstrate tax regulation adherence in the proposal narrative and budget notes.

Proposal Narrative

The proposal narrative describing the program must conform to the aforementioned Guidelines dated April 1993 and must include any subgrants to be issued. The narrative must also describe in detail the abilities of the

participating organizations to adapt to the changing exchange environments in the countries eligible for participation in this program. The proposal should also detail the program activities in each country, including the courses offered, who will teach the courses, what the courses will cover, and how the courses relate to the enhancement of participants' language or teaching skills.

Proposed Budget

One or two project awards to U.S. organizations will be made in a wide range of amounts, but combined awards will not exceed $240,000, which includes program and administrative costs.

The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount.

All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. The budget should list all sources of support for the program in fiscal year 1994, including both cash and in-kind contributions.

Allowable costs

Grant-funded items of expenditure may include, but are not limited to, the following categories:

Program Costs

—International Travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs for supervisors or resident directors, for no more than one program supervisor per twenty participants;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the project); and
—Taxes and visa fees.

Administrative costs—Not to exceed 20% of the requested budget.

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other Direct Costs; and
—Indirect Costs.

Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility.

Ineligible Proposals: Proposals may be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package, including the Guidelines dated April, 1993.

Eligible Proposals: Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associated Director for Educational and Cultural affairs. Final technical authority for grant awards resides with USIA's contracting officer.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost-effectiveness—greatest return on each grant dollar. A key measure of cost-effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of exchanges (people moved). The Agency also reviews the ratio of cost-sharing exhibited. Cost-sharing through other financial support as well as institutional direct and in-kind funding contributions is strongly encouraged.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan, including academic rigor, thorough conception of project, demonstration of meeting student needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA before, the demonstrated potential to achieve program goals will be evaluated.

g. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to provide for the participation of teachers who will impact students from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described above.

i. Institutional commitment as demonstrated by financial and other support to the program, including the provision for adequate and appropriate personnel and institutional resources to achieve the program goals.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA-supported programs are not isolated events.

k. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution to determine the success of the project.

l. Geographic diversity—the Agency will seek to achieve maximum geographic diversity in selection and placement of participants through its award of grants.

Preference Factor

Preference will be given to proposals that:

1. Demonstrate the widest geographic representation through participant recruitment;
2. Include an area studies component;
3. Include a thorough orientation component for all participants;
4. Provide for an approximately equal number of American and NIS participants; and
5. Recruit participants through open, merit-based competition.

VOL
58
ISS
125
JL
1
1993
UMI

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified in writing of the results of the review process on or about November 19, 1993. All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal

Subject to the availability of funding for FY 1995 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: June 28, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–15585 Filed 6–30–93; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
July 1, 1993

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1915

Incorporation of General Industry Safety and Health Standards Applicable to Shipyard Employment; Final Rule

VOL 58 ISS 125 JL 1 1993 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Occupational Safety and Health Standards for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; technical amendments and redesignation.

SUMMARY: The Occupational Safety and Health Administration (OSHA) standards for shipyards are located principally in 29 CFR part 1915, Occupational Safety and Health Standards for Shipyard Employment. However, most standards for toxic substances protecting shipyard employees are printed in either 29 CFR part 1910 or in the 1970 Threshold Limit Values of the American Conference of Governmental Industrial Hygienists and cover shipyard employees by cross reference.

The Shipyard Employment Standards Advisory Committee has recommended generally that OSHA incorporate all toxic substance standards covering shipyards into 29 CFR part 1915. OSHA believes that direct incorporation of the existing toxic substance standards covering shipyard workers into 29 CFR part 1915 will be more convenient for and accessible to shipyard employers and therefore more protective of workers. There will be better knowledge of existing regulations and a higher level of compliance since almost all OSHA regulations covering the industry will be located in one, easily accessible place. Accordingly, OSHA is by this technical amendment incorporating into 29 CFR part 1915, a comprehensive subpart Z which includes the toxic substance standards and certain related standards applicable to shipyards.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, United States Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND AND RATIONALE

Most OSHA standards governing occupational safety for shipyards are printed in 29 CFR Part 1915, Occupational Safety and Health Standards for Shipyard Employment. However, part 1915 generally does not include the text of the health standards which cover shipyard employment. Rather, it incorporates those health standards by cross reference in other documents.

Specifically, part 1915 has incorporated by cross-reference health standards from two sources. The first, incorporated in §§ 1915.5, 1915.12(a)(3) and (b)(3), and 1915.32(b), consist of approximately 400 exposure limits for toxic substances which are listed in the 1970 Threshold Limit Values (TLV's) of the American Conference of Governmental Industrial Hygienists (ACGIH).

The second set of health standards incorporated into part 1915 by cross reference are the single substance standards and certain other health related standards located in 29 CFR part 1910, Occupational Safety and Health Standards for General Industry. The single substance standards are located in subpart Z of part 1910, Toxic and Hazardous Substances, at 29 CFR 1910.1001 to 1910.1048. These standards appear in a separate CFR volume, which contains most of the Shipyard Safety standards.

The Shipyard Employment Standards Advisory Committee (SESAC) was organized by OSHA pursuant to the Federal Advisory Committee Act and section 7(b) of the OSH Act, to recommend one comprehensive set of standards and accompanying rationale for the shipbuilding, ship repair, and shipbreaking industries by combining part 1910 and 1915 standards, and by updating, reorganizing, clarifying and simplifying those standards. The committee includes representatives from labor, management, government, and health and safety professionals. It holds public meetings which are announced in advance in the **Federal Register**. The general public may attend and address the committee.

At its May 13, 1991, meeting, SESAC recommended that OSHA directly incorporate in part 1915 a subpart Z which would include the full text of the health and related standards applicable to shipyards (see transcript pp. 149–156). By printing the health standards applicable to shipyards in part 1915, knowledge of their requirements would increase and this would lead to better protection for employees and greater convenience and clarity for shipyard employers.

OSHA concurs with the recommendations of SESAC[1]. It believes that direct incorporation of the health standards, already applicable to shipyards by cross-reference, into part 1915, has important benefits.

First, shipyard employees will have better and more consistent health protection because all the health standards applicable to them will be readily accessible and easy to reference. There will be better knowledge of requirements necessary to protect health.

Second, the shipyard industry and its managers will have a much more convenient source for all the health requirements applicable to the industry. There will be less confusion over what regulations are applicable. This clarification also will result in a greater degree of voluntary compliance.

Third, OSHA's proposal to update the air contaminants levels for shipyards (57 FR 26002, June 12, 1992) will be delayed because of the Eleventh Circuit Court of Appeals decision to vacate similar standards for general industry in the case of *AFL-CIO* v. *OSHA*, 965 F.2d 962 (1992). Consequently, convenient access to the 1970 TLV's for the shipyard industry will be necessary for a longer period and these technical amendments will be helpful for a longer period.

As stated, OSHA's standards for toxic and hazardous substances are contained in 29 CFR part 1910, subpart Z. The 29 CFR part 1910 substance-specific standards apply to shipyard employment by virtue of two provisions. First, for some standards, 29 CFR 1910.19 directly makes the standard applicable to shipyard employment. For example, 29 CFR 1910.19(c) states that the acrylonitrile standard set forth in § 1910.1045 applies to every employment and place of employment specified in §§ 1910.13, 1910.14 and 1910.15. Those sections refer to ship repairing, shipbuilding and shipbreaking, the activities now covered by part 1915, the shipyard employment standards.

Application of the remainder of the substance-specific standards to shipyards is accomplished by virtue of 29 CFR 1910.5(c)(2). That paragraph provides that any standard will apply to any employment and place of employment in any industry, even though particular standards are also prescribed for that industry, to the extent that none of such particular standards applies. Thus, for example, because none of the particular standards

[1] SESAC made several recommended revisions to the Access to employee exposure and medical records standard (§ 1910.20), notably with regard to the disposition of these records after an employer ceased doing business. While these revisions may be valid and worthwhile, they nevertheless could have resulted in reduced access by employees to these records. As these revisions are substantive, they could not be included in this technical amendment. OSHA will carefully review these recommended revisions, and determine whether they should be considered for future rulemaking.

applicable to the shipyard industry regulates exposure to beta-Naphthylamine, the beta Naphthylamine standard, at 29 CFR 1910.1009, applies to shipyard employment.

In addition to the substance-specific standards, part 1915 also incorporates the 1970 TLVs of the American Conference of Governmental Industrial Hygienists. Part 1915 refers to the TLVs in several locations. For example, §§ 1915.12, 1915.32, and 1915.33 refer to the threshold limit values. Section 1915.5 then identifies these "threshold limit values" as the Threshold Limit Values, 1970, of the ACGIH.

As the first step in directly incorporating into 29 CFR part 1915 the health standards applicable to shipyards, OSHA created a new subpart Z of part 1915 when it issued the cadmium standard on September 14, 1992, at 57 FR 42102, 42388–42389. OSHA incorporated the cadmium standard into that new subpart Z of part 1915 as § 1915.1027.

Elements of This Technical Amendment

1. This technical amendment creates a complete subpart Z, Toxic and Hazardous Substances, for part 1915 Shipyards. It incorporates into this subpart Z the health standards already applicable to shipyards. These include the single substance standards at 29 CFR 1910.1001–1048, which will be given the corresponding section numbers of 29 CFR 1915.1001–1915.1048 respectively. No substantive changes have been made to the requirements, but certain formal changes have been made to reflect the new location and appropriate cross references. Consequently, this incorporation is a technical amendment.

Excluded from this incorporation are the coke oven standard, 29 CFR 1910.1029, and the cotton dust standard, 29 CFR 1910.1043, because the operations covered by these standards would not be done in shipyards.

2. OSHA is placing the air contaminants levels for shipyards in a new 29 CFR 1915.1000, Table Z-Shipyards. This will follow the numeration and style used for general industry in part 1910. This format will make the table easier to use because it will follow the same pattern used for most industry. Section 1915.1000 and Table Z-Shipyards merely reprint in convenient form the 1970 TLV's which are already applicable to most operations in shipyards. No substantive changes are made. Consequently, this is also a technical amendment.

As noted, most areas in shipyards are presently covered by the 1970 TLV's. However, since the shipyard regulations are an amalgam of three separate bodies of regulations for shipbuilding, ship repair, and shipbreaking, a few operations have been technically covered by the 1971 OSHA permissible exposure limits (PELs). See 47 FR 16984 (April 20, 1982).

Specifically, the shipbreaking and ship repairing subsectors, and the exposure to toxic solvents and removers in the shipbuilding and ship repair subsectors, are covered by the 1970 TLV's of ACGIH. See §§ 1915.5, 1915.11, 1915.12, 1915.32, and 1915.33. The 1971 OSHA PELs, which are contained in § 1910.1000, will continue to apply to shipbuilding operations not involving toxic solvents and removers. See 29 CFR 1910.5(c).

3. ACGIH made clear that the 1970 TLV "Nuisance Particulate" standard covered both organic and inorganic particulates. Appendix D of the 1970 TLV booklet listed as examples of typical nuisance particulates, various organic particulates such as cellulose, vegetable oil mists, starch, and sucrose. Some confusion was created because ACGIH printed the nuisance particulate limit as part of a table which was headed "Mineral Dusts." To resolve this confusion and to make it clear that the "nuisance particulate" exposure limit covers both inorganic and organic nuisance particulates, OSHA is including a footnote to this effect after the "Inert or Nuisance Particulate" entry. OSHA is also including a duplicate listing titled "Particulates not otherwise regulated (PNOR)" with the same exposure limit. The purpose of this duplicate listing is to make the limit easier to find by using current terminology.

4. The hazard communication standard is currently included in part 1915 as 29 CFR 1915.99. As this is primarily a health-related standard, it is more convenient to redesignate it as § 1915.1200 to reflect the same numeration as general industry and to include it with the other health standards in subpart Z of part 1915.

5. Two other health-related standards already applicable to shipyards by cross reference are being incorporated in full text into subpart Z as recommended by SESAC. These standards are § 1910.20, Access to employee exposure and medical records, which will be incorporated as § 1915.1120, and § 1910.1450 Occupational exposure to hazardous chemicals in laboratories, which will be incorporated as § 1915.1450.

Necessary consequential changes are made to §§ 1915.5, 1915.12, and 1915.32 to reference subpart Z (which now includes the 1970 TLV's) rather than referencing the ACGIH publication.

6. The general industry asbestos standard at 29 CFR 1910.1001 now specifically applies to shipyards. It is being directly incorporated into part 1915 as § 1915.1001. Shipyard representatives have recommended to OSHA in the asbestos remand rulemaking that an asbestos standard tailored to shipyards be developed. OSHA is presently considering this issue, but has not made a final decision. If OSHA concludes that changes in the asbestos standard for shipyards are appropriate, OSHA will amend § 1915.1001 to reflect any such changes when the final rule on the asbestos remand is published in the **Federal Register**.

Conclusion

As this is a technical amendment, it is adopted for the convenience of the shipyard employers and employees, it effects no significant substantive changes, and it has also been supported by SESAC. OSHA concludes that it is unnecessary to provide for notice and comment, as permitted by section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b) and § 1911.5.

As this is not a substantive rule, it may take effect upon publication in the **Federal Register**. OSHA finds good cause for this rule to take effect June 30, 1993, so that these technical amendments will be incorporated in the 1993 edition of the CFR and thereby increase the convenience to the public as soon as possible. See 5 U.S.C. 553(d).

For the same reasons, it is certified that no substantive changes are being made which would require analysis under the Regulatory Flexibility Act or under Executive Order 12291.

List of Subjects in 29 CFR Part 1915

Shipyards, Shipbuilding, Ship repairing, Shipbreaking, Toxic chemicals, Air contaminants, Coal tar pitch volatile, 4=Nitrobiphenyl, alpha-Naphthylamine, Methyl chloromethyl either, 3,3'-Dichlorobenzidine (and its salts), bis-Chloromethyl either, beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, Ethyleneimine, beta-Propiolactone, 2-Actylaminofluorene, 4-Dimethylaminoazobenzene, N-Nitrosodimethylamine, Vinyl chloride, Inorganic arsenic, Lead, Benzene, Acrylonitrile, Ethylene oxide, Formaldehyde, Asbestos, Hazard Communication, Laboratories, Medical records, Monitoring records.

VOL 58 ISS 125 JL 1 1993 UMI

Authority and Signature

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 6 and 8 of the Occupational Safety and Health Act (29 U.S.C. 655, 657); section 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); section 4 of the Administrative Procedure Act (5 U.S.C. 553); and Secretary of Labor's Order No. 1–90 (55 FR 9033); OSHA is issuing these final technical amendments.

Signed at Washington, DC, this 24th day of June, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

29 CFR part 1915 is amended as follows:

PART 1915—[AMENDED]

1. The authority citation of part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

2. Section 1915.5 is amended by adding a sentence to the paragraph incorporating the Threshold Limit Values (the seventh paragraph that lists organizations that are not agencies of the U.S. government). As amended, this paragraph reads as follows:

§ 1915.5 Reference specifications, standards, and codes.

* * * * *

Threshold Limit Values, 1970, American Conference of Governmental Industrial Hygienists, 1014 Broadway, Cincinnati, Ohio 45202, subpart B, § 1915.12(a)(3); subpart C, § 1915.32(b). These threshold limit values are contained in § 1915.1000, Table Z.

* * * * *

3. Paragraphs (a)(3) and (b)(3) of § 1915.12 are revised to read as follows:

§ 1915.12 Precautions before entering.

(a) *Flammable atmospheres and residues.*

* * * * *

(3) If the atmosphere in the space to be entered is found to contain a concentration of flammable vapor or gas below the level immediately dangerous to life as defined in § 1915.152(b)(1), but above the permissible exposure limits specified in 29 CFR part 1915, table Z, employees shall be protected in accordance with the requirements of § 1915.152 (a), and (c), (d), or (e), whichever is applicable.

(b) *Toxic atmospheres and residues.*

* * * * *

(3) If the atmosphere in the space to be entered is found to contain a concentration of toxic contaminants below the level immediately dangerous to life as defined in § 1915.152 (b)(1), but above the permissible exposure limits specified in 29 CFR part 1915, table Z, employees shall be protected in accordance with the requirements of § 1915.152 (a), and (c), (d), or (e), whichever is applicable.

* * * * *

§ 1915.99 [Redesignated as § 1915.1200]

4. Section 1915.99 Hazard communication, is redesignated as § 1915.1200.

5. Subparts M–Y are reserved and subpart Z is revised to read as follows:

* * * * *

Subparts M–Y [Reserved]

Subpart Z—Toxic and Hazardous Substances

Sec.

1915.1000 Air contaminants.
1915.1001 Asbestos.
1915.1002 Coal tar pitch volatiles; interpretation of term.
1915.1003 4-Nitrobiphenyl.
1915.1004 alpha-Naphthylamine.
1915.1005 [Reserved]
1915.1006 Methyl chloromethyl ether.
1915.1007 3,3'-Dichlorobenzidiene (and its salts).
1915.1008 bis-Chloromethyl ether.
1915.1009 beta-Naphthylamine.
1915.1010 Benzidine.
1915.1011 4-Aminodiphenyl.
1915.1012 Ethyleneimine.
1915.1013 beta-Propiolactone.
1915.1014 2-Acetylaminofluorene.
1915.1015 4-Dimethylaminoazobenzene.
1915.1016 N-Nitrosodimethylamine.
1915.1017 Vinyl chloride.
1915.1018 Inorganic arsenic.
1915.1025 Lead.
1915.1027 Cadmium.
1915.1028 Benzene.
1915.1030 Bloodborne pathogens
1915.1044 1,2 dibromo-3-chloropropane
1915.1045 Acrylonitrile.
1915.1047 Ethylene oxide.
1915.1048 Formaldehyde.
1915.1050 Methylenedianiline
1915.1120 Access to employee exposure and medical records.
1915.1200 Hazard communication.
1915.1450 Occupational exposure to hazardous chemicals in laboratories.

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

* * * * *

Subparts M–Y [Reserved]

Subpart Z—Toxic and Hazardous Substances

§ 1915.1000 Air contaminants.

Wherever this section applies, an employees's exposure to any substance listed in Table Z—Shipyards of this section shall be limited in accordance with the requirements of the following paragraphs of this section.

(a) (1) *Substances with limits preceded by "C"—Ceiling Values.* An employee's exposure to any substance in Table Z—Shipyards, the exposure limit of which is preceded by a "C," shall at no time exceed the exposure limit given for that substance. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

(2) *Other Substances—8-hour Time Weighted Averages.* An employee's exposure to any substance in Table Z—Shipyards , the exposure limit of which is not preceded by a "C," shall not exceed the 8-hour Time Weighted Average given for that substance in any 8-hour work shift of a 40-hour work week.

(b)—(c) [Reserved]

(d) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z of 29 CFR part 1915 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ldots C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in subpart Z of 29 CFR Part 1915 for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this

section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z—Shipyards. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 p/m
Two hours exposure at 75 p/m
Four hours exposure at 50 p/m

Substituting this information in the formula, we have

(2×150+2×75+4×50)÷8=81.25 p/m

Since 81.25 ppm is less than 100 p.p.m., the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) in case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$E_m=(C_1+L_1+C_2+L_2)+...(C_n+L_n)$

Where:

E_m is the equivalent exposure for the mixture.
C is the concentration of a particular contaminant.
L is the exposure limit for that substance specified in Subpart Z of 29 CFR Part 1915.
The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8 hour exposure (ppm)	8 hr. TWA PEL (ppm)
B	500	1000
C	45	200
D	40	200

Substituting in the formula, we have:
Em=500÷1,000+45÷200+40÷200
Em=0.500+0.225+0.200
Em=0.925

Since Em is less than unity (1), the exposure combination is within acceptable limits.

Table Z—Shipyards

Substance	CAS No.[1]	ppm[2] [3]	mg/m³[2] [3]	Skin Designation
Abate; see Temephos.				
Acetaldehyde	75–07–0	200	360	—
Acetic acid	64–19–7	10	25	—
Acetic anhydride	108–24–7	5	20	—
Acetone	67–64–1	1000	2400	—
Acetonitrile	75–05–8	40	70	—
2-Acetylaminofluorine; see § 1915.1014	53–96–3			
Acetylene	74–86–2	[illegible]		
Acetylene dichloride; see 1,2-Dichloroethylene.				
Acetylene tetrabromide	79–27–6	1	14	—
Acrolein	107–02–8	0.1	0.25	—
Acrylamide	79–06–1	—	0.3	X
Acrylonitrile; see § 1915.1045	107–13–1			
Aldrin	309–00–2	—	0.25	X
Allyl alcohol	107–18–6	[illegible]	5	X
Allyl chloride	107–05–1	[illegible]	3	—
Allyl glycidyl ether (AGE)	106–92–3	(C)10	(C)45	—
Allyl propyl disulfide	2179–59–1	2	12	—
alpha-Alumina	1344–28–1			
Total dust		—	15	—
Respirable fraction		—	5	—
Aluminum, (as Al) Metal	7429–90–5			
Total dust		—	15	—
Respirable fraction		—	5	—
Alundum; see alpha-Alumina				
4-Aminodiphenyl; see § 1915.1011	92–67–1			
2-Aminoethanol; see Ethanolamine.				
2-Aminopyridine	504–29–0	0.5	2	—
Ammonia	7664–41–7	50	35	—
Ammonium sulfamate	7773–06–0			
Total dust		—	15	—
Respirable fraction		—	5	—
n-Amyl acetate	628–63–7	100	525	—
sec-Amyl acetate	626–38–0	125	650	—
Aniline and homologs	62–53–3	5	19	X
Anisidine (o-, p-isomers)	29191–52–4	—	0.5	X
Antimony and compounds (as Sb)	7440–36–0	—	0.5	—
ANTU (alpha Naphthylthiourea)	86–88–4	—	0.3	—
Argon	7440–37–1	E		
Arsenic, inorganic compounds (as As); see § 1915.1018	7440–38–2	—	—	—
Arsenic, organic compounds (as As)	7440–38–2	—	0.5	—
Arsine	7784–42–1	0.05	0.2	—
Asbestos; see 1915.1001.				
Azinphos-methyl	86–50–0	—	0.2	X
Barium, soluble compounds (as Ba)	7440–39–3	—	0.5	—
Barium sulfate	7727–43–7			
Total dust		—	15	—
Respirable fraction		—	5	—
Benomyl	17804–35–2			
Total dust		—	15	—

Table Z—Shipyards—Continued

Substance	CAS No.[d]	ppm[a] [c]	mg/m[3] [c]	Skin Designation
Respirable fraction		—	5	—
Benzene[e]; see § 1915.1028	71-43-2			
Benzidine; see § 1915.1010	92-87-5			
p-Benzoquinone; see Quinone.				
Benzo(a)pyrene; see Coal tar pitch volatiles.				
Benzoyl peroxide	94-36-0	—	5	—
Benzyl chloride	100-44-7	1	5	—
Beryllium and beryllium compounds (as Be)	7440-41-7	—	0.002	—
Biphenyl; see Diphenyl.				
Bismuth telluride, Undoped	1304-82-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Bisphenol A; see Diglycidyl ether.				
Boron oxide	1303-86-2			
Total dust		—	15	—
Boron tribromide	10294-33-4	1	10	—
Boron trifluoride	7637-07-2	(C)1	(C)3	—
Bromine	7726-95-6	0.1	0.7	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—
Bromoform	75-25-2	0.5	5	X
Butadiene (1,3-Butadiene)	106-99-0	1000	2200	—
Butanethiol; see Butyl mercaptan.				
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	—
2-Butoxyethanol	111-76-2	50	240	X
n-Butyl-acetate	123-86-4	150	710	—
sec-Butyl acetate	105-46-4	200	950	—
tert-Butyl acetate	540-88-5	200	950	—
n-Butyl alcohol	71-36-3	100	300	—
sec-Butyl alcohol	78-92-2	150	450	—
tert-Butyl alcohol	75-65-0	100	300	—
Butylamine	109-73-9	(C)5	(C)15	X
tert-Butyl chromate (as CrO_3)	1189-85-1	—	(C)0 1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	—
Butyl mercaptan	109-79-5	0.5	1.5	—
p-tert-Butyltoluene	98-51-1	10	60	—
Cadmium dust fume (as Cd); see 1915.1027	7440-43-9	—	—	—
Calcium carbonate	1317-65-3			
Total dust		—	15	—
Respirable fraction		—	5	—
Calcium hydroxide	1305-62-0	—	—	—
Calcium hydroxide.				
Total dust		—	15	—
Respirable fraction		—	5	—
Calcium oxide	1305-78-8	—	5	—
Calcium silicate	1344-95-2			
Total dust		—	15	—
Respirable fraction		—	5	—
Calcium sulfate	7778-18-9			
Total dust		—	15	—
Respirable fraction		—	5	—
Camphor, synthetic	76-22-2	—	2	—
Carbaryl (Sevin)	63-25-2	—	5	—
Carbon black	1333-86-4	—	3.5	—
Carbon dioxide	124-38-9	5000	9000	—
Carbon disulfide	75-15-0	20	60	X
Carbon monoxide	630-08-0	50	55	—
Carbon tetrachloride	56-23-5	10	65	X
Cellulose	9004-34-6			
Total dust		—	15	—
Respirable fraction		—	5	—
Chlordane	57-74-9	—	0.5	X
Chlorinated camphene	8001-35-2	—	0.5	X
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—
Chlorine	7782-50-5	1	3	—
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	—
Chloroacetaldehyde	107-20-0	(C)1	(C)3	—
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—
Chlorobenzene	108-90-7	75	350	—
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	—
Chlorobromomethane	74-97-5	200	1050	—
2-Chloro-1,3-butadiene; see beta-Chloroprene.				

Table Z—Shipyards—Continued

Substance	CAS No.[d]	ppm[a] [c]	mg/m³[b] [c]	Skin Designation
Chlorodiphenyl (42% Chlorine) (PCB)	53469–21–9	—	1	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097–69–1	—	0.5	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin.				
2-Chloroethanol; see Ethylene chlorohydrin.				
Chloroethylene; see Vinyl chloride.				
Chloroform (Trichloromethane)	67–66–3	[illegible]	240	—
bis(Chloromethyl) ether; see § 1915.1008	542–88–1			
Chloromethyl methyl ether; see § 1915.1006	107–30–2			
1-Chloro-1-nitropropane	600–25–9	20	100	—
Chloropicrin	76–06–2	0.1	0.7	—
beta-Chloroprene	126–99–8	25	90	X
2-Chloro-6-(trichloromethyl) pyridine	1929–82–4			
Total dust		—	15	—
Respirable fraction		—	5	—
Chromic acid and chromates.				
(as CrO_3)	Varies with compound	—	0.1	—
Chromium (II) compounds.				
(as Cr)	7440–47–3	—	0.5	—
Chromium (III) compounds.				
(as Cr)	7440–47–3	—	0.5	—
Chromium metal and insol. salts (as Cr)	7440–47–3	—	1	—
Chrysene; see Coal tar pitch volatiles.				
Clopidol	2971–90–6			
Total dust		—	15	—
Respirable fraction		—	5	—
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	65966–93–2	—	0.2	—
Cobalt metal, dust, and fume (as Co)	7440–48–4	—	0 1	—
Copper	7440–50–8			
Fume (as Cu)		—	0.1	—
Dusts and mists (as Cu)		—	1	—
Corundum; see Emery.				
Cotton dust (raw)		—	1	
Crag herbicide (Sesone)	136–78–7			
Total dust		—	15	—
Respirable fraction		—	5	—
Cresol, all isomers	1319–77–3	5	22	X
Crotonaldehyde	123–73–9; 4170–30–3	2	6	
Cumene	98–82–8	50	245	X
Cyanides (as CN)	Varies with Compound	—	5	—
Cyanogen	460–19–5	10	—	—
Cyclohexane	110–82–7	300	1050	—
Cyclohexanol	108–93–0	50	200	—
Cyclohexanone	108–94–1	50	200	—
Cyclohexene	110–83–8	300	1015	—
Cyclonite	121–82–4	—	1.5	X
Cyclopentadiene	542–92–7	75	200	—
2,4-D (Dichlorophenoxyacetic acid)	94–75–7	—	10	—
Decaborane	17702–41–9	0.05	0.3	X
Demeton (Systox)	8065–48–3	—	0.1	X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123–42–2	50	240	—
1,2-Diaminoethane; see Ethylenediamine.				
Diazomethane	334–88–3	0.2	0.4	—
Diborane	19287–45–7	0.1	0.1	—
1,2-Dibromo-3-chloropropane (CBCP); see § 1915.1044	96–12–8		—	
1,2-Dibromoethane; see Ethylene dibromide.				
Dibutyl phosphate	107–66–4	1	5	—
Dibutyl phthalate	84–74–2	—	5	—
Dichloroacetylene	7572–29–4	(C)0.1	(C)0.4	—
o-Dichlorobenzene	95–50–1	(C)50	(C)300	—
p-Dichlorobenzene	106–46–7	75	450	—
3,3'-Dichlorobenzidine; see § 1915.1007	91–94–1			
Dichlorodifluoromethane	75–71–8	1000	4950	—
1,3-Dichloro-5,5-dimethyl hydantoin	118–52–5	—	0.2	—
Dichlorodiphenyltrichloroethane (DDT)	50–29–3	—	1	X
1,1-Dichloroethane	75–34–3	100	400	—
1,2-Dichloroethane; see Ethylene dichloride.				

Table Z—Shipyards—Continued

Substance	CAS No.[d]	ppm[a] [c]	mg/m[3] [b] [c]	Skin Designation
1,2-Dichloroethylene	540–59–0	200	790	—
Dichloroethyl ether	111–44–4	(C)15	(C)90	X
Dichloromethane; see Methylene chloride.				
Dichloromonofluoromethane	75–43–4	1000	4200	—
1,1-Dichloro-1-nitroethane	594–72–9	(C)10	(C)60	—
1,2-Dichloropropane; see Propylene dichloride.				
Dichlorotetrafluoroethane	76–14–2	1000	7000	—
Dichlorvos (DDVP)	62–73–7	—	1	X
Dicyclopentadienyl iron	102–54–5			
Total dust		—	15	—
Respirable fraction		—	5	—
Dieldrin	60–57–1	—	0.25	X
Diethylamine	109–89–7	25	75	—
2-Diethylaminoethanol	100–37–8	10	50	—
Diethylene triamine	111–40–0	(C)10	(C)42	X
Diethyl ether; see Ethyl ether.				
Difluorodibromomethane	75–61–6	100	850	—
Diglycidyl ether (DGE)	2238–07–5	(C)0.5	(C)2.8	—
Dihydroxybenzene; see Hydroquinone.				
Diisobutyl ketone	108–83–8	50	290	—
Diisopropylamine	108–18–9	5	20	X
4-Dimethylaminoazobenzene; see § 1915.1015	60–11–7			
Dimethoxymethane; see Methylal.				
Dimethyl acetamide	127–19–5	10	35	X
Dimethylamine	124–40–3	10	18	—
Dimethylaminobenzene; see Xylidine.				
Dimethylaniline (N,N-Dimethylaniline)	121–69–7	5	25	X
Dimethylbenzene; see Xylene.				
Dimethyl-1,2-dibromo- 2,2-dichloroethyl phosphate	300–76–5	—	3	—
Dimethylformamide	68–12–2	10	30	X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone.				
1,1-Dimethylhydrazine	57–14–7	0.5	1	X
Dimethylphthalate	131–11–3	—	5	—
Dimethyl sulfate	77–78–3	1	5	X
Dinitrobenzene (all isomers)			1	X
(ortho)	528–29–0			
(meta)	99–65–0			
(para)	100–25–4			
Dinitro-o-cresol	534–52–1	—	0.2	X
Dinitrotoluene	25321–14–6	—	1.5	X
Dioxane (Diethylene dioxide)	123–91–1	100	360	X
Diphenyl (Biphenyl)	92–52–4	0.2	1	—
Diphenylamine	122–39–4	—	10	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate.				
Dipropylene glycol methyl ether	34590–94–8	100	600	X
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate)	117–81–7	—	5	—
Emery	12415–34–8			
Total dust		—	15	—
Respirable fraction		—	5	—
Endosulfan	115–29–7	—	0.1	X
Endrin	72–20–8	—	0.1	X
Epichlorohydrin	106–89–8	5	19	X
EPN	2104–64–5	—	0.5	X
1,2-Epoxypropane; see Propylene oxide.				
2,3-Epoxy-1-propanol; see Glycidol.				
Ethane	74–84–0	E		
Ethanethiol; see Ethyl mercaptan.				
Ethanolamine	141–43–5	3	6	—
2-Ethoxyethanol (Cellosolve)	110–80–5	200	740	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111–15–9	100	540	X
Ethyl acetate	141–78–6	400	1400	—
Ethyl acrylate	140–88–5	25	100	X
Ethyl alcohol (Ethanol)	64–17–5	1000	1900	—
Ethylamine	75–04–7	10	18	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541–85–5	25	130	—
Ethyl benzene	100–41–4	100	435	—
Ethyl bromide	74–96–4	200	890	—
Ethyl butyl ketone (3-Heptanone)	106–35–4	50	230	—
Ethyl chloride	75–00–3	1000	2600	—
Ethyl ether	60–29–7	400	1200	—

VOL 58 ISS 125 JL 1 1993 UMI

Table Z—Shipyards—Continued

Substance	CAS No.[d]	ppm[a][c]	mg/m³[b][c]	Skin Designation
Ethyl formate	109–94–4	100	300	—
Ethyl mercaptan	75–08–1	0.5	1	—
Ethyl silicate	78–10–4	100	850	—
Ethylene	74–85–1	E		
Ethylene chlorohydrin	107–07–3	5	16	X
Ethylenediamine	107–15–3	10	25	—
Ethylene dibromide	106–93–4	(C)25	(C)190	X
Ethylene dichloride (1,2-Dichloroethane)	107–06–2	50	200	—
Ethylene glycol dinitrate	628–96–6	(C)0.2	(C)1	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate.				
Ethyleneimine; see § 1915.1012	151–56–4			
Ethylene oxide; see § 1915.1047	75–21–8			
Ethylidene chloride; see 1,1-Dichloroethane.				
N-Ethylmorpholine	100–74–3	20	[illegible]	X
Ferbam	14484–64–1			
Total dust		—	15	—
Ferrovanadium dust	12604–58–9	—	1	—
Fibrous Glass.				
Total dust			15	—
Respirable fraction		—	5	—
Fluorides (as F)	Varies with compound	—	2.5	—
Fluorine	7782–41–4	0.1	0.2	—
Fluorotrichloromethane (Trichlorofluoromethane)	75–69–4	1000	5600	—
Formaldehyde; see § 1915.1048	50–00–0			
Formic acid	64–18–6	5	9	—
Furfural	98–01–1	5	20	X
Furfuryl alcohol	98–00–0	50	200	—
Gasoline	8006–61–9		A[1]	—
Glycerin (mist)	56–81–5			
Total dust		—	15	—
Respirable fraction		—	5	—
Glycidol	556–52–5	50	150	—
Glycol monoethyl ether; see 2-Ethoxyethanol.				
Graphite, natural, respirable dust	7782–42–5	([2])	([2])	([2])
Graphite, synthetic				
Total dust		—	15	—
Respirable fraction		—	5	—
Guthion; see Azinphos methyl.				
Gypsum	13397–24–5			
Total dust		—	15	—
Respirable fraction		—	5	—
Hafnium	7440–58–6	—	0.5	—
Helium	7440–59–7	[illegible]		
Heptachlor	76–44–8	—	0.5	X
Heptane (n-Heptane)	142–82–5	500	2000	—
Hexachloroethane	67–72–1	1	10	X
Hexachloronaphthalene	1335–87–1	—	0.2	X
n-Hexane	110–54–3	500	1800	—
2-Hexanone (Methyl n-butyl ketone)	591–78–6	100	410	—
Hexone (Methyl isobutyl ketone)	108–10–1	100	410	—
sec-Hexyl acetate	108–84–9	50	300	—
Hydrazine	302–01–2	1	1.3	X
Hydrogen	1333–74–0	E		
Hydrogen bromide	10035–10–6	3	10	—
Hydrogen chloride	7647–01–0	(C)5	(C)7	—
Hydrogen cyanide	74–90–8	10	11	X
Hydrogen fluoride (as F)	7664–39–3	3	2	—
Hydrogen peroxide	7722–84–1	1	1.4	—
Hydrogen selenide (as Se)	7783–07–5	0.05		
Hydrogen sulfide	7783–06–4	10	15	—
Hydroquinone	123–31–9	—	2	—
Indene	95–13–6	10	45	—
Indium and compounds (as In)	7440–74–6	—	0.1	—
Iodine	7553–56–2	(C)0.1	(C)1	—
Iron oxide fume	1309–37–1	—	10	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—
Isoamyl acetate	123–92–2	100	525	—
Isoamyl alcohol (primary and secondary)	123–51–3	100	360	—

Table Z—Shipyards—Continued

Substance	CAS No.[1]	ppm[2] [3]	mg/m[3] [3]	Skin Designation
Isobutyl acetate	110–19–0	150	700	—
Isobutyl alcohol	78–83–1	100	300	—
Isophorone	78–59–1	25	140	—
Isopropyl acetate	108–21–4	250	950	—
Isopropyl alcohol	67–63–0	400	980	—
Isopropylamine	75–31–0	5	12	—
Isopropyl ether	108–20–3	500	2100	—
Isopropyl glycidyl ether (IGE)	4016–14–2	50	240	—
Kaolin	1332–58–7			
Total dust		—	15	—
Respirable fraction		—	5	—
Ketene	463–51–4	0.5	0.9	—
Lead, inorganic (as Pb); see § 1915.1025	7439–92–1	—	—	—
Limestone	1317–65–3			
Total dust		—	15	—
Respirable fraction		—	5	—
Lindane	58–89–9	—	0.5	X
Lithium hydride	7580–67–8	—	0.025	—
L.P.G. (Liquefied petroleum gas)	68476–85–7	1000	1800	
Magnesite	546–93–0			
Total dust		—	15	—
Respirable fraction		—	5	—
Magnesium oxide fume	1309–48–4			
Total particulate		15	—	-
Malathion	121–75–5			
Total dust		—	15	X
Maleic anhydride	108–31–6	0.25		
Manganese compounds (as Mn)	7439–96–5	—	(C)5	—
Manganese fume (as Mn)	7439–96–5	—	(C)5	-
Marble	1317–65–3			
Total dust		—	15	—
Respirable fraction		—	5	—
Mercury (aryl and inorganic)(as Hg)	7439–97–6		0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439–97–6	—	0.01	X
Mercury (vapor) (as Hg)	7439–97–6	—	0.1	X
Mesityl oxide	141–79–7	25	100	—
Methane	74–82–8	E		
Methanethiol; see Methyl mercaptan.				
Methoxychlor	72–43–5			
Total dust		—	15	—
2-Methoxyethanol (Methyl cellosolve)	109–86–4	25	80	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110–49–6	25	120	X
Methyl acetate	79–20–9	200	610	—
Methyl acetylene (Propyne)	74–99–7	1000	1650	—
Methyl acetylene-propadiene mixture (MAPP)		1000	1800	—
Methyl acrylate	96–33–3	10	35	X
Methylal (Dimethoxy-methane)	109–87–5	1000	3100	—
Methyl alcohol	67–56–1	200	260	—
Methylamine	74–89–5	10	12	-
Methyl amyl alcohol; see Methyl isobutyl carbinol.				
Methyl n-amyl ketone	110–43–0	100	465	—
Methyl bromide	74–83–9	(C)20	(C)80	X
Methyl butyl ketone; see 2-Hexanone.				
Methyl cellosolve; see 2-Methoxyethanol.				
Methyl cellosolve acetate; see 2-Methoxyethyl acetate.				
Methyl chloride	74–87–3	100	210	-
Methyl chloroform (1,1,1-Trichloroethane)	71–55–6	350	1900	—
Methylcyclohexane	108–87–2	500	2000	—
Methylcyclohexanol	25639–42–3	100	470	—
o-Methylcyclohexanone	583–60–8	100	460	X
Methylene chloride	75–09–2	500	1740	—
Methyl ethyl ketone (MEK); see 2-Butanone.				
Methyl formate	107–31–3	100	250	—
Methyl hydrazine (Monomethyl hydrazine)	60–34–4	(C)0.2	(C)0.35	X
Methyl iodide	74–88–4	5	28	X
Methyl isoamyl ketone	110–12–3	100	475	—
Methyl isobutyl carbinol	108–11–2	25	100	X
Methyl isobutyl ketone; see Hexone.				
Methyl isocyanate	624–83–9	0.02	.05	X
Methyl mercaptan	74–93–1	0.5	1	—
Methyl methacrylate	80–62–6	100	410	100

Table Z—Shipyards—Continued

Substance	CAS No.[d]	ppm[a] [c]	mg/m[3] [b] [c]	Skin Designation
Methyl propyl ketone; see 2-Pentanone.				
Methyl silicate	681–84–5	5	30	—
alpha-Methyl styrene	98–83–9	(C)100	(C)480	—
Methylene bisphenyl isocyanate (MDI)	101–68–8	(C)0.02	(C)0.2	—
Mica; see Silicates.				
Mineral wool.				
Total dust		—	15	—
Respirable dust		—	5	—
Molybdenum (as Mo)	7439–98–7			
Soluble compounds		—	5	—
Insoluble compounds.				
Total dust		—	15	—
Monomethyl aniline	100–61–8	2	9	X
Monomethyl hydrazine; see Methyl hydrazine.				
Morpholine	110–91–8	20	70	X
Naphtha (Coal tar)	8030–30–6	100	400	—
Naphthalene	91–20–3	10	50	—
alpha-Naphthylamine; see § 1915.1004	134–32–7			
beta-Naphthylamine; see § 1915.1009	91–59–8			—
Neon	7440–01–9	E		
Nickel carbonyl (as Ni)	13463–39–3	0.001	0.007	—
Nickel, metal and insoluble compounds (as Ni)	7440–02–0	—	1	—
Nickel, soluble compounds (as Ni)	7440–02–0	—	1	—
Nicotine	54–11–5	—	0.5	X
Nitric acid	7697–37–2	2	5	—
Nitric oxide	10102–43–9	25	30	—
p-Nitroaniline	100–01–6	1	6	X
Nitrobenzene	98–95–3	1	5	X
p-Nitrochlorobenzene	100–00–5	—	1	X
4-Nitrodiphenyl; see § 1915.1003	92–93–3			
Nitroethane	79–24–3	100	310	—
Nitrogen	7727–37–9	E		
Nitrogen dioxide	10102–44–0	(C)5	(C)9	—
Nitrogen trifluoride	7783–54–2	10	29	—
Nitroglycerin	55–63–0	(C)0.2	(C)2	X
Nitromethane	75–52–5	100	250	—
1-Nitropropane	108–03–2	25	90	—
2-Nitropropane	79–46–9	25	90	—
N-Nitrosodimethylamine; see § 1915.1016	62–79–9			—
Nitrotoluene (all isomers)		5	30	X
o-isomer	88–72–2;			
m-isomer	99–08–1;			
p-isomer	99–99–0			
Nitrotrichloromethane; see Chloropicrin.				
Nitrous oxide	10024–97–2	E		
Octachloronaphthalene	2234–13–1	—	0.1	X
Octane	111–65–9	400	1900	—
Oil mist, mineral	8012–95–1	—	5	—
Osmium tetroxide (as Os)	20816–12–0	—	0.002	—
Oxalic acid	144–62–7	—	1	—
Oxygen difluoride	7783–41–7	0.05	0.1	—
Ozone	10028–15–6	0.1	0.2	—
Paraquat, respirable dust	4685–14–7; 1910–42–5; 2074–50–2	—	0.5	X
Parathion	56–38–2	—	0.1	—
Particulates not otherwise regulated.				
Total dust organic and inorganic		—	15	—
PCB; see Chlorodiphenyl (42% and 54% chlorine).				
Pentaborane	19624–22–7	0.005	0.01	—
Pentachloronaphthalene	1321–64–8	—	0.5	X
Pentachlorophenol	87–86–5	—	0.5	X
Pentaerythritol	115–77–5			
Total dust		—	15	—
Respirable fraction		—	5	—
Pentane	109–66–0	500	1500	—
2-Pentanone (Methyl propyl ketone)	107–87–9	200	700	—
Perchloroethylene (Tetrachloroethylene)	127–18–4	100	670	—
Perchloromethyl mercaptan	594–42–3	0.1	0.8	—
Perchloryl fluoride	7616–94–6	3	13.5	—

Table Z—Shipyards—Continued

Substance	CAS No.[1]	ppm[2] [3]	mg/m³[3] [4]	Skin Designation
Perlite	93763-70-3			
Total dust		—	15	—
Respirable fraction		—	5	—
Petroleum distillates (Naphtha)(Rubber Solvent)			A[5]	—
Phenol	108-95-2	5	19	X
p-Phenylene diamine	106-50-3	—	0.1	X
Phenyl ether, vapor	101-84-8	1	7	—
Phenyl ether-biphenyl mixture, vapor		1	7	—
Phenylethylene; see Styrene.				
Phenyl glycidyl ether (PGE)	122-60-1	10	60	—
Phenylhydrazine	100-63-0	5	22	X
Phosdrin (Mevinphos)	7786-34-7	—	0.1	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—
Phosphine	7803-51-2	0.3	0.4	—
Phosphoric acid	7664-38-2	—	1	—
Phosphorus (yellow)	7723-14-0	—	0.1	—
Phosphorus pentachloride	10026-13-8	—	1	—
Phosphorus pentasulfide	1314-80-3	—	1	—
Phosphorus trichloride	7719-12-2	0.5	3	—
Phthalic anhydride	85-44-9	2	12	—
Picloram	1918-02-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Picric acid	88-89-1	—	0.1	—
Piperazine dihydrochloride	142-64-3	—	—	X
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	—	0.1	—
Plaster of Paris	26499-65-0			
Total dust		—	15	—
Respirable fraction		—	5	—
Platinum (as Pt)	7440-06-4			
Metal		—	—	—
Soluble salts		—	0.002	—
Polytetrafluoroethylene decomposition products			A[2]	
Portland cement	65997-15-1			
Total dust		15	—	10
Respirable fraction		5	—	—
Propargyl alcohol	107-19-7	1	—	X
beta-Propriolactone; see § 1915.1013	57-57-8			
Propionic acid	79-09-4	—	—	—
n-Propyl acetate	109-60-4	200	840	—
n-Propyl alcohol	71-23-8	200	500	—
n-Propyl nitrate	627-13-4	25	110	—
Propylene dichloride	78-87-5	75	350	—
Propylene imine	75-55-8	2	5	X
Propylene oxide	75-56-9	100	240	—
Propyne; see Methyl acetylene.				
Pyrethrum	8003-34-7	—	5	—
Pyridine	110-86-1	5	15	—
Quinone	106-51-4	0.1	0.4	—
RDX; see Cyclonite.				
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—
Rhodium (as Rh), soluble compounds	7440-16-6	—	0.001	—
Ronnel	299-84-3	—	10	—
Rotenone	83-79-4	—	5	—
Rouge		—		
Total dust		—	15	—
Respirable fraction		—	5	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—
Silica, amorphous, precipitated and gel	112926-00-8	[2]	[2]	[2]
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	[2]	[2]	[2]
Silica, crystalline cristobalite, respirable dust	14464-46-1	[2]	[2]	[2]
Silica, crystalline quartz, respirable dust	14808-60-7	[2]	[2]	[2]
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	[2]	[2]	[2]
Silica, crystalline tridymite, respirable dust	15468-32-3	[2]	[2]	[2]
Silica, fused, respirable dust	60676-86-0	[2]	[2]	[2]
Silicates (less than 1% crystalline silica).				
Mica (respirable dust)	12001-26-2	[2]	[2]	[2]
Soapstone, total dust	—	[2]	[2]	[2]
Soapstone, respirable dust	—	[2]	[2]	[2]

Table Z—Shipyards—Continued

Substance	CAS No.[4]	ppm[5] [6]	mg/m[3] [5] [6]	Skin Designation
Talc (containing asbestos)	—	[3]	[3]	[3]
Talc (containing no asbestos), respirable dust	14807-96-6	[2]	[2]	[2]
Tremolite, asbestiform		[3]	[3]	[3]
Silicon	7440-21-3			
Total dust		-	15	-
Respirable fraction		-	5	-
Silicon carbide	409-21-2			
Total dust		—	15	—
Respirable fraction		-	5	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—
Soapstone; see Silicates				
Sodium fluoroacetate	62-74-8	—	0.05	X
Sodium hydroxide	1310-73-2	—	2	-
Starch	9005-25-8			
Total dust		—	15	—
Respirable fraction		—	5	-
Stibine	7803-52-3	0.1	0.5	—
Stoddard solvent	8052-41-3	200	1150	-
Strychnine	57-24-9	—	0.15	—
Styrene	100-42-5	100	420	50
Sucrose	57-50-1			
Total dust		—	15	-
Respirable fraction		—	5	-
Sulfur dioxide	7446-09-5	5	13	-
Sulfur hexafluoride	2551-62-4	1000	6000	—
Sulfuric acid	7664-93-9	—	1	-
Sulfur monochloride	10025-67-9	1	6	—
Sulfur pentafluoride	5714-22-7	0.025	0.25	—
Sulfuryl fluoride	2699-79-8	5	20	—
Systox, see Demeton				
2,4,5-T (2,4,5-trichlorophenoxyacetic acid)	93-76-5	-	10	-
Talc; see Silicates—.				
Tantalum, metal and oxide dust	7440-25-7	—	5	—
TEDP (Sulfotep)	3689-24-5	—	0.2	X
Teflon decomposition products			A2	
Tellurium and compounds (as Te)	13494-80-9	—	0.1	-
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	-
Temephos	3383-96-8			
Total dust		—	15	—
Respirable fraction		—	5	—
TEPP (Tetraethyl pyrophosphate)	107-49-3	—	0.05	X
Terphenyls	26140-60-3	(C)1	(C)9	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	-
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—
1,1,2,2-Tetrachloroethane	79-34-5	5	35	X
Tetrachloroethylene; see Perchloroethylene.				
Tetrachloromethane; see Carbon tetrachloride				
Tetrachloronaphthalene	1335-88-2	—	?	X
Tetraethyl lead (as Pb)	78-00-2	—	0.1	X
Tetrahydrofuran	109-99-9	200	590	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.15	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	X
Tetranitromethane	509-14-8	1	8	—
Tetryl (2,4,6-Trinitrophenylmethylnitramine)	479-45-8	-	1.5	X
Thallium, soluble compounds (as Tl)	7440-28-0	—	0.1	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96-69-5			
Total dust		—	15	—
Respirable fraction		—	5	—
Thiram	137-26-8	—	5	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	-	2	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—
Tin oxide (as Sn)	21651-19-4	—	—	—
Total dust		—	15	—
Respirable fraction		—	5	-
Titanium dioxide	13463-67-7			
Total dust		—	15	—
Toluene	108-88-3	200	750	100
Toluene-2,4-diisocyanate (TDI)	584-84-9	(C)0.02	(C)0.14	—
o-Toluidine	95-53-4	5	22	X
Toxaphene; see Chlorinated camphene.				
Tremolite; see Silicates.				

Table Z—Shipyards—Continued

Substance	CAS No.[d]	ppm[a] [e]	mg/m[3] [b] [e]	Skin Designation
Tributyl phosphate	126-73-8	—	5	
1,1,1-Trichloroethane; see Methyl chloroform				
1,1,2-Trichloroethane	79-00-5	10	45	X
Trichloroethylene	79-01-6	100	535	
Trichloromethane; see Chloroform				
Trichloronaphthalene	1321-65-9	—	5	X
1,2,3-Trichloropropane	96-18-4	50	300	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	—
Triethylamine	121-44-8	25	100	—
Trifluorobromomethane	75-63-8	1000	6100	—
Trimethyl benzene	25551-13-7	25	120	
2,4,6-Trinitrophenyl; see Picric acid.				
2,4,6-Trinitrophenylmethylnitramine; see Tetryl.				
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	1.5	X
Triorthocresyl phosphate	78-30-8	—	0.1	—
Triphenyl phosphate	115-86-6	—	3	—
Tungsten (as W)	7440-33-7			
Insoluble compounds		—	5	—
Soluble compounds		—	1	—
Turpentine	8006-64-2	100	560	
Uranium (as U)	7440-61-1			
Soluble compounds		—	0.2	—
Insoluble compounds		—	0.2	—
Vanadium	1314-62-1			
Respirable dust (as V_2O_5)		—	(C)0.5	
Fume (as V_2O_5)		—	(C)0.1	
Vegetable oil mist				
Total dust		—	15	—
Respirable fraction		—	5	
Vinyl benzene; see Styrene.				
Vinyl chloride; see § 1915.1017	75-01-4			
Vinyl cyanide; see Acrylonitrile.				
Vinyl toluene	25013-15-4	100	480	—
Warfarin	81-81-2	—	0.1	—
Xylenes (o-, m-, p-isomers)	1330-20-7	100	435	—
Xylidine	1300-73-8	5	25	X
Yttrium	7440-65-5	—	1	—
Zinc chloride fume	7646-85-7	—	1	—
Zinc oxide fume	1314-13-2	—	5	
Zinc oxide	1314-13-2			
Total dust		—	15	—
Respirable fraction		—	5	—
Zinc stearate	557-05-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Zirconium compounds (as Zr)	7440-67-7	—	[k]	

MINERAL DUSTS

Substance	mppcf[j]
SILICA:	
Crystalline	
Quartz. Threshold Limit calculated from the formula	250[h] / %SiO_2+5
Cristobalite.	
Amorphous, including natural diatomaceous earth	20
SILICATES (less than 1% crystalline silica)	
Mica	20
Portland cement	50
Soapstone	20
Talc (non-asbestiform)	20
Talc (fibrous), use asbestos limit	--

MINERAL DUSTS—Continued

Substance	mppcf[j]
Graphite (natural)	15
Inert or Nuisance Particulates:[m]	50 (or 15 mg/m[3] whichever is the smaller) of total dust <1% SiO_2

.Conversion factors.
mppcf × 35.3 = million particles per cubic meter = particles per c.c.

Footnotes to Table Z—Shipyards:
[1] [Reserved]
[2] See Mineral Dusts Table.
[3] Use Asbestos Limit § 1915.1001.
[4] See 1915.1001.
[a] The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit. They are to be determined from breathing-zone air samples.
[b] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
[c] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.
[d] [Reserved]

[d] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given--not CAS numbers for the individual compounds.

[e-i] [Reserved]

[j] For sectors excluded from § 1915.1028 the limit is 10 ppm TWA.

[k] Where OSHA has published a proposal for a substance but has not issued a final rule, the proposal is referenced and the existing limit is published.

[l] [Reserved]

[m] Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.

[n] The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.

[o] Covers all organic and inorganic particulates not otherwise regulated. Same as Particulates Not Otherwise Regulated.

The 1970 TLV uses letter designations instead of a numerical value as follows:

A[1] [Reserved]

A[2] Polytetrafluoroethylene decomposition products. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No TLV is recommended pending determination of the toxicity of the products, but air concentrations should be minimal.

A[3] Gasoline and/or Petroleum Distillates. The composition of these materials varies greatly and thus a single TLV for all types of these materials is no longer applicable. The content of benzene, other aromatics and additives should be determined to arrive at the appropriate TLV.

E Simple asphyxiants. The limiting factor is the available oxygen which shall be at least 18% and be within the requirement addressing explosion in subpart B of part 1915.

§ 1915.1001 Asbestos.

(a) *Scope and application.* (1) This section applies to all occupational exposures to asbestos in all industries covered by the Occupational Safety and Health Act, except as provided in paragraph (a)(2) of this section.

(2) This section does not apply to construction work as defined in 29 CFR 1910.12(b). [Exposure to asbestos in construction work is covered by 29 CFR 1926.58.]

(b) *Definitions. Action level* means an airborne concentration of asbestos, of 0.1 fiber per cubic centimeter (f/cc) of air calculated as an eight (8)—hour time-weighted average.

Asbestos includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person authorized by the employer and required by work duties to be present in regulated areas.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Employee exposure means that exposure to airborne asbestos that would occur if the employee were not using respiratory protective equipment.

Fiber means a particulate form of asbestos, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer diameter mono-disperse particles.

Regulated area means an area established by the employer to demarcate areas where airborne concentrations of asbestos exceed, or can reasonably be expected to exceed, the permissible exposure limit.

(c) *Permissible exposure limits (PELS).*—(1) *Time-weighted average limit (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes.

(d) *Exposure monitoring.*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and 30-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one or more samples representing full-shift exposures for each shift for each employee in each job classification in each work area. Representative 30-minute short-term employee exposures shall be determined on the basis of one or more samples representing 30 minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

(2) *Initial monitoring.* (i) Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, shall perform initial monitoring of employees who are, or may reasonably be expected to be exposed to airborne concentrations at or above the action level and/or excursion limit.

(ii) Where the employer has monitored after December 20, 1985, for the TWA and after March 14, 1988, for the excursion limit, and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has relied upon objective data that demonstrates that asbestos is not capable of being released in airborne concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling, then no initial monitoring is required.

(3) *Monitoring frequency (periodic monitoring) and patterns.* After the initial determinations required by paragraph (d)(2)(i) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than six months for employees whose exposures may reasonably be foreseen to exceed the action level and/or excursion limit.

(4) *Changes in monitoring frequency* If either the initial or the periodic monitoring required by paragraphs (d)(2) and (d)(3) of this section statistically indicates that employee exposures are below the action level and/or excursion limit, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(5) *Additional monitoring.* Notwithstanding the provisions of paragraphs (d)(2)(ii) and (d)(4) of this section, the employer shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures above the action level and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level and/or excursion limit.

(6) *Method of monitoring.* (i) All samples taken to satisfy the monitoring requirements of paragraph (d) shall be personal samples collected following the procedures specified in Appendix A.

(ii) All samples taken to satisfy the monitoring requirements of paragraph (d) shall be evaluated using the OSHA

Reference Method (ORM) specified in Appendix A of this section, or an equivalent counting method.

(iii) If an equivalent method to the ORM is used, the employer shall ensure that the method meets the following criteria:

(A) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons; and

(B) The comparison indicates that 90% of the samples collected in the range 0.5 to 2.0 times the permissible limit have an accuracy range of plus or minus 25 percent of the ORM results with a 95% confidence level as demonstrated by a statistically valid protocol; and

(C) The equivalent method is documented and the results of the comparison testing are maintained.

(iv) To satisfy the monitoring requirements of paragraph (d) of this section, employers must use the results of monitoring analysis performed by laboratories which have instituted quality assurance programs that include the elements as prescribed in Appendix A.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under the standard, notify the affected employees of these results in writing either either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, wherever monitoring results indicated that the TWA and/or excursion limit had been exceeded.

(e) *Regulated Areas*—(1) *Establishment.* The employer shall establish regulated areas wherever airborne concentrations of asbestos are in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in any manner that minimizes the number of persons who will be exposed to asbestos.

(3) *Access.* Access to regulated areas shall be limited to authorized persons or to persons authorized by the Act or regulations issued pursuant thereto.

(4) *Provision of respirators.* Each person entering a regulated area shall be supplied with and required to use a respirator, selected in accordance with paragraph (g)(2) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated areas.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA and/or excursion limit, prescribed in paragraph (c) of this section, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA and/or excursion limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

(iii) For the following operations, wherever feasible engineering controls and work practices that can be instituted are not sufficient to reduce the employee exposure to or below the TWA and/or excursion limit, prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to or below 0.5 fiber per cubic centimeter of air (as an eight-hour time-weighted average) or 2.5 fibers/cc for 30 minutes (short-term exposure) and shall supplement them by the use of any combination of respiratory protection that complies with the requirements of paragraph (g) of this section, work practices and feasible engineering controls that will reduce employee exposure to or below the TWA and to or below the excursion limit prescribed in paragraph (c) of this section: Coupling cutoff in primary asbestos cement pipe manufacturing; sanding in primary and secondary asbestos cement sheet manufacturing; grinding in primary and secondary friction product manufacturing; carding and spinning in dry textile processes; and grinding and sanding in primary plastics manufacturing.

(iv) Local exhaust ventilation. Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with good practices such as those found in the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1979.

(v) *Particular tools.* All hand-operated and power-operated tools with would produce or release fibers of asbestos so as to expose employees to levels in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section, such as, but not limited to saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems which comply with paragraph (f)(1)(iv) of this section.

(vi) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers so as to expose employees to levels in excess of the TWA and/or excursion limit, prescribed in paragraph (c) of this section, unless the usefulness of the product would be diminished thereby.

(vii) [Reserved]

(viii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne fibers of asbestos so as to expose employees to levels in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(ix) *Compressed air.* Compressed air shall not be used to remove asbestos or materials containing asbestos, unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(2) *Compliance program.* (i) Where the TWA and/or excursion limit is exceeded, the employer shall establish and implement a written program to reduce employee exposure to or below the TWA and to or below the excursion limit by means of engineering and work practice controls as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

(ii) Such programs shall be reviewed and updated as necessary to reflect significant changes in the status of the employer's compliance program.

(iii) Written programs shall be submitted upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives.

(iv) The employer shall not use employee rotation as a means of compliance with the TWA and/or excursion limit.

(g) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities, or other activities for which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA and/or excursion limit; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1. The employer shall select respirators from among those jointly approved as being acceptable for protection by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(ii) The employer shall provide a powered, air-purifying respirator in lieu of any negative pressure respirator specified in Table 1 whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

TABLE 1—RESPIRATORY PROTECTION FOR ASBESTOS FIBERS

Airborne concentration of asbestos	Required respirator
Not in excess of 2 f/cc (10 X PEL).	1. Half-mask air-purifying respirator, other than a disposable respirator, equipped with high-efficiency filters.
Not in excess of 10 f/cc (50 X PEL).	1. Full facepiece air-purifying respirator equipped with high-efficiency filters.
Not in excess of 20 f/cc (100 X PEL).	1. Any powered air-purifying respirator equipped with high-efficiency filters. 2. Any supplied-air respirator operated in continuous flow mode.
Not in excess of 200 f/cc (1000 X PEL).	1. Full facepiece supplied-air respirator operated in pressure demand mode.
Greater than 200 f/cc (> 1,000 X PEL) or unknown concentration.	1. Full facepiece supplied air respirator operated in pressure demand mode equipped with an auxiliary positive pressure self-contained breathing apparatus.

NOTE: a. Respirators assigned for higher environmental concentrations may be used at lower concentrations.

b. A high-efficiency filter means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

(3) *Respirator program.* (i) Where respiratory protection is required, the employer shall institute a respirator program in accordance with 29 CFR 1910.134(b), (d), (e), and (f).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall, be permitted to leave the regulated area to wash their faces and respirator facepieces whenever necessary to prevent skin irritation associated with respirator use.

(iv) No employee shall be assigned to tasks requiring the use of respirators if, based upon his or her most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by the use of a respirator. Such employee shall be assigned to another job or given the opportunity to transfer to a different position whose duties he or she is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay the employee had just prior to such transfer, if such a different position is available.

(4) *Respirator fit testing.* (i) The employer shall ensure that the respirator issued to the employee exhibits the least possible facepiece leakage and that the respirator is fitted properly.

(ii) For each employee wearing negative pressure respirators, employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every six months thereafter. The qualitative fit tests may be used only for testing the fit of half-mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix C. The tests shall be used to select facepieces that provide the required protection as prescribed in Table I.

(h) *Protective work clothing and equipment*—(1) *Provision and use.* If an employee is exposed to asbestos above the TWA and/or excursion limit, or where the possibility of eye irritation exists, the employer shall provide at no cost to the employee and ensure that the employee uses appropriate work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, head coverings, and foot coverings; and

(iii) Face shields, vented goggles, or other appropriate protective equipment which complies with § 1910.133 of this title.

(2) *Removal and storage.* (i) The employer shall ensure that employees remove work clothing contaminated with asbestos only in change rooms provided in accordance with paragraph (i)(1) of this section.

(ii) The employer shall ensure that no employee takes contaminated work clothing out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iii) Contaminated work clothing shall be placed and stored in closed containers which prevent dispersion of the asbestos outside the container.

(iv) Containers of contaminated protective devices or work clothing which are to be taken out of change rooms or the workplace for cleaning, maintenance or disposal, shall bear labels in accordance with paragraph (j)(2) of this section.

(3) *Cleaning and replacement.* (i) The employer shall clean, launder, repair, or replace protective clothing and equipment required by this paragraph to maintain their effectiveness. The employer shall provide clean protective clothing and equipment at least weekly to each affected employee.

(ii) The employer shall prohibit the removal of asbestos from protective clothing and equipment by blowing or shaking.

(iii) Laundering of contaminated clothing shall be done so as to prevent the release of airborne fibers of asbestos in excess of the permissible exposure limits prescribed in paragraph (c) of this section.

(iv) Any employer who gives contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph

(h)(3)(iii) of this section to effectively prevent the release of asbestos in excess of the permissible exposure limits.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with asbestos of the potentially harmful effects of exposure to asbestos.

(vi) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (j) of this seciton.

(i) *Hygiene facilities and practices*—(1) *Change rooms.* (i) The employer shall provide clean change rooms for employees who work in areas where their airborne exposure to asbestos is above the TWA and/or excursion limit.

(ii) The employer shall ensure that change rooms are in accordance with § 1910.141(e) of this title, and are equipped with two separate lockers or storage facilities, so separated as to prevent contamination of the employee's street clothes from his protective work clothing and equipment.

(2) *Showers.* (i) The employer shall ensure that employees who work in areas where their airborne exposure is above the TWA and/or excursion limit shower at the end of the work shift.

(ii) The employer shall provide shower facilities which comply with § 1910.141(d)(3) of this title.

(iii) The employer shall ensure that employees who are required to shower pursuant to paragraph (i)(2)(i) of this section do not leave the workplace wearing any clothing or equipment worn during the work shift.

(3) *Lunchrooms.* (i) The employer shall provide lunchroom facilities for employees who work in areas where their airborne exposure is above the TWA and/or excursion limit.

(ii) The employer shall ensure that lunchroom facilities have a positive pressure, filtered air supply, and are readily accessible to employees.

(iii) The employer shall ensure that employees who work in areas where their airborne exposure is above the TWA and/or excursion limit wash their hands and faces prior to eating, drinking or smoking.

(iv) The employer shall ensure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface asbestos fibers have been removed from the clothing or equipment by vacuuming or other method that removes dust without causing the asbestos to become airborne.

(4) *Smoking in work areas.* The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos because of activities in that work area.

(j) *Communication of hazards to employees*—(1) *Warning signs.* (i) Posting. Warning signs shall be provided and displayed at each regulated area. In addition, warning signs shall be posted at all approaches to regulated areas so that an employee may read the signs and take necessary protective steps before entering the area.

(ii) Sign specifications. The warning signs required by paragraph (j)(1)(i) of this section shall bear the following information:

DANGER
ASBESTOS
CANCER AND LUNG DISEASE
HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE
CLOTHING
ARE REQUIRED IN THIS AREA

(iii) [Reserved]

(iv) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (j)(1)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

(2) *Warning labels.* (i) Labeling. Warning labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers.

(ii) Label specifications. The labels shall comply with the requirements of 29 CFR 1915.1200(f) of OSHA's Hazard Communication standard, and shall include the following information:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE
HAZARD

(3) *Material safety data sheets.* Employers who are manufacturers or importers of asbestos or asbestos products shall comply with the requirements regarding development of material safety data sheets as specified in 29 CFR 1915.1200(g) of OSHA's Hazard Communication standard, except as provided by paragraph (j)(4) of this section.

(4) The provisions for labels required by paragraph (j)(2) or for material safety data sheets required by paragraph (j)(3) do not apply where:

(i) Asbestos fibers have been modified by a bonding agent, coating, binder, or other material provided that the manufacturer can demonstrate that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of fibers of asbestos in excess of the action level and/or excursion limit will be released or

(ii) Asbestos is present in a product in concentrations less than 0.1%.

(5) *Employee information and training.* (i) The employer shall institute a training program for all employees who are exposed to airborne concentrations of asbestos at or above the action level and/or excursion limit and ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(iii) The training program shall be conducted in a manner which the employee is able to understand. The employer shall ensure that each employee is informed of the following:

(A) The health effects associated with asbestos exposure;

(B) The relationship between smoking and exposure to asbestos in producing lung cancer;

(C) The quantity, location, manner of use, release, and storage of asbestos, and the specfic nature of operations which could result in exposure to asbestos;

(D) The engineering controls and work practices associated with the employee's job assignment;

(E) The specific procedures implemented to protect employees from exposure to asbestos, such as appropriate work practices, emergency and clean-up procedures, and personal protective equipment to be used;

(F) The purpose, proper use, and limitations of respirators and protective clothing;

(G) The purpose and a description of the medical surveillance program required by paragraph (l) of this section;

(H) The content of this standard, including appendices.

(I) The names, addresses and phone numbers of public health organizations which provide information, materials, and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix I, to comply with this requirement.

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

(iv) Access to information and training materials.

(A) The employer shall make a copy of this standard and its appendices readily available without cost to all affected employees.

(B) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and

the training program to the Assistant Secretary and the Director.

(C) The employer shall inform all employees concerning the availability of self-help smoking cessation program material. Upon employee request, the employer shall distribute such material, consisting of NIH Publication No. 89–1647, or equivalent self-help material, which is approved or published by a public health organization listed in appendix I.

(k) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of accumulations of dusts and waste containing asbestos.

(2) All spills and sudden releases of material containing asbestos shall be cleaned up as soon as possible.

(3) Surfaces contaminated with asbestos may not be cleaned by the use of compressed air.

(4) Vacuuming. HEPA-filtered vacuuming equipment shall be used for vacuuming. The equipment shall be used and emptied in a manner which minimizes the reentry of asbestos into the workplace.

(5) Shoveling, dry sweeping and dry clean-up of asbestos may be used only where vacuuming and/or wet cleaning are not feasible.

(6) Waste disposal. Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with asbestos consigned for disposal, shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(l) *Medical surveillance*—(1) *General.* (i) The employer shall institute a medical surveillance program for all employees who are or will be exposed to airborne concentrations of asbestos at or above the action level and/or excursion limit.

(ii) *Examination by a physician.* (A) The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee and at a reasonable time and place.

(B) Persons other than licensed physicians, who administer the pulmonary function testing required by this section, shall complete a training course in spirometry sponsored by an appropriate academic or professional institution.

(2) *Preplacement examinations.* (i) Before an employee is assigned to an occupation exposed to airborne concentrations of asbestos fibers, a preplacement medical examination shall be provided or made available by the employer.

(ii) Such examination shall include, as a minimum, a medical and work history; a complete physical examination of all systems with emphasis on the respiratory system, the cardiovascular system and digestive tract; completion of the respiratory disease standardized questionnaire in Appendix D, Part 1; a chest roentgenogram (posterior-anterior 14x17 inches); pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$); and any additional tests deemed appropriate by the examining physician. Interpretation and classification of chest roentgenograms shall be conducted in accordance with Appendix E.

(3) *Periodic examinations.* (i) Periodic medical examinations shall be made available annually.

(ii) The scope of the medical examination shall be in conformance with the protocol established in paragraph (l)(2)(ii) of this section, except that the frequency of chest roentgenograms shall be conducted in accordance with Table 2, and the abbreviated standardized questionnaire contained in Appendix D, Part 2, shall be administered to the employee.

TABLE 2—FREQUENCY OF CHEST ROENTGENOGRAMS

Years since first exposure	Age of employee		
	15 to 35	35+ to 45	45+
0 to 10	Every 5 years	Every 5 years	Every 5 years.
10+	Every 5 years	Every 2 years	Every 1 year.

(4) *Termination of employment examinations.* (i) The employer shall provide, or make available, a termination of employment medical examination for any employee who has been exposed to airborne concentrations of fibers of asbestos at or above the action level and/or excursion limit.

(ii) The medical examination shall be in accordance with the requirements of the periodic examinations stipulated in paragraph (l)(3) of this section, and shall be given within 30 calendar days before or after the date of termination of employment.

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with any of the preceding paragraphs [(l)(2)–(l)(4)] within the past 1 year period.

(6) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and Appendices D and E.

(ii) A description of the affected employee's duties as they relate to the employee's exposure.

(iii) The employee's representative exposure level or anticipated exposure level.

(iv) A description of any personal protective and respiratory equipment used or to be used.

(v) Information from previous medical examinations of the affected employee that is not otherwise available to the examining physician.

(7) *Physician's written opinion.* (i) The employer shall obtain a written signed opinion from the examining physician. This written opinion shall contain the results of the medical examination and shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of material health impairment from exposure to asbestos;

(B) Any recommended limitations on the employee or upon the use of personal protective equipment such as clothing or respirators; and

(C) A statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions resulting from asbestos exposure that require further explanation or treatment.

(D) A statement that the employee has been informed by the physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to asbestos.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 30 days from its receipt.

(m) *Recordkeeping*—(1) *Exposure measurements.* (i) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to asbestos as prescribed in paragraph (d) of this section.

(ii) This record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposure to asbestos which is being monitored;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of respiratory protective devices worn, if any; and

(F) Name, social security number and exposure of the employees whose exposure are represented.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1915.1120.

(2) *Objective data for exempted operations.* (i) Where the processing, use, or handling of products made from or containing asbestos is exempted from other requirements of this section under paragraph (d)(2)(iii) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) The record shall include at least the following:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of asbestos;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

Note: The employer may utilize the services of competent organizations such as industry trade associations and employee associations to maintain the records required by this section.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (l)(1)(i) of this section, in accordance with 29 CFR 1915.1120.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physician's written opinions;

(C) Any employee medical complaints related to exposure to asbestos; and

(D) A copy of the information provided to the physician as required by paragraph (l)(6) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1915.1120.

(4) *Training.* The employer shall maintain all employee training records for one (1) year beyond the last date of employment of that employee.

(5) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying.

(ii) The employer, upon request shall make any exposure records required by paragraph (m)(1) of this section available for examination and copying to affected employees, former employees, designated representatives and the Assistant Secretary, in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i).

(iii) The employer, upon request, shall make employee medical records required by paragraph (m)(2) of this section available for examination and copying to the subject employee, to anyone having the specific written consent of the subject employee, and the Assistant Secretary, in accordance with 29 CFR 1915.1120.

(6) *Transfer of records.* (i) The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1915.1120(h).

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal of records and, upon request, transmit them to the Director.

(n) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to asbestos conducted in accordance with paragraph (d) of this section.

(2) *Observation procedures.* When observation of the monitoring of employee exposure to asbestos requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(o) *Dates*—(1) *Effective date.* This standard shall become effective July 21, 1986. The requirements in the amended paragraphs in this section which pertain only to or are triggered by the excursion limit shall become effective October 14, 1988.

(2) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Exposure monitoring.* Initial monitoring required by paragraph (d)(2) of this section shall be completed as soon as possible but no later than October 20, 1986.

(ii) *Regulated areas.* Regulated areas required to be established by paragraph (e) of this section as a result of initial monitoring shall be set up as soon as possible after the results of that monitoring are known and not later than November 17, 1986.

(iii) *Respiratory protection.* Respiratory protection required by paragraph (g) of this section shall be provided as soon as possible but no later than the following schedule:

(A) Employees whose 8-hour TWA exposure exceeds 2 fibers/cc—July 21, 1986.

(B) Employees whose 8-hour TWA exposure exceeds the PEL but is less than 2 fibers/cc—November 17, 1986.

(C) Powered air-purifying respirators provided under paragraph (g)(2)(ii)—January 16, 1987.

(iv) *Hygiene and lunchroom facilities.* Construction plans for changerooms, showers, lavatories, and lunchroom facilities shall be completed no later than January 16, 1987; and these facilities shall be constructed and in use no later than July 20, 1987. However, if as part of the compliance plan it is predicted by an independent engineering firm that engineering controls and work practices will reduce exposures below the permissible exposure limit by July 20, 1988, for affected employees, then such facilities need not be completed until 1 year after the engineering controls are completed, if such controls have not in fact succeeded in reducing exposure to below the permissible exposure limit.

(v) *Employee information and training.* Employee information and training required by paragraph (j)(5) of this section shall be provided as soon as

possible but no later than October 20, 1986.

(vi) *Medical surveillance.* Medical examinations required by paragraph (l) of this section shall be provided as soon as possible but no later than November 17, 1986.

(vii) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section as a result of initial monitoring shall be completed and available for inspection and copying as soon as possible but no later than July 20, 1987.

(viii) *Methods of compliance.* The engineering and work practice controls as required by paragraph (f)(1) shall be implemented as soon as possible but no later than July 20, 1988.

(3) *Start-up dates for excursion limit.* Compliance with the excursion limit requirements in this section shall be as follows:

(i) Paragraphs (c), (d), (e), (g), (h), (j), (k), (l), (m) of this section, shall be complied with by December 13, 1988.

(ii) Paragraph (f) of this section, shall be complied with by March 13, 1989.

(iii) Paragraph (i) of this section, shall be complied with by September 14, 1989.

(4) *Compliance date.* The requirements of paragraphs (i)(4), (j)(l)(iv), (j)(5)(iii)(I), (j)(5)(iii)(J), (j)(5)(iv)(C), and (l)(7)(i)(D) shall be complied with by May 7, 1990.

(p) *Appedices.* (1) Appendices A, C, D, and E to this section are incorporated as part of this section and the contents of these Appendices are mandatory.

(2) Appendices B, F, G, H, and I to this section are informational and are not intended to create any additional obligation not otherwise imposed or to detract from any existing obligation.

Appendix A to § 1915.1001—OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods (such as the NIOSH 7400 method) which OSHA considers to be essential to achieve adequate employee exposure monitoring while allowing employers to use methods that are already established within their organizations. All employers who are required to conduct air monitoring under paragraph (d) of the standard are required to utilize analytical laboratories that use this procedure, or an equivalent method, for collecting and analyzing samples.

Sampling and Analytical Procedure

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm electrically conductive extension cowl. The 37-mm cassette may be used if necessary but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (e.g., expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the "breathing zone" of the employee (i.e., attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 X eyepiece and a 40 to 45 X objective for a total magnification of approximately 400 X and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated for a field diameter of 100 micrometers (+/ − 2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, seven being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 blanks. The blank results shall be averaged and subtracted from the analytical results before reporting. Any samples represented by a blank having a fiber count in excess of 7 fibers/100 fields shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fibers equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. In the absence of other information, count all particles as asbesto that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures

1. Intralaboratory program. Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2. Interlaboratory program. Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equalivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

Appendix B to § 1915.1001—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

This appendix contains a detailed procedure for sampling and analysis and includes those critical elements specified in Appendix A. Employers are not required to use this procedure, but they are required to use Appendix A. The purpose of Appendix B is to provide a detailed step-by-step sampling and analysis procedure that conforms to the elements specified in Appendix A. Since this procedure may also standardize the analysis and reduce variability, OSHA encourages employers to use this appendix.

Asbestos Sampling and Analysis Method

Technique: Microscopy, Phase Contrast
Analyte: Fibers (manual count)
Sample Preparation: Acetone/triacetin method
Calibration: Phase-shift detection limit about 3 degrees
Range: 100 to 1300 fibers/mm ^{2} filter area
Estimated limit of detection: 7 fibers/mm ^{2} filter area
Sampler: Filter (0.8–1.2 um mixed cellulose ester membrane, 25-mm diameter)
Flow rate: 0.5 L/min to 2.5 L/min (25-mm cassette) 1.0 L/min to 2.5 L/min (37-mm cassette)
Sample volume: Adjust to obtain 100 to 1300 fibers/mm ^{2}
Shipment: Routine
Sample stability: Indefinite
Blanks: 10% of samples (minimum 2)
Standard analytical error: 0.25.

Applicability: The working range is 0.02 f/cc (1920–L air sample) to 1.25 f/cc (400–L air sample). The method gives an index of airborne asbestos fibers but may be used for other materials such as fibrous glass by inserting suitable parameters into the counting rules. The method does not differentiate between asbestos and other fibers. Asbestos fibers less than ca. 0.25 um diameter will not be detected by this method.

Interferences: Any other airborne fiber may interfere since all particles meeting the counting criteria are counted. Chainlike particles may appear fibrous. High levels of nonfibrous dust particles may obscure fibers in the field of view and raise the detection limit.

Reagents: 1. Acetone. 2. Triacetin (glycerol triacetate), reagent grade

Special precautions: Acetone is an extremely flammable liquid and precautions must be taken not to ignite it. Heating of acetone must be done in a ventilated laboratory fume hood using a flameless, spark-free heat source.

Equipment: 1. Collection device: 25-mm cassette with 50-mm electrically conductive extension cowl with cellulose ester filter, 0.8 to 1.2 mm pore size and backup pad.

Note: Analyze representative filters for fiber background before use and discard the filter lot if more than 5 fibers/100 fields are found.

2. Personal sampling pump, greater than or equal to 0.5 L/min. with flexible connecting tubing.

3. Microscope, phase contrast, with green or blue filter, 8 to 10X eyepiece, and 40 to 45X phase objective (total magnification ca 400X; numerical aperture = 0.65 to 0.75.

4. Slides, glass, single-frosted, pre-cleaned, 25 x 75 mm.

5. Cover slips, 25 x 25 mm, no. 1½ unless otherwise specified by microscope manufacturer.

6. Knife, No. 1 surgical steel, curved blade.

7. Tweezers.

8. Flask, Guth-type, insulated neck, 250 to 500 mL (with single-holed rubber stopper and elbow-jointed glass tubing, 16 to 22 cm long).

9. Hotplate, spark-free, stirring type; heating mantle; or infrared lamp and magnetic stirrer.

10. Syringe, hypodermic, with 22-gauge needle.

11. Graticule, Walton-Beckett type with 100 um diameter circular field at the specimen plane (area = 0.00785 mm ^{2}). (Type G–22).

Note: the graticule is custom-made for each microscope.

12. HSE/NPL phase contrast test slide, Mark II.

13. Telescope, ocular phase-ring centering.

14. Stage micrometer (0.01 mm divisions).

Sampling

1. Calibrate each personal sampling pump with a representative sampler in line.

2. Fasten the sampler to the worker's lapel as close as possible to the worker's mouth. Remove the top cover from the end of the cowl extension (open face) and orient face down. Wrap the joint between the extender and the monitor's body with shrink tape to prevent air leaks.

3. Submit at least two blanks (or 10% of the total samples, whichever is greater) for each set of samples. Remove the caps from the field blank cassettes and store the caps and cassettes in a clean area (bag or box) during the sampling period. Replace the caps in the cassettes when sampling is completed.

4. Sample at 0.5 L/min or greater. Do not exceed 1 mg total dust loading on the filter. Adjust sampling flow rate, Q (L/min), and time to produce a fiber density, E (fibers/mm^2), of 100 to 1300 fibers/mm^2 [3.85×10^4 to 5×10^5 fibers per 25-mm filter with effective collection area (A_c=385 mm^2)] for optimum counting precision (see step 21 below). Calculate the minimum sampling time, $t_{minimum}$ (min) at the action level (one-half of the current standard), L (f/cc) of the fibrous aerosol being sampled:

$$t_{minimum} = \frac{(Ac)(E)}{(Q)(L)10^3}$$

5. Remove the field monitor at the end of sampling, replace the plastic top cover and small end caps, and store the monitor.

6. Ship the samples in a rigid container with sufficient packing material to prevent jostling or damage.

Note: Do not use polystyrene foam in the shipping container because of electrostatic forces which may cause fiber loss from the sample filter.

Sample Preparation

Note: The object is to produce samples with a smooth (non-grainy) background in a medium with a refractive index equal to or less than 1.46. The method below collapses the filter for easier focusing and produces permanent mounts which are useful for quality control and interlaboratory comparison. Other mounting techniques meeting the above criteria may also be used, e.g., the nonpermanent field mounting technique used in P & CAM 239.

7. Ensure that the glass slides and cover slips are free of dust and fibers.

8. Place 40 to 60 ml of acetone into a Guth-type flask. Stopper the flask with a single-hole rubber stopper through which a glass tube extends 5 to 8 cm into the flask. The portion of the glass tube that exits the top of the stopper (6 to 10 cm) is bent downward in an elbow that makes an angle of 20 to 30 degrees with the horizontal.

9. Place the flask in a stirring hotplate or wrap in a heating mantle. Heat the acetone gradually to its boiling temperature (ca. 56 °C).

Caution.—The acetone vapor must be generated in a ventilated fume hood away from all open flames and spark sources. Alternate heating methods can be used, providing no open flame or sparks are present.

10. Mount either the whole sample filter or a wedge cut from the sample filter on a clean glass slide.

a. Cut wedges of ca. 25 percent of the filter area with a curved-blade steel surgical knife using a rocking motion to prevent tearing.

b. Place the filter or wedge, dust side up, on the slide. Static electricity will usually keep the filter on the slide until it is cleared.

c. Hold the glass slide supporting the filter approximately 1 to 2 cm from the glass tube port where the acetone vapor is escaping from the heated flask. The acetone vapor stream should cause a condensation spot on the glass slide ca. 2 to 3 cm in diameter. Move the glass slide gently in the vapor stream. The filter should clear in 2 to 5 sec. If the filter curls, distorts, or is otherwise rendered unusable, the vapor stream is probably not strong enough. Periodically wipe the outlet port with tissue to prevent liquid acetone dripping onto the filter.

d. Using the hypodermic syringe with a 22-gauge needle, place 1 to 2 drops of triacetin on the filter. Gently lower a clean 25-mm square cover slip down onto the filter at a slight angle to reduce the possibility of forming bubbles. If too many bubbles form or the amount of triacetin is insufficient, the cover slip may become detached within a few hours.

e. Glue the edges of the cover slip to the glass slide using a lacquer or nail polish.

Note: If clearing is slow, the slide preparation may be heated on a hotplate (surface temperature 50 °C) for 15 min to hasten clearing. Counting may proceed

immediately after clearing and mounting are completed.

Calibration and Quality Control

11. Calibration of the Walton-Beckett graticule. The diameter, d_c(mm), of the circular counting area and the disc diameter must be specified when ordering the graticule.

a. Insert any available graticule into the eyepiece and focus so that the graticule lines are sharp and clear.

b. Set the appropriate interpupillary distance and, if applicable, reset the binocular head adjustment so that the magnification remains constant.

c. Install the 40 to 45X phase objective.

d. Place a stage micrometer on the microscope object stage and focus the microscope on the graduated lines.

e. Measure the magnified grid length, L_o(mm), using the stage micrometer.

f. Remove the graticule from the microscope and measure its actual grid length, L_a(mm). This can best be accomplished by using a stage fitted with verniers.

g. Calculate the circle diameter, d_c(mm), for the Walton-Beckett graticule:

$$d_c = \frac{L_a \times D}{L_o}$$

Example.—If L_o = 108 um, L_a = 2.93 mm and D = 100 um, then d_c = 2.71 mm.

h. Check the field diameter, D(acceptable range 100 mm ± 2 mm) with a stage micrometer upon receipt of the graticule from the manufacturer. Determine field area (mm^2).

12. Microscope adjustments. Follow the manufacturer's instructions and also the following:

a. Adjust the light source for even illumination across the field of view at the condenser iris.

Note: Kohler illumination is preferred, where available.

b. Focus on the particulate material to be examined.

c. Make sure that the field iris is in focus, centered on the sample, and open only enough to fully illuminate the field of view.

d. Use the telescope ocular supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase-shifting elements) are concentric.

13. Check the phase-shift detection limit of the microscope periodically.

a. Remove the HSE/NPL phase-contrast test slide from its shipping container and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooves (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7. The requirements for counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 to 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope which fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image quality deteriorates, clean the microscope optics and, if the problem persists, consult the microscope manufacturer.

14. Quality control of fiber counts.

a. Prepare and count field blanks along with the field samples. Report the counts on each blank. Calculate the mean of the field blank counts and subtract this value from each sample count before reporting the results.

Note 1: The identity of the blank filters should be unknown to the counter until all counts have been completed.

Note 2: If a field blank yields fiber counts greater than 7 fibers/100 fields, report possible contamination of the samples.

b. Perform blind recounts by the same counter on 10 percent of filters counted (slides relabeled by a person other than the counter).

15. Use the following test to determine whether a pair of counts on the same filter should be rejected because of possible bias. This statistic estimates the counting repeatability at the 95% confidence level. Discard the sample if the difference between the two counts exceeds 2.77(F)s_r, where F=average of the two fiber counts and s_r=relative standard deviation, which should be derived by each laboratory based on historical in-house data.

Note: If a pair of counts is rejected as a result of this test, recount the remaining samples in the set and test the new counts against the first counts. Discard all rejected paired counts.

16. Enroll each new counter in a training course that compares performance of counters on a variety of samples using this procedure.

Note: To ensure good reproducibility, all laboratories engaged in asbestos counting are required to participate in the Proficiency Analytical Testing (PAT) Program and should routinely participate with other asbestos fiber counting laboratories in the exchange of field samples to compare performance of counters.

Measurement

17. Place the slide on the mechanical stage of the calibrated microscope with the center of the filter under the objective lens. Focus the microscope on the plane of the filter.

18. Regularly check phase-ring alignment and Kohler illumination.

19. The following are the counting rules:

a. Count only fibers longer than 5 um. Measure the length of curved fibers along the curve.

b. Count only fibers with a length-to-width ratio equal to or greater than 3:1.

c. For fibers that cross the boundary of the graticule field, do the following:

1. Count any fiber longer tha 5 um that lies entirely within the graticule area.

2. Count as ½ fiber any fiber with only one end lying within the graticule area.

3. Do not count any fiber that crosses the graticule boundary more than once.

4. Reject and do not count all other fibers.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of a fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields. Stop at 100 fields regardless of fiber count.

20. Start counting from one end of the filter and progress along a radial line to the other end, shift either up or down on the filter, and continue in the reverse direction. Select fields randomly by looking away from the eyepiece briefly while advancing the mechanical stage. When an agglomerate covers ca. ⅛ or more of the field of view, reject the field and select another. Do not report rejected fields in the number of total fields counted.

Note: When counting a field, continuously scan a range of focal planes by moving the fine focus knob to detect very fine fibers which have become embedded in the filter. The small-diameter fibers will be very faint but are an important contribution to the total count.

Calculations

21. Calculate and report fiber density on the filter, E (fibers/mm^2); by dividing the total fiber count, F; minus the mean field blank count, B, by the number of fields, n; and the field area, A_f (0.00785 mm^2 for a properly calibrated Walton-Beckett graticule):

$$E = \frac{(F/n_f - (B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:

n_f=number of fields in submission sample

n_b=number of fields in blank sample

22. Calculate the concentration, C (f/cc), of fibers in the air volume sampled, V (L), using the effective collection area of the filter, A_c (385 mm^2 for a 25-mm filter):

$$C = \frac{(E)(Ac)}{V(10^3)}$$

Note: Periodically check and adjust the value of A_c, if necessary.

Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures—Mandatory

Qualitative Fit Test Protocols

I. Isoamyl Acetate Protocol.

A. Odor Threshold Screening

1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically peeled, dried off and switched to maintain the integrity of the test.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator Selection

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least five sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fit properly and used properly will provide adequate protection.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a good fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepiece shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g. see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure test the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit Test

1. The fit test chamber shall be similar to a clear 55 gal drum liner suspended inverted over a 2 foot diameter frame, so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and rainbow passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting

the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject breaks the faceseal and takes a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. At least two facepieces shall be selected for the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL of airborne asbestos.

16. The test shall not be conducted if there is any hair growth between the skin the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping

A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator Selection

Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste Threshold Screening

1. An enclosure about head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C 7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test

1. The test subject shall don and adjust the respirator without the assistance from any person.

2. The fit test uses the same enclosure described in IIB above.

3. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

4. The test subject shall don the enclosure while wearing the respirator selected in section 1B above. This respirator shall be properly adjusted and equipped with a particulate filter.

5. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above).

10. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side *to the other*. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C9.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. At least two facepieces shall be selected by the saccharin solution aerosol test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping

A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a high-efficiency cartridge.

B. Fit test

1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Repeating it after the test conductor (keeping eyes closed) will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in Place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. At least two facepieces shall be selected by the irritant fume test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

13. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of asbestos.

14. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

15. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

16. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

17. Qualitative fit testing shall be repeated at least every six months.

18. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmestic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping

A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent

Quantitative Fit Test Procedures

1. General.

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign one individual who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. *Definition.*

a. *Quantitative Fit Test* means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. *Challenge Agent* means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. *Test Subject* means the person wearing the respirator for quantitative fit testing.

d. *Normal Standing Position* means standing erect and straight with arms down along the sides and looking straight ahead.

e. *Fit Factor* means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.*

a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to freely perform all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. *Procedural Requirements.*

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfo II–M, North M. Survivair M, A-O M, or Scott-M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive pressure test.* With the exhaust port(s) blocked, the negative pressure of slight inhalation should remain constant for several seconds.

(2) *Negative pressure test.* With the intake port(s) blocked, the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitive test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d, and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

(1) Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. *Exercise Regime.* Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his/her head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his/her head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

e. *Reading (R).* The test subject (keeping eyes closed) shall repeat after the test conductor the 'rainbow passage' at the end of this section. The subject shall talk slowly and aloud so as to be heard clearly by the test conductor or monitor.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least 30 seconds.

h. *Jogging in place (J).* The test subject shall perform jog in place for at least 30 seconds.

i. *Normal Breathing (NB).* Same as exercise a.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say

he is looking for the pot of gold at the end of the rainbow.

6. The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

7. *Calculation of Fit Factors.*

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. *Interpretation of Test Results.* The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. *Other Requirements.*

a. The test subject shall not be permitted to wear a half-mask or full facepiece mask if the minimum fit factor of 100 or 1,000, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the test subject with the following information:

(1) Name.

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

11. *Recordkeeping.*

A summary of all test results shall be maintained for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

Appendix D to § 1915.1001—Medical Questionnaires; Mandatory

This mandatory appendix contains the medical questionnaires that must be administered to all employees who are exposed to asbestos above the action level, and who will therefore be included in their employer's medical surveillance program. Part 1 of the appendix contains the Initial Medical Questionnaire, which must be obtained for all new hires who will be covered by the medical surveillance requirements. Part 2 includes the abbreviated Periodical Medical Questionnaire, which must be administered to all employees who are provided periodic medical examinations under the medical surveillance provisions of the standard.

Part 1
INITIAL MEDICAL QUESTIONNAIRE

1 NAME _____

2. SOCIAL SECURITY # ___ ___ ___ ___ ___ ___ ___ ___ ___
1 2 3 4 5 6 7 8 9

3. CLOCK NUMBER ___ ___ ___ ___ ___ ___
10 11 12 13 14 15

4. PRESENT OCCUPATION _____

5 PLANT _____

6. ADDRESS _____

7. _____
(Zip Code)

8. TELEPHONE NUMBER _____

9. INTERVIEWER _____

10. DATE _____ ___ ___ ___ ___ ___ ___
16 17 18 19 20 21

11. Date of Birth _____ ___ ___ ___ ___ ___ ___
Month Day Year 22 23 24 25 26 27

12. Place of Birth _____

13. Sex
1. Male ___
2. Female ___

14. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

15. Race
1. White ___
2. Black ___
3. Asian ___
4. Hispanic ___
5. Indian ___
6. Other ___

16. What is the highest grade completed in school? _____
(For example 12 years is completion of high school)

OCCUPATIONAL HISTORY

17A. Have you ever worked full time (30 hours per week or more) for 6 months or more?
1. Yes __ 2. No __

IF YES TO 17A:

B. Have you ever worked for a year or more in any dusty job?
1. Yes __ 2. No __ 3. Does Not Apply __

Specify job/industry _____ Total Years Worked ____

Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

C. Have you even been exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___
Specify job/industry _____ Total Years Worked ___

Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

D. What has been your usual occupation or job--the one you have worked at the longest?

1. Job occupation _____

2. Number of years employed in this occupation _____

3. Position/job title _____

4. Business, field or industry _____

(Record on lines the years in which you have worked in any of these industries, e.g. 1960-1969)

Have you ever worked:

	YES	NO
E. In a mine?.....	[__]	[__]
F. In a quarry?.....	[__]	[__]
G. In a foundry?.....	[__]	[__]
H. In a pottery?.....	[__]	[__]
I. In a cotton, flax or hemp mill?.....	[__]	[__]
J. With asbestos?.....	[__]	[__]

18. PAST MEDICAL HISTORY

	YES	NO
A. Do you consider yourself to be in good health?	[__]	[__]
If "NO" state reason _____		
B. Have you any defect of vision?.....	[__]	[__]
If "YES" state nature of defect _____		
C. Have you any hearing defect?.....	[__]	[__]
If "YES" state nature of defect _____		

D. Are you suffering from or have you ever suffered from:

a. Epilepsy (or fits, seizures, convulsions)?	[__]	[__]
b. Rheumatic fever?	[__]	[__]
c. Kidney disease?	[__]	[__]
d. Bladder disease?	[__]	[__]
e. Diabetes?	[__]	[__]
f. Jaundice?	[__]	[__]

19. CHEST COLDS AND CHEST ILLNESSES

19A. If you get a cold, does it usually go to your chest? (Usually means more than 1/2 the time) — 1. Yes __ 2. No __ 3. Don't get colds __

20A. During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed? — 1. Yes __ 2. No __

IF YES TO 20A:

B. Did you produce phlegm with any of these chest illnesses? — 1. Yes __ 2. No __ 3. Does Not Apply __

C. In the last 3 years, how many such illnesses with (increased) phlegm did you have which lasted a week or more? — Number of illnesses __ No such illnesses __

21. Did you have any lung trouble before the age of 16? — 1. Yes __ 2. No __

22. Have you ever had any of the following?

1A. Attacks of bronchitis? — 1. Yes __ 2. No __

IF YES TO 1A:

B. Was it confirmed by a doctor? — 1. Yes __ 2. No __ 3. Does Not Apply __

C. At what age was your first attack? — Age in Years __ Does Not Apply __

2A. Pneumonia (include bronchopneumonia)? — 1. Yes __ 2. No __

IF YES TO 2A:

B. Was it confirmed by a doctor? — 1. Yes __ 2. No __ 3. Does Not Apply __

C At what age did you first have it? — Age in Years __ Does Not Apply __

3A. Hay Fever?	1. Yes __ 2. No __
IF YES TO 3A:	
B. Was it confirmed by a doctor?	1. Yes __ 2. No __ 3. Does Not Apply __
C. At what age did it start?	Age in Years __ Does Not Apply __
23A. Have you ever had chronic bronchitis?	1. Yes __ 2. No __
IF YES TO 23A:	
B. Do you still have it?	1. Yes __ 2. No __ 3. Does Not Apply __
C. Was it confirmed by a doctor?	1. Yes __ 2. No __ 3. Does Not Apply __
D. At what age did it start?	Age in Years __ Does Not Apply __
24A. Have you ever had emphysema?	1. Yes __ 2. No __
IF YES TO 24A:	
B. Do you still have it?	1. Yes __ 2. No __ 3. Does Not Apply __
C. Was it confirmed by a doctor?	1. Yes __ 2. No __ 3. Does Not Apply __
D. At what age did it start?	Age in Years __ Does Not Apply __
25A. Have you ever had asthma?	1. Yes __ 2. No __
IF YES TO 25A:	
B. Do you still have it?	1. Yes __ 2. No __ 3. Does Not Apply __
C. Was it confirmed by a doctor?	1. Yes __ 2. No __ 3. Does Not Apply __
D. At what age did it start?	Age in Years __ Does Not Apply __
E. If you no longer have it, at what age did it stop?	Age stopped __ Does Not Apply __
26. Have you ever had:	
A. Any other chest illness?	1. Yes __ 2. No __

If yes, please specify _____

VOL 58 ISS 125 JL 1 1993 UMI

B. Any chest operations? 1. Yes __ 2. No __

If yes, please specify _____

C. Any chest injuries? 1. Yes __ 2. No __

If yes, please specify _____

27A. Has a doctor ever told you that you had heart trouble? 1. Yes __ 2. No __

IF YES TO 27A:

B. Have you ever had treatment for heart trouble in the past 10 years? 1. Yes __ 2. No __ 3. Does Not Apply __

28A. Has a doctor ever told you that you had high blood pressure? 1. Yes __ 2. No __

IF YES TO 28A:

B. Have you had any treatment for high blood pressure (hypertension) in the past 10 years? 1. Yes __ 2. No __ 3. Does Not Apply __

29. When did you last have your chest X-rayed? (Year) __ __ __ __ (25 26 27 28)

30. Where did you last have your chest X-rayed (if known)? _____

What was the outcome? _____

FAMILY HISTORY

31. Were either of your natural parents ever told by a doctor that they had a chronic lung condition such as:

	FATHER			MOTHER		
	1. Yes	2. No	3. Don't Know	1. Yes	2. No	3. Don't Know
A. Chronic Bronchitis?	__	__	__	__	__	__
B. Emphysema?	__	__	__	__	__	__
C. Asthma?	__	__	__	__	__	__
D. Lung cancer?	__	__	__	__	__	__
E. Other chest conditions	__	__	__	__	__	__
F. Is parent currently alive?	__	__	__	__	__	__
G. Please Specify	__ Age if Living __ Age at Death __ Don't Know			__ Age if Living __ Age at Death __ Don't Know		

H. Please specify cause of death

_____ _____

COUGH

32A. Do you usually have a cough? (Count a cough with first smoke or on first going out of doors. Exclude clearing of throat.) [If no, skip to question 32C.] — 1. Yes __ 2. No __

B. Do you usually cough as much as 4 to 6 times a day 4 or more days out of the week? — 1. Yes __ 2. No __

C. Do you usually cough at all on getting up or first thing in the morning? — 1. Yes __ 2. No __

D. Do you usually cough at all during the rest of the day or at night? — 1. Yes __ 2. No __

IF YES TO ANY OF ABOVE (32A, B, C, or D), ANSWER THE FOLLOWING. IF NO TO ALL, CHECK DOES NOT APPLY AND SKIP TO NEXT PAGE

E. Do you usually cough like this on most days for 3 consecutive months or more during the year? — 1. Yes __ 2. No __ 3. Does not apply __

F. For how many years have you had the cough? — Number of years __ Does not apply __

33A. Do you usually bring up phlegm from your chest? (Count phlegm with the first smoke or on first going out of doors. Exclude phlegm from the nose. Count swallowed phlegm.) (If no, skip to 33C) — 1. Yes __ 2. No __

B. Do you usually bring up phlegm like this as much as twice a day 4 or more days out of the week? — 1. Yes __ 2. No __

C. Do you usually bring up phlegm at all on getting up or first thing in the morning? — 1. Yes __ 2. No __

D. Do you usually bring up phlegm at all during the rest of the day or at night? — 1. Yes __ 2. No __

IF YES TO ANY OF THE ABOVE (33A, B, C, or D), ANSWER THE FOLLOWING: IF NO TO ALL, CHECK DOES NOT APPLY AND SKIP TO 34A.

E. Do you bring up phlegm like this on most days for 3 consecutive months or more during the year? — 1. Yes __ 2. No __ 3. Does not apply __

VOL 58 ISS 125 JL 1 1993 UMI

F. For how many years have you had trouble with phlegm? — Number of years __ Does not apply __

EPISODES OF COUGH AND PHLEGM

34A. Have you had periods or episodes of (increased*) cough and phlegm lasting for 3 weeks or more each year? — 1. Yes __ 2. No __
*(For persons who usually have cough and/or phlegm)

If YES TO 34A
B. For how long have you had at least 1 such episode per year? — Number of years __ Does not apply __

WHEEZING

35A. Does your chest ever sound wheezy or whistling
1. When you have a cold? — 1. Yes __ 2. No __
2. Occasionally apart from colds? — 1. Yes __ 2. No __
3. Most days or nights? — 1. Yes __ 2. No __

IF YES TO 1, 2, or 3 in 35A
B. For how many years has this been present? — Number of years __ Does not apply __

36A. Have you ever had an attack of wheezing that has made you feel short of breath? — 1. Yes __ 2. No __

IF YES TO 36A
B. How old were you when you had your first such attack? — Age in years __ Does not apply __

C. Have you had 2 or more such episodes? — 1. Yes __ 2. No __ 3. Does not apply __

D. Have you ever required medicine or treatment for the(se) attack(s)? — 1. Yes __ 2. No __ 3. Does not apply __

BREATHLESSNESS

37. If disabled from walking by any condition other than heart or lung disease, please describe and proceed to question 39A.
Nature of condition(s)_____

38A. Are you troubled by shortness of breath when hurrying on the level or walking up a slight hill? — 1. Yes __ 2. No __

IF YES TO 38A

B. Do you have to walk slower than people of your age on the level because of breathlessness?	1. Yes __ 2. No __ 3. Does not apply __
C. Do you ever have to stop for breath when walking at your own pace on the level?	1. Yes __ 2. No __ 3. Does not apply __
D. Do you ever have to stop for breath after walking about 100 yards (or after a few minutes) on the level?	1. Yes __ 2. No __ 3. Does not apply __
E. Are you too breathless to leave the house or breathless on dressing or climbing one flight of stairs?	1. Yes __ 2. No __ 3. Does not apply __

TOBACCO SMOKING

39A. Have you ever smoked cigarettes? (No means less than 20 packs of cigarettes or 12 oz. of tobacco in a lifetime or less than 1 cigarette a day for 1 year.)	1. Yes 2. No __

IF YES TO 39A

B. Do you now smoke cigarettes (as of one month ago)	1. Yes __ 2. No __ 3. Does not apply __
C. How old were you when you first started regular cigarette smoking?	Age in years __ Does not apply __
D. If you have stopped smoking cigarettes completely, how old were you when you stopped?	Age stopped __ Check if still smoking __ Does not apply __
E. How many cigarettes do you smoke per day now?	Cigarettes per day __ Does not apply __
F. On the average of the entire time you smoked, how many cigarettes did you smoke per day?	Cigarettes per day __ Does not apply __
G. Do or did you inhale the cigarette smoke?	1. Does not apply __ 2. Not at all __ 3. Slightly __ 4. Moderately __ 5. Deeply __
40A. Have you ever smoked a pipe regularly? (Yes means more than 12 oz. of tobacco in a lifetime.)	1. Yes __ 2. No __

IF YES TO 40A:
FOR PERSONS WHO HAVE EVER SMOKED A PIPE

B. 1. How old were you when you started to smoke a pipe regularly? — Age __

2. If you have stopped smoking a pipe completely, how old were you when you stopped? — Age stopped __ / Check if still smoking pipe __ / Does not apply __

C. On the average over the entire time you smoked a pipe, how much pipe tobacco did you smoke per week? — __ oz. per week (a standard pouch of tobacco contains 1 1/2 oz.) / __ Does not apply

D. How much pipe tobacco are you smoking now? — oz. per week __ / Not currently smoking a pipe __

E. Do you or did you inhale the pipe smoke?

1. Never smoked __
2. Not at all __
3. Slightly __
4. Moderately __
5. Deeply __

41A. Have you ever smoked cigars regularly? (Yes means more than 1 cigar a week for a year) — 1. Yes __ 2. No __

IF YES TO 41A
FOR PERSONS WHO HAVE EVER SMOKED CIGARS

B. 1. How old were you when you started smoking cigars regularly? — Age __

2. If you have stopped smoking cigars completely, how old were you when you stopped. — Age stopped __ / Check if still smoking cigars __ / Does not apply __

C. On the average over the entire time you smoked cigars, how many cigars did you smoke per week? — Cigars per week __ / Does not apply __

D. How many cigars are you smoking per week now? — Cigars per week __ / Check if not smoking cigars currently __

E. Do or did you inhale the cigar smoke?

1. Never smoked __
2. Not at all __
3. Slightly __
4. Moderately __
5. Deeply __

Signature _____ Date _____

VOL 58 ISS 125 JL 1 1993 UMI

Part 2
PERIODIC MEDICAL QUESTIONNAIRE

1. NAME _____

2. SOCIAL SECURITY # ___ ___ ___ ___ ___ ___ ___ ___ ___ ___
(1 2 3 4 5 6 7 8 9)

3. CLOCK NUMBER ___ ___ ___ ___ ___ ___
(10 11 12 13 14 15)

4. PRESENT OCCUPATION _____

5. PLANT _____

6. ADDRESS _____

7. _____
(Zip Code)

8. TELEPHONE NUMBER _____

9. INTERVIEWER _____

10. DATE _____ ___ ___ ___ ___ ___ ___
(16 17 18 19 20 21)

11. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

12. OCCUPATIONAL HISTORY

12A. In the past year, did you work full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 12A:

12B. In the past year, did you work in a dusty job? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

12C. Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

12D. In the past year, were you exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

12E. Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

12F. In the past year, what was your:
1. Job/occupation? _____
2. Position/job title? _____

13. RECENT MEDICAL HISTORY

13A. Do you consider yourself to be in good health? Yes ___ No ___

If NO, state reason _____

13B. In the past year, have you developed:

	Yes	No
Epilepsy?	___	___
Rheumatic fever?	___	___
Kidney disease?	___	___
Bladder disease?	___	___
Diabetes?	___	___
Jaundice?	___	___
Cancer?	___	___

14. CHEST COLDS AND CHEST ILLNESSES

14A. If you get a cold, does it usually go to your chest? (Usually means more than 1/2 the time)

1. Yes ___ 2. No ___
3. Don't get colds ___

15A. During the past year, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?

1. Yes ___ 2. No ___
3. Does Not Apply ___

IF YES TO 15A:

15B. Did you produce phlegm with any of these chest illnesses?

1. Yes ___ 2. No ___
3. Does Not Apply ___

15C. In the past year, how many such illnesses with (increased) phlegm did you have which lasted a week or more?

Number of illnesses ___
No such illnesses ___

16. RESPIRATORY SYSTEM

In the past year have you had:

	Yes or No	Further Comment on Positive Answers
Asthma	_____	
Bronchitis	_____	
Hay Fever	_____	
Other Allergies	_____	

VOL 58 ISS 125 JL 1 1993 UMI

	Yes or No	Further Comment on Positive Answers
Pneumonia	____	
Tuberculosis	____	
Chest Surgery	____	
Other Lung Problems	____	
Heart Disease	____	

Do you have:

	Yes or No	Further Comment on Positive Answers
Frequent colds	____	
Chronic cough	____	
Shortness of breath when walking or climbing one flight or stairs	____	

Do you:

Wheeze	____	
Cough up phlegm	____	
Smoke cigarettes	____	Packs per day ___ How many years ___

Date _____ Signature _____

Appendix E to § 1915.1001—Interpretation and Classification of Chest Roentgenograms—Mandatory

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted Classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 though 4) shall be included. This form is not to be submitted to NIOSH.

(b) Roentgenograms shall be interpreted and classified only by a B-reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) All interpreters, whenever interpreting chest roentgenograms made under this section, shall have immediately available for reference a complete set of the *ILO–U/C* International Classification of Radiographs for Pneumoconioses, 1980.

Appendix F to § 1915.1001—Work Practices and Engineering Controls for Automotive Brake Repair Operations—Non-Mandatory

This appendix is intended as guidance for employers in the automotive brake and clutch repair industry who wish to reduce their employees' asbestos exposures during repair operations to levels below the new standard's action level (0.1 f/cc). OSHA believes that employers in this industry sector are likely to be able to reduce their employees' exposures to asbestos by employing the engineering and work practice controls described in Sections A and B of this appendix. Those employers who choose to use these controls and who achieve exposures below the action level will thus be able to avoid any burden that might be imposed by complying with such requirements as medical surveillance, recordkeeping, training, respiratory protection, and regulated areas, which are triggered when employee exposures exceed the action level or PEL.

Asbestos exposure in the automotive brake and clutch repair industry occurs primarily during the replacement of clutch plates and brake pads, shoes, and linings. Asbestos fibers may become airborne when an automotive mechanic removes the asbestos-containing residue that has been deposited as brakes and clutches wear. Employee exposures to asbestos occur during the cleaning of the brake drum or clutch housing.

Based on evidence in the rulemaking record (Exs. 84–74, 84–263, 90–148), OSHA believes that employers engaged in brake repair operations who implement any of the work practices and engineering controls described in Sections A and B of this appendix may be able to reduce their employees' exposures to levels below the action level (0.1 fiber/cc). These control methods and the relevant record evidence on these and other methods are described in the following sections.

A. Enclosed Cylinder/HEPA Vacuum System Method

The enclosed cylinder-vacuum system used in one of the facilities visited by representatives of the National Institute for Occupational Safety and Health (NIOSH) during a health hazard evaluation of brake repair facilities (Ex. 84–263) consists of three components:

(1) A wheel-shaped cylinder designed to cover and enclose the wheel assembly;

(2) A compressed-air hose and nozzle that fits into a port in the cylinder; and

(3) A HEPA-filtered vacuum used to evacuate airborne dust generated within the cylinder by the compressed air.

To operate the system, the brake assembly is enclosed in a cylinder that has viewing ports to provide visibility and cotton sleeves through which the mechanic can handle the brake assembly parts. The cylinder effectively isolates asbestos dust in the drum from the mechanic's breathing zone. One company manufactures the brake assembly isolation cylinder in two sizes to fit brake drums in the 7-to-12-inch size range common to automobiles and light trucks and the 12-to-19-inch size range common to large commercial vehicles. The cylinder is equipped with built-in compressed-air guns and a connection for a vacuum cleaner equipped with a High Efficiency Particulate Air (HEPA) filter. This type of filter is capable of removing all particles greater than 0.3 microns from the air. When the vacuum cleaner's filter is full, it must be replaced according to the manufacturer's instruction, and appropriate HEPA-filtered dual cartridge respirators should be worn during the process. The filter of the vacuum cleaner is assumed to be contaminated with asbestos fibers and should be handled carefully, wetted with a fine mist of water, placed immediately in a labelled plastic bag, and disposed of properly. When the cylinder is in place around the brake assembly and the HEPA vacuum is connected, compressed air is blown into the cylinder to loosen the residue from the brake assembly parts. The vacuum then evacuates the loosened material from within the cylinder, capturing the airborne material on the HEPA filter.

The HEPA vacuum system can be disconnected from the brake assembly isolation cylinder when the cylinder is not being used. The HEPA vacuum can then be used for clutch facing work, grinding, or other routine cleaning.

B. Compressed Air/Solvent System Method

A compressed-air hose fitted at the end with a bottle of solvent can be used to loosen the asbestos-containing residue and to capture the resulting airborne particles in the solvent mist. The mechanic should begin spraying the asbestos-contaminated parts with the solvent at a sufficient distance to ensure that the asbestos particles are not dislodged by the velocity of the solvent spray. After the asbestos particles are thoroughly wetted, the spray may be brought closer to the parts and the parts may be sprayed as necessary to remove grease and other material. The automotive parts sprayed with the mist are then wiped with a rag, which must then be disposed of appropriately. Rags should be placed in a labelled plastic bag or other container while they are still wet. This ensures that the asbestos fibers will not become airborne after the brake and clutch parts have been cleaned. (If cleanup rags are laundered rather than disposed of, they must be washed using methods appropriate for the laundering of asbestos-contaminated materials.)

OSHA believes that a variant of this compressed-air/solvent mist process offers advantages over the compressed-air/solvent mist technique discussed above, both in terms of costs and employee protection. The variant involves the use of spray cans filled with any of several solvent cleaners commercially available from auto supply stores. Spray cans of solvent are inexpensive, readily available, and easy to use. These cans will also save time, because no solvent delivery system has to be assembled, i.e., no compressed-air hose/mister ensemble. OSHA believes that a spray can will deliver solvent to the parts to be cleaned with considerably less force than the alternative compressed-air delivery system described above, and will thus generate fewer airborne asbestos fibers than the compressed-air method. The Agency therefore believes that the exposure levels of automotive repair mechanics using the spray can/solvent mist process will be even lower than the exposures reported by NIOSH (Ex. 84–263) for the compressed-air/solvent mist system (0.08 f/cc).

C. Information on the Effectiveness of Various Control Measures

The amount of airborne asbestos generated during brake and clutch repair operations depends on the work practices and engineering controls used during the repair or removal activity. Data in the rulemaking record document the 8-hour time-weighted average (TWA_8) asbestos exposure levels associated with various methods of brake and clutch repair and removal.

NIOSH submitted a report to the record entitled "Health Hazard Evaluation for Automotive Brake Repair" (Ex. 84–263). In addition, Exhibits 84–74 and 90–148 provided exposure data for comparing the airborne concentrations of asbestos generated by the use of various work practices during brake repair operations. These reports present exposure data for brake repair operations involving a variety of controls and work practices, including:

- Use of compressed air to blow out the brake drums;
- Use of a brush, without a wetting agent, to remove the asbestos-containing residue;
- Use of a brush dipped in water or a solvent to remove the asbestos-containing residue;
- Use of an enclosed vacuum cleaning system to capture the asbestos-containing residue; and
- Use of a solvent mixture applied with compressed air to remove the residue.

Prohibited Methods

The use of compressed air to blow the asbestos-containing residue off the surface of the brake drum removes the residue effectively but simultaneously produces an airborne cloud of asbestos fibers. According to NIOSH (Ex. 84–263), the peak exposures of mechanics using this technique were as high as 15 fibers/cc, and 8-hour TWA exposures ranged from 0.03 to 0.19 f/cc.

Dr. William J. Nicholson of the Mount Sinai School of Medicine (Ex. 84–74) cited

data from Knight and Hickish (1970) that indicated that the concentration of asbestos ranged from 0.84 to 5.35 f/cc over a 60-minute sampling period when compressed air was being used to blow out the asbestos-containing residue from the brake drum. In the same study, a peak concentration of 87 f/cc was measured for a few seconds during brake cleaning performed with compressed air. Rohl et al. (1976) (Ex. 90–148) measured area concentrations (of unspecified duration) within 3–5 feet of operations involving the cleaning of brakes with compressed air and obtained readings ranging from 6.6 to 29.8 f/cc. Because of the high exposure levels that result from cleaning brake and clutch parts using compressed air, OSHA has prohibited this practice in the revised standard.

Ineffective Methods

When dry brushing was used to remove the asbestos-containing residue from the brake drums and wheel assemblies, peak exposures measured by NIOSH ranged from 0.61 to 0.81 f/cc, while 8-hour TWA levels were at the new standard's permissible exposure limit (PEL) of 0.2 f/cc (Ex. 84–263). Rohl and his colleagues (Ex. 90–148) collected area samples 1–3 feet from a brake cleaning operation being performed with a dry brush, and measured concentrations ranging from 1.3 to 3.6 f/cc; however, sampling times and TWA concentrations were not presented in the Rohl et al. study.

When a brush wetted with water, gasoline, or Stoddart solvent was used to clean the asbestos-containing residue from the affected parts, exposure levels (8-hour TWAs) measured by NIOSH also exceeded the new 0.2 f/cc PEL, and peak exposures ranged as high as 2.62 f/cc (Ex. 84–263).

Preferred Methods

Use of an engineering control system involving a cylinder that completely encloses the brake shoe assembly and a High Efficiency Particulate Air (HEPA) filter-equipped vacuum produced 8-hour TWA employee exposures of 0.01 f/cc and peak exposures ranging from nondetectable to 0.07 f/cc (Ex. 84–263). (Because this system achieved exposure levels below the standard's action level, it is described in detail above.) Data collected by the Mount Sinai Medical Center (Ex. 90–148) for Nilfisk of America, Inc., the manufacturer of the brake assembly enclosure system, showed that for two of three operations sampled, the exposure of mechanics to airborne asbestos fibers was nondetectable. For the third operator sampled by Mt. Sinai researchers, the exposure was 0.5 f/cc, which the authors attributed to asbestos that had contaminated the operator's clothing in the course of previous brake repair operations performed without the enclosed cylinder/vacuum system.

Some automotive repair facilities use a compressed-air hose to apply a solvent mist to remove the asbestos-containing residue from the brake drums before repair. The NIOSH data (Ex. 84–263) indicated that mechanics employing this method experienced exposures (8-hour TWAs) of 0.8 f/cc, with peaks of 0.25 to 0.68 f/cc. This technique, and a variant of it that OSHA believes is both less costly and more effective in reducing employee exposures, is described in greater detail above in Sections A and B.

D. Summary

In conclusion, OSHA believes that it is likely that employers in the brake and clutch repair industry will be able to avail themselves of the action level trigger built into the revised standard if they conscientiously employ one of the three control methods described above: the enclosed cylinder/HEPA vacuum system, the compressed air/solvent method, or the spray can/solvent mist system.

Appendix G to § 1915.1001—Substance Technical Information for Asbestos—Non-Mandatory

I. Substance Identification

A. Substance: "Asbestos" is the name of a class of magnesium-silicate minerals that occur in fibrous form. Minerals that are included in this group are chrysotile, crocidolite, amosite, tremolite asbestos, anthophyllite asbestos, and actinolite asbestos.

B. Asbestos is used in the manufacture of heat-resistant clothing, automative brake and clutch linings, and a variety of building materials including floor tiles, roofing felts, ceiling tiles, asbestos-cement pipe and sheet, and fire-resistant drywall. Asbestos is also present in pipe and boiler insulation materials, and in sprayed-on materials located on beams, in crawlspaces, and between walls.

C. The potential for a product containing asbestos to release breatheable fibers depends on its degree of friability. Friable means that the material can be crumbled with hand pressure and is therefore likely to emit fibers. The fibrous or fluffy sprayed-on materials used for fireproofing, insulation, or sound proofing are considered to be friable, and they readily release airborne fibers if disturbed. Materials such as vinyl-asbestos floor tile or roofing felts are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding or sawing operations. Asbestos-cement pipe or sheet can emit airborne fibers if the materials are cut or sawed, or if they are broken during demolition operations.

D. Permissible exposure: Exposure to airborne asbestos fibers may not exceed 0.2 fibers per cubic centimeter of air (0.2 f/cc) averaged over the 8-hour workday.

II. Health Hazard Data

A. Asbestos can cause disabling respiratory disease and various types of cancers if the fibers are inhaled. Inhaling or ingesting fibers from contaminated clothing or skin can also result in these diseases. The symptoms of these diseases generally do not appear for 20 or more years after initial exposure.

B. Exposure to asbestos has been shown to cause lung cancer, mesothelioma, and cancer of the stomach and colon. Mesothelioma is a rare cancer of the thin membrane lining of the chest and abdomen. Symptoms of mesothelioma include shortness of breath, pain in the walls of the chest, and/or abdominal pain.

III. Respirators and Protective Clothing

A. Respirators: You are required to wear a respirator when performing tasks that result in asbestos exposure that exceeds the permissible exposure limit (PEL) of 0.2 f/cc. These conditions can occur while your employer is in the process of installing engineering controls to reduce asbestos exposure, or where engineering controls are not feasible to reduce asbestos exposure. Air-purifying respirators equipped with a high-efficiency particulate air (HEPA) filter can be used where airborne asbestos fiber concentrations do not exceed 2 f/cc; otherwise, air-supplied, positive-pressure, full facepiece respirators must be used. Disposable respirators or dust masks are not permitted to be used for asbestos work. For effective protection, respirators must fit your face and head snugly. Your employer is required to conduct fit tests when you are first assigned a respirator and every 6 months thereafter. Respirators should not be loosened or removed in work situations where their use is required.

B. Protective Clothing: You are required to wear protective clothing in work areas where asbestos fiber concentrations exceed the permissible exposure limit (PEL) of 0.2 f/cc to prevent contamination of the skin. Where protective clothing is required, your employer must provide you with clean garments. Unless you are working on a large asbestos removal or demolition project, your employer must also provide a change room and separate lockers for your street clothes and contaminated work clothes. If you are working on a large asbestos removal or demolition project, and where it is feasible to do so, your employer must provide a clean room, shower, and decontamination room contiguous to the work area. When leaving the work area, you must remove contaminated clothing before proceeding to the shower. If the shower is not adjacent to the work area, you must vacuum your clothing before proceeding to the change room and shower. To prevent inhaling fibers in contaminated change rooms and showers, leave your respirator on until you leave the shower and enter the clean change room.

IV. Disposal Procedures and Cleanup

A. Wastes that are generated by processes where asbestos is present include:

1. Empty asbestos shipping containers.
2. Process wastes such as cuttings, trimmings, or reject material.
3. Housekeeping waste from sweeping or vacuuming.
4. Asbestos fireproofing or insulating material that is removed from buildings.
5. Building products that contain asbestos removed during building renovation or demolition.
6. Contaminated disposable protective clothing.

B. Empty shipping bags can be flattened under exhaust hoods and packed into airtight containers for disposal. Empty shipping drums are difficult to clean and should be sealed.

C. Vacuum bags or disposable paper filters should not be cleaned, but should be sprayed with a fine water mist and placed into a labeled waste container.

D. Process waste and housekeeping waste should be wetted with water or a mixture of water and surfactant prior to packaging in disposable containers.

E. Material containing asbestos that is removed from buildings must be disposed of in leak-tight 6-mil thick plastic bags, plastic-lined cardboard containers, or plastic-lined metal containers. These wastes, which are removed while wet, should be sealed in containers before they dry out to minimize the release of asbestos fibers during handling.

V. Access to Information

A. Each year, your employer is required to inform you of the information contained in this standard and appendices for asbestos. In addition, your employer must instruct you in the proper work practices for handling materials containing asbestos, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to asbestos. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure, and, if you are exposed above the permissible limit, he or she is required to inform you of the actions that are being taken to reduce your exposure to within the permissible limit.

C. Your employer is required to keep records of your exposures and medical examinations. These exposure records must be kept for at least thirty (30) years. Medical records must be kept for the period of your employment plus thirty (30) years.

D. Your employer is required to release your exposure and medical records to your physician or designated representative upon your written request.

Appendix H to § 1915.1001—Medical Surveillance Guidelines for Asbestos Non-Mandatory

I. Route of Entry Inhalation, Ingestion

II. Toxicology

Clinical evidence of the adverse effects associated with exposure to asbestos is present in the form of several well-conducted epidemiological studies of occupationally exposed workers, family contacts of workers, and persons living near asbestos mines. These studies have shown a definite association between exposure to asbestos and an increased incidence of lung cancer, pleural and peritoneal mesothelioma, gastrointestinal cancer, and asbestosis. The latter is a disabling fibrotic lung disease that is caused only by exposure to asbestos. Exposure to asbestos has also been associated with an increased incidence of esophageal, kidney, laryngeal, pharyngeal, and buccal cavity cancers. As with other known chronic occupational diseases, disease associated with asbestos generally appears about 20 years following the first occurrence of exposure: There are no known acute effects associated with exposure to asbestos.

Epidemiological studies indicate that the risk of lung cancer among exposed workers who smoke cigarettes is greatly increased over the risk of lung cancer among non-exposed smokers or exposed nonsmokers. These studies suggest that cessation of smoking will reduce the risk of lung cancer for a person exposed to asbestos but will not reduce it to the same level of risk as that existing for an exposed worker who has never smoked.

III. Signs and Symptoms of Exposure-Related Disease

The signs and symptoms of lung cancer or gastrointestinal cancer induced by exposure to asbestos are not unique, except that a chest X-ray of an exposed patient with lung cancer may show pleural plaques, pleural calcification, or pleural fibrosis. Symptoms characteristic of mesothelioma include shortness of breath, pain in the walls of the chest, or abdominal pain. Mesothelioma has a much longer latency period compared with lung cancer (40 years versus 15–20 years), and mesothelioma is therefore more likely to be found among workers who were first exposed to asbestos at an early age. Mesothelioma is always fatal.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Symptoms include shortness of breath, coughing, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. The diagnosis of asbestosis is based on a history of exposure to asbestos, the presence of characteristic radiologic changes, end-inspiratory crackles (rales), and other clinical features of fibrosing lung disease. Pleural plaques and thickening are observed on X-rays taken during the early stages of the disease. Asbestosis is often a progressive disease even in the absence of continued exposure, although this appears to be a highly individualized characteristic. In severe cases, death may be caused by respiratory or cardiac failure.

IV. Surveillance and Preventive Considerations

As noted above, exposure to asbestos has been linked to an increased risk of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis among occupationally exposed workers. Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as cancer, from exposure to asbestos do not presently exist. However, some tests, particularly chest X-rays and pulmonary function tests, may indicate that an employee has been overexposed to asbestos increasing his or her risk of developing exposure-related chronic diseases. It is important for the physician to become familiar with the operating conditions in which occupational exposure to asbestos is likely to occur. This is particularly important in evaluating medical and work histories and in conducting physical examinations. When an active employee has been identified as having been overexposed to asbestos, measures taken by the employer to eliminate or mitigate further exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the action level (0.1 fiber per cubic centimeter of air). All examinations and procedures must be performed by or under the supervision of a licensed physician, at a reasonable time and place, and at no cost to the employee.

Although broad latitude is given to the physician in prescribing specific tests to be included in the medical surveillance program, OSHA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms of the respiratory system, cardiovascular system, and digestive tract.

(ii) Completion of the respiratory disease questionnaire contained in Appendix D.

(iii) A physical examination including a chest roentgenogram and pulmonary function test that includes measurement of the employee's forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1).

(iv) Any laboratory or other test that the examining physician deems by sound medical practice to be necessary.

The employer is required to make the prescribed tests available at least annually to those employees covered; more often than specified if recommended by the examining physician; and upon termination of employment.

The employer is required to provide the physician with the following information: A copy of this standard and appendices; a description of the mployee's duties as they relate to asbestos exposure; the employee's representative level of exposure to asbestos; a description of any personal protective and respiratory equipment used; and information from previous medical examinations of the affected employee that is not otherwise available to the physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, if required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of exposure-related disease; any recommended limitations on the employee or on the use of personal protective equipment; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions related to asbestos exposure that require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to exposure to asbestos, and a copy of the opinion must be provided to the affected employee.

Appendix I to § 1915.1001—Smoking Cessation Program Information For Asbestos—Non-Mandatory

The following organizations provide smoking cessation information and program material.

1. The National Cancer Institute operates a toll-free Cancer Information Service (CIS)

with trained personnel to help you. Call 1–800–4–CANCER* to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31, Room 10A24, Bethesda, Maryland 20892.

2. American Cancer Society, 3340 Peachtree Road, NE., Atlanta, Georgia 30062, (404) 320–3333.

The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational materials, ACS helps people learn about the health hazards of smoking and become successful ex-smokers.

3. American Heart Association, 7320 Greenville Avenue, Dallas, Texas 75231, (214) 750–5300.

The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 state and regional groups. AHA produces a variety of publications and audiovisual materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

4. American Lung Association, 1740 Broadway, New York, New York 10019, (212) 245–8000.

A voluntary organization of 7,500 members (physicians, nurses, and laypersons), the American Lung Association (ALA) conducts numerous public information programs about the health effect of smoking. ALA has 59 state and 85 local units. The organization actively supports legislation and information campaigns for non-smokers' rights and provides help for smokers who want to quit, for example, through "Freedom From Smoking," a self-help smoking cessation program.

5. Office on Smoking and Health, U.S. Department of Health and, Human Services, 5600 Fishers Lane, Park Building, Room 110, Rockville, Maryland 20857.

The Office on Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-realted topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

*In Hawaii, on Oahu call 524–1234 (call collect from neighboring islands).

Spanish-speaking staff members are available during daytime hours to callers from the following areas: California, Florida, Georgia, Illinois, New Jersey (area code 210), New York, and Texas. Consult your local telephone directory for listings of local chapters.

(Reporting and recordkeeping requirements in paragraphs (d)(2), (3), (5), and (7), (f)(2) and (3)(i), (j)(5), (l), and (m) as they apply to the excursion limit have been approved by the Office of Management and Budget under control numbers 1218–0133 and 1218–0134. The OMB clearance expires on February 29, 1992.)

(Reporting and recordkeeping requirements in paragraph (j)(5)(iv)(C) have received OMB paperwork clearance under OMB clearance number 1218–0133. The OMB clearance expires on April 30, 1993.)

(Approved by the Office of Management and Budget under control number 1218–0133)

§ 1915.1002 Coal tar pitch volatiles; interpretation of term.

As used in § 1915.1000 (Table Z-1), coal tar pitch volatiles include the fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum (excluding asphalt), wood, and other organic matter. Asphalt (CAS 8052–42–4, and CAS 64742–93–4) is not covered under the "coal tar pitch volatiles" standard.

§ 1915.1003 4-Nitrobiphenyl.

(a) *Scope and application.* (1) This section applies to any area in which 4-Nitrobiphenyl, Chemical Abstracts Service Registry Number 92933 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of 4-Nitrobiphenyl.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Nitrobiphenyl. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 4-Nitrobiphenyl where containment prevents the release of 4-Nitrobiphenyl into regulated areas, non-regulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 4-Nitrobiphenyl or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 4-Nitrobiphenyl from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 4-Nitrobiphenyl which may result in exposure to or contact with 4-Nitrobiphenyl.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 4-Nitrobiphenyl, which is impervious to the passage of 4-Nitrobiphenyl, and which would prevent the entry of 4-Nitrobiphenyl into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Nitrobiphenyl within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 4-Nitrobiphenyl in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4-Nitrobiphenyl into regulated areas, non-regulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 4-Nitrobiphenyl.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) "Requirements for areas containing 4-Nitrobiphenyl." A regulated area shall be established by an employer where 4-Nitrobiphenyl is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 4-Nitrobiphenyl within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and

before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 4-Nitrobiphenyl is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 4-Nitrobiphenyl is contained within: (i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 4-Nitrobiphenyl is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 4-Nitrobiphenyl handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4-Nitrobiphenyl could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 4-Nitrobiphenyl such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 4-Nitrobiphenyl from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 4-Nitrobiphenyl and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and

(c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 4-Nitrobiphenyl and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 4-Nitrobiphenyl contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance. *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of 4-Nitrobiphenyl, including local and systemic toxicity;

(B) The specific nature of the operation involving 4-Nitrobiphenyl which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4-Nitrobiphenyl;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 4-Nitrobiphenyl in each regulated area.

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 4-Nitrobiphenyl is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 4-Nitrobiphenyl into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0085)

§ 1915.1004 alpha-Naphthylamine.

(a) *Scope and application.* (1) This section applies to any area in which alpha-Naphthylamine, Chemical Abstracts Service Registry Number 134327 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of alpha-Naphthylamine.

(3) This section will not apply to operations involving the destructive distillation of carbonaceous materials, such as occurs in coke ovens.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of alpha-Naphthylamine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving alpha-Naphthylamine where containment prevents the release of alpha-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of alpha-Naphthylamine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of alpha-Naphthylamine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of alpha-Naphthylamine which may result in exposure to or contact with alpha-Naphthylamine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of alpha-Naphthylamine, which is impervious to the passage of alpha-Naphthylamine, and which would prevent the entry of alpha-Naphthylamine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving alpha-Naphthylamine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving alpha-Naphthylamine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of alpha-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to alpha-Naphthylamine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing alpha-Naphthylamine.* A regulated area shall be established by an employer where alpha-Naphthylamine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with alpha-Naphthylamine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where alpha-Naphthylamine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while alpha-Naphthylamine is contained within: (i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where alpha-Naphthylamine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and shoe covers and gloves prior to entering a regulated area.

(iv) Employees engaged in alpha-Naphthylamine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exist of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with alpha-Naphthylamine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected areas shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with alpha-Naphthylamine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove alpha-Naphthylamine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of alpha-Naphthylamine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of alpha-Naphthylamine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have alpha-Naphthylamine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of alpha-Naphthylamine, including local and systemic toxicity;

(B) The specific nature of the operation involving alpha-Naphthylamine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of alpha-Naphthylamine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of alpha-Naphthylamine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which alpha-Naphthylamine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of alpha-Naphthylamine into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0084)

§ 1915.1005 [Reserved]

§ 1915.1006 Methyl chloromethyl ether.

(a) *Scope and application.* (1) This section applies to any area in which methyl chloromethyl ether, Chemical Abstracts Service Registry Number 107302 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of methyl chloromethyl ether.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of methyl chloromethyl ether. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving methyl chloromethyl ether where containment prevents the release of methyl chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of methyl chloromethyl ether or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of methyl chloromethyl ether from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of methyl chloromethyl ether which may result in exposure to or contact with methyl chloromethyl ether.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of methyl chloromethyl ether, which is impervious to the passage of methyl chloromethyl ether, and which would prevent the entry of methyl chloromethyl ether into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

VOL 58 ISS 125 JL 1 1993 UMI

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving methyl chloromethyl ether within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving methyl chloromethyl ether in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of methyl chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to methyl chloromethyl ether.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing methyl chloromethyl ether.* A regulated area shall be established by an employer where methyl chloromethyl ether is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with methyl chloromethyl ether within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where methyl chloromethyl ether is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while methyl chloromethyl ether is contained within. Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where methyl chloromethyl ether is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and gloves prior to entering the regulated area.

(iv) Employees engaged in methyl chloromethyl ether handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1910.134.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with methyl chloromethyl ether could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with methyl chloromethyl ether, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a

regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove methyl chloromethyl ether from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of methyl chloromethyl ether and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of methyl chloromethyl ether and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii) (B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have methyl chloromethyl ether contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of methyl chloromethyl ether, including local and systemic toxicity;

(B) The specific nature of the operation involving methyl chloromethyl ether which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of methyl chloromethyl ether;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of methyl chloromethyl ether in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which methyl chloromethyl ether is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of methyl chloromethyl ether into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances be taken, with specific completion dates, of the incident, and measures taken or to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than

VOL
58
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annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0086)

§ 1915.1007 3,3′-Dichlorobenzidine (and its salts).

(a) *Scope and application.* (1) This section applies to any area in which 3,3′-Dichlorobenzidine (or its salts), Chemical Abstracts Service Registry Number 91941 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1 percent by weight or volume of 3,3′-Dichlorobenzidine (or its salts).

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 3,3′-Dichlorobenzidine (or its salts). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 3,3′-Dichlorobenzidine (or its salts) where containment prevents the release of 3,3′-Dichlorobenzidine (or its salts) into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 3,3′-Dichlorobenzidine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 3,3′-Dichlorobenzidine (or its salts) from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 3,3′-Dichlorobenzidine (or its salts) which may result in exposure to or contact with 3,3′-Dichlorobenzidine (or its salts).

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment, of 3,3′-Dichlorobenzidine (or its salts), which is impervious to the passage of 3,3′-Dichlorobenzidine (or its salts) and which would prevent the entry of 3,3′-Dichlorobenzidine (or its salts) into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 3,3′-Dichlorobenzidine (or its salts) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 3,3′-Dichlorobenzidine (or its salts) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 3,3′-Dichlorobenzidine (or its salts) into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 3,3′-Dichlorobenzidine (or its salts).

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 3,3′-Dichlorobenzidine (or its salts).* A regulated area shall be established by an employer where 3,3′-Dichlorobenzidine (or its salts) is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 3,3′-Dichlorobenzidine (or its salts) within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 3,3′-Dichlorobenzidine (or its salts) is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 3,3′-Dichlorobenzidine (or its salts) is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 3,3′-Dichlorobenzidine (or its salts) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 3,3′-Dichlorobenzidine (or its salts) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 3,3′-Dichlorobenzidine (or its salts) could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 3,3′-Dichlorobenzidine (or its salts), such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 3,3′-Dichlorobenzidine (or its salts) from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 3,3′-Dichlorobenzidine (or its salts) and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 3,3′-Dichlorobenzidine (or its salts) and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 3,3′-Dichlorobenzidine (or its salts) contents with corrosive or irritating properties shall have label statements warning of

such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of 3,3′-Dichlorobenzidine (or its salts), including local and systemic toxicity;

(B) The specific nature of the operation involving 3,3′-Dichlorobenzidine (or its salts) which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 3,3′-Dichlorobenzidine (or its salts);

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 3,3′-Dichlorobenzidine (or its salts) in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 3,3′-Dichlorobenzidine (or its salts) is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 3,3′-Dichlorobenzidine (or its salts) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrance of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination, and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0083)

§ 1915.1008 bis-Chloromethyl ether.

(a) *Scope and application.* (1) This section applies to any area in which bis-chloromethyl ether, Chemical Abstracts Service Registry Number 542881 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of bis-chloromethyl ether.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to

be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of bis-chloromethyl ether. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving bis-chloromethyl ether where containment prevents the release of bis-chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of bis-chloromethyl ether or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of bis-chloromethyl ether from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of bis-chloromethyl ether which may result in exposure to or contact with bis-chloromethyl ether.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment, of bis-chloromethyl ether, which is impervious to the passage of, bis-chloromethyl ether and which would prevent the entry of bis-chloromethyl ether into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving bis-chloromethyl ether within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving bis-chloromethyl ether in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of bis-chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to bis-chloromethyl ether.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing bis-chloromethyl ether.* A regulated area shall be established by an employer where bis-chloromethyl ether is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with bis-chloromethyl ether within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where bis-chloromethyl ether is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while bis-chloromethyl ether is contained within. Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where bis-chloromethyl ether is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and gloves prior to entering the regulated area.

(iv) Employees engaged in bis-chloromethyl ether handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1910.134.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with bis-chloromethyl ether could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be

included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with bis-chloromethyl ether such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove bis-chloromethyl ether from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identifications.* (i) Containers of bis-chloromethyl ether and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of bis-chloromethyl ether and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have bis-chloromethyl ether contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) of this paragraph shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of bis-chloromethyl ether, including local and systemic toxicity;

(B) The specific nature of the operation involving bis-chloromethyl ether which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of bis-chloromethyl ether;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and inplant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of bis-chloromethyl ether in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which bis-chloromethyl ether is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of bis-chloromethyl ether into any area where employees may be

VOL 58 ISS 125 JL 1 1993 UMI

potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0087)

§ 1915.1009 beta-Naphthylamine.

(a) *Scope and application.* (1) This section applies to any area in which beta-Naphthylamine, Chemical Abstracts Service Registry Number 91598 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of beta-Naphthylamine.

(3) This section will not apply to operations involving the destructive distillation of carbonaceous materials, such as occurs in coke ovens.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of beta-Naphthylamine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving beta-Naphthylamine where containment prevents the release of beta-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of beta-Naphthylamine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of beta-Naphthylamine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of beta-Naphthylamine which may result in exposure to or contact with beta-Naphthylamine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of beta-Naphthylamine, which is impervious to the passage of beta-Naphthylamine, and which would prevent the entry of beta-Naphthylamine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving beta-Naphthylamine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving beta-Naphthylamine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of beta-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to beta-Naphthylamine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing beta-Naphthylamine.* A regulated area shall be established by an employer where beta-Naphthylamine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved: (1) *Isolated systems.* Employees working

with beta-Naphthylamine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where beta-Naphthylamine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while beta-Napthylamine is contained within (i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where beta-Naphthylamine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

(i) Access shall be restricted to authorized employees only.

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in beta-Naphthylamine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with beta-Naphthylamine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air suppled hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with beta-Napthylamine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove beta-Naphthylamine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of beta-Naphthylamine

and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of beta-Naphthylamine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have beta-Naphthylamine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of beta-Naphthylamine, including local and systemic toxicity;

(B) The specific nature of the operation involving beta-Naphthylamine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of beta-Naphthylamine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of beta-Naphthylamine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which beta-Naphthylamine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of beta-Naphthylamine into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination;

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability

for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0089)

§ 1915.1010 Benzidine.

(a) *Scope and application.* (1) This section applies to any area in which Benzidine, Chemical Abstracts Service Registry Number 92875 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixutures containing less than 0.1 percent by weight or volume in Benzidine.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono dispense aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of Benzidine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving Benzidine where containment prevents the release of Benzidine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of Benzidine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of Benzidine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of Benzidine which may result in exposure to or contact with Benzidine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of Benzidine, which is impervious to the passage of Benzidine, and which would prevent the entry of Benzidine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving Benzidine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving Benzidine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of Benzidine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to Benzidine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing Benzidine.* A regulated area shall be established by an employer where Benzidine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with Benzidine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where Benzidine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while Benzidine is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where Benzidine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply. (i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in Benzidine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with Benzidine could result, each authorized employee entering that area shall: (i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with Benzidine such employee shall be required to shower as soon as possible unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove Benzidine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of Benzidine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of Benzidine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have Benzidine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of Benzidine, including local and systemic toxicity;

(B) The specific nature of the operation involving Benzidine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of Benzidine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported

UMI
VOL
58
ISS
125
JL
1
1993
UMI

in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change. (i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of Benzidine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which Benzidine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of Benzidine into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0082)

§ 1915.1011 4-Aminodiphenyl.

(a) *Scope and application.* (1) This section applies to any area in which 4-Aminodiphenyl, Chemical Abstracts Service Registry Number 92671 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of 4-Aminodiphenyl.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Aminodiphenyl. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 4-Aminodiphenyl where containment prevents the release of 4-Aminodiphenyl into regulated areas, nonregulated area, or the external environment.

(5) *Decontamination* means the inactivation of 4-Aminodiphenyl or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 4-Aminodiphenyl from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 4-Aminodiphenyl which may result in exposure to or contact with 4-Aminodiphenyl.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 4-Aminodiphenyl, which is imperivious to the passage of 4-Aminodiphenyl, and which would prevent the entry of 4-Aminodiphenyl into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Aminodiphenyl within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 4-Aminodiphenyl in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4-Aminodiphenyl into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an

employee against contact with or exposure to 4-Aminodiphenyl.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 4-Aminodiphenyl.* A regulated area shall be established by an employer where 4-Aminodiphenyl is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 4-Aminodiphenyl within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 4-Aminodiphenyl is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 4-Aminodiphenyl is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 4-Aminodiphenyl is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 4-Aminodiphenyl handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with 4-Aminodiphenyl could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air suppled hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 4-Aminodiphenyl such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 4-Aminodiphenyl from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in

VOL
58
ISS
125
JL
1
1993
UMI

paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 4-Aminodiphenyl and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 4-Aminodiphenyl and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 4-Aminodiphenyl contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive including, but not necessarily limited to: A training and indoctrination program (A) The nature of the carcinogenic hazards of 4-Aminodiphenyl, including local and systemic toxicity;

(B) The specific nature of the operation involving 4-Aminodiphenyl which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4-Aminodiphenyl;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in this application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change. (i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 4-Aminodiphenyl in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 4-Aminodiphenyl is present in each regulated area; e.g. whether it is manufactured, processed, used repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 4-Aminodiphenyl into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor,

records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0090)

§ 1915.1012 Ethyleneimine.

(a) *Scope and application.* (1) This section applies to any area in which Ethyleneimine, Chemical Abstracts Service Registry Number 151564 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of Ethyleneimine.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of Ethyleneimine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving Ethyleneimine where containment prevents the release of Ethyleneimine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of Ethyleneimine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of Ethyleneimine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of Ethyleneimine which may result in exposure to or contact with Ethyleneimine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of Ethyleneimine, which is impervious to the passage of Ethyleneimine, and which would prevent the entry of Ethyleneimine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving Ethyleneimine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving Ethyleneimine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of Ethyleneimine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to Ethyleneimine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing Ethyleneimine.* A regulated area shall be established by an employer where Ethyleneimine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with Ethyleneimine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where Ethyleneimine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while Ethyleneimine is contained within: Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where Ethyleneimine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and gloves prior to entering the regulated area.

(iv) Employees engaged in Ethyleneimine handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1910.134.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on

contaminated systems or equipment, where direct contact with Ethyleneimine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with Ethyleneimine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(vi) Emergency deluge showers and eyewash fountains supplied with running potable water shall be located near, within sight of, and on the same level with locations where a direct exposure of Ethyleneimine would be most likely as a result of equipment failure, or improper work practice.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove Ethyleneimine from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of Ethyleneimine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of Ethyleneimine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii) (B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)5 of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have Ethyleneimine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of Ethyleneimine, including local and systemic toxicity;

(B) The specific nature of the operation involving Ethyleneimine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of Ethyleneimine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change. (i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of Ethyleneimine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which Ethyleneimine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of Ethyleneimine into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0080)

§ 1915.1013 beta-Propiolactone.

(a) *Scope and application.* (1) This section applies to any area in which beta-Propiolactone, Chemical Abstracts Service Registry Number 57578 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of beta-Propiolactone.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of beta-Propiolactone. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving beta-Propiolactone where containment prevents the release of beta-Propiolactone into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of beta-Propiolactone or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of beta-Propiolactone from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of beta-Propiolactone which may result in exposure to or contact with beta-Propiolactone.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of beta-Propiolactone, which is impervious to the passage of beta-Propiolactone, and which would prevent the entry of beta-Propiolactone into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute;

designed, constructed, and maintained in such a way that an operation involving beta-Propiolactone within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving beta-Propiolactone in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of beta-Propiolactone into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to beta-Propiolactone.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing beta-Propiolactone.* A regulated area shall be established by an employer where beta-Propiolactone is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with beta-Propiolactone within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where beta-Propiolactone is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while beta-Propiolactone is contained within. Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where beta-Propiolactone is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in beta-Propiolactone handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1910.134.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with beta-Propiolactone could result, each authorized employee entering that area shall: (i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented. (i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with beta-Propiolactone, such employee shall be required to shower soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(vi) Emergency deluge showers and eyewash fountains supplied with running potable water shall be located near, within sight of, and on the same level with locations where a direct exposure to beta-Propiolactone would be most likely as a result of equipment failure, or improper work practice.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause

contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove beta-Propiolactone from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of beta-Propiolactone and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of beta-Propiolactone and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have beta-Propiolactone contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) shall be a minimum letter height of 2 inches. Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of beta-Propiolactone, including local and systemic toxicity;

(B) The specific nature of the operation involving beta-Propiolactone which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of beta-Propiolactone;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of beta-Propiolactone in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which beta-Propiolactone is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of beta-Propiolactone into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include: (A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of

increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agent, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0079)

§ 1915.1014 2-Acetylaminofluorene.

(a) *Scope and application.* (1) This section applies to any area in which 2-Acetylaminofluorene, Chemical Abstracts Service Registry Number 53963 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of 2-Acetylamino fluorene.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 2-Acetylaminofluorene. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 2-Acetylaminofluorene where containment prevents the release of 2-Acetylaminofluorene into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 2-Acetylaminofluorene or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 2-Acetylaminofluorene from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 2-Acetylaminofluorene which may result in exposure to or contact with 2-Acetylaminofluorene.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 2-Acetylaminofluorene, which is impervious to the passage of 2-Acetylaminofluorene, and which would prevent the entry of 2-Acetylaminofluorene into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 2-Acetylaminoflourene within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 2-Acetylaminofluorene in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 2-Acetylaminofluorene into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 2-Acetylaminofluorene.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 2-Acetylaminofluorene.* A regulated area shall be established by an employer where 2-Acetylaminofluorene is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance wtih the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 2-Acetylaminofluorene within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 2-Acetylaminofluorene is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 2-Acetylaminofluorene is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 2-Acetylaminofluorene is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full

body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 2-Acetylaminofluorene handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with 2-Acetylaminofluorene could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be elimtnated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with apragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 2-Acetylaminofluorene, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 2-Acetylaminofluorene from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA
IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES
AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 2-Acetylaminofluorene and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification, limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 2-Acetylaminofluorene and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 2-Acetylaminofluorene contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance; *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any

required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to: (A) The nature of the carcinogenic hazards of 2-Acetylaminofluorene, including local and systemic toxicity;

(B) The specific nature of the operation involving 2-Acetylaminofluorene which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 2-Acetylaminofluorene;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees, shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 2-Acetylaminofluorene in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 2-Acetylaminofluorene is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 2-Acetylaminofluorene into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0088)

§ 1915.1015 4-Dimethylaminoazobenzene.

(a) *Scope and application.* (1) This section applies to any area in which 4-Dimethylaminoazobenzene, Chemical Abstracts Service Registry Number 60117 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of 4-Dimethylaminoazobenzene.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Dimethylaminoazobenzene. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 4-Dimeth- ylaminoazobenzene where containment prevents the release of 4-Dimethylaminoazobenzene into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 4-Dimethylaminoazobenzene or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 4-Dimethylaminoazobenzene from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 4-Dimethylaminoazobenzene which may result in exposure to or contact with 4-Dimethylaminoazobenzene.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 4-Dimethylaminoazobenzene, which is impervious to the passage of 4-Dimethylaminoazobenzene which would prevent the entry of 4-Dimethylaminoazobenzene into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Dimethylaminoazobenzene within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 4-Dimethylaminoazobenzene in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4-Dimethylaminoazobenzene into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 4-Dimethylaminoazobenzene.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 4-Dimethylaminoazobenzene.* A regulated area shall be established by an employer where 4-Dimethylaminoazobenzene is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 4-Dimethylaminoazobenzene within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 4-Dimethylaminoazobenzene is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 4-Dimethylaminoazobenzene is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 4-Dimethylaminoazobenzene is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

(iv) Employees engaged in 4-Dimethylaminoazobenzene handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exist of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with 4-Dimethylaminoazobenzene could result, each authorized employee entering that area shall: (i) Be provided with and required to wear clear, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of

VOL 58 ISS 125 JL 1 1993 UMI

the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 4-Dimethylaminoazobenzene, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change room shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 4-Dimethylaminoazobenzene from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 4-Dimethylaminoazobenzene and containers required under paragraph (c)(4)(v) and (c)(6)(vii) (B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 4-Dimethylaminoazobenzene and containers required under paragraphs (c)(4)(v), (c)(6)(vii) (B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 4-Dimethylaminoazobenzene contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) of this paragraph shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of 4-Dimethylaminoazobenzene, including local and sytemic toxicity;

(B) The specific nature of the operation involving 4-Dimethylaminoazo-benzene which could result in exposure;

(C) The purpose for the application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4-Dimethylaminoazobenzene;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 4-Dimethylaminoazobenzene in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 4-Dimethyaminoazobenzene is present in

each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 4-Dimethylaminoazobenzene into any area where employees may be potentially exposed shall be reported in accordance with this paragraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examination, the examing physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examination. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0044)

§ 1915.1016 N-Nitrosodimethylamine.

(a) *Scope and application.* (1) This section applies to any area in which N-Nitrosodimethylamine, Chemical Abstracts Service Registry Number 62759 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0% by weight or volume of N-Nitrosodimethylamine.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of N-Nitrosodimethylamine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving N-Nitrosodimethyl- amine where containment prevents the release of N-Nitrosodimethylamine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of N-Nitrosodimethylamine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of N-Nitrosodimethylamine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of N-Nitrosodimethylamine which may result in exposure to or contact with N-Nitrosodimethylamine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of N-Nitrosodimethylamine, which is impervious to the passage of N-Nitrosodimethylamine, and which would prevent the entry of N-Nitrosodimethylamine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving N-Nitrosodimeth-ylamine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restriced nor controlled.

(13) *Open-vessel system* means an operation involving N-Nitrosodimethylamine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of N-Nitrosodimethylamine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to N-Nitrosodimethylamine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing N-Nitrosodimethylamine.* A regulated area shall be established by an employer

where N-Nitrosodimethylamine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with N-Nitrosodimethylamine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where N-Nitrosodimethylamine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while N-Nitrosodimethylamine is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where N-Nitrosodimethylamine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

(iv) Employees engaged in N-Nitrosodimethylamine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1910.134. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with N-Nitrosodimethylamine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garment, including gloves, boots and continuous-air supplied hood in accordance with § 1910.134.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with N–Nitrosodimethylamine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1910.141(d) (1) and (2) (ii) through (vii).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1910.141(d)(3).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1910.141(e), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove N-Nitrosodimethylamine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of N-Nitrosodimethylamine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii) (B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of N-Nitrosodimethylamine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have N-Nitrosodimethylamine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of N-Nitrosodimethylamine, including local and systemic toxicity;

(B) The specific nature of the operation involving N-Nitrosodimethylamine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose of and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of N-Nitrosodimethylamine;

(H) The purpose for and application of specific first aid procedures and practices.

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of N-Nitrosodimethylamine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which N-Nitrosodimethylamine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of N-Nitrosodimethylamine into any area where employees may be potentially exposed shall be reported in accordance with this paragraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of an employee's employment, including retirement or

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death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0081)

§ 1915.1017 Vinyl chloride.

(a) *Scope and application.* (1) This section includes requirements for the control of employee exposure to vinyl chloride (chloroethene), Chemical Abstracts Service Registry No. 75014.

(2) This section applies to the manufacture, reaction, packaging, repackaging, storage, handling or use of vinyl chloride or polyvinyl chloride, but does not apply to the handling or use of fabricated products made of polyvinyl chloride.

(3) This section applies to the transportation of vinyl chloride or polyvinyl chloride except to the extent that the Department of Transportation may regulate the hazards covered by this section.

(b) *Definitions.* (1) *Action level* means a concentration of vinyl chloride of 0.5 ppm averaged over an 8-hour work day.

(2) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or his designee.

(3) *Authorized person* means any person specifically authorized by the employer whose duties require him to enter a regulated area or any person entering such an area as a designated representative of employees for the purpose of exercising an opportunity to observe monitoring and measuring procedures.

(4) *Director* means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services or his designee.

(5) *Emergency* means any occurrence such as, but not limited to, equipment failure, or operation of a relief device which is likely to, or does, result in massive release of vinyl chloride.

(6) *Fabricated product* means a product made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride.

(7) *Hazardous operation* means any operation, procedure, or activity where a release of either vinyl chloride liquid or gas might be expected as a consequence of the operation or because of an accident in the operation, which would result in an employee exposure in excess of the permissible exposure limit.

(8) *OSHA Area Director* means the Director for the Occupational Safety and Health Administration Area Office having jurisdiction over the geographic area in which the employer's establishment is located.

(9) *Polyvinyl chloride* means polyvinyl chloride homopolymer or copolymer before such is converted to a fabricated product.

(10) *Vinyl chloride* means vinyl chloride monomer.

(c) *Permissible exposure limit.* (1) No employee may be exposed to vinyl chloride at concentrations greater than 1 ppm averaged over any 8-hour period, and

(2) No employee may be exposed to vinyl chloride at concentrations greater than 5 ppm averaged over any period not exceeding 15 minutes.

(3) No employee may be exposed to vinyl chloride by direct contact with liquid vinyl chloride.

(d) *Monitoring.* (1) A program of initial monitoring and measurement shall be undertaken in each establishment to determine if there is any employee exposed, without regard to the use of respirators, in excess of the action level.

(2) Where a determination conducted under paragraph (d)(1) of this section shows any employee exposures, without regard to the use of respirators, in excess of the action level, a program for determining exposures for each such employee shall be established. Such a program:

(i) Shall be repeated at least monthly where any employee is exposed, without regard to the use of respirators, in excess of the permissible exposure limit.

(ii) Shall be repeated not less than quarterly where any employee is exposed, without regard to the use of respirators, in excess of the action level.

(iii) May be discontinued for any employee only when at least two consecutive monitoring determinations, made not less than 5 working days apart, show exposures for that employee at or below the action level.

(3) Whenever there has been a production, process or control change which may result in an increase in the release of vinyl chloride, or the employer has any other reason to suspect that any employee may be exposed in excess of the action level, a determination of employee exposure under paragraph (d)(1) of this section shall be performed.

(4) The method of monitoring and measurement shall have an accuracy (with a confidence level of 95 percent) of not less than plus or minus 50 percent from 0.25 through 0.5 ppm, plus or minus 35 percent from over 0.5 ppm through 1.0 ppm, and plus or minus 25 percent over 1.0 ppm. (Methods meeting these accuracy requirements are available in the "NIOSH Manual of Analytical Methods").

(5) Employees or their designated representatives shall be afforded reasonable opportunity to observe the monitoring and measuring required by this paragraph.

(e) *Regulated area.* (1) A regulated area shall be established where:

(i) Vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used; and

(ii) Vinyl chloride concentrations are in excess of the permissible exposure limit.

(2) Access to regulated areas shall be limited to authorized persons.

(f) *Methods of compliance.* Employee exposures to vinyl chloride shall be controlled to at or below the permissible exposure limit provided in paragraph (c) of this section by engineering, work practice, and personal protective controls as follows:

(1) Feasible engineering and work practice controls shall immediately be used to reduce exposures to at or below the permissible exposure limit.

(2) Wherever feasible engineering and work practice controls which can be instituted immediately are not sufficient to reduce exposures to at or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest practicable level, and shall be supplemented by respiratory protection in accordance with paragraph (g) of this section. A program shall be established and implemented to reduce exposures to at or below the permissible exposure limit, or to the greatest extent feasible, solely by means of engineering and work practice controls, as soon as feasible.

(3) Written plans for such a program shall be developed and furnished upon request for examination and copying to authorized representatives of the Assistant Secretary and the Director.

Such plans shall be updated at least every six months.

(g) *Respiratory protection.* Where respiratory protection is required under this section:

(1) The employer shall provide a respirator which meets the requirements of this paragraph and shall assure that the employee uses such respirator, except that until April 1, 1976, wearing of respirators shall be at the discretion of each employee for exposures not in excess of 25 ppm, measured over any 15-minute period. Until April 1, 1976, each employee who chooses not to wear an appropriate respirator shall be informed at least quarterly of the hazards of vinyl chloride and the purpose, proper use, and limitations of respiratory devices.

(2) Respirators shall be selected from among those jointly approved by the Mining Enforcement and Safety Administration, Department of the Interior, and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(3) A respiratory protection program meeting the requirements of § 1910.134 shall be established and maintained.

(4) Selection of respirators for vinyl chloride shall be as follows:

Atmospheric concentration of vinyl chloride	Required apparatus
(i) Unknown, or above 3,600 p/m	Open-circuit, self-contained breathing apparatus, pressure demand type, with full facepiece.
(ii) Not over 3,600 p/m	(A) Combination type C supplied air respirator, pressure demand type, with full or half facepiece, and auxiliary self-contained air supply; or
(iii) Not over 1,000 p/m	(B) Combination type, supplied air respirator continuous flow type, with full or half facepiece, and auxiliary self-contained air supply.
(iv) Not over 100 p/m	Type C, supplied air respirator, continuous flow type, with full or half facepiece, helmet or hood. (A) Combination type C supplied air respirator demand type, with full facepiece, and auxiliary self-contained air supply; or (B) Open-circuit self-contained breathing apparatus with full facepiece, in demand mode; or (C) Type C supplied air respirator, demand type, with full facepiece.
(v) Not over 25 p/m	(A) A powered air-purifying respirator with hood, helmet, full or half facepiece, and a canister which provides a service life of at least 4 hours for concenrations of vinyl chloride up to 25 p/m, or (B) Gas mask, front- or back-mounted canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 p/m.
(vi) Not over 10 p/m	(A) Combination type C supplied-air respirator, demand type, with half facepiece, and auxiliary self-contained air supply; or (B) Type C supplied-air respirator, demand type, with half facepiece; or (C) Any chemical cartridge respirator with an organic vapor cartridge which provides a service life of at least 1 hour for concentrations of vinyl chloride up to 10 p/m.

(5)(i) Entry into unknown concentrations or concentrations greater than 36,000 ppm (lower explosive limit) may be made only for purposes of life rescue; and

(ii) Entry into concentrations of less than 36,000 ppm, but greater than 3,600 ppm may be made only for purposes of life rescue, firefighting, or securing equipment sq as to prevent a greater hazard from release of vinyl chloride.

(6) Where air-purifying respirators are used:

(i) Air-purifying cannisters or cartridges shall be replaced prior to the expiration of their service life or the end of the shift in which they are first used, whichever occurs first, and

(ii) A continuous monitoring and alarm system shall be provided where concentrations of vinyl chloride could reasonably exceed the allowable concentrations for the devices in use. Such system shall be used to alert employees when vinyl chloride concentrations exceed the allowable concentrations for the devices in use.

(7) Apparatus prescribed for higher concentrations may be used for any lower concentration.

(h) *Hazardous operations.* (1) Employees engaged in hazardous operations, including entry of vessels to clean polyvinyl chloride residue from vessel walls, shall be provided and required to wear and use:

(i) Respiratory protection in accordance with paragraphs (c) and (g) of this section; and

(ii) Protective garments to prevent skin contact with liquid vinyl chloride or with polyvinyl chloride residue from vessel walls. The protective garments shall be selected for the operation and its possible exposure conditions.

(2) Protective garments shall be provided clean and dry for each use.

(i) *Emergency situations.* A written operational plan for emergency situations shall be developed for each facility storing, handling, or otherwise using vinyl chloride as a liquid or compressed gas. Appropriate portions of the plan shall be implemented in the event of an emergency. The plan shall specifically provide that:

(1) Employees engaged in hazardous operations or correcting situations of existing hazardous releases shall be equipped as required in paragraph (h) of this section;

(2) Other employees not so equipped shall evacuate the area and not return until conditions are controlled by the methods required in paragraph (f) of this section and the emergency is abated.

(j) *Training.* Each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use.

(1) The program shall include:

(i) The nature of the health hazard from chronic exposure to vinyl chloride including specifically the carcinogenic hazard;

(ii) The specific nature of operations which could result in exposure to vinyl chloride in excess of the permissible limit and necessary protective steps;

(iii) The purpose for, proper use, and limitations of respiratory protective devices;

(iv) The fire hazard and acute toxicity of vinyl chloride, and the necessary protective steps;

(v) The purpose for and a description of the monitoring program;

(vi) The purpose for, and a description of, the medical surveillance program;

(vii) Emergency procedures;

(viii) Specific information to aid the employee in recognition of conditions which may result in the release of vinyl chloride; and

(ix) A review of this standard at the employee's first training and indoctrination program, and annually thereafter.

(2) All materials relating to the program shall be provided upon request to the Assistant Secretary and the Director.

(k) *Medical surveillance.* A program of medical surveillance shall be instituted for each employee exposed, without regard to the use of respirators, to vinyl chloride in excess of the action level. The program shall provide each such employee with an opportunity for examinations and tests in accordance with this paragraph. All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(1) At the time of initial assignment, or upon institution of medical surveillance;

(i) A general physical examination shall be performed, with specific attention to detecting enlargement of liver, spleen or kidneys, or dysfunction in these organs, and for abnormalities in skin, connective tissues and the pulmonary system (See Appendix A).

(ii) A medical history shall be taken, including the following topics:

(A) Alcohol intake;

(B) Past history of hepatitis;

(C) Work history and past exposure to potential hepatotoxic agents, including drugs and chemicals;

(D) Past history of blood transfusions; and

(E) Past history of hospitalizations.

(iii) A serum specimen shall be obtained and determinations made of:

(A) Total bilirubin;

(B) Alkaline phosphatase;

(C) Serum glutamic oxalacetic transaminase (SGOT);

(D) Serum glutamic pyruvic transaminase (SGPT); and

(E) Gamma glustamyl transpeptidase.

(2) Examinations provided in accordance with this paragraph shall be performed at least:

(i) Every 6 months for each employee who has been employed in vinyl chloride or polyvinyl chloride manufacturing for 10 years or longer; and

(ii) Annually for all other employees.

(3) Each employee exposed to an emergency shall be afforded appropriate medical surveillance.

(4) A statement of each employee's suitability for continued exposure to vinyl chloride including use of protective equipment and respirators, shall be obtained from the examining physician promptly after any examination. A copy of the physician's statement shall be provided each employee.

(5) If any employee's health would be materially impaired by continued exposure, such employee shall be withdrawn from possible contact with vinyl chloride.

(6) Laboratory analyses for all biological specimens included in medical examinations shall be performed in laboratories licensed under 42 CFR part 74.

(7) If the examining physician determines that alternative medical examinations to those required by paragraph (k)(1) of this section will provide at least equal assurance of detecting medical conditions pertinent to the exposure to vinyl chloride, the employer may accept such alternative examinations as meeting the requirements of paragraph (k)(1) of this section, if the employer obtains a statement from the examining physician setting forth the alternative examinations and the rationale for substitution. This statement shall be available upon request for examination and copying to authorized representatives of the Assistant Secretary and the Director.

(l) *Signs and labels.* (1) Entrances to regulated areas shall be posted with legible signs bearing the legend:

CANCER-SUSPECT AGENT
AUTHORIZED PERSONNEL ONLY

(2) Areas containing hazardous operations or where an emergency currently exists shall be posted with legible signs bearing the legend:

CANCER-SUSPECT AGENT
PROTECTIVE EQUIPMENT REQUIRED
AUTHORIZED PERSONNEL ONLY

(3) Containers of polyvinyl chloride resin waste from reactors or other waste contaminated with vinyl chloride shall be legibly labeled:

CONTAMINATED WITH VINYL CHLORIDE
CANCER-SUSPECT AGENT

(4) Containers of polyvinyl chloride shall be legibly labeled:

POLYVINYL CHLORIDE (OR TRADE NAME)
CONTAINS VINYL CHLORIDE
VINYL CHLORIDE IS A CANCER-SUSPECT AGENT

(5) Containers of vinyl chloride shall be legibly labeled either:

(i)

VINYL CHLORIDE
EXTREMELY FLAMMABLE GAS UNDER PRESSURE
CANCER-SUSPECT AGENT

or (ii) In accordance with 49 CFR parts 170 through 189, with the additional legend:

CANCER-SUSPECT AGENT

applied near the label or placard.

(6) No statement shall appear on or near any required sign, label or instruction which contradicts or detracts from the effect of, any required warning, information or instruction.

(m) *Records.* (1) All records maintained in accordance with this section shall include the name and social security number of each employee where relevant.

(2) Records of required monitoring and measuring and medical records shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a) through (e) and (g) through (i). These records shall be provided upon request to the Director. Authorized personnel rosters shall also be provided upon request to the Assistant Secretary and the Director.

(i) Monitoring and measuring records shall:

(A) State the date of such monitoring and measuring and the concentrations determined and identify the instruments and methods used;

(B) Include any additional information necessary to determine individual employee exposures where such exposures are determined by means other than individual monitoring of employees; and

(C) Be maintained for not less than 30 years.

(ii) [Reserved]

(iii) Medical records shall be maintained for the duration of the employment of each employee plus 20 years, or 30 years, whichever is longer.

(3) In the event that the employer ceases to do business and there is no successor to receive and retain his records for the prescribed period, these records shall be transmitted by registered mail to the Director, and each employee individually notified in writing of this transfer. The employer shall also comply with any additional requirements set forth in 29 CFR 1915.1120(h).

(n) *Reports.* (1) Not later than 1 month after the establishment of a regulated area, the following information shall be reported to the OSHA Area Director. Any changes to such information shall be reported within 15 days.

(i) The address and location of each establishment which has one or more regulated areas; and

(ii) The number of employees in each regulated area during normal operations, including maintenance.

(2) Emergencies, and the facts obtainable at that time, shall be reported within 24 hours to the OSHA Area Director. Upon request of the Area Director, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of similar nature.

(3) Within 10 working days following any monitoring and measuring which discloses that any employee has been exposed, without regard to the use of respirators, in excess of the permissible exposure limit, each such employee shall be notified in writing of the results of the exposure measurement and the steps being taken to reduce the exposure to within the permissible exposure limit.

(o) *Effective dates.* (1) Until April 1, 1975, the provisions currently set forth in § 1910.93q of this part shall apply.

(2) Effective April 1, 1975, the provisions set forth in § 1910.93q of this part shall apply.

(Approved by the Office of Management and Budget under control number 1218—0010)

Appendix A to § 1915.1017—Supplementary Medical Information

When required tests under paragraph (k)(1) of this section show abnormalities, the tests should be repeated as soon as practicable, preferably within 3 to 4 weeks. If tests remain abnormal, consideration should be given to withdrawal of the employee from contact with vinyl chloride, while a more comprehensive examination is made.

Additional tests which may be useful:

A. For kidney dysfunction: urine examination for albumin, red blood cells, and exfoliative abnormal cells.

B. Pulmonary system: Forced vital capacity, Forced expiratory volume at 1 second, and chest roentgenogram (posterior-anterior, 14 × 17 inches (35.56 × 43.18 cm)).

C. Additional serum tests: Lactic acid dehydrogenase, lactic acid dehydrogenase isoenzyme, protein determination, and protein electrophoresis.

D. For a more comprehensive examination on repeated abnormal serum tests: Hepatitis B antigen, and liver scanning.

§ 1915.1018 Inorganic arsenic.

(a) *Scope and application.* This section applies to all occupational exposures to inorganic arsenic except that this section does not apply to employee exposures in agriculture or resulting from pesticide application, the treatment of wood with preservatives or the utilization of arsenically preserved wood.

(b) *Definitions. Action level* means a concentration of inorganic arsenic of 5 micrograms per cubic meter of air (5 $\mu g/m^3$) averaged over any eight (8) hour period.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (e) of this section.

Director means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services or designee.

Inorganic arsenic means copper aceto-arsenite and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

(c) *Permissible exposure limit.* The employer shall assure that no employee is exposed to inorganic arsenic at concentrations greater than 10 micrograms per cubic meter of air (10 $\mu g/m^3$), averaged over any 8-hour period.

(d) *Notification of use.* (1) By October 1, 1978 or within 60 days after the introduction of inorganic arsenic into the workplace, every employer who is required to establish a regulated area in his workplaces shall report in writing to the OSHA area office for each such workplace:

(i) The address of each such workplace;

(ii) The approximate number of employees who will be working in regulated areas; and

(iii) A brief summary of the operations creating the exposure and the actions which the employer intends to take to reduce exposures.

(2) Whenever there has been a significant change in the information required by paragraph (d)(1) of this section the employer shall report the changes in writing within 60 days to the OSHA area office.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to inorganic arsenic over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(iii) The employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall monitor each such workplace and work operation to accurately determine the airborne concentration of inorganic arsenic to which employees may be exposed.

(3) *Frequency.* (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in paragraph (e)(4) of this section.

(ii) If the initial monitoring, required by this section, or subsequent monitoring reveals employee exposure to be above the permissible exposure limit, the employer shall repeat monitoring at least quarterly.

(iii) If the initial monitoring, required by this section, or subsequent monitoring reveals employee exposure to be above the action level and below the permissible exposure limit the employer shall repeat monitoring at least every six months.

(iv) The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven (7) days apart, are below the action level at which time the employer may discontinue monitoring for that employee until such time as any of the events in paragraph (e)(4) of this section occur.

(4) *Additional monitoring.* Whenever there has been a production, process, control or personal change which may result in new or additional exposure to inorganic arsenic, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to inorganic arsenic, additional monitoring which complies with paragraph (e) of this section shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposures.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* (i) The employer shall use a method of monitoring and measurement which has an accuracy (with a confidence level of 95 percent) of not less than plus or minus 25 percent for concentrations of

inorganic arsenic greater than or equal to 10 μg/m³.

(ii) The employer shall use a method of monitoring and measurement which has an accuracy (with confidence level of 95 percent) of not less than plus or minus 35 percent for concentrations of inorganic arsenic greater than 5 μg/m³ but less than 10 μg/m³.

(f) *Regulated area*—(1) *Establishment.* The employer shall establish regulated areas where worker exposures to inorganic arsenic, without regard to the use of respirators, are in excess of the permissible limit.

(2) *Demarcation.* Regulated areas shall be demarcated and segregated from the rest of the workplace in any manner that minimizes the number of persons who will be exposed to inorganic arsenic.

(3) *Access.* Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto to enter such areas.

(4) *Provision of respirators.* All persons entering a regulated area shall be supplied with a respirator, selected in accordance with paragraph (h)(2) of this section.

(5) *Prohibited activities.* The employer shall assure that in regulated areas, food or beverages are not consumed, smoking products, chewing tobacco and gum are not used and cosmetics are not applied, except that these activities may be conducted in the lunchrooms, change rooms and showers required under paragraph (m) of this section. Drinking water may be consumed in the regulated area.

(g) *Methods of compliance*—(1) *Controls.* (i) The employer shall institute at the earliest possible time but not later than December 31, 1979, engineering and work practice controls to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(ii) Where engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest levels achievable by these controls and shall be supplemented by the use of respirators in accordance with paragraph (h) of this section and other necessary personal protective equipment. Employee rotation is not required as a control strategy before respiratory protection is instituted.

(2) *Compliance Program.* (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limit by means of engineering and work practice controls.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which inorganic arsenic is emitted; e.g. machinery used, material processed, controls in place, crew size, operating procedures and maintenance practices;

(B) Engineering plans and studies used to determine methods selected for controlling exposure to inorganic arsenic;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Monitoring data;

(E) A detailed schedule for implementation of the engineering controls and work practices that cannot be implemented immediately and for the adaption and implementation of any additional engineering and work practices necessary to meet the permissible exposure limit;

(F) Whenever the employer will not achieve the permissible exposure limit with engineering controls and work practices by December 31, 1979, the employer shall include in the compliance plan an analysis of the effectiveness of the various controls, shall install engineering controls and institute work practices on the quickest schedule feasible, and shall include in the compliance plan and implement a program to minimize the discomfort and maximize the effectiveness of respirator use; and

(G) Other relevant information.

(iii) Written plans for such a program shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, Director, any affected employee or authorized employee representatives.

(iv) The plans required by this paragraph shall be revised and updated at least every 6 months to reflect the current status of the program.

(h) *Respiratory protection*—(1) *General.* The employer shall assure that respirators are used where required under this section to reduce employee exposures to below the permissible exposure limit and in emergencies. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering or work practice controls;

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations in which engineering controls and supplemental work practice controls are not yet sufficient to reduce exposures to or below the permissible exposure limit; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section the employer shall select, provide at no cost to the employee and assure the use of the appropriate respirator or combination of respirators from Table I below for inorganic arsenic compounds without significant vapor pressure, or Table II below for inorganic arsenic compounds which have significant vapor pressure.

(ii) Where employee exposures exceed the permissible exposure limit for inorganic arsenic and also exceed the relevant limit for particular gasses such as sulfur dioxide, any air purifying respirator supplied to the employee as permitted by this standard must have a combination high efficiency filter with an appropriate gas sorbent. (See footnote in Table 1)

TABLE I—RESPIRATORY PROTECTION FOR INORGANIC ARSENIC PARTICULATE EXCEPT FOR THOSE WITH SIGNIFICANT VAPOR PRESSURE

Concentration of inorganic arsenic (as As) or condition of use	Required respirator
(i) Unknown or greater or lesser than 20,000 μg/m³ (20 mg/m³) or firefighting.	(A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode.
(ii) Not greater than 20,000 μg/m³ (20 mg/m³)	(A) Supplied air respirator with full facepiece, hood, or helmet or suit and operated in positive pressure mode.
(iii) Not greater than 10,000 μg/m³ (10 mg/m³)	(A) Powered air-purifying respirators in all inlet face coverings with high efficiency filters.[1] (B) Half-mask supplied air respirators operated in positive pressure mode.

TABLE I—RESPIRATORY PROTECTION FOR INORGANIC ARSENIC PARTICULATE EXCEPT FOR THOSE WITH SIGNIFICANT VAPOR PRESSURE—Continued

Concentration of inorganic arsenic (as As) or condition of use	Required respirator
(iv) Not greater than 500 µg/m³	(A) Full facepiece air-purifying respirator equipped with high-efficiency filter.[1] (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus.
(v) Not greater than 100 µg/m³	(A) Half-mask air-purifying respirator equipped with high-efficiency filter.[1] (B) Any half-mask supplied air respirator.

[1]High-efficiency filter—99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.

TABLE II—RESPIRATORY PROTECTION FOR INORGANIC ARSENICALS (SUCH AS ARSENIC TRICHLORIDE[2] AND ARSENIC PHOSPHIDE) WITH SIGNIFICANT VAPOR PRESSURE

Concentration of inorganic arsenic (as As) or condition of use	Required respirator
(i) Unknown or greater or lesser than 20,000 µg/m³ (20mg/m³) or firefighting.	(A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode.
(ii) Not greater than 20,000 µg/m³ (20 mg/m³)	(A) Supplied air respirator with full facepiece hood, or helmet or suit and operated in positive pressure mode.
(iii) Not greater than 10,000 µg/m³ (10mg/m³)	(A) Half-mask[2] supplied air respirator operated in positive pressure mode.
(iv) Not greater than 500 µg/m³	(A) Front or back mounted gas mask equipped with high-efficiency filter[1] and acid gas canister. (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus.
(v) Not greater than 100 µg/m³	(A) Half-mask[2] air-purifying respirator equipped with high-efficiency filter[1] and acid gas cartridge. (B) Any half-mask supplied air respirator.

[1]High efficiency filter—99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.
[2]Half-mask respirators shall not be used for protection against arsenic trichloride, as it is rapidly absorbed through the skin.

(iii) The employer shall select respirators from among those approved for protection against dust, fume, and mist by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

(3) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) The employer shall perform qualitative fit tests at the time of initial fitting and at least semi-annually thereafter for each employee wearing respirators, where quantitative fit tests are not required.

(iii) Employers with more than 20 employees wearing respirators shall perform a quantitative face fit test at the time of initial fitting and least semi-annually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in Table I or II.

(iv) If an employee has demonstrated difficulty in breathing during the fitting test or during use, he or she shall be examined by a physician trained in pulmonary medicine to determine whether the employee can wear a respirator while performing the required duty.

(4) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece to prevent skin irritation associated with respirator use.

(5) *Commencement of respirator use.* (i) The employer's obligation to provide respirators commences on August 1, 1978 for employees exposed over 500 µg/m³ of inorganic arsenic, as soon as possible but not later than October 1, 1978 for employees exposed to over 50 µg/m³ of inorganic arsenic, and as soon as possible but not later than December 1, 1978 for employees exposed between 10 and 50 µg/m³ of inorganic arsenic.

(ii) Employees with exposures below 50 µg/m³ of inorganic arsenic may choose not to wear respirators until December 31, 1979.

(iii) After December 1, 1978 any employee required to wear air-purifying respirators may choose, and if so chosen the employer must provide, if it will give proper protection, a powered air purifying respirator and in addition if necessary a combination dust and acid gas respirator for times where exposures to gases are over the relevant exposure limits.

(i) [Reserved]

(j) *Protective work clothing and equipment*—(1) *Provision and use.* Where the possibility of skin or eye irritation from inorganic arsenic exists, and for all workers working in regulated areas, the employer shall provide at no cost to the employee and assure that employees use appropriate and clean protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, and shoes or coverlets;

(iii) Face shields or vented goggles when necessary to prevent eye irritation, which comply with the requirements of § 1915.133(a) (2)–(6); and

(iv) Impervious clothing for employees subject to exposure to arsenic trichloride.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required in paragraph (j)(1) of this section in a freshly laundered and dry condition at least weekly, and daily if the employee works in areas where exposures are over 100 µg/m³ of inorganic arsenic or in areas where more frequent washing is needed to prevent skin irritation.

(ii) The employer shall clean, launder, or dispose of protective clothing

VOL 58 ISS 125 JL 1 1993 UMI

required by paragraph (j)(1) of this section.

(iii) The employer shall repair or replace the protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms prescribed in paragraph (m)(1) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of inorganic arsenic outside the container.

(vi) The employer shall inform in writing any person who cleans or launders clothing required by this section, of the potentially harmful effects including the carcinogenic effects of exposure to inorganic arsenic.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment in the workplace or which are to be removed from the workplace are labelled as follows:

Caution: Clothing contaminated with inorganic arsenic; do not remove dust by blowing or shaking. Dispose of inorganic arsenic contaminated wash water in accordance with applicable local, State or Federal regulations.

(viii) The employer shall prohibit the removal of inorganic arsenic from protective clothing or equipment by blowing or shaking.

(k) *Housekeeping*—(1) *Surfaces.* All surfaces shall be maintained as free as practicable of accumulations of inorganic arsenic.

(2) *Cleaning floors.* Floors and other accessible surfaces contaminated with inorganic arsenic may not be cleaned by the use of compressed air, and shoveling and brushing may be used only where vacuuming or other relevant methods have been tried and found not to be effective.

(3) *Vacuuming.* Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner to minimize the reentry of inorganic arsenic into the workplace.

(4) *Housekeeping plan.* A written housekeeping and maintenance plan shall be kept which shall list appropriate frequencies for carrying out housekeeping operations, and for cleaning and maintaining dust collection equipment. The plan shall be available for inspection by the Assistant Secretary.

(5) *Maintenance of equipment.* Periodic cleaning of dust collection and ventilation equipment and checks of their effectiveness shall be carried out to maintain the effectiveness of the system and a notation kept of the last check of effectiveness and cleaning or maintenance.

(l) [Reserved]

(m) *Hygiene facilities and practices*—(1) *Change rooms.* The employer shall provide for employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic, clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment in accordance with 29 CFR 1910.141(e).

(2) *Showers.* (i) The employer shall assure that employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1910.141(d)(3).

(3) *Lunchrooms.* (i) The employer shall provide for employees working in regulated areas, lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(ii) The employer shall assure that employees working in the regulated area or subject to the possibility of skin or eye irritation from exposure to inorganic arsenic wash their hands and face prior to eating.

(4) *Lavatories.* The employer shall provide lavatory facilities which comply with § 1910.141(d) (1) and (2) (ii) through (vii).

(5) *Vacuuming clothes.* The employer shall provide facilities for employees working in areas where exposure, without regard to the use of respirators, exceeds 100 $\mu g/m^3$ to vacuum their protective clothing and clean or change shoes worn in such areas before entering change rooms, lunchrooms or shower rooms required by paragraph (j) of this section and shall assure that such employees use such facilities.

(6) *Avoidance of skin irritation.* The employer shall assure that no employee is exposed to skin or eye contact with arsenic trichloride, or to skin or eye contact with liquid or particulate inorganic arsenic which is likely to cause skin or eye irritation.

(n) *Medical surveillance*—(1) *General*—(i) *Employees covered.* The employer shall institute a medical surveillance program for the following employees:

(A) All employees who are or will be exposed above the action level, without regard to the use of respirators, at least 30 days per year; and

(B) All employees who have been exposed above the action level, without regard to respirator use, for 30 days or more per year for a total of 10 years or more of combined employment with the employer or predecessor employers prior to or after the effective date of this standard. The determination of exposures prior to the effective date of this standard shall be based upon prior exposure records, comparison with the first measurements taken after the effective date of this standard, or comparison with records of exposures in areas with similar processes, extent of engineering controls utilized and materials used by that employer.

(ii) *Examination by physician.* The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay and at a reasonable time and place.

(2) *Initial examinations.* By December 1, 1978, for employees initially covered by the medical provisions of this section, or thereafter at the time of initial assignment to an area where the employee is likely to be exposed over the action level at least 30 days per year, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and a medical history which shall include a smoking history and the presence and degree of respiratory symptoms such as breathlessness, cough, sputum production and wheezing.

(ii) A medical examination which shall include at least the following:

(A) A 14" by 17" (35.56 × 43.18 cm) posterior-anterior chest X-ray and International Labor Office UICC/Cincinnati (ILO U/C) rating;

(B) A nasal and skin examination;

(C) A sputum cytology examination; and

(D) Other examinations which the physician believes appropriate because of the employees exposure to inorganic arsenic or because of required respirator use.

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) (A), (B), and (D) at least annually for covered employees who are under 45 years of age with fewer than 10 years of exposure over the action level without regard to respirator use.

(ii) The employer shall provide the examinations specified in paragraphs

(n)(2)(i) and (n)(2)(ii) of this section at least semi-annually for other covered employees.

(iii) Whenever a covered employee has not taken the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) of this section within six (6) months preceding the termination of employment, the employer shall provide such examinations to the employee upon termination of employment.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to inorganic arsenic the employer shall provide an appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and tests performed;

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to inorganic arsenic;

(C) Any recommended limitations upon the employee's exposure to inorganic arsenic or upon the use of protective clothing or equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training*—(1) *Training program.* (i) The employer shall institute a training program for all employees who are subject to exposure to inorganic arsenic above the action level without regard to respirator use, or for whom there is the possibility of skin or eye irritation from inorganic arsenic. The employer shall assure that those employees participate in the training program.

(ii) The training program shall be provided by October 1, 1978, for employees covered by this provision, at the time of initial assignment for those subsequently covered by this provision, and shall be repeated at least quarterly for employees who have optional use of respirators and at least annually for other covered employees thereafter; and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendix A;

(B) The quantity, location, manner of use, storage, sources of exposure, and the specific nature of operations which could result in exposure to inorganic arsenic as well as any necessary protective steps;

(C) The purpose, proper use, and limitation of respirators;

(D) The purpose and a description of the medical surveillance program as required by paragraph (n) of this section;

(E) The engineering controls and work practices associated with the employee's job assignment; and

(F) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide; upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the meaning of the required sign or label.

(2) *Signs.* (i) The employer shall post signs demarcating regulated areas bearing the legend;

DANGER
INORGANIC ARSENIC
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY
NO SMOKING OR EATING
RESPIRATOR REQUIRED

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(3) *Labels.* The employer shall apply precautionary labels to all shipping and storage containers of inorganic arsenic, and to all products containing inorganic arsenic except when the inorganic arsenic in the product is bound in such a manner so as to make unlikely the possibility of airborne exposure to inorganic arsenic. (Possible examples of products not requiring labels are semiconductors, light emitting diodes and glass). The label shall bear the following legend:

DANGER
CONTAINS INORGANIC ARSENIC
CANCER HAZARD
HARMFUL IF INHALED OR SWALLOWED
USE ONLY WITH ADEQUATE VENTILATION
OR RESPIRATORY PROTECTION

(q) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The date(s), number, duration location, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employees monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of the employee's exposure.

(iii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever, is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to inorganic arsenic.

(iii) The employer shall in addition keep, or assure that the examining physician keeps, the following medical records;

(A) A copy of the medical examination results including medical and work history required under paragraph (n) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) The initial X-ray;

(D) The X-rays for the most recent 5 years;

(E) Any X-rays with a demonstrated abnormality and all subsequent X-rays;

(F) The initial cytologic examination slide and written description;

(G) The cytologic examination slide and written description for the most recent 5 years; and

(H) Any cytologic examination slides with demonstrated atypia, if such atypia persists for 3 years, and all subsequent slides and written descriptions.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years whichever is longer.

(3) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (q) of this section to the Assistant Secretary and the Director for examination and copying.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a) through (e) and (g) through (i).

(4) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least 3 months prior to the disposal of such records and shall transmit those records to the Director if he requests them within that period.

(iv) The employer shall also comply with any additional requirements involving the transfer of records set in 29 CFR 1915.1120(h).

(r) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to inorganic arsenic conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to inorganic arsenic requires entry into an area where the use of respirators, protective clothing, or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing, and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to;

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of inorganic arsenic performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(s) *Effective date.* This standard shall become effective August 1, 1978.

(t) *Appendices.* The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(u) *Startup dates*—(1) *General.* The startup dates of requirements of this standard shall be the effective date of this standard unless another startup date is provided for either in other paragraphs of this section or in this paragraph.

(2) *Monitoring.* Initial monitoring shall be commenced on August 1, 1978, and shall be completed by September 15, 1978.

(3) *Regulated areas.* Regulated areas required to be established as a result of initial monitoring shall be set up as soon as possible after the results of that monitoring is known and no later than October 1, 1978.

(4) *Compliance program.* The written program required by paragraph (g)(2) as a result of initial monitoring shall be made available for inspection and copying as soon as possible and no later than December 1, 1978.

(5) *Hygiene and lunchroom facilities.* Construction plans for change- rooms, showers, lavatories, and lunchroom facilities shall be completed no later than December 1, 1978, and these facilities shall be constructed and in use no later than July 1, 1979. However, if as part of the compliance plan it is predicted by an independent engineering firm that engineering controls and work practices will reduce exposures below the permissible exposure limit by December 31, 1979, for affected employees, then such facilities need not be completed until 1 year after the engineering controls are completed or December 31, 1980, whichever is earlier, if such controls have not in fact succeeded in reducing exposure to below the permissible exposure limit.

(6) *Summary of startup dates set forth elsewhere in this standard.*

Startup Dates

August 1, 1978—Respirator use over 500 µg/m³.

as soon as possible but no later than

September 15, 1978—Completion of initial monitoring.

October 1, 1978—Complete establishment of regulated areas. Respirator use for employees exposed above 50 µg/m³. Completion of initial training. Notification of use.

December 1, 1978—Respirator use over 10 µg/m³. Completion of initial medical. Completion of compliance plan. Optional use of powered air-purifying respirators.

July 1, 1979—Completion of lunch rooms and hygiene facilities.

December 31, 1979—Completion of engineering controls.

All other requirements of the standard have as their startup date August 1, 1978.

(Approved by the Office of Management and Budget under control number 1218—0104)

Appendix A to § 1915.1018—Inorganic Arsenic Substance Information Sheet

I. SUBSTANCE IDENTIFICATION

A. *Substance.* Inorganic Arsenic.

B. *Definition.* Copper acetoarsenite, arsenic and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

C. *Permissible Exposure Limit.* 10 micrograms per cubic meter of air as determined as an average over an 8-hour period. No employee may be exposed to any skin or eye contact with arsenic trichloride or to skin or eye contact likely to cause skin or eye irritation.

D. *Regulated Areas.* Only employees authorized by your employer should enter a regulated area.

II. HEALTH HAZARD DATA

A. *Comments.* The health hazard of inorganic arsenic is high.

B. *Ways in which the chemical affects your body.* Exposure to airborne concentrations of inorganic arsenic may cause lung cancer, and can be a skin irritant. Inorganic arsenic may also affect your body if swallowed. One compound in particular, arsenic trichloride, is especially dangerous because it can be absorbed readily through the skin. Because inorganic arsenic is a poison, you should wash your hands thoroughly prior to eating or smoking.

III. PROTECTIVE CLOTHING AND EQUIPMENT

A. *Respirators.* Respirators will be provided by your employer at no cost to you for routine use if your employer is in the process of implementing engineering and work practice controls or where engineering and work practice controls are not feasible or insufficient. You must wear respirators for non-routine activities or in emergency situations where you are likely to be exposed to levels of inorganic arsenic in excess of the permissible exposure limit. Since how well your respirator fits your face is very important, your employer is required to conduct fit tests to make sure the respirator seals properly when you wear it. These tests are simple and rapid and will be explained to you during training sessions.

B. *Protective clothing.* If you work in a regulated area, your employer is required to provide at no cost to you, and you must wear, appropriate, clean, protective clothing and equipment. The purpose of this equipment is to prevent you from bringing to your home arsenic-contaminated dust and to protect your body from repeated skin contact with inorganic arsenic likely to cause skin irritation. This clothing should include such items as coveralls or similar full-body clothing, gloves, shoes or coverlets, and aprons. Protective equipment should include face shields or vented goggles, where eye irritation may occur.

IV. HYGIENE FACILITIES AND PRACTICES

You must not eat, drink, smoke, chew gum or tobacco, or apply cosmetics in the regulated area, except that drinking water is permitted. If you work in a regulated area your employer is required to provide lunchrooms and other areas for these purposes.

If you work in a regulated area, your employer is required to provide showers, washing facilities, and change rooms. You must wash your face, and hands before eating and must shower at the end of the work shift. Do not take used protective clothing out of change rooms without your employer's permission. Your employer is required to provide for laundering or cleaning of your protective clothing.

V. SIGNS AND LABELS

Your employer is required to post warning signs and labels for your protection. Signs must be posted in regulated areas. The signs must warn that a cancer hazard is present, that only authorized employees may enter the area, and that no smoking or eating is allowed, and that respirators must be worn.

VI. MEDICAL EXAMINATIONS

If your exposure to arsenic is over the Action Level (5 $\mu g/m^3$)—(including all persons working in regulated areas) at least 30 days per year, or you have been exposed to arsenic for more than 10 years over the Action Level, your employer is required to provide you with a medical examination. The examination shall be every 6 months for employees over 45 years old or with more than 10 years exposure over the Action Level and annually for other covered employees. The medical examination must include a medical history; a chest x-ray; skin examination; nasal examination and sputum cytology exam for the early detection of lung cancer. The cytology exams are only included in the initial exam and examinations given after you are either 45 years or older or have 10 or more years employment over the Action Level. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion. The physician must not tell your employer any conditions he detects unrelated to occupational exposure to arsenic but must tell you those conditions.

VII. OBSERVATION OF MONITORING

Your employer is required to monitor your exposure to arsenic and you or your representatives are entitled to observe the monitoring procedure. You are entitled to receive an explanation of the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you must also be provided with and must wear the protective clothing and equipment.

VIII. ACCESS TO RECORDS

You or your representative are entitled to records of your exposure to inorganic arsenic and your medical examination records if you request your employer to provide them.

IX. TRAINING AND NOTIFICATION

Additional information on all of these items plus training as to hazards of exposure to inorganic arsenic and the engineering and work practice controls associated with your job will also be provided by your employer. If you are exposed over the permissible exposure limit, your employer must inform you of that fact and the actions he is taking to reduce your exposures.

Appendix B to § 1915.1018—Substance Technical Guidelines

ARSENIC, ARSENIC TRIOXIDE, ARSENIC TRICHLORIDE (THREE EXAMPLES)

I. Physical and chemical properties

A. Arsenic (metal).
1. Formula: As.
2. Appearance: Gray metal.
3. Melting point: Sublimes without melting at 613°C.
4. Specific Gravity: (H_20=1):5.73.
5. Solubility in water: Insoluble.
B. Arsenic Trioxide.
1. Formula: As203, (As406).
2. Appearance: White powder.
3. Melting point: 315°C.
4. Specific Gravity (H_20=1):3.74.
5. Solubility in water: 3.7 grams in 100cc of water at 20°C.
C. Arsenic Trichloride (liquid).
1. Formula: AsC 13.
2. Appearance: Colorless or pale yellow liquid.
3. Melting point: −8.5°C.
4. Boiling point: 130 2°C.
5. Specific Gravity (H_20=1):2.16 at 20°C.
6. Vapor Pressure: 10mm Hg at 23.5°C.
7. Solubility in Water: Decomposes in water.

II. Fire, explosion and reactivity data.

A. Fire: Arsenic, arsenic Trioxide and Arsenic Trichloride are nonflammable.
B. Reactivity:
1. Conditions Contributing to Instability: Heat.
2. Incompatibility: Hydrogen gas can react with inorganic arsenic to form the highly toxic gas arsine.

III. Monitoring and Measurement Procedures

Samples collected should be full shift (at least 7-hour) samples. Sampling should be done using a personal sampling pump at a flow rate of 2 liters per minute. Samples should be collected on 0.8 micrometer pore size membrane filter (37mm diameter). Volatile arsenicals such as arsenic trichloride can be most easily collected in a midget bubbler filled with 15 ml. of 0.1 N NaOH.

The method of sampling and analysis should have an accuracy of not less than ±25 percent (with a confidence limit of 95 percent) for 10 micrograms per cubic meter of air (10 $\mu g/m^3$) and ±35 percent (with a confidence limit of 95 percent) for concentrations of inorganic arsenic between 5 and 10 $\mu g/m^3$.

Appendix C to § 1915.1018—Medical Surveillance Guidelines

I. GENERAL

Medical examinations are to be provided for all employees exposed to levels of inorganic arsenic above the action level (5 $\mu g/m^3$) for at least 30 days per year (which would include among others, all employees, who work in regulated areas). Examinations are also to be provided to all employees who have had 10 years or more exposure above the action level for more than 30 days per year while working for the present or predecessor employer though they may no longer be exposed above the level.

An initial medical examination is to be provided to all such employees by December 1, 1978. In addition, an initial medical examination is to be provided to all employees who are first assigned to areas in which worker exposure will probably exceed 5 $\mu g/m^3$ (after the effective date of this standard) at the time of initial assignment. In addition to its immediate diagnostic usefulness, the initial examination will provide a baseline for comparing future test results. The initial examination must include as a minimum the following elements:

(1) A work and medical history, including a smoking history, and presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing;

(2) A 14" by 17" (35.56 × 43.18 cm) posterior-anterior chest X-ray and an International Labor Office UICC/Cincinnati (ILO U/C) rating;

(3) A nasal and skin examination;

(4) A Sputum Cytology examination; and

(5) Other examinations which the physician believes appropriate because of the employee's exposure to inorganic arsenic or because of required respirator use.

Periodic examinations are also to be provided to the employees listed above. The periodic examinations shall be given annually for those covered employees 45 years of age or less with fewer than 10 years

UMI
VOL 58 ISS 125 JL 1 1993
UMI

employment in areas where employee exposure exceeds the action level (5 μg/m³). Periodic examinations need not include sputum cytology and only an updated medical history is required.

Periodic examinations for other covered employees, shall be provided every six (6) months. These examinations shall include all tests required in the initial examination, except that the medical history need only be updated.

The examination contents are minimum requirements. Additional tests such as lateral and oblique X-rays or pulmonary function tests may be useful. For workers exposed to three arsenicals which are associated with lymphatic cancer, copper acetoarsenite, potassium arsenite, or sodium arsenite the examination should also include palpation of superficial lymph nodes and complete blood count.

II. Noncarcinogenic Effects

The OSHA standard is based on minimizing risk of exposed workers dying of lung cancer from exposure to inorganic arsenic. It will also minimize skin cancer from such exposures.

The following three sections quoted from "Occupational Diseases: A Guide to Their Recognition", Revised Edition, June 1977, National Institute for Occupational Safety and Health is included to provide information on the nonneoplastic effects of exposure to inorganic arsenic. Such effects should not occur if the OSHA standards are followed.

A. *Local*—Trivalent arsenic compounds are corrosive to the skin. Brief contact has no effect but prolonged contact results in a local hyperemia and later vesicular or pustular eruption. The moist mucous membranes are most sensitive to the irritant action. Conjunctiva, moist and macerated areas of skin, the eyelids, the angles of the ears, nose, mouth, and respiratory mucosa are also vulnerable to the irritant effects. The wrists are common sites of dermatitis, as are the genitalia if personal hygiene is poor. Perforations of the nasal septum may occur. Arsenic trioxide and pentoxide are capable of producing skin sensitization and contact dermatitis. Arsenic is also capable of producing keratoses, especially of the palms and soles.

B. *Systemic*—The acute toxic effects of arsenic are generally seen following ingestion of inorganic arsenical compounds. This rarely occurs in an industrial setting. Symptoms develop within ½ to 4 hours following ingestion and are usually characterized by constriction of the throat followed by dysphagia, epigastric pain, vomiting, and watery diarrhea. Blood may appear in vomitus and stools. If the amount ingested is sufficiently high, shock may develop due to severe fluid loss, and death may ensue in 24 hours. If the acute effects are survived, exfoliative dermatitis and peripheral neuritis may develop.

Cases of acute arsenical poisoning due to inhalation are exceedingly rare in industry. When it does occur, respiratory tract symptoms—cough, chest pain, dyspnea—giddiness, headache, and extreme general weakness precede gastrointestinal symptoms. The acute toxic symptoms of trivalent arsenical poisoning are due to severe inflammation of the mucous membranes and greatly increased permeability of the blood capillaries.

Chronic arsenical poisoning due to ingestion is rare and generally confined to patients taking prescribed medications. However, it can be a concomitant of inhaled inorganic arsenic from swallowed sputum and improper eating habits. Symptoms are weight loss, nausea and diarrhea alternating with constipation, pigmentation and eruption of the skin, loss of hair, and peripheral neuritis. Chronic hepatitis and cirrhosis have been described. Polyneuritis may be the salient feature, but more frequently there are numbness and parasthenias of "glove and stocking" distribution. The skin lesions are usually melanotic and keratotic and may occasionally take the form of an intradermal cancer of the squamous cell type, but without infiltrative properties. Horizontal white lines (striations) on the fingernails and toenails are commonly seen in chronic arsenical poisoning and are considered to be a diagnostic accompaniment of arsenical polyneuritis.

Inhalation of inorganic arsenic compounds is the most common cause of chronic poisoning in the industrial situation. This condition is divided into three phases based on signs and symptoms.

First Phase: The worker complains of weakness, loss of appetite, some nausea, occasional vomiting, a sense of heaviness in the stomach, and some diarrhea.

Second Phase: The worker complains of conjunctivitis, a catarrhal state of the mucous membranes of the nose, larynx, and respiratory passage. Coryza, hoarseness, and mild tracheobronchitis may occur. Perforation of the nasal septum is common, and is probably the most typical lesion of the upper respiratory tract in occupational exposure to arsenical dust. Skin lesions, eczematoid and allergic in type, are common.

Third Phase: The worker complains of symptoms of peripheral neuritis, initially of hands and feet, which is essentially sensory. In more severe cases, motor paralyses occur; the first muscles affected are usually the toe extensors and the peronei. In only the most severe cases will paralysis of flexor muscles of the feet or of the extensor muscles of hands occur.

Liver damage from chronic arsenical poisoning is still debated, and as yet the question is unanswered. In cases of chronic and acute arsenical poisoning, toxic effects to the myocardium have been reported based on EKG changes. These findings, however, are now largely discounted and the EKG changes are ascribed to electrolyte disturbances concomitant with arsenicalism. Inhalation of arsenic trioxide and other inorganic arsenical dusts does not give rise to radiological evidence or pneumoconiosis. Arsenic does have a depressant effect upon the bone marrow, with disturbances of both erythropoiesis and myelopoiesis.

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III. Sputum Cytology

Sputum can be collected by aerosol inhalation during the medical exam or by spontaneous early morning cough at home. Sputum is induced by transoral inhalation of an aerosolized solution of eight per cent (8 percent) sodium chloride in water. After inhaling as few as three to five breaths the subject usually yields an adequate sputum. All sputum should be collected directly into sixty percent (60 percent) alcohol.

Scientific evidence suggests that chest X-rays and sputum cytology should be used together as screening tests for lung tests for lung cancer in high risk populations such as workers exposed to inorganic arsenic. The tests are to be performed every six months on workers who are 45 years of age or older or have worked in the regulated area for 10 or more years. Since the tests seem to be complementary, it may be advantageous to alternate the test procedures. For instance, chest X-rays could be obtained in June and December and sputum cytologies could be obtained in March and September. Facilities for providing necessary diagnostic investigation should be readily available as well as chest physicians, surgeons, radiologists, pathologists and immunotherapists to provide any necessary treatment services.

§ 1915.1025 Lead.

(a) *Scope and application.* (1) This section applies to all occupational exposure to lead, except as provided in paragraph (a)(2).

(2) This section does not apply to the construction industry or to agricultural operations covered by 29 CFR Part 1928.

(b) *Definitions. Action level* means employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air (30 μg/m³) averaged over an 8-hour period.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Director means the Director, National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, or designee.

Lead means metallic lead, all inorganic lead compounds, and organic

lead soaps. Excluded from this definition are all other organic lead compounds.

(c) *Permissible exposure limit (PEL).* (1) The employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air (50 $\mu g/m^3$) averaged over an 8-hour period.

(2) If an employee is exposed to lead for more than 8 hours in any work day, the permissible exposure limit, as a time weighted average (TWA) for that day, shall be reduced according to the following formula:

Maximum permissible limit (in $\mu g/m^3$)=400÷hours worked in the day.

(3) When respirators are used to supplement engineering and work practice controls to comply with the PEL and all the requirements of paragraph (f) have been met, employee exposure, for the purpose of determining whether the employer has complied with the PEL, may be considered to be at the level provided by the protection factor of the respirator for those periods the respirator is worn. Those periods may be averaged with exposure levels during periods when respirators are not worn to determine the employee's daily TWA exposure.

(d) *Exposure monitoring*—(1) *General.* (i) For the purposes of paragraph (d), employee exposure is that exposure which would occur if the employee were not using a respirator.

(ii) With the exception of monitoring under paragraph (d)(3), the employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(iii) Full shift personal samples shall be representative of the monitored employee's regular, daily exposure to lead.

(2) *Initial determination.* Each employer who has a workplace or work operation covered by this standard shall determine if any employee may be exposed to lead at or above the action level.

(3) *Basis of initial determination.* (i) The employer shall monitor employee exposures and shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations:

(A) Any information, observations, or calculations which would indicate employee exposure to lead;

(B) Any previous measurements of airborne lead; and

(C) Any employee complaints of symptoms which may be attributable to exposure to lead.

(ii) Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace.

(iii) Measurements of airborne lead made in the preceding 12 months may be used to satisfy the requirement to monitor under paragraph (d)(3)(i) if the sampling and analytical methods used meet the accuracy and confidence levels of paragraph (d)(9) of this section.

(4) *Positive initial determination and initial monitoring.* (i) Where a determination conducted under paragraphs (d) (2) and (3) of this section shows the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

(ii) Measurements of airborne lead made in the preceding 12 months may be used to satisfy this requirement if the sampling and analytical methods used meet the accuracy and confidence levels of paragraph (d)(9) of this section.

(5) *Negative initial determination.* Where a determination, conducted under paragraphs (d) (2) and (3) of this section is made that no employee is exposed to airborne concentrations of lead at or above the action level, the employer shall make a written record of such determination. The record shall include at least the information specified in paragraph (d)(3) of this section and shall also include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

(6) *Frequency.* (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in paragraph (d)(7) of this section.

(ii) If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level but below the permissible exposure limit the employer shall repeat monitoring in accordance with this paragraph at least every 6 months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in paragraph (d)(7) of this section.

(iii) If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.

(7) *Additional monitoring.* Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to lead, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to lead, additional monitoring in accordance with this paragraph shall be conducted.

(8) *Employee notification.* (i) Within 5 working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall incude in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

(9) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis which has an accuracy (to a confidence level of 95%) of not less than plus or minus 20 percent for airborne concentrations of lead equal to or greater than 30 $\mu g/m^3$.

(e) *Methods of compliance*—(1) *Engineering and work practice controls.* (i) Where any employee is exposed to lead above the permissible exposure limit for more than 30 days per year, the employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below, except to the extent that the employer can demonstrate that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposure to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest feasible level and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (f) of this section.

(ii) Where any employee is exposed to lead above the permissible exposure limit, but for 30 days or less per year, the employer shall implement engineering controls to reduce exposures to 200 μg/m³, but thereafter may implement any combination of engineering, work practice (including administrative controls), and respiratory controls to reduce and maintain employee exposure to lead to or below 50 μg/m³.

TABLE I—IMPLEMENTATION SCHEDULE

Industry[1]	Compliance dates		
	200 μg/m³	100 μg/m³	50 μg/m³
Primary lead production	[3]	June 29, 1984[2]	June 29, 1991.[2]
Secondary lead production	[3]	June 29, 1984[2]	June 29, 1986.[2]
Lead acid battery manufacture	[3]	June 29, 1983[2]	June 29, 1986.[2]
Automobile manufacture/solder grinding	[3]	N/A	June 29, 1986.[2]
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wall paper manufacture, can manufacture and printing	[3]	N/A	June 29, 1982.[2]
Brass and bronze ingot manufacture, lead chemical manufacture, and secondary copper smelting	[3]	N/A	5 years.[4]
Non-ferrous foundries	[3]	N/A	5 years.[4,5]
All other industries	[3]	N/A	2½ years.[4]

[1] Includes ancillary activities located on the same worksite.

[2] This date is calculated by counting, from June 29, 1981 (the date when the United States Supreme Court denied certiorari and lifted the stay on the implementation of paragraph (e)(1)), the number of years specified for the particular industry in the original lead standard for compliance with the given airborne exposure level. The denial of certiorari followed a decision of the United States Court of Appeals for the District of Columbia Circuit finding compliance with paragraph (e)(1) to be feasible for the relevant industries.

[3] On the effective date of this standard, March 1, 1979. This continues an obligation from Table Z–2 of 29 CFR 1910.1000, which has been in effect since 1971 but was deleted from the Code of Federal Regulations upon the effectiveness of this standard.

[4] Expressed as the number of years from the date on which the court lifts the stay on the implementation of paragraph (e)(1) for the particular industry.

[5] Large non-ferrous foundries (20 or more employees) are required to achieve 50 μg/m³ by means of engineering and work practice controls. Small non-ferrous foundries (fewer than 20 employees), however, are only required to achieve 75 μg/m³ by such controls. All foundries are required to comply within five years.

(2) *Respiratory protection.* Where engineering and work practice controls do not reduce employee exposure to or below the 50 μg/m³ permissible exposure limit, the employer shall supplement these controls with respirators in accordance with paragraph (f).

(3) *Compliance program.* (i) Each employer shall establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit, and interim levels if applicable, solely by means of engineering and work practice controls in accordance with the implementation schedule in paragraph (e)(1).

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which lead is emitted; e.g. machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Air monitoring data which documents the source of lead emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program which includes items required under paragraphs (g), (h) and (i) of this regulation;

(G) An administrative control schedule required by paragraph (e)(6), if applicable;

(H) Other relevant information.

(iii) Written programs shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, Director, any affected employee or authorized employee representatives.

(iv) Written programs shall be revised and updated at least every 6 months to reflect the current status of the program.

(4) *Bypass of interim level.* Where an employer's compliance plan provides for a reduction of employee exposures to or below the PEL solely by means of engineering and work practice controls in accordance with the implementation schedule in table I, and the employer has determined that compliance with the 100 μg/m³ interim level would divert resources to the extent that it clearly precludes compliance, otherwise attainable, with the PEL by the required time, the employer may proceed with the plan to comply with the PEL in lieu of compliance with the interim level if:

(i) The compliance plan clearly documents the basis of the determination;

(ii) The employer takes all feasible steps to provide maximum protection for employees until the PEL is met; and

(iii) The employer notifies the OSHA Area Director nearest the affected workplace in writing within 10 working days of the completion or revision of the compliance plan reflecting the determination.

(5) *Mechanical ventilation.* (i) When ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made at least every 3 months. Measurements of the system's effectiveness in controlling exposure shall be made within 5 days of any change in production, process, or control which might result in a change in employee exposure to lead.

(ii) *Recirculation of air.* If air from exhaust ventilation is recirculated into the workplace, the employer shall assure that (A) the system has a high efficiency filter with reliable back-up filter; and (B) controls to monitor the concentration of lead in the return air and to bypass the recirculation system automatically if it fails are installed, operating, and maintained.

(6) *Administrative controls.* If administrative controls are used as a means of reducing employees TWA exposure to lead, the employer shall establish and implement a job rotation schedule which includes:

(i) Name or identification number of each affected employee;

(ii) Duration and exposure levels at each job or work station where each affected employee is located; and

(iii) Any other information which may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

(f) *Respiratory protection*—(1) *General.* Where the use of respirators is required under this section, the employer shall provide, at no cost to the employee, and assure the use of respirators which comply with the requirements of this paragraph. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement engineering or work practice controls, except that after the dates for compliance with the interim levels in table I, no employer shall require an employee to wear a negative pressure respirator longer than 4.4 hours per day;

(ii) In work situations in which engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit; and

(iii) Whenever an employee requests a respirator.

(2) *Respirator selection.* (i) Where respirators are required under this section the employer shall select the appropriate respirator or combination of respirators from table II below.

TABLE II—RESPIRATORY PROTECTION FOR LEAD AEROSOLS

Airborne concentration of lead or condition of use	Required respirator [1]
Not in excess of 0.5 mg/m³ (10X PEL).	Half-mask, air-purifying respirator equipped with high efficiency filters.[2,3]
Not in excess of 2.5 mg/m³ (50X PEL).	Full facepiece, air-purifying respirator with high efficiency filters.[3]
Not in excess of 50 mg/m³ (1000X PEL).	(1) Any powered, air-purifying respirator with high efficiency filters;[3] or (2) Half-mask supplied-air respirator operated in positive-pressure mode.[2]
Not in excess of 100 mg/m³ (2000XPEL).	Supplied-air respirators with full facepiece, hood, helmet, or suit, operated in positive pressure mode.
Greater than 100 mg/m³, unknown concentration or fire fighting.	Full facepiece, self-contained breathing apparatus operated in positive-pressure mode.

[1] Respirators specified for high concentrations can be used at lower concentrations of lead.

[2] Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.

[3] A high efficiency particulate filter means 99.97 percent efficient against 0.3 micron size particles.

(ii) The employer shall provide a powered, air-purifying respirator in lieu of the respirator specified in Table II whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(iii) The employer shall select respirators from among those approved for protection against lead dust, fume, and mist by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) Employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every six months thereafter for each employee wearing negative pressure respirators. The qualitative fit tests may be used only for testing the fit of half-mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix D. The tests shall be used to select facepieces that provide the required protection as prescribed in table II.

(iii) If an employee exhibits difficulty in breathing during the fitting test or during use, the employer shall make available to the employee an examination in accordance with paragraph (j)(3)(i)(C) of this section to determine whether the employee can wear a respirator while performing the required duty.

(4) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(g) *Protective work clothing and equipment*—(1) *Provision and use.* If an employee is exposed to lead above the PEL, without regard to the use of respirators or where the possibility of skin or eye irritation exists, the employer shall provide at no cost to the employee and assure that the employee uses appropriate protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, hats, and shoes or disposable shoe coverlets; and

(iii) Face shields, vented goggles, or other appropriate protective equipment which complies with § 1910.133 of this title.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required in paragraph (g)(1) of this section in a clean and dry condition at least weekly, and daily to employees whose exposure levels without regard to a respirator are over 200 μg/m³ of lead as an 8-hour TWA.

(ii) The employer shall provide for the cleaning, laundering, or disposal of protective clothing and equipment required by paragraph (g)(1) of this section.

(iii) The employer shall repair or replace required protective clothing and

equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms provided for that purpose as prescribed in paragraph (i)(2) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of lead outside the container.

(vi) The employer shall inform in writing any person who cleans or launders protective clothing or equipment of the potentially harmful effects of exposure to lead.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment required by paragraph (g)(2)(v) are labelled as follows:

CAUTION: CLOTHING CONTAMINATED WITH LEAD. DO NOT REMOVE DUST BY BLOWING OR SHAKING. DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR FEDERAL REGULATIONS.

(viii) The employer shall prohibit the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air.

(h) *Housekeeping*—(1) *Surfaces.* All surfaces shall be maintained as free as practicable of accumulations of lead.

(2) *Cleaning floors.* (i) Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air.

(ii) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other equally effective methods have been tried and found not to be effective.

(3) *Vacuuming.* Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner which minimizes the reentry of lead into the workplace.

(i) *Hygiene facilities and practices.* (1) The employer shall assure that in areas where employees are exposed to lead above the PEL, without regard to the use of respirators, food or beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in change rooms, lunchrooms, and showers required under paragraphs (i)(2) through (i)(4) of this section.

(2) *Change rooms.* (i) The employer shall provide clean change rooms for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that change rooms are equipped with separate storage facilities for protective work clothing and equipment and for street clothes which prevent cross-contamination.

(3) *Showers.* (i) The employer shall assure that employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators, shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1910.141(d)(3) of this title.

(iii) The employer shall assure that employees who are required to shower pursuant to paragraph (i)(3)(i) do not leave the workplace wearing any clothing or equipment worn during the work shift.

(4) *Lunchrooms.* (i) The employer shall provide lunchroom facilities for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply, and are readily accessible to employees.

(iii) The employer shall assure that employees who work in areas where their airborne exposure to lead is above the PEL without regard to the use of a respirator wash their hands and face prior to eating, drinking, smoking or applying cosmetics.

(iv) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface lead dust has been removed by vacuuming, downdraft booth, or other cleaning method.

(5) *Lavatories.* The employer shall provide an adequate number of lavatory facilities which comply with § 1910.141(d) (1) and (2) (ii) through (vii) of this title.

(j) *Medical surveillance*—(1) *General.* (i) The employer shall institute a medical surveillance program for all employees who are or may be exposed above the action level for more than 30 days per year.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician.

(iii) The employer shall provide the required medical surveillance including multiple physician review under paragraph (j)(3)(iii) without cost to employees and at a reasonable time and place.

(2) *Biological monitoring*—(i) *Blood lead and ZPP level sampling and analysis.* The employer shall make available biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels to each employee covered under paragraph (j)(1)(i) of this section on the following schedule:

(A) At least every 6 months to each employee covered under paragraph (j)(1)(i) of this section;

(B) At least every two months for each employee whose last blood sampling and analysis indicated a blood lead level at or above 40 µg/100 g of whole blood. This frequency shall continue until two consecutive blood samples and analyses indicate a blood lead level below 40 µg/100 g of whole blood; and

(C) At least monthly during the removal period of each employee removed from exposure to lead due to an elevated blood lead level.

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i), the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

(iii) *Accuracy of blood lead level sampling and analysis.* Blood lead level sampling and analysis provided pursuant to this section shall have an accuracy (to a confidence level of 95 percent) within plus or minus 15 percent or 6 µg/100ml, whichever is greater, and shall be conducted by a laboratory licensed by the Center for Disease Control, United States Department of Health, Education and Welfare (CDC) or which has received a satisfactory grade in blood lead proficiency testing from CDC in the prior twelve months.

(iv) *Employee notification.* Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level exceeds 40 µg/100 g: (A) of that employee's blood lead level and (B) that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

(3) *Medical examinations and consultations*—(i) *Frequency.* The employer shall make available medical examinations and consultations to each employee covered under paragraph (j)(1)(i) of this section on the following schedule:

(A) At least annually for each employee for whom a blood sampling

test conducted at any time during the preceding 12 months indicated a blood lead level at or above 40 μg/100 g;

(B) Prior to assignment for each employee being assigned for the first time to an area in which airborne concentrations of lead are at or above the action level;

(C) As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during use; and

(D) As medically appropriate for each employee either removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited pursuant to a final medical determination.

(ii) *Content.* Medical examinations made available pursuant to paragraph (j)(3)(i) (A) through (B) of this section shall include the following elements:

(A) A detailed work history and a medical history, with particular attention to past lead exposure (occupational and non-occupational), personal habits (smoking, hygiene), and past gastrointestinal, hematologic, renal, cardiovascular, reproductive and neurological problems;

(B) A thorough physical examination, with particular attention to teeth, gums, hematologic, gastrointestinal, renal, cardiovascular, and neurological systems. Pulmonary status should be evaluated if respiratory protection will be used;

(C) A blood pressure measurement;

(D) A blood sample and analysis which determines:

(*1*) Blood lead level;

(*2*) Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology;

(*3*) Zinc protoporphyrin;

(*4*) Blood urea nitrogen; and,

(*5*) Serum creatinine;

(E) A routine urinalysis with microscopic examination; and

(F) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

The content of medical examinations made available pursuant to paragraph (j)(3)(i) (C) through (D) of this section shall be determined by an examining physician and, if requested by an employee, shall include pregnancy testing or laboratory evaluation of male fertility.

(iii) *Multiple physician review mechanism.* (A) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, the employee may designate a second physician:

(*1*) To review any findings, determinations or recommendations of the initial physician; and

(*2*) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(B) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(*1*) The employee informing the employer that he or she intends to seek a second medical opinion, and

(*2*) The employee initiating steps to make an appointment with a second physician.

(C) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(D) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(*1*) To review any findings, determinations or recommendations of the prior physicians; and

(*2*) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(E) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(iv) *Information provided to examining and consulting physicians.* (A) The employer shall provide an initial physician conducting a medical examination or consultation under this section with the following information:

(*1*) A copy of this regulation for lead including all Appendices;

(*2*) A description of the affected employee's duties as they relate to the employee's exposure;

(*3*) The employee's exposure level or anticipated exposure level to lead and to any other toxic substance (if applicable);

(*4*) A description of any personal protective equipment used or to be used;

(*5*) Prior blood lead determinations; and

(*6*) All prior written medical opinions concerning the employee in the employer's possession or control.

(B) The employer shall provide the foregoing information to a second or third physician conducting a medical examination or consultation under this section upon request either by the second or third physician, or by the employee.

(v) *Written medical opinions.* (A) The employer shall obtain and furnish the employee with a copy of a written medical opinion from each examining or consulting physician which contains the following information:

(*1*) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at increased risk of material impairment of the employee's health from exposure to lead;

(*2*) Any recommended special protective measures to be provided to the employee, or limitations to be placed upon the employee's exposure to lead;

(*3*) Any recommended limitation upon the employee's use of respirators, including a determination of whether the employee can wear a powered air purifying respirator if a physician determines that the employee cannot wear a negative pressure respirator; and

(*4*) The results of the blood lead determinations.

(B) The employer shall instruct each examining and consulting physician to:

(*1*) Not reveal either in the written opinion, or in any other means of communication with the employer, findings, including laboratory results, or diagnoses unrelated to an employee's occupational exposure to lead; and

(*2*) Advise the employee of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment.

(vi) *Alternate Physician Determination Mechanisms.* The employer and an employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination

VOL 58 ISS 125 JL 1 1993 UMI

mechanism in lieu of the multiple physician review mechanism provided by this paragraph so long as the alternate mechanism otherwise satisfies the requirements contained in this paragraph.

(4) *Chelation.* (i) The employer shall assure that any person whom he retains, employs, supervises or controls does not engage in prophylactic chelation of any employee at any time.

(ii) If therapeutic or diagnostic chelation is to be performed by any person in paragraph (j)(4)(i), the employer shall assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that the employee is notified in writing prior to its occurrence.

(k) *Medical Removal Protection*—(1) *Temporary medical removal and return of an employee*—(i) *Temporary removal due to elevated blood lead levels*—(A) *First year of the standard.* During the first year following the effective date of the standard, the employer shall remove an employee from work having a daily eight hour TWA exposure to lead at or above 100 μg/m³ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 80 μg/100 g of whole blood;

(B) *Second year of the standard* During the second year following the effective date of the standard, the employer shall remove an employee from work having a daily 8-hour TWA exposure to lead at or above 50 μg/m³ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 70 μg/100 g of whole blood;

(C) *Third year of the standard, and thereafter.* Beginning with the third year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 60 μg/100 g of whole blood; and,

(D) *Fifth year of the standard, and thereafter.* Beginning with the fifth year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 μg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 μg/100 g of whole blood.

(ii) *Temporary removal due to a final medical determination.* (A) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(B) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the multiple physician review mechanism or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section.

(C) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to lead, the employer shall implement and act consistent with the recommendation.

(iii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(*1*) For an employee removed due to a blood lead level at or above 80 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 60 μg/100 g of whole blood;

(*2*) For an employee removed due to a blood lead level at or above 70 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 50 μg/100 g of whole blood;

(*3*) For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 μg/100 g of whole blood;

(*4*) For an employee removed due to a final medical determination, when a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iv) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(v) *Employer options pending a final medical determination.* Where the multiple physician review mechanism, or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to lead, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, end any special protective measures provided to the employee, and remove any limitations placed upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions. If (*1*) the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician or

(*2*) The employee has been on removal status for the preceding eighteen months due to an elevated blood lead level, then the employer shall await a final medical determination.

(2) *Medical removal protection benefits*—(i) *Provision of medical removal protection benefits.* The

employer shall provide to an employee up to eighteen (18) months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to this section.

(ii) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to lead or otherwise limited.

(iii) *Follow-up medical surveillance during the period of employee removal or limitation.* During the period of time that an employee is removed from normal exposure to lead or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iv) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a lead-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment related expenses.

(v) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(vi) *Employees whose blood lead levels do not adequately decline within 18 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to lead due to an elevated blood lead level whose blood lead level has not declined within the past eighteen (18) months of removal so that the employee has been returned to his or her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(B) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and if not, what steps should be taken to protect the employee's health;

(C) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status.

(D) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable blood lead level, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the blood lead level removal criteria provided by this section.

(vii) *Voluntary Removal or Restriction of An Employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (k)(2)(i) of this section.

(l) *Employee information and training*—(1) *Training program.* (i) Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation.

(ii) The employer shall institute a training program for and assure the participation of all employees who are subject to exposure to lead at or above the action level or for whom the possibility of skin or eye irritation exists.

(iii) The employer shall provide initial training by 180 days from the effective date for those employees covered by paragraph (l)(1) (ii) on the standard's effective date and prior to the time of initial job assignment for those employees subsequently covered by this paragraph.

(iv) The training program shall be repeated at least annually for each employee.

(v) The employer shall assure that each employee is informed of the following:

(A) The content of this standard and its appendices;

(B) The specific nature of the operations which could result in exposure to lead above the action level;

(C) The purpose, proper selection, fitting, use, and limitations of respirators;

(D) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females);

(E) The engineering controls and work practices associated with the employee's job assignment;

(F) The contents of any compliance plan in effect; and

(G) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician;

(2) *Access to information and training materials.* (i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(iii) In addition to the information required by paragraph (l)(1)(v), the employer shall include as part of the training program, and shall distribute to employees, any materials pertaining to the Occupational Safety and Health Act, the regulations issued pursuant to that Act, and this lead standard, which are made available to the employer by the Assistant Secretary.

(m) *Signs*—(1) *General.* (i) The employer may use signs required by other statutes, regulations or ordinances in addition to, or in combination with, signs required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign required by this paragraph which contradicts or detracts from the meaning of the required sign.

(2) *Signs.* (i) The employer shall post the following warning signs in each work area where the PEL is exceeded:

WARNING
LEAD WORK AREA
POISON
NO SMOKING OR EATING

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(n) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required in paragraph (d) of this section.

(ii) This record shall include:

(A) The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of employee exposure.

(iii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (j) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of the duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to lead.

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under paragraph (j) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) A copy of the results of biological monitoring.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years, whichever is longer.

(3) *Medical removals.* (i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to lead pursuant to paragraph (k) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date on each occasion that the employee was removed from current exposure to lead as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating whether or not the reason for the removal was an elevated blood lead level.

(iii) The employer shall maintain each medical removal record for at least the duration of an employee's employment.

(4) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (n) of this section to the Assistant Secretary and the Director for examination and copying.

(ii) Environmental monitoring, medical removal, and medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)–(e) and (2)–(i). Medical removal records shall be provided in the same manner as environmental monitoring records.

(5) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (n) of this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least 3 months prior to the disposal of such records and shall transmit those records to the Director if requested within the period.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1915.1120(h).

(o) *Observation of monitoring.* (1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to lead conducted pursuant to paragraph (d) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to lead requires entry into an area where the use of respirators, protective clothing or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of lead performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(p) *Effective date.* This standard shall become effective March 1, 1979.

(q) *Appendices.* The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(r) *Startup dates.* All obligations of this standard commence on the effective date except as follows:

(1) The initial determination under paragraph (d)(2) shall be made as soon as possible but no later than 30 days from the effective date.

(2) Initial monitoring under paragraph (d)(4) shall be completed as soon as possible but no later than 90 days from the effective date.

(3) Initial biological monitoring and medical examinations under paragraph (j) shall be completed as soon as possible but no later than 180 days from the effective date. Priority for biological monitoring and medical examinations shall be given to employees whom the employer believes to be at greatest risk from continued exposure.

(4) Initial training and education shall be completed as soon as possible but no later than 180 days from the effective date.

(5) Hygiene and lunchroom facilities under paragraph (i) shall be in operation as soon as possible but no later than 1 year from the effective year.

(6)(i) Respiratory protection required by paragraph (f) shall be provided as

VOL 58 ISS 125 JL 1 1993 UMI

soon as possible but no later than the following schedule:

(A) Employees whose 8-hour TWA exposure exceeds 200 µg/m³—on the effective date.

(B) Employees whose 8-hour TWA exposure exceeds the PEL but is less than 200 µg/m³—150 days from the effective date.

(C) Powered, air-purifying respirators provided under (f)(2)(ii)—210 days from the effective date.

(D) Quantitative fit testing required under (f)(3)(ii)—one year from effective date. Qualitative fit testing is required in the interim.

(7)(i) Written compliance plans required by paragraph (e)(3) shall be completed and available for inspection and copying as soon as possible but no later than the following schedule:

(A) Employers for whom compliance with the PEL or interim level is required within 1 year from the effective date—6 months from the effective date.

(B) Employers in secondary lead smelting and refining and in lead storage battery manufacturing—1 year from the effective date.

(C) Employers in primary smelting and refining industry—1 year from the effective date for the interim level; 5 years from the effective date for PEL.

(D) Plans for construction of hygiene facilities, if required—6 months from the effective date.

(E) All other industries—1 year from the date on which the court lifts the stay on the implementation of paragraph (e)(1) for the particular industry.

(8) The permissible exposure limit in paragraph (c) shall become effective 150 days from the effective date.

(Approved by the Office of Management and Budget under control number 1218–0092)

Appendix A to § 1915.1025—Substance Data Sheet for Occupational Exposure to Lead

I. Substance Identification

A. *Substance:* Pure lead (Pb) is a heavy metal at room temperature and pressure and is a basic chemical element. It can combine with various other substances to form numerous lead compounds.

B. *Compounds Covered by the Standard:* The word "lead" when used in this standard means elemental lead, all inorganic lead compounds and a class of organic lead compounds called lead soaps. This standard does not apply to other organic lead compounds.

C. *Uses:* Exposure to lead occurs in at least 120 different occupations, including primary and secondary lead smelting, lead storage battery manufacturing, lead pigment manufacturing and use, solder manufacturing and use, shipbuilding and ship repairing, auto manufacturing, and printing.

D. *Permissible Exposure:* The Permissible Exposure Limit (PEL) set by the standard is 50 micrograms of lead per cubic meter of air (50 µg/m³), averaged over an 8-hour workday.

E. *Action Level:* The standard establishes an action level of 30 micrograms per cubic meter of air (30 µg/m³), time weighted average, based on an 8-hour work-day. The action level initiates several requirements of the standard, such as exposure monitoring, medical surveillance, and training and education.

II. Health Hazard Data

A. *Ways in which lead enters your body* When absorbed into your body in certain doses lead is a toxic substance. The object of the lead standard is to prevent absorption of harmful quantities of lead. The standard is intended to protect you not only from the immediate toxic effects of lead, but also from the serious toxic effects that may not become apparent until years of exposure have passed.

Lead can be absorbed into your body by inhalation (breathing) and ingestion (eating). Lead (except for certain organic lead compounds not covered by the standard, such as tetraethyl lead) is not absorbed through your skin. When lead is scattered in the air as a dust, fume or mist it can be inhaled and absorbed through you lungs and upper respiratory tract. Inhalation of airborne lead is generally the most important source of occupational lead absorption. You can also absorb lead through your digestive system if lead gets into your mouth and is swallowed. If you handle food, cigarettes, chewing tobacco, or make-up which have lead on them or handle them with hands contaminated with lead, this will contribute to ingestion.

A significant portion of the lead that you inhale or ingest gets into your blood stream. Once in your blood stream, lead is circulated throughout your body and stored in various organs and body tissues. Some of this lead is quickly filtered out of your body and excreted, but some remains in the blood and other tissues. As exposure to lead continues, the amount stored in your body will increase if you are absorbing more lead than your body is excreting. Even though you may not be aware of any immediate symptoms of disease, this lead stored in your tissues can be slowly causing irreversible damage, first to individual cells, then to your organs and whole body systems.

B. *Effects of overexposure to lead*—(1) *Short term (acute) overexposure.* Lead is a potent, systemic poison that serves no known useful function once absorbed by your body. Taken in large enough doses, lead can kill you in a matter of days. A condition affecting the brain called acute encephalopathy may arise which develops quickly to seizures, coma, and death from cardiorespiratory arrest. A short term dose of lead can lead to acute encephalopathy. Short term occupational exposures of this magnitude are highly unusual, but not impossible. Similar forms of encephalopathy may, however, arise from extended, chronic exposure to lower doses of lead. There is no sharp dividing line between rapidly developing acute effects of lead, and chronic effects which take longer to acquire. Lead adversely affects numerous body systems, and causes forms of health impairment and disease which arise after periods of exposure as short as days or as long as several years.

(2) *Long-term (chronic) overexposure.* Chronic overexposure to lead may result in severe damage to your blood-forming, nervous, urinary and reproductive systems. Some common symptoms of chronic overexposure include loss of appetite, metallic taste in the mouth, anxiety, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pain or soreness, fine tremors, numbness, dizziness, hyperactivity and colic. In lead colic there may be severe abdominal pain.

Damage to the central nervous system in general and the brain (encephalopathy) in particular is one of the most severe forms of lead poisoning. The most severe, often fatal, form of encephalopathy may be preceded by vomiting, a feeling of dullness progressing to drowsiness and stupor, poor memory, restlessness, irritability, tremor, and convulsions. It may arise suddenly with the onset of seizures, followed by coma, and death. There is a tendency for muscular weakness to develop at the same time. This weakness may progress to paralysis often observed as a characteristic "wrist drop" or "foot drop" and is a manifestation of a disease to the nervous system called peripheral neuropathy.

Chronic overexposure to lead also results in kidney disease with few, if any, symptoms appearing until extensive and most likely permanent kidney damage has occurred. Routine laboratory tests reveal the presence of this kidney disease only after about two-thirds of kidney function is lost. When overt symptoms of urinary dysfunction arise, it is often too late to correct or prevent worsening conditions, and progression to kidney dialysis or death is possible.

Chronic overexposure to lead impairs the reproductive systems of both men and women. Overexposure to lead may result in decreased sex drive, impotence and sterility in men. Lead can alter the structure of sperm cells raising the risk of birth defects. There is evidence of miscarriage and stillbirth in women whose husbands were exposed to lead or who were exposed to lead themselves. Lead exposure also may result in decreased fertility, and abnormal menstrual cycles in women. The course of pregnancy may be adversely affected by exposure to lead since lead crosses the placental barrier and poses risks to developing fetuses. Children born of parents either one of whom were exposed to excess lead levels are more likely to have birth defects, mental retardation, behavioral disorders or die during the first year of childhood.

Overexposure to lead also disrupts the blood-forming system resulting in decreased hemoglobin (the substance in the blood that carries oxygen to the cells) and ultimately anemia. Anemia is characterized by weakness, pallor and fatigability as a result of decreased oxygen carrying capacity in the blood.

(3) *Health protection goals of the standard* Prevention of adverse health effects for most workers from exposure to lead throughout a working lifetime requires that worker blood lead (PbB) levels be maintained at or below forty micrograms per one hundred grams of whole blood (40 µg/100g). The blood lead

VOL
58
ISS
125
JL
1
1993
UMI

levels of workers (both male and female workers) who intend to have children should be maintained below 30 µg/100g to minimize adverse reproductive health effects to the parents and to the developing fetus.

The measurement of your blood lead level is the most useful indicator of the amount of lead being absorbed by your body. Blood lead levels (PbB) are most often reported in units of milligrams (mg) or micrograms (µg) of lead (1 mg=1000 µg) per 100 grams (100g), 100 milliters (100 ml) or deciliter (dl) of blood. These three units are essentially the same. Sometime PbB's are expressed in the form of mg% or µg%. This is a shorthand notation for 100g, 100 ml, or dl.

PbB measurements show the amount of lead circulating in your blood stream, but do not give any information about the amount of lead stored in your various tissues. PbB measurements merely show current absorption of lead, not the effect that lead is having on your body or the effects that past lead exposure may have already caused. Past research into lead-related diseases, however, has focused heavily on associations between PbBs and various diseases. As a result, your PbB is an important indicator of the likelihood that you will gradually acquire a lead-related health impairment or disease.

Once your blood lead level climbs above 40 µg/100g, your risk of disease increases. There is a wide variability of individual response to lead, thus it is difficult to say that a particular PbB in a given person will cause a particular effect. Studies have associated fatal encephalopathy with PbBs as low as 150 µg/100g. Other studies have shown other forms of diseases in some workers with PbBs well below 80 µg/100g. Your PbB is a crucial indicator of the risks to your health, but one other factor is also extremely important. This factor is the length of time you have had elevated PbBs. The longer you have an elevated PbB, the greater the risk that large quantities of lead are being gradually stored in your organs and tissues (body burden). The greater your overall body burden, the greater the chances of substantial permanent damage.

The best way to prevent all forms of lead-related impairments and diseases—both short term and long term- is to maintain your PbB below 40 µg/100g. The provisions of the standard are designed with this end in mind Your employer has prime responsibility to assure that the provisions of the standard are complied with both by the company and by individual workers. You as a worker, however, also have a responsibility to assist your employer in complying with the standard. You can play a key role in protecting your own health by learning about the lead hazards and their control, learning what the standard requires, following the standard where it governs your own actions, and seeing that your employer complies with provisions governing his actions.

(4) *Reporting signs and symptoms of health problems.* You should immediately notify your employer if you develop signs or symptoms associated with lead poisoning or if you desire medical advice concerning the effects of current or past exposure to lead on your ability to have a healthy child. You should also notify your employer if you have difficulty breathing during a respirator fit test or while wearing a respirator. In each of these cases your employer must make available to you appropriate medical examinations or consultations. These must be provided at no cost to you and at a reasonable time and place.

The standard contains a procedure whereby you can obtain a second opinion by a physician of your choice if the employer selected the initial physician.

Appendix B to § 1915.1025—Employee Standard Summary

This appendix summarizes key provisions of the standard that you as a worker should become familiar with.

I. Permissible Exposure Limit (pel)—paragraph (c)

The standards sets a permissible exposure limit (PEL) of fifty micrograms of lead per cubic meter of air (50 µg/m^3), averaged over an 8-hour work-day. This is the highest level of lead in air to which you may be permissibly exposed over an 8-hour workday. Since it is an 8-hour average it permits short exposures above the PEL so long as for each 8-hour work day your average exposure does not exceed the PEL.

This standard recognizes that your daily exposure to lead can extend beyond a typical 8-hour workday as the result of overtime or other alterations in your work schedule. To deal with this, the standard contains a formula which reduces your permissible exposure when you are exposed more than 8 hours. For example, if you are exposed to lead for 10 hours a day, the maximum permitted average exposure would be 40 µg/m^3

II. Exposure Monitoring—paragraph (d)

If lead is present in the workplace where you work in any quantity, your employer is required to make an initial determination of whether the action level is exceeded for any employee. This initial determination must include instrument monitoring of the air for the presence of lead and must cover the exposure of a representative number of employees who are reasonably believed to have the highest exposure levels. If your employer has conducted appropriate air sampling for lead in the past year he may use these results. If there have been any employee complaints of symptoms which may be attributable to exposure to lead or if there is any other information or observations which would indicate employee exposure to lead, this must also be considered as part of the initial determination. This initial determination must have been completed by March 31, 1979. If this initial determination shows that a reasonable possibility exists that *any* employee may be exposed, without regard to respirators, over the action level (30 µg/m^3) your employer must set up an air monitoring program to determine the exposure level of every employee exposed to lead at your workplace.

In carrying out this air monitoring program, your employer is not required to monitor the exposure of every employee, but he must monitor a representative number of employees and job types. Enough sampling must be done to enable each employee's exposure level to be reasonably represented by at least one full shift (at least 7 hours) air sample. In addition, these air samples must be taken under conditions which represent each employee's *regular*, daily exposure to lead. All initial exposure monitoring must have been completed by May 30, 1979.

If you are exposed to lead and air sampling is performed, your employer is required to quickly notify you in writing of air monitoring results which represent your exposure. If the results indicate your exposure exceeds the PEL (without regard to your use of respirators), then your employer must also notify you of this in writing, and provide you with a description of the corrective action that will be taken to reduce your exposure.

Your exposure must be rechecked by monitoring every six months if your exposure is over the action level but below the PEL. Air monitoring must be repeated every 3 months if you are exposed over the PEL. Your employer may discontinue monitoring for you if 2 consecutive measurements, taken at least two weeks apart, are below the action level. However, whenever there is a production, process, control, or personnel change at your workplace which may result in new or additional exposure to lead, or whenever there is any other reason to suspect a change which may result in new or additional exposure to lead, your employer must perform additional monitoring.

III. Methods of Compliance—paragraph (e)

Your employer is required to assure that no employee is exposed to lead in excess of the PEL. The standard establishes a priority of methods to be used to meet the PEL.

IV. Respiratory Protection—paragraph (f)

Your employer is required to provide and assure your use of respirators when your exposure to lead is not controlled below the PEL by other means. The employer must pay the cost of the respirator. Whenever you request one, your employer is also required to provide you a respirator even if your air exposure level does not exceed the PEL. You might desire a respirator when, for example, you have received medical advice that your lead absorption should be decreased. Or, you may intend to have children in the near future, and want to reduce the level of lead in your body to minimize adverse reproductive effects. While respirators are the least satisfactory means of controlling your exposure, they are capable of providing significant protection if properly chosen, fitted, worn, cleaned, maintained, and replaced when they stop providing adequate protection.

Your employer is required to select respirators from the seven types listed in Table II of the Respiratory Protection section of the standard. Any respirator chosen must be approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH). This respirator selection table will enable your employer to choose a type of respirator which will give you a proper amount of protection based on your airborne lead exposure. Your employer may select a type of respirator that provides greater

protection than that required by the standard; that is, one recommended for a higher concentration of lead than is present in your workplace. For example, a powered air purifying respirator (PAPR) is much more protective than a typical negative pressure respirator, and may also be more comfortable to wear. A PAPR has a filter, cartridge or canister to clean the air, and a power source which continuously blows filtered air into your breathing zone. Your employer might make a PAPR available to you to ease the burden of having to wear a respirator for long periods of time. The standard provides that you can obtain a PAPR upon request.

Your employer must also start a Respiratory Protection Program. This program must include written procedures for the proper selection, use, cleaning, storage, and maintenance of respirators.

Your employer must assure that your respirator facepiece fits properly. Proper fit of a respirator facepiece is critical. Obtaining a proper fit on each employee may require your employer to make available two or three different mask types. In order to assure that your respirator fits properly and that facepiece leakage is minimized, beginning on November 12, 1982, your employer must give you either a qualitative fit test in accordance with Appendix D of the standard or a quantitative fit test if you use a negative pressure respirator. Any respirator which has a filter, cartridge or canister which cleans the work room air before you breathe it and which requires the force of your inhalation to draw air thru the filtering element is a negative pressure respirator. A positive pressure respirator supplies air to you directly. A quantitative fit test uses a sophisticated machine to measure the amount, if any, of test material that leaks into the facepiece of your respirator.

You must also receive from your employer proper training in the use of respirators. Your employer is required to teach you how to wear a respirator, to know why it is needed, and to understand its limitations.

Until March 1, 1980, your employer must test the effectiveness of your negative pressure respirator initially and at least every six months thereafter with a "qualitative fit test." In this test, the fit of the facepiece is checked by seeing if you can smell a substance placed outside the respirator. If you can, there is appreciable leakage where the facepiece meets your face.

The standard provides that if your respirator uses filter elements, you must be given an opportunity to change the filter elements whenever an increase in breathing resistance is detected. You also must be permitted to periodically leave your work area to wash your face and respirator facepiece whenever necessary to prevent skin irritation. If you ever have difficulty in breathing during a fit test or while using a respirator, your employer must make a medical examination available to you to determine whether you can safely wear a respirator. The result of this examination may be to give you a positive pressure respirator (which reduces breathing resistance) or to provide alternative means of protection.

V. Protective Work Clothing and Equipment—paragraph (g)

If you are exposed to lead above the PEL, or if you are exposed to lead compounds such as lead arsenate or lead azide which can cause skin and eye irritation, your employer must provide you with protective work clothing and equipment appropriate for the hazard. If work clothing is provided, it must be provided in a clean and dry condition at least weekly, and daily if your airborne exposure to lead is greater than 200 $\mu g/m^3$. Appropriate protective work clothing and equipment can include coveralls or similar full-body work clothing, gloves, hats, shoes or disposable shoe coverlets, and face shields or vented goggles. Your employer is required to provide all such equipment at no cost to you. He is responsible for providing repairs and replacement as necessary, and also is responsible for the cleaning, laundering or disposal of protective clothing and equipment. Contaminated work clothing or equipment must be removed in change rooms and not worn home or you will extend your exposure and expose your family since lead from your clothing can accumulate in your house, car, etc. Contaminated clothing which is to be cleaned, laundered or disposed of must be placed in closed containers in the change room. At no time may lead be removed from protective clothing or equipment by any means which disperses lead into the workroom air.

VI. Housekeeping—paragraph (h)

Your employer must establish a housekeeping program sufficient to maintain all surfaces as free as practicable of accumulations of lead dust. Vacuuming is the preferred method of meeting this requirement, and the use of compressed air to clean floors and other surfaces is absolutely prohibited. Dry or wet sweeping, shoveling, or brushing may not be used except where vaccuming or other equally effective methods have been tried and do not work. Vacuums must be used and emptied in a manner which minimizes the reentry of lead into the workplace.

VII. Hygiene Facilities and Practices—paragraph (i)

The standard requires that change rooms, showers, and filtered air lunchrooms be constructed and made available to workers exposed to lead above the PEL. When the PEL is exceeded the employer must assure that food and beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in these facilities. Change rooms, showers, and lunchrooms, must be used by workers exposed in excess of the PEL. After showering, *no* clothing or equipment worn during the shift may be worn home, and this includes shoes and underwear. Your own clothing worn during the shift should be carried home and cleaned carefully so that it does not contaminate your home. Lunchrooms may not be entered with protective clothing or equipment unless surface dust has been removed by vacuuming, downdraft booth, or other cleaning method. Finally, workers exposed above the PEL must wash both their hands and faces prior to eating, drinking, smoking or applying cosmetics.

All of the facilities and hygiene practices just discussed are essential to minimize additional sources of lead absorption from inhalation or ingestion of lead that may accumulate on you, your clothes, or your possessions. Strict compliance with these provisions can virtually eliminate several sources of lead exposure which significantly contribute to excessive lead absorption.

VIII. Medical Surveillance—paragraph (j)

The medical surveillance program is part of the standard's comprehensive approach to the prevention of lead-related disease. Its purpose is to supplement the main thrust of the standard which is aimed at minimizing airborne concentrations of lead and sources of ingestion. Only medical surveillance can determine if the other provisions of the standard have affectively protected you as an individual. Compliance with the standard's provision will protect most workers from the adverse effects of lead exposure, but may not be satisfactory to protect individual workers (1) who have high body burdens of lead acquired over past years, (2) who have additional uncontrolled sources of non-occupational lead exposure, (3) who exhibit unusual variations in lead absorption rates, or (4) who have specific non-work related medical conditions which could be aggravated by lead exposure (e.g., renal disease, anemia). In addition, control systems may fail, or hygiene and respirator programs may be inadequate. Periodic medical surveillance of individual workers will help detect those failures. Medical surveillance will also be important to protect your reproductive ability—regardless of whether you are a man or woman.

All medical surveillance required by the standard must be performed by or under the supervision of a licensed physician. The employer must provide required medical surveillance without cost to employees and at a reasonable time and place. The standard's medical surveillance program has two parts-periodic biological monitoring and medical examinations.

Your employer's obligation to offer you medical surveillance is triggered by the results of the air monitoring program. Medical surveillance must be made available to all employees who are exposed in excess of the action level for more than 30 days a year. The initial phase of the medical surveillance program, which includes blood lead level tests and medical examinations, must be completed for all covered employees no later than August 28, 1979. Priority within this first round of medical surveillance must be given to employees whom the employer believes to be at greatest risk from continued exposure (for example, those with the longest prior exposure to lead, or those with the highest current exposure). Thereafter, the employer must periodically make medical surveillance—both biological monitoring and medical examinations—available to all covered employees.

Biological monitoring under the standard consists of blood lead level (PbB) and zinc protoporphyrin tests at least every 6 months after the initial PbB test. A zinc

protoporphyrin (ZPP) test is a very useful blood test which measures an effect of lead on your body. Thus biological monitoring under the standard is currently limited to PbB testing. If a worker's PbB exceeds 40 µg/100g the monitoring frequency must be increased from every 6 months to at least every 2 months and not reduced until two consecutive PbBs indicate a blood lead level below 40 µg/100g. Each time your PbB is determined to be over 40 µg/100g, your employer must notify you of this in writing within five working days of his receipt of the test results. The employer must also inform you that the standard requires temporary medical removal with economic protection when your PbB exceeds certain criteria. (See Discussion of Medical Removal Protection—Paragraph (k).) During the first year of the standard, this removal criterion is 80 µg/100g. Anytime your PbB exceeds 80 µg/100g your employer must make available to you a prompt follow-up PbB test to ascertain your PbB. If the two tests both exceed 80 µg/100g and you are temporarily removed, then your employer must make successive PbB tests available to you on a monthly basis during the period of your removal.

Medical examinations beyond the initial one must be made available on an annual basis if your blood lead level exceeds 40 µg/100g at any time during the preceding year. The initial examination will provide information to establish a baseline to which subsequent data can be compared. An initial medical examination must also be made available (prior to assignment) for each employee being assigned for the first time to an area where the airborne concentration of lead equals or exceeds the action level. In addition, a medical examination or consultation must be made available as soon as possible if you notify your employer that you are experiencing signs or symptoms commonly associated with lead poisoning or that you have difficulty breathing while wearing a respirator or during a respirator fit test. You must also be provided a medical examination or consultation if you notify your employer that you desire medical advice concerning the effects of current or past exposure to lead on your ability to procreate a healthy child.

Finally, appropriate follow-up medical examinations or consultations may also be provided for employees who have been temporarily removed from exposure under the medical removal protection provisions of the standard. (See Part IX, below.)

The standard specifies the minimum content of pre-assignment and annual medical examinations. The content of other types of medical examinations and consultations is left up to the sound discretion of the examining physician. Pre-assignment and annual medical examinations must include (1) a detailed work history and medical history, (2) a thorough physical examination, and (3) a series of laboratory tests designed to check your blood chemistry and your kidney function. In addition, at any time upon your request, a laboratory evaluation of male fertility will be made (microscopic examination of a sperm sample), or a pregnancy test will be given.

The standard does not require that you participate in any of the medical procedures, tests, etc. which your employer is required to make available to you. Medical surveillance can, however, play a very important role in protecting your health. You are strongly encouraged, therefore, to participate in a meaningful fashion. The standard contains a multiple physician review mechanism which would give you a chance to have a physician of your choice directly participate in the medical surveillance program. If you were dissatisfied with an examination by a physician chosen by your employer, you could select a second physician to conduct an independent analysis. The two doctors would attempt to resolve any differences of opinion, and select a third physician to resolve any firm dispute. Generally your employer will choose the physician who conducts medical surveillance under the lead standard—unless you and your employer can agree on the choice of a physician or physicians. Some companies and unions have agreed in advance, for example, to use certain independent medical laboratories or panels of physicians. Any of these arrangements are acceptable so long as required medical surveillance is made available to workers.

The standard requires your employer to provide certain information to a physician to aid in his or her examination of you. This information includes (1) the standard and its appendices, (2) a description of your duties as they relate to lead exposure, (3) your exposure level, (4) a description of personal protective equipment you wear, (5) prior blood lead level results, and (6) prior written medical opinions concerning you that the employer has. After a medical examination or consultation the physician must prepare a written report which must contain (1) the physician's opinion as to whether you have any medical condition which places you at increased risk of material impairment to health from exposure to lead, (2) any recommended special protective measures to be provided to you, (3) any blood lead level determinations, and (4) any recommended limitation on your use of respirators. This last element must include a determination of whether you can wear a powered air purifying respirator (PAPR) if you are found unable to wear a negative pressure respirator.

The medical surveillance program of the lead standard may at some point in time serve to notify certain workers that they have acquired a disease or other adverse medical condition as a result of occupational lead exposure. If this is true, these workers might have legal rights to compensation from public agencies, their employers, firms that supply hazardous products to their employers, or other persons. Some states have laws, including worker compensation laws, that disallow a worker who learns of a job-related health impairment to sue, unless the worker sues within a short period of time after learning of the impairment. (This period of time may be a matter of months or years.) An attorney can be consulted about these possibilities. It should be stressed that OSHA is in no way trying to either encourage or discourage claims or lawsuits. However, since results of the standard's medical surveillance program can significantly affect the legal remedies of a worker who has acquired a job-related disease or impairment, it is proper for OSHA to make you aware of this.

The medical surveillance section of the standard also contains provisions dealing with chelation. Chelation is the use of certain drugs (administered in pill form or injected into the body) to reduce the amount of lead absorbed in body tissues. Experience accumulated by the medical and scientific communities has largely confirmed the effectiveness of this type of therapy for the treatment of very severe lead poisoning. On the other hand, it has also been established that there can be a long list of extremely harmful side effects associated with the use of chelating agents. The medical community has balanced the advantages and disadvantages resulting from the use of chelating agents in various circumstances and has established when the use of these agents is acceptable. The standard includes these accepted limitations due to a history of abuse of chelation therapy by some lead companies. The most widely used chelating agents are calcium disodium EDTA, ($CaNa_2$ EDTA), Calcium Disodium Versenate (Versenate), and d-penicillamine (pencillamine or Cupramine).

The standard prohibits "prophylactic chelation" of any employee by any person the employer retains, supervises or controls. "Prophylactic chelation" is the routine use of chelating or similarly acting drugs to *prevent* elevated blood levels in workers who are occupationally exposed to lead, or the use of these drugs to *routinely* lower blood lead levels to predesignated concentrations believed to be 'safe'. It should be emphasized that where an employer takes a worker who has no symptoms of lead poisoning and has chelation carried out by a physician (either inside or outside of a hospital) solely to reduce the worker's blood lead level, that will generally be considered prophylactic chelation. The use of a hospital and a physician does not mean that prophylactic chelation is not being performed. Routine chelation to prevent increased or reduce current blood lead levels is unacceptable whatever the setting.

The standard allows the use of "therapeutic" or "diagnostic" chelation if administered under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring. Therapeutic chelation responds to severe lead poisoning where there are marked symptoms. Diagnostic chelation involved giving a patient a dose of the drug then collecting all urine excreted for some period of time as an aid to the diagnosis of lead poisoning.

In cases where the examining physician determines that chelation is appropriate, you must be notified in writing of this fact before such treatment. This will inform you of a potentially harmful treatment, and allow you to obtain a second opinion.

IX. Medical Removal Protection—paragraph (k)

Excessive lead absorption subjects you to increased risk of disease. Medical removal protection (MRP) is a means of protecting you when, for whatever reasons, other

methods, such as engineering controls, work practices, and respirators, have failed to provide the protection you need. MRP involves the temproary removal of a worker from his or her regular job to a place of significantly lower exposure without any loss of earnings, seniority, or other employment rights or benefits. The purpose of this program is to cease further lead absorption and allow your body to naturally excrete lead which has previously been absorbed. Temporary medical removal can result from an elevated blood lead level, or a medical opinion. Up to 18 months of protection is provided as a result of either form of removal. The vast majority of removed workers, however, will return to their former jobs long before this eighteen month period expires. The standard contains special provisions to deal with the extraordinary but possible case where a longterm worker's blood lead level does not adequately decline during eighteen months of removal.

During the first year of the standard, if your blood lead level is 80 μg/100g or above you must be removed from any exposure where your air lead level without a respirator would be 100 $\mu g/m^3$ or above. If you are removed from your normal job you may not be returned until your blood lead level declines to at least 60 μg/100g. These criteria for removal and return will change according to the following schedule:

	Removal blood lead (μg/100 g)	Air lead ($\mu g/m^3$)	Return blood lead (μg/100 g)
After Mar. 1, 1980	70 and above	50 and above	At or below 50.
After Mar. 1, 1981	60 and above	30 and above	At or below 40.
After Mar. 1, 1983	50 and above averaged over six months.	30 and above	Do

You may also be removed from exposure even if your blood lead levels are below these criteria if a final medical determination indicates that you temporarily need reduced lead exposure for medical reasons. If the physician who is implementing your employers medical program makes a final written opinion recommending your removal or other special protective measures, your employer must implement the physician's recommendation. If you are removed in this manner, you may only be returned when the doctor indicates that it is safe for you to do so.

The standard does not give specific instructions dealing with what an employer must do with a removed worker. Your job assignment upon removal is a matter for you, your employer and your union (if any) to work out consistent with existing procedures for job assignments. Each removal must be accomplished in a manner consistent with existing collective bargaining relationships. Your employer is given broad discretion to implement temporary removals so long as no attempt is made to override existing agreements. Similarly, a removed worker is provided no right to veto an employer's choice which satisfies the standard.

In most cases, employers will likely transfer removed employees to other jobs with sufficiently low lead exposure. Alternatively, a worker's hours may be reduced so that the time weighted average exposure is reduced, or he or she may be temporarily laid off if no other alternative is feasible.

In all of these situation, MRP benefits must be provided during the period of removal—i.e., you continue to receive the same earnings, seniority, and other rights and benefits you would have had if you had not been removed. Earnings includes more than just your base wage; it includes overtime, shift differentials, incentives, and other compensation you would have earned if you had not been removed. During the period of removal you must also be provided with appropriate follow-up medical surveillance. If you were removed because your blood lead level was too high, you must be provided with a monthly blood test. If a medical opinion caused your removal, you must be provided medical tests or examinations that the doctor believes to be appropriate. If you do not participate in this follow up medical surveillance, you may lose your eligibility for MRP benefits.

When you are medically eligible to return to your former job, your employer must return you to your "former job status." This means that you are entitled to the position, wages, benefits, etc., you would have had if you had not been removed. If you would still be in your old job if no removal had occurred that is where you go back. If not, you are returned consistent with whatever job assignment discretion your employer would have had if no removal had occurred. MRP only seeks to maintain your rights, not expand them or diminish them.

If you are removed under MRP and you are also eligible for worker compensation or other compensation for lost wages, your employer's MRP benefits obligation is reduced by the amount that you *actually* receive from these other sources. This is also true if you obtain other employment during the time you are laid off with MRP benefits.

The standard also covers situations where an employer *voluntarily* removes a worker from exposure to lead due to the effects of lead on the employee's medical condition, even though the standard does not require removal. In these situations MRP benefits must still be provided as though the standard required removal. Finally, it is important to note that in all cases where removal is required, respirators cannot be used as a substitute. Respirators may be used before removal becomes necessary, but not as an alternative to a transfer to a low exposure job, or to a lay-off with MRP benefits.

X. Employee Information and Training—paragraph (l)

Your employer is required to provide an information and training program for all employees exposed to lead above the action level or who may suffer skin or eye irritation from lead. This program must inform these employees of the specific hazards associated with their work environment, protective measures which can be taken, the danger of lead to their bodies (including their reproductive systems), and their rights under the standard. In addition your employer must make readily available to all employees, including those exposed below the action level, a copy of the standard and its appendices and must distribute to all employees any materials provided to the employer by the Occupational Safety and Health Administration (OSHA).

Your employer is required to complete this training program for all employees by August 28, 1979. After this date, all new employees must be trained prior to initial assignment to areas where there is a possibility of exposure over the action level.

This training program must also be provided at least annually thereafter.

XI. Signs—paragraph (m)

The standard requires that the following warning sign be posted in work areas where the exposure to lead exceeds the PEL:

WARNING
LEAD WORK AREA
NO SMOKING OR EATING

XII. Recordkeeping—paragraph (n)

Your employer is required to keep all records of exposure monitoring for airborne lead. These records must include the name and job classification of employees measured, details of the sampling and analytic techniques, the results of this sampling, and the type of respiratory protection being worn by the person sampled. Your employer is also required to keep all records of biological monitoring and medical examination results. These must include the names of the employees, the physician's written opinion, and a copy of the results of the examination. All of the above kinds of records must be kept for 40 years, or for at least 20 years after your termination of employment, whichever is longer.

Recordkeeping is also required if you are temporarily removed from your job under the medical removal protection program. This record must include your name and social security number, the date of your removal and return, how the removal was or is being accomplished, and whether or not the reason for the removal was an elevated blood lead level. Your employer is required to keep each

medical removal record only for as long as the duration of an employee's employment.

The standard requires that if you request to see or copy environmental monitoring, blood lead level monitoring, or medical removal records, they must be made available to you or to a representative that you authorize. Your union also has access to these records. Medical records other than PbB's must also be provided upon request to you, to your physician or to any other person whom you may specifically designate. Your union does not have access to your personal medical records unless you authorize their access.

XIII. Observations of Monitoring—paragraph (o)

When air monitoring for lead is performed at your workplace as required by this standard, your employer must allow you or someone you designate to act as an observer of the monitoring. Observers are entitled to an explanation of the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of the monitoring, observers are entitled to record or receive the results of the monitoring when returned by the laboratory. Your employer is required to provide the observer with any personal protective devices required to be worn by employees working in the area that is being monitored. The employer must require the observer to wear all such equipment and to comply with all other applicable safety and health procedures.

XIVv. Effective Date—paragraph (p)

The standard's effective data is March 1, 1979, and employer obligations under the standard begin to come into effect as of that date.

XV. For Additional Information

A. Copies of the Standard and explanatory materials can be obtained free of charge by calling or writing the OSHA Office of Publications, Room S–1212, United States Department of Labor, Washington, D.C. 20210: Telephone (202) 523–6138. The following publications are available:

1. The standard and summary of the statement of reasons (preamble), **Federal Register**, Volume 43, pp. 52952–53014, November 14, 1978.

2. The full statement of reasons (preamble) **Federal Register**, vol. 43, pp. 54354–54509, November 21, 1978.

3. Partial Administrative Stay and Corrections to the standard, (44 FR 5446–5448) January 26, 1979.

4. Notice of the Partial Judicial Stay (44 FR 14554–14555) March 13, 1979.

5. Corrections to the preamble, **Federal Register**, vol. 44, pp. 20680–20681, April 6, 1979.

6. Additional correction to the preamble concerning the construction industry, **Federal Register**, vol. 44, p. 50338, August 28, 1979.

7. Appendices to the standard (Appendices A, B, C), **Federal Register**, Vol. 44, pp. 60980–60995, October 23, 1979.

8. Corrections to appendices, **Federal Register**, Vol. 44, 68828, November 30, 1979.

9. Revision to the standard and additional appendices (Appendices D and E), **Federal Register**, Vol. 47, pp. 51117–51119, November 12, 1982.

B. Additional information about the standard, its enforcement, and your employer's compliance can be obtained from the nearest OSHA Area Office listed in your telephone directory under United States Government/Department of Labor.

Appendix C to § 1915.1025—Medical Surveillance Guidelines

Introduction

The primary purpose of the Occupational Safety and Health Act of 1970 is to assure, so far as possible, safe and healthful working conditions for every working man and woman. The occupational health standard for inorganic lead[1] was promulgated to protect workers exposed to inorganic lead including metallic lead, all inorganic lead compounds and organic lead soaps.

Under this final standard in effect as of March 1, 1979, occupational exposure to inorganic lead is to be limited to 50 $\mu g/m^3$ (micrograms per cubic meter) based on an 8 hour time-weighted average (TWA). This level of exposure eventually must be achieved through a combination of engineering, work practice and other administrative controls. Periods of time ranging from 1 to 10 years are provided for different industries to implement these controls. The schedule which is based on individual industry considerations is given in Table 1. Until these controls are in place, respirators must be used to meet the 50 $\mu g/m^3$ exposure limit.

The standard also provides for a program of biological monitoring and medical surveillance for all employees exposed to levels of inorganic lead above the action level of 30 $\mu g/m^3$ (TWA) for more than 30 days per year.

The purpose of this document is to outline the medical surveillance provisions of the standard for inorganic lead, and to provide further information to the physician regarding the examination and evaluation of workers exposed to inorganic lead.

Section 1 provides a detailed description of the monitoring procedure including the required frequency of blood testing for exposed workers, provisions for medical removal protection (MRP), the recommended right of the employee to a second medical opinion, and notification and recordkeeping requirements of the employer. A discussion of the requirements for respirator use and respirator monitoring and OSHA's position on prophylactic chelation therapy are also included in this section.

Section 2 discusses the toxic effects and clinical manifestations of lead poisoning and effects of lead intoxication on enzymatic pathways in heme synthesis. The adverse effects on both male and female reproductive capacity and on the fetus are also discussed.

Section 3 outlines the recommended medical evaluation of the worker exposed to inorganic lead including details of the medical history, physical examination, and recommended laboratory tests, which are based on the toxic effects of lead as discussed in Section 2.

Section 4 provides detailed information concerning the laboratory tests available for the monitoring of exposed workers. Included also is a discussion of the relative value of each test and the limitations and precautions which are necessary in the interpretation of the laboratory results.

TABLE 1

Permissible airborne lead levels by industry ($\mu g/m^3$) [1]	Effective date					
	Mar. 1, 1979	Mar. 1, 1980	Mar. 1, 1981	Mar. 1, 1982	Mar. 1, 1984	Mar. 1, 1989 (final)
1. Primary lead production	200	200	200	100	100	50
2. Secondary lead production	200	200	200	100	50	50
3. Lead-acid battery manufacturing	200	200	100	100	50	50
4. Nonferrous foundries	200	100	100	100	50	50
5. Lead pigment manufacturing	200	200	200	100	50	50
6. All other industries	200	50	50	50	50	50

[1] Airborne levels to be achieved without reliance or respirator protection through a combination of engineering, work practice and other administrative controls. While these controls are being implemented respirators must be used to meet the 50 $\mu g/m^3$ exposure limit.

[1] The term inorganic lead used throughout the medical surveillance appendices is meant to be synonymous with the definition of lead set forth in the standard.

I. Medical Surveillance and Monitoring Requirements for Workers Exposed to Inorganic Lead

Under the occupational health standard for inorganic lead, a program of biological monitoring and medical surveillance is to be made available to all employees exposed to lead above the action level of 30 μg/m³ TWA for more than 30 days each year. This program consists of periodic blood sampling and medical evaluation to be performed on a schedule which is defined by previous laboratory results, worker complaints or concerns, and the clinical assessment of the examining physician.

Under this program, the blood lead level of all employees who are exposed to lead above the action level of 30 μg/m³ is to be determined at least every six months. The frequency is increased to every two months for employees whose last blood lead level was between 40 μg/100 g whole blood and the level requiring employee medical removal to be discussed below. For employees who are removed from exposure to lead due to an elevated blood lead, a new blood lead level must be measured monthly. A zinc protoporphyrin (ZPP) measurement is strongly recommended on each occasion that a blood lead level measurement is made.

An annual medical examination and consultation performed under the guidelines discussed in Section 3 is to be made available to each employee for whom a blood test conducted at any time during the preceding 12 months indicated a blood lead level at or above 40 μg/100 g. Also, an examination is to be given to all employees prior to their assignment to an area in which airborne lead concentrations reach or exceed the action level. In addition, a medical examination must be provided as soon as possible after notification by an employee that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice regarding lead exposure and the ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during respirator use. An examination is also to be made available to each employee removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited or specially protected pursuant to medical recommendations.

Results of biological monitoring or the recommendations of an examining physician may necessitate removal of an employee from further lead exposure pursuant to the standard's medical removal protection (MRP) program. The object of the MRP program is to provide temporary medical removal to workers either with substantially elevated blood lead levels or otherwise at risk of sustaining material health impairment from continued substantial exposure to lead. The following guidelines which are summarized in Table 2 were created under the standard for the temporary removal of an exposed employee and his or her subsequent return to work in an exposure area.

TABLE 2

	Effective date				
	Mar. 1, 1979	Mar. 1, 1980	Mar. 1, 1981	Mar. 1, 1982	Mar. 1, 1983 (final)
A. Blood lead level requiring employee medical removal. (Level must be confirmed with second follow-up blood lead level within two weeks of first report.).	≥80 μg/100 g.	≥70μg/100 g	≥60 μg/100 g.	≥60 μg/100 g.	≥60μg/100 g or average of last three blood samples or all blood samples over previous 6 months (whichever is over a longer time period) is 50 μg/100 g or greater unless last blood sample is 40 μg/100 g or less
B. Frequency which employees exposed to action level of lead (30 μg/m³ TWA) must have blood lead level checked (ZPP is also strongly recommended in each occasion that a blood lead is obtained.):					
1. Last blood lead level less than 40 μg/100 g.	Every 6 months.	Every 6 months.	Every 6 months.	Every 6 months.	Every 6 months.
2. Last blood lead level between 40 μg/100 g and level requiring medical removal (see A above).	Every 2 months.	Every 2 months.	Every 2 months.	Every 2 months.	Every 2 months.
3. Employees removed from exposure to lead because of an elevated blood lead level.	Every 1 month.	Every 1 month.	Every 1 month.	Every 1 month.	Every 1 month.
C. Permissible airborne exposure limit for workers removed from work due to an elevated blood lead level (without regard to respirator protection).	100 μg/m³ 8 hr TWA.	50 μg/m³ 8 hr TWA.	30 μg/m³ 8 hr TWA.	30 μg/m³ 8 hr TWA.	30 μg/m³ 8 hr TWA.
D. Blood lead level confirmed with a second blood analysis, at which employee may return to work. Permissible exposure without regard to respirator protection is listed by industry in Table I.	<60 μg/100 g.	<50 μg/100 g.	<40 μg/100 g.	<40 μg/100 g.	<40 μg/100 g.

NOTE: When medical opinion indicates that an employee is at risk of material impairment from exposure to lead, the physician can remove an employee from exposures exceeding the action level (or less) or recommend special protective measures as deemed appropriate and necessary. Medical monitoring during the medical removal period can be more stringent than noted in the table above if the physician so specifies. Return to work or removal of limitations and special protections is permitted when the physician indicates that the worker is no longer at risk of material impairment.

Under the standard's ultimate worker removal criteria, a worker is to be removed from any work having any eight hour TWA exposure to lead of 30 μg/m³ or more whenever either of the following circumstances apply: (1) a blood lead level of 60 μg/100 g or greater is obtained and confirmed by a second follow-up blood lead level performed within two weeks after the employer receives the results of the first blood sampling test, or (2) the average of the previous three blood lead determinations or the average of all blood lead determinations conducted during the previous six months, whichever encompasses the longest time period, equals or exceeds 50 μg/100 g, unless the last blood sample indicates a blood lead level at or below 40 μg/100 g in which case the employee need not be removed. Medical removal is to continue until two consecutive blood lead levels are 40 μg/100 g or less.

VOL 58 ISS 125 JL 1 1993 UMI

During the first two years that the ultimate removal criteria are being phased in, the return criteria have been set to assure that a worker's blood lead level has substantially declined during the period of removal. From March 1, 1979 to March 1, 1980, the blood lead level requiring employee medical removal is 80 μg/100 g. Workers found to have a confirmed blood lead at this level or greater need only be removed from work having a daily 8 hour TWA exposure to lead at or above 100 μg/m^3. Workers so removed are to be returned to work when their blood lead levels are at or below 60 μg/100 g of whole blood. From March 1, 1980 to March 1, 1981, the blood lead level requiring medical removal is 70 μg/100 g. During this period workers need only be removed from jobs having a daily 8 hour TWA exposure to lead at or above 50 μg/m^3 and are to be returned to work when a level of 50 μg/100 g is achieved. Beginning March 1, 1981, return depends on a worker's blood lead level declining to 40 μg/100 g of whole blood.

As part of the standard, the employer is required to notify in writing each employee whose blood lead level exceeds 40 μg/100 g. In addition each such employee is to be informed that the standard requires medical removal with MRP benefits, discussed below, when an employee's blood lead level exceeds the above defined limits.

In addition to the above blood lead level criteria, temporary worker removal may also take place as a result of medical determinations and recommendations. Written medical opinions must be prepared after each examination pursuant to the standard. If the examining physician includes a medical finding, determination or opinion that the employee has a medical condition which places the employee at increased risk of material health impairment from exposure to lead, then the employee must be removed from exposure to lead at or above the action level. Alternatively, if the examining physician recommends special protective measures for an employee (e.g., use of a powered air purifying respirator) or recommends limitations on an employee's exposure to lead, then the employer must implement these recommendations. Recommendations may be more stringent than the specific provisions of the standard. The examining physician, therefore, is given broad flexibility to tailor special protective procedures to the needs of individual employees. This flexibility extends to the evaluation and management of pregnant workers and male and female workers who are planning to raise children. Based on the history, physical examination, and laboratory studies, the physician might recommend special protective measures or medical removal for an employee who is pregnant or who is planning to conceive a child when, in the physician's judgment, continued exposure to lead at the current job would pose a significant risk. The return of the employee to his or her former job status, or the removal of special protections or limitations, depends upon the examining physician determining that the employee is no longer at increased risk of material impairment or that special measures are no longer needed.

During the period of any form of special protection or removal, the employer must maintain the worker's earnings, seniority, and other employment rights and benefits (as though the worker had not been removed) for a period of up to 18 months. This economic protection will maximize meaningful worker participation in the medical surveillance program, and is appropriate as part of the employer's overall obligation to provide a safe and healthful workplace. The provisions of MRP benefits during the employee's removal period may, however, be conditioned upon participation in medical surveillance.

On rare occasions, an employee's blood lead level may not acceptably decline within 18 months of removal. This situation will arise only in unusual circumstances, thus the standard relies on an individual medical examination to determine how to protect such an employee. This medical determination is to be based on both laboratory values, including lead levels, zinc protoporphyrin levels, blood counts, and other tests felt to be warranted, as well as the physician's judgment that any symptoms or findings on physical examination are a result of lead toxicity. The medical determination may be that the employee is incapable of ever safely returning to his or her former job status. The medical determination may provide additional removal time past 18 months for some employees or specify special protective measures to be implemented.

The lead standard provides for a multiple physician review in cases where the employee wishes a second opinion concerning potential lead poisoning or toxicity. If an employee wishes a second opinion, he or she can make an appointment with a physician of his or her choice. This second physician will review the findings, recommendations or determinations of the first physician and conduct any examinations, consultations or tests deemed necessary in an attempt to make a final medical determination. If the first and second physicians do not agree in their assessment they must try to resolve their differences. If they cannot reach an agreement then they must designate a third physician to resolve the dispute.

The employer must provide examining and consulting physicians with the following specific information: a copy of the lead regulations and all appendices, a description of the employee's duties as related to exposure, the exposure level to lead and any other toxic substances (if applicable), a description of personal protective equipment used, blood lead levels, and all prior written medical opinions regarding the employee in the employer's possession or control. The employer must also obtain from the physician and provide the employee with a written medical opinion containing blood lead levels, the physicians's opinion as to whether the employee is at risk of material impairment to health, any recommended protective measures for the employee if further exposure is permitted, as well as any recommended limitations upon an employee's use of respirators.

Employers must instruct each physician not to reveal to the employer in writing or in any other way his or her findings, laboratory results, or diagnoses which are felt to be unrelated to occupational lead exposure. They must also instruct each physician to advise the employee of any occupationally or non-occupationally related medical condition requiring further treatment or evaluation.

The standard provides for the use of respirators where engineering and other primary controls have not been fully implemented. However, the use of respirator protection shall not be used in lieu of temporary medical removal due to elevated blood lead levels or findings that an employee is at risk of material health impairment. This is based on the numerous inadequacies of respirators including skin rash where the facepiece makes contact with the skin, unacceptable stress to breathing in some workers with underlying cardiopulmonary impairment, difficulty in providing adequate fit, the tendency for respirators to create additional hazards by interfering with vision, hearing, and mobility, and the difficulties of assuring the maximum effectiveness of a complicated work practice program involving respirators. Respirators do, however, serve a useful function where engineering and work practice controls are inadequate by providing supplementary, interim, or short-term protection, provided they are properly selected for the environment in which the employee will be working, properly fitted to the employee, maintained and cleaned periodically, and worn by the employee when required.

In its final standard on occupational exposure to inorganic lead, OSHA has prohibited prophylactic chelation. Diagnostic and therapeutic chelation are permitted only under the supervision of a licensed physician with appropriate medical monitoring in an acceptable clinical setting. The decision to initiate chelation therapy must be made on an individual basis and take into account the severity of symptoms felt to be a result of lead toxicity along with blood lead levels, ZPP levels, and other laboratory tests as appropriate. EDTA and penicillamine which are the primary chelating agents used in the therapy of occupational lead poisoning have significant potential side effects and their use must be justified on the basis of expected benefits to the worker. Unless frank and severe symptoms are present, therapeutic chelation is not recommended given the opportunity to remove a worker from exposure and allow the body to naturally excrete accumulated lead. As a diagnostic aid, the chelation mobilization test using CA–EDTA has limited applicability. According to some investigators, the test can differentiate between lead-induced and other nephropathies. The test may also provide an estimation of the mobile fraction of the total body lead burden.

Employers are required to assure that accurate records are maintained on exposure monitoring, medical surveillance, and medical removal for each employee. Exposure monitoring and medical surveillance records must be kept for 40 years or the duration of employment plus 20 years, whichever is longer, while medical

removal records must be maintained for the duration of employment. All records required under the standard must be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health and the Director of the National Institute for Occupational Safety and Health. Employers must also make environmental and biological monitoring and medical removal records available to affected employees and to former employees or their authorized employee representatives. Employees or their specifically designated representatives have access to their entire medical surveillance records.

In addition, the standard requires that the employer inform all workers exposed to lead at or above the action level of the provisions of the standard and all its appendices, the purpose and description of medical surveillance and provisions for medical removal protection if temporary removal is required. An understanding of the potential health effects of lead exposure by all exposed employees along with full understanding of their rights under the lead standard is essential for an effective monitoring program.

II. Adverse Health Effects of Inorganic Lead

Although the toxicity of lead has been known for 2,000 years, the knowledge of the complex relationship between lead exposure and human response is still being refined. Significant research into the toxic properties of lead continues throughout the world, and it should be anticipated that our understanding of thresholds of effects and margins of safety will be improved in future years. The provisions of the lead standard are founded on two prime medical judgments: first, the prevention of adverse health effects from exposure to lead throughout a working lifetime requires that worker blood lead levels be maintained at or below 40 µg/100 g and second, the blood lead levels of workers, male or female, who intend to parent in the near future should be maintained below 30 µg/100 g to minimize adverse reproductive health effects to the parents and developing fetus. The adverse effects of lead on reproduction are being actively researched and OSHA encourages the physician to remain abreast of recent developments in the area to best advise pregnant workers or workers planning to conceive children.

The spectrum of health effects caused by lead exposure can be subdivided into five developmental stages: normal, physiological changes of uncertain significance, pathophysiological changes, overt symptoms (morbidity), and mortality. Within this process there are no sharp distinctions, but rather a continuum of effects. Boundaries between categories overlap due to the wide variation of individual responses and exposures in the working population. OSHA's development of the lead standard focused on pathophysiological changes as well as later stages of disease.

1. *Heme Synthesis Inhibition.* The earliest demonstrated effect of lead involves its ability to inhibit at least two enzymes of the heme synthesis pathway at very low blood levels. Inhibition of delta aminolevulinic acid dehydrase (ALA–D) which catalyzes the conversion of delta-aminolevulinic acid (ALA) to protoporphyrin is observed at a blood lead level below 20 µg/100 g whole blood. At a blood lead level of 40 ug/100 g, more than 20% of the population would have 70% inhibition of ALA–D. There is an exponential increase in ALA excretion at blood lead levels greater than 40 µg/100 g.

Another enzyme, ferrochelatase, is also inhibited at low blood lead levels. Inhibition of ferrochelatase leads to increased free erythrocyte protoporphyrin (FEP) in the blood which can then bind to zinc to yield zinc protoporphyrin. At a blood lead level of 50 µg/100 g or greater, nearly 100% of the population will have an increase in FEP. There is also an exponential relationship between blood lead levels greater than 40 µg/100 g and the associated ZPP level, which has led to the development of the ZPP screening test for lead exposure.

While the significance of these effects is subject to debate, it is OSHA's position that these enzyme disturbances are early stages of a disease process which may eventually result in the clinical symptoms of lead poisoning. Whether or not the effects do progress to the later stages of clinical disease, disruption of these enzyme processes over a working lifetime is considered to be a material impairment of health.

One of the eventual results of lead-induced inhibition of enzymes in the heme synthesis pathway is anemia which can be asymptomatic if mild but associated with a wide array of symptoms including dizziness, fatigue, and tachycardia when more severe. Studies have indicated that lead levels as low as 50 µg/100 g can be associated with a definite decreased hemoglobin, although most cases of lead-induced anemia, as well as shortened red-cell survival times, occur at lead levels exceeding 80 µg/100 g. Inhibited hemoglobin synthesis is more common in chronic cases whereas shortened erythrocyte life span is more common in acute cases.

In lead-induced anemias, there is usually a reticulocytosis along with the presence of basophilic stippling, and ringed sideroblasts, although none of the above are pathognomonic for lead-induced anemia.

2. *Neurological Effects.* Inorganic lead has been found to have toxic effects on both the central and peripheral nervous systems. The earliest stages of lead-induced central nervous system effects first manifest themselves in the form of behavioral disturbances and central nervous system symptoms including irritability, restlessness, insomnia and other sleep disturbances, fatigue, vertigo, headache, poor memory, tremor, depression, and apathy. With more severe exposure, symptoms can progress to drowsiness, stupor, hallucinations, delerium, convulsions and coma.

The most severe and acute form of lead poisoning which usually follows ingestion or inhalation of large amounts of lead is acute encephalopathy which may arise precipitously with the onset of intractable seizures, coma, cardiorespiratory arrest, and death within 48 hours.

While there is disagreement about what exposure levels are needed to produce the earliest symptoms, most experts agree that symptoms definitely can occur at blood lead levels of 60 µg/100 g whole blood and therefore recommend a 40 µg/100 g maximum. The central nervous system effects frequently are not reversible following discontinued exposure or chelation therapy and when improvement does occur, it is almost always only partial.

The peripheral neuropathy resulting from lead exposure characteristically involves only motor function with minimal sensory damage and has a marked predilection for the extensor muscles of the most active extremity. The peripheral neuropathy can occur with varying degrees of severity. The earliest and mildest form which can be detected in workers with blood lead levels as low as 50 µg/100 g is manifested by slowing of motor nerve conduction velocity often without clinical symptoms. With progression of the neuropathy there is development of painless extensor muscle weakness usually involving the extensor muscles of the fingers and hand in the most active upper extremity, followed in severe cases by wrist drop or, much less commonly, foot drop.

In addition to slowing of nerve conduction, electromyographical studies in patients with blood lead levels greater than 50 µg/100 g have demonstrated a decrease in the number of acting motor unit potentials, an increase in the duration of motor unit potentials, and spontaneous pathological activity including fibrillations and fasciculations. Whether these effects occur at levels of 40 µg/100 g is undetermined.

While the peripheral neuropathies can occasionally be reversed with therapy, again such recovery is not assured particularly in the more severe neuropathies and often improvement is only partial. The lack of reversibility is felt to be due in part to segmental demyelination.

3. *Gastrointestinal.* Lead may also affect the gastrointestinal system producing abdominal colic or diffuse abdominal pain, constipation, obstipation, diarrhea, anorexia, nausea and vomiting. Lead colic rarely develops at blood lead levels below 80 µg/100 g.

4. *Renal.* Renal toxicity represents one of the most serious health effects of lead poisoning. In the early stages of disease nuclear inclusion bodies can frequently be identified in proximal renal tubular cells. Renal function remains normal and the changes in this stage are probably reversible. With more advanced disease there is progressive interstitial fibrosis and impaired renal function. Eventually extensive interstitial fibrosis ensues with sclerotic glomeruli and dilated and atrophied proximal tubules; all represent end stage kidney disease. Azotemia can be progressive, eventually resulting in frank uremia necessitating dialysis. There is occasionally associated hypertension and hyperuricemia with or without gout.

Early kidney disease is difficult to detect. The urinalysis is normal in early lead nephropathy and the blood urea nitrogen and serum creatinine increase only when two-thirds of kidney function is lost. Measurement of creatinine clearance can often detect earlier disease as can other methods of measurement of glomerular filtration rate. An abnormal Ca-EDTA

VOL 58 ISS 125 JL 1 1993 UMI

mobilization test has been used to differentiate between lead-induced and other nephropathies, but this procedure is not widely accepted. A form of Fanconi syndrome with aminoaciduria, glycosuria, and hyperphosphaturia indicating severe injury to the proximal renal tubules is occasionally seen in children.

5. *Reproductive effects.* Exposure to lead can have serious effects on reproductive function in both males and females. In male workers exposed to lead there can be a decrease in sexual drive, impotence, decreased ability to produce healthy sperm, and sterility. Malformed sperm (teratospermia), decreased number of sperm (hypospermia), and sperm with decreased motility (asthenospermia) can all occur. Teratospermia has been noted at mean blood lead levels of 53 µg/100 g and hypospermia and asthenospermia at 41 µg/100 g. Furthermore, there appears to be a dose-response relationship for teratospermia in lead exposed workers.

Women exposed to lead may experience menstrual disturbances including dysmenorrhea, menorrhagia and amenorrhea. Following exposure to lead, women have a higher frequency of sterility, premature births, spontaneous miscarriages, and stillbirths.

Germ cells can be affected by lead and cause genetic damage in the egg or sperm cells before conception and result in failure to implant, miscarriage, stillbirth, or birth defects.

Infants of mothers with lead poisoning have a higher mortality during the first year and suffer from lowered birth weights, slower growth, and nervous system disorders.

Lead can pass through the placental barrier and lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord at birth. Transplacental passage becomes detectable at 12–14 weeks of gestation and increases until birth.

There is little direct data on damage to the fetus from exposure to lead but it is generally assumed that the fetus and newborn would be at least as susceptible to neurological damage as young children. Blood lead levels of 50–60 µg/100 g in children can cause significant neurobehavioral impairments and there is evidence of hyperactivity at blood levels as low as 25 µg/100 g. Given the overall body of literature concerning the adverse health effects of lead in children, OSHA feels that the blood lead level in children should be maintained below 30 µg/100 g with a population mean of 15 µg/100 g. Blood lead levels in the fetus and newborn likewise should not exceed 30 µg/100 g.

Because of lead's ability to pass through the placental barrier and also because of the demonstrated adverse effects of lead on reproductive function in both the male and female as well as the risk of genetic damage of lead on both the ovum and sperm, OSHA recommends a 30 µg/100 g maximum permissible blood lead level in both males and females who wish to bear children.

6. *Other toxic effects.* Debate and research continue on the effects of lead on the human body. Hypertension has frequently been noted in occupationally exposed individuals although it is difficult to assess whether this is due to lead's adverse effects on the kidney or if some other mechanism is involved. Vascular and electrocardiogarphic changes have been detected but have not been well characterized. Lead is thought to impair thyroid function and interfere with the pituitary-adrenal axis, but again these effects have not been well defined.

III. Medical Evaluation

The most important principle in evaluating a worker for any occupational disease including lead poisoning is a high index of suspicion on the part of the examining physician. As discussed in Section 2, lead can affect numerous organ systems and produce a wide array of signs and symptoms, most of which are non-specific and subtle in nature at least in the early stages of disease. Unless serious concern for lead toxicity is present, many of the early clues to diagnosis may easily be overlooked.

The crucial initial step in the medical evaluation is recognizing that a worker's employment can result in exposure to lead. The worker will frequently be able to define exposures to lead and lead containing materials but often will not volunteer this information unless specifically asked. In other situations the worker may not know of any exposures to lead but the suspicion might be raised on the part of the physician because of the industry or occupation of the worker. Potential occupational exposure to lead and its compounds occur in at least 120 occupations, including lead smelting, the manufacture of lead storage batteries, the manufacture of lead pigments and products containing pigments, solder manufacture, shipbuilding and ship repair, auto manufacturing, construction, and painting.

Once the possibility for lead exposure is raised, the focus can then be directed toward eliciting information from the medical history, physical exam, and finally from laboratory data to evaluate the worker for potential lead toxicity.

A complete and detailed work history is important in the initial evaluation. A listing of all previous employment with information on work processes, exposure to fumes or dust, known exposures to lead or other toxic substances, respiratory protection used, and previous medical surveillance should all be included in the worker's record. Where exposure to lead is suspected, information concerning on-the-job personal hygiene, smoking or eating habits in work areas, laundry procedures, and use of any protective clothing or respiratory protection equipment should be noted. A complete work history is essential in the medical evaluation of a worker with suspected lead toxicity, especially when long term effects such as neurotoxicity and nephrotoxicity are considered.

The medical history is also of fundamental importance and should include a listing of all past and current medical conditions, current medications including proprietary drug intake, previous surgeries and hospitalizations, allergies, smoking history, alcohol consumption, and also non-occupational lead exposures such as hobbies (hunting, riflery). Also known childhood exposures should be elicited. Any previous history of hematological, neurological, gastrointestinal, renal, psychological, gynecological, genetic, or reproductive problems should be specifically noted.

A careful and complete review of systems must be performed to assess both recognized complaints and subtle or slowly acquired symptoms which the worker might not appreciate as being significant. The review of symptoms should include the following:

General—weight loss, fatigue, decreased appetite.

Head, Eyes, Ears, Nose, Throat (HEENT)—headaches, visual disturbances or decreased visual acuity, hearing deficits or tinnitus, pigmentation of the oral mucosa, or metallic taste in mouth.

Cardio-pulmonary—shortness of breath, cough, chest pains, palpitations, or orthopnea.

Gastrointestinal—nausea, vomiting, heartburn, abdominal pain, constipation or diarrhea.

Neurologic—irritability, insomnia, weakness (fatigue), dizziness, loss of memory, confusion, hallucinations, incoordination, ataxia, decreased strength in hands or feet, disturbances in gait, difficulty in climbing stairs, or seizures.

Hematologic—pallor, easy fatigability, abnormal blood loss, melena.

Reproductive (male and female and spouse where relevant)—history of infertility, impotence, loss of libido, abnormal menstrual periods, history of miscarriages, stillbirths, or children with birth defects.

Musculo-skeletal—muscle and joint pains.

The physical examination should emphasize the neurological, gastrointestinal, and cardiovascular systems. The worker's weight and blood pressure should be recorded and the oral mucosa checked for pigmentation characteristic of a possible Burtonian or lead line on the gingiva. It should be noted, however, that the lead line may not be present even in severe lead poisoning if good oral hygiene is practiced.

The presence of pallor on skin examination may indicate an anemia, which if severe might also be associated with a tachycardia. If an anemia is suspected, an active search for blood loss should be undertaken including potential blood loss through the gastrointestinal tract.

A complete neurological examination should include an adequate mental status evaluation including a search for behavioral and psychological disturbances, memory testing, evaluation for irritability, insomnia, hallucinations, and mental clouding. Gait and coordination should be examined along with close observation for tremor. A detailed evaluation of peripheral nerve function including careful sensory and motor function testing is warranted. Strength testing particularly of extensor muscle groups of all extremities is of fundamental importance.

Cranial nerve evaluation should also be included in the routine examination.

The abdominal examination should include auscultation for bowel sounds and abdominal bruits and palpation for organomegaly, masses, and diffuse abdominal tenderness.

Cardiovascular examination should evaluate possible early signs of congestive

heart failure. Pulmonary status should be addressed particularly if respirator protection is contemplated.

As part of the medical evaluation, the lead standard requires the following laboratory studies:

1. Blood lead level
2. Hemoglobin and hematocrit determinations, red cell indices, and examination of the peripheral blood smear to evaluate red blood cell morphology
3. Blood urea nitrogen
4. Serum creatinine
5. Routine urinalysis with microscopic examination.
6. A zinc protoporphyrin level

In addition to the above, the physician is authorized to order any further laboratory or other tests which he or she deems necessary in accordance with sound medical practice. The evaluation must also include pregnancy testing or laboratory evaluation of male fertility if requested by the employee.

Additional tests which are probably not warranted on a routine basis but may be appropriate when blood lead and ZPP levels are equivocal include delta aminolevulinic acid and coproporphyrin concentrations in the urine, and dark-field illumination for detection of basophilic stippling in red blood cells.

If an anemia is detected further studies including a careful examination of the peripheral smear, reticulocyte count, stool for occult blood, serum iron, total iron binding capacity, bilirubin, and, if appropriate, vitamin B12 and folate may be of value in attempting to identify the cause of the anemia.

If a peripheral neuropathy is suspected, nerve conduction studies are warranted both for diagnosis and as a basis to monitor any therapy.

If renal disease is questioned, a 24 hour urine collection for creatinine clearance, protein, and electrolytes may be indicated. Elevated uric acid levels may result from lead-induced renal disease and a serum uric acid level might be performed.

An electrocardiogram and chest x-ray may be obtained as deemed appropriate.

Sophisticated and highly specialized testing should not be done routinely and where indicated should be under the direction of a specialist.

IV. Laboratory Evaluation

The blood lead level at present remains the single most important test to monitor lead exposure and is the test used in the medical surveillance program under the lead standard to guide employee medical removal. The ZPP has several advantages over the blood lead level. Because of its relatively recent development and the lack of extensive data concerning its interpretation, the ZPP currently remains an ancillary test.

This section will discuss the blood lead level and ZPP in detail and will outline their relative advantages and disadvantages. Other blood tests currently available to evaluate lead exposure will also be reviewed.

The blood lead level is a good index of current or recent lead absorption when there is no anemia present and when the worker has not taken any chelating agents. However, blood lead levels along with urinary lead levels do not necessarily indicate the total body burden of lead and are not adequate measures of past exposure. One reason for this is that lead has a high affinity for bone and up to 90% of the body's total lead is deposited there. A very important component of the total lead body burden is lead in soft tissue (liver, kidney, and brain). This fraction of the lead body burden, the biologically active lead, is not entirely reflected by blood lead levels since it is a function of the dynamics of lead absorption, distribution, deposition in bone and excretion. Following discontinuation of exposure to lead, the excess body burden is only slowly mobilized from bone and other relatively stable body stores and excreted. Consequently, a high blood lead level may only represent recent heavy exposure to lead without a significant total body excess and likewise a low blood lead level does not exclude an elevated total body burden of lead.

Also due to its correlation with recent exposures, the blood lead level may vary considerably over short time intervals.

To minimize laboratory error and erroneous results due to contamination, blood specimens must be carefully collected after thorough cleaning of the skin with appropriate methods using lead-free blood containers and analyzed by a reliable laboratory. Under the standard, samples must be analyzed in laboratories which are approved by the Center for Disease Control (CDC) or which have received satisfactory grades in proficiency testing by the CDC in the previous year. Analysis is to be made using atomic absorption spectrophotometry, anodic stripping voltammetry or any method which meets the accuracy requirements set forth by the standard.

The determination of lead in urine is generally considered a less reliable monitoring technique than analysis of whole blood primarily due to individual variability in urinary excretion capacity as well as the technical difficulty of obtaining accurate 24 hour urine collections. In addition, workers with renal insufficiency, whether due to lead or some other cause, may have decreased lead clearance and consequently urine lead levels may underestimate the true lead burden. Therefore, urine lead levels should not be used as a routine test.

The zinc protoporphyrin test, unlike the blood lead determination, measures an adverse metabolic effect of lead and as such is a better indicator of lead toxicity than the level of blood lead itself. The level of ZPP reflects lead absorption over the preceding 3 to 4 months, and therefore is a better indicator of lead body burden. The ZPP requires more time than the blood lead to read significantly elevated levels; the return to normal after discontinuing lead exposure is also slower. Furthermore, the ZPP test is simpler, faster, and less expensive to perform and no contamination is possible. Many investigators believe it is the most reliable means of monitoring chronic lead absorption.

Zinc protoporphyrin results from the inhibition of the enzyme ferrochelatase which catalyzes the insertion of an iron molecule into the protoporphyrin molecule, which then becomes heme. If iron is not inserted into the molecule then zinc, having a greater affinity for protoporphyrin, takes the place of the iron, forming ZPP.

An elevation in the level of circulating ZPP may occur at blood lead levels as low as 20–30 µg/100 g in some workers. Once the blood lead level has reached 40 µg/100 g there is more marked rise in the ZPP value from its normal range of less than 100 µg/100 ml. Increases in blood lead levels beyond 40 µg/100 g are associated with exponential increases in ZPP.

Whereas blood lead levels fluctuate over short time spans, ZPP levels remain relatively stable. ZPP is measured directly in red blood cells and is present for the cell's entire 120 day life-span. Therefore, the ZPP level in blood reflects the average ZPP production over the previous 3–4 months and consequently the average lead exposure during that time interval.

It is recommended that a hematocrit be determined whenever a confirmed ZPP of 50 µg/100 ml whole blood is obtained to rule out a significant underlying anemia. If the ZPP is in excess of 100 µg/100 ml and not associated with abnormal elevations in blood lead levels, the laboratory should be checked to be sure that blood leads were determined using atomic absorption spectrophotometry anodic stripping voltammetry, or any method which meets the accuracy requirements set forth by the standard by a CDC approved laboratory which is experienced in lead level determinations. Repeat periodic blood lead studies should be obtained in all individuals with elevated ZPP levels to be certain that an associated elevated blood lead level has not been missed due to transient fluctuations in blood leads.

ZPP has a characteristic fluorescence spectrum with a peak at 594 nm which is detectable with a hematofluorimeter. The hematofluorimeter is accurate and portable and can provide on-site, instantaneous results for workers who can be frequently tested via a finger prick.

However, careful attention must be given to calibration and quality control procedures. Limited data on blood lead—ZPP correlations and the ZPP levels which are associated with the adverse health effects discussed in Section 2 are the major limitations of the test. Also it is difficult to correlate ZPP levels with environmental exposure and there is some variation of response with age and sex. Nevertheless, the ZPP promises to be an important diagnostic test for the early detection of lead toxicity and its value will increase as more data is collected regarding its relationship to other manifestations of lead poisoning.

Levels of delta-aminolevulinic acid (ALA) in the urine are also used as a measure of lead exposure. Increasing concentrations of ALA are believed to result from the inhibition of the enzyme delta-aminolevulinic acid dehydrase (ALA–D). Although the test is relatively easy to perform, inexpensive, and rapid, the disadvantages include variability in results, the necessity to collect a complete 24 hour urine sample which has a specific gravity greater than 1.010, and also the fact that ALA decomposes in the presence of light.

The pattern of porphyrin excretion in the urine can also be helpful in identifying lead

intoxication. With lead poisoning, the urine concentrations of coproporphyrins I and II, porphobilinogen and uroporphyrin I rise. The most important increase, however, is that of coproporphyrin III; levels may exceed 5,000 µg/1 in the urine in lead poisoned individuals, but its correlation with blood lead levels and ZPP are not as good as those of ALA. Increases in urinary porphyrins are not diagnostic of lead toxicity and may be seen in porphyria, some liver diseases, and in patients with high reticulocyte counts.

Summary. The Occupational Safety and Health Administration's standard for inorganic lead places significant emphasis on the medical surveillance of all workers exposed to levels of inorganic lead above the action level of 30 µg/m^3 TWA. The physician has a fundamental role in this surveillance program, and in the operation of the medical removal protection program.

Even with adequate worker education on the adverse health effects of lead and appropriate training in work practices, personal hygiene and other control measures, the physician has a primary responsibility for evaluating potential lead toxicity in the worker. It is only through a careful and detailed medical and work history, a complete physical examination and appropriate laboratory testing that an accurate assessment can be made. Many of the adverse health effects of lead toxicity are either irreversible or only partially reversible and therefore early detection of disease is very important.

This document outlines the medical monitoring program as defined by the occupational safety and health standard for inorganic lead. It reviews the adverse health effects of lead poisoning and describes the important elements of the history and physical examinations as they relate to these adverse effects. Finally, the appropriate laboratory testing for evaluating lead exposure and toxicity is presented.

It is hoped that this review and discussion will give the physician a better understanding of the OSHA standard with the ultimate goal of protecting the health and well-being of the worker exposed to lead under his or her care.

Appendix D to § 1915.1025—Qualitative Fit Test Protocols

This appendix specifies the only allowable qualitative fit test protocols permissible for compliance with paragraph (f)(3)(ii).

I. Isoamyl Acetate Protocol

A. Odor threshold screening.

1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25°C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but may not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing .4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically *dried off* and switched to avoid people thinking the same jar always has the IAA.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2);

"The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA QLFT may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution he may proceed to respirator selection and fit testing.

B. Respirator selection.

1. The test subject shall be allowed to select the most comfortable respirator from a large array of various sizes and manufacturers that includes at least three sizes of elastomeric half facepieces and units of at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to assess an "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This may not constitute his formal training on respirator use, only a review.

3. The test subject should understand that he is being asked to select the respirator which provides the most comfortable fit for him. Each respirator represents a different size and shape and, if fit properly, will provide adequate protection.

4. The test subject holds each facepiece up to his face and eliminates those which are obviously not giving a comfortable fit. Normally, selection will begin with a half-mask and if a fit cannot be found here, the subject will be asked to go to the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are recorded; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, he shall be directed to don the mask several times and to adjust the straps each time, so that he becomes adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject:

- Chin properly placed.
- Positioning of mask on nose.
- Strap tension.
- Fit across nose bridge.
- Room for safety glasses.
- Distance from nose to chin.
- Room to talk.
- Tendency to slip.
- Cheeks filled out.
- Self-observation in mirror.
- Adequate time for assessment.

7. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g. see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure checks, the subject shall be told to "seat" his mask by rapidly moving the head side-to-side and up and down, taking a few deep breaths

8. The test subject is now ready for fit testing.

9. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

10. The employee shall be given the opportunity to select a different facepiece and be retested if during the first two weeks of on-the-job wear the chosen facepiece becomes unacceptably uncomfortable.

C. Fit test.

1. The fit test chamber shall be substantially similar to a clear 55 gallon drum liner suspended inverted over a 2 foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selecting, donning, and properly adjusting a respirator himself, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hook, to prevent general room contamination.

4. A copy of the following test exercises and rainbow (or equally effective) passage shall be taped to the inside of the test chamber:

Test Exercises

i. Normal breathing.

ii. Deep breathing. Be certain breaths are *deep* and *regular*.

iii. Turning head from side-to-side. Be certain movement is complete. Alert the test subject not to bump the respirator on the shoulders. Have the test subject inhale when his head is at either side.

iv. Nodding head up-and-down. Be certain motions are complete and made about every second. Alert the test subject not bump the respirator on the chest. Have the test subject inhale when his head is in the fully up position.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Normal breathing.

5. Each test subject shall wear his respirator for at least 10 minutes before starting the fit test

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of his cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in No. 4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, he shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. Upon returning to the selection room, the subject shall remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, etc. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot be fitted with the selection of half-mask respirators, include full facepiece models in the selection process. When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having him break the face seal and take a breath before exiting the chamber.

12. When the test subject leaves the chamber he shall remove the saturated towel, returning it to the test conductor. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag. There is no significant IAA concentration buildup in the test chamber from subsequent tests.

13. Persons who have successfully passed this fit test may be assigned the use of the tested respirator in atmospheres with up to 10 times the PEL of airborne lead. In other words this IAA protocol may be used to assign a protection factor no higher than 10.

II. Saccharin Solution Aerosol Protocol

A. Taste threshold screening.

1. Threshold screening as well as fit testing employees shall use an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movement of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly of part # FT 14 and FT 15 combined is adequate.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

4. The test subject shall don the test enclosure. For the threshold screening test, he shall breath through his open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C6 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely then released and allowed to fully expand.

8. Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 9), the test subject may not perform the saccharin fit test.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

B. Respirator selection.

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a particulate filter cartridge

C. Fit test.

1. The fit test uses the same enclosure described in B1 and B2 above

2. Each test subject shall wear his respirator for at least 10 minutes before starting the fit test.

3. The test subject shall don the enclosure while wearing the respirator selected in section A above. This respirator shall be properly adjusted and equipped with a particulate filter cartridge.

4. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

5. A second DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

6. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

7. As before, the test subject shall breathe through the open mouth with tongue extended.

8. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B 10 above)

9. After generation of the aerosol the test subject shall be instructed to perform the following exercises for one minute each.

i. Normal breathing.

ii. Deep breathing. Be certain breaths are *deep* and *regular*.

iii. Turning head from side-to-side. Be certain movement is complete. Alert the test subject not to bump the respirator on the shoulders. Have the test subject inhale when his head is at either side.

iv. Nodding head up-and-down. Be certain motions are complete. Alert the test subject not to bump the respirator on the chest. Have the test subject inhale when his head in the fully up position.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

10. Every 30 seconds, the aerosol concentration shall be replenished using one-half the number of squeeze as initially (C8).

11. The test subject shall so indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

12. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

13. Successful completion of the test protocol shall allow the use of the tested respirator in contaminated atmospheres up to 10 times the PEL. In other words this protocol may be used assign protection factors no higher than ten.

III. Irritant Fume Protocol

A. Respirator selection.

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with high efficiency cartridges.

B. Fit test.

1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize him with the characteristic odor of each.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks. Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct him to keep his eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. He shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The following exercises shall be performed while the respirator seal is being challenged by the smoke. Each shall be performed for one minute.

i. Normal breathing.

ii. Deep breathing. Be certain breaths are *deep* and *regular*.

iii. Turning head from side-to-side. Be certain movement is complete. Alert the test subject not to bump the respirator on the shoulders. Have test subject inhale when his head is at either side.

iv. Nodding head up-and-down. Be certain motions are complete. Alert the test subject not to bump the respirator on the chest. Have the test subject inhale when his head is in the fully up position.

v. Talking—slowly and distinctly, count backwards from 100.

vi. Normal breathing.

9. If the irritant smoke produces an involuntary reaction (cough) by the test subject, the test conductor shall stop the test. In this case the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube to determine whether he reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B7, B8 of this protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the irritant smoke.

12. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL. In other words this protocol may be used to assign protection factors not exceeding ten.

§ 1915.1028 Benzene.

(a) *Scope and application.* (1) This section applies to all occupational exposures to benzene. Chemical Abstracts Service Registry No. 71–43–2, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) This section does not apply to:

(i) The storage, transportation, distribution, dispensing, sale or use of gasoline, motor fuels, or other fuels containing benzene subsequent to its final discharge from bulk wholesale storage facilities, except that operations where gasoline or motor fuels are dispensed for more than 4 hours per day in an indoor location are covered by this section.

(ii) Loading and unloading operations at bulk wholesale storage facilities which use vapor control systems for all loading and unloading operations, except for the provisions of 29 CFR 1915.1200 as incorporated into this section and the emergency provisions of paragraphs (g) and (i)(4) of this section.

(iii) The storage, transportation, distribution or sale of benzene or liquid mixtures containing more than 0.1 percent benzene in intact containers or in transportation pipelines while sealed in such a manner as to contain benzene vapors or liquid, except for the provisions of 29 CFR 1915.1200 as incorporated into this section and the emergency provisions of paragraphs (g) and (i)(4) of this section.

(iv) Containers and pipelines carrying mixtures with less than 0.1 percent benzene and natural gas processing plants processing gas with less than 0.1 percent benzene.

(v) Work operations where the only exposure to benzene is from liquid mixtures containing 0.5 percent or less of benzene by volume, or the vapors released from such liquids until September 12, 1988; work operations where the only exposure to benzene is from liquid mixtures containing 0.3 percent or less of benzene by volume or the vapors released from such liquids from September 12, 1988, to September 12, 1989; and work operations where the only exposure to benzene is from liquid mixtures containing 0.1 percent or less of benzene by volume or the vapors released from such liquids after September 12, 1989; except that tire building machine operators using solvents with more than 0.1 percent benzene are covered by paragraph (i) of this section.

(vi) Oil and gas drilling, production and servicing operations.

(vii) Coke oven batteries.

(3) The cleaning and repair of barges and tankers which have contained benzene are excluded from paragraph (f) methods of compliance, paragraph (e)(1) exposure monitoring-general, and paragraph (e)(6) accuracy of monitoring Engineering and work practice controls shall be used to keep exposures below 10 ppm unless it is proven to be not feasible.

(b) *Definitions.*

Action level means an airborne concentration of benzene of 0.5 ppm calculated as an 8-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (l) of this section, or any other person authorized by the Act or regulations issued under the Act.

Benzene (C_6H_6) (CAS Registry No. 71–43–2) means liquefied or gaseous benzene. It includes benzene contained in liquid mixtures and the benzene vapors released by these liquids. It does not include trace amounts of unreacted benzene contained in solid materials.

Bulk wholesale storage facility means a bulk terminal or bulk plant where fuel is stored prior to its delivery to wholesale customers.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, or the like, but does not include piping systems.

Day means any part of a calendar day.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does

result in an unexpected significant release of benzene.

Employee exposure means exposure to airborne benzene which would occur if the employee were not using respiratory protective equipment.

Regulated area means any area where airborne concentrations of benzene exceed or can reasonably be expected to exceed, the permissible exposure limits, either the 8-hour time weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes.

Vapor control system means any equipment used for containing the total vapors displaced during the loading of gasoline, motor fuel or other fuel tank trucks and the displacing of these vapors through a vapor processing system or balancing the vapor with the storage tank. This equipment also includes systems containing the vapors displaced from the storage tank during the unloading of the tank truck which balance the vapors back to the tank truck.

(c) *Permissible exposure limits (PELs)*—(1) *Time-weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of one part of benzene per million parts of air (1 ppm) as an 8-hour time-weighted average.

(2) *Short-term exposure limit (STEL).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of five (5) ppm as averaged over any 15 minute period.

(d) *Regulated areas.* (1) The employer shall establish a regulated area wherever the airborne concentration of benzene exceeds or can reasonably be expected to exceed the permissible exposure limits, either the 8-hour time weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes.

(2) Access to regulated areas shall be limited to authorized persons.

(3) Regulated areas shall be determined from the rest of the workplace in any manner that minimizes the number of employees exposed to benzene within the regulated area.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's average exposure to airborne benzene.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one sample or samples representing the full shift exposure for each job classification in each work area.

(iii) Determinations of compliance with the STEL shall be made from 15 minute employee breathing zone samples measured at operations where there is reason to believe exposures are high, such as where tanks are opened, filled, unloaded or gauged; where containers or process equipment are opened and where benzene is used for cleaning or as a solvent in an uncontrolled situation. The employer may use objective data, such as measurements from brief period measuring devices, to determine where STEL monitoring is needed.

(iv) Except for initial monitoring as required under paragraph (e)(2) of this section, where the employer can document that one shift will consistently have higher employee exposures for an operation, the employer shall only be required to determine representative employee exposure for that operation during the shift on which the highest exposure is expected.

(2) *Initial monitoring.* (i) Each employer who has a place of employment covered under paragraph (a)(1) of this section shall monitor each of these workplaces and work operations to determine accurately the airborne concentrations of benzene to which employees may be exposed.

(ii) The initial monitoring required under paragraph (e)(2)(i) of this section shall be completed by 60 days after the effective date of this standard or within 30 days of the introduction of benzene into the workplace. Where the employer has monitored within one year prior to the effective date of this standard and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (e)(2)(i) of this section.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure at or above the action level but at or below the TWA, the employer shall repeat such monitoring for each such employee at least every year.

(ii) If the monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure above the TWA, the employer shall repeat such monitoring for each such employee at least every six (6) months.

(iii) The employer may alter the monitoring schedule from every six months to annually for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to the TWA or below, but is at or above the action level.

(iv) Monitoring for the STEL shall be repeated as necessary to evaluate exposures of employees subject to short term exposures.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure to be below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(ii) If the periodic monitoring required by paragraph (e)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5).

(5) *Additional monitoring.* (i) The employer shall institute the exposure monitoring required under paragraphs (e)(2) and (e)(3) of this section when there has been a change in the production, process, control equipment, personnel or work practices which may result in new or additional exposures to benzene, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(ii) Whenever spills, leaks, ruptures or other breakdowns occur that may lead to employee exposure, the employer shall monitor (using area or personal sampling) after the cleanup of the spill or repair of the leak, rupture or other breakdown to ensure that exposures have returned to the level that existed prior to the incident.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) Whenever the PELs are exceeded, the written notification required by paragraph (e)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce the employee exposure to or below the PEL, or shall refer to a document available to the employee which states the corrective actions to be taken.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall

institute engineering controls and work practices to reduce and maintain employee exposure to benzene at or below the permissible exposure limits, except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraph (f)(1)(iii) or (g)(1) of this section apply.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(iii) Where the employer can document that benzene is used in a workplace less than a total of 30 days per year, the employer shall use engineering controls, work practice controls or respiratory protection or any combination of these controls to reduce employee exposure to benzene to or below the PELs, except that employers shall use engineering and work practice controls, if feasible, to reduce exposure to or below 10 ppm as an 8-hour TWA.

(2) *Compliance program.* (i) When any exposures are over the PEL, the employer shall establish and implement a written program to reduce employee exposure to or below the PEL primarily by means of engineering and work practice controls, as required by paragraph (f)(1) of this section.

(ii) The written program shall include a schedule for development and implementation of the engineering and work practice controls. These plans shall be reviewed and revised as appropriate based on the most recent exposure monitoring data, to reflect the current status of the program.

(iii) Written compliance programs shall be furnished upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives.

(g) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and assure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that compliance with either the TWA or STEL through the use of engineering and work practice controls is not feasible, such as some maintenance and repair activities, vessel cleaning, or other operations where engineering and work practice controls are infeasible because exposures are intermittent in nature and limited in duration;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient or are not required under paragraph (f)(1)(iii) of this section to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11. Negative pressure respirators shall have filter elements approved by MSHA/NIOSH for organic vapors or benzene.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a respirator with less breathing resistance such as a powered air-purifying respirator or supplied air respirator.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(4) *Respirator use.* (i) Where air-purifying respirators are used, the employer shall replace the air purifying element at the expiration of service life or at the beginning of each shift in which they will be used, whichever comes first.

(ii) If an air purifying element becomes available with an end of useful life indicator for benzene approved by MSHA/NIOSH, the element may be used until such time as the indicator shows no further useful life.

(iii) The employer shall permit employees who wear respirators to leave the regulated area to wash their faces and respirator facepieces as necessary in order to prevent skin irritation associated with respirator use or to change the filter elements of air-purifying respirators whenever they detect a change in breathing resistance or chemical vapor breakthrough.

(5) *Respirator fit testing.* (i) The employer shall perform, and certify the results of, either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which exhibits minimum leakage and provides the required protection as prescribed in Table 1. The employer shall provide and assure that the employee wears a respirator demonstrated by the fit test to provide the required protection.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

TABLE 1—RESPIRATORY PROTECTION FOR BENZENE

Airborne concentration of benzene or condition of use	Respirator type
(a) Less than or equal to 10 ppm.	(1) Half-mask air-purifying respirator with organic vapor cartridge.
(b) Less than or equal to 50 ppm.	(1) Full facepiece respirator with organic vapor cartridges. (1) Full facepiece gas mask with chin style canister.[1]
(c) Less than or equal to 100 ppm.	(1) Full facepiece powered air-purifying respirator with organic vapor canister.[1]
(d) Less than or equal to 1,000 ppm.	(1) Supplied air respirator with full facepiece in positive-pressure mode.
(e) Greater than 1,000 ppm or unknown concentration.	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive- pressure supplied-air respirator with auxiliary self-contained air supply.
(f) Escape	(1) Any organic vapor gas mask; or (2) Any self-contained breathing apparatus with full facepiece.
(g) Firefighting	(1) Full facepiece self-contained breathing apparatus in positive pressure mode.

[1] Canisters must have a minimum service life of four (4) hours when tested at 150 ppm benzene, at a flow rate of 64 LPM, 25 °C, and 85% relative humidity for non-powered air purifying respirators. The flow rate shall be 115 LPM and 170 LPM respectively for tight fitting and loose fitting powered air-purifying respirators.

(h) *Protective clothing and equipment.* Personal protective clothing and equipment shall be worn where appropriate to prevent eye contact and limit dermal exposure to liquid benzene. Protective clothing and

equipment shall be provided by the employer at no cost to the employee and the employer shall assure its use where appropriate. Eye and face protection shall meet the requirements of 29 CFR 1910.133.

(i) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees who are or may be exposed to benzene at or above the action level 30 or more days per year; for employees who are or may be exposed to benzene at or above the PELs 10 or more days per year; for employees who have been exposed to more than 10 ppm of benzene for 30 or more days in a year prior to the effective date of the standard when employed by their current employer; and for employees involved in the tire building operations called tire building machine operators, who use solvents containing greater than 0.1 percent benzene.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician and that all laboratory tests are conducted by an accredited laboratory.

(iii) The employer shall assure that persons other than licensed physicians who administer the pulmonary function testing required by this section shall complete a training course in spirometry sponsored by an appropriate governmental, academic or professional institution.

(iv) The employer shall assure that all examinations and procedures are provided without cost to the employee and at a reasonable time and place.

(2) *Initial examination.* (i) Within 60 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (i)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed occupational history which includes:

(*1*) Past work exposure to benzene or any other hematological toxins,

(*2*) A family history of blood dyscrasias including hematological neoplasms;

(*3*) A history of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, abnormal function of formed blood elements;

(*4*) A history of renal or liver dysfunction;

(*5*) A history of medicinal drugs routinely taken;

(*6*) A history of previous exposure to ionizing radiation and

(*7*) Exposure to marrow toxins outside of the current work situation.

(B) A complete physical examination.

(C) *Laboratory tests.* A complete blood count including a leukocyte count with differential, a quantitative thrombocyte count, hematocrit, hemoglobin, erythrocyte count and erythrocyte indices (MCV, MCH, MCHC). The results of these tests shall be reviewed by the examining physician.

(D) Additional tests as necessary in the opinion of the examining physician, based on alterations to the components of the blood or other signs which may be related to benzene exposure; and

(E) For all workers required to wear respirators for at least 30 days a year, the physical examination shall pay special attention to the cardiopulmonary system and shall include a pulmonary function test.

(ii) No initial medical examination is required to satisfy the requirements of paragraph (i)(2)(i) of this section if adequate records show that the employee has been examined in accordance with the procedures of paragraph (i)(2)(i) of this section within the twelve months prior to the effective date of this standard.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered under paragraph (i)(1)(i) of this section with a medical examination annually following the previous examination. These periodic examinations shall incude at least the following elements:

(A) A brief history regarding any new exposure to potential marrow toxins, changes in medicinal drug use, and the appearance of physical signs relating to blood disorders:

(B) A complete blood count including a leukocyte count with differential, quantitative thrombocyte count, hemoglobin, hematocrit, erythrocyte count and erythrocyte indices (MCV, MCH, MCHC); and

(C) Appropriate additional tests as necessary, in the opinion of the examining physician, in consequence of alterations in the components of the blood or other signs which may be related to benzene exposure.

(ii) Where the employee develops signs and symptoms commonly associated with toxic exposure to benzene, the employer shall provide the employee with an additional medical examination which shall include those elements considered appropriate by the examining physician.

(iii) For persons required to use respirators for at least 30 days a year, a pulmonary function test shall be performed every three (3) years. A specific evaluation of the cardiopulmonary system shall be made at the time of the pulmonary function test.

(4) *Emergency examinations.* (i) In addition to the surveillance required by (i)(1)(i), if an employee is exposed to benzene in an emergency situation, the employer shall have the employee provide a urine sample at the end of the employee's shift and have a urinary phenol test performed on the sample within 72 hours. The urine specific gravity shall be corrected to 1.024.

(ii) If the result of the urinary phenol test is below 75 mg phenol/L of urine, no further testing is required.

(iii) If the result of the urinary phenol test is equal to or greater than 75 mg phenol/L of urine, the employer shall provide the employee with a complete blood count including an erythrocyte count, leukocyte count with differential and thrombocyte count at monthly intervals for a duration of three (3) months following the emergency exposure.

(iv) If any of the conditions specified in paragraph (i)(5)(i) of this section exists, then the further requirements of paragraph (i)(5) of this section shall be met and the employer shall, in addition, provide the employees with periodic examinations if directed by the physician.

(5) *Additional examinations and referrals.* (i) Where the results of the complete blood count required for the initial and periodic examinations indicate any of the following abnormal conditions exist, then the blood count shall be repeated within 2 weeks.

(A) The hemoglobin level or the hematocrit falls below the normal limit [outside the 95% confidence interval (C.I.)] as determined by the laboratory for the particular geographic area and/or these indices show a persistent downward trend from the individual's pre-exposure norms; provided these findings cannot be explained by other medical reasons.

(B) The thrombocyte (platelet) count varies more than 20 percent below the employee's most recent values or falls outside the normal limit (95% C.I.) as determined by the laboratory.

(C) The leukocyte count is below 4,000 per mm^3 or there is an abnormal differential count.

(ii) If the abnormality persists, the examining physician shall refer the employee to a hematologist or an internist for further evaluation unless the physician has good reason to believe such referral is unnecessary. (See Appendix C for examples of conditions where a referral may be unnecessary.)

(iii) The employer shall provide the hematologist or internist with the

information required to be provided to the physician under paragraph (i)(6) of this section and the medical record required to be maintained by paragraph (k)(2)(ii) of this section.

(iv) The hematologist's or internist's evaluation shall include a determination as to the need for additional tests, and the employer shall assure that these tests are provided.

(6) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's actual or representative exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous employment-related medical examinations of the affected employee which is not otherwise available to the examining physician.

(7) *Physician's written opinions.* (i) For each examination under this section, the employer shall obtain and provide the employee with a copy of the examining physician's written opinion within 15 days of the examination. The written opinion shall be limited to the following information:

(A) The occupationally pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee's health at greater than normal risk of material impairment from exposure to benzene;

(C) The physician's recommended limitations upon the employee's exposure to benzene or upon the employee's use of protective clothing or equipment and respirators.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from benzene exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific records, findings and diagnoses that have no bearing on the employee's ability to work in a benzene-exposed workplace.

(8) *Medical removal plan.* (i) When a physician makes a referral to a hematologist/internist as required under paragraph (i)(5)(ii) of this section, the employee shall be removed from areas where exposures may exceed the action level until such time as the physician makes a determination under paragraph (i)(8)(ii) of this section.

(ii) Following the examination and evaluation by the hematologist/internist, a decision to remove an employee from areas where benzene exposure is above the action level or to allow the employee to return to areas where benzene exposure is above the action level shall be made by the physician in consultation with the hematologist/internist. This decision shall be communicated in writing to the employer and employee. In the case of removal, the physician shall state the required probable duration of removal from occupational exposure to benzene above the action level and the requirements for future medical examinations to review the decision.

(iii) For any employee who is removed pursuant to paragraph (i)(8)(ii) of this section, the employer shall provide a follow-up examination. The physician, in consultation with the hematologist/internist, shall make a decision within 6 months of the date the employee was removed as to whether the employee shall be returned to the usual job or whether the employee should be removed permanently.

(iv) Whenever an employee is temporarily removed from benzene exposure pursuant to paragraph (i)(8)(i) or (i)(8)(ii) of this section, the employer shall transfer the employee to a comparable job for which the employee is qualified (or can be trained for in a short period) and where benzene exposures are as low as possible, but in no event higher than the action level. The employer shall maintain the employee's current wage rate, seniority and other benefits. If there is no such job available, the employer shall provide medical removal protection benefits until such a job becomes available or for 6 months, whichever comes first.

(v) Whenever an employee is removed permanently from benzene exposure based on a physician's recommendation pursuant to paragraph (i)(8)(iii) of this section, the employee shall be given the opportunity to transfer to another position which is available or later becomes available for which the employee is qualified (or can be trained for in a short period) and where benzene exposures are as low as possible but in no event higher than the action level. The employer shall assure that such employee suffers no reduction in current wage rate, seniority or other benefits as a result of the transfer.

(9) *Medical removal protection benefits.* (i) The employer shall provide to an employee 6 months of medical removal protection benefits immediately following each occasion an employee is removed from exposure to benzene because of hematological findings pursuant to paragraphs (i)(8) (i) and (ii) of this section, unless the employee has been transferred to a comparable job where benzene exposures are below the action level.

(ii) For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the current wage rate, seniority and other benefits of an employee as though the employee had not been removed.

(iii) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the employee's removal.

(j) *Communication of benzene hazards to employees*—(1) *Signs and labels.* (i) The employer shall post signs at entrances to regulated areas. The signs shall bear the following legend:

DANGER
BENZENE
CANCER HAZARD
FLAMMABLE—NO SMOKING
AUTHORIZED PERSONNEL ONLY
RESPIRATOR REQUIRED

(ii) The employer shall ensure that lables or other appropriate forms of warning are provided for containers of benzene within the workplace. There is no requirement to label pipes. The labels shall comply with the requirements of 29 CFR 1915.1200(f) and in addition shall include the following legend:

DANGER
CONTAINS BENZENE
CANCER HAZARD

(2) *Material safety data sheets.* (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) which addresses benzene and complies with 29 CFR 1915.1200.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (a) of this section, and

(B) Comply with the requirement in OSHA's Hazard Communication Standard, 29 CFR 1915.1200, that they deliver to downstream employers an MSDS which addresses benzene.

(3) *Information and training.* (i) The employer shall provide employees with

information and training at the time of their initial assignment to a work area where benzene is present. If exposures are above the action level, employees shall be provided with information and training at least annually thereafter.

(ii) The training program shall be in accordance with the requirements of 29 CFR 1915.1200(h) (1) and (2), and shall include specific information on benzene for each category of information included in that section.

(iii) In addition to the information required under 29 CFR 1915.1200, the employer shall:

(A) Provide employees with an explanation of the contents of this section, including Appendices A and B, and indicate to them where the standard is available; and

(B) Describe the medical surveillance program required under paragraph (i) of this section, and explain the information contained in Appendix C.

(k) *Recordkeeping*—(1) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section, in accordance with 29 CFR 1915.1120.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) A description of the sampling and analytical methods used;

(C) A description of the type of respiratory protective devices worn, if any; and

(D) The name, social security number, job classification and exposure levels of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 30 years, in accordance with 29 CFR 1915.1120.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (i) of this section, in accordance with 29 CFR 1915.1120.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic and special examinations, including results of medical examinations and all tests, opinions and recommendations;

(C) Any employee medical complaints related to exposure to benzene;

(D) A copy of the information provided to the physician as required by paragraphs (i)(6) (ii) through (v) of this section; and

(E) A copy of the employee's medical and work history related to exposure to benzene or any other hematologic toxins.

(iii) The employer shall maintain this record for at least the duration of employment plus 30 years, in accordance with 29 CFR 1915.1120.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this paragraph shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a) through (e) and (g) through (i).

(iii) Employee medical records required by this paragraph shall be provided upon request for examination and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary in accordance with 29 CFR 1915.1120.

(4) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1915.1120(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least three (3) months prior to disposal, and transmit them to the Director if required by the Director within that period.

(l) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to benzene conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to benzene requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(m) *Dates*—(1) *Effective date.* The standard shall become effective December 10, 1987.

(2) *Start-up dates.* (i) The requirements of paragraph (a) through (m) of this section, except the engineering control requirements of paragraph (f)(1) of this section shall be completed within sixty (60) days after the effective date of the standard.

(ii) Engineering and work practice controls required by paragraph (f)(1) of this section shall be implemented no later than 2 years after the effective date of the standard.

(iii) Coke and coal chemical operations may comply with paragraph (m)(2)(ii) of this section or alternately include within the compliance program required by paragraph (f)(2) of this section, a requirement to phase in engineering controls as equipment is repaired and replaced. For coke and coal chemical operations choosing the latter alternative, compliance with the engineering controls requirements of paragraph (f)(1) of this section shall be achieved no later than 5 years after the effective date of this standard and substantial compliance with the engineering control requirements shall be achieved within 3 years of the effective date of this standard.

(n) *Appendices.* The information contained in Appendices A, B, C, and D is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations. The protocols on respiratory fit testing in Appendix E are mandatory.

(Approved by the Office of Management and Budget under control number 1218–0129)

Appendix A to § 1915.1028—Substance Safety Data Sheet, Benzene

I. Substance Identification

A. Substance: Benzene.

B. Permissible Exposure: Except as to the use of gasoline, motor fuels and other fuels subsequent to discharge from bulk terminals and other exemptions specified in § 1915.1028(a)(2):

1. Airborne: The maximum time-weighted average (TWA) exposure limit is 1 part of benzene vapor per million parts of air (1 ppm) for an 8-hour workday and the maximum short-term exposure limit (STEL) is 5 ppm for any 15-minute period.

2. Dermal: Eye contact shall be prevented and skin contact with liquid benzene shall be limited.

C. Appearance and odor: Benzene is a clear, colorless liquid with a pleasant, sweet odor. The odor of benzene does not provide adequate warning of its hazard.

II. Health Hazard Data

A. *Ways in which benzene affects your health.* Benzene can affect your health if you inhale it, or if it comes in contact with your skin or eyes. Benzene is also harmful if you happen to swallow it.

B. *Effects of overexposure.* 1. Short-term (acute) overexposure: If you are overexposed

to high concentrations of benzene, well above the levels where its odor is first recognizable, you may feel breathless, irritable, euphoric, or giddy; you may experience irritation in eyes, nose, and respiratory tract. You may develop a headache, feel dizzy, nauseated, or intoxicated. Severe exposures may lead to convulsions and loss of consciousness.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to benzene, even at relatively low concentrations, may result in various blood disorders, ranging from anemia to leukemia, an irreversible, fatal disease. Many blood disorders associated with benzene exposure may occur without symptoms.

III. Protective Clothing and Equipment

A. *Respirators.* Respirators are required for those operations in which engineering controls or work practice controls are not feasible to reduce exposure to the permissible level. However, where employers can document that benzene is present in the workplace less than 30 days a year, respirators may be used in lieu of engineering controls. If respirators are worn, they must have joint Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridge or canisters must be replaced before the end of their service life, or the end of the shift, whichever occurs first. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

B. *Protective Clothing.* You must wear appropriate protective clothing (such as boots, gloves, sleeves, aprons, etc.) over any parts of your body that could be exposed to liquid benzene.

C. *Eye and Face Protection.* You must wear splash-proof safety goggles if it is possible that benzene may get into your eyes. In addition, you must wear a face shield if your face could be splashed with benzene liquid.

IV. Emergency and First Aid Procedures

A. *Eye and face exposure.* If benzene is splashed in your eyes, wash it out immediately with large amounts of water. If irritation persists or vision appears to be affected see a doctor as soon as possible.

B. *Skin exposure.* If benzene is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of water and soap immediately. Wash contaminated clothing before you wear it again.

C. *Breathing.* If you or any other person breathes in large amounts of benzene, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the benzene concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. *Swallowing.* If benzene has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to benzene at a concentration at or above 0.5 ppm as an 8-hour time-weighted average, or have been exposed at or above 10 ppm in the past while employed by your current employer, your employer is required to provide a medical examination and history and laboratory tests within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to benzene (either by ingestion, inhalation, or skin/eye contact) under emergency conditions known or suspected to constitute toxic exposure to benzene, your employer is required to make special laboratory tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to benzene and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to benzene upon written request to your employer. Your medical examination records can be furnished to yourself, your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

Benzene liquid is highly flammable. It should be stored in tightly closed containers in a cool, well ventilated area. Benzene vapor may form explosive mixtures in air. All sources of ignition must be controlled. Use nonsparking tools when opening or closing benzene containers. Fire extinguishers, where provided, must be readily available. Know where they are located and how to operate them. Smoking is prohibited in areas where benzene is used or stored. Ask your supervisor where benzene is used in your area and for additional plant safety rules.

Appendix B to § 1915.1028—Substance Technical Guidlines, Benzene

I. Physical and Chemical Data

A. Substance identification.

1. *Synonyms:* Benzol, benzole, coal naphtha, cyclohexatriene, phene, phenyl hydride, pyrobenzol. (Benzin, petroleum benzin and Benzine do not contain benzene).

2. *Formula:* C_6H_6 (CAS Registry Number: 71–43–2)

B. Physical data.

1. Boiling Point (760 mm Hg): 80.1 °C (176 °F)

2. Specific Gravity (water=1): 0.879

3. Vapor Density (air=1): 2.7

4. Melting Point: 5.5 °C (42 °F)

5. Vapor Pressure at 20 °C (68 °F): 75 mm Hg

6. Solubility in Water: .06%

7. Evaporation Rate (ether=1): 2.8

8. Appearance and Odor: Clear, colorless liquid with a distinctive sweet odor.

II. Fire, Explosion, and Reactivity Hazard Data

A. Fire.

1. Flash Point (closed cup): −11 °C (12 °F)

2. Autoignition Temperature: 580 °C (1076 °F)

3. Flammable limits in Air, % by Volume: Lower: 1.3%, Upper: 7.5%

4. Extinguishing Media: Carbon dioxide, dry chemical, or foam.

5. Special Fire-Fighting procedures: Do not use solid stream of water, since stream will scatter and spread fire. Fine water spray can be used to keep fire-exposed containers cool.

6. Unusual fire and explosion hazards: Benzene is a flammable liquid. Its vapors can form explosive mixtures. All ignition sources must be controlled when benzene is used, handled, or stored. Where liquid or vapor may be released, such areas shall be considered as hazardous locations. Benzene vapors are heavier than air; thus the vapors may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which benzene is handled.

7. Benzene is classified as a 1 B flammable liquid for the purpose of conforming to the requirements of 29 CFR 1910.106. A concentration exceeding 3,250 ppm is considered a potential fire explosion hazard. Locations where benzene may be present in quantities sufficient to produce explosive or ignitable mixtures are considered Class I Group D for the purposes of conforming to the requirements of 29 CFR 1910.309.

B. Reactivity.

1. Conditions contributing to instability: Heat.

2. Incompatibility: Heat and oxidizing materials.

3. Hazardous decomposition products: Toxic gases and vapors (such as carbon monoxide).

III. Spill and Leak Procedures

A. Steps to be taken if the material is released or spilled. As much benzene as possible should be absorbed with suitable materials, such as dry sand or earth. That remaining must be flushed with large amounts of water. Do not flush benzene into a confined space, such as a sewer, because of explosion danger. Remove all ignition sources. Ventilate enclosed places.

B. Waste disposal method. Disposal methods must conform to other jurisdictional regulations. If allowed, benzene may be disposed of: (a) By absorbing it in dry sand or earth and disposing in a sanitary landfill; (b) if small quantities, by removing it to a safe location from buildings or other combustible sources, pouring it in dry sand or earth and cautiously igniting it; and (c) if large quantities, by atomizing it in a suitable combustion chamber.

IV. Miscellaneous Precautions

A. High exposure to benzene can occur when transferring the liquid from one container to another. Such operations should

be well ventilated and good work practices must be established to avoid spills.

B. Use non-sparking tools to open benzene containers which are effectively grounded and bonded prior to opening and pouring.

C. Employers must advise employees of all plant areas and operations where exposure to benzene could occur. Common operations in which high exposures to benzene may be encountered are: the primary production and utilization of benzene, and transfer of benzene.

Appendix C to § 1915.1028—Medical Surveillance Guidelines for Benzene

I. Route of Entry

Inhalation; skin absorption.

II. Toxicology

Benzene is primarily an inhalation hazard. Systemic absorption may cause depression of the hematopoietic system, pancytopenia, aplastic anemia, and leukemia. Inhalation of high concentrations can affect central nervous system function. Aspiration of small amounts of liquid benzene immediately causes pulmonary edema and hemorrhage of pulmonary tissue. There is some absorption through the skin. Absorption may be more rapid in the case of abraded skin, and benzene may be more readily absorbed if it is present in a mixture or as a contaminant in solvents which are readily absorbed. The defatting action of benzene may produce primary irritation due to repeated or prolonged contact with the skin. High concentration are irritating to the eyes and the mucuous membranes of the nose, and respiratory tract.

III. Signs and Symptoms

Direct skin contact with benzene may cause erythema. Repeated or prolonged contact may result in drying, scaling dermatitis, or development of secondary skin infections. In addition, there is benzene absorption through the skin. Local effects of benzene vapor or liquid on the eye are slight. Only at very high concentrations is there any smarting sensation in the eye. Inhalation of high concentrations of benzene may have an initial stimulatory effect on the central nervous system characterized by exhilaration, nervous excitation, and/or giddiness, followed by a period of depression, drowsiness, or fatigue. A sensation of tightness in the chest accompanied by breathlessness may occur and ultimately the victim may lose consciousness. Tremors, convulsions and death may follow from respiratory paralysis or circulatory collapse in a few minutes to several hours following severe exposures.

The detrimental effect on the blood-forming system of prolonged exposure to small quantities of benzene vapor is of extreme importance. The hematopoietic system is the chief target for benzene's toxic effects which are manifested by alterations in the levels of formed elements in the peripheral blood. These effects have occurred at concentrations of benzene which may not cause irritation of mucous membranes, or any unpleasant sensory effects. Early signs and symptoms of benzene morbidity are varied, often not readily noticed and non-specific. Subjective complaints of headache, dizziness, and loss of appetite may precede or follow clinical signs. Rapid pulse and low blood pressure, in addition to a physical appearance of anemia, may accompany a subjective complaint of shortness of breath and excessive tiredness. Bleeding from the nose, gums, or mucous membranes, and the development of purpuric spots (small bruises) may occur as the condition progresses. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, has been frequently reported among the first signs.

Bone marrow may appear normal, aplastic, or hyperplastic, and may not, in all situations, correlate with peripheral blood forming tissues. Because of variations in the susceptibility to benzene morbidity, there is no "typical" blood picture. The onset of effects of prolonged benzene exposure may be delayed for many months or years after the actual exposure has ceased and identification or correlation with benzene exposure must be sought out in the occupational history.

IV. Treatment of Acute Toxic Effects

Remove from exposure immediately. Make sure you are adequately protected and do not risk being overcome by fumes. Give oxygen or artificial resuscitation if indicated. Flush eyes, wash skin if contaminated and remove all contaminated clothing. Symptoms of intoxication may persist following severe exposures. Recovery from mild exposures is usually rapid and complete.

V. Surveillance and Preventive Considerations

A. General

The principal effects of benzene exposure which form the basis for this regulation are pathological changes in the hematopoietic system, reflected by changes in the peripheral blood and manifesting clinically as pancytopenia, aplastic anemia, and leukemia. Consequently, the medical surveillance program is designed to observe, on a regular basis, blood indices for early signs of these effects, and although early signs of leukemia are not usually available, emerging diagnostic technology and innovative regimes make consistent surveillance for leukemia, as well as other hematopoietic effects, essential.

Initial examinations are to be provided within 60 days of the effective date of this standard, or at the time of initial assignment, and periodic examinations annually thereafter. There are special provisions for medical tests in the event of hematologic abnormalities or for emergency situations.

The blood values which require referral to a hematologist or internist are noted in the standard in paragraph (i)(5). The standard specifies that blood abnormalities that persist must be referred "unless the physician has good reason to believe such referral is unnecessary" (paragraph (i)(5)). Examples of conditions that could make a referral unnecessary despite abnormal blood limits are iron or folate deficiency, menorrhagia, or blood loss due to some unrelated medical abnormality.

Symptoms and signs of benzene toxicity can be non-specific. Only a detailed history and appropriate investigative procedures will enable a physician to rule out or confirm conditions that place the employee at increased risk. To assist the examining physician with regard to which laboratory tests are necessary and when to refer an employee to the specialist, OSHA has established the following guidelines.

B. Hematology Guidelines

A minimum battery of tests is to be performed by strictly standardized methods.

1. Red cell, white cell, platelet counts, white blood cell differential, hematocrit and red cell indices must be performed by an accredited laboratory. The normal ranges for the red cell and white cell counts are influenced by altitude, race, and sex, and therefore should be determined by the accredited laboratory in the specific area where the tests are performed.

Either a decline from an absolute normal or an individual's base line to a subnormal value or a rise to a supra-normal value, are indicative of potential toxicity, particularly if all blood parameters decline. The normal total white blood count is approximately 7,200/mm^3 plus or minus 3,000. For cigarette smokers the white count may be higher and the upper range may be 2,000 cells higher than normal for the laboratory. In addition, infection, allergies and some drugs may raise the white cell count. The normal platelet count is approximately 250,000 with a range of 140,000 to 400,000. Counts outside this range should be regarded as possible evidence of benzene toxicity.

Certain abnormalities found through routine screening are of greater significance in the benzene-exposed worker and require prompt consultation with a specialist, namely:

a. Thrombocytopenia.

b. A trend of decreasing white cell, red cell, or platelet indices in an individual over time is more worrisome than an isolated abnormal finding at one test time. The importance of trend highlights the need to compare an individual's test results to baseline and/or previous periodic tests.

c. A constellation or pattern of abnormalities in the different blood indices is of more significance than a single abnormality. A low white count not associated with any abnormalities in other cell indices may be a normal statistical variation, whereas if the low white count is accompanied by decreases in the platelet and/or red cell indices, such a pattern is more likely to be associated with benzene toxicity and merits thorough investigation.

Anemia, leukopenia, macrocytosis or an abnormal differential white blood cell count should alert the physician to further investigate and/or refer the patient if repeat tests confirm the abnormalities. If routine screening detects an abnormality, follow-up tests which may be helpful in establishing the etiology of the abnormality are the peripheral blood smear and the reticulocyte count.

The extreme range of normal for reticulocytes is 0.4 to 2.5 percent of the red cells, the usual range being 0.5 to 1.2 percent of the red cells, but the typical value is in the range of 0.8 to 1.0 percent. A decline in reticulocytes to levels of less than 0.4 percent

is to be regarded as possible evidence (unless another specific cause is found) of benzene toxicity requiring accelerated surveillance. An increase in reticulocyte levels to about 2.5 percent may also be consistent with (but is not as characteristic of) benzene toxicity.

2. An important diagnostic test is a careful examination of the peripheral blood smear. As with reticulocyte count the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may, under certain limited conditions, be made from a blood sample anticoagulated with EDTA (but never with oxalate or heparin). When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer ® type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to 12 hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature.

3. The minimum mandatory observations to be made from the smear are:

a. The differential white blood cell count.

b. Description of abnormalities in the appearance of red cells.

c. Description of any abnormalities in the platelets.

d. A careful search must be made throughout of every blood smear for immature white cells such as band forms (in more than normal proportion, i.e., over 10 percent of the total differential count), any number of metamyelocytes, myelocytes or myeloblasts. Any nucleate or multinucleated red blood cells should be reported. Large "giant" platelets or fragments of megakaryocytes must be recognized.

An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention, for it may represent a change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes, in the absence of another probable cause, is to be considered a possible indication of benzene-induced toxicity.

An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but also may be suspicious of toxicity if the rises above 6.0 percent of the total white count.

The normal range of monocytes is from 2.0 to 8.0 percent of the total white count with an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persistent monocytosis. The findings of a monocyte count which persists at more than 10 to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess of 800/mm^3 should be regarded as a possible sign of benzene-induced toxicity.

A less frequent but more serious indication of benzene toxicity is the finding in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segements—less often one or three round segments—rather than three normally elongated segments. When this anomaly is not hereditary, it is often but not invariably predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop acute myelogenous leukemia show the acquired Pelger-Huet anomaly. Other tests that can be administered to investigate blood abnormalities are discussed below; however, such procedures should be undertaken by the hematologist.

An uncommon sign, which cannot be detected from the smear, but can be elicited by a "sucrose water test" of peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH), which may first occur insidiously during a period of established aplastic anemia, and may be followed within one to a few years by the appearance of rapidly fatal acute myelogenous leukemia. Clinical detection of PNH, which occurs in only one or two percent of those destined to have acute myelogenous leukemia, may be difficult; if the "sucrose water test" is positive, the somewhat more definitive Ham test, also known as the acid-serum hemolysis test, may provide confirmation.

e. Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene may have progressed through a preliminary phase of hematologic abnormality. In some instances pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin, but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years. Depression of a single blood cell type or platelets may represent a harbinger of aplasia or leukemia. The finding of two or more cytopenias, or pancytopenia in a benzene-exposed individual, must be regarded as highly suspicious of more advanced although still reversible, toxicity. "Pancytopenia" coupled with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.), with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.), or unexplained elevations of white blood cells must be regarded as evidence of benzene overexposure unless proved otherwise. Many severely aplastic patients manifested the ominous finding of 5–10 percent myeloblasts in the marrow, occasional myeloblasts and myelocytes in the blood and 20–30% monocytes. It is evident that isolated cytopenias, pancytopenias, and even aplastic anemias induced by benzene may be reversible and complete recovery has been reported on cessation of exposure. However, since any of these abnormalities is serious, the employee must immediately be removed from any possible exposure to benzene vapor. Certain tests may substantiate the employee's prospects for progression or regression. One such test would be an examination of the bone marrow, but the decision to perform a bone marrow aspiration or needle biopsy is made by the hematologist.

The findings of basophilic stippling in circulating red blood cells (usually found in 1 to 5% of red cells following marrow injury), and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken seriously, as they have been noted in recent years to be premonitory signs of subsequent leukemia.

Recently peroxidase-staining of circulating or marrow neutrophil granulocytes, employing benzidine dihydrochloride, have revealed the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes, and this has been reported as an early sign of leukemia. However, relatively few patients have been studied to date. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase has also been reported as suggestive of early acute leukemia. Exposure to benzene may cause an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus, serial measurements of serum iron levels may provide a means of determining whether or not there is a trend representing sustained suppression of erythropoiesis.

Measurement of serum iron, determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed in most pathology laboratories. Peroxidase and alkaline phosphatase staining are usually undertaken when the index of suspecion for leukemia is high.

Appendix D to § 1915.1028—Sampling and Analytical Methods for Benzene Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to benzene are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same change of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee). Sampling and analysis must be performed with procedures meeting the requirements of the standard.

There are a number of methods available for monitoring employee exposures to benzene. The sampling and analysis may be performed by collection of the benzene vaptor or charcoal absorption tubes, with subsequent chemical analysis by gas chromatography. Sampling and analysis may also be performed by portable direct reading instruments, real-time continuous monitoring systems, passive dosimeters or other suitable methods. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for

concentrations of benzene greater than or equal to 0.5 ppm.

The OSHA Laboratory modified NIOSH Method S311 and evaluated it at a benzene air concentration of 1 ppm. A procedure for determining the benzene concentration in bulk material samples was also evaluated. This work, reported in OSHA Laboratory Method No. 12, includes the following two analytical procedures:

I. OSHA Method 12 for Air Samples

Analyte: Benzene
Matrix: Air
Procedure: Adsorption on charcoal, desorption with carbon disulfide, analysis by GC.
Detection limit: 0.04 ppm
Recommended air volume and sampling rate: 10L to 0.2 L/min.

1. Principle of the Method.

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2. The charcoal in the tube is transferred to a small, stoppered vial, and the anlyte is desorbed with carbon disulfide.

1.3. An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained from standards.

2. Advantages and disadvantages of the method.

2.1 The sampling device is small, portable, and involved no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The samples are analyzed by means of a quick, instrumental method.

2.2 The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

3. Apparatus.

3.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate.

3.2. Charcoal tubes: Glass with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600° C prior to packing. The adsorbing section contains 100 mg of charcoal, the back-up section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of silanized glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of 1 liter per minute.

3.3. Gas chromatograph equipped with a flame ionization detector.

3.4. Column (10-ft × ⅛-in stainless steel) packed with 80/100 Supelcoport coated with 20 percent SP 2100, 0.1 percent CW 1500.

3.5. An electronic integrator or some other suitable method for measuring peak area.

3.6. Two-milliliter sample vials with Teflon-lined caps.

3.7. Microliter syringes: 10-microliter (10-µL syringe, and other convenient sizes for making standards, 1-µL syringe for sample injections.

3.8. Pipets: 1.0 mL delivery pipets

3.9. Volumetric flasks: convenient sizes for making standard solutions.

4. Reagents.

4.1. Chromatographic quality carbon disulfide (CS_2). Most commercially available carbon disulfide contains a trace of benzene which must be removed. It can be removed with the following procedure:

Heat under reflux for 2 to 3 hours, 500 mL of carbon disulfide, 10 mL concentrated sulfuric acid, and 5 drops of concentrated nitric acid. The benzene is converted to nitrobenzene. The carbon disulfide layer is removed, dried with anhydrous sodium sulfate, and distilled. The recovered carbon disulfide should be benzene free. (It has recently been determined that benzene can also be removed by passing the carbon disulfide through 13x molecular sieve).

4.2. Benzene, reagent grade.

4.3. p-Cymene, reagent grade, (internal standard).

4.4. Desorbing reagent. The desorbing reagent is prepared by adding 0.05 mL of p-cymene per milliliter of carbon disulfide. (The internal standard offers a convenient means correcting analytical response for slight inconsistencies in the size of sample injections. If the external standard technique is preferred, the internal standard can be eliminated).

4.5. Purified GC grade helium, hydrogen and air.

5. Procedure.

5.1. Cleaning of equipment. All glassware used for the laboratory analysis should be properly cleaned and free of organics which could interfere in the analysis.

5.2. Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.

5.3. Collection and shipping of samples.

5.3.1. Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

5.3.2. The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.

5.3.3. The charcoal tube should be placed in a vertical position during sampling to minimize channeling through the charcoal.

5.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

5.3.5. A sample size of 10 liters is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The flow rate should be known with an accuracy of at least ±5 percent.

5.3.6. The charcoal tubes should be capped with the supplied plastic caps immediately after sampling.

5.3.7. Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.8. Take necessary shipping and packing precautions to minimize breakage of samples.

5.4. Analysis of samples.

5.4.1. Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml vial. The separating section of foam is removed and discarded; the second section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2. Desorption of samples. Prior to analysis, 1.0 mL of desorbing solution is pipetted into each sample container. The desorbing solution consists of 0.05 µL internal standard per mL of carbon disulfide. The sample vials are capped as soon as the solvent is added. Desorption should be done for 30 minutes with occasional shaking.

5.4.3. GC conditions. Typical operating conditions for the gas chromatograph are:

1.30 mL/min (60 psig) helium carrier gas flow.

2.30 mL/min (40 psig) hydrogen gas flow to detector.

3.240 mL/min (40 psig) air flow to detector.

4.150 °C injector temperature.

5.250 °C detector temperature.

6.100 °C column temperature.

5.4.4. Injection size. 1 µL.

5.4.5. Measurement of area. The peak areas are measured by an electronic integrator or some other suitable form of area measurement.

5.4.6. An internal standard procedure is used. The integrator is calibrated to report results in ppm for a 10 liter air sample after correction for desorption efficiency.

5.5. Determination of desorption efficiency.

5.5.1. Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and from one lot of chemical to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2. Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X and (X represents target concentration) based on a 10 L air sample are injected into several tubes at each level. Dilutions of benzene with carbon disulfide are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration they are analyzed following the same procedure as the samples. Desorption efficiency is determined by dividing the amount of benzene found by amount spiked on the tube.

6. Calibration and standards. A series of standards varying in concentration over the range of interest is prepared and analyzed under the same GC conditions that will be used on the samples. A calibration curve is prepared by plotting concentration (µg/mL) versus peak area.

7. Calculations. Benzene air concentration can be calculated from the following equation:

$mg/m^3=(A)(B)/(C)(D)$

Where: A=µg/mL benzene, obtained from the calibration curve
B=desorption volume (1 mL)

C=Liters of air sampled
D=desorption efficiency

The concentration in mg/m³ can be converted to ppm (at 25° and 760 mm) with following equation:

ppm=(mg/m³)(24.46)/(78.11)
Where: 24.46=molar volume of an ideal gas 25 °C and 760 mm
78.11=molecular weight of benzene

8. Backup Data.

8.1 Detection limit—Air Samples.

The detection limit for the analytical procedure is 1.28 ng with a coefficient of variation of 0.023 at this level. This would be equivalent to an air concentration of 0.04 ppm for a 10 L air sample. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit data were obtained by making 1 µL injections of a 1.283 µg/mL standard.

Injection	Area Count	
1	655.4	
2	617.5D	
3	662.0	$\bar{X}$=640.2
4	641.1	SD=14.9
5	636.4	CV=0.023
6	629.2	

8.2. Pooled coefficient of variation—Air Samples. The pooled coefficient of variation for the analytical procedure was determined by 1 µL replicate injections of analytical standards. The standards were 16.04, 32.08, and 64.16 µg/mL, which are equivalent to 0.5, 1.0, and 2.0 ppm for a 10 L air sample respectively.

Injection	Area Counts		
	0.5 ppm	1.0 ppm	2.0 ppm
1	3996.5	8130.2	16481
2	4059.4	8235.6	16493
3	4052.0	8307.9	16535
4	4027.2	8263.2	16609
5	4046.8	8291.1	16552
6	4137.9	8288.8	16618
$\bar{X}$=	4053.3	8254.0	16548.3
SD=	47.2	62.5	57.1
CV=	0.0116	0.0076	0.0034
$\bar{C}\bar{V}$=0.008			

8.3. Storage data—Air Samples

Samples were generated at 1.03 ppm benzene at 80% relative humidity, 22 °C, and 643 mm. All samples were taken for 50 minutes at 0.2 L/min. Six samples were analyzed immediately and the rest of the samples were divided into two groups by fifteen samples each. One group was stored at refrigerated temperature of −25 °C, and the other group was stored at ambient temperature (approximately 23 °C). These samples were analyzed over a period of fifteen days. The results are tabulated below.

PERCENT RECOVERY

Day analyzed	Refrigerated			Ambient		
0	97.4	98.7	98.9	97.4	98.7	98.9
0	97.1	100.6	100.9	97.1	100.6	100.9
2	95.8	96.4	95.4	95.4	96.6	96.9
5	93.9	93.7	92.4	92.4	94.3	94.1
9	93.6	95.5	94.6	95.2	95.6	96.6
13	94.3	95.3	93.7	91.0	95.0	94.6
15	96.8	95.8	94.2	92.9	96.3	95.9

8.4. Desorption data.

Samples were prepared by injecting liquid benzene onto the A section of charcoal tubes. Samples were prepared that would be equivalent to 0.5, 1.0, and 2.0 ppm for a 10 L air sample.

PERCENT RECOVERY

Sample	0.5 ppm	1.0 ppm	2.0 ppm
1	99.4	98.8	99.5
2	99.5	98.7	99.7
3	99.2	98.6	99.8
4	99.4	99.1	100.0
5	99.2	99.0	99.7
6	99.8	99.1	99.9
$\bar{X}$=	99.4	98.9	99.8
SD=	0.22	0.21	0.18
CV=	0.0022	0.0021	0.0018
$\bar{X}$=99.4			

8.5. Carbon disulfide.

Carbon disulfide from a number of sources was analyzed for benzene contamination. The results are given in the following table. The benzene contamiant can be removed with the procedures given in section 4.1.

Sample	µg Benzene/mL	ppm equivalent (for 10 L air sample)
Aldrich Lot 83017	4.20	0.13
Baker Lot 720364	1.01	0.03
Baker Lot 822351	1.01	0.03
Malinkrodt Lot WEMP	1.74	0.05
Malinkrodt Lot WDSJ	5.65	0.18
Malinkrodt Lot WHGA	2.90	0.09
Treated CS_2		

II. OSHA Laboratory Method No. 12 for Bulk Samples

Analyte: Benzene.

Matrix: Bulk Samples.

Procedure: Bulk Samples are analyzed directly by high performance liquid chromatography (HPLC).

Detection limits: 0.01% by volume.

1. Principle of the method.

1.1. An aliquot of the bulk sample to be analyzed is injected into a liquid chromatograph.

1.2. The peak area for benzene is determined and compared to areas obtained from standards.

2. Advantages and disadvantages of the method.

2.1. The analytical procedure is quick, sensitive, and reproducible.

2.2. Reanalysis of samples is possible.

2.3. Interferences can be circumvented by proper selection of HPLC parameters.

2.4. Samples must be free of any particulates that may clog the capillary tubing in the liquid chromatograph. This may require distilling the sample or clarifying with a clarification kit.

3. Apparatus.

3.1. Liquid chromatograph equipped with a UV detector.

3.2. HPLC Column that will separate benzene from other components in the bulk sample being analyzed. The column used for validation studies was a Waters uBondapack C18, 30 cm x 3.9 mm.

3.3. A clarification kit to remove any particulates in the bulk if necessary.

3.4. A micro-distillation apparatus to distill any samples if necessary.

3.5. An electronic integrator or some other suitable method of measuring peak areas.

3.6. Microliter syringes—10 µL syringe and other convenient sizes for making standards. 10 µL syringe for sample injections.

3.7. Volumetric flasks, 5 mL and other convenient sizes for preparing standards and making dilutions.

4. Reagents.

4.1. Benzene, reagent grade.

4.2. HPLC grade water, methyl alcohol, and isopropyl alcohol.

5. Collection and shipment of samples.

5.1. Samples should be transported in glass containers with Teflon-lined caps.

5.2. Samples should not be put in the same container used for air samples.

6. Analysis of samples.

6.1. Sample preparation.

If necessary, the samples are distilled or clarified. Samples are analyzed undiluted. If the benzene concentration is out of the working range, suitable dilutions are made with isopropyl alcohol.

6.2. HPLC conditions.

The typical operating conditions for the high performance liquid chromatograph are:

1. Mobile phase—Methyl alcohol/water, 50/50

1. Analytical wavelength—254 nm

3. Injection size—10 µL

6.3. Measurement of peak area and calibration.

Peak areas are measured by an integrator or other suitable means. The integrator is calibrated to report results % in benzene by volume.

7. Calculations.

Since the integrator is programmed to report results in % benzene by volume in an undiluted sample, the following equation is used:

% Benzene by Volume=A x B

Where: A=% by volume on report

B=Dilution Factor

(B=1 for undiluted sample)

8. Backup Data.

8.1. Detection limit—Bulk Samples.

The detection limit for the analytical procedure for bulk samples is 0.88 µg, with a coefficient of variation of 0.019 at this level. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit data were obtained by making 10 µL injections of a 0.10% by volume standard.

Injection	Area Count	
1	45386	
2	44214	
3	43822	X̄=44040.1
4	44062	SD=852.5
5	44000	CV=0.019
6	42724	

8.2. Pooled coefficient of variation—Bulk Samples.

The pooled coefficient of variation for analytical procedure was determined by 50 µL replicate injections of analytical standards. The standards were 0.01, 0.02, 0.04, 0.10, 1.0, and 2.0% benzene by volume.

AREA COUNT (PERCENT)

Injection No.	0.01	0.02	0.04	0.10	1.0	2.0
1	45386	84737	166097	448497	4395380	9339150
2	44241	84300	170832	441299	4590800	9484300
3	43822	83835	164160	443719	4593200	9557580
4	44062	84381	164445	444842	4642350	9677060
5	44000	83012	168398	442554	4646430	9766240
6	42724	81957	173002	443975	4646260	.....
X̄ =	44040.1	83703.6	167872	444149	4585767	9564986
SD =	852.5	1042.2	3589.8	2459.1	96538.3	166233
CV =	0.0194	0.0125	0.0213	0.0055	0.0211	0.0174
C̄V =	0.017					

Appendix E to § 1915.1028—Qualitative and Quantitative Fit Testing Procedures

I. Fit Test Protocols

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT).

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece; and units from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, at it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to ajust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) Position of the mask on the nose.

(b) Room for eye protection.

(c) Room to talk.

(d) Position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed:

(b) Adequate strap tension, not overly tightened;

(c) Fit across nose bridge;

(d) Respirator of proper size to span distance from nose to chin;

(e) Tendency of respirator to slip;

(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another

VOL 58 ISS 125 JL 1 1993 UMI

facepiece shall be selected and retested if the test subject fails the fit check tests.

(a) *Positive pressure test.* Close off the exhalation value and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation value cover before closing off the exhalation value and then carefully replacing it after the test.

(b) *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall certify that a successful fit test has been administered to the employee. The certification shall include the following information:

(a) Name of employee;

(b) Type, brand and size of respirator; and

(c) Date of test.

Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test, shall be retained with the certification. The certification shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(b) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) Turning head side to side. Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) Grimace. The test subject shall grimace by smiling or frowning.

(g) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) Normal breathing. Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols.

1. *General.*

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Isoamyl Acetate Protocol.*

(a) Odor threshold screening.

The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) Isoamyl acetate fit test.

(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches (15.24 cm) above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch (15.24 × 12.7 cm) piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hand the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before existing the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. *Saccharin Solution Aerosol Protocol.*

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste threshold screening.

The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches (30.48 cm) in diameter by 14 inches (35.56 cm) tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch (1.905 cm) hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Saccharin solution aerosol fit test procedure.

(1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. *Irritant Fume Protocol.*

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches (30.48 cm) from the facepiece and gradually move to within one inch (2.54 cm), moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantiative Fit Test (QNFT) Protocol.

1. *General.*

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Definitions.*

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise

is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ration of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.*

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitatives fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distrubing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. *Procedural Requirements.*

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following mathods:

(i) Average peak concentration.

(ii) Maximum peak concentration.

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

§ 1915.1030 Bloodborne pathogens.

(a) *Scope and Application.* This section applies to all occupational exposure to blood or other potentially infectious materials as defined by paragraph (b) of this section.

(b) *Definitions.* For purposes of this section, the following shall apply:

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

Blood means human blood, human blood components, and products made from human blood.

Bloodborne Pathogens means pathogenic microorgenisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Clinical Laboratory means a workplace where diagnostic or other screening procedures are performed on blood or other potentially infectious materials.

Contaminated means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Contaminated Laundry means laundry which has been soiled with blood or other potentially infectious materials or may contain sharps.

Contaminated Sharps means any contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.

Decontamination means the use of physical or chemical means to remove, inactivate, or destroy bloodborne

pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative.

Engineering Controls means controls (e.g., sharps disposal containers, self-sheathing needles) that isolate or remove the bloodborne pathogens hazard from the workplace.

Exposure Incident means a specific eye, mouth, other mucous membrane, . non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.

Handwashing Facilities means a facility providing an adequate supply of running potable water, soap and single use towels or hot air drying machines.

Licensed Healthcare Professional is a person whose legally permitted scope of practice allows him or her to independently perform the activities required by paragraph (f) Hepatitis B Vaccination and Post-exposure Evaluation and Follow-up.

HBV means hepatitis B virus.

HIV means human immunodeficiency virus.

Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

Other Potentially Infectious Materials means

(1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

Parenteral means piercing mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts, and abrasions.

Personal Protective Equipment is specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.

Production Facility means a facility engaged in industrial-scale, large-volume or high concentration production of HIV or HBV.

Regulated Waste means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps; and pathological and microbiological wastes containing blood or other potentially infectious materials.

Research Laboratory means a laboratory producing or using research-laboratory-scale amounts of HIV or HBV. Research laboratories may produce high concentrations of HIV or HBV but not in the volume found in production facilities.

Source Individual means any individual, living or dead, whose blood or other potentially infectious materials may be a source of occupational exposure to the employee. Examples include, but are not limited to, hospital and clinic patients; clients in institutions for the developmentally disabled; trauma victims; clients of drug and alcohol treatment facilities; residents of hospices and nursing homes; human remains; and individuals who donate or sell blood or blood components.

Sterilize means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Universal Precautions is an approach to infection control. According to the concept of Universal Precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.

Work Practice Controls means controls that reduce the likelihood of exposure by altering the manner in which a task is performed (e.g., prohibiting recapping of needles by a two-handed technique).

(c) *Exposure control*—(1) *Exposure Control Plan.* (i) Each employer having an employee(s) with occupational exposure as defined by paragraph (b) of this section shall establish a written Exposure Control Plan designed to eliminate or minimize employee exposure.

(ii) The Exposure Control Plan shall contain at least the following elements:

(A) The exposure determination required by paragraph(c)(2),

(B) The schedule and method of implementation for paragraphs (d) Methods of Compliance, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, (g) Communication of Hazards to Employees, and (h) Recordkeeping, of this standard, and

(C) The procedure for the evaluation of circumstances surrounding exposure incidents as required by paragraph (f)(3)(i) of this standard.

(iii) Each employer shall ensure that a copy of the Exposure Control Plan is accessible to employees in accordance with 29 CFR 1915.1120(e).

(iv) The Exposure Control Plan shall be reviewed and updated at least annually and whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or revised employee positions with occupational exposure.

(v) The Exposure Control Plan shall be made available to the Assistant Secretary and the Director upon request for examination and copying.

(2) *Exposure determination.* (i) Each employer who has an employee(s) with occupational exposure as defined by paragraph (b) of this section shall prepare an exposure determination. This exposure determination shall contain the following:

(A) A list of all job classifications in which all employees in those job classifications have occupational exposure;

(B) A list of job classifications in which some employees have occupational exposure, and

(C) A list of all tasks and procedures or groups of closely related task and procedures in which occupational exposure occurs and that are performed by employees in job classifications listed in accordance with the provisions of paragraph (c)(2)(i)(B) of this standard.

(ii) This exposure determination shall be made without regard to the use of personal protective equipment.

(d) *Methods of compliance*—(1) *General*—Universal precautions shall be observed to prevent contact with blood or other potentially infectious materials. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

VOL 58 ISS 125 JL 1 1993 UMI

(2) *Engineering and work practice controls.* (i) Engineering and work practice controls shall be used to eliminate or minimize employee exposure. Where occupational exposure remains after institution of these controls, personal protective equipment shall also be used.

(ii) Engineering controls shall be examined and maintained or replaced on a regular schedule to ensure their effectiveness.

(iii) Employers shall provide handwashing facilities which are readily accessible to employees.

(iv) When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, hands shall be washed with soap and running water as soon as feasible.

(v) Employers shall ensure that employees wash their hands immediately or as soon as feasible after removal of gloves or other personal protective equipment.

(vi) Employers shall ensure that employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or other potentially infectious materials.

(vii) Contaminated needles and other contaminated sharps shall not be bent, recapped, or removed except as noted in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) below. Shearing or breaking of contaminated needles is prohibited.

(A) Contaminated needles and other contaminated sharps shall not be bent, recapped or removed unless the employer can demonstrate that no alternative is feasible or that such action is required by a specific medical or dental procedure.

(B) Such bending, recapping or needle removal must be accomplished through the use of a mechanical device or a one-handed technique.

(viii) Immediately or as soon as possible after use, contaminated reusable sharps shall be placed in appropriate containers until properly reprocessed. These containers shall be:

(A) Puncture resistant;

(B) Labeled or color-coded in accordance with this standard;

(C) Leakproof on the sides and bottom; and

(D) In accordance with the requirements set forth in paragraph (d)(4)(ii)(E) for reusable sharps.

(ix) Eating, drinking, smoking, applying cosmetics or lip balm, and handling contact lenses are prohibited in work areas where there is a reasonable likelihood of occupational exposure.

(x) Food and drink shall not be kept in refrigerators, freezers, shelves, cabinets or on countertops or benchtops where blood or other potentially infectious materials are present.

(xi) All procedures involving blood or other potentially infectious materials shall be performed in such a manner as to minimize splashing, spraying, spattering, and generation of droplets of these substances.

(xii) Mouth pipetting/suctioning of blood or other potentially infectious materials is prohibited.

(xiii) Specimens of blood or other potentially infectious materials shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport, or shipping.

(A) The container for storage, transport, or shipping shall be labeled or color-coded according to paragraph (g)(1)(i) and closed prior to being stored, transported, or shipped. When a facility utilizes Universal Precautions in the handling of all specimens, the labeling/color-coding of specimens is not necessary provided containers are recognizable as containing specimens. This exemption only applies while such specimens/containers remain within the facility. Labeling or color-coding in accordance with paragraph (g)(1)(i) is required when such specimens/containers leave the facility.

(B) If outside contamination of the primary container occurs, the primary container shall be placed within a second container which prevents leakage during handling, processing, storage, transport, or shipping and is labeled or color-coded according to the requirements of this standard.

(C) If the specimen could puncture the primary container, the primary container shall be placed within a secondary container which is puncture-resistant in addition to the above characteristics.

(xiv) Equipment which may become contaminated with blood or other potentially infectious materials shall be examined prior to servicing or shipping and shall be decontaminated as necessary, unless the employer can demonstrate that decontamination of such equipment or portions of such equipment is not feasible.

(A) A readily observable label in accordance with paragraph (g)(1)(i)(H) shall be attached to the equipment stating which portions remain contaminated.

(B) The employer shall ensure that this information is conveyed to all affected employees, the servicing representative, and/or the manufacturer, as appropriate, prior to handling, servicing, or shipping so that appropriate precautions will be taken.

(3) *Personal protective equipment*—(i) *Provision.* When there is occupational exposure, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time which the protective equipment will be used.

(ii) *Use.* The employer shall ensure that the employee uses appropriate personal protective equipment unless the employer shows that the employee temporarily and briefly declined to use personal protective equipment when, under rare and extraordinary circumstances, it was the employee's professional judgment that in the specific instance its use would have prevented the delivery of health care or public safety services or would have posed an increased hazard to the safety of the worker or co-worker. When the employee makes this judgement, the circumstances shall be investigated and documented in order to determine whether changes can be instituted to prevent such occurences in the future.

(iii) *Accessibility.* The employer shall ensure that appropriate personal protective equipment in the appropriate sizes is readily accessible at the worksite or is issued to employees. Hypoallergenic gloves, glove liners, powderless gloves, or other similar alternatives shall be readily accessible to those employees who are allergic to the gloves normally provided.

(iv) *Cleaning, laundering, and disposal.* The employer shall clean, launder, and dispose of personal protective equipment required by paragraphs (d) and (e) of this standard, at no cost to the employee.

(v) *Repair and replacement.* The employer shall repair or replace personal protective equipment as needed to maintain its effectiveness, at no cost to the employee.

(vi) If a garment(s) is penetrated by blood or other potentially infectious materials, the garment(s) shall be removed immediately or as soon as feasible.

(vii) All personal protective equipment shall be removed prior to leaving the work area.

(viii) When personal protective equipment is removed it shall be placed in an appropriately designated area or container for storage, washing, decontamination or disposal.

(ix) *Gloves.* Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes, and non-intact skin; when performing vascular access procedures except as specified in paragraph (d)(3)(ix)(D); and when handling or touching contaminated items or surfaces.

(A) Disposable (single use) gloves such as surgical or examination gloves, shall be replaced as soon as practical when contaminated or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised.

(B) Disposable (single use) gloves shall not be washed or decontaminated for re-use.

(C) Utility gloves may be decontaminated for re-use if the integrity of the glove is not compromised. However, they must be discarded if they are cracked, peeling, torn, punctured, or exhibit other signs of deterioration or when their ability to function as a barrier is compromised.

(D) If an employer in a volunteer blood donation center judges that routine gloving for all phlebotomies is not necessary then the employer shall:

(*1*) Periodically reevaluate this policy;

(*2*) Make gloves available to all employees who wish to use them for phlebotomy;

(*3*) Not discourage the use of gloves for phlebotomy; and

(*4*) Require that gloves be used for phlebotomy in the following circumstances:

(*i*) When the employee has cuts, scratches, or other breaks in his or her skin;

(*ii*) When the employee judges that hand contamination with blood may occur, for example, when performing phlebotomy on an uncooperative source individual; and

(*iii*) When the employee is receiving training in phlebotomy.

(x) *Masks, eye protection, and face shields.* Masks in combination with eye protection devices, such as goggles or glasses with solid side shields, or chin-length face shields, shall be worn whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials may be generated and eye, nose, or mouth contamination can be reasonably anticipated.

(xi) *Gowns, aprons, and other protective body clothing.* Appropriate protective clothing such as, but not limited to, gowns, aprons, lab coats, clinic jackets, or similar outer garments shall be worn in occupational exposure situations. The type and characteristics will depend upon the task and degree of exposure anticipated.

(xii) Surgical caps or hoods and/or shoe covers or boots shall be worn in instances when gross contamination can reasonably be anticipated (e.g., autopsies, orthopaedic surgery).

(*4*) *Housekeeping*—(i) *General.* Employers shall ensure that the worksite is maintained in a clean and sanitary condition. The employer shall determine and implement an appropriate written schedule for cleaning and method of decontamination based upon the location within the facility, type of surface to be cleaned, type of soil present, and tasks or procedures being performed in the area.

(ii) All equipment and environmental and working surfaces shall be cleaned and decontaminated after contact with blood or other potentially infectious materials.

(A) Contaminated work surfaces shall be decontaminated with an appropriate disinfectant after completion of procedures; immediately or as soon as feasible when surfaces are overtly contaminated or after any spill of blood or other potentially infectious materials; and at the end of the work shift if the surface may have become contaminated since the last cleaning.

(B) Protective coverings, such as plastic wrap, aluminum foil, or imperviously-backed absorbent paper used to cover equipment and environmental surfaces, shall be removed and replaced as soon as feasible when they become overtly contaminated or at the end of the workshift if they may have become contaminated during the shift.

(C) All bins, pails, cans, and similar receptacles intended for reuse which have a reasonable likelihood for becoming contaminated with blood or other potentially infectious materials shall be inspected and decontaminated on a regularly scheduled basis and cleaned and decontaminated immediately or as soon as feasible upon visible contamination.

(D) Broken glassware which may be contaminated shall not be picked up directly with the hands. It shall be cleaned up using mechanical means, such as a brush and dust pan, tongs, or forceps.

(E) Reusable sharps that are contaminated with blood or other potentially infectious materials shall not be stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.

(iii) *Regulated waste*—(A) *Contaminated sharps discarding and containment.* (*1*) Contaminated sharps shall be discarded immediately or as soon as feasible in containers that are:

(*i*) Closable;

(*ii*) Puncture resistant;

(*iii*) Leakproof on sides and bottom; and

(*iv*) Labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard.

(*2*) During use, containers for contaminated sharps shall be:

(*i*) Easily accessible to personnel and located as close as is feasible to the immediate area where sharps are used or can be reasonably anticipated to be found (e.g., laundries);

(*ii*) Maintained upright throughout use; and

(*iii*) Replaced routinely and not be allowed to overfill.

(*3*) When moving containers of contaminated sharps from the area of use, the containers shall be:

(*i*) Closed immediately prior to removal or replacement to prevent spillage or protrusion of contents during handling, storage, transport, or shipping;

(*ii*) Placed in a secondary container if leakage is possible. The second container shall be:

(*A*) Closable;

(*B*) Constructed to contain all contents and prevent leakage during handling, storage, transport, or shipping; and

(*C*) Labeled or color-coded according to paragraph (g)(1)(i) of this standard.

(*4*) Reusable containers shall not be opened, emptied, or cleaned manually or in any other manner which would expose employees to the risk of percutaneous injury.

(B) *Other regulated waste containment.* (*1*) Regulated waste shall be placed in containers which are:

(*i*) Closable;

(*ii*) Constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping;

(*iii*) Labeled or color-coded in accordance with paragraph (g)(1)(i) this standard; and

(*iv*) Closed prior to removal to prevent spillage or protrusion of contents during handling, storage, transport, or shipping.

VOL
58
ISS
125
JL
1
1993
UMI

(*2*) If outside contamination of the regulated waste container occurs, it shall be placed in a second container. The second container shall be:

(*i*) Closable;

(*ii*) Constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping;

(*iii*) Labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard; and

(*iv*) Closed prior to removal to prevent spillage or protrusion of contents during handling, storage, transport, or shipping.

(C) Disposal of all regulated waste shall be in accordance with applicable regulations of the United States, States and Territories, and political subdivisions of States and Territories.

(iv) *Laundry.* (A) Contaminated laundry shall be handled as little as possible with a minimum of agitation.

(1) Contaminated laundry shall be bagged or containerized at the location where it was used and shall not be sorted or rinsed in the location of use.

(2) Contaminated laundry shall be placed and transported in bags or containers labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard. When a facility utilizes Universal Precautions in the handling of all soiled laundry, alternative labeling or color-coding is sufficient if it permits all employees to recognize the containers as requiring compliance with Universal Precautions.

(3) Whenever contaminated laundry is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the laundry shall be placed and transported in bags or containers which prevent soak-through and/or leakage of fluids to the exterior.

(B) The employer shall ensure that employees who have contact with contaminated laundry wear protective gloves and other appropriate personal protective equipment.

(C) When a facility ships contaminated laundry off-site to a second facility which does not utilize Universal Precautions in the handling of all laundry, the facility generating the contaminated laundry must place such laundry in bags or containers which are labeled or color-coded in accordance with paragraph (g)(1)(i).

(e) *HIV and HBV Research Laboratories and Production Facilities.*

(1) This paragraph applies to research laboratories and production facilities engaged in the culture, production, concentration, experimentation, and manipulation of HIV and HBV. It does not apply to clinical or diagnostic laboratories engaged solely in the analysis of blood, tissues, or organs. These requirements apply in addition to the other requirements of the standard.

(2) Research laboratories and production facilities shall meet the following criteria:

(i) *Standard microbiological practices.* All regulated waste shall either be incinerated or decontaminated by a method such as autoclaving known to effectively destroy bloodborne pathogens.

(ii) *Special practices.* (A) Laboratory doors shall be kept closed when work involving HIV or HBV is in progress.

(B) Contaminated materials that are to be decontaminated at a site away from the work area shall be placed in a durable, leakproof, labeled or color-coded container that is closed before being removed from the work area.

(C) Access to the work area shall be limited to authorized persons. Written policies and procedures shall be established whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements, and who comply with all entry and exit procedures shall be allowed to enter the work areas and animal rooms.

(D) When other potentially infectious materials or infected animals are present in the work area or containment module, a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors. The hazard warning sign shall comply with paragraph (g)(1)(ii) of this standard.

(E) All activities involving other potentially infectious materials shall be conducted in biological safety cabinets or other physical-containment devices within the containment module. No work with these other potentially infectious materials shall be conducted on the open bench.

(F) Laboratory coats, gowns, smocks, uniforms, or other appropriate protective clothing shall be used in the work area and animal rooms. Protective clothing shall not be worn outside of the work area and shall be decontaminated before being laundered.

(G) Special care shall be taken to avoid skin contact with other potentially infectious materials. Gloves shall be worn when handling infected animals and when making hand contact with other potentially infectious materials is unavoidable.

(H) Before disposal all waste from work areas and from animal rooms shall either be incinerated or decontaminated by a method such as autoclaving known to effectively destroy bloodborne pathogens.

(I) Vacuum lines shall be protected with liquid disinfectant traps and high-efficiency particulate air (HEPA) filters or filters of equivalent or superior efficiency and which are checked routinely and maintained or replaced as necessary.

(J) Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., the needle is integral to the syringe) shall be used for the injection or aspiration of other potentially infectious materials. Extreme caution shall be used when handling needles and syringes. A needle shall not be bent, sheared, replaced in the sheath or guard, or removed from the syringe following use. The needle and syringe shall be promptly placed in a puncture-resistant container and autoclaved or decontaminated before reuse or disposal.

(K) All spills shall be immediately contained and cleaned up by appropriate professional staff or others properly trained and equipped to work with potentially concentrated infectious materials.

(L) A spill or accident that results in an exposure incident shall be immediately reported to the laboratory director or other responsible person.

(M) A biosafety manual shall be prepared or adopted and periodically reviewed and updated at least annually or more often if necessary. Personnel shall be advised of potential hazards, shall be required to read instructions on practices and procedures, and shall be required to follow them.

(iii) *Containment equipment.* (A) Certified biological safety cabinets (Class I, II, or III) or other appropriate combinations of personal protection or physical containment devices, such as special protective clothing, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals, shall be used for all activities with other potentially infectious materials that pose a threat of exposure to droplets, splashes, spills, or aerosols.

(B) Biological safety cabinets shall be certified when installed, whenever they are moved and at least annually.

(3) HIV and HBV research laboratories shall meet the following criteria:

(i) Each laboratory shall contain a facility for hand washing and an eye wash facility which is readily available within the work area.

(ii) An autoclave for decontamination of regulated waste shall be available.

(4) HIV and HBV production facilities shall meet the following criteria:

(i) The work areas shall be separated from areas that are open to unrestricted traffic flow within the building. Passage through two sets of doors shall be the basic requirement for entry into the work area from access corridors or other contiguous areas. Physical separation of the high-containment work area from access corridors or other areas or activities may also be provided by a double-doored clothes-change room (showers may be included), airlock, or other access facility that requires passing through two sets of doors before entering the work area.

(ii) The surfaces of doors, walls, floors and ceilings in the work area shall be water resistant so that they can be easily cleaned. Penetrations in these surfaces shall be sealed or capable of being sealed to facilitate decontamination.

(iii) Each work area shall contain a sink for washing hands and a readily available eye wash facility. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door of the work area.

(iv) Access doors to the work area or containment module shall be self-closing.

(v) An autoclave for decontamination of regulated waste shall be available within or as near as possible to the work area.

(vi) A ducted exhaust-air ventilation system shall be provided. This system shall create directional airflow that draws air into the work area through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes. The proper direction of the airflow shall be verified (i.e., into the work area).

(5) *Training requirements.* Additional training requirements for employees in HIV and HBV research laboratories and HIV and HBV production facilities are specified in paragraph (g)(2)(ix).

(f) *Hepatitis B vaccination and post-exposure evaluation and follow-up—(1) General.* (i) The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident.

(ii) The employer shall ensure that all medical evaluations and procedures including the hepatitis B vaccine and vaccination series and post-exposure evaluation and follow-up, including prophylaxis, are:

(A) Made available at no cost to the employee;

(B) Made available to the employee at a reasonable time and place;

(C) Performed by or under the supervision of a licensed physician or by or under the supervision of another licensed healthcare professional; and

(D) Provided according to recommendations of the U.S. Public Health Service current at the time these evaluations and procedures take place, except as specified by this paragraph (f).

(iii) The employer shall ensure that all laboratory tests are conducted by an accredited laboratory at no cost to the employee.

(2) *Hepatitis B vaccination.* (i) Hepatitis B vaccination shall be made available after the employee has received the training required in paragraph (g)(2)(vii)(I) and within 10 working days of initial assignment to all employees who have occupational exposure unless the employee has previously received the complete hepatitis B vaccination series, antibody testing has revealed that the employee is immune, or the vaccine is contraindicated for medical reasons.

(ii) The employer shall not make participation in a prescreening program a prerequisite for receiving hepatitis B vaccination.

(iii) If the employee initially declines hepatitis B vaccination but at a later date while still covered under the standard decides to accept the vaccination, the employer shall make available hepatitis B vaccination at that time.

(iv) The employer shall assure that employees who decline to accept hepatitis B vaccination offered by the employer sign the statement in appendix A.

(v) If a routine booster dose(s) of hepatitis B vaccine is recommended by the U.S. Public Health Service at a future date, such booster dose(s) shall be made available in accordance with section (f)(1)(ii).

(3) *Post-exposure evaluation and follow-up.* Following a report of an exposure incident, the employer shall make immediately available to the exposed employee a confidential medical evaluation and follow-up, including at least the following elements:

(i) Documentation of the route(s) of exposure, and the circumstances under which the exposure incident occurred;

(ii) Identification and documentation of the source individual, unless the employer can establish that identification is infeasible or prohibited by state or local law;

(A) The source individual's blood shall be tested as soon as feasible and after consent is obtained in order to determine HBV and HIV infectivity. If consent is not obtained, the employer shall establish that legally required consent cannot be obtained. When the source individual's consent is not required by law, the source individual's blood, if available, shall be tested and the results documented.

(B) When the source individual is already known to be infected with HBV or HIV, testing for the source individual's known HBV or HIV status need not be repeated.

(C) Results of the source individual's testing shall be made available to the exposed employee, and the employee shall be informed of applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual.

(iii) Collection and testing of blood for HBV and HIV serological status;

(A) The exposed employee's blood shall be collected as soon as feasible and tested after consent is obtained.

(B) If the employee consents to baseline blood collection, but does not give consent at that time for HIV serologic testing, the sample shall be preserved for at least 90 days. If, within 90 days of the exposure incident, the employee elects to have the baseline sample tested, such testing shall be done as soon as feasible.

(iv) Post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service;

(v) Counseling; and

(vi) Evaluation of reported illnesses.

(4) *Information provided to the healthcare professional.* (i) The employer shall ensure that the healthcare professional responsible for the employee's Hepatitis B vaccination is provided a copy of this regulation.

(ii) The employer shall ensure that the healthcare professional evaluating an employee after an exposure incident is provided the following information:

(A) A copy of this regulation;

(B) A description of the exposed employee's duties as they relate to the exposure incident;

(C) Documentation of the route(s) of exposure and circumstances under which exposure occurred;

(D) Results of the source individual's blood testing, if available; and

(E) All medical records relevant to the appropriate treatment of the employee including vaccination status which are the employer's responsibility to maintain.

(5) *Healthcare professional's written opinion.* The employer shall obtain and provide the employee with a copy of the evaluating healthcare professional's written opinion within 15 days of the completion of the evaluation.

(i) The healthcare professional's written opinion for Hepatitis B

vaccination shall be limited to whether Hepatitis B vaccination is indicated for an employee, and if the employee has received such vaccination.

(ii) The healthcare professional's written opinion for post-exposure evaluation and follow-up shall be limited to the following information:

(A) That the employee has been informed of the results of the evaluation; and

(B) That the employee has been told about any medical conditions resulting from exposure to blood or other potentially infectious materials which require further evaluation or treatment.

(iii) All other findings or diagnoses shall remain confidential and shall not be included in the written report.

(6) *Medical recordkeeping.* Medical records required by this standard shall be maintained in accordance with paragraph (h)(1) of this section.

(g) *Communication of hazards to employees*— (1) *Labels and signs*—(i) *Labels.* (A) Warning labels shall be affixed to containers of regulated waste, refrigerators and freezers containing blood or other potentially infectious material; and other containers used to store, transport or ship blood or other potentially infectious materials, except as provided in paragraph (g)(1)(i)(E), (F) and (G).

(B) Labels required by this section shall include the following legend:

(C) These labels shall be fluorescent orange or orange-red or predominantly so, with lettering and symbols in a contrasting color.

(D) Labels shall be affixed as close as feasible to the container by string, wire, adhesive, or other method that prevents their loss or unintentional removal.

(E) Red bags or red containers may be substituted for labels.

(F) Containers of blood, blood components, or blood products that are labeled as to their contents and have been released for transfusion or other clinical use are exempted from the labeling requirements of paragraph (g).

(G) Individual containers of blood or other potentially infectious materials that are placed in a labeled container during storage, transport, shipment or disposal are exempted from the labeling requirement.

(H) Labels required for contaminated equipment shall be in accordance with this paragraph and shall also state which portions of the equipment remain contaminated.

(I) Regulated waste that has been decontaminated need not be labeled or color-coded.

(ii) *Signs.* (A) The employer shall post signs at the entrance to work areas specified in paragraph (e), HIV and HBV Research Laboratory and Production Facilities, which shall bear the following legend:

(Name of the Infectious Agent)
(Special requirements for entering the area)
(Name, telephone number of the laboratory director or other responsible person.)

(B) These signs shall be fluorescent orange-red or predominantly so, with lettering and symbols in a contrasting color.

(2) *Information and training.* (i) Employers shall ensure that all employees with occupational exposure participate in a training program which must be provided at no cost to the employee and during working hours.

(ii) Training shall be provided as follows:

(A) At the time of initial assignment to tasks where occupational exposure may take place;

(B) Within 90 days after the effective date of the standard; and

(C) At least annually thereafter.

(iii) For employees who have received training on bloodborne pathogens in the year preceding the effective date of the standard, only training with respect to the provisions of the standard which were not included need be provided.

(iv) Annual training for all employees shall be provided within one year of their previous training.

(v) Employers shall provide additional training when changes such as modification of tasks or procedures or institution of new tasks or procedures affect the employee's occupational exposure. The additional training may be limited to addressing the new exposures created.

(vi) Material appropriate in content and vocabulary to educational level, literacy, and language of employees shall be used.

(vii) The training program shall contain at a minimum the following elements:

(A) An accessible copy of the regulatory text of this standard and an explanation of its contents;

(B) A general explanation of the epidemiology and symptoms of bloodborne diseases;

(C) An explanation of the modes of transmission of bloodborne pathogens;

(D) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;

(E) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

(F) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;

(G) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;

(H) An explanation of the basis for selection of personal protective equipment;

(I) Information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;

(J) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;

(K) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;

(L) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident;

(M) An explanation of the signs and labels and/or color coding required by paragraph (g)(1); and

(N) An opportunity for interactive questions and answers with the person conducting the training session.

(viii) The person conducting the training shall be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address.

(ix) Additional Initial Training for Employees in HIV and HBV Laboratories and Production Facilities. Employees in HIV or HBV research laboratories and HIV or HBV production facilities shall receive the following initial training in addition to the above training requirements.

(A) The employer shall assure that employees demonstrate proficiency in standard microbiological practices and techniques and in the practices and operations specific to the facility before being allowed to work with HIV or HBV.

(B) The employer shall assure that employees have prior experience in the handling of human pathogens or tissue cultures before working with HIV or HBV.

(C) The employer shall provide a training program to employees who have no prior experience in handling human pathogens. Initial work activities shall not include the handling of infectious agents. A progression of work activities shall be assigned as techniques are learned and proficiency is developed. The employer shall assure that employees participate in work activities involving infectious agents only after proficiency has been demonstrated.

(h) *Recordkeeping*—(1) *Medical Records.* (i) The employer shall establish and maintain an accurate record for each employee with occupational exposure, in accordance with 29 CFR 1915.1120.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) A copy of the employee's hepatitis B vaccination status including the dates of all the hepatitis B vaccinations and any medical records relative to the employee's ability to receive vaccination as required by paragraph (f)(2);

(C) A copy of all results of examinations, medical testing, and follow-up procedures as required by paragraph (f)(3);

(D) The employer's copy of the healthcare professional's written opinion as required by paragraph (f)(5); and

(E) A copy of the information provided to the healthcare professional as required by paragraphs (f)(4)(ii)(B)(C) and (D).

(iii) Confidentiality. The employer shall ensure that employee medical records required by paragraph (h)(1) are:

(A) Kept confidential; and

(B) Not disclosed or reported without the employee's express written consent to any person within or outside the workplace except as required by this section or as may be required by law.

(iv) The employer shall maintain the records required by paragraph (h) for at least the duration of employment plus 30 years in accordance with 29 CFR 1915.1120.

(2) *Training records.* (i) Training records shall include the following information:

(A) The dates of the training sessions;

(B) The contents or a summary of the training sessions;

(C) The names and qualifications of persons conducting the training; and

(D) The names and job titles of all persons attending the training sessions.

(ii) Training records shall be maintained for 3 years from the date on which the training occurred.

(3) *Availability.* (i) The employer shall ensure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee training records required by this paragraph shall be provided upon request for examination and copying to employees, to employee representatives, to the Director, and to the Assistant Secretary.

(iii) Employee medical records required by this paragraph shall be provided upon request for examination and copying to the subject employee, to anyone having written consent of the subject employee, to the Director, and to the Assistant Secretary in accordance with 29 CFR 1915.1120.

(4) *Transfer of Records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1915.1120(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least three months prior to their disposal and transmit them to the Director, if required by the Director to do so, within that three month period.

(i) *Dates*—(1) *Effective date.* The standard shall become effective on March 6, 1992.

(2) The Exposure Control Plan required by paragraph (c) of this section shall be completed on or before May 5, 1992.

(3) Paragraph (g)(2) Information and Training and (h) Recordkeeping shall take effect on or before June 4, 1992.

(4) Paragraphs (d)(2) Engineering and Work Practice Controls, (d)(3) Personal Protective Equipment, (d)(4) Housekeeping, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, and (g) (1) Labels and Signs, shall take effect July 6, 1992.

Appendix A to § 1915.1030—Hepatitis B Vaccine Declination (Mandatory)

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to me.

(Approved by the Office of Management and Budget under control number 1218–0180)

§ 1915.1044 1,2-dibromo-3-chloropropane.

(a) *Scope and application.* (1) This section applies to occupational exposure to 1,2-dibromo-3-chloropropane (DBCP).

(2) This section does not apply to:

(i) Exposure to DBCP which results solely from the application and use of DBCP as a pesticide; or

(ii) The storage, transportation, distribution or sale of DBCP in intact containers sealed in such a manner as to prevent exposure to DBCP vapors or liquid, except for the requirements of paragraphs (i), (n) and (o) of this section.

(b) *Definitions. Authorized person* means any person required by his duties to be present in regulated areas and authorized to do so by his employer, by this section, or by the Act. *Authorized person* also includes any person entering such areas as a designated representative of employees exercising an opportunity to observe employee exposure monitoring.

DBCP means 1,2-dibromo-3-chloropropane, Chemical Abstracts Service Registry Number 96–12–8, and includes all forms of DBCP.

Director means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which may, or does, result in an unexpected release of DBCP.

OSHA Area Office means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

Assistant Secretary means the Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, or designee.

(c) *Permissible exposure limit*—(1) *Inhalation.* The employer shall assure that no employee is exposed to an airborne concentration of DBCP in excess of 1 part DBCP per billion parts of air (ppb) as an 8-hour time-weighted average.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to eye or skin contact with DBCP.

(d) *Notification of use.* Within ten (10) days following the introduction of DBCP into the workplace, every employer who has a workplace where DBCP is present, shall report the following information to the nearest OSHA Area Office for each such workplace:

(1) The address and location of the workplace:

(2) A brief description of each process or operation which may result in employee exposure to DBCP;

(3) The number of employees engaged in each process or operation who may be exposed to DBCP and an estimate of the frequency and degree of exposure that occurs; and

(4) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to DBCP.

(e) *Regulated areas.* (1) The employer shall establish, within each place of employment, regulated areas wherever DBCP concentrations are in excess of the permissible exposure limit.

(2) The employer shall limit access to regulated areas to authorized persons.

(f) *Exposure monitoring*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to DBCP over an 8-hour period.

(ii) For the purposes of this paragraph, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial.* Each employer who has a place of employment in which DBCP is present, shall monitor each workplace and work operation to accurately determine the airborne concentrations of DBCP to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring required by this section reveals employee exposures to be below the permissible exposure limit, the employer shall repeat these measurements at least quarterly.

(ii) If the monitoring required by this section reveals employee exposures to be in excess of the permissible exposure limit, the employer shall repeat these measurements for each such employee at least monthly. The employer shall continue monthly monitoring until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limit. Thereafter the employer shall monitor at least quarterly.

(4) *Additional.* Whenever there has been a production, process, control, or personnel change which may result in any new or additional exposure to DBCP, or whenever the employer has any reason to suspect new or additional exposures to DBCP, the employer shall monitor the employees potentially affected by such change for the purpose of redetermining their exposure.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the measurements which represent the employee's exposure.

(ii) Whenever the results indicate that employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* The employer shall use a method of measurement which has an accuracy, to a confidence level of 95 percent, of not less than plus or minus 25 percent for concentrations of DBCP at or above the permissible exposure limit.

(g) *Methods of compliance*—(1) *Priority of compliance methods.* The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to DBCP at or below the permissible exposure limit, except to the extent that the employer establishes that such controls are not feasible. Where feasible engineering and work practice controls are not sufficient to reduce employee exposures to within the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls, and shall supplement them by use of respiratory protection.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposures to DBCP to or below the permissible exposure limit solely by means of engineering and work practice controls as required by paragraph (g)(1) of this section.

(ii) The written program shall include a detailed schedule for development and implementation of the engineering and work practice controls. These plans shall be revised at least every six months to reflect the current status of the program.

(iii) Written plans for these compliance programs shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and any affected employee or designated representative of employees.

(iv) The employer shall institute and maintain at least the controls described in his most recent written compliance program.

(h) *Respirators*—(1) *General.* Where respiratory protection is required under this section, the employer shall select, provide and assure the proper use of respirators. Respirators shall be used in the following circumstances:

(i) During the period necessary to install or implement feasible engineering and work practice controls; or

(ii) During maintenance and repair activities in which engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limit; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

TABLE 1—RESPIRATORY PROTECTION FOR DBCP

Airborne concentration of DBCP or condition of use	Respirator type
(a) Less than or equal to 10 ppb.	(1) Any supplied-air respirator; or (2) any self-contained breathing apparatus.
(b) Less than or equal to 50 ppb.	(1) Any supplied-air respirator with full facepiece, helmet, or hood; or (2) any self-contained breathing apparatus with full facepiece.

VOL 58 ISS 125 JL 1 1993 UMI

TABLE 1—RESPIRATORY PROTECTION FOR DBCP—Continued

Airborne concentration of DBCP or condition of use	Respirator type
(c) Less than or equal to 1,000 ppb.	(1) A Type C supplied-air respirator operated in pressure-demand or other positive pressure or continuous flow mode.
(d) Less than or equal to 2,000 ppb.	(1) A Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure mode, or with full facepiece, helmet, or hood operated in continuous flow mode.
(e) Greater than 2,000 ppb or entry and escape from unknown concentrations.	(1) A combination respirator which includes a Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure or continuous flow mode and an auxiliary self-contained breathing apparatus operated in pressure-demand or positive pressure mode; or (2) a self-contained breathing apparatus with full facepiece operated in pressure-demand or other positive pressure mode.
(f) Firefighting	(1) A self-contained breathing apparatus with full facepiece operated in pressure-demand or other positive pressure mode.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their faces and respirator facepieces as needed to prevent potential skin irritation associated with respirator use.

(i) *Emergency situations*—(1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace in which DBCP is present.

(ii) Appropriate portions of the plan shall be implemented in the event of an emergency.

(2) Employees engaged in correcting emergency conditions shall be equipped as required in paragraphs (h) and (j) of this section until the emergency is abated.

(3) *Evacuation.* Employees not engaged in correcting the emergency shall be removed and restricted from the area and normal operations in the affected area shall not be resumed until the emergency is abated.

(4) *Alerting employees.* Where there is a possibility of employee exposure to DBCP due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(5) *Medical surveillance.* For any employee exposed to DBCP in an emergency situation, the employer shall provide medical surveillance in accordance with paragraph (m)(6) of this section.

(6) *Exposure monitoring.* (i) Following an emergency, the employer shall conduct monitoring which complies with paragraph (f) of this section.

(ii) In workplaces not normally subject to periodic monitoring, the employer may terminate monitoring when two consecutive measurements indicate exposures below the permissible exposure limit.

(j) *Protective clothing and equipments*—(1) *Provision and use.* Where there is any possibility of eye or dermal contact with liquid or solid DBCP, the employer shall provide, at no cost to the employee, and assure that the employee wears impermeable protective clothing and equipment to protect the area of the body which may come in contact with DBCP. Eye and face protection shall meet the requirements of § 1910.133 of this title.

(2) *Removal and storage.* (i) The employer shall assure that employees remove DBCP contaminated work clothing only in change rooms provided in accordance with paragraph (l) (1) of this section.

(ii) The employer shall assure that employees promptly remove any protective clothing and equipment which becomes contaminated with DBCP-containing liquids and solids. This clothing shall not be reworn until the DBCP has been removed from the clothing or equipment.

(iii) The employer shall assure that no employee takes DBCP contaminated protective devices and work clothing out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, of disposal.

(iv) DBCP-contaminated protective devices and work clothing shall be placed and stored in closed containers which prevent dispersion of the DBCP outside the container.

(v) Containers of DBCP contaminated protective devices or work clothing which are to be taken out of change rooms or the workplace for cleaning, maintenance or disposal, shall bear labels in accordance with paragraph (o)(3) of this section.

(3) *Cleaning and replacement.* (i) The employer shall clean, launder, repair, or replace protective clothing and equipment required by this paragraph to maintain their effectiveness. The employer shall provide clean protective clothing and equipment at least daily to each affected employee.

(ii) The employer shall inform any person who launders or clean DBCP-contaminated protective clothing or equipment of the potentially harmful effects of exposure to DBCP.

(iii) The employer shall prohibit the removal of DBCP from protective clothing and equipment by blowing or shaking.

(k) *Housekeeping*—(1) *Surfaces.* (i) All workplace surfaces shall be maintained free of visible accumulations of DBCP.

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces is prohibited where DBCP dusts or liquids are present.

(iii) Where vacuuming methods are selected to clean floors and other surfaces, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that DBCP is not reintroduced into the workplace air; and

(B) Portable vacuum units used to collect DBCP may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (o)(3) of this section.

(iv) Cleaning of floors and other surfaces contaminated with DBCP-containing dusts shall not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) *Liquids.* Where DBCP is present in a liquid form, or as a resultant vapor, all containers or vessels containing DBCP shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) *Waste disposal.* DBCP waste scrap, debris, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of DBCP outside the container.

(l) *Hygiene facilities and practices*—(1) *Change rooms.* The employer shall provide clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment whenever employees are required to wear protective clothing and equipment

in accordance with paragraphs (h) and (j) of this section.

(2) *Showers.* (i) The employer shall assure that employees working in the regulated area shower at the end of the work shift.

(ii) The employer shall assure that employees whose skin becomes contaminated with DBCP-containing liquids or solids immediately wash or shower to remove any DBCP from the skin.

(iii) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(3) *Lunchrooms.* The employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(4) *Lavatories.* (i) The employer shall assure that employees working in the regulated area remove protective clothing and wash their hands and face prior to eating.

(ii) The employer shall provide a sufficient number of lavatory facilities which comply with 29 CFR 1910.141(d)(1) and (2).

(5) *Prohibition of activities in regulated areas.* The employer shall assure that, in regulated areas, food or beverages are not present or consumed, smoking products and implements are not present or used, and cosmetics are not present or applied.

(m) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees who work in regulated areas and employees who are subjected to DBCP exposures in an emergency situation.

(ii) All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) *Frequency and content.* At the time of initial assignment, and annually thereafter, the employer shall provide a medical examination for employees who work in regulated areas, which includes at least the following:

(i) A medical and occupational history including reproductive history.

(ii) A physical examination, including examination of the genito-urinary tract, testicle size and body habitus, including a determination of sperm count.

(iii) A serum specimen shall be obtained and the following determinations made by radioimmunoassay techniques utilizing National Institutes of Health (NIH) specific antigen or one of equivalent sensitivity:

(A) Serum follicle stimulating hormone (FSH);

(B) Serum luteinizing hormone (LH); and

(C) Serum total estrogen (females).

(iv) Any other tests deemed appropriate by the examining physician.

(3) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to DBCP, the employer shall provide the employee with a medical examination which shall include those elements considered appropriate by the examining physician.

(4) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The level of DBCP to which the employee is exposed; and

(iv) A description of any personal protective equipment used or to be used.

(5) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain and provide the employee with a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of health from exposure to DBCP; and

(C) Any recommended limitations upon the employee's exposure to DBCP or upon the use of protective clothing and equipment such as respirators.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(6) *Emergency situations.* If the employee is exposed to DBCP in an emergency situation, the employer shall provide the employee with a sperm count test as soon as practicable, or, if the employee has been vasectionized or is unable to produce a semen specimen, the hormone tests contained in paragraph (m)(2)(iii) of this section. The employer shall provide these same tests three months later.

(n) *Employee information and training*—(1) *Training program.* (i) The employer shall institute a training program for all employees who may be exposed to DBCP and shall assure their participation in such training program.

(ii) The employer shall assure that each employee is informed of the following:

(A) The information contained in Appendix A;

(B) The quantity, location, manner of use, release or storage of DBCP and the specific nature of operations which could result in exposure to DBCP as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators;

(D) The purpose and description of the medical surveillance program required by paragraph (m) of this section; and

(E) A review of this standard, including appendices.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(o) *Signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all regulated areas. These signs shall bear the legend:

DANGER

1,2-Dibromo-3-chloropropane

(Insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

RESPIRATOR REQUIRED

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of DBCP and of products containing DBCP in the workplace, and that the labels remain affixed when the DBCP or products containing DBCP are sold, distributed, or otherwise leave the employer's workplace. Where DBCP or products containing DBCP are sold, distributed or otherwise leave the employer's workplace bearing appropriate labels required by EPA under the regulations in 40 CFR part 162, the labels required by this paragraph need not be affixed.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER
1,2-Dibromo-3-chloropropane
CANCER HAZARD

(p) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (f) of this section.

(ii) This record shall include:

(A) The dates, number, duration and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (m) of this section.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) A copy of the physician's written opinion;

(C) Any employee medical complaints related to exposure to DBCP;

(D) A copy of the information provided the physician as required by paragraphs (m)(4)(ii) through (m)(4)(iv) of this section; and

(E) A copy of the employee's medical and work history.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records and employee medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a) through (e) and (g) through (i).

(4) *Transfer of records.* (i) If the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (p) of this section for the prescribed period.

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall transmit these records by mail to the Director.

(iii) At the expiration of the retention period for the records required to be maintained under paragraph (p) of this section, the employer shall transmit these records by mail to the Director.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1915.1120(h).

(q) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, with an opportunity to observe any monitoring of employee exposure to DBCP required by this section.

(2) *Observation procedures.* (i) Whenever observation of the measuring or monitoring of employee exposure to DBCP requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring or measurement, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of DBCP performed at the place of exposure; and

(C) Record the results obtained.

(r) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0101)

Appendix A to § 1915.1044—Substance Safety Data Sheet For DBCP

I. Substance Identification

A. Synonyms and trades names: DBCP; Dibromochloropropane; Fumazone (Dow Chemical Company TM); Nemafume; Nemagon (Shell Chemical Co. TM); Nemaset; BBC 12; and OS 1879.

B. Permissible exposure:

1. *Airborne.* 1 part DBCP vapor per billion parts of air (1 ppb); time-weighted average (TWA) for an 8-hour workday.

2. *Dermal.* Eye contact and skin contact with DBCP are prohibited.

C. Appearance and odor: Technical grade DBCP is a dense yellow or amber liquid with a pungent odor. It may also appear in granular form, or blended in varying concentrations with other liquids.

D. Uses: DBCP is used to control nematodes, very small worm-like plant parasites, on crops including cotton, soybeans, fruits, nuts, vegetables and ornamentals.

II. Health Hazard Data

A. Routes of entry: Employees may be exposed:

1. Through inhalation (breathing);
2. Through ingestion (swallowing);
3. Skin contact; and
4. Eye contact.

B. Effects of exposure:

1. *Acute exposure.* DBCP may cause drowsiness, irritation of the eyes, nose, throat and skin, nausea and vomiting. In addition, overexposure may cause damage to the lungs, liver or kidneys.

2. *Chronic exposure.* Prolonged or repeated exposure to DBCP has been shown to cause sterility in humans. It also has been shown to produce cancer and sterility in laboratory animals and has been determined to constitute an increased risk of cancer in man.

3. *Reporting Signs and Symptoms.* If you develop any of the above signs or symptoms that you think are caused by exposure to DBCP, you should inform your employer.

III. Emergency First Aid Procedures

A. *Eye exposure.* If DBCP liquid or dust containing DBCP gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately. Contact lenses should not be worn when working with DBCP.

B. *Skin exposure.* If DBCP liquids or dusts containing DBCP get on your skin, immediately wash using soap or mild detergent and water. If DBCP liquids or dusts containing DBCP penetrate through your clothing, remove the clothing immediately and wash. If irritation is present after washing get medical attention.

C. *Breathing.* If you or any person breathe in large amounts of DBCP, move the exposed person to fresh air at once. If breathing has stopped, perform artificial respiration. Do not use mouth-to-mouth. Keep the affected person warm and at rest. Get medical attention as soon as possible.

D. *Swallowing.* When DBCP has been swallowed and the person is conscious, give the person large amounts of water immediately. After the water has been swallowed, try to get the person to vomit by having him touch the back of his throat with his finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. *Rescue.* Notify someone. Put into effect the established emergency rescue procedures. Know the locations of the emergency rescue equipment before the need arises.

IV. Respirators and Protective Clothing

A. *Respirators.* You may be required to wear a respirator in emergencies and while your employer is in the process of reducing DBCP exposures through engineering

controls. If respirators are worn, they must have a National Institute for Occupational Safety and Health (NIOSH) approval label (Older respirators may have a Bureau of Mines Approval label). For effective protection, a respirator must fit your face and head snugly. The respirator should not be loosened or removed in work situations where its use is required. DBCP does not have a detectable odor except at 1,000 times or more above the permissible exposure limit. If you can smell DBCP while wearing a respirator, the respirator is not working correctly; go immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. *Protective clothing.* When working with DBCP you must wear for your protection impermeable work clothing provided by your employer. (Standard rubber and neoprene protective clothing do not offer adequate protection).

DBCP must never be allowed to remain on the skin. Clothing and shoes must not be allowed to become contaminated with DBCP, and if they do, they must be promptly removed and not worn again until completely free of DBCP. Turn in impermeable clothing that has developed leaks for repair or replacement.

C. *Eye protection.* You must wear splash-proof safety goggles where there is any possibility of DBCP liquid or dust contacting your eyes.

V. Precautions for Safe Use, Handling, and Storage

A. DBCP must be stored in tightly closed containers in a cool, well-ventilated area.

B. If your work clothing may have become contaminated with DBCP, or liquids or dusts containing DBCP, you must change into uncontaminated clothing before leaving the work premises.

C. You must promptly remove any protective clothing that becomes contaminated with DBCP. This clothing must not be reworn until the DBCP is removed from the clothing.

D. If your skin becomes contaminated with DBCP, you must immediately and thoroughly wash or shower with soap or mild detergent and water to remove any DBCP from your skin.

E. You must not keep food, beverages, cosmetics, or smoking materials, nor eat or smoke, in regulated areas.

F. If you work in a regulated area, you must wash your hands thoroughly with soap or mild detergent and water, before eating, smoking or using toilet facilities.

G. If you work in a regulated area, you must remove any protective equipment or clothing before leaving the regulated area.

H. Ask your supervisor where DBCP is used in your work area and for any additional safety and health rules.

VI. Access to Information

A. Each year, your employer is required to inform you of the information contained in this Substance Safety Data Sheet for DBCP. In addition, your employer must instruct you in the safe use of DBCP, emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to DBCP. You or your representative have the right to observe employee exposure measurements and to record the result obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being overexposed, he is required to inform you of the actions which are being taken to reduce your exposure.

C. Your employer is required to keep records of your exposure and medical examinations. Your employer is required to keep exposure and medical data for at least 40 years or the duration of your employment plus 20 years, whichever is longer.

D. Your employer is required to release exposure and medical records to you, your physician, or other individual designated by you upon your written request.

Appendix B to § 1915.1044—Substance Technical Guidelines for DBCP

I. Physical and Chemical Data

A. Substance Identification

1. Synonyms: 1,2-dibromo-3-chloropropane; DBCP, Fumazone; Nemafume; Nemagon; Nemaset; BBC 12; OS 1879. DBCP is also included in agricultural pesticides and fumigants which include the phrase "Nema———" in their name.

2. Formula: $C_3H_5Br_2$ C1.

3. Molecular Weight: 236.

B. Physical Data:

1. Boiling point (760 mm HG): 195 C (383 F)

2. Specific gravity (water=1): 2.093.

3. Vapor density (air=1 at boiling point of DBCP): Data not available.

4. Melting point: 6C (43 F).

5. Vapor pressure at 20C (68 F): 0.8 mm Hg

6. Solubility in water: 1000 ppm.

7. Evaporation rate (Butyl Acetate=1): very much less than 1.

8. Appearance and odor: Dense yellow or amber liquid with a pungent odor at high concentrations. Any detectable odor of DBCP indicates overexposure.

II. Fire Explosion and Reactivity Hazard Data

A. Fire

1. Flash point: 170 F (77 C)

2. Autoignition temperature: Data not available.

3. Flammable limits in air, percent by volume: Data not available.

4. Extinguishing media: Carbon dioxide, dry chemical.

5. Special fire-fighting procedures: Do not use a solid stream of water since a stream will scatter and spread the fire. Use water spray to cool containers exposed to a fire.

6. Unusual fire and explosion hazards: None known.

7. For purposes of complying with the requirements of § 1910.106, liquid DBCP is classified as a Class III A combustible liquid.

8. For the purpose of complying with § 1910.309, the classification of hazardous locations as described in article 500 of the National Electrical Code for DBCP shall be Class I, Group D.

9. For the purpose of compliance with § 1910.157, DBCP is classified as a Class B fire hazard.

10. For the purpose of compliance with § 1910.178, locations classified as hazardous locations due to the presence of DBCP shall be Class I, Group D.

11. Sources of ignition are prohibited where DBCP presents a fire or explosion hazard.

B. Reactivity

1. Conditions contributing to instability: None known.

2. Incompatibilities: Reacts with chemically active metals, such as aluminum, magnesium and tin alloys.

3. Hazardous decomposition products: Toxic gases and vapors (such as HBr, HCl and carbon monoxide) may be released in a fire involving DBCP.

4. Special precautions: DBCP will attack some rubber materials and coatings.

III. Spill, Leak and Disposal Procedures

A. If DBCP is spilled or leaked, the following steps should be taken:

1. The area should be evacuated at once and re-entered only after thorough ventilation.

2. Ventilate area of spill or leak.

3. If in liquid form, collect for reclamation or absorb in paper, vermiculite, dry sand, earth or similar material.

4. If in solid form, collect spilled material in the most convenient and safe manner for reclamation or for disposal.

B. Persons not wearing protective equipment must be restricted from areas of spills or leaks until cleanup has been completed.

C. Waste Disposal Methods:

1. For small quantities of liquid DBCP, absorb on paper towels, remove to a safe place (such as a fume hood) and burn the paper. Large quantities can be reclaimed or collected and atomized in a suitable combustion chamber equipped with an appropriate effluent gas cleaning device. If liquid DBCP is absorbed in vermiculite, dry sand, earth or similar material and placed in sealed containers it may be disposed of in a State-approved sanitary landfill.

2. If in solid form, for small quantities, place on paper towels, remove to a safe place (such as a fume hood) and burn. Large quantities may be reclaimed. However, if this is not practical, dissolve in a flammable solvent (such as alcohol) and atomize in a suitable combustion chamber equipped with an appropriate effluent gas cleaning device. DBCP in solid form may also be disposed in a state-approved sanitary landfill.

IV. Monitoring and Measurement Procedures

A. Exposure above the permissible exposure limit.

1. *Eight Hour Exposure Evaluation:* Measurements taken for the purpose of determining employee exposure under this section are best taken so that the average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

2. *Monitoring Techniques:* The sampling and analysis under this section may be performed by collecting the DBCP vapor on

petroleum based charcoal absorption tubes with subsequent chemical analyses. The method of measurement chosen should determine the concentration of airborne DBCP at the permissible exposure limit to an accuracy of plus or minus 25 percent. If charcoal tubes are used, a total volume of 10 liters should be collected at a flow rate of 50 cc. per minute for each tube. Analyze the resultant samples as you would samples of halogenated solvent.

B. Since many of the duties relating to employee protection are dependent on the results of monitoring and measuring procedures, employers should assure that the evaluation of employee exposures is performed by a competent industrial hygienist or other technically qualified person.

V. Protective Clothing

Employees should be required to wear appropriate protective clothing to prevent any possibility of skin contact with DBCP. Because DBCP is absorbed through the skin, it is important to prevent skin contact with both liquid and solid forms of DBCP. Protective clothing should include impermeable coveralls or similar fullbody work clothing, gloves, headcoverings, and workshoes or shoe coverings. Standard rubber and neoprene gloves do not offer adequate protection and should not be relied upon to keep DBCP off the skin. DBCP should never be allowed to remain on the skin. Clothing and shoes should not be allowed to become contaminated with the material, and if they do, they should be promptly removed and not worn again until completely free of the material. Any protective clothing which has developed leaks or is otherwise found to be defective should be repaired or replaced. Employees should also be required to wear splash-proof safety goggles where there is any possibility of DBCP contacting the eyes.

VI. Housekeeping and Hygiene Facilities

1. The workplace must be kept clean, orderly and in a sanitary condition;

2. Dry sweeping and the use of compressed air is unsafe for the cleaning of floors and other surfaces where DBCP dust or liquids are found. To minimize the contamination of air with dust, vacuuming with either portable or permanent systems must be used. If a portable unit is selected, the exhaust must be attached to the general workplace exhaust ventilation system, or collected within the vacuum unit equipped with high efficiency filters or other appropriate means of contamination removal and not used for other purposes. Units used to collect DBCP must be labeled.

3. Adequate washing facilities with hot and cold water must be provided, and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of DBCP from the skin.

4. Change or dressing rooms with individual clothes storage facilities must be provided to prevent the contamination of street clothes with DBCP. Because of the hazardous nature of DBCP, contaminated protective clothing must be stored in closed containers for cleaning or disposal.

VII. Miscellaneous Precautions

A. Store DBCP in tightly closed containers in a cool, well ventilated area.

B. Use of supplied-air suits or other impervious clothing (such as acid suits) may be necessary to prevent skin contact with DBCP. Supplied-air suits should be selected, used, and maintained under the supervision of persons knowlegeable in the limitations and potential life-endangering characteristics of supplied-air suits.

C. The use of air-conditioned suits may be necessary in warmer climates.

D. Advise employees of all areas and operations where exposure to DBCP could occur.

VIII. Common Operations

Common operations in which exposure to DBCP is likely to occur are: during its production; and during its formulation into pesticides and fumigants.

Appendix C to § 1915.1044—Medical Surveillance Guidelines For DBCP

I. Route of Entry

Inhalation; skin absorption

II. Toxicology

Recent data collected on workers involved in the manufacture and formulation of DBCP has shown that DBCP can cause sterility at very low levels of exposure. This finding is supported by studies showing that DBCP causes sterility in animals. Chronic exposure to DBCP resulted in pronounced necrotic action on the parenchymatous organs (i.e., liver, kidney, spleen) and on the testicles of rats at concentrations as low as 5 ppm. Rats that were chronically exposed to DBCP also showed changes in the composition of the blood, showing low RBC, hemoglobin, and WBC, and high reticulocyte levels as well as functional hepatic disturbance, manifesting itself in a long prothrombin time. Reznik et al. noted a single dose of 100 mg produced profound depression of the nervous system of rats. Their condition gradually improved. Acute exposure also resulted in the destruction of the sex gland activity of male rats as well as causing changes in the estrous cycle in female rats. Animal studies have also associated DBCP with an increased incidence of carcinoma. Olson, et al. orally administered DBCP to rats and mice 5 times per week at experimentally predetermined maximally tolerated doses and at half those doses. As early as ten weeks after initiation of treatment, DBCP induced a high incidence of squamous cell carcinomas of the stomach with metastases in both species. DBCP also induced mammary adenocarcinomas in the female rats at both dose levels.

III. Signs and Symptoms

A. Inhalation: Nausea, eye irritation, conjunctivitis, respiratory irritation, pulmonary congestion or edema, CNS depression with apathy, sluggishness, and ataxia.

B. Dermal: Erythema or inflammation and dermatitis on repeated exposure.

IV. Special Tests

A. *Semen analysis:* The following information excerpted from the document "Evaluation of Testicular Function", submitted by the Corporate Medical Department of the Shell Oil Company (exhibit 39–3), may be useful to physicians conducting the medical surveillance program;

In performing semen analyses certain minimal but specific criteria should be met

1. It is recommended that a minimum of three valid semen analyses be obtained in order to make a determination of an individual's average sperm count.

2. A period of sexual abstinence is necessary prior to the collection of each masturbatory sample. It is recommended that intercourse or masturbation be performed 48 hours before the actual specimen collection. A period of 48 hours of abstinence would follow; then the masturbatory sample would be collected.

3. Each semen specimen should be collected in a clean, widemouthed, glass jar (not necessarily pre-sterilized) in a manner designated by the examining physician. Any part of the seminal fluid exam should be initialed *only after liquifaction* is complete, i.e., 30 to 45 minutes after collection.

4. Semen volume should be measured to the nearest 1/10 of a cubic centimeter.

5. Sperm density should be determined using routine techniques involving the use of a white cell pipette and a hemocytometer chamber. The immobilizing fluid most effective and most easily obtained for this process is distilled water.

6. Thin, dry smears of the semen should be made for a morphologic classification of the sperm forms and should be stained with either hematoxalin or the more difficult, yet more precise, Papanicolaou technique. Also of importance to record is obvious sperm agglutination, pyospermia, delayed liquifection (greater than 30 minutes), and hyperviscosity. In addition, pH, using nitrazine paper, should be determined.

7. A total morphology evaluation should include percentages of the following:

a. Normal (oval) forms,

b. Tapered forms,

c. Amorphous forms (include large and small sperm shapes),

d. Duplicated (either heads or tails) forms, and

e. Immature forms.

8. Each sample should be evaluated for sperm *viability* (percent viable sperm moving at the time of examination) as well as sperm *motility* (subjective characterization of "purposeful forward sperm progression" of the majority of those viable sperm analyzed) within two hours after collection, ideally by the same or equally qualified examiner.

B. *Serum determinations:* The following serum determinations should be performed by radioimmuno-assay techniques using National Institutes of Health (NIH) specific antigen or antigen preparations of equivalent sensitivity:

1. Serum follicle stimulating hormone (FSH);

2. Serum luteinizing hormone (LH); and

3. Serum total estrogen (females only).

V. Treatment

Remove from exposure immediately, give oxygen or artificial resuscitation if indicated.

Contaminated clothing and shoes should be removed immediately. Flush eyes and wash contaminated skin. If swallowed and the person is conscious, induce vomiting. Recovery from mild exposures is usually rapid and complete.

VI. Surveillance and Preventive Considerations

A. *Other considerations.* DBCP can cause both acute and chronic effects. It is important that the physician become familiar with the operating conditions in which exposure to DBCP occurs. Those with respiratory disorders may not tolerate the wearing of negative pressure respirators.

B. *Surveillance and screening.* Medical histories and laboratory examinations are required for each employee subject to exposure to DBCP. The employer should screen employees for history of certain medical conditions (listed below) which might place the employee at increased risk from exposure.

1. *Liver disease.* The primary site of biotransformation and detoxification of DBCP is the liver. Liver dysfunctions likely to inhibit the conjugation reactions will tend to promote the toxic actions of DBCP. These precautions should be considered before exposing persons with impaired liver function to DBCP.

2. *Renal disease.* Because DBCP has been associated with injury to the kidney it is important that special consideration be given to those with possible impairment of renal function.

3. *Skin desease.* DBCP can penetrate the skin and can cause erythema on prolonged exposure. Persons with pre-existing skin disorders may be more susceptible to the effects of DBCP.

4. *Blood dyscrasias.* DBCP has been shown to decrease the content of erythrocytes, hemoglobin, and leukocytes in the blood, as well as increase the prothrombin time. Persons with existing blood disorders may be more susceptible to the effects of DBCP.

5. *Reproductive disorders.* Animal studies have associated DBCP with various effects on the reproductive organs. Among these effects are atrophy of the testicles and changes in the estrous cycle. Persons with pre-existing reproductive disorders may be at increased risk to these effects of DBCP.

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[43 FR 11527, Mar. 17, 1978, as amended at 45 FR 35283, May 23, 1980; 49 FR 18295, Apr. 30, 1984; 54 FR 24334, June 7, 1989]

§ 1915.1045 Acrylonitrile.

(a) *Scope and application.* (1) This section applies to all occupational exposures to acrylonitrile (AN), Chemical Abstracts Service Registry No. 000107131, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) This section does not apply to exposures which result solely from the processing, use, and handling of the following materials:

(i) ABS resins, SAN resins, nitrile barrier resins, solid nitrile elastomers, and acrylic and modacrylic fibers, when these listed materials are in the form of finished polymers, and products fabricated from such finished polymers;

(ii) Materials made from and/or containing AN for which objective data is reasonably relied upon to demonstrate that the material is not capable of releasing AN in airborne concentrations in excess of 1 ppm as an eight (8)-hour time-weighted average, under the expected conditions of processing, use, and handling which will cause the greatest possible release; and

(iii) Solid materials made from and/or containing AN which will not be heated above 170° F (77° C) during handling, use, or processing.

(3) An employer relying upon exemption under paragraph (a)(2)(ii) shall maintain records of the objective data supporting that exemption, and of the basis of the employer's reliance on the data, as provided in paragraph (q) of this section.

(b) *Definitions. Acrylonitrile* or *AN* means acrylonitrile monomer, chemical formula CH_2=CHCN.

Action level means a concentration of AN of 1 ppm as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

Decontamination means treatment of materials and surfaces by water washdown, ventilation, or other means, to assure that the materials will not expose employees to airborne concentrations of AN above 1 means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which results in an unexpected massive release of AN.

Liquid AN means AN monomer in liquid form, and liquid or semiliquid polymer intermediates, including slurries, suspensions, emulsions, and solutions, produced during the polymerization of AN.

OSHA Area Office means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits*— (1) *Inhalation.* (i) *Time weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of acrylonitrile in excess of two (2) parts acrylonitrile per million parts of air (2 ppm) as an eight (8)-hour time-weighted average.

(ii) *Ceiling limit.* The employer shall assure that no employee is exposed to an airborne concentration of acrylonitrile in excess of ten (10) ppm as averaged over any fifteen (15)-minute period during the work day.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to skin contact or eye contact with liquid AN.

(d) *Notification of regulated areas and emergencies*— (1) *Regulated areas.* Within thirty (30) days following the establishment of a regulated area pursuant to paragraph (f) of this section, the employer shall report the following information to the OSHA Area Office:

(i) The address and location of each establishment which has one or more regulated areas;

(ii) The locations, within the establishment, of each regulated area;

(iii) A brief description of each process or operation which results in employee exposure to AN in regulated areas; and

(iv) The number of employees engaged in each process or operation within each regulated area which results in exposure to AN, and an estimate of the frequency and degree of exposure that occurs.

Whenever there has been a significant change in the information required to be reported by this paragraph, the employer shall promptly provide the

new information to the OSHA Area Office.

(2) *Emergencies.* Emergencies, and the facts obtainable at that time, shall be reported within seventy-two (72) hours of the initial occurrence to the OSHA Area Office. Upon request of the OSHA Area Office; the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to AN over an eight (8)-hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial monitoring.* Each employer who has a place of employment in which AN is present shall monitor each such workplace and work operation to accurately determine the airborne concentrations of AN to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring required by this section reveals employee exposure to be below the action level, the employer may discontinue monitoring for that employee.

(ii) If the monitoring required by this section reveals employee exposure to be at or above the action level but below the permissible exposure limits, the employer shall repeat such monitoring for each such employee at least quarterly. The employer shall continue these quarterly measurements until at least two consecutive measurements taken at least seven (7) days apart, are below the action level, and thereafter the employer may discontinue monitoring for that employee.

(iii) If the monitoring required by this section reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) *Additional monitoring.* Whenever there has been a production, process, control, or personnel change which may result in new or additional exposures to AN, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to AN, additional monitoring which complies with this paragraph shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of the results of monitoring required by this paragraph, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) *Accuracy of measurement.* The method of measurement of employee exposures shall be accurate to a confidence level of 95 percent, to within plus or minus 35 percent for concentrations of AN at or above the permissible exposure limits, and plus or minus 50 percent for concentrations of AN below the permissible exposure limits.

(f) *Regulated areas.* (1) The employer shall establish regulated areas where AN concentrations are in excess of the permissible exposure limits.

(2) Regulated areas shall be demarcated and segregated from the rest of the workplace, in any manner that minimizes the number of persons who will be exposed to AN.

(3) Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the act or regulations issued pursuant thereto.

(4) The employer shall assure that food or beverages are not present or consumed, tobacco products are not present or used, and cosmetics are not applied in the regulated area.

(g) *Methods of compliance*—(1) *Engineering and work practice controls.* (i) By November 2, 1980, the employer shall institute engineering and work practice controls to reduce and maintain employee exposures to AN, to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by these controls, and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to AN above the permissible exposure limits;

(B) An outline of the nature of the engineering controls and work practices to be applied to the operation or process in question;

(C) A report of the technology considered in meeting the permissible exposure limits;

(D) A schedule for implementation of engineering and work practice controls for the operation or process, which shall project completion no later than November 2, 1980; and

(E) Other relevant information.

(iii) The employer shall complete the steps set forth in the compliance program by the dates in the schedule.

(iv) Written plans shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or representative.

(v) The plans required by this paragraph shall be revised and updated at least every six (6) months to reflect the current status of the program.

(h) *Respiratory protection*—(1) *General.* The employer shall assure that respirators are used where required by this section to reduce employee exposure to within the permissible exposure limits. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities or reactor cleaning, in which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select and provide, at no cost to the employee,

VOL 58 ISS 125 JL 1 1993 UMI

the appropriate type of respirator from table I below, and shall assure that the employee wears the respirator provided.

TABLE I—RESPIRATORY PROTECTION FOR ACRYLONITRILE (AN)

Concentration of AN or condition of use	Respirator type
(a) Less than or equal to 20 ppm	(1) Chemical cartridge respirator with organic vapor cartridge(s) and half-mask facepiece; or (2) Supplied air respirator with half-mask facepiece.
(b) Less than or equal to 100 ppm or maximum use concentration (MUC) of cartridges or canisters, whichever is lower.	(1) Full facepiece respirator with (A) organic vapor cartridges, (B) organic vapor gas mask chin-style, or (C) organic vapor gas mask canister, front- or back-mounted; (2) Supplied air respirator with full facepiece; or (3) Self-contained breathing apparatus with full facepiece.
(c) Less than or equal to 4,000 ppm	(1) Supplied air respirator operated in the positive pressure mode with full facepiece, helmet, suit, or hood.
(d) Greater than 4,000 ppm or unknown concentration	(1) Supplied air and auxiliary self-contained breathing apparatus with full facepiece in positive pressure mode; or (2) Self-contained breathing apparatus with full facepiece in positive pressure mode.
(e) Firefighting	Self-contained breathing apparatus with full facepiece in positive pressure mode.
(f) Escape	(1) Any organic vapor respirator, or (2) Any self-contained breathing apparatus.

(ii) The employer shall select respirators from among those approved for use with organic vapors by the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Where air/purifying respirators (chemical cartridge- or canister-type) are used, the air-purifying canister or cartridge(s) shall be replaced prior to the expiration of their service life or at the completion of each shift, whichever occurs first. A label shall be attached to the cartridge or canister to indicate the date and time at which it is first installed on the respirator.

(iii) *Testing.* Fit testing of respirators shall be performed to assure that the respirator selected provides the protection required by table I.

(A) *Qualitative fit.* The employer shall perform qualitative fit tests at the time of initial fitting and at least semiannually thereafter for each employee wearing respirators.

(B) *Quantitative fit.* Each employer with more than 10 employees wearing negative pressure respirators shall perform quantitative fit testing at the time of initial fitting and at least semiannually thereafter for each such employee.

(iv) Employees who wear respirators shall be allowed to wash their faces and to wipe clean the face-to-facepiece seals on their respirators to minimize potential skin irritation associated with respirator use.

(i) *Emergency situations*—(1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace where liquid AN is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in paragraph (h) of this section until the emergency is abated.

(iii) Employees not engaged in correcting the emergency shall be evacuated from the area and shall not be permitted to return until the emergency is abated.

(2) *Alerting employees.* Where there is the possibility of employee exposure to AN in excess of the ceiling limit, a general alarm shall be installed and used to promptly alert employees of such occurrences.

(j) *Protective clothing and equipment*—(1) *Provision and use.* Where eye or skin contact with liquid AN may occur, the employer shall provide at no cost to the employee, and assure that employees wear, impermeable protective clothing or other equipment to protect any area of the body which may come in contact with liquid AN. The provision of §§ 1910.132 and 1910.133 shall be complied with.

(2) *Cleaning and replacement.* (i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this section as needed to maintain their effectiveness.

(ii) The employer shall assure that impermeable protective clothing which contacts or is likely to have contacted liquid AN shall be decontaminated before being removed by the employee.

(iii) The employer shall assure that an employee whose nonimpermeable clothing becomes wetted with liquid AN shall immediately remove that clothing and proceed to shower. The clothing shall be decontaminated before it is removed from the regulated area.

(iv) The employer shall assure that no employee removes protective clothing or equipment from the change room, except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment of the potentially harmful effects of exposure to AN.

(k) *Housekeeping.* (1) All surfaces shall be maintained free of visible accumulations of liquid AN.

(2) For operations involving liquid AN, the employer shall institute a program for detecting leaks and spills of liquid AN, including regular visual inspections.

(3) Where spills of liquid AN are detected, the employer shall assure that surfaces contacted by the liquid AN are decontaminated. Employees not engaged in decontamination activities shall leave the area of the spill, and shall not be permitted in the area until decontamination is completed.

(l) *Waste disposal.* AN waste, scrap, debris, bags, containers, or equipment shall be decontaminated before being incorporated in the general waste disposal system.

(m) *Hygiene facilities and practices.* (1) Where employees are exposed to airborne concentrations of AN above the permissible exposure limits, or where employees are required to wear

protective clothing or equipment pursuant to paragraph (j) of this section, the facilities required by 29 CFR 1910.141, including clean change rooms and shower facilities, shall be provided by the employer for the use of those employees, and the employer shall assure that the employees use the facilities provided.

(2) The employer shall assure that employees wearing protective clothing or equipment for protection from skin contact with liquid AN shall shower at the end of the work shift.

(3) The employer shall assure that, in the event of skin or eye exposure to liquid AN, the affected employee shall shower immediately to minimize the danger of skin absorption.

(4) The employer shall assure that employees working in the regulated area wash their hands and faces prior to eating.

(n) *Medical surveillance*—(1) *General.* (i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to AN at or above the action level, without regard to the use of respirators. The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and that they shall be provided without cost to the employee.

(2) *Initial examinations.* At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and medical history with special attention to skin, respiratory, and gastrointestinal systems, and those nonspecific symptoms, such as headache, nausea, vomiting, dizziness, weakness, or other central nervous system dysfunctions that may be associated with acute or with chronic exposure to AN;

(ii) A complete physical examination giving particular attention to the peripheral and central nervous system, gastrointestinal system, respiratory system, skin, and thyroid;

(iii) A 14- by 17-inch (35.56 × 43.18 cm) posteroanterior chest X-ray; and

(iv) Further tests of the intestinal tract, including fecal occult blood screening, for all workers 40 years of age or older, and for any other affected employees for whom, in the opinion of the physician, such testing is appropriate.

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraph (n)(2) of this section at least annually for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examination specified in paragraph (n)(2) of this section within 6 months preceding termination of employment, the employer shall make such examination available to the employee prior to such termination.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms which may be associated with exposure to AN, the employer shall provide an appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendixes;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and test performed;

(B) The physician's opinion as to whether the employee has any detected medical condition(s) which would place the employee at an increased risk of material impairment of the employee's health from exposure to AN;

(C) Any recommended limitations upon the employee's exposure to AN or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to AN.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training*—(1) *Training program.* (i) By January 2, 1979, the employer shall institute a training program for and assure the participation of all employees exposed to AN above the action level, all employees whose exposures are maintained below the action level by engineering and work practice controls, and all employees subject to potential skin or eye contact with liquid AN.

(ii) Training shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in appendixes A and B;

(B) The quantity, location, manner of use, release, or storage of AN, and the specific nature of operations which could result in exposure to AN, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators and protective clothing;

(D) The purpose and a description of the medical surveillance program required by paragraph (n) of this section;

(E) The emergency procedures developed, as required by paragraph (i) of this section;

(F) Engineering and work practice controls, their function, and the employee's relationship to these controls; and

(G) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendixes readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all workplaces where AN concentrations exceed the permissable exposure limits. The signs shall bear the following legend:

DANGER
ACRYLONITRILE (AN)
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS MAY BE
REQUIRED

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of liquid AN and AN-based materials not exempted under paragraph (a)(2) of this standard. The employer shall assure that the lables remain affixed when the materials are sold, distributed, or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER
CONTAINS ACRYLONITRILE (AN)
CANCER HAZARD

(q) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the processing, use, and handling of materials made from or containing AN are exempted pursuant to paragraph (a)(2)(ii) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The material qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of AN;

(D) A description of the operation exempted and how the data supports the exemption; and

(E) Other data relevant to the operations, materials, and processing covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used and the data relied upon to establish that the methods used meet the accuracy and precision requirements of paragraph (e)(6) of this section;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physician's written opinions;

(B) Any employee medical complaints related to exposure to AN;

(C) A copy of the information provided to the physician as required by paragraph (n)(5) of this section; and

(D) A copy of the employee's medical and work history.

(iii) The employer shall assure that this record be maintained for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(4) *Availability.* (i) The employer shall make all records required to be maintained by this section available, upon request, to the Assistant Secretary and the Director for examination and copying.

(ii) Records required by paragraphs (q)(1) through (q)(3) of this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a) through (e) and (q) through (i). Records required by paragraph (q)(1) shall be provided in the same manner as exposure monitoring records.

(5) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section for the prescribed period.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall notify the Director at least 3 months prior to the disposal of the records, and shall transmit them to the Director upon request.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1915.1120(h).

(r) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to AN conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to AN requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing and equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled:

(A) To receive an explanation of the measurement procedures;

(B) To observe all steps related to the measurement of airborne concentrations of AN performed at the place of exposure; and

(C) To record the results obtained.

(s) *Effective date:* (1) This section shall become effective November 2, 1978.

(2) Monitoring and medical surveillance conducted since January 17, 1978, under the provisions of the emergency temporary standard may be relied upon by the employer to meet the initial monitoring and initial medical surveillance requirements of this section.

(3) Training programs must be implemented by January 2, 1979.

(4) Engineering and work practice controls required by paragraph (g) of this section shall be implemented no later than November 2, 1980.

(t) *Appendixes.* The information contained in the appendixes is not intended, by itself, to create any additional obligation not otherwise imposed, or to detract from any obligation.

(Approved by the Office of Management and Budget under control number 1218–0126)

Appendix A to § 1915.1045—Substance Safety Data Sheet for Acrylonitrile

I. Substance Identification

A. Substance: Acrylonitrile (CH_2 CHCN).

B. Synonyms: Propenenitrile; vinyl cyanide; cyanoethylene; AN; VCN; acylon; carbacryl; fumigrian; ventox.

C. Acrylonitrile can be found as a liquid or vapor, and can also be found in polymer

resins, rubbers, plastics, polyols, and other polymers having acrylonitrile as a raw or intermediate material.

D. AN is used in the manufacture of acrylic and modiacrylic fibers, acrylic plastics and resins, speciality polymers, nitrile rubbers, and other organic chemicals. It has also been used as a fumigant.

E. Appearance and odor: Colorless to pale yellow liquid with a pungent odor which can only be detected at concentrations above the permissible exposure level, in a range of 13–19 parts AN per million parts of air (13–19 ppm).

F. Permissible exposure: Exposure may not exceed either:

1. Two parts AN per million parts of air (2 ppm) averaged over the 8-hour workday; or

2. Ten parts AN per million parts of air (10 ppm) averaged over any 15-minute period in the workday.

3. In addition, skin and eye contact with liquid AN is prohibited.

II. Health Hazard Data

A. Acrylonitrile can affect your body if you inhale the vapor (breathing), if it comes in contact with your eyes or skin, or if you swallow it. It may enter your body through your skin.

B. Effects of overexposure: 1. Short-term exposure: Acrylonitrile can cause eye irritation, nausea, vomiting, headache, sneezing, weakness, and light-headedness. At high concentrations, the effects of exposure may go on to loss of consciousness and death. When acrylonitrile is held in contact with the skin after being absorbed into shoe leather or clothing, it may produce blisters following several hours of no apparent effect. Unless the shoes or clothing are removed immediately and the area washed, blistering will occur. Usually there is no pain or inflammation associated with blister formation.

2. Long-term exposure: Acrylonitrile has been shown to cause cancer in laboratory animals and has been associated with higher incidences of cancer in humans. Repeated or prolonged exposure of the skin to acrylonitrile may produce irritation and dermatitis.

3. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms and suspect they are caused by exposure to acrylonitrile.

III. Emergency First Aid Procedures

A. Eye exposure: If acrylonitrile gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately. Contact lenses should not be worn when working with this chemical.

B. Skin exposure: If acrylonitrile gets on your skin, immediately wash the contaminated skin with water. If acrylonitrile soaks through your clothing, especially your shoes, remove the clothing immediately and wash the skin with water. If symptoms occur after washing, get medical attention immediately. Thoroughly wash the clothing before reusing. Contaminated leather shoes or other leather articles should be discarded.

C. Inhalation: If you or any other person breathes in large amounts of acrylonitrile, move the exposed person to fresh air at once. If breathing has stopped, perform artificial respiration. Keep the affected person warm and at rest. Get medical attention as soon as possible.

D. Swallowing: When acrylonitrile has been swallowed, give the person large quantities of water immediately. After the water has been swallowed, try to get the person to vomit by having him touch the back of his throat with his finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, notify someone else and put into effect the established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

F. Special first aid procedures: First aid kits containing an adequate supply (at least two dozen) of amyl nitrite pearls, each containing 0.3 ml, should be maintained at each site where acrylonitrile is used. When a person is suspected of receiving an overexposure to acrylonitrile, immediately remove that person from the contaminated area using established rescue procedures. Contaminated clothing must be removed and the acrylonitrile washed from the skin immediately. Artificial respiration should be started at once if breathing has stopped. If the person is unconscious, amyl nitrite may be used as an antidote by a properly trained individual in accordance with established emergency procedures. Medical aid should be obtained immediately.

IV. Respirators and Protective Clothing

A. Respirators. You may be required to wear a respirator for nonroutine activities, in emergencies, while your employer is in the process of reducing acrylonitrile exposures through engineering controls, and in areas where engineering controls are not feasible. If respirators are worn, they must have a Mine Safety and Health Administration (MSHA or MESA) or National Institute for Occupational Safety and Health (NIOSH) label of approval for use with organic vapors. (Older respirators may have a Bureau of Mines approval label.) For effective protection, respirators must fit your face and head snugly. Respirators should not be loosened or removed in work situations where their use is required.

Acrylonitrile does not have a detectable odor except at levels above the permissible exposure limits. Do not depend on odor to warn you when a respirator cartridge or canister is exhausted. Cartridges or canisters must be changed daily or before the end-of-service-life, whichever comes first. Reuse of these may allow acrylonitrille to gradually filter through the cartridge and cause exposures which you cannot detect by odor. If you can smell acrylonitrile while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Supplied-air suits: In some work situations, the wearing of supplied-air suits may be necessary. Your employer must instruct you in their proper use and operation.

C. Protective clothing: You must wear impervious clothing, gloves, face shield, or other appropriate protective clothing to prevent skin contact with liquid acrylonitrile Where protective clothing is required, your employer is required to provide clean garments to you as necessary to assume that the clothing protects you adequately.

Replace or repair impervious clothing that has developed leaks.

Acrylonitrile should never be allowed to remain on the skin. Clothing and shoes which are not impervious to acrylonitrile should not be allowed to become contaminated with acrylonitrile, and if they do the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered or discarded after the AN is removed. Once acrylonitrile penetrates shoes or other leather articles, they should not be worn again.

D. Eye protection: You must wear splashproof safety goggles in areas where liquid acrylonitrile may contact your eyes. In addition, contact lenses should not be worn in areas where eye contact with acrylonitrile can occur.

V. Precautions for Safe Use, Handling, and Storage

A. Acrylonitrile is a flammable liquid, and its vapors can easily form explosive mixtures in air.

B. Acrylonitrile must be stored in tightly closed containers in a cool, well-ventilated area, away from heat, sparks, flames, strong oxidizers (especially bromine), strong bases, copper, copper alloys, ammonia, and amines

C. Sources of ignition such as smoking and open flames are prohibited wherever acrylonitrile is handled, used, or stored in a manner that could create a potential fire or explosion hazard.

D. You should use non-sparking tools when opening or closing metal containers of acrylonitrile, and containers must be bonded and grounded when pouring or transferring liquid acrylonitrile.

E. You must immediately remove any non-impervious clothing that becomes wetted with acrylonitrile, and this clothing must not be reworn until the acrylonitrile is removed from the clothing.

F. Impervious clothing wet with liquid acrylonitrile can be easily ignited. This clothing must be washed down with water before you remove it.

G. If your skin becomes wet with liquid acrylonitrile, you must promptly and thoroughly wash or shower with soap or mild detergent to remove any acrylonitrile from your skin.

H. You must not keep food, beverages, or smoking materials, nor are you permitted to eat or smoke in regulated areas where acrylonitrile concentrations are above the permissible exposure limits.

I. If you contact liquid acrylonitrile, you must wash your hands thoroughly with soap or mild detergent and water before eating, smoking, or using toilet facilities.

J. Fire extinguishers and quick drenching facilities must be readily available, and you should know where they are and how to operate them.

VOL 58 ISS 125 JL 1 1993 UMI

K. Ask your supervisor where acrylonitrile is used in your work area and for any additional plant safety and health rules.

VI. Access to Information

A. Each year, your employer is required to inform you of the information contained in this Substance Safety Data Sheet for acrylonitrile. In addition, you employer must instruct you in the proper work practices for using acrylonitrile, emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to acrylonitrile. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being overexposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits.

C. Your employer is required to keep records of your exposures and medical examinations. These records must be kept by the employer for at least forty (40) years or for the period of your employment plus twenty (20) years, whichever is longer.

D. Your employer is required to release your exposure and medical records to you or your representative upon your request.

Appendix B to § 1915.1045—Substance Technical Guidelines for Acrylonitrile

I. Physical and Chemical Data

A. Substance identification: 1. Synonyms: AN; VCN; vinyl cyanide; propenenitrile; cyanoethylene; Acrylon; Carbacryl; Fumigrain; Ventox.

2. Formula: $CH_2=CHCN$.

3. Molecular weight: 53.1.

B. Physical data: 1. Boiling point (760 mm Hg): 77.3° C (171° F);

2. Specific gravity (water=1): 0.81 (at 20° C or 68° F);

3. Vapor density (air=1 at boiling point of acrylonitrile): 1.83;

4. Melting point: −83° C (−117° F);

5. Vapor pressure (@20° F): 83 mm Hg;

6. Solubility in water, percent by weight @20° C (68° F): 7.35;

7. Evaporation rate (Butyl Acetate=1): 4.54; and

8. Appearance and odor: Colorless to pale yellow liquid with a pungent odor at concentrations above the permissible exposure level. Any detectable odor of acrylonitrile may indicate overexposure.

II. Fire, Explosion, and Reactivity Hazard Data

A. Fire: 1. Flash point: −1° C (30° F) (closed cup).

2. Autoignition temperature: 481° C (898° F).

3. Flammable limits air, percent by volume: Lower: 3, Upper: 17.

4. Extinguishing media: Alcohol foam, carbon dioxide, and dry chemical.

5. Special fire-fighting procedures: Do not use a solid stream of water, since the stream will scatter and spread the fire. Use water to cool containers exposed to a fire.

6. Unusual fire and explosion hazards: Acrylonitrile is a flammable liquid. Its vapors can easily form explosive mixtures with air. All ignition sources must be controlled where acrylonitrile is handled, used, or stored in a manner that could create a potential fire or explosion hazard. Acrylonitrile vapors are heavier than air and may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which acrylonitrile is being handled.

7. For purposes of compliance with the requirements of 29 CFR 1910.106, acrylonitrile is classified as a class IB flammable liquid. For example, 7,500 ppm, approximately one-fourth of the lower flammable limit, would be considered to pose a potential fire and explosion hazard.

8. For purposes of compliance with 29 CFR 1910.157, acrylonitrile is classified as a Class B fire hazard.

9. For purpose of compliance with 29 CFR 1919.309, locations classified as hazardous due to the presence of acrylonitrile shall be Class I, Group D.

B. Reactivity:

1. Conditions contributing to instability: Acrylonitrile will polymerize when hot, and the additional heat liberated by the polymerization may cause containers to explode. Pure AN may self-polymerize, with a rapid build-up of pressure, resulting in an explosion hazard. Inhibitors are added to the commercial product to prevent self-polymerization.

2. Incompatibilities: Contact with strong oxidizers (especially bromine) and strong bases may cause fires and explosions. Contact with copper, copper alloys, ammonia, and amines may start serious decomposition.

3. Hazardous decompostion products: Toxic gases and vapors (such as hydrogen cyanide, oxides of nitrogen, and carbon monoxide) may be released in a fire involving acrylonitrile and certain polymers made from acrylonitrile.

4. Special precautions: Liquid acrylonitrile will attack some forms of plastics, rubbers, and coatings.

III. Spill, Leak, and Disposal Procedures

A. If acrylonitrile is spilled or leaked, the following steps should be taken:

1. Remove all ignition sources.

2. The area should be evacuated at once and re-entered only after the area has been thoroughly ventilated and washed down with water.

3. If liquid acrylonitrile or polymer intermediate, collect for reclamation or absorb in paper, vermiculite, dry sand, earth, or similar material, or wash down with water into process sewer system.

B. Persons not wearing protective equipment should be restricted from areas of spills or leaks until clean-up has been completed.

C. Waste disposal methods: Waste material shall be disposed of in a manner that is not hazardous to employees or to the general population. Spills of acrylonitrile and flushing of such spills shall be channeled for appropriate treatment or collection for disposal. They shall not be channeled directly into the sanitary sewer system. In selecting the method of waste disposal, applicable local, State, and Federal regulations should be consulted.

IV. Monitoring and Measurement Procedures

A. Exposure above the Permissible Exposure Limit:

1. Eight-hour exposure evaluation: Measurements taken for the purpose of determining employee exposure under this section are best taken so that the average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee.)

2. Ceiling evaluation: Measurements taken for the purpose of determining employee exposure under this section must be taken during periods of maximum expected airborne concentrations of acrylonitrile in the employee's breathing zone. A minimum of three (3) measurements should be taken on one work shift. The average of all measurements taken is an estimate of the employee's ceiling exposure.

3. Monitoring techniques: The sampling and analysis under this section may be performed by collecting the acrylonitrile vapor on charcoal adsorption tubes or other composition adsorption tubes, with subsequent chemical analysis. Sampling and analysis may also be performed by instruments such as real-time continuous monitoring systems, portable direct-reading instruments, or passive dosimeters. Analysis of resultant samples should be by gas chromatograph.

Appendix D lists methods of sampling and analysis which have been tested by NIOSH and OSHA for use with acrylonitrile. NIOSH and OSHA have validated modifications of NIOSH Method S–156 (See Appendix D) under laboratory conditions for concentrations below 1 ppm. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that methods of monitoring must be accurate, to a 95-percent confidence level, to ±35-percent for concentrations of AN at or above 2 ppm, and to ±–50-percent for concentrations below 2 ppm. In addition to the methods described in Appendix D, there are numerous other methods available for monitoring for AN in the workplace. Details on these other methods have been submitted by various companies to the rulemaking record, and are available at the OSHA Docket Office.

B. Since many of the duties relating to employee exposure are dependent on the results of monitoring and measuring procedures, employers shall assure that the evaluation of employee exposures is performed by a competent industrial hygienist or other technically qualified person.

V. Protective Clothing

Employees shall be provided with and required to wear appropriate protective clothing to prevent any possibility of skin contact with liquid AN. Because acrylonitrile is absorbed through the skin, it is important

to prevent skin contact with liquid AN. Protective clothing shall include impermeable coveralls or similar full-body work clothing, gloves, head-coverings, as appropriate to protect areas of the body which may come in contact with liquid AN.

Employers should ascertain that the protective garments are impermeable to acrylonitrile. Non-impermeable clothing and shoes should not be allowed to become contaminated with liquid AN. If permeable clothing does become contaminated, it should be promptly removed, placed in a regulated area for removal of the AN, and not worn again until the AN is removed. If leather footwear or other leather garments become wet from acrylonitrile, they should be replaced and not worn again, due to the ability of leather to absorb acrylonitrile and hold it against the skin. Since there is no pain associated with the blistering which may result from skin contact with liquid AN, it is essential that the employee be informed of this hazard so that he or she can be protected.

Any protective clothing which has developed leaks or is otherwise found to be defective shall be repaired or replaced. Clean protective clothing shall be provided to the employee as necessary to assure its protectiveness. Whenever impervious clothing becomes wet with liquid AN, it shall be washed down with water before being removed by the employee. Employees are also required to wear splash-proof safety goggles where there is any possibility of acrylonitrile contacting the eyes.

VI. Housekeeping and Hygiene Facilities

For purposes of complying with 29 CFR 1910.141, the following items should be emphasized:

A. The workplace should be kept clean, orderly, and in a sanitary condition. The employer is required to institute a leak and spill detection program for operations involving liquid AN in order to detect sources of fugitive AN emissions.

B. Dry sweeping and the use of compressed air is unsafe for the cleaning of floors and other surfaces where liquid AN may be found.

C. Adequate washing facilities with hot and cold water are to be provided, and maintained in a sanitary condition. Suitable cleansing agents are also to be provided to assure the effective removal of acrylonitrile from the skin.

D. Change or dressing rooms with individual clothes storage facilities must be provided to prevent the contamination of street clothes with acrylonitrile. Because of the hazardous nature of acrylonitrile, contaminated protective clothing should be placed in a regulated area designated by the employer for removal of the AN before the clothing is laundered or disposed of.

VII. Miscellaneous Precautions

A. Store acrylonitrile in tightly-closed containers in a cool, well-ventilated area and take necessary precautions to avoid any explosion hazard.

B. High exposures to acrylonitrile can occur when transferring the liquid from one container to another.

C. Non-sparking tools must be used to open and close metal acrylonitrile containers. These containers must be effectively grounded and bonded prior to pouring.

D. Never store uninhibited acrylonitrile.

E. Acrylonitrile vapors are not inhibited. They may form polymers and clog vents of storage tanks.

F. Use of supplied-air suits or other impervious coverings may be necessary to prevent skin contact with and provide respiratory protection from acrylonitrile where the concentration of acrylonitrile is unknown or is above the ceiling limit. Supplied-air suits should be selected, used, and maintained under the immediate supervision of persons knowledgeable in the limitations and potential life-endangering characteristics of supplied-air suits.

G. Employers shall advise employees of all areas and operations where exposure to acrylonitrile could occur.

VIII. Common Operations

Common operations in which exposure to acrylonitrile is likely to occur include the following: Manufacture of the acrylonitrile monomer; synthesis of acrylic fibers, ABS, SAN, and nitrile barrier plastics and resins, nitrile rubber, surface coatings, specialty chemicals, use as a chemical intermediate, use as a fumigant and in the cyanoethylation of cotton.

Appendix C to § 1915.1045—Medical Surveillance Guidelines for Acrylonitrile

I. Route of Entry

Inhalation; skin absorption; ingestion.

II. Toxicology

Acrylonitrile vapor is an asphyxiant due to inhibitory action on metabolic enzyme systems. Animals exposed to 75 or 100 ppm for 7 hours have shown signs of anoxia; in some animals which died at the higher level, cyanomethemoglobin was found in the blood. Two human fatalities from accidental poisioning have been reported; one was caused by inhalation of an unknown concentration of the vapor, and the other was thought to be caused by skin absorption or inhalation. Most cases of intoxication from industrial exposure have been mild, with rapid onset of eye irritation, headache, sneezing, and nausea. Weakness, lightheadedness, and vomiting may also occur. Exposure to high concentrations may produce profound weakness, asphyxia, and death. The vapor is a severe eye irritant. Prolonged skin contract with the liquid may result in absorption with systemic effects, and in the formation of large blisters after a latent period of several hours. Although there is usually little or no pain or inflammation, the affected skin resembles a second-degree thermal burn. Solutions spilled on exposed skin, or on areas covered only by a light layer of clothing, evaporate rapidly, leaving no irritation, or, at the most, mild transient redness. Repeated spills on exposed skin may result in dermatitis due to solvent effects.

Results after 1 year of a planned 2-year animal study on the effects of exposure to acrylonitrile have indicated that rats ingesting as little as 35 ppm in their drinking water develop tumors of the central nervous system. The interim results of this study have been supported by a similar study being conducted by the same laboratory, involving exposure of rats by inhalation of acrylonitrile vapor, which has shown similar types of tumors in animals exposed to 80 ppm.

In addition, the preliminary results of an epidemiological study being performed by duPont on a cohort of workers in their Camden, S.C. acrylic fiber plant indicate a statistically significant increase in the incidence of colon and lung cancers among employees exposed to acrylonitrile.

III. Signs and Symptoms of Acute Overexposure

Asphyxia and death can occur from exposure to high concentrations of acrylonitrile. Symptoms of overexposure include eye irritation, headache, sneezing, nausea and vomiting, weakness, and light-headedness. Prolonged skin contact can cause blisters on the skin with appearance of a second-degree burn, but with little or no pain. Repeated skin contact may produce scaling dermatits.

IV. Treatment of Acute Overexposure

Remove employee from exposure. Immediately flush eyes with water and wash skin with soap or mild detergent and water. If AN has been swallowed, and person is conscious, induce vomiting. Give artificial resuscitation if indicated. More severe cases, such as those associated with loss of consciousness, may be treated by the intravenous administration of sodium nitrite, followed by sodium thiosulfate, although this is not as effective for acrylonitrile poisoning as for inorganic cyanide poisoning.

V. Surveillance and Preventive Considerations

A. As noted above, exposure to acrylonitrile has been linked to increased incidence of cancers of the colon and lung in employees of the duPont acrylic fiber plant in Camden, S.C. In addition, the animal testing of acrylonitrile has resulted in the development of cancers of the central nervous system in rats exposed by either inhalation or ingestion. The physician should be aware of the findings of these studies in evaluating the health of employees exposed to acrylonitrile.

Most reported acute effects of occupational exposure to acrylonitrile are due to its ability to cause tissue anoxia and asphyxia. The effects are similar to those caused by hydrogen cyanide. Liquid acrylonitrile can be absorbed through the skin upon prolonged contact. The liquid readily penetrates leather, and will produce burns of the feet if footwear contaminated with acrylonitrile is not removed.

It is important for the physician to become familiar with the operating conditions in which exposure to acrylonitrile may occur. Those employees with skin diseases may not tolerate the wearing of whatever protective clothing may be necessary to protect them from exposure. In addition, those with chronic respiratory disease may not tolerate the wearing of negative-pressure respirators.

B. Surveillance and screening. Medical histories and laboratory examinations are required for each employee subject to

exposure to acrylonitrile above the action level. The employer must screen employees for history of certain medical conditions which might place the employee at increased risk from exposure.

1. *Central nervous system dysfunction.* Acute effects of exposure to acrylonitrile generally involve the central nervous system. Symptoms of acrylonitrile exposure include headache, nausea, dizziness, and general weakness. The animal studies cited above suggest possible carcinogenic effects of acrylonitrile on the central nervous system, since rats exposed by either inhalation or ingestion have developed similar CNS tumors.

2. *Respiratory disease.* The du Pont data indicate an increased risk of lung cancer among employees exposed to acrylonitrile.

3. *Gastrointestinal disease.* The du Pont data indicate an increased risk of cancer of the colon among employees exposed to acrylonitrile. In addition, the animal studies show possible tumor production in the stomachs of the rats in the ingestion study.

4. *Skin disease.* Acrylonitrile can cause skin burns when prolonged skin contact with the liquid occurs. In addition, repeated skin contact with the liquid can cause dermatitis.

5. *General.* The purpose of the medical procedures outlined in the standard is to establish a baseline for future health monitoring. Persons unusually susceptible to the effects of anoxia or those with anemia would be expected to be at increased risk. In addition to emphasis on the CNS, respiratory and gastro-intestinal systems, the cardiovascular system, liver, and kidney function should also be stressed.

Appendix D to § 1915.1045—Sampling and Analytical Methods for Acrylonitrile

There are many methods available for monitoring employee exposures to acrylonitrile. Most of these involve the use of charcoal tubes and sampling pumps, with analysis by gas chromatograph. The essential differences between the charcoal tube methods include, among others, the use of different desorbing solvents, the use of different lots of charcoal, and the use of different equipment for analysis of the samples.

Besides charcoal, considerable work has been performed on methods using porous polymer sampling tubes and passive dosimeters. In addition, there are several portable gas analyzers and monitoring units available on the open market.

This appendix contains details for the methods which have been tested at OSHA Analytical Laboratory in Salt Lake City, and NIOSH in Cincinnati. Each is a variation on NIOSH Method S–156, which is also included for reference. This does not indicate that these methods are the only ones which will be satisfactory. There also may be workplace situations in which these methods are not adequate, due to such factors as high humidity. Copies of the other methods available to OSHA are available in the rulemaking record, and may be obtained from the OSHA Docket Office. These include, the Union Carbide, Monsanto, Dow Chemical and Dow Badische methods, as well as NISOH Method P & CAM 127.

Employers who note problems with sample breakthrough should try larger charcoal tubes. Tubes of larger capacity are available, and are often used for sampling vinyl chloride. In addition, lower flow rates and shorter sampling times should be beneficial in minimizing breakthrough problems.

Whatever method the employer chooses, he must assure himself of the method's accuracy and precision under the unique conditions present in his workplace.

NIOSH Method S–156 **(Unmodified)**

Analyte: Acrylonitrile.
Matrix: Air.
Procedure: Absorption on charcoal, desorption with methanol, GC.

1. *Principle of the method* (Reference 11.1).

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2 The charcoal in the tube is transferred to a small, stoppered sample container, and the analyte is desorbed with methanol.

1.3 An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained for standards.

2. *Range and sensitivity.*

2.1 This method was validated over the range of 17.5–70.0 mg/cu m at an atmospheric temperature and pressure of 22° C and 760 MM Hg, using a 20-liter sample. Under the conditions of sample size (20–liters) the probable useful range of this method is 4.5–135 mg-cu m. The method is capable of measuring much smaller amounts if the desorption efficiency is adequate. Desorption efficiency must be determined over the range used.

2.2 The upper limit of the range of the method is dependent on the adsorptive capacity of the charcoal tube. This capacity varies with the concentrations of acrylonitrile and other substances in the air. The first section of the charcoal tube was found to hold at least 3.97 mg of acrylonitrile when a test atmosphere containing 92.0 mg/cu m of acrylonitrile in air was sampled 0.18 liter per minute for 240 minutes; at that time the concentration of acrylonitrile in the effluent was less than 5 percent of that in the influent. (The charcoal tube consists of two sections of activated charcoal separated by a section of urethane foam. See section 6.2.) If a particular atmosphere is suspected of containing a large amount of contaminant, a smaller sampling volume should be taken.

3. *Interference.*

3.1 When the amount of water in the air is so great that condensation actually occurs in the tube, organic vapors will not be trapped efficiently. Preliminary experiments using toluene indicate that high humidity severely decreases the breakthrough volume.

3.2 When interfering compounds are known or suspected to be present in the air, such information, including their suspected identities, should be transmitted with the sample.

3.3 It must be emphasized that any compound which has the same retention time as the analyte at the operating conditions described in this method is an interference. Retention time data on a single column cannot be considered proof of chemical identity.

3.4 If the possibility of interference exists, separation conditions (column packing, temperature, etc.) must be changed to circumvent the problem.

4. *Precision and accuracy.*

4.1 The Coefficient of Variation (CV_T) for the total analytical and sampling method in the range of 17.5–70.0 mg/cu m was 0.073. This value corresponds to a 3.3 mg/cu m standard deviation at the (previous) OSHA standard level (20 ppm). Statistical information and details of the validation and experimental test procedures can be found in Reference 11.2.

4.2 On the average the concentrations obtained at the 20 ppm level using the overall sampling and analytical method were 6.0 percent lower than the "true" concentrations for a limited number of laboratory experiments. Any difference between the "found" and "true" concentrations may not represent a bias in the sampling and analytical method, but rather a random variation from the experimentally determined "true" concentration. Therefore, no recovery correction should be applied to the final result in section 10.5.

5. *Advantages and disadvantages of the method.*

5.1 The sampling device is small, portable, and involves no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The tubes are analyzed by means of a quick, instrumental method.

The method can also be used for the simultaneous analysis of two or more substances suspected to be present in the same sample by simply changing gas chromatographic conditions.

5.2 One disadvantage of the method is that the amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

5.3 Furthermore, the precision of the method is limited by the reproducibility of the pressure drop across the tubes. This drop will affect the flow rate and cause the volume to be imprecise, because the pump is usually calibrated for one tube only.

6. *Apparatus.*

6.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate. (Reference 11.3).

6.2 Charcoal tubes: Glass tubes with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoals prepared from coconut shells and is fired at 600° C prior to packing. The adsorbing section contains 100 mg of charcoal, the backup section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the backup section. A plug of silicated glass wool is placed in front of the adsorbing section. The

pressure drop across the tube must be less than 1 inch of mercury at a flow rate of 1 liter per minute.

6.3 Gas chromatograph equipped with a flame ionization detector.

6.4 Column (4–ft×¼-in stainless steel) packed with 50/80 mesh Poropak, type Q.

6.5 An electronic integrator or some other suitable method for measuring peak areas.

6.6 Two-milliliter sample containers with glass stoppers or Teflon-lined caps. If an automatic sample injector is used, the associated vials may be used.

6.7 Microliter syringes: 10-microliter and other convenient sizes for making standards.

6.8 Pipets: 1.0-ml delivery pipets.

6.9 Volumetric flask: 10-ml or convenient sizes for making standard solutions.

7. *Reagents.*

7.1 Chromatographic quality methanol.

7.2 Acrylonitrile, reagent grade.

7.3 Hexane, reagent grade.

7.4 Purified nitrogen.

7.5 Prepurified hydrogen.

7.6 Filtered compressed air.

8. *Procedure.*

8.1 Cleaning of equipment. All glassware used for the laboratory analysis should be detergent washed and thoroughly rinsed with tap water and distilled water.

8.2 Calibration of personal pumps. Each personal pump must be calibrated with a representative charcoal tube in the line. This will minimize errors associated with uncertainties in the sample volume collected.

8.3 Collection and shipping of samples.

8.3.1 Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

8.3.2 The smaller section of charcoal is used as a backup and should be positioned nearest the sampling pump.

8.3.3 The charcoal tube should be placed in a vertical direction during sampling to minimize channeling through the charcoal.

8.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

8.3.5 A maximum sample size of 20 liters is recommended. Sample at a flow of 0.20 liter per minute or less. The flow rate should be known with an accuracy of at least ±5 percent.

8.3.6 The temperature and pressure of the atmosphere being sampled should be recorded. If pressure reading is not available, record the elevation.

8.3.7 The charcoal tubes should be capped with the supplied plastic caps immediately after sampling. Under no circumstances should rubber caps be used.

8.3.8 With each batch of 10 samples submit one tube from the same lot of tubes which was used for sample collection and which is subjected to exactly the same handling as the samples except that no air is drawn through it. Label this as a blank.

8.3.9 Capped tubes should be packed tightly and padded before they are shipped to minimize tube breakage during shipping.

8.3.10 A sample of the bulk material should be submitted to the laboratory in a glass container with a Teflon-lined cap. This sample should not be transported in the same container as the charcoal tubes.

8.4 Analysis of samples.

8.4.1 Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml stoppered sample container. The separating section of foam is removed and discarded; the second section is transferred to another stoppered container. These two sections are analyzed separately.

8.4.2 Desorption of samples. Prior to analysis, 1.0 ml of methanol is pipetted into each sample container. Desorption should be done for 30 minutes. Tests indicate that this is adequate if the sample is agitated occasionally during this period. If an automatic sample injector is used, the sample vials should be capped as soon as the solvent is added to minimize volatilization.

8.4.3 GC conditions. The typical operating conditions for the gas chromatograph are:

1. 50 ml/min (60 psig) nitrogen carrier gas flow.
2. 65 ml/min (24 psig) hydrogen gas flow to detector.
3. 500 ml/min (50 psig) air flow to detector.
4. 235° C injector temperature.
5. 255° C manifold temperature (detector).
6. 155° C column temperature.

8.4.4 Injection. The first step in the analysis is the injection of the sample into the gas chromatograph. To eliminate difficulties arising from blowback or distillation within the syringe needle, one should employ the solvent flush injection technique. The 10-microliter syringe is first flushed with solvent several times to wet the barrel and plunger. Three microliters of solvent are drawn into the syringe to increase the accuracy and reproducibility of the injected sample volume. The needle is removed from the solvent, and the plunger is pulled back about 0.2 microliter to separate the solvent flush from the sample with a pocket of air to be used as a marker. The needle is then immersed in the sample, and a 5-microliter aliquot is withdrawn, taking into consideration the volume of the needle, since the sample in the needle will be completely injected. After the needle is removed from the sample and prior to injection, the plunger is pulled back 1.2 microliters to minimize evaporation of the sample from the tip of the needle. Observe that the sample occupies 4.9–5.0 microliters in the barrel of the syringe. Duplicate injections of each sample and standard should be made. No more than a 3 percent difference in area is to be expected. An automatic sample injector can be used if it is shown to give reproducibility at least as good as the solvent flush method.

8.4.5 Measurement of area. The area of the sample peak is measured by an electronic integrator or some other suitable form of area measurement, and preliminary results are read from a standard curve prepared as discussed below.

8.5 Determination of desorption efficiency.

8.5.1 Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and also from one batch of charcoal to another. Thus, it is necessary to determine at least once the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

8.5.2 Procedure for determining desorption efficiency. Activated charcoal equivalent to the amount in the first section of the sampling tube (100 mg) is measured into a 2.5 in, 4-mm I.D. glass tube, flame sealed at one end. This charcoal must be from the same batch as that used in obtaining the samples and can be obtained from unused charcoal tubes. The open end is capped with Parafilm. A known amount of hexane solution of acrylonitrile containing 0.239 g/ml is injected directly into the activated charcoal with a microliter syringe, and tube is capped with more Parafilm. When using an automatic sample injector, the sample injector vials, capped with Teflon-faced septa, may be used in place of the glass tube.

The amount injected is equivalent to that present in a 20-liter air sample at the selected level.

Six tubes at each of three levels (0.5X, 1X, and 2X of the standard) are prepared in this manner and allowed to stand for at least overnight to assure complete adsorption of the analyte onto the charcoal. These tubes are referred to as the sample. A parallel blank tube should be treated in the same manner except that no sample is added to it. The sample and blank tubes are desorbed and analyzed in exactly the same manner as the sampling tube described in section 8.4.

Two or three standards are prepared by injecting the same volume of compound into 1.0 ml of methanol with the same syringe used in the preparation of the samples. These are analyzed with the samples.

The desorption efficiency (D.E.) equals the average weight in mg recovered from the tube divided by the weight in mg added to the tube, or

$$\text{D.E.} = \frac{\text{Average weight recovered (mg)}}{\text{weight added (mg)}}$$

The desorption efficiency is dependent on the amount of analyte collected on the charcoal. Plot the desorption efficiency versus weight of analyte found. This curve is used in section 10.4 to correct for adsorption losses.

9. *Calibration and standards.*

It is convenient to express concentration of standards in terms of mg/1.0 ml methanol, because samples are desorbed in this amount of methanol. The density of the analyte is used to convert mg into microliters for easy measurement with a microliter syringe. A series of standards, varying in concentration over the range of interest, is prepared and analyzed under the same GC conditions and during the same time period as the unknown samples. Curves are established by plotting concentration in mg/1.0 ml versus peak area.

Note: Since no internal standard is used in the method, standard solutions must be analyzed at the same time that the sample analysis is done. This will minimize the effect of known day-to-day variations and

variations during the same day of the FID response.

10. *Calculations.*

10.1 Read the weight, in mg, corresponding to each peak area from the standard curve. No volume corrections are needed, because the standard curve is based on mg/1.0 ml methanol and the volume of sample injected is identical to the volume of the standards injected.

10.2 Corrections for the bank must be made for each sample.

mg = mg sample − mg blank

Where:

mg sample = mg found in front section of sample tube.

mg sample = mg found in front section of blank tube.

A similar procedure is followed for the backup sections.

10.3 Add the weights found in the front and backup sections to get the total weight in the sample.

10.4 Read the desorption efficiency from the curve (see sec. 8.5.2) for the amount found in the front section. Divide the total weight by this desorption efficiency to obtain the corrected mg/sample.

$$\text{Corrected mg/sample} = \frac{\text{Total weight}}{\text{D.E.}}$$

10.5 The concentration of the analyte in the air sampled can be expressed in mg/cu m.

$$\text{mg/cu m} = \text{Corrected mg (section 10.4)} \times \frac{1{,}000 \text{ (liter/cu m)}}{\text{air volume sampled (liter)}}$$

10.6 Another method of expressing concentration is ppm.

$$\text{ppm} = \text{m mg/cu} \times 24.45/\text{M.W.} \times 760/P \times T. + 273/298$$

Where:

P = Pressure (mm Hg) of air sampled.

T = Temperature (°C) of air sampled.

24.45 = Molar volume (liter/mole) at 25°C and 760 mm Hg.

M.W. = Molecular weight (g/mole) of analyte.

760 = Standard pressure (mm Hg).

298 = Standard temperature (°K).

11. *References.*

11.1 White, L. D. et al., "A Convenient Optimized Method for the Analysis of Selected Solvent Vapors in the Industrial Atmosphere," *Amer. Ind. Hyg. Assoc. J.*, 31:225 (1970).

11.2 Documentation of NIOSH Validation Tests, NIOSH Contract No. CDC–99–74–45.

11.3 Final Report, NIOSH Contract HSM–99–71–31, "Personal Sampler Pump for Charcoal Tubes," September 15, 1972.

NIOSH Modification of NIOSH Method S–156

The NIOSH recommended method for low levels for acrylonitrile is a modification of method S–156. It differs in the following respects:

(1) Samples are desorbed using 1 ml of 1 percent acetone in CS_2 rather than methanol.

(2) The analytical column and conditions are:

Column: 20 percent SP–1000 on 80/100 Supelcoport 10 feet x ⅛ inch S.S.

Conditions:

Injector temperature: 200°C.

Detector temperature: 100° C.

Column temperature: 85° C.

Helium flow: 25 ml/min.

Air flow: 450 ml/min.

Hydrogen flow: 55 ml/min.

(3) A 2 µl injection of the desorbed analyte is used.

(4) A sampling rate of 100 ml/min is recommended.

OSHA Laboratory Modification of NIOSH Method S–156

Analyte: Acrylonitrile.

Matrix: Air.

Procedure: Adsorption on charcoal, desorption with methanol, GC.

1. *Principle of the Method* (Reference 1).

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2 The charcoal in the tube is transferred to a small, stoppered sample vial, and the analyte is desorbed with methanol.

1.3 An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained for standards.

2. *Advantages and disadvantages of the method.*

2.1 The sampling device is small, portable, and involves no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The tubes are analyzed by means of a quick, instrumental method.

2.2 This method may not be adequate for the simultaneous analysis of two or more substances.

2.3 The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

2.4 The precision of the method is limited by the reproducibility of the pressure drop across the tubes. This drop will affect the flow rate and cause the volume to be imprecise, because the pump is usually calibrated for one tube only.

3. *Apparatus.*

3.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate.

3.2 Charcoal tubes: Glass tube with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600° C prior to packing. The adsorbing section contains 100 mg of charcoal, the back-up section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of sililated glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of 1 liter per minute.

3.3 Gas chromatograph equipped with a nitrogen phosphorus detector.

3.4 Column (10-ft x 1/8"-in stainless steel) packed with 100/120 Supelcoport coated with 10 percent SP 1000.

3.5 An electronic integrator or some other suitable method for measuring peak area.

3.6 Two-milliliter sample vials with Teflon-lined caps

3.7 Microliter syringes: 10-microliter, and other convenient sizes for making standards.

3.8 Pipets: 1.0-ml delivery pipets.

3.9 Volumetric flasks: convenient sizes for making standard solutions.

4. *Reagents.*

4.1 Chromatographic quality methanol.

4.2 Acrylonitrile, reagent grade.

4.3 Filtered compressed air.

4.4 Purified hydrogen.

4.5 Purified helium.

5. *Procedure.*

5.1 Cleaning of equipment. All glassware used for the laboratory analysis should be

properly cleaned and free of organics which could interfere in the analysis.

5.2 Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.

5.3 Collection and shipping of samples.

5.3.1 Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

5.3.2 The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.

5.3.3 The charcoal should be placed in a vertical position during sampling to minimize channeling through the charcoal.

5.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

5.3.5 A sample size of 20 liters is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The flow rate should be known with an accuracy of at least ±5 percent.

5.3.6 The temperature and pressure of the atmosphere being sampled should be recorded.

5.3.7 The charcoal tubes should be capped with the supplied plastic caps immediately after sampling. Rubber caps should not be used.

5.3.8 Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.9. Take necessary shipping and packing precautions to minimize breakage of samples.

5.4 Analysis of samples.

5.4.1 Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml vial. The separating section of foam is removed and discarded; the section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2 Desorption of samples. Prior to analysis, 1.0 ml of methanol is pipetted into each sample container. Desorption should be done for 30 minutes in an ultrasonic bath. The sample vials are recapped as soon as the solvent is added.

5.4.3 GC conditions. The typical operating conditions for the gas chromatograph are:

1. 30 ml/min (60 psig) helium carrier gas flow.
2. 3.0 ml/min (30 psig) hydrogen gas flow to detector.
3. 50 ml/min (60 psig) air flow to detector.
4. 200° C injector temperature.
5. 200° C dejector temperature.
6. 100° C column temperature.

5.4.4 Injection. Solvent flush technique or equivalent.

5.4.5 Measurement of area. The area of the sample peak is measured by an electronic integator or some other suitable form of area measurement, and preliminary results are read from a standard curve prepared as discussed below.

5.5 Determination of desorption efficiency.

5.5.1 Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and also from one batch of charcoal to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2 Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X (X represents TLV) based on a 20 l air sample are injected onto several tubes at each level. Dilutions of acrylonitrile with methanol are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration they are analyzed following the same procedure as the samples A curve of the desorption efficiency

amt recovered/amt added

is plotted versus amount of analyte found. This curve is used to correct for adsorption losses.

6. *Calibration and standards.*

A series of standards, varying in concentration over the range of interest, is prepared and analyzed under the same GC conditions and during the same time period as the unknown samples. Curves are prepared by plotting concentration versus peak area.

Note: Since no internal standard is used in the method, standard solutions must be analyzed at the same time that the sample analysis is done. This will minimize the effect of known day-to-day variations and variations during the same day of the NPD response. Multiple injections are necessary.

7. *Calculations.*

Read the weight, corresponding to each peak area from the standard curve, correct for the blank, correct for the desorption efficiency, and make necessary air volume corrections.

8. *Reference.* NIOSH Method S–156.

§ 1915.1047 Ethylene oxide.

(a) *Scope and application.* (1) This section applies to all occupational exposures to ethylene oxide (EtO), Chemical Abstracts Service Registry No. 75–21–8, except as provided in paragraph (a)(2) of this section.

(2) This section does not apply to the processing, use, or handling of products containing EtO where objective data are reasonably relied upon that demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the action level, and may not reasonably be foreseen to release EtO in excess of the excursion limit, under the expected conditions of processing, use, or handling that will cause the greatest possible release.

(3) Where products containing EtO are exempted under paragraph (a)(2) of this section, the employer shall maintain records of the objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in paragraph (k)(1) of this section.

(b) *Definitions:* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne EtO of 0.5 ppm calculated as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (l) of this section, or any other person authorized by the Act or regulations issued under the Act.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment that is likely to or does result in an unexpected significant release of EtO.

Employee exposure means exposure to airborne EtO which would occur if the employee were not using respiratory protective equipment.

Ethylene oxide or *EtO* means the three-membered ring organic compound with chemical formula C_2H_4O.

(c) *Permissible exposure limits*—(1) *8-hour time weighted average (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of one (1) part EtO per million parts of air (1 ppm) as an 8-hour time-weighted average (8-hour TWA).

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of 5 parts of EtO per million parts of air (5 ppm) as averaged over a sampling period of fifteen (15) minutes.

(d) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and 15-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for each shift for each job classification in each work area. Representative 15-minute short-term employee exposures shall be

VOL 58 ISS 125 JL 1 1993 UMI

determined on the basis of one or more samples representing 15-minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer need only determine representative employee exposure for that operation during one shift.

(2) *Initial monitoring.* (i) Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraph (a)(2) or (d)(2)(ii) of this section, shall perform initial monitoring to determine accurately the airborne concentrations of EtO to which employees may be exposed.

(ii) Where the employer has monitored after June 15, 1983 and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has previously monitored for the excursion limit and the monitoring satisfies all other requirements of this sections, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(3) *Monitoring frequency (periodic monitoring).* (i) If the monitoring required by paragraph (d)(2) of this section reveals employee exposure at or above the action level but at or below the 8-hour TWA, the employer shall repeat such monitoring for each such employee at least every 6 months.

(ii) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 8-hour TWA, the employer shall repeat such monitoring for each such employee at least every 3 months.

(iii) The employer may alter the monitoring schedule from quarterly to semiannually for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee's exposure has decreased to or below the 8-hour TWA.

(iv) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 15 minute excursion limit, the employer shall repeat such monitoring for each such employee at least every 3 months, and more often as necessary to evaluate exposure the employee's short-term exposures.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure to be below the action level, the employer may discontinue TWA monitoring for those employees whose exposures are represented by the initial monitoring.

(ii) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level, the employer may discontinue TWA monitoring for those employees whose exposures are represented by such monitoring.

(iii) If the initial monitoring required by paragraph (d)(2)(1) of this section reveals employee exposure to be at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by the initial monitoring.

(iv) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by such monitoring.

(5) *Additional monitoring.* Notwithstanding the provisions of paragraph (d)(4) of this section, the employer shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures to EtO or when the employer has any reason to suspect that a change may result in new or additional exposures.

(6) *Accuracy of monitoring.* (i) Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of EtO at the 1 ppm TWA and to within plus or minus 35 percent for airborne concentrations of EtO at the action level of 0.5 ppm.

(ii) Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 35 percent for airborne concentrations of EtO at the excursion limit.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify the affected employee of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, wherever monitoring results indicated that the TWA and/or excursion limit has been exceeded.

(e) *Regulated areas.* (1) The employer shall establish a regulated area wherever occupational exposure to airborne concentrations of EtO may exceed the TWA or wherever the EtO concentration exceeds or can reasonably be expected to exceed the excursion limit.

(2) Access to regulated areas shall be limited to authorized persons.

(3) Regulated areas shall be demarcated in any manner that minimizes the number of employees within the regulated area.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA and to or below the excursion limit, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA and to or below the excursion limit, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

(iii) Engineering controls are generally infeasible for the following operations: collection of quality assurance sampling from sterilized materials removal of biological indicators from sterilized materials: loading and unloading of tank cars; changing of ethylene oxide tanks on sterilizers; and vessel cleaning. For these operations, engineering controls are required only where the Assistant Secretary demonstrates that such controls are feasible.

(2) *Compliance program.* (i) Where the TWA or excursion limit is exceeded, the employer shall establish and implement a written program to reduce exposure to or below the TWA and to or below the excursion limit by means of engineering and work practice controls, as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

(ii) The compliance program shall include a schedule for periodic leak detection surveys and a written plan for emergency situations, as specified in paragraph (h)(i) of this section.

(iii) Written plans for a program required in paragraph (f)(2) shall be developed and furnished upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives. Such plans shall be reviewed at least every 12 months, and shall be updated as necessary to reflect significant changes in the status of the employer's compliance program.

(iv) The employer shall not implement a schedule of employee rotation as a means of compliance with the TWA or excursion limit.

(g) *Respiratory protection and personal protective equipment*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances.

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities, vessel cleaning, or other activities for which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA or excursion limit; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall ensure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved as being acceptable for protection against EtO by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator program.* Where respiratory protection is required by this section, the employer shall institute a respirator program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(4) *Protective clothing and equipment.* Where eye or skin contact with liquid EtO or EtO solutions may occur, the employer shall select and provide, at no cost to the employee, appropriate protective clothing or other equipment in accordance with 29 CFR 1910.132 and 1910.133 to protect any area of the body that may come in contact with liquid EtO or EtO in solution, and shall ensure that the employee wears the protective clothing and equipment provided.

(h) *Emergency situations*—(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with respiratory protection as required by paragraph (g) of this section until the emergency is abated.

(iii) The plan shall include the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) *Alerting employees.* Where there is the possibility of employee exposure to EtO due to an emergency, means shall be developed to alert potentially affected employees of such occurrences promptly. Affected employees shall be immediately evacuated from the area in the event that an emergency occurs.

TABLE 1—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION FOR AIRBORNE ETO

Condition of use or concentration of airborne EtO (ppm)	Minimum required respirator
Equal to or less than 50.	(a) Full facepiece respirator with EtO approved canister, front-or back-mounted.
Equal to or less than 2,000.	(a) Positive-pressure supplied air respirator, equipped with full facepiece, hood, or helmet, or (b) Continuous-flow supplied air respirator (positive pressure) equipped with hood, helmet or suit.
Concentration above 2,000 or unknown concentration (such as in emergencies).	(a) Positive-pressure self-contained breathing apparatus (SCBA), equipped with full facepiece, or (b) Positive-pressure full facepiece supplied air respirator equipped with an auxiliary positive-pressure self-contained breathing apparatus.
Firefighting	(a) Positive pressure self-contained breathing apparatus equipped with full facepiece.
Escape	(a) Any respirator described above.

Note.—Respirators approved for use in higher concentrations are permitted to be used in lower concentrations.

(i) *Medical surveillance*—(1) *General*—(i) *Employees covered.* (A) The employer shall institute a medical surveillance program for all employees who are or may be exposed to EtO at or above the action level, without regard to the use of respirators, for at least 30 days a year.

(B) The employer shall make available medical examinations and consultations to all employees who have been exposed to EtO in an emergency situation.

(ii) *Examination by a physician.* The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(2) *Medical examinations and consultations.* (i) Frequency. The employer shall make available medical examinations and consultations to each employee covered under paragraph (i)(1)(i) of this section on the following schedules:

(A) Prior to assignment of the employee to an area where exposure may be at or above the action level for at least 30 days a year.

(B) At least annually each employee exposed at or above the action level for at least 30 days in the past year.

(C) At termination of employment or reassignment to an area where exposure to EtO is not at or above the action level for at least 30 days a year.

(D) As medically appropriate for any employee exposed during an emergency.

(E) As soon as possible, upon notification by an employee either (1) that the employee has developed signs or symptoms indicating possible overexposure to EtO, or (2) that the employee desires medical advice concerning the effects of current or past exposure to EtO on the employee's ability to produce a healthy child.

(F) If the examining physician determines that any of the examinations should be provided more frequently than specified, the employer shall

provide such examinations to affected employees at the frequencies recommended by the physician.

(ii) *Content.* (A) Medical examinations made available pursuant to paragraphs (i)(2)(i)(A)–(D) of this section shall include:

(*1*) A medical and work history with special emphasis directed to symptoms related to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(*2*) A physical examination with particular emphasis given to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(*3*) A complete blood count to include at least a white cell count (including differential cell count), red cell count, hematocrit, and hemoglobin.

(*4*) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

(B) The content of medical examinations or consultation made available pursuant to paragraph (i)(2)(i)(E) of this section shall be determined by the examining physician, and shall include pregnancy testing or laboratory evaluation of fertility, if requested by the employee and deemed appropriate by the physician.

(3) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and Appendices A, B, and C.

(ii) A description of the affected employee's duties as they relate to the employee's exposure.

(iii) The employee's representative exposure level or anticipated exposure level.

(iv) A description of any personal protective and respiratory equipment used or to be used.

(v) Information from previous medical examinations of the affected employee that is not otherwise available to the examining physician.

(4) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination and shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of material health impairment from exposure to EtO;

(B) Any recommended limitations on the employee or upon the use of personal protective equipment such as clothing or respirators; and

(C) A statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions resulting from EtO exposure that require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to EtO.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days from its receipt.

(j) *Communication of EtO hazards to employees*—(1) *Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED
TO BE WORN IN THIS AREA

(ii) The employer shall ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level or whose contents may reasonably be foreseen to cause employee exposure above the excursion limit, and that the labels remain affixed when the containers of EtO leave the workplace. For the purpose of this paragraph, reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers. The labels shall comply with the requirements of 29 CFR 1915.1200(f) of OSHA's Hazard Communication standard, and shall include the following legend:

(A)

DANGER
ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD

and

(B) A warning statement against breathing airborne concentrations of EtO.

(iii) The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.

(2) *Material safety data sheets.* Employers who are manufacturers or importers of EtO shall comply with the requirements regarding development of material safety data sheets as specified in 29 CFR 1915.1200(g) of OSHA's Hazard Communication standard.

(3) *Information and training.* (i) The employer shall provide employees who are potentially exposed to EtO at or above the action level or above the excursion limit with information and training on EtO at the time of initial assignment and at least annually thereafter.

(ii) Employees shall be informed of the following:

(A) The requirements of this section with an explanation of its contents, including Appendices A and B;

(B) Any operations in their work area where EtO is present;

(C) The location and availability of the written EtO final rule; and

(D) The medical surveillance program required by paragraph (i) of this section with an explanation of the information in Appendix C.

(iii) Employee training shall include at least:

(A) Methods and observations that may be used to detect the presence or release of EtO in the work area (such as monitoring conducted by the employer, continuous monitoring devices, etc.);

(B) The physical and health hazards of EtO;

(C) The measures employees can take to protect themselves from hazards associated with EtO exposure, including specific procedures the employer has implemented to protect employees from exposure to EtO, such as work practices, emergency procedures, and personal protective equipment to be used; and

(D) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and how employees can obtain and use the appropriate hazard information.

(k) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the processing, use, or handling of products made from or containing EtO are exempted from other requirements of this section under paragraph (a)(2) of this section, or where objective data have been relied on in lieu of initial monitoring under paragraph (d)(2)(ii) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of EtO;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure measurements.* (i) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to EtO as prescribed in paragraph (d) of this section.

(ii) This record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposure to EtO which is being monitored;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of protective devices worn, if any; and

(F) Name, social security number and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1915.1120.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (i)(1)(i) of this section, in accordance with 29 CFR 1915.1120.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physicians' written opinions;

(C) Any employee medical complaints related to exposure to EtO; and

(D) A copy of the information provided to the physician as required by paragraph (i)(3) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1915.1120.

(4) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying.

(ii) The employer, upon request, shall make any exemption and exposure records required by paragraphs (k) (1) and (2) of this section available for examination and copying to affected employees, former employees, designated representatives and the Assistant Secretary, in accordance with 29 CFR 1915.1120 (a) through (e) and (g) through (i).

(iii) The employer, upon request, shall make employee medical records required by paragraph (k)(3) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Assistant Secretary, in accordance with 29 CFR 1915.1120.

(5) *Transfer of records.* (i) The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1915.1120(h).

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal and transmit them to the Director.

(l) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to EtO conducted in accordance with paragraph (d) of this section.

(2) *Observation procedures.* When observation of the monitoring of employee exposure to EtO requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(m) *Dates*—(1) *(i) Effective date.* The paragraphs contained in this section shall become effective August 21, 1984, except for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) which shall become effective on March 12, 1985.

(ii) The requirements in this section which pertain only to or are triggered by the excursion limit shall become effective June 6, 1988, except for the excursion limit provisions in paragraphs (a)(2), (d), (f)(2), (g)(3) and (j) of this section which shall become effective August 25, 1988.

(2) *Start-up dates.* (i) The start-up date for the requirements in those paragraphs that were effective on August 21, 1984, including institution of work practice controls specified in paragraph (f)(1), shall be February 19, 1985, except as provided for in paragraph (m)(2)(ii), and the start-up date for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) of this section shall be September 9, 1985.

(ii) Engineering controls specified by paragraph (f)(1) of this section shall be implemented by August 21, 1985.

(iii) Compliance with the requirements in this section which pertain only to or are triggered by the excursion limit shall be by September 6, 1988, except for compliance with the excursion limit provisions of paragraphs (a)(2), (d), (f)(2), (g)(3), and (j) of this section, which shall be by October 6, 1988, and implementation of engineering controls specified for compliance with the excursion limit, which shall be by December 6, 1988.

(3) *Labeling.* (i) Paragraph (j)(1)(ii)(A) of this section as amended is effective January 9, 1986.

(ii) Paragraph (j)(1)(iii) of this is effective October 11, 1985.

(n) *Appendices.* The information contained in the appendices is not intended by itself to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0108)

Appendix A to § 1915.1047—Substance Safety Data Sheet for Ethylene Oxide (Non-Mandatory)

I. substance identification

A. Substance: Ethylene oxide (C_2H_4O).

B. Synonyms: dihydrooxirene, dimethylene oxide, EO, 1,2-epoxyethane, EtO, ETO, oxacyclopropane, oxane, oxidoethane, alpha/beta-oxidoethane, oxiran, oxirane.

C. Ethylene oxide can be found as a liquid or vapor.

D. EtO is used in the manufacture of ethylene glycol, surfactants, ethanolamines, glycol ethers, and other organic chemicals. EtO is also used as a sterilant and fumigant.

E. Appearance and odor: Colorless liquid below 10.7 °C (51.3 °F) or colorless gas with ether-like odor detected at approximately 700 parts EtO per million parts of air (700 ppm).

F. Permissible Exposure: Exposure may not exceed 1 part EtO per million parts of air averaged over the 8-hour workday.

II. health hazard data

A. Ethylene oxide can cause bodily harm if you inhale the vapor, if it comes into contact with your eyes or skin, or if you swallow it.

B. Effects of overexposure:

1. Ethylene oxide in liquid form can cause eye irritation and injury to the cornea, frostbite, and severe irritation and blistering of the skin upon prolonged or confined contact. Ingestion of EtO can cause gastric irritation and liver injury. Acute effects from inhalation of EtO vapors include respiratory irritation and lung injury, headache, nausea, vomiting, diarrhea, shortness of breath, and cyanosis (blue or purple coloring of skin). Exposure has also been associated with the occurrence of cancer, reproductive effects, mutagenic changes, neurotoxicity, and sensitization.

1. EtO has been shown to cause cancer in laboratory animals and has been associated with higher incidences of cancer in humans. Adverse reproductive effects and chromosome damage may also occur from EtO exposure.

VOL
58
ISS
125
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a. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms and suspect that they are caused by exposure to EtO.

III. emergency first aid procedures

A. Eye exposure: If EtO gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper eyelids. Get medical attention immediately. Contact lenses should not be worn when working with this chemical.

B. Skin exposure: If EtO gets on your skin, immediately wash the contaminated skin with water. If EtO soaks through your clothing, especially your shoes, remove the clothing immediately and wash the skin with water using an emergency deluge shower. Get medical attention immediately. Thoroughly wash contaminated clothing before reusing. Contaminated leather shoes or other leather articles should not be reused and should be discarded.

C. Inhalation: If large amounts of EtO are inhaled, the exposed person must be moved to fresh air at once. If breathing has stopped, perform cardiopulmonary resuscitation. Keep the affected person warm and at rest. Get medical attention immediately.

D. Swallowing: When EtO has been swallowed, give the person large quantities of water immediately. After the water has been swallowed, try to get the person to vomit by having him or her touch the back of the throat with his or her finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, attempt rescue only after notifying at least one other person of the emergency and putting into effect established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

IV. respirators and protective clothing

A. Respirators: You may be required to wear a respirator for nonroutine activities, in emergencies, while your employer is in the process of reducing EtO exposures through engineering controls, and where engineering controls are not feasible. As of the effective date of the standard, only air supplied positive-pressure, full-facepiece respirators are approved for protection against EtO. If air-purifying respirators are worn in the future, they must have a joint Mine Safety and Health Administration (MSHA) and National Institute for Occupational Safety and Health (NIOSH) label of approval for use with ethylene oxide. For effective protection, respirators must fit your face and head snugly. Respirators should not be loosened or removed in work situations where their use is required.

EtO does not have a detectable odor except at levels well above the permissible exposure limits. If you can smell EtO while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective clothing: You may be required to wear impermeable clothing, gloves, a face shield, or other appropriate protective clothing to prevent skin contact with liquid EtO or EtO-containing solutions. Where protective clothing is required, your employer must provide clean garments to you as necessary to assure that the clothing protects you adequately.

Replace or repair protective clothing that has become torn or otherwise damaged.

EtO must never be allowed to remain on the skin. Clothing and shoes which are not impermeable to EtO should not be allowed to become contaminated with EtO, and if they do, the clothing should be promptly removed and decontaminated. Contaminated leather shoes should be discarded. Once EtO penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection: You must wear splashproof safety goggles in areas where liquid EtO or EtO-containing solutions may contact your eyes. In addition, contact lenses should not be worn in areas where eye contact with EtO can occur.

V. precautions for safe use, handling, and storage

A. EtO is a flammable liquid, and its vapors can easily form explosive mixtures in air.

B. EtO must be stored in tighly closed containers in a cool, well-ventilated area, away from heat, sparks, flames, strong oxidizers, alkalines, and acids, strong bases, acetylide-forming metals such as cooper, silver, mercury and their alloys.

C. Sources of ignition such as smoking material, open flames and some electrical devices are prohibited wherever EtO is handled, used, or stored in a manner that could create a potential fire or explosion hazard.

D. You should use non-sparking tools when opening or closing metal containers of EtO, and containers must be bonded and grounded in the rare instances in which liquid EtO is poured or transferred.

E. Impermeable clothing wet with liquid EtO or EtO-containing solutions may be easily ignited. If your are wearing impermeable clothing and are splashed with liquid EtO or EtO-containing solution, you should immediately remove the clothing while under an emergency deluge shower.

F. If your skin comes into contact with liquid EtO or EtO-containing solutions, you should immediately remove the EtO using an emergency deluge shower.

G. You should not keep food, beverages, or smoking materials in regulated areas where employee exposures are above the permissible exposure limits.

H. Fire extinguishers and emergency deluge showers for quick drenching should be readily available, and you should know where they are and how to operate them.

I. Ask your supervisor where EtO is used in your work area and for any additional plant safety and health rules.

VI. access to information

A. Each year, your employer is required to inform you of the information contained in this standard and appendices for EtO. In addition, your employer must instruct you in the proper work practices for using EtO emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to EtO. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determine that you are being overexposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits.

C. Your employer is required to keep records of your exposures and medical examinations. These exposure records must be kept by the employer for at least thirty (30) years. Medical records must be kept for the period of your employment plus thirty (30) years.

D. Your employer is required to release your exposure and medical records to your physician or designated representative upon your written request.

VII. sterilant use of eto in hospitals and health care facilities

This section of Appendix A, for informational purposes, sets forth EPA's recommendations for modifications in workplace design and practice in hospitals and health care facilities for which the Environmental Protection Agency has registered EtO for uses as a sterilant or fumigant under the Federal Insecticide, Funigicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* These new recommendations, published in the **Federal Register** by EPA at 49 FR 15268, as modified in today's **Register**, are intended to help reduce the exposure of hospital and health care workers to EtO to 1 ppm. EPA's recommended workplace design and workplace practice are as follows:

1. Workplace Design

a. *Installation of gas line hand valves.* Hand valves must be installed on the gas supply line at the connection to the supply cylinders to minimize leakage during cylinder change.

b. *Installation of capture boxes.* Sterilizer operations result in a gas/water discharge at the completion of the process. This discharge is routinely piped to a floor drain which is generally located in an equipment or an adjacent room. When the floor drain is not in the same room as the sterilizer and workers are not normally present, all that is necessary is that the room be well ventilated.

The installation of a "capture box" will be required for those work place layouts where the floor drain is located in the same room as the sterilizer or in a room where workers are normally present. A "capture box" is a piece of equipment that totally encloses the floor drain where the discharge from the sterilizer is pumped. The "capture box" is to be vented directly to a non-recirculating or dedicated ventilation system. Sufficient air intake should be allowed at the bottom of the box to handle the volume of air that is ventilated from the top of the box. The "capture box" can be made of metal, plastic, wood or other equivalent material. The box is intended to reduce levels of EtO discharged into the work room atmosphere.

The use of a "capture box" is not required if: (1) The vacuum pump discharge floor drain is located in a well ventilated equipment or other room where workers are not normally present or (2) the water sealed vacuum pump discharges directly to a closed sealed sewer line (check local plumbing codes).

If it is impractical to install a vented "capture box" and a well ventilated equipment or other room is not feasible, a box that can be sealed over the floor drain may be used if: (1) The floor drain is located in a room where workers are not normally present and EtO cannot leak into an occupied area, and (2) the sterilizer in use is less than 12 cubic feet in capacity (check local plumbing codes).

c. *Ventilation of aeration units* i. *Existing aeration units.* Existing units must be vented to a non-recirculating or dedicated system or vented to an equipment or other room where workers are not normally present and which is well ventilated. Aerator units must be positioned as close as possible to the sterilizer to minimize the exposure from the off-gassing of sterilized items.

ii. *Installation of new aerator units (where none exist).* New aerator units must be vented as described above for existing aerators. Aerators must be in place by July 1, 1986.

d. *Ventilation during cylinder change.* Workers may be exposed to short but relatively high levels of EtO during the change of gas cylinders. To reduce exposure from this route, users must select one of three alternatives designed to draw off gas that may be released when the line from the sterilizer to the cylinder is disconnected:

i. Location of cylinders in a well ventilated equipment room or other room where workers are not normally present.

ii. Installation of a flexible hose (at least 4" in diameter) to a non-recirculating or dedicated ventilation system and located in the area of cylinder change in such a way that the hose can be positioned at the point where the sterilizer gas line is disconnected from the cylinder.

iii. Installation of a hood that is part of a non-recirculating or dedicated system and positioned no more than one foot above the point where the change of cylinders takes place.

e. *Ventilation of sterilizer door area.* One of the major sources of exposure to EtO occurs when the sterilizer door is opened following the completion of the sterilization process. In order to reduce this avenue of exposure, a hood or metal canopy closed on each end must be installed over the sterilizer door. The hood or metal canopy must be connected to a non-recirculating or dedicated ventilation system or one that exhausts gases to a well ventilated equipment or other room where workers are not normally present. A hood or canopy over the sterilizer door is required for use even with those sterilizers that have a purge cycle and must be in place by July 1, 1986.

f. *Ventilation of sterilizer relief valve.* Sterilizers are typically equipped with a safety relief device to release gas in case of increased pressure in the sterilizer. Generally, such relief devices are used on pressure vessels. Although these pressure relief devices are rarely opened for hospital and health care sterilizers, it is suggested that they be designed to exhaust vapor from the sterilizer by one of the following methods:

i. Through a pipe connected to the outlet of the relief valve ventilated directly outdoors at a point high enough to be away from passers by, and not near any windows that open, or near any air conditioning or ventilation air intakes.

ii. Through a connection to an existing or new non-recirculating or dedicated ventilation system.

iii. Through a connection to a well ventilated equipment or other room where workers are not normally present.

g. *Ventilation systems.* Each hospital and health care facility affected by this notice that uses EtO for the sterilization of equipment and supplies must have a ventilation system which enables compliance with the requirements of section (b) through (f) in the manner described in these sections and within the timeframes allowed. Thus, each affected hospital and health care facility must have or install a non-recirculating or dedicated ventilation equipment or other room where workers are not normally present in which to vent EtO.

h. *Installation of alarm systems.* An audible and visual indicator alarm system must be installed to alert personnel of ventilation system failures, i.e., when the ventilation fan motor is not working.

2. Workplace Practices

All the workplace practices discussed in this unit must be permanently posted near the door of each sterilizer prior to use by any operator.

a. *Changing of supply line filters.* Filters in the sterilizer liquid line must be changed when necessary, by the following procedure:

i. Close the cylinder valve and the hose valve.

ii. Disconnect the cylinder hose (piping) from the cylinder.

iii. Open the hose valve and bleed slowly into a proper ventilating system at or near the in-use supply cylinders.

iv. Vacate the area until the line is empty.

v. Change the filter.

vi. Reconnect the lines and reverse the value position.

vii. Check hoses, filters, and valves for leaks with a fluorocarbon leak detector (for those sterilizers using the 88 percent chlorofluorocarbon, 12 percent ethylene oxide mixture (12/88)).

b. *Restricted access area.* i. Areas involving use of EtO must be designated as restricted access areas. They must be identified with signs or floor marks near the sterilizer door, aerator, vacuum pump floor drain discharge, and in-use cylinder storage.

ii. All personnel must be excluded from the restricted area when certain operations are in progress, such as discharging a vacuum pump, emptying a sterilizer liquid line, or venting a non-purge sterilizer with the door ajar or other operations where EtO might be released directly into the face of workers.

c. *Door opening procedures.* i. *Sterilizers with purge cycles.* A load treated in a sterilizer equipped with a purge cycle should be removed immediately upon completion of the cycle (provided no time is lost opening the door after cycle is completed). If this is not done, the purge cycle should be repeated before opening door.

ii. *Sterilizers without purge cycles.* For a load treated in a sterilizer not equipped with a purge cycle, the sterilizer door must be ajar 6" for 15 minutes, and then fully opened for at least another 15 minutes before removing the treated load. The length of time of the second period should be established by peak monitoring for one hour after the two 15-minute periods suggested. If the level is above 10 ppm time-weighted average for 8 hours, more time should be added to the second waiting period (door wide open). However, in no case may the second period be shortened to less than 15 minutes.

d. *Chamber unloading procedures.* i. Procedures for unloading the chamber must include the use of baskets or rolling carts, or baskets and rolling tables to transfer treated loads quickly, thus avoiding excessive contact with treated articles, and reducing the duration of exposures.

ii. If rolling carts are used, they should be pulled not pushed by the sterilizer operators to avoid offgassing exposure.

e. *Maintenance.* A written log should be instituted and maintained documenting the date of each leak detection and any maintenance procedures undertaken. This is a suggested use practice and is not required.

i. *Leak detection.* Sterilizer door gaskets, cylinder and vacuum piping, hoses, filters, and valves must be checked for leaks under full pressure with a Fluorocarbon leak detector (for 12/88 systems only) every two weeks by maintenance personnel. Also, the cylinder piping connections must be checked after changing cylinders. Particular attention in leak detection should be given to the automatic solenoid valves that control the flow of EtO to the sterilizer. Specifically, a check should be made at the EtO gasline entrance port to the sterilizer, while the sterilizer door is open and the solenoid valves are in a closed position.

ii. *Maintenance procedures.* Sterilizer/areator door gaskets, valves, and fittings must be replaced when necessary as determined by maintenance personnel in their bi-weekly checks; in addition, visual inspection of the door gaskets for cracks, debris, and other foreign substances should be conducted daily by the operator.

Appendix B to § 1915.1047—Substance Technical Guidelines for Ethylene Oxide (Non-Mandatory)

I. physical and chemical data

A. Substance identification:

1. Synonyms: dihydrooxirene, dimethylene oxide, EO, 1,2-epoxyethane, EtO ETO oxacyclopropane, oxane, oxidoethane, alpha/beta-oxidoethane, oxiran, oxirane.

2. Formula: (C_2H_4O).

3. Molecular weight: 44.06

B. Physical data:

1. Boiling point (760 mm Hg): 10.70°C (51.3°F);

2. Specific gravity (water = 1): 0.87 (at 20°C or 68°F)

3. Vapor density (air = 1): 1.49;

4. Vapor pressure (at 20°C): 1,095 mm Hg;

5. Solubility in water: complete;
6. Appearance and odor: colorless liquid; gas at temperature above 10.7°F or 51.3°C with ether-like odor above 700 ppm.

II. fire, explosion, and reactivity hazard data

A. Fire:
1. Flash point: less than O°F (open cup);
2. Stability: decomposes violently at temperatures above 800°F;
3. Flammable limits in air, percent by volume: Lower: 3, Upper: 100;
4. Extinguishing media: Carbon dioxide for small fires, polymer or alcohol foams for large fires;
5. Special fire fighting procedures: Dilution of ethylene oxide with 23 volumes of water renders it non-flammable;
6. Unusual fire and explosion hazards: Vapors of EtO will burn without the presence of air or other oxidizers. EtO vapors are heavier than air and may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which EtO is being used.
7. For purposes of compliance with the requirements of 29 CFR 1910.106, EtO is classified as a flammable gas. For example, 7,500 ppm, approximately one-fourth of the lower flammable limit, would be considered to pose a potential fire and explosion hazard.
8. For purposes of compliance with 29 CFR 1910.155, EtO is classified as a Class B fire hazard.
9. For purpose of compliance with 29 CFR 1919.307, locations classified as hazardous due to the presence of EtO shall be Class I.
B. Reactivity:
1. Conditions contributing to instability: EtO will polymerize violently if contaminated with aqueous alkalies, amines, mineral acids, metal chlorides, or metal oxides. Violent decomposition will also occur at temperatures above 800 °F;
2. Incompatabilities: Alkalines and acids;
3. Hazardous decomposition products: Carbon monoxide and carbon dioxide.

III. spill, leak, and disposal procedures

A. If EtO is spilled or leaked, the following steps should be taken:
1. Remove all ignition sources.
2. The area should be evacuated at once and re-entered only after the area has been thoroughly ventilated and washed down with water.
B. Persons not wearing appropriate protective equipment should be restricted from areas of spills or leaks until cleanup has been completed.
C. Waste disposal methods: Waste material should be disposed of in a manner that is not hazardous to employees or to the general population. In selecting the method of waste disposal, applicable local, State, and Federal regulations should be consulted.

IV. monitoring and measurement procedures

A. Exposure aoove the Permissible Exposure Limit:
1. Eight-hour exposure evaluation: Measurements taken for the purpose of determining employee exposure under this section are best taken with consecutive samples covering the full shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee.)
2. Monitoring techniques: The sampling and analysis under this section may be performed by collection of the EtO vapor on charcoal adsorption tubes or other composition adsorption tubes, with subsequent chemical analysis. Sampling and analysis may also be performed by instruments such as real-time continuous monitoring systems, portable direct reading instruments, or passive dosimeters as long as measurements taken using these methods accurately evaluate the concentration of EtO in employees' breathing zones.

Appendix D describes the validated method of sampling and analysis which has been tested by OSHA for use with EtO. Other available methods are also described in Appendix D. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring should be accurate, to a 95 percent confidence level, to plus or minus 25 percent for concentrations of EtO at 1 ppm, and to plus or minus 35 percent for concentrations at 0.5 ppm. In addition to the method described in Appendix D, there are numerous other methods available for monitoring for EtO in the workplace. Details on these other methods have been submitted by various companies to the rulemaking record, and are available at the OSHA Docket Office.

B. Since many of the duties relating to employee exposure are dependent on the results of measurement procedures, employers should assure that the evaluation of employee exposures is performed by a technically qualified person.

V. protective clothing and equipment

Employees should be provided with and be required to wear appropriate protective clothing wherever there is significant potential for skin contact with liquid EtO or EtO-containing solutions. Protective clothing shall include impermeable coveralls or similar full-body work clothing, gloves, and head coverings, as appropriate to protect areas of the body which may come in contact with liquid EtO or EtO-containing solutions.

Employers should ascertain that the protective garments are impermeable to EtO. Permeable clothing, including items made of rubber, and leather shoes should not be allowed to become contaminated with liquid EtO. If permeable clothing does become contaminated, it should be immediately removed, while the employer is under an emergency deluge shower. If leather footwear or other leather garments become wet from EtO they should be discarded and not be worn again, because leather absorbs EtO and holds it against the skin.

Any protective clothing that has been damaged or is otherwise found to be defective should be repaired or replaced. Clean protective clothing should be provided to the employee as necessary to assure employee protection. Whenever impermeable clothing becomes wet with liquid EtO, it should be washed down with water before being removed by the employee. Employees are also required to wear splash-proof safety goggles where there is any possibility of EtO contacting the eyes.

VI. miscellaneous precautions

A. Store EtO in tightly closed containers in a cool, well-ventilated area and take all necessary precautions to avoid any explosion hazard.
B. Non-sparking tools must be used to open and close metal containers. These containers must be effectively grounded and bonded.
C. Do not incinerate EtO cartridges, tanks or other containers.
D. Employers should advise employees of all areas and operations where exposure to EtO occur.

VII. common operations

Common operations in which exposure to EtO is likely to occur include the following: Manufacture of EtO, surfactants, ethanolamines, glycol ethers, and specialty chemicals, and use as a sterilant in the hospital, health product and spice industries.

Appendix C to § 1915.1047—Medical Surveillance Guidelines for Ethylene Oxide (Non-Mandatory)

I. route of entry

Inhalation.

II. toxicology

Clinical evidence of adverse effects associated with the exposure to EtO is present in the form of increased incidence of cancer in laboratory animals (leukemia, stomach, brain), mutation in offspring in animals, and resorptions and spontaneous abortions in animals and human populations respectively. Findings in humans and experimental animals exposed to airborne concentrations of EtO also indicate damage to the genetic material (DNA). These include hemoglobin alkylation, unsecheduled DNA synthesis, sister chromatid exchange chromosomal aberration, and functional sperm abnormalities.

Ethylene oxide in liquid form can cause eye irritation and injury to the cornea, frostbite, severe irritation, and blistering of the skin upon prolonged or confined contact. Ingestion of EtO can cause gastric irritation and liver injury. Other effects from inhalation of EtO vapors include respiratory irritation and lung injury, headache, nausea, vomiting, diarrhea, dyspnea and cyanosis.

III. signs and symptoms of acute overexposure

The early effects of acute overexposure to EtO are nausea and vomiting, headache, and irritation of the eyes and respiratory passages. The patient may notice a "peculiar taste" in the mouth. Delayed effects can include pulmonary edema, drowsiness, weakness, and incoordination. Studies suggest that blood cell changes, an increase in chromosomal aberrations, and spontaneous abortion may also be causally related to acute overexposure to EtO.

Skin contact with liquid or gaseous EtO causes characteristic burns and possibly even an allergic-type sensitization. The edema and erythema occurring from skin contact with EtO progress to vesiculation with a tendency

to coalesce into blebs with desquamation. Healing occurs within three weeks, but there may be a residual brown pigmentation. A 40–80% solution is extremely dangerous, causing extensive blistering after only brief contact. Pure liquid EtO causes frostbite because of rapid evaporation. In contrast, the eye is relatively insensitive to EtO, but there may be some irritation of the cornea.

Most reported acute effects of occupational exposure to EtO are due to contact with EtO in liquid phase. The liquid readily penetrates rubber and leather, and will produce blistering if clothing or footwear contaminated with EtO are not removed.

IV. surveillance and preventive considerations

As noted above, exposure to EtO has been linked to an increased risk of cancer and reproductive effects including decreased male fertility, fetotoxicity, and spontaneous abortion. EtO workers are more likely to have chromosomal damage than similar groups not exposed to EtO. At the present, limited studies of chronic effects in humans resulting from exposure to EtO suggest a causal association with leukemia. Animal studies indicate leukemia and cancers at other sites (brain, stomach) as well. The physician should be aware of the findings of these studies in evaluating the health of employees exposed to EtO.

Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as cancer, from exposure to EtO do not presently exist. Laboratory tests may, however, give evidence to suggest that an employee is potentially overexposed to EtO. It is important for the physician to become familiar with the operating conditions in which exposure to EtO is likely to occur. The physician also must become familiar with the signs and symptoms that indicate a worker is receiving otherwise unrecognized and unacceptable exposure to EtO. These elements are especially important in evaluating the medical and work histories and in conducting the physical exam. When an unacceptable exposure in an active employee is identified by the physician, measures taken by the employer to lower exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to EtO at or above the action level (0.5 ppm) for at least 30 days per year, without regard to respirator use. All examinations and procedures must be performed by or under the supervision of a licensed physician at a reasonable time and place for the employee and at no cost to the employee.

Although broad latitude in prescribing specific tests to be included in the medical surveillance program is extended to the examining physician, OSHA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms related to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(ii) Physical examination with particular emphasis given to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(iii) Complete blood count to include at least a white cell count (including differential cell count), red cell count, hematocrit, and hemoglobin.

(iv) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

If requested by the employee, the medical examinations shall include pregnancy testing or laboratory evaluation of fertility as deemed appropriate by the physician.

In certain cases, to provide sound medical advice to the employer and the employee, the physician must evaluate situations not directly related to EtO. For example, employees with skin diseases may be unable to tolerate wearing protective clothing. In addition those with chronic respiratory diseases may not tolerate the wearing of negative pressure (air purifying) respirators. Additional tests and procedures that will help the physician determine which employees are medically unable to wear such respirators should include: An evaluation of cardiovascular function, a baseline chest x-ray to be repeated at five year intervals, and a pulmonary function test to be repeated every three years. The pulmonary function test should include measurement of the employee's forced vital capacity (FVC), forced expiratory volume at one second (FEV1), as well as calculation of the ratios of FEV1 to FVC, and measured FVC and measured FEV1 to expected values corrected for variation due to age, sex, race, and height.

The employer is required to make the prescribed tests available at least annually to employees who are or will be exposed at or above the action level, for 30 or more days per year; more often than specified if recommended by the examining physician; and upon the employee's termination of employment or reassignment to another work area. While little is known about the long term consequences of high short-term exposures, it appears prudent to monitor such affected employees closely in light of existing health data. The employer shall provide physician recommended examinations to any employee exposed to EtO in emergency conditions. Likewise, the employer shall make available medical consultations including physician recommended exams to employees who believe they are suffering signs or symptoms of exposure to EtO.

The employer is required to provide the physician with the following informatin: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, when required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examinations; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of his or her health from exposure to EtO; any recommended restrictions upon the employee's exposure to EtO, or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to EtO, and a copy of the opinion must be provided to the affected employee.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to aid in the determination of initial placement of employees and to assess the employee's ability to use protective clothing and equipment.

Appendix D to § 1915.1047—Sampling and Analytical Methods for Ethylene Oxide (Non-Mandatory)

A number of methods are available for monitoring employee exposures to EtO. Most of these involve the use of charcoal tubes and sampling pumps, followed by analysis of the samples by gas chromatograph. The essential differences between the charcoal tube methods include, among others, the use of different desorbing solvents, the use of different lots of charcoal, and the use of different equipment for analysis of the samples.

Besides charcoal, methods using passive dosimeters, gas sampling bags, impingers, and detector tubes have been utilized for determination of EtO exposure. In addition, there are several commercially available portable gas analyzers and monitoring units.

This appendix contains details for the method which has been tested at the OSHA Analytical Laboratory in Salt Lake City. Inclusion of this method in the appendix does not mean that this method is the only one which will be satisfactory. Copies of descriptions of other methods available are available in the rulemaking record, and may be obtained from the OSHA Docket Office. These include the Union Carbide, Dow Chemical, 3M, and DuPont methods, as well as NIOSH Method S–286. These methods are briefly described at the end of this appendix.

Employers who noto problems with sample breakthrough using the OSHA or other charcoal methods should try larger charcoal tubes. Tubes of larger capacity are available. In addition, lower flow rates and shorter sampling times should be beneficial in minimizing breakthrough problems. Whatever method the employer chooses, he must assure himself of the method's accuracy and precision under the unique conditions present in his workplace.

Ethylene Oxide

Method No.: 30.
Matrix: Air.
Target Concentration: 1.0 ppm (1.8 mg/m^3).

Procedure: Samples are collected on two charcoal tubes in series and desorbed with 1% CS_2 in benzene. The samples are derivatized with HBr and treated with sodium carbonate. Analysis is done by gas chromatography with an electron capture detector.

Recommended Air Volume and Sampling Rate: 1 liter and 0.05 Lpm.

Detection Limit of the Overall Procedure: 13.3 ppb (0.024 mg/m^3) (Based on 1.0 liter air sample).

Reliable Quantitation Limit: 52.2 ppb (0.094 mg/m^3) (Based on 1.0 liter air sample).

Standard Error of Estimate: 6.59% (See Backup Section 4.6).

Special Requirements: Samples must be analyzed within 15 days of sampling date.

Status of Method: The sampling and analytical method has been subjected to the established evaluation procedures of the Organic Method Evaluations Branch.

Date: August 1981.

Chemist: Wayne D. Potter.

Organic Solvents Branch, OSHA Analytical Laboratory, Salt Lake City, Utah

1. General Discussion.

1.1 Background.

1.1.1 History of Procedure.

Ethylene oxide samples analyzed at the OSHA Laboratory have normally been collected on activated charcoal and desorbed with carbon disulfide. The analysis is performed with a gas chromatograph equipped with a FID (Flame ionization detector) as described in NIOSH Method S286 (Ref. 5.1). This method is based on a PEL of 50 ppm and has a detection limit of about 1 ppm.

Recent studies have prompted the need for a method to analyze and detect ethylene oxide at very low concentrations.

Several attempts were made to form an ultraviolet (UV) sensitive derivative with ethylene oxide for analysis with HPLC. Among those tested that gave no detectable product were: p-anisidine, methylimidazole, aniline, and 2,3,6-trichlorobenzoic acid. Each was tested with catalysts such as triethylamine, aluminum chloride, methylene chloride and sulfuric acid but no detectable derivative was produced.

The next derivatization attempt was to react ethylene oxide with HBr to form 2-bromoethanol. This reaction was successful. An ECD (electron capture detector) gave a very good response for 2-bromoethanol due to the presence of bromine. The use of carbon disulfide as the desorbing solvent gave too large a response and masked the 2-bromoethanol. Several other solvents were tested for both their response on the ECD and their ability to desorb ethylene oxide from the charcoal. Among those tested were toluene, xylene, ethyl benzene, hexane, cyclohexane and benzene. Benzene was the only solvent tested that gave a suitable response on the ECD and a high desorption. It was found that the desorption efficiency was improved by using 1% CS_2 with the benzene. The carbon disulfide did not significantly improve the recovery with the other solvents. SKC Lot 120 was used in all tests done with activated charcoal.

1.1.2 Physical Properties (Ref. 5.2–5.4).

Synonyms: Oxirane; dimethylene oxide, 1,2-epoxy-ethane; oxane; C_2H_4O; ETO;

Molecular Weight: 44.06

Boiling Point: 10.7 °C (51.3°)

Melting Point: −111 °C

Description: Colorless, flammable gas

Vapor Pressure: 1095 mm. at 20 °C

Odor: Ether-like odor

Lower Explosive Limits: 3.0% (by volume)

Flash Point (TOC): Below 0 °F

Molecular Structure: $CH_2—CH_2$

1.2 Limit Defining Parameters.

1.2.1 Detection Limit of the Analytical Procedure.

The detection limit of the analytical procedure is 12.0 picograms of ethylene oxide per injection. This is the amount of analyte which will give a peak whose height is five times the height of the baseline noise. (See Backup Data Section 4.1).

1.2.2 Detection Limit of the Overall Procedure.

The detection limit of the overall procedure is 24.0 ng of ethylene oxide per sample.

This is the amount of analyte spiked on the sampling device which allows recovery of an amount of analyte equivalent to the detection limit of the analytical procedure. (See Backup Data Section 4.2).

1.2.3 Reliable Quantitation Limit.

The reliable quantitation limit is 94.0 nanograms of ethylene oxide per sample. This is the smallest amount of analyte which can be quantitated within the requirements of 75% recovery and 95% confidence limits. (See Backup Data Section 4.2).

It must be recognized that the reliable quantitation limit and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters. In this case, the limits reported on analysis reports will be based on the operating parameters used during the analysis of the samples.

1.2.4 Sensitivity.

The sensitivity of the analytical procedure over a concentration range representing 0.5 to 2 times the target concentration based on the recommended air volume is 34105 area units per µg/mL. The sensitivity is determined by the slope of the calibration curve (See Backup Data Section 4.3).

The sensitivity will vary somewhat with the particular instrument used in the analysis.

1.2.5 Recovery.

The recovery of analyte from the collection medium must be 75% or greater. The average recovery from spiked samples over the range of 0.5 to 2 times the target concentration is 88.0% (See Backup Section 4.4). At lower concentrations the recovery appears to be non-linear.

1.2.6 Precision (Analytical Method Only).

The pooled coefficient of variation obtained from replicate determination of analytical standards at 0.5X, 1X and 2X the target concentration is 0.036 (See Backup Data Section 4.5).

1.2.7 Precision (Overall Procedure).

The overall procedure must provide results at the target concentration that are 25% of better at the 95% confidence level. The precision at the 95% confidence level for the 15 day storage test is plus or minus 12.9% (See Backup Data Section 4.6).

This includes an additional plus or minus 5% for sampling error.

1.3 Advantages.

1.3.1 The sampling procedure is convenient.

1.3.2 The analytical procedure is very sensitive and reproducible.

1.3.3 Reanalysis of samples is possible.

1.3.4 Samples are stable for at least 15 days at room temperature.

1.3.5 Interferences are reduced by the longer GC retention time of the new derivative.

1.4 Disadvantages.

1.4.1 Two tubes in series must be used because of possible breakthrough and migration.

1.4.2 The precision of the sampling rate may be limited by the reproducibility of the pressure drop across the tubes. The pumps are usually calibrated for one tube only.

1.4.3 The use of benzene as the desorption solvent increases the hazards of analysis because of the potential carcinogenic effects of benzene.

1.4.4 After repeated injections there can be a buildup of residue formed on the electron capture detector which decreases sensitivity.

1.4.5 Recovery from the charcoal tubes appears to be nonlinear at low concentrations.

2. Sampling Procedure.

2.1 Apparatus.

2.1.1 A calibrated personal sampling pump whose flow can be determined within plus or minus 5% of the recommended flow.

2.1.2 SKC Lot 120 Charcoal tubes: glass tube with both ends flame sealed, 7 cm long with a 6 mm O.D. and a 4-mm I.D., containing 2 sections of coconut shell charcoal separated by a 2-mm portion of urethane foam. The adsorbing section contains 100 mg of charcoal, the backup section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the backup section. A plug of silylated glass wool is placed in front of the adsorbing section.

2.2 Reagents.

2.2.1 None required.

2.3 Sampling Technique.

2.3.1 Immediately before sampling, break the ends of the charcoal tubes. All tubes must be from the same lot.

2.3.2 Connect two tubes in series to the sampling pump with a short section of flexible tubing. A minimum amount of tubing is used to connect the two sampling tubes together. The tube closer to the pump is used as a backup. This tube should be identified as the backup tube.

2.3.3 The tubes should be placed in a vertical position during sampling to minimize channeling.

2.3.4 Air being sampled should not pass through any hose or tubing before entering the charcoal tubes.

2.3.5 Seal the charcoal tubes with plastic caps immediately after sampling. Also, seal each sample with OSHA seals lengthwise.

2.3.6 With each batch of samples, submit at least one blank tube from the same lot used for samples. This tube should be subjected to exactly the same handling as the samples (break, seal, transport) except that no air is drawn through it.

2.3.7 Transport the samples (and corresponding paperwork) to the lab for analysis.

2.3.8 If bulk samples are submitted for analysis, they shoud be transported in glass containers with Teflon-lined caps. These samples must be mailed separately from the container used for the charcoal tubes.

2.4 Breakthrough.

2.4.1 The breakthrough (5% breakthrough) volume for a 3.0 mg/m ethylene oxide sample stream at approximately 85% relative humidity, 22°C and 633 mm is 2.6 liters sampled at 0.05 liters per minute. This is equivalent to 7.8 µg of ethylene oxide. Upon saturation of the tube it appeared that the water may be displacing ethylene oxide during sampling.

2.5 Desorption Efficiency.

2.5.1 The desorption efficiency, from liquid injection onto charcoal tubes, averaged 88.0% from 0.5 to 2.0 x the target concentration for a 1.0 liter air sample. At lower ranges it appears that the desorption efficiency is non-linear (See Backup Data Section 4.2).

2.5.2 The desorption efficiency may vary from one laboratory to another and also from one lot of charcoal to another. Thus, it is necessary to determine the desorption efficiency for a particular lot of charcoal.

2.6 Recommended Air Volume and Sampling Rate.

2.6.1 The recommended air volume is 1.0 liter.

2.6.2 The recommended maximum sampling rate is 0.05 Lpm.

2.7 Interferences.

2.7.1 Ethylene glycol and Freon 12 at target concentration levels did not interfere with the collection of ethylene oxide.

2.7.2 Suspected interferences should be listed on the sample data sheets.

2.7.3 The relative humidity may affect the sampling procedure.

2.8 Safety Precautions.

2.8.1 Attach the sampling equipment to the employee so that it does not interfere with work performance.

2.8.2 Wear safety glasses when breaking the ends of the sampling tubes.

2.8.3 If possible, place the sampling tubes in a holder so the sharp end is not exposed while sampling.

3. Analytical Method.

3.1 Apparatus.

3.1.1 Gas chromatograph equipped with a linearized electron capture detector.

3.1.2 GC column capable of separating the derivative of ethylene oxide (2-bromoethanol) from any interferences and the 1% CS_2 in benzene solvent. The column used for validation studies was: 10 ft x ⅛ inch stainless steel 20% SP-2100, .1% Carbowax 1500 on 100/120 Supelcoport.

3.1.3 An electronic integrator or some other suitable method of measuring peak areas.

3.1.4 Two milliliter vials with Teflon-lined caps.

3.1.5 Gas tight syringe—500 µL or other convenient sizes for preparing standards.

3.1.6 Microliter syringes—10 µL or other convenient sizes for diluting standards and 1 µL for sample injections.

3.1.7 Pipets for dispensing the 1% CS_2 in benzene solvent. The Glenco 1 mL dispenser is adequate and convenient.

3.1.8 Volumetric flasks—5 mL and other convenient sizes for preparing standards.

3.1.9 Disposable Pasteur pipets.

3.2 Reagents.

3.2.1 Benzene, reagent grade.

3.2.2 Carbon Disulfide, reagent grade.

3.2.3 Ethylene oxide, 99.7% pure.

3.2.4 Hydrobromic Acid, 48% reagent grade.

3.2.5 Sodium Carbonate, anhydrous, reagent grade.

3.2.6 Desorbing reagent, 99% Benzene/ 1% CS_2.

3.3 Sample Preparation.

3.3.1 The front and back sections of each sample are transferred to separate 2-mL vials.

3.3.2 Each sample is desorbed with 1.0 mL of desorbing reagent.

3.3.3 The vials are sealed immediately and allowed to desorb for one hour with occasional shaking.

3.3.4 Desorbing reagent is drawn off the charcoal with a disposable pipet and put into clean 2-mL vials.

3.3.5 One drop of HBr is added to each vial. Vials are resealed and HBr is mixed well with the desorbing reagent.

3.3.6 About 0.15 gram of sodium carbonate is carefully added to each vial. Vials are again resealed and mixed well.

3.4 Standard Preparation.

3.4.1 Standards are prepared by injecting the pure ethylene oxide gas into the desorbing reagent.

3.4.2 A range of standards are prepared to make a calibration curve. A concentration of 1.0 µL of ethylene oxide gas per 1 mL desorbing reagent is equivalent to 1.0 ppm air concentration (all gas volumes at 25°C and 760 mm) for the recommended 1 liter air sample. This amount is uncorrected for desorption efficiency (See Backup Data Section 4.2. for desorption efficiency corrections).

3.4.3 One drop of HBr per mL of standard is added and mixed well.

3.4.4 About 0.15 grams of sodium carbonate is carefully added for each drop of HBr (A small reaction will occur).

3.5 Analysis.

3.5.1 GC Conditions.

Nitrogen flow rate—10mL/min.
Injector Temperature—250° C
Detector Temperature—300° C
Column Temperature—100° C
Injection size—0.8 µL
Elution time—3.9 minutes

3.5.2 Peak areas are measured by an integrator or other suitable means.

3.5.3 The integrator results are in area units and a calibration curve is set up with concentration vs. area units.

3.6 Interferences.

3.6.1 Any compound having the same retention time of 2-bromoethanol is a potential interference. Possible interferences should be listed on the sample data sheets.

3.6.2 GC parameters may be changed to circumvent interferences.

3.6.3 There are usually trace contaminants in benzene. These contaminants, however, posed no problem of interference.

3.6.4 Retention time data on a single column is not considered proof of chemical identity. Samples over the 1.0 ppm target level should be confirmed by GC/Mass Spec or other suitable means.

3.7 Calculations

3.7.1 The concentration in µg/mL for a sample is determined by comparing the area of a particular sample to the calibration curve, which has been prepared from analytical standards.

3.7.2 The amount of analyte in each sample is corrected for desorption efficiency by use of a desorption curve.

3.7.3 Analytical results (A) from the two tubes that compose a particular air sample are added together.

3.7.4 The concentration for a sample is calculated by the following equation:

$$ETO, mg/m^3 = AXB/C$$

where:

A=µg/mL

B=desorption volume in milliliters

C=air volume in liters.

3.7.5 To convert mg/m^3 to parts per million (ppm) the following relationship is used:

$$ETO, ppm = mg/m^3 \times 24.45/44.05$$

where:

mg/m^3=results from 3.7.4

24.45=molar volume at 25 °C and 760mm Hg

44.05=molecular weight of ETO.

3.8 Safety Precautions

3.8.1 Ethylene oxide and benzene are potential carcinogens and care must be exercised when working with these compounds.

3.8.2 All work done with the solvents (preparation of standards, desorption of samples, etc.) should be done in a hood.

3.8.3 Avoid any skin contact with all of the solvents.

3.8.4 Wear safety glasses at all times.

3.8.5 Avoid skin contact with HBr because it is highly toxic and a strong irritant to eyes and skin.

4. Backup Data.

4.1 Detection Limit Data.

The detection limit was determined by injecting 0.8 µL of a 0.015 µg/mL standard of ethylene oxide into 1% CS_2 in benzene. The detection limit of the analytical procedure is taken to be 1.20×10^{-5} µg per injection. This is equivalent to 8.3 ppb (0.015 mg/m^3) for the recommended air volume.

4.2 Desorption Efficiency.

Ethylene oxide was spiked onto charcoal tubes and the following recovery data was obtained.

Amount spiked (µg)	Amount recovered (µg)	Percent recovery
4.5	4.32	96.0
3.0	2.61	87.0
2.25	2.025	90.0
1.5	1.365	91.0
1.5	1.38	92.0
.75	.6525	87.0
.375	.315	84.0
.375	.312	83.2
.1875	.151	80.5
.094	.070	74.5

At lower amounts the recovery appears to be non-linear.

4.3 Sensitivity Data.

The following data was used to determine the calibration curve.

Injection	0.5x.75 µg/mL	1x1.5 µg/mL	2x3.0 µg/mL
1	30904	59567	111778
2	30987	62914	106016
3	32555	58578	106122
4	32242	57173	109716
X	31672	59558	108408

Slope=34.105.

4.4 Recovery.

The recovery was determined by spiking ethylene oxide onto lot 120 charcoal tubes and desorbing with 1% CS_2 in Benzene. Recoveries were done at 0.5, 1.0, and 2.0 X the target concentration (1 ppm) for the recommended air volume.

PERCENT RECOVERY

Sample	0.5x	1.0x	2.0x
1	88.7	95.0	91.7
2	83.8	95.0	87.3
3	84.2	91.0	86.0
4	88.0	91.0	83.0
5	88.0	86.0	85.0
X	86.5	90.5	87.0

Weighted Average=88.2.

4.5 Precision of the Analytical Procedure.

The following data was used to determine the precision of the analytical method:

Concentration	0.5x.75 µg/mL	1x1.5 µg/mL	2x3.0 µg/mL
Injection	.7421	1.4899	3.1184
	.7441	1.5826	3.0447
	.7831	1.4628	2.9149
	.7753	1.4244	2.9185
Average	.7612	1.4899	2.9991
Standard Deviation	.0211	.0674	.0998
CV	.0277	.0452	.0333

$$CV = \frac{3(.0277)^2 + 3(.0452)^2 + 3(.0333)^2}{3 + 3 + 3}$$

CV+0.036

4.6 Storage Data.

Samples were generated at 1.5 mg/m^3 ethylene oxide at 85% relative humidity, 22°C and 633 mm. All samples were taken for 20 minutes at 0.05 Lpm. Six samples were analyzed as soon as possible and fifteen samples were stored at refrigerated temperature (5°C) and fifteen samples were stored at ambient temperature (23°C). These stored samples were analyzed over a period of nineteen days.

PERCENT RECOVERY

Day analyzed	Refrigerated	Ambient
1	87.0	87.0
1	93.0	93.0
1	94.0	94.0
1	92.0	92.0
4	92.0	91.0
4	93.0	88.0
4	91.0	89.0
6	92.0	.....
6	92.0	.....
8	.....	92.0
8	.....	86.0
10	91.7	.....
10	95.5	.....
10	95.7	.....
11	.....	90.0

PERCENT RECOVERY—Continued

Day analyzed	Refrigerated	Ambient
11	.....	82.0
13	78.0	.....
13	81.4	.....
13	82.4	.....
14	.....	78.5
14	.....	72.1
18	66.0	.....
18	68.0	.....
19	.....	64.0
19	.....	77.0

4.7 Breakthrough Data.

Breakthrough studies were done at 2 ppm (3.6 mg/m^3) at approximately 85% relative humidity at 22°C (ambient temperature). Two

charcoal tubes were used in series. The backup tube was changed every 10 minutes and analyzed for breakthrough. The flow rate was 0.050 Lpm.

Tube No.	Time (minutes)	Percent breakthrough
1	10	(1)
2	20	(1)
3	30	(1)
4	40	1.23
5	50	3.46
6	60	18.71
7	70	39.2
8	80	53.3
9	90	72.0
10	100	96.0
11	110	113.0
12	120	133.9

[1] None.

The 5% breakthrough volume was reached when 2.6 liters of test atmosphere were drawn through the charcoal tubes.

5. References.

5.1 "NIOSH Manual of Analytical Methods," 2nd ed. NIOSH: Cincinnati, 1977; Method S286.

5.2 "IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man," International Agency for Research on Cancer: Lyon, 1976; Vol. II, p. 157.

5.3 Sax., N.I. "Dangerous Properties of Industrial Materials," 4th ed.; Van Nostrand Reinhold Company. New York, 1975; p. 741.

5.4 "The Condensed Chemical Dictionary", 9th ed.; Hawley, G.G., ed.; Van Nostrand Reinhold Company, New York, 1977; p. 361.

Summary of Other Sampling Procedures

OSHA believes that served other types of monitoring equipment and techniques exist for monitoring time-weighted averages. Considerable research and method development is currently being performed, which will lead to improvements and a wider variety of monitoring techniques. A combination of monitoring procedures can be used. There probably is no one best method for monitoring personal exposure to ethylene oxide in all cases. There are advantages, disadvantages, and limitations to each method. The method of choice will depend on the need and requirements. Some commonly used methods include the use of charcoal tubes, passive dosimeters, Tedlar gas sampling bags, detector tubes, photoionization detection units, infrared detection units and gas chromatographs. A number of these methods are described below.

A. Charcoal Tube Sampling Procedures

Qazi-Ketcham method (Ex. 11–133)—This method consists of collecting EtO on Columbia JXC activated carbon, desorbing the EtO with carbon disulfide and analyzing by gas chromatography with flame ionization detection. Union Carbide has recently updated and revalidated this monitoring procedures. This method is capable of determining both eight-hour time-weighted average exposures and short-term exposures. The method was validated to 0.5 ppm. Like other charcoal collecting procedures, the method requires considerable analytical expertise.

ASTM-proposed method—The Ethylene Oxide Industry Council (EOIC) has contracted with Clayton Environmental Consultants, Inc. to conduct a collaborative study for the proposed method. The ASTM-Proposed method is similar to the method published by Qazi and Ketcham is the November 1977 American Industrial Hygiene Association Journal, and to the method of Pilney and Coyne, presented at the 1979 American Industrial Hygiene Conference. After the air to be sampled is drawn through an activated charcoal tube, the ethylene oxide is desorbed from the tube using carbon disulfide and is quantitated by gas chromatography utilizing a flame ionization detector. The ASTM-proposed method specifies a large two-section charcoal tube, shipment in dry ice, storage at less than −5°C, and analysis within three weeks to prevent migration and sample loss. Two types of charcoal tubes are being tested—Pittsburgh Coconut-Based (PCB) and Columbia JXC charcoal. This collaborative study will give an indication of the inter- and intralaboratory precision and accuracy of the ASTM-proposed method. Several laboratories have considerable expertise using the Qazi-Ketcham and Dow methods.

B. Passive Monitors—Ethylene oxide diffuses into the monitor and is collected in the sampling media. The DuPont Pro-Tek badge collects EtO in an absorbing solution, which is analyzed colorimetrically to determine the amount of EtO present. The 3M 350 badge collects the EtO on chemically treated charcoal. Other passive monitors are currently being developed and tested. Both 3M and DuPont have submitted data indicating their dosimeters meet the precision and accuracy requirements of the proposed ethylene oxide standard. Both presented laboratory validation data to 0.2 ppm (Exs. 11–65, 4–20, 108, 109, 130).

C. Tedlar Gas Sampling Bags-Samples are collected by drawing a known volume of air into a Tedlar gas sampling bag. The ethylene oxide concentration is often determined on-site using a portable gas chromatograph or portable infrared spectometer.

D. Detector tubes—A known volume of air is drawn through a detector tube using a small hand pump. The concentration of EtO is related to the length of stain developed in the tube. Detector tubes are economical, easy to use, and give an immediate readout. Unfortunately, partly because they are nonspecific, their accuracy is often questionable. Since the sample is taken over a short period of time, they may be useful for determining the source of leaks.

E. Direct Reading Instruments—There are numerous types of direct reading instruments, each having its own strengths and weaknesses (Exs. 135B, 135C, 107, 11–78, 11–153). Many are relatively new, offering greater sensitivity and specificity. Popular ethylene oxide direct reading instruments include infrared detection units, photoionization detection units, and gas chromatographs.

Portable infrared analyzers provide an immediate, continuous indication of a concentration value; making them particularly useful for locating high concentration pockets, in leak detection and in ambient air monitoring. In infrared detection units, the amount of infrared light absorbed by the gas being analyzed at selected infrared wavelengths is related to the concentration of a particular component. Various models have either fixed or variable infrared filters, differing cell pathlengths, and microcomputer controls for greater sensitivity, automation, and interference elimination.

A fairly recent detection system is photoionization detection. The molecules are ionized by high energy ultraviolet light. The resulting current is measured. Since different substances have different ionization potentials, other organic compounds may be ionized. The lower the lamp energy, the better the selectivity. As a continuous monitor, photoionization detection can be useful for locating high concentration pockets, in leak detection, and continuous ambient air monitoring. Both portable and stationary gas chromatographs are available with various types of detectors, including photoionization detectors. A gas chromatograph with a photoionization detector retains the photionization sensitivity, but minimizes or eliminates interferences. For several GC/PID units, the sensitivity is in the 0.1–0.2 ppm EtO range. The GC/PID with microprocessors can sample up to 20 sample points sequentially, calculate and record data, and activate alarms or ventilation systems. Many are quite flexible and can be configured to meet the specific analysis needs for the workplace.

DuPont presented their laboratory validation data of the accuracy of the Qazi-Ketcham charcoal tube, the PCB charcoal tube, Miran 103 IR analyzer, 3M #3550 monitor and the Du Pont C–70 badge. Quoting Elbert V. Kring:

> We also beleive that OSHA's proposed accuracy in this standard is appropriate. At plus or minus 25 percent at one part per million, and plus or minus 35 percent below that. And, our data indicates there's only one monitoring method, right now, that we've tested thoroughly, that meets that accuracy requirements. That is the Du Pont Pro-Tek badge* * *. We also believe that this kind of data should be confirmed by another independent laboratory, using the same type dynamic chamber testing (Tr. 1470)

Additional data by an independent laboratory following their exact protocol was not submitted. However, information was submitted on comparisons and precision and accuracy of those monitoring procedures which indicate far better precision and accuracy of those monitoring procedures than that obtained by Du Pont (Ex. 4–20, 130, 11–68, 11–133, 130, 135A).

The accuracy of any method depends to a large degree upon the skills and experience of those who not only collect the samples but also those who analyze the samples. Even for methods that are collaboratively tested, some laboratories are closer to the true values than others. Some laboratories may meet the precision and accuracy requirements of the method; others may consistently far exceed them for the same method.

VOL 58 ISS 125 JL 1 1993 UMI

§ 1915.1048 Formaldehyde.

(a) *Scope and application.* This standard applies to all occupational exposures to formaldehyde, i.e. from formaldehyde gas, its solutions, and materials that release formaldehyde.

(b) *Definitions.* For purposes of this standard, the following definitions shall apply:

Action level means a concentration of 0.5 part formaldehyde per million parts of air (0.5 ppm) calculated as an eight (8)-hour time-weighted average (TWA) concentration.

Assistant Secretary means the Assistant Secretary of Labor for the Occupational Safety and Health Administration, U.S. Department of Labor, or designee.

Authorized person means any person required by work duties to be present in regulated areas, or authorized to do so by the employer, by this section, or by the OSH Act of 1970.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency is any occurrence, such as but not limited to equipment failure, rupture of containers, or failure of control equipment that results in an uncontrolled release of a significant amount of formaldehyde.

Employee exposure means the exposure to airborne formaldehyde which would occur without corrections for protection provided by any respirator that is in use.

Formaldehyde means the chemical substance, HCHO, Chemical Abstracts Service Registry No. 50–00–0.

(c) *Permissible Exposure Limit (PEL)*—(1) *TWA*: The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds 0.75 parts formaldehyde per million parts of air (0.75 ppm) as an 8-hour TWA.

(2) *Short Term Exposure Limit (STEL)*: The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds two parts formaldehyde per million parts of air (2 ppm) as a 15-minute STEL.

(d) *Exposure monitoring*—(1) *General.* (i) Each employer who has a workplace covered by this standard shall monitor employees to determine their exposure to formaldehyde.

(ii) *Exception.* Where the employer documents, using objective data, that the presence of formaldehyde or formaldehyde-releasing products in the workplace cannot result in airborne concentrations of formaldehyde that would cause any employee to be exposed at or above the action level or the STEL under foreseeable conditions of use, the employer will not be required to measure employee exposure to formaldehyde.

(iii) When an employee's exposure is determined from representative sampling, the measurements used shall be representative of the employee's full shift or short-term exposure to formaldehyde, as appropriate.

(iv) Representative samples for each job classification in each work area shall be taken for each shift unless the employer can document with objective data that exposure levels for a given job classification are equivalent for different work shifts.

(2) *Initial monitoring.* The employer shall identify all employees who may be exposed at or above the action level or at or above the STEL and accurately determine the exposure of each employee so identified.

(i) Unless the employer chooses to measure the exposure of each employee potentially exposed to formaldehyde, the employer shall develop a representative sampling strategy and measure sufficient exposures within each job classification for each workshift to correctly characterize and not underestimate the exposure of any employee within each exposure group.

(ii) The initial monitoring process shall be repeated each time there is a change in production, equipment, process, personnel, or control measures which may result in new or additional exposure to formaldehyde.

(iii) If the employer receives reports of signs or symptoms of respiratory or dermal conditions associated with formaldehyde exposure, the employer shall promptly monitor the affected employee's exposure.

(3) *Periodic monitoring.* (i) The employer shall periodically measure and accurately determine exposure to formaldehyde for employees shown by the initial monitoring to be exposed at or above the action level or at or above the STEL.

(ii) If the last monitoring results reveal employee exposure at or above the action level, the employer shall repeat monitoring of the employees at least every 6 months.

(iii) If the last monitoring results reveal employee exposure at or above the STEL, the employer shall repeat monitoring of the employees at least once a year under worst conditions.

(4) *Termination of monitoring.* The employer may discontinue periodic monitoring for employees if results from two consecutive sampling periods taken at least 7 days apart show that employee exposure is below the action level and the STEL. The results must be statistically representative and consistent with the employer's knowledge of the job and work operation.

(5) *Accuracy of monitoring.* Monitoring shall be accurate, at the 95 percent confidence level, to within plus or minus 25 percent for airborne concentrations of formaldehyde at the TWA and the STEL and to within plus or minus 35 percent for airborne concentrations of formaldehyde at the action level.

(6) *Employee notification of monitoring results.* Within 15 days of receiving the results of exposure monitoring conducted under this standard, the employer shall notify the affected employees of these results. Notification shall be in writing, either by distributing copies of the results to the employees or by posting the results. If the employee exposure is over either PEL, the employer shall develop and implement a written plan to reduce employee exposure to or below both PELs, and give written notice to employees. The written notice shall contain a description of the corrective action being taken by the employer to decrease exposure.

(7) *Observation of monitoring.* (i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to formaldehyde required by this standard.

(ii) When observation of the monitoring of employee exposure to formaldehyde requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the clothing and equipment to the observer, require the observer to use such clothing and equipment, and assure that the observer complies with all other applicable safety and health procedures.

(e) *Regulated areas.* (1) The employer shall establish regulated areas where the concentration of airborne formaldehyde exceeds either the TWA or the STEL and post all entrances and accessways with signs bearing the following information:

DANGER
FORMALDEHYDE
IRRITANT AND POTENTIAL CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(2) The employer shall limit access to regulated areas to authorized persons who have been trained to recognize the hazards of formaldehyde.

(3) An employer at a multiemployer worksite who establishes a regulated area shall communicate the access

restrictions and locations of these areas to other employers with work operations at that worksite.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to formaldehyde at or below the TWA and the STEL.

(2) *Exception.* Whenever the employer has established that feasible engineering and work practice controls cannot reduce employee exposure to or below either of the PELs, the employer shall apply these controls to reduce employee exposures to the extent feasible and shall supplement them with respirators which satisfy this standard.

(g) *Respiratory protection*—(1) *General.* Where respiratory protection is required, the employer shall provide the respirators at no cost to the employee and shall assure that they are properly used. The respirators shall comply with the requirements of this standard and shall reduce the concentration of formaldehyde inhaled by the employee to at or below both the TWA and the STEL. Respirators shall be used in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities or vessel cleaning, for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (i) The appropriate respirators as specified in Table 1 shall be selected from those approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

TABLE 1.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST FORMALDEHYDE

Condition of use or formaldehyde concentration (ppm)	Minimum respirator required[1]
Up to 7.5 ppm. (10 x PEL)	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde.[2]
Up to 75 ppm. (100 x PEL)	Full-face mask with chin style or chest or back mounted type with industrial size canister specifically approved for protection against formaldehyde. Type C supplied-air respirator, pressure demand or continuous flow type, with full facepiece, hood, or helmet.
Above 75 ppm or unknown (emergencies). (100 x PEL).	Self-contained breathing apparatus (SCBA) with positive pressure full facepiece. Combination supplied-air, full facepiece positive pressure respirator with auxiliary self-contained air supply.
Firefighting	SCBA with positive pressure in full facepiece.
Escape	SCBA in demand or pressure demand mode. Full-face mask with chin style or front or back mounted type industrial size canister specifically approved for protection against formaldehyde.

[1] Respirators specified for use at higher concentrations may be used at lower concentrations.
[2] A half-mask respirator with cartridges specifically approved for protection against formaldehyde can be substituted for the full facepiece respirator providing that effective gas-proof goggles are provided and used in combination with the half-mask respirator.

(ii) The employer shall make available a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who experiences difficulty wearing a negative pressure respirator to reduce exposure to formaldehyde.

(3) *Respirator usage.* (i) whenever respirator use is required by this standard, the employer shall institute a respiratory protection program in accordance with 20 CFR 1910.134 (b), (d), (e), and (f).

(ii) The employer shall perform either quantitative or qualitative face fit tests in accordance with the procedures outlined in Appendix E at the time of initial fitting and at least annually thereafter for all employees required by this standard to wear negative pressure respirators.

(A) Respirators selected shall be from those exhibiting the best facepiece fit.

(B) No respirator shall be chosen that would potentially permit the employee to inhale formaldehyde at concentrations in excess of either the TWA or the STEL.

(iii) Where air purifying chemical cartridge respirators are used, the cartridges shall be replaced after three hours of use or at the end of the workshift, whichever is sooner unless the cartridge contains a NIOSH-approved end-of-service indicator to show when breakthrough occurs.

(iv) Unless the canister contains a NIOSH-approved end-of-service-life indicator to show when breakthrough occurs, canisters used in atmospheres up to 7.5 ppm (10×PEL) shall be replaced every 4 hours and industrial sized canisters used in atmospheres up to 75 ppm (100×PEL) shall be replaced every two hours or at the end of the workshift, whichever is sooner.

(v) Employers shall permit employees to leave the work area to wash their faces and respirator facepieces as needed to prevent skin irritation from respirator use.

(h) *Protective equipment and clothing.* Employers shall comply with the provisions of 29 CFR 1910.132 and 1910.133. When protective equipment or clothing is provided under these provisions, the employer shall provide these protective devices at no cost to the employee and assure that the employee wears them.

(1) *Selection.* The employer shall select protective clothing and equipment based upon the form of formaldehyde to be encountered, the conditions of use, and the hazard to be prevented.

(i) All contact of the eyes and skin with liquids containing 1 percent or more formaldehyde shall be prevented by the use of chemical protective clothing made of material impervious to formaldehyde and the use of other personal protective equipment, such as goggles and face shields, as appropriate to the operation.

(ii) Contact with irritating or sensitizing materials shall be prevented to the extent necessary to eliminate the hazard.

(iii) Where a face shield is worn, chemical safety goggles are also required if there is a danger of formaldehyde reaching the area of the eye.

(iv) Full body protection shall be worn for entry into areas where concentrations exceed 100 ppm and for emergency reentry into areas of unknown concentration.

(2) *Maintenance of protective equipment and clothing.* (i) The employer shall assure that protective equipment and clothing that has become

VOL 58 ISS 125 JL 1 1993 UMI

contaminated with formaldehyde is cleaned or laundered before its reuse.

(ii) When ventilating formaldehyde-contaminated clothing and equipment, the employer shall establish a storage area so that employee exposure is minimized. Containers for contaminated clothing and equipment and storage areas shall have labels and signs containing the following information:

DANGER
FORMALDEHYDE-CONTAMINATED [CLOTHING] EQUIPMENT
AVOID INHALATION AND SKIN CONTACT

(iii) The employer shall assure that only persons trained to recognize the hazards of formaldehyde remove the contaminated material from the storage area for purposes of cleaning, laundering, or disposal.

(iv) The employer shall assure that no employee takes home equipment or clothing that is contaminated with formaldehyde.

(v) The employer shall repair or replace all required protective clothing and equipment for each affected employee as necessary to assure its effectiveness.

(vi) The employer shall inform any person who launders, cleans, or repairs such clothing or equipment of formaldehyde's potentially harmful effects and of procedures to safely handle the clothing and equipment.

(i) *Hygiene protection.* (1) The employer shall provide change rooms, as described in 29 CFR 1910.141 for employees who are required to change from work clothing into protective clothing to prevent skin contact with formaldehyde.

(2) If employees' skin may become spashed with solutions containing 1 percent or greater formaldehyde, for example, because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately.

(3) If there is any possibility that an employee's eyes may be splashed with solutions containing 0.1 percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use.

(j) *Housekeeping.* For operations involving formaldehyde liquids or gas, the employer shall conduct a program to detect leaks and spills, including regular visual inspections.

(1) Preventative maintenance of equipment, including surveys for leaks, shall be undertaken at regular intervals.

(2) In work areas where spillage may occur, the employer shall make provisions to contain the spill, to decontaminate the work area, and to dispose of the waste.

(3) The employer shall assure that all leaks are repaired and spills are cleaned promptly by employees wearing suitable protective equipment and trained in proper methods for cleanup and decontamination.

(4) Formaldehyde-contaminated waste and debris resulting from leaks or spills shall be placed for disposal in sealed containers bearing a label warning of formaldehyde's presence and of the hazards associated with formaldehyde.

(k) *Emergencies.* For each workplace where there is the possibility of an emergency involving formaldehyde, the employer shall assure appropriate procedures are adopted to minimize injury and loss of life. Appropriate procedures shall be implemented in the event of an emergency.

(l) *Medical surveillance*—(1) *Employees covered.* (i) The employer shall institute medical surveillance programs for all employees exposed to formaldehyde at concentrations at or exceeding the action level or exceeding the STEL.

(ii) The employer shall make medical surveillance available for employees who develop signs and symptoms of overexposure to formaldehyde and for all employees exposed to formaldehyde in emergencies. When determining whether an employee may be experiencing signs and symptoms of possible overexposure to formaldehyde, the employer may rely on the evidence that signs and symptoms associated with formaldehyde exposure will occur only in exceptional circumstances when airborne exposure is less than 0.1 ppm and when formaldehyde is present in material in concentrations less than 0.1 percent.

(2) *Examination by a physician.* All medical procedures, including administration of medical disease questionnaires, shall be performed by or under the supervision of a licensed physician and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(3) *Medical disease questionnaire.* The employer shall make the following medical surveillance available to employees prior to assignment to a job where formaldehyde exposure is at or above the action level or above the STEL and annually thereafter. The employer shall also make the following medical surveillance available promptly upon determining that an employee is experiencing signs and symptoms indicative of possible overexposure to formaldehyde.

(i) Administration of a medical disease questionnaire, such as in appendix D, which is designed to elicit information on work history, smoking history, any evidence of eye, nose, or throat irritation; chronic airway problems or hyperreactive airway disease: allergic skin conditions or dermatitis; and upper or lower respiratory problems.

(ii) A determination by the physician, based on evaluation of the medical disease questionnaire, of whether a medical examination is necessary for employees not required to wear respirators to reduce exposure to formaldehyde.

(4) *Medical examinations.* Medical examinations shall be given to any employee who the physician feels, based on information in the medical disease questionnaire, may be at increased risk from exposure to formaldehyde and at the time of initial assignment and at least annually thereafter to all employees required to wear a respirator to reduce exposure to formaldehyde. The medical examination shall include:

(i) A physical examination with emphasis on evidence of irritation or sensitization of the skin and respiratory system, shortness of breath, or irritation of the eyes.

(ii) Laboratory examinations for respirator wearers consisting of baseline and annual pulmonary function tests. As a minimum, these tests shall consist of forced vital capacity (FVC), forced expiratory volume in one second (FEV_1), and forced expiratory flow (FEF).

(iii) Any other test which the examining physician deems necessary to complete the written opinion.

(iv) Counseling of employees having medical conditions that would be directly or indirectly aggravated by exposure to formaldehyde on the increased risk of impairment of their health.

(5) *Examinations for employees exposed in an emergency.* The employer shall make medical examinations available as soon as possible to all employees who have been exposed to formaldehyde in an emergency.

(i) The examination shall include a medical and work history with emphasis on any evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation.

(ii) Other examinations shall consist of those elements considered appropriate by the examining physician.

(6) *Information provided to the physician.* The employer shall provide

the following information to the examining physician:

(i) A copy of this standard and appendix A, C, D, and E;

(ii) A description of the affected employee's job duties as they relate to the employee's exposure to formaldehyde;

(iii) The representative exposure level for the employee's job assignment;

(iv) Information concerning any personal protective equipment and respiratory protection used or to be used by the employee; and

(v) Information from previous medical examinations of the affected employee within the control of the employer.

(vi) In the event of a nonroutine examination because of an emergency, the employer shall provide to the physician as soon as possible: A description of how the emergency occurred and the exposure the victim may have received.

(7) *Physician's written opinion.* (i) For each examination required under this standard, the employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination except that it shall not reveal specific findings or diagnoses unrelated to occupational exposure to formaldehyde. The written opinion shall include:

(A) The physician's opinion as to whether the employee has any medical condition that would place the employee at an increased risk of material impairment of health from exposure to formaldehyde;

(B) Any recommended limitations on the employee's exposure or changes in the use of personal protective equipment, including respirators;

(C) A statement that the employee has been informed by the physician of any medical conditions which would be aggravated by exposure to formaldehyde, whether these conditions may have resulted from past formaldehyde exposure or from exposure in an emergency, and whether there is a need for further examination or treatment.

(ii) The employer shall provide for retention of the results of the medical examination and tests conducted by the physician.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days of its receipt.

(8) *Medical removal.* (i) The provisions of paragraph (l)(8) apply when an employee reports significant irritation of the mucosa of the eyes or the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization attributed to workplace formaldehyde exposure. Medical removal provisions do not apply in the case of dermal irritation or dermal sensitization when the product suspected of causing the dermal condition contains less than 0.05% formaldehyde.

(ii) An employee's report of signs or symptoms of possible overexposure to formaldehyde shall be evaluated by a physician selected by the employer pursuant to paragraph (l)(3). If the physician determines that a medical examination is not necessary under paragraph (l)(3)(ii), there shall be a two-week evaluation and remediation period to permit the employer to ascertain whether the signs or symptoms subside untreated or with the use of creams, gloves, first aid treatment or personal protective equipment. Industrial hygiene measures that limit the employee's exposure to formaldehyde may also be implemented during this period. The employee shall be referred immediately to a physician prior to expiration of the two-week period if the signs or symptoms worsen. Earnings, seniority and benefits may not be altered during the two-week period by virtue of the report.

(iii) If the signs or symptoms have not subsided or been remedied by the end of the two-week period, or earlier if signs or symptoms warrant, the employee shall be examined by a physician selected by the employer. The physician shall presume, absent contrary evidence, that observed dermal irritation or dermal sensitization are not attributable to formaldehyde when products to which the affected employee is exposed contain less than 0.1% formaldehyde.

(iv) Medical examinations shall be conducted in compliance with the requirements of paragraph (l)(5) (i) and (ii). Additional guidelines for conducting medical exams are contained in Appendix C.

(v) If the physician finds that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal, the employer shall promptly comply with the restrictions or recommendation of removal. In the event of a recommendation of removal, the employer shall remove the effected employee from the current formaldehyde exposure and if possible, transfer the employee to work having no or significantly less exposure to formaldehyde.

(vi) When an employee is removed pursuant to paragraph (l)(8)(v), the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the formaldehyde exposures are as low as possible, but not higher than the action level. The employeer shall maintain the employee's current earnings, seniority, and other benefits. If there is no such work available, the employer shall maintain the employee's current earnings, seniority and other benefits until such work becomes available, until the employee is determined to be unable to return to workplace formaldehyde exposure, until the employee is determined to be able to return to the original job status, or for six months, whichever comes first.

(vii) The employer shall arrange for a follow-up medical examination to take place within six months after the employee is removed pursuant to this paragraph. This examination shall determine if the employee can return to the original job status, or if the removal is to be permanent. The physician shall make a decision within six months of the date the employee was removed as to whether the employee can be returned to the original job status, or if the removal is to be permanent.

(viii) An employer's obligation to provide earnings, seniority and other benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(ix) In making determinations of the formaldehyde content of materials under this paragraph the employer may rely on objective data.

(9) *Multiple physician review.* (i) After the employer selects the initial physician who conducts any medical examination or consultation to determine whether medical removal or restriction is appropriate, the employee may designate a second physician to review any findings, determinations or recommendations of the initial physician and to conduct such examinations, consultations, and laboratory tests as the second physician deems necessary and appropriate to evaluate the effects of formaldehyde exposure and to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or

consultation for the purpose of medical removal or restriction.

(iii) The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the notification of the right to seek a second medical opinion, or receipt of the initial physician's written opinion, whichever is later;

(A) The employee informs the employer of the intention to seek a second medical opinion, and

(B) The employee initiates steps to make an appointment with a second physician.

(iv) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve the disagreement. If the two physicians are unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician who shall be a specialist in the field at issue:

(A) To review the findings, determinations or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) In the alternative, the employer and the employee or authorized employee representative may jointly designate such third physician.

(vi) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(m) *Hazard communication*—(1) *General.* Communication of the hazards associated with formaldehyde in the workplace shall be governed by the requirements of paragraph (m). The definitions of 29 CFR 1915.1200(c) shall apply under this paragraph.

(i) The following shall be subject to the hazard communication requirements of this paragraph: Formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air, under reasonably foreseeable conditions of use, at concentrations reaching or exceeding 0.1 ppm.

(ii) As a minimum, specific health hazards that the employer shall address are: Cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(2) Manufacturers and importers who produce or import formaldehyde or formaldehyde-containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs if these items may constitute a health hazard within the meaning of 29 CFR 1915.1200(d) under normal conditions of use.

(3) *Labels.* (i) The employer shall assure that hazard warning labels complying with the requirements of 29 CFR 1915.1200(f) are affixed to all containers of materials listed in paragraph (m)(1)(i), except to the extent that 29 CFR 1915.1200(f) is inconsistent with this paragraph.

(ii) *Information on labels.* As a minimum, for all materials listed in paragraph (m)(1)(i) capable of releasing formaldehyde at levels of 0.1 ppm to 0.5 ppm, labels shall identify that the product contains formaldehyde; list the name and address of the responsible party; and state that physical and health hazard information is readily available from the employer and from material safety data sheets.

(iii) For materials listed in paragraph (m)(1)(i) capable of releasing formaldehyde at levels above 0.5 ppm, labels shall appropriately address all hazards as defined in 29 CFR 1915.1200(d) and 29 CFR 1915.1200 appendices A and B, including respiratory sensitization, and shall contain the words "Potential Cancer Hazard."

(iv) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

(v) *Substitute warning labels.* The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements required by this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials listed in paragraph (m)(1)(i) shall comply with the requirements of 29 CFR 1915.1200(g) with regard to the development and updating of material safety data sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde-containing materials listed in paragraph (m)(1)(i) shall assure that material safety data sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a material safety data sheet is updated.

(5) *Written hazard communication program.* The employer shall develop, implement, and maintain at the workplace, a written hazard communication program for formaldehyde exposures in the workplace, which at a minimum describes how the requirements specified in this paragraph for labels and other forms of warning and material safety data sheets, and paragraph (n) for employee information and training, will be met. Employers in multi-employer workplaces shall comply with the requirements of 29 CFR 1915.1200(e)(2).

(n) *Employee information and training*—(1) *Participation.* The employer shall assure that all employees who are assigned to workplaces where there is exposure to formaldehyde participate in a training program, except that where the employer can show, using objective data, that employees are not exposed to formaldehyde at or above 0.1 ppm, the employer is not required to provide training.

(2) *Frequency.* Employers shall provide such information and training to employees at the time of initial assignment, and whenever a new exposure to formaldehyde is introduced into the work area. The training shall be repeated at least annually.

(3) *Training program.* The training program shall be conducted in a manner which the employee is able to understand and shall include:

(i) A discussion of the contents of this regulation and the contents of the Material Safety Data Sheet.

(ii) The purpose for and a description of the medical surveillance program required by this standard, including:

(A) A description of the potential health hazards associated with exposure to formaldehyde and a description of the signs and symptoms of exposure to formaldehyde.

(B) Instructions to immediately report to the employer the development of any adverse signs or symptoms that the employee suspects is attributable to formaldehyde exposure.

(iii) Description of operations in the work area where formaldehyde is present and an explanation of the safe work practices appropriate for limiting exposure to formaldehyde in each job;

(iv) The purpose for, proper use of, and limitations of personal protective clothing and equipment;

(v) Instructions for the handling of spills, emergencies, and clean-up procedures;

(vi) An explanation of the importance of engineering and work practice controls for employee protection and any necessary instruction in the use of these controls; and

(vii) A review of emergency procedures including the specific duties or assignments of each employee in the event of an emergency.

(4) *Access to training materials.* (i) The employer shall inform all affected employees of the location of written training materials and shall make these materials readily available, without cost, to the affected employees.

(ii) The employer shall provide, upon request, all training materials relating to the employee training program to the Assistant Secretary and the Director.

(o) *Recordkeeping*—(1) *Exposure measurements.* The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to formaldehyde. This record shall include:

(i) The date of measurement;

(ii) The operation being monitored;

(iii) The methods of sampling and analysis and evidence of their accuracy and precision;

(iv) The number, durations, time, and results of samples taken;

(v) The types of protective devices worn; and

(vi) The names, job classifications, social security numbers, and exposure estimates of the employees whose exposures are represented by the actual monitoring results.

(2) *Exposure determinations.* Where the employer has determined that no monitoring is required under this standard, the employer shall maintain a record of the objective data relied upon to support the determination that no employee is exposed to formaldehyde at or above the action level.

(3) *Medical surveillance.* The employer shall establish and maintain an accurate record for each employee subject to medical surveillance under this standard. This record shall include:

(i) The name and social security number of the employee;

(ii) The physician's written opinion;

(iii) A list of any employee health complaints that may be related to exposure to formaldehyde; and

(iv) A copy of the medical examination results, including medical disease questionnaires and results of any medical tests required by the standard or mandated by the examining physician.

(4) *Respirator fit testing.* (i) The employer shall establish and maintain accurate records for employees subject to negative pressure respirator fit testing required by this standard.

(ii) This record shall include:

(A) A copy of the protocol selected for respirator fit testing.

(B) A copy of the results of any fit testing performed.

(C) The size and manufacturer of the types of respirators available for selection.

(D) The date of the most recent fit testing, the name and social security number of each tested employee, and the respirator type and facepiece selected.

(5) *Record retention.* The employer shall retain records required by this standard for at least the following periods:

(i) Exposure records and determinations shall be kept for at least 30 years.

(ii) Medical records shall be kept for the duration of employment plus 30 years.

(iii) Respirator fit testing records shall be kept until replaced by a more recent record.

(6) *Availability of records.* (i) Upon request, the employer shall make all records maintained as a requirement of this standard available for examination and copying to the Assistant Secretary and the Director.

(ii) The employer shall make employee exposure records, including estimates made from representative monitoring and available upon request for examination, and copying to the subject employee, or former employee, and employee representatives in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i).

(iii) Employee medical records required by this standard shall be provided upon request for examination and coying, to the subject employee or former employee or to anyone having the specific written consent of the subject employee or former employee in accordance with 29 CFR 1915.1120 (a)–(e) and (g)–(i).

(p) *Dates*—(1) *Effective dates*—(i) *General.* This section shall become effective February 2, 1988, except as noted below.

(ii) *Laboratories.* This standard shall become effective for anatomy, histology, and pathology laboratories February 2, 1988, except as noted in the start-up date section. For all other laboratories, paragraphs (a) and (c) of this standard shall become effective February 2, 1988, and paragraphs (b) and (d)–(o) of this standard shall become effective on September 1, 1988 except as noted in the start-up date section.

(2) *Start-up dates*—(i) *Exposure determinations.* Initial monitoring or objective determinations that no monitoring is required by the standard shall be completed by 6 months after the effective date of the standard.

(ii) *Medical surveillance.* The initial medical surveillance of all eligible employees shall be completed by 6 months after the effective date of the standard.

(iii) *Emergencies.* The emergency procedures required by this standard shall be implemented by 6 months after the effective date of the standard.

(iv) *Respiratory protection.* Respiratory protection as required in this standard shall be provided as soon as possible and no later than 9 months after the effective date of the standard.

(v) *Engineering and work practice controls.* Engineering and work practice controls required by this standard shall be implemented as soon as possible, but no later than one year after the effective date of the standard.

(vi) *Employee training.* Written materials for employee training shall be updated as soon as possible, but no later than 2 months after the effective date of the standard.

(3) *Start-up dates of amended paragraphs*—(i) *Respiratory protection.* Respiratory protection required to meet the amended PEL of 0.75 ppm TWA shall be provided as soon as possible but no later than September 24, 1992.

(ii) *Engineering and work practice controls.* Engineering and work practice controls required to meet the amended PEL of 0.75 ppm TWA shall be implemented as soon as possible, but no later than June 26, 1993.

(iii) *Medical removal protection.* The medical removal protection provisions including the multiple physician review mechanism shall be implemented no later than December 28, 1992.

(iv) *Hazard communication.* The labeling provisions contained in amended paragraph (m) of this standard shall be implemented no later than December 28, 1992. Labeling of containers of formaldehyde products shall continue to comply with the provisions of 29 CFR 1915.1200 (e)–(j) until that time.

(v) *Training.* The periodic training mandated for all employees exposed to formaldehyde between 0.1 ppm and 0.5 ppm shall begin no later than August 25, 1992.

(Approved by the Office of Management and Budget under control number 1218–0145)

Appendix A to § 1915.1048—Substance Technical Guidelines for Formalin

The following Substance Technical Guideline for Formalin provides information

on uninhibited formalin solution (37% formaldehyde, no methanol stabilizer). It is designed to inform employees at the production level of their rights and duties under the formaldehyde standard whether their job title defines them as workers or supervisors. Much of the information provided is general; however, some information is specific for formalin. When employee exposure to formaldehyde is from resins capable of releasing formaldehyde, the resin itself and other impurities or decomposition products may also be toxic, and employers should include this information as well when informing employees of the hazards associated with the materials they handle. The precise hazards associated with exposure to formaldehyde depend both on the form (solid, liquid, or gas) of the material and the concentration of formaldehyde present. For example, 37–50 percent solutions of formaldehyde present a much greater hazard to the skin and eyes from spills or splashes than solutions containing less than 1 percent formaldehyde. Individual Substance Technical Guidelines used by the employer for training employees should be modified to properly give information on the material actually being used.

Substance Identification

Chemical Name: Formaldehyde
Chemical Family: Aldehyde
Chemical Formula: HCHO
Molecular Weight: 30.03
Chemical Abstracts Service Number (CAS Number): 50–00–0

Synonyms: Formalin; Formic Aldehyde; Paraform; Formol; Formalin (Methanol-free); Fyde; Formalith; Methanal; Methyl Aldehyde; Methylene Glycol; Methylene Oxide; Tetraoxymethalene; Oxomethane; Oxymethylene

Components and Contaminants

Percent: 37.0 Formaldehyde
Percent: 63.0 Water

(**Note.**—Inhibited solutions contain methanol.)

Other Contaminants: Formic acid (alcohol free)
Exposure Limits:

OSHA TWA—0.75 ppm
OSHA STEL—2 ppm

Physical Data

Description: Colorless liquid, pungent odor
Boiling point: 214° F (101 °C)
Specific Gravity: 1.08 (H_2O=1 @ 20 °C)
pH: 2.8–4.0
Solubility in Water: Miscible
Solvent Solubility: Soluble in alcohol and acetone
Vapor Density: 1.04 (Air=1 @ 20 °C)
Odor Threshold: 0.8–1 ppm

Fire and Explosion Hazard

Moderate fire and explosion hazard when exposed to heat or flame.

The flash point of 37% formaldehyde solutions is above normal room temperature, but the explosion range is very wide, from 7 to 73% by volume in air.

Reaction of formaldehyde with nitrogen dioxide, nitromethane, perchloric acid and aniline, or peroxyformic acid yields explosive compounds.

Flash Point: 185 °F (85 °C) closed cup
Lower Explosion Limit: 7%
Upper Explosion Limit: 73%
Autoignition Temperature: 806 °F (430 °C)
Flammability Class (OSHA): III A

Extinguishing Media: Use dry chemical, "alcohol foam", carbon dioxide, or water in flooding amounts as fog. Solid streams may not be effective. Cool fire-exposed containers with water from side until well after fire is out.

Use of water spray to flush spills can also dilute the spill to produce nonflammable mixtures. Water runoff, however, should be contained for treatment.

National Fire Protection Association Section 325M Designation:

Health: 2—Materials hazardous to health, but areas may be entered with full-faced mask self-contained breathing apparatus which provides eye protection.

Flammability: 2—Materials which must be moderately heated before ignition will occur. Water spray may be used to extinguish the fire because the material can be cooled below its flash point.

Reactivity: D—Materials which (in themselves) are normally stable even under fire exposure conditions and which are not reactive with water. Normal fire fighting procedures may be used.

Reactivity

Stability: Formaldehyde solutions may self-polymerize to form paraformaldehyde which precipitates.

Incompatibility (Materials to Avoid): Strong oxidizing agents, caustics, strong alkalies, isocyanates, anhydrides, oxides, and inorganic acids. Formaldehyde reacts with hydrochloric acid to form the potent carcinogen, bis-chloromethyl ether. Formaldehyde reacts with nitrogen dioxide, nitromethane, perchloric acid and aniline; or peroxyformic acid to yield explosive compounds. A violent reaction occurs when formaldehyde is mixed with strong oxidizers.

Hazardous Combustion or Decomposition Products: Oxygen from the air can oxidize formaldehyde to formic acid, especially when heated. Formic acid is corrosive.

Health Hazard Data

Acute Effects of Exposure

Ingestion (Swallowing): Liquids containing 10 to 40% formaldehyde cause severe irritation and inflammation of the mouth, throat, and stomach. Severe stomach pains will follow ingestion with possible loss of consciousness and death. Ingestion of dilute formaldehyde solutions (0.03–0.04%) may cause discomfort in the stomach and pharynx.

Inhalation (Breathing): Formaldehyde is highly irritating to the upper respiratory tract and eyes. Concentrations of 0.5 to 2.0 ppm may irritate the eyes, nose, and throat of some individuals. Concentrations of 3 to 5 ppm also cause tearing of the eyes and are intolerable to some persons. Concentrations of 10 to 20 ppm cause difficulty in breathing, burning of the nose and throat, cough, and heavy tearing of the eyes, and 25 to 30 ppm causes severe respiratory tract injury leading to pulmonary edema and pneumonitis. A concentration of 100 ppm is immediately dangerous to life and health. Deaths from accidental exposure to high concentrations of formaldehyde have been reported.

Skin (Dermal): Formalin is a severe skin irritant and a sensitizer. Contact with formalin causes white discoloration, smarting, drying, cracking, and scaling. Prolonged and repeated contact can cause numbness and a hardening or tanning of the skin. Previously exposed persons may react to future exposure with an allergic eczematous dermatitis or hives.

Eye Contact: Formaldehyde solutions splashed in the eye can cause injuries ranging from transient discomfort to severe, permanent corneal clouding and loss of vision. The severity of the effect depends on the concentration of formaldehyde in the solution and whether or not the eyes are flushed with water immediately after the accident.

Note.—The perception of formaldehyde by odor and eye irritation becomes less sensitive with time as one adapts to formaldehyde. This can lead to overexposure if a worker is relying on formaldehyde's warning properties to alert him or her to the potential for exposure.

Acute Animal Toxicity:
Oral, rats: LD50=800 mg/kg
Oral, mouse: LD50=42 mg/kg
Inhalation, rats: LCLo=250 mg/kg
Inhalation, mouse: LCLo=900 mg/kg
Inhalation, rats: LC50=590 mg/kg

Chronic Effects of Exposure

Carcinogenicity: Formaldehyde has the potential to cause cancer in humans. Repeated and prolonged exposure increases the risk. Various animal experiments have conclusively shown formaldehyde to be a carcinogen in rats. In humans, formaldehyde exposure has been associated with cancers of the lung, nasopharynx and oropharynx, and nasal passages.

Mutagenicity: Formaldehyde is genotoxic in several *in vitro* test systems showing properties of both an initiator and a promoter.

Toxicity: Prolonged or repeated exposure to formaldehyde may result in respiratory impairment. Rats exposed to formaldehyde at 2 ppm developed benign nasal tumors and changes of the cell structure in the nose as well as inflamed mucous membranes of the nose. Structural changes in the epithelial cells in the human nose have also been observed. Some persons have developed asthma or bronchitis following exposure to formaldehyde, most often as the result of an accidental spill involving a single exposure to a high concentration of formaldehyde.

Emergency and First Aid Procedures

Ingestion (Swallowing): If the victim is conscious, dilute, inactivate, or absorb the ingested formaldehyde by giving milk, activated charcoal, or water. Any organic material will inactivate formaldehyde. Keep affected person warm and at rest. Get medical attention immediately. If vomiting occurs, keep head lower than hips.

Inhalation (Breathing): Remove the victim from the exposure area to fresh air

immediately. Where the formaldehyde concentration may be very high, each rescuer must put on a self-contained breathing apparatus before attempting to remove the victim, and medical personnel should be informed of the formaldehyde exposure immediately. If breathing has stopped, give artificial respiration. Keep the affected person warm and at rest. Qualified first-aid or medical personnel should administer oxygen, if available, and maintain the patient's airways and blood pressure until the victim can be transported to a medical facility. If exposure results in a highly irritated upper respiratory tract and coughing continues for more than 10 minutes, the worker should be hospitalized for observation and treatment.

Skin Contact: Remove contaminated clothing (including shoes) immediately. Wash the affected area of your body with soap or mild detergent and large amounts of water until no evidence of the chemical remains (at least 15 to 20 minutes). If there are chemical burns, get first aid to cover the area with sterile, dry dressing, and bandages. Get medical attention if you experience appreciable eye or respiratory irritation.

Eye Contact: Wash the eyes immediately with large amounts of water occasionally lifting lower and upper lids, until no evidence of chemical remains (at least 15 to 20 minutes). In case of burns, apply sterile bandages loosely without medication. Get medical attention immediately. If you have experienced appreciable eye irritation from a splash or excessive exposure, you should be referred promptly to an opthamologist for evaluation.

Emergency Procedures

Emergencies: If you work in an area where a large amount of formaldehyde could be released in an accident or from equipment failure, your employer must develop procedures to be followed in event of an emergency. You should be trained in your specific duties in the event of an emergency, and it is important that you clearly understand these duties. Emergency equipment must be accessible and you should be trained to use any equipment that you might need. Formaldehyde contaminated equipment must be cleaned before reuse.

If a spill of appreciable quantity occurs, leave the area quickly unless you have specific emergency duties. Do not touch spilled material. Designated persons may stop the leak and shut off ignition sources if these procedures can be done without risk. Designated persons should isolate the hazard area and deny entry except for necessary people protected by suitable protective clothing and respirators adequate for the exposure. Use water spray to reduce vapors. Do not smoke, and prohibit all flames or flares in the hazard area.

Special Firefighting Procedures: Learn procedures and responsibilities in the event of a fire in your workplace. Become familiar with the appropriate equipment and supplies and their location. In firefighting, withdraw immediately in case of rising sound from venting safety device or any discoloration of storage tank due to fire.

Spill, Leak, and Disposal Procedures

Occupational Spill: For small containers, place the leaking container in a well ventilated area. Take up small spills with absorbent material and place the waste into properly labeled containers for later disposal. For larger spills, dike the spill to minimize contamination and facilitate salvage or disposal. You may be able to neutralize the spill with sodium hydroxide or sodium sulfite. Your employer must comply with EPA rules regarding the clean-up of toxic waste and notify state and local authorities, if required. If the spill is greater than 1,000 lb/day, it is reportable under EPA's Superfund legislation.

Waste Disposal: Your employer must dispose of waste containing formaldehyde in accordance with applicable local, state, and Federal law and in a manner that minimizes exposure of employees at the site and of the clean-up crew.

Monitoring and Measurement Procedures

Monitoring Requirements: If your exposure to formaldehyde exceeds the 0.5 ppm action level or the 2 ppm STEL, your employer must monitor your exposure. Your employer need not measure every exposure if a "high exposure" employee can be identified. This person usually spends the greatest amount of time nearest the process equipment. If you are a "representative employee", you will be asked to wear a sampling device to collect formaldehyde. This device may be a passive badge, a sorbent tube attached to a pump, or an impinger containing liquid. You should perform your work as usual, but inform the person who is conducting the monitoring of any difficulties you are having wearing the device.

Evaluation of 8-hour Exposure: Measurements taken for the purpose of determining time-weighted average (TWA) exposures are best taken with samples covering the full shift. Samples collected must be taken from the employee's breathing zone air.

Short-term Exposure Evaluation: If there are tasks that involve brief but intense exposure to formaldehyde, employee exposure must be measured to assure compliance with the STEL. Sample collections are for brief periods, only 15 minutes, but several samples may be needed to identify the peak exposure.

Monitoring Techniques: OSHA's only requirement for selecting a method for sampling and analysis is that the methods used accurately evaluate the concentration of formaldehyde in employees' breathing zones. Sampling and analysis may be performed by collection of formaldehyde on liquid or solid sorbents with subsequent chemical analysis. Sampling and analysis may also be performed by passive diffusion monitors and short-term exposure may be measured by instruments such as real-time continuous monitoring systems and portable direct reading instruments.

Notification of Results: Your employer must inform you of the results of exposure monitoring representative of your job. You may be informed in writing, but posting the results where you have ready access to them constitutes compliance with the standard.

Protective Equipment and Clothing

[Material impervious to formaldehyde is needed if the employee handles formaldehyde solutions of 1% or more. Other employees may also require protective clothing or equipment to prevent dermatitis.]

Respiratory Protection: Use NIOSH-approved full facepiece negative pressure respirators equipped with approved cartridges or canisters within the use limitations of these devices. (Present restrictions on cartridges and canisters do not permit them to be used for a full workshift.) In all other situations, use positive pressure respirators such as the positive-pressure air purifying respirator or the self-contained breathing apparatus (SCBA). If you use a negative pressure respirator, your employer must provide you with fit testing of the respirator at least once a year in accordance with the procedures outlined in Appendix E.

Protective Gloves: Wear protective (impervious) gloves provided by your employer, at no cost, to prevent contact with formalin. Your employer should select these gloves based on the results of permeation testing and in accordance with the ACGIH Guidelines for Selection of Chemical Protective Clothing.

Eye Protection: If you might be splashed in the eyes with formalin, it is essential that you wear goggles or some other type of complete protection for the eye. You may also need a face shield if your face is likely to be splashed with formalin, but you must not substitute face shields for eye protection. (This section pertains to formaldehyde solutions of 1% or more.)

Other Protective Equipment: You must wear protective (impervious) clothing and equipment provided by your employer at no cost to prevent repeated or prolonged contact with formaldehyde liquids. If you are required to change into whole-body chemical protective clothing, your employer must provide a change room for your privacy and for storage of your normal clothing.

If you are splashed with formaldehyde, use the emergency showers and eyewash fountains provided by your employer immediately to prevent serious injury. Report the incident to your supervisor and obtain necessary medical support.

Entry Into an IDLH Atmosphere

Enter areas where the formaldehyde concentration might be 100 ppm or more only with complete body protection including a self-contained breathing apparatus with a full facepiece operated in a positive pressure mode or a supplied air respirator with full facepiece and operated in a positive pressure mode. This equipment is essential to protect your life and health under such extreme conditions.

Engineering Controls

Ventilation is the most widely applied engineering control method for reducing the concentration of airborne substances in the breathing zones of workers. There are two distinct types of ventilation.

Local Exhaust: Local exhaust ventilation is designed to capture airborne contaminants as near to the point of generation as possible. To protect you, the direction of contaminant

VOL 58 ISS 125 JL 1 1993 UMI

flow must always be toward the local exhaust system inlet and away from you.

General (Mechanical): General dilution ventilation involves continuous introduction of fresh air into the workroom to mix with the contaminated air and lower your breathing zone concentration of formaldehyde. Effectiveness depends on the number of air changes per hour. Where devices emitting formaldehyde are spread out over a large area, general dilution ventilation may be the only practical method of control.

Work Practices: Work practices and administrative procedures are an important part of a control system. If you are asked to perform a task in a certain manner to limit your exposure to formaldehyde, it is extremely important that you follow these procedures.

Medical Surveillance

Medical surveillance helps to protect employees' health. You are encouraged strongly to participate in the medical surveillance program.

Your employer must make a medical surveillance program available at no expense to you and at a reasonable time and place if you are exposed to formaldehyde at concentrations above 0.5 ppm as an 8-hour average or 2 ppm over any 15-minute period. You will be offered medical surveillance at the time of your initial assignment and once a year afterward as long as your exposure is at least 0.5 ppm (TWA) or 2 ppm (STEL). Even if your exposure is below these levels, you should inform your employer if you have signs and symptoms that you suspect, through your training, are related to your formaldehyde exposure because you may need medical surveillance to determine if your health is being impaired by your exposure.

The surveillance plan includes:

(a) A medical disease questionnaire.

(b) A physical examination if the physician determines this is necessary.

If you are required to wear a respirator, your employer must offer you a physical examination and a pulmonary function test every year.

The physician must collect all information needed to determine if you are at increased risk from your exposure to formaldehyde. At the physician's discretion, the medical examination may include other tests, such as a chest x-ray, to make this determination.

After a medical examination the physician will provide your employer with a written opinion which includes any special protective measures recommended and any restrictions on your exposure. The physician must inform you of any medical conditions you have which would be aggravated by exposure to formaldehyde.

All records from your medical examinations, including disease surveys, must be retained at your employer's expense.

Emergencies

If you are exposed to formaldehyde in an emergency and develop signs or symptoms associated with acute toxicity from formaldehyde exposure, your employer must provide you with a medical examination as soon as possible. This medical examination will include all steps necessary to stabilize your health. You may be kept in the hospital for observation if your symptoms are severe to ensure that any delayed effects are recognized and treated.

Appendix B to § 1915.1048—Sampling Strategy and Analytical Methods for Formaldehyde

To protect the health of employees, exposure measurements must be unbiased and representative of employee exposure. The proper measurement of employee exposure requires more than a token commitment on the part of the employer. OSHA's mandatory requirements establish a baseline; under the best of circumstances all questions regarding employee exposure will be answered. Many employers, however, will wish to conduct more extensive monitoring before undertaking expensive commitments, such as engineering controls, to assure that the modifications are truly necessary. The following sampling strategy, which was developed at NIOSH by Nelson A. Leidel, Kenneth A. Busch, and Jeremiah R. Lynch and described in NIOSH publication No. 77–173 (Occupational Exposure Sampling Strategy Manual) will assist the employer in developing a strategy for determining the exposure of his or her employees.

There is no one correct way to determine employee exposure. Obviously, measuring the exposure of every employee exposed to formaldehyde will provide the most information on any given day. Where few employees are exposed, this may be a practical solution. For most employers, however, use of the following strategy will give just as much information at less cost.

Exposure data collected on a single day will not automatically guarantee the employer that his or her workplace is always in compliance with the formaldehyde standard. This does not imply, however, that it is impossible for an employer to be sure that his or her worksite is in compliance with the standard. Indeed, a properly designed sampling strategy showing that all employees are exposed below the PELs, at least with a 95 percent certainty, is compelling evidence that the exposure limits are being achieved provided that measurements are conducted using valid sampling strategy and approved analytical methods.

There are two PELs, the TWA concentration and the STEL. Most employers will find that one of these two limits is more critical in the control of their operations, and OSHA expects that the employer will concentrate monitoring efforts on the critical component. If the more difficult exposure is controlled, this information, along with calculations to support the assumptions, should be adequate to show that the other exposure limit is also being achieved.

Sampling Strategy

Determination of the Need for Exposure Measurements

The employer must determine whether employees may be exposed to concentrations in excess of the action level. This determination becomes the first step in an employee exposure monitoring program that minimizes employer sampling burdens while providing adequate employee protection. If employees may be exposed above the action level, the employer must measure exposure. Otherwise, an objective determination that employee exposure is low provides adequate evidence that exposure potential has been examined.

The employer should examine all available relevant information, *eg.* insurance company and trade association data and information from suppliers or exposure data collected from similar operations. The employer may also use previously-conducted sampling including area monitoring. The employer must make a determination relevant to each operation although this need not be on a separate piece of paper. If the employer can demonstrate conclusively that no employee is exposed above the action level or the STEL through the use of objective data, the employer need proceed no further on employee exposure monitoring until such time that conditions have changed and the determination is no longer valid.

If the employer cannot determine that employee exposure is less than the action level and the STEL, employee exposure monitoring will have to be conducted.

Workplace Material Survey

The primary purpose of a survey of raw material is to determine if formaldehyde is being used in the work environment and if so, the conditions under which formaldehyde is being used.

The first step is to tabulate all situations where formaldehyde is used in a manner such that it may be released into the workplace atmosphere or contaminate the skin. This information should be available through analysis of company records and information on the MSDSs available through provisions of this standard and the Hazard Communication standard.

If there is an indication from materials handling records and accompanying MSDSs that formaldehyde is being used in the following types of processes or work operations, there may be a potential for releasing formaldehyde into the workplace atmosphere:

(1) Any operation that involves grinding, sanding, sawing, cutting, crushing, screening, sieving, or any other manipulation of material that generates formaldehyde-bearing dust

(2) Any processes where there have been employee complaints or symptoms indicative of exposure to formaldehyde

(3) Any liquid or spray process involving formaldehyde

(4) Any process that uses formaldehyde in preserved tissue

(5) Any process that involves the heating of a formaldehyde-bearing resin.

Processes and work operations that use formaldehyde in these manners will probably require further investigation at the worksite to determine the extent of employee monitoring that should be conducted.

Workplace Observations

To this point, the only intention has been to provide an indication as to the existence of potentially exposed employees. With this information, a visit to the workplace is needed to observe work operations, to

identify potential health hazards, and to determine whether any employees may be exposed to hazardous concentrations of formaldehyde.

In many circumstances, sources of formaldehyde can be identified through the sense of smell. However, this method of detection should be used with caution because of olfactory fatigue.

Employee location in relation to source of formaldehyde is important in determining if an employee may be significantly exposed to formaldehyde. In most instances, the closer a worker is to the source, the higher the probability that a significant exposure will occur.

Other characteristics should be considered. Certain high temperature operations give rise to higher evaporation rates. Locations of open doors and windows provide natural ventilation that tend to dilute formaldehyde emissions. General room ventilation also provides a measure of control.

Calculation of Potential Exposure Concentrations

By knowing the ventilation rate in a workplace and the quantity of formaldehyde generated, the employer may be able to determine by calculation if the PELs might be exceeded. To account for poor mixing of formaldehyde into the entire room, locations of fans and proximity of employees to the work operation, the employer must include a safety factor. If an employee is relatively close to a source, particularly if he or she is located downwind, a safety factor of 100 may be necessary. For other situations, a factor of 10 may be acceptable. If the employer can demonstrate through such calculations that employee exposure does not exceed the action level or the STEL, the employer may use this information as objective data to demonstrate compliance with the standard.

Sampling Strategy

Once the employer determines that there is a possibility of substantial employee exposure to formaldehyde, the employer is obligated to measure employee exposure.

The next step is selection of a maximum risk employee. When there are different processes where employees may be exposed to formaldehyde, a maximum risk employee should be selected for each work operation.

Selection of the maximum risk employee requires professional judgment. The best procedure for selecting the maximum risk employee is to observe employees and select the person closest to the source of formaldehyde. Employee mobility may affect this selection; *eg.* if the closest employee is mobile in his tasks, he may not be the maximum risk employee. Air movement patterns and differences in work habits will also affect selection of the maximum risk employee.

When many employees perform essentially the same task, a maximum risk employee cannot be selected. In this circumstance, it is necessary to resort to random sampling of the group of workers. The objective is to select a subgroup of adequate size so that there is a high probability that the random sample will contain at least one worker with high exposure if one exists. The number of persons in the group influences the number that need to be sampled to ensure that at least one individual from the highest 10 percent exposure group is contained in the sample. For example, to have 90 percent confidence in the results, if the group size is 10, nine should be sampled; for 50, only 18 need to be sampled.

If measurement shows exposure to formaldehyde at or above the action level or the STEL, the employer needs to identify all other employees who may be exposed at or above the action level or STEL and measure or otherwise accurately characterize the exposure of these employees.

Whether representative monitoring or random sampling are conducted, the purpose remains the same—to determine if the exposure of any employee is above the action level. If the exposure of the most exposed employee is less than the action level and the STEL, regardless of how the employee is identified, then it is reasonable to assume that measurements of exposure of the other employees in that operation would be below the action level and the STEL.

Exposure Measurements

There is no "best" measurement strategy for all situations. Some elements to consider in developing a strategy are:

(1) Availability and cost of sampling equipment

(2) Availability and cost of analytic facilities

(3) Availability and cost of personnel to take samples

(4) Location of employees and work operations

(5) Intraday and interday variations in the process

(6) Precision and accuracy of sampling and analytic methods, and

(7) Number of samples needed.

Samples taken for determining compliance with the STEL differ from those that measure the TWA concentration in important ways. STEL samples are best taken in a nonrandom fashion using all available knowledge relating to the area, the individual, and the process to obtain samples during periods of maximum expected concentrations. At least three measurements on a shift are generally needed to spot gross errors or mistakes; however, only the highest value represents the STEL.

If an operation remains constant throughout the workshift, a much greater number of samples would need to be taken over the 32 discrete nonoverlapping periods in an 8-hour workshift to verify compliance with a STEL. If employee exposure is truly uniform throughout the workshift, however, an employer in compliance with the 1 ppm TWA would be in compliance with the 2 ppm STEL, and this determination can probably be made using objective data.

Need to Repeat the Monitoring Strategy

Interday and intraday fluctuations in employee exposure are mostly influenced by the physical processes that generate formaldehyde and the work habits of the employee. Hence, in-plant process variations influence the employer's determination of whether or not additional controls need to be imposed. Measurements that employee exposure is low on a day that is not representative of worst conditions may not provide sufficient information to determine whether or not additional engineering controls should be installed to achieve the PELs.

The person responsible for conducting sampling must be aware of systematic changes which will negate the validity of the sampling results. Systematic changes in formaldehyde exposure concentration for an employee can occur due to:

(1) The employee changing patterns of movement in the workplace

(2) Closing of plant doors and windows

(3) Changes in ventilation from season to season

(4) Decreases in ventilation efficiency or abrupt failure of engineering control equipment

(5) Changes in the production process or work habits of the employee.

Any of these changes, if they may result in additional exposure that reaches the next level of action (*i.e.* 0.5 or 1.0 ppm as an 8-hr average or 2 ppm over 15 minutes) require the employer to perform additional monitoring to reassess employee exposure.

A number of methods are suitable for measuring employee exposure to formaldehyde or for characterizing emissions within the worksite. The preamble to this standard describes some methods that have been widely used or subjected to validation testing. A detailed analytical procedure derived from the OSHA Method 52 for acrolein and formaldehyde is presented below for informational purposes.

Inclusion of OSHA's method in this appendix in no way implies that it is the only acceptable way to measure employee exposure to formaldehyde. Other methods that are free from significant interferences and that can determine formaldehyde at the permissible exposure limits within ±25 percent of the "true" value at the 95 percent confidence level are also acceptable. Where applicable, the method shou1d a1so be capab1e of measuring formaldehyde at the action level to ±35 percent of the "true" value with a 95 percent confidence level. OSHA encourages emp1oyers to choose methods that will be best for their individual needs. The employer must exercise caution, however, in choosing an appropriate method since some techniques suffer from interferences that are likely to be present in workplaces of certain industry sectors where formaldehyde is used.

OSHA's Analytical Laboratory Method

Method No: 52
Matrix: Air
Target Concentration: 1 ppm (1.2 mg/m^3)
Procedures: Air samples are collected by drawing known volumes of air through sampling tubes containing XAD–2 adsorbent which have been coated with 2-(hydroxymethyl) piperidine. The samples are desorbed with toluene and then analyzed by gas chromatography using a nitrogen selective detector.
Recommended Sampling Rate and Air Volumes: 0.1 L/min and 24 L
*Reliable Quantitation Limit:*16 ppb (20 μg/m^3)
Standard Error of Estimate at the Target Concentration: 7.3%

Status of the Method: A sampling and analytical method that has been subjected to the established evaluation procedures of the Organic Methods Evaluation Branch.
Date: March 1985

1. *General Discussion*

1.1 *Background:* The current OSHA method for collecting acrolein vapor recommends the use of activated 13X molecular sieves. The samples must be stored in an ice bath during and after sampling and also they must be analyzed within 48 hours of collection. The current OSHA method for collecting formaldehyde vapor recommends the use of bubblers containing 10% methanol in water as the trapping solution.

This work was undertaken to resolve the sample stability problems associated with acrolein and also to eliminate the need to use bubblers to sample formaldehyde. A goal of this work was to develop and/or to evaluate a common sampling and analytical procedure for acrolein and formaldehyde.

NIOSH has developed independent methodologies for acrolein and formaldehyde which recommend the use of reagent-coated adsorbent tubes to collect the aldehydes as stable derivatives. The formaldehyde sampling tubes contain Chromosorb 102 adsorbent coated with N-benzylethanolamine (BEA) which reacts with formaldehyde vapor to form a stable oxazolidine compound. The acrolein sampling tubes contain XAD–2 adsorbent coated with 2-(hydroxymethyl)piperidine (2–HMP) which reacts with acrolein vapor to form a different, stable oxazolidine derivative. Acrolein does not appear to react with BEA to give a suitable reaction product. Therefore, the formaldehyde procedure cannot provide a common method for both aldehydes. However, formaldehyde does react with 2–HMP to form a very suitable reaction product. It is the quantitative reaction of acrolein and formaldehyde with 2–HMP that provides the basis for this evaluation.

This sampling and analytical procedure is very similar to the method recommended by NIOSH for acrolein. Some changes in the NIOSH methodology were necessary to permit the simultaneous determination of both aldehydes and also to accommodate OSHA laboratory equipment and analytical techniques.

1.2 *Limit-defining parameters.* The analyte air concentrations reported in this method are based on the recommended air volume for each analyte collected separately and a desorption volume of 1 mL. The amounts are presented as acrolein and/or formaldehyde, even though the derivatives are the actual species analyzed.

1.2.1 *Detection limits of the analytical procedure:* The detection limit of the analytical procedure was 386 pg per injection for formaldehyde. This was the amount of analyte which gave a peak whose height was about five times the height of the peak given by the residual formaldehyde derivative in a typical blank front section of the recommended sampling tube.

1.2.2 *Detection limits of the overall procedure:* The detection limits of the overall procedure were 482 ng per sample (16 ppb or 20 $\mu g/m^3$ for formaldehyde). This was the amount of analyte spiked on the sampling device which allowed recoveries approximately equal to the detection limit of the analytical procedure.

1.2.3 *Reliable quantitation limits:* The reliable quantitation limit was 482 ng per sample (16 ppb or 20 $\mu g/m^3$) for formaldehyde. These were the smallest amounts of analyte which could be quantitated within the limits of a recovery of at least 75% and a precision (±1.96 SD) of ±25% or better.

The reliable quantitation limit and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters.

1.2.4 *Sensitivity:* The sensitivity of the analytical procedure over concentration ranges representing 0.4 to 2 times the target concentration, based on the recommended air volumes, was 7,589 area units per µg/mL for formaldehyde. This value was determined from the slope of the calibration curve. The sensitivity may vary with the particular instrument used in the analysis.

1.2.5 *Recovery:* The recovery of formaldehyde from samples used in an 18-day storage test remained above 92% when the samples were stored at ambient temperature. These values were determined from regression lines which were calculated from the storage data. The recovery of the analyte from the collection device must be at least 75% following storage.

1.2.6 *Precision (analytical method only):* The pooled coefficient of variation obtained from replicate determinations of analytical standards over the range of 0.4 to 2 times the target concentration was 0.0052 for formaldehyde (Section 4.3).

1.2.7 *Precision (overall procedure):* The precision at the 95% confidence level for the ambient temperature storage tests was ±14.3% for formaldehyde. These values each include an additional ±5% for sampling error. The overall procedure must provide results at the target concentrations that are ±25% at the 95% confidence level.

1.2.8 *Reproducibility:* Samples collected from controlled test atmospheres and a draft copy of this procedure were given to a chemist unassociated with this evaluation. The formaldehyde samples were analyzed following 15 days storage. The average recovery was 96.3% and the standard deviation was 1.7%.

1.3 *Advantages:*

1.3.1 The sampling and analytical procedures permit the simultaneous determination of acrolein and formaldehyde.

1.3.2 Samples are stable following storage at ambient temperature for at least 18 days.

1.4 *Disadvantages:* None.

2. *Sampling Procedure*

2.1 *Apparatus:*

2.1.1 Samples are collected by use of a personal sampling pump that can be calibrated to within ±5% of the recommended 0.1 L/min sampling rate with the sampling tube in line.

2.1.2 Samples are collected with laboratory prepared sampling tubes. The sampling tube is constructed of silane treated glass and is about 8-cm long. The ID is 4 mm and the OD is 6 mm. One end of the tube is tapered so that a glass wool end plug will hold the contents of the tube in place during sampling. The other end of the sampling tube is open to its full 4-mm ID to facilitate packing of the tube. Both ends of the tube are fire-polished for safety. The tube is packed with a 75-mg backup section, located nearest the tapered end and a 150-mg sampling section of pretreated XAD–2 adsorbent which has been coated with 2–HMP. The two sections of coated adsorbent are separated and retained with small plugs of silanized glass wool. Following packing, the sampling tubes are sealed with two 7/32 inch OD plastic end caps. Instructions for the pretreatment and the coating of XAD–2 adsorbent are presented in Section 4 of this method.

2.1.3 Sampling tubes, similar to those recommended in this method, are marketed by Supelco, Inc. These tubes were not available when this work was initiated; therefore, they were not evaluated.

2.2 *Reagents:* None required.

2.3 *Technique:*

2.3.1 Properly label the sampling tube before sampling and then remove the plastic end caps.

2.3.2 Attach the sampling tube to the pump using a section of flexible plastic tubing such that the large, front section of the sampling tube is exposed directly to the atmosphere. Do not place any tubing ahead of the sampling tube. The sampling tube should be attached in the worker's breathing zone in a vertical manner such that it does not impede work performance.

2.3.3 After sampling for the appropriate time, remove the sampling tube from the pump and then seal the tube with plastic end caps.

2.3.4 Include at least one blank for each sampling set. The blank should be handled in the same manner as the samples with the exception that air is not drawn through it.

2.3.5 List any potential interferences on the sample data sheet.

2.4 *Breakthrough:*

2.4.1 Breakthrough was defined as the relative amount of analyte found on a backup sample in relation to the total amount of analyte collected on the sampling train.

2.4.2 For formaldehyde collected from test atmospheres containing 6 times the PEL, the average 5% breakthrough air volume was 41 L. The sampling rate was 0.1 L/min and the average mass of formaldehyde collected was 250 µg.

2.5 *Desorption Efficiency:* No desorption efficiency corrections are necessary to compute air sample results because analytical standards are prepared using coated adsorbent. Desorption efficiencies were determined, however, to investigate the recoveries of the analytes from the sampling device. The average recovery over the range of 0.4 to 2 times the target concentration, based on the recommended air volumes, was 96.2% for formaldehyde. Desorption efficiencies were essentially constant over the ranges studied.

2.6 *Recommended Air Volume and Sampling Rate:*

2.6.1 The recommended air volume for formaldehyde is 24 L.

2.6.2 The recommended sampling rate is 0.1 L/min.

2.7 *Interferences:*

2.7.1 Any collected substance that is capable of reacting 2-HMP and thereby depleting the derivatizing agent is a potential interference. Chemicals which contain a carbonyl group, such as acetone, may be capable or reacting with 2-HMP.

2.7.2 There are no other known interferences to the sampling method.

2.8 *Safety Precautions:*

2.8.1 Attach the sampling equipment to the worker in such a manner that it well not interfere with work performance or safety.

2.8.2 Follow all safety practices that apply to the work area being sampled.

3. *Analytical Procedure*

3.1 *Apparatus:*

3.1.1 A gas chromatograph (GC), equipped with a nitrogen selective detector. A Hewlett-Packard Model 5840A GC fitted with a nitrogen-phosphorus flame ionization detector (NPD) was used for this evaluation. Injections were performed using a Hewlett-Packard Model 7671A automatic sampler.

3.1.2 A GC column capable of resolving the analytes from any interference. A 6 ft x ¼ in OD (2mm ID) glass GC column containing 10% UCON 50–HB–5100 + 2% KOH on 80/100 mesh Chromosorb W–AW was used for the evaluation. Injections were performed on-column.

3.1.3 Vials, glass 2-mL with Teflon-lined caps.

3.1.4 Volumetric flasks, pipets, and syringes for preparing standards, making dilutions, and performing injections.

3.2 *Reagents:*

3.2.1 Toluene and dimethylformamide. Burdick and Jackson solvents were used in this evaluation.

3.2.2 Helium, hydrogen, and air, GC grade.

3.2.3 Formaldehyde, 37%, by weight, in water. Aldrich Chemical, ACS Reagent Grade formaldehyde was used in this evaluation.

3.2.4 Amberlite XAD–2 adsorbent coated with 2-(hydroxymethyl—piperidine (2-HMP), 10% by weight (Section 4).

3.2.5 Desorbing solution with internal standard. This solution was prepared by adding 20 µL of dimethylformamide to 100 mL of toluene.

3.3 *Standard preparation:*

3.3.1 *Formaldehyde:* Prepare stock standards by diluting known volumes of 37% formaldehyde solution with methanol. A procedure to determine the formaldehyde content of these standards is presented in Section 4. A standard containing 7.7 mg/mL formaldehyde was prepared by diluting 1 mL of the 37% reagent to 50 mL with methanol.

3.3.2 It is recommended that analytical standards be prepared about 16 hours before the air samples are to be analyzed in order to ensure the complete reaction of the analytes with 2–HMP. However, rate studies have shown the reaction to be greater than 95% complete after 4 hours. Therefore, one or two standards can be analyzed after this reduced time if sample results are outside the concentration range of the prepared standards.

3.3.3 Place 150-mg portions of coated XAD–2 adsorbent, from the same lot number as used to collect the air samples, into each of several glass 2-mL vials. Seal each vial with a Teflon-lined cap.

3.3.4 Prepare fresh analytical standards each day by injecting appropriate amounts of the diluted analyte directly onto 150-mg portions of coated adsorbent. It is permissible to inject both acrolein and formaldehyde on the same adsorbent portion. Allow the standards to stand at room temperature. A standard, approximately the target levels, was prepared by injecting 11 µL of the acrolein and 12 µL of the formaldehyde stock standards onto a single coated XAD–2 adsorbent portion.

3.3.5 Prepare a sufficient number of standards to generate the calibration curves. Analytical standard concentrations should bracket sample concentrations. Thus, if samples are not in the concentration range of the prepared standards, additional standards must be prepared to determine detector response.

3.3.7 Desorb the standards in the same manner as the samples following the 16-hour reaction time.

3.4 *Sample preparation:*

3.4.1 Transfer the 150-mg section of the sampling tube to a 2-mL vial. Place the 75-mg section in a separate vial. If the glass wool plugs contain a significant number of adsorbent beads, place them with the appropriate sampling tube section. Discard the glass wool plugs if they do not contain a significant number of adsorbent beads.

3.4.2 Add 1 mL of desorbing solution to each vial.

3.4.3 Seal the vials with Teflon-lined caps and then allow them to desorb for one hour. Shake the vials by hand with vigorous force several times during the desorption time.

3.4.4 Save the used sampling tubes to be cleaned and recycled.

3.5 *Analysis:*

3.5.1 GC *Conditions*

Column Temperature:

Bi-level temperature program—First level: 100 to 140 °C at 4 °C/min following completion of the first level.

Second level: 140 to 180 °C at 20 °C/min following completion of the first level.

Isothermal period: Hold column at 180 °C until the recorder pen returns to baseline (usually about 25 min after injection).

Injector temperature: 180 °C

Helium flow rate: 30 mL/min (detector response will be reduced if nitrogen is substituted for helium carrier gas).

Injection volume: 0.8 µL

GC column: Six-ft x ¼-in OD (2 mm ID) glass GC column containing 10% UCON 50–HB–5100 + 2% KOH on 80/100 Chromosorb W–AW.

NPD conditions:

Hydrogen flow rate: 3 mL/min

Air flow rate: 50 mL/min

Detector temperature: 275 °C

3.5.2 *Chromatogram:* For an example of a typical chromatogram, see Figure 4.11 in OSHA Method 52.

3.5.3 Use a suitable method, such as electronic integration, to measure detector response.

3.5.4 Use an internal standard method to prepare the calibration curve with several standard solutions of different concentrations. Prepare the calibration curve daily. Program the integrator to report results in µg/mL.

3.5.5 Bracket sample concentrations with standards.

3.6 *Interferences (Analytical)*

3.6.1 Any compound with the same general retention time as the analytes and which also gives a detector response is a potential interference. Possible interferences should be reported to the laboratory with submitted samples by the industrial hygienist.

3.6.2 GC parameters (temperature, column, etc.) may be changed to circumvent interferences.

3.6.3 A useful means of structure designation is GC/MS. It is recommended this procedure be used to confirm samples whenever possible.

3.6.4 The coated adsorbent usually contains a very small amount of residual formaldehyde derivative (Section 4.8).

3.7 *Calculations:*

3.7.1 Results are obtained by use of calibration curves. Calibration curves are prepared by plotting detector response against concentration for each standard. The best line through the data points is determined by curve fitting.

3.7.2 The concentration, in µg/mL, for a particular sample is determined by comparing its detector response to the calibration curve. If either of the analytes is found on the backup section, it is added to the amount found on the front section. Blank corrections should be performed before adding the results together.

3.7.3 The acrolein and/or formaldehyde air concentration can be expressed using the following equation:

$mg/m^3=(A)(B)/C$

where A=µg/mL from 3.7.2, B=desorption volume, and C=L of air sampled.

No desorption efficiency corrections are required.

3.7.4 The following equation can be used to convert results in mg/m^3 to ppm.

$ppm=(mg/m^3)(24.45)/MW$

where mg/m^3=result from 3.7.3, 24.45=molar volume of an ideal gas at 760 mm Hg and 25 °C, MW=molecular weight (30.0).

4. *Backup Data*

4.1 Backup data on detection limits, reliable quantitation limits, sensitivity and precision of the analytical method, breakthrough, desorption efficiency, storage, reproducibility, and generation of test atmospheres are available in OSHA Method 52, developed by the Organics Methods Evaluation Branch, OSHA Analytical Laboratory, Salt Lake City, Utah.

4.2 *Procedure to Coat XAD–2 Adsorbent with 2–HMP:*

4.2.1 *Apparatus:* Soxhlet extraction apparatus, rotary evaporation apparatus, vacuum dessicator, 1–L vacuum flask, 1–L round-bottomed evaporative flask, 1–L Erlenmeyer flask, 250-mL Buchner funnel with a coarse fritted disc, etc.

4.2.2 *Reagents:*

4.2.2.1 Methanol, isooctane, and toluene.

4.2.2.2 2-(Hydroxymethyl)piperidine.

4.2.2.3 Amberlite XAD–2 non-ionic polymeric adsorbent, 20 to 60 mesh, Aldrich Chemical XAD–2 was used in this evaluation.

4.2.3 *Procedure:* Weigh 125 g of crude XAD–2 adsorbent into a 1–L Erlenmeyer flask. Add about 200 mL of water to the flask and then swirl the mixture to wash the adsorbent. Discard any adsorbent that floats to the top of the water and then filter the mixture using a fritted Buchner funnel. Air dry the adsorbent for 2 minutes. Transfer the adsorbent back to the Erlenmeyer flask and then add about 200 mL of methanol to the flask. Swirl and then filter the mixture as before. Transfer the washed adsorbent back to the Erlenmeyer flask and then add about 200 mL of methanol to the flask. Swirl and then filter the mixture as before. Transfer the washed adsorbent to a 1–L round-bottomed evaporative flask, add 13 g of 2–HMP and then 200 mL of methanol, swirl the mixture and then allow it to stand for one hour. Remove the methanol at about 40 °C and reduced pressure using a rotary evaporation apparatus. Transfer the coated adsorbent to a suitable container and store it in a vacuum desiccator at room temperature overnight. Transfer the coated adsorbent to a Soxhlet extractor and then extract the material with toluene for about 24 hours. Discard the contaminated toluene, add methanol in its place and then continue the Soxhlet extraction for an additional 4 hours. Transfer the adsorbent to a weighted 1–L round-bottom evaporative flask and remove the methanol using the rotary evaporation apparatus. Determine the weight of the adsorbent and then add an amount of 2-HMP, which is 10% by weight of the adsorbent. Add 200 mL of methanol and then swirl the mixture. Allow the mixture to stand for one hour. Remove the methanol by rotary evaporation. Transfer the coated adsorbent to a suitable container and store it in a vacuum desiccator until all traces of solvents are gone. Typically, this will take 2–3 days. The coated adsorbent should be protected from contamination. XAD–2 adsorbent treated in this manner will probably not contain residual acrolein derivative. However, this adsorbent will often contain residual formaldehyde derivative levels of about 0.1 µg per 150 mg of adsorbent. If the blank values for a batch of coated adsorbent are too high, then the batch should be returned to the Soxhlet extractor, extracted with toluene again and then recoated. This process can be repeated until the desired blank levels are attained.

The coated adsorbent is now ready to be packed into sampling tubes. The sampling tubes should be stored in a sealed container to prevent contamination. Sampling tubes should be stored in the dark at room temperature. The sampling tubes should be segregated by coated adsorbent lot number. A sufficient amount of each lot number of coated adsorbent should be retained to prepare analytical standards for use with air samples from that lot number.

4.3 *A Procedure to Determine Formaldehyde by Acid Titration:* Standardize the 0.1 N HCl solution using sodium carbonate and methyl orange indicator.

Place 50 mL of 0.1 M sodium sulfite and three drops of thymophthalein indicator into a 250-mL Erlenmeyer flask. Titrate the contents of the flask to a colorless endpoint with 0.1 N HCl (usually one or two drops is sufficient). Transfer 10 mL of the formaldehyde/methanol solution (prepared in 3.3.1) into the same flask and titrate the mixture with 0.1 N HCl, again, to a colorless endpoint. The formaldehyde concentration of the standard may be calculated by the following equation:

$$\text{Formaldehyde, mg/mL} = \frac{\text{acid titer} \times \text{acid normality} \times 30.0}{\text{mL of sample}}$$

This method is based on the quantitative liberation of sodium hydroxide when formaldehyde reacts with sodium sulfite to form the formaldehyde-bisulfite addition product. The volume of sample may be varied depending on the formaldehyde content but the solution to be titrated must contain excess sodium sulfite. Formaldehyde solutions containing substantial amounts of acid or base must be neutralized before analysis.

Appendix C to § 1915.1048—Medical Surveillance—Formaldehyde

I. Health Hazards

The occupational health hazards of formaldehyde are primarily due to its toxic effects after inhalation, after direct contact with the skin or eyes by formaldehyde in liquid or vapor form, and after ingestion.

II. Toxicology

A. Acute Effects of Exposure

1. *Inhalation (breathing):* Formaldehyde is highly irritating to the upper airways. The concentration of formaldehyde that is immediately dangerous to life and health is 100 ppm. Concentrations above 50 ppm can cause severe pulmonary reactions within minutes. These include pulmonary edema, pneumonia, and bronchial irritation which can result in death. Concentrations above 5 ppm readily cause lower airway irritation characterized by cough, chest tightness and wheezing. There is some controversy regarding whether formaldehyde gas is a pulmonary sensitizer which can cause occupational asthma in a previously normal individual. Formaldehyde can produce symptoms of bronchial asthma in humans. The mechanism may be either sensitization of the individual by exposure to formaldehyde or direct irritation by formaldehyde in persons with pre-existing asthma. Upper airway irritation is the most common respiratory effect reported by workers and can occur over a wide range of concentrations, most frequently above 1 ppm. However, airway irritation has occurred in some workers with exposures to formaldehyde as low as 0.1 ppm. Symptoms of upper airway irritation include dry or sore throat, itching and burning sensations of the nose, and nasal congestion. Tolerance to this level of exposure may develop within 1–2 hours. This tolerance can permit workers remaining in an environment of gradually increasing formaldehyde concentrations to be unaware of their increasingly hazardous exposure.

2. *Eye contact:* Concentrations of formaldehyde between 0.05 ppm and 0.5 ppm produce a sensation of irritation in the eyes with burning, itching, redness, and tearing. Increased rate of blinking and eye closure generally protects the eye from damage at these low levels, but these protective mechanisms may interfere with some workers' work abilities. Tolerance can occur in workers continuously exposed to concentrations of formaldehyde in this range. Accidental splash injuries of human eyes to aqueous solutions of formaldehyde (formalin) have resulted in a wide range of ocular injuries including corneal opacities and blindness. The severity of the reactions have been directly dependent on the concentration of formaldehyde in solution and the amount of time lapsed before emergency and medical intervention.

3. *Skin contact:* Exposure to formaldehyde solutions can cause irritation of the skin and allergic contact dermatitis. These skin diseases and disorders can occur at levels well below those encountered by many formaldehyde workers. Symptoms include erythema, edema, and vesiculation or hives. Exposure to liquid formalin or formaldehyde vapor can provoke skin reactions in sensitized individuals even when airborne concentrations of formaldehyde are well below 1 ppm.

4. *Ingestion:* Ingestion of as little as 30 ml of a 37 percent solution of formaldehyde (formalin) can result in death. Gastrointestinal toxicity after ingestion is most severe in the stomach and results in symptoms which can include nausea, vomiting, and servere abdominal pain. Diverse damage to other organ systems including the liver, kidney, spleen, pancreas, brain, and central nervous systems can occur from the acute response to ingestion of formaldehyde.

B. Chronic Effects of Exposure

Long term exposure to formaldehyde has been shown to be associated with an increased risk of cancer of the nose and accessory sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer in humans. Animal experiments provide conclusive evidence of a causal relationship between nasal cancer in rats and formaldehyde exposure. Concordant

evidence of carcinogenicity includes DNA binding, genotoxicity in short-term tests, and cytotoxic changes in the cells of the target organ suggesting both preneoplastic changes and a dose-rate effect. Formaldehyde is a complete carcinogen and appears to exert an effect on at least two stages of the carcinogenic process.

III. Surveillance Considerations

A. History

1. *Medical and occupational history:* Along with its acute irritative effects, formaldehyde can cause allergic sensitization and cancer. One of the goals of the work history should be to elicit information on any prior or additional exposure to formaldehyde in either the occupational or the non-occupational setting.

2. *Respiratory history:* As noted above, formaldehyde has recognized properties as an airway irritant and has been reported by some authors as a cause of occupational asthma. In addition, formaldehyde has been associated with cancer of the entire respiratory system of humans. For these reasons, it is appropriate to include a comprehensive review of the respiratory system in the medical history. Components of this history might include questions regarding dyspnea on exertion, shortness of breath, chronic airway complaints, hyperreactive airway disease, rhinitis, bronchitis, bronchiolitis, asthma, emphysema, respiratory allergic reaction, or other preexisting pulmonary disease.

In addition, generalized airway hypersensitivity can result from exposures to a single sensitizing agent. The examiner should, therefore, elicit any prior history of exposure to pulmonary irritants, and any short- or long-term effects of that exposure.

Smoking is known to decrease mucociliary clearance of materials deposited during respiration in the nose and upper airways. This may increase a worker's exposure to inhaled materials such as formaldehyde vapor. In addition, smoking is a potential confounding factor in the investigation of any chronic respiratory disease, including cancer. For these reasons, a complete smoking history should be obtained.

3. *Skin Disorders:* Because of the dermal irritant and sensitizing effects of formaldehyde, a history of skin disorders should be obtained. Such a history might include the existence of skin irritation, previously documented skin sensitivity, and other dermatologic disorders. Previous exposure to formaldehyde and other dermal sensitizers should be recorded.

4. *History of atopic or allergic diseases:* Since formaldehyde can cause allergic sensitization of the skin and airways, it might be useful to identify individuals with prior allergen sensitization. A history of atopic disease and allergies to formaldehyde or any other substances should also be obtained. It is not definitely known at this time whether atopic diseases and allergies to formaldehyde or any other substances should also be obtained. Also it is not definitely known at this time whether atopic individuals have a greater propensity to develop formaldehyde sensitivity than the general population, but identification of these individuals may be useful for ongoing surveillance.

5. *Use of disease questionnaires:* Comparison of the results from previous years with present results provides the best method for detecting a general deterioration in health when toxic signs and symptoms are measured subjectively. In this way recall bias does not affect the results of the analysis. Consequently, OSHA has determined that the findings of the medical and work histories should be kept in a standardized form for comparison of the year-to-year results.

B. Physical Examination

1. *Mucosa of eyes and airways:* Because of the irritant effects of formaldehyde, the examining physician should be alert to evidence of this irritation. A speculum examination of the nasal mucosa may be helpful in assessing possible irritation and cytotoxic changes, as may be indirect inspection of the posterior pharynx by mirror.

2. *Pulmonary system:* A conventional respiratory examination, including inspection of the thorax and auscultation and percussion of the lung fields should be performed as part of the periodic medical examination. Although routine pulmonary function testing is only required by the standard once every year for persons who are exposed over the TWA concentration limit, these tests have an obvious value in investigating possible respiratory dysfunction and should be used wherever deemed appropriate by the physician. In cases of alleged formaldehyde-induced airway disease, other possible causes of pulmonary disfunction (including exposures to other substances) should be ruled out. A chest radiograph may be useful in these circumstances. In cases of suspected airway hypersensitivity or allergy, it may be appropriate to use bronchial challenge testing with formaldehyde or methacholine to determine the nature of the disorder. Such testing should be performed by or under the supervision of a physician experienced in the procedures involved.

3. *Skin:* The physician should be alert to evidence of dermal irritation of sensitization, including reddening and inflammation, urticaria, blistering, scaling, formation of skin fissures, or other symptoms. Since the integrity of the skin barrier is compromised by other dermal diseases, the presence of such disease should be noted. Skin sensitivity testing carries with it some risk of inducing sensitivity, and therefore, skin testing for formaldehyde sensitivity should not be used as a routine screening test. Sensitivity testing may be indicated in the investigation of a suspected existing sensitivity. Guidelines for such testing have been prepared by the North American Contact Dermatitis Group.

C. Additional Examinations or Tests

The physician may deem it necessary to perform other medical examinations or tests as indicated. The standard provides a mechanism whereby these additional investigations are covered under the standard for occupational exposure to formaldehyde.

D. Emergencies

The examination of workers exposed in an emergency should be directed at the organ systems most likely to be affected. Much of the content of the examination will be similar to the periodic examination unless the patient has received a severe acute exposure requiring immediate attention to prevent serious consequences. If a severe overexposure requiring medical intervention or hospitalization has occurred, the physician must be alert to the possibility of delayed symptoms. Followup nonroutine examinations may be necessary to assure the patient's well-being.

E. Employer Obligations

The employer is required to provide the physician with the following information: A copy of this standard and appendices A, C, D, and E; a description of the affected employee's duties as they relate to his or her exposure concentration; an estimate of the employee's exposure including duration (*e.g.* 15 hr/wk, three 8-hour shifts, full-time); a description of any personal protective equipment, including respirators, used by the employee; and the results of any previous medical determinations for the affected employee related to formaldehyde exposure to the extent that this information is within the employer's control.

F. Physician's Obligations

The standard requires the employer to obtain a written statement from the physician. This statement must contain the physician's opinion as to whether the employee has any medical condition which would place him or her at increased risk of impaired health from exposure to formaldehyde or use of respirators, as appropriate. The physician must also state his opinion regarding any restrictions that should be placed on the employee's exposure to formaldehyde or upon the use of protective clothing or equipment such as respirators. If the employee wears a respirator as a result of his or her exposure to formaldehyde, the physician's opinion must also contain a statement regarding the suitability of the employee to wear the type of respirator assigned. Finally, the physician must inform the employer that the employee has been told the results of the medica examination and of any medical conditions which require further explanation or treatment. This written opinion is not to contain any information on specific findings or diagnoses unrelated to occupational exposure to formaldehyde.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to assist the employer in placing employees initially, in assuring that their health is not being inpaired by formaldehyde, and to assess the employee's ability to use any required protective equipment.

Appendix D to § 1915.1048—Nonmandatory Medical Disease Questionnaire

A. Identification

Plant Name———

Date———

Employee Name———

S.S. #———

Job Title———

Birthdate:———

Age:———

Sex:———

Height:———

Weight:———

B. Medical History

1. Have you ever been in the hospital as a patient?
Yes ☐No ☐

If yes, what kind of problem were you having?———

2. Have you ever had any kind of operation?
Yes ☐No ☐

If yes, what kind?———

3. Do you take any kind of medicine regularly?
Yes ☐No ☐

If yes, what kind?———

4. Are you allergic to any drugs, foods, or chemicals?
Yes ☐No ☐

If yes, what kind of allergy is it?———

What causes the allergy?———

5. Have you ever been told that you have asthma, hayfever, or sinusitis?
Yes ☐No ☐

6. Have you ever been told that you have emphysema, bronchitis, or any other respiratory problems?
Yes ☐No ☐

7. Have you ever been told you had hepatitis?
Yes ☐No ☐

8. Have you ever been told that you had cirrhosis?
Yes ☐No ☐

9. Have you ever been told that you had cancer?
Yes ☐No ☐

10. Have you ever had arthritis or joint pain?
Yes ☐No ☐

11. Have you ever been told that you had high blood pressure?
Yes ☐No ☐

12. Have you ever had a heart attack or heart trouble?
Yes ☐No ☐

B–1. Medical History Update

1. Have you been in the hospital as a patient any time within the past year?
Yes ☐No ☐

If so, for what condition?———

2. Have you been under the care of a physician during the past year?
Yes ☐No ☐

If so, for what condition?———

3. Is there any change in your breathing since last year?
Yes ☐No ☐

Better?———

Worse?———

No change?———

If change, do you know why?———

4. Is your general health different this year from last year?
Yes ☐No ☐

If different, in what way?———

5. Have you in the past year or are you now taking any medication on a regular basis?
Yes ☐No ☐

Name Rx———

Condition being treated———

C. Occupational History

1. How long have you worked for your present employer?

2. What jobs have you held with this employer? Include job title and length of time in each job.

3. In each of these jobs, how many hours a day were you exposed to chemicals?

4. What chemicals have you worked with most of the time?

5. Have you ever noticed any type of skin rash you feel was related to your work?
Yes ☐No ☐

6. Have you ever noticed that any kind of chemical makes you cough?
Yes ☐No ☐

Wheeze?
Yes ☐No ☐

Become short of breath or cause your chest to become tight?
Yes ☐No ☐

7. Are you exposed to any dust or chemicals at home?
Yes ☐No ☐

If yes, explain:———

8. In other jobs, have you ever had exposure to:

Wood dust?
Yes ☐No ☐

Nickel or chromium?
Yes ☐No ☐

Silica (foundry, sand blasting)?
Yes ☐No ☐

Arsenic or asbestos?
Yes ☐No ☐

Organic solvents?
Yes ☐No ☐

Urethane foams?
Yes ☐No ☐

C–1. Occupational History Update

1. Are you working on the same job this year as you were last year?
Yes ☐No ☐

If not, how has your job changed?———

2. What chemicals are you exposed to on your job?

3. How many hours a day are you exposed to chemicals?

4. Have you noticed any skin rash within the past year you feel was related to your work?
Yes ☐No ☐

If so, explain circumstances: ———

5. Have you noticed that any chemical makes you cough, be short of breath, or wheeze?
Yes ☐No ☐

If so, can you identify it?———

D. Miscellaneous

1. Do you smoke?
Yes ☐No ☐

If so, how much and for how long?———

Pipe———

Cigars———

Cigarettes———

2. Do you drink alcohol in any form?
Yes ☐No ☐

If so, how much, how long, and how often?———

3. Do you wear glasses or contact lenses?
Yes ☐No ☐

4. Do you get any physical exercise other than that required to do your job?
Yes ☐No ☐

If so, explain:———

5. Do you have any hobbies or "side jobs" that require you to use chemicals, such as furniture stripping, sand blasting, insulation or manufacture of urethane foam, furniture, etc?
Yes ☐No ☐

If so, please describe, giving type of business or hobby, chemicals used and length of exposures.

VOL 58 ISS 125 JL 1 1993 UMI

E. Symptoms Questionnaire

1. Do you ever have any shortness of breath?
Yes ☐No ☐
If yes, do you have to rest after climbing several flights of stairs?
Yes ☐No ☐
If yes, if you walk on the level with people your own age, do you walk slower than they do?
Yes ☐No ☐
If yes, if you walk slower than a normal pace, do you have to limit the distance that you walk?
Yes ☐No ☐
If yes, do you have to stop and rest while bathing or dressing?
Yes ☐No ☐
2. Do you cough as much as three months out of the year?
Yes ☐No ☐
If yes, have you had this cough for more than two years?
Yes ☐No ☐
If yes, do you ever cough anything up from chest?
Yes ☐No ☐
3. Do you ever have a feeling of smothering, unable to take a deep breath, or tightness in your chest?
Yes ☐No ☐
If yes, do you notice that this on any particular day of the week?
Yes ☐No ☐
If yes, what day or the week?
Yes ☐No ☐
If yes, do you notice that this occurs at any particular place?
Yes ☐No ☐
If yes, do you notice that this is worse after you have returned to work after being off for several days?
Yes ☐No ☐
4. Have you ever noticed any wheezing in your chest?
Yes ☐No ☐
If yes, is this only with colds or other infections?
Yes ☐No ☐
Is this caused by exposure to any kind of dust or other material?
Yes ☐No ☐
If yes, what kind?———————
5. Have you noticed any burning, tearing, or redness of your eyes when you are at work?
Yes ☐No ☐
If so, explain circumstances:———————
———————
6. Have you noticed any sore or burning throat or itchy or burning nose when you are at work?
Yes ☐No ☐
If so, explain circumstances: ———————
———————
7. Have you noticed any stuffiness or dryness of your nose?
Yes ☐No ☐
8. Do you ever have swelling of the eyelids or face?
Yes ☐No ☐
9. Have you ever been jaundiced?
Yes ☐No ☐
If yes, was this accompanied by any pain?
Yes ☐No ☐
10. Have you ever had a tendency to bruise easily or bleed excessively?
Yes ☐No ☐
11. Do you have frequent headaches that are not relieved by aspirin or tylenol?
Yes ☐No ☐
If yes, do they occur at any particular time of the day or week?
Yes ☐No ☐
If yes, when do they occur?———————
———————
12. Do you have frequent episodes of nervousness or irritability?
Yes ☐No ☐
13. Do you tend to have trouble concentrating or remembering?
Yes ☐No ☐
14. Do you ever feel dizzy, light-headed, excessively drowsy or like you have been drugged?
Yes ☐No ☐
15. Does your vision ever become blurred?
Yes ☐No ☐
16. Do you have numbness or tingling of the hands or feet or other parts of your body?
Yes ☐No ☐
17. Have you ever had chronic weakness or fatigue?
Yes ☐No ☐
18. Have you ever had any swelling of your feet or ankles to the point where you could not wear your shoes?
Yes ☐No ☐
19. Are you bothered by heartburn or indigestion?
Yes ☐No ☐
20. Do you ever have itching, dryness, or peeling and scaling of the hands?
Yes ☐No ☐
21. Do you ever have a burning sensation in the hands, or reddening of the skin?
Yes ☐No ☐
22. Do you ever have cracking or bleeding of the skin on your hands?
Yes ☐No ☐
23. Are you under a physician's care?
Yes ☐No ☐
If yes, for what are you being treated?———————
———————
24. Do you have any physical complaints today?
Yes ☐No ☐
If yes, explain?———————
———————
25. Do you have other health conditions not covered by these questions?
Yes ☐No ☐
If yes, explain: ———————
———————

Appendix E to § 1915.1048—Qualitative and Quantitative Fit Testing Procedures

I. FIT Test Protocols

Because exposure to formaldehyde can affect the employee's ability to detect common odorants, fit test results from the isoamyl acetate test must be augmented by results from either the saccharin or irritant smoke test.

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT).

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece; and units from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) position of the mask on the nose.
(b) room for eye protection.
(c) room to talk.
(d) position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) chin properly placed;
(b) adequate strap tension, not overly tightened;
(c) fit across nose bridge;
(d) respirator of proper size to span distance from nose to chin;
(e) tendency of respirator to slip;
(f) self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another

facepiece shall be selected and retested if the test subject fails the fit check tests.

(a) *Positive pressure test.* Close off the exhalation valve and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

(b) *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall certify that a successful fit test has been administered to the employee. The certification shall include the following information:

(a) Name of employee;

(b) Type, brand and size of respirator; and

(c) Date of test;

Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test, shall be retained with the certification. The certification shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure.

The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) *Normal breathing.* In a normal standing position, without talking, the subject shall breathe normally.

(b) *Deep breathing.* In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) *Turning head side to side.* Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) *Moving head up and down.* Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) *Talking.* The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) *Grimace.* The test subject shall grimace by smiling or frowning.

(g) *Bending over.* The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) *Normal breathing.* Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols

1. *General.* (a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that tese equipment is in proper working order.

(c) The employer shall assure the QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Isoamyl Acetate Protocol*—(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g., distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known at isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clear dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contain a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA ordor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall ware it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test

has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. *Saccharin Solution Aerosol Protocol.* The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) *Saccharin solution aerosol fit test procedure.* (1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be properly adjusted and equipped with a particular filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeeezes as initially.

(10) The test subject shall indicate to the test conductor if any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. *Irritant Fume Protocol.* (a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) If a half-mask is being fitted, advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantitative Fit Test (QNFT) Protocol

1. *General.* (a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Definitions.* (a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agency is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determing test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a

UMI
VOL
58
ISS
125
JL
1
1993
UMI

strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.* (a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitiative fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g., where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. *Procedural Requirements.* (a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g., half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration

(ii) Maximum peak concentration

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

§ 1915.1050 Methylenedianiline

(a) *Scope and application.* (1) This section applies to all occupational exposures to MDA, Chemical Abstracts Service Registry No. 101–77–9, except as provided in paragraphs (a)(2) through (a)(7)of this section.

(2) Except as provided in paragraphs (a)(8) and (e)(5) of this section, this section does not apply to the processing, use, and handling of products containing MDA where initial monitoring indicates that the product is not capable of releasing MDA in excess of the action level under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(3) Except as provided in paragraph (a)(8) of this section, this section does not apply to the processing, use, and handling of products containing MDA where objective data are reasonably relied upon which demonstrate the product is not capable of releasing MDA under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(4) This section does not apply to the storage, transportation, distribution or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of § 1915.1200 of this part and paragraph (d) of this section.

(5) This section does not apply to the construction industry as defined in 29 CFR 1910.12(b). (Exposure to MDA in the construction industry is covered by 29 CFR 1926.60).

(6) Except as provided in paragraph (a)(8) of this secton, this section does not apply to materials in any form which contain less than 0.1% MDA by weight or volume.

(7) Except as provided in paragraph (a)(8) of this section, this section does

not apply to "finished articles containing MDA."

(8) Where products containing MDA are exempted under paragraphs (a)(2) through (a)(7) of this section, the employer shall maintain records of the initial monitoring results or objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in the recordkeeping provision of paragraph (n) of this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne MDA of 5 ppb as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees, for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (o) of this section, or any other person authorized by the Act or regulations issued under the Act.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, commercial packaging or the like, but does not include piping systems.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA:

(i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and

(ii) Materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA.

Employee exposure means exposure to MDA which would occur if the employee were not using respirators or protective work clothing and equipment.

Finished article containing MDA is defined as a manufactured item:

(i) Which is formed to a specific shape or design during manufacture;

(ii) Which has end use function(s) dependent in whole or part upon its shape or design during end use; and

(iii) Where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

4,4' Methylenedianiline or MDA means the chemical, 4,4'-diaminodiphenylmethane, Chemical Abstract Service Registry number 101-77-9, in the form of a vapor, liquid, or solid. The definition also includes the salts of MDA.

Regulated areas means areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits, or where dermal exposure to MDA can occur.

STEL means short term exposure limit as determined by any 15 minute sample period.

(c) *Permissible exposure limits (PEL).* The employer shall assure that no employee is exposed to an airborne concentration of MDA in excess of ten parts per billion (10 ppb) as an 8-hour time-weighted average or a STEL of 100 ppb.

(d) *Emergency situations*—(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with the appropriate personal protective equipment and clothing as required in paragraphs (h) and (i) of this section until the emergency is abated.

(iii) The plan shall specifically include provisions for alerting and evacuating affected employees as well as the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) Alerting employees. Where there is the possibility of employee exposure to MDA due to an emergency, means shall be developed to alert promptly those employees who have the potential to be directly exposed. Affected employees not engaged in correcting emergency conditions shall be evacuated immediately in the event that an emergency occurs. Means shall also be developed and implemented for alerting other employees who may be exposed as a result of the emergency.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's exposure to airborne MDA over an eight (8) hour period. Determination of employee exposure to the STEL shall be made from breathing zone air samples collected over a 15 minute sampling period.

(ii) Representative employee exposure shall be determined on the basis of one or more samples representing full shift exposure for each shift for each job classification in each work area where exposure to MDA may occur.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer shall only be required to determine representative employee exposure for that operation during one shift.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall perform initial monitoring to determine accurately the airborne concentrations of MDA to which employees may be exposed.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (e)(2) of this section reveals employee exposure at or above the action level, but at or below the PELs, the employer shall repeat such representative monitoring for each such employee at least every six (6) months.

(ii) If the monitoring required by paragraph (e)(2) of this section reveals employee exposure above the PELs, the employer shall repeat such monitoring for each such employee at least every three (3) months.

(iii) The employer may alter the monitoring schedule from every 3 months to every 6 months for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to below the TWA but above the action level.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (e)(2) of this section reveals employee exposure to be below the action level, the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(ii) If the periodic monitoring required by paragraph (e)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as

VOL 58 ISS 125 JL 1 1993 UMI

otherwise required by paragraph (e)(5) of this section.

(5) *Additional monitoring.* The employer shall institute the exposure monitoring required under paragraphs (e)(2) and (e)(3) of this section when there has been a change in production process, chemicals present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of MDA.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results, in writing, either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (e)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce the employee exposure to or below the PELs, wherever the PELs are exceeded.

(8) *Visual monitoring.* The employer shall make routine inspections of employee hands, face and forearms potentially exposed to MDA. Other potential dermal exposures reported by the employee must be referred to the appropriate medical personnel for observation. If the employer determines that the employee has been exposed to MDA the employer shall:

(i) Determine the source of exposure;

(ii) Implement protective measures to correct the hazard; and

(iii) Maintain records of the corrective actions in accordance with paragraph (n) of this section.

(f) *Regulated areas*—(1) *Establishment*—(i) *Airborne exposures.* The employer shall establish regulated areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits.

(ii) *Dermal exposures.* Where employees are subject to dermal exposure to MDA the employer shall establish those work areas as regulated areas.

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in a manner that minimizes the number of persons potentially exposed.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Personal protective equipment and clothing.* Each person entering a regulated area shall be supplied with, and required to use, the appropriate personal protective clothing and equipment in accordance with paragraphs (h) and (i) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum , or apply cosmetics in regulated areas.

(g) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to MDA at or below the PELs except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraphs (g)(1)(ii) or (h)(1)(i) through (iv) of this section apply.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protective devices which comply with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposure to or below the PELs by means of engineering and work practice controls, as required by paragraph (g)(1) of this section, and by use of respiratory protection where permitted under this section. The program shall include a schedule for periodic maintenance (e.g., leak detection) and shall include the written plan for emergency situations as specified in paragraph (d) of this section.

(ii) Upon request this written program shall be furnished for examination and copying to the Assistant Secretary, the Director, affected employees, and designated employee representatives. The employer shall review and, as necessary, update such plans at least once every 12 months to make certain they reflect the current status of the program.

(3) *Employee rotation.* Employee rotation shall not be permitted as a means of reducing exposure.

(h) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PEL; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a positive pressure respirator or any supplied-air respirator operated in the continuous flow or pressure demand mode.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with § 1910.134 (b), (d), (e), and (f) of this title.

(4) *Respirator use.* (i) Where air-purifying respirators (cartridge or canister) are used, the employer shall replace the air purifying element as needed to maintain the effectiveness of the respirator. The employer shall ensure that each cartridge is dated at the beginning of use.

(ii) Employees who wear respirators shall be allowed to leave the regulated area to readjust the facepiece or to wash their faces and to wipe clean the facepieces on their respirators in order to minimize potential skin irritation associated with respirator use.

TABLE 1—RESPIRATORY PROTECTION FOR MDA

Airborne Concentration of MDA or Condition of U	Respirator Type
a. Less than or equal to 10 x PEL.	(1) Half-Mask Respirator with HEPA[1] Cartridge[2]
b. Less than or equal to 50 x PEL.	(1) Full facepiece Respirator with HEPA[1] Cartridge or Canister[2]
c. Less than or equal to 1000 x PEL.	(1) Full facepiece powered air-purifying respirator with HEPA[1] cartridges[2]

TABLE 1—RESPIRATORY PROTECTION FOR MDA—Continued

Airborne Concentration of MDA or Condition of U	Respirator Type
d. Greater than 1000 x PEL or unknown concentrations.	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode (2) Full facepiece positive pressure demand supplied-air respirator with auxiliary self-contained air supply
e. Escape	(1) Any full facepiece air-purifying respirator with HEPA[1] cartridges;[2] (2) Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood
f. Firefighting	(1) Full facepiece self-contained breathing apparatus in positive pressure demand mode.

Note: Respirators assigned for higher environmental concentrations may be used at lower concentrations.

[1] High Efficiency Particulate In Air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

[2] Combination HEPA/Organic Vapor Cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(5) *Respirator fit testing.* (i) The employer shall perform and record the results of either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which provides the required protection as prescribed in Table 1.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

(i) *Protective work clothing and equipment*—(1) *Provision and use.* Where employees are subject to dermal exposure to MDA, where liquids containing MDA can be splashed into the eyes, or where airborne concentrations of MDA are in excess of the PEL, the employer shall provide, at no cost to the employee, and ensure that the employee uses, appropriate protective work clothing and equipment which prevent contact with MDA such as, but not limited to:

(i) Aprons, coveralls or other full-body work clothing;

(ii) Gloves, head coverings, and foot coverings; and

(iii) Face shields, chemical goggles; or

(iv) Other appropriate protective equipment which comply with § 1910.133 of this title.

(2) *Removal and storage.* (i) The employer shall ensure that, at the end of their work shift, employees remove MDA-contaminated protective work clothing and equipment that is not routinely removed throughout the day in change rooms provided in accordance with the provisions established for change rooms.

(ii) The employer shall ensure that, during their work shift, employees remove all other MDA-contaminated protective work clothing or equipment before leaving a regulated area.

(iii) The employer shall ensure that no employee takes MDA-contaminated work clothing or equipment out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iv) MDA-contaminated work clothing or equipment shall be placed and stored in closed containers which prevent dispersion of the MDA outside the container.

(v) Containers of MDA-contaminated protective work clothing or equipment which are to be taken out of change rooms or the workplace for cleaning, maintenance, or disposal, shall bear labels warning of the hazards of MDA.

(3) *Cleaning and replacement.* (i) The employer shall provide the employee with clean protective clothing and equipment. The employer shall ensure that protective work clothing or equipment required by this paragraph is cleaned, laundered, repaired, or replaced at intervals appropriate to maintain its effectiveness.

(ii) The employer shall prohibit the removal of MDA from protective work clothing or equipment by blowing, shaking, or any methods which allow MDA to re-enter the workplace.

(iii) The employer shall ensure that laundering of MDA-contaminated clothing shall be done so as to prevent the release of MDA in the workplace.

(iv) Any employer who gives MDA-contaminated clothing to another person for laundering shall inform such person of the requirement to prevent the release of MDA.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with MDA of the potentially harmful effects of exposure.

(vi) MDA-contaminated clothing shall be transported in properly labeled, sealed, impermeable bags or containers.

(j) *Hygiene facilities and practices*—(1) *Change rooms.*

(i) The employer shall provide clean change rooms for employees, who must wear protective clothing, or who must use protective equipment because of their exposure to MDA.

(ii) Change rooms must be equipped with separate storage for protective clothing and equipment and for street clothes which prevents MDA contamination of street clothes.

(2) *Showers.* (i) The employer shall ensure that employees, who work in areas where there is the potential for exposure resulting from airborne MDA (e.g., particulates or vapors) above the action level, shower at the end of the work shift.

(A) Shower facilities required by this paragraph shall comply with § 1910.141(d)(3) of this title.

(B) The employer shall ensure that employees who are required to shower pursuant to the provisions contained herein do not leave the workplace wearing any protective clothing or equipment worn during the work shift.

(ii) Where dermal exposure to MDA occurs, the employer shall ensure that materials spilled or deposited on the skin are removed as soon as possible by methods which do not facilitate the dermal absorption of MDA.

(3) *Lunch facilities.* (i) Availability and construction. (A) Whenever food or beverages are consumed at the worksite and employees are exposed to MDA at or above the PEL or are subject to dermal exposure to MDA the employer shall provide readily accessible lunch areas.

(B) Lunch areas located within the workplace and in areas where there is the potential for airborne exposure to MDA at or above the PEL shall have a positive pressure, temperature controlled, filtered air supply.

(C) Lunch areas may not be located in areas within the workplace where the potential for dermal exposure to MDA exists.

(ii) The employer shall ensure that employees who have been subjected to dermal exposure to MDA or who have been exposed to MDA above the PEL wash their hands and faces with soap and water prior to eating, drinking, smoking, or applying cosmetics.

(iii) The employer shall ensure that employees exposed to MDA do not enter lunch facilities with MDA-contaminated protective work clothing or equipment.

(k) *Communication of hazards to employees*—(1) *Signs and labels.* (i) The employer shall post and maintain

legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
MDA
MAY CAUSE CANCER
LIVER TOXIN
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING
MAY BE REQUIRED TO BE WORN IN THIS AREA

(ii) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of 29 CFR 1915.1200(f) and shall include the following legend:

(A) For Pure MDA

DANGER
MDA
MAY CAUSE CANCER
LIVER TOXIN

(B) For mixtures containing MDA

DANGER
MDA
CONTAINS MATERIALS WHICH MAY CAUSE CANCER
LIVER TOXIN

(2) *Material safety data sheets (MSDS).* (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA. In meeting this obligation, employers shall make appropriate use of the information found in Appendices A and B.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (k)(1)(ii) of this section appropriate, and

(B) Comply with the requirement in OSHA's Hazard Communication standard, 29 CFR 1915.1200, that they deliver to downstream employers an MSDS for MDA.

(3) *Information and training.* (i) The employer shall provide employees with information and training on MDA, in accordance with 29 CFR 1915.1200(h), at the time of initial assignment and at least annually thereafter.

(ii) In addition to the information required under 29 CFR 1915.1200, the employer shall:

(A) Provide an explanation of the contents of this section, including appendices A and B, and indicate to employees where a copy of the standard is available;

(B) Describe the medical surveillance program required under paragraph (m) of this section, and explain the information contained in Appendix C; and

(C) Describe the medical removal provision required under paragraph (m) of this section.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Assistant Secretary and the Director, upon request, all information and training materials relating to the employee information and training program.

(l) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of visible accumulations of MDA.

(2) The employer shall institute a program for detecting MDA leaks, spills, and discharges, including regular visual inspections of operations involving liquid or solid MDA.

(3) All leaks shall be repaired and liquid or dust spills cleaned up promptly.

(4) Surfaces contaminated with MDA may not be cleaned by the use of compressed air.

(5) Shoveling, dry sweeping, and other methods of dry clean-up of MDA may be used where HEPA-filtered vacuuming and/or wet cleaning are not feasible or practical.

(6) Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with MDA shall be collected and disposed of in a manner to prevent the re-entry of MDA into the workplace.

(m) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees exposed to MDA:

(A) Employees exposed at or above the action level for 30 or more days per year;

(B) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(C) Employees who have been exposed in an emergency situation;

(D) Employees whom the employer, based on results from compliance with paragraph (e)(8), has reason to believe are being dermally exposed; and

(E) Employees who show signs or symptoms of MDA exposure. (ii) The employer shall ensure that all medical examinations and procedures are performed by, or under the supervision of, a licensed physician, at a reasonable time and place, and provided without cost to the employee.

(2) *Initial examinations.* (i) Within 150 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (m)(1)(i) with a medical examination including the following elements:

(A) A detailed history which includes:

(*1*) Past work exposure to MDA or any other toxic substances;

(*2*) A history of drugs, alcohol, tobacco, and medication routinely taken (duration and quantity); and

(*3*) A history of dermatitis, chemical skin sensitization, or previous hepatic disease.

(B) A physical examination which includes all routine physical examination parameters, skin examination, and signs of liver disease.

(C) Laboratory tests including:

(*1*) Liver function tests and

(*2*) Urinalysis.

(D) Additional tests as necessary in the opinion of the physician.

(ii) No initial medical examination is required if adequate records show that the employee has been examined in accordance with the requirements of this section within the previous six months prior to the effective date of this standard or prior to the date of initial assignment.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered by this section with a medical examination at least annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential liver toxins, changes in drug, tobacco, and alcohol intake, and the appearance of physical signs relating to the liver, and the skin;

(B) The appropriate tests and examinations including liver function tests and skin examinations; and

(C) Appropriate additional tests or examinations as deemed necessary by the physician.

(ii) If in the physicians' opinion the results of liver function tests indicate an abnormality, the employee shall be removed from further MDA exposure in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on advice of the physician.

(4) *Emergency examinations.* If the employer determines that the employee has been exposed to a potentially hazardous amount of MDA in an emergency situation as addressed in paragraph (d) of this section, the employer shall provide medical examinations in accordance with paragraphs (m)(3) (i) and (ii) of this section. If the results of liver function testing indicate an abnormality, the employee shall be removed in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on the advice of the

physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and on the advice of the physician, no additional testing is required.

(5) *Additional examinations.* Where the employee develops signs and symptoms associated with exposure to MDA, the employer shall provide the employee with an additional medical examination including a liver function test. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and, on the advice of the physician, no additional testing is required.

(6) *Multiple physician review mechanism.* (i) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms of occupational exposure to MDA (which could include an abnormal liver function test), and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, the employee may designate an appropriate, mutually acceptable second physician:

(A) To review any findings, determinations, or recommendations of the initial physician; and

(B) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informing the employer that he or she intends to seek a second medical opinion, and

(B) The employee initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to resolve quickly their disagreement, then the employer and the employee through their respective physicians shall designate a third physician;

(A) To review any findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) The employer shall act consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(7) *Information provided to the examining and consulting physicians.* (i) The employer shall provide the following information to the examining physician:

(A) A copy of this regulation and its appendices;

(B) A description of the affected employee's duties as they relate to the employee's potential exposure to MDA;

(C) The employee's current actual or representative MDA exposure level;

(D) A description of any personal protective equipment used or to be used; and

(E) Information from previous employment-related medical examinations of the affected employee.

(ii) The employer shall provide the foregoing information to a second physician under this section upon request either by the second physician, or by the employee.

(8) Physician's written opinion. (i) For each examination under this section, the employer shall obtain, and provide the employee with a copy of, the examining physician's written opinion within 15 days of its receipt. The written opinion shall include the following:

(A) The occupationally pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to MDA;

(C) The physician's recommended limitations upon the employee's exposure to MDA or upon the employee's use of protective clothing or equipment and respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from MDA exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(9) *Medical removal*—(i) *Temporary medical removal of an employee.* (A) Temporary removal resulting from occupational exposure. The employee shall be removed from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (paragraph (m)(2) of this section), periodic examinations (paragraph (m)(3) of this section), an emergency situation (paragraph (m)(4) of this section), or an additional examination (paragraph(m)(5) of this section) in the following circumstances:

(*1*) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(*2*) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(B) Temporary removal due to a final medical determination.

(*1*) The employer shall remove an employee from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, on each occasion that there is a final medical determination or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(*2*) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(*3*) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, the employer shall implement and act consistent with the recommendation.

(ii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(*1*) When the employee no longer shows signs or symptoms of exposure to

MDA, or upon the advice of the physician.

(2) When a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iii) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee, or end any special protective measures provided to an employee, pursuant to a final medical determination, when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(iv) *Employer options pending a final medical determination.* Where the physician review mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to MDA, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, and end any special protective measures provided to the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions.

(1) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(2) If the employee has been on removal status for the preceding six months as a result of exposure to MDA, then the employer shall await a final medical determination.

(v) *Medical removal protection benefits*—(A) *Provisions of medical removal protection benefits.* The employer shall provide to an employee up to six (6) months of medical removal protection benefits on each occasion that an employee is removed from exposure to MDA or otherwise limited pursuant to this section.

(B) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to MDA or otherwise limited.

(C) *Follow-up medical surveillance during the period of employee removal or limitations.* During the period of time that an employee is removed from normal exposure to MDA or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(D) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a MDA-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

(E) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from non-MDA-related employment with any employer made possible by virtue of the employee's removal.

(F) *Employees who do not recover within the 6 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to MDA:

(1) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(2) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and, if not, what steps should be1 taken to protect the employee's health;

(3) Where the final medical determination has not yet been obtained, or, once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status; and

(4) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status, despite what would otherwise be an abnormal liver function test, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the MDA removal criteria provided by this section.

(vi) *Voluntary removal or restriction of an employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to MDA or otherwise places limitations on an employee due to the effects of MDA exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (m)(9)(v) of this section.

(n) *Recordkeeping*—(1) *Monitoring data for exempted employers.* (i) Where as a result of the initial monitoring the processing, use, or handling of products made from or containing MDA are exempted from other requirements of this section under paragraph (a) (2) of this section, the employer shall establish and maintain an accurate record of monitoring relied on in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the monitoring data (e.g., was monitoring performed by the employer or a private contractor);

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption (e.g., are the monitoring data representative of the conditions at the affected facility); and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Objective data for exempted employers.* (i) Where the processing, use, or handling of products made from or containing MDA are exempted from other requirements of this section under paragraph (a) of this section, the employer shall establish and maintain an accurate record of objective data relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(3) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section, in accordance with § 1915.1120 of this part.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) Identification of the sampling and analytical methods used;

(C) A description of the type of respiratory protective devices worn, if any; and

(D) The name, social security number, job classification and exposure levels of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 30 years, in accordance with § 1915.1120 of this part.

(4) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (m) of this section, in accordance with § 1915.1120 of this part.

(ii) This record shall include:

(A) The name, social security number and description of the duties of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic, and any special examinations, including results of medical examination and all tests, opinions, and recommendations;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to MDA;

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and its appendices for all employees provided the employer references the standard and its appendices in the medical surveillance record of each employee;

(B) A copy of the information provided to the physician as required by any paragraphs in the regulatory text;

(C) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to the information;

(D) A copy of the employee's medical and work history related to exposure to MDA; and

(iv) The employer shall maintain this record for at least the duration of employment plus 30 years, in accordance with 29 CFR 1915.1120 of this part.

(5) *Medical removals.* (i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to MDA pursuant to paragraph (m) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date of each occasion that the employee was removed from current exposure to MDA as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating the reason for the removal.

(iii) The employer shall maintain each medical removal record for at least the duration of an employee's employment plus 30 years.

(6) *Availability.* (i) The employer shall assure that records required to be maintained by this section shall be made available, upon request, to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this section shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1915.1120 (a)-(e) and (g)-(i).

(iii) Employee medical records required by this section shall be provided upon request for examination and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary in accordance with § 1915.1120 of this part.

(7) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1915.1120(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least 90 days prior to disposal, and transmit the records to the Director if so requested by the Director within that period.

(o) *Observation of monitoring.* (1) Employee observation. The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to MDA conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to MDA requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(p) *Effective date.* This standard shall become effective September 9, 1992.

(q) *Appendices.* The information contained in Appendices A, B, C and D to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation. The protocols for respiratory fit testing in Appendix E are mandatory.

(r) *Startup dates.* All obligations of this standard commence on the effective date except as follows:

(1) Initial monitoring under paragraph (e) (2) of this section shall be completed as soon as possible but no later than December 8, 1992.

(2) Medical examinations under paragraph (m) of this section shall be completed as soon as possible but no later than February 8, 1993.

(3) Emergency plans required by paragraph (d) of this section shall be provided and available for inspection and copying as soon as possible but no later than January 7, 1993.

(4) Initial training and education shall be completed as soon as possible but no later than January 7, 1993.

(5) Hygiene and lunchroom facilities under paragraph (j) shall be in operation as soon as possible but no later than September 9, 1993.

(6) Respiratory protection required by paragraph (h) of this section shall be provided as soon as possible but no later than January 7, 1993.

(7) Written compliance plans required by paragraph (g) (2) of this section shall be completed and available for inspection and copying as soon as possible but no later than January 7, 1993.

(8) The permissible exposure limits in paragraph (c) of this section shall become effective January 7, 1993.

(9) Engineering controls needed to achieve the PELs must be in place September 9, 1993.

(10) Personal protective clothing required by paragraph (i) of this section shall be available January 7, 1993.

(Approved by the Office of Management and Budget under control number 1218-0184)

Appendix A to § 1915.1050—Substance Data Sheet for 4-4'-Methylenedianiline

I. Substance Identification

A. *Substance:* Methylenedianiline (MDA)

B. *Permissible exposure:*

1. *Airborne:* Ten parts per billion parts of air (10 ppb), time-weighted average (TWA) for an 8-hour workday and an action level of five parts per billion parts of air (5 ppb).

2. *Dermal:* Eye contact and skin contact with MDA are not permitted.

C. *Appearance and odor:* White to tan solid; amine odor

II. Health Hazard Data

A. *Ways in which MDA affects your health.* MDA can affect your health if you inhale it, or if it comes in contact with your skin or eyes. MDA is also harmful if you happen to swallow it. Do not get MDA in eyes, on skin, or on clothing.

B. *Effects of overexposure.* 1. *Short-term (acute) overexposure:* Overexposure to MDA may produce fever, chills, loss of appetite, vomiting, jaundice. Contact may irritate skin, eyes and mucous membranes. Sensitization may occur.

2. *Long-term (chronic) exposure.* Repeated or prolonged exposure to MDA, even at relatively low concentrations, may cause cancer. In addition, damage to the liver, kidneys, blood, and spleen may occur with long term exposure.

3. *Reporting signs and symptoms:* You should inform your employer if you develop any signs or symptoms which you suspect are caused by exposure to MDA including yellow staining of the skin.

III. Protective Clothing and Equipment

A. *Respirators.* Respirators are required for those operations in which engineering controls or work practice controls are not adequate or feasible to reduce exposure to the permissible limit. If respirators are worn, they must have the joint Mine Safety and Health Administration and National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridges or canisters must be replaced as necessary to maintain the effectiveness of the respirator. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

MDA does not have a detectable odor except at levels well above the permissible exposure limits. Do not depend on odor to warn you when a respirator canister is exhausted. If you can smell MDA while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. *Protective clothing.* You may be required to wear coveralls, aprons, gloves, face shields, or other appropriate protective clothing to prevent skin contact with MDA. Where protective clothing is required, your employer is required to provide clean garments to you, as necessary, to assure that the clothing protects you adequately. Replace or repair impervious clothing that has developed leaks.

MDA should never be allowed to remain on the skin. Clothing and shoes which are not impervious to MDA should not be allowed to become contaminated with MDA, and if they do, the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered to remove MDA or discarded. Once MDA penetrates shoes or other leather articles, they should not be worn again.

C. *Eye protection.* You must wear splashproof safety goggles in areas where liquid MDA may contact your eyes. Contact lenses should not be worn in areas where eye contact with MDA can occur. In addition, you must wear a face shield if your face could be splashed with MDA liquid.

IV. Emergency and First Aid Procedures.

A. *Eye and face exposure.* If MDA is splashed into the eyes, wash the eyes for at least 15 minutes. See a doctor as soon as possible.

B. *Skin exposure.* If MDA is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of soap and water immediately. Wash contaminated clothing before you wear it again.

C. *Breathing.* If you or any other person breathes in large amounts of MDA, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the MDA concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. *Swallowing.* If MDA has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to MDA at a concentration at or above the action level for more than 30 days per year, or exposed to liquid mixtures more than 15 days per year, your employer is required to provide a medical examination, including a medical history and laboratory tests, within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to MDA (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to constitute toxic exposure to MDA, your employer is required to make special examinations and tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to MDA and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you and your representative must also be provided with, and must wear, the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to MDA upon written request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

A. *Material is combustible.* Avoid strong acids and their anhydrides. Avoid strong oxidants. Consult supervisor for disposal requirements.

B. *Emergency clean-up.* Wear self-contained breathing apparatus and fully clothe the body in the appropriate personal protective clothing and equipment.

Appendix B to § 1915.1050—Substance Technical Guidelines, MDA

I. Identification

A. Substance identification.

1. *Synonyms*: CAS No. 101-77-9. 4,4'-methylenedianiline; 4,4'-methylenebisaniline; methylenedianiline; dianilinomethane.

2. *Formula*: $C_{13}H_{14N2}$

II. Physical Data

1. Appearance and Odor: White to tan solid; amine odor

2. Molecular Weight: 198.26

3. Boiling Point: 398–399° C at 760 mm Hg

4. Melting Point: 88–93° C (190–100° F)

5. Vapor Pressure: 9 mmHg at 232° C

6. Evaporation Rate (n-butyl acetate = 1): Negligible

7. Vapor Density (Air=1): Not Applicable

8. Volatile Fraction by Weight: Negligible

9. Specific Gravity (Water=1): Slight

10. Heat of Combustion: -8.40 kcal/g

11. Solubility in Water: Slightly soluble in cold water, very soluble in alcohol, benzene, ether, and many organic solvents.

III. Fire, Explosion, and Reactivity Hazard Data

1. Flash Point: 190° C (374° F) Setaflash closed cup

2. Flash Point: 226° C (439° F) Cleveland open cup

3. Extinguishing Media: Water spray; Dry Chemical; Carbon dioxide.

4. Special Fire Fighting Procedures: Wear self-contained breathing apparatus and protective clothing to prevent contact with skin and eyes.

5. Unusual Fire and Explosion Hazards: Fire or excessive heat may cause production of hazardous decomposition products.

IV. Reactivity Data

1. Stability: Stable

2. Incompatibility: Strong oxidizers

3. Hazardous Decomposition Products: As with any other organic material, combustion may produce carbon monoxide. Oxides of nitrogen may also be present.

4. Hazardous Polymerization: Will not occur.

V. Spill and Leak Procedures

1. Sweep material onto paper and place in fiber carton.

2. Package appropriately for safe feed to an incinerator or dissolve in compatible waste solvents prior to incineration.

3. Dispose of in an approved incinerator equipped with afterburner and scrubber or contract with licensed chemical waste disposal service.

4. Discharge treatment or disposal may be subject to federal, state, or local laws.

5. Wear appropriate personal protective equipment.

VI. Special Storage and Handling Precautions

A. High exposure to MDA can occur when transferring the substance from one container to another. Such operations should be well ventilated and good work practices must be established to avoid spills.

B. Pure MDA is a solid with a low vapor pressure. Grinding or heating operations increase the potential for exposure.

C. Store away from oxidizing materials.

D. Employers shall advise employees of all areas and operations where exposure to MDA could occur.

VII. Housekeeping and Hygiene Facilities

A. The workplace should be kept clean, orderly, and in a sanitary condition. The employer should institute a leak and spill detection program for operations involving MDA in order to detect sources of fugitive MDA emissions.

B. Adequate washing facilities with hot and cold water are to be provided and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of MDA from the skin.

VIII. Common Operations

Common operations in which exposure to MDA is likely to occur include the following: Manufacture of MDA; Manufacture of Methylene diisocyanate; Curing agent for epoxy resin structures; Wire coating operations; and filament winding.

Appendix C to § 1915.1050—Medical Surveillance Guidelines for MDA

I. Route of Entry

Inhalation: skin absorption; ingestion. MDA can be inhaled, absorbed through the skin, or ingested.

II. Toxicology

MDA is a suspect carcinogen in humans. There are several reports of liver disease in humans and animals resulting from acute exposure to MDA. A well documented case of an acute cardiomyopathy secondary to exposure to MDA is on record. Numerous human cases of hepatitis secondary to MDA are known. Upon direct contact MDA may also cause damage to the eyes. Dermatitis and skin sensitization have been observed. Almost all forms of acute environmental hepatic injury in humans involve the hepatic parenchyma and produce hepatocellular jaundice. This agent produces intrahepatic cholestasis. The clinical picture consists of cholestatic jaundice, preceded or accompanied by abdominal pain, fever, and chills. Onset in about 60% of all observed cases is abrupt with severe abdominal pain. In about 30% of observed cases, the illness presented and evolved more slowly and less dramatically, with only slight abdominal pain. In about 10% of the cases only jaundice was evident. The cholestatic nature of the jaundice is evident in the prominence of itching, the histologic predominance of bile stasis, and portal inflammatory infiltration, accompanied by only slight parenchymal injury in most cases, and by the moderately elevated transaminase values. Acute, high doses, however, have been known to cause hepatocellular damage resulting in elevated SGPT, SGOT, alkaline phosphatase and bilirubin.

Absorption through the skin is rapid. MDA is metabolized and excreted over a 48-hour period. Direct contact may be irritating to the skin, causing dermatitis. Also MDA which is deposited on the skin is not thoroughly removed through washing.

MDA may cause bladder cancer in humans. Animal data supporting this assumption is not available nor is conclusive human data. However, human data collected on workers at a helicopter manufacturing facility where MDA is used suggests a higher incidence of bladder cancer among exposed workers.

III. Signs and Symptoms

Skin may become yellow from contact with MDA.

Repeated or prolonged contact with MDA may result in recurring dermatitis (red-itchy, cracked skin) and eye irritation. Inhalation, ingestion or absorption through the skin at high concentrations may result in hepatitis, causing symptoms such as fever and chills, nausea and vomiting, dark urine, anorexia, rash, right upper quadrant pain and jaundice. Corneal burns may occur when MDA is splashed in the eyes.

IV. Treatment of Acute Toxic Effects/ Emergency Situation

If MDA gets into the eyes, immediately wash eyes with large amounts of water. If MDA is splashed on the skin, immediately wash contaminated skin with mild soap or detergent. Employee should be removed from exposure and given proper medical treatment. Medical tests required under the emergency section of the medical surveillance section(m)(4) must be conducted.

If the chemical is swallowed do not induce vomiting but remove by gastric lavage.

Appendix D to § 1915.1050—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to MDA are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

There are a number of methods available for monitoring employee exposures to MDA. The method OSHA currently uses is included below.

The employer, however, has the obligation of selecting any monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for the select PEL.

OSHA Methodology

Sampling Procedure

Apparatus

Samples are collected by use of a personal sampling pump that can be calibrated within ±5% of the recommended flow rate with the sampling filter in line.

Samples are collected on 37 mm Gelman type A/E glass fiber filters treated with sulfuric acid. The filters are prepared by soaking each filter with 0.5 mL of 0.26N H_2SO_4. (0.26 N H_2SO_4 can be prepared by diluting 1.5 mL of 36N H(2)S0(4) to 200 mL with deionized water.) The filters are dried in an oven at 100° C for one hour and then assembled into two-piece 37 mm polystyrene cassettes with backup pads. The cassettes are sealed with shrink bands and the ends are plugged with plastic plugs.

After sampling, the filters are carefully removed from the cassettes and individually transferred to small vials containing approximately 2 mL deionized water. The vials must be tightly sealed. The water can be added before or after the filters are transferred. The vials must be sealable and capable of holding at least 7 mL of liquid. Small glass scintillation vials with caps containing Teflon liners are recommended.

Reagents

Deionized water is needed for addition to the vials.

Sampling technique

Immediately before sampling, remove the plastic plugs from the filter cassettes.

Attach the cassette to the sampling pump with flexible tubing and place the cassette in the employee's breathing zone.

After sampling, seal the cassettes with plastic plugs until the filters are transferred to the vials containing deionized water.

At some convenient time within 10 hours of sampling, transfer the sample filters to vials.

Seal the small vials lengthwise.

Submit at least one blank filter with each sample set. Blanks should be handled in the same manner as samples, but no air is drawn through them.

Record sample volumes (in L of air) for each sample, along with any potential interferences.

Retention efficiency

A retention efficiency study was performed by drawing 100 L of air (80% relative humidity) at 1 L/min through sample filters that had been spiked with 0.814 µg MDA. Instead of using backup pads, blank acid-treated filters were used as backups in each cassette. Upon analysis, the top filters were found to have an average of 91.8% of the spiked amount. There was no MDA found on the bottom filters, so the amount lost was probably due to the slight instability of the MDA salt.

Extraction efficiency

The average extraction efficiency for six filters spiked at the target concentration is 99.6%.

The stability of extracted and derivatized samples was verified by reanalyzing the above six samples the next day using fresh standards. The average extraction efficiency for the reanalyzed samples is 98.7%.

Recommended air volume and sampling rate

The recommended air volume is 100 L.

The recommended sampling rate is 1 L/min.

Interferences (sampling)

MDI appears to be a positive interference. It was found that when MDI was spiked onto an acid-treated filter, the MDI converted to MDA after air was drawn through it.

Suspected interferences should be reported to the laboratory with submitted samples.

Safety precautions (sampling)

Attach the sampling equipment to the employees so that it will not interfere with work performance or safety.

Follow all safety procedures that apply to the work area being sampled.

Analytical Procedure

Apparatus: The following are required for analysis.

A GC equipped with an electron capture detector. For this evaluation a Tracor 222 Gas Chromatograph equipped with a Nickel 63 High Temperature Electron Capture Detector and a Linearizer was used.

A GC column capable of separating the MDA derivative from the solvent and interferences. A 6 ft X 2 mm ID glass column packed with 3% OV-101 coated on 100/120 Gas Chrom Q was used in this evaluation.

A electronic integrator or some other suitable means of measuring peak areas or heights.

Small resealable vials with Teflon-lined caps capable of holding 4 mL.

A dispenser or pipet for toluene capable of delivering 2.0 mL.

Pipets (or repipets with plastic or Teflon tips) capable of delivering 1 mL for the sodium hydroxide and buffer solutions.

A repipet capable of delivering 25 µL HFAA.

Syringes for preparation of standards and injection of standards and samples into a GC.

Volumetric flasks and pipets to dilute the pure MDA in preparation of standards.

Disposable pipets to transfer the toluene layers after the samples are extracted.

Reagents

0.5 NaOH prepared from reagent grade NaOH.

Toluene, pesticide grade. Burdick and Jackson distilled in glass toluene was used

Heptafluorobutyric acid anhydride (HFAA). HFAA from Pierce Chemical Company was used.

pH 7.0 phosphate buffer, prepared from 136 g potassium dihydrogen phosphate and 1 L deionized water. The pH is adjusted to 7.0 with saturated sodium hydroxide solution.

4,4' -Methylenedianiline (MDA), reagent grade.

Standard Preparation

Concentrated stock standards are prepared by diluting pure MDA with toluene. Analytical standards are prepared by injecting uL amounts of diluted stock standards into vials that contain 2.0 mL toluene.

25 µL HFAA are added to each vial and the vials are capped and shaken for 10 seconds.

After 10 min, 1 mL of buffer is added to each vial.

The vials are recapped and shaken for 10 seconds.

After allowing the layers to separate, aliquots of the toluene (upper) layers are removed with a syringe and analyzed by GC.

Analytical standard concentrations should bracket sample concentrations. Thus, if samples fall out of the range of prepared standards, additional standards must be prepared to ascertain detector response.

Sample preparation

The sample filters are received in vials containing deionized water.

1 mL of 0.5N NaOH and 2.0 mL toluene are added to each vial.

The vials are recapped and shaken for 10 min.

After allowing the layers to separate, approximately 1 mL aliquots of the toluene (upper) layers are transferred to separate vials with clean disposable pipets.

The toluene layers are treated and analyzed.

Analysis

GC conditions

Zone temperatures:
Column—220° C
Injector—235° C
Detector—335° C

Gas flows, Ar/CH4 Column - 28 mL/min (95/5)

Purge—40 mL/min

Injection volume: 5.0 µL

Column: 6 ft X 1/8 in ID glass, 3% OV-101 on 100/120 Gas Chrom Q

Retention time of MDA derivative: 3.5 min

Chromatogram:

Peak areas or heights are measured by an integrator or other suitable means.

A calibration curve is constructed by plotting response (peak areas or heights) of standard injections versus µg of MDA per sample. Sample concentrations must be bracketed by standards.

Interferences (analytical)

Any compound that gives an electron capture detector response and has the same general retention time as the HFAA derivative of MDA is a potential interference. Suspected interferences reported to the laboratory with submitted samples by the industrial hygienist must be considered before samples are derivatized.

GC parameters may be changed to possibly circumvent interferences.

Retention time on a single column is not considered proof of chemical identity. Analyte identity should be confirmed by GC/MS if possible.

Calculations

The analyte concentration for samples is obtained from the calibration curve in terms of µg MDA per sample. The extraction efficiency is 100%. If any MDA is found on the blank, that amount is subtracted from the sample amounts. The air concentrations are calculated using the following formulae.

ug/m(3) = (µg MDA per sample) (1000)/(L of air sampled)

ppb = (ug/m(3))(24.46)/(198.3) = (ug/m(3))(0.1233)

where 24.46 is the molar volume at 25° C and 760 mm Hg

Safety Precautions (analytical)

Avoid skin contact and inhalation of all chemicals.

Restrict the use of all chemicals to a fume hood if possible.

Wear safety glasses and a lab coat at all times while in the lab area.

Appendix E to § 1915.1050—Qualitative and Quantitative Fit Testing Procedures

Qualitative Fit Test Protocols

I. Isoamyl Acetate (banana oil) Protocol

A. *Odor threshold screening.*

1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25 deg. C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated so that circulation of the test solution does not occur and cross contaminate the testing different sites.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. *Respirator Selection*

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a comfortable fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. All donning and adjustments of the facepiece shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points in s6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator after donning:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall perform the conventional negative or positive-pressure fit checks (e.g., see ANSI Z88.2-1980A7). Before beginning the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If the respirator has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and to be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. *Fit Test*

1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2-foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or canisters shall be replaced as necessary to maintain the effectiveness of the respirator.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and Rainbow Passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are deep and regular.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it aloud will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jog in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at a least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

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58
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125
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7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject must break the faceseal and take a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL. In atmospheres greater than 10 times, and less than 50 times the PEL (up to 50 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by five times for QLFT of the full facepiece.)

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as a powered air-purifying respirator, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. *Recordkeeping*

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. *Respirator Selection.*

Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. *Taste Threshold Screening.*

1. An enclosure placed over the head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C 7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. *Fit Test*

1. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

2. The test subject shall don and adjust the respirator without assistance from any person.

3. The fit test uses the same enclosure described in IIB above.

4. Each test subject shall wear the respirator for a least 10 minutes before starting the fit test.

(a) This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation and, the purpose for the head exercises; or to demonstrate some of the exercises.

(b) The test subject shall perform the conventional negative or positive pressure fit tests (See ANSI Z88.2–1980 A7).

5. The test subject shall enter the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above).

10. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are deep and regular.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. Talk. Talk aloud and slowly. The following paragraph is called the Rainbow

Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement.

vi. Jog in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of along round arch, with its path high above, and its two ends apperently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C9.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of MDA. In other words this protocol may not be used to assign protection factors higher than ten.

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. *Recordkeeping*

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol.

A. *Respirator selection.*

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. *Fit test.*

1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part 5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are deep and regular.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two end apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents

12. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of MDA.

13. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

14. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

15. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

16. Qualitative fit testing shall be repeated at least every 12 months.

17. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. *Recordkeeping*

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

Quantitative Fit Test Procedures

1. *General.*

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign an individual (with help as needed) who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. *Definition.*

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.*

a. Instrumentation. Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. Test chamber. The test chamber shall be large enough to permit all test subjects to freely perform all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter,length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. *Procedural requirements.*

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfr II-M, Norton M, Survivair M A-O M or Scott-M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive pressure test.* With the exhaust port(s) blocked the negative pressure of slight inhalation should remain constant for several seconds.

(2) *Negative pressure test.* With the intake port(s) blocked the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitive test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit by as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. *Exercise Regime.* Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

d. *Moving head up and down(UD).* Standing in place, the subject shall slowly move his head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

e. *Reading (R).* The subject shall read out slowly and loud so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least one minute.

h. *Jogging in place (J).* The test subject shall perform jog in place for at least one minute.

i. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he fs looking for the pot of gold at the end of the rainbow.

6. *Termination of Tests.* The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two

of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.).

7. *Calculation of Fit Factors.*

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. *Interpretation of Test Results.* The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. *Other Requirements*

a. the test subject shall not be permitted to wear a half-mask or full facepiece if the minimum fit factor of 250 or 1,250, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the these subject with the following information:

(1) Name

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. *Retesting.* In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.: multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

11. *Recordkeeping.*

a. A summary of all test results shall be maintained for 3 years. The summary shall include:

(1) Name of test subject

(2) Date of testing.

(3) Name of the test conductor.

(4) Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

b. A copy of all test data including the strip chart and results shall be kept for at least 5 years.

§ 1915.1120 Access to employee exposure and medical records.

(a) *Purpose.* The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

(b) *Scope and application.* (1) This section applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of such employees, whether or not the records are mandated by specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house of contractual (*e.g.*, fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which the records are made or maintained.

(c) *Definitions*—(1) *Access* means the right and opportunity to examine and copy.

(2) *Analysis using exposure or medical records* means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

(3) *Designated representative* means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(4) *Employee* means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

(5) *Employee exposure record* means a record containing any of the following kinds of information:

(i) Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(ii) Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (*e.g.*, the level of a chemical in the blood, urine, breath, hair, fingernails, etc) but not including

VOL 58 ISS 125 JL 1 1993 UMI

results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

(iii) Material safety data sheets indicating that the material may pose a hazard to human health; or

(iv) In the absence of the above, a chemcial inventory or any other record which reveals where and when used and the identity (*e.g.*, chemical, common, or trade name) of a toxic substance or harmful physical agent.

(6)(i) *Employee medical record* means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel or technician, including:

(A) Medical and employment questionnaires or histories (including job description and occupational exposures),

(B) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record"),

(C) Medical opinions, diagnoses, progress notes, and recommendations,

(D) First aid records,

(E) Descriptions of treatments and prescriptions, and

(F) Employee medical complaints.

(ii) "Employee medical record" does not include medical information in the form of:

(A) Physical specimens (*e.g.*, blood or urine samples) which are routinely discarded as a part of normal medical practice; or

(B) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (*e.g.*, social security number, payroll number, etc.); or

(C) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

(D) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

(7) *Employer* means a current employer, a former employer, or a successor employer.

(8) *Exposure* or *exposed* means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (*e.g.*, accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

(9) *Health professional* means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

(10) *Record* means any item, collection, or grouping of information regardless of the form or process by which it is maintained (*e.g.*, paper document, microfiche, microfilm, X-ray film, or automated data processing).

(11) *Specific chemical identity* means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

(12)(i) *Specific written consent* means a written authorization containing the following:

(A) The name and signature of the employee authorizing the release of medical information,

(B) The date of the written authorization,

(C) The name of the individual or organization that is authorized to release the medical information,

(D) The name of the designated representative (individual or organization) that is authorized to receive the released information,

(E) A general description of the medical information that is authorized to be released,

(F) A general description of the purpose for the release of the medical information, and

(G) A date or condition upon which the written authorization will expire (if less than one year).

(ii) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.

(iii) A written authorization may be revoked in writing prospectively at any time.

(13) *Toxic substance or harmful physical agent* means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo—or hyperbaric pressure, etc.) which:

(i) Is listed in the least printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS); or

(ii) Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or

(iii) Is the subject of a material safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

(14) *Trade secret* means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

(d) *Preservation of records.* (1) Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

(i) *Employee medical records.* The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specified period:

(A) Health insurance claims records maintained separately from the employer's medical program and its records,

(B) First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and

(C) The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

(ii) *Employee exposure records.* Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(A) Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year as long as the sampling results, the collection methodology

(sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(B) Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years;[1] and

(C) Biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.

(iii) *Analyses using exposure or medical records.* Each analysis using exposure or medial records shall be preserved and maintained for at least thirty (30) years.

(2) Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record as long as the information contained in the record is preserved and retrievable, except that chest X-ray films shall be preserved in their original state.

(e) *Access to records*—(1) *General.* (i) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner. If the employer cannot reasonably provide access to the record within fifteen (15) working days, the employer shall within the fifteen (15) working days apprise the employee or designated representative requesting the record of the reason for the delay and the earliest date when the record can be made available.

(ii) The employer may require of the requester only such information as should be readily known to the requester and which may be necessary to locate or identify the records being requested (*e.g.*, dates and locations where the employee worked during the time period in question).

(iii) Whenever an employee or designated representative requests a copy of a record, the employer shall assure that either:

(A) A copy of the record is provided without cost to the employee or representative,

(B) The necessary mechanical copying facilities (*e.g.*, photocopying) are made available without cost to the employee or representative for copying the record, or

(C) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

(iv) In the case of an original X-ray, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.

(v) Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that

(A) An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

(B) An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

(vi) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

(2) *Employee and designated representative access*—(i) *Employee exposure records.* (A) Except as limited by paragraph (f) of this section, each employer shall, upon request, assure the access to each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, an exposure record relevant to the employee consists of:

(*1*) A record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;

(*2*) In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected, and

(*3*) Exposure records to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents at workplaces or under working conditions to which the employee is being assigned or transferred.

(B) Requests by designated representatives for unconsented access to employee exposure records shall be in writing and shall specify with reasonable particularity:

(*1*) The records requested to be disclosed; and

(*2*) The occupational health need for gaining access to these records.

(ii) *Employee medical records.* (A) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(D) of this section.

(B) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. Appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

(C) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(*1*) Consult with the physician for the purposes of reviewing and discussing the records requested,

(*2*) Accept a summary of material facts and opinions in lieu of the records requested, or

(*3*) Accept release of the requested records only to a physician or other designated representative.

(D) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(E) A physician, nurse, or other responsible health care personnel

[1] Material safety data sheets must be kept for those chemicals currently in use that are effected by the Hazard Communication Standard in accordance with 29 CFR 1915.1200(g).

maintaining medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

(iii) *Analyses using exposure or medical records.* (A) Each employee shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(B) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

(3) *OSHA access.* (i) Each employer shall, upon request, and without derogation of any rights under the Constitution or the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, that the employer chooses to exercise, assure the prompt access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

(ii) Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

(f) *Trade secrets.* (1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by a health professional, employee, or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in mixture, as long as the health professional, employee, or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.

(2) The employer may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:

(i) The claim that the information withheld is a trade secret can be supported;

(ii) All other available information on the properties and effects of the toxic substance is disclosed;

(iii) The employer informs the requesting party that the specific chemical identity is being withheld as a trade secret; and

(iv) The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with the specific applicable provisions of this paragraph.

(3) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid treatment, the employer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (f)(4) and (f)(5), as soon as circumstances permit.

(4) In non-emergency situations, an employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (f)(2) of this section, to a health professional, employee, or designated representative if:

(i) The request is in writing;

(ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:

(A) To assess the hazards of the chemicals to which employees will be exposed;

(B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(C) To conduct pre-assignment or periodic medical surveillance of exposed employees;

(D) To provide medical treatment to exposed employees;

(E) To select or assess appropriate personal protective equipment for exposed employees;

(F) To design or assess engineering controls or other protective measures for exposed employees; and

(G) To conduct studies to determine the health effects of exposure.

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide the occupational health services described in paragraph (f)(4)(ii) of this section:

(A) The properties and effects of the chemical;

(B) Measures for controlling workers' exposure to the chemical;

(C) Methods of monitoring and analyzing worker exposure to the chemical; and,

(D) Methods of diagnosing and treating harmful exposures to the chemical;

(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(v) The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (f)(9) of this section, except as authorized by the terms of the agreement or by the employer.

(5) The confidentiality agreement authorized by paragraph (f)(4)(iv) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(iii) May not include requirements for the posting of a penalty bond.

(6) Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(7) If the health professional, employee or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

(8) If the employer denies a written request for disclosure of a specific chemical identity, the denial must:

(i) Be provided to the health professional, employee or designated representative within thirty days of the request;

(ii) Be in writing;

(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;

(iv) State the specific reasons why the request is being denied; and,

(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(9) The health professional, employee, or designated representative whose request for information is denied under paragraph (f)(4) of this section may refer the request and the written denial of the request to OSHA for consideration.

(10) When a heath professional employee, or designated representative refers a denial to OSHA under paragraph (f)(9) of this section, OSHA shall consider the evidence to determine if:

(i) The employer has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

(iii) The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

(11)(i) If OSHA determines that the specific chemical identity requested under paragraph (f)(4) of this section is not a *bona fide* trade secret, or that it is a trade secret but the requesting health professional, employee or designated representatives has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means for complying with the terms of such agreement, the employer will be subject to citation by OSHA.

(ii) If an employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.

(12) Notwithstanding the existence of a trade secret claim, an employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is trade secret.

(g) *Employee information.* (1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:

(i) The existence, location, and availability of any records covered by this section;

(ii) The person responsible for maintaining and providing access to records; and

(iii) Each employee's rights of access to these records.

(2) Each employer shall keep a copy of this section and its appendices, and make copies readily available, upon request, to employees. The employer shall also distribute to current employees any informational materials concerning this section which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

(h) *Transfer of records.* (1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify effected current employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

(3) Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

(i) Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

(ii) Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

(4) Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

(i) *Appendices.* The information contained in appendices A and B to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0065)

Appendix A to § 1915.1120—Sample Authorization Letter for the Release of Employee Medical Record Information to a Designated Representative (Non-Mandatory)

I, _____ (full name of worker/patient), hereby authorize _____ (individual or organization holding the medical records) to release to _____ (individual or organization authorized to receive the medical information), the following medical information from my personal medical records:

_____

_____

(Describe generally the information desired to be released)

I give my permission for this medical information to be used for the following purpose:

_____

_____

but I do not give permission for any other use or re-disclosure of this information.

(Note: Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

_____

_____

_____

_____

VOL 58 ISS 125 JL 1 1993 UMI

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

Appendix B to § 1915.1120—Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS) (Non-Mandatory)

Section 1915.1120 applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term *toxic substance or harmful physical agent* is defined by paragraph (c)(13) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The regulation uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the regulation applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance."

It is appropriate to note that the final regulation does not require that employers purchase a copy of RTECS, and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the rule. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by section 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669(a)(6)).

The Introduction to the 1980 printed edition describes the RTECS as follows:

"The 1980 edition of the Registry of Toxic Effects of Chemical Substances, formerly known as the Toxic Substances list, is the ninth revision prepared in compliance with the requirements of Section 20(a)(6) of the Occupational Safety and Health Act of 1970 (Public Law 91–596). The original list was completed on June 28, 1971, and has been updated annually in book format. Beginning in October 1977, quarterly revisions have been provided in microfiche. This edition of the Registry contains 168,096 listings of chemical substances: 45,156 are names of different chemicals with their associated toxicity data and 122,940 are synonyms. This edition includes approximately 5,900 new chemical compounds that did not appear in the 1979 Registry. (p. xi)

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers ad information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternative processes which may be less hazardous. Some organizations, including health agencies and chemical companies, have included the NIOSH Registry accession numbers with the listing of chemicals in their files to reference toxicity information associated with those chemicals. By including foreign language chemical names, a start has been made toward providing rapid identification of substances produced in other countries. (p. xi)

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. (p xi)

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. Thus, the Registry lists many substances that are common in everyday life and are in nearly every household in the United States. One can name a variety of such dangerous substances: prescription and non-prescription drugs; food additives; pesticide concentrates, sprays, and dusts; fungicides; herbicides; paints; glazes, dyes; bleaches and other household cleaning agents; alkalies; and various solvents and diluents. The list is extensive because chemicals have become an integral part of our existence."

The RTECS printed edition may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 (202–783–3238).

Some employers may desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room N2439—Rear, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202–219–7500), or at any OSHA Regional or Area Office (See, major city telephone directories under U.S. Government—Labor Department).

§ 1915.1450 Occupational exposure to hazardous chemicals in laboratories.

(a) *Scope and application.* (1) This section shall apply to all employers engaged in the laboratory use of hazardous chemicals as defined below.

(2) Where this section applies, it shall supersede, for laboratories, the requirements of all other OSHA health standards in 29 CFR part 1910, subpart Z, except as follows:

(i) For any OSHA health standard, only the requirement to limit employee exposure to the specific permissible exposure limit shall apply for laboratories, unless that particular standard states otherwise or unless the conditions of paragraph (a)(2)(iii) of this section apply.

(ii) Prohibition of eye and skin contact where specified by any OSHA health standard shall be observed.

(iii) Where the action level (or in the absence of an action level, the permissible exposure limit) is routinely exceeded for an OSHA regulated substance with exposure monitoring and medical surveillance requirements, paragraphs (d) and (g)(1)(ii) of this section shall apply.

(3) This section shall not apply to:

(i) Uses of hazardous chemicals which do not meet the definition of laboratory use, and in such cases, the employer shall comply with the relevant standard in 29 CFR part 1915, subpart Z, even if such use occurs in a laboratory.

(ii) Laboratory uses of hazardous chemicals which provide no potential for employee exposure. Examples of such conditions might include:

(A) Procedures using chemically-impregnated test media such as Dip-and-Read tests where a reagent strip is dipped into the specimen to be tested and the results are interpreted by comparing the color reaction to a color chart supplied by the manufacturer of the test strip; and

(B) Commercially prepared kits such as those used in performing pregnancy tests in which all of the reagents needed to conduct the test are contained in the kit.

(b) *Definitions—*

Action level means a concentration designated in 29 CFR part 1915 for a specific substance, calculated as an eight (8)-hour time-weighted average, which initiates certain required activities such as exposure monitoring and medical surveillance.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Carcinogen (see *select carcinogen*).

Chemical Hygiene Officer means an employee who is designated by the

employer, and who is qualified by training or experience, to provide technical guidance in the development and implementation of the provisions of the Chemical Hygiene Plan. This definition is not intended to place limitations on the position description or job classification that the designated indvidual shall hold within the employer's organizational structure.

Chemical Hygiene Plan means a written program developed and implemented by the employer which sets forth procedures, equipment, personal protective equipment and work practices that (i) are capable of protecting employees from the health hazards presented by hazardous chemicals used in that particular workplace and (ii) meets the requirements of paragraph (e) of this section.

Combustible liquid means any liquid having a flashpoint at or above 100 °F (37.8 °C), but below 200 °F (93.3 °C), except any mixture having components with flashpoints of 200 °F (93.3 °C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

Compressed gas means:

(i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 °F (21.1 °C); or

(ii) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 °F (54.4 °C) regardless of the pressure at 70 °F (21.1 °C); or

(iii) A liquid having a vapor pressure exceeding 40 psi at 100 °F (37.8 °C) as determined by ASTM D–323–72.

Designated area means an area which may be used for work with "select carcinogens," reproductive toxins or substances which have a high degree of acute toxicity. A designated area may be the entire laboratory, an area of a laboratory or a device such as a laboratory hood.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers or failure of control equipment which results in an uncontrolled release of a hazardous chemical into the workplace.

Employee means an individual employed in a laboratory workplace who may be exposed to hazardous chemicals in the course of his or her assignments.

Explosive means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

Flammable means a chemical that falls into one of the following categories:

(i) *Aerosol, flammable* means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame protection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) *Gas, flammable* means:

(A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of 13 percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than 12 percent by volume, regardless of the lower limit.

(iii) *Liquid, flammable* means any liquid having a flashpoint below 100 °F (37.8 °C), except any mixture having components with flashpoints of 100 °F (37.8 °C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

(iv) *Solid, flammable* means a solid, other than a blasting agent or explosive as defined in § 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flashpoint means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24–1979 (ASTM D 56–79))-for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100 °F (37.8 °C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7–1979 (ASTM D 93–79))-for liquids with a viscosity equal to or greater than 45 SUS at 100 °F (37.8 °C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278–78)).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

Hazardous chemical means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic systems, and agents which damage the lungs, skin, eyes, or mucous membranes.

Appendices A and B of the Hazard Communication Standard (29 CFR 1915.1200) provide further guidance in defining the scope of health hazards and determining whether or not a chemical is to be considered hazardous for purposes of this standard.

Laboratory means a facility where the "laboratory use of hazardous chemicals" occurs. It is a workplace where relatively small quantities of hazardous chemicals are used on a non-production basis.

Laboratory scale means work with substances in which the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one person. "Laboratory scale" excludes those workplaces whose function is to produce commercial quantities of materials.

Laboratory-type hood means a device located in a laboratory, enclosure on five sides with a moveable sash or fixed partial enclosed on the remaining side; constructed and maintained to draw air from the laboratory and to prevent or minimize the escape of air contaminants into the laboratory; and allows chemical manipulations to be conducted in the enclosure without insertion of any portion of the employee's body other than hands and arms.

Walk-in hoods with adjustable sashes meet the above definition provided that the sashes are adjusted during use so that the airflow and the exhaust of air contaminants are not compromised and employees do not work inside the enclosure during the release of airborne hazardous chemicals.

Laboratory use of hazardous chemicals means handling or use of such chemicals in which all of the following conditions are met:

(i) Chemical manipulations are carried out on a "laboratory scale;"

(ii) Multiple chemical procedures or chemicals are used;

(iii) The procedures involved are not part of a production process, nor in any way simulate a production process; and

(iv) "Protective laboratory practices and equipment" are available and in common use to minimize the potential for employee exposure to hazardous chemicals.

Medical consultation means a

consultation which takes place between an employee and a licensed physician for the purpose of determining what medical examinations or procedures, if any, are appropriate in cases where a significant exposure to a hazardous chemical may have taken place.

Organic peroxide means an organic compound that contains the bivalent –O–O– structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

Oxidizer means a chemical other than a blasting agent or explosive as defined in § 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

Physical hazard means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

Protective laboratory practices and equipment means those laboratory procedures, practices and equipment accepted by laboratory health and safety experts as effective, or that the employer can show to be effective, in minimizing the potential for employee exposure to hazardous chemicals.

Reproductive toxins means chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis)

Select carcinogen means any substance which meets one of the following criteria:

(i) It is regulated by OSHA as a carcinogen; or

(ii) It is listed under the category, "known to be carcinogens," in the Annual Report on Carcinogens published by the National Toxicology Program (NTP) (latest edition); or

(iii) It is listed under Group 1 ("carcinogenic to humans") by the International Agency for Research on Cancer Monographs (IARC) (latest editions); or

(iv) It is listed in either Group 2A or 2B by IARC or under the category, "reasonably anticipated to be carcinogens" by NTP, and causes statistically significant tumor incidence in experimental animals in accordance with any of the following criteria:

(A) After inhalation exposure of 6–7 hours per day, 5 days per week, for a significant portion of a lifetime to dosages of less than 10 mg/m^3;

(B) After repeated skin application of less than 300 (mg/kg of body weight) per week; or

(C) After oral dosages of less than 50 mg/kg of body weight per day.

Unstable (reactive) means a chemical which is the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

Water-reactive means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

(c) *Permissible exposure limits.* For laboratory uses of OSHA regulated substances, the employer shall assure that laboratory employees' exposures to such substances do not exceed the permissible exposure limits specified in 29 CFR part 1910, subpart Z.

(d) *Employee exposure determination*—(1) *Initial monitoring.* The employer shall measure the employee's exposure to any substance regulated by a standard which requires monitoring if there is reason to believe that exposure levels for that substance routinely exceed the action level (or in the absence of an action level, the PEL).

(2) *Periodic monitoring.* If the initial monitoring prescribed by paragraph (d)(1) of this section discloses employee exposure over the action level (or in the absence of an action level, the PEL), the employer shall immediately comply with the exposure monitoring provisions of the relevant standard.

(3) *Termination of monitoring.* Monitoring may be terminated in accordance with the relevant standard.

(4) *Employee notification of monitoring results.* The employer shall, within 15 working days after the receipt of any monitoring results, notify the employee of these results in writing either individually or by posting results in an appropriate location that is accessible to employees.

(e) *Chemical hygiene plan—General.* (Appendix A of this section is non-mandatory but provides guidance to assist employers in the development of the Chemical Hygiene Plan.) (1) Where hazardous chemicals as defined by this standard are used in the workplace, the employer shall develop and carry out the provisions of a written Chemical Hygiene Plan which is:

(i) Capable of protecting employees from health hazards associated with hazardous chemicals in that laboratory and

(ii) Capable of keeping exposures below the limits specified in paragraph (c) of this section.

(2) The Chemical Hygiene Plan shall be readily available to employees, employee representatives and, upon request, to the Assistant Secretary.

(3) The Chemical Hygiene Plan shall include each of the following elements and shall indicate specific measures that the employer will take to ensure laboratory employee protection:

(i) Standard operating procedures relevant to safety and health considerations to be followed when laboratory work involves the use of hazardous chemicals;

(ii) Criteria that the employer will use to determine and implement control measures to reduce employee exposure to hazardous chemicals including engineering controls, the use of personal protective equipment and hygiene practices; particular attention shall be given to the selection of control measures for chemicals that are known to be extremely hazardous;

(iii) A requirement that fume hoods and other protective equipment are functioning properly and specific measures that shall be taken to ensure proper and adequate performance of such equipment;

(iv) Provisions for employee information and training as prescribed in paragraph (f) of this section;

(v) The circumstances under which a particular laboratory operation, procedure or activity shall require prior approval from the employer or the employer's designee before implementation;

(vi) Provisions for medical consultation and medical examinations in accordance with paragraph (g) of this section;

(vii) Designation of personnel responsible for implementation of the Chemical Hygiene Plan including the assignment of a Chemical Hygiene Officer and, if appropriate, establishment of a Chemical Hygiene Committee; and

(viii) Provisions for additional employee protection for work with particularly hazardous substances. These include "select carcinogens," reproductive toxins and substances which have a high degree of acute toxicity. Specific consideration shall be given to the following provisions which shall be included where appropriate:

(A) Establishment of a designated area;

(B) Use of containment devices such as fume hoods or glove boxes;

(C) Procedures for safe removal of contaminated waste; and

(D) Decontamination procedures.

(4) The employer shall review and evaluate the effectiveness of the Chemical Hygiene Plan at least annually and update it as necessary.

(f) *Employee information and training.* (1) The employer shall provide employees with information and training to ensure that they are apprised of the hazards of chemicals present in their work area.

aerosol that, when tested by the method described in 16 CFR 1500.45, yields a

chemical for which there is statistically significant evidence based on at least

chemicals.

Medical consultation means a

(2) Such information shall be provided at the time of an employee's initial assignment to a work area where hazardous chemicals are present and prior to assignments involving new exposure situations. The frequency of refresher information and training shall be determined by the employer.

(3) *Information.* Employees shall be informed of:

(i) The contents of this standard and its appendices which shall be made available to employees;

(ii) The location and availability of the employer's Chemical Hygiene Plan;

(iii) The permissible exposure limits for OSHA regulated substances or recommended exposure limits for other hazardous chemicals where there is no applicable OSHA standard;

(iv) Signs and symptoms associated with exposures to hazardous chemicals used in the laboratory; and

(v) The location and availability of known reference material on the hazards, safe handling, storage and disposal of hazardous chemicals found in the laboratory including, but not limited to, Material Safety Data Sheets received from the chemical supplier.

(4) *Training.* (i) Employee training shall include:

(A) Methods and observations that may be used to detect the presence or release of a hazardous chemical (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

(B) The physical and health hazards of chemicals in the work area; and

(C) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(ii) The employee shall be trained on the applicable details of the employer's written Chemical Hygiene Plan.

(g) *Medical consultation and medical examinations.* (1) The employer shall provide all employees who work with hazardous chemicals an opportunity to receive medical attention, including any follow-up examinations which the examining physician determines to be necessary, under the following circumstances:

(i) Whenever an employee develops signs or symptoms associated with a hazardous chemical to which the employee may have been exposed in the laboratory, the employee shall be provided an opportunity to receive an appropriate medical examination.

(ii) Where exposure monitoring reveals an exposure level routinely above the action level (or in the absence of an action level, the PEL) for an OSHA regulated substance for which there are exposure monitoring and medical surveillance requirements, medical surveillance shall be established for the affected employee as prescribed by the particular standard.

(iii) Whenever an event takes place in the work area such as a spill, leak, explosion or other occurrence resulting in the likelihood of a hazardous exposure, the affected employee shall be provided an opportunity for a medical consultation. Such consultation shall be for the purpose of determining the need for a medical examination.

(2) All medical examinations and consultations shall be performed by or under the direct supervision of a licensed physician and shall be provided without cost to the employee, without loss of pay and at a reasonable time and place.

(3) *Information provided to the physician.* The employer shall provide the following information to the physician:

(i) The identity of the hazardous chemical(s) to which the employee may have been exposed;

(ii) A description of the conditions under which the exposure occurred including quantitative exposure data, if available; and

(iii) A description of the signs and symptoms of exposure that the employee is experiencing, if any.

(4) *Physician's written opinion.* (i) For examination or consultation required under this standard, the employer shall obtain a written opinion from the examining physician which shall include the following:

(A) Any recommendation for further medical follow-up;

(B) The results of the medical examination and any associated tests;

(C) Any medical condition which may be revealed in the course of the examination which may place the employee at increased risk as a result of exposure to a hazardous chemical found in the workplace; and

(D) A statement that the employee has been informed by the physician of the results of the consultation or medical examination and any medical condition that may require further examination or treatment.

(ii) The written opinion shall not reveal specific findings of diagnoses unrelated to occupational exposure.

(h) *Hazard identification.* (1) With respect to labels and material safety data sheets:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced.

(ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees.

(2) The following provisions shall apply to chemical substances developed in the laboratory:

(i) If the composition of the chemical substance which is produced exclusively for the laboratory's use is known, the employer shall determine if it is a hazardous chemical as defined in paragraph (b) of this section. If the chemical is determined to be hazardous, the employer shall provide appropriate training as required under paragraph (f) of this section.

(ii) If the chemical produced is a byproduct whose composition is not known, the employer shall assume that the substance is hazardous and shall implement paragraph (e) of this section.

(iii) If the chemical substance is produced for another user outside of the laboratory, the employer shall comply with the Hazard Communication Standard (29 CFR 1915.1200) including the requirements for preparation of material safety data sheets and labeling.

(i) *Use of respirators.* Where the use of respirators is necessary to maintain exposure below permissible exposure limits, the employer shall provide, at no cost to the employee, the proper respiratory equipment. Respirators shall be selected and used in accordance with the requirements of 29 CFR 1910.134.

(j) *Recordkeeping.* (1) The employer shall establish and maintain for each employee an accurate record of any measurements taken to monitor employee exposures and any medical consultation and examinations including tests or written opinions required by this standard.

(2) The employer shall assure that such records are kept, transferred, and made available in accordance with 29 CFR 1915.1120.

(k) *Dates*—(1) *Effective date.* This section shall become effective May 1, 1990.

(2) *Start-up dates.* (i) Employers shall have developed and implemented a written Chemical Hygiene Plan no later than January 31, 1991.

(ii) Paragraph (a)(2) of this section shall not take effect until the employer has developed and implemented a written Chemical Hygiene Plan.

(l) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(C) After oral dosages of less than 50 include each of the following elements their work area.

Appendix A to § 1915.1450—National Research Council Recommendations Concerning Chemical Hygiene in Laboratories (Non-Mandatory)

Table of Contents

Foreword

Corresponding Sections of the Standard and This Appendix

A. General Principles

1. Minimize all Chemical Exposures
2. Avoid Underestimation of Risk
3. Provide Adequate Ventilation
4. Institute a Chemical Hygiene Program
5. Observe the PELs and TLVs

B. Responsibilities

1. Chief Executive Officer
2. Supervisor of Administrative Unit
3. Chemical Hygiene Officer
4. Laboratory Supervisor
5. Project Director
6. Laboratory Worker

C. The Laboratory Facility

1. Design
2. Maintenance
3. Usage
4. Ventilation

D. Components of the Chemical Hygiene Plan

1. Basic Rules and Procedures
2. Chemical Procurement, Distribution, and Storage
3. Environmental Monitoring
4. Housekeeping, Maintenance and Inspections
5. Medical Program
6. Personal Protective Apparel and Equipment
7. Records
8. Signs and Labels
9. Spills and Accidents
10. Training and Information
11. Waste Disposal

E. General Procedures for Working With Chemicals

1. General Rules for all Laboratory Work with Chemicals
2. Allergens and Embryotoxins
3. Chemicals of Moderate Chronic or High Acute Toxicity
4. Chemicals of High Chronic Toxicity
5. Animal Work with Chemicals of High Chronic Toxicity

F. Safety Recommendations

G. Material Safety Data Sheets

Foreword

As guidance for each employer's development of an appropriate laboratory Chemical Hygiene Plan, the following non-mandatory recommendations are provided. They were extracted from "Prudent Practices for Handling Hazardous Chemicals in Laboratories" (referred to below as "Prudent Practices"), which was published in 1981 by the National Research Council and is available from the National Academy Press, 2101 Constitution Ave., NW., Washington DC 20418.

"Prudent Practices" is cited because of its wide distribution and acceptance and because of its preparation by members of the laboratory community through the sponsorship of the National Research Council. However, none of the recommendations given here will modify any requirements of the laboratory standard. This Appendix merely presents pertinent recommendations from "Prudent Practices", organized into a form convenient for quick reference during operation of a laboratory facility and during development and application of a Chemical Hygiene Plan. Users of this appendix should consult "Prudent Practices" for a more extended presentation and justification for each recommendation.

"Prudent Practices" deals with both safety and chemical hazards while the laboratory standard is concerned primarily with chemical hazards. Therefore, only those recommendations directed primarily toward control of toxic exposures are cited in this appendix, with the term "chemical hygiene" being substituted for the word "safety". However, since conditions producing or threatening physical injury often pose toxic risks as well, page references concerning major categories of safety hazards in the laboratory are given in section F.

The recommendations from "Prudent Practices" have been paraphrased, combined, or otherwise reorganized, and headings have been added. However, their sense has not been changed.

Corresponding Sections of the Standard and this Appendix

The following table is given for the convenience of those who are developing a Chemical Hygiene Plan which will satisfy the requirements of paragraph (e) of the standard. It indicates those sections of this appendix which are most pertinent to each of the sections of paragraph (e) and related paragraphs.

Paragraph and topic in laboratory standard	Relevant appendix section
(e)(3)(i) Standard operating procedures for handling toxic chemicals.	C, D, E
(e)(3)(ii) Criteria to be used for implementation of measures to reduce exposures.	D
(e)(3)(iii) Fume hood performance.	C4b
(e)(3)(iv) Employee information and training (including emergency procedures).	D10, D9
(e)(3)(v) Requirements for prior approval of laboratory activities.	E2b, E4b
(e)(3)(vi) Medical consultation and medical examinations.	D5, E4f
(e)(3)(vii) Chemical hygiene responsibilities.	B
(e)(3)(viii) Special precautions for work with particularly hazardous substances.	E2, E3, E4

In this appendix, those recommendations directed primarily at administrators and supervisors are given in sections A–D. Those recommendations of primary concern to employees who are actually handling laboratory chemicals are given in section E. (Reference to page numbers in "Prudent Practices" are given in parentheses.)

A. General Principles for Work with Laboratory Chemicals

In addition to the more detailed recommendations listed below in sections B–E, "Prudent Practices" expresses certain general principles, including the following:

1. *It is prudent to minimize all chemical exposures.* Because few laboratory chemicals are without hazards, general precautions for handling all laboratory chemicals should be adopted, rather than specific guidelines for particular chemicals (2, 10). Skin contact with chemicals should be avoided as a cardinal rule (198).

2. *Avoid underestimation of risk.* Even for substances of no known significant hazard, exposure should be minimized; for work with substances which present special hazards, special precautions should be taken (10, 37, 38). One should assume that any mixture will be more toxic than its most toxic component (30, 103) and that all substances of unknown toxicity are toxic (3, 34).

3. *Provide adequate ventilation.* The best way to prevent exposure to airborne substances is to prevent their escape into the working atmosphere by use of hoods and other ventilation devices (32, 198).

4. *Institute a chemical hygiene program.* A mandatory chemical hygiene program designed to minimize exposures is needed; it should be a regular, continuing effort, not merely a standby or short-term activity (6, 11). Its recommendations should be followed in academic teaching laboratories as well as by full-time laboratory workers (13).

5. *Observe the PELs, TLVs.* The Permissible Exposure Limits of OSHA and the Threshold Limit Values of the American Conference of Governmental Industrial Hygienists should not be exceeded (13).

B. Chemical Hygiene Responsibilities

Responsibility for chemical hygiene rests at all levels (6, 11, 21) including the:

1. *Chief executive officer,* who has ultimate responsibility for chemical hygiene within the institution and must, with other administrators, provide continuing support for institutional chemical hygiene (7, 11).

2. *Supervisor of the department or other administrative unit,* who is responsible for chemical hygiene in that unit (7).

3. *Chemical hygiene officer(s),* whose appointment is essential (7) and who must:

(a) Work with administrators and other employees to develop and implement appropriate chemical hygiene policies and practices (7);

(b) Monitor procurement, use, and disposal of chemicals used in the lab (8);

(c) See that appropriate audits are maintained (8);

(d) Help project directors develop precautions and adequate facilities (10);

(e) Know the current legal requirements concerning regulated substances (50); and

(f) Seek ways to improve the chemical hygiene program (8, 11).

4. *Laboratory supervisor,* who has overall responsibility for chemical hygiene in the laboratory (21) including responsibility to:

(a) Ensure that workers know and follow the chemical hygiene rules, that protective equipment is available and in working order, and that appropriate training has been provided (21, 22);

(b) Provide regular, formal chemical hygiene and housekeeping inspections including routine inspections of emergency equipment (21, 171);

(c) Know the current legal requirements concerning regulated substances (50, 231);

(d) Determine the required levels of protective apparel and equipment (156, 160, 162); and

(e) Ensure that facilities and training for use of any material being ordered are adequate (215).

5. *Project director or director of other specific operation*, who has primary responsibility for chemical hygiene procedures for that operation (7).

6. *Laboratory worker*, who is responsible for:

(a) Planning and conducting each operation in accordance with the institutional chemical hygiene procedures (7, 21, 22, 230); and

(b) Developing good personal chemical hygiene habits (22).

C. The Laboratory Facility

1. *Design*. The laboratory facility should have:

(a) An appropriate general ventilation system (see C4 below) with air intakes and exhausts located so as to avoid intake of contaminated air (194);

(b) Adequate, well-ventilated stockrooms/storerooms (218, 219);

(c) Laboratory hoods and sinks (12, 162);

(d) Other safety equipment including eyewash fountains and drench showers (162, 169); and

(e) Arrangements for waste disposal (12, 240).

2. *Maintenance*. Chemical-hygiene-related equipment (hoods, incinerator, etc.) should undergo continuing appraisal and be modified if inadequate (11, 12).

3. *Usage*. The work conducted (10) and its scale (12) must be appropriate to the physicial facilities available and, especially, to the quality of ventilation (13).

4. *Ventilation*—(a) *General laboratory ventilation*. This system should: Provide a source of air for breathing and for input to local ventilation devices (199); it should not be relied on for protection from toxic substances released into the laboratory (198); ensure that laboratory air is continually replaced, preventing increase of air concentrations of toxic substances during the working day (194); direct air flow into the laboratory from non-laboratory areas and out to the exterior of the building (194).

(b) *Hoods*. A laboratory hood with 2.5 linear feet of hood space per person should be provided for every 2 workers if they spend most of their time working with chemicals (199); each hood should have a continuous monitoring device to allow convenient confirmation of adequate hood performance before use (200, 209). If this is not possible, work with substances of unknown toxicity should be avoided (13) or other types of local ventilation devices should be provided (199). See pp. 201–206 for a discussion of hood design, construction, and evaluation.

(c) *Other local ventilation devices*. Ventilated storage cabinets, canopy hoods, snorkels, etc. should be provided as needed (199). Each canopy hood and snorkel should have a separate exhaust duct (207).

(d) *Special ventilation areas*. Exhaust air from glove boxes and isolation rooms should be passed through scrubbers or other treatment before release into the regular exhaust system (208). Cold rooms and warm rooms should have provisions for rapid escape and for escape in the event of electrical failure (209).

(e) *Modifications*. Any alteration of the ventilation system should be made only if thorough testing indicates that worker protection from airborne toxic substances will continue to be adequate (12, 193, 204).

(f) *Performance*. Rate: 4–12 room air changes/hour is normally adequate general ventilation if local exhaust systems such as hoods are used as the primary method of control (194).

(g) *Quality*. General air flow should not be turbulent and should be relatively uniform throughout the laboratory, with no high velocity or static areas (194, 195); airflow into and within the hood should not be excessively turbulent (200); hood face velocity should be adequate (typically 60–100 lfm) (200, 204).

(h) *Evaluation*. Quality and quantity of ventilation should be evaluated on installation (202), regularly monitored (at least every 3 months) (6, 12, 14, 195), and reevaluated whenever a change in local ventilation devices is made (12, 195, 207). See pp. 195–198 for methods of evaluation and for calculation of estimated airborne contaminant concentrations.

D. Components of the Chemical Hygiene Plan

1. Basic Rules and Procedures (Recommendations for these are given in section E, below)

2. Chemical Procurement, Distribution, and Storage

(a) *Procurement*. Before a substance is received, information on proper handling, storage, and disposal should be known to those who will be involved (215, 216). No container should be accepted without an adequate identifying label (216). Preferably, all substances should be received in a central location (216).

(b) *Stockrooms/storerooms*. Toxic substances should be segregated in a well-identified area with local exhaust ventilation (221). Chemicals which are highly toxic (227) or other chemicals whose containers have been opened should be in unbreakable secondary containers (219). Stored chemicals should be examined periodically (at least annually) for replacement, deterioration, and container integrity (218–19).

Stockrooms/storerooms should not be used as preparation or repackaging areas, should be open during normal working hours, and should be controlled by one person (219).

(c) *Distribution*. When chemicals are hand carried, the container should be placed in an outside container or bucket. Freight-only elevators should be used if possible (223).

(d) *Laboratory storage*. Amounts permitted should be as small as practical. Storage on bench tops and in hoods is inadvisable. Exposure to heat or direct sunlight should be avoided. Periodic inventories should be conducted, with unneeded items being discarded or returned to the storeroom/stockroom (225–6, 229).

3. Environmental Monitoring

Regular instrumental monitoring of airborne concentrations is not usually justified or practical in laboratories but may be appropriate when testing or redesigning hoods or other ventilation devices (12) or when a highly toxic substance is stored or used regularly (e.g., 3 times/week) (13).

4. Housekeeping, Maintenance, and Inspections

(a) Cleaning. Floors should be cleaned regularly (24).

(b) Inspections. Formal housekeeping and chemical hygiene inspections should be held at least quarterly (6, 21) for units which have frequent pesonnel changes and semiannually for others; informal inspections should be continual (21).

(c) *Maintenance*. Eye wash fountains should be inspected at intervals of not less than 3 months (6). Respirators for routine use should be inspected periodically by the laboratory supervisor (169). Safety showers should be tested routinely (169). Other safety equipment should be inspected regularly. (*e.g.*, every 3–6 months) (6, 24, 171). Procedures to prevent restarting of out-of-service equipment should be established (25).

(d) *Passageways*. Stairways and hallways should not be used as storage areas (24). Access to exits, emergency equipment, and utility controls should never be blocked (24).

5. Medical Program

(a) *Compliance with regulations*. Regular medical surveillance should be established to the extent required by regulations (12).

(b) *Routine surveillance*. Anyone whose work involves regular and frequent handling of toxicologically significant quantities of a chemical should consult a qualified physician to determine on an individual basis whether a regular schedule of medical surveillance is desirable (11, 50).

(c) *First aid*. Personnel trained in first aid should be available during working hours and an emergency room with medical personnel should be nearby (173). See pp. 176–178 for description of some emergency first aid procedures.

6. Protective Apparel and Equipment

These should include for each laboratory:

(a) Protective apparel compatible with the required degree of protection for substances being handled (158–161);

(b) An easily accessible drench-type safety shower (162, 169);

(c) An eyewash fountain (162);

(d) A fire extinguisher (162–164);

(e) Respiratory protection (164–9), fire alarm and telephone for emergency use (162) should be available nearby; and

(f) Other items designated by the laboratory supervisor (156, 160).

7. Records

(a) Accident records should be written and retained (174).

(b) Chemical Hygiene Plan records should document that the facilities and precautions were compatible with current knowledge and regulations (7).

(c) Inventory and usage records for high-risk substances should be kept as specified in sections E3e below.

(d) Medical records should be retained by the institution in accordance with the requirements of state and federal regulations (12).

8. Signs and Labels

Prominent signs and labels of the following types should be posted:

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Practices" are given in parentheses.)

provided (21, 22);

(a) Emergency telephone numbers of emergency personnel/facilities, supervisors, and laboratory workers (28);

(b) Identity labels, showing contents of containers (including waste receptacles) and associated hazards (27, 48);

(c) Location signs for safety showers, eyewash stations, other safety and first aid equipment, exits (27) and areas where food and beverage consumption and storage are permitted (24); and

(d) Warnings at areas or equipment where special or unusual hazards exist (27).

9. Spills and Accidents

(a) A written emergency plan should be established and communicated to all personnel; it should include procedures for ventilation failure (200), evacuation, medical care, reporting, and drills (172).

(b) There should be an alarm system to alert people in all parts of the facility including isolation areas such as cold rooms (172).

(c) A spill control policy should be developed and should include consideration of prevention, containment, cleanup, and reporting (175).

(d) All accidents or near accidents should be carefully analyzed with the results distributed to all who might benefit (8, 28).

10. Information and Training Program

(a) Aim: To assure that all individuals at risk are adequately informed about the work in the laboratory, its risks, and what to do if an accident occurs (5, 15).

(b) Emergency and Personal Protection Training: Every laboratory worker should know the location and proper use of available protective apparel and equipment (154, 169).

Some of the full-time personnel of the laboratory should be trained in the proper use of emergency equipment and procedures (6).

Such training as well as first aid instruction should be available to (154) and encouraged for (176) everyone who might need it.

(c) Receiving and stockroom/storeroom personnel should know about hazards, handling equipment, protective apparel, and relevant regulations (217).

(d) Frequency of Training: The training and education program should be a regular, continuing activity—not simply an annual presentation (15).

(e) Literature/Consultation: Literature and consulting advice concerning chemical hygiene should be readily available to laboratory personnel, who should be encouraged to use these information resources (14).

11. *Waste Disposal Program.*

(a) Aim: To assure that minimal harm to people, other organisms, and the environment will result from the disposal of waste laboratory chemicals (5).

(b) Content (14, 232, 233, 240): The waste disposal program should specify how waste is to be collected, segregated, stored, and transported and include consideration of what materials can be incinerated. Transport from the institution must be in accordance with DOT regulations (244).

(c) Discarding Chemical Stocks: Unlabeled containers of chemicals and solutions should undergo prompt disposal; if partially used, they should not be opened (24, 27).

Before a worker's employment in the laboratory ends, chemicals for which that person was responsible should be discarded or returned to storage (226).

(d) Frequency of Disposal: Waste should be removed from laboratories to a central waste storage area at least once per week and from the central waste storage area at regular intervals (14).

(e) Method of Disposal: Incineration in an environmentally acceptable manner is the most practical disposal method for combustible laboratory waste (14, 238, 241).

Indiscriminate disposal by pouring waste chemicals down the drain (14, 231, 242) or adding them to mixed refuse for landfill burial is unacceptable (14).

Hoods should not be used as a means of disposal for volatile chemicals (40, 200).

Disposal by recycling (233, 243) or chemical decontamination (40, 230) should be used when possible.

E. Basic Rules and Procedures for Working with Chemicals

The Chemical Hygiene Plan should require that laboratory workers know and follow its rules and procedures. In addition to the procedures of the sub programs mentioned above, these should include the rules listed below.

1. General Rules

The following should be used for essentially all laboratory work with chemicals:

(a) *Accidents and spills*—Eye Contact: Promptly flush eyes with water for a prolonged period (15 minutes) and seek medical attention (33, 172).

Ingestion: Encourage the victim to drink large amounts of water (178).

Skin Contact: Promptly flush the affected area with water (33, 172, 178) and remove any contaminated clothing (172, 178). If symptoms persist after washing, seek medical attention (33).

Clean-up. Promptly clean up spills, using appropriate protective apparel and equipment and proper disposal (24 33). See pp. 233–237 for specific clean-up recommendations.

(b) *Avoidance of "routine" exposure*: Develop and encourage safe habits (23); avoid unnecessary exposure to chemicals by any route (23);

Do not smell or taste chemicals (32). Vent apparatus which may discharge toxic chemicals (vacuum pumps, distillation columns, etc.) into local exhaust devices (199).

Inspect gloves (157) and test glove boxes (208) before use.

Do not allow release of toxic substances in cold rooms and warm rooms, since these have contained recirculated atmospheres (209).

(c) *Choice of chemicals*: Use only those chemicals for which the quality of the available ventilation system is appropriate (13).

(d) *Eating, smoking, etc.*: Avoid eating, drinking, smoking, gum chewing, or application of cosmetics in areas where laboratory chemicals are present (22, 24, 32, 40); wash hands before conducting these activities (23, 24).

Avoid storage, handling or consumption of food or beverages in storage areas, refrigerators, glassware or utensils which are also used for laboratory operations (23, 24, 226).

(e) *Equipment and glassware*: Handle and store laboratory glassware with care to avoid damage; do not use damaged glassware (25). Use extra care with Dewar flasks and other evacuated glass apparatus; shield or wrap them to contain chemicals and fragments should implosion occur (25). Use equipment only for its designed purpose (23, 26).

(f) *Exiting*. Wash areas of exposed skin well before leaving the laboratory (23).

(g) *Horseplay*: Avoid practical jokes or other behavior which might confuse, startle or distract another worker (23).

(h) *Mouth suction:* Do not use mouth suction for pipeting or starting a siphon (23, 32).

(i) *Personal apparel:* Confine long hair and loose clothing (23, 158). Wear shoes at all times in the laboratory but do not wear sandals, perforated shoes, or sneakers (158).

(j) *Personal housekeeping:* Keep the work area clean and uncluttered, with chemicals and equipment being properly labeled and stored; clean up the work area on completion of an operation or at the end of each day (24).

(k) *Personal protection:* Assure that appropriate eye protection (154–156) is worn by all persons, including visitors, where chemicals are stored or handled (22, 23, 33, 154).

Wear appropriate gloves when the potential for contact with toxic materials exists (157); inspect the gloves before each use, wash them before removal, and replace them periodically (157). (A table of resistance to chemicals of common glove materials is given p. 159).

Use appropriate (164–168) respiratory equipment when air contaminant concentrations are not sufficiently restricted by engineering controls (164–5), inspecting the respirator before use (169).

Use any other protective and emergency apparel and equipment as appropriate (22, 157–162).

Avoid use of contact lenses in the laboratory unless necessary; if they are used, inform supervisor so special precautions can be taken (155).

Remove laboratory coats immediately on significant contamination (161).

(l) *Planning:* Seek information and advice about hazards (7), plan appropriate protective procedures, and plan positioning of equipment before beginning any new operation (22, 23).

(m) *Unattended operations:* Leave lights on, place an appropriate sign on the door, and provide for containment of toxic substances in the event of failure of a utility service (such as cooling water) to an unattended operation (27, 128).

(n) *Use of hood:* Use the hood for operations which might result in release of toxic chemical vapors or dust (198–9).

As a rule of thumb, use a hood or other local ventilation device when working with any appreciably volatile substance with a TLV of less than 50 ppm (13).

Confirm adequate hood performance before use; keep hood closed at all times except when adjustments within the hood are being made (200); keep materials stored in hoods to a minimum and do not allow them to block vents or air flow (200).

Leave the hood "on" when it is not in active use if toxic substances are stored in it

(d) *Special ventilation areas.* Exhaust air

justified or practical in laboratories but may

types should be posted:

or if it is uncertain whether adequate general laboratory ventilation will be maintained when it is "off" (200).

(o) *Vigilance:* Be alert to unsafe conditions and see that they are corrected when detected (22).

(p) *Waste disposal:* Assure that the plan for each laboratory operation includes plans and training for waste disposal (230).

Deposit chemical waste in appropriately labeled receptacles and follow all other waste disposal procedures of the Chemical Hygiene Plan (22, 24).

Do not discharge to the sewer concentrated acids or bases (231); highly toxic, malodorous, or lachrymatory substances (231); or any substances which might interfere with the biological activity of waste water treatment plants, create fire or explosion hazards, cause structural damage or obstruct flow (242).

(q) *Working alone:* Avoid working alone in a building; do not work alone in a laboratory if the procedures being conducted are hazardous (28).

2. Working with Allergens and Embryotoxins

(a) *Allergens* (examples: diazomethane, isocyanates, bichromates): Wear suitable gloves to prevent hand contact with allergens or substances of unknown allergenic activity (35).

(b) *Embryotoxins* (34–5) (examples: organomercurials, lead compounds, formamide): If you are a woman of childbearing age, handle these substances only in a hood whose satisfactory performance has been confirmed, using appropriate protective apparel (especially gloves) to prevent skin contact.

Review each use of these materials with the research supervisor and review continuing uses annually or whenever a procedural change is made.

Store these substances, properly labeled, in an adequately ventilated area in an unbreakable secondary container.

Notify supervisors of all incidents of exposure or spills; consult a qualified physician when appropriate.

3. Work with Chemicals of Moderate Chronic or High Acute Toxicity

Examples: diisopropylflurophosphate (41), hydrofluoric acid (43), hydrogen cyanide (45).

Supplemental rules to be followed in addition to those mentioned above (Procedure B of "Prudent Practices", pp. 39–41):

(a) *Aim:* To minimize exposure to these toxic substances by any route using all reasonable precautions (39).

(b) *Applicability:* These precautions are appropriate for substances with moderate chronic or high acute toxicity used in significant quantities (39).

(c) *Location:* Use and store these substances only in areas of restricted access with special warning signs (40, 229).

Always use a hood (previously evaluated to confirm adequate performance with a face velocity of at least 60 linear feet per minute) (40) or other containment device for procedures which may result in the generation of aerosols or vapors containing the substance (39); trap released vapors to prevent their discharge with the hood exhaust (40).

(d) *Personal protection:* Always avoid skin contact by use of gloves and long sleeves (and other protective apparel as appropriate) (39). Always wash hands and arms immediately after working with these materials (40).

(e) *Records:* Maintain records of the amounts of these materials on hand, amounts used, and the names of the workers involved (40, 229).

(f) *Prevention of spills and accidents:* Be prepared for accidents and spills (41).

Assure that at least 2 people are present at all times if a compound in use is highly toxic or of unknown toxicity (39).

Store breakable containers of these substances in chemically resistant trays; also work and mount apparatus above such trays or cover work and storage surfaces with removable, absorbent, plastic backed paper (40).

If a major spill occurs outside the hood, evacuate the area; assure that cleanup personnel wear suitable protective apparel and equipment (41).

(g) *Waste:* Thoroughly decontaminate or incinerate contaminated clothing or shoes (41). If possible, chemically decontaminate by chemical conversion (40).

Store contaminated waste in closed, suitably labeled, impervious containers (for liquids, in glass or plastic bottles half-filled with vermiculite) (40).

4. Work with Chemicals of High Chronic Toxicity

(Examples: dimethylmercury and nickel carbonyl (48), benzo-a-pyrene (51), N-nitrosodiethylamine (54), other human carcinogens or substances with high carcinogenic potency in animals (38).)

Further supplemental rules to be followed, in addition to all these mentioned above, for work with substances of known high chronic toxicity (in quantities above a few milligrams to a few grams, depending on the substance) (47). (Procedure A of "Prudent Practices" pp. 47–50).

(a) *Access:* Conduct all transfers and work with these substances in a "controlled area": a restricted access hood, glove box, or portion of a lab, designated for use of highly toxic substances, for which all people with access are aware of the substances being used and necessary precautions (48).

(b) *Approvals:* Prepare a plan for use and disposal of these materials and obtain the approval of the laboratory supervisor (48).

(c) *Non-contamination/Decontamination:* Protect vacuum pumps against contamination by scrubbers or HEPA filters and vent them into the hood (49). Decontaminate vacuum pumps or other contaminated equipment, including glassware, in the hood before removing them from the controlled area (49, 50).

Decontaminate the controlled area before normal work is resumed there (50).

(d) *Exiting:* On leaving a controlled area, remove any protective apparel (placing it in an appropriate, labeled container) and thoroughly wash hands, forearms, face, and neck (49).

(e) *Housekeeping:* Use a wet mop or a vacuum cleaner equipped with a HEPA filter instead of dry sweeping if the toxic substance was a dry powder (50).

(f) *Medical surveillance:* If using toxicologically significant quantities of such a substance on a regular basis (*e.g.*, 3 times per week), consult a qualified physician concerning desirability of regular medical surveillance (50).

(g) *Records:* Keep accurate records of the amounts of these substances stored (229) and used, the dates of use, and names of users (48).

(h) *Signs and labels:* Assure that the controlled area is conspicuously marked with warning and restricted access signs (49) and that all containers of these substances are appropriately labeled with identity and warning labels (48).

(i) *Spills:* Assure that contingency plans, equipment, and materials to minimize exposures of people and property in case of accident are available (233–4).

(j) *Storage:* Store containers of these chemicals only in a ventilated, limited access (48, 227, 229) area in appropriately labeled, unbreakable, chemically resistant, secondary containers (48, 229).

(k) *Glove boxes:* For a negative pressure glove box, ventilation rate must be at least 2 volume changes/hour and pressure at least 0.5 inches of water (48). For a positive pressure glove box, thoroughly check for leaks before each use (49). In either case, trap the exit gases or filter them through a HEPA filter and then release them into the hood (49).

(l) *Waste:* Use chemical decontamination whenever possible; ensure that containers of contaminated waste (including washings from contaminated flasks) are transferred from the controlled area in a secondary container under the supervision of authorized personnel (49, 50, 233).

5. Animal Work with Chemicals of High Chronic Toxicity

(a) *Access:* For large scale studies, special facilities with restricted access are preferable (56).

(b) *Administration of the toxic substance:* When possible, administer the substance by injection or gavage instead of in the diet. If administration is in the diet, use a caging system under negative pressure or under laminar air flow directed toward HEPA filters (56).

(c) *Aerosol suppression:* Devise procedures which minimize formation and dispersal of contaminated aerosols, including those from food, urine, and feces (e.g., use HEPA filtered vacuum equipment for cleaning, moisten contaminated bedding before removal from the cage, mix diets in closed containers in a hood) (55, 56).

(d) *Personal protection:* When working in the animal room, wear plastic or rubber gloves, fully buttoned laboratory coat or jumpsuit and, if needed because of incomplete suppression of aerosols, other apparel and equipment (shoe and head coverings, respirator) (56).

(e) *Waste disposal:* Dispose of contaminated animal tissues and excreta by incineration if the available incinerator can convert the contaminant to non-toxic products (238); otherwise, package the waste appropriately for burial in an EPA-approved site (239).

F. Safety Recommendations

The above recommendations from "Prudent Practices" do not include those which are directed primarily toward

VOL 58 ISS 125 JL 1 1993 UMI

Before a worker's employment in the

refrigerators, glassware or utensils which are

active use if toxic substances are stored in it

prevention of physical injury rather than toxic exposure. However, failure of precautions against injury will often have the secondary effect of causing toxic exposures. Therefore, we list below page references for recommendations concerning some of the major categories of safety hazards which also have implications for chemical hygiene:

1. Corrosive agents: (35–6)
2. Electrically powered laboratory apparatus: (179–92)
3. Fires, explosions: (26, 57–74, 162–4, 174–5, 219–20, 226–7)
4. Low temperature procedures: (26, 88)
5. Pressurized and vacuum operations (including use of compressed gas cylinders): (27, 75–101)

G. Material Safety Data Sheets

Material safety data sheets are presented in "Prudent Practices" for the chemicals listed below. (Asterisks denote that comprehensive material safety data sheets are provided).

*Acetyl peroxide (105)
*Acrolein (106)
*Acrylonilrile (107)
Ammonia (anhydrous) (91)
*Aniline (109)
*Benzene (110)
*Benzo[a]pyrene (112)
*Bis(chloromethyl) ether (113)
Boron trichloride (91)
Boron trifluoride (92)
Bromine (114)
*Tert-butyl hydroperoxide (148)
*Carbon disulfide (116)
Carbon monoxide (92)
*Carbon tetrachloride (118)
*Chlorine (119)
Chlorine trifluoride (94)
*Chloroform (121)
Chloromethane (93)
*Diethyl ether (122)
Diisopropyl fluorophosphate (41)
*Dimethylformamide (123)
*Dimethyl sulfate (125)
*Dioxane (126)
*Ethylene dibromide (128)
*Fluorine (95)
*Formaldehyde (130)
*Hydrazine and salts (132)
Hydrofluoric acid (43)
Hydrogen bromide (98)
Hydrogen chloride (98)
*Hydrogen cyanide (133)
*Hydrogen sulfide (135)
Mercury and compounds (52)
*Methanol (137)
*Morpholine (138)
*Nickel carbonyl (99)
*Nitrobenzene (139)
Nitrogen dioxide (100)
N-nitrosodiethylamine (54)
*Peracetic acid (141)
*Phenol (142)
*Phosgene (143)
*Pyridine (144)
*Sodium azide (145)
*Sodium cyanide (147)
Sulfur dioxide (101)
*Trichloroethylene (149)
*Vinyl chloride (150)

Appendix B to § 1915.1450—References (Non-Mandatory)

The following references are provided to assist the employer in the development of a Chemical Hygiene Plan. The materials listed below are offered as non-mandatory guidance. References listed here do not imply specific endorsement of a book, opinion, technique, policy or a specific solution for a safety or health problem. Other references not listed here may better meet the needs of a specific laboratory. (a) Materials for the development of the Chemical Hygiene Plan:

1. American Chemical Society, Safety in Academic Chemistry Laboratories, 4th edition, 1985.

2. Fawcett, H.H. and W. S. Wood, Safety and Accident Prevention in Chemical Operations, 2nd edition, Wiley-Interscience, New York, 1982.

3. Flury, Patricia A., Environmental Health and Safety in the Hospital Laboratory, Charles C. Thomas Publisher, Springfield IL, 1978.

4. Green, Michael E. and Turk, Amos, Safety in Working with Chemicals, Macmillan Publishing Co., NY, 1978.

5. Kaufman, James A., Laboratory Safety Guidelines, Dow Chemical Co., Box 1713, Midland, MI 48640, 1977.

6. National Institutes of Health, NIH Guidelines for the Laboratory use of Chemical Carcinogens, NIH Pub. No. 81–2385, GPO, Washington, DC 20402, 1981.

7. National Research Council, Prudent Practices for Disposal of Chemicals from Laboratories, National Academy Press, Washington, DC, 1983.

8. National Research Council, Prudent Practices for Handling Hazardous Chemicals in Laboratories, National Academy Press, Washington, DC, 1981.

9. Renfrew, Malcolm, Ed., Safety in the Chemical Laboratory, Vol. IV, *J. Chem. Ed.*, American Chemical Society, Easlon, PA, 1981.

10. Steere, Norman V., Ed., Safety in the Chemical Laboratory, *J. Chem. Ed.* American Chemical Society, Easlon, PA, 18042, Vol. I, 1967, Vol. II, 1971, Vol. III 1974.

11. Steere, Norman V., Handbook of Laboratory Safety, the Chemical Rubber Company Cleveland, OH, 1971.

12. Young, Jay A., Ed., Improving Safety in the Chemical Laboratory, John Wiley & Sons, Inc. New York, 1987.

(b) Hazardous Substances Information:

1. American Conference of Governmental Industrial Hygienists, Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment with Intended Changes, 6500 Glenway Avenue, Bldg. D–7 Cincinnati, OH 45211–4438 (latest edition).

2. Annual Report on Carcinogens, National Toxicology Program U.S. Department of Health and Human Services, Public Health Service, U.S. Government Printing Office, Washington, DC, (latest edition).

3. Best Company, Best Safety Directory, Vols. I and II, Oldwick, N.J., 1981.

4. Bretherick, L., Handbook of Reactive Chemical Hazards, 2nd edition, Butterworths, London, 1979.

5. Bretherick, L., Hazards in the Chemical Laboratory, 3rd edition, Royal Society of Chemistry, London, 1986.

6. Code of Federal Regulations, 29 CFR part 1910 subpart Z. U.S. Govt. Printing Office, Washington, DC 20402 (latest edition).

7. IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man, World Health Organization Publications Center, 49 Sheridan Avenue, Albany, New York 12210 (latest editions).

8. NIOSH/OSHA Pocket Guide to Chemical Hazards. NIOSH Pub. No. 85–114, U.S. Government Printing Office, Washington, DC, 1985 (or latest edition).

9. Occupational Health Guidelines, NIOSH/OSHA NIOSH Pub. No. 81–123 U.S. Government Printing Office, Washington, DC, 1981.

10. Patty, F.A., Industrial Hygiene and Toxicology, John Wiley & Sons, Inc., New York, NY (Five Volumes).

11. Registry of Toxic Effects of Chemical Substances, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, Revised Annually, for sale from Superintendent of Documents U.S. Govt. Printing Office, Washington, DC 20402.

12. The Merck Index: An Encyclopedia of Chemicals and Drugs. Merck and Company Inc. Rahway, N.J., 1976 (or latest edition).

13. Sax, N.I. Dangerous Properties of Industrial Materials, 5th edition, Van Nostrand Reinhold, NY., 1979.

14. Sittig, Marshall, Handbook of Toxic and Hazardous Chemicals, Noyes Publications, Park Ridge, NJ, 1981.

(c) Information on Ventilation:

1. American Conference of Governmental Industrial Hygienists Industrial Ventilation (latest edition), 6500 Glenway Avenue, Bldg. D–7, Cincinnati, Ohio 45211–4438.

2. American National Standards Institute, Inc. American National Standards Fundamentals Governing the Design and Operation of Local Exhaust Systems ANSI Z 9.2–1979 American National Standards Institute, N.Y. 1979.

3. Imad, A.P. and Watson, C.L. Ventilation Index: An Easy Way to Decide about Hazardous Liquids, Professional Safety pp 15–18, April 1980.

4. National Fire Protection Association, Fire Protection for Laboratories Using Chemicals NFPA–45, 1982.

Safety Standard for Laboratories in Health Related Institutions, NFPA, 56c, 1980.

Fire Protection Guide on Hazardous Materials, 7th edition, 1978.

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

5. Scientific Apparatus Makers Association (SAMA), Standard for Laboratory Fume Hoods, SAMA LF7–1980, 1101 16th Street, NW., Washington, DC 20036.

(d) Information on Availability of Referenced Material:

1. American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018.

2. American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(Approved by the Office of Management and Budget under control number 1218–0131)

[FR Doc. 93–15301; Filed 6–30–93; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Thursday
July 1, 1993

Part III

Department of Education

Centers for Independent Living; Notice Inviting Applications and Final Distribution of Funds, Selection Criteria, and Absolute Funding Priority

DEPARTMENT OF EDUCATION

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Notice of Final Distribution of Funds, Selection Criteria, and Absolute Funding Priority for Fiscal Year (FY) 1993.

SUMMARY: For FY 1993, the Secretary establishes a method of distributing funds, selection criteria for making new awards, and an absolute funding priority under the Centers for Independent Living program. The absolute funding priority supports the operation of centers for independent living in geographic areas within each State that are not currently being served or are underserved by centers for independent living.

EFFECTIVE DATE: This priority takes effect either August 16, 1993, or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9362. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9362.

SUPPLEMENTARY INFORMATION: For FY 1993, grants under the Centers for Independent Living program are authorized by section 721(e)(2) of the Rehabilitation Act of 1973 (Act), as amended. This program provides support for the planning, operation, conduct, administration, and evaluation of centers for independent living (CILs) that comply with the standards and assurances in section 725 of the Act. Centers for independent living are consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and operated within a local community by individuals with disabilities and provide an array of independent living services.

In FY 1992, the program supported projects in all 50 States, the District of Columbia, Puerto Rico, and American Samoa. The Department has not conducted a major competition for this program since 1982 due to congressional requirements. The Rehabilitation Act Amendments of 1992 (1992 Amendments), which were enacted October 29, 1992, substantially changed this program. The 1992 Amendments provide that FY 1993 is a transition year for determining how funds are distributed under this program. For FY 1993, the Secretary implements a number of funding and program changes made by the 1992 Amendments in a manner that provides the least disruption to the program and provides for the greatest continuity of independent living services to persons with severe disabilities.

Section 721(e)(2)(B)(i) of the Act requires that funds appropriated for this program are to be distributed in FY 1993 to private nonprofit agencies (PNAs) that received funding directly or through subgrants or contracts under part B of title VII of the Act, as in effect on October 28, 1992, the day before the date of enactment of the 1992 Amendments, in FY 1992, if the PNA submits an application to the Secretary that demonstrates the PNA will meet the evaluation standards described in section 725(b) of the Act no later than October 1, 1993, and that contains the assurances described in section 725(c) of the Act.

Pursuant to section 721(e)(2)(C), the Secretary may award funds in FY 1993 under this program to a PNA that did not receive assistance under part B, as in effect on October 28, 1992, in FY 1992, only after funding all PNAs pursuant to section 721(e)(2)(B)(i) and only if the PNA that did not previously receive assistance has submitted a satisfactory application. The Secretary will use the selection criteria that are specified in section 722(d)(2)(B) of the Act for the selection of centers pursuant to section 721(e)(2)(B)(ii) of the Act.

Section 721(c)(1) of the Act provides that the allocation of funds under this program in FY 1994 is to be made on the basis of the ratio of the population of a State to the population of all States. Section 721(c)(1)(B) and (C) of the Act also establishes certain minimums that are to apply to the award of FY 1994 funds under this program.

The minimums established by section 721(c)(1)(B) and (C) for FY 1994 and for each subsequent year are as follows:

(a) Subject to the availability of appropriations for part C of chapter 1 of title VII, the amount of any allotment to a State under section 721(c)(1)(A) for a fiscal year must not be less than the amount of financial assistance received by CILs in the State for FY 1992 under part B of title VII, as in effect on October 28, 1992.

(b) Subject to the availability of appropriations for Part C of Chapter 1 of Title VII and except as provided in section 721(c)(1)(B) of the Act, for a fiscal year in which the amounts appropriated to carry out Part C of Chapter 1 of Title VII exceed the amounts appropriated for FY 1992 to carry out Part B of Title VII, as in effect on October 28, 1992—

(1) If the excess is $8,000,000 or more, the allotment to any State under section 721(c)(1)(A) must be not less than $450,000 or one-third of one percent of the sums made available for the fiscal year for which the allotment is made, whichever is greater, and the allotment of any State under section 721 for any fiscal year that is less than $450,000 or one-third of one percent of the sums must be increased to the greater of the two amounts;

(2) If the excess is $4,000,000 or more but less than $8,000,000, the allotment to any State under section 721(c)(1)(A) must be not less than $400,000 or one-third of one percent of the sums made available for the fiscal year for which the allotment is made, whichever is greater, and the allotment of any State under section 721 for any fiscal year that is less than $400,000 or one-third of one percent of the sums must be increased to the greater of the two amounts; and

(3) If the excess is less than $4,000,000, the allotment to any State under section 721(c)(1)(A) must approach, as nearly as possible, the greater of the two amounts described in section 721(c)(1)(C)(ii) of the Act.

Section 721(c)(2) of the Act provides that Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau are to receive a separate allotment of not less than one-eighth of one percent of the remainder for the fiscal year for which the allotment will be made, except that Palau may receive its allotment only until the Compact of Free Association with Palau takes effect.

Pursuant to section 7(16) of the Act, the District of Columbia and Puerto Rico are considered States. Therefore, the District of Columbia and Puerto Rico are eligible to receive their allotment of funds under this program in accordance with section 721(c)(1) of the Act.

Finally, section 721(d) of the Act provides the method by which the Secretary will redistribute to other States any funds that a State received under its allotment but will not expend to carry out Part C of Title VII of the Act in FY 1994 and subsequent years.

This program supports moving the Nation toward achieving the National Educational Goals by enhancing programs that develop the skills of individuals with severe disabilities to exercise the rights and responsibilities of citizenship.

On April 22, 1993 the Secretary published a notice of proposed

distribution of funds, selection criteria, and absolute funding priority for this competition in the **Federal Register** (58 FR 27716).

Note: This notice does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Public Comment

In the notice of proposed distribution of funds, selection criteria, and absolute funding priority, the Secretary invited comments. The Secretary did not receive any comments by the end of the comment period of June 10, 1993. Except for minor technical revisions, the Secretary has made no changes in the notice.

Final Distribution of Funds, Selection Criteria, and Absolute Funding Priority

Pursuant to section 12 of the Act and 34 CFR 75.105(c)(3), the Secretary establishes the following method for the distribution of funds, the following selection criteria, and the following absolute funding priority under this program in FY 1993.

Distribution of Funds

The Secretary distributes funds under this program in FY 1993 consistent with the allotment by population and the minimums established by section 721(c)(1), (c)(2), and (d) of the Act for FY 1994 that are described in the supplementary information section of this notice.

Selection Criteria

The Secretary evaluates each application for a new center under this program by using the following selection criteria, which are based on section 722(d)(2)(B) of the Act:

(a) *Evidence of need* (15 points).

(1) The Secretary reviews each application for persuasive evidence that shows the extent to which the project meets the specific needs for the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs (i.e., whether from the 1990 census data or other current sources);

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary looks for information that shows that the need for the center for independent living has been established based on an assessment of the ability of existing programs and facilities to meet the service needs for independent living services of individuals with severe disabilities in the geographic area to be served.

(b) *Plan of operation* (25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) The elderly.

(3) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project, including funding, facilities, equipment, and supplies.

(c) *Past performance* (5 points).

(1) The Secretary reviews each application for information that shows the past performance of the applicant in successfully providing services similar to independent living services.

(2) The Secretary looks for information that shows evidence that the applicant successfully provided services comparable to independent living services and core services as listed in section 7(30) of the Act and other services that empower individuals with severe disabilities.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other management and decisionmaking personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2)(i) and (ii) of this criterion will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Involvement of individuals with severe disabilities* (5 points).

(1) The Secretary reviews each application for information that shows that persons with severe disabilities are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that persons with severe disabilities or their parents, guardians, or other representatives, as appropriate, will be substantially involved in planning, policy direction, and management of the center, and, to the greatest extent possible, will be employed by the center.

(f) *Budget and cost effectiveness* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Meeting the standards and the assurances* (25 points).

The Secretary reviews each application for information that shows—

(1) Evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the standards in section 725(b) of the Act by October 1, 1993; and

(2) Convincing evidence of demonstrated success in satisfying, or a

clearly defined plan to satisfy, the assurances in section 725(c) of the Act by October 1, 1993. (Approved by the Office of Management and Budget under control number 1820–0018.)

Absolute Funding Priority

With the funds available to implement section 721(e)(2) (B)(ii) and (C) of the Act in FY 1993, the Secretary also establishes an absolute funding priority for eligible PNAs that propose to serve geographic areas within each State that are underserved or not served by a CIL.

Projects must provide demographic and other information demonstrating how the geographic area proposed to be served by the project is not receiving independent living services or is underserved by CILs.

In addition, all projects must demonstrate how they will—

(1) Address the needs of individuals with severe disabilities who are from minority backgrounds;

(2) By October 1, 1993, comply with the standards in section 725(b) of the Act; and

(3) Comply with the assurances in section 725(c) of the Act. Each grantee shall advise applicants for and recipients of services under this program or, as appropriate, the parents, family members, guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the Client Assistance Program under section 112 of the Act and shall provide them with information on seeking assistance from that program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 29 U.S.C. 721 (c) and (e) and 796(f).

(Catalog of Federal Domestic Assistance Number 84.132A, Centers for Independent Living)

Dated: June 28, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–15599 Filed 6–30–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: This program provides support for the planning, operation, conduct, administration, and evaluation of centers for independent living (CILs) that comply with the standards and assurances in section 725 of Title VII, Chapter 1, Part C of the Rehabilitation Act of 1973, as amended. Centers for independent living are defined as consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living services.

Eligible Applicants: To be eligible to apply for funds under this program, an entity must be a center for independent living that did not receive assistance in FY 1992 under Part B, as in effect on October 28, 1992, the day before the date of enactment of the Rehabilitation Act Amendments of 1992 (1992 Amendments), except that centers that did receive that assistance may propose to open new satellite centers for independent living. Eligibility is limited to those entities in or proposing to serve States and territories where funds are available for competition for new awards that submit a satisfactory application. States and territories with available funds are:

American Samoa	$154,046
Arkansas	99,252
Florida	180,011
Georgia	322,377
Guam	38,137
Indiana	192,439
Iowa	322,377
Minnesota	102,595
Mississippi	475,900
Nevada	92,674
North Dakota	32,377
North Marianas	38,137
Oregon	67,650
Palau	38,137
South Carolina	322,377
Texas	202,574
Vermont	224,071
Virginia	401,749
Wisconsin	264,636

Deadline for Transmittal of Applications: July 30, 1993.

Deadline for Intergovernmental Review: September 29, 1993.

Applications Available: July 1, 1993.

Available Funds: $3,500,000.

Estimated Range of Awards: $30,000 to $200,000.

Estimated Number of Awards: 1 to 4 per eligible State or territory.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priority: The priority in the notice of final distribution of funds, selection criteria, and absolute funding priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in the notice of final distribution of funds, selection criteria, and absolute funding priority for this program, as published elsewhere in this issue of the **Federal Register**.

For Applications: Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9362 (Voice and TDD).

Program Authority: 29 U.S.C. 721 (c) and (e) and 796(f).

Dated: June 28, 1992.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–15600 Filed 6–30–93; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
July 1, 1993

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 207, 213 et al.
Revision of FHA Multifamily Processing; Proposed Rule

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VOL
58
ISS
125
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1993
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 232, 234, 241, and 244

[Docket No. R-93-1656; FR-3349-P-01]

RIN 2502-AF74

Revision of FHA Multifamily Processing

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: It is proposed that FHA multifamily processing regulations be amended to: Increase processing/commitment fees; recognize a feasibility processing stage for substantial rehabilitation projects and impose a fee for this processing: require a preapplication conference; eliminate the conditional commitment processing stage for all but section 220 project improvement loans, section 242 hospital mortgages, section 223(f) acquisition/refinancing mortgages, and section 241 supplemental loans; and update nondiscrimination requirements to conform with applicable civil rights statutory and regulatory requirements.

DATES: Comment due date: August 30, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica Franklin, Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, room 6138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-2556; or (202) 708-4594 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520, and have been assigned OMB control number 2502-0029.

The Department of HUD proposes to amend various relevant parts of title 24 of the Code of Federal Regulations to effect the following changes in its processing procedures for insurance of multifamily project mortgages.

A. Increase Processing Fees

Multifamily mortgage insurance processing and commitment fees currently do not cover expenses incurred by the Department. A Price Waterhouse study estimates that during a 7-year period (FY 1985-FY 1991), fees collected (based on $3/$1000 of the mortgage amount) covered only 68 percent to 92 percent of HUD costs. (These costs were basically Field Office Housing costs—they did not include overhead costs or personnel outside of the Field Office Housing Development Division.)

Implementation of the Delegated Processing program has resulted in an even greater shortfall. Under this program, HUD pays outside contractors to perform underwriting services. Fees charged by delegated processors are based on their cost of doing business, not on a percentage of the mortgage amount. The Price Waterhouse study, although based on a limited sample (since the Delegated Processing program had been in existence only 4 months at the time of the study), indicated that fees collected by HUD covered only 61 percent of costs incurred. (Implementation of Technical Discipline Contracts (TDCs), should result in similar deficiencies in costs versus fees collected.)

It is proposed, therefore, that the regulations be amended to more adequately cover HUD costs by increasing the aggregate fees to $5/$1000 (from the current $3/$1000) of the mortgage amount. This increase will be within the statutory limitation prescribed in section 207(d) of the National Housing Act. Section 207(d) provides that appraisal and inspection charges "shall not aggregate more than 1 percent, of the original principal face amount of the mortgage." With the exception of section 223(f) acquisition/refinancing mortgages, inspection fees are currently based on, and will remain at, not to exceed $5/$1000 of the mortgage amount. Consequently, to remain within the statutory limitation of the statutory 1 percent, total processing/commitment fees cannot be increased by more than $2/$1000 (for a total processing/commitment fee of $5/$1000).

1. Feasibility Processing Stage With Fee

Feasibility processing for substantial rehabilitation projects is recognized by program handbooks as an optional processing stage but it is not recognized by regulation. For this reason, HUD is not able to charge a processing fee, even though feasibility processing requires substantially more effort than Site Appraisal and Market Analysis (SAMA) processing for new construction projects, which are covered by regulation and for which a fee is chargeable.

The inability to charge a fee has significantly contributed to the processing deficit cited above, particularly when a case drops out after the feasibility analysis is completed. In such cases, HUD also loses the opportunity to collect a fee for future (conditional or firm commitment) processing. Furthermore, under Delegated Processing and Technical Discipline Contracts (TDCs), outside contractors must be paid, regardless of whether HUD collects a fee. Collecting a fee to help offset the costs of paying the contractors is simply sound business practice.

Consequently, this rule describes feasibility processing for multifamily substantial rehabilitation projects and reflects long-held HUD policy and practice that issuance of a feasibility letter is not binding upon the Department to the same extent as a SAMA letter. It is a generally known fact that, in cases involving substantial rehabilitation, unanticipated major structural problems may be found at a later stage, and that may result in a dramatic increase in the total cost or rehabilitation. Also, substantial rehabilitation can involve complex readaptation of buildings, originally constructed for a non-residential purpose, that may require major architectural changes in the scope of the work, and consequently, in the Department's conclusions relative to the feasibility of the proposed project. This rule reflects current HUD policy in stating that determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at a later time. The feasibility letter may even unilaterally be terminated by the Commissioner if found necessary.

2. Mandatory Preapplication Conference

One of Office of Housing's goals is to speed up mortgage insurance processing. Submission of complete, well-documented applications by sponsors/mortgagees is essential to expeditious processing. Or ly if

applications are complete, and time is not wasted by going back to the sponsor/mortgagee, can processing time goals be met. Consequently, the rule would require sponsors to attend a preapplication conference before an application may be submitted to or accepted by the Field Office. This requirement would apply in all cases (except for part 242 insurance on hospital mortgages) and would include any application by a project sponsor for an operating loss loan.

During the preapplication conference, sponsors would meet with HUD Field Office staff to present a project idea, discuss program requirements and be advised of any known market or environmental concerns. Contents of the application, including required exhibits, would be identified and discussed.

If the proposal were obviously ineligible for mortgage insurance, the sponsor would be so advised. If it were eligible, the Field Office would determine when an application could be expected so that it could consider, based on work load and other priorities, whether it might be a candidate for in-house processing, delegated processing or TDC contracting.

3. Eliminate Conditional Commitment Stage

To speed the processing cycle, it is proposed that the condition commitment processing stage be eliminated for all applications except those for section 220 project improvement loans, section 242 hospital mortgages, loans for acquisition or refinancing of existing construction pursuant to section 223(f), and for section 241 supplemental loans. Sponsors would have the option, after attending the preapplication conference, of submitting an application of SAMA (or feasibility) or firm commitment processing.

As is now the case, the SAMA (or feasibility) letter would not be a commitment to insure the mortgage, nor would it bind HUD to issuing a firm commitment to insure. The purpose of a firm commitment would also remain unchanged. It would be issued only after completion of technical processing and would evidence HUD's approval of the application.

After issuing a SAMA letter, HUD technical staff would provide liaison services to the sponsor's design architect in the development of preliminary drawings, specifications and cost estimates which must be submitted within a time period set forth in the SAMA letter with a processing fee and in a form prescribed by HUD. HUD would review and comment on the drawings and specifications and develop its own cost estimates which would be provided to the sponsor for use in preparing the firm commitment application. The fee would be equal to $1.00 per $1000 of the mortgage amount.

A preliminary work write-up and outline specifications would be required for a feasibility application. Final documents, including final cost estimates, would be submitted at the firm commitment application stage.

4. Application Fees

The rule would impose a fee for feasibility processing (which heretofore has been performed without charge) and would modify the overall existing fee structure which requires an aggregate of $3.00 per $1000 for all processing stages. The modified fee structure would impose an aggregate fee of $5.00 per $1000 of mortgage amount, to be distributed among all processing stages.

Substantial Rehabilitation

A fee of $2.00 per $1000 would be charge at the feasibility stage of substantial rehabilitation projects. The balance of $3.00 per $1000 would be charged at the firm commitment stage.

New Construction

A fee of $1.00 per $1000 would be charged at the SAMA stage, $1.00 per $1000 for the review of plans and specifications and preparation of cost estimates, and the balance of $3.00 per $1000 would be charged at the firm commitment stage.

Section 223(f)/241 Loans

Projects to be acquired or refinanced pursuant to section 223(f) or submitted for section 241 loans would be subject to a conditional commitment processing fee of $3.00 per $1000 and a firm commitment fee of $2.00 per $1000.

5. Update of Nondiscrimination Provisions

This rule also proposes to update existing regulatory provisions referencing nondiscrimination requirements as they apply to multifamily processing. Section 207.20, 203.16, 220.595, 220.615, 221.539, 232.34, 232.74, 234.16, 234.565, 241.150 and 241.640 would be revised to reflect current statutory and regulatory prohibitions against discrimination on the basis of age, disability or familial status.

Other Matters

Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicated that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act 5 U.S.C. 605(b), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The economic impact of this rule should not be significant, and would affect small and large entities equally.

Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas on building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

HUD Semiannual Agenda

This rule was listed as item 1423 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24405), under Office of Housing, sequence number 1396 in compliance with Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the order. No programmatic or policy changes result from its promulgation which would affect the existing relationship between the federal government and state and local government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR parts 207, 213, 220, 221, 232, 234, 241, and 244 as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 would be revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b; 42 U.S.C. 3535(d).

Sections 207.258 and 207.258b are also issued under 12 U.S.C. 1701z–11e.

2. Section 207.1 would be revised to read as follows:

§ 207.1 Processing of applications and required fees.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. After the pre-application conference, the project sponsor may elect to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(1) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of $1 per thousand dollars of the requested mortgage amount shall be charged for the review of plans and specifications and preparation of cost estimates.

(2) *Application fee—feasibility letter.* An application fee of $2 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(3) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate $5 per thousand dollars of the requested mortgage amount to be insured. The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or contracted pursuant to the Atomic Energy Community Act of 1955, as provided in § 207.31(b)(4).

(b) *Effect of SAMA letter, feasibility letter, and firm commitment*—(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter.

(i) The land value fully improved (with off-site improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(iii) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

After receiving a SAMA letter, the sponsor shall submit preliminary drawings, specifications and cost estimates in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on the drawings, specifications and cost estimates. The comments will be provided to the sponsor for use in preparing a firm commitment application. A fee will be charged for this review and preparation of cost estimates as prescribed in § 207.1(a)(1).

(2) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the

estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(c) *Term of SAMA letter, feasibility letter, and firm commitment*—(1) SAMA letter. A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Feasibility letter.* A feasibility letter shall be effective for whatever term is specified in the letter.

(3) *Firm commitment.* (i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or feasibility letter, or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or feasibility letter, shall be grounds for rejection of an application for firm commitment. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(e) *Inspection fee.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid for as follows:

(1) If the case involves insurance of advances, it shall be paid at the time of initial endorsement.

(2) If the case involves insurance upon completion, it shall be paid before the date construction is begun.

(f) *Fees on increases*—(1) *Increases in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses under § 207.4(f), a combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(g) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(h) *Transfer fee.* Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

3. Paragraphs (a) introductory text and (a)(1) of § 207.20 would be revised to read as follows:

§ 207.20 Occupancy requirements.

(a) *Nondiscrimination against families with children and persons with disabilities.* Except in the case of a mortgage with respect to a

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manufactured home park designed exclusively for occupancy by elderly persons, the mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family and/or persons with disabilities; and

* * * * *

4. Paragraph (a) of § 207.32a would be revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(a) *Processing of applications and required fees.* (1) A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a conditional or firm commitment. After the pre-application conference an application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on a HUD approved form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. No application shall be considered unless accompanied by all exhibits required by the form and program handbooks. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of any improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

(2) *Application fee—conditional commitment.* An application-commitment fee for $3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(3) *Application fee-firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of $5 per thousand dollars of the requested mortgage amount to be insured less any amount previously received for a conditional commitment.

(4) *Inspection fee.* Where an application provides for the completion or repairs and improvements, an inspection fee may be charged by the Commissioner. A fee of $30 per dwelling unit will be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of the repairs.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

5. The authority citation for 24 part 213 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

6. Section 213.2 would be revised to read as follows:

§ 213.2 Processing of applications.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. After the pre-application conference, the project sponsor may elect to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Application shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(b) *Effect of SAMA letter, feasibility letter, and firm commitment—*(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter.

(i) The land value fully improved (with off-site improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(iii) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

After receiving a SAMA letter, the sponsor shall submit preliminary drawings, specifications and cost estimates in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on the drawings, specifications and cost estimates. The comments will be provided to the sponsor for use in preparing a firm commitment application. A fee will be charged for this review and preparation of cost estimates as prescribed in § 207.1(a)(1).

(2) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(c) *Term of SAMA letter, feasibility letter and firm commitment*—(1) SAMA letter. A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Feasibility letter.* A feasibility letter shall be effective for whatever term is specified in the text of the letter.

(3) *Firm commitment.* (i) Insurance of advances: A firm commitment to insure advance shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or feasibility letter, or firm commitment may be extended in such manner as the Commissioner may prescribe.

7. Section 213.3 would be revised to read as follows:

§ 213.3 Fees required by Commissioner.

(a) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of $1 per thousand dollars of the requested mortgage amount shall be charged for the review of plans and specifications and preparation of cost estimates.

(b) *Application fee—feasibility letter.* An application fee of $2 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate $5 per thousand dollars of the requested mortgage amount to be insured.

(d) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or feasibility letter, shall be grounds for rejection of an application for firm commitment. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(e) *Fees on increases*—(1) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating loses under § 213.71(k), a combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(f) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied be a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(g) *Inspection fee.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid for as follows:

(1) If the case involves insurance of advances, it shall be paid at the time of initial endorsement.

(2) If the case involves insurance upon completion, it shall be paid before the date construction is begun.

(h) *Transfer fee.* Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

8. Paragraphs (a)(1) and (a)(2) § 213.16 would be revised to read as follows:

§ 213.16 Mortgagor's certificate for nondiscrimination and mortgage covenant regarding use of property.

(a) * * *

(1) That neither it nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the

sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, sex, familial status, handicap, age, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, sex, familial status, handicap, age, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

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PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

9. The authority citation for 24 CFR part 220 would be revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

10. Paragraph (a) of § 220.501 would be revised to read as follows:

§ 220.501 Cross-reference.

(a) All of the provisions of subpart A, part 207 of this chapter, concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured section 220 of the National Housing Act, except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.17 Classification.
207.19 Required supervision of private mortgagors.
207.24 Development of property.
207.27 Certificates of actual cost.
207.31 Eligibility of miscellaneous-type mortgages.
207.32a Eligibility of mortgages on existing projects.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

* * * * *

11. Section 220.552 would be revised to read as follows:

§ 220.552 Processing of applications.

An applicant for a project improvement loan must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a conditional commitment or a firm commitment. After the pre-application conference, the project sponsor may elect to submit an application for either a conditional or firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for either type commitment for insurance must be submitted by both the project sponsor and an eligible lender. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

12. Section 220.553 would be amended by revising paragraph (b) and adding paragraph (c) and to read as follows:

§ 220.553 Application fee.

* * * * *

(b) *Application fee-conditional commitment.* An application fee of $3 per thousand dollars of the requested loan amount shall accompany the application for a conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with application for a conditional commitment will aggregate $5 per thousand dollars of the requested loan amount to be insured.

13. Section 220.560 would be revised to read as follows:

§ 220.560 Fee on increases.

(a) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. this combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the loan, either by amendment or by substitution of a new loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

14. Paragraph (b) of § 220.595 would be revised to read as follows:

§ 220.595 Certificate of nondiscrimination by borrower.

* * * * *

(b) That any restrictive covenant on such property relating to race, color, religion, sex, familial status, handicap, age, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

* * * * *

15. Section 220.615 is revised to read as follows:

§ 220.615 Discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex, handicap, age, or national origin.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

16. The authority citation for 24 CFR part 221 would be revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, 1715*l*; 42 U.S.C. 3535(d).

17. Section 221.502(a) would be revised to read as follows:

§ 221.502 Processing of applications.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. After the pre-application conference, the project sponsor may

elect to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless:

(1) Accompanied by all exhibits required by the form and program handbooks and

(2) In a case involving a mortgage which is to bear interest at the below market rate provided in § 221.518(b), the Commissioner shall have issued a memorandum evidencing allocation of funds to the proposed project.

* * * * *

18. Section 221.503 would be revised to read as follows:

§ 221.503 Application fees.

(a) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of $1 per thousand dollars of the requested mortgage amount shall be charged for the review of plans and specifications and preparation of cost estimates.

(b) *Application fee—feasibility letter.* An application fee of $2 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter, will aggregate $5 per thousand dollars of the requested mortgage amount to be insured.

19. Section 221.504 would be revised to read as follows:

§ 221.504 Rejection of application.

A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or feasibility letter, shall be grounds for rejection of an application for firm commitment. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

20. Section 221.506(a) would be revised to read as follows:

§ 221.506 Fees on increases.

(a) *Fees on increases—*(1) *Increase in firm commitment before endorsement.* An application, field before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses under § 213.71(k), a combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

* * * * *

21. Section 221.509 would be revised to read as follows:

§ 221.509 Effect and terms of SAMA letter, feasibility letter and firm commitment.

(a) *Effect of SAMA letter, feasibility letter, and firm commitment—*(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter.

(i) The land value fully improved (with off-site improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(iii) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

After receiving a SAMA letter, the sponsor shall submit preliminary drawings, specifications and cost estimates in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on the drawings, specifications and cost estimates. The comments will be provided to the sponsor for use in preparing a firm commitment application. A fee will be charged for this review and preparation of cost estimates as prescribed in § 221.503 of this part.

(b) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications an completion of technical processing involving the estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in

VOL 58 ISS 125 JL 1 1993 UMI

whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(c) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(d) *Term of SAMA letter, feasibility letter, and firm commitment*—(1) SAMA letter. A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Feasibility letter.* A feasibility letter shall be effective for whatever term is specified in the letter.

(3) *Firm commitment.* (i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or feasibility letter, or firm commitment may be extended in such manner as the Commissioner may prescribe.

(e) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

22. Section 221.539 would be revised to read as follows:

§ 221.539 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, religion, sex, handicap, age, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

23. The authority citation 24 CFR part 232 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

24. Section 232.5 would be revised to read as follows:

§ 232.5 Processing of applications.

Pre-application conference. A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. After the pre-application conference, the project sponsor may elect to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

25. Section 232.10 would be revised to read as follows:

§ 232.10 Application-commitment fees.

(a) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of $1 per thousand dollars of the requested mortgage amount shall be charged for the review of plans and specifications and preparation of cost estimates.

(b) *Application fee—feasibility letter.* An application fee of $2 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate $5 per thousand dollars of the requested mortgage amount to be insured.

26. Section 232.11 would be revised to read as follows:

§ 232.11 Rejection of an application.

A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or feasibility letter, shall be grounds for rejection of an application for firm commitment. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

27. Section 232.13 would be revised to read as follows:

§ 232.13 Fees on increases.

(a) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee

was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(c) *Loan to cover operating losses.* In connection with a loan to cover operating losses under § 232.31a, a combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(d) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

28. Paragraphs (a) and (b) of § 232.34 would be revised to read as follows:

§ 232.34 Certification of nondiscrimination by mortgagor.

* * * * *

(a) That neither it nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, sex, familial status, handicap, age, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, sex, familial status, handicap, age, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

* * * * *

29. Section 232.50 would be revised to read as follows:

§ 232.50 Effect and term of SAMA letter, feasibility letter and firm commitment.

(a) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter.

(1) The land value fully improved (with off-site improvements installed).

(2) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(3) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

After receiving a SAMA letter, the sponsor shall submit preliminary drawings, specifications and cost estimates in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on the drawings, specifications and cost estimates which will be provided to the sponsor for use in preparing a firm commitment application. A fee will be charged for this review and preparation of cost estimates as prescribed in § 231.10.

(b) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commission if found necessary.

(c) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for issuance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(d) *Term of SAMA letter, feasibility letter, and firm commitment*—(1) SAMA letter. A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Feasibility letter.* A feasibility letter shall be effective for whatever term is specified in the letter.

(3) *Firm commitment.* (i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or feasibility letter, or firm commitment may be extended in such manner as the Commissioner may prescribe.

(e) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee; must be submitted.

30. Section 232.74 would be revised to read as follows:

§ 232.74 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, religion, sex, handicap, age, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

31. The authority citation for 24 CFR part 234 would continue to read as follows:

Authority: 12 U.S.C. 1715(b), 1715y; 42 U.S.C. 3535(d).

32. Paragraphs (a) and (b) of § 234.16 would be revised to read as follows:

§ 234.16 Certificate of nondiscrimination by mortgagor.

* * * * *

(a) That neither it nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, sex, familial status, handicap, age, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, sex, familial status, handicap, age, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

* * * * *

33. Paragraphs (a) introductory text and (a)(1) of § 234.565 would be revised to read as follows:

§ 234.565 Occupancy requirements.

(a) *Nondiscrimination against families with children and persons with disabilities.* Except in the case of a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons, the mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family and/or persons with disabilities; and

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

34. The authority citation for 24 CFR part 241 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6; 42 U.S.C. 3535(d).

35. Section 241.10 would be revised to read as follows:

§ 241.10 Processing of applications and required fees.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a conditional or firm commitment for insurance of an improvement loan on a project. An application for a conditional commitment must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved lender. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application fee of $3 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $5 per thousand dollars of the amount of the loan applied for less any amount previously received for a conditional commitment.

36. Section 241.25 would be revised to read as follows:

§ 241.25 Fees on increases.

(a) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

37. Section 241.150 would be revised to read as follows:

§ 241.150 Discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex, handicap, age, or national origin.

38. Section 241.505 would be revised to read as follows:

§ 241.505 Processing of applications and required fees.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a conditional or firm commitment for insurance of an energy savings improvement loan on a project. An application for a conditional commitment must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved lender. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application fee of $3 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $3 per thousand dollars of the amount of the loan applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $5 per thousand dollars of the loan applied

for, shall also be submitted with application for a firm commitment.

39. Section 241.520 would be revised to read as follows:

§ 241.520 Fees on increases.

(a) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

40. Section 241.640 would be revised to read as follows:

§ 241.640 Discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex, handicap, age, or national origin.

41. Section 241.1015 would be revised to read as follows:

§ 241.1015 Processing of applications and required fees.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a conditional or firm commitment for insurance of an equity loan on a project. An application for a conditional commitment must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved lender. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application fee of $3 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee in an amount which, when added to any prior fee received in connection with a conditional commitment application, will aggregate $5 per thousand dollars in the loan applied for.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

42. The authority citation for 24 CFR part 244 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5; 42 U.S.C. 3535(d).

43. Section 244.10 would be revised to read as follows:

§ 244.10 Processing of applications and required fees.

(a) *Pre-application conference.* A project sponsor must submit a request for a pre-application conference to its local HUD field office. In all cases, participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. After the pre-application conference, the project sponsor may elect to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter must be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD field office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(1) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of $1 per thousand dollars of the requested mortgage amount shall be charged for the review of plans and specifications and preparation of cost estimates.

(2) *Application fee—feasibility letter.* An application fee of $2 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(3) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate $5 per thousand dollars of the requested mortgage amount to be insured.

(b) *Effect of SAMA letter, feasibility letter, and firm commitment—(1) SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter.

(i) The land value fully improved (with off-site improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition of the group practice and the market for the proposed services. Where the application is not acceptable as submitted, but can be made acceptable

by a change in composition or type of service, the SAMA letter may establish acceptable alternative plans.

After receiving a SAMA letter, the sponsor shall submit preliminary drawings, specifications and cost estimates in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on the drawings, specifications and cost estimates which will be provided to the sponsor for use in preparing a firm commitment application. A fee will be charged for this review and preparation of cost estimates as prescribed in § 241.1(a)(1) of this part.

(2) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(c) *Term of SAMA letter, feasibility letter, and firm commitment*—(1) SAMA letter. A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Feasibility letter.* A feasibility letter shall be effective for whatever term is specified in the letter.

(3) *Firm commitment.* (i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or feasibility letter, or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SMA letter or feasibility letter, shall be grounds for rejection of an application for firm commitment. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(e) *Inspection fee.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid for as follows:

(1) If the case involves insurance of advances, it shall be paid at the time of initial endorsement.

(2) If the case involves insurance upon completion, it shall be paid before the date construction is begun.

(f) *Fees on increases.*—(1) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses, a combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(g) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(h) *Transfer fee.* Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental

body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

Dated: June 22, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–15542 Filed 6–30–93; 8:45 am]

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VOL
58

ISS
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Part V

Department of Health and Human Services

Administration for Children and Families

Family Violence Prevention and Services Discretionary Funds Program; Notice

VOL 58 ISS 125 JL 1 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 93–08]

Fiscal Year 1993 Family Violence Prevention and Services Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Community Services, Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications under the Office of Community Services Family Violence Prevention and Services Program.

SUMMARY: The Office of Community Services (OCS) announces its Family Violence Prevention and Services discretionary funds program for fiscal year (FY) 1993. Funding for grants under this announcement is authorized by the "Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992," Public Law 102–295, governing discretionary programs for family violence prevention and services. This announcement contains all forms and instructions for submitting an application.

DATES: The closing date for submission of applications is August 16, 1993.

ADDRESSES: Application receipt point: Department of Health and Human Services, Administration for Children and Families/Division of Discretionary Grants, (OCS–93–08) 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: William Riley, Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone (202) 401–9233.

SUPPLEMENTARY INFORMATION: The Office of Community Services, Administration for Children and Families, announces the applications are being accepted for funding for FY 1993 projects on Public Information/Community Awareness for the Prevention of Domestic Violence; projects for Improved Access and Legal Representation for Victims of Domestic Violence; and for a National Resource Center for Family Violence Prevention and Services, and Special Issue Resource Centers for Training, Information and Technical Assistance.

This program announcement consists of four parts. Part I provides information on the family violence program and the statutory funding authority applicable to this announcement.

Part II describes the three priority areas under which applications for FY 1993 violence funding are being requested.

Part III describes the review process.

Part IV provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. *No additional application materials are available or needed to submit an application.*

Applicants should note that grants and cooperative agreements to be awarded under this program announcement are subject to the availability of funds.

Part I. Introduction

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, et seq.) is entitled the Family Violence Prevention and Services Act (Act). It was first implemented in FY 1986 and reauthorized and amended for fiscal years 1993 through 1995 by Congress on May 28, 1992 by Public Law 102–295. Funds under this Act are awarded to States and Indian Tribes to assist in supporting programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

Family violence prevention funds have served to supplement many already established community-based family violence prevention and service activities. These funds also have allowed States and Tribes to expand current service programs and establish additional new centers in rural and underserved areas, on Native American Reservations, and in Alaskan Native Villages and Regional Corporation areas. In most areas, there is private sector as well as State and local funding for these emergency shelters.

The Department, through the Family Violence Prevention and Services Act, has provided technical assistance grants to several State Coalitions Against Domestic Violence, and to several nonprofit organizations to assist shelter operators and service providers to improve their service delivery, and also to support better planning, coordination and information exchange.

In addition to the grants that were initially made available in FY 1986, the Department also has supported: the operation of the Clearinghouse on Family Violence Information; research activities with the Department of Justice; regionally based training and technical assistance for State and local law enforcement personnel through the Department of Justice; and grants for technical assistance and training for State and local public and private nonprofit agencies administering the family violence program.

During FY 1991 and FY 1992, the Department made grant awards that enhanced public information and community awareness strategies and activities. These awards also served as models for the prevention of family violence and provided information on resources, facilities, and alternatives to family violence victims and their dependents, community organizations, local school districts, and individuals seeking assistance.

Part II. Fiscal Year 1993 Family Violence Projects

1. Priority Area Number FV 01–93

Public Information/Community Awareness Campaign Projects for the Prevention of Family Violence.

Purpose: To assist in the development of public information and community awareness campaign projects and activities that will serve as information models for the prevention of family violence. These projects should provide information on resources, facilities, and service alternatives available to family violence victims and their dependents, community organizations, local school districts, and other individuals seeking assistance.

Eligible Applicants: State agencies, Territories, and Native American Tribes and Tribal Organizations who are, or have been, recipients and Family Violence Prevention and Services Act grants; State and local private non-profit agencies experienced in the field of family violence prevention; and public and private non-profit educational institutions; community organizations and community-based coalitions, and other entities that have designed and implemented family violence prevention information activities or community awareness strategies.

Background: Based on the encouraging response to the announcement for public information and community awareness grants for family violence prevention in FY 1992, ACF plans to again make these grants available in FY 1993. Current surveys and research studies have indicated that all too often within families the response to stressful situations tends to be physically or emotionally violent. There are data which substantiate the

inference that the violent response to conflicts or stressful situations may be a "learned" response, an adaptive and modeled behavior used to control or extricate a person from a particularly stressful situation.

It also has been shown, particularly in anecdotal reports, that there are victims of family violence still unaware of sources of assistance that may be available in their communities. Victims and batterers alike have indicated that they remained in their situations or felt powerless to change because they were uninformed of their options or of the community resources that may have assisted them. We also may assume that the so-called "new minorities" (e.g., Southeast Asians, Central Americans) may have both language and cultural barriers to surmount in sorting out the matrix of services, laws, and community mores in dealing with family violence. Moreover, the African American and Hispanic communities often have complained that, in general, they do not receive the most current or accurate information on available services or facilities.

The goal of this priority area is to add credible and persuasive information to the arsenal of weapons necessary to break the so-called "cycle of family violence." By assuring that individuals, particularly within minority communities, are aware of available resources and alternative responses for the prevention of violence, we also may demonstrate a model that provides for a more informed individual and a prevention strategy responsive to aggressive and stressful situations.

The focus of this priority area requires the development of an innovative public information campaign model that may be used by public and private agencies, schools, churches, boys and girls clubs, community organizations, and individuals. By simply increasing the amount of information on services and other alternatives for the prevention of family violence, we provide the victims, their dependents, and perpetrators, with options for their particular situations.

Accurate information is critical to any community awareness strategy and activity. How information is communicated must be modified where communication barriers may exist because of perceived or real language differences and cultural insensitivities.

Minimum Requirements for Project Design: In order to successfully compete under the priority area, the applicant should:

- Present a plan for the prevention of family violence that clearly reflects how the applicant would coordinate with public agencies and with other community organizations and institutions active in the field of family violence prevention.
- Describe, as an element of the plan, a proposed model approach to the development of a public information campaign and identify the specific audiences, communities, and groups that will be educated in the prevention of family violence.
- Include, as critical elements in the plan:
- The development and use of non-traditional sources as information providers (applicants should present specific plans for the use of local organizations, businesses and individuals in the distribution of information and materials);
- The identification of the media to be used in the campaign and the geographic distribution of the campaign;
- How the applicant would be responsive to and demonstrate its sensitivity to minority communities and their cultural perspectives;
- A set of achievable objectives and a description of the population groups, relevant geographic area, and the evaluation components to be used to measure progress and the overall effectiveness of the campaign; and
- Provide a description of the kind, volume, distribution and timing of the proposed information with assurances that the public information campaign activities will not supplant or lower the current frequency of public service announcements.

Project Duration: The length of the project should not exceed 12 months.

Federal Share of the Project: The maximum Federal share of the project is not to exceed $35,000 for the 1-year project period. Applications for lesser amounts also will be considered under this priority area.

Matching Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $35,000 in Federal funds must include a match of at least $8,750.

Anticipated Number of Projects to be Funded: It is anticipated that fourteen projects will be funded at the maximum level; more than fourteen projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

2. Priority Area Number FV–02–93

Demonstration Training Models for Improved Access and Legal Representation for Victims of Domestic Violence.

Purpose: To design and implement a demonstration model/course to train State (including city and county) prosecutors to successfully try cases of domestic violence. These models, when implemented, should enhance prosecutor's skills in handling domestic violence cases. The training should incorporate the cooperative use of law enforcement organizations and victims advocacy groups in the design and implementation of the program.

Eligible Applicants: State, Territories, and local private nonprofit agencies and organizations experienced in the field of legal education, with particular expertise in the planning and implementation of training programs for law enforcement officials in the domestic violence area. Applicants must provide documentation of the required expertise and experience in this area. Applicants also must provide letters of support and commitment for the proposed project from their respective State's Department of Public Safety and the State agency designated as the recipient of the Family Violence Prevention and Services Act funds.

Background: The prevalence of domestic violence is a documented and public fact. The national crime index indicates we are in the midst of a domestic violence epidemic, cutting across all racial and socioeconomic groups. Available information indicates that the majority of domestic violence victims are women.

According to the Surgeon General's report, battering is the single largest cause of injury to women in the United States. Battering is a systematic pattern of violent, controlling, and coercive behaviors employed by an abusive person to threaten, frighten, injure and ultimately control the thoughts, beliefs, and behaviors of the victim of this violence.

In the past, the Department of Health and Human Services has joined with the Department of Justice in support of training for law enforcement officials in the means of combating domestic violence through policy development and the training of frontline law enforcement officers. These nation-wide training projects were planned and implemented by national organizations, representative of law enforcement agencies and organizations.

VOL
58
ISS
125
JL
1
1993
UMI

Beginning in FY 1993, we seek to initiate projects that will continue the support for training in the law enforcement community and which are appropriate for the Department's expanded training and technical assistance activities. The ultimate goal of this activity is the effective legal representation of domestic violence victims. In our efforts to achieve that goal we need to determine what specific legal training and technical assistance approaches can be most effective.

Minimum Requirements for Project Design: In order to compete successfully in this priority area the applicant should develop a plan which:

- Includes, as a critical element, a description of the course format and curriculum citing the various methods and techniques relating to prosecuting cases of domestic violence.
- Describes, as another critical element, the topics that should be discussed in the course/training and describes how and to what extent victim advocacy organizations and law enforcement officials will be involved in the development of the curriculum and implementation.
- Describes the proposed efforts and the commitment to replication of the demonstration program on a State-wide basis and the extent advocacy groups and law enforcement officials will assist in its dissemination.
- *Project Duration:* The length of the project should not exceed 12 months.
- *Federal Share of the Project:* The maximum Federal share of the project is not to exceed $35,000 for the 1-year project period. Applications for lesser amounts also will be considered for this project.
- *Matching Requirement:* Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $35,000 in Federal funds must include a match of at least $8,750.

Anticipated Number of Projects to be Funded: It is anticipated that six projects will be funded at the maximum level; more than six projects may be funded depending upon the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

3. Priority Area Number FV–03–93

National Resource Center for Family Violence Prevention and Services, and Special Issue Resource Centers for Information, Training, and Technical Assistance

Purpose: The purpose of the National Resource Center and the Special Issue Resource Centers is to provide resource information, training, and technical assistance to Federal, State, and Indian Tribal agencies, as well as to local domestic violence programs and to other professionals who provide services to victims of domestic violence.

The statute requires that the Department establish and maintain a National Resource Center for Family Violence Prevention and Services (NRC) and up to six Special Issue Resource Centers (SIRCs), (see section 308(a)(2)).

On a nationwide basis, a network composed of the NRC and the SIRCs will offer resource, policy, and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professional and interested parties on issues pertaining to domestic violence. The NRC will maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics relating to the incidence and prevention of family violence and the provision of immediate shelter and related assistance. The SIRCs shall provide a specialization, on a nationwide basis, in at least one area of domestic violence service, prevention, or law.

Eligible applicants: Private nonprofit organizations that focus primarily on domestic violence. Applicants must have documented organizational experience in the area of domestic violence in the specific subject area for which it is applying. The applicant must have an advisory board and the applicant's advisory board representation should be diverse geographically as well as culturally. Applicants must be able to demonstrate strong support for their proposed efforts from domestic violence advocates from across the country and the region for their designation as a national or special issue resource center.

Background: To comply with the NRC mandate, the Office of Community Services seeks to support a nationwide effort that is staffed by an expert multi-disciplinary team that can respond to requests for resource, policy, and training assistance from individuals, agencies and organizations at the Federal, State and local levels.

Because of our concerns for administrative efficiency, ACF has concluded that the desired effective relationships and anticipated coordination between the NRC and the SIRCs will be greatly enhanced with the establishment and maintenance of three (3) SIRCs. A review of section 308 indicates that there are proposed areas of domestic violence service, prevention, or law that clearly overlap and may be combined with no loss of emphasis. The proposed three SIRCs will provide leadership, resource information and materials, training, technical assistance and professional consultation in the following areas of domestic violence, prevention, and services:

(1)-Special Issue Resource Center for Domestic Violence: Civil and Criminal Justice

(a) Criminal justice responses to domestic violence, including court-mandated abuser treatment.

(b) The use of the self-defense plea by domestic violence victims.

(c) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation.

(ii) Special Issue Resource Center for Domestic Violence: Child Protection and Custody

(a) Improving the response of Child Protective Service agencies to battered mothers of abused children.

(b) Child custody issues in domestic violence cases.

(iii) Special Issue Resource Center for Domestic Violence: Health Care and Access

Improving interdisciplinary health care responses and access to health care resources for victims of domestic violence.

Considered together, the National Resource Center and the Special Issue Resource Centers will constitute a domestic violence prevention network and will provide assistance to Federal, State and local agencies, organizations and individuals involved in domestic violence prevention, identification, services, and treatment in related areas. To that end, questions related to the type and extent of the assistance needed by the field must be addressed. In addition, questions related to the shared use of current electronic capabilities, how the assistance and support for the field may be best communicated, and questions relative to the state-of-the-art on prevention, identification, treatment, and services in domestic violence must also be discussed.

Additionally, the provision of assistance and consultation must be conducted in a manner that takes into account varying circumstances, e.g., conditions in the field, and the target

populations to be addressed. This level of responsiveness and sensitivity requires that questions of flexibility, options for services delivery, cost, and the appropriateness of content be addressed.

It is expected that on a nationwide basis the NRC would have a knowledge building and dissemination capacity and exhibit a systematic approach to developing issues for the field in close cooperation with the Special Issue Resource Centers. To that end, the NRC would assume a leadership role in the compilation, analysis, and synthesis of research, including that funded by Federal, State, and local agencies, foundations, advocacy organizations, professional associations and universities; convene work groups and conferences and publish and disseminate proceedings on the state-of-the-art in selected areas of research, demonstrations, and intervention techniques; identify areas where additional information and research is needed to complement policy and practice and suggest next steps for additional data compilation, innovative demonstrations, program administration, and service program evaluations.

The Special Issue Resource Centers would have the ability to deliver highly individualized technical assistance which enables a user to solve a specific problem. In addition to on-site assistance, the SIRCs would identify, develop, and disseminate findings and technical assistance packages for replication of effective services, prevention and training programs; and identify new areas of demonstration and services improvement needed to address domestic violence issues in their respective topical areas.

The Office of Community Services intends to support a National Resource Center for Family Violence Prevention and three Special Issue Resource Centers through Cooperative Agreements. (A Cooperative Agreement is Federal financial aid in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and project staff will be identified and agreed upon prior to award.)

Applicants may apply to provide National Resource Center services, or Special Issue Resource Center services and may submit applications for more than one center. However, in the event that the applicant does apply for more than one center, a separate application for each center would be required. Applicants must clearly indicate whether funding is being sought to support the National Resource Center or the Special Issue Resource Centers. When applying for the Special Issue Resource Centers, the applicant must specify the topical area(s) being addressed.

National Resource Center for Domestic Violence Prevention and Services

Specific areas related to the efforts of the National Resource Center will include:

(i) Identifying emerging domestic violence issues and preparing information and policy papers addressing such issues;

(ii) Identifying, documenting and developing innovative or exemplary resources, and assisting the field in adapting such resources to specific needs; and

(iii) Maintaining a central resource library to collect, prepare, analyze, and disseminate information and statistics.

Specific areas related to the efforts of the Special Issue Resource Centers will include:

(i) Identifying, documenting and developing innovative training curricula, materials and manuals for specific program needs;

(ii) Providing technical assistance, training and consultation to improve program administration, service delivery, and to promote the utilization of resources and state-of-the-art techniques related to domestic violence, including methods and techniques for program implementation and evaluation; and

(iii) Developing a network of professionals in domestic violence and coordinating the input and experiences of these individuals with persons, programs or agencies requesting assistance or information.

Minimum Requirements for Project Design

In order to successfully compete under this announcement, the applicant should:

For the National Resource Center

Outline a plan of interaction with OCS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters agency staff.

Describe the immediacy of the need to be addressed and provide information on the specific services the NRC proposes to provide to the field.

Present the technical approach and the specific workplans for the provision of assistance to the field that is nationwide in scope and that include the use of an advisory board; a plan for continued contact with the field, including, if appropriate, an 800 telephone number and direct mailings; a plan for the effective use of electronic communication capability; and a plan for the development and use of a network of experts and for the provision of direct training and consultation, including fees for service, if necessary.

Describe the efforts that would be undertaken to coordinate the NRC activities with national advocacy groups and domestic violence organizations, other national resource centers and clearinghouses, and Federal and State government agencies; identify the organizations and how coordination with them will enhance that NRC's activities and avoid the duplication of efforts.

Provide a plan to determine the need for and to implement special projects relating to policy issues, training curricula, service delivery models or other aspects of services related to services for or the prevention of domestic violence.

Provide a plan to evaluate the efficiency and effectiveness of proposed project activities, and a plan for evaluating and reporting on the effectiveness of the project 6 months after the effective date of the grant.

Describe the proposed NRC staff with appropriate expertise who would provide assistance.

Describe the administrative and organizational structure, the management plan, and the cost structure within which the project would operate; describe the administrative, operational and organizational relationships to be established with the SIRCs that will constitute an effective national network in the domestic violence areas. Charts depicting these structures and the ensuing relationships must be included.

Project Period: The length of the project for the National Resource Center must not exceed 36 months.

Budget Period and Federal Share: The maximum Federal share for the National Resource Center is not to exceed $840,000 for the first 12-month budget period or a maximum of $1.84 million for a 3-year project period based on the availability of funds.

Matching Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $1,840,000 in Federal funds (based on an award of $633,000, per budget period) must include a match of

at least $460,000 (25 percent of total project cost).

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded, the National Resource Center for Family Violence Prevention.

For the Special Issue Resource Centers

Outline a plan of interaction with OCS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters agency staff.

Demonstrate an in-depth understanding of the program/service and access/response issues of the particular SIRC(s) and the problems associated with them.

Describe the immediacy of the need to be addressed and provide information on the specific training and technical assistance services the SIRC(s) would provide to the field.

Present the technical approach and the specific workplans for the provision of training and technical assistance to the field that is nationwide in scope and utilizes the support and facilitating efforts of the NRC; describe a plan for continuous contact with the field, an 800 telephone number and direct mailings; and a plan for the development and use of a network of experts and for the provision of direct training and consultation, including fees for service, if necessary.

Describe the efforts that would be undertaken to coordinate activities with appropriate resources centers, domestic violence advocacy organizations, public agencies, the National Resource Center and affiliated Special Issue Resource Centers in the network to enhance the Center's activities and to avoid duplication.

Provide a plan to determine the need for and to implement special projects related to training curricula, service delivery models or other aspects of the proposed SIRC topic.

Provide a plan to evaluate the efficiency and effectiveness of the proposed project activities within 6 months of the effective date of the grant.

Describe the proposed SIRC staff with appropriate expertise who would provide assistance.

Describe the administrative and organizational structure, the management plan, and the cost structure within which the project would operate; describe the operational and programmatic relationships to be formed with the affiliated SIRCs and the NRC.

Charts depicting the organizational structures and the ensuring relationships must be included.

Project Period: The length of the projects for the Special Issue Resource Centers must not exceed 36 months.

Budget Period and Federal Share: The maximum Federal share for each of the three Special Issue Resource Centers is not to exceed $335,000 for the first 12-month budget period or a maximum of $735,000 for a 3-year project period.

Matching Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share maybe met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $735,000 in Federal funds (based on an award of $245,000, per budget period), must include a match of at least $183,750 (25 percent of total project cost).

Anticipated Number of Projects to be Funded: It is anticipated that three Special Issue Resource Center projects will be funded, i.e., one each in the areas of Civil and Criminal Justice, Child Protection and Custody, and Health Care and Access.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

Part III—The Review Process

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among priority areas depending on statutory provisions, it is critical that the "Eligible Applicants" section under each specific priority area be read carefully.

Only agencies and organizations, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

For-profit organizations are also eligible to participate as subgrantees or subcontractors with eligible public or private non-profit organizations under all of the priority areas.

Any non-profit agency which has not previously received an award from the U.S. Department of Health and Human Services must submit proof of non-profit status with its grant application. The non-profit agency can accomplish this by either making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or submitting a copy of its letter from the IRS under IRS Code Section 501(c)(3). ACF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Applications that are postmarked by the deadline date and are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this part to review and score the applications. The results of this review are a primary factor in making funding decisions.

OCS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by OCS in making funding decisions.

In making decisions on awards, OCS may give preference to applications which focus on or feature: minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed

project by national or community foundations.

To the extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, OCS may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

Using the appropriate evaluation criteria below a panel of at least three reviewers (primarily experts from outside the Federal government) will review each application. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the appropriate evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

Review Criteria for All Priority Areas

Applications under all priority areas will be evaluated against the following criteria.

1. *Objectives and Need for the Project (20 points).* State the specific objectives and needs addressed by the project in terms of its national or regional significance, its theoretical importance, its applicability to policy and practice. Provide a detailed discussion of the "state-of-the-art relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. State the goals or service objectives of the proposal. Provide supporting documentation or other testimonies from concerned interests other than the applicant. Summarize, evaluate and relate relevant data, based on planning or demonstration studies to the proposed project. The application must identify the specific topics or program areas to be served by the proposed project. Maps and other graphic aids may be attached.

2. *Results or Benefits Expected (20 points).* The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, the extent to which the application indicates the anticipated contributions to policy, practice, and theory, and the extent to which the proposed project costs are reasonable in view of the expected results. Identify, in specific terms, the results and benefits, for target groups and human service providers, to be derived from implementing the proposed project. Describe how the expected results and benefits will relate to previous demonstration efforts. Describe in detail evaluation plans and procedures which are capable of measuring the degree to which the project objectives have been accomplished.

3. *Approach (35 points).* The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; relates each task to the objectives and identifies the key staff member who will be the lead person; provides a chart indicating the timetable for completing each task, the lead person, and the time committed; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved.

The extent to which, when applicable, the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

4. *Level of Effort: (25points). Staffing pattern*—Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contributions to be made by key staff.

Competence of staff—Describe the qualifications of the project team including any experiences working on similar projects. Also, describe the variety of skills to be used, relevant educational background and the demonstrated ability to produce final results that are comprehensible and usable. One or two pertinent paragraphs on each key member are preferred to vitae/resumes. However, vita/resumes may be included in the ten pages allowed for attachments/appendices.

Adequacy of resources—Specify the adequacy of the available facilities, resources and organizational experience with regard to the tasks of the proposed project. List the financial, physical and other sources to be provided by other profit and nonprofit organizations. Explain how these organizations will participate in the day to day operations of the project.

Budget—Relate the proposed budget to the level of effort required to obtain project objectives and provide a cost/benefit analysis. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Collaborative efforts—Discuss in detail and provide documentation for any collaborative or coordinated efforts with other agencies or organizations. Identify these agencies or organizations and explain how their participation will enhance the project. Letters from these agencies and organizations discussing the specifics of their commitment must be included in the application.

Authorship—The authors of the application must be clearly identified together with their current relationship to the applicant organization and any future project role they may have if the project is funded.

Applicants should note that non-responsiveness to the section "*Minimum Requirements for Project Design*" will result in a low evaluation score by the panel of expert reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

D. Available Funds

OCS intends to award new grants and cooperative agreements resulting from this announcement during the fourth quarter of FY 1993. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in

the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon proof of satisfactory performance and the availability of funds from future appropriations.

E. Grantee Share of Project Costs

Federal funds will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-Federal share	Total cost
$75,000 75%	$25,000 25%	$100,000 100%

Part IV—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this publication along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, (E.O.) "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau, have elected to participate in the E.O. process and have established a Single Point of Contact (SPOC). Applicants from these fourteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 45 days from application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–93–08) 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included at the end of this announcement.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this program announcement under **DATES**. Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants (OCS–93–08) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, or

2. Sent on or before the deadline date and received by OCS in time to be considered during the competitive review process.

Applications must be postmarked no later than the date to be found at the beginning of the Program Announcement under **DATES**. When mailing proposal packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Late applications: Applications which do not meet the criteria under Deadlines are considered late applications. The ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; if there is widespread disruption of the mail; or if OCS determines a deadline extension to be in the best interest of the Government. However, OCS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A, Page 2 and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, instructions for these forms have been included at the end of Part IV of this announcement.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

Please prepare your application in accordance with the following instructions:

1. *SF 424 Page 1, Application Cover Sheet*

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An

application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information."

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

Item 15. "Estimated Funding Levels"—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Item 15b-e Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a-15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 30, 1993.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program

income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

*Total Direct Charges—*Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—Line 6j. Enter the estimated amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State government should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any,

expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Part 74.51, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column "(b) First." If a third period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. *Project Summary Description*

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. *Program Narrative Statement*

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Objectives and Need for the Project;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Level of Effort.*

The specific information to be included under each of these headings is described in section C of part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½″×11″ plain white paper, with 1″ margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½″×11″ sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. *Organizational Capability Statement*

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. *Part V—Assurances/Certifications*

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

—A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part III, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying; and
—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your applicant is not received within eight weeks after the deadline date, please notify ACF by telephone at (202) 401–5529.

Dated: June 28, 1993.

Jacqueline G. Lemire,

Acting Director, Office of Community Services.

BILLING CODE 4184–01–M

VOL 58 ISS 125 JL 1 1993 UMI

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

VOL 58 ISS 125 JL 1 1993 UMI

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (4-88)

UMI
1993
JUL 1
ISS 125
VOL 58

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separated for shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding periods

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining the multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2.Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

VOL 58 ISS 125 JL 1 1993 UMI

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Applicant organization

Title

Date submitted

State Single Points of Contact

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Telephone (202) 727–9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114.

Georgia

Charles M. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of

Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893 FAX (808) 548–8172.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman, Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010.

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

Territories

Guam

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Northern Mariana Islands,

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Puerto Rico

Patria Custodio/Israel Soto Marrero,
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Puerto Rico Planning Board,
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Virgin Islands

Jose L. George,
Director,
Office of Management and Budget,
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Charlotte Amalie, V.I. 00802,
Telephone (809) 774–0750.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

BILLING CODE 4184-01-M

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

[FR Doc. 93–15609 Filed 6–30–93; 8:45 am]
BILLING CODE 4184–01–C

VOL 58 ISS 125 JL 1 1993 UMI

federal register

Thursday
July 1, 1993

Part VI

Department of Education

34 CFR Part 378

Projects for Initiating Recreational Programs for Individuals With Disabilities; Rule and Notice Inviting Applications

VOL 58 ISS 125 JL 1 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 378

RIN 1820–AB23

Projects for Initiating Recreational Programs for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Projects for Initiating Recreational Programs for Individuals with Disabilities program in order to implement changes made by the Rehabilitation Act Amendments of 1992. The amended regulations add new application requirements, provide for increasing matching requirements during the period of grant assistance, expand the types and purpose of activities that may be carried out, require that grantees advise applicants for and recipients of project services of the availability of assistance under the State Client Assistance Program, and add reporting requirements as a condition for continuation funding.

EFFECTIVE DATE: These regulations take effect either August 16, 1993 or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9796. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement changes in statutory provisions of the recreational discretionary grant program as authorized in title III, section 316 of the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569), enacted October 29, 1992.

The purpose of this program is to initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration. To the maximum extent possible, these programs and activities are to be provided in settings with peers who are not individuals with disabilities.

This program supports the National Educational Goals. Specifically, the program addresses Goal 5, which calls for every adult American to be literate and to possess the skills necessary to compete in a global economy, by providing improved vocational rehabilitation opportunities for an increased number of people with disabilities.

On May 13, 1993 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 28448). The major issues related to this program are discussed in the preamble to the NPRM.

As a result of public comments, three changes have been made in the final regulations. First, the provision requiring services to be offered in settings with peers who are not individuals with disabilities, if possible and appropriate, has been strengthened to require that services be provided in integrated settings to the maximum extent possible. Second, the number of points assigned to the selection criterion "Impact of the project" has been increased while the number of points assigned to the selection criterion "Evaluation plan" has been reduced. Third, the use of the term "special" in the title of the program and throughout the regulations has been omitted.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eight parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. Comments relating to the grant renewal authority under this program will be considered in the development of separate proposed regulations to be published at a later date and are not dealt with in these final regulations.

Title of Program (Part 378)

Comments: One commenter recommended that the Department remove the word "Special" from the title of this program. The commenter expressed the view that this term, when applied to services for people with disabilities, carries with it the connotation that those services and activities are to be developed and delivered in a separate and segregated fashion, and thus conflicts with the basic intent of the Rehabilitation Act and the Americans with Disabilities Act (ADA).

Discussion: The Secretary agrees that the use of the term "Special" in this context is inappropriate and should be eliminated.

Changes: The term "Special" has been deleted from the title of this program and throughout 34 CFR part 378.

Settings With Peers (§ 378.1)

Comments: Two commenters suggested strengthening the provision requiring services to be offered in settings with peers who are not individuals with disabilities, if possible and appropriate. One commenter proposed that all projects be required to provide activities in integrated settings, i.e., provided in settings with individuals who are not disabled. The other commenter recommended that programs and activities be provided in integrated settings to the maximum extent possible.

Discussion: Section 316(a)(1) of the Act provides that recreational activities should be provided in settings with peers who are not individuals with disabilities whenever possible and appropriate. Thus, program regulations in § 378.1 cannot require without exception that all project activities be integrated. However, the Secretary agrees that language should be added to emphasize that all programs and activities should be carried out in a truly inclusive and integrated manner to the greatest extent possible.

Changes: Section 378.1 has been revised to include the phrase "to the maximum extent possible."

Who Is Eligible for an Award (§ 378.2)

Comments: One commenter recommended that this section be revised to indicate that organizations that provide vocational rehabilitation services to individuals with disabilities and organizations that provide recreational services to the general public are eligible to apply for these funds.

Discussion: Both types of organizations are eligible under this program as long as they are not profit-making. The statute limits grant eligibility to State and other public agencies and private nonprofit organizations.

Changes: None.

Employment Outcome

Comments: One commenter asked whether employment is an expected outcome under these projects.

Discussion: Employment is not an expected outcome under this program, but the recreational services provided are to enhance and facilitate skills leading to employment.

Changes: None.

Selection Criterion—Impact of the Project and Evaluation Plan (§§ 378.20 (a) and (e))

Comments: One commenter recommended that the points allocated to "Impact of the project" be increased and those allocated to "Evaluation plan" be decreased. Both are equally weighted in the NPRM.

Discussion: The Secretary agrees that the selection criterion on "Impact of the project" should be given greater weight.

Changes: The points allocated to "Impact of the project" have been increased from 15 points to 20 points and the points allocated to "Evaluation plan" have been lowered from 15 points to 10 points.

Selection Criteria—Plan of Operation (§ 378.20(b))

Comments: One commenter recommended that one of the eight components in the selection criterion entitled "Plan of operation" in § 378.20(b) be given more points to ensure that projects that take place in settings with peers who are not individuals with disabilities will be given greater weight.

Discussion: The proposed selection criterion entitled "Plan of operation" addresses various aspects of an applicant's project, including the extent to which individual project activities are provided in integrated settings. This selection criterion has been allocated a total of 25 points out of a possible 100 points. The eight component elements of this criterion are not individually weighted. The Secretary believes the number of points allocated for the criterion as a whole is appropriate and does not need to be increased.

Changes: None.

Selection Criterion—Quality of Key Personnel (§ 378.20(c))

Comments: A commenter requested that this section be revised to require the project director and other key staff to meet existing professional licensure or certification requirements.

Discussion: While the Secretary agrees that project personnel should be highly qualified, requiring all key staff to meet existing licensure or recognized professional certification standards would be very limiting and overly prescriptive. Moreover, the experience of the proposed project director, as well as other key personnel, will be reviewed by peer reviewers, and the adequacy of their experience and qualifications will be evaluated accordingly. The Secretary believes that it is up to the applicant to state the adequacy and relevance of the qualifications and experience of its key personnel.

Changes: None.

Individuals With Disabilities From Minority Backgrounds (§ 378.3(a)(4))

Comments: One commenter requested clarification of proposed § 378.3(a)(4), which requires each applicant in its application to describe the manner in which it will address the needs of individuals with disabilities from minority backgrounds. The commenter asked whether appropriate and documented outreach to encourage minority participation could constitute compliance, or whether actual provision of services to minority members is required.

Discussion: The requirements of this section could be met by the provision of outreach activities to encourage minority participation. Widespread and continuing outreach is now required. Each project must make substantial efforts to include minority members among the individuals it serves. The Secretary expects that in most instances this outreach will result in minority participation in the project.

Changes: None.

Type of Projects (§ 378.6)

Comments: A commenter suggested that this section be revised to include an express reference to public park and recreation agencies and that program support be limited to entities that are in the business of operating recreational programs.

Discussion: The Secretary agrees that recreational services providers are essential to this program. However, the Secretary can neither limit the eligible entities to recreational service providers only, nor limit the types of services provided to recreational services only. All public agencies and private nonprofit organizations are eligible to receive a grant under this program, whether or not their exclusive or primary activity is operating a recreational program.

Changes: None.

The ADA and Section 504 of the Act

Comments: One commenter expressed concern that these regulations make no mention of the applicability of regulations implementing section 504 of the Act or titles II and III of the ADA to grant recipients.

Discussion: In 34 CFR 75.500, which applies to this program, each grantee under a discretionary grant program is required to comply with the Department's section 504 regulations in 34 CFR part 104. The provisions of titles II and III of the ADA apply by their own terms.

Changes: None.

Miscellaneous Comments

Comments: A couple of commenters requested that additional information be included in the application package. One commenter requested more specific information about where program findings are to be disseminated. The same commenter also requested that the application package include information about the Client Assistance Program (CAP) and the availability of CAP materials.

Discussion: The Secretary believes that § 378.3(a)(1) is sufficiently clear as to whom the Secretary expects project findings to be disseminated. Also, each applicant is evaluated on its plan for dissemination in § 378.20(g) and can be given up to 10 points under this criterion. The Secretary does not believe it is beneficial to restrict or prescribe to the applicant to whom the findings should be disseminated.

The application package contains a general statement regarding the requirement to provide information on the CAP and further states that, if anyone is in need of additional information about a specific CAP, they can call the Education Department number that is provided.

Changes: None.

Comments: A commenter requested that a definition of "individual with a severe disability" be included in the application package.

Discussion: The appropriate definition of this term is included in technical changes to the general vocational rehabilitation services projects regulations in 34 CFR part 369, which is made applicable to this program in § 378.5.

Changes: None.

Comments: A commenter wanted clarification of whether in-kind contributions can be used to meet the program match requirement.

Discussion: In-kind contributions can be used to meet the program matching requirement. Section 378.4(a) makes applicable departmental grants regulations in 34 CFR parts 74 and 80. These regulations, which apply respectively to nonprofit organizations and State and local governments, expressly permit the value of in-kind

VOL 58 ISS 125 JL 1 1993 UMI

contributions to be used as match in §§ 74.52(b) and 80.24(a)(2).

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 378

Education, Grant programs—recreation, Recreation, Disability or individuals with disabilities, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.128J, Projects for Initiating Recreational Programs for Individuals with Disabilities.)

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 378 to read as follows:

PART 378—PROJECTS FOR INITIATING RECREATIONAL PROGRAMS FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

378.1 What is the Projects for Initiating Recreational Programs for Individuals with Disabilities program?
378.2 Who is eligible for an award?
378.3 What are the application requirements?
378.4 What regulations apply?
378.5 What definitions apply?
378.6 What types of projects may the Secretary fund?

Subpart B—How Does the Secretary Make an Award?

378.20 What selection criteria does the Secretary use?

Subpart C—What Conditions Must Be Met after an Award?

378.30 What is the duration of grants?
378.31 What are the matching requirements?
378.32 What are the additional requirements for grantees?

Authority: 29 U.S.C. 711(c) and 777(f), unless otherwise noted.

Subpart A—General

§ 378.1 What is the Projects for Initiating Recreational Programs for Individuals with Disabilities program?

This program is designed to initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration. To the maximum extent possible, these programs and activities are to be provided in settings with peers who are not individuals with disabilities.

(Authority: Sec. 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.2 Who is eligible for an award?

States and other public agencies and private nonprofit organizations are eligible to receive a grant under this program.

(Authority: Secs. 12(e) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.3 What are the application requirements?

Each grant application must include—

(a) A description of—

(1) The manner in which the findings and results of the project will be disseminated to the interested public, especially to State and private rehabilitation agencies and organizations, to university-based leisure and recreation programs, to community recreation providers, and to related professional associations. The methods of dissemination may include, but are not limited to, videos, presentations, manuals, and newsletters;

(2) If applicable, the extent to which any service program for which the applicant has received funding previously under this part has been continued or will be continued after Federal funding ends;

(3) The means by which the service program proposed in the application will be continued after Federal funding ends; and

(4) The manner in which the applicant will address the needs of individuals with disabilities from minority backgrounds.

(b) An assurance that each project, to the greatest extent possible, will use existing resources and facilities to carry out the recreational activities provided by the project.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: Secs. 21(b)(5) and 316(a)(4) of the Act; 29 U.S.C 718b and 777(f))

§ 378.4 What regulations apply?

The following regulations apply to the Projects for Initiating Recreational Programs for Individuals with Disabilities program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 378.

(c) The regulations in 34 CFR part 369.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

§ 378.5 What definitions apply?

The definitions in 34 CFR Part 369 apply to this program.

(Authority: Sec 12(c) of the Act; 29 U.S.C. 777(c))

§ 378.6 What types of projects may the Secretary fund?

(a) This program supports projects that initiate programs of recreational services and related experiences for individuals with disabilities.

(b) Activities carried out under this program may include, but are not limited to, arts, music, handicrafts, homemaking, camping, dance, 4–H activities, scouting, physical education and sports, vocational skills development, leisure education, leisure networking, leisure resource development, and related recreational activities designed—

(1) To aid in employment; and
(2) To maximize mobility, socialization, independence and community integration.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

Subpart B—How Does the Secretary Make an Award?

§ 378.20 What selection criteria does the Secretary use?

(a) *Impact of the project* (20 points).
(1) The Secretary reviews each application to determine the extent to which the proposed project provides individuals with disabilities with recreational activities and related experiences that will enhance their employment, mobility, socialization, independence, and community integration skills.
(2) The Secretary looks for information that shows—
(i) The number of individuals with disabilities expected to be served;
(ii) The types of individuals with disabilities expected to be served;
(iii) The types of recreational activities expected to be available; and
(iv) How the proposed recreational activities and related experiences will improve the employment, mobility, socialization, independence, and community integration skills of the individuals with disabilities to be served.

(b) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—
(1) The quality of the design of the project;
(2) The extent to which the project includes specific intended outcomes that—
(i) Will accomplish the purposes of the program to initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration;
(ii) Are attainable within the project period given the project's budget and other resources;
(iii) Are objective and measurable for purposes of evaluation; and
(iv) Include specific objectives to be met during each budget period that can be used to determine the progress of the project toward meeting its intended outcomes;
(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;
(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding;
(5) The extent to which the applicant's plan identifies the numbers of eligible clients by type of disability and the numbers of clients with severe disabilities available to participate in the project;
(6) The extent to which the applicant plans to conduct outreach activities to recruit participants;
(7) The extent to which the applicant's plan ensures that individuals who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and,
(8) The extent to which project activities are provided in settings with peers who are not individuals with disabilities.

(c) *Quality of key personnel* (10 points). The Secretary reviews each application to determine the quality of the key personnel proposed for the project, including—
(1) The relevant experience and training of the project director;
(2) The relevant experience and training of each of the other key personnel to be used on the project;
(3) The amount of time that each key person will commit to the project; and
(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—
(i) Persons with disabilities;
(ii) The elderly;
(iii) Women; and
(iv) Members of racial or ethnic minority groups.

(d) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine whether—
(1) The budget for the project is adequate to support the project activities and the Federal matching requirements;
(2) Costs are reasonable in relation to the objectives of the project; and
(3) The application contains sufficient information on how the project will meet its matching requirement and increase its share of project costs during the project period, including an identification of the sources and amounts of matching funds.

(e) *Evaluation plan* (10 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—
(1) Are appropriate for the project;
(2) Will determine how successful the project is in meeting its intended outcomes; and
(3) Are objective and produce data that are quantifiable.

(f) *Adequacy of resources* (5 points). The Secretary reviews each application for information to determine that the applicant plans to devote adequate resources to the project, including—
(1) The facilities that the applicant plans to use;
(2) The equipment and supplies that the applicant plans to use; and
(3) The recordkeeping capabilities of the applicant for financial and evaluation purposes.

(g) *Plan for dissemination of findings and results of the project* (10 points). The Secretary reviews each application to determine the quality of its plan to disseminate the findings and results of the project to the interested public to facilitate replication in other locations.

(h) *Plan for sustaining the program after the project period* (10 points). The Secretary reviews each application to determine the quality of its plan to sustain the project after the termination of Federal grant support.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: Secs. 12(c), 306(h), and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

Subpart C—What Conditions Must Be Met After an Award?

§ 378.30 What is the duration of grants?

Grants under this program shall be for a maximum period of three years unless renewed in accordance with the criteria in section 316(a)(2) of the Act.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.31 What are the matching requirements?

The Federal share of the costs of activities under this program is 100 percent for the first year of the grant, 75 percent for the second year, and 50 percent for the third year.

(Authority: Secs. 12(c) and 316 of the Act: 29 U.S.C. 711(c) and 777(f))

§ 378.32 What are the additional requirements for grantees?

(a) Recreational projects funded under this program must maintain, at a minimum, the same level of services over a three-year project period.

(b) Each grantee under this program shall prepare and submit annually to the Secretary a report on the results of its grant activities, including any other information the Secretary may require, as part of its application for continuation assistance.

UMI
VOL
58
ISS
125
JL
1
1993
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(c) Each grantee shall advise applicants for and recipients of services under its project or, as appropriate, the parents, family members, guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program, including information on seeking assistance from that program.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

[FR Doc. 93–15644 Filed 6–30–93; 8:45 am]
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Projects for Initiating Recreational Programs for Individuals With Disabilities; Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration.

Eligible Applicants: States and other public agencies and private nonprofit agencies and organizations.

Deadline for Transmittal of Applications: August 2, 1993.

Deadline for Intergovernmental Review: October 1, 1993.

Applications Available: July 2, 1993.

Available Funds: $2,570,103.

Estimated Range of Awards: $85,000-$110,000.

Estimated Average Size of Awards: $92,000.

Estimated Number of Awards: 27.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 378.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 378.20.

For Applications: Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tony Cavataio, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2740. Telephone: (202) 205–8206. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 29 U.S.C. 711(c) and 777(f).

William L. Smith,

Acting Assistant Secretary Office of Special Education and Rehabilitative Services.

[FR Doc. 93–15643 Filed 6–30–93; 8:45 am]

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VOL
58

ISS
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1993

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federal register

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Part VII

Federal Emergency Management Agency

44 CFR Part 354
Fees for Services to Support FEMA's Offsite Radiological Emergency Preparedness Program; Interim Rule

VOL
58
ISS
125
JL
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1993
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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 354

RIN 3067–AC10

Fee for Services to Support FEMA's Offsite Radiological Emergency Preparedness Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule establishes the policy and administrative basis for FEMA to assess fees from licensees of commercial nuclear power plants. The purpose of this interim rule is to outline the policies and procedures for recovering the full amount of the costs incurred by FEMA to provide services for offsite planning and emergency preparedness for fiscal year (FY) 1993. Fees received under the interim rule are expected to offset Federal appropriations obligated for FEMA's Radiological Emergency Preparedness (REP) program. FEMA has requested a waiver from the U.S. Department of Treasury's cash management provisions of directive I TFM 6–8000, Section 8025.10 related to the 5-day time frame for billing for services rendered and the 30-day time frame for remission of payments by licensees.

DATES: This interim rule is effective July 1, 1993.

Comments from the public on this interim rule are encouraged and invited on or before August 16, 1993.

ADDRESSES: Written comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472; (fax)(202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Vern Wingert, Chief, Policy Development Branch, Radiological Preparedness Division, Office of Technological Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (tel.)(202) 646–2872.

SUPPLEMENTARY INFORMATION: This interim rule is published under the authority of Public Law 102–389, October 6, 1992, 106 stat. 1571–1619, which provides:

"The Director of the Federal Emergency Management Agency shall promulgate through rulemaking a schedule of fees applicable to persons subject to the Federal Emergency Management Agency's Radiological Emergency Preparedness regulations. The aggregate charges assessed pursuant to this section during fiscal year 1993 shall approximate, but not be less than, 100 per centum of the amounts anticipated by the Federal Emergency Management Agency to be obligated for its Radiological Emergency Preparedness program. * * * "[1]

On March 6, 1991, FEMA published in the **Federal Register** (56 FR 9452–9459) the final rule, 44 CFR part 353, that established a structure for assessing user fees to the Nuclear Regulatory Commission's (NRC) licensees for site-specific services provided by FEMA that directly contribute to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended.

Under 44 CFR part 354, fees will be assessed based on costs incurred or obligated for both site-specific and generic services performed by FEMA staff and FEMA contractors. Licensees with multiple sites will receive consolidated bills.

A comparison of the fee structures under parts 353 and 354 follows with a highlighting of similarities and differences:

(1) Authority. The authority upon which part 353 was constituted and implemented is the Independent Offices Appropriations Act of 1952. This authority is not limited to any specific fiscal year. The authority for part 354 is Public Law 102–389 and is restricted to Fiscal Year (FY) 1993. While this interim rule is restricted by Public Law 102–389 to FY 1993, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted.

(2) Scope. FEMA must assess NRC licensees for 100% of the FY 1993 costs of the REP Program under part 354. Under 44 CFR part 353, FEMA could only assess licensees for costs attributable to site-specific services that directly related to the fulfillment of NRC licensing requirements such as exercise evaluation. Based on the administration of part 353, fees assessed for such services were expected to recover approximately 40% to 60% of the annual REP Program budget.

(3) Assessment methodology. The method used for assessing fees under part 353 was based on time spent on applicable services multiplied by the established fiscal year hourly rate for FEMA personnel and on actual costs for applicable services provided by FEMA-contract personnel. Costs for generic services were not recovered. The method proposed under part 354 is based on recovery of both site-specific and generic costs incurred or obligated by FEMA personnel and by FEMA contractors.

(a) Site-specific services. While site-specific services billable under part 353 included only those services that directly related to NRC licensing requirements, site-specific services billable under part 354 include all such services whether or not they directly support NRC licensing requirements.

(b) Generic services. While licensees were not billed for the costs of generic services under part 353, they are under part 354.

While this interim rule is restricted by Public Law 102–389 to fiscal year (FY) 1993, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted. The Administration has proposed in the FY 1994 budget to continue collecting fees for FY 1994 and subsequent fiscal years.

While FEMA is employing a new approach for the assessment and collection of fees from licensees for FY 1993, part 353 remains in effect and will apply in any subsequent fiscal year for which FEMA is not authorized to collect user fees for generic services.

Services provided by FEMA in support of preparedness for commercial nuclear power plant emergencies are provided in support of a Memorandum of Understanding (MOU) between NRC and FEMA (50 FR 15485, April 18, 1985) and regulations issued by both FEMA (44 CFR parts 350, 351 and 352) and NRC (10 CFR parts 50 and 52). The referenced NRC–FEMA MOU is included as Appendix A to part 354.

Emergency response plans and exercises are evaluated under joint FEMA–NRC criteria, NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee can submit a utility plan to the NRC. FEMA, as requested by the NRC through the MOU, also will make assessments and provide findings on utility-developed plans and exercises, evaluated under Supplement 1.

Under § 354.4, Assessment of Fees, of the interim rule, the determination of costs is divided into three groups: FEMA Personnel; FEMA Contract Personnel; and Other FEMA Contract Services. FEMA estimates that the hourly rate for FEMA Personnel will be in the range of $110 to $130, based on salaries and expenses of an estimated $5,872,000, including travel, divided by the actual number of site-specific hours reported for FY 1993. FEMA will

[1] See § 354.3 for definition of "Persons or Licensee."

recover an estimated $4,300,000 for its Contract Personnel in FY 1993, and an estimated $300,000 for Other Contract Services.

The annual billing provision and the 45-day time frame for payment of FEMA's bills are incorporated in this interim rule contingent upon the granting of a waiver from the U.S. Department of Treasury. If the Department of the Treasury does not grant a waiver, FEMA, if practicable, will execute an estimated billing procedure, and will modify this interim rule accordingly.

Regulatory Flexibility Act

The Director certifies that this interim rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule will not apply to a substantial number of small entities as defined by the Small Business Size Standards, 13 CFR 121.601, Division E, Major Group 49, as amended 57 FR 62520, December 31, 1992, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on a substantial number of small entities.

National Environmental Policy Act

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, Environmental Considerations, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Regulatory Analysis

This interim rule is not a "major rule" as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies or geographic regions and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory analysis is required.

Paperwork Reduction Act

This rule does not contain collection of information requirements and is not subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

Executive Order 12612, Federalism

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee from the Rules Docket Clerk, above.

List of Subjects in 44 CFR Part 354

Disaster assistance, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, and Technical assistance.

Accordingly, 44 CFR is amended by adding part 354 to read as follows:

PART 354—FEE FOR SERVICES TO SUPPORT THE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

Sec.

354.1 Purpose.
354.2 Scope.
354.3 Definitions.
354.4 Assessment of fees
354.5 Costs for FEMA and FEMA-contract services.
354.6 Description of site-specific and generic services.
354.7 Billing and payment of fees.
354.8 Failure to pay.

Appendix A to Part 354—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

Authority: Sec. 109, Pub. L. 96–295, 94 Stat. 780; Sec. 2901, Pub. L. 98–369, 98 Stat. 494; Title III, Pub. L. 102–389, 106 Stat. 1571; EO 12148, 3 CFR, 1979 Comp., p. 412 (50 U.S.C. App. 2251 note); EO 12657, 3 CFR, 1988 Comp., p. 611.

§ 354.1 Purpose.

This part sets out policies and procedures for assessment of fees to licensees of commercial nuclear power plants for recovery of at least 100% of the cost of services provided by the Federal Emergency Management Agency (FEMA) through the Radiological Emergency Preparedness (REP) Program, as authorized under title III, Public Law 102–389, 106 stat. 1571. The schedule of fees shall be fair and equitable, and shall reflect the full amount of direct and indirect costs incurred through the provision of regulatory services. Such fees will be assessed in a manner that reflects the use of agency resources for classes of regulated persons and the administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the general fund of the Treasury as offsetting receipts. Assessment and collection of such fees are only authorized during fiscal year 1993.

§ 354.2 Scope.

The regulation in this part applies to all licensees who have applied for or have received:

(a) A license from the Nuclear Regulatory Commission (NRC) to construct, operate or decommission a commercial nuclear power plant;

(b) A possession-only license;

(c) An early site permit;

(d) A combined construction permit and operating license; or

(e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological planning and preparedness.

§ 354.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the Nuclear Regulatory Commission.

(c) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as provision of support for the preparation of offsite radiological emergency response plans and procedures, provision of advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(d) *Persons or Licensee* means the utility or organization that has applied for or has received:

(1) A license from the NRC to operate or decommission a commercial nuclear power plant;

(2) A possession-only license;

(3) An early site permit;

(4) A combined construction permit and operating license; or

(5) Any other NRC licensee that is now or may become subject to requirements for offsite radiological planning and preparedness activities.

(e) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal Departments and agencies as appropriate.

(f) REP means Radiological Emergency Preparedness as in FEMA's REP Program.

(g) *Fiscal Year* means the Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(h) *Federal Radiological Preparedness Coordinating Committee (FRPCC)* means

a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal Departments and agencies as appropriate.

(i) *Site* means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be, constructed.

(j) *Site-specific costs* mean the costs of all offsite radiological emergency planning and preparedness services provided by FEMA and by FEMA contractors concerning the broad geographical area surrounding the locations at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be, constructed.

(k) *Obligate or obligation* refers to a legal reservation of appropriated funds for expenditure.

§ 354.4 Assessment of fees.

Assessments of fees for licensees shall be based on the following methodology that includes both site-specific and generic activities provided by FEMA and through its contractors. Fees will be assessed only for services provided by FEMA and by FEMA contractors and not for the services provided by other Federal agencies involved in the FRPCC or the RACs.

(a) *Determination of costs for FEMA personnel.* The costs for FEMA personnel will be determined by multiplying the number of site-specific hours reported by the FY 1993 hourly rate. The hourly rate will be calculated by dividing the total obligations for salaries and expenses, including travel, by the actual number of site-specific hours reported for FY 1993. Because total obligations for salaries and expenses will serve as the fixed base in this methodology, the generic costs associated with FEMA staff services will be recovered as a proportional part of the site-specific costs. The exact hourly rate will be calculated at the end of FY 1993 when the total number of site-specific hours can be determined.

(b) *Determination of costs for FEMA contract personnel.* The following approach will be used to recover the bulk of the Emergency Management Planning and Assistance (EMPA), contractor support, portion of the REP Program budget. This portion of EMPA funds is used for contractors who perform predominantly site-specific services. Actual site-specific costs obligated will be assessed to the licensees. Obligated generic costs will be assessed proportional to the percentage of the site-specific costs.

(c) *Determination of costs for other FEMA contract services.* The following approach will be used to recover the remaining EMPA funds of the REP Program budget. Obligations solely for generic program work that provides similar potential benefits to all licensees will be divided equally among the licensees on a per site basis.

§ 354.5 Costs for FEMA and FEMA-contract services.

Licensees shall be assessed for site-specific services provided by FEMA personnel based on an established hourly rate. FEMA contract services will be charged either on the basis of actual costs incurred or equally among all licensees as described in § 354.4.

§ 354.6 Description of site-specific and generic services.

Site-specific and generic services provided by FEMA and by FEMA contractors for which licensees shall be assessed fees include but are not limited to the following:

(a) *Site-specific services.*[1] (1) Evaluation of State and local plans and preparedness.

(2) Scheduling of exercises.

(3) Development of exercise objectives and scenarios.

(4) Pre-exercise logistics.

(5) Conduct of exercise and evaluation.

(6) Preparing, reviewing and finalizing exercise reports, notice and conduct of public meetings.

(7) Scheduling, conducting and evaluating remedial exercises, medical services drills, or other exercises and drills including participation in meetings and the preparation and review of reports.

(8) Preparation of findings and determinations on the adequacy or approval of plans and preparedness.

(9) Conduct of the formal 44 CFR part 350 review process.

(10) Providing technical assistance to States and local governments.

(11) Review of licensee submissions under 44 CFR Part 352.

(12) Review of NRC licensee plan submissions under the NRC-FEMA Memorandum of Understanding on Planning and Preparedness in appendix A of this part.

(13) Participation in NRC adjudicatory proceedings and any other site-specific legal costs.

(14) Alert and notification system reviews.

(15) Responses to petitions filed under 10 CFR 2.206.

(16) Disaster-initiated reviews and evaluations.

(17) Congressionally initiated reviews and evaluations.

(18) Licensee requests for audits of the fee program or responses to challenges for FEMA's administration of the fee program.

(b) *Generic services.* (1) Development of guidance, planning standards and policy.

(2) Coordination with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(3) Coordination of REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, Nuclear Management and Resources Council, and the Edison Electric Institute.

(4) Implementation and coordination of REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(5) Participation of REP staff as lecturers or other functions at EMI, conferences and workshops.

(6) Services associated with the assessment of fees, billing, and administration of this part.

§ 354.7 Billing and payment of fees.

FEMA will forward bills to licensees based on the assessment methodology set forth in § 354.4 to recover at least 100% of the cost of services provided by FEMA through its REP Program. The assessments for each site and licensee, as stated above, will reflect both site-specific and generic costs for FEMA staff and contractors. Because of the need to use actual site-specific data in this methodology, FEMA will determine costs for FY 1993 services during the first quarter of FY 1994 and forward one bill to licensees for assessed FY 1993 costs. FEMA bills will be payable by each licensee within 45 days of receipt of invoices. Notwithstanding the above, FEMA reserves the right to assess licensees on an estimated basis at any time during the fiscal year.

§ 354.8 Failure to pay.

In any case where FEMA believes that a licensee has failed to pay a prescribed fee required under this part, procedures

will be implemented in accordance with 44 CFR part 11, subpart C, to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 et seq.).

Appendix A to Part 354—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713). The substantive changes in the new MOU deal principally with the FEMA handling of NRC requests for findings and determinations concerning offsite planning and preparedness. The basis and conditions for interim findings in support of licensing are defined, as well as provisions for status reports when plans are not complete. The text of the MOU follows.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purposes

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated memorandum of understanding became effective November 1, 1980. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the January and November 1980 MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles, agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergency response plans [1] and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal agencies for responding to accidents involving peacetime nuclear emergencies.

II. Authorities and Responsibilities

FEMA-Executive Order 12148 charges the Director, FEMA, with the responsibility to establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies (Section 2–101) and represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs. (Section 2–104.)

On December 7, 1979, the President in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.

2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources staffing levels and qualifications, and equipment adequacy). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG–0654/FEMA–REP–1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy); or (3) plans are not adequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If in FEMA's view the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1, and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that may adversely affect public health and safety that must be corrected in order to provide reasonable assurance that the plans can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State and local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate

[1] Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f) may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982 (47 FR 10758).]

NRC—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

III. Areas of Cooperation

A. NRC Licensing Reviews. FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearings boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the Executive Legal Director of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this MOU shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA review of offsite plans and preparedness. NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. Preparation for and evaluation of joint exercises. FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR part 350. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that may adversely impact public health and safety that must be corrected by the affected State and local governments in order to provide reasonable assurance that the plan can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. Within 30 days of the exercise, a draft exercise report will be sent to the State, with a copy to the Regional Assistance Committee, requesting comments and a schedule of corrective actions, as appropriate, from the State in 30 days. When there are deficiencies of the types noted in 2 above, and when there is a potential for a remedial exercise, FEMA Headquarters will promptly discuss these with NRC Headquarters. Within 90 days of the exercise, the FEMA report will be forwarded to the NRC Headquarters. Within 15 days of receipt of the FEMA report, NRC will notify FEMA in writing of action taken with the licensee relative to FEMA initiatives with State and local governments to correct deficiencies identified in the exercise.

D. Emergency planning and preparedness guidance. NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

E. Support for document management system. FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

At NRC this includes Document Management System support to the extent that it does not affect duplication or records retention. At FEMA, this includes technical support to the Radiological Emergency Preparedness Management Information System. This agreement is not intended to include the automated information retrieval support for the national level emergency response facilities.

F. Ongoing NRC research and development programs. Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each

provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

G. Public information and education programs. FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for coordination of emergency planning, preparedness, and response activities between the two agencies. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria as appropriate in their respective jurisdictions.

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: April 3, 1985.

William J. Dircks,

Executive Director for Operations.

Approved for the Federal Emergency Management Agency.

Dated: April 3, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

Dated: June 28, 1993.

James L. Witt,

Director.

[FR Doc. 93–15687 Filed 6–30–93; 8:45 am]

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VOL
58
ISS
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Federal Register

Thursday
July 1, 1993

Part VIII

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1993 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1993

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular, interim changes and other information pertinent to Federal sureties may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 874-6850. Interim changes are published in the FEDERAL REGISTER as they occur. For the most current list of Treasury authorized companies, dial into our Public Bulletin Board system at (FTS/202) 874-7214.

The following companies have complied with the law and the regulations of the Department of the Treasury and are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)].

Diane E. Clark
Assistant Commissioner, Financial Information
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acceptance Insurance Company. BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. PHONE: (404) 344-8800. UNDERWRITING LIMITATION b/: $3,332,000. SURETY LICENSES c/: AZ, AR, CO, IL, IA, KY, MI, NE, ND, OH, TN, VA. INCORPORATED IN: NEBRASKA.

ACCREDITED SURETY AND CASUALTY COMPANY, INC. BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION b/: $575,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY. BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (312) 902-5616. UNDERWRITING LIMITATION b/: $1,559,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aetna Casualty & Surety Company of America. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $16,117,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $119,119,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 31st Street, Downers Grove, IL 60515. PHONE: (708) 971-4700. UNDERWRITING LIMITATION b/: $25,377,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Aetna Casualty Company of Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $4,655,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Commercial Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $4,723,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $375,167,000. SURETY LICENSES c/: CT, DC, PA. INCORPORATED IN: Connecticut.

Affiliated FM Insurance Company. BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $4,097,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (907) 263-0200. UNDERWRITING LIMITATION b/: $2,687,000. SURETY LICENSES c/: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alaska.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION b/: $707,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Allendale Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $66,979,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America. BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $9,995,000. SURETY LICENSES c/: IN, KY, ME. INCORPORATED IN: New York.

Allied Mutual Insurance Company. BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION b/: $14,532,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. PHONE: (708) 402-5000. UNDERWRITING LIMITATION b/: $302,263,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company. BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION b/: $8,479,000. SURETY LICENSES c/: AZ, CA, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa.

American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $7,291,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes/Notes at end of Circular

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA. BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION b/: $4,879,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Bonding Company. BUSINESS ADDRESS: 6245 E. Broadway, SUITE: 600, Tucson, AZ 85711. PHONE: (602) 747-5555. UNDERWRITING LIMITATION b/: $1,615,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, GA, GU, HI, ID, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NV, NM, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WV. INCORPORATED IN: Arizona.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $22,860,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION b/: $38,795,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $14,352,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

American Fidelity Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (603) 645-7000. UNDERWRITING LIMITATION b/: $1,562,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

American Fire and Casualty Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $11,469,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (708) 605-6000. UNDERWRITING LIMITATION b/: $20,333,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $121,618,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The). BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 889-2000. UNDERWRITING LIMITATION b/: $32,954,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (708) 540-2000. UNDERWRITING LIMITATION b/: $14,308,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (708) 540-2000. UNDERWRITING LIMITATION b/: $21,814,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $1,935,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company. BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $87,577,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Resources Insurance Co., Inc.. BUSINESS ADDRESS: P.O. Box 91149, Mobile, AL 36691. PHONE: (205) 639-0985. UNDERWRITING LIMITATION b/: $474,000. SURETY LICENSES c/: DC, IN, KY, TN. INCORPORATED IN: Alabama.

AMERICAN ROAD INSURANCE COMPANY (THE). BUSINESS ADDRESS: The American Road, Dearborn, MI 48121-6027. PHONE: (800) 234-2722. UNDERWRITING LIMITATION b/: $34,274,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION b/: $103,816,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company. BUSINESS ADDRESS: P. O. Box 24827, Jacksonville, FL 32241-4827. PHONE: (904) 733-6661. UNDERWRITING LIMITATION b/: $589,000. SURETY LICENSES c/: AL, DC, FL, GA. INCORPORATED IN: Florida.

American Surety Company. BUSINESS ADDRESS: 7470 N. Figueroa Street, Los Angeles, CA 90041-1717. PHONE: (213) 254-4010. UNDERWRITING LIMITATION b/: $288,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91367. PHONE: (818) 704-1111. UNDERWRITING LIMITATION b/: $2,704,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Antilles Insurance Company. BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, PR 00902. PHONE: (809) 721-4900. UNDERWRITING LIMITATION b/: $1,552,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025-3507. PHONE: (415) 326-0900. UNDERWRITING LIMITATION b/: $40,079,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Arkwright Mutual Insurance Company. BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254-9198. PHONE: (617) 890-9300. UNDERWRITING LIMITATION b/: $57,850,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $3,331,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY. BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. PHONE: (609) 795-5575. UNDERWRITING LIMITATION b/: $204,000. SURETY LICENSES c/: DE, MD, NJ, PA. INCORPORATED IN: New Jersey.

See Footnotes/Notes at end of Circular

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $27,987,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company. BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. PHONE: (517) 323-1200. UNDERWRITING LIMITATION b/: $88,560,000. SURETY LICENSES c/: AL, AZ, FL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

Automobile Insurance Company of Hartford, Connecticut (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $28,095,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

BANKERS INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733. PHONE: (813) 579-4000. UNDERWRITING LIMITATION b/: $691,000. SURETY LICENSES c/: AL, AZ, AR, FL, GA, IL, IA, KY, LA, MS, MO, NV, NM, OH, PA, SC, TN, TX. INCORPORATED IN: FLORIDA.

BITUMINOUS CASUALTY CORPORATION. BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. PHONE: (309) 786-5401. UNDERWRITING LIMITATION b/: $8,125,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (708) 495-9380. UNDERWRITING LIMITATION b/: $344,000. SURETY LICENSES c/: IL, IN, KS, MO, OK, TN, TX. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Boston Old Colony Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $2,783,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The). BUSINESS ADDRESS: P.O. Box 1499, Columbus, OH 43216. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $36,926,000. SURETY LICENSES c/: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION b/: $3,585,000. SURETY LICENSES c/: AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

Centennial Insurance Company. BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $11,800,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Century Indemnity Company. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $1,459,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

CENTURY SURETY COMPANY. BUSINESS ADDRESS: P.O. Box 2689, Columbus, OH 43216-2689. PHONE: (614) 785-9000. UNDERWRITING LIMITATION b/: $831,000. SURETY LICENSES c/: AZ, IN, OH, WV, WI. INCORPORATED IN: OHIO.

See Footnotes/Notes at end of Circular

Charter Oak Fire Insurance Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $10,263,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

CHRYSLER INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (313) 948-3390. UNDERWRITING LIMITATION b/: $7,071,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CIGNA Insurance Company of Illinois. BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. PHONE: (312) 380-8100. UNDERWRITING LIMITATION b/: $3,280,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas. BUSINESS ADDRESS: 600 East Las Colinas Blvd., SUITE: 620, Irving, TX 75039. PHONE: (214) 869-8500. UNDERWRITING LIMITATION b/: $2,799,000. SURETY LICENSES c/: NM, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest. BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80443, Indianapolis, IN 46280. PHONE: (317) 573-3000. UNDERWRITING LIMITATION b/: $3,008,000. SURETY LICENSES c/: IN. INCORPORATED IN: INDIANA.

CIGNA Reinsurance Company. BUSINESS ADDRESS: Two Liberty Place, 1601 Chestnut St, Philadelphia, PA 19192. PHONE: (215) 761-3535. UNDERWRITING LIMITATION b/: $2,353,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, KY, LA, ME, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

Cincinnati Casualty Company (The). BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $4,955,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Cincinnati Insurance Company (The). BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $87,191,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY. BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (301) 539-0800. UNDERWRITING LIMITATION b/: $554,000. SURETY LICENSES c/: DC, IA, KS, MD, MO, TX, VA. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY. BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: $185,000. SURETY LICENSES c/: DE, DC, MD, MA, NJ, PA. INCORPORATED IN: Pennsylvania.

Commercial Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $6,877,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $33,733,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE). BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (203) 674-6600. UNDERWRITING LIMITATION b/: $1,945,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: CONNECTICUT.

Consolidated Surety Insurance Company, Inc. BUSINESS ADDRESS: 9841 Airport Blvd., SUITE: 916, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION b/: $290,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

See Footnotes/Notes at end of Circular

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $211,720,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $33,318,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE). BUSINESS ADDRESS: P.O. Box 431, San Patricio Plaza, PMC, San Juan, PR 00968. PHONE: (809) 793-6111. UNDERWRITING LIMITATION b/: $13,102,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

Continental Reinsurance Corporation. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (215) 761-3535. UNDERWRITING LIMITATION b/: $19,254,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company. BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION b/: $6,399,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION b/: $1,593,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (809) 758-8585. UNDERWRITING LIMITATION b/: $8,172,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

CUMBERLAND CASUALTY & SURETY COMPANY. BUSINESS ADDRESS: 4311 West Waters Avenue, SUITE: 501, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION b/: $451,000. SURETY LICENSES c/: DE, DC, FL, GU, ID, IN, LA, MD, MT, NV, ND, SC, SD, TX, WY. INCORPORATED IN: Texas.

Cumberland Surety Insurance Company, Inc.. BUSINESS ADDRESS: 367 West Short Street, Lexington, KY 40507. PHONE: (800) 767-8622. UNDERWRITING LIMITATION b/: $523,000. SURETY LICENSES c/: IN, KY. INCORPORATED IN: Kentucky.

CUMIS INSURANCE SOCIETY, INC. BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: $13,666,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $17,355,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. PHONE: (312) 878-8500. UNDERWRITING LIMITATION b/: $600,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION b/: $611,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. PHONE: (402) 341-0135. UNDERWRITING LIMITATION b/: $8,347,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

EMPLOYERS' FIRE INSURANCE COMPANY (THE).
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108.
PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/:
$5,348,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT,
DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK,
OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY.
INCORPORATED IN: Massachusetts.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company.
BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017.
PHONE: (715) 845-5211. UNDERWRITING LIMITATION b/:
$15,000,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT,
DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK,
OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company. BUSINESS ADDRESS:
Post Office Box 712, Des Moines, IA 50303-0712. PHONE:
(515) 280-2511. UNDERWRITING LIMITATION b/: $23,503,000.
SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL,
GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS,
MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI,
SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN:
Iowa.

Employers Reinsurance Corporation. BUSINESS ADDRESS:
5200 Metcalf, P.O. Box 2991, Overland Park, KS 66201.
PHONE: (913) 676-5200. UNDERWRITING LIMITATION b/:
$127,481,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT,
DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR,
PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Missouri.

Erie Insurance Company. BUSINESS ADDRESS:
100 Erie Insurance Place, Erie, PA 16530. PHONE:
(814) 870-2000. UNDERWRITING LIMITATION b/: $3,676,000.
SURETY LICENSES c/: DC, IN, KY, MD, NC, OH, PA, TN, VA, WV.
INCORPORATED IN: Pennsylvania.

EXPLORER INSURANCE COMPANY (THE). BUSINESS ADDRESS:
P.O. Box 85563, San Diego, CA 92186-5563. PHONE:
(619) 546-2400. UNDERWRITING LIMITATION b/: $1,751,000.
SURETY LICENSES c/: AZ, CA, ID, IA, MT, NV, NM, OR.
INCORPORATED IN: Arizona.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION b/: $407,000. SURETY LICENSES c/: AK, AZ, CA, CO, DC, ID, IN, MT, NV, OR, SD, UT, WY. INCORPORATED IN: California.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION b/: $5,331,000. SURETY LICENSES c/: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmington Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $16,173,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. PHONE: (515) 245-8800. UNDERWRITING LIMITATION b/: $5,563,000. SURETY LICENSES c/: AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, ND, OH, OK, OR, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 580-2000. UNDERWRITING LIMITATION b/: $162,334,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION b/: $44,241,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

See Footnotes/Notes at end of Circular

Fidelity and Casualty Company of New York (The).
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $14,298,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland.
BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (301) 539-0800. UNDERWRITING LIMITATION b/: $24,125,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY.
BUSINESS ADDRESS: P.O. Box 1138, 100 Light Street, Baltimore, MD 21203. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $1,432,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc..
BUSINESS ADDRESS: P.O. Box 1138, Baltimore, MD 21203. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $4,966,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Ohio.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $143,481,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey.
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $45,043,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

See Footnotes/Notes at end of Circular

First Financial Insurance Company. BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704-2788. PHONE: (919) 538-2800. UNDERWRITING LIMITATION b/: $2,120,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.. BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION b/: $5,782,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $5,816,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY.1/ BUSINESS ADDRESS: 196 Broadway, Monticello, NY 12701. PHONE: (800) 836-2100. UNDERWRITING LIMITATION b/: $7,644,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED. BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936-3786. PHONE: (809) 765-8700. UNDERWRITING LIMITATION b/: $3,785,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION b/: $81,614,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $51,268,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

See Footnotes/Notes at end of Circular

General Reinsurance Corporation. BUSINESS ADDRESS: P.O. Box 10350, 695 East Main Street, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $332,162,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $2,130,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. PHONE: (402) 271-2846. UNDERWRITING LIMITATION b/: $2,923,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION b/: $3,837,000. SURETY LICENSES c/: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY. BUSINESS ADDRESS: 110 South French Street, #203, Wilmington, DE 19801. PHONE: (302) 571-0525. UNDERWRITING LIMITATION b/: $235,000. SURETY LICENSES c/: DE, LA, MD, NM, TX. INCORPORATED IN: Delaware.

Granite State Insurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (603) 645-7000. UNDERWRITING LIMITATION b/: $1,417,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $65,257,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great Northern Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 580-2000. UNDERWRITING LIMITATION b/: $8,816,000. SURETY LICENSES c/: AL, AK, AZ, AR, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company. BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION b/: $20,036,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The). BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. PHONE: (513) 221-6010. UNDERWRITING LIMITATION b/: $944,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio.

Hanover Insurance Company (The). BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION b/: $67,123,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (708) 734-4261. UNDERWRITING LIMITATION b/: $3,675,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Harleysville Mutual Insurance Company.
BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION b/: $23,817,000. SURETY LICENSES c/: AL, CA, CO, DE, DC, FL, GA, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, NJ, NM, NC, OH, OK, OR, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $71,879,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $21,635,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $300,667,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (312) 346-6000. UNDERWRITING LIMITATION b/: $11,847,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $2,261,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Hartford Insurance Company of the Southeast.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115.
PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/:
$2,065,000. SURETY LICENSES c/: CT, FL, GA, LA PR
INCORPORATED IN: Florida

Hartford Underwriters Insurance Company.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115.
PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/:
$15,974,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Connecticut.

Highlands Insurance Company. BUSINESS ADDRESS:
10370 Richmond Avenue, Houston, TX 77042-4123. PHONE:
(713) 952-9555. UNDERWRITING LIMITATION b/: $19,048,000.
SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company.
BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION b/: $2,267,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

Home Indemnity Company (The). BUSINESS ADDRESS:
59 Maiden Lane, 7th Floor, New York, NY 10038. PHONE:
(212) 530-7000. UNDERWRITING LIMITATION b/: $9,512,000.
SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY.
INCORPORATED IN: New Hampshire.

Home Insurance Company (The). BUSINESS ADDRESS:
59 Maiden Lane, 7th Floor, New York, NY 10038. PHONE:
(212) 530-7000. UNDERWRITING LIMITATION b/: $66,547,000.
SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY.
INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. PHONE: (817) 377-6000. UNDERWRITING LIMITATION b/: $8,453,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Texas.

Illinois National Insurance Company. BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606-2511. PHONE: (312) 930-5417. UNDERWRITING LIMITATION b/: $2,681,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV. INCORPORATED IN: Illinois.

Indemnity Company of California. BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION b/: $767,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $15,251,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Indiana Lumbermens Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441. UNDERWRITING LIMITATION b/: $2,081,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $3,345,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

INSURANCE COMPANY OF EVANSTON. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (708) 866-2800. UNDERWRITING LIMITATION b/: $1,147,000. SURETY LICENSES c/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Insurance Company of North America. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $44,627,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $31,451,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION b/: $10,796,000. SURETY LICENSES c/: AK, AZ, CA, CO, HI, ID, IA, MD, MI, MS, MO, MT, NE, NV, NM, OH, OK, OR, RI, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: California.

INTEGRAND ASSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (809) 781-0707. UNDERWRITING LIMITATION b/: $2,856,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company. BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (708) 517-2510. UNDERWRITING LIMITATION b/: $1,129,000. SURETY LICENSES c/: AK, AZ, CA, CO, DE, DC, FL, GA, IL, IN, IA, KY, LA, MD, MA, MI, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OR, PA, TN, TX, VA, VI, WA, WI. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company. BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: $9,048,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

INTERNATIONAL CREDIT OF NORTH AMERICA REINSURANCE INC.. BUSINESS ADDRESS: 1225 Franklin Avenue, Garden City, NY 11530. PHONE: (516) 746-7676. UNDERWRITING LIMITATION b/: $4,381,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

International Fidelity Insurance Company. BUSINESS ADDRESS: P.O. Box 56, Newark, NJ 07101-0056. PHONE: (201) 624-7200. UNDERWRITING LIMITATION b/: $2,498,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311. UNDERWRITING LIMITATION b/: $5,331,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. PHONE: (314) 821-6060. UNDERWRITING LIMITATION b/: $11,284,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

John Deere Insurance Company. BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. PHONE: (309) 765-8388. UNDERWRITING LIMITATION b/: $9,407,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The). BUSINESS ADDRESS: Post Office Box 1654, Topeka, KS 66601-1654. PHONE: (913) 234-2631. UNDERWRITING LIMITATION b/: $2,789,000. SURETY LICENSES c/: CO, IL, IA, KS, MN, MO, MT, NE, ND, OK, SD, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $1,757,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes/Notes at end of Circular

KEMPER REINSURANCE COMPANY. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (708) 540-2600. UNDERWRITING LIMITATION b/: $21,602,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

Lawyers Surety Corporation. BUSINESS ADDRESS: P.O.Box 569480, Dallas, TX 75356-9480. PHONE: (214) 634-1900. UNDERWRITING LIMITATION b/: $495,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $118,261,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company. BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757-0000. UNDERWRITING LIMITATION b/: $2,031,000. SURETY LICENSES c/: AL, GA, ID, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

London Assurance of America Inc. (The). BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $17,964,000. SURETY LICENSES c/: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (708) 540-2000. UNDERWRITING LIMITATION b/: $109,072,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION b/: $1,381,000. SURETY LICENSES c/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Massachusetts.

See Footnotes/Notes at end of Circular

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: $1,024,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. PHONE: (517) 482-6211. UNDERWRITING LIMITATION b/: $7,483,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, ID, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, UT, VA, WA. INCORPORATED IN: Michigan.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932-3200. UNDERWRITING LIMITATION b/: $3,926,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $3,678,000. SURETY LICENSES c/: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Millers Mutual Fire Insurance Company of Texas (The). BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION b/: $6,571,000. SURETY LICENSES c/: CO, DC, ID, IL, IN, IA, LA, MI, NE, NM, OK, OR, TN, TX, WY. INCORPORATED IN: Texas.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION b/: $3,974,000. SURETY LICENSES c/: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION b/: $160,000. SURETY LICENSES c/: CO, MN, MT, ND. INCORPORATED IN: Minnesota.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

MOTORS INSURANCE CORPORATION. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION b/: $81,569,000. SURETY LICENSES c/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. PHONE: (212) 310-1600. UNDERWRITING LIMITATION b/: $27,255,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA WA, WV, WI. INCORPORATED IN: New York.

NAC Reinsurance Corporation. BUSINESS ADDRESS: P. O. Box 2568, One Greenwich Plaza, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION b/: $38,403,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, DE, FL, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company. BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION b/: $1,460,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National-Ben Franklin Insurance Company of Illinois. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. PHONE: (312) 876-5250. UNDERWRITING LIMITATION b/: $12,364,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $38,160,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION b/: $10,667,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-3000. UNDERWRITING LIMITATION b/: $399,774,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION. BUSINESS ADDRESS: 777 Long Ridge Road, P.O. Box 10167, Stamford, CT 06904-2167. PHONE: (203) 329-7700. UNDERWRITING LIMITATION b/: $32,121,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. PHONE: (312) 580-6000. UNDERWRITING LIMITATION b/: $9,116,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $90,329,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION b/: $129,932,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

NAVIGATORS INSURANCE COMPANY. BUSINESS ADDRESS: 123 William Street, New York, NY 10038. PHONE: (212) 406-2900. UNDERWRITING LIMITATION b/: $5,730,000. SURETY LICENSES c/: AK, AZ, DE, DC, GA, IL, IN, IA, KS, KY, MD, MA, MI, MS, MO, NE, NJ, NY, ND, OH, OK, OR, PA, RI, SD, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

Netherlands Insurance Company (The). BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $1,578,000. SURETY LICENSES c/: AZ, CA, CT, DC, GA, ID, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (603) 645-7000. UNDERWRITING LIMITATION b/: $39,502,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Nobel Insurance Company. BUSINESS ADDRESS: P.O. Box 6108, Columbia, SC 29260-6108. PHONE: (803) 782-2373. UNDERWRITING LIMITATION b/: $1,691,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Carolina.

North American Reinsurance Corporation. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION b/: $19,472,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY. BUSINESS ADDRESS: 650 Elm Street, 6th Floor, Manchester, NH 03101-2524. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: $1,859,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

North Star Reinsurance Corporation. BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (201) 301-8000. UNDERWRITING LIMITATION b/: $11,539,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. PHONE: (708) 402-5000. UNDERWRITING LIMITATION b/: $16,648,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The). BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $17,049,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION b/: $2,070,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

Oceanic Insurance and Surety Company.2/ BUSINESS ADDRESS: 1450 E. American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (708) 517-2510. UNDERWRITING LIMITATION b/: $522,000. SURETY LICENSES c/: IL, NM. INCORPORATED IN: ILLINOIS.

Ohio Casualty Insurance Company (The). BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $67,421,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Ohio Farmers Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $37,609,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $679,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601-0789. PHONE: (412) 834-5000. UNDERWRITING LIMITATION b/: $31,073,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company. BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2640. UNDERWRITING LIMITATION b/: $1,282,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Omaha Property and Casualty Insurance Company.3/ BUSINESS ADDRESS: 3102 Farnam Street, Omaha, NE 68131. PHONE: (402) 342-3326. UNDERWRITING LIMITATION b/: $2,451,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, PA, RI, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $18,512,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Pacific Indemnity Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 580-2000. UNDERWRITING LIMITATION b/: $36,225,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION b/: $25,228,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $9,351,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION b/: $2,624,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania Manufacturers' Association Insurance Company. BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. PHONE: (215) 629-5177. UNDERWRITING LIMITATION b/: $12,215,000. SURETY LICENSES c/: AK, AZ, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: 72 North Franklin Street, Wilkes-Barre, PA 18773-0016. PHONE: (717) 822-8111. UNDERWRITING LIMITATION b/: $3,626,000. SURETY LICENSES c/: DC, FL, GA, ID, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION b/: $16,879,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Personal Service Insurance Co. (The). BUSINESS ADDRESS: P.O. BOX 1226, Columbus, OH 43216-1226. PHONE: (614) 221-5115. UNDERWRITING LIMITATION b/: $2,829,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: OHIO.

Phoenix Assurance Company of New York. BUSINESS ADDRESS: 4 World Trade Center, SUITE: 6274, New York, NY 10048. PHONE: (212) 775-1300. UNDERWRITING LIMITATION b/: $5,542,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $46,705,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

PLANET INDEMNITY COMPANY. BUSINESS ADDRESS: 410 17th Street, SUITE: 1675, Denver, CO 80202. PHONE: (713) 961-1300. UNDERWRITING LIMITATION b/: $504,000. SURETY LICENSES c/: AL, CO, IL, IN, KS, KY, NV, NM, OR, SD, TX. INCORPORATED IN: Colorado.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $6,615,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

PREFERRED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 407003, FT Lauderdale, FL 33340-7003. PHONE: (305) 752-1222. UNDERWRITING LIMITATION b/: $672,000. SURETY LICENSES c/: FL. INCORPORATED IN: FLORIDA.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: 6000 Parkland Boulevard, Mayfield Hts., OH 44124. PHONE: (216) 464-8000. UNDERWRITING LIMITATION b/: $2,103,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

PROTECTION MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (708) 825-4474. UNDERWRITING LIMITATION b/: $30,362,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Protective Insurance Company. BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION b/: $14,081,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Prudential Reinsurance Company. BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4077. PHONE: (201) 802-8000. UNDERWRITING LIMITATION b/: $39,536,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

Reinsurance Corporation of New York (The). BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. PHONE: (212) 363-4440. UNDERWRITING LIMITATION b/: $5,760,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $58,941,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $1,445,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Republic Western Insurance Company. BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1120. PHONE: (602) 263-6755. UNDERWRITING LIMITATION b/: $10,179,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

Royal Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION b/: $11,764,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $72,027,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: SAFECO PLAZA, Seattle, WA 98185. PHONE: (708) 490-2900. UNDERWRITING LIMITATION b/: $8,203,000. SURETY LICENSES c/: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $4,756,000. SURETY LICENSES c/: CO, KY, MD, MO, NY, UT, WI. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY. BUSINESS ADDRESS: 110 William Street, Suite 1800, New York, NY 10038. PHONE: (212) 978-8200. UNDERWRITING LIMITATION b/: $10,149,000. SURETY LICENSES c/: AL, AZ, DE, ID, IL, IN, IA, LA, MI, MS, NE, NM, NY, NC, OH, OK, OR, PA, TX. INCORPORATED IN: New York.

Sea Insurance Company of America (The). BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $10,055,000. SURETY LICENSES c/: AK, AZ, AR, CA, CT, DE, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Seaboard Surety Company. BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658-3500. UNDERWRITING LIMITATION b/: $10,130,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD. BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (203) 674-6600. UNDERWRITING LIMITATION b/: $9,695,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: CONNECTICUT.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $1,219,000. SURETY LICENSES c/: AL, AR, CA, CO, GA, ID, IL, IN, KS, KY, MO, MT, NM, OH, OK, TX, WY. INCORPORATED IN: Texas.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION b/: $1,830,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (201) 948-3000. UNDERWRITING LIMITATION b/: $12,990,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.. BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION b/: $1,301,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $83,122,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Skandia America Reinsurance Corporation.
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION b/: $22,045,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

SOREMA NORTH AMERICA REINSURANCE COMPANY.
BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION b/: $10,272,000. SURETY LICENSES c/: AK, AZ, DC, ID, IL, KS, MI, MS, MT, NE, NM, NY, OH, OR, RI, TN, TX, UT, WA, WI. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company.
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221-7911. UNDERWRITING LIMITATION b/: $164,250,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221-7911. UNDERWRITING LIMITATION b/: $2,470,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221-7911. UNDERWRITING LIMITATION b/: $4,706,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The).
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $42,343,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Star Insurance Company. BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (313) 358-4020. UNDERWRITING LIMITATION b/: $2,463,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION b/: $30,528,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. PHONE: (309) 766-2311. UNDERWRITING LIMITATION b/: $144,251,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

State Surety Company. BUSINESS ADDRESS: P.O. Box 1976, Des Moines, IA 50306. PHONE: (515) 270-0009. UNDERWRITING LIMITATION b/: $380,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

Statewide Insurance Company. BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. PHONE: (708) 662-0073. UNDERWRITING LIMITATION b/: $501,000. SURETY LICENSES c/: AZ, AR, IL, IN, IA, MO, NE, WI. INCORPORATED IN: Illinois.

SUN INSURANCE COMPANY OF NEW YORK. BUSINESS ADDRESS: 4 World Trade Center, New York, NY 10048. PHONE: (212) 775-1300. UNDERWRITING LIMITATION b/: $6,182,000. SURETY LICENSES c/: AK, AZ, CA, CT, DE, DC, GA, IL, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, OH, OK, OR, PA, PR, RI, SC, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

Sun Insurance Office of America Inc.. BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $6,899,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Surety Company of the Pacific. BUSINESS ADDRESS: Post Office Box 1067, Northridge, CA 91328. PHONE: (818) 894-7878. UNDERWRITING LIMITATION b/: $500,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: Diamond Shamrock Tower, 717 North Harwood, Dallas, TX 75201. PHONE: (214) 754-0777. UNDERWRITING LIMITATION b/: $505,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

Titan Indemnity Company. BUSINESS ADDRESS: P.O. Box 60007, San Antonio, TX 78209. PHONE: (800) 347-4740. UNDERWRITING LIMITATION b/: $2,024,000. SURETY LICENSES c/: AL, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Texas.

Transamerica Insurance Company. BUSINESS ADDRESS: 6300 Canoga Avenue, Woodland Hills, CA 91367. PHONE: (818) 596-5000. UNDERWRITING LIMITATION b/: $29,500,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49017. PHONE: (818) 596-5000. UNDERWRITING LIMITATION b/: $2,037,000. SURETY LICENSES c/: AR, ID, IL, IN, IA, KS, KY, MI, MN, NY, SD, TX, UT, WY. INCORPORATED IN: Michigan.

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. PHONE: (818) 596-5000. UNDERWRITING LIMITATION b/: $11,850,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY. BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $23,665,000. SURETY LICENSES c/: CT, DC, FL, IL, IN, IA, NV, NJ, NM, NY, OH, OK, PA. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $15,538,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $5,853,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $112,241,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $7,345,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Illinois (The). BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. PHONE: (312) 750-2863. UNDERWRITING LIMITATION b/: $3,902,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company of Rhode Island (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $17,611,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION b/: $4,178,000. SURETY LICENSES c/: IL, IN, IA, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $29,302,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, TN, TX, WA, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $645,000. SURETY LICENSES c/: AL, AR, CO, GA, ID, KS, KY, LA, MO, MT, NE, OH, OK, TX. INCORPORATED IN: Kansas.

Trumbull Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $1,966,000. SURETY LICENSES c/: AL, AK, CT, DE, DC, IN, MA, MN, MO, NE, NJ, OK, PA, RI, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $7,912,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

U.S. Capital Insurance Company.4/ BUSINESS ADDRESS: 4 West Red Oak Lane, White Plains, NY 10604-3602. PHONE: (914) 694-4757. UNDERWRITING LIMITATION b/: $1,634,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, FL, GA, ID, IN, IA, LA, MD, MI, MT, NE, NV, NM, NY, ND, OH, PA, SD, TN, TX, UT, VA, WI. INCORPORATED IN: NEW YORK.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION b/: $5,179,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

See Footnotes/Notes at end of Circular

Underwriters Indemnity Company. BUSINESS ADDRESS: 8 Greenway Plaza, SUITE: 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION b/: $417,000. SURETY LICENSES c/: AL, IL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WV, WI, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225-1000. UNDERWRITING LIMITATION b/: $18,073,000. SURETY LICENSES c/: AZ, CA, DE, DC, GA, ID, IL, IA, KS, LA, MI, MS, MT, NE, NV, NJ, NY, OH, PA, TX, UT, WI. INCORPORATED IN: New Hampshire.

Unigard Security Insurance Company. BUSINESS ADDRESS: 15805 N.E. 24th Street, Bellevue, WA 98008-2409. PHONE: (206) 641-4321. UNDERWRITING LIMITATION b/: $6,503,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 476-7688. UNDERWRITING LIMITATION b/: $2,251,000. SURETY LICENSES c/: AR, CO, DC, ID, IA, KS, MD, MN, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company.5/ BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, GA 30319. PHONE: (404) 843-5599. UNDERWRITING LIMITATION b/: $6,239,000. SURETY LICENSES c/: AZ, WI. INCORPORATED IN: Wisconsin.

United Coastal Insurance Company. BUSINESS ADDRESS: P.O. Box 2350, 233 Main Street, New Britain, CT 06050-2350. PHONE: (203) 223-5000. UNDERWRITING LIMITATION b/: $3,623,000. SURETY LICENSES c/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company. BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: $10,334,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: Three Bala Plaza East, SUITE: 300, Bala Cynwyd, PA 19004. PHONE: (215) 664-1500. UNDERWRITING LIMITATION b/: $11,611,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

United Pacific Insurance Company.6/ BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $4,643,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $1,635,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: Post Office Box 1138, 100 Light Street, Baltimore, MD 21203. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $82,124,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY. BUSINESS ADDRESS: P.O. Box 3432, Old San Juan Station, San Juan, PR 00902-3432. PHONE: (809) 722-8896. UNDERWRITING LIMITATION b/: $199,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY. BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION b/: $704,000. SURETY LICENSES c/: NJ. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (809) 793-7202. UNDERWRITING LIMITATION b/: $4,104,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $1,725,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America. BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION b/: $512,000. SURETY LICENSES c/: AL, AK, CO, FL, KS, LA, MS, MO, OK, TN, TX. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION b/: $43,174,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $15,971,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $12,413,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED. BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION b/: $186,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 580-2000. UNDERWRITING LIMITATION b/: $23,717,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company. BUSINESS ADDRESS: 1930 Thoreau Drive, SUITE: 101, Schaumburg, IL 60173. PHONE: (708) 490-1850. UNDERWRITING LIMITATION b/: $1,031,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, KY, LA, MD, MA, MI, MS, MO, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, VA, WA. INCORPORATED IN: Arizona.

See Footnotes/Notes at end of Circular

VOL 58 ISS 125 JL 1 1993 UMI

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $48,013,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

Westchester Fire Insurance Company. BUSINESS ADDRESS: 211 Mt. Airy Road, Basking Ridge, NJ 07920. PHONE: (908) 204-3500. UNDERWRITING LIMITATION b/: $9,260,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company. BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION b/: $2,844,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Ctr., OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $18,831,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Ctr., OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $5,238,000. SURETY LICENSES c/: CA, IA, OH. INCORPORATED IN: Ohio.

WINTERTHUR REINSURANCE CORPORATION OF AMERICA. BUSINESS ADDRESS: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. PHONE: (212) 416-5700. UNDERWRITING LIMITATION b/: $14,854,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: NEW YORK

ZENITH INSURANCE COMPANY. BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION b/: $16,353,000. SURETY LICENSES c/: AZ, AR, CA, CO, HI, ID, NM, OK, OR, TX, UT. INCORPORATED IN: CALIFORNIA.

See Footnotes/Notes at end of Circular

VOL
58
ISS
125
JL
1
1993
UMI

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

FOLKSAMERICA REINSURANCE COMPANY. BUSINESS ADDRESS: One Liberty Plaza, 19th Floor, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION b/: $11,323,000.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64141-6069. PHONE: (816) 471-2200. UNDERWRITING LIMITATION b/: $10,140,000.

Generali - U.S. Branch. BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION b/: $7,948,000.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. PHONE: (212) 310-1800. UNDERWRITING LIMITATION b/: $41,278,000.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION b/: $38,399,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch. BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297-6600. UNDERWRITING LIMITATION b/: $13,495,000.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (708) 605-6000. UNDERWRITING LIMITATION b/: $61,232,000.

See Footnotes/Notes at end of Circular

FOOTNOTES

1/ Frontier Insurance Company is required by State law to conduct business in the States of Arkansas, Florida, Iowa, Nevada, North Dakota, Texas and Utah as Frontier Insurance Company DBA Frontier Insurance Company of New York. In Missouri, Frontier Insurance Company is required by State law to conduct business as New York Frontier Insurance Company.

2/ Oceanic Insurance and Surety Company changed its State of Domicile from New Mexico to Illinois, effective December 31, 1992.

3/ Omaha Property and Casualty Company changed its State of Domicile from Delaware to Nebraska, effective November 2, 1992.

4/ U.S. Capital Insurance Company is required by State law to conduct business in the State of California as MultiPlus Insurance Co.

5/ United Capitol Insurance Company is an approved surplus lines carrier in all fifty states. Such approval may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the State. Questions related to this, may be directed to the appropriate State Insurance Department.

6/ United Pacific Insurance Company changed its State of Domicile from Washington to Pennsylvania, effective date unknown at date of this publication.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess

risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. For further assistance, contact the Surety Bond Branch.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

[FR Doc. 93-15605 Filed 6-30-93; 8:45 am]
BILLING CODE 4810-35-C

VOL 58 ISS 125 JL 1 1993 UMI

Federal Register

Thursday
July 1, 1993

Part IX

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 585

Federal Republic of Yugoslavia Sanctions Regulations; Final Rule

UMI
VOL
58
ISS
125
JL
1
1993
UMI

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 585

Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations to implement Executive Order No. 12846 of April 25, 1993, imposing new sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro) in view of United Nations Security Council Resolution No. 820; expand the general license covering transactions in certain rescheduled debt of entities of the former Yugoslavia; and notify the public of the authorization number from the Office of Management and Budget for information collections in the regulations.

EFFECTIVE DATE: June 29, 1993, except that § 585.201(b) and §§ 585.215 through 585.218 are effective 12:01 a.m. Eastern Daylight Time, April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622–2480, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On April 25, 1993, the President issued Executive Order 12846, 58 FR 25771 (April 27, 1993) tightening economic sanctions against the unrecognized Federal Republic of Yugoslavia (Serbia and Montenegro) (the "FRY (S&M)"), taking into account the provisions of United Nations Security Council Resolution No. 820 of April 17, 1993. Effective April 26, 1993, the order blocks all property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the FRY (S&M), including property and interests in property of entities (wherever organized or located) owned or controlled by such undertakings or entities, that are or thereafter come within the United States or the possession or control of United States persons. Section 585.201 of the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations ("FRYSR") is amended to implement this provision. Section 1(a) of Executive Order 12846 expressly blocks property subject to U.S. jurisdiction of many entities, both U.S. and foreign, heretofore blocked pursuant to the working presumption of the Office of Foreign Assets Control ("FAC") that all entities organized or located in the FRY (S&M), as well as entities owned or controlled by them, are controlled directly or indirectly by the Government of the FRY (S&M). Regulations, § 585.311. See also, General Notice No. 1 of July 6, 1992, 57 FR 32051 (July 20, 1992).

New § 585.215 implements section 1(c) of Executive Order 12846 to provide that, except as otherwise authorized, conveyances and/or cargo that come within the United States and that are not otherwise subject to blocking, but are suspected of a violation of United Nations Security Council resolutions imposing sanctions against the FRY (S&M), shall be detained pending investigation and, upon a determination by the Secretary of the Treasury or his delegate that a violation has occurred, shall be blocked. New § 585.216 of the Regulations implements section 1(b) of Executive Order 12846 to provide that, except as otherwise authorized, all expenses incident to the blocking and maintenance of property blocked pursuant to §§ 585.201 and 585.215 of the Regulations shall be charged to the owners or operators of such property. Section 585.216 also provides for the discretionary liquidation of property blocked under these sections, with net proceeds placed in a blocked account in the name of the property's owner. E.O. 12846, section 1(b) & (c).

New § 585.217 provides that no vessel registered in the United States or owned or controlled by U.S. persons, other than U.S. naval vessels, may enter the territorial waters of the FRY (S&M) without specific authorization. E.O. 12846, section 1(d). New § 585.218 prohibits, unless specifically authorized pursuant to the statement of licensing policy in new § 585.524, any dealing by a United States person relating to the unauthorized importation from, exportation to, or transshipment through, the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia-Hercegovina under the control of Bosnian Serb forces, and activities promoting such trade. E.O. 12846, section 1(e).

The prohibitions of Executive Order 12846 apply notwithstanding any prior contracts, international agreements, licenses or authorizations, but may be modified by regulation, order or license. New § 585.419 states that Executive Order 12846 does not invalidate existing authorizations and licenses issued pursuant to Executive orders with respect to the FRY (S&M), but makes them subject to termination, suspension or modification by the Office of Foreign Assets Control. E.O. 12846, section 6.

In addition to implementing the provisions of Executive Order 12846, this final rule expands the general license in § 585.509 of the Regulations to include "Qualified Transactions," as defined in the New Financing Agreement of September 20, 1988, in instruments representing rescheduled debt of certain commercial entities in the former Yugoslavia not located or headquartered in Serbia or Montenegro.

Finally, the rule adds the OMB Paperwork Reduction Act authorization number in new § 585.901.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 585

Blocking of assets, Exports, Federal Republic of Yugoslavia (Serbia and Montenegro), Foreign trade, Imports, Shipping, Vessels.

For the reasons set forth in the preamble, 31 CFR part 585 is amended as set forth below:

PART 585—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) SANCTIONS REGULATIONS

1. The authority citation for part 585 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 3 U.S.C. 301; E.O. 12808, 57 FR 23299 (May 30, 1992); E.O. 12810, 57 FR 24347 (June 9, 1992); E.O. 12831, 58 FR 5253 (January 21, 1993); E.O. 12846, 58 FR 25771 (April 27, 1993).

Subpart B—Prohibitions

2. Section 585.201 is amended by redesignating paragraph (b) as paragraph (c), and by adding new paragraph (b) to read as follows:

§ 585.201 Prohibited transactions involving blocked property; transactions with respect to securities.

* * * * *

(b) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement

or any contract entered into or any license or permit granted before 12:01 a.m. EDT, April 26, 1993, no property or interest in property of any commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), including, without limitation, the property and all interests in property of entities (wherever organized or located) owned or controlled by such undertakings or entities, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

* * * * *

3. Section 585.215 is added to read as follows:

§ 585.215 Conveyances and cargo suspected of being in violation of United Nations sanctions; detention; blocking.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before 12:01 a.m. EDT, April 26, 1993, all vessels, freight vehicles, rolling stock, aircraft and cargo that are in or hereafter come within the United States and are not subject to blocking pursuant to § 585.201, but which are suspected of a violation of United Nations Security Council Resolutions No. 713 (1991), 757 (1992), 787 (1992) or 820 (1993):

(1) Shall be detained, pending investigation; and,

(2) Upon a determination by the Director, Office of Foreign Assets Control, that they have been in violation of any of these resolutions, may not be transferred, moved, exported, withdrawn, or otherwise dealt in.

(b) Conveyances and cargoes blocked pursuant to paragraph (a) of this section may be liquidated as provided in § 585.216.

4. Section 585.216 is added to read as follows:

§ 585.216 Expenses of maintaining blocked property; liquidation into blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before 12:01 a.m. EDT, April 26, 1993, all expenses incident to the blocking and maintenance of property blocked pursuant to § 585.201 or § 585.215(a) shall be charged to the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 585.201 or § 585.215 may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds shall be placed in a blocked interest-bearing account in the name of the owner of the property.

5. Section 585.217 is added to read as follows:

§ 585.217 Entry into the territorial waters of the FRY (S&M) prohibited.

Except as otherwise authorized by the Director, Office of Foreign Assets Control, pursuant to this part, no vessel registered in the United States or owned or controlled by U.S. persons, other than a United States naval vessel, may enter the territorial waters of the FRY (S&M).

6. Section 585.218 is added to read as follows:

§ 585.218 Trade in United Nations Protected Areas of Croatia and Serb-controlled areas of Bosnia-Hercegovina.

Except as otherwise authorized by the Director, Office of Foreign Assets Control, pursuant to this part, any dealing by a United States person relating to the importation from, exportation to, or transshipment through the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia-Hercegovina under the control of Bosnian Serb forces, or activity of any kind that promotes or is intended to promote such dealing, is prohibited. See § 585.524.

Subpart C—Definitions

7. Paragraph (a) of § 585.301 is revised; the word "and" is removed from the end of paragraph (c); the period is removed from the end of paragraph (d) and a semicolon and the word "and" are added in its place; and paragraph (e) is added, to read as follows:

§ 585.301 Effective date.

* * * * *

(a) With respect to §§ 585.201 (a) & (c), 585.202, and 585.214, 11:59 p.m. EDT, May 30, 1992;

* * * * *

(e) With respect to §§ 585.201(b), 585.215, 585.216, 585.217, and 585.218, 12:01 a.m. EDT, April 26, 1993.

Subpart D—Interpretations

8. Section 585.418 is added to read as follows:

§ 585.418 Vessels of the Federal Republic of Yugoslavia (Serbia and Montenegro).

Any vessel in which a majority or controlling interest is held by a person or entity in, or operating from the FRY (S&M) shall be considered as a vessel of the FRY (S&M) regardless of the flag under which the vessel sails.

9. Section 585.419 is added to read as follows:

§ 585.419 Effect of E.O. 12846 on outstanding licenses and authorizations.

Executive Order 12846 does not affect the provisions of licenses and authorizations issued pursuant to Executive Order 12808, 12810 or 12831 or this part by the Office of Foreign Assets Control and in force as of 12:01 a.m. EDT, April 26, 1993, except as such licenses or authorizations are thereafter terminated, modified or suspended by the Director, Office of Foreign Assets Control.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

10. Section 585.509 is amended by substituting the words "Pre-sanctions Obligor" for the words "Original Borrower," wherever they occur in paragraphs (b) and (d)(2)(ii), and the section heading and paragraph (a) are revised to read as follows:

§ 585.509 Trading in certain pre-sanctions obligations of debtors in the Republics of Slovenia, Croatia, Bosnia-Hercegovina, and Macedonia authorized.

(a) All transactions by U.S. persons involving secondary market trading in debt obligations, or portions thereof, as well as "Qualified Transactions" that result in the cancellation of Refinancing Loans, or portions thereof, originally incurred or transferred to banks ("Pre-sanctions Obligors") organized and headquartered in the Republics of Slovenia, Croatia, Bosnia-Hercegovina, and Macedonia, prior to the effective date, and rescheduled pursuant to the "New Financing Agreement" of September 20, 1988 (the "NFA"), are authorized, notwithstanding the joint and several liability undertaken by the National Bank of Yugoslavia and/or of banks located in the FRY (S&M), for repayment of such obligations.

* * * * *

11. Section 585.524 is added to read as follows:

§ 585.524 Humanitarian aid and trade in United Nations Protected Areas of Croatia and Serb-controlled areas of Bosnia-Hercegovina.

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to, or transshipment

VOL
58
ISS
125
JL
1
1993
UMI

through, the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia-Hercegovina under the control of Bosnian Serb forces of essential humanitarian supplies, including medical supplies and foodstuffs, distributed by international humanitarian agencies. Applications for specific licenses shall be made in accordance with § 585.522(c).

(b) Specific licenses may be issued on a case-by-case basis to permit importation from, exportation to, or transshipment through the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia-Hercegovina under the control of Bosnian Serb forces of any other goods, only upon a determination by the Director of the Office of Foreign Assets Control that such activities have been properly authorized by the Government of the Republic of Croatia or the Government of the Republic of Bosnia-Hercegovina, respectively.

Subpart I—Paperwork Reduction Act

12. Section 585.901 is added to read as follows:

§ 585.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 585.503, 585.506, 585.509, 585.510, 585.511, 585.515 through 585.518, 585.520, 585.521, Subpart F, and §§ 585.703 and 585.801 have been approved by the Office of Management and Budget and assigned control number 1505–0143.

Dated: June 21, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 25, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–15678 Filed 6–29–93; 11:18 am]

BILLING CODE 4810-25-W

federal register

Thursday
July 1, 1993

Part X

Department of Justice

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status; Certain Nationals of the People's Republic of China; Interim rule

VOL
58
ISS
125
JL
1
1993
UMI

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1607–93]

RIN 1115–AD33

Adjustment of Status; Certain Nationals of the People's Republic of China

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the Chinese Student Protection Act of 1992 (CSPA), by establishing procedures for certain nationals of the People's Republic of China, their spouses, and their children who have been temporarily residing in the United States, to become lawful permanent residents of this country. It allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad and waives many of the usual requirements for this benefit. This rule eliminates the possibility of these persons being forced to return to the People's Republic of China, by allowing them to obtain a settled immigration status and permanent safe haven in the United States, with the possibility of becoming United States citizens in the future. All applications for this benefit must be filed by mail with the appropriate Service Center.

DATES: This interim rule is effective on July 1, 1993. Comments must be received on or before August 2, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1607–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

General Requirements for Lawful Permanent Resident Status

A person who is not a citizen or national of the United States and who is seeking permission to live permanently in this country must establish eligibility for classification as an immigrant under one of several categories provided by the Immigration and Nationality Act (Act). An intending immigrant may meet this requirement by showing that a petition has been approved for his or her classification as an immigrant based upon intended employment in the United States or a close family relationship to a United States citizen or lawful permanent resident.

Due to the high demand for permanent resident status and the need for an orderly immigration process, the Act limits the number of immigrant visas which may be issued each year. The Act places limitations or quotas on the number of immigrant visas which may be issued under most classifications, and on the number of immigrant visas which may be issued to natives of an individual foreign state. A waiting list is established for those classifications and countries where the demand exceeds the number of visas legally available. When an individual's priority date (place on the waiting list) has been reached, a visa number becomes available for him or her. The person may only then be issued an immigrant visa.

Immigrant visas are issued only at United States consulates or embassies abroad. In addition to reviewing an applicant's eligibility for classification as an immigrant and verifying the availability of a visa number, consular officials determine whether the individual is admissible to the United States. A person may be prohibited from entering the United States for a variety of reasons. Grounds of exclusion, as set forth in section 212(a) of the Act, include an inability to obtain employment or otherwise provide for his or her financial support, convictions for certain crimes, and illicit trafficking in controlled substances.

After an individual has been issued an immigrant visa, he or she may travel to the United States and seek admission for lawful permanent residence. A lawful permanent resident may live and work legally in the United States. After meeting certain requirements, a lawful permanent resident may apply to become a naturalized citizen of the United States.

Some intending immigrants, however, are already in the United States in temporary nonimmigrant status. If these persons meet certain criteria, they may be allowed to adjust their immigration status to become lawful permanent residents without leaving the United States. This process is known as adjustment of status. Eligibility requirements for adjustment of status under section 245 of the Act are more stringent than requirements for immigrant visa issuance abroad, since adjustment is an exception to the normal process. The more stringent adjustment requirements also serve to discourage persons from obtaining temporary nonimmigrant visas in order to bypass the immigrant visa processing requirements.

In addition to having an immigrant visa number immediately available and establishing eligibility for classification as an immigrant, adjustment of status applicants usually must prove that they entered the United States after having been inspected and admitted or paroled by an immigration officer. They must also show that they have complied with the requirements of their temporary nonimmigrant status and have not been employed in the United States without authorization.

Benefits of the CSPA

Under the terms of Executive Order (E.O.) 12711 of April 11, 1990, certain nationals of the People's Republic of China (PRC) and their dependents may be granted a temporary deferral of enforcement of their departure from the United States and other temporary benefits through January 1, 1994. The Chinese Student Protection Act of 1992 (CSPA), Public Law 102–404, dated October 9, 1992, allows certain persons covered by E.O. 12711 to adjust status to that of lawful permanent residents of the United States.

The CSPA provides eligible applicants with an automatic immigrant classification under the third employment-based preference category, even though petitions may not have been filed and they may not meet the usual requirements for skilled worker classification under section 203(b)(3)(A)(i) of the Act. It also allows these persons to apply for adjustment of status, regardless of whether their priority dates are current and visa numbers are available. The CSPA totally exempts eligible applicants from the per-country immigrant visa limitation of section 202(a)(2) of the Act, and their adjustment of status applications may be approved without regard to this limitation. However, an application for CSPA adjustment of status may not be approved until a visa number becomes available for the applicant under the worldwide allocation of immigrant visa numbers for employment-based aliens under section 203(b)(3)(A)(i) of the Act. The CSPA also exempts applicants who were or are nonimmigrant exchange visitors under section 101(a)(15)(J) of the Act from compliance with the two-

year home country residence requirement of section 212(e) of the Act.

The CSPA further exempts eligible applicants from certain grounds of exclusion. The CSPA provides that qualified applicants may not be excluded for failure to obtain labor certifications, failure to meet certain requirements applicable to foreign-trained physicians, or for violations of documentary requirements relating to entry as an immigrant.

The CSPA also allows most other exclusion grounds to be waived at the discretion of the Attorney General for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest. Grounds of exclusion which cannot be waived are those involving trafficking in controlled substances; security and related grounds such as espionage, terrorist activities, and foreign policy considerations; and participation in Nazi persecutions or in genocide.

The CSPA also allows eligible applicants to adjust status without regard to the provisions of section 245(c) of the Act. This exemption allows CSPA applicants to adjust status even though they may have entered the United States as crewmen, accepted unauthorized employment, failed to maintain lawful nonimmigrant status, been admitted to the United States in transit without visa status under section 212(d)(4)(C) of the Act, or been admitted to the United States as nonimmigrant visitors without visas under section 212(1) or 217 of the Act.

Basic CSPA Eligibility Requirements

In order to be eligible for benefits under the CSPA, an applicant must be a national of the PRC or a dependent of a national of the PRC as described in section 1 of E.O. 12711; must have resided continuously in the United States since April 11, 1990 (except for brief, casual, and innocent absences); and may not have spent more than 90 days in the PRC after April 11, 1990, and before October 9, 1992. CSPA adjustment applicants must also meet all requirements for adjustment of status under section 245 of the Act, unless such requirements have been waived.

Eligibility under Section 1 of Executive Order 12711

Section 1 of E.O. 12711 provides benefits to nationals of the PRC and their dependents who were in the United States at any time between June 5, 1989, and April 11, 1990, inclusive. Persons who have been granted Deferred Enforced Departure (DED) and/or employment authorization benefits under E.O. 12711 have already established to the Immigration and Naturalization Service (Service) that they meet the requirements of section 1 of E.O. 12711. Persons who have been granted the irrevocable waiver of the two-year home country residency requirement under E.O. 12711 which may be exercised until January 1, 1994, may also have already established to the Service that they meet the requirements of section 1 of E.O. 12711. However, a person who did not initially arrive in the United States until after April 11, 1990, may be found not to meet the requirements of section 1 of E.O. 12711, regardless of the Service's decision to grant him or her a derivative waiver of the two-year home country residency requirement based upon his or her spousal or parental relationship to a principal alien who qualifies for benefits under E.O. 12711. Applicants should note that, because the CSPA and E.O. 12711 have distinct eligibility requirements, a person may be found to be ineligible for CSPA benefits even though that person's E.O. 12711 benefits may have been correctly granted and have not been revoked or terminated. If the Service determines that a person who was granted E.O. 12711 benefits was not, in fact, eligible for these benefits, the Service may deny that person's request for CSPA adjustment without having first revoked or terminated that person's E.O. 12711 benefits.

The Service has previously determined that a brief, casual, and innocent departure from the United States between June 5, 1989, and April 11, 1990, inclusive, would not preclude an individual from coverage under section 1 of E.O. 12711 and eligibility for E.O. 12711 benefits. This same interpretation of the E.O. 12711 requirements will be applied when determining whether a CSPA applicant is a person described in section 1 of E.O. 12711.

The CSPA does not require applicants to have previously applied for benefits under E.O. 12711. Therefore, PRC nationals and their dependents who meet the requirements of section 1 of E.O. 12711 but have not applied for E.O. 12711 benefits may be eligible for CSPA adjustment of status.

National of the PRC

The term "national" is defined under section 101(a)(21) of the Act as a person owing permanent allegiance to a state. In most cases, a citizen of the PRC who entered the United States using a passport issued by the PRC would be considered a national of the PRC. A citizen of the PRC who has taken up temporary or permanent residence in a third country without becoming a citizen of that country would also ordinarily be considered a national of the PRC. A citizen of the PRC who traveled to the United States using a Certificate of Identity or other non-national travel document issued by a third country may also be considered a PRC national.

A citizen of the PRC who is a dual national of the PRC and of one or more other countries would not necessarily be precluded from satisfying the PRC nationality requirement under the CSPA. However, the Service has held that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. Thus, a dual national CSPA principal applicant must have claimed PRC nationality at the time of his or her last entry into the United States on or before April 11, 1990.

Persons who entered the United States as citizens (and not merely residents) of Hong Kong or of Taiwan are not considered nationals of the PRC for the purpose of E.O. 12711 and will not be considered PRC nationals for the purpose of the CSPA. Hong Kong remains a colony of the United Kingdom of Great Britain and Northern Ireland at this time, and is not under the sovereignty of the PRC. Similarly, although the United States government recognizes the government of the PRC to be the government of all of China, section 3303(b)(6) of Title 22 of the United States Code provides that Taiwan is to be considered a separate independent country for purposes of United States immigration law.

Dependents of PRC Nationals

The CSPA does not limit the age, marital status, or sex of persons who may be considered as CSPA principal applicants. Therefore, a spouse or child who is a national of the PRC in his or her own right will be considered a principal applicant for the purpose of establishing eligibility for CSPA adjustment of status.

Certain non-PRC family members who satisfy the requirements of section 1 of E.O. 12711 and of the CSPA may also be eligible for CSPA benefits. In accordance with the general requirements for derivative immigrant classification, as set forth in section 203(d) of the Act, a non-PRC family member who is the unmarried child under 21 years of age or the spouse of an eligible PRC national may apply for CSPA adjustment of status. The non-PRC family member must show that he or she was in the United States at some time between June 5, 1989, and April

11, 1990, and that the qualifying relationship to the PRC principal existed as of April 11, 1990.

A non-PRC applicant is not eligible for CSPA adjustment of status if the qualifying relationship has been terminated or if it terminates before the non-PRC family member's application for CSPA adjustment of status has been approved. However, given that the Service has previously determined that E.O. 12711 benefits should not be terminated merely because a non-PRC son or daughter of a qualified PRC national reached the age of 21 or married, an adult or married non-PRC son or daughter who did not reach 21 years of age and did not marry until after April 11, 1990, may be eligible for CSPA adjustment of status.

A non-PRC family member's application for CSPA adjustment of status may not be granted before the PRC principal's CSPA adjustment of status has been approved. A non-PRC family member's application for CSPA adjustment of status must be denied if the PRC principal applicant is found to be ineligible for CSPA adjustment of status.

Family members unable to qualify for CSPA adjustment of status may be eligible for lawful permanent resident status under other provisions of the Act. Those family members whose spousal or parental relationship was established before the principal CSPA alien's application for adjustment of status is approved may be eligible for derivative immigrant status as employment-based preference immigrants accompanying or following to join the CSPA principal. A child born of a qualifying marriage which existed at the time of the principal CSPA applicant's adjustment of status will be considered to have been acquired prior to the principal applicant's adjustment of status, and may also be eligible for accompanying or following to join derivative employment-based preference immigrant status. A qualified spouse or unmarried child who is under 21 years of age at the time he or she is issued an immigrant visa or granted adjustment of status may be considered as following to join the principal CSPA alien regardless of the amount of time which has elapsed since the CSPA principal's status was adjusted. Such family members who are accompanying or following to join a principal CSPA applicant may derive the principal applicant's employment-based third preference category and may be accorded the principal's priority date. These family members must satisfy the usual requirements for adjustment of status or immigrant visa issuance, including the requirement that an immigrant visa number be immediately available when the immigrant visa is issued or the application for adjustment of status is filed. When the family member's visa number becomes current, the family member may apply for an immigrant visa abroad or, if he or she meets the requirements of section 245 of the Act, for adjustment of status in the United States.

After the CSPA principal's status is adjusted to that of a lawful permanent resident, the principal also has the option of filing a visa petition to accord his or her spouse, children, and unmarried adult sons and daughters immigrant classification under section 203(a)(2) of the Act. In this case, the priority date would be based upon the date the CSPA principal filed the visa petition for the family member. The spousal or parental relationship may have been established any time before the visa petition was filed.

A family member who is not immediately eligible for CSPA adjustment of status may apply for any other benefit for which he or she may be eligible under the Act or by regulation. Any alien in the United States, including a family member of a CSPA applicant, who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, and believes that he or she meets the definition of "refugee" contained in section 101(a)(42) of the Act, may request asylum. An application for asylum may be made by filing Form I–589, Request for Asylum in the United States.

Family members who are unable to maintain lawful nonimmigrant status in the United States and are not immediately eligible to apply for adjustment of status also have the option of requesting voluntary departure. Service regulations at 8 CFR 242.5 allow the request for voluntary departure to be made to the district director having jurisdiction over the person's place of residence. No application form or fee is required. Family members who have been granted voluntary departure may request employment authorization by filing Form I–765, Application for Employment Authorization.

"Resided Continuously" and "Brief, Casual, and Innocent Absences"

Under the terms of the CSPA, eligible applicants must have resided continuously in the United States since April 11, 1990. They may, however, have had brief, casual, and innocent absences from the United States during this time. Since CSPA applicants must also meet the requirements of section 1 of E.O. 12711, CSPA applicants must also have been in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or show that they would have been in this country if they had not had a brief, casual, and innocent departure from the United States during this time.

Section 101(a)(33) of the Act defines the term "residence" as a person's "principal, actual dwelling place in fact, without regard to intent." Therefore, in order to satisfy the continuous residence requirement of the CSPA, an applicant must show that, since April 11, 1990, his or her principal actual dwelling place in fact, regardless of intent, was in the United States. The maintenance of assets in this country without physical presence is not sufficient to satisfy the continuous residence requirement, although continuous physical presence is not required. A CSPA applicant who has had his or her principal actual dwelling place in fact in the United States and has had only brief, casual, and innocent absences from the United States since April 11, 1990, may be considered to have resided continuously in this country.

The determination as to whether an absence may be characterized as "brief, casual, and innocent" may be made only after an evaluation not only of the length of the absence from the United States, but also of the purpose for which the trip was made and any extenuating circumstances which may have caused the person to be unable to promptly return to his or her residence in the United States. For purposes of determining eligibility under E.O. 12711 and the CSPA, "brief, casual, and innocent" has been, and will continue to be, interpreted liberally. Brief, casual, and innocent departures may include foreign visits by students during school vacations, trips outside the country necessitated by family emergencies, international conferences, and other academically-related activities. A temporary absence of this nature should not usually have exceeded the length of a normal summer vacation for students. Prolonged absences that are longer that five months are not necessarily deemed brief or casual. However, circumstances requiring longer absences will be given consideration. In general, absences due to temporary assignments abroad for a United States employer or for academic research or training approved by the applicant's United States educational institution will be looked upon as being brief, casual, and innocent and,

therefore, not interruptive of continuous residence in the United States.

Physical Presence in the PRC

The CSPA limits the time which an applicant may have spent in the PRC between April 11, 1990, and October 9, 1992, to a total of 90 days. The CSPA does not restrict the number of times an eligible applicant may have traveled to the PRC. Therefore, the 90-day restriction will not apply unless the time an applicant has been physically present in the PRC totals 90 or more days, regardless of the number of times the applicant has traveled to the PRC during the restricted period. The CSPA also does not restrict the number of trips an applicant may have made to the PRC before April 12, 1990, and/or on or after October 9, 1992. Time spent in the PRC before or on April 11, 1990, and/or on or after October 9, 1992, will not be taken into account when determining the amount of time a CSPA applicant has physically spent in the PRC.

Since this restriction is statutorily imposed, the Service has no discretionary authority to waive compliance with the 90-day aggregate limit on physical presence in the PRC, regardless of the reasons the applicant may have been forced to remain in the PRC.

Eligibility for Adjustment of Status

An eligible CSPA applicant is considered to be automatically eligible for classification as an immigrant under the third employment-based preference category, even though no petition has actually been filed and the applicant may not be a skilled worker as defined under section 203(b)(3)(A)(i) of the Act. Since no petition is filed, the CSPA applicant will be assigned a priority date based upon the date the application for adjustment of status is properly filed with the appropriate Service office. CSPA applicants are exempted from the per-country immigrant visa limitations of section 202(a)(2) of the Act, and may file applications for adjustment of status, regardless of whether their priority dates are current and visa numbers are immediately available at the time of filing. However, CSPA applicants are not exempted from the worldwide annual numerical limit on employment-based immigrants. Therefore, a CSPA adjustment application may not be approved until the applicant's priority date is current (place on the waiting list has been reached) and a visa number is available for the applicant under the worldwide 203(b)(3)(A)(i) preference category, as shown in the Department of State Visa Bulletin. Applications which have been filed but cannot be approved solely because no visa number is available will be retained by the Service until such time as the priority date is reached and the number becomes available. The CSPA also exempts applicants who were or are nonimmigrant exchange visitors under section 101(a)(15)(J) of the Act from compliance with the two-year home country residency requirement of section 212(e) of the Act.

The CSPA also provides that qualified applicants may not be excluded for failure to obtain labor certifications or failure to meet certain requirements applicable to foreign-trained physicians under section 212(a)(5) of the Act; or for violations of documentary requirements relating to entry as an immigrant under section 212(a)(7)(A) of the Act. However, the CSPA does not automatically exempt CSPA applicants from other grounds of exclusion under section 212(a) of the Act. Therefore, all CSPA applicants must show that they are not excludable from the United States under all applicable grounds of exclusion under section 212(a) of the Act, or must show that an individual waiver has been approved for them. The CSPA allows most other grounds of excludability to be waived individually for CSPA applicants at the discretion of the Attorney General for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest. Grounds of excludability which cannot be waived are those involving trafficking in controlled substances under section 212(a)(2)(C) of the Act; security and related grounds such as espionage under section 212(a)(3)(A) of the Act; terrorist activities under section 212(a)(3)(B) of the Act; foreign policy considerations under section 212(a)(3)(C) of the Act; and participation in Nazi persecutions or in genocide under section 212(a)(3)(E) of the Act. A CSPA applicant may request consideration for one or more waivers by filing an application for the waiver concurrently with his or her adjustment of status application. The adjustment of status may not be granted unless the waiver has first been approved.

The CSPA also allows eligible applicants to adjust status without regard to the provisions of section 245(a) of the Act. This exemption allows CSPA applicants to adjust status even though they entered the United States as crewmen, accepted unauthorized employment, failed to maintain lawful nonimmigrant status, were admitted to the United States in transit without visa status under section 212(d)(4)(C) of the Act, or were admitted to the United States as nonimmigrant visitors without visas under section 212(1) or 217 of the Act.

No other requirements of section 245 of the Act have been waived by the CSPA. Therefore, CSPA applicants must meet the requirements of section 245(a) of the Act, which requires adjustment applicants to establish that they were inspected and admitted or paroled into the United States by an immigration officer. Persons who entered the United States without inspection are not eligible for CSPA benefits. CSPA applicants are also subject to the requirements of section 245(d) of the Act, which prohibits the adjustment of status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216 of the Act. CSPA applicants are also subject to the restrictions on the adjustment of status of an alien who was admitted to the United States as a fiance(e) or the child of a fiance(e) under section 101(a)(15)(K) of the Act, as provided in section 245(d) of the Act. Section 245(d) of the Act allows these persons to adjust status to that of an alien lawfully admitted to the United States only on a conditional basis under section 216 of the Act as a result of the marriage of the fiance(e) to the United States citizen who filed the fiance(e) petition upon which the alien's nonimmigrant status is based.

Application Period

The CSPA specifies that the application period for these benefits begins July 1, 1993. Applications received prior to the beginning of the application period will be deemed by the Service to have been filed on July 1, 1993, and will be assigned a July 1, 1993 priority date. In order to be able to approve as many applications as possible during Fiscal Year 1993, when excess visa numbers are expected to be available within the worldwide section 203(b)(3)(A)(i) quota, the Service may initiate record checks and begin clerical processing of CSPA applications received prior to July 1, 1993.

Pursuant to the CSPA deactivation clause, if the President of the United States determines and certifies to Congress before July 1, 1993, that conditions in the PRC permit persons covered by the CSPA to safely return to the PRC, no applications for lawful permanent resident status under the CSPA will be processed or granted. If this was to happen, Chinese nationals who have been granted DED under E.O. 12711 would be expected to establish eligibility for other immigration classifications or to depart the United States by January 1, 1994.

If the President does not make this certification before July 1, 1993, the Service will grant lawful permanent residence to qualified CSPA applicants. The CSPA will remain in force regardless of changes taking place in the PRC on or after July 1, 1993.

The CSPA application period will continue through June 30, 1994. All CSPA applications must be properly filed with the Service before the end of the business day on June 30, 1994, although the Service may complete its processing of CSPA applications after that date.

Application Forms and Supporting Documents

Applicants should refer to the instructions provided with the required application forms. Applicants for CSPA adjustment of status benefits must file a Form I–485, "Application to Register Permanent Residence or Adjust Status," accompanied by the required application fee and supporting documents. PRC national CSPA applicants should complete Part 2 of that form (Application Type) by checking box "h—other" and writing "CSPA—Principal" next to that block. Non-PRC national CSPA applicants should complete Part 2 of that form (Application Type) by checking box "h—other" and writing "CSPA—Qualified Family Member" next to that block.

Each application filed by a PRC national CSPA applicant must be accompanied by the initial evidence required by Form I–485: (1) A birth certificate or other record of birth; (2) two "ADIT-style" photos as described in the Form I–485 instructions; (3) one complete set of fingerprints on Form FD–258, "Applicant Card," if the applicant is between 14 and 75 years old; (4) a completed Form G–325A, "Biographic Information Sheet," if the applicant is between 14 and 79 years old; (5) an original medical examination report on Form I–693, "Medical Examination of Aliens Seeking Adjustment of Status," completed by a physician authorized by the local Service office; (6) a copy of the applicant's Form I–94, "Arrival-Departure Record" or other evidence of inspection and admission or parole into the United States; and (7) an original letter of employment showing the applicant is employed in a job which is not temporary, a completed Form I–134, "Affidavit of Support," or other evidence showing that the applicant is not likely to become a public charge in the United States.

Each CSPA applicant must also submit evidence of eligibility for the adjustment of status benefits of the CSPA: (1) A photocopy of all pages of the applicant's most recent passport or an explanation of why the applicant does not have a passport; (2) an attachment on a plain piece of paper showing the date of the applicant's last arrival in the United States before or on April 11, 1990, the date of each departure the applicant made from the United States since that arrival, the reason for each departure, and the date of each return to the United States (if the applicant did not depart the United States after the initial date of arrival, the applicant should write "I was in the United States on April 11, 1990, and I have not departed the United States since April 11, 1990"); (3) an attachment on a plain piece of paper showing the date the applicant arrived in the PRC, the date the applicant left the PRC for each trip the applicant made to the PRC between April 11, 1990, and October 9, 1992 (if the applicant did not travel to the PRC, the applicant should write "I was not in the People's Republic of China between April 11, 1990, and October 9, 1992"); (4) a copy of evidence showing that the applicant was found eligible for benefits under E.O. 12711, such as deferred enforced departure (DED), employment authorization, and/or waiver of the two-year home country residence requirement, if the applicant previously applied for benefits under E.O. 12711; and (5) evidence of a derivative relationship to an eligible PRC national, such as a birth or marriage certificate, if the applicant is a non-PRC family member. Further information concerning evidence which may be provided to establish a derivative relationship may be found in the instructions to Form I–485, under "Evidence of eligibility * * * Based on you being the spouse or child of another adjustment applicant or person granted permanent residence based on issuance of an immigrant visa."

Secondary Evidence

If any required document is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish the birth, marriage, or other event.

In view of the difficulties that some CSPA applicants may encounter when attempting to obtain documents from the PRC, the Service will waive the requirement that secondary evidence of birth or marriage in the PRC be accompanied by documentary evidence that the primary evidence is unavailable.

Preferred secondary evidence concerning admission would consist of United States government-issued documents or documents which have been stamped by a United States immigration officer showing the applicant's lawful admission to the United States, such as Form I–20A–B/I–20ID, "Certificate of Eligibility of Nonimmigrant (F–1) Student Status—For Academic and Language Students," Form I–20M–N, "Certificate of Eligibility for Nonimmigrant (M–1) Student Status—For Vocational Students," or Form IAP–66, "Certificate of Eligibility for Exchange Visitor Status."

Service Requests for Additional Evidence

The Service will evaluate all evidence submitted for credibility and authenticity. The Service may also, at the discretion of the Service Center Director or District Director, choose to request additional evidence that the applicant meets any of the requirements for CSPA adjustment of status. For example, the Service may, at the discretion of the Service Center Director or District Director, choose to request additional evidence of the applicant's continuous residence in the United States since April 11, 1990. Copies of school, employment or similar records which show that the applicant was in the United States during the required time period may be submitted in response to requests for additional evidence of continuous residence.

Fee

CSPA adjustment of status applications must be submitted with the fee required by Form I–485.

Filing

All applications and attachments must be submitted by mail to the Service Center having jurisdiction over the applicant's place of residence.

If the applicant lives in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, or West Virginia, the CSPA adjustment application must be mailed to: USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479–0001.

If the applicant lives in Arizona, California, Guam, Hawaii, or Nevada, the CSPA adjustment application must be mailed to: USINS Western Service

Center, P.O. Box 10485, Laguna Niguel, CA 92607–0485.

If the applicant lives in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, the CSPA adjustment application must be mailed to: USINS Southern Service Center, P.O. Box 152122 Department A, Irving, TX 75015–2122.

If the applicant lives elsewhere in the United States, the CSPA adjustment application must be mailed to: USINS Northern Service Center, P.O. 82521, Lincoln, NE 68501–2521.

Applicants will receive a filing receipt from the Service Center. The receipt may instruct the applicant to bring the receipt and photo identification to his or her local Service office where his or her signature and fingerprint will be recorded on Form I–89 for processing for an Alien Registration Receipt Card, Form I–551. Failure to promptly appear at the local Service office for processing may delay action on the application. Applicants will be notified by mail of the action taken on their applications.

Interview

If the application is adjudicated without interview, a notice of the decision will be mailed to the applicant. If an interview is required, the application will be forwarded to the local immigration office having jurisdiction over the applicant's place of residence. The applicant will be notified of the date and time to appear for the required interview. The decision whether to require an interview is solely within the discretion of the Service. If an applicant fails to appear for a required interview without good cause, the application will not be approved and may be denied.

Employment Authorization

An unexpired authorization to accept employment under the provisions of E.O. 12711 will not be invalidated by the filing of an application for adjustment of status. Any applicant for adjustment of status who wishes to obtain initial or continued permission to accept employment during the period the adjustment of status application is pending may file Form I–765, Application for Employment Authorization. After a CSPA adjustment application has been granted, a lawful permanent resident who adjusted under the CSPA may present his or her Alien Registration Receipt Card, Form I–551, as evidence that he or she is authorized to accept employment in the United States.

Travel Outside the United States

If an applicant plans to leave the United States to go to any other country, including Canada or Mexico, before a decision is made on his or her CSPA adjustment application, the applicant should contact his or her local Service office. If an applicant leaves the United States without advance written permission, action on his or her CSPA adjustment application may be terminated and the application may be denied. An applicant may also experience difficulty when returning to the United States if he or she does not have written permission to reenter. After a CSPA adjustment application has been granted, a lawful permanent resident who adjusted under the CSPA may travel outside the United States and reenter using his or her Alien Registration Receipt Card, Form I–551, provided he or she has not been absent from the United States for more than one year.

Alien Registration Receipt Cards for Approved CSPA Applicants

After processing is completed, a notice of the decision will be mailed to the CSPA applicant. Applicants should keep this notice for their records. If the application has been approved, an alien registration receipt card will be mailed to the applicant within several months. If an approved applicant needs temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the CSPA adjustment of status application.

Dissemination of Information

The CSPA instructs that, if the President of the United States has not certified to the United States Congress before July 1, 1993, that conditions in the PRC permit aliens to return safely to that country, the Attorney General shall, subject to the availability of appropriations, immediately broadly disseminate information concerning the CSPA to eligible aliens. The Service intends to take measures to ensure that eligible aliens are aware of the potential benefits of the CSPA by contacting various organizations that may have contact with them and by providing information to the media. The CSPA further directs the Attorney General, to the extent practicable, to provide notice of these benefits to the last known mailing address of each such alien. However, a potential applicant should not delay filing an application for CSPA adjustment merely because he or she has not received a notice from the Service.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B), (d)(3); see *Animal Legal Defense Fund* v. *Quigg*, 932 F.2d 920 (Fed Cir. 1991). The reasons and necessity for immediate implementation of this interim rule are as follows:

Early implementation will allow PRC nationals and their spouses and children to obtain the additional benefits available to applicants for adjustment of status under the CSPA as of the beginning of the statutorily established application period on July 1, 1993. Furthermore, early implementation will allow the Service to approve a significant number of CSPA adjustment of status applications during Fiscal Year 1993, when visa numbers are expected to be available. Visa numbers may regress during Fiscal Year 1994, which would force the Service to delay approval of CSPA adjustment of status applications and delay the date when these persons would become lawful permanent residents of the United States.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirments.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

VOL 58 ISS 125 JUL 1 1993 UMI

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

§ 245.2 [Amended]

2. In § 245.2, paragraph (a) is amended in the first sentence by adding the phrase "unless otherwise instructed in 8 CFR 245" immediately after the phrase "place of residence".

3. A new § 245.9 is added to read as follows:

§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.

(a) *Principal applicant status.* All nationals of the People's Republic of China who qualify under the provisions of paragraph (b) of this section may apply for adjustment of status as principals in their own right, regardless of age or marital status. Nationals of other countries who meet the requirements of paragraphs (b) and (c) of this section may apply for adjustment of status as qualified family members.

(b) *Aliens eligible to apply for adjustment.* An alien is eligible to apply for adjustment of status under the provisions of Public Law 102–404, if the alien:

(1) Is a national of the People's Republic of China or a qualified family member of an eligible national of the People's Republic of China;

(2) Was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country;

(3) Has resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent absences;

(4) Was not physically present in the People's Republic of China for more than a cumulative total of 90 days between April 11, 1990, and October 9, 1992;

(5) Is admissible to the United States as an immigrant, unless the basis for excludability has been waived;

(6) Establishes eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

(7) Properly files an application for adjustment of status under section 245 of the Act.

(c) *Qualified family member who is not a national of the People's Republic of China.* A qualified family member within the meaning of this section includes the spouse, child, son, or daughter of a national of the People's Republic of China who is eligible for benefits under the provisions of paragraph (b) of this section, provided that:

(1) He or she qualified as the spouse or child (as defined in section 101(b)(1) of the Act) of an eligible national of the People's Republic of China as of April 11, 1990; and

(2) The qualifying relationship continues to exist, or the family member is a son or daughter of an eligible national of the People's Republic of China and the family member was unmarried and under the age of 21 on April 11, 1990.

(d) *Waivers of excludability under section 212(a).* An applicant for the benefits of the adjustment of status provisions of Public Law 102–404 automatically exempted from compliance with the requirements of section 212(a)(5) and 212(a)(7)(A) of the Act. A Public Law 102–404 applicant may also apply for one or more waivers of excludability under section 212(a) of the Act, except for excludability under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

(e) *Waiver of the two-year foreign residence requirement of section 212(e).* An applicant for the benefits of the adjustment of status provisions of Public Law 102–404 is automatically exempted from compliance with the two-year foreign residence requirement of section 212(e) of the Act.

(f) *Waiver of section 245(c) of the Act.* Public Law 102–404 provides that the provisions of section 245(c) of the Act shall not apply to persons applying for the adjustment of status benefits of Public Law 102–404.

(g) *Application.* Each applicant must file an application for adjustment of status on Form I–485, Application to Register Permanent Residence or Adjust Status, accompanied by the prescribed fee, and the supporting documents specified on the instructions to Form I–485 and described in § 245.2. Secondary evidence may be submitted if the applicant is unable to obtain the required primary evidence. Applicants who are nationals of the People's Republic of China should complete Part 2 of Form I–485 by checking box "h—other" and writing "CSPA—Principal" next to that block. Applicants who are not nationals of the People's Republic of China should complete Part 2 of Form I–485 by checking box "h—other" and writing "CSPA—Qualified Family Member" next to that block. Each applicant for the benefits of Public Law 102–404 must also submit evidence of eligibility for the adjustment of status benefits of Public Law 102–404:

(1) A photocopy of all pages of the applicant's most recent passport or an explanation of why the applicant does not have a passport;

(2) An attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before or on April 11, 1990;

(ii) The date of each departure the applicant made from the United States since that arrival (if the applicant did not depart the United States after the initial date of arrival, the applicant should write "I was in the United States on April 11, 1990, and I have not departed the United States since April 11, 1990");

(iii) The reason for each departure; and

(iv) The date of each return to the United States.

(3) An attachment on a plain piece of paper showing:

(i) The date the applicant arrived in the People's Republic of China; and

(ii) The date the applicant left the People's Republic of China for each trip the applicant made to the People's Republic of China between April 11, 1990, and October 9, 1992 (if the applicant did not travel to the People's Republic of China, the applicant should write "I was not in the People's Republic of China between April 11, 1990, and October 9, 1992");

(4) A copy of evidence showing that the applicant was found eligible for benefits under E.O. 12711, such as deferred enforced departure (DED), employment authorization, and/or waiver of the two-year foreign residence requirement, if the applicant previously applied for benefits under E.O. 12711; and

(5) Primary or secondary evidence of a qualifying family relationship to an eligible national of the People's Republic of China, such as a birth or marriage certificate, if the applicant is a qualified family member who is not a national of the People's Republic of China.

(h) *Secondary evidence.* If any required primary evidence is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish the birth, marriage, or other event. Documentary evidence establishing that primary evidence is unavailable need not accompany secondary evidence of birth or marriage in the People's Republic of China.

(i) *Filing.* The application period begins on July 1, 1993. To benefit from the provisions of Public Law 102–404

(the Chinese Student Protection Act of 1992), an alien must properly file an application for adjustment of status under section 245 of the Act on or before June 30, 1994. All applications for the benefits of Public Law 102–404 must be submitted by mail to the Service Center having jurisdiction over the applicant's place of residence in the United States. Pursuant to the deactivation clause of Public Law 102–404, if the President of the United States determines and certifies to Congress before July 1, 1993, that conditions in the People's Republic of China permit persons covered by Public Law 102–404 to safely return to the People's Republic of China, no applications for lawful permanent resident status under Public Law 102–404 will be processed or granted.

(j) *Immigrant classification and assignment of priority date.* Public Law 102–404 provides eligible applicants with automatic classifications as immigrants under section 203(b)(3)(A)(i) of the Act. No immigrant visa petition is required and applicants need not meet the usual requirements for classification as skilled workers. The applicant's priority date shall be the date his or her application for adjustment of status under Public Law 102–404 is properly filed with the Service.

(k) *Effect of immigrant visa number limitations.* Eligible Public Law 102–404 applicants are exempt from the per-country immigrant visa number limitations of section 202(a)(2) of the Act. Eligible Public Law 102–404 applicants may file an application for adjustment of status under Public Law 102–404 without regard to immigrant visa number limitations of sections 202(a)(2) and 203(b)(3)(A)(i) of the Act. However, the adjustment of status application may not be approved and adjustment of status to that of a lawful permanent resident of the United States may not be granted until a visa number becomes available for the applicant under the worldwide allocation of immigrant visa numbers for employment-based aliens under section 203(b)(3)(A)(i) of the Act. The applicant may request initial or continued employment authorization during this period by filing Form I–765, Application for Employment Authorization. If the applicant needs to travel outside the United States during this period, he or she may file a request for advance parole on Form I–131, Application for Travel Document.

(l) *Decision.* In the case of an application for adjustment of status filed pursuant to the provisions of Public Law 102–404, the authority conferred upon district directors in 8 CFR part 245 to accept and adjudicate an application for adjustment of status under section 245 of the Act is delegated exclusively to the service center director having jurisdiction over the applicant's place of residence in the United States. If the service center director transfers the application to the district director, authority to adjudicate an application for adjustment of status filed pursuant to the provisions of Public Law 102–404 lies with the district director having jurisdiction over the applicant's place of residence.

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Public Law 102–404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act. Persons who are unable to maintain lawful nonimmigrant status in the United States and are not immediately eligible to apply for adjustment of status may request voluntary departure pursuant to 8 CFR part 242. Persons who have been granted voluntary departure may request employment authorization by filing Form I–765, Application for Employment Authorization.

Dated: June 18, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–15782 Filed 6–30–93; 8:45 am]

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35357–35840

Reader Aids

Federal Register

Vol. 58, No. 125

Thursday, July 1, 1993

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447
Code of Federal Regulations	
Index, finding aids & general information	523–5227
Printing schedules	523–3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230
Presidential Documents	
Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230
The United States Government Manual	
General information	523–5230
Other Services	
Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

VOL 58 ISS 125 JL 1 1993 UMI

CFR ISSUANCES 1993
January—April 1993 Editions and Projected July, 1993 Editions

This list sets out the CFR issuances for the January–April 1993 editions and projects the publication plans for the July, 1993 quarter. A projected schedule that will include the October, 1993 quarter will appear in the first Federal Register issue of October.

For pricing information on available 1992–1993 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1993 editions:

Title	
CFR Index	1–199
	200–End
1–2	
3 (Compilation)	10 Parts:
	0–50
4	51–199
	200–399
5 Parts:	400–499
1–699	500–End
700–1199	
1200–End	11
6 [Reserved]	12 Parts:
	1–199
7 Parts:	200–219
0–26	220–299
27–45	300–499
46–51	500–599
52	600–End
53–209	
210–299	13
300–399	
400–699	14 Parts:
700–899	1–59
900–999	60–139
1000–1059	140–199
1060–1119	200–1199
1120–1199	1200–End
1200–1499	
1500–1899	15 Parts:
1900–1939	0–299
1940–1949	300–799
1950–1999	800–End
2000–End	
	16 Parts:
8	0–149
	150–999
9 Parts:	1000–End

Titles revised as of April 1, 1993:

Title	
17 Parts:	23
1–199	
200–239* (Revised as of June 1, 1993)	24 Parts:
240–End* (Revised as of June 1, 1993)	0–199
	200–499*
18 Parts:	500–699
1–149	700–1699
150–279	1700–End
280–399	
400–End	25
19 Parts:	26 Parts:
1–199	1 (§§ 1.0-1–1.60)
200–End	1 (§§ 1.61–1.169)
	1 (§§ 1.170–1.300)
20 Parts:	1 (§§ 1.301–1.400)
1–399	1 (§§ 1.401–1.500)
400–499	1 (§§ 1.501–1.640)
500–End	1 (§§ 1.641–1.850)
	1 (§§ 1.851–1.907)
21 Parts:	1 (§§ 1.908–1.1000)
1–99	1 (§§ 1.1001–1.1400)
100–169*	1 (§ 1.1401–End)
170–199	2–29
200–299	30–39
300–499	40–49
500–599	50–299
600–799	300–499
800–1299	500–599 (Cover only)
1300–End	600–End
22 Parts:	27 Parts:
1–299	1–199
300–End	200–End (Cover only)

Projected July 1, 1993 editions:

Title	
28 Parts:	125–199
1–42	200–End
43–End	
	34 Parts:
29 Parts:	1–299
0–99	300–399
100–499	400–End
500–899	
900–1899	35
1900–1910 (§§ 1901.1–1910.999)	36 Parts:
1910 (§§ 1910.1000–End)	1–199
1911–1925	200–End
1926	
1927–End	37
30 Parts:	38 Parts:
1–199	0–17
200–699	18–End
700–End	
	39
31 Parts:	
0–199	40 Parts:
200–End	1–51
	52
32 Parts:	53–59
1–190	60
191–399	61–80
400–629	81–85
630–699	86–99
700–799	100–149
800–End	150–189
	190–259
33 Parts:	260–299
1–124	300–399

400–424
425–699
700–789
790–End

400–424
425–699
700–789
790–End

41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
Ch. 201–End

VOL
58
ISS
125
JL
1
1993
UMI

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1993

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	August 2	August 16	August 30	September 29
July 2	July 19	August 2	August 16	August 31	September 30
July 6	July 21	August 5	August 20	September 7	October 4
July 7	July 22	August 6	August 23	September 7	October 5
July 8	July 23	August 9	August 23	September 7	October 6
July 9	July 26	August 9	August 23	September 7	October 7
July 12	July 27	August 11	August 26	September 10	October 12
July 13	July 28	August 12	August 27	September 13	October 12
July 14	July 29	August 13	August 30	September 13	October 12
July 15	July 30	August 16	August 30	September 13	October 13
July 16	August 2	August 16	August 30	September 14	October 14
July 19	August 3	August 18	September 2	September 17	October 18
July 20	August 4	August 19	September 3	September 20	October 18
July 21	August 5	August 20	September 7	September 20	October 19
July 22	August 6	August 23	September 7	September 20	October 20
July 23	August 9	August 23	September 7	September 21	October 21
July 26	August 10	August 25	September 9	September 24	October 25
July 27	August 11	August 26	September 10	September 27	October 25
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July 30	August 16	August 30	September 13	September 28	October 28

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ober 18
ober 18
ober 19
ober 20
ober 21
ber 25
ber 25
ber 26
ber 27
ber 28

VOL
58
ISS
1
2
5
JL
1
1993
UMI

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VOL
58
ISS
126
JL
2
1993
UMI

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VOL
58
ISS
126
JL
2
1993
UMI

7-2-93
Vol. 58
Pages 358

7–2–93
Vol. 58 No. 126
Pages 35841–36116

federal register

Friday
July 2, 1993

Briefings on How To Use the Federal Register
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VOL
58
ISS
126
JL
2
1993
UMI

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Cont

Agricultu
See Farm

Alcohol,
RULES
Alcohol;
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Blind or
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See Comm
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NOTICES
Pacific No
Conse
Policy

Commerc
See Intern
See Natio

Committe
Sever
NOTICES
Procureme

Customs
RULES
Designated
35862
NOTICES
Trade nam
NRC, In

Defense D
See Navy
NOTICES
Agency in
review
Meetings:
Electron
Travel per

Education
RULES
Postsecond
Direct st
PROPOSED
Postsecond
State stu

Employme
NOTICES
Adjustmen
Pennshi
Precision

Contents

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

Agriculture Department
See Farmers Home Administration

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
Oakville, CA, 35877
Rutherford, CA, 35865
PROPOSED RULES
Alcoholic beverages:
Wine and distilled spirits, standards of fill, 35908

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Bonneville Power Administration
NOTICES
Pacific Northwest Electric Power Planning and Conservation Act:
Policy review, 35922

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 35915, 35916

Customs Service
RULES
Designated public international organizations; list changes, 35862
NOTICES
Trade name recordation applications:
NRC, Inc., 36005

Defense Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 35920, 35921
Meetings:
Electron Devices Advisory Group, 35920
Travel per diem rates, civilian personnel; changes, 35917

Education Department
RULES
Postsecondary education:
Direct student loan program, 36088
PROPOSED RULES
Postsecondary education:
State student incentive grant program, 36110

Employment and Training Administration
NOTICES
Adjustment assistance:
Pennshire Stores, 35979
Precision Castparts Corp. et al., 35980
Princeton Packaging, Inc., 35982
Stanley Smith Security, Inc., 35982

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 35978

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Grant and cooperative agreement awards:
Coastal Zone Foundation, 35922
Natural gas exportation and importation:
Great West Energy Ltd., 35932
Vector Energy (U.S.A.), Inc., 35932
Western Gas Resources, Inc., 35932, 35933

Environmental Protection Agency
RULES
Water pollution control:
Ocean dumping; site designations—
Norfolk, VA, 35884
NOTICES
Air programs; fuel and fuel additive waivers:
Ethyl Corp., 35949
Confidential business information and data transfer to contractors, 35951
Environmental statements; availability, etc.:
Agency statements—
Comments availability, 35952
Weekly receipts, 35953
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 35953

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Farm Credit System Insurance Corporation
NOTICES
Assistance to operating insured system banks; policy statement, 35953

Farmers Home Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Socially disadvantaged farmers and ranchers, 35911

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 35860
PROPOSED RULES
Air carriers certification and operations, etc.:
Transport category airplanes; reduced V1 methodology for takeoff on wet and contaminated runways, 36116
Airworthiness directives:
Airbus, 35899

VOL
58
ISS
126
JL
2
1993
UMI

Bell, 35902
Corporate Jets, Ltd., 35904
Fokker, 35905
Schweizer Aircraft Corp. et al., 35900
NOTICES
Exemption petitions; summary and disposition, 36000
Passenger facility charges; applications, etc .36000
Lee County Port Authority, FL, et al., 36000

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Minnesota, 35956, 35957

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Coso Energy Developers, 35928, 35929
Coso Finance Partners, 35929
Coso Power Developers, 35929
HMDC Landfill Gas Energy Recovery Facility, 35931
Environmental statements; availability, etc.:
JDJ Energy Co.; meeting, 35929
Meetings; Sunshine Act, 36006
Applications, hearings, determinations, etc.:
Carnegie Natural Gas Co., 35930
CNG Transmission Corp., 35930
High Island Offshore System, 35930
Natural Gas Pipeline Co. of America, 35931
Pacific Gas Transmission Co., 35931
Tennessee Gas Pipeline Co., 35932

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Fort Bend County et al., TX, 36004

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
CNB Bancshares, Inc., et al., 35958
Drummond Banking Co. et al., 35957
Society Corp., 35958

Federal Trade Commission
PROPOSED RULES
Trade regulation rules:
Men's and boys' tailored clothing industry; discriminatory practices, 35907

Fish and Wildlife Service
RULES
Endangered and threatened species:
Thelypteris inabonensis, etc. (three Puerto Rican ferns), 35887

Food and Drug Administration
NOTICES
Blood establishments, quality assurance guideline; availability, 35958
Committees; establishment, renewal, termination, etc.:
Veterinary Medicine Advisory Committee, 35960
Medical devices; premarket approval:
ABIOMED BVS 5000 bi-ventricular support system, 35961
Organization, functions, and authority delegations:
Surveillance and Biometrics Office, 35959

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
See Social Security Administration
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist the homeless—
Excess and surplus Federal property, 35965
Housing assistance payments (Section 8)—
Loan management set-aside program, 35965

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 36006

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Cheese quota; foreign government subsidies:
Quarterly update, 35914

Interstate Commerce Commission
NOTICES
Motor carriers:
Declaratory order petitions—
Yellow Freight System, Inc. of Indiana, 35977
Railroad operation, acquisition, construction, etc.:
Gateway Eastern Railway Co., 35977

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 35978

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Gila Box Riparian National Conservation Area Advisory Committee, 35973
Environmental statements; availability, etc.:
Robinson Mine Project, NV, 35974
Stateline Resource Area, NV, 35974
Realty actions; sales, leases, etc.:
Utah, 35975
Survey plat filings:
Idaho, 35975
Vernal District Advisory Council; tour of acquired land, 35975

Management and Budget Office
NOTICES
Federal information resources management (Circular A-130); revision, 36068

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council task forces, 35984

National Archives and Records Administration
NOTICES
Nixon Presidential historical materials; opening of materials, 35983

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 36006

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 35962
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 35961

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 36006

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 35897
Gulf of Alaska groundfish, 35897
Gulf of Mexico shrimp, 35897
South Atlantic snapper-grouper, 35895
Summer flounder, 35891
NOTICES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 35914

National Park Service
NOTICES
Concession contract negotiations:
Bandelier National Monument, NM, 35976
Meetings:
Niobrara Scenic River Advisory Committee, 35976

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 35921

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Indiana Michigan Power Co., 35984
Regulatory guides; issuance, availability, and withdrawal, 35985
Reports; availability, etc.:
Voltage-based interim plugging criteria for steam generator tubes, 35985
Applications, hearings, determinations, etc.:
Southern California Edison Co. et al., 35986

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 35982

Office of Management and Budget
See Management and Budget Office

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 36006

Personnel Management Office
RULES
Child support and/or alimony; garnishment orders; processing, 35845

Presidential Documents
EXECUTIVE ORDERS
Committees: establishment, renewal, termination, etc.:
Council on Sustainable Development, President's (EO 12852), 35841
Haiti; blockage of government property and prohibition of transactions (EO 12853), 35843

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Regional Rail Reorganization Act; benefit program; termination, 35987

Securities and Exchange Commission
NOTICES
Electronic Data Gathering, Analysis and Retrieval System (EDGAR); phase-in list changes and corrections, 35987
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 35990
Delta Government Options Corp., 35990
Depository Trust Co., 35991
Intermarket Clearing Corp. et al., 35992
MSB Clearing Corp., 35994
National Association of Securities Dealers, Inc. 35995
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 35994
Philadelphia Stock Exchange, Inc., 35997
Applications, hearings, determinations, etc.:
Public utility holding company filings, 35997

Small Business Administration
NOTICES
Disaster loan area:
Ohio et al., 35999
Oklahoma, 35999

Social Security Administration
RULES
Social security benefits:
Disability and blindness determinations—
Endocrine and multiple body systems; immune system, 36008
Supplemental security income:
Presumptive disability and blindness; human immunodeficiency virus (HIV) infection, 36059
NOTICES
Social security rulings:
Human immunodeficiency virus (HIV) infection evaluation; rescission, 36065

VOL 58 ISS 126 JL 2 1993 UMI

State Department
RULES
Angola; domestic arms embargo; removal, 35864

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreement applications and contract proposals; peer review and advisory council review policy and procedures, 35962

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service
NOTICES
Organization, functions, and authority delegations:
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) et al., 36005

Western Area Power Administration
NOTICES
Power rate adjustments:
Central Valley Project, CA, 35933

Separate Parts In This Issue

Part II
Department of Health and Human Services, Social Security Administration, 36008

Part III
Office of Management and Budget, 36068

Part IV
Department of Education, 36088

Part V
Department of Education, 36110

Part VI
Department of Transportation, Federal Aviation Administration, 36116

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PART

A cumulative
Reader Aids

3 CFR
Executive Or
12737 (Revo
EO
12852).....
12852.....
12775 (Revo
part by EO
12779 (Revo
part by EO
12853.....
5 CFR
581.....
14 CFR
39.....
Proposed Rul
25.....
39 (5 docum
35900, 3
121.....
135.....
15 CFR
Proposed Rul
412.....
19 CFR
148.....
20 CFR
404.....
416.....
22 CFR
126.....
27 CFR
9 (2 docume
Proposed Rul
4.....
5.....
34 CFR
685.....
Proposed Rul
692.....
40 CFR
228.....
50 CFR
17.....
625.....
646.....
658.....
672.....
675.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35843
12779 (Revoked in part by EO 12853).....35843
12853.....35843

5 CFR

581.....35845

14 CFR

39.....35860

Proposed Rules:

25.....36116
39 (5 documents).....35899, 35900, 35902, 35904, 35905
121.....36116
135.....36116

15 CFR

Proposed Rules:

412.....35907

19 CFR

148.....35862

20 CFR

404.....36008
416.....36059

22 CFR

126.....35864

27 CFR

9 (2 documents).....35865, 35877

Proposed Rules:

4.....35908
5.....35908

34 CFR

685.....36088

Proposed Rules:

692.....36110

40 CFR

228.....35884

50 CFR

17.....35887
625.....35891
646.....35895
658.....35897
672.....35897
675.....35897

VOL
58
ISS
126
JL
2
1993
UMI

Federal Reg
Vol. 58, No.
Friday, July

Title 3—

The Pres

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

Presidential Documents

Title 3—

The President

Executive Order 12852 of June 29, 1993

President's Council on Sustainable Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the "President's Council on Sustainable Development" ("Council"). The Council shall consist of not more than 25 members to be appointed by the President from the public and private sectors and who represent industrial, environmental, governmental, and not-for-profit organizations with experience relating to matters of sustainable development. The President shall designate from among the Council members such official or officials to be chairperson, chairpersons, vice-chairperson, or vice-chairpersons of the Council as he shall deem appropriate. The Council shall coordinate with and report to such officials of the executive branch as the President or the Director of the White House Office on Environmental Policy shall from time to time determine.

Sec. 2. *Functions.* (a) The Council shall advise the President on matters involving sustainable development. "Sustainable development" is broadly defined as economic growth that will benefit present and future generations without detrimentally affecting the resources or biological systems of the planet.

(b) The Council shall develop and recommend to the President a national sustainable development action strategy that will foster economic vitality.

(c) The chairperson or chairpersons may, from time to time, invite experts to submit information to the Council and may form subcommittees of the Council to review and report to the Council on the development of national and local sustainable development plans.

Sec. 3. *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Council such information with respect to sustainable development as the Council requires to carry out its functions.

(b) Members of the Council shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) The White House Office on Environmental Policy shall obtain funding for the Council from the Department of the Interior or such other sources (including other Federal agencies) as may lawfully contribute to such activities. The funding received shall provide for the administrative and financial support of the Council.

(d) The Office of Administration in the Executive Office of the President shall, on a reimbursable basis, provide such administrative services for the Council as may be required.

Sec. 4. *General.* (a) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Office of Administration in the Executive Office

of the President in accord with the guidelines and procedures established by the Administrator of General Services.

(b) The Council shall exist for a period of 2 years from the date of this order, unless the Council's charter is subsequently extended.

(c) Executive Order No. 12737, which established the President's Commission on Environmental Quality, is revoked.

William J. Clinton

THE WHITE HOUSE,
June 29, 1993.

[FR Doc. 93-15891
Filed 6-30-93; 2:40 pm]
Billing code 3195-01-P

Editorial note: For the President's remarks on the Council on Sustainable Development, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1076).

VOL 58 ISS 126 JL 2 1993 UMI

Presidential Documents

Executive Order 12853 of June 30, 1993

Blocking Government of Haiti Property and Prohibiting Transactions With Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3 of the United States Code, in view of United Nations Security Council Resolution No. 841 of June 16, 1993, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all property and interests in property of the Government of Haiti and the *de facto* regime in Haiti, or controlled directly or indirectly by the Government of Haiti or the *de facto* regime in Haiti, or by entities, wherever located or organized, owned or controlled by the Government of Haiti or the *de facto* regime in Haiti, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, all property and interests in property of any Haitian national providing substantial financial or material contributions to the *de facto* regime in Haiti, or doing substantial business with the *de facto* regime in Haiti, as identified by the Secretary of the Treasury, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 3. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) The sale or supply, by United States persons, or from the United States, or using U.S.-registered vessels or aircraft, of petroleum or petroleum products or arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, regardless of origin, to any person or entity in Haiti or to any person or entity for the purpose of any business carried on in or operated from Haiti, and any activities by United States persons or in the United States which promote or are calculated to promote such sale or supply;

(b) The carriage on U.S.-registered vessels of petroleum or petroleum products, or arms and related materiel of all types, including weapons and

ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, regardless of origin, with entry into, or with the intent to enter, the territory or territorial sea of Haiti;

(c) Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 4. The exemption for exportation from the United States to Haiti of rice, beans, sugar, wheat flour, and cooking oil in section 2(c)(iii) of Executive Order No. 12779 shall not apply to exportations in which either the *de facto* regime in Haiti or any person identified by the Secretary of the Treasury pursuant to section 2 of this order is a direct or indirect party.

Sec. 5. For the purposes of this order:

(a) The term "Haitian national" means a citizen of Haiti, wherever located; an entity or body organized under the laws of Haiti; and any other person, entity, or body located in Haiti and engaging in the importation, storage, or distribution of products or commodities controlled by sanctions imposed on Haiti pursuant to resolutions adopted either by the United Nations Security Council or the Organization of American States, or otherwise facilitating transactions inconsistent with those sanctions.

(b) The definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purpose of this order. Such actions may include the prohibition or regulation of entry into the United States of any vessel or aircraft which is determined to have been in violation of United Nations Security Council Resolution No. 841. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 7. Section 4 of Executive Order No. 12775 and sections 2(c) and 4 of Executive Order No. 12779 are hereby revoked to the extent inconsistent with this order. Otherwise, the provisions of this order supplement the provisions of Executive Order No. 12779.

Sec. 8. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 9.

(a) This order is effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
June 30, 1993.

[FR Doc. 93–15929
Filed 6–30–93; 4:29 pm]
Billing code 3195–01–P

VOL 58 ISS 126 JL 2 1993 UMI

Rules

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OFFICE OF MANAGEM

5 CFR Part

RIN 3206–AE

Processing Child Supp

AGENCY: Off Managemen

ACTION: Fina

SUMMARY: T Managemen regulations garnishmen and/or alim remove the process exp entity as the new types o the list of pa garnishment making tech including ar of the Depar and updatin designated t

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SUPPLEMENTA amendments notices of pr first notice o published or 9181), and is issued by the Appeals for September 2 *United State* 1990), the ap *inter alia*, th the Departme the garnishm 581.202(a), w process that the Departme garnishee. Th

Rules and Regulations

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

RIN 3206–AB42

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations concerning the processing of garnishment orders for child support and/or alimony. The amendments remove the requirement that legal process expressly name a governmental entity as the garnishee and add several new types of bonuses and allowances to the list of payments that are subject to garnishment. In addition, OPM is making technical amendments, including an amendment at the request of the Department of Veterans Affairs, and updating the list of agents designated to receive legal process.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 606–1980.

SUPPLEMENTARY INFORMATION: These amendments follow two separate notices of proposed rulemaking. The first notice of proposed rulemaking was published on March 5, 1991 (56 FR 9181), and is in response to a decision issued by the United States Court of Appeals for the Federal Circuit on September 28, 1990. In *Millard* v. *United States*, 916 F.2d 1 (Fed. Cir. 1990), the appellant obligor asserted, *inter alia*, that his employing agency, the Department of the Army, violated the garnishment regulations, 5 CFR 581.202(a), when it complied with legal process that did not specifically name the Department of the Army as garnishee. The Army countered by explaining that it interpreted OPM's regulation as being satisfied by the generic designation of "employer" which appeared on the wage assignment that it had received from the California State court. The Federal Circuit accepted the Army's interpretation, noting that the appellant debtor's interpretation of the regulation would render the regulation invalid as being clearly inconsistent with the statute. On May 13, 1991, the United States Supreme Court denied further review (111 S.Ct. 2012).

OPM's amendment clarifies the matter by revising 5 CFR 581.202(a) to state that legal process need not expressly name a governmental entity as the garnishee. OPM received only one written comment in response to its proposal. By letter dated April 17, 1991, the Federal Retirement Thrift Investment Board advised OPM that OPM had erroneously listed 5 U.S.C. 8437 as authority for the garnishment regulations in Part 581 and that in accordance with 5 U.S.C. 8474(b)(5), the Executive Director of the Board was responsible for implementing 5 U.S.C. 8437, the statutory provision permitting money held in the Thrift Savings Fund to be subject to legal process for the enforcement of child support and alimony obligations. Without referring to the Federal Circuit's decision, the Board's letter continued that the Board did not intend to make any payments from the Thrift Savings Fund in response to any legal process that did not expressly direct the payment or the garnishment of money in the Thrift Savings Plan.

In response to the Board's letter, OPM has corrected the Authority provision in part 581. OPM expressly acknowledges that 5 U.S.C. 8437 is not an authority for part 581. OPM also concurs that with regard to the garnishment of moneys in the Thrift Savings Fund, the regulatory provisions in Part 581 are inapplicable. However, OPM respectfully disagrees with any inference that 5 CFR 581.202(a) should not be amended.

On the contrary, OPM believes that in accordance with and in addition to the decision of the Federal Circuit, there are a series of critical factors which mandate the proposed amendment: the overwhelmingly clear intent of Congress to permit the United States Government to comply with legal process for child support and alimony obligations; the refusal to place form over substance and thereby shield a delinquent debtor while denying benefits to the party awarded those benefits by the reviewing court or other lawful authority; the employment relationship that results in the payment of benefits from the United States Government to the debtor; and the intent of the State court to garnish moneys payable by the United States Government to the debtor.

Based on these critical considerations, OPM has recently determined that an "Order Withholding From Earnings" issued by a Texas State court that was addressed to "any employer of the obligor" was enforceable by OPM, as the administrator of the Civil Service Retirement System, against the retirement benefits of the obligor retiree. Similarly, OPM has recently determined that an "Order Assigning Civil Service Payments" issued by a Washington State court which did not list any garnishee, but which was clearly intended to result in payment by OPM, was enforceable as legal process under part 581.

The second notice of proposed rulemaking was published on June 20, 1991 (56 FR 28350), and was made necessary by the enactment on November 5, 1990, of the Federal Employees Pay Comparability Act of 1990, Public Law 101–509, which provided, among other things, for various new types of bonuses, allowances, and adjustments. These new items have been added to the list of payments deemed to be remuneration for employment for purposes of garnishment. The Office of Management and Budget has expressly requested that OPM make this revision.

OPM received only one written comment concerning this proposal. The Director of the Division of Child Support Enforcement of the State of Virginia responded in favor of the proposal.

While not specifically related to the two proposed amendments, OPM has received comments which have resulted in various technical amendments, including a technical amendment to 5 CFR 581.104(f) requested by the Department of Veterans Affairs, and an amendment to 5 CFR 831.306(c) requested by the Department of Human Resources of the State of Alabama.

VOL 58 ISS 126 JL 2 1993 UMI

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director

Accordingly, OPM is amending 5 CFR Part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for Part 581 is revised to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262) (1979).

2. Section 581.103 is amended by republishing paragraph (a) introductory text, revising paragraphs (a)(10), (a)(20), (a)(21), and (a)(22), republishing (a)(23) introductory text, revising paragraph (a)(23)(v), and by adding paragraphs (a)(24), (a)(25), (a)(26), (a)(27) and (a)(28) to read as follows:

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

* * * * *

(10) Recruitment incentives, recruitment and relocation bonuses and retention allowances;

* * * * *

(20) Cash awards, including performance-based cash awards;

(21) Agency and Presidential incentive awards (except where such award is for making a suggestion);

(22) Senior Executive Service rank and performance awards;

(23) Moneys due for the services of a deceased employee obligor, including:

* * * * *

(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due that are listed in § 581.104(i);

(24) Interim geographic adjustments and locality-based comparability payments;

(25) Staffing differentials;

(26) Supervisory differentials;

(27) Special pay adjustments for law enforcement officers in selected cities; and

(28) Advances in pay.

3. Section 581.104 is amended as follows:

a. Amendatory instruction 3 which appeared in the final rule under 5 CFR part 581 published August 1, 1991, (56 FR 36723) is corrected to read: "Section 581.104 is amended by revising paragraph (h) introductory text, by adding paragraph (h)(3), by revising paragraph (i), and by adding paragraphs (j) and (k) to read as follows: "

b. Paragraph (f) is revised to read as follows:

§ 581.104 Moneys which are not subject to garnishment.

* * * * *

(f) Education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of title 38, United States Code, and chapters 106 and 107 of title 10, United States Code;

* * * * *

4. Section 581.202 is amended by revising paragraphs (a) and (c) as follows:

§ 581.202 Service of process.

(a) A party using this part shall serve legal process on the designated agent of the governmental entity which has moneys due and payable to the obligor. Where the legal process is directed to a governmental entity which holds moneys which are otherwise payable to an individual, and the purpose of the legal process is to compel the governmental entity to make a payment from such money in order to satisfy a legal obligation of such individual to provide child support or make alimony payments, the legal process need not expressly name the governmental entity as a garnishee.

* * * * *

(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.102(d) and/or (e), the process must be accompanied by a certified copy of the court order or other document establishing such legal obligations(s).

* * * * *

5. Section 581.306 is amended by revising paragraph (c) as follows:

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

* * * * *

(c) In instances where an employee obligor separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has a Thrift Savings Fund account, or has retired, or has separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employees' Compensation Act, or where the employee obligor has been employed by either another governmental entity or by a private employer, and where this information is known by the governmental entity, the governmental entity shall provide the party with the designated agent for the new disbursing governmental entity or with the name and address of the private employer.

6. Appendix A to Part 581 is revised to read as follows:

Appendix A to Part 581—List of Agents Designated to Accept Legal Process

[This appendix lists the agents designated to accept legal process for the Executive Branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.]

I. DEPARTMENTS

Department of Agriculture

General Counsel, Department of Agriculture, Research and Operations Division, Room 2321, South Building, 14th & Independence Ave., SW., Washington, DC 20250, (202) 720–5565

Department of Commerce

1. For employee obligors in the Office of the Secretary, Bureau of Economic Analysis, Bureau of Export Administration, Economic Development Administration, Economics and Statistics Administration, Minority Business Development Agency, National Technical Information Service, National Telecommunications and Information Administration, Technology Administration, and United States Travel and Tourism Administration:

Personnel Officer, Office of Personnel Operations, Office of the Secretary, 4th and Constitution Avenue, NW., Room 5005, Washington, DC 20230, (202) 482–3827

2. Bureau of the Census

Chief, Personnel and Payroll Systems Branch, Personnel Division, FOB #3, Room 3254, Washington, DC 20233, (301) 763–1520

For agent for decennial census employees is:

Chief, Finance Division, WP, Room 412, Washington, DC 20233, (301) 763–5654

3. International Trade Administration

Director, Personnel Management Division, 14th and Constitution Avenue, NW., Room 4809, Washington, DC 20230, (202) 482–3438

4. National Institute of Science and Technology

Personnel Officer, Office of Personnel and Civil Rights, Administration Building, Room A–123, Gaithersburg, MD 20899, (301) 975–3000

5. National Oceanic and Atmospheric Administration

A. Agent for organizations of the National Oceanic and Atmospheric Administration in the Metropolitan Washington, DC Area:

National Oceanic and Atmospheric Administration, Director, Operations Division, Office of Personnel and Civil Rights, Office of Administration, 1335 East-West Highway, Room 3352, SSMC–1, Silver Spring, MD 20910, (301) 713–0527

B. Agent for organizations of the National Oceanic and Atmospheric Administration in the States of: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin:

Personnel Officer, Central Administrative Support Center, NOAA CC, Federal Building, 601 East 12th Street, Room 1736, Kansas City, MO 64106, (816) 867–2056

C. Agent for National Marine Fisheries Service employees only, CASC is agent in the States of Texas, North Carolina and South Carolina. For the National Weather Service employees only, CASC is agent in the States of Colorado, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming.

Personnel Officer, Eastern Administrative Support Center, NOAA EC, 253 Monticello Avenue, Norfolk, VA 23510, (804) 441–6516

D. Agent for organizations of the National Oceanic and Atmospheric Administration in the States of: Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. For NOAA National Weather Service employees only, MASC is agent in the States of New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Tennessee, Mississippi, Alabama, Georgia, Florida, and Puerto Rico.

Personnel Officer, Mountain Administrative Support Center (MASC), NOAA MC, 325 Broadway, Boulder, Colorado 80303–3328, (303) 497–6305

E. Agent for organizations of the National Oceanic and Atmospheric Administration in the States of: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, American Samoa, and the Trust Territories.

Personnel Officer, Western Administrative Support Center (WASC), NOAA WC, 7600 Sand Point Way NE., BIN C25700, Seattle, WA 98115–0070, (703) 305–8231

6. Office of the Inspector General

Personnel Officer, Resource Management Division, 14th & Constitution Avenue, NW., Room 7713, Washington, DC 20230, (202) 482–4948

7. Patent and Trademark Office

Chief, Payroll and Processing Branch, Box 3, Washington, DC 20231, (703) 305–8208

8. United States Foreign and Commercial Service

Director, Office of Foreign Service Personnel, 14th & Constitution Avenue, NW., Room 3815, Washington, DC 20230, (202) 482–3133

9. In cases where the name of the operating unit in the Department of Commerce cannot be ascertained

Director of Personnel, Department of Commerce, 14th and Constitution Avenue, NW., Room 5001, Washington, DC 20230, (202) 377–4807

Department of Defense

Army

a. Civilian employees in Germany:

Commander, 266th Theater Finance Corps, Attention: AEUCF-CPF, APO NY 09007–0137, 049–6221–57–8911, Autovon: 370–8911

b. Nonappropriated fund civilian employees of the Army Post Exchanges:

Army and Air Force Exchange Service, Attention: CM–G–RI, P.O. Box 660202, Dallas, TX 75266–0202, (214) 312–2011

c. All other Army personnel, active and retired:

Director, DFAS—Indianapolis Center, Attention: DFAS–I–GG, Indianapolis, IN 46249, (317) 542–2155

Navy

Active duty, Reserve, Fleet reserve of retired members:

Director, Navy family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2087, (216) 522–5301

Process affecting the pay of civilian employees of the Department of the Navy, including the Marine Corps:

(i) If currently employed at Navy or Marine Corps activities (including nonappropriated fund instrumentalities) or installations situated within the territorial jurisdiction of the issuing court, such process may be served on the commanding officer or head of such activity or installation, or principal assistant specifically designated in writing by such official.

(ii) In other cases involving civilian employees, such process may be serviced in the manner indicated below:

(A) If pertaining to civil service personnel of the Navy or Marine Corps, such process may be served on:

Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, DC 20390

(B) If pertaining to non-civil service civilian personnel of Navy Exchanges or related nonappropriated fund instrumentalities administered by the Navy by Resale System Office, such process may be served on:

Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street and Third Avenue, Brooklyn NY 11232

(C) If pertaining to non-civil service personnel of Navy clubs, messes, or recreational facilities (non-appropriated funds), such process may be served on:

Chief of Navy Personnel, Director, Recreational Service Division (Pers/NMPC–72), Washington, DC 20370

(D) If pertaining to non-civil service civilian personnel of other nonappropriated fund instrumentalities which fall outside the purview of the Chief of Naval Personnel or the Commanding Officer, Navy Resale Systems Office, such as locally established morale, welfare, and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

(E) If pertaining to non-civil personnel of any Marine Corps nonappropriated fund instrumentalities, such process may be served on the commanding officer of the activity concerned.

Marine Corps

Active duty, reserve and retired military members:

Director, DFAS—Kansas City Center (Code G), Kansas City, MO 64197–0001, (816) 926–7103

(For civilian employees of the Marine Corps, see the listing above for civilian employees of the Navy.)

Air Force

1. Active duty, Reserve, Air National Guard (ANG), retired military members and civilian employees of appropriated fund activities.

Director, DFAS—Denver Center, Attention: GL, Denver, CO 80279–5000, (303) 676–7524

2. Nonappropriated fund civilian employees of base exchanges:

Army and Air Force Exchange Service, Attention: CM-G-RI, P.O. Box 650038, (214) 78–2005 or (214) 780–3111

3. Civilian employees of all other Air Force nonappropriated fund activities:

HQ AFMWRC/GC, Randolph AFB, TX 78150–7000, (512) 652–6691

Defense Advance Research Project Agency

Air Force District of Washington, Accounting and Finance Office, Attention: 15DA, Washington, DC 20332–5260, (202) 767–4211

Defense Communications Agency

General Counsel or Deputy General Counsel, Office of the General Counsel (Code AL), Defense Communications Agency, Washington, DC 20305–2000, (202) 692–2009

Defense Contract Audit Agency

Director of Personnel, Cameron Station, Alexandria, VA 22304–6178, (703) 274–7325

Defense Finance and Accounting Service

Director, DFAS—Columbus Center, Attention: AEP, P.O. Box 182317, Columbus, OH 43218–2317, (614) 338–7232

Defense Intelligence Agency

General Counsel, The Pentagon, Washington, DC 20340–1029, (202) 697–3945

Defense Investigative Service Deputy Director (Resources), 1900 Half Street, SW., Washington, DC 20324–1700, (202) 475–1311

Defense Logistics Agency

1. For civilian employees of the following Defense Logistics Agency (DLA) activities:

Headquarters, Defense Logistics Agency
Defense Administrative Support Center
Defense Technical Information Center
Defense Industrial Plant Equipment Center
Defense Construction Supply Center
DLA Systems Automation Center
Information Processing Center—Columbus
Defense Reutilization and Marketing Service
Defense Contract Management Command
Defense Contract Management District North Central
Defense Contract Management District Northeast
Defense Contract Management District South
Defense Contract Management District West
Defense Contract Management District—Los Angeles
Defense Depot—Columbus
Defense Depot—Memphis
Defense Distribution Region East
Defense Distribution Region West

Director, DFAS—Columbus Center, Attention: AEP, P.O. Box 182317, Columbus, OH 43218–2317, (614) 338–7232

2. Defense Electronics Supply Center: Accounting and Finance Officer (DESC–CF), 1507 Wilmington Pike, Dayton, OH 45444–5000, (513) 296–6415
3. Defense General Supply Center: Accounting and Finance Officer (DGSC–CF), Richmond, VA 23297–5000, (804) 275–4847
4. Defense Personnel Support Center: Accounting and Finance Officer (DPCS–CF), 2800 South 20th Street, Philadelphia, PA 19101–8419, (215) 737–2741
5. Defense Depot, Ogden: Accounting and Finance Officer (DDOU–CF), Ogden, UT 84407–5000, (816) 399–7538
6. Transition Management Office, Cleveland: Accounting and Finance Officer (TMO–CLE–CF), Anthony J. Celebrezze Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199–2064, (216) 552–6490
7. Transition Management Office, St. Louis: Accounting and Finance Officer (TMO–STL–CF), 1222 Spruce Street, St. Louis, MO 63103, (314) 331–5299

Defense Mapping Agency

1. For employees of the DMA Combat Support Center, the DMA Hydrographic/Topographic Center, the Defense Mapping School, and Headquarters:

Associate General Counsel, DMA Hydrographic/Topographic Center, 6500 Brookes Lane, Washington, DC 20315–0030, (202) 227–2268

2. For employees of the DMA Aerospace Center:

Associate General Counsel, DMA Aerospace Center, 3200 South Second Street, St. Louis, MO 63118–3399, (314) 263–4501

3. For employees of the DMA Reston Center, the DMA Systems Center, and the DMA Telecommunications Services Center:

Associate General Counsel, DMA Systems Center, 12100 Sunset Hills Road, Suite 200, Reston, VA 22090–3207, (703) 487–8106

Defense Nuclear Agency

1. For employees at Kirtland AFB, New Mexico: Director, Defense Finance and Accounting Service, Attention: JA, Denver, CO 80279–5000, (303) 676–7524
2. For all other DNA employees: General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681

Uniformed Services University of the Health Sciences, Director, Personnel/Manpower, Civilian Personnel, 4301 Jones Bridge Road, Bethesda, MD 20814–4799, (301) 295–3081

With respect to other civilian employees of Department of Defense agencies, or other employing activities within the Department of Defense or the Military Department, the Director of the agency or activity shall assist by receiving and forwarding process to the designated agent in the appropriate disbursing office.

Department of Education

Assistant General Counsel, Division of Business and Administrative Law, Room 4091, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202–2110, (202) 401–3690

Department of Energy

Power Administrations

1. Alaska Power Administration Administrator: Alaska Power Administration, Department of Energy, P.O. Box 020050, Juneau, AK 99802–0050, (907) 586–7405
2. Bonneville Power Administration: Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 NE. 11th Avenue, Portland, OR 97232, (503) 230–3203
3. Southeastern Power Administration: Chief, Payroll Branch, Department of Energy, Room 1E–184, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5581
4. Southwestern Power Administration: Chief Counsel, Southwestern Power Administration, Department of Energy, P.O. Box Drawer 1619, Tulsa, OK 74101, (918) 581–7426
5. Western Area Power Administration: General Counsel, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–1529

Field Offices

1. Albuquerque Operations Office: Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (505) 844–7265
2. Chicago Operations Office: Chief Counsel, Chicago Operations Office, Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972–2032
3. Idaho Operations Office: Chief, Field Office Accounting Section, Finance and Budget Division, Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, (208) 526–1822
4. Nevada Operations Office: Chief, Payroll Branch, CR–431, Department of Energy, GTN Building, Room 259, Washington, DC 20585, (301) 903–4012
5. Oak Ridge Operations Office: Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box 20001, Oak Ridge, TN 37831–8510 (615) 576–1200
6. Richland Operations Office: Chief Counsel, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, WA 99352, (509) 376–7311
7. San Francisco Operations Office: Chief, Accounting Branch, Financial Management Division, Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273–4258
8. Savannah River Operations Office: Director, Financial Management and Program Support Division, Department of Energy, P.O. Box A, Aiken, SC 29802, (803) 725–5590
9. Washington DC Headquarters, Pittsburgh Naval Reactors Office, Schnectady Naval Reactors Office, and all other organizations within the Department of Energy: Chief, Payroll Branch, CR–431, Department of Energy, GTN Building, Room E–259, Washington, DC 20585, (301) 903–4012

Department of Health and Human Services

1. For the garnishment of the remuneration of employees of the Department of Health and Human Services:

Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave. SW., Washington, DC 20201, (202) 619–0150

2. For the garnishment of benefits under title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

Department of Housing and Urban Development

Chief, Systems Support Branch, Evaluation and Systems Division, Department of Housing and Urban Development, 451 7th Street SW., room 2102, Washington, DC 20410, (202) 755–6116

Department of the Interior

Secretarial Offices

Chief, Division of Fiscal Services, Department of the Interior, 18th & C Streets NW., room 5257, Washington, DC 20240, (202) 208–5027

Bureau of Mines

Chief, Division of Finance, Bureau of Mines, Department of the Interior, Denver Federal Center, Bldg. 20, room D–2243, Denver, CO 80225, (303) 236–0355

Fish and Wildlife Service

Chief, Division of Finance, Fish and Wildlife Service, Department of the Interior, Mail Stop 380, Arlington Square, 4401 North Fairfax Drive, Arlington, VA 22203, (703) 358–1742

Geological Survey

Chief, Office of Financial Management, Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, VA 22092, (703) 648–7604

National Park Service

a. For employees of the National Capital Region:

Associate Regional Director, Administration, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, (202) 619–7200

b. For employees of the North Atlantic Region:

Associate Regional Director, Administration, North Atlantic Region, National Park Service, 15 State Street, Boston, MA 02109, (617) 835–6833

c. For employees of the Mid-Atlantic Region:

Associate Regional Director, Administration, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, PA 19106, (215) 597–4818

d. For employees of the Southeast Region:

Associate Regional Director, Administration, Southeast Region, National Park Service, 75 Spring Street SW., Atlanta, GA 30303, (404) 864–3495

e. For employees of the Midwest Region:

Associate Regional Director, Administration, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, NE 68102, (402) 864–3495

f. For employees of the Southwest Region:

Associate Regional Director, Administration, Southwest Region, National Park Service, Old Santa Fe Trail, P.O. Box 728, Santa Fe, NM 87501, (505) 476–6386

g. For employees of the Rocky Mountain Region:

Associate Regional Director, Administration, Rocky Mountain Region, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, CO 80215, (303) 327–2700

h. For employees of the Western Region:

Associate Regional Director, Administration, Western Region, National Park Service, 450 Golden Gate Avenue, P.O. Box 36036, San Francisco, CA 94102, (415) 556–4540

i. For employees of the Pacific Northwest Region:

Associate Regional Director, Administration, Pacific Northwest Region, National Park Service, 601 Fourth and Pike Building, Seattle, WA 98101, (206) 399–4658

j. For employees of the Alaska Region:

Associate Regional Director, Administration, Alaska Region, National Park Service, 2525 Gambell Street, room 107, Anchorage, AK 99503, (907) 271–2695

k. For all other employees of the National Park Service or where the garnishor is not certain as to which region the legal process should be sent:

Chief Personnel Officer, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202) 208–5093

Bureau of Reclamation

Deputy Assistant Commissioner—Administration, Bureau of Reclamation, Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225, (303) 776–0005

Bureau of Indian Affairs

Chief, Branch of Payroll Liaison, Bureau of Indian Affairs, Department of the Interior, 500 Gold Avenue, SW., Albuquerque, NM 87103, (505) 766–2936

Office of Surface Mining Reclamation and Enforcement

Chief, Division of Financial Management, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, P.O. Box 25065, Denver, CO 80225, (303) 236–0331

Bureau of Land Management

Chief, Division of Finance, Bureau of Land Management, Department of the Interior, 18th & C Streets, NW., Room 3070, Washington, DC 20240, (202) 208–6743

Department of Justice

Justice Management Division

Personnel Office, Payroll Unit, 633 Indiana Avenue, NW., Room 402, Washington, DC 20530, (202) 514–6810

U.S. Trustees Programs

Personnel Office, 901 E Street, NW., Room 770, Washington, DC 20530, (202) 307–1215

United States Marshals Service

Policy and Pay Branch, 600 Army Navy Drive, Suite 800, Arlington, VA 22202–4210, (202) 307–9629

Office of Justice Programs

Office of Personnel, 633 Indiana Avenue, NW., Room 603, Washington, DC 20531, (202) 307–0724

Office of the Inspector General

Personnel Division, 1400 L Street, NW., Room 552, Washington, DC 20537, (202) 633–3351

Immigration and Naturalization Service

Director of Personnel, Personnel Division, 3rd Floor, 111 Massachusetts Avenue, NW., Washington, DC 20536, (202) 514–2690

Federal Bureau of Prisons/Federal Prison Industries (UNICOR)

Human Resource Management Division, HRMIS Section, 320 1st St., NW., Room 440, Washington, DC 20534, (202) 307–3250

Drug Enforcement Administration

Office of Personnel, Employee Relations Unit, 700 Army Navy Drive, Room W3054, Arlington, VA 22202, (202) 307–6888

Office of the United States Attorneys

Executive Office for United States Attorneys, Personnel Office, Patrick Henry Building, 601 D Street, NW., Room 6517, Washington, DC 20530, (202) 501–6921

Federal Bureau of Investigation

Personnel Officer, FBI Headquarters, J. Edgar Hoover Building, 10th Street & Pennsylvania Avenue, NW., Room 6012, Washington, DC 20535, (202) 324–3514

Department of Labor

1. Payments to employees of the Department of Labor.

Director, Office of Accounting, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8314

2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoreman's Act should be directed to the:

Associate Director for Longshore and Harbor Workers' Compensation, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8721

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs:

District No. 1

District Director, Office of Workers' Compensation Programs, Room 1800, John F. Kennedy Building, Government Center, Boston, MA 12203, (617) 565–2137

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

District Director, Office of Workers' Compensation Programs, 201 Varick Street, Room 750, P.O. Box 566, New York, NY 10014–0566, (212) 337–2075

New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

District Director, Office of Workers' Compensation Programs, Gateway Building, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1457

Delaware, Pennsylvania, and West Virginia

District No. 6

District Director, Office of Workers' Compensation Programs, 214 N. Hogan Street, Suite 1026, Jacksonville, FL 32202, (904) 232–2621

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 9

District Director, Office of Workers' Compensation Programs, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–3800

Indiana, Michigan, and Ohio

District No. 10

District Director, Office of Workers' Compensation Programs, 230 S. Dearborn

Street, 8th Floor, Chicago, IL 60604, (312) 353–5656

Illinois, Minnesota, and Wisconsin

District No. 11

Regional Director, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426–2195

Iowa, Kansas, Missouri, and Nebraska

District No. 12

District Director, Office of Workers' Compensation Programs, 1801 California Street, Suite 915, Denver, CO 80202, (303) 391–6000

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

District Director, Office of Workers' Compensation Programs, 71 Stevenson Street, 2nd Floor, P.O. Box 3769, San Francisco, CA 94119–3769, (415) 744–6610

Arizona, California, Hawaii, Guam and Nevada

District No. 14

District Director, Officer of Workers' Compensation Programs, 111 Third Avenue, Suite 615, Seattle, WA 98101, (206) 553–5508

Alaska, Idaho, Oregon, and Washington

District No. 16

District Director, Office of Workers' Compensation Programs, 525 Griffin Street, Room 100, Dallas, TX 75202, (214) 767–2580

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 25

District Director, Office of Workers' Compensation Programs, 800 N. Capitol Street, Room 800, Washington, DC 20211, (202) 724–0713

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees' Compensation Act benefits payable to employees of the Department of Labor should be directed to the:

Regional Director, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426–2195

Department of State

Executive Director (L/EX), Office of the Legal Adviser, Department of State, 22nd and C street, NW, Room 5519A, Washington, DC 20520, (202) 647–8323

Department of Transportation

Office of the Secretary

General Counsel, 400 7th Street, SW., Washington, DC 20590, (202) 366–4702

United States Coast Guard

Commanding Officer (L), U.S. Coast Guard Pay and Personnel Center, Federal Building, 444 SE. Quincy Street, Topeka, KS 66683–3591, (913) 295–2520

Federal Aviation Administration

1. Headquarters (Washington, DC) and overseas employees:

Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3362

2. Central Region (Nebraska, Kansas, Iowa, Missouri, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, North Dakota, and South Dakota):

Regional Counsel, ACE–7, 601 E. 12th Street, Kansas City, MO 64106, (816) 374–5446

3. Southern Region (Kentucky, North Carolina, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, Republic of Panama, the Virgin Islands, Arkansas, Louisiana, Oklahoma, Texas, New Mexico); FAA Technical Center (Atlantic City, New Jersey); and Metropolitan Washington Airports:

Regional Counsel, ASO–7, P.O. Box 20636, Atlanta, GA 30320, (404) 763–7204

4. Mike Monroney Aeronautical Center; Alaskan Region (Alaska); Eastern Region (New York, Pennsylvania, New Jersey, West Virginia, Maryland, Delaware, and Virginia); New England Region (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island); Northwest Mountain Region (Washington, Oregon, Montana, Utah, Colorado, Idaho, and Wyoming); and Western Pacific Region (Arizona, California, Hawaii, Nevada, Pacific-Asia Area, including Guam, American Samoa, Northern Mariana Islands, and Japan);

Aeronautical Center Counsel, AAC–7, P.O. Box 25082, Oklahoma City, OK 73103, (405) 686–2296

Federal Highway Administration

Chief Counsel, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–0740

Federal Railroad Administration

Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–0767

Maritime Administration

Chief Counsel, Maritime Administration, Room 7232, 400 7th Street, SW., Washington, DC 20590, (202) 366–5711

National Highway Traffic Safety Administration

Chief Counsel, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–9511

Urban Mass Transportation Administration

Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–4063

St. Lawrence Seaway Development Corporation

General Counsel, St. Lawrence Seaway Development Corporation, P.O. Box 520, Massena, NY 13662, (315) 764–3200

Research and Special Programs Administration

Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–4400

Department of the Treasury

(1) Departmental Offices

Assistant General Counsel (Administrative and General Law), U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Room 1410, Washington, DC 20220, (202) 622–0450

(2) Office of Foreign Assets Control

Chief Counsel, Second Floor, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–2410

(3) U.S. Savings Bonds Division

Chief Counsel, U.S. Mint, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874–6040

(4) Financial Management Service

Chief Counsel, 401 14th Street, SW., Room 531, Washington, DC 20227, (202) 874–6680

(5) Internal Revenue Service

Assistant Chief Counsel, General Legal Services, Suite 208, Box 69, 370 L'Enfant Promenade, SW., Washington, DC 20024–2518, (202) 401–4000

(6) Bureau of Alcohol, Tobacco & Firearms

Chief Counsel, 640 Massachusetts Avenue, NW., Room 6100, Washington, DC 20226, (202) 927–7772

(7) Bureau of the Public Debt

Chief Counsel, 999 E Street, NW., Room 503, Washington, DC 20239, (202) 219–3320

(8) Secret Service

Legal Counsel, 1800 G Street, NW., Room 842, Washington, DC 20223, (202) 435–5771

(9) Bureau of Engraving & Printing

Legal Counsel, 14th & C Streets, NW., Room 306M, Washington, DC 20228, (202) 874–2500

(10) Office of the Comptroller of the Currency

Director, Litigation, Office of Chief Counsel, 250 E Street, SW., Eighth Floor, Washington, DC 20219, (202) 874–5280

(11) United States Mint

Chief Counsel, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874–5040

(12) Federal Law Enforcement Training Center

Legal Counsel, Building 69, Glynco, GA 31524, (912) 267–2100

(13) Customs Service

Assistant Chief Counsel, P.O. Box 68914, Indianapolis, IN 46278, (317) 298–1233

(14) Office of Thrift Supervision, Chief Counsel, 1700 G Street, NW., Fifth Floor Washington, DC 20552, (202) 906–6268

Department of Veterans Affairs (VA)

The fiscal officer at each Department of Veterans Affairs (VA) facility shall be the designated agent for VA employee obligors at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those limited cases where a portion of VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

Alabama

Fiscal Officer, Birmingham Medical Center, Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36193, (205) 272–4670 ext. 4709

National Cemetery Area Office, 700 South 19th Street, Birmingham, AL 35233, (205) 939–2103

Mobile Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972 ext. 225

Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104, (205) 832–7172

Fiscal Officer Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109, (205) 272–4670 ext. 204

Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35404, (205) 553–3760

Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083, (205) 727–0550 ext. 0622

Alaska

Fiscal Officer, Anchorage Regional Office, Outpatient Clinic, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Arizona

Cave Creek National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277–5551

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85012, (606) 241–2735

Fiscal Officer, Phoenix Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277–5551

Fiscal Officer, Prescott Medical Center, Prescott, AZ 86301, (602) 445–4860 ext. 264

Prescott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Prescott, AZ 86301, (602) 445–4860 ext. 264

Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723, (602) 792–1450 ext. 710

Arkansas

Fayetteville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fort Smith National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Little Rock Regional Office, 1200 W. 3d Street, Little Rock, AR 72205, (501) 378–5142

Fiscal Officer, John L. McClellan Memorial, Veterans Hospital, 4300 West 7th Street (04), Little Rock, AR 72205, (501) 661–1202 ext. 1310

Fiscal Officer, VA Regional Office, Send to: VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72701, (501) 444–5007

Send to: Fiscal Officer, VA Regional Office, Building 65, Fort Roots, P.O. Box 1280, North Little Rock, Little Rock, AR 72115, (501) 370–3741

California

Bell Supply Depot, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681–6800

Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, California 93703, (209) 225–6100

Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 447–2560 ext 317

Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825–7084 ext. 2550/2551

Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822, (213) 498–1313 ext. 2101

Fiscal Officer, Los Angeles Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernadino, San Luis Obispo, Santa Barbara and Ventura.

Los Angeles Data Processing Center, Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Fiscal Officer, Los Angeles Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013, (213) 894–3870

Los Angeles Regional Office of Audit, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 824–4402

Los Angeles Field Office of Audit, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Los Angeles National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553, (415) 228–6680 ext. 235

Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304, (415) 493–5000 ext. 5643

Riverside National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

San Bruno National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221–4810 ext. 315/316

Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351

San Diego Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351

Fiscal Officer, San Diego Regional Office, 2022 Camino Del Rio North, San Diego, CA 92108, (714) 289–5703

Jurisdiction over the following counties in California: Imperial, Riverside and San Diego.

San Francisco National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Officer, 4150 Clement Street, San Francisco, CA 94121, (415) 556–0483

Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105, (415) 974–0160

Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.

Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221–4810 ext. 315/316

Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343, (818) 891–2377

Colorado

Fiscal Officer, Denver Regional Office, Denver Federal Center, Bldg. 20, P.O. Box 25126, Denver, CO 80225, (303) 234–3920

Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Denver National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Fort Logan National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Fort Lyon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038, (719) 384–3987

Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038, (719) 384–3987

Fiscal Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (303) 242–0731 ext. 275

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103, (203) 244–3217

Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 666–6951 ext. 369

Fiscal Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932–5711 ext. 859

Delaware

Fiscal Officer, Wilmington Medical, and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633–5432

District of Columbia

Finance Division Chief (047H), Washington Central Office, Room C–50, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3901

Washington Veterans Canteen Service Field Office, Send to: Finance Division Chief (047H), VA Central Office, Room C–50, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3901

Fiscal Officer, Washington Regional Office, 941 North Capitol Street, NE., Washington, DC 20421, (202) 275–1349

Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8229

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504, (813) 398–9321

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32601, (904) 376–1611 ext. 6685

Jacksonville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1601 SW. Archer Road, Gainesville, FL 32602, (904) 376–1611 ext. 6685

Jacksonville VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236

Fiscal Officer, Lake City Medical Center, 801 South Marion Street, Lake City, FL 32055, (904) 755–3016

Miami VA Office, Send to: Fiscal Officer VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236

Fiscal Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284

Orlando Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612, (813) 971–4500

Fiscal Officer, James A. Haley Veterans' Hospital, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972–7501

Riviera Beach Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284

Pensacola National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972 ext. 225

St. Augustine National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 SW. Archer Road, Gainesville, FL 32602, (904) 376–1611 ext. 6685

Fiscal Officer, St. Petersburg Regional Office, P.O. Box 1437, St. Petersburg, FL 33731, (813) 893–3236

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30365, (404) 347–5008

Atlanta Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Atlanta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Office, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Atlanta Field Office of Audit, Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30365, (404) 347–5008

Fiscal Officer, Augusta Medical Center, Augusta, GA 30910, (404) 733–4471 ext. 675/676

Fiscal Officer, VA Medical Center, 2460 Wrightsboro Road, Augusta, GA 30910, (404) 724–5116

Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111 ext. 6320

Fiscal Officer, Dublin Medical Center, Dublin, GA 31021, (912) 272–1210 ext. 373

Marietta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Hawaii

Fiscal Officer, Honolulu Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 541–1490

Jurisdiction over American Samoa, Guam, Wake, Midway, and the Trust Territory of the Pacific Islands.

Honolulu National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 546–2109

Idaho

Fiscal Officer, Boise Medical Center, 500 West Fort Street, Boise, ID 83702, (208) 336–5100 ext. 7312

Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort Street, Box 044, Boise, ID 83724, (208) 334–1009

Illinois

Alton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631

AMF O'Hare Field Office of Audit, Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141, (312) 343–7200 ext. 2481

Fiscal Officer, Chicago Medical Center (Lakeside), 333 East Huron Street, Chicago, IL 60611, (312) 943–6600

Fiscal Officer, Chicago Medical Center (West Side), 820 South Damen Avenue, Chicago, IL 60612, (312) 666–6500 ext. 3338

Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680, (312) 886–9417

Fiscal Officer, Danville Medical Center, Danville, IL 61832, (217) 442–8000

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Street, Danville, IL 61832, (217) 442–8000 ext. 210

Fiscal Officer, Hines Medical Center, Hines, IL 60141, (708) 343–7200 ext. 2481

Hines Marketing Center, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (708) 786–6020

Fiscal Officer, Hines Supply Depot, P.O. Box 27, Hines, IL 60141, (708) 786–6020

Fiscal Officer, Hines Data Processing Center, P.O Box 66303, AMF O'Hare, Hines, IL 60666, (708) 681–6650

Fiscal Officer, Marion Medical Center, Marion, IL 62959, (618) 997–5311

Mound City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2401 West Main Street, Marion, IL 62959, (618) 997–5311

Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064, (312) 689–1900

Quincy National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 304

Rock Island National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 304

Springfield National Cemetery Area Officer, Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832, (217) 442–8000

Indiana

Evansville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959, (618) 997–5311

Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN 46835, (219) 426–5431

Fiscal Officer, Indianapolis Regional Office, 575 North Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7840

Fiscal Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401 ext. 2363

Indianapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401 ext. 2363

Fiscal Officer, Marion Medical Center, Marion, IN 46952, (317) 674–3321 ext. 214

Marion National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952, (317) 674–3321 ext. 211

New Albany National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401

Iowa

Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4220

Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310, (515) 255–2173

Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 7702

Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 228–052

Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 228–052

Kansas

Ft. Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Ft. Scott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Fiscal Officer, Leavenworth Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 272–3111 ext. 521

Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2221 ext. 256

Wichita Regional Office, Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2111 ext. 256

Process for VA service-connected benefits should also be sent to the Wichita Medical Center rather than to the Wichita Regional Office.

Fiscal Officer, VA Regional Office, 901 George Washington Blvd., Wichita, KS 67211, (316) 269–6813

Kentucky

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40511, (606) 223–4511

Fiscal Officer, Knoxville Medical Center, Knoxville, KY 50138, (515) 842–3101 ext. 241

Lebanon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511

Lexington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511

Fiscal Officer, Lexington Medical Center, Lexington, KY 40507, (606) 233–4511

Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202, (502) 582–6482

Fiscal Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241

Louisville National Cemetery Area Office, (Zachary Taylor), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241

Louisville National Cemetery Area Office (Cave Hill), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241

Nancy National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Lexington, KY 40511, (606) 233–4511

Nicholasville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40511, (606) 233–4511

Perryville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40511 (606) 233–4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria, LA 71301, (318) 473–0010 ext. 2281

Baton Rouge National Cemetery Area Office, Send: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589–6604

Fiscal Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Baton Rouge National Cemetery, 220 North 19th Street, Baton Rouge, LA 70806, (504) 389–0788

Pineville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301, (318) 442–0251

Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71101, (318) 221–8411 ext. 722

Shreveport VA Office, Send to: Fiscal Officer, VA Regional Officer, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589–6604

Port Hudson (Zachary) National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Maine

Portland VA Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411

Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623–8411

Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411

Maryland

Annapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd, Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201, (301) 962–4410

Jurisdiction does not include Prince Georges and Montgomery Counties which are included under the Washington, DC. Regional Office.

Baltimore Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Baltimore National Cemetery Area Office, (Loudon Park), Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052, (301) 687–8768 ext 328,

Hyattsville Field Office of Audit, Send to: Fiscal Division Chief (047H), VA Central Office, Room C–50, 810 Vermont Avenue, Washington, DC. 20420, (202) 389–3901

Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902, (301) 642–2411 ext. 5224/5225

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275–7500

Fiscal Officer, Boston Regional Office, John F. Kennedy Bldg., Room 400C, Government Center, Boston, MA 02203, (617) 565–2616

Jurisdiction over certain towns in Bristol and Plymouth Counties and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.

Boston Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500 ext. 427/420

Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500 ext. 427/420

Bourne National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401, (617) 583–4500 ext. 266

Fiscal Officer, Brockton Medical Center, Brockton, MA 02401, (617) 583–4500 ext. 266

Lowell Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 322–9500 ext. 427/420

New Bedford Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908, (401) 273–7100

Fiscal Officer, Northampton Medical Center, Northampton, MA 01060, (413) 584–4040

Springfield Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Northampton, MA 01060, (413) 584–4040

Springfield VA Office, Send to: Fiscal Officer, VA Regional Office, John F. Kennedy Bldg. Rm 400C, Government Center, Boston, MA 02203, (617) 565–2616

Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323–7700 ext. 5650

Worcester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 322–7700 ext. 5650

Michigan

Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101, (313) 562–6000 ext. 535

Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105, (313) 769–7100 ext. 288/289

Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49016, (616) 966–5600 ext. 3566

Grand Rapids Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Battle Creek, MI 49016, (616) 966–5600 ext. 3566

Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226, (313) 226–4190

Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774–3300 ext. 308

Fiscal Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793–2340 ext. 3061

Minnesota

Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South Minneapolis, MN 55417, (612) 725–6767 ext. 6311
Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252–1600 ext. 411
Fiscal Officer, St. Paul Center, (Regional Office), Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–4075
Fiscal Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725–2150

Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.

St. Paul National Cemetery Area Office, Send to: VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311
St. Paul Data Processing Center, Send to: Fiscal Officer, Va Center, Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–3075
St. Paul Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, Minneapolis, MN 55417, (612) 725–6767 ext. 6311

Mississippi

Biloxi National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225
Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225
Corinth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990
Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601, (601) 863–1972 ext. 225
Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1281
Fiscal Officer, VA Regional Office, Federal Building, 100 W. Capitol St., Suite 207, Jackson, MS 39269, (601) 965–4853
Natchez National Cemetery, Send to: Fiscal Officer, VA Medical Center, 1500 E. Woodrow Wilson Dr., Jackson, MS 39216, (601) 362–4471 ext. 1281

Process for VA service-connected benefits should also be sent to the Jackson Medical Center rather than to the Jackson Regional Office.

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511
Jefferson City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511 ext. 6050
Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128, (816) 861–4700 ext. 214
Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff MO 63901, (314) 686–4151
St. Louis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4931
Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112
Fiscal Officer, VA Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686–4151 ext. 265
St. Louis Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631
Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125, (314) 894–4631
St. Louis Records Processing Center, Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112
Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636, (406) 442–6410
Fiscal Officer, Miles City Medical Center, 210 South Winchester, Miles City, MT 59301, (406) 232–3060

Nebraska

Fiscal Officer, Grand Island Medical Center, 2201 N. Broadwell, Grand Island, NE 68801, (308) 382–3660 ext. 244
Fiscal Officer, Lincoln Regional Office, 5631 South 48th Street, Lincoln, NE 68516, (402) 437–5041
Fiscal Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510, (402) 489–3802 ext. 332
Maxwell National Cemetery Area Office, Send to: Fiscal Officer,VA Medical Center, Grand Island, NE 68801, (308) 382–3660 ext. 244
Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105, (402) 346–8800 ext. 4538

Nevada

Las Vegas Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1701 West Charleston Boulevard, Las Vegas, NV 89102, (702) 786–7200 ext. 244
Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV 89520, (702) 784–5637

Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.

Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200 ext. 244
Henderson Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200 ext. 244

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03101, (603) 666–7638
Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624–4366

New Jersey

Beverly National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 382–2400 ext. 291/292
Fiscal Officer, East Orange Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676–1000 ext. 1771
Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939, (201) 647–0180 ext. 4302
Newark, Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676–1000 ext. 125
Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102, (201) 645–3507
Salem National Cemetery Area Office, Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 994–2511
Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876, (210) 725–2540

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue, SW., Albuquerque, NM 87102, (505) 766–2204
Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque, NM 87108, (505) 265–1711
Santa Fe National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque, NM 87108, (505) 265–1711 Ext. 2214

New York

Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12208, (518) 462–3311 ext. 355
Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, NY 13210, (315) 476–7461 ext. 2358
Albany VA Office, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, NY 10001, (211) 620–6293
Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345–7500 ext. 215
Fiscal Officer, Bath Medical Center, Bath, NY 14810, (607) 776–2111 ext. 1502
Fiscal Officer, Bronx Medical Center, 130 W. Kings Bridge Road, Bronx, NY 10408, (212) 584–9000 ext. 1502/1717
Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542
Brooklyn National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3541
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.

Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215, (716) 834–9200 ext. 2426, 584–900 ext. 1603/1717

Calverton National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Northport, NY 11768, (516) 261–4400 ext. 7101/7103

Fiscal Officer, Canandiagua Medical Center, Canandiagua, NY 14424, (716) 394–2000 ext. 3368

Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882–5404

Elmira National Cemetery Area Office, Send to: Fiscal Officer VA Medical Center, Bath, NY 14810, (607) 776–2111

Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261–4400 ext. 2462/2463

Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737–4400 ext. 2463

Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

New York Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

New York Prosthetics Center, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001, (212) 620–6293

Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001, (212) 620–6293

Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schharie, Suffolk, Sullivan, Ulster, Warren, Washington and Westchester.

New York Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

Fiscal Officer, Northport Medical Center, Northport, NY 11768, (516) 261–4400 ext. 2462/2463

Rochester VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Rochester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020, (716) 343–7500 ext. 215

Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210, (315) 476–7461

Syracuse VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

North Carolina

Fiscal Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28805, (704) 298–7911 ext. 5616

Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 671–6913

Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120

New Bern National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120

Raleigh National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–0411 ext. 6469

Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144, (704) 636–2351

Salisbury National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351

Wilmington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120

Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27155, (919) 761–3513

Winston-Salem Outpatient Regional Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58103, (701) 232–3241 ext. 249

See listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141 ext. 203

Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 550–5040 ext. 4113

Fiscal Officer, VA Medical Center, 2090 Kenny Road, Columbus, OH 43221, (614) 469–6712

Cincinnati VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540

Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44109, (216) 522–3540

Fiscal Officer, Cleveland Medical Center, 10,000 Brecksville Rd., Brecksville, OH 44141, (216) 526–3030 ext. 7170

Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43221, (614) 469–6712

Columbus VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540

Dayton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Dayton, OH 45248, (513) 268–6511 ext. 262–2157

Fiscal Office, VA Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262–2157

Oklahoma

Fort Gibson National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261 ext. 392

Fiscal Officer, Muskogee Regional Office, 125 South Main Street, Muskogee, OK 74401, (918) 687–2169

Fiscal Officer, Muskogee Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261 ext 392

Fiscal Officer, Oklahoma City Medical Center, 921 Northeast 13th Street, Oklahoma City, OK 73104, (405) 272–9876 ext. 500

Oklahoma City VA Office, Send to: Fiscal Officer, VA Regional Office, 125 South Main St., Muskogee, OK 74401, (908) 687–2169

Oregon

Portland National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 220–8262 ext. 6948

Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204, (503) 221–2521

Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 220–8262 ext. 6948

Portland Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 222–9221 ext. 6984

Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 440–1000 ext. 4261

Roseburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 672–4411

Fiscal Officer, White City Domiciliary, White City, OR 97503, (503) 826–2111 ext. 241

White City National Cemetery Area, Send to: Fiscal Officer, VA Office Domiciliary, White City, OR 97503, (503) 826–2111 ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16602, (814) 943–8164 ext. 7046

Annville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, VA Medical Center, Butler, PA 16001, (412) 287–4781 ext. 4505

Fiscal Officer, Coatesville Medical Center, Coatesville, PA 19320, (215) 384–7711 ext. 342

Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501, (814) 868–8661

Harrisburg Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, Philadelphia Center, (Regional Office) P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5321

Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monore, Montgomery Monroe, Montour, Northampton,

Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

Philadelphia Data Processing Center, Send to: Fiscal Officer, VA Medical Center, P.O. Box 13399, Philadelphia, PA 19101, (215) 951–5321

Philadelphia National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951–5321

Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951–5321

Fiscal Officer, Pittsburgh Regional Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–4394

Jurisdiction over all of the counties in Pennsylvania that are not listed under the Philadelphia Center (Regional Office) and jurisdiction over the following counties in West Virginia: Brooke, Hancock, Marshall and Ohio.

Fiscal Officer, Pittsburgh Medical Center, Highland Drive, Pittsburg, PA 15206, (412) 363–4900 ext. 4235

Fiscal Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683–3000 ext. 639

Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711, (717) 824–3521, ext 7211

Philippines

Manila Regional Office Outpatient Clinic and Manila Regional Office Center

For either of the above, send to:

Director, Department of Veterans Affairs, APO, San Francisco, CA 96528, 011–632–521–7116 ext. 2560

Puerto Rico

Raymon National Cemetery Area Office, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 766–5115

Hato Regional Office, GPO Box 4867, San Juan, PR 00936, (809) 766–5115

Mayaguez Outpatient Clinic Substation, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 758–7575 ext. 4953

Rio Piedras Medical and Regional Office Center, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 758–7575 ext. 4953

Fiscal Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 758–5365 or (809) 758–5953

Rhode Island

Fiscal Officer, Providence Regional Office, 380 Westminister Mall, Providence, RI 02903, (401) 528–4439

Jurisdiction over the following towns and counties in Massachusetts: all towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.

Fiscal Officer, Providence Medical Center, Davis Park, Providence, RI 02908, (401) 475–3019

South Carolina

Beaufort National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011 ext. 222

Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011 ext 222

Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201, (803) 765–5210

Fiscal Officer, Columbia Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 150

Florence National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 149

Greenville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 149

South Dakota

Fort Meade National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347–2511 ext. 272

Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347–2511 ext. 272

Hot Springs National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hot Springs, SD 57747, (605) 745–4101 ext. 246

Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747, (605) 745–4101

Tennessee

Chattanooga Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327–4651

Chattanooga National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37130, (615) 893–1360

Knoxville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171 ext. 7601

Knoxville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327–4751 ext. 553

Madison National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327–4751 ext. 553

Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990 ext. 5050

Memphis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8901 ext. 50

Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684, (615) 926–1171 ext. 7601

Mountain Home National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171

Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130, (615) 893–1360 ext 3198

Fiscal Officer, National Regional Office, 110 Ninth Avenue South, Nashville, TN 37203, (615) 736–5352

Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327–4751 ext. 5147

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd. W., Amarillo, TX 79106, (806) 355–9703 ext. 7370

Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772, (512) 389–5000

Beaumont Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 794–7104

Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720, (915) 263–7361 ext. 326

Fiscal Officer, Bonham Medical Center, East 9th & Lipscomb Street, Bonham, TX 75418, (218) 583–2111 ext. 240

Corpus Christi Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 617–5300 ext. 5871

Fiscal Officer, Dallas Medical Center, 4500 South Lancaster Road, Dallas, TX 75216, (214) 376–5451 ext. 5238

Dallas VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757–6454

Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 540–7960/7961

Fort Bliss National Cemetery Area Office, Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 540–7960/7961

Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794–7104

Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660–4121

Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Fric, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenndall, Kennedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patrico, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata and Zavala.

Houston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493

Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028, (512) 896–2020 ext. 300,

Kerrville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028, (512) 896–2020 ext. 300

Lubbock VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757–6454 ext. 635

Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7209

Fiscal Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883–3511 ext. 224

McAllen Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 617–5300 ext. 5871

Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 617–5300 ext. 5871

San Antonio VA Office, Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660–4120

San Antonio National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

San Antonio National Cemetery Area Office (Fort Sam Houston), Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

Fiscal Officer, Temple Medical Center, Temple, TX 76504, (817) 778–4811

Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710, (817) 756–6454

Jurisdiction over all counties in Texas not listed under the Houston Regional Office.

Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Waco Outpatient Clinic. Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Utah

Fiscal Officer, Salt Lake City Regional Office, 125 South State Street, Salt Lake City, UT 84147, (801) 524–5361

Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, UT 85148, (810) 584–1213

Vermont

Fiscal Officer, White River Junction, Medical and Regional Office Center, White River Junction, VT 05001, (802) 295–9363 ext. 1034

Virginia

Alexandria National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Culpeper National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Danville National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153, (703) 982–2463

Hopewell National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Leesburg National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Mechanicsville National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (807) 722–9961

Hampton National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (807) 722–9961

Quantico National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Richmond National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Fiscal Officer, Roanoke Regional Office, 210 Franklin Road, SW., Roanoke, VA 24011, (703) 982–6116

Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, DC Regional Office.

Fiscal Officer, Salem Medical Center, Salem, VA 24153, (703) 982–2463

Sandston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231–9011 ext. 205

Staunton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135, (703) 982–2463

Winchester National Cemetery Area Office, Send to: Fiscal Officer,VA Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493, (206) 582–8440 ext 6049

Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98714, (206) 442–5025

Fiscal Officer, Seattle Medical Center, 1160 S. Columbian Way, Seattle, WA 98108, (206) 762–1010 ext. 2666

Seattle Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1660 S. Columbia Way, Seattle, WA 98108, (206) 762–1010 ext. 2666

Fiscal Officer, Spokane Medical Center—North, 4815 Assembly Street, Spokane, WA 99205, (509) 327–0283 ext. 286

Vancouver Medical Center, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S Veterans Hospital Road, Portland, OR 97207, (503) 220–8262 ext. 6948

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 255–2121 ext. 4174

Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301, (304) 623–3461 ext. 3389

Grafton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301, (304) 623–3461 ext. 3389

Fiscal Officer, Huntington Regional Office, 640 4th Avenue, Huntington, WV 25701, (304) 529–5477

Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.

Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704, (304) 429–6741 ext. 2422

Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Wheeling Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240. (412) 683–7675

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705, (608) 262–7050

Fiscal Officer, Milwaukee (Wood) Regional Office, P.O. Box 6, Wood, WI 53193, (414) 671–8121

Fiscal Officer, Tomah Medical Center, Tomah, WI 54660, (608) 372–1786 ext. 3971

Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000 ext. 2591

Wood National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000 ext. 2591

Wyoming

Fiscal Officer, Cheyenne Medical & Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001, (307) 778–7550 ext. 7263

Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801, (307) 672–3473

II. AGENCIES

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Agency for International Development

For employees of the Agency for International Development and the Trade and Development Program:

Assistant General Counsel for Employee and Public Affairs (GC/EPA), Agency for International Development, 22nd and C Streets, NW., Room 6892, Washington, DC 20523–0076, (202) 647–8218

Central Intelligence Agency

Office of Personnel, Attn: Chief, Special Activities Staff, Washington, DC 20505, (703) 874–2268

Commission on Civil Rights

Solicitor, Commission on Civil Rights, 624 9th Street, NW., Suite 632, Washington, DC 20425, (202) 376–8351

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Commodity Futures Trading Commission

Director, Office of Budget and Fiscal Operations, 2033 K Street, NW., Washington, DC 20581, (202) 254–3354

Consumer Product Safety Commission

General Counsel, 5401 Westbard Avenue, Room 200, Washington, DC 20207, (301) 504–0980

Export-Import Bank of the United States

General Counsel, Export-Import Bank of the United States, Room 947, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8334

Equal Employment Opportunity Commission

Director, Financial Management Division, United States Equal Employment Opportunity Commission, 1801 L Street, NW., Room 2002, Washington, DC 20507, (202) 663–4224

Farm Credit Administration

Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4122

Federal Deposit Insurance Corporation

Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–3686

Federal Election Commission

Accounting Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 376–5270

Federal Emergency Management Agency

Office of General Counsel, General Law Division, 500 C Street, SW., Washington, DC 20472, (202) 646–4105

Federal Labor Relations Authority

Director of Personnel, Federal Labor Relations Authority, 607 14th Street, NW., Suite 430, Washington, DC 20424, (202) 482–6690

Federal Maritime Commission

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5773

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, (202) 653–5305

Federal Retirement Thrift Investment Board

Payments to Board employees:

Director of Administration, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1670

Benefits from the Thrift Savings Fund:

General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1662

General Services Administration

1. Region 1 (Maine, Vermont, New Hampshire, Massachusetts, Connecticut):

Regional Counsel, 10 Causeway Street, Boston, MA 02222, (617) 835–5896

2. Region 2 (New York, New Jersey, Puerto Rico, the Virgin Islands):

Regional Counsel, 26 Federal Plaza, New York, NY 10007, (212) 264–8306

3. Region 3 (Pennsylvania, West Virginia, Maryland, Virginia, less the greater metropolitan area of Washington, DC):

Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107, (215) 597–1319

4. Region 4 (Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida):

Regional Counsel, R.B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, SW., Atlanta, GA 30303, (404) 242–0915

5. Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):

Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–5392

6. Region 6 (Nebraska, Iowa, Kansas, Missouri):

Regional Counsel, 1500 E Bannister Road, Kansas City, MO 64131, (816) 926–7212

7. Region 7 (New Mexico, Texas, Oklahoma, Arkansas, Louisiana):

Regional Counsel, 819 Taylor Street, Fort Worth, TX 76102, (817) 334–2325

8. Region 8 (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado):

Regional Counsel, Building 41, Denver Federal Center, Denver, CO 80225, (303) 776–7352

9. Region 9 (California, Nevada, Arizona, Hawaii, Guam):

Regional Counsel, 525 Market Street, San Francisco, CA 94105, (415) 454–9309

10. Region 10 (Washington, Oregon, Idaho, Alaska):

Regional Counsel, GSA Center, Auburn, WA 98002, (206) 398–7007

11. Greater Metropolitan Area of Washington, DC (includes parts of Maryland and Virginia):

Regional Counsel, 7th & D Streets, NW., Washington, DC 20547, (202) 472–1809

Interstate Commerce Commission

Chief, Budget and Fiscal Office, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423, (202) 927–5827

Merit Systems Protection Board

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653–5805

National Aeronautics and Space Administration

NASA Headquarters

Associate General Counsel (General) Attention: SN Code GG, NASA Headquarters, 400 Maryland Avenue, SW., Washington, DC 20546, (202) 453–2465

NASA Field Installations

Chief Counsel, Ames Research Center (including Dryden Flight Research Center), Moffett Field, CA 94035, (415) 694–5103

Chief Counsel, Goddard Space Flight Center (including Wallops Flight Center), Greenbelt, MD 20771, (301) 286–9181

Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483–3021

Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899, (407) 867–2550

Chief Counsel, Langley Research Center, Hampton, VA 23665, (804) 865–3397

Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433–2318

Chief Counsel, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812, (205) 544–0012

Chief Counsel, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, (601) 688–2164

National Archives and Records Administration

General Counsel (NSL), room 305, Archives Building, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408, (202) 501–5535

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724–0170

National Credit Union Administration

Director, Division of Personnel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, (202) 357–1156

National Endowment for the Arts

General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 522, Washington, DC 20506, (202) 682–5418

National Endowment for the Humanities

General Counsel,
National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0322

National Labor Relations Board

Finance Officer, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Room 1300, Washington, DC 20570, (202) 254–9307

National Mediation Board

Administrative Officer, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC 20572, (202) 523–5950

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 175 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7300

National Science Foundation

General Counsel, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (202) 634–4266

National Transportation Safety Board

Director, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, ATTN: AD–30, (202) 382–6718

Navajo and Hopi Indian Relocation Commission

Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779–2721

Nuclear Regulatory Commission

Controller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4750

Office of Personnel Management

Payments to OPM employees:

General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–1980

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System:

Associate Director for Retirement and Insurance, Office of Personnel Management, Court Order Benefit Section, P.O. Box 17, Washington, DC 20044, (202) 606–0218

Overseas Private investment Corporation

Director of Personnel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527, (202) 457–7082

Panama Canal Commission

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011, 52–3519

Pension Benefit Guaranty Corporation

General Counsel or Deputy General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, (202) 778–8820

Railroad Retirement Board

Deputy General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4935

Securities and Exchange Commission

Branch Chief, Fiscal Operations, Office of the Comptroller, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2049

Selective Service System

General Counsel, Selective Service System, 1023 31st Street, NW., Washington, DC 20435, (202) 724–1167

Small Business Administration

[District Directors are designated to accept legal process for their respective districts as set forth in 13 C.F.R. 101.3–1.]

District Director,Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254–1344

District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271–4022

District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261–3611

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 378–5871

District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071, (213) 688–2956

District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 291–5440

District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556–7490

District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837–2607

District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06106, (203) 244–3600

District Director, Washington District Office, 1030 15th Street, NW., Washington, DC 20417, (202) 655–4000

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791–3782

District Director, Miami District Office, 222 Ponce De Leon Blvd., Coral Gables, FL 33134, (305) 350–5521

District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309, (404) 347–2441

District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546–8950

District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384–1096

District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4433

District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 353–4528

District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7272

District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267–6571

District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201,

District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589–6685

District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622–6171

District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204, (301) 862–4392

District Director, Boston District Office, 150 Causeway Street, Boston, MS 02114, (617) 223–2100

District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48116, (313) 226–6075

District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402, (612) 725–2362

District Director, Jackson District Office, 100 West Capitol Street, Jackson, MS 39201, (601) 969–4371

District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106, (816) 374–3416

District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425–4191

District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381

District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102, (404) 221–4691

District Director, Las Vegas District Office, 301 East Stewart, Las Vegas, NV 89101, (702) 385–6611

District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224–4041

District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102, (201) 645–2434

District Director, Albuquerque District Office, 5000 Marble Avenue, NE., Albuquerque, NM 87110, (505) 766–3430

District Director, New York District Office, 26 Federal Plaza, New York, NY 10007, (212) 264–4355

District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260, (315) 423–5383

District Director, Charlotte District Office, 230 South Tryon Street, Charlotte, NC 28202, (704) 371–6111

District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58108, (701) 237–5771

District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, SD 57102, (605) 336–2980

District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4180

District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215, (614) 469–6860

District Director, Oklahoma City District Office, 200 NW. 5th Street, Oklahoma City, OK 73102, (405) 231–4301

District Director, Portland District Office, 1220 SW. Third Avenue, Portland, OR 97204, (503) 221–2682

District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004, (215) 597–3311

District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–2780

District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918, (809) 753–4572

District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903, (401) 528–4580

District Director, Columbia District Office, 1835 Assembly Street, Columbia, SC 29201, (803) 765–5376

District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219, (615) 251–5881

District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242, (214) 767–0605

District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002, (713) 226–4341

District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550, (512) 423–4534

District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7466

District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (512) 229–6250

District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425–5800

District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229–0538
District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782–2617
District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442–5534
District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456–5310
District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301, (304) 623–5631
District Director, Madison District Office, 212 East Washington Avenue, Madison, WI 53703, (608) 264–5261
District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265–5266

Tennessee Valley Authority

Payments to TVA employees:

Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (615) 632–2101

Payments of retirement benefits under the TVA Retirement System:

Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (615) 632–0202

United States Information Agency

Counsel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–7976

United States Soldiers' & Airmen's Home

Chief, Employee Management Branch, United States Soldiers' and Airmen's Home, Box 1200, 3700 North Capitol Street, NW., Washington, DC 20317, (202) 722–3425

III. The United States Postal Service and the Postal Rate Commission

United States Postal Service

Service of process may be made on the postmaster or head of the installation where the employee obligor works. However, if the installation where the employee obligor works cannot be determined, service of process may be made on the appropriate Chief Field counsel. The geographic areas served by the Chief Field Counsels and their addresses are as follows:

Chief Field Counsel, Northeast Region, U.S. Postal Service, 6 Griffin Park Road North, Windsor, CT 10098–0120, (203) 285–7127

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070–079 and 085–089), New York, and the Caribbean Islands.

Chief Field Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19187–0120, (215) 496–6011

Serving: The District of Columbia, Delaware, Kentucky, Ohio, Maryland, Pennsylvania, Virginia, West Virginia southern New Jersey (ZIP codes beginning with 080–084), North Carolina and South Carolina (ZIP codes beginning with 290–292).

Chief Field Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166–1710, (901) 722–7350

Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina (ZIP codes beginning with 298–299), Tennessee and Texas.

Chief Field Counsel, Central Region, U.S. Postal Service, 300 South Riverside Street, Chicago, IL 60606–1710, (212) 765–5264

Serving: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Colorado and Wyoming.

Chief Field Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099–0170, (415) 742–4810

Serving: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and the Pacific Islands including the Trust Territory.

Processing of legal process in garnishment actions will be substantially expedited by serving the postmaster or installation head rather than the Chief Field Counsel.

Postal Rate Commission

Chief Administrative Officer, Postal Rate Commission, 2000 L Street, NW., Washington, DC 20268, (202) 254–3880

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue, NW., Washington, DC 20004, (202) 727–6979

American Samoa

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633–4155

Guam

Attorney General, P.O. Box DA, Agana, Guam 96910, 472–6841 (Country Code 671)

The Virgin Islands

Attorney General, P.O. Box 280, St. Thomas, VI 00801, (809) 774–1163

V. Instrumentality

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive, SW., Washington, DC 20560, (202) 381–5866

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490–9000

[FR Doc. 93–15390 Filed 7–1–93; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–89–AD; Amdt. 39–8616; AD 93–13–03]

Airworthiness Directives; British Aerospace (Commercial Aircraft), Limited, Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace (Commercial Aircraft), Limited, Model ATP series airplanes. This action requires a one-time safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the fire extinguisher bottles in the left- and right-hand engines; and, if out-of-tolerance electrical resistance is detected, a full electrical inspection of the engine fire extinguisher systems, a safety ohmmeter reinspection, and replacement of cartridge firing units and/or cartridge connectors, as necessary. This amendment is prompted by a report that an engine fire extinguisher bottle cartridge failed to fire. The actions specified in this AD are intended to prevent operational failure of the fire extinguisher systems for the left- and right-hand engines.

DATES: Effective July 19, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 31, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace (Commercial Aircraft), Limited, Model ATP series airplanes. The CAA advises that a report has been received of operational failure of an engine fire extinguisher bottle cartridge on a Model ATP series airplane. When the flight crew attempted to fire the extinguisher system, the cartridge failed to release the extinguishant. Subsequent investigations by the manufacturer revealed that both the cartridge and the firing circuit were serviceable. The suspected origin of this problem has been traced to a lack of electrical conductivity between the fire extinguisher bottle cartridge connector and the cartridge, which originated during manufacture of the connector assembly. This condition, if not corrected, could result in operational failure of the fire extinguisher systems for the left- and right-hand engines.

Jetstream Aircraft, Ltd., has issued Service Bulletin ATP–26–9, dated May 12, 1993, that describes procedures for a one-time safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the fire extinguisher bottles in the left- and right-hand engines; and, if out-of-tolerance electrical resistance is detected, a full electrical inspection of the engine fire extinguisher systems, a safety ohmmeter reinspection, and replacement of cartridge firing units and/or cartridge connectors, as necessary. ("Out-of-tolerance" is defined as having an electrical resistance reading of less than 5.5 ohms or greater than 7 ohms.) The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent operational failure of the fire extinguisher systems for the left- and right-hand engines. This AD requires a one-time safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the engine fire extinguisher bottles in the left- and right-hand engines; and, if out-of-tolerance electrical resistance is detected, a full electrical inspection of the engine fire extinguisher systems, a safety ohmmeter reinspection, and replacement of cartridge firing units and/or cartridge connectors, as necessary. Additionally, operators are required to submit a report to Jetstream Aircraft, Ltd., of the results of any inspection findings. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–89–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

VOL 58 ISS 126 JL 2 1993 UMI

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-13-03 British Aerospace (Commercial Aircraft), Limited: Amendment 39-8616. Docket 93-NM-89-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2055, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent operational failure of the fire extinguisher systems for the left- and right-hand engines, accomplish the following:

(a) Within 14 days after the effective date of this AD, perform a safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the fire extinguisher bottles of the left- and right-hand engines in accordance with Jetstream Aircraft, Ltd., Service Bulletin ATP-26-9, dated May 12, 1993.

(1) If an out-of-tolerance condition is not detected: No further action is required by this paragraph.

Note: An "out-of-tolerance condition" is defined as having an electrical resistance reading of less than 5.5 ohms or greater than 7 ohms.

(2) If an out-of-tolerance condition is detected: Prior to further flight, perform a full electrical inspection of the fire extinguisher systems of the left- and right-hand engines and repeat the safety ohmmeter inspection in accordance with the service bulletin.

(i) If an out-of-tolerance condition is no longer detected: No further action is required by this paragraph.

(ii) If an out-of-tolerance condition is still detected: Prior to further flight, replace the cartridge firing unit with a new or serviceable cartridge firing unit and/or replace the cartridge connector with a new or serviceable cartridge connector in accordance with the service bulletin.

(b) Within 10 days after accomplishing the inspection(s) required by paragraph (a) of this AD, submit a report of any inspection findings, to Jetstream Aircraft, Ltd., in accordance with Jetstream Aircraft, Ltd., Service Bulletin ATP-26-9, dated May 12, 1993. Report all findings, including nil defects, to: Service Support Manager, Customer Support Department, Jetstream Aircraft, Ltd., Woodford Aerodrome, Chester Road, Cheshire SK7 1QR, England. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with Jetstream Aircraft, Ltd., Service Bulletin ATP-26-9, dated May 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 19, 1993.

Issued in Renton, Washington, on June 25, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-15705 Filed 7-1-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. 93-45]

Changes to Customs List of Designated Public International Organizations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating Customs list of designated public international organizations entitled to certain free entry privileges provided for under provisions of the International Organizations Immunities Act. The last time the list was updated was in 1985 and since then the President has issued several Executive Orders which designate or redesignate certain organizations as entitled to this free entry privilege. Accordingly, Customs deems it appropriate to update the list at this time.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Alice Hopkins, Office of International Affairs (202) 927-2231 (for Operational matters), or Anthony L. Shurn, Entry Rulings Branch (202) 482-7040 (for legal matters).

SUPPLEMENTARY INFORMATION:

Background

The International Organizations Immunities Act, 22 U.S.C. 288, generally provides that certain international organizations, agencies, and committees, those in which the United States participates or otherwise has an interest and which have been designated by the President through appropriate Executive Order as public international organizations, are entitled to enjoy certain privileges, exemptions, and immunities conferred by the Act. The Department of State lists the public international organizations, designated by the President as entitled to enjoy any measure of the privileges, exemptions, and immunities conferred by the Act, in the notes following the provisions of section 288. There are currently 62 organizations, agencies, and committees on the Department of State's list of public international organizations.

One of the privileges provided for under the Act is that the baggage and effects of alien officers, employees, and representatives—and their families, suites, and servants—to the designated organization, are admitted free of duty and without entry. Those designated organizations entitled to this duty-free entry privilege are delineated at § 148.87(b), Customs Regulations (19 CFR 148.87(b)). Thus, the list of public international organizations maintained by Customs is for the limited purpose of identifying those organizations entitled to the duty-free entry privilege; it does not necessarily include all of the international organizations that are on the list maintained by the Department of State, which delineates all of the international organizations designated by the President regardless of the extent of the privileges conferred.

Since the last revision of § 148.87(b) in 1985 (T.D. 85-123), many Executive Orders have been issued designating—and redesignating—certain organizations as public international organizations. Collectively, these Executive Orders result in the net addition of 12 international organizations to Customs list of public

international organizations entitled to the duty-free entry privilege—bringing the total of designated international organizations to 61, as follows:

1. Executive Order 10727 of August 31, 1957, 22 FR 7099, 3 CFR parts 1954–1958 Comp. p. 386, designated the Preparatory Commission of the International Atomic Energy Agency;

2. Executive Order 12467 of March 2, 1984, 49 FR 8229, 3 CFR part 1984 Comp. p. 166, 20 Weekly Comp. Pres. Doc. 292, designated the International Boundary and Water Commission, United States and Mexico;

3. Executive Order 12508 of March 22, 1985, 50 FR 11837, 3 CFR part 1985 Comp. p. 337, 21 Weekly Comp. Pres. Doc. 351, designated the World Tourism Organization;

4. Executive Order 12567 of October 2, 1986, 51 FR 35495, 3 CFR part 1986 Comp. p. 232, 22 Weekly Comp. Pres. Doc. 1320, designated the Inter-American Investment Corporation, the Commission for the Study of Alternatives to the Panama Canal, and the Pacific Salmon Commission;

5. Executive Order 12628 of March 8, 1988, 53 FR 7725, 3 CFR part 1988 Comp. p. 553, 24 Weekly Comp. Pres. Doc. 312, designated the United Nations Industrial Development Organization;

6. Executive Order 12643 of June 23, 1988, 53 FR 24247, 3 CFR part 1988 Comp. p. 575, 24 Weekly Comp. Pres. Doc. 856, designated the International Committee of the Red Cross;

7. Executive Order 12647 of August 2, 1988, 53 FR 29323, 3 CFR part 1988 Comp. p. 578, 24 Weekly Comp. Pres. Doc. 992, designated the Multilateral Investment Guarantee Agency;

8. Executive Order 12669 of February 20, 1989, 54 FR 7753, 3 CFR part 1989 Comp. p. 212, 25 Weekly Comp. Pres. Doc. 217, designated the Organization of Eastern Caribbean States;

9. Executive Order 12732 of October 31, 1990, 55 FR 46489, 3 CFR part 1990 Comp. p. 311, 26 Weekly Comp. Pres. Doc. 1712, designated the International Fund for Agricultural Development;

10. Executive Order 12766 of June 18, 1991, 56 FR 28463, 3 CFR part 1991 Comp. p. 333, 27 Weekly Comp. Pres. Doc. 810, designated the European Bank for Reconstruction and Development and amended Executive Order 11760 of January 11, 1974, by striking out the reference to the European Space Research Organization (ESRO) and inserting in its place the European Space Agency;

11. As Executive Order 10533 of June 3, 1954, 19 FR 3289, 3 CFR parts 1954–1958 Comp. p. 194, designated the Organization of American States as including the former Pan American Union—thereby, superseding the previous Executive Order 9698 of February 19, 1946, which initially designated the Pan American Union, the separate reference to the Pan American Union is deleted and parenthetically referenced following the Organization of American States.

Lastly, Executive Order 12425 of June 16, 1983, 48 FR 28069, 3 CFR parts 1983 Comp. p. 193, 19 Weekly Comp. Pres. Doc. 885, designated the International Criminal Police Organization (INTERPOL), with limited privileges: The privilege of duty-free entry, however, was not extended to the organization. Accordingly, although Customs notes the execution of this Executive Order, the subject organization (INTERPOL) is not included on Customs list as entitled to duty-free entry privileges; however, it is carried on the Department of State's list.

This document also corrects some editorial errors, *i.e.*, that incorrectly reference an international organization, thus, the reference to the Organization for Economic Cooperation should read the Organization for European Economic Cooperation and the date of the Executive Order designating the International Maritime Satellite Organization should read September 12, 1980, not April 22, 1980, and adds section 1498, 19 U.S.C. 1498, which relates to entry under regulations, as a general statutory basis for part 148, in addition to section 1496, 19 U.S.C. 1496, which relates to the examination of baggage.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely corrects the listing of designated organizations entitled by law to free entry privileges as public international organizations, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch. Personnel from other offices, however, participated in its development.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Executive orders, Foreign officials, Government employees, International organizations, Privileges and immunities, Taxes.

Amendment to the Regulations

For the reasons stated above, part 148, Customs Regulations (19 CFR part 148), is amended as set forth below:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

2. Section 148.87(b) is amended by removing the entries "European Space Research Organization (ESRO)" and "11760" and "Jan. 17, 1974" and "Pan American Union" and "10533" and "June 3, 1954" from the table and adding the following, in appropriate alphabetical order, to the table, to read as follows:

§ 148.87 Officers and employees of, and representatives to, public international organizations.

* * * * *

(b)* * *

Organization	Executive order	Date
. . . . .	.	.
Commission for the Study of Alternatives to the Panama Canal	12567	Oct. 2, 1986.

Organization	Executive order	Date
• • • • •	•	•
European Bank for Reconstruction and Development	12766	June 18, 1991.
European Space Agency (formerly the European Space Research Organization (ESRO))	12766	June 18, 1991.
• • • • •	•	•
Inter-American Investment Corporation	12567	Oct. 2, 1986.
• • • • •	•	•
International Boundary and Water Commission, United States & Mexico	12467	Mar. 2, 1984.
• • • • •	•	•
International Committee of the Red Cross	12643	June 23, 1988.
• • • • •	•	•
International Fund for Agricultural Development	12732	Oct. 31, 1990.
• • • • •	•	•
Multilateral Investment Guarantee Agency	12647	Aug. 2, 1988.
• • • • •	•	•
Organization of Eastern Caribbean States	12669	Feb. 20, 1989.
• • • • •	•	•
Pacific Salmon Commission	12567	Oct. 2, 1986.
• • • • •	•	•
Preparatory Commission of the International Atomic Energy Agency	10727	Aug. 31, 1957.
• • • • •	•	•
United Nations Industrial Development Organization	12628	Mar. 9, 1988.
• • • • •	•	•
World Tourism Organization	12508	Mar. 22, 1985.

3. In addition to the amendments set forth above, in § 148.87(b) remove the words "Organization for Economic Cooperation (now known as the Organization for Economic Cooperation and Development)" and add, in their place, the words "Organization for Economic Cooperation and Development (formerly Organization for European Economic Cooperation)".

4. In addition to the amendments set forth above, in § 148.87(b) revise the date for the entry "International Maritime Satellite Organization", which reads "April 22, 1980", to read "September 12, 1980".

Approved: June 11, 1993.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–15489 Filed 7–1–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 126

[Public Notice 1825]

Angola; Removal of the Domestic Arms

AGENCY: U.S. Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic In Arms Regulations (ITAR) (22 CFR parts 120–130) to reflect the removal of the domestic arms embargo on Angola.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Rogers, Office of Defense Trade Policy, Bureau of Politico-Military Affairs, U.S. Department of State. Phone: (202) 647–4231.

SUPPLEMENTARY INFORMATION: The Department of State has terminated the domestic arms embargo against Angola. Section 126.1(a) of the ITAR is being amended to reflect this change in policy with respect to the commercial export of defense articles and services to Angola. Effective immediately, it is the policy of the U.S. Government to review all licenses and approvals authorizing the export or other transfer of defense articles or defense services to Angola on a case-by-case basis, with a presumption of denial for lethal articles. Approvals for export of defense articles or defense services bound for Angola will be considered for non-lethal defense articles or services.

For the purposes of this policy, "nonlethal defense articles" means an article that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death (See, *e.g.*, 10 U.S.C. 2547).

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Accordingly, for the reasons set forth in the preamble, and under the authority of the Arms Export Control Act and 22 U.S.C. 2778, the State

Department is adopting the following amendment to 22 CFR 126.1(a).

PART 126—[AMENDED]

1. The authority for part 126 continues to read as follows:

Authority: Sec. 38, sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778, 2780); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658, unless otherwise noted.

2. Section 126.1(a) is revised to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

* * * * *

For the Department of State.

Dated: June 24, 1993.

Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93–15746 Filed 7–1–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–342; RE: Notice Nos. 729, 738, and 756]

RIN 1512–AA07

The Rutherford Viticultural Area [89F–90P]

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "Rutherford." The petition for establishing this viticultural area was submitted by the Rutherford and Oakville Appellation Committee which is composed of seven wineries and seven grape growers within the Rutherford and Oakville areas of Napa County, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Rulemaking Proceeding

Petition

On March 8, 1989, the Rutherford and Oakville Appellation Committee petitioned ATF for establishment of a viticultural area in Napa County, California, to be known as "Rutherford." The viticultural area proposed by the petitioners is located in the central portion of the Napa Valley approximately 12 miles northwest of the city of Napa. In general terms, the proposed area extended as far north as Zinfandel Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, and as far south as Skellenger Lane with the exception of one area extending approximately .5 mile south of Skellenger Lane. The proposed area contains approximately 31 bonded wineries and consists of about 6,650 total acres, most of which are densely planted to vineyards.

Notice of Proposed Rulemaking

In response to the petition, ATF published Notice No. 729 in the **Federal Register** on September 17, 1991 (56 FR 47044), proposing establishment of the Rutherford viticultural area. The notice detailed the boundaries as proposed in the petition, with some minor modifications, and requested comments from all interested persons. Written comments were to be received on or before November 18, 1991.

Comments to Notice of Proposed Rulemaking

ATF received 17 comments in response to the notice of proposed rulemaking. Nine commenters disagreed with the northern boundary of Rutherford. These commenters felt that the Rutherford boundary should extend further north either to Sulphur Creek or to the southern city limits line of St. Helena. One commenter disagreed with the northeastern boundary of Rutherford. This commenter felt that the northeastern boundary should continue to be the 500-foot contour line (which would include an area designated on the pertinent U.S.G.S. map as Spring Valley) rather than changing to the 380-

foot contour line which would exclude the Spring Valley area. Two commenters disagreed with the southern boundary of Rutherford and stated that it should extend further south to include Beaulieu Vineyard properties No. 2 and No. 4. According to these two commenters, Beaulieu Vineyard properties No. 2 and No. 4 have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, both of which have contributed greatly to the development and consumer recognition of the Rutherford name. And finally, one commenter stated he was against any further subdivision of the Napa Valley.

Based on the controversial nature of the comments received, ATF decided to reopen the comment period for an additional 90 days in order to obtain more information on the establishment of the Rutherford viticultural area, its proposed boundaries, and other possible boundaries. Reopening Notice

On April 22, 1992, ATF published Notice No. 738 (57 FR 14681) reopening the comment period on both the proposed Rutherford viticultural area and the directly adjacent Oakville viticultural area. ATF specifically requested comments on 11 questions which were asked in this reopening notice which mostly pertained to possible boundary changes. Interested persons were given until July 21, 1992, to submit their comments.

Comments to Reopening Notice

ATF received 62 comments in response to the reopening notice. Twenty-five commenters disagreed with the proposed northern boundary of Rutherford. These commenters felt that the Rutherford boundary should extend further north either to Sulphur Creek or to the southern city limits line of St. Helena. One of these commenters submitted geographical information in support of his position that there is little or no difference in the geographical features of the area between Zinfandel Lane and Sulphur Creek as compared to the proposed Rutherford viticultural area. Ten commenters, on the other hand, agreed with the proposed northern boundary of Rutherford and stated that there is no historical or current evidence which would suggest that the area north of Zinfandel Lane has ever been considered to be within the Rutherford area.

One commenter disagreed with the northeastern boundary of Rutherford. This commenter felt that the northeastern boundary should continue to be the 500-foot contour line (which would include the Spring Valley area) rather than changing to the 380-foot contour line which would exclude the Spring Valley area.

One commenter disagreed with the northwestern boundary of Rutherford. This commenter felt that the Rutherford boundary should be extended along the northern fork of Bale Slough approximately 2,750 feet north of Zinfandel Lane to a point intersecting the straight line westward extension of the light-duty road known as Inglewood Avenue, then following that line to the west to the 500-foot contour line.

Two commenters disagreed with the eastern boundary of Rutherford. These two commenters stated that the eastern boundary of Rutherford should be extended beyond the currently proposed 500-foot elevation line to the 1200-foot elevation line to include the area south of Lake Hennessey known as Pritchard Hill.

Five commenters, plus petitions containing the names of 56 additional interested persons within the Napa Valley, disagreed with the southern boundary of Rutherford. These commenters and petitioners felt that any boundaries for Rutherford must include Beaulieu Vineyard properties No. 2 and No. 4 which, according to these commenters, have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and have contributed greatly to the development and consumer recognition of the Rutherford name. These two Beaulieu Vineyard properties were at that time located within the proposed Oakville viticultural area directly south of the proposed Rutherford viticultural area.

Six commenters stated that they agreed with the originally proposed southern boundary of Rutherford and did not feel that it should be changed to include Beaulieu Vineyard properties No. 2 and No. 4. These commenters stated that these two vineyard properties were located in the Oakville area and referred to the information submitted in the original Rutherford and Oakville petitions as evidence for their position.

Hearing Notice

As a result of the large number of comments received to the reopening notice and to the conflicting nature of the information contained in those comments, ATF determined that a public hearing was necessary and would serve the public interest. Consequently, on October 2, 1992, ATF published Notice No. 756 (57 FR 45588) which announced the time and place of a public hearing to be held by ATF concerning the establishment of the Rutherford viticultural area. The notice stated that the hearing would be held in Napa, California, on December 9, 1992, and requested that all interested persons who wished to testify at the hearing submit a letter notifying ATF of their intent to comment on or before November 9, 1992. The notice also stated that interested persons could continue to submit written comments on this matter until December 28, 1992.

Public Hearing

A public hearing was held on December 9, 1992, in Napa, California, for the purpose of gathering additional information and to receive evidence with respect to the establishment of the Rutherford viticultural area, the proposed boundaries, and other possible boundaries. Twenty persons testified at the public hearing.

Controversial Boundaries

As a result of the hearing testimony and the large number of written comments received concerning the establishment of the Rutherford viticultural area, ATF has determined that there are five boundary disputes that need to be resolved. These disputes involve the northern, northwestern, northeastern, eastern and southwestern boundaries of Rutherford. We will address the evidence presented by the different parties for each boundary dispute and then give our final decision as to where the boundaries of the Rutherford viticultural area are located and why.

1. Northern Boundary of Rutherford. Mr. W. Andrew Beckstoffer of Beckstoffer Vineyards, Mr. David I. Freed, President of the UCC Vineyards Group, and numerous vineyard owners located between Zinfandel Lane and Sulphur Creek want the proposed northern boundary of Rutherford extended further north. Mr. Beckstoffer and many of the other vineyard owners between Zinfandel Lane and Sulphur Creek want the boundary extended to Sulphur Creek which is within the city limits of St. Helena. Mr. Freed states that if it is not feasible to extend the boundary inside the city limits of St. Helena, then he feels the boundary should extend to the southern city limits line of St. Helena. The proponents of this northward extension state that Zinfandel Lane is not a natural geographical boundary separating the proposed Rutherford viticultural area from the St. Helena area but rather a man-made road which has no geographical significance

As support for his position, Mr. Beckstoffer submitted a report titled "Letter-Report, Hydrogeologic Evaluation of St. Helena-Rutherford Area" prepared by Mr. Richard C. Slade,

consulting groundwater geologist. Mr. Slade's report concludes that generally, climatic, topographic, and geologic characteristics across the study area, from St. Helena to Rutherford, are similar. The report states that the alluvial sediments along the southwestern border of the Napa Valley in this area and emanating from the mountains to the west, are generally composed of material consisting of Sonoma Volcanics and Franciscan assemblage rocks. The report states that the Sulphur Creek drainage is the major influence on alluvial sediments across the entire project site. In addition, the report states that the predominant mineralogic composition of alluvial fans underlying the site appears to be derived from Franciscan assemblage shale, sandstone, and greenstone bodies, along with Sonoma Volcanics. The report further states that there appear to be some differences in the mineralogic composition of alluvial sediments in the area of Bale Slough compared to the region north of Zinfandel Lane and extending to Sulphur Creek.

Mr. Beckstoffer also states that the Soil Survey of Napa County, California, prepared by the United States Department of Agriculture Soil Conservation Service, shows that Zinfandel Lane is surrounded by a "lake" of Pleasanton soil with no distinction between the area immediately north and immediately south of the county road. The Soil Survey map designates the entire area as 170 which is defined as Pleasanton loam, 0 to 2 percent slopes.

In a letter dated December 22, 1992, Mr. Beckstoffer also refers to a letter from Mr. Slade, dated December 23, 1992, which states that in Mr. Slade's professional opinion the Sulphur Creek alluvial fan extends approximately 1 mile south of Zinfandel Lane. Mr. Slade also states that the Sulphur Creek alluvial fan appears to be much larger than the Bear Creek alluvial fan. Mr. Slade states that based on his examination of current topographic maps for the area, the Sulphur Creek alluvial fan covers an area of approximately 5 square miles east of the mountain front. The Bear Creek alluvial fan, on the other hand, covers an area of approximately 2½ square miles. Therefore, according to Mr. Slade, the Sulphur Creek alluvial fan is about twice as large as the Bear Creek alluvial fan. Further, the watershed area drained by Sulphur Creek within the hills west of the valley is approximately three times as large as the watershed area drained by Bear Creek. Mr. Slade states that his examination of published geologic maps for the area show that Franciscan formation rocks comprise the highland area west of the Sulphur and Bear Creek areas. Therefore, according to Mr. Slade, both watershed areas drain geologic terrain consisting of similar rocks, in gross chemical and physical composition.

Mr. Slade states that as a result of his examination, there appears to be little difference in the gross physical and chemical character of the sediments of the Sulphur Creek alluvial fan, compared to the Bear Creek alluvial fan. Therefore, according to Mr. Slade, it is reasonable to extend the northern boundary of the Rutherford viticultural area northward to Sulphur Creek.

After reviewing Mr. Slade's letter of December 23, 1992, Mr. Beckstoffer concludes that Franciscan sedimentary materials can be the same formation whether delivered down Sulphur Canyon (west of St. Helena) or Bear Canyon (west of Rutherford). Consequently, according to Mr. Beckstoffer, the geologic formation in the Rutherford area is similar (Franciscan) even though delivered by two different slides (canyons).

Mr. Beckstoffer states that since Zinfandel Lane is not a natural geological boundary, he feels that the northern boundary of Rutherford should be extended north until the first natural geological feature is observed. According to Mr. Beckstoffer, this natural geological feature would be Sulphur Creek which runs through the city limits of St. Helena and is about 1.85 miles north of Zinfandel Lane.

Mr. Beckstoffer also states that much of the grapes grown between Zinfandel Lane and Sulphur Creek have Rutherford character and are sold to wineries, particularly Rutherford wineries, because of this Rutherford character. He feels that this area should be included within the Rutherford viticultural area due to this Rutherford character and to the long historical use of these grapes by Rutherford wineries.

Mr. David I. Freed also disapproves of using Zinfandel Lane as the northern boundary of the Rutherford viticultural area. Mr. Freed states that if Sulphur Creek is not acceptable as a northern boundary of Rutherford due to its being located within the city limits of St. Helena then he feels the northern boundary should be the southern city limits line of St. Helena. Mr. Freed states that there are no climatic differences which can be distinguished by Zinfandel Lane. He states that to the contrary, the changes in climate are imperceptible. In addition, he states that there are no soil differences which can be distinguished at Zinfandel Lane. To the contrary, Mr. Freed states that the "lake" of Pleasanton soil in the middle of the valley floor on the map presented by Mr. Beckstoffer shows an equal area of the same type of soil (Pleasanton) lying to the north as well as to the south of Zinfandel Lane. Furthermore, according to Mr. Freed, there are no distinguishing geographical features existing at Zinfandel Lane other than the existence of a county road. Mr. Freed states that vineyards lying between Zinfandel Lane and the southern city limits boundary of St. Helena are in Napa County as are all of the properties in the proposed Rutherford area. Furthermore, all zoning, vineyard regulation, taxation and all other governmental matters are controlled by the Board of Supervisors of Napa County, not the city of St. Helena. Mr. Freed states that if the southern city limits line of St. Helena is not adopted as the northern boundary of Rutherford for some reason, then consideration should at least be given to Inglewood Avenue and Chaix Lane as being more accurate, even though somewhat less expedient, than Zinfandel Lane. Mr. Freed indicates that the Inglewood Avenue/Chaix Lane boundary would avoid creating a "no man's land" that would separate grape suppliers from their historical winery connections.

Mr. Richard Mendelson, lawyer for the Rutherford and Oakville Appellation Committee, states in both public testimony and in written comments that the northern boundary of the Rutherford viticultural area should remain at Zinfandel Lane. In support of this position, Mr. Mendelson states that historical and modern community perceptions show that the area north of Zinfandel Lane, except for possibly the historical Rennie property on the extreme western side of the valley, has never been known by the name of Rutherford. Mr. Mendelson submitted various historical and current maps of the area which, according to Mr. Mendelson, show that the area north of Zinfandel Lane has always been considered to be part of the greater St. Helena area.

Ms. Deborah L. Elliott-Fisk, Associate Professor of Geography, University of California at Davis, who represents the Rutherford and Oakville Appellation Committee, states that the map shown by Mr. Beckstoffer at the public hearing, which depicted the extent of the Sulphur Canyon Fan which issues from Sulphur Canyon immediately west of the town of St. Helena, is incorrect. Ms. Elliott-Fisk bases this statement on her research over the last 5½ years which includes sampling over 95 trenches and numerous hand-dug pits and exposures

VOL 58 ISS 126 JL 2 1993 UMI

in the proposed Rutherford viticultural area, the St. Helena region, and the drainage basins that feed the fans and Bale Slough in this section of Napa Valley. Ms. Elliott-Fisk states that her statement is also based on her review of all published materials on the geology of this region. According to Ms. Elliott-Fisk, Sulphur Canyon Fan extends only a little way south of Zinfandel Lane into the northern part of the proposed Rutherford area.

Ms. Elliott-Fisk states that the research report done by Mr. Slade for Mr. Beckstoffer was done for the region north of Zinfandel Lane and west of Highway 29 only, and was based on a 1950s report on groundwater in Napa and Sonoma Counties, on a set of preliminary geologic maps at a scale of 1:62,500 produced by Fox et al. (1973), and with one day of field reconnaissance. Ms. Elliott-Fisk states that, as she mentioned at the December 9 and 10, 1992, public hearings, these maps are inaccurate. Ms. Elliott-Fisk states that Mr. Slade indicates in his report that "alluvial fans emanating from Sulphur Creek are derived from lithologies that are, generally, Franciscan in nature." Mr. Slade later states, according to Ms. Elliott-Fisk, that "the predominant mineralogic composition of alluvial fans underlying the site appears to be derived of Franciscan assemblage shale, sandstone, and greenstone bodies, along with Sonoma volcanics." Ms. Elliott-Fisk states that this statement by Mr. Slade indicated that he relied heavily on the inaccurate Fox et al. (1973) maps for his analyses. Ms. Elliott-Fisk indicates that her extensive field research shows the surficial geology of the Sulphur Canyon draining basin (including its tributary, Heath Canyon) to be approximately 70 percent Sonoma Volcanics (e.g., rhyolitic tuff, rhyolite, dacite and andesite), 20 percent metamorphic units of diverse lithologies, and 10 percent Franciscan sedimentary lithologies. According to Ms. Elliott-Fisk, much more of the region was covered with volcanic flows during the eruption and deposition of the Sonoma Volcanics than is shown by the Fox et al. (1973) maps.

Ms. Elliott-Fisk indicates that the Napa River dominates much of the area Mr. Beckstoffer depicts as Sulphur Canyon Fan south of Zinfandel Lane. She states that Mr. Beckstoffer's depiction of a large Sulphur Canyon Fan "lake" in this region is totally inaccurate. Ms. Elliott-Fisk agrees with Mr. Slade's report concerning his statement that the soils of the Bale Slough are mineralogically different in composition from those of the Sulphur Canyon Fan.

In summary, Ms. Elliott-Fisk states that her research shows that the Sulphur Canyon Fan, the Bale Slough, the Napa River and the Bear Canyon Fan are distinct geomorphic surfaces with correspondingly distinctive soils providing distinctive viticultural environments. According to her, the mineralogic composition of the Bale Slough soils is much more similar to the Bear Canyon Fan soils than to the Sulphur Canyon Fan soils. Ms. Elliott-Fisk states that the Sulphur Canyon Fan should be left for a future St. Helena viticultural area, as it has rocky soils (with a higher percentage of boulders and large cobbles) and is dominated by rhyolite and other volcanic lithologies with a soil matrix of fine sands and secondary clays, providing for moderate to moderately high vine vigor under slightly warmer climates and increased precipitation than in the Rutherford region.

Mr. Robert E. Steinhauer, Senior Vice President, Wine World Estates, submitted a letter dated December 21, 1992, in which he states that he does not believe that the boundary of Rutherford should be moved into the city environs of St. Helena and especially not to Sulphur Creek which would include a major portion of the city limits of St. Helena. Mr. Steinhauer states that he does not agree with Mr. Beckstoffer that geology is the only criteria for determining a boundary. According to Mr. Steinhauer, the area north of Zinfandel Lane is not locally or nationally known as Rutherford, especially where it includes the city limits of St. Helena. Mr. Steinhauer states that moving the boundary into St. Helena invalidates the integrity of Rutherford and "guts" any future St. Helena viticultural area. He further states that moving the Rutherford boundary north of Zinfandel Lane does not meet the climatic or geographic evidence requirements that would substantiate this area as Rutherford.

As support for the above statement, Mr. Steinhauer states that the Sulphur Creek Fan has different soil types—primarily Cortina and Pleasanton—as it fans out over the valley floor. These differences are due to the velocity of the depositing waters with the larger soil particles being deposited by the turbulent, fast moving waters at the fan entrance and the finer clay and loam being deposited in the slow moving waters at the extremities of the spreading fan and as the changes in elevation become more gradual. Mr. Steinhauer states that the second major influence on the Sulphur Creek Fan as it extends into the valley floor is the influence of the Napa River deposits since these deposits make the predominate contribution to the soil chemistry and physical structure on the valley floor. Mr. Steinhauer states that the Napa River deposits formulate the soil all along the vineyards on the valley floor. The 1986 Washington's Birthday flood visually exhibited the influence of the Napa River up and down the entire valley floor according to Mr. Steinhauer.

Mr. Steinhauer states that he has farmed property just south of Zinfandel Lane and found the property to be very wet with a water table at approximately three feet requiring substantial drainage. According to Mr. Steinhauer, the soils are a clay loam and very high in nutrients with the exception of potassium. Potassium deficiency is unavoidable due to high water tables. Mr. Steinhauer indicates that this site was planted to white varieties because his farming company felt the soils would produce only average quality Cabernet Sauvignon. Mr. Steinhauer states that the Cortina soils located just south of Sulphur Creek and extending out to the valley floor are composed of more coarse sandy loams with a large amount of stone. These soils are deeper with lower fertility and somewhat droughty and very suitable for the production of all varieties but produce especially very high quality red wines such as Zinfandel and Cabernet Sauvignon. According to Mr. Steinhauer, this area is completely different from the main valley floor and much more similar to the soils of his Beringer home vineyard, Spotswood vineyard, Bartolucci vineyard and other vineyards all located north of Sulphur Creek and located in the city limits of St. Helena. Consequently, Mr. Steinhauer states that the soils evidence does not support the concept that the areas north of Zinfandel Lane and west of Highway 29 are the same as those areas south of Zinfandel Lane. He states that he strongly believes that all of the geologic evidence supports the Zinfandel Lane boundary as being the closest visual demarcation to the geology separating Rutherford from St. Helena.

After reviewing all the pertinent information submitted by all interested parties, ATF has determined that the most appropriate northern boundary for the Rutherford viticultural area is Zinfandel Lane. This boundary is the same as was proposed in Notice No. 729. Proponents of a northern boundary for Rutherford that is further north than Zinfandel Lane did not submit any evidence that this area between Zinfandel Lane and Sulphur Creek has

ever been known, either currently or historically, as Rutherford. The Rutherford and Oakville Appellation Committee, on the other hand, submitted numerous maps and other name evidence which tends to show that this area has always been considered to be part of the greater St. Helena area.

In regard to geographical features, the evidence submitted by both sides is more difficult to interpret. Mr. Beckstoffer, Mr. Freed, and the rest of their group state that Zinfandel Lane is just a county road with no geographical significance. They point out that the Soil Conservation Service lists both the north and south side of Zinfandel Lane as being Pleasanton loam soil, 0 to 2 percent slopes. Mr. Beckstoffer refers to this area as a Pleasanton "lake" with no change in soil type at Zinfandel Lane. In a letter from Mr. Beckstoffer dated December 22, 1992, he refers to a letter from Mr. Slade stating that it is Mr. Slade's professional opinion that the Sulphur Creek Fan extends approximately 1 mile south of Zinfandel Lane. This would place the southern edge of the Sulphur Creek Fan somewhere in the vicinity of Galleron Avenue. Disputing this assertion, Ms. Elliott-Fisk states that the southern edge of the Sulphur Canyon Fan is much closer to Zinfandel Lane and that the deposits shown by Mr. Slade as Sulphur Canyon Fan deposits, located up to 1 mile south of Zinfandel Lane, are really Napa River deposits. In support of Ms. Elliott-Fisk's position, Mr. Richard Mendelson, lawyer for the Rutherford and Oakville Appellation Committee, states in his public hearing testimony that, for the most part, the Sulphur Canyon Fan extends only slightly south of Zinfandel Lane. Mr. Mendelson states that only one part of Zinfandel Lane, in the very middle of the valley, is two-tenths of a mile away from the lowest point of the incursion of this Sulphur Canyon Fan into the Rutherford viticultural area. Mr. Mendelson states that Zinfandel Lane is a close approximation of the southern edge of the Sulphur Canyon Fan as it extends across the Napa Valley floor and is similar to ATF's decision to use the Yountville Cross Road as the northern boundary of the Stags Leap District viticultural area even though it was approximately two-tenths of a mile north of the originally proposed geographic northern boundary.

Mr. Slade states that his examination of published geologic maps for the area show that Franciscan formation rocks comprise the highland area west of the Sulphur and Bear Creek areas. Therefore, Mr. Slade states that both watershed areas drain geologic terrain consisting of similar rocks, in gross chemical and physical composition. Consequently, according to Mr. Slade, based on the results of his examination, there appears to be little difference in the gross physical and chemical character of the sediments of the Sulphur Creek alluvial fan, compared to the Bear Creek alluvial fan. Therefore, according to Mr. Slade, it is reasonable to extend the northern boundary of the Rutherford viticultural area northward to Sulphur Creek.

Ms. Elliott-Fisk agrees that Franciscan formation rocks predominantly comprise the Bear Canyon Fan Complex. She states that her examination of soils from the Inglenook-Napa Valley Home Vineyard, directly east of Bear Canyon on the western side of the Rutherford area, shows that these soils are very gravelly sandy clay loam soils. These soils, according to Ms. Elliott-Fisk, are deep, moderately drained soils derived from marine sedimentary bedrock (Franciscan formation) clasts brought down from Bear Canyon. Ms. Elliott-Fisk states that serpentine clasts are infrequently encountered in these soils, but are more frequent towards the northern edge of the Bear Canyon Fan along Bale Slough. Ms. Elliott-Fisk states that her analysis of these soils shows that the soils are neutral in pH, have well developed structure (firm, subangular blocky to platy at depth), have great rooting depths (beyond 92 inches), and have moderate permeability. She states that the neutral pH values of these soils are both a function of the sandstone parent materials and the influence of the alkaline (basic) serpentine clasts, which slightly increase the pH.

In regard to the Sulphur Canyon fan soils, Ms. Elliott-Fisk states that her extensive field research shows the surficial geology of the Sulphur Canyon draining basin (including its tributary, Heath Canyon) to be approximately 70 percent Sonoma Volcanics (e.g., rhyolitic tuff, rhyolite, dacite and andesite), 20 percent metamorphic units of diverse lithologies, and 10 percent Franciscan sedimentary lithologies. Ms. Elliott-Fisk states that the Sulphur Canyon Fan has rocky soils (with a higher percentage of boulders and large cobbles) and is dominated by rhyolite and other volcanic lithologies with a soil matrix of fine sands and secondary clays, providing for moderate to moderately high vine vigor. Ms. Elliott-Fisk also states that the mineralogic composition of the Bale Slough soils is much more similar to the Bear Canyon Fan soils than to the Sulphur Canyon Fan soils.

After reviewing the evidence submitted by Mr. Slade and Ms. Elliott-Fisk, we have determined that there is at least some difference between the Sulphur Canyon Fan soils in comparison to the Bear Canyon Fan soils. We also conclude that the Bale Slough soils are more similar to the Bear Canyon Fan soils than to the Sulphur Canyon Fan soils. Consequently, we have determined that the southern edge of the Sulphur Canyon Fan should be approximately the northern boundary of the Rutherford viticultural area.

Furthermore, from the expert testimony of Mr. Slade and Ms. Elliott-Fisk, we have concluded that the Sulphur Canyon Fan extends either just south of Zinfandel Lane (perhaps up to two-tenths of a mile in the middle of the valley) or approximately 1 mile south of Zinfandel Lane in the vicinity of Galleron Avenue, or possibly somewhere in-between. Consequently, we feel that the northern boundary of Rutherford should either be Zinfandel Lane or approximately 1 mile further south or possibly somewhere in-between.

If the more southern boundary were adopted, the two most obvious choices for a specific boundary would be either Galleron Avenue or a contour line in this area, possibly the 180-foot or 160-foot contour line or somewhere in-between the two. The major problem with both of these choices, or any other choice in this immediate area, is that a contour line or the extension of Galleron Avenue entirely across the valley would cut through a number of people's vineyards. In addition, such a boundary would be very difficult to follow on the ground and might lead to confusion as to who was inside or outside of the boundary.

Since a more southern, northern boundary of Rutherford might create innumerable administrative problems and since there is at least some expert testimony stating that the Sulphur Canyon Fan ends somewhere just south of Zinfandel Lane, we have determined that the northern boundary of the Rutherford viticultural area should remain at Zinfandel Lane as originally proposed. This boundary has the added benefit of not dividing individual vineyards except for vineyards owned by Flora Springs Winery which are located at the extreme western end of Zinfandel Lane. Furthermore, most current and historical maps, as well as other name evidence, suggest that Zinfandel Lane is the most appropriate dividing line between Rutherford and St. Helena. The only exception to using Zinfandel Lane as the northern boundary of Rutherford concerns the

vineyards owned by Flora Springs Winery, located south of Inglewood Avenue and west of the north fork of Bale Slough, which will be addressed in the next section.

Mr. Beckstoffer and Mr. Freed stated in both their oral testimony and in their written comments that grapes grown in vineyards located between Zinfandel Lane and Sulphur Creek have Rutherford character and that the majority of those grapes have been sold to Rutherford wineries and have gone into wines associated with Rutherford. ATF does not believe that this by itself is a major consideration in determining the boundaries of a viticultural area.

Many Rutherford wineries buy grapes from throughout the Napa Valley and possibly from other areas. The mere fact that grapes are purchased by Rutherford wineries and the resulting wine is bottled using a Rutherford winery address, or possibly a brand name using the word Rutherford, does not necessarily mean that the grapes are entitled to be considered as coming from the Rutherford viticultural area. Otherwise, grapes sold to Rutherford wineries from all over the Napa Valley, as well as possibly from other areas, would have to be considered as coming from the Rutherford viticultural area.

To be designated as coming from a particular viticultural area, grapes must be grown within the boundaries of that particular viticultural area. The boundaries of a viticultural area are determined by such things as name evidence, history of the area, and geographical features (climate, soil, elevation, physical features, etc.) rather than by the address or brand name used by wineries who buy grapes from a particular area.

Mr. Beckstoffer and his group have stated that they feel their situation is similar to that of certain portions of Napa County (not within the Napa River watershed), which were eventually included within the Napa Valley viticultural area due to their historical association with the Napa Valley.

ATF agrees that certain outlying portions of Napa County were included within the Napa Valley viticultural area due to their historical association with Napa Valley. However, the grapes grown in these outlying valleys had a long history of being used in wine bearing the appellation Napa Valley. This is different from the current situation whereby grapes grown in the area between Zinfandel Lane and Sulphur Creek are sold to Rutherford wineries and the resulting wine is marketed as Napa Valley wine using a Rutherford winery address or possibly a Rutherford brand name. Consequently, ATF does not feel that the historical use of a portion of the grapes grown in the area between Zinfandel Lane and Sulphur Creek by Rutherford wineries justifies this area's inclusion within the Rutherford viticultural area.

2. Northwestern Boundary of Rutherford. The only individually owned vineyards which are split by Zinfandel Lane are located at the extreme western end of this road and are owned by Flora Springs Winery. Mr. Patrick J. Garvey and Mr. John A. Komes, co-owners of Flora Springs Winery, both have testified and submitted comments stating that their vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, should be included in the Rutherford viticultural area. In support of their request, they have submitted various evidence which they feel, when added together, justifies the inclusion of this vineyard property within Rutherford. Mr. Garvey and Mr. Komes submitted numerous articles from newspapers, magazines and books on wine which mention Flora Springs winery as being a Rutherford winery. In addition, these articles mention the Rutherford character of the wine from Flora Springs and state that the wine was produced from estate vineyards located on the edge of the Rutherford area.

Mr. Garvey and Mr. Komes also submitted historical evidence to support their inclusion within Rutherford. This evidence is a 1895 Napa County map which shows that the historic Rennie Brothers' property of 210.8 acres was entirely located immediately north of Zinfandel Lane. The Rennie Brothers' property was listed as being in Rutherford according to a report titled "The Vineyards of Napa County" which was prepared by E. C. Priber in 1893 at the request of the Board of State Viticultural Commissioners. The historical Rennie Brothers' property, along with additional property located immediately south of Zinfandel Lane, is now owned by Flora Springs Winery.

Mr. Garvey and Mr. Komes request that the northwest boundary of Rutherford be changed to follow the north fork of Bale Slough north of Zinfandel Lane approximately 2,750 feet to a point intersecting the straight line westward extension of the light-duty road known as Inglewood Avenue, west of the 227-foot elevation marker, then following that line west to the 500-foot contour line. This extension of Rutherford would include Flora Springs vineyard blocks E, F and L which are located north and south of Zinfandel Lane as well as west of Bale Slough. Mr. Garvey and Mr. Komes submitted a soils report from Ms. Deborah L. Elliott-Fisk which recommends including the area west of Bale Slough within Rutherford. Ms. Elliott-Fisk states that her field work has shown that the Bale Slough soils, and hence Bale Slough as a geomorphological feature, are included in the proposed Rutherford appellation except for the Komes/Garvey property in question. She recommends that the Bale Slough be in Rutherford and the Sulphur Canyon Fan (as closely as can be approximated across property lines) be in St. Helena.

Ms. Elliott-Fisk states that the Komes/Garvey blocks F and L wrap around the front (eastern side) of a small hill where the Flora Springs Wine Company is sited. Ms. Elliott-Fisk states that both color-infrared vineyard photographs submitted by Mr. Garvey and her soil analyses show that these two blocks are Bale Slough soils, darker in color and heavier in texture than the residual bedrock hillside soils to the west and the alluvial fan soils of the Sulphur Canyon Fan to the east. She states that the north fork of the Bale Slough appears to have been confined to the area between the base of the hills and its current channel in recent geologic times, providing the parent material for the Bale Slough soils of blocks E, F and L that are seen today. These soils, according to Ms. Elliott-Fisk, are a variant of the Maxwell series, with parent material primarily serpentinite alluvium with minor inputs of sandstone and volcanic alluvium.

In summary, Ms. Elliott-Fisk states that the vineyards Mr. Garvey and Mr. Komes propose to include in the Rutherford viticultural area are Bale Slough vineyards with characteristic Bale Slough geology and soils. These vineyards (blocks F and L), according to Ms. Elliott-Fisk, have soils identical to vineyards immediately to the south, such as Komes/Garvey block E, which is currently included within the proposed Rutherford viticultural area.

For contrast, Ms. Elliott-Fisk states that she examined soils immediately adjacent to the eastern bank of the north fork of the Bale Slough (including Komes/Garvey blocks not proposed by them to be included in the Rutherford viticultural area) and areas further eastward to and across Highway 29. According to Ms. Elliott-Fisk, even surficial examination shows these soils to be very different, as these are the soils of the Sulphur Canyon bouldery alluvial fan. According to Ms. Elliott-Fisk, these soils have gravel content of 30 percent or greater, with gravels primarily boulder-sized and secondarily cobbles. The dominant clasts (over 60 percent of the gravels) are rhyolite, rhyolitic tuff,

dacite and andesite from the Sonoma Volcanics formation that dominates the surficial geology of the Sulphur Canyon basin.

After reviewing the current and historical name and boundary information, as well as the geographical information, submitted by Mr. Garvey and Mr. Komes, ATF has determined that the Garvey/Komes vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, should be included within the Rutherford viticultural area. In support of this determination, we note that Mr. Garvey and Mr. Komes have submitted evidence showing that their property west of the north fork of Bale Slough and south of Inglewood Avenue has historically been considered as part of Rutherford. In addition, they submitted numerous articles by wine writers to show that their winery and vineyards are considered to be located on the edge of the Rutherford area. Furthermore, Mr. Garvey and Mr. Komes submitted a soils report by Ms. Elliott-Fisk which concludes that the Garvey/Komes vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, is located on Bale Slough soils rather than on Sulphur Canyon Fan soils. Ms. Elliott-Fisk states that these vineyard soils are identical to the vineyard soils immediately to the south of Zinfandel Lane in Garvey/Komes vineyard block E. Since Mr. Garvey and Mr. Komes submitted substantial evidence which supports the inclusion of a large portion of their property within Rutherford, ATF has decided to include this vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, within the Rutherford viticultural area.

3. Northeastern Boundary of Rutherford. Mr. David Heitz of Heitz Wine Cellars testified at the public hearing on Rutherford and submitted several written comments requesting that the Spring Valley area, located northeast of Rutherford, be included within the Rutherford viticultural area. Mr. Heitz states that he feels that Heitz Wine Cellars was unjustly excluded from the proposed Rutherford viticultural area because of the arbitrary decision of the petitioners to lower the elevation, in the area around his winery and vineyards, to the 380-foot contour line which happens to correspond to his property line, whereas elsewhere the boundary follows the 500-foot contour line.

Mr. Heitz states that Spring Valley, the official U.S.G.S. map designation of the area around his winery and vineyards, is an interesting valley in that it drains both to the north along Taplin Road to the Napa River, and also, in part, to the south through his neighbor's property which is part of the proposed Rutherford viticultural area. Therefore, according to Mr. Heitz, Spring Valley is not so much a separate entity but rather a logical extension of the Rutherford appellation as proposed. Mr. Heitz states that his neighbor's soils are very similar to his own because over the centuries erosion from his property has deposited soils on his neighbor's property. In addition, Mr. Heitz states that the Napa County soils map, issued in 1978 by the United States Department of Agriculture Soil Conservation Service, shows that he shares soils 139 (Forward gravelly loam, 9 to 30 percent slopes), 155 (Kidd loam, 15 to 30 percent slopes), 140 (Forward gravelly loam, 30 to 75 percent slopes), and 141 (Forward-Kidd complex, 50 to 75 percent slopes) with his immediate neighbors as well as other neighbors who are included in the proposed Rutherford appellation.

Mr. Heitz states that as far as climate is concerned, a barbed wire fence is not a climatic barrier and that is what separates him from his neighbors who are in the proposed Rutherford appellation. Mr. Heitz further states that he has no historical documents showing that his property belongs to the Rutherford area. However, from a review of the Rutherford petition, Mr. Heitz states that he cannot find any historical documents to support the inclusion of his neighbors either and they are included within the proposed appellation. In addition, Mr. Heitz states that he owns 17 acres of vineyards on the south side of Zinfandel Lane and has no historical evidence of this property belonging to the Rutherford area, but it is included in the proposed appellation.

The Rutherford and Oakville Appellation Committee does not agree that the Spring Valley area should be included within the Rutherford viticultural area. They state that this area has its own identity, Spring Valley, as shown on the U.S.G.S. map and in the promotional material of wineries in that area. Specifically, they refer to the promotional material from Joseph Phelps Vineyards, located in this area, which states that their vineyard property lies in Spring Valley, a small fold in the hills east of St. Helena. This promotional material goes on to refer to this property in Spring Valley as Joseph Phelps' St. Helena area ranch. Since Spring Valley is a separate valley with no apparent historical or geographical ties to Rutherford, the Rutherford and Oakville Appellation Committee does not feel that Spring Valley should be included within the Rutherford viticultural area.

After reviewing the information submitted by all interested parties, ATF has determined that the Spring Valley area should not be included within the Rutherford viticultural area. ATF made this decision based on the fact that Mr. Heitz did not present any evidence which shows that Spring Valley is currently or historically associated with Rutherford. In addition, Mr. Heitz presented very little geographical information in support of his position that Spring Valley should be included within the Rutherford viticultural area. Instead, he submitted a letter stating that since a portion of his property is adjacent to the 380-foot contour line that is being used by the petitioners as a northeastern boundary for Rutherford, he should be included in the Rutherford area since, in other places, the eastern boundary of Rutherford is the 500-foot contour line. The only geographical information Mr. Heitz submitted was soil information from the *Soil Survey of Napa County, California,* issued by the Soil Conservation Service, that showed that some of the same types of soils that are found on his property are also found on his neighbor's property which is located within the proposed Rutherford viticultural area. Since Spring Valley is located northeast of Zinfandel Lane and is shown on U.S.G.S. maps as a separate valley, ATF does not feel it should be included within Rutherford. Furthermore, since it drains mostly to the north along Taplin Road to the Napa River, which is northeast of Zinfandel Lane, and since Spring Valley is associated more with the greater St. Helena area than with Rutherford, ATF has decided not to include it within the Rutherford viticultural area.

4. Eastern Boundary of Rutherford. ATF has received written comments from Mr. Douglas A. Long and Mr. Gordon C. Anderson stating that they feel their property should be included within the Rutherford viticultural area. Both state that they have been grape farmers and wine producers in the Rutherford area for some 10 years and have always considered their property as being part of the Rutherford area. They state that their property should be included within Rutherford because of its geographical location, historical relationship with the town of Rutherford, current post office box location in Rutherford, and similar soils and climatic conditions as those in Rutherford.

Mr. Long and Mr. Anderson both state that they believe an arbitrary line of 500 feet in elevation does not adequately

take into consideration their property, which consists of vineyards and agricultural land between 800 feet and 1200 feet in elevation. They state that inasmuch as the difference between the arbitrary 500-foot elevation and their property is less than 200 to 300 yards, they believe that the oversight of not including the area south of Lake Hennessey known as Pritchard Hill would be an extreme oversight.

The Rutherford and Oakville Appellation Committee does not agree that the Pritchard Hill area, located south of Lake Hennessey, should be included within the Rutherford viticultural area. They point out that this area is shown on U.S.G.S. maps as Pritchard Hill, not as Rutherford. Since this area has its own identity, the Rutherford and Oakville Appellation Committee does not feel it should be included within Rutherford.

After reviewing all pertinent information submitted concerning this area, ATF has determined that the area known as Pritchard Hill should not be included within the Rutherford viticultural area. Neither Mr. Long nor Mr. Anderson submitted any evidence to support their position that the Pritchard Hill area has the same, or very similar, soils and climatic conditions as those in Rutherford. In addition, neither Mr. Long nor Mr. Anderson submitted any evidence to support their position that the Pritchard Hill area has a historical relationship with the Rutherford area. Furthermore, it has been determined that a post office box location in Rutherford is not necessarily a sign of a significant relationship to Rutherford since anyone can obtain such a post office box if they pay the appropriate fee. Also, it has been determined that the elevation of most of the vineyard property in the Pritchard Hill area is between 800 and 1200 feet which is considerably higher than the other vineyards in the proposed Rutherford area. Consequently, due to the lack of evidence showing that the Pritchard Hill area is historically and/or geographically closely related to the Rutherford area, ATF has decided not to include the Pritchard Hill area within the Rutherford viticultural area.

5. Southwestern Boundary of Rutherford. Mr. Anthony A. Bell of Beaulieu Vineyard submitted letters dated November 15, 1991, and July 17, 1992, requesting that Beaulieu Vineyard properties No. 2 and No. 4 be included within the Rutherford viticultural area due to their historical association and geographical similarity to Rutherford. Subsequently, Mr. Bell submitted a letter dated December 7, 1992, requesting that their earlier requests be amended to only include Beaulieu Vineyard property No. 2 within Rutherford. Mr. Bell requested that Beaulieu Vineyard property No. 4 remain in the Oakville viticultural area. Mr. Bell states that Beaulieu Vineyard property No. 2 should be located within the Rutherford viticultural area because of its historical association with Beaulieu Vineyard Cabernet Sauvignon wines. These wines, according to Mr. Bell, have contributed greatly to the development and consumer recognition of the Rutherford name. Mr. Bell also states that Beaulieu Vineyard property No. 2 has the same or very similar soils and climate as the rest of their vineyard property in the Rutherford area.

Mr. Phillip Freese of Robert Mondavi Winery supports the inclusion of Beaulieu Vineyard property No. 2 within the Rutherford viticultural area. In public testimony given on December 9, 1992, Mr. Freese stated that the Rutherford and Oakville Appellation Committee, of which the Robert Mondavi Winery is a member, relied on a drainage channel on the north side of Beaulieu Vineyard property No. 2, as well as a division of the Rutherford Bear Canyon Fan Complex (Franciscan lithology) and the Oakville Grade Fan Complex (Great Valley Sequence lithology), to provide the geographical feature for the drawing of the viticultural area boundary. Mr. Freese states that subsequent historical research shows that this drainage channel had been redirected by man for the ease of viticultural operations in the subject vineyard blocks. According to Mr. Freese and Mr. Bell, the original drainage of this property went through the middle of the property prior to being rerouted. Mr. Freese states that the boundary should be placed along a well established access road just south of the southern border of Beaulieu Vineyard property No. 2. Mr. Freese states that this access road serves as the northern entrance to the Robert Mondavi Winery property.

Mr. Freese states that historically the grapes from Beaulieu Vineyard No. 2 have been considered Rutherford and have been recognized by Beaulieu Vineyard as Rutherford. In addition, according to Mr. Freese and Mr. Bell, the wine produced from grapes from this vineyard property has been labeled as Rutherford wine. Furthermore, according to Mr. Freese, historical records from the latter part of the nineteenth century show that this property was considered part of Rutherford. These historical records, according to Mr. Freese, also show that the property immediately south of Beaulieu Vineyard property No. 2 was, at that time, owned by H.W. Crabb of Oakville. This historical "Crabb" property is now owned by the Robert Mondavi Winery which considers its location to be Oakville, according to Mr. Freese. Consequently, from both a historical and geographical perspective, Mr. Freese and Mr. Bell state that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area.

The Rutherford and Oakville Appellation Committee also state that Beaulieu Vineyard property No. 2 should be included within Rutherford. They have submitted amended boundaries which, if approved, would include this vineyard property within Rutherford.

After reviewing the information submitted by Mr. Bell and Mr. Freese, ATF has determined that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area whereas Beaulieu Vineyard property No. 4 should not be included in this area. Substantial historical and geographical evidence has been submitted in support of the inclusion of Beaulieu Vineyard property No. 2 within Rutherford. Furthermore, we have received a petition signed by numerous persons within the Napa Valley supporting this proposal. In addition, we have not received any opposition to this proposal. Consequently, ATF has decided that Beaulieu Vineyard property No. 2 should be included within Rutherford.

ATF's decisions with respect to the boundaries as discussed above are hereby incorporated into the analysis of the Rutherford viticultural area as follows.

Boundary

The boundary of the Rutherford viticultural area may be found on two United States Geological Survey maps, titled Rutherford Quadrangle and Yountville Quadrangle, with a scale of 1:24,000. The boundary is described in § 9.133 which can be found in the regulations portion of this document.

Viticultural Area Name

The name Rutherford has been associated with the area between St. Helena and Oakville in the Napa Valley for over 100 years. From the mid-nineteenth through the early twentieth centuries, Rutherford moved from an unnamed region with an unknown reputation to become a settled and integral part of Napa County and of the Napa Valley wine industry. Wine writers as early as the 1880s wrote highly of wines from the Rutherford area, including those of Gustave

Niebaum, founder of Inglenook Winery. In 1838 George Yount arrived in the area now called Yountville and planted his first grapes in the 1850s. His vineyard is reported to be the first planted in Napa County. In 1864, Yount gave 1,040 acres of land to his granddaughter, Elizabeth (Yount) Rutherford and her husband Thomas. According to historian John Wichels, "The settlement surrounding this ranch was thereafter known as Rutherford." The southern border of the ranch runs from Silverado Trail to the Napa River along a straight line which incorporates what is now Skellenger Lane. That lane and the Rutherfords' southern property line is used to define part of the southern border of the Rutherford viticultural area.

From 1850 to 1880, Rutherford steadily increased in prominence as a community center. One reason for its emergence was the establishment of the rail system from Napa to Calistoga in 1868. Geographer William Ketteringham writes, "With the completion of the [railroad] line in 1868 other settlements along the line such as Rutherford and Oakville sprang up."

The Rutherford Post Office was established in 1871 and the Rutherford voting precinct was established in 1884. During the 1870s and early 1880s, there was rapid expansion in the number of vineyard plantings and wine production. The cellars of E.B. Smith and Charles Krug (which eventually became those of Niebaum) produced 76,000 gallons.

Following the wine boom of the 1870s and early 1880s, Napa Valley wineries suffered a significant setback as phylloxera set in. Vineyard plantings decreased 83 percent over a ten-year period, from 18,177 acres in 1890 to 3,000 acres in 1900. This period was followed by Prohibition from 1919 to 1933. Surprisingly, planted acreage during Prohibition increased in Napa Valley to keep pace with the burgeoning demand for grapes used to make medicinal, sacramental and home wines, which remained legal. After Prohibition, planted acreage in Napa County remained at around 10,000 acres through the 1960s. Not until the wine renaissance of the 1970s was the acreage total of 1890 surpassed.

Although the period after Prohibition until the early 1970s was relatively stagnant in the wine sector, the community of Rutherford in particular continued to bolster its reputation for quality grapes and wine. Throughout these years, Beaulieu and Inglenook were regular award winners at the California State Fair. Inglenook owner John Daniel prided himself on the fact that all of Inglenook's grapes were estate grown on its vineyards in Rutherford, with the sole exception of Daniel's Napa Nook Ranch located south of the Oakville area on land now owned by the John Daniel Society in Yountville.

The name "Rutherford" has a long history of use by newspapers, magazines and wine books to describe this prominent Napa Valley wine community. Some examples of these publications include The Connoisseurs' Handbook of California Wines by Charles Olken, Earl Singer and Norman Roby, third edition, revised, 1984; The Wine Spectator magazine, "The Rutherford Bench" by James Laube, July 15, 1987; Friends of Wine magazine, "Napa Winery Profiles: The Quest for Site, May 1984, Volume XXI, Number 2; and the Modern Encyclopedia of Wine by Hugh Johnson, second edition, revised and updated, 1987. Numerous newspapers throughout the country have had articles about wine which contain references to the Rutherford area. Historical/Current Evidence of Boundaries.

Because the village of Rutherford is not an incorporated township, there are no municipal boundaries on which to rely in delimiting this area. Consequently, the petitioners to a great extent utilized commercial and public sector uses of the community name in establishing the boundaries of the Rutherford viticultural area. The Rutherford Crossroads and the Rutherford Post Office are the most notable examples of the name's use within the area. It is also worth noting that there are three wineries whose brand names refer directly to Rutherford—Rutherford Hill, Rutherford Vintners and Round Hill Winery's Rutherford Ranch Brand. All three wineries are located in the Rutherford viticultural area. Postal and telephone service areas are less relevant in terms of precise boundaries for the area but do attest to consumer recognition of Rutherford as a distinct and separate community.

Also, various wine press accounts have helped to define what is considered to be the Rutherford area. One such account from The Connoisseurs' Handbook of California Wines includes the following entry:

> Rutherford (Napa) Small community located in southcentral Napa Valley between Oakville and St. Helena in a temperate Region II climate. * * * The area is home for many important wineries— Beaulieu, Inglenook Caymus, Rutherford Hill* * *.

Of the approximately 31 bonded wineries located in the area, most have Rutherford addresses. The main exceptions include approximately 6 wineries at the northern boundary which have St. Helena addresses and one winery along the Silverado Trail in Rutherford that has a Napa address. These exceptions apparently relate to the fact that these wineries have their mail delivered directly from the St. Helena or Napa post offices and do not maintain post office boxes in Rutherford. These bonded winery addresses (with the exceptions noted) generally substantiate the boundaries proposed in the petition.

Geographical Features

Napa Valley can be divided into a group of distinct topographical areas: the lowland Napa River valley between the Mayacamas and Vaca Ranges; the mountains themselves; and the intermontane, eastern portions of the county beyond the watershed of the Napa River. The elevational differences and relief between these areas are pronounced and influence all aspects of the region's physical geography (climate, geomorphology, hydrology, soils and vegetation).

The floor of the Napa Valley is 25 miles in length south to north and between one and four miles wide. Traversing the entire length of the valley is the Napa River, which commences north of Calistoga and drains into San Pablo Bay. Along its course through the valley, the river elevation drops from around 380 feet near the city of Calistoga to around 20 feet near the city of Napa. The gently sloping valley floor, however, is interrupted by numerous bedrock outcrops which form isolated hills. In other places, the valley floor features broad alluvial fans extending toward the center of the valley from mountain streams which serve as tributaries to the Napa River.

Two fundamental geographic distinctions within Napa Valley are particularly relevant to the delimitation of the Rutherford viticultural area: on the east-west axis, mountain versus valley floor, delineating the valley floor viticultural environments; and on the north-south axis, climatic differences as the result of a decreasing incursion of maritime air into the valley.

These distinctions can be integrated with the community identity of Rutherford (and the other communities of Napa Valley) to provide consumers with meaningful and distinctive reference points concerning the viticulture of Napa Valley. From the perspective of a wine consumer, such basic geographic distinctions offer a useful introduction to the complexity of viticulture in Napa Valley.

VOL
58
ISS
126
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Climate

The major climatic difference between the watershed area of Napa Valley and the outlying valleys is the maritime nature of the former. Whereas the valley as defined by the watershed area is classified as a coastal valley, the outlying valleys are considered interior or inland valleys, representing a different climatic type. This is well evidenced by the vegetation, the distribution of which is primarily controlled by climate. Moderate to high elevations in the interior valleys are covered by chamise chaparral and other plant communities tolerant of summer drought and heat. At these same elevations in the Napa Valley river drainage, mixed forests of douglas fir, oak, madrone and coastal redwood dominate. Bedrock geology and soils act as secondary influences controlling these vegetation distributions.

Higher elevation and mountainous regions within Napa Valley experience shorter growing seasons (though they may extend longer into early autumn), fewer degree days, lower daily maximum temperatures during the growing season, less fog, increased solar radiation and increased precipitation. These conditions affect the time of wine grape harvest. In the mountainous areas, desirable acid-sugar levels often are reached much after the harvest on the valley floor. In some mountain settings, with small intermontane basins, local cold air drainage may result in marginal conditions for wine grape production.

Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up valley.

A mesoclimate is a subdivision of a macroclimate. California's Mediterranean climate is considered a macroclimate. Napa Valley's mesoclimates refer to modifications of this macroclimate due to altitude/elevation or distance from the nearest ocean. Because of the diminution of marine influences as one travels up valley, the northern regions of the valley are characterized by much warmer summers and significantly colder and wetter winters than in the south. That is, summer temperatures and total precipitation increase as one travels north. Summer days down valley often are cool, foggy and breezy. The fog usually dissipates early in the day, clearing first to the north and progressing southward to the bay.

Altitudinal variation also affects temperature distribution. The lower, southern troughs of the valley experience the lowest winter temperatures along the valley floor. As the elevation rises up valley, temperatures also rise, between 1.5 and 2.8 degrees Fahrenheit for each 500 feet.

As a result of these mesoclimatic trends along the valley floor, wine writers often speak of different climate regions within Napa Valley. The following excerpt from William Massee's Guide to the Wines of America is illustrative of the association of community names with mesoclimatic variations in Napa Valley.

> [In the Carneros area] there is a tempering influence from the northern round of bay, San Pablo, a receptacle for rivers—the Sacramento and San Joaquin, the Petaluma and Napa—and many creeks. Cool air currents sweep down from the mountain and in from the ocean, bringing fog. It is a cool Region One, * * *. Around Yountville, it is about one and a half—you can often see the fog line in the morning that marks the difference. Near Oakville, it is a cool Region Two, where Beaulieu grows its Johannisberg Riesling, up behind Bob Mondavi. Rutherford is a solid Region Two but it is warmer in Vineyard No. 3, to the east, because it gets the late sun. Up around Calistoga, it is Region Three

The Rutherford viticultural area is warmer than the area around Oakville to the south and cooler than the St. Helena area to the north. The incursion of fog is also less pronounced in the Rutherford area than in the Oakville area

Within this general mesoclimatic context, local relief or topoclimate is significant in determining diurnal temperature pattern within the Rutherford viticultural area. Topoclimate refers to a subdivision of mesoclimates influenced by topography, which may be elevational, topographic blocking by a barrier, or a change in slope or aspect.

In sum, as opposed to some mountain settings of Napa Valley, this part of the central portion of the valley floor offers the type of climatic conditions necessary for the production of a wide variety of wine grapes. Considerable acreage is planted to several varieties, including Cabernet Sauvignon, Chardonnay, Sauvignon Blanc, among others, throughout this region.

Geological History

Geological history is an important factor in shaping Napa Valley viticultural environments. Napa Valley is largely a synclinal (down-folded) valley of Cenozoic age. Faulting (accompanied by minor folding) throughout the valley later resulted in the formation of bedrock "islands" (outcrops) across the valley floor. These rock islands have been modified during the last million years through erosion by the Napa River, its tributaries and other erosional slope processes. Sections of the old Napa River channel are still visible here and there in the valley, including in several places within the Rutherford viticultural area.

In this central portion of the valley, much of the old river channel and its alluvial sediments have been buried by more recent Napa River floodplain sediments, but they principally have been covered by alluvial fans emerging from the mountain streams on the western and eastern sides of the valley. The age and size of these fan surfaces are a function of climatic change, basin lithology (mineral composition and structure of rocks), and basin size, all of which vary among the four major drainage basins in the Rutherford and Oakville areas, accounting for differences in these fan surfaces. The northern fans (in the Rutherford area) are the larger geomorphic features, have more significantly controlled the course of the Napa River through time, and are geologically more diverse.

Geomorphology, Hydrology and Soils

The occurrence of specific soil types can be related to topography in Napa Valley, as topography is one of the five variables that controls soil formation. The Soil Survey of Napa County, California [hereinafter Soil Survey], published by the U.S. Department of Agriculture Soil Conservation Service in 1978, divides the 11 soil associations of Napa County into two general categories: lowland depositional soils, which account for four of the 11 soil associations and are found on alluvial fans, flood plains, valleys and terraces; and upland residual soils, which account for the remaining seven soil associations, and are found on bedrock and colluvially-mantled slopes. The "General Soil Map" from the Soil Survey shows the location of these upland and lowland soils. This map as well as the text of the Soil Survey show that the lowland-upland soil break occurs at around the 500-foot elevation. This same elevation line, with minor exceptions, has been used to differentiate the Rutherford viticultural area from the mountains to the east and west.

According to the petitioners, soils and geomorphic mapping should go hand in hand, as soils usually are mapped according to geomorphic surfaces or units. Within the valley floor area of Napa Valley, there are both alluvial fans and river deposits. The petitioners state that the size and location of these fans, their (dis)similarity in terms of geologic

parent material and soils, and the course of the Napa River and other drainage systems can help to establish viticultural area boundaries on the valley floor. For example, north of Rutherford is a massive fan emanating from the Sulphur Canyon drainage system in the Mayacamas Range. This fan sweeps across the valley floor in St. Helena from west to east and lies generally north of Zinfandel Lane. Pleasanton loam soils predominate. The Rutherford and Conn Creek fans south of Zinfandel Lane push against the Sulphur Canyon fan from the south. Although the point of convergence of these three fans does not lie along a straight line, Zinfandel Lane does serve to separate these areas and therefore provides a good northern boundary for the Rutherford viticultural area. As one proceeds down Napa Valley, Zinfandel Lane also marks the widening of the valley floor, which continues until the appearance of the Yountville Hills at the southern end of Oakville.

Specific Climatological Information

A previously published report, prepared by the National Oceanic and Atmospheric Administration and submitted on behalf of the Napa Valley Appellation petition in 1980, established the general weather and climatic differences of Napa County. This report showed that Napa Valley can be divided into two general climatic regions (coastal and inland), and three topographical areas—the valley itself lying within the Mayacamas Range to the west and the Vaca Range to the east; the area within the mountains themselves; and the area covering the eastern portion of the county.

The elevation within Napa County increases as one progresses north up the valley. With this increase in elevation there is an increase in precipitation, ranging from 20 inches in the south to 50 inches in the north. Additionally, the coastal influence in the Napa Valley results in a relatively moderate climate in the south (warmer than the northern area of Napa Valley in the winter and cooler in the summer) and a relatively extreme climate in the north (hotter than the southern area of Napa Valley in the summer and colder in the winter).

Two sets of data have been submitted to show the difference in temperature, measured in degree-days, between the different areas in Napa Valley. The first set of data is from the Cooperative Extension, University of California, Napa Valley, and is shown below:

Location	Degree-days	Temperature relative to Rutherford in Center of valley (percent)
Calistoga	3369	+7
St. Helena	3229	+2
Rutherford	3159	
Oakville	3124	−1
Napa	2882	−9

The second set of data was collected by the Rutherford and Oakville Appellation Committee. The weather stations used to collect this data are generally located within the center of the Napa Valley, where they are subject to similar relative humidity, wind direction and solar radiation conditions. The data is shown below and is the average reading for the 4-year period between 1985 and 1988:

Location	Degree-days	Temperature relative to Rutherford in Center of valley (percent)
Calistoga	3768	+11
St. Helena	3575	+5
Rutherford	3389	
Oakville	3039	−10
Yountville	2695	−20
Napa	3180	−6

Rainfall

The Cooperative Extension, University of California, Napa Valley, has prepared a chart showing that rainfall generally increases as one proceeds up the Napa Valley from Napa to Calistoga. The data is shown below:

Location	Approximate yearly rainfall (inches)
Calistoga	45 to 50
St. Helena	35 to 40
Rutherford	35 to 40
Oakville	35
Yountville	30
Napa	30

Soil

The General Soil Map of Napa County, California, prepared by the United States Department of Agriculture (U.S.D.A.) Soil Conservation Service, shows most of the Napa Valley floor as being generally the same types of soils. These soils are the Bale-Cole-Yolo series which are nearly level to gently sloping, well drained and somewhat poorly drained loams, silt loams, and clay loams on flood plains, alluvial fans, and terraces. In addition to the Bale series, the Pleasanton soil series dominates much of the central section of the Napa Valley floor. Both of these soil series consist of deep, alluvial soils.

According to Associate Professor Deborah L. Elliott-Fisk, Department of Geography, University of California, Davis, the contribution of small percentages of metamorphic clasts (such as serpentine and chert) on the Rutherford fan soils contributes to minor soil differences between the Rutherford viticultural area and Oakville. The composition of these types of minerals and rocks tends to raise pH slightly in the Rutherford area and alters soil texture and plant nutrition. The high frequency of clasts from Sonoma Volcanics in the Oakville fan soils unifies the Oakville viticultural area and distinguishes it from Rutherford.

After a review of the entire record in this matter, including all data submitted pursuant to the public hearing, ATF believes that there is sufficient evidence with respect to name, boundaries, and geographical features to warrant the establishment of the Rutherford viticultural area.

Oakville Viticultural Area

In today's issue of the **Federal Register**, ATF is also publishing a Treasury decision on the Oakville viticultural area. This area is in Napa Valley adjacent to the Rutherford viticultural area. All interested parties should review this Treasury decision.

Petitions for Rutherford Bench and Oakville Bench Viticultural Areas

The petitions for the Rutherford Bench and Oakville Bench viticultural areas, which were submitted at the same time as the petitions for the Rutherford and Oakville viticultural areas, have been officially withdrawn by the Rutherford and Oakville Appellation committee. Consequently, no further action will be taken concerning these petitions.

Miscellaneous

ATF does not wish to give the impression by approving the Rutherford viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Rutherford wines.

VOL 58 ISS 126 JL 2 1993 UMI

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Accordingly, ATF certifies that the designation of a viticultural area itself has no significant economic impact on a substantial number of small businesses within or without the area because any commercial advantage can only come from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in subpart C is amended to add the title of § 9.133 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec

* * * * *

Section 9.133 Rutherford.

Par. 3. Subpart C is amended by adding § 9.133 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.133 Rutherford.

(a) *Name.* The name of the viticultural area described in this section is "Rutherford."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Rutherford viticultural area are two U.S.G.S. topographical maps of the 1:24,000 scale:

(1) "Yountville Quadrangle, California," edition of 1951, photorevised 1968.

(2) "Rutherford Quadrangle, California," edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The Rutherford viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Yountville quadrangle map at the point where the county road known as the Silverado Trail intersects Skellenger Lane, just outside the southwest corner of Section 12, Township 7 North (T.7 N.), Range 5 West (R.5 W.), the boundary proceeds in a southwesterly direction in a straight line approximately 1.7 miles along Skellenger Lane, past its intersection with Conn Creek Road, to the point of intersection with the main channel of the Napa River (on the "Rutherford" map);

(2) Then south along the center of the river bed approximately .4 miles to the point where an unnamed stream drains into the Napa River from the west;

(3) Then along the unnamed stream in a generally northwesterly direction to its intersection with the west track of the Southern Pacific Railroad Track;

(4) Then southeasterly along said railroad track 1,650 feet to a point which is approximately 435 feet north of the centerline of the entry road to Robert Mondavi Winery (shown on the map) to the southeast corner of Assessor's Parcel Number 27–250–14;

(5) Thence southwesterly S 55° 06' 28" W for 3,869 feet along the common boundary between Assessor's Parcel Numbers 27–250–14 and 27–280–50/51 to the southwest corner of Assessor's Parcel Number 27–250–14;

(6) Thence northwesterly N 40° 31' 42" W for 750 feet along the westerly property line of Assessor's Parcel Number 27–250–14;

(7) Thence southwesterly S 51° 00' W in a straight line to the 500-foot contour line of the Mayacamas Range in the northwestern corner of Section 28, T.7 N., R.5 W.;

(8) Then proceeding along the 500-foot contour line in a generally northwesterly direction in T.7 N., R.5 W. through Sections 21, 20, 17, 18, 17, and 18 to the northwest portion of Section 7 where the 500-foot contour line intersects a southwestward straight line extension of the light-duty road known as Inglewood Avenue;

(9) Thence in a straight line in a northeasterly direction along this extension of Inglewood Avenue to its intersection with the north fork of Bale Slough;

(10) Thence in a southeasterly direction along the north fork of Bale Slough approximately 2,750 feet to its intersection with the end of the county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, near the 201-foot elevation marker;

(11) Then in a northeasterly direction along Zinfandel Avenue (Zinfandel Lane) approximately 2.12 miles to the intersection of that road and Silverado Trail, then continuing northeasterly in a straight line to the 380-foot contour line;

(12) Then following the 380-foot contour line southeasterly through Section 33 to the western border of Section 34, T.8 N., R.5 W., then following that section line north to the 500-foot contour line;

(13) Then following the 500-foot contour line southeasterly to the western border of Section 2, T.7 N., R.5 W., then south along that section line past Conn Creek to its intersection with the 500-foot contour line northwest of the unnamed 832-foot peak;

(14) Then continuing in a westerly direction and then a generally southeasterly direction along the 500-foot contour line through Sections 3, 2,

11 and 12 to the intersection of that contour line with the southern border of Section 12 (on Yountville map);

(15) Then proceeding in a straight line in a westerly direction to the intersection of the Silverado Trail with Skellenger Lane, the point of beginning.

Signed: June 1, 1993.

Daniel R. Black,

Acting Director.

Approved: June 21, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–15650 Filed 7–1–93; 8:45 am]

BILLING CODE 4810–31–U

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27 CFR Part 9

[T.D. ATF–343; RE: Notice Nos. 728, 738 and 756]

RIN 1512–AA07

The Oakville Viticultural Area (89F–92P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "Oakville." The petition for establishing this viticultural area was submitted by the Rutherford and Oakville Appellation Committee which is composed of seven wineries and seven grape-growers within the Rutherford and Oakville areas of Napa County, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Rulemaking Proceeding

Petition

On March 8, 1989, the Rutherford and Oakville Appellation Committee petitioned ATF for establishment of a viticultural area in Napa County, California, to be known as "Oakville." The viticultural area proposed by the petitioners is located in the south-central portion of the Napa Valley approximately 10 miles northwest of the city of Napa. In general terms, the proposed area extends as far north as Skellenger Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, and as far south as approximately one mile northwest of the town of Yountville. The proposed area contains approximately 13 bonded wineries and consists of about 5,760 total acres, most of which are densely planted to vineyards.

Notice of Proposed Rulemaking

In response to the petition, ATF published Notice No. 728 in the **Federal Register** on September 17, 1991 (56 FR 47039), proposing establishment of the Oakville viticultural area. The notice detailed the boundaries as proposed in the petition, with some minor modifications, and requested comments from all interested persons. Written comments were to be received on or before November 18, 1991.

Comments to Notice of Proposed Rulemaking

ATF received 8 comments in response to the notice of proposed rulemaking. Several of these commenters submitted only general comments about the desirability of public hearings or the undesirability of smaller viticultural areas within the Napa Valley. However, two commenters were opposed to the northwestern boundary and two more commenters were opposed to the southwestern boundary of Oakville. Both commenters who opposed the northwestern boundary stated that they felt that any boundaries for Oakville should not include Beaulieu Vineyard properties No. 2 and No. 4 which, according to these commenters, have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and which have contributed greatly to the development and consumer recognition of the Rutherford name.

The two commenters who opposed the southwestern boundary of Oakville stated that this boundary extended too far south into what they felt was Yountville. According to one of these commenters, the Oakville/Yountville boundary has always been known by the locals to be Dwyer Road to Highway 29, then Yount Mill Road to Rector Creek.

Based on the controversial nature of the comments received, ATF decided to reopen the comment period for an additional 90 days in order to obtain more information on the establishment of the Oakville viticultural area, its proposed boundaries, and other possible boundaries.

Reopening Notice

On April 22, 1992, ATF published Notice No. 738 (57 FR 14681) reopening the comment period on both the proposed Oakville and Rutherford viticultural areas. ATF specifically requested comments on 11 questions which were asked in this reopening notice which mostly pertained to possible boundary changes. Interested persons were given until July 21, 1992, to submit their comments.

Comments to Reopening Notice

ATF received a total of 62 comments in response to the reopening notice.

VOL 58 ISS 126 JL 2 1993 UMI

Five commenters, plus petitions containing the names of 56 additional interested persons within the Napa Valley, disagreed with the northwestern boundary of Oakville. These commenters and petitioners felt that any boundaries for Oakville should not include Beaulieu Vineyard properties No. 2 and No. 4 which, according to these commenters, have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and which have contributed greatly to the development and consumer recognition of the Rutherford name. Six commenters, on the other hand, stated that they agreed with the originally proposed northwestern boundary of Oakville and did not feel that it should be changed to exclude Beaulieu Vineyard properties No. 2 and No. 4. These commenters stated that these two vineyard properties were located in the Oakville area and referred to the information in the original Rutherford and Oakville petitions as evidence for their position.

Sixteen commenters disagreed with the proposed southwestern boundary of Oakville. These commenters felt that the southwestern boundary extended too far south into what they felt was Yountville. According to these commenters, the Oakville/Yountville boundary has always been known by the locals to be Dwyer Road to Highway 29, then Yount Mill Road to Rector Creek. Eleven commenters, however, agreed with the proposed southwestern boundary of Oakville. These commenters stated that they had lived and worked in the area for thirty years or more and that they had never heard of Dwyer Road (Lane) and Yount Mill Road being used as the boundary line between Oakville and Yountville. And finally, in addition to the previous boundary disputes, one commenter stated that she objected to an Oakville appellation since she is not convinced that more appellations are needed in the Napa Valley.

Hearing Notice

As a result of the large number of comments received to the reopening notice and the conflicting nature of the information contained in those comments, ATF determined that a public hearing was necessary and would serve the public interest. Consequently, on October 2, 1992, ATF published Notice No. 756 (57 FR 45588) which announced the time and place of a public hearing to be held by ATF concerning the establishment of the Oakville viticultural area. The notice stated that the hearing would be held in Napa, California, on December 10, 1992, and requested that all interested persons who wished to testify at the hearing submit a letter notifying ATF of their intent to comment on or before November 9, 1992. The notice also stated that interested persons could continue to submit written comments on this matter until December 28, 1992.

Public Hearing

A public hearing was held on December 10, 1992, in Napa, California, for the purpose of gathering additional information and to receive evidence with respect to the establishment of the Oakville viticultural area, the proposed boundaries, and other possible boundaries. Twenty-one persons testified at the public hearing.

Controversial Boundaries

As a result of the hearing testimony and the large number of written comments received concerning the establishment of the Oakville viticultural area, ATF has determined that there are three boundary disputes that need to be resolved. These disputes involve the northwestern, southwestern, and eastern boundaries of Oakville. We will address the evidence presented by the different parties for each boundary dispute and then give our final decision as to where the boundaries of the Oakville viticultural area are located and why.

1. Northwestern Boundary of Oakville. Mr. Anthony A. Bell of Beaulieu Vineyard submitted letters dated November 15, 1991, and July 17, 1992, requesting that Beaulieu Vineyard properties No. 2 and No. 4 be included in the Rutherford viticultural area, rather than the Oakville viticultural area, due to their historical association and geographical similarity to Rutherford. Subsequently, Mr. Bell submitted a letter dated December 7, 1992, requesting that their earlier requests be amended to only include Beaulieu Vineyard property No. 2 within Rutherford. Mr. Bell requested that Beaulieu Vineyard property No. 4 remain in the Oakville viticultural area. Mr. Bell states that Beaulieu Vineyard property No. 2 should be located within the Rutherford viticultural area because of its historical association with Beaulieu Vineyard Cabernet Sauvignon wines. These wines, according to Mr. Bell, have contributed greatly to the development and consumer recognition of the Rutherford name. Mr. Bell also states that Beaulieu Vineyard property No. 2 has the same or very similar soils and climate as the rest of Beaulieu's vineyard property in the Rutherford area.

Mr. Phillip Freese of Robert Mondavi Winery supports the inclusion of Beaulieu Vineyard property No. 2 within the Rutherford viticultural area. In public testimony given on December 9, 1992, Mr. Freese stated that the Rutherford and Oakville Appellation Committee, of which the Robert Mondavi Winery is a member, relied on a drainage channel on the north side of Beaulieu Vineyard property No. 2, as well as a division of the Rutherford Bear Canyon Fan Complex (Franciscan lithology) and the Oakville Grade Fan Complex (Great Valley Sequence lithology), to provide the geographical feature for the drawing of the viticultural area boundary. Mr. Freese states that subsequent historical research shows that this drainage channel had been redirected by man for the ease of viticultural operations in the subject vineyard blocks. According to Mr. Freese and Mr. Bell, the original drainage of this property went through the middle of the property prior to being rerouted. Mr. Freese states that the boundary should be placed along a well established access road just south of the southern border of Beaulieu Vineyard property No. 2. Mr. Freese states that this access road serves as the northern entrance to the Robert Mondavi Winery property.

Mr. Freese states that historically the grapes from Beaulieu Vineyard No. 2 have been considered Rutherford and have been recognized by Beaulieu Vineyard as Rutherford. In addition, according to Mr. Freese and Mr. Bell, the wine produced from grapes from this vineyard property has been labeled as Rutherford wine. Furthermore, according to Mr. Freese, historical records from the latter part of the nineteenth century show that this property was considered part of Rutherford. These historical records, according to Mr. Freese, also show that the property immediately south of Beaulieu Vineyard property No. 2 was, at that time, owned by H.W. Crabb of Oakville. This historical "Crabb" property is now owned by the Robert Mondavi Winery which considers its location to be Oakville, according to Mr. Freese. Consequently, from both a historical and geographical perspective, Mr. Freese and Mr. Bell state that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area.

The Rutherford and Oakville Appellation Committee also state that Beaulieu Vineyard property No. 2 should be included within Rutherford. They have submitted amended boundaries which, if approved, would

include this vineyard property within Rutherford rather than Oakville.

After reviewing the information submitted by Mr. Bell and Mr. Freese, ATF has determined that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area whereas Beaulieu Vineyard property No. 4 should remain in the Oakville viticultural area. Substantial historical and geographical evidence has been submitted in support of the inclusion of Beaulieu Vineyard property No. 2 within Rutherford. Furthermore, we have received a petition signed by numerous persons within the Napa Valley supporting this proposal. In addition, we have not received any opposition to including Beaulieu Vineyard property No. 2 within Rutherford. Consequently, ATF has decided that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area and Beaulieu Vineyard property No. 4 should be included within the Oakville viticultural area.

2. Southwestern Boundary of Oakville. ATF received numerous comments from persons, most of whom belonged to an organization known as Growers for Meaningful Appellations (GMA), who did not agree with the southwestern boundary of Oakville as proposed by the Rutherford and Oakville Appellation Committee. These persons stated that they felt the proposed southwestern boundary of Oakville extended too far south into what they felt was Yountville. These persons stated that they felt the boundary in this area should be Dwyer Road, Yount Mill Road and Rector Creek.

At the public hearing for Oakville, held on December 10, 1992, in Napa, California, substantial evidence was presented by residents of the area which showed that the originally proposed southwestern boundary for Oakville was much more appropriate than using Dwyer Road and Yount Mill Road. For example, the boundaries of the 1890 Oakville school district, published by the Napa County Board of Supervisors, and the 1884 and 1893 Napa County viticultural inventories, published by the California State Board of Viticultural Commissioners and the San Francisco Wine Merchant, support the position that Dwyer Road and Yount Mill Road have never been used as the dividing line between Oakville and Yountville. The residents of this area believe instead that the depositional ridge which approximates the southwestern boundary of Oakville is the appropriate boundary from both a historical and current perspective.

Immediately prior to and during the public hearing, the organization known as Growers for Meaningful Appellations changed their position and agreed that the southwestern boundary of Oakville should remain as proposed by the Rutherford and Oakville Appellation Committee. Consequently, there is now general agreement among substantially all parties involved that the southwestern boundary of Oakville should remain as proposed by the Rutherford and Oakville Appellation Committee.

After reviewing the information submitted at the public hearing, as well as the numerous written comments received on this matter, ATF has determined that no changes should be made to the originally proposed southwestern boundary of Oakville. Since numerous historical and geographical evidence was presented in support of the currently proposed boundaries, and since almost all opposition to the current boundaries has been withdrawn, ATF has decided to adopt the previously proposed southwestern boundary of Oakville as the appropriate boundary.

3. Eastern Boundary of Oakville. ATF has received several requests from persons who own vineyard property in the hills almost directly east of the Oakville Cross Road to include this area within the Oakville viticultural area. Mr. R. Gregory Rodeno, a lawyer representing Dalla Valle Vineyards, submitted evidence showing that the 500-foot contour line in this area, which is the currently proposed eastern boundary for Oakville, would cut through the center of Mr. Gustav Dalla Valle's vineyards. Mr. Rodeno also submitted evidence to show that this 500-foot contour line would also cut through the vineyards owned by Weitz Vineyard, Inc.

In addition, Mr. Rodeno submitted evidence from the Soil Survey of Napa County, California, prepared by the United States Department of Agriculture Soil Conservation Service, which characterizes all of the soils in the area as "Boomer Series," an acid loam and acid clay loam soil type. The area containing the vineyards of Weitz and Dalla Valle is designated on the soils map as 107 which is Boomer loam on slopes of 2 to 15 percent. The areas surrounding it are designated 109 which are Boomer gravelly loam on slopes of 30 to 50 percent and contain rocky debris and pebbles to a greater extent than the more gently sloping 107 designation.

Since the 500-foot contour line in this particular area divides vineyards that are located on the exact same soil series (Boomer loam on slopes of 2 to 15 percent), Mr. Rodeno suggests that the 700-foot contour line would make a much better eastern boundary for Oakville in this area than the 500-foot contour line.

In addition, Mr. Randy Lewis of Oakville Ranch Vineyards submitted a letter dated December 21, 1992, which states that the boundary for the Oakville viticultural area should be modified to include Oakville Ranch Vineyards. Mr. Lewis states that due to his winery's name, history, location and style of fruit, Oakville Ranch Vineyards is considered an Oakville winery by the public and by the wineries in Napa Valley that buy grapes from his winery.

Mr. Lewis states that his winery and vineyards are a highly visible part of the unique landscape that includes Backus vineyards and Dalla Valle vineyards. He states that all of these vineyards have identical or nearly identical soil and similar weather conditions. Mr. Lewis states that this contiguous area is the only large area of planted hillside vineyards that one sees driving east across Oakville Cross Road toward the Silverado Trail. Mr. Lewis indicates that a portion of the grapes from his vineyards are purchased by Joseph Phelps Winery because of their distinct similarity to grapes from Backus vineyards. According to Mr. Lewis, Backus vineyards are leased by Joseph Phelps Winery and are located within the currently proposed Oakville viticultural area.

In support of his position, Mr. Lewis submitted a letter from Ms. Deborah Elliott-Fisk on the geographic and viticultural distinctiveness of what Ms. Elliott-Fisk calls the "Backus Terraces" of which Oakville Ranch Vineyards is an integral part. Based on Ms. Elliott-Fisk's report, Mr. Lewis states that the "Backus Terraces" (of which he is a part) are the only extensive uplifted portion of the Napa Valley floor in the Napa Valley viticultural area. Because of the similarity of this area to the rest of the proposed Oakville viticultural area and because of the historical association of this area with Oakville, Mr. Lewis believes that this area should be included within the Oakville viticultural area.

The soils report, prepared by Ms. Elliott-Fisk and submitted as an enclosure to Mr. Lewis's letter, states that this area is an uplifted section of the Napa Valley floor (i.e., these sediments were deposited along the valley floor and soils largely formed on the valley floor). Ms. Elliott-Fisk states that the acreage proposed for inclusion by Oakville Ranch is between the 500-foot contour line and a 1006-foot

benchmark on a terrace along a flight of uplifted valley floor terraces immediately east of the Silverado Trail and north of the Oakville Cross Road. Ms. Elliott-Fisk states that this acreage is an old alluvial fan and that this fan has been broken and uplifted along a series of faults, producing 4 distinctive, reasonably "flat" geomorphic surfaces, referred to hereafter as terraces. Ms. Elliott-Fisk states that vineyards are planted along the lower three terraces, including the Backus vineyard on the first terrace, the Dalla Valle vineyard on the second terrace, and Oakville Ranch on the third terrace. She indicates that no vineyards are planted (or envisioned as being planted) on the fourth terrace above (south and east of) the 1006-foot benchmark. Ms. Elliott-Fisk states that the boundary modification proposed by Oakville Ranch is clearly the best way to bring this distinctive area into the proposed Oakville viticultural area.

Ms. Elliott-Fisk states that there are 3 important geological characteristics of the "Backus Terraces" which should be noted and which justify the inclusion of this acreage in Oakville based on its geology. These 3 geological characteristics are:

(1) The sole rock type here is andesite from the Sonoma Volcanics; andesite is an igneous, extrusive (i.e., volcanic) rock of intermediate composition; andesite is present here in a very few rock outcrops, but more importantly as the soil parent material, broken down as sands, gravels, pebbles, cobble and boulders; this lithology is similar, but not identical, to the Rector Canyon Fan;

(2) This entire landscape is an old alluvial fan deposit that formed on the Napa Valley floor as an alluvial fan over 250,000 years ago (her date on the minimum age of the fan cobbles in the Backus vineyard); at some point following valley floor fan construction, the fan was uplifted and broken along a series of listric faults, forming the terraces that can be seen today; and

(3) The tectonic uplift that created these terraces was accompanied by the rapid downcutting of Rector Creek and the formation of Rector Canyon; Rector Canyon has extremely steep valley walls that could only have formed with rapid tectonic uplift; the Rector Canyon fan was deposited along the valley floor accompanying this erosion and formation of Rector Canyon.

Ms. Elliott-Fisk states that the geomorphic deposits and hence soil parent materials that form the "Backus Terraces" are alluvial fan deposits derived from the Sonoma Volcanics, and in her examination almost exclusively andesite. She indicates that like the Oakville Grade and Rector Canyon fans, these deposits were laid down across the Napa Valley floor from mountain streams that were tributaries to the Napa River. Unlike these two other regions, however, this particular location experienced very rapid geologic uplift, with the fan lifted and warped up above the valley floor. Nonetheless, the parent material for the soil is alluvial fan sediments, with the soils classified as volcanic alluvial fan soils. Ms. Elliott-Fisk also states that the Backus vineyards soil (which is most similar to the Perkins series, but is really its own series as it is much older) covers the entire "Backus Terraces" surface which includes the vineyards owned by Dalla Valle and by Oakville Ranch Vineyards. There are no other soils across this entire surface, according to Ms. Elliott-Fisk. Consequently, Ms. Elliott-Fisk states that, from a geologic perspective, the "Backus Terraces" belong in the Oakville viticultural area.

After reviewing the information submitted by Mr. Lewis and Mr. Rodeno, ATF has determined that the "Backus Terraces" area should be included within the Oakville viticultural area. This will entail going up to the 1006-foot elevation benchmark in this particular area. We feel that this is justified in this one area due to expert testimony to the effect that the soils in this area were originally formed on the valley floor approximately 250,000 years ago and then, at some later time, uplifted and broken along a series of listric faults, forming the terraces that are visible today. We have also received evidence to the effect that the soils on these terraces are either identical or almost identical and that the climate is very similar to the rest of the Oakville area. In addition, U.S.G.S. maps of the area do not delineate this area as a separate entity with a different name than the rest of the Oakville area. And finally, the landowners in the area in question consider and advertise their property as being part of Oakville.

The original petitioners for the Oakville viticultural area used the 500-foot contour line for their eastern and western boundaries to separate mountain and valley viticultural environments. According to Ms. Elliott-Fisk, this is justified in regards to the overall topography, soils and climates of the Napa Valley. However, Ms. Elliott-Fisk states that in this particular area, the Oakville Ranch proposal to include a small section of the lower mountain slopes should be regarded as a unique modification of this valley-mountain delimitation due to its being an uplifted section of the Napa Valley floor with identical soils as that found on the valley floor.

As a result of the extensive geographical information submitted by Mr. Lewis and Mr. Rodeno, as well as evidence that the area in question is considered to be part of Oakville, ATF has decided to include this area within the Oakville viticultural area.

ATF's decisions with respect to the boundaries as discussed above are hereby incorporated into the analysis of the Oakville viticultural area as follows

Boundary

The boundary of the Oakville viticultural area may be found on two United States Geological Survey maps, titled Yountville Quadrangle and Rutherford Quadrangle, with a scale of 1:24,000. The boundary is described in § 9.134 which can be found in the regulations portion of this document.

Viticultural Area Name

The name Oakville has been associated with the area between Yountville and Rutherford in the Napa Valley for over 100 years. From the mid-nineteenth through the early twentieth centuries, Oakville moved from an unnamed region with an unknown reputation to become a settled and integral part of Napa County and of the Napa Valley wine industry. Wine writers as early as the 1880s wrote highly of wine from H.W. Crabb's To-Kalon vineyards in Oakville. Mr. Crabb's extensive landholdings, business and influence in the region south of Rutherford contributed to the establishment of the village of Oakville. While little is known about the man H.W. Crabb, much is written of his grape-growing techniques and the success of his vineyards.

From 1850 to 1880, Oakville steadily increased in prominence as a community center. One reason for its emergence was the establishment of the rail system from Napa to Calistoga in 1868. Geographer William Ketteringham writes, "With the completion of the [railroad] line in 1868 other settlements along the line such as Rutherford and Oakville sprang up."

The Oakville Post Office was established in 1867 and the Oakville voting precinct was established in 1902. During the 1870s and early 1880s, there was rapid expansion in the number of vineyard plantings and wine production. H.W. Crab saw his first plantings of 1868 become the core of over 290 vineyard acres by 1880. During that year he produced over 300,000 gallons of wine or approximately 11 percent of all the wine produced in Napa Valley.

Following the wine boom of the 1870s and early 1880s, Napa Valley wineries

suffered a significant setback as phylloxera set in. Vineyard plantings decreased 83 percent over a ten-year period, from 18,177 acres in 1890 to 3,000 acres in 1900. This period was followed by Prohibition from 1919 to 1933. Surprisingly, planted acreage during Prohibition increased in Napa Valley to keep pace with the burgeoning demand for grapes used to make medicinal, sacramental and home wines, which remained legal. After Prohibition, planted acreage in Napa County remained at around 10,000 acres through the 1960s. Not until the wine renaissance of the 1970s was the acreage total of 1890 surpassed.

The name Oakville has a long history of use by wine books and magazines to describe this prominent Napa Valley wine community. Some examples of these publications include The Connoisseurs' Handbook of California Wines by Charles E. Olken, Earl G. Singer and Norman S. Roby, third edition, revised, 1984; The Wine Spectator magazine, "The Rutherford Bench" by James Laube, July 15, 1987; the Friends of Wine magazine, "Napa Winery Profiles: The Quest for Site", May 1984, and "Back to the Vineyards" by Bob Thompson, May, 1985; and the Modern Encyclopedia of Wine, by Hugh Johnson, second edition, revised and updated, 1987.

Historical/Current Evidence of Boundaries

Because the village of Oakville is not an incorporated township, there are no municipal boundaries on which to rely in delimiting this area. Consequently, the petitioners to a great extent utilized commercial and public sector uses of the community name in establishing the boundaries of the Oakville viticultural area. The Oakville Crossroads and the Oakville Post Office are the most notable examples of the name's use within the area.

Postal and telephone service areas are less relevant in terms of precise boundaries for the area but do attest to consumer recognition of Oakville as a distinct and separate community.

Also, various wine press accounts have helped to define what is considered to be the Oakville area. One such account from The Connoisseurs' Handbook of California Wines includes the following entry:

> Oakville (Napa). Situated in the southern end of Napa Valley, halfway between Yountville and Rutherford, this way station is the home of several wineries (foremost among them the Robert Mondavi Winery) and adjoins some of the Napa Valley's best Cabernet growing turf. The superb Martha's Vineyard produced by Heitz Cellars and a substantial portion of the Robert Mondavi Cabernet vineyards are in Oakville, along the western edge of the valley floor. Other wineries in the area are Villa Mt. Eden and an Inglenook production and bottling plant

Of the approximately 13 bonded wineries located in the area, all but two have Oakville addresses. The only exceptions are one winery east of the Silverado Trail which uses a Napa address and one winery just south of the village of Oakville which uses a Rutherford address, due to its affiliation with a winery in the Rutherford area. The winery using the Napa address appears to do so because they receive their mail directly from the Napa post office rather than maintaining a post office box in Oakville. These bonded winery addresses (with the exceptions noted) help to substantiate the boundaries proposed in the petition.

Geographical Features

Napa Valley can be divided into a group of distinct topographical areas: The lowland Napa River valley between the Mayacamas and Vaca Ranges; the mountains themselves; and the intermontane, eastern portions of the county beyond the watershed of the Napa River. The elevational differences and relief between these areas are pronounced and influence all aspects of the region's physical geography (climate, geomorphology, hydrology, soils and vegetation).

The floor of the Napa Valley is 25 miles in length south to north and between one and four miles wide. Traversing the entire length of the valley is the Napa River, which commences north of Calistoga and drains into San Pablo Bay. Along its course through the valley, the river elevation drops from around 380 feet near the city of Calistoga to around 20 feet near the city of Napa. The gently sloping valley floor, however, is interrupted by numerous bedrock outcrops which form isolated hills. The Yountville Hills are the highest of these "bedrock islands" and have influenced the geographic evolution of the Oakville area. In other places, the valley floor features broad alluvial fans extending toward the center of the valley from mountain streams which serve as tributaries to the Napa River.

Two fundamental geographic distinctions within Napa Valley are particularly relevant to the delimitation of the proposed Oakville viticultural area: On the east-west axis, mountain versus valley floor, delineating the valley floor viticultural environments; and on the north-south axis, climatic differences as the result of a decreasing incursion of maritime air into the valley. These distinctions can be integrated with the community identity of Oakville (and the other communities of Napa Valley) to provide consumers with meaningful and distinctive reference points concerning the viticulture of Napa Valley. From the perspective of a wine consumer, such basic geographic distinctions offer a useful introduction to the complexity of viticulture in Napa Valley.

Climate

The major climatic difference between the watershed area of Napa Valley and the outlying valleys is the maritime nature of the former. Whereas the valley as defined by the watershed area is classified as a coastal valley, the outlying valleys are considered interior or inland valleys, representing a different climatic type. This is well evidenced by the vegetation, the distribution of which is primarily controlled by climate. Moderate to high elevations in the interior valleys are covered by chamise chaparral and other plant communities tolerant of summer drought and heat. At these same elevations in the Napa Valley river drainage, mixed forests of douglas fir, oak, madrone and coastal redwood dominate. Bedrock geology and soils act as secondary influences controlling these vegetation distributions.

Higher elevation and mountainous regions within Napa Valley experience shorter growing seasons (though they may extend longer into early autumn), fewer degree days, lower daily maximum temperatures during the growing season, less fog, increased solar radiation and increased precipitation. These conditions affect the time of wine grape harvest. In the mountainous areas, desirable acid-sugar levels often are reached much after the harvest on the valley floor. In some mountain settings, with small intermontane basins, local cold air drainage may result in marginal conditions for wine grape production.

Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up valley.

A mesoclimate is a subdivision of a macroclimate. California's Mediterranean climate is considered a macroclimate. Napa Valley's mesoclimates refer to modifications of this macroclimate due to altitude/elevation or distance from the nearest ocean. Because of the diminution of marine influences as one travels up valley, the northern regions of the valley are characterized by much warmer

summers and significantly colder and wetter winters than in the south. That is, summer temperatures and total precipitation increase as one travels north. Summer days down valley often are cool, foggy and breezy. The fog usually dissipates early in the day, clearing first to the north and progressing southward to the bay.

Altitudinal variation also affects temperature distribution. The lower, southern troughs of the valley experience the lowest winter temperatures along the valley floor. As the elevation rises up valley, temperatures also rise, between 1.5 and 2.8 degrees Fahrenheit for each 500 feet.

As a result of these mesoclimatic trends along the valley floor, wine writers often speak of different climate regions within Napa Valley. The following excerpt from William Massee's Guide to the Wines of America is illustrative of the association of community names with mesoclimatic variations in Napa Valley.

> [In the Carneros area] there is a tempering influence from the northern round of bay, San Pablo, a receptacle for rivers—the Sacramento and San Joaquin, the Petaluma and Napa—and many creeks. Cool air currents sweep down from the mountain and in from the ocean, bringing fog. It is a cool Region One, * * *. Around Yountville, it is about one and a half—you can often see the fog line in the morning that marks the difference. Near Oakville, it is a cool Region Two, where Beaulieu grows its Johannisberg Riesling, up behind Bob Mondavi. Rutherford is a solid Region Two but it is warmer in Vineyard No. 3, to the east, because it gets the late sun. Up around Calistoga, it is Region Three.

The Oakville viticultural area is cooler than the area around Rutherford to the north and warmer than the Yountville area to the south. The incursion of fog is especially more pronounced at the southern end of the Oakville area. The southern boundary of the Oakville area follows the elevation and hydrologic divide west of the Yountville Hills and the crest of Rector Canyon fan, along Rector Creek, east of the Yountville Hills. Rector Creek converges with Conn Creek and the Napa River at the southern end of the Oakville viticultural area.

Within this general mesoclimatic context, local relief or topoclimate is significant in determining diurnal temperature pattern within the Oakville viticultural area. Topoclimate refers to a subdivision of mesoclimates influenced by topography, which may be elevational, topographic blocking by a barrier, or a change in slope or aspect.

In sum, as opposed to some mountain settings of Napa Valley, this part of the central portion of the valley floor offers the type of climatic conditions necessary for the production of a wide variety of wine grapes. Considerable acreage is planted to several varieties, including Cabernet Sauvignon, Chardonnay, Sauvignon Blanc, among others, throughout this region.

Geological History

Geological history is an important factor in shaping Napa Valley viticultural environments. Napa Valley is largely a synclinal (down-folded) valley of Cenozoic age. Faulting (accompanied by minor folding) throughout the valley later resulted in the formation of bedrock "islands" (outcrops) across the valley floor. These rock islands have been modified during the last million years through erosion by the Napa River, its tributaries and other erosional slope processes. Sections of the old Napa River channel are still visible here and there in the valley, including in several places within the Oakville viticultural area.

In this central portion of the valley, much of the old river channel and its alluvial sediments have been buried by more recent Napa River floodplain sediments, but they principally have been covered by alluvial fans emerging from the mountain streams on the western and eastern sides of the valley. The age and size of these fan surfaces are a function of climatic change, basin lithology (mineral composition and structure of rocks), and basin size, all of which vary among the four major drainage basins in the Oakville and Rutherford areas, accounting for differences in these fan surfaces.

The northern fans (in the Rutherford area) are the larger geomorphic features, have more significantly controlled the course of the Napa River through time, and are geologically more diverse.

Soils and Hydrology

The occurrence of specific soil types can be related to topography in Napa Valley, as topography is one of the five variables that controls soil formation. The Soil Survey of Napa County, California [hereinafter Soil Survey], published by the U.S. Department of Agriculture Soil Conservation Service in 1978, divides the 11 soil associations of Napa County into two general categories: lowland depositional soils, which account for four of the 11 soil associations and are found on alluvial fans, floodplains, valleys and terraces; and upland residual soils, which account for the remaining seven soil associations, and are found on bedrock and colluvially-mantled slopes. The "General Soil Map" from the Soil Survey shows the location of these upland and lowland soils. This map as well as the text of the Soil Survey show that the lowland-upland soil break occurs at around the 500-foot elevation. This same elevation line has been used, with one exception, to differentiate the Oakville viticultural area from the mountains to the east and west.

As one proceeds down Napa Valley, Zinfandel Lane marks the widening of the valley floor, which continues until the appearance of the Yountville Hills at the southern end of Oakville. Part of the southern boundary of the Oakville viticultural area is a depositional ridge which projects perpendicularly across the valley towards the Yountville Hills. This ridge is located at the narrowest point between the Yountville Hills and the Mayacamas Range. To the north of this ridge, streams drain towards the northeast, and to the south of this ridge streams drain to the southeast. The ridge, which is at an overall elevation of around 200 feet, thus functions as a drainage divide.

Specific Climatological Information

A previously published report, prepared by the National Oceanic and Atmospheric Administration and submitted on behalf of the Napa Valley Appellation petition in 1980, established the general weather and climatic differences of Napa County. This report showed that Napa Valley can be divided into two general climatic regions (coastal and inland), and three topographical areas—the valley itself lying within the Mayacamas Range to the west and the Vaca Range to the east; the area within the mountains themselves; and the area covering the eastern portion of the county.

The elevation within Napa County increases as one progresses north up the valley. With this increase in elevation there is an increase in precipitation, ranging from 20 inches in the south to 50 inches in the north. Additionally, the coastal influence in the Napa Valley results in a relatively moderate climate in the south (warmer than the northern area of Napa Valley in the winter and cooler in the summer) and a relatively extreme climate in the north (hotter than the southern area of Napa Valley in the summer and colder in the winter).

Two sets of data have been submitted to show the difference in temperature, measured in degree-days, between the different areas in Napa Valley. The first set of data is from the Cooperative Extension, University of California, Napa Valley, and is shown below:

Location	Degree-days	Temperature relative to Rutherford in center of valley
Calistoga	3369	+7 percent.
St. Helena	3229	+2 percent.
Rutherford	3159	0
Oakville	3124	−1 percent.
Napa	2882	−9 percent.

The second set of data was collected by the Rutherford and Oakville Appellation Committee. The weather stations used to collect this data are generally located within the center of the Napa Valley, where they are subject to similar relative humidity, wind direction and solar radiation conditions. The data is shown below and is the average reading for the 4-year period between 1985 and 1988:

Location	Degree-days	Temperature relative to Rutherford in center of valley
Calistoga	3768	+11 percent.
St. Helena	3575	+5 percent.
Rutherford	3389	0
Oakville	3039	−10 percent.
Yountville	2695	−20 percent.
Napa	3180	−6 percent.

Rainfall

The Cooperative Extension, University of California, Napa Valley, has prepared a chart showing that rainfall generally increases as one proceeds up the Napa Valley from Napa to Calistoga. The data is shown below:

Location	Approximate yearly rainfall (inches)
Calistoga	45 to 50
St. Helena	35 to 40
Rutherford	35 to 40
Oakville	35
Yountville	30
Napa	30

Soil

The "General Soil Map" of Napa County, California, prepared by the United States Department of Agriculture (U.S.D.A.) Soil Conservation Service, shows most of the Napa Valley floor as being generally the same types of soils. These soils are the Bale-Cole-Yolo series which are nearly level to gently sloping, well drained and somewhat poorly drained loams, silt loams, and clay loams on flood plains, alluvial fans, and terraces.

In addition to the Bale series, the Pleasanton soil series dominates much of the central section of the Napa Valley floor. Both of these soil series consist of deep, alluvial soils.

According to Associate Professor Deborah L. Elliott-Fisk, Department of Geography, University of California, Davis, the high frequency of clasts from Sonoma Volcanics in the Oakville fan soils unifies the Oakville viticultural area and distinguishes it from Rutherford. The contribution of small percentages of metamorphic clasts (such as serpentine and chert) on the Rutherford fan soils contributes to minor soil differences between the Rutherford viticultural area and Oakville. The composition of these types of minerals and rocks tends to raise the soil pH slightly in the Rutherford area and alters soil texture and plant nutrition.

After a review of the entire record in this matter, including all data submitted pursuant to the public hearing, ATF believes that there is sufficient evidence with respect to name, boundaries, and geographical features to warrant the establishment of the Oakville viticultural area.

Rutherford Viticultural Area

In today's issue of the Federal Register, ATF is also publishing a Treasury decision on the Rutherford viticultural area. This area is in Napa Valley adjacent to the Oakville viticultural area. All interested parties should review this Treasury decision.

Petitions for Oakville Bench and Rutherford Bench Viticultural Areas

The petitions for the Oakville Bench and Rutherford Bench viticultural areas, which were submitted at the same time as the petitions for the Oakville and Rutherford viticultural areas, have been officially withdrawn by the Rutherford and Oakville Appellation Committee. Consequently, no further action will be taken concerning these petitions.

Miscellaneous

ATF does not wish to give the impression by approving the Oakville viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Oakville wines.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Accordingly, ATF certifies that the designation of a viticultural area itself has no significant economic impact on a substantial number of small businesses within or without the area because any commercial advantage can only come from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine. Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

VOL
58
ISS
126
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Par. 2. The Table of Sections in subpart C is amended to add the title of § 9.134 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.134 Oakville.

Par. 3. Subpart C is amended by adding § 9.134 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.134 Oakville.

(a) *Name.* The name of the viticultural area described in this section is "Oakville."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Oakville viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale:

(1) "Yountville Quadrangle, California," edition of 1951, photorevised 1968.

(2) "Rutherford Quadrangle, California," edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The Oakville viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Yountville quadrangle map at the point where the county road known as the Silverado Trail intersects Skellenger Lane, just outside the southwest corner of Section 12, Township 7 North (T.7 N.), Range 5 West (R.5 W.), the boundary proceeds in a southwesterly direction in a straight line approximately 1.7 miles along Skellenger Lane, past its intersection with Conn Creek Road, to the point of intersection with the main channel of the Napa River (on the Rutherford quadrangle map);

(2) Then south along the center of the river bed approximately .4 miles to the point where an unnamed stream drains into the Napa River from the west;

(3) Then along the unnamed stream in a generally northwesterly direction to its intersection with the west track of the Southern Pacific Railroad Track;

(4) Then southeasterly along said railroad track 1,650 feet to a point which is approximately 435 feet north of the centerline of the entry road to Robert Mondavi Winery (shown on the map) to the southeast corner of Assessor's Parcel Number 27–250–14;

(5) Thence southwesterly S 55°06′28″ W for 3,869 feet along the common boundary between Assessor's Parcel Numbers 27–250–14 and 27–280–50/51 to the southwest corner of Assessor's Parcel Number 27–250–14;

(6) Thence northwesterly N 40°31′42″ W for 750 feet along the westerly property line of Assessor's Parcel Number 27–250–14;

(7) Thence southwesterly S 51°00′ W in a straight line to the 500-foot contour line of the Mayacamas Range in the northwestern corner of Section 28, T.7 N., R.5 W.;

(8) Then proceeding along the 500-foot contour line in a generally southeasterly direction through Sections 28, 29, 20, 29, 28, 29, 28, 33 and 34 of T.7 N., R.5 W. and Section 3 of T.6 N., R.5 W. to its intersection with the unnamed stream known locally as Hopper Creek near the middle of Section 3;

(9) Then along the unnamed stream (Hopper Creek) southeasterly and, at the fork in Section 3, northeasterly along the stream to the point where the stream intersects with the unnamed dirt road in the northwest corner of Section 2, T.6 N., R.5 W;

(10) Then proceed in a straight line to the light duty road to the immediate northeast in Section 2, then along the light duty road in a northeasterly direction to the point at which the road turns 90 degrees to the left;

(11) Then proceed along the light duty road 625 feet, then proceed northeasterly (N 40°43′ E) in a straight line 1,350 feet, along the northern property line of Assessor's Parcel Number 27–380–08 (not shown on the map), to State Highway 29, then continuing in a straight line approximately .1 mile to the peak of the 320+ foot hill along the western edge of the Yountville Hills;

(12) Then proceed due east to the second 300-foot contour line, then follow that contour line around the Yountville Hills to the north to the point at which the 300-foot contour line exits the Rutherford quadrangle map for the second time;

(13) Then proceed (on the Yountville quadrangle map) in a straight line in a northeasterly direction approximately N 34°30′ E approximately 1,000 feet to the 90 degree bend in the unimproved dirt road shown on the map, then along that road, which coincides with a fence line (not shown on the map) to the intersection of Conn Creek and Rector Creek;

(14) Then along Rector Creek to the northeast past the Silverado Trail to the Rector Reservoir spillway entrance, then proceed due north along the spillway of Rector Reservoir, then east and northeast along the shoreline of Rector Reservoir to the point where the first unnamed stream enters the Reservoir;

(15) Thence follow the unnamed stream north and northeast to where it intersects an unimproved dirt road at the 1006-foot benchmark;

(16) Then proceed in a straight line approximately .6 mile due west to the intersection of an unnamed stream, then follow said stream downslope to the 500-foot contour line, and along that contour line northwesterly through sections 18 and 13 to the intersection of the contour line with the southern border of Section 12 in T.7 N, R.5 W.;

(17) Then proceed in a straight line in a westerly direction to the intersection of Skellenger Lane with the Silverado Trail, the point of beginning.

Signed: June 1, 1993.

Daniel R. Black,

Acting Director.

Approved: June 21, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–15651 Filed 7–1–93; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–4674–8]

Ocean Dumping; Designation of Site, Norfolk, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA designates a new dredged material disposal site located offshore of Norfolk, Virginia as an EPA approved ocean dumping site for the dumping of dredged material that meets ocean dumping criteria removed from the entrance channels to the Chesapeake Bay and other lower Chesapeake Bay areas. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. The final site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on July 2, 1993.

ADDRESSES: Send comments to:

William C. Muir, Environmental Assessment Branch, Environmental Services Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

The file supporting this designation is available for public inspection at the following locations:

Environmental Protection Agency, Public Information Reference Unit, room 2904 (rear), 401 M Street, SW., Washington, DC 20460.

EPA Region III, 841 Chestnut Street, Philadelphia, PA.

Norfolk District, U.S. Army Corps of Engineers, 803 Front Street, Norfolk, VA.

FOR FURTHER INFORMATION CONTACT: William C. Muir, Environmental Assessment Branch, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2541.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is within Region III and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. (See 39 FR 16186, (May 7, 1974)).

The EPA has prepared a draft and final Environmental Impact Statement (EIS) entitled "Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Located Offshore Norfolk Virginia." On August 9, 1991 a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** at (56 FR 154). The public comment period on this draft EIS closed September 30, 1991.

On February 5, 1993, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** at (58 FR 23). The public comment period on the final EIS closed March 8, 1993. No major comments or concerns were raised on the final EIS. Anyone desiring a copy of the EIS may obtain one from the address given above.

EPA has initiated section 7 consultation under the Endangered Species Act with the Fish and Wildlife Service and National Marine Fisheries Service.

C. Site Designation

The Norfolk Ocean Disposal Site is the primary disposal site for the disposal of suitable material from dredging operations in the lower Chesapeake Bay region.

The Norfolk Ocean Disposal Site, which is needed to accommodate current and future disposal requirements of dredged material, is located approximately 17 nautical miles (31 kilometers) west of the mouth of the Chesapeake Bay. The site is delineated by a circle with a radius of 4 nautical miles (7.4 kilometers) centered at 36 degrees, 59 minutes north latitude, and 75 degrees, 39 minutes west longitude. The Norfolk Ocean Disposal Site partially overlaps an area used for dredge material disposal prior to the 1960's. Water depth in the area ranges from 43–85 feet (13.1–26 meters). Extensive characterization and delineation of this site as an acceptable disposal site is presented in the EIS.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at any early stage. Where feasible, locations off the Continental Shelf are preferred. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The designated site conforms to the five general criteria.The characteristics of the designated site are below reviewed in terms of the 11 specific criteria for site selection.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance from Coast (40 CFR 228.6(a)(1))

The proposed Norfolk Ocean Disposal Site is centered at 36 degrees, 59 feet North latitude, and 75 degrees, 39 feet West longitude, and has a radius of four nautical miles (7.4 kilometers). Water depths in the area range from 43 to 85 feet (13 to 26 meters). Water depths near the center of the area range from 65 to 80 feet (19.8 to 24.4 meters). The bottom topography is generally flat with depth contours running parallel to the coastline. The bottom topography slopes from 43 feet (13.1 meters) at the northwest edge of the disposal area to 85 feet (25.9 meters) on the eastern edge of the area. The center of the proposed Norfolk Ocean Disposal Site is located approximately 17 nautical miles (31 kilometers) from the nearest land.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Lining Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The Chesapeake Bay, Norfolk Harbor, and adjoining offshore ocean areas support a relatively abundant and diverse biological community. The distribution and abundance of individual species depends on the spawning habits and environmental preferences of the species and the season of the year. Fish and other aquatic organisms (e.g., crabs, plankton) migrate into and out of the Bay throughout the year enroute to spawning grounds or juvenile development areas. Several of the fish and shellfish species that inhabit nearshore areas have commercial or recreational importance. Previous studies, however, have shown that the proposed Norfolk Ocean Disposal Site is not an important breeding, spawning, or nursery area for fish because it is located far offshore. No harvestable quantities of fish or shellfish are known to exist in the area.

Studies indicate that disposal activities at the proposed site are unlikely to have substantial adverse effects on aquatic organisms, mainly because organism populations are widely distributed on the continental shelf.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228(a)(3))

The center of the proposed Norfolk Ocean Disposal Site is located 17 nautical miles (31.5 kilometers) from the nearest recreational beach at Virginia Beach, Virginia. Thus, the closest edge of the site is 13 nautical miles (24

kilometers) from the beach. The Triangle Wrecks, a popular sport fishing and diving location, is located 4.8 nautical miles (8.9 kilometers) from the site. Net sediment transport is negligible. Bottom currents are meteorologically controlled and may account for the nonuniform sedimentation rates measured throughout the site . In addition, material with an age less than 10 years was deposited at the site, which indicates that deposition of material occurs at the site. It is unlikely that dredge material disposed at the site would be transported to beaches or other amenity areas.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR 228.6(a)(4))

The proposed Norfolk Ocean Disposal Site will be used for disposal of new work and maintenance material dredged from the lower Chesapeake Bay. The proposed site could be used for the disposal of appropriate material from the Thimble Shoals, Cape Henry, Atlantic, Hampton Roads, York Spit, and possibly other channels within the lower Chesapeake Bay area. The quantity of material to be placed at the site depends on the quality of the dredged material. Only material that meets ocean dumping criteria will be disposed at the proposed site. This includes unconsolidated fine to medium grain sands, silts, and clays. The Craney Island Containment Area will receive material not suitable for ocean disposal, and the Dam Neck Ocean Disposal Site will receive material for which it has been designated. Dredge material that consists of clean sands will be used for beach replenishment or disposed at the Dam Neck site.

Different dredged material disposal management plans would result in varying amounts of dredge material placed in each of the disposal areas. U.S. Army Corps of Engineers, Norfolk District estimates that 250 million cubic yards of dredge material from Federal, State, and private dredging projects may be disposed at the proposed site over the next 50 years. To dispose of this material at the proposed Norfolk Ocean Disposal Site, the Corps of Engineers will probably employ bucket and scow or hopper dredges of 5,000 to 8,000 cubic yard capacity. The dredges will be either split-hull or bottom-dump design.

The suitability of materials dredged from areas in the lower Chesapeake Bay for ocean disposal has been investigated by several authors. These studies are summarized in the Supplemental Information Report to the final Environmental Impact Statement for the Norfolk Harbor and Channels, Virginia, Deepening and Disposal project prepared by the U.S. Army Corps of Engineers, Norfolk District. These studies, which include the use of bioassays and chemical analysis, conclude that only sediments dredged from the southern branch of the Elizabeth River could not be ocean disposed. In addition, materials dredged from the outer channels (i.e., Thimble Shoal and Atlantic channels) could be used for beach replenishment.

The suitability of dredge material for ocean disposal, however, would have to be determined for each dredging operation. According to section 103 of the MPRSA, any proposed dumping of dredge material into ocean waters must be evaluated through the use of criteria listed in 40 CFR parts 220 through 228. The Corps of Engineers and the EPA have specific guidance for the evaluation of potential environmental impacts of the ocean disposal of dredged material. The suitability for ocean disposal of dredge material is determined through the use of evaluation techniques such as bioassays and bioaccumulation testing.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The U.S. Army Corps of Engineers, Norfolk District, sponsored a monitoring program for the site in the early 1980's. Parameters that were monitored, as identified in the 1982 Final Environmental Impact Statement, include benthic infauna, bioaccumulation in three species of marine organisms, sediment quality, zooplankton, and 20 water quality variables. Investigations that the monitoring data collected by these efforts when combined with statistical models can be used as an effective "early warning system" for major water quality changes that may be associated with disposal activities at the Norfolk Ocean Disposal Site.

During the summer of 1990, sediment and benthic samples were collected by the U.S. EPA, Region III during a site monitoring survey. Results of this sampling effort should be available for incorporation into the final Environmental Impact Statement. Future monitoring efforts will be planned if the site is designated. Monitoring plans should be easily implemented and will be consistent with site management plans.

6. Disposal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

Winter currents at the site flow to the south-southwest and velocities that average 10 cm/sec. Summer surface currents flow to the west or northwest and are generally weaker than winter currents. Near-bottom summer currents average about 2 cm/sec and flow to the west. It has been established that a velocity of 35 cm/sec is needed to initiate movement (e.g., erosion) of fine grained sands; however, current velocities of this magnitude occur at the site only during winter storms. Flow in both seasons is highly wind direction dependent. Dispersal of dredged material during dumping operations was evaluated during a test dump during October 1981. No widespread dispersal of dredged material during disposal operations was shown to occur.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

A portion of the proposed Norfolk Ocean Disposal Site overlaps an area used for the disposal of dredged material from the Thimble Shoal and Cape Henry Channels prior to 1971. No cumulative environmental effects of the past dumping activities have been identified; benthic communities at the Norfolk Ocean Disposal Site are similar to those of surrounding areas. In addition, no unacceptable adverse impacts have been identified at the currently used Dam Neck Ocean Disposal Site.

8. Interference with Shipping, Fishing, Recreation, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean. (40 CFR 228.6(a)(8))

Use of this site is not expected to interfere with known shipping, recreation, mineral extraction, desalination, fish and shellfish activities, or areas of special scientific importance. Some short-term disruption of recreational fishing activities is possible in the immediate area of disposal activities. The proposed Norfolk Ocean Disposal Site is located in an area known to be frequented by herring (*Clupea harengus*), king mackerel (*Scomberomorus cavalla*), porgy (*Stenotomus chrysops*), windowpane flounder (*Scophthalmus aquosus*), bluefish (*Pomatomus saltatrix*), summer founder (*Paralichthys dentatus*) and is in the vicinity of an

area known to have harvestable quantities of sea scallop (*Placopecten magellanicus*). The area is approximately 35 nautical miles (64 kilometers) south of currently harvested Surf Clam (*Spisula solidissima*) beds. Surveys of the proposed Norfolk Ocean Disposal Site have found no known harvestable quantities of fish or shellfish. Industrial fisheries in the area are spiny dogfish (*Squalus acanthias*), Northern searobin (*Prionotus carolinus*) and spotted hake (*Urophycis regius*). No harvesting of industrial fish species is known to occur in this area.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Previous investigations and baseline surveys show the proposed water and sediment quality and other environmental characteristics of the Norfolk Ocean Disposal Site to be typical of the mid-Atlantic region. Specific information regarding the water quality and ecology of the site is discussed in the EIS. In summary, the proposed site does not possess any unique characteristics that would preclude its designation and use as a disposal site. The designation and use of the Norfolk Ocean Disposal Site would not result in unacceptable environmental impacts on organisms that live near or migrate through the site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Based on information available on the community structure of the proposed site, no change in benthic species composition is expected. The communities currently defining the site are characteristic of the mid-Atlantic region. No change in substrate is anticipated if the site is used for dredge material that meets ocean disposal criteria. Past disposal activities adjacent to the proposed site and at the Dam Neck Ocean Disposal Site have not resulted in the development or recruitment of any nuisance species.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

An archeological survey of the area by side-scan sonar was conducted during late 1981. No sites of archeological interest that would be endangered by the proposed disposal operations were found. The survey and subsequent report was coordinated with the State Historical Preservation Officer.

E. Action

Based on the draft and Final EISs, EPA concludes that the site may appropriately be designated for use. The site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Norfolk Ocean Disposal Site as an EPA approved Ocean Dumping Site is being published as final rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region III.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, other than that already approved under section 103 of the Marine Protection, Research, and Sanctuaries Act, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Stanley L. Laskowski,

Acting Regional Administrator, EPA Region III.

In consideration of the forgoing, subchapter H of chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418

2. Section 228.12 is amended by adding paragraph (b)(94) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(94) Norfolk, Virginia, Dredged Material Disposal Site-Region III.
Location (center point):
Latitude–36°59'00" N.
Longitude–75°39'00" W.
Size: Circular with a radius of 7.4 kilometers(4 nautical miles).
Depth: Ranges from 13.1–26 meters.
Primary Use: Dredged material.
Period of use: Continuing use.
Restrictions: Site shall be limited to suitable dredged material which passed the criteria for ocean dumping.

[FR Doc. 93–15691 Filed 7–1–93; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB93

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Endemic Puerto Rican Ferns

AGENCY Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thelypteris inabonensis* (no common name), *T. verecunda* (no common name), and *T. yaucoensis* (no common name) to be endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. These three species, all terrestrial ferns endemic to the island of Puerto Rico, are currently restricted to two or three localities each. The ferns are threatened by habitat destruction and modification, forest management practices, hurricane damage, restricted

distribution, and possible collection. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Thelypteris inabonensis, T. yaucoensis.*

EFFECTIVE DATE: August 2, 1993.

ADDRESSES. The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583).

SUPPLEMENTARY INFORMATION:

Background

Thelypteris inabonensis was described by Dr. George R. Proctor in 1985 from specimens collected at the headwaters of the Río Inabón, Toro Negro Commonwealth Forest, in the municipality of Ponce (Proctor 1989). In 1988, it was found near the summit of Cerro Rosa in the municipality of Ciales. No other localities for this species are known (Proctor 1991). *T. inabonensis* is rare and localized in wet montane forest at elevations of 1120 to 1250 meters. In the Toro Negro Commonwealth Forest, this species grows along a stream bank in sierra palm (*Prestoea montana*) forest, on the east bank of the Río Inabón. Thirty-four plants were counted in this locality (Proctor 1991). At the Cerro Rosa locality, approximately 12 plants were found in deeply-shaded humus near the summit area. The habitat of the second locality is montane mossy forest with sierra palms.

Thelypteris inabonensis is a terrestrial fern with an erect and slender (ca 0.5 cm diameter) rhizome that is clothed at the apex with numerous dark lustrous brown, and densely setulose scales. The fronds are erect-arching, up to 60 cm long. The stipes are 5–10 cm long and clothed with grayish acicular hairs, and they have numerous spreading scales similar to those of the rhizome. This species differs from all other Puerto Rican thelypterid ferns due to the presence of scales and acicular hairs on the rachis. The blades are narrowly elliptic, and up to 55 cm long. The species has 25–30 pairs of sessile pinnae, rounded at the apex, and with up to 7 pairs of simple veins. The tissue has numerous short, erect, acicular hairs and lacks glands. The small sori, which have a densely long-ciliate indusium, are located dorsally on veins.

The size and the beauty of this fern makes the species very attractive to collectors. Although *T. inabonensis* occurs within the Toro Negro Commonwealth Forest (managed by the Commonwealth Department of Natural Resources) where collecting is not permitted, the areas are difficult to monitor. Also, the sheltered areas of the Río Inabón were lightly affected by Hurricane Hugo in 1989. The fact that only 46 individuals are known to exist in only two localities, makes the species vulnerable to the loss of even one individual.

Thelypteris verecunda was described by Dr. George R. Proctor in 1985 from specimens collected from Barrio Charcas in the municipality of Quebradillas (Proctor 1989). Two other localities are known for the species Barrio Bayaney, Hatillo, and Barrio Cidral in the municipality of San Sebastian. In Quebradillas and San Sebastian, only one individual has been reported from each locality. In Barrio Bayaney, about 20 plants are known (Proctor 1988). All these localities are privately owned lands.

Thelypteris verecunda is a terrestrial fern with creeping, 2–3 mm thick rhizomes. The apex bears brown scales, 1 mm long and 0.5 mm wide. The species has dimorphic fronds which are clothed throughout with star-shaped hairs, and numerous, much longer simple hairs. The stipes or stalks are 1–1.5 cm long and 0.4–0.5 mm thick. The sterile blades are oblongate, 2.5–4 cm long, 1.5–2 cm broad, truncate at the base, and rounded at the broadly lobed apex. The sterile blades have 2–4 pairs of short-stalked, round-oblong, 0.8–1 cm long and 0.4–0.6 cm wide, entire pinnae with simple veins. The fertile blades are linear to attenuate, 13–15 cm long, 1.2–1.8 cm broad, and truncate at the base. The rachis bears a minute proliferous bud below the apex. These blades have 15–20 pairs of mostly rounded-oblong to oval, 0.3–0.4 cm wide, short-stalked, entire pinnae. The small and erect sori, which have a minute indusium, are located in an inframedial position, and bear a tuft of long, white, and simple hair.

The fact that this fern is very rare and is known from only three sites makes the species extremely vulnerable to the loss of any individual. Clearing or development of these privately owned areas would result in elimination of the species. The species could also be an attractive item for collectors.

Thelypteris yaucoensis was described by Dr. George R. Proctor in 1984 from specimens collected at Barrio Rubias in the municipality of Yauco (Proctor 1989). This species is also known from two other localities: Los Tres Picachos, Barrio Toro Negro in Ciales; and the summit area of Pico Rodadero, Barrio Sierra Alta in the municipality of Yauco. Approximately 65 individuals have been estimated in these 3 sites (Proctor 1988). This endemic fern is very rare, and is located in humus on steep, shaded rocky banks and ledges at high elevations (850–1200 meters) (Proctor 1989).

Thelypteris yaucoensis is a terrestrial fern with an erect, 0.5 mm thick rhizome, which is bearded at the apex with a tuft of brown, narrowly to broadly lance-attenuate, 5–8 mm long scales. The few fronds are 44–52 cm long and have lustrous light brown, glabrous, 18–22 cm long stipes. The blades are narrowly deltate to oblong, 25–31 cm long, 10–14 cm broad, acuminate at the apex, and truncate at the base. The rachis, costae and costules are more or less stellate-puberulous on both sides. This fern has 13–15 pairs of alternate, irregularly linear-oblong pinnae. The pinnae are mostly simple, with 5–6 pairs of veins and are all free, except for the lowest pairs which are more or less joined. This fern has inframedial to medial sori, which are ciliated with minute forked and 3-branched hairs and have small indusia often hidden by the sporangia.

T. yaucoensis is also located on privately owned land. Clearing or development of the areas would result in the elimination of the species. This species would be very attractive for collectors. The extreme rarity of this fern makes the species very vulnerable to the loss of any individual.

Thelypteris inabonensis, T. verecunda, and *T. yaucoensis* were recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988. The species were subsequently included as category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review for plant taxa published in the **Federal Register** of February 21, 1990 (55 FR 6184). *Thelypteris inabonensis* and *Thelypteris verecunda* are considered to be critical plants by the Natural Heritage Program of the Puerto Rico Department of Natural Resources. A proposed rule to list these three species as endangered was published on November 9, 1992 (57 FR 53309).

Summary of Comments and Recommendations

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports of

information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were requested to comment. A newspaper notice inviting general public comment was published in The San Juan Star on November 29, 1992, and in El Nuevo Dia on November 30, 1992. Three letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural Resources, Natural Heritage Division (PRNHD), supported the listing of *Thelypteris inabonensis* and *T. yaucoensis* as endangered species. In the case of *T. verecunda*, the PRNHD pointed out that Proctor (1989) discussed the possibility that this species is a hybrid between *T. abidita* and *T. reptans*. The PRNHD recommended postponement of the designation of this species as endangered until this uncertainty was clarified. The author of this taxon, Dr. George Proctor, was contacted by the Service to clarify this uncertainty. Dr. Proctor stated that he had only suggested that *T. verecunda* might possibly be a hybrid because *T. abdita* and *T. reptans* were present in the same area. He does not have any evidence (morphological or cytological) to establish that the species in question is a hybrid species. He strongly recommended the designation of *T. verecunda* as endangered, due the fact that the only known population (20 individuals) is located on privately owned land (Proctor, pers. comm.)

The U.S. Forest Service provided comments, but did not indicate either support or objection to listing the species.

A private citizen, Dr. Wayne R. Owen, supported the listing of the three fern species based on the best interest of the species and the communities in which they live.

Summary of Factors Affecting the Species

After the through review and consideration of all information available, the Service has determined that *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thelypteris inabonensis* Proctor, *Thelypteris verecunda* Proctor, and *Thelypteris yaucoensis* Proctor are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Destruction and modification of habitat may be one of the most significant factors affecting the numbers and distribution of these three endemic ferns. Two of the species (*T. verecunda*, and *T. yaucoensis*) are known only from privately owned lands. The clearing or development of these areas would result in the elimination of these species. Although *T. inabonensis* occurs within a Commonwealth forest (Toro Negro Commonwealth Forest), the small populations may be affected by forest management practices and collection These three fern species are rate, extremely restricted in distribution, and very vulnerable to habitat destruction or modification. The extreme rarity of these species makes the loss of any individual even more critical.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these fern species. However, these three species may be very attractive to collectors.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis,* are not yet on the Commonwealth list. Federal listing will provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Probably the most important factor affecting *T. inabonensis, T. verecunda,* and *T. yaucoensis* in Puerto Rico is their limited distribution. In 1989, Hurricane Hugo lightly damaged the area where *Thelypteris inabonensis* is found.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis* as endangered. The extreme rarity of these ferns makes the species very vulnerable to the loss of any plant. Only two populations of *T. inabonensis,* three populations of *T. verecunda,* and three populations of *T. yaucoensis* are known to occur. Collecting may severely impact these populations. Habitat modification can alter microclimatic conditions, and thus may dramatically affect these very rare and endemic fern species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is determined to be endangered or threatened. Regulations found at 50 CFR part 424 state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for both reasons.

The number of populations of *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis* are so small that vandalism and collection could seriously affect the survival of these species. The size and the beauty of these ferns makes the species very attractive to collectors. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of take from such activities.

Take is regulated by the Act with respect to endangered plants only in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands, or (2) removal, cutting, digging up, damaging, or destroying in knowing violation of any State law or regulation, including State criminal trespass law. With the exception of only

one site occurring in a Commonwealth forest, all of the sites for these ferns are found on privately owned land, and currently receive no protection under Commonwealth law. While listing under the Act increases the public's awareness of a species' plight, it can also increase the desirability of a species to collectors. Discovery and elimination of any of these plants could compromise the survival of the species. These ferns also could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation.

No Federal actions are foreseen that would affect these ferns. In the unlikely event that Federal involvement should occur in the areas where these plants occur, the Service believes that the species can be protected without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 consultation process, as appropriate.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these three fern species, as discussed above. Federal involvement that would adversely affect the species is not anticipated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Proctor, G.R. 1988. Status of Puerto Rican Endemic Ferns. List presented in the Interagency Workshop on candidate plant species. Caribbean Islands National Wildlife Refuge, Boquerón, Puerto Rico.

Proctor, G.R. 1989. Ferns of Puerto Rico and the Virgin Islands. The New York Botanical Garden, Bronx, New York. 389 pp.

Proctor, G.R. 1991. Puerto Rican Plant Species of Special Concern; Status and Recommendations. Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales, San Juan, Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Thelpteridaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
. .	.	.	.	.	.	.
Thelypteridaceae—Marsh fern family:						
Thelypteris inabonensis	None	U.S.A. (PR)	E	506	NA	NA
. .	.	.	.	.	.	.
Thelypteris veracunda	None	U.S.A. (PR)	E	506	NA	NA
Thelypteris yaucoensis	None	U.S.A. (PR)	E	506	NA	NA
. .	.	.	.	.	.	.

Dated: June 8, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–15502 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920543–3056; I.D. #022593D]

RIN 0648–AE21

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement a resubmitted portion of Amendment 2 to the Summer Flounder Fishery Management Plan (Amendment 2) and to announce to the effective date of a requirement for annual reports from summer flounder dealers. This final rule implements a mandatory reporting requirement for owners of charter, party, and commercial vessels holding Federal permits for the summer flounder fishery, effective January 1, 1994. The intent of this revision is to replace a measure proposed in the earlier submission of Amendment 2 that was disapproved by the Secretary of Commerce (Secretary).

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Copies of the revised portion of Amendment 2 and the environmental impact statement/regulatory impact review for the original Amendment 2 may be obtained from John C. Bryson, Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this final rule should be sent to the Northeast Regional Director, 1 Blackburn Dr., Gloucester, MA 01930, and the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 281–9324.

SUPPLEMENTARY INFORMATION: Amendment 2 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission. The Council submitted Amendment 2 to the Secretary for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove or partially disapprove fishery management plans or amendments based upon a determination of consistency with national standards and other applicable law. The Secretary announced disapproval of a provision of Amendment 2 that would have implemented a mandatory vessel logbook requirement by January 1, 1993. This disapproval was announced in the final rule to implement Amendment 2 (57 FR 57358, December 4, 1992).

The mandatory vessel logbook requirement was disapproved in Amendment 2 because NMFS determined that the summer flounder logbook requirement would be duplicative of existing reporting requirements. NMFS concluded than it should be consolidated into a coastwide mandatory vessel reporting system for fishing off the Mid-Atlantic and New England coasts, targeted for implementation in 1994. To be consistent with NMFS's plans to implement a coastwide vessel reporting system, the Council resubmitted the summer flounder logbook requirement to the Secretary for review under section 304(b)(3) with the provision that implementation is to occur by January 1, 1994.

The specific information elements the Council requested to be collected are: (1) The vessel name; (2) the vessel permit number; (3) date sailed; (4) date landed; (5) port landed; (6) area fished; (7) number of tows; (8) duration of fishing time or days actually fished; (9) the total amount in pounds/numbers of each species harvested; (10) the total amount in pounds/numbers discarded by species; (11) crew size; (12) date sold; (13) buyer (dealer); (14) number of anglers per trip for party/charter vessels; (15) and other items required by the Regional Director, Northeast Region (Regional Director).

Because the mandatory logbook requirement will partially supplant some existing voluntary information collections, the Regional Director will also collect the following additional information on the logbook: (1) Gear fished; (2) size/quantity of gear; (3) mesh size; (4) depth range fished; (5) average tow/set time; (6) Loran coordinates and (7) dealer permit number. This information is necessary for management of the resource.

Changes From the Proposed Rule to the Final Rule

Section 625.6(a)(2) contains a requirement that permitted summer flounder dealers fill out the employment information of the Annual Processed Products report. The Secretary announced approval of this requirement in the final rule for Amendment 2 (57 FR 57358; December 4, 1992) pending OMB approval, which was subsequently received (OMB 0648–0018). This rule also adds a clarification that the Annual Processed Products report must be filled out for the calendar year and submitted to NMFS and postmarked by February 10 of the following year.

Changes have been made in the final rule to clarify the intent of the regulations. In § 625.6, paragraphs (b)(1) and (c)(1) are changed by removing the word "daily" from the phrase "daily fishing log." In paragraphs (b)(1)(xvii) and (c)(1)(xiii) of § 625.6, "crew size" is

VOL 58 ISS 126 JL 2 1993 UMI

changed to "number of crew." In paragraphs (b)(2) and (c)(2) of § 625.6, the phrase "When to fill in the log" is changed to "When to fill in the fishing log." Also in paragraph (b)(2), the phrase "before landing any summer flounder" is changed to "before offloading has begun" to make it clearer when the fishing log reports must be filled in. In paragraphs (b)(3) and (c)(3) of § 625.6, a change is made in response to a comment to clarify that logbooks currently in use must be kept on board the vessel. Paragraphs (b)(4) and (c)(4) of § 625.6 have been changed to clarify that logbooks which have been filled in completely must be retained for one year and made available to an authorized officer upon request. In § 625.6 (b)(5) and (c)(5), the term "trip reports" is changed to "fishing log reports." Also in these two paragraphs, the report submission deadline is changed, in response to a comment, from "postmarked within 72 hours" to "postmarked within fifteen days." A clarification is also added in paragraphs (b)(5) and (c)(5) to ensure that negative reports are required when no trip is made or when no summer flounder are landed and that negative reports are to be made on a page of the fishing log. Section 625.6(c)(2) is also changed to reflect that the fishing log report must be filled in at the end of each fishing trip. In § 625.6(c)(3), the word operator is added to indicate that the owner or operator must produce reports for inspection upon request of an authorized officer.

Comments and Responses

NMFS received comments on the proposed rule from a fisherman, the East Coast Fisheries Foundation (ECFF) and the State of Connecticut Department of Environmental Protection (DEP). Specific comments are discussed and responded to below.

Comment: One commenter opposes the vessel reporting requirement because fishermen are already overburdened with reporting requirements imposed by state agencies and other federal agencies such as the U.S. Coast Guard (USCG), the Federal Communications Commission (FCC), and the Food and Drug Administration. He believes that the cumulative impact of these reporting burdens is unreasonable, and expresses concern that agencies do not coordinate their requirements. He stated that he is required to keep a log for the USCG and the FCC and that he keeps a personal log.

Response: The fishing industry is regulated by other state and Federal agencies that require different information for different purposes. Information collected by the Coast Guard is generally to ensure that safety and/or anti-pollution regulations are followed. None of the other agencies' information requirements will satisfy the need for information to manage the fishery, which includes information for biological, economic and social assessments as well as for compliance monitoring of quotas. NMFS is working toward consolidating current and future reporting requirements and, in fact, withdrew approval of this vessel reporting requirement in the earlier Council submission so that it could be incorporated into a coastwide vessel reporting system planned for 1994 for all species.

Comment: A commenter believes that the vessel reporting requirement is unnecessary and should be dropped. He believes that the information can be obtained through the sea sampling program or through individual state programs.

Response: Mandatory vessel reporting is especially important to corroborate the information submitted through mandatory dealer reports. This cross-check will improve accuracy and the ability to detect violations, making the system fair and enhancing the success of the resource management program. In addition, the vessel logbook provides an opportunity for vessel owners to ensure that information on their vessel, especially landings and performance, as well as their observations, are included in the database and considered during deliberation of future management systems.

Neither the sea sampling program nor individual state programs can satisfy the requirements for data necessary to manage the fishery. Individual state programs cannot provide the necessary information because the data must be collected throughout the range of the resource in a consistent manner for statistical analyses. Individual state programs are inconsistent among states and many states do not have collection programs.

The information to be supplied by the vessel report cannot be obtained through the sea sampling program due to the low level of coverage, i.e., less than 1 percent. A limited amount of sea sampling time is available to examine other issues and is not adequate to provide all of the data required for analyses of the summer flounder fishery.

Comment: One commenter believes the information collected has nothing to do with the biological management of summer flounder.

Response: The information to be collected on the vessel report is needed to provide managers and scientists with information to evaluate the condition of the resource, such as catch per unit of effort, and other assessment tools. Equally important, this information is necessary for fishery management purposes including quota monitoring, compliance monitoring, and to provide information on which to base future management measures or to evaluate the effectiveness of current measures.

Comment: Two commenters feel that the burden estimate of five minutes per response is too low. One commenter stated this was especially true for reporting discards on a per-tow basis. The commenters believe it will take an inordinate amount of time to weigh, count and tabulate catch information. One commenter cited the time it takes a sea sampler to perform this function. In addition, the commenters believe that much of the information will be inaccurate because fishermen will be tired at the end of a trip and will "just put something down." One commenter pointed to the fact that NMFS staff involved in developing this requirement do not have fishing experience. The commenters also object to the portion of the rule which requires reporting "other items required by the Regional Director," because it is too broad.

Response: The information provided on the fishing log is information that is collected in the course of fishing. NMFS does not believe that one has to be a fisherman to estimate the time required for this reporting, and remains convinced that most fishermen can provide basic trip and catch information in five minutes, even if it must be copied from other vessel records, such as the personal log generally kept by fishermen.

Discard information is not requested on a per-tow basis, but in most cases, at the end of the trip (unless the vessel changes gear or area during a trip requiring the change of page in the log). Discards are not required to be weighed or counted, only an estimate of pounds discarded is required. It is the responsibility of the fishermen to provide accurate information.

The general requirement for "other information required by the Regional Director" is meant to allow minor modifications in the reporting requirement during the 3-year OMB approval period. Substantive changes or additions will still require OMB clearance under the Paperwork Reduction Act.

Comment: The DEP commented that mandatory reporting by vessel owners should be considered only as a last

resort. However, if it is necessary, the number of reporting entries should be kept to a minimum. The commenter notes that the DEP system only requires 7 entries per day.

Response: NMFS agrees that the number of entries should be kept to a minimum. The vessel reporting requirement implemented by this rule requires 20 entries for each trip. The average length of a trip in the summer flounder fishery is 3 to 5 days. Therefore, the number of entries per day is actually less than the commenter's suggestion. In practice, the number of entries will be 20 every several days.

Comment: The DEP advised against requiring entries of discards because this information can only be collected accurately via sea sampling programs that utilize NMFS certified sea samplers. DEP further commented that data collected on a per-tow basis would also not be accurate unless a sea sampler were aboard. At the very least, caution should be used in interpreting such data.

Response: NMFS agrees that sea sampling programs provide the most accurate information on discards. However, until the extent of coverage of the program can be extended, estimates from fishermen are necessary.

Comment: DEP suggested a more general approach to vessel reporting. Rather than specifying each item that must be reported, the rule should state that a system will be developed that may include, but is not limited to, the items listed in § 625.6(b). This would allow flexibility to incorporate changes to the vessel report format that may result from ongoing discussions of data needs. The DEP recommends that mandatory reporting requirements for summer flounder be postponed until regional data collection programs can be redesigned and finalized. The DEP recommends extending the comment period to allow this redesign and planning phase.

Response: NMFS believes that an important aspect of compliance is providing clear instructions to the affected public. This mandatory reporting system requires compliance by regulation, and therefore, must be as explicit as possible in describing to the public exactly what information is required and when it must be submitted. Thus, the items to be reported and the submission deadlines are included in the **Federal Register**, which is available to the public. In addition, vessel owners will also receive specific notification regarding these regulatory requirements in a letter from the Regional Director. NMFS must balance the obligation to provide sufficient public notification against the consequent loss in flexibility.

The comment period cannot be extended because the Magnuson Act requires Secretarial approval or disapproval of a Council submitted FMP or amendment by a certain statutory deadline.

Comment: The ECFF commented that some of the information to be collected by the logbook duplicates other information collections and gave the example of loran coordinates and area fished.

Response: It is not NMFS' intention to collect both the loran coordinates and area fished. Instead, specific instructions accompanying the logbook will show that vessel operators may note either the area fished or the loran coordinates, depending on which is more convenient.

Comment: The ECFF believes there should be a single, efficient logbook for all fisheries. The commenter suggested alternative questions that could be asked on the vessel report such as: whether significant quantities of juvenile fish were discarded; whether the amount of discarding exceeded the quota; and other observations. The ECFF questions why size and quantity of gear are included because they do not seem appropriate for otter trawlers and questions whether "mesh size" applies to the codend.

Response: NMFS is working toward a single coastwide, multiple-fishery vessel logbook to collect efficiently information from resource users. NMFS will consider alternative suggestions on the elements to be included on the vessel log in the future. However, for the purposes of this rule, NMFS has opted to approve the design presented by the Council's amendment. NMFS expects changes in design to be made as other fisheries are added in the future.

Size and quantity of gear are included in anticipation of a single log that would apply to all fisheries and all types of gear.

The clarification that mesh size applies to the codend is made in this rule.

Comment: ECFF commented that the request for "crew size," if taken literally, would result in responses describing the height and weight of the crew on board.

Response: NMFS agrees with this comment. In order to obtain the information desired, the fishing log will request "number of crew."

Comment: ECFF commented that rather than requiring the fishing log to be completed before landing any summer flounder, the regulations should require it to be completed before the next trip. The change is proposed to relieve fishermen from the burden of completing the log "rough weather conditions and cramped quarters."

Response: With the exception of "information that is not yet known" (e.g., date sold, dealer name and dealer permit number), the fishing log must be completed before landing. While the "information that is not yet known" can be added to the log before starting the next trip, allowing the entire log to be completed in that timeframe would undermine the enforceability of the reporting requirement because compliance would be dependent upon the date of a future action and impossible to evaluate.

Comment: ECFF feels that the sections concerning fishing log "inspection" and "record retention" appear to contradict one another. They suggested that the wording should be revised to protect fishermen from being caught in a violation due to the contradiction.

Response: In response to this comment, NMFS has clarified the requirements for presenting the fishing log. A log which is in use must be available for inspection by an authorized officer during or after a trip and thus should be kept aboard the vessel. Logbooks which have been completely filled out must be made available upon request by an official officer but the place of storage is not specified.

Comment: ECFF believes that there are circumstances that would make it impossible to comply with the requirement for negative report to be filed within 72 hours of the end of the month. They pointed out that vessels leaving late in the month do not know for certain if they will land before or after the month's end, and if they land more than 72 hours after the month's end their negative report will be late.

Response: NMFS agrees with the commenter and has extended the submission deadline from 72 hours to 15 days after the end of the month.

Classification

The Secretary determined that the provisions this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, has taken into account the information, views, and comments received during the comment period.

The Council prepared an environmental impact statement (EIS) for Amendment 2, outlining the possible impacts on the environment as a result of this rule. The Assistant Administrator for Fisheries, NOAA (Assistant

VOL 58 ISS 126 JL 2 1993 UMI

Administrator) determined that this revision would not affect the scope or alter the analysis prepared in the EIS.

The Assistant Administrator has determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review (RIR) prepared for Amendment 2 that demonstrates negative net short-term economic benefits but positive long-term economic benefits to the fishery under the management measures. The revision to the Amendment contained in this rule does not alter the impacts analyzed in the RIR, which were not significant for the purposes of this Executive Order. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

This rule involves one collection-of-information subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648–0018). Vessel reports, §§ 625.6 (b) and (c), were approved by OMB as part of the proposed rule for Amendment 2 (control number 0648–0212). The revisions to §§ 625.6 (b) and (c) contained in this rule have also been approved by OMB under control number 0648–0212 and will become effective January 1, 1994. Public reporting burden for this collection is estimated to average 5 minutes per response. Send any comments regarding this burden estimate or any other aspect of this requirement, including suggestions for reducing the burden, to NMFS and OMB (see **"ADDRESSES"**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based on the analyses presented in the EIS/RIR for Amendment 2, which are not changed by this revision.

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Several state agencies responded that the measures are not inconsistent with their respective programs. Consistency is presumed for states that did not respond.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: June 28, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.6 is amended by revising paragraphs (a)(2), (b) and (c) to read as follows:

§ 625.6 Recordkeeping and reporting requirements.

(a) * * *

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on the form is voluntary. Reports for a given calendar year shall be submitted to: NMFS Statistics, 166 Water St., Woods Hole, MA 02543, and must be postmarked by February 10 of the following year.

* * * * *

(b) *Vessel owners issued a moratorium permit.*

(1) *Fishing log.* The owners of a vessel issued a moratorium permit that is not fishing as a vessel for hire, shall maintain, on board the vessel, an accurate fishing log for each fishing trip, on forms supplied by, or approved by, the Regional Director, showing at least:

(i) Vessel name;
(ii) Vessel permit number;
(iii) Date sailed;
(iv) Date landed;
(v) Port landed;
(vi) Gear fished;
(vii) Size/quantity of gear;
(viii) Mesh size (codend);
(ix) Area fished;
(x) Depth range fished;
(xi) Number of tows or sets;
(xii) Days fished;
(xiii) Average tow/set time;
(xiv) Loran coordinates;
(xv) Pounds kept by species;
(xvi) Pounds discarded by species;
(xvii) Number of crew;
(xviii) Date sold;
(xix) Dealer name;
(xx) Dealer permit number;
(xxi) Any other information required by the Regional Director.

(2) *When to fill in the fishing log.* Vessel owners shall ensure that such logbooks are filled in, except for information such as required by paragraphs (b)(1) (xviii), (xix), (xx) of this section that is not yet known, before offloading has begun at the end of a fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook currently in use available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the completed log, the owner shall retain a copy of each logbook and make them available upon request by an authorized officer.

(5) *Fishing log reports.* The owner shall submit fishing log reports to the Regional Director or an official designee on forms supplied by, or approved by, the Regional Director postmarked within 15 days of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip were made or summer flounder were landed during a month, a fishing log report so stating must be submitted and postmarked by the 15th of the following month.

(c) *Owners of party and charter boats.*

(1) *Fishing log.* The owner of any party or charter boat issued a permit under § 625.4 and carrying passengers for hire shall maintain, on board the vessel, an accurate fishing log for each charter or party fishing trip, on forms supplied by or approved by the Regional Director, showing at least:

(i) Vessel name;
(ii) Vessel permit number;
(iii) Date sailed;
(iv) Date landed;
(v) Port landed;
(vi) Gear fished;
(vii) Size/quantity of gear;
(viii) Area fished;
(ix) Depth range fished;
(x) Days fished;
(xi) Number and pounds kept by species;

(xii) Number and pounds discarded by species;

(xiii) Number of crew;

(xiv) Number of anglers;

(xv) Any other information required by the Regional Director.

(2) *When to fill in the fishing log.* Vessel owners shall ensure that all logbook information required in paragraph (c)(1) of this section is filled in for each fishing trip by the end of each fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook currently in use available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the completed log, the owner shall retain a copy of each logbook and make them available upon request by an authorized officer.

(5) *Fishing log reports.* The owner shall submit fishing log reports to the Regional Director or an official designee on forms supplied by, or approved by, the Regional Director postmarked within 15 days of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip were made or summer flounder were landed during a month, a fishing log report so stating must be submitted and postmarked by the 15th of the following month.

* * * * *

[FR Doc. 93–15661 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–20–M

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50 CFR Part 646

[Docket No. 930115–3147; I.D. 112992A]

RIN 0648–AE89

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and technical amendment.

SUMMARY: NMFS establishes eight special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off the South Carolina coast and restricts fishing in these SMZs to hand-held, hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing (excluding powerheads). The intended effect of this rule is to promote orderly use of the fishery resources on and around the ARs, to reduce potential user-group conflicts, to maintain the socioeconomic benefits of the ARs to the maximum extent practicable, and to conform the regulations to current practice. In addition, as a technical amendment, NMFS removes language regarding verification by the Internal Revenue Service (IRS) of income or gross sales of fish documentation submitted in support of applications for Federal permits to engage in the wreckfish fishery off the southern Atlantic states.

EFFECTIVE DATE: July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs as SMZs, following Council recommendation to the Director, Southeast Region, NMFS.

ARs create fishing opportunities that would not exist otherwise and may increase biological production. They are expensive to construct and their benefits can be dissipated rapidly by certain types of fishing gear. Use of certain fishing gear that offers advantages over other gear may reduce significantly the improved fishing opportunities and, thus, may eliminate the incentive for the development of ARs. The intent of SMZs, and associated gear requirements, is to preserve the fishing opportunities of ARs and the incentive to establish them.

The South Carolina Wildlife and Marine Resources Department requested that the Council establish SMZs around eight ARs in which fishing would be limited to hand-held, hook-and-line gear, and spearfishing (excluding powerheads). The ARs are in the EEZ off South Carolina on an expensive shelf area that has large areas devoid of any hard or live bottom. Prior to establishment of the ARs, these areas did not support any significant fisheries. In fact, these large barren areas limited the development of recreational fishing. The ARs provide substrate for invertebrates and juveniles of game fish. The increased substrate leads to increased biological productivity although it is not possible to quantify the increase. The small fish, which inhabit ARs, attract game fish; hence, fishing opportunities are increased.

The procedural requirements of the FMP for designation of ARs as SMZs, the criteria required by the FMP to be evaluated for designation of ARs as SMZs, and evaluation of those criteria were contained in the proposed rule (58 FR 13732, March 15, 1993) and are not repeated here.

Comments and Responses

Two comments were received on the proposed rule.

Comment: A professional diver reported that he had used a powerhead in six of the eight proposed SMZs during the last 4 years and objected to the proposed exclusion of powerheads. He suggested that prohibiting the use of a powerhead for amberjack in the SMZs is equivalent to locking the barn door after the horse was stolen. For the conservation of amberjack, he suggested prohibiting the use of hook-and-line gear for amberjack off south Florida during the spawning season, which, according to the commenter, extends from the third week in April through mid-June.

Response: The Council concluded that the use of powerheads in SMZs would discourage the construction of new ARs because only a few individuals would gain most of the benefits. That is, a few individuals would have an excessive share of the total catch of fish produced or aggregated by the ARs. Commercial fishermen may continue to use the SMZs provided they use legal gear, which includes spear guns, and hook-and-line gear. The Council believes this rule will reduce conflicts among users and will distribute benefits to a larger number of fishermen. NMFS concurs.

The Council chose to limit the harvest of amberjack during April, but not to close the entire fishery. The commenter's suggestion may be considered by the Council if additional conservation measures are necessary.

Comment: The Center for Marine Conservation (Center) supported the proposed rule—with reservations. The Center notes that no conclusive evidence exists that ARs increase fish populations, rather than merely concentrating fish populations, and that protection of SMZs may contribute to increased fishing pressure on natural reefs. The Center encouraged the Council to protect larger natural reef habitats, possibly through the establishment of marine fishery reserves.

Response: The Council held extensive public hearings on the concept of

VOL
58
ISS
126
JL
2
1993
UMI

marine fishery reserves. Because of public opposition to the concept of marine fishery reserves, as well as a lack of scientific information concerning the quantitative effects of reserves, the Council deferred action.

Technical Amendment

The regulations at 50 CFR 646.4(a)(2) specify that for a person to fish for wreckfish in the EEZ, possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ, a vessel permit for wreckfish must be issued to the vessel and be on board. To obtain a permit, the applicant must certify that more than 50 percent of his or her earned income must derived from commercial, charter, or headboat fishing or his or her gross sales of fish were more than $20,000 during one of the 3 calendar years preceding the application. The Director, Southeast Region, NMFS, requires the applicant to provide forms and schedules from his or her income tax return in support of the stated earned income/gross sales. The regulations at 50 CFR 646.4(c)(3) state, "Copies of income tax forms and schedules and other required documentation are treated as confidential, but may be released to and verified by the Internal Revenue Service or other appropriate authorities." The language regarding release to and verification by IRS is removed to conform to current practice.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review for this action, which concludes that the costs or negative impacts associated with the proposed designation of additional SMZs are insignificant compared to the benefits associated with SMZ status.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because few commercial fishermen depend on the artificial reef sites and the negative economic effects would be minimal.

The Southeast Regional Office, NMFS, prepared an environmental assessment (EA) for this action. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

In the final rules implementing the FMP and its amendments, NMFS concluded that, to the maximum extent practicable, the FMP and amendments are consistent with the approved coastal zone management programs of all the affected states. Since this final rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and amendments and their consistency determinations, a new consistency determination under the Coastal Zone Management Act is not required.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 28, 1993

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.4, the last sentence of paragraph (c)(3) is revised to read as follows:

§ 646.4 Permits and fees.

* * * * *

(c) * * *

(3) * * * Copies of income tax forms and schedules and other required documentation are treated as confidential; however, documents other than income tax forms and schedules may be released to and verified by appropriate authorities.

* * * * *

3. In § 646.26, new paragraphs (a)(22) through (a)(29) are added and paragraph (c)(1) introductory text and the first sentence of paragraph (c)(4) are revised to read as follows:

§ 646.26 Area limitations.

(a) * * *

(22) *Little River Offshore Reef:* The area is bounded on the north by 33°42.10′ N. latitude; on the south by 33°41.10′ N. latitude; on the east by 78°26.40′ W. longitude; and on the west by 78°27.10′ W. longitude.

(23) *BP–25 Reef:* The area is bounded on the north by 33°21.70′ N. latitude; on the south by 33°20.70′ N. latitude; on the east by 78°24.80′ W. longitude; and on the west by 78°25.60′ W. longitude.

(24) *Vermilion Reef:* The area is bounded on the north by 32°57.80′ N. latitude; on the south by 32°57.30′ N. latitude; on the east by 78°39.30′ W. longitude; and on the west by 78°40.10′ W. longitude.

(25) *Cape Romaine Reef:* The area is bounded on the north by 33°00.00′ N. latitude; on the south by 32°59.50′ N. latitude; on the east by 79°02.01′ W. longitude; and on the west by 79°02.62′ W. longitude.

(26) *Y–73 Reef:* The area is bounded on the north by 32°33.20′ N. latitude; on the south by 32°32.70′ N. latitude; on the east by 79°19.10′ W. longitude; and on the west by 79°19.70′ W. longitude.

(27) *Eagles Nest Reef:* The area is bounded on the north by 33°01.48′ N. latitude; on the south by 32°00.98′ N. latitude; on the east by 80°30.00′ W. longitude; and on the west by 80°30.65′ W. longitude.

(28) *Bill Perry Jr. Reef:* The area is bounded on the north by 33°26.20′ N. latitude; on the south by 33°25.20′ N. latitude; on the east by 78°32.70′ W. longitude; and on the west by 78°33.80′ W. longitude.

(29) *Comanche Reef:* The area is bounded on the north by 32°27.40′ N. latitude; on the south by 32°26.90′ N. latitude; on the east by 79°18.80′ W. longitude; and on the west by 79°19.60′ W. longitude.

* * * * *

(c) * * *

(1) In SMZs specified in paragraphs (a)(1) through (a)(18) and (a)(22) through (a)(29) of this section.

* * * * *

(4) In the SMZs specified in paragraphs (a)(1) through (a)(10) and

(a)(22) through (a)(29) of this section, a powerhead may not be used to take a fish in the snapper-grouper fishery. * * *

[FR Doc. 93-15742 Filed 7-1-93; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 658

[I.D. 060793A]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment of the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. This year the closure began on May 15, 1993, but because initial biological data indicate that brown shrimp leaving the Texas estuaries will have reached the desired size by July 6, the ending date is changed to this earlier date. The Texas closure is intended to: Prohibit the harvest of brown shrimp during their major period of emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size; and prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 15, 1993, to 30 minutes after sunset, July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that an early ending of the Texas closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicates that ending the closure on July 6, 1993, will provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for ending the Texas closure is changed from 30 minutes after sunset, July 15, 1993, to 30 minutes after sunset on July 6, 1993. During the closure, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom (183-m) depth contour. The waters of Texas are also closed during this period.

Classification

This action is authorized by 50 CFR 658.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 25, 1993.

David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-15738 Filed 6-29-93; 3:19 pm]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921107-3068; I.D. 062693A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for thornyhead rockfish to all gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the thornyhead rockfish total allowable catch (TAC) in the GOA.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), June 28, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the thornyhead rockfish TAC for the GOA was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 1,062 mt (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the thornyhead rockfish TAC in the GOA soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 900 mt, with consideration that 162 mt tons will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for thornyhead rockfish in the GOA, effective from 12 noon, A.l.t., June 28, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1993.

David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-15646 Filed 6-28-93; 4:59 pm]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 921185-3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the "other red rockfish" target species category in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the "other red rockfish" total allowable catch (TAC) in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries

VOL
58
ISS
126
JL
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1993
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Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the "other red rockfish" TAC for the BS was established by the final groundfish specifications (58 FR 8703, February 17, 1993) as 1,020 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the "other red rockfish" TAC in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 920 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in the BS. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for "other red rockfish" in the BS effective from 12 noon, A.l.t., July 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15647 Filed 6–28–93; 4:59 pm]

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14 CFR P

[Docket No

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AGENCY: F
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Proposed Rules

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-62-AD]

Airworthiness Directives; Airbus Model A320-111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320-111 series airplanes. This proposal would require repetitive inspections to detect breakage of the rivet heads at a certain skin-to-frame junction of the fuselage and replacement of discrepant rivets. This proposal would also require eventual replacement of the currently installed rivets with high-strength bolts; when accomplished, this replacement would terminate the need for the proposed repetitive inspections. This proposal is prompted by test reports of fatigue-related damage found on the rivet heads at a certain skin-to-frame junction of the fuselage. The actions specified by the proposed AD are intended to prevent loss of structural integrity of the fuselage.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-62-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-62-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-62-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320-111 series airplanes. The DGAC advises that during fatigue testing, after 48,000 simulated flights, fatigue-related damage was found on the forward fuselage on two rivet heads at the junction between frame 15 and the skin, between stops 3 and 7. Fatigue-related damage in this area, if not detected and corrected in a timely manner, could result in loss of structural integrity of the fuselage.

Airbus Industrie has issued Service Bulletin A320-53-1069, dated August 17, 1991, that describes procedures for external detailed visual inspections to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92-198-027(B), dated September 30, 1992, in order to assure the continued airworthiness of these airplanes in France.

Airbus Industrie has also issued Service Bulletin A320-53-1004, Revision 1, dated July 30, 1992, that describes procedures for replacement of the currently installed rivets with high-strength titanium Hilite bolts. These titanium Hilite bolts are manufactured using a roll-hardening process, which results in greater strength under the head of the bolts than in the rivets. This modification (Modification 20774) was installed during production on airplanes having serial numbers 002, 003, 004, and 013 and subsequent. This service bulletin has been revised by Change Notice 1.A., dated October 12, 1992, that clarifies that the inspections described in referenced Service Bulletin A320-53-1069 are mandatory. The DGAC has not classified this service bulletin or change notice as mandatory.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are

VOL 58 ISS 126 JL 2 1993 UMI

certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive external detailed visual inspections to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7. This proposal would also require eventual replacement of the currently installed rivets with high-strength bolts; when accomplished, this replacement would terminate the need for the proposed repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Currently, there are no affected Model A320–111 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 17 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. The cost of required parts would be $1,404. Based on these figures, the total cost impact of this AD would be $2,339 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–62–AD.

Applicability: Model A320–111 series airplanes; serial numbers 005 through 012, inclusive, on which Modification 20774, as described in Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within the next 60 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 landings, perform an external detailed visual inspection to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7, in accordance with Airbus Industrie Service Bulletin A320–53–1069, dated August 17, 1991.

(1) If no breakage is detected on any rivet head: Prior to the accumulation of 22,000 total landings, or within 180 days after the effective date of this AD, whichever occurs later, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(2) If breakage is detected on fewer than 2 rivet heads on each side: Within the next 100 landings after discovery of breakage, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(3) If breakage is detected on 2 or more rivet heads on either side: Prior to further flight, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(b) Replacement of all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15682 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ASW–50]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C and TH–55A helicopters, that currently requires repetitive inspection and replacement of certain lower belt drive pulley bearings (pulley bearings). This action would retain the present AD requirements and would require for another pulley bearing, part number (P/N) 269A5050–80, the same life limit of 1,800 hours' time-in-service and the same inspections as required by the current AD. This proposal is prompted by the introduction of an alternate pulley bearing with improved

lubrication that still requires the same life limit and repetitive inspections as required for the earlier bearings. The actions specified by the proposed AD are intended to prevent failure of the pulley bearings that could result in loss of transmission drive power to the rotor systems and subsequent loss of control of the helicopter.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–50, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Propulsion Branch, ANE–174, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791–7421, fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may change in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–50." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–50, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

Discussion

On January 4, 1980, the FAA issued AD 80–02–14, Amendment 39–3668 (45 FR 3251, January 17, 1980), to require replacement of all lower belt drive pulley bearings (pulley bearings), part number (P/N) 269A5050–57, that have accumulated 1,800 or more hours' time-in-service; to require a one-time inspection of the pulley bearing installations; and thereafter, to require a repetitive inspection of the lower pulley bearings at intervals of 300 hours' time-in-service. That action was prompted by reports of bearing malfunctions, which could result in a loss of drive power to the main and tail rotor systems. The requirements of that AD are intended to prevent failure of the pulley bearings that could result in loss of transmission drive power to the rotor systems and subsequent loss of control of the helicopter.

Since the issuance of that AD, Schweizer Aircraft Corporation informed the FAA that in October 1983, Hughes Helicopters, Inc. introduced into service an alternate design pulley bearing, P/N 269A5050–80, that is mechanically the same as the earlier design pulley bearing, P/N 269A5050–57. The aircraft manufacturer recently advocated that the requirements imposed by AD 80–02–14 should also be imposed on pulley bearing, P/N 269A5050–80, because of the similiarity between the bearings. The FAA has evaluated these conditions, concurs with the manufacturer, and proposes that the inspection and service life requirements of AD 80–02–14 should also apply to pulley bearings, P/N 269A5050–80.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 80–02–14 to require a one-time inspection of the pulley bearing installation, repetitive inspections of the pulley bearings, and a replacement time for pulley bearings, P/N 269A5050–80, as well as P/N 269A5050–57.

The FAA estimates that 700 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1½ work hours' per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts, if needed, would cost approximately $635 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $168,875 each year assuming 175 helicopters would need new parts each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

VOL 58 ISS 126 JL 2 1993 UMI

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing Amendment 39–3668 (45 FR 3251, January 17, 1980) and by adding a new airworthiness directive (AD), to read as follows:

Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Docket No. 92–ASW–50. Supersedes AD 80–02–14, Amendment 39–3668.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters, with lower belt drive pulley bearings installed, part number (P/N) 269A5050–57 or 269A5050–80, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the lower belt drive pulley bearings (pulley bearings), loss of power to the rotor systems, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours' time-in-service after the effective date of this AD, replace all pulley bearings, P/N 269A5050–57 or 269A5050–80, that have accumulated 1,750 or more hours' time-in-service. For pulley bearings that have accumulated less than 1,750 hours' time-in-service on the effective date of this AD, replace these pulley bearings on or prior to attaining 1,800 hours' total time-in-service. If replaced with pulley bearings, P/N 269A5050–57 or 269A5050–80, the repetitive inspection requirements of paragraph (d) of this AD are applicable.

Note: The following paragraphs of the AD, relative to bearing retention system inspection, cover two systems of retention. At delivery all Model 269A, 269A–1, 269B, TH–55A, and certain 269C helicopters, serial numbers 1 through 589, were equipped with an "H" frame with sheet metal lower bearing straps, P/N 269A5463. Model 269C helicopters, serial numbers 590 and subsequent, were equipped with machined lower bearing caps that are part of a 269A5573–11 "H" frame assembly. Paragraph (b) concerns the sheet metal straps and paragraph (c) concerns the machined caps.

(b) Within the next 50 hours' time-in-service after the effective date of this AD, on helicopters equipped with sheet metal lower bearing straps, P/N 269A5463—

(1) Inspect the pulley bearings in accordance with paragraphs a. through f., Part 1 of Schweizer Aircraft Corporation or Hughes Helicopters, Inc. Service Information Notice (SIN) N–146.2, dated December 7, 1979, and;

(2) Shim bearing straps in accordance with paragraph h.(2), Part 1. of SIN N–146.2, dated December 7, 1979.

(c) Within the next 50 hours' time-in-service after the effective date of this AD, on helicopters equipped with machined lower pulley bearing caps (caps) that are part of a 269A5573–11 "H" frame assembly, inspect caps and frame assembly lower bearing bore for out-of-roundness in accordance with paragraphs l. through p., Part 1 of Schweizer Aircraft Corporation or Hughes Helicopter, Inc. SIN N–164, dated December 7, 1979.

(1) If out-of-roundness exceeds 0.001 inch Total Indicator Reading (T.I.R.), reverse the caps and repeat the inspections of paragraph (c) of this AD for both caps.

(2) If out-of-roundness exceeds 0.001 inch T.I.R. after reversing and reinspecting the caps, replace both caps with two lower bearing straps, P/N 269A5463, in accordance with paragraph r., Part 1 of SIN N–164, dated December 7, 1979.

(d) Within 300 hours' time-in-service after accomplishing paragraphs (b) or (c) of this AD, and thereafter at intervals not to exceed 300 hours' time-in-service from the last inspection, inspect the pulley bearings in accordance with paragraph a. through e., Part III of SIN N–164, dated December 7, 1979.

(e) Prior to return to service of any helicopter equipped with a replacement "H" frame assembly, accomplish the inspections of paragraphs (b) or (c) of this AD as appropriate.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 21, 1993.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–15723 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91-ASW-21]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214B and 214B-1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc., (BHTI) Model 214B and 214B-1 helicopters. This proposal would require establishing a new mandatory retirement or service life on the main rotor pillow block bearing bolts (also called flapping bearing bolts). It would further require recording takeoffs and frequent high-power events such as repeated heavy lift (RHL) external load operations. This proposal is prompted by tests and analyses that reveal fatigue damage accrues more rapidly during frequent RHL and ground-air-ground operations. The actions specified by the proposed AD are intended to prevent fatigue failure of the main rotor pillow block bearing bolts, that could result in loss of the main rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-21, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc. (BHTI), P.O. Box 482, Attention: Customer Support, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193-0170, telephone (817) 624-5168, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-21." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-21, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to BHTI Model 214B and 214B-1 helicopters. Recent BHTI evaluations indicate that BHTI Model 214B and 214B-1 helicopters used in repeated heavy lift (RHL) external load operations sustain more lifts-per-hour than originally anticipated during type certification. These frequent high-power events cause fatigue damage to accrue to the main rotor pillow block bearing bolts (bolts), part number (P/N) 20-057-12-48D and 20-057-12-50D, more rapidly than was originally anticipated. Further, these evaluations by the FAA and BHTI indicate that the Model 214B and 214B-1 bolts should have a service life of 15,000 high-power events, or 2,500 hours' time-in-service, whichever occurs first. A high-power event is defined as either a takeoff or an external load lift. This condition, if not corrected, could result in failure of the bolts, loss of the main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved BHTI Alert Service Bulletin (ASB) No. 214-91-46, Revision A, dated October 8, 1992, that describes procedures for establishing a new mandatory retirement or service life on the main rotor pillow block bearing bolts, and recording takeoffs and frequent high-power events such as RHL external load operations.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the establishment of a mandatory retirement or service life of 15,000 high-power events or 2,500 hours' time-in-service, whichever occurs first, for the bolts, P/N 20-057-12-48D and 20-057-12-50D. The proposed AD would also require recording takeoffs and high-power events such as external load operations.

The FAA estimates that 54 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 25.5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $260 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $89,775 each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 91-ASW-21.

Applicability: Model 214B and 214B-1 helicopters, certificated in any category.

Compliance: Required within 100 hours' time-in-service after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the main rotor pillow block bearing bolts (also called flapping bearing bolts), part numbers (P/N) 20-057-12-48D and 20-057-12-50D, which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a historical maintenance service record, for the main rotor pillow block bearing bolts (bolts), P/N 20-057-12-48D and 20-057-12-50D.

(b) Determine the time-in-service on the bolts as follows:

(1) For bolts that do not have a record of hours time-in-service, calculate a base time-in-service and a base number of high-power events using 900 hours' time-in-service and 5,400 high-power events for each year the bolts have been installed. Prorate for a partial year. High-power events are defined as takeoffs or external load lifts such as fire-fighting by dumping water, logging, or other similar external cargo operations.

(2) For bolts that have a record of hours time-in-service, record the high-power events, as follows:

(i) Record the total number of high power events, if known;

(ii) If the number of high-power events is not known, multiply the hours time-in-service by 6 to determine the high-power events to be recorded.

(c) Replace the bolts according to the following:

(1) Within the next 100 hours' time-in-service or the next 600 high-power events, remove from service those bolts with either 2,400 or more hours' time-in-service, or more than 14,400 high-power events as of the effective date of this AD.

(2) On or before attaining either 2,500 hours' time-in-service or 15,000 high-power events, whichever comes first, remove from service those bolts with less than either 2,400 hours' time-in-service or 14,400 high-power events as of the effective date of this AD.

Note: This AD paragraph, in effect, changes the present Airworthiness Limitations Section of the Model 214B and 214B-1 Maintenance Manual to require a 2,500 hours' time-in-service or 15,000 high-power events service life, whichever occurs first, for the bolts.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193-0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93-15724 Filed 7-1-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-52-AD]

Airworthiness Directives; Corporate Jets, Limited, Model DH/HS/BH/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Corporate Jets, Limited, Model DH/HS/BH/BAe 125 series airplanes. This proposal would require a one-time functional test of the diodes located in the engine fire extinguisher systems to verify proper operation of the diodes, and replacement of any defective diode. This proposal would also require that all test results, positive or negative, be reported to the manufacturer. This proposal is prompted by reports of undetected failures of certain diodes in the engine fire extinguisher systems. The actions specified by the proposed AD are intended to prevent failure of the engine fire extinguisher systems.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-52-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-52-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-52-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets, Limited, Model DH/HS/BH/BAe 125 series airplanes. The CAA advises that failed (short circuit) blocking diodes have been detected during routine maintenance on certain of these airplanes. These diodes are associated with the "EXT FIRED" (BOTTLE GONE) indicators in the engine fire extinguishing circuit. The cause of these failures has not been determined. Failure of the diodes may not be detected readily; therefore, deployment of extinguishing agent to both engines, rather than only to a selected engine, could occur. Faulty deployment of the extinguishing agent may reduce the concentration of the agent to levels below that required to extinguish an engine fire. Undetected failed diodes could prevent the engine fire extinguishing system from extinguishing an engine fire.

Corporate Jets, Limited, (a subsidiary of British Aerospace having responsibility for Model 125 series airplanes) has issued Service Bulletin S.B. 26-33, dated December 8, 1992, that describes procedures for conducting a one-time functional test of the diodes located in each engine fire extinguisher system to verify proper operation of the diodes, and replacement of any defective diode. The service bulletin includes a statement indicating that, for the Model 125 series airplanes, Corporate Jets, Limited, is updating the Aircraft Maintenance Manual to include functional tests of the diodes in the engine fire extinguisher system as a normal maintenance item. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time functional test of the diodes located in the engine fire extinguisher systems to verify proper operation of the diodes, and replacement of any defective diode. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also require that all test results, positive or negative, be reported to the manufacturer.

Repetitive functional tests of the diodes are not included in the proposed AD because the FAA has been advised by Corporate Jets, Limited, that the diodes have been added as a routine functional test item in the Aircraft Maintenance Manual for Model 125 series airplanes. Therefore, repetitive functional tests will be performed in accordance with normal maintenance practices. The proposed one-time functional test, however, would assure that any undetected failed diode is identified and replaced in a timely manner.

The FAA estimates that 440 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $72,600, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Corporate Jets, Limited, (Formerly British Aerospace, Hawker Siddeley Aviation, and De Havilland Aircraft Co., Ltd): Docket 93–NM–52–AD.

Applicability: Model DH/HS/BH/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire extinguisher systems, accomplish the following:

(a) Within 90 days after the effective date of this AD, conduct a one-time functional test of the diodes located in each engine fire extinguisher system to verify proper operation of the diodes, in accordance with Corporate Jets, Limited, Service Bulletin S.B. 26–33, dated December 8, 1992.

(b) If any diode is found to be defective, prior to further flight, replace the defective diode in accordance with Corporate Jets, Limited, Service Bulletin S.B. 26–33, dated December 8, 1992.

(c) Within 10 days after accomplishing the functional test required by paragraph (a) of this AD, report all test findings, positive or negative, by mail or fax message to the following address: Service Support Manager, Corporate Jets, Limited, 3 Bishop Square, St Albans Road West, Hatfield, Hertfordshire, AL10 9NE, England; fax 011–44–707 253959, or 011–44–707 252367. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15683 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–78–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings and installation of a retainer ring, if necessary. This proposal is prompted by a report of a missing retainer ring in the rudder (brake) pedal. The actions specified by the proposed AD are intended to prevent reduced braking authority and reduced directional control of the airplane while it is on the ground.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

VOL
58
ISS
126
JL
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1993
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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that one operator has reported that, upon starting to brake after touchdown, the pilot felt the left rudder (brake) pedal shift under his foot. A subsequent inspection revealed that the cause of the shifting rudder (brake) pedal was attributed to a missing retainer ring; these retainer rings hold the rudder (brake) pedal bearing in place. A missing retainer ring on either the pilot's or first officer's rudder (brake) pedal assembly could result in a loose rudder (brake) pedal, which could result in reduced braking authority and reduced directional control of the airplane while it is on the ground.

Fokker has issued Service Bulletin SBF100–27–047, Revision 1, dated February 9, 1993, that describes procedures for a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings. The service bulletin also describes procedures for installation of a retainer ring, if the retainer ring is missing or installed incorrectly. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 92–087, dated September 25, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings, and the installation of a retainer ring if the retainer ring is missing or installed incorrectly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 65 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,575, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–78–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11407, inclusive, 11409, and 11410; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced braking authority and reduced directional control of the airplane while it is on the ground, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct an inspection of the rudder (brake) pedal assemblies, to verify installation of retainer rings, part number (P/N) MS16624–1075, in accordance with Fokker Service Bulletin SBF100–27–047, Revision 1, dated February 9, 1993.

(1) If all of the retainer rings are installed correctly, no further action is required by this AD.

(2) If any retainer ring is not installed, or is not installed correctly, prior to further flight, install retainer ring, P/N MS16624–1075, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15681 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 412

Trade Regulation Rule: Discriminatory Practices in Men's and Boys' Tailored Clothing Industry

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: The Federal Trade Commission announces its intention to begin a rulemaking proceeding for the trade regulation rule concerning discriminatory promotional allowances in the men's and boys' tailored clothing industry ("Tailored Clothing Rule" or "Rule"). The proceeding will consider whether the Tailored Clothing Rule should remain in effect without changes or should be repealed. The Commission has not relied on the Tailored Clothing Rule in recent years and believes that the circumstances underlying the Rule may have changed. In addition, the Commission recently promulgated revised guidelines on the subject of promotional allowances that may better reflect the requirements of the Robinson-Patman Act. Accordingly, this industry-specific rule may no longer serve a useful purpose. The Commission invites public comment on how the Tailored Clothing Rule currently affects manufacturers, retailers, consumers, and others.

Because the Rule contains no information collection requirements, the Commission is not specifically seeking comments on whether the Rule imposes unnecessary recordkeeping and disclosure requirements within the meaning of the Paperwork Reduction Act.

DATES: Written comments will be accepted until August 2, 1993.

ADDRESSES: Written comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be captioned "NPR Comment—Tailored Clothing Rule."

FOR FURTHER INFORMATION CONTACT: Neil Averitt, Esq., Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580 (202) 326–2885.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is published pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.;* the Robinson-Patman Act, 15 U.S.C. 13; the provisions of Part 1, Subpart C of the Commission's Rules of Practice, 16 CFR 1.21 *et seq.;* and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

This authority permits the Commission to promulgate, modify and repeal rules that define methods of competition that are unfair within the meaning of section 5(a)(1) of the FTC Act, including methods of competition that would also violate the Robinson-Patman Act.

The Tailored Clothing Rule states that promotional allowances to sellers of men's clothing will be presumed not to have been on a proportionately equal basis unless they are made in accordance with the terms of a written plan that has been supplied to all the competing sellers. The Rule was adopted on October 18, 1967, and became effective on April 1, 1968.

Part B—Objectives and Analysis

The objective of this rulemaking proceeding is to determine whether the Commission's Tailored Clothing Rule should be repealed. In this connection the Commission seeks evidence as to whether this industry-specific rule is a useful and efficient means of law enforcement. At least preliminarily, it does not appear that the Tailored Clothing Rule has been of significant value. The Commission also notes that, subsequent to the initial publication of the Tailored Clothing Rule, it published general guidelines on the subject of discriminatory promotional allowances. See Guides for Advertising Allowances and Other Merchandising Payments and Services (the "Fred Meyer Guides"), 16 CFR part 240. These new guidelines may have further diminished the need for industry-specific rules.

The Commission seeks evidence on the question of whether there are benefits from the Tailored Clothing Rule, and, if so, whether those benefits are greater than its costs, in order to assist in reaching a determination on this matter.

The Commission is undertaking this rulemaking proceeding as part of its ongoing program of evaluating trade regulation rules to determine their current effectiveness and impact. Based on the information currently in its possession, the Commission believes that the Tailored Clothing Rule no longer serves the public interest and should be repealed.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Rule or leaving it in effect in its present form.

Part D—Requests for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Tailored Clothing Rule. A comment that includes the reasoning or basis for a proposition is likely to be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted along with the comments. The issues identified in the list below are intended as suggestions and should not be construed as a limitation on the issues or on the scope of public comment.

Questions

(1) In light of experience, is it reasonable to presume that allowances are improper if they are not made pursuant to a written plan?

(2) Have changing technologies or evolving business practices brought new methods of communicating with retailers—other than through a written plan—that clothing manufacturers might prefer to use if they were free to do so?

(3) Do members of the men's and boys' tailored clothing industry refer to the present Rule for guidance on avoiding discriminatory promotional allowances?

(4) Is there a need for guidance that is specific to the tailored clothing industry, or could sufficiently useful guidance be found in the more general Fred Meyer Guides?

(5) What are the costs and benefits of the Tailored Clothing Rule?

(6) Should the Rule be kept in effect or should it be repealed?

Communications with Commissioners' offices

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the treatment described in this paragraph. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, other than oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any responsive oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any responsive oral communications relating to such oral communications.

Part E—Initial Regulatory Flexibility Analysis

The following discussion constitutes the Commission's Initial Regulatory Analysis of the proposed repeal pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Act requires an analysis of the anticipated impact of the proposed Rule repeal on small business. The analysis must contain, as applicable, a description of the reasons why action is being considered; the objectives of and legal basis for the proposed rule change; the class and number of small entities affected; the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and existing federal rules which may duplicate, overlap or conflict with the proposed rule; and any significant alternatives to the proposed rule that may accomplish its objectives and, at the same time, minimize its impact on small entities.

The reasons why action is being considered and the objectives of and legal basis for the proposed repeal of the Rule have been explained elsewhere in this Notice.

The Commission believes that repealing the Tailored Clothing Rule will not have any meaningful impact on small business. The Commission has not applied the Rule in recent years, and as a practical matter it is likely that firms have looked to the Fred Meyer Guides for guidance on the question of providing written plans for promotional allowances. The guidance offered by the Fred Meyer Guides concerns the same statutory provisions as the Rule, and for that reason it is unlikely that repeal of the Rule will have significant impact. Thus it is unlikely that repeal of the Rule will affect small entities.

Repeal of the Rule will remove any reporting, recordkeeping or other compliance requirements of the Rule.

The Commission is not aware of any existing federal rules that would conflict with, duplicate, or overlap the proposed repeal of the Rule.

The only significant alternative to repeal of the Rule is to keep it in its present form. For the reasons stated above, however, the Rule no longer appears to serve a useful purpose. Under these circumstances, keeping the Rule may be contrary to the interests of efficient public administration.

Part F—Paperwork Reduction Act

The Tailored Clothing Rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Part G—Preliminary Regulatory Analysis

The Commission does not believe that repeal of the Tailored Clothing Rule will have an economic impact sufficiently large to require a final regulatory analysis as described in section 22 of the Federal Trade Commission Act, 15 U.S.C. 57b–3.

Part H—Proposed Repeal of Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41 *et seq.*; the Robinson-Patman Act, 15 U.S.C. § 13; the provisions of Part 1, Subpart C of the Commission's Procedures and Rules of Practice, 16 CFR 1.21 *et seq.*; and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, has initiated a proceeding for the repeal of the trade regulation rule concerning promotional allowances in the men's and boys' tailored clothing industry.

List of Subjects in 16 CFR Part 412

Advertising, Trade practices, Clothing, Promotional allowances, Unfair methods of competition.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–15548 Filed 7–1–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5

[Notice No. 773]

Standards of Fill

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ATF is considering amending the regulations prescribing standards of fill for wine and distilled spirits. Recently, ATF has received three petitions to amend the regulations to authorize new sizes for distilled spirits containers. Due to the concerns raised by these petitions, ATF wishes to solicit comments on whether the existing standards of fill for distilled spirits and wine containers should be retained, revised, or eliminated.

DATES: Written comments must be received on or before August 31, 1993.

ADDRESSES: Comments must be submitted to the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221. Attn: Notice No. 773.

FOR FURTHER INFORMATION CONTACT: Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations relating to the "size and fill" of alcoholic beverage containers "as will prohibit deception of the consumer with respect to such products or the quantity thereof * * *" Historically, it has been ATF's position that standards of fill for distilled spirits and wine containers are necessary, and that without such

standards there would be a proliferation of bottle sizes, as well as an increase in the number of bottle sizes that are similar in size and shape, possibly resulting in consumer confusion and deception. Under current regulations, there are no standards of fill prescribed for malt beverages. Unlike wine and distilled spirits, malt beverage containers have been fairly well standardized; consequently, there appears to be little likelihood of consumer confusion or deception in this area.

Accordingly, ATF has prescribed metric standards of fill for wine in 27 CFR 4.73(a) as follows:

3 liters
1.5 liters
1 liter
750 milliliters
500 milliliters
375 milliliters
187 milliliters
100 milliliters
50 milliliters

Section 4.73(b) permits the bottling of wine in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

Likewise, metric standards of fill are prescribed for all containers of distilled spirits in 27 CFR 5.47a(a) as follows: (1) For containers other than cans described in paragraph (a)(2) of this section—

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

(2) For metal containers which have the general shape and design of a can, which have a closure which is an integral part of the container, and which cannot be readily reclosed after opening—

355 milliliters
200 milliliters
100 milliliters
50 milliliters

When ATF established the authorized metric standards of fill for wine (T.D. ATF–12, December 31, 1974, 39 FR 45216), and distilled spirits (T.D. ATF–25, March 10, 1976, 41 FR 10217), one of the reasons given was to facilitate international trade, for exported as well as imported products, by using internationally recognized, accepted, and consistent sizes. Since then the regulations have been amended several times, resulting in the addition of the 50 ml and 500 ml standards of fill for wine (T.D. ATF–76, January 7, 1981, 46 FR 1725, and T.D. ATF–303, October 23, 1990, 55 FR 42710), the 100 ml and 375 ml standards of fill for distilled spirits (T.D. ATF–146, September 23, 1983, 48 FR 43319), and the 355 ml size for cans of distilled spirits (T.D. ATF–326, July 14, 1992, 57 FR 31126).

The 355 ml size is equivalent to the standard 12 fluid ounce container. In 1986, the regulations were amended to eliminate the 500 ml standard of fill for distilled spirits products bottled or imported after June 30, 1989 (T.D. ATF–228, May 1, 1986, 51 FR 16167).

ATF has recently received three petitions requesting that the standard of fill regulations for distilled spirits products be amended to include four sizes which are used in various other countries. The petitioners take the position that the existing standards of fill are actually operating as impediments to international trade.

Cuba Libre Products, Inc. has requested that the regulations be amended to authorize a 296 ml standard of fill for ready-mixed distilled spirits cans. 296 ml is the equivalent of 10 fluid ounces. Cuba Libre argues that the 296 ml can contains two standard servings of their rum and cola product, and that other sizes would not be appropriate for a product which is intended to be consumed upon opening. Cuba Libre currently markets a rum and cola product in Europe and Latin America in a 296 ml can.

Tailor Made Import Distributors has requested that the regulations be amended to reinstate the 500 ml standard of fill for distilled spirits bottles.

Tailor Made wishes to import distilled spirits products from Ukraine and other states in the former Soviet Union, and they state that the only bottles available on a commercially viable level in the Commonwealth of Independent States (CIS) are 500 ml bottles. Tailor Made feels that the current standard of fill requirements constitute an impediment to trade between the United States and the states in the former Soviet Union.

Finally, ATF received a petition from the Corporacion de Exportaciones Mexicanas, S.A. (CEMSA), a Mexican importer. CEMSA requests that the distilled spirits regulations be amended to authorize two new sizes which are currently in use in Mexico: the 680 ml bottle and the 946 ml bottle.

Although the petitions merely requested an amendment of the standards of fill requirements for distilled spirits, ATF believes that it is appropriate to also address the larger issue of retaining or eliminating the standard of fill requirements for distilled spirits and wine. The interest expressed in increasing the number of authorized standard sizes for distilled spirits containers is likely to result in future requests for the recognition of additional standard sizes for wines and distilled spirits.

A common theme in the three petitions is the argument that the current standard of fill regulations are standing in the way of international trade between the United States and countries which have different standard container sizes. It has been suggested that it would not be commercially feasible for producers of distilled spirits products in these countries to invest in new bottling equipment so as to comply with U.S. standard of fill requirements. Thus, the petitioners argue that the addition of new standard container sizes would facilitate international trade.

The issues raised by the three petitions are not new. In 1987, ATF issued an advance notice of proposed rulemaking (Notice No. 633, June 24, 1987, 52 FR 23685), which solicited general comments on whether the existing standard of fill requirements should be retained. That advance notice was in response to a petition from the Washington State Liquor Control Board to amend the regulations to allow the gray market (parallel) importation of distilled spirits not bottled in an authorized metric standard of fill as long as the bottles were labeled with certain additional information. The vast majority of the commenters favored retaining the existing standards of fill, and in Notice No. 696 (February 6, 1990, 55 FR 3980), ATF announced that it was withdrawing Notice No. 633.

Furthermore, the issue of the 500 ml standard of fill for distilled spirits has already been the subject of rulemaking by ATF. When this size was eliminated by T.D. ATF–228, one of the reasons given was to prevent the proliferation of different sizes which might be deceptively similar to the consumer. The comments received by ATF were overwhelmingly in favor of the elimination of the 500 ml size, and there were reports of consumer confusion between the 375 ml and 500 ml sizes, because of the closeness in fill and bottle shape between the two sizes. However, the petition from Tailor Made argues that the 500 ml size should be reinstated, in order to facilitate trade between the United States and the former Soviet states.

Although ATF has addressed many of these issues in recent rulemaking projects, the petitioners argue that changing world economic conditions merit the reconsideration of ATF's longstanding policy on standards of fill. Thus, ATF has been asked to amend the

VOL 58 ISS 126 JL 2 1993 UMI

regulations to reinstate the 500 ml standard of fill for distilled spirits containers, and to authorize three new sizes for distilled spirits containers: a 296 ml can, a 680 ml bottle and a 946 ml bottle.

ATF recognizes that the existing standards of fill may cause some difficulties for importers who wish to bring in distilled spirits from countries where the standard bottle sizes differ from the sizes used in the United States. However, the purpose of the regulations is to prevent consumer deception with respect to these products. The rationale for the original metric scheme was based on approximating customary U.S. sizes for distilled spirits containers. The sizes reflected round measurements and encouraged simplification. In order to prevent consumer deception, size variations were apparent and distinct. The addition of more odd sizes with less distinction between them would undermine the policy of maintaining sufficient separation of container sizes to prevent consumer deception.

However, in view of the petitioners' arguments that changing economic conditions necessitate a change in the standard of fill regulations, ATF wishes to solicit comments on the following questions:

(1) Should the existing standards of fill for distilled spirits and wine be retained, and if so, why?

(2) If the standards of fill are retained, should the regulations be amended to expand the authorized standards of fill to include a 296 ml can, a 500 ml bottle, a 680 ml bottle, and a 946 ml bottle size for distilled spirits products?

(3) Should ATF eliminate the existing standards of fill for wine and distilled spirits products, in favor of allowing marketing practices and consumer preferences to dictate container sizes? Have changes in the world economy necessitated such an action?

(4) If standards of fill are abolished, should the regulations impose any additional labeling requirements in order to prevent consumer confusion which might result from the possible proliferation of bottle and can sizes?

In addition to the above questions, ATF is soliciting comments on any other suggestions or alternatives relating to the issue of standards of fill for wine and distilled spirits.

Public Participation

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. All comments submitted in response to this notice will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, NW., Washington, DC. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

The principal author of this document is Gail Hosey of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority

This advance notice of proposed rulemaking is issued under the authority in 27 U.S.C. 205.

Signed: June 3, 1993.

Stephen E. Higgins,

Director.

Approved: June 17, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–15652 Filed 7–1–93; 8:45 am]

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DEPART

Farmers

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AGENCY:
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SUMMARY
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Notices

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Outreach and Assistance Grants for Socially Disadvantaged Farmers and Ranchers

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) is requesting grant proposals for outreach and assistance grants to assist socially disadvantaged farmers and ranchers. This action is being taken to reverse the decline of socially disadvantaged farmers and ranchers in agriculture. The intended outcome is to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms, participate in agricultural programs, and become an integral part of the agricultural community.

DATES: Proposals will be accepted until August 1, 1993.

ADDRESSES: Submit proposals to Farmers Home Administration, Special Programs Units, Office of the Deputy Administrator for Program Operations, room 4923, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Pickinpaugh, 202–720–0358 for program information or the Budget Division of the Farmers Home Administration on 202–720–9593 for fiscal or budget information.

Comparison With Other Notices

This Notice replaces a Notice published in the **Federal Register** on February 23, 1993, at 58 FR 11172, by the Extension Service of the United States Department of Agriculture. Responsibility and funding for the subject grant program has been transferred from the Extension Service to FmFA. Those interested in applying for this grant program should be guided solely by this **Federal Register** Notice in preparing their grant proposal. FmHA has made several changes to the scope and qualifications for FY 93 grants.

Program Description

(a) Purpose

Proposals are requested for fiscal year 1993 under the Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers. Competitive grants will be awarded to assist eligible organizations and institutions to develop five-year plans for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The authority for this Program is contained in section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 2279.

The program is administered by the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA). Assistance under the program should include information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

(b) Available Funding

For fiscal year 1993, $1 million is available for this program. Individual grants will be awarded in amounts based on the documentation and justification contained in each proposal and agreed upon by the Farmers Home Administration. Future funding is subject to Appropriations. Funding by FmHA of a grant to develop a five-year outreach plan under this Program does not ensure or guarantee funding over the next five years regardless of Appropriations.

(c) Eligibility

Proposals are invited from any community-based organization that: (1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers and ranchers; (2) provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance; and (3) does not engage in activities prohibited under section 501(c)(3) of the Internal Revenue Code of 1986. Proposals are also invited from 1890 Land-Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions, and other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged family farmers and ranchers in their region. In addition to the above, an applicant must qualify as a responsible applicant in order to be eligible for a grant award under the Program. To qualify as responsible, an applicant must meet the following standards:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through sub-agreement(s));

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(4) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

(6) For entity applicants, the majority interest of the entity must be held by socially disadvantaged individuals. For an individual applicant, the applicant must be a member of a Socially disadvantaged group.

(d) Definitions

For the purpose of awarding grants under this Program, the following definitions are applicable.

(1) "Agricultural programs" means those activities established or authorized by: the Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic

Allotment Assistance Act; and the Food Security Act of 1985;

(2) "Awarding official" means the Administrator of the Farmers Home Administration;

(3) "Grant" means the award by the Administrator to assist grantee to assist eligible organizations and institutions for the purpose of developing five-year plans to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs;

(4) "Grantee" means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded;

(5) "Peer review panel" means the appropriate employees of the U.S. Department of Agriculture;

(6) "Project" means the particular activity within the scope of the Program as identified herein;

(7) "Project director" means the individual who is responsible for technical direction of the project, as designated by the grantee in the grant proposal and approved by the Administrator;

(8) "Project period" means the total time approved by the Administrator for conducting the proposed project as outlined in an approved grant proposal or the approved portions thereof;

(9) "Socially disadvantaged farmer or rancher" means a farmer or rancher who is a member of a socially disadvantaged group; and

(10) "Socially disadvantaged group" means a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. FmHA has identified socially disadvantaged groups to consist only of Blacks, Women, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

Proposal Preparation

(a) Proposal Cover Page

(1) Title of Proposal.

The title of the proposal must be brief (80-character maximum) yet represent the major thrust of the project.

(2) Other information.

Also include the following information on the proposal cover page:

(a) Name, address, telephone and fax numbers of applicant and project director.

(b) Signatures and date. The cover page must contain the original signatures of the Project Director and the Authorized Organizational Representative who possesses the necessary authority to commit the entity's time and other relevant resources.

(b) Project Summary

Each proposal must contain a project summary which may not exceed 2 pages in length. The project summary should contain the following:

(1) Brief summary of the needs of socially disadvantaged farmers and ranchers in the area to be served to enhance their ability to participate in agricultural programs;

(2) A brief description of the steps necessary to develop a 5-year plan;

(3) Goal of the 5-year plan and overall project goal(s) and supporting objectives; and

(4) Relevance and/or significance of the 5-year plan to enhancing the participation of socially disadvantaged farmers and ranchers in agriculture.

(c) Project Description

The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 pages and must contain the following components:

(1) Introduction: A clear statement of the goal(s) and supporting objectives of the proposed project should preface the project description.

(2) Background and Existing Situation: Provide a detailed description giving rise to the need to develop a 5-year plan to assist socially disadvantaged farmers and ranchers.

(3) Objectives: The objectives of developing a 5-year plan should be clear, complete, and logically arranged statements. The statements should detail the major steps necessary to develop the plan with specific milestones and planned accomplishments. The objectives should contain details of how the accomplishments will advance the goal for assisting socially disadvantaged farmers and ranchers in obtaining information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

(4) Procedures: Describe the step necessary to develop a 5-year plan including the methods or plan of action to attain the stated objectives.

(5) Evaluation: Give specific evaluation objectives including impact factors and indicators of effectiveness and efficiency in accomplishing objectives.

(d) Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractual arrangements with other entities, the applicant must identify the collaborator/subcontractor and provide a full explanation of the nature of the relationship.

(e) Budget

A budget and a detailed narrative in support of the budget is required. Show all funding sources and itemize costs by the following line items: Personnel costs, equipment, material and supplies, travel and all other costs. Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation, the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

The budget should include only those costs associated with developing the 5-year plan. The proposal should also include estimated budgets for each year of the five year plan based upon anticipated costs. Acceptance by FmHA of the proposal to develop a five-year plan does not ensure or guarantee future funding of the plan.

(f) Social Make of Applicant

Applicants should provide a certification of the social makeup of all members of the applicant/applicant entity including name, gender, race and national origin. For applicant entities, also include the interests held by each member.

Proposal Submission

(a) What To Submit

An original and two copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

(b) Where and When to Submit

Proposals submitted through regular mail must be postmarked by August 1, 1993, and sent to the address below. Hand-delivered proposals must be submitted by August 1, 1993, to an express mail or courier service or brought to the following address: Farmers Home Administration, Special Programs Unit, Office of Deputy Administrator for Program Operations, room 4923, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Proposal Review, Evaluation, and Disposition

(a) Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All accepted proposals will be reviewed by a peer review panel and recognized specialists in the areas covered by the proposals received. The peer review panel will be selected and organized to provided maximum expertise and objective judgment in the evaluation of proposals. Proposals will be ranked and support levels will be recommended by the panel(s) within the limitation of total funding available in fiscal year 1993.

(b) Evaluation Criteria

In evaluating the proposal, the peer review panel will take into account the degree to which the proposal demonstrates the following:

(1) Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project. (30 Points)

(2) Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, and other essential information to enhance participation of agricultural programs and conducting a successful farming operation. (20 Points)

(3) Adequacy, soundness and appropriateness of the approach to the solution of the problem. (20 Points)

(4) Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. (20 Points)

(5) Originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. (10 Points)

(c) Proposal Disposition

When the peer review panel has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel, will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review, or low evaluation score. USDA reserves the right to negotiate with the Project Director and/or the submitting entity regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to recommending any project for funding. A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

SUPPLEMENTARY INFORMATION:

(a) Grant Awards

Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines. The date specified by the awarding official as the beginning of the project period shall be not later than September 30, 1993. All funds granted under the Program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of any resulting awards, the applicable Federal cost principles, and the Department's Federal assistance regulations. Funds for FY 93 are limited to proposals to develop five-year plans for outreach technical assistance to socially disadvantaged farmers or ranchers.

(b) Obligation of the Federal Government

Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to provide further support of a project or any portion thereof. Acceptance by FmHA of any proposal pursuant to this Program does not ensure further support of a project or any portion thereof. FmHA reserves the right to provide preference to recipients of grants under this program in future outreach and technical assistance proposals for socially disadvantaged farmers or ranchers. FmHA also reserves the right to accept future proposals from applicants to provide outreach and technical assistance proposals for socially disadvantaged farmers or ranchers without regard to their participation in any grant under this Program.

(c) Other Applicable Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review or grants awarded under the Program. These include, but are not limited to the following: 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act; 7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection; 7 CFR part 1.1—USDA implementation of the Freedom of Information Act; 7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964; 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance; 7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans; 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and 35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

The reporting and record keeping requirements contained in this notice have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0156. Public reporting burden for this collection of information is estimated to average 4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIR, room 404–W, Washington,

VOL 58 ISS 126 JL 2 1993 UMI

DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0575–0156), Washington, DC 20503.

Done at Washington, DC, on June 24, 1993.

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–15741 Filed 7–1–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Carolyn F. Holton or Patricia W. Stroup, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: June 25, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments	44.4¢/lb	44.4¢/lb.
Canada	Export Assistance on Certain Types of Cheese	27.8¢/lb	27.8¢/lb.
Denmark	EC Restitution Payments	57.9¢/lb	57.9¢/lb.
Finland	Export Subsidy	104.3¢/lb	104.3¢/lb.
France	EC Restitution Payments	63.5¢/lb	63.5¢/lb.
Germany	EC Restitution Payments	71.1¢/lb	71.1¢/lb.
Greece	EC Restitution Payments	0.0¢/lb	0.0¢/lb.
Ireland	EC Restitution Payments	52.6¢/lb	52.6¢/lb.
Italy	EC Restitution Payments	54.8¢/lb	54.8¢/lb.
Luxembourg	EC Restitution Payments	44.4¢/lb	44.4¢/lb.
Netherlands	EC Restitution Payments	45.8¢/lb	45.8¢/lb.
Norway	Indirect (Milk) Subsidy	18.0¢/lb	18.0¢/lb.
	Consumer Subsidy	39.9¢/lb	39.9¢/lb.
		57.9¢/lb	57.9¢/lb.
Portugal	EC Restitution Payments	41.8¢/lb	41.8¢/lb.
Spain	EC Restitution Payments	42.2¢/lb	42.2¢/lb.
Switzerland	Deficiency Payments	151.2¢/lb	151.2¢/lb.
U.K.	EC Restitution Payments	38.2¢/lb	38.2¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 93–15758 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 921067–3144; I.D. 052093A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the commercial fisheries for king and Spanish mackerel.

SUMMARY: This notice announces that anyone entering the commercial fisheries for king and Spanish mackerel in the exclusive economic zone off the Atlantic coastal states south of the New York/Connecticut border and off the Gulf of Mexico coastal states after July

2, 1993, may not be assured of future access to the fishery if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) that limits the number of participants in the fishery. This notice is intended to promote awareness of potential eligibility criteria for access to the commercial fisheries for king and Spanish mackerel and to discourage new entries into the fisheries based on economic speculation while the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) contemplate whether and how access to the commercial fisheries for king and Spanish mackerel should be controlled. This announcement does not prevent establishment of any other date for eligibility in the fisheries or another method of controlling fishing effort from being proposed by the Councils or being implemented by the Secretary of Commerce (Secretary).

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources, including king and Spanish mackerel, are managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, prepared by the Councils, and its implementing regulations at 50 CFR part 642 under the authority of the Magnuson Act.

The Councils are considering a limited access system for the commercial king and Spanish mackerel fisheries. The Councils voted to establish July 2, 1993, as a control date for new entrants into the commercial king and Spanish mackerel fisheries and requested that a notice be published in the **Federal Register** announcing that anyone entering the commercial king and Spanish mackerel fisheries after the control date will not be assured of future participation if the Councils develop, and the Secretary approves and implements, an effort-controlled fishery management regime limiting the number of participants in the fisheries. The Councils may evaluate participation in the fishery by documentation of landings of king and Spanish mackerel prior to the control date.

In establishing a control date and making this announcement, the Councils intend to discourage speculative entry into the commercial king and Spanish mackerel fisheries while the Councils discuss possible limited entry or access-controlled management regimes for the fisheries. As the Councils consider a limited entry or access-controlled management regime, certain fishermen who do not currently fish for king or Spanish mackerel, and never have done so, may decide to enter the fisheries for the sole purpose of establishing a record of making commercial landings. In the absence of a control date, such a record generally may be considered indicative of economic dependence on the fisheries. On this basis, such fishermen may lay claim to access to a king or Spanish mackerel fishery that the Councils may intend to be limited to traditional participants. New fishery entrants subsequent to the establishment of any limited entry or access-controlled system may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant subsequent to establishment of a limited entry or access-controlled system.

When management authorities begin to consider use of a limited access management regime, speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully or overdeveloped. Those seeking possible windfall gain from a potential management change can exacerbate the original problems. To help distinguish *bona fide* and established king and Spanish mackerel fishermen from speculative entrants to the fisheries, a control date may be set before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering the fisheries after that date will not necessarily assure them of future access to the fishery resources on grounds of previous participation.

This establishment of a control date does not commit the Councils or the Secretary to any particular management regime or criterion for entry into the commercial king and Spanish mackerel fisheries. Fishermen are not guaranteed future participation in the fisheries regardless of their date of entry or intensity of participation in the fisheries before or after the control date. The Councils may subsequently choose a different control date, or they may choose a management regime that does not make use of such a date. The Councils are free to apply other qualifying criteria for fishery entry. The Councils may give varying considerations to fishermen in the fisheries before and after the control date. Finally, the Councils may choose to take no further action to control entry or access to the fisheries.

Dated: June 28, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–15660 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 2, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agency listed:

Commissary Shelf Stocking, Custodial and Warehousing, Barksdale Air Force Base, Louisiana

Food Service Attendant, Portland Air National Guard Base, Portland, Oregon

Janitorial/Custodial, Auke Bay Station Post Office, 11899 Glacier Highway, Auke Bay, Alaska

Janitorial/Custodial, Douglas Station Post Office, 904 Third Street, Douglas, Alaska

Janitorial/Custodial, Naval and Marine Corps Reserve Center, 615 Kenhorst Boulevard, Reading, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15749 Filed 7–1–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 2, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 23, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notice (58 FR 21706) of proposed addition to the Procurement List.

Comments were received from a subcontractor to the current contractor for this service. The subcontractor claimed that the addition of this service to the Procurement List would have a significant impact on it when combined with another service recently added for which the firm was the current contractor. The subcontractor claimed that removal of the service from the competitive bidding system would also cause 30 of its employees, most of whom are heads of households, to lose their jobs. Additionally, the subcontractor's employees wrote to the Committee expressing their concerns about losing their jobs as the result of the Committee's action.

The contracting activity has informed the Committee that this service will be offered for contracting with a minority firm under the Small Business Administration's 8(a) program if it is not included under the Committee's program. Consequently, the subcontractor would not receive the contract for this service regardless of the Committee's decision on this proposal.

Moreover, the Committee's statute requires nonprofit agencies providing commodities and services to the Government under its authority to employ people with severe disabilities for an overall total of at least 75% of the direct labor hours required to provide commodities and services to the Government and its other customers. A nonprofit agency has little choice about displacing workers without severe disabilities to meet this requirement.

The purpose of the Committee's program is to create employment for people with severe disabilities. These people have unemployment rates exceeding 65%. They are considerably less likely than the subcontractor's employees to secure other employment. Consequently, the Committee considers the creation of employment for people with severe disabilities through the addition of this service to the Procurement List to outweigh the possibility that the subcontractor's employees will not find comparable employment.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Joseph P. Addabbo Federal Building, Jamaica Avenue and Parsons Boulevard, Jamaica, New York

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15748 Filed 7–1–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 2, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 5, April 23, May 7 and 14, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 12580, 21706, 27272 and 28564) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bandage, Gauze

6510–00–582–7992

Gloves, Cloth, Cotton

8415–00–964–4615

8415–00–964–4760

8415–00–964–4925

Services

Janitorial/Custodial, Federal Building, Fairbanks, Alaska

Janitorial/Custodial S.E., Federal Center, Building 216, M Street, S.E. Washington, DC

Janitorial/Custodial, Federal Building and U.S. Courthouse, 2 South Main Street, Akron, Ohio

Mailroom Operation U.S. Army Corps of Engineers, Robert Duncan Plaza, 333 1st Avenue, U.S. Custom House, 220 N.W. 8th Avenue, Portland, Oregon

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15747 Filed 7–1–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 170. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 170 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

VOL 58 ISS 126 JL 2 1993 UMI

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	M&IE rate (B)=	Maximum per diem rate (C)	Effective date
Alaska:				
Adak [5]	$10	$34	$44	10–01–91
Anaktuvuk Pass	83	57	140	12–01–90
Anchorage:				
05–15–09–15	174	71	245	05–15–93
09–16–05–14	81	66	147	12–01–92
Aniak	73	36	109	07–01–91
Atqasuk	129	86	215	12–01–90
Barrow	86	73	159	06–01–91
Bethel	82	64	146	01–01–93
Bettles	65	45	110	12–01–90
Cold Bay	110	54	164	07–01–93
Coldfoot	95	59	154	10–01–92
Cordova	66	77	143	12–01–92
Craig	67	35	102	07–01–91
Dillingham	76	38	114	12–01–90
Dutch Harbor-Unalaska	113	67	180	05–01–92
Eielson AFB:				
05–15—09–15	100	66	166	05–15–93
09–16—05–14	65	67	132	12–01–92
Elmendorf AFB:				
05–15—09–15	174	71	245	05–15–93
09–16—05–14	81	66	147	12–01–92
Emmonak	72	54	126	06–01–93
Fairbanks:				
05–15—09–15	100	66	166	05–15–93
09–16—05–14	65	67	132	12–01–92
False Pass	80	37	117	06–01–91
Ft. Richardson:				
05–15—09–15	174	71	245	05–15–93
09–16—05–14	81	66	147	12–01–92
Ft. Wainwright:				
05–15—09–15	100	66	166	05–15–93
09–16—05–14	65	67	132	12–01–92
Homer:				
05–01—09–30	71	60	131	05–01–93
10–01—04–30	53	62	115	12–01–92
Juneau:				
05–01—10–01	88	74	162	05–01–92
10–02—04–30	75	73	148	01–01–92
Katmai National Park	89	59	148	12–01–90
Kenai-Soldotna:				
04–02—09–30	94	68	162	04–02–93
10–01—04–01	57	66	123	12–01–92
Ketchikan:				
05–14—10–14	90	77	167	06–01–93
10–15—05–13	68	75	143	10–15–93
King Salmon [3]	75	59	134	12–01–90
Klawock	75	36	111	07–01–91
Kodiak	71	61	132	01–01–92
Kotzebue	133	87	220	05–01–93
Kuparuk Oilfield	75	52	127	12–01–90
Metlakatla	79	44	123	07–01–91
Murphy Dome:				
05–15—09–15	100	66	166	05–15–93
09–16—05–14	65	67	132	12–01–92
Nelson Lagoon	102	39	141	06–01–91
Noatak	133	87	220	05–01–93
Nome	71	58	129	01–01–93
Noorvik	133	87	220	05–01–93
Petersburg	72	64	136	05–01–92
Point Hope	99	61	160	12–01–90
Point Lay [6]	106	73	179	12–01–90
Prudhoe Bay-Deadhorse	64	57	121	12–01–90
Sand Point	75	36	111	07–01–91
Seward:				
05–01—09–30	107	53	160	05–01–92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	M&IE rate (B)=	Maximum per diem rate (C)	Effective date
10–01—04–30	61	48	109	01–01–92
Shungnak	133	87	220	05–01–93
Sitka-Mt. Edgecombe	72	69	141	01–01–92
Skagway:				
05–14—10–14	90	77	167	06–01–93
10–15—05–13	68	75	143	10–15–93
Spruce Cape	71	61	132	01–01–92
St. George	100	39	139	06–01–91
St. Mary's	77	59	136	06–01–93
St. Paul Island	81	34	115	12–01–90
Tanana	71	58	129	01–01–93
Tok:				
04–21—10–31	60	58	118	06–01–93
11–01—04–20	48	57	105	11–01–93
Umiat	97	63	160	12–01–90
Valdez:				
05–01—09–01	98	53	151	05–01–93
09–02—04–30	82	70	152	12–01–92
Wainwright	90	75	165	12–01–90
Walker Lake	82	54	136	12–01–90
Wrangell:				
05–14—10–14	90	77	167	06–01–93
10–15—05–13	68	75	143	10–15–93
Yakutat	70	40	110	12–01–90
Other[3, 4, 6]	63	48	111	01–01–93
American Samoa	85	47	132	12–01–91
Guam	155	75	230	05–01–93
Hawaii:				
Island of Hawaii: Hilo	73	61	134	06–01–93
Island of Hawaii: Other	80	71	151	06–01–93
Island of Kauai				
04–01—11–30	110	75	185	06–01–93
12–01—03–31	122	76	198	12–01–93
Island of Kure[1]		13	13	12–01–90
Island of Maui				
04–01—11–30	79	71	150	06–01–93
12–01—03–31	96	73	169	12–01–93
Island of Oahu	105	62	167	06–01–93
Other	79	62	141	06–01–93
Johnston Atoll[2]	20	20	40	10–01–92
Midway Islands[1]		13	13	12–01–90
Northern Mariana Islands:				
Rota	68	55	123	01–01–93
Saipan	100	69	169	01–01–93
Tinian	50	55	105	01–01–93
Other	20	13	33	12–01–90
Puerto Rico:				
Bayamon:				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92
Carolina:				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92
Fajardo (including Luquillo):.				
04–16—12–14	90	57	147	08–01–92
12–15—04–15	134	61	195	12–15–92
Ft. Buchanan (incl GSA Serv Ctr, Guaynabo):.				
04–16—12–14	93	67	160	08–01–92
12–15–04–15	116	69	185	12–15–92
Mayaguez	85	65	150	08–01–92
Ponce	106	65	171	08–01–92
Roosevelt Roads:				
04–16—12–14	90	57	147	08–01–92
12–15—04–15	134	61	195	12–15–92
Sabana Seca:				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92

VOL 58 ISS 126 JL 2 1993 UMI

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	M&IE rate (B)=	Maximum per diem rate (C)	Effective date
San Juan (incl San Juan Coast Guard Units):.				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92
Other	63	52	115	08–01–92
Virgin Islands of the U.S.:				
05–02—12–15	100	68	168	08–01–92
12–16—05–01	144	73	217	12–16–92
Wake Island[2]	4	17	21	12–01–90
All Other Localities	20	13	33	12–01–90

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

ADaily Rate:
DOD Personnel—$13
Non-DOD Personnel—$30

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15711 Filed 7–1–93; 8:45 am]

BILLING CODE [illegible]

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, 21–22 July 1993.

ADDRESSES: The meeting will be held at Bldg 216, Conference Room 2020 A&B at the Naval Research Laboratory, 4555 Overlook Avenue, SW., Washington, DC 20375–5000.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. app. II Sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. Sec. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15706 Filed 7–1–93; 8:45 am]

BILLING CODE [illegible]

Office of the Secretary of Defense

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, July 14, 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military

Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 29, 1993.

L. M. Bynum,

Alternate, OSB Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15707 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and OMB Control Number: Notice to Mariners Marine Information Report and Suggestion Sheet, HTC Form 8260–3 OMB Control Number 0704–0211

Type of Request: Expedited Processing; approval date requested: 30 days following publication in the Federal Register

Number of Respondents: 520

Responses per Respondent: 1

Annual Responses: 520

Average Burden per Response: 15 minutes

Annual Burden Hours: 130 hours

Needs and uses: This form is used for gathering information or collecting data to be reviewed and checked by Information Processing Operations, a part of the Information Service Operation to fulfill our mission in marine safety. It is supplied by mariners, as needed, to keep marine information products and services up to date for navigational safety.

Affected Public: Businesses of other for-profit and Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

Dod Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15709 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Oceanic Sounding Report, DMA Form 8053–1, OMB Control No. 0704–0208

Type of Request: Expedited Processing; approval date requested: 30 days following publication in the Federal Register

Number of Respondents: 30

Responses per Respondent: 1

Annual Responses: 30

Average Burden per Response: 3 hours

Annual Burden Hours: 90

Needs and Uses: The information collected provides instructions and outlines information needed for ship data collection operations of bathymetric data to be used in the construction of nautical charts.

Affected Public: Businesses of other for-profit and Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15708 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review.

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: DMA Hydrographic/ Topographic Center Port Information Report, DMA Form 8330–1, OMB Control No. 0704–0210

Type of Request: Expedited Processing; approval date requested: 30 days following publication in the Federal Register

Number of Respondents: 100

Responses Per Respondent: 2

Annual Responses: 200

Average Burden Per Response: 30 minutes

Annual Burden Hours (Including recordkeeping): 102 hours

Needs and Uses: The information collected is submitted in the interest of marine safety by military vessels and merchant ships. Information is submitted voluntarily whenever navigators wish to provide updated material to DMA for navigational safety publications. DMA evaluates the incoming data and incorporates it into future editions of its navigation products.

Affected Public: Businesses of other for-profit and Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of

VOL 58 ISS 126 JL 2 1993 UMI

the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-15710 Filed 7-1-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on July 12-16, and July 19-23, 1993, at the Naval Command, Control and Ocean Surveillance Center, Research, Development, Test, and Evaluation Division, San Diego, California. The sessions on July 12-16, and July 19-22 will commence at 8:30 a.m. and terminate at 5 p.m., the session on July 23, 1993, will commence at 8:30 a.m. and terminate at 10:30 a.m. All sessions of these meetings will be closed to the public.

The purpose of these meetings is to discuss basic and advanced research. All sessions of the meetings will be devoted to briefings, discussions, presentations, and technical examination of information related to defense conversion and dual use technology. Premature public disclosure of this information prior to agency approval would be likely to significantly frustrate implementation of proposed policy actions by the Department of the Navy. The information involved is specifically authorized by Executive order to be withheld from the public if the agency determines it to be in their best interest. It therefore is appropriate that all sessions of the meetings be closed to the general public. The agency-protected information to be discussed is so inextricably intertwined with unclassified matters as to preclude opening any portion of these meetings. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of these meetings be closed to the public because they will be concerned with matters listed in section 552b(c)(9) (B) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning these meetings contact: Commander R.C. Lewis, U. S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-4870.

Dated: June 29, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 93-15809 Filed 7-2-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Coastal Zone Foundation

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary noncompetitive financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i) (B) and (D) to the Coastal Zone Foundation (CZF), Middleton, CA, under Grant Number DE-FG01-93EP10049. The purpose of the proposed grant is to support a conference designed to bring technical and professional experts together to exchange information on the status, protection and use of coastal and ocean resources. The Symposium will spotlight scientific and professional tools for managing coastal and ocean resources including energy resources. The DOE and CZF are cost-sharing this grant agreement. The DOE will provide estimated funding in the amount of $10,000 and CZF will provide an estimated $14,200.

FOR FURTHER INFORMATION CONTACT: Please write U.S. Department of Energy, Office of Placement and Administration, Attn: Juanita Ellis, PR-322.4, 1000 Independence Avenue, SW., Washington DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the Coastal Zone Foundation to organize and conduct a five-day symposium entitled, "The Eighth Symposium on Coastal and Ocean Management", to be held July 19 through 23, 1993 in New Orleans, Louisiana.

The goal of the conference is to bring technical and professional experts together to exchange information on the status, protection and use of coastal and ocean resources. The symposium will spotlight scientific and professional tools for managing coastal and ocean resources including energy resources. CZF will provide the Office of Domestic and International Energy Policy (EP) with the unique opportunity to examine environmental and economic policy as it relates to coastal zone and ocean management practices with a group of technical and professional experts. This activity will enable EP to carry out its mission of analyzing and evaluating environmental, economic and technical policies and practices as they relate to energy.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing a forum to examine environmental and economic policy as they relate to coastal zone and ocean management practices with a group of technical and professional experts. The DOE's support of the conference will enhance the public benefits to be derived, and the DOE knows of no other entity which is conducting or is planning to conduct such a conference.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a benefit, both in (1) publicizing and exchanging information pertinent to DOE's multiple missions which concern coastal and related ocean and land resources; and (2) addressing the broad conference purpose of diffusing information and views in order to increase the application by practitioners and decisionmakers of current scientific and engineering research, knowledge and practice so as to improve coastal and ocean-related planning, development, and regulation and conservation actions for the public benefit. The anticipated term of the proposed grant is 5 months from the date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93-15753 Filed 7-1-93; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Revised Agency Policy.

SUMMARY: Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act), 16 U.S.C. 839d(c), requires the

Administrator of the Bonneville Power Administration (BPA) to conduct public hearings on any BPA proposal to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource; and to determine whether the proposed resource is consistent with the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan). In addition, the Act also permits the Council to determine subsequently whether the proposal is consistent with the Council's Plan. If either BPA or the Council determines that the proposed resource is inconsistent with the Plan, BPA can implement the proposal only after receiving approval from Congress.

After an extensive public review process, BPA and the Council first promulgated and adopted their respective sections 6(c) Policies (Policy) in November 1986. *See* 51 Fed. Reg. 42, 903 (1986) and 51 Fed. Reg. 42,038 (1986). As adopted in November 1986, these Policies were limited in scope to (1) proposals to acquire a major regional or non-regional resource and (2) proposals to implement a conservation measure which would conserve an amount of electric power equivalent to that of a major resource. In addition, the November 1986 section 6(c) Policy requires the Administrator to review and reevaluate this policy after 5-years in light of new information and understanding regarding resource acquisition that might have become available after the policy was adopted.

In accordance with the 5-year review requirement, BPA and the Council reviewed their respective section 6(c) Policies and proposed to amend the policies to address payment or reimbursement of investigation and preconstruction expenses to major resource sponsors, and granting billing credits or providing services involving a major resources. In addition, BPA proposed to incorporate a provision in its section 6(c) Policy that would allow a section 6(c) review to be conducted under expedited hearing procedures under certain circumstances. Because a section 6(c) review had been implemented only once in the intervening 5-year period, both BPA and the Council proposed to extend, without modification, the provisions adopted in November of 1986, including the 5-year review requirement.

BPA's revised 6(c) Policy supersedes and replaces the section 6(c) procedures found at 51 Fed. Reg. 42,903 (1986). These procedures shall apply to all 6(c) hearings initiated on or after March 26, 1993. This Policy addresses the types of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criterion for a BPA finding of consistency with the Plan.

Responsible Official: Charles E. Meyer, Director, Division of Resource Planning, Office of Energy Resources, is the official responsible for this Policy.

FOR FURTHER INFORMATION CONTACT: Julie Pipher, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478.

Information may also be obtained from:

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130.

Mr. George Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 243, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, Room 112, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98801, 509–662–4379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Jim Normandeau, Boise District Manager, 304 North 8th Street, Room 450, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provision

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 USC 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource; and to determine whether the proposal is consistent with the Council's Plan. In addition, the Act also permits the Council to determine subsequently whether the proposal is consistent with the Council's Plan. if either the Administrator or the Council determine that the proposal is inconsistent with the Plan, BPA can acquire the major resource or implement the proposal only after receiving expenditure authorization from Congress. Section 6(c) provides:

6.(c)(1) For each proposal under subsection (a), (b), (f), (h), or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

6.(c)(1)(A) publish notice of the proposed action in the **Federal Register** and provide a copy of such notice to the Council, the Governor of each State conservation measure implemented, and the Administrator's customers;

6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

6.(c)(1)(D)(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its

VOL
58
ISS
126
JL
2
1993
UMI

inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

6.(c)(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or

6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

6.(c)(4)(B) publish notice of the decision in the **Federal Register**, and

6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the **Federal Register**, whichever is later.

6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

B. Public Involvement

After an extensive public review process, BPA and the Council first promulgated and adopted their respective section 6(c) Policies in November, 1986. *See* 51 Fed. Reg. 42, 903 (1986) and 51 Fed. Reg. 42,028 (1986). As adopted, these Policies were limited in scope to: (1) proposals to acquire a major regional or non-regional resource, and (2) proposals to implement a conservation measure which would conserve an amount of electric power equivalent to that of a major resource. These policies did not address: (1) proposals to pay or reimburse investigation and preconstruction expenses of the sponsor of a major resource, or (2) proposals to grant billing credits or services involving a major resource.

In response to comments received through the public process, the November 1986 section 6(c) Policy requires the Administrator review and reevaluate this policy after 5-years, in light of new information and understanding regarding resource acquisition that might have become available after the time the policy was adopted. BPA continues to believes that its knowledge and experience in conducting section 6(c) reviews of major resource will increase over time.

In October of 1991, BPA and the Council began the required 5-year review of their respective 6(c) Policies. The agencies met to discuss the issues and procedures for a joint review of their respective Policies. Because a section 6(c) review had been implemented only once in the intervening 5-year period, both BPA and the Council proposed to extend without modification the provisions adopted in November of 1986, including the 5-year review requirement. BPA and the Council, however, proposed to expand the scope of their Policies to include previously unaddressed proposals. These proposals include payment or reimbursement of investigation and preconstruction expenses to the sponsor of a major resource and granting billing credits or services involving a major resource. In addition, BPA proposed to incorporate a provision in its Policy that would allow section 6(c) review to be conducted under expedited hearing procedures under certain circumstances.

On August 20, 1992, BPA published in the **Federal Register** a notice of Review of and Amendment to Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act. 57 Fed.Reg. 37,792 (1992). BPA and the Council then mailed copies of BPA's **Federal Register** Notice and the Council's staff issue paper, dated August 21, 1992, on the Council's Proposed Amendment and Extension of Time for Review of Council Statement of Policy Implementing Section 6(c), to over 3,200 groups and individuals (including BPA customers, State energy offices, fish and wildlife representatives, Governors, public interest groups, public utility regulatory bodies, state legislative bodies and others) for public comment. As part of the public review process, BPA and the Council agreed to exchange all comments received to assist in finalizing their respective policies. On September 11, 1992, BPA extended the public comment period to October 16, 1992, to coordinate with the Council's public process. 57 Fed. Reg. 41,740 (1992). In response to the notice, BPA received, in total, 5 written comments. These commentors represented State agencies, organizations representing public utilities, and interested individuals. Written comments were submitted by W. Bishop, Washington Energy Facility Site Evaluation Council, W. Drummond, Public Power Council, and B. Dutro and C. Browne, private citizens. These comments were considered in developing BPA's final amendments to its section 6(c) Policy. Copies of the written comments and BPA's Decision Document, which addresses these comments, are available from the BPA's Public Involvement Office. Although the Council provided an opportunity for oral comments at their October 14–15, 1992, meeting in Olympia, WA, none were given.

C. Scope of Policy

This section 6(c) Policy addresses proposals under subsections (a), (b), (f), (h), and (l), of section 6 to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource.

II. Policy

A. Definitions

This section contains definitions of terms used in the Policy and is a part of the Policy. Terms defined in the Northwest Power Act have the same meaning in this Policy, unless further defined.

1. *Acquire or Acquisition.* To "acquire" means to incur, and an "acquisition" is, a contractual obligation to make payment for:

a. Specified rights to the output or capability of a generating resource; or

b. The installation of specified conservation measures, or for conservation savings.

2. *Binding Contract Offer.* A "binding contract offer" exists when the Administrator presents a unilaterally executed contract for signature by the other contracting party.

3. *Conservation Resource.* A "conservation resource" is actual or planned reduction of electric power consumption resulting from increases in the efficiency of energy use, production or distribution, by either:

a. The direct application of renewable resources by a consumer; or

b. The implementation of conservation measures.

4. *Generating Resource.* A "generating resource" is actual or planned electric power capability of the following type of generating facility:

a. Renewable resources, such as solar, wind, hydro, geothermal, biomass, or similar sources of energy; or

b. Resources using waste heat or having high fuel conversion efficiency; or

c. Thermal resources, such as nuclear and coal; or

d. Combustion turbines.

5. *Option.* An "option" is the purchase of a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time period on specified terms. No commitment to acquire a resource is made at the time an option is purchased. Options will be used as low-cost means to increase BPA's flexibility in meeting the range of future resource needs.

6. *Billing Credits.* Billing credits are an adjustment to a customer's power bill or equivalent cash payment intended to compensate the customer for electric power resources which are developed or acquired and used to reduce the customer's net requirements for electric power or reserves purchased from BPA.

7. *Investigation and Preconstruction Expenses.* These expenses are costs incurred by or on behalf of sponsors of resources in obtaining required regulatory approval, including but not limited to licenses and permits; environmental analysis/impact statements; land options; easements and right-of-way acquisition; siting and licensing; geotechnical surveys; and architectural and engineering fees. These costs do not include the procurement of capital equipment or construction material or the costs associated with development of the resource proposal.

B. Threshold

1. Proposals

a. The existence of a proposal, and when to initiate a section 6(c) hearing process on the proposal, will be determined by the Administrator. This determination will take into account, among other criteria, the existence of sufficient information concerning a proposed future resource action such that the proposal's compliance with statutory requirements and its consistency with the Council's Plan can be adequately assessed.

b. BPA shall consult with the Council and with representatives from the region prior to the time a section 6(c) review is initiated. Such consultation will address the advisability of modifying BPA's proposal and/or amending the Council's Plan. In addition, BPA shall consult periodically with the Council and representatives of the region with a view to discussing potential proposals to acquire resources within the context of section 6(c).

c. Given the necessarily preliminary current level of understanding of the types of resource acquisitions that may require review pursuant to section 6(c), the Administrator will initiate, at least once every 5 years, a public policy making concerning the Section 6(c) Policy, including threshold, procedures, and consistency criterion, in order to evaluate evolving understandings of resource acquisitions and to assess the need for changes in this Policy. The result of such public policymaking will be a final action for purposes of judicial review under section 9(e)(5) of the Northwest Power Act, or other applicable laws.

2. Generating Resources

a. A proposal to acquire or to grant billing credits for a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired or granted billing credits at any one generating resource project constitute more than 50 average megawatts and are acquired or granted billing credits for a period of more than 5 years.

b. A proposal to acquire or to grant billing credits for a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired or granted billing credits from the utility for that sale constitute more than 50 average megawatts and are acquired or granted billing credits for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition or for application of billing credits.

3. Generation Programs

a. A generation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities binding contract offers to acquire or to grant billing credits for more than 50 average megawatts of electric power for a period of more than 5 years:

(1) From a single generating resource technology, and

(2) At a fixed price or a fixed price formula.

b. The electric power proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition or application of billing credits.

c. An individual contract resulting from a generation program which has been reviewed under section 6(c), for purposes other than that provided for in section 9 of this Policy, shall not be subject to further review under section 6(c).

4. Conservation Resources

a. A proposal to acquire or to grant billing credits for a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired or granted billing credits under a single contract constitute more than 50 average megawatts and are acquired or granted billing credits for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the

VOL 58 ISS 126 JL 2 1993 UMI

term of the contract for acquisition or for application of billing credits.

5. Conservation Programs

a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities generic contracts which consist of a set of logically related activities proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) Do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) Are provided by a single mode of program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition or for application of billing credits.

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c), for purposes other than that provided for in section 9 of this Policy, shall not be subject to further review under section 6(c).

6. Requests for Proposals

a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to an RFP, the Administrator retains the discretion to acquire or to grant billing credits for the electric power or the energy savings through an acquisition or application of billing credits under sections 2–5, above. In the event of an acquisition or the grant of billing credits under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

7. Options to Acquire Major Resources

a. A proposal to purchase an option shall not be subject to section 6(c) review.

b. A proposal to exercise a major resource option shall be subject to section 6(c) review.

8. Section 6(1) Resources

a. A proposal to acquire a major extraregional renewable resource shall be subject to section 6(c) review.

b. Interregional exchanges are not subject to section 6(c) review.

9. Payment or Reimbursement of Investigation and Preconstruction Expenses

a. A proposal to authorize payment of investigation and preconstruction expenses for major resources, for which an agreement or a letter of intent will be signed, identified in the Resource Program is subject to section 6(c) review.

b. A proposal to reimburse investigation and preconstruction expenses of a sponsor, such sponsor having consumers who are end-users of electricity, of a major resource that may be eligible for acquisition but where the project fails prior to completion of the section 6(c) review because of one of the following reasons, is subject to section 6(c) review:

(1) The resource is denied State siting approval or other necessary Federal or State permits or approvals; or

(2) The investigation demonstrates, as determined by the Administrator, that the resource does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of the Act or is not acceptable because of environmental impacts; or

(3) After the investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

c. A proposal to authorize payment of investigation and preconstruction expenses for the sponsor of any major resource other than those addressed above will be reviewed under section 6(c) on a case-by-case or programatic basis, as appropriate.

C. Section 6(c) Hearings Procedures

The appendix, incorporated by reference into this Policy, specifies the procedures for the section 6(c) hearings.

D. Consistency

A BPA proposal pursuant to section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the Plan in effect at the time the proposal is made.

Issued in Portland, Oregon on March 9, 1993.

Randall W. Hardy,

Administrator.

Revised Appendix to Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

Section 6(c) Hearings Procedures

1. Applicability and Scope

(a) *General Procedures.* These procedures apply to all proceedings conducted under the procedural requirements contained in Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839d(c).

(b) *Scope.* The scope of all proceedings conducted under these procedures shall be limited to an inquiry into whether the action proposed by the Administrator will achieve substantially the goals and objectives of the Council's Plan.

(c) *Waiver.* To the extent permitted by law, the Administrator may waive any section of these procedures or prescribe any alternative procedures he determines to be appropriate.

2. Definitions

(a) "Administrator" means the BPA Administrator or the Acting Administrator.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Council" means the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council.

(d) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act Section 6(c).

(e) "Legal Issue" includes any issue rounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing on the propriety of the action proposed by the Administrator.

(f) "Participant" means any person submitting for the record oral or written comments pursuant to section 6. of these procedures on a major resource action proposed by the Administrator.

(g) "Party" means any person whose intervention is effective under section 5.

(h) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, a state, any agency, department, or instrumentality of a state, a state compact agency or interstate body, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(i) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, and such other materials and information as submitted or developed by the Administrator. The record shall be certified by the hearing officer.

(j) "Record of Decision" means the document, issued by BPA which identifies and resolves each relevant, major issue in the 6(c) hearing; summarizes the factual, legal

and policy arguments presented by BPA, the parties, and the participants on such issue; and sets forth the Administrator's decision on such issue.

3. Notice of Proposed Action

(a) The Administrator shall publish notice of any proposed action pursuant to section 6(c) in the **Federal Register** and provide a copy of the notice to:

(1) The members of the Council and its executive staff;

(2) The Governor of each State in the Pacific Northwest Region;

(3) The Administrator's customers; and

(4) Others the Administrator deems appropriate.

(b) The Administrator may initiate the Section 6(c) process with this notice by indicating a date, not less than 60 days following publication of this notice, on which a public hearing or hearings will be held pursuant to section 6(c). This notice must comply with the requirements of section 4.

4. Initiation of Section 6(c) Process

(a) A Section 6(c) process on the Administrator's proposed major resource action may be initiated by a hearing notice published in the **Federal Register**. The hearing notice shall:

(1) specify the proposed major resource action;

(2) establish a deadline for filing petitions to intervene;

(3) specify the date on which the Administrator will issue the Record of Decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing;

(4) establish the dates on which the hearing officer will conduct the prehearing conference and commence the 6(c) hearing;

(5) set forth a statement and short explanation of each of the issues to be addressed in the hearing;

(6) state whether the hearing will be conducted pursuant to the provision for expedited hearings procedures, § 16; and

(7) provide other information which the Administrator determines to be pertinent to the hearing.

(b) The Administrator shall provide a copy of the notice to the persons identified in section 3(a).

5. Intervention

(a) *Filing.* A person seeking to become a party in a 6(c) hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APP.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. The major resource sponsor, contracting entities, or the Council shall be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.*

(1) Petitions must be filed within the time specified in the section 4. notice for the hearing in question.

(2) Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) the petitioner has a good reason for filing out of time;

(ii) any disruption of the proceeding might result from allowing a late intervention;

(iii) the petitioner's interest is adequately represented by existing parties; and

(iv) any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within 2 business days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in sections 8–14 are available only to parties, and are not available to participants.

6. Participation

Any person who is not a party may become a participant by submitting oral or written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comment. Oral or written comments must be submitted to the BPA Public Involvement Office.

7. Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's section 4. **Federal Register** notfce. During the conference, the hearing officer shall:

(a) act on all intervention petitions;

(b) establish any special procedures the hearing officer considers appropriate, provided that such special procedures conform to BPA's procedures governing proposed major resource actions;

(c) establish a service list;

(d) establish a procedural schedule for the entire hearing which may include the scheduling of prefiled testimony; and

(e) consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

8. Discovery

The hearing officer may allow BPA and the parties to any 6(c) hearing to engage in discovery, and be subject to discovery requests, subject to the time available for the hearing and according to the following rules:

(a) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served on the requesting party or counsel for the requesting party.

(b) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require the BPA and the parties wishing to participate in clarification of a witness' testimony serve all data requests pertaining to that testimony at least 3 business days prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (a) of this section.

(c) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(d) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolved the objection informally with the objecting party. Motions to compel must be made within the time specified in the procedural schedule.

(e) *Privileged Information.* The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. 552, or the trade Secrets Act, 18 U.S.C. 1905.

(f) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) striking the testimony or exhibits to which the question or request relates; or

(2) limiting discovery or cross-examination by the party refusing to answer or respond.

(g) *Copies.* Any party wishing copies of data responses should request them from the party submitting the response.

9. 6(c) Hearing Schedule

(a) *General Rule.* Consistent with fairness to the parties and participants, the hearing officer may establish procedures and conduct hearings as necessary to develop a full and complete record and to receive public comment and argument related to the proposed major resource action. The Record of Decision in 6(c) hearings shall be issued on the date set forth in the notice issued under section 4., except as provided in paragraph (b) of this section.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from

the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of this determination within 4 days thereafter.

10. Testimony and Exhibits

(a) *General Rule.*

(1) The opportunity for refutation or rebuttal on any material submitted by any other party or by BPA shall be provided to the parties as the hearing officer deems appropriate. Except as provided in paragraph (b), witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by level of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of documentation, which exclude irrelevant or redundant material.

(b) *Items by Reference.* Other testimony, exhibits, or studies may be designated as items by reference in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Official Notice.* The hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to Strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of Participants.* Testimony and comments received pursuant to section 6. shall be complied in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

11. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-Examinations.*

(1) Cross-examination shall be provided as the hearing officer deems appropriate and shall be limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in statement of issues adopted by the hearing officer. The hearing officer may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz.*, friendly cross-examination.

(c) *Cross-Examination Exhibits.*

(1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witness' counsel 3 business days prior to the date set for cross-examination.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

12. Briefs

(a) *General Rule.*

(1) At the conclusion of the evidentiary portion of a hearing, the hearing officer may allow each party to submit a brief. The purpose of a brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(2) All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

13. Oral Argument

Any opportunity for parties to present oral argument may be provided at the discretion of the Administrator.

14. Service of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under section 6., service on parties may be made by service on BPA General Counsel/APP. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons on whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by section 8(b) and (h).

15. Record of Decision

(a) *Determinations.* The Administrator shall make public a written decision which contains the following two determinations;

(1) the proposed action satisfies the requirements of subsection (a), (b), (f), (h), and (l), or (m) of Section 6 of the Northwest Power Act, as appropriate; and

(2) either:

(A) the proposed action is consistent with the Council's Plan, or in the case of subsection (f), the proposed action is probably consistent with the Council's Plan; or

(B) the proposed action is inconsistent with the Council's Plan; or in the case of subsection (f), the proposed action is probably inconsistent with the Council's Plan; or

(C) notwithstanding the proposed action's inconsistency with the Council's Plan a finding that the proposed action is needed to meet the Administrator's obligations under the Northwest Power Act.

(b) *Submission of Record.* The Administrator shall promptly provide a copy of the Record of Decision to the Council.

(c) *Service of Record.* The Administrator shall promptly serve copies of the Record of Decision on all parties to the proceeding. Copies of the Record of Decision shall be made available to participants and the public upon request to BPA's Public Involvement Manager.

16. Expedited Hearings Procedures

(a) *General Rule.* The record of decision in a section 6(c) hearing, conducted under this section, shall be issued within 90 days after the date of the prehearing conference, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures or special rules necessary to satisfy the Administrator's expedited schedule.

(b) *Extensions.* Any party to the 6(c) hearing may request that the hearing officer petition the Administrator for an extension of the 90-day hearing limit. The party must show that the request is for good cause and is not dilatory. Upon such a showing, the hearing officer shall submit a written request to the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within four days after receipt of the hearing officer's request.

(c) *Special Procedure.* Oral argument will not be heard in expedited 6(c) proceedings, unless all parties agree to substitute oral argument for a brief on exceptions.

[FR Doc. 93–15757 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF86–591–004

Coso Power Developers; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 28, 1993.

On June 17, 1993, Coso Power Developers (Applicant) c/o California Energy Company, Inc. 10831 Old Mills Road, Omaha, Nebraska 68154 submitted for filing an application for recertification of the Navy II Facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the geothermal-fueled small power production facility is located at the Naval Weapons Center in China Lake, California. The Commission originally certified the facility as a qualifying small power production facility in *California Energy Company, Inc.*, 36 FERC ¶ 62,150 (1986). The Commission issued subsequent recertifications on October 3, 1988 in *Coso Energy Developers*, 45 FERC ¶ 61,003 (1988), on July 14, 1989, in *Coso Power Developers*, 48 FERC ¶ 61,044 (1989) and on July 11, 1990, in *Coso Power Developers*, 52 FERC ¶ 62,016 (1990). On November 16, 1990, in Docket No. QF86–591–004, applicant filed a notice of self-recertification. The instant recertification is requested primarily due to the amendments in the ownership agreement pertaining to the facility and its status as an Eligible Facility pursuant to Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15669 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF86–590–005]

Coso Energy Developers; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 28, 1993.

On June 17, 1993, Coso Energy Developers (Applicant) c/o California Energy Company, Inc. 10831 Old Mills Road, Omaha, Nebraska 68154 submitted for filing an application for recertification of the BLM Facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the geothermal-fueled small power production facility is located at the Naval Weapons Center in China Lake, California. The Commission originally certified the facility as a qualifying small power production facility in California Energy Company, Inc., 36 FERC ¶ 62,149 (1986). On October 3, 1988, the Commission issued first recertification in Coso Energy Developers, 45 FERC ¶ 61,003 (1988). On December 28, 1988, in Docket No. QF86–590–002 Applicant filed a notice of self-recertification. On July 14, 1989, the Commission issued second recertification in Coso Energy Developers, 48 FERC ¶ 61,044 (1989). On December 15, 1992, Applicant filed a notice of self-recertification. The instant recertification is requested primarily due to the amendments in the ownership agreement pertaining to the facility and its status as an Eligible Facility pursuant to Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1980.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426,in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15667 filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–327–002]

Coso Finance Partners; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 28, 1993.

On June 17, 1993, Coso Finance Partners (Applicant c/o California Energy Company, Inc. 10831 Old Mills Road, Omaha, Nebraska 68154 submitted for filing an application for recertification of the Navy I Facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the geothermal-fueled small power production facility is located at the Navel Weapons Center in China Lake, California. The Commission originally certified the facility as a qualifying small power production facility in *California Energy Company, Inc.*, 28 FERC ¶ 62,124 (1984). On March 9, 1990, the Commission issued recertification in *Coso Finance Partners*, 50 FERC ¶ 62,154 (1990). On November 16, 1990, in Docket No. QF84–327–002, applicant filed a notice of self-recertification. The instant recertification is requested primarily due to amendments to the ownership agreement pertaining to the facility and its status as an Eligible Facility pursuant to Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the

VOL 58 ISS 126 JL 2 1993 UMI

appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15668 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10455–000–AR]

JDJ Energy Co.; Intent to Hold a Public Meeting in Delaware, AR, to Discuss Staff's Draft Environmental Impact Statement (DEIS) for the Proposed River Mountain Pumped Storage Hydroelectric Project

June 28, 1993.

On June 25, 1993, the Commission staff mailed the River Mountain DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of constructing and operating the applicant's proposed 600-megawatt pumped storage hydroelectric project, to be located in eastern Logan County, Arkansas, approximately 10 miles west of Russellville.

The project's planned upper reservoir would be at the summit of River Mountain. Lake Dardanelle, an existing reservoir managed by the U.S. Army Corps of Engineers, would serve as the project's lower reservoir.

The applicant proposes to locate most project works underground, including the concrete-lined water conduits, powerhouse, and tailrace tunnel. A 500-kilovolt transmission line would extend eastward along the mountain for approximately 1.8 miles, connecting with an existing Arkansas Power and Light transmission line.

The subject DEIS also evaluates the environmental effects of: Implementing applicant's proposal supplemented with staff's recommended mitigative measures; and the no-action alternative (license denial).

The public meeting on the River Mountain Project, which will be recorded by an official stenographer, is scheduled from 7 p.m. to 11 p.m. on Monday, July 19, 1993. The meeting will be held at the Delaware Township firehouse, located at Highway 393 in Delaware, Arkansas.

At the subject meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the River Mountain DEIS for the Commission's public record.

For further information, please contact the FERC environmental coordinator, Jim Haimes, at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15671 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–8–63–003 TM93–8–63–003.]

Carnegie Natural Gas Co.; Compliance Filing

June 28, 1993.

Take notice that on June 23, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of June 1, 1993:

2nd Sub Forty-Third Revised Sheet No. 8
3rd Sub Forty-Third Revised Sheet No. 9

Carnegie states that it is filing the above tariff sheets to supplement and correct the tariff sheets submitted by Carnegie on June 11, 1993, as previously supplemented on June 17, 1993, which were filed to comply with a Letter Order issued on May 27, 1993, in the referenced proceeding. Carnegie states that it is filing these substitute tariff sheets to correct certain errors contained on the tariff sheets tendered in its June 11 compliance filing, specifically relating to the PGA cumulative adjustment for the minimum and maximum commodity rates and the adjusted minimum commodity rate under Carnegie's Rate Schedule SEGSS.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15672 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–7–22–000 and TM93–6–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 28, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on June 21, 1993, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's regulations, and Sections 12 and 15 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six copies of the following tariff sheets for its FERC Gas Tariff, First Revised Volume No. 1:

Thirty-Third Revised Sheet No. 31
Twenty-Ninth Revised Sheet No. 34

The tariff sheets are proposed to become effective July 1, 1993. CNG states that the purpose of this filing is to revise both the PGA and TCRA components of its sales rates to reflect proposed billing changes from Texas Eastern Transmission Corporation.

CNG states that copies of the filing were served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 285.214 and 385.211. All motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15673 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–59–002]

High Island Offshore System; Motion to Have suspended Tariff Sheets Into Effect

June 28, 1993.

High Island Offshore System (HIOS), pursuant to section 4(e) of the natural

Gas Act and § 154.67 of the Federal Energy Regulatory Commission's (Commission) regulations, hereby moves to place into effect on July 1, 1993, subject to refund, the change in rates and charges suspended herein by the Commission's order of January 29, 1993, and which is contained in the tariff sheets.

HIOS states that on December 31, 1992, it filed revised tariff sheets with the Commission that provided for an annual rate increase for HIOS' jurisdictional transportation services. The filing was comprised of both "primary" (project financed rate design) and "alternate" (SFV rate design) sets of tariff sheets. On January 29, 1993, the Commission issued an order that, among other things, accepted HIOS' "primary" set of tariff sheets and suspended them for five months, or until July 1, 1993.

In such order the Commission also directed HIOS to remove from its motion rates any costs associated with (1) enhancing HIOS' Electronic Bulletin Board, (2) installing gas control and monitoring systems, and (3) acquiring gas needed for system line pack, that were included in HIOS' filed rates, but which were not actually incurred by the end of the test period. HIOS sought rehearing of this requirement, and on May 20, 1993, the Commission denied rehearing, thus reaffirming the requirement that such costs be removed from HIOS' motion rates. However, the time period for filing for judicial review relative to the Commission's action in this regard does not expire until July 19, 1993.

HIOS states that it is filing tariff sheets which reflect the removal of the specified costs, as reflected in the cost of service set forth on Attachment A to the filing, as directed by the Commission, and moves that such tariff sheets become effective on July 1, 1993, subject to refund.

HIOS states that by filing and moving into effect, these tariff sheets and the rates which they contain, HIOS does not abandon its protest regarding the directive that it remove the specified costs from its motion rates, and reserves all of its rights, including specifically its right to judicial review relative thereto, as well as the right to collect as of July 1, 1993, rates which reflect inclusion of the specified costs should such inclusion be permitted as a result of judicial review. Such tariff sheets reflect, as HIOS proposed in its December 31, 1992, rate filing, the elimination of HIOS' ACA surcharge provision, and the inclusion of the Annual Charge in the operating expenses which underlie HIOS' new rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15674 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–89–000]

HMDC Landfill Gas Energy Recovery Facility; Amendment to Filing

June 28, 1993.

On June 24, 1993, HMDC Landfill Gas Energy Recovery Facility (Applicant) tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data of the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by July 19, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15670 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–500–000]

Natural Gas Pipeline Co. of America; Application

June 28, 1993.

Take notice that on June 18, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed an application with the Commission in Docket No. CP93–500–000 pursuant to section 7(c) of the Natural Gas Act (NGA) requesting that the Commission: (1) Issue a certificate for those facilities currently classified by Natural as "production" for accounting and rate purposes which have not been previously certificated; and (2) authorized the refunctionalization from "production" to "transmission" of all facilities currently classified by Natural as "production" for accounting and rate purposes, all as more fully set forth in the application which is open to the public for inspection.

Natural states that the original primary function of the facilities [1] that Natural proposes to refunctionalize was to provide a natural gas supply to resale customers in a limited, largely localized market in the metropolitan Chicago, Illinois, area. Natural further states that the current use of the facilities it proposes to refunctionalize differs from the original use, because Natural no longer uses the facilities solely to obtain natural gas supplies to fulfill Natural's traditional merchant function. Natural also states that the use of these facilities will change further upon its implementing of Order No. 636, because the original system supply function will disappear. Natural requests an effective date of December 1, 1993, for the refunctionalization of these facilities in order to coincide with the effective date of Natural's compliance with Order No. 636.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

[1] Natural states that these facilities consist of compression equipment, meters, and pipelines of various lengths and diameters in Aransas, Carson, Denton, Gray, Hutchinson, Jack, Moore, Palo Pinto, Parker, Refugio, Roberts, Tarrant, Wheeler, Winkler, Wise Counties, Texas, and Dewey and Texas Counties, Oklahoma.

VOL 58 ISS 126 JL 2 1993 UMI

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15675 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–4–86–001 and TA93–1–86–002]

Pacific Gas Transmission Co.; Proposed Changes In FERC Gas Tariff

June 28, 1993.

Take notice that on June 23, 1993, Pacific Gas Transmission Company (PGT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Twentieth Revised Sheet No. 4, to be effective June 19, 1993, and Sub. Twenty-First Revised Sheet No. 4, to be effective August 1, 1993.

PGT states that subsequent to its June 18, 1993 filing, PGT discovered a typographical error on First Revised Twentieth Revised Sheet No. 4, of PGT's FERC GAS Tariff, Second Revised Volume No. 1, which PGT requested to become effective June 19, 1993. PGT states that the error was an incorrect base tariff commodity rate of $.106539/MMBtu. PGT states that the correct base tariff commodity rate is $0.035733/MMBtu.

PGT states that there is no correction on Substitute Twenty-First Revised Sheet No. 4, which was submitted as part of the original filing referenced above. PGT states that it is resubmitting Substitute Twenty-First Revised Sheet No. 4, to make it possible for FERC to simply discard the original disk with the tariff sheets and exchange it for the corrected disk.

PGT states that copies of the filing are being served upon all affected jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15676 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–501–000]

Tennessee Gas Pipeline Co.; Application

June 28, 1993.

Take notice that on June 18, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–501–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to provide firm transportation service for Fulton Cogeneration Associates, L.P. (Fulton) and to construct and operate certain facilities necessary to provide the service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee proposes to transport a maximum daily quantity of 6,700 Dth for Fulton from various receipt points to an existing delivery point interconnection with CNG Transmission Corporation (CNG) at Ellisburg, Pennsylvania. Tennessee proposes to charge Fulton a demand charge of $13.23 per Dth and a commodity charge of $.0084 per Dth delivered.

In order to provide this service, Tennessee proposes to construct a 3 mile loop of 30-inch diameter pipeline in Chautauqua County, New York at an estimated cost of $4,166,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15677 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–60–NG]

Great West Energy LTD.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Great West Energy Ltd. blanket authorization to import from Canada up to 40 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels

Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4: 30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 25, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of the Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15754 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–118–NG]

Vector Energy (U.S.A.) Inc.; Order Amending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it amended DOE/FE Order No. 699 which, on October 29, 1992, granted Vector Energy (U.S.A.) Inc., blanker authorization to import up to 30 Bcf of natural gas from Canada over a two-year term ending October 31, 1994. The amending order, 699–A, increased the maximum imports to 44 Bcf.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 25, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15755 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–26–NG]

Western Gas Resources, Inc.; Blanket Authorization to Import Natural Gas From and Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Western Gas Resources, Inc. to import up to 73 Bcf of natural gas from Mexico and to export up to 73 Bcf of natural gas to Mexico over a two-year period beginning on the date of first deliveries.

This order is available for inspection and copying in the Office of Fuels Programs Document Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 25, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15756 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Central Valley Project Notice of Rate Order No. WAPA–59

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Central Valley Project Commercial Firm Power, Peaking Capacity, and Transmission Service Rate Adjustment.

SUMMARY: Notice is given of the confirmation and approval by he Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA–59 and Rate Schedules CV–F7, CV–PC1, CV–FT2, CV–NFT2, and CV–TPT3 placing provisional rates for commercial firm power (capacity and energy) transmission service and peaking capacity from the Central Valley Project (CVP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will remain in effect on an interim basis until Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis or until they are replaced by other rates.

The Under Secretary, DOE, approved the existing rate schedules (CV–F6, CV–FT1, CV–NFT1, and CV–TPT2) on an interim basis, effective on May 1, 1988. FERC approved the existing rates on a final basis by FERC Order (Docket No. EF88–5011–000) dated October 21, 1988.

The existing rates for commercial firm power are derived from collecting 50 percent of the revenues from capacity sales and the remaining 50 percent from energy sales. The provisional rates are the same as the existing rates after adjusting the capacity component for the contract dependable capacity (CDC) Provision of Rate Schedule CV–F6 for the period May 1, 1993, through September 30, 1993. Effective October 1, 1993, the rate design for the provision rate for commercial firm-power service changes to collect 40 percent of revenues from capacity sales (capacity component) and 60 percent from energy sales (energy component) to reflect the greater portion of Western's costs associated with energy. Effective May 1, 1994, the energy component is further separated into a two-tier rate. An energy base rate will be applied to energy sales below a 70-percent load factor. An energy tier rate will be applied to energy sales at a 70 percent and higher load factor. The energy rate above the 70-percent load factor is based on Western's average Northwest purchased energy rate as estimated for this rate case and will not be changed to reflect actual Northwest energy costs. Northwest energy costs are used because supplemental energy purchases are primarily made from the Northwest. The purpose of these changes is to more closely reflect Western's costs associated with CVP capacity and energy sales. The 40/60 split is based on Western's estimated capacity and energy costs. The 70-percent load factor tier was selected after reviewing the historical and projected average CVP generation and preference customer load which showed that both the average preference customer system load factor and the CVP average load factor were approximately 70 percent.

Peaking capacity is a new service. The provisional rates for peaking capacity are designed to recover all costs (CVP generation and purchased power) associated with long-term firm peaking capacity service. The peaking capacity rate is the same as the capacity component of the commercial firm-power rate.

The provisional rates for transmission service for other parties over the CVP transmission system are designed to recover costs of the CVP transmission system used in the delivery of that power.

The provisional rates for transmission of CVP power delivered to a CVP firm-power customer by a third party provides for the passthrough of all costs associated with such service to the customer using the service.

A comparison of existing and provisional rates follows:

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COMMERCIAL FIRM—POWER RATE SCHEDULE

Capacity	Energy	Composite	% Change
Existing Rate Schedule: CV–F6, Effective 10/01/91–04/30/93 [1]			
$7.74/kW/month	16.30 mills/kWh	32.60 mills/kWh	
Provisional Rate Schedule: CV–F7, Effective 05/01/93–09/30/93			
6.45/kW/month	Base: 16.30 mills/kWh Tier: None	28.75 mills/kWh	None.[1]
Effective 10/01/93–04/30/94			
6.22/kW/month	Base: 17.97 mills/kWh Tier: None	29.95 mills/kWh	4.2 Increase.
Effective 05/01/94–09/30/95			
6.22/kW/month	Base: 16.99 mills/kWh Tier: 30.87 mills/kWh	29.95 mills/kWh	None.
Effective 10/01/95–09/30/97			
6.57/kW/month	Base: 17.73 mills/kWh Tier: 34.70 mills/kWh	31.55 mills/kWh	5.3 Increase.
Effective 10/01/97–04/30/98			
7.16/kW/month	Base: 19.33 mills/kWh Tier: 37.46 mills/kWh	34.37 mills/kWh	8.9 Increase.

[1] Rate after CDC Adjustment pursuant to the CDC Adjustment in Rate Schedule CV–F6: Capacity $6.45/kW/month, Composite 28.75 mills/kWh.

PEAKING CAPACITY

[Existing Rate Schedule: None—Provisional Rate Schedule: CV–PC1]

Effective dates	Rates	% Change
05/01/93–09/30/93	$6.45/kW/month	None.
10/01/93–09/30/95	6.22/kW/month	3.5 Decrease.
10/01/95–09/30/97	6.57/kW/month	5.6 Increase.
10/01/97–04/30/98	7.16/kW/month	8.9 Increase.

FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–FT1	$0.481/kW/month	—
Provisional—CV–FT2	0.43/kW/month	10.6 Decrease.

NON-FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–NFT1	1.022 mills/kWh	—
Provisional—CV–NFT2	1.23 mills/kWh	20.3 Increase.

TRANSMISSION OF CVP POWER BY THIRD PARTY

Existing Rate Schedule: CV–TPT2	Passthrough Cost.
Provisional Rate Schedule: CV–TPT3	Passthrough Cost.

DATES: Rate schedules CV–F7, CV–PC1, CV–FT2, CV–MFT2, and CV–TPT3 will be placed in effect on an interim basis on May 1, 1993, and will be in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

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Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW.,

Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published at 56 FR 41835, August 23, 1991, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

These power rates are established pursuant to the DOE Organization Act, 42 U.S.C. 7101 *et seq.*; the Reclamation Act 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887, 891; and other acts specifically applicable to the project system involved.

Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published at 50 FR 37835, September 18, 1985.

The DOE procedures were followed by Western in the development of these commercial firm power, peaking capacity, and transmission rates. A public information forum was held on August 18, 1992, followed by a public comment forum on September 3, 1992. Verbal comments were provided by 5 persons at the public comment forum, and 12 comment letters were received. The comments are addressed in the rate order published with this notice. In addition, an evidentiary hearing on the revenue adjustment clause (RAC) was held on August 25, 1992, and continued on September 18, 1992. Western received the Hearing Officer's findings and recommendations on the RAC dated February 10, 1993. The Hearing Officer recommended that the RAC as modified by Western be included in the rate schedule for the CVP.

Several actions have impacted the revenue requirements for commercial firm power since implementation of the existing rate: (1) California has experienced a 6-year drought which has drawn down water supplies in CVP reservoirs, thus reducing generation. Normal water years are assumed to begin in FY 1995; (2) As a result of several recent settlement agreements between Western and Pacific Gas and Electric Company (PG&E), several outstanding issues have been resolved, resulting in completed or pending monetary settlements; (3) Western's resource mix has changed due to additional long-term Northwest purchase contracts, the Western/PG&E settlement of capacity issues, and additional transmission access to Northwest suppliers; and (4) Congress passed the Shasta Bypass legislation (Pub. L. 101–514) that made purchased power expenses associated with bypassing generation at Shasta Dam because of specific environmental purposes nonreimbursable by the CVP rate payers.

Revisions to the RAC provisions and the power factor adjustment have been included in Rate Schedule CV–F7. The RAC compares projected net revenue with actual net revenue for each fiscal year. If the net difference is positive, a RAC credit is applied to customers' power bills during the next January 1 to September 30 period. If the net difference is negative, a RAC surcharge is applied to customers' power bills in an amount equal to any deficit in repayment of annual expenses plus a minimum investment payment equal to the lesser of 1 percent of unpaid investment or projected investment payment. The maximum total RAC credit or surcharge on customers' power bills is $20 million annually.

The power factor adjustment included in Rate Schedule CV–F7, renamed the low power factor charge or LPFC, provides that a charge of $2.50 per kilovoltampere reactive will be applied when the average of a customer's average monthly power factor and the peak power factor are not maintained at 95 percent.

The CVP transmission service rates, as provided for by Rate Schedules CV–FT2 and CV–NFT2 have been revised due to changes in the projected transmission facility costs and additional transmission service sales. More detailed information on the changes to the rates are provided in the rate order published with this notice.

Rate Order No. WAPA–59, confirming, approving, and placing the proposed CVP rate adjustment in effect on an interim basis, is issued, and the new Rate Schedules CV–F7, CV–PC1, CV–FT2, CV–NFT2, and CV–TPT3 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, April 12, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Assistant Secretary for Conservation and Renewable Energy

In the matter of: Western Area Power Administration Rate Adjustment for Sacramento Area Office, Central Valley Project. Rate Order No. WAPA–59.

Order Confirming, Approving, and Placing the Sacramento Area Office, Central Valley Project Commercial Firm Power, Peaking Capacity and Transmission Service Rates Into Effect on an Interim Basis

April 12, 1993.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 2 to Delegation Order No. 0204–108, published at 56 FR 41835, August 23, 1991, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published at 50 FR 37835, September 18, 1985.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Adjusted rate: Existing rate after applying the CDC adjustment.

Assistant Secretary: Assistant Secretary for Conservation and Renewable Energy, DOE.

$/kW/month: Dollars per kilowatt per month.

Capacity component: The component of this rate which sets forth the charges for capacity. It is shown in the power repayment study as a kW/year charge and billed on a dollar per kW/month

basis. The charge shall be applied each billing period to each kW delivered or scheduled to each customer.
Composite rate: Energy rate that combines capacity cost and energy cost.
Contract 2948A: Pacific Gas and Electric Company's contract with Western for the sale, interchange, and transmission of power; Contract No. 14–06–200–2948A, as amended.
Corps: U.S. Army Corps of Engineers.
CDC: Contract dependable capacity. The Capacity Adjustment for Northwest power purchases as used in Rate Schedule CV–F6 under the CDC Charge Adjustment Provision.
CRD: Contract rate of delivery. The maximum amount of capacity that Western is contractually obligated to provide to a customer.
CVP: Central Valley Project.
Curtailable power: Power offered by Western to qualified preference entities which may be curtailed on a real-time scheduling basis by Western and at Western's sole discretion to protect the 1,152 MW load level.
Customer brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order, dated August 1992.
CY: Calendar year.
Diversity power: Firm power made available because of the diversity of Western's customers' peak demands at the time of Western's peak demand. A diversity power customer, at the request of Western, must shed a specified amount of load or reduce its Western schedule at the time of Western's simultaneous peak demand to maintain the customer load level.
Diversity program: The load management measures established by Western and funded by those entities who have elected to participate in the program, by either direct financial contribution or by on-peak period curtailment of Western's power allocation, to allow Western to maintain a contractually specified load level.
DOE: Department of Energy.
DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.
EA2: Energy Bank Account No. 2, which is an arrangement between Western and PG&E under Contract 2948A.
Energy base rate: Energy rate applied to energy sales below a 70-percent monthly load factor.
Energy component: The component of this rate which sets forth the charges for energy. It is expressed in mills per kWh and applied to each kWh made available to each customer.
Energy tier rate: Energy rate applied to energy sales at a 70-percent and higher monthly load factor.
Existing rate(s): Rates specified in Rate Schedules CV–F6, CV–FT1, CV–NFT1, and CV–TPT2.
FERC: Federal Energy Regulatory Commission.
FY: Fiscal year; October 1 to September 30.
Interior: U.S. Department of the Interior.
Intertie: Pacific Northwest-Pacific Southwest Intertie Transmission System-Northern Division.
kV: Kilovolt.
kVar: Kilovoltampere reactive.
kW: Kilowatt.
kWh: Kilowatthour.
LPFC: Low power factor charge.
mills/kWh: Mills per kilowatthour.
MW: Megawatt (1000 kW).
Load factor: The ratio of total energy delivered compared to the maximum energy available during a specified period of time.
Net revenue: Revenue remaining after paying all annual expenses.
Northwest: Northwest United States.
O&M: Operations and maintenance.
Peaking capacity: Power available to assist in meeting that portion of peak load which is above a base load.
PDC: Project dependable capacity as defined in Contract 2948A.
PG&E: Pacific Gas and Electric Company.
PG&E settlement: Settlement agreement between Western and PG&E dated December 31, 1992.
Power factor: The ratio of real (kW) to apparent power (kVA) at any given point and time in an electrical circuit. Generally it is expressed as a percentage ratio.
Provisional rate(s): A rate which has been confirmed, approved, and placed in effect on an interim basis by the Assistant Secretary.
PURPA: Public Utilities Regulatory Policies Act.
PMA: Power marketing administration.
PRS: Power repayment study.
Project use: CVP power requirements for specific uses.
RAC: Revenue adjustment clause.
Reclamation: Bureau of Reclamation, U.S. Department of the Interior.
Secretary: Secretary of Energy.
Treasury: U.S. Department of the Treasury.
Western: Western Area Power Administration, U.S. Department of Energy.
Withdrawable power: Power that has been allocated to preference entities that may be withdrawn to meet the statutory and contractual requirements of Western.

Effective Date

The provisional rates will become effective on an interim basis on May 1, 1993, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these commercial firm power, peaking capacity, and transmission rates.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. On October 7, 1991, Western issued by letter an "Announcement of Central Valley Project Rate Adjustment Process" to all CVP customers. This announcement notified CVP customers of Western's initiation of a rate adjustment process, as well as the date of the first informal customer meeting. At the first informal customer meeting, held on October 31, 1991, Western's staff discussed various options and methods that were being considered for the rate adjustment process and solicited verbal and written comments regarding the options or process.

2. On January 31, 1992, Western issued a letter to all CVP customers acknowledging and thanking those customers who chose to comment on the rate design options and methods presented at the first informal meeting. Enclosed with the letter were copies of all the customer comments. This letter also announced the date of the second informal customer meeting. At the second informal customer meeting held on March 6, 1992, Western's staff presented assumptions used in the development of its CVP PRS and discussed customer questions raised as a result of the first informal meeting.

3. On April 10, 1992, Western issued a letter to all CVP customers requesting their input regarding changes in their purchasing pattern if energy tier rates were implemented.

4. A **Federal Register** notice was published at 57 FR 31709, July 17, 1992, officially announcing the proposed commercial firm power, long-term peaking capacity, and transmission service rate adjustment; initiating the public consultation and comment period; announcing the public information and public comment forums; and presenting procedures for public participation.

5. On July 24, 1992, a customer brochure was mailed to all CVP

customers and other interested persons. This mailing also included a letter announcing the dates of the public information and comment forums as well as a copy of the July 17, 1992, **Federal Register** notice.

6. At the public information forum held on August 18, 1992, Western explained the need for the rate increase in greater detail and answered questions.

7. A public comment forum was held on September 3, 1992, to give the public an opportunity to comment for the record. Five persons representing customers and customer groups made oral comments.

8. Twelve comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended October 15, 1992. All formally submitted comments have been considered in the preparation of this rate order.

9. On November 2, 1992, copies of all written comments received during the 90-day consultation and comment period were sent to all CVP customers and interested parties.

Concurrently with the rate adjustment process, Western held public proceedings on the proposed RAC in accordance with PURPA, 16 U.S.C. sections 2601–2645. The following summarizes the steps Western took to ensure involvement of interested parties in the PURPA process:

1. A **Federal Register** notice was published at 57 FR 31708, July 17, 1992, giving notice of hearing procedures, and announcing a prehearing conference and hearing on the RAC.

2. On August 18, 1992, a prehearing conference was held as announced in the July 17, 1992, **Federal Register** notice.

3. On August 25, 1992, a RAC evidentiary hearing was held. Western's staff issued supplemental testimony regarding the RAC at this hearing based on questions raised at the prehearing conference.

4. On September 16, 1992, a continuation of the first evidentiary hearing was held.

5. Four parties provided testimony during the RAC proceedings.

6. Western received the Hearing Officer's findings and recommendations on the RAC dated February 10, 1993. The Hearing Officer recommended that the RAC as modified by Western be included in the rate schedule for the CVP.

Project History

Located in northern and central California, the CVP consists of eight powerplants, two pump-generation plants, and approximately 1,200 miles of transmission lines.

The initial features of the CVP, authorized in 1935 by the Emergency Relief Appropriations Act of 1935 for construction by Reclamation, included the Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River; the Tracy pumping plant and the Delta-Mendota canal; the powerplants at Shasta Dam and at Keswick Dam with powerlines to bring the power generated to the Tracy pumping plants and to integrate that power into other electric systems; the Contra Costa canal, the Friant-Kern canal, and the Madera canal; and the Delta cross channel.

To help meet the expanding needs in the Central Valley, Congress, in 1944, authorized the American River Division to be constructed by the Corps. In 1949, Congress reauthorized the American River Division to be integrated with the CVP. This division included Folsom Dam and powerplant, Nimbus Dam and powerplant, and the Sly Park Unit. The Trinity River Division, including Trinity Dam and powerplant, Lewiston Dam and powerplant, Lewiston fish facilities, Whiskeytown Dam, Judge Francis Carr powerhouse, and Spring Creek powerplant, was authorized in 1955. The San Luis Unit, including San Luis Dam and reservoir, San Luis canal, Pleasant Valley canal, and the O'Neill and San Luis pump-generators, was authorized in 1960. Three Corps projects, Buchanan, Hidden, and New Melones were authorized in 1962 for integration into the CVP. Western is authorized to market the power made available from the New Melones powerplant. The Auburn-Folsom South Unit, including Auburn Dam, reservoir, and powerplant, the Folsom South canal, the Foresthill Unit, and the Folsom-Malby Unit, was authorized in 1965. The San Felipe Division was authorized in 1967, with the Allen Camp Unit being authorized in 1976.

A significant addition in 1964 was the construction of the 500–kV Intertie of which the CVP has the right to use 400 MW of transmission capacity to import power from the Northwest. Black Butte, another Corps project, was added to the CVP in 1970 by Pub. L. 91–502.

Construction of the California-Oregon Transmission Project will give Western an additional 150–250 MW of transmission to the Northwest beginning in 1993.

Power generated from the CVP system is dedicated first to meeting the power requirements of the project pumping facilities. The remaining capability of the project's power facilities is used to provide commercial power to various preference customers in northern California. These preference customers consist of military and Federal installations, irrigation and Reclamation districts, cooperatives, utility districts, municipalities, and educational and penal institutions of the State of California.

The CVP powerplants have a combined maximum operating capability of about 2,000 MW.

The amount of commercial firm load which can be supplied at present by CVP generation alone is significantly less than the current customer commercial firm load level. In 1951, Reclamation entered into a support contract with PG&E which greatly increased the commercial load serving capability of the CVP. In 1967, that contract was amended and consolidated with a transmission contract into the present Contract No. 2948A. Under Contract No. 2948A, the CVP powerplants and the two pump generation plants were integrated operationally with PG&E's power system. The contract provides that energy and capacity generated by the CVP, along with power imported from the Northwest, in excess of CVP obligations to preference customers, can be banked with PG&E. The contract also provides Western the right to purchase an equivalent amount of capacity and energy from PG&E, at times and in amounts required, when the CVP's power supply is insufficient to meet the CVP obligations to the preference customers. The energy and capacity available under this "banking arrangement" permits the CVP to supply a much greater amount of customer load than would be possible without benefits of such coordination. The contract provides that PG&E, with the Intertie arrangements, will provide support to enable the CVP to supply a simultaneous customer peak demand up to a maximum level of 1,152 MW through CY 2004.

Power Repayment Study

PRSs are prepared by Western each FY to determine if power revenue will be sufficient to pay, within the prescribed time periods, all costs assigned to the CVP's power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12.b, sets forth the PMA's revenue repayment requirements. That section states:

> In addition to the recovery of the above costs [operation and maintenance and interest expenses] on a year-by-year basis, the expected revenue is at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue

producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects or States.

Transmission Service Rate Study

A transmission service rate is charged to CVP customers receiving transmission service over the CVP system for the transmission of non-CVP power. A transmission service rate study was prepared to ensure that the firm transmission service rate is based on the cost of service of the CVP transmission network system as defined in the customer brochure.

The transmission service rate study dated May 1992 indicated that the firm transmission service rate needed to be adjusted from its current level of $0.481/kW/month to $0.43/kW/month for a 10.6-percent decrease.

The change in rate is primarily due to changes in the projected transmission facility costs and an increase in the amount of sales under firm transmission service contracts during this rate period.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

TABLE 1.—COMPARISON OF EXISTING AND PROVISIONAL RATES

[Commercial Firm-Power Rate Schedule]

Capacity	Energy	Composites	% Change
Existing Rate Schedule: CV–F6—Effective 10/01/91–04/30/93[1]			
$7.74/kW/month	16.30 mills/kWh	32.60 mills/kWh	
Provisional Rate Schedule: CV–F7—Effective 05/01/93–09/30/93			
6.45/kW/month	Base: 16.30 mills/kWh Tier: None	28.75 mills/kWh	None.[1]
Effective 10/01/93–04/30/94			
6.22/kW/month	Base: 17.97 mills/kWh Tier: None	29.95 mills/kWh	4.1 Increase.
Effective 05/01/94–09/30/95			
6.22/kW/month	Base: 16.99 mills/kWh Tier: 30.87 mills/kWh	29.95 mills/kWh	None.
Effective 10/01/95–09/30/97			
6.57/kW/month	Base: 17.73 mills/kWh Tier: 34.70 mills/kWh	31.55 mills/kWh	5.3 Increase.
Effective 10/01/97–04/30/98			
7.16/kW/month	Base: 19.33 mills/kWh Tier: 37.46 mills/kWh	34.37 mills/kWh	8.9 Increase.

[1] Adjusted Rates $6.45/kW/month for the Capacity Component; 28.75 mills/kWh for the Composite Rate.

PEAKING CAPACITY

[Existing Rate Schedule: None—Provisional Rate Schedule: CV–PC1]

Effective dates	Rates	% Change
05/01/93–09/30/93	$6.45/kW/month	None.
10/01/93–09/30/95	6.22/kW/month	3.5 Decrease.
10/01/95–09/30/97	6.57/kW/month	5.6 Increase.
10/01/97–04/30/98	7.16/kW/month	8.9 Increase.

FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–FT1	$0.481/kW/month	—
Provisional—CV–FT2	0.43/kW/month	10.6 Decrease.

NON-FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–NFT1	1.022 mills/kWh	—
Provisional—CV–NFT2	1.23 mills/kWh	20.3 Increase.

TRANSMISSION SERVICE FOR CVP POWER BY THIRD PARTY	
Existing Rate Schedule: CV–TPT2.	Passthrough Cost.
Provisional Rate Schedule: CV–TPT3.	Passthrough Cost.

Certification of Rate

Western's Administrator has certified that the CVP commercial firm power, peaking capacity, and transmission service rates placed into effect on an interim basis herein are the lowest possible rates consistent with sound business principles. The provisional rates have been developed in accordance with administrative policies and applicable laws.

Discussion

Commercial Firm-Power Rates

The CVP provisional rates for commercial firm power incorporate a change in the CVP rate design and are higher than the adjusted rates. The rates are higher because of a need for increased revenues to meet estimated annual expenses. The existing rates are derived from collecting 50 percent of the revenues from capacity sales and the remaining 50 percent from energy sales. The provisional rates are the same as the adjusted rates for the period May 1, 1993, through September 30, 1993. Effective October 1, 1993, the rate design for the provisional rates for commercial firm-power service changes to collect 40 percent of the revenues from capacity sales (capacity component) and 60 percent from energy sales (energy component) to reflect the greater portion of Western's costs associated with energy. Effective May 1, 1994, the energy component is further separated into a two-tier rate. An energy base rate will be applied to energy sales below a 70-percent load factor. An energy tier rate will be applied to energy sales at a 70 percent and higher load factor. The energy rate above the 70-percent load factor is based on Western's average Northwest purchased energy rate as estimated for this rate case and will not be changed to reflect actual Northwest energy costs. Northwest energy costs are used because supplemental energy purchases are primarily made from the Northwest. The purpose of these changes is to more closely reflect Western's costs associated with CVP capacity and energy sales. The 40/60 split is based on Western's estimated capacity and energy costs. The 70-percent load factor tier was selected after reviewing the historical and projected average CVP generation and preference customer loads which showed that both the average preference customer system load factor and the CVP average load factor were approximately 70 percent. Further detail concerning the rationale for the revised rate design was provided in the customer brochure.

Several actions have impacted the revenue requirements for commercial firm power since implementation of the existing rates: (1) California has experienced a 6-year drought which has drawn down water supplies in CVP reservoirs, thus reducing CVP generation. Normal water years are assumed to begin in FY 1995; (2) As a result of several recent settlement agreements between Western and PG&E, several outstanding issues have been resolved resulting in completed or pending monetary settlements; (3) Western's resource mix has changed due to additional long-term Northwest purchase contracts, the Western/PG&E settlement of capacity issues, and additional transmission access to Northwest suppliers; and (4) Congress passed the Shasta Bypass legislation (Pub. L. 101–514) that made purchased power expenses associated with bypassing the generators at the Shasta Dam because of specific environmental purposes nonreimbursable by the CVP rate payers.

Because financial impacts from the recently enacted Reclamation Project Authorization and Adjustment Act of 1992 (Pub. L. 102–575) are not known, no estimate has been included in the provisional rates. It is anticipated that either the RAC will offset any impacts or that revised rates will be implemented in the future, if needed.

Revenue Adjustment Clause

The RAC included with the provisional rates compares projected net revenue with actual net revenue for a FY. If the net difference is positive, a RAC credit is applied to the customers' bills during the next January 1 to September 30 period. If the net difference is negative, a RAC surcharge is applied to the customers' bills in an amount equal to any deficit in repayment of annual expenses plus a minimum investment payment equal to the lesser of 1 percent of unpaid investment or projected investment payment. The maximum total RAC credit or surcharge on the customers' power bills is $20 million annually.

The revised RAC differs from the existing RAC. The existing RAC provides that every 6 months Western will compare projected commercial firm-power revenues with actual commercial firm-power revenues and will compare projected purchased power expenses with actual purchased power expenses. The net difference results in a RAC credit or surcharge on power bills for the following 6-month period with a maximum of $15 million each period. An amendment (approved by FERC Order dated October 21, 1988, Docket No. EF–88–5011–00) to the existing RAC provided that a RAC credit would not be applied if the PRS showed a deficit in repayment of annual expenses for the prior FY, and that a RAC surcharge would not be applied if the PRS showed surplus net revenue. No projected RAC revenue adjustments are included in the PRS because Western assumes that projected net revenues are accurate.

Low Power Factor Adjustment

The power factor adjustment included with the provisional rates, renamed the low power factor charge or LPFC, provides that a charge of $2.50 per kVar will be applied when the average of a customer's monthly average power factor and the peak power factor is not maintained at 95 percent. To determine the LPFC, the customer's peak and monthly average power factors are averaged to determine the customer's mean power factor. If the mean power factor is less than 95 percent, the customer pays a charge calculated by multiplying the customer's peak demand by a kVar/kW rate, as provided in Rate Schedule CV–F7. The kVar/kW rate is derived by multiplying the applicable kVar/kW multiplier, as provided in the customer brochure (kVar/kW multiplier at a certain power factor less than 95 percent), by the $2.50 charge. The kVar/kW multiplier represents the additional kVars which would be required to raise the customer's power factor to 95 percent.

The existing power factor adjustment provides that a surcharge of 0.25 percent will be assessed against the total monthly capacity and energy charges at each point of delivery for each percent or major portion thereof that a customer's power factor at such point of delivery is below 95 percent, lagging or leading.

Additional information regarding the LPFC is provided in the customer brochure. No projected LPFC revenue is projected in the PRS because Western assumes that the customers will make efforts to correct power factor deficiencies and therefore incur no charges.

Transmission Service Rates

The CVP transmission service rates have been revised due to changes in projected facility costs and additional transmission service sales. Intertie

facilities are no longer included in determining the CVP transmission rates because Intertie facilities are not anticipated to be used to deliver non-CVP power over the CVP transmission system. This resulted in a change in investment and O&M expense. The basic rate design for transmission service is the same as the existing rate.

Total Operating Revenues

The total operating revenue derived from the adjusted rate and provisional rate revenue for the CVP are as follows:

	Total operating revenues	
	Adjusted rate (FY 1992) [1]	Provisional rate (FY 1994) [1]
Total Operating Revenues	[2] $263,874,947	$269,501,770

[1] Years represented are the last full year the existing rate is effective and the first full year the provisional rate will be effective. The intervening year, FY 1993, is not used because the existing rate expires on April 30, 1993, resulting in a mixture of existing and provisional rates for the year.

[2] Actual revenues.

Increased revenues are necessary to satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The following table 2 provides a summary of revenue and expense data through the cost evaluation rate period.

TABLE 2.—CENTRAL VALLEY PROJECT, COMPARISON OF COST EVALUATION RATE PERIOD REVENUES AND EXPENSES

[$1,000]

	FY 1988 PRS 1993–98	FY 1992 PRS 1993–98	Difference
Total Revenues	1,648,715	1,791,420	142,705
Revenue Distribution:			
O&M	144,288	219,822	75,534
Purchased Power	1,288,119	1,328,942	40,823
Other	109,441	91,438	<18,003>
Interest	39,252	48,032	8,780
Investment Repayment	67,615	103,186	35,571
Capitalized Expenses	0	0	0
Prior-Year Adjustment	0	0	0
Total	1,648,715	1,791,420	142,705

Basis for Rate Development

The provisional rate for CVP commercial firm power is designed to collect 40 percent of revenue from capacity sales and 60 percent from energy sales. The cost to individual customers will vary because of differences in individual customer load factors.

The provisional rate for commercial firm power contains a $/kW/month firm capacity component and a mills/kWh energy component. In addition, the firm energy component contains an energy tier rate at 70-percent and higher load factor, which is based on the CVP projected Northwest energy purchases. The load factor is computed based on the lesser of the customer's (1) maximum demand for the month, or if a scheduled customer, the maximum scheduled demand for the month; or (2) the CRD. Only power offered under Rate Schedule CV–F7 will be used in the calculation. The commercial firm-power rates will be phased in as shown in table 1. Table 1 provides the effective dates and percent change in the composite rate. The rate approval period terminates, at the latest, on April 30, 1998.

The provisional rates for firm and nonfirm transmission service are designed to recover costs of the CVP transmission system used in the delivery of non-CVP power. The transmission service rates and percentage change from the existing rates are shown in table 1.

The provisional rate for transmission service for CVP power by a third party provides for the passthrough of all costs associated with such service to the customer using the service. This rate proposal is the same as provided in the existing Rate Schedule CV–TPT2.

The provisional rates for peaking capacity are designed to recover all costs (CVP generation and purchased power) associated with long-term firm peaking capacity service. Peaking capacity is a new service. The peaking capacity rates are the same as the capacity component of the commercial firm-power rate. Normally associated energy will be returned unless provided for by contracts. If Western elects to sell surplus peaking capacity in the future under short-term agreements, such available sales would be sold at short-term power rates.

Comments

During the 90-day comment period, Western received 12 written comments either requesting information or commenting on the rate adjustment. In addition, five persons commented during the September 3, 1992, public comment forum. Four persons provided testimony during the RAC evidentiary hearing proceedings. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Arvin-Edison Water Storage District (California)
Broadview Water District (California)
Calaveras Public Power Agency (California)
NASA—Ames Research Center (California)
Northern California Power Agency (California)
Palo Alto, City of (California)
Roseville, City of (California)
Sacramento Municipal Utility District (California)
Santa Clara, City of (California)
Tuolumne County Public Power Agency (California)
U.S. Department of Energy, San Francisco Field Office (California)

Westlands Water District (California)

Representatives of the following organizations made oral comments:

Arvin-Edison Water Storage District (California)
Northern California Power Agency (California)
Palo Alto, City of (California)
Sacramento Municipal Utility District (California) 2 Representatives

Representatives from the following organizations provided testimony during the RAC proceedings:

Arvin-Edison Water Storage District (California)
Northern California Power Agency (California)
Sacramento Municipal Utility District (California)
Santa Clara, City of, and Modesto Irrigation District (California)

Most of the comments received at the public meetings and in correspondence dealt with the commercial firm-power rate design, energy tier rate, rate period, RAC, and the PG&E settlement. Discussion of comments will be grouped by these issues, with all other comments being placed under the heading of "other." In some cases Western will address several comments with one response. The comments, paraphrased for brevity, and responses are presented below. Specific comments are used for clarification, where necessary.

Commercial Firm-Power Rate Design

The following comments all relate to the proposed CVP rate design of recovering 40 percent of the revenue requirement from capacity sales and 60 percent from energy sales. Several comments which supported the rate design opposed the proposed transition period.

Comments: A 40-percent capacity and 60-percent energy revenue split is reasonable.

Reconsider the magnitude of the shift. It is unfair to high-load-factor customers.

Western should not alter its rate design. The customers are familiar with the present rate design and have structured their customers' rates to reflect the costs incurred.

Rates should be based on Western's actual cost. Western's analysis has indicated that 33 percent of Western's cost is a result of capacity and 67 percent of energy. Another comment indicated that another Western study showed that 27 percent is a result of capacity and 73 percent of energy. The 40/60-percent split does not reflect Western's actual cost of supplying capacity and energy. The composite rate is still decreasing at load factors of 70 to 100 percent because too much weight has been placed on the demand charge.

Response: Western was not convinced by comments that its proposed rate design should be changed to collect greater revenue from capacity or that Western should maintain the existing 50/50-percentage revenue split. The CVP customers have already adjusted to a change in the capacity/energy revenue split because the existing rate of $7.74 per kW/month for capacity, when adjusted for the CDC adjustment, changed to $6.45/kW/month for the period October 1, 1992, through March 30, 1993. The first CDC adjustment was implemented beginning May 1, 1992. The CDC adjustment rate results in an approximate revenue split of 43 percent to capacity and 57 percent to energy.

Western's rate design represents its actual costs associated with providing capacity and energy to all CVP customers. Western prepared different studies to determine a reasonable revenue split between capacity and energy. The 33/67-percentage split that the commenters are referring to is the result of a study provided in the customer brochure that allocated fixed cost to capacity and variable cost to energy using FY 1990 financial data. Investment costs and purchased power costs for capacity for which Western receives capacity credit under Contract 2948A were allocated to the fixed-cost category. All annual expenses and all other purchased power costs were allocated to the variable category. The 27/73-percentage resulted from an earlier informal study based on the same allocation method but using different financial data. This study was requested by the commenter. No further study was prepared to analyze the separate costs as to their fixed or variable nature. Further analysis would be open to differences of opinion as to what is a fixed or variable cost.

Other studies Western performed analyzed CVP annual purchased power expenses by allocating cost based on projected cost of capacity and energy. The results of these studies were also provided in the customer brochure. The annual expense study showed that, depending on the year being analyzed, Western's cost of capacity or energy varied from 40 to 45 percent for capacity and 55 to 60 percent for energy. Based on the various studies and comments received from the CVP customers during the informal rate process, Western proposed the rate design that allocated 40 percent of the CVP revenue required to capacity and 60 percent to energy. This rate design reflects Western's cost of capacity and energy to provide power to all CVP customers, not an individual customer's consumption of capacity or energy. The impact on individual customers will vary depending on that customer's usage of capacity or energy from the CVP.

Some comments attempted to put blame for Western's capacity or energy costs on a certain type of user. A high-load-factor customer stated that the low-load-factor customers consume on-peak; therefore, the low-load-factor customers are responsible for Western's higher energy costs (see comment under Energy Tier Rate). A low-load-factor customer claims that the high-load-factor customers force Western to buy more power to supplement that being generated by the CVP powerplants. It is Western's position that Western has an obligation to meet all its contractual commitments and that the capacity/energy revenue split coupled with the energy tier rate, as discussed in other responses, recognizes Western's overall cost of power.

Comment: Adopt a rate structure that will provide rate stability and eliminate the rate spike in FY 1993.

Response: Retaining a portion of the PG&E settlement revenue eliminates the proposed rate spike in FY 1993, which will provide greater rate stability. Further discussion on the rate design can be found in the customer brochure and in the following response.

Comments: There should not be a transition period. There was no transition when Western went to the existing 50-percent capacity and 50-percent energy split for the previous rate design changes.

Western's low-load-factor customers have paid substantially higher rates than other customers over the past 5 years due to the existing rate design. There is no justification to prolong this inequity.

Response: Western was convinced by comments that it was inappropriate to phase in the change in the capacity and energy revenue split over 2½ years. The change to a 40/60-percentage split in the rate design will take effect on October 1, 1993. Due to adjustments in prior-year expenses from the PG&E settlement affecting FY 1993 net revenues, Western is maintaining the adjusted rates until September 30, 1993.

Energy Tier Rate

Comments: An agricultural customer's monthly energy use is dependent upon the timing and amount of water supply available; therefore, the energy use cannot be altered. An energy tier rate creates a penalty for load management. An energy tier rate is a disincentive to reduce monthly peak load. The energy tier rate appears inconsistent with the energy efficiency rate making standards

VOL
58
ISS
126
JL
2
1993
UMI

applicable to Western under PURPA (16 U.S.C. 2621, 2625) and conflicts with goals of Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. 7275, 7276).

Response: Western does not believe that the energy tier rate is inconsistent with the PURPA (16 U.S.C. 2621,2625) or the goals of Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. 7275,7276). Western's revised energy rates are designed to recover cost of service. The energy tier rate is designed to apply a higher energy rate to any CVP customer purchasing energy at a Western load factor of 70 percent and higher. The 70-percent load factor tier was selected after reviewing the historical and projected average CVP generation and preference customer loads. Based on this examination, it was determined that both the average preference customer system load factor and the CVP average load factor were approximately 70 percent. The energy tier rate represents Western's average energy cost from Northwest suppliers because Western uses a combination of firm and nonfirm Northwest energy purchases to support the CVP generation. Like the change in the capacity/energy revenue split which was discussed in other responses, this change may have an impact on individual customers, but its intent is to represent Western's overall cost of providing service.

Comments: Recommend using a 60-percent capacity factor based on CRD instead of a 70-percent monthly load factor.

Response: Western would have no justification to select a 60-percent capacity factor for the basis of its energy tier rate. The 70-percent load factor was selected because it reflects the preference customer average load factor served by the CVP. A CVP customer is only charged for total CRD when it is used. Western does not believe it is appropriate to use a capacity amount that is not being purchased by the customer to calculate an energy cost; therefore, actual monthly demand was selected rather than a customer's CRD. The customer who cannot use its full capacity entitlement will benefit in some months from the lower capacity rate, resulting from the revision in capacity and energy rates.

Comments: Base the energy tier on actual cost rather than an arbitrary load factor. The first tier could reflect CVP produced energy and EA2-priced energy with the next tier reflecting Northwest and other purchases.

Response: As discussed in other responses, Western did not arbitrarily select the 70-percent load factor or its energy tier rate. Western did several studies to determine an appropriate method for its rate design, including the solicitation of comments and suggestions from its customers prior to beginning the CVP rate process and during the formal rate process. Western selected the average purchased energy cost from the Northwest to set the rate for its energy tier rate because all customers are benefiting from CVP support energy purchases from the Northwest. The energy tier rate represents the average cost to Western for purchasing support energy from the Northwest to support its commercial firm-power sales. Western did not select tier rates based on the marginal cost of individual resources as this comment suggests because all the customers are benefiting from all resources of the CVP, not a specific resource. If Western markets different types of power services in the future, the proposed tiering may be considered.

Comments: Western may be buying more energy because of the drought not because of high-load-factor customers.

Eliminate the energy tier rate. There is no theoretical legitimacy for the energy tier rate. The energy tier rate is based on an assumption that only customers at a 70-percent and higher load factor are responsible for higher priced energy purchased in the Northwest. Efficient pricing requires that all customers pay the same rate except for differences in voltage delivery levels for energy purchased at the same point in time. Differences in marginal energy costs are masked by the CVP rate. High-load-factor customers generally take more energy off-peak. Costs to these customers are lower not higher. An energy tier rate moves prices in the wrong direction.

Western is under a mandate to sell power to its preference customers at cost-based rates, not to juggle rates to reflect power costs in the market. A high-load-factor customer is not necessarily more expensive to serve than a low-load-factor customer.

Western's tiered energy proposal is supported as an incentive to reduce customers' energy use and return Western's system to a load-resource balance. It will ensure decreased withdrawals from EA2. This valuable shaping resource could then be preserved.

Response: Western concurs that it is buying more energy because of the drought, but Western is also buying more energy to support the energy demands of its customers. In analyzing historical load data, Western noted that some CVP customers are purchasing energy from Western at load factors greater than the customers' own system load factors. As discussed in other responses, Western did not design its energy tier rate on the assumption that only customers at 70-percent and higher load factor are responsible for higher priced energy or that these users are marginal customers. The energy tier rate was designed to reduce the impact of purchasing CVP support energy on all customers. Only those customers who purchase energy from Western at 70-percent and higher load factor pay the energy tier rate. All energy up to the 70-percent load factor is purchased at the energy base rate. The energy composite rate is only slightly higher than the energy base rate.

Comments: Western solicited customer comments regarding consumption of Western's resource at hypothetical rates at a 50-percent capacity factor and low differential between tier rates, but subsequently proposed a rate structure with a 70-percent capacity factor and high differential. Customer consumption cannot be predicted based on the survey. A 2-year rate would help to deal with this uncertainty.

What has Western done to show that if high-load-factor customers switch to other sources for their energy it will reduce Western's cost more than Western's revenue?

Response: Since several customers indicated informally to Western's staff that they may switch to another resource if Western added an energy tier rate, Western solicited input on this subject by asking customers how they would change their purchases from Western. In a letter dated April 10, 1992, Western provided the customers with estimated rates under several rate design scenarios. The rate design scenarios, as the commenter points out, were based on energy tier rates at 50-percent load factor. The letter clearly stated that the 50-percent load factor represented a midrange of possible load factor tiers. Western received minimum response to its letter. Western concurs with the comment that consumption could not be predicted based on the responses. The responses Western did receive merely restated what had already been said informally—that some customers may switch resources.

The overall rate design Western selected provides higher energy tier rates than used in the April 10, 1992, letter; but the proposed design has a relatively flat impact on the CVP composite rates for higher load factor customers. Western believes that if the rate design reduces Western's energy sales it will also reduce Western energy purchases. Since Western purchases

from a mixture of energy resources at different rates and is projecting revenue from an energy tier rate based on an average purchase rate, the impact on revenue could swing from undercollection to overcollection over a period of time. However, the impact on repayment should be minimal. Western does not concur that a 2-year rate would help deal with this uncertainty and believes that the RAC will compensate for any difference in Western's projection.

Rate Period

Western received several comments proposing that Western adopt a 2-year rate period rather than the 5-year period. Some of these same comments indicated that a 2-year rate should be adopted instead of the RAC. However, some comments opposed a 2-year rate period at this time. Specific comments follow:

Comments: Western feels it is required to have a 5-year rate period. Nothing in DOE Order RA 6120.2 requires a 5-year rate period. The uncertain situation now facing the CVP does not lend itself to reliable projections for ratemaking purposes for a 5-year period. An examination of historical versus actual results reveals a degree of variance in Western's revenues and expenses which could reflect a high degree of variability in the operational environment. If Western retains a 5-year rate period, adopt a requirement for a rate adjustment process or review every 2 years.

More frequent general rate adjustments would prompt more interaction between Western and its customers. Shorter rate periods allow Western to compensate for a changing market, load, and environmental conditions. Western is encouraged to biennially disseminate 10- or 20-year budget and sales forecasts, providing more stability.

If the 2-year period was adopted, Western could increase the rate in the PRS after the second year.

Response: Western reviewed the comments recommending a 2-year rate period but does not believe it will give the customers the results they are expecting. Western concurs that a 5-year rate period is not required by DOE Order RA 6120.2, but paragraph 12 of DOE Order RA 6120.2 does require that expected revenues be adequate to repay all costs to the end of the repayment period, which is the year 2048 for the CVP. Applying this provision means that expected revenues from the power rates would have to be higher initially due to the higher annual expenses projected after the second year of the study period. The longer rate period allows Western to phase in rates during the 5-year period because the rate in the fifth year is high enough to meet future repayment obligations. If Western adopted a 2-year rate, the composite rate in the second year and thereafter would be 33.04 mills/kWh which is greater than the provisional rates through FY 1997. This rate would result in surplus revenue in FY 1995 to FY 1997 that would repay investment earlier than required. This result conflicts with the comment from the same commenter that questioned Western's projections of repaying investment costs before it was necessary.

Western believes that increasing the rate after the 2-year rate period is inappropriate based on FERC findings on the last CVP rate approval (Docket No. EF88–5011–000). FERC states:

> With respect to the level of the rates in the instant filing, however, the PRS prepared by WAPA deviates from DOE and Commission policies by assuming and incorporating a 1 mill/kWh increase in rates in 1996, which would occur beyond the requested 5-year rate approval period. This assumption is apparently designed to track WAPA's costs more closely than can be accomplished under the usual PRS concept. Such an assumption would completely undermine the basis for the PRS concept, which has been applied by the PMA's for over 20 years. The Commission's regulations state that," . . . the Administrator must provide a PRS which uses the level of revenues produced by the proposed rates." . . . future filings should comply with DOE and Commission regulations.

Western further believes that because most of the uncertainty with repayment of the CVP is related to purchased power expenses, the RAC is a better method to assure repayment than a 2-year rate period. This position was supported by the Hearing Officer's recommendation on the RAC dated February 10, 1993. In addition, the execution of the PG&E settlement lends some stability to Western's projection of purchased power expenses.

Western appreciates the customers' concerns about future markets, load, and environmental conditions having potential impacts on CVP repayment. Although Western is requesting a 5-year rate approval period, this does not mean that revised rates cannot be implemented before the end of the approval period. Western is required by DOE Order RA 6120.2 to prepare a PRS annually to determine if the rates are adequate. If it is determined that the rates are not adequate, Western must prepare a plan of action, which may include a proposed rate adjustment. In response to customer concerns, Western will report to its customers, at least annually, the status of the CVP repayment after the preparation of the annual PRS, normally prepared in December. If necessary, Western will hold an informal customer meeting, similar to the meetings held before starting this rate process, to discuss the results of the PRS, the revenue and expense projections used in the PRS, and Western's plan to adjust rates if that is necessary.

Revenue Adjustment Clause

Many of the comments on the RAC were presented during the evidentiary hearing process on the RAC. Since the RAC is an integral part of the CVP rate, the comments received during the evidentiary hearing process are being incorporated into the rate process.

Comments: The $20 million RAC cap may be inadequate to balance Western's cash-flow. If a surplus builds up, the surplus may be used prematurely to pay off 3 percent Treasury-interest debt.

Limit any RAC surcharge to an amount that, when combined with a CVP rate increase, will never exceed a specific annual percentage increase.

Support revision of the RAC from a 6-month to 12-month period with a maximum RAC of $20 million.

The RAC is difficult for customers to budget. It forces prudent customers to carry Western's contingency funds.

The lagged feedback mechanism of the RAC may trigger oscillating cash-flow for customers.

Separate the PG&E settlement from the RAC.

Response: In light of the comments and the execution of the PG&E settlement, Western has modified its RAC proposal as follows:

1. The impact from the PG&E settlement has been deleted from the RAC. Adjustments resulting from the PG&E settlement will be separate from the RAC.

2. The proposed annual carryover has been eliminated. The RAC will be limited to the results in the year calculated only. Since Western is retaining a portion of the PG&E settlement toward repayment of investment, the carryover is not necessary.

3. The RAC will not be effective until October 1, 1993 (FY 1994), with the first RAC credit or surcharge applied beginning January 1, 1995. The adjustment in the PRS for the PG&E settlement will assure repayment of annual expenses and adequate repayment in FY 1993. A RAC for this period is not necessary. However, revenue adjustment for other purposes may be allocated at any time.

VOL 58 ISS 126 JL 2 1993 UMI

4. The RAC surcharge will be no greater than the annual deficit plus the lesser of 1 percent of the unpaid investment or projected net revenue. This change is due to the fact that in some years the projected net revenue is less than 1 percent of the unpaid investment.

All other provisions of the proposed RAC explained in the customer brochure will be included in the RAC. With these revisions, the customers can be assured the RAC cannot impact their charges from Western until after January 1995. This should provide the customers with greater rate stability in the near term. Thereafter, any RAC credit or surcharge will be limited to a maximum of $20 million annually to be recovered from all CVP commercial firm-power customers.

Comments: Including project O&M costs in the RAC provides insufficient incentive to control O&M costs.

The RAC would include variances in O&M costs caused by project use and transmission customers. Variances in these O&M costs should be removed from the RAC.

The RAC should be modified, at the very least, such that shortfalls in project-use revenues are not included if such inclusion results in a RAC surcharge.

Response: Western has changed its RAC because the existing RAC was based on a comparison of commercial firm-power revenues and purchased-power expenses. This comparison could result in revenue credits when the CVP repayment was deficit due to changes in other revenue or expense categories, such as O&M expenses. It also could create a surcharge during a period when the CVP repayment was surplus. In order to eliminate this deficiency, Western is adopting a revised RAC based on projected net revenue compared to actual net revenue.

Western concurs that variances in projection of any revenue or cost may trigger a RAC. The RAC, however, will not create a deviation in the cost of service. Deviations in projected O&M expenses would have the same impact on future rates as it will have on the RAC. To control Western expenses, Western has implemented cost containment policies Western-wide. In addition, Western must request appropriations from Congress for all its O&M expenses. It is these actions that control O&M expenses. In any case, if the rates are inadequate to repay the actual annual expenses, including O&M, a rate adjustment would need to be implemented. The RAC merely allows Western to collect up to a $20 million shortfall more quickly than does a rate adjustment.

A commenter also indicated that a variance in O&M costs caused by project use and transmission customers could cause a revenue adjustment and recommended that these O&M costs should be removed from the RAC. Western is required to collect adequate revenue from its power sales to recover all costs. Other services merely provide revenue to assist in repayment. Transmission service rates have been designed to collect revenues to offset the average cost associated with transmission facilities normally recovered through power sales, not to shift repayment responsibility to transmission service customers. The commercial power sales must recover adequate revenue to repay all expenses; therefore, only the commercial power sales are included in the RAC.

Project-use revenues are slightly different than transmission service in that project-use sales are required to recover actual O&M expenses.

Western and Reclamation are developing procedures to assure that project use picks up the proper allocation of CVP operating expenses. The procedures will include a method of adjusting from projected to actual expenses. When procedures are agreed to, the PRS will reflect any adjustments resulting from the procedures; thus the RAC will recognize this adjustment.

Comments: The positive feedback mechanism of the interest, cost savings, or earnings that will accrue on either deficits or surpluses will exacerbate the RAC cash-flow.

The RAC can pay credits to customers when the CVP is deficit.

Response: Some commenters expressed a concern that a RAC adjustment in any one year could create an opposite RAC in the next year. During the RAC evidentiary hearing, Western indicated that this could occur if proper accounting was not set up to account for the RAC. To prevent this from occurring, Western will first prepare a PRS without any RAC adjustment to determine the RAC for the year. This will assure that proper revenues and interest are calculated. Once the RAC amount is determined, accrual accounts will be set up to show collection or payment from the RAC within the year in which the RAC was calculated. A second PRS will be prepared with the RAC adjustment included in a separate column of the PRS, thus balancing the revenue in that year only. This will prevent a RAC from affecting the next year's net revenue amount.

PG&E Settlement

Comments: An allocation to investment repayment of any overcollection of revenues because of the PG&E purchased power costs should not prepay CVP debt. Restrict allocation to debt repayment that is in arrears only.

At least one-half of the PG&E settlement Western receives should be returned to the CVP customers at the time of settlement, not over a period of up to 3 years.

Western should set up contingency reserve funds.

Response: As stated in the discussion on the RAC, the PG&E settlement refund issue will be separated from the rate process. The PG&E settlement resolves several outstanding billing issues between Western and PG&E. As a result of the settlement, PG&E will pay Western $44.6 million plus interest accrued from August 24, 1992, to the date payment is made to Western. Western will pay PG&E $118.35 million plus interest accrued from August 24, 1992, to date paid. The actual amount paid will not be known until after all interest is calculated and payment is made.

As explained in the customer brochure, the payments by PG&E and Western resolve some longstanding capacity disputes as well as rates for capacity purchases by Western from PG&E. The payment from PG&E to Western is a refund plus interest on payments made by Western for capacity purchased from January 1, 1985, through April 30, 1988. The payment from PG&E results from Western and PG&E agreeing to the methodology for calculating PG&E's thermal rates under a letter agreement dated February 7, 1992, and approved by FERC on October 29, 1992 (Docket No. ER92–457–000).

The payment from Western to PG&E is for capacity purchases by Western from May 1, 1988, through December 31, 1992, as agreed to by the parties in the PG&E settlement.

This settlement has a major impact on the CVP repayment and rates. The existing rates were based on the actual payments made to PG&E from 1985 to 1987 and estimated costs thereafter. For the existing rates, Western estimated capacity costs to PG&E during the cost evaluation period to be about $248 million. The actual cost will be dependent on the final payments made by Western for the same period, which will be substantially lower than estimated. Western stopped making actual payments to PG&E in 1988. Thereafter, Western estimated the potential payments to PG&E and

accrued the expenses in financial documents and the PRS.

During this same period, Western implemented the RAC to assure timely repayment of the CVP. One aspect of the RAC provided that an overcollection of revenue of up to $15 million every 6 months would be returned to the customer through revenue credits on customer power bills. The RAC was based on a comparison of actual revenue to projected revenue and a comparison of actual purchased-power expenses to projected purchased-power expenses. The net difference would result in a revenue credit or surcharge. Because Western did not have actual purchased-power expenses for PG&E capacity purchases, Western used the accrued expenses for purposes of the RAC, which resulted in Western applying $53.8 million in RAC credits and $0.6 million in RAC surcharges for the period November 1, 1988, to March 31, 1993.

If actual expenses were known, the customers may have been entitled to larger revenue credits, but such credits would have been limited to $15 million biannually. Any difference greater than $15 million would have flowed through the PRS as revenue. If total revenue in that year was greater than annual expenses, all remaining revenue would have been applied to repayment of a deficit or investment. Assuming that the $15 million limit would have been reached each period, the customer could have received up to $82 million more credit for the period FY 1988 to 1992. Since the PG&E settlement provides a lump-sum payment by Western for this same period, Western cannot go back and determine in what RAC period the customer may have been entitled to additional RAC credits.

As stated earlier, the existing rates were developed to collect adequate revenues to repay a projected amount for PG&E capacity purchases, but the rate was also developed to collect adequate revenues to make projected deficit and investment payments. In some years during this period, either inadequate or no payments were made on investment. The CVP repayment fell behind its projected repayment by over $33 million.

Normally, Western cannot return revenue to customers that it collects as a result of applying a rate to power sales. Over or undercollection of revenue is adjusted through future rates or, in the case of the CVP, through applying a RAC to future sales. In this situation, Western cannot determine the specific amounts that the customer may have received in revenue credit due to application of the RAC or the specific amount that may have flowed through the PRS as revenue available for repayment of investment. Therefore, Western has concluded that because the customers may have been entitled to greater revenue credits during the existing rate period, the difference of any settlement amount from the PG&E settlement will be shared with the customers and part reapplied in the PRS to repay project costs, thus lowering the CVP rates. Western estimated that about $65 million should be retained for CVP repayment. If revenue credits on power bills are chosen as the means to share an adjustment with the CVP customers, the revenue credit will be in addition to a RAC adjustment.

Western's position will provide adequate revenues to repay the approximate $33 million shortfall in repayment of investment, FY 1993 projected payments, and reduce the investment payments to a minimum amount for FY 1994 and FY 1995. This allows Western to minimize rates and still meet the goal of averaging about $10 million annually toward repayment of investment during the cost evaluation period of 1993 to 1998.

The specific method of allocating the difference to the customers will be developed with the customers outside the rate process.

Other

Comments: The acceptable power factor should be set at 85 or 90 percent. Reduce the magnitude of the billing impact from the LPFC.

Response: Western selected the 95-percent power factor for its LPFC because Contract 2948A requires a 95-percent power factor. A power-factor adjustment (surcharge) was first implemented with the existing rates effective May 1, 1988. The power-factor surcharge was delayed until after June 1989 to allow the CVP customers time to implement power-factor improvement programs. Some customers reacted to the power-factor surcharge program by improving their power factor. Those customers that did not implement power-factor improvement programs have incurred the power-factor surcharge since June 1989. Western believes that this is ample time for a customer to take action to improve its power factor. The magnitude of the revised charge is appropriate to encourage improved power factors.

Comments: Curtailable power should be sold at discount rates.

Response: Western believes that the curtailable power this commenter is referring to is Western's withdrawable power and diversity power. In order to maximize the CVP resources, Western has entered into firm-power sales contracts for power that is withdrawable after a specific notification period. Although Western concurs that this withdrawable power does not have the long-term commitment of power that is not subject to withdrawal, it is a power resource available on a long-term firm basis from Western until withdrawn. Also, diversity power is allocated to certain customers who can reduce their loads at the request of Western at the time of Western's simultaneous peak. For this service, the customer benefits by receiving an additional allocation of CVP power and, at the same time, prevents the permanent withdrawal of the customer's allocation of withdrawable power. For these reasons, Western believes it is appropriate to apply the commercial firm-power rate to withdrawable power and diversity power.

Comments: The Diversity Program compensation to National Aeronautics and Space Administration, Ames Research Center (NASA-Ames), should be increased. NASA-Ames should pay only the CVP system composite rate for all energy above the "protection level of 27 MW provided by NASA-Ames."

Response: The allocation of diversity power and the compensation to NASA-Ames for its participation in the Diversity Program are outside of this rate process.

Comments: The assumption that customers' contracts are not renewed in 2004 causes rates to be set at a level sufficient to repay investment before it is due.

Response: It has been a long-standing policy to assume for repayment study purposes that the current firm-power contracts will terminate in 2004 and that the CVP will then sell power only from CVP generation. The basis of this assumption is that Contract 2948A terminates in 2004 and a new marketing plan may be adopted by Western. This assumption does not cause rates to be set at a level to repay investment before it is due. The PRS assumes a levelized repayment of investment through the end of the repayment period, regardless of the amount of power being sold.

Comments: Peaking capacity is priced above its production cost. Peaking capacity should be priced at the cost incurred to produce the capacity component of CVP firm power. This would make the product competitive and allow all CVP customers to share in the benefits. These benefits would result in reduced firm-power rates because the capacity cost is already recovered in the rates. CVP customers are unlikely to buy capacity from Western when the

VOL 58 ISS 126 JL 2 1993 UMI

Bonneville Power Administration rates would be lower for the identical capacity product.

Response: Western's commercial firm-power rates reflect Western's costs associated with providing capacity or energy to its customers. Western would be required to supply long-term firm peaking capacity under the same conditions that it provides other firm power; therefore, it is appropriate to charge the same rate. Like other PMA's, Western needs to set its firm-power sales at rates adequate to recover its costs. If Western elects to sell surplus peaking capacity in the future under short-term agreements, such available sales would be sold at short-term power rates.

Comments: Western's projected price of energy purchases from PG&E is too high and should be reduced.

(a) The EA2 credit is too low.

(b) PG&E thermal rates are too high. Western assumes gas and oil prices escalate at an average of 9.35 percent, which is about double the industry estimates. Seven-percent escalation factor seems high (factor applied to PG&E partial requirements rate).

Northwest costs are not justified or supportable and need to be reduced.

Response: Western made several changes to its estimated rates used in projecting the CVP purchased-power expenses, substantially reducing the projected purchased-power costs used in determining the provisional rates for commercial firm power. Based on the PG&E settlement, PDC has been set at 870 MW. The 1993 PG&E thermal-rate estimates were provided by PG&E. Estimated PG&E thermal rates thereafter have been developed based on the rate design agreed to in the Western/PG&E Agreement dated February 7, 1992 (Contract No. 92–SAO–10106) and the PG&E long-term estimated costs provided in its 1992 Electricity Report (ER92). Revised estimates of PG&E thermal rates assume average water years. Western used PG&E's estimated mix of gas and oil for its fuel projections but used DRI-McGraw Hill inflation factors, which were lower than PG&E's estimates. The EA2 rates were developed by entering the estimated thermal rates and estimated withdrawals and deposits into the EA2 computer program used by both PG&E and Western. The EA2 credit is based on the weighted average rate paid by PG&E for the energy balance in the account less PG&E's average cost of thermal energy from 1967 to the current month.

Western's projected cost of other Northwest power was also modified. Revised costs have been limited to the estimated cost of nonfirm energy only. The rates for nonfirm energy were developed based on Western's 1992 average cost, escalated at the average yearly increase for the period 1988 through 1992.

Comments: The recent PDC agreement (PG&E settlement) may add an expensive capacity resource for Western. Western should tier its capacity rate similar to the energy rate. The first tier being CVP O&M, interest, repayment, and Northwest capacity costs and the second tier should be at the PG&E cost.

Response: Western does not believe that the capacity rates should be tiered in the manner recommended. Western stated in a separate response to a similar comment on tiering for energy that all CVP customers are benefiting from all the resources and costs; therefore, rates should not be allocated based on a specific resource. Since each CVP customer is limited to a specific CRD, no customer is receiving a greater benefit from Western capacity purchases over another customer.

Comments: We support the cost-based rates for transmission service. Western should guarantee direct-service CVP customers bidirectional transmission access and net scheduling. If unidirectional rates mean halving the rates, then provide unidirectional rates.

Response: The availability of transmission and type of service will be determined on a case-by-case basis outside the rate process. The CVP transmission service rates will be applied to the maximum rate of delivery provided in the transmission service contract. Unidirectional rates does not mean halving the rates because the rate design is based on service amounts and not necessarily one-half of the provisional rates.

Comments: Western cannot rightfully charge its direct connected service customers for losses incurred making deliveries over the PG&E transmission system to other customers.

Response: Transmission of CVP power by PG&E is an integral part of the CVP system. Direct service customers have chosen to directly connect to the CVP transmission facilities. By directly connecting to the CVP system, these customers avoid paying the PG&E transmission service rates. The charges for PG&E transmission are passed on to the specific users of this service. An additional benefit to the direct-service customers is that these same customers have a choice of using either the CVP or PG&E wheeling services for third-party power transactions. Western has evaluated the potential impact to the direct service customers and has determined that it is inappropriate to give these customers a discount or rate reduction for PG&E transmission losses. Contract 2948A requires that the CVP provide 4.5-percent losses to PG&E for its deliveries to CVP customers at 44 kV and above and 8-percent losses for deliveries below 44 kV. These losses are netted into the PG&E/Western monthly accounting of resources. The losses may be provided by CVP generation, PG&E, or from other purchases made by Western. Those customers receiving deliveries below 44 kV are charged for 3.5-percent losses by Western at the CVP commercial firm-power rates. This assures that only the costs associated with the higher voltage deliveries are included in the power rates charged to all customers. If Western were to give direct-service customers a credit for losses by third parties, Western would have to adjust that credit by losses Western incurred for delivery to the direct-service customers over Western's system. Western is currently charging 3.7-percent losses to third parties. In addition, Western would have to charge the direct-service customers for O&M costs for facilities associated with the direct service. These costs are now being included in the commercial firm-power rates. The costs associated with CVP losses are difficult to determine and vary with the mix of resources which Western uses. Allocation of O&M expenses would require a breakdown of costs based on the facilities or equipment used solely for direct-service deliveries, which would be difficult to determine. Western's approach provides equality for all CVP customers regardless if the ultimate power deliveries are over PG&E or Western facilities. Western has unbundled the appropriate costs associated with PG&E deliveries from the CVP commercial firm-power rates.

Comments: Western should withdraw the rate adjustment proposal. The current proposal is not supportable. PRS guidelines (DOE Order RA 6120.2) are not causing a need for a rate adjustment. The PRS shows that unamortized investment does not equal allowable unamortized investment until FY 2004. The CVP is more than $200 million ahead of the repayment requirements. No current PRS was provided that showed a need to develop a plan as provided for in DOE Order RA 6120.2.

Response: A rate adjustment is required under FERC criteria because the rate approval on the existing rates terminates April 30, 1993. The revised rates are supportable. Western followed DOE Order RA 6120.2 to develop its provisional rates. As the commenter points out, the CVP is ahead of its required repayment in accordance with

DOE Order RA 6120.2, but the CVP did not make an investment payment from the mid 1970's until FY 1991. In fact, the CVP has been carrying a deficit in its repayment of annual expenses for several years. The current PRS indicates that the CVP has recovered all deficits and is now making payments toward repayment of investment. A revised PRS was provided in the customer brochure that demonstrated the revised rates were needed to recover future projected expenses. A PRS using the existing rates was available to all parties upon request.

Comments: Delay rate process, combine rate and RAC, and work with customers "showing an interest" to develop a supportable rate, or at least an understanding of assumptions and methodologies used. Make rates effective October 1, 1993.

Response: Delaying the rate process is inappropriate. Western held two informal meetings, a public information forum, and a public comment forum in order to explain its rates and discuss issues. Prior to the formal process, Western invited all customers to meet with its staff in order to obtain a better understanding of the CVP rate methodologies. Although the rates are effective May 1, 1993, the rates do not change until October 1, 1993.

Comments: Establish a forum for the customer's input into budget process.

Response: In a separate response, Western indicated that it will annually report to the customers or hold a customer meeting on the status of CVP repayment. This will include budget information.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Part 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Sacramento Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 1825 Bell Street, Suite 105, Sacramento, CA 95825; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective May 1, 1993, Rate Schedules CV–F7, CV–PC1, CV–FT2, CV–NFT2, and CV–TPT3. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval or substitute rates on a final basis, through April 30, 1998.

Issued in Washington, DC, April 12, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule CV–F7 (Supersedes Schedule CV–F6)

Central Valley Project

Schedule of Rates for Commercial Firm-Power Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To the commercial firm-power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

MONTHLY RATES

Period	Capacity	Energy
05/01/93–09/30/93	$6.45/kW/month	Base: 16.30 mills/kWh. Tier: None
10/01/93–04/30/94	$6.22/kW/month	Base: 17.97 mills/kWh. Tier: None
05/01/94–09/30/95	$6.22/kW/month	Base: 16.99 mills/kWh . Tier: 30.87 mills/kWh.
10/01/95–09/30/97	$6.57/kW/month	Base: 17.73 mills/kWh. Tier: 34.70 mills/kWh.
10/01/97–04/30/98	$7.16/kW/month	Base: 19.33 mills/kWh. Tier: 37.46 mills/kWh.

Billing: Demand: The rates listed above for capacity shall be the charge per kW of billing demand. The billing demand is the highest 30-minute integrated demand measured or scheduled during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy: The rates listed above for energy shall be a charge per kWh for all energy use up to, but not in excess of, the maximum kWh obligation of the United States during the month as established under the power sales contract.

The energy base rate shall be applied to all energy sales below a 70-percent monthly load factor. The energy tier rate shall be applied to all energy sales at a 70-percent and higher monthly load factor. The monthly load factor shall be calculated based on the lesser of the customer's (1) maximum demand for the month or, if a scheduled customer, the maximum scheduled demand for the month; or (2) the CRD. Only power offered under this Rate Schedule CV–F7 will be used in the calculation of the load factor.

Adjustments: Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of

the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above. The energy base rate will be used as the overrun rate for energy.

For Revenue Adjustment: The Revenue Adjustment Clause (RAC) calculation specified in Rate Schedule CV–F6 will terminate effective March 31, 1993. All credits or surcharges allocated based on the final 6-month RAC calculation period of October 1, 1992, through March 31, 1993, will be allocated to the CVP commercial firm-power customers during a 5-month period beginning on May 1, 1993, and ending on September 30, 1993. No RAC will be applied under this Rate Schedule CV–F7 for the remainder of FY 1993. The following RAC methodology will be effective October 1, 1993:

1. If the actual net revenue is greater than the projected net revenue for the RAC calculation period, a revenue credit will be allocated during the RAC adjustment period. The credit will equal the difference between the actual net revenue and projected net revenue, represented by the following formula:

ANR > PNR; C = ANR–PNR
Where:
ANR=Actual Net Revenue
PNR=Projected Net Revenue
C=Credit

2. If actual net revenue is less than the projected net revenue for the RAC calculation period, a revenue surcharge will be allocated during the RAC adjustment period.

2.1 If the actual net revenue is negative, the surcharge will be equal to the minimum investment payment plus the annual deficit, represented by the following formula:

ANR < PNR and < O; S = MIP + AD
Where:
ANR=Actual Net Revenue
PNR=Projected Net Revenue
MIP=Minimum Investment Payment
AD=Annual Deficit
S=Surcharge

2.2 If the actual net revenue is positive, the surcharge will equal the minimum investment payment less the actual net revenue, represented by the following formula:

ANR < PNR and > O; S = MIP–ANR (if ANR > MIP, S = O)
Where:
ANR=Actual Net Revenue
PNR=Projected Net Revenue
MIP=Minimum Investment Payment
S=Surcharge

Provided, that if the actual net revenue is greater than the minimum investment payment, the surcharge will be equal to zero.

3. The RAC credit or surcharge allocation shall not exceed $20,000,000 each RAC adjustment period.

4. The RAC credit or surcharge shall be allocated to each CVP commercial firm-power customer based on the proportion of the customer's billed obligation to Western for CVP commercial firm capacity and energy to the total billed obligation for all CVP commercial firm-power customers for CVP commercial firm capacity and energy for the RAC calculation period.

5. For purposes of the RAC calculation, the following terms are defined:

5.1 Actual Net Revenue—The Recorded Net Revenue.

5.2 Annual Deficit—The amount the recorded annual expenses, including interest, exceed recorded annual revenues.

5.3 Minimum Investment Payment—The lesser of 1 percent of the recorded unpaid investment balance at the end of the prior FY that the RAC is being calculated, or the projected net revenue.

5.4 Projected Net Revenue—The annual net revenue available for investment repayment projected in the PRS for the rate case during the FY that the RAC is being calculated (see table I).

5.5 RAC Adjustment Period—The period January 1 through September 30, following the RAC calculation period when credits or surcharges will be applied to the power bills. The first RAC adjustment period under this rate schedule will be in FY 1995, beginning January 1, 1995, and ending September 30, 1995.

5.6 RAC Calculation Period—The last recorded FY (October 1 through September 30). The first RAC calculation period under this rate schedule will be FY 1994, beginning October 1, 1993, and ending September 30, 1994.

5.7 Recorded Net Revenue—The annual net revenue available for repayment recorded in the PRS for the FY that the RAC is being calculated.

6. Subject to modification by a superseding rate schedule, the final RAC will be allocated to the customers during the period January 1, 1999, to September 30, 1999.

TABLE 1.—PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE

Period	Projected net revenue
October 1, 1993–September 30, 1994	$1,581,503
October 1, 1994–September 30, 1995	7,032,754

TABLE 1.—PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE—Continued

Period	Projected net revenue
October 1, 1995–September 30, 1996	14,430,107
October 1, 1996–September 30, 1997	1,051,664
October 1, 1997–September 30, 1998	9,595,452

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading. The low power factor charge (LPFC) will be calculated by multiplying the customer's maximum monthly demand by the kVar/kW rate for the customer's mean power factor as provided in the following table 2:

A LPFC will be assessed when a customer's power factor is less than 95 percent.

(a) A charge of $2.50 per kVar will be assessed for every kVar required to raise a customer's power factor to 95 percent. The calculated power factor used to determine if a charge will be assessed is the arithmetic mean of a customer's measured monthly average power factor and their measured onpeak power factor, rounded to the nearest whole percent with 0.5 percent or greater rounded to the next higher percent.

(b) The mean power factor will be calculated at each customer's point of delivery. If a customer has multiple points of delivery, the power factor will be determined from totalized information from the points of delivery.

(c) No credit will be given for customers operating between 95 percent and 100 percent.

(d) Customers that have a monthly peak demand of less than or equal to 50 kW will not be subject to the LPFC.

(e) The Contracting Officer may waive the LPFC for good cause in whole or in part.

TABLE 2.—KVAR/KW RATE TABLE

Power factor	Rate
0.94	$0.09
0.93	0.17
0.92	0.24
0.91	0.32
0.90	0.39

TABLE 2.—KVAR/KW RATE TABLE CONTINUED

Power factor	Rate
0.89	0.46
0.88	0.53
0.87	0.60
0.86	0.66
0.85	0.73
0.84	0.79
0.83	0.86
0.82	0.92
0.81	0.99
0.80	1.05
0.79	1.12
0.78	1.18
0.77	1.25
0.76	1.32
0.75 & below	1.38

Rate Schedule CV–PC1

Central Valley Project

Schedule of Rate for Peaking Capacity Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To customers for long-term firm peaking capacity service supplied through one meter, at one point of delivery, unless otherwise provided in the service contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Billing: The rates listed below for peaking capacity shall be the charge per kW applied to the maximum rate of delivery specified in the service contract, payable whether utilized or not.

Peaking Capacity Charge:

Effective 05/01/93–09/30/93.	Rate: $6.45/kW/month.
Effective 10/01/93–09/30/95.	Rate: $6.22/kW/month.
Effective 10/01/95–09/30/97.	Rate: $6.57/kW/month.
Effective 10/01/97–04/30/98.	Rate: $7.16/kW/month.

Energy: Billing: The rates listed below for energy shall be the charge per kWh for all energy scheduled for delivery without return.

Energy Charge:

Effective 05/01/93–09/30/93.	Rate: $16.30 mills/kWh.
Effective 10/01/93–04/30/94.	Rate: $17.97 mills/kWh.
Effective 05/01/94–09/30/95.	Rate: $16.99 mills/kWh.
Effective 10/01/95–09/30/97.	Rate: $17.73 mills/kWh.
Effective 10/01/97–04/30/98.	Rate: $19.33 mills/kWh.

Adjustments: Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above.

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Rate Schedule CV–FT2 (Supersedes Schedule CV–FT1)

Central Valley Project

Schedule of Rate For Firm Transmission Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To firm transmission service customers where power and energy are received into the CVP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CVP system specified in the transmission service contract.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Billing: The rate listed below shall be applied to the maximum rate of delivery specified in the service contract, payable whether utilized or not.

Transmission Service Charge: $0.43/kW/month.

Adjustments: For Reactive Power: None. There shall be no entitlement to the transfer of reactive kVars at delivery points, except when such transfers may be mutually agreed upon by the Contractor and Contracting Officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Rate Schedule CV–NFT2 (Supersedes Schedule CV–NFT1)

Central Valley Project

Schedule of Rate for Nonfirm Transmission Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To nonfirm transmission service customers where power and energy are received into the CVP system at points of receipt with other systems and transmitted and delivered, subject to the availability of transmission capacity, less losses, to points of delivery from the CVP system specified in the service contract.

Character and Conditions of Service: Transmission service on an intermittent basis for capacity, three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Billing: The rate listed below shall be applied to each kWh delivered at the point of delivery, as specified in the service contract.

Transmission Service Charge: 1.23 mills per kWh.

Adjustments: For Reactive Power: None. There shall be no entitlement to the transfer of reactive kVars at delivery points, except when such transfers may be mutually agreed upon by the Contractor and Contracting Officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Rate Schedule CV–TPT3 (Supersedes Schedule CV–TPT2)

Central Valley Project

Schedule of Rate for transmission of CVP Power by a Third Party

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To customers of the CVP who require transmission service by a third party to receive power and energy sold by Western.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: When the United States utilizes transmission facilities, other than its own, in providing service under a customer's power sales contract, and costs are incurred by the United States for the use of such facilities, the customer shall pay all costs, including transmission losses, incurred in the delivery of such power.

The transmission losses chargeable to the customer shall be those losses which are in excess of the "at or above 44-kV" transmission losses specified by Contract No. 14–06–200–2948A. For billing purposes, transmission losses will be added to the meter readings of the power and energy delivered to the

customer under the customer's power sales contract with the United States.

[FR Doc. 93-15598 Filed 7-1-93; 8:45 am]
BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4674-7]

Fuels and Fuel Additives; Waiver Application/Circuit Court Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 12, 1991, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). The application sought a waiver for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). On January 8, 1992, the Administrator of EPA denied Ethyl's application for a waiver (57 FR 2535, January 22, 1992). On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case. In the context of those discussions, Ethyl submitted to the Agency new emissions test data developed by Ethyl since the denial decision. Ultimately the court case was not settled and on April 6, 1993, in light of these new data, the United States Court of Appeals remanded the case to the Agency to redetermine within 180 days whether to grant or deny Ethyl's section 211(f)(4) application. Since the mandate of the court was transmitted to the Agency on June 3, 1993, the Administrator of EPA has until November 30, 1993 to grant or deny this application.

DATES: Since the date of the remand by the United States Court of Appeals, Ethyl has submitted additional data to EPA, and has committed to submit other additional data no later than July 15, 1993. Comments on this application will be accepted until August 6, 1993.

EPA has not scheduled a public hearing on this Notice. A hearing will be held in Washington, DC, on this waiver application if one is requested on or before July 19, 1993.

Parties who wish to request a hearing should contact Joseph R. Sopata at (202) 233-9034. If a hearing is scheduled based on a request and you wish to be notified or to participate, you must contact the above individual for the date, time and location of the hearing. If there is a hearing, parties wishing to testify should contact Joseph R. Sopata. It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the EPA Air Docket in Washington, DC. Additional information on the submission of comments to the docket may be found below in the "ADDRESSES" section of this notice.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A-93-26 at the Air Docket (LE-131) of the EPA, Room M-1500, 401 M Street, SW., Washington, DC 20460, (202) 260-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233-9034.

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 56 FR 5352 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which apply only to light-duty vehicles. Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application the statute provides that the waiver shall be treated as granted. The subject of this notice is an application by Ethyl under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn).

This Agency action is a reconsideration of Ethyl's fourth application for a waiver for MMT. Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decisions and justifications thereof may be found in the September 18, 1978 **Federal Register**, 43 FR 41424, and the December 1, 1981 **Federal Register**, 46 FR 58630. Ethyl's third application, was submitted on May 9, 1990, for concentrations of MMT resulting in a level of 0.03125 (1/32) gpg Mn in unleaded gasoline (the same levels which are requested in the application which is the subject of today's notice). Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time that Ethyl withdrew that application, EPA accepted the

withdrawal and immediately terminated the proceeding without action on the application.

On January 8, 1992, the Administrator of EPA denied Ethyl's fourth application for a waiver (57 FR 2535, January 22, 1992). The application was denied based in part upon data submitted by Ford Motor Company which indicated that, for the model groups tested by Ford and, for the conditions under which Ford tested its vehicles, the increases in hydrocarbon exhaust emissions as a result of the use of MMT were substantially greater than those observed in the Ethyl test program. In its decision, the Agency stated that a likely factor which might account for the differences observed between the Ethyl and Ford test programs was the severity of the driving cycle. However, the Agency also concluded that other factors might be responsible for the observed differences.

In the denial decision, the Agency stated that it had always accepted data from test programs which "model" the fleet in support of waiver applications, but that if an interested party were to present data indicating that a potentially significant subset of the fleet, not tested by the applicant, was especially susceptible to the negative effects of the additive, the Agency could reasonably require specific testing on representative models of that sub-fleet.

In its decision, the Agency also stated that it believes it is reasonable to take into account the effect of a fuel on vehicles' ability to meet future emissions standards. (The "Tier I" tailpipe standards prescribed by section 202(g) of the Act begin to take effect in model year 1994, which begins approximately in September 1993.[1]) Therefore, regarding the Ford data mentioned above, the Agency stated in its decision that the concerns raised by those data related to both current and future standards.

On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case. In the context of those discussions, Ethyl submitted to the Agency new emissions test data developed by Ethyl since the denial decision.

In its new test program, Ethyl tested six pairs of 1991 Escorts, using both the relatively high-speed driving pattern similar to that utilized by Ford in its testing of 1991 Escorts (the Ford cycle) and, also, after changing emissions system components (catalyst and oxygen sensor), the driving cycle used by Ethyl in the original test program (EPA's durability certification cycle also known as the AMA). Half of the vehicles utilized MMT-containing fuel and half were run on clear fuel (fuel not containing MMT). Ethyl also performed some catalyst efficiency tests on these vehicles utilizing a "slave engine".[2]

Ethyl also tested six 1988 Escorts which were used in its original test program driven on the AMA cycle. In the new program, after replacing the catalyst and oxygen sensor, Ethyl continued mileage accumulation, from 75,000 to 100,000 miles, utilizing the Ford cycle. Likewise, Ethyl tested six 1988 Buicks from its original fleet accumulating mileage (100,000 to 115,000 miles) using the Ford cycle but without replacing any components.

Finally, in this test program, Ethyl accumulated mileage on seven pairs of 1992 vehicles (four Crown Victorias, six Buick Regals and four Ford Mustangs) over 20,000 to 45,000 miles, with and without MMT, using the Ford cycle.

Based on its inspection and analysis of the new Ethyl data, EPA tentatively concluded that the data indicate that driving cycle does not contribute significantly to MMT-induced increases in hydrocarbon emissions. (EPA's preliminary analysis was placed in docket A–92–41.) However, in addition to addressing the issue of driving cycle, the Ethyl data appeared to confirm the finding by Ford that 1991 Escorts experienced a much higher MMT-induced HC increase than that observed in other models tested (either in Ethyl's new program or in the original Ethyl test program). The Agency remained concerned that these data could indicate that certain engine and emissions control system configurations are more vulnerable to an MMT-induced emissions increase irrespective of driving cycle.

To facilitate further settlement discussions with Ethyl, EPA decided to attempt to formulate an emission testing program intended to address in a timely manner specific unresolved issues concerning the effect of MMT on emissions. EPA held a public workshop to assist the Agency in attempting to formulate a proposed emission test program to address these issues (57 FR 44740, September 29, 1992). In particular, EPA hoped to obtain information and assistance from technical experts outside of the Agency. Moreover, in view of the significance of any future waiver decision concerning MMT for the auto industry and the general public, EPA was interested in obtaining comments concerning a specific emission testing program and decisional framework designed to address and resolve these issues. The workshop was conducted on October 28, 1992.

Although further settlement discussions between Ethyl and EPA were held subsequent to the public workshop, the parties were not successful in reaching a settlement. However, despite the failure of the parties to reach agreement, EPA concluded that the Administrator's denial decision should be reconsidered in light of the new emissions data generated by Ethyl subsequent to the decision. Accordingly, EPA requested that the United States Court of Appeals for the District of Columbia remand the denial decision to enable EPA to reconsider its decision concerning Ethyl's application.

On April 6, 1993, the Court of Appeals issued a decision granting the Agency's motion and remanding the case to the Agency to redetermine within 180 days whether to grant or deny Ethyl's application. The mandate implementing this judgement was transmitted to the Agency on June 3, 1993, thereby beginning the 180-day period allotted for the Agency's reconsideration. Thus, the Administrator's final decision on remand is due on or before November 30, 1993.

Ethyl has conducted and submitted to EPA additional data on emissions testing with fuels containing MMT on five 1993 models and on three previously tested 1992 models. Ethyl used an intermediate 45 mile per hour average driving cycle for mileage accumulation on the 1993 test vehicles and for some of the mileage accumulation on the 1992 vehicles (the initial mileage accumulation on the 1992 vehicles was generated using a 55 mile per hour average driving cycle, i.e , the Ford cycle).

Ethyl has presently submitted additional data for five 1993 models (Toyota Camrys, Oldsmobile Achievas, Dodge Shadows, TLEV Honda Civics, TLEV Ford Escorts) reflecting 45,000 to 50,000 test miles of operation after an initial 5000 mile stabilization period. Test mileage accumulation for the 1992 vehicles which were tested varied. For example, the 1992 Ford Crown Victoria accumulated 100,000 test miles. By contrast, the 1992 Ford Mustang accumulated 45,000 test miles, while

[1] 56 FR 25724–25790 (June 5, 1991).

[2] A "slave engine" is a stand alone engine which is used to produce consistent emissions which can be tested in catalysts. The purpose is to reduce the inconsistencies in emissions coming out of the engine so specific catalyst effects can be isolated.

the 1992 Buick Regal accumulated 65,000 test miles. Data concerning testing completed on these vehicles were submitted by Ethyl on May 25, 1993, May 28, 1993 and June 1, 1993. A copy of Ethyl's data submission and Ethyl's accompanying analysis have been placed in the docket. Ethyl has agreed that it will submit any additional data representing higher mileage testing of the 1993 vehicles to the Agency no later than July 15, 1993.

EPA invites comments on whether the Administrator should grant or deny this waiver application. All comments must be submitted by August 6, 1993.

Dated: June 28, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-15685 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140211; FRL-4629-9]

Access to Confidential Business Information by ICF, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF, Incorporated (ICF), of Fairfax, Virginia and Washington, DC, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D3-0021, contractor ICF, Inc., of 9300 Lee Highway, Fairfax, VA, and 1850 K Street, NW, Washington, DC will assist the Office of Pollution Prevention and Toxics (OPPT) in the development and implementation of national regulations for the protection of stratospheric ozone, including the development of the Significant New Alternatives Policy (SNAP) program under section 612 of the Clean Air Act.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D3-0021, ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at ICF's Fairfax, VA and Washington, DC sites.

ICF will be authorized access to TSCA CBI at its facilities under EPA's *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at ICF's sites, EPA will approve ICF's security certification statement, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 21, 1993.

George A. Bonina,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-15578 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4622-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 14, 1993 Through June 18, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 19392).

Draft EISs

ERP No. D-AFS-L65146-OR Rating EC2, Spirit Fire Recovery Project, Timber Harvest and Road Construction, High Spirit Fire Area, Willamette National Forest, Oakridge Ranger District, Lane County, OR.

Summary: EPA had environmental concerns based on the potential for adverse effects on air quality and spotted owls. Additional information and clarification was needed to: identify potential effects on air quality; disclose the information contained in the Biological Evaluation dealing with the effects of the proposal on spotted owls; disclose the noise impacts associated with helicopter logging; present the effectiveness of the proposed mitigation measures; and describe a detailed monitoring plan.

ERP No. D-AFS-L65188-00 Rating LO, Pacific Yew (Taxus brevifolia) Harvesting Program, Implementation, WA, OR, ID and CA.

Summary: EPA had no objections to the proposed project although it suggested the Final EIS and Record of Decision make a strong commitment to monitoring yew populations and potential effects since the draft EIS indicates that inventory estimates of yew populations are based on only 1991 and 1992 sampling efforts.

ERP No. D-FHW-K40199-AZ Rating EC2, Price Freeway (Loop 101) Corridor, Construction Price Road between the Superstition Freeway to Pecos Road, Funding and Right-of-Way Acquisition, Maricopa County, AZ.

Summary: EPA expressed environmental concerns because of potential impacts to air quality and conformity requirements of the Clean Air Act. EPA requested additional information on the transportation systems management alternative and air quality.

ERP No. D-NOA-E91008-00 Rating EC2, Red Snapper Reeffish Fishery Management Plan and Amendment 5, Implementation, Approval of several Permits and Special Management Zones, (SMZ), Gulf of Mexico, FL, AL, MS, LA and TX.

Summary: EPA raised environmental concerns regarding secondary economic impacts of fishing regulations on industries and individuals associated with fishing. EPA supported technical aspects of the fishery management plan.

Final EISs

ERP No. F-COE-K39035-HI, Ewa Beach Marina Protection Project, Construction and Development, US Department of Army Permit Application and US Coast Guard Bridge Permit, Ewa

Beach, Island of Oahu, Honolulu County, HI.

Summary: EPA requested that the EIS Record of Decision include appropriate commitments to protect water quality and associated natural resources such as bottom and reef communities. EPA urged the US Army Corps of Engineers to ensure adequate planning efforts for watershed management, regional development and traffic mitigation measures.

Dated: June 29, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–15728 Filed 7–1–93; 8:45 am]

BILLING CODE 6560–60–U

[ER–FRL–4622–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 21, 1993 Through June 25, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930206, Final EIS, GSA, IL, Hammond Federal Building and U.S. Courthouse Construction and Site Selection, Implementation, Lake County, IL, Due: August 02, 1993, Contact: Barbara Reed (312) 353–5610.

EIS No. 930207, Final EIS, AFS, ID, Coeur d'Arlene Nursery Pest Management, Implementation, Idaho Panhandle National Forests, Kootenai County, ID, Due: August 02, 1993, Contact: Sally Campbell (503) 326–7755.

EIS No. 930208, Draft EIS, AFS, CO, Mountain Plover (Charadruis Montanus) Management Strategy, Implementation, Pawnee National Grassland, Arapaho and Roosevelt National Forests, Weld County, CO, Due: September 11, 1993, Contact: Jeffrey M. Losche (303) 353–5004.

EIS No. 930209, Draft EIS, FRC, AR, River Mountain Pumped Storage Hydroelectric Project, FERC No. 10455, Construction, Operation and Maintenance, License, Logan County, AR, Due: August 16, 1993, Contact: James Haimes (202) 219–2780.

EIS No. 930210, Draft EIS, AFS, ID, Upper Swiftwater Timber Sale and Road Construction, Implementation, Selway Ranger District, Nez Perce National Forest, Idaho County, ID, Due: August 16, 1993, Contact: Cynthia A. Lane (208) 926–4258.

EIS No. 930211, Final EIS, FHW, PA, PA–33 Extension, US 22 Interchange in Bethlehem Township to I–78 Interchange in Lower Saucon Township, Funding and COE Section 404 Permit, Northampton County, PA, Due: August 02, 1993, Contact: Manuel A. Marks (717) 782–4422.

EIS No. 930212, Draft EIS, FHW, WA, WA–520 Corridor Improvements, Construction and Reconstruction between 104th Avenue N.E. and West Lake Sammamish Parkway (Formerly WA–901), Funding and COE Section 404 Permit, Cities of Bellevue and Redmond, King County, WA, Due: August 16, 1993, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 930213, Draft EIS, NPS, AK, Denali (South Slope) National Park and Preserve Development Concept Plan, Implementation, Mantanuska-Susitna Borough, AK, Due: September 17, 1993, Contact: Russell W. Berry, Jr. (907) 683–2294.

EIS No. 930214, Final Supplement, AFS, UT, Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, New Information, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: May 14, 1993, Contact: Ronald Wilson (801) 865–3200.

This is official Notice of Availability for the above EIS. There was a 45 day comment/waiting period ending on 5–14–93. The project will not be Implemented for 30 days following the publication of this notice in the **Federal Register** dated July 2, 1993. For further information contact the above Forest Service Representative.

Dated: June 29, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–15727 Filed 7–1–93; 8:45 am]

BILLING CODE 6560–50–U

[OPPTS–44599; FRL–4631–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tetrabromobisphenol-A-bis(ethoxylate) (CAS No. 4162–45–2), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404. TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for tetrabromobisphenol-A-bis(ethoxylate) were submitted by the Great Lakes Chemical Corporation pursuant to a test rule at 40 CFR 799 Part 766. They were received by EPA on June 1, 1993. The submission describes the analytical protocol for the determination of polybrominated dibenzo-p-dioxins and dibenzofurans by high resolution gas chromatography/medium high-high resolution mass spectrometry.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44599). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET-G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 21, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–15577 Filed 7–1–93; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT SYSTEM INSURANCE CORPORATION

[BM–27–APR–93–02]

Policy Statement Concerning Financial Assistance to Operating Insured Banks

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) by the Farm Credit System Insurance Corporation Board (Board) adopted a policy statement setting forth the

circumstances under which financial assistance to operating insured institutions will be considered, and the terms and conditions that would likely be imposed in conjunction with the granting of assistance. The proposed statement of policy was published on September 8, 1992, 57 FR 40912. The policy as adopted was published in the **Federal Register** on May 7, 1993 at 58 FR 27285. Explanatory information in response to comments received is published today.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Carl R. Pfitzinger, Asset Assurance Manager, Farm Credit System Insurance Corporation, P.O. Box 9826, McLean, Virginia 22102–0826, (703) 883–4385, TDD (703) 883–4455.

SUPPLEMENTARY INFORMATION: On September 8, 1992, FR 57 40912, the Corporation published for comment a policy statement setting forth the circumstances under which financial assistance to operating insured institutions will be considered, and the terms and conditions that would likely be imposed in conjunction with the granting of assistance.

I. General

Under section 5.61 of the Act, the Corporation may, in its sole discretion, provide financial assistance to operating insured banks:[1] (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by such insured System bank under such threat of instability.

In order for the Corporation to provide assistance to any operating insured bank, the Corporation Board of Directors must determine that either: (1) The amount of assistance is less than the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank) or (2) the continued operation of the bank is essential to provide adequate agricultural services in the area of operation of the bank.

Given the discretionary nature of the powers contained in section 5.61 and their importance to institutions potentially seeking Federal government assistance the Board has determined that this Statement of Policy should be adopted covering situations involving only open, operating institutions. That is, those institutions seeking financial assistance under section 5.61 to remain operational are covered under this statement of policy; however, in weighing a request for assistance, the Corporation will evaluate alternatives for dealing with troubled institutions seeking assistance, including, where appropriate, assisting other Farm Credit System institutions in merging with or otherwise acquiring the troubled institution.

II. Discussion of Comments

The Corporation received comments jointly from The Farm Credit Council (FCC), on behalf of its membership, and the Farm Credit Banks Funding Corporation, and from one Farm Credit Bank. The Farm Credit Bank's comments consisted of statements in support of the FCC's comments. A discussion of their comments by criterion follows.

Criterion 1—Least Cost Analysis

Criterion 11—Potential Financial Effect of Assistance

Because the FCC combined some of its comments on these two criteria, they will be discussed together.

The FCC expressed its understanding that "cost to the Corporation" contained in criterion 1 was limited to the "cost to the Insurance Fund" of the open institution assistance; "cost" did not include other costs such as increased funding costs to the System, which it believed were addressed in criterion 11. It also believed that the purported linkage between Criteria 1 and 11 needed to be spelled out more clearly in the final Statement of Policy. The FCC further noted that, in its view, criterion 1 was more restrictive than the limitation contained in section 5.61(a)(3)(A) of the Act. It requested that the Corporation give recognition to this in the final Statement of Policy. In addition, the FCC expressed concern over the use of the term "clearly" in criterion 1 and urged the Corporation to adopt a more easily applied standard. The FCC sought further clarification regarding the precise meaning of criterion 11, namely, if the primary concern in criterion 11 is the potential adverse effect that open institution assistance might have on other System institutions, it believed that this should be made explicit. In addition, the FCC believed that "uninsured creditors" are not an appropriate concern of the Corporation, and the term should be deleted from criterion 11.

The FCC is correct in its understanding that "costs" considered in evaluating open institution assistance are limited to "cost to the Corporation." The only relevant costs are those to be incurred by the Corporation, either through open institution assistance or liquidation. The Corporation disagrees that criterion 1 is limited and imposes a stricter standard than that in the statute. Criterion 1 merely affirms that the "cost test" contained in the statute will be applied.

The purpose of criterion 11 is to indicate that, beyond the cost test referenced in criterion 1, the Corporation will evaluate the effect of granting or not granting open institution assistance to the parties listed. In doing so, the Corporation is being prudent in assessing the potential for incurring or avoiding additional "costs to the Corporation" resulting from its decision relative to the request for assistance. The Corporation believes it would be unwise not to assess the potential effects of its decision upon the stockholders, uninsured creditors, and the financial markets. The Corporation would point out that in the case of an assistance request involving an association, in the view of the Corporation, the lending bank is an uninsured creditor. It is the Corporation's position that the only insured creditors are the bondholders.

Criterion 2—Alternative Sources of Assistance Must Be Exhausted

The FCC expressed concern over what is characterized as the all-encompassing language of this criterion. While recognizing that the Corporation desires potential candidates for assistance to attempt to resolve their problems and explore other methods of self-help, the FCC believes that the word "exhausted" is too absolute and unyielding. It suggested that words such as "explored" or "considered" might better convey the Corporation's intent.

The Corporation believes that open assistance should only be utilized after a troubled institution has taken every reasonable step to resolve its financial problems on its own, including considering and/or utilizing merger or any other System self-help mechanism available to it. The Corporation believes that its funds should not be utilized until all reasonable private-sector solutions have been attempted. However, to clarify the Corporation's position in this regard, the word "exhausted" has been deleted and "explored in good faith" substituted.

The FCC also requested specific comment as to whether associations

[1] As used in section 5.61, the terms "Insured System Bank" and "Bank" include each Production Credit Association and other Associations making direct loans under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

would be expected to provide assistance to their Farm Credit Bank before the Corporation would consider a request from that bank for "open assistance" as well as the extent that associations might be expected to receive assistance from their bank or other associations in the district. Presumably, associations, as owners of a cooperative enterprise, would have an interest in the viability of their institution. However, the Corporation is not in a position to state at this time what its expectations might be in this regard in a particular circumstance. We intend to maintain as much flexibility as possible, and to evaluate individual requests for assistance on a case-by-case basis depending upon the circumstances present at the time.

Criterion 3—Viability

The FCC urged the Corporation to spell out in the final Statement of Policy the kind of factors, both qualitative and quantitative, it will consider in determining whether assistance will restore viability. It also sought confirmation of its understanding that it is largely up to the institution requesting assistance to convince the Corporation of the reasonableness of the business plan and that the proposal for assistance will lead to the viability of the institution.

The Corporation appreciates the FCC's desire for more specificity with respect to the implementation of this policy; however, it is inappropriate to set out specific standards in the policy statement. In granting assistance, it is the Corporation's objective that the amount and form of assistance extended will reasonably assure the viability of the recipient. That is, once the assistance is granted, the institution must, at a minimum, be in conformance with existing regulatory standards, as determined by its regulator, and the institution's financial health for the immediate future must be reasonably assured, as determined by the Corporation. Each such instance must be judged on a case-by-case basis. The FCC is correct in assuming that it is largely up to the applicant to convince the Corporation of the reasonableness of the business plan and any assumptions made in deriving projections; however, the Corporation will make its own determination of viability based on the business plan, the reasonableness of assumptions, and any other circumstance existing at the time.

The FCC requested confirmation that the reference to "adequate level of capitalization" related directly to the Farm Credit Administration (FCA) capital regulations. In addition, to the extent that the Corporation defined "adequate capital" differently than FCA, the FCC urged the Corporation to spell out the kinds of factors it will look to in determining "adequate level of capitalization."

The Corporation is mindful of FCA's statutory duty in setting capital standards which it has done through regulations. However, the FCA capital regulations establish only minimum capital requirements with which insured banks must comply. Again, the Corporation will make a determination on a case-by-case basis as to the prospects for "an adequate level of capitalization within a reasonable period of time" based on the circumstances present at the time. The Corporation has no statutory or regulatory role in the setting of either capital or accounting standards for System institutions, and will make its independent business judgment relative to adequate capital based on the amount and components of the equity accounts of the applicant in relation to asset quality, management strength, earnings, liquidity, and any other factors the Corporation deems relevant.

Criterion 4—Repayment of Assistance

The FCC expressed general support of the proposition that open bank assistance should be repaid; however, it expressed concern as to how repayment requirements would be characterized in any assistance package as said requirements could impact the counting of assistance as capital under either generally accepted accounting principles or for regulatory capital purposes.

The Corporation appreciates the concern expressed and is mindful of the issue; however, the statute provides for numerous methods of assisting troubled institutions and the Corporation believes it has the capacity to address this issue should the need arise.

Criterion 5—Approval of Business Plans

The FCC expressed support for proposals providing for adequate managerial resources and Corporation approval of business plans, and the need for the Corporation to be able to satisfy itself that the qualifications of the continuing board and management were adequate. It also expressed its view that criterion 5 did not contemplate requiring the continuing board and management to submit undated letters of resignation as was prohibited under section 6.6(c) of the Act, which relates to the Farm Credit System Assistance Board. Section 6.6(c) does not apply to the Corporation.

The FCC is correct in its view that criterion 5 does not contemplate the submission of undated letters of resignation in conjunction with open bank assistance proposals. However, the Corporation reserves the option of determining the continued service of the principals specified in the policy statement.

Criterion 6—Acquisition and Servicing of Troubled Debt

The FCC supported the substance of this criterion.

Criterion 7—Contingent Fee Arrangements

While supporting the concept that fee arrangements in conjunction with requests for open bank assistance should be reasonable and disclosed to the Corporation, the FCC expressed concern regarding the seeming absoluteness of the final sentence of this criterion, and suggested that the Corporation prohibit fees based upon a percentage of the assistance received rather than simply prohibiting all contingent fees.

It is the Corporation's position that requests for assistance can generally be prepared by in-house personnel and that outside parties would generally not be needed incident to a request for assistance. Furthermore, the Corporation believes that fees, to the extent that they are incurred by troubled institutions in conjunction with a request for assistance, are ultimately paid by the Corporation out of any assistance granted. It is therefore the Corporation's objective that a minimum of fees be incurred in conjunction with a request for assistance. It is not the intent of the Corporation to prohibit or otherwise inhibit reasonable expenditures in conjunction with the implementation of an assistance package or the rehabilitation of a troubled institution.

After consideration of the comments, the Corporation believes this criterion otherwise provides sufficient control by the Corporation to justify the elimination of the final sentence of criterion 7.

Criterion 8—Competitive Bidding; Qualified Acquiror

The FCC urged the Corporation to clarify in the final Statement of Policy that the term "qualified acquiror" in both criterion 8 and 9 is intended to mean potential merger partner.

The Corporation believes that the wording in the proposed Statement of Policy is adequate and further clarification is not needed. Section 5.61(a)(2)(A) deals with the

Corporation's authority to provide financial assistance to a potential "acquiror" of a troubled farm credit institution. The Corporation retains the right, in consultation with FCA, to determine that an institution is statutorily qualified to acquire a troubled institution with Corporation assistance, and is otherwise qualified from a managerial and financial standpoint to acquire the troubled institution. In considering any request for open institution assistance, the Corporation reserves the option to compare the cost of open institution assistance with other assistance alternatives under Section 5.61(a)(2)(A) or liquidation.

Criterion 9—Unrestricted Access

The FCC expressed its understanding that the term "acquiror" is limited to another Farm Credit System institution, that unrestricted access would not be required until the point where the Corporation was actually exploring the merger alternative, and that any potential acquiror would be required to execute a confidentiality agreement as a condition precedent to being granted such access.

The Corporation does not have statutory authority to provide assistance for mergers with other than System institutions under the provisions of section 5.61 of the Act and System institutions lack authority to merge with non-System entities. Therefore, for the purposes of this policy, "acquiror" necessarily refers only to other System institutions. While the Corporation reserves the right to deal with requests for open institution assistance within a competitive bidding context, it is not bound to do so. Should the Corporation choose to seek to reduce its cost by soliciting interest from potential acquirors of an applicant for open institution assistance, the potential acquirors must have unrestricted access to the books and records of the applicant. It is expected that at the point the Corporation elects to consider the possibility of an assisted merger or consolidation, the applicant will be required to make its books and records available to the acquiror or withdraw any request for assistance. While the terms of any confidentiality agreement are between the applicant and any qualified acquiror, the confidentiality agreement may not impede the Corporation's efforts to ascertain its potential costs.

Criterion 10—Quantifiable Limits

The FCC expressed the understanding that "quantifiable limits" cited in this criterion relates both to the amount of the assistance and to its relationship to particular assets or liabilities, such as "particular loans included in an assisted pool."

The FCC's understanding is correct. The Corporation expects any applicant to submit a sound and well-structured request detailing both the amount and form of the assistance.

Following is the revised Statement of Policy as adopted by the Board of Directors of the Corporation:

Effective Date: Upon adoption.

Effect on Previous Action: None.

Source of Authority: Section 5.61 of the Farm Credit Act of 1971, as Amended (the Act); 12 U.S.C. 2277a–10.

Whereas, under section 5.61 of the Act, the Farm Credit System Insurance Corporation (Corporation) may provide financial assistance to operating insured banks: /1/ (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by such insured System banks under such threat of instability.

Therefore, the Farm Credit System Insurance Corporation's Board of Directors (Board) adopts the following policy statement:

In order for the Farm Credit System Insurance Corporation (Corporation) to provide assistance to any operating insured bank, the Corporation's Board of Directors must determine that either: (1) The amount of assistance is less than the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank) or (2) the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.

Assistance to operating insured banks may be provided directly to the bank in danger of being placed in receivership, or to another insured bank qualified to merge with or acquire the failing bank.

The Corporation believes that proposals for assistance to operating insured banks under section 5.61 of the Act should be reviewed by the Corporation utilizing the following criteria:

1. The cost to the Corporation must be clearly less than other available alternatives.

2. All alternative sources of assistance must be explored in good faith prior to the Corporation's granting assistance.

3. The proposal must reasonably anticipate the viability of the recipient, including provisions for the attainment of an adequate level of capitalization within a reasonable period of time.

4. The proposal should provide for the eventual repayment of the assistance.

5. The proposal must provide for adequate managerial resources, and the Corporation's approval of business plans. Continued service of any Director or Senior Officer serving the assisted institution in a policy-making role, as determined by the Corporation, will be subject to approval of the Corporation. In addition, compensation arrangements covering Directors and Senior Officers must be approved by the Corporation.

6. The Corporation will consider on a case-by-case basis the nature of the financial assistance requested. Generally, assistance proposals should not anticipate the acquisition and servicing of assets from the assisted institution by the Corporation.

7. Fee arrangements with attorneys, accountants, consultants, and other parties incident to requests for financial assistance must be disclosed to the Corporation. Excessive fees are unnecessary and must be avoided; fee arrangements will be considered in evaluating the cost of the assistance request.

8. The Corporation retains the option of evaluating the assistance proposal within the context of a competitive bidding process and will consider soliciting interest from qualified acquirors.

9. An institution seeking operating institution assistance must consent to unrestricted on-site due diligence review by any potential acquiror that is determined by the Corporation to be qualified after consultation with the Farm Credit Administration.

10. The proposal must contain quantifiable limits on all financial items in the request.

11. The Corporation will evaluate the potential financial effect of the proposal on shareholders, uninsured creditors and the financial markets.

Dated this 27th day of April, 1993.

Dated: June 28, 1993.

By Order of the Board.

Curtis M. Anderson,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 93–15649 Filed 7–1–93; 8:45 am]

BILLING CODE 6710–01–P

[1] As used in section 5.61, the terms "Insured System Bank" and "Bank" include each Production Credit Association and other Associations making direct loans under under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–993–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 11, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms, flooding, and tornadoes on May 6, 1993, through May 19, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David A. Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Brown, Cottonwood, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood and Rock Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–15712 Filed 7–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to be May 6, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–15713 Filed 7–1–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

CNB Bnacshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire an 84.26 percent interest in House Investments-Deerfield Commons, Limited Partnership, Indianapolis, Indiana, and thereby engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Lafayette, Indiana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. ANB Bankcorp, Inc., Bristow, Oklahoma; to engage *de novo* through its subsidiary, American Consulting and Training Services, Inc., Bristow, Oklahoma, in providing management consulting advice to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. Chambanco, Inc., Chambers, Nebraska; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15701 Filed 7–1–93; 8:45 am]

BILLING CODE 6210–01–F

Drummond Banking Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Drummond Banking Company, Chiefland, Florida; to acquire 100 percent of the voting shares of Suwannee Valley Bancshares, Inc., Chiefland, Florida, and thereby indirectly acquire Bank of Florida, N.A., Chiefland, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. The First Trust Holdings, Inc., Watseka, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First Trust and Savings Bank, Watseka, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Bourbon Bancshares, Inc., Bourbon, Missouri; to acquire 100 percent of the voting shares of Wisdom Holding Corporation, Salem, Missouri, and thereby indirectly acquire Dent County Bank and Trust Company, Salem, Missouri.

2. First Banks, Inc., St. Louis, Missouri; to acquire 19.99 percent of the voting shares of Southside Bancshares Corp., St. Louis, Missouri, and thereby indirectly acquire South Side National Bank in St. Louis, St. Louis, Missouri; Bay-Hermann-Berger Bank, Hermann, Missouri; State Bank of DeSoto, DeSoto, Missouri; Bank of Ste. Genevieve, Ste. Genevieve, Missouri; and The Bank of St. Charles County, St. Charles, Missouri.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FNB, Inc., Greeley, Colorado; to acquire 88.25 percent of the voting shares of Poudre Valley Bank, Fort Collins, Colorado.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Finger Interests Number One, Ltd., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of CBH, Inc., Wilmington, Delaware; and Charter Bancshares, Inc., Houston, Texas, and thereby indirectly acquire University National Bank, Galveston, Texas; Charter National Bank-Colonial, Houston, Texas; and Charter National Bank-Houston, Houston, Texas.

2. First Sonora Bancshares, Inc., Sonora, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Sonora Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire The First National Bank of Sonora, Sonora, Texas.

3. First Sonora Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Sonora, Sonora, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Security Corporation, Salt Lake City, Utah; to merge with First National Financial Corporation, Albuquerque, New Mexico, and thereby indirectly acquire First National Bank in Albuquerque, Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, June 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15703 Filed 7–1–93; 8:45 am]

BILLING CODE 6210–01–F

Society Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to engage *de novo* through its subsidiary, Society Equipment Leasing Company, Cleveland, Ohio, in real property leasing activities, including, without limitation, the origination and/or servicing of lease transactions, leasing real property, acting as agent, broker or advisor in leasing such property and in any real property leasing services incidental thereto pursuant to § 225.25(b)(5); and commercial loan transactions

(including, but not limited to, revolving credit and/or term loan credit agreements and the promissory notes associate therewith) relating to the financing of personal or real property pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15704 Filed 6–30–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0450]

Guideline for Quality Assurance in Blood Establishments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft entitled "Guideline for Quality Assurance in Blood Establishments." The guideline is intended to assist manufacturers of blood and blood components in developing quality assurance (QA) programs that are consistent with recognized principles of QA and current good manufacturing practice (CGMP). FDA is requesting written comments on the draft and will review the comments to determine whether further revisions are warranted.

DATES: Written comments by August 31, 1993.

ADDRESSES: Submit written requests for single copies of "Guideline for Quality Assurance in Blood Establishments" to the Congressional and Consumer Affairs Branch (HFM–12), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9000. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9074.

SUPPLEMENTARY INFORMATION:

I. Draft "Guideline for Quality Assurance in Blood Establishments"

The draft, dated June 17,1993, was prepared by the Office of Blood Research and Review (formerly the Office of Biologics Research) and the Office of Compliance, Center for Biologics Evaluation and Research, FDA, and the Office of Regional Affairs, FDA. The draft was developed from the background information document that was provided at an FDA-sponsored public workshop on quality assurance in the manufacture of blood and blood components. The workshop, which was announced in the **Federal Register** of December 13, 1991 (56 FR 65094), was held on January 21 and 22, 1992, in Bethesda, MD. The draft includes discussions of the following: (1) The general concepts of a quality control/assurance program; (2) the responsibilities of the quality control/assurance unit; and (3) the biological product and blood and blood component regulations in 21 CFR parts 600 through 680 and the current good manufacturing practice regulations in 21 CFR parts 210 and 211. Additionally, the draft contains a glossary, a reference page, and an appendix that provides examples of the regulations in 21 CFR parts 210 and 211 and 21 CFR parts 600 through 680 supplementing each other.

II. Request for Comments

FDA is making this draft guideline available for public comment and will consider such comments in determining whether to revise the draft. Because FDA is in the process of revising 21 CFR 10.90(b), FDA is not issuing this document under the authority of 21 CFR 10.90(b), and the document, although called a guideline, does not bind the agency and does not create any rights, privileges, or benefits on or for any person. Manufacturers of blood and blood components may follow the guideline or may choose to use alternative procedures not provided in the guideline. Manufacturers of blood and blood components may wish to discuss the alternative procedures with FDA.

FDA believes that a quality assurance program is an essential part of CGMP for blood establishments. The agency intends to consider rulemaking to codify some or all of the specific principles discussed in the draft guideline.

Interested persons may, on or before August 31, 1993, submit to the Dockets Management Branch (address above) written comments regarding the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Dated: June 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15642 Filed 6–30–93; 8:45 am]

BILLING CODE 4160–01–F

[GN 2094]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 57 FR 14584, April 21, 1992) is amended to reflect a realignment and consolidation of functions in the Center for Devices and Radiological Health (CDRH), Office of Operations, Food and Drug Administration (FDA). FDA proposes to consolidate its postmarket management activities within CDRH into a new Office of Surveillance and Biometrics. The new Office will consist of statistical, epidemiological, and postmarket surveillance study functions transferred from the Office of Science and Technology and functions pertaining to the review and analysis of adverse device experience reporting transferred from the Office of Compliance and Surveillance (which will be retitled as the Office of Compliance). This Office will also provide extensive support to device evaluation premarket review activities.

Under section HF–B, Organization:

1. Under the Office of Operations (HFA9), Center for Devices and Radiological Health, delete subparagraph *Office of Compliance and Surveillance (HFWC)* in its entirety and insert a new subparagraph *Office of Compliance (HFWC)* reading as follows:

Advises the Center Director and other Agency officials on legal, administrative, and regulatory programs and policies concerning Agency compliance responsibilities relating to medical device and radiological health activities.

Develops, directs, coordinates, evaluates, and monitors compliance programs covering regulated industry.

Conducts field tests and inspections when necessary for regulatory purposes and evaluated industry quality control and testing programs to assure compliance with regulations.

Provides advice to Agency field offices on, and manages Center activities relating to legal actions, case development, and contested case assistance.

Designs, develops, and implements Center programs to register device establishments and list products.

Manages and coordinates Center activities under the Government-wide Quality Assurance and Bioresearch Monitoring Programs.

Coordinates all field planning activities and issues all field assignments for the Center.

Provides technical support and guidance in the development and review of standards and regulations, and the training of Federal and State compliance personnel.

Advises actual or potential manufacturers concerning the requirements of the law and regulations.

2. Delete subparagraph *Office of Science and Technology (HFWE)* in its entirety and insert a new subparagraph *Office of Science and Technology (HFWE)* reading as follows:

Provides scientific support and laboratory analyses in response to the program needs of the Center and other Agency components.

Plans, develops, and implements an intramural science program covering key areas of engineering, physics, and biology; develops, modifies, and validates test methods and measurement techniques, risk assessments and hazard analyses, and generic techniques to enhance product safety and usefulness.

Provides scientific and engineering support in the review of regulatory documents, the development of regulatory decisions, and the analysis of post market surveillance issues.

Plans, conducts, or stimulates research on the human health effects of radiation and medical devices.

Participates in the development of national and international consensus standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Conducts laboratory investigations related to existing and emerging health technologies.

3. Insert a new subparagraph *Office of Surveillance and Biometrics (HFWH)* reading as follows: *Office of Surveillance and Biometrics (HFWH).* Advises the Center Director and other Agency officials on Center programs and policies concerning postmarket management activities for medical devices and radiological products.

Designs, develops, and implements a Center program to acquire device experience information; identifies and analyzes device problems; develops solution strategies to such problems; and tracks programs and solution implementations.

Provides statistical, epidemiological, and biometric services in support of the operating and administrative programs of the Center.

Represents the Center with other government agencies, industry, and consumer organizations on issues concerning postmarket management activities.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: June 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–15717 Filed 7–1–93; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Members on Public Advisory Committees; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Three vacancies will occur on the committee on October 31, 1993.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

DATES: No cutoff date is established for receipt of nominations, except that nominations for October 31, 1993, vacancies should be submitted as soon as possible.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8769.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the committee. The vacancies that will occur in October 1993, will be in the small animal medicine, pharmacology, and consumer representative areas. However, nominations in all the fields listed below will be accepted at any time.

The function of the committee is to review and evaluate available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the committee. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 23, 1993

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–15719 Filed 7–1–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92M–0477]

ABIOMED, Inc.; Premarket Approval of ABIOMED® BVS 5000® Bi-Ventricular Support System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by ABIOMED, Inc., Danvers, MA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the ABIOMED® BVS 5000® Bi-Ventricular Support System (BVS). After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 20, 1992, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bette Lemperle, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

SUPPLEMENTARY INFORMATION: On July 17, 1991, ABIOMED, Inc., Danvers, MA 01923, submitted to CDRH an application for premarket approval of the ABIOMED® BVS 5000® BVS. The ABIOMED® BVS 5000® BVS device is a mechanical circulatory support system indicated for use in patients suffering from postcardiotomy ventricular dysfunction. These are patients who have undergone successful cardiac surgery and subsequently develop low cardiac output, in pairing hemodynamic stability. The intent of BVS device therapy is to provide circulatory support, restore normal hemodynamics, reduce ventricular work, and allow the heart to recover adequate mechanical function. The BVS device is external to the patient and is intended for short-term use. After undergoing cardiac surgery, the patient is a candidate for mechanical assistance with the BVS device if she/he meets all of the following criteria:

1. Patient has a body surface area > 1.3 m^2 and is ≤ 75 years of age.
2. Patient is in relatively good health other than the cardiovascular problem for which surgery was undertaken.
3. All appropriate measures have been attempted to correct low arterial pH, arterial blood gas abnormalities, electrolytes, hypovolemia, hypervolemia, inadequate cardiac rate, dysrhythmias, and residual hypothermia.
4. Cardiac resuscitation employing pharmacologic agents in a systematic fashion has been attempted. While the use of the intra-aortic balloon pump is recommended prior to BVS assistance, its use may not always be appropriate (e.g., fibrillating heart, peripheral atherosclerosis).
5. Patient is unable to be weaned from cardiopulmonary bypass (CPBP) or is unable to maintain acceptable hemodynamics in the immediate postoperative period (< 6 hours after the first attempt to wean from CPBP).

On November 25, 1991, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On November 20, 1992, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–15718 Filed 7–1–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting; National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 26, 1993. The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The Board will meet July 26, 8:30 a.m. to approximately 4 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue

evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0801.

A summary of the meeting and roster of the members may be obtained by contacting the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045.

Dated: June 29, 1993.

Susan K. Feldman,

NIH Committee Management Office.

[FR Doc. 93–15739 Filed 7–1–93; 8:45 am]

BILLING CODE 6140–01–M

National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, on August 5–6, 1993, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

This meeting will be open to the public on August 5 from 8 a.m. to 8:30 a.m., to review administrative details and other cancer center review issues. Attendance by the pubic will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on August 5 from approximately 8:30 a.m. to recess and on August 6 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide a summary of the meeting and the roster of committee members, upon request.

Dr. David E. Maslow, Scientific Review Administrator, Cancer Center Support Review Committee, National Cancer Institute, Executive Plaza North, Room 643A, National Institutes of Health, Bethesda, Maryland 20892 (301–496–2330) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Maslow, (301) 496–2330 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.197, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15740 Filed 7–1–93; 8:45 am]

BILLING CODE 6140–01–M

Substance Abuse and Mental Health Services Administration

Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This Notice provides the final policies and procedures that the Substance Abuse and Mental Health Services Administration (SAMHSA) will use to implement the provisions of section 504 of the Public Health Service Act, as amended by section 104 of the ADAMHA Reorganization Act, Public Law 102–321 (July 10, 1992). These provisions govern the peer and Advisory Council review of applications for grants and cooperative agreements and proposals for contracts for substance abuse and mental health disorders prevention and treatment services.

SUPPLEMENTARY INFORMATION: The public was invited, through a notice published in the **Federal Register** on January 22, 1993 (58 FR 5747–50), to provide written comments on these policies and procedures. No such comments were received. Beyond minor technical changes, the only change to the policy was a clarification to section 11(c) to indicate that when there are other situations which exist in which the one-fourth Federal staff limit on peer review groups or the Advisory Council requirement is not appropriate, those situations are the result of exceptional circumstances in which such review is not appropriate or feasible. For further information, please contact Jane A. Taylor, Ph.D., Deputy Director for Review Policy and Extramural Operations, Office of Extramural Programs, Substance Abuse and Mental Health Services Administration, 12C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 301–443–4266.

Peer and Advisory Council Review of Substance Abuse and Mental Health Prevention and Treatment Grant Applications and Contract Projects

1. Applicability

The policy applies to competing applications for grants, cooperative agreements, and proposals for contracts received and/or reviewed since October 1, 1992, under mental health and substance abuse prevention and treatment programs administered by the Substance Abuse and Mental Health Services Administration or any of its components. The policy does not apply to applications for:

(1) Continuation funding for budget periods within an approved project period; or

(2) Supplemental funding within a project period.

2. Definitions

As used in this policy:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Administrator" means the Administrator of the Substance Abuse and Mental Health Services Administration.

(c) "Awarding official" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(d) "Budget period" means the interval of time (usually 12 months) into which the project Period is divided for budgetary and reporting purposes.

(e) "Contract project" means an identified, circumscribed activity, involving a single contract or two or more similar, related, or interdependent contracts, intended and designed to promote the mission of the agency. This includes (but is not limited to): services systems development projects, surveys, demonstrations, and evaluation of services or services demonstration activity. "Contract project" does not

include contracts for logistical management, technical assistance, and purchase of supplies.

(f) "Contract proposal" means a written offer to enter into a contract, solicited by and submitted to an awarding official by an individual or non-Federal organization, and including at a minimum, a description of the nature, purpose, duration, and cost of the project and the methods, personnel, and facilities to be utilized in carrying it out.

(g) "Department" means the U.S. Department of Health and Human Services.

(h) "Peer review group" means a group of experts qualified by training and experience in particular programmatic, technical, or scientific fields to give expert advice, in accordance with the provisions of this part, on the programmatic and technical merit of grant or cooperative agreement applications or contract projects in those fields.

(i) "Project approach" means the methodology to be followed.

(j) "Project concept" means the basic purpose, scope, and objectives of the project.

(k) "Project period" means the total time for which support of a project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions.

(l) "Request for proposals" means a Government solicitation to prospective offerors under procedures for negotiated contracts, to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the request for proposals. The request for proposals contains information sufficient to enable all offerors to prepare competitive proposals, and is as complete as possible with respect to: the nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements clauses, or other circumstances affecting the contract; format for cost proposals; and evaluation criteria by which the proposals will be evaluated.

(m) "Unsolicited contract proposal" has the same meaning as in 48 CFR 15.501.

3. Establishment and Operation of Peer Review Groups

(a) To the extent applicable, the Federal Advisory Committee Act (5 U.S.C. App. I), Department implementing regulations (45 CFR Part 11), and Chapter 9 of the Department's General Administration Manual[1] will govern the establishment and operation of peer review groups, including that meetings shall be open to the public except as determined by the Secretary.

(b) Subject to section 5 and paragraph (a) of this section, the Administrator of the Substance Abuse and Mental Health Services Administration will adopt procedures for the conduct of reviews and the formulation of recommendations under Sections 6, 7, 8 and 9 within said agency.

4. Composition of Peer Review Groups

(a) To the extent applicable, the selection and appointment of members of peer review groups and their terms of service will be governed by Chapter 9 of the Department's General Administration Manual. (See Footnote 1).

(b) Subject to paragraph (a) of this section, members will be selected based upon their training and experience in relevant professional, technical, and/or scientific fields, taking into account, among other factors:

(1) The level of formal professional, technical, and/or scientific education completed or experience acquired by the individual;

(2) The extent to which the individual has engaged in relevant activities, the capacities (e.g., project director, administrator) in which the individual has done so, and the quality of such activities;

(3) Recognition as reflected by awards and other honors received from professional or scientific organizations outside the Department; and

(4) The need for the group to have included within its membership experts from various areas of specialization within relevant professional, technical, or scientific fields.

(c) Except as determined in accordance with Section 11, not more than one-fourth of the members of any peer review group established pursuant to this part may be officers or employees of the United States. For purposes of the preceding sentence, membership on such groups does not make an individual an officer or employee of the United States.

5. Conflict of Interest

(a) Members of peer review groups established pursuant to this part are subject to relevant provisions in title 18 of the United States Code relating to criminal activity, the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 11222, as amended.

(b) In addition to any restrictions imposed under paragraph (a) of this section:

(1) No member of a peer review group established pursuant to this part may participate in or be present during any review by that group of a grant application, cooperative agreement application, contract project, or contract proposal in which, to the member's knowledge, any of the following has a financial interest: (i) The member or his or her spouse, parent, child, or partner; (ii) any organization in which the member or his or her spouse, parent, child, or partner is serving as an officer, director, trustee, partner, or employee, or is otherwise similarly associated; or (iii) any organization with which the member or his or her spouse, parent, child, or partner is negotiating or has any arrangement concerning prospective employment or other similar association.

(2) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the project director, evaluator, or member of the staff responsible for carrying out any activities contemplated as part of a grant application, contract project, or contract proposal, that group is disqualified and the review will be conducted by another group with the expertise to do so. If there is no other group with the requisite expertise, the review will be conducted by an ad hoc group no more than 50 percent of whose members may be from the disqualified group. The composition of any such ad hoc group will be determined in accordance with Sections 4(b) and 4(c) of this part and, to the extent feasible, Section 4(a) of this part.

(3) Where a member of a peer review group participates in or is present during: (i) Development or review of a project approach or request for proposals by that group; or (ii) review of a contract proposal by that group (under Section 9(c), i.e., after the issuance of a request for proposals); no contract may thereafter be awarded as the result of such development or review to said member, his or her spouse, parent, child, or partner or any organization in which the member, his or her spouse, parent, child, or partner was serving as officer, director, trustee, partner, or employee at the time of such development or review or with which the member, his or her spouse, parent,

[1] The Department of Health and Human Services General Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Printing Office, Washington, D.C. 20402.

VOL 58 ISS 126 JL 2 1993 UMI

child, or partner was negotiating or had any arrangement concerning prospective employment at said time.

(4) No member of a peer review group may participate in any review under this part of a specific grant application or contract project for which the member has had or is expected to have any other responsibility or involvement (whether preaward or postaward) as an officer or employee of the United States.

(c) Where permissible under the statutes, standards, and order cited in paragraph (a) of this section, the Administrator or his or her designee may waive the requirements in paragraph (b) of this section if he or she determines that the potential conflict is minimal and there is no other practical means for securing appropriate expert advice on a particular grant application, contract project, or contract proposal.

6. Grants; Matters To Be Reviewed

(a) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed by a peer review group in accordance with the provisions of this part and that group has made a recommendation for approval concerning the technical merit of such application.

(b) The peer review group to which an application has been submitted under this paragraph shall make a written report on each application which shall contain the following parts:

(1) The first part of the report shall consist of a factual summary of the proposed project, including a description of its purpose, approach, location, and total budget.

(2) The second part of the report shall address the technical merit of the proposed project and shall consist of a critique of the proposed project with regard to the factors described in Section 7 and such other factors as specified in the program announcement. This portion of the report shall include a set of recommendations with respect to the disposition of the application based upon its technical merit.

(3) For applications recommended for consideration of funding, the peer review panel shall, at the end of its deliberations, provide both a priority score, based upon the technical merit of the proposed project, and its recommendation regarding the appropriate project period and level of support for the proposed project.

(c) Recommendations are advisory and shall not bind the awarding official or Advisory Council, except that recommendations of the peer review group for disapproval shall be binding on the awarding official or Advisory Council.

(d) All grant and cooperative agreement applications shall be reviewed by the cognizant Advisory Council, except where:

(1) Direct costs do not exceed $50,000, or other amount as provided by statute; or

(2) The Administrator approves an exception in accordance with section 11.

(e) No application shall be reviewed by an Advisory Council until it has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

7. Grants; Review Criteria

In carrying out its review under Section 6, the peer review group will take into account, among other factors as specified in the program announcement:

(a) The potential significance of the proposed project;

(b) The appropriateness of the applicant's proposed objectives to the goals of the program announcement;

(c) The adequacy and appropriateness of the proposed approach and activities;

(d) The adequacy of available resources, such as facilities and equipment;

(e) The qualifications and experience of the applicant organization, the project director, and other key personnel; and

(f) The reasonableness of the proposed budget.

8. Unsolicited Contract Proposals; Matters To Be Reviewed

(a) No awarding official shall award a contract based upon an unsolicited contract proposal covered by this part unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part and the procedures set forth in 41 CFR subpart 3–4.52.

9. Solicited Contract Proposals; Matters To Be Reviewed

(a) Where the approach of a solicited contract proposed is defined in the agency's request for contract proposals, no awarding official shall issue such a request unless the project approach has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

(b) Where the approach of a solicited contract proposal is to be defined in the proposal, no awarding official shall award such a contract unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with this part.

(c) The awarding official may waive the requirements of paragraph (a) of this section for peer review before issuing a request for contract proposals if he or she determines that the accomplishments of essential program's objectives would be placed in jeopardy by delay, or that such review is not in the best interest of the Government. The awarding official shall specify in writing the grounds on which this determination is based. Under such circumstances, the awarding official will not award a contract based on the request for contract proposals unless a peer review group has made recommendations concerning the technical merit of the project approach as defined in the request for proposals, and the proposals received in response to the request have been reviewed by a peer review group. The request for proposals will indicate that the project approach has not been reviewed by a peer review group and that no award will be made until a peer review of the approach is conducted and recommendations made based on such review.

(d) Contract proposals shall be reviewed by the appropriate Advisory Council, except where:

(1) Direct costs do not exceed the amount specified in section 6(d)(1); or

(2) The Administrator approves an exception in accordance with section 11.

(e) Except to the extent otherwise provided for by law, Advisory Council recommendations are advisory and not binding on the awarding official.

10. Contract Projects and Proposals; Review Criteria

(a) In carrying out its review of a project approach under Section 9(a) or 9(b), the peer review group will take into account, among other factors, the following general review criteria:

(1) The merit from a technical standpoint of the goals of the proposed activity;

(2) The adequacy of the methodology to be utilized in carrying out the activity; and

(3) The availability and adequacy of the expertise, facilities, and other resources necessary to achieve these goals.

(b) In carrying out its review of unsolicited contract proposals unde. section 8, the peer review group will take into account, among other factors, those criteria in section 7 which are relevant to the particular proposals, as well as the extent to which there are

identified, practical uses for the anticipated results of the activity.

(c) In carrying out its review of solicited contract proposals under section 9(c), the peer review group will evaluate each proposal in accordance with the criteria set forth in the request for proposals.

11. Exceptions

The Administrator may make exceptions to the one-fourth Federal staff limit on peer review groups and the Advisory Council review requirement where:

(a) Awards are mandatory, or awarded on a formula or block grant basis;

(b) Awards are made to meet public health emergencies or other urgent health problems such as disaster assistance or significant increases in use of a particular abusable substance; or

(c) Other exceptional situations exist where such review is not appropriate or feasible, such as a time-limited exception to either of the requirements when it is not feasible to conduct such review in order to award grants, cooperative agreements or contracts.

Such exceptions may be made at the discretion of the Administrator who may also approve or impose alternate review procedures, as appropriate.

12. Applicability of Other Regulations

This policy is in addition to, and does not supersede regulations concerning any applications, contract projects, or contract proposals appearing elsewhere in title 41, title 42, or title 45 of the Code of Federal Regulations.

Dated: June 28, 1993.

Joseph R. Leone,

Acting Deputy Administrator, SAMHSA.

[FR Doc. 93–15658 Filed 7–1–93; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 2, 1993.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 25, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 93–15490 Filed 7–1–93; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3343; FR–3137–N–02]

Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Section 8 Loan Management Set-Aside (LMSA) Program. The announcement contains the names and addresses of the award winners and the amounts of the awards.

DATES: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: William Schick, Chief, Program Support Branch, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2654. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with presently or potentially serious financial difficulties.

The 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on January 24, 1992, at 57 FR 2954. Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $229,507,020 was awarded to 266 projects. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as set forth at the end of this notice.

Dated: June 28, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
		REGION: 1		
016–44003 ...	Eagle Apartments I, Lincoln, RI ...	Normand H. Allaire, 4 Norton Drive, Cumberland, RI 02864	24	$630,180
016–44011 ...	Riverbend, Cranston, RI	Riverbend Associates, c/o National Investments, Ltd, 1414 Atwood Avenue, Johnston, RI 02919.	85	2,174,700
016–44013 ...	Eagle Apartments II, Lincoln, RI ..	Normand H. Allaire, 4 Norton Drive, Cumberland, RI 02864	18	518,520
016–44054 ...	Rock Ridge, Woonsocket, RI	Related Management Corp., 625 Madison Ave, New York, NY 10022.	24	745,320
016–44067 ...	Evergreen Apartments, East Providence, RI.	Evergreen Associates, c/o National Investments, Ltd, 1414 Atwood Avenue, Johnston, RI 02919.	74	1,968,760
016–44068 ...	Cathedral Square I, Providence, RI.	Cathedral Square Associates, 7 Jackson Walkway, Providence, RI 02903.	25	537,000
016–44072 ...	Festival Field, Newport, RI	Field Associates, L.P., 1225 Eye Street NW., Wash. D.C., 20005 ...	46	1,275,120
016–44091 ...	Woonsocket Village, Woonsocket, RI.	Woonsocket Village Associates, 182 Cumberland Street, Woonsocket, RI 02895.	31	1,007,640
016–55006 ...	Walnut Hill Apts., Woonsocket, RI	Walnut Hill Group, c/o Ferland Corporation, 30 Monticello Road, Pawtucket, RI 02861.	47	1,361,880
016–55007 ...	Kent Farm Village, East Providence, RI.	Kent Farm Company, 151 Tremont Street, Boston, MA 02111	47	1,411,740
017–35187 ...	Brewery Square, New Haven, CT	Brewery Square LP, 130 Prospect St., Cambridge, MA 02139	7	318,540
017–44005 ...	New Hope Towers, Stamford, CT	National Realty Partners, Inc., c/o Midland Property Mgmt, Inc., 10 E. 22nd St, #107, Lombard, IL 60148.	35	1,350,360
017–44013 ...	Ten Marshall House, Hartford, CT	Ten Marshall Hse Associates, 10 Marshall Street, Hartford, CT 06105.	35	650,100
017–44026 ...	Branford Manor, Groton Town, CT.	Branford Manor Associates LP, c/o Ronald A. Nicholson, Gen. Partner, 645 Madison Avenue, New York, NY 10022.	50	1,380,000
017–44100 ...	Mohegan Park Apts, Norwich, CT	Mohegan vlg Lp c/o S. Konover Gp, Konover Residential Corporation, 345 N. Main St., W. Hartford, CT 06117.	32	1,008,000
017–44199 ...	Moosup Gardens, Plainfield Town, CT.	Moosup Gdns, Lp, c/o S. Konover, Konover Residential Corporation, 345 N. Main St, W. Hartford, CT 06111.	10	289,500
017–44204 ...	Mohegan Vlg Apts, Norwich, CT .	Mohegan Vlg Lp c/o S. Konover Gp, Konover Residential Corporation, 345 N. Main St, W. Hartford, CT 06117.	20	630,000
017–SH006 ..	Tower I, New Haven, CT	New Haven Jewish Cmty Cncl Hsg, c/o Tower One/Tower East, 18 Tower Lane, New Haven, CT 06519.	50	1,012,320
023–44048 ...	Riverview West, Pittsfield, MA	Riverview West Associates, c/o The Drucker Co., 50 Federal St. Suite 1000, Boston, MA 02110–2585.	51	1,571,220
023–44099 ...	Litchfield Terrace, Leominster, MA.	Litchfield Terrace Associates, c/o Ronald A. Nicholson, 645 Madison Avenue, New York, NY 10020.	9	230,400
023–44120 ...	Mohawk Forest, North Adams, MA.	Mohawk Forest Associates, 31 Milk Street, Boston, MA 02109	41	938,700
023–44143 ...	Greenfield Gardens, Greenfield Town, MA.	Greenfield Gardens, Co., P.O. Box 186, Cohasset, MA 02025	40	851,040
023–44198 ...	Amy Lowell House, Boston, MA ..	Charles River Park E Co., Five Longfellow Place, Boston, MA 02114.	13	432,120
023–44208 ...	Huron Towers, Cambridge, MA ...	First Realty Management, 151 Tremont Street, Boston, MA	63	2,427,000
023–55005 ...	Bowdoin Apartments, Malden, MA.	National Housing Ministries, 115 Washington Street, Bridgeport, CT	108	3,565,680
023–SH006 ..	Bethany Homes Inc., Haverhill, MA.	Bethany Homes, Inc., 100 Water Street, Haverhill, MA 01830	28	657,720
023–SH008 ..	Senority House, Springfield, MA ..	Springfield Hobby Club Hsg., 307 Chestnut Street, Springfield, MA, 01104.	100	1,342,800
024–44001 ...	Royal Gardens, Concord, NH	Royal Gardens Company, c/o Morton Myerson, 175 Rawson Road, Brookline, MA, 02146.	56	1,370,340
024–44007 ...	Concord Gardens, Concord, NH .	Concord Gardens Company, c/o Morton Myerson, 175 Rawson Road, Brookline, MA, 02146.	59	1,503,060
024–55006 ...	Ross Colony Court, Hampton, NH	Ross Colony Court, Inc., Ross Colony Court, Inc., 93 Winnacunnet Road, Unit 10, Hampton, NH 03842.	8	192,480
		REGION: 2		
012–11048 ...	Fordham Towers, New York–Bronx, NY.	Terrace Fordham Associates, c/o U/A Management Corp., 495 Broadway, New York, NY 10012.	28	987,120
012–11096 ...	1199 Housing Corp., New York–Manhattan, NY.	1199 Housing Corp., 2120 First Ave., New York, NY 10029	245	7,331,160
012–35598 ...	590–600 Associates, Hempstead, NY.	590–600 Associates, 377 Oak Street, Garden City, NY 11530–6543.	103	4,814,160
012–55105 ...	Urban Park, Rochester, NY	I.C. Housing Devel. Fund Co., I.C. Housing Fund Develop. Fund Co., 91 Alexander Street, Rochester, NY, 14608.	52	1,417,560

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
014–44010 ...	Harris Park Apts., Rochester, NY	Harris Park Limited Partnership, The National Housing Partnership, 1225 Eye Street, N.W., Washington, DC 20005.	43	1,009,080
031–44029 ...	Grace Church Van Vor, Jersey City, NJ.	Grace Church Van Vorst Episcop, 39 Erie Street, Jersey City, NJ, 07302.	22	478,560
031–SH019 ..	Daughters of Miriami, Clifton, NJ .	Daughters of Miriam Association, 127 Hazel Street, Clifton, NJ 07015.	71	2,171,040
035–44008 ...	Barlinvis Apartments, Atlantic City, NJ.	Barlinvis Associates, 1 East Stow Road, P.O. Box 994, Marlton, NJ, 08053–0994.	31	899,520
035–55006 ...	Vineland Gardens, Vineland, NJ .	Vineland Gardens, 1 East Stow Road, P.O. Box, Marlton, NJ 08053–0994.	55	1,549,500
		REGION: 3		
000–35278 ...	Woods of Fairfax II, Fairfax, VA ..	Woods of Fairfax II, P.O. Box 40177, Indianapolis, IN 46240	41	1,425,000
000–44050 ...	Parkway Overlook East, Washington, DC.	Parkway Overlook East Apt. Ltd., 1801 Avenue of the Stars, Suite 315, Los Angeles, CA 90067.	[illegible]	1,864,080
000–44096 ...	Nalley Apartments, Landover, MD	Nalley Apartments Ltd., 1801 Avenue of the Stars, Suite 315, Los Angeles, CA 90067.	17	765,600
000–44147 ...	Loudoun House Apts., Leesburg, VA.	Loudoun House Limited Prtnshp., c/o NCHP, 1225 Eye Street, N.W., Washington, DC 20005.	75	2,422,440
000–55030 ...	Parkway Overlook West, Washington, DC.	Parkway Overlook West Apt. Ltd., 1801 Avenue of the Stars, Suite 315, Los Angeles, CA 90067.	47	1,943,220
033–35193 ...	Just-Inn Transition, Pittsburgh, PA.	Just-Inn Transition, Inc., 215 Lelia Street, Pittsburgh, PA 15215	15	570,600
033–44002 ...	Penn Circle Towers, Pittsburgh, PA.	Penn Circle Towers Development, 6231 Penn Avenue, Pittsburgh, PA 15206.	[illegible]	772,440
033–44007 ...	East Mall, Pittsburgh, PA	East Mall Associates, 6231 East Mall Associates, Pittsburgh, PA 15206.	42	982,920
033–44014 ...	Valley Stream, Delmont, PA	Valley Stream Associates, 901 Elizabeth Street, Pittsburgh, PA 15221.	16	271,380
033–44019 ...	Greenway Park Coop, Pittsburgh, PA.	Greenway Park Cooperative, Inc., 1592 Crucible Street, Pittsburgh, PA 15205.	40	1,227,600
033–44045 ...	Bedcliff, Pittsburgh, PA	Bedcliff Associates, 5604 Baum Blvd., Pittsburgh, PA 15206	[illegible]	51,120
033–44048 ...	Crestview Gardens, New Castle, PA.	Casco Associates, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	42	1,068,480
033–44057 ...	Brinton Manor, Braddock Hills, PA.	Brinton Manor No. 1 Associates, 1225 Eye Street, N.W., Suite 601, Washington, DC 20005.	23	690,240
033–44142 ...	Leechburg Gardens, Penn Hills, PA.	Leechburg Gardens, 753 Allegheny River Blvd., Verona, PA 15147	18	384,480
033–55002 ...	East Hills Park Apts., Pittsburgh, PA.	East Hills Park Apartments, 901 Elizabeth Street, Pittsburgh, PA 15221.	13	285,300
033–55008 ...	Liberty Park, Pittsburgh, PA	Liberty Park Company, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	71	1,915,980
033–55018 ...	Westgate Village I, Pittsburgh, PA	Broadhead Fording Associates, 5400 Old Court Road, Randallstown, MD 21133.	13	441,840
033–55032 ...	Westgate Village II, Pittsburgh, PA.	Broadhead Associates, 5400 Old Court Road, Randallstown, MD 21133.	19	726,120
034–35156 ...	Stonewood Village, West Manchester TW, PA.	Richard Fore, Mr. Richard Fore, General Partner, 310 Westlake Blvd., Westlake Vil., CA 91362.	[illegible]	1,836,000
034–44027 ...	Eastside Apts., Nanticoke, PA	Nanticoke UAW Housing, Inc., 16 Commerce Drive, Cranford, NJ 07016.	[illegible]	521,100
034–44049 ...	Wayneview Apts., Philadelphia, PA.	Wayneview Homes, Inc., 805 East Willow Grove Ave., Phila., PA 19118.	12	272,160
034–44061 ...	Eastridge Apts., Harrisburg, PA ...	National Housing Partnership, 1225 Eye Street N.W., Washington, DC 20005.	33	996,180
034–44116 ...	Jamestown Village, Reading, PA	National Housing Partnership, 1225 Eye Street, NW., Washington, DC 20005.	55	1,100,520
034–44808 ...	Enon-Toland Apts., Philadelphia, PA.	Enon-Toland, Inc., 1552 E. Wadsworth Avenue, Phila., PA 19150 ..	5	118,200
034–55021 ...	Elrae Gardens, Philadelphia, PA .	Phila. Hsg. Development Corp., 1234 Market Street, Phila., PA 19107.	[illegible]	743,820
034–SH008 ..	Friends Guild Hse., Philadelphia, PA.	Friends Rehabilitation Program, 1221 Fairmount Avenue, Phila., PA 19123.	71	2,087,460
034–SH015 ..	Stephen Smith Towers, Philadelphia, PA.	Stephen Smith Towers, 1030 Belmont Avenue, Phila., PA 19104 ...	41	890,700
034–SH018 ..	Sidney Hillman, Philadelphia, PA	Sidney Hillman Medical Center, 22 South 22nd Street, Phila., PA 19103.	142	3,028,080
034–SH022 ..	Ascension Manor, Philadelphia, PA.	Ascension Manor, Inc., 911 North Franklin St., Phila., PA 19123	61	977,400

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
045–44004 ...	Oakwood Terrace, Charleston, WV.	Kanawha Valley Homes, Inc., 116 Fifth Avenue, Montgomery, WV 20852.	18	433,320
045–44008 ...	Berkeley Gardens, Martinsburg, WV.	Berkeley Gardens Ltd. Ptnership, 12250 Rockville Pike, Suite 200, Rockville, MD 20852.	6	130,200
051–44014 ...	Wilmund Park, Chesapeake, VA .	Wilmund Park, PO Box 5267, Chesapeake, VA 23324	40	942,000
051–44029 ...	Quadrangle, Waynesboro, VA	Quadrangle Assocs., % F&W Corp, PO Box 20809, Roanoke, VA 24018.	25	475,800
051–44034 ...	Tinker Creek, Roanoke, VA	Tinker Creek Apts, 11410 Isaac Newton Sq. No., Reston, VA 22090.	25	594,300
051–44065 ...	Augusta Farms, Augusta County, VA.	Augusta Farms Assocs, % F&W Corp, PO Box 20809, Roanoke, VA 24018.	15	298,500
051–44100 ...	Langley Square 1, Hampton, VA .	Mercury III Associates, 4340 East-West Highway #300, Bethesda, MD 20814.	50	1,465,200
051–44140 ...	Meadowview, Pulaski, VA	Meadowview Apartments, PO Box 20069, Roanoke, VA 24018	50	1,083,000
051–44190 ...	Langley Square 2, Hampton, VA .	Mercury III Associates, 4340 East-West Hwy, #300, Bethesda, MD 20814.	72	2,001,420
051–44216 ...	Willow Woods, Radford, VA	Willow Woods, PO Box 20809, Roanoke, VA 24018	40	759,000
051–44224 ...	Petersburg East 1, Petersburg, VA.	Petersburg East Section 1, National Partnership Invest Corp, 9090 Wilshire Blvd. 3rd, Beverly Hills, CA 90211.	70	1,893,780
051–44225 ...	Northway, Galax, VA	Northway Apartments, PO Box 20809, Roanoke, VA 24018	6	82,800
051–44234 ...	Petersburg East II, Petersburg, VA.	Petersburg East Section 2, National Partnership Invest Corp, 9090 Wilshire Blvd. 3rd, Beverly Hills, CA 90211.	40	1,067,640
051–44239 ...	Huntersvilleviliage, Norfolk, VA	Huntersville Development Co, SRM Realty Co, PO Box 5267, Chesapeake, VA 23324.	38	1,407,000
051–55005 ...	Fairhills, Richmond, VA	Fairhills Apartments, 1233 W. Mt. Royal Ave, Baltimore, MD 21217	55	1,170,300
051–55007 ...	Oakmont North 1, Norfolk, VA	Oakmont Assocs, Great Atlantic, 2 Eaton St. #1100, Hampton, VA 23669.	55	1,241,700
051–55017 ...	Oakmont North II, Norfolk, VA	Oakmont Assocs, Great Atlantic, 2 Eaton St. #1100, Hampton, VA 23669.	30	693,900
051–55021 ...	Eastridge, Bristol, VA	Eastridge Associates, 2111 W. Montcastle Dr. #6, Johnson City, VA 37604.	40	694,860
051–55027 ...	Oakmont North III, Norfolk, VA	Oakmont Assocs, Great Atlantic, 2 Eaton St. #1100, Hampton, VA 23669.	50	1,148,700
		REGION: 4		
053–44038 ...	Camelot Apts, Gastonia, NC	Camelot Housing Alp, Attn: Eugene A. Gulledge, Gp, P O Box 15580, Alexandria, VA 22309–5580.	53	1,134,240
053–44074 ...	Barrington Oaks, Charlotte, NC ...	Barrington Oaks Associates Alp, Attn: E. Packer Wilbur, 2507 Post Road, Southport, CT 06490.	12	356,520
053–44077 ...	Summit Apartments, Lenoir, NC ..	Spencer Ridge Associates, Attn: William R. Wood, P O Box 97311, Bellevue, WA 98009–7311.	19	392,340
053–44084 . .	First Farmington, High Point, NC	First Farmington Ltd P'ship, Attn: Thomas L. Romp, P O Box 26560, Greensboro, NC 27415–6560.	33	671,280
053–44128 ...	Catawba Arms, Hickory, NC	Catawba Arms Alp, Attn: E. O. Browder, Gp, 2320 Highland Ave., South, Birmingham, AL 35205.	15	297,060
053–44158 ...	Hilltop Apts, Hickory, NC	Hilltop Limited Partnership, Attn: NCHP, Gp, 11410 Isaac Newton Square, Preston, VA 22090.	27	620,280
053–44161 ...	Orchard Park, Charlotte, NC	CP/DB Hsng Partners XIII, % Century Pacific Realty Corp, 1925 Century Park E., Suite 1760, Los Angeles, CA 90067.	9	176,400
053–44257 ...	Newgate Gardens, High Point, NC.	Newgate Gardens Alp, Attn: Thomas Romp, P O Box 26560, Greensboro, NC 27415–6560.	19	354,780
054–35452 ...	Winding Way Apts., Greenville County, SC.	Winding Way Associates, Alp, 110 Centerview Dr., Kingstree Building, Suite 114, Columbia, SC 29210.	12	265,680
061–44005 ...	Fairburn & Gordon I, Atlanta, GA	Fairburn & Gordon Associates, 1225 Eye Street, NW., Washington, DC 20005.	47	1,124,640
061–44019 ...	Meadow Lane, Rome, GA	Michael Stein, 18425 Burbank Blvd., Suite 708, Tarzana, CA 91356	7	151,560
061–44067 ...	Highlands Apartments, Newnan, GA.	Highlands-1984, Ltd., 7770 Poplar Avenue, Suite 106, Germantown, TN 38138.	7	174,720
061 44092 ...	Fairburn & Gordon II, Atlanta, GA	Fairburn & Gordon Associates, 1225 Eye Street, NW., Washington, DC 20005.	10	244,800
061–44097 ...	Tall Pines Apartment, La Grange, GA.	Tall Pines Associates, 5505 Interstate N. Parkway, NW., Atlanta, GA 30328.	10	213,000
061–44169 ...	Mt. Calvary Terrace, Atlanta, GA	NHP, Inc., 1225 Eye Street, NW., Washington, DC 20005	12	359,100
061–44197 ...	Blakewood Apartments Statesboro, GA.	Insignia Management Group, One Shelter Place, Greenville, SC 29602.	7	136,320
061–44212 ...	Linwood Apartments, Gainesville, GA.	Linwood Apartments, Ltd., 504 Fair Street, SW., Atlanta, GA 30313	4	69,000

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
061–44218 ...	Carriage Apartments, Calhoun, GA.	Carriage Apartments, Ltd, 50 Chateau Drive, Rome, GA 30161	4	83,100
061–44244 ...	Madison Apartments, Savannah, GA.	New Madison South Ltd. Ptnrshp, 4750 Laroche Avenue, Savannah, GA 31404.	17	367,080
061–44245 ...	Paradise Carrollton, Carrollton, GA.	Paradise Carrollton Apts., Ltd, 504 Fair Street, SW., Atlanta, GA 30313.	[illegible]	122,580
061–44290 ...	Capitol Vanira Atlanta, GA	Capitol Vanira Associates, 504 Fair Street, SW., Atlanta GA 30313	27	807,720
061–44291 ...	Boynton Village Atlanta, GA	Boynton Village Associates, 504 Fair Street, SW., Atlanta, GA 30313.	19	557,640
061–55030 ...	Hollywood West Apts., Atlanta, GA.	H.J. Russell Company, 504 Fair Street, SW., Atlanta GA 30313	12	256,680
061–55043 ...	Anthony Arms Apts, Macon, GA ..	Mr. Edward Herlck, Rural Route 1, P.O. Box 660, Waterbury Ctr, VT 05677.	[illegible]	409,080
061–55058 ...	Martin Manor Apts., Atlanta, GA ..	Martin Manor Apts., Ltd., 504 Fair Street, SW., Atlanta GA 30313 ..	7	175,560
061–SH007 ..	Calvin Court, Atlanta, GA	Calvin Court, Inc., 479 East Paces Ferry Road, Atlanta, GA 30305	[illegible]	803,760
062–35337 ...	Monroe Avenue Apts., Birmingham, AL.	Monroe Avenue Ltd., 5350 Poplar, suite 400, Memphis, TN 38119 ..	[illegible]	100,080
062–44055 ...	Dickens Ferry Apts., Mobile, Al ...	Dickens Ferry Apts., Ltd., 200 Crescent Court, #1385, Dallas, TX 75201.	19	362,880
062–44057 ...	Village Green Apts., Mobile, AL ..	Village Green Apts. Co Ltd., 1225 Eye Street NW., Washington, DC 20005.	21	478,620
063–35197 ...	Mabry Village, Tallahassee, FL ...	Belle Vue Associates, Ltd., N 81 W12920 Leon Road, Menomonee Falls, WI 53051.	[illegible]	655,200
063–44012 ...	Caravan Apartments, Jacksonville, FL.	Caravan Apartments, Ltd., 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	19	495,180
063–44024 ...	Village Green, Gainesville, FL	Village Green Limited Partners, 1225 Eye Street, NW, Washington, DC 20005.	11	242,400
063–44034 ...	Spring Manor, Ocala, FL	Royal American Housing, Ltd., 1002 West 23rd Street, suite 400, Panama City, FL 32405.	7	152,040
063–44038 ...	Ortega Arms, Jacksonville, FL	Ortega Arms Apartments, Ltd., P.O. Box 47050, Jacksonville, FL 32247.	27	598,500
063–44041 ...	Sutton Place, Ocala, FL	Hickory Ridge Apartments, Ltd., c/o NHP Property Management, 901 N. Lake Destiny Drive, Ste. 161, Maitland, FL 32751.	[illegible]	219,000
063–44043 ...	Beachwood Apartments, Jacksonville, FL.	Beachwood Apartments, Ltd., 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	13	310,080
063–44049 ...	Middletown Apartment, Orange Park, FL.	Dr. Joseph J. Lowenthal, 1809 Debarry Avenue, Orange Park, FL 32073.	27	715,740
063–44051 ...	Springfield Residence, Jacksonville, FL.	Springfield Residential One, 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	11	269,640
063–58501 ...	Imperial Estates, Jacksonville, FL	Imperial Estates, Ltd., 345 Market Street, Wooster, OH 44691	45	1,051,200
065–44016 ...	College Heights Apts, Biloxi, MS .	College Heights, Ltd., 1225 Eye Street, NW, Washington, DC 20005.	15	382,200
066–11013 ...	Sabal Palm Villas, Miami, FL	Sabal Palm Villa Apts., Ltd., 2221 Lee Road, Suite 17, Winter Park, FL 32789.	[illegible]	4,929,600
066–44043 ...	Broadmoor Apartments, West Palm Beach, FL.	Amreal Corporation, One Shelter Place, Greenville, SC 29602	30	760,560
066–44055 ...	East Green Hills, Perrine, FL	Mr. Luis Gonzales, 17842 SW 107th Avenue, Perrine, FL 33157	24	458,820
066–44072 ...	Stonybrook Apartment, Riviera Beach, FL.	Amreal Corporation, One Shelter Place, P.O. Box 1089, Greenville, SC 29601.	77	1,931,820
066–SH011 ..	Four Freedoms House, Miami Beach, FL.	Four Freedoms House of Miami, I, 2301 Collins Avenue, Miami Beach, FL 33139.	74	1,568,640
067–35277 ...	Armenia Gardens, Tampa, FL	Pinecrest Village Assc. Ltd., 5640 Professional Circle, P.O. Box 41180, Indianapolis, IN 46241.	[illegible]	296,620
067–44033 ...	Palm Grove, Orlando, FL	Palm Grove Gardens, Ltd., 4 Cedar Swamp Road, Glencove, NY 11542.	33	920,340
067–44066 ...	Oakhurst Square I, Tampa, FL	Alco Properties, Inc., 35 Union Avenue, Suite 200, Memphis, TN 38103.	16	384,120
067–44103 ...	Tampa Presb. Village, Tampa, FL	Tampa Presbyterian Village, In, 721 Green Street, Tampa, FL 33607.	[illegible]	161,520
067–44142 ...	Oakhurst Square II, Tampa, FL ...	New Oakhurst Square, 35 Union Avenue, #200, Memphis, TN 38102.	7	163,800
067–44143 ...	Bonny Apartments, Lakeland, FL	Ba Lakeland Associates, Ltd, 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	43	698,040
067–44148 ...	Sand Lake Villas, Orlando, FL	Sand Lake Housing Ltd. partner, C/O New Communities of America, 10501 Joplin, River Ridge, LA 70123.	19	476,520
067–44808 ...	The Columbian, St. Petersburg, FL.	Columbian Knights, Ltd., P.O. Box 47050, Jacksonville, FL 32247 ..	103	1,625,520
067–44814 ...	Presb Homes of Fla, Tampa, FL .	Presbyterian Homes of Fla, Inc, 4011 South Manhattan Avenue, Tampa, FL 33611.	14	212,400

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
067–44816 ...	Presb Homes of Brade, Bradenton, FL.	Presbyterian Homes & Housing, 1051 2nd Avenue North, St. Petersburg, FL 33705.	58	900,540
067–55011 ...	Daytona Village, Daytona Beach, FL.	Daytona Village Apts. Afla Gp, 326 South Grandview Avenue, Daytona Beach, FL 32018.	15	315,420
067–92009 ...	Lake Wales Gardens, Lake Wales, FL.	Lake Wales Gardens Partnership, P.O. Box 2590, West Palm Bea, FL 33402.	16	372,240
081–44002 ...	Pershing Park, Memphis, TN	Frank Jemison, 35 Union Ave., Suite 200, Memphis, TN 38103–2496.	61	1,162,800
081–44018 ...	Corning Village, Memphis, TN	Daniel E. Foley, 1755 E. Martin Luther King Jr. Blvd, Los Angeles, CA 90058.	23	477,960
081–44020 ...	Rolling Hills, Memphis, TN	Frank Z. Jemison, 35 Union Ave. Suite 200, Memphis, TN 38103–2496.	40	703,800
081–44033 ...	Ridgemont Terrace, Memphis, TN	CP/DB Housing Partners XV, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	23	397,140
081–55002 ...	Watkins Manor Apts., Memphis, TN.	Mitchel Stein, 2951 Twenty Eighth Street, Suite 2040, Santa Monica, CA 90405.	37	678,360
086–35032 ...	Millwood Manor, Nashville-Davidson, TN.	Robert D. Short, 2930 Sidco Dr., Nashville, TN 37204	43	1,168,080
086–35128 ...	Peppertree Apts., Memphis, TN ..	Pepper Tree—Memphis, Ltd., 5350 Poplar Suite 400, Memphis, TN 38119.	139	3,882,660
086–44003 ...	Knollcrest, Nashville-Davidson, TN.	Roderick Heller, III, 1225 Eye Street, NW., Washington, DC 20005	63	1,259,580
086–44008 ...	Apollo Apts., Nashville-Davidson, TN.	Robert A. Keenan, 1773 West Harpeth Rd., Franklin, TN 37064	45	858,600
086–44021 ...	Knollcrest Manor, Sparta, TN	L.H. Hardaway Jr., 615 Main Street, P.O. Box 60484, Nashville, TN 37206.	6	101,880
086–44049 ...	High House Village, Dickson, TN	Peter J. Jackson, Skyline Properties, 8235 Douglas Avenue, Dallas, TX 75225.	9	179,460
086–55018 ...	Winstead Manor, Nashville-Davidson, TN.	Robert A. Keenan, 1773 West Harpeth Rd., Franklin, TN 37064	17	273,060
087–55011 ...	Norwood Manor, Knoxville, TN	Robert & Neil Keenen, 908 Battery Lane, Nashville, TN 37220	12	234,000
		REGION: 5		
042–44048 ...	Branch Apartments, Medina, OH .	Carl Milstein, 600 Beta Drive, Mayfield Vill, OH 44143	8	208,320
043–44060 ...	Amberly Square, Columbus, OH .	Amberly Apartments Associates, 105 West Adams St. Suite 3800, Chicago, IL 60603.	22	545,040
046–44143 ...	Pride Apartments, Lockland, OH .	Pride Development Corporation, 11373 Freemantle Drive, Cincinnati, OH 45240.	39	841,740
046–55016 ...	Glenburn Green, Dayton, OH	Glenburn Green Cooperative, IN, 4561 Bufort Blvd., Dayton, OH 45424.	27	506,580
046–55022 ...	Glenburn Green II, Dayton, OH ...	Glenburn Green Coop II, 4561 Bufort Blvd, Dayton, OH 45424	26	495,480
047–35112 ...	Pine Ridge, Grand Rapids, MI	Five Mile Limited Partnership, 5989 Tahoe Drive, Grand Rapids, MI 49546.	24	779,040
047–35115 ...	Oakhill I, Kalamazoo, MI	P.M. Equities, 8137 West Grand River, Suite C, Brighton, MI 48116	24	676,080
047–35117 ...	Country Meadows, De Witt, MI	CMD Associates, 280 N. Woodward Ave., Suite 403, Birmingham, MI 48009.	35	1,035,000
047–35126 ...	The Fountains, Grand Rapids, MI	Three Fountains Limited Pthp, 5989 Tahoe Drive, SE., Grand Rapids, MI 49546.	20	621,600
047–35157 ...	Oakhill II, Kalamazoo, MI	P.M. Equities, 8137 West Grand River, Suite C, Brighton, MI 48116	46	1,295,820
047–44901 ...	New Horizon, Kalamazoo, MI	New Horizon Village Cooperative, 2400 St. Albans Way, Kalamazoo, MI 49001.	24	668,040
048–35035 ...	Greenview Manor, Flint, MI	Greenview Manor Inc., 817 Stevenson, Flint, MI 48502	33	717,000
048–SH027 ..	Essex Manor, Saginaw, MI	Essex Manor Inc., 4000 Harold St., Saginaw, MI 48601	58	1,158,600
071–44011 ...	Vistra Gardens, Chicago, IL	63rd & Michigan Joint Venture, Travis Realty Company, 840 E. 87th Street, Chicago, IL 60619.	40	1,430,940
071–44026 ...	Whispering Oaks II, Waukegan, IL.	Whispering Oaks II Lmtd Ptnshp, 2951 28th St. 90405, Santa Monica, CA 90405.	80	2,166,300
071–44801 ...	Naperville Elderly, Naperville, IL ..	Naperville Elderly Homes, 310 W. Martin Avenue, Naperville, IL 60540.	32	506,880
071–55185 ...	Whispering Oaks I, Waukegan, IL	Whispering Oaks I Lmtd Ptnship, 2951 Twenty Eighth St., Suite 2040, Santa Monica, CA 90405.	68	2,133,480
073–35461 ...	Yorktowne Farms, Greenwood, IN.	Yorktowne Farms Associates, P.O. Box 41180, Indianapolis, IN 46241.	11	328,440
073–44174 ...	Vinton Woods II, Kokomo, IN	Vinton Woods Cooperative, Inc., 3150 Vinton Circle, Kokomo, IN 46902.	5	114,000
075–35138 ...	Juneau Garden Apts., Milwaukee, WI.	Juneau Garden Apartments, 3128 West Ryan Road, Franklin, WI 53132.	30	729,000

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
075–35305 ...	Del Rio Apartments, Milwaukee, WI.	Del Rio Apts., A Ltd. Prtnrshp, 735 North Water Street, Milwaukee, WI 53202.	15	611,100
075–44017 ...	Birch Garden Apts., Kenosha, WI	WCE–I, A Ltd. Prtnrshp, 100 Corporate Place, Suite 403, Peabody, MA 01960.	56	1,387,200
075–44019 ...	Edgewood Manor, Burlington, WI	Burlington 37 Company, P.O. Box 17108, Milwaukee, WI 53217	37	1,265,400
075–44021 ...	Laurel Gardens, Marshfield, WI ...	WCE–I, A Ltd. Prtnrshp, 100 Corporate Place, Suite 403, Peabody, MA 01960.	41	718,020
075–55002 ...	Greentree, Milwaukee, WI	3700 West Greentree Corp., 7 N. Pinckney Street, Suite 225–B, Madison, WI 53703.	85	2,386,740
075–55004 ...	Teutonia Apartments, Milwaukee, WI.	6800 Teutonia Corp., 7 N. Pinckney Street, Suite 255–B, Madison, WI 53703.	16	509,760
075–SH001 ..	Cambridge Apartments, Milwaukee, WI.	Cambridge Apartment Corp. 7 N. Pinckney Street, Suite 225–B, Madison, WI 53702.	62	2,031,780
092–44156 ...	Selby Dayton Rehab, St. Paul, MN.	Leeco Company, 268 Dayton Avenue, St. Paul, MN 55102	31	792,060
092–SH018 ..	Central Towers, St. Paul, MN	Central Towers, Inc., 20 East Exchange Street, St. Paul, MN 55101	56	544,580
092–SH029 ..	Ebenezer Towers, Minneapolis, MN.	Ebenezer Towers, c/o Ebenezer Society, 2722 Park Avenue, Minneapolis, MN 55407.	95	2,039,100
		REGION: 6		
064–44017 ...	Fairwood Manor, Lake Charles, LA.	Federal Property Mgmt Corp, 3038 North Federal Hwy, Ft Lauderdale, FL 33306.	58	1,117,800
064–44030 ...	Spanish Arms Apts., Baton Rouge, LA.	Denham St. Apts. DBA Span. Arm, 4343 Denham Street, Baton Rouge, LA 70806.	43	795,540
064–44071 ...	Northgate Apts., Crowley, LA	Robert L. John, Sr., 600 West Sixteenth Street, Crowley, LA 70526	62	1,060,980
064–44112 ...	Gulfway Terrace, New Orleans, LA.	Century Pacific Hsg Prtnp VII, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	13	246,720
064–44140 ...	Ardenwood Park Apts., Baton Rouge, LA.	Ardenwood Properties, A Ptnshp, 650 N. Ardenwood. Bldg., 5, Baton Rouge, LA 70806.	48	920,04
064–SH008 ..	Monsignor Wynhoven I, Marrero, LA.	Monsignor Wynhoven Apts., Inc., c/o Christopher Homes, Inc., 1000 Howard Avenue, Suite 100, New Orleans, LA 70113.	120	2 024,640
064–SH009 ..	Christopher Inn, New Orleans, LA	Christopher Homes, Inc., 1000 Howard Avenue, Suite 100, New Orleans, LA 70113.	34	518,700
082–35066 ...	Huntington Place, Little Rock, AR	Pete Sisson, General Partner, Tesco, 5350 Popular, Suite 400, Memphis, IN 38119.	33	810,960
082–35226 ...	Old Oaks Apartments, Little Rock, AR.	Lyndell Lay, 3901 McCain Park Drive, Little Rock, AR 72116	10	231,600
112–35286 ...	Irving Oaks, Irving, TX	Irving Oaks, Ltd., 11120 Manor View Circle, Dallas, TX 75228	23	764,520
112–35296 ...	Country Park, Wichita Falls, TX ..	PMG Properties, Inc., 5855 Topanga Canyon, Suite 300, Woodland Hills, CA 91376.	16	385,020
112–55011 ...	Northlake Terrace, Dallas, TX	Northlake Terrace Associates, 1225 Eye Street NW, Washington, DC 20005.	43	1 014,720
113–44018 ...	Timberlake Apts, Arlington, TX	Timberlake Apts. Ltd Ptnrshp, 1225 Eye Street NW, Washington, DC 20005.	21	455,520
113–44032 ...	Continental Terrace, Fort Worth, TX.	Century Pacific Partnership, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	22	432,180
113–44033 ...	Sun Valley, Wichita Falls, TX	JDM Properties, P.O. Box 5117, Lubbock, TX 79415	22	491,880
113–44036 ...	Abilene North Apts, Abilene, TX ..	Abilene North Apts, Ltd., 3625 N Hall, Suite 1140, Dallas, TX 75219.	25	441,420
114–11062 ...	Hampton Place, Nacogdoches, TX.	Campus Colony DBA Hampton Pl., Campus Colony DBA Hampton Place, 201 N. University Avenue, Lubbock, TX 79415.	16	351,360
114–35127 ...	Memorial, Texas City, TX	Leslie A. Harlander, Leslie A. Harlander, 310 Cutting Blvd., Richmond, CA 94804.	28	436,800
114–35197 ...	Pecan Park I, Rosenberg, TX	Pecan Park I, Ltd., Plantation Mgmt., C/O J. Grizzard, 2018 N. Memorial Way, Houston, TX 77007.	25	680,760
114–35230 ...	Pecan Park II, Rosenberg, TX	Pecan Park II Limited, Plantation Mgmt., C/O J. Grizzard, 2018 Memorial Way, Houston, TX 77007.	25	690,960
114–35278 ...	Harbor Lights, Freeport, TX	Harbor Lights Associates, Ltd., Harbor Lights Associates, Ltd., 9000 SW. Freeway, Suite 208, Houston, TX 77074.	80	1,294,800
114–44020 ...	Northline Point, Houston, TX	Richard T. Simoni, Richard T. Simoni, 1324 Crane Street, Menlo Park, CA 94025.	41	985,260
114–44024 ...	Parker Square, Houston, TX	Southward Limited Partnership, National Housing Corporation, 11410 Isaac Newton Square North, Reston, VA 22090–5012.	76	1,849,020
114–44031 ...	Aristocrat, Houston, TX	Aristocrat Apartments, Ltd., National Corporation Housing, 11410 Isaac Newton Square North, Reston, VA 22090–5012.	22	533,760
115–44017 ...	Southridge Apts, Austin, TX	NCHP Asset Management, 1225 Eye Street NW, Washington, DC 20005–0000.	40	956,100

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
115–44073 ...	Riverview Apartments, San Marcos, TX.	H. Garland Stokes, 2520 S. IH 35, Austin, TX 78704–0000	10	211,920
118–35080 ...	Willow Park, Bartlesville, OK	Willow Park Ltd. Partnership, 1050 E. 61 St., Tulsa, OK 74136	15	311,340
118–35084 ...	Willow Creek, Bartlesville, OK	Willow Creek Ltd. Partnership, 1050 E. 61 St., Tulsa, OK 74136	10	195,960
118–44095 ...	Keetowah Village, Muskogee, OK	David Little, 1901 North Kickapoo, Shawnee, OK 74801	30	503,520
118–44107 ...	Terry Hill, Hugo, OK	Hugo Plaza Apts. Ltd., 1601 5 Av., Suite 1900, Seattle, WA 98101	5	78,300
118–55012 ...	Normandy Apartments, Tulsa, OK	R.C. Cunningham, 2692 West I–40, Oklahoma City, OK 73108	92	1,866,120
133–44007 ...	Castle Garden Apts., Lubbock, TX.	Century Pacific Housing Pt. XV, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	26	437,940
133–44011 ...	Mt. Franklin, El Paso, TX	Rufus E. Bruce, 114 E San Antonio, El Paso, TX 79901	21	387540
133–44034 ...	Woodcrest Apts, Odessa, TX	Woodcrest Apartments Ltd., 1225 Eye St., NW, Washington, DC 20005.	9	229,920
		REGION: 7		
084–44025 ...	Roanoke Ridge I, Kansas City, MO.	Agia Properties Limited, 3443 Wyoming, Kansas City, MO 64111 ...	22	456,000
084–44028 ...	Cloverleaf Apts, Kansas City, MO	Churchill Properties Ltd, C/O Yarco Co, 4125 Broadway, Kansas City, MO 64111.	119	2,973,900
084–44032 ...	Van Horn Place Apts, Independence, MO.	Van Horn Place, C/O Town Square Properties, 314 West 24 Highway, Suite 201, Independence, MO 64050.	31	642,540
084–44039 ...	Meadowridge Th I, Blue Springs, MO.	Meadowridge Townhouses, Inc., 1620 South 9th, Blue Springs, MO 66015.	8	168,480
084–44040 ...	Meadowridge Th II, Blue Springs, MO.	Meadowridge Townhouses, Inc., 1620 South 9th, Blue Springs, MO 66015.	6	126,600
084–44041 ...	Meadowridge Th III, Blue Springs, MO.	Meadowridge Townhouses, Inc., 1620 South 9th Blue Springs, MO 64015.	5	105,720
084–44090 ...	Royal Gardens, Kansas City, KS	Royal Gardens Limited, Robert Hughes, Sr, General Partner, 1021 North Seventh Street, Kansas City, KS 66101.	12	259,200
084–44119 ...	Parvin Estates, Kansas City, MO	Shawmet Homes Inc, 4125 Broadway, Kansas City, MO 64111	44	922,440
084–55027 ...	Terrace View I, Kansas City, MO	Orlando Investment Corporation, 3108 East Ninth, Kansas City, MO 64124.	35	713,220
085–35337 ...	Columbus Square Apts, St. Louis, MO.	Columbus Square Assoc. II, 415 Debaliviere Ave, St. Louis, MO 63112.	20	561,600
085–35359 ...	Blair School Apts, St. Louis, MO .	Blair School Ltd Ptnshp, 1101 Lucas Ave, St. Louis, MO 63101	5	145,260
102–44082 ...	Greenbriar–Dodge City, Dodge City, KS.	A. E. Rudd, 614 Magnolia Gardens, Garden City, KS 67846	4	72,540
		REGION: 8		
101–38016 ...	St Moritz Towers, Denver, CO	Acoma Street Assoc. Ltd, 1777 South Harrison #309, Denver, CO 80210.	46	845,820
101–44146 ...	Argonaut Apts, Denver, CO	Jona Goldrich, Goldrich & Kest 5150 Overland Ave, Culver City, CA 90230.	27	512,460
105–44002 ...	Normandie I, Ogden, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	19	377,760
105–44007 ...	Vine Villa, Murray, UT	Vine Villa LTD PTSP, 35 Century Parkway, Slc, Ut 84115	10	166,800
105–44022 ...	Normandie II, Ogden, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	8	167,760
105–44029 ...	La Dawn I, Roy, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	26	533,400
105–44034 ...	La Dawn II, Roy, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	29	595,680
		REGION: 9		
121–35796 ...	Pioneer 2000 Santa Rosa, CA	Pioneer 2000 Limited, 5855 Topanga Canyon Blvd., Suite 300, Woodland Hill, CA 91367.	31	1,193,400
121–35801 ...	Sea Breeze Apts, Vallejo, CA	Thomas & Angelita F. Tomanek, 26601 Durham Way, Hayward, CA 94542.	71	2,611,500
121–44027 ...	All Hallows Gardens, San Francisco, CA.	All Hallows Association, 11410 Issac Newton Square North, Reston, VA 22090–5021.	8	279,120
121–44053 ...	Western Park, San Francisco, CA	Northern California Presby Hom, 1525 Post Street, S.F., CA 94109–6560.	41	992,700
121–44127 ...	Vincentian Villa, San Francisco, CA.	Vincentian Villa, 1170 Market St. Suite 500, S.F., CA 94103	22	434,280
121–44131 ...	Loren Miller Homes, San Francisco, CA.	Loren Miller Corporation, 937 McAllister St, S.F., CA 94115	20	619,680
121–44233 ...	Josephine Lum Lodge, Hayward, CA.	Josephine Lum Lodge, Inc., 2747 Oliver Drive, Hayward, CA 94545	36	584,460
121–44337 ...	Kings Canyon, Fresno, CA	Kings Canyon Apts., Ltd., Goldrich and Kest, 5150 Overland Avenue, Culver City, CA 90231–3623.	39	1,168,320

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
121–44365 ...	Barrett Terrace, Richmond, CA ...	Greater Richmond Community Dev, 1125 Eye St. NW., Washington, DC 20005.	15	489,060
121–44366 ...	Barrett Plaza, Richmond, CA	Greater Richmond Community Dev, 1125 Eye St. NW., Washington, DC 20005.	13	477,360
121–44410 ...	Betel Apartments, San Francisco, CA.	Mission Housing Deve Propty 2, 2922 Mission Street, S.F., CA 94110.	4	144,960
121–44440 ...	Bayview Apartments, San Francisco, CA.	Bayview Hunters Point Apts, 11410 Isaac Newton Square North, Reston, VA 22090–5012.	5	193,500
121–44810 ...	Bethany Center, San Francisco, CA.	Bethany Center Senior Hous, Inc, 580 Capp St, S.F., CA 94110	14	355,740
121–44811 ...	Pleasanton Gardens, Pleasanton, CA.	Pleasanton Gardens, Inc., 251 Kottinger Drive, Pleasanton, CA 94566.	8	135,780
121–44813 ...	Town Park Towers, San Jose, CA.	Northern California Presbyteri, 1525 Post Street, San Francisco, CA 94109–6569.	15	352,500
121–55073 ...	Crescent Village, Suisun City, CA	Crescent Associates, 12 Canyon Oak Place, Danville, CA 94526 ...	24	728,280
122–94001 ...	Traymore Apts, Los Angeles, CA	Traymore Limited, 5699 Kanan Road No 234, Agoura Hills, CA 91301.	53	1,816,200
122–94019 ...	Wilshire Villas No	Thomas Bell, 12661 Sunswept Ave, Garden Grove, CA 92643	55	1,895,880
123–44026 ...	Fry Apartments, Tucson, AZ	Fry Development, 260 S. Pantano #127, Tucson, AZ 85710	28	420,480
136–44130 ...	Santa Clara Terrace, Roseville, CA.	Santa Clara Terrace, Alp, Eugene Burger, Gp, 481 Via Hidalgo, Greenbrae, CA 94904.	12	321,960
136–44158 ...	Vernal Apartments, Manteca, CA	Vernal Housing Limited Partner, Eugene Burger, Gp, 481 Via Hidalgo, Greenbrae, CA 94904.	15	332,100
143–38005 ...	Briarwood Manor, Montclair, CA ..	Briarwood Manor Partnership, 481 Via Hidalgo, Greenbrae, CA 94904.	80	1,655,100
REGION: 10				
124–44004 ...	Alpine Manor, Boise, ID	Rockwood Alpine Oregon Ltd, 13500 SW Pacific Hwy, Ste 200, Portland, OR 97223.	23	514,500
126–44116 ...	The Plaza, Portland, OR	William R. Wood, P.O. Box 97311, Bellevue, OR 98009	79	1,058,100
126–94002 ...	Down Manor, Hood River, OR	Louis Nex, Jr, Down Manor Inc, 3260 Brookside Drive, Hood River, OR 97031.	40	567,600
171–44034 ...	Pinecrest Apt, Pasco, WA	Patricia S. Nettleship, 2665 Main St., Suite 220, Santa Monica, CA 90405.	38	553,140

[FR Doc. 93–15653 Filed 7–1–93; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–4333–02–RPRN]

Call for Gila Box Advisory Committee Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions on the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to title 2, section 201, of the Arizona Desert Wilderness Act of 1990.

The purpose of the Advisory Committee is to provide informed advice to the Safford District Manager on management of pubic lands in the Gila Box Riparian National Conservation Area. Members are currently assisting BLM with the selection of a preferred alternative for the final Gila Box Interdisciplinary Activity Plan. The Advisory Committee is meeting at least every two months during this part of the planning process. Members serve without salary, but are reimbursed for travel and per diem expenses at current rate for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific ares related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. These categories of expertise include wildlife conservation, riparian ecology, archaeology, hydrology, recreation, environmental education, or other related disciplines.

Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide names, addresses, professions, biographical data, and category of expertise for qualified nominees. Persons selected to serve on the Committee will serve a three-year term ending on July 31, 1996. Nominations should be submitted to the Safford District Manager at the address below.

DATES: All nominations should be submitted to the District Manager, 711 14th Avenue, Safford, Arizona 85546, and received by July 30, 1993.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Jonathan Collins, Gila Box Coordinator, Gila Resource Area, Safford District Office, 711 14th Ave., Safford, Arizona 85546, telephone (602) 428–4040.

Dated: June 24, 1993.

William T. Civish,

District Manager.

[FR Doc. 93–15657 Filed 7–1–93; 8:45 am]
BILLING CODE 4310–32–M

VOL 58 ISS 126 JL 2 1993 UMI

[NV-040-4191-03]

Intent To Prepare an Environmental Impact Statement; Robinson Mine Project, White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Bureau of Land Management's (BLM) Ely District Office gives notice of its intent to develop an environmental impact statement (EIS) pursuant to section 102(2)(e) of the National Environmental Policy Act of 1969 and to 43 CFR part 3809 for the Robinson Mine Project. This project is located in White Pine County, Nevada. This EIS will be prepared by contract, funded by the proponent, Robinson Mining Limited Partnership (RMLP). The BLM invites comments and suggestions on the scope of the analysis.

DATES: Written comments on the scope of the EIS will be accepted until August 6, 1993.

ADDRESSES: Scoping comments are to be sent to: Ely District Manager, HC 33 Box 33500, Ely, NV, 89301.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Daniel R. Netcher at (702) 289-4865.

SUPPLEMENTARY INFORMATION: The RMLP proposes to construct and operate a copper mining facility in the Robinson Mining District near Ely, Nevada. The majority of the operation will be conducted on 3,324 acres of private land owned or controlled by Magma Nevada Mining Company. The operation will also take place on 1,965 acres of public land administered by the BLM. Public lands will be required for a mill tailings impoundment and ancillary facilities, leach facilities, powerline and water pipeline corridors, and small portions of waste rock disposal areas. A total of 5,289 acres of public and private lands will be used by the copper operation.

The Mining District has been extensively mined for copper for nearly a century, most recently by Kennecott Copper Corporation (Kennecott). Kennecott ceased its mining activities in 1978, leaving an area of over 3,170 acres of private land and approximately 240 acres of public land unreclaimed. This surface disturbance includes three large open pit mines and at least seven discrete waste rock disposal areas.

RMLP's Robinson Mine Project will consist of continued mining in the three existing open pits, expansion of some of the existing waste rock dumps, construction of a new sulfide concentrator to produce copper and molybdenum concentrates, and construction of a copper heap leaching, solvent extraction and electrowining (SX/EW) facility to produce copper cathodes. An electrical powerline will be constructed from the Gonder Substation near McGill, Nevada to the project area.

Based on currently identified ore reserves and anticipated mining rates, the project is expected to have an active life of approximately 18 years. An average daily production of approximately 650 tons of copper concentrate, 50 tons of cathode copper, and 2 tons of molybdenum concentrate are planned for the facility.

The issues expected to be analyzed in the EIS are impacts to: Surface and groundwater quality and quantity, air quality, socio-economics, threatened and endangered species, cultural resources, visual impacts, wildlife, truck traffic haulage of mining chemicals and concentrates, and mine reclamation.

Dated: June 28, 1993

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93-15679 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-050-4410-02]

Intent To Supplement the Draft Stateline Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent. The Bureau of Land Management (BLM) is proposing to prepare a supplement to the Draft Stateline Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) to analyze issues not addressed in the draft document.

SUMMARY: Based on comments from agencies and the general public and evaluation on the draft document, the BLM has determined that the following issues require further analysis and public review: (1) Ephemeral/perennial rangeland classification, (2) utility corridor locations at Henderson, Paiute Valley, Dry Lake/Apex Area, and Pahrump and corridor width throughout the planning unit, (3) Mineral Management/Post Congressional Non-Designation of Wilderness Study Areas (WSA), and (4) Tortoise Recovery Plan implications.

DATES: A public coordination period has been scheduled from July 1 to August 2, 1993 in advance of the preparation of the supplement.

ADDRESSES: All comments and concerns you may have with this proposed supplement are to be submitted to: Bureau of Land Management, Attention: Stateline Area Manager, P.O. Box 26569, Las Vegas, NV 89126 or hand delivered to the BLM District Office at 4765 Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Marvin D. Morgan, Stateline Resource Area Manager, or Jerry C. Wickstrom, RMP Team Leader, at the above address or telephone (702) 647-5000.

SUPPLEMENTARY INFORMATION: Issues that will be addressed in the proposed supplement to the Draft Stateline RMP/ EIS include:

(A) Rangeland Classification—The reclassification of certain grazing allotments from "ephemeral" to "ephemeral/perennial" or "perennial".

(B) Utility Corridors—Alternative corridor locations in the Henderson, Dry Lake/Apex, and Pahrump areas. It will also discuss a more precise narrower corridor concept throughout the planning area.

(C) Minerals Management/Post Congressional Non-Designation of WSAs—Management objectives and direction for released WSAs under the mining and mineral laws.

(D) Tortoise Management—Desert Tortoise management as outlined in the Draft Recovery Plan of April, 1993 (developed by the Fish and Wildlife Service). It will address only those recommendations not covered in any of the alternatives in the Draft Stateline RMP/EIS.

A 90 day public review of the supplement will be provided at a later date. After the public review and comments, the results of the supplement will be combined with comments previously received on the Draft Stateline RMP/EIS and will be used to develop the Proposed Stateline RMP/ Final EIS (FEIS). The Proposed RMP/ FEIS is scheduled for release in June, 1994.

Federal, state and local agencies, and other individuals or organizations who are interested in or affected by aspects of the proposed supplement are invited to participate in the process. Comments and recommendations will be accepted only on those subjects being addressed in this supplement to the Draft Stateline RMP/EIS. Comments that are specific are the most helpful.

Dated: June 28, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93-15680 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-HC-M

[ID-942-03-4730-02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 25, 1993.

The plat representing the dependent resurvey of portions of the Fourth Standard Parallel North (south boundary) and subdivisional lines, the subdivision of section 32, and survey of Lots 1, 2, 5, 6, and 7, in section 32, Township 18 North, Range 8 East, Boise Meridian, Idaho, Group No. 832, was accepted June 16, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 25, 1993.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-15656 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-GG-M

[UT-060-03-4210-05; UTU-67449]

Realty Action; Noncompetitive (Direct) Sale of Public Land in Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU-67449, Noncompetitive (Direct) Sale of public land in Carbon County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcel has been found suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3-3):

Salt Lake Meridian, Utah
T. 14 S., R. 10 E.,
Section 23, W½NE¼NE¼.
The described land aggregates 20.00 acres more or less.

The subject parcel of land has been leased to Carbon County since 1980 for use as a sanitary landfill, through the provisions of the Recreation and Public Purposes Act (43 U.S.C. 869). A complete Environmental Audit as well as a Regulatory Compliance Audit have been completed on the landfill. In addition, approval from the Director of the Bureau of Land Management to transfer the land to Carbon County has been received.

The parcel is difficult and uneconomic to manage as part of the public lands, is not needed for any resource programs, and is not suitable for management by the Bureau or any other Federal department or agency. The parcel (UTU-67449) is being offered as a noncompetitive (direct) sale in accordance with 43 CFR 2711.3-3 to Carbon County, Utah. The land will not be offered for sale until at least sixty (60) days after publication of this notice in the **Federal Register**. The sale will be at no less than the appraised fair market value.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The Terms and Conditions Applicable to the Sales Are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of land will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to:

a. A right-of-way, Serial No. UTU-002283, to PacifiCorp dba UP & L, its successors or assignees, for a powerline located in SLM, T. 14 S., R. 10 E., Section 23, W½NE¼NE¼, under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

b. A right-of-way, Serial No. UTU-015341, to PacifiCorp dba UP & L, its successors or assignees, for a powerline located in SLM, T. 14 S., R. 10 E., Section 23, W½NE¼NE¼, under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

Sale Procedures: The buyer will be required to submit the fair market value of the property on the date of the sale. The land will be offered for sale at the Price River Resource Area Office.

Bidder Qualifications: Bidder must be U.S. citizen 18 years of age or over, a State or State instrumentality authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

Comments: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION:
Additional information concerning the lands and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab Distict Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: June 24, 1993.

William C. Stringer,

Associate District Manager.

[FR Doc. 93-15729 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-080-03-4110-99]

Vernal District Advisory Council Tour

AGENCY: Bureau of Land Management.

ACTION: Notice of Advisory Council Tour.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and CFR part 1780, that a Vernal District Advisory Council Tour will be conducted on Tuesday, July 20, 1993. The purpose of the tour is: to familiarize the Council with new land the District is acquiring in a land exchange with the Rocky Mountain Elk Foundation and discuss future management opportunities; to tour the White River Oil shale facilities and discuss possible future site and facility uses; to visit Coyote Basin Oil Field and discuss oil exploration, production, and coordination with the National Park Service and to discuss possible black-footed ferret reintroduction into the Coyote Basin area.

VOL 58 ISS 126 JL 2 1993 UMI

The tour agenda is as follows:

Vernal District Advisory Council Tour, July 20, 1993

8:30 a.m. Begin tour at BLM office
9:00 a.m. Stop at Coyote Basin Oil Field
Discuss: Oil exploration and production coordination of oil field activities with NPS reintroduction of black-footed ferrets
10:30 a.m. Tour White River Oil shale facilities discuss potential future use of the facilities and site
11:30 a.m. Visit and discuss oil shale patent applications
1:00 p.m. Have lunch and tour Hill properties on Bitter Creek being acquired through exchange with the Rocky Mountain Elk Foundation

Discuss options for future management including:

Livestock grazing
Riparian restoration
Water quality and fisheries
Public access/recreation
Wildlife habitat improvements
Stabilization/use of historic structures
4:00 p.m. Tour Wolf Den portion of Hill property
6.00 p.m. Arrive back in Vernal

The tour is open to the public; however, they would be required to furnish their own transportation and food.

FOR FURTHER INFORMATION, CONTACT: David E. Little, Vernal District Manager, Phone (801) 789–1362.

Dated: June 29, 1993.

David E. Little,

District Manager.

[FR Doc. 93–15880 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Concession Contract Negotiations; Bandelier National Monument, NM

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued snack bar and gift shop services for the public at Bandelier National Monument, New Mexico, for a period of five (5) years from date of final execution of the concession contract.

EFFECTIVE DATE: August 31, 1993.

ADDRESSES: Interested parties should contact Superintendent Roy Weaver, Bandelier National Monument, HCR 1, Box 1, Suite 15, Los Alamos, New Mexico 87544, (505) 672–3861, for requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1992, and, therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20d), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: February 25, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–15744 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–70–M

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: July 21, 1993 9 a.m.–3 p.m.

ADDRESSES: Keya Paha County High School (library), Football Avenue, Springview, Nebraska.

Agenda topics include: Discuss comments received by the commission members from the community; an update, and discussion on the status of the draft statements prepared for the Niobrara Scenic River General Management Plan by the National Park Service planning team; the opportunity for public comment, and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplished the agenda for the meeting the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of Minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan, and on the management and operation of the 40 mile and 30 mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent; Niobrara/Missouri National Scenic Riverways; P.O. Box 591; O'Neill, Nebraska 68763–0591. Telephone: (402) 336–3970.

Dated: June 23, 1993.

William W. Schenk,

Acting Regional Director.

[FR Doc. 93–15745 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Notice No. 40853]

Yellow Freight System, Inc. of Indiana—Petition for Declaratory Order—Weighing Shipments

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by Yellow Freight System, Inc. of Indiana (Yellow), the Commission has instituted a declaratory order proceeding to determine whether (1) the Commission has exclusive jurisdiction over the reasonableness of Yellow's practice of verifying shipment weights using forklift scales; and (2) more stringent State requirements for scale accuracy are preempted. An opportunity to participate in the proceeding is provided to interested persons, and their comments are invited.

DATES: Written comments must be filed August 1, 1993. Additional filings will be scheduled only if required.

ADDRESSES: Send an original and 10 copies of all comments to: Attn: No. 40853, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy to each of the following representatives of Yellow: Lawrence W. Bierlein, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037; and Jerry C. Bowlin, 10777 Barkley, Overland Park, KS 66211.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 or Joseph C. Levin, (202) 927–6287. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: The Commission has instituted a declaratory order proceeding under 5 U.S.C. 554(e) on Yellow's request to terminate a controversy with State authorities concerning Yellow's practice of weighing interstate shipments with a forklift scale. Yellow is a major motor carrier engaged in the transportation of less-than-truckload (LTL) shipments throughout the United States. As provided for in its tariff, Yellow has been verifying shipper supplied weight information by using mobile forklift scales that are not certified "legal for trade," because they do not conform with State requirements.

Yellow indicates that it randomly reweighs only a few shipments and more frequently reweighs shipments of customers having a history of inaccurate weights. Yellow indicates that it has not received any complaints from shippers about its reweighing practice.

Yellow's use of forklift scales has been cited by the States of Maryland and Nevada for being inconsistent with State law. Both States require that scales be calibrated to a tolerance of 0.1 percent to conform with the National Institute of Standards and Technology (NIST) Handbook 44, for Class III scales. Yellow's forklift scales are calibrated to a tolerance of 1 percent. Both States have advised Yellow that its "not legal for trade" forklift scales cannot be used to determine freight charges. Both States disagree with Yellow's contention that the Commission has exclusive jurisdiction over this aspect of interstate trucking and that the State requirements are a burden on interstate commerce.

Yellow believes it would be significantly burdened if shipments had to be weighed on State-certified scales. It also questions whether any legitimate State interest is served by mandating a 0.1 percent tolerance. It asserts that a 1 percent tolerance is more than adequate to assess freight charges for LTL shipments. Allegedly, the difference between a 0.1 percent tolerance and a 1 percent tolerance would not significantly affect the charges.

The National Conference of Weights and Measures (NCWM) commented on Yellow's position. It believes that Yellow's position is inconsistent with uniform weighing requirements adopted by all 50 States and the District of Columbia. It contends that the standards have been adopted universally, and are not an undue burden on interstate commerce.

The Department of Commerce, NCWM, State agencies, motor carriers, shippers, and other interested members of the public are invited to comment on these issues. Any person seeking to participate in support of, or, in opposition to Yellow's position, should submit written representations, views, or arguments to the Commission. Copies of Yellow's petition, NCWM's comments, and Yellow's reply are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented and continues to believe that a declaratory order is not necessary at this time as no case or controversy exists.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15716 Filed 7–1–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32304]

Gateway Eastern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation

Gateway Eastern Railway Company (GERC), a noncarrier, has filed a notice of exemption to acquire from Consolidated Rail Corporation (Conrail) and to operate 16.69 miles of rail lines in St. Clair County, IL: (1) 14.79 miles between milepost 243.5 at "WR" Tower in Granite City and milepost 0.91 at East Alton;[1] and (2) 1.90 miles between milepost 236.8 at "Willows" interlocking in East St. Louis and milepost 238.7 at "Q" Tower in East St. Louis.[2] GERC will also assume by assignment Conrail's existing overhead trackage rights over the Terminal Railroad Association of St. Louis between "WR" Tower and a point near "Willows" interlocking, a distance of approximately 5.25 miles. GERC expects to become a class III rail carrier upon consummation of the transaction. The parties plan to consummate the transaction on or after June 10, 1993, the effective date of this notice of exemption.[3]

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[1] A change in the numbering system accounts for what appears to be a discrepancy between these milepost designations. Also included in the agreement is Conrail's interest in (1) the Roxanne Industrial Track, (2) a joint switching agreement at Alton, IL, and (3) a 1906 joint use agreement from "WR" Tower in Granite City to Wann, covering the Conrail line (operated eastward) and the parallel GWRC-SPCSL Corp. line (operated westward).

[2] Under its interchange agreement with Conrail, GWER will operate into Conrail's Rose Lake Yard, just east of "Willows" interlocking.

Conrail will retain a non-exclusive easement and overhead trackage rights over the 1.90-mile line to maintain, via other carriers, its access to the MacArthur Bridge over the Mississippi River and certain river terminals south of "Q" Tower.

[3] Unless they file a voting trust under 49 CFR 1013, the actual consummation date will depend on the effective date of a related proceeding, Finance Docket No. 32306. There, Gateway Western Railway Company (GWRC), which wholly owns GERC, and Wertheim Schroder & Co., Inc., which controls GWRC, seek an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C 11343 *et seq.*, to continue in control of GERC when it becomes a carrier. This proceeding is also related

Continued

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: Robert H. Wheeler, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Dated: June 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-15715 Filed 7-1-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics
Supplemental Telephone Communications Survey
1220-0146
Annually
Businesses or other for-profit
14 respondents; 171.4 hours per response; 2400 total hours; 1 form

Detailed information pertaining to the inputs of local exchange carriers in the telephone communications industry is needed for productivity statistics. The information will be used in a multifactor productivity measure for the local telephone communications industry. The respondents are regional Bell operating companies and other local exchange carriers, who have all agreed to participate.

Signed at Washington, DC this 22nd day of June, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93-15731 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-24-P

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

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to Finance Docket No. 32307, where GWRC filed a notice of exemption to acquire overhead trackage rights from GERC over a portion of Conrail's line described in (2) above to be acquired by GERC, and to Finance Docket No. 32305, where GEWR and GWRC jointly seek an exemption under section 10505 from the prior approval requirements of 49 U.S.C. 10901 to construct a connection between a proposed new GWRC line (discussed below) and the lines to be acquired by GERC. Because these concurrently filed exemptions will, if consummated, have the cumulative effect of connecting GWRC and Conrail lines, they are also relevant to the Commission's consolidated decision in Finance Docket Nos. 32158 and 32158 (Sub-No. 1), *Gateway W. Ry. Co.-Const. Exempt.-St. Clair County IL, et al.* (not printed), served May 11, 1993. There, the Commission conditionally granted GWRC an exemption to construct and operate a rail line at East St. Louis but requested additional evidence on whether the construction of certain related crossings would result in the Conrail connection now proposed and on what the traffic consequences of such a connection would be. Petitions to reopen and revoke these exemptions are now pending before the Commission.

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Kansas
KS930023 (July 2, 1993)
KS930024 (July 2, 1993)
KS930025 (July 2, 1993)

Volume III

Arizona
AZ930005 (July 2, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama
AL930007 (Feb. 19, 1993)
AL930008 (Feb. 19, 1993)
AL930033 (Feb. 19, 1993)
New Jersey
NJ930002 (Feb. 19, 1993)
NJ930007 (Feb. 19, 1993)
New York
NY930008 (Feb. 19, 1993)
Pennsylvania
PA930023 (Feb. 19, 1993)
Virginia
VA930005 (Feb. 19, 1993)
VA930033 (Feb. 19, 1993)
VA930036 (Feb. 19, 1993)
VA930048 (Feb. 19, 1993)
VA930065 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)

Volume II

Illinois
IL930001 (Feb. 19, 1993)
IL930002 (Feb. 19, 1993)
IL930003 (Feb. 19, 1993)
IL930004 (Feb. 19, 1993)
IL930005 (Feb. 19, 1993)
IL930007 (Feb. 19, 1993)
IL930008 (Feb. 19, 1993)
IL930009 (Feb. 19, 1993)
IL930011 (Feb. 19, 1993)
IL930012 (Feb. 19, 1993)
IL930013 (Feb. 19, 1993)
IL930014 (Feb. 19, 1993)
IL930015 (Feb. 19, 1993)
IL930017 (Feb. 19, 1993)
Kansas
KS930004 (Feb. 19, 1993)
KS930006 (Feb. 19, 1993)
KS930008 (Feb. 19, 1993)
KS930009 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930014 (Feb. 19, 1993)
KS930019 (Feb. 19, 1993)
KS930022 (Feb. 19, 1993)

Volume III

Alaska
AK930001 (Feb. 19, 1993)
Arizona
AZ930001 (Feb. 19, 1993)
AZ930002 (Feb. 19, 1993)
Colorado
CO930001 (Feb. 19, 1993)
Idaho
ID930001 (Feb. 19, 1993)
ID930002 (Feb. 19, 1993)
North Dakota
ND930001 (Feb. 19, 1993)
ND930002 (Feb. 19, 1993)
Oregon
OR930001 (Feb. 19, 1993)
OR930004 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930003 (Feb. 19, 1993)
WA930005 (Feb. 19, 1993)
WA930007 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)
WA930010 (Feb. 19, 1993)
WA930011 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of June 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–15453 Filed 7–1–93; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA–W–28, 425]

Pennshire Stores, Plant #2 Portage, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated May 25, 1993, the petitioners and former workers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 10, 1993 and published in the **Federal Register** on May 25, 1993 (58 FR 30072).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following conditions:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

VOL 58 ISS 126 JL 2 1993 UMI

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the subject firm produced men's and boys' suits and topcoats only for its parent company, Charles Navasky & Company in Philipsburg, Pennsylvania. The findings show that although topcoat production and sales at Portage accounted for a substantial portion of Portage's production and sales in 1992, the workers were not separately identifiable by product. The plant closed in January, 1993.

The petitioners state that the Department based its findings on men's and boys' suits and not on topcoats. The petitioners asked whether the Department's survey included topcoats as well as men's and boys' suits and whether the other company plants were surveyed.

Investigation findings show that the Department's denial was based on the fact that the "contributed importantly" test of the Trade Act was not met. The Department's survey included topcoats as well as men's and boys' suits. The survey findings showed that there were no company imports of men's and boys' suits and topcoats and that sales did not decrease.

Company officials stated that production was reorganized and the Portage plant was closed because the company had unused capacity at its Philipsburg plants which were more economically operated.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 22nd day of June 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-15732 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,421; Precision Castparts Corp., Portland, OR

TA-W-28,374; Teledyne Wah Chang Albany, Albany, OR

TA-W-28,189 & 28, 189A; Unisys Corp., Eagan MN and Roseville, MN

TA-W-28,427; Kingston-Warren Corp., Wytheville, VA

TA-W-28,562; Rogue Valley Printed Circuits, Inc., Medford, OR

TA-W-28,561; Syntron, Inc., Houston, TX

TA-W-28,474; Border Steel Rolling Mills, Inc., EL Paso, TX

TA-W-28,505; Osram Sylvania, Inc., Circuit Assembly, Williamport, PA

In the following cases, the investigation revealed that the Criteria for eligibility has not been met for the reasons specified.

TA-W-28,543; Planters/Lifesavers Co., Amsterdam, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,655; North American Energy Service, Rainer, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,609; General Dynamics, Convair Div., San Diego, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,351; Todd Pacific Shipyards Corp., Seattle, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,585; Campbell Tobacco Rehandling Co., Inc., Mayfield, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,483; KP/Stant Corp., El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,617; Timeslice Technology, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,750; Communications Instruments, Inc., Midtex Div., El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,653; Tupperware Manufacturing, Halls, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,456; Schlumberger Gico-Prakla, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA-W-28,566; Nicolette Fashions, Inc., West New York, NJ*****

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,350; United Technologies Motors Systems, Inc., Brownsville, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,513; Swift Adhesives, Inc., Portland, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,528 & TA-W-28,528A; Hilti Steel Industry Div., Tulsa, OK and Sisco, Inc., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,469; Magic Chef Co., Cleveland, TN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,498; Boise Cascade Corp., Plywood Div., Yakima, WA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-28,631; Pyke Manufacturing Co., Lehi, UT

A certification was issued covering all workers engaged in the production of ladies' apparel separated on or after April 23, 1992.

TA-W-28,467; Ozalid Corp., Vestal, NY

A certification was issued covering all workers separated on or after March 8, 1992.

TA-W-28,523; Conemaugh & Black Lick Railroad Co., Johnstown, PA

A certification was issued covering all workers separated on or after March 19, 1992.

TA-W-28,554, TA-W-28,555, TA-W-28,556, TA-W-28,557, TA-W-28,558, TA-W-28,559, TA-W-28,560; Smith Energy Services, Farmington, NM, Midland, TX, Longmont, CO, Vernal, UT, Casper, WY, Denver, CO and Houston, TX

A certification was issued covering all workers separated on or after March 31, 1992.

TA-W-28,533; TRW Vehicle Safety Systems, Washington, MI

A certification was issued covering all workers engaged in the production of pain line operations for metal fabricated seat belt components separated on or after September 1, 1992.

TA-W-28,590, TA-W-28,606; Columbia Aluminum, Goldendale, WA and Portland Unloading, Portland, OR

A certification was issued covering all workers engaged in the production of aluminum and the loading and unloading of alumina separated on or after April 12, 1992.

TA-W-28,563; Moore Clark Co., Inc., Laconner, WA

A certification was issued covering all workers engaged in the production of fish feed separated on or after April 1, 1992.

TA-W-28,524; BRK Electronics, Inc., Aurora, IL

A certification was issued covering all workers engaged in the production of smoke detectors separated on or after March 24, 1992.

TA-W-28,586; Brinley Sportswear, Inc., Medford, NY

A certification was issued covering all workers engaged in the production of ladies' bathing suits separated on or after April 14, 1992.

TA-W-28,517; Tex Style, Inc., Cincinnati, OH

A certification was issued covering all workers engaged in the production of shower curtains separated on or after March 23, 1992. It was also determined that all workers engaged in the production of tier curtains are denied.

TA-W-28,472 & TA-W-28,472A; International Drilling Fluids, Houston, TX & Operations in the State of LA

A certification was issued covering all workers engaged in the production of exploration and drilling of crude oil and natural gas separated on or after March 2, 1992.

TA-W-28,618; San Ron Sportswear, Pittston, PA

A certification was issued covering all workers separated on or after April 22, 1992.

TA-W-28,434; Cliftex Co., Falls River, MA

A certification was issued covering all workers engaged in the production of men's suits and sportcoats separated on or after February 19, 1992.

TA-W-28,335; Richard & Trute Tool & Die Corp., Warren, MI

A certification was issued covering all workers separated on or after February 1, 1992.

TA-W-28,478; General Electric Co., Murfreesboro, TN

A certification was issued covering all workers separated on or after March 16, 1992.

TA-W-28,568; Plummer Precision Optics, Pennsburg, PA

A certification was issued covering all workers separated on or after April 7, 1992.

TA-W-28,698, TA-W-28,699; Braelock Holdings, Inc., Covington, LA, and Graham Energy Services, Inc., Covington, LA

A certification was issued covering all workers engaged in drilling and the production of crude oil separated on or after May 17, 1992.

TA-W-28,700, TA-W-28,701; Pontchartrain Services, Covington, LA and GRL Production Services, Houston, TX

A certification was issued covering all workers engaged in drilling and the production of crude oil separated on or after May 17, 1992.

TA-W-28,546; Osram Sylvania, Wellsboro, PA

A certification was issued covering all workers engaged in the production of commercial floor tile separated on or after March 31, 1992.

TA-W-28,604; Sallies Fashions, Pittston, PA

A certification was issued covering all workers separated on or after March 27, 1992.

TA-W-28,470; Vought Aircraft Co., Dallas, TX

A certification was issued covering all workers engaged in the production of aircraft skin panels separated on or after March 8, 1992.

TA-W-28,551; Alta Products, Williamsport, PA

A certification was issued covering all workers engaged in the production of slippers separated on or after April 12, 1992.

TA-W-28,384; Jones & Vining, Inc., Troy, MO

A certification was issued covering all workers engaged in the production of shoe lasts separated on or after December 1, 1992.

TA-W-28,608; Tri-State Optical Co., Shreveport, LA

A certification was issued covering all workers engaged in the production of eyeglasses, lenses & frames separated on or after April 20, 1992.

TA-W-28,526; Belcraft Skirts, Ridgewood, NY

A certification was issued covering all workers engaged in the production of ladies' skirts separated on or after March 26, 1992.

TA-W-28,678, TA-W-28,679; Greenhill Petroleum Corp., Houston, TX and Metairie, LA

A certification was issued covering all workers engaged in the production of exploration, drilling and production of crude oil separated on or after May 6, 1992.

TA-W-28,575; AAI/Microflite Simulation International, Binghamton, NY

A certification was issued covering all workers engaged in the production and modifying full flight simulators and flight training devices separated on or after April 1, 1992.

TA-W-28,595; Lineville Apparel Corp., Lineville, AL

A certification was issued covering all workers separated on or after April 15, 1992.

I hereby certify that the aforementioned determinations were issued during the month of June 1993. Copies of these determinations

VOL 58 ISS 126 JL 2 1993 UMI

are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 23, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-15734 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

TA-W-28, 423

Princeton Packaging, Inc., Bakery Packaging Products Division, Bloomington, IN; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 4, 1993, Local #17 of the Graphite Communication International Union (GCIU) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 10, 1993 and published in the Federal Register on May 25, 1993 (58 FR 30072).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the subject firm produced plastic bags for bakery products—primarily bread. The subject firm was sold to the Bemis Company, a domestic firm in February, 1993.

The union claims that the Bemis Company sent machinery to its affiliate in Mexico, after its purchase of the Princeton Packaging's Bakery Products Division.

The Department's denial was based on the fact that the "contributed importantly" test of the Worker Group Eligibility Requirements of the Trade Act was not met. The sale of the subject firm to another domestic firm would not provide a basis for a worker group certification.

Investigation findings show that Bemis sent two printing presses to Mexico to print on plastic tubing for laundry detergent to be sold in Mexico. Company officials indicated that the equipment is not to be used to produce bakery bags, the only product produced at Bloomington. The findings show no company imports of bakery bags by Bemis.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of June 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-15735 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-28,442]

Stanley Smith Security, Inc., Trojan Nuclear Plant, Rainier, OR, Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 1, 1993, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 10, 1993 and published in the **Federal Register** on May 25, 1993 (58 FR 30072).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that Stanley Smith Security is an independent firm providing security services to Portland General Electric, (PGE).

The petitioners state that the security services which they provide PGE are provided as a condition of PGE's license to operate and produce a product—electricity.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of the Trade Act, as amended. The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals.

Although the services rendered may be a condition of the license to operate and produce a product, such services cannot be considered the production of an article. The worker adjustment assistance program was not intended to provide TAA to workers who are in some way related to import competition but only for those workers who produce an article and are adversely affected by increased imports of like or directly competitive articles which contributed importantly to sales or production and employment declines at the worker's firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 24th day of June 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 93-15733 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Lead Work Group of the Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Lead Work Group of the Advisory Committee on Construction Safety and Health (ACCSH), established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656), will meet on July 29 and 30, 1993, in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Ave., NW., Washington, DC. The meeting is open to the public and will begin at 9 a.m.

The agenda for the meeting includes a discussion of the interim final standard on lead in construction. The Lead Work Group will discuss training

requirements under the standard, recommendations on outreach programs for the standard, and interest in clarification of the language in the standard.

On May 4, 1993, OSHA issued an interim final standard, as directed by Congress, to protect more than 900,000 construction workers against lead exposure. The standard reduces the permissible exposure limit for lead in construction from 200 micrograms per cubic meter of air as an eight-hour time weighted average to an eight-hour time weighted average of 50 micrograms per cubic meter of air.

In developing the interim final standard, OSHA consulted with the Advisory Committee on Construction Safety and Health which includes representatives of labor and management in construction and the public health community, several of whom are members of the Lead Work Group. OSHA incorporated in the interim final standard modifications suggested by the work group and approved by the committee.

Written data, views, or comments may be submitted, preferably with five copies, to John Moran, ACCSH Lead Work Group leader. Any such submissions received prior to the meeting will be provided to the members of the work group and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Mr. Moran prior to the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled, as time permits, at the discretion of Mr. Moran.

For additional information contact: John Moran, Lead Work Group Leader, Laborer's Health and Safety Fund of North America (LHSFNA , 905 16th St., NW., Washington, DC 20006, telephone: (202) 628–5465, telefax: (202) 628–2613; or Tom Hall, designated federal official for the parent committee (ACCSH), OSHA Division of Consumer Affairs, room N–3647, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 219–8615, telefax: (202) 219–5986.

Disabled individuals wishing to attend should contact Tom Hall at the above address to obtain appropriate accommodations.

Signed at Washington, DC, this 28th day of June 1993.

David C. Zeigler,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 93–15736 Filed 7–1–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and § 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access Watergate-related portions of Nixon White House tapes among the Nixon Presidential historical materials.

DATES: The National Archives intends to make the Watergate-related portions of the Nixon White House tapes described in this notice available to the public beginning August 26, 1993. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before August 16, 1993.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions asserting claims of legal rights or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The National Archives is proposing to open 46 segments of Watergate-related Nixon White House tapes from 24 separate conversations recorded during August 1972. These segments total approximately 2 hours and 47 minutes of listening time.

The first opening of Nixon White House tapes, on May 28, 1980, included 12 and ½ hours of conversation used as evidence in Watergate trials. The second opening, on June 4, 1991, included 47 and ½ additional hours of conversations obtained by the Watergate Special Prosecution Force but not used in court. The third opening, on May 17, 1993, included approximately 3 additional hours of Watergate-related segments for the months of May and June 1972. The National Archives has proposed a fourth opening for July 15, 1993, including approximately 1 hour and 19 minutes of Watergate-related segments for July 1972.

The National Archives will propose additional abuse of power segments for public access on a periodic basis in monthly groupings as final review and processing are completed.

There are no transcripts for these tapes. Tape logs, prepared by the National Archives, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The sound recordings will be made available to the general public in the research room at 845 S. Pickett Street, Alexandria, Virginia, Monday through Friday between 8 a.m. and 4:30 p.m. Listening stations will be available for public use on a first come, first served basis. The National Archives reserves the right to limit listening time in response to heavy demand. No copies of the sound recordings will be sold or otherwise provided. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log entries will be available for purchase.

Public access to some portions of the White House tapes will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (PRMPA Regulations).

Dated: June 25, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–15659 Filed 7–1–93; 8:45 am]

BILLING CODE 7515–01–M

VOL 58 ISS 126 JL 2 1993 UMI

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93-058)]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: July 13, 1993, 8 a.m. to 4:30 p.m.; and July 14, 1993, 8 a.m. to 4:30 p.m.

ADDRESSES: ARC Professional Services Group, suite 950, 500 E Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864-8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports
—Facility Study Office Report
—Future Task Force Plans

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: June 25, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-15714 Filed 7-1-93; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from the requirement of 10 CFR part 50, appendix J, paragraph III.D.2(b)(ii) to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of appendix J, paragraph III.D.2(b)(ii) of 10 CFR part 50. On December 21, 1992, the licensee requested an exemption from paragraph III.D.2(b)(ii) which requires that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required by the plant's Technical Specifications. Instead of the full pressure air lock leakage test, the licensee has proposed to conduct seal leakage testing when the reactor is in cold shutdown or refueling and maintenance has been performed on the air lock gaskets, but no maintenance has been performed that affects air lock sealing capabilities.

The Need for the Proposed Action

The proposed exemption is needed because compliance to paragraph III.D.2(b)(ii) of 10 CFR part 50, appendix J, would result in unique hardship and cost because of reduced operational flexibility and unwarranted delays in power ascension over the life of Cook Nuclear Plant. This requirement would be in excess of those incurred by other, similar facilities that have received exemptions from the subject appendix J requirement. Performance of the leakage rate tests required by paragraph III.D.2(b)(ii) takes approximately eight hours per air lock and requires installation of strongback devices on both the inner and outer doors. Due to common problems that occur following maintenance during the refueling shutdowns, it is often the case that this testing must be performed several times during the startup phase. This has in the past delayed entry into Mode 4.

Environmental Impact of the Proposed Action

The proposed exemption would allow the substitution of an air lock seal test for an air lock pressure test while the reactor is in Mode 5 (cold shutdown) or Mode 6 (refueling). The potential increase in risk to public health and safety is solely related to the potential increased probability for, and magnitude of, containment leakage during an accident that could lead to potentially greater offsite radiological consequences. The potential increase in risk due to this exemption is considered insignificant and would result only from the potential leakage path through the door operator shaft seals, which will not be measured by this substitute test. However, the six-month test requirement of appendix J paragraph III.D.2(b)(i), and the testing required when maintenance is performed on the air lock, will measure the leakage through the door operator shaft seals and provide assurance that the air lock will not leak excessively and will not affect containment integrity or increase the risk of any facility accidents. Therefore, post-accident radiological releases will not exceed previously determined values. The exemption has no impact on plant radiological or non-radiological effluents and has the potential to reduce occupational exposure by reducing the amount of time that personnel spend in a radiologically restricted area.

With regard to potential non-radiological impacts, the proposed change to the Technical Specifications involves a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement, dated August 1973, in connection with D.C. Cook, Units 1 and 2.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated December 21, 1992. These letters

are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 24th day of June 1993.

For the Nuclear Regulatory Commission.

J. Randall Hall,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15700 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," describes methods acceptable to the NRC staff for implementing the Commission's requirements for controlling access to high and very high radiation areas in nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 9th day of June 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–15698 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

Issuance and Availability of Draft NUREG–1477, "Voltage-Based Interim Plugging Criteria for Steam Generator Tubes—Task Group Report"

The U.S. Nuclear Regulatory Commission (NRC) staff has issued NUREG–1477, "Voltage-Based Interim Plugging Criteria for Steam Generator Tubes—Task Group Report" in draft form. Draft NUREG–1477 is being issued for information and comment. This report, when issued in final form, will serve as the technical basis for a forthcoming NRC staff generic position concerning the use of voltage-based interim plugging criteria (IPC) to address outer diameter stress corrosion cracking (ODSCC) at the tube support plate intersections.

The draft report was prepared by a special NRC Task Group that was established to review the technical basis for voltage-based plugging criteria applied to ODSCC of steam generator tubes. The charter of the Task Group was to review the technical bases for and outstanding issues related to interim approval of voltage-based plugging criteria that had been approved for application to ODSCC and to prepare conclusions and recommendations concerning implementation of these criteria. Most of these issues are also relevant to the long-term approval of voltage-based plugging criteria. The Task Group was composed of NRC staff from the Office of Nuclear Reactor Regulation and the Office of Nuclear Regulatory Research. Expert consultants from NRC contractors also assisted in the Task Group's evaluations. The Task Group reviewed and evaluated tube integrity-related issues, including the potential for tube rupture or leakage under postulated accident conditions, and the related safety implications. The Task Group activities included an assessment of outstanding technical issues and concerns that had been raised by Industry, the Public, and NRC staff regarding voltage-based plugging criteria for ODSCC. Tube integrity-related issues that were reviewed and assessed include: (1) The understanding of the ODSCC mechanism, (2) methods for evaluating margins against tube rupture and estimating potential primary-to-secondary leakage, (3) operational primary-to-secondary leakage limits, and (4) inservice inspection methods and scope. The assessment of methods for evaluating margins against tube rupture and estimating potential primary-to-secondary leakage was particularly important. This assessment included evaluation of an NRC-developed model and an industry-developed model. The NRC model uses traditional mechanics-based approaches for assessing tube integrity, while the industry model uses an empirical approach based on the voltage amplitude of eddy current measurements. Analyses performed using these two models had predicted significantly different primary-to-secondary leakage rates under postulated accident conditions. Understanding and resolving this difference was important in order to assess the potential safety implications with regard to offsite radiological doses and core integrity.

In the area of safety assessment, the Task Group performed calculations to assess the radiological doses and the potential for core damage associated with a range of assumed primary-to secondary leakage rates. The Task Group also performed a risk assessment to provide further insights to the safety significance of ODSCC for steam generator tubes.

The draft report documents the results of the Task Group's effort including its conclusions and recommendations with respect to implementation of voltage-based IPCs. These conclusions and recommendations are preliminary and predecisional. The NRC staff will consider all public comments received pertaining to the draft report, and will revise the draft report as appropriate. The revised document will be reviewed by the Director of the Office of Nuclear Reactor Regulation, the Director of the Office of Nuclear Regulatory Research, and the NRC Committee for the Review of Generic Requirements (CRGR) prior to its issuance in final form. When issued in final form, this report will serve as the technical basis for a forthcoming NRC staff generic position concerning the use of voltage-based IPCs to address ODSCC at the tube-to-tube support plate intersections. The forthcoming NRC staff generic position will be subject to the appropriate procedures necessary to issue such a position.

The staff and the Commission are seeking comments from the public on this document before the final position document is issued. The staff recognizes

the benefits that can be achieved by public review and comment, especially when the comments are accompanied by supporting data. The staff will evaluate the comments received and address them, as appropriate, in the final NUREG–1477 when it is published.

A free single copy of draft NUREG–1477 may be requested by those considering public comment by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington DC.

Written comments on draft NUREG–1477 may be submitted by mail to the Rules and Review Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be hand delivered to 7920 Norfolk Avenue, Bethesda, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal Comments should be received within 45 days of the date of issuance of this notice The comment period expires August 16, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given for comments received after this date. For further information contact Mr. Timothy A. Reed, Project Directorate II–1, Division of Reactor Projects, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1463.

Dated at Rockville, Maryland this 10th day of June 1993.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate II–1, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15697 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(y) for Facility Operating License No. DPR–13, a possession-only license (POL) held by the Southern California Edison Company (the licensee). The exemption would apply to the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1), a permanently shutdown plant located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow exemption from the requirements of 10 CFR 50.44(y) in response to the licensee request dated February 8, 1993. This exemption would allow certified fuel handlers, rather than senior reactor operators, to take emergency actions as necessary to protect the public health and safety.

Permanent shut downs of SONGS 1 occurred on November 30, 1992, and defueling of the SONGS 1 reactor was completed by the licensee in March 1993. The license amendment converting the SONGS 1 license to POL status was issued on October 23, 1992, and the POL became effective on March 9, 1993. On May 27, 1993, the NRC issued a license amendment which eliminated Technical Specification (TS) requirements to use 10 CFR part 55 licensed reactor operators and senior operators. As authorized by the May 27, 1993 amendment, the licensee has established the Certified Fuel Handler position as the highest level of defueled plant operator, analogous to a licensed senior operator at an operational facility.

Need for the Proposed Action

The underlying purpose of 10 CFR 50.54(x) is to permit plant personnel to take emergency actions in response to abnormal conditions which may not have been considered when the License Conditions and Technical Specifications were formulated. However, for SONGS 1, these emergency actions would not be permitted by 10 CFR 50.54(y) due to the absence of licensed senior operators following implementation of the approved Certified Fuel Handler Technical Specification change. Thus, the licensee has requested an exemption from 10 CFR 50.54(y) to allow these potential emergency actions to be authorized by Certified Fuel Handlers at SONGS–1.

Environmental Impact of the Proposed Action

There are no environmental impacts of the proposed action. The proposed exemption is an administrative change by which the licensee will assure that the underlying purpose of 10 CFR 50.54(y) is fulfilled by establishing administrative controls requiring that any emergency action permitted by 10 CFR 50.54(x) be approved, as a minimum, by a Certified Fuel Handler prior to taking the action. Since the proposed exemption does not otherwise affect radiological plant effluents or cause any significant occupational exposures, the Commission concludes that there are no radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Environmental Assessment related to the conversion of the Provisional Operating License to a Full Term Operating License issued to Southern California Edison Company for SONGS 1 on September 16, 1991.

Agencies and Persons Consulted

The NRC staff consulted with the State of California regarding the environmental impact of the proposed action. The State representative had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application for exemption dated February 8, 1993, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the

Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of June 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15699 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Termination of the Benefit Program Under Title V of the Regional Rail Reorganization Act of 1973, as Amended by the Northeast Rail Service Act of 1981

Pursuant to 31 U.S.C. 1555, the Railroad Retirement Board has determined that the purposes for which this appropriation was made have been fulfilled, that no further obligations will be incurred against this appropriation, and the unobligated balance of $456,108.23 for the payment of benefits under title V of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981, will be transferred to the Department of Transportation for withdrawal and redeposit to the general fund of the Department of the Treasury.

Dated: June 24, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–15654 Filed 7–1–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. Nos. 33–7003; 34–32530]

Changes and Corrections to EDGAR Phase-In List

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Commission is publishing a list of changes and corrections to the EDGAR phase-in list for companies with filings processed by the Division of Corporation Finance.

FOR FURTHER INFORMATION CONTACT: Sylvia J. Reis, Assistant Director, CF EDGAR Policy, Division of Corporation Finance at (202) 272–3691.

SUPPLEMENTARY INFORMATION: In connection with the adoption of interim rules to implement the operational phase of the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, on March 18, 1993 the Commission published a list of companies whose filings are processed by the Division of Corporation Finance to place registrants on notice as to when they would become subject to mandated electronic filing.[1] The registrants were divided into ten groups to be phased in over the next three years. Rule 901 of Regulation S–T[2] provides that registrants may request a change to their assigned phase-in dates. Such requests may be granted pursuant to delegated authority. In addition, corrections to the published list may be necessary. Changes to the Division of Corporation Finance phase-in list are published from time to time in the SEC News Digest. The Commission today is publishing a comprehensive list of all changes in Division of Corporation Finance phase-in group assignments made since the list was published on March 18, 1993; this procedure will be repeated from time to time, in order to further notify the public of changes to the list. A change to a company's phase-in date is of particular importance to persons or entities filing documents with respect to that company, since generally such persons must file electronically when the company becomes subject to electronic filing.[3]

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 33–6977 (FEBRUARY 23, 1993)

Company name	CIK No.	Former group	New group
Ambase Corp	020639	CF–02	CF–09
American Express Co	004962	CF–02	CF–03
Ames Department Stores, Inc	006071	CF–02	CF–03
Arkansas Power & Light Co	007323	CF–02	CF–01
AT&T Capital Corp	861940	CF–01	CF–01
change to AT&T Capital Corp	897706	CF–01	CF–01
Bowater, Inc	743368	CF–02	CF–04
Cambridge Electric Light Co	016573	CF–09	CF–02
Canal Electric Co	016906	CF–03	CF–02
Cell Technology Inc /DE/	816159	CF–06	CF–06
change to Air Methods Corp	816159	CF–06	CF–06
CIPSCO, Inc	860520	CF–01	CF–02
Clinical Technologies Associates, Inc	805326	CF–08	CF–08
change to Emisphere Technologies, Inc	805326	CF–08	CF–08
Commonwealth Electric Co	071222	CF–09	CF–02
Commonwealth Gas Co	022620	CF–04	CF–02
CS Primo Corp	792157	CF–09	CF–09
change to Dynasty Travel Group, Inc	792157	CF–09	CF–09
Duracell Holdings Corp	873482	CF–10	CF–10
change to Duracell International, Inc	873482	CF–10	CF–10

[1] See Release No. 33–6977 (February 23, 1993), published on March 18, 1993 at 58 FR 14628. The timing for each phase-in group was included in that release as Appendix A, and the phase-in list as Appendix B. As is true with all rules promulgated by the Commission, persons making filings with the Commission are responsible for apprising themselves of their new obligations associated with filing on the EDGAR system. While the Commission attempts to contact registrants in each phase-in group by furnishing a copy of the EDGAR Filer Manual and EDGARLink software prior to phase-in, filers will not be relieved of their electronic filing obligations in the absence of such notification.

[2] 17 CFR § 232.901.

[3] Rule 901(b) provides that a party making a filing pursuant to Section 13 or 14 of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78n, respectively] with respect to a registrant that has become subject to mandated electronic filing is required to submit that filing in electronic format. Consequently, persons filing a Schedule 13D or 13G, a proxy statement, or tender offer material with respect to an electronic filer are required to make such filings electronically.

VOL 58 ISS 126 JL 2 1993 UMI

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 33-6977 (FEBRUARY 23, 1993)—Continued

Company name	CIK No.	Former group	New group
Entergy Corp	065984	CF-02	CF-01
First National Financial Corp	779575	CF-03	CF-04
Future Medical Products Inc /NY/	839087	CF-08	CF-03
Grace Energy Corp	852551	CF-03	Remove
Great Atlantic & Pacific Tea Co, Inc	043300	CF-02	CF-03
Greyhound Dial Corp /AZ/	734716	CF-02	CF-02
change to Dial Corp /AZ/	734716	CF-02	CF-02
Hadson Europe, Inc	350091	CF-07	CF-07
change to Midwest Energy Companies, Inc	350091	CF-07	CF-07
IMRS, Inc	878594	CF-02	CF-03
Jorgensen Earle M Co /DE/	054003	CF-04	CF-09
Levi Strauss Associates, Inc	778977	CF-02	CF-03
Louisiana Power & Light Co /LA/	060527	CF-02	CF-01
Marrow Tech, Inc	829549	CF-07	CF-07
change to Advanced Tissue Sciences Inc	829549	CF-07	CF-07
McDermott, Inc	225615	CF-07	CF-02
Mississippi Power & Light Co	066901	CF-02	CF-01
MNC Financial, Inc /MD/	062973	CF-02	CF-04
National Gypsum Co	070174	CF-02	CF-09
New Orleans Public Service, Inc	071508	CF-03	CF-01
Nordstrom Credit, Inc	757439	CF-08	CF-02
North American Vaccine, Inc	856573	NONE	CF-10
North Shore Gas Co /IL/	110101	CF-08	CF-02
NVR LP	792972	CF-02	CF-09
Playtex Beauty Care, Inc	817217	CF-03	CF-09
Playtex FP Group, Inc	842699	CF-10	CF-09
Playtex International Corp	880821	CF-10	CF-09
Playtex Investment Corp	880820	CF-10	CF-09
Premier Bancorp, Inc	761332	CF-03	CF-09
Primark Corp	356064	CF-04	CF-09
Prospect Group, Inc	739169	CF-02	CF-09
Realmark Property Investors LP I	312982	CF-07	CF-06
Realmark Property Investors LP II	704165	CF-07	CF-06
Realmark Property Investors LP VI B	822764	CF-08	CF-06
Reliance Financial Services Corp	083047	CF-04	CF-03
Reliance Group Holdings, Inc	356395	CF-02	CF-03
Rockwell International Corp	084636	CF-02	CF-01
Ryder System, Inc	085961	CF-02	CF-03
Sahara Resorts	704435	CF-01	CF-04
Shearson Lehman Brothers Holdings, Inc	806085	CF-02	CF-03
Shearson Lehman Brothers, Inc	728586	CF-02	CF-03
System Energy Resources, Inc	202584	CF-02	CF-01
Texaco Capital, Inc	708490	CF-10	CF-02
Transam Capital Corp	851943	CF-10	CF-10
change to Pacific Animated Imaging Corp	851943	CF-10	CF-10
Transco Energy Co	099231	NONE	CF-02
Unicorp American Corp/DE/NEW/	202172	CF-02	CF-05
change to Lincorp Holdings, Inc	202172	CF-02	CF-05
Total Number of Companies:	58	.....	

Dated: June 28, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-15695 Filed 7-1-93; 8:45 am]

BILLING CODE 8010-01-P

[Release No. 34-32516; File No. SR-NASD-93-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filling of Vacancies on NASD Nominating Committees

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[2] The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] In a *Notice to Members* (June 1993), the NASD invited is members to vote on this proposed rule change. Following the last voting day on July 26, 1993, the NASD will submit the results of the voting to the Commission. Final Commission approval will not occur until the results of the vote are received.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article IX, Section 4 of the NASD By-Laws to conform the procedures for filling vacancies on Nominating Committees to those currently in place for District Committees. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Article IX

* * * * *

Filling of Vacancies for Nominating Committees

Sec. 4 [All vacancies in any Nominating Committee other than those caused by the expiration of a member's term of office shall be filled as follows:]

[(a) If the unexpired term of the member causing the vacancy is for less than six months, such vacancy shall be filled by appointment by the remaining members of the Nominating Committee of a representative of a member of the Corporation eligible to vote in the same District.]

[(b) If the unexpired term of the member causing the vacancy is for six months or more, such vacancy shall be filled by election, which shall be conducted as nearly as practicable in accordance with the provisions of Section 3 of this Article.]

In the event of any vacancy on any Nominating Committee caused by the departure of a Committee member prior to the expiration of that member's term of office the Nominating Committee shall appoint a representative of a member of the Corporation eligible to vote in the same District to fill the vacancy. Such appointment shall be effective until the next regularly scheduled election occurs, in accordance with the provisions of Section 3 of this Article.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's By-Laws currently provide for different procedures to be used to fill vacancies on the District Nominating Committees and on the District Committees themselves. Article IX, Section 4 of the By-Laws provides that Nominating Committee vacancies caused by other than the expiration of a member's term of office shall be filled by appointment by the remaining members of the Nominating Committee if the unexpired term is for less than six months, but that if the unexpired term is for six months or more, such vacancy shall be filled by special election. Article VIII, Section 5 of the By-Laws relating to the filling of vacancies on the District Committees, however, provides that the District Committee shall appoint a representative of a member firm having a place of business in the District to fill any vacancy resulting from the unexpired term of a departed committee member and that such appointment shall be effective until the next regularly scheduled election occurs.

The NASD believes that this special election provision for Nominating Committee vacancies serves no valid purpose and is a costly and cumbersome mechanism, particularly in view of the fact that the term of Nominating Committee members is only one year. Accordingly, the NASD is proposing to amend Article IX, Section 4 of the By-Laws to provide for the same procedures to be used in filling Nominating Committee vacancies as are used to fill District Committee vacancies. The proposed rule change provides that any Nominating Committee shall appoint a representative of a member of the NASD eligible to vote in the same District to fill a vacancy until the next regularly scheduled election.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(4) and (5) of the Act in that it assures fair representation of the NASD's members by making it easier and less costly for the NASD to fill vacancies on any of its Nominating Committees.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–93–34 and should be submitted July 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15730 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

VOL 58 ISS 126 JL 2 1993 UMI

[Release No. 34-32515; File No. SR-CBOE-93-27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Monthly Subscriber Fees for Use of Exchange Installed Telephones

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 10, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish a subscriber fee in the amount of $5.00 per month to be imposed on members who are approved to use Exchange installed telephones in the Exchange's equity options trading crowds. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish monthly subscriber fees to be imposed upon members who are approved to use Exchange installed telephones located in the equity options trading crowds on the Exchange floor.[1] This action is being taken pursuant to CBOE Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges amount its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-27 and should be submitted by July 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15689 Filed 7-1-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32529; File No. SR-DGOC-93-01]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving a Proposed Rule Change Relating to the Definition of Exercise Price

June 28, 1993.

On April 6, 1993, Delta Government Options Corp. ("DGOC") filed a proposed rule change (File No. SR-DGOC-93-01) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 12, 1993, to solicit comments from interested persons.[2] By letter filed with the Commission on April 12, 1993, DGOC made nonsubstantive, stylistic modifications to the proposal.[3] No comments were received. This order approves the proposal as amended.

I. Description of the Proposal

The proposed rule change amends the definition of exercise price in Article I of DGOC's *Procedures* to provide that each exercise price shall be stated in whole numbers and sixty-fourths (or fractions reduced from sixty-fourths) or in other gradations or in such other manner that will conform with the then current practice for the expression of prices of Treasury Bills, Notes, or Bonds

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[1] Exchange Rule 2.22 establishes fees for members who are approved to use Exchange installed telephones located on the equity options trading floor, or who are approved to install their own telephones on the equity options trading floor. *See* Securities Exchange Act Release No. 32463 (June 15, 1993), 58 FR 33850. The CBOE has submitted a proposed rule change to incorporate Exchange policies governing the use of such telephones located at equity option trading posts on the floor of the Exchange. *See* File No. SR-CBOE-93-24.

[2] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32263 (May 4, 1993), 58 FR 28076.

[3] Letter from David J. Maloy, President, DGOC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (April 6, 1993).

among primary dealers of U.S. Government Securities.

The proposed rule change responds to Participants' requests for finer gradations in exercise prices for options on U.S. Treasury securities. DGOC states that with respect to options that are due to expire shortly and/or that have underlying securities that are near maturity, and during periods of low volatility in the prices of options, small incremental changes in exercise prices become more significant in the decision to buy or sell an option. The proposal authorizes DGOC to clear options on U.S. Treasury securities with exercise prices stated in gradations of sixty-fourths of a dollar in place of the current exercise price gradations of sixteenths of a dollar.

As a result, the proposed amendment to the definition of exercise price affords DGOC Participants additional flexibility in choosing DGOC cleared options with exercise prices that match more precisely their overall U.S. Treasury securities portfolios. The proposal enables Participants to submit to DGOC for processing trades in options on U.S. Treasury securities that previously could not be submitted to DGOC because the exercise prices of those options were not available at DGOC.

The amended definition of exercise price also gives DGOC the ability to process options with exercise prices stated not only in sixty-fourths but also stated in other gradations or in other manners that conform with the then current practice for the expression of prices of U.S. Treasury Bills, Notes, or Bonds among primary dealers of U.S. Government Securities. This should enable DGOC to provide uninterrupted clearing and settlement services to its Participants should there be a change in the manner in which prices of Treasury Securities are expressed in the U.S. Government Securities market.[4]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[5] Section 17A(a)(1) of the Act[6] encourages the use of efficient, effective, and safe procedures for the clearance and settlement of securities transactions. Moreover, sections 17A(b)(3)(A) and (F) of the Act[7] require that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

This proposed rule change is essentially a technical amendment that permits DGOC to set exercise prices on options on U.S. Treasury securities in finer gradations in connection with its trade processing. The proposed rule change responds to requests by DGOC's Participants who have noted that additional price gradations are necessary in the U.S. Treasury securities options market, especially at times of low volatility in the prices of options and when an option is near expiration or its underlying security is near maturity. At such times, options often trade in narrow increments within a narrow range. Moreover, the revised definition of exercise price should allow DGOC Participants to select options that more closely match the prices in their overall U.S. Treasury securities portfolios.

As a general matter, the Commission believes that DGOC's proposal for finer gradations of exercise prices for options on U.S. Treasury securities will benefit the Government securities market. The proposal allows for the automated clearance and settlement through the DGOC system of securities transactions that otherwise would be conducted in the over-the-counter market and would be cleared through a decentralized and less efficient process outside the national system for the clearance and settlement of securities transactions. The ability to use DGOC's clearance and settlement system for more transactions in options on U.S. Treasury securities should provide DGOC's Participants with greater flexibility in the marketplace, should add a degree of efficiency and safety to the market, and should further the establishment of a national system for the clearance and settlement of securities transactions.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the above-mentioned proposed rule change (File No. SR–DGOC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15690 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32518; File No. SR–DTC–93–05]

Self-Regulatory Organizations; The Depository Trust Co.; Filing and Immediate Effectiveness of a Proposed Rule Change Regarding the Memo Segregation Service

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–93–05) as described in Items I, II, and III below, which items have been prepared in part by DTC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to DTC's memo segregation service ("Memo Seg").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC developed Memo Seg to assist participants in their compliance with Rule 15c3–3 under the Act, which requires, among other things, that broker-dealers maintain control of all

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[4] Should there be a change in the manner in which prices of Treasury Securities are expressed in the U.S. Government Securities market that necessitates DGOC to process options on U.S. Treasury securities with exercise prices stated in a manner other that in sixty-fourths, DGOC will notify the Commission in writing of such change.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(a)(1) (1988).

[7] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[8] 15 U.S.C. 78s(b) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1989).

fully-paid or excess margin securities they hold for the accounts of customers.[2] Memo Seg enables a participant, particularly a broker-dealer participant, to segregate customer fully-paid and excess margin securities by creating a "memo" position within its free account. This memo position enables a participant to protect itself from unintended delivery of a designated quantity of customer fully-paid or excess margin securities that either are in the participant's free account or that may be received during the daily processing cycle.[3] DTC has been operating Memo Seg since August 1988, initially under the terms of a temporary order.[4]

Under the rule proposal, when a DTC participant receives a deliver order ("DO") submitted with Reason Code 40 (indicating transfer of a customer account), DTC increases both the free account position and the memo segregation position of the participant. Prior to this rule change, a participant had to submit an instruction to DTC to increase the memo segregation position after receiving a DO with Reason Code 40.

Also under the rule proposal, when a participant receives a DO with Reason Code 30 (indicating a delivery against payment) or Reason Code 10 (indicating a stock loan) and the participant has a memo segregation position greater than its free account position, DTC will allow the DO received to release any pending deliveries up to the quantity of securities in the DO received despite the memo segregation position. If the participant does not have any pending deliveries at the time when a DO with Reason Code 30 or Reason Code 10 is received, DTC will retain throughout that day's processing cycle a notation of the quantity of securities in the DO received and will process any deliveries later submitted by the participant up to that quantity despite the memo segregation position. Prior to this rule proposal, a participant had to submit an instruction to DTC to reduce the memo segregation position in order to deliver securities received that day by a DO with Reason Code 30 or Reason Code 10.

DTC states that these enhancement to Memo Seg will be available by July 30, 1993.

[2] 17 CFR 240.15c3–3 (1991).

[3] For a detailed description of Memo Seg, refer to Securities Exchange Act Release No. 26250 (November 3, 1988), 53 FR 45638 [File No. SR–DTC–88–16] (order approving DTC's proposed Memo Seg procedures).

[4] Securities Exchange Act Release No. 26000 (August 16, 1988), 53 FR 31947 [File No. SR–DTC–88–16].

Because the proposed rule change will facilitate compliance with the provisions of the Act and the rules and regulations thereunder, it is consistent with the Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC developed the proposed rule change as a result of discussions with the Securities Operations Division of the Securities Industry Association. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and subparagraph (e) of Rule 19b–4 thereunder.[6] The proposed rule change effects changes in an existing service of DTC that (i) do not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) do not significantly affect the respective rights or obligations of DTC or persons using the services.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–93–05 and should be submitted by July 23, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15666 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A) (1989).

[6] 17 CFR 240.19b–4(e) (1991).

[7] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32528; File Nos. SR–OCC–93–12 and SR–ICC–93–5]

Self-Regulatory Organizations; The Options Clearing Corp. and The Intermarket Clearing Corp.; Filing of Proposed Rule Changes Relating to Cross-Margining with the Commodity Clearing Corp.

June 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 24, 1993, The Options Clearing Corporation ("OCC") and the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by OCC and ICC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes would establish cross-margining programs among and between OCC, ICC, and the Commodity Clearing Corporation ("CCC").[2]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] CCC acts as the clearing organization for futures contracts and options on futures contracts for which FINEX, Inc., a division of the New York Cotton Exchange, has been designated as a contract market by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filing with the Commission, OCC and ICC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of these proposed rule changes is to provide for cross-margining programs among OCC, ICC, and CCC ("trilateral" cross-margining) and for cross-margining programs between OCC and ICC, between OCC and CCC, and between ICC and CCC ("bilateral" cross-margining). The trilateral and bilateral programs will include both proprietary and non-proprietary cross-margining and will be established by a Cross-Margining Agreement ("Agreement") among OCC, ICC and CCC.

The Agreement to be executed by OCC, ICC, and CCC is substantially similar to the Cross-Margining Agreement among OCC, ICC, and the Chicago Mercantile Exchange ("CME").[3] except for the differences described below.

First, as OCC, ICC, and CCC will not make any settlements on Good Friday, that day is not defined as a Business Day for purposes of section 7 of the Agreement.

Second, the parties have determined that it is unnecessary to provide that oral agreements must be made over a recorded telephone line and later confirmed in writing. Accordingly, all references relating to the use of recorded telephone lines in making oral agreements and to confirming such agreements in writing have been deleted from the Agreement. Such references are most notable in section 5, 6, 7, and 14 of the OCC/ICC/CME Cross-Margining Agreement.

Third, certain times reflected in the Agreement, most notably in section 7, have been drafted to accommodate OCC's settlement times.

Fourth, provisions of section 8 relating to the suspension of a Clearing Member or pair of Affiliated Clearing Members and the liquidation of X–M Accounts have been revised to accommodate the inclusion of the restructured OCC/ICC cross-margining program.[4] The basic formula for the sharing of any surplus or shortfall among or between OCC, ICC, and CCC, however, is the same as among and between OCC, ICC, and CME in their cross-margining programs.

Fifth, the list of contracts eligible for cross-margining is set forth in Exhibit A to the Agreement and is tailored for the programs among and between OCC, ICC, and CCC. Eligible OCC-cleared contracts will include put and call options on broad-based stock indices and on foreign currencies. Eligible ICC-cleared contracts will include futures contracts on the New York Stock Exchange Composite Index, put and call options on the New York Stock Exchange Composite Index futures, foreign currency futures, and put and call options on foreign currency futures. Eligible CCC-cleared contracts will include futures on the U.S. Dollar Index ("USDX") and put and call options on the USDX futures.

The forms of account agreements and subordination agreements are substantially identical to those used in the cross-margining programs among and between OCC, ICC, and CME.[5]

OCC and ICC believe the proposed rule changes are consistent with the purposes and requirements of section 17A of the Act,[6] as amended, because they expand the implementation of cross-margining to another significant group of market participants and thereby further enhance the safety of the clearing system while providing lower margin costs to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC and ICC do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(a) By order approve the proposed rule changes or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of OCC and ICC. All submissions should refer to the File Nos. SR–OCC–93–12 and SR–ICC–93–05 and should be submitted by July 23, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15694 Filed 7–1–93; 8.45 am]

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[3] The Cross-Margining Agreement among OCC, ICC, and CME is set forth in Amendment No. 2 to File Nos. SR–OCC–92–28 and SR–ICC–92–5.

[4] For a discussion of the restructured OCC/ICC cross-margining program, refer to File Nos. SR–OCC–93–07 and SR–ICC–93–04.

[5] The account agreements and subordination agreements used in the OCC/ICC/CME cross-margining program are included in Amendment No. 2 to File Nos. SR–OCC–92–28 and SR–ICC–92–5.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Blackrock Broad Investment Grade 2009 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10883)
Brock Exploration Corporation
Common Stock, $.10 Par Value (File No. 7–10884)
Burlington Resources Coal Seam Gas Royalty Trust
Common Stock, Trust Units (File No. 7–10885)
Nuveen Pennsylvania Premium Income Municipal Fund III
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10886)
Nuveen California Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10887)
Nuveen Florida Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10888)
Nuveen New Jersey Premium Income Municipal Fund III
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10889)
Nuveen New York Premium Income Municipal Fund
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10890)
Patriot Preferred Dividend Fund
Common Stock, No Par Value (File No. 7–10891)
Putnam Managed High Yield Trust
Common Shares of Beneficial Interest, No Par Value (File No. 7–10892)
Rauch Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–10893)
Roadmaster Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–10894)
Sonat Offshore Drilling, Inc.
Common Stock, $.01 Par Value (File No. 7–10895)
Thornburg Mortgage Asset Corporation
Common Stock, $.01 Par Value (File No. 7–10896)
Van Kampen Merritt New Jersey Value Municipal Income Trust
Common Shares of Beneficial, $.01 Par Value (File No. 7–10897)
Van Kampen Merritt Massachusetts Value Municipal Income Trust
Common shares of Beneficial Interest, $.01 Par Value (File No. 7–10898)
Van Kampen Merritt Ohio Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10899)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 20, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for a hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15663 Filed 7–1–93; 8:45 am]

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[Release No. 34–3527; File No. SR–MBS 92–04]

Self-Regulatory Organizations, MBS Clearing Corp. Order Approving Proposed Rule Change Relating to the Limitation or Elimination of a Director's Liability in Certain Instances

June 28, 1993.

On August 12, 1992, the MBS Clearing Corporation ("MBS") filed a proposed rule change (File No. SR–MBS–92–04) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 1, 1992.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The rule change amends the eighth paragraph of the MBS Certificate of Incorporation and Article 6, Section 6. 1 of the By-Laws, by adding the following paragraph to both the Certificate of Incorporation and the By-Laws:

To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

The rule change limits the personal monetary liability of MBS directors to the fullest extent possible under section 102(b)(7) of the General Corporation Law of the State of Delaware,[3] MBS' state of incorporation, except that violations of the Federal securities laws would be excluded from the liability limitation. Section 102(b)(7) allows Delaware corporations to adopt provisions in their Certificates of Incorporation eliminating or limiting the personal monetary liability of directors under certain circumstances.

The amendment does not eliminate a director's duty of care, and directors continue to have a duty to exercise informed business judgment in discharging their duties. Under the amendment, however, the personal liability of MBS' directors to MBS and to its shareholders will be limited if they should fail, through negligence or gross negligence, to satisfy this duty.[4] Nevertheless, under Delaware law such limitations of directors' liability would not apply in the following circumstances: (1) Breach of the director's duty of loyalty to MBS or its shareholders *i.e.*, the responsibility to conduct business in good faith and in the honest that the action taken is in the best interest of MBS;[5] (2) acts or omissions that are not performed in good faith, or which involve intentional misconduct or violation of law; (3) unlawful payment of dividends or unlawful purchase or redemption of stock; and (4) transactions from which a director derives improper personal benefit.

The amendment makes clear that the limitation of directors' liability will not

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31492 (November 19, 1992, 57 FR 56939.

[3] 4 *Delaware Code Annotated*, title 8, Sec. 102(b)(7), at 557–558 (Michie, 1991).

[4] Pursuant to their fiduciary duty of care, directors must act on an informed basis, in good faith, and in honest belief that action taken is in the best interests of the company. *See Grobow* v. *Perot*, 539 A.2d 180 (Del. 1988).

[5] Pursuant to their duty of loyalty, directors must act in good faith without self-interest. *See Cede & Co.* v. *Technicolor, Inc.*, 542 A.2d 1188 (Del. 1988).

limit or eliminate an MBS director's liability under the Federal securities laws. The amendment does not limit or eliminate other equitable legal remedies, such as rescission or injunctive actions, and does not apply to the liability of a director for acts or omissions that may have occurred prior to the approval of the amendment.[9] In addition, the amendment does not apply to the liability of MBS officers for actions taken in their capacity as officers, even if such officers are also directors.

MBS stated that the amendment is a necessary measure to help ensure its ability to recruit and retain competent directors. In addition, MBS stated that due to the increased numbers and magnitude of lawsuits against directors, many other Delaware corporations, including some that are registered with the Commission under the Act, already have adopted similar provisions.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[7] Specifically, the proposal, which excludes violations of the Federal securities laws from its liability limitations, is not designed to affect adversely MBS directors' compliance with the Federal securities laws.

Section 17A of the Act[8] and Division of Market Regulation standards interpreting section 17A[9] require clearing agencies to be organized and have the capacity to comply with the Act and the rules and regulations thereunder. Accordingly, clearing agency directors must exercise their duties consistent with the Act and clearing agency rules must be designed to promote such compliance. Directors also have a duty to promote clearing agency and clearing member compliance with clearing agency rules.[10] Clearing agency directors exercising their duties in a manner inconsistent with the Act and clearing agency rules may be subject to Commission sanction. Under section 19(h)(4) of the Act[11] the Commission may remove from office or censure any clearing agency director who has: (1) Willfully violated any provision of the Act; (2) willfully violated any rules or regulations under the Act; (3) willfully violated clearing agency rules; (4) willfully abused his authority; or (5) without reasonable justification, failed to enforce compliance with clearing agency rules by any clearing agency member. Congress directed the Commission to use this authority to ensure that clearing agencies do not exercise their delegated power "in a manner inimical to the public interest or unfair to private interests."[12]

To facilitate compliance with the Federal securities laws by clearing agency directors, clearing agencies generally must have an audit committee which either selects, or makes a recommendation to the board of directors regarding the selection of, the clearing agency's independent public accountant.[13] The audit committee must include non-management directors who "review the nature and scope of the work performed by the independent public accountant and results thereof."[14]

The Commission believes that MBS's proposal is consistent with the Act. The proposal should enable MBS to recruit and retain competent directors while excluding violations of the Federal securities laws from the liability limitation.[15] The proposal also would not affect the Commission's authority to remove from office or censure a director under section 19(h)(4) of the Act for reasons enumerated in that section.

III. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular the requirements of section 17A of the Act.[16]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[17] that the above-mentioned proposed rule change (File No. SR–MBS–92–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15693 Filed 7–1–93; 8:45 am]

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[8] Under section 102(b)(7), a corporate provision limiting director liability must receive shareholder approval prior to effectiveness.

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1 (1988).

[9] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[10] *See* section 19(g) of the Act, 15 U.S.C. 78s(g) (1988).

[11] 15 U.S.C. 78s(h)(4) (1988).

[12] *See* Securities Acts Amendments of 1975: Hearings before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong. 1st Sess. 185 (1975).

[13] *See* Standards Release, *supra* note 9.

[14] *Id.*

[15] The Commission has previously approved similar proposals by other self-regulatory organizations. *See, e.g.*, Securities Exchange Act Release No. 27448 (November 16, 1989), 54 FR 48707 (File No. SR–MCC–89–02).

[16] 15 U.S.C. 78q–1 (1988).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32517; File No. SR–NASD–93–01]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change Relating to Trade Reporting for Convertible Debt Securities

June 25, 1993.

I. Introduction

The National Association of Securities Dealers ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change[1] on January 4, 1993, pursuant to section 19(b)(1)[2] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposed rule change would require members to report to the NASD information about transactions in convertible debt securities that are eligible for trading on Nasdaq, the content and timing of which would be similar to current requirements for reporting Nasdaq equity securities. In particular, members will be required to report all transactions in convertible debt securities within 90 seconds after execution to the NASD for surveillance purposes.[3] Transactions of 99 bonds or less will be disseminated to the public on a real-time basis.[4] End of day volume and price changes will include transactions publicly disclosed during the trading day.

Notice of the filing of this proposal appeared in the **Federal Register** on February 16, 1993.[5] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Background

In June 1992, the NASD implemented transaction reporting requirements for Nasdaq Small-Cap securities, similar to the requirements in place for Nasdaq National Market System securities ("Nasdaq/NMS").[6] Currently, however, the NASD relies on end-of-day volume statistics as the primary source of surveillance information for trades in convertible debt securities.

[1] File No. SR–NASD–93–01.

[2] 15 U.S.C. 78s(b)(1).

[3] The surveillance function of this proposal is expected to be implemented in December, 1993.

[4] The public dissemination function of this proposal is expected to be implemented during the summer of 1994.

[5] *See* Securities Exchange Act Release No. 31838 (February 9, 1993, 58 FR 8640.

[6] *See* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

VOL 58 ISS 126 JL 2 1993 UMI

III. Description

The NASD is proposing a new Part XV to Schedule D to the By-Laws to require real-time trade reporting for convertible bonds on Nasdaq. Specifically, the NASD is proposing to require members to report all transactions in convertible debt securities for surveillance purposes within 90 seconds after execution, utilizing the same reporting protocols as are used with Nasdaq equity securities.[7] The new rule also provide that only those transactions equalling 99 bonds or less ("odd-lot") will be disseminated to the public on a real-time basis. The NASD is simultaneously eliminating the requirement for end-of-day volume reporting by market makers in convertible debt securities.

IV. Discussion

The Commission has determined that the NASD's proposal is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

Trade reporting of Nasdaq convertible debt issues will enhance the information available to the public and provide investors with instant, up-to-the-minute information on the securities traded in this segment of the Nasdaq market.[8] Trade reporting also will greatly enhance the NASD's ability to detect or deter manipulative or abusive trading practices. Trade reporting of all Nasdaq securities increases the availability of information to investors and issuers and permits immediate collection and scrutiny of transactional data for regulatory purposes.

A. Real-Time Dissemination of Retail or "Odd Lot" Transactions

1. Real-Time Trade Reporting

Transaction reporting is a fundamental component of a national marketplace that facilitates several important functions: reporting enhances transparency for investors and issuers, permits immediate collection and scrutiny of trading information for regulatory purposes, and permits the compilation of historical price and volume data for analysis and research. As experience shows from Nasdaq/NMS and Nasdaq Small-Cap securities, capturing trade-by-trade data is fundamental to ensuring regulatory and self-regulatory oversight of the markets. Moreover, transparency, in the form of last sale and quotation information provides several important benefits to the market.

The Commission believes that moving from the current limited end-of-day summary price and volume information and toward real-time dissemination is a positive step in bringing the debt market on a par with the equity market. Realtime transaction reporting will increase the NASD's ability to conduct surveillance of trading as it occurs. For example, as real-time trade reporting is fully implemented, the trading data will be available on the NASD's equity audit trail, which integrates last sale and inside quotation data for reported securities. Historically, the Commission has stated that transparency, in the form of last sale and quotation information provides several important benefits to the market.[9]

While reporting transactions on a real-time basis for convertible debt securities may impose a marginal burden on brokers and dealers, the benefits to the market and to public investors obtained from more complete and effective surveillance information far outweigh any burdens. Moreover, elimination of end-of-day volume reporting will be a beneficial offset.

2. "Odd Lot" Transactions

Increased transparency in the relatively illiquid convertible bond market could have significant costs in terms of liquidity and dealer participation in such a market. In balancing the benefits to be gained by increased transparency with the potential burdens to the convertible debt market, the NASD has determined that, at this time, only the "odd lot" transactions (transactions of 99 bonds or less) will be disseminated on a real-time basis. While the Commission acknowledges that this proposal establishes different treatment for convertible debt securities than for equities traded on Nasdaq, the Commission recognizes the inherent differences in the bond and equity marketplaces.[10] For example, bond issues are generally smaller than stock issues, while individual trades in bonds can represent large percentages of outstanding floats of bond issues. The bond market, moreover, is an institutional market and the pattern of trading is characterized by a few, large transactions that may be easily identified and tracked, to the disadvantage of the dealer and the client. Therefore, the Commission believes this proposal is a positive first step toward increased transparency in the convertible debt market. While the Commission is willing to approve the filing as proposed to allow time to evaluate the effect of transparency on the market, the limitation of "odd-lot" only transaction reporting need not be permanent, and the Commission will monitor the market and review its ability to withstand increased transparency.

V. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with section 15A(b)(6) of the Act, and that it is appropriate to approve transaction

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[7] The NASD expects members will use the Automated Confirmation Transaction Service ("ACT"). In most instances, the market maker registered in the bond in the Nasdaq system would be the reporting party. If there are two market makers, however, the sell side would report. The execution price reported to the NASD would exclude commission, markup, or markdown. For members that trade infrequently, the NASD will make the ACT service desk available for trade reporting purposes. The NASD operates the ACT service desk to facilitate trade reporting by members that do not have Nasdaq Workstation equipment and account for fewer than five trades a day on average. Therefore, the ACT service desk will also be made available to members that qualify under the same criteria for trade reporting of convertible debt (five or fewer trades a day on average).

[8] As of the date of this order, the NASD has not completed the systems changes necessary to implement the dissemination function. Accordingly, the Commission, by this order, approves the proposed rule changes that would permit the NASD to implement this function subject to the following conditions: (1) Submission of system change notification consistent with the Commission's Automation Review Policy II [*See* Securities Exchange Act Release No. 29185 (May 9, 1991, 56 FR 22490)]; (2) successful completion of functionality, capacity and stress testing of the system changes; and (3) notification to the Commission staff containing representations regarding the effective completion of those tests and confirming the effectiveness of the system.

[9] In June 1992, the NASD implemented transaction reporting requirements for Nasdaq Small-Cap securities, similar to the requirements in place for Nasdaq/NMS securities. In its approval order, the Commission stated that transparency, in the form of last sale and quotation information, provides three important benefits to the market: (1) Allows for efficient pricing within a market by allowing all market participants to access overall supply and demand; (2) allows investors to monitor more effectively the quality of executions they receive and the size of the dealer markup on the transaction; and (3) has the potential for enhancing the liquidity of the referenced securities by increasing visibility through trade reporting. *See* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13398.

[10] *See* Securities Exchange Act Release No. 32019 (March 19, 1993), 58 FR 16428.

reporting for certain convertible debt securities.[11]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15688 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Van Kampen Merritt Ohio Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10867)
Van Kampen Merritt Massachusetts Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10868)
Van Kampen Merritt New Jersey Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10869)
Holly Residential Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–10870)
Burlington Resources Coal Seam Gas Royalty Trust
Turst Units (File No. 7–10871)
Nuveen Pennsylvania Premium Income Municipal 3
Common Stock, $.01 Par Value (File No. 7–10872)
Nuveen California Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10873)
Nuveen New Jersey Premium Income Municipal 3
Common Stock, $.01 Par Value (File No. 7–10874)
Nuveen Florida Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10875)
Nuveen New York Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10876)
Blackrock Broad Investment Grade 2009 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10877)
Minnesota Municipal Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–10878)
Putnam Managed High Yield Trust
Common Stock, $.01 Par Value (File No. 7–10879)
American Municipal Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–10880)
Brock Exploration Corporation
Common Stock, $.01 Par Value (File No. 7–10881)
Libbey, Inc.
Common Stock, $.01 Par Value (File No. 7–10882)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 20, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15664 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25838]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 25, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 19, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–6060)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a) and 10 of the Act to its application filed under sections 9(a) and 10 of the Act.

By orders dated November 9, 1977 and May 16, 1979 (HCAR Nos. 20251 and 21048, respectively) (together, Order"), I&M was authorized to enter into an agreement of sale ("Agreement") with the City of Sullivan, Indiana ("City") concerning the construction, installation, financing acquisition and sale of pollution control facilities ("Facilities") at I&M's Breed Generating Plant. Under the Agreement, the City may issue an sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the City and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded. The Agreement provides that the Revenue and Refunding Bonds shall have such terms as shall be specified by I&M.

I&M was also authorized to convey an undivided interest in a portion of the Facilities to the City, and to reacquire

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[11] The Commission's approval of the dissemination function of this proposal is subject to the conditions outlined above. *See* Footnote 8.

[12] 17 CFR 200.30–3(a)(12).

VOL 58 ISS 126 JL 2 1993 UMI

that interest under an installment sales arrangement requiring I&M to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the City to pay, when due, the interest and principal on the Revenue Bonds and Refunding Bonds. Under the Order, the City has issued and sold two series of Revenue Bonds in connection with the financing of the Facilities in an aggregate principal amount of $45 million.

It is now proposed that I&M will effect the City's issuance and sale of its series C Refunding Bonds ("C Bonds") in the aggregate principal amount of $45 million, prior to December 31, 1993, pursuant to underwriting arrangements between Goldman, Sachs & Co. and the City. The C Bonds will be issued under and secured by the Indenture and a Second Supplemental Indenture of Trust between the City and the Trustee.

The proceeds from the issuance and sale of the C Bonds will be used to provide for the early redemption of the entire $45 million principal amount of outstanding Revenue Bonds, as follows: (1) $25 million principal amount of the series A Revenue Bonds bearing interest at a fixed rate of 6⅞% per annum and maturing on May 1, 2006 ("2006 Bonds"); (2) $7 million principal amount of the Series B Revenue Bonds bearing interest at a fixed rate of 7⅜% per annum and maturing on May 1, 2004 ("2004 Bonds"); and (3) $13 million principal amount of the Series B Revenue Bonds bearing interest at a fixed rate of 7½% per annum and maturing on May 1, 2009 ("2009 Bonds"). Currently, the 2006 Bonds may be redeemed at a price of 100½% of the principal amount, and the 2004 Bonds and the 2009 Bonds may be redeemed at a prince of 101% of the principal amount.

I&M is advised that the series C Bonds will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. The series C Bonds may be subject to mandatory redemption under circumstances and terms to be specified at the time of pricing, and, if it is deemed advisable, may also include a sinking fund provision. In addition, the series C Bonds may not be redeemable at the option of the City in whole or in part at any time for a period to be determined at the time of pricing. I&M may provide some form of credit enhancement for the C Bonds, such as a letter of credit, surety bond or bond insurance, and pay associate fees.

I&M will not agree, without further order of the Commission, to the issuance of any series C Bond by the City if: (1) The stated maturity of any such bond shall be more than 30 years; (2) the rate of interest to be borne by any such bond shall exceed 7.5% per annum; (3) the discount from the initial public offering price of any such bond exceeds 5% of the principal amount; or (4) the initial public offering price is less than 95% of the principal amount. I&M will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the series C Bonds.

The Columbia Gas System, Inc., et al. (70–8012)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, TriStar Ventures Corporation ("TVC"), a nonutility subsidiary company of Columbia, both located at 20 Montchanin Road, Wilmington, Delaware 19087, TriStar Georgetown General Corporation and TriStar Georgetown Limited Corporation (collectively, the "Georgetown Cogeneration Subsidiaries"), each a wholly owned subsidiary company of TVC and located at the same address as Columbia and TVC, and Georgetown Cogeneration, L.P. ("GCLP" and, together with Columbia, TVC and the Georgetown Cogeneration Subsidiaries, "Applicants"), a partly owned subsidiary company of the Georgetown Cogeneration Subsidiaries, P.O. Box 26532, Richmond, Virginia 23261, have filed a post effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder to their application-declaration originally filed under sections 6(a), 7, 9(a), 10, 12 and 13 of the Act and rules 43, 45, 50(a)(5), 51, 86, 87(b)(1), 90(d)(1) and 91 thereunder.

The Georgetown Cogeneration Subsidiaries hold an aggregate 50% interest in GCLP, which proposes to construct a 56 megawatt facility on the Georgetown University campus in Washington, D.C. ("Georgetown Project"). The Georgetown Project has been certified as a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 and the regulations thereunder.

In an order dated September 17, 1992 (HCAR No. 25635) ("September Order"), the Commission reserved jurisdiction over the investment by Columbia, TVC and the Georgetown Cogeneration Subsidiaries of $8.3 million in the Georgetown Project. The Commission also reserved jurisdiction over the procurement of a then-expected $66.4 million in project financing for that project. On November 9, 1992 (HCAR No. 25672), the Commission authorized TVC to issue $4.3 million in securities, of the $8.3 million reserved by the September Order, to Columbia in order to meet certain development and administrative expenses incurred in connection with the Georgetown Project. The Commission continued to reserve jurisdiction over the sale by TVC of the remaining $4.0 million in securities to Columbia and the investment by TVC of $8.3 as equity in the Georgetown Cogeneration Subsidiaries.

TVC now seeks to contribute at any time or from time to time through December 31, 1995 $16.5 million in the Georgetown Cogeneration Subsidiaries via the acquisition of common stock at a par value of $25 per share for investment in the Georgetown Project. This represents an increase of $8.2 million over the earlier request of $8.3 million. The Georgetown Cogeneration Subsidiaries request authority through December 31, 1995 to invest, and/or to commit to lenders to the Georgetown Project to invest, $16.5 million in GCLP as a capital contribution for investment in the Georgetown Project.

This increase over the original request to invest $8.3 million is driven by several factors. First, an increase of $.7 million (to $9.0 million) in the equity contribution by the Georgetown Cogeneration Subsidiaries in GCLP is required by lenders to the Georgetown Project ("Georgetown Lenders") due to an increase in the expected cost of the Georgetown Project to $90 million. Secondly, there is a possible need for an additional $2.25 million due to a requirement by the Georgetown Lenders that may increase the Georgetown Cogeneration Subsidiaries' share in the costs of the Georgetown Project from 10% to 12.5%. Thirdly, additional funds of up to $2.5 million may be required by the Georgetown Lenders to cover the Georgetown Cogeneration Subsidiaries' share of possible cost overruns. Lastly, the Georgetown Lenders may require that the Georgetown Cogeneration Subsidiaries fund an amount of up to $2.75 million for operational reserves, such as maintenance.

The funds for the $16.5 million contribution would come from: (a) The issuance, by TVC of $4.0 million in common stock to Columbia, at a par value of $25 per share, jurisdiction over

which had been earlier reserved by the Commission; (b) $4.3 million in development cost refunds expected following the closing on the debt financing for the Georgetown Project; and (c) the remainder in a combination of refunds of development expenditures, accelerated contingent equity contributions and tax payments.

Additionally, GCLP and the Cogeneration Subsidiaries seek approval to borrow at any time or from time to time through December 31, 1995 up to $95 million in debt financing for the Georgetown Project. The construction loan ("Construction Loan") would be for an amount up to the cost of the project, presently estimated at $90 million, plus an additional $5 million in possible cost overruns. This loan would mature no later than December 31, 1995 and be refinanced, up to 80%, by a long-term loan ("Term Loan") for up to $76 million maturing no later than sixteen years after the $76 million has been borrowed under the long-term facility.

Each of the Construction Loan and the Term Loan would bear an interest rate that would not exceed the highest of (a) LIBOR plus 200 basis points, (b) the Fed Funds rate or the Georgetown Lenders' agent's prime rate plus 130 basis points, or (c) the CD rate plus 215 basis points. The following fees would be owed to the Georgetown Lenders in connection with the proposed debt financing: (a) An up-front fee not to exceed 1.75% of the Construction Loan amount; (b) an annual administrative fee not to exceed $80,000; and (c) a commitment fee not to exceed .75% per annum on the unused portion of the Construction Loan.

Additionally, GCLP and/or the Georgetown Cogeneration Subsidiaries may enter into interest rate protection agreements to hedge against the floating interest rates in the Construction Loan and/ or the Term Loan in a notional amount up to $95 million. The interest rate on the hedged notional amount will not exceed 11%, plus the applicable margins described above. If such agreements are entered into with the Lenders, an additional fee not to exceed. 75% of the notional amount may be assessed.

The Construction Loan and the Term Loan will be secured by GCLP's assets and by a pledge by the Georgetown Cogeneration Subsidiaries of their (a) equity interest in GCLP and (b) rights to certain reserve accounts. Additionally, the Georgetown Cogeneration Subsidiaries request authority to guaranty obligations of GCLP under the Term Loan and the Construction Loan.

The Georgetown Cogeneration Subsidiaries also request authority to obtain letters of credit to secure an obligation to the Georgetown Lenders to maintain certain equity levels, up to $16.5 million, in GCLP. Any amounts payable under the reimbursement agreement would bear an interest charge at the federal funds rate and would be due no later than the maturity date on the Term Loan. Additionally, GCLP requests that it be permitted to issue notes under the Construction Loan pursuant to an exception from competitive bidding procedures of Rule 50 under Rule 50(a)(5).

Potomac Edison Company (70–8082)

Potomac Edison Company ("PEC"), 10435 Downsville Pike, Hagerstown, Maryland 21740, an electric public-utility subsidiary company of Allegheny Power Systems, Inc., a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

PEC requests authority through December 31, 1993 to redeem 4,046 shares of its 4.70% Cumulative Preferred Stock ("Preferred Stock"), Series B, par value $100 per share, at the current optional redemption price of $101 per share. PEC seeks to redeem the Preferred Stock in order to eliminate the large administrative expense, approximately $10,500, incurred in complying with a repurchase covenant to attempt to acquire 750 shares of the Preferred Stock annually. PEC would not issue any securities in connection with the proposed redemption but would effect such redemption with cash on hand.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15665 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2655]

Ohio and Contiguous Counties in Pennsylvania; Declaration of Disaster Loan Area

Mahoning County and the contiguous counties of Columbiana, Portage, Stark, and Trumbull in Ohio, and Lawrence and Mercer Counties in Pennsylvania constitute a disaster area as a result of damages caused by high winds, heavy rains, and flooding which occurred on June 8, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 23, 1993 and for economic injury until the close of business on March 23, 1994 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Business with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265506 for Ohio and 265606 for Pennsylvania. For economic injury the numbers are 792400 for Ohio and 792500 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 23, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–15759 Filed 7–1–93; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2648]

Oklahoma; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated June 23, 1993 to include Osage County, Oklahoma as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 8 and continuing through May 26, 1993.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 12, 1993 and for economic injury the deadline is February 15, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

VOL
58
ISS
126
2
1993
JL
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Dated June 23, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–15760 Filed 7–1–93; 8:45 am]

BILLING CODE 9025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 part 11).

Issued in Washington, DC, on June 28, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No. 27306
Petitioners: Nockair Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.43 (a) and (b)
Description of Relief Sought:

To allow Nockair Helicopters Inc. and Nockair Entertainment Inc. to perform an aerial trapeze act, without meeting the requirement to have a means for jettisoning a man-carrying Class B load.

[FR Doc. 93–15722 Filed 7–1–93; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In May 1993, there were 10 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Lee County Port Authority (LCPA), Fort Myers, Florida.
Application Type: Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $252,548,262.
Earliest Permissible Charge Effective Date: November 1, 1992.
Duration of Authority to Impose: June 1, 2015.
Class of Air Carriers Not Required to Collect PFC's:

Previously approved in August 31, 1992 decision.

Brief Description of Projects Approved to Use PFC Revenue:

Landside at Southwest Florida Regional (RSW) Airport: Commuter terminal facilities.

Airside at RSW: Commuter aircraft ramp.

Brief Description of Project Approved-in-Part to Use PFC Revenue:

Airside at RSW: Runway 6/24 extension.

Determination: The FAA is limiting its approval for use of PFC revenue to a runway extension of 2,400 feet to 10,600 feet. The FAA is not approving use of PFC revenue on the remaining 1,200 feet of the proposed extension at this time because the LCPA has not demonstrated that it can meet the Airport Improvement Program (AIP) eligibility requirement for runway extensions, which is 500 annual itinerant operations by critical aircraft.

Decision Date: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Bart Vernace, Orlando Airports District Office, (407) 648–6583.

Public Agency: Gogebic-Iron Airport Board, Ironwood, Michigan.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $74,690.
Earliest Permissible Charge Effective Date: August 1, 1993.
Duration of Authority to Impose: October 1, 1998.
Class of Air Carriers Not Required to Collect PFC's:

Part 135 operators who file FAA Form 1800–31.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved:

Reimbursement for runway 9/27 improvements, Airfield signage.

Taxiway lighting on taxiways A, B, and J.

Decision Date: May 11, 1933.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Department of Aviation, Philadelphia, Pennsylvania.
Application Type: Use PFC Revenue.
PFC Level: $3.00
Total Approved Net PFC Revenue: $76,169,000.
Earliest Permissible Charge Effective Date: September 1, 1992.
Duration of Authority to Impose: July 1, 1995.
Class of Air Carriers Not Required to Collect PFC's:

Previously approved in June 29, 1992 decision.

Brief Description of Projects Approved to Use PFC Revenue:

Upgrade of airfield signage system, Fire alarm system expansion.

Moving sidewalks.

Brief Description of Project Approved-in-Part to Use PFC:

Ground transportation improvements.

Determination: A portion of this project is AIP eligible (paragraph 553(a)

of FAA Order 5100.38A, AIP Handbook). However, the public telephones and the vehicle access card readers are considered revenue-producing and, as such, are specifically ineligible under paragraph 551(d) of FAA Order 5100.38A.

Decision Date: May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Walsh, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: Gallatin Airport Authority, Belgrade, Montana.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $4,198,000.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: June 1, 2005.

Class of Air Carriers Not Required to Collect PFC's: On demand non-scheduled air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Use PFC Revenue:

Terminal expansion, phases I and II.

Decision Date: May 17, 1993.

FOR FURTHER INFORMATION CONTACT: David Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: Port of Port Angeles, Port Angeles, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $52,000.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: August 1, 1994.

Class of Air Carriers Not Required to Collect PFC'S:

Air Taxi operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Runway and taxiway signage, Airport access road,

Terminal area planning, Runway safety area.

Decision Date: May 24, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Public Agency: Great Falls International Airport Authority, Great Falls, Montana.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,010,900.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: July 1, 2002.

Class of Air Carriers Not Required to Collect PFC'S:

Previously approved in August 28, 1992 decision.

Brief Description of Project Approved to Use PFC Revenue:

Airport fire station.

Decision Date: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: David Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: Jackson Hole Airport Board, Jackson, Wyoming.

Aplication Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $1,081,183.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: February 1, 1996.

Class of Air Carriers Not Required to Collect PFC's:

None.

Brief Description of Projects Approved to Impose and Use: Airport planning study, Safety equipment, Runway safety improvements, Apron Safety improvements, Access control system and perimeter fencing, Terminal building expansion.

Decision Date: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dakota Chamberlian, Denver Airports District Office, (303) 286–5543.

Public Agency: Brainerd-Crow Wing County Regional Airport Commission, Brainerd, Minnesota.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $43,000.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: July 1, 1994.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose and Use: Install airfield signs, Environmental assessment/ environmental impact statement, Rehabilitation/replacement of non-revenue-producing terminal area parking lot pavement.

Brief Description of Projects Disapproved:

Construction of the southwest building area.

Determination: The "Project Description & Justification" provided in the application does not include information for the southwest building area discussed at the air carrier consultation meeting and shown in the financial plan. In addition, § 158.25(c)(1)(ii)(B) requires that all environmental reviews, required by the National Environmental Policy Act (NEPA) of 1969, be completed prior to application. The NEPA requirement for this project has not been satisfied. Therefore, this project is not PFC eligible.

Installation of a localizer to serve runway 5.

Determination: Section 158.25(c)(1)(ii)(A) requires that all development items be shown on an approved ALP prior to making application for authority to use PFC revenue. The proposed localizer to serve runway 5 is not on an approved ALP. In addition § 158.25(c)(1)(ii)(B) of the regulation requires that all environmental reviews, required by NEPA be completed prior to application. The NEPA requirement for this project has not been satisfied. The NEPA requirement for this project has not been satisfied. Therefore, this project is not PFC eligible.

Decision Date: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4421.

Public Agency: Ports of Chelan and Douglas Counties, East Wenatchee, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $280,500.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: October 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose and Use:

Construct new terminal, access road, access road lighting, apron, and airport layout plan.

Decision Date: May 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virginia.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,256,126.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: April 1, 1998.

Class of Air Carriers Not Required to Collect PFC's:

(1) Unscheduled part 135 charter operators for hire to the general public and (2) unscheduled part 121 charter operators for hire to the general public.

Determination: Approved. The FAA has determined that each proposed class accounts for less than 1 percent of the airport's total annual emplanements.

Brief Description of Projects Approved to Impose and Use: Conduct master plan, Rehabilitate general aviation ramp, Upgrade airfield signage, Remove and light obstructions, Purchase snowbroom, Replace airport beacon, Purchase security radio repeater, Purchase wheelchair lift device, Install centerline lighting, runway 5/23, Complete terminal apron expansion, Expand ticket lobby and holdroom, Purchase loading bridges, Upgrade baggage delivery system, Replace 1500-gallon crash truck, Replace quick dash fire truck, Replace security vehicle, Replace two snowplow trucks, Replace terminal emergency generator.

Brief Description of Projects Approved to Impose Only: Overlay/groove runway 5/23, asphalt blast pads, Overlay taxiways B and C, Realign taxiway A and install new taxiway A–2; remove hill; relocate tank and radar, Master plan update study, Rehabilitate airfield lighting, Purchase snowroom (second).

Brief Description of Project Disapproved: Overlay loop roadway.

Determination: Disapproved. The justification provided in the application indicates that the overlay of the roadway "is a normal pavement life cycle consideration" implying that the project is for pavement maintenance and not eligible under AIP criteria.

Decision Date: May 28, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Scheff, Beckley Airports Field Office, (3040 252–6216).

Issued in Washington, DC on June 28, 1993.

Lowell Johnson,

Manager, Airports Financial Assistance Division.

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama:					
Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
Flagstaff Pullam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	06/01/1993	07/01/1998
Metropolitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	01/09/1993
Puerto Rico:					
Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton, Christiansted St Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1993
Washington:					
Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
Guam:					
Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Texas:					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virgina:					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
Washington:					
Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	07/01/1994
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
Pennsylvaina:					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Tennessee:					
Memphis International, Memphis	05/28/1992	3	26,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Ohio:					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
New York:					
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1993
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
La Guardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Montana:					
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1998
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Minnesota:					
Minneapolis-St. Paul International Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Massachusetts:					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	06/01/1998
Houghton County Memorial, Hancock	04/29/1993	3	152,986	07/01/1993	01/01/1996
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional Airport of Emmet C, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Indiana:					
Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
Iowa:					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Louisiana:					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
New Orleans International/ Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Georgia:					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
Capital, Springfield	04/26/1993	3	562,104	06/01/1992	02/01/1994
Florida:					
Southwest Florida Regional, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
California:					
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
Denver International (new), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Florida:					
Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
California:					
Ontario International, Ontario	03/26/1993	3	49,000,000	06/01/1993	07/01/1998
Palm Springs Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
San Jose International, San Jose	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93-15725 Filed 7-1-93; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Fort Bend and Harris Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft environmental impact statement will be prepared for the State Highway 122 (Fort Bend Parkway) in Fort Bend and Harris Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. G.E. Olvera, P.E., 826 Federal Building, 300 East 8th Street, Austin, Texas, 78701. Telephone: (512) 482-5516. Mr. Kenneth C. Bohuslav, P.E., Texas Department of Transportation, Division of Highway Design, 125 East 11th Street, Austin, Texas, 78701. Telephone: (512) 416-2606.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation, will prepare an environmental impact statement (EIS) on the proposed State Highway 122 (Fort Bend Parkway) in Fort Bend and Harris Counties, Texas. State Highway 122 is a limited access freeway proposed for construction from proposed Beltway 8, at Hillcroft Boulevard, to State Highway 6, near Knight Road. This proposed roadway, functionally classified as an urban freeway, will be approximately 6.3 miles in length. This roadway is considered necessary to provide for existing and projected traffic levels in the area.

Three reasonable alternative routes for the proposed State Highway 122 will be evaluated in the draft EIS, plus the no action (no build) alternative. The three alternative corridors for this roadway will be analyzed for all anticipated impacts caused by the construction and operation of this proposed highway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held on August 18, 1993, at 7 p.m. at the Missouri City Community Center, 1522 Texas Parkway (FM 2234), Missouri City, Texas. The purpose of the scoping meeting is to explain the proposal, to review the draft Environmental Assessment (EA), and to offer an opportunity for the public and agencies to identify significant issues that should be focused upon in the EIS. A public hearing will be held after the draft EIS is completed. The scoping meeting and the public hearing will be held for interested citizens to express their concerns regarding the social, economic, and environmental aspects of the proposed project. Public notice will be given for the time and place of the scoping meeting and the public hearing. The draft EIS will be available for public

and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action, the draft EA, and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 25, 1993.

G.E. Olvera,

District Engineer, Austin, Texas.

[FR Doc. 93-15655 Filed 7-1-93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15-02]

Access to Records; Authority Delegation

June 28, 1993.

1. *Delegation.* This directive delegates to the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) and the Deputy Assistant Secretary (Law Enforcement), authority to make determinations on any appeal assigned to the Office of Enforcement under 5 U.S.C. 552 and 5 U.S.C. 552a.

2. *Cancellation.* Treasury Directive 15-02, "Access to Records," dated September 29, 1986, is superseded.

3. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93-15750 Filed 7-1-93; 8:45 am]

BILLING CODE 4810-25-P

Customs Service

[T.D. 93-47]

RECORDATION OF TRADE NAME: "NLC"

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: On Friday, April 23, 1993, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "NLC, Inc.(sic)," was published in the **Federal Register** (58 FR 21772). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than June 23, 1993. No responses were received in opposition to the notice.

The specific version of the trade name claimed by NLC, Inc., in its application letter is "NLC." Accordingly, as provided in § 133.14, Customs Regulation (19 CFR 133.14), the name "NLC" is recorded as the trade name used by NLC, Inc., a corporation organized under the laws of the state of Missouri, located at 319 West Main Street, P.O. Box 348, Jackson, Missouri 63755. The trade name is used in connection with arc welding accessories which are sold under the trademark "LENCO" and include electrode holders, ground clamps, cable connectors, lugs, splicers and chipping hammers, resistance spot welders and computer controlled welding trainers.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 482-6960.

Dated: June 28, 1993.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 93-15737 Filed 7-1-93; 8:45 am]

BILLING CODE 4820-02-P

VOL
58
ISS
126
JL
2
1993
UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 28, 1993, 58 FR 34619.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 30, 1993, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG-7 on the Agenda scheduled for June 30, 1993:

Item No., Docket No., and Company

CAG-7—RP93-128-000 and RP85-177-102, Texas Eastern Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 93-15911 Filed 6-30-93; 4:00 pm]

BILLING CODE 6717-02-M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: 2:00 p.m.—4:00 p.m., July 12, 1993.

PLACE: 901 N. Stuart Street, Tenth Floor Arlington, Virginia 22203.

STATUS: Open except for the portions specified as closed session as provided in 22 CFR Part 1004.4 (b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the April 12, 1992, Board Meeting
2. The Chairman's Report
3. The President's Report
4. 1992 *Year in Review* Report
5. Foundation's Participation in Review of U.S. Foreign Assistance Programs
6. Review of FY 1994 and 1995 Foundation Budgets
7. Board's Advocacy in Promoting Foundation's Programs
8. The Audit Committee Report (Closed Session)
9. Personnel Expenses (Closed Session)

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. France, Secretary to the Board of Directors, (703) 841-3894.

Dated June 29, 1993.

Adolfo A Franco,

Sunshine Act Officer.

[FR Doc. 93-15808 Filed 6-30-93; 9:43 am]

BILLING CODE 7025-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 11:00 a.m., Wednesday, July 7, 1993.

PLACE: Filene Board Room, 7th Floor, 1776 Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Betty Baker,

Secretary of the Board.

[FR Doc. 93-15859 Filed 6-30-93; 12:38 pm]

BILLING CODE 7535-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Thursday, July 1, 1993.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section-552b(c)(2) (internal personnel rules and practices) and (6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) (9)(B) disclosure would significantly frustrate implementation of a proposed Agency action) and exemption (10) (deliberations concern * * * the Board's participation in a civil action * * * or disposition by the Board of particular * * * unfair labor practice proceedings * * * or any court proceedings, collateral or ancillary thereto).

MATTERS CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated: Washington, D.C., June 30, 1993.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 93-15910 Filed 6-30-93; 4:00 pm]

BILLING CODE 7545-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (Closed Portion), 2:30 p.m. (Open Portion), Tuesday, July 13, 1993.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:30 p.m.):

1. President's Report
2. Finance Project in Philippines
3. Finance Project in Israel
4. Approval of 4/27/93 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.)

1. Approval of the 4/27/93 Minutes (Open Portion)
2. Personnel Appointments
3. Information Reports
4. Recommendation for meeting schedule through end of December 1993.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202)-336-8403.

Dated: June 30, 1993.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 93-15900 Filed 6-30-93; 3:22 pm]

BILLING CODE 3210-01-M

federal register

Friday
July 2, 1993

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Part 404 et al.

Social Security Benefits: Endocrine, and Multiple Body Systems; Immune Systems; Presumptive Disability and Blindness: Human Immunodeficiency Virus Infection; Evaluation; Rules and Notice

VOL
58
ISS
126
JL
2
1993
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AC06

Federal Old-Age, Survivors, and Disability Insurance; Determining Disability and Blindness; Revision of Part A and Part B of the Listing of Impairments; Endocrine, and Multiple Body Systems; Immune System

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments establish a new listing section called "Immune System" in both part A and part B of "Listing of Impairments." The new part A (adult) listings section includes up-to-date criteria for evaluation of connective tissue diseases (previously contained in the "Multiple Body Systems" section) and establishes a listing for the evaluation of human immunodeficiency virus (HIV) infection. The amendments also move the adult listing for obesity from the "Multiple Body Systems" section to the "Endocrine System" section, and change the name of the "Endocrine System" section to "Endocrine System and Obesity." The new part B (childhood) section establishes a listing for the evaluation of human immunodeficiency virus (HIV) infection, includes up-to-date criteria for evaluation of congenital immune deficiency disease (previously contained in the "Multiple Body Systems" section), and adds new criteria for evaluation of connective tissue diseases.

These criteria describe disorders that are severe enough to prevent a person from performing any gainful activity, or in the case of a child under age 18 applying for Supplemental Security Income (SSI) based on disability, severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner.

EFFECTIVE DATE: These rules are effective July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or Richard M. Bresnick, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6242 or 965–1758.

SUPPLEMENTARY INFORMATION: The Social Security Act (the Act) provides, in title II, for the payment of disability benefits to workers insured under the Act. Title II also provides for the payment of child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for SSI payments to persons who are disabled and have limited income and resources. For workers insured under title II, for children of workers insured under title II who become disabled before age 22, for widows, widowers, and surviving divorced spouses claiming widow's or widower's insurance benefits based on disability under title II, and for adults claiming SSI benefits based on disability, "disability" means inability to engage in any substantial gainful activity. For children under the age of 18 who apply for SSI benefits based on disability, "disability" means that the child's physical or mental impairment(s) is of comparable severity to an impairment that would make an adult (a person age 18 or older) disabled. Under both title II and title XVI, "disability" must be by reason of a medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months. To the extent that Medicare and Medicaid eligibility are based on title II and title XVI eligibility, these regulations also affect the Medicare and Medicaid programs.

Under the sequential evaluation process, if the evidence shows that an individual is not engaging in substantial gainful activity and has an impairment(s) that meets the duration requirement, is severe, and meets or equals in severity a listing criteria, the individual is disabled. (In the case of a child applying for SSI, this includes consideration of whether the child's impairment(s) is functionally equivalent to a listed impairment, as defined in § 416.926a.) If the impairment(s) (e.g., HIV infection) does not meet or equal in severity any listing criteria, we evaluate all signs, symptoms, laboratory findings, and other evidence to determine whether the person is disabled. For an adult, we assess residual functional capacity and, based on that assessment, determine whether the claimant retains the capacity to perform past relevant work, or, if not, whether he or she retains the capacity to perform any other work considering his or her residual functional capacity, age, education, and work experience. If not, the adult is disabled. For a child under the age of 18 applying for SSI, we individually assess the child's ability to function to determine whether there is a substantial reduction in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. If there is such a substantial reduction, the child is disabled.

Medical criteria for evaluating disability and blindness at the third step of the sequential evaluation processes for adults and children are found in the listings. The listings include examples of the most commonly occurring medical conditions for persons who file applications for disability benefits. It describes, for each of 13 major body systems, impairments that are considered severe enough to prevent an individual from engaging in any gainful activity, or in the case of a child under the age of 18 applying for SSI, examples of impairments that are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. To establish disability under the Act, the impairment must be expected to result in death or last or be expected to last for a continuous period of not less than 12 months. Most of the listed impairments are permanent or are expected to result in death; in some instances, a specific durational requirement is a part of the medical criteria for the impairment (in addition to the 12-month duration requirement that applies to all impairments that are not expected to result in death). If an individual is not performing substantial gainful activity and has an impairment that meets the requirements of one of the listings, or has an impairment or combination of impairments that is equal in severity to one of the listings (and meets the duration requirement), the individual is disabled. If, however, the individual does not have an impairment which meets or equals in severity the requirements of a listing, the claim is not denied and no conclusion on the issue of disability is made. Rather, resolution of the issue of disability depends on other factors. For adults, these other factors are residual functional capacity, and, for adults who are unable to perform their past work, age, education, and work experience. For children whose impairments are severe but do not meet or equal in severity the requirements of a listing, we will do an individualized functional assessment and determine whether the child is able to function independently, appropriately, and effectively in an age-appropriate manner.

Appendix 1 consists of two parts, part A and part B. The criteria in part A

apply to the evaluation of impairments of adults but may, in some cases, be appropriate for evaluating impairments in children under age 18. Part B contains medical criteria for the evaluation of impairments in children under age 18 when criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a child under age 18, we use part B first. If the child's impairment(s) does not meet or equal the medical criteria in part B, or the criteria in part B do not apply, then we use the medical criteria in part A, when the criteria are appropriate. To the extent possible, we maintain a structural and content relationship between parts A and B (see §§ 404.1525 and 416.925). When part A criteria are repeated in part B, our intent is to eliminate any question about their application to children.

We revised the listings on December 6, 1985 (50 FR 50068). At that time, as a result of medical advancements in disability evaluation and treatment, and program experience, we indicated that the listings should be reviewed periodically and updated. Accordingly, we specified termination dates for the listings ranging from 4 to 8 years. These final rules revise the listings to: Establish a new listing section called "Immune System" in both part A and part B of appendix 1; establish new listings for the evaluation of HIV infection in both adults and children; update the criteria for evaluation of connective tissue disorders in adults and for congenital immune deficiency disease in children; establish new criteria for evaluation of connective tissue disorders in children; move the adult listing for obesity from the "Multiple Body Systems" section to the "Endocrine System" section; change the name of the adult "Endocrine System" section to "Endocrine System and Obesity"; delete Hansen's disease (leprosy, formerly Listing 10.02) from the listings; and modify the "Multiple Body Systems" section for children to make it effective for 5 years.

We revised the connective tissue disorders criteria with information we received from individuals recommended by various professional groups, including the American College of Physicians, the American College of Rheumatology (formerly the American Rheumatism Association), the Arthritis Foundation, the Lupus Research Institute, the American Society of Internal Medicine, and from individual Federal and State representatives with expertise in the evaluation of disability claims involving connective tissue disorders. In addition, in developing the proposed part B criteria for children, we received information from individuals with expertise in these areas.

We developed the proposed listings contained in our December 18, 1991, Notice of Proposed Rulemaking (NPRM) (see 56 FR 65702) for HIV infection based in part on information from numerous individuals recommended by or affiliated with various professional organizations, including the Public Health Service's Centers for Disease Control (CDC), the Johns Hopkins Hospital, the State of Maryland AIDS Administration, the Department of Veterans Affairs, and Federal representatives with expertise in the evaluation of disability claims involving HIV infection. A number of individuals who commented on the NPRM expressed concern that we did not consult with experts on the various segments of the population who are infected with HIV, especially women and children. Therefore, in response to the comments, we obtained additional information about women and children and other segments of the population infected with HIV, and about other issues from experts in the Department of Health and Human Services, including experts from the Public Health Service's CDC, Health Resources and Services Administration, and National Institutes of Health. We also obtained additional assistance from individual physicians and other experts involved in the evaluation and treatment of HIV infection—particularly in women and children—in various parts of the country, as indicated below. We obtained additional information from individuals at Albert Einstein College of Medicine, Beth Israel Hospital, Bronx Lebanon Hospital, Columbia Presbyterian Hospital, Harlem Hospital, Montefiore Hospital, St. Luke's/Roosevelt Hospital, and St. Vincent's Hospital in New York; Howard University Hospital in Washington, DC; University of Maryland Medical Center and Johns Hopkins Hospital in Baltimore; University of Texas Medical School in Houston; Cook County Hospital and Children's Memorial Hospital in Chicago. Several of the experts were recommended to us by the American Medical Association and the American Academy of Pediatrics. We also received information from the American Medical Association and the HIV Project of the MFY Legal Services Inc., a legal advocacy group in New York City. Therefore, the listings contained in this final rule reflect updated information about HIV infection.

HIV Infection

In 1980, shortly after acquired immunodeficiency syndrome (AIDS) was first identified in the United States, the CDC developed a case definition in order to conduct epidemiologic surveillance. The CDC defined AIDS based on a variety of diseases that encompassed the most severe manifestations observed in infected individuals. In late 1982, we began receiving disability claims from individuals infected with HIV. We used the CDC's surveillance definition of AIDS in developing our initial criteria for determining disability of listing-level severity in people with AIDS. These criteria provided that an individual who had a confirmed diagnosis of AIDS, as manifested by one or more of the conditions identified by the CDC, and who was not engaging in substantial gainful activity, would have an impairment of listing-level severity. As medical knowledge and understanding about HIV infection was continuously refined, and with knowledge derived from adjudicating disability cases involving HIV infection, we updated our policies.

For instance, as early as 1983, clinicians identified a syndrome that for a time was known as AIDS-Related Complex (ARC), although that term was never used or defined by the CDC. Shortly thereafter, we issued instructions stressing our policy that the evaluation of disability in these cases was not limited to the CDC's surveillance definition of AIDS, that claimants with AIDS or ARC, like all disability claimants, must be evaluated on a case-by-case basis, and that an individual need not have fully developed AIDS to be found disabled.

We reminded our adjudicators that individuals who have immune system dysfunction, but who do not have a confirmed diagnosis of AIDS, may still have an impairment that is of listing-level severity, either because of a manifestation that, in and of itself, meets the criteria of a listing, or because an individual's impairment(s) is equal in severity to a listing. We said that, as with any medically determinable impairment, the assessment of severity must take into account all signs, symptoms, and laboratory findings—not only those included in our criteria—and must follow the full sequential evaluation process if an applicant's impairment(s) is severe and does not meet or equal in severity any listing.

As more information about HIV infection became available and as we gained even more adjudicative experience, it became apparent that HIV

infection was being manifested by impairments that were not encompassed under ARC, or in the CDC's criteria for AIDS. By 1987, we issued instructions that provided specific criteria beyond those covered in the CDC's surveillance definition for adjudicators to use in evaluating whether a claimant's impairment(s) was of listing-level severity. We have continued to update and refine our instructions to reflect the escalating array of information available on the manifestations of HIV infection.

We have always viewed AIDS (and other symptomatic HIV infection) from a different perspective than the CDC. The CDC defines AIDS for health purposes to enhance its capability for activities such as disease reporting and surveillance, epidemiologic studies, prevention and control activities, and public health policy and planning. Its definition is not intended to determine whether any statutory or legal requirements for disability are met. In evaluating disability claims, our concern is to determine whether an individual's impairment(s) is severe enough to prevent him or her from engaging in any substantial gainful activity (or, in the case of a child under age 18 applying for SSI, substantially reduces the child's ability to function independently, appropriately, and effectively in an age-appropriate manner).

In these final rules, we have made it clear that all our disability evaluation standards apply to cases of HIV infection in the same way they apply to cases involving other impairments. The standards require, on a case-by-case basis, an evaluation of all relevant factors, including the symptoms (such as pain, fatigue, and malaise), signs, and laboratory findings, as well as the effects of medication, on the ability to function, and a determination whether an individual is able to engage in substantial gainful activity or, in the case of a child, able to engage in age-appropriate activities. Although these final rules relate only to one part of the sequential evaluation process, they stress that (as we do for all individuals) we apply the full sequential evaluation process when adjudicating claims from individuals with HIV infection.

HIV Infection in Women and Children

These final rules include specific criteria to take into account the clinical manifestations and course of the disease in women and children.

The criteria in parts A and B recognize that HIV infection can manifest itself differently in women (including female adolescents) than in men. Therefore, the final rules state that it is important when reviewing the claim of a woman with HIV infection that manifestations of HIV infection that affect women (e.g., gynecological conditions) be considered in assessing impairment severity and the degree of functional loss. Similarly, the criteria in part B recognize that the disease process may manifest itself differently in children (especially younger children) than in adults.

Other Immune System Listings

The final rules also include listings for evaluation of other immune system disorders. In preparing these listings, our aim was to put less emphasis on disease labeling or diagnosis, and to place more emphasis on the functional impact on a person's ability to work or, in the case of an SSI claimant under age 18, on the ability to function independently, appropriately, and effectively in an age-appropriate manner.

Endocrine System and Obesity

We revised the adult listing for obesity and moved it from the Multiple Body Systems (10.00) to the Endocrine System (9.00), and renamed the latter Endocrine System and Obesity. Therefore, all listings that were under 10.00, Multiple Body Systems, are now under either 14.00, Immune System, or 9.00, Endocrine System and Obesity. We also converted the weight tables that accompany the obesity listing into metric measurements.

Explanation of the Final Rules

We published an NPRM in the **Federal Register** on December 18, 1991 (56 FR 65702), and invited interested persons, organizations, and groups to submit comments pertaining to the proposed rules within a period of 60 days from the date of publication of the NPRM. The comment period ended on February 18, 1992.

In response to the NPRM, we received over 7,000 letters containing comments pertaining to the changes we proposed. The majority of the letters were form letters in support of the proposed changes to the listing for systemic lupus erythematosus (final Listing 14.02). We also received a number of other form letters that were sent by multiple individuals. The majority of these letters concerned the proposed HIV infection listings. Many of these were from legal services organizations and advocacy groups, State and city government departments, Members of Congress, and individual lawyers. Some letters came from individuals or Government agencies whose responsibilities require them to make disability determinations involving HIV-related impairments under titles II and XVI of the Act. Other letters came from medical associations, hospitals, physicians and other medical professionals, or from individual private citizens.

The public comments were invaluable to us in drafting these final rules. Some of the commenters pointed out problems or potential problems with the proposed rules, and we adopted or accommodated many of these comments. Other commenters, however, suggested changes that would go beyond the scope of these rules, or even our authority in promulgating regulations. We carefully considered all the comments we received, and adopted the commenters' suggestions whenever possible. In the public comments section of this preamble, we address all the substantive comments and explain how we used the comments (or why we did not use them) in preparing these final rules.

The following is a summary of the listings we are adopting in these final rules, with an explanation of the more important changes we made from the text of the NPRM. We describe other changes in the public comments section of this preamble.

9.00 Endocrine System and Obesity

9.00 Endocrine System and Obesity

Because we have moved the listing for obesity from former Listing 10.10 to final Listing 9.09, we also moved the prefatory text describing obesity, which was formerly in 10.00B, to the second paragraph of final 9.00. We also revised the paragraph to make it more specific to listing-level determinations. In response to a comment, we added a second paragraph which clarifies that the weight-bearing criterion in Listing 9.09A refers to the lumbosacral spine, not the cervical or thoracic spines.

We changed the headings of 9.00 and 9.01 to include references to obesity. There are no changes in the headings from the NPRM.

9.09 Obesity

We revised the listing for obesity, which was previously Listing 10.10 in the Multiple Body Systems section, and moved it to the Endocrine System section, which we renamed Endocrine System and Obesity. The listing for obesity is now Listing 9.09. In addition, we revised paragraph 9.09A (formerly 10.10A) to clarify that the pain, limitation of motion, and evidence of arthritis required in that section must be in the same joint or in the lumbosacral spine. We clarified the rules based on questions we have received over the years.

In response to a public comment, we revised the language of the NPRM to make clear that the phrase "weight-bearing" applies to both the joints and the spine; the revision adds language describing the lower parts of the spine (the lumbosacral spine), which are the weight-bearing areas. This is not a substantive change, but a clarification of the policy as we have always applied it. In the final rules, we also made a technical correction to the weight tables that accompany the obesity listing. We converted the table values to the metric system. Except for some very minor rounding off necessitated by the conversion, we did not change any of the relative weight and height criteria from the prior rules.

14.00 Immune System

We have established a new section 14.00, Immune System. The new section includes criteria for systemic lupus erythematosus (14.02), systemic vasculitis (14.03), systemic sclerosis and scleroderma (14.04), polymyositis or dermatomyositis (14.05), undifferentiated connective tissue disorder (14.06), immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, excepting HIV infection (14.07), and HIV infection (14.08). We describe each of these listings below.

Final 14.00 includes all the criteria that were previously in 10.00, Multiple Body Systems, with the exception of former Listing 10.02, Hansen's disease (leprosy), which we have deleted, and former Listing 10.10, "Obesity." We deleted the Hansen's disease listing because new cases of the condition are almost nonexistent in the Western Hemisphere and because the disease can now usually be treated successfully. As already stated, we moved the obesity listing to 9.00. We reserved the entry for 10.00, which no longer contains any listings, for future use.

Although we made a number of editorial changes for clarity and consistency, we made few substantive changes from the NPRM in final Listings 14.02–14.07 and 114.02–114.07; that is, all but the HIV listings. We discuss those listings first, beginning with a summary of final 14.00A–C and 114.00A–C, the sections of the preface that are appropriate to the non-HIV listings. We then provide a summary of the provisions of, and changes to, the rules on HIV in 14.00D and 114.00D, and final Listings 14.08 and 114.08.

The Non-HIV Listings

14.00 and 114.00 Preface

Final 14.00A–C and 114.00A–C describe impairments of the immune system. We made a number of revisions in the final rules from the NPRM, both in response to comments and for technical reasons. Most of the changes were for consistency. We compared the rules in part A with those in part B and, wherever it was appropriate, added provisions that were lacking in one but were present in the other. We also revised language when both part A and part B contained the same provisions but used different language; the revisions simply make their language the same. As we explain below, none of these changes is substantive: They only improve the consistency and clarity of the rules.

14.00A and 114.00A

In 14.00A and 114.00A, we describe some of the components of the immune system. There are no changes from the NPRM.

14.00B and 114.00B

In final 14.00B and 114.00B, we discuss connective tissue disorders. In a technical correction, and for internal consistency, we changed the proposed phrase "connective tissue disease" in the first paragraph and throughout the preface to "connective tissue disorder." This is a more accurate description of the disorders. Moreover, the two phrases were used interchangeably in the NPRM; the revision now uses only one phrase throughout. We also changed the reference to "The American Rheumatism Association" in proposed 14.00B1 to the current name, "The American College of Rheumatology."

For consistency, we revised the language we had proposed as the second paragraph of 14.00B so that it better reflected the language we had proposed in the first paragraph of 114.00B (now the third paragraph in final 114.00B). We also made minor changes to the third paragraph of final 114.00B so that both paragraphs would say the same thing.

The final language in the second paragraph of 14.00B is almost identical to the proposed language. The most significant difference is that we deleted the proposed opening statement from the NPRM, "Each of these disorders should be differentiated diagnostically * * *," for conformity with the childhood rules. Although the clause was true, we believe that it is inherent in the remaining language of the paragraph, as well as being a basic principle of disability evaluation that need not be repeated in this particular context.

We expanded the third paragraph of final 14.00B from the NPRM to incorporate language that was formerly in proposed Listings 14.02–14.06 and 114.02. We simplified those listings, each of which repeated the same provisions about duration of active disease despite prescribed therapy, by incorporating the language into the preface and replacing the repetitious criteria in the listings with cross-references to the preface. We describe our reasons for this change in greater detail in the public comments section of this preamble. However, the revision is merely editorial, not substantive.

In the fourth paragraph of the final adult rules in 14.00B, we made two technical corrections, but no substantive changes. We replaced the abbreviation "SAL" with "SLE," for systemic lupus erythematosus, and we replaced the phrase "undifferentiated connective tissue disease" with "undifferentiated connective tissue disorder," as already described. We did not change the language of the fifth paragraph of the adult rules from the proposed language in the NPRM.

In the sixth paragraph of final 14.00B, we revised the first sentence to refer to "any gainful activity," which is the standard of severity in the listings, as set forth in §§ 404.1525 and 416.925, instead of the proposed "gainful work activities." This is a technical correction for consistency among the rules. We also added a sentence describing our use of the word "severe" in these listings. We explain this addition, and our reasons for making it, in the public comments section of this preamble. We added the latter sentence to the sixth paragraph of final 114.00B.

We made only minor editorial revisions in final 14.00B1–3 (for example, by deleting the word "Listing" before the listing numbers for consistency with other body system listings). In response to a comment, we revised 14.00B4, Polymyositis or dermatomyositis, to provide more information about the criteria for muscle weakness in final Listing 14.05. We also updated the terminology by replacing the references to SGOT and SGPT with the more current, generic term "aminotransferases."

In response to a comment, we added a discussion of so-called overlap syndromes to final 14.00B5. We also indicate that these syndromes are to be evaluated under Listing 14.06, Undifferentiated connective tissue disorders.

Finally, we made a number of nonsubstantive editorial revisions to the

childhood rules in 114.00B in addition to those already mentioned. We divided the first paragraph of the NPRM into three separate paragraphs for clarity and better conformity with the paragraphs in the corresponding adult rules. We added a new fourth paragraph, which is identical to the fifth paragraph of 14.00B, to stress the importance of considering the effects of treatment in connective tissue disorders; the addition is only for consistency between the adult and childhood rules.

We also established a new 114.00C to include allergies (also in conformity with the adult rules). We also moved the second and third paragraphs of proposed 114.00B, dealing with growth impairments and Kawasaki disease, into the new section. We did this because both of these paragraphs provide guidance about cross-referring to other listings: The second paragraph of proposed 114.00B provided that growth impairments could be evaluated under the listings in 100.00, and the third paragraph provided cross-reference listings for Kawasaki disease. Inasmuch as the guidance on allergic disorders refers to evaluation under the appropriate body system listing, we believe that it is clearest to group all three paragraphs together under the same heading.

14 00C and 114.00C

Final 14.00C of part A states that allergic disorders are discussed under the appropriate listing for the affected body system. We made no substantive changes from the NPRM in this paragraph. In a technical clarification, we added the phrase "and evaluated," to the sentence to make it clear that allergic disorders are both discussed and evaluated under the appropriate listing for the affected body system.

Final 114.00C of part B is new. As we have explained, we established the section in order to include the same guidance about allergic disorders in the childhood rules as is in the adult rules. We also moved the paragraphs about growth impairments and Kawasaki disease from proposed 114.00B into this new section for reasons already given. We also added a heading, for clarity. In a technical revision, we revised the provision on Kawasaki disease to better state our original intent. The proposed language could have suggested that Kawasaki disease is not a multisystem impairment when, in fact, all we meant to say was that disease of the coronary arteries is the usual cause of listing-level disease.

Because we added this new section in the childhood rules, we redesignated proposed 114.00C, on HIV infection, to 114.00D. This also makes the lettering of the childhood preface correspond to the lettering in the adult preface.

14.02–14.07 and 114.02–114.07 The Non-HIV Listings

14.02 and 114.02 Systemic Lupus Erythematosus

The final rules move former Listing 10.04 to 14.00, renumber it as Listing 14.02, and change the heading from "Disseminated lupus erythematosus" to "Systemic lupus erythematosus" to conform to the current nomenclature for this disease. They also establish a new Listing 114.02 for systemic lupus erythematosus in children that is nearly identical to the adult rule, but includes criteria for the possible limiting effects unique to children that are not included in the adult rules.

In the final adult rule, we expanded and revised the criteria formerly in Listing 10.04 to focus on and delineate severe functional loss. We also removed the requirement that this disorder be established by a positive lupus erythematosus (LE) preparation, biopsy, or positive anti-nuclear antibody (ANA) test in favor of the currently accepted 1982 criteria of the American College of Rheumatology for classification of this disease (cited in final 14.00B1). Both final Listings 14.02A and 114.02A describe listing-level abnormalities in a single organ or body system, whereas final Listings 14.02B and 114.02B describe disability resulting from functional loss of lesser severity than in Listing 14.02A or 114.02A in two or more organs or body systems, with severe documented constitutional symptoms and signs.

We revised both listings from the proposed language in the NPRM in response to public comments and for technical reasons. For reasons we have already explained, we removed the criteria, "Documented * * * by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months," from the proposed language in the first paragraph of Listings 14.02 and 114.02, as well as the similar language in Listings 14.02B and 114.02B; the criteria now appear in the third paragraph of 14.00B and the fifth paragraph of 114.00B and are applicable to all connective tissue disorders.

In final Listings 14.02A and 114.02A, we made minor technical revisions to several of the cross-references to other listings so that the listing now refers to other listing sections, rather than to individual listings. The change makes our method of cross-referencing consistent within the two listings. Moreover, by referring to entire body system listing sections instead of individual listings, we ensure that Listings 14.02 and 114.02 will remain current if the numbering changes as other body system listings are revised.

In response to a comment, we added a new Listing 114.02A3 for muscle involvement. The same criterion already appears in the adult rules at Listing 14.02A2. The addition of the new criterion required us to renumber the subsequent criteria. We also reversed the order of the criteria for endocrine and skin involvement so that they are in the same order that they appear in the cross-referenced listings. In response to a comment, we also added a cross-reference to final listing 14.04D to include listing-level Raynaud's phenomena under final Listings 14.02A5 and 114.02A6.

As we explain in the public comment section of this preamble, we also changed the phrase "severe, documented, incapacitating constitutional symptoms and signs" from proposed Listings 14.02B and 114.02B to "significant, documented, constitutional symptoms and signs" in order to clarify the phrase and make it consistent with language in final Listings 14.03 and 14.04.

14.03 and 114.03 Systemic Vasculitis

The final rules move prior Listing 10.03 to section 14.00, renumber it as Listing 14.03, and change the heading from "Polyarteritis or periarteritis nodosa (established by biopsy)" to "Systemic vasculitis" to correspond with currently accepted medical nomenclature. We also expanded this listing to emphasize the spectrum of vasculitic/arteritic syndromes that can preclude any gainful activity. These syndromes include classical polyarteritis nodosa, aortic arch arteritis, giant cell arteritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders.

The only changes from the NPRM language in final Listing 14.03 are those that we have already described in connection with final Listing 14.02. We deleted the language about documentation of active disease for 3 months despite therapy and the expectation of persistence for 12 months from the opening paragraph of the listing and the similar language in Listing 14.03B, because the provisions are now in the third paragraph of final 14.00B. We also changed the phrase "severe, documented, constitutional symptoms and signs" in proposed

14.03B to "significant, documented, constitutional symptoms and signs" consistent with our revisions in Listings 14.02, 14.04, and 114.02.

The childhood listing for systemic vasculitis, 114.03, is unchanged substantively from the NPRM. We made a minor language change for clarity, but the listing still cross-refers to the adult rules in Listing 14.03, and also includes a criterion for growth impairment.

14.04 and 114.04 Systemic Sclerosis and Scleroderma

The final rules move prior Listing 10.05 to section 14.00, renumber it as Listing 14.04, and change the title from "Scleroderma or progressive systemic sclerosis (the diffuse or generalized form)" to "Systemic sclerosis and scleroderma." We deleted the term "progressive" from the title because it was redundant. The criteria in final Listing 14.04 describe systemic disease of severity that precludes performance of any gainful activity for the requisite duration. The proposed criteria provide greater specificity in describing listing-level severity in the extremities and target organs (i.e., lungs, heart, kidneys).

We changed the NPRM language in the same way we have already described in connection with final Listing 14.02. We deleted the language about documentation of active disease for 3 months despite therapy and the expectation of persistence for 12 months from the opening paragraph of the listing and the similar language in Listing 14.04B, because the provisions are now in the third paragraph of final 14.00B. We also changed the phrase "severe, documented, constitutional symptoms and signs" in proposed 14.03B to "significant, documented, constitutional symptoms and signs" consistent with our revisions in Listings 14.02, 14.03, and 114.02.

In response to a comment, we made a minor revision in final Listing 14.04D. We replaced the word "with" with the phrase "characterized by" to clarify our original intent that the phrase "digital ulcerations, ischemia, or gangrene" describes the severe Raynaud's phenomena in the listing.

We added a separate childhood listing because these disorders may be manifested differently in children than in adults. Moreover, even when the manifestations are similar, the impact on a child's growth, development, and age-appropriate functioning may be more serious than the impact on an adult's ability to perform work-related activity. We revised proposed Listing 114.04 by adding cross-references to the documentation requirements in 14.00B3 and 114.00B in the opening paragraph. The revision is for consistency with the corresponding adult section and is not substantive.

We also revised the cross-references to other listings in final Listings 14.04A and 114.04B so that both listings now refer to entire listing sections, rather than to individual listings. This makes the cross-references consistent with those in final Listings 14.02A and 114.02A, and ensures that the listings will remain current when other body systems are revised.

14.05 and 114.05 Polymyositis or Dermatomyositis

The prior listings formerly codified in 10.00ff did not include listings for polymyositis or dermatomyositis. We added the new adult listing to recognize the potential for a disabling work-related functional deficit in some patients with chronic refractory myopathy. We added a separate childhood listing because these disorders may be manifested differently in children than in adults. Moreover, even when the manifestations are similar, the impact on a child's growth, development, and age-appropriate functioning may be more serious than the impact on an adult's ability to perform work-related activity.

In response to public comments, we added a discussion on evaluating severity of muscle weakness to proposed 14.00B4 and changed the cross-reference in final Listing 14.05A from 11.12B to 14.00B4. In response to another comment, we also revised final Listing 14.05B1 to better describe impairment of swallowing. We describe these changes in greater detail in the public comments section of this preamble.

We made only minor revisions to the final childhood listing. As in final Listing 114.04, we added cross-references to the appropriate documentation requirements in final 14.00B4 and 114.00B. We also revised the remainder of the listing language for consistency with other listings.

14.06 and 114.06 Undifferentiated Connective Tissue Disorders

We added new undifferentiated connective tissue disorders listings in parts A and B because some individuals can be disabled at the listing-level by connective tissue disorders that cannot be classified with an exact diagnosis.

In response to a comment about the NPRM, we added to final Listing 14.06 a cross-reference to Listing 14.04. In response to another comment, we revised final Listing 114.06 to change the cross-reference from Listing 14.06 of the adult listings to Listings 114.02 or 114.04 of the childhood listings.

14.07 Immunoglobulin Deficiency Syndrome or Deficiencies of Cell-Mediated Immunity, Excepting HIV Infection; 114.07 Congenital Immune Deficiency Disease

We added new Listing 14.07 to provide criteria for adults comparable to those we formerly included for children in Listing 110.09 (now final Listing 114.07). The listing provides criteria with which to evaluate immunoglobulin deficiency syndromes and deficiencies of cell-mediated immunity, excepting HIV infection.

In the final rule, we reorganized the language of proposed Listing 14.07 in order to make it consistent with Listing 114.07. The reorganization does not change the criteria.

We moved prior Listing 110.09 to section 114.00, renumbered it as Listing 114.07, and changed the heading from "Immune deficiency disease" to "Congenital immune deficiency disease." As in the foregoing listings and throughout these listings, we revised the language of proposed Listing 114.07A1 to make it consistent with final Listing 14.07. Because of this revision, we have deleted the requirement from proposed Listing 114.07A1 that the episodes of recurrent, severe infections must have occurred in the 5 months prior to adjudication. This additional requirement was not only inconsistent with the adult rules, but would have made the childhood listing more stringent than the adult listing and would have been difficult to implement in our case adjudications at the various levels of appeal.

The HIV Listings

In response to the many comments we received about the proposed rules for evaluating HIV infection, we have extensively revised the final rules from the NPRM. The following are some of the most important changes in the final rules. Thereafter, we provide a summary of all of the final provisions pertaining to HIV, beginning with final 14.00D and 114.00D of the prefaces.

Reorganization and Simplification

The most obvious change we made to the proposed rules in response to public comments was to reorganize and rewrite the proposed HIV infection listings (14.08 and 114.08). We did so in response to many commenters' concerns about the complexity of the proposed listings, and suggestions that we include additional manifestations of HIV infection in the listings and delete or

modify some of the criteria we proposed.

Many commenters pointed out that the proposed listings were unnecessarily complex and repetitive for Social Security disability evaluation purposes. This was primarily because we had included in the listings both the CDC's criteria defining AIDS and other manifestations of symptomatic HIV infection we deemed appropriate for inclusion in our listings, even though they are not AIDS-defining under the CDC surveillance definition. As we have already explained, however, the CDC's criteria are primarily for surveillance purposes, not for the evaluation of disability; therefore, the CDC criteria contain requirements that are not necessary in our program.

For instance, the CDC surveillance definition contains criteria for establishing the diagnosis of AIDS in the presence of documented HIV infection, as well as when infection is not documented. However, both categories include a number of opportunistic infections in common that establish the diagnosis of AIDS; for example, pneumocystis carinii pneumonia and extrapulmonary cryptococcosis are included in both categories and, therefore, are repeated within the CDC's surveillance definition of AIDS. As many commenters pointed out, whereas it may be appropriate for the CDC surveillance definition to be repetitive for surveillance purposes, for Social Security disability purposes we need only be satisfied that a person with HIV infection has experienced one of the manifestations (for example, pneumocystis carinii pneumonia or extrapulmonary cryptococcosis) to conclude that the individual has a listing-level impairment. Therefore, it was unnecessary for us to have listed these infections in two places (proposed adult Listings 14.08A2 and C2, and childhood Listings 114.008A2 and C2 for extrapulmonary cryptococcal infections, and proposed adult Listings 14.08A8 and B2, and childhood Listings 114.08A9 and B2 for pneumocystis carinii pneumonia) when the outcome was the same in both instances. Similarly, the CDC surveillance definition includes several separate criteria for Hodgkin's and non-Hodgkin's lymphomas, which we had listed separately, following the CDC surveillance definition. We had also proposed to include other lymphomas that are not included in the CDC surveillance definition, and listed them separately. The commenters pointed out that we were, in effect, saying that any individual who has HIV infection and any lymphoma would have an impairment that meets our listing and that there was, therefore, no need to list lymphomas in three separate places as we had proposed (i.e., in proposed adult Listings 14.08A6, I, and J, and childhood Listings 114.08A6, H, and I).

Many commenters pointed out that it was also unnecessary, and could be unfair, to provide specific requirements for the diagnosis of each manifestation of HIV infection in the listings. They pointed out that, at a minimum, we could summarize our criteria for establishing the existence of HIV infection and its manifestations in the prefaces to the listings; i.e., 14.00 and 114.00. (They also offered comments about our rules for establishing these findings, many of which we adopted, and which we describe later in this preamble.)

In the final adult rules, therefore, we combined the criteria in proposed Listing 14.08A with the criteria in proposed Listings 14.08B-L and organized them first by etiology of infection (final Listings 14.08A-D) and then by type of manifestation, regardless of etiology (final Listings 14.08E-N). We also removed the specific documentation requirements for each disease or manifestation from the listings and consolidated all documentation requirements with the general discussion of documentation in final 14.00D3 and D4. We removed duplicative language from the listings and clarified the standards established for many of the diseases. We made the same kinds of changes to the childhood listings in 114.00 and 114.08.

Manifestations of HIV Infection in Women

In response to public comments, final Listing 14.08 now also includes specific criteria for most manifestations of HIV infection that are common in women. Because these conditions are now included in the listings, we deleted the discussion of specific conditions common in women that we proposed in 14.00D of the NPRM, although we retained and augmented that section's general discussion of women's issues in final 14.00D5. The final listing, which we describe in greater detail below, explicitly mentions conditions common to women and provides criteria by which we will determine whether a given manifestation is of listing-level severity. We provide specific responses to the many comments on this issue in the public comments section of this preamble.

Listings 14.08M, 114.08L and 114.08M: The Functional Criteria

We received many public comments on the functional criteria in proposed Listings 14.08M, 114.08L, and 114.08M, the majority of which were unfavorable. The proposed rules had listed several possible manifestations of HIV infection (for example, meningitis, Kaposi's sarcoma, mucosal candidiasis, and oral hairy leukoplakia), and clinical and laboratory findings (for example, anemia, fever, and weight loss) that were not listed as stand-alone medical manifestations but that, in conjunction with functional restrictions, could establish listing-level HIV infection.

The commenters asked us to delete or substantially revise the rules for a number of reasons. Many commenters asked us to delete the rules employing functional criteria because they thought that the proposed medical manifestations were sufficient in themselves to establish listing-level disability. Many of these commenters pointed out that we had already incorporated indicators of medical severity by requiring the conditions in proposed Listings 14.08M2, 114.08L1, and 114.08M2 to be "persistent and/or resistant to therapy," and by requiring a 2-month persistence of at least two of the medical manifestations in proposed Listings 14.08M3, 114.08L2, and 114.08M3. The commenters pointed out that to require functional limitations in addition to these medical requirements seemed excessive and unfair. For instance, a number of commenters thought that diarrhea that had already persisted for 2 months and was unresponsive to treatment should be enough to establish disability, and need not be associated with another medical manifestation and functional limitations.

Some commenters thought that the mere existence of some of the manifestations (for example, pulmonary tuberculosis or vulvovaginal candidiasis) was in itself sufficient to establish disability in HIV-infected individuals and that no indicator of severity—either medical or functional—was necessary. Others offered suggestions for tying some of the manifestations to a test of functioning while making some of the other manifestations stand-alone medical listings without functional criteria. Some offered suggested criteria for describing medical severity for the stand-alone manifestations. The thrust of these suggestions was toward providing medical criteria specific to each different manifestation instead of the more general criteria for persistence

and unresponsiveness to treatment we had proposed.

With regard to the functional criteria themselves, most of the comments addressed the adult criteria in proposed Listing 14.08M. Many people said that the criteria were inappropriate and too difficult to meet. Some said that the criteria were originally intended for the evaluation of mental impairments and, therefore, could not be used to evaluate physical impairments, especially HIV infection. (Of these comments, many singled out the criterion of marked limitation of social functioning in proposed Listing 14.08M4b as being especially inapt.) Some thought that this was the first time we had employed functional criteria in the physical listings and said that we should not start with HIV infection.

Many commenters who thought that we should not have the functional criteria at all recommended that, if we must have functional criteria, we should revise the proposed rules so that meeting only one of the functional criteria—instead of two, as we had proposed—would suffice. Some thought that we should incorporate into the listing the two functional criteria we formerly used in our manual instructions, believing the old criteria to be less stringent than the proposed criteria. Some thought that we should revise the language of the functional criteria to make them more specific to HIV infection. Finally, many commenters said that our definitions of the term "marked" in proposed 14.00D with respect to each of the functional criteria set too severe of a standard.

We address the individual comments, and other related comments, in more detail in the public comments section of this preamble. Notwithstanding the comments, however, we have decided to retain listings that permit a showing of disability based on an individualized assessment of the impact of a person's HIV infection on his or her functioning in the broad areas of activities of daily living, social functioning, and concentration, persistence, or pace. However, we have also extensively revised the rules in response to the comments, and we believe that we have addressed many of the commenters' concerns.

We have addressed most of the concerns by adding listings that provide stand-alone medical criteria for most of the manifestations that were in proposed Listings 14.08M, 114.08L, and 114.08M. The medical criteria in the new stand-alone medical listings are specific to the listed manifestations. (For reasons we explain later, we have deleted the criterion for a CD4 (T4) lymphocyte count; therefore, there are no provisions in the final rules corresponding to proposed Listings 14.08M1 or 114.08M1.) By doing this, the functional criteria become simply an alternative way that individuals with most of the manifestations in the proposed rules can establish that they are disabled under the listings, instead of the only way.

In final adult Listing 14.08N, we now describe episodic manifestations. Listing 14.08N thus includes individuals who suffer from the same manifestation periodically but who are not necessarily continuously ill; whose manifestations, though continuously present, wax and wane in severity; or who suffer episodes of different manifestations that, taken together, demonstrate listing-level severity. Final childhood Listing 114.08O (which replaces proposed Listings 114.08L and 114.08M and applies to children from birth to the attainment of age 18) includes all manifestations of HIV infection (both episodic and continuous). Both new listings include people who have manifestations that are listed in the preceding medical listings but that do not meet the medical criteria, as well as manifestations that are not listed in final Listings 14.08A–M and 114.08A–N.

For reasons we explain below, the final adult listing, 14.08N, now includes only three functional criteria—(1) activities of daily living; (2) social functioning; and (3) concentration, persistence, and pace—and an individual need only establish marked limitations in one of the three areas to show an impairment that meets this listing. We have also revised our definitions of the term "marked" to clarify its applicability in HIV cases.

As we analyzed the comments, we realized that many of them were based on misconceptions about both the proposed rules and how we evaluate disability in general. Although we agreed with those commenters who expressed concerns that some of the conditions tied to the functional criteria in the proposed rules need not be so tied—and we made appropriate changes—we could not agree with those commenters who stated that the proposed functional criteria would be used to deny disability benefits or to disqualify some individuals.

Our disability evaluation policies do not permit denial of disability benefits on the basis that an individual's impairment(s) does not impose functional limitations at the listing level. We use the listings at the third step of our sequential evaluation processes for adults and children to "screen in," i.e., allow, individuals who are clearly disabled. (See §§ 404.1520, 416.920, and 416.924 for our rules on the sequential evaluation processes.) Under these processes, if an individual's impairment(s) is "severe" but does not meet or equal in severity any listing, we reach no conclusion at all about disability. Rather, we move on to the next step of the process and look at other factors to resolve that ultimate issue. We may use the criteria described in these listings to find that an individual is disabled, but we do not use the criteria to find that an individual is not disabled.

Therefore, the nature of this process is such that any time we include a new listing in appendix 1, no matter what the requirements, this is an advantage to an individual who applies for disability benefits because it adds a new way we may find the individual disabled, without adding a new way to find him or her not disabled.

As in the proposed rules, the functional criteria in these final rules serve a very important purpose—to provide individuals who have what may at first seem like less severe manifestations of HIV infection, or combinations of impairments that would not fit neatly into any of the purely medical listings, with a listing their impairments can meet. The listing, therefore, provides claimants with every opportunity to be found disabled as early in the evaluation process as possible. We believe that the commenters who argued against the functional criteria did not understand this purpose and misinterpreted what we intended to be a very beneficial part of the listing. This was partly because we did not explain it clearly enough. But it was also because—as the commenters correctly pointed out—we need not have limited the functional criteria only to certain specific manifestations, that some of the proposed manifestations were in themselves disabling, that some of the manifestations in the listing were more medically serious than others, and that we could have provided alternative medical criteria for some of the manifestations we had proposed.

The following changes respond to the commenters' concerns that some HIV-related medical conditions were included in the listings only in relation to functional standards. At the same time, they retain the flexibility we need for making favorable disability determinations at the listing level using functional criteria.

VOL 58 ISS 126 JL 2 1993 UMI

1. Stand-Alone Medical Criteria

We reviewed each of the medical conditions that were tied to functioning in proposed Listings 14.08M, 114.08L, and 114.08M and attempted to draft a medical description of each condition, at listing-level severity, that did not include a functional evaluation. In doing so, we heeded comments pointing out that some of the medical requirements in proposed Listing 14.08M were already extremely severe without the functional criteria. We did not, however, agree with those commenters who thought that the mere existence of each of the manifestations should be enough to establish listing-level severity. Most of the manifestations we had proposed in Listing 14.08M can vary in severity, responsiveness to treatment, and their impact on functioning. Therefore, we believe it is imperative that each manifestation be described by criteria that define listing-level severity if it is to be a stand-alone medical listing.

We were able to draft stand-alone listings for all the manifestations included in proposed Listings 14.08M2, 114.08L1, and 114.08M2: Pulmonary tuberculosis in final Listings 14.08A1 and 114.08A1; Kaposi's sarcoma in final Listings 14.08E2 and 114.08E2; peripheral neuropathy in final Listings 14.08H and 114.08H; and pneumonia, bacterial or fungal sepsis, meningitis, septic arthritis, and endocarditis in final Listings 14.08M and 114.08N. We were also able to include most of the conditions included in proposed Listings 14.08M3, 114.08L2, and 114.08M3: Mucosal candidiasis, including vulvovaginal candidiasis, and dermatological conditions in final Listings 14.08B2 and 14.08F and 114.08B2 and 114.08F; Herpes zoster in final Listings 14.08D3 and 114.08D3; anemia, granulocytopenia, and thrombocytopenia in final Listings 14.08G and 114.08G; diarrhea in final Listings 14.08J and 114.08J; and sinusitis in final Listings 14.08M and 114.08N. In some cases, the new criteria consist of a reference to another listing (e.g., final Listing 14.08G, anemia, as described under the criteria in 7.02). In other cases, the criteria are new (e.g., final Listing 14.08D3, Herpes zoster either disseminated or with multidermatomal eruptions, that are resistant to treatment).

We did not include fever, weight loss, and oral hairy leukoplakia as stand-alone listings. Fever and weight loss are not medical conditions in themselves, but the observable outcome—i.e., signs—of medical conditions. We believe that there are few people whose sole manifestation of HIV infection is a persistent, high fever without any other observable problems; indeed, the individual will likely have other signs and symptoms that may be evaluated together with the fever. Moreover, any stand-alone medical listing that tried to describe listing-level fever would have to be set at a very high level, would rarely apply, and would be subject to the same criticism that we received about some of the manifestations in the proposed functional listings, i.e., that it is too severe. We believe, therefore, that it would be better to evaluate the few individuals who suffer only from persistent fever (of any level) in terms of their functioning; such individuals may be fatigued and weak, have difficulty doing their daily chores, and may even be confined to their homes or even to bed. Final Listings 14.08N and 114.08O also allow for the possibility that the individual's fever is not constant, but recurrent, which we believe is a more realistic possibility than continuous high fever. To underscore these points, we have included fever among the examples of symptoms and signs that may result in the functional limitations in the listing.

Similarly, weight loss is already inherent in the listings for HIV wasting syndrome and growth disturbance (final Listings 14.08I and 114.08I) as well as the aforementioned new listings for diarrhea. Individuals who have unexplained weight loss or weight loss because of loss of appetite may have impairments that are medically equivalent to one of these listings or the new functional listings, or to listings in other body systems; even those whose weight loss is not as serious as in final Listings 14.08I and 114.08I may have symptoms of fatigue and weakness resulting in listing-level functional restrictions. We have also included weight loss among the examples of signs and symptoms that may result in the functional limitations of the listing.

We did not include oral hairy leukoplakia as a stand-alone medical condition because it is generally an asymptomatic condition that may persist for a relatively long time without interfering with the individual's functioning. We believe, therefore, that each case will have to be evaluated to determine the particular effects of the manifestation on the individual under final Listings 14.08N or 114.08O. We also did not include from the proposed childhood rules parotitis, or the clinical findings of splenomegaly, hepatomegaly, and generalized lymphadenopathy. These conditions and clinical findings can vary greatly from child to child in their severity, medical significance, and impact on a child's ability to function. Because of this, it is not possible to define with solely medical criteria, except in the most extreme terms, a level of severity for these conditions and clinical findings that would interfere with most children's ability to engage in age-appropriate activities to the required degree.

Final Listings 14.08N and 114.08O do not list specific impairments. We made this change partly in response to comments suggesting many other possible manifestations of HIV infection for inclusion in the listing and partly because it is logical. We decided that instead of expanding the list of manifestations, we could respond to the commenters' concerns by abandoning the finite list of HIV-related manifestations and referring instead to "manifestations of HIV infection" in general. This allows for consideration of any manifestations, whether identified in the listing or not. We have also added discussions to final 14.00D8 and 114.00D8, the sections of the prefaces that describe the functional criteria, explaining that these listings may be used not only to evaluate manifestations of HIV infection that are not included in Listings 14.08A–M and 114.08A–N, but to evaluate manifestations that are listed in, but do not meet the criteria of, those listings.

2. The Functional Criteria

Many commenters expressed concern that the functional criteria in proposed Listing 14.08M were based on the functional deficits described in the mental impairment listings for adults in 12.00 of the listings. The commenters were concerned that these criteria, therefore, only related to individuals with mental disorders and were not appropriate measures of severity in the case of individuals with HIV infection. We do not agree. Although adjudicators are most accustomed to applying the functional criteria in 12.00 in the context of mental impairments, those criteria describe broad areas of functioning that are relevant to any individual's ability to work. It does not matter, for example, whether an individual's ability to perform activities of daily living is restricted because of memory loss or hallucinations, or whether it is because of fatigue, headaches, or weakness resulting from a manifestation of HIV infection. In either event, the ability to perform the tasks is compromised.

Nevertheless, we realized from the comments that the proposed rules may not have made application of the functional criteria sufficiently specific

to the evaluation of HIV-related impairments. Therefore, we modified proposed Listing 14.08M to more clearly reflect our original intent, which was to expand the way we assess the severity of HIV-related impairments at the listing level beyond the use of strict medical criteria by using broad functional criteria. We had hoped to include in the listings (via proposed Listing 14.08M3) a group of individuals whom we believed would be very difficult to describe in strictly medical terms—individuals who become ill then improve, only to repeatedly become ill again, either with the same manifestation of HIV infection or with different manifestations.

Based on some commenters' questions about the applicability of the proposed functional criteria to physical disorders, we also realized that proposed paragraph 14.08M4d, repeated episodes of decompensation, was not really a measure of functioning at all, but a description of what we were trying to address in this listing. Unlike its purpose in the mental listings (where decompensation can be a measurement of an individual's ability to tolerate stress), when applied to HIV-related illnesses the criterion measured the persistence and frequency of episodes of manifestations of HIV infection; in effect, it distinguished between individuals who develop and recover from only one or two isolated manifestations of HIV, and those who have a pattern of repeated episodes of illness.

Therefore, we removed proposed Listing 14.08M4d from the list of functional criteria, modified it to make it more specific to HIV, and used it as the introductory criterion for final Listing 14.08N. The final listing is for the evaluation of individuals who have repeated manifestations of HIV infection. We also revised the criterion in response to commenters who pointed out that the requirement in proposed paragraph 14.08M4d for the episodes to occur 3 times a year or once every 4 months and to last for at least 2 weeks was unnecessarily inflexible. In the third paragraph of 14.00D8 we have retained the provision that the conditions may occur on an average of 3 times a year, or once every 4 months, and each last at least 2 weeks, and at the same time we provide additional flexibility. Specifically, we now provide that the episodes may also last for less than 2 weeks and occur substantially more frequently than 3 times a year or every 4 months, or that they may occur less frequently than 3 times a year or once every 4 months but last substantially longer than 2 weeks each time.

In response to commenters who asked us to include criteria for some of the more common symptoms and signs of individuals who do not have CDC-defined AIDS, we adopted and expanded language from Listing 14.02B, the listing for systemic lupus erythematosus, about which we received literally thousands of favorable public comments. The language in final Listing 14.08N explains that disability under this listing will result from "significant, documented, symptoms or signs (e.g., fatigue, fever, malaise, weight loss, pain, night sweats)" that cause functional limitations. (Unlike Listing 14.02B, we do not provide that there must be both symptoms and signs in this listing. The constitutional symptoms and signs in Listing 14.02B help to define the syndrome of systemic lupus erythematosus and its severity. In contrast, the criterion in final Listing 14.08N includes any symptoms or signs that can be the cause of the functional limitations because the existence of the impairment has already been established.)

We retained the three remaining functional criteria as the standards for measuring functional deficit. Having more accurately described the individuals to whom we intend the listing to apply, we then agreed with commenters who stated that marked functional restrictions in any one of the categories would be sufficient to demonstrate listing-level severity. Consequently, final Listing 14.08N requires marked limitations in only one of the three broad areas of functioning.

We want to reiterate, however, that we retained a revised version of the proposed Listing 14.08M4d criterion in the final listing. Our intention in modifying and relocating the criterion is to better express our original intent and to recognize that the proposed fourth criterion was not a "functional" criterion in this listing but a medical one. We believe that the result is an improvement over the proposed rule. Individuals with less serious manifestations than several of those we had proposed in Listing 14.08M2 and those who have only one of the manifestations we had proposed in Listing 14.08M3 will now be able to show that they have impairments that meet this listing. Furthermore, even though there is, in effect, no change in the functional severity level of this listing for those people whose impairments would have satisfied one of the criteria in proposed Listing 14.08M4a (activities of daily living), 14.08M4b (social functioning), or 14.08M4c (concentration, persistence, or pace) and the criterion in 14.08M4d—thus satisfying two of the proposed "functional" criteria—we have made the functional criteria more accurate measures of an individual's true functional limitations. No claimant will have to establish that he or she has marked limitations in two of the three true areas of functioning about which so many of the commenters were concerned. In this way, by requiring that a claimant show marked limitations in only one of the three functional areas, the area of social functioning, about which many commenters were concerned, becomes only one way among three available to establish disability at the listing level and can only benefit claimants by providing another area in which to document functional restrictions. However, if social functioning is not markedly limited, a claimant may still show listing-level impairment by demonstrating marked limitations in one of the other areas, activities of daily living or concentration, persistence, or pace.

3. The Childhood Functional Criteria: Final Listing 114.08O

We also did not adopt the recommendations of commenters who urged us to eliminate the functional criteria for children in proposed Listings 114.08L and 114.08M. These commenters noted that our regulations, in § 416.926a, already allow for a finding of equivalence when the functional limitation(s) resulting from a child's impairment(s) is the same as the disabling functional consequences of a listed impairment. Therefore, they did not believe that it was necessary to restate this previously established policy within the context of this listing.

Although we agree that proposed Listings 114.08L and 114.08M were based on a principle similar to functional equivalence, and we agree that most or all children whose impairments meet the criteria of proposed Listing 114.08L or 114.08M would have been found disabled based on the functional equivalence rule, we did not want to take the chance that our rules would be misinterpreted as being more advantageous to adults. In addition, the concept of functional equivalence applies only to childhood SSI claims under title XVI of the Act. Even though SSI claims constitute the great majority of childhood disability applications, it is possible for individuals under age 18 to apply for disability benefits (both as disabled minor children and as workers) under title II. The rules on functional

equivalence do not apply in these cases, and such children could be disadvantaged by removal of the rule.

We did not change the proposed childhood functional criteria the same way we changed the adult criteria. The adult criterion we changed (repeated episodes of decompensation) is not applicable to the evaluation of functioning in children. Further, the childhood functional criteria vary depending on the age of the child. We concluded that the functional criteria in 112.00ff represent the best way to measure broad functional restrictions in children. Consequently, we retained the proposed childhood functional criteria (which cross-refer to Listings 112.02 and 112.12).

4. CD4 (T4) Count

Another change in the final listings is the elimination of a specific criterion for CD4 lymphocyte count. Proposed Listings 14.08M1 and 114.08M1 used a CD4 count of less than or equal to 200 cells/mm^3 as a measure of the severity of immunodeficiency. A number of public commenters questioned why we used this particular criterion to evaluate impairment severity. Some said that individuals with higher CD4 counts than 200 could be just as functionally limited, and suggested that we use a higher CD4 count. Some commenters said that a CD4 count of 200 should, in and of itself, be sufficient to establish listing-level severity, without the need to show functional restrictions. Others stated that using a CD4 count is not appropriate at all because it is not a good indicator of impairment severity.

In light of these comments, we reevaluated the listing and realized that, while a low CD4 count (and especially a rapidly declining CD4 count) is an indicator of a compromised immune system and a valuable tool for determining when to institute prophylactic treatment, there is no consistent correlation between a given CD4 count and how or whether an individual is functionally impaired by HIV infection. Individuals with high CD4 counts may be quite severely limited, while others with very low counts may be able to continue normal activities. One individual who commented on our proposed rules related his own story of living with HIV infection, noting that he continued to feel well and to work until his CD4 count was well below 100. He argued that to base our rules on such an unreliable indicator would be to unfairly stigmatize individuals who are able to function well despite low CD4 counts.

Therefore, we decided not to include a specific CD4 lymphocyte count as a criterion in the listings. For informational purposes, we have also included in final 14.00D3, 14.00D4, and 114.00D4 general statements about the role CD4 counts play in disease susceptibility.

In final 114.00D3, we also retained guidance that permits a finding of the existence of HIV infection in very young children based on a CD4 count. We did this because these tests are helpful in making the difficult diagnosis of HIV infection in infants. However, based on a commenter's suggestion, which was consistent with other information we received, we extended this provision (which we had proposed to apply to children up to 15 months of age) to cover children up to 24 months of age.

Provisions of the Final HIV Rules

14.00D Human Immunodeficiency Virus (HIV) Infection

Final 14.00D introduces the subject of HIV infection and lists some of the information that is important in documenting and evaluating the disease. The section explains what is acceptable evidence of HIV infection and its manifestations. It provides definitions of some of the terms we use in the listings, including the terms associated with the functional listing, 14.08N.

We extensively revised final 14.00D, both substantively and technically, based on public comments. In place of the 23 paragraphs we had proposed for 14.00D in the NPRM, the final rules are now divided into 8 numbered sections. We have also deleted repetitious language and several paragraphs that are no longer necessary in 14.00D because we have included the impairments they described in Listing 14.08.

14.00D1 HIV Infection

Final 14.00D1, which describes "HIV infection" and "AIDS," corresponds to the first paragraph of proposed 14.00D. We revised the final language to emphasize that an individual need not have CDC-defined AIDS to have an impairment that meets or is equivalent in severity to, the listed impairments in final Listing 14.08.

14.00D2 Definitions

Final 14.00D2 is a new section we added in response to comments asking us to define some of the terms in the listing. The final section defines the terms "resistant to treatment," "recurrent," "disseminated," and "significant involuntary weight loss." It states that the first three terms have the same general meaning as used by the medical community, but cautions that the precise meaning of the terms will necessarily vary depending on the specific disease or condition in question, the body system affected, the usual course of the disorder and its treatment, and other relevant circumstances. We then provide definitions of the three terms.

For the fourth term, "significant involuntary weight loss," which is used in Listing 14.08I, we explain that the term does not describe a specific minimum amount or percentage of body weight. We still provide that we always consider an involuntary weight loss of 10 percent of baseline to be significant. However, in response to a comment, we now also provide that loss of less than 10 percent of body weight may be significant, especially in a smaller person. To illustrate the principle, we provide examples of two women, showing when weight loss of less than 10 percent of body weight may and may not be significant.

14.00D3 Documentation of HIV Infection; 14.00D4 Documentation of the Manifestations of HIV Infection

Final 14.00D3 provides our standards for documenting the existence of HIV infection and final 14.00D4 provides our standards for documenting its manifestations. These sections correspond to the provisions we had proposed in the third through seventh paragraphs of proposed 14.00D. However, in response to many comments, we extensively revised these sections.

We revised final 14.00D3 to explain that, even though the medical evidence must include documentation of the existence of HIV infection (which is required by the statute), documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice. We adopted the additional language about generally acceptable methods of diagnosis from comments pointing out that many claimants will not have undergone the kinds of testing we had described. Many commenters noted that clinicians do not always perform laboratory testing for HIV because the existence of HIV infection can be inferred, or presumed, based on the existence of certain opportunistic infections. These commenters pointed out that even the proposed rules recognized this practice. Some commenters also pointed out that in many instances where claimants have been tested for the HIV, the test results

will not be available because of privacy concerns.

The section is then divided into two parts: 14.00D3a, which describes how HIV infection may be diagnosed definitively, and 14.00D3b, which describes how HIV infection may be diagnosed presumptively—that is, be acceptably documented without the definitive laboratory evidence described in 14.00D3a. In response to comments with which we agreed, we clearly state in final 14.00D3a that when laboratory testing for HIV infection has been performed, every reasonable effort must be made to obtain reports of the results of that testing. We also clarified the language to explain why the results of a positive ELISA screening test are ordinarily verified by a more definitive test for HIV antibodies. In final 14.00D3a(ii), we combined the tests specifically for HIV antigen into one category, and included the laboratory tests named in the proposed listing as examples. We also added cerebrospinal fluid specimens to this category of clinical tests to make the adult rules consistent with the childhood rules; even though such testing is rare in adults, it is not unheard of. In response to a comment, we expanded final 14.00D3a(iii), which was formerly the fourth example in the fourth paragraph of proposed 14.00D, to include other tests that are acceptable methods of detecting HIV and consistent with the prevailing state of medical knowledge.

The third paragraph of final 14.00D3a has been adapted from the second sentence of the third paragraph of proposed 14.00D. In response to comments, and for reasons we have already explained above in the summary of revisions to Listing 14.08N, we clarify that, even though the level or rate of decline of CD4 count correlates with the extent of immune depression, a reduced CD4 count alone does not definitively diagnose the presence of HIV infection or provide information about the severity or functional effects of HIV infection; additional documentation will always be necessary.

Final 14.00D3b describes when documentation of HIV infection is possible without definitive laboratory evidence. It states that HIV infection may be documented by medical history, clinical and laboratory findings, and diagnoses shown in the medical evidence, provided that the documentation is consistent with the prevailing state of medical knowledge and clinical practice, and is consistent with the other evidence. As an example, it states that HIV infection will be documented if the individual has an opportunistic disease predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to that disease. This is a provision we moved from proposed Listing 14.08A as part of our simplification of the listing.

Final 14.00D4 explains the documentation requirements for opportunistic diseases and other manifestations of HIV infection. It is structured in the same way as final 14.00D3, with a section (final 14.00D4a) describing definitive methods of diagnosis, and a section (final 14.00D4b) describing other acceptable methods of diagnosis. It notes that every reasonable effort should be made to obtain whatever specific laboratory evidence is available. If only hospitalization summaries or treating physician reports are available, this evidence should include details of the clinical findings and the results of the diagnostic or microscopic studies.

As in final 14.00D3, we have added guidance that documentation of manifestations of HIV infection may be by laboratory evidence or documentation which is consistent with the prevailing state of medical knowledge and clinical practice, and consistent with the other evidence. We have also included in final 14.00D4a a discussion of the relevance of CD4 counts, which cross-refers to the discussion in 14.00D3a.

Final 14.00D4b discusses other acceptable documentation of opportunistic diseases and other manifestations of HIV infection. In response to comments, with which we agree, we have clarified the explanation of how opportunistic diseases and manifestations of HIV infection may be documented by medical history, clinical and laboratory findings, and diagnoses indicated in the medical evidence. Though a diagnosis of opportunistic disease or HIV manifestation may not be supported by a definitive test, the diagnosis is acceptable documentation provided that it is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. As a point of clarification, we have also added a discussion about cytomegalovirus (CMV) disease, which presents special documentation issues. Because the CMV is an organism that is present in many individuals who are not ill, a positive serology in itself does not confirm that a person has CMV disease. Therefore, in this circumstance, we require confirmation by biopsy or other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice. One such method, which we single out in the new paragraph, is diagnosis by an ophthalmologist of chorioretinitis caused by CMV.

14.00D5 Manifestations Specific to Women

The two paragraphs of final 14.00D5 replace the tenth through twelfth paragraphs of proposed 14.00D and discuss the evaluation of HIV infection in women. We shortened the discussion of manifestations specific to women contained in proposed 14.00D because we have incorporated the specific diseases mentioned in the proposed prefatory language directly into final Listings 14.08A5 (pelvic inflammatory disease), 14.08D2 (genital herpes), and 14.08F (vulvovaginal candidiasis) as stand-alone medical listings.

In final 14.00D5, we have retained the basic guidance from the NPRM for evaluating HIV infection. Both paragraphs of final 14.00D5 continue to alert adjudicators to give careful consideration and scrutiny to the medical evidence when evaluating HIV infection and its manifestations in women.

The first paragraph of final 14.00D5 corresponds to the tenth paragraph of proposed 14.00D. We have revised it slightly following the publication of the NPRM because most women with severe immunosuppression do, in fact, exhibit the same kinds of manifestations that men do, and the HIV infection need not necessarily be in the end stages for this to happen. However, in addition to these manifestations, HIV infection does have effects in some women that are different from those in men with the disease, sometimes by increasing the frequency and resistance to treatment of conditions, including gynecologic conditions, that occur in women who do not have HIV infection. We have, therefore, revised the last two sentences of the paragraph to say that HIV infection may have different manifestations in women than in men, and that adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions that are both specific to women and common in the female population, but may be more severe because of the HIV infection.

The second paragraph of final 14.00D5 includes material that was in the remaining two paragraphs of the NPRM and explains the foregoing principles in more detail. Because we have incorporated the most important conditions specific to women directly into the listing, we now no longer state that gynecologic conditions may result only in equivalence determinations under the listings. Instead, we provide

that manifestations of HIV infection in women may be evaluated under the specific listing criteria (such as Listing 14.08E, which explicitly lists cervical cancer), under an applicable general listing category (such as final Listing 14.08A5), or under final Listing 14.08N (which considers the specific impact of an impairment(s) that does not otherwise meet a listing on the individual's ability to function). We believe that final Listing 14.08N will be especially useful in cases of women who do not suffer from a continuous, listing-level manifestation of HIV infection, but suffer exacerbations and remissions of their manifestation, or a number of consecutive different manifestations.

14.00D6 Evaluation

Final 14.00D6 gathers under one heading the three paragraphs of the NPRM that addressed issues of evaluation: the second, thirteenth, and last paragraphs of proposed 14.00D.

We consolidated the repetitive language in these paragraphs but retained the discussion of the need to evaluate the impact of all impairments in individuals with HIV infection. We changed the second sentence of the first paragraph of final 14.00D6 (the second paragraph of proposed 14.00D) to emphasize that equivalence to other listings must be considered in evaluating an individual's HIV disease or condition. We also revised the subsequent discussion, which was adapted from the thirteenth paragraph of proposed 14.00D, but which was confined to mental manifestations in the proposed rules. The final rule refers to both mental and physical impairments and removes any implication that we did not consider that mental signs and symptoms could be manifestations of HIV infection.

We also explain that some individuals with HIV infection may have impairments that are less than listing-level severity, but still may be disabling. Evaluation of these cases should proceed through the final steps of the sequential evaluation process.

14.00D7 Effect of Treatment

Final 14.00D7 is an expanded version of the fourteenth paragraph of proposed 14.00D. It discusses the need to evaluate the impact of treatment in individuals with HIV infection. In response to public comments, with which we agreed, we clarified the first and second sentences of the proposed paragraph by specifically referring to both the potential benefits and the potential adverse effects of treatment. We expanded the explanation dealing with individual responses to treatment to further emphasize the importance of evaluating adverse or beneficial consequences of treatment on a case-by-case basis. We also added language that explains why it is important to know that the effects of treatment may be temporary or long-term as a reminder that any decision regarding the impact of treatment should be based on a sufficient period of treatment for an accurate and realistic assessment.

14.00D8 Functional Criteria

Final 14.00D8 discusses the functional criteria contained in Listing 14.08N. We extensively modified the proposed language in response to comments and to conform with the changes we made in the functional criteria of final Listing 14.08N, already described above.

The first paragraph of final 14.00D8, together with the third paragraph, replaces the twenty-second paragraph of proposed 14.00D, which had described the fourth area of functioning, repeated episodes of deterioration or decompensation in work or work-like settings. This paragraph now explains that the provisions of final Listing 14.08N apply both to manifestations that are listed in Listings 14.08A through M but that do not meet those listings, and to unlisted manifestations. In this way, instead of using a finite list of manifestations as we had proposed, the provision now applies to any type of manifestation.

The second paragraph stresses important considerations in the evaluation of HIV infection. It requires an assessment of the full impact of signs, symptoms, and laboratory findings on an individual's ability to function, and mentions the following specific factors: Symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations, or periods of exacerbation and remission; and the functional impact of treatment, including the side effects of medication.

The third paragraph of final 14.00D8 (as well as the first paragraph) replaces the twenty-second paragraph of the NPRM. In the third paragraph, we provide the definition of the term "repeated" as we use it in Listing 14.08, which we have already explained above. Our intent is to provide as much flexibility as possible to include "repeated" manifestations, provided that the episodes are of sufficient frequency or duration as to be at the listing level.

The fourth through eighth paragraphs of final 14.00D8 replace the seventeenth through twenty-first paragraphs of 14.00D in the NPRM. Inasmuch as we require an individual to satisfy only one of the three functional criteria now in Listing 14.08N, we have revised the fourth paragraph accordingly. We have added language that reminds adjudicators that the functional restrictions may result from the impact of the manifestation on mental or physical functioning or both. We have also moved into this paragraph the language in paragraphs 18 through 21 of the NPRM about the importance of considering symptoms (such as depression, fatigue, or pain) and the side effects of medication when assessing functioning.

In response to comments about the seventeenth paragraph of the NPRM, now the fifth paragraph of final 14.00D8, we revised the general guidance definition of the term "marked." The revisions now state that a marked limitation does not represent a quantitative measure of the individual's ability to do an activity for a certain percentage of the time. We also state plainly, in response to many comments, that an individual with a marked limitation is not totally precluded from performing an activity and that the term "marked" does not imply that the individual is confined to bed, hospitalized, or in a nursing home. This has always been our intent in the rules; our reason for including the statement that "marked * * * means more than moderate, but less than extreme" is to illustrate that there is a level of limitation higher than the "marked" level, a situation that would not be possible if "marked" meant complete limitation.

In the sixth, seventh, and eighth paragraphs of final 14.00D8, we revised the descriptions of the three general areas of functioning to make them more specific to people who have HIV infection and to respond to concerns in the public comments. For instance, in the seventh paragraph, we now explain that an individual may be able to communicate with close friends and relatives yet still have a marked limitation of the ability "to engage in social interaction on a sustained basis." This, too, has always been our intent. The ability to communicate effectively with close family and friends is not necessarily indicative of an individual's ability to maintain social contact independently or in a work setting.

Even though all of the foregoing information is basic to the use of the rules we proposed in the NPRM, and would have been understood by our adjudicators, we have included it in the preface to the final listing to make our policy clearer in the regulations.

Finally, we deleted from the preface the material that was in the seventh, eighth, and ninth paragraphs of proposed 14.00D. The seventh paragraph described documentation requirements for Pneumocystis carinii pneumonia, and has been superseded by the new discussions on documentation of the manifestations of HIV infection at the listing-level. We incorporated the provisions of proposed paragraphs eight and nine directly into their respective listings (14.08H1 for HIV encephalopathy, and 14.081 for HIV wasting syndrome).

14.08 Human Immunodeficiency Virus (HIV) Infection

This new listing adds to the regulations our criteria for evaluating HIV infection at the listing level. The listing includes a range of opportunistic diseases, cancers, and other manifestations that are indicative of listing-level severity in an individual with HIV infection. Specific manifestations that are considered indicative of listing-level HIV infection are in final Listings 14.08A–M, grouped by type (e.g., fungal infections, bacterial infections, malignant neoplasms) for ease of reference. Final Listing 14.08N includes any manifestations of HIV infection that cause listing-level functional limitations.

Final Listing 14.08 is significantly different from the proposed listing. We reorganized and changed the proposed listing in the following ways:

To improve the clarity of the final listing criteria, we deleted specific documentation requirements from each HIV manifestation listed in 14.08 and retained only one general cross-reference to the comprehensive discussion of documentation requirements in final 14.00D3 (for documentation of the existence of HIV infection) and 14.00D4 (for documentation of the manifestations of HIV infection). Because we have included a discussion of opportunistic disease predictive of a defect in cell-mediated immunity that document HIV infection in final 14.00D3, we have deleted proposed 14.08A.

14.08A Bacterial Infections

Final Listing 14.08A, Bacterial infections, includes the proposed listings that described bacterial infections. Thus, final Listing 14.08A1, Mycobacterial infection, includes proposed Listings 14.08A7, 14.08D, and 14.08M2b; final Listings 14.08A2, Nocardiosis, and 14.08A3, Salmonella bacteremia, were in proposed Listing 14.08F We combined the proposed listings for mycobacterial infections, which are a kind of bacterial infection, because we agreed with those commenters who pointed out that the proposed listings (except for 14.08M2b, Pulmonary tuberculosis) resulted in a finding of "meets" regardless of the kind of the mycobacterial infection. (We made a technical correction to the name of one of the three bacteria we listed as examples of causes of mycobacterial infections, M. avium-intracellulare.) We added pulmonary tuberculosis, resistant to treatment, in response to comments that asked us to create a stand-alone medical listing for this condition.

For the same reason, we added syphilis or neurosyphilis to final Listing 14.08A4, and required that the sequelae be evaluated under the criteria for the affected body system. We also added listing criteria for multiple or recurrent bacterial infections, such as pelvic inflammatory disease, in final Listing 14.08A5. The final listing includes criteria for hospitalization or intravenous antibiotic treatment as a measure of severity.

14.08B Fungal Infections

Final Listing 14.08B includes material originally proposed in Listings 14.08A and 14.08C. Final Listing 14.08B2, Candidiasis (at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal membranes; or involving the esophagus, trachea, bronchi, or lungs) combines the criteria of proposed Listings 14.08A1 and 14.08C1. Final Listings 14.08B3, Coccidioidomycosis, and 14.08B5, Histoplasmosis, were both in proposed Listing 14.08C. Final Listing 14.08B4, Cryptococcosis, was in proposed Listings 14.08A2 and 14.08C2; we have also added a reference to cryptococcal meningitis in partial response to the public comments asking us to list the criteria in proposed Listing 14.08M2 as stand-alone listings. (Other forms of meningitis are listed in final Listing 14.08M.) In response to comments, we added aspergillosis to 14.08B1 and mucormycosis to 14.08B6; neither of these manifestations was in the proposed listing.

14.08C Protozoan or helminthic infections

Final Listing 14.08C1 includes manifestations originally proposed as Listings 14.08A3 and 14.08B1 (both for cryptosporidiosis) and 14.08B4 (isosporiasis). In response to comments, we also added microsporidiosis to final Listing 14.08C1. Final Listing 14.08C2, for Pneumocystis carinii pneumonia, includes the manifestations that were in proposed Listings 14.08A8 and 14.08B2. In response to comments, we added extrapulmonary pneumocystis infection to final 14.08C2. Thus, the listing includes all infections with the Pneumocystis carinii organism. We listed both the pneumonia and the extrapulmonary infections (instead of a single description of Pneumocystis carinii infection) because pneumonia is such a common manifestation of HIV infection.

Final Listing 14.08C3, Strongyloidiasis, extra-intestinal, was proposed Listing 14.08B5. Final Listing 14.08C4, Toxoplasmosis, combines proposed Listings 14.08A10 and 14.08B3 into one listing.

14.08D Viral Infections

Final Listing 14.08D1, Cytomegalovirus disease, combines proposed Listings 14.08A4 and 14.08E1 The final criteria for cytomegalovirus disease include a cross-reference to the new discussion of documentation of the disease in 14.00D4, already described.

Final Listing 14.08D2, Herpes simplex, combines proposed Listings 14.08A5 and 14.08E2. We revised the language of those rules slightly for clarity, and divided the listing into three separate criteria. We added to final Listing 14.08D2a, mucocutaneous infection, examples of such infections that may result from Herpes simplex virus.

Final Listing 14.08D3 is a stand-alone medical criterion for Herpes zoster, formerly in proposed Listing 14.08M3h as an impairment that required limited functioning. The listing is met with either disseminated infection or with multidermatomal eruptions that are resistant to treatment. Final Listing 14.08D4, Progressive multifocal leukoencephalopathy, was in proposed Listings 14.08A9 and 14.08E3. We also added a new Listing 14.08D5 for viral hepatitis in response to the public comments.

14.08E Malignant Neoplasms

Final Listing 14.08E consolidates the two proposed listings for neoplastic diseases, Listings 14.08I and 14.08J, and proposed Listing 14.08A6 (which was for primary lymphoma of the brain in individuals less than 60 years old). In the final rules, we use the term "malignant neoplasms" instead of the term "neoplasms" (which was in the proposed rules) to more accurately reflect the nature of these disorders. In response to public comments pointing out that we considered all lymphomas associated with HIV infection to be disabling, we combined all types of lymphomas into one listing, 14.08E3. We now mention primary lymphoma of the brain, Burkitt's lymphoma,

immunoblastic sarcoma, other non-Hodgkin's lymphoma, and Hodgkin's disease only as examples. In response to numerous comments, we also added as Listing 14.08E2 stand-alone medical criteria for Kaposi's sarcoma, which was in the proposed functional listing, 14.08M2. Final Listing 14.08E2 recognizes that there is a range of severity to Kaposi's sarcoma and, therefore, provides specific criteria for extensive oral lesions, or involvement of the gastrointestinal tract, lungs, or other viscera, or involvement of the skin or mucous membranes as described in final Listing 14.08F, discussed below.

Final Listing 14.08E1, Carcinoma of the cervix, was proposed Listing 14.08J2. Final Listing 14.08E4, Squamous cell carcinoma of the anus, was proposed Listing 14.08J3.

14.08F Conditions of the Skin or Mucous Membranes

In response to numerous comments, we added a new Listing 14.08F to the final rules. The listing includes criteria for conditions of the skin or mucous membranes, including mucosal candida, such as vulvovaginal candidiasis (which we had proposed with functional criteria in Listing 14.08M3f) and persistent dermatological conditions, such as eczema or psoriasis (proposed with functional criteria in Listing 14.08M3i). We added to this listing examples, including condyloma caused by human papillomavirus and genital ulcerative disease. Because these conditions may range in severity, we have provided criteria for extensive fungating or ulcerating lesions not responsive to treatment. We also include a cross-reference to the skin listings in 8.00ff, in the event they might apply.

14.08G Hematologic Abnormalities

In response to comments, we have added a new final Listing 14.08G with stand-alone medical criteria for the HIV-related hematological abnormalities we had proposed to link with functional criteria (anemia, granulocytopenia, and thrombocytopenia) in proposed Listings 14.08M3a-c. The listing consists of cross-references to existing hematological listings as a measure of severity.

14.08H Neurological Abnormalities

In response to public comments, we have expanded the proposed listing for HIV encephalopathy (proposed Listing 14.08G) into a general listing category for neurological manifestations of HIV infection, final Listing 14.08H. Final Listing 14.08H1 combines the proposed listing for HIV encephalopathy (proposed Listing 14.08G) with its definition in the eighth paragraph of proposed 14.00D. We revised the description from proposed 14.00D to remove superfluous language. We changed the phrase "cognitive and/or motor dysfunction" to "cognitive or motor dysfunction" because either of these findings is sufficient to find that the listing is met; therefore, "and/or" was unnecessary. We also deleted the requirement that the dysfunction progress "over weeks and months in the absence of a concurrent illness." The phrase "over weeks and months" was unclear: If there had already been months of progression, it is self-evident that weeks would have also passed. Moreover, "weeks and months" is an imprecise standard. Similarly, "in the absence of a concurrent illness" is unnecessary because it speaks to the issue of documentation of the existence of the manifestation called HIV encephalopathy.

Final Listing 14.08H2 adds listing criteria for other neurological manifestations of HIV infection, including peripheral neuropathy, which was in proposed Listing 14.08M2. The impairments in final Listing 14.08H2 must be evaluated under the criteria for the neurological listings in 11.00ff.

14.08I HIV Wasting Syndrome

Final Listing 14.08I combines the proposed listing for HIV wasting syndrome (proposed Listing 14.08H) with its definition in the ninth paragraph of proposed 14.00D. We clarified the proposed language to more accurately reflect the criteria for wasting syndrome. We also corrected a typographical error in the proposed rule: We intended to require chronic diarrhea for 1 month, not 2 months as stated in proposed 14.00D.

14.08J Diarrhea

Final Listing 14.08J is new, and includes stand-alone medical criteria for evaluating listing-level chronic diarrhea, which we had proposed with functional criteria in Listing 1408M3j.

14.08K Cardiomyopathy

The final listing for cardiomyopathy in 14.08K now includes a cross-reference to the criteria in 11.04 of the neurological listings. This addition makes the criteria for HIV-related cardiomyopathy consistent with the criteria for cardiomyopathy in the listing of impairments for the cardiovascular system.

14.08L Nephropathy

We modified the proposed listing for nephropathy, proposed 14.08L, to cross-refer to the entire genitourinary system listings section, rather than to specific listings in keeping with similar revisions throughout these final rules.

14.08M

In 14.08M of the final listing, we combined the proposed listings criteria for pneumonia in 14.08M2a, bacterial or fungal sepsis in 14.08M2C, meningitis in 14.08M2d, septic arthritis in 14.08M2e, endocarditis in 14.08M2f, and radiographically documented sinusitis in 14.08M3k into a general group of HIV-related manifestations that are resistant to treatment and that alone meet the listing without consideration of functional criteria. In some cases, specific variants of these conditions are described in other listings (e.g., bacterial sepsis under final Listing 14.08A, cryptococcal meningitis under final Listing 14.08B4). Therefore, we specify that final Listing 14.08M applies only to these infections if they are not listed in 14.08A–14.08L.

14.08N Repeated Manifestations of HIV Infection

Final 14.08N contains criteria (from proposed Listing 14.08M) for evaluation of manifestations of HIV infection based on functional consequences. We have extensively revised the proposed listing, as discussed above.

114.00D Human Immunodeficiency Virus (HIV) Infection

As we have already explained, we added a new 114.00C, Allergies, growth impairments, and Kawasaki disease, to correspond to 14.00C of the adult rules. This required us to redesignate proposed 114.00C to final 114.00D, which also makes all of the final designations in the preface to the childhood rules parallel the adult rules. We also revised most of final 114.00D of the childhood rules in the same way as the adult rules. In place of the 17 paragraphs we had proposed in 114.00C, final 114.00D is now divided into 8 sections with the same headings and organization as in 14.00D, except that we have added references to children in the headings. Of course, we also revised the text as necessary to refer to children. Thus, final 114.00D1, HIV infection, is the same as final 14.00D1, except that we refer to children instead of adults.

Final 114.00D2, Definitions, is the same as final 14.00D2, except that it does not include a paragraph corresponding to the last paragraph of final 14.00D2. The last paragraph in final 14.00D2 defines the term "significant involuntary weight loss" as it is used in final Listing 14.08I. We did

not include a similar explanation in the childhood rules because final Listing 114.08I, Growth disturbance, contains three separate criteria for assessing weight loss in children and is, therefore, more precise than the adult rule.

In response to comments, we extensively revised the discussions in final 114.00D3, Documentation of HIV infection in children, and 114.00D4, Documentation of the manifestations of HIV infection in children. Except as noted below, these sections parallel final 14.00D3 and D4.

In final 114.00D, we have revised, clarified, and expanded the guidance in the fourth and fifth paragraphs of proposed 114.00C for establishing the existence of HIV infection in children. For reasons we explain in the public comments section of this preamble, we changed the proposed rules that referred to children up to the age of 15 months to apply to children up to the age of 24 months.

Final 114.00D3a(i) corresponds to the first category in the fourth paragraph of proposed 114.00C. In addition to revising the paragraph in the same way as the corresponding adult rule, we added a new first sentence to clarify that HIV infection is not documented in children under 24 months of age by antibody testing. Inasmuch as any kind of specimen (such as serum, lymphocyte culture, or cerebrospinal fluid) that contains HIV antigen definitively diagnoses HIV infection, we deleted the repetitive references to HIV antigens from the proposed rules (the second and third criteria in the fourth paragraph of proposed 114.00C and the first and second criteria in the fifth paragraph) and provide only one all-inclusive criterion in final 114.00D3a(ii). In final 114.00D3a(iii) we added the immunoglobulin A (IgA) serological assay specific for HIV as another test that documents HIV infection in children. Although this test is not widely available, it is highly accurate for diagnosis of HIV infection.

Final 114.00D3b describes when documentation of HIV infection is possible without definitive laboratory evidence. We have expanded the explanation of why infants may have serum antibodies for HIV but not have HIV infection, formerly in the fifth paragraph of proposed 114.00C, and have extended the age limit from 15 months to 24 months in response to comments and information we received. We also include criteria for situations in which the presence of HIV infection may be presumed in such infants when there are HIV antibodies and other signs of the infection, such as a significantly depressed CD4 count, even though these findings would not definitively diagnose the presence of the disease. In response to comments, we added to these criteria abnormal immunoglobulin G (IgG) and abnormal CD4/CD8 ratio. As in the adult rules, we provide that the presence of HIV infection in children may also be established by medical history, clinical and laboratory findings, and diagnoses consistent with the prevailing state of medical knowledge and clinical practice, as, for example, when the child has an opportunistic disease predictive of a defect in cell-mediated immunity and there is no other known cause of diminished resistance to that disease.

Final 114.00D4 explains the documentation requirements for opportunistic diseases and other manifestations of HIV infection in children. Final 114.00D4a describes the methods of documenting manifestations of HIV infection by definitive diagnosis. It is identical to final 14.00D4a of the adult rules except that we have added a reference to children.

Final 114.00D4b discusses other acceptable documentation of opportunistic diseases and HIV manifestations. It is identical to final 14.00D4b of the adult rules except that we have added a reference to children.

Final 114.00D5 replaces the discussions in the ninth, tenth, and eleventh paragraphs of proposed 114.00C. For reasons we explain in the public comments section of this preamble, we deleted the proposed text on the epidemiology of HIV infection in children, the text discussing the mean age of diagnosis in infants, and the provisions on the course and spectrum of the disease in children age 13 or older. We also deleted the sentence from the ninth paragraph of proposed 114.00C that cross-referred to the adult listing for HIV wasting syndrome; instead, we have provided explicit listing criteria for the evaluation of weight loss in children in final Listing 114.08I.

In final 114.00D5, we continue to acknowledge that HIV infection can manifest itself differently in children than in adults, and have expanded the provisions describing these differences in response to comments. We moved the proposed guidance on HIV encephalopathy and neurologic problems into a separate paragraph because neurological impairments may be more subtle and difficult to detect in children than in adults. We also added two new paragraphs discussing the evaluation of bacterial infections; as part of this guidance, we point out that older female children may have pelvic inflammatory disease, just as women do.

Final 114.00D6, Evaluation of HIV infection in children, replaces the second, twelfth, and sixteenth paragraphs of 114.00C of the NPRM. The first and second paragraphs of the section are identical to the first and second paragraphs of final 14.00D6, except that we have used the word "child" as appropriate. The third paragraph contains the same information as the third paragraph in final 14.00D6, except that it refers to the sequential evaluation process for children in § 416.924 of part 416. As in the adult rules, final 114.00D6 includes a discussion of the need to evaluate the impact of all impairments in children with HIV infection and explains that some children with HIV infection may have severe impairments that are less than listing-level severity, but that may still be disabling. Evaluation of these cases should proceed through the final step of the sequential evaluation process, where an individualized functional assessment is performed.

Final 114.00D7, Effect of treatment, is an expanded version of the thirteenth paragraph of proposed 114.00C. As in final 14.00D7 of the adult rules, it discusses the need to evaluate the impact of treatment in children with HIV infection and refers to both the potential benefits and the potential adverse effects of treatment on a case-by-case basis. The first and third paragraphs of final 114.00D7 are identical to the corresponding paragraphs in final 14.00D7 except that we have used the word "child" as appropriate. The second paragraph is nearly identical to the second paragraph of final 14.00D7 except that we use an example of a childhood infection, otitis media, and the word "child" as appropriate.

Final 114.00D8, Functional criteria, discusses the functional criteria contained in final Listing 114.08O. We modified the proposed language in order to conform with the changes we made in the functional criteria (see "Explanation of the Final Rule," above).

114.08 Human Immunodeficiency Virus (HIV) Infection

This new listing adds to the regulations our criteria for evaluating HIV infection in children at the listing level. The listing includes a range of opportunistic diseases, cancers, and other manifestations that are indicative of listing-level severity in children with HIV infection. A separate listing is necessary for children because children with HIV infection may differ from adults in the mode of infection, clinical manifestation, and course of the disease

VOL 58 ISS 126 JL 2 1993 UMI

Specific manifestations that are considered indicative of listing-level HIV infection are in final Listings 114.08A–N, grouped by type (e.g., fungal infections, bacterial infections, malignant neoplasms) for ease of reference. Final Listing 114.08O includes any manifestation(s) of HIV infection that causes listing-level functional limitations.

We reorganized the basic structure and presentation of final Listing 114.08 in the same way as the adult rules. Therefore, the final listing is significantly different from the proposed listing. Important differences between the final listing and the NPRM and between the childhood and adult listings follow.

For completeness, we added to the final childhood listing a number of criteria that we had proposed only in the adult listing. Adding these criteria did not change the evaluation of HIV infection in children because our regulations in §§ 404.1525 and 416.925 call for using the adult criteria for children whenever the childhood criteria do not apply. We added these new criteria only to make the childhood listing easier to use.

Final Listing 114.08A addresses bacterial infections. The listing includes the same criteria as in final Listing 14.08A. In addition, we have retained, in final Listing 114.08A5, the criteria we proposed in Listing 114.08F1 for children less than 13 years old who experience certain pyogenic bacterial infections at least twice in 2 years. Although we have deleted from the remainder of the childhood listings all of the previously proposed distinctions between children under age 13 and children age 13 and above, we retained this distinction only in final Listing 114.08A5, where it is medically valid. However, consistent with the adult listings, we also added criteria at final Listing 114.08A6 that apply to multiple or recurrent bacterial infections caused by any bacteria—including pelvic inflammatory disease—and that can be applied to all children.

We revised final Listings 114.08B, Fungal infections, 114.08C, Protozoan or helminthic infections, 114.08D, Viral infections, 114.08E, Malignant neoplasms, 114.08F, Conditions of the skin and mucous membranes, and 114.08G, Hematologic abnormalities, in the same way as the adult rules. The language of these provisions is the same except that we provide cross-references to the appropriate childhood listings where necessary. As in the adult listings, the revisions to these childhood rules also provide stand-alone medical criteria for several of the manifestations we had proposed to tie to a test of functional limitations in proposed Listings 114.08L and 114.08M. We added criteria for carcinoma of the cervix and squamous cell carcinoma of the anus (as in the adult listing) to final Listing 114.08E because these conditions may occur in adolescents.

We have extensively revised final Listing 114.08H (proposed Listing 114.08J), Neurological manifestations, based on public comment. A child with HIV infection may now have a neurological manifestation (for example, HIV encephalopathy or peripheral neuropathy) that meets the listing in any of four ways. In response to a comment pointing out that the criteria in proposed Listing 114.08J3 essentially described impairments that meet the criteria in 111.00 of the listings, we revised final Listing 114.08H3 to provide for only progressive motor dysfunction affecting gait and station or fine and gross motor skills. We also changed the criteria for evaluating motor deficits to eliminate the requirement that they be symmetric. However, inasmuch as some children will have neurologic manifestations that meet the criteria of one of the listings in 111.00, we added to the opening paragraph a criterion that permits a finding of disability by cross-reference to those listings. In final Listing 114.08H1, we also revised the criteria for evaluating loss of previously acquired intellectual ability (which were in proposed Listing 114.08J1) to reflect our intent to include those situations where the child does not lose previous knowledge, but is unable to learn new information; that is, suddenly acquires a new learning disability. We also added a cross-reference in final Listing 114.08H2 to the new discussion in 114.00D5 describing documentation of impaired brain growth.

Final Listing 114.08I addresses growth disturbances. These criteria were previously in proposed Listing 114.08K. Based on numerous public comments, we added weight criteria for evaluating failure to thrive, which are based on a fall from an established growth curve. These criteria recognize that, unlike adults (who have stopped growing), children can be gaining weight yet still be failing to thrive because their weight gain is not commensurate with their growth. Final Listing 114.08I1 describes children who, because of weight loss or failure to gain weight at an appropriate rate for age, have a persistent fall (defined as 2 months or longer) of 15 percentiles from an established growth curve on standard growth charts, irrespective of the actual percentile at which their weight lies. Conversely, final Listing 114.08I2 describes children whose weight, because of an involuntary weight loss or failure to gain weight at an appropriate rate, falls and persists below the third percentile from an established growth curve on standard growth charts, irrespective of the number of percentiles of the fall. A new third criterion, final Listing 114.08I3, provides for an involuntary weight loss greater than 10 percent of baseline that persists for at least 2 months. In final Listing 114.08I4, which incorporates the proposed listing's cross-reference to the growth impairment listings, we changed the cross-reference to the entire section, 100.00, for consistency with the changes we made to other listings.

Final Listing 114.08J, Diarrhea, is the same as the corresponding final adult listing, 14.08J. This condition was previously in proposed Listings 114.08L and 114.08M only in conjunction with the functional requirements. Final Listing 114.08K, Cardiomyopathy, is also the same as final Listing 14.08K, except for the cross-reference to the listings in 104.00; the cross-reference to adult neurological Listing 11.04, however, is correct and consistent with our cardiovascular rules for children. This condition was proposed only in the adult listings. We decided to add it to the childhood listings because it also occurs in children.

Final Listing 114.08L addresses lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia (LIP/PLH complex). This criterion was previously in proposed Listing 114.08G. We changed the criteria to apply to all children rather than just applying it to children under age 13, as we proposed. We also added criteria for listing-level severity, because these conditions may range widely in their severity and impact on a child's functioning.

Final Listing 114.08M, Nephropathy, is the same as final Listing 14.08L except that the cross-references are to the criteria in 106.00 of the childhood listings. As with cardiomyopathy, we had proposed to include this condition only in the adult listings, but have added it to the childhood listings because it also occurs in children.

Final Listing 114.08N is identical in substance to final Listing 14.08M. It includes a number of infections that we had proposed to include only with functional limitations: sepsis, meningitis, pneumonia, septic arthritis, endocarditis, and radiographically documented sinusitis.

Final Listing 114.08O addresses any other manifestation(s) of HIV infection that either does not meet the criteria in any of the other childhood HIV listings

or is not contained in those listings. We have already described the criteria of the final listing above.

Other Changes

It was apparent to us from some of the comments that it would be helpful and clearer if we used the same or similar language in parts A and B of the listings where we intended the provisions to be analogous. Therefore, we made a number of revisions in parts A and B to make their language consistent. In the majority of cases, these changes were editorial, not substantive. We also made minor editorial changes throughout the rules to correct errors in the NPRM, maintain internal consistency, and conform the style of these listings to our other listings.

As already explained, these final listings move the listings for systemic lupus erythematosus and systemic sclerosis and scleroderma from Listing 10.04 and 10.05 to Listings 14.02 and 14.04. Because of this, we are changing the references in the second sentence of 8.00B of the skin impairment listings to reflect the new designations.

We made several other changes in response to the public comments in addition to those described above. We describe these changes, and explain why we made them, in the following summary of the public comments.

Public Comments

We carefully considered all of the comments and adopted many of the recommendations. The resulting changes are identified in the following discussion of issues that were raised in the comments.

Many of the comments were quite long and detailed. Of necessity, therefore, we had to condense, summarize, or paraphrase them. However, we tried to express everyone's views adequately and respond to all of the relevant issues raised. There were a few comments that we did not address below. This is because they only pointed out minor typographical errors, or were about information in the preamble to the prior rules or administrative matters that are not appropriate to the final rules.

For ease of reference, we organized the comments and responses as follows. We first address general comments, i.e., comments that are either about the rules as a whole or that apply to more than one section of the rules. We then address the remaining comments, which pertain to specific sections of the rules. If we changed the section numbers or headings in the final rules, we provide both the NPRM and final references in the text of the comment and response.

9.00 Endocrine System and Obesity

Hansen's Disease

Comment: A few commenters thought that there are still sufficient cases of Hansen's disease to warrant its retention in the listings.

Response: We did not adopt the comment. The incidence (new cases per year) of Hansen's disease (leprosy) in the United States is very low, less than 135 in the past few years. Moreover, we do not need a separate listing because the dermatological and neurological manifestations of this disorder are addressed in the sections pertaining to those body systems.

9.00 and 9.09 Obesity

Comment: One comment we received said that we should not move the obesity listing to the endocrine system section, but that it should stay with the impairments in the multiple body system section.

Response: We did not adopt the comment. With the exception of obesity and Hansen's disease (which we have deleted), we have moved all the impairments from the adult multiple body systems section to the newly established "Immune System." Rather than keep obesity as the sole impairment in a body system, we believe that the most appropriate location for it would be the endocrine system, which is now titled: "Endocrine System and Obesity."

Comment: A comment asked whether the reference to the "spine" in proposed Listing 9.09A was meant to include the cervical and thoracic regions of the spine. Another comment said that the listing for obesity should state that the history of pain, limitation of motion, and arthritis caused by obesity in any weight-bearing joint or spine need only be minimal to satisfy the listing's requirements.

Response: We agreed with the first comment that the references to the "spine" in former Listing 10.10A and proposed Listing 9.09A could be made clearer. The listing has always applied only to the weight-bearing parts of the spine (i.e., the lumbosacral regions). Therefore we have clarified the language in final Listing 9.09. This is not a substantive change from the prior rules or the NPRM, but a clarification of our intent that the phrase "weight-bearing" modify both "joint" and "spine" in the listing.

We did not adopt the second comment because it is implicit in the language of the rule. The fact that the degrees of pain, limitation of motion, and arthritis in the weight-bearing structures are not quantified indicates the intentional absence of threshold criteria.

Comment: A comment stated that the adult obesity listing is inadequate for assessing obesity in children. The comment also suggested that we consult with pediatricians to develop a childhood obesity listing by which to assess whether a child is functioning independently, appropriately, and effectively in an age-appropriate manner.

Response: We did not adopt the comment because the creation of a childhood obesity listing is beyond the scope of these rules. When we consider revising the childhood endocrine section, we will consider whether we need to add a listing for obesity.

14.00 and 114.00 Immune System—Non-HIV Listings

Connective Tissue Disorders—General Comments

Comment: One comment stated that the term "rheumatic diseases" better describes conditions such as juvenile arthritis, systemic lupus erythematosus dermatomyositis, and scleroderma than does the term "connective tissue disorders."

Response: We did not adopt the comment. Inflammatory arthritides (which are types of connective tissue disorders), including rheumatoid arthritis, psoriatic arthritis, Reiter's syndrome, and ankylosing spondylitis, are included in the musculoskeletal body system listings in 1.00 and 101.00. Therefore, we prefer the term "connective tissue disorders" because it better describes the disorders in 14.00 and 114.00.

Comment: Another comment said that systemic lupus erythematosus, systemic sclerosis, and polymyositis are rheumatic disorders that should be retained under the multiple body system section, or grouped into a new section titled, "Rheumatic Disorders." The comment added that any listing of the immune system should include multiple sclerosis and myasthenia gravis.

Response: We did not adopt the comment. We agree that all immune system disorders are not included in this listing. There are many disorders of immune regulation that are covered in other body systems, depending on the primary target organs. For example, multiple sclerosis (Listing 11.09) and myasthenia gravis (Listing 11.12) are evaluated under the neurological body system because neurological dysfunction is the primary outcome of these impairments. However, in the immune system listings we have

VOL
58
ISS
126
JL
2
1993
UMI

grouped a number of connective tissue disorders that are characterized by autoimmune abnormality.

Comment: A few commenters called for rheumatoid arthritis to be grouped with systemic lupus erythematosus (Listings 14.02 and 114.02), systemic vasculitis (Listings 14.03 and 114.03), systemic sclerosis (Listings 14.04 and 114.04), and polymyositis (Listings 14.05 and 114.05). One of their comments said that the inclusion of rheumatoid arthritis would be consistent with our emphasis on functional aspects rather than labeling or diagnosis, inasmuch as the effects of all of these disorders on joints and internal organs are very similar.

Response: We did not adopt the comment in these final rules. However, we will consider the comment when we consider any revisions to the musculoskeletal body system listings.

Comment: A few commenters called for separate listing subsections for Sjögren's syndrome, sarcoidosis, psoriatic arthritis, Ehlers-Danlos syndrome, Marfan's syndrome, and, in the adult section, congenital immune deficiencies, such as genetic dwarfism. They also stated that consideration of Raynaud's phenomena should not be limited to systemic sclerosis and scleroderma. One of their comments suggested the addition of listings subsections for spondyloarthropathies, reactive arthritides, Bechet's syndrome, familial Mediterranean fever, and inflammatory myopathies other than polymyositis, such as body myositis. The comment also stated that the listings should consider the effects of therapy, which can cause bone thinning, pathologic fractures, and growth failure.

Response: We did not adopt the comments, but we did add guidance to 114.00B of the childhood rules in response to the last comment. The listings are only examples of impairments, not an all-inclusive list, and serve as a screening device by which we can quickly identify individuals who are disabled as a result of commonly occurring impairments. Even though they include many impairments, they have never been intended to include all impairments. It would not be feasible to attempt to provide a listing for every known disease. Generally, when a specific disease is not listed, we use the listing that provides the findings most closely analogous to the findings associated with the unlisted impairment.

Sjögren's syndrome is evaluated under the applicable body system depending on the presenting manifestation (e.g., kerato-conjunctivitis under 2.00 or 102.00, xerostomia under 5.00 or 105.00, arthritis under 1.02 or 101.02, and other connective tissue involvement under 14.00 or 114.00). The most common rheumatic manifestation of sarcoidosis is acute arthritis, which may be evaluated under the musculoskeletal system (Listings 1.02 and 101.02). When chronic arthritis occurs, the predominant impairment is due to involvement of the lungs, spleen, bone marrow, and bone. Hence, sarcoidosis, the cause of which is unknown, should also be evaluated under the applicable body system, depending on the disease manifestations. Psoriatic arthritis and spondylitis may be evaluated under 1.00, 101.00, or 8.00. Raynaud's phenomena are seen in several connective tissue disorders, but are particularly common in systemic sclerosis (Listings 14.04 and 114.04) and undifferentiated connective tissue disorders (Listings 14.06 and 114.06). When they occur in these or other connective tissue disorders and are characterized by digital ulceration, ischemia, or gangrene, equivalence to Listing 14.04 or 114.04 could be found.

Although Ehlers-Danlos syndrome and Marfan's syndrome are connective tissue disorders, they are not immune disorders, but genetic disorders, and, therefore, should not be included in the immune system listings. These syndromes are evaluated under the listings for the affected body system, (e.g., cardiovascular, visual, musculoskeletal, gastrointestinal).

Listings 14.07 and 114.07 provide criteria for immunoglobulin deficiency states and non-HIV cell-mediated immune deficiency. Myositis and myopathy may occur in a wide spectrum of diseases, and should be evaluated under the body system applicable to the primary disorder associated with the myopathy (e.g., 6.00 or 106.00 for hyperthyroidism, 11.00 or 111.00 for myasthenia gravis, or 14.00 or 114.00 for connective tissue disorders). Equivalence to 14.05 or 114.05, polymyositis, may be found when the criteria are applicable but the cause of the myopathy is other than polymyositis. Muscle weakness associated with myopathies may also manifest equivalent severity under the neurological listings.

Spondyloarthropathies and "reactive" arthritides may be evaluated under 1.00 or 101.00. Bechet's syndrome is rare, its manifestations diverse, and etiology unknown. The major findings are genital and oral ulcers, skin lesions, and ocular lesions. Evaluation should be under the applicable body system for the manifestation(s). Mediterranean fever is an inherited disorder and not due to immune dysregulation. It is characterized by acute, self-limited attacks of fever, abdominal pain, pleuritic pain and, occasionally, arthritis. Evaluation for equivalence under rules applicable to other episodic illnesses is appropriate.

We do consider the effects of treatment in all cases. The fifth paragraph of 14.00B (both in the NPRM and the final rule) indicates that in addition to the limitations caused by the connective tissue disorder itself, the chronic adverse effects of treatment may result in functional loss. However, even though this principle is fundamental to all disability adjudications, the last comment made us realize that we had stated it explicitly in the preface to the adult rules but not in the preface to the childhood rules. Therefore, in response to the comment, we have added a new fourth paragraph to final 114.00B which is identical to the corresponding paragraph in the adult rules and underscores the need to consider the adverse effects of treatment (such as corticosteroid therapy) when evaluating connective tissue disorders in children.

Comment: We received a comment stating that because of the vast number of rare "orphan diseases," the primary factor that we should use to determine disability should be functional limitations caused by symptoms of any etiology.

Response: As noted previously, the listings are only examples of commonly occurring impairments and are not intended to include all impairments, especially rare ones. Many listings, including final Listings 14.02–14.06 and 114.02–114.06 do include functioning among their criteria; when we use these listings for comparison to evaluate unlisted impairments, we also consider functioning within the context of the listings. Moreover, for children who apply for SSI benefits based on disability, we also provide a "functional equivalence" determination.

Even if the individual's severe impairment(s) does not meet or equal in severity any listing, we still always assess the functional limitations caused by the impairment(s) and use that assessment to determine whether the individual is disabled at the later steps of the sequential evaluation processes for adults and children. As with all claims where the individual has a severe impairment(s) that does not meet or equal the severity of a listed impairment, the individual's claim is evaluated further and residual functional capacity is assessed to determine if he or she has the ability to do past relevant work. If the individual cannot perform his or her past work, we

will determine if there are other jobs the individual can perform. In the case of a child under 18 who is applying for SSI, we perform an individualized functional assessment to determine if he or she is able to function independently, appropriately, and effectively in an age-appropriate manner.

Comment: One comment said that, beyond the information needed to make a medical diagnosis, there should be more specific guidelines in the listings on assessing function because of the imperfect relationship between a person's capacity and his or her function.

Response: We did not adopt the comment. We already have very detailed standards on assessing function for all impairments. The instructions address the need to consider the specific effects of each person's impairment(s) on his or her ability to function and recognize that one individual's limitations may differ from another's even though they may have the same impairment(s).

Comment: Another comment suggested adding listing criteria for chronic fatigue syndrome which, the comment said, is an immunological disorder that affects millions of individuals.

Response: We did not adopt the comment. Due to the divergence of medical opinion on chronic fatigue syndrome, we do not believe that it is either possible or appropriate to establish listing criteria. Further, such a listing would be beyond the scope of these rules.

Comment: One comment questioned whether adults who have impairments that would meet the childhood criteria may be found disabled using the part B criteria. The comment also asked if children who have impairments that meet the childhood criteria will remain eligible upon attainment of age 18, or whether they will then have to demonstrate that they have impairments that meet the part A criteria.

Response: As set forth in §§ 404.1525(b)(2) and 416.925(b)(2) of our regulations, the criteria in part B apply only to the evaluation of impairments in persons under age 18. Therefore, the listings in part B may not be used to find an adult disabled.

We do not require children to reestablish disability based on adult criteria when they attain age 18. However, we do periodically review the claims of disabled people to determine whether they are still disabled. When we determine whether disability continues, we apply a medical improvement review standard required by the statute. Under this standard, if a beneficiary who is now an adult was most recently found disabled (or still disabled) because his or her impairment(s) met the childhood criteria, we use those childhood criteria, even after the individual has attained age 18, as a basis of comparison to determine whether there has been any medical improvement in the individual's impairment(s) that is related to the ability to work.

14.00A and B, and 114.00A and B Preface

Comment: One comment said that the discussion on polymyositis and dermatomyositis in 14.00B4 omitted any other inflammatory myopathies and implies that if there is weakness, pain or tenderness in any muscles other than the proximal limb-girdle, cervical, cricopharyngeal, or intercostal muscles or the diaphragm, then one does not meet this criterion.

Response: We accommodated the comment by indicating in final 14.00B4 that the descriptions are only meant to describe the criteria in Listing 14.05. The muscles described in Listing 14.05 and in final 14.00B4 are the ones usually involved in polymyositis or dermatomyositis. If other muscles are involved, the underlying disorder—which may not be polymyositis—should be identified if possible and considered under the appropriate body system listings. If the impairment is found to be severe at the second step of the sequential evaluation processes but does not meet or equal in severity any listing at the third step of the processes, we will do an individualized assessment of its impact on the person's functioning and decide disability at the last steps of the sequential evaluation processes.

Comment: Another comment stated that weight loss as a constitutional symptom, which is recognized in 14.00B of the adult listings, should also be recognized in the childhood listings.

Response: We did not adopt the comment because the proposed childhood listings already included weight loss in the fourth paragraph of proposed 114.00B. That same language appears in the last sentence of final 114.00B.

14.02–14.06 and 114.02–114.06 Connective Tissue Disorder Listings

Comment: One comment noted that the phrase "with the expectation that the disease will remain active for 12 months" appeared repeatedly in the proposed connective tissue disorder listings (in proposed Listings 14.02–14.06 and 114.02) and asked how we make such a prediction. The comment said that unless we describe how physicians are to make the prediction, claimants who have had active disease for 10 or 11 months will be denied benefits.

Response: Even though we disagree with the conclusion that we would deny claims filed by individuals who have had active, listing-level disease for almost a year, we partially adopted the comment. We frequently make findings of disability based on an expectation that a disabling impairment(s) is expected to last for at least 12 months. In most cases in which the evidence substantiates a finding of disability, it is readily apparent from the same evidence whether or not the impairment is expected to last 12 months from the onset of disability. When the application is being adjudicated before the impairment has lasted 12 months, the nature of the impairment, the therapeutic history, and the prescribed treatment serve as the basis for concluding whether the impairment is expected to continue to prevent the individual from working for the required 12 months' duration. However, we are not describing this in the listings because it is longstanding practice that applies to all types of impairments, not just connective tissue disorders.

This comment and others made us realize that the discussions on duration in proposed Listings 14.02–14.06 and 114.02 made the proposed listings unnecessarily complex. More importantly, they only repeated the general listings requirements in §§ 404.1525(a) and 416.925(a). There is, therefore, no reason to repeat the provision in each of these listings. Therefore, in response to this and other comments, we removed the repetitive language from each of the proposed listings and added a single discussion on duration in 14.00B and 114.00B as a reminder of the basic rules. For consistency, we also removed the statements in each of the listings requiring a 3-month longitudinal clinical record, inasmuch as we already make the statement in 14.00B and 114.00B. We also moved the requirement that the disorder remain active, "despite prescribed therapy" into the same sections of the preface. (We also changed the word "therapy" to "treatment" for reasons explained elsewhere in this preamble.) The result is that final Listings 14.02–14.06 and 114.02 are much simpler to read, even though there is no substantive change in the rules as a result of these editorial changes.

Finally, we will not generally find an individual who has had active, listing-level disease for 10 or 11 months to be not disabled. Unless the impairment has

VOL 58 ISS 126 JL 2 1993 UMI

significantly improved to the point at which it is no longer disabling at the second, fourth, or fifth steps of the sequential evaluation process for adults (or the second or fourth steps of the sequential evaluation process for children claiming SSI benefits) before the end of 12 months after onset, an allowance would be appropriate. We are confident that our adjudicators understand this principle.

Comment: A comment suggested editorial changes to the statements regarding duration in Listings 14.02 and 14.03, apparently to remove redundancies.

Response: We adopted the comment in part by moving references pertaining to durational requirements from all of the listings that used this language to one location in 14.00B and 114.00B.

Comment: One comment we received said that there were problems with including in Listing 114.02A cross-references to other listings criteria as a means of describing the multiple organ dysfunction of systemic lupus erythematosus. The comment said that the type and pattern of organ involvement in systemic lupus erythematosus is not always the same as in other disorders and that muscle involvement in scleroderma and systemic sclerosis is not necessarily similar or identical to the muscle involvement of polymyositis or dermatomyositis. The comment also questioned the propriety of referencing some of the childhood connective tissue disorders to adult criteria because the disorders are not always identical in children and adults.

Response: We did not adopt the comment. Connective tissue disorders may involve many different organs and body systems. Establishing specific criteria for every organ in each body system would make the listing unnecessarily complicated. Consequently, we believe that cross-references to existing listings are the best solution.

We cross-referenced the childhood systemic lupus erythematosus listing (final Listing 114.02) to other body systems, the scleroderma and systemic sclerosis childhood listing (final Listing 114.04) and polymyositis and dermatomyositis childhood listing (final Listing 114.05) to the corresponding adult rules in final Listings 14.04 and 14.05, and the childhood undifferentiated connective tissue disorders listing (final Listing 114.06) to the childhood listings for systemic lupus erythematosus and systemic sclerosis and scleroderma (final Listings 114.02 and 114.04), because their manifestations can be identical, even though the causes of the problems are not the same. Cross-referencing provides a means to find the existence of a disabling impairment when a single manifestation of disease is at the same level of severity described in the cross-referenced listing.

Comment: A comment asked whether severe fatigue, fever, malaise, and weight loss must all be present to satisfy the criteria in Listings 14.02B, 14.03B, and 14.04B (and, presumably, 114.02B).

Response: We adopted the comment. The parenthetical "e.g." in the proposed rules was an error. We have corrected final Listings 14.02B, 14.03B, 14.04B and 114.02B to show that all four symptoms and signs must be present. However, instead of replacing the proposed "e.g." with "i.e.," as we originally intended, we have revised the sentence to make our intent clearer. The final provisions state that the disorders must be "* * * associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss." We chose the particular symptoms and signs shown in the listings because they are the most common and are most likely to be present.

Comment: Another comment asked that we define the terms "severe" and "moderate" used throughout the listings for connective tissue disorders.

Response: We did not adopt the comment. Even though, as we explain later, we changed the term "severe" in places where it could have been confused with other terms ("incapacitating" and "major"), we retained the terms "severe" and "moderate" where we believe they are appropriate and unambiguous. The terms are widely used to describe relative values on a rating scale, and their meanings are commonly understood. But because their meanings are somewhat nonspecific, use of these terms in Listings 14.02, 14.03, 14.04, and 114.02 unquestionably requires a degree of judgment, as do many other aspects of our disability evaluation process. Our adjudicators are accustomed to making these judgments on a case-by-case basis, and we believe that attempting to devise specific definitions for terms that are, by their nature, non-specific, would only make the listings confusing. However, in response to this comment, we have also provided clarification in 14.00B and 114.00B that we use the word "severe" in these listings in its medical sense, not in the functional sense associated with the second step of our sequential evaluation processes. We explain this provision in a later response, below.

14.02 and 114.02 Systemic Lupus Erythematosus

Comment: One comment noted our statement in proposed 14.00B1 that, "[g]enerally" the medical evidence will show that patients with systemic lupus erythematosus will fulfill the 1982 "Revised Criteria for the Classification of Systemic Lupus Erythematosus" of the American College of Rheumatology (formerly, the American Rheumatism Association). The comment also noted that this implies that an individual can have systemic lupus erythematosus and not fulfill these criteria, and asked why similar latitude is not provided for other conditions.

Response: We did not adopt the comment. We used the word "generally" because the diagnosis is not invariably made strictly according to the criteria. To meet the American College of Rheumatology diagnostic criteria for systemic lupus erythematosus an individual must have four manifestations out of a list of 11 criteria, and the vast majority of people with this disorder will meet these criteria. However, a doctor will occasionally make a diagnosis of systemic lupus erythematosus when an individual has only three out of 11 manifestations, or other findings, when it appears likely that the diagnosis is appropriate.

Latitude is built into all the connective tissue disorder criteria. The guidance in final 14.00B3 for evaluations under Listing 14.04, Systemic sclerosis and scleroderma does not require that any specific pattern of disease manifestations be present to establish the diagnosis. The criteria in Listing 14.04 are similar to those for the other connective tissue disorders, providing references to other listings. As in those other listings, it also provides alternative criteria for multisystem manifestations associated with constitutional symptoms and signs. This is also true of polymyositis, 14.00B4 and final Listing 14.05, and undifferentiated connective tissue disorder, 14.00B5 and final Listing 14.06.

Systemic vasculitis, 14.00B2 and final Listing 14.03, comprises several diverse clinical syndromes and is characterized diagnostically by a tissue biopsy showing necrotizing vascular inflammation. Hence, a tissue biopsy or an angiogram showing the characteristic vascular abnormalities is necessary to confirm the clinically suspected diagnosis. However, when the findings of a referenced listing are present or multisystem involvement is evident with constitutional symptoms and signs, listing-level severity may be found even if there has not been a definitive

diagnosis. Hence, this listing also provides latitude.

Comment: A few commenters said that they were not sure that the medical community at large is familiar with the 1982 "Revised Criteria for the Classification of Systemic Lupus Erythematosus" of the American College of Rheumatology. They suggested that, instead of referencing it, the material should be included in the listing itself or in a readily available supplement. One of their comments asked why we proposed to use the American College of Rheumatology criteria for systemic lupus erythematosus, but not for the other connective tissue disorders. The comment also said that most of the rheumatic diseases are syndromes and the diagnoses are made by meeting specific criteria.

Response: We did not adopt the first comment because we do not think that it is necessary to publish the diagnostic criteria in the regulations. The American College of Rheumatology diagnostic criteria are widely available and widely known.

Systemic lupus erythematosus is a relatively common disease, the diagnosis of which is based upon the presence of several non-specific clinical and laboratory abnormalities. Because of the lack of a single set of diagnostic findings, individuals may be erroneously diagnosed because of a non-specific laboratory result. It is, therefore, appropriate to refer to the published American College of Rheumatology diagnostic criteria. The vasculitides, on the other hand, are rare and difficult to diagnose clinically. The hallmark for and the diagnosis of vasculitis is almost invariably based upon characteristic clinical findings and tissue biopsy showing necrotizing vascular inflammation. Moreover, there are no published specific diagnostic criteria based upon clinical observations and laboratory tests. Therefore, referral to published diagnostic criteria is not possible.

Comment: A few commenters said that, because the type and pattern of joint involvement in rheumatoid arthritis and juvenile rheumatoid arthritis differs from that seen in systemic lupus erythematosus, the rheumatoid arthritis and juvenile rheumatoid arthritis criteria in Listings 1.02 and 101.02 should not be applied as reference listings to the evaluation of systemic lupus erythematosus under Listings 14.02A1 and 114.02A2. One of their comments noted further that, if there is joint involvement consistent with rheumatoid arthritis or juvenile rheumatoid arthritis in the presence of other findings consistent with systemic lupus erythematosus, then, by our definition, this would be an undifferentiated connective tissue disorder, which should be evaluated under Listings 14.06 and 114.06.

Response: We did not adopt the comment. In referencing proposed Listing 14.02A1 to Listing 1.02, and proposed Listing 114.02A2 to Listing 101.02, we were providing a means to determine the presence of a disabling impairment when a single manifestation of disease is at the same level of severity as that described in the reference listing. We did not mean to imply that systemic lupus erythematosus and rheumatoid arthritis have identical characteristics. To make this point even clearer, we have revised the cross-references in the final rules to the generic body system headings, 1.00 and 101.00, in order to include any musculoskeletal effects of systemic lupus erythematosus that are at the listing level of severity.

A diagnosis of undifferentiated connective tissue disorder is appropriate where the impairment has features suggestive of a connective tissue disorder but not diagnostic of any one disorder. We did not intend to suggest otherwise in Listings 14.02A1 and 114.02A2, which describe properly diagnosed systemic lupus erythematosus.

Comment: One comment noted that the adult listing for systemic lupus erythematosus included a criterion for muscle involvement (Listing 14.02A2), but proposed childhood Listing 114.02 did not.

Response: In response to the comment, we added muscle involvement to final Listing 114.02A3. Because of this addition, we renumbered the subsequent criteria accordingly.

Comment: Another comment suggested that Listing 114.02 include cross-references to criteria in the hemic system and to the listings for depression and Raynaud's phenomena.

Response: We adopted the comment. Although proposed childhood Listings 114.02A8 and 114.02A12 did include cross-references to specific hemic listings (Listings 7.02 and 107.06) and mental disorders listings (Listings 112.02, 112.03, and 112.04), we revised final Listings 114.02A9 and 114.02A13 so that they refer to the hemic and lymphatic and mental "body systems" in general (107.00 and 112.00), instead of to specific listings. In this way, no hemic or mental manifestations will be overlooked and the listing will remain up-to-date should we revise the hemic and mental listings in the future. Even though Raynaud's phenomena are not a primary feature of childhood systemic lupus erythematosus, we added a cross-reference to Listing 14.04D in final Listing 114.02A6 for those situations in which children do have such manifestations at the listing level. For consistency, we also added a cross-reference to Listing 14.04D in the corresponding adult rule, final Listing 14.02A5.

Comment: One comment suggested that in proposed Listing 14.02B the requirement that the individual demonstrate "severe" and "incapacitating" signs and symptoms was extreme, especially when a full 12 months of this level of severity must be anticipated.

Response: We adopted the comment in part. We agree that "incapacitating" is a higher level of severity than is needed to show listing-level severity. Furthermore, the comment made us realize that we had proposed slightly different language (using the terms "severe," "incapacitating," and "major") for corresponding paragraphs in proposed Listings 14.02B, 14.03B, 14.04B, and 114.02B, when we intended to say the same thing in each section. Furthermore, the word "major," which we had proposed in Listing 14.04B, could have caused confusion because it has a particular meaning in the medical community, referring to kinds of infections. Therefore, we replaced all these terms with the word "significant," which conveys the intended meaning consistently throughout these final listings.

We also realized that referring to "severe" symptoms and signs in these listings could have caused confusion because "severe" has a specific meaning when we use the word in the phrase "severe impairment" to describe the functional impact of an impairment(s) (see §§ 404.1520, 404.1521, 416.920, 416.921, and 416.924). For this reason, we have added a sentence at the end of the sixth paragraph of final 14.00B and 114.00B to explain that we use the term "severe" in these listings to describe medical severity and that it does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes for adults and children.

14.03 and 114.03 Systemic Vasculitis

Comment: One comment said that proposed Listing 14.03 on vasculitis was stricter and more detailed than then-current Listing 10.03, which required only signs of generalized arterial involvement.

Response: Listing 14.03 is more detailed than prior Listing 10.03, but the criteria are not stricter. Rather, they are

VOL 58 ISS 126 JL 2 1993 UMI

more medically accurate and reflect state-of-the-art practice. They also now include all forms of systemic vasculitis, and ensure more consistent and valid determinations.

14.04 and 114.04 Systemic Sclerosis and Scleroderma

Comment: A comment suggested that we delete the word "generalized" before "scleroderma" in Listing 14.04C. Another comment questioned why we provided a listing for linear scleroderma for children (Listing 114.04B) but no similar listing for adults, and noted that 14.00B3 omits mention of the differences between limited and diffuse scleroderma.

Response: We have retained the term "generalized" in final Listing 14.04C because adults rarely manifest localized scleroderma; if they do, equivalence to a listing in 1.00 or a residual functional capacity assessment may lead to a finding of disability because of destructive or mutilating lesions of the extremities or the head. We provided criteria for localized scleroderma for children because destructive and mutilating lesions involving the extremities, head, and scalp not only interfere with walking and using the upper extremities, but also with growth and development; scalp and facial lesions in children may also be accompanied by seizures.

"Limited" cutaneous scleroderma is not the same thing as "localized" or "linear" scleroderma, but a systemic form of the disorder. We did not mention the differences between limited and diffuse cutaneous scleroderma in the preface because the differences are not needed for application of the criteria in final Listings 14.04 and 114.04.

Comment: A comment said that, although severe Raynaud's phenomena were included in the proposed Listing 14.04D criteria, they were not defined.

Response: We have clarified the listing in response to the comment. In fact, proposed Listing 14.04D did describe severe Raynaud's phenomena, which are characterized by digital ulcerations, ischemia, or gangrene. However, we realized that the language of the proposed rule, "Raynaud's phenomena *with*" these findings, was not clear. We have, therefore, changed the word "with" to "characterized by" in the final listing to make clear that the findings of digital ulcerations, ischemia, or gangrene define severe Raynaud's phenomena.

14.05 and 114.05 Polymyositis and Dermatomyositis

Comment: One comment stated that proposed Listing 14.05, for polymyositis and dermatomyositis, was too strict. The comment said that an individual who satisfied the criteria in the opening paragraph of the listing (which required 3 months of active disease, severe proximal muscle weakness despite prescribed treatment, and an expected duration of 12 months) should be found to meet the listing without also having to satisfy the criteria in proposed Listing 14.05A or 14.05B.

Response: We partially adopted the comment. The commenters misunderstood our intent in proposed Listing 14.05. The criteria in proposed Listings 14.05A and 14.05B were not additional criteria, but were meant to define the "severe proximal muscle weakness" in the opening paragraph. However, the comment made us realize that the listing could be made clearer. Therefore, we have clarified the requirements in final Listing 14.05 by removing the opening paragraph, which was redundant of the criteria for documentation, duration, and severity, discussed in other parts of the listings, and which is now in final 14.00B.

Comment: Another comment suggested that we provide more detail about the required severity of proximal muscle weakness. The comment said that proposed Listing 14.05 required shoulder or pelvic muscle weakness as described in Listing 11.12, which pertains only to muscle weakness of the extremities. The comment also questioned how swallowing and impairment of respiration are to be evaluated under Listings 14.05B1 and 14.05B2.

Response: In response to the comment, we deleted the cross-reference to Listing 11.12B in final Listing 14.05A and instead provided a discussion of the intent of the provision in final 14.00B4. We also provided a more detailed description of the criteria in final Listing 14.05B1 for cricopharyngeal weakness. However, we think that proposed Listing 14.05B2 was clear and have made no changes in that final listing.

Comment: Another comment questioned why there was no adult listing corresponding to Listing 114.05B for polymyositis or dermatomyositis with severe multiple joint contracture or diffuse cutaneous calcification, and why swallowing or respiratory difficulties are limited to adult Listing 14.05B1.

Response: Both multiple joint contractures and diffuse cutaneous calcification are extremely uncommon findings in adults with these disorders; however, if an adult has these findings their specific impact on the individual must be assessed. Multiple joint contractures in an adult that are of listing-level severity should be evaluated under the criteria in 1.00ff, the musculoskeletal body system. Listing-level cutaneous calcification may be evaluated under Listing 14.04, Systemic sclerosis and scleroderma.

Swallowing and respiratory difficulties are not limited to Listing 14.05B. Childhood Listing 114.05A indicates that impairment should be evaluated according to Listing 14.05. Therefore, all of the criteria in Listing 14.05 apply to children.

14.06 and 114.06 Undifferentiated Connective Tissue Disorder

Comment: One comment questioned whether the term "undifferentiated connective tissue disorder" used in Listings 14.06 and 114.06 is synonymous with "mixed connective tissue disorder." The comment also questioned why chronic undifferentiated tissue disorder is evaluated by reference to the criteria in Listing 14.02, Systemic lupus erythematosus, and stated that the disorder is either systemic lupus erythematosus or it is not.

Response: We partially adopted the comment. We added a discussion of overlap syndromes to final 14.00B5 (which is also referred to in 114.00B) and noted that these syndromes should be evaluated under Listings 14.06 and 114.06. Although most individuals with undifferentiated connective tissue disorders have features of systemic lupus erythematosus, we recognize that some may have features of systemic sclerosis and scleroderma. Therefore, we added to Listings 14.06 and 114.06 cross-references to Listings 14.04 and 114.04. However, we prefer to confine Listings 14.06 and 114.06 to undifferentiated connective tissue disorders to indicate the lack of a specific diagnosis, with its attendant specific prognosis. We also have retained the title.

Comment: Another comment stated that there is a distinction between the undifferentiated connective tissue disorders (i.e., where a connective tissue disorder is present but unknown) and the overlap syndromes (i.e., where there are elements of more than one connective tissue disorder present). This comment also said that both types should be recognized under the listing and that, because some of these disorders are not undifferentiated, Listings 14.06 and 114.06 should be titled: "Other Connective Tissue Disorders."

Response: We did not adopt the comment, except to the extent that we added the aforementioned discussion about overlap syndromes to final

14.00B5. "Undifferentiated connective tissue disorder" is similar to, but not synonymous with, "overlap syndrome" and "mixed connective tissue disorder," but the latter two classifications depend upon constellations of non-specific features. Undifferentiated connective tissue disorders have the clinical and immunologic features of several connective tissue disorders, none of which satisfies the criteria for any of the disorders described. Overlap syndromes have clinical features of more than one established connective tissue disorder, and mixed connective tissue disorders usually have features of systemic lupus erythematosus, systemic sclerosis, and myositis. Most individuals with mixed connective tissue disorders eventually will be shown to have either systemic lupus erythematosus, systemic sclerosis, or Sjögren's syndrome, but a few remain undiagnosed and should be labeled "undifferentiated."

Comment: A comment stated that the criteria for evaluation of childhood undifferentiated connective tissue disorders in Listing 114.06 were a confusing series of cross-references, noting that Listing 114.06 referred to evaluation under corresponding adult Listing 14.06 which, in turn, referred to Listing 14.02.

Response: We adopted the comment. Final Listing 114.06 now indicates that undifferentiated connective tissue disorders should be evaluated by reference to Listings 114.02 or 114.04.

14.07 and 114.07 Immunoglobulin Deficiency Syndromes or Congenital Immune Deficiency Disease

Comment: One comment said that the criteria for the evaluation of immune deficiency disease in Listings 14.07 and 114.07 are too restrictive because they consider only immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, and exclude other immune deficiencies or immune dysregulatory states. The comment also noted our statement in proposed 14.00A that the " * * * disorders include impairments involving deficiency of one or more components of the immune system * * *." The comment said that, although a number of examples are listed in this section, many of the potential immune system impairments are absent from Listings 14.07 and 114.07.

Response: We did not adopt the comment. As we have stated, the listings are only examples of commonly occurring impairments, and are not meant to be all-inclusive. Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity are the most common immune deficiencies. Immune deficiency disorders not specified in Listing 14.07 or 114.07, but that are of listing-level severity, may be found equivalent in severity to the listed criteria.

14.00 and 114.00 Immune System: General Comments on the HIV Listings

Populations Covered by the Rules

Comment: Various commenters asserted that the proposed rules did not include manifestations of HIV infection that affect women, persons of color, gay and lesbian people, and the poor.

Response: On the basis of information we received from individual medical and other experts who study, treat, and work with people who have HIV infection, as well as our review of the medical literature, we do not agree that the proposed rules excluded these groups of people. Based on our experience since December 17, 1991, using our revised operating procedures, we know that the proposed listings would have included the vast majority of people who were disabled by HIV infection. Nevertheless, as we have already explained above in the summary of the final provisions, we have further revised the final listings to make them even more inclusive. Among the new criteria are several new criteria in both the adult and childhood listings that include more of the manifestations of HIV infection unique to women and girls. We are confident that these final rules provide criteria for evaluating all of the manifestations of HIV infection suffered by various populations.

Comment: One of the comments said that the proposed listing did not recognize the medical conditions that affect drug abusers, and that some chronic conditions were not listed.

Response: This comment did not identify any additional conditions that were not listed. The manifestations in proposed Listing 14.08M2 (with the exception of Kaposi's sarcoma), as well as many others throughout the proposed listing, are conditions that affect drug abusers. The conditions in proposed Listing 14.08M2 are now in the final rules as stand-alone medical listings, without functional requirements.

Comment: Many commenters thought that, despite our assertion to the contrary in the NPRM (56 FR at 65703), the proposed rules had not broken the link to the CDC surveillance definition of AIDS. They said the listings were unfair and discriminatory to women, poor people, those who do not have CDC-defined AIDS, and those with no continuity of health care. They indicated that, although we had proposed to include manifestations that the CDC uses to define AIDS without functional criteria, other illnesses (the kind not associated with CDC-defined AIDS, but frequently found in women, intravenous drug users and others who tend to be poor and have limited access to health care) required that functional criteria be met.

Response: We disagree with the comments, but we have revised the rules in response to these and other comments to explicitly include even more manifestations without a functional requirement. Therefore, even though we have included many of the criteria of the CDC's surveillance definition of AIDS, we have also provided many other criteria for people who have symptomatic HIV infection but who do not meet the CDC surveillance definition.

For example, we added as stand-alone conditions as many HIV-related conditions from proposed Listings 14.08M and 114.08L and 114.08M as possible, including endocarditis, syphilis and neurosyphilis, meningitis, pulmonary tuberculosis, and pneumonia. These manifestations are not stand-alone criteria in the CDC surveillance definition of AIDS but, we believe, can be sufficiently severe to be disabling in an individual with HIV infection. In addition, we created a stand-alone listing that includes pelvic inflammatory disease (final Listings 14.08A5 and 114.08A6) and another that includes vulvovaginal candidiasis (final Listings 14.08F and 114.08F).

Standard of Disability

Comment: Many commenters believed the proposed listings did not take into account the progressive nature of HIV infection in adults or children. They suggested that claimants with HIV infection should be found disabled at commensurately lower levels of severity than claimants with other diseases. A few commenters suggested that we adopt the broadest permissible definition of disability so as to get medical care to as many HIV-infected individuals as early as possible. They said this was important because the degenerative nature of HIV-related conditions guarantees that if someone is nearly disabled today, he or she will become disabled in the near future. One of their comments said that, although our stringent disability standards make sense with impairments that are relatively stable and capable of improvement, such eligibility requirements are less necessary when dealing with rapidly degenerative illnesses such as those associated with HIV. This is because there is little need

VOL
58
ISS
126
JL
2
1993
UMI

to consider whether applicants will remain ill long enough to be classified as disabled—those impaired by such illnesses simply do not get better. Another comment noted that, only through a combination of Federal, State and local funding could early treatment and care, including drug trials, be provided, and that tightening the listing criteria would result in the City and State governments bearing the entire responsibility for this continuum of care.

Some commenters cited the rapid deterioration experienced by children with HIV infection, and the fact that few of these children live to adulthood, especially those who acquire the virus from their mothers. The commenters said that our childhood neoplastic listings (i.e., the listings in 113.00) permit a finding of disability before marked functional loss has occurred and thus set a precedent for doing something similar in the case of children with HIV infection.

Response: We believe that these rules provide the broadest permissible definition of listing-level severity, consistent with the definition of disability contained in the Act. Moreover, we do not have the authority to apply a different definition of disability for some people than the standard of disability in the Act. The Act requires that an individual be currently disabled, and does not permit us to find an individual disabled based on a prediction of future disability.

However, these rules are not stricter than our previous criteria. To the contrary, both the proposed rules and these final rules provide more ways in which people with HIV infection may establish that they have listing-level impairments.

Our criteria take into account the unique course and history of HIV disease in both adults and children, including its progressive nature. In cases in which a claimant is experiencing a manifestation(s) of HIV disease that is indicative of a rapid decline in an adult's ability to engage in any gainful activity, or an SSI child claimant's ability to function independently, appropriately, and effectively in an age-appropriate manner, we have defined criteria that do not necessarily require continuous functional loss following the onset of the initial manifestation. Rather, the manifestation of HIV infection can be found disabling even though it includes periods of improvement. However, even though HIV infection is progressive and ultimately fatal, it is not true that all illnesses or other manifestations associated with HIV are rapidly degenerative, or that individuals with HIV infection cannot recover from HIV-related manifestations. Many manifestations are treatable, and many individuals can return to a good level of functioning following a period of severe illness. The impact of HIV and its manifestations is highly individual, and our disability adjudication system, which affords an individualized determination to every claimant, recognizes this.

We believe that this approach is consistent with the approach we take in the neoplastic listings. Neither the HIV listings nor the neoplastic listings describe impairments of lower severity than other listings. Rather, they recognize the medical realities of the conditions in terms of prognosis, overall functioning on a longitudinal basis, and the impact of treatment on functioning.

It is also very important to remember that no individual will be denied benefits simply because his or her impairment(s) does not meet or equal the severity of a listing. If an individual's impairment(s) does not meet or equal the severity of a listing, he or she can be found disabled at later steps of the sequential evaluation processes for adults and children.

Finally, we want to assure the commenters that we share their concerns, and are aware of the poor prognosis for individuals with HIV infection. We believe the promulgation of these listings addresses those concerns.

Comment: Some commenters thought that we should find any individual with symptomatic HIV infection to be disabled.

Response: We do not agree that any individual with symptomatic HIV infection of any type should be found disabled. There are, in fact, many such conditions that are amenable to treatment without significant after-effects, and others that are simply not so severe as to render an individual unable to work or unable to engage in age-appropriate activities. In both instances individuals may continue to function well for long periods, and we believe that it is reasonable to provide regulatory criteria that allow for the individualized assessment of the effects of a person's impairment(s) on him or her, as we have done in final Listings 14.08N and 114.08O.

Comment: A few commenters said that the criteria for HIV infection should recognize that persons who have asymptomatic HIV infection should have the right to treat their condition and prolong their lives through rest and stress reduction, and not be exposed to further compromise of their medical condition in a workplace.

Response: We did not adopt the comment. The standard of disability for adults under the statute is the inability to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment(s), or for children under age 18 who apply for SSI based on disability an impairment(s) of comparable severity to one that would disable an adult. Even though we agree that people who have asymptomatic HIV infection will ultimately become ill, they are not functionally limited until the infection begins to become symptomatic; i.e., until they begin to experience manifestations of the HIV infection. Once individuals do become symptomatic, however, these rules do not require that they be continuously symptomatic. The rules require that their impairments be evaluated on a longitudinal basis in order to form a picture of how the individual is able to function over time. Indeed, we have provided a separate listing, final Listing 14.08N, that includes individuals who suffer periodic manifestations of HIV infection but who may not be continuously limited between the episodes.

We would also like to clarify that we do not require people to work. The Act uses the ability to work as a way of describing the level of severity of impairment that constitutes a "disability." The Act does not say that a person who does not meet the definition of disability must work; it simply says that such a person is not disabled within the meaning of the Act. Indeed, to underscore this point, the statute explicitly excludes from consideration the factors of whether a job exists in the area in which the person lives, whether there are job openings, or whether the person would be hired to do a job. Thus, the listings are not intended for use in determining whether or not an individual should work, but to provide examples of impairments that satisfy the definition of disability in the Act because they are considered severe enough to prevent an adult from engaging in any gainful activity, or an SSI claimant under the age of 18 from functioning independently, appropriately, and effectively in an age-appropriate manner.

Comment: One comment said that any claimant whose physician reports positive HIV infection and a resulting inability to work should be considered disabled, regardless of whether or not the individual presents opportunistic infections.

Response: We did not adopt the comment. As we have said, an individual with asymptomatic HIV infection will not be functionally limited by the impairment. Under our rules for evaluating medical opinion evidence in §§ 404.1527(e) and 416.927(e), the Secretary is responsible for determining whether an individual is "disabled" under the Act; a statement by a medical source that the individual is "unable to work" is not sufficient in itself to establish that an individual is disabled within the meaning of the Act. However, in making our determination, we review all of the medical findings and other evidence in the individual's case record that support a medical source's statement that the individual is disabled and will recontact the source, if necessary, to obtain additional information in support of the opinion.

Comment: A number of commenters suggested that we give special consideration to the "socioeconomic" factors that can affect HIV-infected claimants, such as poor nutrition, limited or no access to ongoing health care, inadequate housing, and adverse family factors.

Response: We did not adopt the comments, but we have revised several provisions in response to these and other comments to make clear that we do consider some of the factors the commenters suggested, though not as "socioeconomic" factors.

The Act requires that disability must be established on the basis of a medically determinable physical or mental impairment(s) that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. It does not permit direct consideration of "socioeconomic" factors as determinants of disability. For example, under the Act we cannot consider whether a claimant lives in inadequate housing or receives substandard medical care in making a disability determination.

However, we do consider some of the factors the commenters believed to be "socioeconomic" factors because they are medical factors under our program. For example, under our program poor nutrition (i.e., malnutrition) is a medical condition and can be a disabling impairment in and of itself if it is of sufficient severity and duration. Even if it is not of listing-level severity, it can limit an individual's ability to function and cause disability, or combine with other impairments to cause disability. Individuals who receive substandard medical care—especially individuals who have HIV infection—will often be more severely impaired than other individuals because of more frequent illness or failure to adequately recover from infections and other manifestations that might be treatable with proper care, resulting in a generally more severe medical and functional picture.

Thus, it is not necessary for us to consider "socioeconomic" factors, which are ancillary to the determination of how the person is actually affected by his or her impairment(s). For the purpose of deciding disability, we need only know the nature and severity of the individual's impairment(s) and its effects on his or her functioning. We do not use factors like the quality of medical care or housing to determine whether a person is medically disabled, just as we would not use such factors to find a claimant not disabled.

However, in part because we agree with the commenters that many claimants have limited access to ongoing health care, we have clarified the documentation requirements in final 14.00D3 and 14.00D4, and 114.00D3 and 114.00D4 to make it clear that HIV infection or its manifestations may be documented without definitive laboratory evidence if the documentation is consistent with the prevailing state of medical knowledge and current medical practice and is consistent with the other evidence. We do not require specific diagnostic tests in all cases.

Comment: A few commenters proposed that we should also assess the effect of an HIV-infected individual's home situation on the ability to work when the individual is a parent caring for a child or children who also show symptoms of HIV and are, therefore, in need of more intensive care. These commenters observed that, because such children require frequent administration of medication and regular clinic visits and are not allowed to receive day care, they would be a burden on a healthy parent; parents with HIV infection are already required to miss work frequently because of their own conditions, and the situation is exacerbated when the parent must also take time off from work to care for sick children.

Response: We did not adopt the comment. Under the Act, disability must result from the individual's medically determinable impairment(s). We are, therefore, unable to provide for a finding of disability when an adult is unable to attend work because of the need to care for an ailing child and not because of a medically determinable impairment(s). However, when we consider the extent to which an individual's HIV-related manifestations affect his or her ability to function, we consider the individual's ability to care for her or his children.

Organization of the Listings

Comment: Many commenters requested that we simplify the HIV listings. Some commenters thought that it was unnecessary to publish all of the CDC's criteria for diagnosing AIDS in our listings because some of the CDC criteria are redundant. They pointed out, for example, that every manifestation in proposed Listings 14.08A and 114.08A was repeated somewhere in proposed Listings 14.08B–H and 114.08B–H; the only difference was that a person's manifestations would meet Listings 14.08A or 114.08A if the person did not have laboratory evidence confirming the presence of HIV infection, but would meet one of the other listings if he or she did have such evidence. The commenters noted that, whereas the CDC might have good reasons for distinguishing between the two situations, the fact was that we would find an individual who had one of these manifestations to be disabled under the listings whether or not there was laboratory evidence of HIV infection. Therefore, there was no reason for us to list the same manifestation more than once.

Some commenters said that this complexity had led to inconsistencies in the proposed rules. They pointed to various sections of the proposed listings where the same conditions and the same evidence needed to document those conditions were described in slightly different terms, suggesting that the criteria were different even though they clearly were not meant to be. They stated that these discrepancies and other inconsistencies in the language would be confusing to both adjudicators and the general public.

Some commenters pointed out repetitious language that we could delete (for instance, the statement "Documentation of HIV infection as described in 14.00D" at the beginning of every listing under proposed 14.08 and 114.08); others suggested ways to reorganize the listings. One of their comments said that dividing the proposed listing by pathogenic process did not increase the ease of reference and thought the repetition of section headings added clutter. The comment recommended that we combine the proposed listings into a single listing with all of the manifestations arranged alphabetically.

Many commenters objected to the many different proposed criteria for documenting the existence of the

VOL 58 ISS 126 JL 2 1993 UMI

various manifestations in the listings. We address the substantive comments in a separate section below, but as pertinent here, the commenters pointed out that the numerous specific criteria for documenting each of the different manifestations made the listings very complex and difficult to use.

Response: We adopted the comments. As we have already explained in the summary of the final provisions, we have simplified the language and organization of the final rules and have eliminated the redundancies of the proposed listings. In response to comments we describe later in this section, we removed all of the various specific requirements for documenting the presence of the manifestations in lieu of the guidance we now provide in final 14.00D4 and 114.00D4. We also revised the language throughout part A and part B to make them both internally consistent and consistent with each other where appropriate.

We chose to retain an organization that lists some of the manifestations under general headings for the type of organism, and others according to the affected body system or type of manifestation. We did not adopt the suggestion that we list all of the manifestations alphabetically, although we did try it to see if it would work. We found that an alphabetical list was more cumbersome than the system in these final rules. To begin with, the list was very long; there are over 50 separate named manifestations in final Listing 14.08. In addition, it was sometimes difficult to decide how a given impairment should be alphabetized (i.e., by specific organism, affected organ, or kind of manifestation), and in some cases, impairments that naturally seemed to group together (for example, cryptosporidiosis, isosporiasis, and microsporidiosis, which are all protozoans that cause diarrhea) were widely separated only because of the alphabetical artifice. Moreover, we believe that the system we decided to use in the final rules carries an advantage that simple alphabetization would not. By grouping impairments according to etiology where possible and, elsewhere, into other logical categories (such as body system or organ affected) we have provided implicit guidance that will be more useful for finding medical equivalence for unlisted manifestations than an alphabetized system would.

Comment: One comment suggested editorial revisions in 14.00D. The comment suggested that we consolidate the definition and description of HIV infection into one location, giving more emphasis to the progressive nature of the disease, that we consolidate all information about evaluation of HIV infection cases under the sequential evaluation process into one location, and that we eliminate superfluous language. The commenter provided alternative language for parts of proposed 14.00D.

Response: Although we have not adopted the specific language suggested in the comment, we have rewritten and reorganized all of the paragraphs in 14.00D of the final rule, and removed repetitious language. In the final rule, we have revised the definition of HIV infection in 14.00D1, consolidated the explanation of how to evaluate individuals with HIV infection under the sequential evaluation process in 14.00D6, and made other changes throughout 14.00D. We discuss these changes in greater detail in the explanation of the final rules and in response to public comments about specific issues addressed in final 14.00D.

Comment: One comment suggested that it was not necessary to list Hodgkin's and non-Hodgkin's lymphomas separately, as we had proposed in Listings 14.08I and 14.08J. The comment noted that, under the proposed rules, any individual with any type of lymphoma would be found to have an impairment that met a listing; therefore, it would be simpler to have one listing that included all lymphomas. Another comment said that we should provide separate criteria for immunoblastic sarcoma, which we had included with the lymphomas in proposed Listing 14.08I2, because there is a controversy over whether it is a true lymphoma.

Response: We adopted the first comment. Final Listing 14.08E3 now includes all lymphomas. In a parenthetical statement, the final listing names some of the various lymphomas we had proposed in the NPRM, but characterizes them as examples to emphasize that all lymphomas are included. This is because all lymphomas in HIV-infected individuals carry a poor prognosis. We made the same revisions in the childhood rules, at final Listing 114.08E3.

Even though we acknowledge that there is a dispute about whether immunoblastic sarcoma is a lymphoma, we did not adopt the second comment. Inasmuch as the prognosis is poor in all such cases with HIV infection and the mere existence of the manifestation establishes listing-level severity, there is no practical reason for establishing a separate listing under our rules.

Documentation

Comment: A number of commenters said that the proposed requirements for documentation of HIV infection were too difficult and burdensome to meet, especially for indigent persons who do not have a primary care physician and have inadequate access to health care. The commenters also said that the tests we required in the proposed rules to document a diagnosis of HIV infection are too expensive for indigent persons to afford, and that proposed 14.00D required individuals to undergo specific laboratory tests or invasive medical procedures to establish a diagnosis or meet the listing. Several commenters also expressed concern that requiring specific laboratory tests, such as an HIV antibody test or a CD4 count, might inappropriately cause denials or the early obsolescence of the criteria for establishing disability related to HIV infection. Several commenters suggested that we consider clinical judgment or generally acceptable means of diagnosis consistent with the current state of medical knowledge. One commenter suggested specific language about the standards for documenting HIV infection without laboratory evidence, and included suggested language for the fourth paragraph of proposed 14.00D to explain why a positive screening test for HIV infection, such as ELISA, needs confirmation by a more definitive test.

Response: We adopted the comments, even though we did not require as much testing as the commenters believed. For instance, in the fifth and sixth paragraphs of proposed 14.00D we explained that a diagnosis of HIV infection could be accepted without laboratory documentation based on the existence of a disease predictive of a defect in cell-mediated immunity with no known cause of diminished resistance to that disease. We also said that, in such cases, the documentation of HIV infection will rely on the clinical history, physical examination, exclusion of other causes for clinical abnormalities, and treating source opinion. We also added language to final 14.00D3a and 114.00D3a to explain why a positive ELISA test must be confirmed by a more definitive test.

However, recognizing the reality of limited access to health care for many individuals, we have revised and expanded the language in final 14.00D3b and 114.00D3b. Other acceptable documentation of HIV infection, to provide that the existence of HIV infection may be documented without definitive laboratory evidence when definitive laboratory evidence is not available. We did not adopt the

specific language suggested by one commenter. If no definitive laboratory evidence is available, documentation may be by medical history, clinical and laboratory findings, and diagnoses indicated in the medical evidence, provided that it is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. This would be true, for example, when an individual has an opportunistic disease predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to the disease (as we provided in the NPRM). We use the clause, "If no definitive laboratory evidence is available," in the final rules to make clear that we include individuals who may have undergone HIV testing anonymously or when there are privacy considerations. Of course, if laboratory tests have been performed and the results are available, we will make every reasonable effort to obtain them.

We have also made other changes in the rules. We made similar revisions to our rules regarding the documentation of manifestations of HIV disease in final 14.00D4b and 114.00D4b. We also no longer include separate listings in final Listings 14.08 and 114.08 for manifestations of HIV with and without documentation.

Comment: Some commenters believed that diagnosis without definitive laboratory evidence should be accepted for every manifestation in the proposed listings. Other commenters requested clarification of which manifestations of HIV infection could be diagnosed without definitive laboratory evidence and which required definitive documentation.

Response: We did not adopt the comments. We cannot make a blanket rule that permits diagnosis of every listed manifestation in Listings 14.08 and 114.08 without definitive laboratory evidence because some of the manifestations, such as Salmonella bacteremia (Listing 14.08A3), lymphoma (Listing 14.08E3), nephropathy (Listing 14.08L), and radiographically documented sinusitis (Listing 14.08M6), will by their very nature require laboratory testing. However, we also do not want to specify exactly which of the manifestations may be diagnosed without definitive laboratory evidence because we want to leave the listings flexible to accommodate future medical practices. For this reason, we provide in final 14.00D3b and 14.00D4b (as well as the corresponding childhood sections) that the diagnosis of HIV and its manifestations may be established by methods of documentation that are "consistent with the prevailing state of medical knowledge and clinical practice and consistent with the other evidence."

Comment: Another comment said that the proposed rule's heavy reliance on documented HIV test results disadvantaged persons who test positive for HIV infection at an anonymous test site before developing HIV-related symptoms. Giving the example of an individual applying for disability benefits under title II after she tested positive for HIV infection at an anonymous test site and subsequently developed an HIV-related condition, the comment recommended that we apply later evidence of HIV infection retroactively to the date when HIV-related symptoms first developed.

Response: We partially adopted the comment. As we explained above, we introduced the clause, "If no definitive laboratory evidence is available," in final 14.00D3 and 14.00D4, and 114.00D3 and 114.00D4, to underscore the fact that we include the situation in which an individual may have undergone HIV testing anonymously.

We did not add explicit rules on determining retroactivity. Our general disability rules already permit us to establish an onset date in the past based on an inference drawn from the medical and other evidence in the case record. This does not mean, however, that we will find all individuals with HIV infection to be disabled from the moment that they tested positive for the HIV. As we have said, individuals with HIV infection who are otherwise asymptomatic and do not yet have any limitations are not disabled under the definition of disability in the Act. On the other hand, it is possible for us to find disabled as of the date the manifestation(s) first occurred, an individual who began experiencing manifestations of HIV infection before she knew that she had HIV infection. As we always do, we will determine an individual's onset date based on the facts of the specific case.

Treatment

Comment: A few commenters said that we did not address the adverse side effects caused by treatment or explain how to evaluate improvement caused by AZT therapy.

Response: Although we did include a general discussion of the need to consider the effects of treatment in the fourteenth paragraph of proposed 14.00D, we have expanded the discussion in final 14.00D7, Effect of treatment, in response to the comments. The final section contains three paragraphs. The first paragraph stresses the importance of considering both the positive and negative effects of treatment. In the paragraph, we mention antiretroviral agents as an example of a type of treatment that may ameliorate the condition or cause side effects. AZT is a kind of antiretroviral agent; we did not mention it specifically because we would like the rules to remain current if new treatments are devised in the future that supplant the use of AZT.

In the second and third paragraphs of the final rule, we provide guidance about how to evaluate the effects of treatment. We stress the need to take into consideration on a case-by-case basis both the positive and negative effects of treatment on the individual's ability to function. In these same paragraphs, we also point out that some individuals may respond to treatment more successfully than others and that the effects of treatment may be temporary or long-term. As in the NPRM, the final section provides that it is essential to obtain a specific description of the drugs or treatment given, and a description of the complications or any other response to treatment.

Equivalence

Comment: A few commenters suggested that we include in the listing preface more instructions to be used in determining when unlisted conditions equal the severity of listed conditions. They said that an applicant would have no way of knowing what he or she would have to prove, because program physicians determine whether an unlisted illness has a level of severity equivalent to a listed impairment. One of their comments suggested that, even though such things are not amenable to exact quantitative measurement, the approximate levels of pain, fatigue, and physical impairment associated with each listed illness, along with any other relevant factors, such as frequency and duration of episodes, could be specified, so any illness that meets the least restrictive of these descriptions could qualify as a disability.

Response: We did not add guidance to the listings about how to determine equivalence, but we have provided more of the kind of detail the commenters requested in the final rules. We do not provide substantive instructions for determining equivalence in any of the listings sections in part A or part B. We have separate rules in §§ 404.1526, 416.926, and 416.926a of our regulations which set forth criteria for determining equivalence. The rules on equivalence include rules in § 416.926a for assessing a child's functional limitations to determine whether they are the same as

VOL
58
ISS
126
JL
2
1993
UMI

the disabling functional consequences of any impairment in the listings.

The majority of our listings describe conditions for which medical criteria can be specified that are of such severity that it is unnecessary to consider the kinds of factors mentioned by the commenters. Final Listings 14.08 and 114.08 are no exception; the criteria for all of the manifestations in Listings 14.08A–M and 114.08A–N are met without the need to consider or specify whether there are symptoms or limitations; the levels of fatigue, pain, or "physical impairment" these impairments may cause are implicit in the listings. Only final Listings 14.08N and 114.08O, which employ functional criteria as a measure of severity, require such considerations. As we have already explained, we have extensively revised the functional rules in response to these and other comments, and we believe that we have provided more detail about the kinds of symptoms and the extent of limitations necessary to meet these listings within the listings themselves and in 14.00D and 114.00D.

In addition to symptoms (such as fatigue and pain) and limitations, the commenters also suggested that we better define other factors, such as the frequency and duration of episodes mentioned in various listings. We believe we have responded to this comment as well in the extensive revisions in final 14.00D and 114.00D. In these sections, we have, among other changes, provided definitions of the terms "resistant to treatment" and "recurrent," included language about the need to consider an individual's medical and functional status on a longitudinal basis, and provided explicit guidance (in final 14.00D8) about the meaning of the term "repeated" in final Listing 14.08N. In the listings themselves, we added specific criteria for the frequency, duration, and severity of episodes of manifestations wherever it was relevant. For example, final Listings 14.08A5 and 114.08A6 specify that the multiple or recurrent bacterial infections must require hospitalization or intravenous antibiotic treatment at least 3 times in 1 year.

Finally, an individual does not have to know what he or she has to prove to us in order for us to make a finding of equivalence or any other finding regarding disability. We assist the individual by requesting the evidence we need for our determination. Moreover, an individual does not have to "prove" equivalence to us to be found disabled. If we determine that the individual's impairment(s) is equivalent in severity to a listed impairment, we will find that the individual is disabled. However, if we determine that an individual's impairment or impairments are "severe," but that they are not listed and are not equivalent in severity to a listed impairment, our evaluation will proceed through the final steps of the sequential evaluation process before we make any determination about whether the individual is disabled.

Proposed 14.08M, 114.08L, and 114.08M: The Functional Listings

Proposed 14.08M1–M3, 114.08L1–L2, and 114.08M1–M3: The Medical Criteria

Comment: A number of commenters said that the manifestations of HIV infection in proposed Listings 14.08M2 and 14.08M3, 114.08L1 and 114.08L2, and 114.08M2 and 114.08M3 were severe enough to be disabling without meeting a functional test, or had their own functional ramifications. Some commenters indicated that the manner in which the diseases were ranked did not accurately reflect the true disabling effects of some of the conditions. A number of commenters specifically questioned the need for functional requirements for people with Kaposi's sarcoma in proposed Listing 14.08M2h. Some commenters noted that there was a range of severity for Kaposi's sarcoma. (CD4 lymphocyte count, the other criterion associated with the functional criteria in proposed Listings 14.08M1 and 114.08M1, is addressed in a separate comment and response, below.)

Some commenters thought that our use of the terms "persistent" and "resistant" to describe the severity of the manifestations was confusing. They said we should define the terms.

Response: We adopted many of the comments. As we have already explained in the summary of the final provisions above, we devised stand-alone medical listings for most of the manifestations we had proposed in the functional listings. We also removed all of the specific manifestations we had proposed to list in lieu of more general descriptive rules that include any kind of manifestation of HIV infection, not only those that were in the proposed functional listings. Our changes were based on the public comments, additional medical information received from doctors—including pediatricians and physicians specializing in the treatment of HIV infection in women—and from other professionals with expertise in treating and studying individuals with HIV infection.

We converted all eight HIV manifestations included in proposed Listings 14.08M2, 114.08L1, and 114.08M2 into stand-alone listing criteria. We agreed for the most part with commenters who stated that the first six of the eight listed manifestations would be listing-level impairments if they were "persistent and/or resistant to therapy," as described in the proposed rules, without the need to consider functional deficits. In the final listings, pulmonary tuberculosis is in Listings 14.08A1 and 114.08A1; pneumonia, sepsis, meningitis, septic arthritis, and endocarditis are in final Listings 14.08M and 114.08N.

The final rules require that these conditions be "resistant to treatment" instead of "persistent and/or resistant to therapy." We made this change for a number of reasons. We used the word "treatment" instead of "therapy" only to make the language of the final rules consistent with other sections in the listings; this is merely an editorial change. The phrase "persistent and/or resistant to therapy," however, was redundant and could have been confusing. The phrase "and/or" was unnecessary in that, because of the disjunctive, "or," a person would have had an impairment that met the listings with either persistence or resistance to treatment; therefore, the conjunctive, "and," was superfluous. Also, in most situations, "persistent" would have been redundant of "resistant to therapy" because, if a person was receiving treatment and the manifestation persisted, the manifestation was implicitly resistant to treatment.

Moreover, the word "persistent" was also ambiguous and difficult to define. Some manifestations can respond to treatment without being cured. They can technically "persist" because the organisms that cause them are still present, but not necessarily be disabling. If we said the manifestations had to persist at a disabling level, the individual would have to be in treatment and the manifestation resistant to treatment: Individuals with persistent disabling pneumonia, pulmonary tuberculosis, sepsis, and meningitis require treatment or they will die; septic arthritis is usually a sign of a more pervasive infection and is so debilitating that the individual would also require treatment.

Therefore, we deleted the word, "persistent," from the final rules. However, we also provided alternative criteria for the manifestations in final Listings 14.08M and 114.08N by which individuals whose manifestations respond to treatment only to recur may establish listing-level severity.

We did not agree with the commenters who thought that we could list the remaining two manifestations

proposed in Listings 14.08M2, 114.08L1 and 114.08M2, peripheral neuropathy and Kaposi's sarcoma, without some other indication of medical severity. Both Kaposi's sarcoma and peripheral neuropathy vary widely in severity. These disorders, even when not amenable to treatment, may not seriously impair functioning, even in individuals with HIV infection. Therefore, the medical criteria we developed require more than resistance to treatment and are more descriptive of listing-level severity. The final criteria for evaluating Kaposi's sarcoma (final Listings 14.08E2 and 114.08E2) require more than limited superficial lesions; they require extensive oral lesions, or visceral involvement, or skin or mucous membrane lesions of sufficient severity to satisfy the criteria in final Listings 14.08F and 114.08F, conditions of the skin or mucous membranes. Of course, the condition may also be evaluated under the final functional listings in 14.08N and 114.08O. In the case of peripheral neuropathy (final Listings 14.08H2 and 114.08H), the disorder must be assessed either under the appropriate neurological listings in 11.00 and 111.00 or on the basis of functional limitations under final Listings 14.08N and 114.08O. In order to make clear that HIV-related peripheral neuropathy may be evaluated under the neurological listings, we added cross-references to those listings sections in final Listings 14.08H2 and 114.08H.

In addition, we developed criteria for evaluating most of the other HIV manifestations in proposed Listings 14.08M3, 114.08L2 and 114.08M3. As we did for peripheral neuropathy, we required the three blood disorders now in final Listings 14.08G and 114.08G—anemia (proposed Listings 14.08M3a and 114.08M3a), granulocytopenia (proposed Listings 14.08M3b and 114.08M3b), and thrombocytopenia (proposed Listings 14.08M3c and 114.08M3c)—to meet the criteria of other listings (in 7.00 and 107.00, the listings for the hemic and lymphatic system). Even in the case of an individual with HIV infection, the blood count figures alone do not show how an individual is able to function.

We also developed stand-alone medical listings for mucosal candidiasis, including vulvovaginal candidiasis (proposed Listings 14.08M3f and 114.08M3f, final Listings 14.08F and 114.08F), Herpes zoster (proposed Listings 14.08M3h and 114.08M3h, final Listings 14.08D and 114.08D), dermatological conditions such as eczema and psoriasis (proposed Listings 14.08M3i, 114.08L2g, and 114.08M3i, final Listings 14.08F and 114.08F), diarrhea (proposed Listings 14.08M3j, 114.08L2f, and 114.08M3j, final Listings 14.08J and 114.08J), and radiographically documented sinusitis (proposed Listings 14.08M3k, 114.08L2i, and 114.08M3k, final Listings 14.08M6 and 114.08N6).

Although we agree with the comment that the remaining manifestations in proposed Listings 14.08M3, 114.08L2 and 114.08M3 (fever, weight loss, hepatomegaly, splenomegaly, parotitis, oral hairy leukoplakia, and lymphadenopathy) can have functional ramifications, their effects on an adult's ability to work or a child's ability to function in an age-appropriate manner vary from individual to individual and, thus, listing-level severity cannot be defined in solely medical terms. Therefore, these manifestations, along with other manifestations of HIV infection that do not meet the criteria in final Listings 14.08A–M or 114.08A–114.08N, will continue to be evaluated with functional criteria under final Listings 14.08N and 114.08O.

Comment: Another comment questioned the addition of functional requirements to the criteria for HIV wasting syndrome.

Response: We did not list HIV wasting syndrome in proposed Listing 14.08M3 (or proposed childhood Listing 114.08M3); we proposed a separate Listing 14.08H (final Listing 14.08I) which provided that any person with HIV wasting syndrome had an impairment that met the listing. In the childhood listings, we provided a cross-reference to the proposed adult rule, in the ninth paragraph of proposed 114.00C.

We believe that the commenters misunderstood our intent in proposed Listings 14.08M3 and 114.08M3. HIV wasting syndrome is defined as an involuntary weight loss of more than 10 percent of baseline body weight and either chronic diarrhea or chronic weakness and documented fever greater than 100.4° F (38° C) for the majority of 1 month or longer. Although it is true that in proposed Listings 14.08M3 and 114.08M3 we listed all three of the criteria that may define HIV wasting syndrome (fever, weight loss, and diarrhea), we did not intend to list true HIV wasting syndrome in the functional listing but a lesser manifestation of HIV infection. An individual with true HIV wasting syndrome would have already been found to have an impairment that met the criteria of proposed Listing 14.08H. The individuals who could have met the criteria of proposed Listing 14.08M3 were those who did not have all of the findings needed to define HIV wasting syndrome, but who were nevertheless significantly limited in their functioning because of their manifestations.

For reasons we have already explained in the summary of provisions, we have established separate listings, final Listings 14.08J and 114.08J, to make diarrhea a stand-alone medical condition, but we have not listed fever and weight loss separately, except insofar as they define HIV wasting syndrome. However, these two medical findings, as well as diarrhea of lesser severity than in the stand-alone medical listings, may still be found to be of listing-level severity under final Listings 14.08N and 114.08O.

Comment: Some commenters suggested that we consider additional manifestations of HIV infection in conjunction with the functional standards in proposed Listing 14.08M3. The commenters suggested many specific manifestations, including joint aches, arthritis, or arthralgias, recurrent cystitis, fatigue, chronic headaches, chronic sleep disturbance, chronic shortness of breath or exertional dyspnea, and HIV-related mental disorders. Various comments on the childhood listings also suggested that we add chronic and recurrent otitis media associated with functional limitations.

Response: As we have said, instead of making the lists longer, but still finite, we decided to revise the functional listings so that they would include any possible manifestation of HIV infection. Therefore, we no longer list any manifestations explicitly, only a few examples. The revisions in final Listing 114.08O are sufficient to allow adjudicators to evaluate chronic and recurrent otitis media when it is a manifestation of HIV infection. Additionally, sequelae from otitis media, such as hearing loss or brain abscess, or any other manifestations of HIV infection in children or adults, can be evaluated under the appropriate listing or at the last steps of the sequential evaluation processes.

Comment: A number of commenters believed that the CD4 lymphocyte count required in proposed Listings 14.08M1 and 114.08M1 should be considered enough to establish listing-level severity without the additional requirement to meet the functional criteria. Some commenters stated that the proposed CD4 count less than or equal to 200 cells/mm^3 (or 14 percent or less lymphocytes) was too low, especially if we linked it to functioning; others stated that it was too high.

Many suggested various alternatives. At least one commenter asked us not to use any particular CD4 count as a

measure of disability at all because each individual situation is different, the commenter said that it would be unfair to label as disabled all individuals with low CD4 counts, when many such individuals are still functioning well. One commenter suggested a specific description of the standard for using CD4 lymphocyte counts, and suggested specific language to clarify the discussion of CD4 lymphocyte counts in the third paragraph of proposed 14.00D.

Response: We have deleted the CD4 criterion from the final rules. We realize that, although a decreased CD4 count is a gauge of an individual's potential for developing a serious opportunistic infection or other manifestation of HIV, with improved treatment and prophylaxis for certain opportunistic diseases one cannot reliably predict when an individual will develop a disabling manifestation. Further, the laboratory finding does not show whether the individual is functionally limited. There are many cases of individuals with very low CD4 counts (often far below 200) who exhibited few or no functional restrictions, and other individuals with much higher CD4 counts who were seriously impaired. Indeed, we received comments from such an individual, who related his own story of living with HIV infection and working even though his CD4 count was below 100.

We agreed completely with the many commenters who stated that such individuals are at risk of becoming disabled. However, our disability programs require an assessment of whether an individual is disabled currently, without regard to whether the individual may become disabled at some point in the future. Because there is so much variability in the state of health and functioning of individuals with any given CD4 count we could not adopt the suggestions to use a specific CD4 count alone (at any level) as a listing criterion.

Proposed 14.08M4, 114.08L3, and 114.08M4: The Functional Criteria

Comment: Many commenters said that the functional criteria were overly burdensome and restrictive and should be eliminated entirely. Some of these commenters believed that linking manifestations of HIV disease to a functional test ignored the progressive nature of the disease and created a higher level of severity than established by other listings. One commenter suggested extensive revisions in the paragraphs explaining the functional criteria in proposed 14.00D, and provided specific language for such revisions.

Response: For reasons we have given in the explanation of the final rules, we did not eliminate the functional criteria. Our intent in proposing the functional criteria in Listings 14.08M, 114.08L, and 114.08M was to include in the listings many individuals for whom we thought we could not provide solely medical criteria. For instance, the functional listings include a group of individuals who would be very difficult to describe in strictly medical terms—individuals who become ill then improve, only to repeatedly become ill again, either with the same manifestation of HIV infection or with something different. The functional listings also provide a listing for those individuals whose impairments might not be at listing-level severity for all individuals, but that are actually of listing-level severity for the particular individuals given their effects, such as pain, other symptoms, and the consequences of medication, that vary greatly with the individual. They help to ensure a finding of disability for any person whose impairment(s) actually prevents him or her from engaging in any gainful activity, or of any SSI claimant child whose impairment(s) actually prevents him or her from independently, appropriately, and effectively engaging in age-appropriate activities, even though that impairment(s) might not impose similar limitations on other individuals.

Moreover, we believe that, in view of the fact that we have made most of the proposed manifestations into stand-alone medical listings, we have accommodated the comments that asked us to delete the functional listings. The functional criteria now only provide another way to find disabled individuals who have most of the manifestations we proposed in Listings 14.08M, 114.08L, and 114.08M.

Based on other comments, however, we have significantly modified the proposed functional criteria to make them more applicable to cases involving HIV infection and to better express our original intent. We have also revised the paragraphs in the final rules that explain the functional criteria (final 14.00D8). The functional criteria for both adults and children are no longer tied to a finite list of specific medical conditions; any manifestation or combination of manifestations may now be evaluated under this listing. Additionally, the final rules require an adult to demonstrate limitations of functioning in only one of three areas of functioning, rather than the proposed two of four. We describe these rules and our reasons for the changes in subsequent comments.

Comment: Many commenters pointed out that under the functional equivalence policy in § 416.926a(b)(3), any child who has listing-level deficits in the functional domains of the listings in 112.00 is considered disabled regardless of the nature of the impairment. They said it was, therefore, not necessary to include the functional criteria in proposed Listings 114.08L and 114.08M, because these criteria did no more than recodify existing policy

Response: We disagree. The part B listings are used to evaluate claims filed under both title II and title XVI of the Act if the claimant is under age 18. The functional equivalence policy in § 416.926a(b)(3), however, applies only to claims for SSI filed under title XVI. Even though SSI claims constitute the great majority of childhood disability applications, it is possible for individuals under age 18 to apply for disability benefits (both as disabled minor children and as workers) under title II. Functional equivalence does not apply in these cases, and such children could be disadvantaged by removal of the rule.

Comment: Many commenters said that the proposed HIV listing was the first and only adult physical impairment listing to require a functional test in order to qualify for benefits, and to do so violated various antidiscrimination laws. One comment indicated that the listing should exist solely to provide SSA with medical criteria for the purpose of making disability determinations.

Response: The commenters were not correct. Even though the listing for evaluation of HIV infection is the first to contain functional criteria similar to those in the mental body system, other physical body system listings, such as (but not limited to) several in the neurological and musculoskeletal body systems, include functional criteria among their requirements. We also believe that we have the statutory authority to include functional criteria in the listings because the listings are not intended to include all possible impairments (see, e.g., *Sullivan* v. *Zebley*, 493 U.S 521 (1990)) and because our rules ensure that all disabled individuals have an opportunity to establish that they are disabled under the Act. In any case, we have provided stand-alone criteria for most of the manifestations we had proposed to link to functioning, as well as some others that affect women, girls, and other groups of people with HIV infection. Therefore, the final rules do not discriminate against any group of people, but broaden the listings to include more people.

We also do not agree that the listings may include only medical criteria. Functional criteria not only provide an important avenue to allow individuals whose HIV-related conditions impose functional limitations, but, perhaps most importantly, they reflect a true outcome of the illness. Even the strictly medical criteria in the listings have implied functional consequences. By definition, claimants with impairments meeting or equaling listed medical criteria cannot work, and this inability to work—a functional assessment—is the underlying statutory criterion on which the entire disability program is based.

Comment: Several commenters said that requiring functional criteria in the adult listing would prevent adults with HIV infection from establishing their disabilities at the earliest possible point in time. They said that the functional criteria could cause the same delays for gathering and weighing evidence as the commenters believe occur when we assess residual functional capacity when a claimant's severe impairment(s) does not meet or equal in severity any listing. Some commenters said that the requirement for 2 months' persistence of the manifestations in proposed Listings 14.08M3 and 114.08M3 would create a 2-month processing delay.

Response: The effect of the functional criteria may actually be to expedite case processing. The functional criteria do not come into play unless the individual does not have an impairment that meets the requirements of one of the preceding listings. We also follow a general policy in all cases of curtailing development when there is sufficient evidence to properly allow a claim; if the evidence shows medical equivalence to one of the listings, we would not further develop the claim simply to establish whether the individual has an impairment that meets final Listing 14.08N. Therefore, the provision applies only to individuals for whom we would have to assess functioning at later steps of the sequential evaluation process: Individuals who have severe impairments that do not meet the medical listings and for whom we would have to perform a residual functional capacity assessment if we did not have this listing.

The assessment of residual functional capacity is a much more refined evaluation than is required under final Listing 14.08N. Whereas final Listing 14.08N only requires a judgment about whether an individual is markedly impaired in a broad area of functioning, a residual functional capacity assessment is a detailed evaluation of the claimant's ability to do particular physical and mental work-related activities. Both evaluations rely on the same kinds of evidence, so the new listing will not require additional time spent to develop evidence. If anything, individuals who meet this listing may not have to present as much evidence of their ability to function as they would have to for the more detailed residual functional capacity assessment. Furthermore, the actual assessment of functioning under the listing is quicker than the residual functional capacity assessment and does not require evaluation under the medical-vocational rules.

In fact, there has been no evidence that using functional criteria since December 17, 1991, has delayed decisions made on cases involving HIV infection. We updated our procedures for evaluating HIV infection under an interpretive ruling we have been following since December 17, 1991 (Social Security Ruling (SSR) 91–8p, "Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection," 56 FR 65498, December 17, 1991). The experience we have using SSR 91–8p indicates that claims involving HIV infection are being processed expeditiously. We believe, therefore, that—far from delaying case adjudication—the new listing will speed the processing of many claims and permit more cases to be adjudicated at the listing level than would otherwise be possible.

With regard to the comment about the delays that might have been caused by the criteria requiring 2 months' persistence of the manifestations in proposed Listings 14.08M3 and 114.08M3, we have deleted those rules, as already explained.

Comment: Many commenters said that if we retained functional criteria in the final adult and childhood listings, the requirement should be to demonstrate marked limitations in only one area of functioning (for adults) or one functional domain (for children). They thought that for adults this was equivalent to the threshold we previously used in our operating instructions in effect prior to December 17, 1991. Some commenters were particularly concerned that the proposed rules for adults would be stricter than the rules they would replace by requiring a higher level of functional impairment.

Response: Even though we have changed the standard for adults to require marked limitations in one of the three functional areas, we do not agree that the proposed rules set a higher level of severity than was in our previous operating instructions, nor was that our intent. Indeed, under our prior instructions, an individual needed help with most activity, including climbing stairs, shopping, cooking, and housework, in order to establish a "marked" restriction of activities of daily living. In the nineteenth paragraph of 14.00D of the NPRM, an individual who was unable to perform activities independently most of the time had a "marked" limitation of activities of daily living. We further defined a "marked" limitation in the seventeenth paragraph of the section as arising "when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively."

More fundamentally, and as we have already explained in the summary of provisions above, the proposed functional criteria for adults effectively permitted a finding of disability based on marked limitations in only one functional area if the individual also suffered episodic bouts of illness. Whereas activities of daily living, social functioning, and concentration, persistence or pace clearly describe functioning, the fourth area, repeated episodes of deterioration or decompensation in work or work-like settings, referred to episodes of illness. (This is not true for people with mental disorders, where the episodes of deterioration or decompensation may result from the stress of the work or work-like setting, but it is true in the context of HIV infection.) Thus, an individual who experienced the required episodes of illness in proposed Listing 14.08M4d and met only one of the three functional criteria in proposed Listing 14.08M4a–c would have had an impairment that met the listing.

This is not to say that all individuals could have met the listing in this way. Some would not have suffered episodic manifestations and, therefore, would have had to meet two of the three functional criteria in proposed Listing 14.08M4a–c. However, it has been our experience, contrary to the beliefs of many commenters, that individuals who are markedly limited in one of the areas of functioning also demonstrate marked limitations in one of the other areas; the requirement for limitations in two areas merely validated the finding of disability. Indeed, we have been using the same procedures under SSR 91–8p and have allowed many cases under this interpretive ruling.

As we have already explained in the summary, and in response to the comments, we revised final Listing

VOL 58 ISS 126 JL 2 1993 UMI

14.08M inasmuch as the fourth proposed functional criterion described the universe of individuals we were trying to capture in the listing. In the final rule, the fourth criterion from the proposed listing is now the threshold criterion for the listing and the individual must meet one of three functional criteria.

A similar change in the number of functional domains that must be limited in a childhood case is not appropriate. The criteria a child has to meet to be considered under the listing (i.e., the child must have a manifestation of HIV infection that does not satisfy any of the criteria in final Listings 114.08A–N) are not repeated in the functional domains, are not analogous to the areas of functioning used in evaluating adult cases, and differ with the age of the child.

Comment: Many commenters thought that the "marked" level of restriction required in the proposed adult functional criteria was too severe. They were particularly critical of the definition of "marked" as occurring "most of the time" in the paragraphs that defined the first three functional criteria. Some commenters suggested that "marked" connoted a level of functional restriction commensurate with almost total incapacitation, i.e., bed confinement or requiring nursing home care, and said that this reflected a higher level of restriction than is required to establish disability under the Act. Some also suggested that individuals would be disabled even if they were not limited "most of the time" but were limited to some lesser extent.

Response: We never intended "marked" to be interpreted as requiring total incapacitation (as, indeed, it does not in the mental body system listings). We proposed language to underscore this intent in the seventeenth paragraph of 14.00D in the NPRM, which, with minor language changes, is now the fifth paragraph of 14.00D8 in the final rules. In that paragraph, we first defined "marked" as being on a continuum between "moderate" and "extreme" to make the point that there is a more severe limitation than a "marked" limitation; that is, an "extreme" limitation. If "marked" meant total debility, it clearly would have left no room on the scale of severity for "extreme" limitation. We then stated that a marked limitation could arise "when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively." By indicating that a marked limitation might result from limitations of only several activities, or even only one activity, and by using the phrase "seriously interfere," we again meant to say that the individual need not have been totally debilitated.

We did, however, intend to establish a level of limitation that is higher than is required to establish disability under the Act. This is because all listed impairments in part A and part B define a more severe level of disability than is defined in the Act. The standard of disability in the statute is based on an inability to engage in "any substantial gainful activity" (see sections 216(i), 223(d), and 1614(a) of the Act). Under §§ 404.1525(a) and 416.925(a) of our regulations, however, we explain that the listings describe impairments that are considered severe enough to prevent a person from doing "any gainful activity." Similarly, the regulations defining disability in children provide that "comparable severity" to a disability in an adult means a substantial reduction in the ability to function independently, appropriately, and effectively in an age-appropriate manner (see § 416.924(a)). The listings, however, describe impairments that "prevent" a child from functioning independently, appropriately, and effectively in an age-appropriate manner (see §§ 416.924(e) and 416.926a(a)).

The point is that the listings are meant to be a screening device by which we can decide relatively quickly that an individual is disabled, without the need to proceed to the final steps of the sequential evaluation processes. It is at the final steps of the sequential evaluation processes for adults and children that we determine whether individuals have impairments that meet the statutory definition of disability. Disability under the listings is so severe that we know that there is no need to proceed further because a finding of disability would result even if we proceeded through all the steps of the sequential evaluation processes.

Nevertheless, the comments made us realize two things: First, that we could have more clearly stated that "marked" does not mean total incapacity, and second, that the standard of "most of the time" was unnecessarily inflexible. Consequently, we revised the description of "marked" to explain our intent more clearly. We now state plainly in the fifth paragraph of final 14.00D8 that "an individual need not be totally precluded from performing an activity to have a marked limitation * * *." We also added language in the fifth paragraph that describes "marked" in qualitative terms and makes clear that a "marked" restriction in function is not defined by any frequency of occurrences but by the degree of interference with function. We also state plainly that "marked" is not intended to imply that a person is confined to bed, hospitalized, or in a nursing home. This allows us the flexibility to determine whether a limitation is "marked" on a case-by-case basis. In each of the sixth, seventh, and eighth paragraphs of final 14.00D8 (which define the three functional areas, and correspond to the nineteenth, twentieth, and twenty-first paragraphs of proposed 14.00D) we eliminated the sentences that included the phrase "most of the time" and revised the remaining discussions to be more descriptive of our intent.

We did not simply revise "most of the time" to a shorter period, as some commenters suggested, because we believe the attempt was fraught with the same pitfalls that the commenters pointed out for the phrase we proposed. Furthermore, because we say that "marked" may involve only one activity or several activities, a criterion for less frequent interference could result in unintended variations in severity levels depending on which activities or other functions were limited.

Comment: Many commenters thought that it was inappropriate to use, nearly verbatim, the functional criteria language from the mental listings to describe the functional limitations in proposed Listings 14.08M, 114.08L and 114.08M. Although some commenters said they could appreciate the need to link functional limitations to physical disorders, they thought it was inappropriate to apply mental listing criteria to physical impairments.

Response: We do not agree that it is inappropriate to apply these functional criteria to physical disorders because the criteria are generic; they do not describe mental functions, but broad areas of functioning that are relevant to any adult's ability to work or any child's ability to independently, appropriately and effectively engage in age-appropriate activity. As we have explained in the summary of the final rules, these activities describe what people do and how well they do it on a day-to-day basis. For our purposes, it is immaterial whether an individual has difficulty doing chores or maintaining concentration because of a mental disorder or because of fatigue, weakness, pain, headaches, frequent diarrhea, or any other physical problem; the person still has the limitation that results from a medically determinable impairment(s).

However, as we have also said, we have modified the proposed language in

final 14.00D8 to make it even more specific to individuals with HIV infection. As we have previously explained, we also removed the fourth "functional" criterion in proposed Listing 14.08M4d.

We also repeat that, by revising proposed Listings 14.08M, 114.08L and 114.08M to make most of the proposed manifestations into stand-alone medical listings and to broaden the applicability of the final functional listings to include any manifestation or combinations of manifestations, final Listings 14.08N and 114.08O are only advantageous to claimants. They merely provide another means for people to show that they are disabled under the listings.

Comment: A number of commenters specifically commented that the area of social functioning is meant to measure an individual's psychiatric condition and is not appropriate for the evaluation of HIV. They were especially concerned that an individual could be denied disability benefits because he or she "socialized" with family and friends.

Response: The comments misunderstood our intent; we have, therefore, clarified the rules. We have always recognized that there is a difference between visiting with family and close friends, who may make special allowances for an impaired individual, and independent social functioning. Furthermore, the ability to interact with other people can be affected by a physical impairment. For instance, an individual who is fatigued may have difficulty going out or sustaining conversation. In addition, many individuals with manifestations of HIV infection do have mental findings (such as anxiety, depression, and apathy) that can interfere with their social functioning. Even if the mental findings are not manifestations of HIV infection, or are the only manifestations of the HIV infection, we still consider their effect on the individual's functioning together with any other manifestations.

To make our intent clearer, we have revised the language of the seventh paragraph of final 14.00D8 in response to the comments. Final 14.00D8 states that marked difficulty of social functioning means that an individual "cannot engage in social interaction on a sustained basis (even though he or she is able to communicate with close friends or relatives) * * *." It is also important to note that, under the final listing, social functioning is only one area of functioning among three, each one of which can establish disability at the listing level.

Comment: Several commenters thought that the fourth functional test requirement in the adult listing, i.e., "repeated episodes of decompensation," was too severe and went beyond what is necessary to prevent an adult from working. The commenters suggested that this criterion be revised to more accurately reflect the reality of the exacerbations and remissions in HIV-related illnesses and the need to be absent from work for treatment.

Response: We have already explained how we revised proposed Listing 14.08M in the summary of provisions and the foregoing responses. In the third paragraph of final 14.08D8, we retained the provision for manifestations occurring on an average of 3 times a year, or once every 4 months, and each lasting at least 2 weeks, but changed it to one provision among several alternatives instead of an absolute requirement. We now also provide that the manifestations may last for less than 2 weeks and occur substantially more frequently than 3 times a year or every 4 months, or that they may occur less frequently than 3 times a year or once every 4 months but last substantially longer than 2 weeks each time. We believe this better reflects the variety of patterns of episodic illness experienced by persons with HIV infection.

We do not agree, however, that the proposed criterion was incompatible with the ability to work in and of itself. It described an individual who missed 6 weeks of work during the course of a whole year because of illness. Although we do not mean to suggest that missing work for 2 weeks at a time 3 times in a year is not serious, we do not believe that it is so serious in itself that we could conclude that the individual was disabled for 12 months, as required by the statute. This is why we also require an accompanying indication of marked functional limitations in the final rule.

Comment: Several commenters stated that in setting the adult functional standards, we should evaluate individuals based on both current functional ability and likely future loss of capacity.

Response: The Act requires that an individual be disabled during the period covered by the individual's application. This usually means that the individual must be currently disabled, although we may find disability in the past under title II within the time limits covered by the application. However, we are never permitted to find an individual disabled based on a prediction that the individual will become disabled in the future. There is no provision in the statute that would permit us to overlook a claimant's current favorable level of function because it is expected his or her condition will worsen at some future time. Our policy is to advise individuals to reapply for disability benefits at such time as the condition precludes substantial work activity.

Comment: Numerous commenters suggested that we use functional tests like the Karnofsky Performance Status instead of the proposed functional criteria.

Response: We did not adopt the comments. The Karnofsky Performance Status is not a "functional test," but a physician's estimate of functional status. We do not think, however, that the Karnofsky or other available tests are sufficiently broad or objective to use in place of our functional criteria, as the standard for measuring functional capacity in HIV-related disability claims.

Comment: Several commenters said that we should develop a special form to capture information regarding a claimant's functional limitations and train our Field Office and State agency personnel to properly elicit this information. Some were interested in working with us to develop the form, as well as to develop a national 800-number and telefax service for the dictation of physician narratives and medical documentation.

Response: Developing evidence of functional limitations is not new to Field Office or State agency employees. The disability application forms include basic questions regarding evidence of functional limitations and are sufficient to make a determination in many cases The State agencies develop additional evidence regarding function from a variety of medical and non-medical sources when that is necessary. Although we appreciate the commenters' offers, at this time we do not believe a special form is needed for either the Field Offices or the State agencies. Also, because medical determinations are made locally, a national telephone/telefax service for physician narratives and medical documentation would not be practical. We believe these kinds of services are best when designed and implemented locally in order to meet the particular needs of the area.

HIV Manifestations Suggested as Additions to the Listings

Comment: A number of commenters suggested adding other manifestations of HIV infection to the listings, such as: anemia, arthritis, oral candidiasis (oral thrush), chronic shortness of breath or exertional dyspnea, chronic sleep disorders, hepatitis (including hepatitis caused by cytomegalovirus), extrapulmonary pneumocystis, fatigue, HIV myositis, leukemia, lymphocytic

interstitial pneumonitis, microsporidiosis, mucormycosis, neoplasia, pancytopenia, pulmonary aspergillosis, recurrent giardiasis, renal failure, squamous carcinoma of the genitals, side effects of antiretroviral therapy, syphilis and neurosyphilis. (We discuss other suggested additions to the listings—including several that are specific to women—in subsequent comments and responses.)

Some of these commenters suggested specific criteria to be included (e.g., chronic anemia with persistent hemoglobin of less than 10 percent or hematocrit of less than 30 percent, or requiring transfusions more often than twice yearly). Other commenters simply identified the symptoms (e.g., dyspnea) or conditions they thought should be included, without describing any particular level of severity. When a commenter suggested adding a medical condition to the listing but did not include criteria describing impairment severity, we were often unable to discern whether the commenter was asking that we develop listing criteria for that manifestation, or asking that we consider the mere existence of the manifestation in an individual with HIV infection to be listing-level severity. In order to ensure that we considered every comment, we considered both possible interpretations of the comment.

Response: We adopted some of these comments, partially adopted others, and did not adopt others.

In response to the comments, we added the following manifestations of HIV infection to the listing without any qualifying criteria: Extrapulmonary pneumocystis carinii infection (final Listings 14.08C2 and 114.08C2); mucormycosis (final Listings 14.08B6 and 114.08B6); and aspergillosis (final Listings 14.08B1 and 114.08B1). An individual with HIV infection and any one of these manifestations has an impairment that meets the listing.

To the extent that the commenters were suggesting that we include any other manifestations in the HIV listings without any qualifying criteria, we did not adopt the suggestions. The information we obtained and the medical literature indicated that, although the other manifestations suggested by the commenters can be disabling, they need not be. Consequently, the assessment of severity must be made based on criteria beyond the mere presence of the manifestation. In order to be responsive to the comments, we attempted to develop a listing-level standard for each suggested addition to the listings, using qualifying criteria to indicate impairment severity.

The listings now include microsporidiosis (final Listings 14.08C1 and 114.08C1), if it results in diarrhea lasting for 1 month or longer; and septic arthritis (final Listings 14.08M4 and 114.08N4) if it is resistant to treatment or requires hospitalization or intravenous treatment 3 or more times in 1 year. These criteria were developed based on the information we obtained.

Some of the HIV manifestations that commenters suggested as additions to the listings may be evaluated under existing listings; consequently, we did not add new criteria for them. These include: oral candidiasis (which is evaluated under final Listings 14.08F and 114.08F, Conditions of the skin or mucous membranes, or 14.08M and 114.08N, for other multiple infection, or under the appropriate body system listing); leukemia (which is evaluated under the criteria in Listing 7.11, 7.12, 13.27, or 107.11); giardiasis (which is evaluated under final Listings 14.08J and 114.08J); and pancytopenia (which is evaluated under final Listings 14.08G and 114.08G or under the criteria in 7.00ff and 107.00ff).

Syphilis and neurosyphilis are also manifestations that may be evaluated under existing listings. However, because of their frequency in individuals with HIV infection, we added Listings 14.08A4 and 114.08A4 to remind adjudicators that HIV infection can make this illness more difficult to treat and to ensure that they look for sequelae of the disease. For the same reason, we added Listings 14.08D5 and 114.08D5 for evaluating viral hepatitis. We did not distinguish in the final listings between CMV hepatitis and other forms; therefore, CMV hepatitis is included under these final listings.

The NPRM included criteria for evaluating various malignant neoplasms. Final Listings 14.08E and 114.08E are expressly for the evaluation of malignant neoplasms. The NPRM also included criteria for renal failure, in proposed Listing 14.08L. The general term "nephropathy" means disease of the kidneys and would, therefore, encompass renal (i.e., kidney) failure. Nephropathy is now included in both the adult and childhood listings at final Listings 14.08L and 114.08M, which are cross-references to the criteria in 6.00ff and 106.00ff.

We did not adopt the suggestions to add listing criteria for the following manifestations of HIV infection because the manifestations are either symptoms, signs, or medical findings that must be evaluated based on the underlying medical condition: dyspnea, sleep disorder, or fatigue.

We did not adopt the suggestion to include criteria for squamous cell carcinoma of the genitals because the condition is not necessarily disabling, even in an individual with HIV infection, and may be evaluated under the listings for malignant neoplasms in 13.00 and 113.00 or as other skin conditions under the criteria in final Listings 14.08F and 114.08F.

Likewise, HIV myositis and arthritis are not necessarily disabling in individuals with HIV infection, and these disorders may be evaluated under existing criteria in 1.00ff. HIV myositis may also be evaluated under the criteria in final Listings 14.05 and 114.05, and septic arthritis under the criteria in final Listings 14.08M and 114.08N.

The NPRM included criteria for lymphocytic interstitial pneumonia (LIP) in children. We did not adopt the suggestion to add criteria for adults because the condition is uncommon in adults, is usually accompanied by other manifestations of HIV infection, and would likely cause respiratory symptoms that could be evaluated appropriately under 3.00ff, or under final Listing 14.08N.

The term "recurrent cystitis" describes many different types of bladder inflammation that occur commonly in individuals who have HIV infection and individuals who do not. Evaluation under the listings will depend on the type of inflammation (e.g., bacterial cystitis may be evaluated under final Listings 14.08A5 and 114.08A6). Separate criteria for cystitis are not warranted because the condition is often not functionally limiting. If it is, and if it does not meet the criteria of any of the stand-alone medical listings, it may still meet the criteria of the functional listings, 14.08N and 114.08O.

In response to the comment about the side-effects of antiretroviral therapy, we supplemented the discussion of the effects of treatment in final 14.00D7 and 114.00D7, to make it clearer that we always consider the effects of treatment when evaluating disability. We have included "antiretroviral agents" as an example of treatment in these sections.

It is important to remember that any severe HIV manifestations not specifically included in the listings (including any of the manifestations discussed above that we declined to add) may still be evaluated based on their functional consequences under final Listings 14.08N and 114.08O, or at later steps of the sequential evaluation processes for adults and children.

Comment: A few commenters questioned whether the HIV infection listing adequately considered the effects of mental disorders such as depression

or anxiety, which are common among HIV-infected individuals. They expressed concern that an individual who had HIV infection would nevertheless have to meet a specific mental disorder listing without consideration of the factors of HIV infection and its symptoms. Some commenters suggested that we add depression and anxiety as manifestations of HIV infection.

Response: We agree that many individuals with HIV infection display signs and symptoms of mental disorders, such as anxiety and depression. In some cases, this is a reaction to the condition, similar to that of many individuals afflicted with other serious disorders, such as cancer or heart disease, and may be a mental disorder in itself. In some cases, the mental findings may be manifestations of the underlying HIV infection. For example, mental signs associated with HIV encephalopathy are, of course, manifestations of the illness. Some people who have HIV infection may have mental disorders that are unrelated to the HIV infection but nevertheless contribute to their limitations; for example, individuals who abuse drugs may have a mental disorder related to their use of drugs.

However, regardless of whether the mental findings are signs or symptoms of an underlying disorder, mental impairments in and of themselves, or symptoms of mental impairments, can vary in their severity and impact on each individual's functioning. We, therefore, believe that it is appropriate to evaluate these kinds of mental findings either under our mental listings or under final Listings 14.08N and 114.08O, in both of which we are required to consider their impact on the person's functioning. The mental listings contain criteria not only for the evaluation of depression and anxiety disorders (Listings 12.04, 12.06, 112.04 and 112.06) but other disorders that include these findings among their signs and symptoms. Moreover, Listings 12.02 and 112.02, Organic mental disorders, are listings specifically for people who experience psychological or behavioral abnormalities associated with organic brain dysfunction. Therefore, these listings would include mental manifestations caused by HIV.

We also repeat that the test of disability involves much more than a requirement that an impairment meet (or equal in severity) any listing, and that disability may also be established at the last steps of the sequential evaluation processes.

Comment: Many commenters suggested including listing criteria for genital ulcers or genital herpes. Some suggested specific listing criteria, such as chronic genital ulcers; chronic genital ulcers persisting for more than 1 month; chronic genital ulcers that fail to respond to treatment and persist for more than 4 weeks; chronic genital ulcers caused by a sexually transmitted disease that fail to respond to treatment and persist for more than 4 weeks; recurrent herpes simplex; recurrent herpes with lesions that have not been documented to last 4 weeks, but that recur more often than every 8 weeks or that are incompletely suppressed despite continuous maintenance therapy.

Other commenters simply identified the conditions they thought should be included (e.g., genital herpes), without describing any particular level of severity.

Response: As we noted above, we considered both possible interpretations of these comments; i.e., that the commenters thought the mere existence of the condition was sufficient to establish disability or that the commenters thought we could devise severity criteria. To the extent that the commenters were suggesting that we include these conditions without additional criteria describing impairment severity (such that any individual with HIV infection and genital ulcers would have an impairment that meets the listings), we did not adopt the suggestions. Although genital ulcerative disease can be of disabling severity, it is not necessarily disabling. Consequently, the assessment of severity must be based on criteria beyond the mere presence of the disease.

Some of the comments demonstrated that our proposed criteria for Herpes simplex (proposed Listings 14.08A5, 14.08E2, 114.08A5, and 114.08E2) were not clear. (Many commenters recommended criteria that were essentially the same as the criteria we proposed.) Therefore, we reorganized the proposed listings (which became final Listings 14.08D2 and 114.08D2) to make it clearer that genital ulcers caused by Herpes simplex that persist for 1 month or longer meet the criteria of the listing. We did not adopt the suggestion to include Herpes simplex infection that does not last for 1 month, but recurs, because recurrence alone is not a reliable indicator of impairment severity; an individual with recurrent minor lesions of short duration may be completely unimpaired. Recurrent manifestations of HIV infection may be evaluated based on the functional consequences of the disorder in final Listings 14.08N and 114.08O.

In further response to these and other comments, we also developed general criteria in final Listings 14.08F and 114.08F for conditions affecting the skin and mucous membranes, which include genital ulcerative disease. For reasons we have already given in the explanation of the final rules, the criteria are based on the severity of the resulting lesions ("with extensive fungating or ulcerating lesions") and the response to treatment ("not responding to treatment").

We did not adopt the suggestion to include criteria limiting the evaluation to ulcers caused by a sexually transmitted disease, or the suggestion to require that the conditions be both resistant to treatment and of a specific duration. Adopting these suggestions would have resulted in an unnecessarily restrictive listing.

HIV Manifestations Specific to Women

Comment: Many commenters suggested adding criteria for evaluating pelvic inflammatory disease, often called PID. They suggested various medical criteria for describing listing-level pelvic inflammatory disease, including: pelvic inflammatory disease resulting in severe pain; recurrent or refractory pelvic inflammatory disease; pelvic inflammatory disease that is persistent or resistant to treatment; pelvic inflammatory disease of more than 1 month's duration that does not respond to treatment; pelvic inflammatory disease with a specific number of episodes (e.g., three or more episodes); pelvic inflammatory disease with one episode requiring hospitalization; pelvic inflammatory disease with one episode requiring pelvic surgery; pelvic inflammatory disease with one episode resulting in documented chronic pain syndrome; or some combination of the above.

Response: We responded to these comments by developing stand-alone medical criteria that may be used to evaluate pelvic inflammatory disease in final Listings 14.08A5 and 114.08A6. We included pelvic inflammatory disease in the childhood listings because there are many adolescent girls who have the disease. Although we did not fully adopt any one of the suggestions for specific criteria to describe listing-level severity, we derived our criteria from many of the suggestions.

We did not adopt some of the specific suggestions because they did not represent listing-level severity. For example, we did not include a blanket rule for pelvic inflammatory disease requiring surgery because pelvic inflammatory disease (whether in the

VOL 58 ISS 126 JL 2 1993 UMI

general population or in individuals with HIV infection) usually responds to surgical treatment and, therefore, will not always meet the statutory duration requirement. Moreover, a single episode of pelvic inflammatory disease requiring hospitalization is not an accurate predictor of continuing impairment severity because individuals often recover satisfactorily from such an isolated episode.

The criteria in these final rules (i.e., pelvic inflammatory disease requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year) are similar to a number of the commenters' suggestions (e.g., recurrent or refractory pelvic inflammatory disease; pelvic inflammatory disease that is persistent or resistant to treatment; pelvic inflammatory disease of more than a month's duration that does not respond to treatment; pelvic inflammatory disease with a specific number of episodes). The criteria are also based on the same premise as those suggestions—that disability from pelvic inflammatory disease can be measured most accurately by the persistence and severity of the infection. We believe that the final rules are less stringent than some of the commenters' suggestions, especially those that require more-or-less continuous disease. The final rules may be used to evaluate claims filed by women and girls who may recover from bouts of infection, but who suffer from repeated infections, or who may have their infections controlled for a time only to suffer exacerbations.

The criteria in final Listings 14.08A5 and 114.08A6 do not apply only to pelvic inflammatory disease, but to any other multiple or recurrent bacterial infections requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year. Bacterial infections, including pelvic inflammatory disease, that do not meet these criteria but that may be disabling because of pain, chronic illness, or other symptoms and signs may also be evaluated under the functional criteria in final Listings 14.08N and 114.08O.

Comment: Many commenters recommended that we revise the proposed listing-level criteria for invasive cervical cancer, FIGO stage II, in proposed Listing 14.08J2. Some suggested that we use stage IB because cancer at that stage usually requires the same treatment as cancer at stage II (i.e., surgery and radiation therapy). Other commenters suggested stage I (without indicating IA or IB), or made no specific recommendation.

In addition, some commenters recommended that we allow evaluation of cervical cancer not yet at FIGO stage II under the functional test in proposed Listing 14.08M3.

Response: We did not adopt the recommendations to list cervical cancer less than FIGO stage II as a stand-alone listing. Impairment severity in the case of malignant tumors is assessed by considering the site of the lesion and extent of involvement, histogenesis of the tumor, adequacy of and response to treatment, and any post-therapeutic residuals. We chose FIGO stage II as the listing-level criterion for cervical cancer as a manifestation of HIV infection because that is the minimal point at which the cancer has advanced beyond the cervix. In FIGO stage I, the cancer is confined to the cervix—stage IA indicates cancer that can only be seen microscopically, and stage IB indicates a larger amount, deeper in the tissues of the cervix, but still confined to the cervix. In stage II, however, the cancer has spread beyond the cervix into the uterus or upper vagina. Stage I (including IB) cervical lesions are usually amenable to treatment, even in individuals with HIV infection.

The fact that the recommended treatment is the same for stages IB and II may have clinical significance, but it says little about the potential for ongoing functional restrictions.

Our revisions in final Listings 14.08N and 114.08O address the suggestion to evaluate cervical cancer of a severity less than FIGO stage II at the listing level in conjunction with functional restrictions. As we have already explained, final Listing 14.08N allows for a finding that manifestation of HIV infection (including cervical cancer not meeting the criteria in Listing 14.08J) may be found to meet the listing based on the functional consequences of the impairment.

Comment: Many commenters identified other manifestations of HIV infection that they considered disabling to women, and suggested that we include those manifestations in Listing 14.08. They cited many of the same manifestations that commenters suggested as general additions to the adult listings (which we have already discussed above), or as conditions that should not have been tied to the functional criteria in proposed Listings 14.08M, 114.08L, and 114.08M (also discussed above). They also suggested that we add abscess of an internal organ or body cavity, cervical dysplasia, chronic headaches, vulvovaginal candidiasis, human papillomavirus, and vaginal condyloma. (As noted previously, when a comment suggested adding one of these manifestations to the listing but did not include criteria describing impairment severity, we analyzed both possible interpretations of the comment.) One commenter suggested extensive revisions in the tenth, eleventh, and twelfth paragraphs of proposed 14.00D, the proposed paragraphs discussing the evaluation of HIV infection in women. The commenter provided specific language for such revisions.

Response: We have added to the final listings most of the conditions suggested by the commenters by drafting specific criteria describing listing-level severity for a wide range of HIV-related conditions common in women. We could not, however, adopt the suggestions to include these conditions without additional criteria describing impairment severity. None of the conditions suggested are necessarily disabling solely by virtue of being present with HIV infection.

We considered all the criteria the commenters suggested for describing impairment severity, but decided to draft original criteria based on the suggestions and on other information about the severity and consequences of the conditions. In many cases, the criteria we decided to use are similar to the suggested criteria. For example, a comment suggested adding vulvovaginal candidiasis of more than 1 month's duration that does not respond to therapy; we decided to include all skin and mucosal conditions with extensive ulcerating lesions not responding to treatment in final Listings 14.08F and 114.08F. Whenever we decided to use criteria significantly different from that suggested by the commenters, we did so based on what is known about the severity and consequences of the conditions.

Final Listings 14.08F and 114.08F include criteria for vulvovaginal candidiasis and condyloma caused by human papillomavirus. Because these conditions can affect both adults and children, especially adolescent children, we incorporated the criteria into both part A and part B of the listings.

Although abscesses of an internal organ or body cavity are not specifically referred to in the final rules, they may be evaluated under final Listings 14.08A5 and 114.08A6, which apply to multiple or recurrent bacterial infections.

We did not adopt the suggestions to include criteria for cervical dysplasia or headaches. Cervical dysplasia is a clinical finding, a deviation from normal in the cells in the lining of the cervix, which may or may not cause symptoms or progress to a more serious condition. We did not list it as a separate condition because, although clinically meaningful, dysplasia alone

does not necessarily result in functional limitation, and evaluation of such a condition will depend on its impact on the individual on a case-by-case basis. Headaches are symptoms that may be associated with a wide range of medical conditions, and should be evaluated according to the underlying condition and our rules for the evaluation of symptoms, including pain, in §§ 404.1529 and 416.929, which we have recently updated and made more detailed.

In the final rules, we deleted the paragraphs the last commenter asked us to edit because vulvovaginal candidiasis, genital herpes, and pelvic inflammatory disease are now specifically included in the final listings as stand-alone medical conditions. Based on these revisions, the additional language suggested by the commenter was not needed. The guidance in final 14.00D5, Manifestations specific to women, is more general and addresses issues of evaluation instead of specific manifestations.

Comment: A comment suggested that we add a discussion of HIV infection in pregnant women to the preface and that we use different listing criteria for pregnant women. The comment said that immunological alterations associated with pregnancy and the fact that the CD4 count typically decreases during pregnancy raise the possibility that HIV infection could be accelerated. For example, pregnant women may develop opportunistic infections when their CD4 counts fall below 300.

Response: We did not adopt the comment. We agree that medical literature reports that the rate of CD4 cell loss in HIV-infected pregnant women is faster than in HIV-negative pregnant women or HIV-infected men. However, as we state in final 14.00D4a and 114.00D4a, a CD4 count in itself is not an indicator of the severity of the HIV infection or its functional effects, or a reliable predictor of when manifestations will occur. If pregnant women develop manifestations of HIV, we will evaluate them in the same way that we do in other women, examining the particular effects of their conditions on a case-by-case basis.

Comment: Another comment noted that we had included gynecological conditions associated with HIV infection and functional limitations in the proposed listings. The comment said that, since the conditions are also prevalent in HIV-negative women, we should add listings for gynecological conditions associated with conditions other than HIV infection, and resulting in functional limitations.

Response: We did not adopt the comment, which was beyond the scope of these rules. However, in evaluating the claim of a woman with or without a compromised immune system under the listings, we will consider whether the medical findings for any gynecological impairment, in combination with other impairments or standing alone, are listed or are medically equivalent in severity to the findings for the most closely analogous listed impairment.

The Childhood Listings: Other Comments

General

Comment: A number of commenters expressed concern that the proposed childhood HIV listings did not adequately reflect the course of the disease in children, but were merely an extension, with minor changes, of the adult HIV listings. One comment recommended that we limit the childhood HIV listings to those aspects peculiar to children that are not covered by the adult HIV listings.

Response: We partially adopted the comments, even though it is not true that the proposed childhood listings were only an extension of the adult listings. It is simply a fact that many of the manifestations of HIV infection in children are the same as those in adults. Although the course of these manifestations may differ somewhat in a child, in most instances the mere existence of a manifestation is sufficient to establish listing-level severity. For that reason, there was no need to provide criteria distinguishing the childhood manifestations from criteria in the adult rules. Where the differences did matter—for instance, in proposed Listing 114.08F (final Listing 114.08A5) (for two pyogenic bacterial infections in 2 years) and proposed Listing 114.08J (final Listing 114.08H) (for HIV encephalopathy)—we proposed criteria that recognized these differences.

However, we agree with the general suggestion to make the childhood listings better reflect the course and manifestations of the disease in children, and have revised the final listings accordingly. We revised the discussion about the course and manifestations of HIV infection in children in final 114.00D5, deleted most cross-references to the adult rules, and provided more listing criteria that describe the unique presentation of some manifestations in children. We describe the listings changes in other comments and responses, below.

The final childhood listings still contain many of the same criteria as the adult listings because they are appropriate to the evaluation of both adults and children. We included these criteria in both listings, as we do in many other body systems, to ensure the public understands the rules and to increase ease and accuracy of adjudication by decisionmakers. Indeed, we have added several new listings to the childhood listings that are the same as adult listings—such as listings describing manifestations that affect women—because we believe that it is not self-evident that many children (especially adolescents) are unfortunately in the same risk groups for HIV infection as many adults and, therefore, suffer from the same manifestations.

Documentation

Comment: One comment stated that the HIV evaluation criteria for children in the proposed rules were too vague to be properly applied.

Response: We have responded to the comment by clarifying 114.00D3 and 114.00D4 of the final rules, the documentation standards for evaluating children with HIV infection, final 114.00D6, Evaluation of HIV infection in children, and final 114.00D7, Effect of treatment.

Evidence of HIV Infection

Comment: We received many comments about our proposal in the fifth paragraph of proposed 114.00C to use CD4 (T4) lymphocyte counts to establish the existence of HIV infection. Some commenters agreed with the proposal that CD4 counts of 1500/mm^3 or less or 20 percent or less are evidence of HIV infection for children from birth to age 1. A few commenters believed that a CD4 count of 1000/mm^3 or less should by itself be evidence of HIV infection for children 12 to 15 months of age. Other commenters said that CD4 counts of 750/mm^3 or less should be evidence of HIV infection for children 12 to 24 months of age. One comment suggested that we provide language discussing the change in CD4 counts with age.

Some commenters believed that CD4 counts of 750/mm^3 or less should be the standard for children 1 to 15 years of age. One comment said that the CD4 counts used in the childhood listings were not consistent with CDC guidelines.

Response: We partially adopted the comments. As we make clear in 114.00D3, antibody testing for HIV infection is not definitive in young children because the mother's antibodies can persist in a child up to 24 months of age, even if the child is not

infected. Therefore, we need to include criteria that would help identify when infants who test positive for HIV antibodies are actually infected. CD4 counts alone are generally not used to definitively diagnose HIV infection in children, in part because there is still some debate in the medical community about what the norms for CD4 counts in children should be. However, the CD4 counts in these rules are used by the medical community to begin prophylaxis for Pneumocystis carinii pneumonia, and are sufficiently suggestive in an infant who has tested positive for HIV antibodies to presume the existence of HIV infection.

Because of the continuing debate about the norms in children, we cannot adopt the recommendation to use a higher CD4 count for children age 12 months to 15 months of age. However, even though we have not increased the CD4 count threshold in the final rules, we have extended the age range for CD4 counts of 750/mm3 or less to cover children up to 24 months of age to make them consistent with the CDC guidelines for prophylaxis, in response to some of the comments, and based on other information we received. We also added two additional ways of establishing the presence of HIV infection in response to a comment we summarize below.

We did not extend the use of CD4 counts to aid in the diagnosis of HIV infection in children age 2 years or older because antibody testing is definitive in these children.

Comment: One comment suggested that we find infants who have HIV antibodies automatically eligible until such time as their infection status can be definitively established. Another comment suggested that we establish a listing that would allow for a finding of disability for a child between birth and age 15 months who has HIV antibodies and exhibits failure to thrive, diffuse lymphadenopathy, or any form of candidiasis. The commenters stated that the presence of HIV infection in young children can be difficult to confirm through laboratory testing, which can be expensive and may be inconclusive.

Response: We did not adopt these suggestions because the Act requires that disability be established in order for the claimant to receive benefits. As one medical organization that submitted comments noted, only about one in three infants born with HIV antibodies actually has HIV infection.

However, in response to these and other comments, we revised final 114.00D3 to allow HIV infection to be documented based on medical history, clinical and laboratory evidence (other than the laboratory evidence that definitively diagnoses the impairment), and diagnoses. The documentation must be consistent with the prevailing state of medical knowledge and clinical practice and consistent with the other evidence. Thus, a diagnosis of HIV infection could be established under the final rules for a child who has HIV antibodies and exhibits failure to thrive, diffuse lymphadenopathy, or any form of candidiasis. However, we cannot make a blanket statement that this would, or should, always be the case, because diagnoses of HIV infection in such cases rely on clinical judgment and the documented facts of the individual case. For example, oral candidiasis (oral thrush) is a very common condition in babies. If this were the only finding in an infant with HIV serum antibodies, a doctor would have to make a judgment, based on such factors as the severity, frequency, duration, and response to treatment of the infection, and whether there are other accompanying clinical findings, to decide whether the infection is a routine infection of infancy or a sign of HIV infection.

In addition, even if the suggested signs result in a presumed diagnosis of HIV infection, this alone would not speak to the severity of the manifestations or their effects on the child's ability to function. HIV infection alone, without any serious manifestations, will seldom interfere with a child's ability to function.

Once HIV infection is documented, the child, like any person with HIV infection, can be found disabled if his or her manifestations satisfy, or are equivalent in severity to, the criteria in any of the HIV listings or other listings appropriate for the evaluation of the manifestations. If the impairment(s) of a child claimant for SSI does not meet or equal in severity any listing, the effects of the impairment(s) on the child's ability to function will be evaluated at the last step in the sequential evaluation process for children.

In addition, it is important to remember that we consider all the impairments the child has, whether related to HIV or not. Thus, if the child could be found disabled on some other basis, e.g., a child less than 1 year of age who weighed under 1200 grams at birth, consideration of HIV infection would not be necessary.

Comment: One comment suggested that we include abnormal CD4/CD8 ratios and immunoglobulin G (IgG) levels greater than or less than the normal range for age as laboratory evidence of HIV infection in children.

Response: We adopted the comment in final 114.00D3b (iii) and (iv). These laboratory findings are acceptable documentation of the existence of HIV infection in children up to age 24 months who have serum antibodies for the HIV.

Comment: One comment suggested language to revise the fifth paragraph of proposed 114.00C to expand the discussion about the transmission of HIV antibodies and HIV infection from mother to child and the significance of CD4 counts. The comment suggested adding information about the low prenatal and natal HIV transmission rate to infants, and the duration of HIV antibody persistence, and put the list of laboratory findings in a separate paragraph.

Response: We modified and adopted the suggested language in final 114.00D3 a and b.

Comment: Another comment noted that, although proposed 114.00C stated that the mean age of diagnosis of children infected before or shortly after birth is 17 months, various mean ages of diagnosis of HIV infection have been determined and diagnosis is often made earlier.

Response: We have adopted this comment by removing the language concerning the mean age of diagnosis of children infected before or shortly after birth. Final 114.00D3b permits HIV infection to be documented in children from birth to the attainment of 24 months of age based on any of four specific laboratory findings, or based on documentation consistent with the prevailing state of medical knowledge and clinical practice.

Comment: Several commenters said we should delete the language in the ninth paragraph of proposed 114.00C describing how pediatric populations may contract HIV because it was inappropriate and irrelevant to the purpose of disability determination.

Response: We adopted the comment.

Symptoms and Response to Treatment

Comment: One comment said that the criteria incorrectly assumed that children will adequately express and document pain, fatigue, complications and/or reactions to therapy.

Response: We recognize that some children may have a limited ability to report history, symptoms, and other information, but we do not believe that this will have an adverse effect on their claims. Most of the listings in final 114.08 do not include symptoms among their criteria; rather, the criteria consist of clinical signs and laboratory findings that will be documented in the child's medical records. Furthermore, our experience in processing childhood disability claims has shown that a

child's symptoms will generally be observed by a parent or other caregiver who will provide this information to the physician and to us.

Although some children may not be able to verbally describe their symptoms, these symptoms may be expressed in other ways, such as otherwise unexplained changes in demeanor, behavior, eating habits, and sleeping habits. These changes would be readily discernible to the child's parents or other caregivers, a physician or other professionals experienced in evaluating and treating children, as well as to other people who see the children, such as relatives, teachers, social workers, and ministers. Older children should be more able to express their symptoms and any adverse effects of treatment, if this information is needed for adjudication.

Adolescents

Comment: Many commenters requested that we eliminate the proposed criteria that distinguished between children under age 13 and over age 13. Many of the commenters questioned our statements in the ninth paragraph of proposed 114.00C that the course and spectrum of disease in children age 13 and older is generally similar to that of adults, and that older children with HIV encephalopathy and HIV wasting syndrome should be evaluated under the appropriate adult listings. One comment asserted that scientific and medical literature point to distinctive differences between the course and spectrum of HIV infection in adolescents and adults, and referred us to the "Journal of Pediatrics," Volume 119, July 1991, Number 1, Part 2, titled "Guidelines for the Care of Children and Adolescents With HIV Infection. Report of the New York State Department of Health AIDS Institute Criteria Committee for the Care of HIV-Infected Children."

Response: We partially adopted the comments. Our statement in the ninth paragraph of proposed 114.00C that the course and spectrum of the disease in children age 13 and older is the same as in adults was correct and was confirmed by various pediatric authorities, including some who specialize in the study and treatment of adolescents. We disagree with the comment suggesting that the scientific and medical literature supports a contrary view. Indeed, the article cited in the comment does not say that there are significant differences between adolescents and adults in the manifestations of HIV infection; it says that there are differences in epidemiology—i.e., the modes of disease transmission. Our disability determination, however, is based on the effects of the disease on a child's ability to function in an age-appropriate manner, not on how the child acquired HIV disease.

Nevertheless, in response to the comments we deleted the statement about the course and spectrum of the disease in adolescents, and revised the statement (now in final 114.00D5) about the manifestations and course of disease in younger children. The proposed statement about the disease in adolescents did not provide guidance that was especially relevant to the determination of disability and, therefore, was superfluous.

Comment: A number of commenters thought that it was more difficult for some children with HIV infection to qualify for disability than it was for children with other impairments. The commenters gave as an example a child over age 13 with HIV encephalopathy. The ninth paragraph of 114.00C of the proposed rules had indicated that such a child should be evaluated under proposed adult Listing 14.08G (which, in turn, cross-referred to criteria in the eighth paragraph of 14.00D), and would have required the child to show progressive motor dysfunction and the absence of a concurrent illness. The commenters suggested that this proposed listing was more severe than the children's neurologic Listing 111.06, which the commenters thought requires only interference with age-appropriate major daily activities.

Response: We do not agree that any of the proposed listings made it more difficult for children with HIV infection to qualify for disability than children with other impairments, for reasons we have already given in an earlier comment and response.

The proposed criteria for HIV encephalopathy for children were not more stringent than Listing 111.06. The criteria in the eighth paragraph of proposed 14.00D, which would have been applied to children, required only that there be HIV encephalopathy "characterized by" cognitive or motor dysfunction that limited function and progressed, and that there not be a concurrent illness that could otherwise explain the neurological findings. Thus, the criteria only defined the syndrome of HIV encephalopathy; that is, how one can tell that a person has HIV encephalopathy without invasive testing. Childhood Listing 111.06, on the other hand, requires more than mere interference with age-appropriate activities; it requires persistent disorganization or deficit of motor function involving two extremities that, despite prescribed therapy, interferes with age-appropriate major daily activities and results in disruption of fine and gross movements or gait and station.

However, as we have already said, we believe that the proposed criteria for evaluating HIV encephalopathy in children could be simplified because they appeared only in proposed 114.00C, not in the listing, and required a cross-reference to an adult listing that itself cross-referred to 14.00D of the adult rules. Therefore, we revised final Listing 114.08H (which replaces proposed Listing 114.08J) to include HIV encephalopathy and criteria specifically for children. We also provided guidance in final 114.00D5 specifically for the evaluation of neurological abnormalities, such as HIV encephalopathy, in children. We also deleted the requirement for ruling out other causes, as we did in the corresponding adult rule.

Comment: Some comments questioned our proposals in Listings 114.08F and 114.08G to limit the criteria for multiple bacterial infections and lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia to children under age 13. Similarly, some comments questioned the proposal to pair different manifestations with functional requirements, for the two age groups in proposed Listings 114.08L and 114.08M.

Response: We adopted most of the comments. We eliminated the age reference in final Listing 114.08L, Lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia, so that it now applies to children of all ages. We had proposed the distinction only because the manifestation is quite rare in older children, as it is in adults. However, it is possible that an older child could have the disorder, especially as more and more children who contracted HIV perinatally or early in life are surviving into adolescence. For reasons we have already given, however, we have also revised final Listing 114.08L to better describe listing-level severity.

The functional listing, final Listing 114.08O, which replaces proposed Listings 114.08L and 114.08M, no longer lists specific medical manifestations. Therefore, there is no longer a need to distinguish between adolescents and younger children.

We have retained the age limit in final Listing 114.08A5, Multiple or recurrent pyogenic bacterial infections, because these types of infections are more serious and more indicative of a rapid decline in younger children, and age 13 is medically an appropriate dividing line. Although we could have confined

VOL
58
ISS
126
JL
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the rule to younger children, we decided to retain the rule because age 13 is fair and consistent with prevailing medical practice, and we want these listings to be as inclusive as possible. Furthermore, unlike the proposed rules, the final rules include a new Listing 114.08A6 under which all children, including adolescents, may establish that they have impairments of listing-level severity as the result of multiple bacterial infections of any type.

Comment: Another comment recommended that we address the special needs of adolescents with HIV infection, including feelings and fears regarding HIV testing, effective ways of counseling adolescents, coping strategies of adolescents with HIV infection, and the role of social support in the lives of adolescents with HIV infection. The comment also recommended that we establish a group of experts within SSA to focus on the specific needs of adolescents with HIV infection.

Response: We share these concerns about the impact of HIV infection on adolescents. However, the recommendations involve areas of social services policy that are beyond our authority under the Act and, thus, cannot be addressed within the context of these rules.

Final 114.08H Neurological Manifestations

Comment: One comment recommended that we add "the sudden acquisition of new learning disabilities" as a fourth criterion in proposed Listing 114.08J (final Listing 114.08H).

Response: We adopted the comment. We added language to the second paragraph of final 114.00D5 and a parenthetical statement in final Listing 114.08H1 (which replaces proposed Listing 114.08J1) to state clearly that the loss of previously acquired, or marked delay in achieving, developmental milestones or intellectual ability, includes "the sudden acquisition of a new learning disability." This addition is only a clarification of our original intent in the proposed rules.

Final 114.08I Growth Disturbance

Comment: Many commenters suggested we clarify our criteria for assessing failure to thrive. Some commenters thought we were using the height criteria specified in Listing 100.02 to assess failure to thrive under proposed Listing 114.08K. The commenters indicated that, because the term "failure to thrive" generally refers to infants and children who fail to gain weight at an appropriate rate or who lose weight, the listing should contain criteria based on weight.

Other commenters stated that the 10 percent weight loss required by proposed Listings 114.08L and 114.08M, which was the same standard used in the adult HIV listings, was too strict. They pointed out that a standard of weight loss can make sense for adults because adults are fully grown and are expected to maintain a static weight. However, because children are growing, it is possible for a child to be gaining weight but falling behind what is normal, so that the resulting impairment would be as severe as a serious weight loss. The majority of these commenters suggested using a 5 percent weight loss as a standard for children. Another suggestion was to base our criteria on a failure to follow age-appropriate growth curves on standard growth charts.

Response: We adopted several of the comments. We revised final Listing 114.08I, which is now headed "Growth disturbance" to include weight criteria for failure to thrive in addition to the height criteria. The first two criteria of final Listing 114.08I describe children who have either lost weight or who have failed to gain weight at an appropriate rate, so that there is persistence of a fall of 15 percentiles on a standard growth chart or persistence of weight below the third percentile on a standard growth chart. We have determined that this approach provides a more accurate method of assessment than basing our criteria solely on a percentage of weight loss because, as the commenters stated, children can, in fact, be gaining weight and still be failing to thrive.

We have, however, also retained the criterion of a 10 percent weight loss in final Listing 114.08I3 (formerly in proposed Listings 114.08L and 114.08M) because in some cases 10 percent weight loss will still be less than 15 percentiles on a standard growth chart or result in a weight above the third percentile. We believe that a 5 percent weight loss would be too small to be a reliable standard in the listings, and that children with this amount of weight loss will have to be evaluated on an individualized basis under the rules for equivalence and the last step of the sequential evaluation process.

We have also retained the rules providing for loss of height or length, as described in the growth impairment listings in 100.00. Both the 10 percent weight loss provision and the cross-reference to the growth impairment listings merely provide alternative criteria by which children may be found disabled under the listings.

Comment: A number of commenters were also concerned about assessing HIV-related growth impairments in children by reference to the criteria of Listing 100.02. The commenters said that Listing 100.02 defines when a growth impairment is disabling in itself and not because HIV infection has interfered with growth. The commenters also questioned whether the longitudinal approach required by Listing 100.02 is appropriate for children with a progressive disease such as HIV infection.

Response: Listing 100.02 is appropriate to use because it is a listing for evaluating growth impairment caused by a known medically determinable impairment, such as HIV infection. It is, thus, a very appropriate listing for evaluating growth impairment caused by HIV infection. (However, we revised the reference to 100.00ff for consistency with our other revisions.) In any event, by expanding final Listing 114.08I, we have made the reference to the growth impairment listing only one alternative among four by which a child's impairment may meet the listing, not the sole criterion as in the NPRM.

We believe the longitudinal approach required by the growth impairment listings is reasonable. Multiple measurements are needed to properly assess the decline in the child's growth and its persistence.

Final 114.08O1: The Functional Criteria for Infants

Comment: One comment objected to the criteria in Listing 112.12, the description of functional deficit we used to describe listing-level severity for infants from birth to age 1 in proposed Listing 114.08L3. The comment stated that our standard of one-half chronological age for these children appeared to be more restrictive than the standard for older children and adults, especially considering how quickly infants change over time. Also, the comment suggested that impairment at the level specified need only be documented at one assessment.

Response: The functional standard for children from birth to the attainment of age 1 (and for many children age 1 to the attainment of age 3), now in final Listing 114.08O, is not more restrictive than the standard used for older children and adults. In the Mental Disorders listings, older children and adults are found disabled at the listing level if their impairments result in marked limitations in two areas of functioning. In Listings 112.12 A and B (and in Listings 112.02B1 for children age 1 to 3), however, a young child has an impairment that meets the functional requirements of the listings if he or she has either one "extreme" limitation or

two "marked" limitations. An extreme limitation may result when the function or developmental milestone is limited to no more than one-half the child's chronological age, while marked limitations result with less severe limitations—more than one-half but no more than two-thirds of the child's chronological age.

For this reason, we provide two ways for children from birth to the attainment of age 3 to establish listing-level severity. Under the functional criteria in Listings 112.02B1a, b, and c, and in Listings 112.12A and B, children can establish that their impairments are of listing-level severity by showing functioning or delays at no more than one-half of their chronological age. Alternatively, under Listings 112.02B1d and 112.12E, they can establish listing-level severity in the same way that older children and adults do: by showing marked impairment—i.e., functioning at more than one-half but less than two-thirds of chronological age—in two functional areas.

We recognize the problems involved in assessing infants, who do change rapidly over time. Because of this, we cannot state that determinations of disability can always be based on a single evaluation. The amount of evidence needed for each claim has to be determined based on the facts of that specific claim, which include the nature and progression of the impairment, the interventions and treatments available, the response to those interventions and treatments, and—perhaps most importantly—the individual infant's own response to the illness.

Other Comments

Error in Proposed Listing 14.08D

Comment: Several commenters pointed out that the 2-month timeframe set out in the ninth paragraph of proposed 14.00D for chronic diarrhea or documented fever caused by HIV wasting syndrome was longer than the 1 month required by the CDC's surveillance definition.

Response: The criterion in the NPRM was an editorial error. In fact, we have been using a 1-month standard in our operating instructions, consistent with the CDC surveillance definition of HIV wasting syndrome. We have corrected the final rule, which is in final Listing 14.08I.

Administrative Procedure Act

Comment: A few commenters expressed a concern that we had released guidelines on the evaluation of HIV infection in the form of a Social Security Ruling (SSR), in effect implementing the proposed rules in the NPRM in advance of public comments. Some commenters saw this as a breach of faith or a violation of the Administrative Procedure Act (APA).

Response: We have issued SSRs (SSRs 84–19 and 86–20) and manualized instructions concerning HIV infection on various occasions since 1983, as medical and scientific knowledge about this disease became available, to provide guidance to our decisionmakers concerning how claims involving HIV infection could be evaluated within the context of the law and regulations. On December 17, 1991, we published the latest of these instructions, an interpretative ruling, SSR 91–8p, in the **Federal Register** (56 FR 65498), to announce and to state our criteria for evaluating HIV infection. We have been applying this interpretive ruling in our adjudication of claims filed by people with HIV infection. Since January 11, 1990, we have published SSRs in the **Federal Register** pursuant to the provisions of § 422.406(b) of part 422, of title 20 of the Code of Federal Regulations. Statements of policy in SSRs continue to be binding on all components of SSA, just as they have been since before the regulatory change in 1990 that provided for their publication in the **Federal Register**.

The purpose of these criteria has been to permit our decisionmakers to make findings of disability when a particular AIDS- or HIV-related condition could "meet" or "equal" a listing under the existing regulatory framework. If we had not published them but had waited for these final rules, we would have followed our prior instructions which, as we have stated, were not as inclusive as the criteria we published in SSR 91–8p. The effect would have been only to delay needlessly claims that we have now been able to allow

Advisory Council

Comment: A number of commenters recommended that we convene a group of experts, an advisory council, or other knowledgeable specialists to evaluate and revise the proposed listings on HIV infection, and to regularly review the listings to keep the criteria for HIV-related diseases current. Some commenters also thought that the proposed rules for evaluating HIV infection in children did not reflect the expertise of childhood medical specialists. They pointed out that no childhood specialty groups, such as the American Academy of Pediatrics (AAP), or public interest advocacy groups were among the list of medical specialty groups listed in the NPRM as providing information in developing the HIV criteria in proposed Part B. They questioned whether any of the experts listed were pediatricians and whether they were independent of SSA. A few commenters also said the implementation of the proposed rules should be delayed until we consult with childhood HIV experts.

Response: We did not adopt the recommendation to establish an advisory council to assist us in preparing these rules. We solicited information from individual medical experts, including pediatricians, in developing the proposed rules. Establishing a separate group of experts following the publication of the NPRM would likely have duplicated many of the steps we had already undertaken and, most importantly, such duplication would have caused unnecessary delay in the publication of these final rules, to the disadvantage of claimants with HIV infection. Moreover, the public comments in response to the NPRM came from a broad spectrum of the medical, legal, and advocacy communities, and, hence, included some of the kind of input recommended by the commenters.

Nevertheless, and partly in response to the comments, we have sought additional information from a wide range of individual medical specialists. Other experts assisted us on an individual basis as we finalized these rules and responded to the comments.

With regard to the proposed rules for evaluating HIV infection in children, although we did not obtain information from the AAP during the development of the proposed rules, we did obtain information from pediatricians at Johns Hopkins Hospital, the Centers for Disease Control, and other Federal agencies, all of which were independent of SSA. Furthermore, during the process of developing the final rules, we obtained information from additional pediatricians and other individuals with knowledge and treatment experience in pediatric HIV infection in all childhood populations, including adolescents. Among these individuals were some recommended by members of the AAP and a physician to whom we were specifically referred by the AAP. Finally, the AAP, as well as other pediatric specialty groups and other children's advocacy groups, have submitted comments on the NPRM expressing their interest or concern about its content and publication. By submitting these comments, these groups have participated in the formulation of the final rules.

Timely Updates

Comment: A number of commenters responded to our request for suggestions on alternatives to our regulatory process consistent with the APA and that would enable us to issue timely updates to the listings for HIV infection (56 FR at 65704). One comment suggested that we develop a decisionmaking protocol, which would be subject to the normal regulatory process, that would establish a procedure for evaluating when changes would be appropriate in the listings. Other comments proposed that we create an ongoing advisory panel composed of a range of experts committed to assisting us in updating and refining these procedures in a timely fashion as medical knowledge on HIV improves.

Response: We appreciate these suggestions, and will give them further study. We will study whether any of the suggestions we received can be used given the constraints of the Act and our regulations. We have always attempted to update the medical listings to reflect advancements in medical technology, disability evaluation and treatment, and changes in knowledge and new disease processes. We monitor the listings on an ongoing basis to ensure that they continue to meet program purposes and, when changes are found to be warranted, the listings for that body system are updated through the normal regulatory process.

We recognize that the HIV listings may need to be changed as we learn more about the course of HIV infection in different populations, and as new tests and treatments are developed. We will update the listings as it becomes necessary, and will issue new instructions to our adjudicators as this becomes necessary.

Excessive Paperwork

Comment: A number of commenters were concerned that the proposed rules were complicated and would require too much paperwork on the part of health care providers and claimants to document a claimant's eligibility. They were also concerned that the proposed rules would not produce timely disability determinations, which would be harmful to individuals affected by HIV infection.

Response: We agree that paperwork and the effort required to establish a disabling impairment should be kept to a minimum. We have made changes in the final listings that will facilitate the documentation and adjudication of HIV claims. These changes include revising the criteria for documenting the existence of HIV infection and its manifestations to permit documentation of HIV infection or its manifestations in the absence of a definitive diagnosis and to permit a finding of "meets" for most of the impairments formerly tied to functional criteria in proposed Listing 14.08M when the medical evidence indicates listing-level severity. In addition, we give these claims priority handling.

Training

Comment: Several commenters expressed the need for extensive training for health care officials, physicians, advocates, Social Security personnel, and the general public.

Response: We agree, and have already begun a public awareness campaign and training initiative with respect to HIV including the design, printing, and distribution of brochures, television and radio public service announcements (in both English and Spanish), and video news releases. We are also working with the medical community, service providers, and advocacy groups to ensure that the important message about the potential for Social Security Disability Insurance (SSDI) and SSI benefits reaches those with HIV infection. We have also provided training to our adjudicators and will continue to provide training as necessary.

Trust Fund

Comment: A few commenters expressed concern about the cost of adding manifestations of HIV infection to the Listing of Impairments on the Social Security and health care financing systems.

Response: These final rules establish a listing for HIV infection to replace the adjudicative criteria we have been using to evaluate manifestations of this disease. These final rules represent only the latest refinement of the criteria we have been using since we began receiving these cases shortly after AIDS was first identified. Consequently, we do not expect their publication to have a significant additional effect on the Federal Disability Insurance Trust Fund or the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. It should also be noted that SSI benefits are not paid from the Social Security trust funds, but from the general revenues.

Waiting Period for Cash and Medicare Benefits

Comment: A comment suggested that we waive the 24-month waiting period to qualify for Medicare for individuals with HIV infection, which, the comment indicated, we do for other conditions, such as end-stage renal disease. The comment also noted that the 5-month waiting period requirement for SSDI benefits is inappropriate in HIV-infection cases, in view of the short life expectancy that follows a diagnosis of AIDS.

Response: We certainly empathize with the need for medical care for people who are HIV-infected. The comments are, however, outside the scope of these regulations. More importantly, the waiting periods for Medicare (including the exception for end-stage renal disease) and for SSDI benefits are specified in the Act, and cannot be "waived" without a legislative change.

Critical Payments

Comment: One comment recommended that the regulations require Social Security disability adjudicators to notify claimants of the availability of immediate critical payments at the time they are found eligible for disability benefits.

Response: We did not adopt this comment because it is outside the scope of these regulations and has been dealt with in our operating instructions. One of our goals is to pay all benefits due on time, and in the vast majority of cases we meet this goal through routine processing. However, our operating instructions provide for expedited payment by various means if a claimant has a financial emergency. These methods include the one-time emergency advance payment (EAP) procedure, which can be made in SSI cases in accordance with § 416.520 of our regulations when the individual is presumptively eligible for SSI payments and has a financial emergency. Our Field Offices and processing centers also have the capability to make expedited payments in other critical Social Security and SSI case situations.

Determinations at Steps 4 and 5; Younger Individuals

Comment: A number of commenters supported the philosophy of awarding as many claimants as possible at the listing level. They pointed out that most adult claimants with HIV infection are "younger" individuals (i.e., people under 50 years old) under our rules in §§ 404.1563(b) and 416.963(b). The commenters said that, if these individuals are not found to have an impairment(s) that meets a listing, they would probably be denied at the last step of the sequential evaluation processes. One comment said that we almost never do an equivalence analysis. Other comments said that it was insufficient to rely on the rest of the

sequential evaluation process to adjust for the "inadequacies" of the medical standard.

Response: As we have explained, the listings do not represent the standard of disability in the Act, but a higher level of disability, because they are intended only to be a method by which we can quickly pay claims that clearly would be allowed at later steps in the sequential evaluation processes. Indeed, the Act does not require us to have a set of listings at all; the listings are simply a means by which we can process some claims more timely and efficiently.

Therefore, the question is not about any "inadequacies" in the listings, but about whether we will find disabled all individuals who have disabling impairments. We are committed to ensuring that all individuals who are disabled because of HIV infection receive timely and correct determinations under our rules, whether at the listing-level or beyond. This means that we will provide assessments of equivalence and of residual functional capacity (or of a child's functioning) to people who do not have impairments that meet the requirements of any of these listings, and allow those individuals who are disabled within the meaning of the Act.

But the fact that the great majority of people disabled with HIV infection are found to have listing-level impairments also attests to two things: that HIV infection is a terrible disease and that we have made our listing criteria broad enough to include most people who are disabled by HIV infection. We believe that some of the changes in the final rules—the listings for manifestations that affect women and girls, the new stand-alone medical criteria and other new medical criteria we have added, and the improvements to the functional criteria—will include even more disabled people at the listing level.

Beyond that, we can only say that we are as concerned about people with HIV infection as the commenters are. It is never acceptable to deny an individual who is disabled, even more so when the individual has an illness like HIV infection. Nevertheless, we are bound to follow the statute, there are many individuals who have HIV infection and are not yet disabled under the statute, and we have a responsibility to ensure that only individuals who are disabled receive benefits.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only States and individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 29, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: April 29, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

For the reasons set out in the preamble, part 404, subpart P, of Chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1 (Listing of Impairments) to subpart P is amended by adding a new sentence at the end of the fifth paragraph of introductory text to read as follows: "The Immune System listings in part A (14.00) and part B (114.00) and the Multiple Body Systems listings in part B (110.00) will no longer be effective on July 2, 1998, unless extended by the Secretary or revised and promulgated again."

3. The table of contents for part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the entry for 9.00, removing and reserving the entry for 10.00, and adding an entry for 14.00 to read as follows:

Part A

* * * * *

Sec

* * * * *

9.00 Endocrine System and Obesity
10.00 [Reserved]
11.00 * * *
12.00 * * *
13.00 * * *
14.00 Immune System

4. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by changing the references to "10.04 and 10.05" in the second sentence of 8.00B to "14.02 and 14.04".

5. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the heading for 9.00, Endocrine System, and adding two paragraphs of introductory text, and revising the heading of 9.01, Category of Impairments, Endocrine, to read as follows:

9.00 Endocrine System and Obesity

* * * * *

Long-term massive obesity will usually be associated with disorders of the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the occurrence of these disorders is the major cause of disability at the listing level. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

The weight-bearing criterion in 9.09A refers to the lumbosacral spine. The cervical and thoracic spines are not considered weight-bearing.

9.01 Category of Impairments, Endocrine System and Obesity

* * * * *

6. Part A of Appendix 1 (Listing of Impairments) to Subpart P is amended by redesignating listing 10.10 (including Tables I through III—C), Obesity, as listing 9.09, Obesity, and revising the introductory paragraph, paragraph A, and Tables I and II to read as follows:

9.09 Obesity. Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level), and one of the following:

A. History of pain and limitation of motion in any weight-bearing joint or the lumbosacral spine (on physical examination) associated with findings on medically acceptable imaging techniques of arthritis in the affected joint or lumbosacral spine; or

* * * * *

VOL 58 ISS 126 JL 2 1993 UMI

TABLE I.—MEN
[Metric]

Height without shoes (centimeters)	Weight (kilograms)
152	112
155	115
157	117
160	120
163	123
165	125
168	129
170	134
173	137
175	141
178	145
180	149
183	153
185	157
188	162
190	165
193	170

TABLE I.—MEN

Height without shoes (inches)	Weight (pounds)
60	246
61	252
62	258
63	264
64	270
65	276
66	284
67	294
68	302
69	310
70	318
71	328
72	336
73	346
74	356
75	364
76	374

TABLE II.—WOMEN
[Metric]

Height without shoes (centimeters)	Weight (kilograms)
142	95
145	96
147	[illegible]
150	102
152	105
155	107
157	110
160	114
163	117
165	121
168	125
170	128
173	132
175	135
178	139
180	143
183	146

TABLE II.—WOMEN

Height without shoes (inches)	Weight (pounds)
56	208
57	212
58	218
59	224
60	230
61	236
62	242
63	250
64	258
65	266
66	274
67	282
68	290
69	298
70	306
71	314
72	322

* * * * *

7. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by removing and reserving the entry for listing 10.00, including the tables.

8. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by adding listing 14.00, Immune System, to read as follows:

14.00 Immune System

A. Listed disorders include impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disorder. Connective tissue disorders include several chronic multisystem disorders that differ in their clinical manifestation, course, and outcome. They generally evolve and persist for months or years, may result in loss of functional abilities, and may require long-term, repeated evaluation and management.

The documentation needed to establish the existence of a connective tissue disorder is medical history, physical examination, selected laboratory studies, medically acceptable imaging techniques and, in some instances, tissue biopsy. However, the Social Security Administration will not purchase diagnostic tests or procedures that may involve significant risk, such as biopsies or angiograms. Generally, the existing medical evidence will contain this information.

A longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed treatment during this period with the expectation that the disease will remain active for 12 months is necessary for assessment of severity and duration of impairment.

To permit appropriate application of a listing, the specific diagnostic features that should be documented in the clinical record for each of the disorders are summarized for systemic lupus erythematosus (SLE), systemic vasculitis, systemic sclerosis and scleroderma, polymyositis or dermatomyositis, and undifferentiated connective tissue disorders.

In addition to the limitations caused by the connective tissue disorder *per se*, the chronic adverse effects of treatment (e.g., corticosteroid-related ischemic necrosis of bone) may result in functional loss.

These disorders may preclude performance of any gainful activity by reason of severe loss of function in a single organ or body system, or lesser degrees of functional loss in two or more organs/body systems associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. We use the term "severe" in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

1. Systemic lupus erythematosus (14.02)—This disease is characterized clinically by constitutional symptoms and signs (e.g., fever, fatigability, malaise, weight loss), multisystem involvement and, frequently, anemia, leukopenia, or thrombocytopenia. Immunologically, an array of circulating serum auto-antibodies can occur, but are highly variable in pattern. Generally the medical evidence will show that patients with this disease will fulfill The 1982 Revised Criteria for the Classification of Systemic Lupus Erythematosus of the American College of Rheumatology. (Tan, E.M., et al., Arthritis Rheum. 25: 11271–1277, 1982).

2. Systemic vasculitis (14.03)—This disease occurs acutely in association with adverse drug reactions, certain chronic infections and, occasionally, malignancies. More often it is idiopathic and chronic. There are several clinical patterns, including classical polyarteritis nodosa, aortic arch arteritis, giant cell arteritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders (e.g., rheumatoid arthritis, SLE, Sjögren's syndrome, cryoglobulinemia). Cutaneous vasculitis may or may not be associated with systemic involvement and the patterns of vascular and ischemic involvement are highly variable. The diagnosis is confirmed by angiography or tissue biopsy when the disease is suspected clinically. Most patients who are stated to have this disease will have the results of the confirmatory angiogram or biopsy in their medical records.

3. Systemic sclerosis and scleroderma (14.04)—These disorders constitute a spectrum of disease in which thickening of the skin is the clinical hallmark. Raynaud's phenomena, often severe and progressive, are especially frequent and may be the peripheral manifestation of a generalized vasospastic abnormality in the heart, lungs, and kidneys. The CREST syndrome (calcinosis, Raynaud's phenomena, esophageal dysmotility, sclerodactyly, telangiectasia) is a variant that may slowly progress to the generalized process, systemic sclerosis, over years. In addition to skin and blood vessels, the major organ/body system involvement includes the gastrointestinal

tract, lungs, heart, kidneys, and muscle. Although arthritis can occur, joint dysfunction results primarily from soft tissue/cutaneous thickening, fibrosis, and contractures.

4. Polymyositis or dermatomyositis (14.05)—This disorder is primarily an inflammatory process in striated muscle, which can occur alone or in association with other connective tissue disorders or malignancy. Weakness and, less frequently, pain and tenderness of the proximal limb-girdle musculature are the cardinal manifestations. Involvement of the cervical muscles, the cricopharyngeals, the intercostals, and diaphragm may occur in those with listing-level disease. Weakness of the pelvic girdle, as contemplated in Listing 14.05A, may result in significant difficulty climbing stairs or rising from a chair without use of the arms. Proximal limb weakness in the upper extremities may result in inability to lift objects, and interference with dressing and combing hair. Weakness of anterior neck flexors may impair the ability to lift the head from the pillow in bed. The diagnosis is supported by elevated serum muscle enzymes (creatine phosphokinase (CPK), aminotransferases, aldolase), characteristic abnormalities on electromyography, and myositis on muscle biopsy.

5. Undifferentiated connective tissue disorder (14.06)—This listing includes syndromes with clinical and immunologic features of several connective tissue disorders, but that do not satisfy the criteria for any of the disorders described; for instance, the individual may have clinical features of systemic lupus erythematosus and systemic vasculitis and the serologic findings of rheumatoid arthritis. It also includes overlap syndromes with clinical features of more than one established connective tissue disorder. For example, the individual may have features of both rheumatoid arthritis and scleroderma. The correct designation of this disorder is important for assessment of prognosis.

C. Allergic disorders (e.g., asthma or atopic dermatitis) are discussed and evaluated under the appropriate listing of the affected body system.

D. Human immunodeficiency virus (HIV) infection.

1. HIV infection is caused by a specific retrovirus and may be characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions, as described in 14.08. Any individual with HIV infection, including one with a diagnosis of acquired immunodeficiency syndrome (AIDS), may be found disabled under this listing if his or her impairment meets any of the criteria in 14.08 or is of equivalent severity to any impairment in 14.08.

2. Definitions. In 14.08, the terms "resistant to treatment," "recurrent," and "disseminated" have the same general meaning as used by the medical community. The precise meaning of any of these terms will depend upon the specific disease or condition in question, the body system affected, the usual course of the disorder and its treatment, and the other circumstances of the case.

"Resistant to treatment" means that a condition did not respond adequately to an appropriate course of treatment. Whether a response is adequate, or a course of treatment appropriate, will depend on the facts of the particular case.

"Recurrent" means that a condition that responded adequately to an appropriate course of treatment has returned after a period of remission or regression. The extent of response (or remission) and the time periods involved will depend on the facts of the particular case.

"Disseminated" means that a condition is spread widely over a considerable area or body system(s). The type and extent of the spread will depend on the specific disease.

As used in 14.08I, "significant involuntary weight loss" does not correspond to a specific minimum amount or percentage of weight loss. Although, for purposes of this listing, an involuntary weight loss of at least 10 percent of baseline is always considered significant, loss of less than 10 percent may or may not be significant, depending on the individual's baseline weight and body habitus. (For example, a 7-pound weight loss in a 100-pound female who is 63 inches tall might be considered significant; but a 14-pound weight loss in a 200-pound female who is the same height might not be significant.)

3. Documentation of HIV infection. The medical evidence must include documentation of HIV infection. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of HIV infection by definitive diagnosis. A definitive diagnosis of HIV infection is documented by one or more of the following laboratory tests:

i. A serum specimen that contains HIV antibodies. HIV antibodies are usually detected by a screening test. The most commonly used screening test is the ELISA. Although this test is highly sensitive, it may yield false positive results. Therefore, positive results from an ELISA must be confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay).

ii. A specimen that contains HIV antigen (e.g., serum specimen, lymphocyte culture, or cerebrospinal fluid (CSF) specimen).

iii. Other test(s) that are highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)), or that are acceptable methods of detection consistent with the prevailing state of medical knowledge.

When laboratory testing for HIV infection has been performed, every reasonable effort must be made to obtain reports of the results of that testing.

Individuals who have HIV infection or other disorders of the immune system may undergo tests to determine T-helper lymphocyte (CD4) counts. The extent of immune depression correlates with the level or rate of decline of the CD4 count. In general, when the CD4 count is 200/mm^3 or less (14 percent or less), the susceptibility to opportunistic disease is considerably increased. However, a reduced CD4 count alone does not establish a definitive diagnosis of HIV infection, or document the severity or functional effects of HIV infection.

b. Other acceptable documentation of HIV infection.

HIV infection may also be documented without the definitive laboratory evidence described in paragraph a, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If no definitive laboratory evidence is available, HIV infection may be documented by the medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. For example, a diagnosis of HIV infection will be accepted without definitive laboratory evidence if the individual has an opportunistic disease (e.g., toxoplasmosis of the brain, pneumocystis carinii pneumonia (PCP)) predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to that disease (e.g., long-term steroid treatment, lymphoma). In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

4. Documentation of the manifestations of HIV infection. The medical evidence must also include documentation of the manifestations of HIV infection. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of the manifestations of HIV infection by definitive diagnosis.

The definitive method of diagnosing opportunistic diseases or conditions that are manifestations of HIV infection is by culture, serological test, or microscopic examination of biopsied tissue or other material (e.g., bronchial washings). Therefore, every reasonable effort must be made to obtain specific laboratory evidence of an opportunistic disease or other condition whenever this information is available. If a histological or other test has been performed, the evidence should include a copy of the appropriate report. If the report is not obtainable, the summary of hospitalization or a report from the treating source should include details of the findings and results of the diagnostic studies (including radiographic studies) or microscopic examination of the appropriate tissues or body fluids.

Although a reduced CD4 lymphocyte count may show that there is an increased susceptibility to opportunistic infections and diseases (see 14.00D3a, above), that alone does not establish the presence, severity, or functional effects of a manifestation of HIV infection.

b. Other acceptable documentation of the manifestations of HIV infection.

Manifestations of HIV infection may also be documented without the definitive laboratory evidence described in paragraph a, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If no definitive laboratory evidence is available, manifestations of HIV infection may be documented by medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

Documentation of cytomegalovirus (CMV) disease (14.08D) presents special problems because diagnosis requires identification of viral inclusion bodies or a positive culture from the affected organ, and the absence of any other infectious agent. A positive serology test identifies infection with the virus, but does not confirm a disease process. With the exception of chorioretinitis (which may be diagnosed by an ophthalmologist), documentation of CMV disease requires confirmation by biopsy or other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

5. Manifestations specific to women. Most women with severe immunosuppression secondary to HIV infection exhibit the typical opportunistic infections and other conditions, such as pneumocystis carinii pneumonia (PCP), candida esophagitis, wasting syndrome, cryptococcosis, and toxoplasmosis. However, HIV infection may have different manifestations in women than in men. Adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions specific to or common in women with HIV infection that may affect their ability to function in the workplace.

Many of these manifestations (e.g. vulvovaginal candidiasis, pelvic inflammatory disease) occur in women with or without HIV infection, but can be more severe or resistant to treatment, or occur more frequently in a woman whose immune system is suppressed. Therefore, when evaluating the claim of a woman with HIV infection, it is important to consider gynecologic and other problems specific to women, including any associated symptoms (e.g., pelvic pain), in assessing the severity of the impairment and resulting functional limitations. Manifestations of HIV infection in women may be evaluated under the specific criteria (e.g., cervical cancer under 14.08E), under an applicable general category (e.g., pelvic inflammatory disease under 14.08A5) or, in appropriate cases, under 14.08N.

6. Evaluation. The criteria in 14.08 do not describe the full spectrum of diseases or conditions manifested by individuals with HIV infection. As in any case, consideration must be given to whether an individual's impairment(s) meets or equals in severity any other listing in appendix 1 of subpart P (e.g., a neoplastic disorder listed in 13.00ff). Although 14.08 includes cross-references to other listings for the more common manifestations of HIV infection, other listings may apply.

In addition, the impact of all impairments, whether or not related to HIV infection, must be considered. For example, individuals with HIV infection may manifest signs and symptoms of a mental impairment (e.g., anxiety, depression), or of another physical impairment. Medical evidence should include documentation of all physical and mental impairments, and the impairment(s) should be evaluated not only under the relevant listing(s) in 14.08, but under any other appropriate listing(s).

It is also important to remember that individuals with HIV infection, like all other individuals, are evaluated under the full five-step sequential evaluation process described in § 404.1520 and § 416.920. If an individual with HIV infection is working and engaging in substantial gainful activity (SGA), or does not have a severe impairment, the case will be decided at the first or second step of the sequential evaluation process, and does not require evaluation under these listings. For an individual with HIV infection who is not engaging in SGA and has a severe impairment, but whose impairment(s) does not meet or equal in severity the criteria of a listing, evaluation must proceed through the final steps of the sequential evaluation process (or, as appropriate, the steps in the medical improvement review standard) before any conclusion can be reached on the issue of disability.

7. Effect of treatment. Medical treatment must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the specific disorder, or of the HIV infection itself (e.g., antiretroviral agents) and in terms of any side effects of treatment that may further impair the individual.

Response to treatment and adverse or beneficial consequences of treatment may vary widely. For example, an individual with HIV infection who develops pneumonia or tuberculosis may respond to the same antibiotic regimen used in treating individuals without HIV infection, but another individual with HIV infection may not respond to the same regimen. Therefore, each case must be considered on an individual basis, along with the effects of treatment on the individual's ability to function.

A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long term. As such, the decision regarding the impact of treatment should be based on a sufficient period of treatment to permit proper consideration.

8. Functional criteria. Paragraph N of 14.08 establishes standards for evaluating manifestations of HIV infection that do not meet the requirements listed in 14.08A–M. Paragraph N is applicable for manifestations that are not listed in 14.08A–M, as well as those listed in 14.08A–M that do not meet the criteria of any of the rules in 14.08A–M.

For individuals with HIV infection evaluated under 14.08N, listing-level severity will be assessed in terms of the functional limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the claimant's ability to function must be considered. Important factors to be considered in evaluating the functioning of individuals with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

As used in 14.08N, "repeated" means that the conditions occur on an average of 3 times a year, or once every 4 months, each lasting 2 weeks or more; or the conditions do not last for 2 weeks but occur substantially more frequently than 3 times in a year or once every 4 months; or they occur less often than an average of 3 times a year or once every 4 months but last substantially longer than 2 weeks.

To meet the criteria in 14.08N, an individual with HIV infection must demonstrate a marked level of restriction in one of three general areas of functioning: activities of daily living; social functioning; and difficulties in completing tasks due to deficiencies in concentration, persistence, or pace. Functional restrictions may result from the impact of the disease process itself on mental or physical functioning, or both. This could result from extended or intermittent symptoms, such as depression, fatigue, or pain, resulting in a limitation of the ability to concentrate, to persevere at a task, or to perform the task at an acceptable rate of speed. Limitations may also result from the side effects of medication.

When "marked" is used as a standard for measuring the degree of functional limitation, it means more than moderate, but less than extreme. A marked limitation does not represent a quantitative measure of the individual's ability to do an activity for a certain percentage of the time. A marked limitation may be present when several activities or functions are impaired or even when only one is impaired. However, an individual need not be totally precluded from performing an activity to have a marked limitation, as long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively. The term "marked" does not imply that the impaired individual is confined to bed, hospitalized, or in a nursing home.

Activities of daily living include, but are not limited to, such activities as doing household chores, grooming and hygiene, using a post office, taking public transportation, and paying bills. An individual with HIV infection who, because of symptoms such as pain imposed by the illness or its treatment, is not able to maintain a household or take public transportation on a sustained basis or without assistance (even though he or she is able to perform some self-care activities) would have marked limitation of activities of daily living.

Social functioning includes the capacity to interact appropriately and communicate effectively with others. An individual with HIV infection who, because of symptoms or a pattern of exacerbation and remission caused by the illness or its treatment, cannot engage in social interaction on a sustained basis (even though he or she is able to communicate with close friends or relatives) would have marked difficulty maintaining social functioning.

Completing tasks in a timely manner involves the ability to sustain concentration, persistence, or pace to permit timely completion of tasks commonly found in work settings. An individual with HIV infection who, because of HIV-related fatigue or other symptoms, is unable to sustain concentration

or pace adequate to complete simple work-related tasks (even though he or she is able to do routine activities of daily living) would have marked difficulty completing tasks.

14.01 Category of Impairments, Immune System

14.02 Systemic lupus erythematosus. Documented as described in 14.00B1, with:

A. One of the following:

1. Joint involvement, as described under the criteria in 1.00; or

2. Muscle involvement, as described under the criteria in 14.05; or

3. Ocular involvement, as described under the criteria in 2.00ff; or

4. Respiratory involvement, as described under the criteria in 3.00ff; or

5. Cardiovascular involvement, as described under the criteria in 4.00ff or 14.04D; or

6. Digestive involvement, as described under the criteria in 5.00ff; or

7. Renal involvement, as described under the criteria in 6.00ff; or

8. Skin involvement, as described under the criteria in 8.00ff; or

9. Neurological involvement, as described under the criteria in 11.00ff; or

10. Mental involvement, as described under the criteria in 12.00ff.

or

B. Lesser involvement of two or more organs/body systems listed in paragraph A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

14.03 Systemic vasculitis. Documented as described in 14.00B2, including documentation by angiography or tissue biopsy, with:

A. Involvement of a single organ or body system, as described under the criteria in 14.02A.

or

B. Lesser involvement of two or more organs/body systems listed in 14.02A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

14.04 Systemic sclerosis and scleroderma. Documented as described in 14.00B3, with:

A. One of the following:

1. Muscle involvement, as described under the criteria in 14.05; or

2. Respiratory involvement, as described under the criteria in 3.00ff; or

3. Cardiovascular involvement, as described under the criteria in 4.00ff; or

4. Digestive involvement, as described under the criteria in 5.00ff; or

5. Renal involvement, as described under the criteria in 6.00ff.

or

B. Lesser involvement of two or more organs/body systems listed in paragraph A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

or

C. Generalized scleroderma with digital contractures.

or

D. Severe Raynaud's phenomena, characterized by digital ulcerations, ischemia, or gangrene.

14.05 Polymyositis or dermatomyositis. Documented as described in 14.00B4, with:

A. Severe proximal limb-girdle (shoulder and/or pelvic) muscle weakness, as described in 14.00B4.

or

B. Less severe limb-girdle muscle weakness than in 14.05A, associated with cervical muscle weakness and one of the following to at least a moderate level of severity:

1. Impaired swallowing with dysphagia and episodes of aspiration due to cricopharyngeal weakness, or

2. Impaired respiration due to intercostal and diaphragmatic muscle weakness.

or

C. If associated with malignant tumor, as described under the criteria in 13.00ff.

or

D. If associated with generalized connective tissue disease, described under the criteria in 14.02, 14.03, 14.04, or 14.06.

14.06 Undifferentiated connective tissue disorder. Documented as described in 14.00B5, and with impairment as described under the criteria in 14.02A, 14.02B, or 14.04.

14.07 Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, excepting HIV infection. Associated with documented, recurrent severe infection occurring 3 or more times within a 5-month period.

14.08 Human immunodeficiency virus (HIV) infection. With documentation as described in 14.00D3 and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (e.g., caused by M. avium-intracellulare, M. kansasii, or M. tuberculosis) at a site other than the lungs, skin, or cervical or hilar lymph nodes; or pulmonary tuberculosis resistant to treatment; or

2. Nocardiosis; or

3. Salmonella bacteremia, recurrent non-typhoid; or

4. Syphilis or neurosyphilis—evaluate sequelae under the criteria for the affected body system (e.g., 2.00 Special Senses and Speech, 4.00 Cardiovascular System, 11.00 Neurological); or

5. Multiple or recurrent bacterial infection(s), including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year.

or

B. Fungal infections:

1. Aspergillosis; or

2. Candidiasis, at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or candidiasis involving the esophagus, trachea, bronchi, or lungs; or

3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or

4. Cryptococcosis, at a site other than the lungs (e.g., cryptococcal meningitis); or

5. Histoplasmosis, at a site other than the lungs or lymph nodes; or

6. Mucormycosis.

or

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or

2. Pneumocystis carinii pneumonia or extrapulmonary pneumocystis carinii infection; or

3. Strongyloidiasis, extra-intestinal; or

4. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

or

D. Viral infections:

1. Cytomegalovirus disease (documented as described in 14.00D4b) at a site other than the liver, spleen, or lymph nodes; or

2. Herpes simplex virus causing:

a. Mucocutaneous infection (e.g., oral, genital, perianal) lasting for 1 month or longer; or

b. Infection at a site other than the skin or mucous membranes (e.g., bronchitis, pneumonitis, esophagitis, or encephalitis); or

c. Disseminated infection; or

3. Herpes zoster, either disseminated or with multidermatomal eruptions that are resistant to treatment; or

4. Progressive multifocal leukoencephalopathy; or

5. Hepatitis, as described under the criteria in 5.05.

or

E. Malignant neoplasms:

1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or

2. Kaposi's sarcoma with:

a. Extensive oral lesions; or

b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or

c. Involvement of the skin or mucous membranes, as described under the criteria in 14.08F; or

3. Lymphoma (e.g., primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other non-Hodgkins lymphoma, Hodgkin's disease); or

4. Squamous cell carcinoma of the anus.

or

F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above) with extensive fungating or ulcerating lesions not responding to treatment (e.g., dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal candida, condyloma caused by human papillomavirus, genital ulcerative disease), or evaluate under the criteria in 8.00ff.

or

G. Hematologic abnormalities:

1. Anemia, as described under the criteria in 7.02; or

2. Granulocytopenia, as described under the criteria in 7.15; or

3. Thrombocytopenia, as described under the criteria in 7.06.

or

H. Neurological abnormalities:

1. HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses; or

2. Other neurological manifestations of HIV infection (e.g., peripheral neuropathy) as described under the criteria in 11.00ff.

or

I. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (or other significant involuntary weight loss, as described in 14.00D2) and, in the absence of a concurrent illness that could explain the findings, either:

1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or

2. Chronic weakness and documented fever greater than 38° C (100.4° F) for the majority of 1 month or longer.

or

J. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

or

K. Cardiomyopathy, as described under the criteria in 4.00ff or 11.04.

or

L. Nephropathy, as described under the criteria in 6.00ff.

or

M. One or more of the following infections (other than described in A–L, above), resistant to treatment or requiring hospitalization or intravenous treatment 3 or more times in 1 year (or evaluate sequelae under the criteria for the affected body system).

1. Sepsis; or
2. Meningitis; or
3. Pneumonia; or
4. Septic arthritis; or
5. Endocarditis; or
6. Radiographically documented sinusitis.

or

N. Repeated (as defined in 14.00D8) manifestations of HIV infection (including those listed in 14.08A–M, but without the requisite findings, e.g., carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08J, or other manifestations, e.g., oral hairy leukoplakia, myositis) resulting in significant, documented symptoms or signs (e.g., fatigue, fever, malaise, weight loss, pain, night sweats) and one of the following at the marked level (as defined in 14.00D8):

1. Restriction of activities of daily living; or

2. Difficulties in maintaining social functioning; or

3. Difficulties in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

9. The table of contents for part B of appendix 1 (Listing of Impairments) to subpart P is amended by adding an entry for 114.00 to read as follows:

Part B

* * * * *

Sec.

* * * * *

114.00 Immune System

10. In part B of appendix 1 (Listing of Impairments) to subpart P, 110.00B is amended by removing the last sentence.

11. In part B of appendix 1 (Listing of Impairments) to subpart P, Listing 110.09, Immune deficiency disease, is removed.

12. In part B of appendix 1 (Listing of Impairments) to subpart P, 114.00 is added to read as follows:

114.00 Immune System

A. Listed disorders include impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disorder. Connective tissue disorders include several chronic multisystem disorders that differ in their clinical manifestation, course, and outcome. These disorders are described in part A, 14.00B.

Some of the features of connective tissue disorders in children may differ from the features in adults. When the clinical features are the same as that seen in adults, the principles and concepts in part A, 14.00B apply.

The documentation needed to establish the existence of a connective tissue disorder is medical history, physical examination, selected laboratory studies, medically acceptable imaging techniques and, in some instances, tissue biopsy. However, the Social Security Administration will not purchase diagnostic tests or procedures that may involve significant risk, such as biopsies or angiograms. Generally, the existing medical evidence will contain this information.

In addition to the limitations caused by the connective tissue disorder *per se*, the chronic adverse effects of treatment (e.g., corticosteroid-related ischemic necrosis of bone) may result in functional loss.

A longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed treatment during this period with the expectation that the disease will remain active for 12 months is necessary for assessment of severity and duration of impairment.

In children the impairment may affect growth, development, attainment of age-appropriate skills, and performance of age-appropriate activities. The limitations may be the result of loss of function or failure in a single organ or body system, or a lesser degree of functional loss in two or more organs/body systems that, in combination with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss, results in listing-level limitations. We use the term "severe" in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

C. Allergies, growth impairments and Kawasaki disease.

1. Allergic disorders (e.g., asthma or atopic dermatitis) are discussed and evaluated under the appropriate listing of the affected body system.

2. If growth is affected by the disorder or its treatment by immunosuppressive drugs, 100.00 may apply.

3. Kawasaki disease, also known as mucocutaneous lymph node syndrome, is characterized by multisystem manifestations, but significant functional impairment is usually due to disease of the coronary arteries, which should be evaluated under 104.00.

D. Human immunodeficiency virus (HIV) infection.

1. HIV infection is caused by a specific retrovirus and may be characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions, as described in 114.08. Any child with HIV infection, including one with a diagnosis of acquired immunodeficiency syndrome (AIDS), may be found disabled under this listing if his or her impairment meets any of the criteria in 114.08 or is of equivalent severity to an impairment in 114.08.

2. Definitions. In 114.08, the terms "resistant to treatment," "recurrent," and "disseminated" have the same general meaning as used by the medical community. The precise meaning of any of these terms will depend upon the specific disease or condition in question, the body system affected, the usual course of the disorder and its treatment, and the other circumstances of the case.

"Resistant to treatment" means that a condition did not respond adequately to an appropriate course of treatment. Whether a response is adequate, or a course of treatment appropriate, will depend on the facts of the particular case.

"Recurrent" means that a condition that responded adequately to an appropriate course of treatment has returned after a period of remission or regression. The extent of response (or remission) and the time periods involved will depend on the facts of the particular case.

"Disseminated" means that a condition is spread widely over a considerable area or body system(s). The type and extent of the spread will depend on the specific disease.

3. Documentation of HIV infection in children. The medical evidence must include documentation of HIV infection. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of HIV infection in children by definitive diagnosis. A definitive diagnosis of HIV infection in children is documented by one or more of the following laboratory tests:

i. For a child 24 months of age or older, a serum specimen that contains HIV antibodies. HIV antibodies are usually detected by a screening test. The most commonly used screening test is the ELISA. Although this test is highly sensitive, it may yield false positive results. Therefore, positive results from an ELISA must be

confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay). (See paragraph b, below, for information about HIV antibody testing in children younger than 24 months of age).

ii. A specimen that contains HIV antigen (e.g., serum specimen, lymphocyte culture, or cerebrospinal fluid (CSF) specimen).

iii. An immunoglobulin A (IgA) serological assay specific for HIV.

iv. Other test(s) that are highly specific for detection of HIV in children (e.g., polymerase chain reaction (PCR)), or that are acceptable methods of detection consistent with the prevailing state of medical knowledge.

When laboratory testing for HIV infection has been performed, every reasonable effort must be made to obtain reports of the results of that testing.

b. Other acceptable documentation of HIV infection in children.

As noted in paragraph a, above, HIV infection is not documented in children under 24 months of age by a serum specimen containing HIV antibodies. This is because women with HIV infection often transfer HIV antibodies to their newborns. The mother's antibodies can persist in the infant for up to 24 months, even if the infant is not HIV-infected. Only 20 to 30 percent of such infants are actually infected. Therefore, the presence of serum HIV antibodies alone does not establish the presence of HIV infection in a child under 24 months of age. However, the presence of HIV antibodies accompanied by evidence of significantly depressed T-helper lymphocytes (CD4), an abnormal CD4/CD8 ratio, or abnormal immunoglobulin G (IgG) may be used to document HIV infection in a child under 24 months of age, even though such testing is not a basis for a definitive diagnosis.

For children from birth to the attainment of 24 months of age who have tested positive for HIV antibodies (see D3a above), HIV infection may be documented by one or more of the following:

i. For an infant 12 months of age or less, a CD4 (T4) count of 1500/mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

ii. For an infant from 12 to 24 months of age, a CD4 (T4) count of 750/mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

iii. An abnormal CD4/CD8 ratio.

iv. An IgG significantly greater than or less than the normal range for age.

HIV infection in children may also be documented without the definitive laboratory evidence described in paragraph a, or the other laboratory evidence discussed above, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If such laboratory evidence is not available, HIV infection may be documented by the medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. For example, a diagnosis of HIV infection in children will be accepted without definitive laboratory evidence if the child has an opportunistic disease (e.g., Pneumocystis carinii pneumonia (PCP)) predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to that disease (e.g., long-term steroid treatment, lymphoma). In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

4. Documentation of the manifestations of HIV infection in children. The medical evidence must also include documentation of the manifestations of HIV infection in children. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of the manifestations of HIV infection in children by definitive diagnosis.

The definitive method of diagnosing opportunistic diseases or conditions that are manifestations of HIV infection in children is by culture, serological test, or microscopic examination of biopsied tissue or other material (e.g., bronchial washings). Therefore, every reasonable effort must be made to obtain specific laboratory evidence of an opportunistic disease or other condition whenever this information is available. If a histological or other test has been performed, the evidence should include a copy of the appropriate report. If the report is not obtainable, the summary of hospitalization or a report from the treating source should include details of the findings and results of the diagnostic studies (including radiographic studies) or microscopic examination of the appropriate tissues or body fluids.

Although a reduced CD4 lymphocyte count in a child may show that there is an increased susceptibility to opportunistic infections and diseases, that alone does not document the presence, severity, or functional effects of a manifestation of HIV infection in a child.

b. Other acceptable documentation of the manifestations of HIV infection in children.

Manifestations of HIV infection in children may also be documented without the definitive laboratory evidence described in paragraph a, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If no definitive laboratory evidence is available, manifestations of HIV infection may be documented by medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

Documentation of cytomegalovirus (CMV) disease (114.08D) presents special problems because diagnosis requires identification of viral inclusion bodies or a positive culture from the affected organ, and the absence of any other infectious agent. A positive serology test identifies infection with the virus, but does not confirm a disease process. With the exception of chorioretinitis (which may be diagnosed by an ophthalmologist), documentation of CMV disease requires confirmation by biopsy or other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

5. HIV infection in children. The clinical manifestation and course of disease in children who become infected with HIV perinatally or in the first 6 years of life may differ from that in older children and adults. In addition, survival times are shorter for children infected in the first year of life compared to those who become infected as older children or as adults. Infants may present with failure to thrive or pneumocystis carinii pneumonia (PCP); young children may present with recurrent infections, neurological problems, or developmental abnormalities. Older children may also exhibit neurological abnormalities, such as HIV encephalopathy, or failure to thrive.

The methods of identifying and evaluating neurological abnormalities may vary depending on a child's age. For example, in an infant, impaired brain growth can be documented by a decrease in the growth rate of the head. In older children, impaired brain growth can be documented by brain atrophy on a CAT scan. Neurological abnormalities can also be observed in a younger child in the loss of previously acquired, or marked delays in achieving, developmental milestones. In an older child, this type of neurological abnormality would generally be demonstrated by the loss of previously acquired intellectual abilities. Although loss of previously acquired intellectual abilities can be documented by a decrease in intelligence quotient (IQ) scores or demonstrated if a child forgets information he or she previously learned, it can also be shown if the child is unable to learn new information. This could include the sudden acquisition of a new learning disability.

Children with HIV infection may contract any of a broad range of bacterial infections. Certain major infections caused by pyogenic bacteria, e.g., some pneumonias, can be severely limiting, especially in pre-adolescent children. These major bacterial infections should be evaluated under 114.08A5, which requires two or more such infections within a 2-year period. Although 114.08A5 applies only to children less than 13 years of age, an older child may be found to have an impairment of equivalent severity if the circumstances of the case warrant (e.g., delayed puberty).

Otherwise, bacterial infections are evaluated under 114.08A6. The criteria of the listing are met if one or more bacterial infection(s) occurs and requires hospitalization or intravenous antibiotic treatment 3 or more times in 1 year. Pelvic inflammatory disease in older female children should be evaluated under multiple or recurrent bacterial infections (114.08A6).

6. Evaluation of HIV infection in children. The criteria in 114.08 do not describe the full spectrum of diseases or conditions manifested by children with HIV infection. As in any case, consideration must be given to whether a child's impairment(s) meets or equals in severity any other listing in appendix 1 of subpart P (e.g., a neoplastic disorder listed in 113.00ff). Although 114.08 includes cross-references to other listings for the more common manifestations of HIV infection, additional listings may also apply.

VOL 58 ISS 126 JL 2 1993 UMI

In addition, the impact of all impairments, whether or not related to the HIV infection, must be considered. Children with HIV infection may manifest signs and symptoms of a mental impairment (e.g., anxiety, depression), or of another physical impairment. Medical evidence should include documentation of all physical and mental impairments and the impairment(s) should be evaluated not only under the relevant listing(s) in 114.08, but under any other appropriate listing(s).

It is also important to remember that children with HIV infection, like all others, are evaluated under the full sequential evaluation process described in § 416.924. If a child with HIV infection is working and engaging in substantial gainful activity (SGA), or does not have a severe impairment, the case will be decided at the first or second step of the sequential evaluation process, and does not require evaluation under these listings. For a child with HIV infection who is not engaging in SGA and has a severe impairment, but whose impairment(s) does not meet the criteria of a listing, consideration will be given to whether the child's impairment or combination of impairments is either medically or functionally equivalent in severity to any listed impairment. If the child's impairment or impairments do not meet or equal a listing in severity, evaluation must proceed through the final step(s) of the sequential evaluation process (or, as appropriate, the steps in the medical improvement review standard) before any conclusion can be reached on the issue of disability.

7. Effect of treatment. Medical treatment must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the specific disorder, or of the HIV infection itself (e.g. antiretroviral agents) and in terms of any side effects of treatment that may further impair the child.

Response to treatment and adverse or beneficial consequences of treatment may vary widely. For example, a child with HIV infection who develops otitis media may respond to the same antibiotic regimen used in treating children without HIV infection, but another child with HIV infection may not respond to the same regimen. Therefore, each case must be considered on an individual basis, along with the effects of treatment on the child's ability to function.

A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long-term. As such, the decision regarding the impact of treatment should be based on a sufficient period of treatment to permit proper consideration.

8. Functional criteria. Paragraph O of 114.08 establishes standards for evaluating manifestations of HIV infection that do not meet the requirements listed in 114.08A-N. Paragraph O is applicable for manifestations that are not listed in 114.08A-N, as well as those listed in 114.08A-N that do not meet the criteria of any of the rules in 114.08A-N.

For children with HIV infection evaluated under 114.08O, listing-level severity will be assessed in terms of the functional limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the child's ability to function must be considered. Important factors to be considered in evaluating the functioning of children with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the criteria in 114.08O, a child with HIV infection must demonstrate a level of restriction in either one or two (depending on the child's age) of the general areas of functioning applicable to the child's age group. (See 112.00C for additional discussion of these areas of functioning).

114.01 Category of Impairments, Immune System

114.02 Systemic lupus erythematosus. Documented as described in 14.00B1 and 114.00B, with:

A. One of the following:

1. Growth impairment, as described under the criteria in 100.00ff; or

2. Musculoskeletal involvement, as described under the criteria in 101.00ff; or

3. Muscle involvement, as described under the criteria in 14.05; or

4. Ocular involvement, as described under the criteria in 102.00ff; or

5. Respiratory involvement, as described under the criteria in 103.00ff; or

6. Cardiovascular involvement, as described under the criteria in 104.00ff or 14.04D; or

7. Digestive involvement, as described under the criteria in 105.00ff; or

8. Renal involvement, as described under the criteria in 106.00ff; or

9. Hematologic involvement, as described under the criteria in 107.00ff; or

10. Skin involvement, as described under the criteria in 8.00ff; or

11. Endocrine involvement, as described under the criteria in 109.00ff; or

12. Neurological involvement, as described under the criteria in 111.00ff; or

13. Mental involvement, as described under the criteria in 112.00ff.

or

B. Lesser involvement of two or more organs/body systems listed in paragraph A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

114.03 Systemic vasculitis. As described under the criteria in 14.03 or, if growth impairment, as described under the criteria in 100.00ff.

114.04 Systemic sclerosis and scleroderma. Documented as described in 14.00B3 and 114.00B, and:

A. As described under the criteria in 14.04 or, if growth impairment, as described under the criteria in 100.00ff.

or

B. Linear scleroderma, with one of the following:

1. Fixed valgus or varus deformities of both hands or both feet; or

2. Marked destruction or marked atrophy of an extremity; or

3. Facial disfigurement from hypoplasia of the mandible, maxilla, or zygoma resulting in an impairment as described under the criteria in 112.00ff; or

4. Seizure disorder, as described under the criteria in 111.00ff.

114.05 Polymyositis or dermatomyositis. Documented as described in 14.00B4 and 114.00B, and:

A. As described under the criteria in 14.05.

or

B. With one of the following:

1. Multiple joint contractures; or

2. Diffuse cutaneous calcification with formation of an exoskeleton; or

3. Systemic vasculitis as described under the criteria in 14.03.

114.06 Undifferentiated connective tissue disorder. As described under the criteria in 114.02 or 114.04.

114.07 Congenital immune deficiency disease.

A. Hypogammaglobulinemia or dysgammaglobulinemia, with:

1. Documented, recurrent severe infections occurring 3 or more times within a 5-month period; or

2. An associated disorder such as growth retardation, chronic lung disease, collagen disorder or tumor. Evaluate according to the appropriate body system listing.

or

B. Thymic dysplastic syndromes (such as Swiss, diGeorge).

114.08 Human immunodeficiency virus (HIV) infection. With documentation as described in 114.00D3 and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (e.g., caused by M. avium-intracellulare, M. kansasii, or M. tuberculosis) at a site other than the lungs, skin, or cervical or hilar lymph nodes; or pulmonary tuberculosis resistant to treatment; or

2. Nocardiosis; or

3. Salmonella bacteremia, recurrent non-typhoid.

4. Syphilis or neurosyphilis—evaluate sequelae under the criteria for the affected body system (e.g., 102.00 Special Senses and Speech, 104.00 Cardiovascular System, 111.00 Neurological); or

5. In a child less than 13 years of age, multiple or recurrent pyogenic bacterial infection(s) of the following types: sepsis, pneumonia, meningitis, bone or joint infection, or abscess of an internal organ or body cavity (excluding otitis media or superficial skin or mucosal abscesses) occurring 2 or more times in 2 years; or

6. Other multiple or recurrent bacterial infection(s), including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year.

or

B. Fungal infections:

1. Aspergillosis; or

2. Candidiasis, at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or candidiasis involving the esophagus, trachea, bronchi, or lungs; or

3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or

4. Cryptococcosis, at a site other than the lungs (e.g., cryptococcal meningitis); or

5. Histoplasmosis, at a site other than the lungs or lymph nodes; or

6. Mucormycosis.

or

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or

2. Pneumocystis carinii pneumonia or extrapulmonary pneumocystis carinii infection; or

3. Strongyloidiasis, extra-intestinal; or

4. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

or

D. Viral infections:

1. Cytomegalovirus disease (documented as described in 114.00D4b) at a site other than the liver, spleen, or lymph nodes; or

2. Herpes simplex virus causing:

a. Mucocutaneous infection (e.g., oral, genital, perianal) lasting for 1 month or longer; or

b. Infection at a site other than the skin or mucous membranes (e.g., bronchitis, pneumonitis, esophagitis, or encephalitis); or

c. Disseminated infection; or

3. Herpes zoster, either disseminated or with multidermatomal eruptions that are resistant to treatment; or

4. Progressive multifocal leukoencephalopathy; or

5. Hepatitis, as described under the criteria of 105.05.

or

E. Malignant neoplasms:

1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or

2. Karposi's sarcoma with:

a. Extensive oral lesions; or

b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or

c. Involvement of the skin or mucous membranes as described under the criteria of 114.08F; or

3. Lymphoma (e.g., primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other Non-Hodgkin's lymphoma, Hodgkin's disease); or

4. Squamous cell carcinoma of the anus.

or

F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3 above) with extensive fungating or ulcerating lesions not responding to treatment (e.g., dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal candida, condyloma caused by human papillomavirus, genital ulcerative disease), or evaluate under the criteria in 8.00ff.

or

G. Hematologic abnormalities:

1. Anemia, as described under the criteria in 7.02; or

2. Granulocytopenia, as described under the criteria in 7.15; or

3. Thrombocytopenia, as described under the criteria of 107.06 or 7.06.

or

H. Neurological manifestations of HIV infection (e.g., HIV encephalopathy, peripheral neuropathy), as described under the criteria in 111.00ff, or resulting in one or more of the following:

1. Loss of previously acquired, or marked delay in achieving, developmental milestones or intellectual ability (including the sudden acquisition of a new learning disability); or

2. Impaired brain growth (acquired microcephaly or brain atrophy—see 114.00D5); or

3. Progressive motor dysfunction affecting gait and station or fine and gross motor skills.

or

I. Growth disturbance, with:

1. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall of 15 percentiles from established growth curve (on standard growth charts) that persists for 2 months or longer; or

2. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall to below the third percentile from established growth curve (on standard growth charts) that persists for 2 months or longer; or

3. Involuntary weight loss greater than 10 percent of baseline that persists for 2 months or longer; or

4. Growth impairment as described under the criteria in 100.00ff.

or

J. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

or

K. Cardiomyopathy, as described under the criteria in 104.00ff or 11.04.

or

L. Lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia (LIP/PLH complex), with respiratory symptoms that significantly interfere with age-appropriate activities, and that cannot be controlled by prescribed treatment.

or

M. Nephropathy, as described under the criteria in 106.00.

or

N. One or more of the following infections (other than described in A–M, above), resistant to treatment or requiring hospitalization or intravenous treatment 3 or more times in 1 year (or evaluate sequelae under the criteria for the affected body system):

1. Sepsis;

2. Meningitis; or

3. Pneumonia; or

4. Septic arthritis; or

5. Endocarditis; or

6. Radiographically documented sinusitis.

or

O. Any other manifestation(s) of HIV infection (including any listed in 114.08A–N, but without the requisite findings, e.g., oral candidiasis not meeting the criteria in 114.08F, diarrhea not meeting the criteria in 114.08J, or any other manifestation(s), e.g., oral hairy leukoplakia, hepatomegaly), resulting in one of the following:

1. For children from birth to attainment of age 1, at least one of the criteria in paragraphs A–E of 112.12; or

2. For children age 1 to attainment of age 3, at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or

3. For children age 3 to attainment of age 18, at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

[FR Doc. 93–15124 Filed 7–1–93; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD51

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise our regulations, describing how we make findings of presumptive disability or presumptive blindness. The revisions clarify our presumptive disability rules and incorporate into the regulations procedures that are now in our operating instructions. These are revised procedures we have been using to make findings of presumptive disability for people who allege infection with the human immunodeficiency virus (HIV). Our prior rules permitted employees in Social Security Administration (SSA) Field Offices to make findings of presumptive disability in claims involving HIV infection only upon confirmation by a licensed physician that an individual had a diagnosis of acquired immunodeficiency syndrome (AIDS). This final rule allows Field Office employees to make findings of presumptive disability for individuals with HIV infection whose disease manifestations are of listing-level severity. We have also made changes in the final rule in response to suggestions from commenters and have made editorial changes to clarify the language of the proposed rule.

VOL 58 ISS 126 JL 2 1993 UMI

EFFECTIVE DATE: This rule is effective July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or Richard M. Bresnick, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–6243 or 965–1758.

SUPPLEMENTARY INFORMATION: Under section 1631(a)(4)(B) of the Social Security Act (the Act) and implementing regulations, we may pay a person supplemental security income (SSI) benefits on the basis of presumptive disability or presumptive blindness before we make a formal determination of disability or blindness. Findings of presumptive disability or presumptive blindness may be made when the available evidence reflects a high degree of probability that the individual will be found disabled or blind when complete evidence is obtained, and he or she meets the nonmedical eligibility requirements. Currently, presumptive disability or presumptive blindness payments may be made for no more than 6 months. (Prior to May 1, 1991, the effective date of section 5038 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, presumptive disability or presumptive blindness payments could be made for no more than 3 months.)

Findings of presumptive disability or presumptive blindness may be made at our Social Security Field Offices or at the State agencies that make SSI disability determinations. Generally the employees at our Social Security Field Offices are not trained disability experts; therefore, they are currently authorized to make findings of presumptive disability or presumptive blindness only for HIV with confirmation that the disease manifestations are of listing-level severity or for readily observable impairments (for example, amputation of two limbs), which are specified in § 416.934. We are not changing § 416.934 in this final rule.

Disability adjudicators at the State agencies are specialists in the evaluation of disability and, therefore, may make findings of presumptive disability or presumptive blindness in any case involving any impairment or combination of impairments in which the available evidence is sufficient to establish a high degree of probability that the individual is disabled or blind.

The list of readily observable impairment categories in § 416.934 previously included a category for AIDS. However, on December 18, 1991, we published a final rule in the Federal Register (56 FR 65682) removing § 416.934(k), the provision for finding presumptive disability based on AIDS. Although AIDS was included on the list of readily observable impairments in § 416.934 that do not require confirming medical evidence, the regulation explicitly required diagnosis by a licensed physician and was, therefore, different from the other impairment categories. The preamble to the final rule explained in detail our reasons for removing the section (56 FR at 65682–65683). In brief, we removed it because we revised our procedures for making findings of presumptive disability for people who allege HIV infection (including AIDS) and whose disease manifestations are of listing-level severity. The revised procedures allow us to identify individuals who can be found presumptively disabled because of HIV infection at the earliest stage in the application process.

This final rule incorporates into the regulations a specific provision for establishing presumptive disability for people who have HIV infection (including AIDS) of listing-level severity. Our operating instructions provide that Social Security Field Offices may make findings of presumptive disability for any person who is infected with the HIV—not only one who is diagnosed as having AIDS—when the claimant's medical source provides us with information that confirms that the claimant demonstrates disease manifestations of listing-level severity. Using these procedures we are able to make findings of presumptive disability for HIV-infected claimants earlier in the process, and also expedite the formal determinations of disability in many claims.

The final rule is also sufficiently flexible that it can be made consistent with any future listing for HIV infection, any future medical research on the illness, and any revision of our operating instructions about claims involving HIV infection or other impairments. Thus, the new rule will help us ensure that eligibility for presumptive disability payments is routinely and expeditiously considered for eligible claimants with HIV infection.

Under the new procedures used in HIV claims, the Social Security Field Office generally mails a check-block form to the claimant's physician or other medical source for completion and return to the Social Security Field Office. (There are separate forms for documenting the manifestations of HIV infection in adults and children.) Personnel in the Social Security Field Office may also contact the claimant's physician or other medical source by telephone to verify the presence of HIV disease manifestations. The claimant may also directly request his or her medical source to complete the check-block form, copies of which have been made available to physicians and others upon request.

The check-block form lists manifestations of HIV infection that we currently consider sufficient to establish listing-level severity. Of course, if the Social Security Field Office is unable to make a finding of presumptive disability, the State agency may still make such a finding at any time that the evidence is sufficient to establish a high degree of probability that the individual is disabled.

After a presumptive disability finding is made, the State agency completes the development of the evidence and decides the claim using the full sequential evaluation process for determining if the requirements for establishing disability are met. We believe that the information obtained on the check-block form by the Social Security Field Office has helped to expedite the formal determination process at the State agency by helping the State agency pinpoint the kind of evidence it will need to obtain for its formal disability determination. The use of the check-block form does not preclude full evaluation of the case as provided in our regulations. All relevant evidence will always be considered in making the formal disability determination.

In the following sections, we describe the specific revisions we have made.

Explanation of Final Rule

Section 416.933 How We Make a Finding of Presumptive Disability or Presumptive Blindness

We revised the language and structure of the proposed rule to more closely parallel the language of the prior rule in order to maintain flexibility in making presumptive disability findings. We retained the explanation that we make a finding of presumptive disability in HIV cases based on disease manifestations of listing-level severity.

In a technical correction, we revised the first sentence of the final rule to replace the reference to the presumptive disability or presumptive blindness "decision" with a reference to the presumptive disability or presumptive blindness "finding." The word "decision" is a term of art in our regulations and is not applicable to findings of presumptive disability or presumptive blindness. Under § 416.1401 of the regulations, a "decision" means the decision made by

an administrative law judge or the Appeals Council. Therefore, it does not refer to the findings of presumptive disability and presumptive blindness made by Social Security Field Offices and State agencies. In any case, we use the word "finding" at the beginning of the sentence and later on in § 416.933, as well as in §§ 416.932 and 416.934. Therefore, this nonsubstantive revision also provides consistency within the rules.

As in the proposed rule, we deleted the word "severe" from the phrase "readily observable severe impairments," which was in the second sentence of the prior rule. The word "severe" is a technical term in our disability rules that does not have the same meaning we intend in the context of this sentence.

The third sentence of the final rule, which is based on the fourth sentence in the proposed rule, now corresponds to the third sentence in the prior rule. As proposed, we deleted the words "disability evaluators" from the prior rule and replaced them with the word "us." Under § 416.902, the term "us" is defined to refer to either the Social Security Administration or the State agency making the disability determination. Therefore, this technical revision is a clearer statement of who "disability evaluators" are.

In response to a comment, described below, we deleted the third, fifth, and sixth sentences of the proposed rule to maintain flexibility in applying the presumptive disability rule in the future. For the same reason, we revised the penultimate sentence of the final rule to provide that HIV is an "example" of an impairment on which we may make a finding of presumptive disability based on medical evidence. We modified the last sentence of the proposed rule to clarify that the State agency may make a finding of presumptive disability or presumptive blindness for any type of impairment and at any stage of the development process at which the medical evidence or other evidence justifies such a finding.

Finally, we made minor editorial changes to correct spelling and punctuation throughout the final rule. These changes are not substantive and do not change the meaning of the rule in any way.

Public Comments

These regulations were published in the **Federal Register** (56 FR 65714) as a Notice of Proposed Rulemaking (NPRM) on December 18, 1991. Interested persons, organizations, and groups were invited to submit comments pertaining to the proposed rule within a period of 60 days from the date of publication of the NPRM. The comment period ended on February 18, 1992.

We received 50 comments from individuals, physicians, other medical professionals, medical and legal associations, Government agencies, and organizations that represent the interests of individuals who are infected with the HIV. Many of the written comments, by necessity, had to be condensed, summarized or paraphrased. In doing this, we believe that we have expressed everyone's views adequately and have responded to the issues raised. After carefully considering the comments contained in the letters we received regarding the proposed rule, we are adopting the proposed rule with modifications.

Many of the comments referred to the content of the proposed HIV listings, which we also published as proposed rules on December 18, 1991 (see 56 FR 65702) rather than the presumptive disability rule. For example, some commenters asked us to provide automatic presumptive disability allowances for Kaposi's sarcoma, HIV wasting syndrome, extrapulmonary tuberculosis, chronic anemia, conditions particular to women, and infants with the HIV antibody. Some commenters also referred to the proposed functional criteria in the listing and the issue of the documentation of HIV infection and its manifestations. Because the focus of these comments was on the proposed listings, not the presumptive disability process, we have not included them in this preamble. However, we have included the relevant comments and our responses in the final Immune Body System Listings, which we are publishing separately.

Comment: One commenter believed that the new Social Security Field Office presumptive disability procedures would not result in the identification of disabled individuals at the earliest possible stage in the application process. The commenter suggested that presumptive disability payments could be made for individuals with HIV-related conditions based on the applicant's own report. The commenter said that contact with a physician would be necessary only if an applicant's report was not sufficient.

Response: We did not adopt the suggestion to allow a Social Security Field Office employee to make a presumptive disability finding for claimants with HIV infection based on the applicant's own report of his or her condition because such allegations, without additional confirmation, would not be sufficient to establish a high degree of probability that the claimant is disabled. Generally, the only time Social Security Field Office employees may make a finding of presumptive disability based on a claimant's allegation is when the allegations are confirmed by the presence of a readily observable impairment (e.g., amputation of two limbs). In claims involving HIV infection, the disease manifestations are varied and may not be readily observable. Therefore, it is not appropriate to make a finding of presumptive disability based only on a claimant's allegation of his or her manifestations of HIV infection. We do, however, request the information needed to confirm the manifestations of HIV infection when a claimant alleges HIV infection.

Our presumptive disability procedures for claims involving HIV infection allow us to make findings of presumptive disability at the earliest stage in the application process through the use of the check-block form and direct contact with medical sources by our Social Security Field Office personnel to verify disease manifestations of listing-level severity. For example, our internal operating instructions provide flexibility for our Social Security Field Office employees to accept confirmation of listing-level severity for presumptive disability purposes from a medical source, such as a member of a hospital or clinic staff. Therefore, a presumptive disability finding can be made at the earliest stage in the application process, i.e., at the time of the application or shortly thereafter.

Comment: One commenter thought that the proposed rule for making findings of presumptive disability or presumptive blindness was flawed because it assumed that every applicant would have had access to a level of medical care that would fully diagnose and document his or her condition. The commenter asserted that poor applicants need SSI eligibility to get the medical care that would adequately document their conditions and prove disability, but cannot establish SSI eligibility until disability is proven. This commenter suggested that the proposed rule be changed to allow a finding of presumptive disability based on a standard of "significant probability" that an individual is disabled rather than a "high degree of probability," as stated in our prior rule and the proposed rule. The commenter acknowledged that this lower standard would allow some people who are not disabled to receive benefits for a few

VOL
58
ISS
126
JL
2
1993
UMI

months until their claims are adjudicated.

Response: We are aware that our applicants, particularly SSI applicants, may have difficulty securing medical care, and may not have adequate medical evidence to support their claims for benefits. However, our presumptive disability procedures take cognizance of this fact insofar as findings of presumptive disability are concerned, and we have other rules which ensure that no individual is excluded from the disability program because of an inability to obtain appropriate medical care.

Our presumptive disability procedures for HIV infection do not require an individual to provide documentation that will "fully diagnose and document" the condition, as the commenter stated, nor do they require an individual to be in a program of medical care. They require only that a medical source who has seen the claimant provide us with information (on a check-block form, over the telephone, or in any other way) that confirms the individual has symptomatic HIV infection that meets the severity of listing-level criteria for HIV. We do not require the source to provide supporting information at this point, and the claimant does not have to be in treatment. Moreover, we will accept this information from any medical source. Therefore, our procedures do not require us to develop the evidence fully to find that there is a high degree of probability that the individual is disabled.

The purpose of the presumptive disability provision is not to obtain evidence to adjudicate claims, but to expedite the payment of benefits to presumptively disabled people. We have separate rules to aid those claimants who do not have medical evidence, or sufficient medical evidence, to pursue their claims. SSI eligibility is not needed to obtain this medical evidence. We will purchase a consultative examination(s) to obtain the medical evidence to adjudicate a claim whenever it is needed, whether to establish a medical record or to perfect the existing medical record. Moreover, because we share the commenter's concern to ensure that benefits are expedited to all eligible claimants alleging HIV infection, we have recently issued operating instructions that direct the Social Security Field Office to "flag" any HIV claims where there is no apparent medical source to confirm the claimant's allegations. This procedure alerts the State agency personnel immediately on receipt of the claim that a consultative examination is needed. The consultative examination may be quickly scheduled to obtain the needed information to adjudicate the claim.

For the reasons given in the preceding response, however, we cannot remove the requirement that our Social Security Field Office employees confirm the manifestations of HIV infection with a medical source. We also did not adopt the suggestion to change the final rule to permit a finding of presumptive disability based on a "significant probability" rather than a "high degree of probability" that an individual will be found disabled at the formal disability determination. The payments made on the basis of a presumptive disability finding are intended to go to those whose conditions we can determine are most likely to be disabling when full documentation is obtained and a formal disability determination is made. Our implementing regulations have always provided that this likelihood be demonstrated by a high degree of probability of disability.

Comment: One commenter suggested that we revise the language in the proposed rule which indicated that HIV infection was an exception to the rule that findings of presumptive disability based on medical evidence would generally be made only by the State agency, in order to permit application of the new rule to other impairment categories.

Response: We adopted this comment. We revised the rule to more closely parallel the language of the prior rule so as to maintain flexibility to apply this provision to other impairment categories. In addition, we have cited HIV as an example, as opposed to an exception.

Comment: Many commenters suggested that in cases involving individuals with HIV infection, the regulation should specify that a finding of presumptive disability may be made at any stage of the appeals process because people with HIV-related impairments, which may not initially qualify them for benefits, rapidly develop new, and disabling, medical conditions.

Response: We did not adopt this suggestion because it is inconsistent with the statute. Section 1631(a)(4)(B) of the Act permits us to pay a person SSI benefits on the basis of presumptive disability or presumptive blindness only "prior to the determination" of disability or blindness. Once we have made a formal determination, we no longer have the authority to pay benefits on the basis of presumptive disability or presumptive blindness.

Comment: We received numerous comments about the new check-block forms (SSA–4814 for adults and SSA–4815–F3 for children) we developed to assist in establishing medical source verification of HIV-related disease manifestations at listing-level severity. Although we received several favorable comments from the medical community, other commenters pointed out what they saw as problems with the forms, including a lack of instructions for the individuals who complete the forms, the additional time it might take them to complete and mail the forms back, and the confusion that can arise later when a State agency subsequently sends another form to obtain the information necessary to make a formal disability decision.

Response: Although these comments are more properly addressed to our operating procedures rather than the proposed rule, we agree with many of them. Therefore, we have developed instructions for completion of the forms and have revised the forms. For example, to minimize any confusion, we will include a cover sheet of instructions that explains how to complete the form and the purpose of the form. In doing so we will explain that, after the presumptive disability finding is made, the State agency completes the development of the evidence it needs for a formal determination which will require more detailed evidence from the medical source. We have also reemphasized in our operating instructions that Social Security Field Office employees have the flexibility to make direct contact with the medical source to verify listing-level severity. We think the multiple contact is worthwhile because it allows us to get the necessary information quickly to provide presumptive disability payments to those who may need them. In addition, the information on the check-block form will help the State agency pinpoint the kind of evidence it will need to obtain for the formal disability determination, which should expedite the determination. We also have prepared public information materials to eliminate any confusion that may have existed.

Comment: One commenter suggested that the new rule allow a presumptive disability finding if an individual presents medical documentation of a pattern of chronic health problems of 6 months or longer. The commenter thought that this would permit the individual the resources to access health care facilities to obtain the medical documentation needed for a formal disability determination.

Response: We did not adopt this comment. As we have already explained, because our Social Security Field Office employees generally are not medically trained, we believe it is appropriate to use listing-level conditions when making presumptive disability findings in the Social Security Field Office. Thus, when medical source information confirms that an individual has an impairment(s) that meets the severity of listing-level criteria for HIV because of persistent or recurrent health problems, such an individual can be found presumptively disabled at the Social Security Field Office. Moreover, a claimant with the type of chronic conditions described by the comment may be found presumptively disabled in the State agency if there is a high degree of probability that he or she is disabled, even though there is not yet sufficient evidence for a formal determination.

With regard to the comment that the presumptive disability finding would enable the person to have access to health care and secure documentation for the formal disability determination, we repeat that, when the evidence presented by the claimant is insufficient for us to determine whether he or she is disabled (or the claimant has no evidence to present), we purchase consultative examinations, at our expense, to obtain evidence on which to base a disability determination. As we have stated before, the purpose of findings of presumptive disability is not to develop evidence for those with no treatment records or to finally adjudicate claims. We expedite benefits to those claimants with HIV infection who do not have medical sources by flagging their files in the Social Security Field Office to alert State agency personnel that a consultative examination is needed. Thereafter, the State agency may make a finding of presumptive disability or a formal determination of disability at the earliest possible moment.

Comment: A commenter suggested that the presumptive disability rule should include a detailed recitation of the HIV presumptive disability criteria or should reference the Listing of Impairments in appendix 1 to subpart P of 20 CFR part 404.

Response: We have not adopted this comment. We did not adopt the comment asking us to repeat the HIV presumptive disability criteria because they are the same criteria as are in the listings; to include them in this rule would be redundant and cumbersome. Nor did we reference the Listing of Impairments. We did not include this reference because we believe to do so would limit our ability to promptly add additional manifestations of HIV to the check-block form which may be found to be of "listing-level" in the future. In doing so, we will be able to include manifestations that are of listing-level severity, and on which findings of presumptive disability may be based, expeditiously as new medical information emerges.

Comment: One commenter noted that we had separately published a final rule removing 20 CFR 416.934(k) at 56 FR 65682, December 18, 1991. The commenter objected to the publication of the final rule without the opportunity for public notice and comment and recommended that SSA continue to make presumptive disability findings based on a confirmed diagnosis of AIDS.

Response: The sunset date for § 416.934(k) was December 31, 1991. Therefore, this provision would have expired 2 weeks following the date of the publication in the **Federal Register** of the final rule to remove it. While we could have let the provision expire on December 31, 1991, we chose to alert the public by publishing a final rule removing the section and explaining our new presumptive disability procedures to include consideration of those individuals filing claims based on HIV infection, not just those individuals filing claims based on AIDS. As we have stated before, these new procedures allow us to identify individuals who can be found presumptively disabled at the earliest stage of the application process.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these revisions do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations contain a reporting requirement in § 416.933. However, we have obtained clearance from the Office of Management and Budget (OMB) to collect this information using forms SSA–4814 and SSA–4815–F3. Both forms have OMB number 0960–0057.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: March 4, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: April 29, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and bi.

2. Section 416.933 is revised to read as follows:

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time we make the presumptive disability or presumptive blindness finding reflects a high degree of probability that you are disabled or blind. In the case of readily observable impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind for purposes of this section without medical or other evidence. For other impairments, a finding of disability or blindness must be based on medical evidence or other information that, though not sufficient for a formal determination of disability or blindness, is sufficient for us to find that there is a high degree of probability that you are disabled or blind. For example, for claims involving the human immunodeficiency virus (HIV), the Social Security Field Office may make a finding of presumptive disability if your medical source provides us with information that confirms that your disease manifestations meet the severity of listing-level criteria for HIV. Of course, regardless of the specific HIV manifestations, the State agency may make a finding of presumptive disability

VOL
58
ISS
126
JL
2
1993
UMI

if the medical evidence or other information reflects a high degree of probability that you are disabled.

[FR Doc. 93–15123 Filed 7–1–93; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling (SSR) 91–8p, Titles II and XVI]

Evaluation of Human Immunodeficiency Virus Infection

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Ruling.

SUMMARY: The Principal Deputy Commissioner of Social Security gives notice of the rescission of SSR 91–8p, which updated the policy interpretation for evaluating human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), in determining disability based on this impairment under titles II and XVI of the Social Security Act.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 91–8p was published in the **Federal Register** on December 17, 1991 (56 FR 65498). This Ruling also was published in the 1990–1991 Cumulative Edition of the Rulings. SSR 91–8p updated the policy interpretation for evaluating human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), in determining disability based on these impairments under titles II and XVI of the Social Security Act.

Elsewhere in this edition of the **Federal Register**, we are publishing final regulations which, among other things, establish a new listing section called "Immune System" in part A and part B of the Listing of Impairments contained in appendix 1 of 20 CFR part 404, subpart P. The new listing section includes a listing for the evaluation of HIV infection. Because these final regulations are effective as of today, SSR 91–8p is now obsolete. Therefore, we are rescinding SSR 91–8p.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.807 Supplemental Security Income)

Dated: May 5, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Certified To Be A True Copy of the Original.

Martin Sussman,

(Alternate), Division of Regulations, SSA.

[FR Doc. 93–15122 Filed 7–1–93; 8:45 am]

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VOL
58
ISS
1
2
6
JL
2
1993
UMI

federal register

Friday
July 2, 1993

Part III

Office of Management and Budget

Federal Information Resources Management (Circular A-130), Revision; Notice

VOL 58 ISS 126 JL 2 1993 UMI

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Revision of OMB Circular No. A–130.

SUMMARY: The Office of Management and Budget (OMB) is revising Circular No. A–130, Management of Federal Information Resources. This notice revises those portions of the circular concerning information management policy, including policies relating to information dissemination, records management, and cooperation with State and local governments. This Circular supersedes OMB Circular Nos. A–3 and A–114.

DATE: This Circular is effective June 25, 1993.

ELECTRONIC AVAILABILITY: This document is available on the Internet via anonymous File Transfer Protocol (FTP) from *nis.nsf.net* as */omb/omb.a130.rev2* (do not use any capital letters in the file name). For those who do not have FTP capability, the document can also be retrieved via mail query by sending an electronic mail message to *nis-info@nis.nsf.net* with no subject, and with *send omb.a130.rev2* as the first line of the body of the message. For assistance using FTP, mail query, or electronic mail, please contact your system administrator.

FOR FURTHER INFORMATION CONTACT: Peter N. Weiss, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) assigns the Director of OMB responsibility for maintaining a comprehensive set of information resources management (IRM) policies and for promoting the application of information technology to improve the use and dissemination of information by Federal agencies.

To fulfill these responsibilities, OMB issued Circular No. A–130, Management of Federal Information Resources (50 FR 52730; December 24, 1985), which provided a policy framework for the management of Federal information resources. Since the Circular was issued in 1985, Federal agencies have introduced major new information programs involving the electronic collection and dissemination of information. Congress has also enacted several laws bearing on the Circular, especially amendments to the PRA (Public Law 99–500), the Computer Security Act of 1987 (Public Law 100–235), the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503), and the Computer Matching and Privacy Protection Amendments of 1990 (Public Law 101–508). Since publication of the Circular, OMB has addressed the need for additional guidance in several notices:

(1) Notice of Policy Guidance on Electronic Collection of Information (52 FR 29454; August 7, 1987);

(2) Advance Notice of Further Policy Development on Dissemination of Information (54 FR 214; January 4, 1989);

(3) Second Advance Notice of Further Policy Development on Dissemination of Information (54 FR 25554; June 15, 1989);

(4) Advance Notice of Plans for Revision of OMB Circular No. A–130 (56 FR 9026; March 4, 1991);

(5) Proposed Revision of OMB Circular No. A–130 (57 FR 18296; April 29, 1992).

Also, consistent with the October 1, 1991, Notice of Rescission of OMB Circulars (56 FR 49824), OMB is incorporating into Circular No. A–130 certain provisions of existing Circular No. A–3, Government Publications, and of Circular No. A–114, Management of Federal Audiovisual Activities. As of the effective date of these revisions, Circular Nos. A–3 and A–114 are rescinded.

The purpose of the revision is to bring into proper perspective the following key areas that were not sufficiently emphasized in the original circular:

(1) IRM planning, with special focus on the information life cycle.

(2) The role of State and local governments in the management of information resources, and the need for Federal agencies to consider the effects of their information activities on those governments.

(3) Records management, with a special focus on the need to properly manage electronic records.

(4) Electronic collection and dissemination of information, identifying those conditions where agencies should consider using electronic techniques in order to reduce costs or provide better services.

(5) Information dissemination policy, stating the basic responsibility of all agencies to disseminate information consistent with their missions, and laying out the structure and substance of agency dissemination management programs.

Structure of this Revision

This revision affects primarily Section 6 of the Circular, Definitions; Section 7, Basic Considerations and Assumptions; Section 8a, Information Management Policy, and Appendix IV, Analysis of Key Sections. Minor changes are made in other sections. The structural outline of the Circular, together with notations as to which parts are changed, is presented below.

Outline of OMB Circular No. A–130 [as Revised]:

1. *Purpose:* [Unchanged]
2. *Rescissions:* [Rescinds Circular No. A–3, Government Publications, and Circular No. A–114, Management of Federal Audiovisual Activities.]
3. *Authorities:* [Cites additional statutory authorities for the Circular.]
4. *Applicability and Scope:* [Unchanged]
5. *Background:* [Unchanged]
6. *Definitions:* [Changed]
7. *Basic Considerations and Assumptions:* [Changed]
8. *Policies:*

a. *Information Management Policy:* [Changed]

b. *Information Systems and Information Technology Management:* [Unchanged]

9. *Assignment of Responsibilities:* [Changed]
10. *Oversight:* [Changed]
11. *Effective Date:* [Changed]
12. *Inquiries:* [Unchanged]
13. *Sunset Review Date:* [Changed]

Appendix I: *Federal Agency Responsibilities for Maintaining Records about Individuals* [Changed]

Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities* [Unchanged]

Appendix III: *Security of Federal Automated Information Systems* [Unchanged]

Appendix IV: *Analysis of Key Sections* [Changes reflecting revisions to policy.]

The revised portions are printed in their entirety.

Summary of Revisions

Section 3. *Authorities.* This notice adds a reference to the Computer Security Act of 1987 and the Chief Financial Officers Act of 1990.

Section 6. *Definitions.* OMB defines the terms "record" and "records management" as set forth at 44 U.S.C. 3301 and 44 U.S.C. 2901(2) respectively

because the newly proposed policy explicitly covers records management, and defines the terms "information life cycle" and "information dissemination product" because policy statements regarding records management and information dissemination use the terms. The term "audiovisual production" is defined in order to incorporate policy presently contained in Circular No. A–114. The revision modifies the definition of the term "information" for clarity. The term "government information" is expanded to include information created, collected, processed, disseminated, or disposed of by "or for" the Federal Government. The term "access to information" is deleted because its use has caused confusion.

Section 7. *Basic Considerations and Assumptions.* Aside from minor stylistic changes and renumbering, the revisions are as follows:

Subsection 7d revises a statement, taken from the public notice of June 15, 1989, to recognize that the benefits to be derived from government information may not always be quantifiable.

Subsection 7e in the current Circular is deleted; the intended meaning is adequately stated in OMB Circular No. A–76.

Subsection 7i is a new statement emphasizing the need for strategic planning in the management of information resources.

Subsection 7j is a new statement stressing the need for Federal Government cooperation with State and local governments in the management of information resources.

Subsection 7l is a revision of the present 7f adding a statement about the potential benefits of electronic dissemination of information.

Section 8a. *Information Management Policy.* The section begins with a set of policy statements concerning IRM planning with special emphasis on the information life cycle. Both in the planning statements and elsewhere, are new policy statements concerning the role of State and local governments and concerning records management. Also included are new policy statements regarding electronic collection and dissemination of information. The information dissemination policy statements are the most extensively revised, incorporating the concepts set forth in the June 15, 1989, notice (54 FR 25554).

Section 8a(1). *Information Management Planning.* This policy is new. However, Section 8a(1)(d), pertaining to acquiring information through sharing from existing sources, is incorporated from the existing Circular at 8a(2).

Section 8a(2) and (3). *Information Collection.* Section 8a(2) states the applicable information collection principles derived primarily from PRA. Section 8a(3) sets forth a new policy concerning situations under which electronic information collection is appropriate. These statements revise those proposed in the August 7, 1987, notice (52 FR 29454).

Section 8a(4). *Records Management.* Section 8a(4) sets forth basic policy regarding records management.

Sections 8a(5) and 8a(6). *Information Dissemination Policy.* The notice of June 15, 1989, set forth certain conclusions about the proper role for executive branch agencies in government information dissemination and the boundaries between Federal and nonfederal roles. OMB has used these conclusions as a starting point for revising information dissemination policy.

Section 8a(5) states the basic responsibility of all agencies to provide information to the public consistent with their missions. It also sets forth guidance on how agencies should go about disseminating information.

Section 8a(6) is a new policy that agencies maintain an information dissemination management system to ensure the routine performance of certain dissemination functions. The system and its functions are new provisions; however, they set in place some requirements originally contained in OMB Bulletins 88–14, 89–15, 90–09, and 91–16. Finally, this section incorporates certain requirements from Circular No. A–3, Government Publications, which is rescinded.

Section 8a(7). *Avoiding Improperly Restrictive Practices.* Section 8a(7) states a new policy concerning agency control over information that it intends to disseminate. This section also states policy regarding user charges for information dissemination products.

Section 8a(8). *Electronic Information Dissemination.* New section 8a(8) sets forth policy about when agencies should consider disseminating information in electronic format. This section parallels Section 8a(3) concerning electronic information collection.

Section 8a(9). *Information Safeguards.* Section 8a(9) incorporates policy statements found in the existing Circular at 8a(3) through (6).

Section 9. *Assignment of Responsibilities.* New section 9(a)(10) carries over the requirement in Circular No. A–114 that the head of each agency designate an office with responsibility for management oversight of agency audiovisual productions, facilities and activities. Section 9(a)(11) adds a requirement that the agency designated IRM official monitor agency compliance with the policies contained in the Circular and act as an ombudsman to consider alleged instances of agency failure to comply.

Appendix I: *Federal Agency Responsibilities for Maintaining Records About Individuals.* Changes to agency responsibilities resulting from recent enactments of privacy legislation have previously been issued in OMB guidance, and are incorporated into Appendix I.

Appendix IV: *Analysis of Key Sections.* This appendix is completely revised and provides a general context and explanation of the contents of the key Sections of the Circular. It explains the changes made to the original Circular by this notice, and reflects OMB's consideration and resolution of the comments received in response to the revisions proposed on April 29, 1992 (57 FR 18296).

Plans for Development of Other Topics

The second phase of revisions to Circular No. A–130, which is being published separately, will address the following areas:

Section 8b. *Information Systems and Information Technology Management.* The revisions to Section 8b of the circular will focus on strategic IRM planning and analysis of proposed investments in information technology. The Circular will state policy principles to guide agency planning and explain OMB's expectations when reviewing agency budget requests for investments in information technology. OMB intends to make more explicit the policy connections between A–130 and OMB policy documents including Circular Nos. A–109, A–123 and A–127, with the goal of avoiding unnecessary overlap and harmonizing definitions among all four. It will link the management of information technology to agency strategic planning, stress incorporating user needs when preparing requirements analyses, and suggest policy level control and review mechanisms for IRM policies and life cycle management of projects.

Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities.* OMB will revise Appendix II to reflect changes in law made by the Chief Financial Officers Act and the Budget Enforcement Act of 1990. These requirements include ensuring that accounting and reimbursements for sharing of information technology facilities are monitored and approved.

VOL
58
ISS
126
JL
2
1993
UMI

The revision will also address the use of revolving funds for cost recovery and accounting for inter-agency and intra-agency reimbursements. In addition, the revision will address the budgetary scoring of capital leases and lease-to-purchase agreements for information technology.

Appendix III: *Security of Federal Automated Information Systems.* OMB will revise Appendix III to incorporate requirements of the Computer Security Act of 1987, including requirements for security plans described in OMB Bulletin 90–08. Those revisions will incorporate changes based on the experience gained in recent computer security visits to major agencies. OMB will also work with the National Institute of Standards and Technology to implement recommendations of the Computer Security and Privacy Advisory Board (established by the Computer Security Act) regarding better coordination between this Circular and OMB Circular No. A–123.

Accordingly, Circular No. A–130 is revised as set forth below.

Sally Katzen,
Administrator,
Office of Information and Regulatory Affairs.

Circular No. A–130—Revised

Transmittal Memorandum No. 1

To the Heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources.

Circular No. A–130 provides uniform government-wide information resources management policies as required by the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. This Transmittal Memorandum contains updated guidance on those portions of the Circular dealing with information resources management planning, records management and information dissemination policy. It also contains a revised Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," and a revised Appendix IV, "Analysis of Key Sections."

This Circular replaces and rescinds OMB Circular No. A–3, "Government Publications," dated May 2, 1985, and OMB Circular No. A–114, "Management of Federal Audiovisual Activities," dated March 20, 1985.

Leon E. Panetta,
Director

Circular No. A–130—Revised

Transmittal Memorandum No. 1

Memorandum for Heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources.

1. *Purpose:* This Circular establishes policy for the management of Federal information resources. Procedural and analytic guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions:* This Circular rescinds OMB Circulars No.A–3, A–71, A–90, A–108, A–114, and A–121, and all Transmittal Memoranda to those circulars.

3. *Authorities:* This Circular is issued pursuant to the Paperwork Reduction Act (PRA), as amended (44 U.S.C. Chapter 35); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 et seq.); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 759 and 487); the Computer Security Act (40 U.S.C. 759 note); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); Executive Order No. 12046 of March 27, 1978; and Executive Order No. 12472 of April 3, 1984.

4. *Applicability and Scope:*

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal Government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives. National security emergency preparedness activities should be conducted in accordance with Executive Order No. 12472.

5. *Background:* The Paperwork Reduction Act establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of OMB develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions:*

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Within the Executive Office of the President, the term includes only OMB and the Office of Administration.

b. The term "audiovisual production" means a unified presentation, developed according to a plan or script, containing visual imagery, sound or both, and used to convey information.

c. The term "dissemination" means the government initiated distribution of information to the public. Not considered dissemination within the meaning of this Circular is distribution limited to government employees or agency contractors or grantees, intra- or inter-agency use or sharing of government information, and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act.

d. The term "government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

e. The term "government publication" means information which is published as an individual document at government expense, or as required by law. (44 U.S.C. 1901)

f. The term "information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

g. The term "information dissemination product" means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, disseminated by an agency to the public.

h. The term "information life cycle" means the stages through which information passes, typically characterized as creation or collection, processing, dissemination, use, storage, and disposition.

i. The term "information resources management" means the planning, budgeting, organizing, directing, training, and administrative control associated with government information resources. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and information technology.

j. The term "information system" means the organized collection, processing, maintenance, transmission, and dissemination of information in

accordance with defined procedures, whether automated or manual.

k. The term "information technology" means the hardware and software operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information on behalf of the Federal Government to accomplish a Federal function, regardless of the technology involved, whether computers, telecommunications, or others. It includes automatic data processing equipment as that term is defined in Section 111(a)(2) of the Federal Property and Administrative Services Act of 1949. For the purposes of this Circular, automatic data processing and telecommunications activities related to certain critical national security missions, as defined in 44 U.S.C. 3502(2) and 10 U.S.C. 2315, are excluded.

l. The term "information technology facility" means an organized grouping of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology.

m. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating, or maintenance costs; or its significant impact on the administration of agency programs, finances, property, or other resources.

n. The term "records" means all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included. (44 U.S.C. 3301)

o. The term "records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations. (44 U.S.C. 2901(2))

7. *Basic Considerations and Assumptions:*

a. The Federal Government is the largest single producer, collector, consumer, and disseminator of information in the United States. Because of the extent of the government's information activities, and the dependence of those activities upon public cooperation, the management of Federal information resources is an issue of continuing importance to all Federal agencies, State and local governments, and the public.

b. Government information is a valuable national resource. It provides the public with knowledge of the government, society, and economy—past, present, and future. It is a means to ensure the accountability of government, to manage the government's operations, to maintain the healthy performance of the economy, and is itself a commodity in the marketplace.

c. The free flow of information between the government and the public is essential to a democratic society. It is also essential that the government minimize the Federal paperwork burden on the public, minimize the cost of its information activities, and maximize the usefulness of government information.

d. In order to minimize the cost and maximize the usefulness of government information, the expected public and private benefits derived from government information should exceed the public and private costs of the information, recognizing that the benefits to be derived from government information may not always be quantifiable.

e. The nation can benefit from government information disseminated both by Federal agencies and by diverse nonfederal parties, including State and local government agencies, educational and other not-for-profit institutions, and for-profit organizations.

f. Because the public disclosure of government information is essential to the operation of a democracy, management of Federal information resources should protect the public's right of access to government information.

g. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

h. Systematic attention to the management of government records is an essential component of sound public resources management which ensures public accountability. Together with records preservation, it protects the government's historical record and guards the legal and financial rights of the government and the public.

i. Strategic planning is basic to the operation of sound government programs. This planning ensures that the management of information resources reflects agency strategic priorities within budgetary limitations.

j. Because State and local governments are important producers of government information for many areas such as health, social welfare, labor, transportation, and education, the Federal Government must cooperate with these governments in the management of information resources.

k. The open and efficient exchange of scientific and technical government information, subject to applicable national security controls and the proprietary rights of others, fosters excellence in scientific research and effective use of Federal research and development funds.

l. Modern information technology presents opportunities to improve the management of government programs to provide better service to the public. The availability of government information in diverse media, including electronic formats, permits the public greater flexibility in using the information.

m. Federal Government information resources management policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policy*—a. *Information Management Policy*

(1) *Information Management Planning*. Agencies shall plan in an integrated manner for managing information throughout its life cycle. Agencies shall:

(a) Consider, at each stage of the information life cycle, the effects of decisions and actions on other stages of the life cycle, particularly those concerning information dissemination;

(b) Consider the effects of their actions on members of the public and ensure consultation with the public as appropriate;

(c) Consider the effects of their actions on State and local governments and ensure consultation with those governments as appropriate;

(d) Seek to satisfy new information needs through interagency or intergovernmental sharing of information, or through commercial

VOL
58
ISS
126
JL
2
1993
UMI

sources, where appropriate, before creating or collecting new information;

(e) Integrate planning for information systems with plans for resource allocation and use, including budgeting, acquisition, and use of information technology;

(f) Train personnel in skills appropriate to management of information;

(g) Protect government information commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information;

(h) Use voluntary standards and Federal Information Processing Standards where appropriate or required;

(i) Consider the effects of their actions on the privacy rights of individuals, and ensure that appropriate legal and technical safeguards are implemented;

(j) Record, preserve, and make accessible sufficient information to ensure the management and accountability of agency programs, and to protect the legal and financial rights of the Federal Government;

(k) Incorporate records management and archival functions into the design, development, and implementation of information systems;

(l) Provide for public access to records where required or appropriate.

(2) *Information Collection.* Agencies shall collect or create only that information necessary for the proper performance of agency functions and which has practical utility.

(3) *Electronic Information Collection.* Agencies shall use electronic collection techniques where such techniques reduce burden on the public, increase efficiency of government programs, reduce costs to the government and the public, and/or provide better service to the public. Conditions favorable to electronic collection include:

(a) The information collection seeks a large volume of data and/or reaches a large proportion of the public;

(b) The information collection recurs frequently;

(c) The structure, format, and/or definition of the information sought by the information collection does not change significantly over several years;

(d) The agency routinely converts the information collected to electronic format;

(e) A substantial number of the affected public are known to have ready access to the necessary information technology and to maintain the information in electronic form;

(f) Conversion to electronic reporting, if mandatory, will not impose substantial costs or other adverse effects on the public, especially State and local governments and small business entities.

(4) *Records Management.* Agencies shall:

(a) Ensure that records management programs provide adequate and proper documentation of agency activities;

(b) Ensure the ability to access records regardless of form or medium;

(c) In a timely fashion, establish, and obtain the approval of the Archivist of the United States for, retention schedules for Federal records; and

(d) Provide training and guidance as appropriate to all agency officials and employees and contractors regarding their Federal records management responsibilities.

(5) *Providing Information to the Public.* Agencies have a responsibility to provide information to the public consistent with their missions. Agencies shall discharge this responsibility by:

(a) Providing information, as required by law, describing agency organization, activities, programs, meetings, systems of records, and other information holdings, and how the public may gain access to agency information resources;

(b) Providing access to agency records under provisions of the Freedom of Information Act and the Privacy Act, subject to the protections and limitations provided for in these Acts;

(c) Providing such other information as is necessary or appropriate for the proper performance of agency functions; and

(d) In determining whether and how to disseminate information to the public, agencies shall:

(i) Disseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public;

(ii) Disseminate information dissemination products on equitable and timely terms;

(iii) Take advantage of all dissemination channels, Federal and nonfederal, including State and local governments, libraries and private sector entities, in discharging agency information dissemination responsibilities;

(iv) Help the public locate government information maintained by or for the agency.

(6) *Information Dissemination Management System.* Agencies shall maintain and implement a management system for all information dissemination products which shall, at a minimum:

(a) Assure that information dissemination products are necessary for proper performance of agency functions (44 U.S.C. 1108);

(b) Consider whether an information dissemination product available from other Federal or nonfederal sources is equivalent to an agency information dissemination product and reasonably fulfills the dissemination responsibilities of the agency;

(c) Establish and maintain inventories of all agency information dissemination products;

(d) Develop such other aids to locating agency information dissemination products including catalogs and directories, as may reasonably achieve agency information dissemination objectives;

(e) Identify in information dissemination products the source of the information, if from another agency;

(f) Ensure that members of the public with disabilities whom the agency has a responsibility to inform have a reasonable ability to access the information dissemination products;

(g) Ensure that government publications are made available to depository libraries through the facilities of the Government Printing Office, as required by law (44 U.S.C. Part 19);

(h) Provide electronic information dissemination products to the Government Printing Office for distribution to depository libraries;

(i) Establish and maintain communications with members of the public and with State and local governments so that the agency creates information dissemination products that meet their respective needs;

(j) Provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

(k) Ensure that, to the extent existing information dissemination policies or practices are inconsistent with the requirements of this Circular, a prompt and orderly transition to compliance with the requirements of this Circular is made.

(7) *Avoiding Improperly Restrictive Practices.* Agencies shall:

(a) Avoid establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products on a timely and equitable basis;

(b) Avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or redissemination of Federal information dissemination products by the public; and,

(c) Set user charges for information dissemination products at a level sufficient to recover the cost of dissemination but no higher. They shall exclude from calculation of the charges costs associated with original collection and processing of the information. Exceptions to this policy are:

(i) Where statutory requirements are at variance with the policy;

(ii) Where the agency collects, processes, and disseminates the information for the benefit of a specific identifiable group beyond the benefit to the general public;

(iii) Where the agency plans to establish user charges at less than cost of dissemination because of a determination that higher charges would constitute a significant barrier to properly performing the agency's functions, including reaching members of the public whom the agency has a responsibility to inform; or

(iv)Where the Director of OMB determines an exception is warranted.

(8) *Electronic Information Dissemination.* Agencies shall use electronic media and formats, including public networks, as appropriate and within budgetary constraints, in order to make government information more easily accessible and useful to the public. The use of electronic media and formats for information dissemination is appropriate under the following conditions:

(a) The agency develops and maintains the information electronically;

(b) Electronic media or formats are practical and cost effective ways to provide public access to a large, highly detailed volume of information;

(c) The agency disseminates the product frequently;

(d) The agency knows a substantial portion of users have ready access to the necessary information technology and training to use electronic information dissemination products;

(e) A change to electronic dissemination, as the sole means of disseminating the product, will not impose substantial acquisition or training costs on users, especially State and local governments and small business entities.

(9) *Safeguards.* Agencies shall:

(a) Ensure that information is protected commensurate with the risk and magnitude of the harm that would result from the loss, misuse, or unauthorized access to or modification of such information;

(b) Limit the collection of information which identifies individuals to that which is legally authorized and necessary for the proper performance of agency functions;

(c) Limit the sharing of information that identifies individuals or contains proprietary information to that which is legally authorized, and impose appropriate conditions on use where a continuing obligation to ensure the confidentiality of the information exists;

(d) Provide individuals, upon request, access to records about them maintained in Privacy Act systems of records, and permit them to amend such records as are in error consistent with the provisions of the Privacy Act.

b. *Information Systems and Information Technology Management.* [This Section is unaffected by this revision. *See* 50 FR 52730 (December 24, 1985).]

9. *Assignment of Responsibilities—a. All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Create, maintain, and dispose of a record of agency activities in accordance with the Federal Records Act of 1950, as amended;

(7) Identify to the Director, OMB, statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the PRA including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, as required by 44 U.S.C. 3506(b), who shall report directly to the agency head to carry out the responsibilities of the agency under the PRA. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official.

(10) Designate an office with responsibility for management oversight of agency audiovisual productions and establish an appropriate program for the management of audiovisual productions, facilities, and activities in conformance with the requirements contained at 36 CFR 1232.4.

(11) Direct the senior official appointed pursuant to 44 U.S.C. 3506(b) to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the senior official shall consider alleged instances of agency failure to comply with this Circular and recommend or take corrective action as appropriate. The senior official shall report annually, not later than February 1st of each year, to the Director those instances of alleged failure to comply with this Circular and their resolution.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal Government information activities and ensure that such positions and policies are consistent with Federal information resources management policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition management security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal tele-communications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal tele-communications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

VOL
58
ISS
126
JL
2
1993
UMI

(5) Develop, in consultation with the Secretary of State and the Director of OMB, plans, policies, and programs relating to international telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Secretary of Defense and the Administrator of General Services, to ensure efficient application of such technology;

(7) Ensure that the Federal Government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *Department of Defense.* The Secretary of Defense shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

e. *General Services Administration.* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies, as authorized by law, on the acquisition, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as required by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the PRA and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management including end-user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget shall:

(1) Provide overall leadership and coordination of Federal information resources management within the executive branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined by 5 CFR 1320.7;

(6) Develop and publish annually in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal Government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the PRA;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to Section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. Government Position and Policy statements on international issues affecting Federal Government information activities and advise the Secretary of State as to their consistency with Federal information resources management policy.

10. *Oversight:*

a. The Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management measures, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

b. The Director, OMB, may, upon written request of an agency, grant a waiver from particular requirements of this Circular. Requests for waivers must detail the reasons why a particular waiver is sought, identify the duration of the waiver sought, and include a plan for the prompt and orderly transition to full compliance with the requirements of this Circular. Notice of each waiver request shall be published promptly by the agency in the **Federal Register**, with a copy of the waiver request made available to the public on request.

11. *Effectiveness:* This Circular is effective upon issuance. Nothing in this Circular shall be construed to confer a private right of action on any person.

12. *Inquiries:* All questions or inquiries should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395–4814.

13. *Sunset Review Date:* OMB will review this Circular three years from the date of issuance to ascertain its effectiveness.

Appendix I to OMB Circular No. A–130

Federal Agency Responsibilities for Maintaining Records About Individuals

1. *Purpose and Scope.* This Appendix describes agency responsibilities for implementing the reporting and publication requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. Note that this Appendix does not rescind other guidance OMB has issued to help agencies interpret the Privacy Act's provisions, e.g., Privacy Act Guidelines (40 FR 28949–28978, July 9, 1975), or Final Guidance for Conducting Matching Programs (54 FR at 25819, June 19, 1989).

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this Appendix, are defined in the Act (5 U.S.C. 552a(a)).

b. *Matching Agency.* Generally, the Recipient Federal agency (or the Federal source agency in a match conducted by a nonfederal agency) is the matching agency and is responsible for meeting the reporting and publication requirements associated with the matching program. However, in large, multi-agency matching programs, where the recipient agency is merely performing the matches and the benefit accrues to the source agencies, the partners should assign responsibility for compliance with the administrative requirements in a fair and reasonable way. This may mean having the matching agency carry out these requirements for all parties, having one participant designated to do so, or having each source agency do so for its own matching program(s).

c. *Nonfederal Agency.* Nonfederal agencies are State or local governmental agencies receiving records from a Federal agency's automated system of records to be used in a matching program.

d. *Recipient Agency.* Recipient agencies are Federal agencies or their contractors receiving automated records from the Privacy Act systems of records of other Federal agencies, or from State or local governments, to be used in a matching program as defined in the Act.

e. *Source Agency.* A source agency is a Federal agency that discloses automated records from a system of records to another Federal agency or to a State or local agency to be used in a matching program. It is also a State or local agency that discloses records to a Federal agency for use in a matching program.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act and the specific reporting and publication requirements detailed in this Appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every two years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act binding on the contractor and his or her employees. (*See* 5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annually agency recordkeeping and disposal policies and practices in order to assure compliance with the Act, paying particular attention to the maintenance of automated records.

(3) *Routine Use Disclosures.* Review every four years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency collected the information.

(4) *Exemption of Systems of Records.* Review every four years each system of records for which the agency has promulgated exemption rules pursuant to Section (j) or (k) of the Act in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB guidance, and any agency regulations, operating instructions, or guidelines have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements of their specific jobs.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under Section (g) of the Act, or an employee being found criminally liable under the provisions of Section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrence of the problem.

(8) *Systems of Records Notices.* Review annually each system of records notice to ensure that it accurately describes the system of records. Where minor changes are needed, e.g., the name of the system manager, ensure that an amended notice is published in the **Federal Register.** Agencies may choose to make one annual comprehensive publication consolidating such minor changes. This requirement is distinguished from and in addition to the requirement to report to OMB and Congress significant changes to systems of records and to publish those changes in the **Federal Register** (See paragraph 4c of this Appendix).

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for ensuring the security of information protected by the Act in automated information systems.

c. *The Department of Defense, General Services Administration, and National Aeronautics and Space Administration.* These agencies shall, consistent with guidelines issued by the Director, OMB, ensure that instructions are issued on what agencies must do in order to comply with the requirements of Section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain governmentwide standards and procedures for civilian personnel information processing and recordkeeping directives to essure conformance with the Act.

(2) Develop and conduct Privacy Act training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States through the Office of the

VOL 58 ISS 126 JL 2 1993 UMI

Federal Register, shall, consistent with guidelines issued by the Director, OMB:

(1) Issue instructions on the format of the agency notices and rules required to be published under the Act.

(2) Compile and publish every two years, the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public at low cost.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review new and altered system of records and matching program reports submitted pursuant to Section (o) of the Act.

(4) Compile the biennial report of the President to Congress in accordance with Section (s) of the Act.

(5) Compile and issue a biennial report on the agencies' implementation of the computer matching provisions of the Privacy Act, pursuant to Section (u)(6) of the Act.

4. *Reporting Requirements.* (See Table 1 at the end of this Appendix for due dates and recipient addresses.)

a. *Biennial Privacy Act Report.* To provide the necessary information for the biennial report of the President, agencies shall submit a biennial report to OMB, covering their Privacy Act activities for the calendar years covered by the reporting period. The exact format of the report will be established by OMB. At a minimum, however, agencies should collect and be prepared to report the following data on a calendar year basis:

(1) A listing of publication activity during each year showing the following:

* Total Number of Systems of Records (Exempt/NonExempt)
* Number of New Systems of Records Added (Exempt/NonExempt)
* Number Routine Uses Added
* Number Exemptions Added to Existing Systems
* Number Exemptions Deleted from Existing Systems
* Total Number of Automated Systems of Records (Exempt/NonExempt)

The agency should provide a brief narrative describing those activities in detail, e.g., "the Department added a (k)(1) exemption to an existing system of records entitled "Investigative Records of the Office of Investigations;" or "the agency added a new routine use to a system of records entitled "Employee Health Records" that would permit disclosure of health data to researchers under contract to the agency to perform workplace risk analysis."

(2) A brief description of any public comments received on agency publication and implementation activities, and agency response.

(3) Number of access and amendment requests from record subjects citing the Privacy Act that were received during the calendar year of the report. Also the disposition of requests from any year that were completed during the calendar year of the report:

* *Total Number of Access Requests*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied
  Number For Which No Record Found
* *Total Amendment Requests*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied
* *Number of Appeals of Denials of Access*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied
  Number For Which No Record Found
* *Number of Appeals of Denials of Amendment*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied

(4) Number of instances in which individuals brought suit under section (g) of the Privacy Act against the agency and the results of any such litigation that resulted in a change to agency practices or affected guidance issued by OMB.

(5) Results of any reviews undertaken in response to paragraph 3a of this Appendix.

(6) Description of agency Privacy Act training activities conducted in accordance with paragraph 3a(6) of this Appendix.

b. *Biennial Matching Activity Report.* (*See* 5 U.S.C. 552a(u)(3)(D)). At the end of each calendar year, the Data Integrity Board of each agency that has participated in matches covered by the computer matching provisions of the Privacy Act will collect data summarizing that year's matching activity. The Act requires that such activity be reported every two years. OMB will establish the exact format of the report, but agencies' Data Integrity Boards should be prepared to report the data identified below both to the agency head and to OMB.

(1) A listing of the names and positions of the members of the Data Integrity Board and showing separately the name of the Board Secretary, his or her agency mailing address, and telephone number. Also show and explain any changes in membership or structure occurring during the reporting year.

(2) A listing of each matching program, by title and purpose, in which the agency participated during the reporting year. This listing should show names of participant agencies, give a brief description of the program, and give a citation including the date to the **Federal Register** notice describing the program.

(3) For each matching program, an indication of whether the cost/benefit analysis performed resulted in a favorable ratio. The Data Integrity Board should explain why the agency proceeded with any matching program for which an unfavorable ratio was reached.

(4) For each program for which the Board waived a cost/benefit analysis, reasons for the waiver and the results of match, if tabulated.

(5) A description of each matching agreement the Board rejected and an explanation of why it was rejected.

(6) A listing of any violations of matching agreements that have been alleged or identified, and a discussion of any action taken.

(7) A discussion of any litigation involving the agency's participation in any matching program.

(8) For any litigation based on allegations of inaccurate records, an explanation of the steps the agency used to ensure the integrity of its data as well as the verification process it used in the matching program, including an assessment of the adequacy of each.

c. *New and Altered System of Records Report.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems of records, and to submit reports to OMB, and to the Chair of the Committee on Government Operations of the House of Representatives, and the Chair of the Committee on Governmental Affairs of the Senate. The reports must be transmitted at least 40 days prior to the operation of the new system of records or the date on which the alteration to an existing system takes place.

(1) *When to Report Altered Systems of Records.* Minor changes to systems of records need not be reported. For example, a change in the designation of

the system manager due to a reorganization would not require a report, so long as an individual's ability to gain access to his or her records is not affected. Other examples include changing applicable safeguards as a result of a risk analysis, or deleting a routine use when there is no longer a need for the disclosure. The following changes are those for which a report is required:

(a) A significant increase in the number of individuals about whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a file covering physicians that has been expanded to include other types of healthcare providers, e.g., nurses, technicians, etc., would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the system of records. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption pursuant to Section (j) or (k) of the Act. Note that, in examining a rulemaking for a Privacy Act exemption as part of a report of a new or altered system of records, OMB will also review the rule under applicable regulatory review procedures and agencies need not make a separate submission for that purpose.

(f) The addition of a routine use pursuant to 5 U.S.C. 552a(b)(3).

(2) *Reporting Changes to Multiple Systems of Records.* When an agency makes a change to an information technology installation or a telecommunication network, or makes any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single, consolidated report, with changes to existing notices and supporting documentation included in the submission.

(3) *Contents of the New or Altered System Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook*.

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system of records. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency or governmentwide systems of records. The letter sent to OMB may also include requests for waiver of the time period for the review. The agency should indicate why it cannot meet the established review period and what will be the consequences of not obtaining the waiver, (see paragraph 4e below).

(b) *Narrative Statement.* The narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

1. Describe the purpose for which the agency is establishing the system of records.

2. Identify the authority under which the system of records is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as necessary.

3. Provide the agency's evaluation of the probable or potential effect of the proposal on the privacy of individuals.

4. Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

5. Explain how each proposed routine use satisfies the compatibility requirement of subsection (a)(7) of the Act. For altered systems, this requirement pertains only to any newly proposed routine use.

6. Provide OMB Control Numbers, expiration dates, and titles of any OMB approved information collection requests (e.g., forms, surveys, etc.) contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(c) *Supporting Documentation.* Attach the following to all new or altered system of records reports:

1. A copy of the new or altered system of records notice in **Federal Register** format, consistent with the provisions of 5 U.S.C. 552a(e)(4). For proposed altered systems the agency should supply a copy of the original system of records notice to ensure that reviewers can understand the changes proposed.

2. A copy in **Federal Register** format of any new exemption rules or changes to published rules (consistent with the provisions of 5 U.S.C. 552a(i),(j), or (k)) that the agency proposes to issue for the new or altered system.

(4) *OMB Concurrence.* Agencies may assume that OMB concurs in the Privacy Act aspects of their proposal if OMB has not commented within 40 days from the date the transmittal letter was signed. Agencies should ensure that letters are transmitted expeditiously after they are signed. Agencies may publish system of records and routine use notices as well as proposed exemption rules in the **Federal Register** at the same time that they send the new or altered system report to OMB and Congress. The period for OMB and congressional review and the notice and comment period for routine uses and exemptions will then run concurrently. Note that exemptions must be published as final rules before they are effective.

d. *New or Altered Matching Program Report.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered matching programs, and to submit reports to OMB, and to Congress. The report must be received at least 40 days prior to the initiation of any matching activity carried out under a new or substantially altered matching program. For renewals of continuing programs, the report must be dated at least 40 days prior to the expiration of any existing matching agreement.

(1) *When to Report Altered Matching Programs.* Agencies need not report minor changes to matching programs. The term "minor change to a matching program" means a change that does not significantly alter the terms of the agreement under which the program is being carried out. Examples of significant changes include:

(a) Changing the purpose for which the program was established.

(b) Changing the matching population, either by including new categories of record subjects or by

greatly increasing the numbers of records matched.

(c) Changing the legal authority covering the matching program.

(d) Changing the source or recipient agencies involved in the matching program.

(2) *Contents of New or Altered Matching Program Report.* The report for a new or altered matching program has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Privacy Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the matching program. The letter should state that a copy of the matching agreement has been distributed to Congress as the Act requires. The letter to OMB may also include a request for waiver of the review time period.

(b) *Narrative Statement.* The narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should provide:

1. A description of the purpose of the matching program and the authority under which it is being carried out.

2. A description of the security safeguards used to protect against any unauthorized access or disclosure of records used in the match.

3. If the cost/benefit analysis required by Section (u)(4)(A) indicated an unfavorable ratio or was waived pursuant to OMB guidance, an explanation of the basis on which the agency justifies conducting the match.

(c) *Supporting Documentation.* Attach the following:

1. A copy of the **Federal Register** notice describing the matching program.

2. For the Congressional report only, a copy of the matching agreement.

(3) *OMB Concurrence.* Agencies may assume that OMB concurs in the Privacy Act aspects of their proposal if OMB has not commented within 40 days from the date the transmittal letter was signed. Agencies should ensure that letters are transmitted expeditiously after they are signed. Agencies may publish matching program notices in the **Federal Register** at the same time that they send the matching program report to OMB and Congress. The period for OMB and congressional review and the notice and comment period will then run concurrently.

e. *Expediting the Review Process.* The Director, OMB, may grant a waiver of the 40-day review period for either systems of records or matching program reviews. The agency must ask for the waiver in the transmittal letter and demonstrate compelling reasons. When a waiver is granted, the agency is not thereby relieved of any other requirement of the Act. If no waiver is granted, agencies may presume concurrence at the expiration of the 40 day review period. Note that OMB cannot waive time periods specifically established by the Act such as the 30 days notice and comment period required for the adoption of a routine use proposal pursuant to Section (b)(3) of the Act.

5. *Publication Requirements.* The Privacy Act requires agencies to publish notices or rules in the **Federal Register** in the following circumstances: when adopting a new or altered system of records, when adopting a routine use or exemption for a system of records, or when proposing to carry out a new or altered matching program. (See paragraph 4c(1) and 4d(1) above on what constitutes a reportable alteration.)

a. *Publishing New or Altered Systems of Records Notices and Exemption Rules.*

(1) *Who Publishes.* The agency responsible for operating the system of records makes the necessary publication. Publication should be carried out at the departmental or agency level. Where a system of records is to be operated exclusively by a component, the department rather than the component should publish the notice. Thus, for example, the Department of the Treasury would publish a system of records notice covering a system operated exclusively by the Internal Revenue Service. Note that if the agency is proposing to exempt the system under Section (j) or (k) of the Act, it must publish a rule in addition to the system of records notice.

(a) *Governmentwide Systems of Records.* Certain agencies publish systems of records containing records for which they have governmentwide responsibilities. The records may be located in other agencies, but they are being used under the authority of and in conformance with the rules mandated by the publishing agency. The Office of Personnel Management for example, has published a number of governmentwide systems of records relating to the operation of the government's personnel program. Agencies should not publish systems of records that wholly or partly duplicate existing governmentwide systems of records.

(b) *Section (m) Contract Provisions.* When an agency provides by contract for the operation of a system of records, it should ensure that a system of records notice describing the system has been published. It should also review the notice to ensure that it contains a routine use under Section (e)(4)(D) of the Act permitting disclosure to the contractor and his or her personnel.

(2) *When to Publish.*

(a) *System Notice.* It must appear in the **Federal Register** before the agency begins to operate the system, e.g., collect and use the information.

(b) *Routine Use.* Must be published in the **Federal Register** 30 days before agency discloses records pursuant to its terms. If the sole change to an existing system of records is to add a routine use, the agency should either republish the entire system of records notice, a condensed description of the system of records, or a citation to the last full text **Federal Register** publication. (Note that the addition of a routine use to an existing system of records requires a report to OMB and Congress, and that the review period for this report is 40 days.)

(c) *Exemption Rule.* Must be established through informal rulemaking pursuant to the Administrative Procedure Act. This process generally requires publication of a proposed rule, a period during which the public may comment, publication of a final rule, and the adoption of the final rule. Agencies may not withhold records under an exemption until these requirements have been met.

(3) *Format.* Agencies should follow the publication format contained in the Office of the Federal Register *Document Drafting Handbook* obtainable from the Government Printing Office.

b. *Publishing Matching Notices.*

(1) *Who Publishes.* Generally, the Recipient Federal agency (or the Federal source agency in a match conducted by a nonfederal agency) is responsible for publishing in the **Federal Register** a notice describing the new or altered matching program. However, in large, multi-agency matching programs, where the recipient agency is merely performing the matches, and the benefit accrues to the source agencies, the partners should assign responsibility for compliance with the administrative requirements in a fair and reasonable way. This may mean having the matching agency carry out these requirements for all parties, having one

participant designated to do so, or having each source so for its own matching program(s).

(2) *Timing.* Publication must occur at least 30 days prior to the initiation of any matching activity carried out under a new or substantially altered matching program. For renewals of programs agencies wish to continue past the 30 month period of initial eligibility (i.e., the initial 18 months plus a 1 year extension), publication must occur at least 30 days prior to the expiration of the existing matching agreement. (But note that a report to OMB and the Congress is also required with a 40 day review period).

(3) *Format.* The matching notice shall be in the format prescribed by the Office of the Federal Register *Document Drafting Handbook* and contain the following information:

(a) The name of the Recipient Agency.

(b) The Name(s) of the Source Agencies.

(c) The beginning and ending dates of the match.

(d) A brief description of the matching program, including its purpose; the legal authorities authorizing its operation; categories of individuals involved; and identification of records used, including name(s) of Privacy Act Systems of records.

(e) The identification, address, and telephone number of a Recipient Agency official who will answer public inquiries about the program.

Table 1—Reporting Requirements

Report	When Due	Recipient**
Biennial Privacy Act Report	June 30, 1994, 1996, 1998, 2000	Administrator, OIRA
Biennial Matching Activity Report	June 30, 1994, 1996, 1998, 2000	Administrator, OIRA
New System of Records Report	When establishing a system of records—at least 40 days before operating system*	Administrator, OIRA, Congress
Altered System of Records Report	When adding a new routine use, exemption, or otherwise significantly altering an existing system of records—at least 40 days before change to system takes place*.	Administrator, OIRA, Congress
New Matching Program Report	When establishing new matching program—at least 40 days before operating program*.	Administrator, OIRA, Congress
Renewal of Existing Matching Program	At least 40 days prior to expiration of one year extension of original program—treat as new program.	Administrator, OIRA, Congress
Altered Matching Program	When making a significant change to an existing matching program—at least 40 days before operating altered program*.	Administrator, OIRA, Congress
Matching Agreements	At least 40 days prior to start of matching program*	Congress

* Review Period: Note that the statutory reporting requirement is 30 days prior; the additional 10 days will ensure that OMB and Congress have sufficient time to review the proposal. Agencies should therefore ensure that reports are mailed expeditiously after being signed

** Recipient Addresses: At bottom of envelope print "PRIVACY ACT REPORT"

House of Representatives: The Chair of the House Committee on Government Operations, 2157 RHOB, Washington, D.C. 20515–6143.

Senate: The Chair of the Senate Committee on Governmental Affairs, 340 SDOB, Washington, D.C. 20510–6250

Office of Management and Budget: The Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Docket Library, NEOB Room 3201, Washington, D.C. 20503.

Appendix II to OMB Circular No. A–130

Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

[This Appendix is unchanged by this revision. *See* 50 FR 52730 (December 24, 1985).]

Appendix III to OMB Circular No. A–130

Security of Federal Automated Information Systems

[This Appendix is unchanged by this revision. *See* 50 FR 52730 (December 24, 1985).]

Appendix IV to OMB Circular No. A–130

Analysis of Key Sections

1. *Purpose*

The purpose of this Appendix is to provide a general context and explanation for the contents of the key Sections of the Circular.

2. *Background*

The Paperwork Reduction Act (PRA) of 1980, Public Law 96–511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, OMB, to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency, and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

The Circular implements OMB authority under the Act with respect to Section 3504(b), general information policy, Section 3504(e), records management, Section 3504(f), privacy, and Section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 et seq.); Sections 111 and 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759 and 487, respectively); the Computer Security Act, (40 U.S.C. 759 *note*); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); and Executive Order No. 12046 of March 27, 1978, and Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Telecommunications Functions. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other Sections of the PRA dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, the Circular revises and consolidates policy and procedures in seven previous OMB directives and rescinds those directives, as follows:

A–3—Government Publications

A–71—Responsibilities for the Administration and Management of Automatic Data Processing Activities Transmittal Memorandum No. 1 to Circular No. A–71—Security of Federal Automated Information Systems

A–90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems

A–108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies

VOL 58 ISS 126 JL 2 1993 UMI

A–114—Management of Federal Audiovisual Activities

A–121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities

3. *Analysis*

Section 6, Definitions. *Access and Dissemination.* The original Circular No. A–130 distinguished between the terms "access to information" and "dissemination of information" in order to separate statutory requirements from policy considerations. The first term means giving members of the public, at their request, information to which they are entitled by a law such as the FOIA. The latter means actively distributing information to the public at the initiative of the agency. The distinction appeared useful at the time Circular No. A–130 was written, because it allowed OMB to focus discussion on Federal agencies' responsibilities for actively distributing information. However, popular usage and evolving technology have blurred differences between the terms "access" and "dissemination" and readers of the Circular were confused by the distinction. For example, if an agency "disseminates" information via an online computer system, one speaks of permitting users to "access" the information, and online "access" becomes a form of "dissemination."

Thus, the revision defines only the term "dissemination." Special considerations based on access statutes such as the Privacy Act and the FOIA are explained in context.

Government Information

The definition of "government information" includes information created, collected, processed, disseminated, or disposed of both by and for the Federal Government. This recognizes the increasingly distributed nature of information in electronic environments. Many agencies, in addition to collecting information for government use and for dissemination to the public, require members of the public to maintain information or to disclose it to the public. Sound information resources management dictates that agencies consider the costs and benefits of a full range of alternatives to meet government objectives. In some cases, there is no need for the government actually to collect the information itself, only to assure that it is made publicly available. For example, banks insured by the FDIC must provide statements of financial condition to bank customers on request. Particularly when information is available in electronic form, networks make the physical location of information increasingly irrelevant.

The inclusion of information created, collected, processed, disseminated, or disposed of for the Federal Government in the definition of "government information" does not imply that responsibility for implementing the provisions of the Circular itself extends beyond the executive agencies to other entities. Such an interpretation would be inconsistent with Section 4, Applicability, and with existing law. For example, the courts have held that requests to Federal agencies for release of information under the FOIA do not always extend to those performing information activities under grant or contract to a Federal agency. Similarly, grantees may copyright information where the government may not. Thus the information responsibilities of grantees and contractors are not identical to those of Federal agencies except to the extent that the agencies make them so in the underlying grants or contracts. Similarly, agency information resources management responsibilities do not extend to other entities.

Information Dissemination Product

This notice defines the term "information dissemination product" to include all information that is disseminated by Federal agencies. While the provision of access to online databases and search software included on compact disk, read-only memory (CD-ROM) are often called information services rather than products, there is no clear distinction and, moreover, no real difference for policy purposes between the two. Thus, the term "information dissemination product" applies to both products and services, and makes no distinction based on how the information is delivered.

Section 8a(1). *Information Management Planning.* Parallel to new Section 7, Basic Considerations and Assumptions, Section 8a begins with information resources management planning. Planning is the process of establishing a course of action to achieve desired results with available resources. Planners translate organizational missions into specific goals and, in turn, into measurable objectives.

The PRA introduced the concept of information resources management and the principle of information as an institutional resource which has both value and associated costs. Information resources management is a tool that managers use to achieve agency objectives. Information resources management is successful if it enables managers to achieve agency objectives efficiently and effectively.

Information resources management planning is an integral part of overall mission planning. Agencies need to plan from the outset for the steps in the information life cycle. When creating or collecting information, agencies must plan how they will process and transmit the information, how they will use it, how they will protect its integrity, what provisions they will make for access to it, whether and how they will disseminate it, how they will store and retrieve it, and finally, how the information will ultimately be disposed of. They must also plan for the effects their actions and programs will have on the public and State and local governments.

The Role of State and Local Governments

OMB made additions at Sections 7a, 7e, and 7j, Basic Considerations and Assumptions, concerning State and local governments, and also in policy statements at Sections 8a(1)(c), (3)(f), (6)(c), 9(e), and 10(c).

State and local governments, and tribal governments, cooperate as major partners with the Federal Government in the collection, processing, and dissemination of information. For example, State governments are the principal collectors and/or producers of information in the areas of health, welfare, education, labor markets, transportation, the environment, and criminal justice. The States supply the Federal Government with data on aid to families with dependent children; medicare; school enrollments, staffing, and financing; statistics on births, deaths, and infectious diseases; population related data that form the basis for national estimates; employment and labor market data; and data used for census geography. National information resources are greatly enhanced through these major cooperating efforts.

Federal agencies need to be sensitive to the role of State and local governments, and tribal governments, in managing information and in managing information technology. When planning, designing, and carrying out information collections, agencies should systematically consider what effect their activities will have on cities, counties, and States, and take steps to involve these governments as appropriate. Agencies should ensure that their information collections impose the minimum burden and do not duplicate or conflict with local efforts or other Federal agency requirements or mandates. The goal is that Federal

agencies routinely integrate State and local government concerns into Federal information resources management practices. This goal is consistent with standards for State and local government review of Federal policies and programs.

Training

Training is particularly important in view of the changing nature of information resources management. Decentralization of information technology has placed the management of automated information and information technology directly in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities. Agencies must plan for incorporating policies and procedures regarding computer security, records management, protection of privacy, and other safeguards into the training of every employee and contractor.

Section 8a(2). *Information Collection.* The PRA requires that the creation or collection of information be carried out in an efficient, effective, and economical manner. When Federal agencies create or collect information—just as when they perform any other program functions—they consume scarce resources. Such activities must be continually evaluated for their relevance to agency missions.

Agencies must justify the creation or collection of information based on their statutory functions. Policy statement 8a(2) uses the justification standard—"necessary for the proper performance of the functions of the agency"—established by the PRA (44 U.S.C. 3504(c)(2)). Furthermore, the policy statement includes the requirement that the information have practical utility, as defined in the PRA (44 U.S.C. 3502(16)) and elaborated in 5 CFR Part 1320. Practical utility includes such qualities of information as accuracy, adequacy, and reliability. In the case of general purpose statistics or recordkeeping, practical utility means that actual uses can be demonstrated (5 CFR 1320.7(o)). It should be noted that OMB's intent in placing emphasis on reducing unjustified burden in collecting information, an emphasis consistent with the Act, is not to diminish the importance of collecting information whenever agencies have legitimate program reasons for doing so. Rather, the concern is that the burdens imposed should not exceed the benefits to be derived from the information. Moreover, if the same benefit can be obtained by alternative means that impose a lesser burden, that alternative should be adopted.

Section 8a(3). *Electronic Information Collection.* Section 7l articulates a basic assumption of the Circular that modern information technology can help the government provide better service to the public through improved management of government programs. One potentially useful application of information technology is in the government's collection of information. While some information collections may not be good candidates for electronic techniques, many are. Agencies with major electronic information collection programs have found that automated information collections allow them to meet program objectives more efficiently and effectively. Electronic data interchange (EDI) and related standards for the electronic exchange of information will ease transmission and processing of routine business transaction information such as invoices, purchase orders, price information, bills of lading, health insurance claims, and other common commercial documents. EDI holds similar promise for the routine filing of regulatory information such as tariffs, customs declarations, license applications, tax information, and environmental reports.

Benefits to the public and agencies from electronic information collection appear substantial. Electronic methods of collection reduce paperwork burden, reduce errors, facilitate validation, and provide increased convenience and more timely receipt of benefits.

The policy in Section 8a(3) encourages agencies to explore the use of automated techniques for collection of information, and sets forth conditions conducive to the use of those techniques.

Section 8a(4). *Records Management.* Section 8a(4) begins with the fundamental requirement for Federal records management, namely, that agencies create and keep adequate and proper documentation of their activities. Federal agencies cannot carry out their missions in a responsible and responsive manner without adequate recordkeeping. Section 7h articulates the basic considerations concerning records management. Policy statements concerning records management are also interwoven throughout Section 8a, particularly in subsections on planning (8a(1)(i)), information dissemination (8a(7)), and safeguards (8a(10)).

Records support the immediate needs of government—administrative, legal, fiscal—and ensure its continuity. Records are essential for protecting the rights and interests of the public, and for monitoring the work of public servants. The government needs records to ensure accountability to the public which includes making the information available to the public.

Each stage of the information life cycle carries with it records management responsibilities. Agencies need to record their plans, carefully document the content and procedures of information collection, ensure proper documentation as a feature of every information system, keep records of dissemination programs, and, finally, ensure that records of permanent value are preserved.

Preserving records for future generations is the archival mission. Advances in technology affect the amount of information that can be created and saved, and the ways this information can be made available. Technological advances can ease the task of records management; however, the rapid pace of change in modern technology makes decisions about the appropriate application of technology critical to records management. Increasingly the records manager must be concerned with preserving valuable electronic records in the context of a constantly changing technological environment.

Records schedules are essential for the appropriate maintenance and disposition of records. Records schedules must be prepared in a timely fashion, implement the General Records Schedules issued by the National Archives and Records Administration, be approved by the Archivist of the United States, and be kept accurate and current. (*See* 44 U.S.C. 3301 et seq.) The National Archives and Records Administration and the General Services Administration provide guidance and assistance to agencies in implementing records management responsibilities. They also evaluate agencies' records management programs to determine the extent to which they are appropriately implementing their records management responsibilities.

Sections 8a(5) and 8a(6). *Information Dissemination Policy.* Section 8a(5). Providing information to the public. Every agency has a responsibility to inform the public within the context of its mission. This responsibility requires that agencies distribute information at the agency's initiative, rather than merely responding when the public requests information.

The FOIA requires each agency to publish in the **Federal Register** current descriptions of agency organization, where and how the public may obtain information, the general methods and procedural requirements by which agency functions are determined, rules of procedure, descriptions of forms and

how to obtain them, substantive regulations, statements of general policy, and revisions to all the foregoing (5 U.S.C. 552(a)(1)). The Privacy Act also requires publication of information concerning "systems of records" which are records retrieved by individual identifier such as name, Social Security Number, or fingerprint. The government in the Sunshine Act requires agencies to publish meeting announcements (5 U.S.C. 552b (e)(1)). The PRA (44 U.S.C. 3507(a)(2)) and its implementing regulations (5 CFR Part 1320) require agencies to publish notices when they submit information collection requests for OMB approval. The public's right of access to government information under these statutes is balanced against other concerns, such as an individual's right to privacy and protection of the government's deliberative process.

As agencies satisfy these requirements, they provide the public basic information about government activities. Other statutes direct specific agencies to issue specific information dissemination products or to conduct information dissemination programs. Beyond generic and specific statutory requirements, agencies have responsibilities to disseminate information as a necessary part of performing their functions. For some agencies the responsibility is made explicit and sweeping; for example, the Agriculture Department is directed to "... diffuse among people of the United States, useful information on subjects connected with agriculture. ..." (7 U.S.C. 2201) For other agencies, the responsibility may be much more narrowly drawn.

Information dissemination is also a consequence of other agency activities. Agency programs normally include an organized effort to inform the public about the program. Most agencies carry out programs that create or collect information with the explicit or implicit intent that the information will be made public. Disseminating information is in many cases the logical extension of information creation or collection.

In other cases, agencies may have information that is not meant for public dissemination but which may be the subject of requests from the public. When the agency establishes that there is public demand for the information and that it is in the public interest to disseminate the information, the agency may decide to disseminate it automatically.

The policy in Section 8a(5)(d) sets forth several factors for agencies to take into account in conducting their information dissemination programs. First, agencies must balance two goals: maximizing the usefulness of the information to the government and the public, and minimizing the cost to both. Deriving from the basic purposes of the PRA (44 U.S.C. 3501), the two goals are frequently in tension because increasing usefulness usually costs more. Second, Section 8a(5)(d)(ii) requires agencies to conduct information dissemination programs equitably and in a timely manner. The word "equal" was removed from this Section since there may be instances where, for example, an agency determines that its mission includes disseminating information to certain specific groups or members of the public, and the agency determines that user charges will constitute a significant barrier to carrying out this responsibility.

Section 8a(5)(d)(iii), requiring agencies to take advantage of all dissemination channels, recognizes that information reaches the public in many ways. Few persons may read a **Federal Register** notice describing an agency action, but those few may be major secondary disseminators of the information. They may be affiliated with publishers of newspapers, newsletters, periodicals, or books; affiliated with online database providers; or specialists in certain information fields. While millions of information users in the public may be affected by the agency's action, only a handful may have direct contact with the agency's own information dissemination products. As a deliberate strategy, therefore, agencies should cooperate with the information's original creators, as well as with secondary disseminators, in order to further information dissemination goals and foster a diversity of information sources. An adjunct responsibility to this strategy is reflected in Section 8a(5)(d)(iv), which directs agencies to assist the public in finding government information. Agencies may accomplish this, for example, by specifying and disseminating "locator" information, including information about content, format, uses and limitations, location, and means of access.

Section 8a(6). *Information Dissemination Management System*

This Section requires agencies to maintain an information dissemination management system which can ensure the routine performance of certain functions, including the essential functions previously required by Circular No. A–3. Smaller agencies need not establish elaborate formal systems, so long as the heads of the agencies can ensure that the functions are being performed.

Subsection (6)(a) carries over a requirement from OMB Circular No. A–3 that agencies' information dissemination products are to be, in the words of 44 U.S.C. 1108, "necessary in the transaction of the public business required by law of the agency." (Circular No. A–130 uses the expression "necessary for the proper performance of agency functions," which OMB considers to be equivalent to the expression in 44 U.S.C. 1108.) The point is that agencies should determine systematically the need for each information dissemination product.

Section 8a(6)(b) recognizes that to carry out effective information dissemination programs, agencies need knowledge of the marketplace in which their information dissemination products are placed. They need to know what other information dissemination products users have available in order to design the best agency product. As agencies are constrained by finite budgets, when there are several alternatives from which to choose, they should not expend public resources filling needs which have already been met by others in the public or private sector. Agencies have a responsibility not to undermine the existing diversity of information sources.

At the same time, an agency's responsibility to inform the public may be independent of the availability or potential availability of a similar information dissemination product. That is, even when another governmental or private entity has offered an information dissemination product identical or similar to what the agency would produce, the agency may conclude that it nonetheless has a responsibility to disseminate its own product. Agencies should minimize such instances of duplication but could reach such a conclusion because legal considerations require an official government information dissemination product.

Section 8a(6)(c) makes the Circular consistent with current practice (See OMB Bulletins 88–15, 89–15, 90–09, and 91–16), by requiring agencies to establish and maintain inventories of information dissemination products. (These bulletins eliminated annual reporting to OMB of title-by-title listings of publications and the requirement for agencies to obtain OMB approval for each new periodical. Publications are now reviewed as necessary during the normal budget review process.) Inventories help other agencies and the public identify information which is available. This serves both to increase the efficiency of the dissemination function and to avoid unnecessary burdens of duplicative information collections. A corollary, enunciated in

Section 8a(6)(d), is that agencies can better serve public information needs by developing finding aids for locating information produced by the agencies. Finally, Section 8a(6)(f) recognizes that there will be situations where agencies may have to take appropriate steps to ensure that members of the public with disabilities whom the agency has a responsibility to inform have a reasonable ability to access the information dissemination products

Depository Library Program

Sections 8a(6)(g) and (h) pertain to the Federal Depository Library Program. Agencies are to establish procedures to ensure compliance with 44 U.S.C. 1902, which requires that government publications (defined in 44 U.S.C. 1901 and repeated in Section 6 of the Circular) be made available to depository libraries through the Government Printing Office (GPO).

Depository libraries are major partners with the Federal Government in the dissemination of information and contribute significantly to the diversity of information sources available to the public. They provide a mechanism for wide distribution of government information that guarantees basic availability to the public. Executive branch agencies support the depository library program both as a matter of law and on its merits as a means of informing the public about the government. On the other hand, the law places the administration of depository libraries with GPO. Agency responsibility for the depository libraries is limited to supplying government publications through GPO.

Agencies can improve their performance in providing government publications as well as electronic information dissemination products to the depository library program. For example, the proliferation of "desktop publishing" technology in recent years has afforded the opportunity for many agencies to produce their own printed documents. Many such documents may properly belong in the depository libraries but are not sent because they are not printed at GPO. The policy requires agencies to establish management controls to ensure that the appropriate documents reach the GPO for inclusion in the depository library program.

At present, few agencies provide electronic information dissemination products to the depository libraries. At the same time, a small but growing number of information dissemination products are disseminated only in electronic format.

OMB believes that, as a matter of policy, electronic information dissemination products generally should be provided to the depository libraries. Given that production and supply of information dissemination products to the depository libraries is primarily the responsibility of GPO, agencies should provide appropriate electronic information dissemination products to GPO for inclusion in the depository library program.

While cost may be a consideration, agencies should not conclude without investigation that it would be prohibitively expensive to place their electronic information dissemination products in the depository libraries. For electronic information dissemination products other than online services, agencies may have the option of having GPO produce the information dissemination product for them, in which case GPO would pay for depository library costs. Agencies should consider this option if it would be a cost effective alternative to the agency making its own arrangements for production of the information dissemination product. Using GPO's services in this manner is voluntary and at the agency's discretion. Agencies could also consider negotiating other terms, such as inviting GPO to participate in agency procurement orders in order to distribute the necessary copies for the depository libraries. With adequate advance planning, agencies should be able to provide electronic information dissemination products to the depository libraries at nominal cost.

In a particular case, substantial cost may be a legitimate reason for not providing an electronic information dissemination product to the depository library program. For example, for an agency with a substantial number of existing titles of electronic information dissemination products, furnishing copies of each to the depository libraries could be prohibitively expensive. In that situation, the agency should endeavor to make available those titles with the greatest general interest, value, and utility to the public. Substantial cost could also be an impediment in the case of some online information services where the costs associated with operating centralized databases would make provision of unlimited direct access to numerous users prohibitively expensive. In both cases, agencies should consult with the GPO, in order to identify those information dissemination products with the greatest public interest and utility for dissemination. In all cases, however, where an agency discontinues publication of an information dissemination product in paper format in favor of electronic formats, the agency should work with the GPO to ensure availability of the information dissemination product to depository libraries.

Notice to the Public

Sections 8a(6)(i) and (j) present new practices for agencies to observe in communicating with the public about information dissemination. Among agencies' responsibilities for dissemination is an active knowledge of, and regular consultation with, the users of their information dissemination products. A primary reason for communication with users is to gain their contribution to improving the quality and relevance of government information—how it is created, collected, and disseminated. Consultations with users might include participation at conferences and workshops, careful attention to correspondence and telephone communications (e.g., logging and analyzing inquiries), or formalized user surveys.

A key part of communicating with the public is providing adequate notice of agency information dissemination plans. Because agencies' information dissemination actions affect other agencies as well as the public, agencies must forewarn other agencies of significant actions. The decision to initiate, terminate, or substantially modify the content, form, frequency, or availability of significant products should also trigger appropriate advance public notice. Where appropriate, the Government Printing Office should be notified directly. Information dissemination products deemed not to be significant require no advance notice.

Examples of significant products (or changes to them) might be those that:

(a) are required by law; e.g., a statutorily mandated report to Congress;

(b) involve expenditure of substantial funds;

(c) by reason of the nature of the information, are matters of continuing public interest; e.g., a key economic indicator;

(d) by reason of the time value of the information, command public interest; e.g., monthly crop reports on the day of their release;

(e) will be disseminated in a new format or medium; e.g., disseminating a printed product in electronic medium, or disseminating a machine-readable data file via on-line access.

Where members of the public might consider a proposed new agency product unnecessary or duplicative, the

agency should solicit and evaluate public comments. Where users of an agency information dissemination product may be seriously affected by the introduction of a change in medium or format, the agency should notify users and consider their views before instituting the change. Where members of the public consider an existing agency product important and necessary, the agency should consider these views before deciding to terminate the product. In all cases, however, determination of what is a significant information dissemination product and what constitutes adequate notice are matters of agency judgment.

Achieving Compliance with the Circular's Requirements

Section 8a(6)(k) requires that the agency information dissemination management system ensure that, to the extent existing information dissemination policies or practices are inconsistent with the requirements of this Circular, an orderly transition to compliance with the requirements of this Circular is made. For example, some agency information dissemination products may be priced at a level which exceeds the cost of dissemination, or the agency may be engaged in practices which are otherwise unduly restrictive. In these instances, agencies must plan for an orderly transition to the substantive policy requirements of the Circular. The information dissemination management system must be capable of identifying these situations and planning for a reasonably prompt transition. Instances of existing agency practices which cannot immediately be brought into conformance with the requirements of the Circular are to be addressed through the waiver procedures of Section 10(b).

Section 8a(7). *Avoiding Improperly Restrictive Practices.* Federal agencies are often the sole suppliers of the information they hold. The agencies have either created or collected the information using public funds, usually in furtherance of unique governmental functions, and no one else has it. Hence agencies need to take care that their behavior does not inappropriately constrain public access to government information.

When agencies use private contractors to accomplish dissemination, they must take care that they do not permit contractors to impose restrictions that undercut the agencies' discharge of their information dissemination responsibilities. The contractual terms should assure that, with respect to dissemination, the contractor behaves as though the contractor were the agency. For example, an agency practice of selling, through a contractor, on-line access to a database but refusing to sell copies of the database itself may be improperly restrictive because it precludes the possibility of another firm making the same service available to the public at a lower price. If an agency is willing to provide public access to a database, the agency should be willing to sell copies of the database itself.

By the same reasoning, agencies should behave in an even-handed manner in handling information dissemination products. If an agency is willing to sell a database or database services to some members of the public, the agency should sell the same products under similar terms to other members of the public, unless prohibited by statute. When an agency decides it has public policy reasons for offering different terms of sale to different groups in the public, the agency should provide a clear statement of the policy and its basis.

Agencies should not attempt to exert control over the secondary uses of their information dissemination products. In particular, agencies should not establish exclusive, restricted, or other distribution arrangements which interfere with timely and equitable availability of information dissemination products, and should not charge fees or royalties for the resale or redissemination of government information. These principles follow from the fact that the law prohibits the Federal Government from exercising copyright.

Agencies should inform the public as to the limitations inherent in the information dissemination product (e.g., possibility of errors, degree of reliability, and validity) so that users are fully aware of the quality and integrity of the information. If circumstances warrant, an agency may wish to establish a procedure by which disseminators of the agency's information may at their option have the data and/or value-added processing checked for accuracy and certified by the agency. Using this method, rediseminators of the data would be able to respond to the demand for integrity from purchasers and users. This approach could be enhanced by the agency using its authority to trademark its information disseminaton product, and requiring that redisseminators who wish to use the trademark agree to appropriate integrity procedures. These methods have the possibility of promoting diversity, user responsiveness, and efficiency as well as integrity. However, an agency's responsibility to protect against misuse of a government information dissemination product does not extend to restricting or regulating how the public actually uses the information. Agencies should not attempt to condition the resale or redissemination of its information dissemination products by members of the public.

User charges

Title 5 of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701) establishes Federal policy regarding fees assessed for government services, and for sale or use of government property or resources. OMB Circular No. A–25, User Charges, implements the statute. It provides for charges for government goods and services that convey special benefits to recipients beyond those accruing to the general public. It also establishes that user charges should be set at a level sufficient to recover the full cost of providing the service, resource, or property. Since Circular No. A–25 is silent as to the extent of its application to government information dissemination products, full cost recovery for information dissemination products might be interpreted to include the cost of collecting and processing information rather than just the cost of dissemination. The policy in Section 8a(8)(c) clarifies the policy of Circular No. A–25 as it applies to information dissemination products.

Statutes such as FOIA and the Government in the Sunshine Act establish a broad and general obligation on the part of Federal agencies to make government information available to the public and to avoid erecting barriers that impede public access. User charges higher than the cost of dissemination may be a barrier to public access. The economic benefit to society is maximized when government information is publicly disseminated at the cost of dissemination. Absent statutory requirements to the contrary, the general standard for user charges for government information dissemination products should be to recover no more than the cost of dissemination. It should be noted in this connection that the government has already incurred the costs of creating and processing the information for governmental purposes in order to carry out its mission.

Underpinning this standard is the FOIA fee structure which establishes limits on what agencies can charge for access to Federal records. That Act permits agencies to charge only the direct reasonable cost of search, reproduction and, in certain cases, review of requested records. In the case of FOIA requests for information

dissemination products, charges would be limited to reasonable direct reproduction costs alone. No search would be needed to find the product, thus no search fees would be charged. Neither would the record need to be reviewed to determine if it could be withheld under one of the Act's exemptions since the agency has already decided to release it. Thus, FOIA provides an information "safety net" for the public.

While OMB does not intend to prescribe procedures for pricing government information dissemination products, the cost of dissemination may generally be thought of as the sum of all costs specifically associated with preparing a product for dissemination and actually disseminating it to the public. When an agency prepares an information product for its own internal use, costs associated with such production would not generally be recoverable as user charges on subsequent dissemination. When the agency prepares the product for public dissemination, and disseminates it, costs associated with preparation and actual dissemination would be recoverable as user charges.

When agencies provide custom tailored information services to specific individuals or groups, full cost recovery, including the costs of collection and processing, is appropriate. For example, if an agency prepares special tabulations or similar services from its databases in answer to a specific request from the public, all costs associated with fulfilling the request would be charged, and the requester should be so informed before work is begun.

In a few cases, agencies engaging in information collection activities augment the information collection at the request of, and with funds provided by, private sector groups. Since the 1920s, the Bureau of the Census has carried out, on request, surveys of certain industries at greater frequency or at a greater level of detail than Federal funding would permit, because gathering the additional information is consistent with Federal purposes and industry groups have paid the additional information collection and processing costs. While the results of these surveys are disseminated to the public at the cost of dissemination, the existence and availability of the additional government data are special benefits to certain recipients beyond those accruing to the public. It is appropriate that those recipients should bear the full costs of information collection and processing, in addition to the normal costs of dissemination.

Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended. If an agency mission includes disseminating information to certain specific groups or members of the public and the agency determines that user charges will constitute a significant barrier to carrying out this responsibility, the agency may have grounds for reducing or eliminating its user charges for the information dissemination product, or for exempting some recipients from the charge. Such reductions or eliminations should be the subject of agency determinations on a case by case basis and justified in terms of agency policies.

Section 8a(8). *Electronic Information Dissemination*. Advances in information technology have changed government information dissemination. Agencies now have available new media and formats for dissemination, including CD-ROM, electronic bulletin boards, and public networks. The growing public acceptance of electronic data interchange (EDI) and similar standards enhances their attractiveness as methods for government information dissemination. For example, experiments with the use of electronic bulletin boards to advertise Federal contracting opportunities and to receive vendor quotes have achieved wider dissemination of information about business opportunities with the Federal Government than has been the case with traditional notices and advertisements. Improved information dissemination has increased the number of firms expressing interest in participating in the government market and decreased prices to the government due to expanded competition. In addition, the development of public electronic information networks, such as the Internet, provides an additional way for agencies to increase the diversity of information sources available to the public. Emerging standards such as Wide Area Information Servers (using the NISO Z39.50 standard) will be used increasingly to facilitate dissemination of government information such as environmental data, international trade information, and economic statistics in a networked environment.

A basic purpose of the PRA is "to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government." (44 U.S.C. 3501(3)) Agencies can frequently enhance the value and practical utility of government information as a national resource by disseminating information in electronic media. Electronic collection and dissemination may substantially increase the usefulness of government information dissemination products for three reasons. First, information disseminated electronically is likely to be more timely and accurate because it does not require data re-entry. Second, electronic records often contain more complete and current information because, unlike paper, it is relatively easy to make frequent changes. Finally, because electronic information is more easily manipulated by the user and can be tailored to a wide variety of needs, electronic information dissemination products are more useful to the recipients.

As stated at Section 8a(1)(h), agencies should use voluntary standards and Federal Information Processing Standards to the extent appropriate in order to ensure the most cost effective and widespread dissemination of information in electronic formats.

Agencies can frequently make government information more accessible to the public and enhance the utility of government information as a national resource by disseminating information in electronic media. Agencies generally do not utilize data in raw form, but edit, refine, and organize the data in order to make it more accessible and useful for their own purposes. Information is made more accessible to users by aggregating data into logical groupings, tagging data with descriptive and other identifiers, and developing indexing and retrieval systems to facilitate access to particular data within a larger file. As a general matter, and subject to budgetary, security, or legal constraints, agencies should make available such features developed for internal agency use as part of their information dissemination products.

There will also be situations where the agency determines that its mission will be furthered by providing enhancements beyond those needed for its own use, particularly those that will improve the public availability of government information over the long term. In these instances, the agency should evaluate the expected usefulness of the enhanced information in light of its mission, and where appropriate construct partnerships with the private sector to add these elements of value. This approach may be particularly appropriate as part of a strategy to utilize new technology enhancements, such as graphic images, as part of a particular dissemination program.

Section 8a(9). *Information Safeguards*. The basic premise of this Section is that agencies should provide

an appropriate level of protection to government information, given an assessment of the risks associated with its maintenance and use. Among the factors to be considered include meeting the specific requirements of the Privacy Act of 1974 and the Computer Security Act of 1987.

In particular, agencies are to ensure that they meet the requirements of the Privacy Act regarding information retrievable by individual identifier. Such information is to be collected, maintained, and protected so as to preclude intrusion into the privacy of individuals and the unwarranted disclosure of personal information. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. To the extent that agencies share information which they have a continuing obligation to protect, agencies should see that appropriate safeguards are instituted. Appendix I prescribes agency procedures for the maintenance of records about individuals, reporting requirements to OMB and Congress, and other special requirements of specific agencies, in accordance with the Privacy Act.

This Section also incorporates the requirement of the Computer Security Act of 1987 that agencies plan to secure their systems commensurate with the risk and magnitude of loss or harm that could result from the loss, misuse, or unauthorized access to information contained in those systems. It includes assuring the integrity, availability, and appropriate confidentiality of information. It also involves protection against the harm that could occur to individuals or entities outside of the Federal Government as well as the harm to the Federal Government. Such protection includes limits on collection and sharing of information and procedures to assure the integrity of information as well as requirements to adequately secure the information.

Incorporation of Circular No. A–114

OMB Circular No. A–114, Management of Federal Audiovisual Activities, last revised on March 20, 1985, prescribes policies and procedures to improve Federal audiovisual management. Although OMB will rescind Circular No. A–114, its essential policies and procedures will continue. This revision provides information resources management policies and principles independent of medium, including paper, electronic, or audiovisual. By including the term "audiovisual" in the definition of "information," audiovisual materials are incorporated into all policies of this Circular.

The requirement in Circular No. A–114 that the head of each agency designate an office with responsibility for the management oversight of an agency's audiovisual productions and that an appropriate program for the management of audiovisual productions in conformance with 36 CFR 1232.4 is incorporated into this Circular at Section 9a(10). The requirement that audiovisual activities be obtained consistent with OMB Circular No. A–76 is covered by Sections 8a(1)(d), 8a(5)(d)(i) and 8a(6)(b).

Procurement policies contained in Circular No. A–114 will be incorporated into an Office of Federal Procurement Policy Letter.

The National Archives and Records Administration will continue to prescribe the records management and archiving practices of agencies with respect to audiovisual productions at 36 CFR 1232.4, "Audiovisual Records Management."

Section 9a(11). *Ombudsman.* The senior agency official designated by the head of each agency under 44 U.S.C. 3506(b) is charged with carrying out the responsibilities of the agency under the PRA. Agency senior information resources management officials are responsible for ensuring that their agency practices are in compliance with OMB policies. It is envisioned that the agency senior information resources management official will work as an ombudsman to investigate alleged instances of agency failure to adhere to the policies set forth in the Circular and to recommend or take corrective action as appropriate. Agency heads should continue to use existing mechanisms to ensure compliance with laws and policies.

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[The remainder of Appendix IV, which covers sections not changed in this revision, is also unchanged. *See* 50 FR 52730 (December 24, 1985).]

[FRDoc. 93–15662 Filed 7–1–93; 8:45 am]
BILLING CODE 3110–01–F

VOL 58 ISS 126 JL 2 1993 UMI

Friday
July 2, 1993

Part IV

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Final Rule

VOL
58
ISS
126
JL
2
1993
UMI

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AB91

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds a new part 685 to title 34 of the Code of Federal Regulations containing regulations for the Federal Direct Loan Demonstration Program, hereafter referred to as the Federal Direct Student Loan Program (FDSLP).

These regulations are being published under unusual circumstances. The statute that authorizes the FDSLP requires that final regulations for the demonstration program be published by July 1, 1993. However, the President has proposed significant changes to the governing legislation as part of the Student Loan Reform Act of 1993. If the Student Loan Reform Act is enacted in whole or in part, the scope of the FDSLP and the terms and conditions for borrowers and schools participating in the FDSLP would be altered significantly. At this time, passage of the Student Loan Reform Act in some form seems likely. The Student Loan Reform Act would require the Secretary to promulgate rules necessary for the administration of the FDSLP that would in large part supersede these regulations.

These final regulations govern the Federal Direct Stafford Loan Program, the Federal Direct Supplemental Loans for Students Program, and the Federal Direct PLUS Program, collectively referred to as the Federal Direct Student Loan Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 685.200. Section 685.200 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue, SW., (2100 Corridor, L'Enfant Plaza), Washington, DC 20202–5162. Telephone: (202) 732–1818. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The reauthorization of the HEA established the FDSLP, a program designed to test the effectiveness of a direct student loan program in comparison to the Federal Family Education Loan (FFEL) Program, formerly known as the Guaranteed Student Loan Programs. In the FFEL Program, the Secretary works with private lenders and guaranty agencies to provide loans to students and parents of students attending postsecondary schools. In the FDSLP, the Federal government provides loan capital, schools originate loans on behalf of the Secretary, and the Secretary performs functions necessary in the FDSLP that in the FFEL Program are performed by private lenders and guaranty agencies. These functions will be performed primarily by contractors under the Secretary's direction. Loans will be made under the FDSLP for the period beginning July 1, 1994 and ending June 30, 1998.

The Department of Education (ED) and the General Accounting Office (GAO) will analyze and evaluate the FDSLP and compare this demonstration program to the FFEL Program. During the demonstration period, GAO is required to recommend to Congress whether to modify, continue, expand, or terminate the loan demonstration program and whether to replace all or some of the FFEL Program.

On April 2, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 17472). However, on May 5, 1993, the President sent a legislative proposal to Congress, the Student Loan Reform Act of 1993, that would expand the scope of the FDSLP to fully replace the guaranteed loan programs by the beginning of the 1997–1998 academic year. The primary objective of this proposed legislation is to revamp the student loan system to better serve students. A new streamlined system would simplify the administrative tasks of educational institutions, make the system easier to understand, provide students with greater choice in repayment plans, and lower costs to taxpayers and borrowers.

Under the Student Loan Reform Act, borrowers would continue to be assured of access to loan funds. As in the demonstration program, direct loan capital would not be limited by congressional appropriations. Funds would flow promptly to schools solely on the basis of borrower eligibility and needs. Once the system is fully implemented, a portion of the general cost savings from direct lending would be passed on to borrowers in the form of a reduction in the interest rate on their loans.

The Student Loan Reform Act would phase in a full-scale direct lending program over 4 years, beginning in academic year 1994–95. The goal is to begin with 4 percent of new loan volume in direct lending in the first year, 25 percent the second year, 60 percent the third year, and full implementation in academic year 1997–98. In addition, the proposed legislation removes the requirement that the Secretary select schools to be in a control group for purposes of comparing direct lending to the FFEL Program.

Some key provisions of the Student Loan Reform Act that would impact on schools and borrowers include—

- Criteria for measuring the financial and administrative capability of schools to originate loans that would be used to determine which schools may originate loans;
- The availability of alternative originators for schools that do not originate loans;
- A fee to help cover some of the costs of loan origination for schools that originate;
- The availability of a range of flexible repayment options to suit borrowers' varied financial circumstances, including options for those borrowers who choose to take low-paying community service jobs; and
- A consolidation option for borrowers, without regard to the total amount of the outstanding balance.

If the Student Loan Reform Act is enacted, the current demonstration program would become phase one of the full-scale program, with the same anticipated loan volume. If enacted, the provisions of the Student Loan Reform Act would take precedence over many of the provisions of these regulations. Because of the short timeframe between the anticipated enactment of the Student Loan Reform Act and the FDSLP startup, the proposed legislation allows the Secretary to publish a notice in the **Federal Register** specifying whatever standards, criteria, and procedures, consistent with the statute, the Secretary determines are reasonable and necessary to the successful implementation of the first year of the FDSLP. This notice would incorporate the provisions of these final regulations except where the statute requires a

change or addition. The second and subsequent years of the FDSLP will be regulated under the normal regulatory process (i.e., NPRM, public comments, final regulations).

The Secretary received many comments regarding the proposed legislation as well as the NPRM. Comments concerning the proposed legislation are not addressed in these final regulations.

Certain technical amendments to the HEA also have been drafted, including the incorporation of unsubsidized Federal Direct Stafford loans into the FDSLP. At the time these final regulations were prepared, technical amendments had not been enacted. In addition, many provisions in these final regulations are based on similar provisions in the FFEL Program regulations. The FFEL Program regulations are being revised under a negotiated rulemaking process. Where appropriate, the FDSLP regulations will also be amended in the future to incorporate changes made in the FFEL Program regulations as a result of the negotiations, or to reflect any technical amendments enacted.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 230 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Because the FDSLP is a demonstration program and will be evaluated and compared to the FFEL Program, proposed changes to provisions in the NPRM that are identical to provisions in the FFEL Program regulations have not been accepted.

Funds Disbursement

Comment: A number of commenters expressed confusion about how a school would draw down funds from ED. Other commenters said the limitation on the amount a school could draw down (*i.e.*, the amount a school would need to fund loans it planned to disburse within a 3-day period), was too short. Some commenters asked how students' funding needs would be met if the amount a school needed to fund those students exceeded its authorization level.

Discussion: Schools will be authorized to draw down funds for making FDSLP loans using the same process currently used to draw down money for the Federal Pell Grant Program and the Federal campus-based programs, *i.e.*, the Department of Education's Payment Management System (EDPMS). EDPMS handles payments to schools for those student aid programs for which the school serves as the disbursing agent to the student. The role of EDPMS is to serve as the school's single point of contact in the Department for cash matters. EDPMS manages cash advances to schools, expedites the flow of cash between the Federal government and schools, and transmits data back to the appropriate program office (*i.e.*, FDSLP).

For the FDSLP, funds will be transferred using the Automated Clearing House/Electronic Funds Transfer method (ACH/EFT). This method provides paperless payment processing. A FDSLP school will transmit an electronic payment request using the school-based software provided by the Secretary, or will telephone its payment request, to the central service bureau, (currently National Computer Systems (NCS)). After ensuring that the request is valid, the central service bureau will forward the request to EDPMS. Each request will be transmitted to the Federal Reserve Bank, which will deposit funds electronically into the school's FDSLP bank. Funds will be received within 3 working days of the school's request. For example, a request made by 2 p.m. E.S.T. (eastern standard time) on Monday will generally be deposited on Wednesday to the school's account. However, a school should always verify that the deposit has been made.

The payment request transmitted by the school must be adequate to meet the school's FDSLP disbursement needs. As in the other Federal student aid programs, a payment request may not exceed "immediate need," which is defined as 3 days in advance of disbursement to the student. If the amount of funds drawn down is insufficient to meet its FDSLP loan funding needs, a school would simply transmit another payment request.

The FDSLP is a school entitlement program. The amount of funds a school can draw down from EDPMS is limited only by the eligibility of its student and parent borrowers. There is no "school authorization level" as in the other Federal student aid programs. The FDSLP will, however, use internal controls to monitor school drawdown requests in order to prevent and detect errors and potential fraud and abuse.

Changes: None.

Section 685.100 The Federal Direct Student Loan Program

Section 685.100(a)

Comment: A number of commenters noted that no equivalent to the unsubsidized Federal Stafford loan was included in the FDSLP. The commenters stated that the absence of an unsubsidized Federal Direct Stafford would put students attending a FDSLP school at a distinct financial disadvantage compared to students attending a school participating in the FFEL Program where they would have access to an unsubsidized Federal Stafford loan.

Discussion: The Secretary agrees with the commenters that if an unsubsidized Federal Direct Stafford loan is not available, students attending a FDSLP would be at a disadvantage. However, until the HEA is amended to allow unsubsidized Federal Direct Stafford loans to be made in the FDSLP, unsubsidized Federal Direct Stafford loans cannot be referenced in the regulation. The Secretary has been assured that the exclusion of the unsubsidized program was a legislative oversight that will be remedied shortly. Treatment of unsubsidized Federal Direct Stafford loans in the FDSLP will parallel the treatment of unsubsidized Federal Stafford loans in the FFEL Program.

Changes: None.

Section 685.102 Definitions

Co-maker

Comment: None.

Discussion: The statute does not use the term co-maker in discussing the provisions that apply to the Federal PLUS program. A co-maker is one of two individuals who is a joint borrower on a Federal PLUS loan and who is jointly and severally liable for repayment of the loan. In the Federal PLUS program, there are generally two eligible borrowers for each loan, *i.e.*, two parents who may borrow on behalf of an eligible student. Thus, it has been the Secretary's longstanding interpretation that both parents could obtain a loan for a single student as co-makers. However, both co-makers must also qualify in order to obtain the other benefits available to borrowers under the program, *e.g.*, deferments, forbearances, and cancellations. The Secretary has left it to the discretion of each guaranty agency in the FFEL Program to decide if co-makers will be used in their program. In recognition

VOL
58
ISS
126
JL
2
1993
UMI

that the circumstances that might make a PLUS loan borrower eligible for these benefits generally financially impacts the family and not just the individual, the Secretary has decided that the second signatory on a PLUS loan promissory note will be an endorser and not a co-maker. An endorser is defined as an individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Changes: The term "co-maker" has been deleted from the final regulations.

Loan Period

Comment: A number of commenters stated that the definition of "Loan Period" was incomplete and should be expanded to specify what the minimum loan period should be.

Discussion: The minimum period of enrollment for which a loan may be made must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed.

Changes: The definition of loan period has been amended to clarify that the loan period must be at least an academic term.

School

Comment: Several commenters stated that the definition of "school" should include the discussion that is in the FFEL Program regulations that clarifies that a borrower may receive an in-school deferment based on attendance at an eligible school, regardless of whether that school is participating in a title IV program. The commenters believed that failure to include such a discussion would not allow borrowers with both FFEL Program and FDSLP loans to defer their loans concurrently.

Discussion: The definition of "school" found in § 685.102 is the definition of those schools that are eligible to participate in the FDSLP. The regulations for the FDSLP in § 685.305 cross reference the FFEL Program regulations (34 CFR 682.210) for purposes of determining deferment eligibility. The FFEL Program regulations specify that a borrower is entitled to a deferment while enrolled in a school defined in § 682.200. Accordingly, the deferment eligibility is the same for both programs.

Changes: None.

Section 685.200 Application Instructions for Schools to Participate in the FDSLP or the Control Group

Comment: Many commenters asked how schools would apply for participation in the FDSLP or the control group.

Discussion: The Secretary has developed an application for schools to use to apply to participate in the FDSLP or the control group. A draft of the application is included in these regulations as Appendix B; the Secretary will submit this application form for review under the Paperwork Reduction Act. A school must complete the approved application and submit it to the Secretary by October 1, 1993. Applications postmarked after October 1, 1993 will not be accepted. A school may use a single application to apply for participation in the FDSLP or the control group. The selection for schools to participate in the FDSLP will be conducted first.

Changes: The final regulations have been amended to specify the procedures a school must follow to apply for participation in the FDSLP or the control group. An application schools can use to apply has been provided as Appendix B.

Comment: Several commenters asked how a group of schools could apply as a consortium.

Discussion: Each school included as part of a consortium of schools must furnish the information requested in the application. The application has been designed so that schools wishing to apply as a consortium can do so. A school that is applying as part of a consortium may not also apply individually.

Changes: None.

Section 685.201 Requirements for Schools to Participate in the FDSLP

Comment: Several commenters asked how a consortium would operate in the FDSLP.

Discussion: A consortium of schools in the FDSLP would interact with the Secretary in the same manner as other schools, except that the communication between the Secretary and the schools in the consortia would be consolidated and funneled through a single point. This point may be a school or even a third party under a contractual arrangement with the consortium. Each school in the consortium will be required to sign the FDSLP participation agreement with the Secretary and be responsible for the information supplied through the consortium.

Changes: None.

Comment: Some commenters opposed the requirement that a school have certain computer equipment and participate electronically in the FDSLP. These commenters believed that the requirement would prevent a comparison between the FDSLP and the FFEL Program because guaranty agencies do not have similar requirements. Some commenters believed that guaranty agencies were prohibited from having similar requirements. Many commenters believed that the computer requirements were reasonable and that requiring electronic communication was a forward step in decreasing the paperwork that is endemic in the financial aid process.

Discussion: The HEA requires that loans made under the FDSLP must have the same terms and conditions as FFEL Program loans. This does not require that the FDSLP operate in the same way as the FFEL Program. By definition, schools will have a different relationship with the Secretary under the FDSLP than they do with guaranty agencies and lenders in the FFEL Program. Guaranty agencies are not prohibited from instituting similar requirements for schools participating in their programs. The Secretary plans to make maximum use of current technology. This technology will allow schools participating in the FDSLP to communicate with the Secretary quickly and efficiently and will reduce the paperwork that has come to be associated with student loans.

Changes: The computer configuration specified in the NPRM as a requirement to participate has been removed from the section in the final regulations that lists the requirements for schools to participate in the FDSLP. However, the requirement that a school in the FDSLP use the software or specifications provided by the Secretary is still included in the participation agreement a school will sign with the Secretary to participate in the FDSLP. The minimum computer configuration a school must have to use the software or specifications provided by the Secretary is an IBM-compatible personal computer (PC), 512K RAM, DOS version 3.3 or later, 4 MB space available on a hard disk, a floppy drive, and a 1200, 2400 or 9600 baud Hayes compatible asyncronous modem; or a mainframe computer supporting IBM 3780 RJE protocol and HASP using binary synchronous communications at 2400 and 4800 bits/second; and, a printer that prints on 8½ by 11 inch paper. Of course, depending upon the volume of loans for a particular school, additional capacity may be needed. The hardware needed to participate in the FDSLP is quite modest and is already resident at most schools.

Comment: A number of commenters asked if there would be technical assistance and training for schools and, if so, would there be a charge.

Discussion: The Secretary will provide technical assistance and

training to schools in the FDSLP. The Secretary will not charge schools for this service.

Changes: None.

Comment: Several commenters asked if the Secretary would provide data layouts and specifications to schools that use mainframe or minicomputers. If so, would there be a charge?

Discussion: The Secretary will provide data layouts and specifications at no charge to the school.

Changes: None.

Comment: Many commenters opposed the requirement that the school have a cohort default rate that is less than 25 percent in at least one of the two most recent years for which cohort default rates have been calculated. Some commenters noted that a guaranty agency is prohibited from denying participation to an eligible school in the guaranty agency's program based solely on default rate of the school. Other commenters believed that the 25 percent threshold was too high and for a demonstration program, and participation should be limited to schools with demonstrated success with the FFEL Program.

Discussion: Because the FDSLP is a demonstration program that is only authorized for a 4-year period, the Secretary has decided not to apply the cohort default rate provisions applicable to the FFEL Program to schools selected to participate in the FDSLP. The Secretary is interested in permitting some schools with relatively high default rates to participate in the demonstration program. However, the Secretary does not believe it would be in the Federal fiscal interest to allow a school to participate in the FDSLP if there is a high probability that the school's participation in the FFEL Program would be terminated because of the school's high default rates if the school remained in the FFEL Program. Therefore, the final regulations retain the 25 percent cut-off for initial selection into the FDSLP.

Changes: None.

Section 685.202 Selection Process for Schools in the FDSLP

Comment: A number of commenters believed that the process the Secretary will use to determine which schools will participate in the FDSLP or the control group should be defined in greater detail. Many commenters asked how the Secretary will ensure that the limitations regarding guaranty agency volume are met. A number of commenters, noting the political pressures involved in determining which schools will participate, suggested that a third-party contractor be used for the selection process.

Discussion: The Secretary will ensure that the process used to select participants in the FDSLP and the control group will comply with the statutory requirements. The Secretary has obtained the services of a third-party contractor to assist in developing the selection process.

Changes: None.

Section 685.203 Selection Process for Schools in the Control Group

Comment: A number of commenters asked what specific activities would be required of schools in the control group.

Discussion: The Secretary and the GAO will conduct a comprehensive evaluation of the FDSLP and compare this demonstration program to the FFEL Program. A control group will be selected to provide a standard against which the FDSLP can be compared. Schools in the control group will continue to be required to follow the FFEL Program regulations. These final regulations do not impose any additional requirements on schools in the control group.

Changes: None.

Section 685.204 Appeal Procedure for Schools Selected to Participate in the FDSLP or the Control Group

Comment: Many commenters believed that the 15-day period during which a school could appeal its selection to participate in the FDSLP or the control group was too short.

Discussion: In enacting the FDSLP, Congress included the implementation schedule in the legislation. The statutory deadline for submitting applications to participate is October 1, 1993. If a school successfully appeals its selection, then the Secretary must select another school that also will have an opportunity to appeal. In addition, many schools have indicated that they will need to know if they will participate in the FDSLP prior to the January 1, 1994 deadline for the Secretary to publish the final list of participants in the FDSLP and the control group. Because of the statutory deadlines, the 15-day deadline for appeals has been retained. However, a school's appeal submitted after the deadline may be accepted if the school can demonstrate extenuating circumstances that prevented the appeal from being made by the deadline date.

Changes: None.

Section 685.301 Obtaining and Repaying a Loan

Section 685.301(a)(1)

Comment: Many commenters asked how a school will determine what interest rate to charge a Federal Direct Stafford borrower.

Discussion: If a Federal Direct Stafford loan borrower has a prior fixed-rate Federal Stafford or Federal Direct Stafford loan, the borrower will receive the same interest rate on a subsequent Federal Direct Stafford loan. Once the National Student Loan Data System (NSLDS) is operational, the interest rate will be determined when the borrower's need analysis application is processed through the Central Processing System. Until then, schools may rely upon the interest rate reported by the student on the Free Application for Federal Student Aid (FAFSA). In either case, the rate will be forwarded to the school on the student's Student Aid Report (SAR) or Electronic Student Aid Report (ESAR).

If the student does not have a prior fixed-rate Stafford loan, the student's interest rate will be a variable rate. The variable rate is published annually in the **Federal Register** and will be provided to schools. More detailed guidance will be provided in the policy and procedures manual that will be given to FDSLP schools.

Changes: None.

Comment: Several commenters asked what would be the school's responsibility if it had information regarding a borrower's interest rate that conflicted with the information on the SAR or ESAR.

Discussion: Consistent with 34 CFR part 668, subpart E, a school would be responsible for resolving conflicting information before a FDSLP loan could be made.

Changes: None.

Section 685.301(a)(3)

Comment: Many commenters asked for more specific details about how the process for Federal Direct PLUS loans would work. Many other commenters asked who would be responsible for doing the credit check required for Federal Direct PLUS loans.

Discussion: Federal Direct PLUS loans will be made through a process similar to the one used in the FFEL Program that starts with the parent filling out a combined application/promissory note and sending it to the school. The school will forward this application to the Secretary where the data will be key entered and a credit check performed. Alternatively, a school may enter the data using the software provided by the Secretary, and electronically forward

this information to the Secretary. In either case, the Secretary will perform the credit check and notify the school of the results. The school may then draw down money and disburse the loan funds in the same manner as Federal Direct Stafford and SLS loans.

Changes: The final regulations have been amended to reflect the origination process for a Federal Direct PLUS loan.

Section 685.302 Charges for Which FDSLP Borrowers are Responsible

Section 685.302(a)(1)(vi) and (vii)

Comment: One commenter noted that the provision for interest rebates for loans with an interest rate of 10 percent where the sum of the 91-day Treasury bill rate plus 3.25 percent is less than 10 percent should not be included in the FDSLP regulations.

Discussion: The Secretary agrees with the commenter.

Changes: Sections 685.302(a)(1)(vi)-(vii) have been deleted from the final regulations.

Section 685.302(b)-(e)

Comment: Many commenters believed that the Secretary would be charging a FDSLP borrower more than if the borrower were receiving a loan in the FFEL Program. They pointed out that while a borrower is in deferment, many lenders capitalize interest annually rather than quarterly, that the insurance premium is frequently less than 3 percent, and that late charges and collection charges before default are often waived or reduced.

Discussion: The proposed regulations reflected the extent of the Secretary's legal authority to assess certain charges. That authority is also reflected in these final regulations. The actual charges (not to exceed the authorized maximum) will be reflected in the promissory note and other program materials. The Secretary anticipates capitalizing interest annually during deferment periods, charging a loan fee of 6.5 percent, and assessing late charges and collection costs before default in limited circumstances.

Changes: The final regulations have been amended to clarify the Secretary's flexibility in assessing certain charges, including late charges and collection charges before default, and in the frequency of capitalization of interest. The final regulations have also been amended to provide for a single loan fee that is equal to the origination fee plus the insurance premium. The new combined loan fee will not exceed the maximum amount allowed for an origination fee plus insurance premium in the FFEL Program.

Section 685.304 Repayment of a Loan

Comment: Many commenters asked if the Internal Revenue Service (IRS) would be collecting FDSLP loans through payroll deduction. Other commenters said that the specific collection procedures that will be used in the collection of FDSLP loans should be included in the regulations.

Discussion: For the demonstration program, the Secretary does not anticipate that the IRS will be involved in the actual loan collection process through payroll deductions. The Secretary will contract for servicing and collection of FDSLP loans. Procedures to be followed by the contractor in the servicing and collection of FDSLP loans will be specified by the Secretary as part of the contractual agreement. However, it is the Secretary's intent to require FDSLP contractors, at a minimum, to follow the servicing and collection procedures in the FFEL Program regulations.

Changes: None.

Section 685.305 Deferment

Section 685.305

Comment: Several commenters asked what a school's responsibilities would be regarding deferments.

Discussion: A school's responsibility regarding deferments will be the same in the FDSLP as it is in the FFEL Program, *i.e.*, to certify the enrollment status of a student who requests an in-school deferment.

Changes: None.

Section 685.306 Forbearance

Section 685.306(a)(1)

Comment: A few of the commenters were concerned that the NPRM did not authorize an endorser to a FDSLP loan to request a forbearance.

Discussion: In the FFEL Program regulations, an endorser is authorized to request forbearance for a FFEL Program loan. A similar provision did not appear in the NPRM.

Changes: The final regulations have been revised to allow an endorser to request forbearance on a FDSLP loan.

Section 685.400 Agreement Between an Eligible School and the Secretary for Participation in the FDSLP

Section 685.400(b)(3)

Comment: Many commenters asked how long schools would have to forward promissory notes to the Secretary and be considered to have done so in a "timely" manner.

Discussion: The timing requirement for sending promissory notes to the Secretary will be determined by the reconciliation process, by which the school will reconcile drawdowns, disbursements, and cash on hand with the Secretary. A school must reconcile with the Secretary once each month for the previous month's activity. Schools will be assigned a monthly reconciliation period that ends at the same time each month. For example, if a school's reconciliation period ends on September 15th, the school would have to reconcile with the Secretary by October 15th. If a school drew down a total of $10,000 during the reconciliation period ending September 15, the Secretary should have received FDSLP loan disbursement records (supported by promissory notes) totalling $10,000 by October 15th.

Changes: None.

Section 685.401 Rules for a School Making Loans in the FDSLP

Section 685.401(b)(1)

Comment: A number of commenters asked if schools would be held responsible for the accuracy of information provided by the borrower in the loan origination process.

Discussion: A school is not held responsible for information that is provided by the borrower, provided the school has no evidence or documentation that the information submitted by the applicant is incorrect. However, the borrower will be responsible for the accuracy of information provided in connection with a loan application.

Changes: The Secretary has amended the final regulations to include a provision from the FFEL Program regulations to the effect that unless the borrower is subject to verification or the school has conflicting documentation, the school may rely upon statements made by the borrower.

Section 685.401(c)

Comment: A number of commenters asked what constitutes "all required information" that must be provided by the borrower before a school can disburse FDSLP loan proceeds.

Discussion: Each Federal Direct Stafford and Federal Direct SLS borrower must complete and sign a FAFSA and a FDSLP promissory note before receiving the loan. In addition, each Federal Direct PLUS borrower must complete and sign a combination application/promissory note before receiving a Federal Direct PLUS loan. If these forms are not completed by a borrower, the school may not disburse FDSLP loan proceeds.

Changes: None.

VOL 58 ISS 126 JL 2 1993 UMI

Section 685.401(c)

Comment: A couple of commenters noted that the NPRM did not explicitly require that FDSLP student loans be multiply disbursed although the HEA specifies that FDSLP loans will be made with the same terms and conditions as FFEL Program loans.

Discussion: The Secretary agrees with the commenters.

Changes: The final regulations have been revised to incorporate language requiring FDSLP student loans to be multiply disbursed.

Section 685.403 Disbursing Borrowers' Loan Proceeds and Counseling Borrowers.

Section 685.403(c)

Comment: Many commenters objected to the provision requiring a school to obtain a separate written authorization from the borrower in order to release loan proceeds. The commenters noted that an alternative process had recently been approved for use in the FFEL Program for schools using Electronic Funds Transfer (EFT) and should be available to schools in the FDSLP.

Discussion: The Secretary agrees with the commenters and has allowed for a similar process in the final regulations.

Changes: The final regulations have been revised to allow a school to use the authorization statement that will be included in FDSLP promissory notes, provided that the school gives a statement to the borrower within 30 days following each disbursement showing the disbursement applied to the student's account.

Section 685.403(f) and (g)

Comment: A number of commenters asked who would be responsible for the materials used by FDSLP schools for entrance and exit counseling.

Discussion: In the FDSLP, the Secretary will develop materials for a FDSLP school to use, if it so chooses, for entrance and exit counseling. In addition, the Secretary will provide borrower-specific information regarding a borrower's FDSLP loans for a school's use in exit counseling.

Changes: None.

Section 685.406 Withdrawal Procedure for Schools in the FDSLP

Section 685.406(b)

Comment: Many commenters opposed the provision that prohibited a school that withdraws from the FDSLP from participating in the FFEL Program until the end of the demonstration period. The commenters argued that the provision was unfair to schools that made a good faith effort to participate, but found participation in the FDSLP to be more than they could manage administratively.

Discussion: The Secretary is concerned that schools selected for participation in the FDSLP have an incentive to make the FDSLP work. In addition, because participation will be limited and participating schools will be selected using statistically sound methods, withdrawal of a significant number of schools would seriously undermine the reliability of the cross section of schools and thus the evaluation. However, the Secretary is sensitive to the fact there may be reasons why a school might wish to withdraw despite having made a good faith effort to participate. In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program.

Changes: The provision that prohibited a school that withdraws from the FDSLP from participating in the FFEL Program for the duration of the demonstration program has been removed from the final regulations. The final regulations have been revised to allow a school to withdraw if the school makes a written request with an explanation of why it seeks the withdrawal, and the Secretary approves the request. In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program. If a school's request is approved by the Secretary, the withdrawal will become effective after the June 30 following the school's request.

Section 685.407 Remedial Actions

Section 685.407(a)

Comment: Many commenters expressed concern over a school's liability for loans that are unenforceable. Other commenters asked what arrangements are available to schools for relief when a promissory note is unavailable.

Discussion: A school will be financially liable if, due to an error of the school, the loan is unenforceable, or if a borrower receives more than the amount for which the borrower was eligible. This policy is the same for schools participating in the FFEL Program.

If a school cannot furnish the promissory note to the Secretary for a loan it has already disbursed, it will not be exposed to a liability if the school can secure a signed promissory note from the borrower. If a signed promissory note cannot be obtained, the school will be liable for the amount it has disbursed. A school can reduce its potential for liability by forwarding promissory notes to the Secretary and receiving a confirmed acceptance prior to disbursing the loan proceeds or by maintaining a copy of the promissory note at the school. Once the Secretary has accepted the promissory note, the school will no longer be potentially liable for the promissory note.

Changes: None.

Section 685.408 Administrative and Fiscal Control and Fund Accounting Requirements for Schools Participating in the FDSLP

Section 685.408(h)(1)

Comment: Many commenters objected to the requirement that a FDSLP school have a separate bank account for FDSLP funds that it draws down. Many schools indicated that they already have accounting systems in place that would accomplish whatever benefits a separate bank account would provide. Other commenters opposed the requirement because schools already have other Federal accounts for other ED programs and should not be required to set up another account for another Federal program. Other commenters said the cost of opening up another separate bank account would be prohibitive. One commenter pointed out that 31 U.S.C. 6503(h) prohibits Federal agencies from requiring States (including State schools) to deposit Federal funds in a separate bank account.

Discussion: A critical measure of the success of the FDSLP will be the ability of the Secretary and schools to manage and account for funds used to make FDSLP loans. These funds can only be used to make FDSLP loans. In order to ensure program integrity, FDSLP funds must be easily tracked and auditable. While many schools have accounting systems that meet these needs, many schools do not.

Although, the Secretary does not necessarily agree with the commenter that 31 U.S.C. 6503(h) prohibits requiring a State school participating in the FDSLP to maintain a separate bank account, the Secretary has nevertheless eliminated the separate account requirement for State institutions.

Changes: The final regulations have been revised so that State schools are not required to have a separate bank account.

VOL 58 ISS 126 JL 2 1993 UMI

Section 685.408(h)(2)

Comment: Several commenters objected to the requirement that schools maintain an interest-bearing account for FDSLP funds.

Discussion: The provision does not require FDSLP funds to be maintained in a separate interest-bearing account. However, if funds are kept in an interest-bearing account, any interest earned must be returned to the Secretary.

Changes: The Secretary has amended the final regulations to clarify that interest earned on FDSLP funds must be returned to the Secretary.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

Dated: June 29, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 685 to read as follows:

PART 685—FEDERAL DIRECT STUDENT LOAN PROGRAM

Subpart A—Purpose and Scope

Sec.

685.100 The Federal Direct Student Loan Program.
685.101 Participation in the FDSLP.
685.102 Definitions.
685.103 Applicability of subparts.

Subpart B—School Eligibility and Selection

685.200 Application instructions for schools to participate in the FDSLP or the control group.
685.201 Requirements for schools to participate in the FDSLP.
685.202 Selection process for schools in the FDSLP.
685.203 Selection process for schools in the control group.
685.204 Appeal procedure for schools selected to participate in the FDSLP or the control group.

Subpart C—Borrower Provisions

685.300 Borrower eligibility.
685.301 Obtaining and repaying a loan.
685.302 Charges for which FDSLP borrowers are responsible.
685.303 Loan limits.
685.304 Repayment of a loan.
685.305 Deferment.
685.306 Forbearance.
685.307 Borrower responsibilities.

Subpart D—Requirements, Standards and Payments for FDSLP Schools

685.400 Agreement between an eligible school and the Secretary for participation in the FDSLP.
685.401 Rules for a school making loans in the FDSLP.
685.402 Correspondence school schedule requirements.
685.403 Disbursing borrowers' loan proceeds and counseling borrowers.
685.404 Determining the date of a student's withdrawal.
685.405 Payment of a refund to the Secretary.
685.406 Withdrawal procedure for schools participating in the FDSLP.
685.407 Remedial actions.
685.408 Administrative and fiscal control and fund accounting requirements for schools participating in the FDSLP.

Appendix A—Addendum to Program Participation Agreement for Participation in the Federal Direct Student Loan Program.

Appendix B—School Participation Application.

Authority: 20 U.S.C. 1087a *et seq.*

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (FDSLP), the Secretary makes loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students.

(2) Federal Direct Supplemental Loans for Students (SLS) Program, which provides loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students.

(b) The Secretary makes a FDSLP loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.101 Participation in the FDSLP.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and technical schools selected by the Secretary may participate in the FDSLP. Participation in the FDSLP enables an eligible student or his or her parents to obtain a loan to pay for the student's cost of education at his or her institution.

(2) A school that is participating in the FDSLP may not certify loans under the Federal Family Education Loan Program, as defined in 34 CFR part 600.

(b) Eligible students who are enrolled at a school participating in the FDSLP may borrow under the Federal Direct Stafford Loan and Federal Direct SLS programs. Parents of eligible dependent students may borrow under the Federal Direct PLUS program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (FDSLP)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Supplemental Loans for Students (SLS) Program
Federal Work-Study Program
Independent student
Parent
State
U.S. citizen or National

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program

Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the FFEL Program under the Higher Education Act of 1965, as amended, 34 CFR part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Post-deferment grace period

(b) The following definitions also apply to this part:

Actual interest rate: The annual interest rate charged on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that may be charged under the Act on a loan.

Borrower: An individual to whom a FDSLP loan is made.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: The delivery of loan proceeds by a school to a borrower, either directly or through the crediting of the student's account with the school.

Estimated cost of attendance: The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a FDSLP loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance: (1) The estimated amount of assistance that a student has been or will be awarded, for a loan period, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Federal Direct Stafford loan eligible for interest subsidies, Federal Pell Grants, and to the extent funding is available, campus-based aid the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(viii) In the case of a Federal Direct PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Federal Direct Stafford loan, Federal Pell grant, and campus-based aid that the student has been or will be awarded.

(ix) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL Program or FDSLP loan was received, the amount of Federal Stafford, Federal SLS, and Federal PLUS loan proceeds withheld by the lender or the amount of Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loan proceeds withheld by the Secretary on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Federal Direct SLS and Federal Direct PLUS loan amounts;

(ii) Private and State-sponsored loan program loan amounts; and

(iii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution: The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

FDSLP school: A school that has an agreement with the Secretary under § 685.400 to participate in the FDSLP.

VOL
58
ISS
126
JL
2
1993
UMI

Federal Direct PLUS Program: A loan program authorized by title IV–D of the Act that provides loans to parents of undergraduate students attending FDSLP schools with loans that have the same terms and conditions as Federal PLUS Program loans.

Federal Direct Stafford Loan Program: A loan program authorized by title IV–D of the Act that provides loans to students attending FDSLP schools with loans that have the same terms and conditions as Federal Stafford Loan Program loans.

Federal Direct Supplemental Loans for Students (SLS) Program: A loan program authorized by Title IV–D of the Act that provides loans to students attending FDSLP schools with loans that have the same terms and conditions as Federal SLS Program loans.

Grace period: The period that begins on the day after a Federal Direct Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins. For a Federal Direct SLS borrower who also has a Federal Stafford or Federal Direct Stafford loan on which the borrower has not yet entered repayment, an equivalent period after the borrower ceased to be enrolled as at least a half-time student at an eligible institution.

Half-time student: A student enrolled in a school that is participating in the FFEL Program or the FDSLP and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Loan period: The period for which a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan is intended. The loan period must coincide with a bona fide academic term established by the school, for which institutional charges are normally assessed.

Origination fee: A fee, payable by the borrower, that is used to help defray the costs of the FDSLP.

Repayment period: (1) For a Federal Direct Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2) For a Federal Direct SLS loan, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, the date the last disbursement is made and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Federal Direct PLUS loan, the period that begins on the date the loan is disbursed and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance.

School: (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) *Promote the availability* means—

(A) Provide a prospective or enrolled student with loan application forms;

(B) Provide other information relating to the FDSLP to a prospective or enrolled student in order to encourage the student to finance his or her education with a FDSLP loan; or

(C) Otherwise use the availability of FDSLP loans as a recruiting or retention tool.

Temporarily totally disabled: The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Totally and permanently disabled: The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student: A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.103 Applicability of subparts.

(a) Subpart A of this part contains general information regarding the purpose and scope of the FDSLP.

(b) Subpart B of this part contains provisions regarding eligibility and selecting schools that will participate in the FDSLP.

(c) Subpart C of this part contains provisions that apply to borrowers in the FDSLP.

(d) Subpart D of this part contains certain requirements that apply to schools in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—School Eligibility and Selection

§ 685.200 Application instructions for schools to participate in the FDSLP or the control group.

(a) A school that wishes to participate in the FDSLP or the control group must submit an application to the Secretary by October 1, 1993. The school shall supply the information requested in the School Participation Application provided as Appendix B to this part. A school may use a single application to apply for participation in the FDSLP or the control group.

(b) Schools that wish to apply as a consortium shall supply the information requested for each of the schools in the consortium. A school that applies as part of a consortium may not apply individually.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.201 Requirements for schools to participate in the FDSLP.

(a) A school participating in the FDSLP must be an eligible institution as defined in 34 CFR part 600.

(b) A school participating in the FDSLP must be able to use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting information to the Secretary.

(c) A school applying to participate in the FDSLP must have a cohort default rate as defined in section 435(m) of the Act that is less than 25 percent in at least one of the two most recent years for which cohort default rates have been published by the Secretary.

(d) A school applying to participate in the FDSLP must be located in a State.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.202 Selection process for schools in the FDSLP.

(a) *General.* The Secretary uses statistical methodology to ensure that a cross section of schools participating in the FFEL Program is represented in the FDSLP.

(b)(1) The Secretary groups the universe of FFEL Program participants by various categories into "cells," taking into consideration institutional control, length of academic program, size of student enrollment, percentage of FFEL Program student borrowers, geographic location, annual loan volume, default experience, and demographic composition of the student body.

(2) If a school applies for participation in the FDSLP, it is selected unless there are too many applicant schools from the cell to which the school belongs.

(3) If there are too many applicants from a particular cell, the Secretary makes random selections from among the applicants to give each applicant the same probability of selection.

(4) If there are too few applicants from a particular cell, all applicants are selected, and the Secretary randomly selects additional schools from that cell from among the non-applicants to obtain the desired cross section of schools participating in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.203 Selection process for schools in the control group.

(a) *General.* After determining which schools would participate in the FDSLP, the Secretary selects a control group using a statistical methodology to ensure a cross section of schools from the remaining universe of schools participating in the FFEL Program.

(b) The procedures set forth in § 685.202 to select schools for participation in the FDSLP are also used to select schools for the control group.

(c) The fact that a school applies for participation in the FDSLP but is not selected neither increases nor decreases the school's probability of being selected to be in the control group.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.204 Appeal procedure for schools selected to participate in the FDSLP or the control group.

(a) *General.* A school may appeal to the Secretary to decline its selection to participate in the FDSLP or the control group. Such an appeal must demonstrate good cause (for example, extreme administrative burden) for the Secretary to grant the school's appeal.

(b) A selected school that does not wish to participate must appeal to the Secretary within fifteen (15) days of the date the school is notified of its selection to participate. The Secretary does not grant an appeal that is made after fifteen (15) days of when the school was notified unless the school can demonstrate extenuating circumstances that prevented the appeal from being made on a timely basis.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart C—Borrower Provisions

§ 685.300 Borrower eligibility.

(a)(1) *Student borrower.* A student is eligible to receive a Federal Direct Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(1)(iii) of this section, a dependent undergraduate student, is eligible to receive a Federal Direct SLS loan, if the student is enrolled in an FDSLP school, meets the requirements for an eligible student under 34 CFR part 668, and—

(i) In the case of an undergraduate student who seeks a Federal Direct Stafford loan or Federal Direct SLS loan for the cost of attendance at a school that participates in the Federal Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Federal Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Federal Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(ii) In the case of any student who seeks a Federal Direct SLS loan for the cost of attendance at a school that participates in the FDSLP, has—

(A) Received a determination of need for a Federal Direct Stafford loan, and if determined to have need in excess of $200, has requested a Federal Direct Stafford loan from the school; and

(B) Received a certification of graduation from a school providing secondary education or the recognized equivalent;

(iii) For purposes of a dependent undergraduate student's eligibility for a Federal Direct SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the Federal Direct PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a Federal Direct PLUS loan does not constitute an exceptional circumstance;

(iv)(A) Reaffirms any FFEL Program or FDSLP loan amount that previously was cancelled due to the borrower's total and permanent disability, or that was discharged in bankruptcy, or written off; and

(B) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(*1*) Signing a new promissory note or repayment schedule; or

(*2*) Making a payment on the loan;

(v)(A) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that any FDSLP loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(vi) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, has passed an independently administered examination approved by the Secretary; and

(vii) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(2) *Special conditions for subsidized Federal Direct Stafford Loan borrowers.* (i) To qualify for interest benefits on a Federal Direct Stafford loan, a borrower must demonstrate financial need in accordance with title IV, part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Parent borrower.* A parent is eligible to receive a Federal Direct PLUS loan, if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

VOL 58 ISS 126 JL 2 1993 UMI

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirement of paragraphs (a)(1)(iv) and (a)(1)(v) of this section; and

(7)(i)(A) Does not have an adverse credit history; or

(B) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history.

(ii) For purposes of this paragraph (b)(7)(i), an adverse credit history means that as of the date of the credit report, the applicant is 90 or more days delinquent on any debt.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a Federal Direct SLS loan, Federal Direct PLUS loan, State-sponsored loan or other non-Federal loan obtained for a period of enrollment to replace the expected family contribution for that loan period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.301 Obtaining and repaying a loan.

(a)(1) *Application for a Federal Direct Stafford loan.* To obtain a Federal Direct Stafford loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Stafford loan and the school is willing to make the loan, the school shall obtain a completed promissory note from the student and originate the loan on behalf of the Secretary.

(2) *Application for a Federal Direct SLS loan.* To obtain a Federal Direct SLS loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct SLS loan, and the school is willing to make the loan, the school shall obtain a completed promissory note from the borrower and originate the loan on behalf of the Secretary.

(3) *Application for a Federal Direct PLUS loan.* To obtain a Federal Direct PLUS loan, the parent shall complete an application and submit it to the school for certification. After the school certifies the application, the school submits the application to the Secretary. If the parent does not have an adverse credit history and the school is willing to make the loan, the school shall originate the loan on behalf of the Secretary.

(b) *Repaying a loan—(1) General.* The borrower is obligated to repay the full amount of the loan, late fees, collection costs, and any interest not subsidized by the Secretary.

(2) *Federal Direct Stafford loan repayment.* Generally, a borrower is not required to make any payments on the principal of a Federal Direct Stafford loan during the time the borrower is in school. If the borrower qualifies, the Secretary subsidizes the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to pay the accruing interest on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan except during authorized periods of deferment.

(3) *Federal Direct SLS loan repayment.* The repayment period for a Federal Direct SLS loan begins immediately on disbursement of the loan. The first payment of principal and interest on a Federal Direct SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Federal Stafford or Federal Direct Stafford loan borrower requests that repayment on the Federal Direct SLS loan be deferred until the borrower's grace period on the Federal Stafford or Federal Direct Stafford loan expires. The borrower is responsible for the interest that accrues during the life of the loan.

(4) *Federal Direct PLUS loan repayment.* The repayment period for a Federal Direct PLUS loan begins immediately on disbursement of the loan. The first payment of principal and interest on a Federal Direct PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) *Deferment of repayment.* Repayment of principal on an FDSLP loan may be deferred under the circumstances described in 34 CFR 685.305.

(6) *Default.* If a borrower defaults on a loan, the Secretary adds collection costs to the amount owed by the borrower.

(c) *Cancellation.* (1) *Death.* If a borrower, or the student on whose behalf a parent borrowed, dies, the obligation of the borrower and any endorser to make any further payments is canceled.

(2)(i) *Total and permanent disability.* If a borrower becomes totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled.

(ii) A physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State must certify the borrower's total and permanent disability in order for the loan obligation to be canceled.

(3) *Bankruptcy.* If a borrower has his or her loan obligation discharged in bankruptcy, the obligation of the borrower to make any further payments on the loan is canceled.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.302 Charges for which FDSLP borrowers are responsible.

(a) *Interest—(1) Applicable interest rates under the Federal Direct Stafford Loan Program.* (i) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has an outstanding balance on a previous Federal Stafford or Federal Direct Stafford loan, the applicable interest rate is the applicable rate charged on that previous loan.

(ii) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford or Federal Direct Stafford loan but has an outstanding balance of principal or interest on a Federal PLUS or Federal SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Federal Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is 8 percent.

(iii) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford or Federal Direct Stafford but has an outstanding balance for a Federal PLUS or Federal SLS loan made for a period of enrollment beginning on or after July 1, 1988 but before October 1, 1992, or on a Federal Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988 but before October 1, 1992, the applicable interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford loan or Federal Direct Stafford but has an outstanding balance of principal or interest on a Federal SLS or Federal PLUS loan that was disbursed on or after October 1, 1992 or a Federal Consolidation loan that repaid a Federal Stafford loan for which the first disbursement is on or after October 1, 1992, the applicable interest rate is 8 percent.

(v) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance of principal or interest on any FFEL Program or FDSLP loan, the applicable rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury Bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vi) For a Federal Direct Stafford loan made to a borrower with an outstanding FFEL Program loan, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the Secretary—

(A) Calculates an adjustment in an amount specified under paragraph (a)(1)(vii) of this section; and

(B) Credits the adjustment to reduce the outstanding principal balance of the loan if the borrower's account is not more than 30 days delinquent on December 31 of any year for which an adjustment is payable.

(vii) For the purpose of paragraph (a)(1)(vi), the amount of an adjustment for a calendar quarter is equal to—

(A) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(B) Multiplied by the outstanding principal balance of the loan;

(C) Divided by 4; and

(D) Prorated for the portion of the quarter during which the borrower is responsible for the payment of interest on the loan.

(2) *Applicable interest rates under the Federal Direct PLUS Program.* The applicable interest rate on a Federal Direct PLUS loan is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(ii) 10 percent.

(3) *Applicable interest rates under the Federal Direct SLS Program.* The applicable interest rate on a Federal Direct SLS Program loan is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(ii) 11 percent.

(b) *Capitalization.* (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) The Secretary may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period;

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) Under the Federal Direct SLS and Federal Direct PLUS programs, the Secretary requires the borrower to pay on a monthly or quarterly basis, or may capitalize on a quarterly or less frequent basis, interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a FFEL Program or FDSLP loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(4) For a borrower who is in a period of deferment, or a required medical or dental internship forbearance, and has agreed to monthly or quarterly payments of interest, the Secretary capitalizes past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that would accrue through the remainder of that period.

(c) *Loan fee for Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loans.* The Secretary—

(1) Charges a borrower a loan fee on a Federal Direct Stafford, Federal Direct SLS or Federal Direct PLUS loan not to exceed 8 percent of the principal amount of the loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the fee from each disbursement; and

(4) Refunds by a credit against the borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each late installment under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 10 days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provisions of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or his agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Fees on checks returned due to non-sufficient funds.

(2) *Collection charges after default.* If a borrower defaults on an FDSLP loan, he or she is assessed collection costs under the formula in 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.303 Loan limits.

(a) *Federal Direct Stafford Loan Program annual limits.* (1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed—

(i) $2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) $1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, for that second year may not exceed—

(i) $3,500 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,325 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,175 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(3) In the case of a student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) $3,675 for enrollment in a program of study of at least two-thirds of an academic year but less than an academic year in length; and

(iii) $1,825 for a program of study of at least one-third of an academic year in length but less than two-thirds of an academic year in length;

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed $8,500.

(b) *Federal Direct Stafford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Federal Direct Stafford and Federal Stafford Loan Program loans made to a student may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Federal Direct PLUS Program annual limit.* The total amount of all Federal Direct PLUS loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of education minus other estimated financial assistance for that student.

(d) *Federal Direct PLUS Program aggregate limit.* The total amount of all Federal Direct PLUS Program loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(e) *Federal Direct SLS Program annual limit.* The total amount of all Federal Direct SLS loans, in combination with Federal SLS loans, that a student may borrow for any academic year of study—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(i) $5,000 for enrollment in a program of study of at least a full academic year;

(ii) $3,325 for enrollment in a program of study of at least two-thirds of an academic year but less than a full academic year in length; and

(iii) $1,675 for enrollment in a program of study of at least one-third of an academic year but less than two-thirds of an academic year.

(3) In the case of a graduate or professional student, may not exceed $10,000.

(f) *Federal Direct SLS Program aggregate limit.* The total unpaid principal amount of Federal Direct SLS and Federal SLS loans may not exceed—

(1) $23,000 for an undergraduate student.

(2) $73,000 for a graduate or professional student.

(g) *Minimum loan interval.* The annual loan limits applicable to a student shall apply to the greater of—

(1) The length of the school's academic year; or

(2) Seven consecutive months.

(h) *Treatment of Federal Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Federal Consolidation loan counted against a borrower's aggregate loan limits—

(1) For the Federal Direct Stafford Loan Program, equals the percentage of the original amount of the Federal Consolidation loan attributable to the Federal Stafford and Federal Direct Stafford loans; and

(2) For the Federal Direct SLS Loan Program, equals the percentage of the original amount of the Federal Consolidation loan attributable to the Federal SLS and Federal Direct SLS loans.

(i) In no case may a Federal Direct Stafford, Federal Direct PLUS, or Federal Direct SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Federal Direct Stafford loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.304 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a Federal Direct PLUS loan, the 10-year repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2)(i) For a Federal Direct SLS loan, the 10-year repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(ii) of this section, the first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For a Federal Direct SLS borrower who has not yet entered repayment on a Federal Direct Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Federal Direct Stafford loan.

(3) Except as provided in paragraphs (a) (4) and (5) of this section, for a Federal Direct Stafford loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is 7 percent per year, 9 months following the date on which the borrower is no longer

enrolled on at least a half-time basis at an eligible school; and

(ii) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(4) For a borrower of a Federal Direct Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 685.402. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 685.402.

(5) A Federal Direct Stafford loan borrower may upon written request begin the repayment period prior to the end of the grace period. In this event, a borrower waives the remainder of the grace period.

(6) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(7)(i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a borrower is entitled to at least 5 years, but not more than 10 years, to repay a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, calculated from the beginning of the repayment period.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 685.305 or § 685.306, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, and 10-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the Secretary a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the Secretary at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by the Secretary, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the Secretary may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1)(ii) and (2) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program and FDSLP loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the Secretary agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance, as described in § 685.306, or deferment, as described in § 685.305, has been approved.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.305 Deferment.

An FDSLP borrower is entitled to the same deferments as an FFEL Program borrower under the conditions specified in 34 CFR 682.210, with references therein to an FFEL Program borrower understood to mean an FDSLP borrower, references therein to a Federal Stafford, Federal SLS, or Federal PLUS loan understood to mean a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, and references therein to a lender understood to mean the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in § 685.305 were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.306 Forbearance.

(a)(1) An FDSLP borrower or endorser may receive forbearance from the Secretary if the borrower or endorser is willing but unable to make scheduled loan payments. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. A forbearance is granted by the Secretary only if the borrower or endorser requests forbearance in accordance with procedures established by the Secretary, and—

(i) The Secretary believes that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 685.305 and the Secretary does not subsidize the interest benefits on behalf of the borrower under § 685.300(a)(2).

(2) If payments of interest are forborne, they are capitalized.

(b) Upon the written request of a borrower whose eligibility for an internship or residency deferment under 34 CFR 682.210(n) has expired, the Secretary grants forbearance of payment of principal, and, unless otherwise indicated by the borrower, interest, in 12-month intervals, until the borrower has completed the internship or residency.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.307 Borrower responsibilities.

(a) The borrower shall give the school, as part of the origination process for a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan—

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(2) Information demonstrating that the borrower is eligible for the loan;

(3) Information concerning the outstanding FFEL Program and FDSLP loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(4) A statement authorizing the school to release information to the Secretary relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b) The borrower shall promptly notify—

(1) The Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The school of any change in local address during enrollment.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by

VOL 58 ISS 126 JL 2 1993 UMI

the Office of Management and Budget under control number 1840–0657)

Subpart D—Requirements, Standards, and Payments for FDSLP Schools

§ 685.400 Agreement between an eligible school and the Secretary for participation in the FDSLP.

(a)(1) *General.* Participation of a school in the FDSLP means that the school's students are eligible to receive FDSLP loans. To participate in the FDSLP, a school must—

(i) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(ii) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(2) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(i) The Act and applicable regulations;

(ii) The Student Assistance General Provisions, 34 CFR part 668; and

(iii) The Institutional Eligibility regulations, 34 CFR part 600.

(b) In the participation agreement, the school shall—

(1) Certify that information provided to the Secretary with regard to each student's or parent's eligibility for an FDSLP loan will be correct and consistent with borrower eligibility requirements.

(2) Agree to use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting requested information to the Secretary.

(3) Agree to timely forward promissory notes for loans made under the FDSLP as well as other information required by the Secretary.

(4) Agree to comply with conditions that the Secretary may require for testing income-contingent repayment methods.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

§ 685.401 Rules for a school making loans in the FDSLP.

(a) *General.* An FDSLP school, acting as the agent of the Secretary, is responsible for all loan-making duties, including determining the amount of the loan, processing the promissory note and other required forms, approving the borrower for the loan, explaining to the borrower his or her rights and responsibilities under the loan, and having the borrower sign the promissory note.

(b)(1) A school participating in the FDSLP shall ensure that any information it provides to the Secretary in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(2) The information to be provided to the Secretary by the school about the borrower receiving the loan must include—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.300 and § 685.302;

(ii) The student's estimated cost of attendance for the period for which the loan is sought;

(iii) The student's estimated financial assistance for the period for which the loan is sought;

(iv) For a Federal Direct Stafford loan, the student's eligibility for interest benefits;

(v) For a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, the disbursement date(s) and disbursement amounts of the loan proceeds; and

(vi) The student's loan amount.

(3) A school may not certify a Federal Direct Stafford, Federal Direct PLUS, or Federal Direct SLS loan application, or combination of loan applications, for a loan amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.303; or

(ii) Exceeds the student's estimated cost of attendance, less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Federal Direct Stafford that is eligible for interest benefits, the borrower's expected family contribution for that period.

(4) A school may refuse to certify a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FDSLP loans because of the borrower's race, sex, color, religion, national origin, age, disability status, or income.

(5) A school may not assess a fee for the completion or certification of any FDSLP loan data.

(c) *Disbursing a loan.* (1) Before disbursing a loan, a school must determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student. A school may not ask the borrower to sign an FDSLP promissory note before it has been fully completed.

(2) A school shall establish disbursement dates for any Federal Direct Stafford or Federal Direct SLS loan as follows:

(i) Disbursements must be in two or more installments;

(ii) No installment may exceed one-half the loan; and

(iii) At least one-half of the loan period must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the loan period.

(d) *Promissory note.* (1) The Secretary provides promissory notes for use in the FDSLP and a school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school shall obtain from the borrower an executed legally enforceable promissory note as proof of the borrower's indebtedness.

(3) A school shall give the borrower and any endorser a copy of each executed promissory note.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.402 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.403 Disbursing borrowers' loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's disbursement of a borrower's Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) A school may not deliver any loan proceeds without first obtaining an executed legally enforceable promissory note from the borrower.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section, or as provided in (b)(2)(iii) of this paragraph, a school may disburse loan proceeds only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 685.300, from the beginning of the loan period certified by the school.

(ii) If, after the first disbursement is made to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may make the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iii) If, prior to when the loan is made to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make the first disbursement of the loan and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the proceeds of an FDSLP loan.* (1) Except as provided in paragraph (c)(4) of this section, the school shall, not more than 30 days prior to the first day of the loan period, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FDSLP program loan to be made, and after the student has registered either—

(i) Disburse the proceeds to the student borrower subject to paragraph (d)(3) of this section; or

(ii) Credit the student's account in accordance with paragraph (d)(2) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(3) of this section not later than 45 days after the disbursement of the funds.

(2) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 685.404(c).

(3) A school may not make the first disbursement of a Federal Direct Stafford or Federal Direct SLS loan to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Federal Direct Stafford, or Federal Direct SLS loan until 30 days after the first day of the student's program of study.

(4) The authorization statement included in the borrower's promissory note will meet the authorization statement requirement in paragraph (c)(1) of this section if the school provides a notice to the borrower within 30 days of the disbursement date informing the borrower that the FDSLP loan funds have been credited to the student's account at the school.

(d) *Disbursing FDSLP loan proceeds.* (1) A school may not make a loan if the student does not register for the loan period.

(2)(i) For purposes of paragraph (c)(1)(ii) of this section, a school may not make the first disbursement of a loan by crediting a registered student's account earlier than 3 weeks before the first day of classes of the loan period.

(ii) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(3) For purposes of paragraph (c)(1) of this section, a school may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the loan period.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in § 685.404(b) shall notify the Secretary of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the Secretary—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of any loan proceeds delivered by the school to the student.

(e) *Late disbursement.* (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the period of enrollment for which the loan was intended; or

(ii) Before the end of the period of enrollment for which the loan was intended but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school may make a late disbursement only if it has received a completed promissory note prior to whichever condition specified in paragraph (e)(1) of this section applies.

(3) Notwithstanding paragraph (e)(2), a school may not make—

(i) A late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to delayed delivery under § 685.403(c)(3);

(ii) A late second or subsequent disbursement of a Federal Direct Stafford or Federal Direct SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(iii) Any late disbursement that under 34 CFR part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(f) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Federal Direct Stafford and Federal Direct SLS borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to making the first disbursement of the proceeds of the first Federal Direct Stafford or Federal Direct SLS loan made to a borrower who has not received a Federal Stafford or Federal SLS loan for attendance at the school and shall ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or

VOL 58 ISS 126 JL 2 1993 UMI

a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming; and

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Federal Stafford, Federal SLS, Federal Direct Stafford, or Federal Direct SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Federal Direct Stafford or Federal Direct SLS loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Before the delivery of any Federal Direct Stafford or Federal Direct SLS loan disbursement, if a school learns that the borrower would receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Federal Direct SLS, Federal Direct PLUS, or State-sponsored or private loan to cover the expected family contribution, if not already done; or

(2) Reduce the disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraphs (f) and (g) were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.404 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the Secretary the date that the student has withdrawn from the school and for determining when a refund must be paid under § 685.405.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 685.402. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to the Secretary, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1) through (b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) 60 days; or

(ii) 6 months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a

physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in § 685.404 were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.405 Payment of a refund to the Secretary.

(a) *General.* By applying for an FDSLP loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to an FDSLP loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to an FDSLP loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 685.404(b)(1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 685.404(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.406 Withdrawal procedure for schools in the FDSLP.

(a) A school participating in the FDSLP may submit a written request to withdraw from the FDSLP explaining why it seeks to withdraw from participation in the FDSLP.

(b) The Secretary reviews the school's request to determine if the school has the ability to administer the FDSLP properly and notifies the school of his decision to approve or disapprove the request within 30 days of receiving the school's request.

(c) In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program.

(d) If a school's request is approved by the Secretary, the withdrawal will become effective after the June 30 following the school's request.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.407 Remedial actions.

(a) *General.* The Secretary requires a school to purchase that portion of an FDSLP loan that is unenforceable, that the borrower was ineligible to receive, or for which, contrary to the school's certification, the borrower was ineligible to receive interest subsidies. The school shall make arrangements acceptable to the Secretary for reimbursement of interest the Secretary has subsidized for any loan determined to be ineligible for interest subsidies. The Secretary requires the repayment of funds and the purchase of loans if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest subsidies, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or purchasing of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FDSLP in accordance with 34 CFR part 668, subpart G.

(e) The Secretary may take any other action necessary to enforce the Secretary's rights under the agreement specified in 34 CFR 685.400.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.408 Administrative and fiscal control and fund accounting requirements for schools participating in the FDSLP.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR Part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days—

(i) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(c) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1)(i) Shall keep all records required under the regulations in this part for 5 years following the last day of the borrower's attendance at the school;

(2) Shall keep for 5 years after completion, copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide, in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(d) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 685.103;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Federal Direct Stafford loan for which the borrower applies for interest subsidies under § 685.300, the data used to determine the student's expected family contribution;

(7) In the case of a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan—

(i) The date the school made each loan disbursement and the amount of that disbursement; and

(ii) A copy of the borrower's written authorization required under § 685.403(c)(1) to transfer the initial and subsequent disbursements of each FDSLP loan;

(8) The student's job placement, if known; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a school promptly shall provide the Secretary with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Federal Direct Stafford, or Federal Direct SLS loan has changed his or her permanent address, the school shall notify the Secretary within 30 days thereafter.

(g)(1) *Accounting requirements.* A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1). The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all of the school's other financial activities.

(2) The school shall account for receiving and expending FDSLP funds in accordance with generally accepted accounting principles.

(h)(1) *FDSLP bank account.* The school shall establish and maintain a bank account as trustee for the Secretary and the borrower for FDSLP funds. The account shall require the written approval of the borrower for each FDSLP loan for which funds are released from the account. The school shall notify in writing the bank where the FDSLP account is located that the FDSLP account contains Federal funds. This notice must be given by including the word "Federal" in the name of the school's FDSLP account. Unless the school is a State entity, the FDSLP account must be a separate bank account.

(2) Any interest earned on FDSLP funds deposited in the school's account is considered Federal funds and must be returned to the Secretary.

(i) A school shall divide the functions of authorizing payments and disbursing funds so that no single office has responsibility for both functions to borrowers under the FDSLP.

(j) Funds received by a school under this part may be used only to make FDSLP loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraphs (c) and (f) were approved by the Office of Management and Budget under control number 1840–0657)

Appendix A—Addendum to Program Participation Agreement for Participation in the Federal Direct Student Loan Program

Name of Institution _____
Address of Institution _____
IRS Employer Identification Number _____
OPE Identification Number _____

The postsecondary educational institution listed above, referred to hereafter as the "Institution" and the United States Secretary of Education, referred to hereafter as the "Secretary," agree that this addendum is made a part of the Program Participation Agreement (PPA) between the Institution and Secretary, executed for the Secretary on _____. The purpose of this addendum is to allow the Institution to participate in the Federal Direct Student Loan Program (FDSLP), authorized by title IV, part D of the Higher Education Act of 1965, as amended (the HEA).

The Institution and the Secretary agree that the following Article is added to the PPA:

"Article IVA. Federal Direct Student Loan Program—Specific Provisions

1. The Institution agrees to establish and maintain a direct loan program at the Institution, subject to the program statutes and implementing regulations of title IV, part D of the HEA, under which the Institution will:

a. Determine the eligibility in accordance with section 484 of the HEA of student and parent borrowers who seek student financial assistance at the Institution;

b. Estimate the need of each student in accordance with title IV, part F, of the HEA;

c. Originate loans to eligible students and eligible parents in accordance with title IV, part D, and not charge any administrative fees to those students or parents for the origination activities;

d. Provide timely information concerning the status of student and parent borrowers to the Secretary or the Secretary's agents for loan collection purposes;

e. Use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting information to the Secretary;

f. Participate in the FDSLP for its duration, subject to procedures for withdrawal established by section 455 of the HEA.

2. The Institution agrees that the note or evidence of obligation on the loan shall be the property of the Secretary and that the Institution will act as the agent of the Secretary for the purpose of making loans under the FDSLP.

3. The Institution will accept responsibility and liability stemming from its failure to perform its functions under this agreement.

4. The Institution agrees that students at the Institution and their parents (with respect to those students) will not be eligible to

participate in the Federal Stafford Loan program, the Federal Supplemental Loans to Students program, or the Federal PLUS loan program for the period during which the Institution participates in the FDSLP.

5. If the Secretary offers income contingent repayment and the Institution is selected by the Secretary pursuant to section 453(f) of the HEA, the Institution agrees:

a. To offer borrowers the option of income contingent repayment, based on an annual review of the borrower's Federal income tax return, to any student who applies for a loan under the FDSLP;

b. To include terms and conditions in the notes or other agreements entered into by the borrower, required by the regulations governing the FDSLP, to facilitate the testing of income contingent repayment methods, including the requirement that the borrower disclose subsequent income.

c. That the notes or other agreements entered into by the borrower will provide for the discharge of loans after not more than 25 years of income contingent repayment, as specified by the Secretary by regulations.

6. The Institution agrees to provide borrowers with the loan information specified in section 463A of the HEA.

7. The Institution will provide access to the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or persons designated by these officials, to program and accounting records.

Signature of Chief Executive Officer _____

Date _____

Print name and title _____

For the Secretary _____

Date _____

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VOL 58 ISS 126 JL 2 1993 UMI

Appendix B

SCHOOL PARTICIPATION APPLICATION

School Information

School Name: _____

School Address: _____

_____

_____

Signature and Title of School Official: _____

_____

Phone Number of School Official: _____

IRS Employer Identification Number: _____

School Code used in the Federal Family Education Loan Program: _____

Participation Information

Please check the appropriate box(es) if you would like to participate in:

☐ | the Federal Direct Student Loan Program

☐ | the Federal Family Education Loan Program control group

School Consortium Information

If applying as part of a consortium, please indicate 1) The exact name of the consortium; or 2) The lead school in the consortium:

Public Reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0657, Washington, D.C. 20503.

INSTRUCTIONS FOR APPLYING TO PARTICIPATE

A school must complete this application and submit it to the Secretary by October 1, 1993. Applications postmarked after October 1, 1993 will not be accepted. A school may apply to participate in the FDSLP, the control group, or either. The selection for schools to participate in the FDSLP will be conducted first.

Each school included as part of a consortium of schools must furnish the information requested in the application. A school that is applying as part of a consortium may not also apply individually.

Applications should be sent to:

U.S. Department of Education
Federal Direct Student Loan Program
400 Maryland Avenue, SW
2100 Corridor, L'Enfant Plaza
Washington, DC 20202-5162

[FR Doc. 93-15702 Filed 7-1-93; 8:45 am]
BILLING CODE 4000-01-C

federal register

Friday
July 2, 1993

Part V

Department of Education

34 CFR Part 692
State Student Incentive Grant Program; Proposed Rule

VOL 58 ISS 126 JL 2 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 692

RIN 1840–AB72

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the State Student Incentive Grant (SSIG) Program regulations to clarify them, to make minor technical changes, and to implement statutory changes made by the Higher Education Amendments of 1992 to the Higher Education Act of 1965, as amended (HEA).

DATES: Comments must be received on or before August 2, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fred H. Sellers, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dan Sullivan, U.S. Department of Education, 400 Maryland Avenue, SW, room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary is proposing to revise the existing SSIG Program regulations to implement statutory changes required by the Higher Education Amendments of 1992, enacted July 23, 1992 (Pub. L. 102–325) (1992 amendments), which amend the HEA. These revised regulations also propose changes to the SSIG Program regulations to reduce burden and clarify existing rules where possible.

The SSIG Program provides financial incentives for States to establish and to maintain financial assistance programs that make grants and provide work-study assistance to students with substantial financial need. The President's proposed fiscal year 1994 budget includes no funding for the SSIG Program. The SSIG Program has already achieved its purpose of encouraging States to provide financial aid to needy students, and Federal support is no longer needed. However, the Secretary is proposing regulations for this currently funded program under the requirements of the General Education Provisions Act (GEPA) (20 U.S.C. 1232).

The SSIG Program supports National Education Goal 5, which calls for every adult American to be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. A description of the proposed major changes to the SSIG Program regulations follows.

Definitions

Section 692.4(b) of the proposed SSIG Program regulations defines the terms "academic year," "institution of higher education," "postsecondary vocational institution," and "proprietary institution of higher education" as they are defined in section 481 of the HEA. These amendments to section 481 of the HEA require that the Secretary amend definitions in the Student Assistance General Provisions regulations in 34 CFR part 668. When the Secretary publishes final regulations amending these definitions, he will also amend the definitions in § 692.4(b) in the SSIG Program regulations to reference those changes.

Maximum Award

Section 692.21(c) of the program regulations has been revised to comply with amended section 415C(b)(2) of the HEA to reflect the increase in the maximum annual SSIG award that can be provided by a State to a student from $2,500 to $5,000.

Fees for Data Collection

Under amended section 415C(b)(4) of the HEA, no parent or student may be charged a fee that is payable to an entity other than a State for collecting data used to make a determination of financial need for SSIG Program purposes. Currently, many application processors who process data for SSIG Program need-analysis purposes charge a fee to the applicant for the service that is payable directly to the application processor. The Secretary is proposing to amend § 692.21 of the regulations to add this new requirement under a new paragraph (e). The Secretary also proposes to require that each State provide an assurance of compliance with this requirement on its annual application to participate in the SSIG Program. The impact of this proposed regulatory amendment will be to require the States, and the processors with whom they do business, to develop new procedures to account for such payments, if any, to comply with the new statutory requirement. The Secretary also has modified the language in the multiple data entry servicer contracts dealing with the Federal student financial aid application processing system to require that all successful offerers be in compliance with this new requirement.

Aid to Part-time and Independent Students

Amended section 415C(b)(7) of the HEA requires that if a State's allocation under this subpart is based in part on the financial need demonstrated by students who are independent students or attend their institution on a less-than-full-time basis, a reasonable portion of the State's allocation shall be made available to these students. This amendment is consistent with similar amendments to the campus-based programs in Subpart 3 of Part A, Part C, and Part E of Title IV of the HEA, in which the Congress clearly establishes its intent to make more Federal student financial aid available to part-time and independent students. This amendment is a significant change from the prior statute's language, which required a State to ensure that a reasonable portion of SSIG funds be disbursed to students who attended institutions less-than-full-time only if the State allocated funds directly to its institutions using a formula that included consideration of the financial need of these students. Most States, however, make awards directly to students and, therefore, do not allocate funds to institutions. The few States that do allocate funds to institutions include the financial need of less-than-full-time students in their allocation formula. Therefore, the previous provision affected very few States.

Amended section 415C(b)(7) of the HEA also changes the focus of this provision from using a State's SSIG formula for allocating funds to institutions, if any, to using the State's allocation from the Secretary. If the State's allocation from the Secretary is based on a formula that includes the financial need of students who are independent or attend an institution less-than-full-time, then the State must ensure that those students receive a reasonable proportion of SSIG funds. This amended provision will now affect all States, as all States make SSIG awards to independent students as well as dependent students, and several States make SSIG awards to students who attend less-than-full-time. We are proposing to implement this statutory change in § 692.21(g) of these regulations.

For the States to report uniformly to the Department on awarding a reasonable amount of SSIG funds to independent students, the Secretary is proposing to require that any State making SSIG awards use the Federal definition of "independent student" as defined in section 480(d) of the HEA.

Furthermore, the Secretary is proposing to amend § 692.41 to require that States use the term "independent student," as defined by section 480(d) of the HEA, in a State's own need-analysis system or a need-analysis system combining the State's system with the Federal system under Part F of Title IV of the HEA in order to obtain the Secretary's approval of the State's system. The Secretary believes that requiring the States to use the revised Federal definition of independent student is consistent with the intent of Congress in the 1992 amendments. The 1992 amendments strongly encourage States to use the free Federal student aid need-analysis application for their student need-analysis processing as evidenced by the "no fee payable" amendment to the SSIG statute and the amendment to section 483(a)(1) of Part G (General Provisions) of Title IV of the HEA; these permit the Secretary to include not more than eight nonfinancial data elements selected in consultation with the States to assist States in awarding State student financial assistance. This proposed change also would reduce the burden on student financial aid applicants, a major goal under the 1992 amendments.

Allotment Formula

Section 415B(a) of the program statute provides the statutory allotment formula used by the Secretary to allocate Federal SSIG funds to the States participating in the program. Under section 415B(a)(1), no State may receive less than the amount it received in fiscal year 1979, regardless of what the State is scheduled to receive under the allotment formula. However, it is impossible to allot to each State the amount it received in fiscal year 1979 when the total amount of SSIG funds appropriated for a fiscal year are less than those appropriated in fiscal year 1979. Therefore, under § 692.10(a)(2) of the program regulations, the Secretary allots to each State an amount of Federal funds that represents the same ratio to the current total appropriation as the allocation the State received in fiscal year 1979 bears to the total fiscal year 1979 appropriation for all States. Since fiscal year 1979, the SSIG appropriation has remained equal to or less than the fiscal year 1979 appropriation, and, therefore, the States have received an allocation based on this formula.

For the purpose of allocating SSIG funds to participating States, the Secretary is proposing to amend § 692.10(b) of the program regulations to redefine students who are "deemed eligible" to participate in the SSIG Program as students who were reported by the State as SSIG recipients in the most recently available performance report data. Under § 692.10(b) of the current program regulations, a student is deemed eligible to participate in a State's SSIG Program for fund allocation purposes if the student is in attendance at an institution that is eligible to participate in the State's program. Therefore, under this current definition, students who do not necessarily meet the SSIG Program eligibility requirements under § 692.40 are counted in the allotment formula.

The Secretary is proposing to change the existing broad definition to one that is narrower by counting for purposes of making allotments to States only those students who received an SSIG award in the most recent award year as reported by the State in the most recently available data. The Secretary is proposing to collect these data on the number of recipients from each State's most recent SSIG Program performance report. By using the most recently available performance report data, the States will not be required to conduct a new data collection. The Secretary invites comment on the desirability of the use of the latest available performance report data in the allotment formula process in order for a State to receive additional Federal SSIG funds above the "hold-harmless" amount.

This proposed change provides for the better use of Federal funds under the program by (1) rewarding States that have made a strong commitment of their State grant funds to the SSIG Program as reflected by the State's number of SSIG recipients and (2) encouraging States to maintain or expand their commitment to the SSIG Program and their level of expenditures for State grant programs. As another alternative, the Secretary could have proposed that the States collect the number of students in each State attending eligible institutions who meet the SSIG Program eligibility requirements under § 692.40 of the program regulations. However, the number of these students is not currently reported to the Secretary and is probably also not readily available in many States. Thus, collecting these data would be likely to increase significantly the data collection burden on the States by requiring many States to collect new data to report to the Secretary.

Furthermore, the Secretary believes that using the number of SSIG recipients as the base of the allotment formula provides an incentive for a State to expand the size of its SSIG Program in order to receive additional Federal SSIG funds above the "hold- harmless" amount. The "hold-harmless" amount of funds is the allotment each State received in fiscal year 1979 under the SSIG Program. Under section 415B(a)(1) of the program statute, if an appropriation exceeds the fiscal year 1979 appropriation, each State still would continue to receive at least its "hold-harmless" amount regardless of the results of the allotment formula. However, to exceed the allotment of funds beyond the "hold harmless" amount States would necessarily have to elect to include a higher percentage of their State grant funds under the SSIG Program, as determined by the States' number of SSIG recipients. The Secretary will allot additional SSIG funds to States above their "hold-harmless" amounts by using the following steps:

(1) Calculate the States' projected allotments by dividing each State's number of recipients by the total recipients for all States and then multiply that number by the appropriation.

(2) Compare each State's projected allotment calculated in step 1 to its "hold-harmless" amount and select only States where the projected allotment exceeds the "hold-harmless" amount.

(3) For the States selected in step 2, calculate the amount the Secretary will allot above the "hold-harmless" amount to each of these States by dividing each of the selected State's number of recipients by the total recipients for all of the selected States and then multiply that number by the amount of the appropriation above the total "hold-harmless" amount. Consequently, the Secretary believes that these States that have made a greater commitment to the SSIG Program would be rewarded.

The Secretary also believes that encouraging the inclusion of additional State funds in the SSIG Program stabilizes the grant funds available to students from the States and promotes the best use of Federal funds by encouraging the expansion of State grant assistance. In four recent instances, for example, State funding was maintained, or a former reduction in funding was increased in the following award year, as a result of the SSIG matching requirements.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive

Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. State and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 692.21 of the SSIG Program regulations contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department will submit a copy of these sections to OMB for its review. (44 U.S.C. 3504(h))

The public reporting and recordkeeping burden for the information collection required under § 692.21 of this notice of proposed rulemaking is estimated to average one-half hour per State.

Organizations and individuals desiring to submit comments on the information collection requirements contained in this notice should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington DC, 20503; Attention: Daniel Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there might be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 692

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.096, State Student Incentive Grant Program.)

Dated: June 24, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 692 of title 34 of the Code of Federal Regulations as follows:

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

1. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c through 1070c-4, unless otherwise noted.

* * * * *

2. Section 692.3 is amended by revising paragraphs (b) and (d) and the authority citation to read as follows:

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (Ineligibility of Certain Individuals to Receive Assistance).

(2) 34 CFR Part 76 (State-Administered Programs).

(3) 34 CFR Part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Deberment and Suspension [Nonprocurement] and Governmentwide Requirements for Drug-Free Workplace [Grants]), and

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

(d) The Student Assistance General Provisions in 34 CFR Part 668.

(Authority: 20 U.S.C. 1070c–1070c-4)

3. In § 692.4, paragraph (a) is amended by removing the terms, "Academic year (§ 668.2)", "Campus-based programs (§ 668.2)", "Guaranteed Student Loan Program (§ 668.2)", "Income Contingent Loan Program (§ 668.2)", "Pell Grant Program (§ 668.2)", "PLUS Program (§ 668.2)", and "Postsecondary vocational institution (§ 668.5)"; by redesignating paragraph (b) as paragraph (c); and by adding a new paragraph (b) to read as follows:

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

* * * * *

(b) *Definitions in the HEA.*

(1) The following term used in this part is defined in section 480(d) of the HEA:

Independent student

(2) The following terms used in this part are defined in section 481(a), (b), (c) and (d) of the HEA:

Academic year
Institution of higher education
Postsecondary vocational institution
Proprietary institution of higher education

* * * * *

4. Section 692.10 is amended by revising paragraph (b) to read as follows:

§ 692.10 How does the Secretary allot funds to the States?

* * * * *

(b) For the purpose of paragraph (a)(1) of this section, a student is "deemed eligible" to participate in a State's SSIG Program if the student was a recipient of an SSIG award as reported by the State in the most recently available data.

5. Section 692.21 is amended by removing the periods after paragraphs (a) and (d); adding semi-colons after paragraphs (a) and (d); redesignating paragraphs (e), (f), (g), (h), and (i) as paragraphs (f), (g), (h), (i), and (j), respectively; adding a new paragraph (e); and revising paragraphs (b), (c), and (g) to read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(b) Provides assistance only to students who meet the eligibility requirements in § 692.40;

(c) Provides that assistance under this program to a full-time student will not be more than $5,000 for each academic year;

* * * * *

(e) Provides that no student or parent shall be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need in

accordance with paragraph (d) of this section;

* * * * *

(g) Provides that, if a State awards grants to independent students or to students who are less-than-full-time students enrolled in an institution of higher education, a reasonable portion of the State's allocation must be awarded to those students;

* * * * *

§ 692.30 [Amended]

6. Section 692.30 is amended by removing the first of the duplicate paragraphs (e)(2).

7. Section 692.41 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; by designating the undesignated introductory text as paragraph (a); by revising newly redesignated paragraph (a)(1); and by adding a new paragraph (b), to read as follows:

§ 692.41 What standards may a State use to determine substantial financial need?

(a) * * *

(1) A system for determining a student's financial need under Part F of Title IV of the HEA;

* * * * *

(b) The Secretary approves a need-analysis system under paragraph (a)(2) or (3) of this section only if the need-analysis system applies the term "independent student" as defined under section 480(d) of the HEA.

* * * * *

[FR Doc. 93–15645 Filed 7–1–93; 8:45 am]

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VOL
58
ISS
1
2
6
JL
2
1993
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federal register

Friday
July 2, 1993

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, 135

Standards for Approval of a Wet Runway Reduced V_1 Methodology for Takeoff on Wet and Contaminated Runways; Proposed Rule

VOL
58
ISS
126
JL
2
1993
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 25471; Notice No. 87-13]

RIN 2120-AB17

Standards for Approval of a Wet Runway Reduced V_1 Methodology for Takeoff on Wet and Contaminated Runways

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to amend the Federal Aviation Regulations (FAR) by adding new standards for transport category airplanes to increase safety for rejected takeoffs from wet and contaminated runways. The FAA has determined that an alternative approach, intended to make the current takeoff airworthiness standards more rational, will be used to address rejected takeoffs on wet runways in a future rulemaking proposal.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Flight Test and Systems Branch (ANM-111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone (206) 227-1129.

SUPPLEMENTARY INFORMATION: On November 30, 1987, the FAA published Notice of Proposed Rulemaking (NPRM) 87-13 (52 FR 45578) proposing to amend parts 25, 121, and 135 of the Federal Aviation Regulations. Notice 87-13 proposed adding new standards for transport category airplanes to increase safety for rejected takeoffs from wet and contaminated runways. Slippery runways have been identified as a contributing factor in a number of rejected takeoff accidents. The available braking friction is reduced on a slippery runway, resulting in the airplane requiring a longer distance to stop. Notice 87-13 proposed lowering the takeoff decision speed, V_1, by allowing a reduced height over the end of the runway for a continued takeoff. This reduced V_1 methodology would have made more runway length available for stopping on a slippery runway.

Since publication of notice 87-13, the FAA has been involved in a review of the takeoff airworthiness standards, including the effect of slippery runways. As a result, the FAA intends to propose improved standards for determining rejected takeoff performance, including accounting for the effect of wet runways, in a future rulemaking. Accordingly, Notice of Proposed Rulemaking 87-13, Docket No. 25471, published in the **Federal Register** on November 30, 1987 (52 FR 45578), is withdrawn.

Issued in Washington, DC on June 25, 1993.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service

[FR Doc. 93-15721 Filed 7-1-93; 8:45 am]

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35357-35840
35841-36116

Reader Aids

Federal Register

Vol. 58, No. 126

Friday, July 2, 1993

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447
Code of Federal Regulations	
Index, finding aids & general information	523–5227
Printing schedules	523–3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230
Presidential Documents	
Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230
The United States Government Manual	
General information	523–5230
Other Services	
Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

5 CFR

581.....35845

7 CFR

2.....35359
1097.....34359
1098.....35361
1099.....34362

8 CFR

245.....35832

12 CFR

710.....35363

14 CFR

39.....35860
Proposed Rules:
25.....36116
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905
121.....36116
135.....36116

16 CFR

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
249.....35367

18 CFR

Proposed Rules:
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008
416.....36059

21 CFR

Proposed Rules:
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416

26 CFR

Proposed Rules:
31 (2 documents).....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908

28 CFR

0.....35371
55.....35371

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400

34 CFR

378.....35762
685.....36008
Proposed Rules:
692.....36110

40 CFR

228.....35884

VOL
58
ISS
126
JL
2
1993
UMI

Proposed Rules:
88.....35420

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

47 CFR

73 (3 documents).....35409, 35410

Proposed Rules:
73 (3 documents).....35420, 35421

49 CFR

Proposed Rules:
543.....35422

50 CFR

17.....35887
625.....35891
646.....35895
658.....35897
672.....35897
675.....35897

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 890/P.L. 103–44

To amend the Federal Deposit Insurance Act to improve the procedures for treating unclaimed insured deposits, and for other purposes. (June 28, 1993; 107 Stat. 220; 3 pages)

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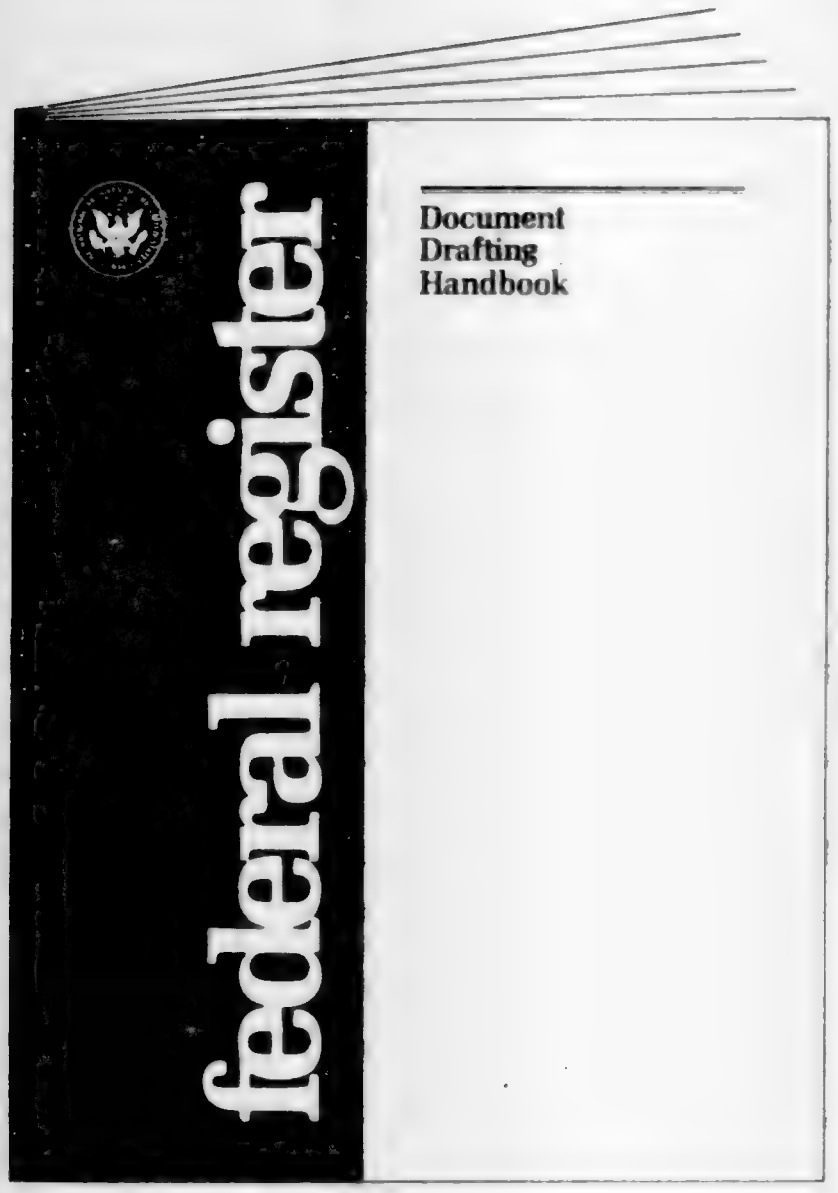

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JL
6
1993
UMI

7-6-93
Vol. 58
Pages 3

7–6–93
Vol. 58 No. 127
Pages 36117–36300

federal register

Tuesday
July 6, 1993

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

VOL
58
ISS
1
2
7
JL
6
1993
UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

WHEN: July 15 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Cont

Agricult
See Com
See Rura

Antitrust
NOTICES
National
Inter C
36

Army De
See Engi
NOTICES
Environm
Ground
36
Military
Defens
Patent lic
exclu
Youde

Coast Gu
RULES
Ports and
Tanker
sys

Commer
See Natio

Commod
RULES
Loan and
Sugar a
36

Commod
NOTICES
Meetings;

Defense
See Army
See Engi
See Navy

Energy D
See Feder
See Heari
RULES
Acquisiti
Collecti
pro
cor
NOTICES
Floodplai
deter
Middle
Grant and
Nationa

Contents

Federal Register

Vol. 58, No. 127

Tuesday, July 6, 1993

Agriculture Department
See Commodity Credit Corporation
See Rural Electrification Administration

Antitrust Division
NOTICES
National cooperative research notifications:
Inter Company Collaboration for Aids Drug Development, 36223

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Ground based radar family of strategic and theater radars, 36187
Military traffic management:
Defense Transportation Tracking System (DTTS), 36188
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Youden, et al.; grinding apparatus, 36188

Coast Guard
RULES
Ports and waterways safety:
Tankers; autopilots expanded use in integrated navigation systems; suspension, 36141

Commerce Department
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Loan and purchase programs:
Sugar and crystalline fructose; marketing allotments, 36120

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 36250

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
RULES
Acquisition regulations:
Collective bargaining agreements, arbitration for protection services and management and operating contracts, 36149
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Middlesex Sampling Plant et al., NJ, 36192
Grant and cooperative agreement awards:
National Govenors' Association, 36192

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Big Sunflower River Basin Project, MS; flood control study, 36189
Meetings:
Inland Waterways Users Board, 36189

Environmental Protection Agency
RULES
Water pollution control:
Water quality standards; priority toxic pollutants, numeric criteria; State compliance, 36141
PROPOSED RULES
Superfund program:
Toxic chemical release reporting; community right-to-know—
Glycol ethers category, 36180
NOTICES
Committees; establishment, renewal, termination, etc.:
Hazardous Waste Identification Committee, 36200
Superfund; response and remedial actions, proposed settlements, etc.:
Reese Air Force Base, 36201
United Refrigerated Services, Inc , 36202

Executive Office of the President
See Office of Policy Development
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airspace designations; incorporation by reference, 36298
Airworthiness directives:
Aerostar Aircraft Corp., 36131
Cessna, 36130
PROPOSED RULES
Airspace reclassification, 36157, 36158
NOTICES
Grants and cooperative agreements; availability, etc.:
Airway science program, 36243

Federal Communications Commission
RULES
Common carrier services:
Access charges—
Local exchange carriers subject to rate of return regulation; reform, 36145
Name and address billing; tariff requirements, 36143
Uniform systems of account for record carriers, 36142
PROPOSED RULES
Radio broadcasting:
AM directional antennas; proof-of-performance evaluation policies and procedures, 36184
NOTICES
Rulemaking proceedings; petitions filed. granted, denied, etc., 36203

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Special assessments; accounting and ratemaking treatment, 36172

VOL
58
ISS
127
JL
6
1993
UMI

NOTICES
Electric utilities (Federal Power Act):
Special assessments; accounting and ratemaking treatment, 36193
Applications, hearings, determinations, etc.:
Northern Electric Power Co., L.P., 36194
Panhandle Eastern Pipe Line Co., 36194
Sonat Marketing Co., 36195
Williston Basin Interstate Pipeline Co., 36195

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Selby County et al., TN, 36244

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36203
Organization, functions, and authority delegations:
Tariffs, Certification, and Licensing Bureau, Director, 36204

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 36250
Applications, hearings, determinations, etc.:
BB&T Financial Corp. et al., 36204
Laddie Cimpl Revocable Trust/Doris Cimpl Revocable Trust, 36205

Federal Transit Administration
NOTICES
Meetings:
Transit Technology Program Advisory Committee, 36244

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 36184
NOTICES
Endangered and threatened species permit applications, 36219

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Trimethoprin and sulfadiazine oral powder, 36134
Color additives:
1,4-bis[4-(2-methacryloxyethyl)phenylamino]anthraquinone copolymers; contact lenses coloring
Correction, 36134
PROPOSED RULES
Medical devices:
Cardiovascular devices; nonroller-type cardiopulmonary bypass blood pump; premarket approval, 36290
NOTICES
Debarment orders:
Sturm, Jan T.; correction, 36252
Food labeling regulations, regulatory flexibility analysis; availability, 36205
GRAS and prior-sanctioned ingredients:
Donath-Kelterei; withdrawn, 36206
Medical devices; premarket approval:
MFL5000 Lithotripter, 36206
Silicone devices affected by withdrawal of Dow Corning silastic materials; alternative review procedure guidance availability, 36207

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 36205

General Services Administration
NOTICES
Agency information collection activities under OMB review, 36205

Geological Survey
NOTICES
Grant and cooperative agreement awards:
Agriculture Department et al., 36219

Health and Human Services Department
See Food and Drug Administration
See Indian Health Service
See Public Health Service
See Social Security Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 36195
Decisions and orders, 36197, 36199

Housing and Urban Development Department
PROPOSED RULES
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation, and rental voucher programs, 36175
Real Estate Settlement Procedures Act; implementation:
Agency review and hearing, 36176
NOTICES
Grants and cooperative agreements; availability, etc.:
Flexible subsidy program; operating assistance and capital improvement loan components, 36217
Public and Indian housing—
Family unification demonstration program, 36266
Youth sports program, 36254

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Chitimacha Tribe, LA, 36264

Indian Health Service
NOTICES
Privacy Act:
Systems of records, 36208

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Nationwide Tax Forum (1993); conferences and exhibitions, 36248

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Boston & Maine Corp. et al., 36221, 36222

Justice Department
See Antitrust Division
See Prisons Bureau
NOTICES
Pollution control; consent judgments:
Oconomowoc Electroplating Co., Inc., 36222

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Colorado, 36218

National Aeronautics and Space Administration
PROPOSED RULES
Civil Space Employee Testing Act of 1991; implementation:
Alcohol and drug testing programs, 36159

National Commission on Judicial Discipline and Removal
NOTICES
Meetings, 36224

National Council on Disability
NOTICES
Meetings; Sunshine Act, 36250

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Child restraint systems—
Add-on (portable) child restraint system; labeling flexibility, 36152
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 36246
Motor vehicle safety standards; exemption petitions, etc.:
Hackney & Sons, Inc., 36244

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
South Atlantic snapper-grouper, 36155
Tuna, Atlantic bluefin fisheries, 36154
NOTICES
Permits:
Endangered and threatened species, 36187

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 36220

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 36189, 36191
Patent licenses; non-exclusive, exclusive, or partially exclusive:
San Doil Co., 36191

Office of Policy Development
NOTICES
Meetings:
President's Council on Sustainable Development, 36249

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
RULES
Personnel actions; agency authority, 36119
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 36224

Presidential Documents
PROCLAMATIONS
Special observances:
Youth Sports Program Day, National (Proc. 6576), 36117

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
Worcester County, MA, 36223

Public Health Service
See Food and Drug Administration
See Indian Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 36214
President's Council on Physical Fitness and Sports; memorandum of agreement; termination, 36215

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc.; correction, 36248

Rural Electrification Administration
RULES
Telecommunications standards and specifications:
Digital, stored program controlled central office equipment (Form 522); general specification Correction, 36252

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 36227, 36228
Boston Stock Exchange, Inc., 36229
Cincinnati Stock Exchange, Inc., 36231
Midwest Securities Trust Co., 36232
Options Clearing Corp., 36232
Options Clearing Corp. et al., 36234, 36238
Philadelphia Stock Exchange, Inc., 36239, 36240

Social Security Administration
RULES
Social security benefits:
Disability and blindness determinations—
Cardiovascular system listing; expiration date extension, 36133

VOL 58 ISS 127 JL 6 1993 UMI

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list
Withdrawals, 36215

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 36135
Pennsylvania, 36139
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 36177, 36178

Trade Representative, Office of United States
NOTICES
Japan:
Omnibus Trade and Competitiveness Act of 1988; contract awards by Federal agencies for products and services; prohibition, 36227
Unfair trade practices, petitions, etc.:
Japan; construction, architectural, and engineering services procurement, 36226

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 36242
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36242
Hearings, etc.—
Chicago Express Airlines, Inc., 36243
UFS, Inc., 36243

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 36248

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Joan Miro, 36249

Veterans Affairs Department
NOTICES
Privacy Act:
Computer matching programs, 36249

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 36254

Part III
Department of the Interior, Bureau of Indian Affairs, 36264

Part IV
Department of Housing and Urban Development, 36266

Part V
Department of Transportation, Federal Aviation Administration, 36290

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PAR

A cumulati
Reader Aid

3 CFR
Proclamatio
6576.....
5 CFR
230.....
250.....
7 CFR
1435.....
1755.....
14 CFR
39 (2 docu
71.....
Proposed R
71 (2 docu
1272.....
18 CFR
Proposed R
35.....
20 CFR
404.....
21 CFR
73.....
510.....
520.....
Proposed R
870.....
24 CFR
Proposed R
888.....
3500.....
30 CFR
920.....
938.....
Proposed R
935 (2 docu
33 CFR
164.....
40 CFR
131.....
Proposed R
372.....
47 CFR
1.....
34.....
35.....
43.....
61 (2 docur
64.....
65.....
69 (2 docur
Proposed Ru
73.....
48 CFR
922.....
937.....
952.....
970.....
49 CFR
571.....
50 CFR
285.....
646.....
Proposed Ru
17.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6576.....36117

5 CFR
230.....36119
250.....36119

7 CFR
1435.....36120
1755.....36252

14 CFR
39 (2 documents).....36130, 36131
71.....36298
Proposed Rules:
71 (2 documents).....36157, 36158
1272.....36159

18 CFR
Proposed Rules:
35.....36172

20 CFR
404.....36133

21 CFR
73.....36134
510.....36134
520.....36134
Proposed Rules:
870.....36290

24 CFR
Proposed Rules:
888.....36175
3500.....36176

30 CFR
920.....36135
938.....36139
Proposed Rules:
935 (2 documents).....36177, 36178

33 CFR
164.....36141

40 CFR
131.....36141
Proposed Rules:
372.....36180

47 CFR
1.....36142
34.....36142
35.....36142
43.....36142
61 (2 documents).....36143, 36145
64.....36143
65.....36145
69 (2 documents).....36143, 36145
Proposed Rules:
73.....36184

48 CFR
922.....36149
937.....36149
952.....36149
970.....36149

49 CFR
571.....36152

50 CFR
285.....36154
646.....36155
Proposed Rules:
17.....36184

VOL
58
ISS
127
JL
6
1993
UMI

Federal
Vol. 58
Tuesday

Title

The

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

Presidential Documents

Title 3—

The President

Proclamation 6576 of July 1, 1993

National Youth Sports Program Day, 1993

By the President of the United States of America

A Proclamation

The National Youth Sports Program (NYSP) provides economically disadvantaged children between the ages of 10 through 16 opportunities to earn and learn self-respect through a comprehensive sports and educational instruction program. Today, in its 25th year, the NYSP serves more than 69,000 young people at 173 colleges and universities in 44 States and the District of Columbia.

The children who participate in the program receive supervised training in sport competitions, personal health care, proper nutrition, and free medical and follow-up examinations. They obtain information on drug and alcohol abuse and are taught about good study habits. Career and educational opportunities in math and science are also offered. In addition to the benefits provided to the children, the NYSP enables staff at the participating institutions to become involved in their communities and in providing solutions to community problems.

For more than 25 years, the NYSP has worked to develop effective partnerships with several Federal agencies and departments and with the Nation's colleges and universities acting through the National Collegiate Athletic Association. These unique partnerships have allowed Federal funds to be used to provide direct services for youth, have enabled institutions to contribute their facilities and personnel, and have permitted public and private businesses to donate equipment and supplies needed for the children to participate in the program during the summer.

By utilizing competitive sports as a means of expression, it has allowed these children to express their pain and deal with their difficult living conditions in a positive way, rather than in a self-destructive manner. For many of these children, a sense of accomplishment and empowerment has taken the place of despair. I urge all Americans to join me on this special day to celebrate the significant gains that NYSP's 25 years of service has provided to these children.

The Congress, by Senate Joint Resolution 88, has designated July 1, 1993, as "National Youth Sports Program Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 1, 1993, as National Youth Sports Program Day. I call upon all Americans to observe this day by demonstrating their respect for all those individuals who participate so successfully in these programs and by showing gratitude for those who unselfishly share their experiences, skills, and talents with the disadvantaged youths who participate in NYSP activities across the country.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-16038
Filed 7-1-93; 3:21 pm]
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VOL 58 ISS 127 JL 6 1993 UMI

Rule

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The Code
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SUMMARY:
Managem
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comments

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Rules and Regulations

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230 and 250

RIN 3206–AA66

Organization of the Government for Personnel Management; Personnel Management in Agencies

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting in part its proposed regulations to reorganize and consolidate regulations contained in parts 230 and 250. The changes are part of OPM's effort to streamline its regulations and represent a move toward structural consistency between them and title 5 of the United States Code. Specifically, this revision transfers the regulations in subpart B of part 230 relating to the exercise of agency authority to take personnel actions to 5 CFR part 250, subpart A. The regulations in subpart D of part 230 relating to agency authority to take personnel actions in a national emergency are not transferred to subpart B of part 250, as was indicated in the proposed regulations. Changes to these subpart D regulations, if any, will be made as part of a future OPM review of its national security emergency preparedness program regulations and guidance. Consideration will be given in that review to subpart D issues raised in comments on the proposed rule.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Oland, (202) 606–2458.

SUPPLEMENTARY INFORMATION: The changes effected by this final rule were published for comment at 56 FR 21330 on May 8, 1991, and distributed to heads of Departments and Independent Establishments in Federal Personnel Manual Bulletin 250–14 on May 23, 1991. In the 60-day period provided for comment ending on July 8, 1991, OPM received comments from a labor organization, the American Federation of Government Employees (AFGE), and from an agency, the Department of Defense (DOD). OPM also received written comments from the Federal Emergency Management Agency (FEMA) following the close of the formal 60-day comment period.

AFGE suggested that delegation agreements addressed in § 250.102 of the proposed regulations be identified specifically as those which are made between OPM and agency headquarters. While delegations usually are granted at the headquarters level, in some situations they may be delegated to a lower level in the agency. Therefore, we have not adopted the suggestion because it would not cover all situations for which these regulations are intended to apply.

AFGE also suggested that § 250.103 be revised by using the wording in the current regulation; namely, that the word "action" be followed by the qualifying phrase "under a delegated agreement" . . . This change is not adopted because OPM's enforcement authority for regulations it administers extends beyond agency actions taken under delegation agreements.

AFGE, DOD, and FEMA suggested several changes to the proposed subpart B of part 250. As noted in the Summary above, these comments will be considered in a future OPM review of its national security emergency preparedness program regulations and guidance, including part 230, subpart D, where the regulations commented on currently reside.

Related guidance in Chapters 230 and 250 of the Federal Personnel Manual also will be revised and updated as part of this effort. Comments and suggestions for improving this FPM guidance are welcome.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to the internal management of Federal agencies and does not substantively change existing regulations.

List of Subjects

5 CFR Part 230

Civil defense, Government employees.

5 CFR Part 250

Authority delegations (Government agencies), Civil defense; Government employees.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR parts 230 and 250 as follows:

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

1. The authority citation for part 230 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

2. In part 230, subpart B is removed and reserved.

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

3. The authority citation for Part 250 is revised to read as follows:

Authority: 5 U.S.C. 1101 note, 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218.

4. Part 250 is amended by revising subpart A to read as follows:

Subpart A—Authority for Personnel Actions in Agencies

Sec.

250.101 Standards and requirements for agency personnel actions.
250.102 Delegation agreements.
250.103 Taking corrective action or suspending or withdrawing agency authority.

Subpart A—Authority for Personnel Actions in Agencies

§ 250.101 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by OPM in the Federal Personnel Manual, and the provisions of any agreement development between OPM and the

VOL
58
ISS
127
JL
6
1993
UMI

agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of an order of a Court or a settlement agreement, or a decision or order of or a settlement agreement or an arbitral award reached under the labor arbitration process or the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or OPM, the agency shall follow the instructions in Federal Personnel Manual Chapter 296, and must comply with all other relevant substantive and documentary requirements, including those applicable to retirement, life insurance, and health benefits.

§ 250.102 Delegation agreements.

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency and OPM. The agreement will set forth the conditions for application of the delegated authorities. The agreement will include a description of minimum standards of performance and the system of oversight to be used by the agency and by OPM in monitoring the use of each delegated authority.

§ 250.103 Taking corrective action or suspending or withdrawing agency authority.

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard which OPM administers, it may require the agency to take corrective action. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when it finds that the agency has not complied with qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter; or that the suspension or withdrawal is in the interest of the service for any other reason. OPM may suspend or revoke a delegation agreement established under § 250.102 at any time, if it judges that the agency is not adhering to the provisions of the agreement.

[FR Doc. 93–15806 Filed 7–2–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth regulations to implement the provisions of part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), with respect to marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996.

DATES: This interim rule is effective June 30, 1993. Comments must be received on or before August 5, 1993, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to the Deputy Administrator for Program Analysis (DAPA), Agricultural Stabilization and Conservation Service (ASCS), room 3090, South Agriculture Building, U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday except holidays, in room 3727, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, ASCS; telephone: 202–720–3391.

SUPPLEMENTARY INFORMATION: As a result of extensive comments on, and changes to, the proposed rule, the Commodity Credit Corporation (CCC) has chosen not to make the proposed rule final but to provide further opportunity for comments. However, CCC has determined that an interim rule should be promulgated in order to permit the immediate implementation of marketing allotments if necessary.

Executive Order 12291 and Departmental Regulation 1512–1

This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "major" rule. It has been determined that the provisions of this interim rule may result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States (U.S.)-based enterprises to compete in domestic or export markets.

Regulatory Flexibility Act

It has been determined the Regulatory Flexibility Act is applicable to this interim rule. A Final Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular marketing allotment options considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Final Regulatory Impact Analysis describing the options considered in developing this interim rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases; 10.051.

Paperwork Reduction Act

The amendments to 7 CFR part 1435 set forth in this interim rule impose information collection and reporting requirements on the public. The information collection requirements have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The public reporting

burden for these collections of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and computing and reviewing the collection of information.

Executive Order 12372 and Executive Order 12778

The programs covered by this interim rule are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule preempt State law to the extent such laws are inconsistent with the provisions of this interim rule. This interim rule is not retroactive. Before any action may be brought regarding the provisions of this interim rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

Statutory Background

Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Act"), which was enacted on November 28, 1990, amended subtitle B of title III of the 1938 Act to provide, in a new part VII, under certain circumstances, for the establishment of marketing allotments for sugar and crystalline fructose for fiscal years 1992 through 1996. Section 111 of the Food, Agriculture, Conservation, and Trade Amendments Act of 1991 (the "Technical Corrections Act"), which was enacted on December 13, 1991, amended several portions of the 1938 Act's marketing allotment provisions. Public Law 102–535, which was enacted on October 27, 1992, further amended provisions pertaining to penalties for producers in Louisiana who harvest acreage in excess of proportionate shares.

Summary of Comments

A proposed rule to implement the 1938 Act's provisions for sugar marketing allotments was published on March 25, 1993 (58 FR 16126). Forty-two comments were received from interested persons regarding the proposed regulations: 14 from sugar beet grower organizations, 9 from sugar beet refining companies, 4 from members of the cane industry, 3 from farm bureaus, 3 from members of Congress, 3 from the corn sector, 2 from foreign interests, 1 from a sugar beet grower, 1 from a sugar user group, 1 from a sugar trader, 1 signed by 8 beet processing companies, and 1 signed by representatives of the entire cane sugar industry, 2 sugar beet processing companies, and 1 State sugar beet growers' association.

Discussion of Comments

1. The major issue addressed in the comments was the 3-factor criteria used to establish the percentage factors for splitting the overall marketing allotment between the cane and beet sectors. Thirty-nine comments dealt with the weights to be assigned to each of the 3 criteria—past marketings, processing capacity, and ability to market. Recommendations for weights varied greatly. Nine comments recommended that "past marketings" should carry the most weight, from 80 to 100 percent, but 6 comments suggested that "past marketings" should be given equal or less weight than the other two criteria. Recommended weights for "ability to market" were 100 percent, 80 percent, 45 percent, 33⅓ percent, and 0 percent. Recommended weights for "processing capacity" were 45 percent, 33⅓ percent, 15 percent, and 0 percent. Six comments favored flexibility in assignment of weights for a variety of reasons, while four comments opposed flexibility.

CCC continues to believe that the weights for the 3-factor criteria provided in the proposed rule—33⅓ percent for each of the 3 criteria—are appropriate for the purposes of the statute. The appropriateness is based on the view that all three components of the U.S. sugar processing industry—sugar beet processors, sugarcane processors, and cane sugar refiners—serve necessary roles. At the same time, Congress did not intend that the industry be rigidly frozen in fixed market shares but intended to allow for the evolutionary growth of competition.

At 100-percent weight for "past marketings", beet sugar's share would be about 51 percent, and cane sugar's share would be about 49 percent. At 100-percent weight for "ability to market, beet sugar's share would rise to 54 percent, and cane sugar's share would drop to around 46 percent. However, the statute does not permit 100-percent weight to any one factor; all 3 factors are required to be used. Equal weights for the 3-factor criteria would provide beet sugar about 53 percent of the overall allotment and cane sugar about 47 percent. Because beet sugar now accounts for some 56 percent of U.S. sugar production, marketing allotments using equal weights would result in surplus beet sugar that cannot be marketed in the United States, whereas cane sugar would be in deficit relative to its allotment. The margin of deficit, if not reassigned, would benefit cane refiners in the form of additional imports above the level of 1.25 million tons, raw value.

2. Recommendations also varied on the definitions for the 3-factor criteria. CCC believes that the definitions of the 3-factor criteria are intended to provide a balance and should be viewed not as isolated categories but as a totality. While "past marketings" from the 1985–89 crops is a fixed quantity, "processing capacity" will vary over time, and "ability to market" provides the most current but changeable criterion.

Five comments wanted "past marketings" to be defined as the average of marketings from the two highest crop years in the base period (1985–89), while one comment suggested a 2-year "weighted" moving average. Two comments favored the average of all the 5 years in the base period, and one recommended an average of the 5 crop years preceding the current crop.

The 1938 Act requires that "past marketings" be defined as the average of marketings from the two highest 1985–89 years for purposes of determining State cane allotments, but it is silent on how the 1985–89 years are to be used for dividing the overall marketing allotment between the beet and cane sectors or for making allocations among processors. CCC proposed to define "past marketings" as the average of the 1985–89 years, excluding the highest and lowest crop-years. CCC continues to believe that such an olympic average is more representative of the 1985–89 period than the average of the two highest crop years or the average of all five years. CCC has no discretion to define past marketings so as to include crop years outside of the statutorily prescribed 1985–89 base period.

Four comments concerned the definition of "processing capacity", with two favoring the highest crop year in the 1985–89 base period, one preferring the highest crop in the most recent 5-year period including the current crop, and another preferring the highest crop in the most recent 3-year period.

CCC believes that the 1985–89 base period has little relevance to current plant capacity and that the inclusion of production for the current crop year would have the tendency to exaggerate capacity. The current crop can be grossly unpredictable, particularly if estimates are made early in the fiscal year. Furthermore, an allowance for the most-up-to-date potential production is already included in the third factor ("ability to market").

One comment wanted to exclude sugar from desugared molasses in the definition of "ability to market".

CCC recognizes that desugaring technology has been developed and implemented. Sugar produced through this new process cannot be ignored any more than sugar produced through older technologies.

3. Twenty-two comments were received regarding allocations of the marketing allotments.

CCC had asked for comments on the sale, lease, or auction of allocation rights. Three comments opposed the auction, sale, or lease of allotments, seven more comments opposed the auction of allotments, and only 5 comments were in favor of any of these three actions.

The disposition of the allocation of a facility closing or curtailing operations was a concern of 3 comments. Their recommendations were (1) transfer the allocation to nearby processors who can service affected sugar beet growers, (2) transfer each grower's production history to other processors in the same State, and (3) divide production history among the entire beet and cane industry rather than one sector.

Under the provisions in the 1938 Act, allocations are not made on a facility basis but rather on a processor basis and allotments are made on the basis of sectors and cane States. The closure of a facility would not immediately affect any of the data used to determine the percentage factors for dividing the overall allotment quantity among the beet sugar and cane sugar sectors or the division of the cane sugar allotment among the five cane sugar States, except to the extent that it reduces the sector's or State's ability to market sugar. Even at the processor level, a plant closing would have no effect on past marketings and would reduce processing capacity after five years, if the former production by the closed facility were not offset by increased production at other facilities owned by the processor. Once a facility is shut down, CCC would have to assess whether the processor's ability to market would be affected, and if the processor were placed in a "deficit" due to the closure of a facility, CCC would reassign the deficit according to the normal procedures.

Two comments recommended that sugar from desugared molasses be given lower priority in allocations and 1 comment suggested that allocations be assigned to molasses desugaring plants rather than to the plant that was the original source of the molasses.

CCC will treat sugar derived from desugaring molasses on the same basis as any other sugar is treated, and its production will affect the allocation of the processor who produces it.

One comment called for allowances for new processors. CCC notes that the sugar marketing allotment provisions of the 1938 Act do not provide for special treatment for new entrants. Such processors will be unable to acquire a past marketings status but may acquire processing capacity and the ability to market sugar.

Regarding a "minimum" allocation, 1 comment opposed any minimum while another comment requested that a minimum allocation be guaranteed so as to permit the financial viability of a company. CCC will allocate allotments according to the criteria mandated by the 1938 Act without providing an absolute guarantee of a minimum allocation to any processor.

4. Several comments pointed out that the proposed rule would require the "payback" of a processor's excess marketings over an allocation by the sector (beet or cane) in the next year when marketing allotments are in effect. CCC accepts that the statute provides for payback by the processor but not by the sector as a whole and has rewritten the regulations accordingly. Since such paybacks would essentially result in a deficit in the year in which they are required, CCC will reassign any payback amounts according to the rules for reassigning deficits in order to avoid shorting the market.

Two comments suggested that the payback penalty for any marketing in excess of an allocation should be absolved if marketing allotments are not in effect in the immediately next fiscal year. However, the 1938 Act explicitly states that such penalty be imposed in the next year allotments are in effect, even if an interval occurs in allotment years.

5. For the definition of "sugar", 5 comments wanted liquid fructose derived from sucrose to be excluded, 2 comments wanted invert sugar to be included in the definition, and 2 wanted invert sugar to be excluded.

CCC's view, based on well-established definitions of sugar and sucrose, is that invert sugar and fructose from sucrose are sugar, rather than sugar products. Sugar products which are not subject to allotment would consist of products, other than sugar, whose majority content is not sucrose or which are not suitable for human consumption. Permitting invert sugar and liquid fructose derived from sucrose to be exempt from marketing allotments would be a circumvention of the purposes of the statute.

6. Seven comments claimed that the proposed timing for a hearing on the allocations was too short. Recommendations ranged from the 5th to the 15th work day after the request for the hearing, and 1 comment wanted a comment period prior to the hearing and another after the hearing. CCC agrees that the proposed timing for a hearing on the allocations was too rigid and has deleted the specific time by which a hearing will be held after the request for such a hearing and will schedule such hearing based upon all relevant factors that exist at that time.

7. There were 6 comments on reassignment of deficits. Three of the comments involved the timing of a processor's certification of a deficit: 2 recommended 45 days prior to the end of the fiscal year, and 1 recommended within 10 days of the allocation.

The proposed rule did not specify, but the 1938 Act states, that the Secretary, from time to time, shall determine whether any processor will be unable to fill its allocation. CCC believes that 45 calendar days is too close to the end of the fiscal year to permit sufficient opportunity for reassignments and the logistical requirements involved. Instead, CCC would assess the data submitted by each sugar processing company together with other USDA information, from time to time, to determine and reassign the deficits to other processors with due consideration of current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors.

8. Some beet processors indicated that, in the event of marketing allotments, imports should not exceed 1.25 million tons. The 1938 Act clearly states, however, that in the event processors have a deficit which cannot be filled by other processors in the same sector (beet or cane), such deficit will be reassigned to imports, without any requirement that imports cannot exceed 1.25 million tons.

9. Two comments questioned the proposed rule's provision that 159,757 short tons of crystalline fructose is the equivalent of 200,000 tons of sugar, raw value (the marketing allotment for crystalline fructose in the event of allotments). CCC has sought to provide latitude for the marketing of domestically manufactured crystalline fructose from corn, by selecting the minimum superior sweetness equivalent of crystalline fructose to refined sugar (a 1.17-to-1.00 ratio), which is based upon well-established scientific tests. CCC had also considered a sweetness equivalence of 1.50-to-1.00 based on the average sweetness of crystalline fructose among different products in which it is used. The comments contend that

crystalline fructose is a premium product to sugar, and that sweetness is only one aspect of crystalline fructose's superiority to sugar. Furthermore, the comments contend that because crystalline fructose is higher priced by a factor of 1.5, crystalline fructose's equivalence to 200,000 tons of raw sugar should be 256,410 tons of crystalline fructose (200,000 × 1.5 / 1.17). However, if crystalline fructose is a premium product to sugar, then less (not more) of crystalline fructose would be equivalent to the sugar quantity of 200,000 tons. Furthermore, the 1.5 factor which is the price premium depends not just on the inherent quality of crystalline fructose relative to sugar but on transient market conditions, including variable competitive relationships among alternative sweeteners.

10. The 3-factor criteria for establishing sugar allotments was also used in the proposed rule for the purpose of establishing allotments of crystalline fructose among U.S. manufacturers. Objections were raised because, unlike sugar, crystalline fructose was not manufactured until 1987 and therefore the 1985–89 base period has limited applicability. CCC agrees and will use the highest year's production in the preceding 5 fiscal years as the basis for establishing the allotments for crystalline fructose manufacturers.

11. Two comments proposed, respectively, that "reasonable carry-over stocks" should be defined as no less than a 14.5 percent stocks-to-use ratio or a moving 5-year stocks-to-consumption average.

CCC will determine what carry-over stocks are deemed "reasonable" based on a comprehensive review of the market. While the proposed, essentially mechanical, procedures might be helpful, they are considered insufficient for a complete evaluation of the market. Therefore CCC does not agree with the proposals.

12. A comment proposed that if marketing allotments are implemented in the third or fourth quarter of a fiscal year, that allotments should also be established for the next fiscal year. However, the 1938 Act requires CCC to review and reestimate the sugar market every quarter and CCC believes it would be premature to establish allotments for the next fiscal year substantially before the current one expires. Furthermore, data for the next fiscal year can be highly conjectural before July.

13. A comment requested that the sugar content in sugar-containing product imports should be estimated and counted in calculating the market allotment import estimate (MAIE). However, the statute does not authorize CCC to include such imports in calculating the MAIE, which is calculated on the basis of domestic production, consumption, and stocks rather than actual imports of sugar.

14. Several comments were made on the definition of "marketing." One suggestion was that if sugar pledged as collateral for a CCC price support loan is redeemed, the sugar should no longer be considered marketed. CCC agrees that the marketing of sugar which had been pledged as collateral for a price support loan and then redeemed would not be counted a second time against the processor's allocation because the processor's allocation would have been charged when the sugar was pledged as collateral. CCC notes that there is no comparable statutory exemption from double counting for sugar pledged as loan collateral and then disposed of in commerce by forfeiture to the CCC.

Three comments proposed a number of sales transactions to define more clearly and specifically what constitutes marketing. CCC recognizes that if marketing allotments are imposed there would be difficulties in resolving futures contracts. Nonetheless, CCC is obliged to use the statutory definition of marketing, which is the sale or other disposition of sugar. Normally, a sale of goods occurs when title to the goods transfers from the seller to the buyer. Generally, under the Uniform Commercial Code, title transfers according to the contract of the parties but no sooner than the time when specific goods are identified to the sales contract and no later than when the goods are accepted by the buyer. Use of the normal commercial understandings of sales will facilitate administration of this program.

15. One comment asked that beet processors be allowed to swap sugar with domestic cane sugar refiners. CCC notes that section 359c(h) of the 1938 Act prohibits using beet sugar to fill the cane sugar allotment or vice versa.

Two comments proposed that a processor with a surplus of beet sugar relative to its allocation should be allowed to market the sugar domestically if an equal quantity of sugar is "swapped" with a cane refinery's export of domestically produced sugar. Such a swap, it is claimed, would not change the domestic sugar supply while permitting sugar to be marketed at lower cost. However, CCC has limited authority, principally related to quarterly reestimates of consumption, production, and stocks, to alter the overall allotment quantity or the beet sugar or cane sugar allotments. Certainly the export of refined cane sugar, which is not even subject to marketing allotments, is not grounds under the 1938 Act for increasing the beet sugar allotment or the allocation of any beet sugar processor. Moreover, control of the sugar supply would be made unduly difficult by such swaps because of a cane refinery's several sources of supply, including tariff-rate quota imports and imports under the re-export program. Therefore, CCC does not agree with the proposal.

16. One comment proposed that, for companies that are not cooperatives, penalties be imposed only on the processor's share, as determined by the producer-processor contract, of the market value of sugar sold in excess of an allocation. The 1938 Act does not provide for the imposition of civil penalties in the manner proposed. Accordingly, the comment is not adopted.

17. The following miscellaneous comments were received but were considered to be outside the limits of this rulemaking or clearly contrary to the provisions of the 1938 Act: (1) For Hawaii, all the processors' allocations should be combined into one State allotment; (2) Proportionate shares should be calculated for sugar beet States; (3) USDA should withdraw the rule and ask Congress to change the law; (4) Processors should not have the right to purchase sugar to fill a marketing allocation; (5) Growers should share in the net revenue from a processor's purchase of sugar to fill an allocation; (6) In order to avoid allotments, imports of sugar products should be restricted; (7) Price support levels should be reduced by 10 percent; (8) Incentives should be made to increase exports of sugar-containing products; (9) In order to avoid forfeitures, the tariff-rate quota amount should be reduced to 1.25 million short tons; (10) Forfeitures in one year should be deducted from the next year's allocation to the processor who forfeited; (11) Allocations of U.S. shortfalls among foreign suppliers should be made on the basis of historical shares; and (12) Marketing controls should be placed on Mexico's producers if the North American Free Trade Agreement becomes effective.

List of Subjects in 7 CFR Part 1435

Loan programs (agriculture), Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended by adding a new subpart (§§ 1435.500 through 1435.529) as follows:

VOL 58 ISS 127 JL 6 1993 UMI

PART 1435—SUGAR

Subpart—Marketing Allotments for Sugar and Crystalline Fructose

Sec.

1435.500 Applicability.
1435.501 Administration.
1435.502 Definitions.
1435.503–1435.506 [Reserved]
1435.507 Annual estimates and quarterly re-estimates.
1435.508 Establishment and suspension of allotments.
1435.509 Overall allotment quantity.
1435.510 Adjustment of overall allotment quantity.
1435.511 Beet sugar and cane sugar allotments.
1435.512 State cane sugar allotments.
1435.513 Allocation of marketing allotments to processors.
1435.514 Reassignment of deficits.
1435.515–1435.519 [Reserved]
1435.520 Sharing processors' allocations with producers.
1435.521 Proportionate shares for producers of sugarcane.
1435.522 Establishment of acreage bases for purposes of proportionate shares.
1435.523 Permanent transfer of acreage base histories for purposes of proportionate shares.
1435.524 Temporary transfer of proportionate shares due to disasters.
1435.525 Adjustments to proportionate shares.
1435.526 Acreage reports for purposes of proportionate shares.
1435.527 Crystalline fructose allotment.
1435.528 Penalties and assessments.
1435.529 Appeals.

Authority: 7 U.S.C. 1359aa–1359jj; 15 U.S.C. 714b and 714c.

Subpart—Marketing Allotments for Sugar and Crystalline Fructose

§ 1435.500 Applicability.

(a) The regulations of this subpart are applicable to the establishment and allocation of marketing allotments for:

(1) The marketing by processors during fiscal years 1992 through 1996 of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers, during fiscal years 1992 through 1996, of crystalline fructose manufactured from corn;

(3) The distribution of the processor's allotment allocation to producers; and

(4) The harvesting of sugarcane by producers subject to proportionate shares.

(b) The regulations of this subpart do not apply to:

(1) The marketing of imported raw or refined sugar or imported crystalline fructose;

(2) The marketing of sugar processed from imported sugarcane or sugar beets;

(3) The marketing of liquid fructose from corn; or

(4) The exportation of sugar or crystalline fructose from the customs territory of the United States.

(c) The provisions of this subpart are applicable throughout the United States, including Puerto Rico and the District of Columbia.

§ 1435.501 Administration.

The provisions of this subpart shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, ASCS), and shall be carried out in the field by State and county ASC committees (State and county committees), respectively.

(a) State and county committees, and their representatives and employees, do not have authority to modify or waive any provisions of this subpart.

(b) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(c) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, ASCS), or a designee, from determining any questions arising under this subpart or from reversing or modifying any determination made by a State or county committee.

(d) The Executive Vice President, CCC (Administrator, ASCS), or a designee, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of this subpart.

§ 1435.502 Definitions.

The definitions set forth in this section are applicable throughout this subpart. The definitions contained in parts 718 and 719 of this title and part 1413 of this chapter are also applicable and are incorporated by reference.

Ability to market means, for purposes of determining allotments or allocations, the estimated quantity of sugar, raw value, as determined by CCC, that will be produced in the sector or State or by the processor, as appropriate, during the crop year beginning on the July 1st which immediately precedes the fiscal year for which marketing allotments are in effect and such ability to market is being determined.

Allocation means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the sugarcane processors of that State.

ASCS means Agricultural Stabilization and Conservation Service.

Beet sugar means sugar, whether or not principally of crystalline structure, which is processed directly or indirectly from domestically produced sugar beets, including sugar produced from sugar beet molasses.

Beet sugar allotment means that portion of the overall allotment quantity allocated to sugar beet processors.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar allotment means that portion of the overall allotment quantity allocated to sugarcane processors.

Cane syrup means concentrated cane juice from which no sucrose has been extracted.

Carry-in stocks means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

CCC means the Commodity Credit Corporation.

Crop year means the period beginning July 1 and ending June 30 of the following calendar year, with the customary allowance for a continuous harvest that goes beyond June. For example, the "1991 crop" within the context of this subpart means sugar processed from domestically produced sugar beets or sugarcane harvested during the 1991 crop year, starting on July 1, 1991 and ending on June 30, 1992. The "1991 crop" includes sugar processed from molasses or thick juice produced from domestically produced sugar beets or sugarcane harvested during the 1991 crop year.

Crystalline fructose means a monosaccharide and reducing sugar, manufactured from field corn, appearing as free-flowing white crystals with the chemical formula $C_6H_{12}O_6$ and molecular weight of 180.16 and meeting the specifications of the *Food Chemicals Codex* (Third Edition, as amended in Third Supplement, 1991) of the National Research Council.

Crystalline fructose allotment means the total quantity of crystalline fructose—159,757 tons—that may be marketed by manufacturers of crystalline fructose in any fiscal year in

which marketing allotments are in effect.

Crystalline fructose manufacturer's allotment means that portion of the crystalline fructose allotment allocated to a manufacturer of crystalline fructose.

DASCO means the Deputy Administrator, State and County Operations, ASCS.

Deficit means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the fiscal year in which marketing allotments are in effect.

Edible molasses means molasses which is not to be further refined or improved in quality and which is to be distributed for human consumption, either directly or in molasses-containing products.

Farm means that entity as defined in § 719.3 of this title, except that when a State is subject to the implementation of proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

Fiscal year means the year beginning October 1 and ending the following September 30. For example, fiscal 1993 begins October 1, 1992 and ends September 30, 1993.

Imports means sugar originating in foreign countries or areas and entered, or to be entered, into the customs territory of the United States.

Invert sugar means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

Liquid sugar means a direct-consumption sugar which is not principally of crystalline structure and which contains, or which is to be used for the production of any sugars principally not of crystalline structure which contain, soluble nonsugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 percent or less of the total soluble solids. Liquid sugar is exclusive of cane syrup and edible molasses.

Market or *Marketing* means the sale or other disposition of sugar or crystalline fructose in commerce in the United States, including, with respect to any integrated processor and refiner, the movement of raw cane sugar into the refining process.

Molasses means a thick syrup which is a byproduct of processing sugar beets or sugarcane or of refining raw cane sugar.

Normal carryover inventory means sugarcane processors' inventory on hand at the end of the fiscal year, calculated as the previous 5-year-average ratio of carryover inventory to production, multiplied by current estimated production. Normal carryover inventory applies only to Louisiana and is not synonymous with "reasonable ending stocks".

Overall allotment quantity means, on a national basis, the total quantity of sugar, raw value, which is processed from domestically produced sugarcane or sugar beets, and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a fiscal year or other period in which marketing allotments are in effect.

Past marketings means, for purposes of determining State cane sugar allotments, the average of the two highest years of sugar production during the 1985 through 1989 crop years; and means for all other purposes, the average of production of sugar during the 1985 through 1989 crop years, excluding the highest and lowest years.

Per-acre yield goal means the yield level for a State established at not less than the average per-acre yield in the State for the preceding 5 crop years or such other higher yield established by CCC that will ensure an adequate net return per pound to producers in the State.

Processing capacity means, for purposes of determining sugar allotments or allocations, the highest crop-year production of sugar, raw value, as determined by CCC, achieved in the sector or State or by the processor, as appropriate, during the 5-year period prior to the fiscal year for which allotments have been established.

Proportionate share means the total acreage from which a producer may harvest sugarcane for sugar or seed during any fiscal year or other period in which marketing allotments are in effect.

Raw sugar means any sugar, whether or not principally of crystalline structure, which is to be further refined or improved in quality.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric or equivalent test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = actual weight × {[(actual degree of polarization − 92) × 0.0175] + 0.93}. For example, for cane sugar testing 92 sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by 0.93; for cane sugar testing more than 92 sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by the figure obtained by adding 0.93 to the result of multiplying 0.0175 by the number of degrees and fractions of a degree of polarization above 92 degrees. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as determined by CCC.

Refined crystalline sugar means centrifugal, crystalline sugar (including "high-polarity" sugar from raw cane mills, and "soft" or "brown" sugars) which is not to be further refined or improved in quality.

State means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

State cane sugar allotment means that portion of the cane sugar allotment assigned to Florida, Hawaii, Louisiana, Texas, or Puerto Rico.

Sucrose means a disaccharide having the chemical formula $C_{12}H_{22}O_{11}$.

Sugar means any grade or type of saccharine product which is processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses) and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, sugar syrup, and cane syrup.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from domestically-produced sugar beets (including sugar produced from sugar beet molasses).

Sugar products means products for human consumption, other than sugar, which contain 50 percent or more of sucrose, on a dry weight basis, and which are marketed by a sugar beet processor or sugarcane processor.

In determining sugar subject to marketing allocations, only the sugar

content of such products will be counted against the allocation.

Sugar syrup means a direct-consumption sugar with a sucrose or sucrose-equivalent invert sugar content of less than 94 percent of the total soluble solids.

Sugarcane processor means a person who commercially processes domestically-produced sugarcane or sugarcane molasses to produce sugar.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

USDA means the United States Department of Agriculture.

U.S. market value means, for sugarcane, the daily New York No. 14 contract price for raw sugar; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News; and for crystalline fructose, 1.5 times the Midwest refined beet sugar price.

§§ 1435.503–1435.506 [Reserved]

§ 1435.507 Annual estimates and quarterly re-estimates.

(a) Before the beginning of each of the fiscal years 1993 through 1996 CCC will estimate, and before the beginning of each quarter of such fiscal years CCC will re-estimate, for such fiscal year:

(1) The quantity of sugar that will be consumed in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products);

(2) The quantity of sugar that will provide for reasonable carryover stocks;

(3) The quantity of sugar that will be available for consumption from carry-in stocks;

(4) The quantity of sugar that will be available for consumption from domestically produced sugarcane and sugar beets; and

(5) The quantity of sugar that will be imported for consumption in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), which will be calculated as the difference between:

(i) The sum of the quantity of estimated consumption and reasonable carryover stocks; and

(ii) The quantity of sugar estimated to be available from domestically grown sugarcane and sugar beets and from carry-in stocks.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will be made by using available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, the data supplied in reports submitted pursuant to the reporting requirements set forth in §§ 1435.400 and 1435.402 of this part.

§ 1435.508 Establishment and suspension of allotments.

(a) If it is estimated under § 1435.507(a)(5) that imports of sugar for the fiscal year will be less than 1.25 million short tons, raw value, allotments for the marketing of sugar and sugar products will be established for that fiscal year at a level that CCC estimates will result in imports of sugar of not less than 1.25 million short tons, raw value.

(b) An allotment for crystalline fructose will be imposed whenever allotments for the marketing of sugar are established.

(c) Marketing allotments for sugar and for crystalline fructose will be suspended, as CCC determines appropriate, to reflect changes in estimated consumption, stocks, production, or imports based on quarterly re-estimates under section 1435.507(a).

(d) Each determination under this section to establish or suspend marketing allotments will be promptly published in the **Federal Register** and will be accompanied by a statement of the reasons for the determination.

§ 1435.509 Overall allotment quantity.

The overall allotment quantity for the fiscal year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(a) 1,250,000 short tons, raw value; and

(b) Carry-in stocks.

§ 1435.510 Adjustment of overall allotment quantity.

(a) The overall allotment quantity will be adjusted:

(1) As CCC determines appropriate, to reflect changes in estimated consumption, stocks, production, or imports based on quarterly re-estimates under § 1435.507(b); and

(2) To the maximum extent practicable, to avoid the forfeiture of sugar to the CCC.

(b) Each determination to adjust the overall allotment quantity under this section will be promptly published in the **Federal Register** and will be accompanied by a statement of the reasons for the determination.

(c) The allotment for beet sugar, the allotment for cane sugar, the State cane sugar allotments, and the fiscal year allocations of each sugar beet processor and each sugarcane processor will be increased or reduced, as appropriate, to reflect an adjustment of the overall allotment quantity.

(d) If the overall allotment quantity is reduced under paragraph (a)(1) of this section and the sum of the quantity of sugar and sugar products marketed and sugar pledged as collateral for a price support loan by any individual processor, at the time of the reduction, exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed or pledged as collateral will be deducted from the processor's next allocation of an allotment, if any. The exceptions provided for in § 1435.513 shall be applicable in determining whether a processor has exceeded a reduced allocation.

(e) Whenever a processor's allocation is required to be reduced as provided in paragraph (d) of this section, the quantity by which such allocation is reduced will be reassigned using the same procedures as are provided for the reassignment of deficits in § 1435.514.

§ 1435.511 Beet sugar and cane sugar allotments.

(a) An allotment for beet sugar and an allotment for cane sugar will be established for each fiscal year that marketing allotments are in effect.

(b) The beet sugar allotment and cane sugar allotment will be equal to the product of multiplying the overall allotment quantity for the fiscal year by the percentage factor established for beet sugar and the percentage factor established for cane sugar, respectively.

(c) Percentage factors will be established on the basis of:

(1) Past marketings of sugar based on the average marketings of beet sugar and cane sugar from the 1985 through 1989 crops, dropping the highest and lowest years;

(2) Processing capacity in the beet and cane sectors; and

(3) The beet and cane sectors' respective ability to market the allotments assigned to each.

(d) Each of the three criteria used to determine the percentage factors specified in paragraph (c) of this section will be weighted equally, or as determined appropriate by CCC for each year that allotments are in effect.

(e) A sugar beet processor who has been allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation, and a sugarcane processor who has been allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

§ 1435.512 State cane sugar allotments.

(a) The allotment for cane sugar will be allotted among Florida, Hawaii, Louisiana, Texas and Puerto Rico, based on:

(1) The average of the two highest years of marketings of cane sugar from each State during the 1985 through 1989 crop years;

(2) Processing capacity in each State; and

(3) The ability of processors in each State to market the sugar covered under the allotment assigned to the State.

(b) Each of the three criteria specified in paragraph (a) of this section will be weighted equally, or as determined appropriate by CCC for each year that an allotment is in effect.

(c) Except when deficits are reassigned as provided in § 1435.514, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

§ 1435.513 Allocation of marketing allotments to processors.

(a) Whenever marketing allotments are established for a fiscal year under this subpart, sugar beet processors and sugarcane processors will receive marketing allocations for that fiscal year.

(b) Allocations to sugar beet processors will be based on each processor's:

(1) Average of past marketings of beet sugar during the crop years 1985 through 1989, excluding the highest and lowest years,

(2) Processing capacity, and

(3) Ability to market sugar.

(c) Allocation to sugarcane processors of a State cane sugar allotment will be based on each processor's:

(1) Average of past marketings of cane sugar during the crop years 1985 through 1989, excluding the highest and lowest years,

(2) Processing capacity, and

(3) Ability to market sugar.

(d) Each of the three criteria specified in paragraphs (b) and (c) of this section will be weighted equally, or as determined appropriate by CCC for each year that marketing allotments are in effect.

(e) An informal hearing will be held, if requested by interested parties within 5 workdays following the announcement of proposed allocations, to afford all interested persons the opportunity to comment on the proposed allocations. After consideration of comments obtained at the hearing, a final determination on allocations will be announced.

(f) During any fiscal year in which marketing allotments are in effect and allocated to processors, the total of the following shall not exceed the quantity of the allocation of the allotment made to the processor:

(1) The quantity of sugar and sugar products marketed by a processor, and

(2) The quantity of sugar pledged as collateral by the processor for a CCC price-support loan.

(g) Sugar pledged in a fiscal year as collateral for a CCC price-support loan and counted against a processor's allocation of an allotment shall not be counted a second time against the processor's allocation when the sugar is marketed in that fiscal year after having been redeemed.

(h) Paragraph (f) of this section shall not apply to any sale of sugar by a processor to another processor that is made to enable the purchasing processor to fulfill the purchasing processor's allocation of an allotment. Such sales shall be reported to CCC within 2 days of the date of any such sale.

§ 1435.514 Reassignment of deficits.

(a) From time to time in each fiscal year that marketing allotments are in effect, CCC will determine whether processors of sugar beets or sugarcane will be able to market sugar covered by the portions of the allotments allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors. Generally, these determinations will be made in July but may be made at any other time in the fiscal year.

(b) If it is estimated that a sugarcane processor will be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) First, be reassigned proportionately to the allocations of other sugarcane processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be assigned to such other processor and taking into account the interests of producers served by the processors;

(2) If the deficit cannot be eliminated after reassignment within the same State, the deficit will be reassigned to the other cane sugar States based on the ability of processors in such States to market the deficit to be reassigned to such States, with the reassigned quantity to each State being allocated among its processors in proportion to the initial allocations of the processors; and

(3) If any portion of the deficit remains after paragraphs (b)(1) and (b)(2) of this section have been implemented, it will be assigned to imports.

(c) If a sugar beet processor is estimated to be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) First, be reassigned proportionately to the allocations of other sugar beet processors depending on the capacity of the other processors to fill the portion of the deficit to be assigned to them and taking into account the interests of producers served by the processors; and

(2) If any portion of the deficit remains after paragraph (c)(1) of this section has been implemented, it will be reassigned to imports.

(d) The fiscal year allocation of each sugar beet processor or sugarcane processor who receives an additional reassigned deficit amount will be increased to reflect the reassignment for that year.

§§ 1435.515–1435.519 [Reserved]

§ 1435.520 Sharing processors' allocations with producers.

(a) Every sugar beet processor and sugarcane processor shall share its allocation with producers served by the processor in a fair and equitable manner that adequately reflects such producers' production histories.

(b) Whenever allocations of a marketing allotment are established or adjusted, every sugar beet processor and sugarcane processor must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and adequate manner which reflects each producer's production history.

(c) Any producer or processor can request arbitration of a dispute with respect to the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State ASCS office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC, or a designee. Any arbitration will be subject to appeal to the Office of the Administrative Law Judge, USDA.

§ 1435.521 Proportionate shares for producers of sugarcane.

(a) Proportionate shares, and the provisions of this section and §§ 1435.522 through 1435.526, shall be applicable only with respect to

VOL 58 ISS 127 JL 6 1993 UMI

sugarcane farms in the State of Louisiana.

(b) In any fiscal year in which marketing allotments are established at the beginning of such fiscal year, CCC will determine whether the production of sugar in the State of Louisiana, in the absence of proportionate shares, will be greater than the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in the State, plus a normal carryover inventory, will exceed the State's allotment for the fiscal year, CCC will establish for each sugarcane-producing farm a proportionate share that limits the acreage of sugarcane that may be harvested on the farm for sugar or seed during the fiscal year that the allotment is in effect.

(c) For purposes of determining proportionate shares for any crop of sugar, CCC will:

(1) Establish the State's per-acre yield goal at a level not less than the average per-acre yield in the State for the preceding five years;

(2) Adjust the per-acre yield goal by the average recovery rate of sugar produced by sugarcane processors in the State;

(3) Convert the State cane sugar allotment, as determined in accordance with § 1435.513 into a State acreage allotment by dividing the State cane sugar allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all adjusted acreage bases in the State as determined under § 1435.522; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane-producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

§ 1435.522 Establishment of acreage bases for purposes of proportionate shares.

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed on the farm in each of the five crop years preceding the fiscal year for which proportionate shares are being established. Acreage considered planted shall be determined in accordance with § 1435.524.

(b) In establishing crop acreage bases, CCC will:

(1) Not take into consideration the acreage which producers are prevented from planting.

(2) Will take into consideration:

(i) Acreage planted to sugarcane that fails, and

(ii) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 1413.97 due to participation in the Conservation Reserve Program in accordance with part 704 of this title.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date determined and announced by CCC. Late-filed acreage reports will be accepted as determined by DASCO.

(d) The crop acreage base established for the farm shall be used to determine the farm's proportionate share.

(e) The regulations at 7 CFR parts 718 and 719 of this title shall be applicable to this subpart except the reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines.

§ 1435.523 Permanent transfer of acreage base histories for purposes of proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the acreage base history of land owned, operated, or controlled by the producer to any other farm in the State that is owned, operated, or controlled by that producer in accordance with instructions issued by DASCO. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(b) All owners of the farm must agree in writing to the transfer.

(c) Producers may transfer sugarcane acreage base histories in accordance with this section by the date established annually by the State ASC Committee.

§ 1435.524 Temporary transfers of proportionate shares due to disasters.

(a) If for reasons beyond the control of a producer on a farm, such producer is unable to harvest an acreage of sugarcane with respect to all or a portion of the proportionate share established for the farm, the Secretary may preserve, for a period of not more than 3 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for one crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 3 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share in accordance with paragraph (b) of this section will be required to:

(1) Initiate the transfer in the county ASCS office where the proportionate shares are established; and

(2) Obtain approval from the transferring county ASC committee.

(d) All transfers made in accordance with this section must be completed by the date established by the State ASC Committee.

§ 1435.525 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a crop of sugarcane, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable processors in the State to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.526 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required with respect to farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar or seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by DASCO and shall be filed annually with the county ASC committee by the applicable final reporting date established by DASCO. Such report shall be filed by the farm operator or by the farm owner.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection which may be used to make a determination with respect to:

(1) The existence of the crop;

(2) The use made of the crop;

(3) The lack of crop; or

(4) A disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized

ASCS employee unless the county ASC committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise a report of acreage to change the acreage reported. Revised reports shall be filed in accordance with instructions issued by DASCO and shall be accepted at any time if:

(1) Evidence exists for inspection and determination of:

(i) The existence of the crop;

(ii) The use made of the crop;

(iii) The lack of crop; and

(iv) A disaster condition affecting the crop; and

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) The provisions of 7 CFR part 718 will apply for field inspections, tolerance, and variance. Assessments for inaccurate acreage reporting will be applied in accordance with § 1435.528.

§ 1435.527 Crystalline fructose allotment.

(a) An allotment for crystalline fructose will be imposed, whenever allotments are established for cane and beet sugar, at a level of 159,757 tons of crystalline fructose, during the fiscal year in which marketing allotments are in effect.

(b) An allotment will be allocated among manufacturers of crystalline fructose based on each manufacturer's highest year of production of crystalline fructose during the preceding five fiscal years.

(c) At any time a crystalline fructose allotment is in effect, no manufacturer of crystalline fructose may market crystalline fructose in excess of the manufacturer's allotment.

§ 1435.528 Penalties and assessments.

(a) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any sugar beet processor or sugarcane processor who markets sugar or sugar products or pledges sugar as collateral for a price-support loan in excess of the processor's allocation in violation of § 1435.514 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any manufacturer of crystalline fructose who markets crystalline fructose in excess of the manufacturer's marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of crystalline fructose involved in the violation.

(c) In accordance with section 359f(b)(5) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any producer of sugarcane whose farm has been assigned a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share, shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer has harvested acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:

(1) Processed by a sugarcane processor that does not exceed the marketing allocation of such processor; or

(2) Diverted to a use other than sugar or seed if:

(i) The sugarcane producer requests and pays for a field inspection by CCC, and

(ii) A representative of CCC verifies the disposition of the excess harvest.

(d) Any penalty assessed under paragraph (c) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(e) Any person who files a false or inaccurate acreage report which exceeds tolerance will be subject to an assessment calculated by multiplying the difference between the reported and determined acreage of sugarcane, times the State yield-goal, times 25 percent of the National sugar price-support loan rate, but not more than $5000. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, DASCO may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable in relation to the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.

(f) Any person who knowingly violates any provision of this subpart is subject to the assessment of a civil penalty by CCC of not more than $5,000 for each violation.

§ 1435.529 Appeals.

(a) An appeal may be made to the Office of the Administrative Law Judge, USDA, by:

(1) Any sugar beet processor, sugarcane processor, or any other person adversely affected by a decision under paragraphs (a) through (e) of § 1435.513 who disagrees with such decision;

(2) Any producer or any other person adversely affected by a decision under §§ 1435.521, 1435.522, 1435.525 or 1435.528(c) who disagrees with a determination with respect to the establishment or adjustment of proportionate shares or acreage bases or excess acreage harvested; or

(3) Any processor or producer adversely affected by an arbitration decision pursuant to § 1435.520(c) or its review by the Executive Vice President, CCC.

(b) A manufacturer of crystalline fructose who has been determined to have marketed crystalline fructose in excess of the applicable allotment may request review of such determination pursuant to the ASCS appeal procedure set forth at part 780 of this title by filing an appeal with the National Appeals Division.

(c) A sugar beet processor or sugarcane processor who has been determined to have marketed sugar in excess of the assigned allocation may request review of such determination pursuant to the ASCS appeal procedures set forth at part 780 of this title by filing an appeal with the National Appeals Division.

(d) All appeals must be filed within 15 calendar days after the relevant determination is issued. The appeal must be in writing.

Signed the 29th day of June, 1993 in Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–15817 Filed 6–30–93; 8:45 am]

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VOL
58
ISS
127
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-61-AD; Amdt. 39-8622; 93-13-09]

Airworthiness Directives: Cessna T210 Series Airplanes Modified by Supplemental Type Certificate SA2231CE or Supplemental Type Certificate SA3203NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna T210 series airplanes equipped with a turbocharged Continental TSIO-520R engine and intercooler installation in accordance with Supplemental Type Certificate (STC) SA2231CE or STC SA3203NM. This action requires inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature. One of the affected airplanes lost engine power at high altitude because hot air from the turbocharger caused the Gates air induction hose to split. The actions specified by this AD are intended to prevent air induction hose failure, which could result in loss of engine power.

EFFECTIVE DATE: August 13, 1993.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Parts needed to accomplish this AD may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710; Telephone (909) 393-0884.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; Telephone (310) 988-5265; Facsimile (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to Cessna T210 series airplanes equipped with a turbocharged Continental TSIO-520R engine and intercooler installation in accordance with STC SA2231CE or STC SA3203NM was published in the **Federal Register** on February 8, 1993 (58 FR 7494). The action proposed to require inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 390 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $135 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $74,100. These figures take into account that none of the affected airplanes have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

93-13-09 Cessna Aircraft Company: Amendment 39-8622; Docket No. 92-CE-61-AD.

Applicability: The following model airplanes (all serial numbers) equipped with a Continental TSIO-520R engine and intercooler installation in accordance with the applicable supplemental type certificate (STC), certificated in any category:

Model	Modified by STC
T210K	SA2231CE
T210L	SA2231CE
T210M	SA3203NM
T210N	SA3203NM

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent air induction hose failure, which could result in loss of engine power, accomplish the following:

(a) Visually inspect between the turbocharger and intercooler to determine whether a Gates air induction hose, part number (P/N) 20987 or P/N 21370, is installed. If a Gates hose is installed, prior to further flight, accomplish the following:

(1) Loosen the two AN737-TW clamps and remove the Gates hose.

(2) Install The Aircraftsman hose, P/N MW1118, and tighten the two AN737-TW clamps.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to

the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may examine any information referred to herein upon request to the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Parts needed as a result of this action may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710.

(e) This amendment (39–8622) becomes effective on August 13, 1993.

Issued in Kansas City, Missouri, on June 29, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service

[FR Doc. 93–15811 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–51–AD; Amendment 39–8621; AD 93–13–08]

Airworthiness Directives: Aerostar Aircraft Corporation PA–60–600 (Aerostar 600) and PA–60–700 (Aerostar 700) Series (formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–11–08, which currently requires replacing or upgrading the main landing gear torque links on certain Aerostar Aircraft Corporation (Aerostar) PA–60–600 and PA–60–700 series airplanes. The Federal Aviation Administration (FAA) has received several reports of fatigue failures of the main landing gear torque links that were installed or upgraded in accordance with AD 92–11–08. This action requires replacing these main landing gear torque links with parts of improved design; or repetitively inspecting the existing torque links, and replacing any cracked torque links. The actions specified by this AD are intended to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

DATES: Effective August 20, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455–8872. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; Telephone (206) 227–2589.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Aerostar PA–60–600 (Aerostar 600) and PA–60–700 (Aerostar 700) series airplanes was published in the **Federal Register** on December 14, 1992 (57 FR 58998). The action proposed to require replacing the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear). The proposed action would be accomplished in accordance with the Instructions section of Aerostar Service Bulletin No. 746C, dated September 15, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters suggest that, as an alternative method of compliance, the FAA give the affected airplane operators the option of repetitively inspecting the main landing gear torque links every 100 hours time-in-service (TIS) or at every annual inspection, whichever occurs first. The FAA concurs that an equivalent level of safety could be obtained by allowing repetitive inspections every 100 hours TIS, and has incorporated this option into the proposed AD. Since the condition is caused by airplane operation, the FAA has not included "at the next annual inspection" as a compliance time.

Both of these commenters also suggest that the FAA remind operators of the importance of proper strut inflation. One of these commenters references reports that Aerostar operators have a tendency to over-inflate the main landing gear struts to maintain a level deck angle while the airplane is on the ground, which redistributes forces to the torque link mechanism that are inconsistent with the design. One of these commenters also states that improper use of the hydraulic nose gear steering mechanism could lead to overstressed torque links. The FAA concurs with these statements and has added a NOTE in the proposed AD cautioning against these actions. The FAA has also asked the manufacturer to issue a service letter to address this issue.

Another commenter raises questions as to why another AD requiring mandatory torque link replacement is proposed. His concerns are:

- Why are the affected operators expected to pay for the flight testing of all new and improved versions of the torque link kits?
- What is the benefit outweighing the additional cost for replacement?; or How long will this version of the torque links last before another is issued? and
- What assurance is there that this replacement is reliable and that the prior design flaws have indeed been eliminated?

The FAA took all of these concerns into consideration before developing the proposed AD. The new torque links were developed through careful and thorough loads analysis, materials selection, static testing, and field testing. The FAA has carefully analyzed the failure modes of the previous torque link designs, and the FAA has determined that this torque link design is a permanent replacement, and that the failure modes of the previous design have been eliminated. The FAA has determined that either initial replacement of the torque links, or repetitive inspections of the existing torque links and replacement of any cracked torque links with the improved parts, achieve, as far as the main landing gear torque links are concerned, the safety objective of returning the airplane to its original certification level of safety.

No comments were received on the FAA's determination of the cost to the public, but if the operator chooses to repetitively inspect instead of replacing and no cracks are found, then the initial cost will be substantially lower. However, the long-term cost of repetitive inspections will eventually exceed the one-time cost of replacing the torque links.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for adding the option of repetitively inspecting the torque links, and replacing any cracked torque links, and minor editorial corrections. The FAA has determined that the addition and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

VOL 58 ISS 127 JL 6 1993 UMI

The FAA estimates that 800 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the torque link replacement, and that the average labor rate is approximately $55 an hour. Parts cost approximately $882 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $793,600. The initial cost would be much lower if the operator chose the repetitive inspection option and found no torque link cracks.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–11–08, Amendment 39–8258 (57 FR 20742, May 15, 1992), and adding the following new airworthiness directive:

93–13–08 Aerostar Aircraft Corporation: Amendment 39–8621; Docket No. 92–CE–51–AD. Supersedes AD 92–11–08, Amendment 39–8258.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
PA–60–600 Aerostar 600.	60–0001–003 through 60–0933–8161262.
PA–60–601 Aerostar 601.	61–0001–004 through 61–0880–8162157.
PA–60–601P Aerostar 601P.	61P–0157–001 through 61P–0860–8163455.
PA–60–602P Aerostar 602P.	62P–0750–8165001 through 60–8365021.
PA–60–700P Aerostar 700P.	60–8223001 through 60–8423025.

Note 1: The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required as indicated, unless already accomplished.

To prevent loss of directional control of the airplane during ground operation caused by torque link failure, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, accomplish either (1) or (2) below:

(1) Replace the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the Instructions section of Aerostar Service Bulletin (SB) No. 746C, dated September 15, 1992.

Note 2: Aerostar SB No. 746C, dated September 15, 1992, references the availability of Main Landing Gear Torque Link Replacement Kit No. 765–155 revision G. This kit contains the improved torque links and all hardware necessary to install these links. This kit may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(2) Dye penetrant inspect (using FAA-approved methods) the main landing gear torque links for cracks.

(i) If cracks are found, prior to further flight, replace the cracked torque links with improved designed torque links part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the Instructions section of Aerostar SB No. 746C, dated September 15, 1992.

(ii) If no cracks are found, reinspect at intervals not to exceed 100 hours TIS.

(iii) The repetitive inspection requirement is no longer required when both the left and right main landing gear torque links are replaced with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the Instructions section of Aerostar SB No. 746C, dated September 15, 1992. This installation may be accomplished at any time regardless of whether cracks are found during the inspection.

Note 3: Operators should ensure that proper strut inflation is maintained as improper strut inflation could put extreme impact upon the torque links. In addition, improper use of the hydraulic nose gear steering mechanism at high speeds could also lead to overstressed torque links.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) The replacement required by this AD shall be done in accordance with Aerostar Service Bulletin No. 746C, dated September 15, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8621) supersedes AD 92–11–08, Amendment 39–8258.

(f) This amendment (39–8621) becomes effective on August 20, 1993.

Issued in Kansas City, Missouri, on June 29, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15812 Filed 7–2–93; 8:45 am.]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960–None Assigned

Federal Old-Age, Survivors and Disability Insurance Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which part A of the cardiovascular system listings, found in the appendix to the regulations on determining disability and blindness, will no longer be effective from July 6, 1993, to January 6, 1994. We are also extending the date on which part B of those listings will no longer be effective from December 6, 1993, to January 6, 1994. We have made no revisions in the medical criteria in the cardiovascular system listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a Notice of Proposed Rulemaking (NPRM) to update the medical criteria contained in part A and part B of the cardiovascular system listings. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This final rule will be effective July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (part A), or in the case of a child under the age of 18, impairments that are considered severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established termination dates ranging from 4 to 8 years for each of the listings for specific body systems. A date of December 6, 1989, was established for the cardiovascular system listings in part A to no longer be effective. A date of December 6, 1993, was established for part B of the cardiovascular system listings to no longer be effective.

The potential program impact of the changes to update the cardiovascular system listings required careful analysis and consideration within the Agency. As our analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the cardiovascular system listings by December 6, 1989. We published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular system listings for a period of 18 months through June 5, 1991. The cardiovascular system listings were again extended an additional 12 months through June 5, 1992, by final regulation published in the **Federal Register** on June 6, 1991 (56 FR 26030), and were extended to January 5, 1993, by final regulation published in the **Federal Register** on June 5, 1992 (57 FR 23945), and to July 6, 1993, by final regulation published in the **Federal Register** on December 29, 1992 (57 FR 61795).

On July 9, 1991, we published an NPRM proposing revisions to the medical criteria contained in parts A and B of the cardiovascular system listings (56 FR 31266), with provisions for a 60-day comment period. The complex issues raised by the numerous comments we received have required extensive analysis and careful consideration. In order to ensure sufficient time for this review, we are extending the date on which the current cardiovascular system listings in part A will no longer be effective for an additional 6 months—from July 6, 1993, to January 6, 1994, and the date on which the part B listings will longer be effective for an additional 1 month—from December 6, 1993, to January 6, 1994.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed ruelmaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the dates on which parts A and B of the cardiovascular system listings will no longer be effective and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, we have determined that use of public comment procedures is unnecessary under the Administrative Procedure Act.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: May 28, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: June 23, 1993.

Donna E. Shalala

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising the fourth paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The cardiovascular system (4.00 and 104.00) will no longer be effective on January 6, 1994.

* * * * *

[FR Doc. 93–15840 Filed 7–2–93; 8:45 am]

BILLING CODE 4190–29–M

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21 CFR Part 73

Food and Drug Administration

[Docket No. 89C–0203]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of April 5, 1993 (58 FR 17506). The document amended the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone. The document was published with an incorrect docket number in the heading. This document corrects that error.

DATES: Effective May 6, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by May 5, 1993.

FOR FURTHER INFORMATION CONTACT: Robin Thomas Johnson, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 93–7769, appearing on page 17506 in the **Federal Register** of Monday, April 5, 1993, the following correction is made:

On page 17506, in the first column, the docket number "89C–0203" is corrected to read "90C–0406".

Dated: June 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15781 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Trimethoprin and Sulfadiazine Oral Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Macleod Pharmaceuticals, Inc. The ANADA provides for the use of a generic trimethoprim/sulfadiazine oral powder in feed for control of bacterial infections of horses during the treatment of acute strangles, respiratory tract infections, acute urogenital infections, wound infections, and abscesses.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Charles W. Francis, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8617.

SUPPLEMENTARY INFORMATION: Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525, is the sponsor of ANADA 200–033, which provides for the use of a generic trimethoprim/ sulfadiazine oral powder in feed for control of bacterial infections of horses during the treatment of acute strangles, respiratory tract infections, acute urogenital infections, wound infections, and abscesses.

Approval of ANADA 200–033 for Macleod Pharmaceuticals' trimethoprim/ sulfadiazine oral powder (Uniprim™ powder) is as a generic copy of Coopers Animal Health's NADA 131–918 for Tribrissen® 400 oral paste (trimethoprim/sulfadiazine oral paste). The ANADA is approved as of June 11, 1993, and the regulations are amended by adding new § 520. 2613 (21 CFR 520.2613) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, Macleod Pharmaceuticals, Inc., has not previously been listed in 21 CFR 510.600(c) as sponsor of an approved application. That section is amended to add entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Macleod Pharmaceuticals, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "058711" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525.	058711
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
058711	Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525.
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 520.2613 is added to read as follows:

§ 520.2613 Trimethoprim and sulfadiazine powder.

(a) *Specifications.* Each gram of powder contains 67 milligrams of trimethoprim and 333 milligrams of sulfadiazine.

(b) *Sponsor.* See No. 058711 in § 510.600(c) of this chapter.

(c) *Conditions of use: Horses*—(1) *Dosage.* 3.75 grams of powder per 110 pounds (50 kilograms) of body weight per day.

(2) *Indications for use.* For control of bacterial infections of horses during treatment of acute strangles, respiratory tract infections, acute urogenital infections, wound infections, and abscesses.

(3) *Limitations.* Administer orally in a small amount of feed, as a single daily dose, for 5 to 7 days. Continue therapy for 2 to 3 days after clinical signs have subsided. If no improvement is seen in 3 to 5 days, reevaluate diagnosis. A complete blood count should be done periodically with prolonged use. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 25, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–15778 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Air Resources; Permitting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM); Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment limits the air protection standards to air pollution attendant to erosion. The proposed amendment also deletes a number of provisions that either are not required by Federal rules or will make the regulations consistent with statutory provisions recently approved by OSM. The amendment is intended to make the Maryland regulations no less effective than the Federal regulations.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, Suite 3C, Harrisburg, PA 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendments

By letter dated February 5, 1993, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD–562.00). The amendment changes the provisions of the Code of Maryland Administrative Regulations (COMAR) 08.13.09.27, Air Resources Protection, to require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion. Certain specified fugitive dust control measures are made optional as determined by Maryland. The provisions of COMAR 08.13.09.04, Permit Application Review Procedures, are changed to modify the notification procedures for permit approval and issuance. The provisions pertaining to decisions by the Land Reclamation Committee (LRC) are deleted. Effective April, 1993, COMAR 08.13.09 was recodified as COMAR 08.20.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16383) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period ended on April 26, 1993.

By letter dated April 26, 1993, Maryland submitted revisions to the amendment to OSM (administrative Record No. MD–562.11). OSM announced receipt of the revisions in the May 21, 1993, **Federal Register** (58 FR 29560) and reopened the public comment period and provided opportunity for a public hearing. The comment period ended on June 21, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on February 5, 1993, and revised on April 26, 1993. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording

changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations That are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
COMAR 08.13.09.27A, (now 08.20.23.01A)	Air Resources Protection	30 CFR 816.95(a)

Revisions to Maryland's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

Permit Application Review Procedures

At COMAR 08.13.09.04H(1) (now 08.20.04.08A), Maryland is deleting its existing provision that the Bureau of Mines hold a joint hearing with the Land Reclamation Committee (LRC) if a public hearing is requested. The revised regulation requires that the Bureau schedule a hearing, if requested, in the locality of the proposed operation. The deletion is consistent with the statutory deletion approved by OSM on December 17, 1992 (57 FR 59922). Because the revised regulation is substantively identical to the Federal regulation at 30 CFR 773.13(c)(2)(i), the Director finds it no less effective than its Federal counterpart.

At COMAR 08.13.09.04J(1) (now 08.20.04.11A), Maryland is revising its permit approval regulations to require that if the State decides to approve a permit application, it shall notify the applicant, each person who filed written comments or objections to the application, and each party to the hearing, in writing of its approval of the permit application. Maryland is deleting the requirement that the notification be made by certified mail. There is no Federal counterpart, therefore, the deletion does not render the State program less effective than the Federal regulations. Because the revised regulation is no less effective than the Federal regulation at 30 CFR 773.19(b)(1), which also requires notification of a permit decision, the Director finds it no less effective than its Federal counterpart.

At COMAR 08.13.09.04J(4) (now 08.20.04.11D), Maryland is deleting its current requirement that upon permit issuance, it advertise notice of its decision and provide for an adjudicatory hearing, if requested. The revised regulation requires that upon permit issuance, the State provide written notification of the issuance to OSM. Since the Federal regulations pertaining to permit issuance at 30 CFR 773.19(b) do not require that the regulatory authority advertise notice of its decision, the deletion of the requirement does not render the State program less effective than the Federal regulations. The Federal regulation at 773.19(b)(3) requires that OSM be notified of the permit decision at the same time as the applicant. The Maryland regulation is different in that it would not notify OSM of its decision until after the permit is issued. However, the purpose behind OSM's notification is "for OSM to conduct oversight of a State program." 48 FR 44344, 44371 (September 28, 1983). The later notification by Maryland to OSM still satisfies this purpose because OSM's oversight capacity is not dependent upon notification simultaneous with the applicant's notice. Therefore, so long as Maryland notifies OSM within a reasonable time, the Director finds the amendment to be no less effective than 30 CFR 773.19(b)(3).

Deletions to Maryland's Regulations

1. Permit Application Review Procedures

At COMAR 08.13.09.04B(4) (now 08.20.04.02D), Maryland is deleting its existing provision that the State forward copies of a complete permit application to the Water Resources Administration and appropriate Soil Conservation District for review and comments. Also deleted is the provision that the State conduct a technical on-site evaluation with these agencies. The Federal regulations at 30 CFR 773.13 contain no comparable provisions. The Director finds that the proposed deletions do not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04C(2)(e) (now 08.20.04.03B(5)), Maryland is deleting the requirement that an applicant's newspaper advertisement specify that a public hearing will be held on the application. The Federal regulations at 30 CFR 773.13(a)(1) contain no comparable provision. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04G(5) (now 08.20.04.07D), Maryland is deleting the requirement that the State schedule a public hearing as part of the permit review process. The Federal regulations at 30 CFR 773.13(c) require that the regulatory authority hold an informal conference only if an interested party requests one. Maryland satisfies this requirement at COMAR 08.20.04.05A. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04G(5) (now 08.20.04.07E), Maryland is deleting the requirement that the State forward copies of the permit application to certain agencies and public representative members of the LRC. The Federal regulations at 30 CFR 773.13(a)(3) require that the regulatory authority issue written notification indicating the applicant's intention to mine to certain governmental agencies. Maryland satisfies this requirement at COMAR 08.20.04.02C(3). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04g(6) (now 08.20.04.07F), Maryland is deleting the requirements that a site visit for the LRC be scheduled and that the applicant flag or stake all areas to be affected by the proposed mining activity. The Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications contain no comparable provisions. The Director finds that the proposed deletions do not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04H(2)(b) (now 08.20.04.08B(2), Maryland is deleting the requirement that the State publish information regarding a requested public hearing in the Maryland Register. The Federal regulations at 30 CFR 773.13(c)(2)(ii) contain no comparable provision. The Director finds that the

proposed deletion does not render the State program less effective than the Federal regulations.

Maryland is deleting its current regulations at COMAR 08.13.09.04I (now 08.20.04.09) which required that the LRC vote and approve, reject or conditionally approve reclamation plans. The remaining sections are relettered for consistency. The deletion is duplicative of new statutory language approved by OSM on December 17, 1992 (57 FR 59922). The Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At new COMAR 08.13.09.04I(1) (now 08.20.04.10A), Maryland is deleting the requirement that the State complete its review of a permit application within ten days of receipt of the LRC approval of decision on a reclamation plan. The Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(1)(a) (now 08.20.04.11A(1)), Maryland is deleting the requirement that the State's approval notice to the permit applicant contain all written findings required by Regulation .05A (Required Written Findings). The remaining sections are relettered for consistency. The Federal regulations at 30 CFR 773.19(b) pertaining to notification contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(2) (now 08.20.04.11B), Maryland is deleting the requirement that a copy of the permit notice be forwarded to any person who filed a written comment or objection and the Regional Director of the Federal Office of Surface Mining. The remaining sections are renumbered for consistency. The Federal regulations at 30 CFR 773.19(b) require that these entities be notified. Maryland provides for notification at revised COMAR 08.13.09.04J (1) and (4) (now COMAR 08.20.04.11 A and D). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(5) (now 08.20.04.11E), Maryland is deleting the requirement that the State issue a permit within ten days of receipt of all required bonds, fees, and evidence of forms of approvals. The remaining sections are renumbered for consistency. The Federal regulations at 30 CFR 773.19(a) require that the permit be issued upon submittal of a performance bond. Maryland satisfies this requirement at revised COMAR 08.13.09.04J(3) (now 08.20.04.11C). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At new COMAR 08.13.09.04J(5) (now 08.20.04.11F), Maryland is deleting the requirement that it notify OSM that a permit has been issued within ten days of issuance. As discussed earlier, the Federal regulations at 30 CFR 773.19(b)(3) require notification. Maryland satisfies this requirement at revised COMAR 08.13.09.04J(4) (now 08.20.04.11D). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(7) (now 08.20.04.11G), Maryland is deleting the requirement that it forward to OSM a copy of the mining permit and related documents and permits. The Federal regulations at 30 CFR 773.19 pertaining to permit issuance contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04L (now 08.20.04.13), Maryland is deleting the word "final" in the phrase: "Within 30 days after the applicant is notified of the final decision of the Bureau concerning the application for a permit in accordance with Sec. J or K of this regulation. . . ." Because the revised regulation is substantively identical to the Federal regulation at 30 CFR 775.11(a), the Director finds it no less effective than its Federal counterpart.

2. Air Resources Protection

At COMAR 08.13.09.27B (8), (13), (14), and (15) (now 08.20.23.01B (8), (13), (14), and (15)), Maryland is deleting certain required fugitive dust control measures and is designating the remaining measures as optional examples. The remaining provisions are renumbered for consistency. The measures being deleted are: substituting conveyor systems for haul trucks under certain conditions, restricting areas to be blasted at any one time, restricting activities causing fugitive dust, and extinguishing and periodically inspecting burning areas when the potential for spontaneous combustion is high. The Federal regulations at 30 CFR 780.15(b)(2) require a plan for fugitive dust control practices, as required under 30 CFR 816.95 which pertains to the stabilization of surface areas. No specific dust control measures are provided. The Director finds that the proposed deletions do not render the State program less effective than the Federal regulations at 30 CFR 780.15(b)(2).

Maryland is deleting its existing provision for air monitoring at COMAR 08.13.09.27D (now 08.20.23.01D). Maryland provides regulations for air pollution control plans at COMAR 08.20.02.13G. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations at 30 CFR 780.15(b)(1).

Additions to Maryland's Regulations

Permit Application Review Procedures

At COMAR 08.13.09.04B(3)(c) (now 08.20.04.02C), Maryland is adding a requirement that the State publish notification of a complete application, including a deadline for submitting comments, objections, or a request for a hearing in the Maryland Register. The Federal regulations at 30 CFR 773.13(a) do not require that the regulatory authority advertise a notice of a complete application. The Director finds that the proposed revision is not less effective than the Federal regulations at 30 CFR 773.13(a).

At COMAR 08.13.09.04J(3) (now 08.20.04.11), Maryland is adding a requirement that if the specified compliance review does not require that State to change its decision to approve the application, the permit shall be issued within 15 days of the State's receipt of all required bonds and fees. The Federal regulations at 30 CFR 773.19(a) require that if the permit is approved, the regulatory authority issue the permit upon submittal of a performance bond. The Director finds that the proposed revision is no less effective than the Federal regulations at 30 CFR 773.19(a).

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the March 26, 1993, **Federal Register** (58 FR 16383) ended on April 26, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony. The public comment period announced in the May 21, 1993, **Federal Register** (58 FR 29560) ended on June 21, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

VOL 58 ISS 127 JL 6 1993 UMI

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Bureau of Mines; the Department of Labor, Mine Safety and Health Administration; and the Department of the Army, Corps of Engineers, responded to the first submission and concurred without comment. No comments were received on the second submission.

EPA Concurrence

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the Environmental Protection Agency (EPA) concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). In a letter dated April 20, 1993, (Administrative Record No. MD–562.10), EPA concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on February 5, 1993, and revised on April 26, 1993.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement the decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 920.15, a new paragraph (x) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(x) The following amendment submitted to OSM on February 5, 1993, and revised on April 26, 1993, is approved effective July 6, 1993. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following rules of the Code of Maryland Administrative Regulations:

08.13.09.04B(3)(c) (Now 08.20.04.02C)	Permit Applications: Initial Review.
08.13.09.04G(4) (Now 08.20.04.07D)	Permit Applications: Bureau Review.
08.13.09.04H(1) (Now 08.20.04.08A)	Permit Applications: Public Hearing.
08.13.09.04H(2)(b) (Now 08.20.04.08B(2)	Permit Applications: Public Hearing.
08.13.09.04I(1) (Now 08.20.04.10A)	Permit Applications: Bureau Decision.

08.13.09.04J(1) (Now 08.20.04.11A)	Permit Applications: Permit Approval.
08.13.09.04J(4) (Now 08.20.04.11D)	Permit Applications: Permit Approval.
08.13.09.04J(5) (new) (Now 08.20.04.11F)	Permit Applications: Permit Approval.
08.13.09.04L (Now 08.20.04.13)	Permit Applications: Permit Approval.
08.13.09.27A,B (Now 08.20.23.01A,B)	Air Resources Protection.

(2) Deletion of the following rules from the Code of Maryland Administrative Regulations:

08.13.09.04B(4) (Now 08.20.04.02D)	Permit Applications: Initial Review.
08.13.09.04C(2)(e) (Now 08.20.04.03B(5))	Permit Applications: Newspaper Advertisement.
08.13.09.04G(5) (Now 08.20.04.07E)	Permit Applications: Bureau Review.
08.13.09.04G(6) (Now 08.20.04.07F)	Permit Applications: Bureau Review.
08.13.09.04(I) (Now 08.20.04.09)	Permit Applications: Land Reclamation Committee.
08.13.09.04J(1)(a) (Now 08.20.04.11A(1))	Permit Applications: Permit Approval.
08.13.09.04J(2) (Now 08.20.04.11B)	Permit Applications: Permit Approval.
08.13.09.04J(5) (Now 08.20.04.11E)	Permit Applications: Permit Approval.
08.13.09.04J(7) (Now 08.20.04.11G)	Permit Applications: Permit Approval.
08.13.09.27B(8),(13),(14),(15) (Now 08.20.23.01B(8),(13),(14),(15))	Air Resources Protection.
08.13.09.27D (Now 08.20.23.01D)	Air Resources Protection.

(3) Addition of the following rules to the Code of Maryland Administrative Regulations:

08.13.09.04B(3)(c) (Now 08.20.04.02C)	Permit Applications: Initial Review.
08.13.09.04J(3) (Now 08.20.04.11)	Permit Applications: Permit Approval.

[FR Doc. 93–15851 Filed 7–2–93; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 938

Pennsylvania Regulatory Program; Permit Fee

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment increases Pennsylvania's surface coal mining and reclamation fee from $50 per acre to $100 per acre. This amendment is intended to assist in rendering the State's Surface Mining Conservation and Reclamation Fund more solvent.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated February 18, 1993 (Administrative Record No. PA–818.00), Pennsylvania submitted a State program amendment to address a shortage of revenues to the Surface Mining Conservation and Reclamation Fund.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16389), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the

VOL
58
ISS
127
JL
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adequacy of the proposed amendment. The public comment period closed on April 26, 1993. The public hearing scheduled for April 12, 1993, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania Program.

Section 86.17 Permit and Reclamation Fees

Pennsylvania proposes to revise section 86.17 concerning the reclamation fee charged for surface mining activities, to increase the fee from $50 per acre to $100 per acre. The money collected through the reclamation fee will be deposited in Pennsylvania's Surface Mining Conservation and Reclamation Fund (hereinafter referred to as the Fund) and shall be dedicated to the reclamation and revegetation of defaulted mining operations as a supplement to bond forfeiture funds.

The Fund is one component of an alternative bonding program which is used to supplement both the bonding cost incurred by the permittee and the bonds available for the reclamation of forfeited surface coal mining operations. The increase in the cost of the reclamation fee from $50 per acre to $100 per acre is being proposed by the State to offset a shortage of revenue to the Fund.

Under 30 CFR 800.11(e), the Director may approve an alternative bonding system provided the State has demonstrated that the alternative bonding system will have available sufficient funds to complete the reclamation plan for any areas which may be in default at any time. On May 31, 1991 (56 FR 24687), the Director conditionally approved a Pennsylvania amendment to revise the alternative bonding program pending a demonstration by Pennsylvania that the revenues generated through collection of the reclamation fee will meet the requirements of 30 CFR 800.11(e), as stated above.

In compliance with the finding, Pennsylvania has undertaken to have an independent actuarial appraisal of the solvency of its alternative bonding program. As of the date of this final rule, the conclusion of that study is not final. Therefore, the proposed amendment of the language of 86.17 (56 FR 24687) is still only conditionally approved.

In its amendment submittal, Pennsylvania acknowledges that "(E)ven though the proposed fee of $100 per acre may still be insufficient, a stop gap measure is needed to keep the situation from worsening." Therefore, because this amendment is not intended to satisfy the solvency requirements stipulated by the Director's conditional approval of section 86.17 (56 FR 24687), but is instead an intermediate step to keep the shortage in the Fund from further deteriorating, the Director is approving the proposed revision to section 86.17 to increase the reclamation fee from $50 per acre to $100 per acre.

IV. Summary and Disposition of Comments

Public Comment

The public comment period and opportunity to request a public hearing announced in the March 26, 1993, **Federal Register** ended on April 26, 1993. No public comments were received, and since no one requested an opportunity to testify at the scheduled public hearing, one was not held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(ii)(i), comments were solicited from various Federal and State agencies with an actual or potential interest in the Pennsylvania program. Responses received from the Department of Labor, Mine Safety and Health Administration, District 1 and the Department of Agriculture, Soil Conservation Service, were supportive of the amendment. The Department of Interior, Fish and Wildlife Service and Bureau of Mines; Department of Labor, Mine Safety and Health Administration, District 2; and the U.S. Army Corp of Engineers responded without comment or objection to the amendment. The Environmental Protection Agency and the Advisory Council on Historic Preservation did not respond to the request for comments.

V. Director's Decision.

Based on the findings discussed above, the Director is approving Pennsylvania's program amendment pertaining to the increase in the reclamation fee from $50 per acre to $100 per acre, as submitted on February 18, 1993.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent

with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15, is amended by adding a new paragraph (z) to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(z) The amendment to the Pennsylvania regulatory program pertaining to the General Requirements for Permits and Permit Applications, title 25, Pennsylvania Code Section 86.17 which increased the reclamation fee from $50 to $100 per acre is approved, effective July 6, 1993.

[FR Doc. 93–15848 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 91–203, 91–204, 91–222]

RIN 2115–AE00, AE03, AE12

Navigation Underway; Tankers; Partial Suspension of Effectiveness

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of effectiveness.

SUMMARY: The Coast Guard is partially suspending the effectiveness of the provisions of the rule governing the use of autopilot equipment in the navigable waters of the United States. The portion affected would have allowed expanded use of autopilots in integrated navigation systems. The rule is being suspended because the technology necessary to implement this provision is not fully developed or adequately tested.

EFFECTIVE DATE: Suspension of § 164.13(e) is effective July 9, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–204), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Short Range Aids to Navigation Division (G–NSR–3), (202) 267–0415.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Margie G. Hegy, Project Manager.

Discussion

The Coast Guard published a proposed rule on January 3, 1992, (57 FR 514), a supplemental notice of proposed rulemaking (SNPRM) on October 2, 1992, (57 FR 45667), and a final rule on May 10, 1993, (58 FR 27628) on the use of autopilots. New § 164.13(e) of Title 33 allows tankers with an integrated navigation system (INS) to use their autopilot in certain traffic separation schemes and shipping safety fairways where conventional autopilot use is prohibited. This provision was added at the SNPRM stage because of comments suggesting that a modern autopilot that is part of an INS would be far more capable and reliable than the older autopilots described in the International Maritime Organization standard referenced in the NPRM.

The effectiveness of this provision is suspended because of a comment received after publication of the final rule. The comment pointed out that at present, INS is a broad, general term that applies to a wide range of shipboard systems that utilize the input from two or more shipboard sensors to determine ship's position, course, and speed. Currently there is no performance standard for a shipboard INS in terms of accuracy, integrity, or reliability. Although the Coast Guard recognizes that the use of INS with an autopilot offers the potential to improve navigation safety, adequate testing and evaluation of this technology has not been conducted. The Coast Guard intends to conduct further rulemaking concerning necessary testing and methodology for certifying that performance standards have been met and will provide further opportunity for public input.

Dated: June 29, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–15818 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH–FRL–4668–1]

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; State's Compliance

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is amending a rule issued on December 22, 1992, to

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58
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withdraw a portion of that rule as it applies to the State of Washington. The aquatic life criteria for arsenic and selenium adopted by Washington and approved by EPA make the Federally promulgated criteria for these pollutants unnecessary.

EFFECTIVE DATE: This amendment is effective July 6, 1993.

ADDRESSES: The administrative record for the consideration of Washington's revised standards is available for public inspection from the Environmental Protection Agency, Region X Office, Water Division, 1200 Sixth Avenue, Seattle, WA, 98101, during normal business hours of 8 a.m. until 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, Chief, Water Quality Standards Branch (WH-585), Office of Water, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The telephone number is 202-260-1315.

SUPPLEMENTARY INFORMATION: A final rule to establish numeric water quality criteria for those States and Territories that failed to comply fully with section 303(c)(2)(B) of the Clean Water Act was published in the **Federal Register** on December 22, 1992 (57 FR 60848). Federal criteria were promulgated for 12 States and 2 Territories, and these criteria became the legally enforceable water quality standards in the named States and Territories for all purposes and programs under the Clean Water Act on February 5, 1993.

As indicated in the preamble to the final rule, EPA would amend the rule to withdraw criteria from the rule when a State adopted and EPA approved criteria that met the requirements of the Clean Water Act (see 57 FR 60860). On November 25, 1992, the State of Washington adopted revisions to the State's surface water quality standards, Chapter 173-201A of the Washington Administrative Code, regarding aquatic life criteria for arsenic and selenium. The State adopted criteria identical to those promulgated by EPA for both fresh and marine waters. These criteria were approved by EPA on March 25, 1993.

EPA's promulgated criteria for arsenic and selenium are now duplicative of EPA-approved State criteria and are no longer needed to meet the requirements of the Act. It is EPA's policy to withdraw promulgated water quality standards when the State adopts new or revised standards which meet the requirements of the Act (57 FR 60848). Accordingly, EPA is amending its rule promulgated December 22, 1992, to withdraw the criteria for arsenic and selenium for the protection of aquatic life for Washington. Other criteria promulgated by EPA for Washington remain in force.

Washington complied with the public participation requirements in its adoption of State standards. Additionally, because Washington adopted, and EPA approved, water quality criteria for arsenic and selenium for the protection of fresh and marine aquatic life identical to those being withdrawn in today's rule, EPA has determined that additional public participation in this action is unnecessary and constitutes good cause for issuing this final rule without notice and comment. For the same reasons, the Agency has determined that good cause exists to waive the requirement for a 30-day period before the amendment becomes effective and therefore the amendments will be immediately effective.

This action imposes no new regulatory requirements but merely withdraws a Federal regulation. Therefore, this rule imposes no costs and does not require a regulatory impact analysis under Executive Order 12291. The Agency has determined that this action will have no significant impact on a substantial number of small entities. The rule also does not impose any requirements subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 131

Water pollution control, Water quality standards, Toxic pollutants.

Dated: June 8, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

§ 131.36 [Amended]

2. Section 131.36(d)(14)(ii) is amended in "Fish and Shellfish; Fish" use classification, under the listing of applicable criteria, by removing the entries "Column B1 and B(2)—#2, 10" and "Column C1—#2, 10" in their entirety and by removing "#2" and "#10" from the entry for Column C2.

[FR Doc. 93-15862 Filed 7-2-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 34, 35 and 43

[Common Carrier Docket No. 92-145, FCC No. 93-292]

Uniform Systems of Accounts for Record Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Report and Order which eliminates the Commission's rules on a uniform system of accounts for radiotelegraph carriers and a uniform system of accounts for wire-telegraph and ocean-cable carriers and also eliminates the related Annual Reports Forms R and O. Finally, the Commission requires record carriers to file a letter each year on operating revenues and communications plant. We make these changes because we do not see a need for these record carriers to continue accounting under uniform systems of accounts or to file extensive data with us. These changes provide effective and adaptive regulation for record carriers while eliminating regulations that are unnecessary or inimical to the public interest.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Weber, Common Carrier Bureau, Accounting and Audits Division, (202)-634-1861.

SUPPLEMENTARY INFORMATION: The Commission's Report and Order eliminates the accounting systems in parts 34 and 35 of the Commission's rules and also eliminates the associated annual reports' filing requirements in part 43 of our rules. Finally, we require record carriers with annual revenue of over $75 million to file an annual letter which includes selected information from their income statements and balance sheets.

Paperwork Reduction

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, room 234, Paperwork

Reduction Project (3060–0515), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0515), Washington, DC 20503.

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 34

Communications common carriers, Radiotelegraph, Uniform Systems of Accounts.

47 CFR Part 35

Communications common carriers, Uniform Systems of Accounts, Wire-telegraph and ocean cable.

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements, Telegraph.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

47 CFR parts 1, 34, 35, and 43 are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

1. Section 1.785 (a) is revised to read as follows:

§ 1.785 Annual financial reports.

(a) An annual financial report shall be filed by telephone carriers and affiliates as required by part 43 of this chapter on Form M.

* * * * *

§§ 1.793 and 1.794 [Removed]

2. Sections 1.793 and 1.794 are removed.

PART 34—[REMOVED]

3. Part 34 is removed in its entirety.

PART 35—[REMOVED]

4. Part 35 is removed in its entirety.

PART 43—REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

5. The authority citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

6. Paragraphs (a) and (d) of § 43.21 are revised to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of $100 million, and certain companies (as indicated in paragraph (c) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraphs (c), (e) and (f) of this section, each annual report required by this section shall be filed not later than March 31 of each year, covering the preceding calendar year. It shall be filed on the appropriate report form prescribed by the Commission (see § 1.785 of this chapter) and shall contain full and specific answers to all questions propounded and information requested in the currently effective report forms. The number of copies to be filed shall be specified in the applicable report form. At least one copy of this report shall be signed on the signature page by the responsible accounting officer. A copy of each annual report shall be as retained in the principal office of the respondent and shall be filed in such manner to be readily available for reference and inspection.

* * * * *

(d) Each miscellaneous common carrier (as defined by § 21.1 of this chapter) with operating revenues over $100 million for a calendar year shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. Each record carrier with operating revenues over $75 million for a calendar year shall file a letter showing selected income statement and balance sheet items for that year with the Common Carrier Bureau Chief. These letters must be filed by March 31 of the following year.

* * * * *

[FR Doc. 93–15787 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 61, 64 and 69

[CC Docket No. 91–115; FCC 93–254]

Tariffing Requirements for Billing Name and Address

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 13, 1993, the Commission adopted a Second Report and Order establishing rules requiring local exchange carriers to provide billing name and address information on a common carrier basis to telecommunications service providers for billing purposes. This will enable telecommunications service providers without billing and collection agreements with local exchange carriers to perform their own billing and collection, thus improving competition in the market for billing and collection services. The Commission also adopted rules limiting billing name and address disclosure to telecommunications service providers and prohibit use of billing name and address information for purposes other than billing for telecommunications services. These rules are designed to protect the privacy of end users.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted May 13, 1993, and released June 9, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, suite 140, 2100 M Street, NW., Washington, DC 20037.

Regulatory Flexibility Analysis: We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service

area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant effect on a substantial number of "small entities."

Summary of Report and Order

Joint use cards are calling cards issued by local exchange carriers (LECs) which can be used to charge both local and long distance calls. Interexchange carriers need billing name and address (BNA) information to bill for calls made with joint use cards, as well as third party or collect calls. The Commission's Second Report and Order requires local exchange carriers to provide their customers' billing name and address information to interexchange carriers and other telecommunications service providers on a common carrier basis for this purpose. The Second Report and Order amends the access charge rules to provide a separate rate element for billing name and address information, but otherwise prescribes no rate structure for BNA, so that local exchange carriers will have the flexibility they need to meet their customers' needs.

Requiring provision of BNA information on a common carrier basis makes the market for billing and collection services more competitive by ensuring that interexchange carriers and other telecommunications service providers can perform their own billing and collection. The Second Report and Order strikes an optimal balance between interexchange carriers' interests in being able to perform their own billing and collection, and the privacy interests of end users, without being unduly burdensome to the local exchange carriers.

Local exchange carriers collect, maintain, and update BNA information as part of their exchange access service. Therefore, BNA is incidental to a communications service within the meaning of sections 3(a) and 3(h) of the communications act. In addition, only Local exchange carriers have access to accurate, up-to-date BNA information. Therefore, the draft order would treat BNA as a common carrier service.

Because widespread disclosure of BNA information could conflict with customers' reasonable expectations of privacy, the item limits BNA disclosure, thus safeguarding these expectations. First, local exchange carriers may not release BNA information for any use other than billing and collection, and to no one other than interexchange carriers and other telecommunications service providers, and their authorized billing and collection agents. Secondly, local exchange carriers must notify their subscribers that when subscribers use a local exchange carrier joint use card or accept a collect or third party call, their BNA may be disclosed to the serving interexchange carriers and other telecommunications service providers to facilitate billing. We expect this notification to serve two purposes. First, it will minimize intrusion on privacy because subscribers will be on notice that their BNA will be released to telecommunications providers whenever they use their joint use cards or their local exchange account to pay for telecommunications services. Second, this procedure should reduce some local exchange carriers' concerns that end users may be confused or surprised when they receive a bill from a non-local exchange carrier company.

As a further precaution, local exchange carriers are prohibited from releasing the BNA information associated with unlisted and unpublished telephone numbers without the customer's consent. In addition to the notification requirement established above, we also require LECs to obtain a one-time written authorization for BNA disclosure from existing and future LEC cardholders having unpublished or unlisted numbers. With respect to third party and collect calls, customers are given an opportunity to accept or reject charges to their line accounts prior to the completion of those calls, and no BNA is released if the subscriber refuses the call. We conclude that this opportunity to refuse a call is sufficient to protect from unwanted disclosure the BNA of end users with unpublished or unlisted numbers. Accordingly, we need not adopt any additional safeguards to protect unlisted or unpublished BNA with respect to collect or third party calls.

Conclusion

In this Report and Order, we require LECs to provide BNA for their LEC joint use calling cards pursuant to title II in order to ensure that BNA is provided in a non-discriminatory manner at just and reasonable rates. Because of the variety of ways in which it is possible to offer BNA, we do not believe it is necessary to impose a uniform method of providing the service or a uniform rate structure. In order to balance the privacy concerns of end users with the telecommunications providers' need to obtain payment for their services, we require that LECs disclose BNA to IXCs and enhanced and information service providers and their authorized agents for the limited purpose of billing end users for telecommunication services charged to their LEC calling cards. In addition, we mandate a one-time notification requirement to all end users that BNA for their LEC card will be disclosed for billing purposes and we require the LECs to secure authorization for BNA disclosure from those end users with unlisted or unpublished numbers.

Ordering Clauses

Accordingly, *it is ordered*, That the policies, rules and requirements set forth herein *are adopted*.

It is further ordered, That pursuant to authority contained in sections 1, 4 and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–205, parts 61, 64, and 69 of the Commission's Rules, 47 CFR part 61, 64. 69, are amended as set forth below.

It is further ordered, That all local exchange carriers that have issued local exchange carrier joint use calling cards as defined by this Order SHALL FILE, within 90 days of the release of this Order, tariff revisions to become effective on 45 days' notice that are consistent with this Order. For these purposes we waive § 61.58 and 61.59 of the Commission's Rules, 47 CFR 61.58, 61.59, and assign Special Permission No. 93–398.

It is further ordered, That all local exchange carriers that have issued local exchange carrier joint use calling cards as defined by this Order SHALL PROVIDE notification as required by this Order to their subscribers, within 60 days of the release of this Order. Furthermore, all local exchange carriers that have issued local exchange carrier joint use calling cards as defined by this Order SHALL OBTAIN consent from their joint use calling card subscribers with unlisted or unpublished telephone numbers for disclosure of their billing name and address information for billing purposes, within 60 days of the release of this Order.

It is further ordered, That the provisions in this Second Report and Order will be effective August 5, 1993.

List of Subjects

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Part 64

Communications common carriers, Miscellaneous rules relating to common carriers.

47 CFR Part 69

Communications common carriers, Access charges.

Rules; Amendments to the Code of Federal Regulations

Title 47 of the CFR, parts 61, 64, and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154.

2. Section 61.42 is amended by removing the period at the end of paragraph (e)(1)(vi) and adding in its place "; and", and adding paragraph 61.42(e)(1)(vii) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(e) * * *

(1) * * *

(vii) Billing name and address, as described in § 69.128 of this chapter.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

4. Section 64.1201 is added to read as follows:

§ 64.1201 Restrictions on billing name and address disclosure.

(a) As used in this section:

(1) The term *billing name and address* means the name and address provided to a local exchange company by each of its local exchange customers to which the local exchange company directs bills for its services.

(2) The term *telecommunications service provider* means interexchange carriers, operator service providers, enhanced service providers, and any other provider of telecommunications services.

(3) The term *authorized billing agent* means a third party hired by a telecommunications service provider to perform billing and collection services for the telecommunications service provider.

(4) The term *bulk basis* means billing name and address information for all the local exchange service subscribers of a local exchange carrier.

(5) The term *LEC joint use card* means a calling card bearing an account number assigned by a local exchange carrier, used for the services of the local exchange carrier and a designated interexchange carrier, and validated by access to data maintained by the local exchange carrier.

(b) No local exchange carrier providing billing name and address shall disclose billing name and address information to any party other than a telecommunications service provider or an authorized billing and collection agent of a telecommunications service provider.

(c) No telecommunications service provider or authorized billing and collection agent of a telecommunications service provider shall use billing name and address information for any purpose other than billing customers for using telecommunications services of that service provider and collecting amount due.

(d)(1) No local exchange carrier shall disclose billing name and address information on a bulk basis.

(2) Nothing in paragraph (d)(1) of this section shall preclude local exchange carriers from providing to an interexchange carrier the billing name and address information for all customers presubscribed to that interexchange carrier.

(e)(1) All local exchange carriers providing billing name and address information shall notify their subscribers that:

(i) The subscriber's billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, FCC 93–254, adopted May 13, 1993, whenever the subscriber uses a LEC joint use card to pay for services obtained from the telecommunications service provider, and

(ii) The subscriber's billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, FCC 93–254, adopted May 13, 1993, whenever the subscriber accepts a third party or collect call to a telephone station provided by the LEC to the subscriber.

(2) All local exchange carriers shall obtain from subscribers with local exchange carrier joint use cards who also have unlisted or unpublished telephone numbers written consent for disclosure of the billing name and address information associated with the local exchange carrier joint use card account before disclosing such information pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, FCC 93–254, adopted May 13, 1993.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply to disclosure of billing name and address information in the circumstances described in paragraph (d)(2) of this section.

PART 69—ACCESS CHARGES

5. The authority citation for part 69 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154.

6. Section 69.128 is added to read as follows:

§ 69.128 Billing name and address.

Appropriate subelements shall be established for the use of equipment or facilities that are associated with offerings of billing name and address.

7. Paragraph (b) of § 69.307 is redesignated as paragraph (c), and new paragraph (b) is added to read as follows:

§ 69.307 General support facilities.

* * * * *

(b) General purpose computer investment used in the provision of the billing name and address element at § 69.128 shall be assigned to that element.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15788 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 61, 65 and 69

[CC Docket No. 92–135; FCC 93–253]

Reform for Local Exchange Carriers Subject to Rate of Return Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 13, 1993 the Commission adopted a Report and Order establishing rules affecting rate of return regulated local exchange carriers. The proceeding established optional regulatory reforms that compliment the price cap system applicable to the largest local exchange carriers, by providing incentives for smaller companies to become more efficient and by encouraging technological development. Because these smaller companies provide service primarily to rural areas, these options will help bring ratepayer benefits gained from incentive regulations to rural Americans as well as urban populations served by the largest carriers. These options also reduce administrative burdens, and

increase flexibility, while continuing to assure high service quality and universal service at reasonable rates. The Commission therefore established a continuum of options to be made available to the over 1300 carriers not required to be regulated under price caps.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew Mulitz, Attorney/Advisor, Tariff Division, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted May 13, 1993, and released June 11, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service (202) 857–3800 1919 M Street, NW., suite 246, Washington, DC 20554.

Paperwork Reduction Analysis

Public reporting for this collection of information is estimated to average 833 hours per service quality response and 10 hours per infrastructure response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project (3060–0510), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0510), Washington, DC 20503.

Regulatory Flexibility Analysis

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. Additionally, the regulatory regimes established by these rules are both optional and less burdensome than existing requirements. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers as is evidenced by this proceeding.

Summary of Report and Order

The more than 1300 local exchange carriers that do not participate in price caps represent approximately 6 percent of the LEC industry. These companies range in size from less than 100 to more than 1 million access lines. These carriers have resisted the price caps option for a number of reasons, including: unwillingness to assume the risks, inability to spread the risks; and, discomfort with the administrative complexity of price caps.

Therefore, the Report and Order establishes three options that, together with price caps, would establish a continuum of regulatory options. The continuum extends from traditional, basic rate of return regulation to full price caps. As a carrier proceeds along the continuum, the risks and potential rewards increase.

The option offering the least risk—traditional, basic rate of return—would be applicable to the National Exchange Carrier Association (NECA) and any company that does not elect another option. This form of regulation would differ from the present methods in two major aspects. First, as proposed, a filing entity other than NECA could, at its option, file tariffs every two years instead of annually. Second, the Common Carrier Bureau could introduce, as a further option, greater reliance on historical costs and simple extrapolations made from historical costs.

The next level along the continuum would be available to small telephone companies serving 50,000 access lines or less, with gross annual revenues of $40 million and less. Such companies that do not participate in the NECA pools would be able to file tariffs for all interstate rates based on historical costs for two-year periods. Under existing rules, these carriers may file such tariffs for traffic sensitive rates only. With the exception of subscriber line charges, no cost support would have to be filed with the tariffs; however, the information would be available upon request of the Commission or interested parties. We believe ratepayers would reap the full benefits of reduced costs by lower rate reflected in biennial tariff filings.

Third, the Commission adopted an optional incentive plan open to all LECs outside of the NECA pools. Under the optional incentive plan, carriers would file tariffs every two years. Cost support showings would be based on historical, rather than projected, costs. The earnings bond would be 150 basis points above and 75 basis points below the rate of return authorized by the Commission. Pricing flexibility would be pursuant to rules similar to those used in price caps. Ratepayers would benefit by rate reductions reflecting the cost reductions of the historical period.

The final step in the continuum is the previously-adopted price cap regulation plan.

Ordering Clauses

Accordingly, *It is ordered that,* Pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, part 61, part 65, and part 69, and §§ 61.38, 61.39, 61.50, 61.58, 65.700, and 69.3, are amended as set forth below.

It is further ordered, That this Report and Order will be effective thirty days after publication in the **Federal Register**.

List of Subjects

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Part 65

Communications common carriers, Interstate rate of return prescription and methodologies.

47 CFR Part 69

Access charges, Communications common carriers.

Rules

Amendments to the Code of Federal Regulations

Title 47 of the CFR, parts 61, 65, and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by revising paragraph (e) to read as follows:

§ 61.3 Definitions.

* * * * *

(e) *Base period.* For carriers subject to §§ 61.41–61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs, or for carriers regulated under § 61.50, the 24-month period ending six months prior to the effective date of biennial optional incentive plan tariffs.

* * * * *

3. Section 61.38 is amended by revising paragraph (a) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenue exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (a), (b), (d), (e), and (g), promotional offerings that relate to services subject to price cap regulation, tariff filings proposing rates for services identified in § 61.50, or to tariff filings, other than promotional filings, filed on 14 days' notice pursuant to § 61.58(c)(6).

* * * * *

4. Section 61.39 is amended by revising paragraphs (a) and (b), and adding a new paragraphs (d) and (e) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42(d), (e) and (g), which filings are submitted by carriers subject to price cap regulation, or to tariff filings proposing rates for services identified in § 61.50, which filings are submitted by carriers subject to optional incentive regulation.

(b) *Explanation and data supporting tariff changes.* The material to be submitted to either a tariff change or a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.33. The basis for ratemaking must comply with the following requirements. Except as provided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Tariff Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the local exchange company that is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas approved by the Commission.

(3) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first period the Carrier Common Line revenue requirement shall be determined by a cost of service study for the most recent 12 month period. The Carrier Common Line revenue requirement shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(ii) For subsequent filings, the Carrier Common Line revenue requirement shall be determined by a cost of service study for the total period since the carrier's last biennial access filing. The Carrier Common Line revenue requirement determined in this manner shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(4) For a tariff change, the local exchange carrier which is an average schedule carrier must propose common line rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Common Line settlement from the National Exchange Carrier Association that is conclusively binding upon the carrier and the Association. This carrier common line settlement amount shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(ii) For subsequent filings, an amount calculated to reflect the average schedule pools settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule Common Line formulas approved by the Commission. This amount shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(5) For End User Common Line charges included in a tariff pursuant to this Section, the local exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

* * * * *

(d) Rates for a new service that is the same as that offered by a price cap

VOL 58 ISS 127 JL 6 1993 UMI

regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier. Compliance may be shown through submission of applicable tariff pages of the adjacent carrier; a showing that the serving areas are adjacent; any necessary explanations and work sheets.

(e) Average schedule companies filing pursuant to this Section shall retain their status as average schedule companies.

5. Section 61.45 is amended by revising paragraph (d)(2) to read as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(d) * * *

(2) Local exchange carriers specified in § 61.41 (a)(2) or (a)(3) shall also make such temporary exogenous cost changes as may be necessary to reduce PCIs to give full effect to any sharing of base period earnings required by the sharing mechanism set forth in the Commission's Second Report and Order in Common carrier Docket No. 87–313, FCC 90–314, adopted September 19, 1990. Such exogenous cost changes shall include interest, computed at the prescribed rate of return, from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect.

* * * * *

6. Section 61.50 is revised to read as follows:

§ 61.50 Scope: Optional incentive regulation for rate of return local exchange carriers.

(a) This section shall apply on an elective basis, to local exchange carriers for either traffic sensitive rates only or for both traffic sensitive and common line rates. Carriers electing the plan for traffic sensitive rates only must participate in the Association common line pool. Affiliation with average schedule companies shall not bar a carrier from electing optional incentive regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files an optional incentive regulation tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file incentive plan tariffs in all their study areas.

(c) The following rules apply to telephone companies subject to this section, that become involved in mergers, acquisitions, or similar transactions, except that mergers with, acquisitions by, or other similar transactions with companies subject to price cap regulation, as that term is defined in § 61.3(w), shall be governed by § 61.41(c).

(1) Any telephone company subject to this section that is a party to a merger, acquisition, or similar transaction, shall continue to be subject to incentive regulation notwithstanding such transaction.

(2) Where a telephone company subject to this section acquires, is acquired by, merged with, or otherwise becomes affiliated with a telephone company that is not subject to this section, the latter telephone company shall become subject to optional incentive plan regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file optional incentive plan tariffs to be effective no later than that date in accordance with the applicable provisions of this Part 61.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, when a telephone company subject to optional incentive plan regulation acquires, is acquired by, mergers with, or otherwise becomes affiliated with a telephone company that qualifies as an "average schedule" company, the latter company may retain its "average schedule" status or become subject to optional incentive plan regulations in accordance with § 69.3(i)(3) of this chapter and the requirements referenced in that section.

(d) Local exchange carriers that are subject to this section shall not withdraw from optional incentive regulation until the end of two, two-year tariff periods. If a local exchange carrier withdraws from optional incentive plan regulation, it must file company-specific tariffs under the provisions of § 61.38 for four years before it may again elect to enter incentive plan regulation; such carrier may not participate in the applicable Association tariff during that four years. After the four year period, the carrier may either return to the incentive plan, or remain under § 61.38.

(e) Each local exchange carrier subject to this section shall establish the baskets of services, including service categories, as identified in § 61.42 (d) and (e).

(f) Each local exchange carrier subject to optional incentive regulation shall exclude from its baskets such services or portions of such services as the Commission has designated or may hereafter designate by order.

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket at the first two-year tariff filing following completion of the two-year tariff period in which they are introduced. To the extent that such new services are permitted or required to be included in new or existing service categories within the assigned basket, they shall be so included at the first two-year tariff filing following completion of the two-year tariff period in which they are introduced.

(h)(1) Except as provided in paragraph (c)(4) of this section, in connection with any optional incentive plan tariff filings proposing rate changes, the carrier must calculate an index for each affected basket as determined by the Common Carrier Bureau.

(2) In connection with any tariff filed under this section proposing changes to rates for services in the basket designated in paragraph (e) of this section, the maximum allowable increase or decrease in a basket shall be limited to ten percent over the two-year tariff period.

(i) Rates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rate established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier.

(j) The maximum allowable rate of return on earnings based on rates filed by a local exchange carrier subject to this section, shall be determined by adding a fixed increment of one and one-half percent to the carrier's prescribed rate of return. Rates of local exchange carriers subject to this section that result in earnings less than three-

quarters percent below the carrier's prescribed rate of return may be retargeted to three-quarters percent below the carrier's prescribed rate of return, in a mid-course tariff filing.

(k) Local exchange carriers filing common line rates under this section must propose Carrier Common Line rates based on the following:

(1) For the first period the Carrier Common Line revenue requirement shall be determined by a cost of service study for the most recent 12 month period. The Carrier Common Line revenue requirement shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(2) For subsequent filings, the Carrier Common Line revenue requirement shall be determined by a cost of service study for the total period since the carrier's last biennial access filing. The Carrier Common Line revenue requirement determined in this manner shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

7. Section 61.58 is amended by adding new paragraph (e) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(e) *Carriers subject to optional incentive regulation.* Paragraph (e) of this section applies only to carriers subject to § 61.50. Such carriers must file tariffs according to the following notice periods:

(1) For initial and renewal tariff filings whose effective date coincides with the start of any two-year tariff period as defined in § 69.3(f) of this chapter, filings must be made on not less than 90 days' notice.

(2) For rate revisions made pursuant to § 61.50 (g) and (i), and § 61.39(d), tariff filings must be made on not less than 14 days' notice.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1006, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 65.700 is amended by adding a new paragraph (d) to read as follows:

§ 65.700 Determining the maximum allowable rate of return.

* * * * *

(d) The maximum allowable rate of return for rates filed by local exchange carrier subject to § 61.50 of this chapter, shall be determined by adding a fixed increment of one and one-half percent to the carriers prescribed rate of return.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1006, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.3 is amended by revising the first sentence of paragraph (a), revising the first sentence of paragraph (e), paragraph (i) introductory text, paragraph (i)(1), paragraph (i)(3) and adding a new paragraph (j) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraphs (g) and (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. * * *

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff, except that a group rate for non-affiliated telephone companies may not be filed under § 61.50 of this chapter; e.g., the Association. * * *

* * * * *

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraph (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to paragraph (h) of this section or optional incentive plan tariffs pursuant to § 61.50 of this chapter.

(1) In addition to the withdrawal provisions of paragraphs (e) (6) and (9) of this section, a telephone company or group of affiliated telephone companies that participates in one or more Association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year, shall give the Association at least 6 months' notice that it is withdrawing from Association tariffs, subject to the terms of this section, to participate in price cap regulation or optional incentive regulation.

* * * * *

(3) Notwithstanding the provisions of paragraphs (e) (3), (6), and (9) of this section, in the event a telephone company withdraws from all Association tariffs for the purpose of filing price cap tariffs or optional incentive plan tariffs, such company shall exclude from such withdrawal all "average schedule" affiliates and all affiliates so excluded shall be specified in the withdrawal. However, such company may include one or more "average schedule" affiliates in price cap regulation or optional incentive plan regulation provided that each price cap or optional incentive plan affiliate relinquishes "average schedule" status and withdraws from all Association tariffs and any tariff filed pursuant to § 61.39(b)(2) of this chapter. See generally §§ 69.605(c), 61.39(b) of this chapter; MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2d 1026–1027 (1986).

* * * * *

(j) A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to § 61.50 of this chapter by January 1, 1994 shall notify the association not later than September 1, 1993 that it will no longer participate in the association tariff. This January 1, 1994 filing shall be for an 18-month tariff period. A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to § 61.50 of this chapter, by July 1, 1994 or thereafter pursuant to paragraph (a) of this section, shall notify the association not later than December 31 of the preceding year that it will no longer participate in that association tariff.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14919 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 922, 937, 952, and 970

Acquisition Regulation; Arbitration in Collective Bargaining Agreements for Protective Services Contracts and Management and Operating Contracts

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

VOL
58
ISS
127
JL
6
1993
UMI

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to extend special procedures to certain contracts for protective services. These special procedures have been included in management and operating (M&O) contracts since the early 1950s. This rule extends such coverage to other than M&O contracts involving protective services. Coverage is also extended to subcontracts involving protective services under M&O contracts. The special procedures are designed to ensure continuity of operations at facilities where such continuity is vital to the national security or public safety. The procedure set forth in this rule requires management and labor, under protective services contracts, to exert their best efforts to find means other than lockouts or strikes to resolve any disputes and to include such agreement in collective bargaining agreements into which they may enter.

EFFECTIVE DATE: This rule will be effective August 5, 1993.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Office of Procurement, Assistance and Program Management (PR–121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247.

Linda Johnson, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION: .

I. Background
II. Detailed Changes
III. Procedural Requirements
A. Regulatory Review
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
IV. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984, (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

This action follows publication of a notice of proposed rulemaking in the **Federal Register** on August 12, 1991, 56 FR 38096. Five comments were received and are discussed at a later section.

II. Detailed Changes

1. The authority citation for part 922 is repeated.

2. A new subsection 922.103–5, entitled "Contract clauses" is added to implement subsection 22.103–5 of the Federal Acquisition Regulation. The new subsection designates contracts for protective services as contracts requiring use of the clause at subsection 52.222–1, Notice to the Government of Labor Disputes, of the Federal Acquisition Regulation.

3. The authority citation for part 937 is repeated.

4. A new subpart entitled "Protective services contracting" is added at 937.70. The amendment requires labor and management to exert their best efforts to resolve disputes by means other than lockouts, strikes, or other interruptions of normal operations while performing DOE protective services contracts.

5. The authority citation for part 952 is repeated.

6. A new contract clause entitled "Collective bargaining agreements—protective services" is added at 952.237–70. It contains contract language to implement the policy set forth at item 4 above.

7. The authority citation for part 970 is repeated.

8. Section 970.2201 is revised at (b)(5)(ii) to specify use of a contract clause to reflect existing policy under management and operating contracts.

9. Finally, a new 970.5204–63 entitled "Collective bargaining agreements—management and operating contracts" is added. It contains contract language to implement the policy set forth at item 4 above.

III. Procedural Requirements

A. Regulatory Review

The Office of Management and Budget has reviewed this notice in accordance with their memorandum of guidance dated January 22, 1993, entitled "Regulatory Review". Separately, the Department has determined that there is no need for a regulatory impact analysis as the rule is not a major rule as that term is defined in section 1(b) Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612, Entitled "Federalism"

This Executive Order requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's rule will revise certain policy and procedural requirements. DOE has determined that none of the revisions will have a direct effect on the institutional interests or traditional functions of the States.

E. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), or the DOE Guidelines for NEPA implementation (10 CFR part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Public Comments

In response to the August 12, 1991, notice of proposed rulemaking, 56 FR 38096, five comments were received. One was from a DOE Field Office, two were from DOE management and operating contractors, and two were from a labor organization, separate letters being received from the Headquarters and one of its locals. Our action in response to the comments is discussed below.

Comment 1

The first comment pointed out a difference in the time period mentioned in 970.2201(b)(5)(ii); i.e., "for the term of the [collective bargaining] agreement," and 970.5204–63; i.e., "the period of performance of the contract." The comment noted that the collective bargaining agreement and the contract could be expected to have different time periods. The Department did not intend to affect the time periods of collective bargaining agreements. More specific language is being added to both paragraphs and to the clause at 952.237–70 which has the same problem. The changes are as follows:

(1) At 952.237–70, the first sentence, the words "during the contract period of performance" are being deleted;

(2) At the second sentence of the same paragraph, the words "entered into during the contract period of performance" are being added after the word "agreements";

(3) At the third sentence of the same paragraph, the words "for the period of performance of the contract" are being deleted from the end of the sentence;

(4) At the second sentence of 970.2201(b)(5)(ii), "entered into during the period of performance of the contract" is being added after the first use of the word "agreement" and the words "collective bargaining" are being inserted before the second use of the word "agreement";

(5) At the first sentence of 970.5204–63, the words "during the contract period of performance" are being deleted; and,

(6) At the third sentence of 970.5204–63, the words "for the period of performance of the contract" are being deleted.

Comment 2

Another reviewer suggested that the phrase "requiring continuity of services for the public safety and national security reasons" be added at 937.7040 to make it consistent with the text of 937.7010. This has been done. The reader observed that the coverage of 970.2201 is broader than that of 937.70, in that 970.2201 applies to all collective bargaining agreements under M&O contracts which require continuity of operations, while 970.37 only involves contracts for protective services where continuity is necessary. The reviewer suggests that 970.2201 be revised to be consistent with 937.70. The Department disagrees. The difference is intentional. In the case of M&O contracts, the policy is broadly interpreted and dates to the earliest days of the Atomic Energy Commission. M&O contracts, by their nature, must have continuity of operation. Requirements for protective services were originally provided as a part of the M&O contracts and were, thus, covered by this policy. In recent years, there has been an increasing tendency for these services to be subcontracted by the M&O contractors or to be directly procured by the Federal Government. The Department wishes to preserve this policy for this narrow class of non-M&O contracts; i.e., protective service contracts.

This review has led the Department to make additional changes for clarity. The word "services" has been changed to "operations" at 937.7010. The word "employees" has been changed to "contractors" where it first appeared in the last sentence of 937.7030.

Comment 3

Another reviewer, a management and operating contractor, expressed the view that the revisions would have no effect on its contract. The Department shares this view.

Comments 4 and 5

The final comments, from the Headquarters of a labor organization and one of its locals, objected to what they viewed as an attempt to eliminate their legal right to strike. It is not the Department's intent to do so as such action would be contrary to statute. The Department's intent is to assure that management and labor have a recourse other than lockout or strike to voluntarily pursue means of remedy, generally expected to be arbitration, which can hopefully ensure continuity of operation. The Department has changed the word "shall" to "should" at 937.7030 to make this clear. The clause is a "best efforts" clause, recognizing that the parties may not agree.

List of Subjects in 48 CFR Parts 922, 937, 952, and 970

Government procurement.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on June 29, 1993.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

1. The authority citation for part 922 of chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. A new subsection 922.103–5 is added, as follows:

922.103–5 Contract clauses.

In accordance with FAR 22.101–1(e) and FAR 22.103–5, the contracting officer shall insert the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts for protective services at DOE owned facilities requiring continuity of services for public safety and national security reasons. The contracting officer may insert this clause in other solicitations and contracts where a significant need for continuity in contract performance exists. See 937.70, Protective Services Contracting, for additional policy guidance regarding protective services.

PART 937—SERVICE CONTRACTING

3. The authority citation for part 937 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. A new subpart 937.70, consisting of 937.7010 through 937.7040 is added as follows:

Subpart 937.70—Protective Services Contracting

937.7010 Scope of subpart.
937.7020 Policy.
937.7030 Procedures.
937.7040 Contract clauses.

Subpart 937.70—Protective Services Contracting

937.7010 Scope of subpart.

This subpart is applicable to contracts for the acquisition of protective services for DOE-owned facilities requiring continuity of operations to ensure public safety and national security.

937.7020 Policy.

Continuity of protective services at DOE-owned facilities is vital to the safety of DOE and contractor personnel, public safety, the preservation of DOE property, and national security. DOE believes that contractors providing protective services, their employees, groups representing such employees, the Department, and DOE personnel should cooperate to the maximum practical extent to assure continuity of such services.

937.7030 Procedures.

The importance of operational continuity at DOE-owned facilities dictates that protective service contractors when negotiating collective bargaining agreements, with their personnel, provide that grievances and

VOL 58 ISS 127 JL 6 1993 UMI

disputes involving the interpretation or application of the agreement be settled without resort to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring continuity of operations for the term of the agreement. DOE expects its protective services contractors and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

937.7040 Contract clauses.

The contracting officer shall insert the clause at 952.237–70 entitled "Collective bargaining agreements—protective services" in all protective services solicitations and contracts involving DOE-owned facilities requiring continuity of services for public safety and national defense reasons. See also, 922.103–5, Contract clauses, which prescribes use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

6. Section 952.237–70 is added to read as follows:

952.237–70 Collective bargaining agreements—protective services.

As prescribed in 937.7040, insert the following clause:

Collective Bargaining Agreements—Protective Services (XXX 1992)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations.

For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

8. Section 970.2201 is amended by revising paragraph (b)(5)(ii) as follows:

970.2201 Basic labor policies.

* * * * *

(b) * * *

(5) * * *

(ii) Consistent with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at DOE-owned facilities should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement entered into during the period of performance of this contract should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the collective bargaining agreement. The contracting officer shall insert the clauses at FAR 52.222–1, Notice to the government of labor disputes, and 970.5204–63, Collective bargaining agreements—management and operating contracts, in all management and operating contracts, and subcontracts thereunder, which require continuity of operation at a DOE-owned facility.

* * * * *

9. Section 970.5204–63 is added as follows:

970.5204–63 Collective bargaining agreements—management and operating contracts.

As prescribed in 970.2201(b)(5)(ii), insert the following clause:

Collective Bargaining Agreements—Management and Operating Contracts (XXX 1992)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

[FR Doc. 93–15751 Filed 7–2–93; 8:45 am]
BILLING CODE 6450–01–P–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 32]

RIN 2127–AE81

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: In response to petitions for reconsideration of a September 1992 final rule, this rule amends Federal Motor Vehicle Safety Standard (FMVSS) 213, *Child Restraint Systems*, to allow flexibility in the labeling required by that rule.

DATES: The changes made in this rule are effective August 5, 1993.

Any petition for reconsideration of this rule must be received by NHTSA no later than August 5, 1993.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of this rule and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4919.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1992 (57 FR 41423), NHTSA published a final rule that amended Standard 213. The amendment required add-on (portable) child restraints to meet the requirements of the standard at each of the angles to which the seat back can be adjusted and at each of the restraint belt routing positions. The purpose of the amendment was to remove the possibility that an add-on child restraint could have an adjustment position that was unsuitable for motor vehicle use, i.e., a position in which the restraint could not comply with the standard.

Built-in restraints (restraints that are integral parts of a vehicle) were excluded from the requirement. Since built-in restraints are typically built into the vehicle seat, the seat back for a built-in restraint may also be the seat back of the vehicle seat in which it is built. If the vehicle seat back reclines, such a built-in restraint could fail to meet the standard with the seat back fully reclined. Thus, the effect of including built-in restraints in the amendment could have been to limit or even eliminate the reclinability of seat backs of vehicle seats that have built-in restraints. The agency did not believe there was sufficient reason to disallow the reclining feature of vehicle seat backs, since there was no information showing a safety problem with reclining vehicle/child restraint seat backs. Moreover, vehicle seat backs that recline to form a bed-like surface in passenger vans allow weary drivers and passengers rest at highway rest areas, and provide for easier loading.

However, the September 1992 final rule did adopt a labeling requirement for built-in restraints that were installed in vehicle seats with reclining seat backs. S5.5.5(g) of Standard 213 specifies:

> In the case of each built-in child restraint system which is not intended for use in the motor vehicle at certain adjustment positions, the following statement [shall be labeled on the restraint], inserting the manufacturer's adjustment restrictions. DO NOT USE THE _____ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT WHILE THE VEHICLE IS IN MOTION.

The purpose of the label is to ensure the built-in restraints are not used in ways that provide insufficient crash protection to children.

Petition for Reconsideration

Ford Motor Company petitioned for reconsideration of the labeling requirement for built-in child restraints. Ford requested that NHTSA amend S5.5.5(g) to allow manufacturers the flexibility of determining for themselves what would be appropriate wording for the restrictions on their restraint systems. Ford believed that S5.5.5(g) should not prescribe specific wording, because such wording can be "inappropriate for many circumstances" and thus confusing or misleading. For example, Ford said, some of its built-in child restraints are built into a vehicle seat back that folds rearward to form a bed for use when the vehicle is stationary. Ford said that the "bed" position is not intended as a child restraint adjustment position, and referring to it as such in the label could confuse consumers. Ford also believed that the prescribed wording can limit the flexibility of manufacturers to recommend certain adjustment positions of the child restraint under only limited circumstances. Ford stated:

> For example, a manufacturer may wish to recommend use of a reclined position of the vehicle seat back when the child restraint is being used in the child restraint mode, but warn against such a reclined vehicle seat position when the adult belt is being used to restrain a child.

Ford also wanted NHTSA to allow manufacturers to use upper and lower case lettering for the statement, instead of requiring the statement to be capitalized. Ford stated, "Upper and lower case lettering is generally preferred for labeling because of better readability." Ford said that in some vehicles, the use of all capitals may be confusing and could distract the consumer from other important warnings on the label.

Agency Decision

NHTSA has decided to amend S5.5.5(g) of Standard 213 to provide manufacturers flexibility in wording restrictions on the use of a built-in child seat, as Ford requested. The agency agrees with Ford that the statement currently prescribed in S5.5.5(g) might be too narrow to accommodate the various seating and adjustment positions of built-in child restraint systems. Allowing manufacturers flexibility in wording their restrictions on particular seating and adjustment positions will increase the likelihood that the restrictions will be accurately described and easily understood by the consumer.

However, NHTSA does not agree with Ford's request to remove the requirement that the wording must be capitalized. Standard 213 requires important safety messages on the proper use of the built-in restraint to be capitalized. These include a warning that the consequences of failing to follow the manufacturer's use instructions can result in the child striking the vehicle's interior in a crash (S5.5.5(g)), and directions on snugly adjusting the child restraint belts around the child (S5.5.5(h)) and on placing an infant rear-facing (S5.5.5(j)). The information on the restricted uses of the built-in child restraint is as important as these messages. Requiring the information to be capitalized is consistent with the present labeling requirement of S5.5.5 to capitalize such information, and increases the likelihood that the consumer will notice and read the information. In view of this, that part of Ford's petition on the use of capitalized letters is denied.

Effective Date

This amendment is effective in 30 days. An effective date earlier than 180 days after the date of issuance of this rule is in the public interest because this rule provides manufacturers flexibility in meeting the standard's requirements.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minimal and that preparation of a full final regulatory evaluation is not warranted. The effects of today's rule are minor because it only provides manufacturers of built-in child restraint systems flexibility in wording

restrictions, if any, on the use of a built-in seat. The requirement to label the restraint with such restrictions is not affected by the rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Today's amendment on the labeling requirement for built-in restraints does not have a significant economic impact on a substantial number of small entities. To the agency's knowledge, there are only a few manufacturers of built-in systems that are small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant, since the effects of today's rule only provides manufacturers of built-in child restraint systems flexibility in wording restrictions, if any, on the use of a built-in seat. The requirement to label the restraint with such restrictions is not affected by the rule.

The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as set forth below.

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation or authority at 49 CFR 1.50.

2. Section 571.213 is amended by revising S5.5.5(g)(2) to read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

S5.5.5 * * *

* * * * *

(g) * * *

(2) In the case of each built-in child restraint system which is not intended for use in the motor vehicle in certain adjustment positions or under certain circumstances, an appropriate statement of the manufacturer's restrictions regarding those positions or circumstances, in capitalized letters.

* * * * *

Issued on June 30, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–15867 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407–2519; I.D. 061493A]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Readjustment of Angling category 1993 domestic Atlantic bluefin tuna quotas.

SUMMARY: NMFS announces that the domestic western Atlantic bluefin tuna category quotas are being readjusted to compensate for 1992 quota underharvests/overharvests, and to fine tune the subquotas with respect to regional allocations. This readjustment and fine tuning results in a revised 1993 Angling category quota breakdown as follows: School bluefin—98.2 metric tons (mt), and large school/small medium bluefin—205.3 mt. Furthermore, the school bluefin quota is subdivided as follows: New Jersey and areas north—36.7 mt, and Delaware and areas south—61.5 mt.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended U.S. quota among the various domestic fishing categories.

If a quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.22(h) to subtract the overharvest from, or add the underharvest to, that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt. The Assistant Administrator is further required to publish in the **Federal Register** any amounts to be subtracted or added and the basis for the quota reductions or increases.

On June 14, 1993 (58 FR 32872), a quota adjustment notice was published, effective June 8, 1993, notifying the public that the Angling category had underharvested its 219 metric ton quota by 96.2 mt. New and final information indicates the actual Angling category underharvests/overharvests to be different than those reported. The difference is enough to warrant a readjustment of the Angling category quota. In addition, the 100-mt quota for school bluefin tuna needs to be adjusted on a subquota basis to reflect regional overharvests/underharvests.

In implementing the 1991 ICCAT recommendation to limit catch of school bluefin to 8 percent of the U.S. national quota, the 1992 Angling category quota of 219 mt was split into two subquotas: 100 mt of school fish (which is further split between New Jersey and areas north—53 mt, and Delaware and areas south—47 mt) and 119 mt of large school/small medium fish. Final 1992 Large Pelagic Survey (LPS) catch estimates indicate that the 100 mt of school bluefin tuna was overharvested by 1.8 mt. However, this overharvest occurred completely in the northern area, where the 53-mt subquota was exceeded by 16.3 mt. The southern area underharvested its quota by 14.5 mt. The total quota for large school and small medium bluefins was underharvested by 86.3 mt.

Readjusting the 1993 Angling category data to reflect the final LPS estimates, and the regional overharvest/underharvest of the school bluefin tuna quota, results in a revised 1993 Angling category quota breakdown as follows: School bluefin—98.2 mt, and large school/small medium bluefin—205.3 mt. Furthermore, the school bluefin quota is subdivided as follows: New

Jersey and areas north—36.7 mt, and Delaware and areas south—61.5 mt.

The intent of these actions is to prevent overharvest of the western Atlantic bluefin tuna catch quotes established for this fishery for the 1992–93 biennial period, while assuring that sufficient opportunity exists for fishermen to fill the 1992–93 U.S. ICCAT quota, and that optimum data are generated for scientific purposes from the catches.

Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 28, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15855 Filed 7–2–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 646

[Docket No. 930225–3146; I.D. 052493A]

RIN 0648–AE91

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS adopts as final without change an interim rule published March 2, 1993, which defined a sea bass pot; removed the existing definition of sea bass trap; allowed retention of fish caught incidentally in a sea bass pot; and made other technical changes. The intent of the fishery management plan without undue burden on fishermen, and to clarify the regulations.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*).

Sea Bass Pots

Amendment 4 to the FMP prohibited the use of fish traps in the snapper-grouper fishery but allowed the use of sea bass traps north of Cape Canaveral, Florida. To ensure that a sea bass trap would not be used in a directed fishery for snapper-grouper species other than sea bass, the regulations that implemented Amendment 4 limited a fisherman who used or possessed a sea bass trap in the EEZ north of Cape Canaveral on any trip to the bag limits for those snapper-grouper species that have bag limits, and to zero for all other species except sea bass. These possession limits caused an unanticipated economic hardship to fishermen in North Carolina and South Carolina who had traditionally fished with sea bass traps and other gear on a single trip. To address this economic emergency, the Council requested, and NMFS published, an emergency interim rule, effective August 31, 1992, through November 30, 1992, that established a definition of "sea bass pot," based principally on size, and removed the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North and South Carolina (57 FR 39365, August 31, 1992). Upon the request of the Council and with the concurrence of NMFS, effectiveness of the emergency interim rule was extended through February 28, 1993 (57 FR 56522, November 30, 1992).

The Council initiated action under the FMP's framework procedure for establishing or modifying management measures, including gear restrictions, to establish a definition of sea bass pot, remove the definition of fish trap, remove the incidental catch restrictions for fishermen using sea bass pots, and extend the benefits of the emergency rule throughout the range of allowed use of sea bass pots, that is, from Cape Canaveral through North Carolina. These measures were implemented by interim final rule with a request for comments, effective March 1, 1993 (58 FR 11979, March 2, 1993).

Longlines

The regulations specify that a longline may not be used to fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 m) (50 CFR 646.229(g)(1)). Similarly, a bottom longline may not be used to fish for wreckfish (50 CFR 646.22(g)(2)). In both cases, one of the criteria for determining whether a longline is aboard is possession of a "cable" of diameter suitable for use in the longline fishery. The interim final rule clarified that monofilament or cable may be considered a longline for purposes of the prohibition on using a longline to fish in the snapper-grouper fishery where the charted depth is less than 50 fathoms (91.5 m). In the wreckfish restriction, the criterion remains unchanged and, thus, precludes any presumption that monofilament is cable for the purposes of that restriction.

Charter Vessels and Headboats

The interim final rule also removed unnecessary language regarding the requirement to have two licensed operators aboard as a condition for a charter vessel or headboat to possess more than one daily bag limit of snapper-grouper species.

Additional background and rationale for these actions were included in the interim final rule and are not repeated here.

Comments

No comments were received on the interim final rule. Accordingly, it is adopted as final without change.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) for the framework portions of this final rule, that is, the sea bass pot measures. A summary of the overall net economic benefits in that RIR was included in the interim final rule and is not repeated here. The nonframework portions of this final rule are minor and technical and do not change the regulatory impacts that were previously reviewed and analyzed.

The General Counsel of the Department of Commerce certified to the Small Business Administration that

VOL
58
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this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis was prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of the sea bass pot measures in this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of those measures in this final rule. Other measures in this final rule do not change any of the factors considered in the environmental impact statement prepared for the FMP or in the EAs prepared for its amendments; accordingly, these measures are categorically excluded from the requirement to prepare an EA, as specified in NOAA Administrative Order 216–6.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, North Carolina, and South Carolina. Georgia does not participate in the coastal zone management program. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The state agencies agreed with this determination.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, the interim final rule amending 50 CFR part 646, which was published at 58 FR 11979 on March 2, 1993, is adopted as final without change.

Dated: June 28, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–15743 Filed 7–2–93; 8:45 am]

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AGENCY: Fede
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SUMMARY: Th
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Proposed Rules

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–8]

Proposed Establishment of Class E Airspace; Mt. Sterling, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace near Mt. Sterling, IL to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace". The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcare on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Mt. Sterling, IL, to accommodate a new VOR–A instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL.

The development of this procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in § 71.71(c) of FAA Order 7400.9 dated November 1, 1991, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

VOL
58
ISS
127
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1993
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is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 17.1 of the Federal Aviation Administration Order 7400.9, Airspace Reclassification, dated November 1, 1991, and effective September 16, 1993, is amended as follows:

Section 71.71(c) Transition areas

* * * * *

AGL IL E5 Mt. Sterling, IL [New]
Mt. Sterling Municipal Airport, IL
(lat. 39°59'15" N, long. 90°48'15" W)
Quincy VORTAC
(lat. 39°50'53" N, long. 91°16'44" W)

That airspace extending upwards from 700 ft. above the surface within a 5-mile radius of Mt. Sterling Municipal Airport, IL, and within 2.5 miles each side of the VORTAC 069 radial, extending from the 5-mile radius area to 6-miles west of the airport.

* * * * *

Issued in Des Plaines, Illinois on June 21, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–15845 Filed 7–2–93; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 93–AGL–12]

Proposed Establishment of Class E Airspace; Manitowish Waters, WI.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace near Manitowish Waters, WI, to accommodate a new Nondirectional Beacon (NDB) approach procedure at Manitowish Waters Airport, Manitowish Waters, WI. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace". The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Manitowish Waters, WI, to accommodate a new NDB approach procedure at Manitowish Waters Airport, Manitowish Waters, WI.

The development of this procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace".

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airplanes docket are based on North American Datum 83. Class E airspace designations are published in Section 71.71(c) of FAA Order 7400.9 dated November 1, 1991, and effective September 16, 1993, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 17.1 of the Federal Aviation Administration Order 7400.9, Airspace Reclassification, dated November 1, 1991, and effective September 16, 1993, is amended as follows:

Section 71.71(c) Transition areas

* * * * *

AGL WI E5 Manitowish Waters, WI [NEW]
Manitowish Waters Airport, WI
(lat. 46° 07′ 18″N, long. 89° 53′ 03″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manitowish Waters, WI, Airport.

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Issued in Des Plaines, Illinois on June 21, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–15846 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1272

Procedures for NASA Drug Testing and Alcohol Testing Programs

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing rules to implement the Civil Space Employee Testing Act of 1991 ("the Act"), which requires an alcohol testing program and changes the drug testing program at NASA to include preemployment testing and split sample collection method.

DATES: Comments must be submitted in writing on or before September 7, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Chief, Agency Personnel Policy Branch (Code FPP), NASA Headquarters, 300 E Street SW., Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Julie A. Torres, (202) 358–1219.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1991, President Bush signed the Civil Space Employee Testing Act of 1991 ("the Act"), section 21 of Public Law 102–195, NASA Authorization Act, FY 1992, (42 U.S.C. 2473c). The Act requires NASA to prescribe regulations within 18 months that require testing of employees conducting safety-sensitive, security, and National security functions for use, in violation of law or Federal regulation, of alcohol and drugs listed in the Controlled Substances Act. The Act preempts inconsistent state and local laws, and requires that the regulations be consistent with U.S. international obligations. It specifically mandates, among other things, privacy in collection techniques, incorporation of the Department of Health and Human Services (DHHS) mandatory guidelines for drug testing and comparable safeguards for alcohol testing, quantified confirmation of any initial positive result, collection of split samples of body fluid specimens, confidentiality of test results, and scientifically random selection of employees to be tested. It requires preemployment, random, post-accident, and reasonable suspicion testing; periodic testing is discretionary. Regulations prescribed under the Act must include provisions for the identification of, and opportunity of treatment for, covered employees in need of assistance due to misuse of alcohol or controlled substances. The Act states that current Federally mandated programs are unaffected by the new statutory requirements.

At the time of the enactment of the Act, NASA already had implemented a Drug-Free Workplace Program (DFWP) as mandated by Executive Order 12564, dated September 15, 1986, and section 503 of Public Law 100–71, dated July 11, 1987, to govern drug testing and address the use of illegal drugs by NASA employees.

As noted above, the Act requires certain changes to the existing NASA drug testing rules (e.g., it requires split sample collections and preemployment testing regulations, neither of which are currently mandated by Executive Order 12564 or Section 503 of Public Law 100–71). Therefore, the current NASA Management Instruction (NMI) 3792.3 "NASA Plan for a Drug-Free Workplace," (an internal program document) will continue in effect for the NASA employee drug testing program, which adheres to the requirements of the Act. This Proposed Rule will only include the new drug testing (i.e., split sample collections and preemployment) and alcohol requirements not currently mandated for NASA employees by Federal regulation.

Starting Date for Drug and Alcohol Testing in This Proposed Rule

The Agency would have 1 year from the effective date of the final rules in which to implement the requirements.

Requirements for Notice

Before performing an alcohol test under these rules, the Agency must notify the employee being tested that the alcohol test being administered is required by these rules. The notice may be oral or written. Employees are free to consume alcohol on their own time so long as that consumption does not violate any of the provisions of these rules or other applicable rules.

Alcohol Testing Summary

In general, the proposed rules would prohibit covered employees from performing safety-sensitive, security, or National security functions: (1) When test results indicate breath alcohol concentration of 0.04 or greater; and (2) If they refuse to submit to required alcohol tests. The Agency would have to remove from a safety-sensitive, security, or National security duties any covered employee who violates any of these prohibitions until he or she has met the conditions for returning to such functions. The proposed rule would

VOL 58 ISS 127 JL 6 1993 UMI

require the Agency to conduct preemployment, reasonable suspicion, post-accident, and random, alcohol testing with evidential breath testing devices. Periodic testing is discretionary. They would also provide for alcohol related educational information for employees, supervisor training and referral of employees to employee assistance programs (EAP's).

Alcohol Testing-Overview

Subpart II—Alcohol Testing

This subpart sets forth the alcohol testing procedures that the Agency would implement. Persons familiar with the Agency's drug testing rules will notice some similarities between those rules and the proposed alcohol testing procedures. The Agency is proposing rules concerning the collection site and the collection site person (called the "alcohol testing site" and the "breath alcohol technician (BAT)," respectively, in the alcohol testing procedures), a testing form, preparation for and administration of initial and confirmatory tests, confidentiality, safeguarding, test records, what to do if an employee cannot provide an adequate amount of breath, and what errors in the process are "fatal flaws" that invalidate a test. Except for the "fatal flaws" section, all these provisions have parallels in the drug testing procedures.

The differences between this subpart and the drug testing procedures are equally noteworthy. The drug testing procedures call for the donation of a quantity of urine, packaging, transmission to a National Institute on Drug Abuse (NIDA) certified laboratory for testing, and the use of an evidentiary chain of custody. A medical review officer is used to interpret laboratory results, so as not to label someone who has legitimately ingested a substance as an illegal drug user.

The alcohol testing procedures would use breath for purposes of determining the alcohol concentration as measured by a breath testing device that provides a definitive, quantitative result at the alcohol testing site. Therefore, packaging, chain of custody, and transmission rules are not needed. No testing laboratories would be involved; and, therefore, there would be no need for laboratory certification or procedure rules. Because the issue to be determined is whether an impermissible quantity of a legal substance (ethyl alcohol) is in the person's system—whether it comes from use of an alcoholic beverage or medication—a medical review officer to interpret the results would not be needed. The result is that these alcohol testing procedures would be shorter and less complex than the drug testing procedures.

As the foregoing discussion suggests, perhaps the most important decision underlying these proposed procedures is to rely exclusively on breath testing, rather than involving testing of blood or urine specimens, or evaluations of motor or cognitive functions as part of the process. The Agency believes that the choice of breath testing is consistent with its commitment to an accurate and fair testing program.

Analysis of breath for alcohol (specifically ethanol) has been practiced for many years in the clinical diagnosis of intoxication and for traffic law enforcement purposes. In light of the use of breath test devices for law enforcement purposes, the National Highway Traffic Safety Administration (NHTSA) developed Guideline Specifications (49 FR 48855; December 14, 1984) to ensure that the equipment meets certain minimum performance specifications.

Instruments meeting the NHTSA specifications are included in a "Conforming Products List of Evidential Breath Testing Devices" (CPL) which is used in the purchase of instruments for law enforcement purposes. Instruments on this list enjoy wide acceptance in the judicial community and have met court scrutiny for precision and accuracy. These instruments are reliable in measuring an accurate alcohol concentration from breath, as long as the operator is appropriately trained and the instrument is maintained in accordance with the manufacturer's guidelines.

The precision and accuracy of the instruments, combined with their judicial acceptance, make breath testing instruments of evidential quality the most appropriate method to use in testing for alcohol misuse for the Agency. Breath tests provide an immediate result. Results are obtained nearer to the time at issue than is possible with blood testing. This is a significant advantage in that it enables the Agency to remove an employee who tests positive from performing safety-sensitive, security, or National security duties quickly.

Chain of custody issues that would arise with blood testing do not arise in breath testing. The need for special collection facilities, certified testing laboratories, and the use of medically trained personnel would not be necessary for breath, as opposed to blood testing. The operating cost per test is also lower. Breath tests are much less intrusive than blood tests, from the employee's point of view.

Also, properly conducted breath tests can accurately reflect the alcohol content of the pulmonary arterial blood which, in the initial or absorption phase of alcohol assimilation, gives a truer picture of alcohol influence on the central nervous system than a venous blood sample. In the post-absorptive phase, a quantitative breath test result will yield comparable results to blood analysis (arterial or venous).

This is not to say that blood testing is not a legally valid means of establishing alcohol concentration, on the basis of which it is appropriate to take action with respect to an employee. The validity of these procedures which are subject to evidentiary hearings, has long been recognized in administrative and court proceedings, and it is not brought into question by the Agency's proposal to use breath testing.

Section 1272.402 Definitions

The proposed subpart would define several terms that are used only here, or used in a different sense than in the drug context. "Air blank" would be defined as a test of ambient air. "Alcohol" would refer to ethyl alcohol, in whatever form. The proposed rule regards alcohol in the system, whatever its source. Someone who registers 0.04 concentration as the result of use of a product containing alcohol, even if for medical purposes, is no less impaired than he or she would be at the same alcohol concentration after drinking an alcoholic beverage.

The rule would use the term "alcohol concentration." The more familiar "blood alcohol concentration" could be misleading, since these procedures do not call for the use of blood. The concentration is expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath testing device.

"Collection site," "initial test," and "confirmation test" all are terms used in the drug testing portion of the Part 1272. Separate alcohol testing specific definitions are used here, however. The "breath alcohol technician" (BAT) is analogous to the collection site person under the drug testing procedures, and "alcohol testing site" is analogous to "collection site."

An "evidential breath testing (EBT) device" is any breath testing device that NHTSA has approved and put on its conforming products list. It is not relevant for purposes of this rule whether the courts in any particular state have accepted a given device for use in driving under the influence (DUI) or other legal proceedings in that state. As a matter of Federal law, NHTSA-approved EBT's would be used for all

tests under these rules, regardless of the status of a device under state law.

An "invalid" test is one which has been declared invalid under the provisions of subpart 1272.513. It is neither positive nor negative. The concept is similar to that of a canceled test in the drug testing procedures. For example, if a negative test is needed before a worker may begin performing a safety-sensitive, security, or National security function, an invalid test would not suffice, and the employee would have to have another test conducted. Likewise, if a test result of 0.04 or higher is declared invalid, the consequences of the test result would not apply.

Section 1272.505 Breath Alcohol Technician (BAT)

To ensure that tests are conducted properly and accurately, each BAT would have to be trained to proficiency in the use of the particular EBT he or she would operate and in following properly the procedures in this part. The proposed rule proposes that the training would have to cover several elements, including operation and methodology of the breath testing instrument, the specific procedures of this rule, and where needed, performing checks of external calibration on the EBT.

To ensure that the BAT is trained to proficiency, the proposed rule would require that each course of instruction contain a "hands on" or practical application component that clearly demonstrates the BAT's ability to properly use the EBT to produce an accurate result, in accordance with the procedures outlined in this rule. If the BAT is also going to perform checks of external calibration of the EBT, proficiency in doing so would have to be demonstrated. The Agency would maintain records of BAT training and proficiency. The rule further proposes that courses of instruction consistent with the NHTSA model course for EBT operator training, or other state-approved courses for breath testing device operators may be used to meet the training requirement.

The proposed rule proposes that a direct supervisor of the employee being tested could not, in ordinary circumstances, be the BAT, in order to avoid any appearance of bias. However, if it is impracticable for anyone else to do the job, an Agency representative could do so, where not prohibited by operating rules (e.g., with respect to reasonable suspicion tests).

One issue that has occurred to the Agency is that it would adversely affect the perception of the integrity of the process, and perhaps the defensibility of individual tests, if the BAT were intoxicated at the time of testing or had been seen consuming alcohol prior to conducting tests. Consequently, the BAT is required to be below the Agency's predetermined level for the use of alcohol while on duty. Violation of this requirement would render the BAT ineligible to conduct individual tests.

Section 1272.506 Devices to be Used in Alcohol Testing

The Agency proposes that evidential breath testing devices (EBT's) used in meeting the requirements of this rule would have to be listed on the Conforming Products List (CPL) published periodically by NHTSA. The CPL is published in the **Federal Register** and updated periodically as new technology and changes to breath testing instruments warrant. For many years, NHTSA has evaluated and field tested breath testing devices for their technical and scientific capabilities for use in law enforcement as evidential tests of breath alcohol content. By inclusion on the NHTSA CPL, a given model of breath testing devices is certified as providing accurate and reliable results. In addition to being listed on the NHTSA CPL, EBT's used to meet the requirements of this rule would have to have certain other capabilities relevant to specific provisions of the rule.

First, the EBT (itself, or via a separate printer that would be present at the collection site) would have to be able to print three copies of each test results (either simultaneously or consecutively). Second, the EBT's would also have to number each test sequentially, with the numbers visible to both the BAT and the employee before each test and printed out on the result. The purpose of this requirement is to identify each test result as pertaining to a specific employee. In effect, the employee's signature on the form prior to the test would signify "I am about to take test No. 243." The test result would say "Test No. 243."

Third, the EBT would also have to be able to do an "air blank" or test of the ambient air to ensure that when nobody was breathing into the instrument, it reported zero. An air blank, in other words, is a check of internal calibration. This check of internal calibration of the instrument, conducted both immediately prior to and immediately following each breath test further ensures the accuracy of the result. The EBT would also have to be able to generate printed records of the air blanks along with each test result. Fourth, an EBT would have to be capable of performing a check of external calibration (i.e., a test of its ability to produce a quantitative result consistent, within a given tolerance, of a known alcohol concentration standard).

Checks of external calibration of the instrument using known alcohol concentration standards are essential to validating the accuracy of the EBT. Each EBT model used to meet the requirements of this rule would have to have a Quality Assurance Plan (QAP) provided by the manufacturer and approved by NHTSA. The QAP would specify the manufacturer's recommended methods and frequency for checks of external calibration. This rule also proposes that EBT's would have to be capable of distinguishing ethyl alcohol from acetone at the 0.04 or greater level.

The Agency would inspect, maintain, and calibrate EBT's. The work would have to be performed by the manufacturer or a certified representative of the manufacturer. BAT's who have completed specific training in calibration and maintenance of EBT's may perform such duties. Records of calibration and maintenance would have to be maintained for 3 years, a period of time equivalent to the retention of positive test records.

Each EBT manufacturer would have to develop and submit to the Agency a QAP for each NHTSA CPL approved EBT model used by the Agency. This plan would tell the Agency how and when to perform checks of external calibration, taking into account variations in EBT use that would affect the frequency of such checks (e.g., stationary vs. mobile use, high vs. low temperature, and low vs. high numbers of tests). The QAP would establish tolerances for each instrument that define the acceptable limits of deviation from the known alcohol concentration standards. Other inspection, maintenance, and calibration requirements would also be stated. If an external calibration check revealed that the EBT was out of calibration, the Agency would have to take the EBT out of service and fix the problem before the device could be used again for its mandated employee testing. The EBT would be securely stored when it is not being used. The purpose of this is to prevent anyone from tampering with the device.

Section 1272.507 The Alcohol Testing Site

The requirements for an alcohol testing site are less detailed than the drug testing collection site rules. The site must afford aural and visual privacy

VOL
58
ISS
127
JL
6
1993
UMI

to the person being tested, to protect the confidentiality of the process. Any number of arrangements could satisfy this performance criteria, such as a room, a van, or a partitioned-off area. While testing is going on, or when the EBT is present, the site must be able to be secured. Essentially this means that the BAT must have the EBT under his/her control at all times and be able to limit access to the testing area to authorized personnel. For example, while a temporary partition might meet the privacy requirements, it may or may not meet the security and control requirement.

One exception to collection site requirements would be a situation in which meeting all privacy requirements would be impractical, and a test would not happen at all unless it happened in a nonconforming site. We propose this exception only for unusual, spur-of-the-moment situations (like a post-accident test that could not be conducted in a timely manner if all privacy requirements had to be met), not for regular, predictable, matter of course situations. The BAT would provide privacy protection for the employee to the maximum extent feasible.

The BAT, in order to avoid potential mistakes, could administer only one breath test at a time. This refers to actual operation of the EBT only. Assuming that adequate privacy could be maintained, other employees could be waiting, filling out forms, observing the 15-minute waiting period before a confirmatory test, etc. The BAT is also prohibited from leaving the collection site while the testing process is under way, including the waiting period.

Section 1272.508 The Alcohol Testing Form

This section would mandate the use of one of the two types of testing forms. One type of form is generated by the EBT and would contain all the necessary identification data, space for required signatures, and breath test results specified in this subpart. The other form would be used when the EBT prints only the test result and this result is then attached to a standard form containing the test identification data and signatures and other required information specified in this subpart. The forms would not be altered or customized, so that all alcohol testing forms used Agencywide under the rules incorporating Part 1272 would be standard. The form would be produced in triplicate, with copies to the employee, the Agency, and the BAT. The form, whether EBT-generated or a standard printed form, would contain the date and time, sequential test number, employee identifying data, BAT identifying data, and certification statements about the test with signatures by the employee and the BAT.

Section 1272.509 Preparation for Testing

The pre-testing procedure would be a relatively simple one. After presentation of identification by the employee (and by the BAT, if requested), the BAT would explain the testing procedures and tell the employee what is required. The BAT and the employee would fill out the testing form and sign it. This would include entering the sequential number of the test that the device indicates is about to be taken.

If the employee refuses to take the test (i.e., by refusing to sign the form or provide breath, or otherwise preventing the test from taking place), the BAT would note the refusal on the form, stop the testing process for that employee, and immediately inform the employer. The employer should provide the BAT with instructions concerning the employee's leaving the collection site.

The proposal would also direct the BAT to start a new test if, for some reason, an event occurred to invalidate the test. For example, if, after the initial test, the second post-test air blank did not show a 00.00 reading, the BAT would run a new initial test using a new sequential number. If a similar event happened on a confirmatory test, the BAT would start a new form for the confirmatory test with the new sequential number and affix it to the form used for the valid initial test.

§ 1272.510 Administration of the Initial Test

The first part of the testing process would be to make sure that the EBT is operating properly with respect to detecting the presence of alcohol. In the employee's presence, the BAT would do a "dry run" operation of the EBT by conducting an "air blank" test (e.g., a test of the ambient air, assumed to contain no ethyl alcohol). If the device reads anything other than a zero (0.00), the BAT would know something was wrong. If the initial attempt at conducting an air blank test fails (e.g., the EBT registers something other than 0.00) the BAT could re-run the air blank once more. The test of the employee would not proceed unless a 0.00 reading was obtained. If the instrument again fails to provide a 0.00 result on the air blank, the EBT cannot be used for testing until a check of external calibration is conducted and the instrument is found to be within the tolerance limits on a known alcohol standard of 0.00.

Next, the BAT, in the presence of the employee, would take an individually-sealed mouthpiece (for the sake of sanitation and to avoid any possible contamination of the mouthpiece by alcohol from previous users) and place it into the EBT. In order to get a sufficient quantity of deep lung air, the employee would be instructed to blow into the mouthpiece for at least 6 seconds, or until the EBT indicates that an adequate amount of breath has been obtained. If the employee could not produce an adequate amount of breath, the procedures of § 1272.53 would apply.

Immediately following the testing of employee's breath, a post-test air blank would also have to be performed, to ensure that the device reads 0.00 after the breath test. Once again, if the instrument did not provide a 0.00 reading on the air blank, the BAT may attempt one additional air blank. If a 0.00 reading still was not obtained, use of the EBT would be discontinued and the previous breath result would be invalid. Both the pre- and post-test airblank results would be printed out and attached to the alcohol testing form.

If the EBT does not print the test result directly onto the testing form, the resulting printout would be attached to the form in the place provided with some means that would show clear evidence of removal (e.g., tamper-evident tape). The BAT and employee would again sign the form, citing the sequential test number. (However, if the employee refuses to sign, it would not be considered a refusal to be tested, since the employee has in fact taken the test). If the employee does refuse to sign the form after the result is obtained, the BAT should so note on the form in the remarks section.

In the event the printed result does not match the result displayed on the EBT, the employees and the BAT would both initial or sign a record of such disparity on the form. The test result would be invalid. If an error malfunction of the EBT equipment is immediately detected by the BAT, the BAT would start over and immediately administer another test.

If the result is less than 0.04, the test is "negative." The BAT would report the negative result to the employer. Notification of negative test results may be done telephonically or electronically, but must be followed up with the employer's copy of the testing form. If the result is 0.04 or greater, a confirmatory test would be needed.

The Agency notes that, under the alcohol testing legislation, the initial test need only indicate the consumption of alcohol. It is not statutorily required

that the initial test be of evidential quality, produce a quantitative result, or have elaborate safeguards. Consequently, it would be legally possible, under the statute, for the Agency to permit the use of other testing techniques (e.g., nonevidential breath testing devices) for initial tests, so long as they were capable of identifying alcohol concentration of 0.04 or greater.

The consequences of "false negatives," which may occur with some nonevidential techniques, present serious safety, security or National security concerns. The Agency believes, in addition, that use of nonevidential testing methods would make little sense in the context of this rule. An EBT would have to be available to conduct a confirmatory test very shortly (within 30–60 minutes) after a "positive" initial test in any case. For this reason, the cost of EBT availability, would have to be incurred and would have to include a properly trained BAT. It would probably be less expensive to use the EBT that is already there for the initial, as well as for the confirmatory test than to use other technologies. Use of EBT technology on the initial as well as any required confirmatory test provides the additional advantage of a more scientifically accurate, sensitive, and specific test result for alcohol content on all tests conducted. Use of nonevidential methods for testing also raises issues of how to document test results and how to prevent fraudulent or "doctored" records of employer compliance with testing requirements. In particular, disposable testing methods present problems in ensuring that initial test results of employees who are in violation of the alcohol misuse standards are not ignored and that the evidence of such violation hidden or destroyed.

This discussion is in the context of an extensive, multi-modal testing program, including random testing as well as testing triggered by reasonable suspicion or the occurrence of an accident. Greater protection is needed in such a program, especially in the absence of procedural protection present in some existing programs that may use nonevidential testing methods in some circumstances. For example, the Coast Guard post-accident alcohol testing program can involve an administrative proceeding at which the employee has the opportunity to challenge test results before a license is revoked or an investigative inquiry at which further evidence could be introduced. In any event, the use of nonevidentiary alcohol testing devices alone would not meet the statutory requirement for verification in the testing program proposed by these proposed procedures.

Section 1272.511 Administration of the Confirmatory Test

The confirmatory test could be a second test on the same EBT as the initial test. The statute does not require that the confirmatory test use a different technology. The Agency believes that the reliability of EBT's on the NHTSA CPL is such that using the same device would have no adverse effect on the accuracy of tests. In order to guard against any possibility of alcohol on the used mouthpiece affecting the result of the confirmation test a new mouthpiece would be used for the confirmation test.

Before the confirmatory test, a 15-minute waiting period would be observed. The purpose of the waiting period is to ensure that the presence of mouth alcohol (residual alcohol present in the mouth from the recent use of food, tobacco, or hygiene products) does not artificially raise the test result. The BAT would instruct the employee to avoid actions that could increase mouth alcohol (i.e., using tobacco products, mouthwash, breath spray, cough drops, lozenges, or other food or medicinal products containing alcohol) during the waiting period. The test would proceed even if the employee disregards the instructions, however, since they are for the employee's protection. This rule proposes that the 15-minute waiting period be observed before the confirmatory test rather than before the initial test as a means to reduce lost time and costs in administering the testing program. Since no adverse actions may be imposed on the basis of the initial results, the employee protection afforded by the waiting period are only necessary for the confirmation test. It is assumed that the vast majority of employees will not have permissibly consumed alcohol immediately prior to testing and that the time necessary to prepare for the initial test and complete the form will, in fact, provide ample opportunity for residual mouth alcohol to dissipate. A 20-minute maximum for the waiting period, between initial and confirmation tests is proposed. The purpose of establishing a maximum limit for the waiting period is to prevent the manipulation of confirmation results by affording time for the metabolism of alcohol so that results will be lower than first recorded on the initial test.

Confirmation test results should only be higher than initial test results when an employee has very recently consumed alcohol and is in the absorption phase of alcohol metabolism. The Agency believes that the proposed requirements for pre- and post-test air blank readings on initial and confirmation tests provides sufficient safeguards for ensuring the internal calibration of the instruments.

Typically, under proposed operating administration rules, a confirmed result of 0.04 alcohol concentration or greater requires the employer to remove the employee from performing his or her safety-sensitive, security, or National security duties (Consequence A). Someone who tests negative (less than 0.04) may continue to perform safety-sensitive, security, or National security duties (Consequence B). The proposed rule proposes that when the confirmation result is different from the initial test result, the lower of the two results be used for the purpose of determining consequences. For example, if the confirmation result is below 0.04, even though the initial test result was greater than 0.04, the employee may continue to perform safety-sensitive, security, or National security duties (Consequence B). Under the proposed rule proposal to rely on the lower of the two EBT test results for the assignment of consequences, the following outcomes would occur:

Initial test	Confirmation test	Consequences
0.04 or greater	0.04 or greater ..	A
0.04 or greater	Less than 0.04 ..	B
Less than 0.04	None	B

This section also proposes a procedure for notification of the employer of test results by the BAT. The proposed procedures address the timeliness and methods of transmitting this information.

Section 1272.512 Inability to Provide an Adequate Amount of Breath

What happens if the employee allegedly cannot, because of a medical condition, provide sufficient breath to result in a valid test? (This problem is analogous to the "shy bladder" problem in drug testing.)

First, the employee would have to attempt to provide sufficient breath. This means that the employee would have to attempt to breathe into the EBT. Failure to attempt to provide breath is treated as a refusal to be tested, and the BAT would note such failure to attempt the test on the testing form and immediately notify the employer. If the employee attempts to provide breath and is unable to do so (e.g., cannot sustain a breath long enough, or cannot provide sufficient deep lung air) the BAT would so note on the form and immediately notify the Agency, who

VOL 58 ISS 127 JL 6 1993 UMI

would direct the employee to seek a medical evaluation to document his/her inability to provide a breath sample due to medical reasons. The evaluation would have to be done by a physician acceptable to the employer, in order to help maintain the integrity of the process (i.e., to help prevent a situation in which the employee selects a physician who could reasonably be viewed as being biased in favor of the employee). The provision is not intended to allow the Agency to arbitrarily veto the use of a physician other than one preferred by the Agency. The physician would answer one basic question: Does the employee have a medical condition which has, or with a high degree of probability could have, precluded the employee from providing an adequate amount of breath? If yes, there is no "refusal." If no, the employee is deemed to have refused the test. The employee should be prohibited from performing safety-sensitive, security, or National security duties until the medical evaluation is conducted, the physician's determination made and reported to the Agency.

It should be noted that this inquiry by the physician would be on a case-by-case, test specific basis. Physicians would not, under this provision, be authorized to issue a blanket statement that an individual was permanently unable to provide an adequate amount of breath. Such a statement could amount to a waiver from the testing requirement, which would be contrary to the objectives of the Act.

Section 1272.513 Invalid Tests

This section proposes a list of "fatal flaws" in the testing process, any one of which would invalidate a test. Other testing procedures errors do not necessarily invalidate a test.

Most of these items are self-explanatory. Failing to observe the 15-minute minimum, should invalidate a test. Our view at this time is that the 15-minute minimum waiting period is essential to protect the employee's right to a fair and accurate test. Any failure to provide at least the 15-minute waiting period before the confirmation test would result in the confirmation result being invalid. Because the 20 minute maximum on the waiting period is not an employee protection procedure (in fact, additional delay could be helpful to employees), if the waiting period between tests exceed 20 minutes, the confirmation test would remain valid. If the BAT notices a potentially fatal error in the testing process (e.g., the BAT has failed to sign the form or has failed to sign the form or has failed to run a post-test air blank), before the employee has left the alcohol testing site, the BAT should be able to direct the employee to take another test to correct the problem.

One "fatal flaw" that could create difficulty is a situation in which a check of external calibration indicates that the instrument is not properly calibrated. In this situation, all positive results back to the last check of external calibration that established the instrument's accuracy would be invalidated. The proposed rule proposes that more frequent external calibration checks than required by the manufacturer's QAP be conducted. An external calibration check should be conducted after every positive to mitigate problems for subsequent personnel actions. This will eliminate a number of problems in the administration of the program and Agency's personnel decisions. Since confirmed results are available immediately and once notified, the Agency is required to take action prohibiting the performance of safety-sensitive, security, or National security duties by employees who are found to have violated the alcohol misuse standards, tests invalidated at a later date may result in the reversal of personnel actions, including a restitution of back pay, if an external calibration check is not conducted after every positive.

Section 1272.515 Availability and Disclosure of Alcohol Testing Information About Individual Employees

This section would be parallel to similar material in the drug testing procedures. The general rule is that information is confidential and may not be released to third parties without the employee's written consent. The Agency could release information in the context of a proceeding relating to an employee benefit or to Agency sponsored action against the individual.

Section 1272.516 Maintenance and Disclosure of Records Concerning EBT's and BAT's

This section would require the Agency to ensure that the records of the inspection, maintenance, and calibration of EBT's, compliance with the manufacturer's QAP, and records of the training and proficiency of BAT's are maintained.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 51 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1272

Government employees, Drug testing, Alcohol testing.

For the reasons set out in the preamble, 14 CFR part 1272 is proposed to be added to read as follows:

PART 1272—PROCEDURES FOR NASA DRUG TESTING AND ALCOHOL TESTING PROGRAMS

Subpart A—Drug Testing: General Provisions

Sec.
1272.100 Applicability.
1272.102 Purpose.
1272.103 Definitions.
1272.104 Collective bargaining.

Subpart B—Drug Testing: Specimen Collection Procedures

Sec.
1272.200 Specimen collection procedures.
1272.201 Laboratory personnel and analysis procedures.
1272.202 Reporting and review of results.
1272.203 Protection of employee records.
1272.204 Use of DHHS—certified laboratories.

Subpart C—Drug Testing: Preemployment Testing Procedures

Sec.
1272.300 Preemployment drug testing.
1272.301 Identification of testing designated positions for preemployment.
1272.302 Drugs for which preemployment testing is performed.
1272.303 Specimen collection, handling, and laboratory analysis for preemployment drug testing.
1272.304 Medical review of results of preemployment tests for illegal drug use.
1272.305 Action pursuant to a determination of illegal drug use.
1272.306 Records.

Subpart D—Alcohol Testing: General Provisions

Sec.
1272.400 Applicability.
1272.401 Purpose.
1272.402 Definitions.
1272.403 Collective bargaining.

Subpart E—Alcohol Testing: Procedures

Sec.
1272.500 Employee assistance, education, and training.
1272.501 Random alcohol testing and identification of testing designated positions.
1272.502 Applicant alcohol testing.
1272.503 Alcohol testing as a result of an accident.
1272.504 Alcohol testing for reasonable suspicion.
1272.505 Breath alcohol technician.
1272.506 Devices to be used in alcohol testing.
1272.507 The alcohol testing site.

Sec.
1272.508 The alcohol testing form.
1272.509 Preparation for testing.
1272.510 Administration of the initial test.
1272.511 Administration of the confirmatory test.
1272.512 Inability to provide an adequate amount of breath.
1272.513 Invalid tests.
1272.514 Action pursuant to a determination of alcohol at the predetermined level.
1272.515 Availability and disclosure of alcohol testing information about individual employees.
1272.516 Maintenance and disclosure of records concerning EBT's and BAT's.

Authority: Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; Civil Space Employee Testing Act of 1991, 105 Stat. 1616, 42 U.S.C. 2473c; Executive Order 12564, September 15, 1986; and the Privacy Act of 1974, 5 U.S.C. 552a.

Subpart A—Drug Testing: General Provisions

§ 1272.100 Applicability.

This part applies, through regulations issued by the National Aeronautics and Space Administration (NASA), the Agency, to conduct split sample collections and preemployment testing for drugs of NASA employees.

§ 1272.102 Purpose.

NASA promulgates this part in order to protect the civil space program, maintain public safety and security, and safeguard the National security. This part establishes policies, criteria, and procedures for developing and implementing programs that help maintain a workplace free of the effects of the use of illegal drugs by NASA employees performing safety, security, and National security-sensitive duties. The procedures include the use of split sample collections and testing of applicants for NASA Civil Servant positions for the presence of illegal drugs.

§ 1272.103 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Collection Site Person* means a technician or other person trained and qualified to take urine samples and to secure urine samples for later laboratory analysis.

(b) *Confirmed Positive Test* means a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample. The confirmatory test must be by the gas chromatography/mass spectrometry method.

(c) *Illegal Drug* means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, 812. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with terms of a valid prescription, or other uses authorized by law.

(d) *Medical Review Officer* (MRO) means a licensed physician, approved by NASA to perform certain functions under this part. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of illegal drug use and other substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part, a physician from the site occupational medical department may be the MRO.

(e) *Specimen Chain of Custody Form* is a form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

(f) *Testing Designated Position* (TDP) names a position for which incumbents and applicants are subject to drug testing under this part.

§ 1272.104 Collective bargaining.

When establishing drug preemployment and split sample collection programs, the Agency will negotiate with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because NASA safety-sensitive, security, and National security requirements themselves are non-negotiable. NASA employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if within 1 year after publication of this regulation, the parties have failed to reach an agreement, an impasse will be determined to have been reached and the Agency will unilaterally implement the requirements of this rule.

Subpart B—Drug Testing: Specimen Collection Procedures

§ 1272.200 Speciment collection procedures.

The Agency shall continue the drug specimen collection procedures specified in the Department of Health and Human Services (DHHS) Mandatory Guidelines as required by the Civil Space and Employee Testing Act of 1991, and incorporate the following mandatory split sample collection procedures:

(a) The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection (i.e., 30 ml for the primary test and an additional 15 ml for the "split").

(1) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, pours into two specimen bottles.

(2) The first 30 ml of urine shall be poured into a specimen bottle to be used for the primary specimen.

(3) The remainder of the urine, of at least 15 ml, shall be poured into another specimen bottle for the split specimen.

(4) In an unusual or emergency situation in which a collection container is not available or it is not practicable to pour the urine from the collection container into two specimen bottles, the donor can use a single specimen bottle and the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as primary specimen) and retain the remainder in the collection bottle (to be used as the split specimen).

(5) Both bottles shall be shipped in a single shipping container, together with the primary specimen copies and the split specimen copy of the chain of custody form, to the laboratory.

(6) If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be analyzed at the same or at the employee's expense at a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 24 hours of the employee having been notified of a verified positive test result.

(7) The laboratory is informed in writing by the Agency that the employee has requested a test of a split sample, the laboratory shall analyze the split specimen or forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the request, and the split specimen

VOL
58
ISS
127
JL
6
1993
UMI

copy of the chain of custody form with appropriate chain of custody entries.

(8) The result of the test of the split sample shall be transmitted by the analyzing laboratory to the MRO.

(9) Action required by the Agency regulations and policy as the result of a positive drug test (e.g., removal from performing functions of a test designated position) will not be stayed pending the result of the test of the split sample.

(10) If the result of the test of the split sample fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the reasons for the cancellation to the Agency designated representative.

(b) Upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30 ml of urine for the primary or single specimen bottle and, for the split sample, and additional, measurable amount of at least 15 ml of urine that can be poured into the split specimen bottle. If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluid and, after a period of up to 2 hours, again attempt to provide a complete sample using a fresh collection container. If the required amount is provided, the original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the collection site person shall notify the Agency designated representative, who shall instruct the individual to seek a medical evaluation to document his/her inability to provide the required specimen amount due to a medical condition. The evaluation shall be done by a physician acceptable to the Agency, in order to help maintain the integrity of the process (i.e., to help prevent a situation in which the employee selects a physician who could reasonably be viewed as being biased in favor of the employee). The provision is not intended to allow the Agency to arbitrarily veto the use of a physician other than one preferred by the Agency. Any medical documentation received by the employee for his or her case shall be submitted to the MRO for a determination concerning whether the inability to provide a specimen is genuine or constitutes a refusal to test. (In preemployment testing, if the Agency does not wish to hire the individual, the Agency is not required to instruct the individual to seek medical documentation.) The MRO determination shall be reported to the Agency designated representative in writing.

§ 1272.201 Laboratory personnel and analysis procedures.

Laboratory personnel and analysis procedures shall be in accordance with the DHHS Mandatory Guidelines and incorporate the following split sample procedures:

(a) For split sample collection method, the laboratory shall log in the split sample, with the split specimen bottle seal remaining intact. The laboratory shall store this sample securely (as stated in the DHHS Mandatory Guidelines). If the result of the test of the primary sample is negative, the laboratory may discard the split sample. If the result of the test of the primary sample is positive, the laboratory shall retain the split sample in long-term storage for 1 year following storage requirements stated in the DHHS Mandatory Guidelines. Following the end of the 1-year period, or if informed in writing by the Agency that the employee has not requested a test of the split sample, the laboratory may discard the split sample.

(b) When directed in writing by the Agency to analyze the split sample or to forward the split sample to another DHHS-certified laboratory analysis, the laboratory analyzing the split specimen shall perform gas chromatography/mass spectrometry (GCMS) as stated in the DHHS Mandatory Guidelines to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GCMS confirmation shall be conducted without regard to the cutoff levels as stated in the DHHS Mandatory Guidelines. The split sample shall be retained in the long-term storage for 1 year by the laboratory conducting the analysis of the split sample (or longer if requested by the Agency).

§ 1272.202 Reporting and review of results.

For the split sample method of collection, if the employee requests an analysis of the split sample within 24 hours of having been informed of a verified positive test (or longer period, if agreed to by the Agency), the Agency shall direct, in writing, the laboratory to have the split sample analyzed. Such analysis may take place at the laboratory or upon the employee's request and expense, to another DHHS-approved laboratory. If the analysis of the split sample fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split sample is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the reason for the cancellation to the Agency designated representative.

(a) The employee is not authorized to request a reanalysis of the primary sample. The laboratory may only conduct or forward the split sample for analysis upon the Agency's written request.

(b) The MRO shall review, discuss with the employee, and report all split sample positive test results in accordance with the DHHS Mandatory Guidelines for positive test results.

§ 1272.203 Protection of employee records.

(a) Confirmed split sample test results shall be provided to the MRO who will forward the result to Agency Officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) The Agency shall maintain the maximum confidentiality of records related to drug testing, which includes split sample collection results and records, to the extent required by applicable statutes and regulations.

§ 1272.204 Use of DHHS-certified laboratories.

All drug testing, including split sample analysis, conducted by the Agency shall only be performed by laboratories certified by DHHS.

Subpart C—Drug Testing: Preemployment Testing Procedures

§ 1272.300 Preemployment drug testing.

An applicant for a testing designated position may be tested for the use of illegal drugs before final selection for employment or assignment to such a position.

§ 1272.301 Identification of testing designated positions for preemployment.

The testing designated positions (TDP's) subject to random drug testing are those which the Agency has determined are safety-sensitive, security, and National security positions. Agency determinations of TDP's are final.

§ 1272.302 Drugs for which preemployment testing is performed.

Where preemployment drug testing is performed under this part, at a minimum, the Agency is required to test for the use of marijuana and cocaine. The Agency also has the authority to test for the following drugs: opiates; phencyclidine; and amphetamines.

§ 1272.303 Specimen collection, handling, and laboratory analysis for preemployment drug testing.

(a) Procedures for providing urine specimens shall ensure individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. The Agency shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the HHS Mandatory Guidelines. The Agency shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the HHS Mandatory Guidelines, are utilized.

(b)(1) If the individual refuses to cooperate with the urine collection (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the Agency designated representative and shall document the non-cooperation on the specimen chain of custody form. The Agency designated representative shall report the failure to cooperate to the appropriate management authority. Individuals so failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have used an illegal drug. The Agency may apply any sanctions consistent with its disciplinary policy.

(2) The collection site person shall ascertain that there is a sufficient amount of urine for all testing called for under these procedures. Split sample procedures are required by the Civil Space Employee Testing Act of 1991 and covered under Part 1272, Subpart IIA. Under these proposed split sample procedures, the primary sample, therefore, would be 30 ml, with an additional 15 ml collected for the "split." The minimum sample volume, which the collection site person would ask the applicant to provide, would be a total of 45 ml for the split sample procedure. The applicant may be given reasonable amounts of liquid and a reasonable amount of time in which to provide the specimen required. The applicant and the collection site person must keep the specimen in view at all times. In the event that the individual fails to provide a sufficient amount of urine, the amount collected will be noted on the chain of custody form. In this case, the collection site person will telephone the Agency's designated representative who will determine the next appropriate action. This may include deciding to reschedule the individual for testing, to consider the testing attempt as refusal to cooperate, or both.

§ 1272.304 Medical review of results of preemployment tests for illegal drug use.

(a) All preemployment illegal drug test results shall be submitted for medical review by the Medical Review Officer (MRO). A confirmed positive test for drugs shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another testperformed by the gas chromatography/mass spectrometry method (GC/MS). This procedure is described in paragraphs 2.4 (e) and (f) of the HHS Mandatory Guidelines.

(b) The MRO will consider the medical history of the applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of use of illegal drugs. If no such certification can be made, the MRO will make a determination of use of illegal drugs. Determinations of use of illegal drugs will be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the DHHS (Publication No. (ADM) 88–1528).

§ 1272.305 Action pursuant to a determination of illegal drug use.

(a) When an applicant for employment has a been tested and determined to have tested positive for the presence of an illegal drug processing for employment will be terminated and the applicant will be so notified.

(b) An applicant who has been notified of a positive drug test result may request a confirmation test of the split sample at the same or another DHHS certified laboratory. The Agency designated representative will inform applicants of their right to request a retest under the provisions of this section.

§ 1272.306 Records.

(a) Confirmed preemployment positive test results shall be provided to the Medical Review Officer and only those Agency officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) The Agency shall maintain maximum confidentiality of records related to preemployment testing to the extent required by applicable statutes and regulations (including, but not limited to, 42 U.S.C. 290dd–3, 42 U.S.C. 290ee–3, and 42 CFR part 2). If such records are sought from the Agency for criminal investigations, any applicable procedures in statute or regulation for disclosure of such information shall be followed.

(c) Unless otherwise approved by the Agency, all records relating to positive preemployment drug test results, shall be retained in such a manner as to allow retrieval of all information pertaining to the individual results for a minimum period of 5 years after completion of testing of any given specimen, or longer if so instructed by NASA. In addition, a frozen sample of all positive preemployment urine specimens shall be retained by the laboratory for at least 6 months, or longer if so instructed by the Agency.

(d) The Agency shall maintain as part of its medical records copies of specimen chain of custody forms.

(e) The specimen chain of custody form will contain the following information:

(1) Date of collection;

(2) Tested person's name;

(3) Tested employee/applicant's social security number of other identification number unique to the individual;

(4) Specimen number;

(5) Type of test (applicant);

(6) Temperature range of specimen (urine drug testing);

(7) Remarks regarding unusual behavior or conditions;

(8) Collector's/BAT"s signature; and

(9) Certification signature of specimen provider certifying that specimen identified is in fact the specimen the individual provided.

Subpart D—Alcohol Testing: General Provisions

§ 1272.400 Applicability.

This part applies, through regulations issued by the National Aeronautics and Space Administration (NASA), the Agency, to conduct an alcohol testing program for NASA employees.

§ 1272.401 Purpose.

This part establishes policies, criteria, and procedures for developing and implementing programs that help to maintain a workplace free of the effects of the misuse or abuse of alcohol by NASA employees performing safety, security, and National security-sensitive

duties. The procedures include the detection of alcohol present at a predetermined level by current or prospective NASA employees in or applying for testing designated positions.

§ 1273.402 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Air blank.* A reading by an evidential breath testing device of ambient air containing no alcohol.

(b) *Alcohol.* Ethyl alcohol (ethanol). References to the use of alcohol include use of any beverage, mixture, or preparation containing ethyl alcohol (including any medication).

(c) *Alcohol concentration.* The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part. When the indicated alcohol concentration of a covered employee on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

(d) *Alcohol testing site.* The location designated by the Agency at which employees are required to provide breath in order to be tested for the presence of alcohol.

(e) *Breath Alcohol Technician (BAT).* An individual who instructs and assists individuals in the testing process and operates the evidential breath testing device.

(f)*Confirmed Positive Test.* A breath test result of 0.04 or greater alcohol concentration, performed on an evidential breath testing device and repeated on the same or another breath testing device with a breath test result of 0.04 or greater alcohol concentration. A confirmed 0.04 or greater alcohol concentration is the Agency's predetermined level of alcohol presence.

(g) *Confirmatory test.* An analysis of a second, separate amount of breath on an evidential breath testing device.

(h) *Counseling.* Assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of misuse or abuse of alcohol; such assistance my include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and followup services to the individual after completion of treatment and return to work.

(i) *DHHS.* The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

(j) *Employee.* An individual designated in NASA regulation as subject to alcohol testing. As used in this part, "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

(k) *Employee Assistance.* A program of counseling, referral, and educational services concerning misuse or abuse of alcohol, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

(l) *Evidential breath testing device (EBT).* A breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "confirming products lists of evidential measurement devices."

(m) *Initial test.* The first analysis of an amount of breath on an evidential breath testing device.

(n) *Invalid test.* A test which has been declared invalid. The Agency will not consider such a test as either a positive nor a negative test.

(o) *Random testing.* The unscheduled, unannounced alcohol breath testing of individuals performing safety-sensitive, security, or National security functions by a process designed to ensure that selections are made in a nondiscriminatory manner.

(p) *Reasonable suspicion.* Suspicion based on an articulable belief that an employee misuses and abuses of alcohol drawn from particularized facts and reasonable inferences from those facts as detailed further in section 1272.504.

(q) *Referral.* The direction of an individual toward an employee assistance program professional, for assistance with prevention treatment, or rehabilitation from misuse or abuse of alcohol, or other problems. Referrals to an employee assistance program can be made by the individual [self-referral], or by supervisors or managers.

(r) *Rehabilitation.* A formal treatment process aimed to the resolution of behavioral-medical problems, including alcohol misuse or abuse, and resulting in such resolution.

(s) *Testing designated position.* A position whose incumbents are subject to alcohol testing under § 1272.501.

§ 1272.403 Collective bargaining.

When establishing the alcohol testing program, the Agency will negotiated with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because NASA safety-sensitive, security, and National security requirements themselves are non-negotiable. NASA employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if within 1 year after publication of this regulation, the parties have failed to reach agreement, an impasse will be determined to have been reached and the Agency will unilaterally implement the requirements of this rule.

Subpart E—Alcohol Testing; Procedures

§ 1272.500 Employee assistance, education, and training.

The Agency shall include the following or appropriate alternatives:

(a) Employee assistance programs emphasizing preventive services, education, short-term counseling, coordination and referral to outside agencies, and followup. These services shall be available to all NASA employee involved in performing duties of testing designated positions. The Agency has no obligation to pay the costs of any individual's counseling, treatment, or rehabilitation beyond those services provided by the employee assistance program, except as provided for in the Agency's benefits programs.

(b) Education and training programs for Agency employees on a periodic basis, which will include, at a minimum, the following subjects:

(1) For all NASA employees: Health aspects of alcohol misuse and abuse; safety-sensitive, security, National security and other workplace-related problems caused by alcohol misuse and abuse; the provisions of this rule; the agency's policy; and available employee assistance services.

(2) For managers and supervisors:

(i) Recognition of deteriorating job performance or judgment, or observation of unusual conduct which may be the result of possible misuses or abuse of alcohol;

(ii) Responsibility to intervene when there is deterioration in performance, or observed unusual conduct, and to offer alternative courses of action that can assist the employee in returning to satisfactory performance, judgment, or conduct, including seeking help from the employee assistance program; .

(iii) Appropriate handling and referral of employees with possible alcohol misuse and abuse problems; and

(iv) Employer policies and practices for giving maximum consideration to

the privacy interests of employees and applicants.

§ 1272.501 Random alcohol testing and identification of testing designated positions.

(a)(1) The Agency will conduct random testing for presence of alcohol at the predetermined level for employees in testing designated positions identified in this section.

(2) The program developed under this part for positions identified in paragraph (b) of this section shall provide for random tests at a rate determined to management's need (i.e., generally equal to 10 percent of the total number of employees in testing designated positions for each 12-month period.)

(b) Positions subject to random drug and alcohol testing are safety-sensitive, security, and National security positions, which have been designated as TDP's.

§ 1272.502 Applicant alcohol testing.

An applicant for a testing designated position may be tested for the presence of alcohol at the predetermined level before final selection for employment or assignment to such a position.

§ 127.503 Alcohol testing as a result of an accident.

When there is an accident which is required to be reported to the Agency under applicable NASA instructions, rules, and regulations, it may be necessary to test individuals in testing designated positions, for the presence of alcohol at the predetermined level, if such individuals could have caused or contributed to the conditions which caused the accident. For an accident requiring immediate notification or reporting as required by applicable NASA instructions, rules, and regulations, the testing will be required as soon as possible after the accident but within 6 hours of the accident, unless NASA determines that it is not feasible to do so.

§ 127.504 Alcohol testing for reasonable suspicion.

(a)(1) It may be necessary to test any employee in a testing designated position, for the presence of alcohol at the predetermined level, if the behavior of the individual creates the basis for reasonable suspicion of the use of alcohol in violation of applicable law or Federal regulation. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that there is a reasonable suspicion of alcohol use.

(2) A supervisory or management official has reasonable suspicion that the employee is currently under the influence of or impaired by alcohol, or alcohol in combination with a controlled substance, based upon specific, personal observations that the supervisory or management official can articulate concerning the appearance, behavior, speech, or body odors of the employee.

(b) The fact that an employee had a confirmed positive test for the presence of alcohol at the predetermined level, at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

(c) The requirements of this part relating to alcohol testing are not intended to prohibit the Agency from pursuing other existing disciplinary procedures of any employee exhibiting aberrant or unusual behavior.

§ 1272.505 Breath alcohol technician.

(a) The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the evidential breath testing device (EBT) he or she is using and in the alcohol testing procedures of this part.

(1) Proficiency shall be demonstrated by successful completion of a course of instruction, which at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath specimen, and interpreting and recording EBT results.

(2) Courses of instruction that meet standards of the National Highway Traffic Safety Administration (NHTSA) model course or a course approved by a state department of health or other relevant state agency may be used to demonstrate BAT proficiency.

(3) The course of instruction shall include documentation that the BAT has demonstrated competence in the operation of the specific EBT he/she will use.

(4) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.

(5) The BAT shall received additional training, as needed to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

(6) The Agency shall ensure that documentation of the training and proficiency test of each BAT it uses to test employees is maintained, as provided in § 1272.516 of this part.

(b) The supervisor of an employee shall not act as a BAT for that employee, unless no other BAT is available in a timely manner to perform the test.

§ 1272.506 Devices to be used in alcohol testing.

(a) The Agency shall use only EBT's meeting the requirements of this section for alcohol testing subject to this part.

(b) EBT's shall have the capability of providing, independently or directly linked to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in paragraphs (c) and (d) of this section.

(c) EBT's shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out on each copy of the result.

(d) EBT's shall be able to distinguish alcohol from acetone at the 0.04 alcohol concentration level.

(e) EBT's shall be capable of the following operations prior to and following each collection of breath:

(1) Testing an air blank.

(2) Performing an external calibration check.

(f) In order to be used in alcohol testing subject to this part, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer.

(1) The plan shall designate the method or methods to be used to perform external calibration checks of the device.

(2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use).

(3) The plan shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration.

(4) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.

(5) For a plan to be regarded as valid for purposes of this paragraph, the manufacturer shall have submitted the plan to the National Highway Traffic

Safety Administration (NHTSA) for review by NHTSA and have received NHTSA approval of the plan.

(g) The Agency shall comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol testing subject to this part.

(1) The Agency shall ensure that external calibration checks of each EBT are performed as provided in the manufacturer's plan.

(2) The Agency shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in manufacturer's plan. The EBT shall not again be used for alcohol testing under this Plan until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.

(3) The Agency shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the devices manufacturer or a state health agency or other appropriate state agency. The Agency shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

(4) The Agency shall ensure that the records of the external calibration checks of EBT's are maintained as provided in § 1272.516 of this part.

(h) When the EBT is not being used at an alcohol testing site, it shall be stored in a secured space.

§ 1272.507 The alcohol testing site.

(a) The Agency shall use an alcohol testing site that affords visual and aural privacy to the individual being tested. All necessary equipment, personnel, and materials for breath testing shall be provided at each site.

(b) The Agency may use a mobile collection facility (e.g., a van equipped for alcohol testing) as an alcohol testing site.

(c) The alcohol testing site shall be secured, and no unauthorized persons shall be permitted access to the alcohol testing site, at any time when testing is occurring or when the EBT remains unsecured within the alcohol testing site.

(d) In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a place other than an alcohol testing site. In such case, the Agency or BAT shall provide visual and aural privacy to the employee to the greatest extent practicable.

(e) The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing site while the preparations for testing and testing of a given employe (as set forth in § 1272.509, § 1272.510 and § 1272.511) are in progress.

§ 1272.508 The Alcohol testing form.

(a) The Agency shall use a collection form generated by the EBT if it provides all the following information on the form: date and time, sequential test number, employee name and identifying data, BAT name and identifying data, certification statements about the test with signature space by the employee and the BAT, remarks section, and breath test result. If the EBT does not produce all of this required information, an Agency approved alcohol test form with this required information shall be used.

(b) If the EBT does not print the results directly onto the form, the BAT shall affix the test result printout to the Agency alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(c) The form shall have triplicate copies: one for the employee being tested, one for the BAT, and one for the Agency.

§ 1272.509 Preparation for testing.

(a) When the employee enters the alcohol testing site, the BAT will require him or her to provide positive identification (e.g., through use of a photo I.D. card or identification by an Agency representatives). On request by the employee, the BAT shall provide postive identification to the employee.

(b) The BAT shall explain the testing procedure to the employee.

(c) The employee and BAT shall complete and date the alcohol testing form. Both the BAT and the employee shall sign the form, signifying that the employee is present and is providing breath and noting the number of the test that is about to be taken.

(d) Refusal by an employee to complete and sign the alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the collection process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The collection process shall be terminated and the BAT shall immediately notify the Agency of the termination.

(e) If an initial or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new initial or conformation test, as applicable, using a new alcohol testing form with a new sequential test number.

§ 1272.510 Administration of the initial test.

(a) Before the initial test is administered to each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. If the EBT does not register 0.00 on that attempt, testing shall not proceed using that instrument. However, testing of the employee may continue using another EBT.

(b) An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.

(c) The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(d) After the initial test is administered for each employee, the BAT shall run an air blank, after allowing adequate time for the EBT to clear any residual alcohol remaining from the test. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. The employee's test is valid only if this check results in a 0.00 reading.

(e) Any EBT taken out of service because of failure to perform air blanks accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

(f) If the result of the initial test is an alcohol concentration of less than 0.04, no further testing is authorized. The BAT shall transmit the result to the employer in a confidential manner, and the Agency shall receive and store the information so as to ensure that confidentiality is maintained as required by § 1272.515 of this part.

(g) If the result of the initial test is an alcohol concentration of 0.04 or greater, a confirmatory test shall be performed as provided in § 1272.514 of this part.

(h) If the EBT does not print the results directly onto the form, the BAT shall affix the test result printout to the alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(i) In the event the result displayed on the EBT does not match the printed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with § 1272.513 of this part, the test is invalid and the Agency and employee shall be so advised.

§ 1272.511 Administration of the confirmatory test.

(a) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmatory test. This time period begins with the completion of the initial test, and shall not be less than 15 minutes nor more than 20 minutes long. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol from leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction, the BAT shall so note in the "Remarks" section of the form.

(b) The BAT shall provide to the employee, and instruct the employee to read during the waiting period, a notice which shall inform the employee that should the confirmatory test result be an alcohol concentration of 0.04 or greater, the employee shall not perform any safety, security, or National security-sensitive function. The employee shall initial the testing form in the space provided to indicate that this notice has been provided. If the employee declines to initial the form for this purpose, the BAT shall note the provision of the notice and the employee's refusal to initial in the "Remarks" section of the form.

(c) The procedures of § 1272.510(a), (c), (d), (e), and (i) shall be followed. A new mouthpiece shall be used for the confirmation test.

(d) In the event that the initial and confirmatory results are not identical, the lower of the two results is deemed to be the final result upon which any Agency action shall be based.

(e) If the EBT does not print the result directly onto the form, the BAT shall affix the test result printout to the alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(f) The BAT shall transmit all results to the Agency in a confidential manner.

(1) The Agency shall designate a representative(s) at each Installation for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BAT's to the Agency concerning the alcohol testing results of employees shall be to the designated Agency representative(s).

(2) Such transmission may be in writing, in person or by telephone or electronic means, but the BAT shall ensure immediate transmission to the Agency of results that require the Agency to prevent the employee from performing safety, security, or National security-sensitive functions.

(3) If the initial transmission is not in writing (e.g., by telephone), the Agency shall establish a mechanism to verify the identity of the BAT providing the information.

(4) If the initial transmission is not in writing, the BAT shall follow the initial transmission by providing to the Agency its copy of the alcohol testing form. The Agency shall store the information so as to ensure that confidentiality is maintained as required by § 1272.515 of this part.

§ 1272.512 Inability to provide an adequate amount of breath.

(a) This section sets forth procedures to be followed in any case in which an employee is unable because of a medical condition, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test.

(b) If a donor provides an insufficient amount of breath, and claims that he or she is unable to provide more breath, the BAT shall instruct the employee to attempt to provide an adequate amount of breath a second time. If the employee refuses to make the attempt, the BAT shall immediately inform the Agency.

(c) If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the alcohol testing form and immediately inform the Agency designated representative.

(d) The Agency shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the Agency concerning the employee's medical ability to provide an adequate amount of breath. The employee shall make available to the physician all relevant medical history and records.

(e) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take the test. The physician shall provide to the Agency a written statement of the basis for his or her conclusion. The employee must agree to permit the Agency to have access to medical records that the employee claims substantiates the claims of a medical condition.

(f) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (e) of this section, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion or inability to reach a conclusion to the Agency.

§ 1272.513 Invalid tests.

An alcohol test shall be invalid under the following circumstances:

(a) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the manufacturer's quality assurance plan from the known value of the test standard. In this event, every test performed on the device since the last valid external calibration check shall be considered invalid;

(b) A device other than an EBT as described in § 1272.507 is used for the test;

(c) The BAT does not observe the minimum 15 minutes waiting period

prior to the confirmatory test, as provided in section 1272.511(a);

(d) The BAT does not perform an air blank of the EBT before and after an initial or confirmatory test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test, as provided in § 1272.511 and § 1272.512;

(e) The BAT does not sign the form as required by § 1272.510 and § 1272.511;

(f) The employee has failed to sign the form following the printing on or attachment to the form of the test result, and the BAT has failed to note this event on the remarks section of the form;

(g) The EBT fails to print the result;

(h) The sequential test number on the EBT is not the same as the sequential test number on the printed result; or

(i) The alcohol concentration displayed on the EBT is inconsistent with the alcohol concentration printed on the results.

(j) The Agency will not take any action, or make any adverse determinations based on an invalid test.

§ 1272.514 Action pursuant to a determination of alcohol at the predetermined level.

(a) When an applicant for employment has been tested and determined to have alcohol present at the predetermined level, processing for employment will be terminated and the applicant will be so notified.

(b)(1) When an employee who is in a testing designated position has been tested and determined to have alcohol present at the predetermined level, the Agency shall immediately remove that employee from the testing designated position. If this is the first determination of alcohol present at the predetermined level by that employee, the employee may be offered a reasonable opportunity for rehabilitation, consistent with the Agency's policies. If rehabilitation is offered, the employee will be placed in a non-testing designated position provided there is such an acceptable position in which the individual can be placed during rehabilitation; if there is no acceptable non-testing designated position, the employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result for alcohol misuse or abuse.

(2) Following a determination by the Agency designated representative, in consultation with the Employee Assistance Program, after counseling or rehabilitation, that the employee can safely return to duty, the Agency may offer the employee reinstatement, in the same or a comparable position to the one held prior to the removal. Failure to take the opportunity for rehabilitation if it has been made available will require a significant disciplinary action up to and including removal from NASA employment, in accordance with the Federal policies.

(c) An employee who has been removed from a testing designated position because of substance abuse may not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation; and

(2) Undergone an alcohol breath test with a negative result;

(d) After an employee determined to have misused or abused alcohol, has been returned to duty, the employee shall be subject to unannounced alcohol testing, at intervals, for a period of 12 months.

§ 1272.515 Availability and disclosure of alcohol testing information about individual employees.

(a) Alcohol testing records shall only be disclosed without prior written authorization from the employee who was tested to those Agency officials with a need to know.

(b) Except as provided in this section, the Agency shall release information or copies of records regarding an employee's alcohol test results to a third party only as directed by specific, written instruction of the employee who was tested. The written authorization shall state that the Agency may release the information or records to an identified person.

(c) The Agency shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(d) The Agency may disclose information related to an alcohol test of an individual to the individual, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, or by the Agency against the individual, and arising from a positive alcohol test (including but not limited to a worker's compensation, unemployment, compensation, equitable relief or monetary damages, or other proceeding relating to a benefit sought by the employee.

§ 1272.516 Maintenance and disclosure of records concerning EBT's and BAT's.

(a) The Agency shall ensure that the following records are maintained for 5 years:

(1) Records of the inspection, maintenance, and calibration of each EBT used in employee testing.

(2) Documentation of the compliance with the QAP of the manufacture or each EBT the Agency uses a alcohol testing under this part, including records of the result of external calibration checks.

(3) Records of the training and proficiency testing of each BAT used in employee testing.

(b) Records required to be maintained by this section shall be disclosed as follows: The Agency may disclose records covered by this section to the individual, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, or by the Agency against the individual, and arising from a positive alcohol test (including but not limited to a worker's compensation, unemployment compensation, equitable relief or monetary damages, or other proceeding relating to a benefit sought by the employee).

Dated: June 9, 1993.

Daniel S. Goldin,

Administrator.

[FR Doc. 93–15253 Filed 7–2–93; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–18–000]

Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992; Notice of Proposed Rulemaking

June 23, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing revisions to its regulations concerning the ratemaking treatment to be used by public utilities to recover in jurisdictional rates the costs incurred in paying special assessments levied under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992. The Commission's proposed ratemaking treatment will permit utilities to recover the costs for special assessments on a monthly basis. In a document published elsewhere in

this edition of the **Federal Register**, the Commission is also providing accounting guidance to be used by public utilities to account for the special assessments.

DATES: Written comments must be received by the Commission by August 5, 1993.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

James H. Douglass, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2143 (Legal Issues).

James K. Guest, Office of the Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, Telephone: (202) 219–2602, (Accounting Issues).

Lawrence R. Anderson, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0575 (Ratemaking Issues).

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

Title XI of the Energy Policy Act [1] amends the Atomic Energy Act of 1954 [2] to, among other things, create a fund to be used for the decommissioning and decontamination of the Department of Energy's (DOE) gaseous diffusion uranium enrichment facilities. This new fund will be financed in part through special assessments which DOE is required to collect from certain domestic utilities pursuant to the Atomic Energy Act of 1954, as amended (Atomic Energy Act). Utilities will have no discretion concerning the payment of special assessments.

The Secretary of the DOE will issue special assessments in the near future. Consequently, the Federal Energy Regulatory Commission (Commission) believes that it is necessary to provide guidance as soon as practicable to utilities concerning the accounting treatment to be used for costs incurred for special assessments prior to the collection of the assessment by the Secretary of the DOE.[3] In addition, the Commission believes it is important to provide guidance as well as to the ratemaking treatment for special assessments. Accordingly, the Commission is now proposing to amend part 35 of title 18, chapter I of the Code of Federal Regulations to provide a method for public utilities to recover through jurisdictional rates the costs for special assessments levied under the Atomic Energy Act.

The Commission is also specifying, in the separately-published document, the method that public utilities should use to account for special assessments pursuant to the Commission's Uniform Systems of Accounts (USofA).[4]

II. Public Reporting Burden

The proposed rule would establish how public utilities may recover the costs of special assessments through jurisdictional rates. In the separately-published document, the Commission is also providing guidance concerning how public utilities should account for special assessments through the USofA.

The accounting guidance and proposed rule, if adopted, would add and clarify certain reporting requirements. The public reporting burden for the information collection requirements contained in this rule are estimated to average 2 hours per response. This information will be collected on an annual basis. The number of respondents is estimated to be 70. The respondents are public utilities who may seek to recover the costs incurred for special assessments and may seek to make minor revisions to rate calculations. To the extent that rate calculations are computerized, a one-time programming change, estimated at 50 hours per respondent, would be necessary. Thus, the ratemaking impact is estimated to be no more than a one-time effort of 3050 hours. These estimates include time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Discussion

A. The Uranium Enrichment Decontamination and Decommissioning Fund

Section 1801(a) of the Atomic Energy Act provides for the establishment of the Uranium Enrichment Decontamination and Decommissioning Fund (Fund). The Fund will be used to pay for decontamination, decommissioning, reclamation and other remedial activities at the DOE's gaseous diffusion uranium enrichment facilities. Section 1802(a) provides that the Fund will be financed through deposits in the amount of $480 million per fiscal year (adjusted annually for inflation).

Section 1802(c) provides that the annual deposit to the Fund will be financed partly through the collection by the DOE of a special assessment on domestic utilities. The special assessment will be based on the separative work units (a separative work unit is a measurement of energy and is the unit by which uranium enrichment services are sold) purchased by domestic utilities for the purpose of

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[1] See Pub. L. No. 102–486, Title XI, 106 Stat. 2776, 2954 (1992).

[2] 42 U.S.C. 2011 *et seq.*

[3] This guidance is in a separate document published elsewhere in this edition of the **Federal Register**.

[4] 18 CFR part 101.

VOL
58
ISS
127
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commercial electricity generation prior to October 24, 1992.

Section 1802(c) provides that the amount collected through special assessments by the DOE will not exceed $150 million per fiscal year (adjusted annually for inflation). Section 1802(d) provides that the collection of special assessments will cease at the earlier of October 24, 2007, or when $2.25 billion (adjusted annually for inflation) has been collected.

Section 1802(g) provides that special assessments shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as utility's other fuel cost.

B. Accounting Treatment

The accounting guidance is in a separate document published elsewhere in this edition of the **Federal Register**.

C. Ratemaking Treatment

According to the Commission's ratemaking policy, public utilities are permitted an opportunity to recover all of the fuel expense prudently incurred in providing jurisdictional service under the Federal Power Act (FPA). As noted earlier, section 1802(g) of the Atomic Energy Act provides that special assessments are a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in the same manner as a utility's other fuel cost. Therefore, the Commission finds that special assessments are costs that are generally recoverable cost through jurisdictional rates.[5]

For various reasons, the costs relating to the special assessments charged to Account No. 518, Nuclear Fuel Expense, may not be equal to the amount which the utility actually pays to DOE in a particular year. The Commission's fuel adjustment clause regulation[6] is designed to permit utilities to recover their actual fuel costs. The Commission believes in this instance that the amount eligible for wholesale rate recovery in a particular year should be the actual amount paid to DOE, not the amount charged to Account No. 518 during such period.

Therefore, the Commission believes it is appropriate to prescribe specific procedures to be used by public utilities in reflecting the special assessments in wholesale rates. To this end, the Commission is proposing to amend Part 35 of its regulations to add a new section 35.28 to prescribe the ratemaking treatment for special assessments to be used by public utilities. The Commission's proposed ratemaking treatment will permit utilities to recover the costs for special assessments on a monthly basis. The Commission's proposed regulations will require utilities seeking to recover the costs for special assessments to calculate their monthly net costs by: (1) Deducting any expenses associated with special assessments included in Account No. 518; (2) adding one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and (3) deducting one-twelfth of any refunds of payments made for special assessments received within the 12-month period ending with the current month that is received from the federal government because a public utility has contested a special assessment or overpaid a special assessment.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[7] requires that rulemakings contain either a description and analysis of the affect the proposed rule will have on small entities or to certify that the rule will not have a substantial economic effect on a substantial number of small entities. Because most of the entities that would be required to comply with the proposed rule are large public utilities that do not fall within the RFA's definition of small entities,[8] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

V. Environmental Statement

Commission regulations require the preparation of an environmental assessment or an environmental impact statement for any Commission action that may have a significant effect on the human environment.[9] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[10] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural or that does not substantively change the effect of legislation or regulations being amended.[11] Because the proposed rule is merely clarifying and procedural, no environmental consideration is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[12] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in the proposed rule are contained in FERC–516, "Electric Rate Filings" (OMB approval No. 1902–0096), FERC Form No. 1, "Annual Report of Major public utilities, licensees and others" (OMB approval No. 1902–0021); and FERC Form No. 1–F, "Annual Report of Nonmajor public utilities and licensees" (OMB approval No. 1902–0029).

The Commission uses the data collected in these information collections to carry out its responsibilities under the FPA and the Energy Policy Act. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The Commission's Office of the Chief Accountant uses the data to carry out its audit programs and continuous review of the financial conditions of regulated companies.

The Commission believes that the accounting guidance and proposed rule will assist regulated companies in accounting for and recovering in jurisdictional rates the costs incurred for special assessments, without significantly increasing the reporting burden for public utilities.

The Commission is submitting notification of the proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no

[5] However, while the special assessments are generally recoverable in jurisdictional rates, some public utilities may be operating under rate moratoria or rate settlement terms and conditions that would prohibit recovery of special assessments in rates for certain periods.

[6] 18 CFR 35.14.

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[9] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes & Regulations ¶30,783 (1987).

[10] 18 CFR 380.4.

[11] 18 CFR 380.4(a)(2)(ii).

[12] 5 CFR 1320.12.

later than August 5, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–18–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended to add new section 35.28 to read as follows:

§ 35.28 Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992.

The costs that public utilities incur relating to special assessments under the Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992, are costs that may be reflected in jurisdictional rates. Public utilities seeking to recover the costs incurred relating to special assessment shall comply with the following procedures.

(a) *Fuel Adjustment Clauses.* In computing the cost of nuclear fuel pursuant to section 35.14(a)(6), utilities seeking to recover the costs for special assessments through their fuel adjustment clauses shall:

(1) Deduct any expenses associated with special assessments included in Account No. 518;

(2) Add one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and

(3) Deduct one-twelfth of any refunds of payments made for special assessments received within the 12-month period ending with the current month that is received from the federal government because the public utility has contested a special assessment or overpaid a special assessment.

(b) *Cost of Service Data Requirements.* Public utilities filing rate applications under section 35.12 or 35.13 (regardless of whether the utility elects the abbreviated, unadjusted Period I, adjusted Period I, or Period II cost support requirements) must submit cost data that is computed in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

(c) *Formula Rates.* Public utilities with formula rates on file that provide for the automatic recovery of nuclear fuel costs must reflect the costs for special assessments in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

[FR Doc. 93–15852 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N–93–3616; FR–3510–N–02]

Section 8 Housing Assistance Payments Program-Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice to extend public comment period.

SUMMARY: This notice advises the public that the public comment period on the proposed Fiscal Year 1994 section 8 Fair Market Rents (FMRs) is being extended until August 31, 1993.

DATE: Comments are due August 31, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. To expedite processing, each commenter is requested to simultaneously submit a copy of its comments to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.—5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing (202) 708–0477 (TDD: (202) 708–0850), for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 708–3944 (TDD: (202) 708–4594), for questions relating to all other section 8 programs; for technical information regarding the development of the schedules for specific areas or the method used for calculating the FMRs, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0577 (TDD: (202) 708–0770). Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. On May 6, 1993, HUD published the proposed FY 1994 FMRs with a 60-day public comment period to July 6, 1993. These FMRs were the first to be calculated using 1990 Census data. The introduction of the Census data resulted in major changes to these estimates, including proposed decreases for many areas. The May 6 document provided a detailed explanation of the changes to FMRs that resulted from the "rebenchmarking" process. Because of the large number of requests received, HUD believes that it is in the public interest to extend the public comment period to ensure that all interested parties will have sufficient time to obtain and submit the rental housing survey data required to modify the proposed FMRs.

HUD will publish final FY 1994 FMRs in two stages. (This process is effective for FY 1994 FMRs only.) The first publication will include final FMRs for all areas. For areas for which no comments were submitted and for areas for which comments were received in time to be evaluated, final FY 1994 FMRs will be made effective on October 1. For those areas with comments received too late in the extended comment period for HUD to complete its evaluation, FMRs for FY 1993 will be republished and will continue in effect.

A second publication will replace the FMRs for those areas covered by comments that had decisions pending, *i.e.*, those for whom the FY 1993 FMRs are republished and continued in effect. The second publication will occur as soon as HUD has completed its review of the comments submitted late in the process.

By extending the public comment period to August 31, 1993, HUD seeks further comments on FMR levels for specific areas. These comments must satisfy the requirements set forth in detail in section *V. Request for Comments* (page 27065) of the preamble to the May 6, 1993 **Federal Register** publication of the proposed FY 1994 FMRs. PHAs that have let contracts for Random Digit Dialing surveys, or other types of professionally-conducted surveys, are advised to notify HUD by the end of the comment period if their surveys have not been completed. HUD will allow until October 31, 1993 for receipt of RDD surveys for which contracts were let late in the comment period.

Dated: June 29, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–15826 Filed 7–2–93; 8:45 am]

BILLING CODE 4210–32–M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–93–1256; FR–1942–N–09]

RIN 2502–AC09

Public Comment Period and Informal Public Hearing Under the Real Estate Settlement Procedures Act (RESPA), Regulation X

ACTION: Notice of written comment period and informal public hearing.

SUMMARY: On November 2, 1992, the Department of Housing and Urban Development published in the **Federal Register** a final rule ("the Rule") (57 FR 49600), with an effective date of December 2, 1992, implementing requirements of the Real Estate Settlement Procedures Act (RESPA), as amended, 12 U.S.C. 2601 *et seq.* Since publication of the Rule, the Department has received a considerable number of inquiries and comments from the public concerning provisions of the Rule. In light of these comments, the Secretary has decided to review certain provisions of the Rule. The Secretary is particularly interested in receiving comments concerning the effect that certain new exceptions and other provisions may have on the cost and quality of settlement services to consumers. In order to assure that all points of view are considered, the Secretary has decided to provide a specific period for public comments and to conduct an informal hearing under RESPA.

DATES: *Date for comments:* August 5, 1993.

Date for hearing: On August 6, 1993 the Assistant Secretary for Housing—Federal Housing Commissioner or his designee will hold an informal public hearing from 9 a.m. until completion (including any additional date established at the hearing).

ADDRESSES: The hearing will be held at the National Capital Regional Office of the General Services Administration (GSA) Auditorium, 7th and D Streets SW., Washington, DC 20407, or such alternate site as may be timely announced by a **Federal Register** publication. Court reporters will be provided by the Department to create a transcript of the hearing.

Comments may be sent to: William J. Reid, room 8212, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: William J. Reid (202) 708–0421. For legal questions only, contact Grant E. Mitchell, Senior Attorney (RESPA), (202) 708–1552. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of this public comment period and informal public hearing is to afford all interested members of the public an opportunity to further comment regarding provisions of the Rule allowing employer payments to employees for referrals to any company, the exemption for computerized loan origination systems, the Secretary's authority regarding state laws affecting controlled businesses as such laws affect consumers, and the adequacy of protections to consumers doing business with controlled business arrangements. The provisions of the Rule for which comments are invited are: 1. Section 3500.14(g)(2)(ii) which provides that section 8 RESPA does not prohibit "An employer's payment to its own employees for any referral activities * * *".

2. Section 3500.14(g)(2)(iii) which provides that Section 8 of RESPA does not prohibit "Any payment by a borrower for computer loan origination services, so long as the disclosure set forth in appendix E of this part is provided the borrower."

3. Section 3500.13(b)(2) which provides that "in determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition."

4. Section 3500.15(b)(1) in controlled business situations provides for a "written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in appendix D of this part" of certain information regarding the ownership and financial relationships between referring and referred to parties, and certain timing and other methods for disclosure.

The preamble to the November 2, 1992 Rule, 57 FR 49600–49606, provides background regarding many of these provisions.

With respect to item 1, the Department is interested in receiving comments on how payment practices under this exception may benefit or harm consumers. Concerning item 2, the Department seeks comments as to whether further clarifications or additional conditions regarding CLOs are needed or desirable to protect consumers, particularly if any payment for the CLO service comes directly or indirectly from a Lender. Comments regarding adequacy of disclosures when a mortgage broker uses a CLO system are also requested.

In connection with item 3, the Department requests comments regarding whether the Secretary should establish standards to evaluate provisions in state laws to determine whether such laws provide greater protection to consumers. The Department also requests any other comments or opinions regarding this § 3500.13(b)(2) provision.

Under item 4, the Department seeks views as to whether these controlled business disclosures are adequate to protect the consumer, and, if not, how they might be improved.

After consideration of written comments received in response to this Notice and after the informal hearing held by the Department at the Date, Time and Place set forth above, the Department will determine whether to:

(1) Leave in place the existing rule language;

(2) If warranted, conduct further rulemaking, including issuance of Interpretive Rules;

(3) Recommend legislative action; or

(4) Take any other course of action deemed appropriate.

The Secretary cautions that these administrative actions to invite comments and schedule a hearing do not have any current impact on the effectiveness of the Rule. The Rule is fully effective at this date and will only be altered or interpreted by rulemaking under the Act and regulations if the Secretary determines such action is warranted.

Public Participation

Any member of the public who wishes to submit written comments in response to this notice may submit comments from the date of publication of this notice until the closing date set forth above under Date for Comments. Comments should not exceed ten pages per commenter per identified subject, and should state on their face whether the comment relates to items 1, 2, 3, or 4 or any combination. Written comments or materials will be received, whether or not the commenter participates in the hearing.

Any member of the public who wishes to participate in person in the informal hearing under this notice must: Submit his/her name and the name of his/her organization, if any, to the contact person listed above 15 days before the date of the hearing; specify by number, as set forth above, which issues or issues he/she wishes to testify on; and provide a one-sentence summary of the presenter's position on each such issue. It is anticipated that there will be substantial demand to make presentations. Depending on such demand, it may be necessary for the Department to limit the time and number of presenters on the same subject, to appoint spokespersons for particular subject areas, to run simultaneous hearing sections, or to otherwise take necessary actions to organize this hearing in the most effective and efficient manner. In any event, oral presenters will not have more than 10 minutes each.

If an oral presenter wishes to have his/her written comments distributed at the hearing, it is recommended that 200 copies be brought to the hearing site at the opening hour of the hearing to be placed on a table which will be set up for such purpose. The Department takes no responsibility for the distribution of any presenter's comments.

Authority

This comment period and informal public hearing are being held under the authority of section 19 of the Real Estate Settlement Procedures Act (RESPA, 12 U.S.C. 2601 et seq.) that authorizes the Secretary of Housing and Urban Development to hold hearings in furtherance of the Secretary's responsibilities under such Act.

Dated: June 30, 1993.

Nicolas Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 93–15912 Filed 7–1–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Normal Husbandry Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 61 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns vegetation maintenance practices which Ohio would not consider augmentative and which would not restart the period of extended responsibility for revegetation success.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 21, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on July 16, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 13, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61. In this amendment, Ohio proposed to revise OAC section 1501:13–~~9~~–15(F) to expand and clarify the vegetative management practices which Ohio will not consider augmentative and which will not restart the revegetation responsibility period.

OSM announced receipt of proposed Program Amendment Number 61 in the April 1, 1993, **Federal Register** (58 FR 17173), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 3, 1993. The public hearing scheduled for April 26, 1993, was not held because no one requested an opportunity to testify.

On April 30, 1993, representatives of OSM and Ohio met informally to

VOL 58 ISS 127 JL 6 1993 UMI

discuss OSM's initial questions and comments about the proposed amendment. In response to that meeting, Ohio submitted Revised Program Amendment Number 61 by letter dated June 11, 1993 (Administrative Record No. OH–1888). In this revised amendment, Ohio is proposing two further revisions to OAC 1501:13–9–15:

(1) *Paragraph (F)(5)(b)*: Ohio is revising the previously proposed new language in this paragraph to provide that reseeding of areas unavoidably disturbed because of repairs due to land movement or third party interference will not be considered augmentative provided that the total acreage of areas reseeded during any one year shall not exceed ten percent of the total affected average. The previously proposed language had referred to ten percent of the total permitted acreage.

(2) *Paragraph (F)(7)*: Ohio is revising the previously proposed new language in this paragraph to provide that, for the purposes of paragraphs (F)(5) and (F)(6), permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for phase III bond release. The previously proposed language had required that vegetation must have been in place a minimum of 90 days prior to the phase III bond release request and had included a provision to lengthen this 90-day period in cases of planting after August 1 of a given year.

Also, as part its June 11, 1993, resubmission of Revised Program Amendment Number 61, Ohio has submitted an excerpt from the 4th edition of the textbook, Forage Management in the North (Authors: Smith and Dale). Ohio intends this excerpt to support the allowance for non-augmentative reseeding of legumes within three years of the initial planting as proposed in the initial version of Program Amendment Number 61 at OAC 1501:13–9–15 paragraph (F)(4)(d).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Specifically, OSM is requesting comment and any available supporting documentation on whether reseeding of areas disturbed due to land movement and subsequent repair activities should be considered an augmentative practice requiring the restarting of the permittee's period of responsibility for reclamation success. The Agency seeks information on the extent to which land movement is found on unmined land and whether repair and reseeding is the customary or usual practice. The Agency also requests similar comment and documentation for areas disturbed due to third party interference.

The public is invited to comment on the appropriateness of the area limits which Ohio proposes to set when determining whether the reseeding of areas disturbed by land movement and third party interference is augmentative. The proposed area limits are 10 percent of the total affected acreage with no single area exceeding three acres in size.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on July 13, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–15849 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed Program Amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposes to revise the Ohio Administrative Code (OAC) 1501:13–9–15 and adopt new policy/procedure directives which govern the use of statistical sampling methods for evaluating ground cover and tree stocking at the time of bond release. The amendment is intended to make the Ohio program as effective as the corresponding Federal regulations.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 5, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 2, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 21, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the

proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy, of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

On January 14, 1993 (58 FR 4330), the Director of OSM approved Ohio's proposed revision to Ohio Administrative Code (OAC) section 1501:13–9–15 paragraph (J)(1) adopting the requirement that success of revegetation shall be measured using a statistically valid sampling technique with a 90-percent statistical confidence interval. However, the Director did not approve Ohio's visual (ocular) method of evaluating ground cover as a statistically valid means of performing that sampling. Therefore, the Director continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid sampling technique for evaluating ground cover in order to be as effective as the corresponding Federal regulations at 30 CFR 816.116(a).

By letter dated June 11, 1993 (Administrative Record No. OH–1889), Ohio submitted a new Program Amendment as required by 30 CFR 935.16(f). In this amendment, Ohio proposes to delete the recently approved requirement at OAC 1501:13–9–15 paragraph (J)(1) for statistical sampling and to substitute a mixed use of ocular evaluation and statistical sampling under new paragraphs (G)(3)(b)(ii) and (iii) and revised paragraph (K)(1).

A. Pasture and Grazing Land

Ohio is proposing new paragraphs (G)(3)(b) (ii) and (iii) which provide that Ohio would use its current ocular evaluation method to conduct an initial determination of the success of herbaceous ground cover on pasture and grazing land. If the ocular method indicates that the total areas with sparse or barren cover are within ten percent of exceeding the current allowable limits set in paragraphs (G)(3)(b)(i) (b) and (c), Ohio would conduct a statistical test of the ground cover using the Rennie-Farmer point-intercept sampling method. This statistical sampling would measure the overall success of revegetation for the entire proposed bond release area against a single 70-percent ground cover standard.

Ohio would consider the revegetation of a proposed bond release area to be successful if:

(1) An initial ocular evaluation finds that no single barren area exceeds the maximum size limit set by paragraph (G)(3)(b)(i)(d) and sparse and barren areas are less than 90 percent of the allowable limits set in paragraphs (G)(3)(b)(i) (b) and (c), or

(2) A later statistical test estimates overall ground cover to be equal to or greater than 70 percent.

As part of and in support of this amendment, Ohio has submitted a draft Policy/Procedure Directive providing additional details of the proposed evaluation and sampling methods which Ohio inspectors will use in evaluating herbaceous ground cover on pasture and grazing areas.

B. Areas Where Woody Plants are the Primary Vegetation

Ohio is proposing to revise OAC section 1501:13–9–15 paragraph (K)(1) to provide that sampling techniques for measuring success of woody plants shall use a 90-percent statistical confidence interval (i.e. one-sided test with a 0.10 alpha error). Ohio's cover letter for the amendment indicates that, for this test, Ohio will use a fixed-radius circular plot method as described in a technical paper submitted as part of the amendment. Ohio's cover letter also indicates that Ohio will develop a Policy/Procedure Directive in the near future to adopt this method for use under the Ohio Program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on July 21, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

VOL 58 ISS 127 JL 6 1993 UMI

IV. Procedural Determination

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935:

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–15850 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400073; FRL–4182–3]

Glycol Ethers Category; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redefine the glycol ethers category on the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPA is proposing to change the present definition of the glycol ethers category to exclude the high molecular weight glycol ethers that do not, in EPA's judgement, meet the criteria set out in EPCRA section 313(d). The proposed definition would retain in the category all glycol ethers that are known to or may be reasonably anticipated to cause adverse human health effects. The proposed redefinition of the glycol ethers category is based on EPA's review of available human health data on short chain length glycol ethers. EPA believes that the category can be redefined to exclude the surfactant glycol ethers. The Agency also believes it may be appropriate to further narrow the definition beyond this exclusion of surfactants. However, based on current data, EPA is not able to establish a molecular "size" or weight above which there are no concerns for adverse effects on human health.

DATES: Written comments on this proposed rule must be received by September 7, 1993.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Document Control Officer, TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, TS–790, Environmental Protection Agency, E–G99, 401 M St., SW., Washington, DC 20460, Attn: Docket Number OPPTS–400073.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has both added chemicals to, and deleted chemicals from, the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members

of the section 313 metal compound categories.

II. Description of the EPCRA Section 313 Glycol Ethers Category

When Congress enacted EPCRA, including the original list of chemicals subject to section 313 reporting, the glycol ethers category was included on the list with no clarification as to how that category should be defined. In developing the proposed and final rules implementing section 313 of EPCRA, EPA refrained from making revisions to the list of chemicals subject to section 313 (53 FR 4500, February 16, 1988). However, it was clear that definitions of certain categories were necessary. At the time, the EPCRA glycol ethers category was defined to be consistent with a project that was defining the glycol ethers boundaries under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601). The current definition follows:

$R\text{-}(OCH_2CH_2)_n\text{-}OR'$

Where: R= Alkyl (straight or branched chain) or aryl (phenyl or alkyl substituted phenyl)

R'= R, H, or other group which can be reacted to yield "H"

n = 1, 2, or 3

The "R" groups consist only of carbon and hydrogen chains. The degree of ethoxylation ($-OCH_2CH_2-$) is described by the group within the parentheses where "n" dictates the number of times the ethoxy group repeats. The "R'" group is any group that can be removed.

At the time the category was defined, a limit on the size of the attached alkyl group could not be made based on the available information.

The current EPCRA section 313 glycol ethers category definition includes non-ionic surfactants (high molecular weight glycol ethers) with a glycol ether moiety. Non-surfactant glycol ethers are generally recognized as having short-chain R groups and low degrees of ethoxylation (n less than 4). Glycol ether surfactants, however, can have large R groups as well as a large degree of ethoxylation. Where non-surfactant glycol ethers are generally produced as a single chemical entity, glycol ether surfactants are usually mixtures of chemical substances containing a range of R groups and varying degrees of ethoxylation (i.e., R = C_8 to C_{18}; n averages 8). Low molecular weight glycol ethers are used as general solvents, while glycol ether surfactants are used to solubilize oil-based chemicals into water solutions.

Under section 313, glycol ethers are currently defined to include chemicals which fit the above generic structure where "n" (or the degree of ethoxylation) is three or less. No size restriction was placed on the alkyl chain length. There is general agreement within EPA and in the regulated community on the difference between glycol ether surfactants and glycol ether solvents, with respect to both their structure and use.

Many glycol ether surfactants are manufactured as mixtures. The components of these mixtures have the same pendant alkyl, aryl, or alkyl substituted aryl (i.e., R in the definition given above) but have varying degrees of ethoxylation (i.e., $(CH_2\text{-}CH_2O)_n$, where n = 1 to x).

Under TSCA, these glycol ether surfactant mixtures are considered as a single glycol ethers entity for purposes of the TSCA section 8(b) Inventory. In contrast, under section 313 of EPCRA, these surfactants have been considered as mixtures of glycol ethers. Only those glycol ether components of the mixture with one, two, or three ethoxy groups meet the EPCRA section 313 glycol ether definition. The difference in how glycol ethers are treated under TSCA and EPCRA may have resulted in under-reporting releases of surfactant glycol ethers under EPCRA section 313.

In evaluating the current scope of the glycol ethers category, EPA believes that changing the definition will: (1) Eliminate reporting of surfactants that do not meet the EPCRA section 313(d) criteria, and (2) reduce considerably the number of glycol ethers that would meet the proposed definition and be reportable under EPCRA.

III. EPA's Proposed Category Definition

EPA has evaluated the current scope of the section 313 glycol ethers category and believes that it may be overly broad. The category includes substances that the industry does not consider to be glycol ethers. Also, it is apparent that this category contains members that do not meet the criteria for listing.

The current section 313 glycol ethers category can be viewed as consisting of three groups:

(1) Low molecular weight glycol ethers that are known to cause blood, developmental, and reproductive effects in animal studies and meet the criteria in section 313(d)(2)(A) and (B).

(2) High molecular weight glycol ethers (typically surfactants) that are not expected to meet the criteria for listing.

(3) Glycol ethers which may be of concern based on structure activity relationships with the low molecular weight glycol ethers.

The regulated community has long claimed that the high molecular weight glycol ether surfactants are not glycol ethers, do not exhibit adverse health effects of the low molecular weight glycol ethers, and should not be subject to the reporting requirements of EPCRA section 313. In addition, industry also believes that there are chemicals in group three listed above that are not toxic to humans or the environment, and should not be subject to the reporting requirements of section 313.

EPA has reviewed the current glycol ethers category and believes the category can be redefined to exclude the surfactant glycol ethers (group two above). However, it does not appear that it can be more narrowly defined at this time.

EPA is proposing that the following formula be used to determine if a compound is included in the glycol ethers category:

$R\text{-}(OCH_2CH_2)_n\text{-}OR'$

Where: n = 1, 2, or 3

R = alkyl C_7 or less

or R = phenyl or alkyl substituted phenyl

R' = H or alkyl C_7 or less

or carboxylic acid ester (for example, acetate),

sulfate,

phosphate,

nitrate, or

sulfonate.

IV. EPA's Review of Glycol Ethers

A. Human Health Effects

Low molecular weight glycol ethers (group one above) are known to cause various adverse human health effects and, thus, meet the requirement for listing under section 313(d)(2)(A) and (B) based on their potential toxicity. Most of the available human health data on glycol ethers is based on animal testing of the short-chain length glycol ethers (e.g., ethylene glycol monomethylether) (Ref. 2). Data indicate that as the molecular weight (or the length of the pendant alkyl chain) increases, the human health effects associated with glycol ethers decrease. While it may be recognized that the higher molecular weight glycol ethers may be of low concern for human health effects, there are not sufficient data to establish a size or molecular weight at which point these effects are no longer likely to occur.

EPA has reviewed the literature for the glycol ethers for metabolism, developmental toxicity, reproductive toxicity, and general systemic toxicity, particularly blood effects (Refs. 1 and 2). Specifically, short-chain ethylene glycol ethers, that is an alkyl chain length of one to four, are absorbed by all routes and have caused irritation of skin, eyes and mucous membranes; hemolysis, bone-marrow damage, and leukopenia

VOL 58 ISS 127 JL 6 1993 UMI

of both lymphocytes and granulocytes; direct and indirect kidney damage; liver damage, and central nervous system (CNS) depression. The systemic toxicity of long-chain glycol ethers is a matter of uncertainty. Data have not been found on long-chain glycol ethers, that is those glycol ethers with an alkyl chain length greater than six carbons.

Recently the Agency received two epidemiology studies under section 8(e) of TSCA (Refs. 7 and 8). These studies appear to link some ethylene glycol ethers and derivatives with miscarriages in exposed workers. This is similar to reproductive effects seen in animal studies. All the chemicals identified in these two studies fit the proposed category definition.

With respect to the glycol ethers and developmental effects, there is evidence that the toxicity is reduced going from the methyl to butyl ether, and that it is reduced going from the ethylene glycol to the triethylene glycol (Ref. 4). Test results support the hypothesis that increasing the alkyl chain length reduces the developmental toxicity.

Standard developmental toxicity studies of ethylene glycol monohexyl ether in F344 rats and New Zealand White rabbits show evidence of maternal toxicity after exposure to 41.1 and 79.2 parts per million (ppm). There is no evidence of developmental toxicity (Refs. 4 and 5). However, data on glycol ethers with pendant alkyl groups of one to six carbons do not indicate that for maternal toxicity there is a trend based on chain length.

Based on test data, EPA concludes that there is significant concern for acute and chronic human health effects where the chain length is in the one to four carbon range. For glycol ethers in which R is five to seven carbons, there is sufficient evidence to establish that adverse human health effects can be reasonably anticipated to occur. Thus, the continued listing of these glycol ethers is warranted (Ref. 4). There are no data that indicate that glycol ethers with pendant alkyl chains of eight or more carbons can reasonably be anticipated to cause adverse effects in humans.

2-Phenoxyethanol is known to cause hemolysis. No data have been found on alkyl substituted phenoxyethanol derivatives. EPA is requesting comment on limiting the size of the alkyl group for alkyl substituted phenyl glycol ethers.

For the foregoing reasons, EPA believes that there is insufficient evidence to establish that long-chain glycol ethers (greater than or equal to eight carbons) can reasonably be anticipated to cause adverse acute or chronic human health effects, and hence do not meet the criteria for listing under section 313(d)(2)(A) or (B). However, EPA believes that the low molecular weight glycol ethers do meet the listing criteria under section 313(d)(2)(A) and (B).

B. Environmental Effects

None of the alkylethoxylates which fit the glycol ethers category:

$R - (OCH_2CH_2)_n - OR'$

where R' = H, or other group which can be reacted to yield "H", R generally equal to alkyl, aryl, or alkyl substituted aryl, and n = 1 to 3, have acute or chronic toxicity values for aquatic organisms equal to or less than 0.100 milligram per liter (mg/L) (ppm) (Ref. 3). Tridecyloxyethanol is predicted to be the most toxic, based on the structure activity relationship of the neutral organic chemicals. The acute toxicity value is predicted to be 0.24 mg/L and the chronic toxicity value would be 0.024 mg/L.

None of the compounds in the current glycol ethers category meet the requirement for listing under section 313(d)(2)(C) based on their potential ecotoxicity.

C. Environmental Fate

EPA believes that the EPCRA section 313 glycol ether definition should be limited to the two following groups of glycol ethers: (1) Those glycol ethers that upon removal of readily hydrolyzable R' groups (e.g. acetate) yield the monoalkyl, monophenyl, or monoalkylphenyl glycol ether of the following structure:

Structure 1

$R - (OCH_2OCH_2)_n - OH$

where R is either an alkyl moiety of seven or fewer carbons, phenyl, or alkyl substituted phenyl; and (2) glycol ethers of the following structure:

Structure 2

$R - (OCH_2OCH_2)_n - O - R'$

where R is either an alkyl moiety of seven or fewer carbons, phenyl, or alkyl substituted phenyl and R' is an alkyl moiety of seven or fewer carbons.

Group 1 glycol ethers. EPA believes that, for this group of glycol ethers, R' be defined as those groups that can be hydrolyzed under environmental or gastric conditions to yield structure 1 shown above. EPA proposes that R' include the following readily hydrolyzable groups: carboxylic acid ester, phosphate, sulfate, nitrate, and sulfonate. EPA requests comment on what other hydrolyzable groups should be included in the definition of R'. EPA requests comment on any limitations that should be applied to R' equal carboxylic acid ester.

Group 2 glycol ethers. EPA believes that for this group of glycol ethers R' be defined as an alkyl moiety of seven or fewer carbons. As ethoxy groups are expected to degrade anaerobically and aerobically more readily than branched alkyl groups, the Agency requests comment on whether R' should be limited to straight chain hydrocarbons of seven or fewer carbons.

V. Rationale for Redefinition

EPA's concerns for these chemicals is based on a review of available human health data on short-chain length glycol ethers. None of the chemicals in the current glycol ethers category meet the toxicity criteria of section 313(d)(2)(C) based on their ecotoxicity. EPA believes that the category can be redefined to exclude the surfactant glycol ethers. These high molecular weight glycol ethers do not meet the listing criteria in section 313(d)(2)(A) or (B). The Agency believes it may be appropriate to further narrow the definition beyond this exclusion of surfactants. However, based on current data the Agency is not able to establish a molecular "size" or weight above which there are no concerns for acute or chronic human health effects.

VI. Regulatory Status

Glycol ethers are also listed as a category of "hazardous air pollutants" (HAP) under section 112(b) of the Clean Air Act (CAA), 42 U.S.C. section 7412(b) as amended, and, by virtue of their status as HAPs under the CAA, as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. section 9601(14). The current definition of the glycol ethers category is identical under the CAA, CERCLA, and EPCRA. This proposal only affects the definition of the glycol ethers category under section 313 of EPCRA, set out in 40 CFR 372.65(c). However, the Agency's Office of Air and Radiation intends to propose to redefine the scope of the glycol ethers category listing under section 112(b) of the CAA in a manner consistent with this proposal in the near future.

VII. Rulemaking Record

The record supporting this proposed rule is contained in the docket number OPPTS–400073. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

VIII. Request for Public Comment

EPA requests comment on this proposal to modify the EPCRA section 313 glycol ethers category. Specifically, EPA requests comment on its proposed definition of R': (1) What chemical functionalities that readily come off either *in vivo* or in the environment other than those listed above in Unit III of this preamble should be included as R'; and (2) should the definition of R' include only straight chained alkyl groups of seven or fewer carbons or both straight and branched alkyl groups of seven or fewer carbons.

EPA requests comment on limits to the alkyl group in alkyl substituted phenoxy glycol ethers. Particularly, EPA requests data that would support the limitation on the size of this alkyl group.

Comments should be submitted to the address listed under the ADDRESSES unit at the beginning of this document. All comments must be received by EPA on or before September 7, 1993.

IX. References

(1) USEPA, OPTS, HERD. 1991a. Review of Metabolism of Longchain Glycol Ethers. Memorandum from L. C. Keifer to R. A. Jones, HERD, March 29, 1991.

(2) USEPA, OPTS, HERD. 1991b. Overview of Systemic Toxicity of Glycol Ethers. Memorandum from J. J. Murphy to R. A. Jones, HERD, April 16, 1991.

(3) USEPA, OPTS, HERD. 1990. EPCRA 313 Glycol Ethers Category. Memorandum from M. Zeeman to M. Townsend, HERD, November 21, 1990.

(4) USEPA, OPTS, HERD. 1991c. Comments on Glycol Ether Definition. Memorandum.

(5) USEPA, OPTS, HERD. 1991d. Additional Comments on Glycol Ethers. Memorandum.

(6) USEPA, OPPTS, ETD. 1992. Economic Report in Support of an Agency Action to Redefine Glycol Ethers in the SARA Section 313 List of Toxic Chemicals. June 23, 1992. pp. 1–17.

(7) IBM, September 15, 1992. Letter to USEPA Concerning Ongoing Epidemiology Study at Two Semi-conductor Manufacturing Facilities.

(8) SIA, November 30, 1992. Epidemiology Study Report Conducted at Fourteen Semi-conductor Manufacturing Facilities.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Executive Order (E.O.) 12291 requires each Federal agency to classify as "majoR" any rule likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

EPA's economic analysis estimates that under the proposed definition up to 90 percent of the glycol ethers would no longer be reportable. The savings to industry would range between $540,000 and $745,000. Small businesses are not expected to be adversely affected by this proposal since the rule would increase the likelihood that they would not be required to report glycol ether releases (Ref. 6). EPA anticipates that this proposed redefinition will not have a significant effect on competition and will significantly decrease costs. Therefore, EPA has determined that this proposed rule is not "major."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses (specifically, those facilities with fewer than 10 full-time employees) from reporting. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Thus, many small facilities will not incur any regulatory costs in association with this proposed rule. Small businesses are not expected to be adversely affected by this proposal, since the rule would increase the likelihood that they would not be required to report glycol ether releases.

Therefore, EPA concludes that this proposed rule is not likely to significantly impact small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0093.

The public reporting burden for collection of information under section 313 is estimated to average 43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposal would reduce the number of responses required, thus reducing overall burden.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore it is proposed that 40 CFR part 372 be amended to read as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65(c) by revising the category, glycol ethers to read as follows:

§ 372.65. Chemicals and chemical categories to which the part applies.

* * * * *

(c) * * *

Category name	Effective Date
. . . . .	
Glycol Ethers	1/1/94
R - $(OCH_2CH_2)_n$ - OR'	
Where: n = 1, 2, or 3	
R = alkyl C_7 or less	
or R = phenyl or alkyl substituted phenyl	
R' = H or alkyl C_7 or less	
or carboxylic acid ester	
sulfate	
phosphate	
nitrate	
sulfonate	
. . . . .	

[FR Doc. 93–15861 Filed 7–2–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–177; FCC 93–315]

AM Directional Antennas

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The action being taken in this item is an inquiry into the policies and procedures governing proof-of-performance evaluations of antennas in the AM Radio Service. This action is necessary in order to determine what, if any, modifications would be appropriate to make to these policies and procedures in light of new technologies now available for such evaluations. The intended effect of the inquiry is to make AM antenna evaluations more accurate and, simultaneously, remove any unnecessary measurement burdens and/or expenses.

DATES: Comments due on or before August 20, 1993 and reply comments due on or before September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph M. Johnson, Mass Media Bureau, Engineering Policy Branch, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket 93–177 adopted June 14, 1993 and released on June 29, 1993. The complete text of the Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M St. NW., Washington, DC and may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M St. NW., Washington, DC 20037.

Synopsis of Notice of Inquiry

1. A petition for rulemaking was submitted by the technical consulting firms duTreil, Lundin & Rackley, Inc.; Hatfield & Dawson Consulting Engineers, Inc.; Lahm, Suffa & Cavell, Inc.; Moffet, Larson & Johnson, Inc.; and Silliman & Silliman requesting that the Commission initiate an inquiry into the policies and rules governing performance verification of AM Radio Service directional antenna arrays. Such arrays typically consist of two or more towers which are fed power from the AM station transmitter so as to direct the signal towards desired service areas and away from areas in which interference with other stations might occur. A proof of performance for a directional array involves actual measurements of antenna currents and other array parameters, and may necessitate adjustments to the array to bring it within the provisions of the Commission's rules and the terms and conditions specified on the station license.

2. The genesis of the Commission's regulatory structure for such arrays is the former Standards of Good Engineering Practice, dating from 1939. Although the Commission's rules governing AM arrays have been amended many times in the interim, no systematic reevaluation has taken place. Petitioners argue that the time for such a reevaluation has now arrived as a result of the development of numerous powerful computer models which calculate array patterns and other array parameters, and also because many AM arrays are now located in urban and suburban areas where measurement of array patterns is difficult and expensive.

3. The Commission concurs with Petitioner's arguments, especially in light of the recent adoption of MM Docket 87–267, which restructured the AM Service and made available new frequencies directly above the current AM band edge. As commenters in that proceeding noted, misadjustment of AM directional arrays was a major contributing cause of high interference levels in the current band and proper adjustment of any directional arrays licensed in the new band would be very important. For this reason, and because the Commission's regulations have not been comprehensively evaluated in light of recent technological developments, it would now be appropriate to initiate a Notice of Inquiry into this matter.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15829 Filed 7–2–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on and Commencement of Status Review for a Petition to List the Sacramento Splittail and Longfin Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Sacramento Splittail (*Pogonichthys macrolepidotus*) and longfin smelt (*Spirinchus thaleichthys*) under the Endangered Species Act of 1973, as amended (Act). The petition has been found to present substantial information indicating the requested action may be warranted. Through issuance of this document, the Service is commencing a formal review of the status of these species.

DATES: The finding announced in this document was made on June 24, 1993. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice. All comments and materials should be submitted at the earliest possible date to ensure their use in the final decision.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Sacramento Field Office, Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address

FOR FURTHER INFORMATION CONTACT: Nadine R. Kanim at the above address (916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding, is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in

the **Federal Register**. If the Service finds that a petition presents substantial information indicating that the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within 1-year of the receipt of a petition that presents substantial information.

On November 5, 1992, the Fish and Wildlife Service received a petition from Mr. Gregory A. Thomas of the Natural Heritage Institute to add the Sacramento splittail (*Pogonichthys macrolepidotus*) and longfin smelt (*Spirinchus thaleichthys*) to the List of Endangered and Threatened Wildlife and to designate critical habitat for each species in the Sacramento and San Joaquin Rivers and the Sacramento-San Joaquin River Estuary (Delta), California. In his November 15, 1992, letter, Mr. Thomas identified the following eight organizations as having submitted the petition: American Fisheries Society, Bay Institute of California, Natural Heritage Institute, Planning and Conservation League, Save San Francisco Bay Association, Friends of the River, San Francisco Baykeeper, and the Sierra Club. The petition, supporting documentation, and other documents have been reviewed to determine if substantial information has been presented indicating that the requested action may be warranted. This notice constitutes the 90-day finding for the petition, in accordance with section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended.

The Sacramento splittail is a large cyprinid that frequently reaches 12 inches in length (Moyle 1976; Eddy and Underhill 1983; Moyle and Yoshiyama 1992). Adults are characterized by an elongated body; small, blunt head; barbels usually present at the corners of the slightly subterminal mouth; and distinct nuchel hump. This species can be distinguished from other minnows in the Central Valley of California by the enlarged dorsal lobe of the caudal fin. Sacramento splittail are a dull, silvery-gold on the sides and olive-grey dorsally. During spawning season, the pectoral, pelvic, and caudal fins are tinged with an orange-red color. Males develop small white nuptial tubercles on the head. Because the Clear Lake splittail (*Pogonichthys ciscoids*) has been extinct since the early 1970's, the Sacramento splittail represents the only remaining species in its genus.

Sacramento splittail are endemic to California's Central Valley where they were once widely distributed (Moyle 1976, Moyle *et al.* 1989, Moyle and Yoshiyama 1992). In recent times, dams and diversions increasingly have restricted their upstream access to the large rivers, and the species is now most often found in the northern and western sections of the Delta, Suisun Bay, Suisun Marsh, and Napa Marsh.

Although primarily a freshwater species, the Sacramento splittail can tolerate salinities as high as 10 to 18 parts per thousand (ppt) (Moyle 1976, Moyle and Yoshiyama 1992). Spawning seems to be associated with rising water temperatures and occurs from late January to early July over flooded vegetation in the tidal freshwater and euryhaline habitats of Delta marshes and sloughs and slow moving reaches of the large rivers. The modifications of the structure, hydraulics, and hydrology of these habitats have negatively affected spawning habitat, nursery habitat, and migratory pathways. That is the primary reason for the decline of this species.

The longfin smelt (*Spirinchus thaleichthys*), a member of the true smelt family Osmeridae, can be distinguished from other smelts occurring in California by its long pectoral fins, incomplete lateral line, weak or absent striations on the opercular bones, low number of lateral line scales, and long maxillary bones (McAllister 1963, Miller and Lea 1972, Moyle 1976, Moyle and Yoshiyama 1992). The pectoral fins often extend as far as the base of the pelvic fins, and the maxillary bones reach underneath the eyes. This fish, which often reaches 6 inches in length, has translucent silver sides and an olive to iridescent pink back.

The longfin smelt is one of three species in its genus; the night smelt (*S. starksi*) occurs in California and the shishamo (*S. lanceolatus*) occurs in northern Japan (McAllister 1963). Because of its distinctive characteristics, the Delta population of longfin smelt was once described as a species separate from more northern populations (Moyle 1976, Moyle and Yoshiyama 1992). As presently described, this species' range extends from the Delta to Prince William Sound, Alaska. However, the resident Delta population is genetically isolated from the nearest known populations that occur in Humboldt Bay and the Klamath River estuary (Moyle 1976, Moyle and Yoshiyama 1992).

The longfin smelt is an anadromous euryhaline species, with a 2-year life cycle, that can tolerate salinities ranging from that of freshwater to pure sea water (Moyle 1976, Moyle and Yoshiyama 1992). Spawning occurs in freshwater over sandy-gravel substrates, rocks, or aquatic plants. Spawning may take place as early as November and extend into June, although the peak spawning period is from February to April. The principal nursery habitat for larvae are the productive waters of Suisun and San Pablo Bays. Adults are found mainly in Suisun, San Pablo, and San Francisco Bays although their distribution is shifted upstream in years of low river outflows. Sacramento-San Joaquin River outflow into the bays has been positively correlated with longfin smelt recruitment, possibly because higher outflow increases larval dispersal and the area available for rearing (Stevens and Miller 1983).

The petitioners seek protection under the Act for the Sacramento splittail because of the extreme constriction of its range compared with historical distribution and the accelerated decline in its abundance since the early 1980's. The number of Sacramento splittail in the California Department of Fish and Game (CDFG) 1992 fall mid-water trawl survey is the third lowest ever recorded in this survey's 24 year history (D. Sweetnam, CDFG, pers. comm., 1993). Once one of the most numerous fishes caught in trawl surveys of the Delta, abundance estimates indicate that the longfin smelt has experienced an exponential decline since 1982 (D. Sweetnam, CDFG, *in litt.*, 1992).

The petition and supporting information describe a variety of factors affecting the Delta ecosystem that have led to the decline of the Sacramento splittail, longfin smelt, and a suite of other fishes, including the federally threatened winter-run chinook salmon and delta smelt. Principal among these factors are the altered hydraulics and reduced outflow of the Delta caused by export of freshwater from the Sacramento and San Joaquin Rivers to the Federal and State water diversion projects. Additional threats to these species include: entrainment at pumping plants and in-Delta diversion sites, loss of spawning and nursery habitat as a consequence of draining and diking for agriculture and reduction in the availability of highly productive brackish water habitat, urban and agricultural pollution, inadequate regulatory mechanisms, introduction of exotic species, and the exacerbation of the effects of these factors as a result of 6 years of drought.

The Sacramento splittail is designated as a Category 2 candidate species by the Service (56 FR 58816) and is classified as a "Species of Special Concern" by the California Department of Fish and Game.

The petition has been reviewed by staff at the Sacramento Field Office in Sacramento, California, and the Regional Office in Portland, Oregon.

VOL
58
ISS
127
JL
6
1993
UMI

The Service finds that the petitioner has presented substantial information indicating that the requested action may be warranted. This finding is based on the scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time.

This finding initiates a status review for this species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

References Cited

Eddy, S. and J.C. Underhill. 1983. How to Know the Freshwater Fishes, Third Ed. Wm. C. Brown Co. Publishers, Dubuque, Iowa. 215 pp.

McAllister, D.E. 1963. A revision of the smelt family, Osmeridae. Bull. Natl. Mus. Canada. 191. 53 pp.

Miller, D.J., and R.N. Lea. 1972. Guide to the coastal marine fishes of California. Calif. Dept. Fish Game Fish Bull. 157. 235 pp Addendum.

Moyle, P.B. 1976. Inland Fishes of California. Univ. of California Press, Berkeley, CA. 405 pp.

Moyle, P.B., and R.M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: A plan to protect California's native aquatic biota. Draft report prepared for California Policy Seminar, Univ. of Calif., Berkeley, CA. July 1992. 196pp.

Moyle, P.B., J.E. Williams, and E.D. Wikramanayake. 1989. Fish Species of Special Concern of California. Final Report prepared for State of California Dept. of Fish and Game, Inland Fisheries Division. Rancho Cordova, CA. 222 pp.

Stevens, D.E., and L.W. Miller. 1983. Effects of river flow on abundance of young chinook salmon, American shad, longfin smelt, and Delta smelt in the Sacramento-San Joaquin river system. N. Amer. Jour. Fish Manage. 3: 425–437.

Author

The primary author of this notice is Nadine R. Kanim (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 17 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

Dated: June 24, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–15881 Filed 7–2–93; 8:45 am]

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Notices

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P774#1).

Notice is hereby given that the National Marine Fisheries Service, Northeast Fisheries Science Center has applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to handle, tag, and release, 300 Loggerhead (*Caretta caretta*), 20 Leatherback (*Dermochelys coriacea*), and 10 each of Kemp's Ridley (*Lepidochelys kempi*), Hawksbill (*Eretmochelys imbricata*), and Green (*Chelonia mydas*) turtles. This research would take place within the Exclusive Economic Zone of the Atlantic Ocean and Gulf of Mexico, for a duration of five years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Services, 1335 East-West Hwy., Room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Glouchester, MA 01930 (508–281–9250).

Dated: June 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–15765 Filed 7–2–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Ground Based Radar (GBR) Family of Strategic and Theater Radars Environmental Assessment (EA); Finding of No Significant Impact

AGENCY: Department of Defense, United States Army.

ACTION: Finding of No Significant Impact.

DESCRIPTION OF PROPOSED ACTION: The proposed activities constitute the testing of the GBR project as a part of the defense acquisition process. Phase I of the testing will consist of fabrication and testing of both the Theater Missile Defense (TMD)–GBR and GBR–Test (GBR–T) at various Raytheon Company facilities in Massachusetts. Phase II will consist of installation, integration, and testing of the TMD–GBR at site R–409 on White Sands Missile Range (WSMR), New Mexico. In addition, GBR–T will be installed and tested on Building 1500 at U.S. Army Kwajalein Atoll (USAKA) in the Republic of the Marshall Islands. Phase III will consist of functional technology validation testing against target missiles. The TMD–GBR will be tested at sites R–409 and LC–39 on WSMR and at site IFC–25 located adjacent to WSMR on Fort Bliss. The successful completion of the activities will demonstrate TMD–GBR and GBR–T capabilities to integrate hardware and software, prove discrimination capabilities, and validate the functional technology against target missiles. The above actions have been addressed in the GBR Family of Strategic and Theater Radars EA, May 1993, which is incorporated by reference. In addition, in 1989, an environmental assessment for testing a similar ground based radar at Kwajalein Island, Kwajalein Atoll resulted in a Finding of No Significant Impact.

ALTERNATIVES CONSIDERED: Alternatives considered in the GBR Family of Radars EA in addition to the proposed actions include the following: Alternative test ranges; alternative sensors including existing ground based sensors, space-based sensors, ship-borne sensors, airborne sensors, and other ground-based sensing techniques; alternative siting locations (five sites for TMD–GBR and one site for GBR–T); and the No Action Alternatives which would defer the testing activities while continuing with sensor concept exploration activities.

ANTICIPATED ENVIRONMENTAL EFFECTS: The environmental consequences of TMD–GBR and GBR–T activities were determined to be not significant at the Raytheon Company facilities as well as the test sites at WSMR, Fort Bliss and USAKA. Kwajalein Island, Kwajalein Atoll is listed in the National Register of Historic Places. Potentially significant impacts could result from ground disturbing construction activities for facilities, utilities and infrastructure at each test range. These impacts will be mitigated by implementing preconstruction archaeological surveying, testing, and monitoring of selected sites prior to and during construction. The operation of the GBR will result in the generation of electromagnetic radiation (EMR). Potentially significant EMR impacts to public health and safety will be mitigated to a level of no significant impact by implementing operational safety measures, identifying safety zones for TMD–GBR only, utilizing a separate safety computer and EMR monitoring sensors for GBR–T only, and coordinating with range air control. Plant and wildlife species, including endangered and threatened species, will not be significantly affected by the activities due to the previously disturbed nature of the test sites and the low EMR/power density values on the ground near the radars. The power densities on the ground for the GBR–T

VOL
58
ISS
127
JL
6
1993
UMI

will not exceed 5 milliwatts per square centimeter average over 6 minutes within 2 kilometers of the radar and 1 milliwatt per square centimeter averaged over 6 minutes for distances beyond 2 kilometers. These power densities are within the American National Standards Institute (ANSI) standards for health and human safety. A separate safety computer will be utilized to calculate EMR fields, and ensure that ANSI safety standards are not exceeded. Sensors will also be installed to measure EMR fields, and ensure that safety standards are not exceeded. An EMR safety zone is not required for the GBR–T because ANSI standards will be met on the ground at all locations at USAKA. For the TMD–GBR, a 100 meter safety zone will be established in front of the radar antenna to meet the ANSI health and human safety standard. The GBR will have no significant effects on electroexplosive devices, electronic medical devices, existing radars, and communications equipment since appropriate mitigation measures associated with range operations will be followed. Ground water resources will not be significantly affected by any of the test activities. Potentially significant housing and office space impacts at USAKA, WSMR and Fort Bliss will be mitigated by the dedication of housing units to GBR project personnel and modification of existing structures for housing, office, and operations and maintenance space.

CONCLUSIONS: Based on the environmental impact analyses found in the GBR family of Radars EA, which are hereby incorporated by reference into this finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed testing activities will not have significant individual or cumulative impacts on the quality of the natural or the human environment. Because there would be no significant environmental impact resulting from implementation of the proposed activities, an Environmental Impact Statement is not required and will not be prepared.

DEADLINE FOR RECEIPT OF WRITTEN COMMENTS: There is a 30-day waiting period from the date of appearance of this FNSI in the Federal Register for the public to comment prior to implementation of the proposed testing activities.

POINT OF CONTACT: Persons wishing to comment may obtain a copy of the EA or inquire into this FNSI by writing to: Deputy Commander, U.S. Army Space and Strategic Defense Command, ATTN: Mr. Kenneth R. Sims, CSSD–EN–V, P.O. Box 1500, Huntsville, AL 35807–3801. Verbal comments and questions regarding the EA and FNSI may be directed to Mr. Sims at (205) 955–5075.

Dated: June 30, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 93–15816 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Military Traffic Management Command; Defense Transportation Tracking System (DTTS)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is expanding its Defense Transportation Tracking System (DTTS) to include Satellite Monitoring (SM) of Uncategorized Division 1.1 through 1.3 Ammunition and Explosives (A&E) effective October 1, 1993. Effective January 1, 1994, Satellite Monitoring will become a condition of motor transport for Categorized Arms, Ammunition and Explosives (AA&E) and Uncategorized Division 1.1 through 1.3 A&E shipments.

ADDRESSES: Military Traffic Management Command, ATTN: MTOP–S, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert O. Jones, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1089.

SUPPLEMENTARY INFORMATION: The purpose of this article is to provide information on the expansion of the DTTS.

The DTTS General Officer Steering Committee (GOSC), comprised of membership from the military services and Defense Logistics Agency directors of logistics, have approved expansion of the DTTS to track Uncategorized Division 1.1 through 1.3 A&E effective October 1, 1993.

This represents the final step in a phased plan designed to expand tracking by DTTS to Security Risk Categorized (SRC) AA&E and Uncategorized Division 1.1 through 1.3 A&E shipments. SRC items, totalling about 32,000 shipments annually, are currently being tracked by DTTS. At least 17,000 additional, Uncategorized A&E shipments are expected to be tracked by DTTS each year.

The DTTS GOSC also approved that, effective January 1, 1994, Satellite Monitoring will be required as a condition of business for motor transport of Categorized AA&E and Uncategorized Division 1.1 through 1.3 A&E shipments. Accordingly, on that date, motor carriers will be required to include Satellite Monitoring charges in applicable AA&E transportation linehaul rates. Satellite Monitoring charges as an accessorial service will no longer be accepted for the affected AA&E shipments.

Carriers participating in the transportation of DOD AA&E are invited to provide MTMC any comments or concerns that they may have regarding the DTTS expansion or this notice. Comments should be to Commander, Military Traffic Management Command, ATTN: MTOP–Q, (Ms. Diana Locklear), 5611 Columbia Pike, Falls Church, VA 22041–5050, Tel: (703) 756–1149.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–15769 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of a Foreign (non-U.S.) Patent Application

AGENCY: U.S. Army ARDEC, Pictinny Arsenal, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses under patent application Number PCT/US93/05040, filed May 5, 1993, Docket DAR–16–93, entitled "Grinding Apparatus", by Youden, et al., corresponding to U.S. patent Number 5,220,749, issued June 22, 1993. Licenses shall comply with 35 U.S.C. 209 and 27 CFR part 404.

The Government is willing to pursue patents in foreign countries under the PCT application, subject to negotiation with potential licensees to assume the costs of such formal foreign patent prosecutions.

DATES: Written objections must be filed on or before August 5, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. Army Armament Research, Development and Engineering Center, ATTN: SMCAR–GCL, Mr. Edward Goldberg, Chief Patent Counsel, Pictinny Arsenal, NJ 07806–5000; Tel: 201–724–6590 or DSN 880–6590.

SUPPLEMENTARY INFORMATION: Department of the Army, U.S. Army Armament Research, Development and Engineering Center; Availability of Non-exclusive, Exclusive, or Partially

Exclusive licensing of a foreign (non-U.S.) patent application filed by the U.S. Army worldwide under the Patent Cooperating Treaty (except for the U.S.) as described above. The subject matter of the patent application relates to a machine for automated, one-step, precision grinding of optical lenses.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–15771 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Mississippi Delta, Mississippi, Flood Control Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is to provide a combination of channel enlargement, maintenance dredging, and/or clearing and snagging in the Big Sunflower River, Etc., Project area, including all or portions of the Big Sunflower River, Bogue Phalia, Quiver River, and any other tributaries as necessary to alleviate chronic flooding problems.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Barry, Corps of Engineers, Vicksburg District, ATTN: CELMK–PD–Q, 2101 North Frontage Road, Vicksburg, Mississippi 39180–5191; Tel: 601–631–5425.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The proposed action would provide flood damage protection to rural residences and agricultural properties throughout the Big Sunflower River Basin. The SEIS will supplement the Final EIS "Flood Control, Mississippi River and Tributaries, Yazoo River Basin, Mississippi," filed with the Council on Environmental Quality on 29 December 1975. Prior work in the Basin was authorized by the Flood Control Act of 22 December 1944. This authorization provided for channel improvement for flood control on the Big Sunflower River, Little Sunflower River, Quiver River, Hushpuckena River, and their major tributaries, Bogue Phalia, Steele Bayou, Main Canal, and several smaller streams in the Basin.

2. *Alternatives:* Alternatives to be evaluated include no action and various channel enlargement plans. Local protection for communities will be evaluated as necessary.

3. a. Scoping meetings will be held in the project vicinity during the September/October 1993 timeframe. Public notices to be published later will inform the general public of the locations, times, and dates.

b. Significant issues include bottomland hardwoods, wetlands, endangered species, waterfowl, fish, water quality, cultural resources, socioeconomic conditions, etc. Additional environmental review and consultation requirements could be identified during the scoping process.

c. The Environmental Protection Agency, U.S. Fish and Wildlife Service, Soil Conservation Service, U.S. Forest Service, Mississippi Department of Environmental Quality, and the Mississippi Department of Wildlife, Fisheries and Parks will be invited to participate as cooperating agencies.

4. A draft Feasibility Report, including the draft Supplemental EIS, will be available for review by the general public in 1988.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–15770 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–PU–M

Open Meeting, Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: 27 July 1993.

Place: Washington Court Hotel, 525 New Jersey Ave., NW., (Tel. 202–628–2100).

Time: 8:30 a.m. to 5 p.m.

Proposed Agenda:

AM Session

8:30 Registration
9:05 Welcoming Remarks and Introductions
—Administration Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes
9:30 Status of Inland Waterways Trust Fund
10 Focused Discussion:
a. Proposed Increase in Diesel Fuel Tax
b. U.S. Senate's Proposed Transportation Fuel Tax
10:45 Break
11 Lunch

PM Session

1:30 Status of Major Rehabilitation Program for FY 95 and FY 95.
2:30 Users Board Update: Rehabilitation Recommendation for Fall Meeting
3 Break
3:30 Projects Update: Industrial Canal Lock
4 Public Comment Period
5 Instructions to Board Staff/Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000, Tel. 202–272–1783.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–15768 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–93–M

Department of the Navy

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

DATES: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,018,114: Adjustable Frequency Diversity Acoustic Communications System; filed 13 December 1988; patented 21 May 1991.

Patent 5,068,596: Internal Grounding Arrangement in a switching power converter; filed 20 August 1990; patented 26 November 1991.

Patent 5,085,548: Nut and Snap Ring Position Locking Device; filed 30 April 1991; patented 4 February 1992.

Patent 5,100,353: Electromagnetic Marker Float Release; filed 15 October 1990; patented 31 March 1992.

VOL 58 ISS 127 JL 6 1993 UMI

Patent 5,123,616: High Efficiency, Low Weight and Volume Energy Absorbent Seam; filed 9 September 1991; patented 23 June 1992.

Patent 5,124,385: Polyurethane Self-priming Topcoats; filed 13 May 1991; patented 23 June 1992.

Patent 5,136,119: Lightweight Portable Emi Shielding Container; filed 18 September 1991; patented 4 August 1992.

Patent 5,147,567: Synthetic Lubricating Oil Greases Containing Metal Chelates of Schiff Bases; filed 9 April 1991; patented 15 September 1992.

Patent 5,155,741: High Data Rate Communications System Using Long Pulses; filed 31 January 1991; patented 13 October 1992.

Patent 5,156,806: Metal Alloy and Method of Preparation Thereof; filed 5 May 1975; patented 20 October 1992.

Patent 5,157,695: Variable Pulse Rate Circuit; filed 28 January 1988; patented 20 October 1992.

Patent 5,160,468: Method for Preparing a Storage Container for Explosive Rounds; filed 28 February 1992; patented 3 November 1992.

Patent 5,160,800: Obturator Retaining Means; filed 24 April 1991; patented 3 November 1992.

Patent 5,160,802: Prestressed Composite Gun Tube; filed 24 September 1975; patented 3 November 1992.

Patent 5,160,934: Cross Switched Micrad Seeker; filed 27 August 1985; patented 3 November 1992.

Patent 5,161,125: Radiation Selective System for Target Range and Imaging Readout; filed 5 May 1992; patented 10 November 1992.

Patent 5,161,449: Pneumatic Actuator With Hydraulic Control; filed 24 June 1991; patented 10 November 1992.

Patent 5,162,235: Method and Apparatus for Assessing Distillate Fuel Stability by Oxygen Overpressure; filed 27 June 1989; patented 10 November 1992.

Patent 5,162,274: Regeneration of Whetherite for Absorbing Toxic Pollutants From Air; filed 13 December 1990; patented 10 November 1992.

Patent 5,162,453: Dye Substituted Polymers Containing Hydrophobically Terminated Stilbazolium Radicals; filed 29 November 1990; patented 10 November 1992.

Patent 5,162,470: Polymers With Electrical and Nonlinear Optical Properties; filed 9 April 1991; patented 10 November 1992.

Patent 5,162,741: Temperature Compensated Lithium Battery Energy Monitor; filed 10 December 1990; patented 10 November 1992.

Patent 5,162,802: Method and Apparatus for Tracking Using an Efficient Gating Scheme; filed 1 May 1991; patented 10 November 1992.

Patent 5,162,805: Frequency Diversity Sidelobe Canceller; filed 19 January 1975; patented 10 November 1992.

Patent 5,163,061: Method of Frequency Shifting Using a Chromium Doped Laser Transmitter; filed 7 October 1991; patented 10 November 1992.

Patent 5,163,062: Method of Frequency Shifting Using a Chromium Doped Laser Transmitter; filed 16 October 1991; patented 10 November 1992.

Patent 5,164,324: Laser Texturing; filed 26 September 1990; patented 17 November 1992.

Patent 5,164,524: Process for Preparation of Tetra (Organyl) Telluride Compounds; filed 10 October 1991; patented 17 November 1992.

Patent 5,164,736: Optical Antenna Beam Steering Using Digital Phase Shifter Control; filed 11 March 1992; patented 17 November 1992.

Patent 5,165,087: Crosstie Random Access Memory Element Having Associated Read/Write Circuitry; filed 19 November 1990; patented 17 November 1992.

Patent 5,165,360: Underwater Rapid-Fire Ram Pump; filed 11 March 1991; patented 24 November 1992.

Patent 5,166,882: System for Calibrating a Gyro Navigator; filed 31 March 1989; patented 24 November 1992.

Patent 5,166,988: Thermal Phase Modulation and Method of Modulation of Light Beams by Optical Means; filed 31 October 1991; patented 24 November 1992.

Patent 5,168,359: Video Scan Rate Converter Method and Apparatus for Achieving Same; filed 1 August 1991; patented 1 December 1992.

Patent 5,168,472: Dual-Frequency Receiving Array Using Randomized Element Positions; filed 13 November 1991; patented 1 December 1992.

Patent 5,168,760: Magnetic Multilayer Strain Gage; filed 1 November 1991; patented 18 December 1992.

Patent 5,169,197: Lift Link for Helicopter External Lift of Dual HUMWV'S; filed 28 January 1991; patented 18 December 1992.

Patent 5,169,676: Control of Crystallite Size in Diamond Film Chemical Vapor Deposition; filed 16 May 1991; patented 18 December 1992.

Patent 5,171,608: Method of Pattern Transfer in Photolighography Using Laser; filed 28 September 1990; patented 15 December 1992.

Patent 5,171,790: Elastomer Blend for Sound and Vibration Dampening; filed 23 November 1990; patented 15 December 1992.

Patent 5,172,323: Apparatus for Determining the Attitude of a Vehicle; filed 6 December 1991; patented 15 December 1992.

Patent 5,174,983: Diamond Synthesis Turbulent Flames & Plasmas; filed 24 September 1990; patented 15 December 1992.

Patent 5,175,694: Centroid Target Tracking System Utilizing Parallel Processing of Digital Data Patterns; filed 8 February 1990; patented 29 December 1992.

Patent 5,176,342: Goggle Emergency Release Apparatus; filed 30 December 1991; patented 5 January 1993.

Patent 5,176,788: Method of Joining Diamond Structures; filed 8 July 1991; patented 5 January 1993.

Patent 5,177,816: Helmet Visor Support Apparatus; filed 10 December 1991; patented 12 January 1993.

Patent 5,181,212: Method of Emitting on a Specific Wavelength Fraunhofer Line Using a Neodymium Doped Laser Transmitter; filed 31 December 1991; patented 19 January 1993.

Patent 5,182,418: Aimable Warhead; filed 21 June 1965; patented 26 January 1993.

Patent 5,182,456: Noise Attenuating Circuit for Mechanical Relay Including Optical Isolation; filed 25 February 1992; patented 26 January 1993.

Patent 5,183,217: Cable Pack Winding and Payout System; filed 31 March 1992; patented 2 February 1993.

Patent 5,184,407: Combination Tool and Tape for Measuring Circumference of Flexible Tubing; filed 11 June 1992; patented 9 February 1993.

Patent 5,185,945: Universal Protective Shield for the Foot; filed 10 July 1992; patented 16 February 1993.

Patent 5,186,414: Hybrid Data Link; filed 20 April 1992; patented 16 February 1993.

Patent 5,186,420: Articulated Fin/ Wing Control System; filed 8 November 1991; patented 16 February 1993.

Patent 5,187,690: Acoustic Transducer System; filed 28 May 1992; patented 16 February 1993.

Patent 5,196,653: Muffler for Air Powered Turbine Drive; filed 20 May 1991; patented 23 February 1993.

Patent 5,198,609: Auxiliary Target Area Chaff Container; filed 27 april 1992; patented 30 March 1993.

Patent 5,200,972: ND Laser With Co-Doped Ion(s) Pumped by Visible Laser Diodes; filed 17 June 1991; patented 6 April 1993.

Patent 5,202,783: Secure and Programmable Friendly Target Recognition System; filed 21 June 1991; patented 13 April 1992.

Patent Application 862,709: Gas/Liquid Separator; filed 3 April 1992.

Patent Application 862,689: Combined Centrifugal Force/Gravity Gas/Liquid Separator System; filed 3 April 1992.

Patent Application 866,921: Wire Assembly for Electronically Conductive Circuits; filed 10 April 1992.

Patent Application 874,156: RF Immune 20 mm Electric Primer Method; filed 27 April 1992.

Patent Application 880,789: Pseudoperiodic Driving and Synchronization of Multiperiodic Systems; filed 11 May 1992.

Patent Application 882,226: Lithographic Mask and Method for Fabrication Thereof; filed 15 May 1992.

Patent Application 882,722: Embedded Can Booster; filed 14 May 1992.

Patent Application 883,336: Resonantly Pumped, Erbium-Doped, GSSG, 2.8 Micron, Solid State Laser With Energy Recycling and High Slope Efficiency; filed 14 May 1992.

Patent Application 892,063: An Acoustic Transducer System; filed 28 May 1992.

Patent Application 892,067: Reconfigurable Heavy-Duty Battery Holder; filed 22 May 1992.

Patent Application 896,079: Method and Apparatus for Evaluating the Optical Spatial Response Characteristics of Objects, filed 8 June 1992.

Patent Application 896,633: Armored Fiber Optic Cables; filed 10 June 1992.

Patent Application 897,638: Nanochannel Glass, filed 12 June 1992.

Patent Application 899,803: Two Stage Target Tracking System and Method, filed 17 June 1992.

Patent Application 901,286: Fixture for Pressure Testing Sight Glasses; filed 19 June 1992.

Patent Application 901,620: N,N'–BIS (4,4,4-Trinitrobutyryl) Hydrazine, filed 19 June 1992.

Patent Application 901,621: 2-Polynitroalkyl-5-Perfluoroakkyl-1,3,4-Oxadiazoles, filed 19 June 1992.

Patent Application 901,623: N-(2-Hydroxyethyl nitrate)-2,4,6-Trinitrobenzamine; filed 19 June 1992.

Patent Application 902,749: Surface Modification of Elastomers; filed 23 June 1992.

Patent Application 903,218: Dual Waveband Processing System, filed 23 June 1992.

Patent Application 903,293: VLF–VHF Broadband In-Line Amplifier for Submarine Antennas; filed 24 June 1992.

Patent Application 903,316: Layered Parallel Interface for an Active Antenna Array; filed 24 June 1992.

Patent Application 903,390: Method and Apparatus for Correlating Object Measurements with Object Measurement Estimates; filed 24 June 1992.

Patent Application 904,095: Apparatus for Pressurizing a Submarine Launch Tube; filed 25 June 1992.

Patent Application 904,096: Spirobislactone Acrylate Polymers; filed 25 June 1992.

Patent Application 904,626: Device for Generating Acoustic Signals; filed 26 June 1992.

Patent Application 904,630: All Hydraulic Torpedo Tube Control System; filed 26 June 1992.

Patent Application 905,702: Method and Device for the In Situ Repair of Damaged Threads; filed 29 June 1992.

Patent Application 905,705: Variable Wideband Fiber Optic Delay Line; filed 29 June 1992.

Patent Application 905,949: Adjacent Code System; filed 29 June 1992.

Patent Application 910,053: Sonobuoy for Forming Virtual Vertical Sensing Arrays; filed 8 July 1992.

Patent Application 912,954: Self-Actuating Slide Valve System; filed 8 July 1992.

Patent Application 914,668: Composite Reinforced Gun Barrels, filed 17 July 1992.

Patent Application 915,569: Method of Producing High Temperature Superconductor Wires; filed 20 July 1992.

Patent Application 916,758: Inflatable Undersea Vehicle System of Special Utility as a Daughter Vessel to a Mother Vessel, filed 22 July 1992.

Patent Application 918,085: Antenna Erector for a Towed Buoyant Cable, filed 24 July 1992.

Patent Application 918,086: High Torque Capable, Self Locking, Vibration Isolating Flexible Shaft Coupling; filed 24 July 1992.

Patent Application 926,112: Power Conversion System Modification to Permit Use of DC Power Source; filed 7 August 1992.

Patent Application 929,215: Statistically Calibrated Transducer, filed 13 August 1992.

Patent Application 937,098: Optical Pattern Recognition System Utilizing Resonator Array, filed 31 August 1992.

Patent Application 944,602: Non-Contacting Capacitance Probe for Dielectric Cure Monitoring; filed 14 September 1992.

Patent Application 950,558: Oriented, Single-Phase, Thin Films of Potassium Tantalate-Niobate; filed 25 September 1992.

Patent Application 953,380: Variable Phase Sine Wave Generator for Active Phased Arrays; filed 30 September 1992.

Patent Application 953,621: Transducer Structure; filed 30 September 1992.

Patent Application 953,908: High Temperature Substrate Mount for Chemical Vapor Deposition of Diamond; filed 30 September 1992.

Dated: June 23, 1993.

Michael, P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15762 Filed 7–2–93; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Requests for copies of patent application cited should be directed to the Office of Naval Research (Code 1230), Ballston Tower 1, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

DATES: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 07/988,605 entitled Method and Apparatus for Enhancing Computer-User Selection of Computer-Displayed Objects Through Dynamic Selection Area and Constant Visual Feedback, invented by Glenn A. Osga.

Dated: June 23, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15791 Filed 7–2–93; 8:45 am]

BILLING CODE 3810–AE–M

The San'Doil Co.; Intent to Grant Exclusive Patent Service

AGENCY: Department of the Navy, DoD.

ACTION: Intent to Grant Exclusive Patent License; The San'Doil Company.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to The San'Doil Company a revocable, nonassignable, exclusive license in the

United States to practice the Government-owned inventions described in U.S. Patents No. 5,130,251 entitled "Stress-Resistant Bioluminescent Dinoflagellates"; 5,143,545 entitled "Antifouling Marine Coatings"; and 5,192,667 entitled "Method for Evaluating Anti-Fouling Paints".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230, Ballston Tower One, Arlington, Virginia 22217–5660.

DATES: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 24, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15766 Filed 7–2–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Middlesex Sampling Plant, Middlesex, New Jersey and Maywood Interim Storage Site, Bergen County New Jersey

AGENCY: Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: DOE proposes to conduct a removal action in accordance with Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at the Middlesex Sampling Plant, New Jersey, to remediate radioactively contaminated sediment from areas within a drainage ditch located adjacent to the site. Excavation of the radiologically contaminated sediment from the drainage ditch has been determined to involve work in a floodplain and freshwater wetlands. The action is necessary to remove contaminated sediment that exceeds current DOE criteria for residual radioactivity in soil and would result in storage of the contaminated sediment of the Middlesex Sampling Plant. The Middlesex Sampling Plant is located in the Borough of Middlesex in Middlesex County, New Jersey.

DOE is in the process of proposing options for the remediation of radiological contamination at the Maywood Interim Storage Site, New Jersey, and certain vicinity properties as part of the Remedial Investigation/Feasibility Study-Environmental Impact Statement (RI/FS–EIS) currently underway for the site. Possible remediation options being examined for the Maywood Interim Storage Site and vicinity properties include the construction of a new land encapsulated facility for the storage of radiologically contaminated soil, the excavation and removal of the radiologically contained soil to off-site disposal facilities, and maintenance of the site in its current state with no further remedial action. The Maywood Interim Storage Site and certain vicinity properties have been determined to be partially located in a floodplain and freshwater wetlands. The selection and implementation of a potential preferred remediation option may affect a floodplain or wetlands. The Maywood Interim Storage Site and vicinity properties are on the Environmental Protection Agency's National Priorities List. The properties are located in the Boroughs of Maywood and Lodi and the Township of Rochelle Park in Bergen County, New Jersey.

For each action, in accordance with 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform the proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments are due to the address below no later than July 21, 1993.

ADDRESSES: Comments should be addressed to Mr. William M. Seay, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee 37831–8723.

For further information on these proposed actions, contact:

Ms. Susan M. Cange, Site Manager, Former Sites Restoration Division, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee, 37831–8723, Phone: (615) 576–5724, Fax: (615) 576–0956.

For further information on general DOE Floodplain/Wetlands environmental review requirements, Contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and wetland assessment for each of these proposed actions. DOE floodplain and wetlands assessment and statement of findings (SOF) for these proposed activities will be available for review in the following documents.

The floodplain and wetlands assessment for the Middlesex Sampling Plant will be included in the engineering evaluation/cost analysis-environmental assessment (EE/CA–EA) being prepared for the Middlesex Sampling Plant in accordance with CERCLA and the National Environmental Policy Act (NEPA). The SOF will be included in the EE/CA–EA being prepared for the Middlesex Sampling Plant in accordance with CERCLA and NEPA or published separately.

The floodplain and wetlands assessment for the Maywood Interim Storage Site and vicinity properties will be included in the RI/FS–EIS being prepared for the Maywood Interim Storage Site in Accordance with CERCLA and NEPA. The SOF will be included in the RI/FS–EIS being prepared for the Maywood Interim Storage Site in accordance with CERCLA and NEPA.

Issued at Washington, DC., June 29, 1993.

Thomas P. Grumbly,

Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–15886 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Cooperative Agreement to National Governors' Association

AGENCY: U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the National Governors' Association (NGA) under Cooperative Agreement Number DE–FC01–93EW30226. Estimated total funding in the amount of $2,596,429 will be provided to resolve the problem of treating and disposing of millions of gallons of mixed radioactive and hazardous waste currently stored at DOE sites in states where DOE has mixed waste facilities.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(D) that the National

Governors' Association has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

The proposed effort is to influence the shaping and implementation of national policy and to use creative leadership to solve state problems. The NGA's operations are supported by member jurisdictions, and its policies and programs are formulated by the Governors. The association develops policy positions and discusses common practices and experiences. The positions provide the policy base for the association's legislative and information efforts. The NGA membership is organized into seven standing committees in major substantive areas: agriculture and rural development; economic development and technology innovation; energy and environment; human resources; international trade and foreign relations; justice and public safety; and transportation, commerce, and communications. NGA's ongoing mission is to provide a bipartisan forum to support the work of the Governors, to help shape and implement national policy, and to solve state problems. No other organization supports a similar mission, or provides an equivalent forum for the nation's Governors.

NGA is the only organization that collectively represents all of the nation's Governors on matters of national and state policy, as identified through the Association. NGA's unique institutional ties to the state governments included in this project are required because of the need to balance individual state interests with national perspectives in development of DOE's mixed waste treatment plans. This organization's ability to access and mobilize its member governments on multi-state task forces and committees is needed to provide assessment of key issues identified in the Federal Facility Compliance Act and facilitate issue resolution. The NGA's Center of Policy Research has substantial expertise in federal and state environmental programs and hosting forums for identifying and resolving critical policy and implementation issues.

The period of performance is 36 months from the date of award.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Office of Placement and Administration, Attn: Phyllis Morgan, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–15887 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RM93–18–000]

Accounting And Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992; Notice Providing Accounting Guidance

June 23, 1993.

I. Introduction

Title XI of the Energy Policy Act [1] amends the Atomic Energy Act of 1954 [2] to, among other things, create a fund to be used for the decommissioning and decontamination of the Department of Energy's (DOE) gaseous diffusion uranium enrichment facilities. This new fund will be financed in part through special assessments which DOE is required to collect from certain domestic utilities pursuant to the Atomic Energy Act of 1954, as amended (Atomic Energy Act). Utilities will have no discretion concerning the payment of special assessments.

The Secretary of the DOE will issue special assessments in the near future. Consequently, the Federal Energy Regulatory Commission (Commission) believes that it is necessary to provide guidance as soon as practicable to utilities concerning the accounting treatment to be used for costs incurred for special assessments prior to the collection of the assessments by the Secretary of the DOE. In addition, the Commission believes it is important to provide guidance as well as to the ratemaking treatment for special assessments. Accordingly, in a document published elsewhere in this edition of the **Federal Register**, the Commission is now proposing to amend part 35 of title 18, chapter I of the Code of Federal Regulations to provide a method for public utilities to recover through jurisdictional rates the costs for special assessments levied under the Atomic Energy Act.

The Commission is also specifying the method that public utilities should use to account for special assessments pursuant to the Commission's Uniform Systems of Accounts (USofA).[3]

II. Discussion

A. The Uranium Enrichment Decontamination and Decommissioning Fund

Section 1801(a) of the Atomic Energy Act provides for the establishment of the Uranium Enrichment Decontamination and Decommissioning Fund (Fund). The Fund will be used to pay for decontamination, decommissioning, reclamation and other remedial activities at the DOE's gaseous diffusion uranium enrichment facilities. Section 1802(a) provides that the Fund will be financed through deposits in the amount of $480 million per fiscal year (adjusted annually for inflation).

Section 1802(c) provides that the annual deposit to the Fund will be financed partly through the collection by the DOE of a special assessment on domestic utilities. The special assessment will be based on the separative work units (a separative work unit is a measurement of energy and is the unit by which uranium enrichment services are sold) purchased by domestic utilities for the purpose of commercial electricity generation prior to October 24, 1992.

Section 1802(c) provides that the amount collected through special assessments by the DOE will not exceed $150 million per fiscal year (adjusted annually for inflation). Section 1802(d) provides that the collection of special assessments will cease at the earlier of October 24, 2007, or when $2.25 billion (adjusted annually for inflation) has been collected.

Section 1802(g) provides that special assessments shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as a utility's other fuel cost.

B. Accounting Treatment

The imposition of a special assessment that will be levied on domestic utilities and which is based upon the separative work units purchased by the utilities from DOE prior to October 24, 1992 for the purpose of commercial electricity generation has effectively caused a liability [4] to exist for all affected utilities.

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[1] See Public Law 102–486, title XI, 106 Stat. 2776, 2954 (1992).

[2] 42 U.S.C. 2011 *et seq.*

[3] 18 CFR part 101.

[4] Liabilities are probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of

Continued

Sound accounting practice requires the entire liability for special assessments to be reflected in financial statements currently. Although the special assessment for domestic utilities is limited to $150 million per fiscal year (adjusted annually for inflation) there is an obligation for the utilities to make payments for 15 years after the date of enactment or until $2.25 billion has been collected (also to be adjusted for inflation), whichever comes first. The total obligation is not contingent upon future operations and payments must continue even if the domestic utility no longer operates nuclear units during the time period when special assessments are levied. Further, with the potential exception of future increases for inflation, each utility's liability for special assessments is sufficiently known and measurable to be recognized in current financial statements.

In order to obtain uniform accounting treatment of special assessments, all affected public utilities shall record the non-current portion of the entire liability in Account 224, Other Long-Term Debt, and the current portion of the liability [5] in Account 242, Miscellaneous Current and Accrued Liabilities.[6]

If it is probable that the costs associated with the liability will be included in the development of rates that the public utility is authorized to charge for utility service in future periods, a regulatory asset shall be recorded in Account 182.3, Other Regulatory Assets, for such probable future revenues. The recorded liability and regulatory asset should be adjusted in future years to the extent that adjustments, if any, for inflation or other reasons become known and measurable.

The amount recorded in Account 182.3 shall be charged to Account 518, Nuclear Fuel Expense, concurrently with the recovery of the amounts through rates.[7] Disallowance of rate recovery of all or part of the amount recorded in Account 182.3 shall be accounted for in accordance with the requirements set forth in Order No. 552, issued by the Commission on March 31, 1993.[8]

C. Ratemaking Treatment

Discussion of the ratemaking treatment and other matters relating to the notice of proposed rulemaking [9] are in a separate document published elsewhere in this edition of the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15853 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

past transactions of events. See the Financial Accounting Standards Board's Statement of Concepts No. 6, Elements of Financial Statements, issued December 1985; Volume 2 FASB Original Pronouncements, June 1, 1992.

[5] The initial liability to be recorded shall not contain any estimate of future inflation. Ideally, the liability should be estimated by predicting actual cash flows (which will include future inflation) and then discounting such cash flows to present value through use of an appropriate interest rate (such as the utility's incremental borrowing rate). However, in view of the speculative nature of estimates for future inflation rates and the fact that a sizable portion of the discount rate would be made up of an anticipated inflation rate as well, the Commission does not believe that financial reporting would be appreciably improved through such an exercise in this particular instance.

[6] The Special Instructions for Current and Accrued Liabilities contained in the Commission's USofA, provides, in part, that:

Current and accrued liabilities are those obligations which have either matured or which become due within one year from the date thereof.

18 CFR part 101, text following Account 226.

[7] Public utilities should separately identify in the notes provided at page 122 of Form 1 and pages 12–13 of Form 1–F the following: (1) Any expense associated with special assessments as recorded in Account 518 during the reporting year; (2) any payment associated with special assessments that is made during the reporting year; and (3) any refund of a special assessment that is received during the reporting year from the federal government because a public utility has contested a special assessment or overpaid a special assessment.

[8] See Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A, Order No. 552, 58 FR 17982 (April 7, 1993), III FERC Statutes and Regulations ¶ 30,967 (1993).

[9] Regulatory Flexibility Act, Environmental Statement, Information Collection Statement, Public Comment Procedures, and the text of the proposed rule.

[Docket No. ER93–496–000]

Northern Electric Power Co., L.P.; Issuance of Order

June 29, 1993.

On March 26, 1993, Northern Electric Power Company, L.P. (Northern Electric) submitted for filing with the Commission an agreement and an amendment for the sale of electric power and energy produced by the Hudson Falls Hydroelectric Project to Niagara Mohawk Power Corporation. On May 25, 1993, Northern Electric filed a second amendment to the agreement revising Northern Electric's rates to reflect the state approved avoided cost. Northern Electric also requested waiver of various Commission regulations. In particular, Northern Electric also requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Northern Electric.

On June 18, 1993, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted the requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Northern Electric should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Northern Electric is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; *provided that* said issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Northern Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 19, 1993.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE. Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15793 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–229–000]

Panhandle Eastern Pipe Line Co., Notice of Informal Settlement Conference

June 29, 1993.

Take notice that an informal settlement conference will be convened in this proceeding beginning Wednesday, July 7, 1993, at 1 p.m., and continuing through Thursday, July 8, 1993 at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible

settlement of the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15796 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–507–000]

Sonat Marketing Co., Notice of Application

June 29, 1993.

Take notice that on June 22, 1993, Sonat Marketing Company (Sonat Marketing), 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP93–507–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited jurisdiction certificate of public convenience and necessity authorizing to operate leased underground storage capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Sonat Marketing proposes to lease storage capacity from United States Gas Storage Company (Storage Company) in the Barnsley Storage Field, Hopkins County, Kentucky. Sonat Marketing states that it would use the leased storage capacity to balance its gas supply, enhance it operational capabilities and enable it to provide more flexible sales service to potential customers.

Sonat Marketing asserts that the present operation of the storage field is nonjurisdictional and that it would not provide any storage or transportation service to third parties, but would use the storage capacity only for its own sales and supply functions. Sonat Marketing requests that if the Commission concludes that its use of the leased storage capacity is nonjurisdictional its application be dismissed.

Any person desiring to be heard or to make any protests with reference to said application should on or before July 20, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission's or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sonat Marketing to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15795 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–515–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

June 29, 1993.

Take notice that on June 25, 1993, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP93–515–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery to Montana-Dakota Utilities Company (MDU), under the blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston seeks authorization to construct and operate a new delivery tap, metering station and appurtenant facilities in Jackson County, Wyoming for use in providing firm sales service to MDU, an existing local distribution company sales customer, under Rate Schedule G–1. It is indicated that the proposed tap would be used to effect deliveries to MDU to supply one commercial and two residential customers in the Lake DeSmet Resort Area, between Buffalo and Sheridan Wyoming. Williston estimates a maximum daily quantity of 4 Mcf and an annual sales entitlement quantity of 500 Mcf, both of which, Williston contends, are within MDU's existing certificated sales entitlements. Williston also indicates that the installation of the proposed facilities would have no significant effect on Williston's peak day or annual requirements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15794 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

List of Cases for the Week of June 4 through June 11, 1993

During the Week of June 4 through June 11, 1993, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the

VOL 58 ISS 127 JL 6 1993 UMI

procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 29, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 4 through June 11, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jun. 7, 1993	Estate of John S. Hyatt, Knoxville, TN	LFA–0302	Appeal of an Information Request Denial. *If Granted:* The May 26, 1993 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and the Estate of John S. Hyatt would receive access to all employment records concerning John S. Hyatt, including records concerning his exposure to radiation.
Jun. 8, 1993	Marlene Flor, Arlington, VA	LFA–0303	Appeal of an Information Request Denial. *If Granted:* The May 6, 1993 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Marlene Flor would receive access to a contract between Albuquerque and the University of New Mexico.
Jun. 9, 1993	Ronald Sorri, Albuquerque, NM	LWA–0001	Request for Hearing under DOE Contractor Employee Protection Program. *If Granted:* A hearing under 10 C.F.R. Part 708 would be held on the complaint of Ronald Sorri that reprisals were taken against him by management officials of L & M Technologies, Inc. and Sandia National Laboratories, a Management and Operating Contractor for the Department of Energy, as a consequence of his having disclosed safety concerns to L&M, Sandia and the DOE.
Jun. 10, 1993 ..	Arco/Coast Gas, Inc., Hardin, KY	RR304–63	Request for Modification/Rescission in the Arco Refund Proceeding. *If Granted:* The May 6, 1993 Dismissal Letter (Case No. RF304–8885) issued to Coast Gas, Inc. would be modified regarding the firm's application for refund in the Arco refund proceeding.
Mar. 19, 1992 ..	Texaco/Bridgeport Texaco, Tacoma, WA ...	RR321–131	Request for Modification/Rescission in the Texaco Refund Proceeding. *If Granted:* The March 10, 1992 Decision and Order (Case No. RF321–12) issued to Bridgeport Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
6/4/93 thru 6/11/93	Atlantic Richfield Applications Received	RF304–14059 thru RF304–14093
6/4/93 thru 6/11/93	Crude Oil Refund Applications Received	RF272–94735 thru RF272–94748
6/7/93	Gasway Petroleum Corp	RF349–2
6/8/93	First Paratransit Corp	RC272–203
6/8/93	Hanks Service Station	RF321–19767
6/8/93	Brunson Texaco	RF321–19768
6/8/93	Stephen Robertson	RF238–92
6/8/93	Holmes Transportation Corp.	RF321–19769
6/8/93	W.R. Meadows of Georgia	RF351–1
6/9/93	Defense Fuel Supply Center	RF347–6
6/10/93	K & R Delivery Inc	RC272–204

[FR Doc. 93-15888 Filed 7-2-93; 8:45 am]
BILLING CODE 6450-01-P

Office of Hearings and Appeals

Issuance of Decisions and Orders for the Week of April 12 through April 16, 1993

During the week of April 12 through April 16, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Eugene Maples, 4/12/93, LFA-0276

Eugene Maples filed an Appeal from a denial of his request for a fee waiver by the DOE's Freedom of Information and Privacy Branch (the FOIPB). In considering the Appeal, the DOE found that the FOIPB determinations that Maples lacked the ability to analyze the disclosed information and the means to disseminate the information to the public were incorrect under the Freedom of Information Act. The appeal was therefore granted and the matter remanded for further consideration.

Implementation of Special Refund Procedures

Permain Corp., 4/15/93, LEF-0035

The DOE issued a Decision and Order implementing procedures for the disbursement of $10,953,665, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with the Permian Corporation (Permian) on June 25, 1982. The DOE determined that the Permian funds should be distributed pursuant to Subpart V. The DOE also determined that $810,571 of the consent order fund should be set aside for refunds to customers that purchased Permian refined products during the August 19, 1973 through January 27, 1981 consent order period. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C.A. 4501-07 (West Supp. 1989). Purchasers of regulated petroleum products from Permian during the consent order period may file Applications for Refund from the Permian consent order fund. Applications for Refund from the Permian refined product pool must be postmarked by May 2, 1994. Applications for crude oil refunds must be received by June 30, 1994. Instructions for the completion of refund applications are set forth in the Decision.

Richome Oil and Gas Co., Et al. and Ball Marketing, Inc., Et al., 4/16/93, LEF-0041 and LEF-0043

The DOE issued a Decision and Order implementing procedures for the distribution of $30,343, plus accrued interest, in alleged overcharges obtained from Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Kevin Herrmann, and Stanley Herrmann (Case No. LEF-0041) (Richome) and $798,714.49, plus accrued interest, in alleged overcharges from Ball Marketing Inc., Charles Goss, Baker R. Littlefield and Robert L. McAdams (Case No. LEF-0043) (Ball). These funds were remitted by Richome and Ball to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE determined that these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Under that policy, crude oil overcharge monies are divided among the states (40%), federal government (40%), and injured purchasers of refined products (20%). Accordingly, Applications for Refund will be accepted from any party who purchased controlled refined petroleum products during the period of price controls. The specific information to be included in applications for crude oil refunds, which must be submitted by June 30, 1994, is included in the Decision. Any party who has previously filed an Application for Refund in the crude oil proceedings will be deemed to have filed an application in these proceedings.

Refund Applications

Gulf Oil Corp./Fort Bend County Precinct, 4/12/93, RF300-21732

The DOE has issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application, which was postmarked March 17, 1993, was filed directly by the applicant after the Gulf proceeding deadline of March 1, 1993. Accordingly, the Application for Refund was dismissed.

Gulf Oil Corp./New Bedford Municipal Airport, 4/12/93, RF300-21722

The DOE has issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application, which was postmarked March 9, 1993, was filed by the private filing service of Wilson, Keller & Associates, Inc. after the Gulf proceeding deadline of March 1, 1993. Accordingly, the Application for Refund was dismissed.

Gulf Oil Corp./Piney Branch Gulf, 4/13/93, RF300-21727

The DOE has issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application, which was dated March 9, 1993, was filed by the private filing service of Wilson, Keller & Associates, Inc. after the Gulf proceeding deadline of March 1, 1993. Accordingly, the Application for Refund was dismissed.

Gulf Oil Corp./Wilcox Oil Co., Inc., 4/12/93, RF300-8768

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Wilcox Oil Co., Inc. In its Application for Refund, Wilcox Oil was claiming a refund based upon purchases of Gulf petroleum products made by a Gulf distributorship that Wilcox Oil purchased in 1982. The Application for Refund was denied because Wilcox Oil purchased only the assets of the distributorship, not its corporate stock, and the purchase agreement did not mention potential refunds as being one of the assets which was transferred in the sale.

Gulf Oil Corp./Winston Bresett, New York Telephone, 4/13/93, RF300-21729 and RF300-21730

The DOE has issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. These applications, which were both postmarked March 20, 1993, were filed by the private filing service of Resource Refunds, Inc. after the Gulf proceeding deadline of March 1, 1993. Accordingly, both Applications for Refund were dismissed.

Oregon Department of Transportation Oregon Department of General Services, 4/15/93, RF272-64040 and RF272-67563

The DOE issued a Decision and Order granting Applications for Refund filed by the Oregon Department of Transportation and the Oregon Department of General Services in the Subpart V crude oil refund proceeding. The Applications were based on purchases of refined petroleum products for transportation, heating, and road surfacing. The Applications did not

include purchases by counties, municipalities, or school districts. The total volume approved in the Decision and Order is 65,538,694 gallons and the total refund granted is $50,831.

Texaco Inc./Perry North Main Texaco, 4/12/93, RF321-5954

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Energy Refunds, Inc. (ERI) on behalf of Perry North Main Texaco. That application sought a refund based upon purchases of approximately 7,100,000 gallons of Texaco products during the entire March 1973 through January 1981 refund period. However, W.M. Perry, the owner of the outlet, had previously received a refund for the same station in the Gulf refund proceeding. The Gulf application was also filed through ERI and was for Gulf purchases made between March 1973 and mid-1980. Certain purchase schedules and other documents submitted in the Texaco proceeding were altered to change the name of the supplier from "Gulf" to "Texaco."

Based upon these considerations, the DOE found that the refund application was fraudulent. The DOE noted that because ERI filed both the Gulf and the Texaco applications, it could not claim to have innocently relied upon information supplied by the applicant. In any event, the DOE noted that representatives of applicants are responsible for the accuracy of the information that they file with DOE. Furthermore, the DOE found that ERI either knew or should have known of the alteration of documents submitted with the application. Accordingly, the DOE denied the refund application. In addition, the DOE directed both Mr. Perry and ERI to submit statements explaining their role in the fraudulent filing. The DOE suspended processing of all refund applications filed by ERI and stated that if a satisfactory explanation is not received from ERI, sanctions may be imposed.

Texaco Inc./Reynolds Electrical & Engineering Co., Inc., 4/14/93, RF321-10738

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund that was filed by Reynolds Electrical & Engineering Co., Inc. (Reynolds) in the Texaco special refund proceeding. The DOE found that Reynolds was not injured by Texaco's pricing practices because all of the applicant's Texaco purchases were made pursuant to a contract with the DOE under which Reynolds was reimbursed for all of its energy related expenditures.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A. K. Tone et al	RF272-91605	04/16/93
Arlen & Eunice Rude	RC272-189	04/15/93
Atlantic Richfield Company/Dayton Plaza Service Center	RF304-13761	04/16/93
Atlantic Richfield Company/Zink's ARco et al	RF304-12920	04/14/93
Carlisle School et al	RF272-90517	04/16/93
Don Tribble et al	RF272-91508	04/14/93
Duanesburg Central School et al	RF272-80007	04/15/93
E.I. Dupont de Nemours & Co	RC272-191	04/14/93
Enron Corp./Coastal States Trading, Inc	RF340-179	04/16/93
Enron Corp./Kruegels, Inc	RF340-70	04/15/93
Francis V. Macioce et al	RF272-91405	04/14/93
Gulf Oil Corporation/Amherst Gulf Service Center et al	RF300-16533	04/12/93
Gulf Oil Corporation/Anderson's Gulf et al	RF300-18159	04/15/93
Gulf Oil Corporation/Gelco Corporation	RF300-17308	04/15/93
McGeorge Contracting Co., Inc	RF272-14907	04/14/93
Monfort of Colorado, Inc	RC272-186	04/13/93
New Miami Local Sch. Dist. et al	RF272-80603	04/13/93
Newport Yellow Cab Company	RC272-187	04/14/93
Prophetstown-Lyndon C.U.S.D. 3 et al	RF272-87049	04/16/93
Riddle School District # 70 et al	RF272-81251	04/12/93
Smith-Sheppard Concrete Co	RC272-185	04/13/93
Somerset School District et al	RF272-80301	04/15/93
Texaco Inc./Bill Goetz Texaco	RF321-19691	04/13/93
Texaco Inc./Branch Fuel Company et al	RF321-16900	04/16/93
Texaco Inc./Cowboy Oil Company et al	RF321-15123	04/16/93
Texaco Inc./Harland Hauck Oil Co	RF321-19690	04/14/93
Texaco Inc./Lilburn Texaco	RR321-120	04/15/93
Texaco Inc./Petroleum Marketers, Inc. et al	RF321-2746	04/15/93
Texaco Inc./San German Service Station et al	RF321-10842	04/14/93
Texaco Inc./West College Texaco et al	RF321-17925	04/16/93
Town of Preston et al	RF272-91311	04/14/93
Westside Cab Company	RC272-188	04/14/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Belgrade Elementary #44	RF272-87761
Best Products Co., Inc	RF304-9411
Carl Di Michele	RF304-2025
City of Moorestown	RF272-84047
County of Hutchinson	RF272-91201
Davenport & Son Texaco	RF321-18954
De Foire & De Foire Enterprises.	RF300-16851
Graffam's Service Station	RF300-16823
Hackensack Water	RF300-16516
Herring's Gulf	RF300-17525
Hill Service Station	RF300-16739
Jimbo's Self Service	RF300-16998
John C. Volk	RF272-91857
M.S.A.D. #15	RF272-91178
Marshall's Country Store	RF300-16959
Melvin T. Hester	RF300-15148
Nance's Gulf	RF300-16785
New Mexico Transportation DRF272-89147.	

Name	Case No.
Northwest Catholic High School.	RF272–90845
Pete's Gulf	RF300–16513
Polkton Gulf	RF300–16701
Poteet Independent School District.	RF272–91681
Pyle Westgate Texaco	RF321–6902
Ron's Gulf	RF300–16743
Stout Grocery	RF300–16958
Williams' Gulf	RF300–16704

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forestall Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 28, 1993.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 93–15889 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of May 3 Through May 7, 1993

During the week of May 3 through May 7, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Energy Products, Inc., 5/3/93, LFA–0281

Energy Products, Inc. filed an Appeal from a determination issued to it by the Oak Ridge Field Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that Oak Ridge National Laboratory had performed an adequate search which uncovered no documents revealing the identity of Substance "S" in a report investigating certain properties of a class of building materials entitled "Preliminary Evaluation of Radiation Control Coatings For Energy Conservation in Buildings." The report had been prepared by Robert W. Anderson and Associates, Inc., a subcontractor to Martin Marietta Energy Systems, Inc., the prime contractor for the DOE at Oak Ridge National Laboratory. The DOE did determine, however, that the Building Systems Division of the Office of Building Energy Research in the Office of Conservation and Renewable Energy at the DOE Headquarters in Washington, DC also reviewed the report and could have responsive documents. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Freedom of Information and Privacy Branch at DOE Headquarters to determine which other branches of the DOE, if any, may have responsive documents, and to have those branches initiate a search for any such documents.

Implementation of Special Refund Procedures

Whitaker Oil Company, 5/6/93, LEF–0052

The DOE issued a Decision and Order setting forth refund procedures to distribute $302,541.89 plus interest, received as a result of an Agreed Judgment between Whitaker Oil Company and the DOE. The Decision sets forth refund application procedures for customers who purchased diesel fuel, kerosene, and toluene from Whitaker during the period from November 1973 through March 1974 and xylene from November 1973 through January 1974. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Refund Applications

Gulf Oil Corp./Perry North Main Gulf, 5/7/93, RF40–3711

On September 17, 1986, the DOE issued a Decision and Order in the first Gulf Oil Corp. refund proceeding concerning an Application for Refund filed by Perry North Main Gulf. The amount of that refund was based upon a purchase schedule prepared by Walter Perry, the owner of the retail outlet. Mr. Perry subsequently filed an application in the Texaco Inc. refund proceeding. The purchase schedule that he submitted in the Texaco proceeding was essentially the same as the schedule he submitted in the Gulf-I proceeding. When asked to clarify who his supplier was, Mr. Perry stated that he obtained product from both Gulf and Texaco and that the purchase schedules he submitted included products from both suppliers. Consequently, product that Mr. Perry obtained from Texaco was included in the calculation of his Gulf refund. Accordingly, the DOE found that Mr. Perry had received a refund in the Gulf proceeding that was larger than that to which he was entitled. The DOE directed Mr. Perry and Energy Refunds, Inc., the representative through which Mr. Perry filed his application, to repay, with interest, that portion of the Gulf-I refund attributable to purchases made from Texcaco.

Shell Oil Company Paragas, Inc. RF315–7493; Vangas, Inc. RF315–7494; Suburban Propane Gas Corp. RF315–7495; Petrolane Incorporated, 5/3/93, RF315–9222

The DOE issued a Decision and Order granting, in part, the Application for Refund filed in the Shell Oil Company special refund proceeding by Petrolane Incorporated (Petrolane). The DOE granted Petrolane a full volumetric refund for its own Shell purchases based upon the firm's competitive disadvantage analysis. The DOE rejected, however, the firm's claims based upon purchases made by three affiliated firms which Petrolane acquired after the refund period because Petrolane did not present evidence necessary to prove injury for the affiliates' purchases and was not entitled to a presumption of injury refund for any additional purchases. For similar reasons, the DOE denied three applications filed by Quantum Chemical Corporation (Quantum) on behalf of Pargas, Inc. (Pargas), Vangas, Inc. (Vangas), and Suburban Propane Gas Corp. (Suburban). Because Quantum and Petrolane are affiliated and the operations of Suburban and Petrolane are interviewed, the DOE considered the four applications together to determine the total refund amount. As Petrolane was granted a refund of $83,436 (comprised of $56,175 principal and $27,261 interest), the DOE denied additional presumption refunds to Quantum for Shell purchases made by Pargas, Vangas, and Suburban.

Texaco Inc./Leland Eckman, 5/4/93, RF321–19715

The DOE issued a Supplemental Order to notify a refund granted to Leland Eckman (Case No. RF321–7103) in Texaco Inc./Corrigan Texaco Service, Case Nos. RF321–7100 et al. (May 9, 1991). Specifically, the DOE determined that the factual basis underlying the approval of Mr. Eckman's refund in the May 9, 1991 Decision and Order was inaccurate. Since the refund had been disbursed to Leland Eckman, the DOE required Mr. Eckman to remit to the DOE the sum of $832 ($763 incorrectly granted and $69 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Alden Central School et. al	RF272–80605	05/07/93
Atlantic Richfield Company/Coolidge Square Service Stat. et. al	RF304–1383	05/06/93
Atlantic Richfield Company/K&B Service Station	RR304–59	05/06/93
Atlantic Richfield Company/ Ralston Purina Company et. al	RF304–12975	05/05/93
Atlantic Richfield Company/Seal Beach Arco Service et. al	RF304–13795	05/04/93
Atlantic Richfield Company/Timonium Atlantic et. al	RF304–13812	05/04/93
Chesterfield School District et. al	RF272–80486	05/07/93
City of Longmont	RF272–83315	05/03/93
Town of Marblehead	RF272–83352	
Cith of Revere	RF272–83485	
City of Morgan Hill	RF272–83514	
City of Paris	RF272–83313	05/05/93
Village of Crestwood	RF272–83573	
Village of Whitefish Bay	RF272–83593	
Ritzville School District	RF272–92122	
Getty Oil Company/ S.O.S. Oil Corporation	RF265–2300	05/03/93
Gouverneur Central School et. al	RF272–84340	05/07/93
Gulf Oil Corporation/Central Solvents & Chemicals Co. et. al	RF300–18546	05/05/93
Gulf Oil Corporation/Hinds Gulf	RF300–21736	05/05/93
Gulf Oil Corporation/J.H. Rose Truck Lines, Inc	RF300–12905	05/06/93
Gulf Oil Corporation/Larcon Petroleum Company	RF300–16874	05/07/93
Gulf Oil Corporation/Mohawk Rubber Company	RF300–21737	05/06/93
Gulf Oil Corporation/Stadium Service Center, Inc.	RF300–17909	05/05/93
Reda's Service Station, Inc	RF300–17923	
R&I Service Station, Inc	RF300–17924	
Joplin School Dist. R–VIII et. al	RF272–81960	05/07/93
Maple Dale-Indian Hill School District et. al	RF272–83815	05/05/93
Miller Pipeline Corp	RF272–77628	05/04/93
Apex Bulk Commodities	RF272–7836	
Murfreesboro City Elem. Sch. Dist. et. al	RF272–78842	05/03/93
Roane County Highway Dept. et. al	RF272–91701	05/03/93
Texaco Inc./Bobber Auto/Truck Plaza et. al	RF321–16435	05/04/93
Texaco Inc./Carl May and Viola May et. al	RF321–16777	05/05/93
Texaco Inc./North Hill Texaco	RF321–19717	05/04/93
United Oil Company	RF272–80168	05/07/93

Dismissals

The following submissions were dismissed:

Name	Case No.
50th and Boston Gulf	RF300–11729
Austin Nail	RF272–91867
Borough of North Catasauqua.	RF272–88111
Borough of Paulsboro	RF272–88119
Bruce Cava	RF304–3354
Carbon County	RF272–87745
City of Metropolis	RF272–88152
City of Mount Vernon	RF272–88113
City of Vernon	RF272–88199
Coast Gas, Inc.	RF304–8885
County of Parmer	RF272–87706
Dows Community School District.	RF272–87174
Early Independent School Dist.	RF272–88177
Eastern Sierra Unified	RF272–88176
Easton Community Unit School District.	RF272–88174
Ernest L. Johnson	RF321–14236
Fredon Twp School District .	RF272–88181
Ganado Unified School District 20.	RF272–88180
Gardner Comm Cons School District 72C.	RF272–88173
Godfrey Lee Public School District.	RF272–88167
Goodman-Armstrong School District.	RF272–88166
Hagar's Texaco	RF321–10605
Ivan Sand	RF272–91893
James River Corporation	RF304–13677
Jimmy Withers Texaco Station.	RF321–10874
John R. Veazey	RF272–91726
Ken Parent's Texaco	RF321–10912
Lyle Kufahl	RF272–91816
McComas Truck Line, Inc.	RF272–84297
Municipality of Monroe	RF272–88158
Ray's Texaco	RF321–4530
Robert E. Fitts	RF272–91849
Shepard's Texaco	RF321–18331
Skarrup Shipping Corp.	RD272–63888
Sunny Isle Gulf	RF300–16248
Talladega County Commission.	RF272–78100
Therriault's Texaco	RF321–10763
Tire Town Texaco	RF321–10908
Town of Harvard	RF272–84252
Town of Pembroke Park	RF272–88116
Town of Post	RF272–88145
Truckstops of America	RF321–19439
Village of South Nyack	RF272–87960
West Park Texaco	RF321–7142
Wilburn Howton	RF272–91770

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 29, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–15890 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4675–7]

Establishment and Notice of Open Meeting of the Committee on Hazardous Waste Identification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Establishment of FACA Committee and Meeting Announcement.

SUMMARY: As required by section (9)(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the establishment of the Hazardous Waste Identification Committee. We have determined that establishing this committee is in the public interest and will assist the Agency in performing its duties and responsibilities prescribed in the Resource Conservation and Recovery Act. This committee will continue the work of the dialogue group on hazardous waste identification that has been meeting in announced, open, public sessions since January 1993.

Copies of the Committee Charter have been filed with the appropriate committees of Congress and the Library of Congress.

The Committee will meet on July 20–21, 1993. The Committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to finalize operational groundrules for committee operations and to discuss issues relating to regulation of contaminated media and as generated waste. The Committee meeting is open to the public without need for advance registration. The public should be advised that portions of either or both days may involve non-plenary, private, workgroup sessions.

DATES: The Committee will meet on July 20 and 21 from 9: a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be at the Hyatt Regency Hotel, 2799 Jeff Davis Highway, Crystal City, Arlington, Virginia (703) 418–1234.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters should contact William A. Collins, Jr., Office of Solid Waste, OS–333, Environmental Protection Agency, Washington, DC 20460; phone (202) 260–4791. Persons needing further information on procedural matters should call the Committee's Co-facilitator, Michael Young, Endispute, New York City, (212) 233–8300.

SUPPLEMENTARY INFORMATION:

I. Background: Need for the Committee

The committee will provide a forum to discuss appropriate procedures and standards to identify and govern safe management of mixtures and derivatives of hazardous waste, contaminated media, and remediation waste. It is hoped that a consensus on the most feasible changes to current regulation may be possible but, at a minimum, EPA would like to ensure that all changes are identified and thoroughly evaluated. The output of the committee will be options for modifying regulations for the identification and management of waste regulated by RCRA.

III. Dialogue Committee Membership

The following organizations are represented on the committee. The Environmental Protection Agency considers this a balanced committee.

Members

Federal Government

Environmental Protection Agency

State Governments

Oregon Department of Environmental Quality
Minnesota Pollution Control Agency
Oklahoma

Industry

U.S. Chamber of Commerce
American Iron and Steel Institute
Chevron Corporation/American Petroleum Institute
Dow Chemical Corporation/Chemical Manufacturers Association
General Electric Corporation

Environmental Groups

Natural Resources Defense Council
Environmental Defense Fund

Waste Treatment Industry

Hazardous Waste Treatment Council
Institute of Chemical Waste Management

IV. Committee Procedures

E. Schedule for the Committee

The EPA has currently set a deadline of October 31, 1993 for the committee to complete work on this project. The agency may terminate the activities of the Committee if it does not appear likely to reach consensus or complete its evaluations on a schedule that is consistent with Agency goals. If significant progress is being made, the Agency may consider extending the October 31, 1993 deadline.

The following procedures and guidelines will apply to the Committee unless they are modified by the Committee during the dialogue process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not make recommendations on substantive manners being considered by the committee. The facilitator's role is to:

- Chair committee meetings;
- Help the process run smoothly;
- Assist participants in articulating their interests, identifying areas of agreement, and developing consensus solutions to the problems that divide them.

B. Administrative Support

The EPA will supply logistical, administrative and management support. If it is deemed necessary and appropriate, EPA will provide technical support to the committee in gathering and analyzing additional data or information. The Office of Policy, Planning and Evaluation, Consensus and Dispute Resolution Program will provide administrative support.

C. Meetings

Most meetings will be held in the Washington area at the convenience of the Committee. EPA will announce Committee meetings in the **Federal Register** in accordance with FACA. Such meetings will be open to the public.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

E. Record of Meetings

In accordance with FACA's requirements, EPA will keep a summary of all Advisory Committee meetings. These summaries and meeting documents, as well as summaries of the open meetings held since January 1993, will be placed in the administrative record for Hazardous Waste Identification and are available through the RCRA Docket (F93–HWIP–FFFFF). The docket is located in room 2616M, 2nd Floor Waterside Mall, 401 M Street SW., Washington, DC. It is open between 8:30 a.m. and noon, and 1:30 p.m. until 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

Dated: June 30, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–15860 Filed 7–2–93; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4675–3]

Proposed Settlement Under Section 7003 of the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") proposes to

VOL
58
ISS
127
JL
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1993
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enter into an administrative settlement to resolve claims under the Solid Waste Disposal Act of 1976, as amended by the Resource Conservation and Recovery Act ("RCRA"). Notice is being published to inform the public of the proposed settlement and administrative record and of the opportunity to comment. The settlement is intended to establish to the actions that Reese Air Force Base must take to address the potential for imminent and substantial endangerment of public health and the environment around the Base. Reese Air Force Base is located approximately seven miles from Lubbock, Texas.

DATES: Comments must be provided on or before July 19, 1993.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Region 6, Office of Regional Counsel, Multi-Media Enforcement (6C–M), 1445 Ross Avenue, Dallas, Texas 75202 and should refer to: In Re: Reese Air Force Base, Docket No. VI–7003–93–01.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Region 6, Hazardous Waste Management Division, RCRA Enforcement Branch, Texas Section, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–6719, Attention: Bobby Williams.

SUPPLEMENTARY INFORMATION: EPA issued an Administrative Order On Consent to Reese Air Force Base, located approximately seven miles west of Lubbock, Texas. Preliminary investigations by Reese and EPA indicate that some private water wells near the base are contaminated with trichloroethylene (TCE), an organic compound typically used in solvents and degreasers. The presence of the TCE may be dangerous to human health and the environment.

Reese has agreed to undertake all actions outlined in the Order, including: (1) Provide alternative sources of water to affected households and businesses, and (2) conduct an extensive investigation of the water supply wells surrounding the base.

This Order is issued pursuant to EPA's authority under section 7003(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. In keeping with this authority, EPA is inviting the public to comment on this Order.

The Order and the administrative record supporting the issuance of the Order will be available for public review on Mondays through Fridays, from 8:30 a.m. to 4:30 p.m., at the library of the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. The Order and the administrative record are also available for public review at the Lubbock City/County Public Library, 1306 9th Street, Lubbock, Texas. EPA will be accepting comments on the Order until July 22, 1993.

A copy of the Order may be obtained in person or by mail from U.S. Environmental Protection Agency, Region 6, Hazardous Waste Management Division, RCRA Enforcement Branch, Texas Section, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–6719, Attention: Bobby Williams.

Dated: June 22, 1993.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93–15863 Filed 7–2–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4675–4]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). This settlement is intended to resolve the liability of United Refrigerated Services, Inc. (URS) for the response costs incurred and to be incurred at the 29th and Mead Superfund Site, Wichita, Kansas.

DATES: Written comments must be provided on or before August 5, 1993.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of 29th and Mead Site, Wichita, Kansas, United Refrigerated Services, Inc., EPA Docket No. 93–F–0017.

FOR FURTHER INFORMATION CONTACT: Belinda Holmes, Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7714.

SUPPLEMENTARY INFORMATION: The proposed settling party is United Refrigerated Services, Inc. (URS), the owner of approximately 14.1 acres of property that is part of the 29th and Mead Superfund Site (the Site). EPA, the United States Geological Survey and the Kansas Department of Health and Environment (KDHE) began investigating ground water contamination at the Site in 1983. These investigations revealed the presence of volatile organic compounds (VOCs), including trichloroethylene (TCE), carbon tetrachloride (CCl_4), toluene, benzene, ethylbenzene, methylene chloride, trans and/or cis 1,2-dichloroethylene, vinyl chloride, and 1,1,1-trichloroethane (TCA), in the ground water at the Site. The Site encompasses more than 1440 acres in an industrial area in the northern part of Wichita, Kansas. The Site was placed on the National Priorities List on February 21, 1990.

KDHE assumed the role of lead agency at the Site pursuant to a cooperative agreement between EPA and KDHE. In 1989, a group of potentially responsible parties (PRPs) known as the Wichita North Industrial District (WNID) group signed an agreement with KDHE to perform a Remedial Investigation (RI) to determine the nature and extent of the contamination at the Site and a Feasibility Study (FS) to evaluate the various alternatives for remedial action. The RI/FS is currently underway at the Site. Earlier investigations had revealed a highly concentrated plume of contamination around the manufacturing facility owned and operated by Evcon Industries, Inc., formerly owned and operated by The Coleman Company, Inc. In order to address this area, KDHE and EPA designated the area the "Coleman Operable Unit" and published a Record of Decision (ROD) for the Coleman Operable Unit in September, 1992, which calls for the contaminated ground water to be extracted and treated and for the soil contamination at the Coleman Operable Unit to be treated using soil vapor extraction.

URS has operated a refrigerated storage warehouse on its property at 2707 N. Mead, Wichita, Kansas, since 1979. Soil samples from the URS property collected and analyzed by URS contained none of the hazardous substances listed above in any detectable amounts. In addition, investigations conducted by EPA and/or KDHE have demonstrated that URS has not generated, stored, treated or disposed of any hazardous substance found at the Site.

The proposed settlement provides access to URS' property to EPA, KDHE

and parties designated by EPA or KDHE as their representatives, contractors or agents, as well as to any other persons performing response actions at the Site under EPA's oversight. In addition, URS has agreed to require any lessee or transferee of its property, as a term of any sale, lease or other transfer, to grant access as set forth above. Access to URS' property may be needed for taking soil or ground water samples or installing ground water extraction or monitoring wells.

The proposed settlement involves no financial terms; the proposed settling part is required only to provide access. The proposed de minimis settlement provides that EPA will covenant not to sue URS for response costs at the Site or for injunctive relief pursuant to sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6973. The proposed settlement contains a reopener clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that URS: (1) Conducted or permitted the generation, transportation, storage, treatment or disposal of any hazardous substance at the Site; (2) contributed to a release or threat of release of a hazardous substance at the Site through any act or omission; or (3) that URS no longer meets the criteria for a de minimis settlement set forth in section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(b).

Dated: June 14, 1993.

Carl M. Walter,

Acting Regional Administrator.

[FR Doc. 93–15872 Filed 7–2–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1950]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 29, 1993.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed July 21, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation. (MM Docket No. 92–266)

Number of Petitions filed: 53.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15828 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of New Orleans/Hoogewerff (USA) Inc.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200780.

Title: Port of New Orleans/Hoogewerff (USA), Inc. Project Cargo Shipper's Agreement.

Parties:

The Port of New Orleans (Port)
Hoogewerff (USA), Inc.

Filing Party: Joseph W. Fritz, Jr., Staff Attorney, Board of Commissioners, of the Port of New Orleans, P.O. Box 60046, New Orleans, Louisiana 70160.

Synopsis: The Agreement establishes a wharfage rate of $0.85 per short ton for approximately 9,300 tons of cargo.

By Order of the Federal Maritime Commission.

Dated: June 29, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15785 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

The MOL/HMM Space Charter Agreement in the Far East—U.S. Pacific Northwest Trades; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011376–002

Title: The MOL/HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

Parties:

Mitsui O.S.K. Lines, Ltd.,
Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment adds Kawasaki Kisen Kaisha, Ltd. as a party to the Agreement. It also changes the name of the Agreement to The KL, MOL and HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

Agreement No.: 224–200781.

Title: Port of New York and New Jersey/Italia di Navigazione SPA Container Incentive Agreement.

Parties:

The Port Authority of New York and New Jersey ("Port"),
Italia di Navigazione SPA ("Italia").

Synopsis: The Agreement provides that the Port will pay Italia a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 224–200782.

Title: Port of New York and New Jersey/Hanjin, Shipping Container Incentive Agreement.

VOL 58 ISS 127 JL 6 1993 UMI

Parties:

The Port Authority of New York and New Jersey ("Port"),
Hanjin Shipping ("Hanjin").

Synopsis: The Agreement provides that the Port will pay Hanjin a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 224–200783

Title: Port of New York and New Jersey/NYK Line, Container Incentive Agreement.

Parties:

The Port Authority of New York and New Jersey ("Port"),
NYK Line (North America) Inc. ("NYK").

Synopsis: The Agreement provides that the Port will pay NYK a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

By Order of the Federal Maritime Commission.

Dated: June 29, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15786 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

Organization and Functions of the Federal Maritime Commission; C.O. 1, Amdt. No. 21

The following delegation is made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, Section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by adding subsection 9.17 to read as follows:

9.17 Authority contained in 46 CFR part 514 to temporarily exempt common carriers from the electronic tariff filing requirements of that part for a period not to exceed 90 days from the filing dates set forth in Supplemental Report No. 4 and Order, served in Docket No. 90–23 on May 28, 1993.

Dated: June 24, 1993.

William D. Hathaway,

Chairman.

[FR Doc. 93–15783 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

Organization and Functions of the Federal Maritime Commission; C.O. 1, Amdt. No. 22

The following delegation is made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, Section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by adding subsection 9.18 to read as follows:

9.18 Authority contained in Supplemental Report No. 4 and Order in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce—Tariffs and Service Contracts to grant special permission to deviate from the requirement that electronically-filed tariffs become effective no later than 90 days from the last day of the applicable filing window.

Dated: June 24, 1993.

William D. Hathaway,

Chairman.

[FR Doc. 93–15784 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 30, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire 100 percent of the voting shares of Mutual Savings Bank of Rockingham County, SSB, Reidsville, North Carolina.

2. Southern National Corporation, Lumberton, North Carolina; to acquire 100 percent of the voting shares of East Coast Savings Bank, Inc., SSB, Goldsboro, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First American Corporation, Nashville, Tennessee; to acquire 100 percent of the voting shares of First American National Bank of Kentucky, Bowling Green, Kentucky, formerly known as First Federal Savings and Loan Association of Bowling Green, Bowling Green, Kentucky.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Lima Bancshares, Inc., Lima, Illinois; to acquire 16.67 percent of the voting shares of East Dubuque Bancshares, Inc., East Dubuque, Illinois. In connection with this application, East Dubuque Bancshares, Inc., East Dubuque, Illinois, has applied to become a bank holding company by acquiring 100 percent of the voting shares of East Dubuque Investment Corporation, East Dubuque, Illinois, and thereby indirectly acquire 89.98 percent of the voting shares of East Dubuque Savings Bank, East Dubuque, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Missoula Bancshares, Inc., Missoula, Montana; to become a bank holding company by acquiring 98.02 percent of the voting shares of First Security Bank of Missoula, Missoula, Montana.

Board of Governors of the Federal Reserve System, June 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15814 Filed 7–2–93; 8:45 am]

BILLING CODE 6210–01–F

Laddie Cimpl Revocable Trust/Doris Cimpl Revocable Trust; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Laddie Cimpl Revocable Trust/ Doris Cimpl Revocable Trust, Yankton, South Dakota; to acquire 28.7 percent of the voting shares of First Dakota Financial Corporation, Yankton, South Dakota, and thereby indirectly acquire First Dakota National Bank, Yankton, South Dakota, and McCook County National Bank, Yankton, South Dakota.

Board of Governors of the Federal Reserve System, June 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15815 Filed 7–2–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Announcement of July meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, July 22, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes a presentation on the entity display project; discussions of issues regarding the cost project, and of issues in the draft documents on: (1) Government corporations, (2) liabilities and future claims, and (3) investments.

Other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., Suite 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Public Law 92–463, section 10(a)(2), 86 stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: June 30, 1993.

Jimmie D. Brown,

Deputy Director.

[FR Doc. 93–15864 Filed 7–2–93; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Domestic Assistance Catalog Staff (WKU), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve new information collection, Questionnaire, Catalog of Federal Domestic Assistance. This Information Collection will be a two-time survey of Catalog Users, to ensure that the Catalog is well designed to meet user's needs. The GSA will mail the Questionnaire to selected Catalog users and will place it inside the Catalog so that all users will have the opportunity to comment on the Catalog's contents, if they so desire.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 2,000; annual responses: 2,000; average hours per response: .1; burden hours: 200.

FOR FURTHER INFORMATION CONTACT: Jackie Garrett, (202) 708–5126. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: June 25, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–15773 Filed 7–2–93; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0219]

Regulatory Flexibility Analysis of the Final Rules to Amend the Food Labeling Regulations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990" that the agency has prepared under the Regulatory Flexibility Act (Pub. L. 96–354) on the impact of the food labeling regulations issued in the **Federal Register** of January 6, 1993. The agency has prepared this comprehensive document for these final rules because, when taken together, they will have a significant impact on a substantial number of small firms.

ADDRESSES: Submit written requests for single copies of the document "Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990" to the Economics Branch (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The document is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard A. Williams, Jr., Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5271.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1993 (58 FR 2066 et seq.), FDA published final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). The Regulatory Flexibility Act requires the agency, as part of that rulemaking, to examine the effect that the rulemaking will have on small entities, including small businesses. Because of the statutory timeframes imposed by the 1990 amendments for completion of the final food labeling regulations, FDA delayed the completion of its regulatory flexibility analysis (see 58 FR 2927) in accordance with section 608(b) of the Regulatory Flexibility Act.

FDA has now completed its comprehensive analysis of the food labeling final rules and has determined that the final rules, when taken together, will have a significant impact on a substantial number of small firms. The agency is hereby announcing the availability of its Regulatory Flexibility Act analysis for the food labeling final rules.

Dated: June 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-15893 Filed 6-30-93; 3:51 pm]

BILLING CODE 4160-01-F

[Docket No. 86G-0321]

Donath-Kelterei; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 6G0314) requesting that the agency affirm that the puree and juice from the sea buckthorn berry *Hippophae rhamnoides* L. be affirmed as generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 2, 1986 (51 FR 31175), FDA published a notice that a petition (GRASP 6G0314) had been filed by Donath-Kelterei, Gutenbergstrasse 4, 8043 Unterföhring, West Germany, proposing that the use of puree and juice from the sea buckthorn berry *Hippophae rhamnoides* L. be affirmed as GRAS. Donath-Kelterei has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 28, 1993.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-15871 Filed 7-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93M-0124]

Dornier Medical Systems, Inc.; Premarket Approval of MFL5000 Lithotripter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Dornier Medical Systems, Inc., Kennesaw, GA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the MFL5000 Lithotripter. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 8, 1993, of the approval of the supplemental application.

DATES: Petitions for administrative review by August 6, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marsha Melvin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1194.

SUPPLEMENTARY INFORMATION: On May 11, 1992, Dornier Medical Systems, Inc., Kennesaw, GA 30144, submitted to CDRH a supplemental application for premarket approval of the MFL5000 Lithotripter. The device is an extracorporeal shock wave lithotripter and is indicated for fragmentation of stones in the urinary tract, such as renal calyceal stones, renal pelvic stones, upper ureteral stones, and middle and lower ureteral stones greater than or equal to 10 millimeters in diameter.

On December 16, 1992, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On March 8, 1993, CDRH approved the supplemental application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this supplemental application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 6, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d),

360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-15780 Filed 7-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93D-0204]

Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials; Alternative Review Procedure Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials." The guidance is established for manufacturers of devices affected by Dow Corning's withdrawal of implant grade silicone from the market. The guidance describes the procedures to be followed by manufacturers in determining when to make a submission pursuant to an alternative review process.

DATES: Written comments by September 7, 1993. FDA's Center for Devices and Radiological Health will establish a separate queue for the review of submissions for devices affected by the withdrawal of one or more of the Dow Corning silicone materials listed below from July 6, 1993, until July 7, 1994.

ADDRESSES: Submit written requests for single copies of "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597, or 1-800-638-2041. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ-150), Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301-443-7003.

SUPPLEMENTARY INFORMATION:

I. Background

Dow Corning has notified its customers and FDA that it will no longer manufacture and distribute the following materials:

Silastic MDX4-4515, Peroxide Cured 50D Elastomer;

Silastic MDX4-4516, Peroxide Cured 60D Elastomer;

Silastic Q7-2245, Platinum Cured 40D Elastomer;

Silastic Q7-2213, Dispersion in Clorothene;

Silastic HP Tubing;

Silastic Implant Grade and Medical Grade sheeting; and

Materials for any applications related to reproduction, contraception, obstetrics, or cosmetic surgery and procedures.

These materials are used in the manufacture of a large number and wide variety of marketed medical devices. For some of these devices, a change in the supplier of any of these materials could significantly affect the safety and effectiveness of the device. While it is important in these circumstances for FDA to be informed of these changes when they occur, a new premarket notification submission under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) and 21 CFR 807.81(a)(3)(i), or a supplemental premarket approval application under section 515 of the act and 21 CFR 814.39 is necessary only when the change could significantly affect the safety or effectiveness of the device. Ordinarily these submissions are required to be submitted and approved before the device may be marketed with the change. However, because of the great number of devices that are involved, many of which are extremely significant or even crucial to the health of many patients, FDA believes that removal of these devices from the market during the review of these submissions would be detrimental to the public health. Consequently, in the exercise of its enforcement discretion, FDA has developed a strategy to allow producers of medical devices that are manufactured from one or more of these materials to continue to market their devices pending submission and FDA review of premarket submissions (510(k)'s or premarket approval supplements). FDA is creating an alternate notification and review process for devices affected by Dow Corning's market withdrawal. The agency is announcing the availability of a guidance detailing the notification process, the eligibility requirements, and the procedures to be followed by manufacturers of affected devices to pursue an alternative review process and thereby continue to market their devices without interruption. Written comments may be submitted on this guidance until September 7, 1993. The comments will be considered in determining whether amendments to the guidance document are warranted.

I. Notification of Changes

Within 60 days following publication of this notice, manufacturers intending to continue to market their devices using a material from an alternate supplier shall submit to FDA a special notification containing the following information:

1. A list of each product for which an alternate material or alternate source will be used.

2. The reference number—510(k) or premarket approval application (PMA)—for each device.

3. The name and source of the replacement material.

4. A letter from the alternate supplier permitting reference to its master file, or results from the tests listed in the attached guidance. If tests are not complete, a date by which the testing is expected to be completed.

5. Results from any tests done by the manufacturer on the material or the device.

6. The manufacturer's determination as to whether the change of material may have a significant effect on the safety or effectiveness of the device.

FDA will review the notification and determine whether an application is required to be submitted for the change. FDA will also use the notification to schedule current good manufacturing practice (CGMP) inspections in a timely manner.

In the interest of administrative efficiency, FDA and the Center for Devices and Radiological Health (CDRH) will allow firms to submit a single notification under this guidance covering all affected devices manufactured by that firm. The notification should be marked "Special notification—silicone". However, separate 510(k) or PMA applications shall be submitted for products for which such submissions are required.

VOL
58
ISS
127
JL
6
1993
UMI

II. Review process

For a period of 12 months following publication of this notice in the **Federal Register**, FDA's CDRH will establish a queue, as discussed below, for the review of submissions for devices affected by the withdrawal of one or more of the Dow Corning silicone materials listed above. This queue is separate from the established queues for review of premarket approval supplements and 510(k)'s. The review priority within this queue will be on a first-in-first-reviewed basis.

III. Entry criteria

For an application to be considered in this queue, all of the following requirements must be met:

1. The product must be manufactured from one or more of the silicone materials formerly manufactured by Dow Corning and identified in this notice;

2. The manufacturer must have submitted a "Special notification—Silicone" to FDA.

3. The application must be for a device which has been cleared for marketing under an existing PMA or premarket notification submission (510(k)), or for a preamendments device for which the manufacturer can document the use of one of these materials and for which PMA's have not yet been required;

4. The manufacturer can demonstrate, and is willing to certify, that only Dow Corning has been its source for the silicone material used in its device;

5. The new submission must relate only to the change in the source of the silicone material, and must include a certification that the sponsor has identified an alternative source of material and that it has conducted the tests recommended by the agency to establish that the material supplied by the new supplier is not substantially different from the material that had been supplied by the initially approved supplier. Because the initial certification will be based primarily on the physiochemical characterization of the material, the manufacturer will be required to submit a schedule of dates by which it will submit the results from applicable bioassays; and

6. The submission clearly references this **Federal Register** notice on page one.

Complete and appropriate applications, 510(k)'s or PMA's as described in the act, will be required for each individual device in order to complete the device evaluation process. Manufacturers are also reminded that these applications will be subject to both the agency policy of consulting with the Office of Compliance and Surveillance Reference List and the class III, 510(k) inspection program for determining substantial compliance with the medical device CGMP regulation (21 CFR part 820).

Special Submissions should be sent to: Document Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850. Submissions must clearly reference the document numbers that identified the initial submission (except for preamendments devices).

Dated: June 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15779 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

Indian Health Service

Privacy Act of 1974; Alteration of Systems of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of an Altered System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of an alteration of system of records 09–17–0001, "Health and Medical Records Systems, HHS/IHS/OHP."

DATES: The PHS invites interested parties to submit comments on the proposed internal and routine uses on or before August 5, 1993. The PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on June 21, 1993. The alteration to the system will be effective 60 days from the date of publication, unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to: IHS Privacy Act Officer, Indian Health Service, Parklawn Building, Room 6–37, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0461.

Comments received will be available for inspection at this same address from 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Division of Clinical and Preventive Health Services, Indian Health Service, 5600 Fishers Lane, Room 6A–54, Rockville, Maryland 20857, (301) 443–4644.

The telephone numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) currently maintains a System of Records (SOR) concerning its Health and Medical Records. We are altering this system to inform the patient of the relationship IHS has established with the Social Security Administration (SSA) regarding Social Security Numbers (SSNs). Patients are asked to disclose their SSN to IHS health care providers after being informed of: 1) the purpose of collecting the SSN, i.e., for uniquely identifying patient records, reducing duplicative counting of cases of a disease, improving patient and health program management, and third-party billing; 2) that refusal will not result in denial of services, and, 3) that IHS is working with the SSA to verify the SSN provided or obtain an SSN, if available, when the patient does not know his SSN or declines to provide it.

In order to maintain the integrity of its national patient care database, IHS plans to submit, on an annual basis, automated patient records containing the SSN's collected from patients to the SSA for verification purposes. The SSA will inform IHS whether the SSN on the IHS record matches the SSN in the SSA file for the person with the same name, date of birth (DOB), and sex. If there is not a complete match, SSA will inform IHS which key items (name/DOB/sex) do not match. In certain cases, SSA will provide IHS with a different SSN than which IHS furnished to the SSA, e.g., where a complete match would occur if 2 digits of the IHS-furnished SSN were transposed. The IHS will make appropriate changes to the patient record as well as notify the patient of these changes to the record.

In order to fill data gaps in its national patient care database, IHS plans to submit, on an annual basis, automated patient records lacking SSNs to SSA to seek to obtain, where available, SSNs from the SSA file. The SSA will provide IHS with an SSN when the IHS record matches a record in the SSA file on name, DOB, and sex. The IHS will enter the SSA-furnished SSN in the patient record as well as notify the patient of this addition to the record. The IHS will inform patients, as part of the Privacy Act Notification Statement, that if they do not provide their SSN the IHS will seek to obtain the SSN from the SSA.

This notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

09–17–0001

SYSTEM NAME

Health and Medical Records Systems, HHS/IHS/OHP.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

Indian Health Service (IHS) hospitals, health centers, school health centers, health stations, field clinics, Service Units, IHS Area Offices (Appendix 1), and Regional Federal Records Centers (Appendix 2). Automated records, including Patient Care Component (PCC) records, are stored at the Data Processing Service Center, IHS, located in Albuquerque, New Mexico (Appendix 1). Records may also be located at hospitals and offices of health care providers who are under contract to IHS, including Tribal contractors. A current list of contractor site, including Tribal contractors, is available by writing to the appropriate System Manager (Area or Service Unit Director) at the address shown in Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals, including both IHS beneficiaries and nonbeneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract (including tribal contract) health care providers.

CATEGORIES OF RECORDS IN THE SYSTEM

1. Health and medical records containing: examination, diagnostic and treatment data, proof of IHS eligibility, social data such as name, address, date of birth, Social Security Number, tribe; case records for special programs such as: dental, social service, mental health, nursing; and laboratory test results. 2. Follow-up registers of individuals with specific health conditions or a particular health status such as: tumors, communicable diseases, hospital commitment, suspected and confirmed physical child abuse and neglect, immunizations, self-destructive behavior, or handicap. 3. Logs of individuals provided health care by staffs of specific hospital components such as: surgery, emergency, obstetric delivery, x-ray and laboratory. 4. Operation and/or disease indices for particular hospitals which list each relevant patient by the operation or disease. 5. Monitoring strips and tapes such as fetal monitoring strips and EEG and EKG tapes. 6. Third-party reimbursement records containing name, address, date of birth, date of admission and Medicare or Medicaid claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Section 321 of the Public Health Service Act, as amended, (42 U.S.C. 248), "Hospitals, Medical Examinations and Medical Care." Section 327A of the Public Health Service Act, as amended, (42 U.S.C. 254a–1), "Hospital-Affiliated Primary Care Centers." Indian Self Determination and Education Assistance Act (25 U.S.C. 450). Snyder Act (25 U.S.C. 13). Indian Health Care Improvement Act (25 U.S.C. 1601 et. seq). Construction of Community Hospitals Act (25 U.S.C. 2005–2005f). Indian Health Service Transfer Act (42 U.S.C. 2001–2004).

PURPOSES

The purposes of this system are:

1. To provide a description of a patient's illness, the treatment administered and results achieved, and to plan for future care of the patient.

2. To provide IHS program officials with statistical data upon which the health care program is evaluated and modified to meet future needs.

3. To serve as a means of communication among members of the health care team who contribute to the patient's care by integrating information from field visits with that from IHS facilities which have provided treatment.

4. To serve as the official documentation of health care rendered.

5. To contribute to continuing education of IHS staff to improve their competency to deliver health care services.

6. For disease surveillance purposes. For example:

(a) The Centers for Disease Control may use these records for their monitoring of various communicable diseases among persons residing within the United States; and,

(b) The National Institutes of Health may use these records for their review of the prevalence of particular diseases (i.e., malignant neoplasms, diabetes mellitus, arthritis, metabolism and digestive diseases) for various ethnic groups of the Nation.

7. To compile and provide aggregated program statistics. Upon request of other components of the Department, IHS will provide statistical information, from which individual identifiers have been removed, such as:

(a) To the National Center for Health Statistics, for its dissemination of aggregated health statistics for various ethnic groups;

(b) To the Assistant Secretary for Population Affairs to keep a record of the number of sterilizations provided through the use of Federal funds;

(c) To the Health Care Financing Administration for the documentation of IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; and

(d) To the Bureau of Support Services, Health Care Financing Administration, to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native population and to coordinate the care of American Indian and Alaska Native patients with this condition.

8. To process and collect third-party claims.

9. To improve the IHS national patient care database through obtaining and verifying patients' SSNs with the Social Security Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

Note: Special requirements for alcohol and drug abuse patients: If an individual receives treatment, or referral for treatment, for alcohol or drug abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2 may apply. In general under these regulations, the only disclosures of the alcohol or drug abuse record which may be made without patient consent are: (1) To meet medical emergencies (42 CFR Part D, Sec. 2.51), (2) for research, audit, evaluation and examination (42 CFR Part D, Secs. 2.52 and 2.53), (3) pursuant to a court order (42 CFR 2.61–2.67), and (4) pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11. In all other situations, written consent of the patient is usually required prior to disclosure of alcohol or drug abuse information under the routine uses listed below. Individuals acting *in loco parentis* to minors, as well as parents, legal guardians, and custodians may act on behalf of the subject individual for purposes of giving consent for disclosures to others when it is determined that the subject individual is a minor who is unable to or cannot exercise with appropriate understanding, the right of consent by himself or herself.

1. Records may be disclosed to State, local or other authorized organizations which provide health services to American Indians and Alaska Natives, or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements and reporting results of medical examination and treatment.

2. Records may be disclosed to Federal and non-Federal school systems which serve American Indians and

VOL
58
ISS
127
JL
6
1993
UMI

Alaska Natives for the purpose of student health maintenance.

3. Records may be disclosed to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, utilization review or to provide accreditation or certification of health care facilities or programs.

4. Records may be disclosed to authorized organizations, such as the United States Office of Technology Assessment, or individuals for conduct of analytical and evaluation studies sponsored by the IHS.

5. Records may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject individual.

6. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. The IHS health care providers may disclose information from these records regarding the commission of crimes or the occurrence of communicable diseases, tumors, suspected child abuse, births, deaths, alcohol or drug abuse, etc., as required by Federal law or regulation or State or local law or regulation of the jurisdiction in which the facility is located. Disclosure may be made to organizations as specified by the law or regulation, such as births and deaths to State or local health departments, and crimes to law enforcement agencies. In federally conducted or assisted alcohol or drug abuse programs, the disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under 42 CFR part 2; e.g., disclosure of patient information on alcohol and drug abuse for purposes of criminal investigation generally must be authorized by court order issued under 42 CFR 2.65 except that reports of suspected child abuse may be made to the appropriate State or local authorities under State law.

8. The IHS health care providers may disclose information from these records regarding suspected cases of child abuse to: (1) Agencies of any Indian tribe, any State or the Federal Government that need to know the information in the performance of their duties, and (2) members of community child protection teams of the purpose of establishing a diagnosis, formulating a treatment plan, monitoring the plan, investigation reports of suspected child abuse, and making recommendations to the appropriate court. Community child protection teams are comprised of representatives of: tribes, the Bureau of Indian Affairs, child protection service agencies, the judicial system(s) (local, State and/or tribal, law enforcement agencies and IHS). In federally conducted or assisted alcohol or drug abuse programs, the disclosure to the contents of records which pertain to patient identity, diagnosis, prognosis, or treatment of alcohol or drug abuse is restricted under 42 CFR part 2; e.g., disclosure of patient information on alcohol or drug abuse for purposes of criminal investigation generally must be authorized by court order issued under 42 CFR 2.65 except that reports of suspected child abuse by be made to the appropriate State or local authorities under State law.

9. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) any HHS employee in his or her official capacity; or

(c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

10. Records may be disclosed to the Bureau of Indian Affairs and its contractors for the identification of American Indian and Alaska Native handicapped children to permit that Bureau to carry out the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq.).

11. Records may be disclosed to an IHS contractor, including tribal contractors, for the purpose of computerized data entry or maintenance of records contained in this system. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

12. Records may be disclosed to a health care provider undercontract to IHS (including tribal contractors) to permit the contractor to obtain health and medical information about the subject individual in order to provide appropriate health services to that individual. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

13. Records may be disclosed to the State of Alaska, Department of Health and Social Services (DHSS) (which supplies part or all of this information to IHS), in response to its request for patient summaries, portions of immunization registers, disease indices and other computer-generated medical summaries. This information assists DHSS in its provision of health care to the subject individual. Disclosure to the State of Alaska's DHSS is limited to information concerning its patients.

14. Disclosures regarding specific medical services may be made from the records of a minor patient to the minor's parent or legal guardian who previously consented to those specific medical services.

15. (a) PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with

the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances:

(1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors;

(2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s);

(3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and

(4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has, notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

File folders, ledgers, card files, microfiche, microfilm, computer tapes, disk packs and automated files.

RETRIEVABILITY

Indexed by name, record number, and SSN and cross-indexed.

SAFEGUARDS

Safeguards apply to records stored on-site and off-site.

1. Authorized Users

Access is limited to authorized IHS personnel and IHS contractors and subcontractors in the performance of their duties. Authorized personnel include: Medical records personnel, health care providers, authorized researchers, medical audit personnel, and health care team members, and, administrative personnel on a need to know basis.

2. Physical Safeguards

Records are kept in locked metal filing cabinets or in a secured room at all times when not actually in use during working hours and at all times during nonworking hours. Magnetic tapes, disks, other computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Telecommunication equipment (computer terminal, modems and disks) of the Patient Care Component (PCC) are maintained in locked rooms during nonworking hours. Combinations on door locks are changed periodically and whenever a PCC employee resigns, retires or is reassigned.

3. Procedural Safeguards

Within each facility a list of personnel or categories of personnel having a demonstrable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may not be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Persons who have a need to know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records. They are to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated health and medical records maintained in the Patient Care Component. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS automated information systems are implemented. The use of current passwords and log-on codes are required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated audit trail is maintained. Only authorized IHS Division of Data Processing Services staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated data. Such retrievals are password protected.

Privacy Act requirements and specified Automated Information System security provisions are specifically included in contracts and agreements and the system manager or his/her designee oversee compliance with these contract requirements.

4. Implementing Guidelines

DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General administration Manual; and DHHS, "Automated Information Systems Security Program Handbook", as amended.

RETENTION AND DISPOSAL

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility which provided health services from three to seven years and then are transferred to the appropriate Federal Records Center. Monitoring strips and tapes (i.e., fetal monitoring strips and EEG and EKG tapes) which are not stored in the patient's official medical record, are stored at the health facility for one year and are then transferred to the appropriate Federal Records Center. (See Appendix 2 for Federal Record Center addresses). Records, including those maintained on computer media are retained in useable formats at the Regional Federal Records Centers for 25 years. Disposal methods include burning or shredding of hard copy and erasing of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS

Policy-Coordinating Official: Director, Division of Clinical and Preventive Health Services, Indian Health Service, 5600 Fishers Lane, Room 6A–54, Rockville, Maryland 20857. See Appendix 1. The IHS Area Office Directors, Service Unit Directors, Chief Executive Officers and Facility Directors listed in Appendix 1 are System Managers.

NOTIFICATION PROCEDURE:

General Procedure

Requests must be made to the appropriate System Manager (IHS Area/Program Office Director or Service Unit Director). An individual who requests a copy of, or access to, a medical record shall at the time the request is made designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Such a representative may be an IHS health professional. When an individual is seeking to obtain information about himself/herself which may be retrieved by a different name or identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks. No verification of identity shall be required where the record is one which is

required to be disclosed under the Freedom of Information Act.

Requests In Person

Identificaiton papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the subject individual's identity. If the subject individual has no identification papers, the responsible system manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 dollar's fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

Requests By Mail

Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

Requests By Telephone

Since positive identification of the caller cannot be established, telephone requests are not honored.

Parents And Legal Guardians

Parents of minor children and legal guardians of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

RECORD ACCESS PROCEDURES

Same as Notification Procedures. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their record, if any

CONTESTING RECORD PROCEDURES

Write to the appropriate IHS Area/Program Office Director or Service Unit Director at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES

Patient and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, Medicare and Medicaid funding agencies, and the Social Security Administration.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records are Maintained

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401.
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625.
Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339.
Director, Flandreau Indian School Health Center, RR1, Box 10, Flandreau, South Dakota 57028.
Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763.
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335.
Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752.
Director, Lower Brule Indian Health Center, Lower Brule, South Dakota 57548.
Director, McLaughlin Indian Health Center, McLaughlin, South Dakota 57642.
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071.
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770.
Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57701.
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570.
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262.
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538.
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316.
Director, Wahpeton Indian School Health Center, Wahpeton, North Dakota 58075.
Director, Wanblee Indian Health Center, Wanblee, South Dakota 57577.
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380.
Director, Director, Alaska Area Native Health Service, 250 Gambell Street, Anchorage, Alaska 99501.
Director, Alaska Native Health Center, St. George Island, Alaska 99660.
Director, Alaska Native Health Center, St. Paul Island, Alaska 99660.
Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, 255 Gambell St., Anchorage, Alaska 99501.
Director, Annette Islands Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926.
Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723.
Director, Ketchikan Alaska Native Health Center, 3289 Tongass Avenue, Ketchikan, Alaska 99901.
Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752.
Director, Southeast Area Regional Health Center, 3272 Hospital Drive, Juneau, Alaska 99801.
Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Center, Bethel, Alaska 99559.
Director, Albuquerque Area Indian Health Service, 505 Marquette, N.W., Suite 1502, Albuquerque, New Mexico 87102–2163.
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, N.E., Albuquerque, New Mexico 87106.
Director, Canoncito Indian Health Station, c/o Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.
Director, Cochiti Indian Health Station, Cochiti, New Mexico 87041.
Director, Dulce Indian Health Center, Dulce, New Mexico 87528.
Chief, Dental Program, IHS Dental Training Center, Southwestern Indian Polytechnical Institute, 9168 Coors Road, N.W., P.O. Box 25927, Albuquerque, New Mexico 87125.
Director, Indian School Health Center, Southwestern Indian Polytechnical Institute, 9168 Coors Road, N.W., P.O. Box 25927, Albuquerque, New Mexico 87125.
Director, Isleta Indian Health Center, P.O. Box 429, Isleta, New Mexico 87022.
Director, Jemez Indian Health Center, P.O. Box 256, Jemez Pueblo, New Mexico 87024.
Director, Laguna Indian Health Center, P.O. Box 199, New Laguna, New Mexico 87038.
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340.
Director, New Sunrise Regional Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049.
Director, Sandia Indian Health Station, P.O. Box 6008, Bernalillo, New Mexico 87004.

Director, Santa Ana Indian Health Station, P.O. Box 580, Bernalillo, New Mexico 87004.
Director, San Felipe Indian Health Station, General Delivery, San Felipe Pueblo, New Mexico 87001.
Director, San Juan Indian Health Station, San Juan, New Mexico 87566.
Director, Santa Clara Indian Health Center, P.O. Box 1322, Espanola, New Mexico 87532.
Director, Santo Domingo Indian Health Station, Santo Domingo, New Mexico 87052.
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501.
Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137.
Director, Southern Ute Health Center, Ignacio, Colorado 81137.
Director, Taos Indian Health Center, Taos, New Mexico 87571.
Director, Ute Mountain Ute Health Center, Towaoc, Colorado 81334.
Director, White Mesa Indian Health Station, General Delivery, Towaoc, Colorado 81334.
Director, Zia Indian Health Station, General Delivery, San Ysidro, New Mexico 87053.
Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327.
Director, Bemidji Area Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601.
Director, Ball Club Indian Health Station, Ball Club, Minnesota 56622.
Director, Cass Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633.
Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788.
Director, Inger Indian Health Station, Inger Route, Deer River, Minnesota 56636.
Director, Naytahwaush Indian Health Station, Naytahwaush, Minnesota 56566.
Director, Onigum Indian Health Station, Star Route, Walker, Minnesota 56484.
Director, Pine Point Indian Health Station, White Earth, Minnesota 56591.
Director, Ponemah Indian Health Station, Ponemah, Minnesota 56666.
Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671.
Director, Squaw Lake Indian Health Station, Squaw Lake, Minnesota 56681.
Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591.
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103.
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510.
Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417.
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022.
Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865.
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526.
Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255.
Director, Hays Indian Health Station, Hays, Montana 59527.
Director, Heart Butte Indian Health Station, Heart Butte, Montana 59448.
Director, Lodge Grass Indian Health Center, Lodge Grass, Montana 59050.
Director, Northern Cheyenne Service Unit, Lame Dear Indian Health Center, Lame Deer, Montana 59043.
Director, Pryor Indian Health Station, Pryor, Montana 59066.
Director, Polson Indian Health Center, 320–B 4th Avenue East, Polson, Montana 59860.
Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521.
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514.
Director, Wolf Point Indian Health Center, Wolf Point, Montana 59201.
Director, California Area Indian Health Service, 1825 Bell Street, Suite 200, Sacramento, California 95825–1097.
Director, Nashville Area Indian Health Service, 3310 Perimeter Hill Drive, Nashville, Tennessee 37211–4139.
Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719.
Director, Unity Regional Youth Treatment Center, P.O. Box C–201, Cherokee, North Carolina 28719.
Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515.
Director, Chilchinbeto Indian Health Station, c/o Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Chief Executive Officer, Chinle Service Unit, P.O. Drawer P.H., Chinle, Arizona 86503.
Chief Executive Officer, Crownpoint Service Unit, Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Dennebito Indian Health Station, c/o Tuba City Indian Hospital, Tuba City, Arizona 86045.
Director, Dennehotso Indian Health Center, c/o Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Dilkon Indian Health Station, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Dzilth-Na-O-Dith-Le Indian Health Center, Star Route 4, Box 5400, Bloomfield, New Mexico 87413.
Chief Executive Officer, Fort Defiance Service Unit, Fort Defiance Indian Hospital, P.O. Box 649, Fort Defiance, Arizona 86504.
Director, Fort Wingate Indian School Health Center, c/o Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301.
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301.
Director, Inscription House Indian Health Center, P.O. Box 7397, Shonto, Arizona 86044.
Chief Executive Officer, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 366, Kayenta, Arizona 86033.
Director, Leupp Indian Health Station, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Facility Director, Montezuma Creek Health Center, Montezuma Creek, Utah 84534.
Director, Pinon Indian Health Station, c/o Chinle Indian Hospital, P.O. Box P.H., Chinle, Arizona 85603.
Director, Pueblo Pintado Indian Health Station, c/o Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Rock Point Indian Health Station, c/o Chinle Indian Hospital, P.O. Box P.H., Chinle, Arizona 85603.
Director, Sanostee Indian Health Station, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Chief Executive Officer, Shiprock Service Unit, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Teec Nos Pos Indian Health Center, P.O. Drawer D, Teec Nos Pos, Arizona 85614.
Director, Toadlena Indian Health Station, c/o Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325.
Chief Executive Officer, Tsaile Indian Health Center, P.O. Box 467, Tsaile, Arizona 86556.
Chief Executive Officer, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045.
Chief Executive Officer, Winslow Service Unit, Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 N.W. 56th Street, Oklahoma City, Oklahoma 73112.
Director, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820.
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005.
Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73150.
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard & Moore, Claremore, Oklahoma 74017.
Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601.
Director, Concho Indian Health Clinic, P.O. Box 150, Concho, Oklahoma 73022.
Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436.
Facility Director, Lawrence (Haskell) Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044.
Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501.
Director, Miami Indian Health Center, P.O. Box 1498, Miami, Oklahoma 74855.
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056.
Director, Pawnee Service Unit, Pawnee Indian Service Center, RR2, Box 1, Pawnee, Oklahoma 74058.
Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801.

VOL
58
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Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464.
Director, Watonga Indian Health Center, P.O. Box 878, Watonga, Oklahoma 73772.
Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884.
Director, White Eagle Indian Health Center, P.O. Box 2071, Ponca City, Oklahoma 74601.
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981.
Director, Bylas Indian Health Center, P.O. Box 208, San Carlos, Arizona 85550.
Director, Chemehuevi Indian Health Clinic, Chemehuevi Valley, California 92363.
Director, Cibecue Indian Health Center, Cibecue, Arizona 85941.
Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344.
Director, Fort McDermitt Indian Health Station, P.O. Box 475, McDermitt, Nevada 89421.
Director, Fort McDowell Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364.
Director, Gila Crossing Indian Health Clinic, Route 1, Box 770, Laveen, Arizona 85339.
Director, Havasupai Indian Health Station, Supai, Arizona 86435.
Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034.
Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832.
Director, Peach Springs Indian Health Center, Peach Springs, Arizona 86434.
Director, Phoenix Indian School Health Center, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016.
Director, Pyramid Lake Indian Health Clinic, Nixon, Nevada 89424.
Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247.
Director, Salt River Indian Health Center, Route 1, Box 215, Scottsdale, Arizona 85256.
Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550.
Director, San Lucy Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427.
Director, Second Mesa Indian Health Center, General Delivery, Second Mesa, Arizona 86043.
Director, Sherman Indian School Health Center, 8934 Magnolia, Riverside, California 9250.
Director, Southern Nank Indian Health Clinic, 1545 [illegible] Eagle Road, Elko, Nevada 89[illegible].
Director, Stewart Indian Health Station, Stewart, Nevada 89437.
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84066.
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941.
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2829.
Director, Chemawa Indian Health Center, 3750 Chemawa Road, NE., Salem, Oregon 97305–1198.
Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155.
Director, Coeur d'Alene Indian Health Station, Coeur d'Alene, Idaho 83814.
Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203.
Director, Inchelium Indian Health Center, Inchelium, Washington 99138.
Director, Kamiah Indian Health Station, Kamiah, Idaho 83536.
Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington 98357.
Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapwai, Idaho 83540.
Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225.
Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144.
Director, Queets Indian Health Station, c/o Service Unit Director, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587.
Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587.
Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Oregon 99040.
Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington 99040.
Director, Yakima Service Unit, Yakima Indian Health Center, 401 Buster Road, Toppenish, Washington 98948.
Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801.
Director, Office of Health Program Research & Development, Indian Health Service, 7900 S. J. Stock Road, Tucson, Arizona 85746–9352.
Director, Santa Rosa Indian Health Center, HCR Box 700, Sells, Arizona 85634.
Director, San Xavier Indian Health Center, 7900 S. J. Stock Road, Tucson, Arizona 85746–9352.
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634.

Appendix 2—Federal Archives and Records Centers

District of Columbia, Maryland Except U.S. Court Records for Maryland, Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.
GSA Region 1—Connecticut, Maine, and Rhode Island, Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154.
GSA Region 2—New York, Federal Archives and Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002.
GSA Region 3—Pennsylvania, Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144.
GSA Region 4—Alabama, Florida, Mississippi and North Carolina, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.
GSA Region 5—Wisconsin, Minnesota and U.S. Court Records for Michigan, Federal Archives and Records Center, 7358 South Pulaski Rd., Chicago, IL 60629.
GSA Region 5—Michigan Except U.S. Court Records, Federal Records Center, 3150 Springboro Road, Dayton, OH 45439.
GSA Region 6—Kansas, Iowa, and Nebraska, Federal Archives and Records Center, 2306 East Bannister Rd., Kansas City, MO 64131.
GSA Region 7—Louisiana, New Mexico, Oklahoma and Texas, Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, TX 76115.
GSA Region 8—Colorado, Wyoming, Utah, Montana, North Dakota and South Dakota, Federal Archives and Records Center, P.O. Box 25307, Denver, CO 80225.
GSA Region 9—California, Except Southern California, and Nevada, Except Clark County, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066.
GSA Region 9—Arizona: Clark County, Nevada and Southern California (Counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial Inyo, and San Diego), Federal Archives and Records Center, 24000 Avila Road, Laguna Niguel, CA 92677.
GSA Region 10—Washington, Oregon, Idaho and Alaska, Federal Archives and Records Center, 6125 Sand Point Way, Seattle, WA 98115.

Dated: June 24, 1993.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 93–15777 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 19466, April 14, 1993), is amended to reflect the reorganization of the National Institute of Environmental Health Sciences (NIEHS) (HNV), National

Institutes of Health (NIH). This reorganization will: (1) Transfer the functions of the Division of Toxicology Research and Testing (DTRT) (HNV5) and the Division of Biometry and Risk Assessment (DBRA) (HNV6) to the Division of Intramural Research (HNV2) and abolish the DTRT and the DBRA; and (2) revise the functional statement of the Division of Intramural Research (HNV2). This reorganization will consolidate the NIEHS intramural functions within the Division of Intramural Research in order to facilitate the pursuit of new research opportunities, and promote the highest level of research in environmental health sciences, environmental medicines, environmental epidemiology, and toxicology.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *Division of Intramural Research (HNV2),* delete the functional statement in its entirety and insert the following:

(1) Plans and conducts the Institute's basic laboratory and clinical research, which encompasses the environmental areas of medicine, biology, pharmacology, neurosciences and pulmonary pathobiology, chemistry, toxicology, genetics, and biophysics;

(2) Plans and conducts a program of toxicology and carcinogenesis studies to establish and characterize the toxicity of chemicals and other environmental agents, and develop, validate, and evaluate such methods;

(3) Plans and conducts basic and applied research related to environmental health in the areas of risk assessment, statistics, biomathematics, and epidemiology;

(4) Ensures optimal utilization of available resources in the attainment of Institute objectives;

(5) Evaluates research efforts and establishes intramural priorities;

(6) Integrates ongoing and new research activities into the division structure;

(7) Collaborates with other NIH Institutes, divisions and programs;

(8) Maintains an active association with peer groups in other Federal agencies, academic and private institutions, and international organizations with similar environmental health research interests, and disseminates research results; and

(9) Provides advice to the Institute Director and staff on matters of scientific interest.

(2) Under the heading *Division of Toxicology Research and Testing (HNV5),* and the *Division of Biometry and Risk Assessment (HNV6),* delete the title and functional statements in their entirety.

Delegations of Authority Statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: July 11, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93–15865 Filed 7–2–93; 8:45 am]

BILLING CODE 4140–01–M

[GN# 2100]

President's Council on Physical Fitness and Sports; Termination of Agreement

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of termination of agreement.

SUMMARY: The President's Council on Physical Fitness and Sports (PCPFS) has decided to continue the PCPFS' President's Challenge and to terminate its Agreement to unify two physical fitness testing programs.

FOR FURTHER INFORMATION CONTACT: Christine G. Spain, M.A., Director, Research, Planning & Special Projects, PCPFS, 701 Pennsylvania Avenue, NW., suite 250, Washington, DC 20004, 202–272–3424.

SUPPLEMENTARY INFORMATION: On July 20, 1992, a notice was published in the **Federal Register** (57 FR 32022) inviting public comment concerning the appropriateness of the PCPFS and the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) entering into an agreement to develop a uniform national physical fitness testing program. The full text of the Agreement also was published. Two hundred and ten comments were received in response to the notice, 85 in favor of the merger and 125 opposed. Based upon a decision of the then Assistant Secretary for Health, Dr. James O. Mason, the comments were reviewed by the Department's Office of General Counsel, followed by a separate review by a departmentally-approved five-member peer review panel. The PCPFS has carefully considered the views expressed in the public comments as well as those of the members of the panel and has concluded that the two tests—AAHPERD's "Physical Best" and the PCPFS' "President's Challenge"—should continue to operate independently and not be merged. The effect of this decision is to terminate the Memorandum of Agreement between the PCPFS and AAHPERD.

Dated: June 28, 1993.

Matthew Guidry,

Acting Executive Director, PCPS.

[FR Doc. 93–15839 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories that Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three

rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on- site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, Georgia 31604, 912–244–4468

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (address, phone, and name changed on 5/17/93: formerly MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485, (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City,

OK 73109, 800–749–3784, (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories, Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (Formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory withdrew from the National Laboratory Certification Program during June 1993:

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209–221–5655/800–448–7600

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–15877 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3556; FR–3357–C–02]

NOFA for the Operating Assistance and Capital Improvement Loan Components of the Flexible Subsidy Program for FY 1993; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability (NOFA) for Fiscal Year 1993; correction.

SUMMARY: On June 7, 1993 (58 FR 32022), the Department published a NOFA to announce the availability of funding for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program for Fiscal Year (FY) 1993. This document makes a correction to Section I.D.3.c. of the June 7, 1993 NOFA, which concerns the source of the owner contribution.

DATES: The due date for submission of applications by project owners in response to the June 7, 1993 NOFA is set forth in the NOFA at 58 FR 32022. This document does not change the due date.

FOR FURTHER INFORMATION CONTACT: Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2654 (voice) or (202) 708–3938 (TDD for hearing-

impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The FY 1993 NOFA for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program was published on June 7, 1993 (58 FR 32022). This document corrects an error that appeared in Section I.D.3.c. of the June 7, 1993 NOFA at 58 FR 32025, middle column, which concerns the source of the owner contribution. In that section of the NOFA, the Department stated that the owner contribution may not be taken from project income, "but may be made from distributions of surplus cash or residual receipts as appropriate, as defined in and permitted under the Regulatory Agreement." The language in quotations was inadvertently included.

The reference to "residual receipts" is not contained in the existing Flexible Subsidy regulations at 24 CFR part 219, and therefore the use of distribution of residual receipts as an owner contribution is not permitted by regulation. (See §§ 219.205(b)(2) and 219.305(c)(2) of the final rule published on July 21, 1992 (57 FR 32398).) Although the term "surplus cash" is referenced in existing §§ 219.205(b)(2) and 219.305(c)(2) of the Flexible Subsidy regulations, the Department is publishing a proposed rule that will propose to remove this term from these regulatory sections. The Department's experience is that, in practice, an owner contribution is not made from distributions of surplus cash, and the inclusion of this term in the regulatory sections concerning owner contribution only leads to confusion. As the proposed rule will point out, notably, any distributions to which a project owner is entitled, e.g., the up-to six percent distribution available to a limited distribution owner, once they have been distributed, can be applied toward an owner's contribution. Conversely, "surplus" funds not taken as a distribution by the owner, and that are applied or to be applied to project related accounts cannot be applied toward an owner's contribution.

Accordingly, for the reasons stated above, the following correction is made to FR.Doc.93–13288 published on June 7, 1993 at 58 FR 32022.

Section I.D.3.c.—[Corrected]

1. On page 58 FR 32025, in the second column, the first sentence of paragraph c of Section I.D.3 is corrected to read as follows (the remainder of paragraph c, as set forth on page 58 FR 32025, middle column, is unchanged):

c. *Source of contribution.* This owner contribution may not be taken from project income. * * *

Dated: June 29, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–15827 Filed 7–2–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–070–4210–05; COC 0125484]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Mesa County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In response to an application from Mesa County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Mesa County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands currently leased to Mesa County for landfill purposes (R&PP lease COC–0125484) would continue to be used for landfill purposes. An additional 160 acres of contiguous land would be developed for a waste management park and expansion of the existing landfill.

Ute Principal Meridian

T. 2S., R. 1E.,

Currently leased for landfill purposes:

Sec. 4: S½NW¼, N½SW¼

Sec. 5; lot 7, S½NE¼, SE¼NW¼

Additional lands (not currently leased):

Sec. 4; SW¼NE¼, W½SE¼,

Sec. 9; NW¼NE¼

Containing 449.51 acres, more or less.

The lands are not needed for Federal purposes. Conveyance of surface and mineral estates is consistent with current BLM land use planning and would be in the public interest.

A patent, if issued, will be subject to the following reservations, terms, and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302.)

3. A right-of-way thereon for ditches and canals constructed by authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

4. Those rights for overhead telephone line purposes as have been granted to Mountain States Telephone and Telegraph, its successors and assigns, by right-of-way Colorado 27354 under the Act of February 15, 1901, as amended (43 U.S.C. 959) across the SW¼NE¼, SE¼NW¼, NW¼SE¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

5. Those rights for road purposes as have been granted to Mesa County Road Department, its successors and assigns, by right-of-way Colorado 34353 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼ and NW¼SE¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

6. Those rights for overhead powerline purposes as have been granted to Grand Valley Rural Power, its successors and assigns, by right-of-way Colorado 40209 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼, SE¼NW¼ and NE¼SW¼ of section 4, T. 2S., 1E., Ute Principal Meridian.

7. Those rights for overhead telephone line purposes as have been granted to Mountain States Telephone and Telegraph, its successors and assigns, by right-of-way Colorado 40252 under the Act of October 21, 1976 (43 U.S.C. 1761) across the S½NW¼ and NE¼SW¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

8. Those rights for road purposes as have been granted to Orchard Mesa Aggregates, its successors and assigns, by Colorado 50785 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼ and SE¼NW¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

9. Those rights for buried telephone line purposes as have been granted to US West Communications, its successors and assigns, by Colorado 54593 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼ and NW¼SE¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

10. As to the SW¼NE¼, SE¼NW¼, N½SW¼ and W½SE¼ of section 4; lot 7, the S½NE¼, and SE¼NW¼ of section 5; and the NW¼NE¼ of section 9, T. 2S., R. 1E., Ute Principal Meridian, Colorado, these lands are withdrawn for power purposes by Power Site Classification No. 392, approved July 29, 1948. The United States reserves the right to itself, its permittees or licensees to enter upon, occupy and use any part or all of the lands necessary for power purposes under part 1 of the Federal Power Act of August 26, 1935, as amended (16 U.S.C. 818) upon payment of damages to buildings or other

improvements caused by such entry. Any improvements or structures placed upon the land which shall be found to interfere with such power development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees.

11. Mesa County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from: Ute Principal Meridian, Colorado, T. 2S, R. 1E, section 4: SW¼NE¼, S½NW¼, N½SW¼, W½SE¼; section 5: lot 7, S½NE¼, SE¼NW¼; section 9: NW¼NE¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

R&PP *CLASSIFICATION* COMMENTS: Interested parties may submit comments involving the suitability of the land for a landfill/waste management park.

Comments on the classification are restricted to whether the land is physically suited for a landfill/waste management park, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

R&PP *APPLICATION* COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill/waste management park.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado.

Mesa County has also filed an application for the conveyance of the federal mineral estate for the above described lands under the provisions of section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719) and the regulations at 43 CFR part 2720.

The following lands, currently leased to Mesa County for landfill purposes are not proposed for conveyance. If a patent is issued, the R&PP lease will be terminated. Upon termination of the lease, the R&PP lease classification will be terminated.

Ute Principal Meridian

T. 2S., R. 1E.,

Section 5: lot 8, north ten chains of lot 5, N½SW¼SW¼

Containing 68.71 acres, more or less.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and conveyance of the mineral estate under the Federal Land Policy and Management Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the applications, or two years from the date of filling of the applications, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the lands to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: June 25, 1993.

Tim Hartzell,

District Manager.

[FR Doc. 93–15772 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–JB–U

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice Of Proposed Cooperative Research and Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with the U.S. Department of Agriculture (USDA) and the Electric Power Research Institute (EPRI). The purpose of the CRADA is to conduct joint research regarding regional-scale watershed modeling under conditions of change. Any other organization interested in pursuing the possibility of a CRADA for similar kings of activities with the USGS should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Office of the Assistant Director for Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 104, Reston, VA 22092.

FOR FURTHER INFORMATION CONTACT: Dr. Anton L. Inderbitzen, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: June 18, 1993.

Anton L. Inderbitzen,

Deputy Assistant Director for Research.

[FR Doc. 93–15810 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–31–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Rodney Graybill, Newark, NY. PRT–777253.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. J.M. Mullins, Grahamstown. South Africa, for the purpose of enhancement of survival of the species.

Applicant: Philadelphia Zoological Garden, Philadelphia, PA. PRT–777503.

The applicant requests a permit to import three male and three female bicolored tamarins (*Sanfuinus b. bicolor*) which were captive-born at Rio de Janeiro Primate Center, Rio de Janeiro, Brazil, for enhancement of propagation.

Written data or comments should be submitted to the Director, U.S. Fish and

VOL 58 ISS 127 JL 6 1993 UMI

Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX (703/358–2281).

Dated: June 30, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–15838 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 26, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 21, 1993.

Beth L. Savage,

Acting Chief of Registration, National Register.

CALIFORNIA

Napa County

Oakville Grocery, 7856 St. Helena Hwy., Oakville, 93000664

Riverside County

Arlington Branch Library and Fire Hall, 9556 Magnolia Ave., Riverside, 93000668

San Benito County

Hawkins, Joel and Rena, House (Hollister MPS), 801 South St., Hollister, 93000669

San Luis Obispo County

Powerhouse, The, Jct. of S. Perimeter Rd. and Cuesta Ave., NE corner, San Luis Obispo, 93000670

Santa Clara County

Milpitas Grammer School, 160 N. Main St., Milpitas, 93000667

COLORADO

Grand County

Grand Lake Lodge, 15500 US 34, Grand Lake, 93000663

CONNECTICUT

Litchfield County

Catlin, J. Howard, House, 14 Knife Shop Rd., Litchfield, 93000672

KENTUCKY

Christian County

Alumni—Latham—Mooreland Historic District, Alumni Ave., Latham Ave. and Mooreland Dr., Hopkinsville, 93000696

Washington County

Hamilton Farm, US 150 0.7 mi. W of Parker's Branch crossing, Springfield vicinity, 93000695

Wolfe County

Hurst, William L., Law Office, N. Washington St., Campton, 93000697

LOUISIANA

Orleans Parish

LeBeuf Plantation House, 101 Carmick, US Naval Support Activity, New Orleans, 93000694

MARYLAND

Frederick County

Willard, George, House, 4804 Old Middletown Rd., Jefferson vicinity, 93000665

NEVADA

Clark County

Huntridge Theater, 1208 E. Charleston Blvd., Las Vegas, 93000686

Storey County

Chollar Mansion, 565 S. D St., Virginia City, 93000689

Parish House, 109 S. F St., Virginia City, 93000688

Piper—Beebe House, 2 S. A St., Virginia City, 93000684

Prescott, C. J., House, 12 Hickey St., Virginia City, 93000687

Washoe County

Southside School, 190 E. Liberty, Reno, 93000683

Veteran's Memorial School, 1200 Locust St., Reno, 93000690

White Pine County

Capital Theater, 460 Aultman St., Ely, 93000692

Central Theater, 145 W. 15th Ave., Ely, 93000691

Ely L. D. S. Stake Tabernacle, 900 Aultman St., Ely, 93000685

Nevada Northern Railway East Ely Yards and Shops, 11th St. E., N terminus, Ely, 93000693

Carson City Independent City

Olcovich—Meyers House, 214 W. King St., Carson City, 93000682

NEW MEXICO

Rio Arriba County

Ku-ouinge (Late Prehistoric Cultural Developments Along the Rio Chama and Tributaries MPS), Address Restricted, Espanola vicinity, 93000674

Pons ipa'Akeri (Late Prehistoric Cultural Developments Along the Rio Chama and Tributaries MPS), Address Restricted, Ojo Caliente vicinity, 93000673

Posi-ouinge (Late Prehistoric Cultural Developments Along the Rio Chama and Tributaries MPS), Address Restricted, Ojo Caliente vicinity, 93000675

NEW YORK

Chautauqua County

Pennsylvania Rail Station, Water St., Mayville, 93000680

Madison County

Nelson Welsh Congregational Church, Jct. of Welsh Church and Old State Rds., Nelson vicinity, 93000681

Suffolk County

Beachbend (Stony Brook Harbor Estates MPS), Smith Ln.,1 Nissequogue, 93000698

By-the-Harbor (Stony Brook Harbor Estates MPS), Moriches Rd., Nissequogue, 93000699

East Farm (Stony Brook Harbor Estates MPS), Harbor Rd., N side, at Shep Jones Ln., Head of the Harbor, 93000700

Harbor House (Stony Brook Harbor Estates MPS), Spring Hollow Rd., Nissequogue, 93000701

Land of Clover (Stony Brook Harbor Estates MPS), Long Beach Rd., S side, Nissequogue, 93000702

Phyfe, James W. and Anne Smith, Estate (Stony Brook Harbor Estates MPS), 87 Stillwater Rd., Nissequogue, 93000704

Rassapeaque (Stony Brook Harbor Estates MPS), Long Beach Rd., S side, Nissequogue, 93000705

Ryan, William J., Estate (Stony Brook Harbor Estates MPS), Moriches Rd., Nissequogue, 93000706

Shore Cottage (Stony Brook Harbor Estates MPS), Harbor Rd., E side, Head of the Harbor, 93000707

The Mallows (Stony Brook Harbor Estates MPS), Emmet Way, Head of the Harbor, 93000703

Wetherill, Kate Annette, Estate (Stony Brook Harbor Estates MPS), Harbor Hill Rd., S side, Head of the Harbor, 93000708

Woodcrest (Stony Brook Harbor Estates MPS), Moriches Rd., Nissequogue, 93000709

OHIO

Franklin County

Griswold Memorial Young Women's Christian Association, 65 S. Fourth St., Columbus, 93000671

OKLAHOMA

Stephens County

Chrislip, H. C., House, 709 N. 14th St., Duncan, 93000677

VERMONT

Windsor County

Brook Farm (Agricultural Resources of Vermont MPS), Twenty Mile Stream Rd. NW of Cavendish, Cavendish vicinity, 93000676

WISCONSIN

Portage County

Folding Furniture Works Building, 1020 First St., Stevens Point, 93000668

[FR Doc. 93-15836 Filed 7-2-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-32 (Sub-No. 52X) and No. AB-355 (Sub-No. 4X)]

Boston and Maine Corp—Abandonment Exemption—In Strafford County, NH Springfield Terminal Railway Co.—Discontinuance Exeption—In Strafford County, NH

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over approximately 2.12-miles of rail line between milepost D.7.71 and milepost D.9.83 in Rochester, Strafford County, NH.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) has been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 7, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 19, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 28, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, N. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 13, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-15856 Filed 7-2-93; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB-32 (Sub-No. 50X) and No. AB-355 (Sub-No. 2X)]

Boston and Maine Corp.—Abandonment Exemption—In Hillsboro County, NH and Springfield Terminal Railway Co.—Discontinuance Exemption—In Hillsboro County, NH

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over 1.61 miles of rail line between milepost W.44.39 and milepost W.46.00 in Nashua, Hillsboro County, NH.[1]

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7; 49 CFR 1105.8; 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicants, in their verified notice, indicated a proposed consummation date of July 19, 1993. Because the verified notice was not filed until June 8, 1993, consummation should not have been proposed to take place prior to July 28, 1993. The applicants' representative has confirmed the corrected consummation date.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues

Continued

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 16, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should also be sent to applicants' representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses environment and historic impacts, if any, from this abandonment and discontinuance. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 9, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15857 Filed 7–12–93; 8:45 am]

BILLING CODE 7035–01–M

(whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–32 (Sub-No. 51X and No. AB–355 (Sub-No. 3X]

Boston and Maine Corp. Abandonment Exemption—In Essex County, MA and Springfield Terminal Railway Co.—Discontinuance Exemption—In Essex County, MA

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over approximately 0.82 miles of rail line between Mileposts 0.00 and 0.82, in Salem, Essex County, MA.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the compliant within the 2-year period, and (4) that the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment and discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be failed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 1993, unless stayed pending reconsideration. Petitions to say that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 16, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by July 9, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15858 Filed 7–2–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment (SEE) in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandoment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Settlement and Stipulation Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Clean Water Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Oconomowoc Electroplating Co., Inc.*, Case No. 90–C–735, was lodged on June 22, 1993, with the United States District Court for the Eastern District of Wisconsin.

The proposed Consent Decree resolves claims of the United States against defendant Oconomowoc Electroplating Co., Inc. ("OECI"). The United States' complaint alleged claims under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Oconomowoc Electroplating Co. Site in Ashippun, Wisconsin, and under Section 309 of the Clean Water Act, 33 U.S.C. 1309, for violations of the National Pollutant Discharge Elimination Permit issued to OECI by the Wisconsin Department of Natural Resources. Under the terms of the Consent Decree, OECI agrees to provide the United States access to its facility and to refrain from further violations of the Clean Water Act. Settlement terms are based in part on OECI's inability to pay any penalty or contribute to the United States' response costs at the Oconomowoc Electroplating Co. Site. OECI is no longer operating.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Oconomowoc Electroplating Co., Inc.*, DOJ Ref. #90–11–3–647 and #90–5–1–1–3440.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building Room 330, 517 East Wisconsin Ave., Milwaukee Wisconsin 53202; the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–15763 Filed 7–2–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE ANTITRUST DIVISION

Notice Pursuant To The National Cooperative Research Act of 1984; Inter Company Collaboration For Aids Drug Development

Notice is hereby given that, on May 27, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Inter Company Collaboration For Aids Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: AB Astra, Sodertalje, Sweden; Bayer Aktiengesellschaft, Leverkusen, Germany; Boehringer Ingelheim Pharmaceuticals, Inc., Ridgefield, CT; Bristol-Myers Squibb Company, New York, NY; Bristol-Myers Squibb Holdings Limited, Ickenham, Uxbridge, England; Bristol-Myers Squibb, Brussels, Belgium; Bristol-Myers Squibb Canada, Inc., North York, Ontario, Canada; Bristol-Myers Squibb Pharmaceuticals Limited, Middlesex, England; Bristol-Myers Squibb S.A., Paris, France; Bristol-Myers Squibb G.m.b.H., Munich, Germany; Bristol-Myers Squibb S.p.A., Rome, Italy; E. R. Squibb & Sons, Inc., Princeton, NJ; E. R. Squibb & Sons Limited, Middlesex, England; Mead Johnson & Company, Evansville, IN; Squibb Corporation, Princeton, NJ; Burroughs Wellcome, Co., Research Triangle Park, NC; The Wellcome Foundation Limited, London, England; Burroughs Wellcome, Inc., Kirkland, Quebec, Canada; The Du Pont Merck Pharmaceutical Company, Wilmington, DE; Eli Lilly and Company, Indianapolis, IN; Glaxo Holdings plc, London, England; Glaxo Inc., Research Triangle Park, NC; Hoechst AG, Frankfurt, Germany; Hoechst-Roussel-Pharmaceuticals Inc., Somerville, NJ; Hoffmann-La Roche Inc., Nutley, NJ; F. Hoffmann-La Roche Ltd., Basel, Switzerland; Merck & Co., Inc., Whitehouse Station, NJ; Pfizer Inc., New York, NY; Sigma-Tau S.p.A., Rome, Italy; SmithKline Beecham plc, Brentford, Middlesex, England; Syntex, Palo Alto, CA and all other affiliates and subsidiaries of the above listed companies. The parties have agreed to the mutual exchange of scientific research and development data on HIV antiviral drugs and of HIV antiviral compounds for comparative and/or concomitant AIDS research and development. The parties may also develop standardized preclinical testing procedures, assays, and other standards and tests for HIV antiviral compounds.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–15764 Filed 7–2–93; 8:45 am]

BILLING CODE 4410–01–M

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Medical Center Complex (FMCC) at Fort Devens, Worcester County, MA

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS); notice of intent to prepare an Environmental Assessment (EA) on the hospital and building #1677.

Summary

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal Medical Center Complex (FMCC) is needed in its system. A portion of Fort Devens, Massachusetts will be evaluated as a possible site for the FMCC. An Environmental Assessment will be prepared on the conversion of the existing hospital to accommodate 144 medical beds, the addition of an approximately 150 bed psychiatric wing, and use of Building #1677 as a warehouse. A Draft Environmental Impact Statement will be prepared on new construction which would include two detention housing units, with a combined capacity of approximately 320. The housing units will house United States Marshals' detainees and those inmates awaiting return to their parent institution after medical treatment. Also constructed will be a 256 bed low security unit to house the work cadre, a 512 bed minimum security satellite camp, and administrative space for staff. The Environmental Assessment will be incorporated into the DEIS by reference.

Additionally, the site would be used for road access, administration, programs and services, parking, and support facilities. Enclosed and secure exercise areas will be part of the facility.

In the process of evaluating the tract of land, several aspects will receive a detailed examination including utilities,

traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement. A public scoping meeting will be held at 7 p.m. on Tuesday, July 20, 1993, at the Fort Devens Officers' Club at Fort Devens. The meeting will be well publicized and will be held at a time that will make the meeting possible for the public and interested agencies or organizations to attend. A number of informal meetings have already been held, and other public meetings will be conducted by representatives of the Bureau of Prisons.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: Natalie A. Landy, Site Selection Specialist, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514–6470.

Dated: June 30, 1993.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review.

[FR Doc. 93–15841 Filed 7–2–93; 8:45 am]

BILLING CODE 4410–05–M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Public Meeting

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on July 15, 1993, in Washington DC. The First session of the meeting will convene at 9:30 a.m. and adjourn at approximately 12:30 p.m., and the second session of the meeting will convene at 1:30 p.m. and adjourn at approximately 5 p.m. Both sessions of the meeting will be held in the Main Conference Room of the Federal Judiciary Building at One Columbus Circle, NE.

AUTHORITY: This public meeting will be the eleventh one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States and the Conference of State Chief Justices. The National Commission, established by Public Law 101–650 (Title IV), is assigned three statutory duties. The first is to investigate ad study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges.

The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legisltive and administrative actions as are considered appropriate. The due date for the Commission's final report is August 1, 1993.

The Commission is not authorized to consider specific complaints against Federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, a good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: Both sessions of the meeting will be open to the public. A portion of either session of the meeting may be held in executive session to consider administrative matters involving privacy interests.

MATTERS TO BE CONSIDERED: This meeting will be the fourth in a series of Commission meetings designed to consider proposed recommendations for legislative or administrative action which may be incorporated into the Commission's final report.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, Suite 690, 2100 Pennsylvania Ave., NW., Washington, DC, 20037–3202; or call (202) 254–8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

William J. Weller,

Deputy Director.

[FR Doc. 93–15813 Filed 7–2–93; 8:45 am]

BILLING CODE 6820–DB–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on June 3, 1993 (58 FR 31554). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1 and May 31, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

Schedule A

No Schedule A authorities were established or revoked during May 1993.

Schedule B

No Schedule B authorities were established or revoked during May 1993.

Schedule C

Action

Confidential Assistant to the Special Assistant to the Director. Effective May 12, 1993.

Special Assistant to the Special Assistant to the Director. Effective May 12, 1993.

Confidential Assistant to the Special Assistant to the Director. Effective May 12, 1993.

Special Assistant to the Assistant Director of Vista/Student Community Service Programs. Effective May 25, 1993.

Agency for International Development

Special Assistant to the Administrator of the Agency for International Development. Effective May 11, 1993.

Department of Agriculture

Private Secretary to the Assistant Secretary for Congressional Relations. Effective May 5, 1993.

Private Secretary to the Under Secretary for Small Community and Rural Development. Effective May 13, 1993.

Confidential Assistant to the Administrator, Food and Nutrition Service. Effective May 13, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 17, 1993.

Staff Assistant to the Chief, Soil Conservation Service. Effective May 27, 1993.

Confidential Assistant to the Assistant Secretary for Natural Resources and Environment. Effective May 27, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 27, 1993.

Staff Assistant to the Secretary of Agriculture. Effective May 27, 1993.

Private Secretary to the Deputy Secretary. Effective May 27, 1993.

Staff Assistant to the Secretary of Agriculture. Effective May 27, 1993.

Confidential Assistant to the Administrator of the Foreign Agricultural Service. Effective May 28, 1993.

Department of Commerce

Confidential Assistant to the Deputy Assistant Secretary for White House Liaison. Effective May 4, 1993.

Confidential Assistant to the Deputy Executive Secretary. Effective May 5, 1993.

Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective May 11, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Investigations, International Trade Administration. Effective May 12, 1993.

Special Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration. Effective May 18, 1993.

Director, Office of Congressional Affairs to the Assistant Secretary for Communications and Information. Effective May 21, 1993.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 24, 1993.

Confidential Assistant to the Under Secretary for Economic Affairs. Effective May 25, 1993.

Special Assistant to the Deputy Assistant Secretary for White House Liaison. Effective May 27, 1993.

Department of Defense

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective May 10, 1993.

Law Clerk to the Chief Judge, United States Court of Military Appeals. Effective May 17, 1993.

Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Atomic Energy. Effective May 27, 1993.

Department of Education

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 5, 1993.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 5, 1993.

Confidential Assistant to the Deputy Secretary. Effective May 5, 1993.

Confidential Assistant to the Chief of Staff. Effective May 7, 1993.

Confidential Assistant to the Counselor to the Secretary. Effective May 7, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 7, 1993.

Confidential Assistant to the Deputy Secretary. Effective May 11, 1993.

Deputy Chief of Staff to the Chief of Staff, Office of the Secretary. Effective May 12, 1993.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective May 13, 1993.

Special Assistant to the Secretary of Education. Effective May 18, 1993.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective May 20, 1993.

Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 20, 1993.

Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 21, 1993.

Special Assistant to the Chief of Staff. Effective May 25, 1993.

Confidential Assistant to the Assistance Secretary for Intergovernmental and Interagency Affairs. Effective May 25, 1993.

Department of Energy

Executive Assistant to the Chairman of the Federal Energy Regulatory Commission. Effective May 11, 1993.

Department of Health and Human Services

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation. Effective May 5, 1993.

Congressional Liaison Specialist to the Deputy Assistant for Legislation (Congressional Liaison). Effective May 19, 1993.

Special Assistant to the Associate Commissioner for Public Affairs. Effective May 20, 1993.

Special Assistant for Policy to the Deputy Commissioner for Policy. Effective May 20, 1993.

Speechwriter to the Director of Speechwriting. Effective May 20, 1993.

Confidential Assistant (Advance) to the Director, Office of Advance. Effective May 20, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective May 21, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective May 26, 1993.

Special Assistant to the Chief of Staff. Effective May 26, 1993.

Senior Advisor to the Assistant Secretary for Planning and Evaluation. Effective May 26, 1993.

Department of Housing and Urban Development

Special Assistant to the Deputy Assistance Secretary for Single Family Housing, Federal Housing Commission. Effective May 17, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective May 17, 1993.

Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs. Effective May 17, 1993.

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective May 17, 1993.

Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development. Effective May 17, 1993.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective May 17, 1993.

Special Assistant to the Assistant Secretary for Housing Federal Housing Commissioner. Effective May 17, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective May 17, 1993.

Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations. Effective May 17, 1993.

Special Assistant to the Assistant Secretary for Administration. Effective May 17, 1993.

Department of the Interior

Special Assistant to the Assistant to the Secretary. Effective May 21, 1993.

Special Assistant to the Director, Bureau of Land Management. Effective May 21, 1993.

Special Assistant to the Director, Bureau of Land Management. Effective May 21, 1993.

Special Assistant to the Assistant Secretary of Policy, Management and Budget. Effective May 24, 1993.

Department of Labor

Intergovernmental Officer to the Director, Office of Intergovernmental Affairs. Effective May 12, 1993.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Special Assistant to the Secretary of Labor. Effective May 12, 1993.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Special Assistant to the Deputy Secretary. Effective May 27, 1993.

Department of State

Staff Assistant to the Under Secretary for Management. Effective May 10, 1993.

Staff Assistant to the Secretary of State. Effective May 11, 1993.

Special Assistant to the Secretary of State. Effective May 11, 1993.

Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective May 11, 1993.

Staff Assistant to the Under Secretary for Management. Effective May 17, 1993.

Special Assistant to the Under Secretary for Management. Effective May 17, 1993.

Legislative Officer to the Under Secretary for Management. Effective May 21, 1993.

Special Assistant to the Legal Advisor. Effective May 24, 1993.

Protocol Officer (Visits) to the Foreign Affairs Officer/Assistant Chief of Protocol. Effective May 26, 1993.

Special Assistant to the Assistant Secretary for African Affairs, Bureau of African Affairs. Effective May 27, 1993.

Department of Transportation

Scheduling Assistant to the Chief of Staff. Effective May 3, 1993.

Scheduling Assistant to the Chief of Staff. Effective May 3, 1993.

Special Assistant to the Administrator, Federal Aviation Administration. Effective May 7, 1993.

Special Assistant to the Associate Administrator for Motor Carriers, Federal Highway Administration. Effective May 7, 1993.

Director, Executive Secretariat to the Secretary. Effective May 24, 1993.

Department of the Treasury

Confidential Assistant to the Commissioner of Customs. Effective May 4, 1993.

Staff Assistant to the Assistant Secretary of Economic Policy. Effective May 5, 1993.

Staff Assistant to the Deputy Assistant Secretary (Public Liaison). Effective May 20, 1993.

Deputy to the Assistant Secretary (Legislative Affairs). Effective May 27, 1993.

Environmental Protection Agency

Congressional Liaison Assistant to the Director of Congressional Liaison. Effective May 3, 1993.

Federal Emergency Management Agency

Supervisory Public Affairs Specialist to the Director, Federal Emergency Management Agency. Effective May 26, 1993.

Federal Maritime Commission

Administrative Assistant to the Chairman. Effective May 21, 1993.

General Services Administration

Congressional Liaison Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective May 27, 1993.

U.S. International Trade Commission

Staff Assistant to the Commissioner. Effective May 19, 1993.

Interstate Commerce Commission

Confidential Assistant to the Chairman of the Interstate Commerce Commission. Effective May 17, 1993.

Office of the United States Trade Representative

Private Sector Liaison to the Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison. Effective May 4, 1993.

Confidential Assistant to the Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison to the Assistant United States Trade Representative. Effective May 4, 1993.

Private Sector Liaison to the Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison. Effective May 4, 1993.

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective May 7, 1993.

Confidential Assistant to the General Counsel. Effective May 11, 1993.

Supervisory Public Affairs Specialist to the Assistant United States Trade Representative for Public Affairs. Effective May 19, 1993.

Confidential Assistant to the United States Trade Representative. Effective May 19, 1993.

Pension Benefit Guaranty Corporation

Assistant Executive Director for Legislative Affairs to the Executive Director. Effective May 19, 1993.

Staff Assistant to the Deputy Executive Director. Effective May 20, 1993.

United States Information Agency

Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs. Effective May 27, 1993.

United States Tax Court

Secretary (Confidential Assistant) to the Judge, United States Tax Court. Effective May 20, 1993.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–15807 Filed 7–2–93; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Determination Under Section 305 of the Trade Agreements Act of 1979

Pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515) and the authority delegated to me by the President pursuant to Presidential Determination 93–29, I hereby identify Japan as a country that maintains in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States

businesses. Pursuant to section 305(g)(2) of the Trade Agreements Act of 1979, as amended, on behalf of the President, I hereby determine that immediate imposition of the sanctions specified in section 305(g)(1)(B) of the Act would harm the public interest of the United States, and accordingly postpone imposition of those sanctions so that they will take effect November 1, 1993.

Reasons for Determination

On April 30, 1993, in the Administration's annual report to the Congress under title VII of the Omnibus Trade and Competitiveness Act of 1988 (section 305 of the Trade Agreements Act of 1979, as amended), the Administration identified Japan for the discrimination in the procurement of construction, architectural and engineering services. Specifically cited was anticompetitive practices in Japan's construction market. Japan extensively uses the "designated bidder system," which routinely excludes U.S. bidders. Japan also maintains non-transparent administrative processes that provide an advantage to Japanese bidders at the expense of U.S. businesses. Further, Japan may have violated the 1991 Major Projects Arrangement (MPA) and has been unwilling to significantly improve the MPA and its coverage.

If the 60-day period of consultations specified in the statute is not successful in resolving U.S. concerns, the President is required to make this determination. Although the United States held consultations with the Japanese to address the practices cited in the title VII report, U.S. concerns have not yet been addressed by Japan in a satisfactory manner. Therefore, pursuant to the requirements of the statute, I have determined to identify Japan. However, the Government of Japan has agreed to negotiate with the U.S. to remove the discriminatory practices on the basis of a U.S. proposal. On this basis, I am postponing implementation of the sanctions until November 1, 1993.

This determination shall be published in the **Federal Register.**

Michael Kantor,

U.S. Trade Representative.

[FR Doc. 93–16005 Filed 7–2–93; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of Sanctions With Respect to Japan Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Postponement until November 1, 1993 of implementation of prohibition of awards of contracts by federal agencies for products and services from Japan.

SUMMARY: On June 30, 1993, the United States Trade Representative announced that the effective date of the prohibition on awards of contracts by federal agencies for products and services of Japan, scheduled to go into effect on June 30, was being postponed until November 1, 1993 on the basis of an agreement by the Government of Japan to negotiate on the basis of a U.S. proposal.

FOR FURTHER INFORMATION CONTACT: Charles Lake, Office of Japan and China Affairs (202–395–5070), or Laura B. Sherman, Office of the General Counsel (202–395–3150), Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On April 30, 1993, in its annual report to the Congress concerning procurement practices required by title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended), the Administration identified Japan as a country that maintains, in government procurement of construction, architectural and engineering services, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses. At that time, the U.S. requested consultations with the Government of Japan on ways to remove the discriminatory practices in the construction sector.

Title VII requires the President to formally identify a country as discriminating 60 days after the report is sent to Congress if the pattern or practice has not been resolved, at which time sanctions are automatically imposed. The President, however, has the authority to modify or restrict the sanctions if their imposition would harm the public interest. Since requesting consultations with Japan, the U.S. has been engaged in intensive negotiations with Japan at the highest levels. The Government of Japan has agreed to negotiate based on a U.S. proposal to significantly revise the Major Projects Arrangement and to address the identified discriminatory practices. On June 30, on the basis of this agreement and on behalf of the President, the U.S. Trade Representative announced the formal identification of Japan as a country that maintains, in government procurement of construction, architectural and engineering services, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses, and the postponement of imposition of title VII sanctions until November 1, 1993.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–16006 Filed 7–2–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32542; File No. SR–Amex–92–20]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialist Disclosure of Orders on the Book

June 29, 1993.

On June 26, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 174 to permit a specialist, upon request of a member conducting a market probe, to disclose information regarding orders on his book which are at or near the prevailing quotation.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30946 (July 21, 1992), 54 FR 33375 (July 28, 1992). No comments were received on the proposal.

The Amex Rule 174 currently prohibits a specialist from disclosing to any person other than a Floor Official or other official of the Exchange any information regarding orders entrusted to him as a specialist, or the name of a bidder or offeror. However, a specialist, when requested, must disclose whether a bid or offer is in whole or in part for an account in which he has an interest,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

VOL 58 ISS 127 JL 6 1993 UMI

and the specialist is also permitted to respond to a request for the names of buying and selling member organizations in completed or partially executed transactions unless specifically directed to the contrary by the parties involved.

The Exchange believes that its marketplace will be made even more efficient if information regarding buying and selling interest at or near the prevailing quotation is made available to members conducting a market probe in the course of normal business. The Exchange, therefore, proposes to amend rule 174 to permit specialists to disclose such information, as well as the identity of the bidders or offerors that placed the orders unless expressly directed to the contrary by the broker who entered the order with the specialist. Amended rule 174, moreover, would require a specialist to make the same information available in a fair and impartial manner to any member who inquires. The Rule also would continue to require the specialist, when requested, to disclose whether a bid or offer is in whole or in part for the account in which the specialist has direct or indirect interest.

The Exchange states that the proposed amendment is similar to changes recently made to the comparable rule of the New York Stock Exchange ("NYSE").[3] Rather than requiring members entering orders with the specialist to specifically grant permission to the specialist to disclose the name of the bidder or offeror, as required by the NYSE rule, however, the Amex rule will permit the specialist to disclose such information unless specifically directed to the contrary by the entering broker.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, by providing Exchange members and the investors they represent with more information with which to make trading decisions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular with the requirements of section 6(b)(5), 11A(a)(1)(C)(iii), and 11(b) of the Act.[5] Section 6(b)(5) requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 11A(a)(1)(C)(iii) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the Amex proposal, which will permit specialists to disclose information regarding buying and selling interest at or near the prevailing quotation, as well as the firm that placed the order (unless specifically prohibited by the bidder or offeror) to members conducting a market probe in the course of normal business, should further the principles of section 6(b)(5) as well as section 11A of the Act by broadening the availability of market information. At the present time, Amex specialists generally are prohibited from disclosing information regarding orders on their books. The Amex proposal will provide an opportunity for members conducting a market probe to access such information. As a result of the proposed rule change, specialists will be permitted to disclose market interest at or near the prevailing quotation as well as the identity of the firms that placed the orders. In this way, Amex members will have access to potentially valuable information with respect to the conditions of the market. Moreover, the rule protects against selective disclosure of market information by requiring the specialist to make the information available in a fair and impartial manner to all Amex members. The Commission, therefore, believes that the proposed rule change should promote the objectives of sections 6(b)(5) and 11A of the Act and enhance the ability of market participants to make informed investment decisions.

The Commission also believes that the proposal is consistent with section 11(b) of Act.[6] Section 11(b), among other things, prohibits a specialist or Exchange official from disclosing information with respect to specialist orders which is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist. As noted above, the Amex proposal will make information regarding buying and selling interest at or near the prevailing market quotation available to all members conducting a market probe in the normal course of business on the Floor. At the same time, specialists would be prohibited from initiating the disclosure of such information, and thus could not favor certain Exchange members over others. In all other respects, the specialist would be required to maintain the confidentiality of orders on the books. The Commission, therefore, believes that the proposal provides a mechanism for the fair and impartial disclosure of information by the specialist in a manner that is neither anti-competitive nor discriminatory. Accordingly, because the modification to rule 174 would only permit the specialist to provide such information to all members of the Exchange on an equal basis, the Commission finds that the proposed amendment to rule 174 is consistent with section 11(b) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–92–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15799 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32548; File No. SR–Amex–92–24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to Cabinet Trading of Certain Equity and Derivative Securities

June 29, 1993.

On July 27, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to

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[3] See Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1992) (Order approving File No. SR–NYSE–89–02).

[4] See NYSE Rule 115. Under the rule, a specialist may provide information about buying or selling interest in the market at or near the prevailing quotation in response to a market "probe" by a member acting in the normal course of business on the Floor, as well as to any other member who inquires, but may not disclose the identity of any buyer or seller unless expressly authorized to do so.

[5] 15 U.S.C. 78f(b), 78k–1(a)(1)(C)(iii), and 78k(b) (1988).

[6] 15 U.S.C. 78k(b) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

amend Amex Rule 25 to clarify the circumstances under which a security may be designated for cabinet trading.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 31062 (August 20, 1992, 57 FR 38895 (August 27, 1992). No comments were received on the proposal.

Commentary .01 and .03 to Amex Rule 25 presently states that any equity or derivative security, other than a bond or option, may be a "designated" security for the purposes of cabinet trading if there is no bid or buying interest in the security at a price equal to or higher than the minimum price at which such security may trade on the Exchange (currently 1/256 of $1.00). The Exchange proposes to amend Commentary .01 and .03 of Amex Rule 25 to clarify that a such a security may be "designated" for cabinet trading if there is no bid or buying interest in the security at a price equal to or higher than the minimum transaction price that may be disseminated in a defined, computer-readable format through the Exchange's market data system ("MDS")[4] to the Consolidated Tape Association ("CTA") or the Consolidated Quotation System ("CQS").

As a technical matter, the current language concerning minimum price in Commentary .01 and .03 to Amex Rule 25 is not accurate. Transactions may be effected on the Exchange below 1/256 of $1.00, and such transactions may be reported to CTA through administrative messages. However, at the present time, only prices at or over 1/256 of $1.00 may be disseminated in a defined, computer-readable format by the Exchange's market data system to the facilities of CTA or CQS. Accordingly, this amendment will not effect any substantive change at all, but will more accurately describe the benchmark price which the Exchange is using to determine when a security is appropriate for Cabinet Trading.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade as well as remove impediments to perfect the mechanism of a free and open market. The Commission believes that the new language of Commentary .01 and .03 of Amex Rule 25 more accurately describes the pricing parameters under the rule which determines which securities can be subject to cabinet trading.

The Commission believes that this more accurate language should facilitate the operation of cabinet trading. The Commission has previously determined that cabinet trading is consistent with just and equitable principles of trade, so long as cabinet trading is primarily limited to inactive securities in which there is little market interest.[6] The Commission believes that the language of the present amendment merely clarifies the pricing parameters which define instances appropriate for cabinet trading. Further, the Commission believes that the language, as amended, is consistent with limiting cabinet trading to inactive securities in which there is little market interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–92–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15834 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[3] "Cabinet trading" provides an alternative to the traditional auction market, whereby the Exchange relieves a specialist of its market-making obligations in an essentially worthless security which lacks two-sided interest. Pursuant to Amex Rule 25, when the Exchange relegates such a "designated" security to a "cabinet," the security may be bid for or offered at $.001 per share, or $1.00 for 1,000 shares. The specialist effects transactions in cabinet securities by pairing-off such cabinet buy (sell) orders with cabinet sell (buy) orders.

[4] MDS is the Amex's system for the collection and reporting of market information operated by the Securities Industry Automation Corporation ("SIAC"), which processes and disseminates trade information to the Consolidated Tape.

[5] 15 U.S.C. 78f(b) (1988).

[6] See Securities Exchange Act Release No. 30803 (June 15, 1992), 57 FR 27822 (June 22, 1992) (order approving File No. SR–Amex–92–09, adopting Amex Rule 25 to establish a cabinet system for trading certain equity and derivative securities).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32549; File No. SR–BSE–93–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Boston Stock Exchange, Inc. To Initiate a Six-Month Pilot Program to Permit Competing Specialists on the Floor of the Exchange

June 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to adopt a set of procedures as a pilot program to permit competing specialists on its floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization includes statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit competing specialists on the floor of the Exchange. The Exchange anticipates that such expanded competition would be beneficial to the investing public because greater competition on the floor will result in better prices for the customers. Under the proposed rule change there would be both a regular specialist and a competing specialist(s) in XYZ stock, whereas, currently there is only one specialist in that stock. Orders could be directed to either specialist based on each customer's independent decision, but all orders in XYZ stock would be executed in accordance with strict time priority. If the customer does not specify which specialist should receive the order, the order would be directed to the regular specialist. Once all limits at a price level are depleted, each specialist would be responsible for the market orders directed to him or her specifically.

VOL 58 ISS 127 JL 6 1993 UMI

All limit orders entrusted to each competing specialist and the regular specialist will be represented and executed strictly according to time priority as to the receipt of the order in the Boston Exchange Automated Communication Order-routing Network ("BEACON").[1] Thus, incoming market and marketable limit orders will automatically execute against limit orders on the books according to the order in which the limit orders were received in the system.[2] The regular specialist will be responsible for updating quotations; thus, all competitors must communicate their markets to the regular specialist and be responsible for their portion of the published bid and/or offer. Openings and reopenings shall be coordinated through the regular specialist to ensure that they are unitary. All ITS activity must be cleared through the regular specialist and only the regular specialist can input quotations to reflect the Boston market. Thus, to all other markets in the National Market System, there will be only one Boston market. Trading halts also will be coordinated through the regular specialist and any trading halt will apply to all competitors in a stock.

The Exchange is proposing this rule change as a six-month pilot program during which time participation would be limited to three competitors, including the regular specialist, in each stock and a maximum of ten stocks per competing specialist. However, the Market Performance Committee ("MPC") may approve, on a case-by-case basis, an increase in the number of stocks in which a specialist competes up to 20 stocks per applicant firm.[3] Thus, during the pilot program, the total number of stocks subject to competition will not exceed 360 of the 2211 stocks that the Exchange trades. Such limitations will enable the Exchange to evaluate the effectiveness of the program and to determine if any changes are necessary to improve the program and the Exchange's market-making function generally. The Exchange seeks to attract additional business, while at the same time providing adequate protection of customer orders sent to the Exchange and maintaining a true agency auction market.

The Exchange has adopted procedures to provide guidelines for the pilot program participants and for the Exchange in its administration of the program.[4] Any new competitive situation will be reviewed by the Exchange for the duration of the pilot program. Reports of specialists' dealings will be reviewed on a daily basis for the first four weeks and on a random basis thereafter. In addition, the subjective portion of the specialist performance evaluation program will reflect performance for the competing specialists during the pilot program, after which, the Exchange will incorporate the full evaluation program for measuring the performance of competing specialists.

Certain technical changes necessitated by the proposed pilot program have been made to Chapter XV(g) regarding the specialist's book to permit the competing specialists to see a summary of bids and offers at each price level in the subject stock. This will enable all competitors in a stock to know the combined market in that stock.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–12 and should be submitted by July 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15835 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[1] The BSE's rules explain the BEACON system. See Chapter XXXIII, Section 1, BEACON in General.

[2] The BEACON system will view all of the limits on the various books as one centralized book for the purposes of order execution.

[3] The MPC would be responsible for reviewing the competing specialists' applications, as well as, deciding which specialists' would trade which stock.

[4] The text of the procedures for competing specialists is submitted as Exhibit 2 of the proposed rule change.

[Release No. 34-32541; File No. SR-CSE-92-06]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Its By-Laws to Permit Simultaneous Service as Chairman and President

June 29, 1993.

On July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its Code of Regulations ("By-Laws") to permit the same individual to serve simultaneously as Exchange President and Chairman of the Board of Trustees ("Board").

The proposed rule change was published for comment in Securities Exchange Act Release No. 31045 (August 17, 1992), 57 FR 38077 (August 21, 1992). No comments were received on the proposal.

Article VII of the CSE's By-Laws states that the officers of the Exchange shall be a Chairman of the Board, President, Secretary, Treasurer and any other officers as appointed by the Board. Article VII of the Exchange By-Laws specifies that any person may hold more than one office, except that the same person may not hold the office of both President and Chairman of the Board and the Secretary may not hold either the office of President or Chairman of the Board.

The Exchange proposes to amend Article VII to permit the same individual to serve as Exchange Chairman and President. The CSE argues that although Article VII currently prohibits this, the actual burden to the Exchange of a particular, qualified individual not being able to hold both positions outweighs any potential advantages of separating the office.[3] The Exchange states that apart from customary distinctions, the principal distinction between the powers of the President and the Chairman specified in the Exchange By-Laws is that only the Chairman is given authority to appoint committee members (with Board approval), fill committee vacancies and remove committee members.[4] The CSE believes that there is little potential problem in conferring these committee-related powers to the individual serving as President, because even under the proposed amendment no individual could fill both posts without the consent of the Board.[5] The CSE notes that the proposed rule change was approved by membership vote on July 10, 1992.[6]

The CSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1) and (5) of the Act.[7] Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(5) of the Act requires, among other things, that exchange rules be designed to protect investors and the public interest.

The Commission believes that the proposed rule change should further the objectives of sections 6(b)(1) and 6(b)(5) because the proposal should streamline the organization and governance of the Exchange by providing the CSE with additional flexibility in selecting its Chairman and President. In this regard, the Commission notes that although CSE currently has a Chairman, the CSE has been operating without a President of the Exchange. For the reasons set forth below, the Commission believes that it is reasonable for CSE to determine, based upon the experience and qualifications of a particular individual and the needs of the Exchange, that the governance process of the Exchange would be enhanced by the ability of one individual to serve simultaneously as both Chairman and President.

Article VII, Section 5 of the CSE By-Laws describes the powers and duties of Exchange officers as those powers and duties which customarily pertain to the respective office and such further powers and duties as from time to time may be conferred by the Board.[8] As a general matter, the CSE Board currently allows its Chairman and President to perform similar duties. For example, either the President or Chairman may call a special meeting of the membership[9] or a special meeting of the Board.[10] In addition, either the Chairman or President may suspend an Exchange member or remove the suspension of an Exchange member.[11] Furthermore, the Chairman or President may summarily limit or prohibit any person from access to services offered by the Exchange.[12]

The authority of the President and Chairman also is constrained by the Board. As noted above, under CSE's rules, the primary difference between the duties and powers of the Chairman and the President is found in the authority to appoint CSE committee members; only the Chairman may appoint members of the CSE's committees.[13] The Chairman's committee appointments, however, are subject to Board approval.[14] In addition, the Board appoints all officers of the Exchange.[15] Accordingly, the decision to allow an individual to serve as both President and Chairman would be made by the CSE Board. Moreover, any officer, including the Chairman and the President may be removed by the Board, with or without cause, by an affirmative vote of a majority of Board members.[16] Based on the governance structure described above, the Commission believes that, because the CSE's Board places significant checks and balances on the authority of the Chairman and the President, it is consistent with

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992.

[4] See CSE By-Law Article VI, Section 1.2.

[5] Pursuant to CSE By-Law Article VII, Section 2, the Chairman and the President are both appointed by the Board.

[6] The CSE adds that the proposed rule change was approved by the Exchange's Executive Committee on June 17, 1992 and ratified by the Board on July 22, 1992. Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992. This completes the required approval necessary for a CSE By-Law change. See CSE By-Law Article IX, Section 1.

[7] 15 U.S.C. 78f(b) (1) and (5) (1988).

[8] The Board is composed of the Exchange President; two proprietary members with certificates, or executive officers of proprietary members with certificates who are Designated Dealers in the CSE's National Securities Trading System; one proprietary member with certificate, or an executive officer of a proprietary member with certificate, who conducts a nonmember public customer business on the Exchange; the Chairman of the Chicago Board Options Exchange ("CBOE"); four CBOE members or executive officers of CBOE member organizations; and three representatives of issuers and investors. See CSE By-Law Article V, Section 1.1.

[9] See CSE By-Law Article II, Section 10.2

[10] See CSE By-Law Article V, Section 5.

[11] See CSE Rules, Chapter VII, Rule 7.1 (a) and (c).

[12] See CSE Rules, Chapter VII, Rule 7.6.

[13] See CSE By-Law Article VI, Section 1.2, 2.1, and 3.2.

[14] *Id*

[15] See CSE By-Law Article VII, Section 2

[16] See CSE By-Law Article VII, Section 3

VOL 58 ISS 127 JL 6 1993 UMI

section 6(b) of the Act of the Board to permit and individual to serve simultaneously as Chairman and the President of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CSE–92–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15800 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32535; File No. SR–MSTC–93–04]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change to Revise By-Laws Regarding Indemnification of Directors, Officers, and Employees

June 28, 1993.

On February 8, 1993, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–93–4) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change revises various MSTC By-Laws that relate to indemnification of directors and officers. The Commission published notice of the proposed rule change in the **Federal Register** on March 17, 1993.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposal, MSTC is amending Article VI of its By-Laws regarding indemnification of MSTC directors, officers, and employees. Specifically, under the proposal MSTC deletes current section 1 of Article VI of its By-Laws relating to indemnification of MSTC's officers, directors, and administrative employees and replaces it with four separate sections relating to indemnification. New section 1 indemnifies directors and officers to the fullest extent possible under Illinois law for potential civil or criminal liability for actions taken as directors or officers of MSTC. New section 2 expresses that Article VI is deemed to be a contract between MSTC and each director or officer. New section 3 relates to the indemnification of employees and agents of MSTC who, under the section, may be indemnified "to the extent authorized at any time or from time to time by the board of directors." New section 4 expresses that the rights of indemnification provided in Article VI shall not be deemed exclusive of any other rights to which those indemnified may be entitled. That section also expresses that Article VI rights of indemnification shall inure to the benefit of the heirs, executors, and administrators of the protected person.

The approach used in the proposed rule change is similar to the approach used in the comparable Midwest Stock Exchange, Inc. ("MSE") and Midwest Clearing Corporation ("MCC") By-Laws where indemnification of directors and officers is permitted to the fullest extent permitted by Delaware law.[3]

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and in particular with section 17A(b)(3)(C)[4] of the Act in that it helps to ensure the fair representation of shareholders and participants in the administration of MSTC. By ensuring that directors and officers are fully indemnified for actions they take within the scope of their employment, the proposal should guarantee that qualified candidates are not discouraged from becoming MSTC directors or officers for fear of being held liable for actions they may take as directors or officers of MSTC.[5] This should enable MSTC to maintain a variety of qualified candidates from which to choose directors, officers, and other employees, and in particular should help MSTC retain directors who are fairly representative of MSTC's shareholders and participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–MSTC–93–4) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15802 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32532; File No. SR–OCC–93–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

June 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 23, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through June 30, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approval of OCC's modifications to its rules setting forth the standards for letters of credit deposited with OCC as a form of margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

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[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31978 (March 11, 1993), 58 FR 14453.

[3] MSE and MCC are both Delaware corporations. See Article X of the MSE Constitution and Article VI of the MCC By-Laws.

[4] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[5] The Commission recognizes that MSTC's proposal may raise an issue regarding the scope of MSTC's indemnification of its officers, directors, and employees in pending litigation. In this regard, MSTC has represented that the proposal should be viewed as a "clarification and streamlining of the existing By-Law" rather than as an effort to expand the scope of its current indemnification provisions. Letter from Larry A. Mallinger, Associate Counsel, MSTC, to Richard C. Strasser, Attorney, Division, Commission (June 24, 1993).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In August 1991, February 1992, April 1992, July 1992, and November 1992, OCC filed with the Commission rule changes which proposed to modify the standards for letters of credit deposited with OCC as a form of margin.[2] The Commission granted approval of each of those filings on an accelerated and temporary basis.

This filing again proposed to make permanent the Commission's temporary approval. Like the previous filings, this filing proposes several modifications to Rule 604, which sets forth the standards for acceptable forms of collateral deposited with OCC as margin. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, the letters of credit must expire on a quarterly basis. Fourth, OCC included language to make explicit its authority to draw upon letters of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other Clearing Members, or the general public.[3]

In the interim since its original letter of credit filing, OCC has received no adverse comments or complaints from any of its Clearing Members, Banks, or other interested parties with respect to the modifications to Rule 604 or to the implementation of the revised letter of credit standards. Accordingly, OCC now requests that the Commission grant permanent approval of those revisions.

OCC believes the proposed rule change is consistent with the requirements of section 17A of Act, as amended.[4] Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(F) of the Act.[5] That section requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. The revised standards should make letters of credit deposited as a form of margin more liquid instruments and, consequently, should permit OCC to more safely rely upon such letters of credit. Because the revised standards will induce letter of credit issuers to reexamine Clearing Members' financial conditions every three months rather than annually as under the prior standards, the financial conditions of Clearing Members electing to deposit letters of credit as margin may be assessed more frequently thereby facilitating the discovery of any adverse developments in a more timely manner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (*e.g.*, when a Clearing Member is experiencing financial difficulties or during times of market volatility). By approving the proposed rule change on a temporary basis through June 30, 1994, OCC, the commission, and other interested parties will be able to assess further, prior to permanent Commission approval, any effects these revised standards have on letter of credit issuance and on margin deposited at OCC.[6]

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the proposed rule change be approved before the expiration of the Commission's previous order granting temporary approval of these modifications to the letter of credit standards. By approving this proposed rule filing before expiration of the prior temporary approval order, the changes that have been implemented pursuant to the temporary approval order may remain in place pending permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commissions Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should

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[2] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 [File No. SR–OCC–91–13] (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8160 [File No. SR–OCC–92–06] (order temporarily approving proposed rule change through May 31, 1992); 30763 (June 1, 1992), 57 FR 24284 [File No. SR–OCC–92–11] (order temporarily approving proposed rule change through August 31, 1992); 31126 (September 1, 1992) 57 FR 40925 [File No. SR–OCC–92–19] (order temporarily approving proposed rule change through December 31, 1992); and 31614 (December 17, 1992) 57 FR 61142 [File No. SR–OCC–92–37] (order temporarily approving proposed rule change through June 30, 1993).

[3] For a detailed discussion of the modifications to OCC's rules governing letters of credit deposited as margin, refer to Securities Exchange Act Release No. 29641, *supra* note 2.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] The Commission and OCC currently are studying concentration limits on letters of credit deposited as margin. The Division believes that clearing agencies that accept letters of credit as margin deposits or clearing fund contributions should limit their exposure by imposing concentration limits on the use of letters of credit. Generally, clearing agencies impose limitations on the percentage of an individual member's required deposit or contribution that may be satisfied with letters of credit, limitations on the percentage of the total required deposits or contributions that may be satisfied with letters of credit by any one issuer, or some combination of both. OCC has no concentration limits on the use of letters of credit issued by U.S. institutions.

refer to the file number SR–OCC–93–14 and should be submitted by July 27, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–14) be, and hereby is, approved through June 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15803 Filed 7–2–93; 8:45 am]

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[Release No. 34–32534; File Nos. SR–OCC–92–28 and SR–ICC–92–5]

Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Order Approving Proposed Rule Changes Relating to Trilateral Cross-Margining With the Chicago Mercantile Exchange

June 28, 1993.

On September 22, 1992, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") each filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File Nos. SR–OCC–92–28 and SR–ICC–92–5) that would enable OCC and ICC to enter into a cross-margining agreement with the Chicago Mercantile Exchange ("CME") to accommodate the existing bilateral cross-margining program between OCC and CME, to establish a bilateral cross-margining program between ICC and CME, and to establish a trilateral cross-margining program among OCC, ICC, and CME. The Commission published notice of these proposals in the **Federal Register** on December 3, 1992.[2] OCC and ICC filed technical amendments to their proposals on March 10, 1993,[3] on May 12, 1993,[4] and on June 14, 1993, that did not require republication of notice.[5] No public comments were received. For the reasons discussed below, the Commission is approving the proposals.

I. Description

A. Background

Pursuant to the proposals, OCC, ICC, and CME will enter into a Cross-Margining Agreement ("Agreement") to accommodate the existing bilateral cross-margining ("X–M") program between OCC and CME, to establish a bilateral X–M program between ICC and CME, and to establish a trilateral X–M program among OCC, ICC, and CME.[6] Under the OCC/CME bilateral X–M program, participating clearing firms can cross-margin certain OCC-cleared stock index options with certain CME-cleared stock index futures and options on those futures.[7] Under the ICC/CME bilateral X–M program, participating clearing firms will be able to cross-margin certain ICC-cleared stock index futures and options on those futures with certain CME-cleared stock index futures and options on those futures.[8] Under the OCC/ICC/CME trilateral program, participating clearing firms will be able to cross-margin certain OCC-cleared stock index options, certain ICC-cleared stock index futures and options on those futures, and certain CME-cleared stock index futures and options on those futures.[9] All three X–M programs include positions carried in proprietary accounts and positions carried by participating Clearing Members for market professionals in non-proprietary accounts.[10]

The X–M programs between ICC and CME and among OCC, ICC, and CME will operate in basically the same way as the existing OCC/CME program.[11] Thus, the Agreement governing these programs is based on the existing Amended and Restated Cross-Margining

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[7] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31499 (November 23, 1992), 57 FR 57258.

[3] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (March 9, 1993).

[4] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (May 10, 1993).

[5] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 14, 1993).

[6] Under the proposal, the current OCC/CME bilateral X–M program will be phased out in favor of the trilateral program. Both OCC and ICC have filed proposals to restructure the existing OCC/ICC X–M program into a program modeled after the OCC/CME bilateral X–M program. [File Nos. SR–OCC–93–07 and SR–ICC–93–04]. Until approval of such proposals is granted, the OCC/ICC program will continue to operate as a program distinct from the trilateral program. Conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (March 5, 1993). Currently, three Clearing Members participate in the OCC/ICC X–M program, one of which is expected to transfer into the trilateral program when it becomes operational. Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 19, 1993).

[7] For a discussion of contracts eligible for this X–M program, see *infra* note 9.

[8] For a discussion of contracts eligible for this X–M program, see *infra* note 9.

[9] Contracts eligible for the X–M programs are: (1) OCC-cleared put and call options on the Standard & Poor's ("S&P") 500 Index, S&P 100 Index, Major Market Index, New York Stock Exchange ("NYSE") Composite Index, Financial News Composite Index, Institutional Index, Financial Times 100 Index, S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, and Wilshire Small Cap Index; (2) ICC-cleared NYSE Composite Index futures and put and call options on NYSE Composite Index futures; and (3) CME-cleared S&P 500 futures, put and call options on S&P 500 futures, Financial Times 100 Index futures, put and call options on Financial Times 100 Index futures, S&P MidCap 400 futures, put and call options on S&P MidCap 400 futures, and Russell 2000 Index futures and put and call options on Russell 2000 Index futures.

Eligible contracts fall into three product groups. Those product groups consist of broad-based indexes, small cap indexes, and the Financial Times 100 Index. The broad-based product group includes options, futures, and options on futures where the underlying instrument is the S&P 100 Index, S&P 500 Index, Major Market Index, New York Stock Exchange Composite Index, Financial News Composite Index, and Institutional Index. The small cap product group includes options, futures, and options on futures where the underlying instrument is the S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, and Wilshire Small Cap Index. Options, futures, and options on futures where the underlying instrument is the Financial Times 100 Index are in a product group by themselves. Within each product group, each index will constitute an individual class group. Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 19, 1993).

Only contracts within the same product group may be cross-margined against each other. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (June 16, 1993).

[10] Market professionals include (1) market-makers, specialists, and registered traders as defined in OCC rules; (2) floor traders and off-floor traders as defined in ICC rules; and (3) CME members or firms owning CME memberships to the extent they are trading for their own accounts and not for the accounts of others.

[11] Under the OCC/CME arrangement, OCC and CME effectively share control of Clearing Member options and futures positions. OCC maintains control of OCC-cleared options, which are held in a special X–M account, and CME maintains control of CME-cleared futures and options on futures, which also are held in a special X–M account. Clearing Members electing to participate in the X–M arrangement must grant OCC and CME cross-liens on options positions maintained at OCC and on futures positions maintained at CME. Funds paid by Clearing Members or generated by liquidating positions are maintained in a joint OCC/CME bank account. OCC and CME exchange position data and coordinate collection of margin deposits on those positions and share any losses resulting from position liquidations.

For a more detailed description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–1] (order approving OCC/CME non-proprietary, market professional cross-margining) and 27296 (September 26, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining).

Agreement between OCC and CME ("OCC/CME Amended Agreement") but with modifications as necessary to accommodate the ICC/CME bilateral and the OCC/ICC/CME trilateral programs. Several of the more significant differences between the Agreement and the OCC/CME Amended Agreement are discussed below as are corresponding amendments to OCC's and ICC's by-laws and rules.[12]

B. Significant Differences between Agreements

Section 1 of the Agreement adds certain definitions and modifies others to conform them to the proposed programs. The Agreement defines a "Carrying Clearing Organization" as any clearing organization that carries one of a particular set of X–M Accounts.[13] The term reflects that under the Agreement, a set of X–M Accounts might be carried either by all three or by only two clearing organizations. The term "Joint Clearing Member" refers to a Clearing Member that is a member of each Carrying Clearing Organization. The term "Affiliated Clearing Members" refers to two Clearing Members that are Affiliates of one another where each one is a Clearing Member of at least one Carrying Clearing Organization and where between them they have at least one Clearing Membership at each Carrying Clearing Organization. The definition of "Affiliate" has been revised to focus on the relationship between the Affiliates rather than on the status of an account carried by one Affiliate for the other as was the focus in the OCC/CME Amended Agreement.[14]

Section 2 of the Agreement provides that, subject to the approval of the Carrying Clearing Organization, each Joint Clearing Member and pair of Affiliated Clearing Members may establish one set of Proprietary X–M Accounts and one set of Non-Proprietary X–M Accounts. Each set of X–M Accounts may consist of either two accounts or three accounts.[15] As security for obligations of Joint Clearing Members or pairs of Affiliated Clearing Members to the Carrying Clearing Organizations, account agreements will continue to allow Carrying Clearing Organizations to have liens on and security interests in all positions in X–M Accounts, all margin held in respect thereof, and all proceeds of any of the foregoing.[16] As with the existing OCC/CME X–M program, security interests in or liens on positions in Non-Proprietary X–M Accounts, however, secure only obligations arising from such accounts.

Section 2 also provides that each Joint Clearing Member or pair of Affiliated Clearing Members must designate one of its Carrying Clearing Organizations as its Designated Clearing Organization ("DCO").[17] Paragraph (b) of Section 2 also provides that in the case of Affiliated Clearing Members, one Clearing Member, which is a Clearing Member of the DCO, shall be appointed by the other Clearing Member to act as the agent for purposes of interacting with the DCO. This amendment is intended to facilitate participation in the X–M programs by Affiliated Clearing Members.

Section 3 of the Agreement provides for Clearing Members to designate either set of X–M Accounts (*i.e.*, proprietary or non-proprietary) or both as X–M Pledge Accounts.[18] As with the OCC/CME Amended Agreement, Section 3 contains language stating that no X–M Pledge Account may be established until all necessary regulatory approval is obtained.

Section 5 provides that the Carrying Clearing Organizations jointly will determine the margin requirement for each set of X–M Accounts carried by them[19] but that any Carrying Clearing Organization may elect to use the margin system of another Carrying Clearing Organization for purposes of calculating margin.[20] An oral agreement between two Carrying Clearing Organizations to use the margin system of one of the two must be made over a recorded telephone line and promptly confirmed in writing. This provision is intended to protect the parties to the oral agreement.

Section 6 of the Agreement sets forth that cash, U.S. Treasury Securities, letters of credit, and certain common stock are acceptable forms of initial margin.[21] While the forms of initial margin are unchanged from the OCC/CME program, the Agreement states that deposits of certain common stock will be valued at 70% of current market value or at such lesser percentage as required by the Commission and CFTC.[22]

Section 7 describes the daily settlement procedures for sets of X–M Accounts in the bilateral and trilateral programs.[23] The Agreement differs from the OCC/CME Amended Agreement in

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[12] Corresponding amendments also were made to the various agreements describing the rights and responsibilities of Clearing Members with regard to their participation in the X–M programs.

[13] The term "set" has been substituted for the term "pair" when speaking of X–M Accounts to accommodate both trilateral and bilateral X–M programs.

[14] The definition of Affiliate set forth in the OCC/CME Amended Agreement states that each entity must be a person whose account with the other entity would not be the account of a customer. This definition originally was adopted in the context of proprietary cross-margining and was intended to ensure that the commingling of funds beneficially owned by each of the pair of Affiliates in a proprietary X–M account was consistent with Commission and Commodity Futures Trading Commission ("CFTC") rules and regulations. However, there is no legal necessity for this definition to focus on the status of an account (*i.e.*, proprietary or customer) carried by one Affiliate for the other. Therefore, to eliminate confusion, the new definition of Affiliate is based on the relationship of the entities (*i.e.*, control of one entity over the other or the entities being under common control). Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Associate Director, Division, Commission (July 7, 1992).

[15] Each set of X–M Accounts, proprietary or non-proprietary, will consist of either (1) a X–M Account at CME and a X–M Account at either OCC or ICC or (2) a X–M Account at CME, OCC, and ICC.

[16] OCC Rule 701 has been amended to provide that as security for the obligations of a Clearing Member, OCC and the Carrying Commodity Clearing Organization ("CCO"), rather than the Participating CCO, jointly will have a lien on and security interest in: (1) All contracts purchased or carried in any set of X–M accounts; (2) all cash, securities, and property deposited or held in respect thereof; and (3) all proceeds of any of the foregoing. With regard to Proprietary X–M Accounts, this lien or security interest will apply to all obligations of a Clearing Member to OCC and the Carrying CCO, regardless of whether the obligations arose from the X–M Accounts.

[17] For operational purposes, OCC is the DCO for all Clearing Members. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division, Commission (March 2, 1993). Designation of the DCO is provided for by new ICC Rule 516.

[18] X–M Pledge Accounts are those that a Clearing Member has granted a security interest in to a bank as security for loans extended by the bank to that Clearing Member.

[19] New ICC Rule 517 states that the amount of margin shall be determined by ICC and the Carrying Clearing Organization(s) in accordance with the applicable X–M agreement and sets forth ICC's authority to require the deposit of additional margin.

[20] OCC, ICC, and CME have agreed that OCC, as the DCO for all participating Clearing Members, will calculate all margin requirements under the X–M programs.

[21] New ICC Rule 518 describes the acceptable forms of margin for the X–M program.

[22] Currently, common stock which meets the margin eligibility requirements of OCC Rule 604(d) and is deposited as margin with OCC is valued at 50% of current market value. OCC has filed a proposed rule change with the Commission whereby eligible common stock could be valued at 70% of current market value. Refer to Securities Exchange Act Release No. 31169 (September 10, 1992), 57 FR 43041 (notice of proposed rule change relating to valuation rate of securities deposited as margin). Until the Commission approves that proposal, common stock deposited as margin will be valued at no more than 50% of current market value.

[23] New ICC Rule 519 describes the daily settlement procedures for the X–M program. To facilitate the settlement process, ICC has designated OCC as its agent for purposes of receiving and approving or disapproving settlement instructions. ICC must give reasonable advance written notice to OCC and CME if it decides to revoke such designation.

VOL 58 ISS 127 JL 6 1993 UMI

its description of the procedures OCC will follow for issuing settlement instructions to a X–M Clearing Bank and in its inclusion of procedures ICC will follow in issuing such instructions. In addition, under the Agreement a clearing organization's issuance of an instruction to a X–M Clearing Bank not to proceed with a settlement instruction will constitute a failure to perform a material obligation where the clearing organization is not a Carrying Clearing Organization with respect to the particular X–M Accounts for which such instruction was issued.[24] Section 7(j) provides that non-proprietary cash settlement funds will not be paid to a Clearing Member until the Clearing Member has completed all of its other settlement obligations with respect to all other non-proprietary accounts carried for it at the Carrying Clearing Organizations. Moreover, no proprietary cash settlement funds will be paid to a Clearing member until that Clearing Member has completed all of its other settlement obligations with the Carrying Clearing Organizations.

Section 8 describes procedures for the close-out of X–M Accounts.[25] Although many basic procedures to be followed by the Carrying Clearing Organizations in liquidating the X–M Accounts remain the same as those described in the OCC/CME Amended Agreement, there are certain important differences between the two agreements regarding allowable reimbursements from the non-proprietary liquidating settlement account and allocation of surpluses or losses among the three clearing organizations.

First, a provision has been added to section 8(d) of the Agreement which provides that funds held in the Non-Proprietary Liquidating Account may be used to reimburse the Proprietary Liquidating Account to the extent that proceeds from any Proprietary X–M Account were used, as provided for in Section 8(b) of the Agreement, to offset a liquidating deficit in any Non-Proprietary X–M Account.

Second, Section 8(d) of the Agreement was revised to provide that (1) CME will be entitled to receive or retain 50% of the surplus and either OCC or ICC (whichever is the Carrying Clearing Organization) will be entitled to the remaining 50% of the surplus or (2) CME will be entitled to receive or retain 50% of the surplus and OCC and ICC (if both are Carrying Clearing Organizations) will be entitled to the remaining 50% of the surplus as OCC and ICC may agree in writing among themselves for application against any "other losses."[26] Any surplus retained by or returned to CME and OCC and/or ICC shall not exceed their respective other losses from the defaulting Clearing Member.

Third, Section 8 has been revised to clarify that in the event that the liquidation of a defaulting Clearing Member results in a shortfall, CME will bear 50% of the shortfall while OCC and ICC will bear the remaining 50% as allocated between themselves by agreement.[27] If either OCC or ICC is not a Carrying Clearing Organization with respect to the defaulting Clearing Member, however, that entity will not be required to contribute to eliminate the shortfall.[28] Section 8(f) has been amended to make explicit that each clearing organization in accordance with its rules will apply its clearing or guarantee fund and exercise any rights to make additional assessments against Clearing Members to the extent necessary to meet its obligations to the other clearing organizations with respect to shortfalls. New paragraph (i) requires the clearing organizations to review annually formulas for allocating surpluses and losses.

Section 10 has been revised to clarify the right of an indemnitor to control any legal defenses available to it and any of the indemnified parties. Section 10 in the Agreement differs from section 10 of the OCC/CME Amended Agreement in that it provides that an indemnitor will pay for one separate firm of attorneys for each indemnified party where the indemnified parties are two clearing organizations and the legal defenses available to one are different from or in addition to those available to the other.

A new paragraph (c) has been added to the termination provisions of section 12 of the Agreement. Under that paragraph, if either OCC or ICC establishes a termination date, then the Agreement and X-M program shall remain in effect as to the non-terminating parties. This provision is intended to eliminate the need for non-terminating clearing organizations to execute a new X-M agreement.

Subparagraph (vi) of section 14(a) reflects that a clearing organization must notify the others of a disciplinary action taken by such clearing organization's governing body, or committee or subcommittee thereof, against a Clearing Member unless the disciplinary action involves an appeal from an administrative fine. A new paragraph (c) has been added to reflect the agreement of OCC, ICC, and CME to inform one another on a monthly basis of the total size and aggregate amount of required contributions to its clearing or guarantee fund. This paragraph expands the scope of information available to the clearing organizations regarding the ability of each to meet its obligations under section 8 (Suspension and Liquidation of Clearing Member) of the X-M Agreement.

II. Discussion

The Commission believes that OCC's and ICC's proposals are consistent with the Act and in particular with Section 17A thereunder.[29] As discussed below, the proposal will facilitate the development of linked or coordinated clearing facilities for intermarket positions, will promote the prompt and accurate clearance and settlement of securities transactions, and appears to be designed to safeguard securities and funds.[30]

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[24] See Agreement section 7(b). For instance, if ICC, which was not the Carrying Clearing Organization with regard to a particular set of X–M Accounts, nonetheless were to direct the X–M Clearing Bank not to proceed with an instruction involving those accounts, then ICC would have failed to perform a material obligation under the Agreement and would be liable to the other clearing organizations for any loss, cost, or expense they incurred as a result of ICC's action.

[25] New ICC Rule 520 discusses procedures for closing out the X–M accounts of defaulting Clearing Members.

[26] Section 8(d) of the OCC/CME Amended Agreement provides for both OCC and CME to receive up to 50% of the surplus in a Proprietary Liquidating Account to be applied against any losses whatsoever resulting from defaults in other obligations of a defaulting Clearing Member.

OCC and ICC will allocate their share of any such surplus between themselves on a proportional basis based on each one's percentage of the total number of contracts in the X-M Account. File Nos. SR–OCC–92–28, nn. 8 & 9 and SR–ICC–92–05, nn. 9 & 10.

[27] OCC Rule 707(b) was amended to reflect that any shortfall resulting from the liquidation of sets of X-M Accounts would be allocated between or among OCC and the Participating CCOs in accordance with the applicable Participating CCO Agreement. For a discussion of the Participating CCO Agreement, refer to OCC By-Laws Article VI, § 24.

[28] If both OCC and ICC are Carrying Clearing Organizations, they will allocate their share of any such shortfall between themselves on a proportional basis based on each one's percentage of the total number of contracts in the X-M Account.

[29] 15 U.S.C. 78q–1 (1988).

[30] For example, Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible. 15 U.S.C. 78q–1(b)(3)(F) (1988).

See also Section 17A(a)(2)(A)(ii). 15 U.S.C. 78q–1(a)(2)(A)(ii) (1990). Congress added this section to the Act by enacting the Market Reform Act of 1990. Pub. L. No. 101–432, 104 Stat. 963 (1990). This section directs the Commission to use its authority under the Act "to facilitate the establishment of linked or coordinated facilities for clearance and

As with other X–M arrangements, the current proposal links and coordinates the various clearance and settlement facilities of OCC, ICC, and CME through shared management of risks associated with the Clearing Members' intermarket portfolios and through information sharing regarding the financial health of participating joint and affiliated members.[31] This arrangement is a significant improvement over the past practice where individual clearing organizations were required independently to manage the risk of separate components of a Clearing Member's portfolio of options and futures positions. Thus, cross-margining programs, such as those proposed here, facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities options, futures, and options on futures in furtherance of the goals of section 17A(a)(2)(A)(ii) of the Act.[32]

Moreover, since it granted approval of the first X–M program in 1988,[33] the Commission repeatedly has found that X–M programs are consistent with clearing agency responsibilities under Section 17A of the Act. As the Commission previously noted, X–M programs, among other things, tend to enhance Clearing Member and systemic liquidity both in times of normal trading and in times of stress.[34] Under routine trading, Clearing Members who participate in a X–M program have lower initial margin deposits. Reduced margin requirements help Clearing Members manage their cash flow by increasing available cash to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of Clearing Members and thus would enhance liquidity in the market as a whole.[35] By enhancing market liquidity, X–M arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[36]

In addition, the Commission consistently has indicated that by reducing the levels of initial margin to reflect more accurately a Clearing Member's portfolio risk, X–M arrangements enhance Clearing Member liquidity and thereby reduce the risk that Clearing Members will become insolvent in times of extreme market stress. Enhancing Clearing Member liquidity thus promotes the safety of the entire clearance and settlement system by increasing the liquidity of individual participants and thereby decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.

The bilateral programs and the trilateral program of this filing are based on the OCC/CME model, which embodies the concept of equal control and interest in assets held in X–M accounts, and the programs retain virtually all of the important safety provisions of the OCC/CME program. As with the OCC/CME X–M program, the Commission believes that the X–M programs proposed here are consistent with clearing agencies' statutory requirements to assure the safeguarding of funds and securities which are in their custody or control or for which they are responsible.

As participation in the X–M programs grows, so will the benefits enjoyed by participating organizations and Clearing Members. Participation in X–M arrangements has expanded considerably since the first facility was activated in 1988. In addition to the OCC/ICC and OCC/CME programs, three other X–M arrangements have been approved, and fifteen Clearing Members currently are participating in one or more of these programs.[37] As with the current proposal, these three X–M programs are modeled after the OCC/CME X–M arrangement. Those arrangements that are actively operating[38] have been very successful in reducing liquidity demands on Clearing Members. For instance, in 1992 firms participating in the OCC/CME and OCC/ICC programs were required to deposit 50% less margin than they would have been required to deposit without cross-margining for their eligible positions.[39] Implementation of the ICC/CME bilateral and OCC/ICC/CME trilateral programs will make more contracts eligible for cross-margining and will expand the field of available hedge positions, which should encourage wider participation in cross-margining.

Moreover, because the establishment of the ICC/CME and OCC/ICC/CME X–M programs will allow Clearing Members to cross-margin ICC-cleared contracts with CME-cleared contracts, the amount of margin deposited with clearing organizations on the futures side should decrease appreciably. In addition, participating Clearing Members generally will benefit through lower administrative costs.[40] Currently, the clearing organizations must maintain X–M accounts with multiple clearing banks. By extending cross-margining on both a bilateral basis and

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settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options." For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures (March 5, 1993).

[31] Approximately 39 of OCC's 142 clearing members are registered both as broker-dealers and as futures commission merchants. Telephone conversations between Jean M. Cawley, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (June 18, 1993).

[32] 15 U.S.C. 78q–1(a)(2)(A)(ii) (1990).

[33] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving non-proprietary X–M program between OCC and ICC).

[34] See e.g., Securities Exchange Act Release Nos. 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation X–M program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME X–M program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation X–M program for proprietary positions); 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME X–M program for proprietary positions).

[35] Securities Exchange Act Release No. 29991 (November 26, 1991), 56 FR 61458.

[36] *Id.* Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by X–M arrangements, would "help ensure that a securities market failure does not become a credit market failure." The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[37] The Commission and the CFTC have approved X–M arrangements between OCC and the Board of Trade Clearing Corporation ("BOTCC"), the clearing facility for the Chicago Board of Trade (Securities and Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680; by letter dated October 31, 1991, CFTC staff advised BOTCC that is proposal could be made effective immediately without prior CFTC approval); between OCC and the Kansas City Board of Trade Clearing Corporation ("KCBOTCC"), the clearing facility for the Kansas City Board of Trade ("KCBT") (Securities Exchange Act Release No. 30413 (February 26, 1992), 57 FR 7830; by letter dated February 25, 1992, CFTC staff advised KCBOTCC that its proposal could be made effective immediately without prior CFTC approval); and between OCC and the Comex Clearing Association ("CCA") (Securities Exchange Act Release No. 31414) (November 6, 1992), 57 FR 53943; by letter dated September 9, 1992, CFTC staff advised CCA that its proposal could be made effective immediately without prior CFTC approval).

[38] No clearing members currently participate in the OCC/CAA X–M program. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division, Commission (March 2, 1993).

[39] Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (March 5, 1993).

[40] Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division, Commission (March 2, 1993).

a trilateral basis, the proposal will allow participating clearing organizations to maintain accounts at fewer clearing banks and thereby will reduce costs associated with such accounts. These cost savings, in turn, may be passed on to Clearing Members.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–OCC–92–28 and SR–ICC–92–5) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[41]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15804 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32533; File No. SR–OCC–93–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Filing of a Proposed Rule Change Relating to Establish a Non-Proprietary Cross-Margining Program with the Kansas City Board of Trade Clearing Corporation

June 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 20, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will expand the cross-margining program between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC") to include non-proprietary, market professional positions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to expand the current proprietary cross-margining program between OCC and KCC to include non-proprietary positions carried for market professionals.[2] OCC originally filed for both a proprietary and non-proprietary program with KCC; however, OCC later asked the Commission to defer action on the OCC/KCC non-proprietary program due to a request by KCC.[3] OCC now has been advised by KCC that it desires to proceed with non-proprietary cross-margining and, accordingly, OCC is renewing its request for such approval.

Except for the minor differences noted herein, the proposed program is similar in all respects to the existing non-proprietary cross-margining program between OCC and the Chicago Mercantile Exchange ("CME").[4] Although the existing Cross-Margining Agreement between OCC and KCC contains provisions for non-proprietary accounts, those provisions do not reflect the final form of the provisions in the OCC/CME Amended and Restated Cross-Margining Agreement that relate to non-proprietary cross-margining. Therefore, OCC and KCC have executed the Amended Cross-Margining Agreement ("OCC/KCC Amended X–M Agreement"), which is substantially similar to the OCC/CME Amended and Restated Cross-Margining Agreement. The proposed OCC/KCC program also is similar to the proposed non-proprietary cross-margining program between OCC and the Chicago Board of Trade Clearing Corporation ("BOTCC").[5]

Except for minor differences in language and certain terms that are particular to KCC (most notably the settlement times set forth in section 7), there are two noteworthy differences between the OCC/KCC Amended X–M Agreement and the Amended and Restated Cross-Margining Agreement between OCC and BOTCC ("OCC/BOTCC X–M Agreement").

First, the OCC–KCC Amended X–M Agreement does not contain provisions for "super margins" because KCC does not impose such margin requirements of its Clearing Members. OCC has always maintained that super margins are not essential to cross-margining program between OCC and another commodity clearing organization that does not impose such requirements.[6]

Second, Exhibit A to the OCC/KCC Amended X–M Agreement lists the contracts eligible for cross-margining. Exhibit A is tailored for OCC/KCC cross-margining and reflects that in addition to put and call options on the Value Line Index, which were the original OCC cleared Eligible Contracts under the OCC/KCC proprietary cross-margining program, put and call options on the S&P MidCap 400 Index, Russell 2000 Index, and the Wilshire Small Cap Index have been added as Eligible Contracts for OCC.[7]

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act

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[41] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s (1988).

[2] Securities Exchange Act Release No. 30413 (February 26, 1992), 57 FR 7830 (File No. SR–OCC–91–09) (order approving the OCC/KCC proprietary cross-margining program).

[3] Amendment Nos. 1 and 3 to File No. SR–OCC–91–09.

[4] For a description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 (File No. SR–OCC–89–01) (order approving OCC/CME proprietary cross-margining) and 29991 (November 26, 1991), 56 FR 61458 (File No. SR–OCC–90–01) (order approving OCC/CME non-proprietary, market professional cross-margining).

[5] Securities Exchange Act Release No. 31537 (November 30, 1992), 57 FR 57854 (File No. SR–OCC–92–24) (notice of filing of the proposed rule change establishing the OCC/BOTCC non-proprietary cross-margining program). For a description of the OCC/BOTCC proprietary cross-margining program refer to Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 (File No. SR–OCC–91–07) (order approving the OCC/BOTCC proprietary cross-margining program). The OCC/BOTCC X–M Agreement also is based upon the current Amended and Restated Cross-Margining Agreement between OCC and the CME.

[6] Securities Exchange Release Act No. 31414 (November 6, 1992), 57 FR 53943 (File No. SR–OCC–92–22) (order approving OCC/Comex non-proprietary cross-margining program).

[7] In Securities Exchange Act Release No. 32020 (March 19, 1993), 58 FR 16438 (File No. SR–OCC–93–05) (notice and order granting accelerated approval) the Commission approved for cross-margining under the OCC/KCC proprietary cross-margining program the creation of a small capitalization index product group which includes the S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, MiniValue Line Index, and the Wilshire Small Cap Index. Accordingly, the list of Eligible Contracts in the OCC/KCC Amended X–M Agreement includes the KCC cleared futures and options of futures on the Value Line Index and on the MiniValue Line Index and put and call options on the OCC cleared small capitalization index product group excluding the MiniVAlue Line Index. The amendment to Exhibit A, therefore, is merely conforming in nature.

because it expands cross-margining to another significant group of market participants, further enhancing the safety of the clearing system while providing lower margin costs to participants.

B. Self-Regulatory Organization's Statement on the Burden on competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–93–13 and should be submitted by July 27, 1993.

For the Commission by the Division of Marketing Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15801 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32545; International Series Release No. 557; File No. SR–PHLX–93–25]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Change in the Foreign Currency Trading Hours for the British Pound and British Pound/German Mark Cross-Rate Contracts.

June 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend its foreign currency options ("FCOs") trading hours respecting the British pound and British pound/German mark cross-rate FCO contracts. Specifically, the Exchange intends to adjust its FCO trading hours schedule by suspending the 6 p.m. through 3:30 a.m. Eastern Standard Time ("E.S.T.") trading session ("Evening Session") for these FCO option contracts.

The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The PHLX's FCO trading hours generally commence at 6 p.m. E.S.T. each Sunday through Thursday and terminate at 2:30 p.m. E.S.T. each Monday through Friday. Historically, according to the Exchange, the trading in the British pound and British pound/German mark cross-rate FCO contracts are marked by little trading interest and corresponding liquidity during the Evening Session. The Evening Session generally corresponds to the primary business hours in the Far East and, according to the Exchange, has received limited trading volume in these European time zone oriented FCO contracts over the past year. In this regard, the PHLX believes that the anticipated limited trading interest in the British pound and British pound/German mark cross-rate FCO contracts can be adequately handled and executed during the 3:30 a.m. to 2:30 p.m. E.S.T. trading session. The Exchange further believes that the proposed adjustments to FCO trading hours in these particular contracts will ease the staffing burden on the current registered FCO specialist units. If the proposed rule change is approved, the British pound and British pound/German mark cross-rate FCO contracts will join the French franc, European Currency Unit, and Canadian dollar contracts which trade exclusively from 3:30 a.m. to 2:30 p.m. E.S.T.

The PHLX will be responsive to any change in marketplace demand for reinstating evening trading hours for these and other FCO contracts should the need so arise.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

VOL 58 ISS 127 JL 6 1993 UMI

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[1] Specifically, given the realities of the global foreign currency market, which, according to the Exchange, historically is marked by reduced or declining liquidity in the market for British pound and British pound/German mark cross-rate FCO contracts during the Evening Session, the Commission believes that the Exchange's proposal to amend the trading hours for the British pound and British pound/German mark cross-rate FCO contracts, likely will not have a material impact on market participants while, at the same time, will help to reduce operational burdens during the Evening Session. In addition, the PHLX FCO market will be open for trading the British pound and British pound/German mark cross-rate FCO contracts during the 3:30 a.m. to 2:30 p.m. E.S.T. trading session, so that investors will have the ability to access the Exchange's FCO market to trade these contracts.[2] Moreover, the Commission notes that the Exchange has issued notices to its membership advising them of the proposed changes, and will issue another notice to its membership upon approval of the proposed rule change,[3] thereby avoiding any possible investor confusion. Finally, the Commission notes that the French franc, European Currency Unit, and Canadian dollar FCO contracts already trade on the schedule proposed for the British pound and British pound/German mark cross-rate FCO contracts and thus this rule change should not create any undue customer confusion. Based on the above, the Commission finds that the Exchange's proposal to change the FCO trading hours for British pound and British pound/German mark cross-rate FCO contracts as described herein is consistent with just and equitable principles of trade and the protection of investors.[4]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal will allow the Exchange to notify FCO specialist units, member firms, and customers of the schedule changes, thus permitting the Exchange to ease the operational burdens resulting from the low trading activity of the British pound and British pound/German mark cross-rate FCO contracts during the Evening Session, in a timely fashion. Accordingly, the Commission believes it is consistent with sections 6 and 19 of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–25 and should be submitted August 2, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–PHLX–93–25), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15832 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78f(b)(5) (1988).

[2] Indeed, the PHLX has represented to the Commission that should investor and market needs warrant, it will consider reinstating the Evening Session for these and other FCO contracts.

[3] See Circular No. 93–93, from Murray L. Ross, Secretary, PHLX, to Members, dated June 8, 1993 The PHLX has represented that upon approval of this proposal, it will provide at least two weeks advance notice prior to adjustment of the trading hours for the British pound and British pound/German mark cross-rate FCO option contracts. See Letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Bradley S. Ritter, Attorney, Division of Market Regulation, Commission, dated June 29, 1993.

[4] The Commission recognizes that the regular business hours for the Far East market occur during the Evening Session. Nevertheless, because the PHLX has represented that the trading volume in the British pound and British pound/German mark cross-rate FCO option contracts is extremely limited during the Evening Session, we believe, given the staffing burden on registered FCO specialist units, it is permissible and within the PHLX's business judgment to alter its trading hours as proposed.

[5] 15 U.S.C. 78s(b)(92) (1988).

[6] 17 CFR 200.30–3 (a)(12) (1993).

[Release No. 34–32546; International Series Release No. 558; File No. SR–PHLX–93–22]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to a Change in the Holiday Trading Schedule for Foreign Currency Options for Independence Day, Labor Day, and Boxing Day, 1993

June 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. The PHLX submitted one amendment to its proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend its

[1] In Amendment No. 1, the PHLX proposes to change its foreign currency options trading hours on Boxing Day, 1993, by opening for trading at 8 a.m. rather than 3:30 a.m. E.S.T. on December 27, 1993. In its original filing, the Exchange had proposed to close during the evening session beginning at 6 p.m. E.S.T. on Boxing Day until 3 a.m. E.S.T. on Tuesday, December 28, 1993. See Letter from Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Division of Market Regulation, Commission, dated May 27, 1993. In a subsequent clarification of the proposal, the Exchange represented that the evening trading hours for FCOs are from 6 p.m. E.S.T. until 3:30 a.m. E.S.T., not 3 a.m. E.S.T. See Letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Richard L. Zack, Branch Chief, Division or Market Regulation, Commission, dated June 29, 1993.

holiday schedule with respect to the trading of foreign currency options ("FCOs") on the Independence Day, Labor Day, and Boxing Day holidays in 1993. Specifically, the Exchange intends to close during (i) the trading session from 6 p.m. through 3:30 a.m. Eastern Standard Time ("E.S.T.") ("Evening Session") beginning on Monday, July 5, 1993 (in observance of Independence Day); (ii) the Evening Session beginning on September 6, 1993 (in observance of Labor Day); and (iii) the trading session from 3:30 a.m. through 8 a.m. E.S.T. on Boxing Day, Monday, December 27, 1993.

The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The PHLX's FCO trading hours generally commence at 6 p.m. E.S.T. each Sunday through Thursday and terminate at 2:30 p.m. E.S.T. each Monday through Friday. Historically, according to the Exchange, the resumption of foreign currency option trading on certain holidays is marked by reduced trading interest and liquidity, particularly during the Evening Session. While the Evening Session generally corresponds to the primary business hours in the Far East, the Exchange has stated that over the past year, this session has generally received limited trading volume, and on certain holidays, that situation is exacerbated. In this regard, the PHLX believes that the anticipated limited trading interest that would be reflected in the Evening Session on the observed Independence Day and Labor Day holidays in 1993, can be adequately handled and executed during the 3:30 a.m. to 2:30 p.m. E.S.T. trading session immediately following those days.[2] Additionally, the Exchange anticipates that as a result of the observance in foreign market centers of Boxing Day on Monday, December 27, 1993, the trading session from 3:30 a.m. through 8 a.m. E.S.T. on Boxing Day will also receive limited trading volume.[3] Therefore, the Exchange believes that the limited trading interest during this session can be adequately handled and executed during the 8 a.m. to 2:30 p.m. E.S.T. session on Boxing Day. The Exchange further believes that the modified trading hours during these holiday periods also will ease the staffing burden on current FCO specialist units at a time when key employees traditionally take holiday vacations. Accordingly, the PHLX proposes to institute the revised trading hours for Independence Day, Labor Day, and Boxing Day, 1993, as proposed herein.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] Specifically, given the realities of the global foreign currency market, which, according to the Exchange, historically is marked by reduced or declining liquidity during these holiday periods, the Commission believes that the Exchange's proposal to amend the trading hours for FCOs during the Independence Day, Labor Day, and Boxing Day holidays in 1993, will help to reduce operational burdens during the periods. In addition, the PHLX FCO market will remain open during the 3:30 a.m. to 2:30 p.m. E.S.T. trading sessions following Independence Day and Labor Day, and from 8 a.m. to 2:30 p.m. E.S.T. on Boxing Day, so that investors will have the ability to access the Exchange's FCO market. Moreover, the Commission notes that the Exchange will issue notices to its membership advising them of these changes, thereby avoiding any possible investor confusion.[5] Based on the above, the Commission finds that the Exchange's proposal to change the FCO trading hours as described herein is consistent with the just and equitable principles of trading and the protection of investors.[6]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal will provide the Exchange with sufficient time to notify FCO specialist units, member firms, and customers of the schedule changes and allow such persons and entities to revise plans based on the

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[2] Under the present FCO trading schedule, the Exchange will be closed from 1 p.m. E.S.T. on Friday, July 2, 1993, until 6 p.m. E.S.T. on Monday, July 5, 1993, in observance of Independence Day, and from 1 p.m. E.S.T. on Friday September 3, 1993, until 6 p.m. E.S.T. on Monday, September 6, 1993, in observance of Labor day. Accordingly, upon approval of the proposal herein, FCOs will not be open for trading on the PHLX from 1 p.m. E.S.T. on July 2, 1993, through 3:30 a.m. E.S.T. on July 6, 1993, and from 1 p.m. E.S.T. on September 3, 1993, through 3:30 a.m. E.S.T. on September 7, 1993.

[3] Under the present FCO trading schedule, the Exchange will be closed from 1 p.m. E.S.T. on Thursday, December 23, 1993, until 3:30 a.m. E.S.T. on December 27, 1993, in observance of Christmas. Accordingly, upon approval of the proposal herein, FCOs will not be open for trading on the PHLX from 1 p.m. E.S.T. on December 23, 1993, through 8 a.m. E.S.T. on December 27, 1993.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] The Exchange shall notify its membership of the rule change upon approval of the proposal by the Commission, and again prior to each holiday. See Letter from Murray L. Ross, Secretary, PHLX, to Bradley S. Ritter, Attorney, Division of Market Regulation, Commission, dated June 23, 1993.

[6] The Commission recognizes that the regular business hours for the Far East market occur during the Evening Session. Nevertheless, because the PHLX has represented that the trading volume is extremely limited, we believe, given the staff limitations at the Exchange due to the Independence Day and Labor Day holidays, it is permissible and within the PHLX's business judgment to alter its trading hours as proposed. Similarly, because the PHLX has represented that the trading volume during the 3:30 a.m. to 8 a.m. E.S.T. session on Boxing Day will receive extremely limited trading volume, we believe, again given the staff limitations of the Exchange, it is permissible and within the PHLS's business judgment to alter its trading hours on Boxing Day as proposed.

VOL 58 ISS 127 JL 6 1993 UMI

amendment holiday schedule. Accordingly, the Commission believes it is consistent with sections 6 and 19 of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–22 and should be submitted July 27, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PHLX–93–22), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 93–15833 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 25, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48882.
Date filed: June 21, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/P 0998 dated June 18, 1993 Japan—TC1 Resolution r–1 to 14.
Proposed Effective Date: October 1/ November 1, 1993.

Docket Number: 48890.
Date filed: June 23, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC12 Telex—Mail Vote 636, USA to Israel—Seasonal Periods for Fares, Telex—Amendment to Mail Vote.
Proposed Effective Date: September 1, 1993.
Docket Number: 48891.
Date filed: June 23, 1993.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex—Reso 033f—Portugal rates.
Proposed Effective Date: July 1, 1993.
Docket Number: 48892.
Date filed: June 23, 1993.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/379 dated June 16, 1993, Finally Adopted Resos r–1 to r–31.
Proposed Effective Date: October 1, 1993.

Docket Number: 48893.
Date filed: June 23, 1993.
Parties: Members of the International Air Transport Association.
Subject: Meeting site/date, if applicable: Geneva, June 3–11, 1993 IATA Agreement:
TC2 Reso/P 1427 dated June 18, 1993 r1–8
TC2 Reso/P 1428 dated June 18, 1993 r9–14
TC2 Reso/P 1429 dated June 18, 1993 r15–20
TC2 Reso/P 1430 dated June 18, 1993 r21
TC2 Reso/P 1433 dated June 18, 1993 r22–24
TC2 Reso/P 1434 dated June 18, 1993 r25–28
TC2 Reso/P 1435 dated June 18, 1993 r29–33
TC2 Reso/P 1438 dated June 18, 1993 r34–35
TC2 Reso/P 1439 dated June 18, 1993 r36–38
Proposed Effective Date: Expedited Sept. 1/Oct. 1/Nov, 1993 Expedited Jan. 1, 1994.
Docket Number: 48894.
Date filed: June 23, 1993.
Parties: Members of the International Air Transport Association.
Subject: Meeting site/date, if applicable: Geneva, June 3–11, 1993
TC2 Reso/P 1426 dated June 18, 1993 r1–6
TC2 Reso/P 1431 dated June 18, 1993 r–7
TC2 Reso/P 1432 dated June 18, 1993 r8–12
TC2 Reso/P 1436 dated June 18, 1993 r–13
TC2 Reso/P 1437 dated June 18, 1993 r14–16
Proposed Effective Date: Expedited August 15, 1993.
Docket Number: 48895.
Date filed: June 23, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/C 0083 dated May 18, 1993
TC3 (except to/from UST) R1–6
Minutes—TC3 Meet/C 0022 dated June 4, 1993
Rates Tables—Rates 0083 dated June 15, 1993
Proposed Effective Date: October 1, 1993.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–15843 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 25, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48885.
Date filed: June 22, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 20, 1993.
Description: Application of Tower Air, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for issuance of a Certificate of Public Convenience and Necessity, or amendment of its current Certificate for authority to operate scheduled passenger, property and mail air service between New York, N.Y. and The Netherlands and India.

Docket Number: 48887.
Date filed: June 22, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 20, 1993.
Description: Application of Delta Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the

[7] 15 U.S.C. 78s(b)(2) (1988).
[8] 17 CFR 200.30–3(a)(12) (1988).

Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide scheduled foreign air transportation between London, United Kingdom and Frankfurt, Federal Republic of Germany with local traffic rights.

Docket Number: 48897.

Date filed: June 25, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 1993.

Description: Application of Oasis International Airlines, S.A., pursuant to Section 412 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between points in Spain and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–15844 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

[Order 93–6–39 and Docket 48794]

Application of UFS, Inc. For Certificate Authority Under Subpart Q

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding UFS, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 14, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48794 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–9721.

Dated: June 29, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–15874 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

Fitness Determination of Chicago Express Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 93–6–40 Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Chicago Express Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2342.

Dated: June 29, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–15873 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Grants and Cooperative Agreements; Airway Science Program

AGENCY: Fedearl Aviation Administration, DOT.

ACTION: Exrtension of closing date and clarification of application directions for notice of solicitation for airway science grant proposals.

SUMMARY: The solicitation published in the **Federal Register** (58 FR 21763, April 23, 1993) represents a continuation of the Federal Aviation Administration's Airway Science (AWS) Grant Program. The Federal Aviation Administration (FAA) is authorized by Public Laws 101–516 and 102–143 to solicit competitive proposals for AWS grants from accredited public or nonprofit private colleges and universities with recognized FAA AWS Curriculum programs. FAA previously announced in the **Federal Register** the availability of $5,036,834 in AWS grant funding with the Federal share of any grant project not to exceed 50 percent of the cost of the project.

Public Law 101–516 provided $1,275,834 of the total available funds and established the maximum Federal share at 50 percent. Public Law 102–143 provided the remaining $3,761,000 in grant funding also with a maximum Federal share of 50 percent. However, Public Law 102–388 revised the Federal share of projects funded under the AWS Grant Program to a maximum of 65 percent. The law further stated that such Federal share shall be considered as having taken effect on October 1, 1991. As a result, this Notice states (1) the maximum Federal share of projects totalling $1,275,834 funded under Public Law 101–516 shall not exceed 50 percent and, (2) the maximum Federal share of projects funded with the remaining available $3,761,000 provided under Public Law 102–143 shall not exceed 65 percent.

The FAA expects to award most, if not all, of an available $5,036,834 in the form of grants, to a select number of recognized AWS institutions. A portion of the available funds will be awarded to eligible minority institutions with recognized AWS curricula. Awards will range up to a maximum of $300,000.

The grant funds may be used for the purchase, lease with intent to purchase, or construction of academic buildings and associated facilities to be used in direct support of an FAA recognized AWS curriculum. In addition, grant funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. No federal grant funds shall be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, general purpose parking lots, land, commercial airport facilities, taxiways, runways, or any project in support of a commercial activity.

Priority consideration will be give to grant applications submitted by institutions which have not received noncompetitive grant awards under the AWS Grant Program since Fiscal Year 1991 and to applications requesting funds in support of receive sites under the AWS Network.

FOR FURTHER INFORMATION CONTACT:

VOL 58 ISS 127 JL 6 1993 UMI

Virginia Hancock Krohn, Manager, Airway Science Grant Program, Federal Aviation Administration, Office of Training and Higher Education, AHT-30, room PL-100, 400 7th St., SW, Washington, DC 20590, Telephone: (202) 366-7003.

Closing Date

The closing date is extended to July 23, 1993.

Clarification of Application Directions

Institutions may submit only one grant application (six copies) in response to this Notice of Solicitation For Airway Science Grant Proposals.

Issued in Washington, DC, on June 22, 1993.

R.M. Rice,

Director, Office of Training and Higher Education.

[FR Doc. 93-15847 Filed 7-2-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Shelby and Fayette Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Shelby and Fayette Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Research and Technical Systems Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Nashville, TN 37228; Telephone (615) 736-7106.

SUPPLEMENTAL INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct an access-controlled four-lane facility from Mt. Pleasant Road near Collierville to just south of Interstate 40, Shelby and Fayette Counties, Tennessee. The proposed State Route 385 would be on new location and will be approximately 16-17 miles in length, depending upon the choice of proposed alternatives. Improvements to the corridor are considered necessary to provide for both present and projected traffic needs.

Options under consideration include (1) taking no action and (2) constructing an access-controlled four-lane facility on new location. There are two major build alternatives being proposed.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state, and local agencies on June 21, 1993. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The Draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued On: June 25, 1993.

Wright B. Aldridge, Jr.,

Research & Technical Systems, Tennessee Division, Nashville, Tennessee.

[FR Doc. 93-15767 Filed 7-2-93; 8:45 am]

BILLING CODE 4910-22-M

Federal Transit Administration

Transit Technology Program: Advisory Committee Meeting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces the fourth Federal Transit Administration (FTA) Transit Industry Technology Development Advisory Committee meeting to be held on August 18, 1993. The discussions will focus on the general condition of the transit equipment market, legislative and institutional barriers to transit industry growth, methods of stimulating technological innovation, defense conversion opportunities, and how the Department can facilitate increased U.S. production of rail and transit equipment for both domestic consumption and export.

MEETING DATES: The meeting will take place August 18, 1993, 9 a.m. to 4.30 p.m.

ADDRESSES: The Advisory Committee meeting will be held in room 2230 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mora, Federal Transit Administration, Office of Technical Assistance and Safety, (202) 366-0215.

SUPPLEMENTARY INFORMATION:

Background

The Federal Transit Administration (FTA) has held three previous meetings of the Transit Industry Technology Development Federal Advisory Committee. The first meeting provided guidance to the Committee membership about their responsibilities, and what the FTA expects of the Committee. This meeting also established the objectives of the Committee, as well as key technology areas that the transit industry would be addressing. The second meeting included a lengthy discussion of FTA procurement practices and a review of the FTA Fiscal Year 1992 Technology Program Plan. The third meeting, a follow-up to the previous meeting, served as a forum to seek the views of the Committee members about the FTA Office of Technical Assistance and Safety's proposed six-year Technology Program Plan.

The fourth meeting will focus on issues related to how the Department can facilitate increased U.S. manufacturing of transit equipment for both domestic consumption and export.

Procedures

The FTA will provide interpreters for persons with hearing disabilities, if requested by August 13, 1993. All meetings of the Transit Industry Technology Development Advisory Committee will be open to the public.

Issued on: June 30, 1993.

Robert H. McManus,

Acting Administrator.

[FR Doc. 93-15866 Filed 7-2-93; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

[Docket No. 92-71; Notice 2]

Hackney and Sons, Inc.; Disposition of Petition for Determination of Inconsequential Noncompliance

Hackney and Sons, Inc. (Hackney) of Washington, North Carolina, determined that some of its trailers fail to comply with 49 CFR 571.121, Federal Motor Vehicle Safety Standard No. 121, "Air Brake Systems," and filed an appropriate report pursuant to 49 CFR part 573. Hackney also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15

U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 31, 1992, and an opportunity afforded for comment (57 FR 62602).

Between June 1987 and May 1991, Hackney manufactured 130 trailers which it determined did not comply with the brake release time requirements of Standard No. 121 for trailers designed to tow another vehicle with air brakes. Between May 1991 and October 1992 Hackney produced 131 of the same type of trailer which it also determined did not comply with both the brake actuation and release time requirements of the standard.

I. Brake Release Times

A. Release Time Requirements of Standard No. 121

In Standard No. 121, vehicles manufactured before May 3, 1991 have the option to comply with the release time requirements of either paragraph S5.3.4.3 (hereinafter "old brake release test requirement") or paragraph S5.3.4.1 (hereinafter "new brake release test requirement"). Vehicles manufactured on or after May 3, 1991 must comply with the new brake release test requirement.

The old brake release test requirement is that

> [w]ith an initial service brake chamber air pressure of 95 pounds per square inch (psi), the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than * * * 0.65 second [this time interval is referred to as the release time] in the case of trailers. * * * A trailer * * * shall meet the above release time requirement with * * * the test rig shown in Figure 1(a) of the standard.

The new brake release test requirement is that these trailers have a release time that does not exceed 1.00 second when using the test rig depicted in Figure 1 of the standard, which is a different test rig from that in Figure 1(a). From this point on, the test rigs in Figures 1 and 1(a) will be referred to as "new test rig" and "old test rig," respectively.

B. Hackney Brake Release Time Tests

Hackney tested two samples of model year 1993 trailers using both the old brake release test requirement and the new brake release test requirement. In a phone conversation, Curtis B. Brookshire, Director of Research and Development for Hackney, indicated that there have been no air brake design changes from model years 1987 to 1993. Therefore, Mr. Brookshire expected that the pre-model year 1993 trailers would perform at the same level of noncompliance as the 1993 trailers in the air brake timing tests.

In the release time tests using the old brake release test requirements, the times ranged from 0.684 to 0.690 second, exceeding the maximum of 0.65 second allowed by the standard. These results placed the trailers manufactured before May 3, 1991 out of compliance with the release time portion of the standard.

In the release time tests using the new brake release test requirement, the times ranged from 1.344 to 1.428 seconds, exceeding the maximum of 1.00 second allowed in the standard. These results placed the trailers manufactured on or after May 3, 1991 out of compliance with the release time requirements of the standard.

II. Brake Actuation Times

A. Actuation Time Requirements of Standard No. 121

Vehicles manufactured before May 3, 1991 have two actuation time options. Vehicles can either comply with the actuation time requirements of paragraph S5.3.3.3 (hereinafter "old brake actuation test requirement") or of paragraph S5.3.3.1 (hereinafter "new brake actuation test requirement"). Vehicles manufactured on or after May 3, 1991 must comply with the new brake actuation test requirement.

The old brake actuation test requirement is that:

> [w]ith an initial service brake chamber air pressure of 100 pounds per square inch (psi), the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 psi in not more than * * * 0.30 second [this time interval is referred to as the actuation time] in the case of trailer. * * * A trailer * * * shall meet the above test rig shown in Figure 1(a) [old test rig].

The new brake actuation test requirement is that these trailers have an actuation time that does not exceed 0.50 second when using the test rig in Figure 1 (new test rig).

B. Hackney Brake Actuation Time Tests

Hackney tested the same model year 1993 trailers in the actuation time tests as it used for the release time tests.

When using the old brake actuation test requirement, the actuation times ranged from 0.204 to 0.216 second. These times comply with the requirement of not more than 0.30 second required in the old brake actuation test requirement. However, this requirement is not applicable to post May 3, 1991 vehicles.

In the test using the new brake actuation test requirement, the actuation times ranged from 0.582 to 0.638 second. These test results did not comply with the maximum 0.50 second actuation time required in the new brake actuation test requirement. These results place the trailers manufactured on or after May 3, 1991 out of compliance with the actuation time requirements of the standard.

III. Hackney Rationale

Hackney believes that the noncompliances are inconsequential as they relate to motor vehicle safety for the following two reasons:

1. The actuation times on the post-May 3, 1991 units comply with the pre-May 3, 1991 requirements of the standard.

2. The release times on both the pre- and post-May 3, 1991 units are only slightly out of compliance with the pre-May 3, 1991 portion of the standard.

In addition, Hackney cited comments on a final rule, which NHTSA issued on May 1, 1989, amending the timing requirements of Standard No. 121 (54 FR 18890). Hackney stated that the materials supported its petition, without offering elaboration. The materials Hackney cited are as follows:

> MVMA also asserted that *NHTSA's own test results do not support the significance of combination timing on trailer push, jackknifing, or accident avoidance.* (54 FR 18893)

> Bendix stated that it believes that, for combination vehicles, faster application times coupled with improved timing balance will result in shorter stopping distances and better driving control. That commenter stated that it believes also the proposed changes are in the proper direction and are technically feasible, although *it is unaware of data to substantiate performance improvements."* (54 FR 18894)

> GM argued further that while NHTSA has implied that the kingpin forces measured are largely the result of the brake timing existent on the tested vehicle combinations, those forces are actually a function of brake system pneumatic balance, torque balance, brake application technique and timing. *The commenter asserted that NHTSA has demonstrated neither that there is a need to lower such forces nor that the revisions proposed would serve to achieve that end."* (54 FR 19894)

> One commenter, Volvo White opposed the adoption of gladhand timing requirements. This company argued that manufacturer's compliance data would be invalidated, that many of the changes implemented over the last ten years to improve tractor trailer compatibility would no longer be available, and that *NHTSA's research does not justify the need for the proposed requirements."* (54 FR 18805) (emphasis original in all quotes).

Once Hackney discovered the noncompliance, it added a booster valve in the trailer brake system to correct both the actuation and release timing

VOL 58 ISS 127 JL 6 1993 UMI

problems. Hackney stated that trailers currently in production fully comply with the actuation and release time requirements of Standard No. 121.

No comments were received on the petition.

The agency has accorded little weight to Hackney's bare citation of comments without elaboration. NHTSA had already considered these comments in establishing the final rule published on May 1, 1989. NHTSA has decided to dispose of the petition by Hackney in the manner and for the reasons discussed below.

A. Brake Release Time of the 130 Trailers Manufactured Before May 3, 1991

The requirement in effect for trailers manufactured before May 3, 1991, established a brake release time of not more than 0.65 second. The range of brake release time experienced by petitioner's trailers was 0.684 to 0.690 second, resulting in a range of noncompliance of 0.034 to 0.040 second.

NHTSA has examined the rulemaking history of Standard No. 121 including the comments submitted to the various dockets to see if there were any characterizations of the effect on braking performance of an increase in brake release time measured in hundredths of a second. There were no such comments. Informed opinion at NHTSA headquarters and its Vehicle Research Test Center in Ohio is that the slight increase in release time reflected in this noncompliance will not adversely affect the braking performance of the noncompliant trailers, and will not have a measurable impact upon safety.

Accordingly, the petitioner has met its burden of persuasion that the noncompliance with S5.3.4.3 of Standard No. 121, by 130 trailers manufactured before May 3, 1991, is inconsequential as it relates to motor vehicle safety, and its petition is granted.

B. Brake Release Time of the 131 Trailers Manufactured on and After May 3, 1991

The requirement in effect for trailers manufactured on and after May 3, 1991, establishes a brake release time of not more than 1.00 second, when a vehicle is tested in accordance with a new procedure that the agency had determined better represented the actual braking performance experienced by a motor vehicle equipped with an air brake system. The range of brake release times experienced by the petitioner's trailers was 1.344 to 1.428 seconds, resulting in a range of noncompliance of 0.344 to 0.428 second. These values represent a 28 to 43% increase over the maximum permitted by the standard, and the agency does not believe that such a deviation can be considered inconsequential.

Inadequate release timing of trailer air brakes can adversely affect braking performance. For example, if the trailer's wheels do not unlock fast enough as the driver is attempting to stop, the trailer will skid. In order for the driver to regain control, immediate release of the brakes is necessary.

Accordingly, the petitioner has not met its burden of persuasion that the failure of the 131 trailers manufactured on and after May 3, 1991, to conform to S5.3.4.1 of Standard No. 121 is inconsequential as it relates to motor vehicle safety, and its petition is denied.

C. Brake Actuation Time of Trailers Manufactured on and After May 3, 1991

The requirement in effect for trailers manufactured on and after May 3, 1991, establishes a brake actuation time of not more than 0.50 second, when a trailer is tested in accordance with the new test procedure. The range of brake actuation times experienced by the petitioner's trailers was 0.582 to 0.636 second, resulting in a range of noncompliance of .082 to 0.136 second. These values represent an increase of 16 to 27 percent over the maximum permitted by the standard, and in this instance as well, the agency does not believe that such a deviation can be considered inconsequential.

Inadequate actuation time of trailer air brakes can adversely affect braking performance. For example, if a trailer's brakes are applied more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. In addition, if the brakes are applied during a turn on a wet road, this force on the kingpin may reduce the stability of a tractor-trailer combination and contribute to a jackknifing accident.

Accordingly, the petitioner has not met its burden of persuasion that the failure of the 131 trailers manufactured on and after May 3, 1991, to comply with S5.3.3.1 of Standard No. 121 is inconsequential as it relates to motor vehicle safety, and its petition is denied.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 30, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-15868 Filed 7-2-93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93-49; Notice 1]

Receipt of Petition for Determination That Nonconforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATES: The closing date for comments on the petition is August 2, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II),

permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) has petitioned NHTSA to determine whether 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs are eligible for importation into the United States. Europa contends that this vehicle is eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), because it has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence * * **(based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on inspection), 104 *Windshield Wiping and Washing Systems* (based on operation and certification of vehicle to European standard), 105 *Hydraulic Brake Systems* (based on documented testing and comparison of components to U.S.-model counterparts), 106 *Brake Hoses* (based on visual inspection of certification markings), 107 *Reflecting Surfaces* (based on visual inspection), 113 *Hood Latch Systems* (based on operation), 116 *Brake Fluids* (based on visual inspection of certification markings), 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation), 201 *Occupant Protection in Interior Impact* (based on test film and certification of vehicle to European standard), 202 *Head Restraints* (based on test film and certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film), 205 *Glazing Materials* (based on visual inspection of certification markings), 206 *Door Locks and Door Retention Components* (based on certification of vehicle to European standard), 207 *Seating Systems* (based on undocumented test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on certification markings and schematic diagram of seat belt warning system), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 291 *Windshield Zone Intrusion* (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 *Flammability of Interior Materials* (based on composition of upholstery).

The petitioner also contends that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV is capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rearview mirror with a flat surfaced mirror, or inscription of the required warning statement on the mirror's convex surface.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard. The petitioner asserts that the tire rims are certified by their manufacturer as complying with the standard, even though they lack a DOT certification marking.

Standard No. 208 *Occupant Crash Protection:* Installation of a complying driver's side air bag and a seat belt warning buzzer. The petitioner asserts that the vehicle conforms to the standard's head injury criteria at the front passenger position based on a test report from the vehicle's manufacturer.

Standard No. 210 *Seat Belt Assembly Anchorages:* Insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner asserts that the vehicle is certified as complying with a European standard that contains more severe force application requirements than those of this standard.

Standard No. 212 *Windshield Retention:* Application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 *Fuel System Integrity.* The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at the lower speed of 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle.

The petitioner additionally notes that Standard Nos. 214 *Side Impact Protection* and 216 *Roof Crush Resistance* will apply to MPVs built on or after September 1, 1993. Although it assumes that it will first modify vehicles built before September 1, 1993, the petitioner stated that it intends to conduct tests confirming the requirements of those standards so that vehicles built after that date can be certified. The petitioner also expressed the belief that the Gelaendewagon 300GE will meet Standard No. 216 without the need for modification.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(C)(3)(a)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 29, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–15869 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–60–M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denial of application for exemptions, correction.

SUMMARY: Notice of Application No. 10803–N Western Electric Corporation that appeared at page 33977 of the **Federal Register** for June 22, 1993, should have appeared 10803–N Westinghouse Electric Corporation.

J. Suzanne Hedgepeth,

Chief, Exemptions Programs, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 93–15842 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 28, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0087

Form Number: IRS Forms 1040–ES, 1040–ES(NR), and 1040–ES (Espanol)

Type of Review: Revision

Title: Estimated Tax for Individuals (U.S.Citizens and Residents) (1040–ES), For Nonresident Aliens (1040–ES(NR)), For Use in Puerto Rico (In Spanish)

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.

Respondents: Individuals or households

Estimated Number of Respondents/ Recordkeepers: 14,563,250

Estimated Burden Hours Per Respondent/Recordkeeper:

	1040–ES	1040–ES(NR)	1040–ES espanol
Recordkeeping	1 hr., 19 min	40 min	7 min.
Learning about the law	19 min	15 min	7 min.
Preparing the worksheets and payment vouchers	53 min	1 hr., 3 min	32 min.
Copying, assembling, and sending the payment voucher to the IRS	10 min	10 min	10 min.

Frequency of Response: Quarterly

Estimated Total Reporting/ Recordkeeping Burden: 1,117,862,200 hours

OMB Number: 1545–0188

Form Number: IRS Form 4868

Type of Review: Revision

Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return

Description: Form 4868 is used by taxpayers to apply for an automatic four-month extension of time to file Form 1040, Form 1040A, or Form 1040EZ. This form contains data used by the Service to determine if a taxpayer qualifies for the extension.

Respondents: Individuals or households

Estimated Number of Respondents/ Recordkeepers: 5,572,999

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordingkeeping—26 minutes
Learning about the law or the form—12 minutes
Preparing the form—18 minutes
Copying, assembling, and sending the form to the IRS—20 minutes

Frequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 7,021,978 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–15797 Filed 7–2–93; 8:45 am]

BILLING CODE 4830–01–M

Internal Revenue Service

Trade Show: IRS 1993 Nationwide Tax Forum

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of IRS's 1993 Nationwide Tax Forum, Conferences and Exhibitions.

SUMMARY: The Alternative Ways of Filing Office of the Input Processing Division of the Internal Revenue Service is offering seven Nationwide Tax Forums, Conference and Exhibitions in 1993. Dates and locations for the Conference and Exhibitions are: July 7–8 in Boston, MA; July 20–21 in Minneapolis, MN; August 12–13 in Atlanta, GA; September 1–2 in Cincinnati, OH; September 15–16 in San Francisco, CA; September 29–30 in Seattle, WA; and October 6–7 in San Antonio, TX.

Each conference and exhibition will provide a forum, in a trade show environment, on the latest information about alternative ways of filing federal tax returns, i.e., electronic filing, 1040PC, and other IRS initiatives. It will also be an opportunity to view the latest in computer hardware and software used for electronic filing.

Vendors of computer hardware, software and other services related to electronic filing of tax return data are invited to exhibit their products during these two day shows.

Seminars will be provided for new and experienced participants in electronic tax filing. Topics covered in the seminars will include Alternative Ways of Filing, 1040PC and Forms Standardization, Joint Filing of Federal and State Tax Returns, 1994 Changes in Electronic Filing, Tax Practitioner Programs, Benefits of Filing Employee Pension Plan Returns by Electronic/Magnetic Media, Tax System Modernization (TSM), Compliance 2000, as well as others. Attendance at these seminars will qualify for Continuing Professional Education (CPE) credits.

Participants in the electronic filing program who have an application on file with the IRS or are on the Practitioner Mailing List, will receive a mail-out that details the specifics of the shows. The mail-out will also contain hotel reservation information.

FOR FURTHER INFORMATION CONTACT: Will Alvey, RP Exhibit Service, Inc., at (301) 773–1881 or FAX (301) 773–8742, if you are interseted in being an exhibitor. Contact your local IRS office and ask for the Electronic Filing Coordinator if you have any questions about the conferences or if you have not received the attendee brochure.

Peggy Strunk,

Chief, Marketing Section.

[FR Doc. 93–15775 Filed 7–2–93; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; List of Objects

On June 18, 1993 notice was published at page 33687 of the **Federal Register** (58 FR 33687) by the United States Information Agency pursuant to Public Law 89–259, relating to the exhibit "Joan Miro." A list of the objects included in that exhibit may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is (202) 619–5078, and the address is room 700, 301 4th Street, SW., Washington, DC 20547.

Dated: June 29, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–15776 Filed 7–2–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Internal Revenue Service (IRS) income tax records with VA pension and parents' dependency and indemnity compensation records. The match will include the records of current VA beneficiaries as well as records of former beneficiaries.

The goal of this match is to compare income as reported to VA with income tax records maintained by IRS.

The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with income tax records maintained by IRS. This is a reinstatement of a matching program whose legislative authority expired September 30, 1992. Public Law 102–568, extended the matching authority to September 30, 1997. The match with IRS will provide VA with data from the IRS Wage and Information Returns (IRP) Master File. VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently, information about a VA beneficiary's receipt of income is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

Records to be Matched: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1989 compilation, Volume II, pages 918–922 as amended. The IRS records consist of information from the Wage and Information Returns (IRP) Master File, Privacy Act System Treas/IRS 22.061. In accordance with title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match is estimated to start June 1, 1993, but will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 30 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 233–3504.

SUPPLEMENTARY INFORMATION: This information is required by title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: June 24, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–15882 Filed 7–2–93; 8:45 am]

BILLING CODE 8320–01–M

OFFICE OF POLICY DEVELOPMENT

President's Council on Sustainable Development; Meeting

AGENCY: Office of Policy Development.

ACTION: Noticing the first meeting of the President's Council on Sustainable Development.

Time and Date: 9 a.m.–3 p.m. Tuesday, July 20, 1993.

Place: Thomas L. Kimball Conference Center—National Wildlife Federation—1400 16th Street, NW.

Status: Open.

Matters to be Considered: The President's Council on Sustainable Development is a partnership of industry, labor, government, environmental organizations, not-for-profit groups, and civil rights organizations. The Council will adopt administrative procedures, establish short and long-term priorities, discuss substantive sustainable development issues.

Contact: Cathy Zoi—White House Office On Environmental Policy, (202) 456–6224.

(**Note:** Notice of meeting is being published less than fifteen days in advance due to holiday publication scheduling).

Peter S. Siegel,

Management Analyst.

[FR Doc. 93–16145 Filed 7–2–93; 2:08 pm]

BILLING CODE 3127–01–M

VOL
58
ISS
127
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1993
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Sunshine Act Meetings

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, July 16, 1993.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–1596 Filed 7–1 –93; 10:54 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 22, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

—Quarterly review, 3rd Quarter, FY 1993
—Final regulation prohibiting dual trading by floor brokers
—Consideration of upcoming Commission business

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

[FR Doc. 93–15962 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, July 22, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–15963 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, July 22, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–15964 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Thursday, July 22, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–15965 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12:00 noon, Thursday, July 8, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15968 Filed 7–1–93; 11:29 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, July 8, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed criteria for sponsoring Telecommunications Service Priority assignments. (Proposed earlier for public comment; Docket No. R–0786)

Discussion Agenda:

2. Publication for comment of proposed amendments to Regulation DD (Truth in Savings) regarding calculation of the annual percentage yield for certain time accounts.
3. Proposed 1994 Federal Reserve Bank budget objective.
4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15969 Filed 7–1–93; 11:29 am]

BILLING CODE 6210–01–P

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Public Hearing

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability and the Council's public hearing on inclusion of students with disabilities in the mainstream of our education system. Notice of this meeting and hearing is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

DATES: August 2–5, 1993, 8:45 a.m. to 5:00 p.m.

LOCATION: Hyatt Regency Chicago, 151 E. Wacker Drive, Chicago, Illinois 60601, (312) 565–1234.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267–3846, (202) 267–3232 (TDD).

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. It was established in 1978 as an advisory board within the Department of Education. The Rehabilitation Act Amendments of 1984 transformed the Council into an independent agency. The mission of the National Council on Disability is to provide leadership in the identification of emerging issues affecting people with disabilities and in the development and recommendation of disability policy to the President and the Congress.

The quarterly meeting and public hearing of the National Council shall be open to the public. The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Unfinished Business
New Business
Announcements
Public Hearing on Inclusion of Students with Disabilities
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 28, 1993.

Andrew I. Batavia,

Executive Director.

[FR Doc. 93–13957 Filed 7–1–93; 10:35 am]

BILLING CODE 8320-08-M

VOL
58
ISS
127
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1993
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Corrections

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

0572-AA58

REA General Specification for Digital Stored Program Controlled Central Office Equipment (Form 522)

Correction

In rule document 93-12531 beginning on page 30937 in the issue of Friday, May 28, 1993, make the following corrections:

Appendix D to 7 CFR 1755.522 [Corrected]

On pages 30974 through 30976, beginning in the third column, in Appendix D to 7 CFR 1755.522, in paragraphs 5.4 through 8.10 and 10.3 through 10.5, wherever "1AYes" or "1ANo" appears, it should read "Yes" or "No".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0418]

Jan T. Sturm; Debarment Order

Correction

In notice document 93-14645 beginning on page 33941 in the issue of Tuesday, June 22, 1993, make the following correction:

On page 33942, in the second column, beginning in the tenth line, "(*insert date of publication in the* **Federal Register**)" should read "June 22, 1993".

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 6, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary

Public and Indian Housing Youth Sports Program; Funding Availability; Notice

VOL 58 ISS 127 JL 6 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public And Indian Housing

[Docket No. N–93–3635; FR–3375–N–01]

Public and Indian Housing Youth Sports Program; Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces HUD's FY 1993 funding of $8,250,000 for the Youth Sports Program (YSP) to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made.

DATES: Application is due by August 20, 1993, at 4:30 p.m. local time, at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA.

FOR FURTHER INFORMATION CONTACT: Robin Prichard, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197 or 708–3502. A telecommunications device for deaf persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0140. The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Information on the estimated public reporting burden is provided as follows:

Section of NOFA affected	Number of respondents	Number of respondents per response	Total annual responses	Hours per response	Total hours
III (entire)	500	1	500	24	12,000
Total annual reporting burden					12,000

I. Purpose and Substantive Description

(a) Authority

This program is authorized by Section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101–625).

(b) Allocation Amounts

Section 520(k) of NAHA provides that five percent of any funding appropriated for the Drug Elimination Program shall be available for Youth Sports Program grants. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (93 App. Act) (Pub. L. 102–389, approved October 6, 1993) appropriated $175 million for the Drug Elimination Program in FY 1993. This appropriation results in $8.75 million as the amount set aside for the Youth Sports Program. However, the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) required that not more than $500,000 of any amounts made available in FY 1993 for the Youth Sports Program be set aside for a demonstration program known as the Success Through Academic and Recreational Support program, administered by the City of Fort Myers. Accordingly, $8.25 million is the amount available for the Youth Sports Program for Fiscal year 1993. Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects.

Because of the limited amount of funding appropriated for this program, and to ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application. The maximum annual Youth Sports grant amount per applicant is $125,000. As more fully explained below, applicants must supplement grant funds with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

(c) Eligibility

(1) Eligible Applicants

Funding for this program in FY 1993 is limited to PHAs and IHAs. Although Section 520 of NAHA lists seven categories of entities qualified to receive grants (States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs)), and HCDA 1992 section 126(b) added institutions of higher learning that have never participated in a Youth Sports program as eligible applicants, the 93 App. Act limited the funding for the Drug Elimination Program to PHAs and IHAs only. Since the funding of the Youth Sports Program is dependent on the appropriation for the Drug Elimination Program, the limitations that apply to Drug Elimination affect Youth Sports as well. Therefore, for FY 1993 only PHAs and IHAs are eligible applicants for Youth Sports Program Funding.

In designing an activity for funding, PHA and IHA applicants shall consult with RMCs/RCs where they exist, and with other entities that would be eligible for funding under this program, as listed above, with at least two years of experience in designing or operating sports, cultural, recreational, educational or other activities for youth.

Eligible local entities that are affiliates of national organizations may rely on the experience of the national organization for this purpose. These consultations will provide applicants with valuable resident input and will involve entities with experience in designing and implementing the eligible types of activities under this program with PHA and IHA applicants that may not have this type of experience. These experienced entities may establish a sub-contracting relationship, in accordance with 24 CFR part 85, with the PHA/IHA if deemed appropriate by the grantee to further their public/private partnership. This consultation process will also provide entities that are not PHAs or IHAs with a greater appreciation and understanding of the operations and problems of public and Indian housing projects. The end result will be more effective program activities that make more efficient use of program funds. This result is expected because it draws upon and combines the expertise of PHA and IHA applicants with respect to the operations and problems of public and Indian housing projects, and the expertise of other entities with respect to designing and implementing youth activities.

(2) Eligible Activities

Youth Sports Program funds may be used to assist in carrying out sports, cultural, recreational, educational or other activities for youth in any of the following manners:

(i) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(A) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant (Section III.(a)(3) of this NOFA).

(B) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing projects in which the funded facility is operated (Section III.(a)(2)(ii) and III.(a)(10)(iii) of this NOFA).

(C) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or adjacent to the premises of the public housing project identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA projects will have access to the facility, since IHAs often cover large areas (Section III.(a)(9) of this NOFA).

(D) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities (Section III.(a)(2)(iii) of this NOFA).

(E) Facilities receiving Youth Sports funding must be used exclusively for Youth Sports activities commensurate with the extent of the Youth Sports funding. For example, if a facility is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities.

(F) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, make them made readily accessible to and usable by individuals with handicaps.

(G) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(ii) Redesigning or modifying public spaces in public or Indian housing projects to provide increased utilization of the areas by Youth Sports activities is an eligible activity under this program.

(A) The construction of sports facilities on public or Indian housing property to implement Youth Sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(iii) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, transportation costs, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(A) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(B) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(C) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(D) Cultural and recreational activities, such as ethnic heritage classes, and art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(E) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(F) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(G) The purchase of vehicles under this program is prohibited.

(H) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

(3) Threshold Requirements for Funding

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements or it will not be considered for funding:

(i) The activity must be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-

VOL 58 ISS 127 JL 6 1993 UMI

related problems in the public or Indian housing project or projects for which the activity is proposed. (See, Section III.(a)(7), below, of this NOFA.)

(ii) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(A) The determination required in paragraph (ii) will be made on the basis of information submitted in the applicant's plan as described below in "Checklist of Application Submission Requirements," Section III.(a)(7).

(iii) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or Indian housing projects for which the activities or facilities are operated. (See, Section III.(a)(10), below.)

(iv) Applicants must provide a workplan detailing a timeline for the implementation of activities and a budget for the activity or activities for which funding is sought, as required by Sections III.(a)(4) and (5), below.

(v) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant. (*See* Section III.(a)(2)(ii), below.) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(A) States;

(B) Units of general local government or agencies of such governments;

(C) Indian tribes;

(D) Private contributions;

(E) Any salary paid to staff to carry out the Youth Sports activities of the applicant, computed as follows:

(*1*) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources;

(*2*) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program;

(F) The value of the time and services contributed by volunteers to carry out the program of the grant recipient to be determined as follows:

(*1*) Except as set out in paragraph (*2*), below, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(*2*) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located;

(G) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item(s) at the time of the donation;

(*1*) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items;

(H) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(*1*) The applicant must document the fair market value of a lease by referencing an existing, or no more than one year old, lease from the building involved; or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(vi) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously used, or designated for use, for the purpose of this program. (See, Section III.(a)(2)(vi).

(d) Selection Criteria

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 75 points out of the maximum of 120 points awardable under this competition to be eligible for funding. Grants will be awarded to the three highest-ranked, eligible PHA applications within each region. In addition, grants will be awarded to the three highest-ranked, eligible IHA applications on a nation-wide basis. All of the remaining eligible applications, both PHAs and IHAs, will then be placed in overall nation-wide ranking order, with the remaining funds granted in order of rank until all funds are awarded. The following criteria will be used to evaluate eligible applications:

(1) The extent to which the Youth Sports activities to be assisted with the grant address the particular needs of the area to be served by the activities and employs methods, approaches, or ideas in the design or implementation of the activities particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative). (Maximum points: 25). In assessing this criterion, HUD will consider the following factors:

(i) The appropriateness of the applicant's methods, approaches, or ideas in addressing the particular needs of the area to be served by the program, as reflected in the description of the services to be provided by the applicant's proposed Youth Sports Program (Section II.(a)(3) of this NOFA); (10 points)

(ii) The resources committed to each activity and service (Section III.(a)(5) of this NOFA) proposed for funding in the application; (5 points)

(iii) An estimate of the number of youth from public or Indian Housing projects that will be involved in the applicant's proposed activities, in accordance with Section III.(a)(8) of this NOFA. (5 points)

(iv) The applicant's explanation of the procedures that will be followed to ensure that the Youth Sports activities will serve primarily youth from the public or Indian housing project in which the program to be assisted by a grant is operated, as required by Section III.(a)(10)(iii). (5 points)

(2) The technical merit of the application of the qualified applicant. (Maximum points: 10). In assessing this criterion HUD will consider the following factor:

(i) The quality and thoroughness of the statement required in the application (Section III.(a)(6) of this NOFA) regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria for this program. (10 points)

(3) The qualifications, capabilities, and experience of the personnel and staff of the sports program who are critical to achieving the objectives of the program as described in the application. (Maximum points: 15) In assessing this criterion HUD will consider the following factors:

(i) The position descriptions of staff critical to achieving the objectives of the applicant's program, required under Section III.(a)(10)(ii) of this NOFA; (10 points)

(ii) The nature of the duties volunteers will perform, required under Section III.(a)(10)(ii) of this NOFA. (5 points)

(4) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its youth sports program and achieving the

objectives of its program as described in the application, and the potential of the applicant for continuing the youth sports program. (Maximum points: 30) In assessing this criterion HUD will consider the following factors:

(i) The related experience of the applicant, as evidenced by its staff, and of the entity consulted by the applicant in preparing its application, in conducting the type of activities, in public or Indian housing, for which funding is requested (Section III.(a)(10)(i) and (ii) of this NOFA); (10 points)

(ii) The appropriateness, in terms of need, size, location, and suitability, of the facilities to be used for youth activities (Section III.(a)(9) of this NOFA); (5 points)

(iii) The applicant's workplan and implementation schedule for the Youth Sports activities for which funding is sought (Section III.(a)(4) of this NOFA); (10 points)

(iv) The extent of the resources committed to continue the operation of Youth Sports activities and facilities beyond the grant term included in the applicant's description of plans to continue the Youth Sports activities in the future, as required in Section III.(a)(12) of this NOFA. (5 points)

(5) The severity of the drug problem at the local public or Indian housing site for the youth sports program and the extent of any planned or actual efforts to rid the site of the problem. (Maximum points: 10) In assessing this criterion HUD will consider the following factors:

(i) The extent of the drug-related problems at the housing projects to be assisted, as established in the applicant's plan required by Section III.(a)(7) of this NOFA; (5 points)

(ii) The extent of any planned or actual efforts to rid the housing projects to be assisted of their drug-related problem, as described in the applicant's plan required by Section III.(a)(7) of this NOFA. (5 points)

(6) The extent to which local sports organizations or sports figures are involved. (Maximum points: 5 points) In assessing this criterion, HUD will consider the following factor:

(i) The documentation provided in the application of the level of on-site or other participation by local sports, cultural, recreational, educational, or other community organizations or figures that is focused on the specific youth activities for which the application is prepared (Section III.(a)(11) of this NOFA). (5 points)

(7) The extent of the coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports program. (Maximum points: 15) In assessing this criterion, HUD will consider the following factors:

(i) The applicant's description of its consultations with resident management groups or resident associations, where they exist, and residents, as required by Section III.(a)(7) of this NOFA; (10 points)

(ii) The extent to which the applicant demonstrates the relationship of the Youth Sports activities with other existing anti-drug activities, if any, in the housing projects to be assisted as reflected in the applicant's plan required by Section III.(a)(7) of this NOFA. (5 points)

(8) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's budget describing the share of the costs of the applicant's Youth Sports Program provided by a grant under this program and the share of the costs provided from funds from non-federal sources and other resources, such as the number of volunteers and volunteer hours committed, submitted in accordance with Section III.(a)(5) of this NOFA. (5 points)

(9) The extent to which the applicant demonstrates local government or tribal support for the program. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's description of local or tribal government support as evidenced by contributions from these entities listed under Section III.(a)(5) of this NOFA. (5 points)

II. Application Process

(a) An application package may be obtained from the local HUD field office or by calling HUD's Drug Information and Strategy Clearinghouse on 800–245–2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) The deadline for the submission of grant applications under this NOFA is [insert 45 days after FEDERAL REGISTER publication]. In order to be eligible, the original and two copies of the application must be physically received by 4:30 PM, local time, on the deadline date at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA, Attention: Public Housing Division Director, or Office of Indian Programs Director. A list of these offices is included as Appendix 1 to this NOFA. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A FAX is not acceptable.

III. Checklist of Application Submission Requirements

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50 percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing projects in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in 24 CFR part 87 (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to

supplement grant funds under this program will not be used to replace other public funds previously used, or designated for use, for the purpose of this program.

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program.

(viii) *Civil Rights.* A certification from the applicant that:

(A) It will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and with HUD regulations at 24 CFR part 1, which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structures which are provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits;

(B) It will comply with the Fair Housing Act (42 U.S.C. 3601–3620) and with implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and will administer its programs and activities relating to housing in a manner affirmatively to further fair housing;

(C) It will comply with Executive Order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR part 107, which prohibit discrimination because of race color, creed, sex or national origin in housing and related facilities provided with federal financial assistance;

(D) It will comply with Executive Order 11246 and its implementing regulations at 42 CFR chapter 60–1, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal contracts, and that affected persons shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in 24 CFR 130.5, the equal opportunity clause required by § 130.15(b);

(E) It will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701a), and with implementing regulations at 24 CFR part 135, which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project and contracts for work in connection with the project be awarded in substantial part to persons residing in the area of the project;

(F) It will comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and with implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in federally assisted and conducted programs and activities;

(G) It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, which prohibit discrimination against persons because of age in projects and activities receiving federal financial assistance;

(H) It will comply with Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and by women.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with an 18 months maximum task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and provide a narrative describing how the share of the costs provided from other sources of funds (e.g., local or tribal government, corporations, individuals), including funds from non-Federal sources, will be obtained.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria in Section I.(d), above.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing projects proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing projects in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in futherance of the 961.15 plan. The other choice is that an applicant may submit an abbreviated plan prepared for this NOFA as follows:

(i) The plan must describe the drug-related problems in the projects that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the projects proposed for assistance. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which has a direct bearing on drug-related problems in the projects proposed for assistance. Examples of these data are: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted projects. Any efforts being undertaken by community and governmental entities, residents of the project, Resident Management Corporations (RMCs), Resident Corporations, (RCs), other resident associations, or any other entities to address the drug-related problems in the projects proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be

operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(i) The applicant must provide the total estimated number of youth involved for each proposed activity and participating in youth leadership assignments (for example, team managers, assistant managers, team captains) computed on an annual and, if applicable, a session or seasonal basis (for example, classes or league sports may be organized in sessions or seasons that run for a certain number of weeks or months, or more activities may take place and more youth may be involved on weekends than on weekdays).

(ii) The total estimated number given for each activity must be further broken down by categories of age (e.g., 5–8 years old, 9–12 years old, etc.), sex (male, female, co-ed), and residency in public or Indian housing.

(9) A description of the facilities used.

(i) Facilities to be used for Youth Sports activities must be described in the application with regard to their dimensions, location, and the number of youth that can be accommodated at one time.

(A) In the case of an Indian housing project, if a facility to be acquired, constructed, or rehabilitated is not located on or adjacent to the premises of the project to be assisted, the application must specify how youth from the Indian housing project will have access to the facility (e.g., transportation will be provided, transportation service is readily available.)

(ii) Where applicable, the application must provide a detailed explanation of all facility acquisition, construction, rehabilitation, operation, redesign or modification proposed for funding under this program.

(A) The application must specify what percent of the facility will be used for youth activities (as opposed to, for example, senior citizen or adult activities). This percentage may not be less than the percentage of Youth Sports funding provided for the facility.

(iii) The application must identify the entity that will be responsible for the operation of any facility funded by a Youth Sports grant.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with RMCs/RCs, where they exist, and other entities experienced in the design and implementation of the type of proposed youth sports activities;

(ii) The position descriptions of the staff that will be responsible for managing and operating the Youth Sports activities must be included in the application; if volunteers are involved, their number, job descriptions, and hours per week of involvement must be included;

(iii) The procedures that will be followed to ensure that the Youth Sports activities or facilities will serve primarily youth from the public or Indian housing project in which the program to be assisted by a grant is operated must be explained in the application.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(i) The applicant must provide documentation of the level of on-site or other participation by local and nationally affiliated sports organizations, except as provided in Section (ii) below, with at least two years of organizational and operational experience. These may include, but are not limited to, strictly sports organizations, such as Little Leagues, Midnight Basketball, or professional teams. Participation by cultural, recreational, or educational organizations is also permissible. The participation of these groups must be focused on the youth activities for which the application is prepared.

(ii) The applicant may demonstrate the involvement of local or national sports, cultural, recreational or educational figures, such as athletes, coaches, artists, entertainers and teachers in place of, or in addition to, the participation of organizations. The participation of these figures must be focused on the youth activities for which the application is prepared.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

(13) HUD Form 2880.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Cannot be submitted after the application due date has expired, to improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

V. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact (FONSI) with respect to the environment for the FY 1991 NOFA has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Since the requirements of this FY 1993 NOFA are identical to those of the FY 1991 NOFA, the FONSI prepared for the FY 1991 NOFA will apply to this NOFA, as it did to the FY 1992 NOFA for the same reasons. The FONSI is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20401. HUD will review all applications and their proposed activities in accordance with the environmental requirements of 24 CFR Part 50.

(b) *Federalism Impact.* The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that

provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program is intended to improve the quality of life of public and Indian housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) *Section 102 HUD Reform Act. Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Section 103 HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Section 112 HUD Reform Act.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 2291). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated : June 22, 1993.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

Appendix Listing of: HUD Regional Offices, Category A and B Field Offices, and Other Field Offices With Delegated Public Housing Responsibilities, and Offices of Indian Programs

Region I

Jurisdictions: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St., Room 375, Boston, MA 02222–1092, (617) 565–5234. TDD Number: (Commercial) (617) 565–5453

Hartford, Connecticut Office–A

Manager, HUD—Hartford Office, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523. TDD Number: (Commercial) (203) 240–4522

Manchester, New Hampshire Office–B

Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681. TDD Number: (Commercial) (603) 666–7518

Providence, Rhode Island Office–B

Manager, HUD—Providence Office, 330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785. (401) 528–5351. TDD Number: (Commercial) (401) 528–5364

Region II

Jurisdictions: New York, New Jersey

New York Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–8068. TDD Number: Commercial number not available

Buffalo, New York Office–A

Manager, HUD—Buffalo Office, Lafayette Court, 5th Fl., 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755. TDD Number: Commercial number not available

Newark, New Jersey Office–A

Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New

Jersey 07102–5504, (201) 877–1662. TDD Number: (Commercial) (201) 645–6649

Region III

Jurisdictions: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th St., Philadelphia, Pennsylvania 19106–3392, (215) 597–2560. TDD Number: (Commercial) (215) 597–5564

Washington, D.C. Office–A

Manager, HUD—Washington Office, Union Center Plaza, Phase III, 820 First St. NE., suite 300, Washington, DC 20002–4502, (202) 275–9200. TDD Number: (Commercial) (202) 275–0967

Baltimore, Maryland Office–A

Manager, HUD—Baltimore Office, 10 North Calvert St., 3rd, Fl., Baltimore, Maryland 21202–1865, (301) 962–2121. TDD Number: (Commercial) (301) 962–0106

Pittsburgh, Pennsylvania Office–A

Manager, HUD—Pittsburgh Office, 412 Old Post Office Courthouse Building, 7th Ave., & Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428. TDD Number: (Commercial) (412) 644–5747

Richmond, Virginia Office–A

Manager, HUD—Richmond Office, 400 North 8th St., Richmond, Virginia 23240 (804) 771–2721. TDD Number: (Commercial) (804) 771–2820

Charleston, West Virginia Office–B

Manager, HUD—Charleston Office, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000. TDD Number: (Commercial) (304) 347–5332

Region IV

Jurisdictions: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring St., S.W., Atlanta, Georgia 30303–3388, (404) 331–5136. TDD Number: (Commercial) (404) 730–2654

Birmingham, Alabama Office–A

Manager, HUD—Birmingham Office, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 731–1617. TDD Number: (Commercial) (205) 290–7624

Louisville, Kentucky Office–A

Manager, HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251. TDD Number: Commercial number not available

Jackson, Mississippi Office–A

Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol St., Room, 910, Jackson, Mississippi 39269–1096, (601) 965–4738. TDD Number: (Commercial) (904) 232–1241

Greensboro, North Carolina Office–A

Manager, HUD—Greensboro Office, 415 North Edgewood St., Greensboro, North Carolina 27401–2107, (919) 333–5361. TDD Number: (Commercial) 919–547–4055

Caribbean Office–A

Manager, HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Ave., San Juan Puerto Rico 00918–1804, (809) 766–5201. TDD Number: Commercial number not available

Columbia, South Carolina Office–A

Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592. TDD Number: Commercial number not available

Knoxville, Tennessee Office–A

Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust St., SW., Knoxville, Tennessee 37902–2526, (615) 549–9384. TDD Number: (Commercial) (615) 545–4379

Nashville, Tennessee Office–B

Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213. TDD Number: (Commercial) (615) 736–2886

Jacksonville, Florida Office–A

Manager, HUD—Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, Florida 32202–5121, (904) 232–2626. TDD Number: (Commercial) (904) 232–1241

Region V

Jurisdictions: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Chicago Regional Office, 626 West Jackson Blvd., Chicago, IL 60606–5601, (312) 353–5680. TTD Number: (Commercial) (312) 353–7143

Chicago—Office of Indian Programs

Director, HUD—Chicago—Office of Indian Programs, 626 West Jackson Blvd., Chicago, IL 60606–1683, (312) 353–1683. TDD Number: (Commercial) (312) 353–7143

Detroit, Michigan Office–A

Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900. TDD Number: Commercial number not available

Indianapolis, Indiana Office–A

Manager, HUD—Indianapolis Office, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303. TDD Number: Commercial number not available

Grand Rapids, Michigan Office–B

Manager, HUD—Grand Rapids Office, 2922 Fuller Ave., NE., Grand Rapids, Michigan 49505–3499, (616) 456–2100. TDD Number: Commercial number not available

Minneapolis-St. Paul, Minnesota Office–A

Manager, HUD—Minneapolis-St. Paul Office, 220 2nd St. S., Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3002. TTD Number: (Commercial) (612) 370–3186

Cincinnati, Ohio Office–B

Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884. TDD Number: (Commercial) (513) 684–6180

Cleveland, Ohio Office–B

Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Ave., Rm. 420, Cleveland, Ohio 44114–1670, (216) 522–4065. TDD Number: Commercial number not available

Columbus, Ohio Office–A

Manager, HUD—Columbus Office, 200 N. High St., Columbus, Ohio 43215–2499, (614) 469–5737. TDD Number: Commercial number not available

Milwaukee, Wisconsin Office–A

Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214. TDD Number: Commercial number not available

Region VI

Jurisdictions: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401. TDD Number: (Commercial) (817) 885–5447

Houston, Texas Office–B

Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274. TDD Number: Commercial number not available

San Antonio, Texas Office–A

Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (512) 229–6800. TDD Number: (Commercial) (512) 229–6885

Little Rock, Arkansas–A

Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201, (501) 324–5931. TDD Number: (Commercial) (501) 324–5931

New Orleans, Louisiana–A

Manager, HUD—New Orleans Office, Fisk Federal Building, 1661 Canal St., P.O. Box 70288, New Orleans, Louisiana 70112–2887, (504) 589–7200. TDD Number: None available

Oklahoma City, Oklahoma Office–A

Manager, HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, Oklahoma 73102–3202, (405) 231–4181. TDD Number: (Commercial) (405) 231–4891

Oklahoma City—Indian Programs Division

Director, HUD—Oklahoma City Office IPD, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, OK 73102–3202, (405) 231–4102. TDD Number: Commercial number not available

Albuquerque, NM Office–C

Manager, HUD—Albuquerque Office, 625 Truman Street N.E., Albuquerque, NM 87110–6443, (505) 262–6463. TDD Number: (Commercial) (505) 262–6463

Region VII

Jurisdictions: Iowa, Kansas, Missouri, Nebraska

Kansas City, Kansas—Regional Office

Regional Administrator, Regional Housing Commissioner, Kansas City Regional Office, Gateway Tower II, 400 State Ave., Kansas City, Kansas 66101–2506, (913) 236–2162. TDD Number: (Commercial) (913) 236–3972

Omaha, Nebraska Office–A

Manager, HUD—Omaha Office, Braiker/Brandeis Building, 210 S. 16th St., Omaha, Nebraska 68102–1622, (402) 221–3703. TDD Number: (Commercial) (402) 492–3183

St. Louis, Missouri Office–A

Manager, HUD—St. Louis Office, 1222 Spruce St., St. Louis, Missouri 63103–2836, (314) 539–6583. TDD Number: (Commercial) (314) 539–6331

Des Moines, Iowa Office–B

Manager, HUD—Des Moines Office, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512. TDD Number: (Commercial) (515) 284–4728

Region VIII

Jurisdictions: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Denver Regional Office, Executive Office Building, 1405 Curtis St., Denver Colorado 80202–2349, (303) 844–4513. TDD Number: (Commercial) (303) 844–6158

Denver, Colorado—Office of Indian Programs

Director, HUD—Denver Office OIP, Executive Tower Building, 1405 Curtis St., Denver, CO 80202–2349, (303) 844–4513. TDD Number: (Commercial) (303) 844–6158

Region IX

Jurisdictions: Arizona, California, Hawaii, Nevada, Guam, America Samoa

San Francisco, California—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752. TDD Number: (Commercial) (415) 556–8357

Phoenix, Arizona—Region IX Indian Programs Office

Director, HUD—Phoenix Office of Indian Programs, Two Arizona Center, Suite 1650, Phoenix, Arizona 85004, (602) 379–4156. TDD Number: (Commercial) (602) 379–4461

Honolulu, Hawaii Office–A

Manager, HUD—Honolulu Office, 300 Ala Moana Blvd., Rm. 3318, Honolulu, Hawaii 96850–4991, (808) 541–1323. TDD Number: (Commercial) (808) 541–1356

Los Angeles, California Office–A

Manager, HUD—Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122. TDD Number: (Commercial) (213) 251–7038

Sacramento, California Office–B

Manager, HUD—Sacramento Office, 777 12th Ave., Suite 200, P.O. Box 1978, Sacramento, California 96814–1997, (916) 551–1351. TDD Number: (Commercial) (916) 561–1367

Phoenix, Arizona Office–B

Manager, HUD—Phoenix Office, Two Arizona Center, 400 N. 5th St., Phoenix, Arizona 85004–2361, (602) 261–4434. TDD Number: (Commercial) (602) 379–4461

Region X

Jurisdictions: Alaska, Idaho, Oregon, Washington

Seattle, Washington—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Seattle Regional Office, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, Washington 98104–1000, (206) 220–5290. TDD Number: (Commercial) (206) 220–4351

Seattle, Washington—Office of Indian Programs

Director, HUD—Office of Indian Programs, Arcade Plaza Building, 1321 2nd Ave., Seattle, WA 98101–2058, (206) 553–0330. TDD Number: (Commercial) (206) 553–4351

Portland, Oregon Office–A

Manager, HUD—Portland Office, Cascade Building, 520 S.W. 6th Ave., Portland, Oregon 97203–1596, (503) 326–2561. TDD Number: (Commercial) (503) 326–3656

Anchorage, Alaska Office–A

Manager, 222 West 8th Avenue, #64, Anchorage, Alaska 99513–7537, (907) 271–4170. TDD Number: Commercial not available

Director, Anchorage—Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513, (907) 271–4170.

[FR Doc. 93–15761 Filed 7–2–93; 8:45 am]

BILLING CODE 4210–33–M

Federal Register

Tuesday
July 6, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Chitimacha Tribe of Louisiana; Tribal-State Compact; Notice

VOL 58 ISS 127 JL 6 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Chitimacha Tribe of Louisiana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Tribal-State Compact for the Conduct of Class III Gaming Between the Chitimacha Tribe of Louisiana and the State of Louisiana, which was enacted on February 15, 1993.

DATES: This action is effective July 6, 1993.

FOR FURTHER INFORMATION CONTACT:

Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 18, 1993.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–15774 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Tuesday
July 6, 1993

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Notice of Fund Availability (NOFA) for Fiscal Year 1993, and Program Guidelines for the Family Unification Demonstration Programs; Notice

VOL 58 ISS 127 JL 6 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3634; FR 3381–N–01]

Notice of Fund Availability (NOFA) for Fiscal Year 1993, and Notice of Program Guidelines for the Family Unification Demonstration Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability (NOFA) for Fiscal Year (FY) 1993; and notice of program guidelines for the Family Unification Demonstration Program.

SUMMARY: This notice announces the availability of FY 1993 budget authority for a national competition to award funding for section 8 rental certificates under the Family Unification Demonstration Program, and also sets forth program guidelines for this demonstration program. This Notice invites public housing agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds. The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families.

Participation in the Family Unification Demonstration Program for Fiscal Year 1992 was limited, under the VA, HUD-Independent Agencies Appropriations Act for FY 1992, to PHAs in the following 11 States: California, Florida, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Texas. As provided by the Senate Committee Report to the VA, HUD Independent Agencies Appropriations Act of 1993, HUD has selected the following five additional States to participate in the FY 1993 Family Unification Demonstration Program: Georgia, Illinois, Minnesota, North Carolina and Virginia. The selection of these five States was based on the caseload of families with children in foster care within these States. The information concerning families with children in foster care was provided to HUD by the Administration for Children and Families at the U.S. Department of Health and Human Services (HHS).

Accordingly, HAs in the following States are invited by this notice to submit applications for rental certificates under this demonstration program: California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia.

This NOFA contains information for HAs in the 16 States listed above regarding the allocation of rental certificate budget authority, the application process, including the application requirements and the deadline for filing applications, the selection criteria and the selection process.

DATE: The due date for submission of applications in response to this NOFA is August 20, 1993. Application forms may be obtained from the local HUD Field Office/Indian Programs Office. Applications must be received in the local HUD Field Office/Indian Programs Office on the due date by 3:00 p.m. local time. The local Field Offices are the official place of receipt for all applications. At the time of, or immediately following, the submission of the application to the Field Office, the HA also must submit a copy of the application for funding under this NOFA to the following address: U.S. Department of Housing and Urban Development, Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, room 4220, 451 Seventh Street, SW., Washington, DC 20410.

The above-stated application deadline for submission of completed applications to the Field Offices/Indian Programs Offices is firm as to date and hour. In the interest of fairness to all competing HAs, the Department will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problem(s). HUD will not accept applications sent via facsimile (FAX) transmission.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577–0123.

I. Purpose and Substantive Description

(A) Authority

The Family Unification Demonstration Program is authorized by section 8(x) of the U.S. Housing Act of 1937, as added by section 553 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (42 U.S.C. 1437f(x)); the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991) (HUD Appropriations Act of 1992), and the VA, HUD-Independent Agencies Act of 1992 (Pub. L. 102–389, approved October 6, 1992) (Appropriations Act of 1993). The regulations governing the section 8 rental certificate program are codified at 24 CFR part 882.

(B) Background

The Family Unification Program is a demonstration program under which section 8 housing assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in:

(1) the imminent placement of the family's child, or children, in out-of-home care, or

(2) the delay in the discharge of the child, or children, to the family from out-of-home care.

The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families. (Lack of adequate housing is defined in Section II(A) of this NOFA.)

Certificates awarded under the Family Unification Demonstration Program are to be administered by HAs under HUD's current regulations for the section 8 rental certificate program (24 CFR part 882). The HA may issue a rental voucher to a family selected for participation in the Family Unification Program if the family requests a rental voucher and the HA has one available. In accordance with the Senate Committee Report to the HUD

Appropriations Act for 1993, the demonstration program funding available in FY 1993 is provided for use in 16 States. These 16 States are identified in the "Summary" and in Section I(D) of this NOFA.

(C) Allocation Amounts

Of the amounts made available by the HUD-Appropriations Act for FY 1993, up to $75 million of budget authority for the section 8 rental certificate program is earmarked for the Family Unification Demonstration Program. This amount will support approximately 2,200 section 8 rental certificates. Each HA may apply for funding for a maximum of 100 units. The minimum funding amount is for 25 units. Any HA that is unwilling to accept less than the number of units for which it applies must state this in its cover letter to its application, and must state the minimum number it is willing to accept.

The amounts allocated under this NOFA will be awarded under a national competition based on demonstrated need for such assistance. The Family Unification Demonstration Program is exempt from section 213(d) of the Housing and Community Development Act of 1974 (which requires that funds be allocated on a fair share basis), and from 24 CFR part 791, subpart D, the HUD regulation implementing section 213(d).

(D) Eligibility

HAs in the following 16 States are invited by this notice to submit applications for rental certificates under this demonstration program: California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia.

(E) Family Self-Sufficiency Program

Section 23 of the U.S. Housing Act of 1937, which established the Family Self-Sufficiency (FSS) Program, was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that all PHAs receiving additional rental vouchers or certificates in FY 1993 must establish a local FSS program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991 (56 FR 49592). The interim and final rules for the FSS program were published in the **Federal Register** on May 27, 1993, at 58 FR 30858 and 58 FR 30906, respectively. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.) Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published in the **Federal Register** on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

II. Application Process

(A) Program Guidelines

(1) Definitions: For purposes of the Family Unification Demonstration Program:

(a) "Family Unification eligible family" means a family:

(i) which the public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care; and

(ii) which the HA has determined is eligible for section 8 rental assistance.

(b) "Lack of adequate housing" means a situation in which a family:

(i) is living in substandard housing or homeless, as defined in 24 CFR 882.219(f); or

(ii) is, or will be, involuntarily displaced from a housing unit because of actual or threatened violence against a family member under the circumstances described in 24 CFR 882.219(d)(2).

(c) Public child welfare agency (PCWA) means the public agency that is responsible under applicable State or Tribal law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(2) HA Responsibilities. HAs must:

(a) Send a partial listing of the names of families on the section 8 waiting list to the PCWA to determine if the families meet the Family Unification eligibility requirements described in Section II(A) of this NOFA. The HA will continue to send a list of family names to the PCWA until the number of families is equal to the number of rental certificates provided to the HA under the Family Unification Program. Families must be referred to the PCWA based on their positions on the section 8 waiting list. Families will be selected for participation after the PCWA determines that the family meets the Family Unification eligibility requirements, and based on their positions on the section 8 waiting list;

(b) Determine if families referred by the PCWA are eligible for section 8 assistance, and place eligible families on the section 8 waiting list based on the date of the families's applications and any preferences for which the families qualify;

(c) Amend the administrative plan and equal opportunity housing plan to provide for rental assistance to Family Unification eligible families in a number equal to the rental certificates provided by HUD for this purpose, and provide for the opening of closed waiting lists to add applicants when necessary;

(d) Administer the rental assistance in accordance with applicable program regulations and requirements; and

(e) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, and submit with the application a certification that the HA will cooperate with and provide requested data to the HUD office responsible for program evaluation.

The HA must review its waiting list to determine if there are any families already on its waiting list (including families in the PCWA caseload) who may be eligible for the Family Unification program. A family must be certified by the PCWA as a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the discharge of a child, or children, to the family from out-of-home care. The names of Family Unification eligible families can be mutually shared between the HA and the PCWA. Families admitted to participate in the Family Unification Program must be selected in order based on their positions on the section 8 waiting list after the PCWA determines they are eligible for the Family Unification Program and the HA determines they are eligible for the section 8 program.

Any HA with a closed waiting list is required to advertise the opening of its waiting list before accepting new applicants for this demonstration program. The advertisement and opening of the waiting list may be limited to applications from Family Unification eligible families. For administrative convenience, an HA may limit the number of applications taken in response to an advertisement.

VOL 58 ISS 127 JL 6 1993 UMI

(3) Public Child Welfare Agency (PCWA) Responsibilities. Public child welfare agencies are responsible for:

(a) Providing written certification to the HA that a family qualifies as a Family Unification eligible family, under the eligibility requirements described in Section II(A)(1)(a) of this NOFA;

(b) Establishing and implementing a system to identify Family Unification eligible families within the agency's caseload and reviewing referrals from the HA;

(c) Committing sufficient staff resources to ensure that Family Unification eligible families are identified and the PCWA certification process based on the criteria in Section II(A) of this NOFA is completed in a timely manner; and

(d) Assuring the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, and submitting a certification with the application that the PCWA will agree to cooperate with and provide requested data to the HUD office having responsibility for program evaluation.

(4) Federal Preference. To participate in the Family Unification Demonstration Program, a family must be a Family Unification eligible family as defined in Section II(A)(1) of this NOFA. Generally, most families eligible for the Family Unification Demonstration Program will qualify for a Federal preference. However, if an HA selects a family without a Federal preference for its Family Unification Demonstration Program, but has skipped over a family with a Federal Preference, the selected family will count against the HA's 10 percent authority to select non-Federal preference holders.

(5) Section 8 Rental Certificate Assistance. The Family Unification Demonstration Program provides assistance under the section 8 rental assistance programs. Although HUD is providing a special allocation of rental certificates, the HA may use both rental vouchers and certificates to assist families under this demonstration program. HAs must administer this demonstration program in accordance with HUD's regulations governing the section 8 rental certificate and rental voucher programs, codified at 24 CFR part 882 and 24 CFR part 887. The HA may issue a rental voucher to a family selected to participate in the Family Unification Program if the family requests a rental voucher and the HA has one available. If section 8 assistance for a family under this demonstration is terminated, the rental assistance must be reissued to another Family Unification eligible family during the five-year term of the ACC for the section 8 rental certificates provided under this demonstration.

(B) Selection Criteria/Ranking Factors

To provide each applicant HA with a fair and equitable opportunity to receive an award of rental certificates for the Family Unification Demonstration Program during FY 1993, HUD will use the three objective selection criteria listed below to rate all applications found acceptable for further processing.

(1) Selection Criterion 1: HA Administrative Capability (30 points)—

(a) Description: Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), portability of rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements is either excellent or good. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program.

(b) Rating: *16–30 points.* Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing) as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings (unless Office of Inspector General recommendation has been appealed by Field Office, Indian Programs Office or Regional Office); the HA is complying with the portability requirements under the rental voucher and rental certificate programs; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet housing quality standards (HQS) or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office/Indian Programs Office documents that September 30, 1992, report was not reflective of HA performance;

1–15 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with HA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for Public/Indian Housing units) under ACC for one year or more was at least 85 percent as of September 30, 1992, unless the Field Office/Indian Programs Office documents that the September 30, 1992, report is not reflective of HA performance.

0 points. If neither of the above statements apply, assign 0 points.

(2) Selection Criterion 2: Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families (30 points)—

(a) Description: The application describes the method that the HA and the public child welfare agency will use to identify and assist Family Unification eligible families.

(b) Rating: *16–30 points.* A letter of intent from the PCWA indicating its commitment to provide resources and support for the program is included with the HA application. The PCWA letter of intent and other information provided is comprehensive and includes an explanation of the method used to identify eligible families, of the PCWA's certification process for determining eligible families based on the criteria in Section II(A) of this NOFA, of the responsibilities of each agency, of the PCWA assistance provided to families in locating housing units, of the PCWA staff resources committed to the program, of the past PCWA experience administering a similar program, and of the PCWA/HA cooperation in administering a similar program.

1–15 points. The information provided is general and includes a discussion of the method and process used to identify and assist eligible families.

0 points. The information provided is either not coherent or fails to include an explanation of the method and process used to identify and assist eligible families. Proposed administration of program is not consistent with program regulations.

(3) Selection Criterion 3: Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program (20 points)—

(a) Description: The application must describe the need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care, or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency.

(b) Rating: *11–20 points.* The PCWA has adequately demonstrated that there is a need in the HA's jurisdiction for the Family Unification Demonstration which is not being met through existing programs. The narrative includes specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families lacking adequate housing.

1–10 points. The PCWA has provided a general narrative describing a need for the Family Unification demonstration in the HA's jurisdiction.

0 points. There is no need, or the PCWA has not adequately demonstrated the need for the number of certificates requested in the application.

(C) Application Processing

The HUD Field Office/Indian Programs Office and the Regional Office of Public Housing are responsible for rating the applications, and HUD Headquarters is responsible for ranking and selection of applications (including applications rated by the Indian Programs Office) which will receive assistance under the Family Unification Demonstration Program. The Field Office/Indian Programs Office will initially screen all applications, using the "Checklist for Technical Requirements" listed in Section IV(B) of this NOFA as a guide to determine if an application is complete.

(D) Selection Process

After the Field Office or Indian Programs Office has screened HA applications and disapproved any applications unacceptable for further processing (see Section III of this NOFA), the Field Office or Indian Programs Office will review and rate all approvable applications, utilizing the selection criteria and point assignments listed in this NOFA. All scored applications and rating sheets in each Field Office and Indian Programs Office will be sent to the Regional Office. The Indian Programs Office will send each application to the Regional Office that has jurisdiction over the State in which the Indian Housing Authority is located.

In order to ensure that rating is consistent among the Field Offices within its region, the Regional Office of Public Housing will review and may re-rate these applications, utilizing the same selection criteria and point assignments listed in this NOFA.

The Regional Office of Public Housing must send to HUD Headquarters the Field Office and/or Indian Programs Office rating sheets, and the Regional Office rating sheets. Headquarters may review and re-rate these applications, utilizing the same selection criteria and point assignment listed in this NOFA. Headquarters will fund the highest rated applications until the rental certificate funds are insufficient to fund the next highest rated application(s). In the event of tie scores, HUD Headquarters will rank tied applications on the basis of selection criteria 2—coordination between HA and Public Child Welfare Agency to identify and assist eligible families.

When remaining rental certificate funds are insufficient to fund the next highest scoring application(s) in full, HUD Headquarters may fund that application(s) to the extent of the number of units available. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

(E) Local Government Comments

The Field Office will obtain "section 213" comments, in accordance with 24 CFR part 791, subpart C, from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

III. Checklist of Application Submission Requirements

(A) Application Requirements

(1) Form HUD–52515. An Application for Existing Housing, Form HUD–52515, must be completed in accordance with the rental certificate program regulations. A copy of Form HUD 52515 is attached to this notice [Attachment 1], and can be obtained from the local HUD Field Office/Indian Program Office.

All the items in this Section III must be included in the application submitted to the HUD Field Office/ Indian Programs Office. The application must include an explanation of how the application meets, or will meet, Selection Criteria 2 and 3. The PCWA serving the jurisdiction of the HA is responsible for providing the information for Selection Criterion 3, "Need for Family Unification Demonstration Program," to the HA for submission with the HA application. A State-wide PCWA must provide information on Selection Criteria 3 to all HAs that request data, otherwise, HUD will not consider applications from any HAs with the PCWA as a participant in its program. The HA must state in its cover letter to the application whether it will accept a reduction in the number of units and the minimum number of units it will accept since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of units requested.

(2) Certification Regarding Drug-Free Workplace. The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with CFR part 24, subpart F [see Attachment 2].

(3) Certification Regarding Lobbying. Section 319 of the Department of the

VOL
58
ISS
127
JL
6
1993
UMI

Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these lobbying restrictions are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL).

To assist HAs, the text for the Certification Regarding Lobbying [Attachment 3] and "Disclosure Form to Report Lobbying" (SF–LLL) [Attachment 4] are attached to this announcement. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(4) Form HUD–2880. A Form HUD–2880 (Applicant/Recipient Disclosure/Update Report) [Attachment 6] must be completed in accordance with subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance. (See Section V(D) of this NOFA.)

(5) Evaluation Certifications. The HA and the PCWA in separate certifications must state that the HA and PCWA agree to cooperate with HUD and provide requested data to the HUD office designated responsibility for the program evaluation.

(6) Single Audit Act Certification. The HA must submit the Single Audit Act Certification [Attachment 5] in accordance with the Single Audit Act, and HUD's regulations at 24 CFR part 44.

(B) Checklist for Technical Requirements

The checklist for technical requirements provided in this Section specifies the information that must be included in the application. HAs are encouraged to review the checklist to ensure that the application submitted is complete.

Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the joint application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

HA		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	1. The application contains a cover letter stating the *total* number of rental vouchers or rental certificates requested in the application and indicates whether the applicant is willing to accept a reduced number and the minimum number of units the applicant is willing to accept.
☐	☐	☐	☐	2. The application includes form HUD 52515 and the monthly adjusted income (see section H of HUD 52515) by bedroom size for which the HA has submitted an application.
☐	☐	☐	☐	3. The application demonstrates that the applicant qualifies as an HA and is legally qualified and authorized to participate in the rental assistance programs for the area in which the program is to be carried out. Such demonstration includes (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office, they do not have to be resubmitted.
☐	☐	☐	☐	4. The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.
☐	☐	☐	☐	5. The application contains the HA schedule of leasing which must provide for the expeditious leasing of units. In developing the schedule, an HA must specify the number of units that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
☐	☐	☐	☐	6. The application contains a narrative explaining how the application meets Selection Criterion 2, Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families.
☐	☐	☐	☐	7. The application contains the Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program, Selection Criterion 3.
☐	☐	☐	☐	8. The application contains an evaluation certification from the HA and from the PCWA.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT, AND COMPLIANCE WITH THE SINGLE AUDIT ACT

HA		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's drug-free workplace requirement set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace [Attachment 2].)
☐	☐	☐	☐	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. To comply, HAs must submit an Anti-Lobbying Certification [Attachment 3] and if warranted, a Disclosure of Lobbying Activities [Attachment 4].
☐	☐	☐	☐	The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR 44; or OMB Circular No. A–133. To comply, HAs must submit a Single Audit Act Certification (Attachment 5). HAs who are not currently in compliance with the audit requirements will not be eligible for funding.

IV. Corrections to Deficient Applications.

(1) Acceptable Applications

To be eligible for processing, an application must be received by the Field Office/Indian Programs Office no later than the application submission deadline date and time specified in this NOFA. The Field Office/Indian Programs Office will screen all applications and notify HAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, which do not improve the substantive quality of the application relative to the ranking factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

All HAs are encouraged to review the "Checklist for Technical Requirements" provided in Section III of this NOFA. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 882.204(a) and this notice, including the drug-free workplace certification and the antilobbying certification disclosure requirements, after the 14-day technical deficiency correction period, will be rejected.

(2) Unacceptable Applications

(a) After the 14-calendar day technical deficiency correction period (refer to Section III(C)(1) of this NOFA, Corrections to Deficient Applications, of this NOFA), if any, the Field Office/Indian Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section IV , Checklist of Technical Requirements, of this NOFA). The Field Office/Indian Programs Office notification of rejection letter must state the basis for the decision.

(b) Applications that fall into any of the following categories will not be processed:

(i) The Department of Justice has brought a civil rights suit against the applicant HA and the suit is pending;

(ii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iii) HUD has deferred application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (see 24 CFR 1.8), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (see 24 CFR 8.57).

(iv) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(v) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

(vi) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(vi) The HA is not in compliance with the Single Audit Act (31 U.S.C. 7501–7507), OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44, or OMB Circular No. A–133, as applicable.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effect on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA does not alter the established roles of HUD, the States and local governments, including HAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The Family Unification demonstration can be expected to provide additional decent and sanitary housing for very low-income families with children who seek to maintain the family unit. Since the impact on the family is considered beneficial, no further review under the order is necessary.

(D) Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16,

1992 (57 FR 1942), for further information on these requirements.)

(2) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: June 22, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

VOL 58 ISS 127 JL 6 1993 UMI

Application for Existing Housing

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Attachment 1

Send the original and two copies of this application form and attachments to the local HUD Field Office

OMB Approval No 2577-0169 (exp 9/30/95)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send the completed form to either of these addresses.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
for Section 8 Certificates? ☐ ☐
for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number | Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count: Elderly, Handicapped, Disabled — Efficiency	1-BR	2-BR	Non-Elderly — 1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application (check * the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref handbook 7420.3

E. **Financial and Administrative Capability.** Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. **Housing Quality Standards.** Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. **Leasing Schedule.** Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. **Average Monthly Adjusted Income** (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. **Attachments.** The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

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Attachment 2

Certification Regarding Drug-Free Workplace Requirements
(From 24 CFR, Appendix C)
Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about -

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted -

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

VOL 58 ISS 127 JL 6 1993 UMI

Attachment 3

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

VOL 58 ISS 127 JL 6 1993 UMI

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.) Attachment 4

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply)*: $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

VOL
58
ISS
127
JL
6
1993
UMI

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

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Attachment 5

Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act (31 U.S.C. 7501-7507), OMB Circular No. A-128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A-133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

VOL 58 ISS 127 JL 6 1993 UMI

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

Attachment 6

OMB Approval No 2525-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1 Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number

2 Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (1/92)
ref. Sec: 102, HRA 1989; PL 101 - 235

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

VOL 58 ISS 127 JL 6 1993 UMI

Part V. Report on Expected Sources and Uses of Funds

Source	

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Use	

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete

Signature	Date

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Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c) and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if either of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets neither of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets either of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

if the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions – uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee

FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer), corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

[FR Doc. 93-15798 Filed 7-2-93; 8:45 am]
BILLING CODE 4210-32-C

VOL 58 ISS 127 JL 6 1993 UMI

federal register

Tuesday
July 6, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 870

Cardiovascular Devices; Effective Date of Requirement for Premarket Approval of Nonroller-Type Cardiopulmonary Bypass Blood Pump; Proposed Rule

VOL 58 ISS 127 JL 6 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 93M–0150]

Cardiovascular Devices; Effective Date of Requirement for Premarket Approval of Nonroller-Type Cardiopulmonary Bypass Blood Pump

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the nonroller-type cardiopulmonary bypass (CPB) blood pump, a medical device. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from use of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by September 7, 1993; requests for a change in classification by July 21, 1993. FDA intends that if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bette L. Lemperle, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1053.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to promulgate a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). FDA has in the past requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for nonroller-type CPB blood pumps.

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

A. Classification of the Nonroller-type CPB Pump

In the **Federal Register** of February 5, 1980 (45 FR 7959), FDA issued a final rule (§ 870.4360 (21 CFR 870.4360)) classifying the nonroller-type CPB blood pump into class III. The preamble to the proposal to classify the device published in the **Federal Register** of March 9, 1979 (44 FR 13409), included the recommendation of the Circulatory Support Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel recommended that the device be in class III (premarket approval) for all uses. The Panel believed that a performance standard would not provide reasonable assurance of the safety and effectiveness of this device and that there was insufficient information to establish such a standard. The Panel stated that the device is life supporting and life sustaining and is potentially hazardous to life or health even when properly used. Because it is a part of the CPB circuit and is used in a surgical clinical environment excessive leakage current can be a serious hazard. Because it is in a system with other devices, it may be hazardous if not adequately assembled, used, or maintained.

In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval for 31 class III preamendments devices. Among other things, the notice described the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. The nonroller-type CPB blood pump was not included in the list of devices identified in that notice. However, using those factors, FDA has determined that the nonroller-type CPB blood pump identified in § 870.4360 has a high priority for initiating a proceeding to require premarket approval because its safety, effectiveness and clinical utility have not been established by valid scientific evidence as defined in § 860.7 (21 CFR 860.7). Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the nonroller-type CPB blood pump stimulator has an approved PMA or a PDP that has been declared completed.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the nonroller-type CPB blood pump within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the nonroller-type CPB blood pump during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any nonroller-type CPB blood pump which is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the nonroller-type CPB blood pump is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

C. Description of Device

A nonroller-type CPB blood pump is a device that uses a method other than revolving rollers to pump blood through a CPB circuit during bypass surgery. There are several types of these pumps available, all of which can be divided into two categories: Pulsatile flow pumps and nonpulsatile flow pumps. Pulsatile pumps may be of a diaphragmatic, pneumatic, piston, bellows, or bar compression design. A nonpulsatile pump is generally of the centrifugal flow design.

The proposed rule to require premarket approval of nonroller-type CPB blood pumps applies only to the nonroller-type CPB blood pumps identified above that were being commercially distributed before May 28, 1976, and to devices introduced or proposed for introduction into commercial distribution since that date that are substantially equivalent to the nonroller-type CPB blood pumps. FDA considers use or promotion of the device for any other indication, including extracorporeal membrane oxygenation for periods greater than 6 hours, for ventricular support to assist in weaning a patient from CPB, and to provide circulatory assist for heart transplant candidates until a donor heart is found (bridge to transplant), to be investigational. Consequently, any nonroller-type CPB blood pump labeled, promoted, or otherwise intended to be used for any purpose other than for short term use to pump blood through a CPB circuit during surgery, is not subject to this proposal, but rather is already required to have in effect an approved PMA or IDE.

D. Proposed Finding With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the nonroller-type CPB blood pump to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

E. Risk Factors

1. Alteration in blood composition

It is essential that the flow characteristics, materials, surface finish, and cleanliness of the device do not promote blood component trauma. Resulting complications associated with these features could include bleeding, hemolysis, thrombus formation, and complement activation. Improper mechanical design of the device can also result in such complications (Refs. 1, 2, 4 through 8, 26, and 27).

2. Inadequate tissue perfusion

If the design of the pump is improper, or the pump is unable to pump blood adequately through a CPB circuit,

VOL 58 ISS 127 JL 6 1993 UMI

inadequate organ perfusion can result. The literature identified associated adverse effects such as intra-abdominal complications, and liver and cerebral dysfunction (Refs. 9 through 17, 20, 22, 23, and 27).

3. Embolism

Improper design of the device may cause the generation of gaseous, particulate, or thrombotic embolisms, which may be debilitating or fatal (Refs. 26 and 28).

4. Retrograde perfusion

When the pump stops, due to electrical or pump failure, retrograde flow can result, pulling air into the aorta through holes from needles or around the pursestring sutures (Ref. 25).

5. Duration of use

Frequency and severity of adverse effects may be related to duration of use (Refs. 9, 11, 14, 20, and 22).

F. *Benefits of the Device*

Investigators who have studied the effectiveness of using nonroller-type cardiopulmonary blood pumps during CPB have reported varying results. The majority of the literature published in the English language regarding use of this device for CPB is an assortment of anecdotal commentary, uncontrolled studies, and technical reviews focusing on only a few variables associated with CPB.

Most of the scientific studies reviewed by FDA contained insufficient information regarding their protocol and design. Most of the studies failed to satisfy one or more of the minimum design requirements under § 860.7 for a valid scientific study. These requirements include adequate controls, randomization, followup data, and reliable evaluation criteria. After an extensive literature search, FDA identified only one study in which some type of prospective, randomized, controlled design was employed that would be appropriate to evaluate the safety, efficacy, and clinical utility of a nonroller-type CPB pump.

This study (Ref. 1) was designed to evaluate many of the variables associated with CPB that influence outcome. In that study, Jakob et al. (Ref. 1) conducted a prospective, randomized, clinical trial with 50 coronary artery bypass graft patients. The patients were randomly assigned to one of two groups, each with an identical CPB circuit except for the pump. In one group a centrifugal pump was used in the CPB bypass circuit, and in the other group a roller pump was used in the CPB circuit. The study, however, did not evaluate the effects of the nonroller-type CPB pump on the function of all vital organs. Rather, the study focused on the evaluation of blood components and time on bypass.

The remainder of the studies consisted of isolated case reports (Refs. 8 through 10, 15, and 17), studies in which only one type of CPB pump was used (Refs. 4, 7, 12, 15, 16, 22, and 23), studies in which the type of CPB pump was not identified (Refs. 2, 5, 6, 8 through 11, 13, 14, and 18 through 21), and studies in which the number of variables that were studied was limited (Ref. 2 and 4 through 23).

FDA has concluded from a review of the scientific literature that the safety, effectiveness, and clinical utility of nonroller-type CPB pumps for pumping blood through a CPB circuit during bypass surgery have not been established by valid scientific evidence as defined in § 860.7.

G. Need for Information for Risk/Benefit Assessment of the Device

FDA classified the nonroller-type CPB blood pump into class III because it determined that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has determined that the special controls that may now be applied to class II devices under the Safe Medical Devices Act of 1990 also would not provide such assurance. FDA has weighed the probable risks and benefits to the public health from the use of the device and believes that the literature reports and other information discussed above present evidence of significant risks associated with use of the device. These risks must be addressed by the manufacturers of nonroller-type CPB blood pumps. FDA believes that the nonroller-type CPB blood pumps should undergo premarket approval to establish effectiveness and to determine whether the benefits to the patient are sufficient to outweigh any risk.

II. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known to the applicant that have not been identified in this document, (2) the effectiveness of the specific nonroller-type CPB blood pump that is the subject of the application, and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the nonroller-type CPB blood pump for its intended use. In addition to the basic requirements described in 21 CFR 814.20 (b)(6)(ii) for a PMA, it is recommended that such studies employ a protocol that meets the following criteria:

A. General Protocol Requirements

The nonroller-type cardiopulmonary blood pump must be evaluated in a prospective, randomized, controlled clinical trial that uses a roller pump as the control. The study must attempt to answer all of the general and specific questions about the safety, effectiveness, and clinical utility of the device, including the risk to benefit ratio, during coronary artery bypass graft surgery. These questions should relate to the pathophysiologic effects which the device produces as well as the primary and secondary variables analyzed to evaluate safety and effectiveness. Study endpoints and study success must be defined. Examples of questions to be answered include: What morbidity and mortality is associated with the subject device in the patient population and how does this compare to the control? How does the device affect the circulatory system and organ function? Does its performance meet expectations for homeostasis during the time that cardiac function was excluded? Appropriate rationale, supported by background literature on previous uses of the device and proposed mechanisms for its effect, should be presented as justification for the questions to be answered, and the definitions of study endpoints and success. Clear study hypotheses should be formulated based on this information. The use of a steering committee to develop the study protocol is encouraged. Members of the committee should include investigators, engineers, statisticians, and members of other pertinent health and scientific disciplines.

B. Study Size

A minimum of three institutions should participate in the study. The number of patients studied should relate

to statistical considerations in the study hypotheses, such as the anticipated difference in morbidity and mortality between the subject device and the control in the population at risk (i.e., coronary artery bypass or valve replacement patients) and the expected level of adverse effects. The components of the treatment and the control group bypass circuits should be exactly the same, identified by brand name, size, etc., with the only difference being the pump. It is anticipated that a study in which all three institutions use the exact same CPB circuit components and follow the identical protocol will be able to demonstrate statistically and clinically significant differences in the results with fewer patients than a study in which each institution uses a different circuit (varied configurations and brand names) and different procedures.

C. Patient Inclusion and Exclusion Criteria

Patient demographics and pertinent coronary artery bypass graft variables should be addressed. All variables that could confound the study results should be evaluated for inclusion or exclusion. Each criterion should be clearly defined to assure uniform application among institutions and investigators.

D. Randomization

After a determination is made that a patient meets the study inclusion and exclusion criteria, the patient should be randomly assigned to either the nonroller-type pump (study pump) or the roller-type pump (control pump). Assignment should be made by a central monitor who is not involved in patient management or data retrieval.

E. Phases of the Study

The study should consist of four phases: Enrollment, baseline, treatment, and followup. The protocol should discuss exactly what will happen during each phase (e.g., assignment to study and control groups, data to be collected, number of measurements, length of followup, etc.). and an algorithm(s) should be developed to guide study participants. Followup should extend for no less than 30 days after CPB.

F. Data Collection

There should be continuity between the questions to be answered in the study and the data to be collected. For example, the specific data points collected to demonstrate success (e.g., the effect of the device on the lungs and on the blood, etc.) should be specified, including the schedule for collection. If a specific test or evaluation is required (e.g., neurologic assessment) the specific test to be used must be identified in the protocol and the test measurements should be objective to allow for more powerful statistical analysis of the results. Protocols must be developed to assure such objectivity. Adverse effects must be defined to allow for uniform interpretation. The format used for recording the information should be provided in the protocol. Consideration should be given to the need for multiple measurements in each phase of the study to decrease the role of chance.

G. Statistical Analysis Plan

There should also be continuity between the questions to be answered in the study and the statistical analysis plan. The objective is to demonstrate statistical significance of the study hypotheses and other pertinent study variables. Statistical significance should be obtained at the level of a two tailed alpha of 0.05 and a minimum beta of 0.20 for each variable at each site. Nonparametric tests are frequently required when analyzing data because the basic assumptions for parametric tests can rarely be met. If the assumptions for a parametric test are fully met by the study such a test could be used. Data analysis, however, may involve more than the decision to use either parametric or nonparametric tests. If the prognostic variables are categorical, then categorical data analysis and possibly even the generalized linear model may be useful for statistical analysis.

H. Clinical Analysis

Study results should be evaluated from a clinical perspective. Rationale supported by data should be used as required to strengthen conclusions.

I. Monitoring

Rigorous monitoring is required to assure that study procedures are followed and that data are collected in accordance with the study protocol. Forceful monitors, who have appropriate credentials and who are not aligned with patient management or otherwise biased, contribute prominently to a successful study.

Applicants should submit any PMA in accordance with FDA's "Premarket Approval (PMA) Manual." This guideline is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 5600 Fishers Lane, Rockville, Maryland 20857.

III. Request for Comments With Data

FDA is providing a 60-day period for interested persons to submit to the Dockets Management Branch (address above) written comments regarding this proposal and its findings. Two copies of any comments are to be submitted, except that individuals may submit one copy.

IV. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the nonroller-type CPB blood pump is to be in the form of a reclassification petition containing the information required by 21 CFR 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by July 21, 1993.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in 21 CFR 860.123(b)(1). If a timely request for a change in the classification of the nonroller-type CPB blood pump is submitted, the agency will, by September 7, 1993, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Jakob, H. G. et al., "Routine Extracorporeal Circulation With a Centrifugal or Roller Pump," ASAIO transactions; 37:M487–M489, 1991.

2. Prasad, K. et al., "Increased Oxygen Free Radical Activity in Patients on Cardiopulmonary Bypass Undergoing Aortocoronary Bypass Surgery," *American Heart Journal*, 123(1):37–45, January 1992.

3. Westaby, S., "Complement and Damaging Effects of Cardiopulmonary Bypass," *Thorax*, 38(5):321–325, May 1983.

4. Chenoweth, D. E. et al., "Complement Activation During Cardiopulmonary Bypass, Evidence of Generation of C3a and C5a Anaphylatoxins," *New England Journal of Medicine*, 304(9):497–503, February 26, 1981.

5. Hamerschmidt, D. E. et al., "Complement Activation and Neutropenia Occurring During Cardiopulmonary Bypass," *Journal of Thoracic Cardiovascular Surgery*, 81:370–377, 1981.

6. Lum, G. et al., "Hypomagnesemia and Low Alkaline Phosphatase Activity in Patients' Serum After Cardiac Surgery," *Clinical Chemistry*, (35)4, pp. 664–667, 1989.

7. Chenoweth, D. E., "Complement Activation During Cardiopulmonary Bypass," in "Pathophysiology and Techniques of Cardiopulmonary Bypass," edited by J. R. Utley, Williams and Wilkins, Baltimore, MD, pp. 49–60, 1983.

8. Wolk, L. A. et al., "Changes in Antithrombin, Antilasmin, and Plasminogen During and After Cardiopulmonary Bypass," *American Surgeon*, 51(6):309–313, June 1985.

9. Leitman, I. M. et al., "Intra-abdominal Complications of Cardiopulmonary Bypass Operations," *Surgery Gynecology Obstetrics*, 165(3):251–4, September 1987.

10. Long, W. B., "Abdominal Complications of Cardiopulmonary Bypass," in "Pathophysiology and Techniques of Cardiopulmonary Bypass," edited by J. R. Utiely, Williams and Wilkins, Baltimore, MD, pp. 164–174, 1983.

11. Collins, J. D. et al., "Incidence and Prognostic Importance of Jaundice After Cardiopulmonary Bypass Surgery," *Lancet*, 1(8334):1119–1122, May 21, 1983.

12. Kreutzer, D. L. et al., "Characterization of the Anaphylatoxin Inactivator and Chemotactic Factor Inactivator Activities During Cardiopulmonary Bypass," *Journal of Experimental Pathology*, 1(3):183–187, Summer 1984.

13. Venditti, J. et al., "Metabolic Activity of the Lung During Cardiopulmonary Bypass," *Journal of Medicine*, 17(2):65–85, 1986.

14. Reed, G. L. et al., "Stroke Following Coronary-Artery Bypass Surgery," *New England Journal of Medicine*, 319(19):1246–1250, November 10, 1988.

15. Soma, Y. et al., "Clinical Results of Cardiopulmonary Bypass With Selective Cerebral Perfusion for Aneurysm of the Ascending Aorta and the Aortic Arch," *Annals of Thoracic Surgery*, 32(1):63–67, July 1981.

16. Govier, A. V. et al., "Factors and Their Influence on Regional Cerebral Blood Flow During Nonpulsatile Cardiopulmonary Bypass," *Annals of Thoracic Surgery*, 38(6):592–600, December 1984.

17. Hall, L. T., "Recovery From Coma That Results as a Complication of Cardiac Arrest Followed by Cardiopulmonary Bypass," *Heart and Lung*, 18(6)559–64, November 1989.

18. Rogers, A. T. et al., "Cerebrovascular and Cerebral Metabolic Effects of Alterations in Perfusion Flow Rate During Hypothermic Cardiopulmonary Bypass in Man," *Journal of Thoracic Cardiovascular Surgery*, 103(2):363–368, February 1992.

19. Sadler, P. D., "Incidence, Degree, and Duration of Postcardiotomy Delirium," *Heart and Lung*, 10:1084, 1981.

20. Quinless, F. W. et al., "The Effect of Selected Preoperative, Intraoperative, and Postoperative Variables on the Development of Postcardiotomy Psychosis in Patients Undergoing Open Heart Surgery," *Heart and Lung*, 14:334, 1985.

21. Greeley, W. J. et al., "Effects of Cardiopulmonary Bypass on Cerebral Blood Flow in Neonates, Infants, and Children," *Circulation*, 80(3 Pt 1):I209–215, September 1989.

22. Carella, F. et al., "Cerebral Complications of Coronary Bypass Surgery, A Prospective Study," *Acta. Neurological Scandinavica*, 1988, 158–163, February 1977.

23. Alston, R. P. et al., "Changes in Hemodynamic Variables During Hypothermic Cardiopulmonary Bypass," *Journal of Thoracic Cardiovascular Surgery*, 100(1):134–44, July 1990.

24. Mandl, J. P. et al., "Comparison of Emboli Production Between a Constrained Force Vortex Pump and a Roller Pump," AmSECT Proceedings, 27–31, 1977.

25. Kolff, J. et al., "Beware Centrifugal Pumps: Not a One-Way Street, But a Potentially Dangerous Siphon," *Annals of Thoracic Surgery*, 50(3):512, September 1990.

26. Furst, E., "Extracorporeal Blood Pumping During Heart-Lung Bypass," *Journal of Cardiovascular Nursing*, 3(3):71–76, May 1989.

27. Weiland, A. P. et al., "Physiologic Principles and Clinical Sequelae of Cardiopulmonary Bypass," *Heart and Lung*, 15(1):34–39, January 1986.

28. FDA MDR database.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and finds that this proposal would not be a major rule as specified in the Order. The agency believes that only a small number of firms will be affected by this proposed rule, and the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Comments

Interested persons may, on or before September 7, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before July 15, 1993, submit to the Dockets Management Branch a written request to change the classification of the nonroller-type CPB blood pump. Two copies of any request are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 870.4360 is amended by revising paragraph (c) to read as follows:

§ 870.4360 Nonroller-type cardiopulmonary bypass blood pump.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (insert date to be 90 days after the effective date of a final rule based on this proposed rule), for any nonroller-type cardiopulmonary bypass blood pump that was in commercial distribution before May 28, 1976, or that has on or before (insert date 90 days after the effective date of a final rule based on this proposed rule), been found to be substantially equivalent to the nonroller-type cardiopulmonary bypass blood pump that was in commercial distribution before May 28, 1976. Any

other nonroller-type cardiopulmonary bypass blood pump shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: May 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-15870 Filed 7-2-93; 8:45 am]

BILLING CODE 4160-01-F

VOL
58
ISS
1
2
7
JL
6
1993
UMI

federal register

Tuesday
July 6, 1993

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Airspace Designations; Incorporation By Reference; Rule

VOL
58
ISS
127
JL
6
1993
UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 27342; Amdt. 71-20]

Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9A, Airspace Designations and Reporting Points. This action also explains how the FAA will amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 1993. The incorporation by reference of FAA Order 7400.9A is approved by the Director of the Federal Register as of September 16, 1993, through September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Webb, Airspace and Obstruction Evaluation Branch, (ATP-240), Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9232.

SUPPLEMENTARY INFORMATION:

Background

FAA Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, listed the airspace descriptions for all jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, and reporting points. FAA Order 7400.9, Airspace Reclassification, dated November 1, 1991, and effective September 16, 1993, listed Class A, Class B, Class C, Class D, and Class E airspace areas. Due to the large number and frequent revision of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in Federal Aviation Regulations (FAR) § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference in § 71.1 of FAA Order 7400.7A as of November 27, 1992, through September 15, 1993, and Order 7400.9 effective as of September 16, 1993, through September 15, 1994. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.7A and Order 7400.9 in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of both orders 7400.7A and 7400.9 into a new order, Airspace Designations and Reporting Points, FAA Order 7400.9A. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9A in § 71.1 as of September 16, 1993, through September 15, 1994. This rule also explains how the FAA will amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also changed to update the incorporation by reference of FAA Order 7400.9A in place of FAA Order 7400.9.

The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9A effective September 16, 1993, through September 15, 1994. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9A in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, effective September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993. This incorporation by reference was approved by the Director the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9A is effective September 16, 1993, through September 15, 1994. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9A may be obtained from the Document Inspection Facility, APA-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3485 Copies of FAA Order 7400.9A may be inspected in Docket No. 27342 at the Federal Aviation Administration, Office of the Chief Counsel, AGC-200, room 915G, 800 Independence Avenue, SW., Washington, DC weekdays between 8:30 a.m. and 5 p.m., or at the Office of the Federal Register, 800 North Capitol

Street, NW., suite 700, Washington, DC. This section is effective September 16, 1993, through September 15, 1994.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

§ 71.41 [Amended]

5. Section 71.41 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

§ 71.51 [Amended]

6. Section 71.51 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

§ 71.61 [Amended]

7. Section 71.61 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

§ 71.71 [Amended]

8. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A" in each paragraph.

§ 71.79 [Amended]

9. Section 71.79 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

§ 71.901 [Amended]

10. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

Issued in Washington, DC, on June 25, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–15805 Filed 7–2–93; 8:45 am]

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VOL
58
ISS
127
JL
6
1993
UMI

Read

INFORMA

Federal Re

Index, findi
Public insp
Corrections
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Index, findi
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Laws

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Additional

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Other Servi

Data base a
Guide to Re
Legal staff
Privacy Act
Public Laws
TDD for the

ELECTRON

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Law numbe
a list of Cli

FEDERAL

35357–35840
35841–36116
36117–36300

Reader Aids

Federal Register

Vol. 58, No. 127

Tuesday, July 6, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842

Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

Proclamations:
6576.....36117

5 CFR

230.....36119
250.....36119
581.....35845

7 CFR

2.....35359
1097.....34359
1098.....35361
1099.....34362
1435.....36120
1755.....36252

8 CFR

245.....35832

12 CFR

710.....35363

14 CFR

39.....35860, 36130, 36131
72.....36298

Proposed Rules:
25.....36116
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905
71.....36157, 36158
121.....36116
135.....36116
1272.....36159

16 CFR

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
249.....35367

18 CFR

Proposed Rules:
35.....36172
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
510.....36134
520.....36134

Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369

Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877

Proposed Rules:
4.....35908
5.....35908

28 CFR

0.....35371
55.....35371

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377

VOL
58
ISS
127
JL
6
1993
UMI

2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

920.....36135
938.....36139

Proposed Rules:

935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400

33 CFR

164.....36141

34 CFR

378.....35762
685.....36008

Proposed Rules:

692.....36110

40 CFR

131.....36141
228.....35884

Proposed Rules:

88.....35420
372.....36180

43 CFR

Public Land Orders:

6986.....35408
6988.....35409

44 CFR

354.....35770

47 CFR

1.....36142
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410

Proposed Rules:

73.....35420, 35421, 36184

48 CFR

922.....36149
937.....36149
952.....36149
970.....36149

49 CFR

571.....36152

Proposed Rules:

543.....35422

50 CFR

17.....35887
285.....36154
625.....35891
646.....35895, 36155
658.....35897
672.....35897
675.....35897

Proposed Rules:

17.....36184

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 2, 1993

CFR CHEC

This checklis
published w
numbers, pr

An asterisk (
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A checklist c
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Affected), wh

The annual r
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Mail orders t
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Title

1, 2 (2 Reser

3 (1992 Com
and Parts
101) .....

4 .....

5 Parts:
1–699 .....
700–1199 .....
1200–End, 6 (
Reserved)

7 Parts:
0–26 .....
27–45 .....
46–51 .....
52 .....
53–209 .....
210–299 .....
300–399 .....
400–699 .....
700–899 .....
900–999 .....
1000–1059 .....
1060–1119 .....
1120–1199 .....
1200–1499 .....
1500–1899 .....
1900–1939 .....
1940–1949 .....
1950–1999 .....
2000–End .....

8 .....

9 Parts:
1–199 .....
200–End .....

10 Parts:
0–50 .....
51–199 .....
200–399 .....
400–499 .....
500–End .....

*11 .....

12 Parts:
1–199 .....
200–219 .....
220–299 .....
300–499 .....
500–599 .....
600–End .....

13 .....

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
*11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
13	(869–019–00041–1)	28.00	Jan. 1, 1993
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–017–00061–2)	28.00	Apr. 1, 1992
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
400–499	(869–017–00064–7)	31.00	Apr. 1, 1992
500–End	(869–017–00065–5)	21.00	Apr. 1, 1992
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–017–00070–1)	29.00	Apr. 1, 1992
500–599	(869–017–00071–0)	21.00	Apr. 1, 1992
*600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–017–00076–1)	19.00	Apr. 1, 1992
23	(869–017–00077–9)	18.00	Apr. 1, 1992
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–9)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
*§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–017–00088–4)	38.00	Apr. 1, 1992
§§ 1.501–1.640	(869–017–00089–2)	19.00	Apr. 1, 1992
§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1, 1992
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–017–00096–5)	15.00	Apr. 1, 1992
*40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–017–00098–1)	15.00	Apr. 1, 1992
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–019–00101–8)	6.00	[4] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[4] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[7] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–017–00154–6)	28.00	July 1, 1992
102–200	(869–017–00155–4)	11.00	[7] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–399	(869–017–00157–1)	23.00	Oct. 1, 1992
400–429	(869–017–00158–9)	23.00	Oct. 1, 1992
430–End	(869–017–00159–7)	31.00	Oct. 1, 1992
43 Parts:			
1–999	(869–017–00160–1)	22.00	Oct. 1, 1992
1000–3999	(869–017–00161–9)	30.00	Oct. 1, 1992
4000–End	(869–017–00162–7)	13.00	Oct. 1, 1992
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
1–199	(869–017–00164–3)	20.00	Oct. 1, 1992
200–499	(869–017–00165–1)	14.00	Oct. 1, 1992
500–1199	(869–017–00166–0)	30.00	Oct. 1, 1992
1200–End	(869–017–00167–8)	20.00	Oct. 1, 1992
46 Parts:			
1–40	(869–017–00168–6)	17.00	Oct. 1, 1992
41–69	(869–017–00169–4)	16.00	Oct. 1, 1992
70–89	(869–017–00170–8)	8.00	Oct. 1, 1992
90–139	(869–017–00171–6)	14.00	Oct. 1, 1992
140–155	(869–017–00172–4)	12.00	Oct. 1, 1992
156–165	(869–017–00173–2)	14.00	[6] Oct. 1, 1991
166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
500–End	(869–017–00176–7)	14.00	Oct. 1, 1992
47 Parts:			
0–19	(869–017–00177–5)	22.00	Oct. 1, 1992
20–39	(869–017–00178–3)	22.00	Oct. 1, 1992
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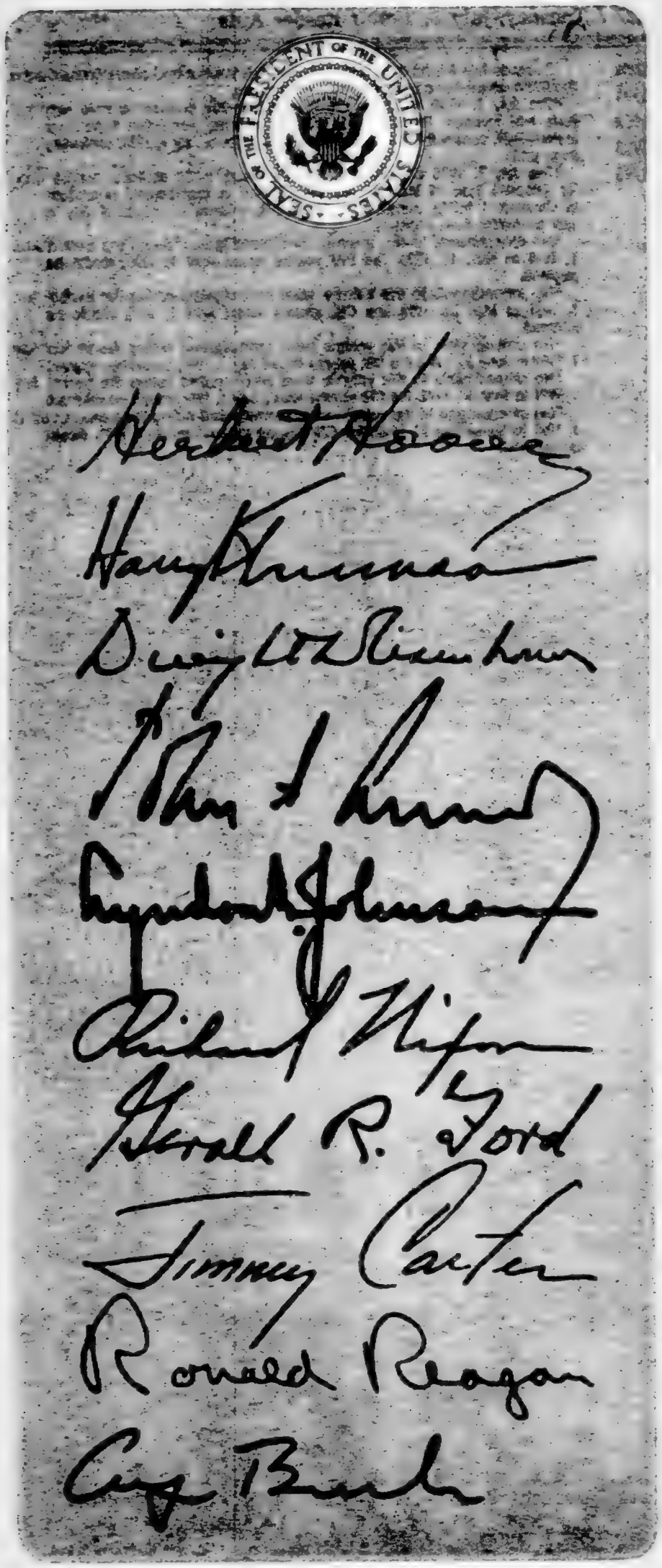

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Wednesday
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VOL
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128
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NOTICES
Agency inf
review
Competitiv
NOTICES
Meetings, 3
Copyright
NOTICES
Meetings; S
Customs S
NOTICES
Jewelry fro
eligibil

Contents

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See Forest Service
See Packers and Stockyards Administration

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
State-based tobacco control programs, 36413
Meetings:
Idaho Community Forum for HHS Energy-Related Health Research, 36416

Coast Guard
RULES
Anchorage regulations:
Florida, 36356
Drawbridge operations:
Florida, 36357
Ports and waterways safety:
Lower Lake Huron, St. Clair River, and Black River, MI; safety zone, 36357
Regattas and marine parades:
53d Annual National Sweepstakes Regatta, 36355
PROPOSED RULES
Passenger vessels (domestic) damage stability standards; regulations applicability, 36374
NOTICES
Committees; establishment, renewal, termination, etc.:
Alternative voluntary advisory group certification in lieu of Regional Citizens' Advisory Council, 36504
Marine navigation safety; local notice to mariners study, 36507
Pollution:
American underpressure oil spill prevention system testing, 36508

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 36389

Competitiveness Policy Council
NOTICES
Meetings, 36398

Copyright Royalty Tribunal
NOTICES
Meetings; Sunshine Act, 36514

Customs Service
NOTICES
Jewelry from U.S. Virgin Islands; duty-free treatment eligibility, 36512

Education Department
NOTICES
Agency information collection activities under OMB review, 36399
Grants and cooperative agreements; availability, etc.:
Individuals with disabilities education program, etc., 36576
National Institute on Disability and Rehabilitation Research—
Research and demonstration projects, etc., 36554

Employment and Training Administration
NOTICES
Adjustment assistance:
Charm Corp. et al., 36421
Ciba-Geigy Corp., 36421
General Electric Co., 36421
Highland Co. et al., 36421
Labor surplus areas classifications:
Annual list; additions, 36422

Energy Department
See Federal Energy Regulatory Commission
RULES
Acquisition regulations:
Technical amendments, 36363

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Refrigerant recycling; correction, 36516
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glyphosate, 36358
Norflurazon, 36359
PROPOSED RULES
Hazardous waste:
Identification and listing—
Treatability studies sample exclusion, 36367
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Hexakis [2-methyl-2-phenylpropyl] distannoxane, 36366
NOTICES
Agenc information collection activities under OMB review, 36407
Committees; establishment, renewal, termination, etc.:
Clean Air Act Advisory Committee, 36407
Pesticide, food, and feed additive petitions:
Ciba-Geigy Corp., 36409
Pesticide programs:
Stag's Leap Wine Cellars; nonindigenous microbial pesticide; field test, 36409
Pesticide registration, cancellation, etc.:
Alkyl amine hydrochloride, 36408

Executive Office of the President
See Presidential Documents

VOL 58 ISS 128 JL 7 1993 UMI

Export Administration Bureau
RULES
Export licensing:
Import and end-user certificates and statement by ultimate consignee and purchaser; uniform validity period, 36353

Farm Credit Administration
NOTICES
Out-of-territory financially related services; policy statement, 36410

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Cessna 500 series airplane, modified, 36352
Cessna Model 650 airplanes, 36350
Dassult-Aviation Mystere-Falcon Models 50 and 900 airplanes, 36345
Gulfstream American Model 1159 series airplanes, 36348

Federal Communications Commission
RULES
Radio stations, special:
Private land mobile services—
220-222 MHz frequency band use, 36362
PROPOSED RULES
Radio stations; table of assignments:
Georgia, 36375
Montana, 36376
Texas, 36374
Washington, 36376
Television stations; table of assignments:
Kansas, 36374, 36375
NOTICES
Agency information collection activities under OMB review, 36410
Applications, hearings, determinations, etc.:
Richards, Richard, 36411

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Arizona Public Service Co. et al., 36399
Electric utilities (Federal Power Act):
Transmission services; pricing policy; technical conference, 36400
Environmental statements; availability, etc.:
Maine Public Service Co., 36402
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 36402
Cleveland, OH, et al., 36403
Columbia Gas Transmission Corp., 36403
Eastern Shore Natural Gas Co., 36404
Granite State Gas Transmission, Inc., 36404
K N Energy, Inc., 36404
Northern Natural Gas Co., 36405
Texas Gas Transmission Corp., 36405
U-T Offshore System, 36406
Viking Gas Transmission Co., 36406
Williams Natural Gas Co., 36406
Williston Basin Interstate Pipeline Co., 36406

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36411
Freight forwarder licenses:
Pellkirk Services, Inc., et al., 36411

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 36514
Priced secondary market purchases and sales of securities service; consolidation; proposal, 36412

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Interest rates:
Renegotiation Board and prompt payment rates, 36511

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Cuneate bidens (Hawaiian plant), 36387
White sturgeon, 36379
NOTICES
Environmental statements; availability, etc.:
Bayou Sauvage National Wildlife Refuge, LA; meeting, 36417

Food and Drug Administration
NOTICES
Meetings:
Food Chemicals Codex Committee; analytical methods for food ingredients, 36413

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Massachusetts; correction, 36516
Nebraska, 36389
New York, 36390
Virginia—
Newport News Shipbuilding & Drydock Co., 36390

Forest Service
NOTICES
Meetings:
Allegheny Wild and Scenic River Advisory Council, 36389

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Health administration traineeships and special projects program; correction, 36516

Housing and Urban Development Department
RULES
Low income housing:
HOPE program guidelines—
Single family units, 36518, 36546

NOTICES
Grants and cooperative agreements; availability, etc.:
HOPE homeownership program—
Single family homes program, 36518

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Helical spring lock washers from—
China, 36392
Antidumping and countervailing duties:
Administrative review requests, 36391
Countervailing duties:
Ball bearings and parts from—
Thailand, 36392
Ferrosilicon from—
Venezuela, 36394
Lamb meat from New Zealand, 36395
Applications, hearings, determinations, etc.:
University of—
California et al., 36396

Interstate Commerce Commission
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Household Goods Carriers' Bureau, Inc., 36418
Railroad services abandonment:
Burlington Northern Railroad Co., 36419
CSX Transportation, Inc., 36419

Justice Department
RULES
Voting Rights Act; implementation:
Minority language groups
Correction, 36516

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 36420

Land Management Bureau
NOTICES
Alaska Native claims selection:
Kuugpik Corp., Inc., 36417

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
American President Lines, Ltd., 36509

Merit Systems Protection Board
RULES
Practice and procedure:
Commercial overnight delivery, 36345
Whistleblowing:
Commercial overnight delivery added as filing method for appeals and stay requests, 36345

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 36423

National Foundation on the Arts and the Humanities
NOTICES
Meetings; Sunshine Act, 36514

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle theft prevention standards:
Light-duty-trucks; designation as high theft lines, 36376
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Cosco, Inc., 36510

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 36416
President's Cancer Panel, 36416
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 36417

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
Pacific Coast groundfish, 36397
Permits:
Marine mammals, 36398

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Union Electric Co., 36482
Meetings:
Reactor Safeguards Advisory Committee, 36483
Meetings; Sunshine Act, 36514
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 36423
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
Rancho Seco Nuclear Generating Station; Central Library, Sacramento, CA, 36484
Privacy Act:
Systems of records, 36455
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 36485

Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Occupational Safety and Health National Advisory Committee, 36423

Packers and Stockyards Administration
NOTICES
Central filing system; State certifications:
Minnesota, 36389

Postal Service
NOTICES
Meetings; Sunshine Act, 36514

Presidential Documents
PROCLAMATIONS
Generalized System of Preferences; amendments (Proc. 6575), correction, 36516
Romania; trade agreement with U.S. (Proc. 6577), 36301
Special observances:
Literacy Day, National, 1993 and 1994 (Proc. 6578), 36585

VOL
58
ISS
128
JL
7
1993
UMI

EXECUTIVE ORDERS
Cuban Democracy Act implementation (EO 12854), 36587

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 36485
Meetings; Sunshine Act, 36515
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 36485
Chicago Board Options Exchange, Inc., 36487
National Association of Securities Dealers, Inc., 36489
National Securities Clearing Corp. et al., 36491
Pacific Stock Exchange, Inc., 36489, 36492, 36493
Philadelphia Stock Exchange, Inc., 36495, 36496
Applications, hearings, determinations, etc.:
AIM Funds Group et al., 36497
IBM International Finance, N.V., et al., 36502

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
SSI beneficiaries disabled due to alcohol and other drug addictions; managed care demonstration models; correction, 36413

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Fiscal Service
NOTICES
Agency information collection activities under OMB review, 36511
Meetings:
Customs Service Commercial Operations Advisory Committee, 36512

Separate Parts in This Issue

Part II
Department of Housing and Urban Development, 36518

Part III
Department of Education, 36554

Part IV
Department of Education, 36576

Part V
The President, 36583

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PA
A cumulati
Reader Ai
3 CFR
Proclamati
6575 (Cor
6577
6578
Executive
12854
5 CFR
1201
1209
14 CFR
25 (4 docu
15 CFR
770
775
777
785
787
788
790
24 CFR
572
33 CFR
100
110
117
165
40 CFR
180 (2 doc
185
Proposed R
180
186
261
46 CFR
Proposed R
171
47 CFR
90
Proposed R
73 (6 docu
48 CFR
904
906
913
915
916
919
922
952
970
49 CFR
541
50 CFR
Proposed R
17 (2 docu

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
6575 (Correction).....36516
6577.....36301
6578.....36585

Executive Orders:
12854.....36587

5 CFR
1201.....36345
1209.....36345

14 CFR
25 (4 documents).....36345, 36348, 36350, 36352

15 CFR
770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

24 CFR
572.....36518, 36546

33 CFR
100.....36355
110.....36356
117.....36357
165.....36357

40 CFR
180 (2 documents).....36358, 36359
185.....36358

Proposed Rules:
180.....36366
186.....36366
261.....36367

46 CFR

Proposed Rules:
171.....36374

47 CFR
90.....36362

Proposed Rules:
73 (6 documents).....36374, 36375, 36376

48 CFR
904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36363
952.....36363
970.....36363

49 CFR
541.....36376

50 CFR

Proposed Rules:
17 (2 documents).....36379, 36387

VOL
58
ISS
128
JL
7
1993
UMI

Federal Reg
Vol. 58, No
Wednesday,

Title 3—

The Pre

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

Presidential Documents

Title 3—

The President

Proclamation 6577 of July 2, 1993

Agreement on Trade Relations Between the United States of America and Romania

By the President of the United States of America

A Proclamation

1. By the authority vested in me as President by the Constitution and the laws of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of Romania to conclude an agreement on trade relations between the United States of America and Romania.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974, Public Law 93–618, as amended (19 U.S.C. 2101–2495) (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania" ("Agreement"), including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Romanian, was signed on April 3, 1992, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVI of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act (19 U.S.C. 2434, 2435, and 2483), do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of Romania, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVI of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note

3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Romania".

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

Billing code 3195-01-P

Editorial note: For the President's message to Congress and the determination on this trade agreement, see the *Weekly Compilation of Presidential Documents* (vol. 29, issue 26).

VOL 58 ISS 128 JL 7 1993 UMI

AGREEMENT ON TRADE RELATIONS BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF ROMANIA

The Government of the United States of America and the Government of Romania (hereinafter referred to collectively as "Parties" and individually as "Party"),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between nationals and companies of the United States and nationals and companies of Romania will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation and promote respect for internationally recognized worker rights,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between their respective nationals and companies,

Have agreed as follows:

ARTICLE I

APPLICATION OF GATT AND CERTAIN GATT AGREEMENTS

1. Both Parties reaffirm the importance of their rights and obligations under the General Agreement on Tariffs and Trade ("GATT") and reaffirm the importance of the provisions and principles of the GATT to their respective economic policies.

2. To this end, the Parties shall apply between themselves the provisions of the GATT as those provisions apply to each Party, and shall accord each other's products most-favored-nation treatment ("MFN") as provided in the GATT, provided that to the extent any provision of the GATT is inconsistent with this Agreement, the latter shall apply.

3. Both Parties reaffirm the importance of their participation in the GATT Code Agreements to which both are signatories, which presently include the Agreement on Technical Barriers to Trade ("Standards Code"), the Agreement on Implementation of Article VI ("Anti-Dumping Code"), the Agreement on Implementation of Article VII ("Customs Valuation Code"), the Agreement on Import Licensing Procedures ("Licensing Code"), the Agreement on Trade in Civil Aircraft ("Aircraft Code"), and the Arrangement Regarding Bovine Meat, and the importance of the provisions and principles contained therein to their respective economic policies.

4. Both Parties commit to participate constructively in multilateral negotiations aimed at improving existing agreements

VOL 58 ISS 128 JL 7 1993 UMI

and any other multilateral negotiations under the auspices of the GATT.

5. Each Party shall accord to imports of products and services originating in the territory of the other Party most-favored-nation treatment with respect to the allocation of and access to currency to pay for such imports.

ARTICLE II

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties agree to maintain a satisfactory balance of market access opportunities through concessions in trade in products and services, including the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. With a view to assuring nondiscriminatory trade in products and services, such trade shall be effected by contracts between nationals and companies of either Party concluded in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery, and terms of payment.

3. Neither Party shall require or encourage its nationals or companies to engage in barter or countertrade transactions with nationals or companies of the other Party. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties will encourage them to

furnish to each other all necessary information to facilitate the transaction.

ARTICLE III

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of Romania expects that, during the term of this Agreement, nationals and companies of Romania shall increase their orders in the United States for products and services, while the Government of the United States anticipates that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of products and services from Romania. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the

VOL 58 ISS 128 JL 7 1993 UMI

participation of its respective nationals and companies in such events. Each Party shall permit participation in such events by commercial representations on nondiscriminatory terms and conditions. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE IV

GOVERNMENT COMMERCIAL OFFICES

1. In order to promote the development of trade and economic relations between the Parties, and to provide assistance to their nationals and companies engaged in commercial activities, each Party agrees to permit and facilitate the establishment and operation of Government commercial offices of the other Party on a reciprocal basis. The establishment and operation of such offices shall be in accordance with applicable laws and regulations, and subject to such terms, conditions, privileges, and immunities as may be agreed upon by the Parties.

2. Government commercial offices and their respective officers and staff members, to the extent that they enjoy diplomatic immunity, shall not participate directly in the negotiation, execution, or fulfillment of trade transactions, or otherwise carry on trade.

3. Subject to its laws governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

4. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

5. Each Party shall encourage the participation of its nationals and companies in the activities of their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

6. Each Party shall encourage and facilitate access of government commercial office personnel of the other Party to host-country officials, and to representatives of host-country nationals and companies.

7. This Agreement shall not derogate from obligations assumed by either Party concerning the establishment of existing government commercial offices.

ARTICLE V

BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

VOL 58 ISS 128 JL 7 1993 UMI

2. Each Party shall endeavor to ensure that governmental decisions, rulings, and findings affecting the conduct of commercial activities are made expeditiously.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of nationals and companies of third countries.

4. Parties shall permit employees of commercial representations and members of their immediate families to enter the territory of the other Party and to travel therein freely, in accordance with the laws relating to the entry, stay and travel of aliens. Each Party agrees to make available multiple entry visas of duration of six months or longer to such persons and to members of their immediate families.

5. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

6. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines, in connection with the conduct of their activities in the territory of such Party.

7. Each Party shall permit, on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to and use of office space and living accommodations, whether or not designated for use by foreigners. The terms and conditions of such access and use shall in no event be on a basis less favorable than that accorded to commercial representations of nationals and companies of third countries.

8. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

9. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to serve as agents, consultants and distributors of nationals and companies of either Party and of third countries on prices and terms mutually agreed between the parties.

VOL 58 ISS 128 JL 7 1993 UMI

10. Each Party shall permit nationals and companies of the other Party to advertise their products and services (i) through direct agreement with the advertising media, including television, radio, print and billboard, and (ii) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.

11. Each Party shall encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies whose decisions will affect potential sales.

12. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals and companies of the other Party.

13. Each Party shall provide nondiscriminatory access to government-provided products and services, including public utilities and telecommunications facilities, to nationals and companies of the other Party in connection with the operation of their commercial representations.

14. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for after-sale service on a non-commercial basis.

15. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

16. Paragraphs 6 and 14 of this Article shall not be construed to affect the application of ordinary customs and tariff laws.

ARTICLE VI

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws, regulations, judicial decisions, and administrative rulings related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data and information on the national economy and individual sectors, including information on foreign trade, production figures, and other such information related to each Party's internal market.

3. Each Party shall allow the other Party, and the other Party's nationals and companies, the opportunity to comment, to the extent practicable, on the formulation of laws, regulations, standards, and administrative rulings which affect the conduct of their business activities.

VOL 58 ISS 128 JL 7 1993 UMI

ARTICLE VII

FINANCIAL PROVISIONS RELATING TO TRADE
IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals and companies of the Parties shall be made in United States dollars or any other currency that may be designated by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the transfer from its territory of convertible currencies or deposits, or payment instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.

3. Nationals and companies of a Party holding currency of the other Party received in an authorized manner may deposit such currency in financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to their funds

deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange and related matters, including access to freely usable currencies, such as through currency auctions; and

(d) the receipt and use of local currency.

ARTICLE VIII

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, and integrated circuit layout designs as set forth in the text of the attached side letter on intellectual property.

ARTICLE IX

AREAS FOR FURTHER COOPERATION

1. For the purpose of further developing bilateral trade and promoting a steady increase in the exchange of products and services, both Parties shall strive to achieve a mutually acceptable agreement on investment issues, including the repatriation of profits and transfer of capital.

VOL 58 ISS 128 JL 7 1993 UMI

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including cooperation with respect to statistics and standards, as well as production figures.

3. The Parties, taking into account the increasing economic significance of service industries, agree to consult on matters affecting service businesses in the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE X

IMPORT RELIEF SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever actual or prospective imports of products originating in the territory of the other Party cause, threaten to cause, or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to the domestic industry.

2. The consultations provided for in paragraph 1 of this Article shall have the objectives of (i) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (ii) finding means of preventing or remedying such market disruptions. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (i) impose quantitative import limitations, tariff measures or any other restrictions or measures to such extent and for such time as it deems appropriate to prevent or remedy threatened or actual market disruption, and (ii) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that consultations shall be requested immediately thereafter.

VOL 58 ISS 128 JL 7 1993 UMI

5. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

6. In the selection of measures under this Article, the Parties shall give priority to those measures which cause the least disturbance to the goals and provisions of this Agreement.

7. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its own unfair trade laws and regulations, including antidumping and countervailing duty laws and those laws applicable to trade in textiles and textile products.

ARTICLE XI

DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or companies of Romania. Such arbitration may be provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, such as the arbitration rules of the International Chamber of Commerce or the UNCITRAL Rules. If the parties elect the UNCITRAL Rules, the parties should designate an Appointing Authority under said rules in a country other than the United States or Romania.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or Romania that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

VOL 58 ISS 128 JL 7 1993 UMI

ARTICLE XII

NATIONAL SECURITY

1. The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIII

CONSULTATIONS

1. The Joint American-Romanian Economic Commission, established on December 5, 1973, shall periodically review the operation of this Agreement and make recommendations for achieving its objectives. The Commission shall operate pursuant to its existing Terms of Reference and Rules of Procedure, as the same may be modified from time to time by the Parties.

2. At the request of either Party, the Parties agree to consult promptly through appropriate channels to discuss any matter concerning the interpretation or implementation of this Agreement or other relevant aspects of relations between the Parties.

ARTICLE XIV

DEFINITIONS

1. As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company" means any kind of corporation, company, association, sole proprietorship, or other

organization legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain, and whether or not privately or government owned.

(b) "commercial representation" means a representation of a company of a Party.

(c) "national" means a natural person who is a national of a Party under the Party's applicable laws.

ARTICLE XV

GENERAL EXCEPTIONS

1. Nothing in this Agreement shall be construed to prohibit any action by either Party which is required or permitted by the GATT.

2. So long as the measure does not constitute either an arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit:

(a) measures for the protection of intellectual property rights and for the prevention of deceptive practices, as set out in Article VIII and the side letters to this Agreement, provided that such measures shall be related

VOL 58 ISS 128 JL 7 1993 UMI

to the extent of an injury suffered or to prevent such an injury's occurrence;

(b) measures for reasons contemplated by Article XX of the GATT, provided that the term "Agreement" in GATT Article XX, paragraph (d) shall be construed to refer to this Agreement.

3. Trade in products or services between the Parties which is subject to existing or subsequent bilateral or multilateral agreements on specific sectoral trade, such as existing agreements on textiles and civil aircraft, shall be subject to the terms of any such agreement.

4. Each Party reserves the right to deny the advantages of this Agreement to any company if either (i) nationals of a third country control the company and the company has no substantial business activities in the territory of the other Party, or (ii) the company is controlled by nationals of a third country with which the Party does not maintain normal economic relations.

ARTICLE XVI

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters, which are an integral part of the Agreement) shall enter into force upon an exchange of diplomatic notes in which the Parties notify each other that all necessary legal requirements for entry into force have been fulfilled, and shall remain in force as provided in paragraphs 3 and 4 of this Article.

2. This Agreement shall, upon entry into force, supercede in all respects the Agreement on Trade Relations Between the United States of America and the Socialist Republic of Romania, done on April 2, 1975, and the Agreement Suspending Mutual Application of Most Favored Nation Tariff Treatment Under the Trade Agreement of April 2, 1975, done on June 22, 1988, which agreements shall have no further force or effect.

3. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out is obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

VOL 58 ISS 128 JL 7 1993 UMI

4. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at BUCHAREST on this 3RD day of APRIL 1992 in duplicate, in the English and the Romanian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF ROMANIA:

VOL 58 ISS 128 JL 7 1993 UMI

Bucharest, April 3,1992

Dear Mr. Minister,

I have the honor to confirm receipt of your letter that reads as follows:

Dear Mr. Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and Romania (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

GOAL

1. Both Parties shall facilitate the expansion of tourism between the United States and Romania and encourage the adoption of measures by tourist companies of both countries to satisfy the desire of tourists to learn about the lifestyles, achievements, history and culture of each country.

OFFICIAL TOURISM PROMOTION

1. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.

2. Permission to open tourism promotion offices or field offices and the status of personnel at those offices shall be subject to the agreement of the Parties and subject to the laws and regulations of the host country.

The Honorable Constantin Fota
Minister of Commerce and Tourism
Romania

Bucharest, April 3,1992

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3. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations, or engage in any other commercial activities. Such offices shall not sell services to the public or otherwise compete with travel agents or tour operators of either country.

4. Official governmental tourism offices shall conduct activities related to the promotion and facilitation of tourism between the United States and Romania, including:

(a) providing information about the tourist facilities and attractions in their respective countries to the public, the travel industry, and the media;

(b) holding meetings and workshops for representatives of the travel industry, as appropriate;

(c) participating in trade shows;

(d) distributing advertising and promotional materials such as posters, brochures, and photographs to the public, the travel industry, and the media;

(e) performing tourism market research.

5. Nothing in this letter shall obligate either Party to open an official governmental tourism office in the territory of the other.

COMMERCIAL TOURISM COMPANIES

1. Commercial tourism companies, whether privately or governmentally owned, or branches thereof, shall be treated as private commercial companies, fully subject to all applicable laws and regulations of the host country.

2. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled, or administered by that Party or any joint venture therewith, or any private company or joint venture between private companies, which effectively controls a significant

VOL 58 ISS 128 JL 7 1993 UMI

proportion of the tourism and travel-related services in the territory of that Party shall provide those services to nationals and companies of the other Party on a fair and equitable basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from the Agreement as fully as all other industries and sectors.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

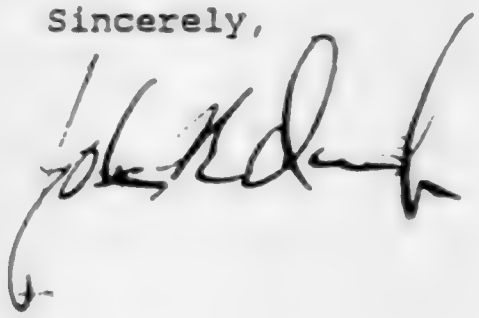

VOL 58 ISS 128 JL 7 1993 UMI

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I have the honor to confirm receipt of your letter that reads as follows:

Dear Mr. Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the Government of the United States and the Government of Romania (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

The Parties agree to provide adequate and effective protection and enforcement of intellectual property rights in patents, trademarks, copyrights, trade secrets, and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories. Specifically, each Party reaffirms the commitments made with respect to the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) and the Berne Convention for the Protection of Literary and Artistic Works.

1. Each Party shall provide no less favorable treatment to the right holders of the other Party than it provides to its own right holders with respect to laws, regulations and practices implementing the provisions of this letter.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall continue to adhere to the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) (Paris Convention), and shall adhere to the Berne Convention for the protection of Literary and Artistic Works (Paris 1971)(Berne Convention), and the Geneva Convention for the Protection of Producers of Phonograms (Geneva Convention) and shall also observe, inter alia, the following:

The Honorable Constantin Fota
Minister of commerce and Tourism
Romania

(a) COPYRIGHT AND RELATED RIGHTS

(i) Each Party shall protect the works listed in Article 2 of the Berne Convention and any other works now known or later developed, that embody original expression within the meaning of the Berne Convention, including:

(1) all types of computer programs (including application programs and operating systems) expressed in any language, whether in source or object form which shall be protected as literary works; and,

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected in so far as they constitute an intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(ii) Each Party shall ensure that the rights provided to authors in works protected pursuant to paragraph 2(a)(i) of this letter shall include, the following:

(1) the exclusive right to import or authorize the importation into the territory of the Party of lawfully made copies of the work;

(2) the exclusive right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(3) the exclusive right to make the first public distribution of the original or each authorized copy of a work by sale, rental, or otherwise;

(4) in respect of at least computer programs, the exclusive right to authorize or prohibit the rental of the original or copies of their copyrighted works. Each Party may exclude from the rental right programs that are fixed as part of a machine or are fixed in a medium that is not susceptible to

VOL 58 ISS 128 JL 7 1993 UMI

copying. Putting the originals or copies of computer programs on the market with the consent of the right-holder shall not exhaust the rental right; and

(5) the exclusive right to publicly communicate a work except for a sound recording (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work); the term "public" shall include:

(A) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in clause 2(ii)(5)(A) or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

(iii) Parties shall extend the protection afforded under paragraph 2(a)(i) and 2(a)(ii) of this letter to authors of the other Party, whether they are natural persons or, where the domestic law of the Party seeking protection so provides, juridical entities, and to their successors in title.

(iv) Each Party shall provide that the exclusive rights protected under paragraph 2(a)(ii) of this letter are freely and separately exploitable and transferable. Each Party also shall provide that assignees and exclusive licensees may enjoy all rights of their assignors and licensors acquired through voluntary agreements, and ensure that they are entitled to enjoy and exercise their acquired exclusive rights in their own names.

(v) In cases where a Party calculates the term of protection of a work on a basis other than the life of a natural person, the term of protection shall be no less than 50 years from the first authorized publication or, failing such authorized publication within 50 years from the making of the work, 50 years after the making.

(vi) Each Party shall confine any limitations upon and exceptions to the exclusive rights provided under paragraph 2(a)(ii) of this letter (including any limitations or exceptions that restrict such rights to "public" activity) to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

(vii) Each Party shall limit resort to compulsory licensing to those works, rights and utilizations permitted under the Berne Convention; and further shall ensure that any legitimate compulsory or non-voluntary license or restriction of exclusive rights to a right of remuneration shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(viii) Each Party shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part; and

(2) to exercise the importation and exclusive distribution and rental provided in paragraphs 2(a)(ii)(1)(2)(3) and (4) of this letter.

(ix) Paragraphs 2(a)(iii), (iv) and (vi) of this letter shall apply mutatis mutandis to sound recordings.

(x) Each Party shall:

VOL 58 ISS 128 JL 7 1993 UMI

(1) protect sound recordings first fixed or published in the territory of the other Party;

(2) protect sound recordings for a term of at least 50 years from publication; and

(3) grant the right to make the first public distribution of the original of each authorized sound recording by sale, rental, or otherwise except that the first sale of the original of such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the disposal of the possession of the original or copies for direct or indirect commercial advantage).

(xi) Parties shall not subject the acquisition and validity of intellectual property rights in sound recordings to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) TRADEMARKS

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, or the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one undertaking from those of other undertakings.

(2) The term "trademark" shall include service marks, collective and may include certification marks.

(ii) Acquisition of Rights

(1) Each Party shall provide a system for the registration of trademarks.

Parties shall provide protection for trademarks based on registration and may provide protection on the basis of use.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any

VOL 58 ISS 128 JL 7 1993 UMI

unauthorized use which constitutes an act of unfair competition.

(4) The rights described in the foregoing paragraphs shall not prejudice any existing prior rights, nor shall this affect the possibility of Parties making rights available on the basis of use.

(iv) Term of Protection

Initial registration of a trademark shall be for a term of at least 10 years. The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met.

(v) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vi) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(vii) Transfer

Trademark registrations may be transferred.

(c) PATENTS

(i) Patentable Subject Matter

Patents shall be available for all inventions, whether products or processes, in all fields of technology, except that a Party may exclude from patentability any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer if the patent owner presents evidence that a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used. In the gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his trade secrets shall be taken into account.

(3) A patent may be revoked only on grounds that would have justified a refusal to grant the patent.

(iii) Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that the exceptions do not significantly prejudice the economic interests of the right-holder, taking account of the legitimate interests of third parties.

(iv) Term of Protection

Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party

VOL 58 ISS 128 JL 7 1993 UMI

is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

(v) Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of the provisions of this letter, where the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of the provisions of this letter; and

(2) a patent has been issued for the product by the other Party prior to the entry into force of the Agreement; and

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent to the competent authority of the Party providing transitional protection. Such Party shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

(vi) Compulsory Licenses

Each Party may limit the patent owner's exclusive rights through compulsory licenses but only (1) to remedy an adjudicated violation of competition laws, (2) to address, only during its existence, a declared national emergency, and (3) to enable compliance with national air pollutant standards, where compulsory licenses are essential to such compliance.

Where the law of a Party allows for the grant of compulsory licenses, the following provisions shall be respected:

(1) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise which exploits such license.

(2) The payment of remuneration to the patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition law.

(3) Each case involving the possible grant of a compulsory license shall be considered on its individual merits except that such consideration may be waived in cases of a declared national emergency.

(4) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

(5) Judicial review shall be available for:

(a) Decisions to grant compulsory licenses, except in the instance of a declared national emergency,

(b) decisions to continue compulsory licenses, and

(c) decisions concerning the amount of compensation provided for compulsory licenses.

(d) LAYOUT-DESIGNS OF SEMICONDUCTOR INTEGRATED CIRCUITS

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor integrated circuit, however the layout-design might be fixed or encoded.

VOL 58 ISS 128 JL 7 1993 UMI

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to right-holders of lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor integrated circuit incorporating the layout-design and products including such integrated circuits.

(2) The conditions set out in paragraph (c)(vi) of this paragraph shall apply, mutatis mutandis, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of

preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

(e) ACTS CONTRARY TO HONEST COMMERCIAL PRACTICES AND THE PROTECTION OF TRADE SECRETS

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention for the Protection of Industrial Property, each Party shall provide in its domestic law and practice the legal means for nationals and companies to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

VOL 58 ISS 128 JL 7 1993 UMI

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(e)(i) of this letter exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall protect such data against unfair commercial use. Further, each Party shall protect such data against disclosure except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

(2) Unless the person submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable period of time, taking into account the efforts involved in the origination of the data, their nature, and the expenditure involved in their

preparation, and such period of time shall generally be not less than five years from the date of marketing approval.

(3) Where a Party relies upon a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

(f) ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

(i) Each Party shall protect intellectual property rights covered by this letter by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, and remedies to prevent or stop, within its territory and at the border, against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide safeguards against abuse.

(ii) Procedures for enforcing intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in each Party's laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Notwithstanding the other provisions of paragraph 2(f), when a Party to this Agreement is

VOL 58 ISS 128 JL 7 1993 UMI

sued with respect to infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. For purposes of this Agreement:

(a) "right-holder," includes the right-holder himself, any other natural or legal person authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights;

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition, use or disclosure of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in their acquisition of such information.

(c) "Integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

4. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this letter shall be construed to prohibit the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations relating to the protection and enforcement of intellectual property rights and the prevention of deceptive practices as set out in this letter.

5. Each Party agrees to submit for enactment no later than December 31, 1993 the legislation necessary to carry out the obligations of this letter and to exert its best efforts to enact and implement this legislation by that date.

6. The Parties acknowledge that, under the existing Romanian law, it is not possible to fully implement the provisions of this letter. Accordingly, the Government of Romania has undertaken the obligation set forth in paragraph 5 of the side letter to submit and exert best efforts to

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enact and implement amendments to existing laws or enact new laws. Pending the enactment of such amendments or new laws which fully implement the provisions of the exchange of letters, if it is brought to the attention of the Romanian Government by the Government of the United States that existing laws are being applied in a manner inconsistent with this side letter, the Government of Romania shall promptly take appropriate steps to rectify the inconsistency, including accelerating the introduction and implementation of such amendments and new laws.

I have the further honor to propose this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

[FR Doc. 93-16216
Filed 7-2-93; 4:26 pm]
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VOL
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ISS
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Rules and Regulations

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures; Commercial Overnight Delivery

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its regulations by adding commercial overnight delivery as a method of service of written submissions; by adding commercial overnight delivery as a method of filing written submissions; and by defining the date of filing written submissions by commercial overnight delivery as the date the document is delivered to the commercial overnight delivery service. The changes will conform the regulations to actual and accepted practice.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is amending its regulations to provide specifically for service and filing of documents by commercial overnight delivery and to define the date of filing by this means as the date the document is delivered to the commercial overnight delivery service. The rule gives comparable treatment to filing by mail and filing by commercial overnight delivery.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. Section 1201.4 is amended by removing the second "or" in paragraph (i); by removing the period at the end of paragraph (i); and by adding in its place ", or by commercial overnight delivery." Section 1201.4 is also amended by adding a sentence at the end of paragraph (l) to read as follows:

§ 1201.4 General definitions.

* * * * *

(l) * * * The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service.

3. Section 1201.22 is amended by removing "or" in paragraph (d); by removing the period at the end of paragraph (d); and by adding in its place ", or by commercial overnight delivery."

4. Section 1201.26 is amended by removing "or" in the second sentence of paragraph (b)(2); and by inserting after "delivery" and before "to" in line seven ", or by commercial overnight delivery".

5. Section 1201.114 is amended by removing "or" in paragraph (c); by removing the period at the end of paragraph (c); and by adding in its place ", or by commercial overnight delivery."

Dated: June 30, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–15949 Filed 7–6–93; 8:45 am]

BILLING CODE 7400–01–M

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its regulations by adding commercial overnight delivery as a method of filing for appeals and stay requests of personnel actions allegedly based on whistleblowing to conform the regulations to actual and accepted practice.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is amending its regulations to provide specifically for filing and service by commercial overnight delivery.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1209 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8) and 7701.

2. Section 1209.8 is amended by removing "or" in paragraph (d); by removing the period at the end of paragraph (d); and by adding in its place ", or by commercial overnight delivery."

Dated: June 30, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–16064 Filed 7–6–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–78; Special Conditions No. 25–ANM–73]

Special Conditions: Modified Dassault-Aviation Mystere-Falcon Model 50 and Model 900 Airplanes, Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes modified by Falcon Jet Corporation in Little Rock, Arkansas. These special conditions apply to airplanes being modified by installation or modification of high-technology digital avionics systems or other electronic systems which perform

VOL 58 ISS 128 JL 7 1993 UMI

critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2148.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1991, Falcon Jet Corporation applied for a supplemental Type Certificate to modify the Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics including, an electronic flight instrument system (EFIS) which is vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. Other similar modifications often installed when updating to digital avionics include attitude and heading reference systems (AHRS) and engine indication and crew alerting systems (EICAS). Because these are typical modernization modifications for retrofitting state-of-the-art avionics and electronics to older airplanes, it is expected that Falcon Jet Corporation at Little Rock, Arkansas, will apply for supplemental type certificates for installation of similar modifications on Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes in the near future. Therefore, Falcon Jet Corporation will need appropriate lightning and HIRF criteria available for application to those projects.

The Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes are both on Type Certificate A46EU. The airplanes are pressurized, 8 to 19 passengers plus two pilots and an observer, executive transport type airplanes having maximum brake release weights prior to takeoff of 38,800 to 45,500 pounds, maximum operating speeds of 350 to 370 knots (IAS), and maximum operating altitudes of 45,000 to 51,000 feet, all depending on the specific model and airplane configuration. The airplanes are powered by three aft fuseable mounted turbojet or turbofan engines, depending on the scientific model and airplane configuration.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C of the FAR, Falcon Jet must show that the modified Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes meet the applicable requirements as specified in § 21.101 (a) and (b) of the FAR; unless (1) Otherwise specified by the Administrator, or (2) Compliance with later effective amendments is elected or required under § 21.101 (a) and (b), and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.101 (a) and (b) of the FAR, Falcon Jet Corporation, when accomplishing their modification projects on Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes will have to show compliance with the applicable type certification basis on Type Certificate Data sheet (TCDS) No. A46EU, plus any additional requirements or amendments necessary to provide a level of safety equal to that established by the regulations at the time application is made for Supplemental Type Certification.

If the Administrator finds that the applicable airworthiness regulations (i.e., applicable part 25 requirements) do not contain adequate or appropriate safety standards for the modified Dassault-Aviation Mystere-Falcon Model 50 or Model 900 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) of the FAR to establish a level of safety equivalent to that established in the regulations. These special conditions form an additional part of the type certification basis when critical or essential digital avionics/electronic systems are being modified or installed.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29 of the FAR, and become part of the type certification basis in accordance with § 21.115(a) of the FAR.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic and electronic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes which require that new technology electrical and electronic systems, such as electronic flight information systems, electronic engine information displays, digital avionics systems and electronic propulsion controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment which has been changed to agree with the latest recommendation from the SAE AE4L lightning committee. This change was made subsequent to the publication of Notice of Proposed Special Conditions No. SC–93–1–NM in the **Federal Register** on March 5, 1993 (58 FR 12563). Because the new multiple burst environment is relieving as far as regulatory burden is considered, the public comment period will not be reopened for these special conditions.

The lightning current waveforms (Components A, D, and H) defined

below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And, 3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds, the maximum is 1,000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between subsequent bursts is 30 ms, and (2) the maximum period between subsequent bursts is 300 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o\,(e^{-at}-e^{-bt})$

where: t = time in seconds, i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=218,810	109,405	54,703	10,572
a, sec^{-1}	=11,354	22,708	22,708	187,191
b, sec^{-1}	=647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
i_{peak}	=200 KA	100 KA	50 KA	10 KA and,
$(di/dt)_{max}$ (amp/sec)	=1.4×10^{11} @t=0+ sec	1.4×10^{11} @t=0+ sec	0.7×10^{11} @t=0+ sec	2.0×10^{11} @t=0+ sec
di/dt, (amp/sec)	=1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

VOL 58 ISS 128 JL 7 1993 UMI

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,800	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice of proposed special conditions No. SC–93–1–NM for the Modified Dassault-Aviation Mystere-Falcon Model 50 and Model 900 Airplanes was published in the Federal Register on March 5, 1993 (58 FR 12563). Two comments were received. One commenter concurs with the special conditions as proposed. The other commenter references a mistake under the "Background" section in the notice which states that the aircraft is "powered by two aft fuselage mounted turbine or turbofan engines depending on the specific model and airplane configuration." The commenter points out that, in fact, both the Falcon 50 and Falcon 900 airplanes are powered by three aft fuselage mounted turbofan engines. That correction is noted in these final special conditions.

Conclusion

This action affects only certain unusual or novel design features on Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes modified at Falcon Jet Corporation in Little Rock, Arkansas, by installation or modification of electronic systems that perform critical or essential functions. It is not a rule of general applicability and affects only Falcon Jet Corporation in Little Rock, Arkansas, when they apply to the FAA for approval of modifications involving these features on Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modification or installation of critical and essential electronic systems on Dassault-Aviation Mystere-Falcon Model 50 and Model 900 airplanes at Falcon Jet Corporation in Little Rock, Arkansas.

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on May 13, 1993.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–12179 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 25

[Docket No. NM–82; Special Conditions No. 25–ANM–70]

Special Conditions: Modified Gulfstream American Model 1159 Series Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream American Model 1159 series airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 10, 1993. Comments must be received on or before August 23, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–82, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–82. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–82." The postcard will be date stamped and returned to the commenter.

Background

On March 9, 1993, Duncan Aviation, Inc., applied for a supplemental type certificate to modify the Gulfstream American Model 1159 series airplanes. The Gulfstream American Model 1159 is a twin-engine business jet with two aft-mounted Rolls Royce Spey RB 511–8 engines. The airplane can carry two pilots and 19 passengers and is capable of operating to 45,000 feet altitude with certain service changes installed. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.102 of the FAR, Duncan Aviation, Inc., must show that the altered Gulfstream American Model 1159 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A12EA include the following: Gulfstream American G–1159: CAR 4b dated December 31, 1953, including Amendments 4b–1 thru 4b–14. Gulfstream American 1159A: The Federal Aviation Regulations in 14 CFR part 25 effective February 1, 1965, including Amendments 25–2 thru 25–8, 25–10, 25–12, 25–16 thru 25–22, 25–24, 25–26, except § 25.1203(b)(3) for serial numbers 249, 252, 300 thru 321 (see retrofit requirement in A12Ea), 25–27, 25–29 thru 25–31, 25–34, 25–37, 25–40 (as applicable to the APU installation); and § 25.1329 (as applied to the autopilot installation). Gulfstream American G–1159B: CAR 4b, dated December 31, 1953, including Amendments 4b–1 thru 4b–14. In addition the following regulations apply to the EFIS installation for all Gulfstream American 1159 series airplanes: §§ 25.1301, 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b or part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream American Model 1159 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Gulfstream American Model G–1159 series airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	50	50
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States.

VOL 58 ISS 128 JL 7 1993 UMI

Conclusion

This action affects only certain unusual or novel design features on the Gulfstream American Model 1159 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Gulfstream American Model G–1159 series airplanes:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–12180 Filed 7–6–93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 25

[Docket No. NM–83; Special Conditions No. 25–ANM–71]

Special Conditions: Modified Cessna Model 650 Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Model 650 airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 10, 1993. Comments must be received on or before August 23, 1993.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–83, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–83." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–83." The postcard will be date stamped and returned to the commenter.

Background

On March 9, 1993, Duncan Aviation Inc., applied for a supplemental type certificate to modify Cessna Model 650 airplanes. The Cessna 650 is a twin-engine business jet with two aft-mounted Garrett TFE 731 engines. The Model 650 airplane is capable of carrying two pilots and 13 passengers and is capable of flying to 51,000 feet altitude. Modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Duncan Aviation Inc., must show that the altered Cessna Model 650 airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A9NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A9NM include the following: The Federal

Aviation Regulations in 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–1 through 25–39, 25–43, and 25–44; §§ 25.901(c) and 25.1199, as amended through Amendment 25–40; §§ 25.1309 and 25.1351(d), as amended through Amendment 25–41; §§ 25.177, 25.255, and 25,703, as amended through Amendment 25–42; and §§ 25.1305 and 25.1529, as amended through Amendment 25–54. In addition, the following regulations apply to the EFIS installation: §§ 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 650 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems for high-intensity radiated field (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Cessna 650 airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100Hz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 18571–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Cessna Model 650 airplanes modified by Duncan Aviation:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–12181 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–13–M

VOL 58 ISS 128 JL 7 1993 UMI

14 CFR Part 25

[Docket No. NM–84; Special Conditions No. 25–ANM–72]

Special Conditions: Modified Cessna Model 500 Series Airplanes, High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Model 500 series airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 10, 1993. Comments must be received on or before August 23, 1993.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–84, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–84." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–84." The postcard will be date stamped and returned to the commenter.

Background

On March 9, 1993, Duncan Aviation, Inc., applied for a supplemental type certificate to modify the Cessna Model S550 airplane. The Cessna S550, like all of the Cessna 500 series models, is a twin-engine business jet with two aft-mounted engines. Modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to high-intensity radiated fields (HIRF) external to the airplane. Duncan Aviation has requested that the special conditions be made applicable to the Cessna Model 500, 550, 552, and 560 airplanes because all of the airplanes are listed on Type Certificate Data Sheet No. A22CE.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Duncan Aviation, Inc., must show that the altered Cessna Model 500 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A22CE include the following: The Federal Aviation Regulations in 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–1 through 25–17. In addition, the following regulations apply to EFIS installations in all Cessna Model 500 series airplanes: §§ 25.1301, 25.1303(b) and 25.1322, as amended through Amendment 25–38; and §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 500 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is not specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations referenced, special conditions are needed for the modified Cessna 500 series airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated

wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on Cessna Model 500 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Cessna Model 500 series airplanes modified by Duncan Aviation:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–12182 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 775, 777, 785, 787, 788, and 790

[Docket No. 930370–3070]

Revisions to the Export Administration Regulations; Supporting Documentation

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) to establish a uniform validity period for all Import and End-User Certificates, as well as the Statement by Ultimate Consignee and Purchaser. This rule also makes several editorial corrections to the EAR to indicate the correct Commerce telephone numbers and mailing address.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4819.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations by establishing a uniform validity period for all Import and End-User Certificates, as well as the Statement by Ultimate Consignee and Purchaser. When an Import or End-User Certificate is obtained in support of one or more export license applications, the applicant must submit the first application to be supported by this document to the Office of Export Licensing (OEL) within the validity period shown on the certificate or six months from the date the document was issued, whichever is shorter. In addition, any subsequent export license application supported by such a document must be submitted to OEL within one year from the date that the first export license application supported by the document was submitted to OEL. The first application to be supported by a Form BXA–629P, whether prepared as a single or multiple transaction statement, must be submitted to OEL within 6 months after the Form BXA–629P is signed by the consignee or purchaser, whichever date is later. When the Statement by Ultimate Consignee and Purchaser is prepared as a multiple transaction statement, however, subsequent applications may be submitted to the Office of Export Licensing at any time within the validity of the Statement (June 30 of the second year).

This rule also amends the EAR by revising references to several Commerce Department telephone numbers, and by changing the phrases "Processing Unit" and "Reports and Records Unit" to "Operations Branch" to correctly reflect that office's name.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, 0694–0010, and

VOL 58 ISS 128 JL 7 1993 UMI

0694–0021. The import and end-use certificates referenced in this regulation are issued by foreign governments, and therefore are not subject to the Paperwork Reduction Act.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Part 775

Exports, Reporting and recordkeeping requirements.

15 CFR Part 777

Administrative practice and procedure, Export, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 785

Exports.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirement.

15 CFR Part 788

Administrative practice and procedure, Boycotts, Exports, Penalties.

15 CFR Part 790

Administrative practice and procedure, Advisory committees, Exports.

Accordingly, parts 770, 775, 777, 785, 787, 788 and 790 of the Export Administration Regulations (15 CFR part 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 787, 788 and 790 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR parts 775 and 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

3. The authority citation for 15 CFR part 777 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended: secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 770—[AMENDED]

4. Section 770.11 is amended by revising the phrase "(202)377–2752 in paragraph (a)(2)(i)(A) to read "(202)482–2752.

PART 772—[AMENDED]

5. Section 772.4 is amended:

a. By revising the phrase "(202)377–8536" in paragraph (b)(2)(iv)(A) to read "(202)482–0436";

b. By revising the phrase "202–377–4811; telex: 892536; telefax: 202–377–3322" in paragraph (i)(1), introductory text, to read "(202)482–4811; telex: 892536; telefacsimile: (202)482–3617";

c. By revising paragraph (i)(1)(i); and

d. By revising the phrase "377–4196; telex: 892536; telefax: 377–4096" in paragraph (i)(6) to read "(202)482–5400 telex: 892536; telefacsimile: (202)482–4094", as follows:

§ 772.4 How to apply for a validated license.

* * * * *

(i) * * *

(1) * * *

(i) Hand-carry the application directly to—Exporter Counseling Division, Office of Export Licensing, room 1099D, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. The best way to ensure prompt delivery, other than by company personnel hand carrying, is to use those private courier services that guarantee overnight delivery. C.O.D. submissions will not be accepted. "Attention: Exporter Counseling Division—Emergency Clearance Required" should be marked on the envelope. The Exporter Counseling Division will review daily the applications for which emergency

processing is requested and determine whether such processing is justified.

* * * * *

PART 775—[AMENDED]

6. Section 775.2 is amended by revising the first sentence and deleting the second sentence in paragraph (e)(6) to read as follows:

§ 775.2 Form BXA–629P, statement by ultimate consignee and purchaser.

* * * * *

(e) * * *

(6) *Validity period.* The first application to be supported by a Form BXA–629P, whether prepared as a single or multiple transaction statement, must be submitted to the Office of Export Licensing within 6 months after the Form BXA–629P is signed by the consignee or purchaser, whichever date is later. * * *

* * * * *

7. Section 775.3 is amended by revising paragraph (h)(3) to read as follows:

§ 775.3 International import certificate and delivery verification certificate.

* * * * *

(h) * * *

(3) *Validity period.* See paragraph (b) of § 775.10 of this subchapter for information on the validity period of the International Import Certificate.

* * * * *

8. Section 775.6 is amended by adding a new paragraph (d) to read as follows:

§ 775.6 People's Republic of China End-User Certificate.

* * * * *

(d) *Validity period.* See paragraph (b) of § 775.10 of this subchapter for information on the validity period of the PRC End-User Certificate.

9. Section 775.7 is amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

§ 775.7 Indian Import Certificate.

* * * * *

(d) *Validity period.* See paragraph (b) of § 775.10 of this subchapter for information on the validity period of the Indian Import Certificate.

* * * * *

10. Section 775.8 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 775.8 Polish, Hungarian, or Czechoslovak Import Certificate.

* * * * *

(d) *Validity period.* See paragraph (b) of § 775.10 of this subchapter for information on the validity period of the Polish, Hungarian, or Czechoslovak Import Certificate.

* * * * *

11. Section 775.10 is amended by redesignating paragraphs (b) through (g) as (c) through (h), and adding a new paragraph (b) to read as follows:

§ 775.10 Special provisions.

* * * * *

(b) *Validity period.* When a PRC End-User Certificate, Indian Import Certificate, Polish, Hungarian, or Czechoslovak Import Certificate, or an International Import Certificate is obtained in support of one or more export license applications, the applicant must submit the first application to be supported by such a Certificate to the Office of Export Licensing (OEL) within the validity period shown on the Certificate or 6 months from the date the Certificate was issued, whichever is shorter. In addition, any subsequent export license applications supported by such a Certificate must be submitted to OEL within one year from the date that the first export license application supported by the Certificate was submitted to OEL.

* * * * *

PART 777—[AMENDED]

12. Section 777.1 is amended by revising the phrase "202–377–4811; telex: 892536; telefax: 202–377–3322" in paragraph (c)(3) to read "(202) 482–4811; telex: 892536; telefacsimile: (202) 482–3617".

13. Section 777.2 is amended by revising the phrase "14th and E Streets" in paragraph (e) to read "14th St. and Pennsylvania Ave."

13a. The phrase "Processing Unit" is revised to read "Operations Branch" in the following places:

Sec.
777.2(e) [two references]
777.4(d)(1), introductory text
777.4(h), introductory text
777.4(i)(2), introductory text
777.6(d), introductory text
777.7(d)

14. Section 777.4 is amended by removing the phrase "Reports and LRecords Unit," in paragraph (h).

15. The phrase "Reports and Records Unit," is removed from the following places:

Sec.
777.4(i)(2), introductory text
777.7(d)

PART 785—[AMENDED]

16. Section 785.2 is amended by revising the phrase "Commodity Control List" in paragraph (a)(4) to read "Commerce Control List" (two references).

17. Section 785.7 is amended by removing the second sentence in paragraph (b).

PART 787—[AMENDED]

18. Section 787.14 is amended:

a. By revising the phrase "(202) 377–4608" in paragraphs (a)(1) and (a)(2) to read "(202) 482–8208"; and

b. By revising the phrase "(202) 377–2381" in paragraphs (a)(1) and (a)(2) to read "(202) 482–2381".

19. Section 787.15 is amended by revising the phrase "(202) 377–8208" in paragraph (c)(2)(ii) to read "(202) 482–8208".

PART 788—[AMENDED]

20. Section 788.20 is amended by revising the phrase "(202) 377–2593" in paragraph (c)(1)(i) to read "(202) 482–5653".

PART 790—[AMENDED]

21. Section 790.1 is amended by revising the phrase "(202) 377–2593" in paragraph (h)(3) to read "(202) 482–5653".

Dated: June 25, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–15526 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 93–054]

53rd Annual National Sweepstakes Regatta, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document puts into effect the permanent regulations, 33 CFR 100.103, for the 53rd Annual National Sweepstakes Regatta. The regulation will be effective from Saturday, July 24, 1993 at 8 p.m. until 6 p.m. Sunday, July 25, 1993. This regulation is necessary to control vessel traffic due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the

VOL 58 ISS 128 JL 7 1993 UMI

safety of life and property during the event.

EFFECTIVE DATE: The regulations are effective from 8 a.m. on Saturday, July 24, 1993 to 8 p.m. on Sunday, July 25, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

DRAFTING INFORMATION: The principal persons involved in drafting this document are LT E. G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J. D. Stieb, Project Attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This document provides the effective period for the permanent regulation governing the 1993 running of the National Sweepstakes Regatta in Red Bank, New Jersey. A portion of the Navesink River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between the NJ Route 35 bridge and a line running across the Navesink River connecting Guyon and Lewis Points. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.103.

Dated: June 7, 1993.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93–15821 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 110

[CGD 07–91–060]

Anchorage Grounds; Port Everglades, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two anchorage grounds off Port Everglades, Florida. The Florida State Department of Natural Resources, Port Everglades Authority, and the Ocean Research Institute requested that the Coast Guard establish these anchorage grounds off the coast. Anchoring regulations requiring use of the anchorage grounds are also being established by these regulations. The primary purpose for establishing the federally designated anchorage grounds is to require commercial vessels to anchor within the anchorage grounds' boundaries to avoid causing reef damage with their anchors.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. Gray, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536–5621.

SUPPLEMENTARY INFORMATION: On July 16, 1992 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (57 FR 31471). Interested persons were requested to submit comments and 12 comments were received.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal office.

Discussion of Comments

All comments received supported the proposed anchorage grounds; however, several recommended changes to and presented concerns with the regulation.

The comments included a request that the areas be marked with buoys and shown on nautical charts. The anchorages will be shown on nautical charts; however, there are no plans to mark the anchorage grounds with buoys. Depiction on nautical charts is generally sufficient to indicate the boundaries of offshore anchorages.

Several comments suggested modifying the regulation to require all vessels to use the anchorage grounds rather than just vessels awaiting berthing in Port Everglades as contained in the Notice of Proposed Rulemaking for this regulation. The language of the regulation has been changed to require use of the anchorage grounds by all commercial vessels in the vicinity of Port Everglades, Florida.

The comments also included a recommendation that vessels be required to check-in with the harbormaster when entering or leaving the anchorage grounds and a recommendation that the harbormaster be given the authority to control vessels' entry to, exit from, and movement within the anchorage grounds. Such authority is generally given to the Captain of the Port or another federal agency and is not properly delegated to a non-federal entity.

Several comments expressed concern over the environmental impact of this regulation, particularly the increased potential for pollution incidents. In light of these comments, the categorical exclusion was reviewed and determined to still be appropriate.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. The designated areas have traditionally been used as anchorage grounds for large vessels. Therefore, minimal economic impact would result from directing commercial ships away from the reef areas for anchoring.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.b.2.1 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation as an administrative action under the Coast Guard's statutory authority to establish and regulate Restricted Navigational Areas. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

In consideration of the foregoing, the Coast Guard is amending part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.186 is added to read as follows:

§ 110.186 Port Everglades, Florida.

(a) *The anchorage grounds.* (1) Anchorage A. A rectangular area the center of which is approximately two miles northeast of the entrance to Port Everglades with the following NAD 83 coordinates:

Latitude	*Longitude*
26°07′48″ N.	80°04′51″ W.
26°07′46″ N.	80°05′01″ W.
26°06′20″ N.	80°05′01″ W.
26°06′20″ N.	80°05′10″ W.

(2) Anchorage B. An area bounded by a line connecting points with the following NAD 83 coordinates:

Latitude	*Longitude*
26°07'16" N.	80°04'38" W.
26°07'56" N.	80°04'34" W.
26°07'56" N.	80°02'42" W.
26°07'16" N.	80°02'54" W.

(b) *The regulations.* (1) Commercial vessels in the Atlantic Ocean in the vicinity of Port Everglades shall anchor only within the anchorage area hereby defined and established, except in cases of emergency.

(2) Commercial vessels anchoring under emergency circumstances outside the anchorage area shall be shifted to new positions within the anchorage area immediately after the emergency ceases.

Dated: June 18, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93-15819 Filed 7-6-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-93-025]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Okeechobee Waterway, Manatee River & Orange River, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations pertaining to four drawbridges in Southwest Florida. Each of these drawbridges has been replaced with a fixed bridge. Therefore, there is no longer a need for the drawbridge regulations because they pertain to drawbridges that no longer exist.

EFFECTIVE DATE: This rule becomes effective on August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations, because there is no longer a need for the regulations as they pertain to drawbridges that no longer exist.

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Background and Purpose

The Edison Drawbridge, Okeechobee Waterway mile 134.5, Caloosahatchee River, at Fort Myers, Lee County, Florida, was replaced by a high-level fixed bridge in June 1992. The SR 80 Drawbridge, Orange River mile 0.9, between Fort Myers and Tice, Lee County, Florida, was replaced by a high-level fixed bridge in November 1990.

The US 41 Drawbridge, Manatee River mile 4.3, at Bradenton, Manatee County, Florida, was replaced by a high-level fixed bridge in October 1987.

The Maximo Point Drawbridge, Gulf Intracoastal Waterway mile 110.5, Tampa Bay, Pinellas County, Florida, was replaced by a high-level fixed bridge in November 1992.

Regulatory Evaluation

There are no issues that require a Federalism Assessment. This regulation removal is Categorically Excluded under Section 2.B.2.1. of the NEPA Implementing Procedures. This action has no economic consequences. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing facts, part 117 of title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.301 [Removed]

2. Section 117.301 is removed.

§ 117.317 [Amended]

3. In § 117.317, paragraph (j) is removed, and paragraph (k) is redesignated paragraph (j).

§ 117.321 [Removed]

4. Section 117.321 is removed.

§ 117.287 [Removed]

5. In § 117.287, paragraph (d)(3) is removed.

Dated: June 1, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93-15820 Filed 7-6-93; 8:45 am]

BILLING CODE 4910-04-M

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33 CFR Part 165

[CGD 09-93-19]

Safety Zone Regulations; Lower Lake Huron, St. Clair River and Black River, Port Huron, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for portions of Lower Lake Huron, the St. Clair River and Black River during the festivities surrounding the beginning of the annual Port Huron to Mackinac Island Race on July 24, 1993. These regulations will establish a "Caution Area" from the lower part of the Black River to the International Boundary in the St. Clair River northward to the Lake Huron Cut Buoys 5 and 6, Lake Huron, in United States waters. Due to a dramatic increase in boating traffic, which could pose hazards to navigation in the area, these regulations are needed to provide for the safety of life, limb, and property on navigable waters during the beginning of the event.

EFFECTIVE DATE: These regulations become effective from 10 a.m. (EDST) on July 24, 1993 until 4 p.m. (EDST) July 25, 1993.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 14, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Project Officer, Aids to Navigation and Waterways Management Branch and M. Eric Reeves, Commander, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

VOL 58 ISS 128 JL 7 1993 UMI

Discussion of Regulations

The circumstances requiring these regulations result from past experiences with congestion and confrontations before, during, and after the start of the annual Port Huron to Mackinac Island Race. This event, based on past records, has drawn in excess of 100,000 people and dramatically increased boating traffic in the general vicinity. These regulations require that all vessels in the designated "Caution Area" from the lower part of the Black River to the International Boundary in the St. Clair River northward to the Lake Huron Cut Buoys 5 and 6, Lake Huron, in United States waters, be operated at NO-WAKE speed meaning that all vessels transiting the area be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution in the area. There will be no restrictions imposed by the Canadian authorities in their waters. These regulations are necessary to ensure the protection of life, limb, and property prior to and until approximately eight hours after the start of the race.

This regulation is issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of part 165.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The impact of these regulations is expected to be minimal, and the Coast Guard therefore certifies that, if adopted, they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Collection of Information

These regulations will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1233; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0976 is added to read as follows:

§ 165.T0976 SAFTEY ZONE: Lower Lake Huron, St. Clair River and Black River, Port Huron, MI.

(a) *Regulated area.* That portion of the Black River, St. Clair River, and Lower Lake Huron from:

Latitude	*Longitude*
42°58.8′ N.	082°26.0′ W., to
42°58.4′ N.	082°24.8′ W., thence
northward along the International Boundary to:	
43°02.8′ N.	082°23.8′ W., to
43°02.8′ N.	082°26.8′ W., thence
southward along the U.S. shoreline to:	
42°58.9′ N.	082°26.0′ W., thence to
42°58.8′ N.	082°26.0′ W.

(b) *Regulations.* The above regulated area is designated as a "Caution Area". All vessels transiting the above listed area will operate at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution in the area.

(c) *Patrol Commander.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander".

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated areas. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitation and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This regulation is effective from 10 a.m. (EDST) on July 24, 1993 until 4 p.m. (EDST) on July 25, 1993, unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI).

Dated: June 16, 1993.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–15822 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[PP 0F3865, PP 2F4081, FAP 2H5635/R2004; FRL–4629–8]

RIN 2070–AB78

Pesticide Tolerances and Food Additive Regulation for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances and a food additive regulation for residues of the herbicide glyphosate [(*N*-phosphonomethyl) glycine] in or on the raw agricultural commodities (RACs) wheat at 5.0 parts per million (ppm), wheat straw at 85 ppm, the tree nut crop group at 1.0 ppm, almond hulls at 25 ppm, and a food additive regulation for wheat milling fractions (except flour) at 20 ppm. Monsanto Co. submitted petitions requesting EPA to establish the maximum permissible residues of the herbicide in or on these RACs and the processed human food.

EFFECTIVE DATE: These regulations become effective July 7, 1993.

ADDRESSES: Written objections, identified by the document control

number, [PP 0F3865, PP 2F4081, FAP 2H5635/R2004], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM), Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 5, 1993 (58 FR 26725), EPA issued a proposed rule that pursuant to petitions (PP 0F3865, PP 2F4081, and FAP 2H5635) by the Monsanto Co., 700 14th St., NW., Washington, DC 20005, and under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), EPA proposed to amend 40 CFR 180.364 to permit combined residues of the herbicide glyphosate, [*N*-(phosphonomethyl)glycine], and its metabolite aminomethylphosphonic acid resulting from the application of the isopropylamine salt in or on the RACs wheat at 5.0 ppm, wheat straw at 85 ppm, the tree nut crop group at 1.0 ppm, almond hulls at 25 ppm, and a food additive regulation under 40 CFR 185.3500 for wheat milling fractions (except flour) at 20 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances and food additive regulation will protect the public health. Therefore, the tolerances and food additive regulation are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects

40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Food additives, pesticides and pests.

Dated: June 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.364, by amending paragraph (a) in the table therein by revising the entry "grain crops" and by adding new paragraph (d), to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Grain crops (except wheat)	0.1 (N)
* * * * *	

* * * * * *

(d) Tolerances are established for residues of glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond hulls	25
Tree nut crop group	1.0
Wheat, grain	5.0
Wheat, straw	85.0

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.3500, by adding new paragraph (a)(3), to read as follows:

§ 185.3500 Glyphosate.

(a) * * *

* * * * *

(3) Glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate for herbicidal purposes.

Food	Parts per million
Wheat milling fractions (excluding flour)	20.0

* * * * * *

[FR Doc. 93–15419 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 9F3702/R2003; FRL 4628–7]

RIN 2070–AB78

Pesticide Tolerances for Norflurazon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

VOL
58
ISS
128
JL
7
1993
UMI

SUMMARY: This document amends the tolerances for residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl-3(2H)-pyridazonone) in or on the raw agricultural commodities (RACs) peanuts at 0.2 part per million (ppm); peanut, hay at 0.5 ppm; peanut, hulls at 0.5 ppm; and peanut, vines at 0.5 ppm resulting from indirect residues of norflurazon and its desmethyl metabolite in or on these raw agricultural commodities when present therein as a result of the application of norflurazon in the culture of cotton, by establishing permanent tolerances for residues that may result from the intentional application of norflurazon in the culture of peanuts. Sandoz, Inc., petitioned EPA for this regulation to establish maximum permissible levels for the combined residues of the herbicide in or on these commodities.

EFFECTIVE DATE: Effective July 7, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3702/R2003], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 8, 1989 (54 FR 6170), which announced that Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plaines, IL 60018, had submitted a pesticide petition (PP 9F3702) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for the herbicide norflurazon (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2H)-pyridazinone and its desmethyl metabolite (4-chloro-5-(amino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2H)-pyridazinone) in or on the raw agricultural commodities (RACs) peanut, nutmeat at 0.05 ppm; peanut, hulls at 1.0 ppm; peanut, vines (green hay) at 0.075 ppm; and peanut, hay (dry) at 0.5 ppm.

EPA also issued a notice, published in the **Federal Register** of May 15, 1991 (56 FR 22428), which announced that Sandoz Crop Protection Corp. had requested that section F of the petition be amended for the same residues in or on the RACs peanuts at 0.05 ppm; peanut, hulls at 1.5 ppm; peanut, vines at 1.5 ppm; and peanut, hay at 5.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of these tolerances include the following:

1. Several acute toxicology studies were performed, placing technical-grade norflurazon in toxicity Category IV.

2. A 90-day rat feeding study at nominal dosages of 0, 12.5, 25.0, and 125.0 mg/kg/day, with a no-observable-effect-level (NOEL) of 25.0 mg/kg/day and a lowest-effect-level (LEL) of 125.0 mg/kg/day. The effect was increased liver-to-body weight ratios with hypertrophy of thyroids with depletion of colloid with acini and slight-to-moderate increase in interstitial vascularity.

3. A 6-month dog feeding study at nominal dosages of 0, 1.25, 3.75, and 11.25 mg/kg/day with a NOEL of 3.75 mg/kg/day and a LEL of 11.25 mg/kg/day based on a relative liver weight increase.

4. A 3-week rabbit dermal study with a NOEL of > 2,000 mg/kg/day the highest dose tested (HDT).

5. A 28-day rat feeding study at dosages of 0, 25.0, 50.0, and 250.0 mg/kg/day with a NOEL of 50.0 mg/kg/day. The effect was hyperplasia and hypertrophy of liver and higher liver, kidney, adrenal, and heart/body weight ratios.

6. A 28-day mouse feeding study at dosages of 0, 10.5, 31.5, 63.0, and 378.0 mg/kg/day with a NOEL of 63.0 mg/kg/day and a LEL of 378.0 mg/kg/day. The effect was diffused and smooth granular livers and an increase in the liver/body weight ratios.

7. A rat dermal absorption study at dosages of 0, 0.1, 1.0, and 10.0 mg/rat showing that no more than 0.1 percent of applied dose was absorbed at doses up to 10 mg/rat.

8. Gene mutation assays in *Salmonella typhimurium* (strains TA98, TA100, TA1535, TA1537, and TA1538), *E. coli* (strain WP2), and *Saccharomyces cerevisiae* (strain D4), in-vitro cytogenetic assay in Chinese hamster ovary cells for chromosome aberrations, and unscheduled DNA synthesis test in primary rat hepatocytes for DNA repair were negative for potential mutagenic activity.

9. A developmental study in rats at dosages of 0, 100, 200, and 400 mg/kg/day showed no maternal or developmental effects at 400 mg/kg/day.

10. A developmental study in rabbits at dosages of 0, 10, 30, and 60 mg/kg/day showed maternal body weight decreases at 60 mg/kg/day. Developmental effects seen at 30 and 60 mg/kg/day were decreased fetal weight and incomplete ossification of the skull, fore and hind limb middle phalanx, metacarpal, and proximal epiphysis of the tibia. The NOEL for maternal toxicity was 30 mg/kg/day. The NOEL for developmental toxicity was 10 mg/kg/day.

11. A three generation reproduction study in rats at dosages of 0, 6.25, 18.75, and 51.25 mg/kg/day showed effects of reduced fertility, gestation, and viability indices at 51.25 mg/kg/day.

12. A carcinogenicity study in rats at dosages of 0, 0.1, 6.25, 18.75, and 51.25 mg/kg/day with a NOEL of 18.75 mg/kg/day and a LEL of 51.25 mg/kg/day based on reduced body weight gain, increases in blood urea nitrogen (BUN) and a marked reduction in 2,3-diphosphoglyceric acid (DPG), increased mortality, increased liver, kidney and ovary weight, fatty changes in adrenals, endometritis, increased chromophobe adenomas in pituitary, modular or cortical hypertrophy in adrenals, cast in kidneys (males). There were no carcinogenic effects attributable to norflurazon in the study.

13. A carcinogenicity study in mice at dosages of 0, 12.75, 51.0, and 204.0 mg/kg/day with a NOEL of 51 mg/kg/day and a LEL of 204 mg/kg/day with increased liver-to-body weight ratios and significant positive trend in hepatocellular adenomas and in combined hepatocellular adenomas and/or carcinomas. A significant pair-wise increase in hepatocellular adenomas and hepatocellular adenomas/carcinomas combined was observed at the 204 mg/kg/day dose level in males. There were no statistically significant increases in tumor incidence with incremental doses of norflurazon in females.

14. A rat metabolism study at single oral doses of 2 or 110 mg/kg, a single i.v. dose of 2.0 mg/kg, or a single oral dose at 2 mg/kg after animals had ingested 0.1 mg/kg for 14 days showed that less than 1.0 percent remained in bodies of rats 96 hours after dosing. Thirteen metabolites were isolated. Norflurazon appears to be metabolized by *N*-demethylation, displacement of the chlorine atom by *N*-demethylation, displacement of the chlorine atom by glutathione, glutathione attack on the aromatic ring, and replacement of the chlorine atom with hydrogen. Norflurazon appears to be rapidly

absorbed from the gastrointestinal tract and extensively metabolized.

The Agency's Health Effects Division Peer Review Committee classified norflurazon as a Group C, possible human carcinogen, based on the criteria in the Agency's Guideline for the Classification of Carcinogens (51 FR 33992-34003, Sept. 24, 1986) and the statistically significant increase in comparison to controls in liver adenomas and combined liver adenomas and carcinomas in male CD-1 mice as well as the statistically significant positive trend for these hepatocellular adenomas and combined adenomas and carcinomas.

That committee also recommended that for the purposes of risk characterization the Reference Dose (RfD) approach should be used for the quantification of human risk. This recommendation was supported by the presence of only benign tumors in only one sex of one species at one dose level, and adequate but negative mutagenicity data and no positive analogues.

Using a 100-fold safety factor and the NOEL of 3.75 mg/kg/day determined by the most sensitive species (the 6-month dog feeding study), the RfD is 0.04 mg/kg/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.002038 mg/kg/bwt/day and utilizes 5.0 percent of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, nonnursing infants, is 0.009355 mg/kg/bwt/day and utilizes 23.0 percent of the RfD.

Previous tolerances have been established for norflurazon in almonds, hulls and nutmeat; asparagus; avocados; apricots; apples; blackberries; blueberries; cattle, fat, meat, and meat byproducts; cherries; citrus fruit; cottonseed; cranberries; filberts; goats, fat, meat, and meat byproducts; grapes; hogs, fat, meat, and meat byproducts; hops, green; horses, fat, meat, and meat byproducts; milk; nectarines; peanuts; peanut hay, hulls, and vines; peaches; pears; pecans; plums (fresh prunes); poultry, fat, meat, and meat byproducts; raspberries; sheep, fat, meat, and meat byproducts; soybeans; soybean, forage and hay; and walnuts.

The metabolism of norflurazon in plants is adequately understood. Metabolism of norflurazon in livestock has been studied, and tolerances for livestock commodities have been established. Reevaluation of the data has indicated that there are some metabolites that yet need to be identified. These data are scheduled to be submitted by February 1994. After the data are evaluated, the tolerances involving livestock will be reconsidered.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography using electron capture detection, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-4432.

The modifications raise tolerance levels on peanut hays and vines and raise and redistribute the tolerance levels for the peanut taken as a whole, i.e., nutmeat and hull. Under the previous rule, tolerance levels on peanuts were more evenly distributed between the hull and the nutmeat. This rule changes that distribution to reflect more accurate data showing proportionately higher concentration of residues in the hull and a lower permissible level for the peanut, nutmeat. In addition, these amendments provide tolerances for direct application and also for indirect application as previously provided for these commodities. In accordance with EPA and FDA policies, pesticide residues resulting from indirect application are automatically regulated under direct application tolerances, when available.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: June 23, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.356, by removing the paragraph designation "(a)" and amending the table therein by adding and alphabetically inserting the following raw agricultural commodities and by removing paragraph (b), to read as follows:

§ 180.356 Norflurazon; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Peanuts	0.05

Commodity	Parts per million
Peanuts, hay	5.50
Peanuts, hulls	1.5
Peanuts, vines	1.5

. . . . .

[FR Doc. 93–15986 Filed 7–6–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552; FCC No. 93–297]

Use of the 220–222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order denying a petition for reconsideration filed by United Parcel Service of America, Inc. (UPS). In addition, in the Order, the Commission on its own motion amended its regulations by eliminating that portion thereof that permitted applicants to rely on a long-term business plan to satisfy the requirement that they demonstrate internal communications needs in 70 or more markets. The intended effect of this action is to ensure that the non-commercial channels are used primarily as envisioned for the licensee's internal nationwide communications needs.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634–2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Public reporting burden for this collection of information is estimated to average 25.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (OMB Control No. 3060–0475), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control No. 3060–0475), Washington, DC 20503.

This is a summary of the Commission's Order, PR Docket No. 89–552, FCC No. 93–297, adopted June 4, 1993, and released June 21, 1993. The full text of the Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Orders

1. On June 18, 1992, the Commission adopted a Memorandum Opinion and Order, 57 FR 32448 (July 21, 1992), that addressed the issues raised on reconsideration of the Report and Order, 56 FR 19598 (April 29, 1991), in PR Docket No. 89–552, as well as those presented by the Further Notice of Proposed Rule Making, 57 FR 4180 (February 4, 1992), issued in the same proceeding. The Memorandum Opinion and Order also amended the Commission's rules to strengthen the construction and operating requirements applicable to non-commercial nationwide 220–222 MHz licensees in a manner designed to ensure that the non-commercial nationwide channels would be used as envisioned to satisfy the licensee's nationwide internal communications needs.

2. UPS filed a Request for Clarification or Petition for Reconsideration of certain of these rule changes. Specifically, UPS requested the Commission to amend 47 CFR 90.733(d) to limit the amount of system capacity available for leasing to 20 percent, or to amend § 90.733(d) to prohibit the leasing of excess capacity entirely during the initial ten-year license term. In the alternative, UPS requested that if § 90.733(d) were maintained in its present form, construction benchmarks be adopted at one, three and five years, with a loss of license imposed for failure to meet these deadlines. In addition, UPS asked the Commission to make plain that non-commercial nationwide applicants must rely solely on their qualifications and resources as of the time that their applications were filed in satisfying the requirement that they demonstrate a need for internal communications capacity in 70 or more markets.

3. The Commission denied UPS's request that § 90.733(d) be amended to restrict further the circumstances in which non-commercial nationwide licensees may lease the excess capacity of their systems, citing its continued belief that allowing the leasing of excess capacity only after expiration of the initial five years of the license term best balances the interests in spectrum efficiency and in ensuring that the non-commercial channels are used as intended. Similarly, the Commission disagreed with UPS's suggestion that its rules be amended to impose construction benchmarks on non-commercial nationwide licensees. In this regard, the Commission stated its belief that its existing rules, which require licensees to (1) construct and place in operation base stations in a minimum of 70 markets within five years or forfeit the entire nationwide license, 47 CFR 90.725(h), and (2) include with their application a certification that they have sufficient resources to construct the entire system within five years of license grant and operate the system during the first years of the license term, 47 CFR 90.713(a)(5), 90.713(b), 90.713(c)(4), are fully adequate to ensure that the system will not be misused.

4. The Commission also denied UPS's request that it make plain that each non-commercial nationwide applicant must rely solely on its internal communications needs and financial qualifications as of May 1, 1991, when its application was filed. The Commission stated that the rule changes adopted in the Memorandum Opinion and Order significantly altered the non-commercial nationwide entry criteria, and that consequently, applicants able to satisfy the original criteria should be afforded an opportunity to amend their applications in response to the new rules.

5. On its own motion, the Commission amended that portion of 47 CFR 90.713(a)(6) that permits non-commercial nationwide applicants to rely on a long-term business plan in satisfying the requirement that they demonstrate a need for non-commercial communications capacity in 70 or more markets. Under the rule in its new form, applicants will be required to demonstrate an actual presence, and will not be allowed to rely upon a projected need based on a long-term business plan. The Commission stated that because this represents a significant change in the entry criteria, non-commercial nationwide applicants seeking to withdraw their applications prior to the effective date of the new rules will be allowed to obtain a refund of their application filing fees. In addition, the Commission indicated that submission of the showings required of non-commercial nationwide applicants

under the Memorandum Opinion and Order and the instant Order would be required once approval from the Office of Management and Budget (OMB) has been obtained pursuant to the Paperwork Reduction Act. The Commission delegated authority to the Chief of the Private Radio Bureau to announce the date that non-commercial applicants will be required to file the additional submissions through issuance of a Public Notice.

List of Subjects in 47 CFR Part 90

220–222 MHz narrowband frequencies, Private land mobile radio services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 332 48 Stat., 1066, 1082, as amended; 47 U.S.C. §§ 154, 303 and 332 unless otherwise noted.

2. Section 90.713 is amended by revising paragraphs (a)(1) and (a)(6) to read as follows:

§ 90.713 Entry criteria.

(a) * * *

(1) Applicants for commercial nationwide channels must include certification that, within ten years of receiving a license, the applicant will construct a minimum of one base station in a least 70 different geographic areas designated in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; and that each base station will have all five assigned nationwide channels constructed and placed in operation (regularly interacting with mobile and/or portable units). Applicants for non-commercial nationwide channels must include certification that, within five years of receiving a license, the applicant will construct a minimum of at least one base station in at least 70 different geographic areas designed in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; that each base station in the ten large urban areas designated in § 90.725(h) will have all assigned nationwide channels constructed and placed in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and placed in operation.

* * * * *

(6) Applicants for non-commercial nationwide licensing must also submit a certification demonstrating an actual presence necessitating internal communications capacity in the 70 or more markets identified in the license application.

* * * * *

3. Section 90.725 is amended by revising the text of paragraph (h) (the Table remains unchanged) to read as follows:

§ 90.725 Construction requirements.

* * * * *

(h) Licensees granted non-commercial nationwide authorizations will be required to construct and place in operation base stations in a minimum of 70 markets designated in the application within five years of the initial license grant. Base stations of 10-channel non-commercial nationwide systems that are located in any of the ten large urban areas listed in the following Table (base stations are considered located in the following ten large urban areas if they are within 60 kilometers (37.3 miles) of the coordinates listed) must have all 10 channels constructed and placed in operation within 5 years of the initial license grant:

* * * * *

[FR Doc. 93–15790 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 904, 906, 913, 915, 916, 919, 922, 952, and 970

Acquisition Regulation; Miscellaneous Amendments (Number 4)

AGENCY: Department of Energy (DOE).

ACTION: Final rule; technical amendments.

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to perform "housekeeping" duties such as updating references, correcting editorial errors, and clarifying language. This rule falls under the exceptions stated in the Administrative Procedure Act to the proposed rulemaking and public procedure requirements. These corrections and changes are all technical and administrative in nature, and none of them raises substantive issues. All of these changes are summarized in the "Section-by-Section Analysis" appearing later in this document.

EFFECTIVE DATE: This rule will be effective August 6, 1993.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Smith, Office of Procurement, Assistance and Program Management (PR–121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8189.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

I. Section-by-Section Analysis
II. Procedural Requirements
A. Regulatory Review
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Review Under Executive Order 12778

I. Section-by-Section Analysis

A detailed list of changes follows:

1. The authority citation for parts 904, 906, 913, 915, 916, 919, 922, and 952 is restated.

2. Section 904.601 is amended to reflect an organizational name change.

3. Subsection 904.601–70(b) is amended to update the citation for DOE Order 1331.1.

4. Subsection 904.601–70(b)(2) is amended to clarify language for Individual Procurement Action Report submission requirements.

5. Subsection 904.601–70(b)(3)(ii) is amended to update the dollar threshold for SF 281 reporting.

6. Subsection 906.303–1(a) is amended to clarify language addressing justification language for Other Than Full And Open Competition.

7. Subsection 913.505–1 is amended to clarify language and to allow for the use of DOE F4250.3.

8. Subsection 915.971–4(f) is amended to correct a typographical error.

9. Subsection 915.971–6(b) is amended to correct a referenced citation.

10. Section 916.206 duplicates FAR coverage and is deleted.

11. Section 919.708(b) containing the requirement for quarterly report submittals is deleted.

12. Section 922.473 is amended to reflect an organizational name change.

13. Section 922.803 is amended to reflect an organizational name change.

VOL 58 ISS 128 JL 7 1993 UMI

14. Subsection 922.804–2 is amended to reflect an organizational name change.

15. Section 922.7001 is amended to reflect an organizational name change.

16. Section 952.219 is deleted as the alternate language to the FAR clause is no longer relevant.

17. The authority citation for part 970 is restated.

18. Section 970.1901(a) is amended to delete the reference to 952.219–9, since requirement for quarterly report submittals has been deleted.

19. Section 970.2270(b)(2) is amended to reflect an organizational name change.

20. Section 970.2271(b)(1) is amended to reflect an organizational name change.

21. Subsection 970.3102–2(l)(2) is amended to reflect an organizational name change.

22. Subsection 970.5204–20 is amended to add the clause preamble, title and date.

23. Subsection 970.7104–11 is amended to correct a typographical error.

24. Subsection 970.7104–12 is amended to delete the paragraph containing the requirement for quarterly reporting.

II. Procedural Requirements

A. Regulatory Review

Pursuant to the January 22, 1993, memorandum from the Director, Office of Management and Budget (OMB), on the subject of regulatory review, 58 FR 6074 (January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis as the rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will apply to states that contract with DOE; however, none of the revisions is substantive in nature.

E. National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 904, 906, 913, 915, 916, 919, 922, 952, and 970

Government Procurement.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on June 29, 1993.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

Chapter 9 of title 48 Code of Federal Regulations is amended by making the following technical amendments:

1. The authority citation for parts 904, 906, 913, 915, 916, 919, 922, and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 904—ADMINISTRATIVE MATTERS

2. Section 904.601 is amended in paragraph (c) (first sentence) by removing the name "Office of Procurement Information/Property" and adding the name "Office of Management Review and Assistance" in its place.

3. Subsection 904.601–70 is amended in paragraph (b) introductory text by removing "1331.1A" and adding "1331.1 (latest version)" in its place.

4. Subsection 904.601–70 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

904.601–70 Procurement and Assistance Data System (PADS).

* * * * *

(b) * * *

(2) For each prime contract over the small purchase limit, contracting officers shall complete, for each action awarded under that contract, an Individual Procurement Action Report (IPAR), DOE F 4200.40, and submit it to their data entry point for input to the Procurement and Assistance Data System. * * *

* * * * *

5. Subsection 904.601–70 is amended at paragraph (b)(3)(ii) by removing "$10,000" and adding "$25,000" in its place.

PART 906—COMPETITION REQUIREMENTS

6. Subsection 906.303–1 is amended at paragraph (a) by removing the first sentence.

PART 913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

7. Subsection 913.505–1 is amended by revising the heading and paragraph (a)(2) to read as follows:

913.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation or DOE F 4250.3, Order for Supplies or Services.

(a)(2) Optional Forms 347 and 348, or DOE F 4250.3 may be used for purchase orders using small purchase procedures. These forms shall not be used as the contractor's invoice.

* * * * *

PART 915—CONTRACTING BY NEGOTIATION

8. Subsection 915.971–4 is amended in paragraph (f), third sentence, by removing the word "relation" and adding the word "relations" in its place.

9. Subsection 915.971–6 is amended in paragraph (b) introductory text, first sentence, by removing "(f)(2)" and adding "(a) of this section" in its place.

PART 916—TYPES OF CONTRACTS

10. Part 916 is amended by removing section 916.206 and subsection 916.206–3.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

11. Section 919.708 is amended by removing paragraph (b).

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

12. Section 922.473 is amended in paragraph (b) by removing "Office of Contractor Industrial Relations" and adding "Office of Contractor Human Resource Management" in its place.

13. Section 922.803 is amended in paragraph (d) (fifth sentence) by removing "Office of Industrial Relations" and adding "Office of Civil Rights" in its place.

14. Subsection 922.804–2 is amended in paragraph (b)(3) (seventh sentence) by removing "Office of Industrial Relations" and adding "Office of Civil Rights" in its place.

15. Section 922.7001 is amended in paragraphs (c)(3) (third sentence), (e) (sixth sentence), (f)(1) (second sentence), and (h) (both occurrences) by removing "Office of Industrial Relations" and adding "Office of Contractor Human Resource Management" in its place.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Part 952 is amended by removing section 952.219 and subsection 952.219–9.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

17. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

18. Section 970.1901 is amended in paragraph (a) by removing "as modified by 952.219–9".

19. Section 970.2270 is amended in paragraph (b)(2) introductory text (second sentence) by removing "Headquarters Labor Relations" and adding "Office of Contractor Human Resource Management" in its place.

20. Section 970.2271 is amended in paragraph (b)(1) by removing "Labor Relations" and adding "Office of Contractor Human Resource Management" in its place; in paragraph (b)(2)(iv) by removing "Office of Industrial Relations" and adding "Office of Contractor Human Resource Management" in its place; and in paragraph (b)(3) by removing "Office of Industrial Relations" and adding "Office of Contractor Human Resource Management" in its place.

21. Subsection 970.3102–2 is amended in paragraph (l) (2) (fourth sentence) by removing "Office of Labor Relations" and adding "Office of Contractor Human Resource Management" in its place.

22. Subsection 970.5204–20 is amended by adding "In accordance with 970.0901, the following clause shall be used in management and operating contracts:

MANAGEMENT CONTROLS (Jan 1992)"

after the heading and before paragraph (a).

23. Subsection 970.7104–11 is amended by revising the heading to read as follows:

970.7104–11 Cost or pricing data.

* * * * *

24. Subsection 970.7104–12 is amended by removing paragraph (g).

[FR Doc. 93–15885 Filed 7–6–93; 8:45 am]

BILLING CODE 6450–01–P

VOL
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Proposed Rules

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[PP 0E3823 and FAP 0H5592/P563; FRL 4628-6]

RIN 2070-AC18

Pesticide Tolerance and Food Additive Regulation for Hexakis [2-Methyl-2-Phenylpropyl] Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a pesticide tolerance be established for residues of the pesticide hexakis in or on the raw agricultural commodity marigolds and that a food additive regulation be established for the processed feed commodities dried marigolds and marigold extract. The proposed regulations to establish maximum permissible levels for residues of the pesticide in or on the commodities were requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 0E3823 and FAP 0H5592/P563], must be received on or before August 6, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 0E3823 and feed additive petition (FAP) 0H5592 to EPA on behalf of the Agricultural Experiment Station of California. Pesticide petition 0E3823 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), amend 40 CFR part 180 by establishing a tolerance for residues of the pesticide hexakis, [2-methyl-2-phenylpropyl] distannoxane, and its organotin metabolites, calculated as hexakis, in or on the raw agricultural commodity marigolds at 4 parts per million (ppm). Feed additive petition 0H5592 requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), amend 40 CFR part 186 by establishing a feed additive regulation for residues of hexakis and its organotin metabolites in or on the processed feed commodities dry marigolds and marigold extract at 25 ppm.

Marigolds are fed to poultry in the form of dried and ground flower petals or as an extract of xanthophyll concentrate produced from marigold petals. Xanthophylls are plant pigments which are fed to poultry to increase yellow pigment and enhance the yellow color of their egg yolks and skin.

The petitioner proposed that this use of hexakis be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year chronic feeding study in dogs fed diets containing 0, 2.5, 5.0, 15, 30, or 60 milligrams (mg)/kilogram (kg)/day with no observed toxicity other than vomiting and diarrhea at doses of 15 mg/kg and above.

2. A 2-year chronic feeding/carcinogenicity study in rats feed diets containing 0, 50, 100, 300, or 600 ppm with a no-observed-effect-level (NOEL) for systemic effects of 100 ppm (equivalent to 5.0 mg/kg/day) based on decreased leukocytes in female rats and reduced body weights in both sexes. No increase in tumor incidence was observed under the conditions of the study.

3. A carcinogenicity study in mice fed diets containing 0, 50, 100, 300, and 600 ppm with no increase in tumor incidence observed under the conditions of the study. A NOEL for systemic effects was established at 100 ppm (equivalent to 15 mg/kg/day) based on body weight reduction.

4. A two-generation reproduction study in rats with a reproductive NOEL of 75 ppm (equivalent to 5.2 mg/kg/day in male rats and 5.98 mg/kg in female rats) based on decreased body weight and food consumption in the adult rats and the first generation offspring.

5. A developmental toxicity study in rabbits given oral doses of 0, 1, 5, and 10 mg/kg/day in gelatin capsules on days 6 through 18 of gestation with a NOEL for developmental toxicity of 1 mg/kg/day based on increased incidence of abortions at 5 mg/kg/day and above. Maternal toxicity was established at 5 mg/kg/day based on anorexia and gastric lesions.

6. A developmental toxicity study in rats given gavage doses of 0, 15, 30, or 60 mg/kg/day from days 6 through 15 of gestation with a NOEL for developmental toxicity of 30 mg/kg/day based on increased preimplantation loss. A maternal toxicity NOEL was established at 15 mg/kg/day based on reduced body weight.

7. Gene mutation assays in Salmonella and Chinese hamster ovary cells, a chromosome aberration test in human lymphocytes, and an unscheduled DNA synthesis test in rat primary hepatocytes were all negative.

8. A metabolism study in rats reveals that hexakis is primarily excreted as the parent compound within 3 days of ingestion.

The reference dose (RfD) for hexakis is established at 0.05 mg/kg body weight/day. The RfD is based on a NOEL of 5.2 mg/kg body weight/day from the reproduction study in rats and an uncertainty factor of 100. The anticipated residue contribution (ARC) from established tolerances, including tolerances for eggs, and poultry meat, fat, and meat byproducts, utilizes 4 percent of the RfD for the general population (8 percent of the RfD for the subgroup most highly exposed, children 1 to 6 years old). This proposed action does not alter the dietary risk assessment for hexakis. Hexakis residues in eggs and poultry meat, fat, and meat byproducts resulting from the proposed use are expected to fall within the established tolerances for these commodities. The risk assessment discussed above assumes dietary exposure to hexakis residues at a tolerance level (0.1 ppm) for eggs and poultry meat, fat, and byproducts.

The nature of the residue is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. An analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual (PAM), Vol. II. Any secondary residues occurring in poultry and eggs will be covered by existing tolerances for hexakis. Secondary residues are not expected in nonpoultry livestock from the proposed use since marigolds are not considered a feed item for these animals. The pesticide is considered capable of achieving the intended physical or technical effect.

There are currently no actions pending against the continued registration of this chemical.

Based on the above information, the Agency concludes that the proposed tolerance would protect the public health and that use of the pesticide in accordance with the proposed food additive regulations would be safe. Therefore, it is proposed that they be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that the proposed tolerance for fresh marigold be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [PP 0E3823 and 0H5592/P563]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.362, by amending paragraph (b) in the table therein by adding and alphabetically inserting a tolerance for regional registration for fresh marigolds, to read as follows:

§ 180.362 Hexakis [2-methyl-2-phenylpropyl]distannoxane; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Marigolds, fresh	4.0

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.3550, to read as follows:

§ 186.3550 Hexakis (2-methyl-2-phenylpropyl) distannoxane.

(a) Tolerances are established for combined residue of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in the following processed feeds when present therein as a result of application of the insecticide to growing crops:

Commodity	Parts per million
Apple pomace, dried	75.0
Citrus pulp, dried	35.0
Grape pomace, dried	100
Raisin waste	20

(b) Tolerances with regional registration, as defined in § 180.1(n) of this chapter, are established for residues of the pesticide hexakis in or on the following feed commodities:

Feed	Parts per million
Marigolds (dried and extract)	25.0

[FR Doc. 93–15987 Filed 7–6–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 261

[FRL–4557–2]

RIN 2050–AD70

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

VOL
58
ISS
128
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SUMMARY: On July 19, 1988, the Environmental Protection Agency (EPA) issued a final rule conditionally exempting waste samples used in small-scale treatability studies from subtitle C regulations. The rule established quantity limits on materials to be processed and imposed reporting and recordkeeping requirements. Based on hazardous waste treatment technology development efforts and site remediation experience under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA), EPA is proposing to revise the existing treatability sample exclusion rule, primarily in the area of the quantity of contaminated soils and debris which may be processed without a requirement to meet subtitle C regulations. For example, EPA proposes to allow testing on up to 10,000 kg of soil and debris contaminated with non-acute hazardous waste.

DATES: EPA will accept public comments on this document until September 7, 1993. Comments postmarked after this date may not be considered.

ADDRESSES: Commenters should send an original and two copies of their comments to:

RCRA Information Center (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number (#F–93–TSP-FFFFF) on your comments.

An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to:

Document Control Officer (OS–312), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The docket is available for viewing at the RCRA Information Center (RIC) located at:

EPA/RCRA Information Center, room M2427, 401 M Street SW., Washington, DC 20460.

The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (202) 269–9327 for appointments. Viewers may copy up to 100 pages free of charge, after which copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346. For technical information contact Jim Cummings, Technology Innovation Office (OS–110W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (703) 308–8796.

SUPPLEMENTARY INFORMATION:

I. Data Availability
II. Background
III. Discussion of Major Issues
A. Introduction
1. Summary of Existing the Treatability Sample Exclusion Rule
2. Need and Rationale for This Proposed Rulemaking
a. The Role of Treatability Studies in Hazardous Waste Remediation
b. EPA Experience With Treatability Studies and Technology Demonstrations
c. Expected Benefits from Increasing the Quantity Limits
d. Potential for Abuse of the Exclusion
3. Determination of Minimal Risk
B. Proposed Limitations
1. Quantity Limits per Waste Stream per Treatment Process
2. Transportation Shipment Limits - Generator and Facility
3. Treatment Rate Limit
4. Storage Limit
5. Residues and Unused Samples - Time Limitations
C. Reporting and Recordkeeping Requirements
D. EPA Identification Numbers
IV. Issues for Comment
V. State Authority
VI. Effective Date
VII. Regulatory Analyses
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Data Availability

The Agency has developed or received the following new data relating to treatability studies. This information supplements that found in the docket for the existing treatability sample exclusion rule (docket number F–87–TSEF-FFFFF). The earlier docket is also part of the record for this proposed rule. Copies of the following documents are available for viewing at the RIC (see "**ADDRESSES**" section):

(1) Information derived from submissions by hazardous waste treatment technology developers and vendors for inclusion in the Vendor Information System for Innovative Treatment Technologies (V.I.S.I.T.T.). Submissions include size of equipment and quantities utilized in conducting treatability studies.

(2) Information from implementation of the Superfund Innovative Technology Evaluation (S.I.T.E.) program. The SITE program provides developers of innovative technologies with an opportunity to demonstrate the performance of their equipment on actual waste from Superfund and other hazardous waste sites.

II. Background

On July 19, 1988, EPA issued a final rule conditionally exempting waste samples used in small-scale treatability studies from subtitle C regulation. This rule was issued in response to comments in an earlier rulemaking suggesting that such an exclusion be allowed. The earlier rulemaking granted an exclusion for samples shipped solely for the purpose of monitoring or testing to determine their characteristics or composition. The July 19, 1988 rule was also in response to a June 2, 1987 petition from the Hazardous Waste Treatment Council (HWTC) requesting that the Agency promulgate regulations to provide limited exemptions from the permitting requirements of RCRA to facilities conducting treatability studies.

The HWTC petition was in several parts. In addition to requesting that the Agency extend the sample exclusion to include samples shipped for treatability testing, HWTC also recommended that the Agency consider regulatory changes that would facilitate larger-scale treatability studies. The rule promulgated on July 19, 1988 addressed the first part of the HWTC petition which pertained to small-scale treatability studies. The preamble to that rule stated that "[T]he Agency will address the second part of HWTC's petition concerning larger scale studies at a later date." 53 FR 27291.

Today's proposal to increase the amount of contaminated soil and debris used in treatability studies draws upon EPA's experience since the promulgation of the initial treatability sample exclusion and responds to the HWTC petition. It addresses the continuing need for flexible mechanisms to facilitate development and evaluation of hazardous waste treatment technologies.

III. Discussion of Major Issues

A. Introduction

1. Summary of the Existing Treatability Sample Exclusion Rule

The existing Treatability Sample Exclusion rule imposes limits on the quantity of material which may be shipped, stored or treated under the exemption. In order to qualify for the conditional exclusion, laboratory and test facilities must comply with the quantity limitations as well as notification, reporting and record-keeping requirements. Except where noted, the quantity limits are the primary focus of today's proposal. Commenters are referred to the full text of the rule for other provisions which are generally unchanged by today's proposal.

Shipment—The mass of each sample shipment may not exceed 1000 kg of "as received" hazardous waste, 1 kg of acute hazardous waste, or 250 kg soils, water,

or debris contaminated with acute hazardous waste. See 40 CFR 261.4(e)(2)(ii).

Storage—The laboratory or testing facility may store up to 1000 kg of non-acute hazardous waste. This limitation can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. See 40 CFR 261.4(f)(4).

Treatment—The laboratory or testing facility, on a per waste stream per treatment process basis, may conduct treatability tests on up to 1000 kg of non-acute hazardous waste, 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste. See 40 CFR 261.4(e)(2)(i). The rule imposes a treatment initiation rate limit of 250 kg per day of "as received" waste for the entire laboratory or testing facility. 40 CFR 261.4(f)(3). "As received" refers to the waste shipped by the generator or sample collector as it arrives at the laboratory or testing facility.

2. Need and Rationale for This Proposed Rulemaking

The principal focus of comments in support of the original rule was that RCRA subtitle C permit requirements unnecessarily interfere with the ability to develop and assess treatment technologies. Regulatory barriers which the existing rule sought to alleviate included the costs of applying for a RCRA permit, the delays associated with obtaining Agency approval of the application, and delays prior to final granting of the permit. The Agency found that treatability testing, subject to specific limits and conditions, would pose minimal risk to human health and the environment.

More than 40 comments were received on the original treatability sample exclusion proposal (Docket number F–87–TSEF–FFFF). A number of these comments supported higher limits than those in the HWTC petition or in the rule which EPA eventually promulgated. A frequent comment was that for certain technologies larger quantities were not only desirable, but necessary, to develop required information on technology performance.

a. The Role of Treatability Studies in Hazardous Waste Remediation

"Treatability study" is defined in the existing rule as "a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process." 40 CFR 260.10.

Different types and scales of treatability studies are needed at different stages of technology development and hazardous waste site remedy evaluation. In the early stages of technology development and site assessment, lab or bench-scale studies are employed to understand basic physical and/or chemical phenomena and whether a given approach will work in principle.

Tests on larger quantities of waste with pilot-scale equipment are conducted to assess the applicability of the technology for various physical forms and waste mixtures encountered at specific sites. These tests may serve to verify engineering design, determine equipment operating parameters required for full-scale operation, estimate remediation costs, determine residual waste characteristics, and address materials handling problems associated with both untreated materials and treatment residues. It is preferable to conduct treatability studies using actual wastes which have been subjected to aging and weathering effects in the natural environment rather than using 'surrogate' materials—e.g., soils spiked with chemicals to simulate hazardous waste.

b. EPA Experience With Treatability Studies and Technology Demonstrations

Information on hazardous waste site remediation from EPA's S.I.T.E. program and vendor-submitted data in the V.I.S.I.T.T. data base indicate that a number of technologies require larger quantities of material for treatability testing and technology demonstrations. This information is summarized in Tables 1 and 2, and is available for review in the docket. Data for the V.I.S.I.T.T. system were submitted to EPA by vendors and specifically concern site remediation requirements.

Technologies which are tested in a batch mode generally require smaller quantities of waste than technologies which operate continuously. It is generally easier to simulate full-scale conditions in a batch reactor, and continuous flow units require a start-up period before steady state conditions are attained. For either case, adequate quantities of contaminated material are necessary to assess different technology operating conditions.

TABLE 1.—SUMMARY OF V.I.S.I.T.T. PILOT-SCALE TREATABILITY TESTING INFORMATION

Technology group	Average process rate (kg/hr)	Average total quantity req'd (kg)	Number of vendors
Bioremediation—Slurry Phase	780–1,310	2,060–4,600	5
Bioremediation—Solid Phase	420–2,030	7,770–39,300	[illegible]
Chemical Treatment—Dechlorination	25–75	500–1,000	1
Chemical Treatment—Other	400–3,400	2,030–10,330	3
Electrical separation	2,000–5,000	1,000–3,000	1
Materials Handling	5–250	1,000–5,000	1
Slagging—Off-Gas Treated	515–1,390	5,150–50,400	2
Soil Washing	850–1,900	3,160–14,380	[illegible]
Solvent Extraction	235–600	2,180–4,300	[illegible]
Thermal Desorption	610–1,520	5,420–7,500	5
Vitrification	143–440	230–2,380	4
Acid Extraction	500–1,000	1,000–2,000	1

TABLE 2.—PILOT-SCALE DEMONSTRATIONS CONDUCTED IN THE S.I.T.E. PROGRAM

Technology	Total qty used (kg)	Process rate (kg/hr)	Qty per test (kg)	Number of tests
Thermal:				
Pyretron	1,800	95	300	6
Cyclone Furn.	2,700	77	908	3
Infrared	1,800	55	500	3
Circulating Bed Reactor	3,900	77–148	1,300	3
Plasma Furn.	1,800	68	600	3
Phys/Chemical:				
Soil Washing	22,000	227	22,000	1
CF Solvent Extraction	908	272	227	4
CG Extraction	290	10	145	2

c. Expected Benefits From Increasing the Quantity Limits

The high cost of remedial action involving treatment at hazardous waste sites highlights the continuing need to develop and apply alternative treatment technologies. The desire to consider more cost-effective remedies, coupled with complex site and waste conditions which are not readily amenable to traditional approaches, results in an increasing willingness to select innovative techologies. While innovative approaches are being considered and selected, relatively few cleanups involving innovative technologies have been completed. Lacking such a data base of experience, treatability studies, at an appropriate scale, must be employed to provide necessary performance information.

Under the existing exclusion, up to 1000 kg of non-acutely hazardous waste may be treated from a single waste stream with a maximum of 250 kg (less than two drums) per day. Existing quantity limitations for soil and debris and other remediation wastes may be too restrictive and may prevent thorough analysis of a technology's potential to remediate contaminated sites.

The increase in quantity limits proposed today concerns only contaminated soils and debris such as those associated with site remediation activities. Contaminated soil and debris often result from undocumented or uncontrolled disposal activity resulting in unique combinations of contaminants. The often unique soil conditions at individual sites results in the need for site-specific treatability testing to assess potential technology applications. Industrial waste streams are likely to be more consistent, and may be better suited to transfer of data from other treatability studies for similar industries.

Contaminated soil and debris are essentially solid and pose a small risk if accidentally released. In the event of a spill, soil and debris can be more easily recovered than liquid wastes. Thus the incremental risk associated with transportation and storage of 10,000 kg of soil and debris is expected to be minimal in comparison to 1000 kg of liquid process waste as allowed by the current rule.

The concentrations of contaminants in soils and debris are generally lower than the concentrations in the waste material which served as the original source. Over time, contaminants will disperse in the environment by processes such as leaching, evaporation and erosion. These lower concentrations in soil further mitigate any increase in risk associated with transportation, storage and treatment of the larger quantities of material which are being proposed.

In addition to facilitating development of innovative approaches, EPA expects that increasing the quantity limits will remove obstacles to the performance of comprehensive treatability tests, thereby: (a) Providing a mechanism which will increase user willingness to consider innovative approaches and to select such approaches with greater confidence; and (b) for both innovative and established technologies, increasing the likelihood that the technology will work "as advertised" when full-scale remedial efforts commence.

Depending on the technology and its extent of use, pilot-scale tests of reasonable duration are preferred to more limited lab or bench-scale tests as predictors of full-scale cost and performance. Potential technology users may be reluctant to select or even consider a remedy based solely on bench or lab scale data. Although this applies to all technologies, it is more likely to be the case where innovative technologies are concerned. In addition, pilot-scale data may be necessary for project design and may allow vendors to formulate more precise, and potentially lower, bids for remediation work.

d. Potential for Abuse of the Exclusion

In the proposal for the existing rule, EPA solicited comment on the potential for abuse of the provision. Numerous commenters pointed out misuse of the exclusion was unlikely in light of the fact that the cost of small-scale treatability studies was many times greater than the cost of legitimate treatment or disposal.

It is our expectation that many treatability studies will be conducted with quantities less than the maximum proposed today. As discussed more fully in the risk section of today's proposal, there are a number of financial, logistic and liability factors which will drive laboratories and testing facilities to utilize the minimum quantity of material necessary to evaluate the technology in question. The purpose of today's proposed rule is to allow treatability studies to be conducted on a quantity of material, within prescribed limits, appropriate to the technology.

It is useful to place the larger quantity proposed today in perspective in terms of the potential for abuse even if the cost disparity did not exist. Various surveys such as the Preliminary Economic Assessment of the Proposed Hazardous Waste Identification Rule suggest that on average, hazardous waste sites will have on the order of 20,000 tons of material which must be addressed. The 10,000 kg (approximately 11 tons) which EPA is proposing as an upper limit, is less than one-tenth of one percent of the total waste at the average site. Therefore, the concern that a series of small-scale treatability studies could be undertaken as an alternative to use of a full-scale approach to site remediation does not appear to be realistic.

3. Determination of Minimal Risk

EPA concluded that the original treatability sample exclusion was appropriate because a number of factors combined to ensure that the risks to human health and the environment

were minimal. These factors include: (1) A limitation on the size of sample that is exempted; (2) the high cost of collecting and shipping the sample; (3) a limitation on the quantity of waste that can be shipped at any one time; (4) the applicability of the Department of Transportation (DOT), U.S. Postal Service (USPS), or other regulations governing the transportation of hazardous materials; (5) a limitation on the quantity of hazardous waste that can be stored at a laboratory or testing facility; (6) a limitation on the quantity of hazardous waste that may be processed (i.e., tested in a treatability unit) in any one day; (7) the prohibitive costs involved in conducting legitimate treatability studies as an alternative to commercial treatment and disposal; (8) a limitation on the time that a waste sample used in a treatability study or any residue generated from such studies may remain at the laboratory or testing facility without being subject to the hazardous waste regulations; (9) the RCRA requirement that any unused sample and residues from a treatability study must still be managed as a hazardous waste (if, in fact, it is still hazardous); and (10) certain reporting and recordkeeping requirements that will enable the Agency to conduct inspections and bring enforcement actions against persons who abuse the exemption. (53 FR 27292, July 19, 1988).

The same factors which serve to minimize the risk in the original rule also work to ensure a similar result with the larger quantities proposed. In particular, the proposed revision does not change the initial notification, record-keeping and reporting requirements of the original rule. Furthermore, in the case of soil and debris, contaminants are distributed throughout a relatively inert matrix, thus reducing the risks associated with transportation, storage and treatment.

As with the original rule, the proposed revision does not apply where the practice could result in a significant uncontrolled release of hazardous constituents to the environment. It would include neither open-burning, nor any type of treatment involving placement of hazardous waste on the land.

In some situations, allowing larger-scale treatability studies may result in increased reliance on on-site pilot-scale treatability testing, particularly for remediation situations not presently able to take advantage of permit exemptions. This practice will further reduce the risk from waste handling, transportation and storage.

B. Proposed Limitations

1. Quantity Limits per Waste Stream per Treatment Process

The existing rule limits treatability studies to 1000 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water or debris contaminated with acute hazardous waste. Testing of many of the technologies discussed in Tables 1 and 2 would be hampered under the existing rule. For the reasons discussed above, the Agency believes that raising the limit to 10,000 kg for soils and debris contaminated with non-acute hazardous waste would be beneficial for technology development and for site remedy evaluation and selection, and that is today's proposal. As discussed elsewhere in this proposal, shipment, storage and treatability testing on larger quantities of contaminated soil and debris poses no greater risk, and may actually pose a lower risk, than the existing limitation when applied to process wastes.

In addition, EPA proposes to raise the treatment limit for soils and debris contaminated with acute hazardous waste to 2500 kg, while retaining the existing 250 kg limit for water contaminated with such waste. In keeping with the remediation focus of this proposal, the 1 kg limit on acute hazardous waste would be retained.

In light of the fact that the purpose of this rule is to facilitate remediation of hazardous waste sites, EPA solicits comment on further expanding the scope of the exclusion beyond soil and debris. Other combinations of hazardous waste and waste matrices occur frequently at Superfund and RCRA Corrective Action sites. Media other than soil and debris present the same pre-treatment, materials handling, treatment and residue disposal challenges. At sites with more than one medium, it is likely that decision-makers will seek a single technology which can handle multiple matrices. In addition, as with soil and debris, EPA expects that the high cost of treatability studies for other media and the fact that most remedial actions will occur with some level of federal or state oversight, reduce concerns regarding mismanagement of the waste materials.

Groundwater contaminated with LNAPLs (Light Non-Aqueous Phase Liquids) and DNAPLs (Dense Non-Aqueous Phase Liquids) is a prevalent problem at remedial action sites. Although the levels of contamination in groundwater are generally in the low parts per million range, there may be transportation and storage concerns with allowing larger-scale treatability studies. Furthermore, it is not clear that larger quantities are needed for ex-situ treatability testing for groudwater, as much of the focus on groundwater remediation is on in-situ approaches which require on-site pilot projects.

EPA solicits information on treatability study experiences and requirements regarding other forms of remediation waste. Depending on the comments received on this revision, EPA may elect to expand the scope of the revision to include other forms of remediation waste. EPA is particularly interested in examples of innovative technologies which illustrate whether including additional materials in this increased exemption could promote more effective, less costly remedies while protecting human health and the environment.

2. Transportation Shipment Limits—Generator and Facility

The existing rule imposes a single shipment limitation of 1000 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, or debris contaminated with acute hazardous waste. See 40 CFR 261.4(e)(2)(ii).

EPA proposes to raise the single shipment limit for soil and debris contaminated with non-acute hazardous waste to 10,000 kg, and 2500 kg for soils and debris contaminated with acute hazardous waste, while retaining the 1 kg limit for acute hazardous waste. Other forms of non-acute hazardous waste will continue to be subject to the 1000 kg limit, and water contaminated with acute hazardous waste will continue to be subject to a single shipment limit of 250 kg. As discussed above and as mentioned in the preamble to the original rule, "The costs to conduct the study and to collect, pack, and ship the sample will tend to limit the sample size to the smallest amount practicable." (53 FR 27295, July 19, 1988).

3. Treatment Rate Limit

The existing rule imposes a treatment initiation rate limit of 250 kg per day of "as received" waste. This allows for technologies which add non-waste materials to enhance treatment.

Under the continuing premise that the purpose of revising the rule is to allow, within limits, whatever quantity is required to evaluate a given technology, and with the expectation that processing rates will be the minimum necessary, EPA proposes to allow daily treatment rates up to the maximum quantity allowable per waste stream—i.e., 10,000 kg of "as received" soil and debris contaminated with non-acute hazardous

waste or 2500 kg of soil and debris contaminated with acute hazardous waste may be processed per day. Existing limits for other forms and types of waste are retained.

4. Storage Limit

The existing rule adopted a 1000 kg limit per laboratory or testing facility. The 1000 kg limit can include 500 kg of soils, water or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste.

EPA proposes to increase the storage limit for soil and debris contaminated with non-acute hazardous waste to 10,000 kg and to 5000 kg for soil and debris contaminated with acute hazardous waste. Other existing storage limits are retained.

5. Residues and Unused Samples—Time Limitations

The existing rule imposes the following limits on retention of materials on site: "No more than 90 days have elapsed since the treatability study for the sample has been completed, or no more than one year has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility. See 40 CFR 261.4(f)(5).

EPA is aware of the complex combinations of wastes encountered at hazardous waste sites, and of the potential need for the use of treatment trains—i.e., combinations of technologies to address wastes such as inorganics and organics which cannot be treated by a single process. Treatability studies for some treatment trains and for certain stand alone technologies, e.g., those involving bioremediation, may require extended timeframes.

Bioremediation treatability studies may require extended timeframes, particularly for contaminants not already known to be bio-degradable. Study start-up may require time for micro-organism acclimatization. Various combinations of organisms, nutrients and oxygen may be tried before initial degradation is noted. Further iterations may be necessary before desired cleanup levels are achieved.

EPA proposes to extend the one-year time limit for bioremediation treatability studies to two years, and solicits comment on whether additional technologies or groups of technologies also require longer timeframes. Wastes must still be returned to the generator within 90 days of study completion.

C. Reporting and Recordkeeping Requirements

EPA is not changing the notification, record-keeping and reporting requirements contained in the existing rule.

D. EPA Identification Numbers

Laboratories and testing facilities must continue to have an EPA identification number in order to conduct treatability studies under this exclusion.

IV. Issues For Comment

The following summarizes the issues on which EPA requests comment. These headings are suggested to help organize responses and to facilitate agency analysis and review. Commenters are strongly encouraged to provide information on the full range of concepts and information in this proposal.

(1) Are the proposed increased quantity limits for soil and debris relating to:

a. Shipment
b. Storage
c. Treatment

adequate and appropriate? In particular, are there cases where higher limits might be beneficial but still protective?

(2) Should EPA increase or otherwise modify the existing limits for other forms of remediation waste in addition to soil and debris?

(3) The factors such as the cost of treatability studies and concerns about liability from improper disposal limit the risk from treatability studies on smaller quantities should also minimize the risk from larger scale studies. These factors will also work to limit the quantities of waste to be used for treatability testing to the minimum necessary. Are there conditions or situations where factors such as cost and liability concerns will not have these desired effects?

(4) EPA proposes to extend the time limits on how long samples may be retained at the laboratory or testing facility to two years for bioremediation. Is this appropriate? Are there other technologies or combinations of technologies where extensions may also be appropriate?

(5) How many treatability studies do users expect to conduct under the revised rule? What costs would be associated with conducting treatability studies under other regulatory provisions?

Comments are solicited on the issues presented above, and on any other issues directly relevant to an expansion of the existing treatability sample exclusion rule.

V. State Authority

As with the existing rule, today's announcement proposes regulations that are not effective under HSWA in authorized states, since this rulemaking does not impose requirements or prohibitions contained in HSWA. Thus the regulations will be applicable only in those States that do not have final authorization. In an authorized State, the proposed regulation would not be applicable until the State revises its program to adopt equivalent regulations under state law. Again, as with the original rule these proposed changes are less stringent or reduce the scope of the Federal program. Therefore, although EPA strongly encourages timely adoption, authorized states would not be required to modify their programs to adopt regulations consistent with and equivalent to this rulemaking.

VI. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to those regulations take effect 6 months after promulgation. Given the potential of this proposed rule to increase the timeliness of CERCLA remedial activities and RCRA Corrective Actions, as was the case with the original rule, EPA proposes to make this proposed rule effective upon publication of the final rule.

VII. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to a Regulatory Impact Analysis. EPA has tentatively determined that this proposed regulation is not major because it will not result in an effect on the economy of $100 million or more. Rather this rule, as with the original treatability sample exclusion, will reduce the overall costs and economic impact of EPA's hazardous waste management regulations by eliminating permitting requirements for laboratories and testing facilities intending to conduct treatability studies. EPA solicits comment on the number of treatability studies which may be conducted under the proposed revision and the costs which would otherwise accrue using other regulatory mechanisms to conduct needed testing.

In the original rule, the agency estimated that perhaps 400 facilities would be affected by promulgation of the rule. It was estimated that these facilities would be spared the time (up to 2 years) and the costs (estimated to be between $100,000 and $200,000) otherwise necessary to receive a RCRA

permit. In addition, there are approximately 120 vendors in EPA's Vendor Information System for Innovative Treatment Technologies (V.I.S.I.T.T.). If between one-third and one-half of the vendors seek to conduct treatability studies at the increased scale allowed by the revised rule, using the cost estimates above regarding the expense of obtaining a RCRA permit, there is potential for additional incremental savings of between $4M–$8M.

The ultimate objective of this rule is to increase the availability of alternative treatment technologies that are environmentally preferable, particularly for remediation wastes. Non-quantifiable benefits include not only the development of new technologies, but also of more cost-effective technologies. Larger-scale treatability studies are also expected to reduce the current uncertainties associated with hazardous waste remediation and allow contractors to reduce the contingency components of their bids.

There will be no adverse impact on the ability of U.S. based enterprises to compete with non-U.S.-based enterprises in domestic or export markets. The development of new, and potentially more cost-effective, remedial technologies should improve the competitiveness of domestic vendors in both U.S. and international markets. Because this regulation is not a major regulation, no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an Agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

As with the original rule, the Agency expects that this revision will eliminate time-consuming and costly permitting requirements, and will thus have a positive effect on small entities.

This amendment will have no adverse economic impact on small entities. In fact, it should reduce the burden imposed on small entities that conduct treatability studies and comply with the provisions of this rulemaking. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0053.

The public reporting burden for this collection of information is estimated to be 10 hours for generators/collectors of waste samples, and 51 hours for laboratory and facilities actually conducting the treatability studies. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of collection of information including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: June 28, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 261 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is proposed to be amended by revising paragraphs (e)(2)(i) and (e)(2)(ii), (f)(3), (f)(4) and (f)(5) to read as follows:

§ 261.4 Exclusions.

* * * * *

(e) * * *

(2) * * *

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of soil and debris contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than soil and debris, 1 kg of acute hazardous waste, 2500 kg of soils and debris contaminated with acute hazardous waste, or 250 kg of water contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all soil and debris contaminated with non-acute hazardous waste, or may include 2500 kg of soil and debris contaminated with acute hazardous waste, 1000 kg of hazardous waste, 250 kg of water contaminated with acute hazardous waste, and 1 kg of acute hazardous waste; and

* * * * *

(f) * * *

(3) No more than a total of 10,000 kg of "as received" soil and debris contaminated with non-acute hazardous waste, 2500 kg of soil and debris contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of soil and debris contaminated with non-acute hazardous waste, 5000 kg of soils and debris contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than soil and debris, 500 kg of water contaminated with acute hazardous waste, and 1 kg of acute hazardous waste. This quantity limitation does not include:

(i) Treatability study residues; and

(ii) Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs.

* * * * *

[FR Doc. 93–15876 Filed 7–6–93; 8:45 am]
BILLING CODE 6560–50–P

VOL 58 ISS 128 JL 7 1993 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 171

[CGD 93–041]

Domestic Passenger Vessel Damage Stability Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice; public meeting.

SUMMARY: The Coast Guard will hold a public meeting to solicit information on the subject of passenger vessel damage stability standards and the application of Coast Guard regulations to domestic passenger vessels. This meeting will be open to the public.

DATES: The meeting is scheduled for 1 p.m. to 5 p.m. on August 5, 1993.

ADDRESSES: This public meeting will be held in room 2415 of Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division (G–MTH–3), room 1308, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone: (202) 267–2988, telefax: (202) 267–4816.

SUPPLEMENTARY INFORMATION: All large U.S. passenger vessels, as defined in 46 CFR 171.045, constructed on or after December 10, 1992 are required to meet the damage stability standard in 46 CFR 171.080(e). This criteria was based on a standard developed by the International Maritime Organization for application to any passenger vessel allowed to carry 12 or more passengers on an international voyage.

Because of industry concerns with the application of this requirement to domestic vessels, especially vessels operating in protected and partially-protected waters, the Coast Guard intends to hold a public meeting to determine what problems have been encountered in complying with the standard and what actions may be appropriate.

The public meeting is scheduled for 1 p.m. to 5 p.m. on August 5, 1993 in room 2415 of Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593. More information about this public meeting is available by contacting the person listed in "**FOR FURTHER INFORMATION CONTACT**".

(Authority: 46 U.S.C. 3306)

Dated: June 28, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–15982 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–180, RM–8237]

Radio Broadcasting Services; Bowie, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Central Oklahoma Radio Corporation, licensee of Station KFXT–FM, Sulphur, Louisiana, proposing the substitution of Channel 264A for Channel 264C3 for Station KRJT–FM at Bowie, Texas and modification of its license to specify operation on the Class A channel. The coordinates for Channel 264A at Bowie are 33–38–43 and 97–49–08.

DATES: Comments must be filed on or before August 23, 1993, and reply comments on or before September 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 Nineteenth Street, NW., Suite 400, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–180, adopted June 16, 1993, and released June 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15902 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–172, RM–8261]

Television Broadcasting Services; Cimarron, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clear Channel Television Licenses, Inc., proposing the allotment of UHF Channel 23 to Cimarron, Kansas, as that community's first local television service. The coordinates for Channel 23 are 37–48–41 and 100–22–38. There is a site restriction 2.7 kilometers (1.7 miles) west of Cimarron.

DATES: Comments must be filed on or before August 23, 1993, and reply comments on or before September 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Bodorff, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–172 adopted June 10, 1993, and released June 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision

may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15904 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–475; RM–7280, RM–7328]

Radio Broadcasting Services; Dawson and Sasser, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251A for Channel 221A at Dawson, Georgia, and modifies the license for Station WAZE (FM) accordingly and allots Channel 299C3 to Sasser, Georgia, as a first local transmission service, at the request of Dawson Broadcasting Company and EME Communications, respectively. See 55 FR 46079, November 1, 1990. Channel 251A can be allotted to Dawson in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.5 miles) southwest, in order to avoid a short spacing to Station WDMT (FM), Channel 250A, Eufaula, Alabama, and Station WKKN (FM), Channel 252A, Cordele, Georgia. The coordinates for Channel 251A at Dawson are North Latitude 31–44–06 and West Longitude 84–29–01. Channel 299C3 can be allotted to Sasser in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.5 miles) west, in order to avoid a short spacing to Station WWRQ (FM), Channel 299A, Valdosta, Georgia, and Station WPEZ (FM), Channel 300C1, Macon, Georgia. The coordinates for Channel 299C3 at Sasser are North Latitude 31–41–55 and West Longitude 84–27–13. With this action, this proceeding is terminated.

DATES: *Effective:* August 16, 1993. The window period for filing applications for Sasser, Georgia, will open on August 17, 1993 and close on September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–475, adopted June 16, 1993, and released June 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73 [AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 221A and adding Channel 251A at Dawson, and by adding Sasser, Channel 299C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15905 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–173, RM–8262]

Television Broadcasting Services; Hoisington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clear Channel Television Licensee, Inc., proposing the allotment of Television Channel 14+ to Hoisington, Kansas, as that community's first local television service. The coordinates for Channel 14+ are 38–31–00 and 98–46–36. Channel 14+ does not require a site restriction but does have a plus offset.

DATES: Comments must be filed on or before August 23, 1993, and reply comments on or before September 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Bodorff, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–173, adopted June 10, 1993, and released June 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15903 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

VOL
58
ISS
128
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47 CFR Part 73

[MM Docket No. 93–181, RM–8268]

Radio Broadcasting Services; Livingston, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Henry Adams requesting the allotment of Channel 264C to Livingston, Montana, as that community's second FM broadcast service. The coordinates for Channel 264C are 45–39–45 and 110–33–37. The channel can be allotted without a site restriction.

DATES: Comments must be filed on or before August 23, 1993, and reply comments on or before September 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lauren A. Colby, Law Office of Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21705–0113.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–181, adopted June 16, 1993, and released June 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15899 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–175; RM–8264]

Radio Broadcasting Services; Pateros, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Pateros Community Broadcasters proposing the allotment of Channel 300A at Pateros, Washington, as its first local aural transmission service. Channel 300A can be allotted to Pateros in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.3 kilometers (5.1 miles) west to avoid a short-spacing to Station KMBI–FM, Channel 300C, Spokane, Washington, at petitioner's requested site. The coordinates for Channel 300A at Pateros are North Latitude 48–03–32 and West Longitude 120–00–51. Since Pateros is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

DATES: Comments must be filed on or before August 23, 1993, and reply comments on or before September 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–175, adopted June 10, 1993, and released June 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15901 Filed 7–6–93; 8:45 am]

BILLING 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 93–50; Notice 1]

RIN 2127–AE 85

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Anti Car Theft Act (ACTA) of 1992, which was enacted in October 1992, amended title VI, "Theft Prevention," of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Among the amendments was one requiring that certain lines of multipurpose passenger vehicles (MPVs) and light-duty trucks (LDTs) be designated as high theft lines. Manufacturers of lines designated as high theft will have to mark the major parts of each vehicle in the line. In anticipation of rulemaking to promulgate this requirement, this notice solicits comments on the definition of LDTs for title VI purposes. It also seeks comments on what parts of MPVs and LDTs should be considered major parts, and therefore should be subject to parts marking.

DATES: Comments on this advance notice of proposed rulemaking must be received by this agency not later than August 23, 1993.

ADDRESSES: Comments should refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, is a comprehensive attack on automotive theft and fraud. ACTA strengthens Federal penalties for motor vehicle theft, armed robbery of motor vehicles, and motor vehicle titling fraud. In addition, ACTA amended title VI "Theft Prevention" of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) (15 U.S.C. 2021 *et seq.*).

As amended by ACTA, title VI defines "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Since title VI had formerly defined "passenger motor vehicle" to include passenger cars only, the effect of the new definition is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be likely high theft vehicles, and may thus be subject to the parts marking requirements of the Theft Prevention Standard.

The agency anticipates having to make substantial revisions to the Motor Vehicle Theft Prevention Standard (49 CFR part 541) to reflect the amendments to title VI. The purpose of the standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major motor vehicle parts. Each vehicle in a high theft line must have its major parts and major replacement parts marked unless the line is exempted from parts marking pursuant to 49 CFR part 543.

This advance notice is the first step in revising the Theft Prevention Standard. The notice solicits public comment to aid the agency in developing proposals regarding the vehicles that must henceforth be covered by the Theft Prevention Standard, and regarding which parts of these vehicles should be considered major parts, and therefore subject to parts marking.

New Types of Motor Vehicles To Be Covered by the Theft Prevention Standard

Under the new definition of "passenger motor vehicle," lines of MPVs and LDTs designated as high theft will be required to comply with the Theft Prevention Standard. For the purposes of designating high theft lines, there is no need to differentiate between MPVs and LDTs. However, with respect to non-high theft vehicles, the new title VI requirements distinguish MPVs from LDTs. Section 602(f) requires NHTSA to promulgate a vehicle theft standard by October 1994 that applies to the major parts of one half on non-high theft passenger motor vehicles, but excludes LDTs from this requirement.

Since title VI requirements differ in some respects for "multipurpose passenger vehicles" and "light-duty trucks," these two terms must be defined so that it can be readily determined whether a particular vehicle is an MPV or an LDT.

1. Multipurpose Passenger Vehicle

Section 2 of the Cost Savings Act (15 U.S.C. 1901), which applies to title VI, defines "passenger motor vehicle" and "multipurpose passenger vehicle" as follows:

> For the purpose of this Act (except title V and except as provided in section 601 of this Act):
>
> (1) The term "passenger motor vehicle" means a motor vehicle with motive power, designed for carrying twelve persons or less, except (A) a motorcycle or (B) a truck not designed primarily to carry its operator or passengers.
>
> (2) The term "multipurpose passenger vehicle" means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation.

Since section 601(1) defines "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less," it differs from section 2(2) in that it excludes some MPVs (those over 6,000 pounds) and includes some LDTs (those at 6,000 pounds or under). Similarly, "multipurpose passenger vehicle" has a narrower meaning in title VI than that set forth in section 2(2). Combining the section 2(2) definition with the gross vehicle weight limit of section 601 yields the following definition of MPV for the purposes of Title VI:

> A passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

2. Light-Duty Truck

To implement ACTA, the agency must define "light-duty truck" for Theft Prevention Standard purposes. No definition of "light-duty truck" is provided in the Cost Savings Act (including title VI), or in ACTA itself. The legislative history of ACTA provides no express guidance as to what types of vehicles ACTA's drafters intended to include in "light-duty truck" for theft prevention purposes. To determine the most suitable definition, NHTSA first examined existing definitions that may be applied to the Theft Prevention Standard. NHTSA, in its regulations, has promulgated a definition of "light truck," at 49 CFR 523.5, for purposes of title V of the Cost Savings Act, the Corporate Average Fuel Economy (CAFE) program, and a definition of "truck," at 49 CFR 571.3, for purposes of the Federal Motor Vehicle Safety Standards.

NHTSA's definition of "light truck" in 49 CFR part 523 (for CAFE program purposes) is broad enough to include multipurpose passenger vehicles. The definition applies to motor vehicles that transport more than 10 persons, or permit expanded use of the vehicle for cargo carrying purposes by removing seats. Many multipurpose passenger vehicles can meet one or both of these conditions, and would therefore be included as "light trucks." For this reason, the definition of "light truck" would not be suitable as a basis for defining "light-duty truck" for Theft Prevention Standard purposes. As was previously explained, it is important to maintain a distinction between "multipurpose passenger vehicles" and "light-duty trucks."

NHTSA therefore proposes to base the definition of "light duty truck" for Theft Prevention Standard purposes, on NHTSA's definition of "truck" at 49 CFR 571.3: "A motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment." This definition focuses on the primary distinction between multipurpose passenger vehicles and light-duty trucks, a distinction that is important for Theft Prevention Standard purposes: Multipurpose passenger vehicles are designed to carry passengers, and light-duty trucks are

VOL 58 ISS 128 JL 7 1993 UMI

designed to carry property. Since multipurpose passenger vehicles are not designed primarily to transport property or equipment, multipurpose passenger vehicles are not included in the 49 CFR 571.3 definition of "truck."

Therefore, in defining "light-duty truck" under ACTA, NHTSA would propose to modify its definition of "truck," by imposing a weight limit of 6,000 pounds gross vehicle weight. The following is the proposed definition of "light-duty truck" for the purposes of title VI:

> A motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

Public comments are solicited on this proposal. If the commenter believes that this proposed definition would not fulfill the needs of the Theft Prevention Standard, the agency requests that the commenter provide an alternative definition, with a statement of rationale why the alternative definition would be more suitable for Theft Prevention Standard purposes.

Major Parts

Section 601(7) of title VI "Theft Prevention" of the Motor Vehicle Information and Cost Savings Act, defines the term "major part." Section 601(7) identifies various specific passenger automobile parts as major parts and provides that the agency may add additional motor vehicle parts of comparable design or function. The identified parts are:

The engine;
The transmission;
Each door allowing entrance or egress to the passenger compartment;
The hood;
The grille;
Each bumper;
Each front fender;
The deck lid, tailgate or hatchback (whichever is present);
Rear quarter panels;
The trunk floor pan;
The frame, or in the case of a unitized body, the supporting structure which serves as a frame; and any other part of a passenger motor vehicle which the agency, by rule, determines is comparable in design or function to any of the parts listed above.

NHTSA has implementing provisions, in the Theft Prevention Standard at 49 CFR 541.5, that specify the major parts on high theft passenger car lines that must be marked. Section 541.5 lists all the parts identified in section 601(7) except for the grille, the trunk floor pan, and the frame or supporting structure which serves as a frame. The agency did not exercise its authority in section 601(7) and did not add additional parts to the list. Before its amendment by ACTA, title VI of the Cost Savings Act mandated that manufacturers mark not more than 14 major parts on a high theft passenger automobile. As amended, there is no statutory limit on the number of major parts that may be required to be marked. However, the parts marking requirement is still limited by a $15 (in 1984 dollars) maximum marking cost per vehicle. (See section 604.) Hence, although there is no longer a statutory limit on the number of parts that must be marked, the limit on costs involved in marking parts would still indirectly restrict the number of parts that can be required to be marked.

Comments are solicited on what parts of multipurpose passenger vehicles and of light-duty trucks should be considered "major parts." The listing in § 541.5 was created specifically to apply to passenger cars, and may not be wholly appropriate for multipurpose passenger vehicles or for light-duty trucks. If the commenter believes that the existing list of "major parts" in 49 CFR 541.5 or section 601(7) of title VI of the Cost Savings Act should also be made applicable to multipurpose passenger vehicles and/or light-duty trucks, or should be modified, comments so stating are solicited.

As stated earlier, the ACTA removed the limitation on the number of major parts that may be required to be marked on any motor vehicle. Therefore, comments are also solicited regarding whether there are any other major parts on passenger cars, comparable in design or function to those parts already listed, that should be added to the list of passenger car parts subject to the Theft Prevention Standard.

Potential Regulatory Impacts

NHTSA believes that this advance notice is neither "major" within the meaning of Executive Order (E.O.) 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This advance notice solicits comments on definition of "light-duty truck" (LDT) and on what parts of multipurpose passenger vehicles (MPVs) and LDTs should be considered "major parts." If made final, the new definition would have little effect in and of itself. The definition clarifies which vehicles Congress intended to be subject, as LDTs, to the marking of high theft car lines, but excluded from the potential rules for marking of low theft car lines. The costs and benefits resulting from the marking of major parts of MPVs and LDTs will be analyzed in subsequent rulemaking.

Similarly, the selection of the MPV and LDT parts to be marked is already, in large part, decided by Congress in title VI. However, the agency has authority under section 601(7) to make modifications to the statutory list. The specific nature of those modifications, as well as their impact, is unknown at this point. The overall cost of marking the MPVs and LDTs would, in any event, be limited to the $15 per vehicle maximum specified in section 604. The agency can say at this point that the overall impact of any modifications it might make would be less than the $100 million threshold for a regulation to be "major" under E.O. 12291 or "significant" under DOT's regulatory policies and procedures.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Procedures for Filing Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be

considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

Issued on: June 30, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–15967 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB94

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*), as an endangered species without critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act). The Kootenai River population of the white sturgeon is restricted to approximately 168 miles (270 kilometers (km)) of the Kootenai River, in Idaho, Montana, and British Columbia, Canada, primarily upstream from Cora Linn Dam at the outflow from Kootenay Lake, British Columbia. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River population of white sturgeon from other white sturgeon populations in the Columbia River basin for approximately 10,000 years. Recent genetic analysis indicates that the Kootenai River sturgeon is a unique stock and constitutes a distinct interbreeding population. The free-flowing river habitat for the Kootenai River white sturgeon population has been modified and impacted from development of the Kootenai River basin. Construction of Libby Dam for hydropower and flood control has transformed the natural hydrograph of the Kootenai River, thus reducing river flows critical to successful reproduction during the May to July sturgeon spawning season, and also affecting the biological productivity of the system by removing nutrients. This population has declined to an estimated 880 individuals, with approximately 80 percent of the sturgeon over 20 years old. There has been an almost complete lack of recruitment of juveniles into the population since 1974, soon after Libby Dam began operation. Other potential threats to the population include disease, and poor water quality due to contaminants.

This proposal, if made final, would extend the Act's protection to the Kootenai River population of the white sturgeon. The Service requests comments and information from the public on this proposed rule.

DATES: Comments from all interested parties must be received by November 4, 1993.

In anticipation of a request, the Service intends to conduct a public hearing on Thursday, August 26, 1993, from 1 to 4 p.m. and from 6 to 8 p.m. in Sand Point, Idaho.

ADDRESSES: Written comments and materials concerning this proposed rule may be submitted at the hearing or to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho, 83705. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing on August 26, 1993, will be held at the Schweitzer Mountain Resort, Headquarters Day Lodge, Caribou Room, 10000 Schweitzer Mountain Road, 11 miles north of Sand Point, Idaho.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Field Supervisor, at the above address or (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

White sturgeon (*Acipenser transmontanus*) historically occurred on the Pacific coast from the Aleutian Islands to central California. The species reproduces in at least three large river systems: the Sacramento-San Joaquin, Columbia, and Fraser Rivers. The Kootenai River population of white sturgeon is one of several land-locked populations of white sturgeon found in the Pacific Northwest. The Kootenai River originates in Kootenay National Park in British Columbia, Canada, and flows south into Montana, turns northwest into Idaho, and north through the Kootenai Valley back into British Columbia, where it flows through Kootenay Lake and eventually joins the Columbia River at Castlegar.

White sturgeon are included in the Family Acipenseridae, which consists of 4 genera and 24 species of sturgeon. There are eight species of sturgeon in North America; white sturgeon is one of five species in the genus *Acipenser*. *Acipenser*, among the oldest genera of sturgeon, evolved nearly 400 million years ago during the Cretaceous Period (Scott and Crossman 1973). The closely related green sturgeon (*Acipenser medirostris*) also occurs in the Pacific Coast region, but is restricted in distribution to river estuaries.

The white sturgeon was described by Richardson in 1863 from a single specimen collected in the Columbia River near Fort Vancouver, Washington (Scott and Crossman 1973). All sturgeon are distinguished in having a cartilaginous skeleton with a persistent notochord, and also a protractile, tube-like mouth and sensory barbels on the ventral surface of the snout. The white sturgeon is distinguished from other *Acipenser* by the specific arrangement and number of scutes (bony plates) along its body (Scott and Crossman 1973). The fish have 11 to 14 dorsal, 36 to 48 lateral, and 9 to 12 ventral scutes. White sturgeon are the largest freshwater or anadromous fish in North America, reported to grow upwards of 1,800 pounds (lb) (820 kilograms (kg)). However, the largest authentic record of a white sturgeon is a 1,387 lb (630 kg) specimen taken from the Fraser River in British Columbia in 1897 (Scott and Crossman 1973). Individuals in landlocked populations are generally much smaller. For example, there are no reports of white sturgeon over 200 lbs (90 kg) captured from the Kootenai River system (Apperson 1992, Graham 1981, Partridge 1983). White sturgeon are known to be long-lived, with females living from 34 to 70 years (PSMFC 1992). Partridge (1983) reported that the oldest of 342 sturgeon captured in the Kootenai River during 1977 to 1982 was estimated to be 44 years old.

For white sturgeon in general, the size or age of first maturity in the wild is

quite variable (PSMFC 1992). Females normally require a longer period to mature than males, generally taking 15 to 32 years. Only a portion of adult white sturgeon are reproductive or spawn each year, with the spawning frequency for females estimated at 2 to 11 years. Spawning occurs when the physical environment permits vitellogenesis (egg development) and cues ovulation. White sturgeon are broadcast spawners, releasing their eggs and sperm in fast water. In the lower Columbia River, below McNary Dam, landlocked populations of white sturgeon normally spawn during the period of peak flows from April through July (Parsley et al. 1989; Duke et al. 1990); in recent studies sturgeon eggs were collected in spawning areas with mean column water velocities ranging from 1.6 to 6.3 feet (ft) per second (0.5 to 1.92 meters (m) per second) (Miller et al. 1991). Spawning in high water velocities disperses and prevents clumping of the adhesive eggs. Following fertilization, eggs adhere to the river substrate and hatch after a relatively brief incubation period of 8 to 15 days, depending on water temperature (Brannon et al. 1985). Recently hatched yolk-sac larvae swim or drift in the current for a period of several hours and then settle into interstitial spaces in the substrate. Larval white sturgeon require 20 to 30 days to metamorphose into juveniles with a full complement of fin rays and scutes. During this period, larval sturgeon disperse into the water column where they begin to feed actively, thus becoming susceptible to predation, starvation, disease, and parasitism (Parsley et al. in prep.).

The ecology of white sturgeon in the Kootenai River is not as well known as that of anadromous and other landlocked populations of white sturgeon in the Columbia River basin. Historically, little was known concerning the status and life history of the white sturgeon population in the Kootenai River basin prior to studies initiated during the late 1970's by the British Columbia Ministry of Environment and Parks (Andrusak 1980), Idaho Department of Fish and Game (Partridge 1983), and Montana Department of Fish, Wildlife and Parks (Graham 1981).

The Kootenai River population of white sturgeon is restricted to approximately 168 river miles (270 river km) in the Kootenai River basin, primarily upstream of Cora Linn Dam at the outflow from Kootenay Lake, British Columbia, Canada, through the northeast corner of the Idaho panhandle to Kootenai Falls, about 31 river miles (50 km) below Libby Dam, Montana. Kootenai Falls, in Montana, represents an impassible natural barrier to the upstream migration of the sturgeon. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River white sturgeon from other white sturgeon populations in the Columbia River basin since the last glacial age (approximately 10,000 years) (Apperson and Anders 1991). The Kootenai River population is one of 18 landlocked populations of white sturgeon known to occur in western North America.

Recent genetic analysis indicates that the Kootenai River sturgeon is a unique stock and constitutes a distinct interbreeding population (Setter and Brannon 1990). In examining electrophoretic data from 65 individuals in the Kootenai River, Setter and Brannon (1990) estimated an average heterozygosity (or measure of the quantity of genetic variation) for the Kootenai River population at 0.54. An average heterozygosity of 0.74 was observed for white sturgeon sampled in the Columbia River. Based on the observed lowered average heterozygosity, Setter and Brannon (1990) concluded "* * * that the amount of variability is on the average less for individuals found in the Kootenai River than those found throughout the Columbia River" and "* * * we find adequate evidence to distinguish these fish as a separate population based on differences in allele frequencies, the genetic distance calculation and the overall quantity of variation displayed."

In general, individual white sturgeon in the Kootenai River are broadly distributed, migrating freely between the Kootenai River and the deep, oligotrophic Kootenay Lake (Andrusak 1980). However, the species is not commonly found upstream of Bonners Ferry into Montana (Apperson and Anders 1991). In 1980, Graham (1981) estimated the sturgeon population in Montana to be from one to five individuals found in the river reach immediately downstream of Kootenai Falls. Although white sturgeon use the main channel of the Kootenai River upstream to Kootenai Falls, none have been reported from tributary streams in Idaho and Montana (Partridge 1983).

Based on tagging studies, Kootenai River white sturgeon are relatively sedentary during the summer and inhabit the deepest holes (Apperson and Anders 1990). During late summer and fall, tagged fish were observed moving into the deepest river holes available in the river and/or into Kootenay Lake. Kootenai River locations used by sturgeon were generally sites over 20 ft (6 m) deep with column velocities less than 0.77 ft per second (less than 0.24 m per second) and water temperature of 57 to 68° F (14 to 20° C) (PSMFC 1992). Depths utilized by sturgeon in Kootenay Lake ranged from 30 to over 300 ft (10 to 100.5 m) (Apperson and Anders 1991). Compared with other waters containing white sturgeon, the Kootenai River is a relatively cool river with summer high temperatures of 68 to 72° F (20 to 22° C). Like other white sturgeon, Kootenai River sturgeon are opportunistic feeders. Partridge (1983) found white sturgeon more than 28 inches (in) (80 centimeters (cm)) in length feeding on a variety of prey items, including chironomids, clams, snails, aquatic insects, and fish. Andrusak (British Columbia Environment, Parks and Lands, pers. comm., 1993) noted that kokanee salmon (*Oncorhynchus nerka*) in Kootenay Lake, prior to a dramatic population crash beginning in the mid 1970's, were once considered an important prey item for adult white sturgeon in the lake.

Specific spawning sites for white sturgeon in the Kootenai River are not well known. Apperson (IDFG, pers. comm., 1993) believes that under natural (pre-Libby Dam operation) flow conditions, habitat available for white sturgeon spawning would have occurred in an approximate 60 river mile (96 river km) stretch of the Kootenai River from Shorty's Island in Idaho (river mile 145) upstream to Kootenai Falls in Montana (river mile 203). Apperson (1992) reported that six reproductively mature white sturgeon (three males and three females) tagged with ultrasonic transmitters were located weekly from April through July 1991 to monitor spawning related movements. By May, all six fish had moved upriver 10 to 71 river miles (16 to 114 river km) into the river reach between Shorty's Island and immediately downstream of Bonners Ferry, where they were congregated through July. These fish exhibited movements and remained congregated in areas similar to other sturgeon tagged and monitored in 1990. During May through July, white sturgeon fitted with transmitters occupied locations with water velocities that ranged from 1 to 2 ft per second (0.3 to 0.6 m per second) in 1990, and 1.3 to 2.5 ft per second (0.4 to 0.8 m per second) in 1991.

Based on a comparison of population estimates made in 1982 and 1990, Kootenai River white sturgeon have declined from an estimated 1,194 fish (range of 907 to 1,503) (Partridge 1983) to approximately 880 fish (range of 638 to 1,211) (Apperson and Anders 1991).

This decline in population from 1982 to 1990 indicates an overall annual mortality rate of 0.0374 for adult white sturgeon. The 1990 population estimate translates to an average abundance of seven sturgeon per river kilometer from Kootenay Lake upstream to Bonners Ferry, Idaho.

The population is reproductively mature, with approximately 80 percent of the sturgeon over 20 years old (Apperson 1992). The Idaho Department of Fish and Game (IDFG) estimates that 7 percent of the female white sturgeon and 30 percent of the male white sturgeon in the Kootenai River are reproductive each year (Apperson 1992). Based on a 1:1 sex ratio, this translates into 22 to 42 females and 96 to 182 males available to spawn in any given year. The actual number of available spawners is dependent upon size at maturity and spawning frequency. In addition, it is not certain at what age reproductive senescence occurs in white sturgeon.

There has been an almost complete lack of recruitment of juveniles into the population since 1974, soon after Libby Dam began operation (Partridge 1983, Apperson and Anders 1991). The youngest fish found in the most recent study was a single specimen of the 1977 year class (Apperson and Anders 1991). According to PSMFC (1992), no white sturgeon less than 20 in (51 cm) total length were collected in surveys conducted between 1977 and 1982 on the Kootenai River.

Partridge (1983) noted that sturgeon recruitment was intermittent and possibly decreasing prior to 1974 starting in the mid-1960's, demonstrated by lack of sturgeon from the 1965 to 1969, 1971 to 1973, and 1975 year-classes. Partridge speculated that the lack of recruitment was due in part to (1) the elimination of rearing areas for juveniles through diking of slough and marsh side-channel habitats, and (2) the increase in chemical pollutants (copper, zinc) in the river that may have affected spawning success. In any event, based on current annual mortality rate estimates of 0.0374 coupled with continuing zero recruitment in the future, Apperson (1992) believes that the number of white sturgeon in the Kootenai River population will decline to fewer than 500 individuals within 15 years and to 100 individuals within 55 years.

Previous Federal Action

Federal action on the Kootenai River population of white sturgeon began on November 21, 1991, when the Service included this population as a category 1 candidate species in the Animal Notice of Review (56 FR 58804), based primarily on the results of field studies conducted by Idaho Department of Fish and Game. Category 1 candidates are taxa for which the Service has on file enough substantial information on biological vulnerability and threats to propose them for endangered or threatened status. On June 11, 1992, the Service received a petition from the Idaho Conservation League, Northern Idaho Audubon, and Boundary Backpackers to list the Kootenai River population of white sturgeon as threatened or endangered under the Act. The petition cited the continuing lack of natural flows affecting juvenile recruitment as the primary threat to the continued existence of the wild sturgeon population. Pursuant to section 4(b)(3)(A) of the Act, the Service determined that the petition presented substantial information indicating that the requested action may be warranted, and published this finding in the **Federal Register** on April 14, 1993 (58 FR 19401).

Section 4(b)(3)(B) of the Act requires the Service to make a finding within 1 year of the date a petition is received as to whether or not the requested action is warranted. This proposed rule constitutes the 1-year finding that listing of the Kootenai River population of white sturgeon as an endangered species is warranted.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Kootenai River population of white sturgeon (*Acipenser transmontanus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The significant modifications to the natural hydrograph in the Kootenai River caused by flow regulation at Libby Dam is considered the primary reason for the Kootenai River sturgeon's declining numbers (Apperson and Anders 1991). Since 1972 when Libby Dam began operating, spring flows in the Kootenai River have been reduced an average 50 percent, and winter flows have increased by 300 percent over normal. As a consequence, natural high spring flows required by white sturgeon for reproduction rarely occur during the May to July spawning season when suitable temperature, water velocity, and photoperiod conditions exist. Spring flows in the Kootenai River are also far below the flows observed in 1974, the last year with appreciable white sturgeon production (Apperson 1992). Flows in 1974 exceeded 35,000 cubic ft per second (1,000 cubic m per second) during most of the spawning season. The operation of Libby Dam drastically alters seasonal downstream discharge by storing the natural spring runoff, providing more predictable flows throughout the year, and allowing late summer load factoring (power peaking) flows (Apperson 1992).

In 1990 and 1991, river discharge during the suspected spawning period was atypical for the post-Libby Dam period. Instead of discharge declining through late spring as occurred during 1989 and most prior years following Libby Dam operation, increasing and higher than 'normal' flows coincided with increasing water temperatures through June in 1990 and 1991. In both 1990 and 1991, mature female sturgeon tagged with ultrasonic transmitters moved from 10 to 68 river miles (15 to 110 river km) upriver and congregated in the 10 river mile reach near Bonners Ferry (Apperson 1992). These migrations coincided with an increase in flows near Bonners Ferry from approximately 24,700 cubic ft per second to nearly 42,400 cubic ft per second (700 to 1,200 cubic meters per second) and an increase in water temperature from 8 to 14° C. According to Parsley et al. (in prep.), most sturgeon spawning recorded in the lower Columbia River occurred at 14° C. Although no sturgeon eggs were recovered in 1990, 13 eggs were collected in early July 1991 from an artificial substrate placed in the suspected spawning area near river mile 155 at Bonners Ferry, within 0.06 mile (100 m) downriver from the railroad bridge (Apperson 1992). The eggs, estimated to be approximately 3 days of age, were spawned when water temperatures were 14° C and discharge between June 29 and July 2 ranged from 14,125 to 19,400 cubic ft per second (400 to 500 cubic meters per second). Water velocities where sturgeon eggs were collected were estimated at 2.4 to 3.1 ft per second (0.8 to 1.0 m per second); these velocities were at the lower end of velocity ranges measured in white sturgeon spawning areas during egg collection in the lower Columbia River (1.6 to 9.1 ft per second or 0.5 to 2.8 m per second) (Miller et al. 1991). This egg collection is the only

physical evidence of natural spawning by white sturgeon in the Kootenai River basin based upon recent studies. Although pre-spawning migratory behavior was observed in both 1990 and 1991, the higher than normal Kootenai River flows through the suspected spawning area occurred only for a brief period, and few viable eggs were collected. Evidence that more than one female spawned successfully, or whether the eggs spawned in 1991 survived past the larval stage, is lacking.

Additional adverse impacts to sturgeon because of reduced spring flow conditions may result from load-factoring or load-following at Libby Dam. Load-factoring, the deliberate practice of artificially raising and lowering river levels over a daily or weekly pattern for peak power generation or recreation, can create rapid changes in tailwater flows and affect depth, temperature, dissolved gases, and other physical-chemical conditions in the tailwater. Load-factoring at Libby Dam is a frequent and sporadic operating practice contributing to routine fluctuations in river elevations of 1 to 3 ft (0.3 to 0.9 m) per day (Kim Apperson, IDFG, pers. comm., 1993). These fluctuations may adversely affect sturgeon spawning behavior and reduce any egg/larvae survival. Because sturgeon spawning coincides with peak flows during spring and early summer, flows within natural fluctuations are considered important in maintaining consistent sturgeon spawning behavior during the spawning period (Lance Beckman, U.S. Fish and Wildlife Service, pers. comm., 1993).

Kootenai River sturgeon eggs and larvae are subject to downstream drift and are vulnerable to dewatering from flow fluctuations for 4 to 6 weeks post-spawning. This is especially critical for eggs and larvae deposited in shallow, littoral areas within the 10 river mile (16 river km) stretch downstream of Bonners Ferry. In addition, frequent water level fluctuations may displace larval sturgeon, thus increasing their susceptibility to predation (Kim Apperson, IDFG, in litt., 1993). Load-factoring also affects and modifies the primary and secondary productivity in lotic ecosystems (Ward and Stanford 1979). White sturgeon normally begin exogenous feeding within 2 weeks following hatching. Therefore, the availability of native benthos, periphyton, and zooplankton suitable as prey organisms is critical to their early survival.

Elimination of side channel slough habitat in the Kootenai River floodplain due to diking and bank stabilization to protect agricultural lands from flooding may also be a contributing factor to the sturgeon decline. Much of the Kootenai River has been channelized and stabilized from Bonners Ferry downstream to Kootenay Lake resulting in reduced aquatic habitat diversity, altering flow conditions at potential remaining spawning and nursery areas, and altering remaining substrates and conditions necessary for survival. The former slough and side channel areas were considered important rearing and foraging habitat for early age sturgeon and their prey (Partridge 1983). In summary, these extensive habitat modifications in the Kootenai River basin are believed to have caused adverse effects on white sturgeon reproduction, recruitment, and survival, and threaten the continued existence of the population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

All legal commercial and sport harvest for Kootenai River sturgeon has been eliminated in Idaho, Montana, and British Columbia. However, it is not known what impact, if any, to Kootenai River sturgeon may still be occurring from the illegal harvest of sturgeon.

While no historic evidence of white sturgeon exploitation in the Kootenai River basin during the 1800's exists (PSMFC 1992), sturgeon were utilized by the Kootenai Indians "* * * at least several hundred years ago" (Graham and White 1985). In Idaho, the harvest of white sturgeon in the Kootenai River was first regulated in 1944 when commercial fishing was prohibited and sport fishing restrictions were imposed (Apperson 1992). With increasingly restrictive harvest and length restrictions, an estimated 10 to 20 white sturgeon were harvested per year from 1944 through the mid-1970's. Partridge (1983) reported that the legal harvest had reached a relatively constant 51 to 52 fish per year over the 1979 through 1981 period, although "* * * the total number of sturgeon caught has been decreasing and less fish are being released * * *." Partridge also found that only 13 percent (n = 50) of the 342 sturgeon sampled were younger than age 15 and smaller than the legal size of 32 in (92 cm) total length, concluding that lack of recruitment was limiting the population and fishery. Following this investigation and citing concerns about the status of the population, Idaho terminated the legal sport harvest in 1984, limiting the sturgeon fishery to catch and release only.

In Montana, the harvest of white sturgeon was not restricted prior to 1972 (Apperson 1992). Graham and White (1985) reported that burbot (ling) anglers and fishermen using set-lines harvested sturgeon in the Kootenai River downstream of Kootenai Falls during the 1940's and 1950's. Beginning in 1972, harvest was restricted to two sturgeon per year with a slot (size) limit of between 36 and 54 in (102 to 183 cm). Over a 6-year period, 5 to 18 sturgeon were harvested annually. Fishing for sturgeon in Montana has been prohibited since 1979, and the species is now classified as a "Species of Special Concern" (Don Skarr, Montana Department of Fish, Wildlife and Parks, pers. comm., 1993).

In British Columbia, the white sturgeon harvest was first regulated in 1952 (Apperson 1992). During the 1974 through 1989 period, anglers were allowed to harvest one white sturgeon per year over 1 m total length. Anglers were required to secure a permit to fish for sturgeon. An average of 55 permits were issued annually from 1973 to 1980 with an estimated annual legal and illegal harvest of 10 to 20 fish (Graham 1981). Setlining for white sturgeon in British Columbia was prohibited in 1989, and a total ban on the sport harvest was imposed in 1990.

A few adult white sturgeon are collected each year for experimental culture purposes. The Kootenai Tribal Experimental Hatchery in Bonners Ferry, Idaho, is currently evaluating factors limiting recruitment, including the relationship between water quality and gamete viability, as well as habitat use and survival of juvenile Kootenai sturgeon released into the Kootenai River. Although collection for experimental culture purposes does not appear to be a threat at this time, the Bonneville Power Administration (BPA) is funding an evaluation of a captive broodstock program for the species to determine the environmental impacts and genetic risk of supplementation on the remaining wild sturgeon population (Rick Westerhouse, BPA, pers. comm., 1993; and Harold Kincaid, Service, pers. comm., 1993).

C. Disease or Predation

Not known to be applicable. However, the potential exists for disease to enter the wild Kootenai River sturgeon population through the release of hatchery raised sturgeon, such as those from the experimental culture facility. Diseases known to occur in white sturgeon hatcheries include bacterial diseases, protozoans, fungi, adenovirus, and the white sturgeon iridovirus (WSIV) (PSMFC 1992). During late November 1992, an outbreak of the WSIV killed most of the nearly 23,000 fingerling Kootenai River white sturgeon

VOL 58 ISS 128 JL 7 1993 UMI

being raised at the Kootenai Tribe hatchery, and the IDFG hatchery at Sandpoint, Idaho. Following the outbreak, approximately 2,000 of the sturgeon fingerlings survived, 1,800 of which remain at the Kootenai Tribe Hatchery. The remaining 200 sturgeon at the IDFG hatchery at Sandpoint were subsequently destroyed to prevent any further transmission of the WSIV virus (Kent Hauck, IDFG, pers. comm., 1993). Although it appears that white sturgeon fingerlings are most susceptible to the iridovirus when confined under hatchery rearing conditions, the disease may also be transmitted to the remaining wild population when hatchery raised sturgeon are released.

Fish predation may be a source of mortality for white sturgeon eggs and larvae, although no data to support this suggestion exists specific to the Kootenai River. In the Columbia River downstream of McNary Dam, common carp (*Cyprinus carpio*), largescale suckers (*Catostomus macrocheilus*), and northern squawfish (*Ptychocheilus oregonensis*) have been collected with white sturgeon eggs in their stomachs (Duke et al. 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

The Idaho Department of Fish and Game (IDFG) currently classifies the Kootenai River population of white sturgeon as endangered, which it defines as "any species in danger of extinction throughout all or a significant portion of its Idaho range" (IDFG 1992). While such designation regulates t.0he take or possession of those species classified as threatened or endangered, the State lacks authority to impose or implement additional conservation measures to ensure survival or recovery.

In Montana, the Kootenai River sturgeon is classified as a "Species of Special Concern" (Don Skarr, Montana Department of Fish, Wildlife and Parks, pers. comm., 1993). Montana does have a State "Nongame and Endangered Species Conservation Act of 1973" that assists in the protection of endangered, indigenous wildlife of Montana. Species of Special Concern are not protected under this conservation act, however. Listing the white sturgeon under the State conservation act would not only prohibit the taking and possession of the species but also allow the Montana Department of Fish, Wildlife and Parks to negotiate with agencies such as the U.S. Army Corps of Engineers (Corps) and BPA for enhanced management of white sturgeon (Graham 1981). In the early 1980's, the Montana State Legislature resisted all attempts at reclassifying the species as endangered under State law, thus precluding any State-authorized initiatives that could benefit the species.

The Corps regulates the management of water at Libby Dam. The Libby Dam project was authorized by title II of Public Law 81–516, the Flood Control Act of 1950, primarily for flood control, hydropower generation, and recreation purposes (U.S. Army Corps of Engineers 1984). Present Corps policy states that equal consideration should be given to environmental concerns in accordance with project objectives. In practice, there is no specific allocation of water on the Kootenai River for fish and wildlife, and the Corps does not give any special consideration to the Kootenai River sturgeon. The Corps is proposing to provide an additional 400,000 acre ft of storage water in 1993, for a one-time test only, to evaluate sturgeon spawning (Jeff Laufle, Corps, pers. comm., 1993). This block of water will provide about 18,000 to 20,000 cubic ft per second of flows through the Bonners Ferry spawning area over a 15 day period starting in June. This additional water, while possibly useful to evaluate flows necessary to stimulate spawning, is unlikely to provide suitable spawning and rearing habitat throughout the normal sturgeon spawning and early rearing season.

Because operation of Libby Dam is considered part of the Coordinated Columbia River System, BPA is also involved in the management of Kootenai River operations. The Coordinated Columbia River System refers to all projects operated under at least three authorities: the Columbia River Treaty, the Pacific Northwest Coordination Agreement, and Federal flood control statutes. The Columbia River Treaty of 1961 between Canada and the United States provided for the building of four storage reservoirs, including Libby Dam, in the upper Columbia River drainage, primarily for flood control and power production. The Pacific Northwest Coordination Agreement, an intricate contract between the Corps, BPA, and Bureau of Reclamation, calls for the planned operation to accommodate all of the authorized purposes of the Columbia River hydropower system. These authorized purposes include flood control, navigation, irrigation, and power production (System Operation Review Interagency Team 1991). The two aforementioned treaties and the various Federal flood control statutes have enacted stringent planning and operation criteria for the Columbia River system for flood control, hydropower, and other purposes. BPA and the Corps have not yet taken steps to impose conservation measures on Libby Dam operations to specifically protect and enhance recruitment opportunities for white sturgeon in the Kootenai River. Although BPA has stated that additional conservation measures to benefit sturgeon would be available if the species were listed, it believes that without threatened or endangered status, the remaining sturgeon have no "special status" for conservation considerations, and other regional interests (i.e., hydropower production, recreation, resident fish) would be given priority consideration (Walt Pollock, BPA, pers. comm., 1993).

BPA, on at least two occasions since June 1992, has made decisions affecting flow conditions in the Kootenai River system that adversely impacted sturgeon. In the first instance, during early June 1992, BPA required that water be stored behind Libby Dam as part of an energy exchange with British Columbia Hydro and Power Authority. As a result, flows dropped from nearly 20,000 cfs to 4,000 cfs in the Kootenai River during the critical spawning period. At that time, three mature female sturgeon tagged with ultrasonic transmitters were staging in the suspected spawning reach near Bonners Ferry when suitable temperature and possibly flow conditions were present. Subsequent to the flow reduction, no eggs or larvae or other evidence of spawning were reported for the 1992 sturgeon spawning season. In the second example, BPA in mid-February 1993 started drafting the nearly 1 million acre ft stored behind Libby Dam for power reserve generation. The Service had been working with the Corps to develop an agreement or Memorandum of Agreement (MOA) that included a flow regime for 1993 using all or part of this stored water for sturgeon reproduction; the Service believed this cooperative effort would not only benefit sturgeon, but also complement flow augmentation proposals being developed for recently listed salmon.

The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Power Planning Act) was a recent attempt by the United States Congress to address the hydropower impacts on fish and wildlife in the Columbia River system. The Power Planning Act directed the Northwest Power Planning Council (NWPPC) to "* * * promptly develop and adopt * * * a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries" (16 U.S.C. 839b(h)(1)(A)). BPA has been charged with funding all efforts and projects to protect, mitigate, and enhance fish and

wildlife consistent with the NWPPC's Program. Ongoing efforts by various State agencies and the Kootenai Tribe, authorized by the NWPPC (1987) and funded by BPA, have been undertaken to identify environmental factors limiting the white sturgeon population in the Kootenai River, and develop and maintain an experimental white sturgeon culture facility on the Kootenai River. Despite these efforts to better comprehend the factors affecting the Kootenai River sturgeon, a change in the flow regime associated with dam operation on the Kootenai River is still needed to enable this population to successfully reproduce and increase in size.

The Service joined efforts in June 1992 with IDFG, MDFWP, the Corps, the Kootenai Tribe, and other U.S. and Canada regional agencies to form a Kootenai River White Sturgeon Technical Committee. The goal of the Technical Committee was to develop a regional, prelisting recovery plan that would form the basis of a Conservation Agreement or MOA between the Service, Corps, and IDFG to provide a realistic, natural flow solution for sturgeon recruitment in the Kootenai River within water management constraints. The Service noted the MOA would need to include measures to remove threats to the sturgeon and include long-term provisions to modify flows in the Kootenai River below Libby Dam that would result in successful spawning and recruitment.

Based on discussions and recommendations by the Kootenai River Sturgeon Technical Committee, the Service adopted an interim flow proposal as the basis of any prelisting Conservation Agreement or MOA. This alternative attempts to match flows of 1974, the last year of successful reproduction and measurable recruitment to the population, but reduces the peak flows to 35,000 cfs to minimize flooding impacts and dike damage at Bonners Ferry and reduce nitrogen supersaturation effects below Libby Dam. The interim flow strategy specified that discharge from Libby Dam be regulated so that river flows through the suspected spawning reach near Bonners Ferry stay at the 35,000 cfs discharge throughout the white sturgeon spawning, egg incubation, and early rearing period. The flow proposal is equal to 60 percent of normal discharge (pre Libby Dam) and is similar to the record low natural flows that occurred in 1937.

The Service and the Technical Committee, while recognizing that the lack of reproduction is the most immediate threat to the sturgeon population, are cognizant of other factors negatively affecting the fish. The Service will continue to participate in the Technical Committee process as needed to identify additional factors affecting sturgeon viability in the Kootenai River. To date, the Service has been unable to successfully negotiate a Conservation Agreement to implement the interim flow proposal developed by the Technical Committee.

In summary, cooperative efforts to date to implement a regional prelisting recovery strategy for the Kootenai River sturgeon have not been successful. Existing regulatory mechanisms are not sufficient to ensure the survival and recovery of this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Although not fully understood, there is evidence that the overall biological productivity of the Kootenai River downstream of Libby Dam has been altered. Based on limnological studies of Kootenay Lake, Daley et al. (1981) concluded that the construction and operation of Libby Dam (and Duncan Dam in Canada) "* * * has drastically altered the annual hydrograph and has resulted in modifications to the quality of water now entering the lake by removing nutrients, by permitting the stripping of nutrients from the water in the river downstream from the dam and altering the time at which the nutrients are supplied to the lake." Potential threats to the Kootenai River population of white sturgeon from declining biological productivity include (1) Decreased prey abundance and limited food availability for all life stages of sturgeon downstream of Libby Dam, (2) reduced condition factor in adult sturgeon possibly impacting fecundity and reproduction, and (3) a possible reduction in the overall capacity for the Kootenai River and Kootenay Lake systems to sustain substantial populations of sturgeon and other native fishes. The British Columbia Ministry of Environment, Lands and Parks is currently experimenting with fertilization of Kootenay Lake to increase biological productivity and enhance native fisheries (Jay Hammond, British Columbia Environment, Lands and Parks, pers. comm., 1993). Additionally, BPA has recently funded IDFG to study primary productivity and nutrient cycling in the Kootenai River from Kootenai Falls downstream to Kootenay Lake (Kim Apperson, pers. comm., 1993).

Poor water quality and excessive nutrients in the Kootenai River were once considered major problems for the Kootenai River sturgeon and other native fishes prior to the construction and operation of Libby Dam. Graham (1981) concluded that poor water quality conditions in the Kootenai River in the 1950's and 1960's resulting from industrial and mine development most likely affected white sturgeon reproduction and overall productivity. Poor water quality could have affected white sturgeon by impacting their prey base, and introducing heavy metals and other contaminants that may have affected reproductive success. The major sources of pollution resulted from effluents from a lead-zinc mine and concentrator, a fertilizer processing plant, and sewage treatment plants on the St. Mary River, an upstream tributary in Canada, and also a vermiculite mine and processing plant 7 miles (11 km) upstream of Libby, Montana. Significant improvements in water quality were noted by 1977, due in part to waste water control and effluent recycling measures initiated in the late 1960's. Apperson (1992) noted that detectable levels of aluminum, copper, lead, zinc, and strontium were found in sturgeon oocyte (egg) samples from the Kootenai River along with detectable levels of PCB's and pesticides. However, other than copper, the detectable levels of these compounds (e.g., PCB's, organochlorides, zinc) were either (1) lower than levels found in other Columbia River basin sturgeon populations that successfully reproduce, or (2) not enough is known regarding the toxicity of these pollutants to sturgeon. Apperson believed that "* * * concentrations of copper found in white sturgeon oocytes potentially present the most severe contaminant effect on reproductive success" since some of the copper concentrations found in water samples taken in the Kootenai River were in the range of levels known to inhibit yolk uptake in larval white sturgeon. One of the objectives of the Kootenai Indian Tribe's experimental hatchery is to determine the relationship between water quality (including toxicants) and gamete viability. Initial culture efforts have documented successful fertilization and incubation and that sturgeon gametes (i.e., eggs and sperm) are generally viable (Apperson and Anders 1991). The degree to which poor water quality is a factor threatening Kootenai River sturgeon is not known; however, it remains a potential threat to the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this

VOL 58 ISS 128 JL 7 1993 UMI

rule. Based on this evaluation, the preferred action is to list the Kootenai River population of white sturgeon (*Acipenser transmontanus*) as endangered because the species has declined to an estimated 880 individuals, the majority of which are greater than 20 years of age, and there has been an almost total lack of recruitment of juveniles into the population since 1974. The reduced river flows during the critical spring spawning season as a result of the operation of Libby Dam has precluded successful reproduction, and threatens the continued existence of this population. The population also faces threats from reduced water quality and prey abundance, and disease. Because this distinct population of white sturgeon is in danger of extinction throughout its range, it fits the Act's definition of an endangered species. For reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat for the Kootenai River population of white sturgeon is not presently determinable. Regulations implementing section 4 of the Act provide that a designation of critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12). For example, the Service has identified the lack of natural flows in the Kootenai River below Libby Dam as the primary threat to the white sturgeon population. Other than a basic understanding of streamflow conditions necessary for providing spawning and early rearing habitat during the normal May through July sturgeon spawning season, the life history requirements for other life stages of sturgeon are not sufficiently well known to permit identification of an area in the Kootenai River basin as designated critical habitat. Additionally, many Kootenai River sturgeon migrate freely throughout the Kootenai River system and spend part of their life in Kootenay Lake in British Columbia, Canada. The Service will gather additional information on the life history needs of the Kootenai River population of the white sturgeon, and on the potential economic consequences of designating critical before making a decision concerning critical habitat for the sturgeon.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may be affected by this proposal include the continuing operation of Libby Dam and Kootenai River flow management by the U.S. Army Corps of Engineers. The Corps would be required to consult with the Service on the previously mentioned Libby Dam operations. BPA would be required to consult with the Service regarding the existing Kootenai sturgeon research program authorized by the Northwest Power Planning Council (1987) and funded by BPA. BPA would need to insure that the research and monitoring efforts to identify environmental factors limiting the white sturgeon in the Kootenai River, and that the experimental sturgeon culture facility operated by the Kootenai Indian Tribe of Idaho, are not likely to jeopardize the continued existence of the species. In addition, joint consultation by the Corps, BPA, and Bureau of Reclamation may be necessary if any change in the operation or reauthorization of the Joint Coordination Columbia River System occurs as a result of the System Operation Review process.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing endangered species permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for information on permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service 4401 North Fairfax Drive, room 432–ARLSQ, Arlington, Virginia 22203–3507 (703/358–2171).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical

habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

A public hearing will be held on this proposal. See **DATES** and **ADDRESSES** sections for detailed information.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Stephen D. Duke, U.S. Fish and Wildlife Service, Boise Field Office (see **ADDRESSES** section); telephone 208/334–1931.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
Fishes:							
•	•	•	•	•	•	•	•
Sturgeon, white ...	*Acipenser transmontanus.*	U.S.A. (AK, CA, ID, MT, OR, WA), Canada (BC).	U.S.A. (ID, MT), Canada (BC) (Kootenai R. system).	E	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: June 24, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–15958 Filed 7–6–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Proposed Delisting of the Hawaiian Plant "Bidens cuneata" (Cuneate Bidens)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to remove a plant, *Bidens cuneata* (cuneate bidens), from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species as defined by the Endangered Species Act of 1973, as amended (Act), and therefore was listed in error. Extensive studies associated with a recent revision of the Hawaiian members of the genus have concluded that *Bidens cuneata* is an outlying population of *B. molokaiensis,* which is common along the windward cliffs of the island of Molokai.

DATES: Comments from all interested parties must be received by September 7, 1993. Public hearing requests must be received by August 23, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The type specimen for *Bidens cuneata* was collected on Diamond Head, Oahu, by William A. Bryan on December 6, 1903, and was formally described by Earl E. Sherff in 1920 (Sherff 1920, Takeuchi 1980). Subsequent to its initial discovery, there were no further collections or observations of the species, leading botanists to believe that it possibly could have gone extinct. In 1955, the species was rediscovered in the area from which the type originally was collected (Takeuchi 1980).

Hybrids between Hawaiian *Bidens* species can readily be induced experimentally and result in highly fertile progeny, indicating a general lack of genetic barriers within the group. Based upon experimental crosses in the Hawaiian members of the genus, Gillette and Lim (1970) concluded that *B. cuneata* was a natural hybrid between *B. mauiensis,* native to the island of Maui, and *B. molokaiensis,* which is restricted to Molokai Island; however, few botanists accepted this conclusion. Citing the occurrence of natural and experimental hybrids, Gillette (1975) later contended that the 41 species of Hawaiian *Bidens* placed by Sherff in section *Campylotheca* should be considered a single species. Recent systematic studies of the genus (including additional experimental hybridizations) culminated in a revision of the Hawaiian members of the genus (Ganders and Nagata 1990). In this publication, *B. cuneata* was considered conspecific with *B. molokaiensis,* a common species found along the northern side of Molokai Island. *Bidens molokaiensis* occurs between sea level and 150 meters (500 feet) in elevation along the seashores, sea cliffs, talus slopes, and fields of northern Molokai from Hoolehua to Kaonihu, a distance of about 37 kilometers (23 miles) or about two-thirds the length of the island.

Summary of Factors Affecting the Species

50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Bidens cuneata* Sherff (cuneate bidens) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Bidens cuneata has been determined to be no more than an outlying population of *Bidens molokaiensis,* a common species native to the northern part of Molokai. *Bidens molokaiensis* is not significantly threatened with destruction, modification, or curtailment of its habitat throughout a significant portion of its range. The final rule designating *Bidens cuneata* as an endangered species was published on February 17, 1984 (49 FR 6099) and identified habitat degradation, possible reduction of reproductive success due to a decline of native pollinating insects, and potential fire hazards as threats contributing to the endangerment of that species. If *Bidens cuneata* were a valid taxon and met the definition of a "species" as described by the Act, then these factors would be relevant. However, since the entity shows no genetic integrity independent of *Bidens molokaiensis,* it cannot be scientifically defended as either a species, subspecies, or taxonomic variety.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Such overutilization is not known to be a factor for *Bidens molokaiensis,* which includes *Bidens cuneata.*

VOL
58
ISS
128
JL
7
1993
UMI

C. Disease or Predation

Disease or predation is not a threat to *Bidens molokaiensis*, which includes *Bidens cuneata*.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal listing of a species as endangered or threatened automatically invokes listing under Hawaii State law, which prohibits taking of endangered plants in the state and encourages conservation by State agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. This rule, if made final, would automatically remove the protection of the State laws that this population presently enjoys as a federally listed species. It also would require the reevaluation of *Bidens cuneata* in the context of its status in State land use planning documents.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

None known.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *Bidens cuneata* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in section 3(16) of the Act. Therefore, *Bidens cuneata* was listed in error.

Effects of Rule

The proposed action would result in the removal of this species from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Bidens cuneata*. There is no designated critical habitat for this species. Federal restrictions on taking this species would no longer apply. There are no specific preservation or management programs for the species that would be terminated.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Gillette, G.W. 1975. The diversity and history of Polynesian *Bidens*, section *Campylotheca*. Univ. Hawaii Harold L. Lyon Arbor. Lecture 6:1–32.

Gillette, G.W., and E.K.S. Lim. 1970. An experimental study of the genus *Bidens* (Asteraceae) in the Hawaiian Islands. Univ. Calif. Publ. Bot. 56:1–63.

Sherff, E.E. 1920. Studies in the genus *Bidens*.V. Bot. Gaz. 70:89–109.

Takeuchi, W. 1980. Unpublished status survey of *Bidens cuneata* Sherff. U.S. Fish and Wildlife Service, Honolulu, 29 pp.

Author

The author of this proposed rule is Dr. Derral R. Herbst, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by removing the entry "*Bidens cuneata* (cuneate bidens)" under "Asteraceae—Aster family" from the List of Endangered and Threatened Plants.

Dated: June 17, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–15959 Filed 7–6–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Advisory Council Meeting; Allegheny Wild and Scenic River, Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny National Wild and Scenic River will meet at 6 p.m., Tuesday, July 20, 1993 in 2nd floor meeting room of the Franklin Public Library, Franklin, PA. The Northern Advisory Council will meet at 6 p.m., Wednesday, July 21, 1993, at the YMCA, Warren, PA.

Primary topics include a presentation by the U.S. Army Corps of Engineers on the regulation of the upper Allegheny River water levels (6 p.m.) and reports on followup meetings with local municipal officials.

The Southern Council will discuss progress on developing guidelines to protect the outstanding cultural resource and recreation values between Franklin and Emlenton (Goals #3 and #5).

The Northern Council will decide on which of its goals and objectives to begin developing guidelines and will identify subcommittees for the selected goals/objectives.

Meeting is open to the public. A sign language interpreter will be provided if requested by July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: June 30, 1993.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93–15946 Filed 7–6–93; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Certification of Central Filing System—Minnesota

The Statewide central filing system of Minnesota is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Joan Anderson Growe, Secretary of State, for the following farm products produced in that State:

Wheat/durum	Sorghum.
Alfalfa	Sunflowers.
Barley	Canola.
Oats	Onions.
Green Beans	Cucumbers.
Snap Beans	Green Peas.
Green Lima Beans	Eggs.
Milk	Cattle/calves.
Honey/bees Wax	Hogs/pigs.
Goats	Broilers.
Mink	Hay.
Rye	Field Corn.
Flax	Soybeans.
Silage	Dry Edible Beans.
Carrots	Sweet Corn.
Potatoes	Sugar Beets.
Wool	Cheese.
Apples	Horses.
Chickens	Sheep/lambs.
Fish	Turkeys.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), P.L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR §§ 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: June 29, 1993.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 93–15943 Filed 7–6–93; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations—Petroleum Products.

Agency Form Number: None but requirements are found at Section 777.6 of the Export Administration Regulations.

OMB Approval Number: 0694-0026.

Burden: 3 hours.

Number of Respondents: 5.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This information collection requires the submission of documents in support of an export license application for petroleum products derived from a naval petroleum reserve.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 482–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: June 28, 1993

Edward Michals,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–16018 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Order No. 646]

Foreign-Trade Zone 59; Lincoln, NE, Application for Expansion

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Expansion of Foreign-Trade Zone 59, Lincoln, NE

Whereas, an application from the Lincoln Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 59, for authority to expand its general-purpose zone in Lincoln, Nebraska, adjacent to the Omaha Customs port of entry, was filed by the Foreign-Trade

Zones (FTZ) Board on June 2, 1992 (Docket 16–92, 57 FR 24775, 6/11/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 25th day of June, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–16014 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–3–93]

Foreign-Trade Zone 54—Clinton County, NY, Request for Export Manufacturing Authority; (Bicycles)

A request has been submitted to the Foreign-Trade Zones (FTZ) Board pursuant to § 400.32(b)(1) of the Board's regulations for approval of zone export manufacturing authority within FTZ 54 by the Clinton County Area Economic Development Corporation, grantee of FTZ 54. It was formally filed on June 24, 1993.

The proposed operation involves the assembly for export of bicycles (HTS 8712.00.15 and 8712.00.25—duty rate 11% and 5.5%) by the U.S. Bicycle Corporation, a subsidiary of Nevada Cycle and Sports, Ltd., of Canada. Foreign-sourced components include frames, wheels, hubs, brakes, saddles, peddles, grips, cranks, gears, and derailleurs (duty rate: 4.9–10%).

Zone procedures would exempt U.S. Bicycle from payment of Customs duties on foreign components used in the exported finished products. The request indicates that zone procedures will help promote the proposed export activity.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 7, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., room 3716, Washington, DC 20230.

Dated: June 28, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–16012 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 645]

Foreign-Trade Zone 23; Erie County, NY; Application for Expansion

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Expansion of Foreign-Trade Zone 23 Erie County, NY

Whereas, an application from the County of Erie, New York, grantee of Foreign-Trade Zone No. 23, for authority to expand its general-purpose zone in Erie County, New York, within the Buffalo Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on June 8, 1992 (Docket 17–92, 57 FR 28482, 6/25/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 25th day of June, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–16013 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 649]

Newport News Shipbuilding & Dry Dock Co. (Shipbuilding), Newport News, VA; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of Authority for Subzone Status, Newport News Shipbuilding & Dry Dock Company (Shipbuilding), Newport News, VA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Virginia Port Authority, grantee of Foreign-Trade Zone 20, for authority to establish a special-purpose subzone for the Newport News Shipbuilding & Dry Dock Company shipyard, in Newport News, Virginia, was filed by the Board on July 8, 1992, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 23–92, 57 FR 32000, 8–20–92); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 20B) at the Newport News Shipbuilding & Dry Dock Company shipyard, in Newport News, Virginia, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and,

2. In addition to the annual report, Newport News Shipbuilding shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the

Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 25th day of June, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates Foreign-Trade Zones Board.

[FR Doc. 93–16015 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than July 31, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings:	
Armenia: Solid Urea (A–831–801)	07/01/92–06/30/93
Azerbaijan: Solid Urea (A–832–801)	07/01/92–06/30/93
Belarus-Baltic: Solid Urea (A–822–801)	07/01/92–06/30/93
Brazil: Industrial Nitrocellulose (A–351–804)	07/01/92–06/30/93
Brazil: Silicon Metal (A–351–806)	07/01/92–06/30/93
Estonia-Baltic: Solid Urea (A–447–801)	07/01/92–06/30/93
Georgia: Solid Urea (A–833–801)	07/01/92–06/30/93
Germany: Industrial Nitrocellulose (A–428–803)	07/01/92–06/30/93
Germany: Solid Urea (A–428–605)	07/01/92–06/30/93
Iran: Certain In-Shell Pistachios (A–507–502)	07/01/92–06/30/93
Japan: Industrial Nitrocellulose (A–588–812)	07/01/92–06/30/93
Japan: Malleable Cast-Iron Pipe Fittings (A–588–605)	07/01/92–06/30/93
Japan: High Power Microwave Amplifiers and Components Thereof (A–588–005)	07/01/92–06/30/93
Japan: Fabric Expanded Neoprene Laminate (A–588–404)	07/01/92–06/30/93
Japan: Synthetic Methionine (A–588–041)	07/01/92–06/30/93
Kazakhstan: Solid Urea (A–834–801)	07/01/92–06/30/93
Kyrgyzstan: Solid Urea (A–835–801)	07/01/92–06/30/93
Latvia-Baltic: Solid Urea (A–449–801)	07/01/92–06/30/93
Lithuania: Solid Urea (A–451–801)	07/01/92–06/30/93
Moldova: Solid Urea (A–841–801)	07/01/92–06/30/93
Romania: Solid Urea (A–485–601)	07/01/92–06/30/93
Russia: Solid Urea (A–821–801)	07/01/92–06/30/93
Tajikistan: Solid Urea (A–842–801)	07/01/92–06/30/93
Thailand: Carbon Steel Butt-Weld Pipe Fittings (A–549–807)	12/26/91–06/30/93
The People's Republic of China: Carbon Steel Butt-Weld Pipe Fittings (A–570–814)	09/26/91–06/30/93
The People's Republic of China: Industrial Nitrocellulose (A–570–802)	07/01/92–06/30/93
The Republic of Korea: Industrial Nitrocellulose (A–580–805)	07/01/92–06/30/93
The United Kingdom: Industrial Nitrocellulose (A–412–803)	07/01/92–06/30/93
Turkmenistan: Solid Urea (A–843–801)	07/01/92–06/30/93
Ukraine: Solid Urea (A–823–801)	07/01/92–06/30/93
Uzbekistan: Solid Urea (A–844–801)	07/01/92–06/30/93
Countervailing Duty Proceedings:	
Canada: Certain Softwood Lumber Products (C–122–816)	03/12/92–03/31/93
European Economic Community: Sugar (C–408–046)	01/01/92–12/31/92
Uruguay: Leather Wearing Apparel (C–355–001)	01/01/92–12/31/92

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Thomas Futtner, in room 3069–A of the main Commerce Building. Further, in accordance with section 353.31 or 355.31 of the

VOL 58 ISS 128 JL 7 1993 UMI

Commerce regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review" for requests received by July 31, 1993. If the Department does not receive, by July 31, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as service to the international trading community.

Dated: June 30, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16007 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–822]

Postponement of Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116.

POSTPONEMENT: On April 26, 1993 (58 FR 26112, April 30, 1993), the Department of Commerce (the Department) issued an affirmative preliminary determination in the antidumping duty investigation of certain helical spring lock washers from the People's Republic of China (PRC).

On June 22, 1993, Hangzhou Spring Washer Plant (HSWP), which accounted for a significant portion of exports of the subject merchandise from the PRC to the United States, requested that the Department postpone the final determination in accordance with § 353.20(b) of the Department's regulations. Respondent made this request in order to ensure that the Department has adequate time to fully review the arguments made before it by all interested parties in regard to the application of surrogate data in calculating the dumping margin for the purposes of the final determination. We find no compelling reasons to deny this request.

In order to allow the Department sufficient time to analyze the data it has gathered in the investigation, we are postponing the final determination the full extent authorized under section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). The final determination will, therefore, be issued not later than September 13, 1993, which is 135 days after the date of publication of the preliminary determination.

On May 10, 1993, respondent requested a public hearing in this investigation. Because of the postponement of the final determination, the current hearing date of June 30, 1993 has been changed. In accordance with 19 CFR 353.38, case briefs, or other written comments, have been submitted to the Assistant Secretary for Import Administration on June 21, 1993. With the new tentative date for the public hearing, and considering the number and complexity of issues in this investigation, the Department is hereby extending the date for rebuttal briefs to no later than July 9, 1993. Ten copies of the rebuttal briefs should be submitted. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. Tentatively, the hearing will be held at 9:30 a.m. on July 16, 1993, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: June 25, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16016 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–802]

Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 25, 1993, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand (58 FR 15174). We have now completed that review and determine the total bounty or grant during the period January 1, 1991 through December 31, 1991 to be 7.07 percent *ad valorem* for all producers and exporters

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Sarah Givens or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 15174) the preliminary results of its administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand (54 FR 19130; May 3, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act 1930, as amended (the Act).

Since the publication of the preliminary results of review (58 FR 15174, March 25, 1993), the following events have occurred. On April 26, 1993, petitioner filed a case brief. On May 3, 1993, respondents filed their rebuttal brief. Pursuant to 19 CFR 355.31(a), the Department returned both petitioner's and respondents' briefs on May 10, 1993, because they contained untimely new factual information. See 19 CFR 355.31(a)(3) and 355.3(a). Both parties were given 24 hours in which to resubmit their briefs with the new information stricken. On May 11, 1993, both parties submitted revised versions of their briefs. The comments addressed in this notice come from the May 11, 1993 briefs.

In accordance with the Department's regulations (19 CFR 355.31(a)(1)(ii)),

unsolicited submissions of new factual information for the Department's consideration in the final results of an administrative review shall be submitted not later than the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review. While information from the investigation, prior reviews, or corollary proceedings existed prior to the applicable time limits, the Department deems such information as "new factual information" if it is untimely submitted for the purposes of the instant review. Each administrative review is a separate, judicially reviewable action; data or statements of fact on the records of the investigation or other reviews, used to support allegations in the instant review, must be placed before the Department in a timely manner in order for them to be properly considered by the Department and commented upon by other interested parties.

The Department, therefore, has not considered the rejected briefs in the final results of the above referenced review. See 19 CFR 355.31(a)(3). Copies of the rejected briefs were placed on the record solely for purposes of judicial review as to whether the Department properly rejected them.

Scope of Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, two related producers/exporters, NMB Thai Ltd. (NMB) and Pelmec Thai Ltd. (Pelmec), and nine programs: Investment Promotion Act (IPA) sections 31, 28 and 36(1); Tax Certificates for Exporters; Export Packing Credits; Electricity Discounts for Exporters; Rediscount of Industrial Bills; Export Processing Zones; IPA Sections 33 and 36(4); Reduced Business Taxes for Producers of Intermediate Goods for Export Industries; and International Trade Promotion Fund.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and rebuttal comments from the respondents.

Comment 1

Petitioner argues that the Department should not adjust the benefit calculation for the parent company mark-up. Petitioner asserts that it is incorrect to assume that the marked-up price is equal to the entered value, and states that the issue has not been fully investigated or verified. In the 1990 administrative review, the Department determined that, of the two invoices for each sale, the invoice reflecting the marked-up price was the import value used by U.S. Customs. The marked-up invoice, however, states a CIF price which is not used to establish the entered value for ordinary duty purposes. Thus, petitioner alleges that, in the 1990 review, the Department did not verify the actual entered values used by Customs as the basis for its calculations. Accordingly, petitioner argues that, until NMB and Pelmec submit actual entered values, the Department should not adjust the benefit calculation for the parent company mark-up.

Petitioner further suggests that the adjustment methodology is particularly susceptible to manipulation by respondents. Petitioner contends that because related parties handle every transaction, Minebea Japan (the parent company) can readily invoice NMB Corp. U.S.A. (a subsidiary) at a high transfer price, and the U.S. subsidiary could then resell the merchandise at a lower price.

Respondents reply that the Department completed an extensive verification in the last review that supports the mark-up adjustment methodology. The respondents cite Customs law and the final results in the 1990 review to reject petitioner's suggestions that invoices could be manipulated. Respondents conclude that, since the Department has all the correct information needed to adjust for the mark-up, there should be no change in this methodology or the duty rate calculated on this basis in the preliminary results.

DOC Position

We disagree with the petitioner. The mark-up methodology in question was fully investigated and verified in the final results of the 1990 review, Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review, 57 FR 26646, 26647 (June 15, 1992). In those final results, the Department determined:

> [T]here are two export prices for the same sale: the one on which subsidies are applied for and received by NMB and Pelmec, and the one which includes Minebea Japan's mark-up and which is the value listed on the NMB or Pelmec invoice accompanying the merchandise to the United States. At verification, NMB and Pelmec demonstrated that their accounting systems are set up to track the mark-up for each individual shipment of bearings via back-to-back invoices that are identical except for price. When NMB and Pelmec have a shipment ready for export, they will electronically transmit a copy of the invoice to Minebea Japan, who then adds the mark-up amount and transmits the invoice back to Thailand. This marked-up invoice is then cut in Thailand and packed with the shipment for export from Thailand. Even though Minebea Japan determines the mark-up, the merchandise is shipped from Thailand to the United States accompanied by the marked-up invoice.
>
> Because there is an exact one-to-one correlation between the invoice which reflects the price on which the subsidies are received and the invoice which reflects the marked-up price that accompanies each shipment, and because the merchandise is shipped directly from Thailand to the United States and is not transshipped, combined with other merchandise, or repackaged with other merchandise, the Department has determined that it is possible to make an adjustment to the subsidy rate so that the amount of countervailing duty collected will reflect the amount of subsidies bestowed.
>
> Accordingly, we have divided the FOB value of the exports of the subject merchandise before the inter-company transaction (before mark-up) by the value of the same merchandise as it entered the United States (after mark-up). This results in a ratio which reflects the difference in the export and import values. We then multiplied this ratio by the subsidy rate to obtain an adjusted rate * * * *.

Thus, contrary to petitioner's contention, the Department did fully investigate and verify the appropriateness of respondents' proposed mark-up methodology in the prior review.

Furthermore, while petitioner suggests that the Department should have solicited specific entry invoice data for the purposes of this review, that suggestion was made for the first time in petitioner's pre-hearing brief, long after the Department solicited and analyzed aggregate sales and mark-up data from the respondents. Thus, it was too late in this review for the Department to take into account petitioner's concerns. Moreover, at no time has petitioner furnished any evidence upon which the Department could rely that would substantiate its allegation that respondents are manipulating their invoice values.

Petitioner's contention with respect to Customs' handling of the subject transactions is also unsubstantiated and in error. Regardless of the stated terms on the relevant Customs invoices (e.g.,

CIF), the Department instructs Customs to collect the relevant subsidy rate based upon the FOB value. Customs normally deducts non-dutiable charges (e.g., insurance, freight, and broker fees) from the stated CIF price to arrive at the relevant FOB price. See Memo from Sarah Givens, Import Compliance Specialist, to the File, June 2, 1993 which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Comment 2

Petitioner contends that not all sales of the subject merchandise are marked-up by the parent company, and that some of this merchandise is sold directly to foreign subsidiaries. They conclude that the Department's methodology is improperly applied to those sales which do not receive a mark-up through the parent company.

Respondents state that Commerce has appropriately taken a weighted average of direct and indirect sales to the U.S. in calculating the duty for all transactions.

DOC Position

The Department's calculation is based on a ratio between the value of subject merchandise exported from Thailand to the U.S. and the total entry value of the merchandise entering the U.S. This total entry value includes both marked-up and direct sales. No mark-up for direct sales is added into the calculation. Therefore, the ratio correctly reflects the difference between the value of the merchandise exported from Thailand to the U.S. and the value of the merchandise (both direct and indirect sales) entering the U.S. By adjusting the duty rate based on this ratio, the Department ensures that the total subsidy is captured, and there will be no under- or over-collection of duties.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 7.07 percent ad valorem for the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 7.07 percent of the FOB invoice price on all shipments from Thailand of the subject merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

Because the "B" rate tax certificate program of the Tax and Duty Act was terminated as of January 1, 1992, the duty deposit rate will be reduced to 7.02. As provided by section 751(a)(1) of the Act, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 7.02 percent of the FOB invoice price on shipments of the subject merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C 1675(a)(1)) and 19 CFR 355.22.

Dated: June 29, 1993.

Barbara Stafford,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, constitute the following as outlined below.

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[FR Doc. 93–16010 Filed 7–6–93; 8:45 am]
BILLING CODE 3510–DS–P

[C–307–808]

Amendment to Countervailing Duty Order: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Kristin M. Heim, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798.

Countervailing Duty Order

On May 10, 1993, the Department of Commerce (the Department) published a final affirmative countervailing duty determination and a partial countervailing duty order on ferrosilicon from Venezuela (58 FR 27539, May 10, 1993). This partial countervailing duty order covered the dutiable items within the scope of this investigation, *i.e.*, Harmonized Tariff Schedule (HTS) items 7202.21.7500 and 7202.21.9000. For the reasons articulated in our final determination, the International Trade Commission (ITC) was required to determine whether imports of the non-dutiable merchandise within the scope of this investigation from Venezuela materially injure, or threaten material injury to, a U.S. industry.

On June 16, 1993, in accordance with section 705(d) of the Act, the ITC notified the Department of its final determination that imports of ferrosilicon are materially injuring a U.S. industry. Therefore, in accordance with section 706 of the Act, we are amending our partial countervailing duty order to include ferrosilicon classified under the HTS categories 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050.

The countervailing duties listed below will be assessed, upon further advice provided by the Department in accordance with section 706(a) of the Act, on all unliquidated entries of ferrosilicon from Venezuela classifiable under HTS subheadings 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050, which were entered, or withdrawn from warehouse, for consumption, on or after August 25, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before December 24, 1992, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or

after the date of publication of this order in the **Federal Register**. Entries of ferrosilicon, classified under the four HTS categories listed above, made on or after December 24, 1992, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on August 25, 1992, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, a cash deposit for entries of ferrosilicon from Venezuela as follows:

Company	Ad valorem rate (percent)
FESILVEN	22.06
Country-wide rate	22.08

This determination constitutes a countervailing duty order with respect to ferrosilicon from Venezuela pursuant to section 706 of the Act (19 U.S.C. section 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. section 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance. This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16008 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on lamb meat from New Zealand for the period April 1, 1991 through March 31, 1992. We preliminarily determine the total subsidy to be 0.11 percent *ad valorem* for all firms for the review period. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1992, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (57 FR 41725) for the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). On September 30, 1992, we received a request for review from the New Zealand Meat Producers Board. On October 22, 1992 (57 FR 48201), we initiated the review, covering the period April 1, 1991 through March 31, 1992. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on August 20, 1992 (57 FR 37772).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1991 through March 31, 1992, and two programs.

Analysis of Program

(1) Livestock Incentive Scheme

The Livestock Incentive Scheme (LIS) was introduced in 1976 in order to encourage farmers to increase

permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, could opt for a minimum of one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program. Applications to participate in the LIS program were accepted until March 31, 1982. No new loans have been given under this program since 1983, and no tax credits have been authorized since the 1983/84 government fiscal year. The last loan was forgiven in 1988 and is treated by the Department as a grant. During the 1991/92 government fiscal year (the review period), there were no outstanding loans that had not been converted to grants and no tax credits remaining to be claimed by lamb producers.

The Department has previously found this program to be countervailable because benefits under this program are available only to farmers with livestock herds, and, as such, are limited to a specific enterprise or industry, or group of enterprises or industries (See Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Review (57 FR 27435, June 19, 1992).

To calculate the benefit, we treated the loan amounts forgiven in prior years as grants and allocated those amounts over five years, the average useful life of breeding stock. This methodology is described in 355.49(g) of Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (51 FR 23366, 23385; May 31, 1989). Because the 1988 grant under this program was allocated over five years, we find that a benefit was conferred during the review period. The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven. The methodology and discount rate are the same used in previous administrative reviews (see *e.g.* Lamb Meat from New Zealand; Preliminary Results of Countervailing Duty Administrative Review (56 FR 27243; June 13, 1991). We added the value of the benefits from the grants and multiplied the result by a factor determined to represent the value of lamb meat as a percentage of the total value of all livestock production. We then divided that result by the total value of lamb meat production during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.11 percent *ad valorem* for all firms.

(2) The Export Market Development Taxation Incentive (EMDTI)

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditure. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the program is contingent upon exportation, the Department has previously found this program to confer a countervailable grant or subsidy (See Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review (56 FR 27243; June 13, 1991).

Effective with the government fiscal year beginning April 1, 1990, the Government of New Zealand eliminated the Export Market Development Taxation Incentive (EMDTI) tax credit, and all formerly eligible expenditures are subject to the rules for ordinary business expenses in calculating taxable income. Because certain corporate fiscal years do not correspond with the government of New Zealand's fiscal year, some residual benefits were still possible. However, according to the questionnaire response, no exporters of the subject merchandise claimed benefits under this program on their tax return during the review period.

Accordingly, for purposes of cash deposits of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total subsidy to be 0.11 percent *ad valorem* for all firms during the period April 1, 1991 through March 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent is *de minimis*.

Therefore, as provided for by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from New Zealand exported on or after April 1, 1991 and on or before March 31, 1992. The Department also intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of the subject merchandise from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodologies, and interested parties may request a hearing, not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication in accordance with 19 CFR 355.38(c). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief in accordance with 19 CFR 355.38(d). Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs in accordance with 19 CFR 355.38(f).

Any representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 335.22.

Dated: June 29, 1993.

Barbara Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16009 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used,

are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–169R. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* UHV Scanning Tunneling Microscope. *Manufacturer:* Omicron Associates, Germany. *Original notice of this resubmitted application was published in the* **Federal Register** of January 19, 1993.

Docket Number: 93–064. *Applicant:* LSU-Pennington Biomedical Research Center, 6400 Perkins Road, Baton Rouge, LA 70808. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of components in blood, urine, breath, and saliva that are either isolated and purified with the peripheral devices already under operation, or newly purchased, or off line, then introduced into the IRMS with one of the peripheral devices. The compounds that will be studied include glucose, fatty acids, cholesterol, amino acids, ketone bodies, urea, CO_2, and water. The property to be investigated is the enrichment of stable isotopes in the compounds of interest after administration of a dose of stable isotope precursor or tracer. *Application Received by Commissioner of Customs:* June 9, 1993.

Docket Number: 93–065. *Applicant:* National Institute of Standards and Technology, B364, Building 222, Gaithersburg, MD 20899. *Instrument:* Differential Vacuum System for Mass Spectrometer. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to increase the pumping capacity of an ion source when analyzing large samples of carbon dioxide. *Application Received by Commissioner of Customs:* June 9, 1993.

Docket Number: 93–067. *Applicant:* St. Jude Children's Research Hospital, 570 St. Jude Place, Thomas Tower, Memphis, TN 38105. *Instrument:* Microscope micromanipulator. *Manufacturer:* Singer Instrument Company, United Kingdom. *Intended Use:* The instrument will be used to study yeast Saccharomyces cerevisiae, and genes which control its cell cycle, and human genes which can control the yeast cell cycle. *Application Received by Commissioner of Customs:* June 10, 1993.

Docket Number: 93–068. *Applicant:* Washington University, One Brookings Drive, St. Louis, MO 63130. *Instrument:* Seismograph, Model STS–2. *Manufacturer:* G. Streckheisen, Switzerland. *Intended Use:* The instrument will be used for continuous monitoring of earthquake activity in the United States and around the world, and inference of earth structure based on the seismic waves. The objectives of the investigations are to record earthquakes and to deduce from those recordings the source characteristics of those earthquakes and to study the properties of the earth through which seismic waves pass. In addition, the instrument will be used for educational purposes in the course EPSc 452: Introduction to Seismology. *Application Received by Commissioner of Customs:* June 11, 1993.

Docket Number: 93–069. *Applicant:* Rutgers University, Institute of Marine & Coastal Sciences, Marine Science Building, Cook Campus, P.O. Box 231, New Brunswick, NJ 08903. *Instrument:* 3D Ecoscope System. *Manufacturer:* Institut für Meereskunde, Germany. *Intended Use:* The instrument will be used for studies of macrofauna, meiofauna, and epifauna. Specifically, the instrument will be used to quantify the epifauna at two sites—"sludge max" area and the reference area and to observe identification characteristics and the reproductive condition of many megafaunal species without the need for collections. These data will be useful in interpreting present and future camera surveys. *Application Received by Commissioner of Customs:* June 14, 1993.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–16011 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[ID. 062393A]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of experimental fishing permits.

SUMMARY: This notice announces issuance of experimental fishing permits (EFPs) to nineteen domestic vessels participating in an observation program to monitor the bycatch of salmon caught incidental to Pacific whiting trawl operations. The permits authorize vessels fishing with trawl gear for Pacific whiting to delay sorting, until offloading, of prohibited species caught incidental to the Pacific whiting fishery and allow overages in groundfish trip limits. These activities are otherwise prohibited by Federal regulations. Issuance of EFPs is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

EFFECTIVE DATE: April 15, 1993 through December 31, 1993.

ADDRESSES: Copies of the EFPs are available by writing to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The FMP and implementing regulations at 50 CFR part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application from the states of Oregon, California, and Washington was received on March 2, 1993, to implement an observation program, at the request of the Pacific Fishery Management Council (Council). The purpose of the observation program is to collect information on the bycatch of salmon in whiting harvests delivered to shoreside processing plants by domestic vessels operating in the Pacific whiting fishery in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon and California. The applicants requested issuance of EFPs to vessels participating in a state observation program to allow delayed sorting of salmon from trawl catches of Pacific whiting until the catch is unloaded at a shoreside processing plant so that the total catch could be sampled shoreside by biologists. In addition, in order to sample unsorted whiting catch shoreside, the states requested that the EFPs include provisions to allow for potential minor overages in groundfish trip limits as well as the retention of other prohibited species (i.e., Pacific halibut and Dungeness crab caught seaward of Washington or Oregon). Without an EFP, the vessels would be required to sort their whiting catch and return prohibited species to sea as soon as practicable with a minimum of injury when caught and brought aboard pursuant to groundfish regulations at 50 CFR 663.7(b). A notice acknowledging

receipt of the application, describing the observation program, and requesting public comment was published in the **Federal Register** on March 23, 1993 (58 FR 15484). No written comments were received.

The EFP application was reviewed by the Council at its March 1993 public meeting in San Francisco, California, and the Council recommended that NMFS issue the EFPs, as requested by the applicants. At the Council's recommendation, the Director, Northwest Region, NMFS, approved the application and issued EFPs to nineteen vessels, designated as participants in the observation program by the states, that are delivering whiting to shoreside processing plants in Ilwaco, Washington; Astoria and Newport, Oregon; and Crescent City, California. Vessels delivering whiting to a processing plant in Eureka, California, advised NMFS that they were not interested in participating in the state observation program, so no EFPs were issued to them.

The following conditions are imposed on the use of the EFPs:

1. The EFPs are valid only for fishing with pelagic trawl gear targeting on Pacific whiting, *Merluccius productus*, for shoreside delivery under the states' observation program.

2. The permit holder must allow an observer to accompany the vessel when an observer is assigned under the states' observation program.

3. The permit holder must provide departure and arrival notification to the states to allow for observer placement and/or sampling of the catch at offloading.

4. No at-sea sorting of catch is to occur on fishing trips conducted under the EFP. All fish caught under the EFP must be retained onboard the fishing vessel and delivered shoreside for sampling under the states' observation program. Salmon retained under the EFPs may not be sold, and must be set aside at the processing plant for biological sampling and disposition at the direction of state agency personnel. Groundfish trip limits apply to vessels operating under the EFPs except that overages in trip limits will not be in violation of regulations at 50 CFR 663.23 so long as such overage is surrendered to the state of landing. Pacific halibut caught while fishing under the EFPs are to be voluntarily forfeited by the permit holder to the state of landing and must be set aside at the processing plant for biological sampling and disposition by state agency personnel.

5. The EFPs are valid only for landings made at processing plants that have been designated by the states of Washington, Oregon, or California as participants in the observation program. Designated processing plants have agreed: (1) to allow state personnel to sample whiting landings and all associated bycatch; (2) to set aside salmonids and Pacific halibut for biological sampling and disposition by state agency personnel; and (3) to obtain instructions from the states on disposal of groundfish trip limit overages.

6. Trawl logbooks as required by the applicant state law must be maintained by the permit holder. Estimated pounds of all species caught in each tow and the number of salmon landed on each trip must be recorded in the log.

7. The permit holders agree to the public release of any and all information obtained as a result of activities conducted under the EFPs.

The results of the experimental fishery will be presented by the states at the November 1993 public meeting of the Council.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 30, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15896 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 1 to Permit No. 662.

Notice is hereby given that pursuant to the provisions of § § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. (P396B), issued to the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605 on April 28, 1989 (52 FR 19934) is modified by deleting Special Condition A.1.

Prior to invoking the authority of Permit No. 757 to import beluga whales (*Delphinapterus leucas*) from Canada, the Permit Holder stated intention to forego rights to import *Pseudorca crassidens* under Permit No. 662 upon the import of beluga whales under Permit No. 757. The John G. Shedd Aquarium imported four beluga whales under the authority of Permit No. 757 in August 1992. Therefore, this modification removes the authority of the John G. Shedd Aquarium to import *Pseudorca crassidens* under the authority of Permit No. 662.

This modification becomes effective upon publication in the **Federal Register**.

Documents submitted in connection with the above permit are available for review by appointment in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East West Highway, rm. 7324, Silver Spring, Maryland 20910 (301/713–2289);
Director, Northeast Region, NOAA, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9300);
Director, Northeast Region, NOAA, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115 (206/526–6150);
Director, Southwest Region, NOAA, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802 (310/980–4016).

Dated: June 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–15945 Filed 7–6–93; 8:45 am]

BILLING CODE 3510–22–M

COMPETITIVENESS POLICY COUNCIL

Meetings

AGENCY: Competitiveness Policy Council.

ACTION: Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces several forthcoming meetings.

DATES: July 21, 1993; 8:30 to 5:30 p.m.

ADDRESSES: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, Suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387–9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the U.S. economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

The meeting will be open to the public subject to the seating capacity of

the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open the meeting with a report on the Council's activities since the release of its second annual report. The group will focus on the Clinton Administration investment program and the Council's recent recommendations. The Council will also consider additional business as suggested by its members.

Dated: June 28, 1993.

Dr. C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 93–15584 Filed 7–6–93; 8:45 am]

BILLING CODE 6820–11–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 6, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., Room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 30, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Policy and Planning

Type of Review: NEW

Title: Evaluation of Drug-Free Schools and Communities Act (DFSCA) Regional Centers

Frequency: One time

Affected Public: State or local governments; non-profit institutions

Reporting Burden:

Responses: 1,669

Burden Hours: 1,669

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: Mail and telephone surveys and in-depth in-person interviews are needed to collect data from state government staff to evaluate the services of the five Regional Centers authorized and funded by the Drug-Free Schools and Communities Act. The Department will use the information for a descriptive study of the services and administration of the Regional Centers for purpose of program improvement.

[FR Doc. 93–15916 Filed 7–6–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–438–000, et al.]

Arizona Public Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 29, 1993.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER93–438–000]

Take notice that on June 10, 1993, Arizona Public Service Company (Arizona) tendered for filing an amendment to its March 10, 1993 filing in this docket.

Comment date: July 13, 1993, in accordance with Standard Paragraph E end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER93–674–000]

Take notice that on June 14, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its May 27, 1993 filing in this docket.

Comment date: July 12, 1993, in accordance with Standard Paragraph E at the and of this notice.

3. Montaup Electric Company

[Docket No. ER93–647–000]

Take notice that on May 28, 1993, Montaup Electric Company tendered for filing additional information to its original filing filed in this docket on May 14, 1993.

Comment date: July 13, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. ER93–478–000]

Take notice that on May 24, 1993, Puget Sound Power & Light Company tendered for filing an amendment to its original filing filed in this docket on March 24, 1993.

Comment date: July 13, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa-Illinois Gas and Electric Company

[Docket No. ER93–614–000]

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing on June 22, 1993, revised tariff sheets as an amendment to its proposed change in its rate schedule for third party purchase and resale transactions pursuant to Commission

VOL 58 ISS 128 JL 7 1993 UMI

Order No. 84. The revised tariff sheets have been designated as:

Iowa-Illinois Gas and Electric Company
FERC Order No. 84 Rate Schedule
2nd Revised Sheet No. 1
Canceling 1st Revised Sheet No. 1

The rate schedule is applicable to third party purchase and resale of electric power. The rate schedule change revises the quantifiable cost portion of the rate and explicitly states that the $1/MWh charge for difficult to quantify costs shall only apply to transactions of less the one year in duration.

Iowa-Illinois states that its reasons for proposing the rate schedule change are to reflect the increases and decreases in its quantifiable costs and to increase Iowa-Illinois' flexibility to effectively market power and energy and by permitting it to charge less than the full cost-supported rate. Iowa-Illinois further states that 2nd Revised Sheet No. 1 as amended reflects a lower rate for the quantifiable cost portion of the rate than was provided in 2nd Revised Sheet No. 1 as originally filed by Iowa-Illinois in this proceeding on April 20, 1993 and that this lower rate is acceptable to Staff.

Iowa-Illinois requests an effective date of July 1, 1993 and a waiver of the sixty (60) day notice requirement. Iowa-Illinois states that a waiver of the notice requirement is reasonable because notice of the original filing was given on May 7, 1993, an opportunity to intervene and protest has been give, that no protests were filed and 2nd Revised Sheet No. 1 as amended provides a lower rate than proposed by 2nd Revised Sheet No. 1 as originally filed which was the subject of the earlier notice.

Copies of the filing were served upon the Iowa-Illinois Utilities Board; Illinois Commerce Commission; City of Eldridge, Iowa; Illinois Municipal Electric Agency; Waverly (Iowa) Light and Power; City of Tipton, Iowa; Illinois Power Company; Commonwealth Edison Company; Geneseo (Illinois) Municipal Utilities; Union Electric Company; Interstate Power Company; Iowa Electric Light and Power Company' Midwest Power System; Inc.; Iowa Southern Utilities Company; Northern States Power Company; and City of Pella, Iowa.

Comment date: July 13, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15940 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act

June 30, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of technical conference and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this notice to request comments concerning whether it is appropriate to revise the Commission's present pricing policy for transmission services provided by public utilities under the Federal Power Act.

DATES: Written comments must be received by the Commission on or before September 7, 1993. Reply comments must be received no later than 30 days after the date that initial comments are due. Notice of the technical conference will be published in the **Federal Register** at a later date.

ADDRESSES: Send Comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: James H. Douglas, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: 202–208–2143, (legal issues).

Stephen J. Henderson, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: 202–208–0100, (technical issues).

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Agency Regulatory Commission (Commission) is initiating this proceeding to consider whether it is appropriate to revise the Commission's present pricing policy for transmission services provided by public utilities [1] under the Federal Power Act (FPA).

Attached to this notice is a discussion paper prepared by the Commission staff setting forth staff's preliminary observations on transmission pricing issues.[2]

Historically, the Commission has permitted public utilities providing firm transmission service over an integrated transmission grid to charge rates reflecting the rolled-in embedded cost of the integrated grid, including the rolled-in costs of any new facilities or upgrades which become part of the integrated grid.[3] The Commission has also historically designed firm (and non-

[1] 16 U.S.C. 842(e).

[2] The staff discussion paper is not being published in the **Federal Register**, but is available through the Commission's Public Reference Section.

[3] In certain circumstances, the Commission has permitted public utilities to charge rates reflecting a share of the savings based on the difference between the seller's incremental generation costs and the buyer's decremental generation costs. See Southern Company Services, Inc , 37 FERC ¶ 61,190 (1986).

firm) transmission rates on a "postage stamp" basis.[4]

As described more fully in the staff paper, the Commission has modified its historic, rolled-in embedded cost pricing policy in the last two years.[5] Under the revised policy, when a utility chooses to add new capacity to relieve a transmission constraint, the Commission allows the utility the option of charging the higher of an embedded cost rate (calculated to include the rolled-in costs of the added facilities) *or* a rate based on the incremental cost of expansion.[6] In situations in which a utility chooses not to add new capacity to relieve a transmission constraint, the Commission allows the utility the option of charging the higher of an embedded cost rate *or* a rate based on opportunity costs[7] capped at the incremental cost of expansion. The Commission also has made clear that, in addition to an embedded cost rate or an incremental cost rate, a utility may also charge for the costs associated with interconnecting a particular customer or building a radial line between the customer and the utility's transmission system when such a line is not integral to the utility's system.[8]

The Commission's revised pricing policy for firm transmission service has generated considerable controversy and debate in the electric utility industry. Various interest groups hold widely divergent views as to the appropriate pricing approach, *e.g.*, concerning distance sensitivity, parallel path and loop flow issues, and spot pricing.

There is also disagreement concerning the Commission's pricing policy for non-firm transmission service. Historically, the Commission has permitted non-firm transmission rates to reflect up to a 100% contribution to the fixed costs of providing the service, with the proviso that pricing must reflect the attributes of the service provided, *i.e.*, the degree of firmness.[9]

Given the dramatic changes which the electric industry has faced, and will face in the near term, there can be no dispute that transmission availability and pricing are among the most important policy issues the Commission will face in the coming decade. Such changes include: Increased reliance on market forces to meet power supply needs; new market entrants such as exempt wholesale generators; a significant number of utility mergers and combinations; more highly integrated operation of various power pools; and substantial bulk power trading among electric systems. In addition, many public utilities have filed, or are considering filing, open access transmission tariffs under section 205 of the FPA. Further, Congress has given the Commission new authority under the Energy Policy Act of 1992[10] to compel transmission service under certain circumstances if the Commission determines that such transmission is in the public interest and does not unreasonably impair reliability. As a result, transmission rate schedules will be filed pursuant to orders issued under amended FPA section 211. These open access tariffs and rate schedules will provide more opportunities for buyers and sellers to participate in larger geographic markets. These changes underscore the importance of ensuring that our transmission pricing policies promote efficiency, encourage access, and reflect a reasonable allocation of costs.

In these circumstances, the Commission believes that it is now appropriate to examine its present transmission pricing policy to determine if the present policy promotes or discourages efficiency and competition in the wholesale electric market. Accordingly, the Commission invites comments on, and will hold a technical conference on, whether the present pricing policy needs revision, and possible alternative pricing models.

Clearly, any transmission pricing model adopted by the Commission must meet the substantive standards contained in the FPA. Rates for transmission service under section 205 of the FPA must be just and reasonable and not unduly discriminatory or preferential. Rates for transmission service under section 211 of the FPA must meet the requirements of section 212(a) of the FPA, as added by the Energy Policy Act. Such rates must: (1) allow the transmitting utility to recover all the costs incurred in connection with the transmission services and necessary associated services including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities; (2) promote the economically efficient transmission and generation of electricity; (3) be just and reasonable, and not unduly discriminatory or preferential; and (4) ensure, to the extent practicable, that costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for service and not from a utility's existing wholesale, retail and transmission customers.

Whether the Commission ultimately decides to retain its present transmission pricing policy, or to adopt a new pricing policy, it will ensure that these substantive legal standards are met. The Commission also invites comments on the scope of the Commission's discretion on transmission pricing under section 212 of the FPA, and on whether the Commission should apply the same pricing under section 205 of the FPA as it applies under section 212.

The Commission invites comments on these issues and on the analyses presented in the attached staff paper, and encourages commenters to present their own suggestions concerning alternative transmission pricing models. The discussion paper is intended to initiate discussion and highlight the scope of this inquiry. It is not intended to limit the dialogue.[11]

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[4] Postage stamp rates are based on the theory that, when a utility provides transmission service, it uses its entire integrated transmission grid to provide the service. As such, postage stamp rates do not vary based on the length of transmission provided; in other words, it costs the same amount to move 1 MW of power 10 miles as it does to move it 100 miles.

[5] Northeast Utilities Service Company (Re Public Service, Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070 *reh'g denied*, Opinion No. 364–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing*, 59 FERC ¶ 61,089 (1992), *affirmed in part and remanded in part sub nom.* Northeast Utilities Service Company v. FERC, Nos. 92–1165, *et al.* (1st Cir. May 19, 1993) (*NU*); Pennsylvania Electric Company, 58 FERC ¶ 61,278, *reh'g denied and pricing policy clarified*, 60 FERC ¶ 61,034, *reh'g rejected*, 60 FERC ¶ 61,244 (1992), *appeal pending*, No. 92–1408 (D.C. Cir. filed Sept. 11, 1992) (*Penelec*).

[6] The First Circuit stated in *NU*:

> Under "rolled in" pricing principles, the upgrade costs would be rolled in with other company costs and charged to all ratepayers as part of [a utility's] general rate structure; while administratively simple, it ignores any concept of responsibility. Thus, incremental pricing principles look to hold parties responsible for their share of upgrade costs.

NU, supra, slip op. at 44 n.17, _____F.2d _____ (1st Cir. 1993).

[7] The Commission has stated that opportunity costs, "generally are incurred by a utility when the utility accommodates a third party's request for transmission service (*i.e.*, wheeling request) and thereby forgoes an opportunity to reduce its own costs, to the economic detriment of the utility's native load customers." *Penelec*, 58 FERC at 61,871.

[8] *See NU, slip op.* at 44, 45 n.18, _____F.2d _____(1st Cir. 1993); *Penelec*, 60 FERC at 61,129–2 n.49.

[9] New England Power Company, Opinion No. 335, 49 FERC ¶ 61,129 (1989), *reh'g denied*, Opinion No. 335–A, 50 FERC ¶ 61,151 (1990), *aff'd*, No. 90–1179 (D.C. Cir. Feb. 11, 1991) (unpublished).

[10] Pub. L. No. 102–486, 106 Stat. 2776 (1992).

[11] Some of the materials referenced in the discussion paper will be placed in the Commission's public files in this proceeding and will be available for inspection at the Commission's Public Reference Section, room 3408, 941 North

Continued

VOL 58 ISS 128 JL 7 1993 UMI

In undertaking this inquiry, the Commission recognizes that pricing is only one aspect of ensuring meaningful transmission access and fostering workable competition in the wholesale bulk power market. Other initiatives are currently being considered by the Commission or have already been undertaken.[12] Certain of these initiatives are a direct result of the Energy Policy Act. Others arise as side-issues which will require careful consideration. For example, the Commission will face issues such as what are the appropriate "non-price" terms and conditions of transmission service as well as what constitutes a "good faith" transmission request and reply. The Commission will also face issues regarding the provision of ancillary services, reliability concerns, and determinations of adequate transfer capability. In addition, the Commission recognizes that state regulatory commissions have substantial jurisdiction over transmission facilities. Indeed, transmission facilities are used predominantly to provide service to retail consumers and these facilities are included in retail rate base. Furthermore, most states have siting authority with regard to transmission construction. Consequently, many of the pricing reforms contemplated by this inquiry may implicate state/Federal jurisdictional issues.

We wish to assure commenters that we recognize the spectrum of transmission issues and that we fully intend to address all such issues, whether on a generic basis, or as part of our adjudicative function. Today, we nonetheless have purposefully limited the focus of this inquiry to technical issues related to transmission pricing and certain related legal questions.

II. Public Comment Procedures

The Commission invites all interested persons to submit an original and 14 copies of their written comments. Technical and policy comments on pricing should not exceed 50 pages in length. Comments on legal issues should be submitted in a separate document and should not exceed 25 pages in length. In addition, commenters should submit an executive summary of each set of comments, not to exceed five pages.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should not exceed 25 pages in length and should be submitted no later than 30 days after the date that initial comments are due. If reply comments address both technical/policy issues and legal issues, the comments must be divided into two separately labeled sections.

Persons with common interests or views are encouraged to submit joint comments. Commenters should double space their comments, provide a concise description identifying the commenter, and should reference Docket No. RM93–19–000. In addition, commenters should submit a copy of their comments on a 3½ inch diskette in ASCII II format. Initial comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, no later than September 7, 1993.

All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Section, room 3408, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

A technical conference to discuss transmission pricing issues will be scheduled on a date to be established after the Commission has had an opportunity to review the comments. The Commission invites interested persons to file requests to participate in the technical conference. Requests must be in writing and submitted to the Office of the Secretary no later than the date that comments are due. Persons with common interests or views are requested to file joint requests for participation, so that the Commission can accommodate the maximum number of participants. When the Commission issues a subsequent notice specifying the date, time and place for the technical conference (including format) and the persons who have been selected to participate.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15979 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

Capitol Street, NE., Washington, DC 20426, during regular business hours.

[12] Earlier this year, the Commission issued a final rule regarding certification of Exempt Wholesale Generators. [Order No. 550 FERC Statutes and Regulations ¶ 30,964; Order No. 55–C, FERC Statutes and Regulations ¶ 30,969 (1933)]. On March 30, 1993, the Commission issued a Notice of Proposed Rulemaking dealing with the transmission information requirements of section 213(b) of the FPA. [FERC Statutes and Regulations ¶ 32,493 (1993)]. The Commission has also requested public comment on the issue of Regional Transmission Groups based upon a consensus proposal which was not included in the Energy Policy Act. [61 FERC ¶ 61,232 (1992)].

[Project Nos. 2366–000 & 2367–000 Maine]

Maine Public Service Co.; Availability of Environmental Assessment

June 30, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the existing Aroostook River Hydroelectric Project located on the Aroostook River in Piscataquis and Arrostook Counties near the City of Caribou, Maine, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff analyzed the environmental effects of the project and concluded that approval of the project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment. This EA supersedes the EA for the Aroostook River Hydroelectric Project dated April 30, 1993.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15926 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–14–010]

Algonquin Gas Transmission Co.; Filing of Revised Tariff Sheets To Comply With Commission Order

June 30, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 24, 1993, filed revised tariff sheets to comply with the Commission's June 9, 1993 letter order in Docket No. RP93–14–000. Algonquin proposes that the Commission accept its revised alternate and primary tariff sheets effective May 1, 1993, and June 1, 1993, respectively.

Algonquin states that the alternate and primary tariff sheets listed on Appendix A and Appendix B to the filing, reflect the removal of certain facility costs identified in the June 9 letter order.

Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers

of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15931 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–35–000]

City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Filing

June 30, 1993.

Take notice that on June 22, 1993, the City of Cleveland, Ohio tendered for filing a Supplement to its Complaint filed against Cleveland Electric Illuminating Company in this docket on April 22, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before July 30, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15939 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–635–003]

Columbia Gas Transmission Corp.; Petition to Amend

June 30, 1993.

Take notice that on June 21, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed pursuant to section 7(c) of the Natural Gas Act, as amended, and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, to further amend the certificate of public convenience and necessity issued in Docket Nos. CP89–635–000 *et al.*, which authorized the construction and operation of certain natural gas facilities which was part of the ANR Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that on June 26, 1990, the Commission issued an order for the ANR Project, authorizing Columbia's facilities proposed in Docket No. CP89–635–000, *et al.* and on June 21, 1991, the Commission issued an order modifying certain aspects of its earlier order.[1] The orders authorized Columbia to construct and operate 17.5 miles of 20-inch and 24-inch pipeline, 16,790 horsepower of additional compressor facilities and make various modifications and additions to related facilities in order to provide certain services to Eagle Point Cogeneration Partnership (Eagle Point) and New England Power Company (NEP). This authorized construction would allow Columbia to transport 55,000 Dth/d from a receipt point between Columbia and ANR Pipeline Company (ANR) near Paulding, Ohio to a new point of delivery at West Deptford, New Jersey on behalf of Eagle Point and 60,790 Mdth/d to NEP through an existing interconnection with Algonquin Gas Transmission Company (Algonquin) at Hanover, New Jersey. Columbia states that certain facilities have been completed which provide sufficient capacity to permit delivery of 46,000 Dth/d on a firm basis to Eagle Point. The balance of Eagle Point's firm service (9,000 Dth/d) currently flows subject to interruption. Firm service for the balance of 9,000 Dth/d is dependent on the construction of the Rutledge Compressor Station in Harford County, Maryland. NEP's service is also dependent on the construction of Rutledge Compressor Station as well as the proposed Hellertown Compressor Station.

Columbia states that certain parties, collectively known as the Harford County Citizens Groups, opposed the siting of Columbia's Rutledge Compressor Station and sought review of the Commission's orders in the U.S. Court of Appeals for the District of Columbia Circuit.[2] These same parties also initiated a state appellate review proceeding in Maryland regarding a zoning aspect of the Rutledge Compressor Station. Columbia further states that due to the pendency of the federal and state court proceedings, construction of the Rutledge Compressor Station was delayed. Subsequently, Columbia and the Harford County Citizens Groups reached an agreement pursuant to a mediation program sponsored by the U.S. Court of Appeals for the District of Columbia Circuit. Under the agreement, the Rutledge Compressor Station design will be modified, subject to Commission approval, and the pending federal and state court proceedings will be dismissed.

Columbia proposes to amend its previously issued certificate to implement certain changes to the Rutledge Compressor Station design, as well as authorization for certain other facility related revisions and deletions as set forth below.

(1) With regard to the previously approved Rutledge Compressor Station in Harford County, Maryland, Columbia proposes to install three electric 4,000 HP compressor units, instead of three 3200 HP gas compressors. The electric units will be used to compress the same level of design day volumes as reflected in the original amended application.

(2) At previously approved Hellertown Compressor Station in Northhampton County, Pennsylvania, Columbia proposes to install two 920 HP compressor units, instead of two 600 HP compressor units. Upon review, it was determined that the needed design capacity could not be met with the 600 HP units.

(3) Subsequent to the issuance of the certificate in this proceeding, ANR completed unrelated construction of certain pipeline facilities in Lucas County, Ohio, which, in conjunction with a new interconnection being established between ANR and Columbia near Maumee, Ohio under blanket certificate authorization, will permit Columbia to receive a portion of the NEP volumes at the new interconnection and allow deletion of certain facilities authorized by the Commission's certificate orders in the

[1] See 51 FERC 61,359 and 55 FERC 61,481.

[2] *The Greater Fallston Association, Inc., et al.* v. *FERC*, Case No. 91–1398.

VOL 58 ISS 128 JL 7 1993 UMI

instant proceeding. Columbia proposes to delete construction of Paulding Compressor Station in Paulding County, Ohio; regulation at Greely Chapel Road, Allen County, Ohio; and other miscellaneous pipeline uprating in Allen and Hardin Counties, Ohio.

Columbia states that the total revised estimated cost of the proposed facilities is $56,357,000, and that the cost of the facilities associated with this project, that are completed and in service to date is approximately $18,526,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 21, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15936 Filed 7–6–93; 8.45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–227–002]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 30, 1993.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 25, 1993 certain new and revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective July 1, 1993.

ESNG states that the instant filing is being made to comply with the Commission's order issued on May 24, 1993 in this proceeding. Such order approved ESNG's Stipulation and Agreement filed on March 26, 1993, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. More specifically, the filing is submitted in accordance with Article VII and Article VIII of the Stipulation and Agreement.

Article VII provides for the filing of new tariff sheets to implement a Transportation Cost Adjustment Clause to become effective on the first day of the month following the date of such filing, i.e., July 1, 1993. Article VIII provides for ESNG filing revised tariff sheets to reflect its restated Base Tariff Rates, also to become effective on the first day of the month following the date of such filing, namely July 1, 1993.

ESNG states that the restated Base Tariff Rates, as filed herein, also reflect ESNG's most current purchased gas costs and Account 858 transportation costs as of its most recent Purchased Gas Adjustment (PGA) filing in Docket No. TF93–3–000 effective June 1, 1993, as approved by the Commission on June 2, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15937 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–14–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 30, 1993.

Take notice that on June 28, 1993, Granite State Gas Transmission, Inc. (Granite State) filed Original Sheet No. 28 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1993.

According to Granite State, its filing flows through to its customers costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin). Granite State further states that Algonquin's restructuring compliance filing in Docket No. RS92–28–000 has been accepted by the Commission effective June 1, 1993. Prior to restructuring, Granite State purchased a portion of its system gas supply from Algonguin under its Rate Schedule F–2 and F–3.

It is further stated that on May 28, 1993, in Docket No. RP93–126–000, Algonquin filed a limited Section 4 filing to recover from its former sales customers the projected balances in its Account Nos. 191 and 186 by direct billings. According to Granite State, on Original Sheet No. 28, it has allocated the direct billed costs to its customers on the same basis used by Algonquin in its direct billings to Granite State.

Granite State further states that copies of its filing were served on its customers and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15933 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–145–000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

June 30, 1993.

Take notice that on June 24, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, tendered for filing, pursuant to § 154.63 of the Commission's Regulations (18 CFR 154.63), the following revised tariff sheets to First Revised Volume No. 1–B of its FERC Gas Tariff:

First Revised Volume No. 1–B
Fourth Revised Sheet No. 66
Fifth Revised Sheet No. 66

K N states that these tariff sheets reflect requested changes in the monthly D2 billing demand volumes of Minnegasco, an existing wholesale customer. Specifically, K N proposes to reallocate Minnegasco's D2 demand volumes for the month of January between Minnegasco's delivery zones. In addition, K N proposes to increase the D2 demand volumes for Minnegasco's

delivery zones for the month of April and in total.

KN states that in order for Minnegasco to avoid certain overrun charges, KN requests that Fourth Revised Sheet No. 66 be made effective January 1, 1993 and that Fifth Revised Sheet No. 66 be made effective April 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15928 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–502–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

June 30, 1993.

Take notice that on June 21, 1993, Northern Natural Gas Company (Northern), 1400 Smith Street, Houston, Texas 77002 filed in Docket No. CP93–502–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade two existing delivery points to accommodate natural gas deliveries to Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples) pursuant to its blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Northern states that it requests authority to upgrade two existing delivery points to accommodate natural gas deliveries to Peoples to accommodate increased service to Robert Ferring (Broadview Trailer Court) in Dubuque County, Iowa and Adair, Iowa Town Border Station (TBS) in Guthrie County, Iowa to accommodate service under Northern's currently effective TF Rate Schedule. Northern indicates that the proposed estimated volumes to be delivered to Peoples/Robert Ferring is 123.0 Mcf/day and 21,546 Mcf on an annual basis with an estimated cost of $22,568 to upgrade the delivery point and to Peoples/Adair TBS is 960.0 Mcf/day and 97,522 Mcf on an annual basis with an estimated cost of $7,965 to upgrade the delivery point. Northern states that the additional natural gas volumes will be used for commercial and residential fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15934 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–104–022]

Texas Gas Transmission Corp.; Report of Refunds

June 30, 1993.

Take notice that on January 21, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report detailing refunds made to its customers on January 19, 1993, for the periods November 1, 1990 through November 27, 1990 and November 28, 1990 through October 31, 1992.

Texas Gas states that the refunds were made in accordance with provisions of Article I of the Stipulation and Agreement filed in Docket No. RP90–104.

Texas Gas states that copies of report were sent to each affected customer and the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15935 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–106–002]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 30, 1993.

Take notice that on June 25, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing certain tariff sheets listed on Appendix A to the filing, to reflect changes to its FERC Gas Tariff, Original Volume No. 1, and First Revised Volume No. 2–A.

Texas Gas states that this filing is being made to comply with Commission Order dated May 28, 1993, wherein Ordering Paragraph (D) of the May 28 Order directed Texas Gas to "file an impact study, minimization plan, and pro forma tariff sheets within 30 days * * *" regarding cost mitigation issues on the primary filing. Ordering Paragraph (E) stated that "Texas Gas shall file a lead-lag study," supplemental lead-lag data, and substitute tariff sheets. Finally, the Order also requested Texas Gas to file, executed contracts associated with the Transco expansion facilities before ruling on removal of the "at-risk" condition in that certificate.

Texas Gas states that copies of the filing are being mailed to all persons listed on the official service list in Docket No. RP93–106.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15927 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–61–002]

U–T Offshore System; Tariff Filing

June 30, 1993.

Take notice that on June 25, 1993, U–T Offshore System (U–TOS) tendered for filing certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are contained in Appendix A to the filing. The proposed effective date of the revised tariff sheets is July 1, 1993.

U–TOS states that the purpose of the instant filing is (1) to place into effect on July 1, 1993, upon conclusion of the suspension period in this proceeding, the rates filed herein on December 31, 1992, as adjusted to eliminate any costs associated with enhancing U–TOS' Electronic Bulletin Board, installing gas control and monitoring systems, and acquiring gas needed for system line pack, which costs were included in U–TOS' filed rates but which were not incurred by June 30, 1993, and (2) in compliance with Ordering Paragraph (B) of the Commission's January 28, 1993 order herein, to remove from U–TOS' tariff those provisions whereunder the Annual Charge Adjustment (ACA) has been collected by means of a surcharge.

U–TOS states that copies of the filing have been served on all affected shippers and other interested parties in Docket No. RP93–61.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15930 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–48–009]

Viking Gas Transmission Co.; Tariff Filing

June 30, 1993.

Take notice that on June 25, 1993, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective July 1, 1993:

First Revised 22nd Revised Sheet No. 6

Viking states that the purpose of this filing is to implement the "Interim Settlement Rates" established pursuant to the Stipulation and Agreement filed by Viking in the referenced docket and approved by the Commission in its May 6, 1993 Order Approving Settlement as Modified.

Viking states that copies of the filing is being served upon each party shown on the Commission's official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15925 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–4–43–001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 30, 1993.

Take notice that on June 25, 1993, Williams Natural Gas Company (Williams) tendered for filing as part of this FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with effective date of June 1, 1993:

Substitute Second Revised Fifteenth Revised Sheet No. 6
Substitute Second Revised Sixteenth Revised Sheet No. 6A
Substitute Second Revised Seventeenth Revised Sheet No. 9

Williams states that on June 15, 1993, it filed an out-of-cycle PGA in Docket No. TQ93–4–43–000 with a proposed effective date of June 1, 1993. Williams states that the Commission staff has recommended that the June 15 filing be restated as an interim PGA filing pursuant to Section 154.309 of the Commission's regulations. Williams states that the instant filing replaces Williams' June 15, 1993 filing.

Williams states that copies of the filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15932 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–516–000]

Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

June 30, 1993.

Take notice that on June 25, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP93–516–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to add a new meter and appurtenant facilities and to abandon 1,970 feet of transmission lateral pipeline by sale, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate a new meter station and related facilities, in Yellowstone County, Montana, to effectuate deliveries of gas to Montana-Dakota Utilities Co. (Montana-Dakota) for ultimate delivery to CENEX, an end-use customer connected to Montana-Dakota's system. Williston Basin states that the cost of the construction, which will be reimbursed by Montana-Dakota,

is $32,463. Williston Basin also proposes to abandon 1,970 feet of transmission lateral pipeline, by sale to Montana-Dakota. The facility is located between the proposed meter facilities and the existing meter station owned by Montana-Dakota which is used to meter deliveries to CENEX. Williston Basin states that there would be no impact on service provided by Williston Basin to Montana-Dakota or its end-use customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15938 Filed 7–6–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4675–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Small Industrial-Commercial-Institutional Steam Generating Units (Subpart Dc)–Reporting and Recordkeeping Requirements (EPA ICR No. 1564.03; OMB No. 2060–0202). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of small industrial-commercial-institutional steam generating units must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. Monitoring techniques vary by fuel type and unit size. Owners or operators of oil- and coal-fired steam generating units with heat input capacities of 10 to 100 million Btu/hr must monitor SO2 emissions and submit quarterly compliance reports. Monitoring of opacity and submission of quarterly excess emissions reports are required for coal-, wood-, and residual oil-fired units greater that 30 million Btu/hr heat input capacity. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1,276 hours per response for reporting, and 626 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Owners or operators of small industrial commercial-institutional steam generating units.

Estimated Number of Respondents: 319.

Estimated Number of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 229,674 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: June 30, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–15988 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL 4676–2]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, No. 217, 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I).

Today, EPA announces establishment of the New Source Review (NSR) Reform Subcommittee under the auspices of the CAAAC. The subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATES: Notice is hereby given that the NSR Reform Subcommittee will hold an open meeting on July 21–22, 1993 from 8 a.m. to 5 p.m. at the Omni Hotel, Durham, North Carolina. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

This meeting will address NSR issues related to best available control technology and Class I areas.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION: Concerning the NSR Reform Subcommittee or its

VOL 58 ISS 128 JL 7 1993 UMI

activities, please contact Mr. David Solomon, Designated Federal Official to the subcommittee at (919) 541–5375, telefax (919) 541–5509, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Management Division (MD–15), Research Triangle Park, North Carolina 27711.

The subcommittee will be consulted on environmental, technical, scientific, economic, policy, and guidance issues. Specifically, the responsibilities of the NSR Subcommittee include providing the Agency with advice on approaches for reforming the NSR rules in order to reduce the complexity, inflexibility and impediments to speedy review of the current systems, while at the same time maintaining the environmental goals and benefits embodied in the current approach (i.e., protecting and improving air quality and advances in control technologies).

The NSR Subcommittee is composed of 2 members of the CAAAC and 26 other members which were selected and appointed by the Assistant Administrator of the Office of Air and Radiation for a 2-year term. Members of the NSR Subcommittee were selected on the basis of their professional qualifications and diversity of perspectives which will enable them to provide sound advice and guidance to the Agency in reforming the NSR rules.

The NSR Subcommittee membership is a balanced representation from the following sectors: Business and industry, State and local governments, and nongovernmental and environmental groups. All members are appointed as representatives of non-Federal interests.

Meetings will be held approximately four times a year, as determined by the EPA co-chairperson. The meetings will be open to the public and will be announced in the **Federal Register**. The Designated Federal Officer will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Designated Federal Officer.

Dated: June 30, 1993.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 93–16019 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00355; FRL–4580–1]

Reregistration Eligibility Documents; Completion of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period of the draft reregistration eligibility decision documents for several chemical cases.

ADDRESSES: Copies of these REDs are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk; telephone no. (703) 487–4650. To obtain copies you must provide the publication number that has been assigned to the RED listed in the table below.

FOR FURTHER INFORMATION CONTACT: Ruby Whiters, Accelerated Reregistration Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Crystal Station 1, WF34N4, 2800 Crystal Drive, Arlington, VA. By telephone: 1–800–552–8879.

SUPPLEMENTARY INFORMATION: During fiscal years 1991 and 1992, EPA published Notices in the **Federal Register** announcing the availability of Reregistration Eligibility Documents for the listed pesticide active ingredients. These REDs were issued as draft documents, with initiation of a 60–day comment period. In these REDS, EPA provided its regulatory position on the current registered uses of these pesticides and set forth certain requirements for product reregistration eligibility. There were no comments for the REDs cited below.

Therefore, the Agency, by this Notice, considers these documents final decisions on the reregistration eligibility of the pesticides listed in the following table.

Chemical Name	Case Number	RED Date	RED NTIS Number
Alkyl Amine Hydrochloride	3051	8/92	PB92–220219
Capsaicin	4018	6/92	PB93–101434
Carbon & Carbon Dioxide	4019	9/91	PB92–161926
Citric Acid	4024	6/92	PB92–221829
Dried Blood	4030	9/91	PB92–161942
Ethylene	3071	9/92	PB93–100337
Fosetyl-Al (Aliette)	0646	12/90	PB92–114339
Heliothis NPV	0151	1/91	PB92–111863
Indole-3-butyric acid	2330	8/92	PB92–221969
Inorganic Nitrate/Nitrite	4052	1/91	PB92–161975
Methoprene	0030	3/91	PB92–111855
Potassium Bromide	0342	6/91	PB92–114362
Putrescent Whole Egg Solids	4079	8/92	PB92–220227
Silica Gel	4081	9/91	PB92–161900
Sodium Diacetate	4001	9/91	PB92–161934
Sodium Hydroxide	4065	9/92	PB93–124691
Streptomycin/Sulfate	0169	9/92	PB93–100386

Dated: June 25, 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–15875 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–577; FRL–4631–6]

Ciba-Geigy Corp.; Amended Pesticide Petition for Propiconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Ciba-Geigy Corp. the filing of an amendment to pesticide petition (PP) 8F3674 proposing to establish tolerances for residues of the fungicide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound) as follows: in or on the raw agricultural commodities corn fodder and corn forage at 12.0 parts per million (ppm), corn grain at 0.1 ppm, sweet corn (kernels plus cobs with husks removed) at 0.1 ppm, pineapples at 0.1 ppm, and pineapple fodder at 0.1 ppm.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-577], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Product Manager (PM 21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA has received from the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 8F3674, which appeared in the **Federal Register** of October 12, 1988 (53 FR 39783). The original petition proposed to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the commodities celery at 5.0 ppm, corn fodder and corn forage at 10 ppm, corn grain at 0.1 ppm, sweet corn (kernels plus cobs with husks removed) at 0.1 ppm, pineapples at 0.1 ppm, pineapple fodder at 0.1 ppm, legume vegetables (succulent or dried) at 0.5 ppm, and legume vegetables foliage at 5.0 ppm.

Ciba-Geigy has amended the petition to propose amending 40 CFR 180.434 by establishing a regulation to permit the residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as dichlorobenzoic acid and expressed as parent compound, in or on corn forage at 12.0 parts per million (ppm), corn fodder at 12.0 ppm, corn grain at 0.1 ppm, sweet corn (kernels plus cobs with husks removed) at 0.1 ppm, pineapples at 0.1 ppm, and pineapple fodder at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography.

In previous amendments to the cited pesticide petition, requested by Ciba-Geigy, celery was separated out and is the subject of its own petition, and legumes were withdrawn altogether.

Authority: 7 U.S.C. 346a and 371.

Dated: June 24, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–15985; Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50766; FRL–4631–7]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Stag's Leap Wine Cellars a notification of intent to conduct small-scale field testing on grape vines in California of a strain of *Trichoderma viride* being imported from New Zealand.

DATES: Comments must be received on or before July 21, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Stag's Leap Wine Cellars, 5766 Silverado Trail, Napa, CA 94558. The purpose of the proposed testing is to evaluate the efficacy of a

nonindigenous strain of *Trichoderma viride* being imported from New Zealand for the control of *Eutypa* die-back of grape vines. The proposed field tests would be conducted in California on a total area of less than 10 acres.

Dated: June 24, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–15984 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–40–F

FARM CREDIT ADMINISTRATION

[BM–10–JUN–93–03]

Policy Statement Concerning Out-of-Territory Financially Related Services

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: On June 10, 1993, the Farm Credit Administration Board (Board) adopted a policy statement concerning out-of-territory financially related services. The FCA Board interprets section 1.12 of the Farm Credit Act of 1971, as amended, to authorize the offering of financially related services outside of formally chartered territories. This interpretation will provide consistent authorities to Farm Credit institutions for the lending and financially related services functions.

EFFECTIVE DATE: June 10, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement concerning out-of-territory financially related services is set forth below in its entirety:

Board Action Item Policy Statement—FCA Board Action on Policy Statement Concerning Out-of-Territory Financially Related Services

BM–10–JUN–93–03

FCA–PS–##

Effective Date: Upon adoption.

Effect on Previous Action: None; see also December 1983 Federal Farm Credit Board Policy on Financially Related Services.

Source of Authority: Section 1.12 of the Farm Credit Act of 1971 (Act), as amended, 12 U.S.C. 2020; section 5.17(a) of the Act, 12 U.S.C. 2252; 12 CFR 618.8000.

Whereas, Farm Credit institutions are endeavoring to expand customer bases and the financially related services (FRS) that may be offered to them. Certain institutions may have the resources to develop an expertise and an experienced staff in providing FRS that other institutions may not have the capability or desire to develop and provide;

Whereas, the Farm Credit Administration (FCA) has the authority to modify territories and boundaries of Farm Credit districts with the concurrence of the district banks involved and the authority to establish regulations governing financially related services;

Whereas, in 1972, the FCA enacted regulations authorizing out-of-territory lending, subject to the concurrence of the other institutions providing similar credit in the location. Despite adopting numerous amendments to the Act since 1972, Congress has not taken action that restricts FCA's interpretation of its authorities to enact regulations governing out-of-territory activities.

Therefore, the FCA Board Hereby Adopts the Following Statement of Policy:

The FCA Board hereby interprets section 1.12 of the Farm Credit Act of 1971, as amended, to authorize the offering of financially related services outside of formally chartered territories. This interpretation will provide consistent authorities to Farm Credit institutions for the lending and financially related services functions.

Out-of-territory financially related services programs are subject to the following conditions, which will be included in the FCA's approval of any financially related services policy submitted to authorize out-of-territory activities:

(1) Out-of-territory financially related services must be authorized in bank financially related services policies, which require approval from FCA;

(2) Financially related services provided within an institution's chartered territory should remain the primary component of the institution's services;

(3) The institution desiring to provide financially related services outside its chartered territory must obtain the concurrence of all institutions chartered to serve the territory in which the services will be provided; and

(4) Banks in both the providing and receiving districts will continue to be required to fulfill their responsibilities in 12 CFR 618.8000, which include coordinating, monitoring, and reporting requirements. For example, 12 CFR 618.8000(b)(3) requires that the receiving district of an out-of-territory service provide the service through a single program, or, at a minimum, through common programs within a district.

Dated this 10th day of June, 1993.

By Order of the Board.

Dated: June 30, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–15892 Filed 7–6–93; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 29, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0448

Title: Section 63.07, Special procedures for non-dominant domestic common carriers

Action: Extension of a currently approved collection

Respondents: Business or other for-profit

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 100 responses; 1 hour average burden per response; 100 hours total annual burden

Needs and Uses: Where a communications facility may have a significant effect on the environment, the Commission rules implement federally mandated laws by requiring that applicants and licensees submit environmental and undergo environmental processing. Section 63.07 of the Commission's rules, subjects domestic, non-dominant, facilities-based common carriers to the same requirements as all other FCC-regulated entities. Specifically, a carrier is required to ascertain

whether its facility may have a significant environmental effect, and if so, the carrier must submit an environmental assessment and await the completion of environmental review prior to commencing construction. Where the circumstances warrant the filing of an environmental assessment, the information contained therein, 47 CFR 1.1311, would be reviewed by attorneys, engineers and paraprofessionals to determine whether the environmental assessment is sufficiently complete and in compliance with the Commission's rules to be acceptable for filing. The Commission would also solicit the views of other agencies with relevant expertise and review their comments in conjunction with the environmental assessment to determine whether the facility will have a significant environmental effect. The staff then would inform the carrier of its findings, and the carrier would have the opportunity to "reduce, minimize or eliminate" the environmental problems. If the environmental problem remains, the agency would prepare Environmental Impact Statements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15907 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal Application Designated for Hearing

1. The Commission has before it the following application for renewal of license:

Applicant	City/state	File No.	MM docket No.
Richard Richards	Sierra Vista, AZ	BRTTL–9211161G	93–176

(Seeking a renewal of the license of Station K33CG (LPTV))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine, in light of Richard Richards' conviction for violating title 21, United States Code, sections 841(a)(1), 841(b)(1)(D) and 841(b)(5), whether Richards possesses the requisite qualifications to be the licensee of station K33CG.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the grant of the application to renew the license of station K33CG will serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission

William Caton,

Acting Secretary.

[FR Doc. 93–15906 Filed 7–6–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; San Francisco Port Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004070–009.

Title: Port of San Francisco/Stevedoring Services, of America Terminal Agreement.

Parties: San Francisco Port Commission, Stevedoring Services of America.

Synopsis: The amendment extends the term of the Agreement through August 31, 1993.

Agreement No.: 224–200126–003.

Title: Port of San Francisco/Blue Star Line/Columbus, Lines Terminal Revenue Sharing Agreement.

Parties: San Francisco Port Commission, Blue Star Line, Columbus Lines, Inc.

Synopsis: The amendment extends the term of the Agreement through August 31, 1993.

Dated: June 30, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15909 Filed 7–6–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Pellkirk Services, Inc., 631 E. Dania Beach Blvd., Dania, FL 33004, Officer: Shirley Kirano, President/Director.

Beatriz Caputo, 53 Regis Drive, Staten Island, NY 10314, Sole Proprietor.

Sea Bridge International, Ltd., 80 Lafayette Street, Copiague, NY 11726, Officer: Theodore Mikucki, President.

J.M.C. Cargo Services, Inc., 4575 S.W. 128th Ave., Miami, FL 33175, Officer: Fernando J. Ruiz, Pres./V. Pres./Secre.

Fashion Distribution Services, Inc., 148–08 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Anthony Turrigiano, President/Exec. V. Pres., Gabriele Gaetani, Director, Filippo Occaso, Secre./Treas./V. Pres. Admin., James Tortorella, Vice President.

T.H. Kelly International Inc., 813 Grandview Dr., So. San Francisco, CA 94080, Officers: Dean Huang, General Manager, Teddy Tam, Stockholder.

Pacific King, 802 E. Francis Ave., La Habra, CA 90631, Jorge H. Vasquez, Sole Proprietor.

Due International, Inc., 19300 South Hamilton Ave., Ste. 220, Gardena, CA 90248, Officers: Keisuke Yoshitome, Director, Takeshi Sekibe, President, Tatsarin Linpisal, Vice President,

Etsuko Nakamura, Asst. Vice President, Michael Lublinski, Secretary.

Dated: June 30, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-15908 Filed 7-6-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0804]

Consolidation of Purchases and Sales Service at Federal Reserve Bank of Chicago

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board requests comment on a proposal by the Federal Reserve Banks to consolidate the priced secondary market purchases and sales of securities service, which is currently provided by eight Reserve Banks, at the Federal Reserve Bank of Chicago. The Reserve Banks propose consolidation at the Chicago Reserve Bank to improve efficiency and contain the costs of providing this service to depository institutions nationwide. The service will be included as a part of the Federal Reserve's priced book-entry securities service, beginning January 1, 1994.

DATES: Comments must be submitted on or before August 6, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0804, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected on room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Charles W. Bennett, Assistant Director (202/452-3442), Gerald D. Manypenny, Manager (202/452-3954), or Michael L. Bermudez, Financial Services Analyst (202/452-2216), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The purchases and sales service consists of the secondary market purchase or sale of U.S. Government securities, which are eligible to be held in Federal Reserve book-entry. Purchases and sales are conducted for institutions' own securities as well as for those of customers. Prior to the passage of the Monetary Control Act of 1980, eleven Reserve Banks[1] offered the service to member banks. Generally, smaller depository institutions with no direct relationship with a securities broker or dealer have relied upon Reserve Banks. With the increased acceptance of book entry and the declining availability of Federal agency securities in definitive form, the requests for purchases and sales evolved from the purchase and sale of definitive securities to primarily book-entry securities. Demand for purchases and sales has declined steadily over the past few years, from 74,000 transactions in 1980 to 18,400 transactions in 1992. The service is currently offered by eight Reserve Banks; these are Boston, Philadelphia, Cleveland, Richmond, Chicago, Minneapolis, Kansas City, and Dallas with the Chicago Reserve Bank processing more than half of the System's annual volume.

Consolidation of the purchases and sales service provides an opportunity to reduce cost with little, if any, impact on the level of service offered to depository institutions. All seven Reserve Banks now offering the service are expected to consolidate by the end of 1994. Two Banks (Cleveland and Kansas City) have asked to consolidate as early as possible.

The Chicago Reserve Bank is prepared to support a consolidated purchases and sales operation at Chicago. A toll-free telephone number would be available nationwide for depository institutions to initiate transactions with the Chicago Reserve Bank. A depository institution's representative, with proper authorization on file with the Chicago Reserve Bank, would initiate orders to purchase or sell securities by telephoning the Chicago Reserve Bank on the recorded toll-free line. After determining that an order to *sell* securities is authentic, the Chicago Reserve Bank would confirm that the securities are held in book-entry form at a Federal Reserve Bank;[2] a minimum of two dealers would be contacted if the transaction is an odd lot; and a minimum of five dealers would be contacted for round-lot transactions. The dealer submitting the best price (bid) generally would be given the order.[3] Orders for the *purchase* of securities for depository institutions also would be received via recorded telephone line and verified for authenticity.[4] Like-securities issues (by CUSIP number) would be combined by Chicago, whenever possible, to obtain the best price. For purchases, the dealer submitting the best price (offer) generally would be given the order.

The Monetary Control Act of 1980 requires that the Federal Reserve price its services to depository institutions to recover the costs incurred in providing those services. Based on the analysis which follows, consolidation of the handling of purchases and sales transactions will provide scale economies and other efficiencies not available at eight separate locations.

The Board, after soliciting public comment, approved in October 1992, a set of factors to be used in its analysis of Reserve Bank requests to withdraw from a priced service line. The Board applied these factors in determining whether the System should withdraw from the definitive safekeeping service, which consists of the definitive securities safekeeping service and the purchases and sales service. Also, after soliciting public comment, the Board, in October 1992, approved the request by the Reserve Banks to withdraw from the definitive safekeeping service line by

[1] In 1980, the eleven Reserve Banks offering the purchases and sales service were Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, Minneapolis, Kansas City, Dallas, and San Francisco. However in some districts, such as San Francisco, demand for the service disappeared following the implementation of service pricing.

[2] When depository institutions located outside of the Chicago Head Office region wish to sell securities, Chicago would request that the institution selling the securities or the Reserve Bank holding the book-entry account for the requesting depository institution transfer the securities to Chicago, thus reducing the book-entry holdings at the sending Reserve Bank and increasing the book-entry holdings at Chicago. The offsetting payment is settled through the Inter-District Settlement Fund on settlement day.

[3] Settlement of transactions in United States Treasury or Agency securities of $100,000 or more normally occurs on the business day following the date of execution of the order. Upon request, if an order is received before 11:00 a.m. (Central Time), the Chicago Reserve Bank endeavors to execute the orders for settlement on the same day as the orders are placed.

[4] Purchases for $500,000 or more are authenticated by telephoning another authorized person of the requesting depository institution other than the original caller.

the end of 1993. Secondary market purchase and sale of securities would continue to be offered, but would no longer be included under the definitive safekeeping service line after 1993.

With the declining volume and consequent prospects for cost recovery, the Federal Reserve Banks have requested approval to consolidate the purchases and sales service at the Chicago Reserve Bank. To ensure that appropriate consideration is given to any public policy issues arising from a proposal to consolidate a priced service across district lines, the Board adopted the following factors to be considered when evaluating proposals to consolidate Reserve Bank priced services across district lines. This proposal has been evaluated against those factors as follows:

A. Maintenance or improvement of cost recovery in a service.

The total savings to the System once consolidation is completed will be at least $100,000 per year, primarily as a result of staff reductions.

B. Improvement of the efficiency of Federal Reserve Bank operations.

The Chicago Reserve Bank has the most automated purchases and sales operation and currently has excess capacity. As a result, it will be able to absorb the System's entire volume without increasing staff.

C. Maintenance or improvement of the level or quality of service.

Through consolidation, the level and quality of service are expected to improve. The Chicago Reserve Bank's purchases and sales staff monitors the secondary securities market electronically throughout the day and times its trades according to the movement in that market in order to obtain the best price for the depository institution. Also, because of its level of volume, the Chicago Reserve Bank has more opportunities to combine small trades in order to obtain a better price and to reduce the amount of the broker's fee that must be passed on to the depository institutions; with more volume, the opportunities to combine trades is likely to increase.

D. Responsiveness to changes in the financial-services industry.

The Chicago Reserve Bank's level of automation and market monitoring make it more consistent with and more flexible in responding to changes in the industry.

E. Effect on private-sector providers of the service.

Given the small volume processed by all the Federal Reserve Banks, consolidation is expected to have no measurable impact on private-sector providers of this service.

F. Effect on users of the service.

As indicated in the comments under Factors a. through d., depository institutions will receive an improved level of service, usually at the same or a lower fee. Also, consolidation will enhance on-going cost containment efforts, thereby delaying or reducing possible future fee increases. The depository institutions will be dealing with employees of a different Federal Reserve Bank, but transactions and accounting entries from the depository institutions side will be handled in generally the same manner as before consolidation.

The Board requests comment on the Federal Reserve Banks' proposal to consolidate the purchases and sales service at the Federal Reserve Bank of Chicago. While comments in general are welcome, it would be helpful to the Board in considering this proposal to receive comments that respond to each of the factors.

Board of Governors of the Federal Reserve System, June 30, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–15956 Filed 7–6–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Funds: Cooperative Agreements for Managed Care Demonstration Models for SSI Beneficiaries Disabled Due to Addiction to Alcohol and Other Drugs

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on June 7, 1993, Volume 58, No. 107 that the Center for Substance Abuse Treatment, in cooperation with the Social Security Administration, is soliciting State applications for model programs designed for the referral and monitoring of Supplemental Security Income (SSI) recipients disabled due to drug addiction or alcoholism.

On page 31971, under the ELIGIBILITY section, the exclusion of New York City was an error. The list of eligible states should be corrected to read New York. The parentheses excluding New York City should be deleted.

Dated: June 30, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–15894 Filed 7–6–93; 8:45 am]

BILLING CODE 4162–20–M

Centers for Disease Control and Prevention

[Program Announcement Number 332]

1993 Capacity Building for Core Components of Tobacco Prevention and Control Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for new competing cooperative agreements to improve or initiate state-based tobacco-control programs. Cooperative agreements will be awarded in two priority areas: (A) Core Capacity and (B) Planning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Tobacco, with emphasis on targeted populations specified in risk reduction objective 3.4 and reducing the initiation of smoking by children and youth as described in Objective 3.5. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under Section 301(a) (42 U.S.C. 241(a)) and 317(k) (42 U.S.C. 247b(k)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. The following states are not eligible applicants: Colorado, Indiana, Maine,

VOL
58
ISS
128
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Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Rhode Island, South Carolina, North Carolina, Virginia, Washington, West Virginia, and Wisconsin. The excluded states are currently funded for activities similar to those cited in this program announcement by the National Cancer Institute under the American Stop Smoking Intervention Study (ASSIST) demonstration program. The ASSIST program provides for support for the demonstration of state-of-the-art tobacco control activities at the state health agency level. As a result, those states currently funded by ASSIST have established many of the components of this programmatic announcement. CDC intends to support full and open competition among the states at the termination of the ASSIST demonstration period.

Availability of Funds

Approximately $3 million is available in FY 1993 to fund programs under this announcement.

1. Approximately $2,500,000 is available to fund approximately 10 awards for core capacity programs. It is expected that the average award will be $250,000 ranging from $150,000 to $300,000.

2. Approximately $500,000 is available to fund approximately 8 awards for planning programs. It is expected that the average planning award will be $65,000 ranging from $50,000 to $100,000.

Awards are expected to begin on or about September 30, 1993, and will be funded for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

At the request of the applicant, Federal personnel may be assigned to a program in lieu of a portion of the financial assistance. Federal funds awarded under this program announcement may not be used to supplant state or local funds.

Purpose

The purpose of this program is to support state health departments for one of two priority areas:

1. Core capacity awards to supplement existing tobacco-control efforts and provide assistance in the development of the essential components of a comprehensive public health tobacco-control program, or

2. Planning awards for initial development of infrastructure in preparation for carrying out a tobacco-control program.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below.

A. Recipient Activities

1. Establish a state level tobacco control coalition that includes representation from key private, professional, voluntary and nonprofit tobacco-control organizations, legislators, consumers, departments of education, youth and other high risk groups and communities, local tobacco control leaders, and constituents such as business, insurance, labor and community leaders. Activities of the network should include determining tobacco control intervention needs and identifying effective programs to be implemented at the local level; information collection and dissemination; providing assistance to and networking at the local, region, and national levels; planning and participation in regional conferences; and collaborate with and use existing statewide 800 toll-free information lines. When appropriate 800 toll-free information lines are not available or they are inadequate, funding should be requested to establish 800 toll-free information lines.

2. Develop or improve a state tobacco-control plan that addresses the Healthy People 2000 tobacco-control objectives and describes:

(a) Goals and objectives to address tobacco control issues within the state.

(b) Proposed strategies to meet the objectives. These strategies are described in the document Strategies To Control Tobacco Use in the United States: A blueprint for public health action in the 1990's, Smoking and Tobacco Control Monographs 1 (For ordering a copy of Strategies to Control Tobacco Use in the United States see the section entitled Where to Obtain Additional Information.)

(c) An assessment of existing and needed resources to develop the comprehensive tobacco-control program.

3. Develop and carry out a state-based surveillance system to monitor changes in disease burden and programmatic impact compatible with ongoing CDC surveillance activities, such as the Behavioral Risk Factor Surveillance System (BRFSS), Youth Risk Behavior Survey (YRBS), Pregnancy Risk Assessment Monitoring System (PRAMS), and any available data within the state, to include hospital discharge data. As a part of these surveillance activities, states could choose to monitor the enforcement of minor access laws. Findings of these surveillance systems should be disseminated statewide.

4. In coordination with CDC, develop an evaluation plan to assess program performance that includes formative and process evaluation.

5. Provide assistance and guidance to the local level for staff support, development, and training. Emphasis should be placed on the delivery of established, effective intervention models with the state providing assistance in the identification and implementation of such activities at the local level.

6. Develop and implement a plan to establish a state-based resource center that will provide information on effective tobacco-control strategies and interventions and a comprehensive public health information and education program based on an assessment of the strategies for successful tobacco-control activities.

7. In coordination with CDC cooperate in conducting national tobacco-control campaigns.

B. CDC Activities

1. Convene meetings for training and sharing information among representatives of states that receive awards.

2. Disseminate to state health departments relevant state-of-the-art research findings and public health recommendations related to tobacco control.

3. Collaborate with recipients in planning, conducting, and evaluating strategies in the project's tobacco-control plan.

4. Collaborate with recipients to develop a surveillance system for the tobacco-control program.

5. Collaborate with recipients to analyze and disseminate outcome and evaluation results for integration into ongoing program activities.

6. Provide guidance in the development and establishment of specific morbidity and mortality reduction objectives.

7. Provide program guidance in the development of intervention strategies for tobacco-control programs.

8. Facilitate exchange of information and strategies for intervention from the national, state, and local level including public and private sector activities.

9. Identify and develop national campaigns and materials for use by the states.

10. At the request of the applicant, assign Federal personnel to a project in lieu of a portion of the financial assistance to assist with program management, training, or other specific activities necessary to carry out the purposes of this program.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Background and Need (20 Points)
The extent to which the applicant demonstrates need and identifies barriers/gaps to proposed activities.

B. Goals and Objectives (15 Points)
The extent to which the goals and objectives are specific, measurable, realistic, and timely, and support the objectives of Healthy People 2000.

C. Tobacco Control Plan (20 Points—Core; 10 Points—Planning)
The extent to which the existing or proposed plan demonstrates commitment and the ability to conduct a tobacco-control program consistent with their stated objectives and the objectives of Healthy People 2000.

D. Coordination and Collaboration (10 Points—Core; 20 Points—Planning)
The extent to which the applicant demonstrates the ability to assure community and professional support and involvement, to use available resources, and ensure coalition participation in the development of tobacco-control program strategies.

E. Information and Education Resources (15 Points)
The extent to which the applicant indicates it will share materials, information, and successful interventions with CDC and other collaborative agencies.

F. Surveillance System (10 Points)
The quality of the surveillance plan and its ability to collect relevant data, and target and evaluate program activities.

G. Evaluation Plan (10 Points)
The extent to which the plan presents a reasonable methodology for obtaining data, measuring program effectiveness, reporting results, and using the results for programmatic decision making.

H. Budget (Not Weighted)
The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not Weighted)

Funding Priority

Funding priority will be given to those states in which the State Health Agency expended $1,000,000 or less in FY 1989 for tobacco control activities as reported in the manual entitled: "Reducing the Burden of Chronic Disease: Needs of the States," October 1991, published by the Public Health Foundation. (A copy of the relevant material will be included with the application kit.)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Atlanta, Georgia 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement cited in PHS Circular 92.01.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 8, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, telephone (404) 842–6803. Programmatic technical assistance may be obtained from Corinne R. Meltzer, M.P.H., State Activities Program, Office of Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–50, Atlanta, Georgia 30341, telephone (404) 488–5707.

Please refer to Announcement Number 332 when requesting information and submitting an application.

Potential Applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) as referenced in the Introduction, and as referenced in the Recipient Activities

VOL
58
ISS
128
JL
7
1993
UMI

section, copies of Strategies To Control Tobacco Use in the United States: a blueprint for public health action in the 1990's, Smoking and Tobacco Control Monographs 1, (NIH Publication No. 92–3316), through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 30, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–15947 Filed 7–6–93; 8:45 am]

BILLING CODE 4160–18–P

Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Idaho Community Forum for the Department of Health and Human Services' (HHS) Energy-Related Health Research.

Time and Date: 6 p.m.–9 p.m., July 19, 1993.

Place: Blackfoot City Hall, 157 North Broadway, Second Floor Council Chambers, Blackfoot, Idaho 83221.

Status: Open to the public, limited only by space available.

Purpose: To discuss a draft plan for the Idaho Community Forum for HHS energy-related health research.

Matters To Be Discussed: The meeting will be lead by CDC staff who will begin the meeting with background information on HHS activities at the Idaho National Engineering Laboratory and a presentation of a community involvement plan. From 7 p.m.–9 p.m. the meeting will be open for public comments and discussion of the community involvement plan.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Leeann Denham, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: July 1, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16073 Filed 7–6–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Committee on Food Chemicals Codex, Institute of Medicine, National Academy of Sciences; Notice of Open Workshop on Analytical Methods for Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Institute of Medicine's Committee on Food Chemicals Codex will hold an open workshop on Analytical Methods for Food Ingredients. The workshop will be held in conjunction with the Association of Official Analytical Chemists International 107th Annual Meeting.

DATES: The workshop will be held on Thursday, July 29, 1993, 2 p.m. to 5 p.m., and Friday, July 30, 1993, 9 a.m. to 12 p.m. The workshop is open to the public. No registration is required.

ADDRESSES: The workshop will be held at the Ramada Renaissance Hotel, 999 Ninth St. NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580, or Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9537.

SUPPLEMENTARY INFORMATION: As the committee prepares a new fourth edition of the Food Chemicals Codex, it recognizes the need to explore the state-of-the-art methodologies that are being used by industry and to discuss whether these methodologies are applicable for routine compliance and quality monitoring of food chemicals. Specifically, the committee will examine the determination/quantitation of trace element impurities and organic volatile and nonvolatile impurities to ensure the safety and high quality of food chemicals. Food Chemicals Codex specifications, FDA regulations, and efforts at international harmonization will also be addressed. Each half-day session will feature six speakers and a panel discussion.

Dated: June 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15895 Filed 7–6–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552(b)(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Collaborative Projects (R01) on Minority Health (Pulmonary)

Dates of Meeting: July 18–19, 1993

Time of Meeting: 8 p.m.

Place of Meeting: Ramada Inn, Bethesda, Maryland

Agenda: To review and evaluate grant applications.

Contact Person: Carl A. Ohata, Ph.D., 5332 Westbard Avenue, room 5A09, Bethesda, Maryland 20892. (301) 594–7483

Name of Panel: NHLBI SEP on Collaborative Projects (R01) on Minority Health (Cardiovascular Diseases)

Dates of Meeting: July 19–20, 1993

Time of Meeting: 7:30 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland

Agenda: To review and evaluate grant applications.

Contact Person: Anthony M. Coelho, Ph.D., 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892. (301) 594–7485.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: June 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16002 Filed 7–6–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special

Commission on Breast Cancer, National Cancer Institute, July 21–22, 1993 at Hyatt Regency at Reston, 1800 President Street, Reston, Virginia 20090.

This meeting will be open to the public on July 21, 1993 from 8:30 a.m. to approximately 4 p.m. The topics will include public policy and legislative issues.

In accordance with provisions set forth in section 552b(c)(9)(B), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on July 21 from approximately 4 p.m. to recess and on July 22 from 8 a.m. to adjournment. The Commission needs to meet in closed session in order to evaluate the information obtained from previous open sessions, and to prepare a draft report formulating recommendations to be provided to the Director, NCI and the Chairman of the President's Cancer Panel. It is likely that premature disclosure of these findings and recommendations would significantly frustrate their implementation by the National Cancer Institute.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301/496–1148), in advance of the meeting.

Ms. Iris Schneider, Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31A, room 11A48, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5534) will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to conflict of schedules of committee members.

Date: June 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16003 Filed 7–6–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Joseph Kimm (301) 594–7257

Date of Meeting: July 21, 1993

Place of Meeting: Embassy Suites Hotel, Chevy Chase, MD

Time of Meeting: 9 a.m.

Scientific Review Administrator: Dr. Keith Murray (301) 594–7145

Date of Meeting: July 28–29, 1993

Place of Meeting: OMNI Georgetown Hotel, Washington, DC.

Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 93–16004 Filed 7–6–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4230–05–P; F–14909–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kuugpik Corporation, Inc. for approximately 23,038.51 acres. The lands involved are in the vicinity of Nuiqsut, Alaska.

Umiat Meridian, Alaska

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T. 10 N., R. 5 E.
T. 11 N., R. 5 E.
T. 12 N., R. 5 E.
T. 10 N., R. 6 E.
T. 11 N., R. 6 E.
T. 12 N., R. 6 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the North Slope Sentinal. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 6, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication

[FR Doc. 93–15948 Filed 7–6–93; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

Notice of Intent to Conduct a Public Meeting to Present Alternatives for the Master Plan/EIS for Bayou Sauvage National Wildlife Refuge in Orleans Parish, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to conduct a public meeting to present alternatives for the Master Plan/EIS for the 22,770-acre Bayou Sauvage National Wildlife Refuge in Orleans Parish, Louisiana. Alternatives will be for the physical facilities and programs in response to the purpose for which the refuge was established and project goals.

The purposes for which the refuge was established are:

VOL
58
ISS
128
JL
7
1993
UMI

(1) To enhance the population of migratory, shore, and wading birds;

(2) To encourage natural diversity of fish and wildlife species;

(3) To protect endangered and threatened species, and to provide for the conservation of fish and wildlife;

(4) To fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) To protect the archaeological resources;

(6) To provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and other values of wetlands; and

(7) To provide opportunities for fish- and wildlife-oriented public use and recreation in an urban setting.

Previous public meetings were held on December 17, 1992, and January 13, 1993. Public input was received and project goals were formulated. Project goals are:

Habitat Preservation Goal—To maintain and restore the presence, natural diversity, productivity, vigor and natural integrity of all natural habitats.

Fish and Wildlife Resource Protection Goal—To enhance, maintain, and protect the natural diversity of fish and wildlife species in balance with their habitats.

Archaeological Resource Protection Goal—To identify, preserve, describe, and interpret archaeological resources.

Public Use Goal—To provide public use in the form of environmental education, wildlife and habitat interpretation, wildlife/wildlands oriented recreation, and scientific research in a manner that it is not detrimental to habitat, fish, and wildlife resources and archaeological resources.

Environmental Integrity Goal—To foster a strong resource stewardship ethic of the Refuge in the New Orleans Metropolitan Area, the State of Louisiana, and the Nation.

This meeting will be the third in a series of four. At this meeting, alternatives will be presented for public review and comment.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the alternatives presented in the Master Plan/EIS. Comments and participation at this Public Meeting are solicited.

DATES: Written comments should be received by September 4, 1993. A public meeting will be held Wednesday, August 4, 1993, at 7 p.m. at the Sarah T. Reed High School, 5316 Michoud Blvd., New Orleans, LA 70126.

ADDRESSES: Comments should be addressed to: U.S. Fish and Wildlife Service, 1010 Gause Blvd., Bldg. 936, Slidell, LA 70458.

FOR FURTHER INFORMATION CONTACT: Dan Tabberer, Wildlife Biologist, 1010 Gause Blvd., Bldg. 936, Slidell, LA 70458, (504) 646–7579.

SUPPLEMENTARY INFORMATION: Howard E. Poitevint is the primary author of this document. The document is being prepared under contract by the consulting firm of Cashio, Cochran, Torre/Design Consortium Ltd., N.Y. Associates, Inc., and Coastal Environments, Inc., 5005 Magazine Street, New Orleans, LA 70115.

The FWS, Department of the Interior, proposes to develop and evaluate four alternatives. The alternatives will be in the form of a Master Plan/EIS detailing and discussing the intended Program for Bayou Sauvage National Wildlife Refuge pursuant to governing laws and regulations. The Plan will detail and discuss the existing natural and socioeconomic environment; the management objectives and strategies; rationale for selecting management objectives and strategies; and anticipated results from achievement of management objectives. Management of the natural environment for fish and wildlife conservation, public use, research, and environmental education shall be discussed in detail in a Master Plan. The Plan will detail the concept, location on a map, general size, capacity for handling Program needs, and order of magnitude costs of physical facilities.

Bayou Sauvage National Wildlife Refuge is in custodial status without a Refuge Management Plan. Four alternatives have been identified. Significant issues to be covered in the alternatives are habitat preservation, fish and wildlife conservation, public use, environmental education, endangered species protection, research, and development of physical facilities.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et. seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate DEIS will be made available to the public by December 31, 1993.

Dated: June 30, 1993.

James W. Pulliam, Jr.,

Regional Director, Region 4, Atlanta, GA.

[FR Doc. 93–15944 Filed 7–6–93; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 1 and Amendment No. 9]

Household Goods Carriers' Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Household Goods Carriers' Bureau, Inc. (HGCB), has filed a petition seeking approval of a minor amendment to its collective ratemaking agreement, which was previously approved under 49 U.S.C. 10706(b). The amendment would allow HGCB to: (a) Merge with the American Movers Conference (AMC); (b) change its name to the American Movers Conference; (c) adopt the existing AMC bylaws with appropriate changes; (d) create the Household Goods Carriers' Bureau Committee as a standing autonomous committee; and (e) reframe the HGCB "bylaws" as an "agreement", with appropriate changes. The Commission has issued a decision proposing to approve the amendment.

Copies of HGCB's No. 1 approved agreement and the amendment are available for public inspection and copying at the Public Docket Room (Room 1227) of the Commission in Washington, DC, and from HGCB's representatives: Thomas M. Auchincloss, Jr., and Brian L. Troiano 1920 N Street, NW., suite 420, Washington, DC 20036.

DATES: Comments from interested persons are due August 7, 1993. Replies are due August 23, 1993. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a final decision.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 1 should be sent to: Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicant's representatives.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: June 25, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc 93–15978 Filed 7–6–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–6; Sub-No. 350X]

Burlington Northern Railroad Company—Abandonment Exemption—in Okanogan County, WA

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon its 1.238-mile line of railroad between milepost 122.772 and milepost 124.000 in Oroville, in Okanogan County, WA.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.11, 49 CFR 1105.12, and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandoment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 6, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 19, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railway Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15977 Filed 7–6–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date on this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–55 (Sub-No. 409X)]

CSX Transportation, Inc.—Abandonment Exemption—In Richmond County, NC

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 1.4-mile line of railroad in Rockingham, Richmond County, NC, between: (1) Valuation Station 317+27=0+00 and Valuation Station 47+45; and (2) Valuation Station 45+35=0+00 and Valuation Station 25+25.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) has been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 6, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 19, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20403.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15976 Filed 7–6–93; 8:45 am]

BILLING CODE 7035–01–M

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration

Main Fan Operation and Inspection (30 CFR 57.22204)

1219–0030

Daily

Businesses or other for-profit; Small businesses or organizations 8 respondents; 187.5 hours per response; 1,500 total hours Requires main fans for underground gassy mines to have pressure-recording systems. The fans are required to be examined daily while operating if persons are underground. Records of pressure-recording system testing are required to be kept one year and are to be made available upon request to authorized representatives of the Secretary of Labor.

Extension

Mine Safety and Health Administration

1219–0043

Other: Upon application for an MSHA identification number Businesses or other for-profit; Small businesses or organizations 1,465 respondents; 8 minutes per response; 190 total hours Provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name, telephone number and business address of the independent contractor, and an estimate of the annual hours worked by the independent contractor on mine property for the previous calendar year.

Revision

Employment Standards Administration

FECA Medical Report Forms 1215–0103; CA–16b; 17b, 20, 20a, 1090, 1302, 1303, 1305, 1306, 1314, 1316, 1331, 1332, 1336, OWCP–5a, 5b, 5c

As needed

Businesses or other for-profit; Small businesses or organizations

Form No.	Number of responses	Min. per response
CA–16b	157,000	30
CA–17b	134,000	5
CA–20	92,000	30
CA–20a	20,000	30
CA–1090	1,800	30
CA–1302	7,000	30
CA–1303	11,250	45
CA–1305	1,000	20
CA–1306	900	10
CA–1314	2,000	20
CA–1316	10,000	10
CA–1331	1,500	5
CA–1332	1,500	30
CA–1336	20,000	5
OWCP–5a	7,000	40
OWCP–5b	5,000	20
OWCP–5c	15,000	20
175,198 total hours		

Information obtained through the use of these FECA medical report forms is necessary to determine whether or not a Federal employee who has filed a claim under the Federal Employees Compensation Act (FECA) 5 U.S.C. 8101 et seq., is entitled to compensation.

Signed at Washington, DC, this 1st day of July, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–15992 Filed 7–6–93; 8:45 am]

BILLING CODE 4510–43–P

Employment and Training Administration

[TA–W–28,493 and TA–W–28,493A]

Charm Corp., Ridgeway, SC, and Charmtex Corp., New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 28, 1993, applicable to all workers of the Charm Corporation in Ridgeway, South Carolina. The Notice was published in the **Federal Register** on June 15, 1993 (58 FR 33122).

At the request of the workers the Department reviewed the certification for workers of the Charm Corporation in Ridgeway, South Carolina. New information from the company shows that worker separations occurred at the New York, New York merchandising and design affiliate of the Charm plant Ridgeway, South Carolina.

The intent of the Department's certification is to include all workers of the Charm Corporation and its merchandising and design affiliate in New York, New York. The amended notice applicable to TA–W–28,493 is hereby issued as follows:

"All workers of the Charm Corporation in Ridgeway, South Carolina and its manufacturing and design facility Charmtex Corporation in New York, New York engaged in employment related to ladies' loungewear and children's sportswear who became totally or partially separated from employment on or after March 15, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 25th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15993 Filed 7–6–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28, 651]

Ciba-Geigy Corp., Toms River, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1993 in response to a worker petition which was filed on behalf of workers at Ciba-Geigy Corporation, Toms River, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of June, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15994 Filed 7–6–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,877]

General Electric Co., Aerospace Electronic Systems a/k/a Martin Marietta, Utica, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 4, 1992, applicable to the workers at General Electric Aerospace Electronic Systems in Utica, New York. The certification notice was published in the **Federal Register** on December 30, 1992 (57 FR 62389).

At the request of the New York State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Martin Marietta purchased the Aerospace Electronics Systems from General Electric in March, 1993 and is a successor-in-interest firm. The same product is being produced at Martin Marietta with the same workforce as employed earlier by General Electric. Martin Marietta is experiencing worker separations in 1993.

Accordingly, the Department is amending the certification to show the correct worker group.

The intent of the Department's certification is to include all workers of the Aerospace Electronic Systems Division of General Electric Company and Martin Marietta in Utica, New York who were adversely affected by increased imports of printed circuit boards.

The amended notice applicable to TA–W–27,877 is hereby issued as follows:

All workers of General Electric Company, Aerospace Electronic Systems also known as Martin Marietta Aerospace Electronic Systems in Utica, New York who became totally or partially separated from employment on or after October 26, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15995 Filed 7–6–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Highland Co (Workers)	Odessa, TX	6/21/93	6/10/93	28,784	Barrels, plungers, fittings.
Cable Electric Prod. Leviton Mfg (Workers).	Providence, RI	6/21/93	6/11/93	28,785	Electronic products.
Douglas Aircraft Co (Workers)	Phoenix, AZ	6/21/93	5/13/93	28,786	Computer systems.
Owens-Brockway (Co)	Minneapolis, MN	6/21/93	5/26/93	28,787	Plastic closures.
Schindler Elevator Corp (Workers)	Gettysburg, PA	6/21/93	5/03/93	28,788	Door operators and safety edges.
Quality Manufacturing, Inc (Workers)	Saxton, PA	6/21/93	6/09/93	28,789	Ladies' dresses and suits.
Quality Manufacturing, Inc (Workers)	Martinsburg, PA	6/21/93	6/09/93	28,790	Ladies' dresses and suits.
Union Apparel (ACTWU)	Norvelt, PA	6/21/93	6/15/93	28,791	Men's and women's sportcoats.
Pyke Mfg Coarel (Co)	Manti, UT	6/21/93	6/11/93	28,792	Women's apparel.
Petroleum Testing Service (Workers)	Santa Fe Springs, CA.	6/21/93	12/11/93	28,793	Oil Services.
Oxford of Alma, South (Workers)	Alma, GA	6/21/93	5/28/93	28,794	Ladies' dresses, pants, shorts & jackets.
L & J Leather Coats & Jackets, Inc (Workers).	New York, NY	6/21/93	3/11/93	28,795	Leather coats and jackets.
Hexcel Corp (Workers)	Graham, TX	6/21/93	5/06/93	28,796	Honeycomb core for aircraft bodies.
H.F.S. Apparel Manufacturing, Inc (Workers).	Weissport, PA	6/21/93	6/09/93	28,797	Activewear T-shirts, pants and shorts.
Hermitage Hospital Products (Co)	Niantic, CT	6/21/93	6/09/93	28,798	Gauze pads and dressings.
IMC Fertilizer, Inc (Co)	Bartow, FL	6/21/93	6/04/93	28,799	Phosphate rock and ore.
Iwatsu America, Inc (Workers)	Carlstadt, NJ	6/21/93	6/08/93	28,800	Telecommunicati on products.
Gage Marketing Group (Workers)	El Paso, TX	6/21/93	6/01/93	28,801	Provide coupons & coupon refunds.
Digital Equipment Corp (Workers)	Maynard, MA	6/21/93	6/02/93	28,802	Support services for digital equip.
Suburban Sportswear (ILGWU)	Orange, NJ	6/21/93	6/09/93	28,803	Coats.
Digicon Geophysical Corp (Workers)	Houston, TX	6/21/93	6/10/93	28,804	Oil and gas.
Bull HN Information Systems (Workers)	Phoenix, AZ	6/21/93	5/13/93	28,805	Large computers.
Brown Group, Inc (Workers)	Trenton, TN	6/21/93	6/03/93	28,806	Transporting of shoes.
ACPC, Inc (ABGW)	Massena, NY	6/21/93	6/11/93	28,807	Electrical cable products.

[FR Doc. 93–15996 Filed 7–6–93; 8:45 am]
BILLING CODE 4510–30–M

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of an Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: This addition to the annual list of labor surplus areas is effective July 1, 1993.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: Richard Hardin, Chief, Division of Planning, USES, Employment and Training Administration, 200 Constitution Avenue NW., room N–4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–219–5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 6, 1992 (57 FR 46050).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Acting Assistant Secretary as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective July 1, 1993.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on June 25, 1993.

Carolyn M. Golding,

Acting Assistant Secretary.

ADDITION TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[July 1, 1993]

Labor surplus areas	Civil jurisdictions included
Maryland:	
Wicomico County ...	Wicomico County.

[FR Doc. 93–15997 Filed 7–6–93; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Request for nominations—extension of time for submissions.

SUMMARY: On June 1, 1993, the Assistant Secretary of Labor for Occupational Safety and Health published a notice requesting nominations for membership on the National Advisory Committee on Occupational Safety and Health (NACOSH). Nominations were to be submitted by June 30, 1993. That deadline is now extended 30 days until July 30.

NACOSH was established under 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

Nominations will be accepted for 12 vacancies occurring in the following categories: Four public representatives; two management representatives; two labor representatives; two occupational safety representatives; and two occupational health representatives. The terms for six members will be for one year and the terms for the remaining six members will be for two years. Any interested person or organization may nominate one or more qualified persons for membership. Nominees should be identified by name, place of birth, occupation or position, address, and telephone number. The category which the candidate would represent should be specified and a resume of the nominee's background, experience, and qualifications included. In addition, the nomination should state that the nominee is aware of the nomination and is willing to serve as a committee member for a two year term.

DATES: Nominations must be submitted no later than July 30, 1993.

ADDRESSES: Nominations should be submitted to Tom Hall, Division of Consumer Affairs, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

Signed at Washington, DC this 30th day of June, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–15998 Filed 7–6–93; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–059]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: August 4, 1993, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/554–0501).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Update
—High Speed Research Plan
—Rotorcraft Technology Roadmap
—Subsonic and Transonic Facilities
—Computational Aerosciences Planning
—Final Report on U.S. General Aviation Task Force
—NASA Involvement in Manufacturing Technology
—Situational Awareness Research
—Future Program Directions
—Future AAC Emphasis

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: June 30, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–16000 Filed 7–6–93; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice of Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 14, 1993, through June 24, 1993. The last biweekly notice was published on June 23, 1993 (58 FR 34069).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

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58
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However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 6, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for

amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 20, 1993

Description of amendment request: The proposed amendment reduces the main steam isolation valve low turbine inlet pressure (MSIVLTIP) setpoint from greater than or equal to 880 pounds per square inch gauge (psig) to greater than or equal to 810 psig, and reduces the minimum pressure in the definition of RUN mode from 880 psig to 785 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously identified.

The MSIVLTIP setpoint is associated with the primary containment and reactor vessel isolation control system. The safety purpose of this system is to automatically initiate closure of isolation valves to ensure radiological releases to the environs are less than the maximum allowed by 10CFR100. However, the MSIVLTIP setpoint does not affect the safety function of the primary containment and reactor vessel isolation control system. While the MSIV low-pressure setpoint can initiate isolation of the primary containment and reactor vessel, assessments of radiological releases do not take credit for automatic isolation initiated by a trip of the MSIV low-pressure setpoint. For the design basis steam line break, radiological releases are assessed assuming automatic isolation initiated by a high steam line flow rate. For a small steam line break, radiological releases are assessed assuming automatic isolation initiated by high radiation in the steam tunnel or high temperature in the turbine building. MSIVLTIP setpoint is nevertheless important to power operations. The MSIVLTIP setpoint prevents excessive vessel depressurization should the nuclear system pressure regulator fail open. Excessive vessel depressurization can impose significant thermal stresses on the nuclear system process barrier, resulting in an increase in the nuclear system process barrier's lifetime fatigue usage factor. NEDO-31296 and BECO calculation I-N1-30 show the lifetime fatigue usage factor, assuming eight pressure regulator failure (open) events, is not significantly increased by reducing the allowable value MSIVLTIP setpoint from greater than or equal to 880 to greater than or equal to 810 psig.

Other potential effects were analyzed:

a. Reducing the MSIVLTIP setpoint will have no impact on the Minimum Critical Power Ratio (MCPR). As noted in the analysis (NEDO-31296), MSIV closure following a pressure regulator failure transient with the current setpoint of greater than or equal to 880 psig corresponds to a neutron flux of less than 1%. This result is based on the assumption Turbine Control Valves (TCVs) open instantaneously upon failure of the pressure regulator. A lower setpoint will postpone MSIV closure. However, this postponement is not of concern because MCPR is not near the safety limit due to the very low reactor powers involved and remain bounded by the MCPR associated with the transients in the reload license submittal. This conclusion remains valid in the event the TCV's open slowly.

b. Reducing the MSIV low-pressure isolation setpoint does result in an extended depressurization time prior to isolation. An extended depressurization results in a greater bulk water level swell with the potential of reaching the stem line nozzle, thereby trapping liquid in the steam line between the vessel and the in-board MSIV. However, a GE analysis of this event (MDE-70-0586), using a bounding set of initial conditions chosen to maximize the severity of the water level swell, shows water level will not increase to the bottom of the steam line nozzle elevation. Hence, no liquid would be trapped in the steam lines, and SRV performance would not be affected.

c. If the MSIV low-pressure isolation setpoint were removed, a rapid depressurization of the reactor vessel due to a pressure regulator failure while the reactor is near full power could result in differential pressures across the fuel channels sufficient to cause mechanical deformation of the channels. From a safety perspective, these deformations are bounded by the deformations associated with the steam line break accident and do not challenge Pilgrim's accident analysis.

d. Reducing the MSIV low-pressure setpoint to greater than or equal to 810 psig continues to provide automatic protection of the low-pressure core thermal power safety limit (less than or equal to 25% of rated core thermal power for reactor pressure less than 785 psig).

The other proposed change reduces the minimum pressure in the definition of RUN mode from 880 psig to 785 psig. Reactor modes are determined by the position of the mode switch. The safety function of the mode switch is to select the necessary scram functions for various plant conditions. The mode switch also provides necessary scram bypasses to facilitate operation.

Reducing the minimum pressure of the reactor to be in the RUN mode affects none of these functions. Specifically, the scram on high flux at less than 25% power (with the reactor in STARTUP) will not be bypassed before 785 psig is exceeded. This pressure is the minimum pressure for using the minimum critical power ratio (MCPR) as the basis for fuel cladding protection. Below this pressure, the scram at less than 25% of rated power provides the basis for protecting fuel cladding.

Based on the results of the various analyses, reducing the MSIVLTIP setpoint from greater than or equal to 880 psig and reducing the minimum pressure in the RUN mode definition to 785 psig will not result in a significant increase in the probability or consequences of an accident previously identified.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change modifies an existing instrument setpoint and reduces the minimum pressure for the reactor to be in the RUN mode. No other modifications to Pilgrim are involved. All plant scenarios affected by this setpoint have been reanalyzed as described in the above Part 1. For this reasonit is concluded that this change does not create a new or different kind of accident from any accident previously analyzed.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

As discussed in (1), the MSIVLTIP setpoint does not affect the safety function of the primary containment and reactor vessel isolation control system, and assessments of radiological releases related to 10CFR100 requirements do not take credit for it. Also, the MSIVLTIP does not affect the margin of safety for any system or component that is indirectly impacted by this setpoint function and the minimum pressure in which the reactor mode switch may be in RUN remains consistent with the bases for ensuring the integrity of the fuel cladding. Therefore, operating Pilgrim in accordance with the proposed changes does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: June 7, 1993

VOL 58 ISS 128 JL 7 1993 UMI

Description of amendment request: The proposed amendment will allow Boston Edison Company (BECo) to change existing plant surveillance intervals and in some cases setpoints to accommodate a 24-month fuel cycle. The proposed change to surveillance intervals and system setpoints have been analyzed in accordance with the guidance provided in Generic Letter 91-04.

This change requires that Technical Specifications (TS) specifying 18-month surveillance intervals be changed to reflect that these surveillances are now to be performed once per refueling interval. The frequency for the interval would then be changed from 18 months to "at least once every 24 months." This would extend the time limit for completing these surveillances from 22.5 months (18 x 1.25) to 30 months (24 x 1.25).

Also, the frequency of the calibration/functional test for the analog trip system will be changed from 1 month to 3 months. This is consistent with the setpoint calculations and Note 1 of the Pilgrim Nuclear Power Station TS Tables 4.1.1 and 4.2.A through 4.2.G.

This proposed change affects Definitions 1.0.P and 1.0.V; TS Sections 3.1, 4.1, 3.2, 4.2; Tables 3.1.1, 4.1.1, 4.1.2, 3.2.A, 3.2.B, 3.2.G, and notes to the subject Tables.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously identified.

The proposed modifications involve a change in the surveillance testing intervals to facilitate the change in Pilgrim's refueling interval from 18 months to 24 months. The proposed changes do not impact design or functional requirements of the associated systems. That is, the proposed changes do not degrade the performance or increase the challenges of any associated safety systems assumed to function in the accident analyses. The proposed changes do not impact the surveillance requirements themselves nor the way the surveillances are performed. Additionally, the proposed Technical Specification changes do not introduce any new accident initiators since no accidents previously evaluated have, as their initiators, anything related to the change in the frequency of surveillance testing. Also, the proposed Technical Specification changes do not affect the availability of equipment or systems required to mitigate the consequences of an accident or the availability of redundant systems or equipment. The review of surveillance testing conducted in accordance with guidance provided in Generic Letter 91-04 indicates there is no evidence that would invalidate the above conclusions. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification changes involve a change in the surveillance testing intervals to facilitate the change in Pilgrim's refueling cycle from 18 months to 24 months. The proposed Technical Specification changes do not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility except setpoint changes that have been evaluated and will be performed using approved procedures under the control of our Quality Assurance program. In addition, the surveillance test requirements and the way surveillance tests are performed will remain unchanged. Since the intended operation and function of the analyzed systems do not change as a result of the setpoint analysis, no new initiators were introduced which are capable of initiating an accident that would render these systems unable to provide their required protection. Furthermore, a review of surveillance test results conducted in accordance with guidance provided in Generic Letter 91-04 indicates there is no evidence that would invalidate the above conclusions. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Although the proposed Technical Specification changes will result in an increase in the interval between surveillance tests, the impact on Pilgrim's equipment is small. The proposed changes will either increase the plant safety margin or retain the existing margin. There is no evidence this change would significantly impact the availability of the affected system. Therefore, the assumptions in the licensing basis are not impacted, and the proposed Technical Specification changes do not signficantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 31, 1992, as supplemented June 10, 1993

Description of amendments request: The proposed amendments to the Technical Specifications (TS) consist of two parts.

Part 1: Core Alterations—The definition of core alterations would be revised to specify that the movement of incore instruments, including the under vessel replacement of these instruments, is not considered a core alteration. The definition would also specify that control rod movement with other than the normal control rod drive is not considered a core alteration, provided there are no fuel assemblies in the associated core cell.

Part 2: TS 3/4.9.3, Control Rod Position—The proposed change to TS 3.9.3 would clarify the Limiting Condition for Operation (LCO) applicability, surveillance requirements, and associated Bases to specify that the requirement to maintain all control rods inserted is only applicable during the loading of fuel assemblies into the core. The Action Statement would be revised to reflect this clarification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part 1: Core Alterations

The purpose of the definition of core alterations is to identify operations which have the potential for adding reactivity to the core while the vessel head is removed and fuel is in the vessel. While such operations are in progress, special precautions must be taken to preclude the possibility of an inadvertent criticality. These precautions are comprised mainly of additional safety system operability requirements.

The BSEP Updated Final Safety Analysis Report (UFSAR) for Units 1 and 2 contain analyses for the following refueling accidents involving the possibility of an inadvertent criticality:

—Control Rod removal error during refueling (UFSAR section 15.4.5.1)

—Fuel assembly insertion error during refueling (UFSAR section 15.4.5.2)

The movement of incore instruments (excluded from the proposed core alterations

definition) does not apply to either of these analyses because the amount of fissile material contained in the detectors is so minimal that their movement does not result in a significant change in core reactivity. As such, the additional safety systems would not be required or necessary for incore instrument movement. Control rod movement with other than the normal control rod drive with no fuel assemblies in the associated core cell does not have an impact on the reactivity of the remaining core. Therefore, control rod movement with other than the normal control rod drive with no fuel assemblies in the associated cell does not involve an increase in the probability of an inadvertent criticality; consequently, no special precautions are necessary to preclude such an event and there is no associated significant increase in the probability of an accident. The deletion of the phrase "addition, removal, relocation" from the definition eliminates redundancy and does not change the meaning of the definition. In addition, the incorporation of the phrase "components, or other components affecting reactivity" will key Technical Specification users to consider other types of operations affecting core reactivity. Therefore, the noted revisions to the definition of core alterations does not involve a significant increase in the probability of an accident previously evaluated.

Since the incore instruments are not factored into the current analyses for previously evaluated accidents, their removal from the definition of core alterations, along with the minor text changes noted above, would have no impact on previously evaluated accident consequences. The additional safety systems would also not be required operable for incore instrument movement and, therefore, would not impact the consequences of an accident previously evaluated.

Control rod movement with other than the normal control rod drive with no fuel assemblies in the associated cell is also being excluded from this definition because movement of a control rod blade with fuel assemblies removed from the core does not have an impact on the reactivity of the remaining core. Therefore, control rod movement with other than the normal control rod drive with no fuel assemblies in the associated cell does not involve an increase in the probability of an inadvertent criticality; consequently, no special precautions are necessary to preclude such an event and there is no associated impact on the consequences of an accident previously evaluated.

From the discussion presented above, the noted revisions to the definition of core alterations do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part 2: Specification 3.9.3, Control Rod Position

The Specification 3.9.3 requirement for all control rods to be inserted is appropriate only during the loading of fuel assemblies into the reactor core. The one-rod-out interlock is specifically designed to allow a single control rod to be withdrawn when in Operational Condition 5. Since control rod movement is a core alteration by definition, it is contradictory that the control rod position specification is applicable in "CONDITION 5, during CORE ALTERATIONS".

Prevention and mitigation of prompt reactivity excursions while in Operational Condition 5 is provided by the one-rod-out interlock (BSEP Specification 3.9.1 and 3.9.2), maintaining proper shutdown margin (BSEP Specification 3.1.1), the Intermediate Range Monitor neutron flux scram (BSEP Specification 3.3.1), the Average Power Range Monitor neutron flux scram (BSEP Specification 3.3.1), and the control rod block instrumentation (BSEP Specification 3.3.4). These precautions prevent an unexpected prompt criticality in Operational Condition 5. The proposed change indicates that all control rods must be inserted during loading of fuel assemblies into the core.

The action statement for BSEP Technical Specification 3.9.3 and Surveillance Requirement 4.9.3 are also revised to provide consistency with the revised applicability of Technical Specification 3.9.3. Currently, when the action statement is not satisfied (i.e., all control rods not inserted), the control rod scram solenoid valves must be de-energized, which causes a reactor scram. The appropriate action is to suspend loading of fuel assemblies into the reactor core. Incorporating this action will make the language congruent with the applicability language. In addition, the revision to the surveillance requirement, deleting the reference to "CORE ALTERATIONS" and incorporating the phrase "during loading of fuel assemblies into the core" will also make the language congruent to the language in the specification applicability. The Chapter 15 analysis for refueling accidents are not affected by the changes to Specification 3.9.3. The new phraseology to replace "CORE ALTERATIONS" better articulates the conditions where control rods are required to be fully inserted. In addition, the proposed changes to Specification 3.9.3 still preserve the basis of this specification, which is to prevent two positive reactivity changes from occurring simultaneously.

Based on the above, therefore, the changes to Specification 3.9.3 do not involve a significant increase in the probability of an accident previously evaluated.

The Chapter 15 accidents associated with refueling are not affected by this specification change. In addition, the various features for the prevention and mitigation (i.e., consequences) of prompt reactivity excursions, discussed above, are not impacted by this change. As such, the proposed changes to Specification 3.9.3 do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, based on the discussion above, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part 1: Core Alterations

As discussed previously, the amount of fissile material contained in the incore instruments is so minimal that instrument movement does not result in a significant change in core reactivity. Therefore, instrument movement of this type could not cause an inadvertent criticality.

Control rod movement with other that the normal control rod drive with no fuel assemblies in the associated core cell does not have an impact on the reactivity of the remaining core and therefore does not increase the probability of an inadvertent criticality.

Deletion of the redundant phrase "addition, removal, relocation" from the definition eliminates redundancy and does not change the meaning of the definition. In addition, the incorporation of the phrase "components, other components affecting reactivity" will key Technical Specification users to consider other types of operations affecting core reactivity.

The other minor text changes "vessel" and "position" were made for consistency with the Improved STS [Standard Technical Specifications] and have no impact on the intent of the revised definition.

From the discussion presented above, the noted revisions to the definition of core alterations does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part 2: Specification 3.9.3, Control Rod Position

The revision to Specification 3.9.3 does not involve physical changes to any safety related equipment or changes to plant operation. The method by which any equipment performs will also not be altered by these changes. The revision to specification 3.9.3 eliminates unnecessary and inappropriate requirements regarding reactivity control. As discussed previously, inadvertent criticality is prevented by the one-rod-out interlock feature in Operational Condition 5. As such, it is not necessary to have all control rods inserted at times other than during loading of fuel assemblies into the reactor core. Therefore, the proposed changes to Specification 3.9.3 do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Part 1: Core Alterations

Since the definition of CORE ALTERATION has no impact on any safety limits, setpoints, or plant design, the proposed changes have no affect on the margin of safety. The proposed definition changes further detail what constitutes a core alteration. Therefore, the proposed changes to the definition of core alterations do not involve a significant reduction in the margin of safety.

Part 2: Specification 3.9.3, Control Rod Position

The revisions to Specification 3.9.3 have no impact on any safety limits, setpoints, or plant design and have no affect on the margin of safety. Reactivity control functions and associated surveillance frequencies are not impacted by these changes. Therefore, the proposed changes to Specification 3.9.3. do

not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: January 25, 1993, as supplemented June 10, 1993

Description of amendments request: The proposed amendment requests two changes. The first adds a statement to exempt Technical Specification (TS) 3.1.3.1, Action b, from the requirements of TS 3.0.4 and revises its associated Bases section to reflect the change. The second proposed change revises TS 3.1.3.5, Control Rod Scram Accumulators, and its associated Bases section to address operation with more than one inoperable accumulator. The current specification does not address operating with more than one inoperable scram accumulator, thus requiring entry into TS 3.0.3. Provisions for operating with one inoperable scram accumulator are also being revised to be more consistent with the guidance of the Revised Standard Technical Specifications (NUREG-1433).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Proposed Change 1:

1. The proposed change does not involve a significant increase in the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (FSAR).

Exemption of Technical Specification 3.1.3.1, ACTION b from the requirements to Specification 3.0.4 allows entering OPERATIONAL CONDITION 1 from OPERATIONAL CONDITION 2 with one or more inoperable control rods. The operability status and function of a control rod does not change when the OPERATIONAL CONDITION of the plant changes; therefore, a change in OPERATIONAL CONDITION is not precursor of any accident and cannot increase the probability of any accident previously evaluated.

The proposed change does not involve a significant increase in the consequence of any accident previously evaluated in the Updated Final Safety Analysis Report (FSAR).

Exemption of Technical Specification 3.1.3.1, ACTION b from the requirements of Specification 3.0.4 allows entering OPERATIONAL CONDITION 1 from OPERATIONAL CONDITION 2 with one or more inoperable control rods. Continued operation in OPERATIONAL CONDITION 1 is currently permitted when no more than eight control rods are inoperable. The consequences of accidents in all OPERATIONAL CONDITIONS are bounded by the consequences of accidents previously evaluated and allowing a change from OPERATIONAL CONDITION 2 to OPERATIONAL CONDITION 1 does not increase the consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Exemption of Technical Specification 3.1.3.1, ACTION b from the requirements of Specification 3.0.4 allows entering OPERATIONAL CONDITION 1 from OPERATIONAL CONDITION 2 with one or more inoperable control rods. Withdrawn inoperable control rods do not affect power any differently than movable and operable withdrawn control rods. Changing from OPERATIONAL CONDITION 2 to OPERATIONAL CONDITION 1 occurs prior to power ascension and is not impacted by the presence of control rods that are inoperable. Therefore, changing from OPERATIONAL CONDITION 2 to OPERATIONAL CONDITION 1 does not create the possibility of a new of different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety as defined in the basis of any operating license technicalspecification.

Exemption of Technical Specification 3.1.3.1, ACTION b from the requirements of Specification 3.0.4. allows entering OPERATIONAL CONDITION 1 from OPERATIONAL CONDITION 2 with one or more inoperable control rods. Operation in OPERATIONAL CONDITION 1 is currently permitted when no more than eight control rods are inoperable. The proposed change only allows moving from OPERATIONAL CONDITION 2 to OPERATIONAL CONDITION 1 within the restrictions previously evaluated; therefore, this addition does not involve a significant reduction in the margin of safety as defined in the basis of any operating license technical specification.

Proposed Change 2:

1. The proposed change does not involve a significant increase in the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (FSAR).

Control rod scram accumulators contribute to the mitigation of accidents and anticipated operational occurrences and the operability of scram accumulators is not a precursor to any accident previously evaluated. Therefore, multiple inoperable control rod scram accumulators do not increase the probability of any accident previously evaluated.

The proposed change does not involve a significant increase in the consequence of any accident previously evaluated in the Updated Final Safety Analysis Report (FSAR).

Control rod scram accumulators assist in the rapid insertion of control rods as part of a reactor scram. The consequences of many accidents and anticipated operational occurrences are mitigated by reactor scram. The consequences of anticipated operational occurrences are evaluated assuming the scram insertion of control rods will insert a specified amount of negative reactivity as a function of time and with a certain distribution. In addition to the individual control rod scram accumulator, the reactor steam dome pressure contributes to the rapid insertion of control rods when a scram occurs.

The scram reactivity function or scram curve that is assumed for the evaluation of operating limits for anticipated operational occurrences is enforced by the requirements of Technical Specification 3.1.3.3 and 3.1.3.4 with all controls rods operable. In the event one or more control rods become inoperable, the requirements of Technical Specificating 3.1.3.1, ACTION a and 3.1.3.1, ACTION b in combination with the requirements of Technical Specification 3.1.3.3. and 3.1.3.4 ensure that the assumed scram curve and associated operating limits remain applicable and valid.

Although a withdrawn control rod will still scram without an operable scram accumulator as a result of the reactor steam dome pressure when this pressure is within the normal operating range, some degradation of the scram insertion time may occur. By declaring all control rods with inoperable scram accumulators inoperable and imposing the requirements of Technical specification 3.1.3.1, ACTION b, the negative reactivity of the inoperable control rods in not needed to ensure that the assumed scram curve remains applicable.

With the reactor steam dome pressure below the normal operating range, rapid insertion of all withdrawn control rods is accomplished by the individual scram accumulators. The requirement to verify the available charging header pressure ensures that all operable scram accumulators are maintained at a sufficient level to accomplish rapid insertion to meet the required scram curve. Furthermore, withdrawn control rods without an operable scram accumulator may not be inserted by the available reactor steam dome pressure and are required to be fully inserted.

The requirements of the proposed change will maintain the applicability of the scram curve assumed in evaluation of the consequences of accidents and anticipated operational occurrences. By maintaining the applicability of these evaluations and the associated consequences, the proposed

change does not increase the consequences of any accident previous evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change allows multiple control rod scram accumulators to be inoperable under conditions that ensure that any such control rods that are withdrawn are capable of insertion or are fully inserted. Scram insertion of control rods serves to mitigate many accidents and anticipated operational occurrences. Operation with multiple scram accumulators inoperable within the guidance of the existing control rod specification does not create the possibility of a new or difference kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety as defined in the basis of any operating license technical specification.

Control rod scram accumulators assist in the rapid insertion of control rods as part of reactor scram. The consequences of many accidents and anticipated operational occurrences are mitigated by reactor scram. The consequences of anticipated operational occurrences are evaluated assuming the scram insertion of control rods will insert a specified amount of negative reactivity as a function of time and with a certain distribution. The assumptions and results of these evaluations form the basis for certain Technical Specification requirements and operating limits that protect safety limits defined in the operating license technical specification. By maintaining the applicability of these evaluations and associated safety limits, the proposed change does not involve a significant reduction in the margin of safety as defined in the basis of any operating license technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Dockets Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 15, 1992, as supplemented March 9, 1993

Description of amendment request: Commonwealth Edison Company (CECo) has initiated a Technical Specification Upgrade Program (TSUP) to improve the quality of the current Technical Specifications (TS) for Dresden and Quad Cities. A comparison study of the boiling-water reactor (BWR) Standard Technical Specifications (STS), newer operating plants TS provisions, and the Quad Cities TS was performed by CECo. The study identified requirements which are no longer consistent with current industry practices and the need for potential improvements in clarifying requirements. As a result CECo has committed to upgrade the current Dresden and Quad Cities TS, in their entirety, to more closely follow the provisions of the BWR STS. Wherever possible (except for design differences) the TSUP for both Dresden and Quad Cities will be identical.

By letters dated October 15, 1992, as supplemented March 9, 1993, the licensee proposed upgrades to TS Section 3/4.4 (Standby Liquid Control System).

The proposed amendment would combine the present Specifications for the Standby Liquid Control System (SLCS) into one Specification 3.4.A/4.4.A, thus implementing a STS arrangement. The proposed Applicability statement is equivalent to the present provisions while the proposed Action statements correspond to STS guidelines. The "Objective" statements will be deleted. All surveillance requirements are replaced by STS provisions, where applicable, and quarterly Inservice Testing (IST) guidelines replace the current monthly pump flow verification and head requirements. The proposed amendment would add a daily verification of the operability of the heat tracing circuit and a monthly check of continuity of the explosive charge and valve lineups. The STS controls for explosive charge replacement would also be implemented.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes dc not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes to Technical Specification 3/4.4 involve combining the present requirements into one specification. These changes are based on the evaluated STS provisions that are in use at many operating BWRs with similar design and operating configurations as Dresden and Quad Cities Stations. The proposed changes, which delete the present Applicability and Objective sections, represent administrative changes to format and presentation providing better accessibility to information. The inclusion of additional Applicability and Action requirements represent a clarification of the intended requirements which presently do not state all required conditions of operability or provide clear Action statements when the requirements are not met.

The proposed changes replace current Surveillance Requirements with STS provisions, where applicable. These changes implement testing frequencies for SLCS pumps in accordance with proven IST guidelines, delete unnecessary testing of redundant components, and add STS testing requirements. The proposed changes do not affect accident precursors or involve an increase in the probability of a previously evaluated accident. Operability of the SLCS is maintained in all reactor Operational Modes where control rods can be withdrawn. Furthermore, allowed out-of-service times for inoperable components and other Action provisions follow STS provisions.

The proposed changes do not alter the intent of the existing setpoints or accident assumptions. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed changes to Specification 3/4.4 are administrative changes which do not affect the technical requirements, change any assumptions of previous accident or transient analyses concerning the operability of the SLCS, or implement design modifications to the SLCS. The proposed changes enhance the usability

VOL 58 ISS 128 JL 7 1993 UMI

of the TS and provide clear and concise Applicability and Action statements.

The proposed changes maintain the operability of the SLCS within the assumptions of the present transient and accident analysis and do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety because:

The proposed changes include administrative changes in format and clarification of requirements that do not involve a significant reduction in the margin of safety. The importance of the operability of the SLCS is apparent by comparison of Operational Modes 1 and 2 to Operational Mode 5. Inoperable components in the SLCS subsystem are allowed longer out-of-service times in Mode 5 than in Modes 1 or 2. These requirements maintain the current margin of safety for inoperable components.

The changes to the surveillance requirements are more conservative than the STS provisions and also preserve the present level of operational readiness of the SLCS. Implementation of quarterly pump flow and head measurements specified by the IST program conforms to current operating BWR testing which have demonstrated successful maintenance of system operational readiness. The proposed changes do not involve any significant reduction in the margin of safety since the SLCS is maintained at current or greater levels of operability.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 22, 1993

Description of amendment request: The proposed amendment would change Technical Specification 3/4.8.1 to allow continued operation of one unit for a period of 7 days while the common plant Division 1 diesel generator, "O" DG, is out of service for the performance of specified Technical Specification surveillance requirements and the performance of planned maintenance and/or modification work. In addition, clarification of the equipment necessary to determine the operability of a diesel generator air start receiver is proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The total amount of time that the "O" Diesel Generator is inoperable during a refuel outage will not increase as a result of this change, only the type of work being performed is expanded. In addition to the surveillances already permitted by the current footnote, this work will include planned maintenance and modifications.

The proposed amendment to surveillance requirement 4.8.1.1.2.a.7 clarifies that a diesel generator is operable with the receivers of one air start subsystem to be pressurized to greater than or equal to 200 psig instead of all air start receivers. Per the UFSAR and the LaSalle SER, NUREG-0519, each subsystem (two per diesel generator) is independent and full capacity, thus fully meeting the design criteria for the diesel generator. Both of the air start subsystems are normally operable, so that this change only pertains to cases where a failure of one subsystem occurs or one subsystem is removed from service for inspections, surveillance, or preventative maintenance. A normally closed crosstie valve is located downstream of the subsystem air start receivers. This valve is used to keep the receivers for both subsystems pressurized using only one air compressor while one compressor or associated moisture removal equipment is inoperable, thus minimizing the time the receivers for a subsystem are less than 200 psig.

Therefore, there is no change to the assumptions or initiators of any previously evaluated accident and there is no change to the consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This amendment request does not change the length of time that the "O" diesel generator is allowed to be inoperable with one unit in cold shutdown, refuel, or defueled and the other unit in normal operation, only the work allowed is changed. Therefore, the possibility of a new or different kind of accident than the accidents previously evaluated is not created.

The change to the surveillance requirement for the diesel generator air start receivers does not change the starting capability of the diesel generator. The diesel was designed to start with only one air start subsystem, and the surveillance assures the availability of the starting air required to start the diesel. Therefore, the possibility of a new or different kind of accident than the accidents evaluated is not created.

3) Involve a significant reduction in the margin of safety because:

The requested change to the work allowed to be performed on the "O" diesel generator during a seven day allowed outage time, with one unit in cold shutdown or a lower condition, is limited to the "O" diesel generator. Due to the physical and electrical separation between the diesel generator divisions, no other diesel generators will be effected by the work on the "O" diesel generator. Also, compensatory measures are taken to assure that the remaining required diesel generators and offsite AC sources are operable during the time the "O" diesel generator is out of service. The term pre-planned maintenance excludes any repairs that are required due to a "valid failure" of the "O" diesel generator, thus preventing use of the seven day allowed outage time where the potential for a known condition exists that may effect more than one diesel generator. Therefore, this change is administrative in nature and does not involve a reduction in the margin of safety.

The air start receiver surveillance change would allow a diesel generator to be considered operable with the receivers of only one air start subsystem to be pressurized rather than all receivers pressurized. The UFSAR states that each air start system consists of two full capacity subsystems, therefore one subsystem meets the starting air required by design to start the associated diesel generator. The required essential service system redundancy is met by each diesel generator, not by the redundancy of the supporting systems for each diesel generator. Both subsystems are normally in service for each diesel generator, and therefore the only time when this would not be true is upon component failure, maintenance, or surveillance. Air start system work is considered to be high priority, so the time an air start subsystem is out of service is inherently kept to a minimum by the work request priority system and planning department practices. By allowing a diesel generator to remain operable with one air start subsystem pressurized, unnecessary diesel generator starts are avoided, thus compensating for any slight reduction in the margin of safety by this change.

Therefore, there is no significant reduction in the margin of safety for the above changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One

First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 25, 1993

Description of amendment request: The proposed amendment would change Technical Specification 4.8.1.1.2.c to update the diesel fuel oil testing requirements to the standards of ASTM-D4057-88 (new fuel oil test), ASTM-D975-88 (water and sediment content testing), and ASTM-D2276-89 (impurity levels). The updated standards would be referenced in the Technical Specification Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a) Replacing the sampling procedure ASTM-D270-1975, which has been discontinued but which is presently required by Technical Specifications, with the upgraded sampling procedure ASTM-D4057-88 will not adversely impact on the quality of the obtained diesel fuel oil sample or the analysis of the sample so as to affect the operability of the diesel generators.

b) Replacing the Technical Specification required procedure, "Standard Specification For Diesel Fuel Oils", ASTM-D975-77, with the updated ASTM-D975-88 Standard will not adversely impact on the quality of the analysis of the sample for water and sediment content, and kinematic viscosity so as to affect the operability of the diesel generators. The updated ASTM Standard offers the advantage of included guidance for long term storage of fuel oil. The inclusion of this guidance should provide for enhanced fuel oil control and maintenance, and continued reliable operation of the diesel generators.

c) Replacing the fuel oil test procedure, ASTM-D2274-70, currently required by Technical Specifications at least once per 92 days, with the updated ASTM-D2276-89 Standard will enhance the maintenance of acceptable fuel oil and the continued operability of the diesel generators. ASTM-D2276-89 is more effective in detecting unsatisfactory fuel oil and will be performed at least once per 31 days.

Referencing the updated applicable ASTM Standards in the Bases will allow the most current applicable Standards to be used without the need for a Technical Specification amendment. The 10 CFR 50.59 Safety Evaluation Screening and Station On-Site Review for a proposed change to ASTM Standards referenced in the Bases will assure up-to-date sampling technique and sample analysis methods to assure continued reliable operation of the diesel generators.

Since the acceptable fuel quality under the current specification will be maintained or even upgraded by this proposed amendment, the reliability of diesel generator operation will not be affected. Thus the initial assumptions of the accidents previously analyzed are not affected.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This proposed Technical Specification Amendment does not create the possibility of a new or different accident from any accident previously evaluated. The upgraded ASTM Standard, ASTM-D975-88, will maintain fuel oil sample quality and fuel oil acceptance criteria. The intended purpose and use of the diesel generators and auxiliary equipment remains the same, and the safe and reliable operation of this equipment is maintained.

Therefore, this proposed amendment will replace present ASTM Standards with updated applicable Standards which will neither create the possibility of a new and different kind of accident, nor adversely impact on any previous accident evaluations. Diesel generator reliability is maintained.

3) Involve a significant reduction in the margin of safety because:

a) This proposed amendment maintains fuel oil sample quality and fuel oil acceptance criteria. The safe and reliable operation of the diesel generators is maintained.

b) This proposed amendment increases the surveillance for the detection of particulate contamination in fuel oil from quarterly to monthly. Severe degradation of the fuel oil which could affect diesel engine performance would be detectable during the periodic tests which are performed at least once per 31 days.

Therefore this proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: March 2, 1993

Description of amendment request: The proposed amendment would change the Snubber Visual Inspection Intervals and Corrective Actions in Technical Specification surveillance requirements 4.7.9.b and 4.7.9.c to the alternative requirements provided in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed schedule for snubber visual inspection intervals will maintain the same level of confidence as the existing schedule as documented in Generic Letter 90-09, Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions, dated December 11, 1990. Also, the surveillance requirement and schedule for snubber functional testing remains the same providing a 95 percent confidence level that 90 to 100 percent of the snubbers operate within the specified limits. The proposed visual inspection schedule is separate from the functional testing and adds to the confidence level that the installed snubbers will serve their design function and are being maintained operable. Accident analyses assume that snubbers are initially operable, and by complying with the Technical Specification Surveillance Requirements for functional testing in conjunction with the revised visual inspection schedule assure continued operability of the snubbers. Therefore, no initial assumptions are being changed and thus neither the probability nor consequences of any accidents previously evaluated are significantly increased.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed schedule for snubber visual inspection intervals will maintain the same level of confidence as the existing schedule as documented in Generic Letter 90-09, Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions, dated December 11, 1990. Also, the surveillance requirement and schedule for snubber functional testing remains the same providing a 95 percent confidence level that 90 to 100 percent of the snubbers operate within the specified limits. The proposed visual inspection schedule is separate from functional testing and adds to the confidence level that the installed snubbers will serve their design function and are being maintained operable. As a result, the supported piping, components, etc. will be maintained OPERABLE, so that supported safety systems will perform as designed. Also, this amendment is not a modification or the result of a modification to the facility. Therefore, the possibility of a new or different kind of accident is not created.

3) Involve a significant reduction in the margin of safety because:

VOL 58 ISS 128 JL 7 1993 UMI

a) Through the current snubber functional testing and the revised snubber visual inspection schedule and the associated corrective action requirements, the proposed amendment maintains the same level of confidence as the current technical specification that snubbers are operable.

b) Initially, since the new schedule begins at the same frequency or interval specified by the current surveillance schedule, the effect on snubber operability confidence level will be neutral or negligible during the transition to the new means of determining snubber visual inspection frequency.

c) Provided there continue to be zero or few snubber visual inspection failures, the amendment will allow snubber visual inspections to continue to coincide with planned outages and will reduce personnel radiation exposure. LaSalle has not had snubber visual inspection failures to date, so that inspections have been performed during planned outages. However, as a result of this change, there is a lower potential for special unit outages required for the sole purpose of snubber inspection, thus the units will be subjected to fewer shutdowns and startups, which in itself increases the margin of safety.

Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 17, 1993

Description of amendment request: The proposed amendment will replace License Condition 2.C.(4), relating to the implementation and maintenance of the approved Fire Protection Program, in its entirety with a new standard Condition 2.C.(4), regarding fire protection, as recommended in Generic Letter (GL) 86-10. In addition, as recommended by GL 86-10, the licensee has proposed to remove all Technical Specification provisions related to the Fire Protection Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes simply remove the provisions of the Fire Protection Program that are contained in the technical specifications and places them in the [Final Safety Analysis Report] FSAR. Review of the Fire Protection Program and its revisions will be the responsibility of the [Plant Operations Review Committee] PORC, just as it has always been the responsibility of this group to review changes to fire protection requirements when they were part of the technical specifications. The fire protection license condition is revised to reflect the proposed change, include the applicable NRC safety evaluation reports, and provide the standard wording from GL 86-10.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no new failure modes associated with the proposed changes. Since the plant will continue to operate as designed, the proposed changes will not modify the plant response to the point where it can be considered a new accident.

3. Involve a significant reduction in a margin of safety.

No change is being proposed for the Fire Protection Program requirements themselves. The relevant technical specifications are being deleted, and the requirements contained therein are being incorporated into the FSAR. The FSAR will continue to provide the specific instructions necessary for theimplementation of the requirements, just as when the requirements resided in the technical specifications. Fire Protection Program changes will be governed by the provisions of the fire protection license condition, 10CFR50.59 and 10CFR50.71(e).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: June 11, 1993

Description of amendment request: The proposed amendment would add acceptance criteria for the electric and diesel fire pumps based upon the Emergency Core Cooling System (ECCS) performance requirements of the primary and backup core spray and containment spray systems, and would also remove a portion of the Fire Protection Requirements from the Specifications in response to the Commission's Interim Policy Statement on Technical Specification (TS) Improvement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the proposed change(s) involve a significant increase in the probability or consequences of an accident previously evaluated?

[Three of the changes] are administrative in nature and do not affect the current extent of surveillance testing performed on the electric and diesel fire pumps. [As discussed in the licensee's submittal], duplication currently exists between the fire protection and ECCS sections of the [TS]. With the proposed change, duplication is eliminated and the testing requirements are appropriately located in the ECCS section.

[Three of the changes] are associated with flow testing requirements for both the electric and diesel fire pumps. Currently testing is only required at one point (1,000 gpm, 110 psi) which is outside the operating range of the pumps when performing the ECCS function.

By requiring that pump testing encompass the complete ECCS operating range for both fire pumps, increased assurance of Loss of Coolant Accidents and Main Steam Line Breaks mitigation is realized. By assuring that the fire pumps can perform their ECCS function and out of service (LCO's) are not being altered, the consequences of core inventory accidents are not affected. Although fires are not classified as Chapter 15 accidents, the analysis in the previous section shows that the two pumps still exceed the fire system flow requirements even though the proposed performance curves are slightly below the previous (1,000 gpm [at] 110 psi) design point.

Since the proposed change only involves testing of the ECCS and fire protection pumps, and is not associated with modification to plant systems, probabilities or consequences of previously evaluated accidents remain unchanged.

2) Will the proposed change(s) create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes only affect the surveillance testing program for the electric and diesel fire pumps and does not result in any change to plant systems, structures or components. Testing modes and limiting conditions for operation are also not changed, thus not creating the possibility for a different type of accident.

3) Will the proposed change(s) involve a significant reduction in the margin of safety?

With respect to ECCS requirements, the proposed changes add new acceptance criteria for fire pump performance, to assure that if required adequate core cooling flows of 292 gpm (primary) or 296 gpm (back-up) are achieved. Although the proposed acceptance curve for the electric pump at the 1,000 gpm flowrate is slightly lower than previous criteria in [TS] 4.7.11.1.1.d.3, under LOCA/MSLB conditions the operating range is between [approximately] 100 [to] 750 gpm and thus does not impact ECCS performance.

For fire protection purposes the required flow rate is 2,500 gpm at 72 psig. The current acceptance criteria for both pumps results in a total flow of 3,000 gpm at 72 psig. The new acceptance curves result in a total flow of [approximately] 2,700 gpm at 72 psig which is above the required flow rate and not considered a significant reduction.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: W. M. Dean, Acting

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: December 30, 1992, as supplemented March 12, and June 8, 1993.

Description of amendment request: The proposed amendments would modify the Technical Specifications (TS) to allow sleeving at the steam generator tube support plate and tubesheet regions in accordance with processes performed by Westinghouse. Previously, on June 1, 1993, the Commission approved that part of the proposed amendments dealing with Babcock and Wilcox processes. The remaining portion, which deals with the Westinghouse sleeving process, is still under review. A supplement to the amendments, dated June 8, 1993, stated that the licensee was changing the criteria for evaluating sleeve imperfection depth. The new criteria would result in a "through wall" imperfection limit of 25% instead of 31%, a change in the conservative direction.

On April 6, 1993, the NRC published in the **Federal Register** (58 FR 17912) its preliminary analysis of the issue of no significant hazards consideration based on the amendments proposed December 30, 1992, andsupplemented March 12, 1993. The effect of the June 8, 1993, supplement is evaluated in the no significant hazards analysis herein.

Basis for proposed no significant hazards consideration determination: Under the Commission's regulations, three standards are provided in 10 CFR 50.92 to be evaluated in determining whether an amendment request involves no significant hazards consideration. These three standards are stated below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the change create the possibility of a new or different kind of accident previously evaluated?

3. Does the change involve a significant reduction in a margin of safety?

In its previous evaluation of no significant hazards consideration (58 FR 17912), the licensee addressed the three standards above the Westinghouse sleeving process and concluded there was no significant hazards consideration. The staff's review of the licensee's evaluation agreed with that determination. The only change proposed by the June 8, 1993, supplement is to use design criteria instead of repair criteria for evaluating sleeve integrity. Since design criteria are stricter than repair criteria, and limit the operational stress in the sleeved tubes to a lower value, they are more conservative than repair criteria. The use of design criteria instead of repair criteria means that the "through wall" imperfection limit will be 25% instead of 31%, a more conservative limit. Therefore, all of the arguments made in the previous evaluation of no significant hazards consideration are still applicable, only more so, because the sleeved tubes would have to be removed earlier in their service life.

Based on the NRC staffs' evaluation above, it appears that the three standards of 10 CFR 50.92 are satisfied.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 8, 1993

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specifications (TS) Section 6.9.1.14, to specify the use of the BASH methodology instead of an earlier Westinghouse methodology. The BASH methodology is a Westinghouse improved and updated methodology which can be used to evaluate a large break loss-of-coolant accident. The BASH methodology was approved by the NRC on November 13, 1986. Unit 1 is already using BASH, and the change for Unit 1 is to update the TS reference. Unit 2 is changing from the BART model to BASH using the 10 CFR 50.59 process; the TS change will update the reference.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the no significant hazards consideration standards.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

For BVPS [Beaver Valley Power Station] Unit No. 1, the proposed change to Specification 6.9.1.14 to reference the BASH methodology is editorial in nature since this change does not represent a model change.

Therefore, since this change is editorial, it does not increase the probability or consequences of an accident previously evaluated.

For BVPS Unit No. 2, the proposed change to Specification 6.9.1.14 to reference the BASH methodology will allow the plant to utilize a NRC approved methodology. The actual plant implementation will be performed under the 10 CFR 50.59 process Since the BASH methodology has been determined to be safe through previous NRC reviews, the proposed change to the reference in Specification 6.9.1.14 does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not change the plant configuration in a way which introduces a new potential hazard to the plant. Since design requirements continue to be met and the integrity of the reactor coolant

system pressure [boundary] is not challenged, no new failure mode has been created. As a result, an accident which is different than any already evaluated in the Updated Final Safety Analysis Report will not be created due to this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change to reference the BASH methodology in the BVPS Unit No. 1 Technical Specifications is editorial in nature. BVPS Unit No. 1 currently utilizes the BASH methodology to perform the LBLOCA analysis. The current reference to the 1981 Version of the Westinghouse ECCS [Emergency Core Cooling System] Evaluation Model methodology was incorrectly added when Specification 6.9.1.14 was revised in accordance with GL 88-16. Therefore, the proposed revision to reference the BASH methodology does not affect the margin of safety at BVPS Unit No. 1.

The proposed change will allow BVPS Unit No. 2 to use the BASH methodology. This change will provide an improved level of realism combined with an acceptable level of conservation for the LBLOCA analysis, such that the level of safety and margin of conservatism has been retained.

Therefore, the proposed revision to allow the use of the BASH methodology will provide the same level of safety and margin of conservatism as the current methodologies used at BVPS Unit No. 2 to perform LBLOCA analyses. The use of the BASH methodology, therefore, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 11, 1993

Description of amendment request: The proposed amendment would modify Technical Specification 5.3.1 to allow limited substitution of zirconium alloy or stainless steel filler rods for fuel rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The reconstituted fuel assemblies meet essentially the same designrequirements and satisfy the same design criteria as other assemblies with similar operating history. The use of reconstituted fuel assemblies will not result in a reduction in any existing safety criteria or design limits. Reconstitution will tend to reduce the dose effect of some accidents by reducing or eliminating defective fuel rods that would otherwise contribute to an increase in primary coolant fission product inventory. Justification for the acceptability of replacing fuel rods with filler rods is determined by a cycle specific reload safety evaluation using an NRC approved methodology to verify that the safety criteria and design limits are met. This change is consistent with the requirements recommended in Generic Letter 90-02, Supplement 1 and the STS [Standard Technical Specifications]. This change does not affect the UFSAR [updated final safety analysis report] and is consistent with the regulations, therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Reconstituted fuel assemblies are designed, installed and used in the same manner as the other fuel assemblies in the core and all design and interface requirements remain unchanged. The use of reconstituted fuel assemblies has been evaluated by Westinghouse as described in WCAP-13060-P, "Westinghouse Fuel Assembly Reconstitution Evaluation Methodology." The evaluation was performed to address the concerns identified in Generic Letter 90-02 and Supplement 1 and has been reviewed and approved by the NRC. A reload core design with reconstituted fuel will evaluate the following issues: Mechanical Design, Nuclear Design, Thermal and Hydraulic Design, Non-LOCA [Non-Loss-of-Coolant Accident] Transient Analysis, LOCA Analysis, Steam Generator Tube Rupture and Containment Integrity Analysis. The reconstituted fuel assemblies will meet the design requirements in all these areas and will not introduce any new mode of plant operation or require any physical modification to the plant. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The safety and design limits will not be changed as a result of installing reconstituted fuel. All safety and design limits will continue to be confirmed in accordance with the reload safety evaluation methodology. Technical Specification 3/4.5 defines the ECCS [emergency core cooling system] performance criteria upon which the LOCA analyses are based and Technical Specification 2.1 defines the limiting safety system parameters which form the basis upon which the non-LOCA analyses are based. These criteria ensure that the plant remains within the limits of the safety analyses for all evaluated operating conditions, therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: May 21, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Turkey Point Units 3 and 4 relating to the containment design pressure. Specifically, the proposed amendment would revise TS 5.2.2, "Design Pressure and Temperature," to change the existing maximum containment design internal pressure from 59 psig to 55 psig. Consistent with this change, revision to the associated TS bases and other administrative corrections are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment structure has been designed as one of three principal fission barriers to ensure that offsite doses resulting from pipe break events within containment do not result in offsite doses in excess of the 10 CFR Part 100 limits. The maximum containment design pressure criterion establishes a basis to ensure that the structural integrity of containment is not compromised following an accidental pressurization of this structure. Consequently, a clarification of the maximum

containment design pressure criteria and associated containment structural integrity will have no effect on the probability of occurrence of any initiating accident; and the probability of occurrence of any accident or plant event previously evaluated in the Updated [Final Safety Analysis Report] FSAR has not been increased.

Since the Large Break Loss of Coolant Accident (LOCA) analysis remains the bounding containment transient analysis case with a peak containment pressure of 49.9 psig and the containment design pressure of 55 psig continues to satisfy the original (and current) Atomic Energy Commission (AEC) structural margin criterion of 10%, the use of a containment design pressure equal to the original licensed value of 55 psig (and the associated minimum required prestress forces for the containment post-tensioning system) will not increase the consequences of an accident previously analyzed in the Updated FSAR.

A minor technical change has been proposed for BASES 3/4.6.1.4 to limit the initial containment pressure conditions to be consistent with the stated Limiting Conditions for Operation (LCO) of [Tecnical Specifications] T.S. 3.6.1.4. This will require changing the conservative bounding value of +5.0 psig to +3.0 psig for maximum initial containment pressure. T.S. 3.6.1.4 states that "primary containment internal pressure shall be maintained [below] +3 psig." The original bounding LOCA analyses did not rely on the value of +5.0 psig, and an initial containment pressure of up to +3.0 psig (which supports the LCO requirements) will not result in a post-accident pressure that exceeds the licensed design pressure of 55 psig. For these reasons, this change in BASES 3/4.6.1.4 will have no effect on the probability of occurrence of any initiating accident and it will not increase the consequences of an accident previously analyzed in the Updated Final Safety Analysis Report (UFSAR).

In addition, the capabilities of Engineered Safety Features equipment to operate within the post-accident containment environment and the conclusions of UFSAR Sections 6.3 and 6.4 remain unchanged. Engineered Safety Features equipment has been designed to provide acceptable performance and is qualified for a pressure of 59 psig, which envelopes the original licensed containment design pressure of 55 psig. Consequently, no increase in equipment failures or reductions in performance associated with a revised containment design pressure would occur, and no increase in the consequences of any accident would be expected.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The containment structure has been designed as one of three principal fission barriers to ensure that offsite doses resulting from pipe break events within containment do not result in offsite doses in excess of the 10 CFR Part 100 limits. The maximum containment design pressure criteria establishes a basis to ensure that the structural integrity of containment is not compromised following an accidental pressurization of this structure.

Since the Large Break LOCA analysis remains the bounding containment transient analysis case with a peak containment pressure of 49.9 psig and the licensed containment design pressure of 55 psig continues to satisfy the original AEC containment structural margin criterion (which remains the current NRC criterion) of 10%, no new or different kind of accident has been created. Consequently, the use of a containment design pressure equal to the original licensed pressure of 55 psig (and the associated minimum required prestress forces for the containment post-tensioning system) will not create the possibility of a new or different kind of accident from any accident previously evaluated in the Updated FSAR.

A technical change has been proposed for BASES 3/4.6.1.4 to limit the initial containment pressure conditions to be consistent with the stated LCO. This will require changing the conservatively bounding value of +5.0 psig to +3.0 psig for maximum initial containment pressure. The original bounding LOCA analyses did not rely on the value of +5.0 psig, and an initial containment pressure of up to +3.0 psig (which support the LCO requirements) will not result in a post-accident pressure that exceeds the licensed design pressure of 55 psig. For these reasons, this change in BASES 3/4.6.1.4 will not create the possibility of a new or different kind of accident from any accident previously evaluated in the Updated FSAR.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

Since the Large Break LOCA analysis remains the bounding containment transient analysis case with a peak containment pressure of 49.9 psig and the licensed containment design pressure of 55 psig continues to satisfy the original (and current) AEC structural margin criterion of 10%, the use of a containment design pressure equal to the original licensed pressure of 55 psig (and the associated minimum required prestress forces for the containment post-tensioning system) will have no effect on the margin of safety from that previously licensed by the AEC and documented in the original operating license SER.

A minor technical change has been proposed for BASES 3/4.6.1.4 to limit the initial containment pressure conditions to be consistent with the stated Limiting Conditions for Operation of T.S. 3.6.1.4. This will require changing the conservatively bounding value of +5.0 psig to +3.0 psig for maximum initial containment pressure. The original bounding LOCA analyses did not rely on the value of +5.0 psig, and an initial containment pressure of up to +3.0 psig (which support the LCO requirements) will not result in a post-accident pressure that exceeds the licensed design pressure of 55 psig. For these reasons, this change in BASES 3/4.6.1.4 does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N Berkow

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993

Description of amendment request: The proposed amendment would revise the license to reflect a change in ownership of Gulf States Utilities (GSU). Upon approval by the NRC and other regulatory agencies, GSU, which owns a 70 percent undivided interest in River Bend Station, will become a wholly owned subsidiary company of Entergy Corporation. The license would be changed by adding a footnote that describes this change in ownership of GSU. The merger will not affect the ownership, design, or operation of the River Bend Station. The opportunity to provide comments or information relating to any antitrust issues believed to be raised by the GSU ownership change was noticed in the **Federal Register** on March 25, 1993 (58 FR 16246). The opportunity, if any, for intervention and a hearing in connection with antitrust issues will be the subject of a **Federal Register** notice at the appropriate time.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change would not increase the probability or consequences of a previously evaluated accident.

As a result of the proposed license amendment, there will be no physical change to the River Bend facility, and all limiting conditions for operation, limiting safety system settings and safety limits specified in the technical specifications will remain unchanged.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment will have no effect on the physical configuration of River Bend or the manner in which it will operate. The plant design and design basis will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences. The limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications are not affected by the proposed amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid.

3. The proposed change would not involve a significant reduction in the margin of safety.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings and safety limits specified in the technical specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993

Description of amendment request: The proposed amendment would revise the license to include Entergy Operations, Inc. (EOI), as a licensee and would authorize EOI, as agent for the owners to use and operate River Bend Station and to possess and use related licensed nuclear materials. EOI is a wholly owned subsidiary of Entergy Corporation whose function would be to serve as the managing agent for River Bend. At the time of effectiveness, responsibility for the management, operation, and maintenance of River Bend would transfer to EOI from Gulf States Utilities (GSU).

In order to assure that the role of EOI is solely to act as the managing agent for the plant, the staff will condition the license to prohibit EOI from marketing or brokering power or energy from the plant. In addition, the license condition would indicate that all licensees other than EOI are responsible and accountable for the actions of their agent to the extent said agent's actions effect the marketing or brokering of power and energy from River Bend Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change would not increase the probability or consequences of a previously evaluated accident.

The employees of GSU presently engaged in the operation of River Bend will become employees of EOI. Personnel qualification, therefore, will remain the same as those discussed in the technical specifications and the Updated Final Safety Analysis Report. The organizational structure of EOI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility. Accordingly, the technical qualifications of EOI will be at least equivalent to those of GSU presently. As a result of the proposed amendment, there will be no physical changes to the facility, and all limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications will remain unchanged. With the exception of administrative changes to reflect the role of EOI, the quality assurance program, the emergency plan, security plan, and training program are unaffected. Operating agreements will ensure continued compliance with General Design Criterion 17 as well as EOI control over all activities within the exclusion area.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The limiting conditions for operation, limiting safety system settings, and safety limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of EOI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid.

3. The proposed change would not involve a significant reduction in the margin of safety.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. There will be no change to the physical design or operation of the plant or to any of these margins.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of application for amendment: May 27, 1993

Description of amendment request: Houston Lighting & Power Company, et.al., (the licensee or HL&P) requests amendments to the South Texas Project, Units 1 and 2, Technical Specifications (TS) to upgrade the fuel used in the South Texas Project reactors to Westinghouse VANTAGE 5 Hybrid (V5H) design and to implement several analytical and operational upgrades into the South Texas Project Updated Final Safety Analysis Report (UFSAR). In order to accomplish this, the licensee proposes to modify related setpoints, limiting conditions for operation, surveillance requirements, design features information, and associated bases in the following specifications: TS Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," TS Figure 3.1-1, "Required Shutdown Margin for Modes 1 and 2," TS Figure 3.1-2, "Required Shutdown Margin for Mode 5," TS Figure 3.1-2a, "MTC versus Power Level," TS 3/4.2.5, "Power Distribution Limits - DNB Parameters," TS Table 3.3-4, "Engineered Safety Features Actuation System Instrumentation Trip Setpoints," TS 3/4.6.1 1, "Primary Containment - Containment Integrity," TS 3/4.6.1.2, "Containment Systems -

Containment Leakage," TS 3/4.6.1.3, "Containment Systems - Containment Air Locks," TS 3/4.6.1.5, "Containment Systems - Air Temperature," TS 3/4.7.1.2, "Plant Systems - Auxiliary Feedwater System," TS 5.2.1, "Containment - Configuration," TS 5.3.1, "Reactor Core - Fuel Assemblies," TS 5.6.1, "Fuel Storage - Criticality," and add TS Figure 5.6-7, "Minimum IFBA Content for In-Containment Rack Fuel Storage." Additionally, changes are made for clarity to the TS Index and TS 5.2.2, "Containment - Design Pressure and Temperature."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each proposed change has been evaluated with respect to the above question. The evaluations are presented below.

The changes to the Updated Safety Analysis Report (UFSAR) due to the mechanical changes to the fuel have been reviewed internally by HL&P, per 10 CFR 50.59 [Title 10, Code of Federal Regulations, Section 50.59], have been found not to constitute an unreviewed safety question and, therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only directed effect of these fuel mechanical changes on the non-LOCA safety analyses is the potential for a change in the rod drop time (from gripper release to release to dashpot entry). The currently licensed rod drop time of 2.8 seconds has been shown to be sufficiently conservative to remain bounding even with V5H fuel and zircaloy mid-grids.

The STP analyses supporting this amendment request have incorporated the following changes to the methodology/model used in the previous licensing basis:

1) Revised Thermal Design Procedure
2) 10% steam generator tube plugging
3) Increased allowable range for T_{AVE}
4) Reduced AFW flow rate (Technical Specification (TS) 3/4.7.12) [sic;3/4.7.1.2]
5) Revised reactor containment building volume and P_a (TS 3/4.6.1.1, 3/4.6.1.2, 3/4.6.1.3, 3/4.6.1.5, 5.2.2). [sic;5.2.1]
6) Increased core peaking factor allowance in COLR
7) Positive moderator temperature coefficient (TS Fig. 3.1-2a
8) Tolerance for pressurizer safety valve drift and loop seal purge time
9) Tolerance for steam line safety valve drift
10) Revised DNB parameters (TS 3/4.2.5)
11) Shutdown margin reduction from 1.75% delta k/k to 1.3% delta k/k (Fig. 3.1-1, 3.1-2).

The proposed changes to page viii of the index and the Section 5.2.2 are editorial for consistency and clarity. They have no impact on any of the 10 CFR 50.92 criteria and involve no significant hazards consideration.

[UFSAR] Chapter 15 accidents have been analyzed considering the cumulative effects of all proposed changes, including revised setpoints described in the proposed changes to Technical Specification Tables 2.2-1 and 3.3-4. No significant increase in consequences were identified in the analyses other than small increases in the PCT [peak clad temperature] results for certain Condition IV events (LOCA [loss of coolant accident] and non-LOCA). In any case, these results were found to be within the limits of 10 CFR 50.46.

Accident probability is influenced by changes which increase the frequency of initiating events. The change described above are analytical revisions and do not involve system modifications other than setpoint changes. The changes are expected to benefit operational flexibility overall and, in the case of OT delta T [overtemperature delta temperature] setpoint changes, reduce the potential for reactor trip. Consequently, HL&P has concluded that there is no significant increase in accident probability.

In addition to the re-analysis of the [UFSAR] Chapter 15 non-LOCA transients, the Steamline Break Mass and Energy releases for use in a containment pressure and temperature analysis were calculated. V5H fuel and the associated plant changes were included in those calculations.

The containment and safety-related systems inside containment remain operable as previously analyzed. The changes in the containment volume, pressure, and temperature do not increase or cause an increase in the likelihood of a LOCA, MSLB [main steam line break], or any other DBA [design basis accident]. The increase in peak containment post accident pressure and temperature resulting from the reduced free volume is bounded by the original containment and equipment design pressure (Reference 3) [HL&P Plant Analysis, "Effects of Reduced Containment Free Volume, Reduced Initial Temperature and V5H Fuel Upgrade", February 1993.]

Criticality analyses, including IFBA [Integral Fuel Burnable Absorbers] Credit Reactivity Equivalencing and a review of postulated accidents that would increase reactivity, concluded that the acceptance criteria for criticality is met for the New Fuel and In-Containment Fuel Storage Racks for storage of all Westinghouse 17X17 fuel assemblies with the specified configurations and enrichment limits. Reanalysis of the New and In-Containment fuel racks criticality analysis does not compromise the performance of any safety-related components or system.

The licensing basis of maintaining of K_{eff} [effective multiplication factor] of less than or equal to 0.95 is met by the physical design of both he New Fuel racks and the In-containment storage racks and by the use of administrative controls. Based upon SER [Safety Evaluation Report] Supplement 6 (Reference 12) [NUREG-0781, Safety Evaluation Report Related to the Operation of South Texas Project, Units 1 and 2, including Supplements 1 through 7, Section 3.11 and 6.2] which presents the NRC acceptance criteria, the proposed changes to the UFSAR and to the Section 5.6 of the Technical Specifications meet the accepted NRC acceptance criteria for rack subcriticality. Therefore, the changes in the utilization of the New Fuel racks and the In-containment Fuel racks do not involve a significant increase in the probability or consequences of an accident previously evaluated.

No new performance requirements are being imposed on any system or component in order to support the revised analysis assumptions. Subsequently, overall plant integrity remains consistent with that established by the original licensing basis. Furthermore, the features of V5H which are different from Standard fuel and the associated fuel upgrade related changes included as modifications to the safety analyses procedures or input are associated with features used as limits or mitigators to assumed accident scenarios and not accident initiators.

The evaluation of the impact of the proposed changes specified in Section 3.0 of the Safety Evaluation is discussed in Section 4 of the Safety Evaluation and Plant Safety Evaluation (PSE)

Sections 5.4 and 5.6 (Reference 1) [≥Plant Safety Evaluation for South Texas Project Units 1 and 2 Fuel Upgrade." February 1993, FAL-93-116]. The evaluation addressed a full core of V5H as well as transition cores consisting of V5H and Standard fuel.

Therefore, the probability of occurrence of an accident previously evaluated in the safety analysis report is not increased, and there is no significant increase in the consequences of an accident previously evaluated in the safety analysis report.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As noted below, each of the elements of the revised analyses for the proposed Technical Specification changes has been reviewed and determined to be acceptable. These analytical changes do not impact the way systems are operated or introduce new or different failure mechanisms.

The accident parameters which have a direct impact on dose (including fuel damage, offsite steam releases and primary to secondary leakage) have been reviewed. The results of the accident analysis show that these parameters are not adversely affected by the upgrade to V5H and the associated changes. Since these parameters are not adversely affected, the radiological consequences of the accidents do not create the possibility of a different accident or malfunction of equipment important to safety.

Mechanical evaluations have been performed on equipment important to safety to confirm that their function and reliability are not negatively impacted due to the upgrade to V5H and the additional changes discussed in Section 3.0 of the Safety Evaluation [of May 27, 1993 submittal]. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the fuel transition. The presence of V5H fuel assemblies in the core or the

revised analytical assumptions have no adverse effect and do not challenge the performance of any other safety related system.

All safety related equipment remain operable and will continue to perform their functions under the conditions of the new analyses, and, therefore, the probability of failure of such equipment initiating an accident is not increased.

No new performance requirements are being imposed on any system or component in order to support the revised analysis assumptions. Subsequently, overall plant integrity remains consistent with that established by the original licensing basis. Furthermore, the features of V5H which are different from Standard fuel and the associated fuel upgrade related changes included as modifications to the safety analysis procedures or input (see Section 3.0 of the Safety Evaluation [of May 27, 1993 submittal]) are associated with features used as limits or mitigators to assumed accident scenarios and not accident initiators. Therefore, the probability of a malfunction of equipment important to safety previously evaluated in the safety analysis report is not increased.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The upgrade to V5H fuel, use of RTDP [Revised Thermal Design Procedure] and the other changes discussed in this application were evaluated against the applicable acceptance criteria.

1) Fuel-related criteria:

a) DNBR greater than safety analysis limit

b) PCT less than 2200°F for LOCA

c) Fuel centerline temperature less than 4900°F (BOL), 4800°F (EOL)

d) Average fuel pellet enthalpy less than 200 cal/gm for rod ejection

e) Fuel melting limited to 10 percent for rod ejection

f) Remainder of 10 CFR 50.46 criteria (clad oxidation, hydrogen generation, coolable geometry, long-term cooling)

2) RCS pressure boundary-related criteria:

a) Pressure less than 110 percent for Condition II and III events

b) Pressure less than 116 percent for Condition IV events.

3) Containment pressure:

a) Peak pressure maintained below design pressure, and long-term pressure below 50% of design within 24 hours

DNB [departure from nucleate boiling] margin is maintained by the use of the revised thermal design procedure. The non-LOCA analyses confirm that the DNB design basis is met for Standard 17X17 and V5H fuel.

LOCA-related analyses demonstrate that the margins of safety with respect to blowdown reactor vessel and loop forces is preserved, thus satisfying the 10 CFR 50.46 criteria that the core remain amendable to cooling after a LOCA. Long-term cooling and post-LOCA subcriticality concerns are satisfied by the increased RWST [Reactor Water Storage Tank) boron concentration. Increased RWST boron concentration, in turn, affects the concern with boron precipitation. The analysis shows hot-leg switchover must be accomplished 10.5 hours after accident initiation, which is acceptable.

The containment and safety-related systems inside containment remain operable as previously analyzed. The increase in peak containment post accident pressure and temperature resulting from the reduced free volume is bounded by the original containment and equipment design pressure.

The margin of safety in the plant licensing basis which is affected by the upgrade to V5H fuel and associated changes discussed in Section 3.0 of the Safety Evaluation [of May 27, 1993 submittal] is defined in the BASES to those technical specification. These BASES and the supporting technical specification values are defined by the accident analyses which are performed to conservatively bound the operating basis defined by the technical specifications and to demonstrate compliance with the regulatory acceptance limits.

The upgrade to V5H fuel and the other changes discussed in Section 3.0 of the Safety Evaluation [of May 27, 1993 submittal] were evaluated against the applicable acceptance criteria and determined to be acceptable. Performance of analyses and evaluations for the upgrade to V5H and associated changes have confirmed that the operating envelope defined by the technical specifications continues to be bounded by the revised analytical basis, which is no case exceeds the acceptance limits.

Therefore, the margin of safety provided by the analyses in accordance with these acceptance limits is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P. C., 1615 L Street, N.W., Washington D.C. 20036

NRC Project Director: Suzanne C. Black

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: May 26, 1993

Description of amendment request: The proposed license amendment would revise Technical Specifications 6.8.2 and 6.8.3c to require approval of plant procedures and administrative policies (and changes thereto) by the branch manager for the functional area of the procedure or administrative policy rather than requiring approval of these procedures and administrative policies by the Plant Manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates administrative changes and does not affect assumptions contained in any safety analyses nor do the changes affect Technical Specifications that preserve safety analyses assumptions. Additionally, these proposed changes do not modify the physical design or operation of the plant. Furthermore, the quality of plant procedures will be preserved since approval will rest with the branch managers in the area of expertise for the procedure. Niagara Mohawk believes that it is prudent to have plant procedures approved by the appropriate branch manager. This allows the person most familiar with the procedure the opportunity to approve it. Any safety concerns regarding a procedure change can be elevated to higher levels of management. The proposed changes are intended to enhance the overall management capability and performance of Nine Mile Point Unit 1 by freeing the Plant Manager for other duties involving plant safety. Therefore, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since there are no changes in the way the plant is operated and plant equipment and physical features are not affected, the potential for an unanalyzed accident is not created. The proposed changes are administrative in nature and do not affect any accident initiators for Nine Mile Point Unit 1. Therefore, no new failure modes are introduced. Furthermore, the quality of plant procedures will be preserved since approval will rest with the branch managers in the area of expertise for the procedure. Niagara Mohawk believes that it is prudent to have plant procedures reviewed by the appropriate branch manager. This allows the person most familiar with the procedure the opportunity to approve it. Any safety concerns regarding a procedure change can be elevated to higher levels of management. The proposed changes are intended to enhance the overall management capability and performance of Nine Mile Point Unit 1 by freeing the Plant Manager for other duties involving plant safety. The proposed amendment will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCO's [Limiting Condition for Operations], limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits. No margin of safety is affected by this change. The initial conditions utilized in the conduct of the accident analyses are unchanged. The methodologies used for the analyses are unchanged. The analysis results are not impacted. Sufficient controls are included in the procedure review methodology to ensure that the plant conditions and equipment availability required to support the integrity of the analyses, and hence the margin of safety, will continue to be maintained.

The proposed amendment does not involve a significant reduction in a margin of safety because Niagara Mohawk, through its Quality Assurance programs and other required controls, maintains ANSI standard or Regulatory Guide 1.8, as appropriate, qualified personnel in positions of responsibility. This assures that procedures and procedure changes are approved at a high level of competence.

The proposed changes are administrative in nature and do not affect the safe operation of the plant. Therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 26, 1993

Description of amendment request: The proposed license amendment would revise Technical Specifications (TSs) 6.8.2 and 6.8.3c to require approval of plant procedures (and changes thereto) by the branch manager for the functional area of the procedure rather than requiring approval of these procedures by the Plant Manager. The proposed license amendment would also make a typographical correction to the spelling of the word "DOSE" in TS 6.8.1.i and would delete a footnote on TS page 6-16; the intent of this footnote would be incorporated in the proposed revision to TS 6.8.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates administrative and editorial changes and does not affect assumptions contained in any safety analyses nor do the changes affect Technical Specifications that preserve safety analyses assumptions. Additionally, these proposed changes do not modify the physical design or operation of the plant.

Furthermore, the quality of plant procedures will be preserved since approval will rest with the branch managers in the area of expertise for the procedure. Niagara Mohawk believes that it is prudent to have plant procedures approved by the appropriate branch manager. This allows the person most familiar with the procedure the ability to approve it. Any safety concerns regarding a procedure change can be elevated to higher levels of management. The proposed changes are intended to enhance the overall management capability and performance of Nine Mile Point Unit 2 by freeing the Plant Manager for other duties involving plant safety. The proposed changes to delete the footnote on page 6-16 and to replace the reference to SORC [Station Operations Review Committee] in Specifications 6.8.2 and 6.8.3.c with a reference to Specification 6.5.2 are being requested for clarification purposes and do not change what is currently allowed by the Nine Mile Point Unit 2 Technical Specifications. In addition, an editorial change has been proposed to correct the spelling of "DOES" to "DOSE" in Section 6.8.1.i. Therefore, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since there are no changes in the way the plant is operated and plant equipment and physical features are not affected, the potential for an unanalyzed accident is not created. The proposed changes are administrative and editorial in nature and do not affect any accident initiators for Nine Mile Point Unit 2. Therefore, no new failure modes are introduced. Furthermore, the quality of station procedures will be preserved since approval will rest with the branch managers in the area of expertise for the procedure. Niagara Mohawk believes that it is prudent to have plant procedures reviewed by the appropriate branch manager. This allows the person most familiar with the procedure the ability to approve it. Any safety concerns regarding a procedure change can be elevated to higher levels of management. The proposed changes are intended to enhance the overall management capability and performance of Nine Mile Point Unit 2 by freeing the Plant Manager for other duties involving plant safety. The proposed changes to delete the footnote on page 6-16 and to replace the reference to SORC in Specifications 6.8.2 and 6.8.3.c with a reference to Specification 6.5.2 are being requested for clarification purposes and do not change what is currently allowed by the Nine Mile Point Unit 2 Technical Specifications. In addition, an editorial change has been proposed to correct the spelling of "DOES" to "DOSE" in Section 6.8.1.i. The proposed amendment will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCO's [Limiting Condition for Operations], limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits. No margin of safety is affected by this change. The initial conditions utilized in the conduct of the accident analysis are unchanged. The methodologies used for the analyses are unchanged. The analyses results are not impacted. Sufficient controls are included in the procedure review methodology to ensure that the plant conditions and equipment availability required to support the integrity of the analyses, and hence the margin of safety, will continue to be maintained.

The proposed amendment does not involve a significant reduction in a margin of safety because Niagara Mohawk, through its Quality Assurance programs and other required controls, maintains ANSI standard or Regulatory Guide 1.8, as appropriate, qualified personnel in positions of responsibility. This assures that procedures and procedure changes are approved at a high level of competence.

The proposed changes are administrative and editorial in nature and do not affect the safe operation of the plant. Therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: June 7, 1993

Description of amendment request: The proposed changes would, in part, change the Action requirements and associated Bases for Technical Specification (TS) 3/4.8.1, "AC Sources - Operating," to eliminate unnecessary emergency diesel generator testing when a diesel generator or an off-site power source becomes inoperable. These changes are intended to increase diesel generator reliability by reducing the stresses on the diesel generators caused by unnecessary testing. Additional changes have also been proposed to TS 3/4.8.1 to further enhance diesel generator reliability and to make certain administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.8.1.1, Actions b, c, d and g, require that the operable diesel generator(s) be started and loaded to offsite power to demonstrate their operability in the event any diesel generator(s) becomes inoperable due to any cause other than preplanned preventive maintenance or testing. The proposed change would add wording to Technical Specification 3.8.1.1 Actions b, c, d, and g which would allow verification that the cause of the diesel generator(s) being inoperable does not impact the operability of the operable diesel generator(s). This will allow station personnel to determine whether the potential for a common mode failure exists rather than requiring unnecessary testing of the operable diesel generators.

The normal Technical Specification surveillance testing schedule established in accordance with GL [Generic Letter] 84-15 assures that operable diesel generator(s) are capable of performing their intended safety functions. A failure of a different diesel generator does not reduce the reliability of an otherwise operable diesel generator(s) if the cause of failure is not common to the diesel generator(s). Deleting the requirement to demonstrate the operability of an otherwise operable diesel generator, once the potential for a common mode failure has been dismissed, does not affect the design or performance characteristics of a diesel generator. Therefore, the diesel generator(s) maintain their ability to perform their design function.

Technical Specification 3.8.1.1, Actions b, c, d and g, also require that the operable diesel generator(s) be started and loaded to offsite power to demonstrate their operability in the event any diesel generator becomes inoperable due to any cause other than preplanned preventive maintenance or testing. The proposed change would delete the requirement to load a diesel generator(s) to offsite power. As addressed in Information Notice 84-69, when a diesel generator is operated connected to an offsite power source and its associated non-vital loads, disturbances on the non-vital loads and offsite power systems can adversely affect diesel generator reliability. Therefore, diesel generator availability can be adversely affected by a demonstration of operability requiring connection of the diesel generators to offsite power sources and associated non-vital loads. At a time when at least one diesel generator is already inoperable, these Action [S]tatements increase the risk of losing the remaining operable diesel generator(s). Deleting the requirement to load the operable diesel generator(s) does not affect the design or performance characteristics or the reliability of the diesel generator(s). Therefore, the diesel generators maintain their ability to perform their design function.

Technical Specification 3.8.1.1, Actions b, c, and d, require that all operable diesel generator(s) be started and loaded to offsite power to demonstrate their operability in the event any diesel generator becomes inoperable due to any cause other than "preplanned preventive maintenance or testing." The proposed change would revise Technical Specification 3.8.1.1, Actions b, c, and d, to remove the word "preventive" from the phrase "preplanned preventive maintenance." This requirement could cause unnecessary testing of the operable diesel generators if preplanned "corrective" maintenance was performed. Since, by its nature, preplanned corrective maintenance could be delayed without declaring the diesel generator inoperable, the condition requiring corrective maintenance has not prevented the diesel generator from being capable of performing its intended safety function. Under the current requirements, minor corrective maintenance could be delayed in order to prevent having to demonstrate the operability [of] the operable diesel generators. The ability to perform types of maintenance other than preventive without subsequent testing does not affect the design or performance characteristics of the diesel generators.

Technical Specification 3.8.1.1, Actions a and f, require that the operable diesel generator(s) be started and loaded to offsite power to demonstrate its operability in the event an offsite source becomes inoperable. The inoperability of an offsite AC power source in no way affects the reliability of a diesel generator. Accordingly, the proposed Technical Specification change would delete the requirement to demonstrate the operability of the operable diesel generator(s) when an offsite power source is determined to be inoperable. Deleting the requirement to demonstrate the operability of the diesel generator(s) when offsite power is lost does not affect the design or performance characteristics of the diesel generator(s). Therefore, the diesel generator(s) maintain their ability to perform their design function.

Technical Specification 3.8.1.1 Action e requires that, within 2 hours of a Division I or II diesel generator becoming inoperable, all required systems, subsystems, trains, components and devices that depend on the remaining operable Division I or II diesel generators as a source of emergency power be verified as operable. If this condition cannot be met, the plant is required to be placed in HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours. Technical Specification 3.8.1.1 Action e can result in an unnecessary plant shutdown when the current Technical Specification Action for the affected equipment allows continued plant operation for a time period longer than 2 hours when both redundant pieces of equipment are inoperable.

Therefore, Niagara Mohawk proposes to change Action e to add the option of declaring inoperable the redundant system, subsystem, train, component or device served by the inoperable diesel generator and taking the Actions required by the associated specification(s) for both divisional systems, subsystems, trains, components or devices being inoperable versus shutting down the plant. The current Action requirements for the affected equipment will be used to determine if an immediate plant shutdown should be initiated. These Action statements have been established to support safe operation based upon the affect of the loss of the equipment's safety function(s). Therefore, plant safety is not adversely affected nor is the diesel generator(s) ability to perform its design function affected.

Niagara Mohawk also proposes to add the word "redundant" to Technical Specification 3.8.1.1 Action e to remove the requirement to verify operability of equipment which is served by only one diesel generator. The accident analyses does not take credit for operation of equipment which is not served by both EDG*1 and EDG*3 since a single failure during a design basis accident would prevent such equipment from performing its safety function(s). In addition, there are some systems that are supplied power by both diesel generator(s) that are not required for safe shutdown of the plant. Revised Bases for this Action statement clearly define which equipment is required to be verified operable per Action e. The proposed changes to Action e continue to limit plant operation to those periods of time allowed by the current Action statements for the affected equipment. Therefore, the same level of safety for those significant critical systems is maintained and plant safety is not adversely affected nor is the diesel generator(s) ability to perform its design function.

Technical Specification 3.8.1.1 Action d requires that when Division III diesel generator EDG*2 is found to be inoperable, EDG*2 be restored to an operable status within 72 hours or HPCS [High Pressure Core

Spray] be declared inoperable and the actions required by Technical Specifications 3.5.1 and 3.7.1.1 be taken. Niagara Mohawk proposes to delete the reference made to Technical Specification 3.7.1.1. Technical Specification 3.7.1.1 provides the operability requirements of the plant service water system. The service water system consists of two loops, Division I and Division II. The inoperability of the Division III diesel generator does not affect the operability of the Division I or II service water systems. Therefore, the reference made to Technical Specification 3.7.1.1 should be deleted. This is an administrative change and does not affect the diesel generator design or performance.

The word "test" has been deleted from the note (indicated by the asterisk (*)) in Technical Specification 3.8.1.1. Currently Technical Specification 3.8.1.1, Actions b, c, d, and g, require that a "test" be performed to demonstrate diesel generator operability. Because of the changes proposed above, a "test" is no longer always required to meet the Action requirements. Therefore, the word "test" will be deleted. This is an administrative change and does not affect the diesel generator design or performance.

Because the proposed changes do not affect the design or performance of the diesel generators or their ability to perform their design function, the changes will not result in an increase in the consequences of an accident previously evaluated. Because these changes do not affect the probability of accident precursors, the proposed changes do not affect the probability of an accident previously evaluated. The proposed changes will increase diesel generator reliability, thereby increasing overall plant safety.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Technical Specification 3.8.1.1 Actions and Bases do not introduce any new modes of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make any changes to system setpoints which could initiate a new or different kind of accident. The changes proposed do not affect the design or performance characteristics of any diesel generator or their ability to perform their design functions. The proposed changes will eliminate unnecessary diesel generator testing, increasing diesel generator reliability and thereby having an overall positive affect on plant safety. Accidents concerning loss of offsite power and a single failure (e.g., loss of a diesel generator) have previously been evaluated. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes to Technical Specification 3.8.1.1 Actions and Bases will not reduce the equipment required by Technical Specification Limiting Condition for Operation 3.8.1.1. The changes do not affect the design or performance of any diesel generator, but will increase diesel generator reliability by reducing the stresses on the diesel generator from unnecessary testing. This will result in an overall increase in plant safety. Niagara Mohawk proposes to change Action statement e to add the option of declaring inoperable the redundant system, subsystem, train, component, or device served by the inoperable diesel generator and taking the Actions required for both divisional systems, subsystems, trains, components or devices, being inoperable versus shutting down the plant. This allows the current action requirements, which have been established to support safe operation based upon the affect of the loss of the equipment's safety failure, to determine if an immediate plant shutdown is required. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: May 25, 1993

Description of amendment request: The proposed change removes the operability and associated surveillance requirements for the main steam line radiation monitor (MSLRM) scram and Group I containment isolation functions. Justification for removal of the MSLRM trip function was described in Licensing Topical Report NEDO-31400, "Safety Evaluation For Eliminating the Boiling Water Reactor Main Steam Line Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor," which was approved by the NRC staff on May 15, 1991. The proposed change also moves the requirements for MSLRM calibration to Surveillance Requirement 4.6.K.2 and makes some editorial changes to Limiting Condition for Operation Section 3.6.K.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the attached proposed changes and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed technical specification changes associated with removal of the Group I isolation and the reactor scram functions of the MSLRM do not involve a significant increase in the probability of an accident previously evaluated. The trip function was in place only to react to a previously evaluated accident, the CRDA [Control Rod Drop Accident], and as such, cannot increase the probability of occurrence of previously evaluated accidents.

The consequences of a previously evaluated accident are not significantly increased since the Millstone Unit No. 1 design basis accident analysis currently does not take credit for the trip function. Although the CRDA does assume MSIV [Main Steam Isolation Valve] closure, no credit was taken for this, as the analysis assumes that all activity calculated to be available for release is transported to the condenser before the closing of the MSIVs. Additionally, the main steam activity detected by the MSLRMs will be removed by the SJAEs [Steam Jet Air Ejectors], be monitored by the redundant off-gas monitors, and be directed to the off-gas treatment system. The sensitivity of the off-gas monitors is much greater than in the MSLRMs. The noble gas activity required to cause the MSLRMs to exceed their alarm setpoint will be well above the trip setpoint for the off-gas monitors. The off-gas monitors will automatically initiate closure of the off-gas system discharge valve after a 15-minute time delay and hence, trap all activity within the off-gas system. No significant activity is expected to be released to the public, since it would be contained within the off-gas system.

Furthermore, not closing the MSIVs automatically will reduce the potential dose, as the SJAE will remain available to direct activity to the off-gas system. If the MSIVs were closed, the activity would remain in the condenser. More activity would be expected to leak out of the condenser than the off-gas system. Therefore, the consequences of the previously evaluated CRDA are not increased.

(2) Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes do not involve any plant hardware changes which could introduce any new failure modes or effects. The MSLRM monitors will remain active and will still alarm in the control room. The direct impact on the plant is that this

particular trip function (i.e., MSIV closure and reactor scram) will no longer actuate. Since the design basis accident analysis does not credit this trip function to demonstrate acceptable radiological consequences, the proposed changes have effectively been evaluated previously and are enveloped by the existing analysis. In the CRDA, all activity from failed fuel rods is assumed to be immediately transported to the condenser and is available for leakage from the condenser. Thus, the removal of the Group I isolation and scram functions does not create the possibility of a new or different kind of accident than those previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not affect the calculated off-site dose consequences. Furthermore, the changes will improve the overall reliability of the plant when compared to the existing system, since the proposed changes will reduce the chances of an unnecessary plant transient occurring as a result of an inadvertent MSIV closure.

A reliability assessment of the elimination of the MSLRM scram function on reactivity control failure frequency and core damage frequency was performed in NEDO-31400. The results of this analysis indicate a negligible increase in reactivity control frequency with the deletion of the MSLRM trip function. However, this increase is offset by the reduction in the transient initiating events (inadvertent scrams). This reduction in transient initiating events represents a reduction in core damage frequency and thus, results i[n] a net improvement to safety.

Removal of the MSLRM scram and MSIV closure functions do not increase the consequences of any design basis accidents, including CRDA. Other Group I isolation signals for the MSIVs remain unaffected. Procedures will be changed to require a manual scram and MSIV closure on receipt of an MSLRM alarm followed by an SJAE Hi-Hi alarm. This will ensure that any significant increase in main steam line radioactivity levels is controlled expeditiously. No other protective boundary is adversely affected. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 21, 1993

Description of amendment request: The proposed amendment to the Technical Specification (TS) would reflect the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, and implement administrative changes. The changes in 10 CFR Part 20, reflect the new Part 20 subsection numbers, and revise the term "Very High Radiation Area". Also the release rate limits are changed to add needed operational flexibility to facilitate new 10 CFR Part 20 requirements for liquid and gaseous effluent concentrations from nuclear power reactors. Administrative changes will correct typographical errors, and revise equipment identification numbers and reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve significant hazards considerations because operation of Fort Calhoun Station Unit No. 1 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the liquid and gaseous release rate limits and the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 does not effect the probability or consequences of an accident previously evaluated. The proposed changes will not change the types or amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The proposed changes to the submittal requirements of the annual radioactive effluent report do not affect the probability or consequences of an accident previously evaluated. The required submittal is a reporting requirement only. The proposed change will continue to meet the reporting requirement of 10 CFR 50.36a and further clarifies when the report is to be submitted.

The proposed changes to the equipment identification numbers do not affect the probability or consequences of an accident previously evaluated. The changes reflect a modification which will replace three existing radiation monitors with two monitors which will have the same measurement range of detection and meet the post accident requirements of the present monitors.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to the liquid and gaseous release rate limits and the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 will not create the possibility of a new or different kind of accident. The proposed changes will not change the types or amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The proposed changes to the equipment identification numbers will not create the possibility of a new or different kind of accident. The function and operation of the radiation monitors which will replace the existing monitors remains the same as the present monitors.

(3) Involve a significant reduction in a margin of safety.

The proposed changes to the liquid and gaseous release rate limits and the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 will create the possibility of a new or different kind of accident. The proposed changes will not change the types or amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The proposed changes to the submittal requirements for the annual radioactive effluent report and equipment identification numbers are administrative and will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: Terence L. Chan (Acting)

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 1, 1993

Description of amendment request: The proposed amendment would revise Trojan Operating License No. NPF-1 by removing the Radiological Effluent Technical Specifications (RETS) from the Trojan Technical Specifications (TTS) and relocating them to the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP). This action is proposed in accordance with the guidance provided in Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and Relocation

of Procedural Details of RETS to the Offsite Dose Calculation Manual or Process Control Program."

In conjunction with relocating the RETS, this License Change Amendment also proposes to change the required frequency for submittal of the Radioactive Effluent Release Report from semiannually to annually in accordance with Title 10 to the Code of Federal Regulations, Part 50.36(a) (10 CFR 50.36(a)) made in 1992 to reduce the regulatory burden on licensees (57 FR 39353, August 31, 1992).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is based upon the following items:

1. Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature since the existing RETS requirements will be relocated to the ODCM and PCP and will be controlled by the requirements stipulated in the Administrative Controls section of the TTS. The proposed changes do not involve modifications to existing Plant equipment, the addition of new equipment, or operation of the Plant in a different manner than previously evaluated.

2. Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the requirements of the RETS will be incorporated into the ODCM and PCP with specific administrative controls remaining in the TTS. Additionally, this change is administrative in nature and is consistent with the guidance provided in Generic Letter 89-01. The proposed changes do not involve alterations to Plant operating philosophy or methods, or in changes to installed Plant systems, structures, or components.

3. Would operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety?

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. These changes do not reduce the margin of safety as the existing requirements will be relocated to the ODCM and PCP and will provide for adequate control over radioactive effluent releases, solid waste management and radiological environmental monitoring activities.

The relocation of the RETS requirements from the TTS to the ODCM and the PCP is consistent with the Nuclear Regulatory Commission's Policy Statement on Technical Specification Improvement. This change will not reduce the level of control over gaseous and liquid radioactive effluents or solid waste management since programmatic control of the RETS will be maintained in the Administrative Controls section of the TTS.

In addition to relocating the RETS, this License Change Application also proposes to change the required frequency for submittal of the Radioactive Effluent Release Report from semiannually to annually. This change is consistent with an amendment to the requirements of Title 10 to the Code of Federal Regulations, Part 50.36(a) (10 CFR 50.36(a)) made in 1992 to reduce the regulatory burden on licensees (57 FR 39353, August 31, 1992).

Based on the above analysis, it is concluded that the proposed changes involve no significant hazards consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Seymour H. Weiss

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 21, 1993

Description of amendment request: The proposed changes would revise Technical Specification 4.9.C.2 and Bases Sections 4.9.B and 4.9.C, to clarify that testing of the emergency diesel generator fuel oil transfer system and the emergency diesel generator air starting compressors can be conducted either concurrently or independently of the monthly emergency diesel generator tests. The proposed changes also add the acceptance criteria for emergency diesel generator fuel quality testing to the Bases and make an editorial correction.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes allow emergency diesel generator fuel oil transfer system testing either concurrently or independently of monthly emergency diesel generator testing, clarify the independence of emergency diesel generator and air starting compressor testing, clarify the bases for testing fuel oil and make an editorial correction. These changes involve no hardware modifications, alteration of system operations, or degradation of system performance. Except for allowing independent testing, there are no changes to the procedures used for testing. Concurrent or independent testing of the fuel oil transfer system and the air starting compressors from the emergency diesel generators provides greater flexibility in utilizing plant resources to meet surveillance requirements. Independent system testing will not alter test effectiveness in determining system reliability nor will it alter testing methodology. The changes will not alter the level of confidence in system operability or capability. The changes to the Bases Section delete acceptance criteria which are different than or repetitious of the Surveillance Requirement. There are no changes to emergency diesel generator fuel oil requirements. The changes do not alter the conclusions of existing accident analyses as documented in the FSAR [Final Safety Analysis Report] and NRC SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes involve no hardware modifications, alteration of system operations, or degradation of system performance. The changes do not alter testing methodology or the surveillance frequency. The nature of the changes is such that no new or different kind of accident can be created.

3. involve a significant reduction in the margin of safety.

The proposed changes will have no affect on the margin of safety. Testing methodologies will not change. The extent and frequency of system testing will not change. Concurrent or independent testing will not effect the operability of either the emergency diesel generators, the fuel oil transfer system or the air starting compressors. Independent testing will not reduce the ability of the systems in fulfilling their respective functions in mitigating a design basis accident. Deletion of repetitious or inconsistent descriptions of the acceptance criteria for emergency diesel generator fuel oil has no effect on the margin of safety and clarifies the bases. This change does not reduce test acceptance criteria or affect acceptance test methodology.

The NRC staff has reviewed the licensee's analysis and, based on this

VOL 58 ISS 128 JL 7 1993 UMI

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 16, 1993

Description of amendment request: The proposed changes would amend the Technical Specifications (TSs) to provide a one-time extension of the current intervals for certain surveillances that are required to be performed once each operating cycle. The changes would extend the current intervals for bench checking and disassembling safety/relief valves in accordance with TSs 4.6.E.1 and 4.6.E.2, and for functionally testing 10 percent of each snubber type in accordance with TS 4.6.1.3. The changes would also extend the current interval for testing excess flow check valves in accordance with TS 4.7.D.1.b. The licensee requested extensions of these surveillance intervals until the end of the next refueling outage, currently scheduled to start in January 1995. The changes were requested since the extended 14-month outage from November 1991 to January 1993 interrupted the continuity of the normal surveillance schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the testing frequency of safety/relief valves for one surveillance interval. This change will not require a modification to any plant structures, systems, or components. This is a change only to the safety/relief valve testing frequency. The actual surveillance test effectiveness and operability as determined by this testing will remain the same. The potential small change in reliability will not initiate an accident and will not effect the consequences of an accident since the safety/relief valves are still available to perform their intended safety function.

The one-time surveillance interval extension to the functional testing frequency of snubbers involves no hardware changes, no changes to the operation of the snubbers nor does it change the ability of the snubbers to perform their intended functions. Increasing the snubber functional test interval produces a small increase in the probability that an inoperable snubber would not be detected. However, this small risk does not involve a significant increase in the probability of an accident previously evaluated.

The proposed one-time surveillance interval extension of instrument line excess flow check valve testing involves no hardware modifications, changes to system operating procedures or affects the ability of any system to perform its intended function. The probability of excess flow check valve leakage is not increased significantly and the ability of plant personnel and equipment to respond to an accident is not affected.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed change to the safety/relief valve surveillance test interval does not change design, operation or the testing process. The nature of this change precludes the possibility of a new or different kind of accident.

The proposed change to the snubber functional test interval involves no hardware changes, no changes to the operation of the snubbers nor change the ability of the snubbers to perform their intended functions. Performing the testing on an extended schedule cannot initiate any type of accident.

The proposed change to the excess flow check valve surveillance test interval does not change the design, operation, or the testing process. The change to the testing interval does not affect any condition that could result in a new or different type of accident.

3. involve a significant reduction in the margin of safety.

Safety/relief valves are required to open within 1% of the nominal setpoints as prescribed in the Technical Specifications. The purpose of bench checking all safety/relief valves is to verify these setpoints. In the past, safety/relief valve setpoint drift has caused the setpoint tolerances to be exceeded. As part of the analysis in Reference 1, [Letter from R. E. Beedle (Power Authority of the State of New York) to NRC, dated May 5, 1993, regarding updated Safety Relief Valve Performance Requirements] continuous operation of the plant would be acceptable with the safety/relief valves actuating at 1195 psig. The value of the upper limit of 1195 psig, determined from the overpressure protection analysis, satisfies all safety concerns and does not reduce the ability of the system to perform its intended safety function.

The proposed one-time change to the snubber functional test interval does not change the operation of snubbers nor change the ability of the snubbers to perform their intended function. This one-time interval extension does not change the level of confidence in snubber operability developed from visual inspections which will be performed as scheduled.

The proposed one-time extension to the excess flow check valve functional test interval does not reduce the ability of these valves to perform their intended safety function. The small amount of degradation the valves may undergo during this extension period is insignificant and will not significantly reduce the ability of the valves to close to limit leakage of reactor coolant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and DocumentsDepartment, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 25, 1991, as supplemented March 20, 1992.

Description of amendment request: The proposed amendment would revise Technical Specification 5.0 and Figure 5.1-1 to describe, rather than depict, the Ginna Nuclear Power Plant site boundary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

There is no significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification change. The proposed change does not alter or modify the Security or Emergency plans. Changes to either the Security or Emergency plans are governed in accordance with the criteria in 10CFR50.54(p) and (g) respectively. The Radiological Effluent Technical Specifications are unchanged by the proposed Amendment and the change does not alter any assumptions previously made in evaluating the radiological consequences of an accident described in the [updated final safety analysis report] UFSAR. Therefore, the proposed Amendment does

not involve a significant increase in the probability or consequences of any accident previously evaluated.

The possibility of a new or different kind of accident from any accident previously evaluated is not created. In matters related to nuclear safety, (1) all accidents are bound by previous analyses and (2) the Security and Emergency plans are unchanged by the proposed Amendment. The proposed change does not add or modify any equipment design nor does the proposed change involve any operational changes to any plant system or Limiting Condition for Operating (LCO). The absence of a hardware change or a change in programmatic controls ensures that the accident initiators are unaffected, so no unique accident probability is created.

The proposed amendment does not involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification (TS) because the results of the accident analyses which are documented in the UFSAR continue to bound operation under the proposed changes so that there is no safety margin reduction. Additionally, established activities and administrative practices will continue to be conducted in compliance with the Commission's regulations....

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: May 12, 1993

Description of amendment request: This proposed change would add a new license condition 2.C.(9) concerning the San Onofre, Unit 1, Fire Protection Program. The licensee proposed this new license condition in accordance with Generic Letters 86-10 and 88-12, and as part of a request to replace in its entirety the existing set of Technical Specifications incorporated in *Facility Operating License No.* DRP-13 as Appendix A with a set of Permanently Defueled Technical Specifications (PDTS) (58 FR 34093).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Only two of the accidents that are evaluated in Chapter 15 of the UFSAR remain applicable for the permanently defueled plant: (1) a loss of offsite power (LOP) and (2) a fuel handling accident. The other Chapter 15 accidents are not applicable during the defueled condition. Maintaining the permanently defueled plant in accordance with the proposed PDTS does not affect the probability of occurrence of an LOP, but the probability of a fuel handling accident will be reduced. The consequences of both accidents will be reduced during the Permanently Defueled Mode. Additionally, the ability of the fuel storage facility to withstand other applicable UFSAR events, natural phenomena, and fires is either unchanged from the existing licensing basis or is improved during the defueled condition.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Operating the permanently defueled plant in accordance with the proposed PDTS does not create the possibility of a new or different kind of accident from any previously considered. Most of the existing plant systems and functions will not be operational during the Permanently Defueled Mode since power operations are not allowed and all of the fuel at SONGS 1 is stored in the spent fuel pool. However, all systems and components that are necessary for safe fuel handling and storage activities will be maintained operable during the permanently defueled condition. The proposed PDTS provide operation and surveillance requirements and administrative controls which are sufficient to ensure that the required systems and components will be operable during the Permanently Defueled Mode.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed PDTS are sufficient to ensure no reduction in a margin of safety, in part, because of the reduced range of design basis accidents against which the plant must be protected once the plant is permanently defueled. Only the LOP and fuel handling Chapter 15 accidents are relevant during the Permanently Defueled Mode. The margins of safety for both of these accidents will be improved by maintaining the plant in accordance with the proposed PDTS. None of the other Chapter 15 accidents are applicable since power operation will not occur during the defueled condition. Additionally, the margins of safety for other applicable UFSAR events, natural phenomena, and fires ar either improved during the Permanently Defueled Mode or remain unchanged from the plant's current licensing basis.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket No. 50-361, San Onofre Nuclear Generating Station, Unit No. 2, San Diego County, California

Date of amendment request: April 30, 1993

Description of amendment request: The licensee proposes to revise San Onofre Unit 2 Technical Specification (TS) 3/4.4.8.1, "Pressure-Temperature Limits," TS 3.4.8.3.1, "Overpressure Protection Systems-RCS Temperature [less than or equal to] 312°F," TS 3.4.8.3.2, "Overpressure Protection Systems-RCS Temperature >312°F," and the associated TS Bases. The proposed change (1) revises the Reactor Coolant System (RCS) Pressure-Temperature (P-T) limits and the Low Temperature Overpressure Protection (LTOP) enable temperatures to be effective until 8 Effective Full Power Years (EFPY) of operation, and (2) makes minor changes to the Unit 2 TS to be consistent with the Unit 3 TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

To compensate for any increase in the reactor vessel nil ductility reference temperature (RT_{NDT}) caused by neutron irradiation, limits on Pressure-Temperature (P-T) relationships are periodically changed in accordance with 10 CFR 50, Appendix G. This allows the materials for the pressure-retaining components of the reactor coolant pressure boundary to stay within their stress limits during any condition of normal operation, including anticipated operational

occurrences and system hydrostatic tests over its service lifetime.

The updates to Figures 3.4-2 and 3.4-4, and the new Figure 3.4-5 for normal operation incorporate the changes to the P-T limits calculated using conservative fluence values. The new P-T limit curves (Figures 3.4-6 and 3.4-7) for Remote Shutdown cooldown operation incorporate the Total Loop Uncertainties (TLUs) for pressure for shutdown instruments on the Remote Shutdown panel which are higher than the TLUs for pressure for the Control Room shutdown instruments. The temperature TLUs for both the Remote Shutdown instruments and the Control Room shutdown instruments are equal. These updates maintain margins of safety against nonductile failure of the reactor pressure vessel based on the test results and analysis of the Unit 3 surveillance capsule and updated material properties evaluated in response to GL 92-01, Revision 1, "Reactor Vessel Structural Integrity." Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to the Low Temperature Overpressure Protection (LTOP) enable temperatures is in accordance with NUREG-0800 Branch Technical Position RSB 5-2, Revision 1, "Overpressurization Protection of Pressurized Water Reactors While Operating at Low Temperatures." The results of the most limiting energy addition transient which is driven by the differential temperature between the Reactor Coolant System (RCS) and the steam generator are not changed by this revision to the LTOP. As such the proposed change is bounded by the original analysis. Therefore, the proposed LTOP enable temperature change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change incorporates the change in reactor vessel RT_{NDT} from different irradiation stages to reflect the accumulation of fast neutron exposure. Any increase in RT_{NDT} due to irradiation is compensated for by limiting pressure-temperature relationships in accordance with 10 CFR 50 Appendix G to ensure pressure-retaining components of the reactor coolant pressure boundary stay within their stress limits over their service lives. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

All LTOP design basis energy addition and mass addition transients have been previously evaluated and remain bounding. The proposed changes do not result in any system configuration changes which would affect the capability of the Shutdown Cooling System (SDCS) Relief Valve to respond to design basis transients. Operation of the plant in accordance with TSs 3.4.1.3, "Hot Shutdown," and 3.4.1.4.1, "Cold Shutdown-Loops Filled," remain unchanged. Therefore, the proposed LTOP enable temperature changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The purpose of the P-T limit curves is to limit thermal stresses induced by the normal load transients, reactor trips, and unit startup and shutdown operations. The proposed revision to the P-T limit curves incorporates the effects of neutron-induced embrittlement in the pressure-retaining component materials to preserve the margin of safety required by 10 CFR 50, Appendix G. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The proposed LTOP enable temperatures of 238°F for heatup, and 221°F for both normal and Remote Shutdown cooldown meet the recommendations of NUREG-0800 Branch Technical Position RSB 5-2, Revision 1. The proposed LTOP enable temperatures will assure the SDCS Relief Valve will be aligned to the RCS system to mitigate the consequences of low temperature overpressurization events. Furthermore, the maximum RCS pressure used in the analysis bounds the worst case scenario of the postulated overpressurization event. Hence, it is assured that the P-T limits will not be exceeded by overpressurization transients. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: March 1, 1993

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.3.3.2, "Instrumentation Incore Detectors." The proposed TS change will redefine an operable incore detector string and include additional new requirements to ensure the incore detector system remains capable of performing its intended functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

No

This proposed change redefines an operable incore detector string so that a string is considered operable with up to two failed detectors as opposed to the existing requirement which allows only one failure. To constrain the total number of detector failures allowed, the requirement that 75% of all the detectors be operable has been added. To further ensure all parts of the core are instrumented, at least one detector is required in each quadrant at each level. In addition, the proposed specification strengthens the provision related to quadrant symmetric locations by explicitly stating at least six tilt estimates are required with at least one tilt estimate at each of three levels. These requirements meet the assumptions or are more conservative than the assumptions used in the applicable safety analyses, uncertainty analyses and design basis documentation related to Core Operating Limit Supervisory System (COLSS) and the Combustion Engineering power distribution synthesis code (called CECOR). Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response:

No

The incore instrumentation system is used for monitoring azimuthal power tilt, radial peaking factors, local power density, and departure from nucleate boiling ratio (DNBR) margin. This proposed change allows for additional incore detector failures prior to declaring the incore instrumentation inoperable and has no effect on the signals received from the incores by COLSS and CECOR. COLSS and CECOR uncertainties are based on a random failure of 25% of individual detector locations which is consistent with the proposed change. Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response:

No

This change modifies the definition of an operable incore detector location to reduce

the minimum number of operable rhodium detectors in a location from four to three. This change alone would reduce the minimum total number of detectors to 60%. However, to constrain the total number of detector failures allowed, and maintain the margin of safety required by the safety analysis, uncertainty analysis and other applicable design basis documentation, the requirement that 75% of all detectors be operable is included. To further ensure all parts of the core are instrumented, at least one detector is required in each quadrant at each level. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: May 10, 1993

Description of amendments request: The proposed changes to the Technical Specifications (TS) are to implement the new 10 CFR 50.36a reporting requirement related to the quantity of radioactive effluents released from nuclear power reactors. Currently, the TS require Farley to report the quantity of radioactive effluents on a semiannual basis. The proposed change will change the TS to allow an annual radioactive effluent release report pursuant to 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and do not involve any changes to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed changes do not alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Also, there will be no change in the types or increase in the amount of effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluate.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and do not adversely impact the plant's ability to meet applicable regulatory requirements related to liquid and gaseous effluents, and solid waste releases. The proposed changes would also eliminate an unnecessary burden of governmental regulation without reducing protection for public health and safety. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: January 29, 1993 (TS 301, Supplement 1)

Description of amendment request: The proposed supplemental amendment addresses NRC comments regarding the original amendment request dated March 25, 1992, and also incorporates changes pursuant to the revised provisions of 10 CFR 50.36a(a)(2) for extending the reporting frequency of the Radioactive Effluent Release Report from semiannual to annual. The original amendment request was submitted in accordance with the guidelines of NRC Generic Letter (GL) 89-01 and noticed in the **Federal Register** on May 27, 1992 (57 FR 22268). This supplement addresses prior NRC comments by revising several portions of the Bases and paragraph 3.2.K.1 of the Technical Specifications (TS), clarifying certain administrative requirements in Section 6 of the TS, and making a number of editorial corrections. The revised rule for 10 CFR 50.36a(a)(2) was published in the **Federal Register** on August 31, 1992 (57 FR 39353).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed supplement to BFN TS-301 revises the original submittal to incorporate NRC comments. The proposed changes do not change the intent of the original submittal. The change in reporting requirements is administrative in nature. Since this administrative change does not affect the operability of plant equipment or alter the design of the plant, the probability or consequences of any accident previously evaluated have not been increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes in this supplement do not change the intent of the original submittal. The change to reporting requirements is administrative. Therefore, there is no possibility of a new or different kind of accident being created.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes in this supplement conform to the guidance contained in Generic Letter 89-01 and the revised rule change to 10 CFR 50.36(a)(2). The proposed changes do not change the intent of the original submittal. Therefore, the proposed changes do not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the supplemental amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 24, 1993

Description of amendment request: The proposed change would revise the North Anna Units 1 and 2 (NA-1&2) Technical Specifications (TS). Specifically, the proposed changes would increase the as-found main steam safety valves (MSSV) setpoint tolerance from 1% to 3% of nominal setpoint pressure. The MSSV provide overpressure protection for the main steam system, and are designed to limit pressure transients to less than 110% of the system design pressure. Table 3.7-2 of the NA-1&2 TS currently specifies a 1% "as-found" and 1% "as-left" tolerance on the lift setpoint pressure of the installed valves. A safety evaluation has been performed by the licensee which supports increasing the MSSV lift setpoint tolerance to 3% for the "as-found" condition. The "as-left" setpoint tolerance would remain at 1%. Because the increased MSSV lift setpoint tolerance could result in increased auxiliary feedwater (AFW) system backpressure and therefore, in a reduced AFW delivered flow rate, credit has been taken for flow margin in existing safety analyses to support a reduction of the assumed delivered AFW system flow rate from 340 gpm to 300 gpm. The basis statement for the NA-1&2 TS 3/4.7.1.2 would be modified to reflect this revised delivered flow rate, expand the discussion on pump surveillance testing, and clarify the basis statement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Specifically, operation of North Anna Power Station in accordance with the Technical Specification changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. Affected safety related parameters were analyzed for the proposed change. It was determined that the primary and secondary pressure safety limits would not be exceeded in the most limiting overpressure transients (Loss of Load and the Locked Rotor Events) with the main steam safety valve lift setpoint tolerances increased to 3%. Analyses of the Main Feedline Break, Loss of Normal Feedwater, and Loss of Offsite Power transients demonstrate that the revised assumed AFW system delivered flow rate with a 3% MSSV setpoint tolerance continues to ensure that analysis acceptance criteria are met. The existing overtemperature [delta]T trip setpoints continue to provide bounding core thermal limit protection. The increased setpoint tolerance will not result in an inadvertent opening of the main steam safety valves.

2. Create the possibility of a new or different kind of accident from any accident previously identified because the proposed changes to the Technical Specifications do not involve any alterations to the physical plant which would introduce any new or unique operational modes or accident precursors. Only the allowable tolerances about the existing setpoints will be changed. A reduction in the assumed AFW system delivered flow rate creates no accidents of a new or different kind.

3. Involve a significant reduction in a margin of safety. It was determined that the most limiting overpresssure transients do not result in a maximum pressure in excess of the overpressure safety limit. As well, deliverable AFW system flow rates remain in excess of those assumed in licensing basis accidents. Therefore, the margin of safety is unchanged by the proposed increase in the safety valve setpoint tolerances.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: January 20, 1993

Description of amendment request: The amendment would revise Technical Specification (TS) Table 3.5-4, Table 4.1-1, and the TS Section 3.5 basis. The proposed amendment would revise Table 3.5-4 and Table 4.1-1 to incorporate feedwater isolation specifications for the Kewaunee Nuclear Power Plant (KNPP). The basis for TS Section 3.5 will also be revised to provide background information on the Main Feedwater Isolation system. In addition, administrative changes are being proposed to convert TS Section 3.5 and its basis along with Tables TS 3.5-4 and TS 4.1-1 to the WordPerfect software. The administrative changes will also correct minor typographical errors and format inconsistences.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes will not affect the ability of the Main Feedwater Isolation System to perform its intended safety function, which is to provide steam generator overfill control. The intent of adding the Limiting Condition of Operation and surveillance requirement to the TSs is to ensure the reliability and availability of the steam generator overfill control system. The proposed change is an additional restriction not presently included in the TSs; therefore, it will not increase the probability or consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident previously analyzed.

The proposed change does not alter the plant configuration or overall plant performance; therefore, it does not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed change will add an additional requirement to the TSs to ensure the availability and reliability of the steam generator overfill control system. The addition of this requirement does not adversely affect safety and therefore does not reduce the margin of safety.

The proposed administrative changes have been reviewed in accordance with the provisions of 10 CFR 50.92 to show that no significant hazards exists. The proposed change will not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated, or

2. create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082

NRC Project Director: John N. Hannon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 27, 1993

Description of amendment request: The request proposes to revise the heatup, cooldown, and cold overpressure mitigation system power-operated relief valve setpoint pressure/temperature limits. The limits reflect the analysis of the most recently withdrawn surveillance capsule associated with the reactor vessel radiation surveillance program (10 CFR 50, Appendix H).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

Incorporating the revised heatup, cooldown pressure/temperature limit curves and the COMS PORV [cold overpressure mitigation system power-operated relief valve] setpoint limit curve into Wolf Creek Generating Station (WCGS) technical specifications does not affect the probability or consequences of an accident previously evaluated.

The revised limit curves are calculated using the most limiting RT_{NDT} for the reactor vessel components and include a radiation induced shift corresponding to the end of the period for which the curves are generated. The changes do not affect the basis, initial conditions, initiating events, chronology, or availability/operability of safety related equipment required to mitigate transients and accidents analyzed for WCGS.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

Adopting the revised limit curves redefines the range of acceptable operation for the Reactor Coolant System. This redefinition is a result of the analysis of reactor vessel surveillance specimens removed from the reactor in a continuing surveillance program which monitors the effects of neutron irradiation on the WCGS reactor pressure vessel materials under actual operating conditions. Incorporating these revised curves does not create the possibility of an accident of a different type from any previously evaluated for WCGS.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The revision of these limit curves is not a design change and continues to maintain the margin of safety required for prevention of non-ductile failure of the WCGS reactor pressure vessel during low temperature operation as required by 10 CFR 50, Appendices G and H. The revised curves primarily affect RCS operation below 350°F by limiting the available pressure/temperature window for heatup and cooldown. The revised limit curves compensate for the in-service radiation induced embrittlement of the reactor vessel and accounts for the requirement that the closure flange region temperature must exceed the nil-ductility temperature by at least 120°F when pressure exceeds 20% of the preservice hydrostatic test pressure.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Suzanne C. Black

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 4, 1993.

Brief description of amendment: Requires that the initial and requalification training for licensed personnel is through an accredited program based on the systematic approach.

Date of issuance: June 11, 1993

Effective date: June 11, 1993

Amendment No. 37

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16855)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: March 16, 1993, as supplemented on May 28, 1993.

Brief description of amendment: The amendment deletes a reference in the Technical Specifications to ANSI N45.4

VOL 58 ISS 128 JL 7 1993 UMI

In Surveillance Requirement 4.6.1.2. It maintains the reference to 10 CFR Part 50, Appendix J, which lists acceptable methods for calculating containment integrated leakage rates.

Date of issuance: June 11, 1993
Effective date: June 11, 1993
Amendment No.: 159
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19475) The May 28, 1993 submittal provided clarifying information which did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 11, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 29, 1993, as supplemented April 20, 1993.
Brief description of amendment: This amendment revises the Palisades Technical Specification (TS) Table 3.23-2, Radial Peaking Factor Limits, to add limits for those new fuel bundles to be installed during the 1993 Cycle 11 refueling outage. In addition, the bases for several Specifications (2.1, 2.3, 3.1, 3.12, and 3.23.2) have been updated to reflect the revision of analytical reports for Cycle 11.
Date of issuance: June 16, 1993
Effective date: June 16, 1993
Amendment No.: 156
Facility Operating License No. DPR-20. Amendment revised theTechnical Specifications.
Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19476). The April 20, 1993, submittal provided a correction to the original submittal and did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Florida Power and Light Company, Docket No. 50-250, Turkey Point Plant Unit 3, Dade County, Florida

Date of application for amendment: April 13, 1993
Brief description of amendment: This amendment permits continued power operation with the minimum number of movable in-core detector thimbles reduced from 38 to 25 thimbles and is applicable only for the remainder of Unit 3, Cycle 13 operation.
Date of issuance: June 15, 1993
Effective date: June 15, 1993
Amendment No.: 154
Facility Operating License No. DPR-31: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28066)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1993. No significant hazards consideration comments received: No
Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: November 18, 1991
Brief description of amendment: The amendment revises the Technical Specifications to reflect the as-built plant condition and to resolve the NRC staff's concerns identified during the 1991 Electrical Distribution System Functional Inspection.
Date of issuance: June 24, 1993
Effective date: no later than 60 days from the date of issuance
Amendment No.: 186
Facility Operating License No. DPR-57: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20511)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1993. No significant hazards consideration comments received: No
Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 24, 1992, as supplemented on May 28, 1993
Brief description of amendment: The amendment revises the Technical Specifications to change the surveillance interval definition and testing from 18 months to 24 months.
Date of issuance: June 23, 1993
Effective date: June 23, 1993
Amendment No.: 175
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61112) The May 28, 1993, submittal provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 23, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 11, 1993
Brief description of amendment: The amendment changes Clinton Power Station Technical Specification 6.9.1.7, "Semiannual Radioactive Effluent Release Report" to comply with the amended 10 CFR 50.36a requirements which change the submittal frequency of the report from semiannually to annually. Additionally, the amendment extends the report submittal date to May 1.
Date of issuance: May 27, 1993
Effective date: May 27, 1993
Amendment No.: 76
Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16863)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1993. No significant hazards consideration comments received: No
Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: October 22, 1991, as supplemented February 17, 1993.
Brief description of amendment: The amendment modifies the Clinton Power

Station Technical Specifications by: (1) revising Specification 3/4.8.3.1, "Onsite Power Distribution Systems, Distribution - Operating," to resolve inconsistencies and remove duplications with Specification 3/4.8.4.3, and (2) revising Specification 3/4.8.4.3, "Reactor Protection System Electric Power Monitoring," to implement the recommendations of NRC Generic Letter 91-09, "Modification of Surveillance Interval for the Electrical Protective Assemblies in Power Supplies for the Reactor Protection System."

Date of issuance: June 14, 1993
Effective date: June 14, 1993
Amendment No.: 77
Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1991 (56 FR 66922) The February 17, 1993, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 22, 1992.

Description of amendment request: The amendment modifies theacceptance value for a surveillance requirement intended to demonstrate that the emergency core cooling system is capable of delivering an adequate flow of cooling water to the core via the residual heat removal system (RHR) lines. Surveillance Requirement 4.5.2 h.3) is changed to require a total flow of at least 3869 gpm through the four RHR injection lines with one RHR pump in operation vice 2828 gpm.

Date of issuance: June 14, 1993
Effective date: June 14, 1993
Amendment No.: 21
Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61119).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: March 22, 1993, as supplemented by letter dated May 28, 1993.

Brief description of amendment: The amendment revises the pressure-temperature limits for the reactor vessel. Specifically, Technical Specification Limiting Condition for Operation 3.6.B, Surveillance Requirement 4.6.B, and Figures 3.6.1, 3.6.2, and 3.6.3, along with the corresponding Bases for Section 3.6 are revised. The new pressure-temperature curves are valid to 32 EFPY.

Date of issuance: June 16, 1993
Effective date: June 16, 1993
Amendment No.: 63
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993, (58 FR 19484) The May 28, 1993, letter provided clarifying information that did not charge the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: June 25, 1991

Brief description of amendments: The amendments would revise TS Section 3.1.A.2.C and Table TS 4.1-2A and the associated Bases in response to Generic Letter 90-06. Generic Letter 90-06 provided NRC staff guidance on TS changes that should be implemented to improve the reliability of the Pressurizer Power Operated Relief Valves and the availability of the low temperature overpressure protection system.

Date of issuance: June 21, 1993
Effective date: June 21, 1993
Amendment Nos.: 106 and 99
Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43811).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: March 8, 1993, as supplemented by letter dated June 2, 1993

Brief description of amendments: The requested changes allow the receipt, possession, and use of the fuel assemblies and fuel channels previously irradiated in the Shoreham Nuclear Power Station. The fuel was fabricated by General Electric Company (GE) and consists of 560 GE6-(P8X8R) pressurized, C-lattice, non-barrier fuel assemblies. The 560 fuel assemblies include 340 enriched to 2.19 w/o U-235, 144 enriched to 1.76 w/o U-235, and the remaining 76 are natural uranium (i.e., 0.711 w/o U-235). These fuel assemblies are similar to those utilized in the Limerick Generating Station, Unit 1 initial core loading.

Date of issuance: June 23, 1993
Effective date: June 23, 1993
Amendment Nos. 62 and 27
Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Licenses.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16867)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 23, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 5, 1993, as supplemented by letter dated May 13, 1993

Brief description of amendments: Revise Table 3.15 and the associated bases regarding seismic monitoring instrumentation.

Date of issuance: Upon installation of the new solid-state seismic instrumentation.

Effective date: June 21, 1993

Amendments Nos.: 176 and 179

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16869)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Government PublicationsSection, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 5, 1993

Brief description of amendment: The Technical Specifications (TS) amendment revised the plant staff requirement (specified in TS Section 6.2.2.i) to remove the condition that the Operations Manager must hold a senior reactor operator (SRO) license and replace it with the requirements that the Assistant Operations Manager must hold an SRO license and that the Operations Manager must hold or have held an SRO license at the facility. The plant staff qualifications requirement (specified in TS Section 6.3.1) was also revised to reflect that the Operations Manager shall meet or exceed the qualification requirements of ANSI N18.1-1971 (Selection and Training of Nuclear Plant Personnel) except for the SRO license requirement.

Date of issuance: June 15, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 134

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25863)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: September 8, 1992

Brief description of amendment: The proposed change increases the minimum discharge pressure acceptance limit for the motor driven emergency feedwater (EFW) pumps from 1350 psig to 1600 psig at a minimum flow of 90 gpm.

Date of issuance: June 22, 1993

Effective date: June 22, 1993

Amendment No.: 112

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55590).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 13, 1993

Brief description of amendments: The licensee proposes to revise Technical Specification (TS) 3/4.8.1, "A. C. Sources." This proposed change will provide a one-time exception to TS 4.8.1.1.1.a to allow replacement of the 480V transformers B04X and B06X during the Units 2 and 3 Cycle 7 refueling outages.

Date of issuance: June 15, 1993

Effective date: June 15, 1993

Amendment Nos.: 107 and 96

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25865)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 15, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: January 19, 1993

Brief description of amendment: The amendment changes the submittal frequency (from semiannual to annual) for the formerly titled "Semiannual Radioactive Effluent Release Report." The proposed change eliminates inconsistencies between the present Perry Nuclear Power Plant Technical Specifications and the recently revised 10 CFR 50.36a.

Date of issuance: June 23, 1993

Effective date: June 23, 1993

Amendment No. 49

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16218)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 9, 1993

Brief description of amendment: The amendment revises the Technical Specifications by deleting surveillance requirement 4.8.1.1.2.h(2), which involves performing a pressure test of portions of the diesel fuel oil system.

Date of issuance: June 21, 1993

Effective date: June 21, 1993

Amendment No.: 80

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 19490)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Westinghouse Electric Corporation, Docket No. 50-22, Westinghouse Test Reactor, Waltz Mill, Pennsylvania

Date of application for amendment: December 8, 1992

Brief description of amendment: This amendment deletes three soil basins from License No. TR-2. The soil basins are now under License No. SNM-770, Docket No. 70-698.

Date of issuance: June 14, 1993

Effective date: June 14, 1993

Amendment No.: 6

Facility Operating License No. TR-2: This amendment revises the scope of License No. TR-2.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16232). The Commission has issued a Safety Evaluation for this amendment dated June 14, 1993. No significant hazards consideration comments received: No

Local Public Document Room: N/A

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 28, 1991, as supplemented November 20, 1991, August 31, 1992 and May 24, 1993.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 1.0 to add a definition for the term, DOSE EQUIVALENT I-131. In addition, TS 3.1.c is being expanded to incorporate limits for the radioactivity concentration of DOSE EQUIVALENT I-131 in reactor coolant. Associated with the revisions to TS 3.1.c, TS Table 4.1-2, Item 1 is being expanded to incorporate the increased surveillance requirements. Also, a change is being made to TS 3.1.a.2.B to clarify the minimum water level required for proper decay heat removal. A new TS, 6.9.a.2.D, is being added which would specify the annual reporting requirements for reactor coolant iodine spiking. Finally, administrative changes are made to correct typographical errors and format inconsistencies.

Date of issuance: June 22, 1993

Effective date: June 22. 1993

Amendment No.: 100

Facility Operating License No. DPR-43 Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43818)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991, as supplemented by letters dated October 21, 1992 and April 28, 1993

Brief description of amendment: The amendment revises Technical Specifications 3/4.4.4 related to power-operated relief valves and 3/4.9.3 related to low temperature overpressure protection. These changes were requested as part of the response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)."

Date of issuance: June 23, 1993

Effective date: June 23, 1993

Amendment No.: 63

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37595) The October 21, 1992, and April 28, 1993, supplemental submittals provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1993. No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: December 21, 1992

Brief description of amendment: This amendment revises the Possession Only License and the Technical Specifications to reflect the permanently shut down and defueled status of the plant.

Date of issuance: June 11, 1993

Effective date: June 11, 1993

Amendment No.: 148

Possession Only License No. DPR-3: Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** January 21, 1993, (58 FR 5436).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent, Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of

increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazardsconsideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By August 6, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: May 20, 1993

Brief description of amendment: The amendment adds a footnote to Technical Specification Surveillance Requirement 4.7.9 for each of the 3 units. The footnote explains the methodology used for selecting the test sample for snubber functional testing during the current outage for Unit 2 and the third outage for both Units 1 and 3 which was not in accordance with the requirements of Surveillance Requirement 4.7.9 but adequately demonstrated the operability of the snubber population. The change was requested on an emergency basis when you determined the APS interpretation and implementation of TS 4.7.9 did not meet the surveillance requirement.

Date of issuance: June 21, 1993

Effective date: June 21, 1993

Amendment No.: 71, 57, and 44

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 21, 1993.

Local Public Document Room location: Phoenix Public Library, 12 Esst McDowell Road, Phoenix, Arizona 85004

Attorney for licensee: Arthur C. Gehr, Esq. Snell and Wilmer, 3100 Valley Center, Phoenix Arizona 85023

NRC Project Director: Theodore R. Quay

Dated at Rockville, Maryland, this 29th day of June 1993.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation.

[Doc. 93-15879 Filed 7-6-93; 8:45 am]

BILLING CODE 7590-01-F

Privacy Act of 1974; Republication of Systems of Records Notices

AGENCY: Nuclear Regulatory Commission.

ACTION: Republication of systems of records notices.

SUMMARY: The Nuclear Regulatory Commission (NRC) has conducted a comprehensive review of all Privacy Act Systems of Records. The NRC is revising and republishing all its Systems of Records notices as a result of this review. None of these revisions requires an advance period for public comment. These revisions are minor corrective and administrative changes that do not meet the threshold criteria established by the Office of Management and Budget (OMB) for either a new or altered system of records. These changes are in compliance with OMB Circular No. A-130, appendix I. The notices republished below are complete and accurate as of December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-492-4344.

SUPPLEMENTARY INFORMATION: The following is a republication of the NRC's revised Systems of Records notices. With four exceptions, these notices were last published in the **Federal Register** on August 20, 1990 at 55 FR 37970-37992. The new systems of records are as follows: NRC-3, Enforcement Actions Against Individuals, was published in the **Federal Register** on August 15, 1991 (56 FR 40694), and became effective on October 15, 1991; NRC-6, Discrimination Cases, was published in the **Federal Register** on October 30, 1990 (55 FR 45698), and became effective on December 31, 1990; NRC-26, Administrative Services Files, was published in the **Federal Register** on October 8, 1991 (56 FR 50735), and became effective on November 7, 1991; and, NRC-32, Licensee and Applicant Taxpayer Identification Number Records, was published in the **Federal Register** on September 3, 1991 (56 FR 43624), and became effective on October 3, 1991. In addition, System of Records NRC-18, Investigative Offices Index, Files, and Associated Records, was divided into two separate systems of records (NRC-18, Office of the Inspector General Index File and Associated Records—NRC, and NRC-23, Office of Investigations Indices, Files and Associated Records—NRC). The action was taken to distinguish the functions of each office and the types of records found in each system of records, and to adopt the National Archives and Records Administration (NARA) requirements for the retention and disposal of each office's records. The revised systems of records notices were published in the **Federal Register** on August 6, 1992 (57 FR 34790), and became effective on September 8, 1992.

Privacy Act Systems Nuclear Regulatory Commission

NRC Systems of Records

1. Shared Information Network (SINET)—NRC.
2. Biographical Information Records—NRC.
3. Enforcement Actions Against Individuals—NRC.
4. Conflict of Interest Files—NRC.
5. Contracts Records Files—NRC.
6. Discrimination Cases—NRC.
7. Telephone Call Detail Records—NRC.
8. Employee Appeals, Grievances, and Complaints Records—NRC.
9. Equal Employment Opportunity Discrimination Complaint Files—NRC.
10. Freedom of Information Act (FOIA) end Privacy Act (PA) Requests Records—NRC.
11. General Personnel Records (Official Personnel Folder and Related Records)—NRC.
12. Government Motor Vehicle Operators License Files—NRC.
13. Incentive Awards Files—NRC.
14. Employee Assistance Program Files—NRC.
15. National Standards Committee Membership Files—NRC.
16. Facility Operator Licensees Record Files (10 CFR Part 55)—NRC.
17. Occupational Injuries and Illness Records—NRC.
18. Office of the Inspector General Index File and Associated Records—NRC.
19. Official Personnel Training Records Files—NRC.
20. Official Travel Records—NRC.
21. Payroll Accounting Records—NRC.
22. Personnel Performance Appraisals—NRC.
23. Office of Investigations Indices, Files, and Associated Records—NRC.
24. Government Property Accountability System—NRC.

25. Oral History Program—NRC.
26. Administrative Services Files—NRC.
27. Radiation Exposure Information and Reports System (REIRS) Files—NRC.
28. Recruiting, Examining, and Placement Records—NRC.
29. Nuclear Documents System (NUDOCS)—NRC.
30. Manpower Resource Tracking System Records—NRC.
31. Correspondence and Records, Office of the Secretary—NRC.
32. Licensee and Applicant Taxpayer Identification Number Records—NRC.
33. Special Inquiry File—NRC.
34. Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW) Correspondence Index and Associated Records—NRC.
35. Drug Testing Program Records—NRC.
36. Employee Locator Records Files—NRC.
37. Information Security Files and Associated Records—NRC.
38. Mailing Lists—NRC.
39. Personnel Security Files and Associated Records—NRC.
40. Facility Security Access Control Records—NRC.

These systems of records are those systems maintained by the Nuclear Regulatory Commission (NRC) that contain personal information about individuals, and from which personal information can be retrieved by reference to an individual identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the proposed "routine uses" of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and correct records pertaining to themselves.

One of the purposes of the Privacy Act, as stated in section 2(b)(4), is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to "* * * disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information." The NRC intends to follow these principles in transferring information to another agency or individual as a "routine use," including assurance that the information is relevant for the purposes for which it is transferred.

Prefatory Statement of General Routine Uses

The following routine uses apply to each system of records notice set forth below which specifically references this Prefatory Statement.

1. In the event that a system of records maintained by the NRC to carry out its functions indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rules, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, if necessary, to obtain information relevant to an NRC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of discovery and in presenting evidence to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of settlement negotiations.

5. Disclosure may be made, as a routine use, to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. A record from this system of records may be disclosed, as a routine use, to NRC-paid experts, consultants, and others under contract with the NRC, on a "need-to-know" basis for a purpose within the scope of the pertinent NRC contract. Such access will be granted to an NRC contractor by a system manager only after satisfactory justification has been provided to the system manager.

NRC–1

SYSTEM NAME:

Shared Information Network (SINET)—NRC.

SYSTEM LOCATION:

Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees; NRC contractors; vendors; Federal, State and local Government emergency points of contact; and NRC licensees.

CATEGORIES OF RECORDS IN THE SYSTEM:

For NRC personnel, records will contain name, grade, title, office, and room. For NRC contractors, records will contain name, company address, and identification number. For others, records contain information such as name, phone number, address, and responsibilities.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201 (1988).

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To identify personnel cognizant of or responsible for activities at nuclear power plants.

b. To identify personnel associated with specific NRC functions.

c. For the routine uses specified in paragraphs 1, 5, and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files and computer media.

RETRIEVABILITY:

Accessed by individual, licensee, facility, or plant name; SINET security capability; or system or project.

SAFEGUARDS:

Computer files are password protected. Computer data is protected down to the field value level. Access to and use of these records are limited to

those persons whose official duties require such access.

RETENTION AND DISPOSAL:

SINET records are currently unscheduled and must be retained until a records disposition schedule for this material is approved by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Systems Development Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORDS SOURCE CATEGORIES:

Information is obtained from individuals, supervisors, licensees, contractors, vendors and Federal, State, or local Governments.

NRC–2

SYSTEM NAME:

Biographical Information Records—NRC.

SYSTEM LOCATION:

Office of Public Affairs, NRC, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioners, members of the Atomic Safety and Licensing Board Panel, Office of Commission Appellate Adjudication panel members, and senior NRC staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, and other general biographical data relating to the Commissioners, members of the Atomic Safety and Licensing Board Panel, Office of Commission Appellate Adjudication panel members, and senior NRC staff members. Photographs of Commissioners are also contained in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2241, 5841, 5843(a), 5844(a), 5845(a), and 5849 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to the press;

b. To provide information to other persons and agencies requesting this information; and

c. For the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Maintained in unlocked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained until updated or association with NRC is discontinued, then destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by each individual and approved for use by the individual involved.

NRC–3

SYSTEM NAME:

Enforcement Actions Against Individuals—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems may exist, in whole or in part, at the NRC Regional Offices at the locations listed in Addendum I, Part 2, and in the Office of the General Counsel, NRC, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in NRC-licensed activities who have been subject to NRC Enforcement Actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of individual enforcement actions, including Orders, Notices of Violations with and without Civil Penalties, Orders Imposing Civil Penalties, Letters of Reprimand, and Demands for Information. Also included are responses to these actions. In addition, the files may contain other relevant documents directly related to those actions that have been issued. Files will be arranged numerically by Individual Action (IA) number, assigned as individual enforcement actions are issued. The system will include a computerized database with alphabetical and numerical indices, by names of the individuals subject to the action and IA numbers, respectively.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2114, 2167, 2201(c), and 2282 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To respond to general information requests from the Congress;

b. To deter future violations, information in this system of records may be routinely disseminated to the public by (1) publication in the **Federal Register** of each enforcement action issued to an individual; and (2) a listing of all individuals currently subject to an order that affects their participation in licensed activities and a copy of that order will be sent to all power reactor licensees twice a year and will be made available to other licensees and the general public on request;

c. When considered appropriate for disciplinary purposes, to disclose information, such as a copy of an enforcement action and any hearing proceedings, to a bar association, or other professional organization performing similar functions, including certification of individuals licensed by NRC or Agreement States to perform specified licensing activity;

d. To disclose information, such as a copy of an enforcement action and any hearing proceedings, concerning an individual to a Federal or State

VOL
58
ISS
128
JL
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1993
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Government agency with licensing jurisdiction, where appropriate, to ensure the public health and safety; and

e. For the routine uses specified in paragraph numbers 1, 2, 3, and 4 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders, on computer printouts, and on computer disks.

RETRIEVABILITY:

Records are accessed by individual action file number or by the name of the individual.

SAFEGUARDS:

Records are maintained in file cabinets or a computer database. Access to and use of these records is limited to those NRC employees whose official duties require that access. These files are under visual control during duty hours.

RETENTION AND DISPOSAL:

Enforcement Action Case Files and related indexes are currently unscheduled and must be retained until a records disposition schedule for this material is approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Information in the records is primarily obtained from NRC inspectors and investigators and other NRC employees, including individuals to whom a record pertains, authorized representatives for these individuals, and NRC licensees, vendors, other individuals regulated by the NRC, and persons making allegations to the agency.

NRC–4

SYSTEM NAME:

Conflict of Interest Files—NRC.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employees, special Government employees, former employees, advisory committee members, and consultants of NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to:

a. General biographical data (i.e., name, birth date, home address, position title, home and business telephone numbers, citizenship, educational history, employment history, professional society memberships, honors, fellowships received, publications, licenses, and special qualifications);

b. Financial status (i.e., nature of financial interests and in whose name held, creditors, character of indebtedness, interest in real property, monthly U.S. Civil Service Annuity, and status as Uniformed Services Retired Officer);

c. Certifications by employees that they and members of their families are in compliance with the Commission's stock ownership regulations;

d. Requests for approval of outside employment by NRC employees and NRC responses thereto;

e. Advice and determinations (i.e., no conflict or apparent conflict of interest, questions requiring resolution, steps taken toward resolution); and

f. Information pertaining to appointment (i.e., proposed period of NRC service, estimated number of days of NRC employment during period of service, proposed pay, clearance status, description of services to be performed and explanation of need for the services, justification for proposed pay, description of expenses to be reimbursed and dollar limitation, and description of Government-owned property to be in possession of appointee).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 734–735 (1992); 18 U.S.C. 201–209 (1988); Executive Order 12731, October 17, 1990; Ethics and Government Act, as amended; 10 CFR Part O (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide the Department of Justice, Office of Personnel Management, Office of Government Ethics, Office of Special Counsel, and/or Merit Systems Protection Board with information concerning an employee in instances where this office has reason to believe a Federal law may have been violated or where this office desires the advice of the Department, Office, or Board concerning potential violations of Federal law; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Records are also maintained on computer media.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets and in computer files that can only be accessed by the appropriate personnel.

RETENTION AND DISPOSAL:

Records are destroyed when 6 years old; except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation. Computer files are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant General Counsel for Legal Counsel, Legislation, and Special Projects, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to

whom it applies, or is derived from information he or she supplied, or comes from the office to which the individual is to be assigned, other NRC offices, or other persons such as attorneys.

NRC–5

SYSTEM NAME:

Contracts Records Files—NRC.

SYSTEM LOCATION:

Primary system—Division of Contracts and Property Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees substantially involved with contracting, such as Project Officers and Procurement Officials. Persons who are employed as NRC contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal information (such as technical qualifications, education, rates of pay, employment history) of contractors and their employees, and other contracting records. They also contain evaluations, recommendations, and reports of NRC procurement officials, assessment of contractor performance, Invoice Tracking Systems, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2201, and 5845 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to the Federal Procurement Data Center, Department of Health and Human Services, Defense Contract Audit Agency, General Accounting Office, and other Federal agencies for audits and reviews; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and computer media.

RETRIEVABILITY:

Paper records are accessed by contract number, taxpayer identification number (TIN) and purchase order number; and are cross-referenced to the automated system that contains the name of the contractor, vendor, project officer, procurement official, or contract manager.

SAFEGUARDS:

Maintained in unlocked conserver files. Access to and use of these records are limited to those persons whose official duties require such access. Computer files are password protected.

RETENTION AND DISPOSAL:

Records for transactions of more than $25,000 are destroyed 6 years and 3 months after final payment. Transactions of $25,000 or less are destroyed 3 years after final payment. Records are destroyed through regular trash disposal system, except for confidential business (proprietary) information which is destroyed by shredding. Electronic records in the Contracts System are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal confidential business (proprietary) information.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the contractor or potential contractor or NRC employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–6

SYSTEM NAME:

Discrimination Cases—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, in the Office of the General Counsel, NRC, 11555 Rockville Pike, Rockville, Maryland, and in enforcement coordinators' offices at NRC Regional Offices at the addresses listed on Addendum I, Part 2. The duplicate systems in the Regional Offices would ordinarily be limited to the cases filed in each Region.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints with the Department of Labor (DOL) concerning alleged acts of discrimination in violation of section 210(a) of the Energy Reorganization Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files arranged numerically in accordance with a system established by the DOL ("ERA" numbers) to track complaints filed by individuals pursuant to section 210 of the Energy Reorganization Act. These files include documents related to, and provided by, the DOL including copies of complaints, correspondence between the parties, and decisions by DOL Area Directors, Administrative Law Judges, and the Secretary of Labor. The system includes a computerized database with alphabetical and numerical indices, by complainants' names and ERA numbers, respectively.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201, 2282; 42 U.S.C. 5851 (1988); 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10 (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored in hard copy and on computer media.

RETRIEVABILITY:

Information is retrieved by the name or ERA number of the individual or his/her case.

SAFEGUARDS:

The files are maintained in an area for which access is controlled by keycard

VOL 58 ISS 128 JL 7 1993 UMI

and limited to those with a need for access to the work area, and in a building to which access is controlled by a security guard force. These files are under visual control during duty hours. After duty hours, access to the building is controlled by a security guard force and access to each floor is controlled by keycard.

RETENTION AND DISPOSAL:

Discrimination Case Files and related indexes are currently unscheduled and must be retained until a records disposition schedule for this material is approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure." Information received from the Department of Labor is treated by DOL as public information and subject to disclosure in accordance with applicable laws.

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, attorneys for these individuals, union representatives serving as advisors to these individuals, NRC licensees, NRC, and DOL.

NRC–7

SYSTEM NAME:

Telephone Call Detail Records—NRC.

SYSTEM LOCATION:

Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals utilizing NRC telephones, including current and former NRC employees and contractors who make local or long-distance telephone calls and individuals who received telephone calls placed from NRC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of the agency telephones to place local or long-distance calls, records indicating assignment of telephone numbers to employees, and records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By individual employees of the agency to determine their individual responsibility for telephone calls; and

b. For the routine uses specified in paragraphs 1, 3, 5, and 6 of the Prefatory Statement.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files, on computer tapes or disks.

RETRIEVABILITY:

Accessed by name, office, or telephone number.

SAFEGUARDS:

Maintained in locking file cabinets or locked rooms. Computer files are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records pertaining to employee phone use must be retained until scheduled under General Records Schedule 12–4, "Telephone Use Records." Records pertaining to the location of telephone equipment, equipment requests, and phone service are destroyed when 3 years old. Records contained in the Telephone Directory System (TEL) are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Telephone assignment calls, call detail listings, NRC Form 15 "Employee Locator Form," results of administrative inquiries relating to assignment of responsibility for placement of specific telephone calls, and certification of telephone bills.

NRC–8

SYSTEM NAME:

Employee Appeals, Grievances, and Complaints Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment, current and former NRC employees, and annuitants who have filed written complaints brought to the Office of Personnel's attention or initiated grievances or appeal proceedings as a result of a determination made by the NRC, Office of Personnel Management, and/or Merit Systems Protection Board, or a Board or other entity established to adjudicate such grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes all documents related to disciplinary actions, adverse actions, appeals, complaints, grievances, arbitrations, and negative determinations regarding within-grade salary increases. It contains information relating to determinations affecting individuals made by the NRC, Office of Personnel Management, Merit Systems Protection Board, arbitrators or courts of law. The records consist of the initial appeal or complaint, letters or notices to the individual, records of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to an NRC office or division concerning action to be taken to comply with decisions, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3591 *et seq.*, 4101 *et seq.*, 4303 *et seq.*, 7501 *et seq.* (1988); 42 U.S.C. 2201(d) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information to the Office of Personnel Management and/or Merit Systems Protection Board pursuant to applicable requirements related to grievances and appeals;

b. To provide appropriate data to union representatives and third parties (that may include the Federal Services Impasses Panel and Federal Labor Relations Authority) in connection with grievances, arbitration actions, and appeals; and

c. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards, floppy disks, and a password-protected automated system.

RETRIEVABILITY:

These records are indexed annually by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Maintained in locked file cabinets and in a password-protected automated system available only to Labor Relations personnel. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to grievances, appeals, and adverse actions are destroyed seven years after the cases are closed, index cards are destroyed or deleted with the related records or sooner, if no longer needed, and computer files are destroyed after the period authorized for the related hard copy files or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Policy and Labor Relations, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, NRC, Office of Personnel Management and/or Merit Systems Protection Board officials; affidavits or statements from employees, union representatives, or other persons; testimony of witnesses; official documents relating to the appeal, grievance, or complaint; Official Personnel Folder; and other Federal agencies.

NRC–9

SYSTEM NAME:

Equal Employment Opportunity Discrimination Complaint Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Small and Disadvantaged Business Utilization and Civil Rights, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate system—Office of the General Counsel, NRC, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment and current and former NRC employees who have filed a complaint of discrimination with the Office of Small and Disadvantaged Business Utilization and Civil Rights.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains copies of written reports by counselors; the investigative file; documentation of withdrawn, canceled, rejected, and/or adjusted discrimination complaints; complainant's name, title, and grade; kind of discrimination alleged; description of action, decision, or condition giving rise to the complaint; description of remedial action; description of disciplinary action, if any; copy of the letter of proposed disposition of the complaint and right to a hearing; record of hearing examiner's findings, analysis, and recommended decision; record of appeals examiner's finding, analysis, and recommended decision; and notice of intent to file in Federal District Court, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 20 *et seq.*, 633a(b), 794a(a)(1) (1988); 42 U.S.C. 2000e and 5891 (1988); Executive Orders 11246, September 24, 1965; 11375, August 8, 1969 and 12086, October 5, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information related to discrimination complaints to the Equal Employment Opportunity Commission and the Office of Personnel Management and/or Merit Systems Protection Board in accordance with applicable requirements; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, binders, and on computer media.

RETRIEVABILITY:

Accessed by name.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Computer records are protected by a physical key lock. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Official Discrimination Complaint Case Files are destroyed four years after the resolution of the case. Computer files are destroyed after the period authorized for the related hard copy files or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Small and Disadvantaged Business Utilization and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

VOL 58 ISS 128 JL 7 1993 UMI

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, counselors, NRC, the Office of Equal Employment Opportunity Commission, the Office of Personnel Management and/or Merit Systems Protection Board officials, affidavits or statements from employees, testimony of witnesses, and official documents relating to the complaints.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552(c)(3), (d), (e)(4)(G), (H), and (f), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–10

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Freedom of Information and Publications Services, Office of Administration, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; at the NUDOCS Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have made FOIA or PA requests for NRC records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of the letters from requesters, the NRC response letters, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a (1988); 42 U.S.C. 2201 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. If an appeal or court suit is filed with respect to any records denied;

b. For preparation of reports required by 5 U.S.C. 552 and 5 U.S.C. 552a; and

c. For any of the routine uses specified in the Prefatory Statement. Most of the FOIA records are placed in the NRC Public Document Room and made available to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on microfiche, and on computer media.

RETRIEVABILITY:

Accessed by chronologically assigned number and individual's name.

SAFEGUARDS:

Privacy Act records are maintained in locked file cabinets. FOIA records are maintained in locked rooms. Access to and use of these records are limited to those persons whose official duties require such access. Copies of most of the FOIA records are publicly available in the NRC Public Document Room.

RETENTION AND DISPOSAL:

PA records are retained in hard copy for 2 years from date of reply if request is granted, 6 years if denied, and 6 years from date of appeal, if appealed. The FOIA official files are retained on microfiche and may be destroyed after 6 years. Except for classified, proprietary, and other sensitive information which is destroyed by shredding, records are disposed of through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Requests are made by individuals or other requesters. The response to the request is based upon information contained in NRC records.

NRC–11

SYSTEM NAME:

General Personnel Records (Official Personnel Folder and Related Records)—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters and all Senior Executive Service (SES) personnel, Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland. For Regional personnel, at Regional Offices I–V listed in Addendum I, Part 2.

Duplicate systems—Duplicate systems exist, in whole or in part at the locations listed in Addendum I, Parts 1 and 2, and at the National Institutes of Health Computer Facility, Bethesda, Maryland. The duplicate systems maintained in a particular office, division, or branch may contain information of specific applicability to employees in that organization in addition to that information contained in the primary system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NRC employees and those formerly employed by the NRC (and terminated through death, resignation, retirement, or separation).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain Personal Qualifications Statement (SF–171) and related documents such as information about an individual's birth date, social security number, veteran preference status, tenure, physical handicaps, past and present salaries, grades, position titles, training, test performances, minority group designator, life insurance, health benefits, beneficiaries, academic letters of recommendation, probationary period appraisals, and awards. This system also contains notification of personnel action (SF–50) and documents supporting the action taken, letters of commendation and reprimand, employee suggestion and evaluation of suggestion forms, documentation of charges and decisions on charges, medical records related to initial appointment, notices of reductions-in-force, and locator files. Some duplicate records may contain office-specific applications, personnel qualification statements (SF–171), resumes, conflict of interest correspondence, and other related personnel records in addition to those contained in the primary system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 42 U.S.C. 290dd-2; 42 U.S.C. 290ee-1 (1988); 42 U.S.C. 2201(d) (1988); 10 CFR Part 0 (1992); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management and/or Merit Systems Protection Board for making a decision when an NRC employee or former NRC

employee questions the validity of a specific document in an individual's record;

b. To provide information to a prospective employer of a Government employee. Upon transfer of the employee to another Federal agency, the information is transferred to such agency;

c. To update monthly the Office of Personnel Management systems concerning the Central Personnel Data File (CPDF), the Executive Inventory File, and security investigations index hires, and to update adverse actions and terminations records of the Merit Systems Protection Board;

d. To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force;

e. To provide information to the Office of Personnel Management and/or Merit Systems Protection Board for review and audit purposes;

f. To provide members of the public with the names, position titles, grades, salaries, appointments (temporary or permanent), and duty stations of employees;

g. For medical records, to provide information to the Public Health Service in connection with Health Maintenance Examinations and to other Federal agencies responsible for Federal benefit programs administered by the Department of Labor (Office of Workmen's Compensation Programs) and the Office of Personnel Management; and

h. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, and computer media.

RETRIEVABILITY:

Records are indexed by any combination of name, birth date, social security number, or identification number.

SAFEGUARDS:

Official Personnel Folders are maintained in locking cabinets and related documents may be in unlocked file cabinets or an electromechanical file organizer. Access to and use of these records are limited to those persons whose official duties require such access. Computer files are password protected.

RETENTION AND DISPOSAL:

The Official Personnel Folder is sent to the next Federal employing office if the employee transfers, or to the National Personnel Records Center within 30 days of the date of the employee's separation from the Federal service. Correspondence and forms maintained on the left side of the Official Personnel Folder, such as letters of reprimand, indebtedness, and vouchers, are temporary records and are maintained for the periods of time specified in Federal Personnel Manual (FPM) Chapter 293 and the FPM Supplement 293–31. Computer records are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters and all NRC SES employees—Chief, Executive and Operational Support Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For Region I–V non-SES employees—The appropriate Regional Personnel Officer at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; is derived from information supplied by that individual; or is provided by agency officials, other Federal agencies, universities, other academic institutions, or persons, including references, private and Federal physicians, and medical institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) (5) and (6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (1), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–12

SYSTEM NAME:

Government Motor Vehicle Operators License Files—NRC.

SYSTEM LOCATION:

Primary system—Administrative Service Center, Facility Management Branch, Division of Contracts and Property Management, Office of Administration, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole, or in part, at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees and contractor personnel licensed to drive Government vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain identifying data on individuals including, but not limited to, name, social security number, hair and eye color, sex, and date of birth as well as data on driving experience, traffic violations, accidents, and medical history and conditions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 491 (1988); Executive Order 9397, November 22, 1943; Executive Order 10579, December 1, 1954.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in logs and on paper in file folders.

RETRIEVABILITY:

Indexed alphabetically by license holder's name.

SAFEGUARDS:

Maintained in locked file cabinets under control of supervisors. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after separation of employees or contractor personnel or 3 years after recision of authorization to operate Government-owned vehicle, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Coordinator, Administrative Service Center, Facility Management Branch, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services,

VOL 58 ISS 128 JL 7 1993 UMI

Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Applications for Motor Vehicle Operator's Identification cards, individuals on whom the record is maintained, supervisors and personnel representatives, and medical examiners.

NRC–13

SYSTEM NAME:

Incentive Awards Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees who merit special recognition for achievements either within or outside the employee's job responsibilities and for length of service to the Government. Awards include both NRC awards and awards of other agencies and organizations for which NRC employees are eligible.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains employee's name, title, office, grade, and salary; justification to support recommendation and authorization for cash award; monetary amount of cash award; actions by approving officials; record of individuals receiving awards; suggestions and evaluations of suggestions; citation to be used; and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501–4506, 5336 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management to process and approve nominations or awards;

b. By the Office of the Attorney General and the President of the United States in reviewing recommended awards;

c. To make reports to the Office of Personnel Management and/or Merit Systems Protection Board;

d. By other Government agencies to recommend whether suggestions should be adopted in instances where the suggestion made by an NRC employee affects the functions or responsibilities of the agencies; and

e. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and computer disk.

RETRIEVABILITY:

Information is accessed by name, type of award, office, and year of award.

SAFEGUARDS:

Maintained in locking file cabinets and in a password-protected computer system. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Records relating to meritorious and distinguished service awards made at the Commission level, excluding those in the Official Personnel Folder, are permanent;

b. Case files pertaining to NRC-sponsored awards, excluding those for departmental-level awards, are destroyed 2 years after approval or disapproval;

c. Correspondence pertaining to awards from other Federal agencies or non-Federal organizations are destroyed when 2 years old;

d. Length of service files are destroyed when 1 year old;

e. Letters of commendation and appreciation, excluding copies filed in the Official Personnel Folder, are destroyed when 2 years old;

f. Lists and indexes to agency award nominations are destroyed when superseded or obsolete; and

g. Computer files are continually updated and information deleted when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment, Incentive and Benefits Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For awards limited to SES employees, Chief, Executive and Operational Support Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC employees, other agencies and organizations, and Official Personnel Folders.

NRC–14

SYSTEM NAME:

Employee Assistance Program Files—NRC.

SYSTEM LOCATION:

Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees or family members who have been counseled by or referred to the Employee Assistance Program (EAP) for problems relating to alcoholism, drug abuse, job stress, chronic illness, family or relationship concerns, and emotional and other similar issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of NRC employees or their families who have participated in the Employee Assistance Program and the results of any counseling or referrals which may have taken place. The records contain information as to the nature of each individual's problem, subsequent treatment, and progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1 and 290ee (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For statistical reporting purposes; and

b. Any disclosure of information pertaining to an individual will be made in compliance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulation, 42 CFR Part 2, as authorized by 21 U.S.C. 1175 and 42 U.S.C. 4582, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Information accessed by the EAP identification number and name of the individual.

SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Employee Assistance Program Manager.

RETENTION AND DISPOSAL:

Employee counseling files are destroyed 3 years after termination of counseling. Information contained in the related statistical database is destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Assistance Program, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information compiled by the Manager, Employee Assistance Program, during the course of counseling with an NRC employee or members of the employee's family.

NRC–15

SYSTEM NAME:

National Standards Committee Membership Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Nuclear Regulatory Research, NRC, 5650 Nicholson Lane, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the National Institutes of Health Computer Facility, Bethesda, Maryland and at locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who are serving on committees, subcommittees, working groups, etc., that are developing nuclear standards.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is a comprehensive record of NRC personnel on the national standards committees and contains members' names, the names of the committees to which they belong, and the names of the NRC offices in which the members work.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(b) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to persons or agencies requesting this information including, but not limited to, persons using the NRC Public Document Room and/or Technical Library; and

b. For the routine use specified in paragraph number 5 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on lists and computer media.

RETRIEVABILITY:

Records are indexed by the individual's name, by individual's office or region, and by the committee title.

SAFEGUARDS:

Maintained in an unlocked file cabinet, a loose-leaf notebook, and on computer printouts.

RETENTION AND DISPOSAL:

Updated when information is out-of-date. The information is retained until the person is no longer a member of the committee or no longer an NRC employee, whichever occurs first. Computer tape and disk are destroyed by computer deletion, and lists are destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Research Program Coordination Assistant, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the Director, Office of Research (RES), the individual to whom it applies, or from his or her supervisor.

NRC–16

SYSTEM NAME:

Facility Operator Licensees Record Files (10 CFR Part 55)—NRC.

SYSTEM LOCATION:

Primary system—For power reactors, at the appropriate Regional Office at the address listed in Addendum I, Part 2; for nonpower reactor facilities at the Operator Licensing Branch, Division of Licensee Performance and Quality Evaluation, Office of Nuclear Reactor Regulation, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, in the Operator Licensing Branch, Division of Licensee Performance and Quality Evaluation, Office of Nuclear Reactor Regulation, NRC, 11555 Rockville Pike, Rockville, Maryland; Systems Development Branch, Division of Computer and Telecommunications Services, Office of Information Resources Management, 7920 Norfolk Avenue, Bethesda, Maryland; and at the National Institutes of Health Computer Facility in Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals licensed pursuant to 10 CFR Part 55, new applicants whose applications are being processed, and individuals whose licenses have expired.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information pertaining to 10 CFR Part 55 applicants for a license, licensed operators, and individuals who previously held licenses. This includes applications for a license, license and denial letters, and related correspondence; correspondence relating to actions taken against a licensee; 10 CFR Part 50.74 notifications; certification of medical examination and related medical information; fitness for duty information; examination results and other docket information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2137 and 2201(i) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To determine if the individual meets the requirements of 10 CFR Part 55 to take an examination or to be issued an operator's license;

b. To provide researchers with information for reports and statistical evaluations related to selection, training, and examination of facility operators;

c. To provide for examination and testing material and obtain results from contractors;

d. To provide facility management with sufficient information to enroll the individuals in the licensed operator requalification program; and

e. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper logs, paper in file folders, and computer media.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Maintained in locked file cabinets or an area that is locked. Computer access requires password. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Reactor Operator Licensees Records: When case files have been inactive (i.e., after latest license expiration/termination/ revocation, application denial or withdrawal, or issuance of denial letter), retired after 3 years to the Federal Records Center; and destroyed after 10 years.

b. Operator Licensing Tracking System: Retained as long as system is operational. Destroyed 2 years after system terminates.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Operator Licensing Branch, Division of Licensee Performance and Quality Evaluation, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for a license, the Part 50 licensee, a licensed physician, members of the Operator Licensing Branch or Regional Operator licensing sections, and other NRC and contractor personnel.

NRC–17

SYSTEM NAME:

Occupational Injuries and Illness Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who report an occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the location and descriptions of the injury or illness, treatment, and disposition as well as copies of Workman's Compensation claim forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 29 U.S.C. 657(c) (1988); Executive Orders 12196, February 26, 1980; 12223, June 30, 1980; 12608, September 9, 1987.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Agency Safety and Health Officer and/or the Chief, Benefits and Operations Support, Office of Personnel, to prepare periodic statistical reports on employees' health and injury status for transmission to and review by the Department of Labor;

b. For transmittal to the Secretary of Labor or an authorized representative in accordance with duly promulgated regulations;

c. For transmittal to the Office of Personnel Management and/or Merit Systems Protection Board as required to support individual claims; and

d. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer disk.

RETRIEVABILITY:

Indexed by assigned employee case number or name under report category.

SAFEGUARDS:

Maintained in locked file cabinet under visual control of section employees. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Employee case files are destroyed when 5 years old. Computer files are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC Public Health Unit; NRC Headquarters and Regional Office feeder reports; and forms with original information largely supplied by employees concerned, supervisors, witnesses, medical personnel, etc.

NRC–18

SYSTEM NAME:

Office of the Inspector General Index File and Associated Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, 4350 East West Highway, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of

concern to the Office of the Inspector General and correspondents on subjects directed or referred to the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records that are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Office of the Inspector General correspondence, cases, matters, memoranda, and materials, including, but not limited to, audit reports, investigative reports, inspection reports, correspondence to and from the Office of the Inspector General, memoranda, legal papers, evidence, exhibits, audit data, investigative data and work papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, Pub. L. 100–504 (1988); 42 U.S.C. 2035(c), 2201(c), and 5841(f) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of the Inspector General that has been referred for audit, inspection, or investigation may be disclosed as a routine use to the referring agency, group, organization, or individual of the status of the case or matter or of any decisions or determinations that have been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records in the nature of an audit, inspection, or investigation report relating to the integrity and efficiency of the Commission's operation and management may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations.

g. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from index cards or indices by the name or identifier of the individual or entity and from the jackets or files by number(s) and/or letter(s) assigned and appearing on the index cards or indices.

SAFEGUARDS:

The index is maintained in approved security containers and locking filing cabinets; and the indices, associated records, disks, tapes, etc., are located in locking metal filing cabinets, safes, storage rooms, or similar secure facilities. All records are under visual control during duty hours and available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. Investigative Case Files:

1. Files containing information or allegations that are of an investigative nature but do not relate to a specific investigation—Destroy when 5 years old.

2. All other investigative files, except those that are unusually significant—Place in inactive file when case is closed. Cut off inactive file at end of fiscal year. Destroy 10 years after cutoff.

3. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

b. Audit and Related Case Files: Cut off at end of fiscal year in which case is closed. Destroy 8 years after cutoff.

c. Index/Indices: Destroy or delete with the related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and other procedures concerning confidentiality as determined by the Inspector General and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

NRC–19

SYSTEM NAME:

Official Personnel Training Records Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

VOL 58 ISS 128 JL 7 1993 UMI

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or were selected for either NRC or other Government/non-Government training courses or programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's educational background and training courses, including applications for training, training requests, authorizations for training, evaluations, and other related personnel information (including, but not limited to, name, address, telephone number (home and office), social security number, position title, and grade) and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396; 5 U.S.C. 4103 (1988); Executive Order 9397, November 22, 1943; Executive Order 11348, April 20, 1967, as amended by Executive Order 12107, December 28, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be:

a. Extracted from the records and made available to the Office of Personnel Management; other Federal, State, and local Government agencies; and educational institutions for use in training programs related to NRC employees; and

b. Disclosed for the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official forms are maintained on paper in file folders; computerized training data is maintained in the Automated Training System. The original training request and completion certifications are filed in the Official Personnel Folder (NRC–11).

RETRIEVABILITY:

Information is accessed by name, or social security number, or course number.

SAFEGUARDS:

Paper is maintained in locked file cabinets. Access to and use of these records is limited to those persons whose official duties require such access. Records are also maintained in a password-protected computer system.

RETENTION AND DISPOSAL:

Paper forms are retained for 5 years, then destroyed by shredding.

Information in the ADP training file is maintained until no longer needed for statistical and historical reference.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Organizational Development and Training, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom it applies, the employee's supervisor, and training groups, agencies, or educational institutions and learning activities.

NRC–20

SYSTEM NAME:

Official Travel Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Accounting and Finance, Office of the Controller, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, prospective NRC employees, consultants, and invitational travelers for NRC programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain Request and Authorization for Official Travel forms and Travel Vouchers which include individual's name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701; 31 U.S.C. 1104, 1108, 3511, 716, 3512, 3701, 3711, 3717, 3718 (1988); Federal Travel Regulations, 41 CFR Parts 301–304; Federal Property Management Regulations, 41 CFR Part 101–71; Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For transmittal to the U.S. Treasury for payment;

b. For transmittal to the Department of State or an embassy for passports or visas; and

c. For any of the routine uses specified in the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders, on computer media, and on magnetic tape.

RETRIEVABILITY:

Records are accessed by name, social security number, authorization number, and voucher payment schedule number.

SAFEGUARDS:

Maintained in locked file cabinets in same room as users. For ADP records, an identification number, a password, and assigned access to specific programs are required in order to retrieve information.

RETENTION AND DISPOSAL:

Paper records are retained for 6 years and 3 months after period covered by account, then destroyed through regular trash disposal system. Electronic records are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Travel Management Branch, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual, the organizational component approving the travel, outside transportation agents, and rate books for cost information.

NRC–21

SYSTEM NAME:

Payroll Accounting Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Accounting and Finance, Office of the Controller, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, special Government employees, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay, leave, and allowance histories, which includes, but not limited to, individual's name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6334 (1988); 31 U.S.C. 716, 1104, 1108, 1114, 3325, 3511, 3512, 3701, 3711, 3717, 3718 (1988); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and consultants and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes including the withholding and reporting of Thrift Savings Plan deductions to the Department of Agriculture's National Finance Center;

b. For reporting tax withholding to Internal Revenue Service and appropriate State and local taxing authorities;

c. For FICA deductions to the Social Security Administration;

d. For dues deductions to labor unions;

e. For withholding for health insurance to the insurance carriers and the Office of Personnel Management;

f. For charity contribution deductions to agents of charitable institutions;

g. For annual W–2 statements to taxing authorities and the individual;

h. For transmittal to the Office of Management and Budget for review of budget requests;

i. For withholding and reporting of retirement, reemployed annuitants, and life insurance information to the Office of Personnel Management;

j. For transmittal of information to State agencies for unemployment purposes; and

k. For any of the routine uses specified in the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfiche, magnetic tape, and computer media.

RETRIEVABILITY:

Accessed by name and social security number.

SAFEGUARDS:

File folders, microfiche, tape, and disks, including backup data, are maintained in secured locked rooms after working hours. Computer records are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Individual Account Files consisting of individual service cards or equivalent which comprise the Annual and Quarterly Employee History Records on microfiche are destroyed 56 years after the date of the last entry on the card.

b. Employee and Consultant Payroll Records:

1. Individual Authorized Allotment Files consisting of documents that pertain to savings bonds and CFC are destroyed when superseded or after separation of employee.

2. Individual Authorized Allotment Files consisting of documents that pertain to union dues and savings are destroyed when superseded or after transfer or separation of employee.

3. Notification of Personnel Action Files consisting of the Payroll copies of SF 50s are destroyed when related pay records are audited by GAO or when 3 years old, whichever is sooner.

4. Payroll Change Files consisting of payroll change slips are destroyed when related pay records are audited by GAO or when 3 years old, whichever is sooner.

5. Tax Files consisting of State and Federal withholding tax exemption certificates, such as IRS Form W–4 and the equivalent state form, are destroyed 4 years after form is superseded or obsolete.

c. Time and Attendance Reports Files consisting of NRC Form 704 are destroyed after GAO audit or when 6 years old, whichever is sooner.

d. Administrative Payroll Reports consisting of microfiche reports that are generated by the Payroll System are destroyed when 3 years old, excluding the long-term Employee History Reports.

e. Electronic records contained in the Payroll System (PAY) are destroyed when no longer needed (NRCS 2–10.5). Currently, the electronic records are retained on disk for 1 year, then transferred to and retained on magnetic tapes for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual and the Office of Personnel.

NRC–22

SYSTEM NAME:

Personnel Performance Appraisals—NRC.

Part A: Senior Level System employees, GG–1 through 15 employees, hourly wage employees, scientific and technical schedule employees, and administratively determined rate employees.

Part B: Senior Executive Service and equivalent employees.

VOL 58 ISS 128 JL 7 1993 UMI

SYSTEM LOCATION:

Primary system—Part A: For Headquarters personnel, Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland. For Regional personnel, at the Regional Offices I–V listed in Addendum I, Part 2.

Part B: Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist in whole or in part, at the locations listed in Addendum I, Parts 1 and 2, except for Part B, which is stored only at Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees other than contractor employees, Commissioners, or temporary personnel employed for less than 1 year.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains performance appraisals, including current elements and standards, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 4301, *et seq.*; 5 U.S.C 4311 *et seq.* (1988); and 42 U.S.C. 2201(d), 5841 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By agency management and the Office of Personnel for personnel functions; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in folders in locking file cabinets. Summary ratings are stored in a password-protected computer system.

RETRIEVABILITY:

Paper records are accessed by name. Computer records are accessed by name and social security number.

SAFEGUARDS:

Paper records are maintained in locking file cabinets; computer records are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Part A: Records are normally retained for 3 years, then destroyed by incineration. If an employee separates, the records are forwarded to the next Government Agency employer or to the National Personnel Records Center.

Part B: Retained for 5 years, or until the fifth annual appraisal is completed, whichever is later, then destroyed by incineration. If the employee separates, the records are forwarded to the next Government Agency employer or to the National Personnel Records Center.

Electronic records: Deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Part A: Chief, Policy and Labor Relations, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel, at Regional Offices I–V listed in Addendum I, Part 2.

Part B: Chief, Executive and Operational Support Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Part A: Individual to whom record pertains and employee's supervisors.

Part B: Individual to whom record pertains and employee's supervisors; any documents and sources used to develop critical elements and performance standards for that Senior Executive Service position.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) (1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–23

SYSTEM NAME:

Office of Investigations Indices, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of concern to the Office of Investigations and correspondents on subjects directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical and numerical index files bearing individual names and identifiers, and a numerical index of case numbers. These indices provide access to associated records that are arranged by subject matter, title, or identifying number(s) or letter(s). The system incorporates the records of all Office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c), 2201(c), and 5841(f) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of Investigations may be disclosed as routine use to the referring agency, group, organization, or individual of the status of the case or matter or of any decisions or determinations that have been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the

maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is manually stored on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from indices by the name or identifier of the individual or entity, and from the files by number(s) and/or letter(s) assigned and appearing in the indices.

SAFEGUARDS:

The index is maintained in approved security containers and locking filing cabinets; and the indices, associated records, disks, tapes, etc., are located in locking metal filing cabinets, safes, storage rooms, or similar secure facilities. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. Inquiry case files—Retain closed inquiry case files in office for 2 years, then retire to the Office of Information Resources Management. Destroy 10 years after cases are closed.

b. Investigation Case Files:

1. Significant headquarters official case files (received media attention, were of significant interest to Congress, involved extensive litigation, etc.) are retained by the government permanently. Hold in office for 2 years after closing, then retire to the Office of Information Resources Management. Transfer closed case files in 10-year blocks to the National Archives.

2. Other headquarters official case files—Hold in office 2 years after closing, then retire to the Office of Information Resources Management. Destroy 10 years after cases are closed.

3. Regional office or investigator working files—Retained in regional files for 6 months. At the end of 6 months, they are forwarded to headquarters and combined with the headquarters files.

c. Index/Indices—Destroy or delete with related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–24

SYSTEM NAME:

Government Property Accountability System—NRC.

SYSTEM LOCATION:

Primary System—

a. Property, Procurement and Grants Branch, Division of Contracts and Property Management, Office of Administration, NRC, 7920 Norfolk Avenue, Bethesda, Maryland;

b. Law Library, Program Support Branch, Office of the General Counsel, NRC, 11555 Rockville Pike, Rockville, Maryland;

c. Telecommunications Branch, Division of Computer and Telecommunications Services, Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland;

d. Library Services Section, Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland;

e. Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, NRC, 7735 Old Georgetown Road, Bethesda, Maryland;

f. Office Automation and Network Development Branch, Division of Computer and Telecommunications Services, Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland; and

g. Administrative Service Center, Facility Management Branch, Division of Contracts and Property Management, Office of Administration, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate Systems—Duplicate systems exist, in whole or in part, at locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors who have custody of Government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the property and library materials (such as type, make, model, serial number, NRC tag numbers, location, title, etc.), and information about the custodians of the property and library materials (such as name, social security number, office, and office location).

a. Property, Procurement and Grants Branch—Major items of equipment (e.g., office furnishings, automobiles, etc.) and items of sensitive property (e.g., cameras and cassette recorders);

b. Law Library—Library materials including books, microforms, periodicals, and legislative materials.

c. Telecommunications Branch—Telecommunications property (e.g., pagers, modems, credit cards);

d. Library Services Section—Books and library materials;

VOL 58 ISS 128 JL 7 1993 UMI

e. Information and Records Management Branch—Record/nonrecord holdings;

f. Office Automation and Network Development Branch—ADP equipment and microcomputer software; and

g. Administrative Service Center—Parking permits for NRC-controlled parking spaces.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511; 40 U.S.C. 483 (b), (c) and 487(a) (1988); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To maintain an inventory and accountability of Government property;

b. To provide information for clearances of employees who separate from the NRC; and

c. For any of the routine uses specified in paragraph numbers 1, 3, 5, and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records, NRC forms, magnetic tape, automated systems, and in locked file cabinets, with history and audit files.

RETRIEVABILITY:

Accessed by name, social security number, NRC tag number, office, and office location.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Computer records are password protected.

RETENTION AND DISPOSAL:

The hardcopy records are retained for up to 3 years after an individual's responsibility for the assigned equipment terminates; then they are destroyed by shredding or in the regular trash disposal system. The major automated records are destroyed when no longer needed, or at the same time as the hardcopy records, whichever is later. Minor automated tracking systems are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

a. Chief, Property, Procurement and Grants Branch, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

b. Chief, Program Support Branch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

c. Chief, Telecommunications Branch, Division of Computer and Telecommunications Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

d. Chief, Library Services Section, Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

e. Chief, Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

f. Chief, Office Automation and Network Development Branch, Division of Computer and Telecommunications Services, Office of Information and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and

g. Coordinator, Administrative Service Center, Facility Management Branch, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from NRC forms signed by the individuals having custody of the items, or from reports and memoranda received by the Systems Managers.

NRC–25

SYSTEM NAME:

Oral History Program—NRC.

SYSTEM LOCATION:

Office of the Secretary of the Commission, NRC, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, former employees, and other individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of interviews on magnetic tape and transcribed scripts of the interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161b (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For incorporation in publications on the history of the nuclear regulatory program; and

b. To provide information to historians and other researchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and transcripts.

RETRIEVABILITY:

Information is accessed by the name of the interviewee.

SAFEGUARDS:

Maintained in locked file room. Access to and use of these records are limited to those authorized by the Historian or a designee.

RETENTION AND DISPOSAL:

Transcripts are retained permanently. Tapes are retained until no longer needed then erased and reused.

SYSTEM MANAGER(S) AND ADDRESS:

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian and his or her staff.

NRC–26

SYSTEM NAME:

Administrative Services Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Administration, Administrative Service Center, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system exists, in whole or in part, at the Energy Federal Credit Union, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC Federal Government employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of employee applications to participate in the NRC FULL SHARE program. This application includes the employee applicant's name, home address, duty station, duty telephone number, badge number, and information regarding employee's commuting schedule and mass transit system(s) used. Other records in the system include reports from the Energy Federal Credit Union on employee purchases of subsidized mass transit tickets, reports from the NRC's Division of Accounting and Finance on the use of subsidized funds for the NRC FULL SHARE program, and reports from Administrative Service Center when employee has exceeded the allowable de minimis fare subsidy amount.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 note prec. (Supp. II 1990); 42 U.S.C. 161 (1988); 41 CFR 101–20.104–3(a) (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To report to the Internal Revenue Service the amount of Government funds used by a Government employee when the employee exceeds the allowable de minimis fare subsidy amount;

b. To provide an electronic authorization to the Energy Federal Credit Union the sell Federal subsidized mass transit tickets to employees;

c. To provide statistical reports to the city, county, State, and Federal Government agencies;

d. For the routine uses specified in paragraph numbers 1, 4, 5, and 6 in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer disk.

RETRIEVABILITY:

Indexed by name of employee and NRC badge number.

SAFEGUARDS:

Paper records and backup floppy disks are maintained in locked file cabinets under visual control and employees of the Administrative Services Center. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records are limited to those persons whose official duties require access and Energy Federal Credit Union employees who need authorization to sell federally-subsidized mass transit tickets.

RETENTION AND DISPOSAL:

Records are retained for 1 year following the last month of an employee's participation in the subsidized mass transit fare program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Coordinator, Administrative Service Center, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Applications submitted by NRC employees and reports from the Energy Federal Credit Union, the NRC Division of Accounting and Finance, and the Administrative Service Center.

NRC–27

SYSTEM NAME:

Radiation Exposure Information and Reports System (REIRS) Files—NRC.

SYSTEM LOCATION:

Primary system—Science Applications International Corporation (SAIC), 165 Mitchell Road, Oak Ridge, Tennessee 37830.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported pursuant to 10 CFR 20.403 and 20.405 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, period of employment, place and period date of exposure; name and license number of individual's employer; name and number of licensee reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and nuclide(s) involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o) (1988); 10 CFR 20.401, 20.408–20.409 (1992); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph "Categories of individuals covered by the system"; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are computerized and maintained on magnetic tape, maintained in log books, and filed as either a computer printout or original paper document.

RETRIEVABILITY:

Records are accessed by individual name, social security number, and by licensee name or number.

SAFEGUARDS:

Information maintained at SAIC is accessible only to the Office of Nuclear

VOL 58 ISS 128 JL 7 1993 UMI

Regulatory Research. Reports kept by the Office of Nuclear Regulatory Research are in file cabinets and bookcases in a secured building. A log is maintained of both telephone and written requests for information.

RETENTION AND DISPOSAL:

REIRS (NRC–27) Retention and Disposal

a. Original paper documents from which all data are entered into REIRS are destroyed 2 years after input into REIRS;

b. Original paper documents from which only selected data are entered into REIRS are retained permanently;

c. Log books are retained permanently;

d. Computer printouts are destroyed when superseded or obsolete; and

e. Magnetic tapes are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

REIRS Project Manager, Radiation Protection & Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from licensees required to report radiation exposure information; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; or NRC Form 5, Occupational Exposure Record for a Monitoring Period.

NRC–28

SYSTEM NAME:

Recruiting, Examining, and Placement Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland. For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2. For applicants to the Honor Law Graduate Program, Office of the General Counsel, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for Federal employment with the NRC. NRC employees in the upward mobility and COOP program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain general application information relating to the education, training, employment history, earnings, past performance, criminal convictions, if any, honors, awards or fellowships, military service, veteran preference status, birth date, social security number, home address and telephone numbers of persons who have applied for Federal employment with the NRC (SF–171, resumes, and similar documents). The records also contain personnel qualification statements, job descriptions, self-evaluation forms, examination results, supervisory evaluation forms, performance appraisals, upward mobility counselor's reports, training guides, course plans, interviewer evaluation forms, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 5101, 7201 (1988); 42 U.S.C. 2000e; 42 U.S.C. 2201(d) (1988); Executive Order 9397, November 22, 1943; Executive Order 11478, August 8, 1969 as amended by Executive Order 11590, April 23, 1971; Executive Order 12106, December 28, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information to agencies related to transfer or consideration of employment;

b. To prepare reports for transmittal to the Office of Personnel Management and/or Merit Systems Protection Board; and

c. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained primarily on paper, forms, and lists in file folders. Also, certain data is maintained on computer media.

RETRIEVABILITY:

Records are indexed by name and an identification number assigned to each individual.

SAFEGUARDS:

Maintained in unlocked file cabinets and in a password-protected automated system. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Applications and related correspondence are destroyed when 2 years old;

b. Registers of eligibles are destroyed 5 years after an individual's eligibility terminates;

c. Cancelled and ineligible applications are returned to the applicant or are destroyed 90 days after date of action;

d. Eligible applications are destroyed upon termination of the register unless brought forward to new register or placed on inactive register;

e. Electronic records contained in the Applicant Review System are destroyed when 2 years old or when no longer needed, whichever is later; and

f. General correspondence records are destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment, Incentive and Benefits Programs; Chief, Employment Staffing Programs; Chief, Executive and Operational Support, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For applicants to the Honor Law Graduate Program—Chief, Program Support Branch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from

information supplied by that individual, individual's current and previous supervisor within and outside NRC, upward mobility and COOP counselors and program coordinator, with the exception of reports from medical personnel on physical qualifications, results of examinations, preemployment evaluation data furnished by references and educational institutions whose names were supplied by applicant, and information from other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–29

SYSTEM NAME:

Nuclear Documents System (NUDOCS)—NRC.

SYSTEM LOCATION:

Primary system—Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; NUDOCS Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland; and the NRC Local Public Document Rooms (LPDRs) at the addresses indicated in NUREG/BR–0088; licensee locations, National Laboratories, and other locations utilizing NRC documents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC staff, contractors, subcontractors, licensees, Congressional offices, and other correspondents with the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents both received by and originated by the NRC. No classified information is maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in these records may be used:

a. To refer, where appropriate, inquiries to other Federal agencies or persons for their reply or action;

b. To provide information to persons or agencies requesting this information, including provision of daily accession lists in the NRC PDR and weekly and annual accession lists in the LPDRs;

c. To prepare a monthly "Title List of Documents Made Publicly Available (NUREG–0540)";

d. To serve as the NRC's official record for documents placed in the system; and

e. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on microfiche, disks, and tapes.

RETRIEVABILITY:

Accessed by name (author, recipient, word, or phrase), corporate source, title of document, subject matter, word or phrase, or other identifying document or control number.

SAFEGUARDS:

Access to and use of NRC internal records are limited to NRC personnel. Information not exempt from disclosure under the Freedom of Information Act (FOIA), 10 CFR Part 9, and 10 CFR 2.790 is publicly available in the NRC PDR and LPDRs. Automated records are password protected.

RETENTION AND DISPOSAL:

NUDOCS records are currently unscheduled and must be retained until a records disposition schedule for this material is approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Document Management Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the correspondence originated by and received by NRC, and NRC employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). This exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–30

SYSTEM NAME:

Manpower Resource Tracking System Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Computer and Telecommunications Services, Office of Information Resources Management, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2, and at the National Institutes of Health Computer Facility, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the number of regular and nonregular hours worked, the nature of the work, and work load projections, scheduling and project assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(d), 2201(p) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. As a project management tool in various management records throughout the NRC; and

b. For the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper and in computer files, computer records, on tapes, and disks.

RETRIEVABILITY:

Accessed by name, project, program, or activity numbers; docket number; Technical Assignment Control System (TACS); or planned accomplishment numbers.

VOL 58 ISS 128 JL 7 1993 UMI

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Automated system records are password protected.

RETENTION AND DISPOSAL:

Retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Computer and Telecommunications Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it pertains, individual's supervisors, and NRC management.

NRC–31

SYSTEM NAME:

Correspondence and Records, Office of the Secretary—NRC.

SYSTEM LOCATION:

Primary system—Office of the Secretary, Correspondence and Records Branch, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland; and at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The majority of records in this system consist of internal NRC memoranda between NRC employees and the Chairman, a Commissioner, or the Secretary in the ordinary course of carrying out the official business of the NRC. Records also include correspondence from Members of Congress and their staffs including constituent referrals and White House correspondence referred to the NRC for response as well as correspondence from representatives of industries and other groups affected by NRC regulations, and the general public. Correspondence may identify an individual's social security number, birth date, address, and employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information concerning all subjects which directly or indirectly relate to the fulfillment of NRC's statutory mandate. Records include information dealing with the policy, legal, administrative, and adjudicatory functions of the NRC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders, on computer media, and on microfiche.

RETRIEVABILITY:

Records may be accessed by subject matter headings, author's last name, addressee's last name, activity number, date of document, and date of receipt of document or file location.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Classified materials are maintained in approved safes, and unclassified records are maintained in file cabinets and rolling file equipment. Computer files are password protected.

RETENTION AND DISPOSAL:

Paper records and the related computer indexes are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Correspondence and Records Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from communications to the Commission and responses thereto.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–32

SYSTEM NAME:

License and Applicant Taxpayer Identification Number Records—NRC.

SYSTEM LOCATION:

License Fee and Debt Collection Branch, Office of the Controller, NRC, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC licensees and individuals or companies who have filed applications for an NRC license.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of License Fee and Debt Collection Branch computer systems maintaining a taxpayer ID number and application or license number. These systems include billing information related to a particular license or application. These systems are computerized data bases with licensee or applicant name, billing address, license or application number, fee categories, regional affiliation, and billing history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701(a)(3) (1988); 42 U.S.C. 2201 (1988); 42 U.S.C. 5841 (1988); 10 CFR Parts 15, 170, 171 (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used to refer delinquent debts to debt collection agencies and for any of the routine uses specified in the Prefatory Statement.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit

Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored on hard copy and on computer media.

RETRIEVABILITY:

Information is retrieved by license number, application number, licensee or applicant name, invoice number, or taxpayer identification number.

SAFEGUARDS:

The data bases are maintained in an area where access is controlled by keycard and limited to those with a need for access to the work area, and in a building where access is controlled by a security guard force. These data bases are under visual control during duty hours. After duty hours, access to the building is controlled by a security guard force and access to each floor is controlled by key card. Computer records are password protected.

RETENTION AND DISPOSAL:

These records are destroyed in accordance with the retention periods provided for in General Records Schedule (GRS) 6–10.b or when no longer needed, whichever is later. Computer files are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, License Fee and Debt Collection Branch, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC licensees and applicants for NRC licenses.

NRC–33

SYSTEM NAME:

Special Inquiry File—NRC.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201 (c), (i) and (o) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual and may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management and may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on microfiche, disks, tapes, and paper in file folders. Documents are maintained in secured vault facilities.

RETRIEVABILITY:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

SAFEGUARDS:

These records are located in locking metal filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Paper and microfiche records and related alphabetical indexes are retained permanently. Electronic records are also retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and

VOL 58 ISS 128 JL 7 1993 UMI

architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–34

SYSTEM NAME:

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW) Correspondence Index and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the National Institutes of Health Computer Facility, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons providing information to or requesting information from the ACRS or ACNW, individuals who correspond with the ACRS and ACNW, and individuals who provide technical information to ACRS and ACNW.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to incoming requests and correspondence from individuals and replies thereto and a listing of technical information by authors' names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Indexing is maintained on computer media and individual materials are located in ACRS and ACNW files in file folders and on microfilm.

RETRIEVABILITY:

Indexed by one or more of the following categories: author and addressee's name, subject title using the Key Word Out of Context (KWOC) index, and issuing organization or agency.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Automated records are password protected.

RETENTION AND DISPOSAL:

ACRS and ACNW program correspondence and project files are retained permanently. Computer indexes and related microfilm are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Technical Information Branch, Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Records contain information prepared by private individuals or organizations, Government agencies and their contractors, companies, and other groups such as the American National Standards Institute (ANSI).

NRC–35

SYSTEM NAME:

Drug Testing Program Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and at contractor testing laboratories at collection/evaluation facilities, and at the National Institutes of Health (NIH), Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program; requests for and results of initial, confirmatory and followup testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301 (note); 42 U.S.C. 290ee-3 (1988); Executive Order 12564, September 15, 1986; Pub.L. 100–71, "Supplemental Appropriations Act of 1987," Amendment No. 416, July 11, 1987; Pub.L. 100–440, Section 628, September 22, 1988; Federal Personnel Manual Letter 792–19, "Establishing a Drug-Free Federal Workplace," December 13, 1989.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Security and NRC management:

a. To identify substance abusers within the agency;

b. To initiate counseling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions; and

e. For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on index cards, and on computer media. Specimens are maintained in appropriate environments.

RETRIEVABILITY:

Records are indexed and accessed by name, social security number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Security are stored in an approved security container under the immediate control of the Director, Division of Security, or designee. Records at other NRC locations and in laboratory/collection/evaluation

facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

Employee acknowledgement of notice forms are destroyed when employee separates from testing designated position. Selection and scheduling records, chain of custody records, and test results are destroyed when three years old, except for records used in disciplinary actions which are destroyed four years after the case is closed. Collection and handling record books are destroyed three years after date of last entry. Electronic records of the Employee Drug Testing System are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later. Index cards are destroyed with related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, and contractors who have been identified for drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–36

SYSTEM NAME:

Employee Locator Records Files—NRC.

SYSTEM LOCATION:

Primary system—Part A: Telecommunications Branch, Division of Computer and Telecommunications Services, Office of Information Resources Management, 7920 Norfolk Avenue, Bethesda, Maryland.

Part B: Director, Office of Personnel, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, contractors, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to name, address (home and business), telephone numbers (home, business, and pager), social security number, organization, persons to be notified in case of emergency, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1988); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for:

a. Notification of employee in case of an emergency;

b. Notification of employee regarding matters of official business;

c. Verification of accuracy of and update of Automated Payroll System file on employee home addresses and zip codes;

d. Conducting statistical studies, and

e. The routine use specified in paragraph number 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained within computerized telephone directory systems and on hardcopy listings.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Part A: System is password protected and is maintained in a controlled access room under 24-hour visual control of NRC operators.

Part B: System is maintained in a locked room. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained until 3 months after association with NRC is discontinued, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Part A: Chief, Telecommunications Systems Support Section #1, Telecommunications Branch, Division of Computer and Telecommunications Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Part B: Director, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, general personnel records, and other related records.

NRC–37

SYSTEM NAME:

Information Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including present or former NRC employees, contractors, consultants and licensees; other Government agency personnel; and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and

VOL 58 ISS 128 JL 7 1993 UMI

types of information, the approving authority, and related documents; and

b. Names of individuals who classify documents (e.g., for the protection of information relating to the U.S. national defense and foreign relations) as well as information identifying the document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C 2165 and 2201(i) (1988); Executive Order 12356, April 2, 1982.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on index cards, and on computer media.

RETRIEVABILITY:

Indexed and accessed by name and/or assigned number.

SAFEGUARDS:

Maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information. These systems are stand alone systems with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

RETENTION AND DISPOSAL:

a. Classified documents, administrative correspondence, document receipts, destruction certificates, classified document inventories, and related records—retained 2 years, then destroyed by shredding;

b. Top Secret Accounting and Control files: Registers—retained 5 years after documents shown on form are downgraded, transferred, or destroyed by shredding; Accompanying forms—retained until related document is downgraded, transferred, or destroyed by shredding.

c. Automated records are updated monthly and quarterly, and are maintained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons, including NRC employees, contractors, consultants, and licensees, as well as information furnished by other Government agencies or their contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of NRC regulations.

NRC–38

SYSTEM NAME:

Mailing Lists—NRC.

SYSTEM LOCATION:

Primary System—U.S. Government Printing Office, Superintendent of Documents, 941 North Capitol Street, NW., Union Center Plaza, 4th Floor, Washington, DC 20402.

Duplicate systems—Duplicate systems exist in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include primarily the individual's name and address. Some lists also include title, occupation, and institutional affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For distribution of documents to persons and organizations listed on the mailing list; and

b. For the routine use specified in paragraph number 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, paper, and microfiche.

RETRIEVABILITY:

Records are accessed by company name, individual name, and file code identification number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Automated records are password protected.

RETENTION AND DISPOSAL:

Documents requesting changes are destroyed through the regular trash disposal system after appropriate revision of the mailing list or after 3 months, whichever is sooner; lists are retained until cancelled or revised, then destroyed through the regular trash disposal system. Computer files are deleted after cancelled or revised or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Printing and Mail Services Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

NRC–39

SYSTEM NAME:

Personnel Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and the Department of Energy, Headquarters Building, Germantown, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel (e.g., General Services Administration personnel), other persons who have been considered for a personnel clearance, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to personnel, including name, address, date and place of birth, social security number, citizenship, residence history, employment history, foreign travel, foreign contacts, education, personal references, organizational membership, and security clearance history. These records also contain copies of personnel security investigative reports from other agencies (primarily from the Office of Personnel Management or the Federal Bureau of Investigation), summaries of investigative reports, results of Federal agency indices checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (e.g., grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, "Request for Visit or Access Approval" (Form NRC–277), and other related personnel security processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 318 (1988); 42 U.S.C 2165 and 2201(i) (1988); Executive Order 9397, November 22, 1943; Executive Order 12356, April 2, 1982; Executive Order 10865, February 20, 1960; 10 CFR Part 11 (1992); Pub. L. 99–399, "Omnibus Diplomatic Security and Antiterrorism Act of 1986"; OMB Circular No. A–130, December 12, 1985; Federal Personnel Manual Chapter 732 and authorities cited therein; and Pub. L. 99–500, October 18, 1986 (Continuing Appropriations).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Examiners, Office of Personnel Management, Federal Bureau of Investigation, and other Federal agencies:

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program;

e. To provide licensees criminal history information needed for their unescorted access or access to safeguard information determinations; and

f. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on tape, computer media, and microfiche.

RETRIEVABILITY:

Indexed and accessed by name, social security number, docket number, or case file number or a combination thereof.

SAFEGUARDS:

File folders and computer printouts are maintained in security or controlled areas under guard and/or alarm protection, as appropriate. Automated records are password protected.

RETENTION AND DISPOSAL:

a. Personnel security clearance/access authorization files—destroy case files upon notification of death or 5 years from date of termination of access authorization or final administrative action;

b. Request for Visit or Access Approval—maximum security areas retained 5 years after final entry or after date of document, as appropriate; Other areas: Retained 2 years after final entry or after date of document, then destroyed by approved method of destruction; and

c. Other security clearance/access authorization administration files—retained 2 years after final entry or after date of document, then destroyed by approved method of destruction; and

d. Criminal history record computer files are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons including NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–40

SYSTEM NAME:

Facility Security Access Control Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda Maryland; 7920 Norfolk Avenue, Bethesda, Maryland; and 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the Technical Training Center, NRC,

Osborne Office Center, 5700 Brainerd Road, Chattanooga, Tennessee; and the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including present or former NRC employees, consultants, contractors, and other Government agency personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding NRC personal identification badges and access to NRC-controlled space, which includes, but not limited to, individual's name, social security number, citizenship, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165 and 2201 (i), (k) and (p) (1988); Executive Order 9397, November 22, 1943; Executive Order 12356, April 2, 1982.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To control access to NRC classified information and to NRC spaces by human or electronic means; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper forms in logs and files, and on computer media.

RETRIEVABILITY:

Indexed and accessed by individual name and/or numbers contained on the identification badge.

SAFEGUARDS:

Maintained in NRC-controlled space that is secured after normal duty hours or in security areas under guard presence.

RETENTION AND DISPOSAL:

a. Records and forms related to NRC identification badges are retained in files and destroyed when superseded or obsolete.

b. Visitor logs are retained in cabinets and destroyed 2 years after date of entry.

c. The automated access control system reflects access to controlled areas and employee/contractor identification information. These records are disposed of after the retention period for those records identified in a. and b., or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons including NRC employees, contractors, and other employees of Government agencies.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations Part 1—NRC Headquarters Offices

a. Capitol Place, 80 F Street NW., Washington, DC 20001.

b. East-West/West Towers Building, 4350 East West Highway, Bethesda, Maryland 20814.

c. Gelman Building, 2120 L Street, NW., Washington, DC 20037.

d. Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland 20814.

e. Nicholson Lane/North Building, 5640 Nicholson Lane, Rockville, Maryland 20852–2738.

f. Nicholson Lane/South Building, 5650 Nicholson Lane, Rockville, Maryland 20852.

g. One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

h. Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

i. Woodmont Building, 8120 Woodmont Avenue, Bethesda, Maryland 20814.

j. NRC Technical Training Center, Osborne Office Center, 5700 Brainerd Road, Suite 200, Chattanooga, Tennessee 37411–4017.

Part 2—NRC Regional Offices

a. NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

b. NRC Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323.

c. NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

d. NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064.

e. NRC Region IV Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, Colorado 80401.

f. NRC Region V, 1450 Maria Lane, Walnut Creek, California 94596–5368.

g. High-Level Waste Management Office, 301 East Stewart Avenue, #203, Las Vegas, Nevada 89101.

Dated at Rockville, Maryland, this 28th day of June, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–15878 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–483]

Union Electric Co., Callaway Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to the Union Electric Company (the licensee), for the Callaway Plant, Unit 1, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would allow the licensee to store spent fuel with a maximum initial enrichment of 4.45 w/o U–235 for fuel storage in Region 2 of the spent fuel pool.

The proposed action is in accordance with the licensee's application for amendment dated June 12, 1992, as clarified by letter dated August 31, 1992.

The Need for the Proposed Action

The licensee intends to store irradiated fuel with a maximum initial enrichment of 4.40 w/o U–235 during the next refueling outage, refuel 6. Spent fuel will be stored in Region 2 of the Callaway spent fuel pool. At present, fuel with a maximum enrichment up to 4.25 w/o can be stored in the Region 2 area of the spent fuel pool.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed amendment would allow storage of enriched fuel 4.45 w/o U–235 in the Region 2 area of the Callaway spent fuel pool. The present maximum enrichment of 4.25 w/o U–235 is allowed for Region 2 storage. The use of fuel with a maximum enrichment of 4.45 w/o U–235 would not significantly increase the probability or consequences of any accident previously analyzed. No significant changes in the types or

amounts of radiological effluents during normal operation or postulated accidents that may be released offsite are incurred by the increased w/o fuel enrichment. As a result, no significant increase in the individual or cumulative occupational radiation exposure is noted.

Therefore, since the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any radiological affluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined by 10 CFR part 20. The proposed change will not result in a measurable change to the nonradiological plant effluents and therefore will not have any environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 22, 1992 (57 FR 43756). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant, Unit 1, dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated June 12, 1992, as supplemented on August 31, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 29th day of June 1993.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15955 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on July 27 and 28, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, July 27, 1993 8:30 a.m. until the conclusion of business.

The Subcommittee will review the LaSalle Fire PRA.

Wednesday, July 28, 1993—8:30 a.m. until the conclusion of business.

The Subcommittee will review the proposed resolution of Generic Issue-57, "Effects of Fire Protection System Actuation on Safety-Related Equipment." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Herman Alderman, (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 29, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–15950 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on July 22 and 23, 1993, in room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information deemed proprietary to the Westinghouse Electric Corporation pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, July 22, 1993—8:30 a.m. until the conclusion of business.

Friday, July 23, 1993—8:30 a.m. until the conclusion of business.

the Subcommittee will begin its review of both the Westinghouse analytical and separate effects programs being conducted in support of the

AP600 design certification effort. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its contractors, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 29, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–15951 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Computers in Nuclear Power Plant Operations; Meeting

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations will hold a meeting on July 21, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, July 21, 1993–8:30 a.m. until the conclusion of business.

The Subcommittee will review the progress in developing 10 CFR 50.59 review guidelines for digital instrumentation and control system upgrades. In addition, the Subcommittee will discuss the status of the NRC sponsored environmental qualification research on digital instrumentation and control systems. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff, its consultants, industry representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 29, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–15952 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

Rancho Seco Nuclear Generating Station; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission's (NRC) local public document room (LPDR) for Sacramento Municipal Utility District's Rancho Seco Nuclear Generating Station (Rancho Seco) has been relocated from the Martin Luther King Regional Library to the Central Library, Sacramento, California.

The LPDR was temporarily relocated to the Martin Luther King Regional Library while extensive renovations were made to the Central Library. The renovations have been completed and the collection has been returned to the Central Library. Members of the public may now inspect and copy documents and correspondence relating to the licensing, operation and decommissioning of the Rancho Seco Generating Station at the Central Library, Government Documents Department, 828 I Street, Sacramento, California 95882. The Library is open on the following schedule: Tuesday through Saturday 11 a.m. to 6 p.m.; closed on Sunday and Monday.

For further information: Interested parties in the Sacramento area may contact the LPDR directly through Ms. Hanne Robinson, telephone number (916) 552–8718. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 492–4344, or toll-free 1–800–638–8081.

Dated at Bethesda, Maryland, this 30th day of June, 1993.

For the Nuclear Regulatory Commission.

Carol A. Harris,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–15954 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co., LaSalle County Station, Units 1 and 2; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has received a request for Commonwealth Edison Company (CECo, the licensee) to withdraw CECo's application for proposed amendments to Facility Operating License Nos. NPF–11 and NPF–18, issued to the licensee for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was published in the **Federal Register** on January 22, 1993 (58 FR 2589).

The proposed amendments would have revised Technical Specification surveillance requirement 4.6.1.2 to reflect potential future exemptions from 10 CFR part 50, Appendix J, primary containment integrity testing.

By letter dated March 18, 1993, the licensee withdrew the application for the proposed amendments. The Commission has considered the licensee's request of October 11, 1991, as supplemented July 31, 1992, and has determined that permission to withdraw the application for amendments should be granted.

For further details with respect to this action, see (1) the application for amendments dated October 11, 1991, as supplemented July 31, 1992, and (2) the staff's letter dated June 29, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 29th day of June 1993.

For the Nuclear Regulatory Commission.

Janet L. Kennedy,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15953 Filed 7–6–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–5407.

Upon written request copy available from: Securities and Exchange Commission Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Extension: Rule 17f-4; File No. 270–232.

Deletion: Rule 19b-1; File No. 270–312.

New Collection: Rule 15g-2; File No. 270–381.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted: (a) Rule 17f-4 under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-1 *et seq.*) for extension of OMB approval; (b) Rule 19b-1 under the Act for withdrawal of the Commission's previous request for OMB approval; and (c) Rule 15g-2 (17 CFR 240.15g-2) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) for OMB approval.

Rule 17f-4 regulates the process by which investment companies or their custodians deposit portfolio securities with securities depositories for central handling. The rule imposes a total annual reporting burden of 25,256 hours on 256 respondents.

Rule 19b-1 restricts the ability of registered investment companies to distribute long-term capital gains more than once with respect to a taxable year. The rule imposes no paperwork requirement that is not already imposed by statute.

Rule 15g-2 requires broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a "penny stock." The rule requires broker-dealers to obtain written acknowledgment from the customer that he or she has received the required risk disclosure document. The rule also requires broker-dealers to maintain a copy of the customer's written acknowledgment for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place. The rule would impose a total annual reporting burden of 27,000 hours on 270 respondents.

The estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Direct general comments Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15922 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32544; File No. SR–AMEX–93–12]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Amendment and Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Expansion of the Post Execution Reporting System

June 29, 1993.

On March 23, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to expand the Amex's Post Execution Reporting ("PER") system to permit the entry of up to 25,000 shares for eligible market and limit orders for designated Unit Investment Trust ("UIT") securities.[3]

Notice of the proposed rule change appeared in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] The Amex amended its proposal to provide that the Exchange will apply the following criteria to determine which UIT's qualify for the expansion: (1) The UIT must be based upon an underlying index portfolio; (2) the UIT must have an average daily trading volume of 25,000 shares over the prior three-month period; and (3) the UIT specialist must offer "block size" execution of at least 10,000 shares at the quoted price. The Amex's senior management will determine which UITs among those which meet the objective criteria will be entitled to the PER expansion. *See* Letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, dated May 25, 1993 ("Amendment No. 1").

April 9, 1993.[4] No comments were received on the proposal.

The Amex's PER system is an electronic order entry and routing system for equities which directs certain orders directly to the specialist on the Amex floor for execution. Orders placed through the PER system are either executed immediately by the specialist (market and marketable limit orders) or placed upon the specialist's book (limit orders). Initially, PER accepted only 100-share market orders and odd lots. The most recent increase in the size eligibility of PER market orders permitted an expansion of PER eligible orders to 5,000 shares.[5] The Amex now proposes to increase to 25,000 shares the PER size eligibility for market and limit orders for certain UIT securities which satisfy the following criteria: (1) The UIT is based upon an underlying index portfolio; (2) the UIT has an average daily trading volume of 25,000 shares over the prior three-month period; and (3) the UIT specialist offers "block size" execution of at least 10,000 shares at the quoted price. The Amex's senior management will determine which UITs among those meeting the objective criteria will be entitled to the increased PER size eligibility.[6]

The Amex explains that recent experience in the listing and trading of UIT securities has shown that specialists are able to continuously offer substantial "size" markets at very tight quote intervals. For example, in the case of Standard & Poor's Depositary Receipts ("SPDRs"), the Exchange's most recent listing of a UIT security,[7] the specialist has publicly guaranteed 50,000-up markets during normal markets at the tightest (narrowest) possible quote interval, a ½2nd spread. Further, the Amex notes that, as a practical matter, size quotations in SPDRs are often at substantially higher levels, up to one million shares.

To accommodate the ease of order entry and execution on behalf of member firms, particularly those with institutional customers, the Amex believes that an increase in PER eligibility to a 25,000-share level is appropriate given the demonstrated interest in such products and the specialist's ability to maintain such size markets.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5), because it will facilitate transactions in securities. The proposal will also result in more efficient and effective market operations, consistent with Section 11A(a)(1)(B) and will further the maintenance of fair and orderly markets and the efficient execution of securities transactions consistent with Section 11A(a)(1)(C) of the Act.[8]

Specifically, the Commission believes that the increase in the size eligibility of PER orders for certain UIT securities should benefit investors by facilitating the routing and subsequent execution of UIT orders. Based upon the Amex's representations that UIT specialists are able to continuously offer substantial "size" markets at tight quote intervals, and that certain UIT securities are quoted at levels of up to one million shares, the Commission believes that the PER size eligibility expansion should help the Exchange to accommodate the needs of market participants transacting sizable blocks of UIT securities. In addition, by helping to ensure the efficient and effective routing of UIT orders, the proposal should help the Amex maintain fair and orderly markets, in addition to facilitating the execution of such orders.

Finally, based upon representations from the Amex, the Commission is satisfied that the Exchange's PER system will have adequate computer processing capacity to accommodate the increased order size eligibility for certain UIT securities.[9]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 sets forth the criteria which UIT securities must meet in order to be eligible for the proposed PER expansion. The Commission believes that Amendment No. 1 clarifies and strengthens the Amex's proposal and does not raise new regulatory issues. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–Amex–93–12), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15917 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[4] See Securities Exchange Act Release No. 32103 (April 5, 1993), 58 FR 18432.

[5] See Securities Exchange Act Release No. 28891 (February 15, 1991), 56 FR 7438 (order approving File No. SR–Amex–90–37).

[6] See Amendment No. 1, *supra* note 3.

[7] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (order approving File No. SR–Amex–92–18).

[8] 15 U.S. 78f(b)(5) and 78k–1 (1988).

[9] See Letter from Edward Cook, Jr., Director, Information Technology, Amex, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated April 5, 1993. The Amex states that the Exchange's order processing systems have the capacity to process 60 million shares per day, and that the Exchange's average daily volume is approximately 14 million shares. The daily average for SPDRs during March 1993 was 131,000 shares/40 trades. The Amex states that even if all SPDR trades were eligible for delivery to the floor via the Exchange's order processing systems, there would be no measurable effect on capacity.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34-32556; File No. SR-CBOE-93-13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Relating to the Extension of the Pilot Program Involving Debit Put Spreads in Broad-Based Indexes With European-Style Exercise

June 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder,[1] notice is hereby given that on February 23, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 24.11A, "Debit Put Spread Cash Account Transactions," to extend through December 31, 1993, a pilot program allowing approved public customers with qualified portfolios ("spread exemption customer") to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[3]

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

[1] 17 CFR 240.19b-4 (1992).

[2] On April 15, 1993, the CBOE amended its filing to extend the pilot program through December 31, 1993. See Letter from Michael L. Meyer, Schiff, Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division") Commission, dated April 14, 1993 ("Amendment No. 1").

[3] The Commission approved the pilot program on a one-year basis through November 25, 1992. See Securities Exchange Act Release No. 29992 (November 26, 1991), 56 FR 63526 (order approving File Nos. SR-Amex-91-14 and SR-CBOE-91-17) ("Debit Put Spread Approval Order"). Subsequently, both the CBOE and the American Stock Exchange, Inc. ("Amex") amended the definition of "debit put spread" to provide that the strike price of the long leg of the spread must exceed, not equal, the strike price of the short leg. See Securities Exchange Act Release Nos. 30267 (January 21, 1992), 57 FR 2334 (order approving File No. SR-CBOE-91-50) and 30419 (February 26, 1992), 57 FR 7825 (order approving File No. SR-Amex-92-07).

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, section 220.8 of Regulation T under the Act precludes customers from effecting spread transactions in cash accounts. Specifically, Section 220.8(a)(3)(ii) of Regulation T includes in permissible cash account transactions a creditor's issue, endorsement or guarantee of a put option for a customer if the creditor obtains cash in an amount equal to the exercise price of the option or holds in the account any of the following instruments with a current market value at least equal to the exercise price of the option and with one year or less to maturity: U.S. government securities, negotiable bank certificates of deposit, or bankers acceptances issued by a U.S. bank and payable in the United States. Because offsetting options positions fail to satisfy these criteria, spreads are not included in permissible cash account transactions and therefore must be effected in margin accounts.

On November 26, 1991, the Commission approved proposals submitted by the CBOE and the Amex which established one year pilot programs allowing approved public customers[4] with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[5] The CBOE now proposes to extent its debit put spread pilot program through December 31, 1993.

The pilot program defines a "debit put spread" as "a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s)." Under the terms of the pilot, only public customers approved by the CBOE are permitted to participate in the pilot program. To obtain the CBOE's approval, customers are required, among other things, to hold a qualified stock portfolio or its equivalent that is composed of net long positions in common stocks in at least four industry groups and that contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio. A portfolio must meet these standards at all times, regardless of trading activity in the stocks. In addition, the debit put spread positions must be carried in an account with an Exchange member organization and the qualified portfolio must be maintained with either an Exchange member organization, another broker-dealer, a bank, or a securities depository.

In conjunction with the creation of the pilot programs, the Commission staff also issued no-action letters to the Amex and the CBOE stating that the staff would not recommend enforcement action against the Amex and the CBOE due to the operation of the pilot programs, namely the maintenance of spread positions in a cash account.[6] The staff of the Board of Governors of the Federal Reserve System ("Board") also informed the Commission staff that Board staff would not object to the Commission staff's issuance of these no-action positions in connection with the pilot programs.[7]

As required by the Debit Put Spread Approval Order, the CBOE has submitted a report assessing the effectiveness of the pilot program ("Pilot Report").[8] The CBOE believes that the pilot program has been an efficient means for investors that are limited to cash account transactions to effectively hedge their portfolios against declines in the market. The CBOE represents that

[4] For purposes of its pilot program, a public customer is a customer whose orders are eligible to be placed on a CBOE limit order book under Exchange Rule 7.4(a).

[5] See Debit Put Spread Approval Order, *supra* note 3.

[6] See Letter from Howard L. Kramer, Assistant Director, Division, Commission, to Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, dated November 25, 1991, and Letter from Howard L. Kramer, Assistant Director, Division, Commission, to James M. McNeil, Assistant Vice President, Chief Examiner, Amex, dated November 25, 1991.

[7] See Letter from Laura Homer, Securities Credit Officer, Board, to Howard L. Kramer, Assistant Director, Division, Commission, dated July 12, 1991.

[8] See Letter from Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated October 1, 1992 ("Pilot Report").

it has neither experienced nor detected any problems related to the pilot. Moreover, the Exchange states that no activity of any pilot participant appeared violative of the program's requirements or other Exchange rules, nor have Exchange studies found evidence of market manipulation or other negative impact on market operations.

Accordingly, in order to allow the pilot to continue, the CBOE requests an extension of the pilot program through December 31, 1993. The CBOE proposes no substantive changes to the program. Prior to the end of the proposed extension of the pilot program, the CBOE will provide the Commission with a report similar to the Pilot Report. In addition, the CBOE will notify the Commission promptly of any problems arising in connection with the pilot program.[9]

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to protect investors and the public interest by allowing investors to hedge qualified portfolios against market declines by purchasing and maintaining debit put spread transactions in cash accounts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[10] Specifically, the Commission believes, as it has previously concluded,[11] that the pilot program is designed to benefit qualified public customers who are prohibited or restricted in their use of margin accounts by facilitating their purchase of index option debit put spreads. Specifically, because the purchaser of a debit put spread uses the call premium to reduce the cost of purchasing the put, index option put spreads provide investors with an affordable means to hedge their portfolios against adverse market moves. In addition, to the extent that the pilot program has increased index options transactions, the program has benefited all options investors by contributing to the depth and liquidity of the CBOE's options markets.

The Commission continues to believe that the economic characteristics of index option debit put spreads permit an exception to the application of Regulation T. In a debit put spread, the long put entitles the spread exemption customer to receive payment when the index reaches the put option's strike price; because the strike price of the long put must exceed the strike price of the short put, the spread exemption customer's right to receive payment under the long put will offset any obligations he incurs from the sale of the short put. Because the short position must expire with the long position, the offset provided by the long put will last for the duration of the spread exemption customer's obligation as a short put writer. In addition, there is no risk that the short put will be exercised prior to the long put because the exemption applies solely to European-style options, which may be exercised only during a specified period prior to expiration.

In its Pilot Report, which covers the operation of the pilot program from January 1992 through June 1992, the CBOE states that no participant has operated in violation of the pilot since its inception, nor have the CBOE's surveillance procedures revealed evidence of manipulation or abuse of knowledge of impending expiration-related program trades for each expiration Friday during the review period. The Pilot Report indicates that the pilot program's 51 participants included corporations, pension/retirement plans, non-profit organizations, mutual funds, and individual or family trusts, the majority of the which were prohibited by contractual agreements from using margin accounts. The debit put spreads of all of the participants were comprised of Standard & Poor's ("S&P") 500 Index ("SPX") options with one to five months remaining until expiration. During the review period, individual pilot participants carried between 5 and 2,599 debit put spreads, and the total number of spreads effected under the pilot program each month ranged from 2,922 to 8,620.

On the basis of the Pilot Report, the Commission believes that the debit put spread pilot program has facilitated the needs of qualified public customers who are limited to cash account transactions by providing them with an effective means to hedge their portfolios against adverse market moves. At the same time, the Pilot Report indicates that no pilot participant has violated the pilot's parameters, nor has the Exchange discovered any market manipulation or abuse in connection with the pilot program. For these reasons, the Commission believes that the debit put spread pilot program has provided qualified public customers with additional means to implement their hedging strategies and, by facilitating index options transactions, has benefitted all options investors by contributing to the depth and liquidity of the CBOE's options markets.

The Commission requests that the CBOE submit a report on the continued operation of the pilot by September 30, 1993. The report should contain information comparable to that provided in the most recent Pilot Report. In addition, the CBOE should submit a request for an extension of the pilot or its permanent approval by the same date. The Commission also notes that the CBOE has agreed to notify the Commission promptly of any problems arising in connection with the pilot program.[12]

The Commission finds good cause for approving the CBOE's proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the pilot program to continue. In addition, because the Commission has received no comments regarding the operation of the pilot program since its implementation, and because the pilot program has been utilized by a number of qualified public customers, the Commission believes that granting accelerated approval of the CBOE's proposal is appropriate and consistent with Sections 19(b)(2) and 6(b)(5) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[9] See Amendment No. 1, *supra* Note 2.

[10] 15 U.S.C. § 78f(b)(5) (1988).

[11] *See* Debit Put Spread Approval Order, *supra* note 3.

[12] See Amendment No. 1, *supra* note 2.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–93–13), relating to an extension of the CBOE's debit put spread pilot program until December 31, 1993, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15918 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32553; File No. SR–NASD–93–20]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change Relating to the Use of a Special Indicator for Average-priced Trade Reports

June 29, 1993.

I. Introduction

The National Association of Securities Dealers ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [1] on March 30, 1993, pursuant to section 19(b)(1) [2] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposed rule change would amend Parts XII and XIII of Schedule D to the NASD By-Laws to require use of a special indicator for average-price weighted trades.

Notice of the filing of this proposal appeared in the **Federal Register** on April 26, 1993.[3] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Background and Description

Confusion has arisen recently regarding a limited number of trades that have been reported at a price based on an average-weighting or other formula rather than a current negotiated price.[4] Certain institutions find such trades attractive because they ensure that the institution will not purchase at the high for the day or sell at the low. Trade reports such as these, although timely made, may not relate to the last sale price on Nasdaq and carry no identifier describing their specialized nature. While there are various specialized sale condition indicators employed in the reporting of Nasdaq transaction data to vendors (*e.g.*, ".SLD" for late trade reports and ".T" for trades executed outside of the normal market hours of 9:30 a.m. to 4 p.m. Eastern Time), none accurately describes averaged-price weighted trades. These amendments to the transaction reporting plan for Nasdaq National Market System securities and the rules governing trade reporting for Nasdaq SmallCap securities in Schedule D will require members to mark all such trades with a special identifier, ".W" to denote their specialized sale condition.

III. Discussion

The Commission has determined that the NASD's proposal is consistent with sections 15A(b)(6) and 11A(a)(1)(C)(iii) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. In addition the proposed rule change furthers the objectives set forth in section 11A(a)(1)(C)(iii) of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Reporting transactions in Nasdaq securities that are marked with a special indicator to identify their unique pricing formulas is appropriate for regulatory purposes and obviates investor confusion with regard to those transactions.

The NASD has already adopted amendments to Schedule G to the By-Laws with similar trade reporting requirements for members using average-price weighting formulas for exchange-listed securities. The special indicator has been approved and implemented in the consolidated data stream operated by the Consolidated Tape Association.[5]

IV. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with sections 15A(b)(6) and 11A(a)(1)(C)(iii) of the Act, and that it is appropriate to approve the use of a special indicator for averaged-price and other special weighting formula trades.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15921 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32550; File No. SR–PSE–91–15]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing

June 29, 1993.

I. Introduction

In the Matter of: Order Granting Accelerated Approval to Amendments No. 1, No. 2, No. 3, No. 4 and No. 5 to Proposed Rule Change Relating to the Administration of its Floor Member Qualification Examinations.

On May 31, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange")

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[13] 15 U.S.C. 78s(b)(2) (1982).

[14] 17 CFR 200.30–3(a)(12) (1992).

[1] File No. SR–NASD–93–20.

[2] 15 U.S.C. 78s(b)(1).

[3] See Securities Exchange Act Release No. 32166 (April 19, 1993), 58 FR 22009.

[4] An example of such a transaction would be a trade negotiated as an agency cross during the trading day to be executed after 4 p.m. at a price equal to the average of weighted prices of transactions taking place during the trading day.

[5] See Securities Exchange Act Release Nos. 30437 (March 3, 1992), 57 FR 8370, and 30955 (July 23, 1992), 57 FR 33536.

[6] 17 CFR 200.30–3(a)(12).

VOL 58 ISS 128 JL 7 1993 UMI

submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of examinations it seeks to administer to prospective equity and options floor members. On April 10, 1992, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to make certain corrections and changes to the examinations.[3] On June 23, 1992, August 19, 1992, October 23, 1992 and February 22, 1993, the PSE submitted Amendments No. 2,[4] No. 3,[5] No. 4[6] and No. 5,[7] respectively, to the proposed rule change in order to make further clarifying and technical corrections to the examinations.

The proposed rule change was noticed in Securities Exchange Act Release No. 29366 (June 24, 1991), 56 FR 30612 (July 3, 1991). No comments were received on the proposal.

II. Description of the Proposal

The PSE has devised its own proficiency examinations to be administered to prospective equity and options floor members. Prior to being able to operate in the capacity of an equities or options floor broker or specialist,[8] a prospective member must successfully complete the proposed examination which corresponds to the individual's role as a floor member.[9]

The examinations are designed to accurately test the applicant's knowledge of specific trading and regulatory responsibilities which are implicated when trading on the PSE Floor. Essentially, the examinations cover general terms and rules of trading, as well as items specifically related to trading of equities or options on the PSE.

III. Commission Findings

After careful consideration, the Commission has determined that the PSE's proposed rule change to administer its own proficiency examinations for prospective floor members is consistent with section 6 of the Act.[10] In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The examination requirement will help to ensure that only those candidates with a comprehensive knowledge of the specific rules of the Exchange, as well as an understanding of the relevant provisions of the Act, will be eligible for PSE floor membership. By ensuring this requisite degree of proficiency, the Exchange can remain confident that its floor members have demonstrated an acceptable level of securities knowledge.

The Commission also believes that the proposal is consistent with sections 6(c)(3) (A) and (B) of the Act, which state that a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer or a natural person associated with such broker or dealer, if the broker, dealer or natural person does not meet such standards of training, experience and competence as prescribed by exchange rules. Under these sections, an exchange may establish procedures to examine and verify the qualifications of an applicant. The PSE has tailored the exams toward evaluating the applicant's knowledge of specific Exchange rules and policies, in addition to the requirements of the Act. The Commission believes that the exam appropriately grants Exchange floor membership only to those applicants who have, through passage of the exam, demonstrated the requisite knowledge, training, experience and competence to satisfactorily discharge their individual duties on the PSE floor.

Finally, the Commission believes that the proposed rule change is consistent with section 15(b)(7)[11] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer) must meet certain standards of training, experience, competence and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. In this regard, the Commission has carefully reviewed the format of the examinations and the substantive areas tested. In conducting this review, the Commission focused on the level of difficulty and comprehensiveness of the specific examination questions. Based on the depth of knowledge required to pass the examinations, the Commission concludes that the examinations sufficiently reflect the requisite minimum knowledge an applicant must possess to comply with PSE rules and the pertinent rules and regulations of the Act.

The Commission finds good cause for approving Amendments No. 1, No. 2, No. 3, No. 4 and No. 5 prior to the thirtieth day after the date of publication of notice of filing thereof. These amendments would refine certain details of the PSE's floor member examinations in a manner which is both thorough and fair. In general, the amendments would correct errors in or clarify the language of specific questions. The overall structure of the examinations would, in essence, go unchanged. Finally, the original proposal was published for the full statutory period and no comments were received on any aspect of the proposal.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, No. 2, No. 3, No. 4 and No. 5 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendments No. 1, No. 2 No. 3, No. 4 and No. 5 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the PSE. All submissions should refer to

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[1] 15 U.S.C. 78s(b)(1) (1989).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Kenneth Marcus, Attorney, PSE, to Mary Revell, Branch Chief, SEC, dated April 10, 1992 ("Amendment No. 1").

[4] See letter from Kenneth Marcus, Attorney, PSE, to Mary Revell, Branch Chief, SEC, dated June 23, 1992 ("Amendment No. 2").

[5] See letter from Kenneth Marcus, Attorney, PSE, to Mary Revell, Branch Chief, SEC, dated August 19, 1992 ("Amendment No. 3").

[6] See letter from Kenneth Marcus, Attorney, PSE, to Beth Stekler, Staff Attorney, SEC, dated October 23, 1992 ("Amendment No. 4").

[7] See letter from Kenneth Marcus, Attorney, PSE, to Beth Stekler, Staff Attorney, SEC, dated February 5, 1993 ("Amendment No. 5").

[8] For the most part, these examinations only test the skills of, and thus qualify the applicant to serve as, a registered equity or options floor member. Certain questions, however, are directed exclusively at a prospective equity specialist or options market maker. To act in that capacity, the applicant must successfully complete both the general and more specialized sections of the examination. See PSE Rules 5.27(c)(ii) and 6.33.

[9] The PSE Rules give the Equity or Options Floor Trading Committee discretion to consider, in addition to the applicant's performance on the examination, such other factors as it deems appropriate. See PSE Rules 1.1(c) and 6.44.

[10] 15 U.S.C. 78f (1989).

[11] 15 U.S.C. 78o(b)(7) (1989).

File No. SR–PSE–91–15 and should be submitted by July 28, 1993.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposal is consistent with sections 6(b)(5), 6(c)(3) and 15(b)(7) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act [13] that the proposed rule change (SR–PSE–91–15) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15920 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32547; File Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02]

Self-Regulatory Organizations; National Securities Clearing Corp., Midwest Clearing Corp., and Stock Clearing Corp. of Philadelphia; Filing and Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Changes Relating to the Guarantee of Trades in Continuous Net Settlement Systems

June 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation ("MCC"), and Stock Clearing Corporation of Philadelphia ("SCCP") (collectively referred to as "Clearing Corporations") filed with the Securities and Exchange Commission ("Commission") on May 28, 1993, June 2, 1993, and June 3, 1993, respectively, the proposed rule changes as described in Items I and II below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes through June 30, 1994.

[12] 15 U.S.C. 78 (1989).

[13] 15 U.S.C. 78s(b)(2) (1989).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek an extension of the Commission's order that authorizes the Clearing Corporations: (1) To guarantee at an earlier time the settlement of participant trades in their Continuous Net Settlement ("CNS") systems and (2) to use revised clearing fund calculations to protect against any increased risk caused by such earlier guarantees.[2]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Clearing Corporations have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to extend the Commission's approval of NSCC's, MCC's, and SCCP's, procedures whereby the settlement of all pending CNS trades are guaranteed as of midnight on the day after the trade date for locked-in or automatically compared trades and as of midnight on the day trades are reported to members as compared for all other trades. The proposed rule changes also seek extension of the Commission's approval of the Clearing Corporations' revisions to the CNS portions of their clearing fund formulas. These revisions are designed to protect against increased risk associated with earlier guarantees.[3]

[2] The Commission has approved these proposals on a temporary basis for four previous occasions. Securities Exchange Act Release Nos. 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR–NSCC–87–04, SR–MCC–87–03, and SR–SCCP–87–03 until December 31, 1990); 28728 (December 31, 1990), 56 FR 717 (approving File Nos. SR–NSCC–90–25, SR–MCC–90–08, and SR–SCCP–90–03 until June 30, 1991); 29388 (June 26, 1992), 56 FR 30951 (approving File Nos. SR–NSCC–91–06, SR–MCC–91–03, and SR–SCCP–91–03 through June 30, 1992); and 30879 (July 1, 1992), 57 FR 30279 (approving File Nos. SR–NSCC–92–04, SR–MCC–92–07, and SR–SCCP–92–02 through June 30, 1993).

[3] For a more detailed discussion of the proposals, refer to Securities Exchange Act Release Nos. 30379, 29388, 27828, and 27192 and the accompanying rule filings, *supra* note 2.

The Clearing Corporations represent that the proposed rule changes are consistent with the Act and particularly section 17A of the Act because it will help the Clearing Corporations to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[4]

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Clearing Corporations believe that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Clearing Corporations have neither solicited nor received any comments.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Commission believes the Clearing Corporations' proposals to continue providing earlier guarantees for CNS trades along with revised formulas for calculating clearing fund contributions are consistent with the Act and particularly with section 17A of the Act.[5] Section 17A(b)(3)(F) of the Act [6] requires that the rules of clearing agencies be designed to assure the safeguarding of securities and funds that are in the custody or control of the clearing agencies or for which the clearing agencies are responsible and be designed to remove impediments to and perfect the national system for the clearance and settlement of securities transactions.

The Commission believes that these proposals promote the perfection of the national system by providing increased certainty as to settlement of securities transactions by reducing the time that clearing members are exposed to the risk of counterparty default. The Commission further believes that these proposals achieve that goal without compromising the safeguarding of securities and funds in the Clearing Corporations' custody or control or for which they are responsible.

The Clearing Corporations have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the **Federal Register**. Accelerated approval will permit NSCC, MCC, and SCCP to continue to provide

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

their participants with earlier trade guarantees and to continue to base clearing fund assessments on the revised formulas without any needless disruptions to the program. During the proposals' temporary approval periods, the Commission and the Clearing Corporations have continued to examine the Clearing Corporations' procedures and safeguards applicable to earlier guarantees of CNS trades and the revised formulas for calculating CNS clearing fund contributions. To date, the earlier guarantee procedures and revising clearing fund formulas have functioned adequately. Therefore, the Commission believes there is good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing.

The Commission will continue to monitor the adequacy of NSCC's, MCC's, and SCCP's procedures and safeguards applicable to earlier guarantees of CNS trades and the revised clearing fund formulas. The Clearing Corporations remain under a continuing obligation to provide data to the Commission pertaining to earlier trade guarantees and the ability of the revised CNS clearing formulas to guard against any increased risks posed by earlier guarantees.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the SROs. All submissions should refer to File Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02 and should be submitted by July 28, 1993.

[7] The Commission reserves the right to amend the data request during the ensuing temporary approval for any of the Clearing Corporations in order to obtain the most useful and accurate information available.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act[8] that the above-mentioned proposed rule changes (File Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02) be, and hereby are, approved through June 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15970 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32554; File No. SR–PSE–92–45]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to an Increase in Position and Exercise Limits for Options on the Wilshire Small Cap Index

June 29, 1993.

I. Introduction

On December 8, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to increase the position and exercise limits for European-style[3] options on the Wilshire Small Cap Index ("Wilshire Index" or "Index").

The proposed rule change, amended as of January 26, 1993, was noticed for comment in Securities Exchange Act Release No. 31793 (January 29, 1993), 58 FR 7283. No comments were received on the proposed rule change. This order approves the PSE's proposal.

II. Description of the Proposal

On November 3, 1992, the Commission approved an Exchange proposal to list and trade options on the Wilshire Index.[4] Under the Commission's approval order, the position limits[5] and exercise limits[6] for options on the Index are currently set at 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts in the series with the nearest expiration date.[7]

The proposal would increase the position and exercise limits available on the Index to 37,500 contracts on the same side of the market, with no more than 22,500 of such contracts in the series with the nearest expiration date.[8] These proposed position limits are similar in terms of aggregate dollar value with those that the Commission recently approved for options on the Russell 2000 Index on the CBOE.[9]

The Exchange believes that the characteristics of the Index and the Russell 2000 are sufficiently similar to justify comparable position and exercise limits for both indexes. The Exchange notes that both indexes are capitalization weighted, have an exceptionally high correlation rate of 99.05% (taken on a quarterly basis), and are primarily comprised of domestic securities from the small capitalization market.

III. Discussion

As discussed below, the Commission believes that the PSE proposal is consistent with section 6 of the Act, in general, and section 6(b)(5) in particular, in that it should help remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and the public interest. Specifically, the Commission notes that the Index is a broad-based index consisting of 250 domestic stocks from nine economic sectors. The Exchange's stringent listing requirements insure that the Index will not contain a large number of thinly

[8] 15 U.S.C. 78s(b) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1989).

[3] A European-style option is one that can be exercised only on the expiration date.

[4] Securities Exchange Act Release No. 31397 (November 3, 1992), 57 FR 53368 ("Exchange Act Release No. 31397").

[5] Position limits impose a ceiling on the number of options contracts relating to an underlying instrument which an investor, or group of investors acting in concert, may own or control.

[6] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of option contracts on a particular underlying security within five consecutive business days.

[7] See also PSE Rule 7.6(d)(1).

[8] Originally, the PSE proposed to increase the position and exercise limits for the Wilshire Index to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the nearest expiration month, the same number of contracts that the Commission recently approved for options on the Russell 2000 Index ("Russell 2000") on the Chicago Board Options Exchange, Inc. ("CBOE"). See *infra* note 9. As of January 26, 1993, the Wilshire Index had a value of 298.53 while the Russell 2000 closed at 227.19. Accordingly, because the value of the Russell 2000 is approximately 25% less than that of the Wilshire, the PSE amended its filing to request position and exercise limits that are comparable to the Russell 2000 Index in terms of aggregate dollar value. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Stephen M. Youhn, Attorney, Options Branch, Division of Market Regulation, SEC, dated January 26, 1993.

[9] See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802 ("Exchange Act Release No. 31382").

capitalized, low-priced securities with small public floats and low trading volume.[10] As previously noted, markets that exhibit active and deep trading, as well as broad public ownership, are more difficult to manipulate or disrupt than less active markets with smaller public floats.[11] Accordingly, given the size and breadth of the Index, the Commission does not believe that increasing the position limits for the Index as proposed herein will increase the Index's susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities.

Additionally, the Commission notes that the proposed limits are comparable to those approved by the Commission in terms of aggregate dollar value for options on the Russell 2000 on the CBOE,[12] which have not, to date, posed any discernible problems.

Furthermore, the Commission notes that the settlement value of options on the Index is based on the opening prices of the component securities ("A.M.-Settled"). The Commission believes that settling index products based on opening prices significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions.[13] Accordingly, the Commission believes that the a.m. settlement of the Index is helpful in insuring that the increased position limits should not unduly disrupt the market in the underlying securities comprising the Index.

In summary, the Commission believes that the increase in position and exercise limits for options on the Index will benefit market participants by allowing them to take larger positions in the context of an exchange-traded and regulated product without unnecessarily increasing manipulative concerns.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–PSE–92–45) is approved.

[10] See Exchange Act Release No. 31397, *supra* note 4.

[11] See *e.g.*, Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 ("Exchange Act Release No. 31330").

[12] See Exchange Act Release No. 31382, *supra* note 9.

[13] The Commission has stated, for example, that "in general, basing the settlement of index products on opening, as opposed to closing, prices on expiration Fridays helps alleviate the stock market volatility once experienced frequently on expiration Fridays." See Exchange Act Release No. 31330, *supra* note 11.

[14] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15919 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32558; File No. SR–PSE–92–37]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Pacific Options Exchange Trading System ("POETS") Pilot Program

June 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend until July 31, 1993, its automated options trading system pilot program designated as the Pacific Options Exchange Trading System ("POETS").[2] In addition, the PSE seeks permanent approval of POETS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 1990 the Commission approved POETS on a pilot basis.[3] Subsequently, the Commission approved several Exchange proposals to extend the pilot, including, most recently, a six-month extension through April 30, 1993.[4] The Exchange now seeks to extend the pilot program through July 31, 1993. In addition, the PSE is seeking permanent approval of POETS.

The PSE states that since POETS was implemented, the Exchange has expanded POETS on a floor-wide basis. Over the course of the pilot program, the performance of POETS has been assessed under a variety of market conditions. The Exchange believes, as evidenced by the POETS pilot report submitted by the PSE to the Commission ("Pilot Report"),[5] that POETS is a viable and effective trading system. The PSE believes that POETS has provided, and continues to provide, substantial benefits to the investing public, including the on-line updating of quotations, increased speed and

[15] 17 CFR 200.30–3(a)(12) (1993).

[1] The PSE amended its proposal to request an extension of the pilot program through July 31, 1993. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated May 4, 1993 ("Amendment No. 1").

[2] See Amendment No. 1, *supra* note 1. POETS is a completely automated trading system comprised of an automatic execution system, an options order routing system ("ORS"), an on-line limit order book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote"). The Commission approved the PSE's POETS system on a six-month pilot basis on January 18, 1990. See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File SR–PSE–89–26). The initial six-month approval expired on July 22, 1990, and was extended until October 22, 1990, in order to allow the PSE to complete installation of the system's hardware. See Securities Exchange Act Release No. 28264 (July 26, 1990), 55 FR 31272 (order approving File No. SR–PSE–90–28). In January 1991, the POETS pilot program was extended until June 30, 1991. See Securities Exchange Act Release No. 28778 (January 14, 1991), 56 FR 2576 (order approving File No. SR–PSE–90–36). In April 1991, the Commission approved the PSE's proposal to implement the system's automatic and semi-automatic execution features, termed "Auto-Ex" and "Semi Auto-Ex," respectively, on a floor-wide basis, and to extend the pilot until July 31, 1992. See Securities Exchange Act Release No 29104 (April 18, 1991), 56 FR 19134. The POETS pilot program was extended through October 31, 1992. See Securities Exchange Act Release No. 31022 (August 12, 1992), 57 FR 37179 (order approving File No. SR–PSE–92–26), and, most recently, through April 30, 1993. See Securities Exchange Act Release No. 31935 (March 1, 1992), 57 FR 12611 (order approving File No. SR–PSE–92–46).

[3] See *Supra*, note 2 for a description of POETS.

[4] See Securities Exchange Act Release No. 31935, *supra* note 2.

[5] See "Report of the Pacific Stock Exchange on the Status of its POETS Pilot Program," dated September 18, 1992.

accuracy in the execution and reporting of trades, and improved accuracy and accessibility of trade information. The PSE states that there have been no capacity problems with POETS during the pilot program. The PSE believes that POETS has contributed to the quality and integrity of the Exchange's options markets.

In its Pilot Report, the PSE notes that Auto-Quote is used for approximately 80% of the options series traded on the PSE, and that Auto-Quotes's efficiency in updating quotes enhances the traders' ability to maintain updated and accurate markets. Moreover, the daily report generated through Auto-Quote helps the Exchange's Market Surveillance Department to recreate and trace trading activity.

The PSE states that ORS, which provides members with electronic routing, execution, and reporting of orders, has increased the efficiency of order processing on the Exchange, and that Auto-Ex allows eligible orders that are entered through ORS to be executed immediately at the current disseminated quotation. Since POETS reduces the paper flow in the trading crowds, orders that must be executed manually receive greater attention by the Exchange's staff and members. The Pilot Report concludes that all of the Exchange's members use or benefit from POETS, which provides all members with more accurately updated market quotes, faster executions and price reporting, and more complete and accurate audit trails. The Pilot Report states that as of August 1992, the year-to-date availability rate of POETS was 99.96%.

In addition, the Pilot Report states that the Exchange has received no formal complaints about POETS and that the Exchange has taken no disciplinary action against a member for activities involving POETS.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, because the Exchange believes that POETS should enable the PSE to provide online updating of market quotes, more efficient execution of customer orders, and faster, more accurate trade information reports, which will help the PSE to maintain the quality and integrity of its markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that Amendment No. 1 to the proposal, relating to the extension of the pilot program through July 31, 1993, be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposal to extend the pilot program through July 31, 1993, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 thereunder.[6] In particular, the Commission finds that the extension of the pilot through July 31, 1993, is consistent with section 6(b)(5) of the Act based on the PSE's representations that POETS has enabled the Exchange to provide on-line updating of market quotes, more efficient execution of customer orders, and faster, more accurate trade information reports.[7] The Pilot Report also indicated that POETS availability from January through August 1992 was 99.96%. As the Commission has found in previous extensions of the pilot program, POETS is consistent with section 6(b)(5) of the Act because, according to the PSE, POETS has facilitated the efficient execution of public customer market and limit orders, has facilitated trading on high volume days, and has provided the PSE's Market Surveillance Department with more accurate trade information.[8] The Commission continues to believe that the enhanced efficiency of order processing resulting from POETS should help the PSE to provide deeper, more liquid and more efficient options markets. Moreover, the Commission believes that POETS has enabled the Exchange to develop more accurate and timely audit trails, thereby helping the PSE to maintain the integrity of its markets.

The Commission finds good cause for approving the extension of the pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the continuation of the pilot program. In addition, because there have been no adverse comments concerning the pilot program since its implementation or prior to the Commission's approval of POETS in January 1990 and because of the importance of maintaining the quality and efficiency of the PSE's options markets, the Commission believes good cause exists to approve the extension of the pilot program through July 31, 1993, on an accelerated basis.

With regard to the portion of the proposal seeking permanent approval of POETs, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory

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[6] 15 U.S.C. 78f(b)(5) (1982).

[7] See Pilot Report, *supra* note 5.

[8] In its July 1990 request to extend the pilot program, the PSE represented that POETS had benefitted Exchange members and public investors as follows: (1) By providing faster order turnaround time; (2) by providing better tracking of orders for members, member firms and Exchange staff due to the ability of POETS to retain large amounts of order and transaction information; (3) by facilitating trading during periods of high activity due to the ability of POETS to adjust to market fluctuations by upgrading its capability while on-line; and (4) by providing the Exchange's Regulation Department with more accurate trade data and information. See Securities Exchange Act Release No. 28264, *supra* note 1. See also Securities Exchange Act Release Nos. 28778, 29104, and 31022, *supra* note 2.

organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that Amendment No. 1 to the proposed rule change, relating to an extension of the POETS pilot program until July 31, 1993, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15973 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32557; File No. SR–Phlx–92–30]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Clearing Agents' Responsibility for Ensuring That Good Faith Margin Treatment Is Properly Granted

June 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1992, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as amended on March 25, 1993, and as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Options Floor Procedure Advice ("Advice") F–19 and new Commentary .14 to Phlx Rule 722 to require that clearing agents take reasonable steps to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the account of a market maker. The proposal was amended on March 25, 1993, to provide that reasonable steps include the adoption and implementation of procedures designed to detect any pattern of activity that results in options that do not qualify for good faith margin treatment being carried in the market maker account.[1]

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to adopt new Advice F–19 and new Commentary .14 to Phlx Rule 722 to require that clearing agents take reasonable steps to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions accounts of specialists and Registered Options Traders ("ROTs"). The proposal provides that reasonable steps include the adoption and implementation of procedures designed to detect any pattern of activity that results in options that do not qualify for good faith margin treatment being carried in the market maker account. The purpose of the proposed rule change is to ensure that good faith margin treatment is granted to positions held in a specialist's or ROT's market functions accounts only where appropriate.

The Phlx believes that these requirements should help ensure that only market makers who are registered to trade in that capacity in options listed for trading on the Phlx are afforded market maker margin treatment with respect to Phlx options. The Phlx also believes that, in order to ensure compliance with Regulation T by its member-clearing agents, a policy clearly stating a clearing agent's responsibility is necessary.

The Phlx notes that proposed Advice F–19 would only be applicable to the equity options floor. Thus, the Phlx has placed the notation "(O)" after the Advice. In addition, the Phlx notes that the fine schedule for proposed Advice F–19 would run on a three year cycle, such that repeat violations within a three-year period would result in escalating fines.[2]

The Exchange believes that the proposal is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and to protect investors and the public interest.

The Exchange further believes the proposal is consistent with Regulation T of the Federal Reserve Board. Regulation T grants good faith margin treatment in the market functions accounts of specialists and ROTs only to qualified or offsetting positions. "Customer" margin is to be applied to all other positions. Accordingly, because the purpose of the proposal is to reserve good faith margin treatment for true market maker trades, the Phlx believes that the proposal is consistent with Regulation T.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1992).

[1] See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated March 25, 1993.

[2] The fine schedule for Advice F–19 provides that a fine of $500 will be imposed for the first violation and a fine of $1,000 will be imposed for the section violation. The sanction for the third violation is discretionary with the Phlx Business Conduct Committee. In addition, under a rolling three-year cycle, if three years elapse between the first and second violation, the second violation would be treated as a first violation. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second violation would be treated as a "third violation," even though more than three years may have elapsed after the first violation.

VOL 58 ISS 128 JL 7 1993 UMI

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[FR Doc. 93-15971 Filed 7-6-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32559; File No. SR-Phlx-93-03]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Extending the AUTOM Pilot Program

June 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1993, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend the Exchange's Automated Options Market ("AUTOM") system, a pilot program, until December 31, 1993. AUTOM is an electronic delivery system of small options orders to the PHLX trading floor, with an automatic execution feature.

The text of the proposed rule change is available at the Compliance Department of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 31, 1988, the Commission approved the establishment of AUTOM as a pilot program.[1] The Exchange currently is proposing to extend the AUTOM pilot program until December 31, 1993. The Exchange represents that, from the date of the last Commission order extending the AUTOM pilot program, AUTOM has operated efficiently and without any material problems being reported by Phlx members or AUTOM users.

The AUTOM system is an online system that allows electronic delivery of options orders from members firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation of order executions. Specifically, once AUTOM orders are entered into the system and routed to the specialists' post, they are executed manually by the specialist who, upon execution of the order, enters the relevant trade information into the system. An execution report is then automatically transmitted to the firm that placed the order.

The AUTOM system also has an automatic execution feature called "Auto-X." Currently, Auto-X is available to public customer market and marketable limit orders of up to 20 contracts. Orders eligible for automatic execution through AUTOM are: (1) Printed in hard copy form at the floor representative booth of the delivering member organization; (2) displayed on the trading crowd screen with buy/sell information omitted; and (3) printed in hard copy form at the specialist post. The order is priced and executed automatically at the best displayed bid or offer, and the execution is reported automatically to the Options Price Reporting Authority ("OPRA"). A report of the execution also is electronically sent to the delivering member organization. Under Auto-X, the specialist is the contra-side of all trades. However, the specialist is required to ensure participation of bids and offers on the limit order book and in the trading crowd that are entitled to execution pursuant to the Phlx's rules of priority, parity, and precedence.

The Exchange believes that the proposed rule change is consistent with section 11A(a)(1)(B) and (C)(i) of the Act in that the purpose of the development and implementation of AUTOM is to improve, through the use of new data processing and communications techniques, the efficiency with which transactions in Phlx equity options are executed. The Exchange also believes that the proposal is consistent with section 11A(a)(1)(C)(ii) of the Act in that it fosters competition among exchange markets since other options exchanges currently have in place option execution systems. Finally, the Exchange believes that the proposal is consistent with section 6((b)(5) of the Act in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

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[3] 17 CFR 200.30-3(a)(12) (1992).

[1] The Commission approved AUTOM on a pilot basis for market orders of up to five contracts for all exercise prices in the near month covering twelve Phlx equity options. See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988). Since then, the order routing feature of AUTOM has been expanded to include all orders in all exercise prices and months in all Phlx equity options. In addition, day orders, good until cancelled orders, and cabinet orders (accommodation transactions) have become eligible for delivery through the system, and the eligible order size for the order routing feature of AUTOM has been increased from five to one hundred contracts. See Securities Exchange Act Release No. 28643 (November 26, 1990), 55 FR 49960 (December 3, 1990) at notes 2-6 for citations to Commission orders approving these expansions of the AUTOM pilot. See also Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11A.[2] Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission also believes that the extension of the pilot program until December 31, 1993, will provide the Exchange with a better opportunity to study its operation and effectiveness prior to permanent approval of the program.[3]

The Commission further notes that the Exchange has represented that from March 15, 1991 until present, AUTOM has not suffered any operational failures and the Phlx has not received any formal complaints with respect to the system's operation.[4] Finally, since the pilot program is being extended without expansion of the scope of the pilot, the Commission does not believe that the capacity of the Exchange's automated systems will be adversely effected by this extension.[5]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the Phlx to continue the AUTOM pilot program on an uninterrupted basis. Specifically, the Commission believes that the Phlx's proposal to extend the AUTOM pilot program does not raise any new issues since it merely extends the pilot program as it is currently operating. The pilot is also important in maintaining the quality and efficiency of the Phlx's market. The Commission further notes that there have been no adverse comments concerning the pilot program since its implementation. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Phlx–93–03) is approved through December 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15972 Filed 7–6–93; 8:45 am]

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[2] 15 U.S.C. 78f and 78k–1 (1988).

[3] Before any further extension of the pilot, the Commission expects the Phlx to submit a full report, by November 1, 1993, providing detailed statistics indicating the benefits provided by AUTOM, the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders automatically executed through the Auto-X system, and the system capacity of AUTOM and Auto-X and any problems that have been encountered with the routing and execution features. The Commission also requests that the Phlx submit its request for an extension of the pilot or permanent approval by November 1, 1993.

[4] See letter from Jack McCarthy, Assistant Vice President of Financial Automation, Phlx, to Monica Michelizzi, Staff Attorney, Division of Market Regulation, Commission, dated February 16, 1993.

[5] The Commission recognizes that additional options classes added onto the system can have an effect on the systems operations. In this context, the Commission expects that the Phlx will notify the Commission if the expansion of options multiple trading, pursuant to Rule 19c–5 under the Act, has any material effect on the capacity of the Phlx's automated systems.

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1992).

[Investment Company Act Rel. No. 19547; 812–8264]

AIM Funds Group, et al.; Notice of Application

June 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: AIM Funds Group (the "Fund"), AIM Advisors, Inc. (the "Advisor"), and AIM Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Fund to issue separate classes of shares representing interests in its various investment portfolios, each of which would have different voting rights, conversion rights and expense allocations, to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive or reduce the CDSC in certain instances.

FILING DATE: The application was filed on February 9, 1993, and amended on April 9, 1993, May 24, 1993, and June 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's

interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 11 Greenway Plaza, Suite 1919, Houston, Texas 77046–1173.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Massachusetts business trust and is registered under the Act as an open-end series management investment company.[1] The Fund currently offers fourteen separate investment portfolios (the "Portfolios"), each of which is managed independently of all other Portfolios.[2]

2. The Advisor is a Delaware corporation, which acts as investment adviser for the Portfolios pursuant to a Master Investment Advisory Agreement dated June 30, 1992. The Distributor is a Delaware corporation, which acts as principal underwriter for the Portfolios pursuant to a Master Distribution Agreement dated June 30, 1992.

3. All of the Portfolios currently offer a single class of shares to investors.[3] All of the Portfolios except AIM Cash Fund, AIM Tax-Exempt Cash Fund and AIM Tax-Exempt Cash Fund of Connecticut (collectively, the "No-Load Money Market Portfolios") currently offer their shares to investors at net asset value plus a front-end sales charge. The No-Load Money Market Portfolios currently offer their shares to investors at net asset value without imposition of any sales charge. The Fund also has adopted a Master Distribution Plan pursuant to rule 12b–1 under the Act with respect to each of the Portfolios. This plan provides for payments to the Distributor at an annual rate of up to 0.25% (0.20% with respect to AIM Tax-Exempt Cash Fund of Connecticut) of a Portfolio's average daily net assets for reimbursement of distribution expenses.

4. The Fund proposes to establish a multiple class distribution system (the "Multiple Distribution System") for certain of the Portfolios. Under the Multiple Distribution System, certain Portfolios would redesignate their currently existing shares as "Class A Shares" and would establish a new class of shares, designated as "Class B Shares." These Portfolios also may create additional classes of shares in the future. All classes of shares will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, and will comply with all of the conditions contained in the application. The only differences among the various classes of shares of the Portfolios will relate solely to the following factors: (a) any such class may be subject to different class expenses consisting of (i) rule 12b–1 plan distribution and service fees, (ii) incremental transfer agency costs, (iii) Commission and blue sky registration fees incurred separately by a particular class, (iv) litigation or other legal expenses relating solely to a particular class, (v) printing and postage expenses related to the preparation and distribution of material such as shareholder reports, prospectuses and proxies to shareholders of a particular class, (vi) expenses of administrative personnel and services as required to support the shareholders of a particular class, (vii) trustee fees and expenses incurred as a result of issues relating solely to a particular class, and (viii) any other incremental expenses subsequently identified that should be properly allocated to a particular class, which shall be approved by the Commission pursuant to an amended order (collectively, "Class Expenses"); (b) any such class may bear different identifying designations; (c) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class (except as set forth in condition 15 below; (d) any such class may have different exchange privileges; and (e) any such class may or may not have a conversion feature.

5. Expenditures attributable to the sale of shares of more than one class of a Portfolio will be allocated among those classes in the following manner: one-half of the amount of such expenditures will be allocated among such classes based upon the ratio in which the sales of each class of shares bears to the sales of all such classes of the Portfolio, and one-half of the amount of such expenditures will be allocated among such classes based upon the relative net assets attributable to all such classes of the Portfolio. Except for these expenditures and Class Expenses (which will be allocated to the appropriate class), all expenses incurred by each Portfolio will be allocated daily to each class of shares based on the percentage of net assets attributable to such class at the beginning of the day. Because of the different expenses attributable to the various classes of shares, the per share net income attributable to and the per share dividends payable on each of the classes will vary.

6. Class A Shares will continue to be sold at net asset value plus a front-end sales load. The sales load will be subject to reductions for larger purchases under a combined purchase privilege, a right of accumulation, or a letter of intent.[4] The sales load will be subject to certain other reductions permitted by section 22(d) of the Act and as set forth in the Portfolios' respective prospectuses. The current rule 12b–1 plans applicable to the Portfolios will continue to apply to the respective successor Class A Shares

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[1] Applicants anticipate that, subject to shareholder approval, the Fund will be reorganized as a Delaware business trust during 1993. In connection with this reorganization, it is anticipated that certain current portfolios of the Fund will be merged into or reorganized as part of other investment companies advised by the Advisor and distributed by the Distributor. In addition, certain other investment companies advised by the Advisor and distributed by the Distributor will be merged into one or more portfolios of the Fund or be reorganized as part of the Fund. The exemptive relief requested herein would apply both to the Fund as it is currently organized and as it would exist following such reorganization.

[2] The currently existing Portfolios are: AIM Aggressive Growth Fund, AIM Cash Fund, AIM Government Securities Fund, AIM Growth Fund, AIM High Yield Fund(C), AIM Income Fund, AIM International Growth Fund(C), AIM Money Market Fund(C), AIM Municipal Bond Fund, AIM Tax-Exempt Cash Fund, AIM Utilities Fund, AIM Value Fund, AIM Tax-Exempt Bond Fund of Connecticut, and AIM Tax-Exempt Cash Fund of Connecticut.

[3] On February 27, 1987, the Commission issued an exemptive order (the "Prior Order"), which permitted all investment companies sponsored or advised by the Advisor to offer multiple classes of shares representing interests in the same investment portfolio. *Tax-Free Investment Trust, et al.*, Investment Company Act Release Nos. 15570 (Feb. 6, 1987) (notice) and 15592 (Feb. 27, 1987) (order). To date, none of these funds have created, issued or sold multiple classes of shares pursuant to the Prior Order. In the event the exemptive relief described in this notice is granted by the Commission, applicants have agreed that they will be subject solely to the new order. Although the Prior Order will continue to apply to the other investment companies covered by the Prior Order.

[4] Under an exemptive order issued by the Commission to applicants and certain other investment companies on March 9, 1993, the Registrant is permitted to assess and waive a CDSC on redemptions of certain of its shares purchased at net asset value in amounts of $1 million or more. *AIM Convertible Securities, Inc., et al.*, Investment Company Act Release Nos. 19260 (Feb. 8, 1993) (notice) and 19321 (Mar. 9, 1993) (order). When implemented, this CDSC arrangement will apply to some or all of the Portfolios or, if the exemptive relief outlined in this notice is granted and the Multiple Distribution System is implemented, to some or all of the Class A Shares of the Portfolios.

of the Portfolios. Thus, the specified percentage of average daily net assets payable under each Class A rule 12b–1 plan will be identical to the specified percentage under the current rule 12b–1 plan with respect to the applicable Portfolio. These rule 12b–1 plans recently have been amended to comply with applicable NASD rules regarding limitations on asset-based sales charges. The distribution structure for all classes of shares of the Portfolios will comply with applicable NASD limitations on asset-based sales charges, including rule 12b–1 plan distribution and service fees, which are contained in the NASD's Rules of Fair Practice, as they may be amended or modified from time to time.

7. Class B Shares will be offered to investors at net asset value without the imposition of a sales load. However, an investor's proceeds from a redemption of Class B Shares made within a specified period of years after their purchase, which will be at least four years but will not exceed ten years (the "CDSC Period"), generally will be subject to a CDSC payable to the Distributor as compensation for distribution-related expenses. The CDSC is expected to range from a maximum of 3% to 6% (but can be higher or lower) on shares redeemed during the first year after purchase, and will be reduced over the applicable CDSC Period so that redemptions of shares held after that period will not be subject to a CDSC. No CDSC will be imposed on (1) shares issued prior to the grant of any exemptive order, (2) amounts representing an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period, or (3) shares derived from reinvestment of dividends and distributions. In determining whether a CDSC is applicable, it will be assumed that a redemption is made, first, of any shares in the shareholder's Portfolio account that are not subject to a CDSC; second, of shares derived from reinvestment of dividends and distributions; third, of shares held for a period longer than the CDSC Period; and fourth, of shares held for a period not longer than the CDSC Period. The CDSC will be assessed on an amount equal to the lesser of the then current market value or the cost of shares being redeemed. Class B Shares also will be subject to a rule 12b–1 distribution fee and service fee at a combined annual rate of up to 1% of the daily net assets attributable to the Class B Shares. Of this amount, 0.75% of the average daily net assets attributable to the Class B Shares would be payable to the Distributor as compensation for its services, and up to 0.25% of the average daily net assets attributable to the Class B Shares would be payable as service fees to the Distributor and/or certain financial intermediaries having agreements with the Distributor and whose customers own Class B Shares.

8. Applicants also request the ability to waive or reduce the CDSC on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986 (the "IRC"), of a shareholder, (b) in connection with certain distributions, described in the following paragraph, from individual retirement accounts, Keough plans and custodial accounts maintained pursuant to IRC section 403(b)(7) (collectively, "Retirement Plans"), (c) pursuant to a Portfolio's systematic withdrawal plan, provided that such plan is limited to 12% annually of the value of the account at the time the shareholder elects to participate in the systematic withdrawal plan, (d) effected pursuant to the right of a Portfolio to liquidate a shareholder's account if the aggregate net asset values of shares held in the account is less than the designated minimum account size described in the prospectus of the Portfolio, and (e) effected by the Advisor of its investment in a Portfolio.

9. The CDSC may be waived or reduced for any Retirement Plan redemption in connection with a tax-free lump sum or other distribution to a participant or beneficiary (other than tax-free rollovers or transfers of assets), provided the waiver or reduction would apply only to redemptions that do not exceed 12% annually of the participant's or beneficiary's account value. In addition, a waiver or reduction of the CDSC may apply to Retirement Plan transfers of assets if (1) The transfer of Retirement Plan assets is a transfer in kind, and (2) the participant or beneficiary notifies the Distributor of such transfer of assets in kind no later than the time such transfer takes place. The CDSC also may be waived or reduced upon the tax-free rollover or transfer of assets to another Retirement Plan invested in Class B Shares of one or more of the Portfolios. In such instances, a Portfolio will "tack" the period for which the original shares were held on to the holding period of the shares acquired in the rollover or transfer for purposes of determining what, if any, CDSC is applicable in the event that such acquired shares are redeemed subsequently. Finally, the CDSC may be waived or reduced on any redemption that results from a tax-free return of an excess contribution, the return of excess deferral amounts, or from the death or disability of the participant or beneficiary.

10. All Class B Shares of the Portfolios, other than those purchased through the reinvestment of dividends and distributions, will convert automatically to Class A Shares a certain number of years after the end of the calendar month in which the shares were purchased. This conversion period, which will be the same for all Class B Shares of all the Portfolios, will be at least four years but will not exceed ten years. For purposes of conversion to Class A Shares, shares purchased through the reinvestment of dividends and other distributions will be considered held in a separate sub-account. Each time any Class B Shares in a shareholder's account convert to Class A Shares, a proportionate number of the Class B Shares in the sub-account also will convert to Class A Shares. The existence of a conversion feature for any future classes of the Portfolios will be determined on a class-by-class basis. In no event would a class of shares have a conversion feature that automatically would convert shares of such class into shares of a class with a distributor arrangement that could be viewed as less favorable to the shareholder from the point of view of overall cost. The implementation of the conversion feature is subject to the continuing availability of a ruling of the Internal Revenue Service, or of an opinion of counsel or tax advisor, stating that the conversion of one class of shares to another does not constitute a taxable event under federal income tax law. The conversion feature may be suspended if such a ruling or opinion is not available. In the event that the conversion feature is not implemented or is terminated, Class B Shares would continue to be subject to the rule 12b–1 distribution and service fees, and any other higher class expenses attributable to the Class B Shares for an indefinite period.

11. After implementation of the Multiple Distribution System, Class A Shares of each Portfolio will be exchangeable for Class A Shares of the other Portfolios and for retail shares of other open-end investment companies advised by the Advisor (collectively, the "AIM Funds") that offer an exchange privilege, subject to such conditions as may be imposed from time to time on such exchanges and as disclosed in the prospectuses of the Portfolios and the AIM Funds. Class B Shares of each Portfolio will be exchangeable only for Class B Shares of other Portfolios that offer an exchange privilege, subject to such conditions as may be imposed from time to time on such exchanges

and as disclosed in the prospectuses of the Portfolios. The exchange privileges applicable to the various classes will comply with rule 11a–3 under the Act.

Applicants' Legal Analysis

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of an unlimited number of classes of shares representing interests in the Portfolios might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act, the issuance and sale of which would be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants believe that the proposed Multiple Distribution System does not present the concerns that section 18 of the Act is intended to redress. The Multiple Distribution System does not involve borrowings by investment companies and will not affect the Portfolios' assets or reserves. The proposed arrangement will not increase the speculative character of shares of the Portfolios, since all shares will participate *pro rata* in all of the income and expenses of their respective Portfolios, with the exception of the differing class expenses. Moreover, the capital structures of the Portfolios will not facilitate control without equity or other investment and will not make it difficult for investors to value the securities of the Portfolios.

3. Applicants believe that the issuance and sale by the Portfolios of an unlimited number of classes will better enable the Portfolios to meet the competitive demands of today's financial services industry. Under the proposed Multiple Distribution System, an investor will be able to choose the method of purchasing shares that is most beneficial to that investor, given the amount of purchase, the length of time the investor expects to hold the shares purchased and other relevant circumstances. The proposed arrangement will permit the Portfolios to both facilitate the distribution of their securities and provide investors with a choice as to the appropriate method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 distribution plans is equitable and will not discriminate against any group of shareholders. With respect to any Portfolio, the rights and privileges of each class of shares are substantially identical, and consequently the possibility that their interests ever would conflict would be remote.

5. Applicants believe that the implementation of the CDSC in the manner and under the circumstances described above would be fair and in the best interests of the shareholders of the Portfolios. Thus, granting the order requested in this application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each class of shares will represent interests in the same Portfolio, and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Portfolio will relate solely to (a) class-specific expenses consisting of (i) rule 12b–1 plan distribution and service fees, (ii) incremental transfer agency costs, (iii) Commission and blue sky registration fees incurred separately by a particular class, (iv) litigation or other legal expenses relating solely to a particular class, (v) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to shareholders of a particular class, (vi) expenses of administrative personnel and services as required to support the shareholders of a particular class, (vii) Trustee fees and expenses incurred as a result of issues relating solely to a particular class, and (viii) any other incremental expenses subsequently identified that should be properly allocated to a particular class, which shall be approved by the Commission pursuant to an amended order, (b) any such class may bear different identifying designations; (c) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class, except as provided in condition (15) below, (d) any such class may have different exchange privileges, and (e) any such class may or may not have a conversion feature.

2. The Trustees, including a majority of the Independent Trustees, shall have approved the Multiple Distribution System prior to the implementation of the Multiple Distribution System by the Portfolios. In addition, the Trustees, including a majority of the Independent Trustees, will approve the subsequent creation of any additional class of shares of each Portfolio. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for the Trustees' determination that the Multiple Distribution System is in the best interests of the Portfolios and their respective shareholders.

3. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Portfolios for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisor and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Advisor and the Distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees including a majority of the Trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Portfolio to meet class expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. The Trustees will receive quarterly and annual statements concerning distribution and service fees complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or service fee charged to shareholders of that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that a class

will bear (a) Distribution and service fee payments relating to the 12b–1 plan of such class, (b) differing incremental transfer agency costs relating to such class, (c) Commission and blue sky registration fees incurred separately by such class, (d) litigation or other legal expenses relating solely to such class, (e) printing and postage expenses related to the preparation and distribution of materials such as shareholder reports, prospectuses and proxies to shareholders of such class, (f) expenses of administrative personnel and services as required to support the shareholders of such class, and (g) Trustee fees and expenses incurred as a result of issues relating solely to such class.

7. The methodology and procedures for calculating the net asset value and the dividends and distributions of the various classes and the proper allocation of expenses among such classes have been reviewed by an expert (the "Expert"), who has rendered a report to applicants stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on going basis, the Export, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually reports to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon written request to the Fund for such work papers by a senior member of the Commission's Division of Investment Management or of a regional office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in the Statement of Auditing Standards No. 70 ("SAS No. 70") of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and the dividends and distributions among the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or an appropriate substitute Expert.

9. The prospectus of each Portfolio will contain a statement to the effect that financial intermediaries and any other person entitled to receive compensation for selling or servicing Portfolio shares may receive different compensation for selling or servicing one particular class of shares over another in the Portfolio.

10. The Distributor will adopt compliance standards as to when a particular class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Portfolios to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multiple Distribution System will be set forth in guidelines, which will be furnished to the Trustees.

12. Each Portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Portfolio will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to each Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement or sales literature describes the expenses of performance data applicable to a particular class of shares, it also will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Portfolios' net asset values and public offering prices will separately present each class of shares.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Portfolios may make pursuant to their rule 12b–1 distribution or service plans in reliance on the exemptive order.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Portfolio implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the amendment. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the amendment, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that such New Purchase Class will convert into New Target Class. New Target Classes and/or New Purchase Classes may be formed without further exemptive relief.

VOL 58 ISS 128 JL 7 1993 UMI

Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition (3) above, any additional cost associated with the creation, exchange or conversion of New Target Class or New Purchase Class shall be borne solely by the Advisor and the Distributor. Purchase Class shares sold after the implementation of the amendment may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule currently is proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15924 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19548; Int'l Series Release No. 559; 812–7917]

IBM International Finance, N.V., et al; Notice of Application

June 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC") or ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IBM International Finance, N.V. ("Finance"); and IBM International Treasury Services Company, IBM ITS Centre A Company, IBM ITS Centre B Company, and IBM ITS Centre C Company (collectively, the "Treasury Centres").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of subparagraph (a)(5), (a)(6), and (b) of rule 3a–5 of the Act.

SUMMARY OF APPLICATION: Applicants request an order, pursuant to section 6(c) of the Act, to permit Finance, an indirect wholly-owned finance subsidiary of certain operating companies, to rely on rule 3a–5 under the Act and to engage in certain short-term borrowing, lending, and investing activities not included within rule 3a–5.

FILING DATES: The application was filed on May 8, 1992, and amended on December 3, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Finance, Johan Huizingalaan 765, 1066 VH Amsterdam, The Netherlands; Treasury Centres, Knockmaun House, 42147 Lower Mount Street, Dublin, Ireland.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Barry D. Miller, Senior Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANTS' REPRESENTATIONS AND LEGAL ANALYSIS:

1. Applicants are indirect wholly-owned subsidiaries of IBM World Trade Europe/Middle East/Africa Corporation ("EMEA"), which is a wholly-owned subsidiary of IBM World Trade Corporation ("World Trade"). World Trade is a wholly-owned subsidiary of International Business Machines Corporation ("IBM"). World Trade and its subsidiaries, including EMEA, conduct IBM's business outside of the United States.

2. Finance, a company incorporated under the laws of The Netherlands, was created specifically to centralize IBM's financing in Europe by issuing securities and lending the proceeds to various subsidiaries of EMEA. Finance is operated as a "Dutch Group Finance Company" pursuant to policy guidelines adopted by the Dutch Central Bank under the Act on the Supervision of the Credit System. As such, at least 95% of Finance's total assets must be loaned to or invested in IBM subsidiaries.

3. Each Treasury Centre is incorporated under the laws of the Republic of Ireland and was created to manage IBM's European financing operations by providing a center of expertise regarding interest rate risk, currency risk, and cash management. The primary purpose of each of the Treasury Centres, therefore, is to lend money to EMEA's operating subsidiaries in accordance with their business needs. To obtain funds for their proposed activities, the Treasury Centres seek to engage in short-term borrowing from EMEA operating subsidiaries, from Finance, and from banks.

4. The operations of the Treasury Centres have four principal components: (a) Short-term borrowing from and short-term lending to operating subsidiaries in Europe in their local currencies, (b) swapping cash flows arising out of borrowing and lending activities into United States dollars, (c) borrowing or investing temporarily the deficit/surplus of United States dollars, and (d) managing interest rate risk.

5. Section 3(a)(1) of the Act defines an investment company to include any issuer that is engaged primarily, or that proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines investment company to include any issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and that owns or proposes to acquire investment securities having a value exceeding 40 percent of the issuer's total assets, exclusive of Government securities and cash items, on an unconsolidated basis. Applicants recognize that it consistently has been the position of the Commission and its staff that, absent appropriate exemptive relief, an entity engaging in financing activities as those of Finance is subject to registration as an investment company under the Act.

6. Finance has engaged in private placements of its commercial paper and medium-term notes in the United States and intends to conduct more of such offerings in the future. To the extent that Finance's lending activities may be considered investing or reinvesting in the debt securities of EMEA's operating subsidiaries, Finance may be viewed as falling within the definition of an investment company under the Act.

7. To date, Finance has relied on rule 3a–5 in its sales of securities. Generally, rule 3a–5 exempts from the registration provisions of the Act any finance subsidiary (as defined in the rule) of an operating company so as to permit the finance subsidiary to offer debt

securities or non-voting preferred stock in the United States.

8. Finance intends to lend the proceeds of its securities offering to various operating subsidiaries of EMEA. However, Finance also seeks to (a) remit all or a portion of the proceeds of its commercial paper and medium-term note sales to the Treasury Centres, while permitting the Treasury Centres to operate as described in the application; (b) provide funding to certain EMEA subsidiaries which may be viewed as companies encompassed by section 3(c) of the Act [1]; (c) invest temporarily in bank time deposits, certificates of deposit, and similar assets; and (d) provide financing to EMEA subsidiaries through "back-to-back" loans. For reasons stated below, Finance would be unable to rely on the rule 3a–5 exemption and requests an order of the Commission so that it may issue debt securities in the United States without registering as an investment company under the Act.

9. Section 6(c) provides, among other things, that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transaction from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the provisions of the Act. Applicants believe their request meets the applicable standards for exemption.

A. Loans to Treasury Centres

1. Subparagraph (a)(5) of rule 3a–5 requires that a finance subsidiary relying on the rule invests in or loans to its parent company or a company controlled by its parent company at least 85% of any cash or cash equivalents raised by the finance subsidiary as soon as practicable. Subparagraph (b)(3) of rule 3a–5 defines a "company controlled by a parent company" as a corporation that, among other things, is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a).

2. The Treasury Centres presently restrict their activities in order to receive loans from Finance. Finance may need exemptive relief to continue to make loans to the Treasury Centres because, if they operate as desired, they may not qualify as companies "controlled by a parent company" under subparagraph (b)(3) of rule 3a–5. Specifically, insofar as the Treasury Centres engage in lending activities similar to that of a traditional finance subsidiary, they may be viewed as investment companies. Accordingly, Finance could not lend to the Treasury Centres absent an exemption, ordinarily provided by rule 3a–5 except that they wish to engage in activities not literally within the rule. The Treasury Centres: (a) wish to engage in the types of activities for which Finance is seeking exemptive relief; (b) wish to provide financing to EMEA's operating subsidiaries by purchasing customer invoices (*i.e.*, accounts receivable) from EMEA subsidiaries, in addition to making loans to these subsidiaries; (c) wish to make temporary investments or engage in certain transactions that may be considered to be investing in securities under the Act; and (d) will receive short-term funds on an ongoing basis from various EMEA operating subsidiaries as well as from other sources, and will engage in a continuous program of short-term lending to such subsidiaries.

3. The rule's definition of a controlled company is intended to ensure that an entity receiving the proceeds of a securities offering by a finance subsidiary is not primarily engaged, directly or indirectly, in investment company activities. The instant situation is not, however, one of a foreign collective investment vehicle seeking to attract new investors in the United States indirectly through a putative finance subsidiary. All of the equity ownership of the Treasury Centres lies in the hands of EMEA's operating subsidiaries. More importantly, the business operations of the Treasury Centres are vastly different from those of an investment company. Since the Treasury Centres are internal facilities that coordinate and satisfy short-term financing needs for operating subsidiaries, they also may be characterized as a form of finance subsidiary.

4. The fact that the Treasury Centres need to engage in financing activities more complex than those envisioned by the rule and in interest rate or currency transactions, or in temporary investments that have remaining maturities of up to twelve months (including investments in time deposits and similar money market instruments), does not alter their essential nature. In short, none of the above activities turns the Treasury Centres into collective investment vehicles such that permitting Finance to lend to the Treasury Centres would raise investor protection concerns of the type addressed by the Act.

B. Loans to Section 3(c) Companies

1. As noted above, rule 3a–5 does not apply to situations where a parent or controlled company receiving funds from a finance subsidiary is excepted from the definition of an investment company by section 3(c).

2. Section 3(c)(5)(A) encompasses companies that are engaged primarily in "[p]urchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance and services." Section 3(c)(5)(B) similarly encompasses companies primarily engaged in "making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services."

3. Finance wants the flexibility to loan to subsidiaries of EMEA that qualify for an exception from the Act pursuant to section 3(c)(5)(A) or section 3(c)(5)(B) thereof. Finance presently intends to lend only to subsidiaries that are not investment companies, either under section 3(a) of the Act or excepted from that definition by section 3(b). Nonetheless, Finance does not wish to preclude the possibility of lending to section 3(c)(5)(A) or section 3(c)(5)(B) companies since EMEA may in the future wish to provide financing to companies whose activities could fall under those sections. Those types of businesses may be useful adjuncts to the primary operations of EMEA and its operating subsidiaries, the lease and sale of information technology systems and related services. Among other things, such companies may provide, or facilitate the provision of, financing to customers. Accordingly, it would be appropriate to grant Finance the flexibility to provide financing to EMEA subsidiaries that engage in such activities.

C. Investing in Bank Time Deposits

1. Subparagraph (a)(6) of rule 3a–5 limits the types of securities in which finance subsidiaries may invest, reinvest, own, hold, or trade. Specifically, the subparagraph provides that finance subsidiaries relying on the rule must not "invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent company or a company controlled by its parent company * * * or debt securities (including repurchase agreements) which are exempted from

[1] Section 3(c) generally excludes certain issuers from the provisions of section 3(a) of the Act under certain circumstances.

the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act."

2. Applicants request that Finance be permitted to invest temporarily all or a portion of the proceeds of its securities offerings in bank time deposits, certificates of deposit, and similar money market instruments having a maturity of up to six months. Applicants wish to give Finance the flexibility to offer its debt securities under auspicious market conditions and to manage the cash received from the offering until its parent company or a company controlled by its parent is in a position to receive the offering proceeds. Applicants submit that it is consistent with the purposes of the rule to permit Finance to invest in time deposits, certificates of deposit, and similar money market instruments in addition to those presently permitted by rule 3a–5(a)(6).

3. Similarly, applicants submit that there is not investor protection concern based on the safety of the temporary investments requested above such as would warrant denying the relief sought. The time deposits, certificates of deposit, and similar instruments will have maturities of no greater than six months and will be entered into with established financial institutions in countries where such institutions are regulated as to their capital adequacy and other measures of financial soundness. Applicants state that these instruments are at least as safe as the types of temporary investments presently permitted by rule 3a–5, such as debt securities offered pursuant to section 3(a)(3) of the Securities Act of 1933.

D. Back-to-Back Loans

1. Under the terms of the back-to-back loans, Finance deposits funds with a bank pursuant to terms that require the bank, in turn, to make a loan of an equal or greater amount to a specified EMEA operating subsidiary. The subsidiary enters into an agreement requiring it to repay the principal of (and to pay interest on) the deposit if the bank fails to do so, making the borrowing subsidiary ultimately responsible for repayment of the deposit to Finance.

2. Subparagraph (a)(5) of rule 3a–5 provides a finance subsidiary relying on the rule must invest in or loan "to its parent company or a company controlled by its parent company at least 85% of any cash or cash equivalents raised by the finance subsidiary through an offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after the finance subsidiary's receipt of such cash or cash equivalent."

3. The back-to-back loans that Finance seeks to use to provide financing to EMEA operating subsidiaries may raise concerns under paragraphs (a)(5) and (a)(6) of rule 3a–5 because such loans, while an accepted form of international lending, will appear on their face as bank deposits on the books of Finance. Such loans are not typical of those contemplated by rule 3a–5. Moreover, the ostensible bank deposits created by back-to-back loans may be considered a type of security holding by Finance not within rule 3a–5(a)(6).

4. Applicants state that back-to-back loans essentially are a mechanism for lending funds to the operating subsidiaries. That form of loan, rather than a direct loan, is often used in international finance in order to characterize the loan for tax purposes. Under the laws of certain foreign countries, if the operating subsidiary in such country were to borrow directly from a finance subsidiary in another country, rather than from a bank in the operating subsidiary's home country, the interest payable on the loan would be subject to a non-resident withholding tax by such country. Thus, it would be beneficial for Finance to be permitted to make loans to certain operating subsidiaries through back-to-back loans rather than directly, notwithstanding that the loans may not be contemplated by paragraph (a)(5) or that the deposits may be considered a type of security holding by Finance outside paragraph (a)(6). Back-to-back loans would, in effect, be included within the 85% minimum investment required by paragraph (a)(5), as well as the categories of investments permitted by paragraph (a)(6). Although applicants do not believe that back-to-back loans are inconsistent with the provisions of the rule, they request exemptive relief to avoid any interpretation to the contrary.

Applicants' Conditions

Applicants agree not to rely on the requested order unless the following conditions are met:

1. Any time deposits, certificates of deposit, or similar money market instruments invested in by Finance will have a maturity or no greater than six months and will be entered into with established financial institutions in countries where such institutions are regulated as to their capital adequacy and other measures of financial soundness.

2. Finance will loan and hold obligations of companies eligible to rely on section 3(c) of the Act only to the extent that such companies would fall within section 3(c)(5)(A) or section 3(c)(5)(B) solely by reason of their holdings of accounts receivable of either their own customers or of the customers of other EMEA subsidiaries, or by reason of loans made by them to such subsidiaries or customers.

3. Any bank deposits of Finance made in connection with back-to-back loans will provide expressly that the bank receiving the deposit must make a loan of equal or greater amount within one week of the deposit to the EMEA operating subsidiary specified by Finance, and such subsidiary will agree that if the bank defaults on its obligation to pay interest on or repay the principal amount of such deposit, the subsidiary will be obligated to pay such interest or repay such principal to Finance.

4. The Treasury Centres will continue to meet the primary purpose test of rule 3a–5(b)(1)(ii) in the manner described in the application as long as they receive and have not yet repaid loans from the proceeds of Finance's offerings in the United States.

5. The Treasury Centres will continue to be direct or indirect wholly-owned subsidiaries of IBM as long as they receive and have not yet repaid loans from proceeds of Finance's offerings in the United States.

6. The types of securities held by the Treasury Centres will be limited to securities meeting the requirements of rule 3a–5(a)(6) or that have a remaining maturity of no greater than twelve months, provided that the Treasury Centres may also acquire customer accounts receivable from other subsidiaries of EMEA.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15923 Filed 7–6–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–076a]

Alternative Voluntary Advisory Groups, Prince William Sound and Cook Inlet

AGENCY: Coast Guard, DOT.

ACTION: Notice; policy on certification.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group (advisory group) in lieu of Regional Citizens' Advisory Councils

for Cook Inlet and Prince William Sound Alaska. The Coast Guard has published guidelines to assist advisory groups submitting information to the Coast Guard when seeking certification under the Act. This policy statement clarifies how the Coast Guard will evaluate that information in order to determine whether advisory groups should be certified in accordance with the Act; the factors that the Coast Guard will consider in making its determination to certify an advisory group; and, the procedures which the Coast Guard will follow in meeting its certification responsibilities under the Act.

EFFECTIVE DATE: This policy statement is effective on July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

Background and Information

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 2732(o) of Title 33, U.S. Code, provides for the certification of advisory groups to represent the communities and interests in the vicinity of the oil terminal facilities in the Cook Inlet and Prince William Sound areas in lieu of meeting the requirements of 33 U.S.C. 2732 (c) through (l), if certain conditions are met. Each group must: Enter into a contract with the owners and operators of terminal facilities and crude oil tanker owners or operators in their respective area to ensure annual funding; be certified annually that the group fosters the general goals and purposes of the Act; and be broadly representative of the community and interests in the vicinity of the terminal facilities. In 1991, the President granted certification to both the Cook Inlet Regional Citizens' Advisory Council and the Prince William Sound Regional Citizens' Advisory Council, alternative voluntary advisory groups.

The authority to certify advisory groups was delegated to the Commandant, United States Coast Guard and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection. The Coast Guard recertified both councils in 1992 as alternative voluntary advisory groups (57 FR 14440, 14442). On June 3, 1993, the Coast Guard recertified the Cook Inlet Regional Citizens' Advisory Council through May 31, 1994; and on June 9, 1993, the Prince William Sound Regional Citizens' Advisory Council was recertified through June 30, 1994.

On December 31, 1992, the Coast Guard published guidelines to assist these advisory groups submitting applications for recertification in accordance with the Act (57 FR 62600). In making its determination as to whether certification of a group is appropriate, the Coast Guard evaluates the information submitted to ensure that the advisory group requesting certification fosters the "general goals and purposes" of the Act. During the recent recertification process, the Coast Guard developed policies regarding its evaluation of the applications and its certification responsibilities under the Act. The Coast Guard followed these general policies during the 1993–94 recertification process. The Coast Guard has determined that publication of these policies, which will be followed in evaluating all future certification applications, will provide advisory groups and the public with a better understanding of the advisory groups' and the Coast Guard's responsibilities under the Act. This policy statement provides the Coast Guard's interpretation of what constitutes the "general goals and purposes" of the Act, and what factors the Coast Guard considers important in deciding whether to certify a group. Although these policies were developed for the recertification of existing groups, they will also apply to any new or successor groups seeking certification, with due consideration of the extent to which the evaluation involves planned activities rather than past actions.

General Goals and Purposes of the Act; Community Interests

In considering the March 24, 1989 grounding and rupture of the oil tanker the EXXON VALDEZ, Congress found that—

(a) Many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill;

(b) One way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;

(c) A mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals; and

(d) Only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus.

To work toward addressing these concerns, Congress established two "Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs" (programs) to be carried out in the State of Alaska. These programs were designed to test the concept of building a partnership among industry, government and local communities. The Prince William Sound Program is responsible for environmental monitoring of the terminal facilities and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program is responsible for environmental monitoring of the terminal facilities and crude oil tankers operation in Cook Inlet located south of the latitude at Point Possession and north of the latitude at Amatuli Island, including offshore facilities in Cook Inlet. The Act provided for an Oil Terminal Facilities and Oil Tanker Operations Association (Association) and a Regional Citizens' Advisory Council (Council) for each of the Demonstration Programs for the purposes of reviewing policies relating to the operation and maintenance of the oil terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of their respective terminals.

Each Association shall provide a forum among the owners and operators of the terminal facilities, the owners and operators of crude oil tankers calling at those facilities, the United States, and the State of Alaska, to discuss and to make recommendations concerning all permits, plans, and site-specific regulations governing the activities and actions of the terminal facilities which affect or may affect the environment in the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

Under the Act the Councils were to be representative of the community. They were to be self-governing, and perform the following duties:

(a) Provide advice and recommendations to the Associations created by the Act on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers

VOL 58 ISS 128 JL 7 1993 UMI

which affect or may affect the environment in the vicinity of the terminal facilities.

(b) Monitor the environmental impacts of the operation of the terminal facilities and crude oil tankers.

(c) Monitor those aspects of terminal facilities' and crude oil tankers' operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities.

(d) Review the adequacy of oil spill prevention and contingency plans for the terminal facilities and crude oil tankers operating in Prince William Sound or Cook Inlet.

(e) Provide advice and recommendations to the Associations on port operations, policies and practices.

(f) Make recommendations to the Associations regarding standards and stipulations for permits and site-specific regulation.

(g) Make recommendations to the Associations regarding modifications of operations, maintenance and oil spill prevention and contingency plans for terminal facilities and crude oil tankers in Prince William Sound and Cook Inlet intended to minimize the risk, mitigate the impact, and enhance the ability to prevent and respond to oil spills in the vicinity of the terminal facilities.

(h) Create committees as necessary to carry out the above functions including a scientific and technical advisory committee.

(i) Conduct scientific research, in conjunction with development and monitoring functions, and review the scientific work undertaken by, or on behalf of, the terminal or crude oil tanker operators, as a result of a legal requirement to undertake that work.

(j) Review the relevant scientific work undertaken by, or on behalf of, any government entity relating to the terminal facilities or crude oil tankers.

(k) Coordinate independent scientific work with the scientific work performed by, or on behalf of, the terminal or crude oil tanker operators to avoid unnecessary duplication.

Congress provided for the establishment of alternative voluntary advisory groups in lieu of the Councils and stated that the requirements of § 2732 (c) through (l) of the Act applying to the demonstration programs are deemed to be satisfied so long as the following conditions are met:

(a) With respect to the Prince William Sound Program, the Alyeska Pipeline Service Company or any of its owner companies enters into a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Citizens Advisory Committee in existence on the date of enactment of the advisory group, or a successor organization, to fund that Committee or organization on an annual basis in the amount provided for by the Act, and the President annually certifies that the Committee or organization fosters the general goals and purposes of the Act, and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

(b) With respect to the Cook Inlet Program, the terminal facilities, offshore facilities, or crude oil tanker owners and operators enter into a contract with a voluntary advisory organization to fund that organization on an annual basis, and the President annually certifies that the organization fosters the general goals and purposes of this section, and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet.

Evaluation of Advisory Groups

The guidelines published December 31, 1992, provided the advisory groups with assistance in determining the type of information to be submitted to the Coast Guard with applications for certification. That information assists the Coast Guard in assessing whether the groups should be certified. This policy statement identifies the factors the Coast Guard will consider in making its determination regarding the certification of the advisory groups.

The Coast Guard intends to use the general criteria in section 2732 (c) through (l) of the Act to evaluate an advisory group's request for certification. Specifically, the following factors will be considered when evaluating the application for certification.

(a) *Membership.* The advisory group should be broadly representative of the interests of the communities in the geographical area. Specific items reviewed will include but are not limited to the following:

(1) Membership policies, including the selection and appointment process for the advisory group, and any of its Committees, to ensure full public participation.

(2) Opportunities provided for interested groups to participate. Membership should represent but not be limited to—

(i) Local commercial fishing industry organizations whose members depend on the fisheries resources of the waters in the vicinity of the terminal facilities;

(ii) Aquaculture associations in the vicinity of the terminal facilities;

(iii) Alaska Native Corporations and other Alaska Native organizations whose members reside in the vicinity of the terminal facilities;

(iv) Environmental organizations whose members reside in or use the vicinity of the terminal facilities;

(v) Recreational organizations whose members reside in or use the vicinity of the terminal facilities; and

(vi) The Alaska State Chamber of Commerce or other organization, representing the locally based tourist industry.

(3) The extent to which meetings are publicized in the media and are accessible to members of the general public.

(b) *Establishing communications with industry and government.* The Coast Guard will consider the means by, and the extent to which, the advisory group maintains open communications with industry and government interests (oil terminal, oil tanker, and State and Federal government representatives). In assessing the group's ability to communicate with these interests, the Coast Guard's review will include but not be limited to the following:

(1) A determination as to whether the group works with industry and government to establish and employ communications protocols for reviewing policies, projects, and release of information relating to the operation and maintenance of the oil terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of their respective terminals.

(2) A determination as to whether the group participates in discussions with industry and government, concerning permits, plans and site-specific regulations governing the activities and actions of the terminal facilities which affect or may affect the environment in the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

(3) A determination as to whether the advisory group is working toward developing and fostering a relationship with the Area Committee established under 33 U.S.C. 1321(j) through consultation with, and recommendations to, the Area Committee.

(4) A determination regarding the extent to which the advisory group is working to build cooperation rather than confrontation with industry and government by—

(i) Working with industry and government to develop spill prevention and contingency plans;

(ii) Coordinating study projects, policies and legislative or regulatory recommendations; and

(iii) Keeping industry and government interests informed of its plans, findings, and recommendations.

(c) *Scientific work.* The Coast Guard will review the extent to which the advisory group coordinates its independent scientific work with the scientific work performed by or on behalf of the terminal operators and operators of the crude oil tankers in an effort to avoid unnecessary duplication, and to ensure that research and studies are relevant to issues that impact the environment in the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

(d) *Monitoring program.* The Coast Guard will review the extent to which the advisory group develops and carries out an effective monitoring program, including—

(1) Reviewing the operation and maintenance of terminals and tankers;

(2) Monitoring cleanup drills and actual spill cleanups;

(3) Reviewing the results of oil spills in its region;

(4) Reviewing government and company reports; and

(5) Conducting or reviewing necessary scientific studies with or by recognized experts in the field under study.

(e) *Efforts to prevent oil spills and to plan for responding to, containing, cleaning up, and mitigating impacts of oil spills.* The Coast Guard will review the extent to which the advisory group—

(1) Periodically reviews the respective oil spill prevention and contingency plans for terminal facilities and for the crude oil tankers while in Prince William Sound or Cook Inlet, the light of new technological developments and changed circumstances;

(2) Monitors periodic drills and testing of the oil spill contingency plans for the terminal facilities and for crude oil tankers while in Prince William Sound and Cook Inlet;

(3) Studies wind and water currents and other environmental factors in the vicinity of the terminal facilities which may affect the ability to prevent, respond to, contain, and clean up an oil spill;

(4) Identifies highly sensitive areas which may require special protection in the event of a spill in Prince William Sound or Cook Inlet;

(5) Monitors developments in oil spill prevention, containment, response, and cleanup technology;

(6) Periodically reviews port organization, operations, incidents and the adequacy and maintenance of vessel traffic service systems designed to assure safe transit of crude oil tankers pertinent to terminal operations; and

(7) Periodically reviews the standards for tankers bound for, loading at, exiting from, or otherwise using the terminal facilities.

(8) Reports findings to local industry, and to responsible State and Federal officials through the Area Committee.

(f) *Funding.* The Coast Guard will determine whether the advisory group has entered into a contract for funding in accordance with the requirements of 33 U.S.C. 2732(o) and will review the advisory group's expenditure of those funds.

Expenditures of funds may be made only on those projects or activities that foster the goals and purposes of the Act. Projects or activities may include those that develop information based on sound scientific and engineering principles that the community can use to improve its ability to prevent or respond to oil spills, or to expand the knowledge base of environmental information related to terminal or tanker operation. The Coast Guard will review the purpose and impact of each project or activity to determine whether—

(1) Expenditures and controls are carried out in a manner consistent with sound business practices; and

(2) Expenditures are reasonably related to the prevention or response to oil spills from tanker or terminal operations, including environmental information, in the advisory group's area of responsibility.

(g) *Accessibility of Application.* The Coast Guard's review will include an examination of the extent to which the advisory group provided notification to the public via local press releases that it has applied for certification and, the extent to which the advisory group has ensured that the application is accessible for public review.

Review and Certification Process

On receipt of an application from an organization requesting certification as an alternative voluntary advisory group, the Coast Guard will solicit written comments from interested groups including oil terminal facility owners and operators, owners and operators of the crude oil tankers calling at the terminal facilities, and citizen groups such as fishing, aquaculture, recreational and environmental groups, and will solicit comments from the general public by publication in the **Federal Register**.

After a 45 day comment period, the Coast Guard will review the application and all comments received within 45 days, and will take one of the following actions:

(a) Certify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional certification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny certification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify an alternative voluntary advisory group, by letter, of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of any certifications granted.

Dated: June 23, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–15980 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

[CGD 93–033]

Local Notice to Mariners Study

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: This notice announces a Coast Guard study on issues relating to the Coast Guard's dissemination of marine navigation safety information through the Local Notice to Mariners (LNM) publication.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Comments may be mailed to Commandant (G–NSR–3) (CGD 93–033), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001, or may be delivered to room 1418 at the same address between 8 am to 3 pm, Monday through Friday, except Federal holidays. The telephone number is (202) 267–0358. The comments should be marked "LNM Study." Comments can also be telefaxed to Commandant (G–NSR–3) at (202) 267–4222. Comments received will be available for examination or copying at this address between the hours of 8 am to 3 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker (202) 267–0358.

SUPPLEMENTARY INFORMATION: The LNM publication is the Coast Guard's primary means for disseminating information concerning aids to navigation, hazards to navigation, marine construction and dredging projects that may cause an

obstruction to navigation, corrective information for charts and publications, and other items to interest to mariners who use the navigable waters of the United States, its territories, and possessions. Notice of this study is published under the general authority contained in 14 U.S.C. 93.

Background and Purpose

The Department of Transportation's Inspector General (IG) conducted an audit of the LNM publication. The objectives of the audit were to evaluate the distribution frequency of the LNM and the cost effectiveness of producing the LNM. Questionnaires were distributed nationwide to 500 LNM subscribers. The results of the questionnaires showed a majority of the 500 LNM subscribers felt they did not require the LNM on a weekly basis, there were sections of the LNM that were not used, and that they would be willing to pay a fee to receive the LNM.

From the audit, the IG found the Coast Guard published the LNM more frequently than necessary, the LNM contained redundant information from week-to-week, and in the opinion of the subscribers, there are sections of the LNM that are not needed. As a result of the findings, the IG issued the following recommendations to the Commandant, U.S. Coast Guard: Establish a reasonable frequency for disseminating the LNM, identify all program costs, initiate a user fee sufficient to cover the entire cost of the LNM program, and eliminate the redundancy in LNM data.

The Coast Guard recognizes the process used to gather and disseminate navigation safety information has not kept pace with emerging technologies. However, because the IG recommendations required such widespread change, the results require substantial validation. The IG audit only focused on the dissemination of the LNM as a paper (hard copy) publication. To significantly reduce costs, the Coast Guard believes it must study the entire navigation information program, focusing on the costs, and the process of gathering, assembling, and disseminating the information. To further validate the IG's findings, among other things, the Coast Guard is undertaking a study that will closely examine the entire LNM process.

The goals of the study will be aimed toward reducing costs. However, reducing costs requires more than simply reducing the frequency of publishing and eliminating redundancy. While the study is being undertaken with the premise that the Coast Guard must continue to provide timely and accurate marine safety information to reduce the risk of casualty, the study will attempt to determine the information needs of a broad range of mariners and enable the Coast Guard to reduce overall costs of the LNM, while continuing to provide needed safety information.

Each week, the ten Coast Guard District Commanders issue the proper LNM, which includes items of interest within the district boundaries. This form of distribution requires many mariners to receive information for areas they have no interest in, while others must receive LNMs from more than one district to cover their area of interest. The wide proliferation of personal computers with data communications capability provides an opportunity to disseminate information contained in the LNM through non-traditional means such as electronic distribution or user access on demand from a navigation information data base. In addition, the introduction of digital nautical charts necessitates that the Coast Guard be capable of providing navigation information in a standard digital format. Some issues the Coast Guard will examine by means of this request for comments include:

1. The feasibility of creation of a navigation information data base and possible formats in which it should be available;
2. The determination of the information needs of those in the maritime community and how that information is used;
3. The effect of a reduced frequency of issuance on the individual LNM user who responds to this request for comments;
4. The need for redundancy of particular navigation information from week-to-week; and
5. The impact of charging a fee to users for LNM information.

Request for Comments

The Coast Guard encourages comments concerning these five subject areas and other areas concerning the LNM from shipowners, shipping agents, merchant mariners, pilots, commercial fishermen, recreational boaters, and others experienced in using LNM data. Due to the short time available, and the number of issues to be examined, the Coast Guard does not intend to hold public hearings. To ensure full consideration, comments should be submitted by August 16, 1993. Late comments will be considered to the extent possible without delaying the completion of the study. It is anticipated the study will be completed by October 1993. Since the study results may recommend changes to existing laws or regulations, the Coast Guard will publish a notice of completion of its study in the Federal Register.

Dated: June 30, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Service.

[FR Doc. 93–115981 Filed 7–6–93; 8:45 am]

BILLING CODE 4910-14-M

[CGD 93–042]

Testing of American Underpressure Oil Spill Prevention System

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard seeks comments from the public on the extent, methodology, and cost of conducting a full-scale test of the "American Underpressure System" to reduce oil spills from tankers. The Coast Guard also specifically seeks indications of potential financial support for such a test from the private and public sectors.

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Comments may be mailed to Chief, Marine Technical and Hazardous Material Division, Commandant (G–MTH), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Zbigniew J. Karaszewski, Technical Advisor, Marine Technical and Hazardous Material Division (G–MTH), telephone (202) 267–6481, facsimile (202) 267–4816, or at the address listed above.

SUPPLEMENTARY INFORMATION: In House Report 102–639, to accompany the 1993 Department of Transportation Appropriations Bill, later enacted as Public Law 102–388 (Oct. 6, 1992), the Committee on Appropriations recommended that the Coast Guard conduct a full-scale test of the "American Underpressure System" as an alternative to double hull oil tankers. The Committee recommended funding of $250,000, but said that the funds should not be obligated until local, State, private, and other entities contributed at least $500,000 for this test. A later Conference Report on the 1993 Department of Transportation Appropriations Bill, Report 102–94, identified $200,000 for testing of double hull tanker alternatives. The 1993 Department of Transportation Appropriations Act included an appropriation of funds for scientific research, development, testing and evaluation. Although the Act did not specifically identify funds for this project, it provided that the Coast Guard may credit, to the appropriation, funds received from State and local

governments, other public authorities, private sources and foreign governments for research, development, testing and evaluation expenses.

When a tanker is loaded under normal loading conditions, the oil level inside the hull is higher than the surrounding seawater level. This creates a hydrostatic imbalance, with the pressure created by the height of the oil greater than the pressure of the surrounding seawater. If the hull ruptures, the higher pressure inside causes the oil to flow from the tank into the water.

The "American Underpressure System" uses the vacuum principle. The atmospheric pressure inside the tank is reduced below the atmospheric pressure on the surrounding water, counterbalancing the overpressure created by the height of the oil. This principle may be seen by submerging a jar in water, filling it, and turning it upside down. If the jar is partially lifted out of the water, the water stays inside the jar at a higher level than the surrounding water. A simple principle of hydraulics holds the water in the jar due to the differences in pressure on the water inside the jar and atmospheric pressure on the water outside the jar. In theory, the "American Underpressure System" would prevent a complete loss of oil from a damaged tank. However, applying this simple principle to a tank filled with oil onboard ship involves complex technical and structural problems.

The Coast Guard believes that a meaningful test of the "American Underpressure System" should evaluate the effectiveness of the system for various ship configurations. It should include review of detailed installation/assembly drawings, engineering analysis, including both hydrostatic and dynamic considerations, scale model testing, prototype system bench testing, as well as testing and evaluation of a full-scale installation onboard ship. The Coast Guard estimates this testing program will cost between $3 and $4 million over a two or three-year period.

The Coast Guard seeks comments on the testing procedures discussed above, any alternative test methods which could be used, and cost estimates for a testing program. It also seeks indications of potential financial support from interested public and private organizations, and of the amount of support which may be available.

Dated: June 22, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–15983 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket S–900]

American President Lines, Ltd.; Application for Amendment of Existing Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application dated June 22, 1993, requests a change in an existing waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB–417.

APL has authority, under a previous section 804 waiver, to operate one foreign-flag vessel of up to approximately 300 FEU capacity between Singapore and ports in Indonesia. APL requests a change to increase the authorized number of vessels from one to two, each of approximately 300 FEU capacity.

APL's Indonesia feeder 804 waiver authority, which is one of eight service areas in Waiver 6 of Appendix G to the operating subsidy agreement, currently reads as follows:

No. ships	Approx. capacity	Between	Service area
1.	300 FEU Port coverage	Singapore Singapore	Indonesia. Djakarta, optional Surabaya/ Semarang.

APL also has a section 804 waiver to allow APL to slot charter on foreign-flag vessels of Orient Overseas Container Line Inc. (OOCL) pursuant to the Operator's participation in a reciprocal slot exchange and coordinated sailing agreement, and in a Master Slot Charter Agreement (MSCA), both between APL and OOCL.

Addendum 1 to the MSCA adds two Indonesia feeder loops, each carrier operating one feeder vessel.

APL, in the instant application, is requesting approval of a revised Addendum 1 to the MSCA, providing for three (rather than two) feeder loops with APL providing two (rather than one) Indonesia feeder vessels.

Concomitantly, APL is requesting that Waiver 6 be amended to read:

No. ships	Approx. capacity	Between	Service area
2.	300 FEU each Port coverage	Singapore Singapore	Indonesia. Djakarta, other ports in Sumatra and Java.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on July 14, 1993. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: June 30, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93–15913 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–81–M

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National Highway Traffic Safety Administration

[Docket No. 93–48; Notice 1]

Cosco, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Cosco, Inc. (Cosco) of Columbus, Indiana, has determined that some of its child safety seats fail to comply with the flammability requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and has filed an appropriate report pursuant to 49 CFR part 573. Cosco has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

During the period of November 1, 1989 to March 31, 1993, Cosco produced 133,897 add-on (as opposed to built-in) child restraint seats, with shoulder harness straps that do not comply with the flammability requirements of FMVSS No. 213. The principal restraining mechanism on the subject seats is a soft-shield harness assembly. The soft-shield harness assembly consists of a buckle, a soft molded urethane shield, and two straps, protruding to the top of the shield, which go over the child's shoulders through slots in the back of the child restraint and attach to a metal bar, which in turn is attached to an adjustment strap. When the seats were tested at Detroit Testing Laboratory and re-tested at U.S. Testing Laboratory by NHTSA (NCI 3269), the harness straps burned at a rate of 4.3 inches per minute, test failures under FMVSS No. 213.

Cosco supports its petition for inconsequential noncompliance with the following (Cosco also submitted photographs of the subject seats, photographs of the tests being conducted on the seats, and test data. These materials are available for review in the NHTSA docket.):

Cosco agrees generally that requiring child restraints to meet the [FMVSS] 302 standard does further the purpose of the standard when considering such child restraining components as vinyl or fabric pads or their foam contents. Cosco also concedes that the applicability of the standard to the harness systems of certain child restraints furthers the purpose of the standard, such as five-point harness system which attached to, or pass through, the seating surface of the child restraint where sources of ignition such as cigarettes or matches could become entrapped.

[Cosco believes t]he purpose of the standard is not, however, furthered in any respect by requiring a recall for the noncompliance with the flammability requirements of FMVSS 302 of the Cosco soft shield harness straps for the following reasons:

1. [Cosco believes i]t is not physically possible for the harness straps of the soft shield to ignite or burn unless the entire child restraint or the automobile seat upon which it is installed is already burning.

The configuration and placement of the straps of the Cosco soft-shield assembly are such that these straps cannot come into contact with an independent source of ignition, such as a cigarette or match, which would result in any burning of the harness strap.

These are the only two possible causes for the ignition of the shoulder straps of Cosco soft-shield child restraints. The first is fire already consuming the child restraint and/or the vehicle seat upon which the child restraining is installed is on fire. It cannot be seriously questioned that, in such an instance, the child would be seriously or fatally burned from these sources of fire as opposed to the shoulder straps of the child restraint contributing in any degree to the child's injury. Cosco retained John E. Pless, M.D., Director of Forensic Pathology, Department of Pathology, Indiana University, School of Medicine, to review this issue. Dr. Pless, one of the leading forensic pathologists in the country and, through his work with Riley Children's Hospital in Indianapolis, one of the most experienced pediatric pathologists, concludes that the webbing of the Cosco soft-shield child restraints would have no practical importance on the effects of such a fire on a child. [Dr. Pless' report and curriculum vitae are in the docket.] Dr. Pless' conclusions are supported by tests performed by Cosco [photographs of the test are in the docket.] The tests establishes that the webbing does not "ignite" as that term is commonly understood. The webbing burns in a fashion that can be more accurately described as smoldering and generally extinguishes itself after a brief period of time. It should be noted that the tests * * * do not reflect any possible ignition of the child restraint harness straps if the child restraint were occupied by a child. [Cosco believes t]here is simply no way for a source of ignition, such as a lighter, to come into contact with the strap * * * when the child restraint is occupied by a child.

The other possible source of ignition of the harness strap would be from a localized heat source, such as a match or cigarette. It is critical in the analysis of whether such a risk exists to examine the configuration and placement of the straps of the Cosco soft-shield child restraints. [T]hese straps only contact the child who is occupying the child restraint at the mid-chest level, or higher on the child's body. The straps are essentially vertical as they leave the shield. Cosco conducted tests attempting to ignite the harness strap with a burning cigarette. [Photographs of this test are in the docket.] Simply stated, a lighted cigarette cannot ignite the harness strap. Cosco conducted these tests under controlled conditions which, frankly, seemed inconceivable to occur in the actual use of child restraints.

For example, in order to come into contact, for any length of time, with the child restraint harness strap, a lighted cigarette would have to be balanced at the point where the strap emerges from the molded shield. This is so unlikely as to be virtually inconceivable. Dr. Pless also commented on this possibility and indicated that such a localized heat source is "not within the realm of practical consideration." Cosco believes that any practical examination of these issues concludes that the risk of the ignition of the harnesses of Cosco soft-shield child restraints could not, under any conceivable set of circumstances, result in injury or death to the occupant of the child restraint. The noncompliance of Cosco soft-shield child restraints is therefore inconsequential as it relates to motor vehicle safety as set forth in FMVSS 302.

2. Cosco has never received a report of the burning of a soft-shield harness strap. Cosco is unaware of any study that indicates that the burning of a child restraint harness has caused any injury or death. All occupant protection studies which Cosco has reviewed

indicate an almost infinitesimal risk of injury or death by vehicle fires in total, at least in collisions. Cosco is unaware of any data on fires of the interior of vehicles unrelated to collisions. [Cosco states that c]hild passenger safety advocates, child restraint manufacturers, and the Agency are aware of the negative impact of recalls resulting from technical noncompliance or defects that do not, as a practical matter, have true safety consequences. The most important negative effects of such recalls are:

1. That the public, because of the number and frequency of such recalls, pays no attention to recalls that actually affect, in a practical way, child passenger safety; and

2. That the public, upon seeing the number of recalls, concludes that child restraints currently available are unsafe and therefore decline to use them. The Agency is aware and, in fact, has publicly advised consumers to use child restraints that have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. [An example of this advisement is contained in the docket.] This is in recognition of the fact that technical noncompliances or relatively insignificant safety defects do not compromise the overall effectiveness of child restraints.

In the event [that] a recall is ordered for the noncompliance at issue, both of the negative effects described above will impact consumers adversely.

Cosco submits any reasonable evaluation of the facts surrounding this technical noncompliance will result in the inescapable conclusion that no practical safety issue exists. It would in fact be difficult to find a noncompliance with FMVSS 213 that is more inconsequential as it relates to motor vehicle safety than this one.

Interested persons are invited to submit written data, views, and arguments on the petition of Cosco, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 6, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 1, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–16001 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0770
Regulation ID Number: FI–182–78 NPRM
Type of Review: Extension
Title: Transfers of Securities Under Certain Agreements
Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement. Lenders of securities are affected.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents: 11,742
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 9,781 hours

OMB Number: 1545–1045
Form Number: None
Type of Review: Reinstatement
Title: Conducting 1993 Focus Group Interviews on Federal Tax Forms
Description: Focus group interviews are necessary to obtain public input on a revised tax form. The results will be used to further simplify and improve the form so that taxpayers will understand it more easily.
Respondents: Individuals or households
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Respondent:
Focus Group Screening Time (100 per group)—8 hours, 20 minutes
Focus Group Session Time—3 hours
Frequency of Response: Other (One-time focus group interviews)
Estimated Total Reporting Burden: 384 hours

OMB Number: 1545–1128
Form Number: IRS Form 8814
Type of Review: Extension
Title: Parents' Election to Report Child's Interest and Dividends
Description: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 1,100,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—20 minutes
Learning about the law or the form—8 minutes
Preparing the form—16 minutes
Copying, assembling, and sending the form to the IRS—35 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,441,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–15975 Filed 7–6–93; 8:45 am]

BILLING CODE 4830–01–P

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the

Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1993 and ending on December 31, 1993, is 5⅝% per centum per annum.

Dated: June 29, 1993.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 93–15897 Filed 7–6–93; 8:45 am]

BILLING CODE 4810–25–M

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on July 22, 1993 at 9:30 a.m. in the Cash Room of the U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: The preliminary agenda to be considered at the meeting is as follows:

1. The Customs Modernization Act and Informed Compliance Legislation.
2. Status of the North American Free Trade Agreement.
3. Customs budget, staffing and resources.
4. The Committee recommendations to Secretary of the Treasury Bentsen.
5. Customs work shifts at airports.
6. Enforcement update.
7. Status of line release system.
8. Harbor Maintenance Fee issues.

The agenda may be supplemented or otherwise amended prior to the meeting date.

The meeting is open to the public; however, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Mr. Daniel Reyer or Ms. Theresa Manning at (202) 622–0220 no later than Thursday, July 15, 1993.

Dated: July 1, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–15960 Filed 7–6–93; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Eligibility of Certain Jewelry Under General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: Customs Service, Department of Treasury.

ACTION: Proposed change of practice; solicitation of comments.

SUMMARY: This notice advises the public that Customs proposes to change the practice regarding the eligibility of certain jewelry from the United States Virgin Islands for duty-free treatment. Customs previously has ruled that attaching United States-origin clasps to foreign strung beads, thereby forming necklaces and bracelets, and fastening United States-origin metal spring clips to otherwise finished earrings substantially transforms those articles into "products of" the Virgin Islands. The proposed change set forth herein would not render the addition of fasteners, closures, clasps, etc., to otherwise finished articles of jewelry a substantial transformation of that jewelry into "products of" a United States insular possession.

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the United States Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments filed may be inspected at the Regulations Branch, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Special Classification Branch, Office of Regulations and Rulings (202) 482–6980.

Background

In Headquarters Ruling Letter (HRL) 094018 dated January 17, 1963, individually strung or linked glass and plastic beads, in varying lengths, were imported into the United States Virgin Islands from several foreign countries. Metal findings consisting of clasps and hooks were imported into the Virgin Islands from the United States. The hooks and clasps were attached to the strung beads, resulting in necklaces and bracelets.

Additionally, glass and plastic beads strung and fastened to metal screens and back findings to form earrings were imported into the United States Virgin Islands from foreign countries. Metal clips were imported from the United States.

Customs held that attaching United States clasps to the foreign strung lengths of beads by inserting hooks into eyes in the metal findings and bending the hooks closed, thereby forming necklaces and bracelets, and fastening United States metal spring clips to foreign earrings substantially transformed those imported articles into "products of" the United States Virgin Islands within the meaning of section 301, Tariff Act of 1930, as amended (19 U.S.C. 1301a) (repealed effective August 31, 1963).

Under the provisions of 19 U.S.C. 1301a, all articles imported from an insular possession of the United States, except Puerto Rico, were dutiable at the same rate as were importations from foreign countries, except that those which (1) were of native growth, or (2) were manufactured or produced in such possession and did not contain foreign materials to the value of more than 50 per centum of their final appraised value in the United States, and came into the United States directly from the insular possession, or (3) were articles previously imported into the United States with payment of all applicable duties and taxes which were shipped from the United States without remission, refund, or drawback of such duties and taxes, directly to the possession from which they were being returned by direct shipment, were entitled to free entry.

General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS) (formerly General Headnote 3(a), Tariff Schedules of the United States, which replaced 19 U.S.C. 1301a), provides for the duty-free treatment for goods imported from a United States insular possession if they: (1) Are the growth or "product of" the possession; (2) meet certain value-content requirements; and (3) come directly to the customs territory of the United States from the possession.

To comply with the requirements of General Note 3(a)(iv), an imported

article first must qualify as a "product of" a United States insular possession. *See Yuri-Fashions* v. *United States*, 632 F. Supp. 41, 46 (CIT 1986); T.D. 90–17 dated February 23, 1990. Where merchandise is imported into the insular possession, it must be substantially transformed into a product of that insular possession to receive duty-free treatment under General Note 3(a)(iv), HTSUS.

A substantial transformation occurs when a material is used "in the manufacture of a new article having a new name, character, and use * * *" *See United States* v. *Gibson-Thomsen Co., Inc.*, 27 CCPA 267, 273 (1940).

It is Customs' position that adding a closure, clasp or fastener to otherwise completed articles of jewelry (*i.e.*, bracelet, necklace, earring) does not change the essence of the jewelry which is dedicated to use as such, and has the fundamental character of such jewelry. This position is consistent with Customs' rulings issued under the Generalized System of Preference (GSP) and Country of Origin Marking statutes, 19 U.S.C. 2461–2465 and 19 U.S.C. 1304, respectively, which utilize the substantial transformation test for determining whether an article is the "product of" a country for purposes of those statues. See HRL 556624 dated July 31, 1992 (adding clasps and spring rings to chains is a simple combining operation for which duty free treatment under the GSP is not allowed); HRL 734350 dated April 9, 1992 (soldering a bar-pin clasp to a completed brooch is not a substantial transformation; soldering a metal clip to completed barrettes is not a substantial transformation; gluing of stainless steel posts to completed earrings is not a substantial transformation).

The proposed position with respect to the ineligibility of the described jewelry for duty free treatment under General Note 3(a)(iv), HTSUS, is in conflict with HRL 094018 dated January 17, 1963. Therefore, we propose to change the practice set forth therein to the position advanced above. We note, however, that it is possible that the operations described in HRL 094018, when performed in conjunction with other operations, may result in a substantial transformation of an article into a new and different article of commerce for purposes of General Note 3(a)(iv), HTSUS.

Authority

This notice is published in accordance with section 177.9, Customs Regulations (19 CFR 177.9).

Comments

Before adopting this proposed change in position, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 103.11(b)), on regular business days between the hours of 9 and 4:30 p.m. at the Regulations Branch, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: June 17, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–15898 Filed 7–6–93; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 126
Wednesday, July 7, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: July 16, 1993 at 1:30 p.m.

PLACE: 1825 Conn. Ave., N.W., Suite 918, Washington, D.C. 20009.

STATUS: Closed pursuant to a vote taken June 30, 1993.

MATTERS TO BE CONSIDERED: Formal rule making—admissability of a survey based on Nielsen Company diaries into the record of the 1990 cable royalty distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Conn. Ave., N.W., Suite 918, Washington, D.C. 20009, (202) 606–4400.

Dated: July 1, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–16110 Filed 7–2–93; 11:47 am]

BILLING CODE 1410–09–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 12, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16190 Filed 7–2–93; 3:52 pm]

BILLING CODE 6210–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 9:00 a.m. to 4 p.m.—July 23, 1993.

STATUS: Open.

ADDRESS: Klondike National Historical Park, 117 South Main, Seattle, Washington 98108, 206/553–7220.

FOR FURTHER INFORMATION CONTACT: S. William Laney, Executive Assistant to the National Museum Services Board, Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506–(202) 606–8536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, July 23, 1993 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

NATIONAL MUSEUM SERVICES BOARD

July 23, 1993, Meeting Agenda.

I. NMSB Chairman's Report and Approval of Minutes from April 23, 1993 Meeting
II. Agency Director's Report
III. Agency Agenda Reports: Appropriations/ Reauthorization
IV. NMSB Committee Report: Policy Issues Relative to Small, Minority, Ethnic & Rural Museums
V. Agency Agenda Reports: Programs
VI. Agency Agenda Reports: Legislative/ Public Affairs
VII. NNSB Open Agenda

Dated: July 1, 1993.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 93–16067 Filed 7–1–93; 5:50 pm]

BILLING CODE 7036–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 13, 1993, in Washington, D.C. The meeting is open to the public and will be held in the Benjamin Franklin Room at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 12, 1993, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

July 13—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 7–8, 1993.
2. Remarks of the Postmaster General and CEO. Marvin Runyon)
3. Consideration of Amendments to the BOG Bylaws. (Governor Sam Winters)
4. Briefing on Diversity Development. (Veronica O. Collazo, Vice President, Diversity Development)
5. Update on the Quality Program. (David H. Charters, Vice President, Quality)
6. Annual Report on Engineering, Research and Development. (William J. Dowling, Vice President, Engineering, Research and Development)
7. Capital Investment. (Stephen E. Miller, Vice President, Operations Support)
   a. Integrated Mail Handling System (IMHS).
8. Tentative Agenda for the August 2–3, 1993, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 93–16087 Filed 7–2–93; 11:45 am]

BILLING CODE 7710–12–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 5, 12, 19, and 26, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 5

Thursday, July 8

2:00 p.m.
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–492–3904)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 12—Tentative

Wednesday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 19—Tentative

Tuesday, July 20

10:00 a.m.
Briefing on Options for Addressing Shutdown and Low Power Risk Issues (Public Meeting)
(Contact: Ashok Thadani, 301–504–2884)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)
2:00 p.m.
Briefing on Overview of NRC Research Program (Public Meeting)
(Contact: George Sege, 301–492–3904)

Week of July 26—Tentative

Thursday, July 29

10:00 a.m.
Briefing on Options for Changes to Regulation of Nuclear Medicine (Public Meeting)
(Contact: Darrel Nash, 301–504–3610)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 1, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–16139 Filed 7–2–93; 1:31 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 6, 1993.

A closed meeting will be held on Tuesday, July 6, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 6, 1993, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272–2100.

Dated: July 1, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16109 Filed 7–2–93; 11:46 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23-93]

Proposed Foreign-Trade Zone—Holyoke, MA (Springfield Customs Port of Entry); Application and Public Hearing

Correction

In notice document 93–14232 appearing on page 33254 in the issue of Wednesday, June 16, 1993, in the second column, in the first paragraph, beginning in the seventh line, "[60 days from date of publication]." should read "August 16, 1993." and in the last line, "[75 days from date of publication])." should read "August 30, 1993)."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4625-3]
RIN 2060-AC80

Protection of Stratospheric Ozone; Refrigerant Recycling

Correction

In rule document 93–10832 beginning on page 28660 in the issue of Friday, May 14, 1993, make the following corrections:

1. On page 28707, in the third column, in the last paragraph, in the third line, "November 14, 1993" should read "November 14, 1994".

§ 82.154 [Corrected]

2. On page 28714, in the second column, in § 82.154 paragraphs (g) and (h), in the second line, "November 13, 1995" should read "May 15, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Review Criteria for Grants for the Health Administration Traineeships and Special Projects Program for Fiscal Year 1993

Correction

In notice document 93–13736 appearing on page 32711 in the issue of Friday, June 11, 1993, in the third column, the flushed paragraph after paragraph (3), should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

28 CFR Part 55

[Attorney General Order No. 1752-93]

Amendment to the Attorney General's Minority Language Guidelines; New Coverage Determinations Under the Voting Rights Language Assistance Act of 1992

Correction

In rule document 93–15462 beginning on page 35371 in the issue of Thursday, July 1, 1993, make the following corrections:

Appendix to Part 55 [Corrected]

1. On page 35375, in the Appendix, under "South Dakota:", in the entry "Mellette County", in the second column, remove "American Indian", and in the third column add "American Indian (Dakota)".

2. On page 35376, in the Appendix, under "Texas", in the entry "Polk County", in the third column, "Spanish heritage" should read "American Indian (and Alabama)".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Proclamation 6575 of June 25, 1993

Correction

On 58 FR 34858, Annex I to Proclamation 6575 should have read as follows:

Annex I

Modifications to the HTS

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1–General", "Rates of Duty 1–Special", and "Rates of Duty 2", respectively.

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1993.

1. Subheading 4418.20.00 is superseded by:

	[Builders' joinery . . .]			
"4418.20	Doors and their frames and thresholds:			
4418.20.40	French doors	7.5%	Free (A*, CA, E, IL, J)	33⅓%
4418.20.80	Other	7.5%	Free (A,CA,E, IL, J)	33⅓%"

2. Subheading 8521.10.00 is superseded by:

	[Video recording . . .:]			
"8521.10	Magnetic tape-type:			
	Color, cartridge or cassette type:			
8521.10.30	Not capable of recording	3.9%	Free (A, C, CA, E, IL, J)	35%
8521.10.60	Other	3.9%	Free (A*, C, CA, E, IL, J)	35%
8521.10.90	Other	3.9%	Free (A, C, CA, E, IL, J)	35%"

BILLING CODE 1505-01-D

Federal Register

Wednesday
July 7, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Subtitle A and Part 572

HOPE for Homeownership of Single Family Homes Program (HOPE 3); Final Rule and Notice of Fund Availability

VOL
58
ISS
128
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Subtitle A and Part 572

[Docket No. R-93-1661; FR-2968-F-05]

RIN 2501-AB09

HOPE for Homeownership of Single Family Homes Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule governs the HOPE for Homeownership of Single Family Homes program (HOPE 3), authorized by title IV, subtitle C, of the National Affordable Housing Act (NAHA). The purpose of the HOPE 3 program is to provide homeownership opportunities for low-income families and individuals. The Department published, for public comment, Guidelines for HOPE 3 on February 4, 1991 and revised Guidelines on January 14, 1992. The preamble to the final rule contains the Department's responses to the public comments, as well as explanations of changes to the program as a result of amendments by the Housing and Community Development Act of 1992 and others initiated by the Department.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, room 7158, 451 Seventh Street SW., Washington, DC 20410; (202) 708-0324. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY (8339) or (202) 708-9300. (Telephone numbers, other than the "800" TDD number, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0128.

I. Background

The National Affordable Housing Act (NAHA) authorized three homeownership grant programs for low-income families and individuals under the name Homeownership and Opportunity for People Everywhere (HOPE). HOPE 3 is designed to provide homeownership opportunities for families in certain single family housing. (HOPE 1 and HOPE 2 provide homeownership opportunities in pubic and Indian housing and in certain multifamily housing, respectively.)

HUD published Guidelines for the HOPE 3 program on February 4, 1991 (56 FR 4458) and revised Guidelines on January 14, 1992 (57 FR 1592). A Notice of Fund Availability (NOFA) was published with the revised guidelines. Changes to the Guidelines contained in this final rule are in response to public comments and HUD's experience with the program during the first funding round, as well as amendments to the program by the Housing and Community Development Act of 1992 (1992 Act) (Pub. L. 102-550, approved Oct. 28, 1992). The final rule has also been reorganized.

II. Amendments by 1992 Act

Section 181 of the 1992 Act made several amendments to the HOPE programs. With regard to the HOPE 3 program specifically, the definition of eligible property was expanded to include single family properties owned or held by the Federal Deposit Insurance Corporation (FDIC), Secretary of Defense, Secretary of Transportation, General Services Administration (GSA), and any other Federal agencies. The amendment also excluded from the HOPE 3 definition of eligible property scattered-site, single family public housing. The changes to the definition of eligible property are reflected in the final rule at § 572.5. However, the change with respect to scattered-site, single family public housing is not intended to affect Fiscal Year 1992 implementation grants whose approved applications proposed the use of such housing. Such grantees can continue to use such housing under the terms of their 1992 grant, in accordance with the program Guidelines in effect at the time of approval.

In addition, section 219 of the 1992 Act amended the definition of "first-time homebuyer" contained in section 104 of NAHA, which applies to the HOPE 3 program. The amendment provides that an individual may not be excluded as a first-time buyer on the basis that the individual owns or owned, as a principal residence during the three-year period prior to purchase of a unit under the HOPE 3 program, a dwelling unit that is not permanently affixed to a permanent foundation under local or other applicable regulations, or is not in compliance with State, local, or model building codes and cannot be brought into compliance for less than the cost of constructing a permanent structure. This change is also contained in the final rule's definition of "first-time homebuyer" in § 572.5.

III. Departmental Changes

The maximum cap of $33,500 on per-unit rehabilitation costs paid from grant funds and match funds has been eliminated to provide greater flexibility to implementation grant recipients, especially those operating in high cost areas. However, the overall limitation on the cost of acquisition and rehabilitation, as provided in § 572.100(c) of the final rule, has been retained.

Even though the rehabilitation cost cap has been eliminated, the Department cautions grant recipients when selecting properties to carefully assess rehabilitation costs related to each unit and encourages recipients to make every effort to conserve program funds in order to maximize the number of low-income families served with grant and match resources. The Department also cautions grant recipients from spending excessive funds on rehabilitating properties whose after-rehabilitation value may not capture a reasonable portion of the rehabilitation costs. Finally, the Department reminds recipients of the provision in § 572.100(d) of the final rule that prohibits the use of grant and match funds for luxury items as part of the rehabilitation of the unit.

The selection process in subpart D of the rule has been written to state more clearly the procedures for reviewing applications. In an effort to streamline the review process, the threshold review for implementation grant applications described in the program Guidelines has been eliminated and combined with the "screening process" described in § 572.300(c). In addition, the detailed list of items to include in applications has been removed, and will be provided in the application package. The number of points that may be assigned to each rating factor will be included in the NOFA.

IV. Public Comments

The Department received 22 public comments on the Guidelines published on February 4, 1991, and 4 comments on the revised Guidelines published on January 14, 1992. A discussion of those comments and the Department's responses follows. (Comments on the 1991 Guidelines recommending a change that was subsequently made in the 1992 revised Guidelines have been omitted from the discussion. In addition, comments with regard to scattered-site, single family public

housing have been omitted since those properties are no longer eligible under HOPE 3.)

Relationships to Other Programs

Termination of section 8 or other rental assistance: A commenter stated that section 8 rental assistance should terminate "at the time of" rather than "before" transfer of ownership interest in order to assure the family is not without necessary assistance.

HUD response: The Department agrees with the commenter, and the final rule, at § 572.10, provides that rental assistance to the homebuyer will terminate not later than the date the family acquires an ownership interest in an eligible property or executes a lease-purchase contract.

Variations to FHA single family mortgage insurance programs: A commenter asked for clarification on the relationship of the requirement that a homebuyer not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale, and FHA underwriting rules with regard to income. Specifically, the commenter was concerned about the treatment under HOPE 3 of rental income, stating that FHA allows 93 percent of gross rents to be added to adjusted personal income, with 30 percent of that total to be applied to principal, interest, taxes, and insurance.

HUD response: Section 444 of NAHA requires only that the family not be required to expend more than 30 percent of its adjusted income per month to complete a sale under the program. The Guidelines provided and the final rule (§ 572.120) provides that a homebuyer's income is to be calculated in accordance with 24 CFR part 813, which is the regulation used to calculate income and tenant payments under section 8 programs. (Part 813 is based on section 3(b) of the U.S. Housing Act of 1937.) The Department believes that, in using the 30 percent figures, Congress intended the HOPE programs to calculate income in the same manner used for other HUD assisted housing and public housing programs.

Definitions

Applicant: A commenter objected to the requirement that a public body must apply in cooperation with a private nonprofit organization. The commenter stated that it has operated an urban homesteading program for 10 years without involvement of nonprofit organizations.

HUD response: The definition of applicant is from section 446 of NAHA, which provides that a public body must apply in cooperation with a private nonprofit organization. Although the Department recognizes that many public bodies have experience in homeownership programs, it has no discretion to eliminate this statutory requirement.

Eligible family: A commenter stated that 80 percent of area median income in poor rural areas may be too low for the HOPE program, and suggested making any current resident of public housing eligible, since they were below 80 percent of median upon entering public housing. The commenter argued that even those working and above low-income level still can't afford a mortgage payment, insurance, taxes, and maintenance. Another commenter suggested that the word "first-time" be eliminated from the definition since it is misleading with the broad definition given the term.

HUD response: The definitions of both terms follow the statutory definitions. Section 446(3) of NAHA defines "eligible family" as a family or individual who has an income that does not exceed 80 percent of the median income for the area, with adjustments permitted only on the basis of family size. With regard to the second comment, "first-time homebuyer" is defined in section 104 of NAHA, which is incorporated by reference in section 446(5) of NAHA for HOPE 3. Although the statutory definition includes persons who may have been homeowners in the past, the Department does not believe the term is misleading, since it is defined in the rule with specificity.

Eligible property: One commenter expressed concern about its ability to participate in the HOPE program due to limited availability of eligible properties and the cost limitations. Another commenter questioned how applicants can be assured that foreclosed properties will be available for use in HOPE, since there is such a high demand for those properties in tight markets. The commenter also urged that seller financing from organizations holding the foreclosed properties be available to expedite the transfer for low-income use.

HUD response: As discussed earlier in this preamble, the 1992 Act expanded the definition of eligible property to allow properties owned or held by other Federal agencies not previously eligible. The Department is hopeful that the expanded definition will make more properties available in areas with limited properties. With regard to foreclosed properties, HUD cannot guarantee their availability. However, HUD will provide lists of available HUD-owned properties to grant recipients before the properties are listed for sale to the general public. The Department has negotiated a similar arrangement with the Department of Veterans Affairs.

The rule does not prohibit the use of seller-assisted financing (see § 572.105), but HUD cannot require organizations holding properties to make such financing available to all HOPE 3 homebuyers. In general, it is up to the Federal, State, or local agencies, which are selling properties for use in HOPE 3, to determine if they are authorized and willing to provide seller financing.

Eligible property—two-to-four unit properties: Three commenters strongly encouraged HUD to allow eligible families to buy two-to-four unit houses as "owner-occupants" of one unit and to rent the remaining units. One commenter argued that these are the dominant and most stable and desirable housing in its area, and the rental income allows families who otherwise might not be able to afford the mortgage to quality. This arrangement would also provide affordable rental units in a low density setting for families who are not able or willing to buy. Another commenter pointed out that it is more difficult to obtain mortgage financing for small units, and lenders especially are reluctant on low-income units, so it is even more problematic when it is a small, low-income unit.

HUD response: The general rule is that, in the case of multi-unit properties, only properties that may be divided so that an ownership interest in each unit may be acquired by an eligible family are eligible for the program. However, the final rule has been amended at § 572.115(c) to allow an exception on a program-by-program basis in those rare circumstances where the Department determines that such an exception will serve to further the purposes of the program. Exceptions will be granted to allow the transfer of two-to-four unit properties to an eligible homebuyer and the rental of the remaining units not occupied by the homebuyer under the following conditions: (1) The reasonably projected net rental income is included in the determination of the appraised value of the property at the time of the homebuyer's purchase; (2) the rents charged by the homebuyer will not exceed the Fair Market Rent established by HUD for the area; (3) the recipient will provide the homebuyer with counseling and training in property management and approve the form of lease used by the homebuyer; and (4) the recipient will include the family's potential net rental income in calculating the family's initial

affordability in accordance with § 572.120 of the final rule.

Ownership interest: A commenter recommended that land trusts and split deed arrangements be included as eligible ownership options since Congress intended that innovative alternatives be devised to provide homeownership opportunities while preserving properties as affordable.

HUD response: The definition of "ownership interest" in the final rule (§ 572.5) allows other forms of ownership to be proposed, subject to HUD approval. However, HUD will not approve any form of ownership that substantially limits the ability of homeowners to realize financial appreciation in the value of their homes, as determined by HUD.

Private nonprofit organization: A commenter suggested that housing finance corporations be included in examples of eligible private nonprofits.

HUD response: If a housing finance corporation is the same as a housing finance agency, it would generally be considered a public body or instrumentality of a public body, as defined in the rule, and, therefore, would be an eligible applicant, as well as an eligible source of properties.

Planning Grants

Applications—eligible property and families: A commenter contended that, in requesting information on the composition of tenants, the Guidelines assume all properties will be occupied when in fact vacant or partially vacant buildings are eligible. The commenter stated that the final rule should require information only on occupied units. The same commenter also objected to the requirement that applications for planning grants provide racial and ethnic characteristics of the neighborhood, arguing that this is not only difficult to obtain, but is not essential since the statute does not impose site selection standards or criteria for eligible neighborhoods.

HUD response: With regard to the request for information on the composition of tenants, the commenter has misinterpreted the requirement. The provision has nothing to do with vacant or occupied units, but rather requires the applicant to describe certain characteristics about families living in the general locations where the program will be carried out who are likely to participate, and who may or may not be living in the units that will be selected for the program.

With regard to the comment on the requirement for information on racial and ethnic characteristics of the neighborhood, this is authorized by the statutory provisions referenced in § 572.405(f) of the final rule.

Implementation Grants

Regional fund allocations—rental units occupied by low income persons: With regard to the factors considered in making Regional allocations (in § 572.210(b) of the final rule), two comments were received on the factor that weighs the number of rental units in a Region, as determined by the Bureau of the Census, occupied by persons with incomes at or below the poverty level and the total number of occupied rental units in the Region. One commenter argued that 1980 Census data are outdated and that locally generated data should be considered. The commenter also asked for clarification of how the weighted factors are to be used in determining Regional allocations.

A second commenter stated that the federal poverty level is an inappropriate measure of housing need in non-urban areas where the cost of living is very high and the need for housing is great, and that its use will result in inequitable allocation. The commenter recommended measuring housing occupied by very low-income persons by applying a proportion of the prevailing median income.

HUD response: Generally, allocation formulas recognize that resources are limited and that not all parts of the country have equal need. The formulas seek to target scarce funds where need is greatest to meet the purpose of the program, which is to increase homeownership among low and moderate income persons. The most current available data will be used. For FY 1992, the 1980 Census was the most current available data. The Department expects 1990 Census data to be available for use in the FY 1993 competition.

The three factors in the formula are not weighted; that is, they are all of equal weight. The first factor (§ 572.210(b)(1)) is composed of two parts of equal weight.

With regard to the second comment, the poverty level is not, in and of itself, a factor for allocation. The factor measured is the number of rental units occupied by persons at or below the poverty level. The formula does not discriminate against non-urban, high cost areas. Rather, it targets areas, urban or not, with large numbers of low income renters. The Department is unsure how to apply a proportion of median income to measure housing need. The commenter may have in mind the notion of using the number of low and very low income people in the service area. If so, then it is not feasible to distinguish low and very low income renters from the total low and very low income population. While it might not be burdensome to do Regional allocations using the low and very low income population, it would greatly complicate program administration to try to use this concept in the project scoring because special calculations for each applicant's service area would need to be done manually. Because it is impractical to use it in scoring, then it may be inconsistent to use it in the allocation process.

Regional fund allocations—unsuitable rental units: The second factor is intended to measure the number of rental units in the Region that are unsuitable because they (i) lack or have incomplete plumbing; (ii) are occupied by residents who are paying more than 30 percent of adjusted income toward rent; (iii) are occupied by an average of more than one person in the household per room; or (iv) lack or have incomplete kitchens. A commenter questioned why unsuitable conditions are limited to those listed, since this may result in units that are substandard or in substantial disrepair being considered suitable. The commenter suggested using HUD's definition of substandard in the Federal preference rule (see, *e.g.*, 24 CFR 881.613(f)).

HUD response: The Department believes the commenter may have misunderstood this factor. A unit is identified as substandard if it has any one of the four conditions. This factor has been used in other HUD programs (*e.g.*, Rental Rehabilitation).

Regional fund allocations—single family properties owned by certain Federal agencies: With regard to the third factor—the number of single family properties in the Region owned by HUD, the RTC, or VA, one commenter, a metropolitan city in the Northeast, argued that areas that have historically had few properties owned by HUD, RTC, or VA will not compete well for the allocation, although the city has a substantial inventory of vacant abandoned properties acquired through foreclosure or other acquisitions that are eligible and suitable. Another commenter generally agreed with the first, stating that the factor does not give credit to states whose HFAs have larger inventories than the Federal agencies. Another Northeast city also objected to the formula and suggested including the number of single family properties owned by a state or local government or a PHA/IHA. A fourth commenter opposed this allocation factor, arguing that it is a structural bias that will inevitably result in the majority of funds being diverted to the southern and

southwestern regions of the country where there are large inventories of Federally owned properties.

HUD response: The commenters are generally correct. The formula intentionally favors areas with large numbers of HUD, RTC, and VA properties, as one of the purposes of the program is to utilize available Federally owned single family properties for affordable housing. The Department has added properties owned by the Department of Agriculture in the final rule (§ 582.210(b)(3)). Further, there is no practical way to collect reliable data from all the jurisdictions that might potentially apply and to use it in a formula allocation.

Overall limitations on implementation grants: A commenter recommended that the limitation on total grant amounts that may be awarded in any given year within a particular locality may not exceed 10 percent of the total allocation for that fiscal year. The commenter also argued there should be no limit on the number of awards in a locality or on the amount awarded to individual applicants, and no requirement that individual awards be for programs in different neighborhoods.

HUD response: With regard to the first comment, it is unclear whether the commenter means 10 percent of the Regional allocation or the amount available nationally. However, HUD has removed from the final rule a maximum implementation grant amount for individual grantees, and will publish this amount in the NOFAs for the program each year, since the cap may vary depending on the amount appropriated. The Department disagrees that there should not be a limit on grant amounts for individual grantees, since a limitation ensures as broad a range of participation as possible with limited funds. With regard to the comment about limiting the number of awards in a locality, HUD will approve more than one grant in a locality as long as such awards do not result in substantial competition for available properties (§ 572.210(c)). However, the Department generally believes it would be an inefficient use of Federal dollars to fund several organizations to administer the same program in the same area.

Eligible activities—acquisition of eligible properties: A commenter asked for clarification whether the $33,500 is meant as a grant limit or a cap on the amount of allowable rehabilitation work, stating that $33,500 is insufficient for most of the eligible properties. Several commenters objected to the limit on rehabilitation costs, arguing that the overall limit on the cost of acquisition and rehabilitation significantly reduces the number of eligible properties in high cost areas. One of the commenters also asked whether rehabilitation includes demolition and new construction, which is often needed for property in large depressed areas.

HUD response: The Department agrees that the limit of $33,500 on rehabilitation costs may be unreasonable, and, therefore, has removed this separate rehabilitation limit in the final rule (§ 572.100(c)). The removal of the rehabilitation cap takes into account the relatively high costs for lead-based paint testing and abatement, which is included in the definition of rehabilitation. However, the overall limitation on the cost of acquisition and rehabilitation that may be paid for from grant funds and from matching funds (not in excess of 80 percent of the maximum amount that may be insured under section 203(b) of the National Housing Act) has been retained (§ 572.100(c)). The maximum cap on costs for acquisition and rehabilitation paid for from grant funds or matching contributions has also generally increased as a result of the publication of higher section 203(b) limits for most areas of the country.

There is no statutory basis for undertaking new housing construction in the HOPE 3 program. However, the Department will permit rehabilitation of eligible properties to include reconstruction of a single family unit on an existing foundation. In such instances, partial demolition of an existing structure would be permitted as long as the existing foundation is maintained. Again, the Department cautions grant recipients to carefully select properties requiring rehabilitation and try to conserve program funds in order to maximize the number of families served under the program.

Eligible activities—rehabilitation: Three commenters objected to the provision that HUD may disapprove improvements or amenities it determines are unsuitable, even if paid for with non-program funds.

HUD response: While applicants may use non-program funds for amenities that exceed those improvements that are eligible program costs, there are certain considerations that argue for some oversight of the use of funds. First, the Department has an obligation to assure that the rehabilitation does not include amenities or other features that could negatively affect the long-term affordability of the property. Second, to the extent that an applicant has resources available, those resources should be directed toward eligible grant activities in order to reduce the amount of Federal assistance required. Given the limited amount of assistance available, it is prudent to direct that assistance where it is most needed, rather than funding grant recipients who use significant amounts of their available funds to cover costs of ineligible amenities. The regulations clearly anticipate that HUD will approve reasonable use of non-program funds for this purpose, but include the essential safeguard of providing authority to disapprove expenditures where necessary to avoid program abuses.

Eligible activities—administrative costs: Two commenters stated that while 15 percent for administrative costs would be sufficient to run an existing program, HOPE envisions long term commitments that make it impossible to project what type of future costs will be involved. The commenter believes that the 15 percent allowance is not enough to cover present and future expenses. Another commenter stated that it is reasonable to assume that HOPE 3 will have higher per-unit monitoring costs, and recommended a 20 percent limit.

HUD response: The 15 percent cap on administrative costs is required under section 443(b) of NAHA. However, grant recipients may use up to 15 percent of their sale and resale proceeds for administrative expenses to expand their HOPE 3 program and provide additional homeownership opportunities. (See § 572.135(c).)

Eligible activities—counseling and training: A commenter urged continued funding of HUD's Housing Counseling program to ensure that families succeed in the HOPE 3 program.

HUD response: Funding for HUD's Housing Counseling program is not linked to funding for the HOPE 3 program. However, HOPE 3 recipients may participate in HUD's Housing Counseling program by contacting a HUD-approved Housing Counseling Agency. The Department also notes that counseling is an eligible, and required, activity under the HOPE 3 program.

Eligible activities—replacement reserves: A commenter argued that HUD should have specific limits on the use of replacement reserves for situations where necessary, rather than allowing grantees to determine how reserves will be used. In response to the request in the Guidelines for specific comments on whether a replacement reserve is necessary for HOPE 3, one commenter agreed that they are essential, since low-income families may not be able to afford to set aside funds to replace major systems.

VOL
58
ISS
128
JL
7
1993
UMI

HUD response: The Department agrees that there should be limits on the use of replacement reserves, and believes that they should be used only if necessary to achieve long-term affordability. The final rule, at § 572.125, provides that a replacement reserve fund may only be established to prevent severe financial hardship to families caused by the failure of a major system or component that renders the unit substandard.

Matching requirements—general requirement: Two commenters were concerned that limiting local match to non-Federal sources will eliminate small rural or economically poor PHAs whose need is the greatest. Another commenter objected to the ineligibility of Federal funds as a match, especially Community Development Block Grants (CDBG) funds, stating that this does not follow the original intent of the CDBG program. Two other commenters argued that the match should be lower, because local resources are targeted to the greatest need, which does not include homeownership programs.

HUD response: The 33 percent, non-Federal match requirement is a statutory requirement under section 443(c)(1) of NAHA. Section 443(c)(2) specifically provides that cash contributions may not include funds from a grant under section 106(b) or 106(d) of the Housing and Community Development Act of 1974 (*i.e.*, CDBG funds), except for up to 7 percent for administrative costs funded from CDBG.

Matching requirements—cash contributions: A commenter asked for clarification whether the ineligibility of "Federal tax expenditures" as a cash contribution precludes loans from the sale of mortgage revenue bonds for condos or underlying coop mortgages from the sale of tax-exempt bonds, and if so, the commenter urged reconsideration. In addition, the commenter asked about the status of State housing grant programs funded through direct State expenditures under appropriations, which are later reimbursed by proceeds of tax-exempt bond sales. The commenter also opposed the prohibition against using proceeds of low-income housing tax credits for HOPE projects otherwise eligible for tax credits.

HUD response: The Notice of Program Guidelines allowed and § 572.220(b)(1)(iv)(A) of the final rule continues to allow a portion of the proceeds from tax exempt bonds to count as match. With regard to the use of low income housing tax credits, they are an ineligible match source because HUD considers them a Federal source.

Matching requirements—administrative costs: One commenter stated that, while the 33 percent match is a difficult one for applicants, the 7 percent limit on contribution for administrative costs is even more so, since this eliminates the poorest and neediest from participation. Another commenter believes that if a local government contributes more than 7 percent in administrative fees, the amount above 7 percent should be applied toward the total match.

HUD response: The requirement is statutory under section 443(c)(2) of NAHA, which provides: "Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section."

Matching requirements—land or other real property: A commenter asked for clarification whether the costs of moving structures includes such expenses as acquiring vacant property, building new foundations, preparing the house for the move, moving costs, preparing the move route, reconnecting plumbing and utilities at new site, digging holes for new foundations, grading, etc. The commenter also requested clarification of whether these costs are considered acquisition or rehabilitation, for purposes of determining maximum allowable costs.

HUD response: While vacant land may not be purchased with HOPE 3 funds, § 572.220(b)(4)(iii) of the final rule provides the circumstances under which land may be donated for match. The costs for acquiring and moving the structure, preparing the site, hooking up the utilities, and any other related costs are eligible acquisition costs. The rule provides that "[t]he total amount of the contribution and any amount paid from HOPE 3 funds for acquisition of the structure, moving, and rehabilitation costs must be within the limits provided in § 572.100."

Matching requirements—infrastructure: One commenter stated that the rule should require any infrastructure be built with the intent to last 10 years. Another stated that the rule should permit infrastructure improvements completed within a 24-month period before notice of implementation grant award to be considered as a match. The commenter also stated that a more workable standard than the requirement that the improvements be "required" for the program would be that the improvements "contribute" to the program, and that credit should be awarded for a pro rata share of the improvements that do not accrue to any single property, rather than solely for improvements that are directly related to the property. A third commenter stated that the amount to be counted as a match should be the cost of work on the block on which the house sits, arguing that the infrastructure investment on the block has the potential to increase the value of the property and assist in the overall revitalization of the neighborhood.

HUD response: HUD does not believe a rule requiring infrastructure to be built with the intent of lasting 10 years to be either necessary or enforceable. Both the program Guidelines and final rule specifically allow infrastructure improvements completed within 12 months of notification of grant award to be counted. The Department considers the 12-month period before date of notification of implementation grant approval and no more than five years after the date of the grant agreement a reasonable time period, since the infrastructure must be related to and supportive of the homeownership program. Section 443(c)(2)(D) of NAHA identifies infrastructure investments that are required for the homeownership program as eligible matching funds. The Department has interpreted this as permitting those infrastructure investments that can be shown to directly contribute to the homeownership program. The final rule, at § 572.220(b)(5), reflects this change. The final rules provides, as did the Guidelines, that if the investment infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property may be counted toward the match.

Matching requirements—debt forgiveness: One commenter objected to the ineligibility of forgiveness of the amount of any debt exceeding fair market value of a property. The commenter stated that this restriction will pose a significant problem in cases where the cost of rehabilitating a unit exceeds the post-rehabilitation appraised value of the property.

HUD response: The section on debt forgiveness has been deleted from the final rule. The Department does not believe that credit beyond fair market value is appropriate and may lead to abuse. With regard to the second issue, the property donor should not rehabilitate a property before donating it to the program to prevent that situation from occurring.

Matching requirements—other in-kind contributions: A commenter suggested that the final rule use the same language used in the HOME program in recognizing sweat equity as a match, and apply the same valuation principles.

HUD response: Section 572.220(b)(6) allows donated labor, including sweat equity provided by a homebuyer or homeowner, to count as match as long as it is not also counted toward a family's equity in the property.

Program Requirements

Acquisition and rehabilitation of eligible properties—acquisition: A commenter recommended that applicants be bound to no more than a 5 percent deviation from estimates of the sales prices unless justified.

HUD response: This comment is not practical for the HOPE 3 program, since, at the time of application, an applicant does not know which properties will be used in the program or what the exact acquisition and rehabilitation costs will be.

Acquisition and rehabilitation of eligible properties—housing quality standards: One commenter considers the requirement that units be free of defects that pose a danger before transfer of ownership interest to be too strict. The commenter argues that the repair can be made by the family after purchase but before occupancy, and recommends that the rule require necessary repairs to be completed before occupancy, but not before transfer of ownership. Another commenter believes that HUD should require units to meet minimum housing standards upon transfer and should not expect families to take over substandard property and own it for two years before meeting the minimum standards. A third commenter recommends that recipients be required to establish emergency repair programs to prevent low-income borrowers from losing their homes due to unforeseen events.

HUD response: With regard to the first two comments, the requirement that units be free from defects that pose a danger to health or safety before transfer of an ownership interest and the requirement that a unit meet minimum housing standards not later than two years after transfer are statutory (see section 444(e) (1) and (2) of NAHA). The two-year period was set up to allow for sweat equity or allow the family to rehabilitate the property according to its preferences and specifications. With regard to the comment on emergency repairs, recipients may choose to establish an emergency replacement reserve for repairs of major systems or components that would render a unit substandard if not repaired, but HUD does not see a need to make it a requirement.

Financing the purchase of properties by eligible families: Two commenters stated that assumptions should be allowed. Another suggested that the low-income housing tax credit be allowed, as it may be the final building block on which the program is based. Another commenter stated that, other than prohibiting balloon payment mortgages and allowing sweat equity, the Guidelines do not contain acceptable methods for secondary mortgage financing. The commenter asked for clear guidelines and acceptable options for secondary mortgage financing, since this is particularly important to recipients in high-cost areas.

HUD response: The final rule does not prohibit assumptions by homebuyers when purchasing the unit. However, where the debt assumed is subject to occupancy or resale restrictions that are inconsistent with HUD's policy in § 572.130(e) of the rule, HUD will not approve the assumption. In response to the last comment, the rule does not prohibit recipients from using secondary mortgage financing if it is available (see § 572.105(a)). HUD does not see the need to develop a list of potential financing options for the regulation. However, such options will be provided through training and technical assistance.

Identifying and selecting families—requirement for family to agree to occupy property as principal residence during 15-year period from acquisition of homeownership interest: One commenter stated that the requirement in the application section of the Guidelines did not conform to the section on restrictions on resale. The commenter argued that "change in income and family size" should also be valid reasons for relocating, even if not outside the market area. Another commenter stated that the 15-year term is too restrictive, and would be impractical for grant recipients to administer.

HUD response: It appears that the first commenter is confusing the family's ability to sell the property (which it can do at any time) with the ability to rent it out. If a family's size or income changes, the family can sell the property at any time and purchase another home. With regard to the second comment concerning the restrictiveness of the 15-year term, the term has been changed in the final rule to six years. (See § 572.110(c).)

Identifying and selecting families—requirement to describe composition of residents and potential eligible families: One commenter recommended that applicants should also be required to provide the same information on the composition of residents and potential eligible families for the number of people on the waiting lists for all assisted housing in the jurisdiction.

HUD response: The information would serve no practical purpose. The vast majority of assisted housing projects with waiting lists consist of rental units. The Department assumes that persons on waiting lists for assisted housing may also be included on the recipient's list of potential eligible families as long as they are otherwise qualified.

Affordability standards—initial affordability: Two commenters argued that the rule should allow the flexibility to allow a greater housing expense burden than the 30 percent income ratio. Another commenter argued that barring inclusion of closing costs in the affordability question will create situations where families cannot get past the financial barrier of closing costs, and also recommended including regular maintenance and repairs in the monthly costs estimate.

HUD response: The 30 percent income ratio is required under the HOPE 3 authorizing legislation. The final rule's provisions on initial affordability (§ 572.120(a)) indicate that closing costs may be financed and counted in the PITI calculation, and that other monthly housing costs should also be taken into consideration in determining whether a property is affordable.

Affordability standards—continued affordability: One commenter stated that it is unreasonable to expect recipients to create plans to ensure continuing affordability, arguing that a plan does little to affect divorce and unemployment, which are the main causes of foreclosures. The commenter was also concerned about the recipient's obligation to ensure continued affordability for such a long period of time, and asked that the final rule either establish a methodology to ensure continued affordability or allow recipients the discretion to formulate policies similar to section 8 recertification for monitoring homeowners' PITI payments.

HUD response: The Department agrees, and the final rule, at § 572.120(b), requires recipients to develop a plan demonstrating reasonable efforts to ensure continued affordability.

Restrictions on resale by initial homeowners—general: One commenter expressed concern that HUD's permitting transfer subject only to the right to purchase by certain parties will deter the use of additional resale restrictions in an applicant's program, arguing that the intent of section 445(c) of NAHA is to allow additional

VOL 58 ISS 128 JL 7 1993 UMI

restrictions if an applicant proposes them. Another commenter stated that HUD should encourage applicants to utilize resale restrictions (e.g., ground leases, deed restrictions, restrictions on transfers of coop shares, etc.) on transfer of rental units in addition to those restrictions required by NAHA and the Guidelines.

HUD response: HUD disagrees with the first commenter on its interpretation of this provision. The intent of the HOPE program is to empower low income families and allow them to realize the benefits of homeownership. Resale restrictions, beyond those necessary to recover direct subsidies to the homebuyer, tend to deny homebuyers under HOPE 3 a basic freedom enjoyed by other homeowners—the freedom to sell their properties and recover their equity if they choose to do so. In response to the second comment, HUD believes the existing requirements on resale are restrictive enough, but the final rule, at § 572.130(e), continues to permit applicants to propose additional reasonable restrictions for HUD approval, provided such restrictions do not severely limit the homeowners' ability to realize financial appreciation in the value of their homes and are otherwise reasonable and consistent with the regulations.

Restrictions on resale by initial homeowners—promissory note: A commenter recommended that the rule provide that payments made toward principal will also reduce the amount payable on the promissory note. Another commenter believes the promissory note is too cumbersome and inflexible, and that it is an ineffective mechanism for achieving the goal intended. The commenter recommended that HUD seek statutory relief to provide applicants with flexibility to propose their own resale restrictions, subject to HUD approval. A third commenter believes that when a promissory note is required for subsequent purchasers, the term should be 20 years as required of the first purchaser.

A commenter recommended that if the fair market value (and eventual sales price) of the property drops faster than the reductions in the note, the owner should not be responsible for the difference. Another argued that while a promissory note equal to the difference between the fair market value of the unit and the purchase price may work for units where the post-rehabilitation appraised value is high enough to cover the actual rehabilitation cost, it may not be sufficient for coop or condo units in small properties where the cost of producing the unit will exceed the fair market value of the property. The commenter suggests that the promissory note should cover the amount equal to the difference between the cost of producing the unit and the purchase price.

HUD response: The requirement for a promissory note is statutory under section 445(c) of NAHA, but is only required if the homebuyer's purchase price, as defined in the regulations, is below fair market value or if any other substantial financial assistance in the acquisition of the unit would result in a family receiving an undue profit from sale of their property.

A homeowner will only be responsible for paying back the amount remaining on the promissory note to the extent that proceeds of sale remain after paying off other outstanding debt, other amounts due in connection with the sale (such as closing costs and transfer taxes), and the amount of the owner's equity as computed under § 572.130(c). Deficiency judgments based on the note is not based on the cost of producing the unit because that could result in the family being indebted for an amount greater than the fair market value of the property. In the case where the rehabilitation costs exceed the fair market value, the HOPE 3 grant is designed to cover the additional costs.

Restrictions on resale by initial homeowners—limitation on equity interest: A commenter suggested applying the fair market value to determine appreciation, since the CPI is not tied to housing or location.

HUD response: HUD is attempting to identify a better indicator that is available nationally, as well as at the metropolitan area level.

Restrictions on resale by initial homeowners—use of amounts family may not retain: A commenter recommended that additional costs necessary to administer the HOPE 3 program be an eligible use for recaptured resale proceeds.

HUD response: Recaptured resale proceeds may be used for a number of activities including, but not limited to, providing additional homeownership opportunities and other activities approved by HUD. Section 572.135(c) of the final rule allows the use of up to 15 percent of sale and resale proceeds for administrative costs to carry out the additional homeownership opportunities and other activities approved by HUD.

Nondisplacement: A commenter stated that the Guidelines contain several provisions on displacement and relocation and appear to be inconsistent. The commenter recommended that the final rule provide that no one may be involuntarily displaced due to HOPE.

HUD response: The final rule combines all requirements regarding displacement and relocation into one section at § 572.145, which provides that no person may be displaced from his or her dwelling as a direct result of a homeownership program.

Equal opportunity certifications: A commenter stated that the statement required in the application concerning desegregation orders, agreements, or plans applying to an applicant should also address any orders, consent decrees, agreements, or plans regarding the applicant's compliance with the Fair Housing Act or title VI.

HUD response: The Department interprets this requirement to include the items mentioned by the commenter.

Performance standards: Although not offering any suggestions for performance standards, one commenter responded to the Department's request for comments on what performance standards should be adopted for the program. The commenter encouraged the Department to present the standards, once developed, for public comment rather than simply inserting them in a final rule.

HUD response: The Department believes that the law and regulations contain sufficient performance standards for recipients at this time. However, if the Department decides to establish additional performance standards in the future, it intends to publish a proposed rule for public comment.

Selection Process

Threshold review—implementation grant applications: feasibility of the homeownership program: With regard to the requirement that the proposed program not result in appreciably reducing the number of affordable rental housing units of the type to be assisted that would be available to residents currently residing in the types of properties proposed for use under the program or to families who would be eligible to reside in the properties, one commenter stated that the term "appreciably" is so vague as to be meaningless. The commenter believes there should be no loss of affordable rental units if the State's CHAS coordinates appropriate addition of such units as replacement units. The commenter argued that NAHA contemplates improving the affordable housing situation. Another commenter also expressed concern about the potential loss of existing affordable rental housing stock and would like a clear definition of the terms "locality"

and "market area," arguing that depending on the meaning given, the loss could be greater. A third commenter suggested that applicants should be required to describe their housing markets; the number of standard rental units, rent levels, and the number of affordable to a range of persons eligible for public housing.

HUD response: The term "appreciably" is statutory language. HUD defines the term "appreciably" as no more than 10 percent of the affordable single family rental housing units in the market area being converted to homeownership as a result of application approval (§ 572.100(a)(2)). Typically, properties used in HOPE 3 are not rental properties, so their use in HOPE 3 should have little, if any, impact on rental housing availability. With regard to the third comment, most of this information is required in the CHAS.

Correcting deficiencies in applications: In response to HUD's request for comments on the policy of allowing applicants time to correct any deficiencies in original applications, one commenter responded, and agrees with the policy.

HUD response: The policy of allowing applicants time to correct any technical deficiencies in applications has been retained. Under the final rule, application changes will be permitted only if the application is not fundamentally incomplete, does not require substantial revision as originally received, or does not require revision that would affect the rating of the application. (See § 572.300(c).)

Rating criteria for implementation grants: One commenter recommended that the suitability of a property for homeownership be included as a rating criterion under HOPE 3, as it is in the HOPE 1 and HOPE 2 programs.

HUD response: The Department disagrees with the comment. The "suitability of property for homeownership" is not an appropriate rating criterion for HOPE 3 since it is infeasible for applicants to identify the specific properties they will use in their program at the time of application, as they can in HOPE 1 and 2. Such a requirement would not be feasible, due to the often rapid turnover of properties in government-held inventories.

Rating criteria for implementation grants—local support: A commenter suggested that other organizations, such as homeless coalitions, be notified of all options for the property and provided an opportunity to comment to HUD on the application. The commenter believes that priority should be given to applicants who will serve the poorest households.

HUD response: There is no requirement for site control in HOPE 3, nor does the applicant need to identify which properties it will be purchasing at the time of application. Existing Department procedures for notifying homeless providers of the availability of properties are not changed.

Rating criteria for implementation grants—quality: One commenter believes that under long term affordability, HUD should consider the nature of any resale restrictions proposed by the applicant in addition to those required under the rule.

HUD response: HUD does not interpret continued affordability to apply to keeping the property in the affordable housing stock once it has been sold by the initial homebuyer. However, the final rule has been revised to delete continued affordability as a specific rating criterion, although the applicant's plan for continued affordability will be considered, among other things, under the "Quality for Program Design" criterion.

Rating criteria for implementation grants—fair housing choice: A commenter believes the number of points under this criterion should be 10 or, alternatively, applications that do not propose an increase in housing choice should have up to five points subtracted.

HUD response: The final rule does not contain the number of points that will be assigned each criterion. This information will be contained in the NOFA for each funding round.

Notification of approval for implementation grant: A commenter recommended that the waiting period should be no longer than 45–60 days, arguing that a six-month period is too long to tie up resources and will drive up costs on vacant properties due to rapid deterioration normally seen in these properties.

HUD response: HUD is streamlining the review and rating process to shorten it, but anticipates that the process will still require several months to complete. Section 443(f) of NAHA allows for up to a 180-day period. Since there are no site control requirements for HOPE 3, the applicant will most likely select properties that become available after application approval.

Miscellaneous

Lead-based paint testing and abatement: One commenter related experience with the lead-based paint requirements gained from an FHA single family property disposition demonstration, which had as its goal homeownership for low- and moderate-income buyers. The commenter stated that the 10 percent discount on properties was undone by the cost of compliance ($8,000–$15,000 per unit), and recommended additional discounts equal to the estimated cost to comply.

HUD response: HUD plans to allow a discount of up to 15 percent from the listed sales price on the purchase of five or more properties at a time.

The Department will soon be publishing a rule amending its Single Family Property Disposition rule at 24 CFR part 291 to reflect this policy. Furthermore, if a property is listed on the market and open for bids, the grant recipient may submit a bid on the property at any price it believes is reasonable.

Recordkeeping: A commenter urged that the data collections requirements be revised to include ages and disability status of family members in order to track the different experiences of older, disabled, and younger families. Records should be submitted by sponsors for nonapplicants as well as applicants for homeownership in order to serve those who opt not to purchase their units. The commenter also recommended that the same information on family characteristics be kept for applicants for relocation assistance, and that the success rates of those seeking relocation be documented.

HUD response: The Department believes that the recordkeeping requirements are adequate concerning family characteristics, and does not believe that further regulatory requirements should be imposed. With regard to the second comment, the Department does not understand how recipients could gather information on "nonapplicants." The rule does require recipients to maintain certain records on families who apply for homeownership whether they are selected or rejected (§ 572.425(b)). Concerning the last comment, recipients will need to keep records on relocation assistance to document compliance with the requirement in § 572.145(a).

Abuse or fraud: One commenter expressed concern that the Guidelines did not address the possibility of program abuse or fraud, and recommended that the final rule provide for consequences in instances of family fraud, such as not reporting income or other relevant data used to determine PITI.

HUD response: New language has been included in § 572.225(b) to address program abuse generally, insofar as grant recipients are concerned. Concerning possible homebuyer income reporting fraud, § 572.110(d) of the final

VOL 58 ISS 128 JL 7 1993 UMI

rule requires prospective homebuyers to comply with the procedures for reporting their Social Security numbers and consenting to the disclosure and use of State wage and claim information in 24 CFR parts 750 and 760, which implement 42 U.S.C. 3543 and 3544, respectively. Recipients are expected to use this information to verify homebuyers' incomes and other relevant financial information for purposes of determining homeownership eligibility.

Elderly residents: A commenter questioned the attractiveness and workability of the HOPE programs for very low-income elderly people who make up a substantial portion of the residents of public housing and multifamily housing programs assisted by HUD. The commenter is especially concerned that despite protecting tenants' rights to stay and providing relocation assistance to those who choose to move, older tenants may have their homes jeopardized at a time when both ownership and moving are out of the question.

Hud response: HUD believes the statute and regulations adequately address this issue. If a unit is occupied and the existing tenant does not want to purchase the unit or is not willing to relocate, the unit is not eligible under HOPE 3.

Opportunity to cure financial default: A commenter recommended that the final rule require lenders participating in the program to provide reasonable opportunity to cure a financial default before foreclosing on the property (i.e., temporary relief from payment, reduced payments, restructuring the mortgage).

HUD response: The Department does not believe it is appropriate to place requirements on lenders that may discourage them from participating in the program.

V. Other Matters

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3051–3520), and assigned OMB control number 2506–0128.

Impact on the Economy

The Department received no comments on its previous finding that the Guidelines did not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981 and, therefore, finds no need to update that finding. An analysis of this final rule indicates that it also will not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this final rule does not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule is closely based on statutory requirements and imposes no significant additional burdens on States or other public bodies. The rule does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which HUD will make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Semiannual Agenda

This rule was listed as item number 1398 in the Department's Semiannual Agenda of Regulations published at 58 FR 24382, 24400 on April 26, 1993 under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

(The Catalog of Federal Domestic Assistance program number is 14.240.)

List of Subjects in 24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

In accordance with the reasons as stated in the preamble and under the authority of 42 U.S.C. 3535(d), title 24 of the Code of Federal Regulations is amended as follows:

Appendix C to Subtitle A [Reserved]

1. Subtitle A is amended by removing and reserving Appendix C to subtitle A.

2. Chapter V is amended by adding part 572, to read as follows:

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

Subpart A—General

Sec.

572.1 Overview of HOPE 3.
572.5 Definitions.
572.10 Section 8 assistance.
572.15 Waivers.

Subpart B—Homeownership Program Requirements—Implementation Grants

572.100 Acquisition and rehabilitation of eligible properties; rehabilitation standards.
572.105 Financing the purchase of properties by eligible families.
572.110 Identifying and selecting eligible families for homeownership.
572.115 Transfer of homeownership interests.
572.120 Affordability standards.
572.125 Replacement reserves.
572.130 Restrictions on resale by initial homeowners.
572.135 Use of proceeds from sales to eligible families, resale proceeds, and program income.
572.140 Third party rights.
572.145 Displacement prohibited; protection of nonpurchasing residents.

Subpart C—Grants

572.200 Planning grants.
572.205 Planning grants—eligible activities.

572.210 Implementation grants.
572.215 Implementation grants—eligible activities.
572.220 Implementation grants—matching requirements.
572.225 Grant agreements; corrective and remedial actions.
572.230 Cash and Management Information System.
572.235 Amendments.

Subpart D—Selection Process

572.300 Notice of fund availability; planning and implementation grant applications.
572.305 Selection process for planning grants.
572.310 Selection process for implementation grants.
572.315 Rating criteria for planning grants.
572.320 Rating criteria for implementation grants.

Subpart E—Other Federal Requirements

572.400 Comprehensive Housing Affordability Strategy (CHAS).
572.405 Nondiscrimination and equal opportunity requirements.
572.410 Environmental procedures and standards.
572.415 Conflict of interest.
572.420 Miscellaneous requirements.
572.425 Recordkeeping and reports; audit of recipients.

Authority: 42 U.S.C. 3535(d) and 12891.

Subpart A—General

§ 572.1. Overview of HOPE 3.

(a) *Purpose.* The purpose of the HOPE for Homeownership of Single Family Homes program (HOPE 3) is to provide homeownership opportunities for eligible families to purchase Federal, State, and local government-owned single family properties. HOPE 3 provides grants to eligible applicants to plan and implement homeownership programs designed to meet the needs of low-income first-time homebuyers.

(b) *Scope.* HUD will make planning grants for the purpose of developing the capacity of recipients and assisting them in the preparation of implementation grant applications. HUD will make implementation grants for the purpose of acquiring eligible property, rehabilitating the properties, providing financial assistance to homebuyers to purchase properties, providing homeownership counseling, and other eligible program costs. Recipients of implementation grants must provide matching funds in accordance with § 572.220.

§ 572.5 Definitions.

As used in this part:

Administrative costs means reasonable and necessary costs, as described and valued in accordance with OMB Circular Nos. A–87 or A–122[1] as applicable, incurred by a recipient in carrying out a homeownership program under this part. For purposes of complying with the 15 percent limitation in § 572.215(o), administrative costs do not include the costs of activities that are separately eligible under § 572.215.

Applicant means a private nonprofit organization; a cooperative association; or a public body in cooperation with a private nonprofit organization that applies for a HOPE 3 grant under this part. A cooperative association is an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests to eligible families under a homeownership program.

Comprehensive Housing Affordability Strategy (CHAS) means the housing strategy prepared by a jurisdiction and approved by HUD in accordance with 24 CFR part 91.

Cooperating entity means a private nonprofit organization or public body that the lead applicant has designed in its application to carry out certain functions in the HOPE 3 program. The responsibilities of a cooperating entity must be specified in a memorandum of agreement signed by the lead applicant and the cooperating entity.

Cooperative association means an association organized and existing under applicable State, local, territorial, or tribal law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has not worked full-time full-year in the labor force for a number of years (at least two) but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Eligible family means a low-income family who is a first-time homebuyer.

Eligible property means a single residential property, containing no more than four units, that is owned or held by HUD, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Secretary of Defense, the Secretary of Transportation, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, or any other Federal agency; a State or local government (including any in rem property); or a PHA/IHA (excluding public or Indian housing under the 1937 Act). This definition includes individual condominium units located in multifamily structures owned or held by an eligible source and properties held by institutions within the jurisdiction of the Resolution Trust Corporation. All cooperative units acquired under HOPE 3 must be located in properties containing no more than four units to qualify as eligible property under this part. In the case of two- to four-unit property, only property that may be divided so each unit may be acquired by an eligible family is eligible, except as provided in § 572.115(c). For purposes of this definition, the term State or local government means any entity included in the first sentence of the definition of public body.

First-time homebuyer means an individual and his or her spouse (if any) who have not owned a home during the three-year period before purchase of a home with assistance under this part, except that:

(1) Any individual who is a displaced homemaker may not be excluded from consideration on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(2) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; and

(3) An individual may not be excluded from consideration as a first-time homebuyer under this part on the basis that the individual owns or owned, as a principal residence during such three-year period, a dwelling unit whose structure is:

(i) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(ii) Not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

Homeownership program means a program for homeownership meeting the requirements under this part. The program must provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this part. All eligible properties assisted under the program must be initially acquired by eligible families.

[1] See § 572.420(a) concerning the availability of OMB Circulars.

VOL 58 ISS 128 JL 7 1993 UMI

HUD means the United States Department of Housing and Urban Development.

IHA means an Indian Housing Authority, which means any entity that—

(1) Is authorized to engage in or assist in the development or operation of low-income housing for Indians under the 1937 Act; and

(2) Is established by exercise of the power of self-government of an Indian tribe independent of State law; or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Lead applicant means an eligible applicant designated in a HOPE 3 application to assume legal responsibility as the recipient and execute the grant agreement.

Lease-purchase means

(1) An agreement, enforceable under State (or territorial) and local law, between the recipient or its designee and an eligible family under which the family:

(i) Obtains the right to occupy a unit in an eligible property, subject to the payment of rent and other reasonable lease conditions, for a period of not more than two years, except as provided in § 572.115(a)(2); and

(ii) At the end of such two years has the right to purchase the unit under the terms stated in the lease-purchase agreement, including the completion of any additional rehabilitation required during the lease-purchase period.

(2) A lease-purchase agreement qualifies as a transfer of the unit to the eligible family for purposes of the deadline for transfer in § 572.115(a), but it is not otherwise an "ownership interest" under this part. The interest that the family acquires at the end of the two-year lease-purchase period must be an ownership interest under this part, and the terms and conditions of the purchase of such interest must meet the affordability requirements of this part.

Low-income family means a family or individual qualifying as a low-income family under 24 CFR part 813 (where the recipient is not a PHA/IHA), part 913 (where the recipient is a PHA), or part 905 (where the recipient is an Indian tribe or IHA). A low-income family is generally defined as a family whose annual income does not exceed 80 percent of median income for the area, as determined by HUD with adjustment for family size. HUD may establish income limits higher or lower than 80 percent of median income for the area on the basis of its finding that such variations are necessary because of prevailing construction costs or unusually high or low family incomes.

NAHA means the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 stat. 4079, as amended.

1937 Act means the United States Housing Act of 1937.

NOFA means Notice of Fund Availability.

Ownership interest means ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD pursuant to § 572.115(b).

PHA means a public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing under the 1937 Act.

Private nonprofit organization means any nonprofit organization that

(1) Is organized and exists under applicable Federal, State, territorial, local, or tribal law;

(2) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(3) Has a voluntary board;

(4) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD;

(5) Practices nondiscrimination in the provision of assistance;

(6) Is a tax exempt entity under Section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)), or for a private nonprofit organization in the Commonwealth of Puerto Rico, is a tax-exempt entity under Puerto Rico law;

(7) Is privately controlled and has a governing body that is controlled 51 percent or more by private individuals acting in a private capacity. An individual is considered to be acting in a private capacity if the individual is not an employee of a public body, is not appointed by or acting as the representative of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Program income means income earned from the program as described in 24 CFR 85.25. Notwithstanding anything to the contrary in 24 CFR 85.25, program income in HOPE 3 does not include proceeds from the sale and resale of properties. Such sale and resale proceeds, and interest earned thereon by the recipient or its designee are governed by § 572.135(a)-(c).

Public body means any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions that is created by or pursuant to State, territorial, local, or tribal law, including a State or local Housing Finance Agency; and any PHA or IHA. For purposes of this definition, an organization that meets the requirements of paragraphs (1) and (2) of the definition of private nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

Recipient means the lead applicant that is approved by HUD to receive a HOPE 3 grant and is legally responsible for the grant.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2) Has one or more minor children for whom the individual has custody or joint custody; or is pregnant.

§ 572.10 Section 8 assistance.

Assistance under section 8 of the 1937 Act and other rental assistance to the homebuyer will be terminated not later than the date an eligible family acquires an ownership interest in an eligible property or executes a lease-purchase agreement for the property.

§ 572.15 Waivers.

Upon determination of good cause, the Assistant Secretary for Community Planning and Development may waive any provision of this part, not otherwise required by law, except that the provisions that establish deadlines for receipt of any applications or modifications to applications and the cap on planning grants as specified in the NOFA may not be waived. Each such waiver must be in writing and must be supported by documentation of the pertinent facts and grounds. HUD periodically will publish notice of granted waivers in the **Federal Register**.

Subpart B—Homeownership Program Requirements—Implementation Grants

§ 572.100 Acquisition and rehabilitation of eligible property; rehabilitation standards.

(a) *Minimum number of properties.* (1) Each homeownership program must involve acquisition of at least ten units in eligible properties by eligible families.

(2) A homeownership program may not result in appreciably reducing in the locality the number of affordable rental housing units of the type to be assisted that would be available to residents currently residing in the types of properties proposed for use under the program or to families who would be eligible to reside in the properties. HUD will determine whether the application complies with this criterion if it determines that no more than 10 percent of the affordable single-family (one to four units) rental housing units in the market area would be converted to homeownership as a result of approval of the application.

(b) *Maximum acquisition costs.* The cost of acquiring an eligible property (by a recipient or other entity for transfer to eligible families or by an eligible family from a recipient or directly from an eligible source) may not exceed the as-is fair market value of the property, plus reasonable and customary closing costs charged for comparable transactions in the market area. The as-is fair market value of a property must be determined in accordance with a recent appraisal conducted under procedures consistent with appraisal standards published by The Appraisal Foundation in the current edition of "Uniform Standards of Professional Appraisal Practice."

(c) *Maximum cost of acquisition and rehabilitation.* The cost of acquisition and rehabilitation paid for from grant funds or credited as match may not exceed 80 percent of the maximum amount that may be insured in the area under section 203(b) of the National Housing Act, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(d) *Rehabilitation standards.* (1) The recipient is responsible to assure that rehabilitation of eligible property meets local codes applicable to rehabilitation work in the jurisdiction (but not less than the housing quality standards established under the Section 8 Certificate Program, described in 24 CFR 882.109). Rehabilitation must also include work necessary to meet applicable Federal requirements, including applicable lead-based paint testing and abatement requirements, described in § 572.420(h), and accessibility requirements for persons with disabilities, described in § 572.405(b). Rehabilitation may include energy conservation-related repairs and improvements and the repair or replacement of major systems in danger of failure.

(2) The property must be rehabilitated to a level that makes it marketable for homeownership in the market area to families with incomes at or below 80 percent of the median for the area. Luxury items (fixtures, equipment, and landscaping of a type or quality that substantially exceeds that customarily used in the locality for properties of the same general type as that being rehabilitated) are not eligible expenses. HUD reserves the right to disapprove improvements or amenities to be paid for from nonprogram funds that it determines are unsuitable for the HOPE 3 program.

(3) Rehabilitation costs must comply with the cost standards established by HUD (see paragraph (c) of this section for applicable cost limitations covering both acquisition and rehabilitation). If improvements are made to an eligible property beyond those that qualify as eligible costs, the applicant must assure that the entire cost of the excess improvements will be covered by funds other than the HOPE 3 grant and any amounts contributed toward the match, and that the affordability of the property will not be impaired.

(4) Higher standards may be proposed by the applicant or required by lenders.

(5) The applicant must adopt written rehabilitation standards.

(e) *Rehabilitation and transfer of units.* (1) The unit must be free from any defects that pose a danger to life, health, or safety before transfer of an ownership interest in the unit to the family or occupancy of a unit by an eligible family under a lease-purchase agreement. The recipient must inspect, or ensure inspection of, each unit to determine that it does not pose an imminent threat to the life, health, or safety of residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials.

(2) The unit must, not later than 2 years after transfer of an ownership interest in the unit to an eligible family, or execution of a lease-purchase agreement for the unit, meet minimum rehabilitation standards under paragraph (d)(1) of this section. The recipient must inspect, or ensure inspection of, each unit to determine that it meets the rehabilitation standards required under paragraph (d)(1) of this section.

§ 572.105 Financing the purchase of properties by eligible families.

(a) *Types of financing.* (1) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; or other sources of financing (subject to requirements that apply to those sources), including, but not limited to, conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as Veterans Administration (VA), Farmers Home Administration (FmHA), and Resolution Trust Corporation (RTC) seller-assisted financing.

(2) *FHA single family mortgage insurance requirements.* All regulatory requirements and underwriting procedures established for FHA single family mortgage insurance apply to mortgages insured by FHA on properties assisted under the HOPE 3 program. Exceptions in the regulations specifically for homebuyers under the HOPE 3 program are:

(i) The eligible family/mortgagor may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD (24 CFR 203.19(b) and 234.28(c));

(ii) A second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant (24 CFR 203.32(b) and 234.55(b)); and

(iii) Certain restrictions on conveyance may be permissible. Property with restrictions that do not comply with FHA regulations will be ineligible for FHA mortgage insurance, notwithstanding HUD approval under § 572.130(e).

(b) *Financial assistance to homebuyers.* Recipients may provide assistance to, or on behalf of, eligible families to make acquisition and rehabilitation of eligible properties affordable. This may include interest rate reductions ("interest rate buy-downs"), payment of all or a portion of closing costs, down payments, mortgage insurance premiums, and other expenses, and other forms of assistance approved by HUD. No mechanisms to financially assist homebuyers that would require grant recipients to make lump sum deposits of HOPE 3 grant funds will be permitted.

VOL 58 ISS 128 JL 7 1993 UMI

§ 572.110 Identifying and selecting eligible families for homeownership.

(a) *Selection procedures.* (1) Recipients must establish written equitable procedures for identifying and selecting eligible families to participate in the homeownership program, consistent with the affordability standards in § 572.120. Except for Indian tribes and IHAs as described in § 572.405(a)(2), the recipient must have a procedure to carry out its affirmative fair marketing responsibilities, described in § 572.405(e), that apply whenever homeownership opportunities are made available to other than current residents of the property. These procedures must include specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach.

(2) The written selection procedures must provide for selection only of families that are creditworthy and have the financial capacity to handle the anticipated costs of homeownership. Any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program must be required to resolve any deficiency before being selected for homeownership.

(b) *Preferences.* (1) Recipients must give a first preference for selection for the program otherwise qualified residents who legally occupied units on the date the implementation grant application was submitted to HUD and to current residents at the time the properties are selected. If the unit occupied by a former resident on the date the implementation grant application was submitted to HUD is occupied by a different resident at the time of property selection, a vacant unit under this program must be offered to the former resident at the earliest possible time.

(2) In the case of vacant properties for which the preferences in paragraph (b)(1) of this section do not apply, recipients must give a first preference to otherwise qualified eligible families who reside in public or Indian housing under the 1937 Act. Recipients must use whatever measures are considered appropriate to inform residents of public and Indian housing developments within the housing market area of the preference, such as informing resident councils, PHAs, and IHAs, or other appropriate measures.

(3) Recipients must give a second preference to otherwise qualified eligible families who have completed participation in one of the following economic self-sufficiency programs: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, JOBS, and any other Federal, State, territorial, or local program approved by HUD as equivalent.

(c) *Responsibilities of selected families.* (1) Each eligible family selected for homeownership must certify at the time it acquires an ownership interest in the unit (or enters into a lease-purchase agreement for the unit) that it intends to occupy the unit as its principal residence during the six-year period from the date it acquires ownership interest in the unit, unless the recipient determines that the family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest. The family may permit others to rent space (such as a basement area or a spare bedroom) in the unit occupied by the family as its principal residence. (See § 572.115(c) concerning the rental of units in a multi-unit property purchased by a homebuyer under this part.)

(2) Any homebuyer that violates the agreement made under paragraph (c)(1) of this section shall be subject to penalties as provided in the transfer documents, as prescribed by HUD.

(3) Each eligible family selected for the program must participate in counseling and training of homebuyers and homeowners regarding the general rights and responsibilities of homeownership.

(d) *Social security numbers; wage and claims information.* As a condition of eligibility for homeownership under this part, at the time a family applies for howeownership, the recipient (or other appropriate entity) must:

(1) Require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(2) Require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

(e) *Notification of rejected applicant families.* Recipients or another appropriate entity must promptly notify in writing any rejected applicant family of the grounds for any rejection.

§ 572.115 Transfer of homeownership interests.

(a) *Deadline for transfer.* (1) All units in eligible properties (including in rem properties) must be transferred to eligible families within two years of the effective date of the implementation grant agreement, except as otherwise provided for multi-unit properties in paragraph (c) of this section. The transfer must involve either:

(i) Acquisition by an eligible family of an ownership interest in a unit; or

(ii) Execution of a lease-purchase agreement for a unit.

(2) The HUD Field Office may approve a request for an extension of a period not to exceed one year of the deadline in paragraph (a)(1) of this section on a per program or per unit basis, provided that the Field Office determines that all program activities will be completed in accordance with the timing requirements of § 572.210(f) (including any extension permissible thereunder).

(b) *Form of ownership.* (1) Forms of ownership interests acquired by eligible families under this part may include fee simple ownership (including condominium ownership), cooperative ownership, or another form of ownership interest proposed and justified by the applicant and approved by HUD. HUD will not approve other forms of ownership that would substantially limit the ability of homeowners to realize financial appreciation in the value of their homes as determined by HUD. The type of ownership interest must be consistent with any applicable State (or territorial), local, or tribal law.

(2) The ownership interest may be subject only to:

(i) The restrictions on resale required or approved under § 572.130;

(ii) Mortgages, deeds of trust, or other liens or instruments securing the eligible family's purchase money financing as approved by the recipient; or

(iii) Any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest except as otherwise approved by the recipient. In approving the terms of an eligible family's purchase money financing or any other encumbrances on the property under paragraphs (b)(2) (ii) and (iii) of this section, the recipient shall not approve financing terms that do not comply with the affordability standards in § 572.120, or mortgage terms and conditions or other encumbrances that in effect constitute resale restrictions that would not be approved by HUD under this part.

(3) Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

(c) *Transfer of multi-unit properties.* (1) In the case of a two-to-four unit property, only property that may be divided so that an ownership interest in each unit may be acquired by an eligible

family is eligible. HUD may grant an exception to this requirement on a program-by-program basis when it determines that such an exception will serve to further the purposes of the HOPE 3 program.

(2) HUD Headquarters will consider and may approve an exception under the following circumstances:

(i) The reasonably projected net rental income will be included in the determination of the appraised value of the property at the time of the homebuyer's purchase;

(ii) The rent charged by the owner will not exceed the Fair Market Rent established by HUD for the area;

(iii) The recipient will provide the homebuyer with counseling and training in property management, and will approve the form of lease used by the homebuyer; and

(iv) The recipient will include the family's potential net rental income in calculating the family's initial affordability in accordance with § 572.120 of this part.

§ 572.120 Affordability standards.

(a) *Initial affordability.* (1) The monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is required under the financing for acquisition of a unit must be not less than 20 percent and not more than 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813 (where the recipient is not a PHA/IHA), part 913 (where the recipient is a PHA), or part 905 (where the recipient is an Indian tribe or IHA), as appropriate. HUD may approve a justified request for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high.

(2) The 30 percent cap on monthly payments includes closing costs only if closing costs are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition.

(3) Applicants are encouraged to consider the additional monthly costs of utilities and other monthly housing costs, such as condominium and cooperative fees, in determining whether the family can afford to purchase a unit.

(b) *Continued affordability.* The recipient must develop a plan demonstrating reasonable efforts to ensure continued affordability by homeowners in the eligible property. Financing that would impair the continued affordability of the property for homebuyers, such as a mortgage that is not fully amortizing (*e.g.*, a "balloon" mortgage) may not be used. The plan should take into account such program features as long-term financing at reasonable terms, energy conservation, and improvements that will entail low-cost maintenance.

§ 572.125 Replacement reserves.

(a) *Purpose.* A single replacement reserve may be established for the homeownership program only if HUD determines it is necessary to prevent severe financial hardship to families caused by the failure of a major system or component of the property that would render the unit substandard. Initially, the reserve must be justified by the applicant and approved by HUD as part of the program budget in the application or an amended application.

(b) *Need for reserve account.* In determining the need for a replacement reserve, the applicant or recipient must demonstrate that the financial status of eligible families is insufficient to meet the needs for which the reserve is established, and that the amount proposed for the reserve is reasonable, taking into account the following factors:

(1) The size of the implementation grant and the amount of matching contributions;

(2) The availability of insurance, and the home maintenance and repair capabilities of the families; and

(3) The condition and age of the properties and each of their major systems and components (including at least the heating, plumbing, and electrical systems, the roof, foundation, windows, exterior walls, and common area, if any).

(c) *Drawdown of reserve funds.* Replacement reserve funds may only be drawn down under the Cash and Management Information System when specifically needed to assist a homeowner. At time of program closeout, all funds approved for a replacement reserve may be drawn down to fund a reserve account. The account may not exceed six years estimated replacement cost needs for the properties transferred under the homeownership program.

(d) *Administration of the reserve account.* The recipient must identify the entity that will administer the replacement reserve account at time of program closeout. The entity responsible for administering the account must be bonded and approved by HUD. The account must be interest bearing, if possible, and interest earned thereon must be used for the purposes for which the account is established. Unused funds at the end of the term of the account must be treated as program income in accordance with § 572.135(d).

§ 572.130 Restrictions on resale by initial homeowners.

(a) *Right to transfer.* A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (b) of this section; the requirement for the purchaser to execute a promissory note, if required under paragraph (d) of this section; and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section.

(b) *Right to purchase.* (1) Where a cooperative has jurisdiction over the unit, it has the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount and on the terms specified in a firm contract between the homeowner and a prospective buyer. The cooperative association has 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(2) If no cooperative has jurisdiction over the unit and if the prospective buyer is not a low-income family, the recipient or a PHA/IHA with jurisdiction for the area in which the unit is located, whichever is specified in the documents under which the initial family acquires an ownership interest in the unit, has the prior right to purchase the ownership interest in the unit for the amount and on the terms specified in a firm contract between the homeowner and a prospective buyer. The recipient or PHA/IHA has 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(3) Where a recipient, cooperative, or PHA/IHA exercises a right to purchase, it must resell the unit to an eligible family promptly.

(4) Unless otherwise provided in the property transfer documents, none of the provisions of paragraph (b) of this section apply in the case of liquidation of a security interest in the property. If FHA has insured a mortgage on the property, the provisions of paragraph (b) of this section shall not apply upon occurrence of an event requiring termination under 24 CFR 203.41(c)(2) or 234.66(c)(2).

(c) *Limitation on equity interest an initial homeowner may retain from sale during first six years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner

recovers the equity interest in the property. With respect to any sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under this paragraph. Any excess must be distributed as provided in § 572.135(b). The amount of equity an initial homeowner has in the property is determined by computing the sum of the following:

(i) The contribution to equity paid by the family (such as any downpayment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements (not including normal or routine maintenance) installed at the expense of the family during the family's tenure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor (or the value of the sweat equity); and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) or other HUD approved index against the contribution to equity under paragraphs (d) (i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Promissory note.* (1) If the purchase price of the unit (adjusted, if applicable as described in this paragraph) paid by the initial homebuyer is less than the fair market value of the property (based on an appraisal of the value of the unit after rehabilitation to applicable program standards conducted in accordance with the appraisal requirements in § 572.100(b)), the initial homeowner must, at closing, execute a nonamortizing, nonrecourse, noninterest-bearing promissory note, in a form acceptable to HUD, equal to the difference between such fair market value of the unit and the adjusted purchase price, together with a security instrument securing the obligation of the note and recorded in local land records or other applicable system of recordation appropriate to the type of security interest being recorded. The note must be payable to the recipient or other entity designated in the approved homeownership plan. In determining the amount of the promissory note and for that purpose only, the purchase price must be adjusted by deducting all substantial amounts of financial assistance with respect to the family's acquisition or rehabilitation of the unit that would result in an undue profit to the family if it were to sell the unit at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for an additional restriction on return to the homeowner on reasales during the first six years.) For this purpose, "substantial financial assistance" includes all forms of assistance or subsidy from HOPE 3 resources that reduce the cash return (sales proceeds) received by the recipient for the unit below its appraised after-rehabilitation fair market value by more than a total of $4,000, including (without limitation) discounted purchase prices, downpayment assistance, and rehabilitation or purchase money grants or loans that are not repayable on an amortizing basis. Financing to homeowners provided from HOPE 3 resources may not be assumed by subsequent homebuyers.

(2) With respect to a sale by an initial homeowner, the note must require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(3) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note must be reduced by $\frac{1}{180}$ of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

Example: If the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership), $\frac{84}{180}$ (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(4) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value (determined in accordance with the appraisal requirements in § 572.100(b)), the purchaser must also execute at closing a promissory note and mortgage (to be recorded as stated in paragraph (d)(1) of this section) payable to the recipient or its designee, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note must be the period remaining of the original 20-year period. The note must require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note must be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage must be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

Example: If the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12), $\frac{72}{192}$ (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership until the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(e) *Additional restrictions.* Notwithstanding paragraph (a) of this section, an applicant may propose in its application, and HUD may approve, additional reasonable restrictions on the resale of units under the program. HUD does not encourage additional restrictions, but HUD approval will be based on a review of the individual circumstances. However, HUD will not approve restrictions that it determines will substantially limit the ability of homeowners to realize financial appreciation in the value of their homes.

§ 572.135 Use of proceeds from sales to eligible families, resale proceeds, and program income.

(a) *Proceeds from sales.* The recipient or another entity approved by HUD must use the proceeds, if any, from the initial sale for costs of their HOPE 3 program, including additional homeownership opportunities eligible under the HOPE 3 program, improvements to properties under the HOPE 3 program, business opportunities for low-income families participating in the HOPE 3 program, supportive services related to the HOPE 3 program, and other activities approved by HUD, either as part of the approved application or later on request. Such proceeds include the full consideration received by the recipient or other entity for the property, including principal and interest on purchase money loans from HOPE 3 funds or match.

(b) *Resale proceeds.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under § 572.130 (c), (d), and (e) must be paid to the recipient, or another entity approved by HUD, for use for additional homeownership opportunities eligible under the HOPE 3 program, improvements to properties under the HOPE 3 program, business opportunities for homeowners under the HOPE 3 program, supportive services related to the HOPE 3 program, and other activities approved by HUD in the approved homeownership program or later on request. The remaining 50 percent must be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 3 program, subject to any limitations contained in appropriations Acts.

(c) *Requirements for use of sale and resale proceeds.* Sale and resale proceeds must be committed for approved activities within one year of receipt but may not be commingled with HOPE 3 grant or match funds being expended on approved activities. All sale and resale proceeds must be separately accounted for by the recipient, and 50 percent of all resale proceeds received by the recipient must be returned to HUD, as described in paragraph (b) of this section. Recipients may use up to 15 percent of their sale and resale proceeds for administrative expenses to expand their HOPE 3 program and provide additional homeownership opportunities. Recipients must retain records on the use of these funds to the same level of detail as required of grant funds under the HOPE 3 system or whatever records HUD otherwise prescribes. The recipient, and any other entity approved by HUD to administer the sale and resale proceeds, remain responsible to comply with the requirements of this part with respect to such proceeds, notwithstanding closeout of the HOPE 3 grant.

(d) *Program income.* Any program income, as defined in § 572.5, received by the recipient must be treated as such in accordance with the requirements of 24 CFR part 85.

§ 572.140 Third party rights.

The requirements under this part regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner are judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE 3 program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions, by affected low-income families, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence are entitled to reasonable attorney fees upon prevailing in any such judicial action.

§ 572.145 Displacement prohibited; protection of nonpurchasing residents.

(a) *Displacement prohibited.* (1) No person may be displaced from his or her dwelling as a direct result of a homeownership program under this part. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. Each resident of an eligible property on the date the application for an implementation grant was submitted to HUD and each resident at the time the property is selected must be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements. If the resident does not qualify or does not elect to move, the property is not eligible. The protections provided to residents under this section do not apply to the former owner of the property if the property is acquired from him or her as a result of a tax or mortgage foreclosure.

(2) In addition to any applicable sanctions under the grant agreement, a violation of paragraph (a)(1) of this section may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and governmentwide implementing regulations at 49 CFR part 24.

(b) *Relocation assistance for residents who elect to move.* The recipient must offer each nonpurchasing resident who elects to move relocation assistance in accordance with the approved homeownership program. The program must provide, at least, the following assistance:

(1) Advisory services, including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(2) Payment for actual, reasonable moving expenses; and

(3) Financial assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if the family is provided the opportunity to relocate to suitable, decent, safe, and sanitary housing for which the monthly rent and estimated average utility costs do not exceed the greater of 30 percent of the person's income or the person's monthly rent before relocation and the estimated average monthly utility costs. The homeownership program must specify the period for which replacement housing assistance will be provided to persons who do not receive assistance through a Section 8 rental certificate or voucher or other housing program subsidy.

(c) *Temporary relocation.* The recipient must provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and must reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(d) *Notice of relocation assistance.* As soon as feasible, each recipient must give each resident of an eligible property a written description of the applicable provisions of this section.

Subpart C—Grants

§ 572.200 Planning grants.

(a) *General authority.* HUD will make HOPE 3 planning grants to applicants for the purpose of developing HOPE 3 homeownership programs under this part. Applications will be selected in a national competition in accordance with the selection process and NOFA described in subpart D of this part. The maximum amount of a planning grant will be specified in the NOFA.

VOL 58 ISS 128 JL 7 1993 UMI

(b) *Overall limitations.* (1) If two or more fundable applications for planning grants propose substantially the same general locations, the highest ranking application will be selected. However, HUD may reduce the scope of an application if the size of the jurisdiction is sufficiently large to justify approval of more than one grantee. HUD may also approve a planning grant in an area where an implementation grant already exists or is being approved in the current funding round as long as the program that could result from the planning grant will not lead to substantial competition among grant recipients for eligible properties. However, if a determination is made that the approval of both a planning grant and implementation grant will lead to substantial competition for eligible properties, only the implementation grant will be approved.

(2) A single applicant may apply for more than one planning in response to any NOFA, but HUD will not approve more than one planning grant for any one applicant.

(3) An applicant who has previously received a HOPE 3 planning grant or implementation grant is not eligible for an additional HOPE 3 planning grant.

(4) No amendments to increase previously approved grant amounts are allowed.

(c) *Scope of program.* (1) Applications that identify a public body as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications that identify a private nonprofit organization as the entity to execute the grant agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State, except for Indian tribes or IHAs whose jurisdiction covers more than one State.

(2) An applicant must demonstrate that at least 10 units in eligible properties will be available for use in the area proposed for the program through evidence of current availability or evidence of availability during the 12-month period prior to submission of the application.

(d) *Deadline for completion of activities.* (1) Activities under a planning grant, including the requirements outlined in paragraph (d)(2) of this section, must be carried out within 12 months of the effective date of the planning grant agreement. HUD Field Offices may extend the period up to 60 days. HUD may deobligate amounts not drawn down by the approved completion date. HUD Headquarters may approve a request for an additional extension for costs related to the preparation of an implementation grant application where it determines an extension is necessary.

(2) Each recipient must submit either:

(i) An implementation grant application by the deadline date stated in a HOPE 3 NOFA issued within 12 months of the effective date of the planning grant agreement; or

(ii) A report on activities undertaken under the planning grant agreement, including the recipient's determination whether it is feasible for it to undertake a homeownership program and an assessment of the factors used to make the determination.

§ 572.205 Planning grants—eligible activities.

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs under this part. No additional activities may be approved. Applicants are not required to request funding for each type of eligible activity. Only costs incurred on or after the effective date of the grant agreement qualify for funding under this part. Activities eligible under a planning grant are:

(a) *Assessing stock of eligible properties.* Assessing the availability on an ongoing basis of eligible properties of the appropriate condition, type, and price in specific neighborhoods or areas to implement a homeownership program. For example, planning grants may be used to fund the costs of obtaining and analyzing lists of potentially eligible properties from appropriate Federal, State, and local agencies and inspecting representative properties, including inspection for the purpose of evaluating potential lead-based paint hazards. Technical studies to evaluate environmental problems and to determine whether mitigation is feasible are eligible.

(b) *Training and technical assistance for grant recipients.* Training of and technical assistance to grant recipients related to development of a specific homeownership program. This may include, for example, courses in real estate financing and examining alternative approaches for carrying out a homeownership program. Training and technical assistance may only be provided by qualified entities other than the recipient and may not be provided to any individual or group other than the grant recipient and any cooperating entity named in the approved application.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under § 572.120 and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.* Preliminary architectural and engineering work, including developing estimates of the amount of work necessary to support rehabilitation of a typical unit that may be acquired by an eligible family under the program and other cost estimates to be included in a HOPE 3 implementation grant application.

(e) *Identification of counseling and training curricula and sources.* Identification of course curricula and sources that can provide homebuyer and homeowner counseling and training, including such subjects as personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where eligible families will do some of the rehabilitation ("sweat equity")), and general rights and responsibilities of a homeowner. Development of new curricula is not an eligible cost.

(f) *Economic development planning.* Planning for economic development activities that are eligible implementation grant activities under § 572.215. The aggregate amount of planning and implementation grants that may be used for economic development activities related to any one HOPE 3 program may not exceed $250,000.

(g) *Security plans.* Development of security plans. This activity may cover, where necessary, such costs as assessing the need for negotiating agreements with local law enforcement agencies and for planning security systems.

(h) *Application for an implementation grant.* Preparation of an application for an implementation grant to carry out a homeownership program under this part.

(i) *Administrative costs.* Administrative costs necessary to carry out the eligible activities specified in the approved application.

§ 572.210 Implementation grants.

(a) *General authority.* HUD will make implementation grants to HOPE 3 applicants for the purpose of carrying out homeownership programs approved under this part. Applications will be selected competitively within Regional allocations in accordance with the selection process described in subpart D of this part. The maximum amount of an implementation grant will be specified in the NOFA.

(b) *Regional fund allocations.* HUD will allocate funding authority for each of the 10 HUD Regions by formula based on three equally weighted factors. The

factors in paragraphs (b) (1) and (2) of this section measure the need for the program and the factor in paragraph (b)(3) of this section measures the supply of eligible property available for the program. The factors are:

(1) The number of rental units in the Region, as determined by the Bureau of the Census, occupied by persons with incomes at or below the poverty level (half of the weight for this factor), and the total number of occupied rental units in the Region (for the other half);

(2) The number of rental units in the Region that are unsuitable because:

(i) The units lack or have incomplete plumbing;

(ii) The units are occupied by residents who are paying more than 30 percent of adjusted income toward rent (including utilities);

(iii) The units are occupied by an average of more than one person in the household per room; or

(iv) The units lack or have incomplete kitchens; and

(3) The number of single family properties (with up to four units, including condominium units) in the Region owned by HUD, the Resolution Trust Corporation, the Department of Veterans Affairs, and the Department of Agriculture.

(c) *Overall limitations.* (1) HUD may approve more than one grant for a program to be carried out in a jurisdiction, so long as different applicants are the grantees and the size of the jurisdiction is sufficiently large to justify approval of more than one grantee. A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than the maximum grant amount specified in the NOFA.

(2) Applicants must propose a geographic scope that is reasonably related to the number of units and total cost of the proposed program.

(3) No amendments to increase previously approved grant amounts are allowed.

(4) HUD reserves the right to reject one or more fundable applications or adjust their proposed geographic scope when it finds substantial competition for eligible properties is likely to result from approval of all applications proposing to serve substantially overlapping areas.

(d) *Scope of program.* (1) Applications that identify a public body as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications that identify a private nonprofit organization as the entity to execute the grant agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State, except for Indian tribes or IHAs whose jurisdiction covers more than one State.

(2) An applicant must demonstrate that at least 10 units in eligible properties will be available for use in the area proposed for the program through evidence of current availability or evidence of availability during the 12-month period prior to submission of the application.

(e) *Matching requirement.* (1) Except as provided in paragraph (e)(2) of this section, recipients of implementation grants must assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant will be provided from non-Federal sources to carry out the homeownership program. Eligibility requirements for matching contributions are described in § 572.220.

(2) Where the recipient is an IHA, and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under paragraph (e) of this section and § 572.220 will not apply.

(f) *Deadline for completion of activities.* A recipient must spend all implementation grant amounts within four years from the effective date of the grant agreement. The HUD Field Office may approve a request to extend the deadline not to exceed six months. HUD Headquarters may approve a request to extend the deadline up to six additional months for the completion of eligible activities, where it determines an extension is necessary.

§ 572.215 Implementation grants—eligible activities.

Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out a homeownership program under this part. Only costs incurred on or after the effective date of an implementation grant agreement qualify for funding under this part. Eligible activities include:

(a) *Acquisition of eligible properties by the recipient. Acquisition of eligible properties for the purpose of transferring ownership interests to eligible families in a homeownership program under this part, in accordance with § 572.100. (Where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program funds may not be used for acquisition of the property for the program. However, if the property is owned by an eligible source, it may be donated as match in accordance with § 572.220(b)(4).)*

(b) *Recipient closing costs.* Customary and reasonable closing costs of the buyer associated with the purchase of eligible properties under the program.

(c) *Financial assistance to homebuyers.* Provision of assistance to families to make acquisition and rehabilitation of eligible properties affordable, in accordance with § 572.105(b).

(d) *Rehabilitation.* Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards and cost limitations established by HUD in § 572.100.

(e) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections, including inspections for the purpose of evaluating potential lead-based paint hazards.

(f) *Relocation.* Relocation of residents in eligible properties who elect to move, in accordance with § 572.145(b).

(g) *Temporary relocation of homebuyers.* Temporary relocation of residents during rehabilitation, in accordance with § 572.145(c).

(h) *Legal fees.* Customary and reasonable costs of professional legal services.

(i) *Replacement reserves.* A single replacement reserve for the properties under the program if necessary, in accordance with § 572.125.

(j) *Homebuyer outreach and selection.* Reasonable and necessary costs of marketing the program to potential homebuyers and of identifying and selecting homebuyers under the program. These costs may include costs related to implementing the affirmative fair housing marketing strategy required under § 572.110.

(k) *Counseling and training.* Counseling and training of only those homebuyers (and their alternates) and homeowners selected under the homeownership program. This may include such subjects as personal financial management, home maintenance, home repair, construction skills (especially where the eligible family will do some of the rehabilitation), property management for owners of multi-unit properties, and the general rights and responsibilities of homeownership.

(l) *Property management and holding costs.* Reasonable and necessary costs related to properly maintaining and securing eligible properties after

acquisition or donation and before sale to an eligible homebuyer. These costs may include property insurance expenses, security costs, property taxes, utility charges, and other costs related to sound property management of recipient-owned properties before sale under the program. These costs may not be charged relative to eligible properties donated to the program by the recipient or another entity that HUD determines does not have an "arm's length" relationship with the recipient.

(m) *Recipient training needs.* Defraying costs for ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(n) *Economic development.* Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program. The economic development activities must be directly related to the homeownership program, and may only benefit families and individuals who are homeowners or who have been selected as homebuyers under the program. These costs are limited to job training or retraining and day care costs of those participating in job training and retraining activities approved under the HOPE 3 program. The recipient must enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers and homeowners to be assisted. The aggregate amount of planning and implementation grants that may be used for economic development activities related to any one program may not exceed $250,000.

(o) *Administrative costs.* Reasonable and necessary costs, as described and valued in accordance with the OMB Circular Nos. A–87 or A–122, as applicable, incurred by a recipient in carrying out the HOPE 3 program. The total amount that may be spent on administrative activities from the implementation grant and any contribution toward the match may not exceed 15 percent of the amount of the grant. For purposes of complying with the 15 percent limitation, administrative costs do not include the cost of activities that are separately eligible under this section.

(p) *Other activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them.

§ 572.220 Implementation grants—matching requirements

(a) *General requirements.* (1) Each recipient must assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. (See § 572.210(e) for an exception for certain IHAs to the matching requirements.) Amounts contributed to the match must be used for eligible activities or in accordance with the requirements of this section.

(2) All contributions toward eligible activities to be counted toward the match must be provided no later than the deadline for completion of program activities established in accordance with § 572.210(f), except as permitted under paragraphs (b)(1)(iv) and (b)(3) of this section.

(b) *Form.* Contributions may only be in the form of:

(1) *Cash contributions.* (i) Cash contributions from non-Federal resources contributed permanently for uses under the HOPE 3 program by the applicant, non-Federal public entities, private entities, or individuals, except that a cash contribution in the form of a down payment made by an eligible family may not count as a matching contribution. Funds will be considered permanently contributed if all principal, interest, and any other return on the contribution are used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may include:

(A) Contribution of trust funds held by Federal agencies for Indian tribes;

(B) PHA section 8 operating reserve funds, where approved by HUD;

(C) Income from a Federal grant earned after the end of the award period if no Federal programmatic requirements govern the disposition of the program income (*e.g.*, repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), the Housing Development Grant Program (24 CFR part 850), and the Rental Rehabilitation Program (RRP) when all RRP grant years of participation by an RRP recipient have been closed out by HUD);

(D) Amounts, determined in accordance with paragraph (b)(1)(iv)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its affordable housing program, so long as the application is approved within 30 days of HUD's conditional approval of the HOPE 3 application.

(iii) Non-Federal resources may not include:

(A) Funds from a Community Development Block Grant under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (b)(2) of this section;

(B) Federal tax expenditures, including low-income housing tax credits.

(iv) The grant equivalent of a below-market interest rate loan to the homebuyer from non-Federal resources, where all repayments, interest, and other return will not be permanently contributed to the HOPE 3 program, may be counted as a cash contribution. The grant equivalent of a below market interest rate loan must be calculated in accordance with paragraphs (b)(1)(iv)(A) and (B) of this section—

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received on the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds;

(B) If the loan is made from funds other than under paragraph (b)(1)(iv)(A) of this section, the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market yield one of the following, as appropriate:

(*1*) With respect to housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points; or

(*2*) With respect to housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points.

(v) Cash contributions may also be made from sales proceeds from the Turnkey III Homeownership and Mutual Help programs, as approved by HUD, or an approved homeownership program under section 5(h) of the 1937 Act.

(2) *Administrative costs.* (i) Contributions of eligible administrative services up to a value equal to 7 percent of the amount of the implementation grant. This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions toward the match

may not exceed 15 percent of the grant amount (§ 572.215(o)).

(ii) If an applicant proposes to contribute administrative services, HUD will automatically approve an applicant's assurances for matching purposes that it will pay eligible administrative costs from non-Federal sources in an amount up to 7 percent of the implementation grant, and will not require further documentation of those expenditures for purposes of the HOPE 3 program. If a recipient uses more than 8 percent of its implementation grant to pay administrative costs, the amount credited toward the match will be reduced to less than 7 percent to stay within the 15 percent limitation.

Example: If the grant amount is $600,000, the recipient must assure the provision of at least $198,000 (33 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted toward the match may not exceed $42,000 (7 percent of the grant amount of $600,000). Although a recipient can spend more than this on administrative costs, it may not be counted towards the match. In addition, the recipient must provide contributions covering the remaining $156,000 ($198,000–$42,000) required for the match from non-Federal sources.

(iii) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant under section 106(b) or section 106(d) of the Housing and Community Development Act of 1974 and are subject to the recordkeeping and documentation requirements of that program.

(3) *Taxes, fees, and other charges.* (i) The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part. Only amounts that would have been imposed after the date a property is acquired by a recipient or other entity for transfer to eligible families, the effective date of the implementation grant agreement if the recipient already owns the property, or the date after an eligible property is acquired directly from an eligible source by an eligible family, as applicable, may be counted towards the match.

(ii) Amounts that would be waived, forgone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match.

(iii) The present value of taxes, fees, or other charges waived, forgone, or deferred must be computed by discounting the estimated amount that would be otherwise payable over the time period (up to 20 years) based on a discount rate approved or prescribed by HUD.

(iv) Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family must evidence the contribution, to the extent the contribution has not already been received.

(4) *Real property.* Real property contributed for use under an approved homeownership program. To the extent properties were acquired with Federal resources or are donated directly to the program from Federal sources, their value is not an eligible match contribution.

(i) The as-is fair market value of eligible property may be counted as a contribution toward the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. The maximum value contributed will be limited as provided in § 572.100.

(ii) When eligible real property is sold to the recipient or its designee from non-Federal sources at a price below fair market value, the differential between the fair market value and the discounted sales price may be counted toward the match.

(iii) Vacant land from any non-Federal source located on existing streets with available utilities (which need not include laterals) may be contributed for use under the program, but only if a structure acquired or donated from an eligible HOPE 3 source will be moved onto it. The total amount of the contribution and any amount paid from HOPE 3 funds for acquisition of the structure, moving, and rehabilitation costs must be within the limits provided in § 572.100.

(5) *Infrastructure.* The fair market value of investment (as approved by HUD), not made with Federal resources, in on-site and off-site infrastructure that directly contributes to a homeownership program. The infrastructure investment may be counted toward the match only if it was completed no earlier than 12 months before the deadline date set by HUD in the NOFA for receipt of implementation grant applications. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted toward the match.

(6) *Donated labor.* All donated labor, including sweat equity provided by a homebuyer or homeowner, to be valued at $10 an hour or at a rate promulgated by HUD in the NOFA, except for donated professional labor, as approved by HUD, including professional labor by homebuyers and homeowners. The donated professional labor will be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by attorneys, electricians, carpenters, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted toward a family's equity.

(7) *Donated materials and supplies.* Donated materials and supplies may be counted toward the match contribution at their fair market value. The recipient must maintain a written enumeration of what donated materials and supplies are being used in the program, as well as documentation of their cost or value.

(8) *Other in-kind contributions.* The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD will review to ensure:

(i) The proposed contribution is to be used for an eligible activity under the proposed homeownership program;

(ii) The application demonstrates that the proposed in-kind contribution will actually be provided; and

(iii) The proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD will generally consider the amount such contribution would otherwise cost the program.

§ 572.225 Grant agreements; corrective and remedial actions.

(a) *Terms and conditions.* After HUD approves an application for a planning grant or an implementation grant under this part, it will enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions. The grant agreement will be effective for purposes of this part and funds may be disbursed under the Cash and Management Information (C/MI) System, described in § 572.230, after the grant agreement has been executed by the authorized official of the recipient and HUD. Among other things, the grant agreement will provide that the recipient agrees:

VOL 58 ISS 128 7 1993 JL UMI

(1) To carry out the program in accordance with the provisions of this part, applicable law, the approved application, and all other applicable requirements; and

(2) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner.

(b) *Corrective and remedial actions.* (1) HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this part, including failure to provide the contributions toward the match. Corrective or remedial actions that HUD may instruct the recipient to undertake include;

(i) Preparing and following a schedule of actions or a management plan for properly completing the approved activities;

(ii) Cancelling or revising the affected activities before expending grant funds for them, revising the grant budget as necessary, and substituting other eligible activities;

(iii) Discontinuing draws under the C/MI System, and not incurring further costs for the affected activities;

(iv) Reimbursing its HOPE 3 program account in the amount not used in accordance with this part and the grant agreement; and

(v) In the case of implementation grants, making additional matching contributions in substitution for contributions not in compliance with this part and the grant agreement or submitting to HUD acceptable evidence that matching contributions sufficient to meet the total match required under this part and the grant agreement will be made, before additional draws are made.

(2) If HUD determines that the recipient is not complying with the corrective or remedial actions agreed upon with the recipient, or as otherwise authorized in the grant agreement, HUD may implement the following additional corrective and remedial actions:

(i) Changing the method of payment under the C/MI System to a reimbursement basis;

(ii) Suspending the recipient's authority to make draws under the C/MI System for affected activities;

(iii) Reducing (deobligating) the grant in the amount affected by the performance deficiency, including, in the case of implementation grants, failure to furnish matching contributions in the required amount;

(iv) Terminating the grant for all further activities and initiating close-out procedures;

(v) Taking action against the recipient under 24 CFR part 24 and Executive Order 12549 (3 CFR, 1986 Comp., p. 189) with respect to future HOPE 3, HUD, or Federal grant awards; and

(vi) Taking any other remedial action legally available.

(3) If the amount of grant funds that has been disbursed under the C/MI System exceeds the amount finally determined by HUD to be authorized (including any authorized deobligation), the recipient must repay such excess amount to HUD, and will have no right to reclaim or reuse such excess amount.

(c) *Failure to complete and transfer a property to a homebuyer.* If a property assisted under this part or credited as match is not completed and transferred to homebuyers as required under this part, whether voluntarily by the recipient or otherwise, grant expenditures on the property are considered ineligible, and HOPE 3 funds for acquisition and rehabilitation must be repaid to the program account. Preliminary costs (such as architectural and engineering, inspection, and appraisal fees) expended before acquisition are considered general program expenses and need not be repaid.

(d) *Failure to provide homeownership opportunities under an implementation grant.* Failure to provide at least 70 percent of the number of homeownership opportunities proposed in the application for an implementation grant within the timeframe specified in § 572.210(f) may result in remedial actions, as described in paragraph (b) of this section, being taken by HUD, including requiring repayment of all or part of the grant.

§ 572.230 Cash and Management Information System.

(a) *General.* Disbursement of all approved HOPE 3 planning and implementation grant funds is managed through HUD's Cash and Management Information (C/MI) System for the HOPE 3 program. The C/MI System is a computerized system that manages and disburses HOPE 3 funds, and collects and reports information on their use. Funds will be disbursed through the United States Treasury. The United States Treasury account includes funds awarded to the recipient and obligated through the grant approval letter issued by HUD. Recipients will be required to establish or identify a local account in a financial institution to serve as the local HOPE 3 account for the receipt and deposit of HOPE 3 funds disbursed from the United States Treasury. The local account must be in the recipient's name.

(b) *Disbursement of HOPE 3 funds.* After the recipient and HUD execute the HOPE 3 grant agreement and the recipient submits the appropriate banking and security documents to HUD, HOPE 3 funds may be drawn down for approved activities under a planning or implementation grant, as applicable. HOPE 3 funds are drawn down from a United States Treasury account for the program by the recipient or its authorized designee using the Treasury Automatic Clearinghouse (ACH) System. For implementation grants, all drawdowns related to specific properties will only be allowed if information about the individual properties has been entered into the C/MI System (see paragraph (c) of this section). All funds drawn down will be deposited in the local account authorized by the HOPE 3 recipient within 48 to 72 hours of an authorized disbursement request. Any drawdown of HOPE 3 funds from the United States Treasury account is conditioned upon the submission of satisfactory information about the program and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the C/MI System. Copies of these forms and issuances may be obtained from HUD field offices. Funds not disbursed within program deadlines will be automatically deobligated by the C/MI System.

(c) *Property set-up (implementation grants only).* (1) Before disbursement of any HOPE 3 funds related to specific properties, each property or unit must be set up in the C/MI System, as described in HUD's C/MI issuance. Disbursements that require the set-up of properties in the C/MI System include any disbursements related to a specific property including acquisition, rehabilitation, financial assistance to homebuyers (such as down payment assistance, interest rate buy-down, and closing cost assistance), architectural and engineering, permanent and temporary relocation. Within 10 calendar days of property set-up, a property set-up form must be submitted to HUD for each property set-up in the C/MI System.

(2) If the property set-up form is not received within 20 days of the property set-up call, the property or unit will be canceled automatically by the C/MI System. In addition, a property or unit that has been set up in the C/MI System for 12 months without an initial

disbursement of funds may be cancelled by the C/MI System.

(d) *Payment voucher.* As documentation of each drawdown of funds from the United States Treasury account, a copy of the voucher for each drawdown must be retained in the program file.

(e) *Submission of property transfer report.* A property transfer form for all properties assisted with implementation grants must be submitted to HUD within 15 days of the transfer of the property or unit, as described in HUD's C/MI issuance. If a satisfactory property transfer form is not submitted by the due date, HUD will suspend further property set-ups and may suspend program draws. Property set-ups, and program draws, if applicable, will remain suspended until a satisfactory property transfer form is received and entered into the C/MI System.

(f) *Submission of property completion form.* A property completion form for properties assisted with implementation grants must be submitted to HUD within 30 days of the final disbursement of funds from all sources for that particular property. If a satisfactory property completion form is not submitted by the due date, HUD will suspend further property set-ups and may suspend program draws for the recipient. Property set-ups, and program draws, if applicable, will remain suspended until a satisfactory property completion form is received and entered into the C/MI System.

§ 572.235 Amendments.

Amendments to the approved program must be documented or approved by HUD in accordance with instructions provided by HUD.

Subpart D—Selection Process

§ 572.300 Notice of fund availability; planning and implementation grant applications.

(a) *Notice of fund availability (NOFA).* When funds are made available for planning grants or implementation grants under this part, HUD will publish a NOFA in the Federal Register in accordance with the requirements of 24 CFR part 12. The NOFA will specify the amount of funding available; the location for obtaining application packages; the time and place for submitting completed applications; the rating criteria for the competition; and other appropriate information and guidance. The NOFA will also inform potential applicants how to obtain information and guidance from HUD about program requirements and preparation of the application.

(b) *Applications.* Applications for grants must be submitted in the form and within the time period established by HUD in the NOFA. The application package will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes and regulations.

(c) *Application screening.* (1) HUD will screen each application submitted on or before the deadline specified in the NOFA to determine whether it is complete, is internally consistent, contains correct computations, and complies with all requirements of this part and the NOFA. In addition, HUD will determine whether there appears to be a sufficient number of suitable, available eligible properties in the general locations identified in the application for the proposed activities. Where HUD determines that an application, as initially submitted, is fundamentally incomplete or requires substantial revisions, it will not consider the application further.

(2) Where HUD determines an application is deficient in one or more of the areas in paragraph (c)(1) of this section but is not fundamentally incomplete and does not require substantial revision, it will notify the applicant in writing and give it an opportunity to correct the technical deficiencies in its application. HUD will not notify the applicant of any deficiencies that relate solely to the rating of the application. The notification will require applicants to submit additional or corrected material so that it is received in the appropriate HUD office no later than 4:00 p.m. local time on the 14th calendar day after the date of the written notification to the applicant. HUD may not extend this deadline for actual receipt of the material for any reason. The applicant may not substantially revise the application, such as by submitting or resubmitting fundamental components of the application, substituting another neighborhood, applicant, cooperating entity, or by changing other fundamental features of the howeownership program.

(3) After review of all material submitted under this paragraph (c), HUD will not consider further any applications that do not comply with the requirements of the NOFA and this part.

(Approved by the Office of Management and Budget under control number 2506–0128.)

§ 572.305 Selection process for planning grants.

(a) *Rating and ranking applications.* (1) For planning grant applications that qualify for further consideration after review under § 572.300(c), HUD will assign points in accordance with the rating criteria described in § 572.315. In connection with rating applications, HUD will make any reductions in the requisite grant amounts or geographic scope of the applications that it determines necessary under § 572.200(b) or § 572.305(d). After initially assigning points to each application, HUD will review the applications and may adjust the ratings to ensure consistency among Field and Regional Office scores.

(2) HUD will rank planning grant applications according to total points assigned. Where HUD determines that applications falling below a certain point total are not suitable or not feasible for developing a homeownership program, it may establish a minimum number of points for an application to be selected. HUD will also exclude any applications as required by § 572.200 (b) and (c) before making final selections.

(b) *Selecting applications.* (1) To ensure national geographic diversity among the grants awarded, HUD will select a minimum number of the highest rated applications in each HUD Region as specified in the NOFA. HUD will then select the highest ranking remaining applications without regard to their location.

(2) If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

(i) If the tied applications are for programs to be carried out in different jurisdictions, applications with the highest number of points for the rating criterion described in § 572.315(c), Need for homeownership program, will be selected, if sufficient funds remain.

(ii) If the tied applications are to be carried out in the same jurisdiction, applications with the highest number of points for the rating criterion described in § 572.315(a), Capability, will be selected, if sufficient funds remain.

(3) Funds remaining after applying the procedures described in paragraph (b) (1) and (2) of this section will be reallocated in accordance with paragraph (f) of this section.

(c) *Procedural errors.* Procedural errors by HUD discovered after initial ratings, but before notification of applicants, will be corrected and

rankings revised. Procedural errors discovered after notification of approved applicants that, if corrected, would result in approval of an application that was not approved will be corrected by funding the application from any unused amounts of "off the top" from amounts available in the next funding round.

(d) *Reduction in requested grant amounts and/or geographic scope of the program.* (1) HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

(i) The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified;

(ii) An activity proposed for funding does not qualify as an eligible activity;

(iii) The amount requested exceeds the cost limitations established in this part;

(iv) The applicant is not able to carry out all the activities requested; or

(v) Insufficient amounts remain in that funding round to fund the full amount requested in the application.

(2) In addition, HUD may reduce the geographic scope of the proposed program or existing program if it determines that:

(i) Two or more fundable applications substantially overlap, or one or more fundable applications overlap with an existing program;

(ii) The proposed geographic scope is overly large given the capacity of the organization and/or the number of units it proposes for the homeownership program.

(e) *Notification of approval or disapproval.* After completion of the rating and selection of applications, but no later than six months after the deadline date for submission of the application, as stated in the NOFA, HUD will notify the selected applicants and the applications that have not been selected, in writing.

(f) *Remaining amounts due to insufficient approvable applications or deobligation of grant amounts.* (1) If funds remain after HUD approves all approvable planning grant applications or if any funds become available due to deobligation of grant amounts, the available amounts may be combined and HUD may use them in the following ways:

(i) Correct procedural errors in selecting planning or implementation grant applications;

(ii) Reallocate the remaining funds to Regions having more approvable implementation grant applications than can be funded from the initial allocation to those Regions; or

(iii) Add the remaining funds to funds available for the next competition for planning or implementation grants.

(2) Any reallocation of funds will be carried out under the allocation factors described in § 572.210(b).

§ 572.310 Selection process for implementation grants.

(a) *Rating and ranking applications.* (1) If the regional allocation described in § 572.210(b) is not sufficient to fund each application that qualifies for further consideration under § 572.300(c), HUD will review each such application and assign points in accordance with the rating criteria described in § 572.320. In connection with rating applications, HUD will make any reductions in the requisite grant amounts or geographic scope of the applications that HUD determines necessary under § 572.210(c) or § 572.310(d). After initially assigning points to each application, HUD will review the applications and may adjust the ratings to ensure consistency among Field Office scores. HUD will then rank implementation grant applications according to total points assigned, by Region. HUD will also exclude any applications as required by § 572.210(c).

(b) *Selecting applications.* HUD will select the highest ranking applications within each Region within the Regional allocation.

(1) If two or more applications in a Region receive the same number of points and sufficient amounts are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used:

(i) If the tied applications are for programs to be carried out in different jurisdictions, the application or applications with the greatest need will be selected, using whatever remaining funds are available. To determine need, HUD will consider the percentage of the number of rental households in the jurisdiction or jurisdictions in which the program will be carried out that are living in poverty, as defined by the Bureau of the Census.

(ii) If the tied applications are to be carried out in the same jurisdiction, the application or applications with the highest number of points for the rating criterion described in § 572.320(e), Efficiency, will be selected, using whatever remaining funds are available.

(2) If any amounts remain after applying the procedures described in paragraph (b)(1) of this section, they will be reallocated in accordance with paragraph (f) of this section.

(c) *Procedural errors.* Procedural errors by HUD discovered after initial ratings but before notification of applicants will be corrected and rankings revised. Procedural errors discovered after notification of approved applicants that, if corrected, would result in approval of an application that was not approved will be corrected by funding that application from any unused amounts or "off the top" from amounts available in the next funding round.

(d) *Reduction in requested grant amounts and/or geographic scope of the program.* (1) HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

(i) The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified, or does not otherwise meet applicable cost limitations under this part;

(ii) There is an insufficient inventory of potential eligible properties;

(iii) The applicant lacks adequate past experience or otherwise is not able to carry out as large a program as requested;

(iv) The applicant has requested an ineligible activity;

(v) The applicant has proposed an inadequate match; or

(vi) Insufficient amounts remain in that funding round to fund the full amount requested in the application.

(2) In addition, HUD may reduce the geographic scope of a proposed program or an existing program if it determines that:

(i) Two or more fundable applications substantially overlap, or one or more fundable applications substantially overlap with an existing approved program; or

(ii) The proposed geographic scope is overly large given the capacity of the organization and the number of units or the total cost of the proposed program.

(e) *Notification of approval or disapproval.* After completion of the ranking and selection of applications, but no later than six months after the deadline date for submission of the application, as stated in the NOFA, HUD will notify the selected applicants and the applicants that have not been selected, in writing.

(f) *Remaining amounts due to insufficient approvable applications, reallocation, and deobligation of grant*

amounts. (1) If funds remain after HUD approves all approvable applications in a Region after the initial allocation or reallocation, or if any funds become available due to deobligation of grant amounts, the available amounts may be combined and HUD may use them in the following ways:

(i) Correct procedural errors in selecting planning grant or implementation grant applications;

(ii) Reallocate the remaining funds to Regions having more approvable applications than can be funded from previous allocations to that Region;

(iii) Make the remaining funds available to fund the highest ranked, unfunded planning grant applications; or

(iv) Add the remaining funds to funds available for the next competition.

(2) Any reallocation of funds will be carried out under the allocation factors described in § 572.210(b).

§ 572.315 Rating criteria for planning grants.

HUD will review each application for a planning grant that qualifies for additional consideration under the screening procedures described in § 572.300(c), in accordance with the following rating criteria:

(a) *Capability.* The ability of the applicant to develop a HOPE 3 homeownership program in a reasonable time and in a successful manner. In assigning points for this criterion, HUD will consider evidence in the application that demonstrates:

(1) The capability of the applicant to develop a HOPE 3 homeownership program, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities, or by an explanation of how such capability will be obtained.

(2) The ability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or key staff and existing financial control procedures, or an explanation of how such capability will be obtained.

(b) *Public/private support.* In assigning points for this criterion, HUD shall consider:

(1) The extent of interest of the unit of general local government (or Indian tribe, where applicable), or State or territorial government, and other public agencies, in support of a homeownership program, demonstrated through evidence of intent to provide assistance, such as supportive services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements.

(2) The extent of interest of the private sector and nonprofit organizations (including places of worship, banks, neighborhood or community organizations, the business community, or other community groups) in support of a home ownership program, demonstrated through evidence of intent to provide assistance such as the donation of labor or materials, interest rate reductions or other financing subsidies, and volunteer assistance in some aspect of the program (activities of the applicant will not be considered under this subcriterion).

(c) *Need for homehownership program.* In assigning points for this criterion, HUD will consider the relative percentage of the total number of rental households consisting of persons with incomes at or below the poverty level, as determined by the Bureau of Census, in the applicable jurisdiction or jurisdictions.

(d) *Planning approach.* HUD will consider the extent to which the proposal represents a sound approach to planning, demonstrates an understanding of the nature and scope of activities required to successfully implement a homeownership program, and is likely to result in a successful homeownership program.

§ 572.320 Rating criteria for implementation grants.

If the Regional allocation is not sufficient to fund each application that qualifies for additional consideration under the screening procedures described in § 572.300(c), HUD will rate each application that does so qualify in accordance with the following rating criteria:

(a) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program in a reasonable time and in a successful manner. In assigning points for this criterion, HUD will consider evidence demonstrating:

(1) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or key staff and existing financial control procedures.

(2) The capability of the applicant to manage the proposed homeownership program as a whole, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities.

(b) *Public/private support.* In assigning points for this criterion, HUD will consider:

(1) The extent of commitment of the unit of general local government (or Indian tribe, where applicable), or State or territorial government, and other public agencies in support of the program, such as the provision of supportive services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements.

(2) The extent of commitment of the private sector and nonprofit organizations (including places of worship, banks, neighborhood or community organizations or other community groups) in support of the program, such as the donation of labor or materials, interest rate reductions or other financing subsidies, and commitment of volunteer assistance in some aspect of the program (activities of the applicant shall not be considered under this subcriterion).

(c) *Quality of program design.* In assigning points for this criterion, HUD will consider the extent to which the proposed program is logical, feasible, innovative, and will substantially achieve its stated objectives in the required timeframes and within the proposed budget.

(d) *Efficiency.* In assigning points for this criterion, HUD will consider the cost-effectiveness in using Federal grant funds, determined by dividing the amount of the grant under consideration (adjusted by the R.S. Means Cost Construction Index, where appropriate) by the total number of units expected to be assisted.

(e) *MBE/WBE goals.* HUD will assign points under either paragraph (e)(1) or (2) of this section, as applicable, and will consider:

(1) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 24 CFR 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. (See § 572.405(d).)

(2) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education

VOL 58 ISS 128 JL 7 1993 UMI

Assistance Act, 25 U.S.C. 450e(b), apply. For such applicants, points for this factor will be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

(f) *Inventory.* In assigning points for this criterion, HUD will consider the extent to which the proposal will emphasize the use of eligible Federal properties.

(g) *Fair housing choice.* In assigning points for this criterion, HUD will consider the degree to which the applicant's proposal furthers fair housing choice through its affirmative marketing strategy, the proposed areas in which eligible properties are located, or a combination of these factors.

Subpart E—Other Federal Requirements

§ 572.400 Comprehensive Housing Affordability Strategy (CHAS).

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated CHAS pursuant to the requirements of the CHAS regulations (24 CFR part 91), and must submit a certification that the proposed activities in the application for funding are consistent with the HUD-approved CHAS.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction or jurisdictions in which the proposed program will be located that the applicant's proposed activities are consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or governments or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii), and as may be further described in the NOFA.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa and the Northern Mariana Islands.* These entities are not required to have a CHAS or to make CHAS certifications. An application by an Indian tribe or other applicant for a program that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe or IHA is the applicant for a program that will not be located on a reservation, the certification requirements under the preceding paragraph will apply.

(d) *Timing of CHAS certification submissions.* Except as otherwise set forth in the NOFA with respect to certifications of consistency with an abbreviated CHAS, a required certification must be submitted by the funding application submission deadline announced in the NOFA. A jurisdiction required to make the certification must therefore get its CHAS approved by HUD in time for the certification to be submitted by the applicable deadline, i.e., the funding application deadline announced in the NOFA or, if the NOFA permits a later submission date for the certification, the later date. (HUD has 60 days to approve a CHAS.) However, in no event will an application be considered for funding if a required CHAS has not been submitted for HUD approval by the funding application deadline. All certifications must be signed by the public official responsible for submitting the CHAS to HUD, or his or her authorized representative, and must meet the requirements of the CHAS regulations at 24 CFR 91.80 (a) and (b), "Consistency certification."

§ 572.405 Nondiscrimination and equal opportunity requirements.

The following authorities apply to homeownership programs under this part:

(a) *Fair housing requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of the IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act must be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. With respect to program accessibility standards, the provisions of 24 CFR 8.29 apply.

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects); and Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60.

(2) In the case of Indian tribes and IHAs, the requirements of the Indian Self-Determination and Education Assistance Act (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); and Executive Order 11246 and 41 CFR part 60 to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and women's business enterprises.* The requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616); Executive Order 12432 (3 CFR, 1983 Comp., p. 198); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1979 Comp., p. 393). Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative fair housing marketing.* The recipient must adopt a strategy for informing and soliciting applications from people who are least likely to apply, because of race, color, religion, sex, handicap, familial status, or national origin, for the program without special outreach, consistent with the affirmative fair housing marketing requirements. (See 24 CFR 92.351 for an example of an affirmative fair marketing strategy. Paragraph (e) of this section does not apply to Indian tribes and IHAs, as described in paragraph (a) (2) of this section.

(f) *Authority for collection of racial, ethnic, and gender data.* HUD requires submission of racial, ethnic, and gender data under this part under the authority of section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

(g) *Requirements applicable to religious organizations.* Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization must undertake its responsibilities under the homeownership program in accordance with the following principles:

(1) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or other assistance under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion;

(3) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

§ 572.410 Environmental procedures and standards.

(a) *Planning grants.* HUD has determined that its approval of applications for planning grants under this part is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable.

(b) *Implementation grants.* (1) Recipients of implementation grants must comply with the applicable environmental laws and authorities at 24 CFR 50.4 and must:

(i) Supply HUD with information necessary for it to perform any necessary environmental review of the property (or neighborhood);

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire or otherwise carry out program activities with respect to any eligible property until HUD approval for the property (or neighborhood) is received.

(2) Before any amounts under this part are used to acquire or rehabilitate an eligible property, HUD must determine whether the proposed activities trigger applicability thresholds for the applicable Federal environmental laws and authorities. These may apply when the property is:

(i) Located within designated coastal barriers;

(ii) Listed on, or eligible for listing on, the National Register of Historic Places; or is located within, or adjacent to, an historic district;

(iii) Located near hazardous operations handling fuels or chemicals of an explosive or flammable nature;

(iv) Contaminated by toxic chemicals or radioactive materials;

(v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; or

(vi) Located within a special flood hazard area or within a location requiring flood insurance protection.

(3) A recipient may choose to make the threshold reviews itself or with assistance from State or local governments or qualified persons or to refer the property to HUD for threshold review. Where the recipient makes the threshold review itself, it must submit the result to HUD.

(4) If a recipient chooses not to make the threshold reviews, it must submit information to HUD to permit HUD to make the review.

(5) If HUD determines on the basis of the recipient's threshold review or HUD's threshold review that one or more of the thresholds are exceeded, HUD will conduct an environmental review of that issue and, if appropriate, establish mitigating measures that the recipient must carry out for the property unless it decides to select an alternate property.

§ 572.415 Conflict of interest.

(a) *Conflict of interest.* In addition to the conflict of interest requirements in OMB Circular A–110 [1] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or cooperating entity named in the application and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire an ownership interest.

(b) *Exception.* HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE 3 program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local law. In determining whether to grant a requested exception, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

§ 572.420 Miscellaneous requirements.

(a) *Application of OMB Circulars.* (1) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to

[1] See § 572.425(b) concerning availability of OMB Circulars.

Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under this part by applicable entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this part. Circular Nos. A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations), A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions), and, as applicable, A–21 (Cost Principles for Educational Institutions) apply to the acceptance and use of assistance under this part by covered organizations, except where inconsistent with the provisions of NAHA, other Federal statutes, or this part. Recipients are also subject to the audit requirements of OMB Circular A–128 (Audits of State and Local Governments) implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions), as applicable.

(2) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

(b) *Anti-lobbying certification.* (1) In accordance with 24 CFR part 87, applicants for and recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Applicants and recipients must also disclose whether nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. Substantial monetary penalties may be imposed for failure to file the required certification or disclosure.

(2) Paragraph (b)(1) of this section does not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

(c) *Drug-free workplace.* Applicants must certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

(d) *Debarred or suspended contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, cooperating entities, or contractors or subcontractors under this part, during any period of debarment, suspension, or placement in ineligibility status.

(e) *Labor standards.* If other Federal programs are used in connection with the HOPE 3 homeownership program, labor standards requirements apply to the extent required by such other Federal programs.

(f) *Flood insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the recipient may not provide financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of the acquisition or rehabilitation of the property.

(g) *Coastal Barrier Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve use of properties in the Coastal Barrier Resources System.

(h) *Lead-based paint testing and abatement.* Any residential property assisted under the HOPE 3 program established under this part constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients are responsible for testing and abatement activities.

§ 572.425 Recordkeeping and reports; audit of recipients.

(a) *General records.* Each recipient must keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose:

(1) The amount and disposition by the recipient of the planning and implementation grants received under this part, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by § 572.220; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program under this part.

(b) *Family size and income; racial, ethnic, and gender data.* The recipient must maintain records on the family size and income, and racial, ethnic, and gender characteristics of families who apply for homeownership and families who become homeowners.

(c) *Selection procedures.* The recipient must maintain a copy of its procedures for identifying and selecting eligible families in accordance with § 572.110, and records documenting the eligibility of each family selected for homeownership.

(d) *Rehabilitation standards.* The recipient must maintain written rehabilitation standards required by § 572.100(d)(5).

(e) *Cooperative and condominium agreements.* The recipient must maintain a copy of any condominium and cooperative association agreements for properties under a homeownership program approved under this part.

(f) *Amounts available for reuse.* The recipient must keep and make available to HUD all records necessary to calculate accurately payments due to HUD under § 572.135(b) and (c).

(g) *Access by HUD and the Comptroller General.* For purposes of audit, examination, monitoring, and evaluation, each recipient must give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part, including all records required to be kept under this section.

(h) *Reports.* The recipient must submit reports required by HUD.

(Approved by the Office of Management and Budget, with respect to implementation grants, under control number 2506–0128.)

Dated: June 9, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–15492 Filed 7–6–93; 8:45 am]

BILLING CODE 4210–28–M

VOL 58 ISS 128 JL 7 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-3611; FR-3490-N-01]

HOPE for Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This NOFA announces the availability of $86 million in funding for implementation grants for the HOPE for Homeownership of Single Family Homes Program (HOPE 3). The Notice contains information concerning eligible applicants, funding available for implementation grants, and application requirements and procedures. HUD published, for public comment, a Notice of Program Guidelines for HOPE 3 on February 4, 1991 (56 FR 4458) and amended Guidelines on January 14, 1992 (57 FR 1592). Elsewhere in this issue of the **Federal Register** is the final rule for the HOPE 3 program. The rule, which will be codified as 24 CFR part 572, contains detailed programmatic information and the requirements for the HOPE 3 program. Applicants are advised to consult the regulation in order to prepare an application in compliance with the requirements of the final rule, many of which are not repeated in this NOFA. Failure to follow the rule will result in applications being rejected by HUD.

DATES: Applications for implementation grants for the HOPE 3 program must be received in the appropriate HUD Field Office by 4 p.m. local time on September 3, 1993. Applications may be hand delivered to the appropriate HUD Field Office no later than 4 p.m. local time on the deadline date. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this deadline for actual submission for any reason.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality or area in which the proposed program is located. Applications should be addressed to the attention of: Director, Community Planning and Development Division. A list of HUD Field Offices appears at the end of this NOFA. Applicants must submit their applications to the CPD Division in the correct Field Office, including applicants in States with more than one Field Office. For applications submitted by Indian tribes and IHAs, the correct Field Office is the CPD Division in the office listed at the end of the NOFA with jurisdiction over the geographic area covered by the application. Indian tribes and IHAs should not submit their applications to the Office of Indian Programs or Indian Programs Division. Applicants should contact their local office to confirm the appropriate place for submission. Failure to submit an application to the correct Field Office in accordance with the above procedures will result in disqualification of the application.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7158, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-0324; (TDD (202) 708-2565). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and have been assigned OMB control number 2506-0128.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by title IV of the National Affordable Housing Act (42 U.S.C. 12891-12898), which created the HOPE 3 Program. The final rule for the program, which will be codified at 24 CFR part 572, is being published elsewhere in today's **Federal Register**. If there is any conflict between this NOFA and the regulation, the regulation shall be controlling.

B. Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $86 million in funds for implementation grants, appropriated by the Department's Appropriations Act for fiscal year 1993 (Pub. L. 102-389).

The amount made available for implementation grants has been allocated to each of the 10 HUD Regions by a formula described in the final rule (24 CFR 572.210(b)). However, no Region will be allocated less than $4 million in order to ensure that national geographic diversity is maintained. The formula results in the following allocation by HUD Region for FY 1993:

Region I—$4,000,000
Region II—$8,896,000
Region III—$7,818,000
Region IV—$15,621,000
Region V—$13,274,000
Region VI—$12,936,000
Region VII—$4,000,000
Region VIII—$4,000,000
Region IX—$11,455,000
Region X—$4,000,000

C. Reallocation of Funds

If funds remain after HUD has approved all approvable implementation grant applications in a Region or if any funds become available due to deobligation of grant amounts, the remaining amounts from each Region may be combined and HUD may use them in accordance with § 572.310(f) of the regulation.

D. Implementation Grant Cap

1. For FY 1993, the maximum total grant amount for a single applicant is $3.0 million. A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than $3.0 million.

2. Refer to § 572.210(c) for overall limitations for implementation grants.

E. Eligible Applicants

An eligible applicant is a private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, Indian tribe or an agency or instrumentality of a public body) in cooperation with a private nonprofit organization, all as further defined in the regulations.

II. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including SF 424, other forms, and instructions for preparing applications, are available from the CPD Division in the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA) or through the Affordable Housing Information Center at 1-800-998-9999. Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received no later than 4:00 p.m. on the deadline (see "Dates" at the beginning of this NOFA) at the appropriate HUD Field Office, Attention: Director, Community Planning and Development Division. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile (FAX) will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact their HUD Field Office for information and guidance from HUD about program requirements and preparation of an application and for the time and place of any workshops or training sessions to be held within the Field Office's jurisdiction.

C. Application Contents

Each application must contain a description of the proposed homeownership program demonstrating consistency with all requirements specified in the regulation and the application package. The following is a summary description of the contents of the implementation grant application package.

(1) Summary of Homeownership Program. The application must contain an executive summary of the homeownership program being proposed including information about the lead applicant and cooperating entities, the amount of grant requested, local match and total program cost, the number of homebuyers to be assisted, the location of the program, and the activities being proposed.

(2) Program Neighborhoods and Neighborhood Characteristics. The application must contain a description of the anticipated locations of the properties to be used in the program, by specifying particular neighborhoods where activities will be carried out and describing racial and ethnic characteristics of residents of the neighborhoods.

(3) Applicant Information. (i) Qualifications and Experience of Applicant. The application must describe the applicant and contain evidence of its qualifications and experience, including experience in providing housing for low income families, and capacity to carry out the program and comply with the program requirements. To demonstrate adequate internal management controls, the application must contain the auditor's summary of the last certified independent audit report and a description of any unresolved serious problems or audit findings, if applicable, or a certification from a certified public accountant who has examined the current internal management controls or is establishing those systems for a new entity.

(ii) Requirements for Joint Applications. If two or more entities join in submitting an application, such as a public body in cooperation with a private nonprofit organization or two private nonprofit organizations, the application must include a copy of an executed written agreement between the entities that delineates their respective roles and responsibilities and identifies the lead applicant that will execute the grant agreement and assume legal responsibility for the grant.

(iii) Evidence of Section 501(c) Status. An application must contain evidence of an IRS ruling or determination of tax exempt status under Section 501(c) of the Internal Revenue Code for a private nonprofit organization when it is the lead applicant or when it is designated as the cooperating entity with a public body that is required to apply in conjunction with a private nonprofit organization. An application from a private nonprofit organization organized in the Commonwealth of Puerto Rico (where it is the lead applicant or designated cooperating nonprofit) must contain a letter from the Treasury Department of the Commonwealth of Puerto Rico evidencing that the organization has tax exempt status under Puerto Rico law.

(iv) Requirement for Cooperative Associations. An application submitted by a cooperative association must contain an opinion of counsel that the organization is currently organized and existing under the laws of the applicable State, territory, local government, or Indian tribe, and has as its primary purpose acquiring, owning, and operating housing for its members or shareholders, as applicable.

(4) Unit Information. (i) The application must contain information concerning the anticipated source of units and evidence that at least 10 properties from eligible HOPE 3 sources are either currently available or were available during the 12-month period prior to submission of the application. It must also contain information about the number of units to be used in the program, the size of units, the average acquisition and rehabilitation cost, the basis for the estimate, the terms (if known) to the entity that will purchase the units for resale to eligible families.

(ii) Rehabilitation Standards. The application must contain information about the rehabilitation of the units to be used in the program including—

(A) The type of improvements to be made to, or amenities to be provided for, the units, the source of funds, and provider;

(B) how the applicant will ensure that the unit will be free from any defects that pose a danger to life, health, or safety before transfer of an ownership interest in a unit to an eligible family or occupancy of a unit by an eligible family under a lease purchase agreement;

(C) a plan describing how the applicant will ensure the unit will, not later than two years after the transfer to an eligible family, meet the minimum rehabilitation standards required by HUD under 24 CFR 572.100(d), or any higher standards established by the recipient or required by lenders; and,

(D) where applicable, how the applicant will manage the provision of sweat equity by homebuyers, including (a) a description of the anticipated scope of work, (b) a schedule of completion, (c) a description of how homebuyers (and others donating labor in connection with the sweat equity activity) will be trained, (d) an identification of who will supervise the work, i.e. a licensed general contractor, and (e) a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iii) Type of Ownership. The application must specify the type or types of ownership interests that the homebuyers will acquire under the program, including fee simple ownership, condominium ownership, cooperative ownership, or another form of ownership proposed and justified by the applicant and approved by HUD. See § 572.115 of the final rule.

(iv) Management Entity. The application must identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract, or state that the applicant intends to operate and manage the property. Where homeowners will have full responsibility upon acquiring a homeownership interest in a property (as is expected in scattered-site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(v) Rental Housing Impact. The application must contain a statement concerning whether or not more than 10 percent of the affordable single family rental housing units in the market area will be eliminated as a result of the homeownership program.

(5) Homebuyer Information. (i) Plan for Selecting and Identifying Eligible Families. The application must contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan must contain the elements required under 24 CFR 572.110—Identifying and Selecting Eligible Families for Homeownership.

(ii) Description of Potential Homebuyers. The application must

contain a description of the general composition of potential eligible families who may participate in the program (and residents of occupied properties selected for use under the program) including family size and income, and racial, ethnic, and gender characteristics.

(iii) Homebuyer Financing. (A) The application must contain information concerning the source and type of homebuyer financing and information about the homebuyer's estimated purchase price of the property.

(B) Lease/Purchase. The application must specifiy if the applicant proposes to enter into an interim lease/purchase agreement on any or all of the properties to be used in the program. See 24 CFR 572.5 for the definition of lease/purchase, which is generally limited to a two-year period.

(C) Affordability Requirements. The application must demonstrate that the monthly expenditure for prinicpal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit is not less than 20 percent but not more than 30 percent of the adjusted income of the family. In setting the sales price for acquisition by the family, the applicant must take into account the need to comply with the affordability standards contained in 24 CFR 572.120.

(D) Homebuyer Continued Affordability. The application must contain a feasible plan for demonstrating reasonable efforts to ensure continued affordability by initial homeowners of eligible properties. See 24 CFR 572.120(b).

(6) Program Schedule. The application must contain a schedule requiring completion of program activities under the grant agreement no later than four years from the effective date of the grant agreement. See 24 CFR 572.210(f) for related requirements and provisions allowing HUD to permit a longer deadline for completion of program activities. See 24 CFR 572.115 for requirements for the timely transfer of ownership interests to eligible families.

(7) Program Budget. The application must contain a program budget including the amount of the grant requested and match contributions being made for each proposed activity, a description of each proposed activity and a basis for the estimated cost for each amount proposed and other sources for funds. The budget must demonstrate that the proposed financing from all sources is sufficient to accomplish the program's objectives.

(8) Matching and Other Contributions. (i) The application must contain evidence of commitments for the resources that are expected to be contributed toward the match required under 24 CFR 572.220, and of any other resources that are expected to be made available in support of the homeownership program. Except for administrative costs, acceptable evidence that the contribution will be provided must be included. For example, if 20 years of tax abatement will be counted toward the match, the application should include a copy of the law or other official action by the chief executive officer or appropriate legislative body documenting this commitment. Cash or other property contributions (except those related to administrative costs) must be supported by evidence of a firm commitment by the donor to donate the cash or property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with § 572.210(e) of the final rule, the application must contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

(9) Sale and Resale Information. (i) Plan for Use of Sale and Resale Proceeds. The application must contain a plan for the use of proceeds from sales to eligible families and amounts families may not retain upon resale.

The plan must provide that any proceeds of sale and resale proceeds that may not be retained by a homebuyer and any interest earned thereon are separately accounted for and committed for approved activities within one year of receipt. The application must also identify, by name and address, the entity (and its contact person) that will be responsible for ensuring that all sale and resale proceeds are collected; all sale and resale proceeds are used for approved purposes after grant closeout; and all amounts due to HUD are promptly paid in accordance with the requirements in § 572.135 of the final rule.

(ii) Proposed Additional Resale Restrictions. If Any. The application must contain a description of and justification for any proposed restrictions on the resale of units by initial for subsequent homeowners under the homeownership program (see § 572.130(e) of the final rule). The required restrictions set forth in § 572.130 need not be restated.

(10) Evidence of Public/Private Support. The application must contain a description and evidence of any State or local government, private sector, or nonprofit organization support of the proposed homeownership program.

(11) Minority Business Enterprises and Women-Owned Business Enterprises. The application must contain a description of the applicant's use of minority business enterprises and women-owned business enterprises in the past, if applicable, and a description of specific affirmative steps it will take to ensure that such businesses have an equal opportunity to compete and obtain contracts.

(12) Plan for Counseling and Training. The application must contain a plan for providing counseling and training for homebuyers selected under the program, including information about the topics to be covered, the number of homebuyers to be assisted, the schedule for providing such assistance, and the providers of the services.

(13) Economic Development Activities, If Any. If economic development activities are proposed, the application must contain a description of the economic development activities proposed under the program. The application must demonstrate that the proposed activities are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers and homeowners. See § 572.215(n) of the final rule.

(14) Relocation Assistance. If relocation activities are proposed, the application must describe the proposed relocation activities, in accordance with the requirements of § 572.145 of the final rule. The description must specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, Section 8 assistance).

(15) Comprehensive Housing Affordability Strategy (CHAS) Certification. Applicants that are States or units of general local government: The applicant must have a HUD-approved CHAS for FY 1993 and must submit a certification that the proposed activities are consistent with the HUD-approved CHAS for FY 1993.

Applicants that are not States or units of general local government: The applicant must submit a certification by the jurisdiction or jurisdictions in

which the proposed program will be located that the applicant's proposed activities are consistent with the jurisdiction's HUD-approved CHAS for FY 1993. A required certification must be made by the unit of general local government if it is required to have, or has, a complete CHAS, or if it is authorized to use an abbreviated CHAS and is applying for the same program under this NOFA (and therefore has, or will have, an abbreviated CHAS for fiscal year 1993 for that program). Otherwise the certification may be made by the State, or if the program will be located in part in a unit of general local government authorized to use an abbreviated CHAS, by the unit of general local government if it is willing to prepare such a CHAS.

Certain entities (Indian tribes and the Insular Areas of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands) are not required to have a CHAS or to make CHAS certifications. An application by an Indian tribe or other applicant for a program that will be located on a reservation of an Indian tribe does not require a certification by the tribe or State. However, where an Indian tribe or IHA is the applicant for a program that will not be located on a reservation, the requirement for a certification by the jurisdiction or jurisdictions in which the program will be located under the preceding paragraph applies.

All CHAS certifications must be made by the public official responsible for submitting the CHAS certification to HUD, or his or her authorized representative. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The required CHAS must therefore have been submitted more than 60 days before the application submission deadline, since HUD has 60 days to review and approve the CHAS. Where the certification of consistency with an abbreviated CHAS is permitted to be submitted after the application submission deadline, as described in the next paragraph, the CHAS must nevertheless be submitted by the application submission deadline. Failure to submit the CHAS by the application submission deadline is not a correctable deficiency during application screening.

If a required certification will be made by a unit of general local government with respect to an abbreviated CHAS which has been submitted by the application submission deadline but has not yet been approved by HUD, the deadline will not be applied to the certification of consistency. Instead, the application must include a written statement from an authorized public official responsible for the CHAS that the jurisdiction has submitted an appreciated CHAS for FY 1993 for HUD approval and that the proposed activities in the application are consistent with it. If HUD approves the CHAS, the required certification of consistency with a HUD-approved CHAS for FY 1993 must be submitted as soon as possible thereafter, but not later than grant approval. The grant will not be awarded unless the abbreviated CHAS is approved and the required certification is made.

(16) Nondiscrimination and Equal Opportunity Certification. The application must contain—

(i) A certification that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR parts 100, 109, and 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1. In the case of an application from an Indian tribe or IHA, under the circumstances described in § 572.405(a)(2) of the final rule, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 et seq.). See 24 CFR 572.405(a).

(ii) A certification that the applicant will comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8. See 24 CFR 572.405(b).

(17) Desegregation Statement. The application must contain a statement from the applicant explaining whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; that the applicant is not in violation of any existing desegregation order, compliance agreement or voluntary agreement, or a statement describing the circumstances of the violation; and describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(18) Environmental Assurance. The application must contain an assurance that the recipient will comply with the environmental requirements in 24 CFR 572.410(b)(1).

(19) Other Requirements. The application must contain other information and certifications required by the application package.

D. Selection Process

The selection process for implementation grants under the HOPE 3 Program consists of a screening review, and then, for those applications meeting all screening requirements, rating and ranking under substantive rating criteria. Rating and ranking will only occur if there are more applications that meet screening requirements than funds available in that Region. Field Offices will rate applications on rating criteria #1, 2, 3, 5, 6, and 7 and then forward their applications to their respective Regional Office. (See Section III.F. of this NOFA.) Regional Offices will review Field Office scores for consistency and, following application review, may adjust scores to ensure accuracy and consistency of ratings. Headquarters will rate on criterion #4 and will provide the ratings to the Regional Office.

E. Screening Process/Corrections to Deficient Applications

(1) HUD will screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, contains correct computations, and complies with all requirements of this NOFA and the regulation. In addition, HUD will determine whether there appear to be a sufficient number of suitable, available properties in the general locations identified in the application for the proposed activities. For this purpose, at least ten suitable units in eligible properties must be currently available or have been available in the 12-month period prior to application submission. Where HUD determines that an application as initially submitted is fundamentally incomplete or would require substantial revisions, it will not consider the application further.

(2) Where HUD determines an application is deficient in one or more of the areas in paragraph E(1) of this section but is not fundamentally incomplete and does not require substantial revisions, it will notify the applicant in writing and give it an opportunity to correct the technical deficiencies in its application. HUD will not notify the applicant of any deficiencies that relate solely to the rating of the application.

(3) The notification will require the applicant to submit additional or

VOL
58
ISS
128
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corrected material so that it is received in the appropriate HUD Field Office no later than 4:00 p.m. local time on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. After review of all additional or corrected materials, HUD will not consider further any applications that do not comply with the requirements of the NOFA and the regulation.

F. Rating Criteria

All applications meeting screening requirements will be selected for funding if sufficient funds are available within the Regional allocation. If there are more applications that meet screening requirements than funds available in that Region, all applications meeting the screening requirements will be rated and ranked, using the following substantive rating criteria:

1. Capability of the Applicant—up to 25 points.

2. Demonstrated Public/Private Support—up to 20 points.

3. Quality of Program Design—up to 30 points.

4. Efficiency—up to 10 points.

5. Inventory—up to 5 points.

6. Minority Business Enterprise/ Women-owned Business Enterprise—up to 5 points.

7. Fair Housing Choice—up to 5 points.

Further description of the rating of applications and of the factors considered under each rating criterion may be found in § 572.320 of the final rule.

G. Ranking and Selection

Regional Offices will rank all applications that have been rated within their Region, and make recommendations for selection, within their allocations, to HUD Headquarters, which will make the selections. Further description of the procedure for selection is contained in § 572.310 of the regulation.

IV. Other Matters

A. Paperwork Reduction Act

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3540(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2506–0128.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for the program regulations in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Federalism Executive Order

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

D. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

E. Section 102 of the HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish a **Federal Register** notice of all recipients awarded assistance under this NOFA. (See 24 CFR 12.14(a) and 12.16(b), and the Notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

F. Section 103 of the HUD Reform Act

Section 103 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act) proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulations implementing section 103 are at 24 CFR part 4. In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics at the address or telephone number in the following paragraph.

G. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence this award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented at 24 CFR part 86. Appendix A of the rule contains example of activities covered by the rule. Any questions concerning the rule should be directed to the Office of

Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–3815 TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: June 9, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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Pennsylvania

(Western)

Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493, (TDD) (412) 644–5747.

(Eastern)

John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665, (TDD) (215) 597–5564.

Puerto Rico

Carman R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576.

Rhode Island

Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342, (TDD) (617) 565–5453.

South Carolina

Ed Bradley, Strom Thurmond Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564.

South Dakota

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Tennessee

Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9426, (TDD) (615) 549–9372.

Texas

(Northern)

R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth TX; 76113–2905; (817) 885–5483, (TDD) (817) 728–5447.

(Southern)

John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (512) 229–6820, (TDD) (512) 229–6885.

Utah

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Vermont

David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

Virginia

(except Northern Virginia)

Joseph Aversano, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503, (TDD) (804) 278–4501.

Washington

John Peters, Fed'l Office Bldg., 900 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150.

West Virginia

Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493, (TDD) (412) 644–5747.

Wisconsin

Lane J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113.

Wyoming

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811 (TDD) (303) 844–6158.

[FR Doc. 93–15493 Filed 7–6–93; 8:45 am]

BILLING CODE 4210–29–M

VOL 58 ISS 128 JL 7 1993 UMI

federal register

Wednesday
July 7, 1993

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for FY 1994

VOL
58
ISS
128
JL
7
1993
UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA Nos.: 84.133A, 84.133F, 84.133G, and 84.133P]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year (FY) 1994

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This notice supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

The statute requires that each applicant for a grant demonstrate how its proposed activities will address the needs of individuals from minority backgrounds who have disabilities.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research and Demonstration Projects—34 CFR parts 350 and 351.

Research Fellowships—34 CFR part 356.

Field Initiated Projects—34 CFR parts 350 and 357.

Research Training and Career Development Program—34 CFR part 360.

Program Title: Research and Demonstration Projects.

CFDA Number: 84.133A.

Purpose: Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

Invitational Priorities: The Secretary is particularly interested in applications that meet one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

(1) Studies to further the development of universal designs; and

(2) Studies that examine whether children with disabilities are more likely than children without disabilities to be victims of abuse.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes:* Dissemination/Utilization (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) Probability of Achieving Proposed Outcomes: Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: (Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the projects(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

APPLICATION NOTICE FOR FISCAL YEAR 1994 RESEARCH AND DEMONSTRATION PROJECTS CFDA NO. 84.133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research and Demonstration Projects	November 4, 1993	2	175,000	

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d); 34 CFR 356.32(b).

APPLICATION NOTICE FOR FISCAL YEAR 1994 RESEARCH FELLOWSHIPS CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Fellowships	October 15, 1993	10	40,000	12

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

The Secretary is particularly interested in applications that meet the following invitational priorities: Implementation of the Americans with Disabilities Act (ADA); children and adults with epilepsy; Repetitive motion syndrome; adults with autism; Attention Deficit Disorder; innovative rehabilitation counseling strategies; and developing science and math careers for students with disabilities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

VOL 58 ISS 128 JL 7 1993 UMI

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points) (1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1994 FIELD-INITIATED RESEARCH CFDA NO. 84.133G

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Field-Initiated Projects	October 5, 1993	20	125,000	36

Program Title: Research Training and Career Development Program.

CFDA Number: 84.133P.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Selection Criteria: The Secretary uses the following criteria in 360.31 to evaluate an application under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

APPLICATION NOTICE FOR FISCAL YEAR 1994 RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM
CFDA NO. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Training and Career Development Program	August 27, 1993	3	150,000	36

Instructions for Transmittal of Appliances

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free WorkPlace Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80–0014) and instructions.

Note: ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instruction; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building,

VOL 58 ISS 128 JL 7 1993 UMI

400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–5450. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Authority: 29 U.S.C. 760–762.

Dated: June 30, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate? The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely to be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How Soon After Submitting My Application Can I Find Out if it Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out If My Application is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will All Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: The U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Research and Demonstration Projects (CFDA No. 84.133A) 34 CFR parts 350 and 351.

Research Fellowships (CFDA No. 84.133F) 34 CFR part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR parts 350 and 357.

Research Training and Career Development Program (CFDA No. 84.133P) 34 CFR part 360.

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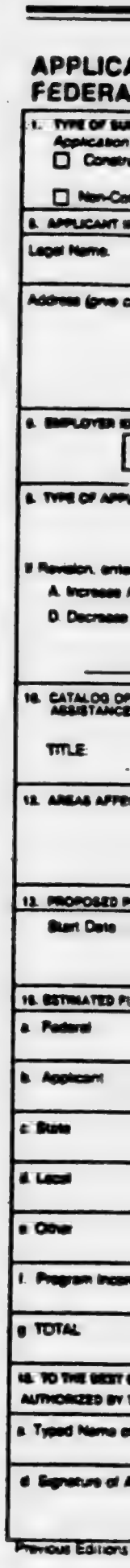

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

BUDGET INFORMATION — Non-Construction Programs

OMB Approved No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program | Catalog of Federal

VOL 58 ISS 128 JUL 7 1993 UMI

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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VOL 58 ISS 128 JL 7 1993 UMI

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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FINANCIAL STATUS REPORT

(Short Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned By Federal Agency	OMB Approval No. 0348-0039	Page	of pages

3. Recipient Organization (Name and complete address, including ZIP code)			
4. Employer Identification Number	5. Recipient Account Number or Identifying Number	6. Final Report ☐ Yes ☐ No	7. Basis ☐ Cash ☐ Accrual

8. Funding/Grant Period *(See instructions)* From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions:	I Previously Reported	II This Period	III Cumulative
a. Total outlays			
b. Recipient share of outlays			
c. Federal share of outlays			
d. Total unliquidated obligations			
e. Recipient share of unliquidated obligations			
f. Federal share of unliquidated obligations			
g. Total Federal share *(Sum of lines c and f)*			
h. Total Federal funds authorized for this funding period			
i. Unobligated balance of Federal funds *(Line h minus line g)*			

11. Indirect Expense	a. Type of Rate *(Place "X" in appropriate box)* ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed			
	b. Rate	c. Base	d. Total Amount	e. Federal Share

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. Certification: **I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.**

Typed or Printed Name and Title	Telephone (Area code, number and extension)
Signature of Authorized Certifying Official	**Date Report Submitted**

Previous Editions not Usable

Standard Form 269A (REV 4-88)
Prescribed by OMB Circulars A-102 and A-110

VOL 58 ISS 128 JL 7 1993 UMI

FINANCIAL STATUS REPORT

(Short Form)

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award. You may also contact the Federal agency directly.

Item	Entry	Item	Entry

1, 2 and 3. Self-explanatory.

4. Enter the employer identification number assigned by the U.S. Internal Revenue Service.

5. Space reserved for an account number or other identifying number assigned by the recipient.

6. Check *yes* only if this is the last report for the period shown in item 8.

7. Self-explanatory.

8. Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."

9. Self-explanatory.

10. The purpose of columns, I, II and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in *the same funding period*. If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.

10a. Enter total program outlays less any rebates, refunds, or other credits. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to sub-recipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.

10b. Self-explanatory.

10c. Self-explanatory.

10d. Enter the amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors.

Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded.

Do not include any amounts on line 10d that have been included on lines 10a, b or c.

On the final report, line 10d must be zero.

10e, f, g, h and i. Self-explanatory.

11a. Self-explanatory.

11b. Enter the indirect cost rate in effect during the reporting period.

11c. Enter the amount of the base against which the rate was applied.

11d. Enter the total amount of indirect costs charged during the report period.

11e. Enter the Federal share of the amount in 11d.

Note: If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

VOL 58 ISS 128 JL 7 1993 UMI

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ If there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Repaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

VOL 58 ISS 128 JL 7 1993 UMI

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind, specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

VOL
58
ISS
128
JL
7
1993
UMI

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OM
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 93-15914 Filed 7-6-93; 8:45 am]
BILLING CODE 4000-01-C

federal register

Wednesday
July 7, 1993

Part IV

Department of Education

Research in Education of Individuals With Disabilities Program and Program for Children and Youth With Serious Emotional Disturbance; Notice of Proposed Priorities for FY 1994 and 1995

VOL
58
ISS
128
JL
7
1993
UMI

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program and Program for Children and Youth With Serious Emotional Disturbance

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary proposes priorities for fiscal years 1994 and 1995 for two programs administered by the Office of Special Education and Rehabilitative Services under the Individuals With Disabilities Education Act. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. The proposed priorities are intended to ensure wide and effective use of program funds. A separate competition would be established for each priority.

DATES: Comments must be received on or before September 7, 1993 for the Research in Education of Individuals With Disabilities Program; and August 6, 1993 for the Program for Children and Youth with Serious Emotional Disturbance.

ADDRESSES: All comments concerning these proposed priorities should be addressed to: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific proposed priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains five proposed priorities under the Research in Education of Individuals with Disabilities Program and one proposed priority under the Program for Children and Youth with Serious Emotional Disturbance. The purpose of each program is stated separately under the title of that program.

These proposed priorities would support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. Further, priorities proposed for FY 1995 could be affected by enactment of legislation reauthorizing these programs. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. Notices inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notices of final priorities.

Research in Education of Individuals With Disabilities Program

Purpose of Program: The Research in Education of Individuals with Disabilities Program is authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443). The program provides support (1) to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn; and (2) for research and related purposes, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

Priorities: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet any one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet any one of these absolute priorities:

Proposed Absolute Priority 1—School-Linked Services to Support Better Outcomes for Children With Disabilities

Background

Special and general educators are increasingly engaged in the search for and implementation of services that will ensure equity, excellence, and inclusion for children and youth with disabilities. While successful adult outcomes are significantly based on one's education as a child, productivity, independence, and quality of life are also influenced by access to and provision of health and social services. Schools increasingly acknowledge that many of these noneducational services are vitally needed, but the needs often go unmet. In response, some schools are coordinating and providing these services through policies and approaches described as school-linked services.

The provision of school-linked services appears to offer considerable promise but presents many issues. Multiple service systems must operate in a coordinated and flexible manner to meet the educational, related services, and noneducational needs of children with disabilities. Differences in organization and administrative structures, regulations and mandates, funding mechanisms and incentives, professional roles, and governance can represent barriers and make the development and implementation of school-linked services difficult. Very little is known about the extent of involvement or outcomes of children and youth with disabilities in schools developing or providing school-linked services, or about the policy and programmatic implications of these types of services for these children.

The purpose of this proposed priority is to support research projects to study (1) the participation of and outcomes for families and students with disabilities who receive services in schools developing or implementing school-linked services, and (2) the programmatic and policy implications associated with the delivery of educational and related services using school-linked approaches.

School-linked services are those (1) provided to children and their families through a collaboration among schools, health care providers, and social services agencies; (2) that place the school as the central participant in planning and governing the collaborative effort; and (3) provided or coordinated by personnel located at or near the school.

Proposed Priority

A project must select one or more sites located in schools that are committed to developing or implementing school-linked approaches to service delivery. In planning and implementing its research, a project must—

(a) Analyze and describe the participation of and academic and social outcomes for students with disabilities and their families;

(b) Provide an in-depth profile of the particular school-linked approach studied including information describing community, school, and student characteristics;

(c) Describe the advantages and disadvantages of the particular approach implemented by the project as

compared to other approaches (e.g., traditional, community-based, family-based);

(d) Describe the programmatic and policy implications, including barriers, that would need to be overcome, associated with the provision of services to students with disabilities within the school-linked approach studied by the project;

(e) Incorporate the ongoing involvement of relevant service systems, parents, and policymakers at the community level in the goals, design, and implementation strategies of the project; and

(f) Develop products and information that are usable by, accessible to, and disseminated to relevant audiences, including the research community, representatives of school and other relevant service systems, and parents.

A project must budget for two trips annually to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information and to discuss findings and methods of dissemination.

Proposed Competitive Priority

Within this proposed absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

A project that would include a site or sites where, due to high levels of poverty or complicated social, cultural, or geographic relationships, the need for closer ties between schools and the providers of vital noneducational services (e.g., health and social services) is especially great.

For Further Information Contact: Judith Fein, U.S. Department of Education, 400 Maryland Avenue, SW, room 3524, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8116. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Proposed Absolute Priority 2—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Background

Traditionally researchers have communicated their findings from individual research projects and systematic lines of research through journal publications and conference presentations. These findings are communicated to other researchers and engage researchers in dialogues. These dialogues contribute to innovation and development in special education.

In recent years the Office of Special Education Programs (OSEP) has sought to expand these traditional approaches. While continuing to support innovation and development, OSEP has established a goal to foster the use of a professional knowledge base by professionals who educate children and youth with disabilities and parents who are involved in the education of their children and youth with disabilities. This goal challenges the research and practice communities to examine beliefs and attitudes about empirical and practice knowledge, the methods for capturing the knowledge, and the communication across professional communities committed to improving the outcomes for children and youth with disabilities.

The purpose of this proposed priority is to synthesize and communicate an extant professional knowledge base on curricular, instructional, or organizational strategies and approaches that would contribute to professional practice as a means for achieving better outcomes for children and youth with disabilities.

Proposed Priority

A project must—

(a) In conducting a synthesis of the literature—

(1) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(2) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(3) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(4) Develop and implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity and generalizability of findings;

(5) Establish criteria and procedures for judging the appropriateness of studies;

(6) Meet with the Office of Special Education Programs and with the other projects funded under this priority to review their topical focus and methodological approach for conducting the synthesis prior to the start of their respective synthesis; and

(7) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals educating children and youth with disabilities; and

(b) In communicating its findings—

(1)(i) Cooperate with OSEP to convene a forum—to be held in Washington, DC between the 18th and 21st months of the project—at which the project would exchange findings from the synthesis activity with researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents; and

(ii) Provide draft copies of its analysis and interpretations to participants;

(2) Based on discussion and feedback from forum participants, prepare final synthesis documents; and

(3)(i) Develop the information products that have the greatest potential for use by national professional education and parent organizations in their existing communication systems and member networks.

(ii) In developing the information products the project must propose products appropriate for the topical focus and audience, provide a rationale for those proposed types of products, and propose communication strategies for fostering the use of the products by the appropriate audience.

(iii) The project must coordinate with OSEP to finalize information products for various systems and networks.

Each project must budget for:

(1) A two-day meeting in Washington, DC, during the first year, as described under paragraph (b)(1) of this proposed priority;

(2) The two-day Research Project Directors' meeting to be held in Washington, DC, each year of the project; and

(3) Two trips for up to two days each to Washington, DC, for the activity described under paragraph (b)(3)(iii) of this proposed priority.

For Further Information Contact: Martha Coutinho, U.S. Department of Education, 400 Maryland Avenue, SW., room 3522, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8156. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Proposed Absolute Priority 3—State and Local Education Efforts to Implement the Transition Requirements in the Individuals With Disabilities Education Act

Background

Despite the progress and accomplishments related to implementation of the Individuals with Disabilities Education Act (IDEA) over the last several years, much remains to be done to improve the outcomes of youth with disabilities. Expanded transition services, now mandated by IDEA, highlight the importance of individualized planning and implementation of specific activities targeted to adolescents, to focus educators' attention on outcomes and the preparedness of youth to assume productive adult lives.

IDEA provides for a number of specific activities that are defined as transition services. These services are to be made available to all students age 16 and older, and may be extended to students age 14 or younger, if appropriate. Transition services are defined in IDEA as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation (20 U.S.C. 1401(a)(19)).

There is considerable State and local variation with respect to the implementation of these expanded requirements. Very little information exists on the nature and extent of State and local implementation, including policies, procedures, and practices. Moreover, policymakers, administrators, and educators at the Federal, State, and local levels lack information regarding the nature of student participation and the impact these services have on student outcomes; the extent other agencies are involved in the transition process; and the degree transition services access and use information and services available from a variety of Federal programs.

This proposed priority would support one cooperative agreement to study the progress being made to implement the transition services mandated by IDEA. The specific goals of the research are to describe Federal, State, and local implementation, including policies, procedures, and practices associated with transition services; to identify barriers to effective implementation; and to evaluate the impact of transition services on student outcomes.

Proposed Priority

(a) The project must include substudies in the following areas:

(1) The range and variation in State and local policies related to the definitional components of transition services;

(2) Student participation in transition planning, and student outcomes associated with implementation of transition services;

(3) State and local policies, practices and procedures related to the implementation of the transition services, with information obtained from local service providers (the substudy may include visits to illustrative sites);

(4) Interagency involvement in transition planning and services, including a description of the impediments associated with interagency involvement in transition planning and provision of services; and

(5) Federal program services and relevant policies related to meeting the transition requirements, including special education, vocational education, rehabilitation services, adult education, postsecondary education, the Job Training Partnership Act, and the Americans with Disabilities Act.

(b) In planning and implementing the substudies, the project must include appropriate policymakers, administrators, and service providers involved in the design and delivery of transition services to youth with disabilities.

(c) The project must submit for approval—

- A plan for conducting the substudies and disseminating reports within 60 days of the start of the project;
- A report for substudy (1) by the end of year one;
- Reports for substudies (2), (3), and (4) by the end of year two;
- A report for substudy (5) by the middle of year 3; and
- A final report at the end of year three. The final report must include the following: an executive summary, introduction, project objectives, methodology, findings organized by substudy, summary, and conclusions regarding the progress being made by State and local agencies to implement the IDEA transition requirements.

The project must budget for two trips, annually, to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another two-day meeting to meet with the project officer of the Office of Special Education Programs (OSEP) and with other OSEP work groups, as appropriate, to plan and review project activities and progress.

For Further Information Contact: Tom V. Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8110. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Proposed Absolute Priority 4—Center for Policy Research

Background

After 16 years of experience implementing the requirements of the Individuals with Disabilities Education Act, parents, educators, and policymakers are calling for reforms in the ways services are delivered to students with disabilities and for a careful examination of the procedures used to ensure that students with disabilities are effectively and appropriately served. A recent report from the National Association of State Boards of Education (1992) calls for sweeping reforms in the service delivery system and in the way special education has been organized and administered at the Federal, State, and local levels. The Center for Policy Options in Special Education at the University of Maryland

has identified issues and options associated with the restructuring of schools and the implications for special education (1992).

Increasingly concerns are expressed with the emphasis that has been placed on procedural compliance, rather than quality outcomes, for special education. A school district could be in full compliance with all procedural requirements and yet have a dropout rate in excess of 40 percent for students with disabilities. Reports from many jurisdictions suggest that much reform in special education service delivery is already emerging at the school building and school district level. However, the anecdotes, while revealing potentially promising innovations, indicate that little systematic research is occurring to document the effects of these reforms. Furthermore, the reform activities themselves have typically not been well described. The need also exists to improve the capacity to conduct policy research in special education.

The Secretary intends to make an award with a project period of up to 36 months. The Secretary may make a continuation award for an additional two-year period, subject to the requirements of 34 CFR 75.253(a). Under 34 CFR 75.234(a)(4), the Secretary would assess in particular the continued need for the center proposed in this priority.

Proposed Priority

This proposed priority would establish a center to conduct a program of policy research to examine the impact of general education reform on students with disabilities and the impact of special education reform activities on the education of all students. The specific goals of the center would be—

- To improve educational outcomes for students with disabilities by describing and documenting reforms occurring at the Federal, State, and local levels; assessing the impact of these reforms; and providing policy options to decision-makers at all levels; and
- To contribute to improving the quality of policy research as it relates to the education of students with disabilities. This would require collaboration between special education researchers and nationally recognized policy researchers in related fields.

The center must—

(a) Fund as research assistants at least five graduate students per year who have concentrations in either policy or disability issues;

(b) Contribute to the development and use of rigorous methodologies in conducting policy research by (1) demonstrating the use of innovative and rigorous methodologies in studying critical policy issues, and (2) facilitating the exchange of relevant information with those conducting research in either or both special education and general education;

(c) In consultation with the Office of Special Education Programs (OSEP), develop a program of policy research that addresses the significant reform issues impacting on service delivery to students with disabilities. The reform issues to be considered must include, but are not limited to, the following:

(1) How statutory and regulatory flexibility can be provided at the Federal, State, and local levels while the rights of students with disabilities are protected.

(2) How performance and compliance monitoring and program audits can promote program improvement, and how other program strategies (e.g., technical assistance) contribute to program improvement.

(3) How State and local efforts to restructure the delivery of both general education and special education have affected the delivery of services to students with disabilities.

(4) What policies and other strategies have been effective in promoting the inclusion of students with disabilities in regular education programs, and what policies, and other strategies have provided disincentives.

(5) The effects of efforts at the Federal, State, and local levels to coordinate various categorical programs; e.g., the Chapter 1 program for disadvantaged students and programs for students with disabilities;

(d) Develop and use effective communication strategies for ensuring that the center's policy research is available for decision making at the appropriate Federal, State, and local levels. Issues to be addressed in developing communication strategies must include, but are not limited to, the timing and format of information; the method of communication; and the scientific and practical credibility of the information;

(e) Address the needs of various audiences for policy research in both the substance and format of the information; and

(f) Create organizational support for using information through involving decisionmakers in early stages of investigations, prior to the development of communication strategies. Study planning and implementation must include the participation of a group of appropriate policymakers, administrators, disability advocates, and other relevant constituents including the National Center on Outcomes

funded by the Office of Special Education Programs.

The center must budget for two trips, annually, to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting to meet with the project officer of the Office of Special Education Programs to plan and review project activities and progress.

For Further Information Contact: Louis Danielson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3532, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8119. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Proposed Absolute Priority 5—Initial Career Awards

Background

There is need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This proposed priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children and youth with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in 34 CFR 324.1.

The purpose of this proposed priority is to award grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program.

For fiscal year 1994 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1989–90 academic year. For fiscal year 1995 awards, individuals must have completed a doctoral program and graduated no earlier than the 1990–1991 academic year. Projects proposing to support individuals who are members of racial or ethnic minority groups, or both, are particularly encouraged by the

Secretary to apply for grants under this proposed priority.

Proposed Priority

To be considered for funding under this proposed priority, a project must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for the two-day Research Project Directors' meeting to be held in Washington, DC, each year of the project.

For Further Information Contact: Tom V. Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205- 8110. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Applicable Program Regulations: 34 CFR part 324.

Program Authority: 20 U.S.C. 1441–1443.

Program for Children and Youth With Serious Emotional Disturbance

Purpose of Program: This program supports projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Priority: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Preventing the Development of Serious Emotional Disturbance Among Children and Youth With Emotional and Behavioral Problems

Background

Improving the academic performance of our Nation's students is a major focus of educational reform initiatives. However, academically focused reform initiatives may potentially divert, not strengthen, the ability of schools to meet the psychological, social, and behavioral needs of students. Schools often do not provide specific educational experiences that promote the personal and social development of youth, complemented, if necessary, with programs and services to prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Our Nation's schools need a reorientation of the fundamental approach to addressing the diverse and complex patterns of psychological and social behavior presented by students, including those with serious emotional disturbance. Approaches are needed that focus on the positive outcomes desired, rather than negative outcomes to be eliminated. Schools must be responsible and accountable for ensuring that, rather than develop serious emotional disturbance, students with emotional and behavioral problems achieve positive academic, personal, and social outcomes. School-based research that incorporates the demands of the environment is needed to design and test interventions that would enhance the personal and social development of students with emotional and behavioral problems, so as to prevent the development of serious emotional disturbance.

This proposed priority would support research projects that implement and test innovative interventions enabling schools to provide positively oriented instruction, curricula, and support services needed to prevent students with emotional and behavioral problems from developing serious emotional disturbance. The research would study how to assist schools in preparing these students to meet the personal and social demands of post-school environments.

Proposed Priority

To be considered for funding under this proposed priority, a project must—

(a) Provide a conceptual framework for the proposed preventive approach. The conceptual framework must reflect findings from multi-disciplinary research, as well as, validated interventions and strategies relevant for promoting personal and social development of children with emotional and behavioral problems;

(b) As part of the conceptual framework: (1) Address the challenge and diversity of mental health, psychological, and social characteristics so as to assist children with emotional and behavioral problems from developing serious emotional disturbance;

(2) Identify and define the outcomes related to personal and social development that would comprise the basis for the design of the proposed preventive components;

(3) Document the rationale for each outcome construct; and

(4) Describe means for measuring these outcomes;

(c) Propose interventions that (1) are comprehensive and positive; (2) promote the social and emotional development of students with emotional and behavioral problems; and (3) provide the cornerstone for building school-wide capacity for meeting the social and emotional needs of children with emotional and behavioral problems. The interventions must encompass an array of experiences that ensure that children with emotional and behavioral problems acquire and demonstrate in various settings the competencies needed to achieve the measurable desired outcomes related to personal and social development;

(d) Provide and test interventions within the general education environment and expand these to include home-based and community-based components appropriate to the proposed approach;

(e) Implement interventions that involve the active participation of a

broad range of constituents, including school personnel, parents, and community agencies;

(f) Assess the efficacy of the proposed interventions for improving personal and social outcomes for students with emotional and behavioral problems; and

(g) Evaluate the implementation of the proposed interventions to enhance the personal and social adjustment of students with emotional and behavioral problems across school environments.

A project must budget for two trips, annually, to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another two-day meeting to meet with the project director of the Office of Special Education Programs and the other projects funded under this priority to share their approaches, designs, and experiences, and to design collaborative products.

For Further Information Contact: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–9099. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Applicable Program Regulations: 34 CFR Part 328.

Program Authority: 20 U.S.C. 1426.

Intergovernmental Review: The Program for Children and Youth with Serious Emotional Disturbance is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3524, 300 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023, and Program for Children and Youth with Serious Emotional Disturbance, 84.237)

Dated: April 30, 1993.

Richard Riley,

Secretary of Education.

[FR Doc. 93–15915 Filed 7–6–93; 8:45 am]

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VOL
58
ISS
1
2
8
JL
7
1993
UMI

federal register

Wednesday
July 7, 1993

Part V

The President

Proclamation 6578—National Literacy Day, 1993 and 1994

Executive Order 12854—Implementation of the Cuban Democracy Act

VOL
58
ISS
128
JL
7
1993
UMI

Federal Reg
Vol. 58, No
Wednesday,

Title 3—

The Pre

Federal Register
Vol. 58, No. 128
Wednesday, July 7, 1993

Presidential Documents

Title 3—

The President

Proclamation 6578 of July 2, 1993

National Literacy Day, 1993 and 1994

By the President of the United States of America

A Proclamation

America is a grand and prosperous Nation. We enjoy the highest standard of living of any major nation, and we lead the world in many other aspects. For instance, many of the greatest educational institutions in the world are American. However, despite this success—or maybe because of it—Americans take many things for granted. Our relative wealth has often led us to neglect the basic strengths on which this Nation was founded and has prospered. One of these strengths is an education level for all Americans adequate to support a productive work force, strong family structures, and a responsible citizenry.

Literacy is fundamental for all facets of life, yet there are approximately 27 million adults who lack the most fundamental skills necessary to survive and succeed in our society. It is my goal as President of the United States to give all Americans the opportunity to learn to read, write, and develop basic skills. National Literacy Day provides us a time to reaffirm our commitment to ensuring that all Americans possess the basic reading and math skills on which all further learning must be built.

The fifth National Education Goal calls for every American, by the year 2000, to possess the knowledge and skills necessary to compete in a global economy. That goal highlights one critical fact of life: The world of work is changing rapidly. Americans, and especially young Americans, will never succeed in tomorrow's economy with yesterday's skills. That is why we must have the courage to change our education system to face the challenges of the 21st century.

My Administration's education reform legislation, the Goals 2000: Educate America Act, establishes high academic and occupational standards, while providing support to States and communities to help them reach those standards. Fifty million Americans have no high school diploma, and half of those who do graduate do not go on to college. We must be sure that these Americans receive the education and training they need to compete in a high-wage, high-skills economic climate.

Literacy is not a luxury. It is a right and a responsibility. It is hard for most of us to imagine functioning in our society without the ability to complete a job application or balance a checkbook. It is a disadvantage that is intolerable in a Nation dedicated to the principles of freedom and equality.

In recent years progress has been made toward a more widely literate society. States and communities, volunteer and religious organizations, businesses and labor organizations have all made invaluable contributions to raising public awareness and assisting undereducated adults. I applaud the good work that these groups have done, and I encourage them to join in a partnership with our Federal initiatives to completely erase American illiteracy by the year 2000.

To recognize the urgent need to increase literacy to ensure the future well-being of our country and all its citizens, the Congress, by House Joint Resolution 213, has designated July 2, 1993, and July 2, 1994, as "National Literacy Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 2, 1993, and July 2, 1994, as "National Literacy Day."

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-16244
Filed 7-6-93; 10:53 am]
Billing code 3195-01-P

VOL 58 ISS 128 JL 7 1993 UMI

Presidential Documents

Executive Order 12854 of July 4, 1993

Implementation of the Cuban Democracy Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trading with the Enemy Act, as amended (50 U.S.C. App. 1–6, 7–39, 41–44), the Cuban Democracy Act of 1992 (Public Law 102–484, sections 1701–1712, October 23, 1992, 106 Stat. 2575) (the "Act"), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. *Implementation of the Act.* All agencies are hereby directed to take all appropriate measures within their authority, including the promulgation of rules and regulations, to carry out the provisions of the Act.

Sec. 2. *Functions of the Department of State.* The Secretary of State shall be responsible for implementing sections 1704, 1707, and 1708 of the Act. Responsibility for transmitting the certification required by section 1707 and the report required by section 1708 of the Act is delegated to the Secretary of State.

Sec. 3. *Functions of the Department of the Treasury.* Except as provided in section 4 of this order, the Secretary of the Treasury shall be responsible for implementing sections 1705(b)–(e) and 1706 of the Act, to the extent that these sections pertain to transactions with Cuba.

Sec. 4. *Functions of the Department of Commerce.* The Secretary of Commerce shall be responsible for implementing sections 1705(b)–(e) of the Act, to the extent that these sections pertain to the exportation to Cuba from the United States or from a third country of goods and technology subject to the jurisdiction of the Department of Commerce.

Sec. 5. *Consultation.* In consultation with the Secretary of State, the Secretary of the Treasury and the Secretary of Commerce are hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Act and this order.

Sec. 6. Nothing in this order shall be deemed to affect any functions vested by law in the Federal Communications Commission.

Sec. 7. *Effective Date.* This order shall be effective immediately.

William J. Clinton

THE WHITE HOUSE,
July 4, 1993.

[FR Doc. 93–16288
Filed 7–6–93; 12:05 pm]
Billing code 3195–01–P

VOL
58
ISS
128
JUL
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1993
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Public Laws
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FEDERAL
35357–35840
35841–36116
36117–36300
36301–36588

Reader Aids

Federal Register

Vol. 58, No. 128

Wednesday, July 7, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587

Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

Proclamations:
6576.....36117
6577.....36301
6578.....36585

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
1097.....34359
1098.....35361
1099.....34362
1435.....36120
1755.....36252

8 CFR

245.....35832

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131
72.....36298

Proposed Rules:
25.....36116
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905
71.....36157, 36158
121.....36116
135.....36116
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

16 CFR

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
249.....35367

18 CFR

Proposed Rules:
35.....36172
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
510.....36134
520.....36134

Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
572.....36518, 36546

Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

VOL
58
ISS
128
JL
7
1993
UMI

27 CFR

9.....35865, 35877

Proposed Rules:

4.....35908
5.....35908

28 CFR

0.....35371
55.....35371

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

920.....36135
938.....36139

Proposed Rules:

935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357

34 CFR

378.....35762
685.....36008

Proposed Rules:

692.....36110

40 CFR

131.....36141
180.....36358, 36359
185.....36358
228.....35884

Proposed Rules:

88.....35420
180.....36366
186.....36366
261.....36367
372.....36180

43 CFR

Public Land Orders:

6986.....35408
6988.....35409

44 CFR

354.....35770

46 CFR

Proposed Rules:

171.....36374

47 CFR

1.....36142
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410
90.....36362

Proposed Rules:

73.....35420, 35421, 36184, 36374, 36375, 36376

48 CFR

904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363

49 CFR

541.....36376
571.....36152

Proposed Rules:

543.....35422

50 CFR

17.....35887
285.....36154
625.....35891
646.....35895, 36155
658.....35897
672.....35897
675.....35897

Proposed Rules:

17.....36184, 36379, 36387

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2343/P.L. 103–45

Forest Resources Conservation and Shortage Relief Amendments Act of 1993 (July 1, 1993; 107 Stat. 223; 6 pages)

S. 80/P.L. 103–46

Big Thicket National Preserve Addition Act of 1993 (July 1, 1993; 107 Stat. 229; 3 pages)

S.J. Res. 88/P.L. 103–47

To designate July 1, 1993, as "National NYSP Day". (July 1, 1993; 107 Stat. 232; 2 pages)

Last List July 2, 1993

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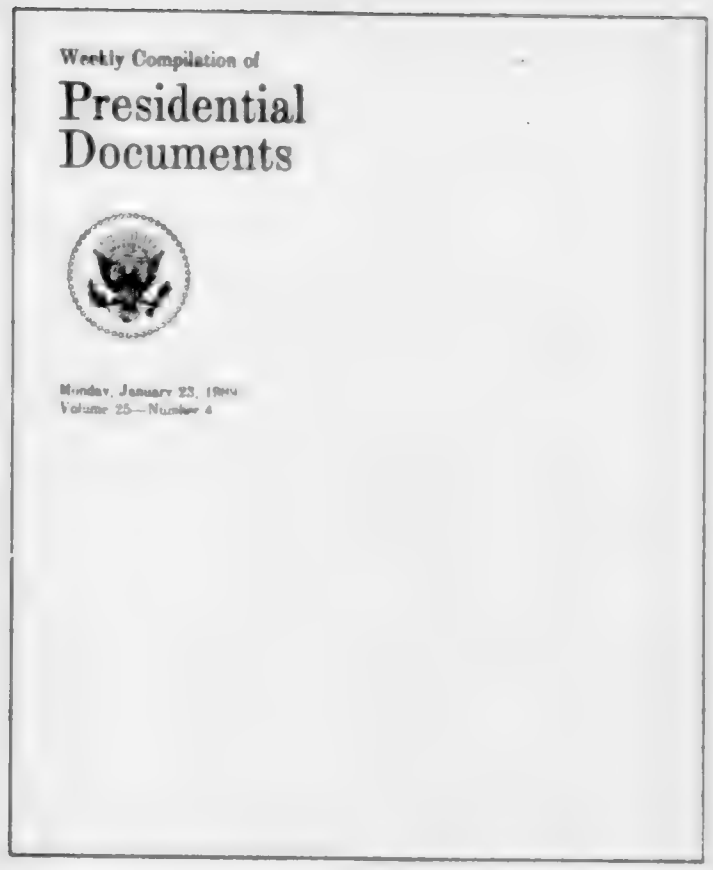

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VOL
58
ISS
128
JL
7
1993
UMI

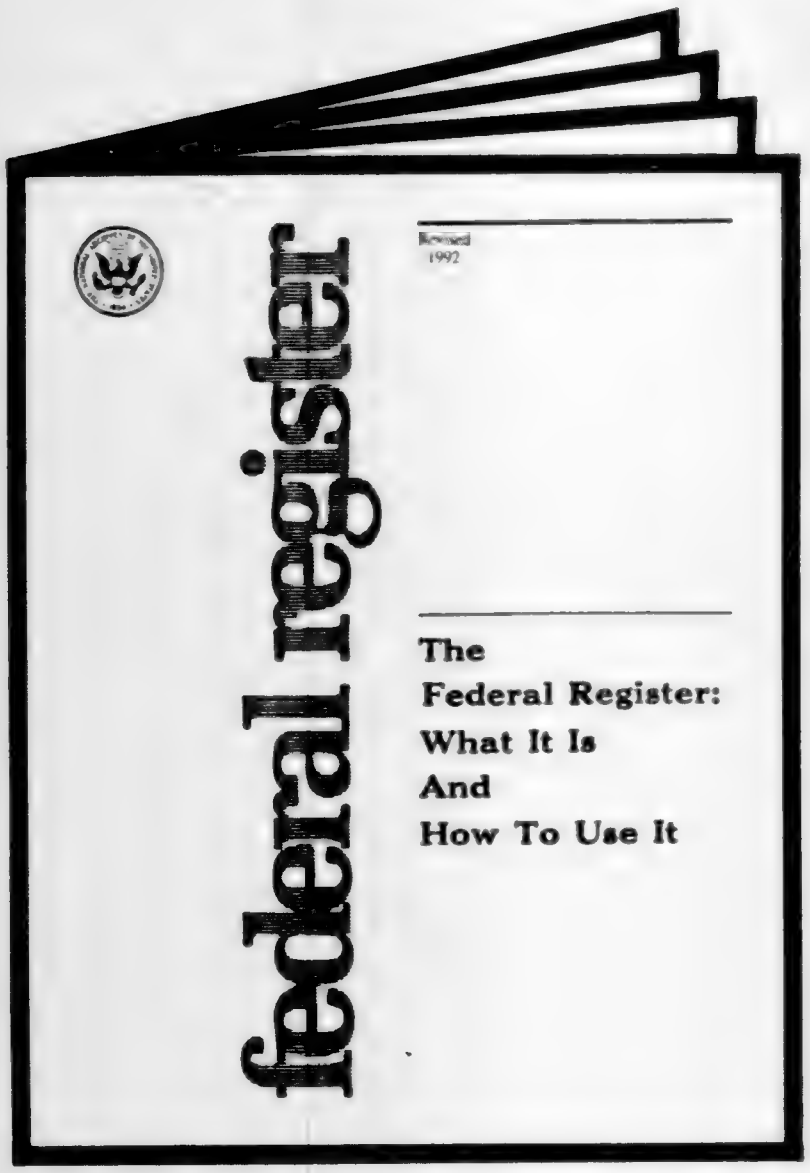

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Vol. 58 No. 129
Pages 36589–36852

Federal Register

Thursday
July 8, 1993

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VOL
58
ISS
129
JL
8
1993
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Contents

Federal Register

Vol. 58, No. 129

Thursday, July 8, 1993

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
Tobacco, 36633

Agriculture Department
See Agricultural Stabilization and Conservation Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Food and Nutrition Service
See Forest Service
See Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 36633

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Bovine spongiform encephalopathy (BSE); animal products and byproducts prohibitions and restrictions—
Denmark removed from list, 36594
Pork and pork products from Denmark, 36593
Rinderpest and foot-and-mouth disease; disease status change—
France, 36594
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications, 36593
Plant-related quarantine, domestic:
Oriental fruit fly, 36589
Pink bollworm, 36591
Witchweed, 36590
PROPOSED RULES
Exportation and importation of animals and animal products:
Animal embryo and semen importation, 36625
Rinderpest and foot-and-mouth disease; disease status change—
New Caledonia, 36624
NOTICES
Genetically engineered organisms for release into environment; permit applications, 36634
Harry S Truman Animal Import Center; importation procedures; application period and lottery, 36635

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
Coyote Springs Cogeneration Project, OR, 36663

Centers for Disease Control and Prevention
NOTICES
Meetings:
Diabetes Translation and Community Control Programs Technical Advisory Committee, 36690
Respirable coal mine dust; occupational exposure; NIOSH meeting, 36691

Coast Guard
RULES
Ports and waterways safety:
New London Harbor, CT; security zone, 36597
Stability design and operational regulations for inspected vessels, 36601
PROPOSED RULES
Drawbridge operations:
Unnecessary openings, 36629

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Thailand, 36655

Copyright Royalty Tribunal
NOTICES
Cable royalty fees:
Distribution proceedings, 36656

Defense Department
NOTICES
Agency information collection activities under OMB review, 36656
Meetings:
Science Board task forces, 36657

Education Department
NOTICES
Meetings:
National Education Goals Panel, 36657

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Nuclear Weapons Complex; Kansas City Plant, MO, et al.; consolidation, 36658
Grant and cooperative agreement awards:
Pacific Gas & Electric, 36662
Syracuse University, 36662
Natural gas exportation and importation:
Northstar Energy Corp., 36682
Texaco Gas Marketing Inc., 36682

Environmental Protection Agency
NOTICES
Drinking water:
Public water supply supervision program—
Connecticut, 36685
Nebraska, 36686
Meetings:
Science Advisory Board, 36686

VOL 58 ISS 129 JL 8 1993 UMI

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
  Airplane operator security; security directives and information circulars, 36802
Transition areas, 36596
PROPOSED RULES
Air carrier certification and operations:
  Transport category airplanes; rejected takeoff and landing performance standards, 36738
Airworthiness directives:
  British Aerospace, 36627
Rulemaking petitions; summary and disposition, 36626
Transition areas, 36628
NOTICES
Exemption petitions; summary and disposition, 36731
Passenger facility charges; applications, etc.:
  Key Field, MS, 36732
  McGhee Tyson Airport, TN, 36732
  Orlando International Airport, FL, 36733

Federal Communications Commission
RULES
Television broadcasting:
  Cable Television Consumer Protection and Competition Act of 1992—
    Must-carry and retransmission consent provisions; correction, 36604
PROPOSED RULES
International Telecommunication Union World Radiocommunication Conferences; agendas preparation, 36630
NOTICES
Agency information collection activities under OMB review, 36688

Federal Crop Insurance Corporation
RULES
Administrative regulations:
  Disaster Assistance Act, 1988; implementation, 36592

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 36736

Federal Election Commission
PROPOSED RULES
Federal Election Campaign Act of 1971; compliance procedures, 36764

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
  PacifiCorp et al., 36664
Natural Gas Policy Act:
  Self-implementing transactions, 36666
Applications, hearings, determinations, etc.:
  Columbia Gas Transmission Corp., 36678
  Florida Gas Transmission Co., 36679
  Granite State Gas Transmission Inc., 36679, 36680
  Las Vegas Energy Storage Limited Partnership, 36680
  Mississippi River Transmission Corp., 36680
  Northwest Pipeline Corp., 36680
  Texas Eastern Transmission Corp., 36681
  Texas Gas Transmission Corp., 36681
  Wisconsin Valley Improvement Co., 36682

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
  Polar Bear Container Line et al., 36688

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 36736

Federal Railroad Administration
RULES
Railroad locomotive safety standards:
  Event recorders, 36605

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
  CNB Preferred Partnership et al., 36689
  Dickinson Financial Corp., 36689
  Illing, Amy Blossman, et al., 36689
  Van Buren Bancorporation, 36690

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 36736

Fish and Wildlife Service
RULES
Clean Vessel Act grant program; request for comments, 36619
NOTICES
Endangered and threatened species:
  Recovery plans—
    Lipochaeta venosa, etc., 36693
Grants and cooperative agreements; availability, etc.:
  Sport fish and wildlife restoration projects; policy and procedures for selecting and funding, 36694

Food and Drug Administration
NOTICES
Debarment orders:
  Fogari, Robert A., 36691
Organization, functions, and authority delegations:
  Financial Management Office, 36692
  Human Resources Management Office, 36692

Food and Nutrition Service
NOTICES
Child nutrition programs:
  Child and adult care food—
    Donated food value (July 1, 1993-June 30, 1994), 36635
    National average payment rates; day care home food service payment rates, etc., 36636
  National school lunch, special milk, and school breakfast programs—
    National average payments/maximum reimbursement rates, 36637

Forest Service
NOTICES
Appeal exemptions; timber sales:
  Boise National Forest, ID, 36639

Health and Human Services Department
See Centers for Disease Control and Prevention

See Food and Drug Administration
See Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations:
Indian Health Service, 36693

Health Care Financing Administration
NOTICES
Medicare:
Home health agency costs per visit; schedule of limits, 36748

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Rental voucher and certificate programs, 36808

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Uranium from—
Ukraine et al., 36640

International Trade Commission
NOTICES
Import investigations:
Condensers, parts, and products containing same, including air conditioners for automobiles, 36701
Flat-rolled carbon steel products, 36702
Mechanical gear couplings and components, 36702
Plastic encapsulated integrated circuits, 36702
Sputtered carbon coated computer disks and products containing same, including disk drives, 36703, 36704

Justice Department
NOTICES
Agency information collection activities under OMB review, 36705
Pollution control; consent judgments:
Apache Energy & Mineral Co. et al., 36705
Pellazar, 36706

Labor Department
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 36706

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Colorado, 36698
Washington public lands; supplementary rules establishment, 36699

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge and Advancement Advisory Panel, 36708
Presenting and Commissioning Advisory Panel, 36708

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Air brake systems—
Burnish procedures and recovery requirements, 36615

National Institute for Literacy
NOTICES
Agency information collection activities under OMB review, 36709
Grants and cooperative agreements; availability, etc.:
National Center for Adult Literacy and Learning Disabilities; establishment, 36782

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 36632
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 36653
Permits:
Endangered and threatened species, 36653
Marine mammals, 36654, 36655

National Park Service
RULES
Concession contracts and permits:
Competitive renewal; address change, 36598
NOTICES
Environmental statements; availability, etc.:
Denali National Park and Preserve, AK, 36699
Lake Meredith National Recreation Area, TX, 36700
Meetings:
Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions, 36700
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 36700
Underground Railroad Advisory Committee, 36700
Upper Delaware Citizens Advisory Council, 36701

National Science Foundation
NOTICES
Meetings:
Biological and Critical Systems Special Emphasis Panel, 36709
Human Resource Development Special Emphasis Panel, 36710
Ocean Sciences Review Panel, 36710

Nuclear Regulatory Commission
NOTICES
Memorandums of understanding:
NRC emergency response data system utilization—
Massachusetts, 36710
Reports; availability, etc.:
Reactor vessel water level instrumentation in BWRs; issues resolution, 36712

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 36707

VOL 58 ISS 129 JL 8 1993 UMI

Personnel Management Office
NOTICES
Senior Executive Service:
Performance Review Board; membership, 36712

Postal Service
RULES
Inspection Service; mail cover law enforcement technique, 36598

Presidential Documents
PROCLAMATIONS
Canada-U.S. trade agreement implementation; acceleration (Proc. 6579), 36839

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 36712, 36714, 36716
Chicago Board Options Exchange, Inc., 36720
International Securities Clearing Corp., 36722
National Association of Securities Dealers, Inc., 36723, 36725, 36726
National Securities Clearing Corp., 36727
Applications, hearings, determinations, etc.:
Ranson Equity & Treasury Securities Trust, Series 1 and Subsequent Series, et al., 36729

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Tenmile Creek Watershed, WA, 36640

State Justice Institute
NOTICES
Meetings; Sunshine Act, 36736

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Northwest Seaplanes, Inc., 36731

Treasury Department
NOTICES
Agency information collection activities under OMB review, 36734
Meetings:
Debt Management Advisory Committee, 36734

Western Area Power Administration
NOTICES
Power and transmission rate adjustments:
Loveland Area Project, CO, 36682
Power rate adjustments:
Pick-Sloan Missouri Basin Program, MT, 36684

Separate Parts in This Issue

Part II
Department of Transportation, Federal Aviation Administration, 36738

Part III
Department of Health and Human Services, Health Care Financing Administration, 36748

Part IV
Federal Election Commission, 36764

Part V
National Institute for Literacy, 36782

Part VI
Department of Transportation, Federal Aviation Administration, 36802

Part VII
Department of Housing and Urban Development, 36808

Part VIII
The President, 36837

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PA
A cumulat
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3 CFR
Proclamati
6515 (See Proc. 65
6579.....
7 CFR
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400.....
9 CFR
78.....
94 (3 docu
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94.....
98.....
11 CFR
Proposed R
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102.....
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14 CFR
71.....
108.....
Proposed R
Ch. I.....
1.....
25.....
39.....
71.....
91.....
121.....
135.....
33 CFR
165.....
Proposed R
117.....
36 CFR
51.....
39 CFR
233.....
46 CFR
170.....
47 CFR
76 (2 docu
Proposed R
Ch. I.....
49 CFR
218.....
229.....
571.....
50 CFR
85.....
Proposed R
642.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6515 (See Proc. 6579)....36839
6579....36839

7 CFR
301 (3 documents)....36589, 36590, 36591
400....36592

9 CFR
78....36593
94 (3 documents)....36593, 36594
Proposed Rules:
94....36624
98....36625

11 CFR
Proposed Rules:
4....36764
5....36764
7....36764
102....36764
111....36764

14 CFR
71....36596
108....36802
Proposed Rules:
Ch. I....36626
1....36738
25....36738
39....36627
71....36628
91....36738
121....36738
135....36738

33 CFR
165....36597
Proposed Rules:
117....36629

36 CFR
51....36598

39 CFR
233....36598

46 CFR
170....36601

47 CFR
76 (2 documents)....36604
Proposed Rules:
Ch. I....36630

49 CFR
218....36605
229....36605
571....36615

50 CFR
85....36619
Proposed Rules:
642....36632

VOL
58
ISS
129
JL
8
1993
UMI

Rule

This sectio
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DEPARTI

**Animal a
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[Docket N

**Oriental
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SUMMARY:
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Rules and Regulations

Federal Register
Vol. 58, No. 129
Thursday, July 8, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-149-5]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of San Diego County, CA, and by removing the imposed restrictions on the interstate movement of regulated articles from that area. The regulations, including the quarantine of a portion of San Diego County, were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from San Diego County and that the quarantine and restrictions are no longer necessary.

DATES: Interim rule effective June 29, 1993. Consideration will be given only to comments received on or before September 7, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-149-5. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

We established the Oriental fruit fly regulations (7 CFR 301.93 through 301.93-10; referred to below as the regulations) and quarantined a portion of San Diego County, CA, in a document effective on February 10, 1993, and published in the **Federal Register** on February 16, 1993 (58 FR 8517-8524, Docket No. 91-149-4). The regulations imposed restrictions on the interstate movement of regulated articles from the quarantined area to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designated soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

Based on insect trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service of the United States Department of Agriculture, we have determined that the Oriental fruit fly has been eradicated from the previously quarantined portion of San Diego County, CA. The last finding of Oriental fruit fly in this area was December 2, 1992.

Since then, no evidence of Oriental fruit fly infestations has been found in this area. Based on Departmental experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that Oriental fruit fly infestations no longer exist in San Diego County, CA. Further, Oriental fruit fly infestations are not known to exist anywhere else in the continental United States. Therefore, we are removing San Diego County, CA, from the list of quarantined areas in § 301.93-3(c), and adding to § 301.93-3(c) a statement that the Oriental fruit fly is not known to exist anywhere in the continental United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of San Diego County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove the quarantine on San Diego County, CA, and to relieve the imposed restrictions on the interstate movement of regulated articles from that area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of San Diego County, CA. There is very little commercial activity in the previously quarantined area that may be affected by

VOL 58 ISS 129 JL 8 1993 UMI

this rule. The approximately 11 small entities that may be affected include 3 nurseries and 8 fruit vendors. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California.

Most of these small entities sold previously regulated articles primarily for local intrastate, not interstate, movement. The sale of these articles will therefore remain unaffected by the regulatory provisions we are removing. Also, many of these entities sold other items in addition to the previously regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

The effect of this regulation on these entities that did move previously regulated articles interstate was minimized by the availability of various treatments specified in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations. The specified treatments, in most cases, allowed these small entities to move previously regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The area described in this paragraph is designated as a quarantined area: The Oriental fruit fly is not known to exist anywhere in the continental United States.

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16126 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 301

[Docket No. 92–097–2]

Witchweed Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the witchweed quarantine and regulations by adding sorghum to the list of regulated articles whose interstate movement is restricted to prevent the artificial spread of witchweed. In that interim rule, we also amended the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting specified areas in 10 counties in North Carolina and 1 county in South Carolina. The interim rule was necessary to prevent the artificial spread of witchweed into noninfested areas of the United States.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Rodriguez, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 5, 1993 (58 FR 215–217, Docket No. 92–097–1), we amended the witchweed quarantine and regulations in 7 CFR part 301 by adding sorghum to the list of specified regulated articles in § 301.80(b). We also amended § 301.80–2a, which lists generally infested and suppressive areas, by adding and deleting specified areas in 10 counties in North Carolina and 1 county in South Carolina to the list of suppressive areas. We added areas in two new counties, Harnett and Lenoir, in North Carolina. We also added areas in Craven, Cumberland, Greene, Pender, and Wayne Counties in North Carolina, and areas in Horry County in South Carolina. We removed areas in Columbus, Cumberland, Duplin, Greene, Pender, Pitt, and Wayne Counties in North Carolina.

Comments on the interim rule were required to be received on or before March 8, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the amendments to subpart "Witchweed," in 7 CFR part 301 that were published at 58 FR 215–217 on January 5, 1993.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16127 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 301

[Docket No. 93–066–1]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pink bollworm regulations by adding Missouri to the list of States quarantined because of pink bollworm and to the list of generally infested areas. This action is necessary to prevent the interstate movement of pink bollworm into noninfested areas.

DATES: Interim rule effective July 8, 1993. Consideration will be given only to comments received on or before September 7, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–066–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Grefenstette, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917, and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations contained in 7 CFR 301.52 *et seq.* (referred to below as the regulations) quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the spread of pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of pink bollworm into noninfested areas. However, the management and containment of pink bollworm is undertaken as an objective only in places that are designated as suppressive areas.

Prior to the effective date of this document, Missouri was not regulated because of pink bollworm. Surveys conducted by inspectors of the United States Department of Agriculture and by State agencies in Missouri have established that pink bollworm has spread into Dunklin County, Missouri.

Section 301.52–2 of the regulations states that less than an entire quarantined State will be designated as a regulated area only if the State is enforcing a quarantine or regulations that impose restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed with respect to the interstate movement of such articles under the Federal regulations. Currently, Missouri is not enforcing such a quarantine or such regulations.

Therefore, in order to prevent the spread of pink bollworm, we are amending the list of regulated areas in § 301.52–2a of the regulations by designating Missouri as a pink bollworm generally infested area. We are also adding Missouri to the list of States in § 301.52(a) that are quarantined because of pink bollworm.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial spread of pink bollworm to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as result of the comments.

Executive Order 12291

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this interim rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Regulatory Flexibility Act

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Impact Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim rule: (1) Preempts all State and local laws and regulations that are inconsistent with it; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this interim rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

VOL 58 ISS 129 JL 8 1993 UMI

Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C., 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

3301.52 [Amended]

2. In § 301.52, paragraph (a) is amended by adding "Missouri," immediately after "Mississippi,".

3. Section 301.52–2a is amended by adding an entry for Missouri in alphabetical order to read as follows:

§ 301.52–2a Regulated area; suppressive and generally infested areas.

* * * * *

Missouri

(1) *Generally infested area.* Entire State.

(2) *Suppressive area.* None.

* * * * *

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16134 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Disaster Assistance Act of 1988; Procedures for Implementation

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation's (FCIC) procedures for implementing the Disaster Assistance Act of 1988 were published in 1989. Since that time, disaster assistance has been made available under several statutes, most of which make reference to, and incorporate the mandatory FCIC provisions of the Disaster Assistance Act of 1988. This rule makes the FCIC regulations implementing the Disaster Assistance Act of 1988 applicable to those provisions of subsequent Acts.

DATES: *Effective date* July 8, 1993.

COMMENT DATE: Comments may be submitted on or before September 7, 1993.

ADDRESSES: Comments should be submitted to Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250. Telephone (202) 254–8314.

FOR FURTHER INFORMATION CONTACT:

Mari L. Dunleavy, Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is May 1, 1994.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. The reinsured company or sales and service contractor affected by this action perform less when purchase of insurance is mandated by various disaster acts. This rule only serves to reduce compensation to conform to the services required. The reduction is mandated by statute and allowed in the Standard Reinsurance Agreement and Agency Sales and Service Contract. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 207 of the Disaster Assistance Act of 1988 (the "ACT") mandated the purchase of crop insurance coverage as a requirement of eligibility for certain disaster assistance benefits. A rule carrying out this directive was promulgated on June 7, 1989, and incorporated the applicable dates for implementation for the 1989 crop year. However, these dates are not relevant to the subsequant Disaster Acts or subsequent crop years.

Since provisions for sign-up for disaster payments for the 1992 crop year have recently been extended by the Agricultural Stabilization and Conservation Service (ASCS) until May 7, it is imperative that the rule be promulgated prior to that date. Therefore, pursuant to 5 U.S.C. 553, an emergency situation exists and FCIC has determined that notice and public procedure are impracticable, unnecessary, and contrary to the public interest. However, FCIC is soliciting comments for 60 days after the effective date of this rule and will consider the comments prior to the final issuance of the rule.

List of Subjects in 7 CFR Part 400

Crop insurance, Disaster Assistance Act of 1988; Procedures for implementation.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) as follows:

PART 400—[AMENDED]

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

Subpart N—Disaster Assistance Act of 1988; Procedures for Implementation

2. Section 400.250 is revised to read as follows:

§ 400.250 General statement.

The Disaster Assistance Act of 1988, subsequent disaster acts and disaster provisions in subsequent acts and the Rural Development Act (7 U.S.C. 1961 *et seq.*) have required that, subject to certain provisions in those enactments, procedures on a farm, in order to be eligible to receive benefits under the various provisions, would be required to purchase Federal crop insurance when the disaster for which benefits are being obtained are related to a peril which should be covered under the insurance policy. Most of these legislative provisions require that regulations be promulgated to provide for a reduction in the commissions paid to private insurance agents, brokers, or companies on contracts for crop insurance entered into under such disaster provisions. Said reductions must be sufficient to reflect that such insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company.

§ 400.251 [Amended]

3. Section 400.251(a) is amended by removing phrase, "the provisions of the ACT" and inserting in its place the phrase, "various disaster acts and disaster provisions which require the purchase of crop insurance issued under the Federal Crop Insurance Act".

4. Section 400.251(b) is amended by removing the year "1989" and by removing the phrase, "the provisions of section 207 of the Disaster Assistance Act of 1988, as set forth in subsections (c)(2) and (3) of said ACT" and inserting in its place the phrase, "the requirements of various disaster acts or provisions requiring the purchase of crop insurance issued under the Federal Crop Insurance Act".

§ 400.252 [Amended]

5. Section 400.252 is amended by removing the words "the ACT" wherever they appear and inserting in their place the words, "various disaster acts or disaster provisions".

6. Section 400.252(a) is further amended by removing the year "1988" and by removing the year "1989" wherever it appears and inserting in its place the word "next".

7. Section 400(b) is further amended by removing the phrase, "crop year 1989" and inserting in its place the phrase, "the next crop year" and by removing the phrase, "3 percent (3%)" and inserting in its place the phrase, "1½ percent".

Done in Washington, DC, on May 5, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–16065 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–08–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 92–140–2]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Oregon from Class A to Class Free. We have determined that Oregon now meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Oregon.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 14, 1993 (58 FR 4360–4361, Docket No. 93–140–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Oregon from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before March 15, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 58 4360–4361 on January 14, 1993.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16129 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 92–137–2]

Pork and Pork Products From Denmark; Restrictions on Importations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are affirming as a final rule, without change, an interim rule that amended the regulations to add certain restrictions concerning the importation into the United States of pork and pork products from Denmark. The imposition of additional import restrictions was a necessary response to conditions which make possible the commingling of swine vesicular disease-contaminated pork or pork products with disease-free pork and pork products in Denmark. The rule protects against the introduction in the United States of swine vesicular disease.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Cougill, Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 758, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7834.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on December 30, 1992 (57 FR 62176–62177,

VOL 58 ISS 129 JL 8 1993 UMI

Docket No. 92–137–1), we amended the regulations in 9 CFR part 94 by adding Denmark to the list of countries in § 94.13 that, although free of swine vesicular disease, are subject to special restrictions on the importation into the United States of their pork and pork products.

Comments on the interim rule were required to be received on or before March 1, 1993. We received one comment by that date, in support of the interim rule. The facts presented in the interim rule still provide a basis for the rule.

The action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Order 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 94.13 and that was published at 57 FR 62176–62177 on December 30, 1992.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 1st day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16128 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 94

[Docket No. 92–141–3]

Importation of Animal Products and Byproducts From Countries Where BSE Exists; Removal of Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by removing Denmark from the list of countries where bovine spongiform encephalopathy (BSE) exists. Denmark was added to the list in September 1992 after the disease was diagnosed in a cow in that country. We removed Denmark from the list in January 1993 after epidemiological investigations revealed that the disease occurred in only one animal imported into Denmark from Great Britain, and that the animal and the herd into which it was imported had been destroyed. The effect of that action was to relieve certain prohibitions or restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which had been in Denmark, without presenting a significant risk of introducing BSE into the United States.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 14, 1993 (58 FR 4306–4308, Docket No. 92–141–2), we amended the animal and animal product importation regulations in 9 CFR part 94 by removing Denmark from the list of countries in § 94.18 where bovine spongiform encephalopathy (BSE) exists.

Comments on the interim rule were required to be received on or before March 15, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Order 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 94.18(a) and that was published at 58 FR 4306–4308 on January 14, 1993.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16130 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 92–196–2]

Change in Disease Status of France Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring France free of rinderpest and foot-and-mouth disease (FMD). There have been no outbreaks of FMD in France since 1981, and we have determined that rinderpest has not existed there since 1870. We are also adding France to a list of countries that, although declared free of rinderpest and FMD, are subject to special restrictions on the importation of their meat and other animal products into the United States. This revision removes the prohibition on the importation into the United States, from France, of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation, from France, of milk and milk products from ruminants.

France is not declared to be free of hog cholera and swine vesicular disease. Therefore, the importation from France of swine and fresh, chilled, and frozen meat from swine will continue to be restricted because of these diseases. Similarly, certain restrictions on the importation, from France, of ruminant meat and edible products from

ruminants will remain in effect because bovine spongiform encephalopathy exists in France. We are also adding France to the list of countries from which the importation into the United States of llamas and alpacas is restricted. We are adding Spain to that list as well, in order to correct an earlier error. Finally, we are removing an outdated reference to the Panama Canal Zone, which no longer exists as a political entity.

EFFECTIVE DATE: July 23, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") restrict the importation into the United States of certain animals and animal products in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy (BSE), African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On March 16, 1993, we published in the **Federal Register** (58 FR 14174–14177; Docket No. 92–196–1) a proposal to amend the regulations by adding France to the list in § 94.1(a)(2) of countries that are declared to be free of rinderpest and FMD. In that document, we also proposed to add France to the list in § 94.11(a) of countries that, although declared free of rinderpest and FMD, are subject to special restrictions on the importation of their meat and other animal products into the United States. We further proposed to make several nonsubstantive editorial changes in the regulations.

We solicited comments concerning our proposal for a 60-day period ending on May 17, 1993. We received one comment by that date. The comment fully supported the proposed action.

Since the proposed rule was published, two more countries have been added to the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD. Spain was added by a final rule published in the **Federal Register** on February 25, 1993 (58 FR 11365–11367, Docket No. 92–147–2) and effective March 29, 1993, and The Netherlands was added by a final rule published in the **Federal Register** on May 13, 1993 (58 FR 28343–28345, Docket No. 92–154–2) and effective June 14, 1993.

When Spain was declared free of rinderpest and FMD in the February 25, 1993, final rule mentioned above, it should have also been added to the list in § 94.1(d)(1) of countries in which rinderpest or FMD has been known to exist and that were declared to be free of rinderpest and FMD on or after September 28, 1990. However, we inadvertently neglected to add Spain to that list. Therefore, in this final rule we will correct that omission by adding Spain to the list in § 94.1(d)(1).

Also in this final rule, we are removing an outdated reference to the Panama Canal Zone, which no longer exists as a political entity, from the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD. Panama is considered to be free of rinderpest and FMD, so removing the former Canal Zone from the list will have no effect on the rinderpest and FMD status of any part of the country.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from France, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from France, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This rule adds France to the list in part 94 of countries declared to be free of rinderpest and FMD. This action removes the prohibition on the importation into the United States, from France, of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation, from France, of milk and milk products from ruminants. This action does not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine from France because France is still considered to be affected with hog cholera and SVD. Similarly, this action does not relieve certain restrictions on the importation, from France, of ruminant meat and edible products from ruminants because BSE exists in France.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from France into the United States as a result of this rule.

The value of total U.S. imports of cattle in 1991 was $951.6 million, and the value of total U.S. imports of sheep in 1991 was about $1.6 million. The United States did not import any cattle or sheep from France during 1991. In fact, no cattle or sheep were imported into the United States from any country in Western Europe during 1991 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Clearly, Western Europe is not a source of ruminants for the United States, and it is unlikely that declaring France free of rinderpest and FMD will have any effect on the existing trade patterns.

In 1991, only 0.0002 percent of all beef and veal imported into the United States was imported from France (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Overall, France is a net importer of fresh, chilled, and frozen meat and meat extracts (Food and Agriculture Organization, "Trade Yearbook," 1990). Given France's general excess demand for meat products and the small percentage of its meat exports that are

VOL 58 ISS 129 JL 8 1993 UMI

sent to the United States, it is unlikely that declaring France free of rinderpest and FMD will significantly change existing patterns of trade. Therefore, any effect on domestic meat prices or supplies will be insignificant.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from France into the United States as a result of this rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The eight APHIS-approved producers of casein in France provided approximately 7 percent of the casein imported into the United States from France in 1991 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Declaring France free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from France because the restrictions that we are removing did not substantially impede imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.1, paragraph (a)(2) is revised to read as follows:

§ 94.1 Countries where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) * * *

(2) The following countries are declared to be free of both rinderpest and foot-and-mouth disease: Australia, The Bahamas, Barbados, Bermuda, British Honduras (Belize), Canada, Channel Islands, Chile, Costa Rica, Denmark, Dominican Republic, El Salvador, Fiji, Finland, France, Great Britain (England, Scotland, Wales, and Isle of Man), Greenland, Guatemala, Haiti, Honduras, Iceland, Ireland, Jamaica, Japan, Mexico, The Netherlands, New Zealand, Nicaragua, Northern Ireland, Norway, Panama, Papua New Guinea, Poland, Spain, Territory of St. Pierre and Miquelon, Sweden, Trinidad and Tobago, and Trust Territory of the Pacific Islands.

* * * * *

§ 94.1 [Amended]

3. In § 94.1, paragraph (d)(1) is amended by adding the word "France," immediately after "Chile," and by removing the words "and Poland" and replacing them with "Poland, and Spain".

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence is amended by removing the words "Bahama Islands," and adding, in their place, "The Bahamas," and by adding the word "France," immediately after "Finland,".

§ 94.12 [Amended]

5. In § 94.12, paragraph (a), the first sentence is amended by removing the words "Bahama Islands," and adding, in their place, "The Bahamas,".

§ 94.13 [Amended]

6. In § 94.13, the introductory text, the first sentence is amended by removing the words "Bahama Islands," and adding, in their place, "The Bahamas,".

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16131 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–6]

Transition Area Alteration, Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Pontiac, IL, transition area to accommodate a new VOR runway 24 Standard Instrument Approach Procedure (SIAP) to the New Pontiac Municipal Airport, Pontiac, IL. This action also reflects the new location of Pontiac Municipal Airport by updating the airport's geographic position. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 7, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the existing Pontiac, IL, transition area (58 FR 18054). Interested parties were invited to participate in this rulemaking proceeding by

submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the Pontiac, IL, transition area to accommodate a new VOR runway 24 SIAP to the new Pontiac Municipal Airport, Pontiac, IL. This proposal also reflects the new location of Pontiac Municipal Airport up updating the airport's geographic position.

The development of a new SIAP requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, as amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AGL IL TA Pontiac, IL [Revised]
Pontiac Municipal Airport, IL
(lat. 40°55′ 25″ N., long. 88° 37′ 32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Pontiac Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on June 22, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–16094 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 165

[CGD01 93–057]

Security Zone; Security Zone D Expansion, New London Harbor, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding Security Zone D in New London Harbor at the Naval Underwater Warfare Center in New London, CT on July 9, 1993. This action is needed to protect the USS NEBRASKA (SSBN 739) against damage, sabotage or other subversive acts while the vessel is in New London for its commissioning. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from July 9, 1993 at 6 p.m. through July 10, 1993 at 1 p.m. unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR D.D. Skewes, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location and position, which are essential information for the purposes of expanding the security zone, until June 15, 1993. There was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the date of the event would be contrary to the public interest.

Background and Purpose

The event requiring this regulation is the launching of the USS NEBRASKA (SSBN 739) at the Naval Underwater Warfare Center on the Thames River in New London, CT. This zone is required to provide security for the USS NEBRASKA prior to and during its commissioning. Security Zone D, as presently published in 33 CFR 165.140(a)(4) will be temporarily expanded for this launching.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 60 minutes. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. This security zone does not close the harbor to commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify

as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are in action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–057 is added to read as follows:

§ 165.T01–057 Security zone; Security Zone D Expansion, New London Harbor, CT.

(a) *Location.* The following area has been declared a security zone: All waters of the Thames River east of the Naval Underwater Warfare Center, New London, CT bounded by the following positions: 41°20′36″ N, 072°05′34.1″ W; 41°20′36″ N, 072°05′20″ W; 41°20′43.1″ N, 072°05′20″ W; 41°20′46.5″ N, 072°05′26″ W; 41°20′46.5″ N, 072°05′37.3″ W.

(b) *Effective date.* This regulation is effective from July 9, 1993 at 6 p.m. through July 10, 1993 at 1 p.m. unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations covering security zones contained in § 165.33 of this part apply.

Dated: June 24, 1993.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 93–16080 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AB98

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Address change on Final Rule.

SUMMARY: In the **Federal Register** on September 3, 1992 (57 FR 40496), the National Park Service published a final rule to amend regulations which describe National Park Service procedures governing the sale and transfer of concession contracts and permits. This document corrects the address for the Service's Information Collection Officer.

On page 40506 on the fourth line after "Service," the address "1100 L Street, NW., Washington, DC 20013" should be changed to read: "800 North Capitol Street NW., Washington, DC 20002."

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Davis (202) 343–3784.

Terry Tesar,

Federal Register, Liaison Officer.

[FR Doc. 93–15837 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–10–M

POSTAL SERVICE

39 CFR Part 233

Mail Covers

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the mail cover regulations to clarify the applicability of a mail cover as a law enforcement technique, to align the procedure for approval of a mail cover with the current Inspection Service format, and to allow the use of mail covers to locate assets pursuant to a criminal violation that is subject to forfeiture.

EFFECTIVE DATE: July 8, 1993.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, 202–268–4415.

SUPPLEMENTARY INFORMATION: The following is a list of the revised paragraphs within § 233.3, along with the justification for each revision. In addition, new paragraphs or paragraphs which define new terms are indicated below:

Paragraph (a) clarifies that the term "mail cover" applies only to law enforcement activities.

Paragraph (b) reinforces that information obtained from mail covers may be disclosed only in accordance with § 233.3(f) and 233.3(h).

Paragraphs (c)(1) through (c)(4) delete references to various classes of mail and insert instead the terms "sealed" and "unsealed" to be consistent with the definitions of mail matter in the Domestic Mail Manual.

Paragraph (c)(1) defines a mail cover as a nonconsensual recording of information appearing on the outside cover of mail matter. It also clarifies that a "postal violation" is a criminal activity directed against the Postal Service. It also clarifies that the attempt to identify assets that may be forfeitable under criminal law is a new justification for ordering the issuance of a mail cover.

Paragraph (c)(2) defines the term "record", previously undefined for the purposes of § 233.3.

Paragraph (c)(3) defines the term "sealed mail", previously undefined for the purposes of § 233.3.

Paragraph (c)(4) defines the term "unsealed mail", previously undefined for the purposes of § 233.3.

Paragraph (c)(5), formerly paragraph (c)(2), defines "fugitive."

New paragraph (c)(6), formerly paragraph (c)(3), defines "crime."

New paragraph (c)(7) defines the term "postal statute" as criminal activity directed against the Postal Service or one of its operations, programs, or revenues.

New paragraph (c)(8), formerly paragraph (c)(4), also adds to the definition of "law enforcement agency" any part of the federal government authorized to protect the national security.

New paragraph (c)(9), formerly paragraph (c)(5), defines "protection of the national security".

New paragraph (c)(10) defines the term "emergency situation" to allow the

immediate release of information under certain conditions.

Paragraphs (d)(1) and (d)(2) and new paragraph (d)(3) further clarify the delegation and designation authority of the Chief Postal Inspector and the Manager, Inspection Service Operations Support Group, and their designees. It requires that any such delegation must be in writing.

Paragraph (e)(1) amends the language of former paragraph (d)(2)(i), by clarifying the authority to order a mail cover for a violation of a postal statute as defined by these regulations.

Paragraph (e)(2) amends the language of former paragraph (d)(2)(ii), by authorizing the Chief Postal Inspector, or his designee, to order a mail cover to identify property, proceeds, or assets that are subject to forfeiture because of a violation of criminal law.

Paragraph (e)(3) amends the language of former paragraph (d)(2)(iii), by increasing from two to three days the time in which a written request must be received following an emergency mail cover request. It also authorizes the release of information if the releasing official is satisfied that an emergency situation exists.

Paragraph (f) adds abandoned mail or mail that is an immediate threat to persons or property as exceptions to the requirement of securing a mail cover order before recording information on the outside cover of mail matter. It also consolidates former paragraphs (f)(1) and (f)(2).

Former paragraphs (f)(1) and (f)(2) are deleted.

Paragraph (g)(1) clarifies that a federal search warrant is needed to open or inspect the contents of sealed mail matter.

Paragraph (g)(2) authorizes the opening of unsealed mail matter only for purposes of determining the payment of proper postage, or mailability.

Paragraphs (g)(3) and (g)(3) (formerly paragraphs (g)(2) and (g)(3)), clarify that a mail cover shall not include mail from and to a subject's known attorney. It also clarifies who may authorize a mail cover order.

Paragraph (g)(5), formerly paragraph (g)(4), discusses time limits.

Paragraph (g)(6), formerly paragraph (g)(5), adds authority for the Chief Postal Inspector to designate the authority to approve mail covers over 120 days.

Paragraph (g)(7), formerly paragraph (g)(6), clarifies that a mail cover will not remain in effect when the subject is indicted or an information has been failed. It also allows a request for a new mail cover on the subject of the indictment or information, if the basis is to assist in the identification of property, proceeds or assets forfeitable because of a violation of criminal law.

New paragraph (g)(8), formerly paragraph (g)(7), adds authority for the head of a law enforcement agency to designate to one high level headquarters official the authority to request a national security mail cover.

Paragraph (h)(1) replaces the word "housing" with the word "storage" to clarify the Chief Postal Inspector's authority to store records.

The language of former paragraph (h)(2) is deleted.

Paragraph (h)(2), formerly paragraph (h)(3), describes actions to be taken if a mail cover is improperly ordered.

Paragraph (h)(3), formerly paragraph (h)(5), describes how data is released to mail cover subjects in legal proceedings.

Paragraph (h)(4), formerly paragraph (h)(5), describes the retention period for mail cover files and records.

Paragraph (i) clarifies that information obtained from a mail cover should be sent by an employee of the Postal Inspection Service.

Paragraph (j)(1) describes the authority and supervision the Chief Postal Inspector has over the issuance of a small mail cover order, and amends the paragraph to be consistent with the current Postal Inspector Service organizational structure.

Paragraph (j)(2) requires the Chief Postal Inspector to select a designee to conduct a periodic review of national security mail covers.

New paragraph (j)(3), formerly paragraph (j)(2), clarifies that the Chief Postal Inspector's determination in mail cover matters is final and not subject to further administrative review.

Paragraph (k), Military Postal System, remains the same.

List of Subjects in 39 CFR Part 233

Administrative practice and procedures, Banks and banking, Credit, Crime, Law enforcement, Postal Service, Privacy, Seizure and forfeiture.

Accordingly, part 233 is amended as follows:

PART 233—[AMENDED]

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254; 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

2. Section 233.3 is revised to read as follows:

§ 233.3 Mail covers.

(a) Policy. The U.S. Postal Service maintains rigid control and supervision with respect to the use of mail covers as an investigative technique for law enforcement or the protection of national security.

(b) Scope. These regulations constitute the sole authority and procedure for initiating a mail cover, and for processing, using and disclosing information obtained from mail covers.

(c) Definitions. For purpose of these regulations, the following terms are hereby defined.

(1) *Mail cover* is the process by which a nonconsensual record is made of any data appearing on the outside cover of any sealed or unsealed class of mail matter, or by which a record is made of the contents of any unsealed class of mail matter as allowed by law, to obtain information in order to:

(i) Protect national security,

(ii) Locate a fugitive,

(iii) Obtain evidence of commission or attempted commission of a crime,

(iv) Obtain evidence of a violation or attempted violation of a postal statute, or

(v) Assist in the identification of property, proceeds or assets forfeitable under law.

(2) For the purposes of § 233.3 *record* is a transcription, photograph, photocopy or any other facsimile of the image of the outside cover, envelope, wrapper, or contents of any class of mail.

(3) *Sealed mail* is mail on which appropriate postage is paid, and which under postal laws and regulations is included within a class of mail maintained by the Postal Service for the transmission of mail sealed against inspection, including First-Class Mail, Express Mail, international letter mail, and mailgram messages.

(4) *Unsealed mail* is mail on which appropriate postage for sealed mail has not been paid and which under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of mail sealed against inspection. Unsealed mail includes second-, third-, and fourth-class mail, and international parcel post mail.

(5) *Fugitive* is any person who has fled from the United States or any State, the District of Columbia, territory or possession of the United States, to avoid prosecution for a crime, to avoid punishment for a crime, or to avoid giving testimony in a criminal proceeding.

(6) *Crime*, for the purposes of this section, is any commission of an act or the attempted commission of an act that

is punishable by law by imprisonment for a term exceeding one year.

(7) *Postal statute* refers to a statute describing criminal activity, regardless of the term of imprisonment, for which the Postal Service has investigative authority, or which is directed against the Postal Service, its operations, programs, or revenues.

(8) *Law enforcement agency* is any authority of the Federal Government or any authority of a State or local government, one of whose functions is to:

(i) Investigate the commission or attempted commission of acts constituting a crime, or

(ii) Protect the national security.

(9) *Protection of the national security* means to protect the United States from any of the following actual or potential threats to its security by a foreign power or its agents:

(i) An attack or other grave, hostile act;

(ii) Sabotage, or international terrorism; or

(iii) Clandestine intelligence activities.

(10) *Emergency situation* refers to circumstances which require the immediate release of information to prevent the loss of evidence or in which there is a potential for immediate physical harm to persons or property.

(d) Authorizations—Chief Postal Inspector. (1) The Chief Postal Inspector is the principal officer of the Postal Service in the administration of all matters governing mail covers. The Chief Postal Inspector may delegate any or all authority in this regard to not more than two designees at Inspection Service Headquarters.

(2) Except for national security mail covers, the Chief Postal Inspector may also delegate any or all authority to the Manager, Inspector Service Operations Support Group, and, for emergency situations, to Inspectors in Charge. The Manager, Inspection Service Operations Support Group, may delegate this authority to no more than two designees at each Operations Support Group.

(3) All such delegations of authority shall be issued through official, written directives. Except for delegations at Inspection Service Headquarters, such delegations shall only apply to the geographic areas served by the Manager, Inspection Service Operation Support Group, or designee.

(e) The Chief Postal Inspector, or his designee, may order mail covers under the following circumstances:

(1) When a written request is received from a postal inspector that states reason to believe a mail cover will produce evidence relating to the violation of a postal statute.

(2) When a written request is received from any law enforcement agency in which the requesting authority specifies the reasonable grounds to demonstrate the mail cover is necessary to:

(i) Protect the national security,

(ii) Locate a fugitive,

(iii) Obtain information regarding the commission or attempted commission of a crime, or

(iv) Assist in the identification of property, proceeds or assets forfeitable because of a violation of criminal law.

(3) When time is of the essence, the Chief Postal Inspector, or designee, may act upon an oral request to be confirmed by the requesting authority in writing within three calendar days. Information may be released by the Chief Postal Inspector or designee, prior to receipt of the written request, only when the releasing official is satisfied that an emergency situation exists.

(f)(1) Exceptions. A postal inspector, or a postal employee acting at the direction of a postal inspector, may record the information appearing on the envelope or outer wrapping, of mail without obtaining a mail cover order, only under the circumstances in paragraph (f)(2) of this section.

(2) The mail must be:

(i) Undelivered mail found abandoned or in the possession of a person reasonably believed to have stolen or embezzled such mail,

(ii) Damaged or rifled, undelivered mail, or

(iii) An immediate threat to persons or property.

(g) Limitations. (1) No person in the Postal Service except those employed for that purpose in dead-mail offices, may open, or inspect the contents of, or permit the opening or inspection of sealed mail without a federal search warrant, even though it may contain criminal or otherwise nonmailable matter, or furnish evidence of the commission of a crime, or the violation of a postal statute.

(2) No employee of the Postal Service shall open or inspect the contents of any unsealed mail, except for the purpose of determining:

(i) Payment of proper postage, or

(ii) Mailability.

(3) No mail cover shall include matter mailed between the mail cover subject and the subject's known attorney.

(4) No officer or employee of the Postal Service other than the Chief Postal Inspector, Manager, Inspection Service Operations Support Group, and their designees, are authorized to order mail covers. Under no circumstances may a postmaster or postal employee furnish information as defined in § 233.3(c)(1) to any person, except as authorized by a mail cover order issued by the Chief Postal Inspector or designee, or as directed by a postal inspector under the circumstances described in § 233.3(f).

(5) Except for mail covers ordered upon fugitives or subjects engaged, or suspected to be engaged, in any activity against the national security, no mail cover order shall remain in effect for more than 30 days, unless adequate justification is provided by the requesting authority. At the expiration of the mail cover order period, or prior thereto, the requesting authority may be granted additional 30-day periods under the same conditions and procedures applicable to the original request. The requesting authority must provide a statement of the investigative benefit of the mail cover and anticipated benefits to be derived from its extension.

(6) No mail cover shall remain in force longer than 120 continuous days unless personally approved for further extension by the Chief Postal Inspector or designees at National Headquarters.

(7) Except for fugitive cases, no mail cover shall remain in force when an information has been filed or the subject has been indicted for the matter for which the mail cover is requested. If the subject is under investigation for further criminal violations, or a mail cover is required to assist in the identification of property, proceeds or assets forfeitable because of a violation of criminal law, a new mail cover order must be requested consistent with these regulations.

(8) Any national security mail cover request must be approved personally by the head of the law enforcement agency requesting the cover or one designee at the agency's headquarters level. The head of the agency shall notify the Chief Postal Inspector in writing of such designation.

(h) Records. (1) All requests for mail covers, with records of action ordered thereon, and all reports issued pursuant thereto, shall be deemed within the custody of the Chief Postal Inspector. However, the physical storage of this data shall be at the discretion of the Chief Postal Inspector.

(2) If the Chief Postal Inspector, or his designee, determines a mail cover was improperly ordered, all data acquired while the cover was in force shall be destroyed, and the requesting authority notified of the discontinuance of the mail cover and the reasons therefor.

(3) Any data concerning mail covers shall be made available to any mail cover subject in any legal proceeding

VOL 58 ISS 129 JL 8 1993 UMI

through appropriate discovery procedures.

(4) The retention period for files and records pertaining to mail covers shall be 8 years.

(i) Reporting to requesting authority. Once a mail cover has been duly ordered, authorization may be delegated to any employee in the Postal Inspection Service to transmit mail cover reports directly to the requesting authority.

(j) Review. (1) The Chief Postal Inspector, or his designee at Inspection Service Headquarters shall periodically review mail cover orders issued by the Manager, Inspection Service Operations Support Group or their designees to ensure compliance with these regulations and procedures.

(2) The Chief Postal Inspector shall select and appoint a designee to conduct a periodic review of national security mail cover orders.

(3) The Chief Postal Inspector's determination in all matters concerning mail covers shall be final and conclusive and not subject to further administrative review.

(k) Military postal system. Section 233.3 does not apply to the military postal system overseas or to persons performing military postal duties overseas. Information about regulations prescribed by the Department of Defense for the military postal system overseas may be obtained from the Department of Defense.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 93-16108 Filed 7-7-93; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 170

[CGD 89-037]

RIN 2115-AD33

Stability Design And Operational Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: On December 10, 1992 at 57 FR 58406, the Coast Guard indefinitely suspended the effective date of 46 CFR 170.210 in the stability design and operational regulations published on September 11, 1992 at 57 FR 41812. This notice requests specific comments to allow further investigation of the application of, and costs associated with, the performance of the periodic lightweight survey requirements in 46 CFR 170.210.

DATES: Comments must be received on or before November 5, 1993. A public hearing is scheduled for 8 a.m. on August 5, 1993.

ADDRESSES: Comments should be submitted in writing to the Executive Secretary, Marine Safety Council (G-LRA-2/3604) (CGD 89-037), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the Office of the Executive Secretary, Marine Safety Council (G-LRA-2), Room 3604, Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC 20593-0001. Comments may also be hand-delivered to this address.

The public hearing will be held at Coast Guard Headquarters at the time and date indicated in "**DATES:**".

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division, (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking entitled Stability Design Design and Operational Regulations in the **Federal Register** (55 FR 5120).

During the 60-day comment period, the Coast Guard received 28 letters commenting on the proposed rulemaking. Following is a breakdown of the sources of these letters:

Four were from mobile offshore drilling unit (MODU) owners/operators;
One was from a MODU operator association;
One was from a tankship owner/operator;
One was from a tank barge owner/operator;
One came from an offshore supply vessel (OSV) owner/operator;
Seven came from Great Lakes and/or oceangoing cargo ship owners/operators;
Two were from cargo ship associations;
One more came from a cargo ship captain;
One was from a shipyard;
One came from a naval architecture firm;
One was from a river passenger vessel owner/operator;
One was from a passenger vessel owners' association;
One came from the Military Sealift Command;
One came from the Naval Sea Systems Command;
One was from the State of Texas Transportation Department;
Three came from Coast Guard field offices/personnel.

A public hearing was requested in only one of the comment letters and the Coast Guard decided at the time that a public hearing was not necessary because the concerns addressed in this letter were resolved in the final rule. Only four of the 28 letters received included comments on specific costs associated with performance of the proposed periodic lightweight surveys. Two of the cost estimates were associated with small passenger vessels, one addressed offshore supply vessels and the other one addressed an ocean-going cargo ship. Where applicable, the economic assessment for the proposal was adjusted in response to these comments.

On September 11, 1992, the Coast Guard published a final rule entitled Stability Design and Operational Regulations in the **Federal Register** (57 FR 41812) which adopted periodic survey requirements from proposed Rule.

Reason for Suspension of Effective Date

Following publication of the final rule, five letters were received questioning the cost and applicability of the periodic lightweight surveys in 46 CFR § 170.210 to mobile offshore drilling units (MODUs) and small passenger vessels. These issues, as related to MODUs, were again raised during the National Offshore Safety Advisory Committee meeting on December 1, 1992, at New Orleans, Louisiana. As a result of the information received, the Coast Guard issued a notice indefinitely suspending the effective date of periodic survey requirements under 46 CFR 170.210 on December 10, 1992.

Drafting Information

The principal persons involved in the drafting of this notice are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Request for Data, Information, and Comments

This notice encourages the submission of specific information and comments. It is the goal of the Coast Guard to propose regulations that will best address both the safety and operational needs of vessels. However, due to the variety of vessels affected by

VOL 58 ISS 129 JL 8 1993 UMI

the requirement in § 170.210 and the lack of comments submitted to the docket for certain vessel types, it was difficult to adequately address and analyze the effect that this regulation would have on all vessel types. Therefore, the Coast Guard again seeks input on aspects associated with compliance with § 170.210 from vessel owners, operators, naval architects, shipyards, Coast Guard and classification society inspectors, consumers, and others involved with the affected vessels. Interested persons are invited and encouraged to participate by submitting written views, data or arguments and, if possible, attending the public hearing.

The Coast Guard would like members of the concerned public to comment on a number of specific issues. In considering these issues, the following specific vessel types should be addressed separately in order to allow the Coast Guard to accurately evaluate the applicability and cost of the suspended section of this regulation:

(a) Tank vessels (Subchapter D) [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(2), (e)(3), (e)(5), or (e)(6).];

(b) Large passenger vessels (Subchapter H) [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(3) or (e)(6).];

(c) Miscellaneous industrial and cargo vessels (Subchapter I) [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(3), (e)(5), or (e)(6).];

(d) MODUs (Subchapter I–A) [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(3), (e)(4), or (e)(6).],

(e) Special purpose vessels (Subchapter R) [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(3) or (e)(6).],

(f) Small passenger vessels (Subchapter T) [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(1), (e)(3) or (e)(6).]; and

(g) Oceanographic research (Subchapter U) vessels [Do not address vessels which qualify for the existing applicability exceptions in § 170.210(e)(3) or (e)(6).].

Persons submitting comments should include their names and addresses, identify this notice (CGD 89–037), identify the specific area of the section to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Receipt of comments will be acknowledged if a stamped self-addressed post card or envelope is enclosed with the comments.

All comments received before the expiration of the comment period will be considered before further action is taken on this section of the stability regulations. After completion of further investigation of this issue, the Coast Guard expects to publish either a supplemental notice of proposed rulemaking or a new effective date for this section.

Specific Issues on Need and Applicability

Issue 1. It is rare that a single identifiable hazard is the sole cause of a stability casualty; however weight growth has been identified as a contributing factor. Weight growth is the unaccounted for accumulation, deletion, or relocation of untracked amounts of weight, such as dunnage, waste, paint, redecoration, disused but not discarded equipment and spare parts, sludge, and similar materials. Accurate tracked weight changes to a vessel are not considered to be weight growth. To allow a better evaluation of the scope of this problem, please provide comments concerning the amount of weight growth you have seen or experienced. Please provide specific examples of amount of, or lack of, weight growth over a specific period of time on a given size and type of vessel as evidenced by the discovery, or lack of discovery, of weight changes during subsequent inspections, deadweight surveys, inclining tests, or casualty investigations.

Issue 2. Where weight changes have been discovered at subsequent deadweight surveys or inclining tests, please comment on whether there was a reduction or increase in stability (change in GM or KG) due to untracked weight changes. Please include specifics of vessel type and size.

Issue 3. Under current regulations, vessels are inclined only at the time of build, after a major modification, or if the stability is questioned by the Officer In Charge of Marine Inspections (OCMI). This means that while the vessel meets the stability criteria at these specific times, at any time thereafter the vessel may no longer meet the stability criteria due to untracked weight changes. 46 CFR 170.210 requires that a deadweight survey check be made on 5 year intervals to verify that a vessel still meets the stability requirements and that the stability information carried aboard the vessel is still appropriate. Please comment on whether this time period is appropriate or if the interval should be different for different vessel types.

Issue 4. No specific requirements on the actual recording of changes in weight onboard vessels are given in the regulations. Therefore, the type and amount of records maintained on weight changes will vary among operators. While some operators try to be diligent and track all known weight changes, other operators track only those changes they think will substantially effect their lightship weight. Even for prudent operators, some weight growth will go unrecorded because of the nature of the problem. Draft marks and load lines may or may not serve as indicators of weight growth. Other than a periodic weight check, please comment by suggesting other reliable methods that could effectively be used to evaluate weight growth problems? Please be specific and provide any available data that supports your suggestion.

Issue 5. The Coast Guard regulations set minimum standards for safety. It is the Coast Guard's position that the tolerances in § 170.201(b) are reasonable and achievable and that excessive weight change over a vessel's life without a stability review is an unsafe practice. Please comment concerning whether the margins in § 170.210(b) are reasonable or unreasonable. Please explain the basis for your opinion and supply any available data that supports your answer.

Issue 6. In § 170.210(e)(5), vessels regulated under Subchapter D, or Subchapter I of this Chapter, whose lightweight displacement comprises less than 35 percent of their total fully loaded displacement are exempted from the periodic lightweight verification. This exemption was added to the final rule after reviewing the arguments and data provided in the comments on vessels such as oceangoing cargo ships and tankers, showing that changes in these vessels' lightweight has a significantly smaller effect than that of other ship types. However, realizing that fixed permanent ballast is considered to be a part of a vessel's lightweight, in your comments, please consider whether the lightweight used in this exemption ratio should exclude the weight of the permanent ballast or if the ratio should be adjusted to account for permanent ballast.

Issues Concerning Requirement Costs

Issue 7. Concern has been raised about the cost of these requirements. In your comments provide estimated costs, if known, for performing a deadweight survey vs. a full inclining test on a given type and size of vessel. Please include itemized data on out-of-service costs, professional fees and any ancillary costs, if available. In calculating the

estimated costs, remember that it is not always necessary for all the items not part of the lightweight to be removed from the vessel to complete a deadweight survey. It is necessary, however, to accurately record the weight and location of each item not part of the lightweight.

Issue 8. At the time some owners purchase a vessel, they elect to not purchase the stability related vessel plans. This problem seems to apply mainly to small passenger vessels (Subchapter T). There is a concern that if redrawn plans are necessary, some differences in vessel characteristics could result from variances between the old and new plans rather than from any changes in the vessel. Please comment on the expected accuracy of new lines plans drawn of an existing small passenger vessel. In your comments consider, for vessels not having their original vessel plans, whether it may be possible to alleviate the need for new plans and still meet the safety goals of this section of the regulation.

Issue 9. One estimated cost, provided in the comments on the NPRM, was for redrawn small passenger vessel lines plans at $4000–$6000. All vessels normally undergo some degree of modification, improvement, or repair sometime during their life that require having a set of the vessel's plans. If the vessel owner does not choose to buy the plans for the vessel at the time of build, the owner must still be responsible for the cost of redrawn plans when improvements, maintenance, or repairs are done on the vessel. Owners purchasing a vessel sometime after build must also figure into the purchase the costs of the plans for the vessel to carry out improvements, maintenance, or repairs. It is the Coast Guard's position that an owner's decision on whether or not to acquire the relevant vessel plans at the time of build or purchase of the vessel is their own, and not a cost attributable to periodic lightweight verification. Please comment on whether a prospective purchaser of a new or a used vessel should consider the cost of securing the vessel plans and documentation necessary to carry out improvements, maintenance, or repairs. If possible, discuss any other reasons to have vessel plans other than to comply with § 170.210. In your comments, explain the basis for your opinion. Also, for specific vessel types and sizes you may have knowledge about, please estimate general costs associated with redrawing of vessel plans in your comments.

Issue 10. Plesase consider the geographic locations and facilities available to perform deadweight surveys for different vessel types in your comments. Discuss advantages or disadvantages associated with specific vessel types or sizes during performance of deadweight survey and/or inclining tests dockside, or in the case of MODUs, on station.

Issues Released to Implementation

Issue 11. The Coast Guard intends to phase-in the requirement for periodic lightweight verification over a five year period as stated in § 170.210(a)(2). For each affected vessel, the date by which its initial periodic lightweight verification must be carried out will be determined by a number of factors, including the history and condition of the vessel, the date of the vessel's last lightweight verification, the date of the vessel's next credit drydocking, and the expiration date of the vessel's Load Line Certificate. The Coast Guard intends that this verification be completed in conjunction with other required surveys to try to avoid a vessel being taken from service solely to perform the lightweight verification. The Coast Guard will publish a Navigation and Inspection Circular containing specific guidance on the phase-in process. Please comment on whether this type of phase-in period is appropriate. If possible, please suggest improvements in the implementation of this phase-in period. Consider whether it should be shorter, longer or keyed to different vessel requirements.

Issue 12. In the final rule, the Coast Guard agreed that "bare bones" vessels which are constructed or operated such that a significant amount of weight growth cannot occur would be exempted from this requirement through the application of § 170.210(e)(6). Please discuss in your comments specific vessel types that should qualify for this exemption. Also, the procedure under consideration for obtaining this exemption is as follows:

Step 1. Apply to local OCMI for this exemption providing background and data on the specific vessel that supports the contention that the vessel is a "bare bones" vessel and it is not subject to significant weight growth.

Step 2. The OCMI, as the authority most familiar with the operation of the particular vessel, will add either an endorsement or a recommendation for denial, before forwarding the request to Commandant.

Step 3. Commandant(G–MTH) will either grant or deny the request for the exemption based on the input received from the requestor and the OCMI while maintaining an equivalent application of this exemption across all Coast Guard districts. This procedure should allow latitude to the OCMI in determining whether or not a vessel needs a periodic survey. Please comment on whether this procedure could be improved and still maintain latitude for OCMI and equivalency of application among districts.

Public Hearing Meeting Date

The Coast Guard has determined that the opportunity to make oral presentations will aid the rulemaking process and a public hearing is planned. The public hearing is set for 8 a.m. to 12 p.m. on August 5, 1993 in room 2415 of Coast Guard Headquarters, Washington, DC 20593. More information about this public hearing is available by contacting the person listed in FOR FURTHER INFORMATION CONTACT.

Requirement for Periodic Lightweight Verification

The section containing the requirements under discussion is reproduced below for reference.

§ 170.210 Lightweight verification.

(a) Except as provided in paragraph (e) of this section, verification of a vessel's lightweight displacement and longitudinal center of gravity is required for all vessels, including vessels built prior to January 3, 1984, as follows:

(1) The owner must conduct a deadweight survey at intervals not exceeding 5 years to determine the lightweight displacement and longitudinal center of gravity, unless otherwise authorized by the Commandant.

(2) For each vessel, the date by which its initial periodic lightweight verification must be carried out will be determined by the OCMI by consideration of a number of factors. These factors include the history and condition of the vessel, the date of the vessel's last lightweight verification, the date of the vessel's next credit drydocking, and the expiration of the vessel's Load Line Certificate.

(3) An authorized Coast Guard representative must be present at each deadweight survey conducted under this section.

(4) If the deviation from the lightweight displacement and longitudinal center of gravity does not exceed the values in paragraph (b) of this section, the owner must certify to the Commanding Officer, Marine Safety Center that the lightweight characteristics have not changed. The Commanding Officer, Marine Safety Center may accept the certification or require the owner to provide supporting calculations for review and approval.

(b) The owner must conduct a stability test in accordance with subpart F of this part, if—

(1) The deviation of the lightweight displacement calculated from the last stability test exceeds 3 percent of the lightweight displacement;

(2) The deviation of the longitudinal center of gravity calculated from the last stability test exceeds 1 percent of LBP (length between perpendiculars);

(3) The deviation from the previously approved lightweight displacement, updated by documented alterations, exceeds 2 percent of the lightweight displacement; or

(4) The deviation from the previously approved longitudinal center of gravity, updated by documented alterations, exceeds 1 percent of LBP.

(c) If a stability test is required by paragraph (b) of this section, the stability booklet must be updated in accordance with § 170.110 to reflect the current stability condition of the vessel.

(d) The deadweight survey required in paragraph (a)(1) of this section must be repeated as part of the stability test required in paragraph (b) of this section, unless the entire stability test including the deadweight survey is completed at the same time.

(e) Periodic lightweight verification is not required for the following:

(1) Vessels to which the simplified stability test of § 171.030 of this chapter was applied;

(2) Vessels with an estimated lightweight center of gravity determined in accordance with § 170.200;

(3) Vessels to which § 170.175(d) applies;

(4) Self-elevating mobile offshore drilling units;

(5) Vessels regulated under Subchapter D or Subchapter I of this Chapter whose lightweight displacement comprises less than 35 percent of their total fully loaded displacement; or

(6) Vessels exempted by the Commandant.

Dated: June 16, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–16079 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–259, 90–4, 92–295; FCC 93–284]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the Commission's Clarification Order, which was published Thursday, June 10, 1993 (58 FR 32449). The Clarification Order responded to a number of issues raised in a Request for Declaratory Ruling filed jointly by the Association of Independent Television Stations, Inc. and the National Association of Broadcasters. That action clarified the requirements of the must-carry rules adopted to implement the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

EFFECTIVE DATE: June 10, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, Policy and Rules Division, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Background

The Clarification Order that is the subject of this correction provided explanations of the new rules adopted to implement the broadcast signal carriage provisions of the 1992 Cable Act, which were published on April 2, 1993 (58 FR 17350). That action was intended to facilitate compliance with the new must-carry rules consistent with Commission and Congressional intent.

Need for Correction

As published, the clarification of the final rules contains an error in the listed docketed proceedings affected by that action which may prove misleading and is in need of clarification.

Correction of Publication

Accordingly, the dockets cited in the June 10, 1993, publication on page 32449, third column, in the docket heading for the clarification of the final rules, which were the subject of FR Doc. 93–13595, are corrected as follows: [MM Docket Nos. 92–259, 90–4, 92–295, FCC 93–284].

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15830 Filed 7–7–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket Nos. 92–259, 90–4, 92–295; FCC 93–278]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the Commission's Order, which was published Thursday, June 10, 1993 (58 FR 32452). That Order denied requests for stay submitted by the National Cable Television Association and Yankee Microwave, Inc. seeking postponement of the effective dates of the rules implementing the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

EFFECTIVE DATE: June 10, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, Policy and Rules Division, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Background

In the Order that is the subject of this correction, the Commission denied two stay requests of its final rules adopted to implement the must-carry and retransmission consent provisions of the 1992 Cable Act, which were published on April 2, 1993 (58 FR 17350). In the Order, the Commission stated that the parties did not demonstrate a need to stay the rules and that the implementation of the rules as adopted balances the interests of broadcasters and cable operators.

Need for Correction

As published, the denial of stay of the final rules contains an error in the listed docketed proceedings affected by that action which may prove misleading and is in need of clarification.

Correction of Publication

Accordingly, the dockets cited in the June 10, 1993, publication on page 32452, first column, in the docket heading for the denial of the stay requests of the final rules, which were the subject of FR Doc. 93–13596, are

corrected as follows: [MM Docket Nos. 92–259, 90–4, 92–295, FCC 93–278].

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–15831 Filed 7–7–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 229

[Docket No. LI–7; Notice 5]

RIN 2130–AA53

Event Recorders

AGENCY: Federal Railroad Administration (FRA).

ACTION: Final rule.

SUMMARY: FRA is acting to improve the safety of railroad operations and to enhance the quality of information available for post accident investigations by requiring event recorders on fast trains, by requiring that event recorders be effectively maintained, and by requiring that the data recorded by event recorders be preserved following a reportable accident.

DATES: This final rule is effective November 5, 1993.The date for compliance with the duty to preserve accident data (§ 229.135(d)) and with the duty to periodically inspect event recorders (§ 229.25(e)) is November 5, 1993. The date for compliance with the duty to have an in-service event recorder in the lead locomotive of any train operated faster than 30 miles per hour (§ 229.135(a)) is January 16, 1995.The date for submitting petitions for reconsideration under FRA's Rules of Practice, 49 CFR 211.29(a), is no later than September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Rolf Mowatt-Larssen, Chief, Motive Power and Equipment Division, Office of Safety Enforcement, RRS–14, Room 8326, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–4094), or Thomas A. Phemister, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0635).

SUPPLEMENTARY INFORMATION:

Statutory Background

Sections 10 and 21 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), provide that

> The Secretary shall, within 18 months after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within 1 year after such rules, regulations, orders, and standards are issued. If the Secretary finds that it is impracticable to equip trains as required within the time limit, the Secretary may extend the deadline for compliance with such requirement, but in no event shall such deadline be extended past 18 months after such rules, regulations, orders, and standards are issued. The term "event recorders" means devices that record train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and are designed to resist tampering.

Sec. 21. Tampering With Safety Devices.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(o)(1) The Secretary shall, . . ., issue such rules, regulations, orders, and standards as may be necessary to prohibit the willful tampering with, or disabling of, specified railroad safety or operational monitoring devices.

Proceedings to Date

On November 23, 1988, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) in this docket. 53 FR 47557. The ANPRM summarized the state of FRA's knowledge about event recorders, called for written comments, and announced a public hearing to gather further information. The substantive comments submitted by interested parties, the testimony given, and the exhibits received at the January 1989 hearing were helpful to the agency.

On February 3, 1989, in a related proceeding, FRA published a final rule in Docket RSOR–10 (54 FR 5485). Published primarily in implementation of section 21 of the RSIA, that rule prohibited tampering with event recorders and granted limited authority to deactivate such devices as were currently installed.

On June 18, 1991, FRA published a Notice of Proposed Rulemaking (NPRM) in this docket. 56 FR 27931. The NPRM summarized the issues surfaced by the ANPRM and the comments of interested parties on those issues. Two public hearings were held in order to facilitate public participation; the written comments submitted in response to the NPRM are extensive, detailed, and helpful. FRA is grateful that the regulated community (both management and labor), the supply industry, individual citizens, and sister Federal agencies were so generous with their time and their knowledge.

Background

As reported in the ANPRM, railroad industry statistics show that there were approximately 20,000 locomotive units in service on the major freight railroads and Amtrak at the close of 1988. The vast majority of these were in freight or passenger road service. About two-thirds of the fleet has been added since 1970 and just under one-fourth of locomotives are eight years old or less. Of the road locomotives in the national fleet, over 17,000 are owned and operated by ten major railroads and Amtrak.

Every major railroad uses event recorders of some type. More than 10,500 locomotives are now equipped with a recorder retaining eight or more events and over 3,500 carry recorders for two or three events. This total of about 14,000 locomotives is a significant increase from the nearly 7,500 locomotives determined to be equipped at the time FRA published the ANPRM in this proceeding in November 1988; more than 70 percent of the road locomotives on the nation's major railroads are now equipped with some form of event recorder.

What An Event Recorder Does

Comments made in response to both the ANPRM and the NPRM show that the public perception of the role and capabilities of an event recorder is largely based on the use made of such devices in the air transport industry. In the investigation of an air disaster, it is often the flight data recorder that, together with the cockpit voice recorder, provides either the key clues about what happened leading up to the crash or the most reliable verification of a disaster hypothesis based on observations made of the debris. The importance of a flight data recorder stems from the complex, three dimensional environment in which airplanes move, the typical disintegration of the aircraft when it hits the ground, and the fact that the plane may fall to earth a considerable distance, both vertically and horizontally, from the actual "place" where the catastrophic event took place.

By contrast, railroads operate fundamentally in two dimensions and, except in rare cases, investigators usually have significantly more wreckage at the actual site of the accident from which they can glean the clues that lead to a determination of cause. None of the locomotive event recorders in common use on America's

VOL 58 ISS 129 JL 8 1993 UMI

railroads records as wide a range of data as the black boxes in a commercial airplane and FRA has not found any railroad equipping its locomotives with anything like the cockpit voice recorders found in large passenger airplanes. This preamble will contain a brief discussion of a plan FRA has to significantly advance the development of event recorders for railroads; it will draw on the experience of the airline industry.

Section 10 of the RSIA defines an event recorder as a device that records "train speed, hot box detection, throttle position, brake application, brake operations," and other functions the Secretary considers necessary to assist in monitoring the safety of train operations, "such as time and signal indications."

The newer recorders in common use by the railroad industry, those on the more than 10,500 road locomotives already equipped with a device that records at least eight events, accumulate the following information:

1. Time;
2. Speed;
3. Traction motor amperage;
4. Distance traveled;
5. Throttle position;
6. Dynamic brakes;
7. Locomotive independent brake; and
8. Train brake pipe pressure reduction.

A typical locomotive-mounted device records (on magnetic tape or in digital form in a computer "memory") the last 48 hours of locomotive events. The information is stored on three data channels, with a fourth dedicated to tracking elapsed time.

The timing channel carries a constant, analog signal of 6.25 Hertz used as a time reference, especially when the data are played back. This channel is used in the generation of time, speed, and distance.

A second channel records wheel revolutions. When calibrated for drive wheel diameter, this channel, working with the time signal, is used to generate unit speed and distance travelled.

A third channel records traction motor current, thus measuring the amount of "work" the motor is performing. Among other derivatives of these data are the determination of the presence and force of the dynamic brake.

The fourth channel records what has been called a "digital word." Such a word, with eight bits of information, is used to retain information on throttle position, automatic brake pipe pressure, application of the locomotive (the "independent") brake, and such parameters as direction of travel. Each condition is sampled, placed into correct order within the eight-bit digital word, and recorded. When and if these data are retrieved, a playback unit reads and decodes the proper sequence and displays the data on a readout medium such as a strip chart. Because the "digital word" recorder collects and stores "samples" of conditions, a condition change may be noted after the time in which it actually happens. This lag may be as much as 15 seconds.

Skilled technicians can use recorder data to recreate, typically, a history of the last 48 hours of a locomotive's operation. While airplane black boxes usually retain only the final minutes of a trip, locomotives need to record over a longer interval. Unless damaged, for instance, the power consist on a train is often used to remove from the scene any cars still on the tracks, clearing them for the rerailing and cleanup crews. A 48-hour "tape loop" is common, both to provide a picture of the entire trip leading up to the accident and to allow the locomotives pulling a train involved in an accident to play a clean-up role without "erasing" essential data by recording over it.

Experts in accident reconstruction use all available data to determine the cause of an accident and are almost always successful. Sometimes, the initial determination is relatively easy: if the cars are tipped off the track and lying in consist order along the outside of a curve, overspeed is a safe initial assumption. Cause is also readily determined from visible evidence in cases such as a broken wheel on the first car derailed, a rail turned under the second locomotive, or marks of a derailed wheel down the ties until that car meets a switch or a grade crossing.

Other accidents are more difficult to analyze, and even seemingly simple accidents may occasionally have contributing causes that elude investigators. FRA believes it has generally been successful in determining the cause of an accident, whether or not event recorder data are available. Of the nearly 300 accidents (of all types, including grade crossing accidents and employee fatalities) directly investigated by the agency each year, all but 3 to 6 percent are closed with a known cause or causes. Because of the nature of the railroad environment, it is usually possible to interview the crew and learn from them what was happening immediately before the accident. With recorder data, the accuracy of their statements can be verified, as can the accuracy of a train simulation run on the basis of their statements.

Event recorder data increase both the quality and the quantity of information available to the investigator, an especially important factor in analyzing complex post-accident scenes. When the death of the head-end crew means that eyewitness testimony is not available, or when the combined effects of derailment, collision, or fire make it extremely difficult to read the physical evidence, the event recorder may provide or lead to vital intelligence otherwise destroyed.

Even though they cannot guarantee discovery of the cause of an accident, event recorder data have demonstrated their utility. On May 12, 1989, a Southern Pacific train ran away on a hill outside San Bernardino, California, and derailed at a curve near the bottom of the hill. Portions of the train and its cargo landed in a residential area, resulting in four fatalities, two serious injuries, and seventeen minor ones. An early suspected cause was poor train handling by the crew, but after rigorous analysis of all the data, including that available from the event recorders, the National Transportation Safety Board absolved the crew from blame. Instead, the crucial factors included a failure to accurately report the total weight of the train, a failure to tell the crew about the condition of the dynamic brakes available to them, and an unclear operating rule about brake applications with heavy trailing tonnage on grades. At San Bernardino, it was immediately obvious that the train left the tracks because it was going too fast, but the data provided by the on-board event recorder also allowed investigators to look more closely at and for the cause of the overspeed. Once this was known, a "lessons learned" approach led to operational corrections aimed at enhancing the quality of information available to the engineer and improving the decision-making capabilities of this key position. FRA understands that Southern Pacific has made operational changes to its train handling procedures, including a change in its air brake rules, as a result of the information learned in this accident investigation.

The Presence of Event Recorders in the Railroad Industry

As noted, major freight railroads in the United States already have more than 70 percent of their road locomotives equipped with an event recorder of some type; because most trains are powered by more than one locomotive, it is well within probability that up to 90 percent of the major freight railroads' trains are equipped with event recorders. Essentially all of the National Railroad Passenger Corporation's (Amtrak's) locomotives are equipped

and, while FRA's information is not fully complete, some commuter railroads have event recorder equipped locomotives and others are working with the supply industry to develop the "standard" commuter-railroad event recorder.

Only a very few of the switching and terminal railroads and smaller line-haul companies have equipped their locomotives with event recorders, but these power units are most often used in low speed operations for which speed indicators are not required.

So far as FRA has been able to determine, virtually all new road locomotives purchased by major United States railroads are factory equipped with an event recorder capable of gathering and retaining information on the parameters established by the RSIA, with one exception: "Hot box" (over-heated journal) detection. The reasons for not recording this "event" on a locomotive-mounted recorder are simple: First, the railroads have determined that hot box readings should be recorded and monitored at central locations. Second, wayside hot box detector signals are now routed to other locations on a railroad; bringing that signal "on board" could be done, but recording data on the locomotive that are now recorded elsewhere would be duplicative and would serve no apparent safety purpose. Third, FRA believes that the present method of hot box detection and recording is more complete than merely recording an overly hot journal reading on a moving recorder; it is also more secure in that there is virtually no chance that the data would be destroyed, altered, or tampered with in an accident.

Some railroads notify the crew of a train passing a hot box detector of both negative and positive readings but the common procedure is either to call the crew with orders to stop and inspect a suspected hot box or to have a wayside indicator convey the same message. In either event, the fact of the detection of a suspected over-heated journal and of the notification to the crew is recorded and available for examination by FRA and railroad officials. FRA's review of the railroad industry's practices regarding hot box detection, reporting, and recording have convinced the agency that no additional requirements are necessary. There would be no safety purpose served by requiring the recording of hot box detection by a device mounted on a locomotive.

Cost and Utility Considerations

Approximately 10,500 of the nearly 20,000 locomotives operated by the railroads are now equipped with either an eight (8) track or a digital recorder: Essentially all of Amtrak's locomotives, the great majority of Class I freight railroads' locomotives, and far fewer commuter and short line/regional railroad locomotives. FRA estimates that equipping enough locomotives with event recorders to comply with the rule issued in this notice will cost the railroads slightly less than $46 million, with an annual maintenance cost of just under $1.8 million. According to the regulatory impact analysis in the docket of this proceeding, the major railroads will bear 49 percent of this cost, the short lines and regional railroads about 5 percent, and the commuter railroads about 45 percent.

Because the smaller freight railroads are not now equipped with recorders as a general rule, the cost impact of a rule requiring event recorders on each locomotive would be borne disproportionately by this segment of the industry. However, section 10 of the RSIA does not require each locomotive to be equipped; the statutory requirement is that, where necessary to enhance safety, trains shall be equipped.

Unlike good brakes, sound track, and qualified engineers, event recorders only indirectly prevent accidents. Their primary safety benefit lies in their use as a tool to diagnose train handling accidents, to continue building a knowledge base of accident causation and, through sampling actual train movements, to evaluate changes in methods of train operation. Event recorders also provide a way to sample the train-handling ability of an engineer in a real-world environment. Another regulatory proceeding, Docket No. RSOR–9, Qualifications for Locomotive Engineers, (56 FR 28228) has dealt more directly with the potential applications for event recorders in monitoring the performance of locomotive engineers.

The Need for Event Recorders

FRA has determined that event recorders enhance railroad safety. Whether they are used to aid accident analysis, to monitor locomotive engineers' performance, or to monitor equipment performance, event recorders provide data that are free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. The data extracted from recorders can be played over and over as part of the analysis process without losing their consistency.

Event recorders provide FRA with a growing pool of verifiable factual information about how trains are operated and what happens when they become part of an accident. Even the presence of event recorder data will not ensure the discovery of the cause of every accident nor eliminate all sources of controversy about causation, but as shown in the Southern Pacific's San Bernardino derailment, event recorder data can help direct the attention of an accident investigator to possible causes not at first suspected. In addition, by reducing the potential for bias from accident investigations, the data from event recorders can help pinpoint operational changes that may prevent the next accident.

Issues and Discussion

Those filing comments and presenting testimony at the hearings held following publication of the NPRM in this matter have provided the agency with a wealth of facts and informed opinions and have been extremely helpful to FRA in resolving the issues. Eleven persons or organizations made formal statements at one of the two hearing sessions and 37 sets of comments were filed, including the supplemental comments filed by several parties after the hearings. In addition to participation by large and small railroads and their industry associations, FRA has received material from rail labor, from manufacturers of event recorders and related equipment, from specialized parts of the railroad industry, and from private individuals. An alphabetical list of those submitting statements follows:

American Association of Private Car Owners, Inc.
American Short Line Railroad Association
Association of American Railroads
Bach-Simpson, Inc.
Bates, J.R., Representative, UTU Local 103–[redacted]
Bessemer and Lake Erie Railroad Company
Brotherhood of Locomotive Engineers
Consolidated Rail Corporation
CP Rail Legal Services
CSX Transportation, Inc.
The Everett Railroad Company
Iowa Traction Railroad
Keokuk Junction Railway
Kyle Railways, Inc.
Long Island Rail Road
Metro North Commuter Railroad
National Transportation Safety Board
NJ Transit
Norfolk Southern Corporation
On-Track Corporation
Phillips, Theodore
Port Authority Trans-Hudson Corporation
The Railway Association of Canada
Railway Labor Executives Association
Santa Cruz, Big Trees & Pacific Railway Company
Southeastern Pennsylvania Transportation Authority
St. Louis Steam Train Association
Tourist Railway Association
United Transportation Union
Wisconsin Central Ltd.

While most commenters spoke or wrote on more than one issue, and while most

VOL 58 ISS 129 JL 8 1993 UMI

of the comments supported the position(s) of at least one other commenter, the issues themselves were grouped around a few key points.

Rather than attempt to paraphrase each commenter's response to each of the proposed regulatory sections in the NPRM, FRA believes it is better, and more understandable, to discuss the several key issues in this proceeding and to relate the thrust of the comments on each of these.

What events should be recorded? The RSIA defines event recorders as devices that record "train speed, hot box detection, throttle position, brake application, brake operations, and other functions the Secretary considers necessary to record to assist in monitoring the safety of train operation." FRA determined, as explained above, that the recording of hot box detection was more effectively accomplished at a central location than on board a train, but proposed in the NPRM to define an event recorder as a device to monitor and record "speed, direction of motion, time, distance, throttle position, and brake applications and operations (including dynamic brake applications and operations)." No commenter said anything against FRA's proposal to continue the present method of monitoring and recording hot boxes.

Some commenters proposed adding to the "events" to be recorded; suggested candidates include the bell/horn, cab signals, wayside signals, and other automated signal features. Other commenters requested that some present devices, either capable of recording only time, speed, and distance, or capable of recording the proposed events but for a shorter time and only while the locomotive is in motion, be "grandfathered," that is, be considered as acceptable alternatives pending a phase-in period.

FRA seriously considered adding a requirement to record the functioning of the bell or horn but has not done so for now because sampling rate of the industry "standard" magnetic tape machine can result in a lag of several seconds between the sounding of the horn and the capturing of it on tape. At mainline speeds, such a delay means that locating the point at which the horn blew is conjecture at best and horn/bell data of that caliber have no utility in accident investigation. As will be discussed below, FRA will be working towards a true "state of the art" event recorder and will consider requiring recording the horn/bell then.

Hot box detector readings happen outside the cab and so do wayside signal aspects; bringing this information on board requires precise and expensive technology for which there is no current pressing need. A "wayside signal" is one placed along side the track (or above it) and that displays, by means of lights or signal "arms," information about the occupancy or condition of the track ahead of the train. The signals are changed either by the passing of a train or from a central control station. Just as there is no signal inside a motor vehicle that the traffic light ahead has turned red, wayside signals do not have a corresponding reading at the control stand of a locomotive engineer. FRA will continue to evaluate the need to record wayside signals, particularly as event recorders improve.

Cab signals are another matter entirely; they already appear inside the cab at the engineer's control stand. Wiring an event recorder to pick up the aspect being displayed is not only relatively easy, but will provide a "witness" to the display that would otherwise not be available. At least one commenter said that recording cab signals would help resolve issues as to the cause of accidents where signals are involved. FRA agrees and this final rule adds cab signals, where the locomotive is so equipped, to the parameters required to be recorded.

The major railroads have, as might be expected, installed a number of different types of event recorders on their equipment. In addition to recorders that fully comply with the final rule announced by this notice, some have installed machines that retain data only on time, speed, and distance. These railroads have requested that these machines be "grandfathered" for ten years (reduced to five in testimony at one of the hearings) to allow the orderly phase-in of newer, more complete recorders. Other commenters urged FRA not to allow a three-event recorder to serve as the only event recorder on a train.

FRA is aware that the three-event recorder has a good history of helping accident investigators reconstruct what happened, but these devices simply do not provide all the data FRA, as guided by the RSIA and its own experience, believes necessary. Accordingly, three-event recorders cannot be "grandfathered," but FRA knows that it is impracticable to replace these recorders in a short time, both because too many units would have to be changed out in the time available and because there is the strong probability that the supply industry could not meet a sudden spike in orders for more capable event recorders. For these reasons, the final rule in this docket provides for an eighteen month phase-in period.

Because the rule in this matter requires that trains rather than locomotives be equipped, railroads with large numbers of three-event recorders may be able to accomplish with equipment scheduling what their mechanical departments are not able to accomplish with purchase and installation of complying event recorders. Certainly any requests for waiver and extension of time would have to deal with all possible means of achieving compliance.

Another kind of event recorder in use in significant numbers in the North American locomotive fleet records the required events but only while the train is moving and only for the most recent eight hours of movement. (A locomotive making several stops will produce a tape that extends back over considerably more than the most recent eight clock hours.) Eight hours is enough in virtually all cases to get a clear picture of any equipment problems with the locomotive on which the recorder is installed and certainly enough to note train handling difficulties immediately prior to an accident. If the train pulled by a locomotive thus equipped is involved in an accident and the locomotive is needed to assist in wreck clearing, the operating railroad can preserve the evidence recorded just prior to the accident by disconnecting the recorder, that is, by taking it out of service in the manner allowed by the final rule. The primary problem with these machines is that they do not record air brake tests made while the train is standing; FRA believes, however, that this lack will not fatally affect accident reconstruction. FRA does not believe that the motion-only recorder is the way for the future, but will allow units in place as of the date of publication of this final rule to be "counted" in assembling power consists to move trains.

The commuter railroads suggested that, for them, the recorded parameters need to be different. FRA sees the functional parameters required by this rule as broad enough to address the needs of the commuter railroads. Taken together, for instance, it would appear that "throttle position" and "brake applications and operations" cover the same parameters as "motoring mode" and "braking mode." FRA does not wish to restrict either technological advances or the unique needs of any segment of its regulated community and the agency thinks it has not. FRA believes that the event recorder "defined" by this final rule will fit the operations of commuter railroads, and, indeed, of any railroad within FRA's jurisdiction. If this is not the case, respondents have available to

them petitions for reconsideration and petitions for waiver.

Some commenters raised issues about the recorder's sampling intervals and sampling accuracy. FRA certainly expects that event recorders will be as accurate as present standards for speed indicators and for air gauges, but the agency realizes that more developmental work needs to be done in this area. FRA has decided not to further delay the requirement to have event recorders on trains and will postpone for now standards that would require resolution of technological issues that are intertwined with the extended development of solid state recorders and with recommendations that event recorders be standardized as to size, location, and crashworthiness. Event recorder developmental issues are discussed in more detail below.

Several participants expressed a desire to have a "status indicator," usually in the form of a warning light, to show the engineer whether or not the event recorder is working. Such lights are typically one of two kinds: either they show that the recorder is receiving electrical power or they show that the capstan drive (which moves magnetic tape across the recording heads) is turning. The problem with both indications is that they do not show that the recorder is actually capturing data and correctly storing it. The surest way to do that is to remove the tape and play it back, but that only shows that the device was working. FRA will delay a requirement for a status light until one is developed that will truly show whether or not the machine is functioning as intended.

Finally, one participant sought a requirement that the recorder keep a record of cars in the train that experience undesired emergency brake applications. The problem with current technology is that, while it can detect an emergency brake application, it cannot pinpoint the location of a "dynamiter" within the train. This participant also requested that the recorder keep track of the train's profile, or weight distribution. FRA is not aware of an on-board recorder that will measure and record this information; while draft and buff forces might be measurable with an adaptation of current technology, detecting these forces beyond the pulling coupler of the locomotive is not yet a standard option.

What trains should be equipped with event recorders? Section 10 of the RSIA requires event recorders on trains where they will enhance safety. FRA has discussed at some length, both in this preamble and in the preambles to the ANPRM and the NPRM in this docket, that the primary benefit from event recorders is the assistance they provide to accident investigators attempting to reconstruct complex accidents. The NPRM proposed that all passenger trains and freight trains operated at 30 miles per hour or faster, pulling more than 50 cars, be powered by at least one locomotive with an event recorder.

Some commenters wanted certain categories of railroads eliminated from the requirements for event recorders; others wanted certain types of operations. Others said that their equipment wasn't compatible with event recorders or that, with steam excluded, it was unfair not to also exclude historical diesel or electric locomotives. Still others requested that "passenger" be defined to exclude tourist or excursion railroads or the operation of special Christmas or charity trains. Yet another commenter wanted coverage on everything operated outside yard limits.

Because the primary benefit of the event recorder is the assistance it can provide for accident analysis, the requirement to equip trains can only be viewed in that light. Class II and Class III railroads are defined by the Interstate Commerce Commission on the basis of their economic activity, not their operating speeds. To exclude "tourist," "excursion," "historic," "museum," and other special trains by defining those persons who ride them as other than "passengers" strains credibility.

FRA has reconsidered its initial proposal to include train length and speed as joint criteria for determining which operations must be covered with an event recorder and has concluded that speed alone should govern. As was pointed out in the NPRM, the energy that must be dissipated in a train accident varies with the square of speed. Requiring that both speed and trailing tonnage be considered introduces unnecessary complication, especially when no distinction is made between empty and loaded cars.

Likewise, FRA realizes that accident complication is more a function of speed than of equipment and that an "unequipped" speed for passenger service is both possible and justified. While FRA recognizes a special duty of care owed to railroad passengers, this agency is also aware that passenger trains have significant operational and equipment differences from freight trains and that these differences lead to more predictable behavior in an accident by the passenger equipment. In general:

- Passenger trains have faster acting brakes than freight trains (with less draft gear slack their brake control valves can be designed to produce faster application);
- Passenger trains have a graduated release feature and a higher brake pipe pressure; with a brake pipe that is typically shorter than a freight train's, they also have less pressure gradient;
- Passenger trains have more even brake application throughout the train because there is only a little variation between the empty and loaded weight of passenger cars and because there is significantly less variation in density throughout the train;
- Passenger trains have an anti-skid feature that allows more controlled stops under adverse traction conditions;
- Passenger equipment in general, and commuter equipment in particular, is not interchanged away from its owner, thus allowing inspection and maintenance forces to become more familiar with each piece of equipment; and
- Commuter operations are characterized by tight control over trains through automatic train control, centralized dispatching, short blocks, tight schedules, cab signals, and short trains; these factors allow fairly precise isolation of accident causes.

FRA received comments strongly advocating that event recorders be required regardless of speed because of the number of accidents that happen on low speed track; other comments urged the adoption of 40 miles per hour as the appropriate recorder/no recorder speed.

FRA is not persuaded that event recorders need to be present in order to capture information about accidents that occur on low speed track. FRA has previously concluded that the operational safety factors inherent in slow speed operations are not sufficient to require that all locomotives be equipped with speed indicators (49 CFR 229.117). To now require the equipping of such locomotives with event recorders, which do not directly enhance the locomotive's operational safety, is not appropriate. Besides, the rule on event recorders is not an attempt to provide automated analysis of every accident, but only to provide an aid for expert investigators dealing with complicated post-accident scenes. FRA has determined that these accidents are more likely to occur during higher speed operations, whether those operations are of freight or passenger trains. FRA's experience is that Class two track (with maximum speeds of 25 miles per hour for freight trains and 30 miles per hour for passenger) does not produce the kinds of complex post-accident environments that demand calling the full capabilities of event recorders into play. FRA also does not

agree with the suggestion for raising the speed to 40 miles per hour as the recorder/no recorder threshold. As noted earlier, the energy that must be dissipated in an accident rises geometrically as train speed increases. In FRA's judgement the types of accidents in which event recorder data will prove useful occur at speeds higher than 30 miles per hour. Thus, this final rule requires event recorders on all trains operating faster than 30 miles per hour.

To a degree, the remaining commenter concerns about the appropriate threshold for equipping locomotives are misplaced. For example, the rule FRA is adopting amends part 229 without altering the scope or applicability section of that part. Part 229 does not apply to steam locomotives or to railroads that are not part of the general system. Similarly, operation of a train without a recorder for special occasions (e.g., the movement of historical equipment on the general system) could possibly be accomplished by a waiver or the use of complying equipment for the lead locomotive without unnecessarily complicating the regulatory criteria for when event recorders must be present. Consequently, the final rule does not contain the suggested discrete changes to the equipping threshold.

New and rebuilt locomotives. FRA's initial proposal would have required event recorders on all new and rebuilt locomotives, primarily as a step towards the day when all locomotives (equipped with speed indicators) would have event recorders. The "new and rebuilt" category was proposed to avoid the economic penalties of retrofitting event recorders to otherwise serviceable locomotives. The desirability of ultimately equipping all locomotives was underscored by comments filed by the National Transportation Safety Board (NTSB) in which they emphasized their desire to capture and have available data concerning the functioning of each locomotive unit.

Upon review of the comments and testimony, however, FRA has decided not to require all new and rebuilt locomotives to be equipped with event recorders at this time even though that is the unmistakable trend in the industry. First, a rule keyed to new and rebuilt locomotives does not reflect the best interpretation of the mandate in RSIA to equip trains where doing so will enhance safety. FRA believes the option it has chosen, requiring event recorder-equipped lead locomotives on trains operated faster than 30 miles per hour, does satisfy the best interpretation of the statute. Second, FRA has learned that several railroads believe that the number of recorder equipped locomotives in their current fleet will enable them to comply with a requirement for an event recorder in the lead locomotive of every train operated at more than 30 miles per hour. For these railroads, a requirement to equip each new or rebuilt locomotive with an event recorder would be an unjustified burden.

"Heavy-electric" commuter equipment. Much of the service provided by commuter railroads, and it is estimated that this group of railroads will bear about 45 percent of the industry's cost for event recorders, uses locomotives that are not essentially different from those of Amtrak or the freight railroads, at least in so far as equipping them to comply with this rule is concerned. FRA is, however, aware that a significant number of carriers use "heavy-electric" equipment, that is, passenger carrying cars that are capable of self-propulsion (by drawing power from ground level "third rails" or overhead catenary).

Just as the design of this equipment is different from that of typical locomotives, the operating characteristics for this equipment are different. Heavy electric equipment, in particular, is not interchanged away from its owner (thus allowing inspection and maintenance forces to become more familiar with each piece of equipment) and different in that heavy electric operations are characterized by tight control over trains through automatic train control, centralized dispatching, short blocks, tight schedules, cab signals, and short trains. These differences, however, do not provide a basis for treating heavy electric operations differently under this rule. Indeed, the use of this equipment for the transportation of passengers and the relatively high speeds and short headways that characterize this type of service clearly require that it be subject to this final rule. Each train comprised of heavy electric equipment must have an in-service event recorder in the lead locomotive.

Railroads using heavy-electric equipment, and Long Island Railroad, Metro North Commuter Railroad, NJ Transit, Port Authority Trans-Hudson Corporation, and Southeastern Pennsylvania Transportation Authority all submitted statements in response to the NPRM, have provided valuable insight into their unique equipment and into their operating environments. FRA appreciates the activities of the heavy-electric commuter operators in working with the supply industry to develop a "standard" commuter-railroad event recorder. This agency is aware of the technological problems facing heavy-electric operators, especially the poor performance of magnetic tape recorders in tunnel operations. FRA welcomes a continuing dialogue with the commuter railroads concerning the use of newly developed digital recorders.

All Locomotives. The NTSB commented that all locomotives in a train should be equipped in order to permit accident investigators to determine the performance of each locomotive in the consist. In addition to the obvious cost implications of this suggestion, there are sound reasons for not attempting to mandate equipping all locomotives at this time. FRA knows that event recorder technology is likely to advance rapidly. Accordingly, rather than establish a rule that would eventually require an event recorder meeting today's standard on every locomotive (except those traveling so slowly they do not even need speed indicators), FRA believes that it is wise to wait to see whether the recorders themselves become significantly better than they now are. FRA agrees with the NTSB that standards should be set for sampling intervals, the ranges of recorded parameters, and the accuracy of their recording. Performance standards for accident survivability should be explored, with the objective of attaining cost effective improvements that will prevent destruction of data by fire or impact. It is also likely that standardized data extraction protocols would enhance the utility of the event recorder immensely. As good as these ideas are, FRA cannot simply bring them into being by mandating them. Time will be required to bring these concepts to mature and practical fruition.

The Federal entity with more experience than any other in reading and using event recorders is the NTSB. FRA will be consulting with the Board to determine how best to use its expertise in working with the supply industry, the railroads, and other interested parties, including most certainly those representing the locomotive engineers, to develop standards for accuracy, for crashworthiness, and for utility for the next generation of event recorders. Equipping trains operating faster than 30 miles per hour now with event recorders, maintained as required, will also enhance this effort by helping to create a data base about recorders themselves.

Where should the event recorders be? The NPRM would have required that any one of the locomotives powering a train carry an in-service event recorder. For recording the basic events of a trip,

this might have been adequate, but FRA has determined that the recorder will be most helpful if it records the events happening in the locomotive occupied by the engineer, that is, the lead locomotive. Only that locomotive, for instance, can record the cab signal aspect displayed to the engineer, because every subsequent locomotive in the power consist will "see" the most restrictive aspect as soon as the lead unit passes the signal. Only the lead locomotive's device will record the engineer's actions in throttle control or in setting up the dynamic brake—recorders on trailing units will note the "message" received, the action they were requested to take, but only the lead locomotive will record the direct input of the person in control.

The benefits of this are evident both for accident analysis and for evaluating the performance of the engineer. Experience shows that a good engineer can give an accurate narrative account of the events of a trip leading up to an accident. In the past, these explanations have been programed into simulators and the recreations, more often than not, show that the person at the control stand correctly described what took place. With the in-service event recorder required to be in the lead unit, additional verification will be provided.

The final rule requires that trains operated faster than 30 miles per hour must have an in-service event recorder in the lead locomotive. In order to keep the recorder in the lead unit as much of the time as possible without requiring undue, and possibly dangerous, switching of locomotives within the power consist, the final rule also states that a lead locomotive with its recorder taken out of service may not remain as the lead locomotive beyond the next calendar day inspection.

FRA is aware that push-pull commuter operations don't have a traditional "locomotive" at the lead in one direction and that this may present problems in some cases. The ideal solution would be for the actions taken at the engineer's stand in the control car to be recorded on the device in the locomotive. This agency welcomes suggested solutions for any operations where this part of the final rule presents problems.

How should event recorders be maintained? The NPRM proposed a requirement that event recorders be maintained at the quarterly periodic inspection, according to written instructions which were to the kept at the site of the work; this requirement supplemented a more basic performance requirement, that the event recorders on trains be "in-service." Two commenters objected and wanted maintenance requirements more tightly drawn. FRA agrees that the proposal left room for confusion.

The line between a performance standard and a regulatory specification is hard to draw and the performance specification is often criticized for being either too lax or so strict that it becomes what one safety expert called "a hanging rule:" any deviation from perfection is an offense. Obviously, neither extreme was intended by FRA and a definition of "In-service" has been added to § 229.5. In addition, FRA's final rule now states explicitly that the quarterly maintenance procedure shall include a thorough test of all of the operating functions captured by the recorder and that the readout of the test tape showing the results of this systems check shall be kept with the locomotive maintenance records until the next one is filed. FRA has no desire to create unnecessary maintenance burdens on the railroads on the one hand, but, on the other, it cannot condone event recorders which fail for lack of effective maintenance. Testimony and comments by representatives of the railroads and of the suppliers demonstrate agreement that a properly maintained recorder will operate from one quarterly inspection to the next without failure, virtually all of the time. The final rule recognizes what industry has said and, accordingly, requires event recorders to be maintained so well that 90 percent of them are still functioning as intended when they arrive at the quarterly inspection. If this level of performance cannot be met on a month-to-month basis, the final rule then requires maintenance intervals and practices to be adjusted so that it can.

Although no parties commented on this aspect of the proposed rule, FRA notes that the maintenance requirements in § 229.25 are "mandatory" in the sense that § 229.23 requires all non-complying conditions to be corrected before the locomotive is used; under new § 229.135(e) a locomotive, due for a periodic inspection, with an inoperative event recorder is a non-complying locomotive under §§ 229.7 and 229.9. This means that a locomotive with an inoperative recorder may not be dispatched from the 92-day inspection.

How should data be preserved following an accident? The NPRM proposed two ways to ensure that data in the event recorder are preserved following an accident. First, tampering with the recorder or the data in it was prohibited and made actionable under civil penalty procedures and proceedings for disqualification from performing safety-sensitive functions. Second, immediately following an accident, the railroad was required to take action to preserve the data recorded by the event recorder, either by safeguarding the locomotive or by removing the tape or the recorder itself and storing them in a secure place for later analysis.

Several commenters suggested amending the proposal. The railroads noted that they need immediate access to the data for their own investigation, both to compare the recorder readout with the physical evidence and to direct their search of the derailment site. One commenter suggested that FRA be extremely cautious about access to recorder data in the post-accident environment to prevent bias from entering the investigation. Another commenter requested timely access to recorder data by, among others, involved rail labor organizations, and the NTSB asked FRA to require the railroads to comply with Board rules on the preservation of evidence.

FRA recognizes the legitimate needs of both management and labor to the operational data stored in event recorders. But Congress, in enacting the Rail Safety Improvement Act of 1988, said that event recorders were being required to "enhance safety." This places the public interest at the top of the needs to be satisfied through analysis of event recorder data.

FRA's initial proposal attempted to weave together the investigatory needs and authorities of the National Transportation Safety Board and of this agency; on reflection, and considering the written comments and oral testimony, FRA has concluded that they are best handled separately. The NTSB has made it clear that they want only the unread, original tape or other data from the event recorders; FRA is willing to let the railroad analyze recorder data as long as a duplicate original is preserved for Federal analysis.

The final rule provides that, after an accident reportable to the Board, the railroad will take no action (except as necessary to avoid outright destruction of the data) until the Board has had eight hours from the time of notification of the National Response Center to declare that it will conduct an investigation of the accident. After the eight hour period (or earlier if the Board makes a "no investigation" determination) the railroad is still required to preserve the data on an FRA-reportable accident; the difference at this level is that the company can now duplicate it and put the copy on its own readout machine. If, during the eight hour period, the Board notifies the

VOL
58
ISS
129
JL
8
1993
UMI

railroad that an investigation will be conducted, the railroad will be governed by the Board's instructions.

Relation to Other Rulemaking Proceedings

In its final rule proscribing tampering with safety devices, published February 3, 1989 (54 FR 5485), FRA required installed event recorders to be operative unless the locomotive was being hauled dead-in-tow or unless the event recorder became inoperative enroute, in which case FRA imposed a notification requirement similar to that used for certain signal-related equipment that controls or restricts train operations. The AAR filed a Petition for Reconsideration in that Docket. Some of what is in this final rule responds to that petition.

FRA agrees that it serves no safety purpose to create a situation in which a locomotive without an installed event recorder could be used in a power consist while a locomotive with an inoperative event recorder could not. FRA notes that section 10 of the RSIA seeks to have event recorders not on locomotives but on those trains where the equipment is necessary to enhance safety.

While this rule requires event recorders to be in operating order at the time the locomotive is cleared from the quarterly inspection, these devices, like any mechanical or electronic device, are subject to random failures. FRA sees no safety benefit in severely restricting the operation of a locomotive costing upwards of a million dollars because of the failure of a fifty dollar part in a black box. The final rule in this docket would permit operation of a locomotive with an event recorder known to have failed but it could not be the sole power, nor the lead locomotive, on a train operated faster than 30 miles per hour.

Based on FRA's further analysis and on the arguments advanced in the AAR's Petition for Reconsideration, FRA believes that, while event recorders come under the general category of safety devices by some meanings of that term and, while they may positively encourage crews to obey the law, they are not the kind of active safety devices that have an immediate effect on train operations. Event recorders do not function in the same way or for the same purpose as does equipment used to assure that the locomotive operator is alert, or that the engineer is not physically incapacitated, or that the person at the controls is aware of and complying with the indications of a signal or other operational control system.

Accordingly, FRA has removed references to event recorders from subpart D of part 218 and has included all regulations relating to event recorders (including a provision prohibiting tampering with such recorders) in the Railroad Locomotive Safety Standards in part 229.

In Docket No. RSOR–9, Qualifications for Locomotive Engineers (56 FR 28228), FRA has discussed the use of event recorders to monitor locomotive engineer performance.

Analysis by Section

Section 229.5. This section is amended by adding a definition of "event recorder" as a tamper-resistant device to record data on train speed, direction of motion, time, distance, throttle position, and brake applications and operations over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed and by adding a definition of "in-service" as an event recorder successfully tested at its most recent periodic inspection and not known to have suffered any failures since then.

Section 229.25. This section is amended by adding a requirement that event recorders be maintained according to standards set by the manufacturer, the supplier, or the owner of the unit; a written copy of the maintenance instructions shall be maintained at the location where the work is being done. At a minimum, event recorders must be run through the full range of each of the operational parameters they were recording and verification of the correct functioning of the recorder, in the form of a read out tape, must be filed with other locomotive maintenance records until the next inspection and maintenance episode. Finally, a performance standard for the effective maintenance of event recorders requires that 90 percent of them be still fully functional when they arrive for periodic inspection. If the "ready rate" drops below this, railroads are required to adjust maintenance intervals or operations so that this performance level is achieved. This maintenance provision will take effect on the effective date of this rule, that is, it will apply to event recorders (as defined by this rule) already installed on that date.

Section 229.135. This new section of the regulations contains the essence of FRA's event recorder requirements. Subsection (a) requires that, eighteen months after the effective date of this final rule, trains operating faster than 30 miles per hour must have an in-service event recorder in the lead locomotive. This is the only provision of the final rule that takes effect after the effective date of the rule.

Subsection (b) provides that a locomotive on which the event recorder has been taken out of service may not remain as the lead locomotive beyond the next calendar day inspection. This subsection also provides that event recorder inspection, maintenance, and testing is limited to that required by § 229.25(e).

Subsection (c) allows a railroad to take an event recorder out of service, and requires it in the case of known failures, upon the authorization of a qualified person. Out of service event recorders must be tagged and may not remain out of service beyond the next periodic inspection.

Subsection (d) provides for the security, and subsequent use by Federal investigators, of data from the recorders of locomotives involved in accidents. Subsection (e) provides that individuals who willfully disable event recorders or alter the data recorded by them are subject to civil penalties and disqualification proceedings.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies

This final rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DoT policies and procedures (44 FR 11034, February 26, 1979).

In an effort to design a regulatory approach that would achieve the maximum benefits at the minimum cost to the industry, FRA developed six regulatory options: (1) Taking no action; (2) requiring the installation of event recorders on all locomotives; (3) requiring the installation of event recorders on all new and rebuilt locomotives; (4) requiring event recorders on Amtrak inter-city passenger trains as well as all high-speed, heavy-tonnage freight trains; (5) requiring event recorders on all passenger trains, high-speed and heavy tonnage freight trains, and all new and rebuilt locomotives; and (6) requiring event recorders on all trains operated faster than 30 miles per hour.

FRA's analysis shows that the sixth option is both economically reasonable and fully responsive to the public interest as expressed by Congress in the RSIA. It has a 20-year discounted cost of just over $60 million dollars. It will result in event recorders first being present when and where they do the most good. FRA contemplates that, after a research and development effort yields performance standards with which all

manufacturers may be required to comply, virtually all locomotives will be equipped, thus increasing, for example, the potential that at least one unit's event recorder data will survive even a major, head-on collision. The chosen option avoids a massive, immediate, and costly full retrofit program, analyzed by FRA to have a 20-year discounted cost of over $92 million dollars, the burden of which would fall disproportionately on small and medium sized railroads, and it will improve FRA's ability to accurately identify the causes of accidents involving complex scenarios involving train handling and train dynamics.

A full analysis of economic impact, including the impact on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), of the rule proposed here and of the other options considered by FRA has been made and is included in the docket file of this proceeding.

Regulatory Flexibility Act

These regulations have been revised to reduce their impact on small entities to the bare minimum consistent with Congressional intent. FRA certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated avg. time
229.25(e) .	Maintaining manufacturer's, supplier's, or owner's instructions for event recorder inspection, maintenance, and testing.	15 min.
229.25(e) .	Data verification readout record.	1 hr.
229.135(c)	Tagging reason for removing event recorder from service.	1 min.
229.135(d)	Record of "security" of event recorder data.	15 min.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to FRA and to FRA Desk Officer, Regulatory Policy Branch (OMB No. 2130–0004), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) FRA has submitted the information collection requirements in this rule to the Office of Management and Budget and has obtained approval under OMB approval number 2130–0004.

Environmental Impact

This rule will not have any identifiable environmental impact.

Federalism Implications

This rule should not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

Therefore, in consideration of the foregoing, FRA amends Parts 218 and 229, Chapter II, Subtitle B of Title 49, Code of Federal Regulations to read as follows:

PART 218—RAILROAD OPERATING PRACTICES

1. The authority for part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (m).

2. By revising § 218.51(b)(3) to read as follows:

§ 218.51 Purpose.

* * * * *

(b) * * *

(3) Under the provisions of § 229.9 of this chapter, provided that when a locomotive is being operated under the provision of § 229.9(b) a designated officer has been notified of the defective alerter or deadman pedal at the first available point of communication.

3. By revising § 218.61(c) to read as follows:

§ 218.61 Authority to deactivate safety devices.

* * * * *

(c) If a locomotive is equipped with a device to record data concerning the operation of that locomotive and/or of the train it is powering, that device may be deactivated only in accordance with the provisions of § 229.135.

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 45 U.S.C. 431, 438, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c), (g), and (m).

2. By revising § 229.4(b) to read as follows:

§ 229.4 Information collection.

(a) * * *

(b) The information collection requirements are found in the following sections:

(1) Section 229.9.
(2) Section 229.17.
(3) Section 229.21.
(4) Section 229.23.
(5) Section 229.25.
(6) Section 229.27.
(7) Section 229.29.
(8) Section 229.31.
(9) Section 229.33.
(10) Section 229.55.
(11) Section 229.103.
(12) Section 229.105.
(13) Section 229.113.
(14) Section 229.135.

3. By amending § 229.5 to redesignate current paragraph (g) as paragraph (h); redesignate current paragraphs (h) through (m) as paragraphs (j) through (o); and add new paragraphs (g) and (i) to read as follows:

§ 229.5 Definitions.

* * * * *

(g) *Event recorder* means a device, designed to resist tampering, that monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, dynamic brake applications and operations) and, where

the locomotive is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed. A device, designed to resist tampering, that monitors and records the specified data only when the locomotive is in motion shall be deemed to meet this definition provided the device was installed prior to [insert the effective date of the rule] and records the specified data for the last eight hours the locomotive was in motion.

* * * * *

(i) *In-service event recorder* means an event recorder that was successfully tested as prescribed in § 229.25(e) and whose subsequent failure to operate as intended, if any, is not actually known by the railroad operating the locomotive on which it is installed.

* * * * *

4. By amending § 229.25 to add a new paragraph (e) to read as follows:

§ 229.25 Tests: every periodic inspection.

* * * * *

(e) The event recorder, if installed, shall be inspected, maintained, and tested in accordance with the instructions of the manufacturer, supplier, or owner thereof and in accordance with the following criteria:

(1) A written copy of the instructions in use shall be kept at the point where the work is performed.

(2) The event recorder shall be tested prior to performing any maintenance work on it. At a minimum, the event recorder test shall include cycling all required recording parameters and determining the full range of each parameter by reading out recorded data.

(3) If this test does not reveal that the device is recording all the specified data and that all recordings are within the designed recording parameters, this fact shall be noted on the data verification result required to be maintained by this section and maintenance and testing shall be performed as necessary until a subsequent test is successful.

(4) When a successful test is accomplished, a copy of those data verification results shall be maintained with the locomotive's maintenance records until the next one is filed.

(5) A railroad's event recorder periodic maintenance shall be considered effective if ninety percent (90%) of the recorders inbound in any given month for periodic inspection are still fully functional; maintenance practices and test intervals shall be adjusted as necessary to yield effective periodic maintenance.

5. By adding a new § 229.135 as follows:

§ 229.135 Event recorders.

(a) *Duty to equip.* Effective January 16, 1995, and except as provided in paragraph (b) of this section, any train operated faster than 30 miles per hour shall have an in-service event recorder in the lead locomotive. For the purpose of this section "train" includes a locomotive or group of locomotives with or without cars and "lead locomotive" means the locomotive from whose cab the crew is operating the train and, when cab control locomotives and/or MU locomotives are coupled together, is the first locomotive proceeding in the direction of movement.

(b) *Response to defective equipment.* A locomotive on which the event recorder has been taken out of service as provided in paragraph (c) of this section may remain as the lead locomotive only until the next calendar-day inspection. A locomotive with an inoperative event recorder is not deemed to be in improper condition, unsafe to operate or a non-complying locomotive under §§ 229.7 and 229.9 and, notwithstanding any other requirements in this chapter, inspection, maintenance, and testing of event recorders is limited to the requirements set forth in § 229.25(e).

(c) *Removal from service.* A railroad may remove an event recorder from service, and if a railroad knows that an event recorder is not monitoring or recording the data specified in § 229.5(g), shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall cause to be recorded the date and the reason[s] for removing the device from service on a tag to be applied to the device or to the place from which the device was removed, as appropriate. The tag described in § 229.9(a)(3) or other suitable tag may be used for this purpose. An event recorder may not remain out of service beyond the completion of the next periodic inspection as set forth in §§ 229.23 and 229.25 of this subpart.

(d) *Preserving accident data.* For the purposes of this paragraph (d), the term event recorder includes all locomotive mounted recording devices designed to record information concerning the functioning of a locomotive or train regardless of whether the device meets the definition of event recorder in § 229.5.

(1) *Accidents reportable to the National Transportation Safety Board.* If any locomotive equipped with an event recorder is involved in an accident that is required to be reported to the National Transportation Safety Board (See 49 CFR part 840), the railroad using the locomotive shall make no attempt, except by the direction of a representative of the Board, or as may be necessary to preserve the data from destruction, to extract or analyze the recorded data until 8 hours have passed from the time the accident is reported to the National Response Center, or until the Board declares that it will not conduct an investigation of the accident, whichever comes first. If, within the 8-hour period, the Board notifies the railroad that an investigation will be conducted, the railroad will be governed by the Board's instructions; if the Board notifies the railroad that an investigation will not be conducted, or if the Board fails to give notification within the 8-hour period, the railroad may extract the data consistent with the preservation requirements of paragraph (d)(2) of this section.

(2) *Accidents required to be reported to the Federal Railroad Administration.* If any locomotive equipped with an event recorder is involved in an accident that is required to be reported to FRA (See 49 CFR part 225), the railroad using the locomotive shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by the device for analysis by FRA. This preservation requirement permits the railroad to extract and analyze such data; *provided* the original or a first-order accurate copy of the data shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the Board. This preservation requirement shall expire 30 days after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis.

(3) *Relationship to other laws.* Nothing in this section is intended to alter the legal authority of law enforcement officials investigating potential violation[s] of State criminal law[s] and nothing in this chapter is intended to alter in any way the priority of National Transportation Safety Board investigations under 49 App. U.S.C. 1903, nor the authority of the Secretary of Transportation to investigate railroad accidents under 45 U.S.C. 40 and 437, and 49 App. U.S.C. 1808.

(e) *Disabling event recorders.* Except as provided in paragraph (c) of this section, any individual who willfully disables an event recorder is subject to civil penalty and to disqualification from performing safety-sensitive functions on a railroad as provided in § 218.55 of this chapter and any individual who tampers with or alters the data recorded by such a device is subject to a civil penalty as provided in appendix B of this part and to

VOL 58 ISS 129 JL 8 1993 UMI

disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures in 49 CFR part 209.

6. By amending Appendix B—Schedule of Civil Penalties—by revising the penalties for § 229.25 under subpart B—Inspection and tests and by adding penalties for § 229.135 under subpart C—Safety requirements as follows:

Appendix B to Part 229—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
229.25		
(a) through (e)(4) Tests: Every periodic inspection	2,500	5,000
(e)(5) Ineffective maintenance	6,000	16,000
* * * * *		
229.135		
(a) Lead locomotive without in-service event recorder	2,500	5,000
(b) Improper response to out of service event recorder	2,500	5,000
(c) Unauthorized removal from service	2,500	5,000
Failure to remove from service a recorder known to have failed	2,500	5,000
(d) Failure to preserve data or unauthorized extraction of data	2,500	5,000
(e) Tampering with device or data	2,500	7,500

* * * * *

Issued in Washington, DC, on July 1, 1993.

Grady C. Cothen, Jr.,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 93–15966 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–65; Notice 2]

RIN 2127–AE15

Federal Motor Vehicle Safety Standards; Air Brake Systems, Burnish Procedures and Recovery Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends two aspects of Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, in response to a petition for rulemaking submitted by Rockwell International. First, the rule amends the adjustment procedure for brake burnish during road and dynamometer testing; and second, it amends the dynamometer test's recovery requirement applicable to truck and bus front brakes. With respect to brake burnish, the rule allows up to three brake adjustments during the burnish procedure at intervals specified by the vehicle manufacturer and at the conclusion of burnishing. The agency believes that this amendment brings the burnish test procedures closer to conditions found in actual vehicle usage. With respect to the recovery requirements, the rule no longer requires front axle brakes on trucks and buses to comply with the minimum pressure requirements related to the brake chamber. The agency believes that this amendment improves brake performance by removing a provision that may prevent the use of larger, more effective brakes on front axles.

DATES: *Effective Date:* The amendments become effective on August 9, 1993.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than August 9, 1993.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 91–65; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Background

A. Burnish Requirements

Standard No. 121, Air Brake Systems (49 CFR 571.121), specifies road tests and dynamometer tests to measure whether vehicles equipped with air brakes comply with the standard's performance requirements. For instance, such vehicles are subject to "burnish" procedures conducted at the outset of road testing and dynamometer testing. A burnish procedure consists of a series of brake applications, which are also known as "snubs," that serve to simulate the break-in of the brakes on new vehicles under normal driving conditions.

Under the current road test burnish procedures, two options, "a" and "b", are available until September 1, 1993 (see S6.1.8.1). Brakes on vehicles manufactured on or after that date must be burnished under option "b." The burnish procedures in both options consist of 500 snubs. In addition, both options specify that the brakes be adjusted during the burnish procedure, if necessary, in accordance with the manufacturer's recommendations, after the 125th, 250th, and 375th snubs and after burnish is completed.

Standard No. 121 also specifies a dynamometer test to measure mechanical force (see S6.2.6). Before the dynamometer test, brakes are burnished by making 400 stops from 40 mph at a deceleration of 10 f.p.s.p.s. For these brake applications, the standard specifies that the "initial brake temperature" must be within a stated range. The term "initial brake temperature" is defined as "the average temperature of the service brakes on the hottest axle of the vehicle 0.2 mile before any brake application."

The current burnish procedures resulted from a rulemaking conducted in response to a petition from International Harvester that culminated in a final rule published on March 14, 1988 (49 FR 8191). After several notices, the agency adopted a burnish procedure in which the brakes on heavy duty vehicles were burnished by 500 snubs slowing the vehicle from 40 mph to 20 mph, without regard to brake temperatures generated during the burnish. The burnish procedure also permitted manual brake adjustments at specified intervals. In the final rule, the agency stated that standardizing intervals at which adjustments could be made would reduce a potential source of variability.

VOL 58 ISS 129 JL 8 1993 UMI

B. Brake Recovery During Dynamometer Testing

At present, section S5.4 specifies requirements that foundation brake assemblies must meet during dynamometer tests for retardation, brake power, and recovery. During brake recovery, the chamber pressure for non-antilock systems must be within a range of 85 to 20 psi. (Anti-lock systems have a range between 85 and 12 psi). The purpose of the 85 psi requirement at the high end of the test specification is to ensure that the brakes can recover from the elevated temperatures which cause brakes to fade. Along with causing brake fade, these elevated temperatures may also permanently alter the physical characteristics of the brake block material. The purpose of the 20 psi and 12 psi requirements at the low end of the test specification is to check for overly aggressive brake blocks with an unstable coefficient of friction resulting from the exposure to high temperature conditions.

II. Petition

On January 8, 1991, Rockwell International (Rockwell) submitted a petition for rulemaking, requesting that the agency amend two aspects of Standard No. 121: (1) The adjustment procedure for brake burnish; and (2) the recovery requirement for front brakes on trucks and buses.

With respect to brake burnish, Rockwell explained that it has experienced problems with brake drag under the current adjustment procedures. For Rockwell's brake design under the current regulation, a manual adjustment is not allowed at the 50th snub, even though such an adjustment would reduce brake swell. Rockwell requested that the Standard be amended to permit manual adjustment at four intervals at the manufacturer's discretion, if necessary. The petition did not request changes to the brake adjustment provisions in the dynamometer test.

With respect to brake recovery, Rockwell stated that the 20 psi requirement results in brake size and input power being limited because if a brake's performance level is too high, the pressure will be less than 20 psi. This limitation historically has had limited impact because recovery typically has fallen at mid-range. However, the petitioner requested that the standard be amended to exclude truck and bus front axle brakes from the minimum pressure requirements to allow use of larger front brake sizes and input powers. The petitioner believed that concern about early lock-up would generally not apply to front axle brakes because of the dynamic weight transfer to front axles during deceleration.

III. Agency Proposal

On December 23, 1991, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 121 in two respects in response to Rockwell's petition. (56 FR 66395). First, the notice proposed amending the burnish requirements in the road and dynamometer test conditions to allow up to three brake adjustments during the burnish procedure, at intervals specified by the vehicle manufacturer, and a final adjustment at the conclusion of burnishing. The agency believed that this proposal would bring the burnish procedures closer to conditions found in actual vehicle usage, given the development of non-asbestos brake blocks that respond to elevated temperatures with increased swelling. Second, the notice proposed amending the brake recovery requirement to exclude the front brakes of trucks and buses from the minimum pressure requirement. The agency believed that this amendment would remove a requirement that might impede the development of larger front brakes on heavy vehicles.

IV. Comments to the NPRM and the Agency's Response

NHTSA received comments in response to the NPRM from motor vehicle manufacturers including General Motors (GM), International Harvester (IH), Ford, and Freightliner and brake equipment suppliers including Ferodo America, Abex, Motion Control Industries, and Echlin. The commenters generally agreed with the proposals to amend the brake adjustment schedule during the burnish requirements and to amend the brake recovery requirements with respect to front brakes on trucks and buses. In addition, commenters addressed specific matters in the proposed regulation, including the need to apply the proposed exclusion to the brake recovery requirements to anti-lock systems.

The agency has considered the points raised by the commenters in developing the final rule. The agency's discussion of the more significant comments and other relevant information is set forth below. The notice first addresses issues about brake adjustment during braking and then addresses truck and bus front axle brake recovery.

A. Brake Adjustment During Burnish

As explained above, Standard No. 121 specifies a burnish procedure requiring a series of snubs that simulate the break-in that brakes get when they are initially used on the public roads. In the 1988 rulemaking about burnish, NHTSA decided to specify the intervals at which manual adjustments could be made. Specifically, manual adjustments were permitted after the 125th, 250th, and 375th snubs and after completing the burnish, with each adjustment made in accordance with the manufacturer's recommendation.

After evaluating the Rockwell petition, NHTSA proposed amending the adjustment schedule during brake burnish to permit adjustment at intervals specified by the vehicle manufacturer, if necessary. The agency reasoned that the amendment might be necessary to accommodate the new generation of non-asbestos brake blocks. In addition, the agency believed that in currently specifying the adjustment intervals, the standard did not account for differences among brakes. The agency requested comment about the best way to prescribe the adjustment schedule to allow flexibility to accommodate new brake designs, while ensuring that the burnish requirements were enforceable and appropriate.

The NPRM addressed two other considerations related to the brake adjustment schedule during burnish. First, the agency proposed amending the brake adjustment intervals specified for the dynamometer test conditions in S6.2 to be consistent with the adjustment schedule during the road test procedures. Second, the agency proposed changing the definition for "initial brake temperature" to be more appropriate for dynamometer testing.

Several commenters addressed the issue related to the adjustment schedule during brake burnish. GM agreed with the rationale set forth in the preamble that different brake system designs may require manual adjustments at different times. Ford supported the proposal although the proposed changes would not benefit its vehicles. Ferodo commented that the proposed readjustment procedure would eliminate problems associated with the burnish procedures. Abex supported allowing three adjustments during the burnish. Rockwell commented that its petition was intended to provide manufacturers with flexibility to make up to three adjustments as necessary during the burnish test and not to specify predetermined adjustment points. It stated that to provide greater flexibility, the phrase "at intervals

specified by the vehicle manufacturer" should be deleted.

Several commenters, including Rockwell stated that the adjustments for both the road and dynamometer tests should be done pursuant to the brake manufacturer's schedule. Rockwell commented that it would be an unnecessary burden to repeat tests using all the potential vehicle manufacturer adjustment procedures. Abex commented that the brake manufacturer's schedule should be followed because conditions controlling the need for readjustments will vary significantly due to ambient conditions, vehicle configuration, brake size, axle ratings, friction material properties, and the predetermined axle by axle brake balance of the specific vehicle being tested.

After reviewing these comments, NHTSA believes that its proposal to amend the adjustment schedule during brake burnish is appropriate. The agency believes that this amendment will provide increased flexibility to manufacturers without resulting in any safety problems. In response to the comments that adjustments should be made at the brake manufacturer's discretion, the agency believes that the vehicle manufacturer's adjustment procedure should be followed instead of the brake manufacturer's. While NHTSA is aware that the brake manufacturer frequently conducts the brake development testing, the agency notes that the vehicle manufacturer is the entity ultimately responsible for certifying that the air brakes comply with standard No. 121. Therefore, the vehicle manufacturer should be responsible for the adjustment schedule.

NHTSA believes that having the regulatory text state that the vehicle manufacturer is responsible for specifying the brake adjustment intervals should not result in any significant change in the relationship between the brake supplier and the vehicle manufacturer. The agency believes that the vehicle manufacturer and its axle or brake supplier would coordinate their compliance testing efforts. The agency would not necessarily expect the burnish adjustment points to be identical in all cases. Since the dynamometer and road tests are run under different cooling conditions, the agency would expect the drum and lining expansion rates to be different, resulting in unique schedules of adjustment for each participant.

With respect to the definition for "initial brake temperature," GM, Abex, and Rockwell commented that the time should be changed to 18 seconds (0.2 miles/40 mph), instead of 12 seconds as proposed in Notice 1, since all burnish snubs will be conducted from 40 mph beginning September 1, 1993. The agency agrees with these commenters that the time should be changed to 18 seconds to make the dynamometer and road tests consistent.

Ferodo recommended that the definition of initial brake temperature should be amended to mean the "temperature of the hottest brake at brake apply." Ferodo also expressed concern that adding an interval of 12 seconds between initial brake temperature and brake apply will add a variable and degrade temperature control.

NHTSA believes that if Ferodo has a problem with accessing of temperature data in 12 seconds (now 18 seconds), then they must have misinterpreted how they should be performing the test. Under S6.2.6, the initial brake temperature means the average temperature of the service brakes on the hottest axle of the vehicle 0.2 miles before any brake application. In the dynamometer tests, they would convert the 0.2 miles to a time since the brake system they were testing was not being run on a vehicle on a test track. The agency notes that no other axle or brake material supplier expressed having a problem with the proposed timing change. In addition, the agency believes that the amendment will only necessitate having manufacturers change several lines of computer code. Based on the above considerations, the agency has determined that Ferodo's concerns are unfounded.

B. Brake Chamber Pressure During Recovery

As explained above, Standard No. 121 currently specifies provisions about a vehicle's brake recovery during the dynamometer testing. (see section S5.4.3) Within two minutes after completing the brake power tests, the brake of a vehicle (other than either front axle brake of a truck-tractor) is required to make 20 consecutive stops from 30 mph at a deceleration rate of 12 f.p.s.p.s. During these stops, the service line air pressure needed to attain the deceleration rate must be not more than 85 lb per square inch and not less than 20 lb/square inch for non antilock brake systems (or 12 lb/square inch for brakes controlled by an antilock system). As explained above, the requirements at the low end of the specification are to prevent overly aggressive brake blocks with an unstable coefficient of friction resulting from exposure to high temperature conditions. One effect of the low end requirements is to prevent the use of larger brakes on the front axle because such systems may go below the fixed lower pressure limit.

NHTSA proposed amending the requirement so that front axle brakes on trucks and buses would no longer have to comply with the minimum pressure requirements for the brake chamber during the recovery tests. The agency believed that this proposed amendment would result in eliminating a regulation that might serve to impede the use of larger, more effective front brakes. Such an amendment would be consistent with the agency policy of encouraging the use of large front brakes.

Several commenters addressed the issue of the brake recovery requirements. GM supported the proposal to remove the 20 psi recovery requirement, stating that the proposal could enhance overall brake system performance by facilitating the use of larger front foundation brakes. GM stated that it has had to limit front brake size due to the 2 psi lower limit requirement. Rockwell, Abex, and Navistar recommended eliminating all minimum pressure requirements for truck and bus front brakes regardless of whether they are controlled by ABS. Believing that this situation resulted from an oversight because antilock brakes are more forgiving of over-recovery, Navistar requested that both the 12 psi and 20 psi requirements be eliminated. In addition, Navistar requested that S5.4.3.(a) and S5.4.3(b) be removed from the proposed regulatory text.

Echlin disagreed with the proposal to eliminate the lower pressure limits, stating that such an action would defeat the purpose of controls that help prevent degraded vehicle control. It believed that as a result of this proposal, brake block materials with overly aggressive recovery characteristics could return. Echlin believed that more effective front brakes could be allowed by testing on the dynamometer at a load higher than the gross axle weight rating (GAWR).

NHTSA agrees with Rockwell, Abex and Navistar that the lower limit recovery requirement applicable to antilock systems on front brakes should be eliminated. This decision results in more consistent treatment for antilock and non-antilock brake systems.

Regulatory Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant"

VOL 58 ISS 129 JL 8 1993 UMI

within the meaning of the Department of Transportation regulatory policies and procedures. The main effect of the burnish amendment is to provide burnish procedures that are more representative of the actual "break-in" that vehicle brakes typically receive while in use on the nation's roads, without favoring any particular braking system design. In particular, allowing adjustment consistent with the vehicle manufacturer's recommended adjustment schedule more fully accounts for differences among brake systems. The main effect of the amendment about recovery requirements is to remove a restriction that prevents the installation of better performing front brakes.

The amendment to the burnish procedures will not result in any cost increase because it does not impose any new requirements on manufacturers. Rather, it provides greater flexibility to manufacturers to conduct the burnish testing. The amendment to the recovery requirements will result in a cost savings because front axle brakes on trucks and buses no longer have to comply with certain requirements.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this rulemaking on small entities. Based on this evaluation, I hereby certify that the amendments will not have significant economic impact on a substantial number of small entities. Few of the truck tractor or brake manufacturers may qualify as small entities. While some trailer manufacturers may qualify as small entities, this rule will not significantly increase the production or certification costs for those manufacturers that qualify as small entities. Small organizations and governmental jurisdictions which purchase these vehicles will not be affected since the cost impacts of this rule are minimal. Accordingly, a regulatory flexibility analysis has not been performed.

C. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant affect on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by revising the definition in S4 of "initial brake temperature," S5.4.3, S6.1.8.1, and S6.2.6 to read as follows:

§ 571.121 Standard No. 121, Air Brake Systems.

* * * * *

S4. * * *

"Initial brake temperature" means the average temperature of the service brakes on the hottest axle of the vehicle 0.2 mile before any brake application in the case of road tests, or 18 seconds before any brake application in the case of dynamometer testing.

* * * * *

S5.4.3 *Brake recovery.* Except as provided in S5.4.3(a) and (b), starting two minutes after completing the tests required by S5.4.2, a vehicle's brake shall be capable of making 20 consecutive stops from 30 mph at an average deceleration rate of 12 f.p.s.p.s., at equal intervals of one minute measured from the start of each brake application. The service line air pressure needed to attain a rate of 12 f.p.s.p.s. shall be not more than 85 lb/in², and not less than 20lb/in² for a brake not subject to the control of an antilock system, or 12 lb/in² for a brake subject to the control of an antilock system.

(a) Notwithstanding S5.4.3, neither front axle brake of a truck-tractor is subject to the requirements set forth in S5.4.3.

(b) Notwithstanding S5.4.3, neither front axle brake of a bus or a truck other than a truck-tractor is subject to the requirement set forth in S5.4.3 prohibiting the service line air pressure from being less than 20 lb/in² for a brake not subject to the control of an antilock system or 12 lb/in² for a brake subject to the control of an antilock system.

* * * * *

S6.1.8.1 Vehicles manufactured before September 1, 1993 may be burnished according to the procedures set forth in S6.1.8.1(a) or S6.1.8.1(b) of this section, at the manufacturer's option. Vehicles manufactured on or after September 1, 1993 shall be burnished according to the procedures set forth in S6.1.8.1(b) of this section.

(a) With the transmission in the highest gear appropriate for the series given in Table IV, make 500 brake applications at a deceleration rate of 10 f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 f.p.s.p.s., in the sequence specified. Except where an adjustment is specified, after each brake application, accelerate to the next speed specified and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If a vehicle cannot attain any speed specified in 1 mile, continue to accelerate until the specified speed is reached or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. If during any of the brake applications specified in Table IV, the hottest brake reaches 550 °F, make the remainder of the 500 brake applications from that snub condition, except that a higher or lower snub condition shall be used as necessary to maintain an after-stop temperature of 500 °F±50F. However, if at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 550 °F, make the remainder of the 500 brake applications from that snub condition, without regard to brake temperature. The brakes may be adjusted not more than three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendations.

Any automatic pressure limiting valve is in use to limit pressure as designed, except that any automatic front axle pressure limiting valve is bypassed if the temperature of the hottest brake on a rear axle exceeds the temperature of the hottest brake on a front axle by more than 125 °F. A bypassed valve is reconnected if the temperature of the hottest brake on a front axle exceeds the temperature of the hottest brake on a rear axle by 100 °F or more.

TABLE IV

Series	Snubs	Snub conditions (highest speed indicated, miles per hour)
1	175	40–20
2	25	45–20
3	25	50–20
4	25	55–20
5	250	60–20

(b) With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 fpsps. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mph, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

* * * * *

S6.2.6 Brakes are burnished before testing as follows: Place the brake assembly on an inertia dynamometer and adjust the brake as recommended by the vehicle manufacturer. Make 200 stops from 40 mph at a deceleration of 10 f.p.s.p.s., with an initial brake temperature on each stop of not less than 315 °F and not more than 385 °F. Make 200 additional stops from 40 mph at a deceleration of 10 f.p.s.p.s. with an initial brake temperature on each stop of not less than 450 °F and not more than 550 °F. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

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Issued on July 2, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–16101 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–56–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 85

RIN 1018–AB95

Clean Vessel Act Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule; request for comment.

SUMMARY: This notice provides the requirements for participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act of 1992. This rule provides for the uniform administration of this new grant program. Additionally, the Fish and Wildlife Service seeks comments on the rule in an effort to develop permanent rules for the program.

DATES: Effective Date: August 9, 1993 except for § 85.20(a)(1) which contains information collection requirements which are not effective until approved by OMB. When approval is received, the agency will publish a document announcing the effective date.

Comment Deadline: Comments must be received on or before August 23, 1993.

Other Dates: Proposals will be accepted for FY 1993 and FY 1994 funds ($12.5 million) through August 31, 1993. For FY 1995 through FY 1997, proposals will be due by May 1 of the year preceding that fiscal year (e.g., May 1, 1994 for FY 1995).

ADDRESSES: Comments may be mailed to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, Room 140 ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia 22203, or delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid, (703) 358–2156.

SUPPLEMENTARY INFORMATION:

Background

Sewage discharged by recreational boaters may be a substantial contributor to localized degradation of water quality in the United States. The discharge of untreated sewage by boaters is prohibited under Federal law in all areas within the navigable waters of the United States. Many boaters have Type III marine sanitation devices (holding tanks), or portable toilets for sewage. However, there is currently an inadequate number of pumpout stations and waste reception facilities (dump stations) for boaters to dispose of their sewage. The purpose of the Act, therefore, is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout and dump stations to improve water quality.

Section 5604 of the Clean Vessel Act (Pub. L. 102–587, Subtitle F) authorizes the Director of the U.S. Fish and Wildlife Service (Director) to make grants to coastal States for conducting surveys of the status of existing facilities and need for additional facilities, and developing plans for the provision of facilities; and to all States for constructing/renovating pumpout and dump stations and for implementing associated education programs. Funds will be available on a competitive basis to ensure that grants address the highest national priorities. Amounts made available in a fiscal year are available for two years for obligation.

Environmental Effects

Because this rule is an administrative action, the effects on the physical, biological and sociological environment are too broad, speculative, and conjectural to be analyzed meaningfully. Therefore, the action is categorically excluded from any environmental documentation pursuant to the National Environmental Policy Act. However, construction/renovation of pumpout and dump stations will require separate environmental consideration.

All actions that may be funded by this national grant program will comply with requirements of the National Environmental Policy Act (Appendix 1 of 516 Department Manual 6) prior to the funding. Compliance with the National Environmental Policy Act and other environmental laws related to the Endangered Species Act, Coastal Barriers Resources Act as amended by the Coastal Barrier Improvement Act, Coastal Zone Management Act, Executive Orders on Floodplains (E.O. 11988) and Wetlands (E.O. 11990), historic/cultural resources, prime and unique farmlands, and the Clean Water Act shall be completed before grant agreements are approved by the Fish and Wildlife Services.

Information Collection Requirements

The information collection requirements contained in this rule, except for surveys, are only those necessary to fulfill applicable

VOL 58 ISS 129 JL 8 1993 UMI

requirements of 43 CFR part 12, and have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The collection of survey information contained in this rule will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public Comment

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the interim rule to the office identified in the Address Section of this preamble. Comments must be received on or before August 23, 1993.

Statement of Effects

The interim rule will have no economic/cost or price effects. It will not cause a significant effect on a substantial number of small entities. The grant program does not involve "taking" as described in Executive Order 12630. The rule allows eligible States to make decisions regarding the development and submission of proposed grants for surveys, plans, construction/renovation and education. Therefore, it is consistent with Executive Order 12612 on Federalism. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*)

Intergovernmental Review of Federal Programs

This Clean Vessel Act Grant Program is covered under Executive Order 12372 "Intergovernmental Review of Federal Programs" and 43 CFR part 9 "Intergovernmental Review of Department of the Interior Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

States and Territories that participate in the Executive Order process have established Single Points of Contact (SPOCs). Applicants should alert their SPOCs to the prospective applications and receive any necessary instructions to provide material as required by the SPOC. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the narrative. Applicants from States that choose to exempt the grants need take no action regarding E.O. 12372.

Author

The primary author of these rules is Robert D. Pacific, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 85

Grant program, Grant procedures, Program policy, Project selection criteria, Natural resources, Coastal waters, Pumpout station, Waste reception facility, Recreational vessel, Coastal zone management, Information collection, Record keeping and Reporting requirements.

Regulation Promulgation

For the reasons set out in the preamble, subchapter F of chapter I, title 50 of the Code of Federal Regulations is amended by adding a new part 85.

PART 85—CLEAN VESSEL ACT GRANT PROGRAM

Subpart A—General

Sec.
85.10 Purpose and scope
85.11 Definitions
85.12 Information collection, record keeping, and reporting requirements

Subpart B—Application for Grants

85.20 Eligible activities
85.21 Application procedures
85.22 Grant proposals

Subpart C—Grant Selection

85.30 Grant selection criteria
85.31 Grant selection

Subpart D—Conditions on Use/Acceptance of Funds

85.40 Cost sharing
85.41 Allowable costs
85.42 Real and personal property
85.43 Signs and symbols
85.44 Fee charges for use of facilities
85.45 Public access to facilities and maintenance
85.46 Survey and plan standards
85.47 Program crediting
85.48 Compliance with Federal laws, regulations, and policies

Authority: Public Law 102–587, Subtitle F.

Subpart A—General

§ 85.10 Purpose and scope.

This part establishes the requirements for state participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act (Pub. L. 102–587, subtitle F).

§ 85.11 Definitions.

Terms used in this part shall have the following meaning:

Clean Vessel Act or Act. The Clean Vessel Act (Public Law 102–587, Subtitle F).

Coastal State. A State of the United States in, or bordering on the Atlantic, Pacific, or Arctic Ocean; the Gulf of Mexico; Long Island Sound; or one or more of the Great Lakes; includes Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands; and, excludes Alaska and American Samoa.

Coastal waters. In the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes; and, in other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bays, lagoons, bayous, ponds, and estuaries.

Coastal zone. Coastal zone has the same meaning that the term has in section 304(1) of the Coastal Zone Management Act of 1992 (16 U.S.C. 1453(1)). The coastal zone consists of coastal waters (including the lands therein and thereunder) and the adjacent shorelands, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands and protect coastal waters.

Construction. Activities which produce new capital improvements and increase the value or usefulness of existing property.

Education/information. The education/information program as identified in the technical guidelines as published in the **Federal Register**, to make recreational boaters aware of the environmental pollution problem resulting from sewage discharges from vessels and inform them of the location of pumpout and dump stations.

Eligible applicant. An agency of a State designated by the Governor.

Facility. A pumpout and waste reception facility.

Grant. An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee.

Inland state. A state which is not a coastal state. The District of Columbia, American Samoa and Alaska are included as inland States.

Maintenance. Those activities necessary for upkeep of a facility. These are activities that allow the facility to function and include routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is non-routine cyclical maintenance to keep facilities fully functional.

Operation. Those activities necessary for the functioning of a facility to produce desired results. These are activities that make the facility work.

Plans. Those plans identified in the technical guidelines as published in the **Federal Register**, for construction or renovation of pumpout and dump stations necessary to ensure that there are adequate and reasonably available stations to meet the needs of recreational vessels using the coastal waters of the State.

Pumpout station. A facility that pumps or receives sewage from a type III marine sanitation device (holding tank) installed on board vessels.

Recreational vessel. Watercraft manufactured for operation, or operated, primarily for pleasure; or, leased, rented, or chartered to another for the latter's pleasure.

Renovation. Major rehabilitation of facilities to restore them to their original intended purpose.

Surveys. Those surveys identified in the technical guidelines as published in the **Federal Register**. Surveys are to determine the number and location of all operational pumpout and dump stations at public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone; and, to determine the number of recreational vessels in coastal waters with holding tanks or portable toilets, and the areas of coastal waters where those vessels congregate.

Type III marine sanitation device (holding tank). Any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge sewage.

Waste reception facility (dump station). A facility specifically designed to receive sewage from portable toilets carried on vessels. Dump stations do not include lavatories or restrooms.

§ 85.12 Information collection, recordkeeping, and reporting requirements.

(a) The information collecting requirements for this grant program are those necessary to comply with 43 CFR part 12 which include a narrative statement as identified in § 85.22, Grant proposals.

(b) Recordkeeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performing (43 CFR 12.80), and financial reporting (43 CFR 12.81).

(c) Reporting requirements, including retention and access requirements as required by 43 CFR 12.82.

Subpart B—Application for Grants

§ 85.20 Eligible activities.

(a) *Eligibility grant activities—coastal states:*

(1) Identification in the coastal zone of all operational pumpout and dump stations, and surveys of recreational vessels in coastal waters with holding tanks or portable toilets, and the areas where those vessels congregate. Also eligible are costs of developing a list, including chart coordinates, of all operational pumpout and dump stations in the coastal zone of the State for submission to the Fish and Wildlife Service.

(2) Plans for construction and renovation of pumpout and dump stations in the coastal zone of the State necessary to ensure that these stations are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State. Completed State-funded plans may be submitted after the technical guidelines appear in the **Federal Register**.

(b) *Eligible grant activities—all states:*

(1) Education/information program to educate/inform recreational boaters about the environmental pollution problems resulting from sewage discharges from vessels and to inform them of the location of pumpout and dump stations.

(2) The construction, renovation, operation and maintenance of pumpout and dump stations. Eligible grant activities also include any activity necessary to hold and transport sewage to sewage treatment plants, such as holding tanks, piping, haulage costs; and any activity necessary to get sewage treatment plants to accept sewage, such as installing bleed-in facilities.

(c) *Ineligible activities:*

(1) Activities that do not provide public benefits.

(2) Enforcement activities.

(3) Construction/renovation of restroom facilities.

(4) Construction, renovation, operation and maintenance of on-site sewage treatment plants, such as package treatment plants and septic systems, and of municipal sewage treatment plants for primary and secondary treatment.

§ 85.21 Application procedures.

(a) Eligible applicants will submit their proposals to the appropriate Regional Office of the U.S. Fish and Wildlife Service.

Region 1 States Include—American Samoa, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington

Division of Federal Aid, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503) 231–6128

Region 2 States Include—Arizona, New Mexico, Oklahoma, and Texas

Division of Federal Aid, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, New Mexico 87103, (505) 766–2095

Region 3 States Include—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin

Division of Federal Aid, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, (612) 725–3596

Region 4 States Include—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands

Division of Federal Aid, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Suite 1290, Atlanta, Georgia 30303, (404) 331–5446

Region 5 States Include—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia

Division of Federal Aid, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8501

Region 6 States Include—Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, and Wyoming

Division of Federal Aid, U.S. Fish and Wildlife Service, 134 Federal Building, P.O. Box 25486, Denver, Colorado 80225

134 Union Boulevard, third floor, Lakewood, Colorado 80225, (303) 236–7392

Region 7 State Includes—Alaska

Division of Federal Aid, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3435

(b) Proposals will be accepted for FY 1993 and FY 1994 funds ($12.5 million) between the effective date and August 31, 1993. For FY 1995 and FY 1997, proposals will be due by May 1 of the year preceding that fiscal year (e.g., May 1, 1994 for FY 1995).

§ 85.22 Grant proposals.

Grant proposals will consist of a narrative which identifies and describes the following:

(a) The need within the purposes of the Act; coastal States with approved plans should indicate how the activities contained in the proposal implements the plan,

(b) Discrete objective(s) to be accomplished during a specified time period that address the need(s),

(c) Expected results or benefits from accomplishing the objectives, including the numbers of recreational vessels and people served,

(d) The approach to be used in meeting the objectives, including specific procedures, schedules, key personnel, cooperators, grant location, innovative approaches, and estimated costs,

(e) Amount and source of matching funds,

(f) Fees for use of facility.

Subpart C—Grant Selection

§ 85.30 Grant selection criteria.

The Director shall give priority consideration to grant proposals that meet the following criteria:

Note: These criteria are not listed in priority order and, as such, are equal. The goal is to have each proposal address as many of these criteria as possible.

(a) In coastal States that have no survey or plan, proposals to complete such survey and plan,

(b) In coastal States, proposals for constructing and renovating pumpout and dump stations in accordance with a coastal State's plan approved under section 5603(c) of the Clean Vessel Act,

(c) Proposals that provide for public/private partnership efforts to develop and operate pumpout and dump stations,

(d) Proposals for innovative ways to increase the availability and use of pumpout and dump stations, e.g., where private parties put in more than the minimum amount,

(e) Proposals that include an education/information component,

(f) Proposals that benefit the waters most likely to be affected by the discharge of sewage from vessels, including the waters as defined in the technical guidelines as published in the **Federal Register**, and

(g) Proposals in areas with high vessel/pumpout or dump station ratios.

§ 85.31 Grant selection.

The Fish and Wildlife Service, Division of Federal Aid, will convene a ranking panel of Federal employees, to include representatives from Regional Offices, to review, rank, and make funding recommendations to the Director the Fish and Wildlife Service. The Director will make the selection of eligible grants by November 1, annually. Upon selection of a proposal the appropriate Regional Office will advise the successful applicant of additional documentation requirements.

Subpart D—Conditions on Use/Acceptance of Funds

§ 85.40 Cost sharing.

(a) The Federal share shall not exceed 75% of total costs approved in the grant agreement.

(b) The provisions of 43 CFR 12.64 apply to cost sharing or matching requirements. Third party in-kind contributions must be necessary and reasonable to accomplish grant objectives and represent the current market value of noncash contributions furnished as part of the grant by another public agency, private organization, or individual.

§ 85.41 Allowable costs.

(a) Allowable grant costs are limited to those costs that are necessary and reasonable for accomplishment of approved grant objectives and meet the applicable Federal cost principles in 43 CFR 12.60(b). Purchase of informational signs, program signs, and symbols designating pumpout and dump stations, are allowable costs.

(b) Grants or facilities designed to include purposes other than those eligible under the Act shall have the costs prorated equitably among the various purposes. Grant funds shall only be used for the part of the activity related to the Clean Vessel Act.

(c) Costs incurred prior to the effective date of the grant agreement are not allowable with the exception that preliminary costs are allowed only with the approval of the appropriate Regional Director. Preliminary costs may include such items as feasibility surveys, engineering design, biolgoical reconnaissance, appraisals, preparation of grant documents such as environmental assessments for compliance with the National Environmental Policy Act, or prior costs for surveys and plans. Prior costs for surveys and plans will be allowed only for the first set of applications, and only for costs incurred after enactment of the Act on November 4, 1992. This allowance is necessitated because of the short timetable for implementing the Act. These costs must be substantiated and documented.

§ 85.42 Real and personal property.

(a) Applicable regulations regarding acquisition, property records, maintenance, and disposal of real property and equipment are found in 43 CFR 12.71 and 43 CFR 12.72. If questions arise about application, the appropriate Regional Office should be contacted.

(b) A State shall ensure that design and installation of the facilities are in accordance with the technical standards identified in the technical guidelines as published in the **Federal Register**.

(c) The State must ensure that facilities are operated and maintained, and that structures or related assests are used for the stated grant purpose.

§ 85.43 Signs and symbols.

A national symbol, to be developed, should be installed to be clearly visible to direct boaters entering the facility to pumpout and dump stations. Appropriate information signs should be installed at pumpout and dump stations. Such information could indicate fees, restrictions, hours of operation, operating instructions, and a contact name and telephone number if the facility is inoperable.

§ 85.44 Fee charges for use of facilities.

A maximum of a $5.00 fee may be charged for use of pumpout facilities constructed, operated or maintained with grant funds. Such proceeds shall be retained, accounted for, and used by the operator to defray operation and maintenance costs for the useful life of the facility.

§ 85.45 Public access to facilities and maintenance.

All recreational vessels must have access to pumpout and dump stations funded under this grant program. Facilities shall be operated, maintained, and continue to be reasonably accessible to all recreational vessels for the full period of their useful life.

§ 85.46 Survey and plan standards.

(a) *Survey standards.*

(1) Surveys should be conducted according to the technical guidelines as published in the **Federal Register**.

(2) Surveys may be conducted Statewide, if necessary, to obtain information on boats using the coastal zone.

(b) *Plan standards.* Plans should be developed according to the technical guidelines as published in the **Federal Register**.

§ 85.47 Program crediting.

Signs should acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act. Following is suggested language: "This facility was built (or improved) using Federal Aid matching funds authorized by the Clean Vessel Act."

§ 85.48 Compliance with Federal laws, regulations, and policies.

(a) In accepting Federal funds, State representatives must agree to and certify compliance with all applicable Federal laws, regulations, and policies. This is done by submitting an assurances statement that describes the compliance requirements for Federal grants.

(b) Compliance with environmental and other laws, as defined in Service Manual 523 FW Chaper 1, may require additional documentation. Consult with Regional Offices for specific applicability.

Dated: May 18, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–16059 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–55–M

VOL
58
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Proposed Rules

Federal Register
Vol. 58, No. 129
Thursday, July 8, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–197–1]

Change in Disease Status of New Caledonia Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare New Caledonia free of rinderpest and foot-and-mouth disease (FMD). We have determined that New Caledonia, which has never had an outbreak of either disease, meets all of the criteria for being declared free of rinderpest and FMD. Although New Caledonia is a possession of France, New Caledonia meets the requirements of the regulations for receiving separate status as to rinderpest and FMD. This proposed revision would remove the prohibition on the importation into the United States, from New Caledonia, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from New Caledonia, of milk and milk products from ruminants. This proposed revision would also ensure that New Caledonia's animal health status would not be affected should the rinderpest and FMD status of France change.

This proposed revision would not give New Caledonia separate status from France in terms of diseases other than rinderpest and FMD, and France is not declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the importation from New Caledonia of swine and fresh, chilled, and frozen meat from swine would continue to be restricted because of those diseases. Similarly, certain restrictions on the importation, from New Caledonia, of ruminant meat and edible products from ruminants would remain in effect because bovine spongiform encephalopathy exists in France.

DATES: Consideration will be given only to comments received on or before September 7, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–197–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202-690-2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy (BSE), African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of both diseases. We are proposing to add New Caledonia to that list. New Caledonia is a possession of France, but it meets all of the criteria specified in § 94.1a of the regulations for determining the separate status of a territory or possession with regard to rinderpest and FMD.

We will consider declaring a country to be free of rinderpest and FMD if there have been no reported cases of the diseases in that country for at least the previous 1-year period, and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period. In the case of New Caledonia, there has never been an outbreak of rinderpest or FMD, and no ruminants or swine have ever been vaccinated for either disease.

New Caledonia has applied to the U.S. Department of Agriculture (USDA) to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of New Caledonia in support of its request. In addition, APHIS officials have evaluated the capability of New Caledonia's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction of disease into New Caledonia through the importation of animals, meat, and animal products. The APHIS officials conducting the evaluation concluded that New Caledonia is free of rinderpest and FMD. Details concerning the evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the information discussed above, we believe that New Caledonia qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and FMD. Although New Caledonia is a possession of France, and APHIS is in the process of declaring France to be free of rinderpest and FMD, we have determined that New Caledonia should receive separate status to ensure that New Caledonia's animal health status would not be affected if an outbreak of rinderpest or FMD should occur in France in the future. This action would remove the prohibition on the importation, from New Caledonia, of fresh, chilled, and frozen meat from ruminants and milk and milk products from ruminants. This action would not give New Caledonia separate status from France in terms of diseases other than rinderpest and FMD, so importations from New Caledonia of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94 because France has not been declared free of hog cholera and SVD. Similarly, the importation, from New Caledonia, of ruminant meat and edible products from ruminants would

continue to be restricted under § 94.18 because BSE exists in France.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

We are proposing to declare New Caledonia free of rinderpest and FMD. We have determined that New Caledonia, which has never had an outbreak of either disease, meets all of the criteria for being declared free of rinderpest and FMD. This proposed revision would remove the prohibition on the importation into the United States, from New Caledonia, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from New Caledonia, of milk and milk products from ruminants.

New Caledonia is a net importer of meat. No meat exports from New Caledonia were reported by the United Nations Food and Agriculture Organization (FAO) in 1989, while approximately $12.4 million worth of fresh, chilled, and frozen meat was imported into New Caledonia during the same year (FAO, "Trade Yearbook," 1990).

FAO and USDA production and trade data indicate that approximately 40 percent of New Caledonia's beef and veal is imported (FAO, "Trade Yearbook," 1990, and USDA, Economic Research Service, "Foreign Agricultural Trade of the United States; Calendar Year 1991 Supplement," 1992). It is unlikely, therefore, that there would be any new imports of beef or veal into the United States from New Caledonia.

New Caledonia has a game ranching industry, and this proposed rule would allow deer meat from New Caledonia to be imported into the United States. According to the North American Deer Farmers Association, 80 percent of the commercially produced venison consumed in the United States is imported from New Zealand, where deer farming is a mature industry. Commercial venison production in the United States, where deer farming is still a new industry, complements, rather than competes with, the venison imports from New Zealand because the U.S. peak production season is opposite that of New Zealand.

New Caledonia and New Zealand share the same peak production season, so exports of venison from those two countries would be in direct competition in the U.S. market. Venison from New Caledonia would enter the U.S. market at the expense of producers in New Zealand, rather than at the expense of domestic producers of venison, so the impact on the U.S. deer farming industry is expected to be minimal. As demand for venison grows, the cost advantages of domestic production are likely to reduce U.S. reliance on all imports of venison.

As stated above, this proposed revision would remove restrictions on the importation of milk and milk products from ruminants into the United States from New Caledonia. The United States does not import casein from New Caledonia, and total U.S. imports of other dairy products from all Pacific island countries other than Australia and New Zealand were valued at only $2,000 in 1991 (USDA, Economic Research Service, "Foreign Agricultural Trade of the United States; Calendar Year 1991 Supplement," 1992). Therefore, we do not expect that this proposed revision would have any effect on U.S. businesses that rely on imported milk or milk products from ruminants.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. Section 94.1, paragraph (a)(2), would be amended by adding "New Caledonia," immediately after "Mexico,".

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16132 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 98

[Docket No. 93–047–1]

Importation of Certain Animal Embryos and Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are considering revising the regulations pertaining to the importation of certain animal embryos and semen to make these regulations consistent with current technology and improve them in other ways. We are soliciting comments from the public on the current regulations and any suggested amendments.

VOL 58 ISS 129 JL 8 1993 UMI

DATES: Consideration will be given only to comments received on or before September 7, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–047–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 765B, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4325.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 (referred to below as the regulations) govern the importation of certain animal embryos and semen to protect the health of U.S. livestock and poultry. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

APHIS officials believe that amendments to the regulations may be appropriate at this time as a result of advances in veterinary technology. Accordingly, we are seeking input from the public on the practicability, economic implications, and animal health ramifications of the regulations and any suggested amendments. Interested persons may obtain a copy of the regulations by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

The regulations are divided into three subparts. Subpart A provides the requirements for importing ruminant and swine embryos from countries free of rinderpest and foot-and-mouth disease and for importing embryos of horses and asses. The regulations require, among other things, that importers of these embryos obtain an import permit from APHIS. The regulations also provide specific conditions regarding the conception, collection, and transport of imported embryos. Upon arrival in this country, an embryo must be accompanied by a health certificate, and the importer must provide a document that includes certain information to an inspector at the port.

Subpart B provides the requirements for importing cattle embryos from countries where rinderpest or foot-and-mouth disease exists. The regulations in this part include some of the same requirements as in Subpart A, but Subpart B includes many additional requirements to ensure that imported cattle embryos from these countries do not introduce either of these serious diseases. For example, the regulations in Subpart B contain detailed requirements concerning the health status of the donor dam, the layout and construction of the embryo collection unit, and various procedures, including procedures for embryo collection.

Subpart C pertains to the importation of certain animal semen. Among other things, the regulations require that importers of certain animal semen obtain an import permit from APHIS and provide a declaration including certain information to an inspector at the port upon the semen's arrival. The regulations also include specific requirements for the importation of semen from countries affected with rinderpest or foot-and-mouth disease.

We believe several aspects of the regulations could be revised to make the importation of certain animal embryos and semen more practical for importers without increasing the risk that these products will introduce exotic livestock and poultry diseases into the United States. For example, the regulations for importing cattle embryos from countries where rinderpest or foot-and-mouth disease exists specify that, among other things, the donor dams must undergo several tests and the embryos must be washed at least times prior to exportation. Recent scientific data has confirmed what we had suspected—that embryo washing is a more effective disease control tool than had been previously believed. As a result, we now believe some of the required disease testing of the donor dams could be reduced or eliminated without increasing the chances of importing infected embryos from these countries.

We are particularly interested in receiving comments concerning the importation of embryos and semen from countries affected with serious livestock diseases, such as foot-and-mouth disease and hog cholera, that are exotic to the United States. Such comments should address potential risks and recommendations for reducing them. We would appreciate it if the comments are supported by references from scientific and professional literature. Commenters who are aware of opposing viewpoints to their positions are also encouraged to cite such contradictory opinions and their reasons for refuting them.

APHIS officials will carefully review all comments received by the close of the comment period. If we decide to propose amendments to the regulations, we will publish a proposal in the **Federal Register**.

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16133 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–12]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 8, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 1, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No: 27005
Petitioner: Mr. John A. Cohan
Regulations Affected: 13 CFR part 91
Description of Rulechange Sought: To add a new section to the FARs to address temporary flight restrictions in the proximity of noise sensitive areas. This proposed section would require the issuance of a NOTAM, whenever the Administrator determines that a request from a homeowner's association, environmental protection group or other community organization desirous of protecting the noise sensitive area is bona fide.
Petitioner's Reason for the Request: The petitioner feels that this proposed new Section 91.145 is necessary to counter the large volume of complaints received by the FAA concerning aircraft being operated in the vicinity of areas or communities that are noise-sensitive, particularly where alternate visual flight patterns are accessible.

[FR Doc. 93–16095 Filed 7–7–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–NM–11–AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes. This proposal would require a functional test to ensure proper operation of the "LIFT SPOILER UNLOCKED" indication system, and replacement of any lift spoiler jack spindle that fails the functional test. This proposal is prompted by a report that lift spoiler jack spindles were manufactured with excess cadmium plating, which may cause the spindles to stick. The actions specified by the proposed AD are intended to prevent failure of the "LIFT SPOILER UNLOCKED" indication system.

DATES: Comments must be received by August 31, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AVRO International Aerospace, Incorporated, 22111 Pacific Boulevard, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–11–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 146 series airplanes. The CAA advises that lift spoiler jacks were manufactured with an excess of cadmium plating on the spindles. This excess of cadmium plating may cause the spindles to stick, and subsequently, the lift spoiler warning system may indicate falsely that lift spoilers are unlocked. This condition, if not corrected, could result in a failure of the "LIFT SPOILER UNLOCKED" indication system.

British Aerospace has issued BAe 146 Inspection Service Bulletin S.B.27–137, dated November 17, 1992, that describes procedures for a functional test to ensure proper operation of the "LIFT SPOILER UNLOCKED" indication system and repair or replacement of any lift spoiler jack spindle that fails the functional test. (This service bulletin refers to Dowty Aerospace Wolverhampton Service Bulletin P308–27–005, dated October 2, 1992, as an additional service information source.) The CAA classified the British Aerospace service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation

VOL 58 ISS 129 JL 8 1993 UMI

described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a functional test to ensure proper operation of the "LIFT SPOILER UNLOCKED" indication system, and replacement of any lift spoiler jack spindle that fails the functional test. The actions would be required to be accomplished in accordance with the British Aerospace service bulletin described previously.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,375, or $275 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 93–NM–11–AD.

Applicability: Model BAe 146 series airplanes equipped with a lift spoiler jack, part number P308–45–0002 or P308–45–0102; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the "LIFT SPOILER UNLOCKED" indication system, accomplish the following:

(a) At the next scheduled maintenance inspection of the lift spoiler configuration warning microswitches, but no later than 15 months after the effective date of this AD, perform a functional test of the lift spoiler configuration warning microswitches in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B.27–137, dated November 17, 1992.

(1) If all of the configuration microswitches operate properly, prior to further flight, no further action is required by this AD. However, entries in the airplane maintenance records that are to be transferred with the airplane must indicate the serial number of each affected lift spoiler jack.

(2) If any configuration microswitch fails to operate properly, prior to further flight, replace the lift spoiler jack spindle with a jack on which the actions described in the service bulletin have been accomplished. Entries in the airplane maintenance records that are to be transferred with the airplane must indicate the serial number of each affected lift spoiler jack.

(b) As of the effective date of this AD, no person shall install on any airplane a lift spoiler jack on which the actions described in British Aerospace BAe 146 Inspection Service Bulletin S.B.27–137, dated November 17, 1992, have not been accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 1, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–16077 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 91–ANE–61]

Presque Isle, ME Transition Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed to modify the Presque Isle, ME Transition Area. Since issuing the NPRM, the FAA has conducted a re-evaluation of terminal airspace in the New England Region to update all control zones and transition areas, and will make the proposed modification part of another notice, therefore, this proposed rule is not required. Accordingly, the proposal is withdrawn.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 270–2428; fax (617) 272–0395.

SUPPLEMENTARY INFORMATION: A proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Presque Isle, ME Transition Area was published in the Federal Register on April 7, 1992 (57 FR 11698). The proposed rule would have modified the Presque Isle, ME Transition Area by increasing slightly the area north of Loring Air Force Base (AFB).

Since issuing the proposed rule the FAA has conducted a re-evaluation of terminal airspace in the New England region to update all control zones and transition areas and keep those areas in conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). The FAA will incorporate modifications proposed for the Presque Isle, ME Transition Area into a new notice of proposed rulemaking to cover all

terminal airspace in the New England Region.

Transition areas are published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Presque Isle, ME Transition Area is published in that Order.

Withdrawal of this notice of proposed rulemaking constitutes only such action, does not preclude the agency from issuing another notice in the future, and does not commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and, therefore, is not covered by Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air), Transition areas.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Airspace Docket 91–ANE–61, published in the **Federal Register** on April 7, 1992 (57 FR 11698) is withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Burlington, Massachusetts, on June 22, 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93–16096 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD 91–059]

RIN 2115–AE14

Drawbridge Operation Regulations, Unnecessary Openings

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations which govern the nation's drawbridges. The proposed amendments would clarify the responsibilities of vessel operators requesting drawbridge openings and prohibit vessel operators from signalling for unnecessary drawbridge openings. This action is intended to better accommodate the needs of vehicular traffic and reduce the wear and tear on draw machinery while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before August 23, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–059), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Tyssens, Alterations, Drawbridges, and Systems Branch (G–NBR–1), (202) 267–0376.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91–059) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rulemaking in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Larry Tyssens, Project Manager, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Currently, 33 CFR 117.11 specifies that no vessel owner or operator shall signal a drawbridge to open for any nonstructural vessel appurtenance which is not essential to navigation or which is easily lowered. This section does not address vessels that have no appurtenances and that can pass safely underneath the drawbridge in question in the closed position, or vessels which signal for a drawbridge opening with no intention of passing through the bridge. Under § 117.5, drawtenders are required to open a bridge when a proper signal is given. Unnecessary drawbridge openings can cause vehicular delays and inordinate wear and tear on draw machinery. Therefore, it has been suggested that there is a need for a regulation requiring that vessel owners and operators refrain from requesting such unnecessary drawbridge openings. Also, it has been suggested that defining the terms used in the regulation would provide mariners with additional guidance concerning their responsibilities under the regulations when requesting the opening of a drawbridge.

Discussion of Proposed Amendments

The proposed amendments would revise § 117.11. The section heading would read "Unnecessary opening of the draw" and the revised section would prohibit an owner or operator from signalling for a drawbridge to open unless there is insufficient vertical clearance for the vessel to pass safely under the drawbridge in the closed position. The revised provision would also prohibit an owner or operator from signalling for a drawbridge to open for any purpose other than to pass through the drawbridge opening.

In order to clarify vessel operators' responsibilities under § 117.11, a new § 117.4 entitled "Definitions" is proposed. That section would define the terms "nonstructural," "appurtenance," "lowerable," and "not essential to navigation." These are the key factors a vessel operator must consider in determining whether there is sufficient clearance to pass under a closed draw or whether signalling for the draw to open is appropriate. Examples would be provided in the definition of "lowerable" to provide guidance for determining whether an appurtenance would be considered "lowerable" either by manual or mechanical methods for purposes of passing through a drawbridge.

Drawbridge openings that are unnecessary to the safe passage of mariners can cause vehicular traffic delays and unnecessary wear and tear on draw machinery. These proposed revisions are intended to prevent such unnecessary openings while allowing for the reasonable needs of navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary. This proposal is operational in nature and, if adopted, will result in no cost to the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This proposal requires no new equipment and imposes no additional expense on small businesses. Additionally, if the proposal is adopted, there will be less delay to vehicular traffic. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to regulate the nation's drawbridges across the navigable rivers and other waters of the U.S. has been committed to the Coast Guard by Federal statutes. Therefore, the Coast Guard does not expect this proposal, if adopted, to raise any preemption issues with respect to state actions on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 105–1(g).

2. Section 117.4 is added to read as follows:

§ 117.4 Definitions.

Certain terms used in this part are defined in this section.

Appurtenance. The term "appurtenance" means an attachment or accessory extending beyond the hull or superstructure that is not an integral part of the vessel and is not needed for a vessel's piloting, propelling, controlling, or collision avoidance capabilities.

Lowerable. The term "lowerable" means the nonstructural vessel appurtenance can be mechanically or manually lowered and raised again. The term "lowerable" also applies to a nonstructural vessel appurtenance which can be modified to make the item flexible, hinged, collapsible, or telescopic such that it can be mechanically or manually lowered and raised again. Failure to make the modification is considered equivalent to refusing to lower a lowerable nonstructural appurtenance that is not essential to navigation. Examples of appurtenances which are considered to be lowerable include, but are not limited to, fishing outriggers, radio antennae, television antennae, false stacks, and masts purely for ornamental purposes. Examples of appurtenances which are not considered to be lowerable include, but are not limited to, radar antennae, flying bridges, sailboat masts, piledriver leads, spud frames on hydraulic dredges, drilling derricks' substructures and buildings, cranes on drilling or construction vessels, or other items of permanent and fixed equipment.

Nonstructural. The term "nonstructural" means that the item is not rigidly fixed to the vessel and is thus susceptible to relocation or alternation.

Not essential to navigation. The term "not essential to navigation" means the nonstructural vessel appurtenance does not adversely affect the vessel's piloting, propulsion, control, or collision avoidance capabilities when in the lowered position.

3. Section 117.11 is revised to read as follows:

§ 117.11 Unnecessary opening of the draw.

No vessel owner or operator shall—

(a) Signal a drawbridge to open if the vertical clearance is sufficient to allow the vessel, after all lowerable nonstructural vessel appurtenances that are not essential to navigation have been lowered, to safely pass under the drawbridge in the closed position; or

(b) Signal a drawbridge to open for any purpose other than to pass through the drawbridge opening.

Dated: July 2, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–16081 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[ET Docket No. 93–198; FCC 93–329]

Preparation for International Telecommunication Union World Radiocommunication Conferences

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Notice of inquiry.

SUMMARY: In December, 1992, the International Telecommunication Union (ITU) underwent a major restructuring. At that time, it was decided that World Radiocommunication Conferences (WRCs, formerly WARCs) should be convened every two years. The first WRC (WRC–93) under the new structure will be held November 15–19, 1993, in Geneva, Switzerland. WRC–93 is expected to set agendas for the 1995 and

1997 conferences, and will not address the merits of particular regulatory provisions in specific topic areas. The Commission's Notice of Inquiry solicits public comment regarding substantive issues that the Commission should consider advocating for placement on the agendas of the 1995, 1997 or future WRCs.

DATES: Comments are due on July 19, 1993. Reply comments are due on July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Office of Engineering and Technology, (202) 653–8106; or, Thomas M. Walsh, Office of International Communications, (202) 632–0935.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry adopted June 24, 1993; and released June 28, 1993. This action will not add to or decrease the public reporting burden. The full text of Commission decisions are available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Notice of Inquiry

1. The ITU Council (Council) has directed WRC–93 to consider scheduling two specific issues for WRC–95: (1) A review of the Radio Regulations based upon the report of the Voluntary Group of Experts (VGE) (addressing service definitions related to and organizational structure of the international Table of Frequency Allocations and approaches to simplifying the Radio Regulations generally); and (2) guidance on using spectrum allocated internationally to the mobile-satellite service. WRC–93 is also directed to schedule the remainder of the WRC–95 agenda, and to make recommendations for a preliminary agenda for WRC–97.

2. To reach informed judgments about the desirability and feasibility of including various telecommunication issues on future WRC agendas, the *NOI* solicits public comment. Beyond the two issues that the ITU Council directed WRC–93 to consider scheduling, *supra*, the *NOI* identifies the following topics as candidates for inclusion on the agendas of future WRCs: (1) Broadcast-satellite service (sound); (2) wind profiler radars; (3) space services; and (4) high frequency broadcasting. Other matters, including resolutions and recommendations from past conferences, also are likely to be considered at WRC–93. With the biennial scheduling of WRCs, it is hoped that issues may be scheduled for consideration systematically, providing for greater lead time for preparations for conferences. The urgency to include all topics on the next scheduled WRC should be reduced now that subsequent opportunities to consider subjects will occur every two years. Individual topics that might be considered at WRC–95 or WRC–97 are discussed below. It should be noted that the two major topics the Council directed WRC–95 to consider are likely to occupy a considerable amount of time.

3. *Report of the Voluntary Group of Experts.* The VGE work primarily concerns identifying ways to simplify the Table of Frequency Allocations, the related service definitions and the regulatory and procedural provisions in the international Radio Regulations. Following completion of its work, the VGE will issue a report (by the first quarter of 1994) making recommendations for simplifying the Radio Regulations. The VGE report will be forwarded to ITU member administrations for consideration at WRC–95.

4. *Mobile-Satellite Services (MSS).* There are several domestic proceedings that could result in new U.S. based MSS systems intended to operate globally. To facilitate the possible implementation of future U.S. MSS systems, it is important that U.S. conference delegations insure there is an appropriate MSS environment for U.S. systems.

5. *Broadcast-Satellite Service (sound) (BSS (sound)).* In GEN Docket No. 90–357, the Commission has proposed to allocate the 2310–2360 MHz band for satellite digital audio radio service (satellite DARS), designated internationally as BSS (sound). The 2310–2360 MHz band is one of three different frequency bands allocated by WARC–92 for BSS (sound). Additionally, WARC–92 resolved to convene a planning conference for use of those bands before 1998. Until that conference, to reserve future planning options, only the upper 25 MHz of each of the three BSS (sound) bands can be used. The two opportunities to consider planning the BSS (sound) bands are the 1995 and 1997 WRCs.

6. *Wind Profiler Radars.* Wind profiler radar systems use radar signals to measure wind speed and direction, vertical wind velocity, intensity of turbulence and precipitation parameters. WARC–92 invited the CCIR to make appropriate technical recommendations regarding use of frequencies near 50, 400, and 1000 MHz for wind profiler radar operations. Consideration of appropriate frequency assignments for wind profilers was invited for the next competent WRC, which would be WRC–95. This matter is important to United States interests as the Commission has recently issued a *NPRM* to allocate spectrum for wind profilers.

7. *Space Services.* WARC–92 adopted RES712 that resolved that the next competent WRC considers certain matters concerning the space services. These matters are: (1) Worldwide primary allocations for the earth-exploration and space research services in the appropriate bands within the 8–20 GHz range; (2) intersatellite service requirements near 23 GHz; (3) providing spectrum for space-based active earth sensors around the 35 GHz band; and (4) including certain CCIR-developed space science service coordination parameters in Appendix 28 of the Radio Regulations.

8. *High Frequency (HF) Broadcasting.* Since 1959, HF broadcast frequency usage has been coordinated worldwide by use of voluntary consultation procedures contained in Article 17 of the international Radio Regulations. In 1987, a HF Broadcasting Conference (HFBC–87) was held to consider a computer-based planning system to replace the notification and coordination procedures of Article 17. Difficulties arose in developing a computer-based planning system that could address the scope and flexibility of all administrations' requirements. The current notification and coordination procedures remain in force. At WARC–92, additional frequencies were allocated to the HF broadcast service. However, use of these frequencies is subject to planning procedures to be developed at a future conference. WARC–92 also instructed the IFRB to report on the continued development of a computer-based planning system to the next competent WARC. The U.S. will have to assess the urgency of considering a computer-based HF broadcasting planning system. Affecting a U.S. position on this issue is the fact that the current Article 17 procedures generally satisfy U.S. HF broadcasting needs.

9. *Resolutions and Recommendations from Previous Conferences.* As discussed previously, there are many unresolved resolutions and recommendations (RES/RECs) from previous telecommunication conferences. An example of this category is Res. 113 (WARC–92). Res. 113 deals with adjustments to the fixed service that have become necessary

because of recent changes in frequency allocations within the 1–3 GHz range. Such adjustments could bear directly on domestic proceedings, such as PCS. These RES/RECs will ultimately need to be brought to the agendas of competent WRCs. The primary issue is timing for consideration of a specific RES/REC in a way that best serves U.S. interests.

Procedural Information

10. Authority for this Notice of Inquiry is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), and 403. Pursuant to § 1.1204(a)(4) of the Commission's Rules, 47 CFR 1.1204(a)(4), no *ex parte* restrictions apply to this proceeding.

11. U.S. government conference preparations have begun and are being conducted by the Interdepartment Radio Advisory Committee (IRAC) and its Ad Hoc 208 interagency group. Ad Hoc 208 will be responsible for coordinating the preparatory activities of affected government agencies that use frequencies allocated for the government's telecommunications needs. The IRAC will make its conference recommendations to NTIA, which is responsible for developing Executive Branch telecommunications policies. NTIA's recommendations for U.S. policy and proposals will then be forwarded to the Department of State for coordination with the Commission's recommendations. Because the Commission participates in IRAC through a liaison representative, we expect the Commission's and NTIA's recommendations for U.S. proposals to be generally consistent.

12. The Commission's recommendations will be forwarded to the Department of State for coordination with NTIA's recommendations as discussed above. WRC–93 is scheduled for November 11–15, 1993. Therefore, the Department of State would normally submit U.S. proposals by September 10, 1993. In view of the short period available for preparation and submission of U.S. proposals, the Commission is requesting comments within 21 days of the release of this Notice of Inquiry at the Commission's headquarters, and reply comments within 10 days thereafter. The dates are given below.

13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.149, interested parties may file comments on or before July 19, 1993, and reply comments on or before July 29, 1993. All relevant and timely comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

14. For further information concerning this Notice of Inquiry, contact Damon C. Ladson, Office of Engineering and Technology, (202) 653–8106, or Thomas M. Walsh, Office of International Communications, (202) 632–0935 Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–16035 Filed 7–7–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a public hearing to receive public testimony on proposed catch distribution of commercial king mackerel off Florida for the 1993–1994 season.

DATES: The hearing will be held on Monday, July 12, 1993, from 7 p.m. to 10 p.m.

ADDRESSES: The hearing will take place at the Ft. Pierce Civic Center, Room 101, 2300 Virginia Avenue, Ft. Pierce, Florida (telephone: 407–468–1415).

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331 Tampa, Florida (813–228–2815).

Dated: July 2, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16215 Filed 7–2–93; 4:59 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 129
Thursday, July 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 2, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Animal and Plant Health Inspection Service

User Fees
Recordkeeping; On occasion; Quarterly
Individuals or households; state or local governments; businesses or other for profit-profit; Federal agencies or employees; Small businesses or organizations; 216,168 responses; 7,517 hours
Helen C. Schmitt, (301) 436–8119

Extension

- Food and Nutrition Service

Report of the Child and Adult Care Food Program
FNS–44
Monthly; Quarterly; Semi-annually
State or local governments; 1,584 responses; 4,752 hours
Alan Rich, (703) 305–2113

- Animal and Plant Health Inspection Service

Animal Welfare
APHIS 7001, 7002, 7003, 7006, 7006A, 7009, 7011, 7019, 7020, 7023, VS 18–1A, 18–5
Recordkeeping; On occasion; Weekly; Semi-annually; Annually State or local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations; 73,988 responses; 242,184 hours
Jerry De Poyster (301) 436–7833

Reinstatement

- Food Safety and Inspection Service

Meat and Poultry Inspection (Application for Inspection, Sanitation, and Equipment Requirements, and Exemptions)
FSIS Form 5200–2; FSIS Form 5200–5
Recordkeeping; On occasion
Businesses or other for-profit; 59,790 responses; 7,396 hours.
Lee Puricelli, (202) 720–7163

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–16124 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

RIN 0560–AC97

1993–1994 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1993–1994 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 8, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Fial, Agricultural Program Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, phone 202–690–0012.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation 1512–1 and has been classified as "nonmajor." It has been determined that this notice will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loan and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

Executive Order 12778 is not applicable to this notice.

Discussion

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, except Puerto Rico (type 46) tobacco, The Agricultural Statistics Board, National Agricultural Statistical Service, U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

The national marketing quota for Puerto Rico (type 46) tobacco for the immediately preceding marketing year was "0" pounds. There is no record of any such tobacco being marketed. Consequently, the penalty rate for the 1993–1994 marketing year cannot be determined based on seventy-five (75) percent of the average market price for the immediately preceding year. Therefore, the penalty rate for Puerto Rico (type 46) tobacco for the 1993–1994 marketing year shall be the same as the penalty rate determined for the 1989–1990 marketing year, the last year in which marketing information is available.

Since the determination of the 1993–1994 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Determination

Accordingly, it has been determined the 1993–1994 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1993–1994 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	129
Burley	136
Fire-Cured (Type 21)	121
Fire-Cured (Types 22 and 23)	163
Dark Air-Cured (Types 35 and 36)	127
Virginia Sun-Cured (Type 37)	104
Cigar-Filler and Binder (Types 42, 43, 44, 54, and 55)	112
Puerto Rico Cigar-Filler (Type 46)	57

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–16125 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

[Docket No. 93–079–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application no.	Applicant	Date received	Organisms	Field test location
93–165–01	Upjohn Company	06–14–93	Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2.	Maryland.
93–165–02	Upjohn Company	06–14–93	Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2.	North Carolina.
93–165–03	Betaseed, Incorporated	06–14–93	Sugar beet plants genetically engineered to express resistance to rhizomania virus and tolerance to the phosphinothricin class of herbicides.	California.

Done in Washington, DC, this 1st day of July 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–16136 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–074–1]

Procedures for Importing Animals Through the Harry S Truman Animal Import Center (HSTAIC)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice of the date and location of the lottery for authorization of the use of the Harry S Truman Animal Import Center (HSTAIC) in calendar year 1994. We are also giving notice of the period during which applications must reach the Animal and Plant Health Inspection Service, Import-Export Animals Staff, Veterinary Services, in order to be included in the lottery.

DATES: To be included in the lottery for authorization to use HSTAIC in calendar year 1994, applications and accompanying deposits must be received no earlier than September 1, 1993, and no later than September 15, 1993. The lottery for authorization to use HSTAIC during 1994 will be held on October 5, 1993.

ADDRESSES: Completed applications and accompanying deposits must be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Application forms may be obtained by writing to the same address, or by calling the telephone number provided under the heading "**FOR FURTHER INFORMATION CONTACT.**" The lottery will be held in the EPIC Room, 7th Floor, Federal Building, 6505 Belcrest Road, Hyattsville, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Montgomery, Staff Specialist, Import-Export Animals Staff, VS, APHIS, USDA, room 765B, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8172.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92, §§ 92.430, 92.431, 92.522, and 92.523 (referred to below as the regulations), set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, FL.

Because the demand for quarantine space at HSTAIC has traditionally exceeded the space available, the regulations provide that a lottery will be held each year during the first 7 days of October, to determine the priority of applications for the following calendar year. To be included in the October lottery, applications must reach the Import-Export Animals Staff no earlier than September 1, and no later than September 15 of the year of the lottery. Additionally, certain applications must include a deposit in the form of an irrevocable letter of credit, in the name of the applicant, and in the amount of $50,000, payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service. Those applications which must include this deposit are identified in the regulations.

The regulations provide that applications received will be placed in one of four categories, depending on the type of animal to be imported and the location from which the animal is exported. The categories are ranked in priority order, with applications placed in each category taking precedence over those in subsequent categories. In the event that the Import-Export Animals Staff does not receive more than one application between September 1, 1993, and September 15, 1993, the lottery will not be held, and the Animal and Plant Health Inspection Service will grant exclusive right to use HSTAIC during calendar year 1994 in the order applications are received.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 37.2(d).

Done in Washington, DC, this 1st day of July 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–16135 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–34–P

Food and Nutrition Service

Food Distribution Program; Value of Donated Foods From July 1, 1993 to June 30, 1994

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof to be provided in the 1994 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

This notice also announces that the value of agricultural commodities and other foods provided to States during the past school year met the level of assistance authorized under the National School Lunch Act. Thus, there will be no shortfall cash payments to States for the NSLP for the 1993 school year. The annually programmed level of assistance was met in food donations by June 30, 1993.

EFFECTIVE DATE: July 1, 1993

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

National Average Minimum Value of Donated Foods for the Period July 1, 1993 through June 30, 1994

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h)(1) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)(1)). Section 6(e)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(e)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h)(1) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers

VOL
58
ISS
129
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served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 14.00 cents for the period July 1, 1993 through June 30, 1994.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oil). Each component is assigned a proportional value using the appropriate relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three-month average of the Price Index increased by 1.55 percent from 121.34 for March, April and May of 1992 to 123.29 for the same three months in 1993. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1993 through June 30, 1994 will be 14.00 cents per meal. This is the same as the rate in effect for the past school year.

Section 14(f) of the Act provides that commodity schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to the use of such foods.

Commodity schools are defined in section 12(d)(7) of the Act (42 U.S.C. 1760(d)(7)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 1994 school year, commodity schools shall be eligible to receive donated food assistance valued at 30.50 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1994. The section 4 factor for commodity schools does not include the two cents per lunch increase for schools where 60 percent of the lunches were served in the second preceding year free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

Cash in Lieu Payments—Value of Donated Commodities for School Year 1993

Section 6(b) of the Act (42 U.S.C. 1755(b)) and the regulations governing cash in lieu of donated foods (7 CFR part 240) require the Secretary of Agriculture by June 1 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR part 250), these foods are used by schools participating in NSLP. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required by July 1 of that school year to pay to each State educational agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

During the past school year the adjusted minimum national average value of donated foods or payments of cash in lieu thereof per lunch was 14.00 cents. In accordance with section 6(e) of the Act, the mandated level of commodity assistance was $566,282,209 for school year 1993. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1993 to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1993.

Authority: Sections 6(e)(1) (A) and (B), 14(f) and 17(h)(1) of the National School Lunch Act, as amended (42 U.S.C. 1755(e)(1) (A) and (B), 1762a(f), and 1766(h)(1)).

Dated: July 1, 1993.

Christopher J. Martin,

Acting Administrator.

[FR Doc. 93–16090 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–30–U

Child And Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1993–June 30, 1994

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1993.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (NSL) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1753) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1993–June 30, 1994.

As provided for under the NSLA and the Child Nutrition Act of 1966, all rates

in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department list published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on June 26, 1992 (for the period July 1, 1992–June 30, 1994).

ALL STATES EXCEPT ALASKA AND HAWAII

Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts:	
Paid	$.1900
Free	.9500
Reduced	.6500
Lunches and Suppers: [1]	
Paid	$.1650
Free	1.7250
Reduced	1.3250
Supplements:	
Paid	$.0425
Free	.4750
Reduced	.2375
Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts	$.8150
Lunches and Suppers	1.4800
Supplements	.4400
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars	
Initial 50 day care homes	$67
Next 150 day care homes	51
Next 800 day care homes	40
Additional day care homes	35

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

ALASKA

Alaska—Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts:	
Paid	$.2725
Free	1.5200
Reduced	1.2200
Lunches and Suppers: [1]	
Paid	$.2700
Free	2.8000
Reduced	2.4000
Supplements:	
Paid	$.0700
Free	.7675
Reduced	.3850
Alaska—Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts	$1.2825
Lunches and Suppers	2.3975
Supplements	.7150
Alaska—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars	
Initial 50 day care homes	$109
Next 150 day care homes	83
Next 800 day care homes	55
Additional day care homes	57

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The new payment rates for Hawaii are as follows:

HAWAII

Hawaii—Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts:	
Paid	$.2125
Free	1.1150
Reduced	.8150
Lunches and Suppers: [1]	
Paid	.1950
Free	2.0225
Reduced	1.6225
Supplements:	
Paid	.0500
Free	.5550
Reduced	.2775
Hawaii—Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts	.9425
Lunches and Suppers	1.7300
Supplements	.5150
Hawaii—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars	
Initial 50 day care homes	79
Next 150 day care homes	60
Next 800 day care homes	47
Additional day care homes	41

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 1.8 percent increase during the 12-month period May 1992 to May 1993 (from 140.4 in May 1992 to 142.9 in May 1993) in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.2 percent increase during the 12-month period May 1992 to May 1993 (from 139.7 in May 1992 to 144.2 in May 1993) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753(b)(2), 1759a(a), 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C. 1773(b)(1)(B).

Dated: July 1, 1993.

Christopher J. Martin,

Acting Administrator.

[FR Doc. 93–16089 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–30–M

Food And Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program

for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 1993 through June 30, 1994.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Background

Special Milk Program for Children

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products (Code 0231), published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1993 to June 30, 1994, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 11.00 cents. This reflects no change over the current reimbursement rate because the Producer Price Index for Fluid Milk Products (Code 0231) from May 1992 to May 1993 (from a level of 120.5 in May 1992 to 120.6 in May 1993) did not change significantly enough to trigger a change in the reimbursement rate.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs

Pursuant to section 11 of the National School Lunch Act, (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1993 through June 30, 1994 reflect a 1.8 percent increase in the Price Index during the 12-month period May 1992 to May 1993 (from a level of 140.4 in May 1992 to 142.9 in May 1993).

Lunch Payment Factors

Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors

Section 4 of the Child Nutrition Act of 1966 establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1994. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated State of Micronesia, the Republic of the Marshalls, and the Republic of Palau use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors

In school food authorities which served less than 60 percent free and reduced price lunches in School Year 1991–92, the payments are: *Contiguous States*—16.50 cents, maximum rate 24.50 cents; *Alaska*—27.00 cents, maximum rate 38.50 cents; *Hawaii*—19.50 cents, maximum rate 28.25 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 1991–92, payments are: *Contiguous States*—18.50 cents, maximum rate 24.50 cents; *Alaska*—29.00 cents, maximum rate 38.50 cents; *Hawaii*—21.50 cents, maximum rate 28.25 cents.

Section 11 National Average Payment Factors

Contiguous States—free lunch—156.00 cents, reduced price lunch 116.00 cents; *Alaska*—free lunch 253.00 cents, reduced price lunch 213.00 cents;

Hawaii—free lunch 182.75 cents, reduced price lunch 142.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are:

Contiguous States—free breakfast 96.00 cents, reduced price breakfast 66.00 cents, paid breakfast 19.00 cents; *Alaska*—free breakfast 152.00 cents, reduced price breakfast 122.00 cents, paid breakfast 27.25 cents; *Hawaii*—free breakfast 111.50 cents, reduced price breakfast 81.50 cents, paid breakfast 21.25 cents.

For schools in "severe need" the payments are:

Contiguous States—free breakfast 114.25 cents, reduced price breakfast 84.25 cents, paid breakfast 19.00 cents; *Alaska*—free breakfast 181.50 cents, reduced price breakfast 151.50 cents, paid breakfast 27.25 cents; *Hawaii*—free breakfast 132.75 cents, reduced price breakfast 102.75 cents, paid breakfast 21.25 cents.

Payment Chart

The following chart illustrates: The lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof—effective from July 1, 1993–June 30, 1994]

National School Lunch Program [1]	Less than 60 percent	60 percent or more	Maximum rate
Contiguous States:			
Paid	.1650	.1850	.2450
Reduced price	1.3250	1.3450	1.4950
Free	1.7250	1.7450	1.8950
Alaska:			
Paid	.2700	.2900	.3850
Reduced price	2.4000	2.4200	2.6575
Free	2.8000	2.8200	3.0575
Hawaii:			
Paid	.1950	.2150	.2825
Reduced price	1.6225	1.6425	1.8150
Free	2.0225	2.0425	2.2150

School Breakfast Program	Non-severe need	Severe need
Contiguous States:		
Paid	.1900	.1900
Reduced price	.6600	.8425
Free	.9600	1.1425
Alaska:		
Paid	.2725	.2725
Reduced price	1.2200	1.5150
Free	1.5200	1.8150
Hawaii:		
Paid	.2125	.2125
Reduced price	.8150	1.0275
Free	1.1150	1.3275

Special Milk Program	All milk	Paid milk	Free milk
Pricing programs without free option.	$.11	N/A	N/A.
Pricing programs with free option.	N/A	$.11	Average cost—½pint milk.
Nonpricing programs.	$.11	N/A	N/A.

[1] Payments listed for free and reduced price lunches include both sections 4 and 11 funds.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 1, 1993.

Christopher J. Martin,

Acting Administrator.

[FR Doc. 93–16091 Filed 7–7–93; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Exemption of the Wren Timber Salvage Sale, Idaho City Ranger District, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Wren project area, Idaho City Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective July 8, 1993.

FOR FURTHER INFORMATION CONTACT: Terry Padilla, Idaho City Ranger District, Boise National Forest, P.O. Box 129, Idaho City ID 83631. Telephone: 208–392–6681.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Idaho City Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged areas. The Forest Service has completed the Wren Environmental Assessment. Issues have been identified, alternatives have been developed, and an analysis of the effects of implementing timber salvage and other recovery activities is complete.

The analysis area for the Wren Salvage is located in the Wren and Beaver Creek drainages of the North Fork Boise River, and Browns Creek drainage of the Middle Fork Boise River. The Forest will salvage trees dead or dying from the bark beetles epidemic on 500 acres and recover approximately 2.0 million board feet, using helicopter yarding (80 percent) and tractor/jammer yarding (20 percent).

The Douglas-fir beetle infestation has created several open areas of dead and dying trees. Salvage of these stands could result in "salvage openings," resembling clearcuts, in the project area. A total of 100 acres of salvage openings would be created. These openings would range up to 5 to 10 acres in size. These acres would be rehabilitated by planting with ponderosa pine and Douglas-fir, to increase the site's timber productivity, resilience and diversity of forest stands. Natural regeneration will be used to reforest small areas (less than 5 acres in size).

No new road construction would occur. Fourteen helicopter landings would be used; 5 are existing and 9 new landings would be built.

Management direction for the Middle Fork Boise River, Rabbit Creek/North Fork Boise River, and Crooked-Bear Management Areas is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other on-site resources. The proposed action for the Wren Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan. The project is not within areas considered for wilderness in the Forest Plan, nor within areas recommended for

wilderness in the recent legislative proposal entitled "Idaho Wilderness, Sustainable Forests and Communities Act of 1993".

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the current insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities would: (1) Recover valuable timber that would otherwise deteriorate, and (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. Through the timber salvage operations, breeding insects can be removed in the logs and Knutson-Vandenburg (K-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Wren project may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that much of the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead, dying and unhealthy timber, based on current bid premiums (6/93) is $850,000. Of this, approximately $215,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Wren Salvage Project, Idaho City Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects of the proposed action on the environment and addresses issues resulting from the proposal.

Dated: June 30, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93-16070 Filed 7-7-93; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Tenmile Creek Watershed, Whatcom County, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tenmile Creek Watershed, Whatcom County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, Rock Pointe Tower West 316 Boone Avenue, suite 450, Spokane, Washington 99201, telephone (509) 353-2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are control and prevention of nonpoint pollution problems and improving salmon spawning and rearing habitat in the Tenmile Creek Watershed. The planned works of improvement include the construction of 36 animal waste storage facilities and appurtenances, 11.5 miles of stream corridor rehabilitation, and accelerated technical assistance for land treatment.

The Notice of a Finding or No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: June 25, 1993.

Lynn A. Brown,

State Conservationist.

[FR Doc. 93-16020 Filed 7-7-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823-802, A-842-802]

Final Determination of Sales at Less Than Fair Value: Uranium From Ukraine and Tajikistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Sullivan or Carole A. Showers, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0114 or 482-3217, respectively.

FINAL DETERMINATIONS: The Department determines that imports of uranium from Ukraine and Tajikistan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Because respondents failed to provide adequate information in a timely manner, we have based our LTFV calculations on the best information otherwise available (BIA). The estimated margin is shown in the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of our preliminary determinations in the **Federal Register** on June 3, 1992, (57 FR 23380), the following events have occurred.

Pursuant to a request made by V/O Techsnabexport (Tenex), Nuexco Trading Corporation (Nuexco), Global Nuclear Services and Supply (GNSS), and Energy Fuels Nuclear (EFN) (collectively referred to herein as Tenex), the Department postponed the final determinations for these investigations until October 16, 1992 (57 FR 30946, July 13, 1992).

On July 15, 1992, the Department received an untimely response from Ukraine to our questionnaire. This

response stated that no uranium has been shipped from Ukraine to the United States since December 1, 1991, and before that date Ukraine was not an independent country. Therefore, it did not have responsibility for its exports.

On September 16, 1992, the Department initialed a proposed suspension agreement with the Governments of Ukraine and Tajikistan. On October 7, 1992, we received comments regarding the proposed suspension agreement from Ukraine and Tajikistan, petitioners, and the U.S. Department of Energy. On October 15, 1992, we received a letter from petitioners in which they conditionally waived their right to comment on a proposed agreement which might be initialed by Tajikistan.

On September 21, 1992, we received case briefs from petitioners, Tenex, the Yankee Group, Ukraine, and Tajikistan. We received rebuttal briefs from these parties on September 28, 1992.

On September 25, 1992, the United States Court of International Trade (CIT) sustained the Department's decision to continue these investigations against Ukraine and Tajikistan, formerly constituent republics of the former Union of Soviet Socialist Republics (USSR). See, *Techsnabexport, Ltd. et al.* v. *United States*, 802 F. Supp. 469 (CIT 1992).

On October 13, 1992, Homestake Mining Company withdrew as a petitioner in these investigations.

On October 16, 1992, the Governments of the United States and the Governments of Ukraine and Tajikistan signed agreements suspending these investigations. On April 19, 1993, pursuant to a request by the Government of Ukraine (GOU), the Department published a notice in the **Federal Register** terminating the suspension agreement and resuming the investigation with respect to Ukraine effective April 12, 1993 (58 FR 21144). On May 19, 1993, pursuant to a request by the Government of Tajikistan (GOT), the Department published a notice in the **Federal Register** terminating the suspension agreement and resuming the investigation with respect to Tajikistan effective April 26, 1993 (58 FR 29197). We stated in both of those notices that we would only use information already submitted in the investigations.

On May 25, 1993, the GOU and GOT submitted letters requesting that the Department postpone the final determinations in their respective investigations by 60 days, in accordance with section 353.20(b) of the Department's regulations (19 CFR § 353.20(b)). On May 26, 1993, petitioners objected to these requests on the grounds that the Department had compelling reasons to deny them. On June 4, 1993, the Department determined that no additional time was needed for any parties to review the preliminary determinations nor was any additional time needed for the Department to reach its final determinations and, therefore, found compelling reasons to deny the requests for postponement.

Scope of the Investigation

We have determined that the merchandise covered by these investigations constitutes one class or kind of merchandise (*see DOC Position* to *Comment 3*, below). We have further determined that highly enriched uranium (HEU) is included in the scope of these investigations. For the Department's rationale regarding this issue, see Memorandum to Alan M. Dunn from Francis J. Sailer dated October 16, 1992, and *DOC Position* to *Comment 4*, below. The above-referenced memorandum and all other memoranda cited in this notice can be found in the public file in the Central Records Unit, Room B099 of the Main Commerce Building.

Since the preliminary determinations, the Department has clarified the scope of these investigations for the U.S. Customs Service. "Milling" or "conversion" performed in a third country does not confer origin for purposes of these investigations. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride (UF_6). Since milling or conversion does not confer origin, uranium ore or concentrate of Ukrainian or Tajik origin that is subsequently milled and/or converted in a third country will be considered of Ukrainian or Tajik origin, respectively. The Department continues to regard enrichment of uranium as conferring origin.

The merchandise covered by these investigations includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}. Both low enriched uranium (LEU) and HEU are included within the scope of these investigations. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. The uranium subject to these investigations is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1991.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate in these investigations. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent provided the information requested in a timely manner and in the form required.

As stated in our preliminary determinations, Tenex, the sole exporter of the subject merchandise during the POI, submitted certain information with respect to U.S. price. However, the Department did not receive adequate and timely factors of production information, despite extensive efforts by the Department to obtain such information. We eventually received a partial response from Tenex with regard to factors of production information that was unusable for many reasons. First, the information provided in the response was severely deficient on its face in that it did not provide the data requested by the Department in its questionnaire. The data provided was primarily cost data, not factors of production data. Second, Tenex is not a producer of the subject merchandise. It is merely an exporter and, as such, does not have first-hand knowledge of the production enterprises. Verification of second-hand knowledge would be a futile endeavor. Third, at the time of our preliminary determinations, the response was not certified by officials at the production enterprises. Although the Department did receive an untimely certification (two months after the information was filed), it was from an official of only one of several production enterprises in question.

Since the preliminary determinations, the Department received a response from Ukraine. This response did not provide the information sought by the

VOL 58 ISS 129 JL 8 1993 UMI

Department and was submitted well after the Department's deadline.

The incomplete and untimely nature of these responses requires the Department to use BIA. BIA is based on information submitted in the petition and detailed in our initiation notice. Limited modifications to this information were made, as appropriate, in response to the comments submitted by interested parties and two other parties from which the Department solicited information (see *United States Price, Foreign Market Value,* and *Interested Parties Comments* sections, below, and Memorandum from Linda K. Eads and Lawrence P. Sullivan to Marie Parker and Susan H. Kuhbach dated May 27, 1992).

Tenex has argued that it should not be held responsible for the lack of response from the production enterprises and, therefore, it should not be penalized for the inaction of those entities. However, in a nonmarket economy (NME) case, the Department presumes central control of all production and exporting facilities (see, *e.g., Final Determination of Sales at Less Than Fair Value: Tungsten Ore Concentrates from the People's Republic of China* (*Tungsten*), 56 FR 47738 (September 20, 1991)). Thus, the Department holds each country's central government responsible for providing an adequate response to all sections of the Department's questionnaire. With respect to Ukraine and Tajikistan, the Department requires a response which provides complete and accurate data on U.S. sales and factors of production in order to consider any response for a determination. Tenex's response represents only a small part of the information required by the Department to perform an LTFV analysis, and is, therefore, materially deficient.

Fair Value Comparisons

To determine whether sales of uranium from Ukraine and Tjikistan to the United States were made at less than fair value, we compared the United States prices (USP) to the foreign market value (FMV), as specified in the *United States Price* and *Foreign Market Value* sections of this notice. As stated above, the margin is based entirely on BIA.

The Department's practice is to base BIA on a simple average of the margins based on petition data, as opposed to the highest margin based on petition data, when we determine that respondents have attempted to cooperate with the Department's investigations (see, *e.g., Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Taiwan*, 57 FR 17892 (April 28, 1992)). We continue to believe that Tenex attempted to cooperate in these proceedings because it supplied the Department with USP data and attempted to provide FMV data. Therefore, we are basing the final margin on an average of the margins for uranium concentrate and enriched uranium derived from the petition.

United States Price

Petitioners' calculation of USP is based on an estimated weighted average f.o.b. import price taken from U.S. Bureau of Census statistics on imports of natural and enriched uranium from the former USSR during the period January 1990 through August 1991.

Foreign Market Value

Petitioners alleged, and the Department determined, that the former USSR was an NME country during the POI within the meaning of section 773(c) of the Act (*see* Memorandum from David Mueller to Carole Showers dated March 24, 1992). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked. This determination covers a geographic area, each part of which assumes the previous NME character in the event of dissolution. *cf. Techsnabexport*, 802 F. Supp. at 472 ("[I]n order to fully effectuate the antidumping laws, imports from successor countries may bear the duties calculated based on the imports from the predecessor nations.") Therefore, Ukraine and Tajikistan will be treated as NMEs until the Department reverses its determination. In these investigations, no information has been presented which would permit the Department to reconsider the NME status of Ukraine or Tajikistan.

Accordingly, petitioners calculated FMV on the basis of constructed value (CV), using the factors of production methodology specified in section 773(c) of the Act. Petitioners calculated separate CVs for mined and enriched uranium.

We have followed the methodology used in the initiation of these investigations (56 FR 63711, 63712, December 5, 1991), as modified in the preliminary determinations, except in the following instances: (1) For mined uranium, we adjusted the Namibian labor value for a holiday bonus which was incorrectly excluded, and (2) for enriched uranium, we calculated the CV based on the British Nuclear Fuels Ltd. (BNFL) 1991 financial statement because the 1991 statement covers a period nearly concurrent with calendar year 1990. In the preliminary determinations, the Department stated its intention to express, where possible, all factors and values in 1990 terms, as BIA, in order to ensure consistency.

Interested Party Comments

All written comments submitted by the interested parties in these investigations which have not been previously addressed in this notice are addressed below. The comments by petitioners, Tenex, and the Yankee Group were submitted in the context of all 12 investigations involving uranium from the newly independent states of the former USSR (NIS). Hence, while reference is made to the NIS or to certain states of the NIS, we are only concerned here with Ukraine and Tajikistan.

Comment 1

Tenex asserts that the Department has improperly transformed its single investigation of uranium imports from the USSR into separate investigations of such imports from each of the NIS. Specifically, Tenex asserts the following: (1) The International Trade Commission's (ITC) preliminary injury determination with respect to uranium imports from the USSR does not support the Department's preliminary determinations or its order to suspend liquidation of entries of such imports from the NIS; (2) the Department issued its preliminary determinations without properly initiating investigations with respect to uranium imports from the NIS; (3) the record contains no factual information sustaining investigations of or supporting determinations of LTFV sales of uranium imports from any of the six uranium-producing NIS; and (4) the Department has failed to make a separate fair value comparison for each NIS. Each of these, according to Tenex, results in a violation of the antidumping law and is legally invalid.

Ukraine and Tajikistan argue that these investigations are unlawful and should be terminated. Additionally, they argue that 19 U.S.C. § 1677b(c) provides that NME determinations must be made on a country-specific basis. Nowhere in the statute are "geographic area" or "geopolitical boundaries" discussed.

Petitioners claim to have demonstrated in various submissions to the Department and the CIT that antidumping investigations processed against unfairly traded merchandise, not the "countries" in which the merchandise is produced or from which it is exported. They argue that the statutory mandate that imports of unfairly traded merchandise be investigated and, if appropriate,

antidumping duties imposed, does not disappear because of political changes in the territory in which the merchandise is produced or exported. The Department's determination not to terminate its investigations, and the CIT's affirmation of that determination in *Techsnabexport*, were proper.

DOC Position

On September 25, 1992, the CIT confirmed that the Department had the legal authority to continue these investigations against the NIS of the former USSR, including Ukraine and Tajikistan. The basis for the Department's decision is described below.

First, there is no requirement in the antidumping law that an ongoing investigation be rescinded when the country named in the petition ceases to exist. This is not to say that there are no geographical aspects to an antidumping order. Indeed, Commerce and the ITC make determinations regarding LTFV sales and injury concerning merchandise produced within certain geopolitical boundaries. When an order is issued, merchandise produced within such boundaries is subject to the order unless expressly excluded from it. However, Congress did not consider the possibility of the dissolution of a country during an antidumping duty investigation. Therefore, it was the Department's task to determine what Congress would have intended had it considered such a situation. The effect of terminating a case, based on the dissolution of the country named in the petition, would be to create a gap in the coverage of the antidumping law. The newly emerging states would be able to dump with impunity until sufficient information developed for the petitioners to file new petitions. Because the purpose of the antidumping duty law is to provide the U.S. domestic industry relief from injuriously dumped merchandise, the Congress could not have intended for the law to be interpreted to allow the dissolution of a certain country to create a gap in the law's coverage which would effectively prevent the U.S. domestic industry from obtaining relief for a certain period of time.

Comment 2

Ukraine and Tajikistan assert that the Department has ignored the procedural requirements of the statute for conducting an investigation (see, *e.g.*, 19 U.S.C. 1673b(a), (b), and (c)), because the ITC's preliminary determination only addressed imports from the USSR. The individual countries were not provided the opportunity to present evidence or argue to the ITC that: (1) Their data should not be cumulated with the data from the other republics; (2) their imports were nonexistent or negligible; or, (3) there was no evidence of injury to the domestic industry by reason of imports from that particular country. Lacking a valid preliminary injury determination by the ITC, the Department may not suspend liquidation.

Petitioners argue that the ITC's preliminary injury determination is sufficient to permit the Department to issue preliminary and final affirmative determinations as to LTFV sales of uranium from the NIS of the former USSR. Petitioners assert that the respondents' arguments were rejected by the ITC and raised unsuccessfully before the CIT. They state that political changes in an exporting territory do not render the ITC's preliminary determination null and void.

DOC Position

Respondents' challenge to the preliminary determination is premature and without legal merit. The ITC's preliminary injury determination was issued on December 23, 1991, prior to recognition by the United States of the independent republics. The ITC specifically stated in its preliminary determination that for "[p]urposes of the investigation, the USSR includes each and every Republic that was a member of the USSR on November 8, 1991." Respondents do not dispute that uranium was produced within their borders both prior to and after November 8, 1991, nor do they contend that there was any deficiency in the injury determination at the time it was issued. Accordingly, it is clear that imports of uranium coming from the geographic area now comprised of the NIS were considered in the ITC's preliminary determination.

However, like the Department's antidumping duty investigation, the ITC's injury determination focuses upon imported merchandise, not upon the country from which the merchandise is exported. Accordingly, for the same reasons discussed above with regard to the validity of the Department's antidumping duty determination, the ITC's preliminary injury determination remains valid.

The continuing validity of the preliminary determination is evidenced by the ITC's recent preliminary determination in *Ferrosilicon from Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine and Venezuela*, Inv. Nos. 303–TA–23, 731–TA–565–570, (Prelim.) USITC Pub. 2535 (July 1992). In *Ferrosilicon*, Russia, Ukraine and Kazakhstan argued that imports to the United States from those regions prior to the dissolution of the USSR could not be considered by the ITC in reaching its injury determination. In rejecting this argument, the ITC stated that "[i]f the Commission were to accept respondents' argument that it cannot even consider imports from these regions prior to the time they became countries, that might prevent an industry otherwise entitled to relief from receiving any protection from unfairly traded imports from the same factories that are allegedly continuing to export dumped ferrosilicon to the United States simply because the political status of these areas had changed. The occurrence of other events changing the legal status of a foreign producer during the period of investigation, such as a change in ownership of the facility or the imposition of an export quota by the country in question, would not preclude the Commission from considering the consequences of the product that had been exported to the United States prior to such an event."

Finally, respondents' perceived error in the Department's preliminary determinations does not require the termination of the investigation. Any error in the preliminary determinations can be fully addressed in the final determinations. See *NTN Bearing Corp. v. United States*, _____CIT _____, 757 F. Supp. 1425 (1991).

Comment 3

Tenex and the Yankee Group contend that the Department should find three separate classes or kinds of merchandise. Tenex bases its statement on Department precedent and the 1983 CIT decision in *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (Ct. Int'l Trade 1983) (*Diversified*) which establishes certain criteria. Tenex alleges that the Department misapplied the *Diversified* criteria in the preliminary determinations when it found that there was only one class or kind of merchandise.

In support of their arguments, both Tenex and the Yankee Group cite *Final Determination of Sales at Less Than Fair Value: Cyanuric Acid and its Chlorinated Derivatives From Japan Used in the Swimming Pool Trade* (*Cyanuric Acid*) 49 FR 7424, (February 29, 1984), where the Department found three separate classes or kinds of merchandise. The Yankee Group posits that each of the three products subject to the *Cyanuric Acid* investigation had different end uses even though two of the products were derivatives of the

third. The situation in uranium is analogous in that concentrates are the raw material used to produce uranium hexafluoride (UF_6) and LEU. They also argue that the ultimate consumers and the ultimate use for all three products in *Cyanuric Acid* were the same. In this case, utilities are the ultimate customers and the ultimate use is fuel for their nuclear reactors. Similarly, the raw materials in both cases cannot perform the end uses that the derivatives are able to perform. Therefore, the logic in *Cyanuric Acid* can be extended to this case.

With respect to physical characteristics, the Yankee Group argues that the Department's reasoning is flawed. Despite the fact that all three forms of uranium share a common fundamental attribute, the U^{235} isotope, they can still be determined to constitute separate classes or kinds of merchandise. The concentration levels of the U^{235} isotope vary greatly between uranium concentrates and UF_6, on the one hand, and LEU, on the other hand. In *Cyanuric Acid*, all of the products shared the fundamental attribute of chlorine. The differences in the chlorine levels of the derivative products in *Cyanuric Acid* were less than the different concentration levels of U^{235}.

Further, the Yankee Group contends that petitioners' analysis concerning physical differences is inaccurate and misleading and should be rejected. The physical differences between the various forms of uranium are significant. Petitioners' emphasis on the common presence of the U^{235} isotope ignores the different chemical structures and physical properties between concentrate, UF_6, and LEU. The Department found three classes or kinds of merchandise in *Cyanuric Acid* based on the fact "that the chemical compositions of these products are distinct." Considering the different chemical compositions between the three forms of uranium, the Department should make a finding of three separate classes or kinds.

With respect to the different uses for these products, the Yankee Group argues that the Department may only find a single class or kind of merchandise when the raw material has "no other use than for" producing the derivative product (see, *e.g., 3.5" Microdisks and Coated Media Thereof from Japan*, 54 FR 6,433, 6,434 (February 10, 1989). In this case, concentrates and UF_6 are the raw materials used in producing LEU which is used as a feedstock for light-water nuclear reactors. Concentrates are also used in the glass industry, specialty metals industry, the manufacture of fuel for heavy-water reactors, plutonium production for nuclear weapons, and in producing uranium tetrafluoride. The Department should reconsider its decision and assign greater weight to the different uses for concentrates and UF_6.

With respect to end users, the Yankee Group asserts that uranium purchasers and their expectations differ greatly. Purchasers of uranium range from utility companies to brokers and traders to converters to enrichers to governmental entities. Purchaser expectations vary with the end use and costs associated with conversion and enrichment.

Finally, with respect to channels of trade, the Yankee Group states that concentrates, UF_6, and LEU are distributed, stored, and shipped differently. Therefore, they are sold in distinct channels of trade.

Petitioners assert that the Department correctly determined in its preliminary determinations that all forms of uranium constitute one class or kind of merchandise. This decision, they contend, is supported by the application of the criteria set forth in *Diversified* and *Kyowa Gas Chemical Industry Co., Ltd.* v. *United States*, 582 F. Supp. 887 (CIT 1984). The ultimate use, expectations of the ultimate purchasers, essential physical characteristics, and channels of trade are the same for all forms of uranium. Moreover, the similarity of the relative costs of the different forms requires a finding of one class or kind of merchandise. The ultimate use for all forms of uranium is as commercial nuclear fuel. This includes HEU previously committed to weapons programs whose only application today is as feed material to produce LEU and then commercial nuclear fuel. All forms of uranium are purchased with the expectation of its use as commercial fuel. Limited processing is required to produce LEU from HEU. All forms of uranium share the same essential physical attribute—the U^{235} isotope. Lastly, the channels of trade are the same for each form of uranium. Therefore, all forms of uranium are one class or kind of merchandise.

DOC Position

The Department disagrees with the Yankee Group and Tenex. *Cyanuric Acid* differs from the present situation in that the different chemical compositions of the three products in *Cyanuric Acid* resulted in three distinct end uses. While these uses were all related to the swimming pool trade, each of the derivatives of cyanuric acid could be used independently. Despite the different physical characteristics of uranium concentrates, UF_6, and LEU, concentrates and UF_6 have virtually no other use than as inputs in the production of LEU which in turn is used as feedstock in nuclear reactor fuel assemblies. The only physical characteristic of consequence is the concentration level of the U^{235} isotope. Consumers of concentrates and UF_6 purchase these products only with a view to increasing the concentration level of the U^{235} isotope to obtain LEU. The ITC preliminarily determined that the subject merchandise constitutes one like product based on the ITC's semi-finished product analysis. Consistent with that concept, we find there to be a direct line of production from concentrates through the fuel assemblies, *i.e.*, the concentrates and UF_6 can be treated as semi-finished products, whereas the two derivatives of cyanuric acid are produced independent of one another. This is the critical difference between *Cyanuric Acid* and this case.

The Yankee Group's analysis regarding the marginal uses of concentrates is misplaced. Every product has alternative uses or the potential for alternative uses. For purposes of a class or kind analysis, it is the Department's responsibility to determine not the number of alternative uses but rather the significance of any or all of those alternatives. According to the ITC preliminary determination, less than one percent of uranium concentrate consumption is used other than for the production of nuclear fuel. Therefore, while the Yankee Group may provide a list of several alternative uses of concentrates, the significance of these uses is minimal. It is proper, then, for the Department to analogize these cases with the Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170 (July 28, 1987), in which the Department found there to be one class or kind of merchandise based, *inter alia*, on the fact that unmachined crankshafts have no other use than for machining into finished crankshafts.

In addition, as petitioners point out, the expectations of the ultimate purchaser (the electric utilities) are the same for all forms of uranium, *i.e.*, for eventual production into nuclear fuel assemblies for use in nuclear reactors. Contrary to the assertions of the Yankee group, the channels of trade for all uranium products are the same. While traders and brokers participate in the market in addition to utilities, all uranium is mined and milled, then shipped to a conversion facility for conversion into UF_6, then to an enrichment facility, then to a fuel

fabricator, then to the ultimate customer—utilities. (For a more detailed discussion of this issue, see Memorandum to Francis J. Sailer from Team, dated May 27, 1992.) For the Department's position with respect to HEU, see *DOC Position* to *Comment 4*, below.

Comment 4

Petitioners argue that contrary to the Department's preliminary scope determination, HEU is within the scope of the investigations and is the same class or kind of merchandise as the other forms of uranium subject to these investigations. The petition unequivocally covers uranium in all of its forms and the Department's notice of initiation included all "uranium enriched in U^{235} and its compounds." According to petitioners, any exclusion of HEU from these investigations will severely compromise the relief to which they are entitled under the statute.

Petitioners hold that arguments proffered by Tenex on this issue are not persuasive and should be rejected. Specifically, unlike the case cited by Tenex, *Smith Corona Corp.* v. *United States*, 796 F. Supp. 1532 (CIT 1992), the petition included all forms of uranium, the Department initiated on all forms of uranium, and a respondent expressly stated that it understood that all forms of uranium were included in the scope. Even *Smith Corona*, however, would not preclude the Department from amending the scope of these investigations. The court did not state that the Department may not redefine the scope of an investigation after a preliminary determination.

Petitioners also state that the comments of the Department of Energy (DOE) on this issue are factually and legally insupportable. Moreover, DOE's comments illustrate that HEU and other forms of uranium are physically similar and commercially interchangeable. Petitioners allege that the DOE failed to explain that it was engaged in negotiations to import HEU from the Russian Federation to be blended down for use in commercial reactors and that the DOE misled the Department by implying that military applications constituted the only significant use for HEU.

Tenex agrees with the Department's preliminary determination that HEU is not within the scope of these investigations. Tenex disagrees with petitioners' claim that the Department included HEU in its initiation merely because HEU was not specifically excluded. Petitioners' subsequent efforts to include HEU within the scope of these investigations not only are untimely, but reflect their determination to make the results of this determination as devastating as possible to the NIS, regardless how illegal, illogical, and unfair such results would be. Tenex insists that petitioners not be allowed to amend the petition to include HEU within these investigations.

Tenex also agrees with DOE's May 19, 1992, letter identifying natural uranium and LEU as a single class or kind of merchandise and HEU as a separate class or kind of merchandise. The radically different physical characteristics, end uses, expectations of the ultimate purchasers, channels of trade, and notably higher production costs make these products distinct from one another. While HEU is capable of sustaining a nuclear reaction of a magnitude that renders it uniquely capable of being used in nuclear weapons, a distinctly military application, LEU can only sustain reactions in light-water commercial nuclear reactors.

Tenex argues that HEU has uses that are unique to that product. HEU is typically used as a weapons grade nuclear fuel, a use which is not shared by any of the other uranium products. Although HEU can be blended down to produce LEU, its primary use is almost exclusively as a weapons-grade nuclear fuel. HEU and LEU have radically different physical characteristics, *i.e.*, differing concentrations of the U^{235} isotope. HEU and LEU differ radically in cost as well. HEU costs nearly eight times as much. These differences, in addition to their different ultimate uses, compel a finding that HEU and LEU are separate classes or kinds of merchandise.

The Yankee Group argues that LEU and HEU are the same class or kind of merchandise, and should be excluded from these investigations. As confirmed by the recent agreement between the United States and the Russian Federation to import HEU and blend it down to LEU for use in nuclear reactors, the end use, expectations, and distribution channels of both LEU and HEU are the same. Since the Department has treated HEU and LEU interchangeably and excluded HEU from its investigation, LEU should also be excluded.

DOC Position

The Department agrees with petitioners. Because the uses of HEU have changed only recently and because HEU was not expressly excluded from the petition, neither the petition nor the ITC and Department determinations previously rendered provide a definitive answer as to whether HEU is within the scope of these investigations. Therefore, application of the *Diversified* criteria is necessary. As explained in greater detail in Memorandum to Alan M. Dunn from Francis J. Sailer dated October 16, 1992, the general physical characteristics, ultimate use and expectations of the ultimate purchaser indicate that HEU should be considered as part of the same class or kind of merchandise as LEU, UF_6, and concentrate.

Comment 5

Tenex argues that imports of uranium have not been massive and that the Department has no basis to ignore the data submitted by Tenex in making its critical circumstances determinations. Moreover, in considering this issue, the Department has not analyzed imports on a country-by-country basis nor has it provided a sufficient basis to depart from its normal comparison months. The Department also has no basis for finding "knowledge of dumping" because a margin based on imports of uranium from the USSR bears no legal relationship to the imports of uranium from the NIS. Therefore, the Department cannot reasonably conclude either that imports have been massive or that knowledge of dumping exists.

Petitioners reject as meritless Tenex's arguments regarding critical circumstances. Petitioners assert that the Department properly used official U.S. Government import statistics rather than the information proffered by Tenex. It would have been inconsistent and inequitable for the Department to accept unverified critical circumstances data from the same respondent that refused to submit a United States price database in proper form. Additionally, petitioners support the Department's application of the knowledge "test" that it uses in other NME cases. Margins of the magnitude in these proceedings are sufficient to constitute notice of dumping to an importer even under the most restricted knowledge test. Therefore, the Department's critical circumstances findings should be affirmed in the final determinations.

DOC Position

As explained above, we determined that we could not use Tenex's response for purposes of these investigations, including for critical circumstances purposes. In light of the absence of timely and adequate responses regarding exports to the United States, we used the margin from the petition and public import statistics maintained by the Department concerning imports from the USSR as BIA. (No pubic information regarding NIS state-specific imports to the United States during the

VOL
58
ISS
129
JL
8
1993
UMI

relevant time periods is available.) This analysis resulted in the finding of massive imports and a knowledge of dumping, based on the Department's regulations and established practice.

Additionally, the Department was justified in the comparison periods used to determine whether imports have been massive. The subject merchandise is transported by ship from the NIS to the United States, a journey of 17 days to over one month according to data submitted by petitioners. Therefore, any subject merchandise shipped on or after the filing date of the petition (November 8, 1991) would almost certainly enter the United States after December 1. Likewise, any shipments leaving the NIS before that date would enter the United States before December 1. Therefore, we determined it appropriate to use for comparison the periods December 1991 through March 1992 and August through November 1991.

Comment 6

Tenex, citing Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 FR 6842, 6844 (March 5, 1987), states that the period of investigation is not representative of, and is irrelevant to, prospective imports of uranium from the NIS because the USSR was in existence during the POI.

DOC Position

The POI in these investigations was selected according to section 353.42(b) of our regulations. While a different period may be chosen to reflect special circumstances, it would be neither correct nor possible to move the POI to post-date the initiation. First, to do so would allow respondents to change their behavior to avoid a finding of dumping. Second, as an administrative matter, it is necessary to pick a historic period so that all terms of the sales being investigated can be reported and analyzed.

Comment 7

Tenex states that even assuming the NIS are NMEs, the Department should have calculated FMVs using the export price exception set forth in section 773(c)(2) of the Act. Tenex stresses that since factors of production information is unavailable, the Department must therefore calculate FMV using the export prices.

Petitioners reject Tenex's argument that the statute suggests that the lack of respondents' factors data alone warrants use of third-country prices. Such an interpretation, petitioners state, would effectively allow respondents, self-servingly, to choose the method the Department would use to calculate FMVs by deciding whether to submit a factors response to the Department's questionnaire.

DOC Position

We disagree with Tenex. As stated above, we received no timely and complete factors information from Ukraine or Tajikistan. This type of data is necessary in order to calculate FMV using the factors of production methodology, which is preferred under the statute. The export price exception generally should be used only when the Department lacks information to value the NME producer's factors of production in a comparable market economy which is a significant producer of the subject merchandise (*see Tungsten* at 47739). Thus, the alternative FMV methodology provided by section 773(c)(2) of the Act is for the Department to use only when we are unable to obtain valuation information, not factors information which is solely within the power of respondents to provide and which, in these investigations, respondents did not provide. If we were to accept Tenex's interpretation, we would effectively be allowing respondents to choose the method for calculating FMV simply by their decision of whether or not to submit a factors response. We do not believe that this is the purpose of the alternative provided by section 773(c)(2).

Comment 8

Petitioners state that the Department was incorrect in computing the preliminary margin as a simple average of the margins for two "such or similar" categories of merchandise. In petitioners' view, Tenex has been absolutely uncooperative in the investigations. If, however, the Department continues to base its final determination on an average of the margins, rather than take the highest margin calculated, it must calculate a single weighted-average margin based on imports of the subject merchandise during the POI.

Tenex asserts that the Department has correctly recognized that respondents have tried in good faith to cooperate with the Department's efforts to obtain factual information and, thus, should find respondents to be cooperative and apply a non-prejudicial BIA. Additionally, petitioners' suggestion to weight-average the margins calculated for natural uranium and for enriched uranium is inappropriate because it relies upon the selective use of Tenex's data.

The Yankee Group asserts that the Department's calculation methodology is flawed and results in an overstated margin. The Department failed to calculate a potential uncollected dumping duty, as is usual in a dumping case, and instead calculated a simple average of the percentage dumping margins for each product. The Yankee Group asserts that, at the very least, the Department should sum the FMVs for each product, subtract the sum of the U.S. prices, and divide the result by the U.S. prices.

DOC Position

Petitioners and the Yankee Group argue explicitly or implicitly for weighting two BIA margins, rather than taking a simple average. While there are numerous ways in which these two numbers could be combined, the Department has stated that it will not fine-tune its BIA methodology (see *DOC Position* to *Comment 9*, below). In this case, we have simply followed Department precedent which directs the Department to use a simple average for BIA when the respondent has attempted to cooperate. Therefore, we have continued to take a simple average.

Comment 9

Tenex states that, as determined in *N.A.R., S.P.A.* v. *U.S.*, 741 F. Supp. 936, 942 (CIT 1990) and reaffirmed in *Midland Export Ltd.* v. *U.S.A.*, Slip Op. 92–53 (CIT 1992), the Department's choice of BIA must be supported by "substantial evidence on the record." Tenex asserts that, although the Department did not obtain complete and verifiable questionnaire responses from any of the NIS governments, the Department should not rely solely upon petitioners' data. Such exclusivity, argues Tenex, defies the inherent principle of substantial evidence on the record. Tenex, citing from the Department's Final Determination of Sales at Less Than Fair Value: Silicon Metal from the PRC, 56 FR 18570 (April 23, 1991) (*Silicon Metal*), asserts that the public information it submitted should be included within the realm of what is considered substantial evidence because there is no basis to ignore publicly available data in the record. Tenex also argues that, just as in the CIT decision, *Holmes Products Corp., and Esteem Industries, Ltd.* v. *U.S.*, Slip Op. 92–118 (CIT 1992), it, like Esteem, should be considered a complying party. Therefore, the information it submitted on May 8, 1992, should be considered in the calculation of FMV based on BIA.

Petitioners state that the Department should continue to refuse to consider Tenex's submissions on the appropriate

basis for BIA, as well as that portion of Tenex's case brief which again presents the information Tenex deems "best." They contend that the Department's selection of BIA in past determinations reflects an unwillingness to entertain substantive comments and information on BIA from non-complying respondents.

In response to Tenex's citing of *Silicon Metal*, petitioners state that the Department entertained a very limited comment from importers concerning the accuracy of one surrogate cost used as BIA. The importers did not submit wholesale factual information to be used as BIA. Here, Tenex seeks improperly to provide comprehensive factual information for use as BIA.

Petitioners argue that neither the statute, *Silicon Metal*, nor any administrative or judicial precedent permits use of Tenex's information. Specifically, they assert, citing *Pistachio Group of the Assn. of Food Industries, Inc.* v. *United States*, 671 F. Supp. 31, 40 (1987), that the courts have emphasized that the BIA rule should be applied in such a way that respondents not be allowed to "control the results of the investigation by providing partial information or by delaying or otherwise hindering the investigation." They also cite the following from *The Timken Company* v. *United States*, 788 F. Supp. 1216 (CIT 1992), *quoting Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 341, 346 (1989), *aff'd* 899 F.2d 1185 (1990): " 'Once Commerce has exercised its discretion to use the BIA rule against a respondent, it is for Commerce, not the respondent to determine what is the best information.' " Therefore, Tenex should not be allowed to select what will constitute BIA.

The Yankee Group contends that the Department imposed an unreasonably high barrier to the acceptance of outside information concerning BIA. By only considering proposals which demonstrated an inaccuracy or aberration on the part of the Department's initiation calculations, the Department excluded relevant information. The Department has an obligation to exercise its BIA discretion reasonably (see *Timken Co.* v. *United States*, 673 F. Supp. 495, 501 (1987)). The Yankee Group contends that the information it submitted should be given greater weight than afforded to it by the Department at the preliminary determinations.

DOC Position

The central purpose of the BIA rule is to induce respondents, in the absence of any subpoena power vested in the agency, to provide Commerce with timely, complete, and accurate factual information, so that the Agency can determine current margins as accurately as possible within the time limits established by the Act. (See *Rhone Poulenc* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990.) Accordingly, in selecting a BIA rate, the Department must draw an inference that is adverse to the noncomplying respondent. Otherwise, respondents "would be able to control the amount of antidumping duties by selectively providing the Department with information." See *Olympic Adhesives* v. *United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990).

Accepting comments from non-complying respondents that lower the BIA rate conflicts with the purpose of the BIA rule by reducing their incentive to respond to the questionnaire. Thus, the Department accepts only very limited comments to correct gross errors in the petition which it would plainly be inequitable to allow to escape scrutiny. A reasonable degree of inaccuracy in the resulting number is acceptable (in fact, virtually unavoidable) because the Department only employs BIA where the respondents have frustrated the Department's efforts to calculate accurate margins by failing to furnish the necessary information. In this circumstance, the BIA rule gives the requirement of an adverse inference priority over the preference for accuracy.

BIA margins are supported by substantial evidence because the statutory requirement that they be based on substantial evidence must be balanced with the requirements of the BIA rule itself, as explained above. Requiring BIA margins to withstand the same level of scrutiny for accuracy as margins based on information in complying questionnaire responses effectively would read the BIA provision out of the statute. Thus, the Department's approach correctly reconciles the competing objectives of the BIA rule and the substantial evidence standard of review.

Consistent with these principles, for purposes of this final determination, we have examined all of the comments submitted by interested parties and others with respect to the selection of BIA. We have accepted from Tenex only comments on clerical errors and other gross errors clearly derivable from public information. Conversely, we have rejected all comments from Tenex based on information within its control, which should have been included in a questionnaire response, and all comments constituting attempts to modify the BIA rate in Tenex's favor.

In examining the adjustments suggested by the non-respondent parties, we applied a similar standard as that used in the preliminary determinations. That is, we did not attempt to "fine-tune" the BIA. We only considered adopting a proposed change to the methodology in instances where our initiation methodology was shown to be plainly inaccurate or where a particular figure used in our calculations was demonstrated to be an aberration.

Comment 10

Petitioners argue that the Department should use certain respondent-provided data as BIA for United States price so as to achieve an LTFV analysis which is as accurate as possible. There is no basis in the statute, the Department's regulations, or past practice to conclude that the Department is precluded from using any respondent-provided data as BIA. Citing *Timken Co.* v. *United States*, 11 CIT 786, 673 F. Supp. 495 (Ct. Int'l Trade 1987), petitioners claim that the CIT has recognized the propriety of using certain respondent data as BIA. In addition, petitioners contend the Department should use the actual product and tails assay values that respondents provided as BIA to calculate more accurate factors of production for the imported merchandise.

Tenex asserts that the Department should deny petitioners' request that it use Tenex's U.S. price data and enriched uranium product (EUP) product and tails assay information as BIA in the final determination. Petitioners have constantly argued that the Department should reject Tenex's questionnaire response and their proposed adjustments to petitioners' FMV estimates (which would improve the Department's LTFV margin calculations).

DOC Position

We disagree with petitioners that the accuracy of the LTFV analysis would be enhanced through selective use of Tenex's response data. The Department did not verify any of the information therein because the Department considers Tenex's response as inadequate and deficient. Accordingly, the Department has not selectively employed data submitted by Tenex.

Comment 11

Tenex states that the Department's factors of production analysis is fundamentally flawed since the Department failed to properly determine

appropriate surrogate countries for each of the NIS under investigation. Tenex states that the surrogate countries chosen during the initiation were chosen specifically for the USSR and not for the separate NIS under investigation. Moreover, since all of the NIS are not at the same level of economic development, a single catch-all surrogate is not appropriate. Tenex also comments that a separate FMV and U.S. price for each uranium-producing NIS should be calculated rather than a single margin for all countries.

Tenex also states that Namibia was incorrectly used to value labor for mining and milling. Tenex accuses the Department of "shopping around" for the highest-cost surrogate because the value was not taken from the petition or the supplement and defied the Department's standard practice of using as few surrogates as possible. Tenex also argues that Namibia is an inappropriate surrogate for the former USSR in that the USSR is far more technically advanced than Namibia. Tenex asserts that while the Gross National Product (GNP) per capita is similar, the purchasing power parity (PPP) is not. Agricultural labor is extensive in Namibia and not in the former USSR. Namibia is sparsely populated while the former USSR is not. Tenex, therefore, concludes that Portugal is more comparable to the former USSR than Namibia for valuing labor mining and milling.

Petitioners assert that because the POI encompasses a period in which the USSR existed, the Department's determination to use surrogates at a "comparable level of economic development" was proper. The group of surrogates selected by the Department satisfies the economic comparability criteria and, therefore, is appropriate. Furthermore, no information has been presented which warrants reconsideration of the surrogate selection because the surrogates proposed by various respondents and other parties do not satisfy the statutory criteria governing surrogate selection.

Petitioners also contend that they attempted to obtain Namibian data for *all* factors. However, because of the limitation on reliable public data for mining factors costs, it was unavoidable that multiple surrogates would be used. They allege that the Namibian data is preferable to Portuguese labor data because the Portuguese data is outdated, and is not uranium-specific. The Namibian data, which is recent and uranium-specific, is the best information available.

DOC Position

We disagree with respondents. When the Department determined it proper to continue this case against Ukraine and Tajikistan, it deemed it appropriate to continue to apply the surrogates chosen for the USSR to Ukraine and Tajikistan (*see* Memorandum to Carole Showers from David Mueller dated March 24, 1992).

With respect to choosing Namibia as the preferred surrogate for mining factors of production, consistent with 19 CFR 353.52(b), the Department followed its traditional analysis by considering the macroeconomic criteria of per capita GNP, the distribution of labor within the economy, and the rate of economic growth of significant producers of comparable merchandise (see, e.g., Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the People's Republic of China, 57 FR 6801, (February 28, 1992)). The PPP data provided by Tenex does not persuade the Department to deviate from its established practice. Based on the criteria considered by the Department, and on the fact that Namibia is a significant producer of comparable merchandise, we have determined that this country is the proper surrogate.

In those instances where values were unavailable from Namibia, we have employed Portuguese values. Portugal was included in the list of comparable countries and, hence, use of Portuguese data is appropriate where data from the preferred surrogate was not available.

Comment 12

Tenex argues that the mines used by petitioners to calculate Canadian U_3O_8 factors of production were incorrect because they were not the mines in operation during the POI. This, Tenex argues, necessarily affected various calculated factors. In addition, Tenex states that operating cost estimates are incorrect and unsupported.

Tenex further asserts that Canadian mining labor was incorrectly adjusted in order to account for differences in labor productivity. Petitioners' use of East German and Czechoslovak experience to adjust for conditions in the USSR cannot be supported because the geological peculiarities of those countries' mines make them more labor-intensive than Canadian or Soviet mines.

Petitioners state that Tenex fails to acknowledge that the Department's responsibility is to identify the best information available for establishing what respondents' factors for producing U_3O_8 were during the POI given the producers' refusal to provide timely responses. Petitioners suggest that respondents would have provided actual factors data were the actual data more favorable.

Petitioners reject the contention of Tenex that the Department should use 1991 Canadian mine data. Petitioners selected 1990 Canadian data because, in addition to being the more complete and accurate data available, it included eastern Canadian mines which are more representative of uranium mines in the NIS republics.

Finally, petitioners state that, lacking usable data on the relative use of each mining method and "geological peculiarities" in the former USSR, the Department's adjustment of Canadian labor usage is well-supported by substantial information on the record of these investigations. Because Tenex has failed to provide this data to the Department, the Department must seek the best information available which is the East European mine data, in conjunction with the Canadian data. Ignoring this data because Tenex contends it differs in some way from what would have been demonstrated if actual data had been provided would be improper and would reward noncompliance.

DOC Position

Respondents failed to provide the data concerning labor productivity requested in the Department's questionnaire and have also failed to prove that the information provided in the petition regarding labor productivity is a clerical error or a gross error clearly derivable from public information. Therefore, consistent with the Department's BIA policy stated in *DOC Position* to *Comment 9*, above, the Department rejects Tenex's proposed adjustment. Furthermore, as stated above in the *Foreign Market Value* section, the Department determined it appropriate to express all figures in 1990 terms, where possible, and the petitioners provided information regarding the mines in operation during 1990. Therefore, Tenex's argument to use data from the mines in operation during the POI is without merit.

Comment 13

Petitioners argue that certain modifications need to be made to the quantification and valuation of the factors or production for uranium mining. The Department should triple the adjustment for the Canadian energy factor because mining facilities in the NIS consume significantly more energy than their Western counterparts. Although such information was

requested of and not provided by respondents, it can be derived indirectly from respondents' data and public information.

Petitioners also claim that the Department's rejection of the adjustment to the Canadian energy factor in the preliminary determinations was erroneous because all activities at the Priargunsky mine are related to, and for the support of, uranium production. Petitioners also provide additional public information from a May 29, 1992, article in The Energy Daily, not available at the time of the Department's preliminary determinations, which substantiates that the unadjusted Canadian factor understates energy consumption in uranium mining facilities in the former USSR.

Tenex states that the Department was correct in rejecting the energy adjustment. Petitioner's attempt to justify the energy adjustment based on electricity use at the Priargrunsky facility is uncertified, uncorroborated, and not specific to the mining industry, let alone the uranium mining industry.

DOC Position

We disagree with petitioners' proposed adjustment to the former Soviet mining energy factor. The Department rejects this adjustment on the grounds that the supporting evidence provided was selectively taken from Tenex's response. See *DOC Position* to *Comment 10*, above. In addition, petitioners' publicly-available evidence pertaining to energy consumption in the former USSR is general and fails to demonstrate that the Department's methodology is inaccurate or aberrant.

Comment 14

Petitioners argue that in its preliminary determinations, the Department failed to include the annual bonus paid to the Rossing mine employees in the cost per man year for uranium mining in Namibia. The 1990 Rossing report clearly states that the bonus is "in addition to" the stated monthly wage rate. Petitioners also argue that the Department should index the 1988 Namibian wage rate to 1990 using information specific to the Namibian uranium sector. Petitioners request that the Department calculate an index specific to the Namibian uranium sector by comparing Rossing's 1990 wage rates to 1988 wage rates for certain wage categories.

DOC Position

The Department agrees with petitioners regarding the holiday bonus pay in Namibia. After review of the information provided, it is clear that the holiday bonus check is provided over and above monthly pay. Therefore, we have adjusted the calculations accordingly. However, the Department disagrees with petitioners' argument concerning indexing of the Namibian labor wages. The methodology proposed by petitioners is based only on increases with respect to four out of thirteen wage categories and, in fact, yields a result very similar to the Department's. As stated above, the Department has made adjustments to the BIA methodology only in those instances where that methodology is shown to be plainly inaccurate or aberrant. We determine that the Department's reliance on the "Home Prices Index" is neither plainly inaccurate nor aberrant.

Comment 15

Tenex states that for mining and milling, and for enrichment, Portugal was inappropriately used as the energy valuation surrogate. Portugal is not an appropriate choice because 1) Portugal seeks self-sufficiency in electricity and, therefore, does not seek the cheapest possible sources, and 2) Portugal has the second highest dependence in imported oil in the Organization for Economic Cooperation and Development. With respect to mining and milling, Canada should have been the surrogate for energy since Canada is more comparable to the former USSR than Portugal in terms of energy supply conditions. For enrichment, Tenex argues that the United Kingdom is the appropriate surrogate because it was the surrogate in the petitioner's factors of production estimates.

Petitioners rebut Tenex's contention that Portugal is an inappropriate surrogate because it is not a "significant energy producer" by stating that there is no requirement in the statute or regulations that the selected surrogate country be a significant producer of the inputs required to produce comparable merchandise. Furthermore, despite the Department's willingness to disregard a surrogate's costs if those costs are aberrant for that surrogate country, there is no indication that Portugal's energy costs are distorted for the period or that these costs are not an appropriate indicator or energy costs in a country which is at a comparable level of economic development to the former USSR.

DOC Position

We disagree with Tenex. As stated above in *DOC Position* to *Comment 11*, the Department selects surrogate countries based on macroeconomics criteria. Different surrogate countries are not chosen to value each separate factor.

Comment 16

Tenex states that BNFL's financial statements cover other operations in addition to commercial enrichment. In addition, only one of the three commercial plants identified actually operated during the POI: E22. However, the petitioners included costs from 1990 and plants E21 and E23 in calculating the EUP constructed value. Therefore, the public data provided by Tenex, pertaining to the E22 plant, is the only appropriate basis for the Department's FMV calculation for enrichment.

Petitioners reject Tenex's arguments regarding the information used as BIA for enriched uranium. First, although the data includes the E21 plant which is now closed, the E21 plant was operational during the entire period covered by the fiscal year 1990 and fiscal year 1991 reports. With respect to E23, Tenex has provided no information to show that the financial statements reflect construction costs. Therefore, the data is not distorted. Moreover, there is no requirement that the BIA factors data be specifically from the POI, nor that the BIA factors be for facilities that were operational during the POI.

Additionally, petitioners state that Tenex offers no information to substantiate its allegation that the Urenco annual report includes military production. According to petitioners, the Treaty of Almelo precludes Urenco from performing uranium enrichment services for military purposes. They also state that the annual report itself demonstrates that only Urenco (UK) commercial production, and not BNFL military production, is encompassed by the report.

DOC Position

Again, as discussed in the *Foreign Market Value* section, above, we have used, as BIA, 1990 information to the extent possible. Plant E21 operated in 1990 and, therefore, is properly included in the Department's calculations. The Department agrees with petitioners in rejecting Tenex's argument regarding the E23 plant. It is unclear whether and to what extent the financial reports reflect the costs of construction of E23. Therefore, we conclude no basis exists to adjust for Tenex's allegations. Finally, the Department thoroughly examined BNFL's financial statements and it is unclear whether they contain data relating to the submarine fuels facilities. Even Tenex recognizes this when stating that data pertaining to this facility is "apparently" consolidated in the BNFL

annual reports. Therefore, Tenex has not shown that the methodology used in the preliminary determinations is inaccurate or aberrant.

Comment 17

Tenex argues that if the Department does not use POI data, it should use the BNFL 1991 annual report data rather than the BNFL 1990 annual report. The 1991 annual report better coresponds to the 1990 data used for other factors than does data from the fiscal year 1990 BNFL annual report. Petitioners agree that the 1991 annual report should be used.

DOC Position

We agree that the fiscal year 1991 BNFL report better suits the Department's objective of using consistent 1990 data for BIA and have adjusted our calculations accordingly.

Comment 18

Depreciation

The Yankee Group argues that the Department should correct BNFL's depreciation and related financing costs to reflect the actual periods listed in BNFL's financial statement. They assert that the Department failed to account for disparities between the depreciation terms of 13–30 years for the buildings and ancillary plant, and 10–15 years for the centrifuge equipment listed in BNFL's 1991 financial statement. The Yankee Group asserts that the Department should correct these adjustments for its final determinations.

Financing

Tenex states that the actual interest expense for former Soviet enrichment plants is minimal or zero since these plant's sunken costs were incurred for military enrichment. However, should the Department decide to use the BNFL annual report to calculate Soviet finance charges, it should not base finance charges on BNFL's gross interest payable, but should use BNFL's net interest payable, which nets out interest revenue.

Petitioners assert that actual finance charges of Urenco (UK) are based on the gross interest payable and, using the net interest payable, would understate the actual financing costs associated with these plants.

DOC Position

The Department disagrees with Tenex concerning its argument about the zero financing charges in the USSR. This is an issue more properly resolved through responding to the Department's questionnaire and subjecting that response to verification rather than through a submission concerning the most appropriate BIA to apply. We do, however, agree with Tenex regarding the use of net interest payable rather than gross interest payable. BNFL's balance sheet contains only short-term interest-revenue-generating assets. Therefore, net interest payable reflects BNFL's financing costs related to production. Tenex has demonstrated that petitioners' use of gross interest payable is a gross error clearly derivable from public data. Hence, we have adjusted the calculations accordingly.

Comment 19

Tenex states that petitioners' cost of capital for enrichment inappropriately reflects high interest costs in Portugal. Although Tenex argues that finance changes should equal zero in the FMV calculation, it would agree to use the DOE's cost of capital, since the former USSR operated more similarly to the United States than to Portugal in this respect, given the government funding in the United States and the USSR.

Moreover, Tenex argues that petitioners' Portuguese interest rate adjustment in no way resembles the cost of capital in the former USSR. Costs of capital are related to a country's state of technological development and inflation, both of which suggest that Portugal has a higher cost of capital than the former USSR. Therefore, the Department should alternatively value interest costs in a country with enrichment capability such as the UK. Finally, if the Department uses the UK data (adjusted to reflect Portuguese costs or not), it should use more current data applicable to the POI.

Petitioners state that Tenex has not argued that Portugal is an unsuitable surrogate but rather, that Portugal's interest rates are too high. Tenex's attempt to pick and choose among surrogates and values to find the most favorable valuations is without support and is impermissible. Moreover, as demonstrated in a May 7, 1992, letter, no support can be found on the record to support the contention that all former Soviet facilities have been fully amortized and, hence, that interest costs should be zero.

DOC Position

We disagree with Tenex. Similar to our position on energy costs, we do not select surrogate countries based on their similarity to the NME respect to individual inputs. They are selected on the basis of macroeconomic criteria. Moreover, we have not updated the information to 1991. In initiating these investigations, we determined that 1990 data were sufficiently current. (See *DOC Position* to *Comment 9*, above.)

Comment 20

Tenex states that petitioners' enrichment labor usage is overstated due to labor used in non-commercial enrichment activities. For example, petitioners' estimated usage of 450 employees to produce 900,000 separative work units (SWU) inflates the reality of the situation since the number of workers typically required to produce 1.25 million SWU in the Netherlands is 208 while only between 180 and 200 are required in the United States to produce 1.5 million SWU.

Petitioners contend that Tenex's comparisons of the UK labor factor with that of a different plant in the Netherlands and with projections for an unbuilt plant in the U.S. are irrelevant. Such comparisons neither suggest that the UK factors are unrepresentative of former Soviet factors, nor that the UK factors are inaccurate.

DOC Position

We agree with petitioners. Tenex's arguments rely on projections and speculation concerning a not-yet-complete enrichment facility in the United States and an enrichment facility outside of the Department's preferred surrogate for factors. Therefore, Tenex has failed to show that the enrichment labor factor used in the petition is a clerical or gross error.

Comment 21

Tenex argues that there is no indication that overfeed costs reported in Urenco's financial statements were all related to commercial production. Tenex contends that it has proven that overfeed is uneconomical given the conditions assumed by the Department. In addition, Urenco's 1991 annual report indicates that the overfeed costs were negative.

Petitioners note that their factors of production analysis, based on fiscal year 1991 data, incorporates the negative feed cost reported by Urenco. Just as the cost of the producer-supplied feed must be incorporated in a cost of production calculation when overfeeding occurs, so must "negative" feed cost be included.

DOC Position

We agree with petitioners. As we have used the 1991 annual report, feed costs are negative. Hence, Tenex's concerns regarding the uneconomical nature of overfeeding are irrelevant.

Comment 22

Tenex states that the Department's EUP factors of production fail to

account for the advanced centrifuge technology employed at enrichment plants in the former USSR. Although petitioners argue that the supposedly advanced Urenco centrifuge technology makes the Urenco plants more productive than Soviet plants, which in turn leads to higher depreciation and finance charges for Soviet enrichment, their claims are unsupported, absurd, and have been rejected by the Department in its preliminary FMV calculation. Actually, the Soviet technology enjoys technological and productivity advantages over Urenco centrifuges, suggesting that depreciation and finance charges should be reduced, not increased, from those estimated for the Urenco plant.

The Yankee Group argues that the Department should reject petitioners' claim that capital and depreciation costs are 3.5 times higher than Urenco's because the smaller former Soviet centrifuges produce less SWU per machine. Petitioners failed to consider that the former USSR's smaller, lower-tech centrifuges cost considerably less per unit than Urenco's larger centrifuges.

Petitioners continue to argue that the Department should adjust UK production factors to reflect known technology differences with facilities producing EUP in the former USSR.

Moreover, petitioners reject Tenex's adjustment as speculative. Further, Tenex should not be given the benefit of certain critical assumptions given the failure of respondents to provide the actual data.

DOC Position

The Department continues to reject petitioners' upward adjustment to enrichment costs as speculation. We also reject Tenex's proposed adjustment. Potential economies of scale experienced by or technology differences at former Soviet enrichment facilities are not an appropriate adjustment for the Department to consider in a BIA situation; rather, it is more properly addressed by responding to the Department's questionnaire and allowing verification to occur.

Comment 23

The Yankee Group asserts that the Department should give greater weight to the visit of its knowledgeable representatives to the former Soviet enrichment plant. The information concerning the former Soviet enrichment plant is directly relevant given that this plant is the only one that produced LEU which was exported to the United States.

Petitioners argue that the information provided by the Yankee Group is inadequate and cannot be construed as BIA because it relies on an impermissible level of speculation and concerns only one former Soviet facility.

DOC Position

We disagree with the Yankee Group and reject the data contained in its affidavit. The information gleaned by Yankee Group representatives during their visit to the Ekaterinburg enrichment facility is more appropriately submitted by the respondents to the Department in the form of a questionnaire response, not through an affidavit of a third party.

Comment 24

The Yankee Group argues, based on public information on the record, that petitioners have overstated the SWU cost at Urenco's UK facilities with their estimate of $166.37 per SWU. BNFL's financial statements indicate that the company had a nine percent profit on sales in 1990. Based on this figure and the fact that BNFL's primary activity is uranium enrichment, the Yankee Group argues that BNFL sold enriched uranium at prices which yielded a profit.

The Yankee Group cites a 1984 statement by an official at Urenco's UK facility that Urenco could offer long-term SWU contracts at prices "around $100 SWU." Prices have not changed significantly since that time. Petitioners estimated Urenco's cost to be $167 per SWU, thus implying that if Urenco were selling enrichment at $100 per SWU, it must have incurred huge losses. The Yankee Group states that BNFL's financial statements demonstrate that the company's costs are less than $100 per SWU, since it is making a profit at that price. Thus, the Yankee Group asserts that the Department should reject petitioners' constructed cost as it is inconsistent with other information on the record of these investigations.

DOC Position

We disagree with the Yankee Group. Their conclusion rests on information dating back to 1984, while petitioners' CV is derived from the 1991 fiscal year. Therefore, we are not convinced that the petition calculations are aberrant.

Comment 25

Tenex states that its failure to provide complete and verifiable responses was due, in large part, to legitimate national security concerns. Tenex insists that there is no basis in law or logic for the Department to require producers or exporters in one country to supply highly sensitive data, critical to the national security of the NIS, relating to production in another country. To do so would violate all notions of sovereignty. Likewise, Tenex states that it cannot be held responsible for the failure to provide data on the production facilities in Ukraine and Tajikistan. It did not, nor does it now, have access to complete and verifiable data concerning factors of production in the former USSR uranium industry. Tenex cites GATT Article XXI as the national prerogative to refuse disclosure of such information which they consider contrary to their essential security interests. In Final Determination of Sales at less Than Fair Value: Industrial Nitrocellulose from France (Industrial Nitrocellulose from France), 48 FR 11971 (March 22, 1983), and Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Yugoslavia (Industrial Nitrocellulose From Yugoslavia), 55 FR 34946 (August 27, 1990), the Department identified GATT Article XXI as grounds for declining disclosure. Tenex also states that in *Chevron Standard Ltd.* v. *U.S.* 563 F. Supp. 1381 (1983), the CIT ruled that the Department cannot penalize one respondent for failing to compel another respondent, over which it has no control, to provide information requested by the Department.

Further, Tenex, states that given the dramatic changes in recent months, its failure to file timely responses to the Department's requests is understandable and excusable. In fact, only one NIS has responded to the Department's questionnaire, illustrating the difficulty the NIS have had, and continue to have, in complying with the Department's numerous requests for information. Based on the above, it would be inconsistent with the antidumping law and precedent to use BIA to calculate punitive margins in this case.

Petitioners state that the Department should continue to reject all respondents' comments and information concerning use of BIA in the final determination. Specifically, petitioners request that the Department reject as BIA publicly available information submitted by Tenex because no legitimate national security concerns have been raised in these proceedings and because the NIS refused to submit information within their possession or control. They argue that none of the NIS explained in a timely manner that national security concerns led to their failure to submit questionnaire responses and that these republics, not Tenex, were the appropriate party to raise such concerns. Petitioners claim that the cases cited by Tenex (*i.e.*,

VOL 58 ISS 129 JL 8 1993 UMI

Industrial Nitrocellulose from France and *Industrial Nitrocellulose From Yugoslavia*) make clear that a secondary respondent such as Tenex may not interpose, in the broadest possible manner, national security concerns.

Petitioners also object to Tenex's statements that it should not be penalized for the failure of the republics to respond to the Department's questionnaire because such information is beyond its control. Tenex's arguments would reward recalcitrant republics by permitting it to supply BIA in lieu of information that properly should have been submitted by the republics.

DOC Position

We disagree with Tenex. In *Industrial Nitrocellulose from Yugoslavia*, the respondent submitted timely and complete responses to the Department's requests for information. The issue of national security involved the verification of data, not the submission of data. In these proceedings, however, we did not receive timely and complete data from Ukraine and Tajikistan. Therefore, *Industrial Nitrocellulose from Yugoslavia* is not relevant to these investigations.

This case can also be distinguished from *Industrial Nitrocellulose from France* in that the French Ministry of Economics and Finance responded to the Department's requests for information with claims of national security. Tenex is not the appropriate entity to be making claims of national security. Any claims involving national security in these investigations must be properly submitted by the GOU and the GOT. In this instance, Tenex's representations of national security concerns are not sufficient, especially since the production information it failed to submit is not within its domain. Rather, the production enterprises, through their overseeing ministries in Ukraine and Tajikistan, are the only parties that can appropriately claim concerns of national security.

Finally, Ukraine and Tajikistan are not signatories to the GATT. Therefore, the United States has no obligations under GATT with respect to Ukraine and Tajikistan.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of uranium from the former USSR. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is subject to investigation, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than its fair value; and

(2) There have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on official statistics of the Department, as BIA, for equal periods immediately preceding and following the filing of the petition. The time period we used for comparison purposes begins in December 1991, the first complete month after the petition was filed (November 8, 1991). Based on available statistics, and in accordance with our regulations (19 CFR 353.16(g)), we determine it appropriate to use for comparison the period December 1991 through March 1992. (*See, DOC Position to Comment 5* above.)

We compared the quantity of imports during the comparison period to the imports during the immediately preceding period (the "base period") of comparable duration (*i.e.*, August through November 1991).

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Our analysis indicates that shipments from the former USSR have increased by considerably more than 15 percent.

Since this shows evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined recent antidumping cases and found that there are currently no findings of dumping in the United States or elsewhere on the subject merchandise by Ukraine or Tajikistan.

We then examined the magnitude of the dumping margins in these investigations. It is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act, when the estimated margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales price sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping. See, *e.g.* Final Determination of Sales at Less than Fair Value: High-Tenacity Rayon Filament Yarn from Germany (57 FR 21770, May 22, 1992). Using these criteria, we have found that the final margins in these investigations are sufficient to impute knowledge of dumping. Therefore, we find that the requirements of section 735(a)(3) are met and we determine that critical circumstances exist with respect to imports of uranium from Ukraine and Tajikistan.

Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the U.S. Customs Service to continue suspending liquidation of all unliquidated entries of uranium from Ukraine and Tajikistan, as defined in the *Scope of Investigations* section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 5, 1992 (90 days prior to the date of publication of our preliminary determinations) through October 16, 1992 (the signing of the suspension agreement) and on or after April 12, 1993 (for Ukraine) and April 26, 1993 (for Tajikistan). The U.S. Customs Service shall require a cash deposit or bond equal to 129.29 percent *ad valorem*, the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers and exporters in Ukraine and Tajikistan of uranium.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine within 45 days whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist with respect to uranium, these proceedings will be terminated and all securities will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of uranium from Ukraine and Tajikistan for the periods discussed above in the *Suspension of Liquidation* section of this notice.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and (19 CFR 353.20(a)(4)).

Dated: June 28, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-16017 Filed 7-7-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Add Meeting Agenda Item

An agenda for a public meeting of the Gulf of Mexico Fishery Management Council (Council) and its Committees which are scheduled to meet on July 12-15, 1993, was published in the **Federal Register** at 58 FR 34783 on June 29, 1993. A new agenda item has been added to the agenda for July 14, 1993; the agenda item to be added is listed below. All other information originally published at 58 FR 34783, remains unchanged.

Add Agenda Item

From 8:45 a.m. to 12 noon: Receive public testimony on proposed catch distribution of commercial king mackerel off Florida for the 1993-1994 season, and also on Draft Amendment #7 to the Reef Fish Fishery Management Plan.

(Note: Testimony cards must be turned in to staff before the start of the public testimony)

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: July 1, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-16066 Filed 7-7-93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of an application for Modification to Scientific Research Permit No. 818 (P211C).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a Modification to Scientific Research Permit No. 818 to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR Part 217-222).

Permit No. 818 was issued on April 22, 1993 (58 FR 25811) as authorized by the ESA. It authorizes ODFW to take listed adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for scientific research purposes through December 31, 1996.

ODFW is requesting authorization to capture and handle an additional 11,800 listed juvenile Snake River spring/summer chinook salmon, and tag with Passive Integrated Transponder (PIT) tags an additional 1,500 listed juvenile Snake River spring/summer chinook salmon, resulting in the indirect mortality of 103 of these fish. ODFW requests this take annually for the duration of the permit, through December 31, 1996.

Written data or views, or requests for a public hearing on this modification application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this Modification application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above modification application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, room 8268, Silver Spring, Maryland 20910, (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: July 1, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93-16165 Filed 7-7-93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTIONS: Issuance of Permit 859 (P521) to James R. Spotila, Department of Bioscience and Biotechnology, Drexel University; Issuance of a Second Modification to Permit 790 (P509) for Robert van Dam, Physiological Research Laboratory, University of California, San Diego; Issuance of an Extension to Permit 691 (P77#36) for the National Marine Fisheries Service (NMFS), Southwest Fisheries Center; Issuance of an Emergency Modification to Permit 817 (P45K) for the U.S. Fish and Wildlife Service; Issuance of an Amendment to Permit No. 826 (P770#64) for the National Marine Fisheries Service (NMFS), Northwest Fisheries Science Center.

On February 5, 1993, notice was published (58 FR 7213) that an application had been filed by James R Spotila, to take listed leatherback turtles (*Dermochelys coriacea*), as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217-222), for the purposes of scientific research. Notice is hereby given that on June 24, 1993 as authorized by the provisions of the ESA (16 U.S.C. 1531-1543), NMFS issued Permit Number 859 for the above taking, subject to certain conditions set forth therein.

On September 2, 1992 (57 FR 41477), Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, was issued Permit No. 790 under the authority of the ESA and the NMFS regulations governing listed fish and wildlife (50 CFR Parts 217-227), authorizing the Physiological Research Laboratory to take listed Hawksbill sea turtles (*Eretmochelys imbricata*) for the purposes of scientific research. On May 13, 1993, (58 FR 29392) as authorized by the ESA, NMFS issued a Modification to Permit No. 790, extending the effective date of the Permit through December 31, 1993. On June 1, 1993, (58 FR 31188) notice was given that the applicant applied for a second Modification to Permit 790. Notice is hereby given that on July 2, 1993, the Physiological Research Laboratory was issued a second Modification, authorizing an increase in the number of listed Hawksbill sea turtles (*Eretmochelys imbricata*) to be captured, measured, tagged and photographed. The modification authorizes an increase in take from 40 to 80 turtles. However, at most, only 40 of those turtles may be sampled for stomach contents.

VOL
58
ISS
129
JL
8
1993
UMI

On October 31, 1989 (54 FR 47105), Southwest Fisheries Science Center, National Marine Fisheries Service, was issued Permit No. 691 under the authority of the ESA and the NMFS regulations governing listed fish and wildlife permits (50 CFR Parts 217–227), authorizing the Southwest Fisheries Center to take listed olive ridley turtles (*Lepidochelys olivacea*) for the purposes of scientific research. Notice is hereby given that on June 29, 1993, the Southwest Fisheries Center was granted an extension to continue their research through December 31, 1994.

On April 1, 1993 (58 FR 18205), the U.S. Fish and Wildlife Service (FWS) was issued Permit No. 817 under the authority of the ESA and the NMFS regulations governing listed fish and wildlife (50 CFR Parts 217–227), authorizing the FWS to take juvenile listed Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for the purposes of scientific research. Notice is hereby given that on June 24, 1993 the FWS was issued an emergency Modification to increase the number of listed Snake River fall chinook salmon authorized to be tagged with Passive Integrated Transponder (PIT) tags, for the following reasons: (1) This year is a unique flow year, resulting in a great number of fish moving downstream in a given time period, and FWS should take advantage of the opportunity; (2) a new PIT tag detector has been installed at Lower Monumental Dam, making it possible to study longer migration patterns; (3) the consensus of the salmon research community is that more Snake River fall chinook salmon should be tagged to further study their migration. The modification increases the number of listed Snake River fall chinook authorized to be PIT tagged from 1,365 to 2,350, and increases the mortalities authorized as a result of this activity from 41 to 71. The modification is valid through December 31, 1993, or until superseded by changes made as a result of comments.

On December 3, 1992, notice was published (57 FR 57157) that an application had been filed by the NMFS Northwest Fisheries Science Center (P770#64), to take listed Snake River sockeye salmon (*O. nerka*) and listed Snake River fall and spring/summer chinook salmon (*O. tshawytscha*) for the purposes of scientific research. On March 23, 1993 (58 FR 17383), NMFS was issued Permit No. 826 for the above taking subject to certain conditions set forth therein, and on April 6, 1993 (58 FR 19654), NMFS was issued a modification to Permit No. 826, as authorized under the ESA and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). Notice is hereby given that on July 1, 1993 NMFS was issued an amendment to Permit No. 826, subject to the conditions set forth therein, to be valid for the duration of the permit. The amendment increases the number of juvenile sockeye salmon authorized to be collected during field research, of which a lower percent than originally estimated would be juvenile listed Snake River sockeye salmon. The permit authorizes the take of up to 68 juvenile sockeye salmon, of which 0.8 were estimated to be listed Snake River sockeye salmon. The take of 0.8 Snake River juvenile sockeye salmon was based on an estimated 1.25% of the outmigrant sockeye salmon at McNary Dam being of Snake River origin. However, current data indicates that, to date, only 0.16% of the sockeye salmon collected at McNary Dam are of Snake River origin, and some of these may be kokanee from Dworshak Reservoir. To cover additional planned sampling to obtain necessary data for recovery purposes, an additional 100 juvenile sockeye salmon need to be captured and handled. The potential impact on listed Snake River sockeye salmon of this additional collection will be below that previously authorized in Permit 826.

Issuance of the above actions was based on a finding that such documentation: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permits; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. The Permit, Modification, Extension, emergency Modification, and Amendment were also issued in accordance with and are subject to parts 217–227 of title 50 CFR, the NMFS regulations governing listed species permits, modifications, extensions and amendments.

Written data or views, or requests for a public hearing on these actions should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these requests would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and options contained in this summary are those of the applicants and do not necessarily reflect the views of NMFS.

All Permits and related documents are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2232); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400). [for salmon]

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9250). [for sea turtles]

Dated: July 2, 1993.

William W. Fox, Jr.

Director, Office of Protected Resources.

[FR Doc. 93–16166 Filed 7–7–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Import Permit (P542)

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

SUMMARY: On May 13, 1993, notice was published in the **Federal Register** (58 FR 28395) that Drs. John R. Kucklick, Joel E. Baker and H. Rodger Harvey, Chesapeake Biological Laboratory, P.O. Box 38, Solomons, MD 20688, applied for a permit to import from the Lake Baikal Limnological Institute, Irkutsk, Russia, blubber samples collected from Lake Baikal seals (*Phoca siberica*). Samples will be used to conduct research which consists of the extraction and analysis of organochlorine contaminants such as DDTs, PCBs, chlordanes, hexachlorocyclohexanes, and toxaphene.

Notice is hereby given that on June 29, 1993, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), the National Marine Fisheries Service (NMFS) issued a Permit for the above import subject to certain conditions set forth therein.

ADDRESSES: The Permit is available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–6150).

Dated: June 29, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16071 Filed 7–7–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Public Display Permit, Birds & Animals Unlimited (P530)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Birds & Animals Unlimited, Universal Studios Florida, 1000 Universal Plaza, Orlando, Florida 32819
2. *Type of Permit:* Public display
3. *Number and Name of Marine Mammals:* Two California sea lions (*Zalophus californianus*) from captive stock.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9300);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802 (310/980–4016); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: June 1, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16072 Filed 7–7–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

July 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53475, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

July 2, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 12, 1993, you are directed to amend the November 4, 1992 directive to reduce the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Thailand:

Category	Twelve-month limit [1]
Levels in Group I	
200	822,140 kilograms.
313/314/315	70,786,800 square meters of which not more than 15,730,400 square meters shall be in Category 313, not more than 34,980,656 square meters shall be in Category 314, and not more than 22,472,000 dozen shall be in Category 315.

VOL 58 ISS 129 JL 8 1993 UMI

Category	Twelve-month limit [1]
613/614/615	30,225,603 square meters of which not more than 17,977,600 square meters shall be in Category 614 and not more than 17,977,600 square meters shall be in Categories 613/615.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–16167 Filed 7–7–93; 8:45 am]

BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 92–1–90 CD]

Establishment of Procedural Schedule

AGENCY: Copyright Royalty Tribunal.

ACTION: Order establishing procedural schedule.

SUMMARY: The Copyright Royalty Tribunal is establishing a procedural schedule for the 1990 cable royalty distribution proceeding.

EFFECTIVE DATE: July 8, 1993.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., Suite 918, Washington, DC 20009. (202) 606–4400.

SUPPLEMENTARY INFORMATION: On June 18, 1993, Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association (hereinafter collectively referred to as "JSC",) filed with the Copyright Royalty Tribunal a Motion to Compel the Production of the 1991 Nielsen diaries and a Motion to Establish the Procedural Schedule for the 1990 Cable Royalty Distribution Proceeding.

By *Notice*, issued June 23, 1993, the Copyright Royalty Tribunal invited the parties to file comments on the two Motions. Friday, June 25, 1993, was established as the due date for filing comments on the Motion to Establish a Procedural Schedule.[1] Tuesday, July 6, 1993, was established as the due date for filing comments on the Motion to Compel the Production of the 1991 Nielsen diaries.

Comments on JSC's procedural schedule Motion were received from Program Suppliers, National Association of Broadcasters, Public Broadcasting Service, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. With the exception of Program Suppliers, all the other commenting parties either supported JSC's proposed schedule or offered an alternative schedule.

Program Suppliers maintained that JSC's motion was premature. They noted that at the outset of the proceeding it had been determined that the proceeding should be bifurcated, with stage one involving the Nielsen access issue. Program Suppliers further explained that the decision to bifurcate was based on the parties desire to avoid "wasteful duplication and confusion." Program Suppliers also opposed JSC's proposed dates on the basis that the schedule would deprive the parties of sufficient time to conduct an adequate hearing.

The Tribunal understands the need to resolve stage one of the proceeding before commencing the distribution stage. However, the Tribunal is also committed to ensuring that the proceeding is completed in an efficient manner. Therefore, although the Tribunal will establish a procedural schedule prior to determination of stage one, the schedule assumes that stage one will be completed prior to the date for filing direct cases. The parties are expected to cooperate with each other to assure that stage one is completed in the designated time period.

Accordingly, the Tribunal adopts the following procedural schedule:

End of stage one deposition period, including filing of any motions based on depositions—July 12, 1993

Comments on any motions based on depositions—July 15, 1993 [2]

Exchange of Direct Cases—August 16, 1993

Discovery Period—August 17–September 7

Phase I Evidentiary Hearing—September 8–27 [3] (10 hearing days)

Exchange of Phase I Rebuttal Cases—October 1, 1993

Phase I Rebuttal Hearing—October 8, 1993

Dated: July 1, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–16119 Filed 7–7–93; 8:45 am]

BILLING CODE 1410–09–M

[1] By letter of June 24, 1993, the Tribunal granted Program Suppliers' request for a one day extension to file their comments on Monday, June 28 rather than Friday June 25. The one day extension also applied to all other parties wishing to file comments on the Motion.

[2] The Tribunal's decision on the stage one access issue will follow shortly after the comments are filed.

[3] The Tribunal will advise the parties shortly of the specific dates reserved for evidentiary hearings.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: Communications and Enlistment Decisions/Youth Attitude Tracking Study III (CED/YATS III), OMB Control No. 0704–0210.

Type of Request: Extension.

Number of Respondents: 11,100.

Responses per Respondent: 1.5.

Annual Responses: 17,100.

Average Burden per Response: 22 minutes.

Annual Burden Hours: 6,375.

Needs and Uses: This survey collects data on the knowledge of and attitudes toward, military service from Americans 16–24 years of age. It provides annual cross-sectional data on propensity to serve and other key issues for trend analyses. Brief follow-up interviews provide additional measures of change, using a mix of previously interviewed individuals and first time respondents. Data are used by DOD Components to develop recruiting strategies, incentive programs, advertising strategies, and Congressional testimony, and to allocate resources, and to conduct special studies.

Affected Public: Individual or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr Pearce, WHS/DIOR, 1215

Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: July 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16027 Filed 7–7–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Readiness; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Readiness will meet in closed session on July 14, and August 10, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: July 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16029 Filed 7–7–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Tactical Air Warfare; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Tactical Air Warfare scheduled for June 21, 1993 as published in the **Federal Register** (Vol. 58, No. 104, Page 31371, Wednesday, June 2, 1993, FR Doc 93–12860) has been cancelled. In all other respects the original notice remains unchanged.

Dated: July 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16030 Filed 7–7–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Defense Acquisition Reform; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Defense Acquisition Reform scheduled for June 29, 1993 as published in the **Federal Register** (Vol. 58, No. 86, Page 26963, Thursday, May 6, 1993, FR Doc 93–10677) has been cancelled. In all other respects the original notice remains unchanged.

Dated: July 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16031 Filed 7–7–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on C–17 Review; Change in Location of Meeting

ACTION: Change in location of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on C–17 Review scheduled for July 1–2, 1993 in the Pentagon, Arlington, Virginia, as published in the **Federal Register** (Vol. 58, No. 99, Page 30028, Tuesday, May 25, 1993, FR Doc. 93–12325) will be held at The Aerospace Corporation, Los Angeles, California. In all other respects the original notice remains unchanged.

Dated: July 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16032 Filed 7–7–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on C–17 Review

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on C–17 Review will meet in closed session on July 28, 1993 at The Aerospace Corporation, Los Angeles, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the current status of the C–17 program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: July 1, 1993.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16028 Filed 7–7–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Education Goals Panel; Meeting

AGENCY: National Education Goals Panel, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: July 27, 1993 at 12:30 p.m.

ADDRESSES: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ruth Whitman Chacon at the National Education Goals Panel, 1850 M Street, NW., Suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes discussion of education technology, disciplined environments conducive to learning, criteria for content standards and action on collegiate assessment and the use of NAEP/NAGB data.

Records are kept of all Panel proceedings, and are available for public inspection at the Office of the Goals Panel at 1850 M Street, NW., Suite 270, Washington, DC 20036, from the hours of 10 a.m. to 5 p.m.

VOL
58
ISS
129
JL
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1993
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Dated: July 2, 1993.

Ann V. Bailey,

Committee Management Officer, Department of Education.

[FR Doc. 93–16179 Filed 7–7–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact Consolidation of the Nonnuclear Component Within the Nuclear Weapons Complex

AGENCY: Department of Energy.

ACTION: Proposed Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) issues this proposed Finding of No Significant Impact (FONSI) on its proposal to consolidate certain nonnuclear component manufacturing, surveillance, and storage functions of the Nation's Nuclear Weapons Complex (Complex). This proposed finding is based on the DOE "Nonnuclear Consolidation Environmental Assessment" (EA), DOE/EA–0792, June 1993, which analyzes the proposed consolidation of these nonnuclear functions that DOE performs in the Complex. The DOE sites involved in the nonnuclear consolidation proposal are the Kansas City Plant (KCP) in Kansas City, Missouri; Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico; the Mound Plant (Mound) in Miamisburg, Ohio; the Y–12 Plant in Oak Ridge, Tennessee; the Pinellas Plant (Pinellas) in Largo, Florida; the Rocky Flats Plant (RFP) in Golden, Colorado; Sandia National Laboratories, New Mexico (SNL/NM) in Albuquerque, New Mexico; and the Savannah River Site (SRS) near Aiken, South Carolina. DOE's proposed action is to consolidate certain nonnuclear manufacturing activities at KCP, relocate others to SRS, LANL, and SNL/NM, and close out the Complex missions at Mound and Pinellas, and Complex nonnuclear missions at RFP. The proposed action responds to Presidential initiatives, including the START II Treaty, to reduce the nations nuclear weapons stockpile, and is expected to achieve more efficient and effective management of nonnuclear functions within the Complex, while also decreasing the long-term operating costs of this aspect of the Complex. The proposed action is part of DOE's larger proposal to reconfigure the entire Complex. The remainder of this reconfiguration proposal is being analyzed in the Nuclear Weapons Complex Reconfiguration Programmatic Environmental Impact Statement (PEIS).

Based on the analyses in the EA, DOE believes that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq. Therefore, DOE proposes to issue a Proposed FONSI pursuant to the Council on Environmental Quality regulations implementing NEPA (40 CFR parts 1500–1508) and the DOE NEPA implementing regulations (10 CFR part 1021). This Proposed FONSI and the supporting EA are being made available for public review and comment for a period of 30 days following the date of this notice. DOE will consider comments received in making a final determination on whether to issue a FONSI or to incorporate the analysis of proposed consolidation of the nonnuclear component of the Complex into the Reconfiguration PEIS.

INVITATION TO COMMENT: DOE invites the public, including states which host these DOE facilities and Indian tribes that might be affected by the proposed action, to comment on this proposed FONSI. Please direct any comments to Mr. Howard R. Canter at the address presented in the following section.

In accordance with 40 CFR 1501.4(a)(2)(i) and 10 CFR 1021.322(d), DOE is making this proposed FONSI available for public review for 30 days.

DOE has made the EA and related documents available to the public. Copies of the EA are available upon request at the address given below. DOE will also make public comments received on this proposed FONSI available to the public. The EA, Nonnuclear Consolidation Plan (DOE, September 1991), and other material pertaining to this proposal are available for public review at the DOE public reading rooms listed below.

California

U.S. Department of Energy, San Francisco Operations Office, 1301 Clay Street, Room 700N, Oakland, California 94612, (510) 637–1762

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College, Library, 3645 West 12th Avenue, Westminster, Colorado 80030, (303) 469–4435

Florida

U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640, (813) 587–6715

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–9162

Nevada

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295–1274

Ohio

U.S. Department of Energy, Miamisburg Library, DOE Public Reading Room, 35 South Fifth Street, Miamisburg, Ohio 45342, (513) 866–1071

South Carolina

U.S. Department of Energy Reading Rm, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, (803) 641–3320

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, Room G–209, Oak Ridge, Tennessee 37831, (615) 576–5765

Illinois

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 972–2010

Missouri

U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent, Public Library, 11140 Locust Street, Kansas City, Missouri 64137, (816) 942–1780

New Mexico-Albuquerque

U.S. Department of Energy, Public Reading Room, National Atomic Museum, 20358 Wyoming SE, Albuquerque, New Mexico 87185, (505) 845–6670/4378

New Mexico-Los Alamos

Los Alamos National Laboratory, Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87545, (505) 665–2127

Texas

U.S. Department of Energy, Lynn Library/Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400

Washington

U.S. Department of Energy, Richland Operations Office, 100 Sprout Road, Richland, Washington 99352, (509) 376–8583

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–90, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–6020

For information on the availability of specific documents and hours of operation, please contact reading rooms at the telephone numbers provided.

DATES: Comments on the proposed FONSI should be postmarked by August 9, 1993 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments on the proposed FONSI and requests for copies of the Nonnuclear Consolidation EA or the EA Executive Summary should be directed to: Howard R. Canter, U. S. Department of Energy, Weapons Complex Reconfiguration Office, P.O. Box 3417, Alexandria, VA 22302. FAX: (202) 586–2180.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the proposed project or the Nuclear Weapons Complex Reconfiguration Program should be sent to: Howard R. Canter, U.S. Department of Energy, Weapons Complex Reconfiguration Office, DP–40, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–2700. For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, U.S. Department of Energy, Office of NEPA Oversight (EH–25), 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On December 16, 1991, the then Secretary of Energy announced his decision to prepare an EA for the consolidation of nonnuclear functions of the Complex. The public notice regarding the Secretary's decision was published on January 27, 1992 (57 FR 3046). The nonnuclear consolidation proposal is based upon the DOE Nonnuclear Consolidation Plan (NCP), September 1991, as amended. The NCP also provided the basis for determining the consolidation alternatives analyzed in the EA. DOE determined that the proposal to consolidate nonnuclear facilities could be analyzed in an EA prior to completion of the Reconfiguration PEIS (see 40 CFR 1506.1(c)) because (1) there are significant benefits for the nation from nonnuclear consolidation, i.e., cost savings and preservation of technical competence, whether the rest of the Complex is reconfigured or not, and (2) decisions regarding nonnuclear consolidation will neither affect nor be affected by decisions to be made following the completion of the Reconfiguration PEIS.

A preapproval review copy of the EA was sent to affected states and Indian Tribes for comment in December 1992. Comments received during the review period were taken into account in preparing the final EA. Appendix G of the EA contains all comments received and DOE responses.

As required by the Energy and Water Development Appropriations Act, 1993 and the National Defense Authorization Act for Fiscal Year 1993, DOE also prepared and submitted to Congress the Nonnuclear Reconfiguration Cost Effectiveness Report (CER) on January 15, 1993. Each of three independent consultants, appointed by Energy Secretary Hazel R. O'Leary to review the CER and accompanying certifications, confirmed on May 25, 1993, that the proposed consolidation is cost effective and would not increase the technological, environmental, safety, or health risks associated with Departmental activities. Their review and conclusions did not result in any changes to the proposed nonnuclear consolidation proposal, and the Secretary made the decision to proceed with the Nonnuclear Consolidation process. If supported by the EA, a FONSI would allow DOE to accelerate the proposed consolidation of nonnuclear facilities in response to Presidential initiatives to reduce the Nation's nuclear weapons stockpile.

Proposed Action

DOE proposes to terminate the Complex missions at Mound and Pinellas, and Complex nonnuclear missions at RFP. The nonnuclear electrical and mechanical manufacturing functions would be consolidated at KCP. Existing research, development, and testing (RD&T) and prototype fabrication capabilities at LANL and SNL/NM would be augmented to provide a limited fabricating capability for future neutron generator work, high power detonators, beryllium technology, pit support functions, and other nonnuclear components now located at Mound, Pinellas, and RFP. These enhanced capabilities would be used to satisfy future weapons stockpile needs, if and when identified. Tritium-handling functions now performed at Mound and Pinellas would be consolidated with tritium functions now located at the Savannah River Site (SRS) and LANL, respectively. The capabilities transferred to KCP, SRS, LANL and SNL/NM would, for the most part, be integrated into the existing plant facilities with appropriate plant modifications and renovations. The nonnuclear manufacturing workload would be downsized at all sites in response to Presidential initiatives, including START II, to reduce the nuclear weapons stockpile. The following specific actions are proposed:

- Mission Closeouts—Complex missions at Mound and Pinellas and the Complex nonnuclear missions at RFP would be terminated, and associated nonnuclear facilities turned over to the DOE Office of Environmental Restoration and Waste Management (EM) for cleanup and restoration.
- Electrical and Mechanical—The nonnuclear electrical and mechanical capabilities now at Mound, Pinellas, and RFP would be consolidated at KCP within existing facilities.
- Tritium-Handling—All tritium-handling capabilities now performed at Mound would be relocated to be with the tritium functions now performed at SRS. The neutron tube target loading for the current design of neutron generators, now performed at Pinellas, would be completed. Capability for future neutron tube target loading requirements would be provided within existing facilities at LANL.
- Detonators—The existing RD&T and prototyping capability at LANL would be enhanced to provide a limited manufacturing capability for high power detonators, now done at Mound. (The existing RD&T technology base for low-power explosives components would be maintained at SNL/NM; the existing capabilities at Mound to manufacture these components would no longer be needed.)
- Beryllium Technology and Pit Support—The existing technology base and prototyping capability at LANL would be enhanced to provide limited manufacturing capability for beryllium technology and pit support work now done at RFP.
- Neutron Generators, Cap Assemblies, and Batteries—Manufacture of the current design of neutron generators at Pinellas would be completed. The existing technology base for neutron generators would be maintained at SNL/NM. Existing RD&T and prototyping capability at SNL/NM would be augmented to provide a limited manufacturing capability for future advanced design neutron

generators. Manufacturing capability for cap assemblies would be relocated from Pinellas to existing facilities at SNL/NM. The technology base now at Pinellas for the manufacture of thermal batteries would be transferred to existing facilities at SNL/NM; manufacture of the batteries would continue to be performed by the private sector. The assembly of lithium ambient batteries from commercially acquired lithium cells would be transferred to KCP.

• Special Products—The nuclear grade steels procurement and storage capability, safe secure trailer manufacturing capability, weapons trainer shop, and metrology services would be transferred from RFP to KCP. The calorimeter manufacturing capability would be relocated from Mound to existing facilities at LANL. The milliwatt heat source surveillance activities would be relocated from Mound to SNL/NM.

Purpose and Need

DOE has proposed to reconfigure the Complex to be smaller, less diverse, and less expensive to operate. The Complex must safely and reliably support whatever nuclear deterrent stockpile objectives are established in the future by the President and funded by Congress. The Nation's nuclear weapons manufacturing requirements are not as great as they were in the past, and maintaining a large manufacturing infrastructure is not a productive use of national resources.

The purpose of nonnuclear consolidation is to manage better nonnuclear manufacturing activities within the Complex, and to decrease the long-term operating costs of the Complex. In addition, consolidation of the nonnuclear manufacturing activities would provide a means to maintain the specialized skill base needed to produce and test these components, as workload requirements decrease significantly.

The nonnuclear products and services of the Complex are needed to design and manufacture nuclear weapons and test individual components. DOE needs to maintain a nonnuclear capability in order to be able to manufacture, test, and monitor nuclear weapons.

Alternatives

In addition to the proposed action, the EA analyzed three alternatives in which electrical and mechanical manufacturing activities would be consolidated at sites other than KCP. The three alternative consolidation sites for electrical and mechanical manufacturing activities were Mound, Pinellas, and RFP. For each of these alternatives, the consolidation site for electrical and mechanical activities would retain all of its other nonnuclear manufacturing activities and receive additional electrical and mechanical activities from KCP and the other two mission closeout sites. The current nonnuclear manufacturing activities at KCP and the other two mission closeout sites would be terminated and remaining nonnuclear activities at these sites would be relocated to either SRS, LANL, or SNL/NM.

The EA analyzed the option of locating beryllium technology and pit support work, now done at RFP, at the Y–12 Plant in Oak Ridge, Tennessee instead of at LANL. Under the Y–12 option, the existing capability at Y–12 would be enhanced to accomplish this work. The proposed action does not include the Y–12 option.

No Action Alternative

The EA compared the impacts of the proposed action to those expected to occur if DOE did not consolidate these functions. Under this alternative, all sites included in the proposed action would retain their current weapons missions. Planned upgrades, renovations, repairs, and maintenance activities necessary to improve Complex compliance with all environment, safety, and health and environmental restoration standards would continue irrespective of future Complex configuration. DOE expects that under No Action many current facilities would be placed in an essentially standby mode due to a major reduction in nuclear weapons manufacturing requirements, with correspondingly reduced environmental impacts.

Considerations Common to All Alternatives

All alternatives were based on the same projected workload, which is substantially lower than requirements of the recent past. Planned upgrades, renovations, repairs, and maintenance activities necessary to enable DOE compliance with all environment, safety, and health and environmental restoration standards would continue at Complex facilities irrespective of the configuration of the Complex.

The nonnuclear consolidation proposal does not include components currently purchased from the private sector. Many nonnuclear weapons components are now manufactured and supplied by private companies. Private manufacture of certain components would continue under all alternatives. Where practical and cost effective, DOE may transfer manufacture of additional products to the private sector under existing procurement procedures. However, with recent reductions in the stockpile level, component manufacturing activities may be returned to the government from the private sector because the workload does not make it cost effective for these private suppliers to continue manufacturing such small quantities.

Environmental Impacts of the Proposed Action

Based on the analysis of environmental impacts in the Nonnuclear Consolidation EA, DOE believes that the proposed action would not result in any significant environmental impacts.

Implementing the proposed action would involve changes and/or modifications to existing buildings at KCP, SRS, LANL, and SNL/NM. Relocated activities would be compatible with existing land use plans and policies. The peak construction workforce of fewer than 100 workers at each site would have negligible effects on area land use, housing, and social services. No significant impacts on ecological resources, geological resources, or soil are expected. Air quality and noise impacts from construction activities are expected to be negligible since most activities would occur within existing buildings. No new construction or activities associated with the proposed action would occur within identified base floodplains or wetlands that would require a floodplain/wetland assessment under 10 CFR 1022.12 (a). (The base floodplain is defined as the 100-year (1.0 percent) floodplain.) Currently, KCP is the only site potentially vulnerable to floods in the proposed consolidated nonnuclear complex. However, KCP will be protected from a 500-year flood event upon completion in December 1993 of a new levee. Construction of the levee is covered by an EA and FONSI prepared by the U.S. Army Corps of Engineers, Environmental Assessment: Completion of Flood Protection Works, Bannister Road Federal Complex, Kansas City, Missouri (September 1990) The Department adopted this EA (DOE/EA–0509) and issued a FONSI on September 18, 1991. No impacts are expected on archeological or historic sites on any of the sites proposed to receive relocated nonnuclear activities. Based on comments received from the EA pre-approval review process, there is no indication that the proposed action would have any adverse effects on any historic or archaeological resources at KCP, SRS, LANL, or SNL/NM.

During operation, minor increases in air emissions and noise are expected,

but would not exceed applicable emissions standards and/or guidelines. Therefore, air quality and noise impacts would not be significant. Terminating the nonnuclear missions at Mound, Pinellas, and RFP would improve the local air quality near these sites, but not significantly. Increases in water usage would be less than 1 percent of current usage at KCP, SRS, and LANL, and less than 3 percent at SNL/NM. Adequate water supplies are available to accommodate the increase; therefore, no significant impacts on water resources are expected.

Socioeconomic and community service impacts at KCP, SRS, LANL, and SNL/NM are not expected to be significant. The proposed action would create approximately 1,095 jobs (425 direct and 670 indirect) at KCP at peak operations. Total in-migration would be approximately 558 persons. At SRS, approximately 103 jobs (45 direct and 58 indirect) would be created. Total in-migration would be approximately 60 persons. At LANL, approximately 294 jobs (115 direct and 179 indirect) would be created. Total in-migration would be about 154 persons. At SNL/NM, approximately 940 jobs (385 direct and 555 indirect) would be created at peak operation. Total in-migration would be about 515 persons. The change in population during the time of peak operation would be less than 1 percent at all sites and the need for additional housing units would be negligible. Therefore, socioeconomic impacts are not significant.

These in-migration estimates do not take into account such factors as rehiring preference for displaced workers that may result from the workforce restructuring plan developed for the site, as required by section 3161 of the National Defense Authorization Act for Fiscal Year 1993. Accordingly, these in-migration estimates represent the maximum expected at each site.

Adverse economic consequences will occur at Mound, Pinellas, and RFP due to the termination of nonnuclear missions at these sites. At Mound, approximately 2,846 jobs (1,070 direct and 1,776 indirect) would be lost. This reduction in jobs would not increase the unemployment rate in the year 2000 beyond the projected baseline level of 5.6 percent. Earnings in the Mound region-of-influence (those areas in which approximately 90 percent of current DOE and contractor employees reside) would be reduced by about $93.1 million, with related decrease in the total personal income of $119.3 million. The City of Miamisburg would lose an estimated $0.8 million in income tax revenue in the year 2000 as a result of the loss of direct employment at Mound. This loss represents a 10 percent loss in total income tax revenue, a 9 percent loss in General Fund revenue, and a loss of less than 4 percent in total actual revenues. The less than 1 percent change in population after weapons mission termination would create an estimated 600 additional vacant housing units. The additional vacant housing units represent less than a 1 percent increase in the Mound region-of-influence.

At Pinellas, approximately 3,038 jobs (1,050 direct and 1,988 indirect) would be lost. This reduction in jobs would not increase the unemployment rate in the year 2000 beyond the projected baseline level of 5.4 percent. Earnings in the Pinellas region-of-influence would be reduced by about $103.1 million, with a related decrease in the total personal income of $148.2 million. The less than 1 percent change in population after weapons mission termination would create an estimated 700 additional vacant housing units. The additional vacant housing units represent less than a 1 percent increase in the Pinellas region-of-influence.

At RFP, approximately 1,917 jobs (750 direct and 1,167 indirect) would be lost. This reduction in jobs would not increase the unemployment rate in the year 2000 beyond the projected baseline level of 5.6 percent. Earnings in the RFP region-of-influence would be reduced by about $68.5 million, with a related decrease in the total personal income of $82.2 million. The less than 1 percent change in population after nonnuclear weapon mission termination would create an estimated 400 additional vacant housing units. The additional vacant housing units represent less than a 1 percent increase in the local RFP area.

As a result of ongoing planning, DOE has revised the workforce estimates presented in the EA. Recently revised workforce figures for direct jobs are slightly different than the workforce number used in the EA analysis and therefore the estimates of indirect jobs would also be slightly different. Additional estimated direct jobs have been revised to 330 at KCP (a decrease of 95), 125 at LANL (an increase of 10), 390 at SNL (an increase of 5), and 50 at SRS (an increase of 5).

The proposed fiscal year 1994 budget projects a reduction in expenditures at most DOE sites resulting in reduced employment. The reduction in workforce associated with the budget reductions is only estimated at this time. The current estimate of direct jobs lost at sites with mission closeouts is 1,020 at Mound (a decrease of 50), 800 at Pinellas (a decrease of 250), and 715 at RFP (a decrease of 15). The estimated direct jobs reduction would also cause the estimated number of indirect jobs lost to be less than those used in the EA analysis. The revised workforce estimates do not affect any impact conclusions presented in the EA.

Nonnuclear manufacturing activities associated with the proposed action would increase hazardous waste volumes by less than 7 percent and would not have significant impacts on waste management at KCP, SRS, LANL, and SNL/NM. Anticipated increases in waste volumes at these sites are well within the existing treatment, storage, and disposal capabilities. Effluents and emissions due to waste management activities attributed to the proposed action would be negligible. Under the proposed action sanitary/industrial wastewater volumes are projected to increase at all sites, but not significantly. At KCP, SRS, and LANL, the increase is less than 1 percent over the current rate at these sites; at SNL/NM, the increase is less than 2 percent over the current rate. All sites have sufficient waste treatment, storage, and disposal capacity to handle the projected increases; therefore, no significant impacts are expected. At Mound, Pinellas, and RFP, nonnuclear production waste streams would be eliminated; however, this would not result in a significant impact.

No significant adverse impacts to the health of the public or workers is expected from implementation or operation activities associated with the proposed action at any of the sites. Hazard Indexes of less than 1.0 were calculated for onsite and at the site boundary at KCP, SRS, LANL, and SNL/NM. (The Hazard Index is a numerical indicator of the threshold between acceptable and unacceptable exposure levels of noncarcinogenic hazardous compounds. A Hazard Index value of 1.0 or less means that no adverse health effects are expected to occur.) The cancer risk to workers at KCP, SRS, LANL, and SNL/NM would be insignificant. The amount and types of chemicals associated with relocated activities would not add significantly to existing health conditions at these sites. Activities relocated to SNL/NM would result in annual cancer risks to workers of 6×10^{-6} due to the introduction of certain chemical solvents. The cancer risk to the public at SNL/NM was less than 10^{-6} annually. EPA accepts a two-level risk for carcinogens that depends upon the compound class and the hazard which it presents, so that risk levels of 10^{-5} and 10^{-6} are considered reasonable (55 FR 60848). Measures

such as substituting less toxic solvents or modifying production procedures would be implemented to minimize the cancer risk to workers at SNL/NM. No significant radiological health effects are expected at LANL, SNL/NM, or SRS as a result of the proposed action. The annual dose increment associated with the increase in tritium emissions at LANL and SNL/NM would be less than 0.1 mrem and 0.022 mrem effective dose equivalent, respectively. At SRS, the annual dose increment would be less than 0.001 mrem effective dose equivalent. These doses would result in an increased risk of less than $4.5x10^{-8}$ and $9.8x10^{-9}$ potential fatal cancers from 1 year of operation at LANL and SNL/NM, respectively, and $4.5x10^{-10}$ at SRS. The annual dose increment to workers at LANL, SNL/NM, and SRS would be less than 0.011 mrem. This dose would result in an incremental and cumulative increased risk of $4.9x10^{-9}$ and $1.3x10^{-7}$ potential fatal cancers, respectively, from 1 year of operation at these sites.

The accident profiles at each site would not change as a result of the proposed action. The probability or consequences of potential accidents would not increase appreciably at any of the sites since relocated functions involve activities and chemicals that are currently being performed at consolidation sites.

The proposed action would have no cumulative effects on the Complex, because the action represents a consolidation of existing activities and functions, rather than an initiation of new activities. In most instances, consolidation would reduce potential cumulative environmental impacts at all sites. Nonnuclear activities now located within aging facilities at donor sites would be transferred to sites with newly refurbished facilities. These facilities would be designed and constructed to incorporate DOE environment, safety, and health requirements on Complex reconfiguration and meet all applicable codes and standards. The facilities to which the nonnuclear activities would be transferred already contain virtually all of these operations, materials, and/or hazardous waste streams. Consolidation would also reduce the number of sites with activities generating these hazardous materials within the Complex.

Environmental Impacts of Alternatives

Environmental consequences discussed above at SRS, LANL, and SNL/NM under the proposed action would be the same or less under the Mound, Pinellas, and RFP alternatives and not significant. At the consolidation sites for each alternative (Mound, Pinellas, and RFP), substantial new construction would be required. If these alternatives were selected, additional site-specific NEPA documentation would be required.

Proposed Determination

Based on the information and analysis in the EA, DOE believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that incorporation into the Reconfiguration PEIS is not required. DOE will make its final determination on whether to issue a FONSI or to incorporate into the PEIS after the 30-day public review period.

Issued in Washington, DC this 1st day of July, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–16157 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–P

Morgantown Energy Technology Center; Financial Assistance Award; (Grant)

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(b), the DOE Morgantown Energy Technology Center gives notice of its plans to award a one year Grant to Pacific Gas and Electric, a California utility company, in the amount of $650,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880. Telephone: (304) 291–4087

Grant No.: DE–FG21–93MC30180

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Grant. The pending award is based on an unsolicited application for a research project entitled, "Technical Review Committee and Project Team Support" which was submitted by Pacific Gas and Electric. The objective of the research project is the acceleration of the transfer of advanced gas turbine technologies from commercial aircraft engines to electric power generation applications. The research is structured to identify high-efficiency gas turbine engine and cycle combinations that potentially could be developed and demonstrated by 1997–98 and commercialized between the years 200 and 2005.

The justification for acceptance of the unsolicited proposal is based on the activity being conducted by the applicant using its own resources; however, Department of Energy support of that activity will enhance the public benefits to be derived and the department knows of no other entity which is conducting the same research.

Dated: June 30, 1993.

Louie L. Calaway,

Director, Acquisition and Assistance Division Morgantown Energy Technology Center.

[FR Doc. 93–16159 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award; (Grant Renewal)

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance renewal award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) Criteria (A), the DOE, Morgantown Energy Technology Center (METC) gives notice of its plans to award a grant renewal to Syracuse University, Department of Chemical Engineering Department, c/o Office of Sponsored Programs, 113 Bowne Hall, Syracuse, NY 13244–1200, in the amount of approximately $150,000 and covers a twelve (12) month project period.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880. Telephone: (304) 291–4089.

Procurement Request No. 21–93MC28072.501

SUPPLEMENTARY INFORMATION: The pending award is based on a renewal application for continuing work necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The grant is to provide financial assistance to Syracuse University for conducting research focused on the utilization of low-quality natural gas by economically upgrading the gas to pipeline quality via membrane separation.

The objective of this follow-on effort is to evaluate the potential usefulness of membrane separation processes for the removal of acid gases, water vapor, and

nitrogen from low-quality natural gas. By providing financial support, DOE expects to stimulate utilization of U.S. natural gas resources, reduce oil imports, and help stabilize our energy supply.

Issued in Washington, DC, June 30, 1993.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–16158 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Coyote Springs Cogeneration Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) under section 102(2)(c) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321).

SUMMARY: BPA intends to prepare an EIS on the transmission integration of Portland General Electric's (PGE) Coyote Springs Cogeneration Project, an electric power generating plant proposed in Morrow County near the City of Boardman, Oregon. PGE has asked BPA to provide transmission integration services over the Federal transmission grid to one or more points of delivery on PGE's transmission system in Oregon.

The Coyote Springs Project would have two combined-cycle combustion turbines with a total electrical output of 494 megawatts (MW). The plant would also supply approximately 225,000 kilograms (500,000 pounds) of steam per hour to steam customers. A 2.4-kilometer (1.5-mile), 500-kilovolt (kV) transmission line and a new substation would be built to interconnect the plant with a nearby BPA transmission line. About 28 kilometers (18 miles) of natural gas pipeline spur would be built by Pacific Gas Transmission Company (PGT) from a point on their existing pipeline northeast of Ione, Oregon, to the plant site. The proposed cogeneration plant, transmission tap line, substation, and natural gas pipeline are parts of a single project.

BPA has assumed the role of lead agency for the project EIS. The Federal Energy Regulatory Commission (FERC) is a cooperating agency. The FERC will be preparing an EIS for PGT's second northwest expansion project which proposes 140 kilometers (90 miles) of new pipelines and compressor stations within Oregon. The pipeline to Coyote Springs will be evaluated separately by FERC in their EIS. BPA will summarize this information in the Coyote Springs EIS.

A fact sheet that summarizes project specifics, potential benefits, environmental considerations and scheduled events is currently being prepared. Persons who wish to receive the fact sheet or other information on the proposed project should contact one of the information sources listed below.

DATES: BPA has established a 30-day scoping period (beginning July 8, 1993) during which affected landowners, concerned citizens, special interest groups and local governments are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal are addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Comments on the proposed scope of the EIS are invited from all interested parties. Written comments should be sent to the address identified below. Comments may be made at an EIS scoping meeting to be held at Riverside High School in Boardman, Oregon, on July 29, 1993, from 7–10 p.m.

The State of Oregon Energy Facility Siting Council (EFSC) is currently evaluating PGE's "Application for a Site Certificate on the Coyote Springs Cogeneration Project." Oregon's site evaluation process, like NEPA, provides opportunity for public participation. BPA will coordinate its processes with those of the State of Oregon. The EIS scoping meeting will be jointly sponsored by BPA and EFSC. The meeting will provide information on the Coyote Springs Plant, the Pacific Gas Transmission Company's (PGT) natural gas pipeline, and BPA electrical facilities.

The draft EIS (DEIS) will be circulated for public review and comment. BPA will provide a public comment period and public comment meetings for the DEIS. BPA will consider and respond to comments received on the DEIS in the final EIS (FEIS).

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the DEIS. Send comment letters, requests to be placed on the project mailing list, and/or requests for more information to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION ON THIS PROJECT CONTACT: Mr. Kenneth Barnhart, BPA Project Environmental Coordinator, at (503) 230–3667, fax number (503) 230–3984, or BPA's Public Involvement Office at (503) 230–3478 in Portland; toll-free (800) 622–4519 for outside of Portland for questions and (800) 622–4520 for documents. Information may also be obtained from Mr. Tom Wagenhoffer, Snake River Area Manager, 101 W. Poplar, Walla Walla, Washington 99362, (509) 522–6227.

FOR FURTHER INFORMATION ON GENERAL DOE ENVIRONMENT REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: As identified in DOE's Regulations for Compliance with NEPA (10 CFR part 1021), Appendix D to subpart D, "Classes of Actions that Normally Require EISs," this proposed project falls within category D6, "Integrating transmission facilities" (i.e., transmission system additions for integrating major new sources of generation into a Power Marketing Administration's main grid).

Proposed Action

BPA proposes to amend its General Transmission Agreement with PGE to establish Coyote Springs as a point of interconnection for wheeling services. A 500-kV substation and 0.8-kilometer (0.5-mile) transmission loop line to the McNary-Slatt 500-kV line will connect the new Coyote Springs Cogeneration Project with BPA's transmission grid. BPA also would install microwave communication facilities to connect Coyote Springs with BPA's existing operations network.

PGE proposes to build the Coyote Springs cogeneration plant on a site within the Port of Morrow Industrial Park. Associated facilities that would also be installed at the plant site include an electrical substation, oil storage tanks, water storage tanks, cooling towers, a workshop, a warehouse, and administrative offices. PGE also plans to build a 1.6-kilometer (1-mile) 500-kV transmission line from the plant to the substation.

When the project is complete, the integration of the Coyote Springs cogeneration plant into the BPA system would occur at the new substation. From this substation, power will be transmitted over the McNary-Slatt 500-kV line to one or more points of delivery. PGE will pay BPA for this service.

All proposed facilities are located within the Port of Morrow Industrial Park near the City of Boardman, Oregon.

VOL 58 ISS 129 JL 8 1993 UMI

Alternatives

Alternatives identified for evaluation in the EIS are: (1) The proposed section; and (2) no action (the consequences of not providing transfer services to PGE).

Identification of Environmental Issues

BPA plans to prepare an EIS addressing both PGE's Coyote Springs cogeneration plant and the associated transmission facilities. This decision is the result of two factors: (1) The Coyote Springs cogeneration plant depends on BPA's transmission grid to deliver electricity to PGE's customers; and (2) no other Federal or state agency is currently preparing an EIS on the Coyote Springs plant. NEPA and associated court rulings direct Federal agencies to consider the environmental impacts of all connected actions even when such actions are proposed by others. In the absence of another EIS, BPA intends to scope its EIS so that the impacts of both transmission elements and the Coyote Springs cogenerations plant are addressed.

Issues presently identified for consideration is the DEIS fall within two categories as follows: *Coyote Springs cogeneration plant*: (1) Air quality impacts; (2) noise impacts from plant operation; (3) aesthetic impacts; (4) socioeconomic impacts created by an influx of construction workers in a sparsely populated area; and (5) impacts to nearby wildlife areas. *Transmission Facilities*: (1) Removal of agricultural land from production at the substation site; (2) disruption of agricultural activities under the transmission line; (3) potential effects of transmission line tower construction in wetlands; (4) concern over possible health effects from exposure to electromagnetic fields, such as those produced by high-voltage transmission lines, and what those effects might be; (5) aesthetic effects of a new transmission line and substation as viewed from Interstate Highway 84; and (6) potential impacts on cultural resources.

These, together with any additional issues identified through the scoping process, will be examined in the EIS.

Issued in Portland, Oregon on June 28, 1993.

Randall W. Hardy,

Administrator.

[FR Doc. 93–16164 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–723–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 30, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER93–723–000]

Take notice that PacifiCorp, on June 24, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Contract No. 93–LAO 714 for the Installation of Facilities at PacifiCorp's Laramie Substation between PacifiCorp and Western Area Power Administration (Western).

The contract provides for the installation of a 13.8 kV bay in PacifiCorp's Laramie Substation to serve Western's Rural Electric Company load.

PacifiCorp requests an effective date of sixty days from the date of the Commission's receipt of its filing.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER93–726–000]

Take notice that on June 25, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Finch, Pruyn and Company, Inc. (Finch) dated January 1, 1988. This agreement provides for transmission service by Niagara Mohawk for Finch's 2 MW purchase from the Feeder Dam hydroelectric facility. The services under this agreement have commenced as of January 1, 1988.

Niagara Mohawk request waiver of the Commission's notice requirements, 18 CFR § 35.3(b), 35.11.

Copies of this filing were served upon Finch and the New York State Public Service Commission.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER93–503–000]

Take notice that on June 23, 1993, Commonwealth Edison Company (Edison) submitted for filing additional cost data in support of the rates submitted for filing in this docket on March 29, 1993, pursuant to contracts between Edison and the Cities of Batavia, Naperville, and St. Charles, Illinois. Edison renewed its request for a June 1, 1993 effective date.

Copies of this filing were served on Batavia, Naperville and St. Charles and the Illinois Commerce Commission.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER93–593–000]

Take notice that on June 23, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing additional information requested by the Commission staff in the above referenced docket.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER93–720–000]

Take notice that on June 22, 1993, (Entergy Services) as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the Entergy Operating Companies) tendered for filing the Third Transmission Service Agreement (Third TSA) between Entergy Services and Entergy Power, Inc. (Entergy Power). The Third TSA sets out the terms and conditions of non-firm transmission service under the Entergy Operating Companies' Transmission Service Tariff, which has been filed in Docket No. ER91–569–000, for the sale of capacity and energy to Associated Electric Cooperative, Inc.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Power, Inc.

[Docket No. ER93–719–000]

Take notice that Entergy Power, Inc. (Entergy Power) on June 22, 1993 tendered for filing Amendment No. 2 to the Interchange Agreement between Entergy Power, Inc. and Associated Electric Cooperative, Inc. Entergy Power states that the purpose of the Second Amendment is to amend Service Schedule LF—Limited Firm Capacity of the Interchange Agreement to specify a rate cap for capacity and associated energy sold by Entergy Power under that schedule.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Company

[Docket No. ER93–529–000]

Take notice that on June 25, 1993, Union Electric Company (UE) tendered for filing a request for a change in the effective date of the Facilities Use Agreement (Agreement) between UE and Electric Energy, Incorporated (EEI) which was accepted for filing on March 31, 1993. UE asserts that the purpose of the amended filing is to modify the effective date of the Agreement from May 28, 1993 to January 1, 1992 and to request a waiver of the Commission's notice provision.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER93–697–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on June 21, 1993, tendered for filing a corrected Exhibit B to the Power Sales Agreement and the Conjunctive Transmission Service Agreement between Wisconsin Electric and the Wisconsin Public Power Inc. SYSTEM. The June 7 submittal incorrectly listed the voltage of the North Kaukauna delivery point, which was not the subject of the filing.

Wisconsin Electric renews its request for an effective date coincident with the initial receipt of service through the new delivery point, which is estimated to occur on or about June 10, 1993.

Copies of the filing have been served on the Village of Slinger, the Wisconsin Public Power Inc. SYSTEM, and the Public Service Commission of Wisconsin.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on Behalf of West Penn Power Company

[Docket No. ER93–728–000]

Take notice that on June 25, 1993, Allegheny Power Service Corporation on behalf of West Penn Power Company filed an application for an order accepting two new delivery points for service to Pennsylvania Power & Light Company's customers under an existing Electric Service Agreement.

Copies of this filing has been provided to the Pennsylvania Public Utility Commission.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company; Wisconsin Public Service Corporation

[Docket No. ER93–724–000]

Take notice that on June 24, 1993, Commonwealth Edison Company (Edison) tendered for filing a Power Sales Tariff, dated June 4, 1993, and Wisconsin Public Service Corporation, Inc. (Wisconsin) tendered for filing an Interchange Agreement, dated June 8, 1993. The Power Sales Tariff provides for Edison to make Firm Power, Short Term Power, and General Purpose Energy available to a customer whenever mutually agreed upon. Edison also submitted a Service Agreement, dated June 4, 1993, to the Tariff establishing Wisconsin as a customer under the Tariff. The Interchange Agreement provides for the sale of Negotiated Capacity and General Purpose Energy to Edison upon mutual agreement. The Companies also submitted for filing a Letter Agreement, dated June 8, 1993, whereby Edison and Wisconsin agree to cancel two existing Letter Agreements, dated May 5, 1987 and February 1, 1990, and Notices of Cancellation with respect to those Rate Schedules. Service previously provided under the Letter Agreements will now be provided under the Tariff and Interchange Agreement.

Copies of this filing were served upon Wisconsin, the Illinois Commerce Commission and the Wisconsin Public Service Commission.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. The Washington Water Power Company

[Docket No. ER93–722–000]

Take notice that on June 24, 1993, The Washington Water Power Company tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR part 35, proposed changes to its FERC electric service tariffs, Schedule 61, for the purpose of deleting Modern Electric Water Company and the City of Chewelah as customers. Washington Water Power requests waiver of the Commission's 60-day filing requirement.

A copy of the filing was mailed to Modern Electric Water Company and the City of Chewelah.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Great Bay Power Corporation

[Docket No. ER93–721–000]

Take notice that on June 23, 1993, Great Bay Power Corporation (Great Bay), by and through representatives of its power marketing agent, tendered for filing an Agreement for Short Term Sales between Great Bay Power Corporation and Bangor Hydro-Electric Company, dated as of August 1, 1993.

Great Bay states that a copy of the filing has been sent to Bangor Hydro. Great Bay also requests waiver of the notice provisions of § 35.3 of the Commission's Regulations, so that service under the Agreements can begin on August 1, 1993, for good cause shown.

Comment date: July 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER93–219–002]

Take notice that on June 21, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a response to the Commission's May 21, 1993 order in Docket No. ER93–219–000 regarding Interconnection Agreements between Western Massachusetts Electric Company (WMECO) and MASSPOWER, Inc. (MASSPOWER). NUSCO renews its request for an effective date as originally filed.

NUSCO states that copies of the filing have been mailed to MASSPOWER.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16044 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93-3638-000 through ST93-3952-000]

TransAmerican Natural Gas Corp., Self-Implementing Transactions

July 1, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93-3638	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	05-03-93	C	2,000	N	I	02-06-93	Indef.
ST93-3639	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	05-03-93	C	2,000	N	I	02-28-93	Indef.
ST93-3640	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	05-03-93	C	10,000	N	I	01-09-93	Indef.
ST93-3641	Transamerican Natural Gas Corp.	Natural Gas Pipeline Co. of America.	05-03-93	C	20,000	N	I	03-18-93	Indef.
ST93-3642	Transamerican Natural Gas Corp.	Trunkline Gas Co.	05-03-93	C	30,000	N	I	04-16-93	Indef.
ST93-3643	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	05-03-93	G-S	10,200,000	N	I	04-14-93	Indef.
ST93-3644	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	05-03-93	G-S	20,000	N	I	04-01-93	Indef.
ST93-3645	Tennessee Gas Pipeline Co.	Amoc Energy Trading Corp.	05-03-93	G-S	200,000	N	I	04-01-93	Indef.
ST93-3646	KM Wattenberg Trans. L.L. Co.	Colorado Interstate Gas Co.	05-03-93	G	5,000	N	I	04-01-93	Indef.
ST93-3647	KM Wattenberg Trans. L.L. Co.	KN Gas Marketing, Inc.	05-03-93	G-S	50,000	A	I	04-01-93	04-01-01

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3648	KM Wattenberg Trans. L.L. Co.	Amoco Production Co.	05–03–93	G–S	170,000	N	I	04–01–93	4–01–08
ST93–3649	KM Wattenberg Trans. L.L. Co.	Martin Exploration Management Co.	05–03–93	G–S	5,000	N	I	04–01–93	04–01–11
ST93–3650	KM Wattenberg Trans. L.L. Co.	North American Resources Co.	05–03–93	G–S	30,000	N	I	04–01–93	09–01–07
ST93–3651	KM Wattenberg Trans. L.L. Co.	Gerrity Oil & Gas Corp.	05–03–93	G–S	50,000	N	I	04–01–93	04–01–11
ST93–3652	Arkla Energy Resources Co.	Altair Energy Corp.	05–03–93	G–S	500	N	I	04–01–93	Indef.
ST93–3653	Panhandle Eastern Pipe Line Co.	Kokomo Gas & Fuel Co.	05–03–93	G–S	3,722	N	F	04–01–93	Indef.
ST93–3654	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	05–03–93	G–S	16,748	N	F	04–01–93	Indef.
ST93–3655	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	05–03–93	G–S	300,000	N	I	-1–01–92	Indef.
ST93–3656	Northwest Pipeline Corp.	Grand Valley Gas Co.	05–03–93	G–S	7,2500	N	F	04–01–93	Indef.
ST93–3657	Phillips Gas Pipeline Co.	Phillips Texas Border Pipeline Co.	05–03–93	B	75,000	A	I	02–01–93	Indef.
ST93–3658	Natural Gas P/ L Co of America.	Arco Natural Gas Marketing, Inc.	05–03–93	G–S	200,000	N	I	04–20–93	Indef.
ST93–3659	Natural Gas P/ L Co of America.	United Gas Services Co.	05–03–93	G–S	300,000	N	I	04–17–93	Indef.
ST93–3660	CNG Transmission Corp.	Public Service Electric & Gas Co.	05–03–93	G–S	7,000	N	I	11–01–92	Indef.
ST93–3661	CNG Transmission Corp.	Washington Gas Light.	05–03–93	G–S	30,000	N	I	11–01–92	Indef.
ST93–3662	CNG Transmission Corp.	Public Service Electric & Gas Co.	05–03–93	G–S	5,000	N	I	11–01–92	Indef.
ST93–3663	CNG Transmission Corp.	New Jersey Electric & Gas Co.	05–03–93	G–S	4,749	N	I	11–01–92	Indef.
ST93–3664	CNG Transmission Corp.	Public Service Electric & Gas Co.	05–03–93	G–S	6,150	N	I	11–01–92	Indef.
ST93–3665	CNG Transmission Corp.	Public Service Electric & Gas Co.	05–03–93	G–S	10,000	N	I	11–01–92	Indef.
ST93–3666	CNG Transmission Corp.	Virginia Natural Gas Co.	05–03–93	G–S	6,650	Y	I	11–14–92	Indef.
ST93–3667	Shenandoah Gas Co.	Columbia Gas Transmission Corp.	05–04–93	C	200	N	I	04–01–93	04–30–94
ST93–3668	KN Energy, Inc	Kerr McGee Corp.	05–04–93	G–S	30,000	N	I	03–09–93	Indef.
ST93–3669	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	05–04–93	G–S	200,000	N	I	04–13–93	Indef.
ST93–3670	Colorado Interstate Gas Co.	Helmerich & Payne, Inc.	05–04–93	G–S	40,000	N	I	04–01–93	Indef.
ST93–3671	ANR Pipeline Co.	Associated Natural Gas, Inc.	05–04–93	G–S	150,000	N	I	04–05–93	Indef.
ST93–3672	Mojave Pipeline Co.	Santa Fe Energy Resources, Inc.	05–04–93	G–S	20,000	N	I	04–28–93	04–27–08

VOL 58 ISS 129 JL 8 1993 UMI

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93-3673	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	05-04-93	C	10,000	N	I	04-15-93	Indef.
ST93-3674	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	05-04-93	C	20,000	N	I	04-20-93	Indef.
ST93-3675	Columbia Gas Transmission Corp.	Columbia Gas of Ohio.	05-04-93	G-S	2,266	Y	I	04-26-93	Indef.
ST93-3676	Columbia Gas Transmission Corp.	Ashland Petroleum Co.	05-04-93	G-S	30,000	N	I	04-22-93	Indef.
ST93-3677	Trunkline Gas Co.	Citizens Gas Supply Corp.	05-04-93	G-S	20,000	N	I	04-14-93	Indef.
ST93-3678	Trunkline Gas Co.	Brookland Interstate Natural Gas.	05-04-93	G-S	75,000	N	I	04-15-93	Indef.
ST93-3679	Trunkline Gas Co.	ANR Pipeline Co.	05-04-93	B	5,000	N	I	04-28-93	Indef.
ST93-3680	Trunkline Gas Co.	Enron Gas Marketing, Inc.	05-04-93	G-S	50,000	N	I	04-13-93	Indef.
ST93-3681	Trunkline Gas Co.	Hadson Gas Systems, Inc.	05-04-93	G-S	100,000	N	I	04-15-93	Indef.
ST93-3682	Trunkline Gas Co.	Yuma Gas Corp.	05-04-93	G-S	150,000	N	I	04-08-93	Indef.
ST93-3683	ANR Pipeline Co.	Wisconsin Gas Co.	05-05-93	G-S	94,738	N	F	04-01-93	03-31-98
ST93-3684	Northwest Pipelinc Corp.	Canadian Hydrocarbons Marketing.	05-05-93	G-S	20,514	N	F	03-09-93	04-28-99
ST93-3685	Natural Gas P/L Co of America.	Enron Gas Marketing, Inc.	05-05-93	G-S	150,000	N	I	04-24-93	INDRF
ST93-3686	Kern River Gas Transmission Co.	Nevada Cogeneration Associates.	05-05-93	G-S	100,000	N	F	04-12-93	Indef.
ST93-3687	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co.	05-05-93	B	131,630	N	F	04-05-93	Indef.
ST93-3688	Florida Gas Transmission Co.	Peoples Gas System, Inc.	05-05-93	G-S	140,943	N	F	04-06-93	Indef.
ST93-3689	Transcontinental Gas P/L Corp.	NGC Transportation, Inc.	05-05-93	G-S	3,040,000	N	I	04-23-93	Indef.
ST93-3690	Transcontinental Gas P/L Corp.	CNG Producing Co.	05-05-93	G-S	400,000	N	I	04-09-93	Indef.
ST93-3691	Valero Transmission, L.P..	Tennessee Gas Pipeline Co.	05-07-93	C	2,620	N	I	04-16-93	Indef.
ST93-3692	Tennessee Gas Pipeline Co.	Pennzoil Products Co.	05-07-93	G-S	1,500	N	F	05-01-93	Indef.
ST93-3693	Tennessee Gas Pipeline Co.	Catex Energy, Inc.	05-07-93	G-S	17,400	N	F	04-23-93	Indef.
ST93-3694	Northern Natural Gas Co.	Northwest Natural Gas Co.	05-07-93	B	158	N	F/I	04-01-93	Indef.
ST93-3695	Northern Natural Gas Co.	Wisconsin Natural Gas Co.	05-07-93	G-S	11,620	N	F/I	03-01-93	Indef.
ST93-3696	Mississippi River Trans. Corp.	Anson Co	05-07-93	G-S	500	N	I	04-01-93	Indef.
ST93-3697	Natural Gas P/L Co. of America.	KCS Energy Marketing, Inc.	05-07-93	G-S	150,000	N	I	04-24-93	Indef.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3698	Natural Gas P/ L Co. of America.	Yuma Gas Corp.	05–07–93	G–S	100,000	N	I	04–27–93	Indef.
ST93–3699	Trans-continental Gas P/L Corp.	Gasiantic Corp	05–10–93	G–S	20,000	N	I	04–19–93	Indef.
ST93–3700	Texas Gas Transmission Corp.	NGC Transportation, Inc.	05–10–93	G–S	5,000	N	I	07–11–92	Indef.
ST93–3701	Texas Gas Transmission Corp..	Commonwealth Aluminum Corp.	05–10–93	G–S	15,000	N	I	04–30–93	Indef.
ST93–3702	Texas Gas Transmission Corp..	NGC Transportation, Inc.	05–10–93	G–S	300,000	Y	I	08–01–92	Indef.
ST93–3703	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp.	05–11–93	C	10,000	N	I	02–02–93	Indef.
ST93–3704	Tennessee Gas Pipeline Co.	Arco Natural Gas Marketing, Inc.	05–10–93	G–S	1,415	N	I	04–08–93	Indef.
ST93–3705	Williams Natural Gas Co.	Vesta Energy Co.	05–11–93	G–S	800	N	F	04–13–93	11–01–93
ST93–3706	Natural Gas P/ L Co. of America.	NGC Transportation, Inc.	05–11–93	G–S	100,000	N	I	01–26–91	Indef.
ST93–3707	Natural Gas P/ L Co. of America.	Valero Gas Marketing, L.P.	05–11–93	G–S	32,097	N	F	05–01–93	05–31–93
ST93–3708	Trunkline Gas Co.	CNG Producing Co.	05–11–93	G–S	30,000	N	I	04–30–93	Indef.
ST93–3709	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	05–11–93	G–S	30,000	N	I	04–30–93	Indef.
ST93–3710	Panhandle Eastern Pipe Line Co.	Colorado Interstate Gas Co.	05–11–93	G	1,000	N	I	04–15–93	Indef.
ST93–3711	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	05–11–93	G–S	30,000	N	I	04–29–93	Indef.
ST93–3712	Panhandle Eastern Pipe Line Co.	Dunn Co	05–11–93	G–S	250	N	I	04–13–93	Indef.
ST93–3713	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	05–11–93	G–S	100,000	N	I	04–16–93	Indef.
ST93–3714	Gulf Energy Pipeline Co.	Trunkline Gas Co.	05–12–93	C	10,000	N	I	12–17–92	Indef.
ST93–3715	Louisiana Resources P/L Co., L.P.	Sabine Pipe Line Co.	05–12–93	C	50,000	N	I	05–01–93	Indef.
ST93–3716	Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	05–12–93	G	505	N	I	04–27–93	Indef.
ST93–3717	Tennessee Gas Pipeline Co.	Yuma Gas Corp.	05–12–93	G–S	125,000	N	I	05–01–93	Indef.
ST93–3719	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	05–12–93	B	200,000	N	I	04–17–93	Indef.
ST93–3720	Texas Eastern Transmission Corp.	Colonial Gas Co.	05–12–93	B	35,000	N	I	04–17–93	Indef.
ST93–3721	Northern Natural Gas Co.	Wiscoonsin Power & Light Co.	05–12–93	G–S	19,889	N	FI	04–01–93	11–05–02
ST93–3722	Northern Natural Gas Co.	Enermax, a Division of Nukem, Inc.	05–12–93	G–S	10,000	N	FI	04–01–93	Indef.
ST93–3723	Williston Basin Inter. P/L Co.	Unigas Energy Inc.	05–12–93	G–S	256,000	N	I	04–13–93	12–15–94

VOL 58 ISS 129 JL 8 1993 UMI

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3724	Midcon Texas Pipeline Corp.	Natural Gas Pipeline Co. of America.	05–12–93	C	50,000	N	I	03–17–93	Indef.
ST93–3725	Enogex Inc	Panhandle Eastern Pipeline Co.	05–13–93	C	10,000	N	I	04–25–93	Indef.
ST93–3726	Tennessee Gas Pipeline Co.	City of Huntsville, et al.	05–13–93	G–S	10,000	N	F	04–14–93	Indef.
ST93–3727	El Paso Natural Gas Co.	Louis Dreyfus Energy Corp.	05–13–93	G–S	92,700	N	I	05–01–93	Indef.
ST93–3728	El Paso Natural Gas Co.	Phillips Texas Border Pipeline Co.	05–13–93	G–S	123,600	N	I	04–30–93	Indef.
ST93–3729	Midcon Texas Pipeline Corp.	Trunkline Gas Co., et al.	05–13–93	C	100,000	N	I	04–01–93	04–01–95
ST93–3730	Midcon Texas Pipeline Corp.	Natural Gas Pipeline Co. of America.	05–13–93	C	104,000	N	I	04–01–93	04–01–13
ST93–3731	Northwest Pipeline Corp.	PG&E Resources Co.	05–13–93	G–S	10,000	N	I	03–01–93	Indef.
ST93–3732	Williston Basin Inter. P/L Co.	Consolidated Natural Gas Limited.	05–13–93	G–S	256,000	N	I	04–14–93	12–15–94
ST93–3733	Algonquin Gas Transmission Co.	NGC Transportation, Inc.	05–14–93	G–S	625,000	N	I	04–29–93	Indef.
ST93–3734	ANR Pipeline Co.	Texaco Gas Marketing, Inc.	05–14–93	G–S	100,000	N	F	05–01–93	Indef.
ST93–3735	ANR Pipeline Co.	Mobil Natural Gas, Inc.	05–14–93	G–S	50,000	N	I	04–28–93	Indef.
ST93–3736	ANR Pipeline Co.	Williams Gas Marketing Co.	05–14–93	G–S	30,000	N	I	04–27–93	Indef.
ST93–3737	ANR Pipeline Co.	Tenaska Gas Marketing Ventures.	05–14–93	G–S	50,000	N	F	05–01–93	Indef.
ST93–3738	ANR Pipeline Co.	Gas Energy Development Co.	05–14–93	G–S	10,000	N	I	05–01–93	Indef.
ST93–3739	ANR Pipeline Co.	Semco Energy Services Inc.	05–14–93	G–S	20,000	N	I	05–01–93	Indef.
ST93–3740	ANR Pipeline Co.	Columbia Gas of Ohio, Inc.	05–14–93	B	100,000	N	I	05–01–93	Indef.
ST93–3741	ANR Pipeline Co.	Ward Gas Marketing, Inc.	05–14–93	G–S	50,000	N	F	05–01–93	Indef.
ST93–3742	ANR Pipeline Co.	Tenaska Gas Marketing Ventures.	05–14–93	G–S	50,000	N	F	05–01–93	Indef.
ST93–3743	Transwestern Pipeline Co.	Amarillo Natural Gas, Inc.	05–14–93	G–S	900	N	I	05–01–93	Indef.
ST93–3744	Transwestern Pipeline Co.	NGP Pipeline Co.	05–14–93	B	50,000	A	I	05–01–93	Indef.
ST93–3745	Transwestern Pipeline Co.	Snyder Oil Corp.	05–14–93	G–S	50,000	N	I	05–01–93	Indef.
ST93–3746	Transwestern Pipeline Co.	Anthem Energy Co., L.P.	05–14–93	G–S	100,000	N	I	05–01–93	Indef.
ST93–3747	Florida Gas Transmission Co.	West Florida Natural Gas Co.	05–14–93	G–S	12,415	N	F	04–23–93	Indef.
ST93–3748	Gateway Pipeline Co.	Arco Natural Gas Marketing, Inc.	05–14–93	G–S	25,000	N	I	05–01–93	08–29–93
ST93–3749	Gateway Pipeline Co.	Monsanto Co ..	05–14–93	G–S	100,000	N	I	05–10–93	09–07–93
ST93–3750	United Gas Pipe Line Co.	Victoria Gas Corp.	05–14–93	G–S	104,800	N	I	05–04–93	09–01–93
ST93–3751	United Gas Pipe Line Co.	NGC Transportation, Inc.	05–14–93	G–S	157,200	N	I	05–04–93	09–01–93

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3752	United Gas Pipe Line Co.	Vesta Energy Co.	05–14–93	G–S	104,800	N	I	05–04–93	09–01–93
ST93–3753	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	05–14–93	G–S	102,704	N	I	05–04–93	09–01–93
ST93–3754	United Gas Pipe Line Co.	Mid Louisiana Marketing Co.	05–14–93	G–S	26,200	N	I	05–04–93	09–01–93
ST93–3755	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	05–14–93	G–S	150,000	N	I	05–01–93	Indef.
ST93–3756	Arkla Energy Resources Co.	Aurora Natural Gas & Assoc. Product.	05–14–93	G–S	20	N	I	05–01–93	Indef.
ST93–3757	Southern Natural Gas Co.	Scana Hydrocarbons, Inc.	05–14–93	G–S	50,000	N	I	05–04–93	Indef.
ST93–3758	Southern Natural Gas Co.	Woodward Marketing, Inc.	05–14–93	G–S	10,000	N	I	04–27–93	Indef.
ST93–3759	Southern Natural Gas Co.	Southwire Co ..	05–14–93	G–S	50,000	N	I	04–24–93	Indef.
ST93–3760	Southern Natural Gas Co.	Scana Hydrocarbons, Inc.	05–14–93	G–S	50,000	N	I	05–04–93	Indef.
ST93–3761	Southern Natural Gas Co.	Woodward Marketing, Inc.	05–14–93	G–S	10,000	N	I	04–22–93	Indef.
ST93–3762	Texas Gas Gathering.	Nat. Gas P/L Co. of America, et al.	05–17–93	C	5,000	N	I	05–01–93	Indef.
ST93–3763	Transtexas Pipeline.	Texas Eastern Transmission Corp.	05–17–93	C	5,500	N	I	05–01–93	Indef.
ST93–3764	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	05–17–93	C	9,900	N	I	05–01–93	Indef.
ST93–3765	Valero Transmission, L.P.	Northern Natural Gas Co.	05–17–93	C	30,000	N	I	05–02–93	Indef.
ST93–3766	Valero Transmission, L.P.	Florida Gas Transmission.	05–17–93	C	25,000	N	I	05–01–93	Indef.
ST93–3767	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	05–17–93	C	100,000	N	I	05–01–93	Indef.
ST93–3768	Valero Transmission, L.P.	Valero Interstate Transmission Corp.	05–17–93	C	40,000	N	I	05–01–93	Indef.
ST93–3769	East Tennessee Natural Gas Co.	Direct Gas Supply Corp.	05–17–93	G–S	20,000	N	I	05–11–93	Indef.
ST93–3770	Northern Natural Gas Co.	National Gas Resources, L.P.	05–17–93	G–S	100,000	N	F/I	04–23–93	Indef.
ST93–3771	Trunkline Gas Co.	Polaris Pipeline Corp.	05–17–93	G–S	30,000	N	I	05–02–93	Indef.
ST93–3772	Trunkline Gas Co.	CNG Producing Co.	05–17–93	G–S	25,000	N	I	05–01–93	Indef.
ST93–3773	Trunkline Gas Co.	Northern Illinois Gas Co.	05–17–93	G–S	200,000	N	I	05–01–93	Indef.
ST93–3774	Trunkline Gas Co.	Aquila Energy Marketing Corp.	05–17–93	G–S	100,000	N	I	05–01–93	Indef.
ST93–3775	Natural Gas P/L Co. of America.	O&R Energy, Inc.	05–17–93	G–S	50,000	N	I	05–01–93	Indef.
ST93–3776	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp.	05–17–93	G–S	15,000	N	I	05–08–93	Indef.
ST93–3777	Columbia Gas Transmission Corp.	Washington Steel Corp.	05–17–93	G–S	826	Y	F	05–01–93	Indef.
ST93–3778	Columbia Gas Transmission Corp.	M&B Industrial Gas Development Corp.	05–17–93	G–S	10,200	Y	I	05–01–93	Indef.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3779	Columbia Gas Transmission Corp.	J.W. Kinzer	05–17–93	G–S	16,330	N	F	05–01–93	Indef.
ST93–3780	Columbia Gas Transmission Corp.	Equitable Gas Co.	05–17–93	G–S	60,000	N	I	05–02–93	Indef.
ST93–3781	Columbia Gas Transmission Corp.	Providence Gas Co.	05–17–93	G–S	50,000	N	I	05–01–93	Indef.
ST93–3782	Enogex Inc	Arkla Energy Resources.	05–18–93	C	50,000	N	I	05–01–93	Indef.
ST93–3783	Enogex Inc	Williams Natural Gas Co.	05–18–93	C	50,000	N	I	05–01–93	Indef.
ST93–3784	Enogex Inc	Arkla Energy Resources.	05–18–93	C	200,000	N	I	05–01–93	Indef.
ST93–3785	Sabine Pipe Line Co.	Tejas Power Corp.	05–18–93	G–S	100,000	N	I	04–21–93	Indef.
ST93–3786	Sabine Pipe Line Co.	CNG Producing Co.	05–18–93	G–S	105,000	N	I	04–30–93	Indef.
ST93–3787	Transok Gas Transmission Co.	Eagle Gas Marketing Co.	05–18–93	C	10,000	N	I	05–01–93	Indef.
ST93–3788	Transok Gas Transmission Co.	Mid-Continent Energy, Inc.	05–18–93	C	10,000	N	I	05–01–93	Indef.
ST93–3789	El Paso Natural Gas Co.	Entrade Corp ..	05–18–93	G–S	50,000	N	I	04–21–93	Indef.
ST93–3790	El Paso Natural Gas Co.	Cimarron Gas Cos., Inc.	05–18–93	G–S	15,000	N	I	05–01–93	Indef.
ST93–3791	El Paso Natural Gas Co.	Valero Gas Marketing, L.P.	05–18–93	G–S	206,000	N	I	05–01–93	Indef.
ST93–3792	Tennessee Gas Pipeline Co.	Tenngasco Corp.	05–19–93	G–S	24,000	A	F	04–19–93	09–18–93
ST93–3793	Tennessee Gas Pipeline Co.	Bay State Gas Co.	05–19–93	G–S	678,700	N	I	04–24–93	Indef.
ST93–3794	Tennessee Gas Pipeline Co.	O & R Energy, Inc.	05–19–93	G–S	2,750,000	N	I	04–24–93	Indef.
ST93–3795	Tennessee Gas Pipeline Co.	Atlanta Gas Light Co.	05–19–93	G–S	16,979	N	F	04–20–93	Indef.
ST93–3796	Equitrans, Inc .	Energy Sales Co.	05–19–93	G–S	31,755	N	I	05–11–93	Indef.
ST93–3797	United Gas Pipe Line Co.	Amax Oil & Gas Inc.	05–19–93	G–S	20,960	N	I	05–13–93	09–10–93
ST93–3798	United Gas Pipe Line Co.	MG Natural Gas Corp.	05–19–93	G–S	115,280	N	I	05–13–93	09–10–93
ST93–3799	United Gas Pipe Line Co.	Prior Intrastate Corp.	05–19–93	G–S	524,000	N	I	05–13–93	09–10–93
ST93–3800	United Gas Pipe Line Co.	Pontchartrain Natural Gas System.	05–19–93	G–S	25,000	N	I	05–10–93	09–07–93
ST93–3801	United Gas Pipe Line Co.	Cytec Industries.	05–19–93	G–S	7,000	N	F	05–01–93	08–29–93
ST93–3802	United Gas Pipe Line Co.	Aquila Energy Marketing Corp.	05–19–93	G–S	50,000	N	I	05–01–93	08–29–93
ST93–3803	United Gas Pipe Line Co.	Chevron U.S.A., Inc.	05–19–93	G–S	50,000	N	I	05–01–93	08–29–93
ST93–3804	Florida Gas Transmission Co.	City of Leesburg.	05–19–93	G–S	2,500	N	F	05–01–93	Indef.
ST93–3805	Florida Gas Transmission Co.	Citrus Industrial Sales Co., Inc.	05–19–93	G–S	1,300	Y	F	05–01–93	04–30–94
ST93–3806	Transcontinental Gas P/L Corp.	Arco Natural Gas Marketing, Inc.	05–19–93	G–S	8,459,000	N	I	05–05–93	Indef.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3807	Transcontinental Gas P/L Corp.	United Gas Pipe Line Co.	05–19–93	G	169,500	N	I	05–6–93	Indef.
ST93–3808	ANR Pipeline Co.	MG Natural Gas Corp.	05–19–93	G–S	30,000	N	F	05–01–93	Indef.
ST93–3809	ANR Pipeline Co.	Chevron U.S.A. Production Co.	05–19–93	G–S	100,000	N	F	05–01–93	Indef.
ST93–3810	ANR Pipeline Co.	ANR Production Co.	05–19–93	G–S	100,000	A	I	05–01–93	Indef.
ST93–3811	ANR Pipeline Co.	Pennzoil Gas Marketing Co.	05–19–93	G–S	5,000	N	I	05–01–93	Indef.
ST93–3812	ANR Pipeline Co.	Arco Natural Gas Marketing, Inc.	05–19–93	G–S	100,000	N	F	05–01–93	Indef.
ST93–3813	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	05–20–93	C	5,000	N	I	05–01–93	Indef.
ST93–3814	Overland Trail Transmission Co.	Kern River Gas Transmission.	05–20–93	C	50,000	Y	I	01–05–93	Indef.
ST93–3815	Tennessee Gas Pipeline Co.	Laser Marketing Co.	05–20–93	G–S	83,325	N	I	05–01–93	Indef.
ST93–3816	Tennessee Gas Pipeline Co.	Centran Corp ..	05–20–93	G–S	20,000	N	I	04–20–93	Indef.
ST93–3817	Pacific Gas Transmission Co.	Brooklyn Interstate Natural Gas.	05–20–93	G–S	103,980	N	I	04–23–93	Indef.
ST93–3818	Natural Gas P/L Co. of America.	Transok Gas Co.	05–20–93	G–S	30,000	N	I	05–01–93	Indef.
ST93–3819	Natural Gas P/L Co. of America.	Northern Indiana Public Service Co.	05–20–93	G–S	100,000	N	I	04–29–93	Indef.
ST93–3820	Natural Gas P/L Co. of America.	Seagull Marketing Services, Inc.	05–20–93	G–S	40,000	N	I	10–01–90	Indef.
ST93–3821	Natural Gas P/L Co. of America.	CMS Gas Marketing.	05–20–93	G–S	50,000	N	I	05–01–93	Indef.
ST93–3822	Florida Gas Transmission Co.	Florida Public Utilities.	05–20–93	G–S	2,877	N	I	05–12–93	Indef.
ST93–3823	Florida Gas Transmission Co.	Natural Gas Services, Inc.	05–20–93	G–S	50,000	N	I	05–01–93	Indef.
ST93–3824	Transcontinental Gas P/L Corp.	Seagull Marketing Services, Inc.	05–20–93	G–S	1,883,000	N	I	05–01–93	Indef.
ST93–3825	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co.	05–20–93	G–S	100,000	N	I	05–01–93	Indef.
ST93–3826	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc.	05–20–93	G–S	130,000	N	I	05–12–93	Indef.
ST93–3827	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, Et Al.	05–21–93	C	20,000	N	I	05–06–93	Indef.
ST93–3828	Tennessee Gas Pipeline Co.	Providence Gas Co.	05–21–93	G–S	60,000	N	I	04–21–93	Indef.
ST93–3829	Tennessee Gas Pipeline Co.	Eastex Hydrocarbons, Inc.	05–21–93	G–S	20,500	N	I	05–02–93	Indef.
ST93–3830	Tennessee Gas Pipeline Co.	Procter & Gamble Paper Products Co.	05–21–93	G–S	7,556	N	F	04–23–93	Indef.

VOL 58 ISS 129 JL 8 1993 UMI

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93-3831	Tennessee Gas Pipeline Co.	Torch Gas, L. C.	05-21-93	G-S	100,000	N	I	05-20-93	Indef.
ST93-3832	Delhi Gas Pipeline Corp.	ANR Pipeline Co., Et Al.	05-21-93	C	10,000	N	I	05-04-93	Indef.
ST93-3833	Delhi Gas Pipeline Corp.	ANR Pipeline Co., Et Al.	05-21-93	C	1,000	N	I	05-01-93	Indef.
ST93-3834	Williams Natural Gas Co.	General Atlantic Resources, Inc.	05-21-93	G-S	100	N	I	04-22-93	04-01-94
ST93-3835	Northwest Pipeline Corp.	Southwest Gas Corp.	05-21-93	G-S	15,000	N	F	05-04-93	Indef.
ST93-3836	Northwest Pipeline Corp.	Development Associates, Inc.	05-21-93	G-S	40,784	N	F	05-01-93	Indef.
ST93-3837	El Paso Natural Gas Co.	Natgas Inc	05-21-93	G-S	14,965	N	I	04-10-93	Indef.
ST93-3838	Transtexas Pipeline.	Natural Gas Pipeline Co. of America.	05-24-93	C	5,000	N	I	05-08-93	Indef.
ST93-3839	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	05-24-93	C	5,500	N	I	05-08-93	Indef.
ST93-3840	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America.	05-24-93	C	22,400	N	I	05-08-93	Indef.
ST93-3841	Valero Transmission, L.P.	El Paso Natural Gas Co.	05-24-93	C	5,000	N	I	05-08-93	Indef.
ST93-3842	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	05-24-93	C	4,500	N	I	05-08-93	Indef.
ST93-3843	Valero Transmission, L.P.	Northern Natural Gas Co.	05-24-93	C	5,000	N	I	05-08-93	Indef.
ST93-3844	Valero Transmission, L.P.	Arkla Energy Resources.	05-24-93	C	10,300	N	I	05-08-93	Indef.
ST93-3845	Webb/DuVal Gaterers.	Texas Eastern Transmission Co.	05-24-93	C	100,000	N	I	03-01-93	Indef.
ST93-3846	Webb/DuVal Gaterers.	Natural Gas Pipeline Co. of Ameria.	05-24-93	C	100,000	N	I	03-01-93	Indef.
ST93-3847	Webb/DuVal Gaterers.	Tennessee Gas Pipeline Co.	05-24-93	C	100,000	N	I	03-01-93	Indef.
ST93-3848	Westar Transmission Co.	El Paso Natural Gas Pipeline Co.	05-24-93	C	25,000	N	I	12-01-92	Indef.
ST93-3849	Westar Transmission Co.	Natural Gas Pipeline Co.	05-24-93	C	10,000	N	I	03-03-93	Indef.
ST93-3850	Tennessee Gas Pipeline Co.	Tinken Col	05-24-93	G-S	300,000	N	I	04-24-93	Indef.
ST93-3851	Tennessee Gas Pipeline Co.	Equitable Petroleum Corp.	05-24-93	G-S	1,700	N	I	04-24-93	Indef.
ST93-3852	Northern Natural Gas Co.	Brooklyn Interstate Nat. Gas Corp.	05-24-93	G-S	100,000	N	F/I	05-01-93	Indef.
ST93-3853	Northern Natural Gas Co.	Snyder Oil Corp.	05-24-93	G-S	10,400	N	F/I	05-01-93	Indef.
ST93-3854	Northern Natural Gas Co.	ANR Pipeline Co.	05-24-93	G	50,137	N	F/I	05-01-93	Indef.
ST93-3855	Enercorp Pipeline, Ltd.	Texas Eastern Transmission Corp.	05-24-93	C	10,000	N	I	01-01-93	Indef.
ST93-3856	Texas Gas Transmission Corp.	Seagull Marketing Services, Inc.	05-24-93	G-S	100,000	N	I	05-01-93	Indef.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3857	Texas Gas Transmission Corp.	NGC Transportation, Inc.	05–24–93	G–S	25,000	N	I	04–01–93	Indef.
ST93–3858	Texas Gas Transmission Corp.	Tenngasco Corp.	05–24–93	G–S	20,000	N	I	05–07–93	Indef.
ST93–3859	Natural Gas P/L Co. of America.	Anadarko Trading Co.	05–25–93	G–S	20,000	N	I	05–01–93	Indef.
ST93–3860	Columbia Gas Transmission Corp.	Northeast Ohio Natural Gas Corp.	05–25–93	B	50	N	F	05–10–93	Indef.
ST93–3861	Columbia Gas Transmission Corp.	Northeast Ohio Natural Gas Corp.	05–25–93	B	100	N	F	05–10–93	Indef.
ST93–3862	Algonquin Gas Transmission Co.	Direct Gas Supply Corp.	05–26–93	G–S	120,000	N	I	05–01–93	Indef.
ST93–3863	Algonquin Gas Transmission Co.	Colonial Gas Co.	05–26–93	G–S	275,000	N	I	05–02–93	Indef.
ST93–3864	Trunkline Gas Co.	Yuma Gas Corp.	05–26–93	G–S	185,000	N	I	05–07–93	Indef.
ST93–3865	Trunkline Gas Co.	Woodward Marketing, Inc.	05–26–93	G–S	42,000	N	I	05–01–93	Indef.
ST93–3866	Trunkline Gas Co.	National Gas Resources Limited.	05–26–93	G–S	50,000	N	I	05–02–93	Indef.
ST93–3867	Trunkline Gas Co.	Cokinos Natural Gas Marketing.	05–26–93	G–S	100,000	N	I	05–04–93	Indef.
ST93–3868	Trunkline Gas Co.	Coastal Gas Marketing Co.	05–26–93	G–S	100,000	N	I	05–08–93	Indef.
ST93–3869	Trunkline Gas Co.	Catex Energy, Inc.	05–26–93	G–S	20,000	N	I	05–08–93	Indef.
ST93–3870	Texas Eastern Transmission Corp.	Union Electric Co.	05–26–93	B	50,000	N	I	05–12–93	Indef.
ST93–3871	Texas Eastern Transmission Corp.	Associated Intrastate Pipeline.	05–26–93	B	400,000	N	I	05–12–93	Indef.
ST93–3872	Texas Eastern Transmission Corp.	Amoco Energy Trading Corp.	05–26–93	G–S	1,000,000	N	I	05–08–93	Indef.
ST93–3873	Texas Eastern Transmission Corp.	Elizabeth Gas Co.	05–26–93	B	30,000	N	I	05–12–93	Indef.
ST93–3874	Texas Eastern Transmission Corp.	Arkla Energy Marketing Co.	05–26–93	G–S	700,000	N	I	05–01–93	Indef.
ST93–3875	Texas Eastern Transmission Corp.	Ledco, Inc	05–26–93	G–S	160,000	N	I	05–01–93	Indef.
ST93–3876	Texas Eastern Transmission Corp.	Highland Energy Co.	05–26–93	G–S	4,000	N	I	05–02–93	Indef.
ST93–3877	Texas Eastern Transmission Corp.	Yuma Gas Corp.	05–26–93	G–S	25,000	N	I	05–11–93	Indef.
ST93–3878	Texas Eastern Transmission Corp.	Amerada Hess Corp.	05–26–93	G–S	100,000	N	I	05–01–93	Indef.
ST93–3879	Texas Eastern Transmission Corp.	International Paper Co.	05–26–93	G–S	400,000	N	I	05–01–93	Indef.
ST93–3880	Texas Eastern Transmission Corp.	Progas U.S.A., Inc.	05–26–93	G–S	29,000	N	F	05–01–93	Indef.
ST93–3881	Texas Eastern Transmission Corp.	Progas U.S.A., Inc.	05–26–93	G–S	29,000	N	F	05–01–93	Indef.

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93-3882	Texas Eastern Transmission Corp.	Eastern American Energy Corp.	05-26-93	G-S	25,000	N	I	05-14-93	Indef.
ST93-3883	Texas Eastern Transmission Corp.	Olympic Fuels Co.	05-26-93	G-S	15,000	N	I	05-01-93	Indef.
ST93-3884	Natural Gas P/L Co of America.	Stand Energy Corp.	05-26-93	G-S	250	N	I	02-28-92	Indef.
ST93-3885	Ozark Gas Transmission System.	Rangeline Corp	05-26-93	G-S	50,000	N	I	05-01-93	Indef.
ST93-3886	Ozark Gas Transmission System.	Arkansas-Oklahomer Gas Corp.	05-26-93	B	250	N	I	05-01-93	Indef
ST93-3887	Enogex Inc	Ozark Gas Transmission System.	05-26-93	C	50,000	N	I	05-01-93	Indef.
ST93-3888	Enogex Inc	Ozark Gas Transmission System.	05-26-93	C	50,000	N	I	05-19-93	Indef.
ST93-3889	Enogex Inc	Enron Industrial Natural Gas Co.	05-26-93	C	20,000	N	I	05-01-93	Indef.
ST93-3890	Superior Offshore Pipeline Co.	Comstock Oil & Gas.	05-26-93	G-S	1,500	N	I	04-01-93	Indef.
ST93-3891	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc.	05-26-93	G-S	112,000	N	I	05-13-93	Indef.
ST93-3892	Transcontinental Gas P/L Corp.	Pennzoil Gas Marketing Co.	05-26-93	G-S	55,000	N	I	05-13-93	Indef.
ST93-3893	ONG Transmission Co.	ANR Pipeline Co.	05-27-93	C	50,000	N	I	04-28-93	Indef.
ST93-3894	Trunkline Gas Co.	Energy Development Corp.	05-27-93	G-S	75,000	N	I	05-13-93	Indef.
ST93-3895	Tennessee Gas Pipeline Co.	ANR Gathering Co.	05-27-93	G-S	300,000	N	I	05-01-93	Indef.
ST93-3896	United Gas Pipe Line Co.	Shell Gas Trading Co.	05-27-93	G-S	209,600	N	I	05-20-93	09-17-93
ST93-3897	United Gas Pipe Line Co.	Exxon Corp	05-27-93	G-S	104,800	N	I	05-20-93	09-17-93
ST93-3898	United Gas Pipe Line Co.	Sonat Marketing Co.	05-27-93	G-S	26,200	N	I	05-20-93	09-17-93
ST93-3899	United Gas Pipe Line Co.	Mitchell Energy Corp.	05-27-93	G-S	10,000	N	I	05-10-93	09-07-93
ST93-3900	United Gas Pipe Line Co.	Eastex Gas Transmission Co.	05-27-93	G-S	146,720	N	I	05-20-93	09-17-93
ST93-3901	Equitrans, Inc .	Vesta Energy Co.	05-27-93	G-S	5,060	N	I	05-01-93	Indef.
ST93-3902	Transcontinental Gas P/L Corp.	Oryx Gas Marketing, L.P.	05-27-93	G-S	1,542,450	N	I	05-14-93	Indef.
ST93-3903	Williams Natural Gas Co.	United Cities Gas Co.	05-27-93	B	1,000	N	I	05-04-93	Indef.
ST93-3904	CNG Transmission Corp.	City of Richmond.	05-28-93	G-S	50,000	N	I	05-01-93	Indef.
ST93-3905	CNG Transmission Corp.	O&R Energy ...	05-28-93	G-S	100,000	N	I	05-13-93	Indef.
ST93-3906	CNG Transmission Corp.	Equitable Resources Marketing.	05-28-93	G-S	9,125	N	I	05-13-93	Indef.
ST93-3907	CNG Transmission Corp.	AGF Direct Gas Sales Inc.	05-28-93	G-S	5,000	N	I	05-11-93	Indef.

VOL 58 ISS 129 JL 8 1993 UMI

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3908	CNG Transmission Corp.	Westvaco Corp	05–28–93	G–S	5,000	N	I	05–19–93	Indef.
ST93–3909	CNG Transmission Corp.	Energy Sales Co.	05–28–93	G–S	2,500	N	I	05–22–93	Indef.
ST93–3910	CNG Transmission Corp.	CNG Gas Services.	05–28–93	G–S	300,000	N	I	05–05–93	Indef.
ST93–3911	CNG Transmission Corp.	Equitable Resources Marketing.	05–28–93	G–S	50,000	N	I	05–01–93	Indef.
ST93–3912	CNG Transmission Corp.	Central Hudson Gas & Electric Co.	05–28–93	G–S	4,000	N	I	05–01–93	Indef.
ST93–3913	CNG Transmission Corp.	Energy Sales Co.	05–28–93	G–S	5,000	N	I	05–01–93	Indef.
ST93–3914	Sea Robin Pipeline Co.	Sonat Marketing.	05–28–93	G–S	10,320	A	F	04–01–93	04–30–93
ST93–3915	Sea Robin Pipeline Co.	ELF Exploration.	05–28–93	G–S	20,000	N	I	04–01–93	Indef.
ST93–3916	Sea Robin Pipeline Co.	Pennzoil Gas Marketing.	05–28–93	G–S	20,000	N	I	05–22–93	Indef.
ST93–3917	Sea Robin Pipeline Co.	Pennzoil Gas Marketing.	05–28–93	G–S	75,000	N	I	05–22–93	Indef.
ST93–3918	Northern Natural Gas Co.	Iowa Electric Light & Power Co.	05–27–93	G–S	73,420	N	F/I	05–01–93	Indef.
ST93–3919	Northern Natural Gas Co.	Retex Gathering Co.	05–27–93	G–S	30,000	N	F/I	05–06–93	Indef.
ST93–3920	Northern Natural Gas Co.	Florida Gas Transmission Co.	05–27–93	B	2,300	Y	F/I	05–01–93	Indef.
ST93–3921	Northern Natural Gas Co.	Suncor, Inc	05–27–93	G–S	60,000	N	F/I	04–23–93	Indef.
ST93–3922	Mississippi River Trans Corp.	National Steel Corp.	05–27–93	G–S	7,500	N	F	05–01–93	04–30–94
ST93–3923	Mississippi River Trans Corp.	Barnes West County Hospital.	05–27–93	G–S	160	N	I	05–01–93	Indef.
ST93–3924	Columbia Gulf Transmission Co.	Louisiana Natural Gas Pipeline, Inc.	05–27–93	G–S	65,000	N	I	05–14–93	Indef.
ST93–3925	Columbia Gulf Transmission Co.	Nerco Oil & Gas, Inc.	05–27–93	G–S	50,000	N	I	05–14–93	Indef.
ST93–3926	Columbia Gas Transmission Corp.	Potomac Electric Power Co.	05–27–93	G–S	600,000	Y	I	05–19–93	Indef.
ST93–3927	Natural Gas P/L Co. of America.	Tejas Power Corp.	05–27–93	G–S	60,000	N	I	10–06–88	Indef.
ST93–3928	Natural Gas P/L Co. of America.	Woodward Marketing, Inc.	05–27–93	G–S	20,000	N	I	05–20–93	Indef.
ST93–3929	Texas Gas Transmission Corp.	Conoco Inc	05–28–93	G–S	20,000	N	I	05–01–93	Indef.
ST93–3930	Texas Gas Transmission Corp.	Tenngasco Corp.	05–28–93	G–S	50,000	N	I	05–18–93	Indef.
ST93–3931	ONG Transmission Co.	Williams Natural Gas Co.	05–28–93	C	50,000	N	I	05–02–93	Indef.
ST93–3932	ONG Transmission Co.	Williams Natural Gas Co.	05–28–93	C	10,000	N	I	05–01–93	Indef.
ST93–3933	Williston Basin Inter P/L Co.	KN Energy, Inc	05–28–93	G–S	11,717,632	N	I	05–01–93	05–14–93
ST93–3934	Williston Basin Inter P/L Co.	Rainbow Gas Co.	05–28–93	G–S	353,154	A	I	04–29–93	07–31–94
ST93–3935	Williston Basin Inter P/L Co.	Exxon Corp	05–28–93	G–S	5,500	A	I	05–01–93	03–31–98
ST93–3936	Williston Basin Inter P/L Co.	Interenergy Corp.	05–28–93	G–S	2,000	N	F	05–01–93	06–30–93

Docket No.[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/ N[3]	Rate schedule	Date commenced	Projected termination date
ST93–3937	Williston Basin Inter P/L Co.	Coastal Gas Marketing Co.	05–28–93	G–S	137,725	A	I	04–30–93	06–18–94
ST93–3938	Williston Basin Inter P/L Co.	Hiland Partners	05–28–93	G–S	99,550	A	I	05–03–93	05–31–93
ST93–3939	Williston Basin Inter P/L Co.	Koch Hydrocarbon Co.	05–28–93	G–S	406,718	A	I	05–01–93	04–30–95
ST93–3940	Questar Pipeline Co.	Colorado Interstate Gas Co., et al.	05–26–93	G	10,000	N	I	05–01–93	Indef.
ST93–3941	Questar Pipeline Co.	Colorado Interstate Gas Co., et al.	05–28–93	G	100,000	N	I	05–01–93	Indef.
ST93–3942	Questar Pipeline Co.	MHW Energy, LTD.	05–28–93	G–S	1,000	N	I	05–05–93	Indef.
ST93–3943	Tennessee Gas Pipeline Co.	Meridian Marketing & Trans. Corp.	05–28–93	G–S	4,140	N	I	05–01–93	Indef.
ST93–3944	Tennessee Gas Pipeline Co.	Capital Oil & Gas, Inc.	05–28–93	G–S	6,300	N	I	05–02–93	Indef.
ST93–3945	Tennessee Gas Pipeline Co.	Stellar Gas Co	05–28–93	G–S	1,000,000	N	I	04–29–93	Indef.
ST93–3946	Tennessee Gas Pipeline Co.	Cornerstone Production Corp.	05–28–93	G–S	150,000	N	I	05–01–93	Indef.
ST93–3947	Kern River Gas Transmission Co.	Canwest Gas Supply U.S.A., Inc.	05–28–93	G–S	25,000	N	F	05–01–93	Indef.
ST93–3948	CNG Transmission Corp.	City of Richmond, et al.	05–28–93	G–S	9,125	N	I	05–01–93	Indef.
ST93–3949	Delhi Gas Pipeline Corp.	Nat. Gas P/L Co. of America, et al.	05–28–93	C	20,000	N	I	05–12–93	Indef.
ST93–3950	Lone Star Gas Co.	El Paso Natural Gas Co., et al.	05–28–93	C	45,000	N	I	05–01–93	Indef.
ST93–3951	Lone Star Gas Co.	Transcontinental Pipeline Co.	05–28–93	C	35,000	N	I	05–02–93	Indef.
ST93–3952	Lone Star Gas Co.	Texas Border Pipeline Co.	05–28–93	C	7,500	N	I	05–01–93	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and an "N" indicates no affiliation.

[FR Doc. 93–16039 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–514–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

July 1, 1993.

Take notice that on June 24, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93–514–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate the facilities necessary to establish twelve new delivery points to existing wholesale customers, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the facilities to establish four delivery points for Columbia Gas of Ohio, Inc., two delivery points for Columbia Gas of Pennsylvania, Inc., and six delivery points for Mountaineer Gas Company for use as commercial, residential, and industrial purposes.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16048 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93-526-000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

July 1, 1993.

Take notice that on June 29, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP93-526-000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to accommodate deliveries to Gas Utility District No. 1, of the Parish of East Baton Rouge, Louisiana (East Baton Rouge), under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new tap, a side valve, minor connecting pipe, and appurtenant facilities on its 30-inch mainline in East Baton Rouge Parish, Louisiana, in order to accommodate gas deliveries to East Baton Rouge. It is stated that FGT will transport, on an interruptible basis, up to 3,000 MMBtu of natural gas per day and up to 1,095,000 MMBtu of natural gas per year for delivery to East Baton Rouge. It is also stated that East Baton Rouge will reimburse FGT for all construction costs; estimated to be $55,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16049 Filed 7-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-16-4-000]

Granite State Gas Transmission Inc.; Proposed Changes in Rates

July 1, 1993.

Take notice that on June 28, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Original Sheet No. 28C, containing changes in rates for effectiveness on July 7, 1993.

According to Granite State, its filing flows through to its customers costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin). Granite State further states that Algonquin's restructuring compliance filing in Docket No. RS92-28-000 has been accepted by the Commission, effective June 1, 1993. Prior to restructuring, Granite State purchased a portion of its system gas supply from Algonquin under its Rate Schedules F-2 and F-3.

According to Granite State, on June 7, 1993, in Docket No. RP93-137-000, Algonquin filed a limited Section 4 filing to recover from its former sales customers Gas Supply Inventory Reservation Charges that Texas Eastern Transmission Corporation proposed to direct bill Algonquin. Granite State further states that, on Original Sheet No. 28C, it has allocated to its customers the direct billed costs proposed to be recovered by Algonquin in its filing in Docket No. RP93-137-000 on the same basis used by Algonquin in its direct billings to Granite State.

Granite State further states that copies of its filing were served on its customers and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16040 Filed 7-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-17-4-000]

Granite State Gas Transmission Inc.; Proposed Changes in Rates

July 1, 1993.

Take notice that on June 28, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Original Sheet No. 28D, containing changes in rates for effectiveness on July 7, 1993.

According to Granite State, its filing flows through to its customers costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin). Granite State further states that Algonquin's restructuring compliance filing in Docket No. RS92-28-000 has been accepted by the Commission, effective June 1, 1993. Prior to restructuring, Granite State purchased a portion of its system gas supply from Algonquin under its Rate Schedules F-2 and F-3.

Granite State further states that, on June 4, 1993, in Docket No. RP93-135-000, Algonquin filed a limited Section 4 filing to pass through to its customers Gas Supply Realignment Costs proposed to be billed to Algonquin by Texas Eastern Transmission Corporation. According to Granite State, on Original Sheet No. 28D, it has allocated to its customers the direct billings by Algonquin on the same basis used by Algonquin to direct bill Granite State.

Granite State further states that copies of its filing were served on its customers and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16041 Filed 7-7-93; 8:45 am]

BILLING CODE 6717-01-M

VOL 58 ISS 129 JL 8 1993 UMI

[Docket No. TM93-15-4-000]

Granite State Gas Transmission Inc.; Proposed Changes in Rates

July 1, 1993

Take notice that on June 28, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Original Sheet Nos. 28A and 28B, containing changes in rates for effectiveness on June 1, 1993 and July 7, 1993, respectively.

According to Granite State, its filing flows through to its customers costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin). Granite State further states that Algonquin's restructuring compliance filing in Docket No. RS92-28-000 has been accepted by the Commission, effective June 1, 1993. Prior to restructuring, Granite State purchased a portion of its system gas supply from Algonquin under its Rate Schedule F-2 and F-3.

Granite State further states that on June 4, 1993, in Docket No. RP93-134-000, filed revised tariff sheets in its FERC Gas Tariff, Fourth Revised Volume No. 1, to flow through to its customers two increments of Account No. 191 costs that will be directly billed to Algonquin by its upstream supplier, Texas Eastern Transmission Corporation (Texas Eastern). According to Granite State, on Original Sheet Nos. 28A and 28B, it has allocated each of the two increments of the direct billed costs to its customers on the same basis used by Algonquin in its direct billings to Granite State.

Granite State further states that copies of its filing were served on its customers and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16050 Filed 7-7-93; 8:45 am]

BILLING CODE 6717-01-M

Las Vegas Energy Storage Limited Partnership; Application for Determination of Exempt Wholesale Generator Status

July 1, 1993.

On June 21, 1993, Las Vegas Energy Storage Limited Partnership, Suite 900, 4365 Executive Avenue, San Diego, California 92121, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a limited partnership that will be engaged directly and exclusively in the business of owning and operating a pumped storage hydroelectric project of 100 MW to 200 MW in Jean, Nevada, and selling electrical power at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before July 16, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16045 Filed 7-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-13-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

July 1, 1993.

Take notice that on June 29, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighty-Ninth Revised Sheet No. 4 and Forty-Eighth Revised Sheet No. 4.1, to be effective July 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Eighty-Ninth Revised Sheet No. 4 and Forty-Eighth Revised Sheet No. 4.1 reflect an increase of 0.87 cents per MMBtu in the commodity cost of purchased gas from PGA rates contained in the out-of-cycle PGA filing to be effective June 1, 1993 in Docket No. TQ93-12-25-000. MRT also states that since the May 28, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16051 Filed 7-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-524-000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

July 1, 1993.

Take notice that on June 29, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93-524-000 a request pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to construct and operate an upgraded metering facility under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set

forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to abandon, in part, existing natural gas metering facilities at the Ritzville Meter Station and to install upgraded replacement facilities at the station, located in Adams County, Washington. Northwest states that the facilities are required to better accommodate existing delivery obligations to The Washington Water Power Company (Water Power). Northwest explains that the existing facilities are obsolete and inadequate. It is stated that, *inter alia,* the existing 4-inch positive displacement meter would be replaced by a 3-inch turbine meter, and the two existing 1-inch regulators would be replaced with two new 1-inch regulators with 35 percent trim. Northwest states that the changes would increase the maximum design delivery capacity from 1,033 MMBtu equivalent per day to about 1,868 MMBtu per day, at an outlet pressure of 150 psig.

Northwest estimates that the total cost of the project would be approximately $48,335. Northwest advises that, since the upgrades are necessary to replace obsolete and inadequate equipment, it would not require a reimbursement from Water Power.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16042 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–112–002 and RP85–177–112]

Texas Eastern Transmission Corp.; Compliance Filing

July 1, 1993.

Take notice that on June 28, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed to comply with Ordering Paragraph (A) of the Commission's order issued May 28, 1993 in the referenced dockets. The Commissions May 28 order the Commission directed Texas Eastern to file tariff sheets and supporting workpapers removing from its proposed Order No. 636 direct bill any pre-December 1, 1990, costs that have not been recovered through filed rates.

Texas Eastern states that all of the costs included in the tariff sheets accepted by the May 28 order were incurred for filed rate purposes after December 1, 1990. Therefore, Texas Eastern states no revised tariff sheets are required to be filed in compliance with Ordering Paragraph (A) of the May 28 order.

Texas Eastern states that copies of the filing have been mailed to all authorized purchasers of natural gas from Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practices and Procedure 18 CFR 385.211. All such protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16046 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–520–000]

Texas Gas Transmission Corp.; Application

July 1, 1993.

Take notice that on June 28, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–520–000 an application, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain looping facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate 12.2 miles of 8-inch pipeline paralleling its existing 8-inch Ripley-Jackson system in Haywood and Madison Counties, Tennessee which would cost an estimated $3,210,000.

Texas Gas indicates that there are two purposes which support the need for the construction of the additional facilities. First, it is stated that three of Texas Gas' existing customers served off the Ripley-Jackson system have requested increases in contract demand. Texas Gas states that Jackson Utility Division (Jackson) and City of Brownsville Utility Board (Brownsville) have requested increases of firm transportation service under Texas Gas' Rate Schedule ST of 3,500 million Btu per day and 700 million Btu per day, respectively. It is also stated that the City of Humboldt, Tennessee has requested an additional 495 million Btu per day of firm no-notice service under Texas Gas' proposed Rate Schedule SGT. Texas Gas notes that a portion of the proposed 8-inch loop is necessary for Texas Gas to accommodate these requested increases in firm transportation service. It is indicated that the transportation and no-notice services would be performed pursuant to § 284.223 of the Commission's Regulations.

Second, Texas Gas states that the installation of the entire 12.2 miles of proposed pipeline would allow Texas Gas to complete the looping of the majority of its Ripley-Jackson system, providing dual line security for the cities of Humboldt and Jackson, Tennessee as well as several other small communities, all of which are served solely by Texas Gas. It is also indicated that the proposed looping would provide other operating efficiencies.

It is indicated that during the winter months, the operation of the Ripley-Jackson system is very tedious and disrupts the operation of Texas Gas' main line system. Texas Gas states that, in order to maintain adequate pressure at the terminus of the Ripley-Jackson system, the main line system has to be operated so that maximum pressure is maintained at the beginning of the system which, it is indicated, is an inefficient operational mode for the main line. It is stated that an interrupt at the Covington, Tennessee compressor station causes serious inlet pressure problems into the Ripley-Jackson system. Texas Gas states that the completion of the proposed looping would minimize the inlet pressure problems during interrupts on the main line system during peak periods.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16047 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2113–028]

Wisconsin Valley Improvement Co.; Complaint

July 1, 1993.

Take notice that on January 8, 1993, the Lac Vieux Desert Association (Association) filed a complaint against the Wisconsin Valley Improvement Company, licensee for the Lac Vieux Desert Dam Project No. 2113. The project is located on the Wisconsin River and its tributaries in Marathon, Lincoln, Oneida, Vilas, and Forest Counties, Wisconsin, and Gogebic County, Michigan.

The Association alleges that the licensee has violated Article 33 of its license, which requires the licensee to make every effort to draw down the water surface elevation level in the project reservoir to 0.0 gage (elevation 1679.53 U.S.C. and G.S. datum) by December 31 of each year.[1] To support its claim that the licensee has disregarded the draw-down date, the Association provided lake level readings showing that the 0.0 gage elevation was exceeded in January of ten previous years.[2] The Association contends that because the draw-down date is not being met, the lake is experiencing shoreline ice expansion damage.

Any person may submit comments regarding this complaint with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. The respondent, Wisconsin Valley Improvement Company, is required to file an answer to the complaint pursuant to Rules 206 and 213, 18 CFR 385.206 and 385.213. No replies to respondent's answer will be accepted. In determining the appropriate action to take, the Commission will consider all comments filed. Copies of the complaint are on file with the Commission and are available for public inspection.

Comments and the answer to the complaint are due on or before August 27, 1993.

For further information, contact Janet L. Oakley at (202) 208–0495.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16043 Filed 7–7–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–54–NG]

Northstar Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northstar Energy Corporation authorization to import up to 7.3 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery after June 30, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–16160 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–45–NG]

Texaco Gas Marketing Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texaco Gas Marketing Inc. authorization to export up to 120 billion cubic feet of natural gas to Mexico over a two-year term, beginning on the date of first delivery after June 30, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Program, Office of Fossil Energy.

[FR Doc. 93–16161 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Loveland Area Projects—Proposed Firm Power Rate and Transmission Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed adjustments to the firm power rate and transmission rate—Loveland Area Projects.

SUMMARY: The Western Area Power Administration (Western) is proposing rate adjustments (Proposed Rates) for firm power service and transmission service for Loveland Area Projects (LAP). The power repayment studies and other analyses indicate that the Proposed Rates for firm power and transmission service are necessary to provide sufficient revenue to pay all annual costs (including interest

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[1] See 25 FERC ¶ 61,344 (1983). Article 33 originally required the licensee to use "its maximum capability" to meet the 0.0 gage requirement. See 23 F.P.C. 102 (1960).

[2] The elevation levels cited by the Association range from 1679.80 to 1680.30.

expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure to be distributed to all interested parties. The first of the Proposed Rates is expected to become effective on February 1, 1994.

The Proposed Rate for firm power composite rate increases the existing rate by 2.05 mills per kilowatthour (mills/kWh). The increase is implemented over a 2-year period. The composite rate for the first year (effective February 1, 1994) is 21.06 mills/kWh. This composite rate consists of an energy charge of 10.53 mills/kWh and a capacity charge of $2.70 per kilowatt-month ($/kW-month). The composite rate for the second year (effective October 1, 1994) is 22.11 mills/kWh. The second year composite rate consists of an energy charge of 11.05 mills/kWh and a capacity charge of $2.90/kW-month.

The existing LAP firm power composite rate is 20.06 mills/kWh, comprised of an energy charge of 10.03 mills/kWh and a capacity charge of $2.58/kW-month.

The Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary), U.S. Department of Energy (DOE), approved the existing firm power rate schedule on an interim basis on August 30, 1991, and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on a final basis on January 28, 1992. This existing rate schedule was placed into effect on October 1, 1991.

The Proposed Rates for transmission service increase the existing capacity rate by $.36/kW-month; or increase the existing energy rate by .5 mills per kWh if the customer's rate is energy-based. The rates would become effective on February 1, 1994, the same date as the first increase in the firm power service rate. The Proposed Rates are $1.88/kW-month for capacity or 2.6 mills per kWh for energy. The existing transmission service rates are $1.52/kW-month for capacity or 2.1 mills per kWh.

The Assistant Secretary, DOE, approved the existing transmission rate schedules for firm and nonfirm service on an interim basis on August 27, 1990, and FERC confirmed and approved the rate schedules on a final basis on April 29, 1991. These existing rate schedules were placed into effect on October 1, 1990.

The following table compares the existing LAP rates with Proposed Rates:

LOVELAND AREA PROJECTS RATES

Type of service	Existing rates	Proposed rates Feb. 1, 1994, and percent change	Proposed rates Oct. 1, 1994, and percent change
FIRM POWER SERVICE			
LAP revenue requirement	$41.9 million	$44.0 million; 5.0%	$45.1 million; 2.5%.
Total LAP composite	20.06 mills/kWh	21.06 mills/kWh; 5.0%	22.11 mills/kWh; 5.0%.
Firm energy	10.03 mills/kWh	10.53 mills/kWh; 5.0%	11.05 mills/kWh; 4.9%.
Firm capacity	$2.58/kW-month	$2.70/kW-month; 4.7%	$2.90/kW-month; 7.4%.
TRANSMISSION SERVICE			
Capacity	$1.52/kW-month	$1.88/kW-month; 23.7%	N/A.
Energy	2.1 mills/kWh	2.6 mills/kWh; 23.8%	N/A.

NA=Not available.

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will consider public comments, revise the rates if necessary, and recommend Proposed Rates for approval on an interim basis by the Assistant Secretary of DOE.

DATES: The consultation and comment period will begin July 8, 1993, and will end October 6, 1993. A public information forum will be held at the following place and time:

July 20, 1993—9 a.m. Holiday Inn, Northglenn, Colorado.

An additional public information forum may be held if added information is received on the final cost allocation for the Fryingpan-Arkansas Project which differs significantly from the assumptions used in developing the proposed rates

A public comment forum at which Western will receive oral and written comments will be held at the following place and time:

August 30, 1993—9 a.m. Holiday Inn, Northglenn, Colorado.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. (303) 490–7201.

SUPPLEMENTARY INFORMATION: Power rates for LAP are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (c)) and the Flood Control Act of 1944 (58 Stat. 887).

By Amendment No. 2 to Delegation Order No. 0204–108, published in 56 FR 41835, August 23, 1991, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published in 50 FR 37835 September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates for firm power and for transmission are and will be made available for inspection and copying at the Loveland Area Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado 80538–8986.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the LAP firm power rate and transmission rate adjustments are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the LAP firm power and transmission rates are of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of the Executive Order 12291, published in 46 FR 13193, February 19, 1981. In addition, Western has an exemption from sections 3, 4, and 7 of said Order 12291 and, therefore, will not prepare a regulatory impact statement.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Issued in Golden, CO, March 5, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–16162 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Pick-Sloan Missouri Basin Program, Eastern Division—Proposed Firm Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Pick-Sloan Missouri Basin Program, Eastern Division, firm power rate adjustments.

SUMMARY: The Western Area Power Administration (Western) is proposing rate adjustments (Proposed Rates) for firm power service for the Pick-Sloan Missouri Basin Program, Eastern Division (P–SMBP–ED). The power repayment study and other analyses indicate that the Proposed Rates for firm power are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure to be distributed to all interested parties. The first of the Proposed Rates for firm power is expected to become effective on February 1, 1994.

The Proposed Rates for firm power are based on an increase in the revenue requirement of $11.0 million per year beginning February of 1994 and an additional increase in the revenue requirement of $8.8 million per year beginning October of 1994. These revenue requirement increases are proposed to be recovered by the following firm power rate adjustments.

1. Beginning February 1, 1994, we propose to:

a. Increase the P–SMBP–ED Firm Commercial capacity charge from $2.74 per kilowatt-month ($/kW-month) to $3.00/kW-month and the energy charge from 7.09 mills per kilowatthour (mills/kWh) to 7.76 mills/kWh.

b. Increase the P–SMBP–ED Firm Peaking capacity charge from $2.74/kW-month to $3.00/kW-month.

2. Beginning October 1, 1994, we propose to:

a. Increase the P–SMBP–ED Firm Commercial capacity charge from $3.00/kW-month to $3.20/kW-month and the energy charge from 7.76 mills/kWh to 8.32 mills/kWh.

b. Increase the P–SMBP–ED Firm Peaking capacity charge from $3.00/kW-month to $3.20/kW-month.

The Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary), U.S. Department of Energy (DOE), approved the existing rate schedules on an interim basis on August 30, 1991, and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedules on a final basis on January 28, 1992. These existing rate schedules were placed into effect on October 1, 1991.

The following table compares the P–SMBP–ED existing rates with Proposed Rates:

PICK-SLOAN MISSOURI BASIN PROGRAM, EASTERN DIVISION RATES

Type of service	Existing rates	Proposed rates Feb. 1, 1994, and percent change	Proposed rates Oct. 1, 1994, and percent change
FIRM POWER SERVICE			
Eastern division revenue requirement	$115.4 million	$126.4 million; 9.5%	$135.2 million; 7.0%.
Total eastern division composite	12.16 mills/kWh	13.32 mills/kWh; 9.5%	14.24 mills/kWh; 6.9%.
Eastern division firm capacity	$2.74/kW-month	$3.00/kW-month; 9.5%	$3.20/kW-month; 6.7%.
Eastern division firm energy	7.09 mills/kWh	7.76 mills/kWh; 9.5%	8.32 mills/kWh; 7.2%.
Tiered > 60% L.F	3.38 mills/kWh	3.38 mills/kWh	3.38 mills/kWh.
FIRM PEAKING SERVICE			
Eastern division peaking capacity	$2.74/kW-month	$3.00/kW-month; 9.5%	$3.20/kW-month; 6.7%.
Eastern division peaking energy	7.09 mills/kWh	7.76 mills/kWh; 9.5%	8.32 mills/kWh; 7.2%.

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will consider public comments, revise the rates if necessary, and recommend Proposed Rates for approval on an interim basis by the Assistant Secretary of DOE.

DATES: The consultation and comment period will begin July 8, 1993, and will end October 6, 1993. Public information forums will be held at the following places and times:

July 20, 1993—9 a.m. Holiday Inn, Northglenn, Colorado;

August 9, 1993—9 a.m. Radisson Northern Hotel, Billings, Montana;

August 10, 1993—2 p.m. Howard Johnson Motel, Sioux Falls, South Dakota;

August 11, 1993—9 a.m. Doublewood Inn, Fargo, North Dakota.

Public comment forums at which Western will receive oral and written comments will be held at the following places and times:

August 30, 1993—9 a.m. Holiday Inn, Northglenn, Colorado;

August 31, 1993—9 a.m. Howard Johnson Motel, Sioux Falls, South Dakota.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800. (406) 657–6532.

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP–ED are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (c)) and the Flood Control Act of 1944 (58 Stat. 887).

By Amendment No. 2 to Delegation Order No. 0204–108, published in 56 FR 41835, August 23, 1991, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published in 50 FR 37835 September 18, 1985

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates for firm power and for transmission are and will be made available for inspection and copying at the Billings Area Office, located at 2525 Fourth Avenue North, Billings, Montana 59107–5800.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the P–SMBP–ED firm power rate adjustments are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the P–SMBP–ED firm power rates are of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of the Executive Order 12291, published in 46 FR 13193, February 19, 1981. In addition, Western has an exemption from sections 3, 4, and 7 of said Order 12291 and, therefore, will not prepare a regulatory impact statement.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Issued in Golden, CO, March 5, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–16163 Filed 7–7–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4676–9]

Notice of Public Water Supervision Program: Program Revisions for the State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Connecticut is revising its approved State Public Water Supervision Primacy Program. Connecticut has adopted (1) filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria that correspond to the National Primacy Drinking Water Regulations for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria requirements promulgated on June 29, 1989 (54 FR 27486) and (2) public notice requirements promulgated on October 8, 1987 (52 FR 41534). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by August 9, 1993 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 9, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective August 9, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m and 4.30 p.m. Monday through Friday, at the following offices: Connecticut Department of Health Services, Water Supplies Section, 21 Grand Street, Hartford, CT 06106; U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, One Congress Street, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Mark Sceery, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3604.

Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40

VOL 58 ISS 129 JL 8 1993 UMI

CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: June 17, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–16141 Filed 7–7–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4676–4]

Public Water System Supervision Program: Program Revision for the State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Nebraska is revising its approved State Public Water System Supervision (PWSS) Program. Nebraska has adopted regulations for (1) public notification requirements that correspond to the National Primary Drinking Water Regulations for public notification published by EPA on October 28, 1987 (52 FR 41534); and (2) synthetic organic chemicals (Phase I VOCs) that correspond to the National Primary Drinking Water Regulations for synthetic organic chemicals, and monitoring for unregulated contaminants published by EPA on July 8, 1987 (52 FR 25690) and corrections, published on July 1, 1988 (53 FR 25108).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulation. This determination was based upon a thorough evaluation of Nebraska's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this Notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Nebraska. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Nebraska. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination based upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Regions VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Nebraska Department of Health, 301 Centennial Mall South, 3rd Floor, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT:

Glen Yager, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551–7296.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 13, 1993.

William W. Rice,

Acting Regional Administrator, EPA, Region VII.

[FR Doc. 93–16138 Filed 7–7–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4676–3]

Science Advisory Board, Executive Committee, Chafee-Lautenberg Study Steering Committee; July 19, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee's Chafee-Lautenberg Study Steering Committee will conduct a meeting on Monday, July 19, 1993. The meeting will be held at the Environmental Protection Agency Headquarters Building at 401 M Street SW., Washington, DC 20460. Information on the room for the meeting will be available through the Office of the Science Advisory Board by July 12. The meeting will begin at 9 a.m. and adjourn no later than 5 p.m. on July 19.

At this meeting, the Executive Committee plans to review an Agency document being prepared for transmission to the Congress that details multi-media risks posed by radon gas and the costs of mitigating these risks.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee (A–101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and at 202–260–4126; FAX 202–260–9232, and at INTERNET address BARNES. Don@ EPAMAIL. EPA.GOV@IN. A copy of the Agency document can be obtained from Ms. Jan Auerbach in the Office of Water (202–276–7575). Limited unreserved seating will be available at the meeting.

Dated: June 25, 1993.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 93–16123 Filed 7–7–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4677–4]

Science Advisory Board; Ad Hoc Industrial Excess Landfill Advisory Panel; Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) ad hoc

Industrial Excess Landfill (IEL) Advisory Panel will meet on July 20–21, 1993 at the Akron West Hilton Inn, 3180 West Market Street, Akron, Ohio 44333. The Hilton Inn telephone number is (216) 867–5000. On July 20th, the meeting will begin at 9 a.m. and will recess at approximately 3 p.m.; an evening public comment period will be held from 7 p.m. until approximately 9 p.m. On July 21st, the meeting will begin at 9 a.m. and will end no later than 2 p.m. The meeting is open to the public and seating is on a first-come basis. At the meeting, the Panel will receive briefings from various parties on the background of the IEL Site and the work done to date. Based on these presentations and discussion at the meeting, the Panel will determine what other information is needed and how they will carry out their charge (as outlined below).

Background

The Agency's Office of Solid Waste and Emergency Response (OSWER) requested that the Science Advisory Board (SAB) form an ad hoc advisory panel to conduct a review of issues related to screening criteria and procedures for radioactive waste materials at a specific superfund site. The ad hoc IEL Advisory Panel was organized by the Science Advisory Board for the purpose of addressing this issue. The charge outlined below contains the wording of the request as agreed to by the SAB.

To address the charge, the ad hoc Panel will review a specific site where sub-surface radioactive contamination may be present, the Industrial Excess Landfill (IEL) Superfund site in Uniontown, Ohio. Citizens residing near the IEL site are concerned that radioactive wastes had been illegally disposed at the site. Former EPA Administrator Reilly asked Clean Sites, Incorporated to perform an independent evaluation of the Agency's management of the IEL site, with emphasis on the radiation sampling being conducted. Clean Sites' March 1992 report to the Administrator contained several recommendations, including one concerning the radiation sampling issue. With respect to radiation sampling, Clean Sites recommended that the Agency request that the Science Advisory Board (SAB) perform specific tasks to resolve data analysis issues at the IEL site. Although these issues arose from this one site, they are of concern to other Superfund sites at which radioactive contamination is suspected and could be used to develop generic guidelines for dealing with such sites. Past, present, and anticipated activities and data collected at this location will be used as source materials for the ad hoc Panel in its deliberations.

Charge to the Panel

In general, at hazardous waste sites where radioactive contamination is suspected, EPA first performs a screening round of sampling. If the screening round data indicate that there is a problem, the Agency performs more extensive investigations. If the screening round data indicate no contamination, further sampling is eliminated. What kind of sampling and analytic protocol is adequate to determine the presence/extent of soil and groundwater contamination at a site which may incorporate radioactive wastes? Specific questions for the Panel include:

a. For screening purposes, what types of temporal and spatial sampling and analyses are sufficient to test a hypothesis that radioactive contamination is present?

b. What radiological parameters, e.g., gross alpha plus alpha spectrometry, gross beta, gamma spectrometry, tritium, and carbon-14, are sufficient to determine the possible existence/extent of potential sub-surface radiological contamination? Are the methods employed by EPA for analysis of radioactive contamination adequate and appropriate for analyses of samples from hazardous waste sites?

c. There are generic guidelines for sampling and analytic methods and chain of custody protocols to ensure that cross contamination or tampering with samples does not occur when dealing with radioactive contaminants. If appropriate, these guidelines may be modified on a site-specific basis depending on the characteristics of the site in question. What modifications are scientifically justified while still assuring accurate, precise and valid data?

d. What factors need to be considered in the development and application of data validation criteria for evaluation of radioactive contaminants at hazardous waste sites?

e. The ad hoc Panel may address other issues as they deem appropriate.

For Further Information

For details concerning this review, including a draft meeting agenda and Panel roster, or the overall activities of the Science Advisory Board, please contact the Designated Federal Officer for this review: Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118.

Opportunity for Providing Comment

All oral presentations or written statements should be limited to scientific issues concerning the above charge, related issues, and the specific site identified above.

Members of the public who wish to make a brief formal oral presentation to the Committee must contact Mr. Flaak no later than Friday, July 16, 1993 in order to be included on the Agenda. Written statements of any length (at least 30 copies) may be provided to the Committee up until the meeting. Please send these comments to Mr. Flaak at the address given above. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. The formal public comment period will take place beginning at 9 a.m. on July 21.

Individual members of the public who cannot attend the daytime session of the Panel's meeting and who wish to provide a brief oral statement to the Panel will have an opportunity to do so from 7 to 9 p.m. on July 20th. This period on the meeting agenda has been set-up to accommodate walk-in speakers who will be able to personally register. Speakers will be given five minutes each and will speak in the order they register.

Future Activities of the Panel

The ad hoc IEL Advisory Panel expects to have at least one additional public meeting to continue discussions and to prepare their written report. This meeting is planned for September 1993 in Washington, DC. A specific date has not been set. The Panel expects to have a draft written report publically available in October 1993. This written report of the Panel will undergo final review and approval at a public meeting of the SAB Executive Committee before the report is finalized and forwarded to the EPA Administrator. The Executive Committee meets quarterly in Washington, DC; its next scheduled meeting is October 26–27, 1993. A **Federal Register** Notice will announce both of these meetings. The above schedule is subject to change.

Dated: July 1, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–16308 Filed 7–7–93; 8:45 am]

BILLING CODE 6560–60–P

VOL 58 ISS 129 JL 8 1993 UMI

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0099.

Title: Annual Report Form M (FCC Form M).

Expiration Date: 06/30/96.

Description: Annual Report Form M is required by Sections 1.785 and 43.21 of the FCC Rules and Section 219 of the Communications Act of 1934, as amended. Subject telephone carriers having annual operating revenues in excess of $100 million are required to file FCC Form M. FCC Form M was revised in the Matter of Revision of ARMIS USOA Report (FCC Report 43–02) for Tier 1 Telephone Companies and Annual Report Form M, (Memorandum Opinion and Order), AAD 92–46, released March 29, 1993. Carriers who are required to file both ARMIS and Form M will satisfy their Form M reporting requirements by filing both diskettes and paper copies of the ARMIS reports.

Title: Automated Reporting and Management Information Systems (ARMIS), ARMIS USOA Report (FCC Report 43–02).

Description: ARMIS is an automated system consisting of ten reports which contain financial and statistical data required by the Commission to administer its accounting, joint cost, jurisdictional separations, rate base, and access charge rules. ARMIS USOA Report, FCC Report 43–02, contains company-wide data for each account specified in the Uniform System of Accounts (USOA). FCC Report 43–02 was revised in the Matter of Revision of ARMIS USOA Report (FCC Report 43–02) for Tier 1 Telephone Companies and Annual Report Form M, (Memorandum Opinion and Order), AAD 92–46, released March 29, 1993. The report was revised to incorporate eighteen Form M schedules, six of which were revised. A new schedule for the collection of aggregate data on plant investment and accumulated depreciation for each jurisdiction was also added to the report.

Federal Communications Commission.

William F. Caton,

Acting Secretary

[FR Doc. 93–16036 Filed 7–7–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 30, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0475.

Title: Section 90.713, Entry Criteria.

Action: Revision of a currently approved collection.

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: Other: One-time requirement at initial application or assignment stage.

Estimated Annual Burden: 34 responses; 25.5 hours average burden per response; 867 hours total annual burden.

Needs and Uses: The Commission has modified 47 CFR 90.713 to permit applicants for non-commercial nationwide systems in the 220–222 MHz band to submit a certification (47 CFR 90.713(a)(6)) indicating that the applicant has either an actual presence or long-term business plan that necessitates internal communications capacity in the 70 or more markets identified in the license application. Under the rule as modified, applicants will be required to certify that they have an actual presence necessitating internal communications capacity in the 70 or more markets identified in the application. Applicants will not be permitted to rely on a long-term business plan. Licensing Division personnel will use the data to determine the eligibility of the applicant to hold a radio station authorization. Land Mobile and Microwave Division personnel will use the data for rulemaking proceedings. Compliance Division personnel in conjunction with field engineers will use the data for enforcement purposes.

Federal Communications Commission

William F. Caton,

Acting Secretary

[FR Doc. 93–16037 Filed 7–7–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline, stating they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than July 14, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners as follows:

P33–93—Werner Schwan, President, Polar Bear Container Line, 220A N. Cloverdale Blvd., Cloverdale, California 95425

P34–93—Jeffrey P. Lawrence, Esq., Sher & Blackwell, 1255 23rd Street, NW., Washington, DC 20037–1194

P35–93—Mrs. Honeylette De Leon, President, World Class Freight, Inc. 110 West Ocean Bl., suite 349, Long Beach, California 90802

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–16205 Filed 7–7–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CNB Preferred Partnership, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. CNB Preferred Partnership, Orlando, Florida; to become a bank holding company by acquiring 100 percent of the preferred shares of Central National Bank Corporation, Inc., Winter Park, Florida, and thereby indirectly acquire Central National Bank of Winter Park, N.A., Winter Park, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Castle BancGroup, Inc., DeKalb, Illinois; formerly known as Sandwich Banco, Inc., DeKalb, Illinois, to acquire 100 percent of the voting shares of B.O.Y. Bancorp, Inc., Yorkville, Illinois, and thereby indirectly acquire Bank of Yorkville, Yorkville, Illinois.

2. Independent Bank Corporation, Ionia, Michigan; to acquire 100 percent of the voting shares of American Home Bank, Unionville, Michigan.

3. Independent Bank Corporation, Ionia, Michigan; to acquire 100 percent of the voting shares of Pioneer Bank, North Branch, Michigan.

4. Van Buren Bancorporation Employee Stock Ownership Plan, Keosauqua, Iowa; to become a bank holding company by acquiring 30.03 percent of the voting shares of Van Buren Bancorporation, Keosauqua, Iowa, and thereby indirectly acquire State Savings Bank, Cantril, Iowa, and Farmers State Bank, Keosauqua, Iowa.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bank of Colorado Holding Company, Vail, Colorado; to become a bank holding company by acquiring Vail National Bank, Vail, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Elkhart Bancorporation, Inc., Elkhart, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Elkhart State Bank, Elkhart, Texas.

Board of Governors of the Federal Reserve System, July 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16083 Filed 7-7-93; 8:45 am]

BILLING CODE 6210-01-F

Dickinson Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Dickinson Financial Corp., Kansas City, Missouri; to acquire Livingston Life Insurance Company, Kansas City, Missouri, and thereby engage in the reinsurance of credit related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16084 Filed 7-7-93; 8:45 am]

BILLING CODE 6210-01-F

Amy Blossman Illing, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 28, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Amy Blossman Illing, and Ann Blossman Komidor, both of Covington, Louisiana; to acquire 25.29 percent of the voting shares of Progressive Capital Corporation, Covington, Louisiana, and thereby indirectly acquire Central Progressive Bank of Amite, Amite, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Louise M. Brands, Prairie du Rocher, Illinois; to acquire an additional 5.6 percent of the voting shares of PDR Bancshares, Inc., Prairie du Rocher, Illinois, for a total of 15.20 percent, and thereby indirectly acquire State Bank of Prairie du Rocher, Prairie du Rocher, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Robert Timothy Monnig, Glasgow, Missouri, to acquire an additional 1.2 percent for a total of 8.6 percent; Thomas Henry Monnig, Glasgow, Missouri, to acquire an additional 1.1 percent for a total of 8.4 percent; John Joseph Monnig, Glasgow, Missouri, to acquire an additional 1.1 percent for a total of 8.4 percent of the voting shares of Bancshares of Glasgow, Glasgow, Missouri, and thereby indirectly acquire Tri-County Trust Company, Glasgow, Missouri.

2. Roger L. Reisher, Lakewood, Colorado; Margaret A. Reisher, Lakewood, Colorado; Dennis E. Barrett, Littleton, Colorado; and William L. Iwata, Arvada, Colorado; to acquire between 35 and 45 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of Palm Desert, Palm Desert, California; FirstBank of West Arvada, National Association, Arvada, Colorado; FirstBank of Aurora, National Association, Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of South Boulder, National Association, Boulder, Colorado; FirstBank of Boulder, National Association, Boulder, Colorado; Breckenridge FirstBank, National Association, Breckenridge, Colorado; FirstBank of Castle Rock, National Association, Castle Rock, Colorado; FirstBank of Denver, National Association, Denver, Colorado; FirstBank of Cherry Creek, National Association, Denver, Colorado; FirstBank of Republic Plaza, NA, Denver, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, National Association, Englewood, Colorado; FirstBank of Colorado, National Association, Littleton, Colorado; FirstBank of Lakewood, National Association, Lakewood, Colorado; FirstBank of Westland, National Association, Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, National Association, Lakewood, Colorado; FirstBank of Littleton, National Association, Littleton, Colorado; FirstBank at Wadsworth/Coal Mine, National Association, Littleton, Colorado; FirstBank of Arapahoe County, National Association, Littleton, Colorado; FirstBank of Longmont, National Association, Longmont, Colorado; FirstBank at Arapahoe/Yosemite, National Association, Englewood, Colorado; FirstBank of Silverthorne, National Association, Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; and FirstBank of Wheatridge, National Association, Wheat Ridge, Colorado.

3. James L. Winget Trust No. 2, Hanston, Kansas; to acquire 25.4 percent; Roberta O. Winget Trust No. 2, Hanston, Kansas, to acquire 25.4 percent; Gary L. Winget, trustee, Hanston, Kansas, to acquire 50.8 percent; Marilyn Sue Winget, trustee, Hanston, Kansas, to acquire 50.8 percent; and Carol Soukup, Hanston, Kansas, to acquire 50.8 percent of the voting shares of Hanston Insurance Agency, Inc., Hanston, Kansas, and thereby indirectly acquire Hanston State Bank, Hanston, Kansas.

Board of Governors of the Federal Reserve System, July 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16085 Filed 7-7-93; 8:45 am]

BILLING CODE 6210-01-F

Van Buren Bancorporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Van Buren Bancorporation, Keosauqua, Iowa; to engage *de novo* in making, servicing or acquiring loans pursuant to § 225.25(b)(1) of the Board s Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16086 Filed 7-7-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Technical Advisory Committee for Diabetes Translation and Community Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Times and Dates: 5:30 p.m.–8:30 p.m., Sunday, July 25, 1993; 8:30 a.m.–4 p.m., Monday, July 26, 1993.

Place: Embassy Suites Hotel-Atlanta Airport, 4700 Southport Road, College Park, Georgia 30349. (Exit 18 Riverdale Road off I–85)

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce risk factors, morbidity, and mortality associated with diabetes and its complications. The committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters To Be Discussed: The committee will discuss results and translation implications of the Diabetes Control and Complications Trial (DCCT), and will review the relationship of the DCCT results to the goals and objectives for CDC's Division of Diabetes Translation. The committee will further review and provide input on content areas for the upcoming fiscal year 1994 request for applications for state-based diabetes control programs. In addition, the committee will discuss issues related to how the Division of Diabetes Translation can further coordinate diabetes translation and the role of the committee within this coordination process. Division of Diabetes Translation staff will provide updates on diabetes control programs currently operational within the Division.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Fredrick G. Murphy, Program Analyst, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE., (K–10), Atlanta, Georgia 30341–3724, telephone 404/488–5005.

Dated: July 1, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16075 Filed 7–7–93; 8:45 am]

BILLING CODE 4160–18–M

Review of Draft Criteria for a Recommended Standard on Occupational Exposure to Respirable Coal Mine Dust: Meeting.

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Review of Draft Criteria for a Recommended Standard on Occupational Exposure to Respirable Coal Mine Dust.

Times and Dates: 9 a.m.–5 p.m., July 29, 1993; 8 a.m.–2 p.m., July 30, 1993.

Place: Robert A. Taft Laboratories, Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available. The meeting room accommodates 150 people.

Purpose: The purpose of this meeting is to review and discuss the draft criteria document, "Occupational Exposure to Respirable Coal Mine Dust," with a panel of invited participants selected by NIOSH for their expertise and background in this area. The review will provide NIOSH with individual input and opinion from experts outside the Institute prior to finalizing the criteria document for publication and transmittal to the Department of Labor. The review will emphasize health issues related to occupational exposures to respirable coal mine dust, including coal workers' pneumoconiosis, silicosis, and chronic obstructive pulmonary disease, as well as the related issues of exposure monitoring, medical surveillance, pulmonary function testing, control technology, and respiratory protection in mining. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Persons for Additional Information: General information may be obtained from Judy Curless, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–32, Cincinnati, Ohio 45226, telephone 513/533–8314.

Technical information may be obtained from Eileen Kuempel, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–32, Cincinnati, Ohio 45226, telephone 513/533–8314.

Dated: June 30, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16074 Filed 7–7–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92N–0421]

Robert A. Fogari; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Deputy Commissioner for Operations of the Food and Drug Administration (FDA) denies Dr. Robert A. Fogari's request for a hearing and issues a final order permanently debarring Dr. Robert A. Fogari, 58 Twin Brooks Rd., Saddle River, NJ 07458, under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)). The Deputy Commissioner bases this order on her finding that Dr. Fogari was convicted of Federal felonies under 18 U.S.C. 1001 and 1505 for conduct relating to the development and approval, including the process for development and approval of a drug product; and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: July 8, 1993.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Robert A. Fogari, a former clinical investigator who participated in experimental drug studies for nine different drug manufacturers, pled guilty and was sentenced on February 2, 1989, for, in addition to other offenses, two counts of submission of false documents, and one count of obstruction of justice, Federal felony offenses under 18 U.S.C. 1001 and 1505. The basis for these convictions was Dr. Fogari's data falsifications and omissions in the written reports of the drug studies that he conducted.

In a certified letter received by Dr. Robert A. Fogari on January 8, 1993, FDA offered Dr. Fogari an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Fogari from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar on its finding that Dr. Fogari's conduct leading to his convictions under 18 U.S.C. 1001 and 1505 related to the development and approval and the regulation of various drug products.

The certified letter also informed Dr. Fogari that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also noted that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact

VOL 58 ISS 129 JL 8 1993 UMI

which precluded the order of debarment, FDA would enter summary judgment against him, making findings and conclusions, and denying his request for a hearing.

In a letter dated January 26, 1993, Dr. Fogari responded to the certified letter by requesting a hearing.

II. Denial of Hearing

In his request for a hearing, Dr. Fogari failed to present any arguments or information to show why he should not be debarred. Therefore, FDA finds that Dr. Fogari has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, pursuant to 21 CFR 12.28, the agency denies Dr. Fogari's request for a hearing.

III. Findings and Order

Therefore, as Deputy Commissioner for Operations, under section 306(a) of the act, I find that Dr. Robert A. Fogari has been convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Robert A. Fogari is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective July 8, 1993 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Fogari in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Fogari, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Dr. Fogari during his period of debarment.

Any application by Dr. Fogari for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 92N-0421 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 28, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-16034 Filed 7-7-93; 8:45 am]

BILLING CODE 4160-01-F

[GN No. 2102]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (formerly Chapter HF) (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 43 FR 16419, April 18, 1978) is amended to reflect the change in title from Division of Financial Management to Office of Financial Management and realignment of the Division of Financial Management staff and functions into the new Office of Financial Management (OFM), Office of Management (OM), Office of Management and Systems, Food and Drug Administration (FDA). To provide consistency with the organizational structure of the centers and within OM, FDA proposes that the Office of Financial Management be established to oversee and direct the Agency's financial responsibilities. This new office will consist of the Division of Financial Systems, the Division of Accounting, the Division of Budget Formulation and Presentation, and the Division of Budget Execution and Control.

Under section UK-B, Organization:

1. Delete subparagraph (h-1) Division of Financial Management (FHA74) and insert a new subparagraph (h-1) under the Office of Management and Systems (HFA6), Office of Management (HFA7) reading as follows:

Office of Financial Management (HFA74). Plans, directs, and coordinates a comprehensive financial management program for FDA encompassing the areas of budget analysis, formulation and execution, automated financial systems, fiscal accounting, voucher audit, and financial reporting. Provides staff assistance in justifying budgets through executive and congressional echelons. After appropriation, develops an orderly expenditure plan.

Develops apportionment plans and issues allotments for expenditures.

Makes periodic reports regarding the status of FDA's financial management.

Develops financial inputs for the Agency's programs and financial plans.

Dated: June 18, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93-16120 Filed 7-7-93; 8:45 am]

BILLING CODE 4160-01-M

[GN No. 2103]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 53 FR 34588, September 7, 1988) is amended to reflect the change in title from the Division of Human Resources Management to the Office of Human Resources Management in the Office of Management (OM), Office of Management and Systems, Food and Drug Administration (FDA). To ensure that ever-changing personnel requirements are met and that the human resources function is performed with a high level of visibility in the OM organizational structure, FDA proposes that the Office of Human Resources Management be established to oversee and direct the Agency's human resources responsibilities. This new office will consist of the Division of Personnel Operations I, the Division of Personnel Operations II, the Division of Employee Relations, the Division of Recruitment and Staffing, and the Division of Compensation, Benefits, and Training. Under section HF-B, Organization:

1. Delete subparagraph (h-4) Division of Human Resources Management (HFA77) in its entirety and insert a new subparagraph (h-4) under the Office of Management and Systems (HFA6), Office of Management (HFA7) reading as follows: Office of Human Resources Management (HFA77). Provides personnel management advice and assistance to the Commissioner and to FDA managers within its servicing area, including advice to Headquarters officials on their management responsibilities for FDA field installations.

Participates in the development of Agency goals and operating plans related to human resources management.

Provides, within its servicing area, personnel management and personnel

administration services, including employment, recruitment, compensation and benefits, classification, employee relations, training, career development and executive services.

Prepares staff studies and recommendations to Agency management on human resources needs and problems.

Identifies the need for human resources policies and programs to the Office of the Assistant Secretary for Health (OASH), as appropriate, in the development of such policies and programs.

Develops and implements operating procedures and interprets policies to the extent necessary to meet the special needs of FDA in the application of PHS, HHS, OPM, and other Government agency regulations.

Represents FDA in human resources management matters with PHS, HHS, OPM, other Government agencies, professional societies, colleges, universities and other non-governmental organizations and institutions.

Identifies barriers in personnel policies, rules, and regulations which hinder the accomplishment of management goals and objectives. Recommends innovative solutions and develops pilot projects to eliminate these barriers.

Dated: June 18, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–16121 Filed 7–7–93; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (55 FR 2152–3, January 22, 1990, and at 54 FR 4085–91, January 27, 1990, 57 FR 34300–01, August 4, 1992, and 57 FR 4337–38, September 18, 1992, and as most recently amended 58 FR 17236, April 1, 1993) is further amended to establish a new Office of Tribal Self-Governance in the Office of the Director, Indian Health Services (IHS), to carry out title III of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended.

Indian Health Service

Chapter HG, *Section HG–20, Functions,* is amended as follows:

After the title and statement for the *Division of Health Professions Recruitment and Training (HGAB4),* insert the following title and statement:

Office of Tribal Self-Governance (HGAC). The Office (1) develops, directs, and oversees the implementation of the Tribal Self-Governance Demonstration Project policies and programs under title III of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended; (2) provides technical support in the development of Tribal Self-Governance Demonstration Projects; (3) provides programmatic review and recommends approval of proposals for Self-Governance planning grants; (4) negotiates self-governance compacts and funding agreements with participating tribal governments; (5) in conjunction with IHS Area and Headquarters components, identifies the amount of funds necessary to implement the agreements and prepares annual budgets; and (6) ensures that the responsibilities of the United States are not waived, modified, or diminished with respect to Indian tribes and individual Indians.

Under *Section HG–40, Delegations of Authority:* All delegations and redelegations of authority made to Indian Health Service officials that were in effect immediately prior to this reorganization and that are consistent with the reorganization shall continue in effect pending further redelegation.

Notice is hereby given that I have delegated to the Assistant Secretary for Health (ASH), with authority to redelegate, all of the authorities of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended, except for the authority to promulgate regulations under section 107 of the Act, and the authority to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

In addition, I ratify and affirm all previous actions taken by Public Health Services officials that, in effect, involved the exercise of the authorities contained in Public Law 93–638, and all subsequent legislative amendments to this Act, prior to the effective date of this delegation.

This delegation supersedes the delegation of July 3, 1975, from the Secretary to the ASH for the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

Dated: June 30, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–16122 Filed 7–7–93; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Lipochaeta Venosa and Isodendrion Hosakae for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Lipochaeta venosa* and *Isodendrion hosakae.* This endangered plant species occurs in the South Kohala District of the Island of Hawaii.

DATES: Comments on the draft recovery plan must be received on or before September 7, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Pacific Islands Ecological Services Field Office, U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Boulevard, P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541-2749). Copies of the draft recovery plan will also be available for inspection, by appointment, during normal business hours at the Services Honolulu address, the Kailua-Kona Public Library, 75–138 Hualalai Road, Kailua-Kona, Hawaii 96740 (phone 808/329–2196), and the Hilo Public Library, 300 Waianuenue Avenue, Hilo, Hawaii 96720 (phone 808/933–4650). Written comments and material regarding the plan should be addressed to Mr. Robert P. Smith, Field Supervisor of the above Honolulu, Hawaii, address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Honolulu, Hawaii, address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's

VOL 58 ISS 129 JL 8 1993 UMI

endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan are *Lipochaeta venosa* and *Isodendrion hosakae*. These species are limited to six cinder cones located on the Parker Ranch in the South Kohala District on the island of Hawaii. Both species occur together on two cinder cones, and *I. hosakae* and *L. venosa* occur separately at one and three other sites, respectively. The presence of these species on the steeply sloped cinder cones is interpreted as an indication that these steep cones are havens from grazing animals, not preferred habitats. It is inferred that their ranges once included, at the least, the lands between the cones where they are now extant, but there is no historical data to confirm this.

Recovery efforts will focus on protection of all extant individuals from herbivores, fire and alien plant species, propagation of plants to augment existing populations, and expansion of both species to all six of the cinder cones where one or both now exist.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 30, 1993.

John H. Doebel,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 93–16076 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–55–M

Revised Policy and Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Projects

AGENCY: Interior, Fish and Wildlife Service.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service, Division of Federal Aid is revising its policies and procedures for special projects funded by Federal Aid Administrative funds. The policy is being revised in response to criticisms that the existing policy does not include a systematic procedure to notify potential applicants of the availability of Federal Aid Administrative funds; that it is not being applied consistently and that it promotes unrealistic expectations among applicants who do apply. The revised policy is being implemented as a pilot for this year's grant cycle with the understanding that it will be finalized at a later date. Comments on the revised policy will be accepted during this grants cycle and until further notice. The U.S. Fish and Wildlife Service is seeking applications/proposals under this revised policy for sport fish and wildlife restoration projects which will be awarded funding in fiscal year 1994. The requirements for submitting and selecting proposals are contained in this notice. Focus areas are not being included as part of the selection criteria for applications submitted in response to this notice for this year only.

DATES: Applications/proposals must be received by July 22, 1993.

ADDRESSES: Applications/proposals and comments must be submitted to: U.S. Fish and Wildlife Service, Chief, Division of Federal Aid, MS 140, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Columbus Brown, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service; (703) 358–2156.

SUPPLEMENTARY INFORMATION: Significant revisions to the policy include providing for annual notification of the availability of funds through Notices in the **Federal Register**; and establishing and announcing in the **Federal Register**, focus areas which will be included as part of the selection criteria. Focus areas will be used to further promote and encourage efforts that address priority needs of the Fish and Wildlife Service and the States. The revised policy also clarifies the roles and responsibilities of the Division of Federal Aid's Washington and Regional Offices and establishes uniform requirements for all applicants.

Dated: May 18, 1993.

Richard N. Smith,

Director.

A. Purpose

This statement establishes policies and procedures for selecting special projects funded with Federal Aid Administrative Funds. Special projects are activities that assist the U.S. Fish and Wildlife Service (Service) in administering Sport Fish and Wildlife Restoration Programs and facilitate the efforts of the States in implementing these programs.

B. Background

The mission of the Federal Aid Program is to strengthen the ability of State and Territorial fish and wildlife agencies to meet effectively the consumptive and non-consumptive needs of the public for fish and wildlife resources. The Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act authorize the Secretary of the Interior to cooperate with the States and to use administrative funds for carrying out this mission.

Federal Aid Administrative Funds are those funds deducted from amounts available under the Federal Aid in Sport Fish Restoration and the Federal Aid in Wildlife Restoration Act. The statutory provisions related to administrative deductions are as follows:

Federal Aid in Sport Fish Restoration (SFR)—Federal Aid Administrative Funds for sport fish restoration may not exceed 6 percent of the deposits in the Sport Fish Restoration Account of the Aquatic Resources Trust Fund. These funds may be used for special projects for the "conduct of necessary investigations, administration, and the execution of this Act and for the aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters." (Section 4 of

the Act as amended by Pub. L. 98–369, 16 U.S.C. 777c)

Federal Aid in Wildlife Restoration (WR)—Federal Aid Administrative Funds for wildlife restoration may not exceed 8 percent of the excise tax receipts deposited in the Federal Aid in Wildlife Restoration Fund. These funds may be used for the "administration and execution of this Act and the Migratory Bird Conservation Act." (Section 4 of the Act, 16 U.S.C. 669c)

After making administrative deductions as specified above, the remainder of the administrative funds will be apportioned to the States in accordance with the formulas contained in the Acts. The Service will strive to minimize administrative deductions in order to maximize apportionments to the States.

C. Availability of Funds

In fiscal year 1994, the amount of administrative funds estimated to be made available for special projects includes approximately $1,400,000 for sport fish restoration, and $1,600,000 for wildlife restoration.

D. Interstate Compacts

Interstate Compacts may also submit proposals for Federal Aid Administrative Funds. Proposed projects must have discrete objectives and will be subject to all the requirements below.

E. Eligibility Requirements

The Division of Federal Aid, Washington Office, will review each proposal and determine if proposed projects are eligible for funding. To be eligible for funding, projects must meet the following:

1. Projects must provide direct benefits to a significant number of States at the national or broad geographic level to meet the needs of the WR and/or SFR Programs.

2. Projects must have specific beginning and ending dates. The maximum duration for any special project is three (3) years.

3. Projects must meet each of the selection criteria stated in section I.

4. Projects determined ineligible or that the Service determines not to fund may not be reconsidered during the same year in which the proposal was submitted.

F. Application Process

1. All proposals including funding requests for special projects must be submitted to the Chief, Division of Federal Aid, Washington Office. Proposals originating within the Service shall be routed through the appropriate Regional Director or Assistant Director.

2. Each year a Notice will be published in the **Federal Register** announcing the deadline for submitting proposals. The Notice will also announce estimates of the availability of Federal Aid Administrative Funds for wildlife and sport fish restoration projects. A chart depicting the approximate dates for each step of the annual process appears in Appendix A.

G. Submission Requirements

Each proposal submitted for Federal Aid Administrative Funds must contain the following:

1. *Title.*

2. *Background and Purpose*—Include a comprehensive statement that describes the significance of the problem and addresses the need or problem to be resolved, as well as a brief history of previous work and a statement on State support of the project.

3. *Scope of Work*—Include a description of work/objectives by year if more than 1 year. State the time required to complete the project and provide milestones to measure accomplishment of the objectives.

4. *Expected results or benefits* related to the State's fish and wildlife programs—In addition to stating how the results will be useful, provisions must be made for making the product or results available and usable to those affected by the problem or need. Benefits must be expressed in quantifiable terms, i.e., angler days, harvest per unit effort, improvements to State administration, dollars saved, etc.

5. *Resumes*—Include resumes and names of the key individuals who will be involved in the project, stating their particular qualifications for undertaking the project.

6. *Project Costs*—Submit cost estimates showing total project costs as well as the Federal and non-Federal shares. Each proposal that contains a multi-year project must include a summary budget showing funds required for each year and an itemized budget for the first 12-month period. Estimates of direct costs must be provided for each year for each of the subsequent years. In addition, costs must be provided for:

a. Personnel

(1) Include salaries of employees (by position title), amount of the salaries attributable to the project and identify the percent of each person's time spent on the project.

(2) Identify fringe benefits (amount only)—This entry should be the proportionate cost of fringe benefits paid for amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to the project.

b. Consultants—Identify specific tasks and work to be performed by consultants, including the basis for the fee paid, e.g., hourly rate.

c. Contracts—Identify all work to be completed by contract. If a commitment has been made prior to application for funding to contract with a particular vendor, explain how the vendor was selected, type of contract, deliverables expected, time frame, cost, and basis for the cost. All contracts must meet the standards established in Office of Management and Budget Circulars. Grants that are subcontracted are subject to review for compliance with government procedures.

d. Travel and Per Diem—Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. Travel expenses shall be in accordance with rates specified by Federal travel regulations. Registration fees should be included.

e. Equipment—Identify equipment or items to be purchased or rented that are necessary to support the project.

f. Supplies—Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies may be included under Indirect Costs unless purchased in large quantity.

g. Indirect Costs—Identify those indirect costs which are based on approved indirect cost rates with the Federal Government. Estimates may be included pending approval of a negotiated Federal indirect cost rate.

h. Other Costs—Identify other costs not stated above that are attributable to the project.

7. Proposals requiring multi-year funding must show projected goals associated with each year of funding.

Appendix B contains a sample proposal along with explanations of the requirements.

These rules do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information collection requirements for this grant program are those necessary to comply with 43 CFR part 12, which include (a) project narrative; and (b) compliance with Federal laws, regulations, and policies. Recordkeeping includes the tracking of costs and accomplishments

(43 CFR 12.60), monitoring progress (43 CFR 12.80), and evaluating accomplishments (43 CFR 12.81). Reporting requirements include those required by 43 CFR 12.82. No additional information collection will be contained in this rule.

H. Focus Areas

Focus areas are those areas of interest and need to the Service and the States for the administration and management of fish and wildlife resources and boating access programs. Focus areas will be determined each year by the Service, based on recommendations from the Grants-In-Aid Committee (GIAC) in accordance with the by-laws of the International Association of Fish and Wildlife Agencies. The GIAC will be asked to submit recommendations each year after its September meeting. The focus areas will be announced in the **Federal Register** in subsequent years in the Notice announcing the availability of Federal Aid Administrative Funds.

I. Selection Criteria

Each eligible proposal will be reviewed and evaluated for the following:

1. Focus Areas—Priorities and areas of need announced in the **Federal Register**.

2. Scope—The problem or need addressed in the proposal that is of direct concern to one-half or more of the States. The scope of proposed marine resources projects must also address a need of direct concern to a majority of States on a specific coast.

3. Significance—The problem or need addressed is deserving of the level of attention proposed and the proposed project is of substantial character and design to address the problem.

4. Feasibility—The proposed objectives can be attained in the amount of time and with the personnel and resources requested.

5. Cost-effectiveness—The expected output relative to the total cost of the project is clearly favorable.

J. Proposal Review and Selection Process

1. The Federal Aid Washington Office will review each proposal for eligibility as defined in section E. The final determination for eligibility will be made by the Federal Aid Office with the Chair of the (GIAC) as an observer.

2. All applicants will be notified of eligibility or ineligibility of their proposal.

3. Copies of eligible proposals will be forwarded to the Regional Offices, other appropriate Service Offices and the Chair, (GIAC). They will also receive lists of on-going grants and ineligible proposals. The Chair, GIAC, will forward copies to the voting members of the GIAC as representatives of the States.

4. The Regional Offices, other Service Offices and members of the GIAC will review and rate each eligible proposal high, medium or low.

5. The Regional Offices, other Service Offices and State voting members of the GIAC will return their ratings and recommendations to the Division of Federal Aid in Washington.

6. The Division of Federal Aid will prepare a summary of the ratings and recommendations from the Regional Offices, other Service Offices and members of the GIAC.

7. The summary of all comments and recommendations will be provided to the Chair, GIAC for review at their September meeting. Copies of the summary will also be provided to the Regional Offices.

8. During the September meeting of the IAFWA, the GIAC will evaluate and rank eligible proposals based on the needs of the States. The GIAC will forward its rankings and recommendations to the Service in accordance with IAFWA procedures.

9. The Division of Federal Aid will summarize and consolidate all the rankings, ratings and recommendations and prepare final recommendations for project selections and awards. The Service may also select and recommend any parts of a proposal or project for funding.

10. The Federal Aid Division's recommendations will be forwarded to the Director of the Service for final review and selection of projects to receive Federal Aid Administrative Funds.

11. The Service will notify each eligible applicant in writing of the final disposition of their proposal.

12. The Director will notify the Regional Directors and the Chair, GIAC of the projects selected for funding.

K. Lobbying Restrictions

During the review of proposals, grant applicants may not engage in any activities that might be considered as attempts to influence reviewers or approving officials. If the activities are determined to be lobbying; the proposal will be disqualified for Federal Aid Administrative Funds.

L. Awards and Funding

1. Projects that are selected and that require more than 1 year of funding will receive subsequent (2nd and/or 3rd) year funding based on project accomplishments and satisfactory progress reports.

2. Federal Aid Administrative funds awarded for special projects may not be used in lieu of regular WR/SFR apportioned funds to support individual State projects or for operational activities beyond development and implementation.

3. Funds awarded to Fish and Wildlife Service offices may not be used to replace operational funding. Salaries may be paid if related to an approved project.

4. The Service's Division of Contracting and General Services will prepare and sign the formal award agreement. It will be forwarded to the awardee for signature. The award agreement must be signed by the Service and an authorized awardee official before it becomes a valid agreement. This process may require up to 60 days to complete. The Service is not responsible for costs incurred prior to the effective date of a signed agreement; therefore, the starting date for all projects should be planned accordingly.

5. The awardee must maintain a financial management system in accordance with the Office of Management and Budget Circular A–110.

M. Project Administration

Projects awarded funding will be assigned to a Project Officer. The Project Officer will provide assistance that includes:

1. Assisting Service contracting officials in completing the grant agreements;

2. Serving as the Service's point of contact after the grant agreement is signed;

3. Receiving and approving bills; and

4. Monitoring project performance and assuring that the grantee adheres to the grant agreement.

Appendix A—Summary of Events

Target date	Event
April 1 (subject to change in future).	Washington Office issues Federal Register Notice announcing availability of Federal Aid Funds and focus areas for grant applications.
June 1 (subject to change in future).	Washington Office receives proposals.
June 30	Washington Office determines eligibility (Chair of the Grants-In-Aid Committee (GIAC) participates as an observer).
July 15	Washington Office forwards copies of eligible proposals to Regional Offices, other appropriate Service offices, such as Migratory Bird Office and Chair, GIAC (Chair of GIAC will distribute proposals to voting members of the GIAC, as representatives of the States) (Includes Summary list of on-going grants and list of ineligible proposals).
July 15	Washington Office sends letters to all applicants informing them of the eligibility or ineligibility of their proposal.
August 15	Regions, States and other Service Offices forward reviews and ratings to Chief, FA (Ratings of High, Medium or Low).
September 1	Chief, FA summarizes comments and ratings and forwards to Chair, GIAC for review at the September meeting.
September 15	GIAC reviews and ranks proposals and forwards rankings and recommendations to Washington, along with recommendations for Focus Areas for the following year.
October 31	Washington Office analyzes all ratings, rankings and recommendations; Prepares final recommendations and forwards to Director.
November 15	Director makes final selections.
November 30	Washington Office notifies applicants and Chair, GIAC of the final disposition of proposals.
January–February	Contracting and General Services awards grants.

Appendix B—Sample Proposal for the Use of Federal Aid Administrative Funds

Submitted by Gwyllt Institute

I. Title

Economic Profiles, Data Analysis, and Survey Design for Sport Fishing.

II. Background and Purpose

In the Fall of 1987, the U.S. Fish and Wildlife Service (Service) released the data tapes of the 1985 National Survey of Fishing, Hunting and Wildlife-Associated Recreation. In its current form the data tapes are not easy for the States to use.

The Gwyllt Institute (Institute) proposes to produce State-specific reports on the retail sales, jobs, wages and salaries, years of employment, output, and tax receipts generated by sport fishing in each State.

III. Scope of Work

The Institute will provide each State with a specially designed software package for State-specific economic impact analysis. The differences between the results of the National Survey and State data collection efforts pertaining to the economic impact of sport fishing will be analyzed by the Institute. The results of this analysis will be used to make recommendations for the design of the 1990 Survey, as well as a standardized format for economic questions on State surveys.

A. Description of Work/Objectives

1. The Grantee shall provide to each of the 50 States, Lotus 1–2–3 (or facsimile) spreadsheets that contain trade margins, location quotients, economic multipliers, and tax rates specific to each of the States. The Grantee shall provide a manual to accompany the spreadsheets that will contain detailed instructions on how to use and modify the spreadsheets to derive the economic impacts of sport fishing, hunting, and wildlife-associated recreation.

2. The Grantee shall download all data from the National Survey from the data tapes to State-specific diskettes. The fishing, hunting and wildlife-associated data shall be on separate diskettes. The diskettes must be accompanied by a software package that allows users to download the data from the diskettes to a Lotus 1–2–3 (or facsimile) spreadsheet.

3. The Grantee shall inform State Directors that workshops will be held by the Institute in each of the Regions of the Service to train State agency and Service personnel on how to use the spreadsheets to analyze the economic impact of fishing or other natural resource uses, using State data or Service data. These sessions will be held in conjunction with the Regional Federal Aid meetings or the Regional meetings of the International Association of Fish and Wildlife Agencies. These sessions will be at no cost to the Government.

4. The Grantee shall assist States by compiling and analyzing State-specific studies and work with States toward assembling data into a format useful for economic impact analysis.

5. The Grantee shall develop recommendations for modifications, if needed, to the design of the 1990 Survey and work with the Responsive Management Project on their economic modules.

6. The following milestones are applicable to paragraphs 1 through 5 above.

a. On a monthly basis, the Grantee shall submit written progress reports to the Service Project Officer. Each report shall contain a summary of the Grantee's efforts and activities for the reporting period, including problems encountered and efforts undertaken for their resolution.

b. Within 4 months after the effective date of this Agreement, the Grantee shall distribute to each of the 50 States the following items:

(1) Data diskettes.

(2) Software to access data diskettes.

(3) Manual for diskettes and software.

c. Within 6 months after the effective date of this Agreement, the Grantee shall distribute to each of the 50 States the following items:

(1) Economic Impact Spreadsheets.

(2) Manual for Economic Impact Spreadsheets, and

(3) Existing State data and studies.

d. During months 5 through 12, the Grantee shall participate in the planned training sessions. (See section A.3. Description of Work/Objectives.)

e. Within 8 months after the effective date of this Agreement, the Grantee

shall prepare the State data in the Impact format.

f. Within 10 months after the effective date of this Agreement, the Grantee shall distribute copies of the Economic Impact Manual and comments. One copy shall be submitted to the Service Project Officer.

g. Within 11 months after the effective date of this Agreement, the Grantee shall submit to the Service Project Office an original and one copy of recommendations for the 1990 Survey.

IV. Expected Results of Benefits

In 1985, 46.4 million anglers spent 976.6 million days and $28.1 billion pursuing their sport. It is anticipated that providing economic profiles for each State will allow State Commissioners of fish and game agencies to argue effectively for the necessary dollars to manage the fishery resources from their respective State legislature. We conservatively estimate that an additional 5 percent of shared resources will be reallocated to recreational anglers.

V. Resumes

VI. Project Cost

A. Personnel:			
Project Manager/Senior Economist (2 Months)	=	$8,000	
Resource economist (12 months)	=	35,000	
Secretary (6 months)	=	10,000	
Subtotal		53,000	
Fringe benefits @ 20%—Total		63,000	$63,000
B. Consultant:			
Computer Programmer (1 month)		5,000	5,000
C. Travel and Per Diem (To consult with Federal Aid—Seattle, WA, to Washington, DC):			
Size of staff: 1			
Duration (days) 3			
Air Fare	=	385	
Per Diem	=	240	
Rental Car	=	75	
Total		700	700
D. Equipment:			
Diskette Storage Cabinet	=	1,300	
Mainframe Computer Time (100 hrs. @ $50)	=	5,000	
Total		6,300	6,300
E. Supplies:			
Diskettes (3,500 @ $1.00)	=	3,500	
Printing (50 manuals @ $20)	=	1,000	
Subtotal		$4,500	4,500
			79,500
F. Indirect Costs @ 12% (rate as established by previous Federal audit):	=	9,540	9,540
Grand Total		89,040	89,040

Note: Cost of training sessions is being funded by other than Federal Government sources.

[FR Doc. 93–16058 Filed 7–7–93; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[CO–050–4210–05; COC–54567]

Realty Action; Recreation and Public Purposes Act Patent; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision to patent.

SUMMARY: The following public lands in Chaffee County, Colorado, have been analyzed in an environmental assessment and determined to be suitable for conveyance to the County of Chaffee under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The County of Chaffee proposes to use the lands for a landfill operated under all applicable Federal, State, and local laws and regulations.

New Mexico Principal Meridian

T.51N., R.8E.,
Sec. 21, N½NE¼,SE¼NE¼
Containing 120 acres more or less.

The lands are not needed for Federal purposes. The conveyance is consistent with the current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States.

2. Leasable minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. Indemnification of the United States from all liability arising out of the use of the land.

4. A limited reverter provision where title reverts to the United States if the land is not developed for the intended use and no waste disposal has occurred.

5. A compensation provision where fair market value must be paid to the United States if title is transferred.

6. A declaratory permanent convenant stating that the land was used for waste disposal and that future uses should take that into account.

7. All applicable provisions of the Recreation and Public Purposes Act and regulations of the Secretary of the Interior.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Royal Gorge Resources Area, 3170 Main Street, Canon City, Colorado.

COMMENTS: The suitability of the land was determined previously and a notice issued on June 8, 1992. Interested parties may now submit comments until August 9, 1993, regarding the specific

use proposed in the plans of development and operation or whether the BLM followed proper administrative procedures in reaching the decision to patent the land.

Any adverse comments will be reviewed by the Colorado State Director. In the absence of any adverse comments, this decision shall become effective immediately.

Dated: June 25, 1993.

James R. Cunio,

Acting District Manager.

[FR Doc. 93-16022 Filed 7-7-93; 8:45 am]

BILLING CODE 4310-JB-M

[OR-130-4333-04; GP3-271]

Establishment of Supplementary Rules

AGENCY: Bureau of Land Management; Interior.

ACTION: Establishment of supplementary rules for Bureau of Land Management (BLM) administered land in the state of Washington.

SUMMARY: The purpose for establishing these supplementary rules are to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various users of those lands.

In accordance with 43 CFR 8365.1-6, the following supplementary rules are hereby established for all BLM lands in the state of Washington.

43 CFR 8365.1-6

(a) On all public lands, unless otherwise authorized, no person shall:

(1) Place a vehicle or other object in such a manner or a place that it is an impediment or hazard to the safety or convenience of any person.

(2) Block, restrict or otherwise interfere with the use of a road, trail, gate or boat launch site or facility.

(3) Park, leave or place a vehicle or a trailer in violation of posted instructions.

(4) Park a vehicle or otherwise obstruct a parking space reserved for handicapped drivers and their vehicles.

(5) Fail to stop a vehicle when directed to do so by a law enforcement officer.

(6) Dispose of or throw any trash, can, bottle or other items not related to human body waste into any toilet, toilet vault or plumbing fixture.

(7) Possess or leave refuse, debris or litter in an exposed, unsightly or unsanitary condition.

(8) Engage in fighting.

(9) Discharge a firearm or any other implement capable of taking human life, causing injury or damaging property * * *

(aa) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area; or

(bb) Across or on a public road or body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge.

(10) Camp longer than 14 consecutive days at any public land site with a maximum of 30 days camped during a time frame of 90 consecutive days.

In accordance with 43 CFR 8365.1-6, the following supplementary rules are hereby established for developed recreation sites and areas on BLM lands in the state of Washington.

(b) On developed recreation sites and areas, no person shall, unless otherwise authorized:

(1) Bring in or possess an animal, other than a seeing eye dog, unless it is crated, caged or upon a leash not longer than six feet, or otherwise under physical restrictive control.

(2) Occupy between 10 PM and 6 AM a place designated for day use only.

(3) Bring in or possess a saddle, pack or draft animal except as authorized by posted instructions.

(4) Camp longer than seven consecutive days at any recreation site or area with a maximum of fourteen days camped in any Recreation site or area during a time frame of sixty consecutive days.

EFFECTIVE DATE: These supplementary rules are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: District Ranger, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202, (509) 353-2570.

SUPPLEMENTARY INFORMATION: The authority for these supplementary rules is provided in 43 CFR 8365.1-6. Violation of these rules is punishable by fine and/or imprisonment.

Dated: June 28, 1993.

Joe Buesing,

Spokane District Manager.

[FR Doc. 93-16023 Filed 7-7-93; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Draft Environmental Impact Statement on the Development Concept Plan for the South Slope of Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) on the development concept plan for the south slope of Denali National Park and Preserve.

DATES: Comments on the draft EIS should be postmarked no later than September 17, 1993. Dates for the public meetings regarding the draft EIS will be scheduled and announced in the future. The final EIS is expected to be completed in March 1994.

ADDRESSES: Comments on the draft EIS should be submitted to the Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755-0009, phone (907) 683-2294. Public meetings will be held in Anchorage, Talkeetna, and Denali National Park and Preserve, Alaska. Public reading copies of the draft EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, (Telephone 202-343-6843).

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503-2892, (Telephone 907-257-2647).

Talkeetna Public Library, P.O. Box 768, Talkeetna, Alaska 99676, (Telephone 907-733-2359).

Headquarters, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755-0009, (Telephone 907-683-2294).

A limited number of copies of the statement are available on request from: Russell Berry, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755-0009. Phone (907) 683-2294.

SUPPLEMENTARY INFORMATION: The development concept plan proposes to expand visitor activities and facilities on the south slope of the Alaska Range. The proposed action calls for construction of a small visitor center in Denali State Park (to be operated jointly by the National Park Service and the Alaska Division of Parks and Outdoor Recreation), 42 miles of trails, two public use cabins (converted from NPS patrol cabins), and six roadside exhibits along the George Parks Highway. An area near Talkeetna was found suitable for construction of a large visitor center; however, it would not be constructed unless its need is more clearly demonstrated in the future. Alternatives to the proposal considered are the no-action alternative and alternatives A and

VOL 58 ISS 129 JL 8 1993 UMI

B. Alternative A calls for one large visitor center in Talkeetna, 63 miles of trails, four public use cabins (two converted and two new), and two roadside exhibits. Alternative B calls for one large visitor center in the state park, 183 miles of trails, eight public use cabins (two converted and six new), and 13 roadside exhibits. Significant environmental effects from the proposed action could accrue to the local economy in the Talkeetna area, to the social environment in the Talkeetna area, and to visitor use patterns and levels along the south slope of the Alaska Range. The responsible official for a decision on the proposed action is the Regional Director, Alaska Region, National Park Service.

John M. Morehead,

Regional Director.

[FR Doc. 93–16150 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–70–P

Anadarko Petroleum Corp., Lake Meredith National Recreation Area, Hutchinson, Moore, and Potter Counties, TX; Availability of Plan of Operations and Environmental Assessment for Continuing Operation of Twenty Gas Wells

Notice is hereby given, in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations, that the National Park Service has received from Anadarko Petroleum Corporation a plan of operations for the continuing operation of twenty existing gas wells within Lake Meredith National Recreation Area, located within Hutchinson, Moore, and Potter Counties, Texas.

The plan of operations and environmental assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211 Santa Fe, New Mexico.

Dated: June 22, 1993.

Mary R. Bradford,

Acting Regional Director, Southwest Region.

[FR Doc. 93–16155 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Cape Krusenstern National Monument and Kobuk Valley National Park and the Chairpersons of the Subsistence Resource Commissions for Cape Krusenstern National Monument and Kobuk Valley National Park announce a forthcoming joint meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions.

The following agenda items will be discussed:

(1) Welcome.
(2) Attendance.
(3) Approval of agenda.
(4) Introduction of guests.
(5) Approval of minutes of last meeting.
(6) Election of Chairpersons.
(7) Old business:
a. Resident zones (review past draft recommendation).
b. Finalization of Hunting Plan.
(8) New business:
a. Federal Subsistance Coordinator's report.
b. Harvest reports.
c. Regional development impacts on subsistence.
d. Borough zoning.
e. Hunting concessions.
(9) Agency comments.
(10) Public comments.
(11) Date of next meeting.
(12) Adjournment.

DATES: The meeting will be held Thursday, July 15, 1993. The meeting will begin at 9 a.m. and conclude around 5 p.m.

LOCATION: The meeting will be held at the National Guard Armory, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Robert Gerhard, Superintendent, PO Box 1029, Kotzebue, Alaska 99752. Phone (907) 442–3890.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

John M. Morehead,

Regional Director.

[FR Doc. 93–16152 Filed 7–7–93; 8:45 am]

BILLING CODE 4315–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: August 18, 1993 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 E. Church Street, room P–205, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Pub. L. 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, Attention: Millie Alvarez. Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Dated: June 29, 1993.

Chris L. Andress,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93–16151 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–70–M

Underground Railroad Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. that a meeting of the Underground Railroad Advisory Committee will be held in Buffalo, New York on July 16, 1993, in the Hilton Hotel, First Floor Conference Room, 120 Church Street. The meeting will begin at 10:30 a.m. and will adjourn at approximately 5 p.m. If necessary, the meeting may be continued in the same location on July 17.

The Underground Railroad Advisory Committee was established by Public Law 101–628 to advise the Secretary of the Interior in preparation of a study of alternatives for commemorating and

interpreting the Underground Railroad used by enslaved Africans escaping to freedom before the conclusion of the Civil War. This will be the second meeting of the Committee. The matters to be discussed at the meeting include:

—Subcommittee reports addressing history and interpretation; sites, structures, and trails; and public involvement

—Progress with data collection and analysis by the National Park Service

—Alternative concepts for resource protection and management

The meeting will be open to the public. However, space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. Anyone may file a written statement concerning the matters to be discussed at the commission meetings. For further information about the meeting or submitting statements, contact Mr. John Paige, Underground Railroad Study Team Captain, National Park Service, Denver Service Center-TEA, P.O. Box 25287, Denver, CO 80225–0287. Telephone 303/969–2356.

This meeting has been scheduled with less than 15 days notice because it was just recently determined to be the only opportunity for a majority of the committee members to meet before the end of September. Several committee members had conflicting commitments on previously planned meeting dates later in the summer. The meeting on July 16th will coincide with the end of a trek, sponsored by an independent organization, originating in Atlanta to commemorate the Underground Railroad. Several members of the committee intend to participate in activities related to this event, and the meeting will allow members of the Advisory Committee to conduct official business while they are in the area for this commemoration of the Underground Railroad. Subject to the availability of funds in Fiscal Year 1994, several additional opportunities for public participation with at least 15 days prior notice are expected during the course of the Advisory Committee's work in the year ahead.

Dated: June 30, 1993.

Denis P. Galvin,

Associate Director, Planning and Development, Washington Office.

[FR Doc. 93–16154 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice establishes a special meeting on Monday, August 9, 1993 at 7 p.m. of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act.

The Delaware River Basin Commission, a partner in the cooperative management of the Upper Delaware Scenic and Recreational River (a component of the Wild and Scenic Rivers System) has introduced proposed standards for the management of non-point source pollution within Special Protection Waters. The Upper Delaware Scenic and Recreational River falls within that description.

The Public comment for these proposed standards ends August 21, 1993. The Upper Delaware Citizens Advisory Council will take action regarding the proposed non-point pollution standards in this special plenary session.

Press Releases regarding this meeting will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-state Gazette
The Pike County Dispatch
The Wayne Independent
The Hawley News Eagle
The Weekly Almanac

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

ADDRESSES: National Park Service Headquarters, Upper Delaware Scenic and Recreational River, River Road, Beach Lake, Pennsylvania, 18405; 1¾ miles north of Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated: June 29, 1993.

Chris L. Andress,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93–16153 Filed 7–7–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–334]

Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Commission Decision To Review Portions of an Initial Determination; Finding of No Violation of Section 337 of the Tariff Act of 1930; Decision to Deny Motion to Reopen

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review portions of the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation. The Commission has determined to review the issues of validity, enforceability, and importation. However, in view of the Commission's determination not to review the issues of claim interpretation and infringement, the ID's determination of no violation of section 337 of the Tariff Act of 1930 is adopted by the Commission. The Commission has further determined to vacate certain *dicta* relating to the ALJ's conclusion that claims 9 and 10 were allowed due to an oversight on the part of the U.S. Patent and Trademark Office examiner. Finally, the Commission has also determined to deny complainant's motion to reopen the evidentiary record.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On December 12, 1991, Modine Manufacturing Company ("Modine") filed a complaint under section 337 of the Tariff Act of 1930 alleging infringement of U.S. Letters Patent 4,998,580 in the importation and sale of certain condensers used in automobile air conditioning systems. On January 13, 1992, the Commission voted to institute an investigation of Modine's complaint. The Commission's notice of investigation was published in the **Federal Register** on January 23, 1992.

The final ID finding no violation of section 337 was filed on April 26, 1993. Complainant Modine and the Commission investigative attorney (IA) filed petitions for review of the ID on May 6, 1993. The IA filed a response to Modine's petition on May 13, 1993. Respondents filed a joint response to both petitions for review on May 18, 1993.

Copies all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.53 and 210.56 (19 CFR 210.53 and 210.56).

The Commission seeks no further written submissions on the issues under review, nor any written submissions on the issues of remedy, the public interest, and bonding.

By order of the Commission.
Issued: June 25, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–16168 Filed 7–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 701–TA–319–332, 334, 336–342, 347–353; and 731–TA–573–579, 581–592, 594–597, 599–609, and 612–619

Certain Flat-Rolled Carbon Steel Products; Commission Determination To Change the Starting Time of the Hearing

AGENCY: International Trade Commission.

ACTION: Change in starting time of the Commission hearing.

SUMMARY: The Commission has unanimously agreed to change the starting time of the hearing scheduled for June 30, 1993 from 9:30 a.m. to 8:30 a.m., and to announce the change at the earliest practicable time.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Pursuant to 19 CFR. 201.37, the Commission made the schedule change to facilitate Commission business.

Issued: June 29, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16169 Filed 7–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–343]

Certain Mechanical Gear Couplings and Components Thereof

Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: K-Power Products, Inc. and A.R. Hutchings.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on June 25, 1993.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: June 25, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–16170 Filed 7–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–315]

Certain Plastic Encapsulated Integrated Circuits; Issuance of Modified Cease and Desist Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has modified the cease and desist order issued to Analog Devices, Inc. (Analog) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the

General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 211.57 of the Commission's Interim Rules of Practice and Procedure (19 CFR 211.57).

On February 18, 1992, the Commission issued its final determination in this investigation. The Commission found that there was a violation of section 337 in the unlicensed importation and sale of certain plastic encapsulated integrated circuits manufactured by a process that infringed certain claims of U.S. Letters Patent 4,043,027 (the '027 patent), owned by TI. The Commission issued a limited exclusion order and cease and desist orders to five respondents, including Analog. The orders explicitly did not cover licensed products, and the limited exclusion order allowed for entry of products which the manufacturer or importer certified were covered by a license. The cease and desist orders contained quarterly reporting requirements.

The Commission adopted the presiding administrative law judge's finding that Analog had obtained a limited license under the '027 patent when Analog acquired another company which had a cross-license agreement with TI. The Commission's remedial orders do not specify the dollar amount above which Analog's sales of the subject plastic encapsulated integrated circuits would exceed the scope of the license and therefore become subject to the exclusion and sales prohibition provisions of those orders. The Commission presumed that there were mechanisms in place for TI to keep track of Analog's sales under the license agreement, and consequently for the parties to ascertain when the remedial orders become operative.

On September 23, 1992, TI filed a Petition for Modification. In that petition, TI stated that there is no mechanism in place for TI and Analog to ascertain licensed sales, and that, without a decision by the Commission as to the license ceiling and proper method for reporting licensed sales, the Commission's remedial orders cannot be implemented. TI requested that the Commission establish a license ceiling equal to the amount of sales of licensed plastic encapsulated circuits by the company acquired by Analog at the time of acquisition; impose a reporting requirement sufficient to enable TI to determine when this ceiling, or whatever ceiling the Commission establishes, has been reached; and issue such further relief as the Commission deems just and proper.

Pursuant to Commission interim rule 211.57 (19 CFR 211.57(b)), the Commission provisionally accepted TI's petition, published a notice in the **Federal Register** to that effect, and requested responses. The two parties, other than TI, that have an interest in the issues raised in the petition—Analog and the Commission's Office of Unfair Imports (OUII)—subsequently filed responses to the petition.

Analog and OUII argued that, under the terms of the license agreement, Analog is licensed up to the dollar amount of annual sales of all licensed products by the acquired company at the time it was acquired by Analog. The Commission agreed with this interpretation of the agreement, and modified the reporting requirements of the cease and desist order issued to Analog in a manner that will enable the Commission to determine whether Analog is complying with the order in light of the Commission's interpretation of the license agreement. Accordingly, the Commission issued a modified cease and desist order that requires Analog to report information sufficient to establish whether its sales of covered plastic encapsulated integrated circuits exceed the license ceiling. To meet this goal, the modified order requires that Analog report its sales in dollars and its sales of all licensed products up to the license ceiling.

Issued: July 2, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16171 Filed 7–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives; Decision to Review an Initial Determination Granting Motions for Summary Determination and Partial Summary Determination on the Issue of Jurisdiction; Request for Written Submissions

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (ID) (Order No. 16) issued on May 28, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the motions of summary determination on the issue of jurisdiction filed by respondents Akashic Memories Corp. ("Akashic"), Micropolis Corp. ("Micropolis"), Hoya Electronics Corp. ("Hoya"), and Nashua Corp. ("Nashua"), and terminating the investigation with respect to those parties. The ID additionally granted motions for partial summary determination on the issue of jurisdiction filed by respondents Seagate Technology, Inc. ("Seagate"), and Western Digital Corp. ("Western Digital").

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon-coated computer disks ("sputtered disks") and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 25, 26, and 29 of U.S. Letters Patent Re 32,464 ("the '464 patent").

Akashic filed a motion for summary determination on May 10, 1993. In its motion, Akashic represented that its activities with respect to sputtered disks are limited to manufacturing and selling such disks in the United States, and that the Commission has no jurisdiction under section 337 with respect to domestically-manufactured articles. The subsequent separate summary determination motions filed by Hoya and Nashua, which are also U.S. disk manufacturers, were essentially identical to Akashic's.

Micropolis's summary determination motion was filed on May 14, 1993. Micropolis asserted that the disks that it purchases for installation in its disk drives are either manufactured in the United States or manufactured in Japan by a licensee of complainant Aine. Consequently, it argued that it is entitled to summary determination because its purchasing activities were either outside the jurisdiction of section 337, insofar as they concern domestically-manufactured disks, or non-infringing, insofar as they concern the disks manufactured by the licensee.

The movants for partial summary determination, Seagate and Western

VOL 58 ISS 129 JL 8 1993 UMI

Digital, manufacture disks in the United States and disk drives overseas. They requested summary determination with respect to their U.S. disk manufacturing activities on the same basis as Akashic. They did not request summary determination with respect to the complaint's allegations that they purchase allegedly infringing foreign-manufactured sputtered disks that they incorporate into the disk drives that they manufacture in foreign countries and import into the United States.

All of the summary determination and partial summary determinations were opposed by complainant Aine and the Commission investigative attorney (IA).

In the ID, the ALJ grants each of the summary determination and partial summary determination motions. The ID further terminates the investigation with respect to Akashic, Micropolis, Hoya, and Nashua.

Complainant Aine and the IA filed petitions for review of the ID. No agency comments were filed.

Having reviewed the record in this investigation, including the ID, the Commission has determined to review the ID's legal conclusions that the Commission's jurisdiction under section 337 does not encompass domestically-manufactured articles and to reconsider the portions of the determination in Certain Erasable Programmable Read-Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories, Inv. No. 337–TA–276, USITC Pub. 2196 (May 1989), on which the ID relied. In connection with this matter, the Commission is particularly interested in additional briefing on the following issues:

1. The proper construction of the term "sale for importation" used in section 337(a)(1)(B). Under what, if any, circumstances, can an export sale by a U.S. manufacturer of infringing articles be considered a "sale for importation?" If such an export sale can be considered a "sale for importation," must it further be shown that the manufacturer has knowledge that each infringing article will subsequently be imported into the United States? Could a single export sale constitute a "sale for importation?"

2. Whether section 337 must or can be read to require any nexus between "unfair activities" such as patent infringement, on the one hand, and the acts proscribed by the statute—importation, sale within the United States after importation, and sale for importation—on the other. Assuming *arguendo* that section 337 cannot be read to forbid the Commission from exercising jurisdiction over infringing domestically-manufactured articles, does it also follow that it compels the Commission to exercise jurisdiction over all imports containing such articles? Is exercise of jurisdiction appropriate, for instance, if the infringing domestically-manufactured article is a component constituting a very small proportion of the total value of an imported assembled article?

3. Whether construing section 337 jurisdiction to extend to domestically-manufactured articles will have the practical effect of making the Commission a nationwide trial-level tribunal for resolution of domestically intellectual property disputes. Could the Commission assume such a role consistent with its Congressional mandate? Would assumption of such a role be proper when Congress to date has expressly created only one nationwide domestic intellectual property court—the United States Court of Appeals for the Federal Circuit, an appellate tribunal?

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The Commission additionally invites *amici curiae* to file submissions on these issues. Written submissions, must be filed by July 30, 1993, and reply submissions must be filed by August 9, 1993.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Oral Argument

The Commission intends to hold oral argument as part of its review of the subject ID. The date and ground rules for the oral argument will be announced later.

Additional Information

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rules 210.54 and 210.56, 19 CFR 210.54, 210.56.

Copies of the nonconfidential version of the ID and all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16172 Filed 7–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–350]

Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives; Initial Determination Terminating a Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Yamaha Corporation (Yamaha).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on July 2, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: July 2, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16173 Filed 7–7–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 30530.

Reinstatement of a Previously Approved Collection for Which Approval has Expired

(1) Civil Liberties Act—Voluntary Information Form

(2) CRT–55. Civil Rights Division.

(3) One-time

(4) Individuals or Households. Under the provisions of 50 U.S.C. App. 1989b. The Voluntary Form may be used to locate persons of Japanese ancestry who were confined, held in custody, relocated, or otherwise deprived of liberty during World War II, and are eligible for a redress payment.

(5) 16,000 annual responses at .5 hours per response

(6) 8,000 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: July 2, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–16137 Filed 7–7–93; 8:45 am]

BILLING CODE 4410–13–M

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on June 25, 1993, a proposed partial consent decree in *United States* versus *Apache Energy & Mineral Company, et al.*, Civil Action No. 86–C–1675, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree with defendants ASARCO, Inc., Resurrection Mining Company, Res-ASARCO Joint Venture, and Newmont Mining Corporation (collectively the "Settling Defendants") resolves the Settling Defendants' alleged liability for past response costs incurred by the United States and the State of Colorado at the California Gulch Superfund Site ("the Site"). As defined in the decree, United States' past response costs include all direct and indirect costs, including enforcement costs, incurred by the United States in connection with the Site prior to February 1, 1991, but do not include costs incurred by the Department of the Interior or Bureau of Reclamation in connection with the Leadville Drainage Tunnel, nor natural resource damages or costs incurred for the assessment of natural resource damages at or from the Site. The United States' past response costs also include interest on those costs through March 15, 1992. The State's past response costs shall mean all direct and indirect costs plus interest incurred by the State of Colorado (the "State") pursuant to CERCLA in connection with the Site prior to February 1, 1992, but shall not include natural resource damages and the cost of natural resource damage assessments.

The proposed decree requires Settling Defendants to pay, within 31 days of the entry of this decree by the court, $8,175,000 to the United States and $575,000 to the State of Colorado. Upon full payment, the United States and the State covenant not to sue the Settling Defendants for their respective past response costs, as defined in the decree. The Settling Defendants expressly waive any rights they may have to assert any claims, including claims for contribution or setoff, against the United States and the State arising out of their reimbursement of the United States' and State's past response costs. The proposed decree further provides that upon performing the obligations and requirements of the decree, the Settling Defendants are entitled to such protection from contribution actions as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The Department of Justice will receive comments relating to the proposed consent decree with Settling Defendants for a period of thirty (30) days from the date of this publication. Comments on the decree should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice,

VOL 58 ISS 129 JL 8 1993 UMI

Washington, DC 20530, and should refer to *United States* versus *Apache Energy and Mineral Company, et al.*, DOJ Ref. 90–11–3–138.

A copy of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 633 17th Street, Suite 1600, Denver, Colorado 80202; the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202–624–0892). A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. When requesting a copy of the proposed consent decree, please enclose a check in the amount of $5.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division

[FR Doc. 93–16033 Filed 7–7–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Pellazar*, Civil Action No. 93–00509 DAE, was lodged on June 25, 1993 with the United States District Court for the District of Hawaii. The consent decree resolves the United States' claims against Petrus Smulders pursuant to sections 112 and 113(b) of the Clean Air Act, 42 U.S.C. 7412, 7413(b), for violations of the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61 (1989), in effect before the 1990 amendments. Specifically, the United States alleges that defendant Smulders failed to notify EPA of a renovation at his condominium unit and failed to keep friable asbestos-containing materials adequately wet prior to collection for disposal. The consent decree requires Smulders, the condominium unit owner, to pay a civil penalty of $6,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Pellazar*, DOJ Ref. # 90–5–2–1–1563.

The proposed consent decree may be examined at the Office of the United States Attorney, room C–242, United States Courthouse, Honolulu, Hawaii; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202–634–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–16026 Filed 7–7–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

One-Stop Shopping Exploratory Inventory Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Request for expedited review under the Paperwork Reduction Act.

SUMMARY: The Employment and Training Administration (ETA), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), is submitting a request for approval to the Office of Management and Budget for an information collection addressing the One-Stop Exploratory Inventory initiative. ETA has requested an expedited review of this submission to be completed by July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the information collection should be directed to Kenneth A. Mills, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210 (202 219–5095). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, room 3001, Washington, DC 20503 (202 395–7316).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Type of Collection: New

Frequency of Response: One-time

Number of Respondents: 219

Average Hours Per Response: 15 minutes

Annual Burden Hours: 55 total hours

Affected Public: State or local governments

Respondents Obligation To Reply: Voluntary

SUPPLEMENTARY INFORMATION: The Department of Labor is undertaking a study to explore easy access to a wide array of enhanced career development and labor market information services. This study seeks to streamline access to the myriad of federally funded employment and training programs available in local communities.

A literature review of major studies completed since 1988 that have attempted to describe and/or classify the status of one-stop service coordination and/or integration efforts underway in states and communities across the country involving employment, training and/or education programs will be part of the study. It will also include a telephone survey of administrators of major employment, training, education and human service programs in all states as appropriate and in selected local communities. Special emphasis will be given to identifying the types and uses of automated information systems which may have been designed to provide such services and to documenting new data applications similar to the one-stop concept.

Byproducts of this survey will include (1) developing a uniform approach to defining and classifying such efforts based on common definitions, characteristics and criteria; and (2) identifying up to ten potential sites that most clearly exemplify these criteria.

The survey includes items designed to solicit information on services provided, target populations, Federal, state and local programs involved, successful techniques used to achieve integration and barriers/impediments to integration.

Signed at Washington, DC this 1st day of July, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–16146 Filed 7–7–93; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Economically Targeted Investments (ETI) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 8:45 am/10:30 am, Friday, July 23, 1993, in suite N–3437 ABC, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to ETI for employee benefit plans covered by ERISA.

The purpose of the July 23 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and group regarding the subject matter.

Individuals, or representatives or organizations wishing to address the Working Group should submit a written request on or before July 20, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 20, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–16102 Filed 7–7–93; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Prohibited Transactions of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11:00 a.m./12:30 p.m., Friday, July 23, 1993, in suite N–3437 ABC, U.S. Department of Labor Building, Third and Constitution Avenue NW. Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Prohibited Transaction for employee benefit plans covered by ERISA.

The purpose of the July 23 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before July 20, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW. Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 20, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–16103 Filed 7–7–93; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans 401(k) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:15 p.m./2:45 p.m., Friday, July 23, 1993, in suite N–3437 ABC, U.S. Department of Labor Building, Third and Constitution Avenue NW. Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Defined Contribution Plans—401(k) for employee benefit plans covered by ERISA

The purpose of the July 23 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before July 20, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 20, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–16104 Filed 7–7–93; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, July 23, 1993, in suite N–3437 ABC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Seventy-Ninth meeting of the Secretary's ERISA Advisory Council which will begin at 3 p.m./4 p.m., is to receive and discuss each working group's progress in defining its topic and schedule of work to be accomplished. The Council has established three work groups, i.e., Economically Targeted Investments, Prohibited Transactions and Defined Contribution Plans—401(k). The Council will also take testimony and or submissions from employee representatives, employer representatives and other interested

VOL 58 ISS 129 JL 8 1993 UMI

individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 20, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 20, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–16105 Filed 7–7–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Overview Section) to the National Council on the Arts will be held on July 29, 1993 from 10 a.m. to 4 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include policy and a review of the guidelines.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 23, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–16176 Filed 7–7–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (States and Regional and Local Arts Agency Section) to the National Council on the Arts will be held on July 26, 1993 from 9:30 a.m. to 5:30 p.m. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10:15 a.m. for introductions.

The remaining portion of this meeting from 10:15 a.m. to 5:30 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 23, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–16177 Filed 7–7–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters A Section) to the National Council on the Arts will be held on July 27–30, 1993 from 9 a.m. to 6:30 p.m. on July 27, 1993, and from 8:30 a.m. to 6:30 p.m. on July 28–30, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of these meetings will be open to the public from 8:30 a.m. to 9 a.m. on July 28 and 29, 1993, and from 8:30 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m. on July 30, 1993. Topics of discussion will include policy and guidelines.

The remaining portions of these meetings from 9 a.m. to 6:30 p.m., on July 27–29, 1993, and 9 a.m.–4 p.m. on July 30, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 1, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–16178 Filed 7–7–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Victor Westbrook at (202) 632–1500.

SUPPLEMENTARY INFORMATION:

Title

Application for State-Capacity Building Awards to Governors for administration by State Literacy Resource Centers to Promote Interagency Development and Implementation of Performance Measurement and Reporting Systems that Foster Continuous Improvement in Adult Literacy and Basic Skills Programs. This is a new request for collection.

Abstract

The National Literacy Act established the National Institute for Literacy and requires that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities, with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by State Governors to apply for funding to provide assistance to State Literacy Resource Centers to create a performance measurement, reporting, and improvement system that can be applied to all adult literacy and basic skills programs in a State. Evaluations to determine successful applicants will be made by a panel of experts using the published criteria. The Institute will use this information to make a cooperative agreement awards for a period up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 65 hours per response annually. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States and Trust Territories and the Mayor of the District of Columbia.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,300 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Victor A. Westbrook, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200, Washington, DC 20006, and Dan Chenok, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Lilian Dorka,

Acting Interim Director, National Institute for Literacy.

[FR Doc. 93–16251 Filed 7–7–93; 8:45 am]

BILLING CODE 6055–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 30, 1993.

FOR FURTHER INFORMATION: Victor Westbrook at (202) 632–1500.

SUPPLEMENTARY INFORMATION:

Title

Application for State-Capacity Building Awards to Governors for administration by State Literacy Resource Centers to develop statewide interagency systems for adult literacy staff development that build state capacity to support integrated adult literacy service delivery. This is a new request for collection.

Abstract

The National Literacy Act established the National Institute for Literacy and requires that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities, with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by State Governors to apply for funding to be administered by State Literacy Resource Centers to create an interagency staff development system for staff of all local programs providing literacy and basic skills services to adults. Evaluations to determine successful applicants will be made by a panel of experts using the published criteria. The Institute will use this information to make a cooperative agreement awards for a period up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 65 hours per response annually. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States and Trust Territories and the Mayor of the District of Columbia.

Estimated Number of Respondents: 20.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,300 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Victor A. Westbrook, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200, Washington, DC 20006, and Dan Chenok, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Lilian Dorka,

Acting Interim Director, National Institute for Literacy.

[FR Doc. 93–16252 Filed 7–7–93; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

VOL 58 ISS 129 JL 8 1993 UMI

463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: July 19, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1133, Washington, DC.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biotechnology Program and Biochemical Engineering Program, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9545.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biosystems Analysis and Control proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16052 Filed 7–7–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: July 28–29, 1993; 8:30 a.m.—5 p.m.; July 30, 1993; 8:30 a.m.—12 noon.

Place: 1800 G Street, NW., room 1243, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Albert Bridgewater, Convener, Model Institutions for Excellence, Education and Human Resources, National Science Foundation, 1800 G St. NW., room 516, Washington, DC 20550. Telephone: (202) 357–7926.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Model Institutions for Excellence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16053 Filed 7–7–93; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Ocean Sciences Review Panel.

Date and Time: July 27–29, 1993; 8:30 a.m.–5 p.m.

Place: Caucus Room, Presidential Room, Suite 303, and Suite 308, One Washington Circle Hotel, One Washington Circle NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7924.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16054 Filed 7–7–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts. The MOU provides the basis for mutually agreeable procedures whereby the Commonwealth of Massachusetts may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Massachusetts. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective May 21, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the Commonwealth of Massachusetts to provide data related to plant conditions during emergencies at commercial nuclear power plants in Massachusetts.

Dated at Rockville, Maryland, this 25th day of June, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the Commonwealth of Massachusetts and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts, acting through Massachusetts

Emergency Management Agency, enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Massachusetts recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Massachusetts fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Massachusetts Emergency Management Agency ("MEMA"), an agency created by Chapter 639 of the Acts of 1950, as amended.

III. Scope

A. This Agreement defines the way in which NRC and Massachusetts will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Date System during emergencies at nuclear power plants in and adjacent to the Commonwealth of Massachusetts, specifically Pilgrim Station, Seabrook Station, and Vermont Yankee.

B. It is understood by the NRC and the Commonwealth of Massachusetts that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the Commonwealth of Massachusetts, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the Commonwealth of Massachusetts on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the Commonwealth of Massachusetts authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the Commonwealth of Massachusetts during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the Commonwealth of Massachusetts. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Massachusetts' General Responsibilities

A. Massachusetts, acting through MEMA, will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Massachusetts will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Massachusetts agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC and/or the utility provided technical liaison personnel.

VI. Implementation

Massachusetts and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Massachusetts, through MEMA, and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and MEMA agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Massachusetts will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Massachusetts General Laws Chapter 66A, Fair Information Practices, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to MEMA by the NRC. MEMA may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. for exercises in which the NRC is not participating, MEMA will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed Director of the Massachusetts Emergency Management Agency. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and MEMA staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and MEMA will work together to resolve these differences.

B. Resolution of differences between MEMA and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office of Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: January 6, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: May 21, 1993.

For the Commonwealth of Massachusetts.

A. David Rodham,

Director, Massachusetts Emergency Management Agency.

[FR Doc. 93–16148 Filed 7–7–93; 8:45 am]

BILLING CODE 7590–01–M

Bulletin 93–03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs"; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) issued Bulletin 93–03 on May 28, 1993 concerning new information about level indication errors that may occur during plant depressurization at boiling water reactors (BWRs).This bulletin is available in the Public Document Rooms under accession number 9305280173. This bulletin was issued as an urgent generic communication under NRC procedures for issues that the staff considers urgent. The Committee to Review Generic Requirements reviewed the bulletin in meeting number 242 on May 27, 1993. This bulletin is discussed in Commission information paper SECY–93–151 which is also available in the Public Document Rooms under accession number 9306070162.

DATES: The bulletin was issued on May 28, 1993.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT:

Amy E. Cubbage, (301) 504–2875.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 30th day of June 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulatory.

[FR Doc. 93–16149 Filed 7–7–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Violet R. Parker, Executive Personnel Division, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 606–2420.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

The following has been selected as an acting member of the Performance Review Board of the Office of Personnel Management: Jeremiah J. Barrett, Deputy Associate Director Administration Group.

[FR Doc. 93–16142 Filed 7–7–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32563; File No. SR–BSE–93–9]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to the Annual Meeting and the Annual Election

June 30, 1993.

I. Introduction

On March 22, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Constitution to change the date of the annual meeting and the annual election. The Exchange has amended the proposed rule change twice subsequent to its original filing. On April 13, 1993, the BSE submitted to the Commission Amendment No. 1 to the proposal[3] and on June 30, 1993, the BSE submitted to the Commission Amendment No. 2 to the proposal.[4]

The proposed rule change, together with Amendment No. 1, was published for comment in Securities Exchange Act Release No. 32197 (April 23, 1993), 58 FR 26011 (April 29, 1993). No comments were received on the proposal.

II. Description of the Proposal

The BSE proposes several amendments to Article VI of its Constitution governing the BSE's annual meeting and annual election.

Article VI, Section 1 of the BSE Constitution, Date-Election, currently provides that the annual meeting and the annual election of the Exchange shall be held on the last Monday of September on the floor of the Exchange. Section 1 specifies that, during the annual meeting members shall elect, by secret ballot, a Vice Chairman, ten members of the Board, and members to fill vacancies for unexpired terms.[5] The Vice Chairman is elected for the ensuing fiscal year.[6] Board members are elected for two fiscal years.

The BSE proposes to amend Article VI, Section 1 to change the date of the annual meeting and annual election to the last Monday of November and to provide that the meeting will be held on the premises of the Exchange. The proposal also would change the date that the Vice Chairman and Board members would commence their terms of office from the ensuing fiscal year to the ensuring calendar year.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated April 12, 1993. Amendment No. 1 clarified certain language in the proposal.

[4] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated June 28, 1993. Amendment No. 2 deleted language in the proposal which would have allowed the Board of Governors ("Board") to change the date or location of the BSE's annual meeting and annual election from time to time.

[5] BSE members do not elect their Chairman. The Chairman of the Exchange is appointed by the Board to serve at its pleasure. See Article III, Section 1 of the BSE Constitution.

[6] The Exchange's fiscal year runs from October 1 through September 30.

Article VI, Section 4 of the BSE Constitution, Meetings of Nominating Committee-Reports, currently requires that the Nominating Committee hold at least one meeting during the month of July for the purpose of suggesting nominees for the offices and positions that are to be filled at the annual election, and for members of the Nominating Committee for the ensuing fiscal year. In addition, Section 4 requires that the Nominating Committee notify the Secretary of the Exchange, on or before the second Monday in August, of the nominees for such offices and positions.[7] Section 4 also requires that independent nominations for the office of Vice Chairman, members of the Board and members of the Nominating Committee be filed with the Secretary of the Exchange on or before the last Monday in August.[8]

The BSE proposes to amend Section 4 to require the Nominating Committee to hold at least one meeting in June for the purpose of electing its own Chairman.[9] According to the BSE, the Nominating Committee routinely elects its Chairman in July, at the same time that it meets to suggest nominees for offices and positions to be filled at the annual election. The BSE also proposes to alter the timing for the submission of the nominees to the Secretary of the Exchange by the Nominating Committee or by independent nomination from the second Monday in August and the last Monday in August, respectively, to the second Monday in October and the last Monday in October.

Finally, the BSE proposes to add Supplementary Material .10 to Article VI of the Constitution. The Supplementary Material would clarify Article VI, Section 1 by specifying that the terms of office would begin on January 1 of each year. In order to facilitate the proposed amendments to the Constitution regarding the change in the date of annual election, the BSE proposes to extend the terms of all Board and Nominating Committee members that are due to expire on September 30, 1994 until December 31, 1994.[10]

The Exchange believes that the proposed rule change will provide for the review of the complete fiscal year picture which expires each September 30, as well as, provide additional time for Nominating Committee deliberations. The BSE states that the basis under the Act for the proposed rule change is Section 6(b)(3) because the proposed rule is designed to assure a fair representation of members in the selection of directors, the selection process, and the administrative affairs of the Exchange.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1), (3) and (5) of the Act.[11] Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(3) of the Act requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(1) of the Act because the proposal is designed to enhance the governance process of the Exchange. The proposed rule change would change the date of the BSE's annual meeting and annual election from the last Monday in September to the last Monday of November. As noted above, the BSE's fiscal year expires on September 30 of each year. As a result of the proposal, BSE members will have the opportunity to review the BSE's overall fiscal year prior to the annual meeting and annual election. This, in turn, may result in increased management accountability to the membership and help to ensure that all Exchange constituencies are adequately represented in its governance

The Commission also believes that the BSE proposal to change the date that the Vice Chairman and Board members commence their terms of office from the fiscal year to the calendar year is consistent with Section 6(b)(1) of the Act. This change is necessary to accommodate the BSE's proposal to change the date of the annual meeting and annual election. Moreover, the proposed rule change would give these elected officials the full month of December to prepare for their term of office, in contrast to the current rule which provides for a few days of transition between the annual election at the end of September and the commencement of elected officials' term of office on October 1. The Commission believes that giving the newly-elected Vice Chairman and Board members more time to prepare for their term of office will result in a more orderly transition in Exchange governance.

The Commission believes that the Exchange's proposal to require its Nominating Committee to meet in June for the purpose of electing its own Chairman is consistent with Sections 6(b)(1), (b)(3) and (b)(5) of the Act. This proposal would ensure that the Chairman of the Nominating Committee would hold office prior to the Nominating Committee deliberations, which would under the proposal, begin the next month in July. As a result, the proposal should provide the Nominating Committee with additional time at its July meeting to consider nominations for Vice Chairman, the Board, the composition of the Nominating Committee for the following year, and vacancies for unexpired terms. This should permit the Nominating Committee to focus, in its July deliberations, solely on eligible candidates for office and their qualifications. In this way, the proposal should work to ensure a fair representation of BSE members in the governance of the Exchange and protect investors and the public interest.[12]

Similarly, the Commission believes that the proposal to change the timing for notification to the Secretary of the Exchange of the nominees selected by the Nominating Committee or by independent nomination from the month of August to the month of October is consistent with sections 6 (b)(1), (b)(3) and (b)(5) of the Act. Because the proposal would change the

[7] See Article VI, Annual Meeting-Annual Election, Meetings of Nominating Committee-Reports, Section 4 of the BSE Constitution.

[8] Article VI, Section 4 provides that, on the written and signed petition of fifteen members of the Exchange, additional nominations may be made for the office of Vice Chairman, members of the Board, or members of the Nominating Committee to be elected at the annual election.

[9] The Nominating Committee's authority to elect its own Chairman is set forth in Article VI, Annual Meeting-Annual Election, Nominating Committee, Section 2 of the BSE Constitution.

[10] The BSE's Board is composed of its Chairman, Vice Chairman, and twenty others, ten of whom must be representatives from the securities industry and ten of whom must be representatives of the public. See Article II, Section 1, of the BSE Constitution.

[11] 15 U.S.C. 78f(b)(1), (3) and (5) (1988).

[12] As noted above, the BSE's Board is composed of its Chairman, Vice Chairman and twenty others, ten of whom must be representatives of the securities industry and ten of whom must be representatives of the public.

VOL 58 ISS 129 JL 8 1993 UMI

date of the BSE's annual meeting and annual election to the last Monday in November, it is reasonable for the BSE to adjust the time period for submitting nominees to the Secretary of the Exchange to October. The extension of the time period should help to ensure the fair representation of BSE members in the governance of the Exchange and protect investors and the public interest by giving the Nominating Committee, and members by independent nomination, a total of three months rather than the one month under current rules, to consider and nominate qualified candidates for Exchange offices and positions.

The Commission believes the Exchange's addition of the Supplementary Material to Article VI of the BSE Constitution, which would clarify the commencement of terms of offices and positions of the Exchange and extend the existing terms of offices of the current Board and Nominating Committee members for three months, in 1993 and 1994, is necessary to effectuate the BSE's amendments to Article VI. The extension in terms of office is reasonable, and is a relatively minor and necessary change to effectuate the BSE's proposal to use calendar, rather than fiscal, years as the term of office.

The Commission finds good cause for approving proposed Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 2 made a non-substantive change to the proposal by deleting language which would have allowed the Board to change the date or location of the BSE's annual meeting and annual election from time to time. The BSE's proposed rule change, together with Amendment No. 1, relating to the annual meeting and annual election, was published in the **Federal Register** for the full statutory period and no comments were received.[13]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to SR–BSE–93–9 and should be submitted by July 29, 1993.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–BSE–93–9) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16057 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[13] See Securities Exchange Act Release No. 32197 (April 23, 1993), 58 FR 26011 (April 29, 1993).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32552; File No. SR–BSE–93–03]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of a Smoking Policy and the Addition of that Policy to its Minor Rule Violation Plan.

June 29, 1993.

I. Introduction

On February 12, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission (SEC" or "Commission"), pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 (Act")[1] and Rules 19b-4 and 19d-1(c)(2) thereunder,[2] a proposed rule change to establish a Smoking Policy to regulate where on the Exchange premises smoking may occur and to amend its Minor Rule Violation Plan ("Plan")[3] to provide for the imposition of summary fines for violation of the Smoking Policy.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32104 (April 5, 1993), 58 FR 18433 (April 9, 1993). No comments were received on the proposal.

II. Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[5] Subsequently, the Commission approved a BSE proposal for a minor rule violation disciplinary system and for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act.[6] Accordingly, the BSE is relieved of the current reporting requirements of Section 19(d)(1) with respect to disciplinary action taken pursuant to the Exchange's Minor Rule Violation Plan ("Plan").[7]

The BSE's Plan, as embodied in Chapter XVIII, Section 4 of the BSE's Rules of the Board of Governors, provides that the Exchange may impose a fine, not to exceed $2500, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.[8] Alternatively, the Plan permits

[1] 15 U.S.C. 78s(b)(1) and (d)(1) (1988).

[2] 17 CFR 240.19b–4 and d–1(c)(2) (1991).

[3] The BSE's Plan for enforcing and reporting minor disciplinary rule violations was approved by the Commission in Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438–I (April 24, 1989) (File No. SR–BSE–88–2).

[4] The BSE has requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 minor rule violation enforcement and reporting plan to include violations of its Smoking Policy. See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated February 8, 1993.

[5] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). See *infra* note 7 for a discussion of periodic reporting under a minor rule plan.

[6] See Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438–I (April 24, 1989) (File No. SR–BSE–88–2).

[7] Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

[8] The "List of Exchange Rules and Fines Applicable thereto Pursuant to Section 4 of Chapter XVII" ("List") is contained in Chapter XVIII, Section 4 of the BSE's Rules of the Board of Governors.

any person to contest the Exchange's imposition of the fine through submission of a written answer, at which time the matter will become a disciplinary proceeding subject to Chapter XXX of the BSE's Rules of the Board of Governors and, where applicable, the reporting provisions of paragraph (c)(1) of Commission Rule 19d–1. Furthermore, the Exchange retains the option of bringing violations of rules included under Chapter XVIII, Section 4 to full disciplinary proceedings.

In the Exchange's original proposal to adopt Chapter XVIII, Section 4, the BSE indicated that it periodically would amend the List of rules subject to the Plan. The Commission subsequently approved amendments to the List, adding BSE rules and policies that are appropriate for summary disciplinary proceedings.[9]

III. The Proposal

The BSE proposes to adopt a Smoking Policy and to amend its Plan to provide for the imposition of summary fines for violation of that policy. Specifically, the proposal would prohibit smoking in all areas of the Exchange that are not designated by the BSE's Market Performance Committee as a smoking area. The proposed policy would designate the BSE's current smoking areas as the large trading floor lounge, the hallways outside the restrooms and in private offices where the occupant permits smoking. Smoking also would be permitted in conference rooms where a meeting of greater than one hour's duration is in session, unless one of the meeting attendees objects. The policy would specify that the Exchange may redesignate areas as smoking or non-smoking as deemed necessary and appropriate by the authorized Exchange committees[10] and the Market Performance Committee, and with due notice to the members and staff.[11] The Exchange states that the policy is a response to concerns regarding the effects of smoking on non-smokers in the work environment, and aims to balance these concerns while providing an area or areas for smokers.

The Exchange also proposes to add the Smoking Policy to its Plan and to include a fine schedule for violations of the policy. The BSE proposes a fine of $100 for an initial offense, and a fine of $250 for subsequent violations of the Smoking Policy. The Exchange believes that this would provide a deterrent to smoking in the restricted areas, as well as enable the Exchange to enforce the policy with the least amount of disruption.

The BSE states that the proposed Smoking Policy is consistent with the objectives of section 6(b)(1) of the Act, in that the policy is an administrative action by the Exchange to require its members to comply with its rules and policies, and will ensure the orderly conduct of business on the floor and in the administrative areas without interfering with the personal comfort and safety of the members and staff. The Exchange believes that the addition of the policy to the Plan will advance the objectives of section 6(b)(6) of the Act, in that its members and persons associated with its members will be appropriately disciplined for violations of rules and policies where the Exchange has determined that such violations are minor in nature. The Exchange also believes that the proposal is consistent with Sections 6(b)(7) and 6(d)(1), in that the Plan provides for a fair disciplinary procedure for the imposition of sanctions.

IV. Commission Findings

The Commission finds that the BSE proposal to adopt the Smoking Policy is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b) (1) and (6) of the Act.[12] The Commission believes that the proposal is a reasonable means by which the Exchange may ensure the orderly conduct of business on its floor and in its administrative areas. Because the proposal defines the scope of the prohibited conduct, provides notice to members and staff, and is tailored to serve a legitimate Exchange regulatory interest, the proposal establishes a fair and reasonable policy for the regulation of smoking on the BSE. The proposed policy should help to ensure a trading floor environment free of conduct that could interfere with trading activity. As a result, the proposal should enhance the members' ability to engage in transactions in securities and, thereby, protect investors and the public interest.

For the reasons set forth below, the Commission also finds that the BSE proposal to amend its Plan is consistent with the Act. In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[13] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which relate to areas that can be adjudicated quickly and objectively.

The Commission believes that the BSE's Smoking Policy meets this criterion and should be added to the List. In particular, the Commission believes that the BSE proposal regarding violation of the Smoking Policy is easily determined and amenable to quick, objective determinations of compliance. Efficient and equitable enforcement of the Policy should not entail the complicated factual and interpretive inquiries associated with more sophisticated exchange disciplinary actions.

The Commission finds that the BSE proposal to add violations of the Smoking Policy to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1), (6) and (7), 6(d)(1) and 19(d).[14] The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal will provide an efficient procedure for appropriate disciplining of members in those instances when a rule or policy violation is either technical and objective or minor in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full

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[9] *See* Securities Exchange Act Release Nos. 29586 (August 20, 1991), 56 FR 42094 (August 26, 1991) (File No. SR–BSE–91–2), and 32155 (April 15, 1993), 58 FR 21492 (April 21, 1992) (File No. SR–BSE–92–3).

[10] For example, in its rule filing, the Exchange states that the Floor Facilities Committee would review changes in designated smoking areas for trading floor areas and that the Rules Revision Committee would review changes in designated smoking areas for all other Exchange areas. Any changes in smoking areas would have to be ratified by the Market Performance Committee. See Securities Exchange Act Release No. 32104 (April 5, 1993), 58 FR 18433 (April 9, 1993) (File No. SR–BSE–93–03).

[11] The BSE states that, in the event that the Exchange determines to redesignate an Exchange area as smoking or non-smoking, the BSE will provide at least 30 days notice to members and staff. The 30 day period would begin once the appropriate committees have reviewed and approved the changes and notice has been published to all members, members' staff, and Exchange staff. See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated April 15, 1993.

[12] 15 U.S.C. 78f(b) (1) and (6).

[13] *See* Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411 (July 14, 1977).

[14] 15 U.S.C. 78f(b)(1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the BSE Smoking Policy, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only reduce reporting burdens of an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the BSE retains the discretion to bring a full disciplinary proceeding for any violations included on the List, such as for egregious or repeat violations, the Commission believes that adding the BSE Smoking Policy to the List will enhance, rather than reduce, the BSE's enforcement capabilities regarding this policy.

Finally, the Commission believes that the inclusion of the BSE's Smoking Policy on the List will prove to be an effective alternate response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act and Rule 19d–1(c)(2) under the Act,[15] that the proposed rule change (SR–BSE–93–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16112 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1991).

[16] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32569; File No. SR–BSE–93–7]

Self-Regulatory Organization; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

July 1, 1993.

In the Matter of: Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to Proposed Rule Change Relating to its Net Capital and Equity Requirements and Amendments to Minor Rule Violation Enforcement and Reporting Plan.

I. Introduction

On March 19, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Net Capital and Equity Requirements and to add Trading in an Inactive Account, as proposed, to the Exchange's Minor Rule Violation Plan's List of Exchange Rule and Policy Violations and Fines Applicable Thereto ("List").[3] On March 30, 1993, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[4] On May 20, 1993, the BSE submitted to the Commission Amendment No. 2 to the proposed rule change.[5] On June 30, 1993, the BSE submitted to the Commission Amendment No. 3 to the proposed rule change.[6]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The BSE also has requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan ("Plan") to include Trading in an Inactive Alternative and/or Trading Account. See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated March 16, 1993.

[4] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated March 25, 1993. Amendment No. 1 corrected certain technical errors in the rule filing.

[5] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 19, 1993. Amendment No. 2 reinstated Section 2(i) to Chapter XXII of the BSE Rules of the Board of Governors which the BSE previously proposed to delete from its rules.

[6] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated June 30, 1993. Amendment No. 3 requested approval of the BSE's capital portion of the proposed rule change for a six month temporary basis, during which time the BSE will submit a proposed rule change to provide for an Early Warning Notification program when capital excess reaches 120% of required minimum capital.

The proposed rule change, together with Amendment No. 1, was noticed in Securities Exchange Act Release No. 32333 (May 19, 1993), 58 FR 30079 (May 25, 1993). No comments were received on the proposal.

II. Description of the Proposal

The BSE proposes to amend (1) Chapter XXII, Section 2 of the BSE Rules of the Board of Governors, concerning specialist net capital and equity requirements, and (2) the List of Exchange Rule and Policy Violations and Fines Applicable Thereto Pursuant to section 4 of chapter XVIII.

Chapter XXII, Section 2(c) of the BSE Rules of the Board of Governors currently provides, among other matters, that a member or member organization doing business on the floor of the Exchange, registered to do business as a specialist, who business may include floor brokerage for other professionals and who does not carry any customer accounts, shall at all times maintain a minimum net capital, as defined by Securities Exchange Act Rule 51c3–1,[7] equal to the greater of either $35,000 or the value of 200 shares of each security marked-to-market, in which that specialist is the dealer at not less than the minimum margin of 25% of market value. In addition, section 2(c)(2) currently provides that specialists who do not have any public customers and who do not have an active trading account, shall be haircut[8] 10% on both long and short security positions prior to the required net capital computation. The BSE proposes to amend section 2(c) to increase the specialist net capital requirement from $35,000 to $100,000. The BSE also proposes to amend section 2(c)(2) to increase the haircut for net capital purposes to 15% on both long and short security positions.[9]

Chapter XXII, section 2(f) specifies minimum equity requirements for specialists conducting business on the Exchange floor.[10] The BSE equity requirements currently require each specialist to maintain a liquidating equity in its account of not less than

[7] 17 CFR 250.15c3–1 (1992).

[8] A "haircut" is a reduction when computing net capital.

[9] The BSE has requested approval of the capital provisions of its rule filing on a six month temporary basis. The BSE has indicated that, during the next six months, it would submit a proposed rule change to provide for an Early Warning Notification program when capital excess reaches 120% of required minimum capital. See supra note 6.

[10] The term "equity", as used in the BSE proposal, means the excess of cash, readily marketable securities and amount due from registered clearing organizations over all liabilities.

$125,000 in cash or securities. Section 2(f)(ii) provides that if any any time a specialist's equity drops below $125,000, such specialist will be given an Early Warning Alert notice.[11] Pursuant to section 2(f)(iii), if a specialist's equity drops below $110,000, such specialist is required to notify the Exchange as to the steps that are being taken to supply additional equity and is given five consecutive business days to increase its equity to $125,000. Pursuant to section 2(f)(iv), if a specialist is unable to increase the equity to $125,000 within five business days, or if at any time the specialist's equity drops below $100,000, all of the specialist's stocks will be assigned to another specialist for not more than 20 business days. Unless the equity is increased to $125,000 within the 20 business days, the stocks are subject to allocation to other specialists.[12]

The BSE proposes to amend section 2(f) to require specialists to maintain their equity funds with the Boston Stock Exchange Clearing Corporation ("BSECC") and to increase its specialist equity requirements in two phases. The first phase, beginning on July 1, 1993, would require each specialist to maintain liquidating equity for each specialist account of not less than $160,000 in cash or securities. The second phase, beginning on January 1, 1994, would require liquidating equity of $200,000.

The BSE also proposes to amend its Early Warning Alert provisions for equity. The BSE proposal would limit to 60 business days the period during which a specialist may operate continuously under the Early Warning Alert Status, except in situations where the specialist is actively seeking additional financing and has requested additional time in writing from the BSE's General Counsel or, in his or her absence, a senior officer of the Exchange who will present such request for exception to the Market Performance Committee or in special circumstances, to the Executive Committee. The proposal would increase the Early Warning Alert thresholds in two phases. During the first phase, beginning July 1, 1993, the BSE proposal would provide that if at any time a specialist's equity drops below $160,000 (but above $140,000) such specialist would be given an Early Warning Alert notice by the Exchange alerting the specialist of its equity position and its proximity to the maintenance requirement, with a statement as to the action that will be taken if the maintenance requirement is violated. If a specialist's equity drops below $140,000, such specialist would be required to notify the Exchange as to the steps that are being taken to supply additional equity and the specialist will be given five business days to increase its equity to the minimum requirement of $160,000. If a specialist is unable to increase its equity to $160,000 within five business days, or if at any time the specialist's equity drops below $130,000, all of such specialist's stocks will be assigned to another specialist, under a caretaker arrangement for not more than 20 business days. Unless the liquidating equity is increased to $160,000 within the 20 business days, the stocks will be subject to allocation to other specialists.

The BSE proposes to amend its Early Warning Alert requirements beginning on January 1, 1994 to coincide with the increase in required liquidating equity to $200,000. During this second phase, the BSE rule would require that if at any time a specialist's equity drops below $200,000 (but above $175,000), the specialist will be given an Early Warning Alert notice. If the specialist's equity drops below $175,000, the specialist will be required to notify the Exchange as to the steps that are being taken to supply additional equity and the specialist will be given five business days to increase its equity to the minimum requirement of $200,000. If a specialist is unable to increase its equity to $200,000 within five business days, or if at any time the specialist's equity drops below $160,000, all of the specialist's stocks will be assigned to another specialist, under a caretaker arrangement for not more than twenty business days. Unless the liquidating equity is increased to $200,000 within twenty business days, the stocks will be subject to allocation to other specialists.[13]

The BSE also proposes to amend section 2(g) to increase its additional equity requirements applicable to alternate specialist and/or trading accounts. Currently, each approved trading account or alternate specialist account is required to maintain at all times a liquidating equity in its account of not less than $25,000 above the current minimum equity requirement in cash or securities.[14] The proposal would increase the additional equity requirement for alternate and/or trading accounts from $25,000 to $50,000 per specialist.

The BSE proposes to adopt section 2(m) to provide that, in the event that a specialist drops below the additional equity requirement to carry an alternate and/or trading account, the specialist shall be notified in writing by the Exchange that the account is inactive. A specialist also would be able to request, in writing, inactive status on an alternate or trading account for any reason and without so stating. In either event, where an account has been inactivated, in order to reactivate the account, the specialist would have to make a written request to the Exchange and be approved by three floor members of the Market Performance Committee for interim approval subject to ratification by the full committee.

Finally, the BSE proposes to amend its List of rules subject to its Plan. The proposed amendment would add Section 2(m), Trading in an Inactive Alternate and/or Trading Account, to the List. The proposal would impose a $500 fine for an initial offense and a $1,000 fine for subsequent offenses of this proposed rule.

The Exchange states that the purpose of the proposed rule change is to revise the capital and equity requirements of the Exchange in anticipation of proposed amendments to Securities Exchange Act Rule 15c3–1.[15] The Exchange also believes that the addition of Trading in an Inactive Alternate and/or Trading Account (Section 2(m)) to the List will enable the Exchange to enforce its equity requirements in a more efficient and effective manner.

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[11] This notice alerts the specialist of its equity position and its proximity to the maintenance requirement and contains a statement as to action that will be taken by the BSE if the maintenance requirement is violated.

[12] The BSE adopted its current minimum equity requirements in two phases, the first phase took effect on December 31, 1987 and the second phase took effect on June 30, 1988. See Securities Exchange Act Release No. 25044 (October 20, 1987), 52 FR 40009 (October 26, 1987) (order approving File No. SR–BSE–87–2). Section 2(f)(iv) permitted the BSE's Market Performance Committee to consider mitigating circumstances and/or market conditions in providing temporary relief or to ascertain alternatives that may be applied where a specialist was unable to maintain the requirements on December 31, 1987 and June 30, 1988.

[13] The BSE proposal would permit its Market Performance Committee to consider mitigating circumstances and/or market conditions in providing temporary relief or to ascertain alternatives that may be applied when a specialist is unable to maintain the increased requirements on July 1, 1993 or January 1, 1994.

[14] "[h]is additional equity requirement does not affect the BSE's early warning alert ranges. If the equity drops below this additional requirement, activity in the accounts must cease immediately until the additional equity requirement is met or the accounts are closed.

[15] 17 CFR 240.15c3–1 (1992). In 1988, the Commission proposed amendments to Rule 15c3–1. The proposed amendments were published for comment in Securities Exchange Act Release No. 26402 (December 28, 1988), 54 FR 315 (January 5, 1989). As of July 1, 1993, the proposed amendments to Rule 15c3–1 have not been adopted by the Commission.

The BSE states that the proposed rule change is consistent with section 6(b)(5) of the Act, in that the capital and equity requirements of the Exchange are designed to protect investors and the public interest by ensuring that Exchange members doing business on the floor have adequate funds to cover losses that they might incur in the everyday transaction of business. The BSE states that the addition of section 2(m) to the List will advance the objectives of section 6(b)(6) of the Act in that its members and persons associated with its members will be appropriately disciplined for the violation of rules and policies where the Exchange has determined that such violation is minor in nature and is consistent with sections 6(b)(7) and 6(d)(1) of the Act because the Minor Rule Violation Plan provides a fair procedure for the imposition of sanctions.

III. Discussion

The BSE, through these amendments to its net capital and equity rules, is seeking to increase the financial responsibility of its specialists by: (1) Increasing minimum net capital requirements and increasing the haircuts in the net capital computation; (2) raising minimum equity requirements for specialists in two phases; (3) limiting to 60 business days, the period during which a specialist may operate under Early Warning Alert Status and revising the Early Warning Alert provisions; (4) increasing the additional equity requirement for alternate specialist and/or trading accounts; (5) requiring that equity funds be maintained with the BSECC; and (6) establishing inactive status for alternate specialist and trading accounts that fall below the additional equity requirements for such accounts.

The Commission finds that the BSE's proposed amendments to its net capital and equity requirements for specialists are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) and 11(b) of the Act.[16] The Commission believes that the BSE's proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11(b) of the Act, and Rule 11b–1 thereunder,[17] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. The proposal is consistent with the rule 11b–1(a)(2)(i) requirement that the rules of a national securities exchange which permit a member to register as a specialist and to act as a dealer include, among other things, adequate minimum capital requirements in view of the markets for securities on such exchange.

The rules of the BSE, in addition to the rules set forth under the Act, impose certain obligations upon specialists, including, but not limited to, the maintenance of fair and orderly markets.[18] Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange. Generally, specialists are under an affirmative obligation to trade for their own accounts to minimize order imbalances and contribute to continuity and depth in their specialty stocks.[19] Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. To ensure that specialists fulfill these obligations, it is important that they maintain an adequate amount of capital and equity.

The importance of specialists' net capital and equity as it relates to the quality of Exchange markets was highlighted during the October 1987 Market Break. In the Division of Market Regulation's ("Division") report on the 1987 Market Break, the Division reviewed, among other things, specialists' ability to maintain fair and orderly markets and minimum capital requirements imposed by the changes. In this respect, the Division stated its concern that the minimum capital requirements imposed by the exchanges on specialists did not reflect the actual capital needed to ensure the maintenance of fair and orderly markets in different types of securities.[20] Accordingly, Division staff recommended a number of changes to the exchanges' capital rules.

The Division believes that the BSE proposal is a positive step toward procuring stronger capital foundations for specialists on its floor. Specifically, the Commission believes that the BSE's proposal to increase specialist net capital requirements to $100,000 and to increase specialist equity requirements to $160,000 and $200,000, in two phases, should help to ensure that BSE specialists have greater access to the capital necessary for the maintenance of fair and orderly markets in their registered securities. By assuring that specialists have capital sufficient to perform their market making responsibilities, the proposal should provide additional protection for the exchange, member organizations, and public investors.

The Commission also believes that amending section 2(f) to require specialists to maintain their equity funds with the BSECC should ensure that the Exchange has immediate access to specialist equity funds. Furthermore, the Commission believes that this requirement is reasonable and will not be overly burdensome on BSE specialists.[21]

The Commission believes that the BSE's proposed revisions to its Early Warning Alert provisions and limitation to 60 business days for operating continuously under the Early Warning Alert Status should help to ensure compliance with the BSE's equity requirements by encouraging specialists to actively obtain additional financing in a reasonable amount of time. Moreover, specialists unable to increase to the appropriate levels, during each respective phase of the proposal, an equity position that has fallen below $140,000 or $175,000 respectively, within five days, would under BSE rules, have their stocks reassigned for 20 days. Unless the minimum equity is met within those 20 days, the stocks would be subject to permanent reallocation to another specialist. Together, these requirements ensure that specialists will not be allowed to make markets in stocks indefinitely if they fall below the equity requirements.

The Commission also believes that the BSE proposal to increase its specialist equity requirements in two phases (July 1, 1993 and January 1, 1994) should provide those specialist units not already meeting the requirements of the proposed rule change with an adequate and reasonable amount of time to come into compliance and that conformity with these standards will not be unduly burdensome on BSE specialist units. In this regard, the BSE stated that the vast majority of its specialist units are

[16] 15 U.S.C. 78f(b)(5) and 78k(b) (1988).

[17] 17 CFR 240.11b–1 (1992).

[18] See generally Chapter XV of the BSE Rules of the Board of Governors. *See also* Rule 11b–1 under the Act.

[19] See supra note 18.

[20] See Division of Market Regulation, The October 1987 Market Break, February 1988, at 4–66 to 4–67. See also Market Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, December 1990, at 4, 16 and 33.

[21] According to the Exchange, as of June 29, 1993, all BSE specialists maintain their equity funds with the BSECC. Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Louis A. Randazzo, Attorney, Commission, on June 29, 1993.

already in compliance with the requirements of the proposed rule.[22]

The Commission believes that the BSE proposal to increase the additional equity requirement for alternate specialist and/or trading accounts is designed to improve the financial integrity and liquidity of the BSE market place. Similarly, the Commission believes that it is appropriate for the Exchange to establish an inactive status for alternate specialist and/or trading accounts that fall below the additional equity requirements for such accounts. This proposal should help to ensure compliance with the additional equity requirements and, as a result, should provide additional protection for the Exchange, member organizations, and public investors.

The Commission also finds that the Exchange's proposal to add Trading in an Inactive Alternate and/or Trading Account (section 2(m)) to the Plan is consistent with sections 6(b)(1), (6) and (7), 6(d)(1) and 19(d).[23] The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal will provide an efficient procedure for appropriate disciplining of members in those instances when a rule violation is either technical and objective or minor in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with sections 6(b)(7) and 6(d)(1) of the Act.

In 1984, the Commission adopted amendments to paragraph (c) of the Securities Exchange Act Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[24] Subsequently, the Commission approved a BSE proposal for a minor rule violation disciplinary system and for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act.[25] Accordingly, the BSE is relieved of the current reporting requirements of section 19(d)(1) with respect to disciplinary action taken pursuant to the Exchange's Plan.[26]

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[27] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which can be adjudicated quickly and objectively.

The Commission believes that the rule violation that the BSE proposes to include in its Plan meets this criteria and should be added to the List. In particular, the Commission believes that the violation of Trading in an Inactive Alternate and/or Trading Account is easily determined and amenable to quick, objective determinations of compliance. Efficient and equitable enforcement of this violation should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions.

The Commission also believes that the proposal provides an alternative means by which to deter violations of Section 2(m), thus furthering the purposes of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean that it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only may reduce reporting burdens of an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the BSE retains the discretion to bring a full disciplinary proceeding for any violations included on the List, such as for egregious or repeat violations, the Commission believes that adding section 2(m) will enhance, rather than reduce, the BSE's enforcement capabilities regarding this Rule.

Finally, the Commission believes that the inclusion of Section 2(m) on the List will prove to be an effective alternate response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation.

The Commission finds good cause for accelerated approval of Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. The BSE's proposed rule change to increase its specialist net capital and equity requirements was published in the **Federal Register** for the full statutory period and no comments were received.[28] Amendment No. 2 is a single modification to the proposal to reinstate section 2(i) to Chapter XXII of the BSE Rules of the Board of Governors, which the BSE previously proposed to delete from its Rules. Amendment No. 3 merely amends the portion of the BSE's proposal that increases specialist capital requirements to request approval on a six month temporary basis. The Commission finds that accelerated approval of Amendment Nos. 2 and 3 is necessary in order for the BSE to be able to effectuate its new net capital and equity requirements in a timely manner upon approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

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[22] According to the Exchange, as of June 23, 1993, all BSE specialists were aware of the proposed amendments and only one specialist was below the equity standards in the proposed rule. Telephone conversation between George W. Mann, Jr., Senior Vice President and General Counsel, BSE, and Louis A. Randazzo, Attorney, Commission, on June 23, 1993.

[23] 15 U.S.C. 78f(b)(1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

[24] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984).

[25] See Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438–I (April 24, 1989) (File No. SR–BSE–88–2).

[26] Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

[27] See Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411 (July 14, 1977).

[28] See Securities Exchange Act Release No. 32333 (May 19, 1993), 58 FR 30079 (May 25, 1993).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–7 and should be submitted by July 29, 1993.

It is therefore ordered, pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[29] that the capital portion of the proposed rule change is approved on a temporary basis through January 2, 1994, and the remainder of the rule change (SR–BSE–93–7) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16113 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32555; File No. SR–CBOE–93–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Firm Quotations and Retail Automatic Execution System

June 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE"), on April 21, 1993, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 6.8, 8.51, and 24.15 to define and specify the circumstances in which an order is to be deemed a "public customer order" for purposes of determining whether the order will be afforded the benefits provided by the Exchange's firm quote rule and its rules relating to the Exchange's Retail Automatic Execution System ("RAES").

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 8.51 generally requires the trading crowd at a post to sell (buy) at least 10 contracts at the offer (bid) which is displayed when a buy (sell) order reaches that trading station. The CBOE earlier submitted a proposal to amend CBOE Rule 8.51 to require members of the trading crowd in receipt of customer orders for more than 10 contracts either to satisfy the orders at the disseminated quote or to update the market quote.[1] The CBOE states that the purpose of that proposal is to limit the incidence of actual or apparent trade-throughs, thereby facilitating orderly trading in multiple listed options.

The CBOE is concerned, however, that developments in the marketplace, including, but not limited to, the multiple trading of equity options, have made it more difficult for market-makers to honor their firm quotation obligations. The Exchange states that CBOE Rule 8.51 (the "Firm Quote Rule"), like the Exchange's RAES systems, is intended to provide certain protections to public customers in connection with the execution of small (ten lots or less) orders. The Exchange believes that market-makers must have sufficient time to adjust their quotes to reflect changes in the markets in the underlying securities, other options and markets, and other options series if they are to be expected to participate in RAES and to meet the requirements of the Firm Quote Rule.

In view of these considerations, the CBOE currently proposes to amend its Firm Quote Rule and RAES rules to define a "public customer order" and thereby better identify the persons whose orders are intended to be served by the provisions of those rules. Specifically, the CBOE is proposing to amend Rule 6.8(h) to define "public customer order" to specify that this term does not include any order that is for a "professional trading account." The proposed amendment defines a professional trading account as either (1) an account of a registered broker-dealer pursuant to the Act, (2) an account of a person engaged in business or employed as a professional trader in securities, (3) an account of a person whose orders are computer-generated and automatically transmitted to the Exchange, (4) an account of a person who has been determined by the Exchange's Market Performance Committee ("MPC") to have engaged in a pattern of trading that has the effect of abusing the purposes of the Exchange's RAES systems,[2] or an account with respect to which any of the foregoing persons exercises investment discretion. The proposal provides, however, that an account of an individual who is a registered representative or other employee of a broker-dealer but who is not referred to in clauses (1) through (4) would not be deemed to be a "professional trading account."

The CBOE also proposes to add a new Interpretation and Policy .01 to Exchange Rule 6.8 which provides that in evaluating whether a person has engaged in a pattern of trading that has the effect of abusing the Exchange's RAES systems, the MPC would deem concentrated or aggressive use of those systems by persons seeking to profit from the inability of market-makers to alter their posted quotes instantaneously to be such an abuse. Similarly, the new Interpretation and Policy further provides that since the RAES systems are designed for small orders, persons who place a number of small orders within a relatively short period of time would be deemed to have abused those systems. The proposal states, however, that these criteria are not exclusive, and the MPC would be authorized (subject to review pursuant to Chapter XIX of the CBOE Rules) to determine that other patterns of trading are an abuse of RAES after considering such factors as the frequency of transactions in an account; whether the account has direct access to electronic order entry, delivery, and

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[29] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1991).

[30] 17 CFR 200.30–3(a)(12) (1991).

[1] See Securities Exchange Act Release No. 32406 (June 3, 1993).

[2] A decision of the MPC that an account is a "professional trading account" would be subject to review pursuant to Chapter XIX of the CBOE Rules.

execution systems of the Exchange; and whether participants in the account have access to non-public market information.

The current proposal also amends Exchange Rules 8.51 and 24.15 to incorporate the definition of "public customer order" from Rule 6.8(h) in those rules. In addition, the CBOE proposes to modify its policies with respect to RAES operations in OEX options similarly to reflect this definition of "public customer order."

Additionally, the CBOE proposes to amend Exchange Rule 8.51 to establish procedures that will assist it in conducting surveillance for violations of that Rule. Specifically, the proposal provides that only those public customer orders that are present in the trading crowd and which are clearly marked with the proper account origin code will be accorded preferential treatment under Rule 8.51.[3] The proposal further provides that it is the responsibility of the member or associated person entering a public customer order to identify accurately the order's account origin on the order ticket prior to execution of the order. Moreover, the proposal requires that members seeking such preferential treatment for an order to confirm, at the request of any member of the trading crowd or at the request of the Exchange, that the order has in fact been submitted by a public customer.

Finally, the proposal provides that persons violating Rule 8.51 may be subject to a fine pursuant to Exchange Rule 17.50, which is the CBOE's plan for minor rule violations.[4] In addition, if a member or associated person fails to furnish the Exchange, upon request, with adequate verification of the account origin of an order for the customer-omnibus account of a non-member broker-dealer, all orders entered or executed on behalf of the account will be classified as a non-public customer order, and will not be entitled to the benefits of Rule 8.51, until the Exchange receives verification of the account origin.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that clarifying the applicability of the CBOE's Firm Quote Rule and RAES rules will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and promote just and equitable principles of trade. Specifically, the CBOE believes that the proposed rule change represents an appropriate balancing of the objectives that are designed to be served by the Firm Quote Rule and are consistent with the policies that have been articulated by the Commission in its evaluation of similar issues in the context of the National Association of Securities Dealers' Small Order Execution System ("SOES").

The Exchange further believes that the current proposal is consistent with the requirements of, and the policies underlying, Commission Rule 11Ac1–1. In support of this proposition, the Exchange cites the Commission's order approving the rules relating to SOES, in which the Commission noted that the policies underlying the Firm Quote Rule can be "eviscerated" by an automatic execution requirement if market-makers are not afforded some relief with respect to orders originating with "professional traders."[5] In that order the Commission stated:

> The requirement that quotations be "firm" is an essential component of the enhancement of market efficiency offered by quoted dissemination * * * Equally important is the accuracy of the information disseminated. Toward this end, the Firm Quote Rule recognizes the legitimate purpose of allowing market makers "sufficient time to update their quotations."
>
> The introduction of an automatic execution facility upsets this balance [between the need for time quotations and the need of market makers to have time to update their quotes]. Automatic and instantaneous execution of trades deprives market makers of the legitimate and reasonable update period that the Firm Quote Rule is designed to permit.[6]

Finally, the CBOE previously submitted to the Commission a proposed rule change (File No. SR–CBOE–92–03) that the Exchange believes addresses substantially the same subject matter as the current proposal. Since the provisions of that proposed rule change would effectively be superseded by the current proposal, the Exchange has determined to withdraw File No. SR–CBOE–92–03.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Only "professional trading accounts" would be affected by the proposed rule change and the CBOE believes that any incidental burden on such accounts is justified by the more than countervailing benefits to public customers and others that would result from the adoptions of these amendments.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1993.

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[3] The Exchange represents that it will distribute to the membership a circular describing the appropriate account origin code for public customer orders upon approval of this proposed rule change.

[4] The Exchange represents that it will file an amendment to Rule 17.50 to establish a schedule of fines for violations of Rule 8.51.

[5] Securities Exchange Act Release No. 32092 (April 1, 1993), 58 FR 18279, 18279 (April 8, 1993).

[6] 58 FR at 18280 quoting Securities Exchange Act Release No. 14415, 43 FR 4342, 4344 (February 1, 1978).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-16114 Filed 7-7-93; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-32564; International Series Release No. 560; File No. SR-ISCC-93-1)

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to a Data Transmission Link With Euroclear

June 30, 1993.

On March 1, 1993, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The Commission published notice of the proposed rule change in the **Federal Register** on April 6, 1993.[2] On May 5, 1993, ISCC filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").[3] On May 26, 1993, ISCC filed Amendment No. 2 to the proposed rule change ("Amendment No. 2").[4] Amendment No. 1 and Amendment No. 2 were technical amendments that did not require republication of notice. No comments were received on the notice. As discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change implements a data transmission link with Euroclear Systems ("Euroclear"), a clearance and settlement system for internationally traded securities, located in Brussels, Belgium.[5] This link is established pursuant to ISCC Rule 40 which provides that ISCC may establish links with foreign financial institutions and may require members to enter into such agreements as ISCC deems necessary in order to use a link.

The Euroclear link will provide ISCC members with the opportunity to have access to Euroclear's clearance and settlement services. ISCC members will transmit instructions to ISCC through a service bureau approved by ISCC.[6] After editing and formatting the instructions, ISCC will re-transmit the information to Euroclear. ISCC will not guarantee the transactions, will have no obligation to settle any transaction in the ISCC member's account, and will not maintain a securities or cash account at Euroclear.

Each participating ISCC member must be approved as a customer by Euroclear because payment obligations for use of the services, such as settlement amounts necessary to conduct the clearance and settlement of transactions, will remain an obligation between the member and Euroclear and will be processed without ISCC intermediation. ISCC is responsible to Euroclear only for payment of the Euclid 90 data transport fees that arise from Euroclear's transmission of data to ISCC, which fees will be passed through to participating ISCC members.

The link procedures provide that the service bureau will submit to ISCC on the member's behalf, in a standard format known as Universal Trade Record ("UTR") via the service bureau's computer, instructions concerning the member's securities account at Euroclear including, but not limited to, instructions to receive or deliver securities against payment or for no value. Each member will have a unique identifier code which will be maintained by ISCC in a master file. ISCC will validate instructions received from a service bureau on behalf of members against the master file and the number of records transmitted by each member. Confirmations of accepted data will be transmitted to the service bureau.

All pending file data will be edited for completeness and alpha/numeric accuracy. Rejected data will be written to a pending file for subsequent transmission to the service bureau. If the data passes the edit, ISCC will reformat the data into Euroclear formats and transmit the data to Euroclear via the General Electric Information Services Company's ("GEISCO") telecommunications network or another Euroclear approved transmission vehicle.[7] Euroclear will confirm receipt to ISCC via their computer system.[8] ISCC will retain a copy of the number of records successfully transmitted. ISCC also has represented that it will capture all information transmitted through the link.[9]

Euroclear will process the instructions and make status codes of transactions available directly to ISCC

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[7] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32075, International Series Release No. 529 (March 31, 1993), 58 FR 17920.

[3] Letter from Karen Saperstein, General Counsel, ISCC, to Christine Sibille, Attorney, Commission (May 5, 1993). Amendment No. 1 discussed some of the conditions under which the link would be operated. Specifically, it clarified that, with the exception of "Yankee Bonds" (bonds issued by non-U.S. issuers, usually de-nominated in dollars, generally registered under the Securities Act of 1933, and issued in the U.S. market) traded between one U.S. and one non-U.S. entity, transactions in securities eligible for safekeeping services at The Depository Trust Company ("DTC") will not be transmitted through the link; ISCC will monitor the previous restriction to non-DTC eligible securities through monthly sampling; ISCC will notify the Commission of any transmission delays exceeding two hours; each month ISCC will provide the Commission with certain information about member usage of the link; and ISCC will not maintain any accounts at Euroclear.

[4] Letter from Karen Saperstein, General Counsel, ISCC to Judith Poppelardo, Assistant Director, SEC (May 20, 1993). Amendment No. 2 requested that transactions between a U.S. and a non-U.S. entity with respect to Global Bonds and Global Depository Receipts be permitted to be transmitted through the link.

[5] Euroclear was founded in 1968 by the Brussels office of Morgan Guaranty Trust Company of New York ("MGT"). The rights to the system were acquired in 1972 by the company now known as Euroclear Clearance System, Public Limited Company ("ECS-PLC"). Such rights are currently licensed by ECS-PLC to Euroclear Clearance System Société Cooperative (the "Co-op"). The services, accounts, and relationships of Euroclear are performed or maintained by the Euroclear Operations Centre ("EOC") of the Brussels office of MGT, pursuant to an operating agreement with the Co-op.

EOC is located in and manages all its business from Brussels, Belgium, and the contractual relationship between it and Euroclear participants is governed by Belgian law. The Co-op has no contractual relationship with participants as such. Participants are offered the opportunity of becoming members of the Co-op, but are not required to do so. The Board of Directors of the Co-op determines certain policy matters under the operating agreement with MGT.

Because EOC is the entity that performs or maintains the services, accounts, and relationships of Euroclear, it is the entity that is regulated with respect to the system. As a bank branch operating in Brussels, it is regulated by the Belgian Banking Commission. As part of a U.S. bank, it is also regulated by the New York Banking Department and U.S. Federal Reserve System. Finally, it is authorized as a services company by the Securities Investment Board in London. EOC is not registered under the Act in any capacity. As of Autumn of 1992, Euroclear had over 2,600 participants worldwide, and accepted over 40,000 different securities including debt instruments issued by sixteen countries and equity issues from seventeen markets. Group of Thirty Clearance and Settlement Project, Euroclear Autumn 1992 Status Report 1 (1992) [hereinafter "G-30 Report"].

[6] Automatic Data Processing, Inc. is the first service bureau to be approved to process these transactions. All members who wish to access this link will be required to enter into a supplemental Member's Agreement amendment (the "Amendment"). The Amendment will authorize ISCC to accept data from the service bureau on behalf of the member, and will limit the liability of ISCC for the errors or omissions of the service bureau.

[7] ISCC has a dedicated phone line to GEISCO and an alternate phone line available as a back-up system.

[8] If there is an error in transmission, ISCC will attempt to remedy any transmission problem and retransmit the data.

[9] Telephone conversation between Karen Saperstein, General Counsel, ISCC, and Christine Sibille, Staff Attorney, Commission (April 19, 1993).

members through their offices' central processing unit or personal computer. Euroclear will immediately notify members of any rejected data. Any instructions forwarded to Euroclear will be processed in accordance with Euroclear's Operating Procedures. Euroclear matches transactions continuously through the day.[10] Unmatched trades are retained in an inventory of valid instructions and continue to be compared until matched or cancelled.[11] Transactions are settled only if the seller has sufficient unencumbered securities in its account (owned outright or borrowed) to make delivery and the buyer has sufficient cash in its account or available credit facilities to pay for the securities.[12] Members remain obligated for unsettled transactions.[13] Output from Euroclear will not flow through ISCC, but will go directly to the ISCC member from Euroclear.

ISCC will operate the Euroclear link subject to certain limitations. First, ISCC will not transmit information about transactions in securities which are eligible for safekeeping services at DTC to Euroclear for processing through the link, except for transactions in Yankee bonds, Global Bonds,[14] or Global Depository Receipts[15] traded between a U.S. entity and a non-U.S. entity. Based on a reasonable sample of link transactions, ISCC will monitor members' link activity on a monthly basis for compliance with this limitation. If ISCC determines that information regarding DTC eligible securities has been transmitted through the link, it will notify the Commission.[16]

In addition, ISCC will notify the Commission of any transmission delays or service problems, including, but not limited to, system down-time of more than two hours, lost data between ISCC and Euroclear, and lost data between ISCC and the member. On a monthly basis, ISCC will provide the Commission with information regarding the total quantity and value of deliver or receive against payment instructions submitted for settlement, by currency, by value date or settlement date through the link.[17]

II. Discussion

The Commission believes the proposed rule change is consistent with Section 17A of the Act, and, therefore, is approving the proposal. Specifically, the Commission believes the proposal is consistent with Section 17A(b)(3)(F)[18] of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination with persons engaged in clearance and settlement of securities transactions. The link with Euroclear will permit ISCC members, using standardized input format, to obtain through ISCC foreign clearing, settlement, and custody services offered by Euroclear. Currently, broker-dealers who wish to use Euroclear's settlement system must transmit instructions both to its service bureau and directly to Euroclear. The ISCC link will reduce the time and expense of such activity, by allowing the member to transmit the information once to the service bureau for transmission to Euroclear, In addition, the link should reduce input errors, because data is input only once by the member and reviewed for errors by ISCC before transmission to Euroclear.

The Commission believes that ISCC's processing of the Euroclear link transactions will provide a record-keeping benefit over the current system. ISCC will preserve transaction records in accordance with United States laws and Commission regulations and standards. This should result in more complete records, providing the Commission with a source of information about transactions settling outside the United States that involve U.S. broker-dealers.

The data format used by members, the UTR, will conform to current United States and international standards for transmission of data relating to the execution of international securities transactions. Participating members will therefore receive the benefits of being able to process and enter their trade data in a standard international format, eliminating the need to accommodate their back office systems to the Euroclear format. In addition, because the data elements of the UTR will conform to both United States and international standards, the Commission believes the Euroclear link will provide a further step in the standardization of international clearance of trades.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–ISCC–93–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16055 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

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[10] G–30 Report at 2. During the matching process, Euroclear will compare account numbers, settlement date, nominal amount, security code number of the issue, and currency and cash countervalue. *Id.*

[11] *Id.*

[12] Federal Reserve Bank of New York, Clearing and Settling the Euro-Securities Market: Euro-Clear and Cedel 3 (March 1989).

[13] *Id.* at 4.

[14] Global Bonds are bonds issued in registered form for trading on a fungible basis in and between the major world securities markets. The bonds are issued generally by supranational agencies, such as the World Bank, but also may be issued by governments and governmental agencies and corporations. Issuers of global debt securities are registered with the Commission under the Securities Act of 1933 or are exempted from registration.

[15] Global Depository Receipts are Depository Receipts structured like global debt issues to facilitate trading on an international basis. The receipts are made up of two fungible tranches held in DTC for book-entry settlement: a U.S. portion for Qualified Institutional Buyers trading in compliance with Rule 144A, and an international tranche issued under Regulation S.

[16] Telephone conversation between Karen Saperstein, General Counsel, ISCC, and Christine Sibille, Staff Attorney, Commission (April 29, 1993).

[17] Telephone conversation between Karen Saperstein, General Counsel, ISCC, and Christine Sibille, Staff Attorney, Commission (May 6, 1993).

[18] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[Release No. 34–32568; File No. SR–NASD–93–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

July 1, 1993.

In the Matter of Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Release of Additional Information Regarding Disciplinary History of Members and Their Associated Persons Via Toll-Free Telephone Listing.

On June 15, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposal

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[1] The NASD filed the initial rule on April 26, 1993. The current amendment replaced the original rule filing in its entirety. Subsequently on June 16, 1993, the NASD made a technical amendment to the rule filing. See letter from Craig Landauer, Associate General Counsel, NASD to Selwyn Notelovitz, Branch Chief, SEC, dated June 16, 1993.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

VOL 58 ISS 129 JL 8 1993 UMI

amends the Resolution of the Board of Governors concerning Notice to Membership and Press of Suspensions, Expulsions, Revocations and Sanctions at Article V, Section I of the NASD Rules of Fair Practice.

Notice of the proposed rule change, together with the substance of the proposal was provided by issuance of a Commission release (Securities Exchange Act Release No. 32473, June 16, 1993) and by publication in the **Federal Register** (58 FR 33963, June 22, 1993). To this date the Commission has not received any comment letters. For the reasons stated herein the Commission is accelerating approval of the proposed rule change.

I. Background

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Reform Act") was enacted on October 15, 1990, with the intention of curbing pervasive fraud and manipulation in the penny stock market. In order to achieve this result the Penny Stock Reform Act, among other things, mandated that the NASD establish a toll-free telephone number to receive customer inquiries concerning the disciplinary history of its members and their associated persons.[4] The NASD began its 800 number service on October 1, 1991.[5] Through this service the NASD reports: (1) past and present employment history of NASD members, (2) all final disciplinary actions[6] taken by federal, state, or self-regulatory organizations which relate to securities or commodities transactions and (3) all criminal convictions reported on Form BD or Form U–4.

In July of 1992 the House Subcommittee on Telecommunications and Finance requested that the Government Accounting Office ("GAO") conduct a review of the rules, procedures, facilities, and oversight and enforcement activities with respect to the Penny Stock Reform Act. One of the areas Congress specifically asked for a review of was the NASD's toll-free number.[7] In response to the Congressional request, the GAO undertook a study of the implementation of the Penny Stock Reform Act. At the completion of its study, the GAO recommended, among other things, that there be improvements in the NASD's procedures for informing investors of broker-dealers' and their associated persons' disciplinary history and arbitration award history. Specifically, the GAO recommended that the NASD be required to "provide public investors who request information via the NASD's toll-free service with information on final arbitration awards."[8] Both the Commission and the NASD concurred in this recommendation.[9] Thereafter, the NASD filed the proposed rule change, which is being approved today, as described below.

II. Description

The proposed rule change will permit the NASD to release certain additional information contained in the Central Registration Depository ("CRD")[10] system regarding the disciplinary history of its members and their associated persons in response to telephonic inquiries from the general public via its existing toll-free telephone listing service plan. The proposed rule change will allow the NASD to release information on all: (1) Pending formal disciplinary proceedings initiated by federal or state securities agencies and self-regulatory organizations,[11] as well as pending and final disciplinary actions taken by foreign governments or foreign regulatory authorities; (2) criminal indictments or informations; (3) civil judgments; and (4) arbitration decisions in securities and commodities disputes involving public customers.

The NASD will disclose final arbitration decisions involving only public customers that are reported on Form U–4 that are available through the NASD's existing arbitration data base. This data base captures all member and associated person arbitration decisions issued by the NASD arbitrators after May 10, 1989. On July 1, 1993, the NASD will make available arbitration decisions disclosed on Form U–4 and only those arbitration decisions from the data base that date back to August 6, 1990. On September 1, 1993, the NASD will add arbitration decisions from the data base that date back to May 10, 1989.[12] Until then the public can seek that information by calling the NASD's office of Administrative Services at (301) 590–6708.

The NASD procedures call for a copy of the information requested to be sent to the person requesting it and to the subject of the request, *i.e.* the member firm or an associated person. Each NASD member firm receives a monthly print-out with the number of requests that have been made concerning the firm and its associated persons, as well as the names of those associated persons on whom the requests have been made. In addition, each such associated person receives a report with all the information that has been sent out by the NASD to the requestor. The name and address of the requestor is redacted from these reports and is not revealed to either the member firm or its associated person.

III. Discussion

The Commission finds the proposed rule change is consistent with sections 15A(i)[13] and 15A(b)(6)[14] of the Act. Section 15A(b)(6) provides, in pertinent part, that the rules of a national securities association shall be designed to promote just and equitable principles

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[4] The legislative history of the Penny Stock Reform Act states that Congress expects that "the Commission, the state regulators, and registered securities associations will consult with one another to try and develop a common approach to this issue, one *which fulfills the informational needs of the customers and assures the maximum level of investor protection.*" H.R. Rep. No. 617, 2d Sess. (1990) (emphasis added).

[5] The NASD presently has in place its 800 Number Service plan which was approved by the Commission in April 1992. See Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992) (approving File No. SR–NASD–91–39).

[6] The term disciplinary action as used by the NASD includes, but is not limited to, the information provided in response to questions 7 B, C, D, E, and F on Form BD; and questions 22 C, D, E, F, and G on Form U–4.

[7] See letter from Edward J. Markey, Chairman of the Subcommittee on Telecommunications and Finance to Charles A. Bowsher, Comptroller General of the United States dated July 17, 1992. Section 510 of the Penny Stock Reform Act directs the Comptroller General to conduct a review of the implementation of the Penny Stock Reform Act, and to submit a report to Congress with any recommendations.

[8] See GAO, Penny Stocks: Regulatory Actions to Reduce Potential for Fraud and Abuse (February 1993), at 48. ("GAO Report").

[9] See letter from William Heyman, Director, Division of Market Regulation, SEC, to Richard Fogel, Assistant Comptroller General, General Accounting Office dated November 27, 1992, GAO Report at 60; and letter from John E. Pinto, Executive Vice President, Compliance Division, NASD, to R. Fogel, GAO, dated November 27, 1992, GAO Report at 65.

[10] Developed jointly by the North American Securities Administrators Association ("NASAA") and the NASD in 1981, the CRD, which the NASD operates, is an on-line data base which contains information pertaining to broker-dealers and their associated persons. Information contained in the CRD is provided by the NASD, SEC, some exchanges, the Commodity Futures Trading Commission, the National Futures Association, state securities commissions, and the Federal Bureau of Investigation. The CRD data base includes about 5,500 broker-dealers and 420,000 active registered persons.

[11] In addition to the information disclosed on Forms BD or U–4, all pending NASD initiated disciplinary actions whether or not disclosed on Forms BD or U–4 also will be provided through the toll-free number.

[12] The NASD notified its membership, through Notice to Members 93–37 (June 1993), that all arbitration decisions will not be disclosed effective July 1, 1993, but that the disclosure of information will be phased in over time. In addition, the NASD's toll-free number operators will alert callers to this fact.

[13] U.S.C. 78o–3(i) (1988 & Supp. 1992).

[14] 15 U.S.C. 78o–3(b)(6) (1988).

of trade. Section 15A(i) mandates that the NASD (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. The Commission believes the proposed rule change furthers the goals of this section of the Act inasmuch as the increased disclosure will enhance the access of members of the public to information that will help them to determine whether or not to conduct or continue to conduct business with an NASD member or any of the member's associated persons. The Commission has long believed that investors need access to reliable information in order to protect themselves against fraud. Adding information on pending disciplinary actions and other matters to the NASD's toll-free number is a positive step in keeping with this policy of providing information to investors.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing. The Commission finds that accelerated approval will allow the NASD to provide additional information in response to customer inquiries concerning broker-dealer firms and their associated persons which is not currently available. The additional information is already in the NASD's system and as noted above, the NASD is prepared to make this information available as of July 1, 1993. Providing this information furthers the legislative intent of developing a toll-free number "which fulfills the informational needs of the customers and assures the maximum level of investor protection." To delay implementation of this rule would hinder attempts by the public to get full and accurate information about brokerage firms and their associated persons.

The Commission does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–93–26 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16115 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32570; File No. SR–NASD–93–17]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Quotation Size Requirements for Market Makers in OTC Equity Securities

July 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) (1988), on March 24, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to revise the minimum size requirement applicable to market makers utilizing the OTC Bulletin Board Service ("OTCBB") or any comparable inter-dealer quotation system to quote firm markets in OTC Equity Securities.

Notice of the proposal appeared in the **Federal Register** on April 7, 1993.[1] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

Currently, if an NASD member enters and displays a firm quotation in the OTCBB for a domestic OTC Equity Security,[2] the bid or offer must be firm for at least one trading unit (typically 100 shares), regardless of the price of the shares quoted. The proposed rule change will replace the standard one-trading-unit requirement with a tiered structure of minimum size requirements that is based on the price of the bid or offer.[3] Each registered market maker that publishes a firm bid or offer in a domestic OTC Equity Security will be required to honor its bid or offer for individual orders up to the size prescribed for the particular price range.[4] These requirements will apply to members' quotes on the OTCBB and any other inter-dealer quotation system that permits quotation updates on a real-time basis. The NASD intends to put the new size requirements into effect within 90 days after the date of the Commission's approval of the proposed rule change.

Once the NASD completes necessary system enhancements, the OTCBB will be capable of displaying size for quotations, and will have a default feature to ensure display of the correct minimum size if a market maker neglects to enter that size while updating its quotes.[5] Nevertheless, each market maker will be responsible for determining the minimum size requirement applicable to its bid or offer, and must honor the quote for the specified size.[6]

The NASD stated in the notice for the proposed rule change that based on input from market makers using the OTCBB, it has determined that the 100-share minimum is no longer appropriate for the vast majority of issues quoted in the OTCBB, especially the lower priced issues. The NASD believes that the proposed rule change will result in quotation size requirements that correspond more closely to the trading practices of market makers that actively use the OTCBB.

II. Discussion

The Commission believes that approval of this proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder, and, in particular with the requirements of section 15A(b)(6) and 15A(b)(11) of the Act. Section 15A(b)(6) states that an association of brokers and dealers, such as the NASD, may not be registered as a national securities association unless the Commission determines that "the rules of the association are designed to prevent fraudulent and manipulative acts and practices, [and] to promote just and equitable principles of trade." Section 15A(b)(11) states that the association rules must "include provisions

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[1] See Securities Exchange Act Release No. 32077 (March 31, 1993), 58 FR 18126.

[2] The proposed rule change states that for purposes of this rule, the term "OTC Equity Security" means any equity security not classified as a "designated security" for purposes of Parts XII or XIII of Schedule D to the NASD By-Laws, or as an "eligible security," for purposes of Schedule G to the NASD By-Laws. The term does not include restricted securities, as defined by Rule 144(a)(3) under the Securities Act of 1933, or any securities designated in the PORTAL Market. The new size requirement will not apply to any foreign/ADR issue in which firm quotations are not permitted to be entered into the OTCBB.

[3] Bids or offers for 0¢ to .50¢ must be firm for 5,000 shares. Bids or offers for .51¢ to $1.00 must be firm for 2,500 shares. Bids or offers for $1.01 to $10.00 must be firm for 500 shares. Bids or offers for $10.01 to $100 must be firm for 200 shares. Bids or offers for $100.01 to $200.00 must be firm for 100 shares. Bids or offers for $200.01 and above must be firm for 50 shares.

[4] The proposed rule change does not require market makers to publish two-sided firm quotes for OTC Equity securities. Market makers may, therefore, continue to publish unpriced indications of interest, or one-sided quotations for such securities.

[5] The NASD anticipates that the OTCBB will have size display capability and the minimum size default feature by the end of the first half of 1994.

[6] A table setting forth the tiered minimum size requirements will be reproduced in a newsframe accessible to OTCBB market makers on the workstations they use to enter and update their quotations.

VOL
58
ISS
129
JL
8
1993
UMI

governing the form and content of quotations * * * [and] be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations."

The Commission believes that replacing the current one-trading-unit size requirement for firm quotes in OTC Equity Securities with size requirements that are based on bid or offer prices should provide investors with a more accurate picture of the actual size of execution available and the depth of the market in each security. Moreover, the proposed rule change should enhance the quality, liquidity, and depth of the OTCBB market and provide greater information to investors. Market makers currently are willing to execute trades in many of the OTC Equity Securities well in excess of the 100-share size that is currently required to be honored. The Commission has favored realistic display of size at least since the early 1980s.[7]

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with sections 15A(b)(6) and 15A(b)(11) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16116 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32573; File No. SR–NASD–93–10]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Participation in the Intermarket Trading System by Third Market Makers

July 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The purpose of the proposed rule change is to require third market makers in exchange-listed securities and register and participate in the Computer Assisted Execution System ("CAES") and the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). On June 10, 1993, the NASD amended the proposed rule change to clarify that only third market makers registered as CQS market makers must register an ITS/CAES market makers.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to Schedules D and G to the NASD By-Laws and to the Rules of Practice and Procedure for the ITS/CAES Automated Interface to require third market makers registered as CQS market makers in exchange-listed securities to register and participate in CAES and ITS/CAES.[2]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing amendments to Schedules D and G to the NASD By-Laws and amendments to the Rules of Practice and Procedures for the ITS/CAES Automated Interface ("ITS/CAES Rules") to require market makers in exchange-listed securities that register as Consolidated Quotation System ("CQS") market makers to participate in CAES and in ITS/CAES. The amendments will require registration as a CAES market maker for those members registered in CQS for non-Rule 19c–3 securities and registration as an ITS/CAES market maker and participation in the ITS/CAES system by CQS market makers in Rule 19c–3 securities traded in the ITS linkage.[3] The proposal also will require CQS market makers to input minimum sizes of 200 or 500 shares in their quotations (depending on trading characteristics of the securities), and will require CQS market makers to abide by excess spread parameters as established for the Nasdaq market in Part VI of Schedule D to the By-Laws. The NASD is also modifying the operation of CAES to permit market maker-to-market maker transactions through the system.

The NASD is proposing the rule change to enhance the quality and liquidity of the third market and to improve opportunities for customers to receive automated executions of their orders through CAES.

Additionally, the NASD believes that requiring market makers in ITS/CAES eligible securities to participate in the linkage will make ITS a more effective national market linkage, and will help eliminate confusion by exchange participants and others between linked and non-linked market makers. Participation in the ITS/CAES linkage will enhance the quality of the third market by making the quotations by third market makers in Rule 19c–3 exchange-listed stocks accessible to other exchange participants. Currently, the quotes of all Nasdaq market makers in exchange-listed securities are consolidated into a composite third market quote and disseminated to vendors and to the floors of competing exchanges on CQS. The quotes of Nasdaq market makers that are not ITS linked are included in the consolidated quote, but are not accessible through the facilities of ITS or ITS/CAES to other ITS participants or ITS market makers. ITS has its own display of quotations, available only to ITS participants, and this dual system of quotation information is sometimes confusing. When other market centers send ITS commitments to the NASD in response to non-ITS market maker quotes seen through CQS, the commitments expire

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[7] See Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391. See also Securities Exchange Act Release No. 28450 (September 18, 1990), 55 FR 39221.

[1] Letter from Robert Aber, Vice President, General Counsel/Corporate Subsidiaries, NASD, to Elizabeth MacGregor, Branch Chief, National Market System, Division of Market Regulation, Commission, (June 10, 1993).

[2] Third market makers make over-the-counter markets in securities that are also listed and traded on an exchange.

[3] Rule 19c–3 under the Act precludes off-board trading restrictions from applying, with certain exceptions, to any reported security which was not traded on an exchange on April 26, 1979, or which was traded on an exchange on April 26, 1979, but which ceases to be traded on an exchange for any period of time thereafter.

unexecuted and the other market centers may believe that the NASD market maker is backing away from its quotes. The NASD believes that it is desirable to remedy this confusion and to enhance the quality of the third market by providing access to all third market quotes through the ITS/CAES linkage.

Additionally, the non-ITS market makers are not presently bound by the ITS Plan or operating procedures. The ITS Plan contains provisions regarding treatment of trade-through occurrences, block trades, pre-opening procedures, and resolution of obvious errors and intermarket disputes. Having some NASD market makers obliged to follow the Plan and others outside the scope of its application causes confusion and disparate regulatory treatment that will be cured by the instant rule proposal.

The NASD is also proposing to require CQS market makers to input size in their quotations of 200 or 500 shares depending on trading characteristics of the securities, such as price, volume, and number of market makers in the security, and to impose excess spread parameters comparable to those in the Nasdaq market. The NASD believes that the benefits of adopting quality of market standards related to size of displayed quotations and excess spread parameters are invaluable to the development and maintenance of a quality marketplace for exchange-listed securities.

Finally, the NASD is modifying the operation of CAES to permit market maker-to-market maker executions within the system. Currently the system is available only for agency orders, and the NASD believes that with mandatory participation in the system, it is appropriate for market makers to be able to access each other through the system, reducing reliance on telephone contact, especially in times of market stress.

The NASD analyzed the effects of the rule proposal on the market makers trading exchange-listed securities but not participating in ITS/CAES and believes that the costs to participants in joining the ITS/CAES link and the regulatory burdens incumbent on members to comply with the ITS Plan and rules thereunder are outweighed by the benefits to the market as a whole and to the continuing development of a national market system, as described in Section 11A of the Act. The NASD met with a number of non-linked market makers to discuss the proposal and has received indications that at least half of the market makers would participate in the linkage, and the more active market makers (those trading more than 50 securities) would most likely participate. Accordingly, the NASD believes that the proposal is appropriate and the burdens on firms in complying with the proposal are outweighed by the positive impact on the market for listed trading.

The NASD believes the proposed rule change is consistent with sections 11A(a)(1)(D), 11A(a)(2) and 15A(b)(6) of the Act. Section 11A(a)(1)(D) of the Act states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders and contribute to best execution of such orders, and subsection (a)(2) thereunder directs the SEC to facilitate the establishment of a national market system for qualified securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The proposal to require all CQS market makers to participate in CAES and ITS/CAES will enhance the national market system for listed securities to the benefit of market participants and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

As discussed above, the NASD believes that any burdens imposed by the proposed rule change are far outweighed by the benefits obtained from the changes. Accordingly, the NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16117 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32551; File No. SR–NSCC–93–5]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to the Use of Letters of Credit To Collateralize Clearing Fund Contributions

June 29, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 7, 1993, the National Securities Clearing Corporation ("NSCC") filed

[1] 15 U.S.C. 78s(b)(1) (1988).

VOL 58 ISS 129 JL 8 1993 UMI

with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–93–5) as described below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through June 30, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the minimum cash Clearing Fund contribution for members that deposit letters of credit as part of their Clearing Fund contributions and limits the percentage of a member's required Clearing Fund contribution that may be collateralized with letters of credit.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies the minimum cash contribution for NSCC clearing members that use letters of credit as part of their Clearing Fund contributions from $50,000 to the greater of $50,000 or 10% of their required Clearing Fund deposit up to a maximum of $1,000,000. In addition, the proposal provides that only 70% of a member's required deposit may be collateralized with letters of credit.[3] The rule change also makes certain nonsubstantive drafting changes, such as adding headings to the Clearing Fund formula section, for purposes of clarity. The effect of the proposed rule change should be to increase the liquidity of the Clearing Fund and to limit NSCC's exposure to risks associated with reliance on letters of credit.

Since obtaining temporary approval of the original filing, NSCC has filed Clearing Fund composition reports with the Commission. Since December 31, 1989, NSCC has observed the following changes in the composition of the Clearing Fund as a result of the new requirements:

1. Cash deposits have increased by approximately 175%;

2. Securities deposits have increased in value by approximately 120%;[4] and

3. Letter of credit deposits have declined by approximately 51%.[5]

NSCC states that the proposal is consistent with its requirements under Section 17A of the Act because it enhances NSCC's ability to safeguard securities and funds in its custody or under its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No new written comments have been solicited or received.[6] NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed, among other things, to protect investors and the public interest.[7] As discussed below, NSCC's proposal to limit the use of letters of credit to collateralize clearing fund obligations will make NSCC's clearing fund more liquid. A liquid clearing fund is necessary to ensure the safety and soundness of a clearing agency, particularly in times of market stress when the risk of member default is greatest. Thus, the proposal is consistent with NSCC's requirements under the Act with regard to protecting the interests of investors and of the public.

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's promise to pay funds upon presentation of stipulated documents by the holder (*i.e.*, the clearing agency), a clearing agency holding letters of credit will be exposed to risk should the issuer default, become insolvent, or simply refuse to honor its promise to pay.[8] Furthermore, because the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents,[9] the clearing agency either may have to await payment or may have to seek alternative short-term financing pending the issuer's payment. This waiting period could compromise a clearing agency's liquidity and thereby could hinder its ability to meet its payment obligations on a timely basis. Overreliance on letters of credit to collateralize clearing fund obligations was cited in the 1990 GAO Report on the national clearance and settlement system as a factor that is

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[2] The proposed rule change originally was filed in October of 1989 and was approved temporarily through December 31, 1990. Securities Exchange Act Release No. 27864 (January 31, 1990), 55 FR 4297 [File No. SR–NSCC–89–16]. Subsequently, the Commission granted three extensions to the temporary approval to provide the Commission and NSCC sufficient time to review and to assess the use of letters of credit as Clearing Fund collateral. Securities Exchange Act Release Nos. 28727 (December 31, 1990), 56 FR 716 [File No. SR–NSCC–90–27]; 29389 (June 28, 1991), 56 FR 30953 [File No. SR–NSCC–91–04]; and 30883 (July 1, 1992), 57 FR 30521 [File No. SR–NSCC–92–05].

[3] Prior to this rule filing, NSCC's rules contained no provision limiting the percentage of a Clearing Member's required Clearing Fund deposit that could be collateralized with letters of credit.

[4] Securities eligible for deposit as Clearing Fund collateral include U.S. or municipal bonds in the first or second rating of any nationally known statistical service. NSCC Rule 4, Section 1.

[5] In October of 1989 when the Commission initially granted temporary approval of NSCC's proposal, letters of credit accounted for 76% of the total dollar value of required Clearing Fund deposits. By May 28, 1993, letters of credit accounted for less than 30%. During the period from June 1, 1992, to May 28, 1993, letters of credit accounted for an average of 30.49% of the total dollar value of required Clearing Fund deposits, and for no month during that period did the portion of letters of credit used for required Clearing Fund deposits rise above 34%. Letter from Karen L. Saperstein, Vice President/Director of Legal & Associate General Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 10, 1993).

[6] In a previous filing of this proposal, NSCC received a letter from Wedbush Morgan Securities, Inc. Wedbush opposed the proposal because it believed the proposal would increase its cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[7] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[8] This problem was discussed by the General Accounting Office ("GAO") in a report on clearance and settlement reform. The GAO noted: "Letters of credit are considered less liquid than cash or cash equivalents because banks that issue letters of credit may choose not to honor them." GAO Report, Clearance and Settlement Reform: The Stock, Options, and Futures Markets are Still at Risk 33 (April 1990) [hereinafter GAO Report"]. A bank's failure to honor a letter of credit, of course, could have dire consequences for its reputation and credit standing.

[9] For example, pursuant to New York's codification of Uniform Commercial Code ("U.C.C." section 5–112(a)(1), a bank to which a demand has been made for payment under a letter of credit may, without breaching its duty under the letter of credit, defer payment until the third banking day after receipt of the required documents. N.Y. U.C.C 5–112(1)(a) (NY CLS 1993).

putting the markets at risk.[10] The GAO noted proposals, however, including the one approved herein, that are designed to ameliorate the problem.[11]

As indicated above, since the proposal first received temporary approval, NSCC has experienced significant increases in the use of cash and eligible securities as required Clearing Fund deposits. Because cash and eligible securities are more liquid than letters of credit, the enhanced level of such deposits helps to ensure the liquidity of NSCC's Clearing Fund in the event of a major member insolvency, catastrophic loss, or major settlement loss. By reducing reliance on letters of credit and thereby increasing the liquidity of its Clearing Fund, NSCC's proposal should help it to fulfill its responsibilities under the Act to protect investors and the public. Therefore, the Commission is approving the proposal.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because accelerated approval of the proposal will keep effective NSCC's rules that help reduce the exposure of NSCC's Clearing Fund to the potential liquidity risks associated with using letters of credit to collateralize members' Clearing Fund obligations. Moreover, since it was first introduced in 1989, NSCC's proposal has been open for public comment and has elicited only one opposing comment. Thus, the Commission does not foresee that approval of the proposal will elicit further opposition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–93–5 and should be submitted by July 29, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b(2) of the Act,[12] that the proposed rule change (File No. SR–NSCC–93–5) be, and hereby is, approved through June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16056 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

[10] See GAO Report, *supra* note 7 at 33–34.

[11] *Id.* at 34.

[Rel. No. IC–19555; 812–8344]

Ranson Equity and Treasury Securities Trust, Series 1 and Subsequent Series, et al.; Notice of Application

July 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Ranson Equity and Treasury Securities Trust, Series 1 and Subsequent Series (the "Trust"), and Ranson Capital Corporation ("Ranson") or a sponsor controlled by or under common control with Ranson (collectively with Ranson, the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order (a) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust and (b) permitting the Trust to distribute capital gains dividends within a reasonable time after receipt.

FILING DATE: The application was filed on April 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 120 South Market, Suite 450, Wichita, Kansas 67202.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803 or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust will consist of a series of unit investment trusts, each of which will be similar but separate and designated by a different series number ("Trust Series"). The objective of each Trust Series is to protect capital, and to provide income and/or capitol appreciation through investments in equity securities and zero coupon obligations. Each Trust Series will be registered under the 1940 Act, and under the Securities Act of 1933 by a registration statement on Form S–6.

2. Each Trust Series will be created pursuant to a trust agreement which will contain information specific to that Trust Series and which will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria of section 26(a) of the Act (trust agreement and master trust indenture collectively, the "Trust Agreement").

3. Each Trust Series will be sponsored by the Sponsor. The Sponsor will deposit zero coupon obligations and equity securities (collectively with the zero coupon obligations, "Securities") in the Trust Series at the price determined by an independent evaluator. The Sponsor expects to deposit in each Trust Series

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1992).

substantially more than $100,000 aggregate value of Securities. All zero coupon obligations in any one Trust Series will have essentially identical maturities, and the Sponsor will purchase all Securities from third parties.

4. Simultaneously with the deposit of Securities in a Trust Series, the Trustee will deliver to the Sponsor registered certificates for units ("Units") which will represent the entire ownership of the Trust Series (owners of such Units are hereinafter referred to as "Unitholders"). The Units in turn will be offered for sale to the public by the Sponsor following the effectiveness of the registration statement relating to the Trust Series, and clearance by the securities authorities of the various states. Applicants intend to offer each Trust Series to the Public initially at prices based on the closing sale prices of listed equity securities and the ask prices of over-the-counter traded equity securities selected for deposit in the Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge.

5. On the initial date of deposit of the Securities in a Trust Series, the Sponsor will establish a proportionate relationship between the zero coupon obigations and the equity securities in the Trust Series. This percentage relationship will be set forth in the prospectus and in each Trust Agreement. Under the Trust Agreement, the Sponsor may deposit additional Securities in the Trust Series, which additional deposit will maintain the proportionate relationship between the zero coupon obligations and the equity securities in the Trust Series. A deposit of additional Securities subsequent to the initial date of deposit may result in a potential corresponding increase in the number of Units outstanding. Such Units may be offered for sale to the public continuously by means of the prospectus.

6. Each Trust Series will consist of the Securities, accrued and undistributed income, dividends, and undistributed cash. The Trust will be structured so that, on the specified maturity date for each Trust Series, the initial Unitholders (investors who purchased Units on the first date they are offered for sale) will receive back at least the total amount of their original investment in the Trust Series, including the sales charge. To that end, the principal value of the maturing zero coupon obligations in each Trust Series will at least equal the original purchase price of the Units of the Trust Series

7. The Trust will redeem Units at prices based on the aggregate bid side evaluation of the zero coupon obligations, the closing sale prices of listed equity securities, and the bid prices of over-the-counter traded equity securities.

8. Although not obligated to do so, the Sponsor intends to maintain a secondary market for Units of each Trust Series. The secondary market will be based on the aggregate bid side evaluation of the zero coupon obligations, the closing sale prices of listed equity securities, and the bid prices of over-the-counter traded equity securities, plus a sales charge. Such a secondary market will reduce the number of Units tendered to the Trustee for redemption and alleviate the need to sell portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until equity securities have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportional relationship to Unit value, and that zero coupon obligations may not be sold to meet Trust expenses.

Applicants' Legal Analysis

1. Section 14(a) of the Act provides, in pertinent part, that no registered investment company shall make a public offering of its securities unless such company (a) has a net worth of at least $100,000 or (b) ensures to the satisfaction of the SEC and as a condition of registration of its securities under the Securities Act of 1933 that: (i) After the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until not more than 25 responsible persons have made firm agreement to purchase securities in an aggregate net amount which will give the company a net worth of at least $100,000; (ii) such amount will be paid into such company before subscriptions will be accepted from any persons in excess of 25; and (iii) arrangements will be made whereby any amount paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction in the event that the net proceeds received by the company do not result in the company having a net worth of at least $100,000 within 90 days after such registration statement becomes effective.

2. Applicants contend that, because the Sponsor will deposit substantially more than $100,000 of Securities in each Trust Series, applicants will comply with section 14(a) of the Act. However, applicants acknowledge that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all the Units thereof. Applicants request an exemption to the extent that section 14(a) would require the Sponsor to take $100,000 worth of Units either for its own account or under an investment letter.

3. Applicants will comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust will invest in equity securities, and hence will not restrict its portfolio investments to "eligible trust securities."

4. Section 19(b) of the Act and rule 19b–1 thereunder provide that no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants state that the provisions of section 19(b) and rule 19b–1 thereunder were designed to remove the temptation to realize capital gains on a frequent and regular basis, and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Applicants also contend that there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income.

5. Rule 19b–1(c), under certain circumstances, excepts a unit investment trust investing in "eligible trust securities," as defined in rule 14a–3(b) of the Act, from the requirements of rule 19b–1. Applicants assert that this exception recognizes that the danger of making manipulative capital gains distributions which are detrimental to Unitholders is largely eliminated for unit investment trusts. For such trusts, the conditions under which capital gains are realized are beyond the Sponsor's control, and the capital gains are identified clearly. However, the exception provided by rule 19b–1(c) does not apply to the Trust because the Trust does not intend to invest in "eligible trust securities." Applicants request an exemption from rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of equity securities to be distributed to

Unitholders along with the Trust's regular distributions.

6. Applicants submit that the dangers which section 19(b) and rule 19b–1 are designed to prevent do not exist in the Trust. Any gains from the sale of equity securities would be triggered by the need to meet Trust expenses or by requests to redeem Units, events over which the Sponsor and Trust have no control. Applicants state that the Sponsor has control over the actual redemption of Units to the extent it makes a market in Units. However, applicants further state that the Sponsor has no incentive to redeem or to permit the redemption of Units in order to generate capital gains for the purpose section 19(b) and rule 19b–1 were designed to protect against. Aside from the facts that the Sponsor intends to maintain a secondary market and that the current realization and distribution of gains is not an objective of the Trust, applicants assert that cash generated from the sale of equity securities will be used to pay expenses and to meet redemptions and will not generate distributions to Unitholders. Moreover, applicants contend that because principal distributions are indicated clearly in accompanying reports to Unitholders as a return of principal and are relatively small in comparison to normal distributions, there is a little danger of confusion from failure to differentiate among distributions. Applicants also assert that any retention of capital gains until year-end would be to the detriment of Unitholders.

7. Applicants contend that the requested exemption is consistent with the purposes and policies of the Act, and would be in the best interests of the Unitholders.

Applicants' Conditions

Applicants agree that, as a condition of the order, applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16118 Filed 7–7–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 93–7–3]

Fitness Determination of Northwest Seaplanes, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Northwest Seaplanes, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: July 1, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–16092 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–93–29]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 28, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 1, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 117CE.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 23.181(b).
Description of Relief Sought: To allow amendment of the Model 525 type certificate utilizing the direction stability damping criterion of § 25.181 in lieu of the dampening criterion of § 23.181(b).

Docket No.: 18114.
Petitioner: Federal Express Corporation.
Sections of the FAR Affected: 14 CFR 121.547 and 121.583.
Description of Relief Sought: To extend Exemption No. 2600 to allow Federal Express Corporation to carry reporters, photographers or journalists aboard its Boeing B–747 aircraft without complying with the passenger carrying requirements of part 121 of the FAR.

Docket No.: 21780.
Petitioner: Civil Air Patrol.
Sections of the FAR Affected: 14 CFR 61.118.

VOL 58 ISS 129 JL 8 1993 UMI

Description of Relief Sought: To extend Exemption No. 4042 to allow the Civil Air Patrol, Inc. (CAP) to continue to be reimbursed for fuel, oil and maintenance expenses while serving on official CAP missions.

Docket No.: 27155.
Petitioner: Saab Aircraft AB.
Sections of the FAR Affected: 14 CFR 25.562.
Description of Relief Sought: To extend Exemption No. 5623 to allow for the Saab 2000 airplane, relief for the HIC requirements for front row passenger seats, and from the floor deformation requirements for cockpit seats.

Docket No.: 27325.
Petitioner: United States Parachute Association.
Sections of the FAR Affected: 14 CFR 105.43(b) (2)(ii) and (3).
Description of Relief Sought: To allow United States Parachute Association individual and group members to jump, using ram-air canopies, in static line direct deployment, without the aid of the assist device prescribed in the regulations.

Docket No.: 27329.
Petitioner: Comair Airlines.
Sections of the FAR Affected: 14 CFR 135.167 (a)(2), (b) and (c).
Description of Relief Sought: To allow Comair to conduct extended over water operations on Gulf Route 26 and Jet Route 58 (or as modified by the FAA) on scheduled revenue flights, without certain emergency survival equipment currently required by the regulation i.e. life rafts, pyrotechnic signaling devices, survival kits, emergency food and water rations and an emergency locator transmitter.

Dispositions of Petitions

Docket No.: 24770.
Petitioner: Flight Safety International.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57 (c) and (d); 61.58 (b)(2) and (c)(1); 61.63 (c)(2), (d)(2) and (3); 61.65 (d) and (g); 61.67(d)(2); 61.163(a); 61.919(c); and Appendix B of part 61.
Description of Relief Sought/ Disposition: To extend Exemption No. 5324 to allow Flight Safety International (FSI) to use FAA-approved simulators to meet certain training requirements of the affected regulations.
Grant, June 25, 1993, Exemption No. 5324A.

Docket No.: 26419.
Petitioner: DHL Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.503, 121.505, and 121.511.
Description of Relief Sought/ Disposition: To extend Exemption No. 5296 to permit DHL Airways, Inc. (DHL), a supplemental air carrier, to operate in accordance with § 121.471, which specifies flight and duty time limitations applicable to a domestic air carrier.
Grant, June 23, 1993, Exemption No. 5296B.

[FR Doc. 93–16097 Filed 7–7–93; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key Field, Meridian, MS

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 9, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Williams, Executive Director of the Meridian Airport Authority at the following address: Meridian Airport Authority, Post Office Box 4351, Meridian, Mississippi 39304–4351.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Meridian Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Principal Engineer, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 29, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Meridian Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 19, 1993.

The following is a brief overview of the application.
Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1994
Proposed charge expiration date: July 9, 1996
Total estimated PFC revenue: $158,973
Brief description of proposed project(s):
1—Overlay Runway 4/22
2—Overlay north 1500 feet of taxiway B
3—Overlay terminal aircraft parking apron
4—Renovate terminal building—phase 2A
5—Acquire security vehicle
6—Install runway/taxiway guidance signs
7—Acquire passenger access lift
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Meridian Airport Authority, Terminal Building, Key Field, 2811 Highway 11 South, Meridian, Mississippi 39304.

Issued in Atlanta, Georgia, on June 29, 1993.

Dell T. Jernigan,
Manager, Planning and Development Branch, Airports Division, Southern Region.

[FR Doc. 93–16098 Filed 7–7–93; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at McGhee Tyson Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 9, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Terry Igoe, Executive Director of the Metropolitan Knoxville Airport Authority at the following address: McGhee Tyson Airport, P.O. Box 15600, Knoxville, Tennessee 37901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Knoxville Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Memphis Airports District Office; ATTN: Mr. Jerry O. Bowers, Planner; 2851 Directors Cove, suite #3; Memphis, Tennessee 38131–0301; Telephone number (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McGhee Tyson Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 22, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Knoxville Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 6, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3 00
Proposed charge effective date: October 1, 1993
Proposed charge expiration date: September 30, 1996
Total estimated PFC revenue: $5,681,615
Brief description of proposed project(s):
"IMPOSE-ONLY" PROJECTS:
4—Acquire property for future runway development.
5B&5C—Terminal Improvements (Restroom expansion and rehabilitation and roadway retaining wall stabilization).
6E—Strengthen Taxiway "A".
9—Expand snow removal equipment maintenance and storage building.
10—Replace 4 snow removal/ice control vehicles.
"IMPOSE AND USE" PROJECTS:
1—Reconstruct/overlay terminal access roads.
2—Conduct update to master plan and FAR Part 150 noise compatibility study.
3—Implement existing Noise Compatibility Program.
5A—Install wheel chair lifts on each concourse.
6A—Reconstruct Taxiway "B–2".
6B—Replace Runway 5L/23R lighting.
6C—Reseal Air Carrier Apron expansion joints.
6D—Pave Taxiway "B" shoulders.
7A, B, C—Strengthen Runway 5R/23L, Update lighting to Cat II, and lower TVA transmission towers.
8A&B—Refurbish 2 ARFF vehicles and replace the dedicated security vehicle.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial (part 135) operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Knoxville Airport Authority.

Issued in East Point, Georgia on June 24, 1993.

Stephen A. Brill,
Manager, Airports Division, Southern Region.

[FR Doc. 93–16099 Filed 7–7–93; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Orlando International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 9, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary LeTellier, Executive Director of the Greater Orlando Aviation Authority, at the following address: Greater Orlando Aviation Authority, Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827–2001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Orlando Aviation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Southern Region, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, Attn: Pablo G. Auffant, Civil Engineer, Telephone: (407) 648–6583.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Orlando International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On June 28, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by The Greater Orlando Aviation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1993

VOL 58 ISS 129 JL 8 1993 UMI

Proposed charge expiration date:
February 1, 1998
Total estimated PFC revenue:
$12,957,000
Brief description of proposed project(s):
Impose and Use:
A. New East Airfield Land Purchase.
B. Interest on Existing Land Acquisition Funding.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: NONE

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Orlando Aviation Authority:

Issued in Atlanta, Georgia on June 29, 1993.

Dell T. Jernigan,

Manager, Planning and Development Branch, Airports Division, Southern Region.

[FR Doc. 93–16100 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

July 1, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0067
Form Number: IRS Form 2555
Type of Review: Revision
Title: Foreign Earned Income
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for the exclusion(s) or deduction.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 165,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 11 minutes
Learning about the law or the form—26 minutes
Preparing the form—1 hour, 40 minutes
Copying, assembling, and sending the form to the IRS—49 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 839,850 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–16143 Filed 7–7–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 1, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Small Business Newsletter ("Tax Tips") Focus Groups
Description: Research Division facilitators will conduct focus group interviews regarding the "Tax Tips" Newsletter mailed to small business owners in the Southeast and Southwest Regions. The focus group facilitators will evaluate how the newsletter helped small business owners with their recordkeeping, filing and deposit requirements.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 650
Estimated Burden Hours Per Respondent:
Focus Group Screening Calls—5 minutes
Focus Group Sessions (plus travel time—3 hours
Frequency of Response: Other (one-time study)
Estimated Total Reporting Burden: 324 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–16144 Filed 7–7–93; 8:45 am]

BILLING CODE 4830–01–P

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on August 3 and 4, 1993, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on August 3 and the preparation of a written report to the Secretary of the Treasury on August 4, 1993.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under subsection 552b(c)(9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have

been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92–463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by subsection 552b(c)(9)(A) of title 5 of the United States Code.

The Office of the Under Secretary for Domestic Finance shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: June 29, 1993.

Frank N. Newman,

Under Secretary for Domestic Finance.

[FR Doc. 93–16078 Filed 7–7–93; 8:45 am]

BILLING CODE 4810–25–M

VOL
58
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129
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Sunshine Act Meetings

Federal Register
Vol. 58, No. 129
Thursday, July 8, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:10 a.m. on Tuesday, July 6, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the probable failure of certain insured banks.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendation concerning an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW, Washington, DC.

Dated: July 6, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–16367 Filed 7–6–93; 3:40 pm]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 2, 1993.

TIME AND DATE: 10:00 a.m., Thursday, July 15, 1993.

PLACE: Room, 600 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor on behalf of Donald L. Gregory et al. v. Thunder Basin Coal Co.*, Docket No. WEST 92–279–D, etc. (Issues include whether the judge erred in dismissing these proceedings because the Secretary refused to provide Thunder Basin with certain documents during discovery.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Donald L. Gregory et al. v. Thunder Basin Coal Co.*, Docket No. WEST 92–279–D, etc. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. 93–16294 Filed 7–6–93; 12:29 pm]

BILLING CODE 6735–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m. July 19, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report entitled "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Loan Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 6, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–16368 Filed 7–6–93; 3:46 pm]

BILLING CODE 6760–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 29, 1993
9:00 a.m. to 5:00 p.m., July 30, 1993
9:00 a.m. to 2:00 p.m., July 31, 1993

PLACE: The Inn at Semiahmoo, 9565 Semiahmoo Parkway, Blaine, Washington 98230.

MATTERS TO BE CONSIDERED: FY 1993 grants; FY 1994 Grant Guideline; internal Institute business.

PORTIONS OPEN TO THE PUBLIC: All grant discussions and internal business other than Institute personnel discussions.

PORTIONS CLOSED TO THE PUBLIC: Personnel discussions.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 93–16249 Filed 7–6–93; 11:04 am]

BILLING CODE 6820–SC–M

federal register

Thursday
July 8, 1993

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, et al.
Improved Standards for Determining Rejected Takeoff and Landing Requirements; Proposed Rule

VOL 58 ISS 129 JL 8 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, 91, 121, and 135

[Docket No. 25471; Notice No. 93-8]

RIN 2120-AB17

Improved Standards for Determining Rejected Takeoff and Landing Performance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice, applicable to transport category airplanes, proposes revised standards for determining the runway length that must be available for takeoff and landing. The current standards would be amended to: (1) Revise the method of accounting for pilot reaction time used in determining the runway length that must be available in the event of a rejected takeoff; (2) account for the effect of wet runways on takeoff performance; and (3) account for the reduced capability of worn brakes on takeoff and landing performance. This action is being taken to improve the current standards, reduce the impact of the standards on the competitiveness of new versus derivative airplanes without adversely affecting safety, and harmonize with proposed standards for the European Joint Aviation Requirements (JAR). The revised standards would not be applied retroactively to either airplanes currently in use or airplanes of existing approved designs that will be manufactured in the future.

DATES: Comments must be received on or before November 5, 1993.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC-10) Docket No. 25471, 800 Independence Avenue SW, Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25471. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM-7), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments in the information docket may be examined in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Flight Test and Systems Branch (ANM-111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1129.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenter should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25471." The postcard will be date stamped and returned to commenter.

Availability of NPRM

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Before a takeoff may be started with a turbine-powered transport category airplane, the operator must determine that the length of the runway to be used, plus any "stopway" and "clearway" that may be available, is adequate to either safely continue the takeoff from a defined go/no-go decision point in the takeoff roll, or reject the takeoff from that point and bring the airplane to a complete stop. The go/no-go decision point occurs during the takeoff roll when the airplane reaches a speed known as the "takeoff decision speed," or "V_1 speed."

To assure that there is adequate runway to continue the takeoff from the go/no-go decision point, the runway plus any clearway at the end must be long enough for the airplane to first accelerate to the V_1 speed and then to continue the takeoff to a height of 35 feet, even if a total loss of power from the most critical engine occurs just before reaching the V_1 speed. This distance for the airplane to reach a height of 35 feet following a total loss of power from the most critical engine is defined as the "takeoff distance."

To provide for a possible need to reject the takeoff, the runway plus any stopway area must also be long enough to accelerate the airplane to the V_1 speed and then bring the airplane to a complete stop. This distance to reject a takeoff is called the "accelerate-stop" distance. A "balanced field length" exists when V_1 is selected such that the accelerate-stop distance is equal to the takeoff distance. In general, the balanced field length is the minimum runway length required for takeoff.

The V_1 speed selected for any takeoff depends on several variables, including the airplane's takeoff weight and configuration (flap setting), the runway length, the air temperature, and the runway surface elevation (airport altitude), etc. The takeoff performance and limitation charts in the Airplane Flight Manual (AFM) are developed in accordance with the FAA airworthiness standards in subpart B of the Federal Aviation Regulations (FAR), part 25—"Airworthiness Standards: Transport Category Airplanes," using data gathered during comprehensive flight tests completed as a part of the FAA's approval of the airplane's type design.

Part 25 of the FAR, subpart B, also prescribes the FAA airworthiness standards for determining the length of runway required for safe landing under various airplane and atmospheric conditions. Landing performance charts are also published in the AFM, to be used by the operator to determine whether a particular runway is long enough for landing.

The general operating rules contained in parts 91, 121, and 135 of the FAR require operators to plan takeoffs and

landings using the appropriate performance and limitation charts published in the AFM.

Part 1 of the FAR defines terms and explains abbreviations used in parts 25, 91, 121, and 135.

This notice proposes amendments to several sections of parts 25, 91, 121, and 135 of the FAR that provide the methods for determining and applying the takeoff and landing performance standards for turbine-powered transport category airplanes. Also, this notice proposes to amend Part 1 to add a definition of the term "takeoff decision speed" and an explanation for the abbreviation "V_{EF}." This nomenclature is currently used in FAA airworthiness standards and operating rules, and is also commonly used in the aviation industry.

It is fundamental to operational safety that the pilot should be able to either safely complete the takeoff or bring the airplane to a complete stop if a decision is made to reject the takeoff no later than the V_1 speed, even if power is lost from the most critical engine just before V_1. This principle has been used as the basis for the takeoff performance standards required for the type certification of turbine-powered transport category airplanes since the issuance of Special Civil Air Regulation No. SR–422, effective August 27, 1957. The amendments proposed in this notice would not change that principle. Proposals are made, however, to change some aspects of implementing that principle by amending the current part 25 airworthiness standards. These proposed amendments would provide a more rational (i.e., explicitly address the specific elements affecting the takeoff distance rather than applying more restrictive standards to all takeoffs) method of accounting for various operational aspects of takeoff and landing, and would affect the takeoff and landing runway lengths required by the Part 91, 121, and 135 operating rules.

The takeoff performance standards of part 25 define how the takeoff performance and limitation contained in the AFM must be determined. The information provided in the AFM accounts for various operational factors affecting how long the runway must be for airplanes to be operated in accordance with the principle stated in the above paragraph. The operator is not permitted to take off from a runway that is shorter than the airplane requires for the given conditions. Since actual runway lengths are fixed, the operator, using the performance information contained in the AFM, may have to reduce the airplane's takeoff weight in order to take off from a given runway. Reducing the takeoff weight shortens the distance required for takeoff. The more restrictive the airworthiness standards for takeoff runway length are, the more the takeoff weight may have to be reduced to be able to take off from a given runway.

To reduce the airplane's takeoff weight, the operator must either reduce the amount of fuel to be carried, or reduce the number of passengers or amount of cargo to be transported. Since the amount of fuel to be carried is dictated primarily by the route being flown, sometimes the operator's only option is to reduce the number of passengers or amount of cargo to be transported. When the number of passengers or amount of cargo must be reduced for a given flight, the airplane operator can suffer a loss of revenue.

Amendment 25–42, which became effective on March 1, 1978, revised the takeoff performance standards to make them more restrictive. Prior to Amendment 25–42, the accelerate-stop distance shown in the AFM accounted for variations in pilot reaction time by generally adding two seconds to the time required for pilots to take the actions necessary to stop the airplane during flight tests (e.g., reduce power, apply the brakes, and raise the spoilers). During this two second time delay, the airplane is assumed to be travelling at a constant speed.

The revised standards of Amendment 25–42 require the accelerate-stop distance to include two seconds of continued acceleration beyond V_1 speed before the pilot takes action to begin stopping the airplane. This revision results in longer accelerate-stop distances being required for airplanes whose application for a type certificate was made after Amendment 25–42 became effective. Consequently, turbine-powered transport category airplanes that are currently being manufactured under a type certificate that was applied for prior to March 1, 1978, have a significant operational economic advantage over airplanes whose type certificate was applied for after that date. This competitive disparity resulting from applying different performance standards has created a compelling need to amend the takeoff performance standards of part 25 without adversely affecting safety.

Amendment 25–42 was a broad brush approach, applying to all takeoffs, to increase the required accelerate-stop distance. This broad brush approach was taken because the takeoff performance standards do not explicitly account for many of the important operational factors that may affect takeoff performance. For example, the standards do not currently distinguish between dry and wet runways, nor are the effects of worn brakes taken into account. Wet runways and worn brakes would result in an airplane requiring a longer accelerate-stop distance than with new brakes on a dry runway. By proposing to account for wet runways and to base stopping performance on brakes that are completely worn, these amendments would provide additional accelerate-stop distance for the conditions where it is specifically needed in operational service.

Because wet runways and worn brakes would be accounted for in the proposed new standards, the FAA also proposes to replace the two seconds of continued acceleration beyond V_1 with a distance equal to two seconds at constant V_1. The distance equal to two seconds at constant V_1, while shorter than that resulting from the continued acceleration beyond V_1 required by Amendment 25–42, is a distance margin that must be added to the accelerate-stop distance demonstrated during flight testing for type certification. This distance margin, based on the V_1 speed and a time "delay" of two seconds, accounts for variability in the time it takes for pilots, in actual operations, to accomplish the procedures for stopping the airplane.

Amendment 25–42 required the two seconds of time delay to be applied prior to the pilot taking any action to stop the airplane. This more restrictive approach causes the airplane to reach a higher speed during the accelerate-stop maneuver and results in a longer distance than the distance equal to two seconds at constant V_1 speed. Inserting the time delay before the pilot takes any action to stop the airplane, however, does not accurately reflect the procedures that pilots are trained to use in operational service. Also, V_1 is intended to be the speed by which the pilot has made the decision to reject the takeoff and has begun taking action to stop the airplane. The time it takes for the pilot to recognize the need for a rejected takeoff, which no longer exists once V_1 is reached, is considered separately within the airworthiness standards. Therefore, the proposed amendments more accurately reflect rejected takeoff procedures and the intended use of V_1 speed, and account for variability in the time it takes for pilots, in actual operations, to accomplish the procedures for stopping the airplane.

The purpose of the proposed amendments to the takeoff performance standards of parts 25, 91, 121, and 135 is to more rationally reflect the

operational factors involved and thus reduce the impact of the standards on the competitiveness of new versus derivative airplanes. The amendments proposed would require more restrictive standards to be met for takeoffs from wet runways than for takeoffs from dry runways. In addition, the accelerate-stop distance, which must be provided as an AFM takeoff limitation, would be based on worn brakes rather than new brakes. Lastly, the airplane would be assumed to maintain a constant velocity for the two second time delay after reaching V_1 speed (instead of accelerating). Overall, the amended standards would be more rational and less restrictive than the existing standards, even though they would remain slightly more restrictive than the standards that existed before Amendment 25–42 became effective.

This notice also proposes to amend the landing distance determination standards of part 25 to account for the diminished stopping capability of having brakes that are worn within the brake wear limits allowed without overhauling the brakes. This proposal is made to be consistent with the proposed requirements that worn brakes be taken into account when determining the accelerate-stop distance for establishing takeoff performance limitations. Because airplanes generally require more distance to take off than to land, and a landing will be followed by a subsequent takeoff, this proposed landing distance rule change is not expected to cause the allowable landing weight to limit the number of passengers or amount of cargo that can be carried.

International Harmonization of Airworthiness Standards

For more than ten years, the FAA has been cooperating with the Joint Aviation Authorities (JAA) of Europe to promote harmonization between the FAR, particularly the airworthiness standards, and the European Joint Aviation Requirements (JAR). The aircraft certification authorities of 19 European countries are members of JAA. An annual meeting is held between FAA senior management officials and senior management officials of the JAA member authorities to identify technical subject areas where cooperation is needed to promote greater harmonization between the FAR of the United States and the European JAR. A large portion of these meetings have been open to the public. A comprehensive study of this activity was completed by Professor George A. Bermann, Columbia University School of Law, in May 1991 as a Conference Consultant to the Administrative Conference of the United States (ACUS). A copy of Professor Bermann's final report to ACUS, titled: "Regulatory Cooperation with Counterpart Agencies Abroad: The FAA's Aircraft Certification Experience," dated May 1991, is included in the docket. Based on Professor Bermann's report, ACUS has confirmed the administrative appropriateness of this effort and has indicated strong support for this activity in their Recommendation 91–1, titled "Federal Agency Cooperation with Foreign Government Regulators," adopted June 13, 1991.

At the annual FAA/JAA meeting in June 1989, the FAA and JAA discussed the competitive disparity caused by the differences between the takeoff performance standards applied to airplanes that met the later standards of Amendment 25–42, as compared with airplanes that were only required to meet the takeoff performance standards that preceded Amendment 25–42. Even though the airplane types were originally type certificated at different times, thus allowing the use of different amendments, both groups of airplanes are continuing in production and both are competing for sales and for use over some common routes. Airplanes whose designs were type certificated to the standards introduced by Amendment 25–42 could be penalized in terms of the number of passengers or amount of cargo they can carry over a common route, even though the airplane's takeoff performance might be better from a safety perspective than a competing airplane design that was not required to meet the later standards. Currently, the only transport category airplane types that have been required to meet the later standards of Amendment 25–42 were designed and manufactured outside the U.S. (mostly in Europe). These airplanes are competing for sales against airplanes that were designed and manufactured in the U.S. that were not required to meet the standards of Amendment 25–42. This situation has led to claims by a major European manufacturer of transport category airplanes that this disparity in the airworthiness standards has created an unfair international trade situation affecting the competitiveness of their airplane types of a later design.

At the June 1990 annual meeting, the FAA and JAA agreed to jointly review the current takeoff performance standards and their applicability with respect to airplanes currently in use and airplanes produced in the future under existing approved designs. The goal was to reduce the inequities described above without adversely affecting safety. The study consisted of two parts: first, the current takeoff performance standards were reviewed to determine if they were too restrictive; and second, the merits of making the resulting standards apply retroactively were considered for both airplanes currently in use and airplanes produced in the future under existing approved designs. The FAA and JAA also agreed to initiate substantively the same rulemaking within their respective systems to harmonize the takeoff performance standards of the FAR and the JAR.

The FAA has concluded that the takeoff performance standards of part 25 can be made more rational, and thus less restrictive overall, without adversely affecting safety and proposes to amend the standards accordingly by this notice. However, with the safety benefits and economic impact information available at this time, the FAA cannot support a recommendation to make the standards proposed by this notice retroactive to either airplanes currently in use or future production airplanes of designs that have already been type certificated. If additional information to support making these proposed standards retroactive becomes available at a later date, the FAA will review such information and determine if further rulemaking is appropriate.

In March 1992, the JAA issued its Notice of Proposed Amendment (NPA) 25 B, D, G –244: "Accelerate-Stop Distances and Related Performance Matters" to change the takeoff performance standards of JAR 25. The amendments proposed in this notice are substantively the same as the amendments proposed by the JAA NPA for the JAR. The JAA NPA is included in the docket for this rulemaking.

On November 30, 1987, the FAA published NPRM 87–13 (52 FR 45578) proposing to amend parts 25, 121, and 135 of the FAR by adding new standards for transport category airplanes to increase the safety of takeoffs from wet and contaminated runways. After further study of rejected takeoff safety, the FAA began drafting a supplemental notice of proposed rulemaking (SNPRM 87–13A), revising NPRM 87–13.

During internal coordination, a draft copy of SNPRM 87–13A was obtained by persons outside the Federal government. Based on that copy, Delta Air Lines and the Air Transport Association of America (ATA) claimed, in letters dated December 27, 1991, and December 10, 1991, respectively, that the FAA underestimated the cost of compliance with the proposed rulemaking. This claim was repeated in a similar letter dated June 5, 1992 from the law firm of Galland, Kharasch, Morse & Garfinkle, P.C., on behalf of

American Trans Air, Inc., American International Airways, Air Canada, and Cathay Pacific Airway. The assertions made in the three letters reiterated cost estimates include in a cost study presented to the FAA by the ATA in May, 1991. The earlier estimates were reviewed at that time and determined by the FAA to contain significant flaws. Nevertheless, the FAA again reviewed the regulatory analysis in light of President Bush's January 28, 1992, memorandum on "Reducing the Burden of Government Regulation" and the three letters mentioned above. As a result of this review and due to the increasing emphasis placed on harmonizing certification standards with the JAA, the FAA has determined that this revised NPRM is necessary. By a separate notice to be published simultaneously with this NPRM, the FAA is withdrawing the original NPRM 87–13. The three letters referenced above have been added to the docket for this rulemaking. This NPRM also will give the public a chance to comment on the subject of those ex parte communications.

Discussion of the Proposals

The FAA proposes the following rule changes:

1. Replace the two seconds of continued acceleration beyond V_1 (mandated by Amendment 25–42) with a distance margin equal to two seconds at V_1 speed;

2. Require that the runway surface condition (dry or wet) be taken into account when determining the runway length that must be available for takeoff; and

3. Require that worn brakes be taken into account when determining the capability of the brakes to absorb energy and provide a stopping force for takeoff and landing.

Proposal 1. The FAA proposes to amend the method of determining the accelerate-stop distance prescribed in § 25.109 by replacing the two seconds of continued acceleration after reaching V_1 with a distance equal to two seconds at V_1 speed. This proposal would reduce the accelerate-stop distance that must be available for a rejected takeoff because the airplane would be assumed to begin stopping from a lower speed (V_1, rather than the speed reached after two seconds of acceleration beyond V_1).

This proposal replaces the most costly and controversial aspect of Amendment 25–42 with a requirement that closely represents the pre-Amendment 25–42 criteria of § 25.109, as applied to the certification of recent U.S.-manufactured airplanes.

Proposal 2. The FAA proposes to amend § 25.105 to require that airplane takeoff performance data be based on wet, in addition to dry, runways. Section 25.1587(b) would be amended to require that performance information for wet runways be included in the Airplane Flight Manual (AFM). (The AFM contains, along with other information, all of the performance information computed under the provisions of part 25.) Sections 91.605, 121.189, and 135.379 of the operating rules would be amended to require that wet runways be taken into account when determining the runway length that must be available for takeoff, if wet runway performance information exists in the AFM. Thus, this rule would apply only to airplanes whose application for type certification occurs after the rule becomes effective.

Section 25.109 would be revised to provide the details of how the accelerate-stop distance would be calculated for a wet runway. This proposal contains a rational approach that includes consideration of the major variables affecting the stopping performance on a wet runway. This approach to determining the wet runway rejected takeoff performance would include: (1) Taking into account the reduced braking force due to the wet surface; (2) permitting performance credit for using available reverse thrust as an additional stopping force; and (3) permitting a lower minimum airplane height over the end of the runway after takeoff. This approach would reduce the risk of overruns during rejected takeoffs on wet runways while retaining safety margins for continued takeoffs similar to those required for dry runways.

The reduced braking force available is the most significant variable affecting the stopping performance on a wet runway. Section 25.109 would be revised to specify that the wet runway braking force is proposed to be one-half the dry runway braking force, unless the applicant demonstrates a higher wet runway braking force. This braking force level would apply regardless of whether the dry runway braking force is limited by the torque capability of the brake, which is the friction force generated within the brake, or the friction capability of the runway surface. Although it can be argued that the torque capability of a brake is independent of the runway surface condition, the proposed use of this simple relationship between wet and dry runway braking capability depends on using the same relationship throughout the braking phase.

Data published in Engineering Science Data Unit (ESDU) 71026, entitled "Frictional and Retarding Forces on Aircraft Types—Part II: Estimation of Braking Force," shows that the relationship between wet and dry braking coefficient varies significantly with speed. At high speeds, the wet runway braking coefficient is typically less than one-half the dry runway braking coefficient. At low speeds, the wet runway braking coefficient is typically more than one-half the dry runway braking coefficient. Used over the entire speed range for the stopping portion of a rejected takeoff, however, the wet runway braking coefficient can justifiably be approximated as one-half the dry braking coefficient. The ESDU report is included in the docket.

Section 25.109 would also be revised to permit the use of available reverse thrust when determining the accelerate-stop distance for a wet runway. "Available" reverse thrust is interpreted as meaning the thrust from engines with thrust reversers that are operating during the stopping portion of the rejected takeoff. Allowance for reverse thrust has been included in this proposal because the most significant variable that affects the stopping performance on a wet runway, reduced braking friction, has been accounted for as part of the rational approach to wet runway rejected takeoff.

On dry runways, the current practice of not permitting credit for reverse thrust when calculating the accelerate-stop distance would be made explicit. Permitting accelerate-stop performance calculations for dry runways to be based on the use of reverse thrust would reduce the level of safety that currently exists by allowing operations at increased takeoff weights. Service experience, as indicated by the rejected takeoff accident record, does not support such a reduction in the level of safety. Although reverse thrust should and probably would be used during most rejected takeoffs, the FAA believes that the additional safety provided by not accounting for reverse thrust in calculating the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance determined under the current standards. For wet runways, credit for reverse thrust would be permitted because taking into account the reduced braking force available on the wet surface, as proposed in this notice, greatly outweighs and more than adequately addresses the effects of these other variables. Examples of variables than can significantly affect the dry runway accelerate-stop performance include: runway surfaces that provide

VOL 58 ISS 129 JL 8 1993 UMI

poorer friction characteristics than the runway used during flight tests to determine stopping performance, worn tires, dragging brakes, brakes whose stopping capability is reduced because of heat retained from previous braking, etc.

Section 25.113 would be revised to allow the distance required for a continued takeoff from a wet runway to include taking off and climbing to a height of 15 feet, rather than the 35 feet required on a dry runway. This lower "screen height" (which is the height of an imaginary screen that the airplane would just clear with the wings in a level attitude when taking off or landing) would reduce the balanced field length V_1 speed, thereby reducing the number of high-speed rejected takeoffs on wet runways. The FAA considers lowering the screen height to be an acceptable method of reducing the risk of overruns on wet runways because of the similarity to current rules when operating from dry runways that have a clearway. The minimum height permitted over the end of the runway for current dry runway takeoffs may be 13 to 17 feet, depending on the airplane, when a clearway is present. In addition, a 15-foot minimum screen height and vertical obstacle clearance distance has been allowed for many years by the British Civil Aviation Authority for wet runway operations without any problems being reported.

The combination of a clearway with the proposed 15-foot screen height for wet runways could result in a minimum height over the end of the runway of near zero (i.e., liftoff very near the end of the runway), if clearway credit were to be permitted for wet runways in the same manner that it is currently permitted for dry runways. The FAA considers this situation to be unacceptable. The possible presence of standing water or other types of precipitation (e.g., slush or snow) and numerous operational factors (e.g., late or slow rotation to liftoff attitude) emphasize the need to provide more of a safety margin than would be present if liftoff were permitted so near the end of the runway. Therefore, § 25.113 would not permit the combination of clearway credit and a 15-foot screen height. Section 25.113 would be clarified, however, to ensure that for wet runways the presence of a clearway does not result in the anomaly of requiring longer runway lengths than if there were no clearway.

In addition to the reduced screen height for wet runways, the minimum vertical distance required between the takeoff flight path defined in § 25.115 and obstacles (e.g., trees, hills, buildings, etc.) would be reduced by a corresponding amount. To accomplish this, § 25.115 would be revised to state that the takeoff flight path shall be considered to begin at a height of 35 feet at the end of the takeoff distance.

This revised definition of the takeoff flight path would apply equally to dry and wet runways, even through the height at the end of the takeoff distance (i.e., screen height) for wet runways is proposed to be only 15 feet. The effect of this proposal is to permit the flight path information currently contained in the AFM for dry runways to also be used for wet runways. Because of the reduced screen height, at a given point in the flight path the height of an airplane taking off from a wet runway will be approximately 20 feet lower than the height of that airplane taking off from a dry runway. Therefore, using the flight path information currently in the AFM will reduce the airplane's actual height over obstacles by approximately 20 feet when that airplane takes off from a wet runway.

Under the current regulations, the airplane's flight path must be higher than any obstacles by a combination of an increment of height and an increment of gradient (i.e., the slope of the flight path). This proposal reduces the height increment by approximately 20 feet, but the gradient increment is not changed. As the distance from the end of the takeoff distance increases, the gradient increment provides an increasingly greater portion of the total height difference between the airplane and the obstacle. Therefore, the effect of reducing the height increment over obstacles by 20 feet diminishes as the distance from the end of the takeoff distance increases.

Proposal 3 The FAA proposes to amend § 25.101(i) to require that accelerate-stop and landing distances must be determined with all the airplane brakes at the fully worn limit of their allowable wear range. Section 25.735 would be revised to require that the brake energy capacity rating must be determined with each brake at the fully worn limit of the allowable wear range. In addition, § 25.735 would be amended to add a requirement for a flight test demonstration of the maximum kinetic energy rejected takeoff with not more than 10 percent of the allowable brake wear range remaining.

Manufacturers or operators of previously certificated airplanes may elect to comply with these proposed later amendments by a change to the type design, and thus the benefits of the revision to the time delay criteria of § 25.109 would be available to relieve the economic burden imposed by Amendment 25–42. The more rational accounting for reduced stopping capability on wet runways during rejected takeoff and for the reduced capability of worn brakes would also be included in such a recertification. It is expected that, for airplanes whose certification basis includes Amendment 25–42, applicants will elect to comply with this proposal because it will be economically beneficial for them to do so.

Miscellaneous. Additionally, it is proposed that one new definition and one new abbreviation be added to Part 1 of the FAR, Definitions and Abbreviations.

As a result of their special investigation of rejected takeoff accidents, the National Transportation Safety Board (NTSB) recommended that the FAA clearly define the term "takeoff decision speed" (V_1) in part 1. This recommendation is contained in the Special Investigative Report, "Runway Overruns Following High Speed Rejected Takeoffs," published on February 27, 1990. A copy of this report is included in the docket.

The FAA concurs with the NTSB recommendation and proposes adding a definition of takeoff decision speed to § 1.1 in order to remove apparent confusion over the meaning of this term. The proposed definition would make it clear that the decision to reject the takeoff, indicated by the pilot activating the first deceleration device, must be made by V_1 for the airplane to be stopped within the accelerate-stop distance.

The abbreviation V_{EF} is used in several places within part 25. The FAA proposes to amend § 1.2 to define V_{EF} as the speed at which the critical engine is assumed to fail during takeoff.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules, except those responding to emergency situations or other narrowly defined

exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposed rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the draft regulatory evaluation, this section also contains the initial regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact Assessment. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Economic Evaluation

The FAA has determined that the potential benefit of these proposals would exceed the expected costs. The proposal would change the conditions that must be considered in the calculation of accelerate-stop distances by replacing the provision for two seconds of continued acceleration beyond V_1 with a provision for two seconds at constant V_1. Certification substantiation, manual revisions, and airport analysis revision costs would only be incurred by those manufacturers who choose to recertify their airplanes and by the operators who choose to take advantage of the reduced requirement. These costs are estimated to total $185,235 per airplane model, but it is unlikely that a manufacturer or operator would elect to incur those costs unless it resulted in a net reduction when reduced operating costs are considered.

The immediate potential benefit of this provision would be gained by the operators of the existing airplane models that were certificated under the Amendment 25–42 standards, assuming that the manufacturers of these airplanes would voluntarily elect to recertificate under the proposed rule. The two large airplane models (above 75,000 lbs. maximum takeoff weight) that were subject to Amendment 25–42 in 1991 performed an estimated 114,300 takeoffs during the year. Using this basis, an average of 57,150 takeoffs per model per year can be expected. It is estimated that the additional 150 foot field length requirement that would be removed under this proposal would affect 0.69 percent or 394 departures per model. The weight reductions that would be averted by avoiding these field length limited incidents are valued at $495 per occurrence. Accordingly, the potential annual benefit of this provision for an existing airplane model that was certificated under Amendment 25–42 standards is valued at $195,030 at current operation levels (394 affected departures times $495 per departure).

The potential benefit for future airplane models that would otherwise be certificated to the existing standards cannot be predicted. To the extent that such models would be affected in the absence of this proposed provision, it is estimated that a benefit rate of $341,550 per 100,000 departures would be realized (100,000 departures, times 0.69% of departures affected, times $495 per affected departure). No incremental certification costs would be attributed to this provision for newly certificated airplane models.

The proposal also includes provisions for newly certificated airplane models that would require accountability for: (1) Worn brake assemblies in the determination of stopping performance, and (2) wet runway conditions in the calculation of necessary takeoff distance.

The expected costs of these provisions are summarized below.

Provision	Percent of departures affected	Cost per affected departure	Cost per 100,000 departures	Average cost per departure
Worn brakes	.39	$495	$193,050	$1.93
Wet runways	.05	726	36,300	.36

It should be noted that this evaluation only quantifies the proposal's impact on takeoffs. It is possible that the proposed rule could induce a field-length-limited landing situation, but such an occurrence would be so infrequent that the relative costs and benefits would be negligible. It should also be emphasized that the above cost and incidence rates for the worn brake provision would generally be limited to airplanes with steel brakes that are certificated in the future. Wear is considered to have a negligible effect on the braking force of carbon brakes, and the trend in brake design for future transport category airplanes is toward carbon brakes.

The potential benefit of the worn brake and wet runway provisions is a reduction in the risk of accidents that might otherwise occur by not considering the reduced braking performance of worn brakes and the reduced braking that exists on wet runways in determining the field length necessary for a safe takeoff.

The average economic valuation of recent rejected takeoff accidents incurred by U.S. operators is $17.8 million per accident. The expected incremental cost of the worn brake provision would be recovered if the added field length afforded by the provision averted one such accident over an exposure period of 9.2 million departures. The wet runway proposal would prove to be cost beneficial by itself if one accident were prevented during an exposure of 49 million departures. The FAA has determined that the potential benefit of these proposals would exceed the expected costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The economic costs of any weight reductions that would be necessitated by this proposal would be incurred by the operators of transport category airplanes. The FAA size threshold for this category is the ownership of nine airplanes. The annualized cost threshold for the determination of what constitutes a significant impact on small

VOL 58 ISS 129 JL 8 1993 UMI

entity airplane operators varies by category:

(1) $112,600 for scheduled carriers whose airplanes have seating capacities greater than sixty, and (2) $63,000 for all other scheduled operators. FAA calculations project that the annualized economic impact of this proposed rule would be less than the threshold values. Accordingly, it is determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The proposed changes would collectively place U.S. and foreign transport airplanes on a more equitable basis regarding their marketability. The standardization of certification criteria between the FAA and the Joint Aviation Authorities of Europe, and the equalization of safety levels for pre- and post-Amendment 25–42 airplanes would eliminate the slight comparative disadvantage experienced by certain foreign airplanes. The proposal regarding the two-second margin would allow European-produced airplanes certificated under Amendment 25–42 to become slightly more competitive against current production U.S. airplanes that were not certificated under Amendment 25–42 (all current production aircraft) by marginally expanding their takeoff envelope.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Because this proposal is intended to enhance the net safety of transport airplane operations and is not expected to result in a substantial economic cost, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. Because this is an issue on which there is substantial public interest both in the United States and Europe, the FAA has determined that this proposal is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Additionally, based on the economic assumptions discussed previously, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this proposed rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 1

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airplanes, Aviation safety, Flights, Pilots, Safety, Transportation.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 91

Air carriers, Air transportation, Aircraft, Aircraft pilots, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airplanes, Airworthiness directives and standards, Aviation safety, Common carriers, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aircraft, Airplanes, Airports, Airworthiness, Aviation safety, Pilots, Safety, Transportation.

The Proposed Amendments

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR parts 1, 25, 91, 121, and 135 of the Federal Aviation Regulations (FAR) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. app. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), and 49 U.S.C. 106(g).

2. By amending § 1.1 by adding a new definition to read as follows:

§ 1.1. General definitions.

* * * * *

Takeoff decision speed means a speed in the takeoff at which, if the pilot activates the first deceleration device at this speed, the airplane can be stopped within the accelerate-stop distance, and alternatively, if the takeoff is continued beyond this speed with the critical engine failed at V_{EF}, the airplane can achieve the required height above the takeoff surface within the takeoff distance.

* * * * *

3. By amending § 1.2 by adding a new abbreviation to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

V_{EF} means the speed at which the critical engine is assumed to fail during takeoff.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

4. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

5. By amending § 25.101 by adding a new paragraph (i) to read as follows:

§ 25.101 General.

* * * * *

(i) The accelerate-stop and landing distances prescribed in §§ 25.109 and 25.125, respectively, must be determined with all the aircraft brake assemblies at the fully worn limit of their allowable wear range.

6. By amending § 25.105 by revising paragraph (c)(1) to read as follows:

§ 25.105 Takeoff.

* * * * *

(c) * * *

(1) Smooth, dry and wet, hard-surfaced runways, in the case of land planes and amphibians;

* * * * *

7. By amending § 25.109 by revising paragraph (a), redesignating paragraphs (c) and (d) as paragraphs (e) and (f), redesignating paragraph (b) as paragraph (c) and revising the introductory text, and adding new paragraphs (b) and (d) to read as follows:

§ 25.109 Accelerate-stop distance.

(a) The accelerate-stop distance on a dry runway is the greater of the following distances:

(1) The sum of the distances necessary to—

(i) Accelerate the airplane from a standing start with all engines operating to V_{EF} for takeoff from a dry runway;

(ii) Accelerate the airplane from V_{EF} to V_1, assuming the critical engine fails at V_{EF}; and

(iii) Come to a full stop on a dry runway from the point reached at the end of the acceleration period

prescribed in paragraph (a)(1)(ii) of this section, assuming that the pilot does not apply any means to retard the airplane until that point is reached; plus

(iv) A distance equivalent to 2 seconds at V_1 for takeoff from a dry runway.

(2) The sum of the distances necessary to—

(i) Accelerate the airplane from a standing start with all engines operating to V_1 for takeoff from a dry runway; and

(ii) Come to a full stop on a dry runway from the point reached at the end of the acceleration period prescribed in paragraph (a)(2)(i) of this section, assuming that the pilot does not apply any means to retard the airplane until that point is reached and that all engines are still operating; plus

(iii) A distance equivalent to 2 seconds at V_1 for takeoff from a dry runway.

(b) The accelerate-stop distance on a wet runway is the greater of the following distances:

(1) The accelerate-stop distance on a dry runway determined in accordance with paragraph (a) of this section; or

(2) The accelerate-stop distance determined in accordance with paragraph (a) of this section, except that the runway is wet and the corresponding values of V_{EF} and V_1 are used. Unless a higher wet runway braking coefficient of friction or wheel braking force has been demonstrated, the wet runway stopping requirements of this paragraph must be determined assuming—

(i) When the wheel braking force determined in meeting the requirements of § 25.101(i) and paragraph (a) of this section does not correspond to the maximum torque limit, a braking coefficient of friction equal to one-half the demonstrated braking coefficient determined in meeting the requirements of § 25.101(i) and paragraph (a) of this section; and

(ii) When the wheel braking force determined in meeting the requirements of § 25.101(i) and paragraph (a) of this section corresponds to the maximum torque limit, the wet runway wheel braking force shall not exceed one-half the dry runway torque-limited value.

(c) Except as provided in paragraph (d)(1) of this section, means other than wheel brakes may be used to determine the accelerate-stop distance if that means—

* * * * *

(d) The effects of available reverse thrust—

(1) Shall not be included as an additional means of deceleration when determining the accelerate-stop distance on a dry runway, and

(2) May be included as an additional means of deceleration using recommended reverse thrust procedures when determining the accelerate-stop distance on a wet runway, provided the requirements of paragraph (c) of this section are met.

* * * * *

8. By amending § 25.113 by revising the introductory text of paragraph (a) and paragraph (a)(1), redesignating paragraph (b) as paragraph (c) and revising newly designated paragraph (c)(1), and adding a new paragraph (b) to read as follows:

§ 25.113 Takeoff distance and takeoff run.

(a) Takeoff distance on a dry runway is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under § 25.111 for a dry runway; or

* * * * *

(b) Takeoff distance on a wet runway is the greater of—

(1) The takeoff distance on a dry runway determined in accordance with paragraph (a) of this section; or

(2) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 15 feet above the takeoff surface, but not beyond the end of the runway, achieved in a manner consistent with the achievement of V_2 before reaching 35 feet above the takeoff surface, determined under § 25.111 for a wet runway.

(c) * * *

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under § 25.111, except that, in the case of takeoff on a wet runway, this distance need not be greater than the horizontal distance determined in accordance with paragraphs (b)(1) and (b)(2) of this section; or

* * * * *

9. By amending § 25.115 by revising paragraph (a) to read as follows:

§ 25.115 Takeoff Flight Path.

(a) The takeoff flight path shall be considered to begin 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with § 25.113 (a) or (b), as appropriate for the runway surface condition.

* * * * *

10. By amending § 25.735 by revising paragraph (f) introductory text, redesignating paragraph (g) as (h), and adding a new paragraph (g) to read as follows:

§ 25.735 Brakes.

* * * * *

(f) The brake kinetic energy capacity rating of each main wheel-brake assembly that is at the fully worn limit of its allowable brake wear range may not be less than the kinetic energy absorption requirements determined under either of the following methods:

* * * * *

(g) In addition, a flight test demonstration of the maximum kinetic energy rejected takeoff shall be conducted with not more than 10 percent of the allowable brake wear range remaining.

* * * * *

11. By amending § 25.1587 by revising paragraph (b) introductory text to read as follows:

§ 25.1587 Performance information.

* * * * *

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, runway gradients, and runway surface conditions (dry and wet), as applicable, within the operational limits of the airplane, and must contain the following:

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

12. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

13. By amending § 91.605 by revising paragraph (b)(3) to read as follows:

§ 91.605 Transport category civil airplane weight limitations.

* * * * *

(b) * * *

(3) The takeoff weight does not exceed the weight shown in the airplane Flight Manual to correspond with the minimum distances required for takeoff considering the elevation of the airport, the runway to be used, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if the Airplane Flight Manual contains wet runway

VOL
58
ISS
129
JL
8
1993
UMI

performance information, the runway surface condition (dry or wet); and

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

15. By amending § 121.189 by revising paragraph (e) to read as follows:

§ 121.189 Transport category airplanes: Turbine engine powered; takeoff limitations.

* * * * *

(e) In determining maximum weights, minimum distances, and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if the Airplane Flight Manual contains wet runway takeoff performance information, the runway surface condition (dry or wet).

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

16. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

17. By amending § 135.379 by revising paragraph (e) to read as follows:

§ 135.379 Transport category airplanes: Turbine engine powered; Takeoff limitations.

* * * * *

(e) In determining maximum weights, minimum distances, and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if the Airplane Flight Manual contains wet runway takeoff performance information, the runway surface condition (dry or wet).

* * * * *

Issued in Washington, DC, on June 25, 1993.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 93–15854 Filed 7–7–93; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
July 8, 1993

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit; Notice

VOL 58 ISS 129 JL 8 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-779-NC]

RIN 0938-AG24

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. As required by section 1861(v)(1)(L)(iii) of the Social Security Act (the Act), these limits are based on the current hospital wage index.

DATES: *Effective date:* The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1993.

COMMENT DATE: Written comments will be considered if we receive them at the appropriate address, as provided below, and must be received by 5 p.m. on September 7, 1993.

ADDRESSES: Mail comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-779-NC, P.O. Box 7517, Baltimore, MD 21207-0517.

If you prefer, you may deliver your comments (an original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or,

Room 132, East High Rise Building 6325 Security Boulevard Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-779-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: 202-690-7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy is $4.50. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael Bussacca (410) 966-4602.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Act authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary in the efficient delivery of needed health services. Under this authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This statutory provision is implemented in the regulations at 42 CFR 413.30. Additional statutory provisions, specifically governing the limits applicable to HHAs, are contained at section 1861(v)(1)(L) of the Act.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101-508, was enacted. Section 4207(d)(1) of OBRA '90 amended section 1861(v)(1)(L)(iii) of the Act to require that in establishing the HHA schedule of limits we are to use the current hospital wage index. However, to lessen the effect on individual HHAs that would have been caused by changing from the 1982 hospital wage data to the 1988 hospital wage data, section 4207(d)(3) of OBRA '90 provided for a 2-year transition period during which we would use a blend of 1982 and 1988 hospital wage data, based on hospital wages and wage-related costs, in calculating the wage index for HHAs. For cost reporting periods beginning on or after July 1, 1991, and before June 30, 1992, the applicable wage indices consisted of a blend of 67 percent of the area wage index using 1982 hospital wage survey data and 33 percent of the area wage index using 1988 hospital wage survey data. For cost reporting periods beginning on or after July 1, 1992, and before June 30, 1993, the blend was based on 33 percent of the 1982 hospital wage survey data and 67 percent of the 1988 hospital wage survey data. On July 1, 1992, we published a schedule of HHA cost limits in the **Federal Register** (57 FR 29410) based on the latter blend.

This notice sets forth cost limits for cost reporting periods beginning on or after July 1, 1993. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the current hospital wage index, that is, the hospital wage index effective for hospital discharges on or after October 1, 1992 (Federal fiscal year (FY) 1993), which is based on 1988 wage survey data (See September 1, 1992 **Federal Register**, 57 FR 39746). As also provided in the statute, in applying the hospital wage index to HHAs, no adjustments are to be made to account for rural counties that have been deemed urban counties under section 1886(d)(8)(B) of the Act. In addition, no adjustments are to be made for any reclassifications resulting from decisions of the Medicare Geographic Classification Review Board under section 1886(d)(10) of the Act.

II. Application of Cost Limits on a Budget-Neutral Basis

Section 4207(d)(2) of OBRA '90 requires that, in updating the wage index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by the changes in the wage index values.

In order to ensure budget neutrality, an adjustment must be made to the payments that would otherwise be made to HHAs for the period beginning July 1, 1993. We determine the amount of the budget neutrality adjustment by first computing the amount of program savings that would have resulted from the cost limits effective July 1, 1993, if a hospital wage index based on 1982 wage data were used. Then, program savings were computed using the current wage index (based on 1988 wage data). The use of the current wage index resulted in higher savings, and therefore, lower program payments. To ensure that aggregate payments to HHAs are not affected by changes to the wage index, we determined that it is necessary to apply a budget neutrality adjustment factor of 1.027 to the labor-related portion of the cost limits. That is, an increase of 2.7 percent to the labor-related portion of the limits results in the same program savings as would have been realized had we used a

hospital wage index based on 1982 wage data to calculate the limits. (See the example in section VI.A below regarding the adjustment of cost limits by the wage index and the budget neutrality factor.)

We note that, for this notice, we are continuing to use a wage index based on 1982 wage data as our basis of comparison in determining budget neutrality. Section 1861(v)(1)(L)(iii) of the Act specifies the use of the applicable hospital wage index for establishing the cost limits for HHAs. Since the passage of OBRA '90, the applicable hospital wage indices that we have used to establish the HHA cost limits have been indices based on 1982 and 1988 hospital wage data. (In accordance with section 4207(d)(3) of OBRA '90, the wage indices that have applied to HHAs were calculated based on blends of the 1982 and 1988 hospital wage data and now based on 1988 data entirely.) We have not used the blended wage index as the basis of comparison in determining the budget neutrality adjustment because the blended index was artificially derived from the 1982 and 1988 wage data. The transition (blended) wage index was for the benefit of the home health agencies, so those agencies whose payments were adversely effected by the change to the wage index based on 1988 wage data could make a gradual adjustment to the full implementation of the wage index values. Because the blended wage index was only a temporary transitional measure from the index based on 1982 wage data to the index based on 1988 wage data, and because the index based on 1982 wage data was the basic underlying value, we believe that it is appropriate to calculate the budget neutrality adjustment by comparing the index based on 1982 wage data with the index based on 1988 wage data.

Beginning in FY 1994, however, section 1886(d)(3)(E) of the Act requires that the hospital wage index be updated annually. Therefore, in setting future HHA limits, our basis of comparison for the budget neutrality adjustment will be the current hospital wage index and the hospital wage index used in the previous HHA notice. Accordingly, we anticipate that in next year's HHA notice, the budget neutrality factor will reflect a comparison of the FY 1994 hospital wage index (based on 1990 survey data) with the FY 1993 wage index (based on 1988 survey data). As discussed above, the wage index applicable to HHAs is different from the hospital wage index because the HHA wage index does not reflect geographic reclassifications of hospitals.

III. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1992. As discussed in the July 1, 1992 notice (57 FR 29411), we will continue to use the latest settled cost report data to develop the HHA cost limits. The cost limits have been updated to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1993, the midpoint of the first cost reporting period to which the limits apply.

A. Data Used

To develop the schedule of limits effective July 1, 1992, we extracted actual cost per-visit data from settled Medicare cost reports for periods ending on or after October 31, 1987, and before October 1, 1988. We then adjusted the data using the latest available market basket indexes to reflect expected cost increases occurring between the cost reporting periods contained in our data base and December 31, 1992. In this notice, we have updated the limits by using the data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, as adjusted by the most recent market basket factors, to reflect expected cost increases occurring between the cost reporting periods contained in the data base and December 31, 1993, the midpoint of the first cost reporting period to which these July 1, 1993 limits apply.

Even though these are the most recent data available at this time, we recognize that the provisions of section 1891(a)(3) of the Act, which require changes in home health aide training and certification effective July 1, 1989, will result in some HHAs incurring costs that will not be reflected in the cost limits. It is not possible for us to estimate the overall impact, if any, this provision will have on an HHA's total costs. However, if the additional home health training and certification requirements result in an HHA's costs exceeding the cost limits, the HHA may present documentation justifying payment of additional amounts in excess of the cost limits, as we indicated in our June 30, 1989 notice concerning HHA cost limits (54 FR 27742), under the exceptions process outlined in § 413.30.

When HCFA updates the HHA cost limits in the future, using a later data base that includes the costs of home health training and certification requirements, an add-on will no longer be needed because the updated limits would include those costs in the basic cost limits.

In addition, we also are aware that HHAs will be incurring additional costs due to the universal precaution requirements of the Occupational Safety and Health Administration (OSHA). OSHA published a final rule in the **Federal Register** on December 6, 1991 (56 FR 64004) that set forth a standard under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) to eliminate, or minimize, occupational exposure to bloodborne pathogens. The rule includes requirements relating to employee vaccinations against bloodborne diseases, staff training on universal precautions, and the use of protective equipment (gloves, aprons, masks, etc.). While the limits set forth in this notice use the most recent cost report data available, we recognize that the OSHA standards, which were effective March 6, 1992, will result in some HHAs incurring costs that are not reflected in the cost limits.

In the July 1, 1992 notice (as corrected at 57 FR 43004 (September 17, 1992)) we provided an add-on to the HHA cost limits of $.16 per visit for those HHAs that incurred costs associated with the additional requirements of the OSHA regulation. The add-on was necessary because the data base used to calculate the HHA cost limit did not reflect the costs associated with the new OSHA requirements. In this notice, we will continue to provide an add-on to the cost limits to account for the additional costs HHAs will incur due to the universal precaution requirements. Based upon our review of the OSHA regulation, OSHA data, and additional information obtained from OSHA staff, we have determined that for cost reporting periods beginning on or after July 1, 1993, HHAs will incur average costs of $.18 per visit in meeting the OSHA requirements. We determined this amount by inflating $.16 (the per-visit add-on for cost reporting periods beginning on or after July 1, 1992) by the HHA market basket index described in this notice. Thus, we are providing for an add-on to the HHA cost limits of $.18 per visit for those HHAs that incur costs associated with the additional requirements of the OSHA regulation.

If, as a result of the additional OSHA requirements, an HHA's costs still exceed the cost limits after the add-on, the HHA may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an "extraordinary circumstance" as defined at § 413.30(f)(2). We will grant an exception to the extent that the costs,

in excess of the limit, are reasonable; incurred in the implementation of the additional requirements; separately identified by the HHA; and verified by the intermediary.

As with home health training and certification requirements, we anticipate that using a later data base that includes the costs of complying with the OSHA standards eventually will preclude the need for an add-on.

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits, and the administrative and general (A&G) add-on, to reflect differing wage levels among areas. In setting this schedule of limits, we used the HCFA FY 1993 hospital wage index that was developed based on 1988 hospital salary data.

Each HHA's labor market area is determined based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We note that on December 28, 1992, OMB announced in OMB bulletin 93–05 the revised statistical definitions for metropolitan areas based on the results of the 1990 census. The revised definitions were effective on December 31, 1992. However, as noted above, section 1861(v)(1)(L) of the Act requires that we use the current hospital wage index (that is, the FY 1993 hospital wage index, which was published in the **Federal Register** on September 1, 1992 (57 FR 39746)) to establish the HHA cost limits. Therefore, this schedule of limits reflects the MSA definitions that are in effect under the hospital prospective payment system. We now plan to implement OMB's revised MSA definitions based on the 1990 census data in the schedule of HHA cost limits that is to take effect on July 1, 1994.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice. These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence-Fall River-Warwick, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the HCFA hospital wage index to the HHA cost limits. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, SNFs, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines. NECMAs are defined on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, those four counties are urban under either definition, NECMA or MSA.

We note that HCFA is considering a proposal from the Prospective Payment Assessment Commission (ProPAC) to establish hospital-specific wage index values that would not rely on the use of MSAs and NECMAs. A full description of the ProPAC proposal is set forth in the hospital prospective payment system (PPS) proposed rule for FY 1994 (See May 26, 1993 **Federal Register**, 58 FR 30222.) It is unclear what the impact of ProPAC's proposal would be for the establishment of HHA cost limits. However, we have indicated in the prospective payment system proposed rule that under no circumstances would we propose to implement this change before FY 1995; therefore, it has no effect on this notice.

IV. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 112 percent of the mean per-visit costs of free-standing HHAs and is adjusted by the latest estimates in the market basket index.

The schedule of limits effective for cost reporting periods beginning on or after July 1, 1993 is based on the latest settled cost data available and provides for the following:

- A classification system based on whether an HHA is located within an MSA, a NECMA, or a non-MSA area. (See Tables IIIa and IIIb in section VIII, below, for the listing of MSAs, NECMAs, and rural areas.)
- The use of a single schedule of limits for hospital-based and free-standing agencies. This single limit is based on the cost experience of free-standing agencies. For each hospital-based discipline, we are providing for an add-on adjustment to the free-standing HHA limit (which is equal to 11.4 percent of the mean cost for the MSA hospital-based group and 12.5 percent for the non-MSA hospital-based group) to account for the higher administrative and general (A&G) costs resulting from Medicare cost allocation requirements, as explained in section VI.C below. The labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, is added to each free-standing limit to determine the per discipline limits for hospital-based agencies. We are currently evaluating the utility of differential payments to home health agencies.
- The use of the following market basket index, which was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1976 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category. The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1992 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and categories with lower rates of price increases receive lower weights.

In developing the relative weights used in the market basket index contained in this schedule, we obtained historical and projected rates of increase in the resource prices for each category. The price variables source of the forecast for calendar years 1989 through 1995 is identified in the third column of the following Home Health Agency Input Price Index chart.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

Cost categories	Relative[1] importance 1994	Forecaster of[2] percent (1989–1995)	Price variables used
Wages and Salaries	68.6	DRI–CFS	Average hourly earnings of nonsupervisory private hospital workers (SIC 806). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly).
Employee benefits	7.6	DRI–TL	Supplements to wages and salaries per worker in nonagriculture establishments. Source: For supplements to wages and salaries-U.S. Dept of Commerce, Bureau of Economic Analysis, Survey of Current Business (monthly). For total employment-U.S. Department of Labor. Bureau of Labor Statistics, Monthly Labor Review.
Transportation	3.8	DRI–TL	Transportation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Office Costs	2.7	DRI–TL	Services Component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Medical Nursing	2.4	HCFA–HHS	Medical equipment and supplies component of the supplies and rental Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Rent	1.1	DRI–CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor Statistics, Monthly Labor Review.
Nonrental Space	1.0	DRI–TL	Composite Fuel and utilities index. Source: HHS–HCFA Community Hospital Price Index.
Miscellaneous	5.9	DRI–TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Contract Services	6.9		Weighted mean of price variables for the preceding eight items.
Total	100.0		

[1] Relative cost weights were derived initially from special studies by HCFA using data primarily from 1976 HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using these 1976 weights and the price variables indicated in this table. The relative importance values have changed over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI–TL refers to Data Resources, Inc., Trendlong (TL 1192), 29 Hartwell Avenue, Lexington, Massachusetts 02173. DRI–CFS refers to Data Resources, Inc., Cost Forecasting Services (CFS–924), 1750 K Street NW., Washington, DC 20006.

- An adjustment to the limits if the estimated market basket rate of increase differs from the actual rate of increase by more than 3/10 of one percentage point (higher or lower).
- The use of the current hospital wage index. The wage index is used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas (MSA or NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (68.6 percent) and the employee benefits portion (7.6 percent), plus a factor representing a proportionate share of contract services (5.6 percent), are used to determine the labor component (81.8 percent) of all HHA per-visit costs used to set the limits.
- Separate treatment of the labor-related and nonlabor components of per-visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods ending on or after June 30, 1989 and before May 31, 1991, and increasing those data by the actual and projected increases in the HHA market basket index. We then separate each HHA's per-visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per-visit costs. For each comparison group, the resulting amounts are shown in Table I of section VII, below.
- The application of a cost-of living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.
- Limits that are determined for the per-visit cost of each type of home health service: skilled nursing care, physical therapy, speech pathology, occupation therapy, medical social services, and home health aide.
- Application of the limits in the aggregate after the HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the costs remaining after these adjustments are made. Payment is limited to the lower of the actual costs or the cost limits.

V. Methodology for Determining Cost-per-Visit Limits

A. Data

For this notice, the cost-per-visit limit values were determined by extracting settled actual cost-per-visit data from Medicare cost reports for periods ending on or after June 30, 1989, and before May 31, 1991. We then adjusted the data using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our data base and December 31, 1993, the midpoint of the first cost reporting period to which these limits apply. The following annual percentage increases were used to compute the per-visit costs:

Calendar year	Percent increase
1990	[1] 5.3
1991	[1] 5.7
1992	[2] 4.1
1993	[2] 4.8
1994	[2] 5.1
1995	[2] 5.3

[1] Final rate of increase.

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 3/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit.

B. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per-visit costs into labor and nonlabor portions. The labor portion of costs (81.8 percent

as determined by the market basket) represents the 76.2 percent employee wage and benefit factor plus the 5.6 percent contract services factor from the market basket. We then divided the labor portion of per-visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliers"

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per-visit costs within two standard deviations of the mean in each service.

D. Basic Service Limit

A basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per-visit costs of free-standing HHAs was calculated for each type of service. (See Table I in section VII.)

VI. Computing the Adjusted Limit

3. Adjustment of Cost Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index. (See example below and Tables IIIa and IIIb in section VIII.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to an HHA.

EXAMPLE—CALCULATION OF ADJUSTED OCCUPATIONAL THERAPY LIMIT FOR A FREESTANDING HHA IN DALLAS, TX

Labor component (Table I)	$76.27
Wage index value (Table III)	×0.9599
Labor portion	73.21
Special labor adjustment for budget neutrality	×1.027
Adjusted labor portion	$75.19
Nonlabor component (Table I)	+16.68
OSHA adjustment	+0.18
Adjusted occupational therapy limit	92.05

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1993, the adjusted per-visit limit for each service is again revised by an adjustment factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, if an HHA's cost reporting period begins January 1, 1994, as calculated in the example in section VI.A above, the labor-adjusted per-visit limit for occupational therapy for a freestanding HHA in Dallas, Texas is $92.05.

Computation of Revised Limit for Occupational Therapy	
Adjusted per-visit limit	$92.05
Adjustment factor from Table IV	×1.0254
Revised per-visit limit	94.39

In this example, the revised adjusted per-visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1994, is $94.39 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of the cost reporting period. For cost reporting periods other than 12 months in duration, the calculation must be made for the midpoint of the specific cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital and is required to file Form HCFA–2552 (hospital cost report), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA is entitled, under section 1861(v)(1)(L)(ii) of the Act, to an adjustment of the per-visit limit to account for higher A&G costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II, section VII.

VII. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1993 and before July 1, 1994. The intermediaries will compute the adjusted limits using the wage index published in Tables IIIa and IIIb of section VIII and will notify each HHA they service of its applicable cost per-visit limits for each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a free-standing agency located in Richmond, VA, furnishes 5,000 covered skilled nursing visits, 2,000 covered physical therapy visits, and 4,000 covered home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning on July 1, 1993.

THE AGGREGATE COST LIMIT IS DETERMINED AS FOLLOWS

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit [1]	Aggregate limit
Skilled nursing	5,000	$16.04	$71.66	$87.88	$439,400
Physical therapy	2,000	16.53	74.03	90.74	181,480
Home health aide	4,000	8.09	35.98	44.25	177,000
Total Visits	11,000				
Aggregate cost limit					797,880

[1] Includes special labor adjustments of 1.027 for budget neutrality and $0.18 per visit for OSHA adjustment.

As noted above in section III.A. of this preamble, in order to account for OSHA's universal precaution requirements, we are providing for an additional adjustment to the aggregate cost limit of $.18 per visit for those HHAs that incur costs in complying with these requirements.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for physical therapy furnished under arrangements (see 42 CFR 413.106) and the limitation on costs that are substantially out of line with those of comparable home health agencies (see 42 CFR 413.9).

TABLE I—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	$90.44	$74.40	$16.04
Physical therapy	93.39	76.86	16.53
Speech pathology	94.68	77.84	16.84
Occupational therapy	92.95	76.27	16.68
Medical social services	129.56	106.41	23.15
Home health aide	45.44	37.35	8.09
Non-MSA location:			
Skilled nursing care	99.08	84.39	14.69
Physical therapy	105.57	89.92	15.65
Speech pathology	110.43	93.98	16.45
Occupational therapy	106.48	90.40	16.08
Medical social services	165.60	140.98	24.62
Home health aide	46.04	39.21	6.83

[1] Nonlabor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

Type of visit	A&G add-on	Labor portion	Nonlabor
MSA (NECMA) location:			
Skilled nursing care	$12.17	$9.95	$2.22
Physical therapy	11.52	9.41	2.11
Speech pathology	11.55	9.43	2.12
Occupational therapy	11.68	9.50	2.18
Medical social services	18.87	15.32	3.55
Home health aide	5.47	4.46	1.01
Non-MSA location:			
Skilled nursing care	$14.42	$12.26	$2.16
Physical therapy	15.92	13.55	2.37
Speech pathology	15.58	13.24	2.34

VOL 58 ISS 129 JL 8 1993 UMI

TABLE II—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES—Continued

Type of visit	A&G add-on	Labor portion	Nonlabor
Occupational therapy	15.97	13.50	2.47
Medical social services	24.04	20.30	3.74
Home health aide	5.76	4.90	0.86

Example: A hospital-based agency in State College, PA, has a wage index value of 0.9861. It provides skilled nursing, physical therapy, and home health aide services. The published limits for that agency are:

	Limit		Add-on	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
Skilled nursing	$74.40	$16.04	$9.95	$2.22
Physical therapy	76.86	16.53	9.41	2.11
Home health aide	37.35	8.09	4.46	1.01

CALCULATION OF HOSPITAL-BASED LIMIT WITH ADD-ON

	SN	PT	HHA
Limit labor portion	$74.40	$76.86	$37.35
Add-On labor portion	+9.95	+9.41	+4.46
Total labor portion	$84.35	$86.27	$41.81
Wage index value	×0.9861	×0.9861	×0.9861
Labor portion	$83.18	$85.07	$41.23
Budget neutrality adjustment	×1.027	×1.027	×1.027
Adjusted labor	$85.43	$87.37	$42.34
Limit nonlabor portion	$16.04	$16.53	$8.09
Add-On nonlabor portion	+2.22	+2.11	+1.01
OSHA adjustment	+0.18	+0.18	+0.18
Adjusted limits	$103.87	$106.19	$51.62

VIII. Wage Indexes

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene TX	0.9183
Taylor, TX	
Aguadilla, PR	0.4549
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9455
Portage, OH	
Summit, OH	
Albany, GA	0.8017
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8867
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0083
Bernalillo, NM	
Alexandria, LA	0.8242
Rapides, LA	
Allentown-Bethlehem, PA–NJ	0.9957

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9201
Blair, PA	
Amarillo, TX	0.8703
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2217
Orange, CA	
Anchorage, AK	1.4119
Anchorage, AK	
Anderson, IN	0.9544
Madison, IN	
Anderson, SC	0.7229
Anderson, SC	
Ann Arbor, MI	1.1815
Washtenaw, MI	
Anniston, AL	0.7899
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9142
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3938

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8760
Buncombe, NC	
Athens, GA	0.8518
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9557

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0464
Atlantic , NJ	
Cape May, NJ	
Augusta, GA–SC	0.9363
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9626
Kane, IL	
Kendall, IL	
Austin, TX	0.9560
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0824
Kern, CA	
Baltimore, MD	1.0115
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9027
Penobscot, ME	
Baton Rouge, LA	0.9052
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9480
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9599
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0124
Beaver, PA	
Bellingham, WA	1.0454
Whatcom, WA	
Benton Harbor, MI	0.8421
Berrien, MI	
Bergen-Passaic, NJ	1.0733
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9287
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8030
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9223

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8734
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8845
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8604
Monroe, IN	
Bloomington-Normal, IL	0.8723
McLean, IL	
Boise City, ID	0.9718
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1762
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0155
Boulder, CO	
Bradenton, FL	0.9225
Manatee, FL	
Brazoria, TX	0.9276
Brazoria, TX	
Bremerton, WA	0.9495
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury	1.1984
Fairfield, CT	
Brownsville-Harlingen, TX	0.8592
Cameron, TX	
Bryan-College Station, TX	0.9451
Brazos, TX	
Buffalo, NY	0.8873
Erie, NY	
Burlington, NC	0.7954
Alamance, NC	
Burlington, VT	0.9320
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4461
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8776
Carroll, OH	
Stark, OH	
Casper, WY	0.8855
Natrona, WY	
Cedar Rapids, IA	0.8935
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8710
Champaign, IL	
Charleston, SC	0.8298
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9653

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC–SC	0.9432
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9576
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN–GA	0.9161
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7876
Laramie, WY	
Chicago, IL	1.0475
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0937
Butte, CA	
Cincinnati, OH–KY–IN	0.9972
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN–KY	0.7352
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0695
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9777
El Paso, CO	
Columbia, MO	0.9468
Boone, MO	
Columbia, SC	0.8904
Lexington, SC	
Richland, SC	
Columbus, GA–AL	0.7452
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9634
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8559
Nueces, TX	
San Patricio, TX	
Cumberland, MD–WV	0.8155

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Allegany, MD	
Mineral, WV	
Dallas, TX	0.9589
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7476
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8640
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9686
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8907
Volusia, FL	
Decatur, AL	0.7457
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8253
Macon, IL	
Denver, CO	1.0714
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9225
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0924
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7524
Dale, AL	
Houston, AL	
Dubuque, IA	0.8341
Dubuque, IA	
Duluth, MN–WI	0.9479
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8444
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8679
El Paso, TX	
Elkhart-Goshen, IN	0.8913
Elkhart, IN	
Elmira, NY	0.8775
Chemung, NY	
Enid, OK	0.8877
Garfield, OK	
Erie, PA	0.9118
Erie, PA	
Eugene-Springfield, OR	1.0123
Lane, OR	
Evansville, IN–KY	0.9422
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND–MN	0.9668
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8262
Cumberland, NC	
Fayetteville-Springdale, AR	0.7958
Washington, AR	
Flint, MI	1.1506
Genesee, MI	
Florence, AL	0.7648
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8395
Florence, SC	
Fort Collins-Loveland, CO	1.0197
Larimor, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0314
Broward, FL	
Fort Myers-Cape Coral, FL	0.9759
Lee, FL	
Fort Pierce, FL	1.0996
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7900
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8881
Okaloosa, FL	
Fort Wayne, IN	0.8967
Allen, IN	
De Kalb, IN	
Whitley, IN	
Forth Worth-Arlington, TX	0.9708
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0694
Fresno, CA	
Gadsden, AL	0.8166
Etowah, AL	
Gainesville, FL	0.8763
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0129
Galveston, TX	
Gary-Hammond, IN	0.9853
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9193
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9539
Grand Forks, ND	
Grand Rapids, MI	0.9813
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9951
Cascade, MT	
Greeley, CO	0.9320
Weld, CO	
Green Bay, WI	0.9547
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9128
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8687
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9121
Washington, MD	
Hamilton-Middletown, OH	0.9347
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9879
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1868
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Litchfield, CT	
Hickory, NC	0.8735
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1534
Honolulu, HI	
Houma-Thibodaux, LA	0.7315
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0022
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV–KY–OH	0.9400
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8799
Madison, AL	
Indianapolis, IN	0.9665
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9489
Johnson, IA	
Jackson, MI	0.9625
Jackson, MI	
Jackson, MS	0.7702
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7878
Madison, TN	
Jacksonville, FL	0.9122

VOL 58 ISS 129 JL 8 1993 UMI

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7125
Onslow, NC	
Jamestown-Dunkirk, NY	0.7746
Chautauqua, NY	
Janesville-Beloit, WI	0.8432
Rock, WI	
Jersey City, NJ	1.0728
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8633
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8827
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0237
Grundy, IL	
Will, IL	
Joplin, MO	0.7925
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1765
Kalamazoo, MI	
Kankakee, IL	0.8454
Kankakee, IL	
Kansas City, KS-MO	0.9550
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8934
Kenosha, WI	
Killeen-Temple, TX	1.1250
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8658
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9452
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8920
LaCrosse, WI	
Lafayette, LA	0.8194
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8588
Tippecanoe, IN	
Lake Charles, LA	0.8341
Calcasieu, LA	
Lake County, IL	0.9953
Lake, IL	
Lakeland-Winter Haven, FL	0.8409
Polk, FL	
Lancaster, PA	0.9221
Lancaster, PA	
Lansing-East Lansing, MI	1.0242
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7248
Webb, TX	
Las Cruces, NM	0.7877
Dona Ana, NM	
Las Vegas, NV	1.0588
Clark, NV	
Lawrence, KS	0.8901
Douglas, KS	
Lawton, OK	0.8354
Comanche, OK	
Lewiston-Auburn, ME	0.9021
Androscoggin, ME	
Lexington-Fayette, KY	0.8565
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8030
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8920
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8373
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8656
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8933
Lorain, OH	
Los Angeles-Long Beach, CA	1.2308
Los Angeles, CA	
Louisville, KY-IN	0.9291
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8766
Lubbock, TX	
Lynchburg, VA	0.8509
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8768
Bibb, GA	
Huston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0270
Dane, WI	
Manchester-Nashua, NH	1.0219
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8358
Richland, OH	
Mayaguez, PR	0.4752
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7684
Hidalgo, TX	
Medford, OR	1.0005
Jackson, OR	
Melbourne-Titusville, FL	0.9162
Brevard, FL	
Memphis, TN-AR-MS	0.9023
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0270
Merced, CA	
Miami-Hialeah, FL	1.0147
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0903
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0335
Midland, TX	
Milwaukee, WI	0.9680
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN-WI	1.0774
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8454
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1530
Stanislaus, CA	
Monmouth-Ocean, NJ	1.0058
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7832
Ouachita, LA	
Montgomery, AL	0.7823
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8397
Delaware, IN	
Muskegon, MI	0.9680
Muskegon, MI	
Naples, FL	1.0282
Collier, FL	
Nashville, TN	0.9360

VOL 58 ISS 129 JL 8 1993 UMI

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3167
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9962
Bristol, MA	
New Haven Waterbury-Meriden, CT	1.2046
New Haven, CT	
New London, London-Norwich	1.1525
New London, CT	
New Orleans, LA	0.8967
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3431
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1350
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8350
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.8481
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4225
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8580
Marion, FL	
Odessa, TX	1.0835
Ector, TX	
Oklahoma City, OK	0.9195
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0957

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Thurston, WA	
Omaha, NE-IA	0.8953
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9815
Orange, NY	
Orlando, FL	0.9582
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8062
Daviess, KY	
Oxnard-Ventura, CA	1.2259
Ventura , CA	
Panama City, FL	0.8598
Bay, FL	
Parkersburg-Marietta, WV–OH	0.8505
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8720
Jackson, MS	
Pensacola, FL	0.8589
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8704
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA–NJ	1.0908
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0387
Maricopa, AZ	
Pine Bluff, AR	0.7840
Jefferson, AR	
Pittsburgh, PA	1.0087
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0739
Berkshire, MA	
Ponce, PR	0.4583
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9254
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1529
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0039
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0639
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0590

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0189
Utah, UT	
Pueblo, CO	0.8687
Pueblo, CO	
Racine, WI	0.8814
Racine, WI	
Raleigh-Durham, NC	0.9448
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8366
Pennington, SD	
Reading, PA	0.8778
Berks, PA	
Redding, CA	1.0507
Shasta, CA	
Reno, NV	1.1571
Washoe, NV	
Richland-Kennewick, WA	0.9364
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9379
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1391
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8251
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0965
Olmsted, MN	
Rochester, NY	0.9671
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9245
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2280
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0452
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9382

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9376
Buchanan, MO	
St. Louis, MO–IL	0.9351
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0403
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2988
Monterey, CA	
Salt Lake City-Ogden, UT	0.9692
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8107
Tom Green, TX	
San Antonio, TX	0.8418
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2095
San Diego, CA	
San Francisco, CA	1.4480
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4840
Santa Clara, CA	
San Juan, PR	0.4967
Barceloneta, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1721
Santa Barbara, CA	
Santa Cruz, CA	1.2733

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Santa Cruz, CA	
Santa Fe, NM	0.9102
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2926
Sonoma, CA	
Sarasota, FL	0.9741
Sarasota, FL	
Savannah, GA	0.8294
Chatham, GA	
Effingham, GA	
Scranton, Wilkes-Barre, PA	0.8916
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0827
King, WA	
Snohomish, WA	
Sharon, PA	0.9024
Mercer, PA	
Sheboygan, WI	0.8836
Sheboygan, WI	
Sherman-Denison, TX	0.9052
Grayson, TX	
Shreveport, LA	0.9262
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	0.8470
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8797
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0142
St. Joseph, IN	
Spokane, WA	1.0648
Spokane, WA	
Springfield, IL	0.9258
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8050
Christian, MO	
Greene, MO	
Springfield, MA	1.0290
Hampden, MA	
Hampshire, MA	
State College, PA	0.9861
Centre, PA	
Steubenville-Weirton, OH–WV	0.8756
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1566
San Joaquin, CA	
Syracuse, NY	0.9905
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0276
Pierce, WA	
Tallahassee, FL	0.9183
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9225

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8791
Clay, IN	
Vigo, IN	
Texarkana-TX–AR	0.7860
Miller, AR	
Bowie, TX	
Toledo, OH	1.0160
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9265
Shawnee, KS	
Trenton, NJ	1.0094
Mercer, NJ	
Tucson, AZ	0.9552
Pima, AZ	
Tulsa, OK	0.8542
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8487
Tuscaloosa, AL	
Tyler, TX	0.9798
Smith, TX	
Utica-Rome, NY	0.8652
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3150
Napa, CA	
Solano, CA	
Vancouver, WA	1.0755
Clark, WA	
Victoria, TX	0.8958
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9720
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0351
Tulare, CA	
Waco, TX	0.7783
McLennan, TX	
Washington, DC–MD–VA	1.0928
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	[illegible]
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9709
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0095

VOL 58 ISS 129 JL 8 1993 UMI

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Palm Beach, FL	
Wheeling, WV–OH	0.8035
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9770
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8139
Wichita, TX	
Williamsport, PA	0.8829
Lycoming, PA	
Wilmington, DE–NJ–MD	1.0825
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8677
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0782
Worcester, MA	
Yakima, WA	1.0070
Yakima, WA	
York, PA	0.9008
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9826
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0220
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8850
Yuma, AZ	

TABLE IIIb. WAGE INDEX FOR RURAL AREAS

Non-urban areas	Wage index
Alabama	0.7121
Alaska	1.3372
Arizona	.8724
Arkansas	.6979
California	1.0122
Colorado	.8382
Connecticut	1.1857
Delaware	.8537
Florida	.8704
Georgia	.7769
Hawaii	.9579
Idaho	.8917
Illinois	.7696
Indiana	.7830
Iowa	.7517
Kansas	.7426
Kentucky	.7781
Louisiana	.7355
Maine	.8294
Maryland	.8029
Massachusetts	1.1607
Michigan	.8893
Minnesota	.8288
Mississippi	.6935
Missouri	.7240
Montana	.8226
Nebraska	.6967
Nevada	.9663

TABLE IIIb. WAGE INDEX FOR RURAL AREAS—Continued

Non-urban areas	Wage index
New Hampshire	.9508
New Jersey	(1)
New Mexico	.8289
New York	.8371
North Carolina	.7992
North Dakota	.7688
Ohio	.8438
Oklahoma	.7384
Oregon	.9643
Pennsylvania	.8620
Puerto Rico	[2].4316
Rhode Island	(1)
South Carolina	.7678
South Dakota	.7179
Tennessee	.7316
Texas	.7578
Utah	.8977
Vermont	.8997
Virginia	.7784
Virgin Islands	[2]1.0000
Washington	.9597
West Virginia	.8482
Wisconsin	.8459
Wyoming	.8423

[1] All counties within State are classified urban.

[2] Approximate value for area.

TABLE IV—COST REPORTING YEAR ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
August 1, 1993	1.0042
September 1, 1993	1.0085
October 1, 1993	1.0126
November 1, 1993	1.0169
December 1, 1993	1.0211
January 1, 1994	1.0254
February 1, 1994	1.0299
March 1, 1994	1.0340
April 1, 1994	1.0385
May 1, 1994	1.0430
June 1, 1994	1.0475

[1] Based on compounded projected market basket inflation rates of 5.10 percent for 1994 and 5.30 percent for 1995.

These adjustment factors are subject to change based on later estimates of cost increases.

If for any reason we do not publish a new schedule of limits to be effective on July 1, 1994, or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.00442 once for each month between June 1, 1994 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if a cost reporting period begins on August 1, 1994, 1.0475 will be multiplied by 1.00442 twice and the resulting factor will equal 1.05678 (1.0475 x 1.00442 x 1.00442 = 1.05678).

IX. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As discussed below, we have determined that the implementation of the new HHA cost limits set forth in this final notice will have an impact of more than $100 million in FY 1994. Thus, consistent with the requirements of E.O. 12291, we are providing a regulatory impact analysis. We note, however, that section 1861(v)(1)(L)(iii) of the Act (as amended by section 4207(d) of OBRA '90) requires that the Secretary establish new HHA cost limits on July 1, 1991, and annually thereafter, and also requires that we use the current hospital wage index to establish the limits. Section 4207(d) of OBRA '90 also requires that the wage index be applied on a budget neutral basis. Moreover, section 1861(v)(1)(L)(i) of the Act specifies that the cost limits are not to exceed 112 percent of the mean per-visit costs of free-standing HHAs. Thus, short of developing an entirely different approach to paying for HHA costs (which would require new legislation), there are no alternatives available for consideration other than implementing the payment methodology and limits set forth in this notice.

This notice sets forth HHA cost limits for cost reporting periods beginning on or after July 1, 1993. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the current hospital wage index to calculate the HHA cost limits, that is, the hospital wage index effective for discharges on or after October 1, 1992, which is based on 1988 wage survey data. The wage index is used to adjust the labor-related portion of the limits, and the administrative and general (A&G) add-on, to reflect differing wage levels among areas. As

discussed in detail in section II of this notice, we are applying a budget neutrality adjustment factor of 1.027 to the labor-related portion of the limits to ensure that aggregate payments to HHAs are not affected by changes to the wage index.

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1992. As required by section 1861(v)(L)(i) of the Act, we calculate the cost limits based based on the mean of the labor-related and nonlabor per visits costs for free-standing home health agencies. As discussed in the July 1, 1992 notice (57 FR 29411), we will continue to use the latest settled cost report data to develop the HHA cost-per-visit limit values for each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide. Thus, for this notice, we have updated the cost-per-visit limits by using the data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991. The data have been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1993, the midpoint of the first cost reporting period to which the limits apply. The intermediary determines the aggregate cost limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

For this year's notice, the conversion from approximately 49 intermediaries to 9 regional intermediaries, coupled with the additional training of providers and intermediaries in the documenting, submittal, and review of cost reports, has resulted in tighter management controls over the cost reporting data than in past years and, we believe, more accurate data. The database used to calculate these limits consists of cost reporting data from 2600 freestanding HHAs, compared with 2389 freestanding HHAs used in calculating last year's limits. Based on this new, more extensive, and more accurate cost data, the cost-per-visit limits have increased for some services (physical therapy, occupational therapy, speech pathology, medical social services), but have decreased for the two highest volume service categories, skilled nursing care and home health aide.

We have incorporated the changes to the wage index and the updated cost report data in calculating a new set of HHA cost limits. We estimate that the revised HHA cost limits implemented in this notice with public comment period will result in the following savings to the Medicare program:

TABLE 1—HHA COST LIMITS (MEDICARE PROGRAM SAVINGS) [1]

Fiscal year	Savings (in millions)
1994	140
1995	55

[1] Figures are rounded to the nearest million.

The savings associated with the new HHA cost limits represent the difference between projected aggregate Medicare HHA expenditures under the new limits and projected aggregate Medicare HHA expenditures using last year's limits updated by the market basket increase. These savings are not the result of any changes in payment or coverage policy. Rather, the estimated aggregate savings in FY 1994 expenditures are attributable to two factors: expected significant growth in overall Medicare HHA expenditures in FY 1994, combined with the use of more accurate cost data in developing the limits. (We note that these new cost limits will also result in aggregate savings of $4 million during the last quarter of FY 1993. The estimated aggregate savings in FY 1993 expenditures are negligible because relatively few HHA cost reporting periods begin during this period.) Aggregate payments are not affected by changes to the wage index, since section 4207(d)(2) of OBRA '90 mandates that these changes be budget neutral.

As discussed above, section 1861(v)(1)(L)(iii) of the Act requires that we establish new HHA limits annually. Moreover, section 1861(v)(1)(L)(i) of the Act specifies that these limits be calculated based on the mean per-visit costs for free-standing HHAs, and we believe that we have an obligation to calculate these costs using the most accurate cost reporting data available. Thus, neither the implementation of the new limits nor the method by which we develop the limits is discretionary. It is important to recognize that the "savings" indicated in Table 1 represent an aggregate impact of only about 1 percent of the projected Medicare HHA expenditures of $13.6 billion in FY 1994. As shown in Table 2 below, the proportional effect of the cost limits has remained relatively constant in recent years.

TABLE 2—PROPORTIONAL IMPACT OF UPDATED COST LIMITS ON MEDICARE HHA EXPENDITURES

Cost reporting period effective	Percentage impact for cost reporting period
7/1/89–6/30/90	1.5 percent (savings).
7/1/90–6/30/91	No new limits.
7/1/91–6/30/92	1.4 percent (costs).
7/1/92–6/30/93	0.76 percent (savings).
7/1/93–6/30/94	1.49 percent (savings).

However, while the proportional impact of the annual update to the HHA cost limits has remained stable, the aggregate costs or savings associated with the revised limits have increased substantially, due to sustained large growth in HHA expenditures. For example, Medicare HHA expenditures have increased more than fourfold over the last 4 years (from $2.3 billion in FY 89 to a projected $10.7 billion in FY 93), and we project that this growth rate will continue at least through FY 94. Thus, small changes in the market basket factors used to adjust the limits now can result in significant spending shifts.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

We are providing a voluntary regulatory flexibility analysis for this notice because of the large number of HHAs that will be affected, even though the overall impact of the notice is expected to be approximately 1 percent and we have no evidence that the economic impact on most HHAs will be significant. Normally, a regulatory flexibility analysis requires the agency to discuss various alternatives to the provisions in a notice such as this. As discussed above, however, HCFA is merely implementing the provisions of section 1861(v)(1)(L)(iii) of the Act. Accordingly, no alternatives to the provisions in this notice with comment are available.

We are unable to identify the effects of changes to the cost limits on individual HHAs. Both changes in the cost data and changes to the wage index contribute to changes in the cost limits for individual HHAs, although we cannot isolate the separate impact of these factors.

VOL 58 ISS 129 JL 8 1993 UMI

The model used for purposes of our analysis was based upon data from 4,199 home health agencies, of which 1,575 (38 percent) were at or over the cost limits. A breakdown of the home health agencies used in the model and the impact of the revised cost limits is as follows:

	Number of agencies	Number over the cost limits
Urban	2498	941
Rural	1700	634
Freestanding	2600	801
Hospital-based	1599	774

Again, we do not have sufficient data to predict exactly which HHAs will be most affected by this notice nor the magnitude of the impact upon individual HHAs. As noted above, each HHA's aggregate limit depends on the number of its Medicare visits for each type of service and its actual costs for the cost reporting period subject to this notice. Thus, whether or not a given HHA exceeds its cost limit is determined largely by the types and number of services it furnishes, and we are not able to make such a determination prospectively for individual HHAs. However, it is clear that individual HHAs will be affected to a greater or lesser degree depending upon the extent to which their total payment is derived from Medicare.

C. Impact on Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act (the RFA) (5 U.S.C. 601 through 612). For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside an MSA.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

X. Other Required Information

A. Waiver of Proposed Notice

In adopting notices, such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act.

As we discussed in section III above, we have used the same methodology to develop the schedule of limits that was used in setting the limits published on July 1, 1992. The cost limits have been updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1993. In addition, as required under section 1861(v)(1)(L) of the Act, we have updated the wage index, using the current hospital wage index, so that it is based entirely on 1988 data.

Because the methodology used to develop this schedule of limits was previously published for public comment and because we are required by section 1861(v)(1)(L)(iii) of the Act to use the current hospital wage index, which is based on 1988 wage survey data, we believe that it would be impracticable and unnecessary to request public comment before implementation of these cost limits. To do so would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice.

B. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date.

Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter. Also, as required by section 1861(v)(1)(L)(iii) of the Act, we are using the current hospital wage index, that is, the hospital wage index for fiscal year 1993, which is based on 1988 wage survey data. If HHAs are to receive timely the benefits of the cost limits that are based on the updated wage index, it is necessary that these limits be effective for cost reporting periods beginning on or after July 1, 1993. Thus, we believe that a delay in the effective date of these cost limits would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in the effective date of this notice with comment period.

C. Paperwork Reduction Act

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

D. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "**DATES**" section of this notice, and, if changes are made in another notice, we will respond to these comments in that notice.

Authority: (Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: June 28, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 1, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–16062 Filed 7–1–93; 4:47 pm]

BILLING CODE 4120–01–P

Thursday
July 8, 1993

Part IV

Federal Election Commission

11 CFR Part 4, et al.
Compliance Procedures; Proposed Rule

VOL 58 ISS 129 JL 8 1993 UMI

FEDERAL ELECTION COMMISSION

11 CFR Parts 4, 5, 7, 102 and 111

[Notice 1993–16]

Compliance Procedures

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to its regulations governing the compliance process under the Federal Election Campaign Act of 1971, as amended (hereinafter "the Act" or "FECA"). The proposed changes would address issues that have arisen since these rules were last amended in 1980. They are intended to streamline and clarify several aspects of the compliance process. Please note that the draft rules which follow do not represent a final decision by the Commission on the issues presented in this rulemaking.

DATES: Comments must be received on or before September 24, 1993. The Commission will hold a public hearing on these proposed regulations at 10 a.m. on October 20, 1993, if requests to testify are received. Persons wishing to testify at the hearing must so indicate in their written comments.

ADDRESSES: Comments must be in writing and should be sent to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor hearing room, 999 E Street, NW., Washington, DC. All comments received will be available for public inspection in the Commission's Public Records Office, 999 E Street, NW., Washington, DC from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comments on proposed revisions to 11 CFR part 111 regarding the operation of the enforcement process, and on conforming amendments to 11 CFR 4.4, 5.4, 7.14 and 102.3. The proposed changes are intended to resolve several issues which have arisen since these regulations were last revised pursuant to the 1979 Amendments to the Act. The major topics under consideration concern the requirements for filing and amending complaints, the policy regarding extensions of time, making findings against treasurers of political committees, the reporting of funds used to pay civil penalties, oral enforcement hearings, and the handling of enforcement matters that result in civil litigation.

On May 22, 1985, the Commission published an Advance Notice of Proposed Rulemaking ("ANPRM") in the **Federal Register** (50 FR 21077) seeking public comments on four general issues that could be addressed in a revision of the regulations and also requesting suggestions for revisions concerning other aspects of Part 111. The four issues raised by the Advance Notice were: (1) Providing respondents with the legal and factual basis for Commission "reason to believe" findings in externally generated complaints; (2) requests for extensions of time; (3) naming committee treasurers as respondents; and (4) procedures for requesting a stay of a final determination on repayment of Federal funds pending a petition for review. The Commission received four comments in response to the ANPRM, which are discussed more fully below. The comments have been helpful to the Commission in formulating the draft rules which follow regarding the first three of these topics. Rules regarding stays of final repayment determinations were subsequently included in revisions to 11 CFR 9007.5 and 9038.5. See Explanation and Justification, 52 FR 20864 (June 3, 1987).

The Commission is now seeking comments on both the proposed regulations which follow and on the compliance process, generally, including any issues not covered by the proposed regulations. A summary of the more significant proposed revisions follows.

A. Computation of Time

The attached draft of § 111.2(a) would add the Birthday of Martin Luther King, Jr. to the list of legal holidays. In addition, the computation of time provision would be revised to exclude Saturdays, Sundays and legal holidays when a period of time prescribed by these regulations is less than eleven days, rather than the current seven days. See attached proposed 11 CFR 111.2(b). Both of these proposals would conform to revisions to Rule 6 of the Federal Rules of Civil Procedure. F.R.C.P. 6(a), as amended April 29, 1985.

Section 111.2(c) currently adds an additional three days to time periods whenever documents are served by mail. This three day period does not include Saturdays, Sundays and legal holidays. New language would be added to this section to establish a presumption that the paper was received and service was accomplished at the end of this time period. Please note, however, that the three day rule does not apply to situations where the time runs from the actual date of receipt of a document, such as the deadline for filing a brief under 11 CFR 111.16(c).

Proposed paragraph (a) of 11 CFR 111.6 would change that time in which a respondent may file a response to a complaint from within 15 days of receiving the complaint to within 15 days from service of a copy of the complaint. Three days would be added if the complaint is served by mail under proposed § 111.2(c).

The revisions to 11 CFR 111.2 would also clarify when a document is considered to be submitted to the Commission for purposes of time limits specified in 11 CFR part 111. New paragraph (d) would indicate that a document is considered to be submitted on the day it is actually received by the Commission. However, comments are sought on whether three extra days should be added to cover situations where respondents mail documents to the Commission. This would result in different time frames for documents that are mailed and those that are hand delivered, or sent by an overnight delivery service or by facsimile machine.

B. Procedures for Filing and Amending Complaints and Notifying Respondents

The Commission proposes several revisions to streamline and clarify the procedures involved in filing complaints. First, new language would be included in § 111.3 (a) and (b) to more fully explain the ways in which compliance matters are initiated. These include referrals from other Federal and state agencies and *sua sponte* compliance matters. The revisions would clarify that an individual or political committee may notify the Commission in writing that he or she or the committee has committed a violation of the FECA.

Comments are requested as to whether additional enforcement-related materials can and should be sent to candidates when their campaign committees are involved in compliance matters. Currently, candidates are sent courtesy copies of complaints and internally generated reason to believe findings. The question is whether to send them additional documents, such as the General Counsel's briefs, probable cause findings, proposed conciliation agreements and notices of authorization to file suit. The difficulty, however, is that the confidentiality provisions of the Act and the attorney/client privilege may not permit such disclosure when the candidate has not been named as a

respondent. The proposed rules which follow do not incorporate these proposals.

The Commission is proposing to revise § 111.4(a) to provide that submitted complaints be originals, not photocopies or facsimiles. Originals are needed to ensure that the complaint is properly signed and notarized, and is legible. In addition, § 111.4(b)(2) would specify that the jurat shall state that the complaint was both sworn and subscribed. These changes are intended to decrease the number of improperly filed complaints.

A revision to § 111.4(d)(1) is proposed to encourage complainants to include, when possible, the addresses of respondents of facilitate initial complaint processing. Paragraph (d)(4) would also be revised to encourage complainants to submit originals, rather than copies, of documentation supporting their allegations.

In addition, a new paragraph (e) is proposed to set forth the Commission's policy of considering complaints based on news stories when sufficient facts are presented to satisfy the requirements of 11 CFR 111.4(d), regarding the basis for the complainant's charges. Such complaints must also comply with the notarization requirements of 11 CFR 111.4(b). One comment received in response to the ANPRM suggested that real corroborating evidence be submitted in addition to the article or that the article should set forth specific facts rather than general allegations. New § 111.4(e) is intended to address those concerns. The Commission also requests comments on the advisability of seeking clarification of a complaint or response prior to finding reason to believe, when clarification is needed.

Please note that FEC Directive 6 sets forth the Commission's established procedures for internally generating compliance matters on the basis of news articles. Comments are sought as to whether persons mentioned in news stories should be accorded an opportunity to respond to the allegations prior to the Commission's decision to find reason to believe. Currently, in these internally generated MURs, respondents do not have an opportunity to reply to the Commission regarding allegations made in the new articles until after the reason to believe finding is made.

New § 111.4(f) would explain how a complainant may submit additional information after having filed a complaint. One comment on the ANPRM suggested that the rules should contain standards and procedures for determining whether the respondent is entitled to an additional opportunity to respond to new charges. Consequently, the Commission is now proposing that the nature of the additional information submitted should determine whether the Act's notification and response time provisions are triggered by the submission.

If the additional information submitted by the complainant describes alleged violations of the FECA or Commission regulations which were not implicated by the original complaint, or if the additional information identifies individuals or entities not implicated by the original complaint, then the additional information would be treated as an amended complaint. Under the proposed rules, an amended complaint would have to comply with the requirements for filing original complaints (such as being sworn to and notarized) and would be subject to the provisions regarding initial complaint processing, notification, and the opportunity to demonstrate that no action should be taken on that complaint-generated matter.

On the other hand, if the additional information submitted by the complainant relates solely to the statutes or regulations implicated by the original complaint and to the persons or entities who, according to the original complaint, were alleged to have committed such violations, the additional information would be treated as supplemental information. Under the proposed rules, a submission of supplemental information is treated as new evidence, and need not conform to the requirements of 11 CFR 111.4 (a), (b) or (d) regarding the number of copies filed, notarization, and the inclusion of information regarding the complainant and the respondent which is already provided in the original complaint. Nor would supplemental information be subject to the provisions of §§ 111.5 and 111.6 regarding initial complaint processing, timing of notification, and the opportunity to demonstrate that no action should be taken. Thus, complainants would be able to provide the Commission with supplemental information after having filed the original complaint, but the submission would not trigger the initial complaint notification process again and the supplemental information would not be sent to the respondents. The Commission seeks comments on the appropriateness of this procedure.

Proposed new § 111.4(g) covers situations where the Commission must resolve similar, but separate, enforcement matters that would individually consume substantial time and resources. The proposed new language would explicitly allow the consolidation or severance of compliance matters which involve: (1) The same respondents; (2) substantially the same issues; (3) common questions of law or fact; or (4) other factors which would warrant a determination by the Commission that such matters should be joined or severed, such as the avoidance of unnecessary costs or delays of time.

The Commission also seeks comments on a proposed change that would delete the requirement to notify those named in an improper complaint filed with the Commission. See proposed 11 CFR 111.5(b). The resources currently devoted to notifications of improper complaints are significant, especially considering that many improper complaints are never corrected and resubmitted. The legislative history of the 1979 Amendments to the FECA suggests that such notifications are not required. H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 20 (1979). The Commission is considering however, providing copies of improper complaints to the respondents upon request.

Finally, the Commission notes that if a complaint does not mention a particular person, that person may not be named as a respondent initially, and will not receive a copy of the complaint. If that person is subsequently named as an internally-generated respondent, comments are sought as to whether the person should be sent a copy of the complaint at that point.

C. The Reason To Believe Finding; Notification; Reconsideration

The Commission proposes moving a sentence from § 111.8(b) to § 111.9(a) to provide that all Commission reason to believe notifications will include the legal basis and the alleged facts which support the Commission's action. This revision would reflect changes in Commission procedure. Previously, a copy of the factual and legal analysis was only included in notifications sent in internally generated matters, as required by the Act. Proposed § 111.9(a) would reflect that factual and legal analyses are now sent to respondents in complaint-generated matters as well. The change in this procedure was discussed in the ANPRM and supported by several commenters. It is intended to provide all respondents with a clearer understanding of the factual and legal basis for the Commission's action, and should help respondents to respond directly to the alleged violations at issue.

Another change in § 111.8(a) would clarify that reason to believe determinations may be made after consideration of a Commissioner's

motion to find reason to believe or no reason to believe. The current language only mentions Commission determinations made after reviewing the General Counsel's recommendation in internally-generated matters. Similar language would also be included in § 111.9(a).

Proposed new § 111.9(b) would provide that the Commission will not entertain a respondent's request for reconsideration or rescission of a reason to believe determination, except in cases where a incurable procedural defect has occurred. Examples of incurable procedural defects include situations where the respondent was never served, or where reason to believe was found against the wrong person who happened to have the same name as the person named in the complaint. This proposal would help to insure that the compliance process moves in an efficient and timely manner. The Commission wants to make clear, however, that a refusal to entertain other requests for reconsideration or rescission does not deny respondents the opportunity to demonstrate that they did not commit the alleged violations. Respondents would continue to have opportunities throughout the compliance process to demonstrate that they did not commit the alleged violations. For example, respondents have an opportunity to reply to the charges made in the complaint. If the matter is internally generated, ordinarily there are also opportunities to respond to the concerns raised prior to the reason to believe determination. If the Commission finds reason to believe, but takes no further action, comments are sought as to whether to incorporate into the rules the current practice of permitting respondents to place a statement on the public record. Respondents may also have the opportunity to refute the charges during the investigation and in their probable cause briefs. Thus, requests for reconsideration or rescission would only duplicate the arguments to be presented to the Commission during and after the investigation.

D. Investigation

In general, the Commission may conduct an investigation in any case in which it finds reason to believe that a violation of the Act or regulations has occurred or is about to occur. Proposed changes to 11 CFR 111.10(a) would clarify that the Commission need not conduct further inquiries when information which is contained in the Commission's records or which was already made available by the respondent makes additional inquiry unwarranted. This proposed addition would promote a more efficient use of the Commission's time and resources under such circumstances. Further, it would reduce the burden which an additional inquiry would place on respondents. Please note that under both the current and the proposed versions of § 111.7(b), the General Counsel may recommend and the Commission may approve the dismissal of a complaint at any point before or after finding reason to believe, when warranted by the facts and circumstances of the case.

Proposed amendments to 11 CFR 111.9(a) and 111.10(a) would also reflect that, in an appropriate case, the Commission may send a respondent a letter of admonishment, or may exercise its prosecutorial discretion by taking no further action after making a reason to believe finding. Similarly, new language at 11 CFR 111.17(a) would indicate that after a probable cause to believe finding in an appropriate case, the Commission may send admonishment letters to respondents which warn against specific activities which constitute violations of the FECA or Commission regulations.

New language in § 111.10(b) would let respondents know that investigations may begin immediately after the Commission makes a reason to believe finding. This is intended to further the timely resolution of compliance matters.

E. Subpoenas and Depositions

The Commission is proposing several amendments to §§ 111.12 through 111.15 to address difficulties that it has experienced while conducting investigations to alleged FECA violations. For example, questions have arisen as to who may be present during a deposition. Consequently, language would be added to 11 CFR 111.12(b) stating that no person other than the witness and his or her counsel, the stenographic reporter, and members of the Commission staff shall be present or represented when a deposition is taken during the course of a Commission investigation. This proposed addition is based on the well established principle that the Constitutional rights of those being investigated by an agency do not include the right to confront witnesses or the right to be notified when the agency uses subpoenas to gather evidence adverse to the target of the investigation. *E.g., S.E.C.* v. *O'Brien*, 467 U.S. 735, 742 (1984); *Hannah* v. *Larche*, 363 U.S. 420 (1960). However, advance arrangements could continue to be made to accommodate those uncommon situations where the deponent needs the assistance of an interpreter or a personal attendant for medical reasons.

The Commission has also had some difficulties with service of documents in compliance matters where political committees have failed to note changes in their addresses and their treasurers or assistant treasurers on their Statements of Organization, as required by 11 CFR 102.2(a)(2). The Commission is proposing to add a new paragraph (e) to section 111.13 to provide that service shall be accomplished by mailing a copy to the address of the political committee, or the treasurer or the assistant treasurer, as listed in the last Statement of Organization, or as listed in the most recent report, or by hand delivering a copy to the treasurer or assistant treasurer. Also, please note that the attached rules which follow would provide for service by first class mail.

The Commission is also considering adding language to expressly permit payment of witness fees and mileage for more than one day, when necessary. See proposed 11 CFR 111.13(a). This would be consistent with fee payments in court cases under 28 U.S.C. 1821.

The draft rules which follow would amend § 111.15 to clarify that it applies to orders, well as subpoenas.

The Commission also is proposing the inclusion of a new section 111.15(b) to clearly indicate that, before challenging a Commission subpoena or order through the courts, respondents must exhaust their administrative remedies by filing a timely motion to quash or modify under this section. Any objection to a subpoena or order which is not presented in a timely motion to quash or modify would be waived for all purposes under this proposed rule.

F. Referrals to the Attorney General

The Commission is considering adding new § 111.19 to set out the procedures used if the Commission refers a knowing and willful violation of the campaign finance laws to the Attorney General of the United States. See, 2 U.S.C. 437g(a)(5)(C)). The draft regulation would indicate that these referrals can only be made after the Commission finds probable cause to believe the respondent knowingly and willfully violated the Act. In such cases, the Department of Justice decides whether to initiate a criminal action.

The proposed rules would indicate that a referral to the Attorney General will suspend the timer periods for attempting to reach conciliation agreement(s) with the respondent(s). If the Justice Department declines to pursue the criminal prosecution, or if the FEC determines that it is appropriate

to continue to pursue the enforcement action, the FEC will so inform the respondent(s) and will reactivate the time periods for conciliation efforts.

G. Civil and Criminal Penalties

Several questions have been raised regarding funds used by candidates and political committees to pay civil or criminal penalties pursuant to 2 U.S.C. 437g(a)(5), 437g(a)(6) and 437g(d). At this time, the Commission does not intend to change its current practice by limiting the sources from which respondents may obtain funds to pay civil penalties. However, candidates and political committees cannot deposit prohibited or excessive amounts in their campaign depositories (or in the legal and accounting compliance fund in the case of a publicly funded campaign committee). Consequently, the Commission is proposing that when the funds used to pay civil penalties come from prohibited sources or would be excessive, these amounts shall be reported as memo entries in accordance with 11 CFR part 104, regardless of amount. Thus, they should be listed on memo schedules for other receipts and disbursements.

This new rule would also govern situations where candidates use permissible, nonexcessive receipts expressly and exclusively to pay civil penalties. In that case, the amounts should be deposited and reported in the same way as they would report other receipts and disbursements. This proposed rule would have no effect on respondents who do not have regular reporting obligations, such as individuals and corporations. Please note that this provision would be designated as new § 111.20, and that current §§ 111.19 through 111.23 would be renumbered §§ 111.21 through 111.25, respectively.

H. Civil Suit

Several changes are proposed in the regulations explaining the procedures governing civil suits arising out of enforcement matters. First, new language would be included in renumbered § 111.21 to reflect that the General Counsel may recommend and the Commission may authorize suit for violation of a conciliation agreement. This may happen, for example, when the respondents fail to pay a civil penalty. When both the political committee and its treasurer are parties to the conciliation agreement, and both have agreed to pay the civil penalty, the Commission may proceed against either or both parties. For example, if a committee is unable to pay a civil penalty, the suit may be brought against the treasurer who signed the conciliation agreement. In such cases, respondents should also be aware that the FECA authorizes an additional civil penalty. 2 U.S.C. 437g(a) (5) and (6). Comments are sought on this policy.

New language is also included to ensure that both complainants and respondents are routinely notified when the Commission authorizes suit. Similarly, § 111.21(b) would indicate that complainants and respondents will be notified of the resolution of the litigation. As explained below, the notification of the final disposition of the court case will trigger the public disclosure of the appropriate portions of the enforcement and litigation files.

The Commission is also considering adding a sentence to 11 CFR 111.21(b) to notify respondents whenever a complainant brings suit under 2 U.S.C. 437g(a)(8) challenging a Commission decision to dismiss a complaint. The new language would also provide notification to respondents as to the final disposition of the section 437g(a)(8) suit. As discussed below, the enforcement matter resulting from the complaint will have been made public no later than 30 days after the complainant is notified of the dismissal of the complaint, which is prior to the filing of the section 437g(a)(8) suit.

I. Termination of Enforcement Matters and Public Disclosure of Commission Action

The Commission is considering amending renumbered § 111.22 to clarify several aspects of its procedures for closing enforcement files and making the results of its investigations public. First, revised language would be included in 11 CFR 111.22(a) to more clearly explain that the Commission's vote to close an enforcement file will trigger the process for making the enforcement matter public. Please note that in situations where the Commission has been unable to successfully resolve the enforcement matter, and therefore must bring civil suit, it does not vote to close the enforcement matter prior to the litigation. The enforcement files would usually remain confidential until the end of the litigation. Of course, the Federal Rules of Civil Procedure governing discovery would remain applicable in such cases. In contrast, in situations where a complainant files suite under 2 U.S.C. 437g(a)(8) challenging the Commission's decision to dismiss a complaint, the Commission may have already made the enforcement matter public before the litigation commences.

In compliance matters involving multiple respondents, proposed § 111.22(a) would specify that in general no action taken by the Commission will be made public prior to closing the enforcement file and terminating all enforcement proceedings with regard to every respondent in such matters. This policy is necessitated by the confidentiality requirement of section 437g(a)(12)(A) of the FECA. However, new language in § 111.4(g) would allow for severing part of the compliance matter and terminating proceedings relating to some respondents when appropriate. This proposal would not change the current internal procedures which can result in the closing of enforcement matters and their placement on the public record before all respondents have received notifications of these actions. The Commission seeks comment on this practice, and in particular whether it would be appropriate, as an alternative, to provide that public release will not take place before three days have elapsed after the mailing of the notification letters.

Similarly, the Commission is proposing adding language to § 111.22(b) to provide that, in general, a conciliation agreement will only be made public following the termination of all proceedings with regard to every respondent in that matter. However, if part of the compliance matter is severed, conciliation agreements for some respondents could be made public before others. This proposal seeks to strike a balance between the duties imposed by the confidentiality provision of the Act and 2 U.S.C. 437g(a)(4)(B)(ii), which requires that conciliation agreements which have been finalized be made public. It preserves that balance by requiring that an executed conciliation agreement be made public as soon as possible following the termination of all proceedings with regard to every respondent in that matter. In addition, conforming amendments to the Freedom of Information and public disclosure regulations at 11 CFR 4.4(a) (3) and (12), and 11 CFR 5.4(a) (3) and (4) are also included in the proposed amendments which follow.

The Commission also seeks comments on language that would define the date of dismissal of a complaint by the Commission as being the date on which the Commission votes to close an enforcement file with respect to all respondents. This date is significant because it triggers the 60 day time period for filing suit under 2 U.S.C. 437g(a)(8). The date of the Commission's vote to dismiss was the date relied upon in a recent Court of Appeals decision. See, *Spannaus* v.

VOL 58 ISS 129 JL 8 1993 UMI

Federal Election Commission, No. 92–5191, slip op. at 2 (D.C. Cir. April 20, 1993). In *Spannaus*, the Court of Appeals rejected a previous lower court decision which had concluded that for purposes of 2 U.S.C. 437g(a)(8), the date of dismissal of a complaint was the date the complaint actually received notification of the Commission's decision to dismiss the complaint. See, *Common Cause* v. *Federal Election Commission*. 630 F. Supp. 508,512 (D.D.C. 1985), see also, *Antosh* v. *Federal Election Commission*, 613 F. Supp. 729 (D.D.C. 1985). The rules which follow incorporate the date of the Commission's vote to dismiss since the court in *Spannaus* concluded that it is undisputed that this is the date of dismissal.

Proposed new paragraph (c) of § 111.22 would clarify that nothing in this section will preclude the Commission from making public information developed in the course of an investigation to support its position in any litigation. This proposed rule would be particularly relevant to subpoena enforcement actions or civil proceedings following the unsuccessful resolution of a matter after an investigation.

Finally, new § 111.22(d) would explain that in cases where the Commission brings civil suit, it will make the nonexempt portions of both the enforcement files and the litigation files public no later than thirty days after notifying the complainant and the respondents of the final disposition of the court case. The final disposition may consist of a court decision that is not appealed by either party, or that is not reviewed by a higher court. This approach would be consistent with the time frames employed for enforcement matters that do not result in litigation.

J. Confidentiality; Waiver

The Commission's current confidentiality regulations could be interpreted to preclude the disclosure of the fact that a complaint has been filed, as well as the substance of the complaint. However, such an interpretation may go beyond the provisions of section 437g(a)(12) of the Act and has also presented some difficulties for the Commission and potential respondents. On occasion, persons have publicly announced the filing of a complaint with the Commission against another person or entity without actually ever filing one. Consequently, the Commission's policy has been to either confirm or deny that a specific person filed a complaint against another specific person or entity. In a number of enforcement matters, the Commission has not construed the FECA to prohibit complainants from giving copies of complaints to the news media or otherwise publicizing them after the complaints have been filed with the FEC. *E.g.*, MURS 3168, 3169, & 3170, and MURs cited therein.

The Commission is now proposing to revise renumbered 11 CFR 111.23 to specifically permit the Commission to maintain a public file containing copies of property-filed complaints submitted to the FEC. Comments are requested as to whether such a file should also include the written responses of the persons alleged to have committed the violations. A conforming amendment to 11 CFR 7.14(a) is also included in the draft rules which follow. This change would not affect the confidentiality of notifications and investigations or the prohibition on ex parte communications concerning enforcement matters. The new language would be consistent with the legislative history of the statutory confidentiality provision, which has existed in a form substantially similar to its present one since the 1974 Amendments to the FECA. In 1979, Congress considered and ultimately rejected including in section 437g(a)(12) a specific prohibition on making public "[a]ny complaint filed under this section" without the written consent of "the person who is the subject of such complaint". H.R. 5010, H.R. Rept. No. 96–422, 96th Cong., 1st Sess. 22–23, 64 (1979) (passed by the House on Sept. 10, 1979); see, also, 125 Cong. Rec. 36751 (Dec. 18, 1979) (Senate passed amendment in the nature of a substitute omitting the House language); 125 Cong. Rec. 37194 (Dec. 20, 1979) (House passed Senate amendment).

In § 111.23(b), the Commission is proposing that the language be revised to more accurately reflect the procedure under which information covered by the confidentiality provisions of the Act will be made public by the Commission. As the amendment indicates, the respondent would first waive the privilege of confidentiality, and then the Commission would approve the release of the information, upon receiving a written request. Comments are sought on whether § 111.23(b) should be revised to prohibit respondents from discussing conciliation efforts. Alternatively, the regulations could treat a discussion by the respondent as a waiver of confidentiality, which would permit the Commission to discuss the conciliation process.

The Commission is also proposing the inclusion of a new sentence in 11 CFR 111.23(c) to permit the Commission to reveal information to the complainant concerning the procedural status of an ongoing enforcement matter if the efficient conduct of Commission business would be assisted by revealing the information to the complainant. This proposal would require the complainant to sign an agreement not to disclose any of the information revealed by the Commission before the enforcement matter is made public. Such an agreement would contain an acknowledgment that public disclosure by the complainant of the information provided would be a violation of the confidentiality requirements of the FECA.

This proposed addition is intended to reduce the necessity for complainants to file suit against the Commission under 2 U.S.C. 437g(a)(8)(A) to find out what actions have been taken in response to their complaints. There may be a number of different reasons why Commission action on the complaint has not been made public within the 120 day period described in 2 U.S.C. 437g(a)(8)(A), such as complex legal and factual issues, or problems in eliciting compliance with Commission subpoenas. Although the Commission is not required to conclude its actions within this period, the current regulations do not permit the Commission to make the complainant aware of those reasons. Therefore, the complainant must bring suit against the Commission simply to find out what actions have occurred. In several cases, the Commission has disclosed this information to the complainant under Court ordered seal. *E.g., Common Cause* v. *Federal Election Commission*, 83 F.R.D. 410 (D.D.C. 1979). The District Court in *Common Cause* concluded that disclosure to the complainant during the course of judicial proceedings is consistent with the confidentiality provisions of 2 U.S.C. 437g because judicial proceedings do not constitute the type of publicity of concern to Congress. *Id.* at 412 (Citing H.R. Rep. No. 94–1057, 95th Cong., 2d Sess. 50 (1976)).

Under the draft amendment to § 111.23(c), the Commission would have the discretion to reveal to the complainant information deemed necessary to make the complainant aware of the status of the compliance matter, thereby eliminating the need to file a section 437g(a)(8) suit. The complainant would be required to sign a nondisclosure agreement before any information is revealed. Thus, sufficient safeguards would be built into the new procedure to ensure that enforcement matters are not made public within the meaning of 2 U.S.C. 437g. Revealing this information to the complainant, who is already aware of the nature of the

allegations in the complaint, is appropriate given the complainant's status as "an integral part of the Act's enforcement scheme." Common Cause, at 412.

The Commission is also proposing the inclusion of new § 111.23(d) to permit respondents to waive their privileges of confidentiality in compliance matters by filing written statements with the Commission. Please note that partial waivers of confidentiality are not contemplated. Following a respondent's waiver of his or her privilege of confidentiality, the Commission would consider a written request by any person for the release of information relating to the compliance matter in which the waiving respondent is a party. Under this proposed rule, however, written requests would not be granted as a matter of course, and only to the extent they do not conflict with the Freedom of Information Act, the Government in the Sunshine Act and all relevant privileges. The proposed new language would also clarify that the only information to be released upon request is information relating solely to the respondent who has waived confidentiality. The Commission would not release information regarding other respondents who have not waived confidentiality.

K. Representation by Counsel; Notification

Comments are requested on several possible changes to renumbered 11 CFR 111.25 regarding representation by counsel and Commission communications with the designated counsel. First, the Commission is proposed new language explicitly stating that the Commission will not communicate with any person purporting to be counsel for a respondent until a written designation is filed. Similarly, the Commission will continue to contact only the designated counsel until notified in writing that the designated counsel no longer represents the respondent. These measures are needed to maintain the confidentiality of enforcement matters, as required by the FECA.

New language would also be added to § 111.25 to explain the procedures for situations where counsel withdraws or the designation of counsel is withdrawn, and a different counsel begins to represent the respondent. The withdrawal does not in itself invalidate statements, actions and offers made by that counsel. After the withdrawal, the Commission will communicate only with the respondent until it receives another properly executed designation of counsel. A related question concerns the appropriateness of a respondent's designated representative signing the conciliation agreement. New language in § 111.18(b) would indicate that this practice is acceptable.

The Commission also proposes that the provisions of § 111.25 be revised to address situations where witnesses, as well as respondents, wish to be represented in MURs. Given the confidentiality requirements of the FECA, witnesses who are represented by counsel must submit signed designations of counsel. Thereafter, the Commission would only communicate with the witness through the designated counsel, unless such direct contact is authorized in writing by the witness. Given that witnesses often do retain counsel, the Commission is proposing this addition to clarify that the same procedures apply to witnesses as apply to respondents.

These rules do not require anyone to obtain counsel at any point in the enforcement process. The proposals would not change the Commission's current practice of accepting a blanket designation of counsel from a publicly-funded committee, which covers all compliance matters in which the committee may be a respondent. Finally, please note that the provision on representation applies only to enforcement matters. Written designations are not needed when counsel handles an advisory opinion request, a Commission audit, or a request for public funding.

L. Extensions of Time; Untimely Filing

The Commission is proposing the inclusion of new 11 CFR 111.26 to explain the current procedures and policies regarding requests for extensions of time in compliance matters and to ensure that materials are received in a more timely manner. The ANPRM proposed including rules covering extensions. Three commenters supported putting policies on extensions of time in the regulations, although they did not fully support the Commission's current enforcement deadlines and extension policies. The draft provisions which follow reflect the Commission's present policies regarding extensions of time.

New § 111.26(a) would provide that whenever a person has a right or is required to take action within a period of time prescribed by 11 CFR part 111 or by notice given thereunder, that person may apply to the Commission for an extension of time within which to exercise such right or take such action.

Proposed paragraph (b) would set forth the requirements for all requests for extensions of time under 11 CFR part 111. First, such requests must be made in writing. Second, the request must state specifically the amount of additional time sought and the reason(s) such an extension is necessary. Third, a request must be filed with the Commission no later than five days prior to the date on which the right at issue will take effect or the required action is due. Given the need to resolve enforcement matters in a timely manner, the Commission hopes to avoid situations in which persons wait until the deadline before requesting an extension of time, thereby delaying the compliance process unnecessarily. The five day period is intended to provide sufficient time so that if a request is denied, the original deadline remains viable and the compliance process is not disrupted or delayed by the request. Nevertheless, comments are requested as to whether it would be preferable to require the request to be made seven or ten days before the due date.

Comments are also sought on whether a five day period is adequate for requesting an extension of time to reply to a complaint. In some cases, a significant part of the fifteen day period for responding to a complaint may have elapsed before the respondent retains counsel, and counsel has had an opportunity to become familiar with the matter.

The only proposed exception to the five day rule would be in the case of a motion to quash or modify a subpoena or order, pursuant to 11 CFR 111.15. In that case, draft § 111.26(b) would require that a request for an extension shall be filed with the Commission no later than three days after receipt of the subpoena or order. A shorter time period is proposed for requesting an extension of time to file a motion to quash or modify a subpoena or order because an earlier request for an extension may be impracticable. However, comments are requested on whether a longer period, possible ten days, should be permitted for filing motions to quash or modify subpoenas or orders. Please note as well, that a request to extend the deadline for complying with a subpoena or order would not affect the time for filing a motion to quash the subpoena or order.

New § 111.26(c) would provide that requests for extensions of time under 11 CFR part 111 will not be routinely granted. Further, to insure that extensions of time are not requested frivolously, this proposed rule would state that requests for extensions of time will not be granted unless such requests are founded on good cause. The burden would be upon the requester to set forth

the reasons why there is good cause to grant an extension.

Draft 11 CFR 111.26(d) would specify that the length of time of any extension granted under this proposed section is to be determined by the Commission or the General Counsel. This provision would also clarify that if granted, extensions may be for a shorter length of time than that sought by the person making the request, depending on the requester's reasons.

Paragraph (e) of proposed § 111.26 would provide that simply filing a request for an extension of time does not automatically stay any previously established due date. Any extension of time which is granted would run from the previous due date, not from the date on which the extension is granted.

Finally, paragraph (f) would provide that absent extraordinary circumstances, respondents' briefs will not be considered by the Commission if they are received after the established deadline.

M. Liability of Treasurers and Candidates

The Commission is proposing the inclusion of new section 111.26 in the compliance regulations to clarify its policy regarding the naming of treasurers and candidates when the Commission makes reason to believe or probable cause to believe findings against political committees. Section 111.27 would set forth policies regarding the liability of current and former treasurers and candidates in their official and individual capacities. It is intended to inform prospective treasurers from the outset of the legal responsibilities which accompany that position. Under some circumstances, these provisions may result in a current treasurer being held personally liable for actions taken before he or she became treasurer. Accordingly, comments are sought as to who specifically should be liable for previous violations (i.e. the present treasurer, the treasurer at the time of the violation, or the candidate) in those infrequent situations where the committee is unable to raise sufficient funds to pay a civil penalty. This is an area that was raised in the ANPRM and addressed by one commenter.

Proposed paragraph (a) of § 111.27 would state that, in any compliance matter in which the Commission finds reason to believe or probable cause to believe a political committee committed a violation, the current treasurer will be named in the findings, whether or not the alleged violations occurred during the tenure of the current treasurer. In general, the current treasurer will be named only in his or her official capacity as treasurer of the political committee. However, the draft rules also recognize that it is appropriate to make additional findings when a treasurer had personal knowledge of, or was actively involved in, the actions which resulted in the violations. The draft rules would also set forth the Commission's current policy of not finding reason to believe or probable cause to believe a candidate committed a violation unless it appears that the candidate had personal knowledge of, or active involvement in, the actions which resulted in the alleged violations.

Proposed paragraph (b) would provide that the Commission, at any point in a compliance matter, will substitute the new treasurer of a political committee upon the death or resignation of the treasurer originally named. Similarly, the Commission may substitute another individual who is acting as treasurer but who has not officially assumed the role of treasurer. This substitution should avoid interruption of the compliance process. However, it would not relieve the political committee of the obligation to file an amended Statement of Organization. Please note that when a new treasurer is substituted, the conciliation agreement may indicate that the new treasurer was not treasurer at the time of the violation and is not charged with personal wrongdoing. In addition, comments are sought on whether it would be preferable to make findings against candidates, former treasurers, or other persons responsible for establishing the political committee in situations where the violations occurred before the current treasurer took office. One basis for pursuing candidates is found in the 1979 amendments to the FECA, which indicate that candidates are agents of their campaign committees for purposes of receiving contributions and loans, and making disbursements. 2 U.S.C. 432(e)(2). In addition, at times the Commission has encountered difficulties in locating previous treasurers.

Paragraph (c) of draft 11 CFR 111.27 would address liability for actions taken in a treasurer's official and individual capacities. It would set forth the circumstances under which the Commission may find reason to believe or probable cause to believe that a treasurer or candidate violated the FECA or Commission regulations. The Commission may make findings against the treasurer for actions taken in his or her official capacity when the FECA or Commission regulations impose a specific responsibility on the treasurer of a committee. Examples include failure to timely file reports with the Commission, and failure to retain required documents. In such situations, courts have held political committees and their treasurers jointly and severally liable. See, *FEC* v. *John A. Dramesi for Congress Committee and Russell E. Paul, as treasurer*, No. 85–4039 (D.N.J. Sept. 5, 1990); *FEC* v. *Gus Savage for Congress '82 Committee and Thomas J. Savage, Treasurer*, 606 F. Supp. 541, 547 (N.D. Ill. 1985). Under joint and several liability, both the political committee and the treasurer are liable for the full amount of any civil penalty imposed by the court, but between them they need only pay the amount of the civil penalty once. As a practical matter, the question of treasurer liability generally does not arise in the enforcement process when the committee is solvent and willing to pay the civil penalty.

Proposed paragraph (c) would also address the issue of the liability of a treasurer after that person no longer is treasurer. Under this proposed rule, in an appropriate case, the Commission may find reason to believe or probable cause to believe that the previous treasurer violated the Act or Commission regulations despite the fact that he or she is no longer treasurer at the time the Commission makes the findings. This would be limited to situations where the previous treasurer had personal knowledge of, or was actively involved in, actions which resulted in FECA violations. These provisions do not relieve the new treasurer from liability for actions which took place while the new treasurer served as treasurer of the committee.

N. Termination of Political Committee Status

Comments are sought on possible conforming amendments to 11 CFR 102.3(a), which incorporate the Commission's policies on termination of a political committee's registration and reporting obligations. The draft rules continue the current procedures whereby political committees may either indicate their intention to terminate on a regularly scheduled report or they may file a written statement at any time containing the necessary information. New language would be added to clarify that a political committee's reporting obligations end upon notification that the Commission has accepted its termination report. This is generally a routine administrative act. However, the draft rules would also list situations which preclude termination, including while the political committee is involved in an enforcement matter, FEC

audit, or litigation with the Commission, and when it has not yet satisfied all requirements of a signed conciliation agreement.

O. Additional Issues

The Commission also requests comments on the compliance process generally, and on several issues for which draft language has not been included in the proposed rules which follow. First, the Commission is considering whether oral hearings should be held in enforcement matters. The possibility of conducting oral enforcement hearings presents a number of questions, beginning with when they should be held. The alternatives are to hold them whenever a respondent or respondent's counsel requests one, or whenever one or more Commissioners would find it helpful. Another option is to hold hearings only for certain types of matters, such as those involving allegations of knowing and willful violations, or MURs involving violations exceeding a given amount, or MURs that reach a certain stage, or only for enforcement matters that involve complex legal or factual issues.

Another consideration is who would have the opportunity to testify. It could be limited to counsel for respondents, or extended to include the respondents themselves, whether or not they are represented by counsel. If a respondent or a respondent's counsel does not want to appear at a hearing, would it ever be appropriate for the Commission to compel them to attend or testify? Should other respondents and their attorneys also be permitted to be present during the hearing? If so, should they have the opportunity to testify and perhaps to cross-examine the person testifying at the hearing? In addition, should complainants have the opportunity to request an oral hearing either when they first file a complaint or when the Commission dismisses their complaints?

The answers to these questions may depend upon the point in the enforcement process when oral hearings would be held. The options are to hold hearings either during the investigation, or after the probable cause briefs have been filed, or at various times throughout the enforcement process, including for example hearings on motions to quash or modify subpoenas. Hearings held during the course of an investigation would permit the Commissioners and the General Counsel to ask factual questions of the attorney and/or the respondent pertinent to the investigation. However, procedures would be needed to spell out whether objections could be raised on the basis of relevancy, scope, the Fifth Amendment, attorney-client privilege or other grounds, and how any such objections would be resolved. Another consideration is whether enforcement hearings could replace some depositions, or whether they should be postponed until after all necessary depositions have been conducted.

An alternative is to restrict enforcement hearings to the probable cause stage, so the respondents may present orally the arguments made in their briefs. Under this approach, the hearing would be modeled after an appellate argument. Another question is whether the matter would need to be re-briefed if significant new evidence is elicited in response to questioning.

An important consideration is the topics to be addressed during enforcement hearings. This could include questions of law, interpretations of the FECA and Congressional intent, and the application of the FECA to the facts at hand. Alternatively, enforcement hearings could also serve to resolve questions of fact, including the credibility of witnesses. Comments are sought on whether it would be of value to address other topics at enforcement hearings, such as the terms of the conciliation agreement, the amount of a civil penalty, or the inclusion of an admissions clause.

Comment is also sought on the procedures that would need to be established for holding a hearing. For example, if a request for a hearing is received, the General Counsel could make a recommendation on whether to have a hearing. Once the Commission votes on holding the hearing, the requester could be informed of the decision. If the request is granted, a hearing date and time would then be scheduled. Another question is whether a court reporter would be needed to prepare a transcript. If so, cost considerations might require those who have requested the hearing to pay the costs of hiring a court reporter and preparing the transcript.

There are several options regarding how many Commissioners would normally be present at an enforcement hearing. It could either be the whole Commission, or a panel of less than the whole Commission, or only those Commissioners who believe they may find the hearing helpful. A quorum may not be needed if no action is taken at that point.

A broader concern is that oral enforcement hearings at any stage may necessitate increasing the resources the Commission devotes to enforcement. Hearings may also increase the respondent's expenses and unduly prolong the enforcement process, at least for some cases. Comments are requested on ways to reduce the amount of resources needed, and ways to avoid procedural delays.

The Commission also seeks comments on precluding complainants from refiling the same compliant with the FEC after it has been dismissed. Please note that this approach would not bar complainants from filing new complaints which present new evidence against the respondents. Comments are also sought on whether to treat a complainant's failure to bring an issue to the Commission's attention in a complaint, or in an amendment to a complaint, as a waiver of the complainant's right to raise the issue in a suit objecting to the Commissions dismissal, pursuant to 2 U.S.C. 437g(a)(8). Such a rule may lessen the number of suits filed against the Commission by providing complainants opportunities to resolve matters within the framework of the compliance process. This approach would also be consistent with previous judicial decisions. *In re Federal Election Campaign Act Litigation*, 474 F. Supp. 1044 (D.D.C. 1979); *Stern* v. *FEC*, C.A. No. 89–0089, slip op. at 10 (D.D.C. Aug. 31, 1989) (Court lacked subject matter jurisdiction to hear allegations of violations which involved facts complainant had not originally raised to the FEC) *aff'd on other grounds*, 921 F.2d 296 (D.C. Cir. 1990).

The Commission is also considering whether the compliance rules should state which documents in a compliance matter would constitute the administrative record. For example, the administrative record would include documents and evidence such as the complaint, the response to the complaint, the General Counsel's and respondents' briefs, and the certifications of Commission votes. On the other hand, the Commission has never considered the administrative record to include documents in the files of individual Commissioners, or documents in FEC employees' files which were never forwarded to the Commissioners or placed in the official file. It would also not be appropriate to include in the administrative record transcripts or tapes of Commission discussions of compliance matters. Although these materials are sometimes made available under the Freedom of Information and Government in the Sunshine Acts, they may not provide an adequate explanation of the reasons for the Commission's decisions in compliance matters. The Commission welcomes comments regarding which

documents should be considered part of the administrative record.

Another possible topic for inclusion in the compliance rules in 11 CFR Part 111 is the issuance of statements of reasons setting forth an explanation for the Commission's dismissal of a compliant. Comments are requested as to whether it would be helpful to include a general statement explaining when statements of reasons are issued. They are prepared when the Commission does not approve by the requisite four votes a General Counsel's recommendation to go forward, and as a result part or all of a complaint is dismissed. See *Democratic Congressional Campaign Committee* v. *Federal Election Commission*, 831 F.2d 1131 (D.C. Cir. 1987); *Common Cause* v. *Federal Election Commission*, 676 F. Supp. 286 (D.D.C. 1984). In these situations, the reasons for the dismissal of the entire complaint, or a particular respondent or allegation, cannot be found in the General Counsel's report.

Comments are also sought on whether the regulations should specify the circumstances in which investigatory materials may be provided to respondents to assist them in preparing their briefs at the probable cause stage. For example, such language could indicate that investigatory materials relied upon in the General Counsel's brief will be provided, upon request, if this would be in the interest of furthering the investigation, such as where there is an issue of credibility. Please note that the Commission is not required to release these investigatory materials to the subject of the investigation under *S.E.C.* v. *O'Brien*, 467 U.S. 735 (1984).

Questions have also been raised as to when the Commission will accept enforcement-related documents transmitted by facsimile machine. The Commission cannot accept faxed complaints or conciliation agreements because an original signature is required. However, comments are sought on the feasibility and desirability of accepting facsimiles of responses to complaints, designations of counsel, requests for extensions of time, motions to quash or modify subpoenas, other investigatory documents, and respondents' briefs. The drawbacks of accepting facsimiles are that they are more difficult to read, and they may not always be transmitted correctly and completely. Thus, a hard copy backup would be required.

The Commission welcomes comments on the proposed revisions to the compliance regulations and the issues presented in this Notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the attached proposed rules, if promulgated would clarify the Commission's enforcement practices and procedures under the Federal Election Campaign Act, as amended. Therefore, these procedural rules would have little, if any, economic effect on a substantial number of small entities.

List of Subjects

11 CFR Part 4

Freedom of Information.

11 CFR Part 5

Archives and records.

11 CFR Part 7

Administrative practice and procedure, Conflict of interests.

11 CFR Part 102

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

11 CFR Part 111

Administrative Practice and Procedure, Elections.

For the reasons set out in the preamble, it is proposed to amend chapter I of title 11 of the Code of Federal Regulations as follows:

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 4 would continue to read as follows:

Authority: 5 U.S.C. 552, as amended.

2. 11 CFR Part 4 would be amended by revising paragraphs (a)(3) and (a)(12) of § 4.4 to read as follows:

§ 4.4 Availability of records.

(a) * * *

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which all respondents are sent notifications that the Commission has voted to take no further action and to close such an enforcement file. * * *

(12) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent, following the termination of all enforcement proceedings with regard to every respondent in that matter.

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PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

3. The authority citation for part 5 would continue to read as follows:

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a) and 31 U.S.C. 9701.

4. 11 CFR Part 5 would be amended by revising paragraphs (a) (3) and (4) of § 5.4 to read as follows:

§ 5.4 Availability of records.

(a) * * *

(3) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent, following the termination of all enforcement proceedings with regard to every respondent in that matter.

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which all respondents are sent notifications that the Commission has voted to take no further action and to close such an enforcement file.

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PART 7—STANDARDS OF CONDUCT

5. The authority citation for part 7 would continue to read as follows:

Authority: 5 U.S.C. 7321 *et seq.*; 18 U.S.C. 207.

6. 11 CFR part 7 would be amended by revising paragraph (a) of § 7.14 to read as follows:

§ 7.14 Prohibition against making notifications and investigations public.

(a) Commission employees are warned that they are subject to criminal penalties if they discuss or otherwise make public any information or actions pertaining to a notification or investigation under 2 U.S.C. 437g, without the written permission of the person notified or being investigated. Such communications are prohibited by 2 U.S.C. 437g(a)(12)(A). The provisions of this section do not prohibit communications permitted under 11 CFR part 111.

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

7. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

8. 11 CFR part 102 would be amended by revising paragraph (a)(1) of § 102.3 to read as follows:

§ 102.3 Termination of registration (2 U.S.C. 433(d)(1)).

(a)(1) A political committee (other than a principal campaign committee) may terminate its registration and reporting obligations by so indicating on a regularly scheduled report of receipts and disbursements, or by filing a written statement containing the same information at the place of filing specified at 11 CFR part 105. Except as provided in 11 CFR 102.4(c), only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. The termination report or written statement shall provide a final report of receipts and disbursements, and shall include a statement as to the purpose for which residual funds will be used, including a statement as to whether such residual funds will be used to defray expenses incurred in connection with an individual's duties as a holder of federal office. The political committee's reporting obligation ends when it is notified that the termination report or written statement has been accepted. The political committee shall not terminate;

(i) While the political committee is a respondent in an ongoing compliance matter under 11 CFR part 111;

(ii) While the Commission is conducting an audit or field investigation of the political committee;

(iii) During the sixty (60) day period beginning on the date the Commission dismisses a complaint against the political committee;

(iv) During an ongoing civil action under 2 U.S.C. 437g(a) (5), (6) or (8) until thirty (30) days after a final non-appealable judgment dismissing the civil action with prejudice; or

(v) Prior to satisfying any outstanding repayment obligations and court judgments, or prior to complying with all requirements of a signed conciliation agreement, including payment of civil penalties.

* * * * *

9. 11 CFR part 111 would be revised to read as follows:

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

Sec.

111.1 Scope (2 U.S.C. 437g).
111.2 Computation of time.
111.3 Initiation of compliance matters (2 U.S.C. 437g(a) (1), (2)).
111.4 Complaints (2 U.S.C. 437g(a)(1)).
111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).
111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).
111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).
111.8 Internally generated matters; referrals (2 U.S.C. 437g (a)(2) and (b).
111.9 The reason to believe finding; notification; reconsideration (2 U.S.C. 437g(a)(2)).
111.10 Investigation (2 U.S.C. 437g(a)(2)).
111.11 Written questions under order (2 U.S.C. 437d(a)(1)).
111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a) (3), (4)).
111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a) (3), (4)).
111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).
111.15 Motions to quash or modify a subpoena or order (2 U.S.C. 437d(a) (3), (4)).
111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).
111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).
111.18 Conciliation (2 U.S.C. 437g(a)(4)).
111.19 Referrals to the Attorney General (2 U.S.C. 437g(a)(5)(C) and 437g(c)).
111.20 Civil and criminal penalties (2 U.S.C. 437g (a)(5), (a)(6) and (d)).
111.21 Civil proceedings (2 U.S.C. 437g(a) (5)(D) and (6)).
111.22 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).
111.23 Confidentiality; waiver (2 U.S.C. 437g(a) (4)(B)(i), and (12)).
111.24 Ex parte communications.
111.25 Representation by counsel; notification.
111.26 Extension of time; untimely filing.
111.27 Liability of treasurers and candidates.

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8).

§ 111.1 Scope (2 U.S.C. 437g).

These regulations provide procedures for processing possible violations of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, *et seq.*) and chapters 95 and 96 of the Internal Revenue Code of 1954 (26 U.S.C. 9001, *et seq.* and 9031 *et seq.*).

§ 111.2 Computation of time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. As used in this section, the term "legal holiday" includes New Year's Day, the Birthday of Martin Luther King, Jr., President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the United States by the President or the Congress of the United States.

(b) *Special rule for periods less than eleven days.* When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(c) *Special rule for service by mail.* Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission or such person and the paper is served by or upon the Commission or such person by mail, three (3) business days shall be added to the prescribed period. It will be presumed that the paper has been received and that service has been accomplished at the conclusion of that period of time.

(d) For purposes of the time limits specified in 11 CFR Part 111, a document is considered to be submitted to the Commission on the day it is actually received by the Commission.

§ 111.3 Initiation of compliance matters (2 U.S.C. 437g(a) (1), (2)).

(a) Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities or on the basis of a referral from an agency of the United States or of any state. A *sua sponte* compliance matter may be initiated when a person, including an individual or a political committee, informs the Commission in writing that he or she or the political committee has committed a violation of a statute or regulation over which the Commission has jurisdiction.

(b) Matters initiated by complaint are subject to the provisions of 11 CFR 111.4 through 111.7. Matters initiated on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities or on the basis of referrals from other agencies and *sua sponte* compliance matters are subject to

the provisions of 11 CFR 111.8. All compliance matters are subject to the provisions of 11 CFR 111.2 and 111.9 through 111.27.

§ 111.4 Complaints (2 U.S.C. 437g(a)(1)).

(a) Any person who believes that a violation of any statute or regulation over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing with the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted. Complaints submitted shall be originals, not photocopies or facsimiles.

(b) A complaint shall comply with the following:

(1) It shall provide the full name and address of the complainant; and

(2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized. The jurat shall state that the complaint was both sworn and subscribed.

(c) All statements made in a complaint shall be made under penalty of perjury and subject to the provisions of 18 U.S.C. 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint should conform to the following provisions:

(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation, along with respondents' address, whenever possible;

(2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;

(3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

(4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant. When available, the original of any documentation, not a copy, should be provided.

(e) The Commission will consider complaints based on news stories if such stories set forth specific facts sufficient to comply with the provisions of paragraph (d) of this section. In addition, all complaints based on news stories must comply with the provisions of paragraph (b) of this section.

(f) *Additional information.* Following the filing of a complaint with the Commission, a complainant may file additional information with the Commission relevant to the original complaint.

(1) *Amended complaints.* If such additional information describes alleged violations of statutes or regulations over which the Commission has jurisdiction which were not implicated by the original complaint, or identifies persons or entities not implicated by the original complaint as respondents, such additional information shall be deemed an amended complaint. Amended complaints shall comply with the requirements for complaints set forth in this section and are subject to the requirements set forth in 11 CFR 111.5 and 111.6.

(2) *Supplemental information.* If such additional information relates solely to the statutes or regulations implicated by the original complaint and to the persons or entities who, according to the original complaint, were alleged to have committed such violations, such additional information will be deemed supplemental information. A submission of supplemental information is subject to the requirements of this section (except paragraphs (a), (b), and (d)), but is not subject to the requirements of 11 CFR 111.5 and 111.6.

(g) *Consolidation and severance.* The Commission may, upon written request from a respondent, or upon the Commission's own motion, consolidate or sever compliance matters which involve:

(1) The same respondents;

(2) Substantially the same issues;

(3) Common questions of law or fact; or

(4) Other factors which warrant a determination by the Commission that the compliance matters should be joined or severed including, but not limited to, the avoidance of unnecessary costs or delays of time.

§ 111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).

(a) Upon receipt of a complaint, the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements, shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint.

(b) If a complaint does not comply with the requirements of 11 CFR 111.4, the General Counsel shall so notify the complainant within the five (5) day period specified in 11 CFR 111.5(a), that no action will be taken on the basis of that complaint.

§ 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from service of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been submitted to the Commission within the fifteen (15) day period specified in 11 CFR 111.6(a).

(c) For purposes of 11 CFR part 111, the date of dismissal of a complaint by the Commission will be determined pursuant to 11 CFR 111.21(a).

§ 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 CFR 111.6(a), or the receipt of a response as specified by 11 CFR 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 CFR 111.6(a).

§ 111.8 Internally generated; referrals (2 U.S.C. 437g (a)(2) and (b)).

(a) On the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or of any state, or on the basis of a *sua sponte* complaint, the General Counsel may recommend in writing, or a member of the Commission may make a motion, that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) Prior to taking any action pursuant to this section against any person for

failure to file a disclosure report required by 11 CFR 104.5(a)(1)(iii) for the calendar quarter immediately preceding the election involved or by 11 CFR 104.5(a)(1)(i), the Commission shall notify such person of the failure to file the required reports. If a satisfactory response is not received within four (4) business days, the Commission shall publish before the election the name of the person and the reports such person has failed to file.

§ 111.9 The reason to believe finding; notification; reconsideration (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 CFR 111.7 and any response of a respondent submitted pursuant to 11 CFR 111.6, or after reviewing an internally-generated recommendation as described in 11 CFR 111.8, or after considering a motion made by a member of the Commission, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding. The notification will include the legal basis and the alleged facts which support the Commission's action. In an appropriate case, the Commission may send a respondent a letter of admonishment, which warns against specific activities which constitute a violation of a statute or regulation over which the Commission has jurisdiction.

(b) The Commission will not entertain a respondent's request for reconsideration or rescission of a determination made pursuant to 11 CFR 111.9(a) that it has reason to believe that the respondent has violated a statute or regulation over which the Commission has jurisdiction, except where an incurable procedural defect has occurred.

(c) If the Commission finds no reason to believe, or otherwise terminates its enforcement proceedings, the General Counsel will so advise both complainant and respondent by letter. See 11 CFR 111.21(a).

§ 111.10 Investigation (2 U.S.C. 437g(a)(2)).

(a) An investigation shall be conducted in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur, unless the information available to the Commission from its own records or from the respondent makes further inquiry unnecessary, or unless the Commission decides by an affirmative vote of four (4) of its members to take no further action.

(b) The Commission may commence its investigation immediately after making its determination that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction.

(c) In its investigation, the Commission may utilize the provisions of 11 CFR 111.11 through 111.15. The investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering. The Federal Rules of Civil Procedure regarding discovery do not govern the Commission's investigations, except as provided in 11 CFR 111.12(c) and 111.23(c).

§ 111.11 Written questions under order (2 U.S.C. 437d(a)(1)).

The Commission may authorize its Chairman or Vice Chairman to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which such answers must be submitted.

§ 111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a) (3), (4)).

(a) The Commission may authorize its Chairman or Vice Chairman to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition of otherwise.

(b) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena will so state and will advise the deponent or person subpoenad that all testimony will be under oath. A deposition may be taken before any person having the power to administer oaths. When a deposition is taken, no person shall be present or represented other than the witness and his or her counsel, the stenographic reporter, and members of the Commission staff. If none of those persons are authorized to administer oaths, then a person so authorized shall also be present.

(c) The Federal Rules of Civil Procedure, Rule 30(e), shall govern the opportunity to review and sign depositions taken pursuant to this section.

§ 111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a) (3), (4)).

(a) Service of a subpoena, order or notification upon a person named therein will be made by delivering a copy to that person in the manner described by paragraphs (b), (c), (d) and (e) of this section. In the case of subpoenas, fees for each day's attendance and mileage will be tendered as specified in 11 CFR 111.14.

(b) Whenever service is to be made upon a person who has advised the Commission of representation by an attorney, pursuant to 11 CFR 111.25, the service will be made upon the attorney by any of the methods specified in paragraph (c), (d) or (e) of this section.

(c) Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, by leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with some person of suitable age and discretion residing therein, by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.

(d) When the person to be served is not a natural person and is not a political committee, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered, certified or first class mail to the person at its place of business, by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, by mailing a copy by registered, certified or first class mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

(e) For political committees, delivery of subpoenas, orders, and notifications may be made by mailing a copy by registered, certified, or first class mail to either the treasurer or assistant treasurer or to the political committee's address, as listed in the last Statement of Organizations filed with the Commission, or by handing a copy to the treasurer or assistant treasurer, or by any other method whereby actual notice is given.

§ 111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).

Witnesses subpoenaed to appear for depositions will be paid the same fees and mileage as witnesses in the courts of the United States. Such fees may be tendered at the time the witness appears for such deposition, or within a reasonable time thereafter.

§ 111.15 Motions to quash or modify a subpoena or order (2 U.S.C. 437d(a) (3), (4)).

(a) Any person to whom a subpoena or order is directed may, prior to the time specified therein for compliance, but in no event more than five (5) days after the date of receipt of such subpoena or order, apply to the Commission to quash or modify such subpoena or order, and shall accompany such application with a brief statement of the reasons therefor. Motions to quash or modify shall be filed with the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted.

(b) A timely motion to quash or modify a subpoena or order must be filed to exhaust administrative remedies as to the subpoena or order. Any objection to a subpoena or order which is not presented in a timely motion to quash or modify the subpoena or order is waived for all purposes.

(c) The Commission may deny the motion, or quash the subpoena or order, or modify the subpoena or order.

(d) The person subpoenaed or ordered and the General Counsel may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena or order, but such agreements will be confirmed by the General Counsel in writing.

§ 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).

(a) Upon completion of the investigation, the General Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether or not the Commission should find probable cause to believe that a violation has occurred or is about to occur.

(b) The General Counsel should notify each respondent of the recommendation and enclose a copy of his or her brief.

(c) With fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, setting forth respondent's position on the factual and legal issues of the case. If possible, ten (10) copies of such brief should be filed with the Commission Secretary and three (3) copies should be submitted to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) After reviewing the respondent's brief, the General Counsel shall advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

§ 111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).

(a) If the Commission, after having found reason to believe and after following the procedures set forth in 11 CFR 111.16, determines by an affirmative vote of four (4) of its members that there is probable cause to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, the Commission will authorize the General Counsel to so notify the respondent by letter. In an appropriate case, the Commission may send the respondent a letter of admonishment, which warns against specific activities which constitute a violation of a statute or regulation over which the Commission has jurisdiction.

(b) If the Commission finds no probable cause to believe or otherwise terminates its enforcement proceedings, the General Counsel will so advise both respondent and complainant by letter. See 11 CFR 111.22(a).

§ 111.18 Conciliation (2 U.S.C. 437g(a)(4)).

(a) Upon a Commission finding of probable cause to believe, the General Counsel shall attempt to correct or prevent the violation by informal methods of conference, conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(b) A conciliation agreement is not binding upon either party unless and until it is signed by the respondent (or respondent's designated representative) and by the General Counsel (or designee) upon approval by the affirmative vote of four (4) members of the Commission.

(c) If a probable cause to believe finding relating to an upcoming election is made within forty-five (45) days prior to that election, such conciliation attempt shall continue for at least fifteen (15) days from the date of such finding. In all other cases, such attempts by the Commission shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(d) Nothing in these regulations shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the General Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. Any conciliation agreement reached under this paragraph is subject to the provisions of paragraph (b) of this section and shall have the same force and effect as a conciliation agreement reached after a Commission finding of probable cause to believe.

(3) If a conciliation agreement is reached between the Commission and the respondent, the General Counsel will send a copy of the signed agreement to both complainant and respondent.

§ 111.19 Referrals to the Attorney General (2 U.S.C. 437g(a)(5)(C) and 437g(c)).

(a) If the Commission by an affirmative vote of four (4) of its members determines that there is probable cause to believe that a respondent knowingly and willfully violated a statute or regulation over which the Commission has jurisdiction, the Commission may refer the matter to the Attorney General of the United States. The Commission will authorize the General Counsel to so advise the respondent by letter.

(b) If the Commission refers a matter to the Attorney General of the United States, the time periods described in 11 CFR 111.18(c) for attempting to reach a conciliation agreement will be suspended. If the Commission is notified that the Attorney General will not pursue the matter, or if the Commission determines that it is appropriate for the Commission to continue to pursue the compliance matter, the Commission will so inform the respondent(s) and will reactivate the time periods for attempting to reach a conciliation agreement.

§ 111.20 Civil and criminal penalties (2 U.S.C. 437g (a)(5), (a)(6) and (d)).

(a) For civil or criminal penalties owed by candidates, political committees or their treasurers under 2 U.S.C. 437g(a)(5), (a)(6) and (d), permissible funds received expressly and exclusively to pay the penalties shall be deposited in an account at the political committee's campaign depository, or in the legal and accounting compliance fund of a presidential candidate receiving public funding under 11 CFR part 9001, *et seq.* The civil or criminal penalty shall be paid by check or similar draft drawn on the account.

(b) Funds which do not meet the limitations and prohibitions of the Act may be used to pay the civil and criminal penalties described above, but

shall not be deposited in any account at the political committee's campaign depository, or in the legal and accounting compliance fund of a presidential candidate receiving public funding under 11 CFR part 9001, *et seq.*

(c) Permissible funds received or spent under paragraph (a) of this section shall be reported as itemized other receipts or itemized disbursements, regardless of amount. Funds received or spent under paragraph (b) of this section shall be reported as itemized memo entries of other receipts and disbursements, regardless of amount. Receipts and disbursements which relate to the same civil or criminal penalty shall be disclosed on the same report.

§ 111.21 Civil proceedings (2 U.S.C. 437g(a) (5)(D) and (6)).

(a) If no conciliation agreement is finalized within the applicable minimum period specified by 11 CFR 111.18(c), or if a conciliation agreement is finalized and the respondent violates any provision of that conciliation agreement, the General Counsel may recommend to the Commission that the Commission authorize a civil action for relief in an appropriate court of the United States.

(b) Upon recommendation of the General Counsel, the Commission may, by an affirmative vote of four (4) of its members, authorize the General Counsel to commence a civil action for relief in an appropriate court of the United States. The General Counsel will advise both the complainant and the respondent(s) by letter of the authorization to commence a civil action and of the final disposition of the civil action. The General Counsel will also advise the respondent(s) by letter of the initiation and final disposition of any civil action brought under 2 U.S.C. 437g(a)(8).

(c) The provisions of 11 CFR 111.18(c) shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement even after a recommendation to file a civil action has been made pursuant to this section. Any conciliation agreement reached under this paragraph is subject to the provisions of 11 CFR 111.18(b) and shall have the same force and effect as a conciliation agreement reached under 11 CFR 111.18(c).

(d) An additional civil penalty is authorized under 2 U.S.C. 437g(a) (5) and (6) for a violation of a conciliation agreement. If a political committee violates a conciliation agreement, the Commission may commence a civil action against both the political committee and the committee's treasurer who is a party to the conciliation agreement.

§ 111.22 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

(a) If the Commission makes a finding of no reason to believe, or no probable cause to believe, or votes to take no further action and to close an enforcement file, it will make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to the complainant(s) and the respondent(s). The Commission will not make such actions and findings public, and will not send the complainant(s) the required notifications, until it votes to close the enforcement file and take no further action with respect to all respondents. Whenever the Commission dismisses a complaint, the date of dismissal is the date on which the Commission votes to close the enforcement file with respect to all respondents in the compliance matter.

(b) If a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith, following the termination of all enforcement proceedings with regard to every respondent in that matter.

(c) Nothing in this section should be construed to limit the ability of the Commission to make public information developed in the course of an investigation to support its position in any litigation.

(d) For any compliance matter in which the Commission commences a civil action pursuant to 11 CFR 111.21, it will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notifications of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

§ 111.23 Confidentiality; waiver (2 U.S.C. 437g(a)(4)(B)(i), and (12)).

(a) Except as provided in this section, no notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the notification was sent, the investigation conducted, or the finding made.

(b) Except as provided in 11 CFR 111.22(b), no conciliation efforts conducted pursuant to 11 CFR 111.18, including any action by the Commission or by any person and any information derived in connection with such efforts, may be made public by the Commission unless the respondent waives his or her privilege of confidentiality in accordance with paragraph (d) of this section and the Commission approves the release of such information.

(c) Nothing in these regulations should be construed to prevent the introduction of evidence in the courts of the United States which would otherwise be properly introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure. Moreover, nothing in these regulations should be construed to prevent the Commission from disclosing information concerning the status of a compliance matter to the complainant in that matter if this would aid the efficient conduct of Commission business, provided that the complainant signs an agreement not to disclose any of the information before it is made public by the Commission under 11 CFR 111.22. The agreement shall state that public disclosure by the complainant of the information provided constitutes a violation of 2 U.S.C. 437g(a)(12). Nothing in these regulations shall preclude the Commission from making publicly available copies of complaints properly filed with the Commission. See 11 CFR 111.24 regarding ex parte communications concerning complaints.

(d) (1) A respondent may waive his or her privilege of confidentiality in a compliance matter by so informing the Commission in writing.

(2) If a respondent waives his or her privilege of confidentiality, any person may request the Commission release information relating to the compliance matter. The request must be made in writing.

(3) The Commission will consider the request in accordance with the Freedom of Information Act, the Government in the Sunshine Act, and all relevant privileges which may limit or preclude the release of any or all information requested. The Commission will only release information which pertains to the respondent waiving confidentiality, and which is reasonably segregable from information pertaining to all other respondents in the compliance matter.

§ 111.24 Ex parte communications.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in compliance matters pending before the Commission pursuant to 11 CFR part 111, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an

investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any ex parte communication relative to the factual or legal merits of any compliance matter, nor will any Commissioner or member of any Commissioner's staff make or entertain any such ex parte communications.

(b) The prohibition of this regulation shall apply from the time a complaint is filed with the Commission pursuant to 11 CFR part 111 or from the time that the Commission determines, on the basis of information ascertained in the normal course of its supervisory responsibilities, that it has reason to believe that a violation has occurred or may occur pursuant to 11 CFR part 111, and remains in force until the Commission has finally concluded all action with respect to the compliance matter in question.

(c) Nothing in this section should be construed to prohibit contact between a respondent or respondent's attorney and any attorney or staff member of the Office of General Counsel in the course of representing the Commission or the respondent with respect to a compliance matter or civil action. No statement made by such a Commission attorney or staff member during any communication shall bind or estop the Commission in any way.

§ 111.25 Representation by counsel; notification.

(a) If a respondent or witness wishes to be represented by counsel with regard to any compliance matter pending before the Commission, the respondent or witness shall so advise the Commission by sending a letter of representation signed by the respondent or witness, which letter shall state the following:

(1) The name, address, and telephone number of the counsel; and

(2) A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of the respondent or witness.

(b) The Commission will have no contact with any person claiming to represent a respondent or witness until receipt of a letter of representation. Upon receipt of a letter of representation, the Commission will have no contact with the respondent or witness except through the designated counsel, unless authorized in writing by the respondent or witness.

(c) The Commission will continue to contact only the designated counsel until notified in writing by either the designated counsel or the respondent or the witness that the designated counsel has withdrawn from representing the respondent or witness or that the designation has been withdrawn by the respondent or witness. A withdrawal does not affect the validity of any actions taken or statements made by the designated counsel on behalf of the respondent or witness. The withdrawal also does not in itself revoke any pending conciliation offers submitted to the Commission by that counsel. Upon receipt of a notification of withdrawal, the Commission will communicate with only the respondent or witness until it receives another letter of representation in accordance with paragraph (a) of this section.

§ 111.26 Extension of time; Untimely filing.

(a) Whenever a person has a right or is required to take action within a period of time prescribed by this Part or by notice given thereunder, the person may apply to the Commission for an extension of time in which to exercise such right or take such action.

(b) All requests for extensions of time under this Part shall:

(1) Be made in writing;

(2) State specifically the amount of additional time requested and the reason(s) such an extension is necessary; and

(3) Be filed with the Commission no later than five (5) days prior to the last date to exercise the right or take the action. A request for an extension of time to comply with a subpoena or order does not extend the time for filing a motion to quash or modify the subpoena or order. A request for an extension of time to file a motion to quash or modify a subpoena or order shall be filed with the Commission no later than three (3) days after the date of receipt of the subpoena or order.

(c) Requests for extensions of time will not be routinely granted and will not be granted unless the requests are founded on good cause.

(d) The length of time of any extension granted under this section will be determined by the Commission or the General Counsel. The Commission or the General Counsel may grant extensions of time for a shorter length of time than that sought by the requester. The reasons stated in a request for an extension of time will be taken into consideration in determining whether the request is granted, and if so, the length of time allowed.

(e) Requesting an extension of time does not automatically stay any previously established due date. Any extension of time which is granted will run from the previous due date, not from the date on which the extension of time is granted.

(f) Absent extraordinary circumstances, respondents' briefs received after the due date will not be considered by the Commission.

§ 111.27 Liability of treasurers and candidates.

(a) *Commission findings.* In all compliance matters in which the Commission makes reason to believe or probable cause to believe findings against a political committee, the Commission will also name the current treasurer of the political committee in the findings whether or not the alleged violation(s) occurred during the tenure of the current treasurer. Except as provided in paragraph (c)(2) of this section, the treasurer of a political committee will be named in the findings only in his or her official capacity as a representative of the political committee and will not be named as a respondent in an individual capacity. The Commission will name in the findings the treasurer listed in the last Statement of Organization filed by the political committee. In compliance matters in which the Commission makes reason to believe or probable cause to believe findings against an authorized committee, the Commission will not name the candidate in the findings unless there are indications that the candidate had personal knowledge of, or was actively involved in, the actions which resulted in the alleged violation(s), or the candidate is listed as or is acting as the treasurer.

(b) *Substitution of successor treasurers and individuals acting as treasurers.* If at any point during the compliance process the treasurer originally named in the findings by the Commission resigns, dies or otherwise ceases to hold that position, the Commission will substitute the new treasurer in his or her official capacity as a representative of the political committee. If the political committee's treasurer of record ceases to perform the duties of treasurer, and another individual performs some or all of those duties, the individual may be named in his or her capacity acting as treasurer of the political committee.

(c) *Liability*—(1) *Treasurer liability for actions taken in official capacity.* The Commission may find reason to believe or probable cause to believe that the treasurer violated the Act or Commission regulations if the Act or Commission regulations impose a specific responsibility on the treasurer or the political committee.

(2) *Individual liability of treasurers and candidates for certain actions.* In addition to the findings made under paragraph (c)(1) of this section, the Commission may find reason to believe or probable cause to believe that the treasurer or the candidate violated the Act or Commission regulations if the treasurer or candidate had personal knowledge of, or was actively involved in, the actions which resulted in the violation(s).

(3) *Liability of preceding treasurers.* The Commission may find reason to believe or probable cause to believe that a preceding treasurer violated the Act or Commission regulations under paragraph (c)(2) of this section whether or not another individual is the successor treasurer or is acting as treasurer.

Dated: July 1, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–15974 Filed 7–7–93; 8:45 am]

BILLING CODE 6715–01–M

VOL
58
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federal register

Thursday
July 8, 1993

Part V

National Institute for Literacy

Application for New Award for Establishment of the National Center for Adult Literacy and Learning Disabilities for Fiscal Year 1993; Grants Availability; Notice

VOL
58
ISS
129
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NATIONAL INSTITUTE FOR LITERACY

[CFDA No.: 84.257]

Application for New Award for Establishment of the National Center for Adult Literacy and Learning Disabilities for Fiscal Year 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all the information, application forms, regulations, and instructions needed to apply for a cooperative agreement under this competition.

AGENCY: The National Institute for Literacy.

ACTION: The National Institute for Literacy invites applications for a new award for Fiscal Year 1993 to support the establishment of a National Center for Adult Literacy and Learning Disabilities.

DEFINITIONS: For purposes of this announcement the following definitions apply:

"Adult Literacy System" All public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for corrections education, programs supported by the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations. (As stated in the National Literacy Act of 1991.)

"Literacy" An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential. (Act, 1991)

"Screening" A process for recognizing learning disabilities through series of questionnaires or relevant tests.

"Remediation" The process of helping adults with learning disabilities achieve literacy skills. Remediation is not used here in the sense of "cure," since there is no known cure for learning disabilities. There are techniques and approaches to learning that reportedly enable persons with learning disabilities to obtain and maintain information, or to contain and control the impact of the disabilities. However, remediation in this document means using the right tools and techniques to assist adults with learning disabilities in obtaining literacy skills. "Remediation" also means accommodation, as the term is used in the Americans with Disabilities Act—that is, steps taken to enable the participation of persons with disabilities in program and employment opportunities that could otherwise be denied to them solely based on their disability.

PURPOSE OF PROGRAM: The National Institute for Literacy proposes to establish a National Center for Adult Literacy and Learning Disabilities to assure that awareness of learning disabilities becomes an integral part of policy and program planning for adult literacy efforts. The National Institute for Literacy expects to work in a close collaborative relationship with the Center to further the understanding that learning disabilities have a direct impact on all efforts to achieve Goal 5 of the National Education Goals and to assure that adults with learning disabilities can "develop the skills and knowledge necessary to compete in a global economy and exercise the rights and responsibilities of citizenship."

This announcement outlines a 5-year cooperative agreement with an initial award for up to 3 years with an option for 2 additional years, subject to program authorization and availability of appropriations. A non-competing proposal will be required to exercise the option for years 4 and 5. The award will be to develop and operate a Center for Adult Literacy and Learning Disabilities. The overall goal of NIFL is to maximize the effectiveness of local literacy services nationwide. The Center will further this goal by helping NIFL enhance the capacity of all literacy service providers to identify and teach adults with learning disabilities.

This announcement responds to a Congressional request that the NIFL establish a center to "develop a battery of tests for the diagnosis of learning disabilities in adults and intervention strategies to address these disabilities." The NIFL has decided that the intent of Congress would be best served through a Center that focuses on:

(1) Enhancing awareness among literacy practitioners, policymakers, researchers, and adult learners about the nature of learning disabilities and their impact on the provision of literacy services.

(2) Building the capacity of literacy practitioners to serve adults with learning disabilities through training and technical assistance in current best practices for screening and remediation.

(3) Producing and refining knowledge of what works best under what conditions for what types of learner through use of broad field-based research on effective practices for assessing and serving adults with learning disabilities.

(4) Eliminating duplication of effort by using or creating linkages and partnerships among programs and agencies with concern for adult literacy and learning disabilities.

The Director is particularly interested in applicants who develop a five year strategic plan for collaborating with the NIFL to produce the following results for the adult literacy system, including programs supported by the Departments of Education, Labor and Health and Human Services:

1. A universal understanding about learning disabilities and their implications for literacy instruction;

2. A "tool kit" for literacy practitioners that includes a variety of simple, inexpensive, validated intake screening devices and tested instructional approaches for identifying and teaching adults with learning disabilities;

3. A knowledge base about what literacy practices work with what populations of adults with which learning disabilities under what circumstances and in what settings, and a mechanism for continually updating that knowledge;

4. Institutionalized capacity in all states, primarily through State Literacy Resource Centers, to train literacy practitioners in—

a. Identifying and teaching adults with learning disabilities, and

b. Conducting field-based research and development to clarify the different learning styles and teaching methodologies for adults with various specific learning disabilities.

The Center will function in close collaboration with the NIFL and, to the extent possible, will accomplish its objectives through the use of existing NIFL systems for communication, information collection and dissemination, training and technical assistance, and other mutually agreed-upon functions.

For a fuller discussion of the National Institute for Literacy and issues related to the creation of the Center, see **SUPPLEMENTARY INFORMATION.**

PLAN OF OPERATION: The applicant must develop a five-year plan that addresses, for each year, NIFL's goals for the Center, as set forth below. This plan should not exceed fifteen (15) single-spaced pages, or thirty (30) double-spaced pages. The plan may be amplified by material in attachments and appendices, but the body should stand alone to give a complete picture of the Center. Proposals which exceed 15 single-spaced pages or 30 double-spaced pages will not be reviewed.

In addressing the goals, the plan must demonstrate how the applicant will:

- Work collaboratively with the NIFL;
- Work with the state literacy resource centers, especially in the areas of information dissemination, training, and technical assistance;
- Address all goals set forth below in an integrated way;
- Use or create linkages and partnerships that provide for the involvement of State and local literacy-related agencies, especially those supported by ED, DOL, and HHS, in all stages of planning and implementation; and
- Assure input from interested public and private organizations and consumer groups in the area of literacy and learning disabilities, especially universities and other institutions that have done related work.

The plan shall include the following information:

Center Goals: The NIFL has established the following goals to be achieved by the Center within 5 years:

1. To help literacy stakeholders achieve and act on a functional understanding of learning disabilities and their implications for adult literacy practice, with the following results:

a. Literacy students with learning disabilities will be better able to learn.

b. Literacy practitioners will be better able to teach adults with learning disabilities;

c. Literacy program administrators will structure programs and service delivery accordingly;

d. Researchers will reflect this understanding in their research questions and designs; and

e. Federal and State policymakers will incorporate appropriate provisions into public policy;

The applicant must explain how it will work with the NIFL to—

—determine the information needs of each group of stakeholders and what form the information should take;
—prepare the necessary information for each group;
—disseminate the information to each group; and
—document the success of its strategy.

2. To develop a "tool kit" for the screening and remediation of adults with learning disabilities for use by literacy practitioners in every state. The tool kit will include—

a. Simple, inexpensive, validated intake screening devices for identifying learning disabilities in adults seeking literacy services.

The applicant must explain how the screening devices will be—

—designed or refined taking into account all available relevant information, including the results of prior NIFL grants;
—tested and piloted in the full range of literacy programs;
—designed to be appropriate for administration by both professional and non-professional staff in the broad range of literacy programs; and
—acceptable to the literacy-related programs of all Federal agencies, such as ED/ABE, DOL/JTPA, and HHS/JOBS, as part of their client intake process.

b. A diverse set of "best practices" in teaching adults with learning disabilities that have been validated through field-based research in a wide range of literacy programs to determine what works best with what populations of adults, with which learning disabilities, and under what conditions.

With regard to such best practices, the applicant must detail a field-based research design that includes plans for—

—collecting and disseminating information about current practices in years 1, 2, and 3;
—testing practices in the full range of literacy programs, with provisions for training practitioners in data collection, from year 2 on; and
—refining and disseminating tested practices from year 2 on.

3. To fully utilize systems established in every state for training literacy practitioners in the use and refinement of best practices for identifying and teaching adults with learning disabilities. These systems will provide for—

a. training practitioners in the use of the tool kit (i.e., how to screen, which practice to use, how and with which adults);

b. training practitioners in field-based research techniques; and

c. continuous refinement of best practices.

The applicant must describe a design for working with State Literacy Resource Centers to:

—Increase understanding of the connection between literacy and learning disabilities;
—Collect information from local service providers about best practices in screening and remediation; and
—Develop ways of training local literacy service providers in—using "best practices" in screening and remediation; and
—conducting field-based research on screening and remediation "best practices."

In addition to addressing the above goals, the applicant must also develop the following plans:

1. An evaluation plan that—

a. Discusses the anticipated significance and impact of the Center's activities and how they will be confirmed and reported.

b. Identifies an external evaluator, and describe specific plans for using this evaluator to conduct formative and summative evaluations of Center activities.

c. Describes provisions for peer review of all curriculum, training, and technical assistance methods and materials developed through Center activities.

d. Summarizes the anticipated outcomes of the Center based on the goals set by the NIFL.

e. Explains how representative constituencies will be involved throughout the implementation process.

f. Describes and justifies the methods used to ensure that the Center's work is of high quality as evaluated by the above procedures.

2. An organization and management plan that—

a. Describes the administrative mechanisms that will be used to organize and manage the Center.

b. Indicates how the Center will work collaboratively with the NIFL and the assigned Center Liaison.

c. Describes any partnership, consultant or subcontract arrangements, with the rights and responsibilities of each party set forth clearly.

d. Identifies key staff members and describes their specific roles.

e. Describes cost-sharing, cooperative funding, and other financial arrangements. [Cost sharing is not a requirement for this Notice].

3. A work plan that—

a. Summarizes, in a table or diagram, the scheduling of major tasks or milestones, including estimates of funds, time, personnel, facilities, and equipment allocated to each activity of the Center.

b. Presents a schedule for progress and other reports, meetings, and other significant events.

Center Communication, Liaison and Governance: The Plan of Operation must also take into account the following:

Telecommunications Network. The Center must explain how it will provide a seamless interface with the Institute's proposed national database, and include provisions for file transfer, electronic bulletin board, on-line database search capability, fast response surveys, reporting and electronic conferences.

NIFL Center Liaison. The NIFL will appoint a Center for Adult Literacy and Learning Disabilities liaison who will work closely with Center management in day-to-day activities, attend meetings, and conferences, and conduct on-site work reviews and analyses. The Liaison will work within the NIFL offices in Washington, DC and will report directly to the Director of the National Institute for Literacy.

NIFL Advisory Committee. The NIFL will create an advisory committee to:

(1) Give advice and assistance in the development of the Center's activities;

(2) Develop a coordinated approach to lifelong learning for adults with learning disabilities at all levels—Federal, State and local; and

(3) Assist the NIFL in developing national policy to ensure coordination

VOL 58 ISS 129 JL 8 1993 UMI

and collaboration among agencies and offices.

APPLICABLE REGULATIONS: The National Institute for Literacy is subject to the rulemaking requirements of the Administrative Procedures Act (APA). Under the APA, as now codified in Title 5 of the United States Code, section 553, matters relating to public property, loans, grants, benefits, or contracts are not subject to the rulemaking requirement of that section. The National Institute for Literacy is now in the initial stages of establishing a new program recently authorized by Congress and must obligate funds under this authority by September 30, 1993. The National Institute for Literacy considered waiving this exemption to rulemaking requirements but determined that there was too little time to propose rules and offer applicants a reasonable amount of time to prepare applications for the award announced in this notice. Therefore, the National Institute for Literacy has adopted the following rules for the conduct of this competition and the resulting award.

The following regulations of the Department of Education apply:

34 CFR part 74, Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations. The following provisions of 34 CFR part 75: §§ 75.50, 75.51, 75.102–75.104, 75.109, 75.117, 75.190–75.192, 75.200, 75.201, 75.215. 34 CFR part 77, Definitions.

34 CFR part 80, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

34 CFR part 82, New restrictions on Lobbying.

34 CFR part 85, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the Department of Education, they have been adapted by the National Institute for Literacy to meet the needs of this program.

While the National Institute for Literacy is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the National Institute for Literacy except as expressly stated in this Notice.

Selection Criteria: (a)(1) In evaluating applications for a cooperative agreement under this competition, including the Plan of Operation and other required information, the Director uses the following selection criteria.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Criteria—(1) *Plan of Operation.* (40 points) The Director reviews each application to determine the quality of the Center's design, as well as the quality of the five-year plan for developing an appropriate, coherent, and effective program to achieve the Center's goals, including—

(i) The extent to which the design for the Center facilitates the accomplishment of NIFL's goals for the Center;

(ii) The extent to which the plan for each of the five years reflects an understanding of the major tasks necessary to achieve the NIFL's goals for the Center, which are—

1. To help literacy stakeholders achieve and act on a functional understanding of learning disabilities and their implications for adult literacy practice.

2. To develop a "tool kit" for the screening and remediation of adults with learning disabilities for use by literacy practitioners nationwide.

3. To assist in creating and implementing state systems for training literacy practitioners in the use and refinement of best practices for identifying and teaching adults with learning disabilities;

(iii) The extent to which the plan addresses the specific steps to be taken in accomplishing each of NIFL's goals for the Center in each of the five years;

(iv) The extent to which the plan includes specific methods by which the Center will—

1. Work collaboratively with the NIFL;

2. Work with the SLRCs, especially in the areas of information dissemination, training, and technical assistance;

3. Address all goals in an integrated way;

4. Use or create linkages and partnerships that provide for the involvement of State and local literacy-related agencies; and

5. Assure input from interested public and private organizations and consumer groups in the areas of literacy and learning disabilities;

(v) The extent to which the plan ensures proper and efficient organization and management of the project, including the best use of resources and personnel;

(vi) The quality of proposed strategies for providing national leadership in carrying out the Center's mission.

(vii) The quality of the work plan outlined in the application.

(2) *Technical Soundness.* (20 points) The Director reviews each application to determine the technical soundness of the proposed Center, including;

(i) The extent to which the applicant demonstrates a thorough knowledge of current issues in adult literacy and learning disabilities as they relate to the mission of the Center,

(ii) The extent to which the applicant demonstrates knowledge of current best practices being used in screening and remediation efforts for adults with learning disabilities.

(iii) The quality of the design and methodologies to be used in the Center's field research efforts; and

(iv) The quality of plans to establish effective working relationships with other related organizations as required for the achievement of the Center's goals.

(3) *Institutional Capability.* (15 points) The Director reviews each application to determine the capability of the applicant to create and maintain a long-term, high-quality, coherent program of demonstration, dissemination and research in achieving the Center's mission, including:

(i) The applicant's experience working with adults with literacy needs, persons with learning disabilities, low-income clients of programs funded by agencies such as ED, HHS, and Labor, and culturally diverse populations;

(ii) The applicant's experience with field-based research; and

(iii) The applicant's experience in developing materials and methods for training and technical assistance in the areas of best practices.

(4) *Quality of key personnel.* (10 points) The Director reviews each application to determine the quality of key personnel for the Center, including:

(i) The qualifications of the project director and each of the other key personnel to be used in the Center, especially with regard to their experience and training in fields related to the goals of the Center;

(ii) The adequacy of time that each of the key personnel will spend on Center Activities; and

(iii) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

(5) *Budget and cost effectiveness.* (5 points) The Director reviews each application to determine the extent to which:

(i) The budget is adequate to support Center activities; and

(ii) Costs are reasonable in relation to the objectives of the Center; and

(6) *Evaluation Plan.* (10 points) The Director reviews each application to determine the quality of the formative and summative evaluation plan for the Center, including:

(i) The quality of the plan for using an external evaluator;

(i) The quality of the peer review process for evaluating instruments and products produced by the Center;

(ii) The quality of the methods to be used to document the Center's progress in relation to its mission and goals; and

(iii) The methods which will be used to document the impact of the Center's program on its target audiences.

SELECTION OF APPLICATIONS: The Director uses 34 CFR 75.217 in selecting an application for award.

OTHER APPLICATIONS REQUIREMENTS: The application shall include the following:

Project Summary: The proposal must contain a 200-word summary of the proposed Center suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

Budget Proposal: The budget proposal should be bound in a separate document. A summary budget should be prepared for 5 years of work. While we recognize the difficulty of predicting research activities for the out years, complete and detailed budgets are expected for the first three years of work. The budget proposal must also contain a budget for each year of requested support and a cumulative budget for the full term of the cooperative agreement. In addition to submitting a budget for the Center as a whole, applicants should prepare separate budgets for individual activities.

Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all Center costs and should identify contributed costs, and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a partnership formed for purposes of the proposal should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost-sharing is proposed for each budget item. The budget form may be reproduced as needed.

Facsimiles may be used, but do not make substitutions in prescribed budget categories. Additional pages for budget explanation and amplification should be attached and must be consistent with the data and categories on the budget form. All budget requests must be documented and fully justified.

Applications should provide a detailed breakdown for each cost category in the budget summary.

Applications should indicate all direct and indirect costs that the host agency will require of the Center. It should also indicate in detail all resources, whether cash or in-kind, that the applicant or others will provide to the Center over and above the funds provided by the National Institute for Literacy. [Note: Matching is not required for this announcement].

Disclosure of Prior Institute Support: If the Project Director(s) has received Institute funding in the past year, the following information on the prior award is required:

- NIFL award number, amount and period of support;
- A summary of the results of the completed work; and
- A brief description of available materials and other related research products not described elsewhere.

If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the proposal.

Current and Pending Support: The applicant should list major sources of support from Federal, State, or local government agencies, private foundations, and commercial organizations. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other senior personnel, even if they receive no salary support from the project(s). The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the Institute.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

ELIGIBLE APPLICANTS: The following are eligible for a new award under this program: Public and private non-profit institutions, agencies, organizations; consortia of such institutions, agencies or organizations; and individuals.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: August 16, 1993.

AVAILABLE FUNDS: This Center will be awarded as a cooperative agreement. In Fiscal Year 1993, $500,000 is available for the Center for Adult Literacy and Learning Disabilities for the first year of funding. Funding levels for years 2 through 5 depend upon program authority, the availability of funds, and needs as reflected in the approved application.

ESTIMATED NUMBER OF AWARDS: 1.

Note: The National Institute for Literacy is not bound by any estimates in this Notice.

PROJECT PERIOD: Up to 60 months.

INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:

(a) To apply for a cooperative agreement—

(1) Mail the original and ten (10) copies of the application on or before the deadline date of August 16, 1993, to: National Institute for Literacy, 800 Connecticut Avenue, NW; Suite 200, Washington, DC 20006, Attention: (CFDA #84.257).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

VOL 58 ISS 129 JL 8 1993 UMI

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

APPLICATION FORMS: The appendix to this announcement is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III. Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debasement, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 90–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the National Institute for Literacy.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received.

GRANT ADMINISTRATION: The administration of the cooperative agreement for the Center for Learning Disabilities is governed by the conditions of the award letter. The Education Department General Administrative Regulations, (EDGAR) 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86 (July 1, 1992), set forth administrative and other requirements. This document is for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The telephone number is (202) 783–3288 for subscription information. It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants official will request certain organizational, management, and financial information.

The following information on grant administration deals with questions that project directors often raise.

General Requirement: Grants and Cooperative Agreements for Federal financial assistance are subject to certain general requirements, such as compliance with the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990 and other laws and regulations prohibiting discrimination; drugfree workplace requirements; restrictions on lobbying; patent and copyright requirements; cost sharing; and the use of U.S. flag carriers for international travel. These are summarized in the Grant General Conditions. The appropriate terms and conditions will accompany notification of award.

Prior Approval Requirements: Prior written approval from NIFL is required for transferring a significant part of the Center activities; making a major change in objectives or scope; making a change in the project director or level of effort; making rearrangements or alterations costing $10,000 or more; and transferring funds from participant support. These changes require prior NIFL approval.

Transfer of Project Director: When a Project Director plans to leave an institution during the course of an award, the institution has the prerogative to nominate a replacement or request that the award be terminated and closed out. Replacement of the project director is subject to NIFL approval. In those cases where a particular project director's participation is integral to a given project and the original and new institutions agree, the NIFL will facilitate a transfer of the award and the assignment of remaining unobligated funds to the project director's new institution.

Suspension or Termination of Award: NIFL grants and cooperative agreements may be suspended or terminated in accordance with the procedures contained in the Grant General Conditions. Termination may be by mutual agreement. Termination by mutual agreement shall not affect any commitment of funds that, in the judgment of the Institute and the grantee, had become firm before the effective date of the termination.

Reporting: In addition to working closely with the NIFL Liaison, the applicant will be required to submit an annual report of activities. This annual report will be presented to the NIFL staff, the National Institute Advisory Board and Interagency Group. Detailed specifications for the annual report will be provided to the Center within 3 months after the award. For planning purposes, the applicant may assume that the following information will be provided:

- Project(s) Title
- Project Abstract

A concise narrative describing in layman's language the subject, purposes, methods, expected outcomes (including products), and significance of the project

- Significant Products

A list of significant products (as described in the applicant) associated with the Center, together with bibliographic information

- Significant Accomplishments

A past-tense abstract that describes the Center's findings and accomplishments, known uses of these findings and accomplishments, and evidence of positive impact

The Center must also submit the following reports:

- Quarterly Performance

A brief 2-3 page report of progress Due: Within 20 days of the end of the 1st, 2nd, and 3rd quarter of each year.

- Annual reports are due within 20 days of the end of the 4th quarter, except that the annual report for year-3 shall be in the form of a Continuation Application.

Contents to be determined by the NIFL Due: By the end of the 3rd quarter of year-3

- Final Report

Due: 90 days after the expiration of or termination of support.

Electronic Submission of Proposals and Reports: The NIFL is exploring the feasibility of receiving reports and proposals using technology that will be part of the National Literacy Database.

Further information about this activity will be provided by the Institute during year one of the award.

Continuation Proposal: Following year 3 of the award, and to receive funding for years 4 and 5, the recipient is required to submit a continuation proposal. The proposal should describe significant activity during the past three years, and explain what will be accomplished during the next award. This proposal should also contain projections of work for the next year.

Acknowledgment of Support and Disclaimer: An acknowledgment of the NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

> This material is based upon work supported by the National Institute for Literacy under Grant No. (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

> Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Institute for Literacy.

Use of Name and Intellectual Property: With regard to the funded entity under the cooperative agreement to be called "The National Center for Adult Literacy and Learning Disabilities:"

(1) The National Institute for Literacy shall retain title to the above named entity. The recipient shall surrender and cease to use same upon request of the National Institute for Literacy.

(2) The recipient shall not engage the named entity in any activities funded by any other sources without specific written notice to and approval from the National Institute for Literacy; and

(3) Intellectual property rights shall be claimed by the recipient only if granted in writing by the National Institute for Literacy.

Questions concerning the use of the name and intellectual property shall be referred to the Grants Officer.

FOR FURTHER INFORMATION CONTACT: Victor Westbrook, Director, Contracts and Grants, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone: 202–632–1500. FAX: 202–632–1512. Individuals who use a telecommunications device for the deaf (TDD) may call 202–632–1529 between the hours 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION

I. Background

National Institute for Literacy: In 1990 the President and the Nation's Governors adopted National Education goals that included an ambitious agenda for adult literacy and life-long learning. Goal Five states that:

> By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

To further the goal of improving literacy in the United States, the Congress passed Public Law 102–73, the National Literacy Act of 1991, which is the first piece of national legislation to focus exclusively on literacy. The overall intent of the Act, as stated, is:

> To enhance the literacy and basic skills of adults, to ensure that all adults in the United States acquire the basic skills necessary to function effectively and achieve the greatest possible opportunity in their work and in their lives and to strengthen and coordinate adult literacy programs.

In designing the Act, among the primary concerns shared by the Congress and literacy stockholders was the fragmentation and lack of coordination among the many efforts in the field. To address these concerns, the Act created the National Institute for Literacy to:

(A) Provide a national focal point for research, technical assistance and research dissemination, policy analysis and program evaluation in the area of literacy; and

(B) Facilitate a pooling of ideas and expertise across fragmented programs and research efforts.

The Act also provided for State Literacy Resource Centers funded through the Governors' offices to provide support to all local literacy programs and to act as reciprocal links with the NIFL in a national support system for literacy. The NIFL will serve as the hub of this national effort to build literacy programs and delivery systems that work for adults in need. To achieve its goals the NIFL has established the following priorities:

Building awareness and strengthening coordination for literacy at the national level. The NIFL will work with the White House, Congress, and key federal agencies to integrate literacy into the national agenda for achieving key domestic and economic goals.

Building literacy capacity at the State level. The NIFL will assist State efforts to build integrated adult learning systems that can meet the needs of all adults, primarily through its links with SLRCs. The NIFL will focus especially on helping SLRCs to provide training, information dissemination, and program coordination for local literacy practitioners.

Creating a national research agenda for literacy. The Institute will assess the extent of our collective knowledge about how adults learn and how best to serve them, and will develop a collaborative research effort to extend that knowledge.

Establishing an information and telecommunications system for literacy. The NIFL will create an information and electronic communications system that permits it to carry out its other goals and to become the national resource on the knowledge base in literacy.

II. Magnitude of the Issue

In creating the National Literacy Act of 1991, Congress demonstrated its concern about the high costs that accrue to the nation as a whole when so many people are unable to achieve their full potential because of limited literacy skills. The Literacy Act estimates that 30 million adults may fit into this category and that the estimated costs to the nation are upwards of $250 billion per year. There is a growing awareness that many Americans with literacy problems may in fact have learning disabilities which are causing or intensifying their literacy problems.

As is the case with literacy needs, learning disabilities are "invisible," and developing a universally acceptable definition has been a difficult and controversial process. In 1987, the Interagency Committee on Learning Disabilities offered the following definition:

> Learning disabilities is a generic term that refers to a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities or of social skills. These disorders are intrinsic to the individual and presumed to be due to central nervous system dysfunction. Even though a learning disability may occur concurrently with other handicapping conditions (e.g., sensory impairment, mental retardation, social and emotional disturbance), with socioenvironmental influences (e.g. cultural differences, insufficient or inappropriate instruction, psychologic factors), and especially attention deficit disorder, all of which may cause learning problems, a learning disability is not the direct result of those conditions or influences.

While we do not know what percentage of adults with literacy needs have learning disabilities, there is widespread agreement that the number of adult literacy students with learning disabilities is substantial and that the

VOL 58 ISS 129 JL 8 1993 UMI

provision of literacy services is seriously affected by this overlap. Strong indications of the connection between literacy problems and learning disabilities can be found in the data of many related fields.

Current State of Knowledge: There is widespread agreement about the need for simple, inexpensive, validated screening devices to identify learning disabilities in adults. At present literacy practitioners generally have two choices in types of screening tests, each with serious drawbacks:

1. Models that are expensive and time-consuming, which limits their utility for most literacy providers and their clients.

2. Small-scale, untested models that are not accepted as valid by many institutions and programs.

With regard to instructional models, there is also widespread agreement about the need to know more about what works with which populations. Some of the potential difficulties in identifying best practices for adults with learning disabilities are suggested by past research on similar programs for children. In its 1993 request for applications for the development of remediation programs for children with learning disabilities, the National Institute for Child Health and Human Development (NICHD) of the Department of Health and Human Services makes statements that are likely to hold true for adults as well:

"Review of the literature related to * * * learning disabilities suggest that no single treatment/intervention approach or method is likely to yield clinically significant, long-term therapeutic gains in heterogeneous groups of LD children. Likewise, even in homogeneous groups * * * members differ significantly in their development of requisite skills * * *. This suggests that not all children fail to develop oral and written language skills for the same reasons and, as such, will not respond equally well to the same treatment or multi-modality approach. Unfortunately, to date, there exists scant scientific support for the use of particular treatment/interventions or combinations of treatment with different types of oral or written language disabilities."

Some of the reasons identified by NICHD for the lack of valid information about remediation for learning disabilities include—

(1) Faulty definition of learning disabilities,

(2) Lack of isolation of learning disabilities vis a vis other factors,

(3) Poorly described and defined treatment models, and faulty explanation of treatment model development,

(4) Short duration of both service delivery and tracking of impact,

(5) Failure to account for impact of other interventions, including medical interventions, and

(6) Failure to evaluate differences in retention rates for those who were maintained in specialized training and those who transferred to a more generalized educational setting.

However, faulty research—or the lack of research altogether—does not speak to the quality of the treatment. There are models currently in use for screening and remediation of learning disabilities that can be described as "best practices." These provide a point of departure for beginning the effort to help literacy practitioners incorporate the treatment of learning disabilities into service delivery.

Instructions for Estimated Public Reporting Burden. Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comments on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0019, Expiration date: June 1994)

Program Authority: 20 U.S.C. 1213c.

Lilian Dorka,

Acting Interim Director.

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item	Entry
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

VOL 58 ISS 129 JL 8 1993 UMI

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1		$	$	$	$	$
2.						
3						
4						
5 TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f Contractual					
g Construction					
h Other					
i Total Direct Charges (sum of 6a - 6h)					
j Indirect Charges					
k TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructio

General I

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All aplications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4. Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e), the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or

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VOL
58
ISS
129
JL
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1993
UMI

supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333) regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions of State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research,

development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Siginature of Authorized Certifying Official

Title

Applicant Organization

7

Date Submitted

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title,

to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

_____

Name of Applicant

_____

PR/Award Number and/or Project Name

_____

Printed Name and Title of Authorized Representative

_____

Signature

_____

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred,

suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Applicant

PR/Award Number and/or Project Name

Printed Name and Title of Authorized Representative

Signature

Date

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name of description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, D.C. 20503.

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

VOL 58 ISS 129 JL 8 1993 UMI

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 93-16147 Filed 7-7-93; 8:45 am]
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VOL
58
ISS
129
JL
8
1993
UMI

federal register

Thursday
July 8, 1993

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security Directives and Information Circulars; Disposition of Comments to Final Rule

VOL 58 ISS 129 JL 8 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 25853; Amdt. No. 108–6]

RIN 2120–AD14

Security Directives and Information Circulars

AGENCY: Federal Aviation Administration, DOT.

ACTION: Disposition of comments to final rule.

SUMMARY: On July 6, 1989, the Federal Administration (FAA) issued a final rule providing for the issuance of Security Directives and Information Circulars as means of disseminating information concerning threats against civil aviation (54 FR 28982; July 10, 1989). The final rule was effective on July 10, 1989; however, the FAA invited public comments on the final rule until August 9, 1989. Although the FAA has determined that there is no need for any amendment to the final rule as originally issued, this document responds to the comments submitted by the public.

ADDRESSES: The complete docket for the final rule on Security Directives and Information Circulars may be examined at the Federal Aviation Administration, Office of the Chief Counsel (AGC–10), Rules Docket, room 915–G, 800 Independence Avenue SW., Washington, DC 20591, weekdays (except Federal holidays) between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Craig Stier, Office of Civil Aviation Security Policy and Planning (ACP–110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3413.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1989, the Department of Transportation announced civil aviation security initiatives designed to protect passengers and crewmembers traveling on U.S. air carriers. Among these initiatives was a commitment to establish a mandatory Security Directive system. The initiatives were necessary because of the dramatic increase in international terrorism since 1971, the year the FAA's Civil Aviation Security Program was established. In December of 1988, Pan American World Airways (Pan Am) Flight 103 was destroyed by a terrorist bomb over Lockerbie, Scotland, illustrating the vulnerability of civil aviation to terrorist acts.

When the FAA learns, through its analysis of classified and unclassified information, of critical threats against civil aviation, it is crucial that the information and any appropriate countermeasures be disseminated as soon as possible to air carrier security personnel. For this reason, the FAA decided that a system that would significantly improve the capability to disseminate critical threat information quickly and, when necessary, establish mandatory security countermeasures, was needed.

On July 6, 1989, the FAA issued a final rule that established a system for the issuance of Security Directives and Information Circulars (54 FR 28982; July 10, 1989). Prior to the issuance of this rule, notification of threats against civil aviation was made through Security Bulletins that discussed both general security concerns and specific threats. Air carriers were not required to acknowledge receipt of Security Bulletins or to comply with the countermeasures recommended in them. The rule provides that Security Directives will be used to notify U.S. air carriers of specific credible threats against civil aviation and will set forth mandatory countermeasures to be implemented by the carriers. The rule requires air carriers to acknowledge receipt of Security Directives and to notify the FAA of how they have implemented the FAA-prescribed countermeasures. It is the FAA's policy to ensure that all specific, credible threats against any aircraft are completely resolved before that aircraft is permitted to take off. The rule provides that Information Circulars will be used to notify air carriers of general security concerns for which the FAA will not prescribe mandatory countermeasures. In addition, the rule prohibits the release of information contained in both Security Directives and Information Circulars without the prior written authorization of the Assistant Administrator for Civil Aviation Security.

(Since promulgation of the final rule, the Aviation Security Improvement Act of 1990, Public Law 101–604, November 16, 1990, (the Act) created the new position of Assistant Administrator for Civil Aviation Security reporting directly to the Administrator with responsibilities for all security functions within the FAA including implementation and enforcement of the Rule on Security Directives and Information Circulars. In a separate rulemaking action, the FAA intends to revise the nomenclature throughout 14 CFR part 108 to reflect this change. For the sake of clarity, this notice uses the title Assistant Administrator for Civil Aviation Security.)

In order to protect immediately passengers and crewmembers traveling in air transportation from a possible rapid increase in criminal acts against civil aviation, the FAA determined that good cause existed to adopt the final rule without prior notice and opportunity for public comment and to make the rule effective upon publication in the **Federal Register**. In accordance with the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979), the FAA invited the public to comment on the final rule after it was published in the **Federal Register**. Eight comments were received. No comments were received objecting to the concept of disseminating threat information; one comment approves of the rule as written and seven suggest modifications.

On August 4, 1989, shortly after the final rule was issued, the President's Commission on Aviation Security and Terrorism (the Commission) was established to "review and evaluate policy operations in connection with aviation security, with particular reference to the destruction * * * of Pan American World Airways Flight 103" (Executive Order 12686). The Commission released its report on May 15, 1990, and made recommendations pertaining to the gathering and dissemination of threat information. The recommendations are as follows:

- The intelligence and law enforcement communities, and those that receive information collected or analyzed by those communities, should review their procedures to reduce to the minimum the number of persons with access to information on civil aviation threats.
- The U.S. Government should, as a matter of course and policy, consciously consider the question of notification and carefully review the factors outlined. The Department of State, and Department of Justice, in close cooperation with the Department of Transportation, should establish a process and a mechanism by which clearly identifiable officials will consider when and how to provide notification to the traveling public.

With respect to the Commission's first recommendation, the FAA concludes that its final rule is consistent with the Commission's statement. The rule limits distribution of Security Directives and Information Circulars to prescribed personnel and those with an operational need to know. The rule also prohibits disclosure of any information contained

in Security Directives and Information Circulars without prior written authorization of the Assistant Administrator for Civil Aviation Security. The FAA supports the need to review procedures for disseminating threat information and to work closely with other entities who collect, receive, or analyze that information, to establish clear and consistent distribution policies that will further reduce the number of persons with access to it.

Regarding the Commission's second recommendation, the FAA's position remains that there should be no routine public notification of threats, and that threat information should be handled by aviation security professionals who have the ability to analyze the threat and either counter it or order the cancellation of the flight. Moreover, the Act establishes criteria, authority, and responsibility for notification of threats to civil aviation. The Department of Transportation and FAA will work closely with the Departments of State and Justice and the entire intelligence community to consider the advisability of public notification in specific circumstances. The issue of public notification, as raised by the public comments, is also addressed below under "Discussion of Comments."

In October 1989, after the issuance of the final rule and the close of the comment period, the FAA chartered the Aviation Security Advisory Committee (ASAC), to be chaired by the FAA's Assistant Administrator for Aviation Security and to serve as an advisory body and develop recommendations on methods, equipment, and procedures to improve civil aviation security. The FAA will consider any recommendations involving threat analysis and dissemination that may result from the work of the ASAC and will consider further rulemaking action if appropriate. The FAA has already received for consideration the ASAC's recommendations addressing the security response to bomb threats. The recommendations addressed standardized criteria for evaluating threats, dissemination and analysis of information, air carrier and airport security training programs, and demarcating areas of responsibilities and authority.

Discussion of Comments

Airport Operators, Ground Security Coordinators, and In-Flight Security Coordinators Should Be Given Copies of Security Directives and Information Circulars

Two commenters believe that it is essential that Security Directives and Information Circulars be distributed to airport operators as well as air carriers. The Airports Commission for the City and County of San Francisco (Airports Commission) states that, pursuant to FAR Part 107—Airport Security, airport operators are responsible for overall airport security and, therefore, must receive timely, accurate security warnings to ensure effective, coordinated responses to threats against civil aviation. The City of Houston's Aviation Department says that there are three primary parties involved with the safety of the flying public—airlines, airport operators, and the FAA—and that as a part of that triumvirate, airport operators must be included in the information link.

Security Directives and Information Circulars should be disseminated on a need-to-know basis, and the FAA agrees that it is important to include airport operators in the dissemination of threat information when threats are made that affect airport operations. It is the FAA's policy to ensure that Security Directives and Information Circulars are distributed to airport operators when appropriate for effective, coordinated responses. The final rule, however, was directed at U.S. air carriers because the threat to domestic airports is relatively low, and in most instances, the threats addressed by Security Directives or Information Circulars will not affect U.S. airports. The FAA is currently reviewing and updating FAR Part 107—Airport Security, and will evaluate further the need for a special system for security alerts to airports in the context of that rulemaking.

The Air Line Pilots Association (ALPA) states that, at a minimum, the ground security coordinator and the in-flight security coordinator (pilot-in-command) should be notified of every Security Directive and Information Circular. ALPA states that this would help pilots and crewmembers to be especially vigilant for the duration of the threat. Flight Engineers' International Association (FEIA) expresses a similar opinion by stating that the flightcrew has a definite operational need to know and must be advised as soon as possible of the issuance of a Security Directive.

Again, as noted in the response to airport operators, the FAA concludes that all persons with an operational need to know (including crewmembers) should be notified in circumstances in which they are directly and immediately affected by a particular threat. The final rule requires that each Security Directive be distributed to personnel specified in the Security Directive and to other personnel that an air carrier determines have an operational need to know. This is essential to ensure that all personnel with an operational involvement in security-related situations are informed of current threat information. The final rule does not preclude airport operators, in-flight security coordinators, or ground security coordinators from being informed of the issuance of Security Directives. The FAA's analysis of the disseminations of past Security Directives (and their predecessor, Security Bulletins) suggests that in almost all instances at those airports assessed as potentially affected by a security threat, personnel likely to have an operational need to know and who would be provided with Security Directives information under the rule include: airport operators, in-flight security coordinators, and ground security coordinators. Indeed, some of these categories of personnel have been listed in Security Directives issued since the final rule was promulgated in 1989. Because the final rule was designed to cover many contingencies, the FAA determined that it was not feasible to list every category of personnel for which dissemination would be appropriate in every possible threat situation. Instead, the final rule requires certificate holders to distribute Security Directives to those persons that are specified by the FAA and to those persons determined by the carrier to have an operational need to know the information.

The FAA Should Allow Public Access to Threat Information

Senator Alfonse D'Amato comments that although Security Directives will contain some sensitive information that should be protected, he does not agree that specific credible threats should be withheld from the public. Senator D'Amato adds that members of the public deserve to be put in a position where they can protect themselves. The FAA is acutely sensitive to the importance of this issue and has implemented procedures to effect the public notification requirements of Section 109 of the Act. The adopted procedures provide for consideration of several factors prior to issuing a threat notification: specificity of the threat, credibility of intelligence, ability to counter the threat, protection of intelligence sources, impact of cancellation of flight vs. public notification, and ability of passengers and crew to reduce their risks as a result of notification.

The Reporters Committee for Freedom of the Press (Reporters Committee) urges the FAA to amend the final rule to

VOL 58 ISS 129 JL 8 1993 UMI

provide for routine FAA dissemination of specific threat information and does not believe that the Freedom of Information Act (FOIA) or section 316(d)(2) of the Federal Aviation Act of 1958, as amended, provides for the blanket withholding of threat information from the public. The Reporters Committee also states that, even though it recognizes that security systems depend in part on the ability of officials to keep specific surveillance techniques secret, it does not believe that disclosure of threats would compromise passenger safety in any way, and that refusal to disclose threats precludes public oversight of airline and airport security and impairs journalistic comment on government activities. Furthermore, the Reporters Committee believes the FAA should amend the rule to require that air carriers disclose immediately any information that does not directly threaten security.

The FAA realizes that public dissemination of threats to aviation security is a sensitive and controversial issue. Consistent with the adopted rule on Security Directives and Information Circulars and with the adopted rule governing flight and cabin crew notification guidelines (56 FR 27866, June 17, 1991), the current system of evaluating and responding to threats to civil aviation is founded on the principle that it is best for intelligence experts to evaluate threat information before dissemination to personnel directly responsible for dealing with those threats. The air carrier's security experts, generally in consultation with the FAA and other government entities, evaluate threat information against specific FAA-established criteria to determine "specificity" and "credibility." (The terms "specific" and "credible" are not interdependent and are commonly applied by intelligence experts to threat information involving a well defined target and which has been authenticated.)

Excluding those threats which are judged to be groundless or not requiring the application of specific countermeasures is a practical approach, given the hundreds of bogus threats received annually. Eliminating bogus threats is also critical to ensure that real threats are perceived as serious, not diluted in impact by a multiplicity of false alarms. The FAA's view is this limited distribution of threat information helps ensure that genuine threats are handled as thoroughly and expeditiously as possible.

Based on its expertise and experience in aviation security matters and on consultations with the Office of the Secretary of Transportation and other government agencies, the FAA has determined that protecting the confidential sources of threat information, and thereby ensuring the free flow of this critical information to the agency, ultimately increases the security of crewmembers and the traveling public. The decision whether to disclose any threat information contained in a Security Directive or Information Circular is properly part of the FAA's overall aviation security responsibility. Toward that end the FAA is continuing existing control procedures, consistent with Section 109 of the Act, to minimize the number of agency personnel having access to intelligence information on threats to civil aviation.

Under appropriate circumstances, the Department of Transportation issues information on specific domestic threats to the public. The State Department issues travel advisories to American citizens. These advisories are issued for a variety of reasons, including general information on the level of the threat of terrorism; however, the State Department's policy is that the general public is advised of particular threats only when they are specific, credible, and cannot be countered. Because existing mechanisms within the U.S. government and procedures of other agencies provide for disclosure of threat information in appropriate circumstances, the FAA has not revised the rule. The FAA's action in this regard is consistent with the notification guidance in section 109 of the Act and the requirement to review working agreements between the intelligence community and the FAA in section 111 of the Act.

The Reporters Committee urges the FAA to revise its FOIA procedures regarding disclosure of Security Directives and Information Circulars and suggests that the FAA revise its FOIA procedures so that the Assistant Administrator for Civil Aviation Security is not the final arbiter regarding the release of a Security Directive or Information Circular. The Reporters Committee suggests that the FAA create a "FOIA unit" that would make such decisions, presumably only for Security Directives and Information Circulars, but not for other FAA documents subject to FOIA.

The final rule contemplates that air carriers and the FAA will receive requests for threat information contained in Security Directives and Information Circulars. The rule quite properly leaves any decision to release threat information under established procedures in the hands of those best equipped to assess the impact of releasing such information. The FAA does not agree with the Reporters Committee's suggestion that there be a "FOIA unit." Even if the FAA had such a unit, its members would not necessarily be aware of related sensitive aviation security information needed to make a properly informed decision on the release of a particular document. The Assistant Administrator for Civil Aviation Security is best equipped to make these decisions. In addition, the Assistant Administrator for Civil Aviation Security is charged by statute with determining what information, if any, can be released based on an informed assessment that disclosure of such information would not be detrimental to the safety of persons traveling in air transportation.

The decision of the Assistant Administrator for Civil Aviation Security is subject to the concurrence of the Office of the Chief Counsel, and may be appealed to the Assistant Administrator for Public Affairs. A decision to uphold the denial of the Assistant Administrator for Civil Aviation Security is subject to the additional concurrence of the General Counsel, Office of the Secretary, Department of Transportation. These procedures fully comply with the FAA's obligations under the Freedom of Information Act and ensure the protection of sensitive information that might endanger aviation security. Thus, the FAA has not revised the final rule to provide for routine disclosure of threat information by the FAA or to provide amended FOIA procedures specific to Security Directives and Information Circulars.

The FAA Should Consult With Air Carriers Before Issuing Security Directives and There Should Be Some Post-Issuance Mechanism To Review Appropriateness of Countermeasures

The Air Transport Association of America (ATA) states that consultations with air carriers before the issuance of Security Directives is necessary in order for the FAA to develop the most effective and efficient mandatory countermeasures. It is the policy of the FAA to consult with air carriers when time allows; however, this policy will be carried out on a case-by-case basis. The rule allows the FAA flexibility to address the adequacy of U.S. air carriers' responses to the countermeasures prescribed in Security Directives. The rule states that carriers shall notify the FAA of how they have implemented the countermeasures, and that carriers unable to implement the countermeasures shall submit proposed alternative measures to the Assistant

Administrator for Civil Aviation Security for approval.

The ATA further states that the FAA and the air carriers need to be able to review the countermeasures after implementation in order to avoid future problems. The FAA understands that there will be occasions when it will be appropriate to assess situations in retrospect in order to make adjustments when responding to those types of situations in the future, and the FAA does not prohibit air carriers from contacting the FAA to discuss the appropriateness of countermeasures after threats have passed.

Security Directives Should Have Automatic Expiration Dates With Provisions for Extension, if Required

The ATA also states that threats typically are not of infinite duration and that Security Directives should carry automatic expiration dates. The ATA then states that if a threat were likely to persist beyond the expiration date of a Security Directive or an Information Circular, the FAA could extend its effectiveness.

The FAA does not agree that Security Directives should have automatic expiration dates in all cases because the nature of each threat determines the necessary duration. In many instances, however, it is appropriate to issue time-limited Security Directives. The FAA periodically evaluates all Security Directives, regardless of whether they carry expiration dates, to determine if they should be rescinded or remain in effect. In the case of ongoing threats, the FAA may choose to amend an air carrier's approved security program.

The Rule Should State That the U.S. Government Shall Be Responsible for Coordinating Countermeasures With Foreign Governments

The ATA states that the U.S. government, not the air carriers, should be responsible for consultation and coordination with foreign governments with respect to countermeasures. The FAA agrees and the final rule does not burden air carriers with the responsibility of consulting with foreign governments regarding any threats or countermeasures. Since the rule was issued, the FAA has implemented section 104 of the Act, establishing a security liaison officer position for each airport outside the U.S. as determined by the Administrator. The Civil Aviation Security Liaison Officer (CASLO) is responsible for serving as the liaison between the Assistant Administrator for Civil Aviation Security and foreign authorities including foreign governments and airport authorities.

The FAA Should Establish and Publicize Its Enforcement Policy for Responding to Alleged Leaks of Security-Sensitive Information

The ATA states that the FAA should publicize its enforcement policy regarding the unauthorized disclosure of security-sensitive information so that penalties for failure to comply with the regulation are clearly understood. Unauthorized disclosure of security information would significantly threaten the safety of crewmembers and the traveling public and could hamper the effectiveness of the aviation security program. Thus, the FAA regards unauthorized disclosure in violation of the regulation as a serious violation that would warrant enforcement action similar to other safety and security violations committed by individuals and air carriers.

Conclusion

The FAA has determined, after carefully considering the comments submitted in response to the final rule, that no further rulemaking action is necessary at this time. Amendment No. 108–6 remains in effect as prescribed by the July 6, 1989, final rule.

Issued in Washington, DC, on June 30, 1993.

Bruce R. Butterworth,

Director, Office of CAS Policy and Planning, ACP–1.

[FR Doc. 93–16093 Filed 7–7–93; 8:45 am]

BILLING CODE 4910-13-M

VOL
58
ISS
129
JL
8
1993
UMI

federal register

Thursday
July 8, 1993

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary

NOFA for the Rental Voucher Program and Rental Certificate Program; Funding Availability; Notice

VOL
58
ISS
129
JL
8
1993
UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3639; FR-3496-N-01]

NOFA for the Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1993 and procedures for allocating funds and approving housing agency applications.

SUMMARY: The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. This notice states the funding allocation available for award of "fair share" rental vouchers and rental certificates. The notice identifies the amount of housing assistance budget authority available for each allocation area and HUD Field Office jurisdiction during Fiscal Year 1993.

This notice also:

(1) Invites Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds;

(2) Provides instructions to HAs governing the submission of applications; and

(3) Describes procedures for rating, ranking, and approving HA applications.

DATES: Applications for all funding under this NOFA must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., time at the office where the application is submitted) on August 23, 1993.

ADDRESSES: The basic application, Form HUD-52515, may be obtained from, and completed applications are to be submitted to, the appropriate HUD Field Office/Indian Programs Office for the jurisdiction in which the applicant is located (see Section II, Application Processing, of the NOFA). (Attachment 1 is the Application form.)

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, room 4220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2577-0169.

I. Purpose and Substantive Description

A. Authority

The regulations governing the Rental Certificate and the Rental Voucher Programs are published at 24 CFR part 882 and 887, respectively. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

B. Allocation Amounts

(1) *Housing needs formula.* In this fiscal year, approximately $1.077 billion of budget authority for the rental voucher and rental certificate programs is available for fair share formula allocation. This funding will add additional units for HA rental voucher and rental certificate programs. Of this amount, approximately $482 million is for rental vouchers and approximately $545 million is for rental certificates and the balance of $50 million is for the Headquarters Reserve which will not be allocated by formula. This budget authority is being allocated to HUD Field Offices and allocation areas under this NOFA, using the housing needs factors established in accordance with 24 CFR 791.402. For purposes of this NOFA, the Department is using the metropolitan area designations that were in effect prior to December 31, 1992, since detailed census data tabulations for the new metropolitan area designations are not available, yet.

(2) *Metropolitan/Non-Metropolitan mix.* Separate housing needs factors were developed for the metropolitan and non-metropolitan allocation areas within each Field Office jurisdiction. On a nationwide basis, approximately 90 percent of the Fiscal Year 1993 "fair share" budget authority for the Rental Voucher Program and Rental Certificate Program is designated for metropolitan areas. The metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas and the non-metropolitan housing needs factors were applied to the housing assistance budget authority available for use in non-metropolitan areas.

The allocation areas were established to ensure sufficient competition among HAs (including State and regional or multi-county HAs) operating housing programs within the HUD-established allocation areas.

(3) *Program type.* This notice announces the fair share allocation of housing assistance budget authority (See Attachment 6) for the Rental Voucher Program and for the Rental Certificate Program to each Field Office for designated allocation areas, based on the housing needs factors. The allocation of housing assistance budget authority to each allocation area, however, is a total for both programs. The allocations have been structured to give Field Offices flexibility in approving HA applications for the rental voucher program or the rental certificate program. It is not necessary that each allocation area within a Field Office jurisdiction be provided both rental vouchers and rental certificates. This notice also provides, for each allocation area, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the allocation area. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction. The actual number of units assisted will vary from these estimates in the actual bedroom size mix that is funded in a given area.

(4) *Potential additional funding.* If additional rental voucher or rental certificate funding becomes available for incremental use during Fiscal Year 1993, the Department plans to distribute any additional funding to Field Offices using the same percentage distribution as reflected in Attachment 6 to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund HA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount.

C. Family Self-Sufficiency Program

Section 23 of the U.S. Housing Act of 1937 was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that all PHAs receiving additional rental vouchers or certificates in FY 1993 must establish a family self-sufficiency (FSS) program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991

(56 FR 49592). The regulations for the FSS program were published on May 27, 1993. Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published in the **Federal Register** on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

D. HA Eligibility

All HAs are invited by this notice to submit applications for the incremental funding for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

II. Application Process

A. Application Requirements

All the items in Section III of this NOFA must be included in the application submitted to the HUD Field Office/Indian Programs Office. The application may include an explanation of how the application meets, or will meet, the selection criteria listed in this NOFA.

B. Selection Criteria/Rating Factors

(1) *Selection Criterion 1: HA Administrative Capability (45 points).*

(a) *Description:* Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), portability of rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements is either excellent or good. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, Moderate Rehabilitation, Public Housing or Indian Housing Program, the Field Office/Indian Programs Office will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(b) *Rating: 21–45 points.* Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing or other housing programs) as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings (unless Office of Inspector General recommendation has been appealed by Field Office, Indian Programs Office or Regional Office); the HA is complying with the portability requirements under the rental voucher and rental certificate programs; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet housing quality standards (HQS) or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office/Indian Programs Office documents that September 30, 1992, report was not reflective of HA performance;

1–20 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing or other housing programs) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with HA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for Public/Indian Housing units) under ACC for one year or more was at least 85 percent as of September 30, 1992, unless the Field Office/Indian Programs Office documents that the September 30, 1992, report is not reflective of HA performance.

0 points. If neither of the above statements apply, assign 0 points.

(c) *Field Office/Indian Programs Office Assessments:* In assigning points for administrative capability for a State or regional HA application, the Field Office/Indian Programs Office shall determine the HA's leasing rate separately for metropolitan areas and for non-metropolitan areas and use the proportionately weighted applicable rate to score points for administrative capability. If the metropolitan areas portion is much larger than the non-metropolitan areas proportion, more weight must be given to metropolitan areas. If the non-metropolitan areas portion is much larger than the metropolitan areas portion, more weight must be given to non-metropolitan areas.

(2) *Selection Criterion 2: Underfunding of Housing Needs (35 points).*

(a) *Description:* The degree to which the housing needs of the area specified in the HA's application from which the HA draws families to assist (primary area) have previously been underfunded, relative to the needs of other localities within the allocation area, taking into account such factors as the number of assisted housing units and the number of very low-income renter households eligible for such assistance. The Field Office will, wherever practicable, consider needs being met by all Federally assisted rental housing programs, including the FmHA Section 515 Rural Rental Housing program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

In accordance with Notice PIH 91–45 (HUD), the Field Office will notify FmHA of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing FmHA projects, with which HUD agrees, will receive zero points for this criteria.

(b) *Rating and Assessment:* The Field Office will evaluate whether housing needs in the primary area specified in the application have been underfunded

with respect to assisted housing provided to other communities in the allocation area, and will assign one of three point-values, as follows:

35 points. Housing needs in the area(s) specified in the application have been severely underfunded.

17 points. Housing needs in the area(s) specified in the application have been moderately underfunded.

0 points. Housing needs in the area(s) specified in the application have received a proportionate share of funding or housing needs have been overfunded.

(3) *Selection Criterion 3: Local Initiatives (10 points).*

(a) *Description.* The application must describe the extent to which HAs demonstrate locally initiated efforts in support of their Rental Voucher and Rental Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(b) *Rating:* The Field Office/Indian Program Office will assign one of three point-values, as follows:

10 points: The State or locality provides significant local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.

5 points: The State or locality provides minimal local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.

0 points: The State or locality does not provide support to the HA's Rental Voucher or Rental Certificate Program.

C. Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period (refer to Section IV, Corrections to Deficient Applications, of this NOFA), the Field Office/Indian Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section III(F), Checklist of Technical Requirements, of this NOFA). The Field Office/Indian Programs Office notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(b) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance.

(c) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(d) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or Field Office/Indian Programs Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(e) The leasing rate for rental vouchers and rental certificates under ACC for at least one year is less than 75 percent, or, in the case of an HA not currently administering a Rental Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 75 percent. (For a State or regional HA, the Field Office/Indian Programs Office shall determine the HA's leasing rate separately for metropolitan and non-metropolitan areas, and shall use the applicable rate in determining whether to accept the application under this paragraph.)

(f) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(g) The HA is not in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable.

D. Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The Field Office/Indian Programs Office will obtain section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the local unit of government.

E. Funding Applications

(1) *Maximum Funding Allowed.* The Field Office/Indian Programs Office may not approve funding for an HA under this NOFA for more than the greater of 10 percent of the HA rental vouchers and rental certificates under reservation or 50 units.

(2) *Minimum Funding Allowed.* The Field Office/Indian Programs Office may not approve funding for an HA under this NOFA for less than 25 units, unless:

(a) The HA requests fewer than 25 units; or

(b) The residual budget authority in using the rank order funding process after funding higher ranked applications is insufficient to fund at least 25 units; or

(c) The total budget authority available to the allocation area will fund less than 25 units.

(3) *Funding Procedure.* The Field Office must develop a procedure for approval of applications (including applications rated by the Indian Programs Office) for each allocation area in rank order until all the housing assistance budget authority is used. Where a Field Office funds applications according to rank order for each allocation area, only to find it has some number of units left, but not enough to fund the next fundable application in its entirety or for the minimum of 25 units, that application can be funded to the extent of the number of units available.

The Field Office may elect to approve 100 percent of the units requested in all

applications that score above a Field Office-determined funding cut-off, up to the maximum number of units allowed.

The Field Office may elect to approve less than 100 percent of the units requested in all applications for each allocation area that score above a Field Office-determined funding cut-off, up to the maximum number of units allowed.

If applications are to be funded at less than 100 percent of the units requested in the applications, the Field Office must either (i) approve the same percentage of the number of units requested in each application or (ii) divide approvable applications into two categories, for example, those scoring over 40 points, and those scoring 40 points or less.

If the Field Office elects to divide applications into two categories, the Field Office may choose to approve a different percentage for applications in each of the two ranking categories so that a higher percentage of units requested would be approved for all applications in the higher category and a lower percentage of units requested would be approved for all applications in the lower category. The Field Office must approve the same percentage of each application within each of the two ranking categories unless there are insufficient funds to approve the minimum 25 units. If the Field Office is unable to fund all the applications for the minimum funding allowed in either of the two categories, the Field Office must reduce the applicable percentage factor in the category in order to fund all applications for the minimum 25 units (unless the HA requested less than 25 units or the total budget authority available to the allocation area will fund less than 25 units).

If an HA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the metropolitan area or non-metropolitan allocation area, the Field Office will award the available form of assistance, even though not specifically requested by the applicant.

The Field Office must promptly notify the applicable Indian Programs Office for each allocation area as to the status of any application from IHAs and, if applicable, the amount of budget authority to be made available for IHA applications that were rated high enough to receive funding.

F. Reallocations of Funds

Each Field Office must make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one Field Office to another when the funds are not likely to be used in the Field Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(1) *Reallocations within the Same State.* If the allocation of funds to a Field Office cannot be awarded within the Field Office jurisdiction during Fiscal Year 1993, the Regional Office must reallocate those funds to another Field Office within the same State where they can be used during Fiscal Year 1993.

(2) *Reallocation Between States.* If a Regional Office cannot use funds within the same State, the Regional Office may request Headquarters approval to reallocate funds to another State within the jurisdiction of the Regional Office.

A request for Headquarters approval of a reallocation between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, the Metropolitan/non-metropolitan mix, and the amount to be reallocated subsequently to each State. These requests must be submitted to Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) for approval.

(3) *Reallocations Between Metropolitan and Non-metropolitan Areas.* The Regional Office must follow the original fund assignments for metropolitan and non-metropolitan areas when it reallocates unused budget authority. If there are not enough approvable applications for the designated metropolitan or non-metropolitan budget authority, the Regional Office may switch the budget authority between a metropolitan and a non-metropolitan area within the same State, provided that an offsetting switch can be made in another State within the same Region. If an offsetting switch cannot be made and the metropolitan or non-metropolitan amounts require changes to the regional fund assignments, the Regional Office must obtain the approval of the Budget Division, Office of Management and Policy, Office of Public and Indian Housing, before switching budget authority between a metropolitan and a non-metropolitan area.

G. Notification of Funds Awarded

(1) After the Field Offices have reviewed, rated, and ranked applications, and the Field Offices and Offices of Indian Programs have approved the applications, Regional Offices must submit to Headquarters a list of all approved applications, listed by Field Office. The Regional Office application approval list is due in Headquarters (Attention: Rental Assistance Division, Office of Public and Indian Housing) on the tenth working day following the date set by Headquarters for completion of application ranking and selections.

(2) The Regional Offices must provide the following information for each application approved:

(a) the name and address of the HA;

(b) The project number, and the number of rental vouchers and the number of rental certificates, as applicable, approved for the HA; and

(c) The amount of contract authority and budget authority, stated separately for rental vouchers and rental certificates.

H. Administrative Fees

(1) The administrative fees for incremental units in the Fiscal Year 1993 appropriations are specified as follows:

(a) *FY 1993 Incremental (Fees Provided by FY 1993 Appropriation):*

	Rental vouchers	Rental certificates
(1) On-going	8.2%	8.2%
(2) Preliminary	$275	$275
(3) Hard-to-House	$45	$45

(b) *FY 1993 Opt-outs/Public Housing Demolition (Replacements and Relocation) Section 23 Conversions:*

	Rental vouchers	Rental certificates
(1) On-going	6.5%	7.65%
(2) Preliminary	$215	$250
(3) Hard-to-House	$45	$45

(c) *Renewal of Rental Vouchers and Rental Certificates:*

	Rental vouchers	Rental certificates
(1) On-going	6.5%	7.65%
(2) Preliminary	$0	$0
(3) Hard-to-House	$45	$45

(2) For budget preparation, submission of requisitions, and approving year-end operating statements, HAs should use the August 3, 1990, Housing Notice (H–90–53), Administrative Fee Requirements for the Housing Voucher and Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given HA.

VOL 58 ISS 129 JL 8 1993 UMI

I. Headquarters Reserve

The Department is retaining in a Headquarters Reserve approximately $50 million of the $1.077 billion of budget authority available for allocation by formula for rental vouchers and rental certificates. Funds in the Headquarters Reserve will not be allocated by formula because these funds will be used in connection with natural disasters, litigation, desegregation, and other housing emergencies, consistent with 24 CFR 791.407. Headquarters will notify HAs when they are eligible to receive assistance from the Headquarters Reserve and may invite the HAs to submit applications.

J. Other Allocations

In addition to the budget authority for "fair share" rental vouchers and rental certificates, $7.565 billion of additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1993 involving up to six cities with populations over 400,000, in metropolitan areas of over 1,500,000 population. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 1,856 units and $67.7 million in budget authority.)

(9) *Family Unification Demonstration—National Competition.* Headquarters will allocate funding to assist families with children for whom the lack of adequate shelter is a primary factor which would result in the imminent placement of the family's child, or children, in out-of-home care or delay in the discharge of the child, or children, to the family from out-of-home care. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 2,244 units and $73 million in budget authority.)

(10) *Homeless Persons with Disabilities.* Headquarters will allocate funding to Field Offices to provide Section 8 rental vouchers, in conjunction with supportive services from other Federal, State, or local sources, to homeless persons with disabilities. The assistance is targeted primarily to homeless persons who are seriously mentally ill, have chronic problems with alcohol and/or drugs, or who have acquired immunodeficiency syndrome (AIDS) and related diseases. (Approximately 5,786 units and $147.7 million in budget authority.)

(11) *Veterans Affairs Supportive Housing—National Competition.* Headquarters will allocate funding under this joint effort between HUD and the Department of Veterans Affairs whereby rental vouchers are provided to assist homeless veterans to obtain rental housing after they have received treatment from a Veterans Affairs (VA) medical facility. HUD is conducting a national competition. The criteria will be published in a NOFA. (Approximately 750 units and $19.1 million in budget authority.)

(12) *Project-Based Assistance—Washington, DC.* Headquarters will allocate funding to provide Section 8 rental certificates based on a Congressional mandate for a multi-cultural tenant empowerment and homeownership project to be located in the District of Columbia. (Approximately 205 units and $20 million in budget authority.)

(13) *Disaster Funding from the Federal Emergency Management Agency.* Headquarters allocated funding from the Federal Emergency Management Agency for rental vouchers to the Department to assist very low-income families who were rendered homeless as a result of Hurricane Andrew and Hurricane Iniki. (Approximately 2,459 units and $32 million in budget authority.)

III. Checklist of Application Submission Requirements

A. Obtaining Application Materials

Form HUD–52515, Application for Existing Housing, may be obtained from the local HUD Field Office/Indian Programs Office. (Except as provided for Indian Housing Authorities in Section III(B) of this NOFA, Submitting Applications, only an original application should be submitted; it is not necessary to submit additional copies of the application.) In addition, the basic application, and other required submissions, are attached to this NOFA, as follows: Form HUD–52515 [Attachment 1]; Certification for a Drug-Free Workplace [Attachment 2]; Text for the Certification Regarding Lobbying [Attachment 3]; Certification Regarding Single Audit Act [Attachment 4]; and Standard Form LLL, Disclosure of Lobbying Activities [Attachment 5].

B. Submitting Applications

HA applications must be received in the HUD Field Office/Indian Programs Office by 3:00 p.m. local time (i.e., the time at the office where the application is to be submitted) on August 23, 1993.

The Indian Programs Office is the place of official receipt for IHA applications. An IHA also must submit, at the same time, a copy of its application to the HUD Field Office that has jurisdiction over the portion of the State in which the IHA is located. Field Offices/Indian Programs Offices will be responsible for notifying their HAs of the exact address and room number where applications are to be submitted. Copies transmitted via facsimile (FAX) transmission will not be accepted for processing.

C. General.

(1) Applications must be submitted to the local Field Office/Indian Programs Office on Form HUD–52515 in accordance with the applicable program regulations.

(2) The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the Field Office/Indian Programs Office can only rate and rank the application based on information the Office has on-hand.

(3) Attachment 6 at the end of this notice lists the HUD Field Offices and the number of units and budget authority available for each allocation area. HAs should limit their applications for the "fair share" program to a reasonable number of rental vouchers and rental certificates, based on the capacity of the HA to lease all the units within 12 months of ACC execution. The number of units on the HA application may not exceed the greater of: (a) Ten percent (10%) of the total rental vouchers and rental certificates under reservation for the HA; or (b) 50 units.

(4) HAs shall submit only one application (Form HUD–52515) for an allocation area. If both rental vouchers and rental certificates are requested on the same application, then the application will be given two project numbers, one for the Rental Voucher Program and one for the Rental Certificate Program. The total number of units applied for may not exceed the ten percent or 50-unit limitation.

(5) Regional and State-wide HAs may submit one application for each allocation area, and each application will be considered separately. Each regional or State-wide HA application may request up to ten percent (10%) of the total rental vouchers and rental certificates the HA has under reservation for each allocation area as applicable, or 50 units, whichever is greater.

(6) The Field Office/Indian Programs Office will reduce the number of units requested in any application that exceeds the ten percent or 50-unit limit to the greater of ten percent (10%) of the total number of rental vouchers and

rental certificates under reservation or 50 units.

D. Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See Certification Regarding Drug-Free Workplace Requirements, Attachment 2 to this NOFA.)

E. Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Pub. L. 101–121, approved October 23, 1989, (31 U.S.C. 1352) (the Byrd Amendment) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR part 87.110, any HA (other than an IHA that meets the definition of "person" in 24 CFR part 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the texts for the Certification Regarding Lobbying (Attachment 3) and Standard Form LLL, Disclosure Form to Report Lobbying (Attachment 5) are attached to this NOFA.

F. Certification Regarding Single Audit Act

The HA must submit the Single Audit Act Certification (Attachment 4) in accordance with the Single Audit Act, and HUD's regulations at 24 CFR part 44.

G. Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the HA's application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

Initial Screening Checklist

APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application contains a completed Form HUD 52515.
☐	☐	☐	☐	The application specifies the number of rental vouchers and/or rental certificates requested from the fair share distribution.
☐	☐	☐	☐	The application states by number of bedrooms the total number of units requested by the HA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled families.
☐	☐	☐	☐	The application demonstrates that it is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
☐	☐	☐	☐	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office/Indian Programs Office, they do not have to be resubmitted.
☐	☐	☐	☐	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and/or 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed or have been approved by the Field Office/Indian Programs Office. In the latter case, each proposed variation shall be specified and justified.
☐	☐	☐	☐	The application contains the HA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, an HA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
☐	☐	☐	☐	The application (for rental vouchers and/or rental certificates) contains estimates of the average adjusted income for prospective participants for each bedroom size.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT, AND THE SINGLE AUDIT COMPLIANCE CERTIFICATION

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (Attachment 2).)

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT, AND THE SINGLE AUDIT COMPLIANCE CERTIFICATION—Continued

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. The Department has determined that IHAs established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage. To comply, HAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 5).
☐	☐	☐	☐	The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR 44; or OMB Circular No. A–133. To comply, HAs must submit a Single Audit Act Certification (Attachment 4). HAs who are not currently in compliance with the audit requirements will not be eligible for funding.

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate Field Office/Indian Programs Office no later than the date and time specified in Section II of this NOFA. The Field Office/Indian Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the Field Office and/or Indian Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate Field Office/Indian Program Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, Single Audit Act certification, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD responsibilities. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of

HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

G. Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be forwarded to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (this is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 1437a, 1437c, 1437f.

Dated: June 30, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

VOL 58 ISS 129 JL 8 1993 UMI

Application for Existing Housing

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Attachment 1

Send the original and two copies of this application form and attachments to the local HUD Field Office

OMB Approval No. 2577-0169 (exp.9/30/95)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send the completed form to either of these addresses.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for :
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count: Elderly, Handicapped, Disabled — Efficiency	1-BR	2-BR	Non-Elderly — 1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check * the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

BILLING CODE 4210-33-C

Attachment 2.—Certificate Regarding Drug-Free Workplace Requirements

(From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies. Certification Regarding Drug-Free Workplace Requirements Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

_____

(Name & Title)

_____

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Attachment 3.—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Attachment 4.—Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210–33–M

Disclosure of Lobbying Activities

Attachment 5

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

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Standard Form-LLL

VOL
58
ISS
129
JL
8
1993
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Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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Standard Form-LLL

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity _____ Page _____ of _____

VOL 58 ISS 129 JL 8 1993 UMI

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

Region	Dollars	Units	Component parts of allocation area
Boston, Massachusetts Office Metropolitan Allocation Areas:			
Western Massachusetts	4,229,964	98	Berkshire county—towns of: Cheshire, Dalton, Hinsdale, Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge; Hampden county—towns of: Agawam, Chicopee, East Longmeadow, Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery, Palmer, Russell, Southwick, Springfield, Westfield, West Springfield, Wilbraham; Hampshire county—towns of: Belchertown, Easthampton; Granby, Huntington, Northampton, Southampton, South Hadley.
Worcester County	3,399,403	78	Middlesex county—towns of: Ashby; Worcester county—towns of: Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster; Worcester county—towns of: Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, North Brookfield, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster, Westborough, West Boylston, Worcester.
Boston	22,067,716	511	Bristol county—towns of: Mansfield, Norton, Raynham; Essex county—towns of: Lynn, Lynnfield, Nahant, Saugus; Middlesex county—towns of: Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Reading, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn; Norfolk county—towns of: Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham; Plymouth county—towns of: Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate; Suffolk county—towns of: Boston, Chelsea, Revere, Winthrop; Worcester county—towns of: Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton.
Northeast	4,561,622	106	Essex county—towns of: Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andover, Salisbury, West Newbury; Middlesex county—towns of: Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford; Essex county—towns of: Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham.
Southeast	4,083,626	94	Bristol county—towns of: Easton; Norfolk county—towns of: Avon, Plymouth county—towns of: Abington, Bridgewater, Brockton, East Bridgewater, Halifax, West Bridgewater, Whitman; Bristol county—towns of: Fall River, Somerset, Swansea, Westport; Bristol county—towns of: Acushnet, Dartmouth, Fairhaven, Freetown, New Bedford; Plymouth county—towns of: Marion, Mattapoisett, Rochester; Bristol county—towns of: Attleboro, North Attleborough, Rehoboth, Seekonk; Norfolk county—towns of: Plainville; Worcester county—towns of: Blackstone, Millville.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Statewide	1,941,410	49	Barnstable, Berkshire county—towns of: Adams, Alford, Becket, Clarksburg, Egremont, Florida, Great Barrington, Hancock, Monterey, Mount Washington, New Ashford, New Marlborough, North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield, Tyringham, Washington, West Stockbridge, Williamstown, Windsor; Bristol county—towns of: Berkley, Dighton, Taunton; Dukes Franklin, Hampden county—towns of: Blandford, Brimfield, Chester, Granville, Holland, Tolland, Wales; Hampshire county—towns of: Amherst, Chesterfield, Cummington, Goshen, Hadley, Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton, Williamsburg, Worthington; Nantucket, Plymouth county—towns of: Wareham; Worchester county—towns of: Athol, Gardner, Hardwick, Hubbardston, New Braintree, Oakham, Petersham, Phillipston, Royalston, Southbridge, Sturbridge, Templeton, Warren, West Brookfield, Winchendor.
Hartford, Connecticut Office Metropolitan Allocation Areas:			
Brideport-Milford, Norwalk, Stamford.	4,340,161	101	Fairfield county—towns of: Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull; New Haven county—towns of: Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour; Fairfield county—towns of: Norwalk, Weston, Westport, Wilton; Fairfield county—towns of: Darien, Greenwich, New Canaan, Stamford.
Bristol, Danbury, New Britain, Waterbury.	3,097,269	71	Hartford county—towns of: Bristol, Burlington; Litchfield county—towns of: Plymouth; Fairfield county—towns of: Bethel, Brookfield, Danbury, New Fairfield, Newtown, Redding, Ridgefield, Sherman; Litchfield county—towns of: Bridgewater, New Milford; Hartford county—towns of: Berlin, New Britain, Plainville, Southington; Litchfield county—towns of: Bethlehem, Thomaston, Watertown; Woodbury, New Haven county—towns of: Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Hartford	4,419,002	102	Hartford county—towns of: Avon, Bloomfield, Canton, East Granby, East Hartford, East Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, South Windsor, Suffield, West Hartford, Wethersfield, Windsor, Windsor Locks; Litchfield county—towns of: Barkhamsted, New hartford; Middlesex county—towns of: East Haddam; New London county—towns of: Colchester; Tolland county—towns of: Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Somers, Stafford, Tolland, Vernon, Willington.
Middletown, N. London, Norwich, N. Haven-Merid.	4,917,245	114	Middlesex county—towns of: Cromwell, Durham, East Hampton, Haddam, Middlefield, Middletown, Portland; New London county—towns of: Bozrah, East Lyme, Franklin, Griswold, Groton, Ledyard, Lisbon, Montville, New London, North Stonington, Norwich, Old Lyme, Preston, Salem, Sprague, Stonington, Waterford; Windham county—town of: Canterbury; Middlesex county—towns of: Clinton, Killingworth; New Haven county—towns of: Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, Woodbridge.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Connecticut Statewide.	908,462	24	Hartford county—towns of: Hartland; Litchfield county—towns of: Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent, Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester; Middlesex county—towns of: Chester, Deep River, Essex, Old Saybrook, Westbrook; New London county—towns of: Lebanon, Lyme, Voluntown; Tolland county—towns of: Mansfield, Union; Windham county—towns of: Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling, Thompson, Windham, Woodstock.
Manchester, New Hampshire Office Metropolitan Allocation Areas:			
Vermont—Burlington	784,045	20	Chittenden county—towns of: Burlington, Charlotte, Colchester, Essex, Hinesburg, Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Williston, Winooski; Franklin county—towns of: Georgia; Grand Isle county—towns of: Grande Isle, South Hero.
Metropolitan New Hampshire.	2,646,722	67	Rockingham county—towns of: Atkinson, Brentwood, Danville, Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham; Hillsborough county—towns of: Bedford, Goffstown, Manchester; Merrimack county—towns of: Allenstown, Hooksett; Rockingham county—towns of: Auburn, Candia; Hillsborough county—towns of: Pelham; Hillsborough county—towns of: Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton; Rockingham county—towns of: Londonderry; Rockingham county—towns of: Exeter, Greenland, Hampton, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham; Strafford county—towns of: Barrington, Dover, Durham, Farmington, Lee, Madbury, Milton, Rochester, Rollinsford, Somersworth.
Metropolitan Maine	2,385,300	60	Penobscot county—towns of: Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono, Orrington, Penobscot Indian I, Veazie; Waldo county—towns of: Winterport; Androscoggin county—towns of: Auburn, Greene, Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus; Cumberland county—towns of: Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth; York county—towns of: Buxton, Hollis, Old Orchard Beach; York county—towns of: Berwick, Eliot, Kittery, North Berwick, South Berwick, Wells, York.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Vermont Statewide.	1,141,832	34	Addison, Bennington, Caledonia, Chittenden county—towns of: Bolton, Buels, Huntington, Underhill, Westford; Essex Franklin county—towns of: Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery, Richford, St. Albans, St. Albans, Sheldon, Swanton; Grand Isle county—towns of: Alburg, Isle La Motte, North Hero, Lamoille, Orange, Orleans, Rutland, Washington, Windham, Windsor.
Nonmetropolitan New Hampshire Statewide.	1,161,527	34	Belknap, Carroll, Cheshire, Coos, Grafton; Hillsborough county—towns of: Antrim, Bennington, Deering, Francestown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Mason, New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare, Windsor; Merrimack county—towns of: Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury, New London, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmot; Rockingham county—towns of: Chester, Deerfield, Epping, Fremont, Hampton Falls, Kensington, Northwood, Nottingham, Raymond, South Hampton; Strafford county—towns of: Middleton, New Durham, Strafford, Sullivan.

VOL 58 ISS 129 JL 8 1993 UMI

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Maine Statewide.	1,785,174	54	Androscoggin county—towns of: Durham, Leeds, Livermore, Livermore Falls, Minot, Turner, Wales; Aroostook, Cumberland county—towns of: Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago; Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot county—towns of: Alton, Argyle, Bradford, Bradley, Burlington, Carmel, Carroll, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg, Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush, Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss, Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly, Webster, Whitney, Winn, Woodville; Piscataquis, Sagadahoc, Somerset, Waldo county—towns of: Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Springs, Swanville, Thorndike, Troy, Unity, Waldo; Washington, York county—towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman, Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro.
Providence, Rhode Island Office Metropolitan Allocation Areas:			
Statewide Metropolitan Allocation Area.	5,228,000	141	Newport county—towns of: Little Compton, Tiverton; Washington county—towns of: Hopkinton, Westerly; Providence; county—towns of: Burrillville, Central Falls, Cumberland, Lincoln, North Smithfield, Pawtucket, Smithfield, Woonsocket; Bristol county—towns of: Barrington, Bristol, Warren; Kent county—towns of: Coventry, East Greenwich, Warwick, West Warwick; Newport county—towns of: Jamestown; Providence county—towns of: Cranston, East Providence, Foster, Glocester, Johnston, North Providence, Providence, Scituate; Washington county—towns of: Exeter, Narragansett, North Kingstown, Richmond, South Kingstown.
Nonmetropolitan Allocation Areas:			
Statewide Nonmetropolitan Allocation Area.	258,955	7	Kent county—towns of: West Greenwich; Newport county—towns of: Middletown, Newport, Portsmouth; Washington county—towns of: Charlestown, New Shoreham.
HUD Region II (New York)			
Buffalo, New York Office Metropolitan Allocation Areas:			
Albany—Schenectady—Troy/Glens Falls, NY.	3,501,903	115	Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Warren, Washington.
Buffalo—Niagara Falls/Jamestown—Dunkirk, NY.	5,463,456	179	Erie, Niagara, Chautauqua.
Syracuse/Utica—Rome/Binghamton/Elmira, NY.	4,941,923	162	Madison, Onondaga, Oswego, Herkimer, Oneida, Broome, Tioga, Chemung.
Rochester, NY	4,750,142	155	Livingston, Monroe, Ontario, Orleans, Wayne.
Nonmetropolitan Allocation Areas:			
Northeast New York	1,132,002	39	Clinton, Essex, Franklin, Fulton, Hamilton, Jefferson, Lewis, St. Lawrence.
Southeast New York	1,477,910	51	Tompkins, Cayuga, Cortland, Columbia, Chenango, Delaware, Otsego, Schoharie.
Southwest New York	783,230	27	Allegany, Cattaraugus, Genesee, Schuyler, Seneca, Steuben, Wyoming, Yates.
New York, New York Office Metropolitan Allocation Areas:			
Nassau County	4,047,691	98	Nassau.
Suffolk County	3,377,759	82	Suffolk.
New York Pmsa	135,380,455	3278	New York, Putnam, Rockland, Westchester.
Dutchess & Orange Counties.	2,541,453	61	Orange, Dutchess.
Nonmetropolican Allocation Areas:			
Sullivan & Ulster Counties	642,726	18	Sullivan, Ulster.
Newark, New Jersey Office Metropolitan Allocation Areas:			
Bergen—Passaic NJ	9,079,564	202	Bergen, Passaic.
Jersey City NJ	8,536,355	190	Hudson.
Newark NJ	15,918,972	354	Essex, Morris, Sussex, Union, Warren.
South Central New Jersey	15,581,845	347	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Salem, Somerset.
HUD Region III (Philadelphia)			
Baltimore, Maryland Office Metropolitan Allocation Areas:			
Maryland Metropolitan	13,511,444	387	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore, Allegany, Washington, Calvert, Charles, Frederick, Cecil.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Allocation Areas:			
Maryland Non Metropolitan	735,084	24	Caroline, Dorchester, Garrett, Kent, St. Mary's, Somerset, Talbot, Wicomico, Worcester.
Charleston, West Virginia Office Metropolitan Allocation Areas:			
All Metro Counties	2,135,747	76	Kanawha, Putnam, Mineral, Cabell, Wayne, Wood, Brooke, Hancock, Marshall, Ohio.
Nonmetropolitan Allocation Areas:			
All Nonmetro Counties	2,191,169	90	Barbour, Berkeley, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Lewis, Lincoln, Logan, McDowell, Marion, Mason, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming.
Philadelphia, Pennsylvania Office Metropolitan Allocation Areas:			
Allentown/Bethlehem	2,343,108	67	Carbon, Lehigh, Northampton.
Harrisburg/Lebanon/Carlisle.	2,388,806	69	Cumberland, Dauphin, Lebanon, Perry.
Lancaster/Reading/York	4,351,403	125	Lancaster, Berks, Adams, York.
Philadelphia/Wilmington	17,407,402	502	Bucks, Chester, Delaware, Montgomery, Philadelphia, New Castle.
Scranton/Wilkes-Barre/State Col./Williamsport.	3,622,536	105	Columbia, Lackawanna, Luzerne, Monroe, Wyoming, Centre, Lycoming.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Delaware/Pennsylvania.	1,838,753	62	Bradford, Clinton, Franklin, Juniata, Mifflin, Montour, Northumberland, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Kent, Sussex.
Pittsburgh, Pennsylvania Office Metropolitan Allocation Areas:			
All Metro Counties	9,967,539	366	Blair, Beaver, Erie, Cambria, Somerset, Allegheny, Fayette, Washington, Westmoreland, Mercer.
Nonmetropolitan Allocation Areas:			
All Nonmetro Counties	1,790,625	64	Armstrong, Bedford, Butler, Cameron, Clairon, Clearfield, Crawford, Elk, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Potter, Venango, Warren.
Richmond, Virginia Office Metropolitan Allocation Areas:			
Richmond-Petersburg-Hopewell, VA MSA.	2,948,929	100	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights, Hopewell, Petersburg, Richmond.
Norfolk-Virginia Beach-Newport News, VA MSA.	4,242,486	142	Gloucester, James City, York, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg.
All Other MSAs	2,433,966	80	Albemarle, Fluvanna, Greene, Charlottesville, Pittsylvania, Danville, Amherst, Campbell, Lynchburg, Scott, Washington, Bristol, Botetourt, Roanoke, Roanoke, Salem, Stafford.
Nonmetropolitan Allocation Areas:			
Nonmetro Portion of Virginia.	2,938,277	120	Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bedford, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Essex, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, Isle of Wight, King and Queen, King George, King William, Lancaster, Lee, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, Southampton, Spotsylvania, Surry, Sussex, Tazewell, Warren, Westmoreland, Wise, Wythe, Bedford, Buena Vista, Clifton Forge, Covington, Emporia, Franklin, Fredericksburg, Galax, Harrisonburg, Lexington, Martinsville, Norton, Radford, South Boston, Staunton, Waynesboro, Winchester.
Washington, D.C. Office Metropolitan Allocation Areas:			
Washington, D.C	21,298,947	424	Montgomery, Prince George's, Washington, Arlington, Fairfax, Loudoun, Prince William, Alexandria, Fairfax, Falls Church, Manassas, Manasses Park.
HUD Region IV (Atlanta)			
Atlanta, Georgia Office Metropolitan Allocation Areas:			
GA. Metro Allocation Area No. 1.	7,695,540	251	Fulton, De Kalb, Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, Douglas, Fayette, Forsyth, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton.
GA. Metro Allocation Area No. 2.	5,751,296	187	Bibb, Chattahoochee, Houston, Jones, Muscogee, Peach, Catoosa, Chatham, Clarke, Columbia, Dade, Dougherty, Effingham, Jackson, Lee, McDuffie, Madison, Oconee, Richmond, Walker.

VOL 58 ISS 129 JL 8 1993 UMI

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Allocation Areas:			
GA. Nonmetro Allocation Area No. 1.	4,065,371	197	Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Bartow, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Calhoun, Camden, Candler, Carroll, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Irwin, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, McIntosh, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.
Birmingham, Alabama Office Metropolitan Allocation Areas:			
Metropolitan Alloction Area 1.	1,281,002	52	Dale, Houston, Autauga, Elmore, Montgomery, Russell.
Metropolitan Allocation Area 2.	1,110,182	45	Baldwin, Mobile.
Metropolitan Allocation Area 4.	3,181,357	130	Calhoun, Blount, Jefferson, St Clair, Shelby, Walker, Tuscaloosa.
Metropolitan Allocation Area 3.	1,576,515	65	Madison, Colbert, Lauderdale, Lawrence, Morgan, Etowah.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area 1.	483,352	24	Coffee, Pike, Lee, Henry, Geneva, Crenshaw, Bullock, Barbour, Chambers.
Nonmetropolitan Allocation Area 2.	364,585	19	Butler, Lowndes, Macon, Covington, Dallas.
Nonmetropolitan Allocation Area 3.	398,122	21	Jackson, Marshall, De Kalb, Cherokee, Winston, Limestone, Lamar, Franklin, Cullman.
Nonmetropolitan Allocation Area 4.	428,532	21	Cleburne, Clay, Coosa, Talladega, Tallapoosa, Randolph, Hale, Greene, Fayette, Bibb, Chilton.
Nonmetropolitan Allocation Area 5.	355,440	17	Choctaw, Clarke, Conecuh, Escambia, Marengo, Marion, Monroe, Perry, Pickens, Sumter, Washington, Wilcox.
Caribbean Office Metropolitan Allocation Areas:			
Metro #1	2,300,084	87	Florida Municipio, Hormigueros Municipio, Luquillo Municipio, Barceloneta Municipio, Quebradillas Municipio, Anasco Municipio, Aguas Buenas Municipio, Las Piedras Municipio, Naranjito Municipio, Gurabo Municipio, Camuy Pueblo, Loiza Municipio, Juncos Municipio, Dorado Municipio, Hatillo Municipio, Moca Municipio, Corozal Municipio, Vega Alta Municipio, Catano Municipio, San German Municipio, San Lorenzo Municipio, Cidra Municipio, Aguada Municipio, Canovanas Municipio, Fajardo Municipio, Cabo Rojo Municipio, Manati Municipio, Isabela Municipio, Toa Alta Municipio, Juana Diaz Municipio, Rio Grande Municipio, Cayey Municipio, Humecao Municipio, Vega Baja Municipio.
Metro #2	1,462,799	59	Toa Baja Municipio, Guaynabo Municipio Arecibo Municipio, Mayaguez Municipio, Caguas Municipio, Aguadilla Municipio, Trujillo Alto Municipio.
Metro #3	3,434,206	135	Ponce Municipio, Bayamon Municipio, San Juan Municipio, Carolina Municipio.
Nonmetropolitan Allocation Areas:			
Caribbean—Nonmetropolitan Areas.	1,098,223	54	Adjuntas Municipio, Alborito Municipio, Arroyd Municipio, Barranquitas Municipio, Ceiba Municipio, Ciales Municipio, Coama Municipio, Comerio Municipio, Culebra Municipio, Guanica Municipio, Guayama Municipio, Guayanilla Municipio, Jayuya Municipio, Lajas Municipio, Lares Municipio, Las Marias Municipio, Maricao Municipio, Maunabo Municipio, Morovis Municipio, Naguabo Municipio, Orocovis Municipio, Patillas Municipio, Penuelas Municipio, Rincon Municipio, Sabana Grande Municipio, Salinas Municipio, San Sebastian Municipio, Santa Isabel Municipio, Utuado Municipio, Vieques Municipio, Villalba Municipio, Yabucoa Municipio, Yauco Municipio, Virgin Islands.
Columbia, South Carolina Office Metropolitan Allocation Areas:			
Metropolitan Allocation Area 1.	4,904,003	191	Anderson, Aiken, Berkeley, Charleston, Dorchester, York, Lexington, Richland, Florence, Greenville, Pickens, Spartanburg.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area 1.	2,014,476	97	Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Edgefield, Fairfield, Georgetown, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, McCormick, Marion, Marlboro, Newberry, Oconee, Orangeburg, Saluda, Sumter, Union, Williamsburg.
Greensboro, North Carolina Office Metropolitan Allocation Areas:			
Charlotte-Gastonia MSA	2,540,408	96	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union.
Greensboro—Winston-Salem—High Point MSA.	2,223,120	84	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin.
Raleigh-Durham MSA	2,206,736	83	Durham, Franklin, Orange, Wake.
All Other Metropolitan Areas, N.C.	2,244,140	84	Buncombe, Alamance, Cumberland, Alexander, Burke, Catawba, Onslow, New Hanover.
Nonmetropolitan Allocation Areas:			
Non-Metropolitan Counties, Western N.C.	2,154,791	93	Alleghany, Anson, Ashe, Avery, Caldwell, Caswell, Chatham, Cherokee, Clay, Cleveland, Graham, Granville, Haywood, Henderson, Iredell, Jackson, Johnston, Lee, McDowell, Macon, Madison, Mitchell, Montgomery, Moore, Person, Polk, Richmond, Rockingham, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wilkes, Yancey.
Mon-Metropolitan Counties, Eastern N.C.	2,609,858	115	Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, Wilson.
Jackson, Mississippi Office Metropolitan Allocation Areas:			
Metropolitan Allocation Area No. 1.	1,955,707	71	Hancock, Harrison, Hinds, Madison, Rankin, De Soto, Jackson.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area No. 1.	3,545,104	171	Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.
Jacksonville, Florida Office Metropolitan Allocation Areas:			
Miami-Hialeah	12,791,560	374	Dade.
West Palm Beach-Ft. Pierce.	2,235,648	65	Palm Beach, Martin, St. Lucie.
Tampa-St. Petersburg-Clearwater.	5,235,508	152	Hernando, Hillsborough, Pasco, Pinellas.
Jacksonville-Ocala-Daytona Beach-Gainesville.	5,197,789	151	Clay, Duval, Nassau, St. John, Marion, Volusia, Alachua, Bradford.
Orlando-Melbourne	3,102,729	91	Orange, Osceola, Seminole, Brevard.
Pensacola-Ft. Walton-Panama City-Tallahassee.	2,373,950	69	Escambia, Santa Rosa, Okaloosa, Bay, Gadsden, Leon.
Lakeland-Bradenton-Naples-Sarasota-Ft. Myers.	2,757,006	82	Polk, Manatee, Collier, Sarasota, Lee.
Ft. Lauderdale-Hollywood ..	2,876,873	84	Broward.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area 1.	1,488,674	56	Baker, Calhoun, Charlotte, Citrus, Columbia, De Soto, Dixie, Flagler, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington.
Louisville, Kentucky Office Metropolitan Allocation Areas:			
Metropolitan Allocation Area 1.	3,505,848	135	Bourbon, Bullitt, Clark, Fayette, Jefferson, Jessamine, Oldham, Scott, Shelby, Woodford.
Metropolitan Allocation Area 2.	1,632,398	63	Boone, Boyd, Campbell, Carter, Christian, Daviess, Greenup, Henderson, Kenton.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area—Northeast.	358,856	16	Bracken, Robertson, Mason, Fleming, Lewis, Montgomery, Bath, Rowan, Powell, Menifee, Morgan, Elliott, Lawrence, Johnson, Martin.
Nonmetropolitan Allocation Area—South Centr.	606,660	28	Anderson, Franklin, Harrison, Nicholas, Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, McCreary, Pulaski, Casey, Lincoln, Garrard, Madison.
Nonmetropolitan Allocation Area—Southeast.	940,105	43	Estill, Lee, Wolfe, Magoffin, Floyd, Pike, Jackson, Laurel, Whitley, Knox, Bell, Clay, Leslie, Harlan, Owsley, Breathitt, Perry, Knott, Letcher, Rockcastle.
Nonmetropolitan Allocation Area—Midwest.	476,245	21	Union, Webster, McLean, Hancock, Ohio, Butler, Logan, Simpson, Warren, Allen, Monroe, Metcalfe, Barren, Hart, Edmonson.
Nonmetropolitan Allocation Area—Far West.	447,678	21	Fulton, Ballard, Carlisle, Hickman, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Lyon, Trigg, Caldwell, Hopkins, Muhlenberg, Todd.
Nonmetropolitan Allocation Area—North Cetn.	487,966	22	Grayson, Breckenridge, Meade, Hardin, LaRue, Nelson, Marion, Washington, Spencer, Trimble, Henry, Carroll, Gallatin, Owen, Grant, Pendleton, Mercer, Boyle.
Knoxville, Tennessee Office Metropolitan Allocation Areas:			
Metropolitan Allocation Area 1.	3,290,412	135	Hamilton, Marion, Sequatchie, Carter, Hawkins, Sullivan, Unicoi, Washington, Anderson, Blount, Grainger, Jefferson, Knox, Sevier, Union.
Nonmetropolitan Allocaiton Areas:			
Nonmetropolitan Allocation Area 1.	763,277	35	Bledsoe, Bradley, Campbell, Claiborne, Cocke, Cumberland, Fentress, Greene, Grundy, Hamblen, Hancock, Johnson, Loudon, McMinn, Meigs, Monroe, Morgan, Pickett, Polk, Rhea, Roane, Scott.
Nashville, Tennessee Office Metropolitan Allocation Areas:			
Memphis-Jackson, TN, Allocation Area.	3,469,407	125	Shelby, Tipton, Madison.
Nashville-Clarksville, TN, Allocation Area.	3,131,194	112	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson, Montgomery.
Nonmetropolitan Allocation Areas:			
West TN. Allocation Area ..	666,665	34	Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy Obion, Weakley.
Middle TN. Allocation Area	776,612	38	Bedford, Cannon, Clay, Coffee, De Kalb, Franklin, Giles, Hickman, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Overton, Perry, Putnam, Smith, Van Buren, Warren, Wayne, White, Stewart, Houston, Humphreys, Trousdale.
HUD Region V (Chicago)			
Chicago, Illinois Office Metropolitan Allocation Areas:			
Metro I Chicago	38,873,176	1005	Cook.
Metro II Chicago Collar Counties.	4,286,917	111	Lake, Kane, Kendall, Grundy, Will, McHenry, Du Page,
Metro III Rockford	2,011,915	52	Boone, Winnebago.
Metro IV Bloomington Champaign Decatur Kanke..	2,204,453	56	McLean, Champaign, Macon, Kankakee.
Metro V Peoria Rock Island Springfield.	2,588,718	68	Peoria, Tazewell, Woodford, Henry, Rock Isaind, Menard, Sangamon.
Metro VI St. Louis-Illinois Portion.	2,251,047	59	Clinton, Jersey, Madison, Monroe, St. Clair.
Nonmetropolitan Allocation Areas:			
Non-Metro I	1,159,553	48	Adams, Brown, Bureau, Calhoun, Carroll, Cass, Fulton, Greene, Hancock, Henderson, Jo Daviess, Knox, Lee, Marshall, McDonough, Mercer, Ogle, Pike, Putnam, Schuyler, Scott, Stark, Stephenson, Warren, Whiteside.
Non-Metro II	1,484,796	59	Bond, Christian, Coles, De Kalb, De Witt, Douglas, Effingham, Fayette, Ford, Iroquois, La Salle, Livingston, Logan, Macoupin, Mason, Montgomery, Morgan, Moultrie, Piatt, Shelby, Vermilion.
Non-Metro III	1,082,269	42	Alexander, Clark, Clay, Crawford, Cumberland, Edgar, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Washington, Wayne, White, Williamson.
Cincinnati, Ohio Office Metropolitan Allocation Areas:			
Cincinnati Office—Metropolitan.	7,481,484	273	Butler, Clermont, Greene, Hamilton, Miami, Montgomery, Warren.
Nonmetropolitan Allocation Areas Cincinnati Office—Nonmetropolitan.	423,372	17	Adams, Brown, Clinton, Darke, Highland, Preble.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Cleveland, Ohio Office Metropolitan Allocation Areas:			
Akron-Canton MSA Area	2,496,332	88	Portage, Summit, Carroll, Stark.
Cleveland PMSA Area	7,398,816	262	Cuyahoga, Geauga, Lake, Medina.
Lorain-Toledo-Mansfield MSA Area.	2,899,866	104	Fulton, Lucas, Wood, Richland, Lorain.
Steubenville-Youngstown MSA Area.	1,450,431	51	Jefferson, Mahoning, Trumbull.
Nonmetropolitan Allocation Areas Cleveland Nonmetro Area 1.	747,739	30	Wayne, Erie, Seneca, Wyandot, Ottawa, Sandusky, Hancock, Henry, Paulding, Defiance, Williams.
Cleveland Nonmetro Area 2.	582,514	28	Ashtabula, Columbiana, Harrison, Tuscarawas, Holmes, Crawford, Ashland, Huron.
Columbus, Ohio Office Metropolitan Allocation Areas:			
Columbus Office—Metropolitan.	5,670,313	209	Lawrence, Delaware, Fairfield, Franklin, Licking, Madison, Pickaway, Union, Clark, Allen, Auglaize, Washington, Belmont.
Nonmetropolitan Allocation Areas:			
Columbus Office—Nonmetropolitan South.	875,186	36	Athens, Fayette, Gallia, Hocking, Jackson, Meigs, Morgan, Perry, Pike, Ross, Scioto, Vinton.
Columbus Office—Nonmetropolitan North.	787,057	33	Champaign, Coshocton, Guernsey, Hardin, Knox, Logan, Marion, Mercer, Monroe, Morrow, Muskingum, Noble, Putnam, Shelby, Van Wert.
Detroit, Michigan Office Metropolitan Allocation Areas:			
Ann Arbor, Flint, Saginaw-Bay-Midland MSAs.	3,802,007	124	Washtenaw, Genesee, Bay, Midland, Saginaw.
Wayne County	9,579,582	313	Wayne.
Detroit PMSA Less Wayne County.	4,444,362	145	Lapeer, Livingston, Macomb, Monroe, Oakland, St. Clair.
Nonmetropolitan Allocation Areas:			
Detroit Office Nonmetro	537,867	21	Alcona, Alpena, Arenac, Gladwin, Huron, Iosco, Lenawee, Montmorency, Ogemaw, Oscoda, Presque Isle, Sanilac, Shiawassee, Tuscola.
Grand Rapids, Michigan Office Metropolitan Allocation Areas:			
Grand Rapids—Lansing-E. Lansing MSAs.	2,996,665	106	Kent, Ottawa, Clinton, Eaton, Ingham.
Calhoun, Berrien, Jackson, Kalamazoo & Muskegon Co.	2,360,583	83	Calhoun, Berrien, Jackson, Kalamazoo, Muskegon.
Nonmetropolitan Allocation Areas:			
Nonmetro—Upper Peniscular.	522,031	21	Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Keweenaw, Iron, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft.
Nonmetro—Lower Peniscular.	1,433,398	58	Ionia, Allegan, Antrim, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Grand Traverse, Gratiot, Hillsdale, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Newaygo, Oceana, Osceola, Otsego, Roscommon, St. Joseph, Van Buren, Wexford.
Indianapolis, Indiana Office Metropolitan Allocation Areas:			
Metro North	3,010,430	107	Lake, Porter, St. Joseph, Elkhart, Allen, De Kalb, Whitley.
Metro Central	4,427,458	156	Tippecanoe, Howard, Tipton, Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby, Madison, Delaware.
Metro South	2,758,002	97	Clay, Vigo, Monroe, Dearborn, Posey, Vanderburgh, Warrick, Clark, Floyd, Harrison.
Nonmetropolitan Allocation Areas:			
Nonmetro North	630,113	26	Newton, Benton, Jasper, La Porte, Starke, Pulaski, White, Carroll, Marshall, Fulton, Cass, Kosciusko, Miami, Wabash, Huntington, Wells, Adams, Lagrange, Noble, Steuben.
Nonmetro Central	648,773	28	Warren, Vermillion, Fountain, Parke, Montgomery, Putnam, Clinton, Grant, Blackford, Jay, Randolph, Henry, Wayne, Rush, Fayette, Union.
Nonmetro South	783,845	34	Sullivan, Knox, Gibson, Owen, Greene, Daviess, Martin, Pike, Dubois, Spencer, Perry, Lawrence, Orange, Crawford, Brown, Jackson, Washington, Bartholomew, Decatur, Jennings, Scott, Jefferson, Ripley, Franklin, Ohio, Switzerland.
Milwaukee, Wisconsin Office Metropolitan Allocation Areas:			
Metropolitan Allocation Area #1.	2,981,455	101	Calumet, Outagamie, Winnebago, Douglas, Chippewa, Eau Claire, Brown, La Crosse, St. Croix, Sheboygan, Marathon.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Metropolitan Allocation Area #2.	2,970,581	101	Rock, Kenosha, Dane, Racine.
Metropolitan Allocation Area #3.	6,010,999	203	Milwaukee, Ozaukee, Washington, Waukesha.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area #1.	823,629	35	Columbia, Crawford, Dodge, Grant, Green, Iowa, Jefferson, LaFayette, Richland, Sauk, Vernon, Walworth.
Nonmetropolitan Allocation Area #2.	835,133	35	Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Dunn, Iron, Jackson, Juneau, Monroe, Pepin, Pierce, Polk, Price, Rusk, Sawyer, Taylor, Trempealeau, Washburn, Wood.
Nonmetropolitan Allocation Area #3.	900,347	37	Adams, Door, Florence, Fond Du Lac, Forest, Green Lake, Kewaunee, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Oconto, Oneida, Portage, Shawano, Vilas, Waupaca, Waushara, Menominee.
Minneapolis-St. Paul, Minnesota Office Metropolitan Allocation Areas:			
Minneapolis/St. Paul MSA	8,851,884	249	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright.
Greater Minnesota Metro	1,895,077	53	St. Louis, Olmsted, Clay, Benton, Sherburne, Steams.
Northern Allocation Areas			
Northern Minnesota	862,432	35	Kittson, Roseau, Marshall, Pennington, Red Lake, Polk, Norman, Lake of the Woods, Beltrami, Clearwater, Mahnomen, Hubbard, Becker, Wilkin, Otter Tail, Grant, Douglas, Traverse, Stevens, Pope, Koochiching, Itasca, Aitkin, Carlton, Lake, Cook, Cass, Crow Wing, Wadena, Todd, Morrison, Mille Lacs, Kanabec, Pine.
Southwestern Minnesota	468,227	19	Big Stone, Chippewa, Lac Qui Parle, Yellow Medicine, Kandiyohi, Meeker, Renville, McLeod, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson.
Southeastern Minnesota	792,722	32	Sibley, Nicollet, Le Sueur, Brown, Watonwan, Blue Earth, Waseca, Martin, Faribault, Rice, Goodhue, Wabasha, Steele, Dodge, Winona, Freeborn, Mower, Fillmore, Houston.
HUD Region VI (Fort Worth)			
Fort Worth, Texas Office Metropolitan Allocation Areas:			
Central Texas	1,828,562	62	Bell, Coryell, Tom Green, McLennan.
Dallas, Texas	6,007,527	199	Collin, Dallas, Denton, Ellis, Kaufman, Rockwall.
East Texas	1,328,417	44	Gregg, Harrison, Grayson, Bowie, Smith.
Fort Worth-Arlington	2,490,964	83	Johnson, Parker, Tarrant.
Far West Texas	3,733,862	123	El Paso, Midland, Ector.
West Texas	1,888,788	63	Taylor, Potter, Randall, Lubbock, Wichita.
New Mexico	2,450,767	81	Bernalillo, Dona Ana, Los Alamos, Santa Fe.
Nonmetropolitan Allocation Areas:			
Central Texas	506,144	21	Milam, Lampasas, San Saba, Hamilton, Mills, Hill, Kimble, Reagan, Mason, Coke, Sutton, Concho, Schleicher, Crockett, Martin, Menard, Sterling, Irion, Nolan, Kent, Brown, Jones, Stonewall, Haskell, Stephens, Fisher, Scurry, Eastland, Knox, Comanche, Runnels, Coleman, Mitchell, Shakelford, Throckmorton, Callahan.
Far West Texas	604,322	26	Reeves, Andrews, Marion, Howard, Pecos, Gaines, Terrell, Crane, Upton, Loving, Ward, Dawson, Glasscock, Broden, Winkler, Bailey, King, Cochran, Lamb, Dickens, Lynn, Garza, Motley, Hockley, Terry, Floyd, Crosby, Hale, Yoakum, Hudspeth, Jeff Davis, Culberson, Brewster, Presidio.
North Central Texas	530,825	24	Limestone, Bosque, Freestone, Falls, Hunt, Palo Pinto, Wise, Erath, Hood, Somervell, Navarro, Fannin, Cooke.
Northeast Texas	625,801	29	Franklin, Hopkins, Titus, Delta, Morris, Red River, Lamar, Cass, Henderson, McCulloch, Camp, Rains, Cherokee, Van Zandt, Rusk, Anderson, Wood, Upshur, Panola.
Texas Panhandle	425,779	17	Jack, Young, Hardeman, Archer, Clay, Montague, Foard, Cottle, Baylor, Wilbarger, Hemphill, Hansford, Hall, Swisher, Gray, Roberts, Donley, Oldham, Deaf, Smith, Moore, Dallam, Hutchinson, Collingsworth, Wheeler, Childress, Parmer, Castro, Lipscomb, Carson, Sherman, Hartley, Ochiltree, Briscoe, Armstrong.
North & West New Mexico	495,123	23	Colfax, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Taos, Torrance, Valencia.
South & East New Mexico	542,727	24	Catron, Chaves, Curry, De Baca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Otero, Quay, Roosevelt, Sierra, Socorro, Union.
Houston, Texas Office Metropolitan Allocation Areas:			
Beaumont-Port Arthur MSA	1,132,910	39	Hardin, Jefferson, Orange.
Houston PMSA	8,859,723	308	Fort Bend, Harris, Liberty, Montgomery, Waller.
Southeast Texas Metro	1,486,330	51	Brazoria, Brazos, Galveston.
Nonmetropolitan Allocation Areas:			
Nonmet BVDC and HGAC Nonmetro.	514,382	21	Austin, Burleson, Chambers, Colorado, Grimes, Leon, Madison, Matagorda, Robertson, Washington, Walker, Wharton.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Deep East Texas Nonmetro.	432,864	19	Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler.
Little Rock, Arkansas Office Metropolitan Allocation Areas:			
Ark-Metro	2,643,770	103	Washington, Crawford, Sebastian, Faulkner, Lonoke, Pulaski, Saline, Crittenden, Jefferson, Miller.
Nonmetropolitan Allocation Areas:			
NW	668,540	34	Baxter, Benton, Boone, Carroll, Madison, Marion, Newton, Searcy, Clark, Conway, Garland, Hot Spring, Johnson, Montgomery, Perry, Pike, Pope, Yell, Franklin, Logan, Polk, Scott.
NE	489,047	24	Cleburne, Fulton, Independence, Izard, Jackson, Sharp, Stone, Van Buren, White, Woodruff, Clay, Craighead, Greene, Lawrence, Randolph.
E	603,538	30	Mississippi, Poinsett, Monroe, Prairie, Gross, Lee, Phillips, St. Francis.
S	529,094	26	Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Lincoln, Calhoun, Columbia, Dallas, Hempstead, Howard, Lafayette, Little River, Nevada, Ouachita, Sevier, Union.
New Orleans, Louisiana Office Metropolitan Allocation Areas:			
Baton Rouge Metro Area	1,246,645	46	Ascension Parish, East Baton Rouge Parish, Livingston Parish, West Baton Rouge Parish.
South-Western Louisiana Metro Areas.	1,792,160	67	Lafourche Parish, Terrebonne Parish, Lafayette Parish, St. Martin Parish, Calcasieu Parish.
North-Central Louisiana Metro Areas.	1,776,786	67	Bossier Parish, Caddo Parish, Ouachita Parish, Rapides Parish.
New Orleans Metro Area	5,894,222	221	Jefferson Parish, Orleans Parish, St. Bernard Parish, St. Charles Parish, St. John The Baptist Parish, St. Tammany Parish.
Nonmetropolitan Allocation Areas:			
North-Western Louisiana	433,538	21	Webster Parish, Claiborne Parish, Lincoln Parish, Bienville Parish, De Soto Parish, Red River Parish, Winn Parish, Sabine Parish, Natchitoches Parish, Grant Parish, Vernon Parish.
South-Western Louisiana	684,814	35	Beauregard Parish, Allen Parish, Evangeline Parish, St. Landry Parish, Jefferson Davis Parish, Acadia Parish, Cameron Parish, Vermilion Parish, Iberia Parish, St. Mary Parish, Assumption Parish.
North-Eastern Louisiana	364,844	18	Union Parish, Morehouse Parish, East Carroll Parish, West Carroll Parish, Jackson Parish, Richland Parish, Madison Parish, Caldwell Parish, Franklin Parish, Tensas Parish, La Salle Parish, Catahoula Parish, Concordia Parish, Avoyelles Parish.
South-Eastern Louisiana	456,534	24	Pointe Coupee Parish, West Feliciana Parish, East Feliciana Parish, St. Helena Parish, Tangipahoa Parish, Washington Parish, St. James Parish, Plaquemines Parish, Iberville Parish.
Oklahoma City, Oklahoma Office Metropolitan Allocation Areas:			
Western Metro	2,726,117	109	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie, Comanche, Garfield.
Eastern Metro	1,543,963	63	Creek, Osage, Rogers, Tulsa, Wagoner, Sequoyah.
Nonmetropolitan Allocation Areas:			
Nonmet Western Nonmetro	1,095,871	51	Alfalfa, Beaver, Beckham, Blaine, Caddo, Carter, Cimarron, Cotton, Custer, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Love, Major, Marshall, Murray, Noble, Payne, Pontotoc, Roger Mills, Seminole, Stephens, Texas, Tillman, Washita, Woods, Woodward.
Nonmet Eastern Nonmetro	795,989	39	Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Craig, Delaware, Haskell, Hughes, Latimer, Le Flore, McCurtain, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Pittsburg, Pushmataha, Washington.
San Antonio, Texas Office Metropolitan Allocation Areas:			
Metropolitan Area A	2,429,284	85	Hidalgo, Cameron, Webb.
Metropolitan Area B	3,768,208	131	Bexar, Comal, Guadalupe.
Metropolitan Area C	2,313,414	81	Travis, Williamson, Hays.
Metropolitan Area D	1,483,141	51	Victoria, Nueces, San Patricio.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Area A	400,263	17	Val Verde, Edwards, Real, Kerr, Bandera, Kinney, Uvalde, Medina, Maverick, Zavala, Frio, Dimmit, La Salle.
Nonmetropolitan Area B	390,740	17	Atascosa, McMullen, Live Oak, Bee, Refugio, Aransas, Duval, Jim Wells, Kleberg, Zapata, Jim Hogg, Brooks, Kenedy, Starr, Willacy.
Nonmetropolitan Area C	449,547	19	Calhoun, Goliad, Jackson, Karnes, De Witt, Lavaca, Wilson, Gonzales, Kendall, Gillespie, Llano, Burnet, Blanco, Caldwell, Bastrop, Lee, Fayette.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
HUD Region VII (Kansas City) Des Moines, Iowa Office Metropolitan Allocation Areas:			
Metro-East	2,155,515	72	Black Hawk, Bramer, Dubuque, Johnson, Linn, Scott.
Metro-West	1,628,866	55	Dallas, Polk, Pottawattamie, Warren, Woodbury.
Nonmetropolitan Allocation Areas:			
Nonmetro-East	973,995	41	Allamakee, Benton, Buchanan, Butler, Cedar, Chickasaw, Clayton, Clinton, Delaware, Des Moines, Fayette, Grundy, Hardin, Henry, Howard, Iowa, Jackson, Jones, Lee, Louisa, Marshall, Muscatine, Poweshiek, Tama, Washington, Winneshiek.
Nonmetro-Northwest/ Central.	914,851	37	Audubon, Buena Vista, Calhoun, Carroll, Cerro Gordo, Cherokee, Clay, Crawford, Dickinson, Emmet, Floyd, Franklin, Greene, Guthrie, Hamilton, Hancock, Humboldt, Ida, Kossuth, Lyon, Mitchell, Monona, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Webster, Winnebago, Worth, Wright.
Nonmetro-Southwest/ Central.	924,827	40	Adair, Adams, Appanoose, Boone, Cass, Clarke, Davis, Decatur, Fremont, Harrison, Jasper, Jefferson, Keokuk, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Page, Ringgold, Shelby, Story, Taylor, Union, Van Buren, Wapello, Wayne.
Kansas City, Missouri Office Metropolitan Allocation Areas:			
Western Missouri Metropolitan Allocation Area.	4,367,353	156	Buchanan, Cass, Christian, Clay, Greene, Jackson, Jasper, Lafayette, Newton, Platte, Ray.
Kansas Metropolitan Allocation Area.	3,262,847	116	Butler, Douglas, Harvey, Johnson, Leavenworth, Miami, Sedgwick, Shawnee, Wyandotte.
Nonmetropolitan Allocation Areas:			
Kansas Nonmetropolitan Allocation Area.	1,677,691	73	Allen, Anderson, Atchinson, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove; Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, McPherson, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson.
Western Missouri Nonmetropolitan Allocation.	816,326	38	Andrew, Atchison, Barry, Barton, Bates, Benton, Caldwell, Camden, Carroll, Cedar, Charlton, Clinton, Dade, Dallas, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Johnson, Laclede, Lawrence, Linn, Livingston, McDonald, Mercer, Miller, Morgan, Nodaway, Pettis, Polk, Pulaksi, Putnam, St. Clair, Caline, Stone, Sullivan, Taney, Veron, Webster, Worth.
Omaha, Nebraska Office Metropolitan Allocation Areas:			
Metro-Nebraska	2,206,233	79	Dakota, Douglas, Lancaster, Sarpy, Washington.
Nonmetropolitan Allocation Areas:	612,325,	28	Antelope, Boone, Burt, Butler, Cass, Cedar, Clay, Colfax, Cuming, Dixon, Dodge, Fillmore, Gage, Hamilton, Jefferson, Johnson, Knox, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Pierce, Platte, Polk, Richardson, Saline, Saunders, Seward, Stanton, Thayer, Thurston, Wayne, York.
West-Nebraska	694,754	27	Adams, Arthur, Banner, Blaine, Box Butte, Boyd, Brown, Buffalo, Chase, Cherry, Cheyenne, Custer, Dawes, Dawson, Deuel, Dundy, Franklin, Frontier, Furnas, Garden, Garfield, Gosper, Grant, Greeley, Hall, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Kearney, Keith, Keya Paha, Kimball, Lincoln, Logan, Loup, McPherson, Morrill, Perkins, Phelps, Red Willow, Rock, Scotts Bluff, Sheridan, Sherman, Sioux, Thomas, Valley, Webster, Wheeler.
St. Louis, Missouri Office Metropolitan Allocation Areas:			
Metropolitan Allocation Area.	6,323,652	218	Boone, Franklin, Jefferson, St. Charles, St. Louis, St. Louis.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area.	1,427,114	71	Adair, Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Cole, Cooper, Crawford, Dent, Douglas, Dunklin, Gasconade, Howard, Howell, Iron, Knox, Lewis, Lincoln, Macon, Madison, Maries, Marion, Mississippi, Moniteau, Monroe, Montgomery, New Madrid, Oregon, Osage, Ozark, Pemiscot, Perry, Phelps, Pike, Ralls, Randolph, Reynolds, Ripley, Ste. Genevieve, St. Francois, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Warren, Washington, Wayne, Wright.
HUD Region VIII (Denver) Denver, Colorado Regional Office Metropolitan Allocation Areas:			
Denver, Colorado PMSA	4,710,189	160	Adams, Arapahoe, Denver, Douglas, Jefferson.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Colorado Northern Front Range Metro.	1,870,539	64	Boulder, Larimer, Weld.
Colorado Southern Front Range Metro.	1,377,748	46	El Paso, Pueblo.
Montana Metro Areas	599,339	21	Yellowstone, Cascade.
North Dakota Metro Areas	726,862	24	Burleigh, Morton, Cass, Grand Forks.
South Dakota Metro Areas	486,758	16	Pennington, Minnehaha.
Utah Metro Areas	3,388,014	115	Utah, Davis, Salt Lake, Weber.
Wyoming Metro Areas	311,066	10	Natrona, Laramie.
Nonmetropolitan Allocation Areas:			
Colorado Nonmetro Area	1,234,372	45	Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma.
Montana Nonmetro Area	1,448,346	50	Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Anaconda-Deer Lodge County, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Butte-Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone National Park.
North Dakota Nonmetro Area.	726,325	23	Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams.
South Dakota Nonmetro Area.	1,145,124	42	Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Handson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln, Lyman, McCook, McPherson, Marshall, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach.
Utah Nonmetro Area	516,641	19	Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emergy, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne.
Wyoming Nonmetro Area	611,064	22	Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.
HUD Region IX (San Francisco)			
Honolulu, Hawaii Office Metropolitan Allocation Areas:			
Honolulu, HI MSA	6,307,552	117	Honolulu.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Allocation Area.	1,829,512	38	Hawaii, Kauai, Maui, Guam.
Los Angeles, California Office Metropolitan Allocation Areas:			
Los Angeles County, CA	84,039,683	1790	Los Angeles.
Orange County, CA	11,254,208	239	Orange.
Riverside and San Bernardino Counties, CA.	8,230,263	176	Riverside, San Bernardino.
San Diego County, CA	14,312,621	305	San Diego.
Nonmetropolitan Allocation Areas:			
S. Luis Obispo-Imperial-Inyo-Mono Counties, CA.	1,435,119	36	San Luis Obispo, Imperial, Inyo, Mono.
Phoenix, Arizona Office Metropolitan Allocation Areas:			
Metropolitan Arizona	6,309,340	214	Maricopa, Pima, Yuma.
Nonmetropolitan Allocation Areas:			
Nonmetropolitan Arizona Allocation Area East.	668,811	23	Apache, Cochise, Gila, Graham, Greenlee, Pinal, Santa Cruz.

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Arizona Allocation Area West.	522,041	18	Coconino, Mohave, Navajo, Yavapai.
Sacramento, California Office Metropolitan Allocation Areas:			
Metropolitan Area 1. Allocation	4,521,275	134	Sacramento, San Joaquin.
Metropolitan Area 2. Allocation	1,437,764	42	Yolo, Sutter, Yuba.
Metropolitan Area 3. Allocation	1,331,823	39	Butte, Shasta.
Metropolitan Area 4. Allocation	570,969	16	El Dorado, Placer.
Nonmetropolitan Areas: Allocation			
Nonmetropolitan Area 1. Allocation	825,850	26	Alpine, Amador, Calaveras, Colusa, Glenn, Lassen, Modoc, Nevada, Plumas, Sierra, Siskiyou, Tehama, Trinity, Tuolumne.
San Francisco, California Office Metropolitan Areas: Allocation			
Metropolitan Area 1. Allocation	7,953,841	163	Fresno, Merced, Stanislaus, Tulare.
Metropolitan Area 2. Allocation	14,826,116	305	Alameda, Contra Costa.
Metropolitan Area 3. Allocation	18,681,807	384	Marin, San Francisco, San Mateo.
Metropolitan Area 4. Allocation	12,205,917	252	Monterey, Santa Clara, Santa Cruz.
Metropolitan Area 5. Allocation	4,154,737	85	Sonoma, Napa, Solano.
Metropolitan Area 6. Allocation	4,118,610	84	Clark, Washoe.
Nonmetropolitan Areas: Allocation			
Nonmetropolitan Area. Allocation	2,256,036	67	Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, White Pine, Carson City, Del Norte, Humboldt, Kings, Lake, Madera, Mariposa, Mendocino, San Benito.
HUD Region X (Seattle)			
Anchorage, Alaska Office Metropolitan Allocation Areas:			
Anchorage	626,593	16	Anchorage Borough.
Nonmetropolitan Area: Allocation			
Nonmetro Alaska	893,793	18	Aleutian Islands Census, Bethel Census Area, Bristol Bay Borough, Dillingham Census Area, Fairbanks North Star Bor, Haines Borough, Juneau Borough, Kenai Peninsula Borough, Ketchikan Gateway Borough, Kobuk Census Area, Kodiak Island Borough, Matanuska-Susitna Borough, Nome Census Area, North Slope Borough, Prince of Wales-Outer KE, Sitka Borough, Skagway-Yakutat-Angoon C, Southeast Fairbanks Census, Valdez-Cordova Census AR, Wade Hampton Census Area, Wrangell-Petersburg Cens, Yukon-Koyukuk Census Area.
Portland, Oregon Office Metropolitan Allocation Areas:			
Portland/Vancouver	5,856,626	184	Clackamas, Multnomah, Washington, Yamhill, Clark.
Ida-Ore Metro	2,937,153	92	Ada, Jackson, Lane, Marion, Polk.
Nonmetropolitan Areas: Allocation			
Idaho Nonmetro	1,749,252	56	Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington.
Eastern Oregon	928,144	32	Klickitat, Skamania, Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.
Western Oregon	1,461,926	48	Benton, Clatsop, Columbia, Coos, Curry, Douglas, Josephine, Lincoln, Linn, Tillamook.
Seattle, Washington Office Metropolitan Allocation Areas:			
Metro-1	7,257,461	211	King, Snohomish.
Metro-2	3,569,063	104	Pierce, Whatcom, Kitsap, Thurston.
Metro-3	2,914,706	84	Spokane, Benton, Franklin, Yakima.

VOL 58 ISS 129 JL 8 1993 UMI

ATTACHMENT 6.—FISCAL YEAR 1993 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION—Continued

Region	Dollars	Units	Component parts of allocation area
Nonmetropolitan Allocation Areas:			
Nonmetro-1	1,089,389	37	Clallam, Cowlitz, Grays Harbor, Island, Jefferson, Lewis, Mason, Pacific, San Juan, Skagit, Wahkiakum.
Nonmetro-2	1,143,854	38	Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, Whitman.

[FR Doc. 93–16175 Filed 7–7–93; 8:45 am]
BILLING CODE 4210–33–M

VOL
58
ISS
1
2
9
JL
8
1993
UMI

federal register

Thursday
July 8, 1993

Part VIII

The President

Proclamation 6579—To Implement an Accelerated Tariff Schedule of Duty Elimination and To Modify Rules of Origin Under the United States-Canada Free-Trade Agreement

VOL
58
ISS
129
JL
8
1993
UMI

Federal R
Vol. 58, N
Thursday,

Title 3–

The Pr

Federal Register
Vol. 58, No. 129
Thursday, July 8, 1993

Presidential Documents

Title 3—

The President

Proclamation 6579 of July 4, 1993

To Implement an Accelerated Tariff Schedule of Duty Elimination and To Modify Rules of Origin Under the United States-Canada Free-Trade Agreement

By the President of the United States of America

A Proclamation

1. On January 2, 1988, the President entered into the United States-Canada Free-Trade Agreement ("the Agreement"). The Agreement and certain letters exchanged between the Governments of Canada and the United States were approved by the Congress in section 101(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("Implementation Act"), Public Law 100–449. The Agreement entered into force on January 1, 1989.

2. Section 201(b) of the Implementation Act grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Implementation Act, the authority to proclaim such modifications as to which the United States and Canada may agree regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 to the Agreement as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

3. Consistent with Article 401(5) of the Agreement, I, through my duly empowered representative, on June 30, 1993, entered into an agreement with the Government of Canada providing an accelerated schedule of duty elimination for specific goods of Annex 401.2 to the Agreement. The consultation and lay-over requirements of section 103(a) of the Implementation Act with respect to such schedule have been complied with.

4. Pursuant to section 201(b) of the Implementation Act, I have determined that the modifications hereinafter proclaimed to existing duties on goods originating in the territory of Canada are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement and to carry out the agreement with Canada providing an accelerated schedule of duty elimination for specific goods of Annex 401.2 to the Agreement.

5. Section 202(d)(1) of the Implementation Act authorizes the President to proclaim, as a part of the Harmonized Commodity Description and Coding System, implemented by the United States as the Harmonized Tariff Schedule of the United States ("HTS"), the rules of origin set forth in Annex 301.2 of the Agreement. Section 202(d)(2) of the Implementation Act authorizes the President to proclaim, subject to the consultation and lay-over requirements of section 103(a) of the Implementation Act, such modifications to the rules as may from time to time be agreed to by the United States and Canada. I have decided, pursuant to an agreement entered into on June 30, 1993, between the United States and Canada, that certain modifications in the Agreement's rules of origin for particular goods of the HTS should be proclaimed as a part of the HTS. The consultation and lay-over requirements of section 103 of the Implementation Act with respect to such modifications have been complied with.

6. Section 201(a) of the Implementation Act authorizes the President to proclaim such modifications to or continuance of existing duties, such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be necessary or appropriate to carry out Article 401 of the Agreement and the schedule of duty reductions with respect to goods originating in the territory of Canada set forth in Annexes 401.2 and 401.7 to the Agreement.

7. Proclamation 6515 of December 16, 1992, among other actions, provided for the continuation of previously proclaimed staged duty reductions on Canadian goods in the HTS provisions modified in Annex I to Proclamation 6515. An error was made concerning the staged reductions for HTS subheading 4421.90.95. Therefore, I have decided that it is necessary and appropriate to correct this error.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and laws of the United States, including but not limited to section 604 of the Trade Act of 1974, and sections 201 and 202 of the Implementation Act, do proclaim that:

(1) In order to provide for an accelerated schedule of duty elimination for specific goods of Annex 401.2 to the United States-Canada Free-Trade Agreement and to modify the rules of origin for certain goods under the Agreement, the tariff treatment provided for in the HTS for certain goods originating in the territory of Canada and general note 3(c)(vii) to the HTS are modified as provided in sections A and B of the Annex to this proclamation.

(2) In order to correct the continued staged duty reductions on Canadian goods provided for in HTS subheading 4421.90.95, the HTS is modified as set forth in section C of the Annex to this proclamation.

(3) In order to implement accelerated elimination of the rate of duty otherwise applicable under section 466 of the Tariff Act of 1930 to the equipments, or any part thereof, including boats, originating in the territory of Canada and the expenses of repairs made in the territory of Canada upon U.S.-documented vessels (other than civil aircraft, as defined in general note 3(c)(iv) of the HTS)), such equipments, parts (including boats), and expenses of repairs shall be subject to duty at a rate of free, effective with respect to any U.S.-documented vessel arriving in any port of the United States on or after the date specified in a notice by the United States Trade Representative and published in the **Federal Register**.

(4) Any provisions of previous proclamations inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(5) The modifications made by paragraph (1) of this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in sections A and B of the Annex to this proclamation.

(6) The modifications made by paragraph (2) of this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in section C of the Annex to this proclamation.

VOL 58 ISS 129 JL 8 1993 UMI

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

Billing code 3195-01-P

Annex

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES ("HTS") WITH RESPECT TO THE TARIFF TREATMENT OF CERTAIN GOODS ORIGINATING IN THE TERRITORY OF CANADA

Section A. Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after July 1, 1993, the HTS is modified as follows:

(1) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, by striking the symbol "(CA)" and the duty rate preceding it, and inserting in lieu thereof in the parentheses following the "Free" rate of duty the symbol "(CA)," in alphabetical order:

0202.30.20	3302.10.10	5504.90.00	6912.00.46	8203.10.90
0202.30.40	3302.10.20	5605.00.00	6912.00.48	8212.10.00
0202.30.60	3302.10.30	5905.00.90	6912.00.50	8212.20.00
0712.10.00	3302.90.10	6301.10.00	7007.19.00	8301.50.00
2208.10.30	3302.90.20	6810.19.12	7019.10.30	8302.41.30
2208.10.60	3916.90.20	6911.10.20	7019.10.60	8302.41.60
2208.10.90	3918.10.31	6911.10.35	7019.31.00	8302.41.90
2208.20.10	3918.10.32	6911.10.39	7225.10.00	8302.50.00
2208.20.20	3918.10.40	6911.10.41	7226.10.10	8409.99.91
2208.20.30	4011.40.00	6911.10.45	7226.10.50	8416.10.00
2208.20.40	4016.92.00	6911.10.49	7307.22.10	8416.20.00
2208.20.50	5403.10.30	6911.10.60	7307.29.00	8509.90.40
2208.20.60	5403.33.00	6911.10.80	7307.93.30	8518.30.20
2208.50.00	5403.39.00	6912.00.10	7307.93.60	8518.90.10
2208.90.45	5404.10.10	6912.00.20	7307.93.90	8518.90.30
2208.90.60	5405.00.60	6912.00.35	7411.21.10	9001.40.00
2208.90.65	5501.10.00	6912.00.39	7411.21.50	9001.50.00
2208.90.70	5503.10.00	6912.00.41	7411.22.00	9018.41.00
2208.90.75	5503.20.00	6912.00.44	8203.10.30	9506.59.40
2208.90.80	5503.30.00	6912.00.45	8203.10.60	9506.59.80

(2) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, by striking the symbol ("CA") and the duty rate preceding it, and inserting in lieu thereof "Free (CA)".

5209.42.00	5403.42.00	5501.20.00	5503.90.00	5902.90.00
5211.42.00	5405.00.30	5501.30.00	5902.10.00	7019.10.10
5403.10.60	5408.10.00	5501.90.00	5902.20.00	7019.10.20

(3) By inserting the following HTS subheadings in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively. Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.06.10	Bulbs in soil (provided for in subheading 0601.20.90).....	Free (CA)
9905.07.01	Chinese cabbage (Brassica rapa, chenensis) or chinese lettuce (Brassica rapa, pekinensis) (provided for in subheading 0704.90.40).....	Free (CA)
9905.07.05	Chinese radishes or daikons (Raphanus sativus, longipinnatus) (provided for in subheading 0706.90.20).....	Free (CA)
9905.07.15	Green chili peppers, in brine (provided for in subheading 0711.90.60).....	Free (CA)
9905.21.05	Prepared ingredients for salads, consisting of a salad dressing and other components packaged together for retail sale (provided for in subheading 2103.90.60).....	Free (CA)

(A)(3) (con.):

	[Goods originating...:]	
9905.21.10	Conditioning, maturing or nutrient additives for flour; Dry honey coating; Honey flake; and Honey powder (all the foregoing goods provided for in subheading 2106.90.65).....	Free (CA)
9905.22.10	Citric acid additives containing citric acid, water, and more than 85 percent but not more than 95 percent of alcohol by weight (provided for in subheading 2207.10.30).....	Free (CA)
9905.24.10	Cigar binders (provided for in subheading 2403.91.40).....	Free (CA)
9905.30.12	Ointment for moisturizing and protecting animal hooves (provided for in subheading 3004.90.60 or 3307.90.00).....	Free (CA)
9905.30.15	Patches, impregnated with nicotine, used to assist in smoking withdrawal (provided for in subheading 3005.10.10).....	Free (CA)
9905.30.25	Tablets containing norethindrone acetate or ethinyl estradiol (provided for in subheading 3006.60.00).....	Free (CA)
9905.33.10	Powders for perfuming or deodorizing rugs or carpets (provided for in subheading 3307.49.00).....	Free (CA)
9905.39.02	Pintlepin assemblies consisting of a monofilament, braid, or monofilament and braid, with attached threading wire and metal tube (provided for in subheading 3916.90.10, 3916.90.30, 5404.10.80, 5609.00.30 or 5808.10.30); and Monofilament certified by the importer as intended for pintlepins or pintlepin assemblies (provided for in subheading 3916.90.10, 3916.90.30 or 5404.10.80)..	Free (CA)
9905.39.11	Flat profile shapes of polycarbonate, of a width of 100 cm or more, of a thickness of 4 mm or more but not exceeding 17 mm, having a cross-section solely of identically sized multiple rectangular voids (provided for in subheading 3916.90.50).....	Free (CA)
9905.39.16	Polyvinyl chloride film, flexible, certified by the importer as intended for use as computer graphic film; Polyvinyl chloride film certified by the importer as intended for use in graphics for trucks and emergency vehicles; and Retroreflective sheets incorporating glass beads or molded plastic microprisms (all the foregoing goods provided for in subheading 3919.90).....	Free (CA)
9905.39.17	Polyethylene synthetic paper pulp, in sheets (provided for in subheading 3920.10.00).....	Free (CA)
9905.39.18	Film, of a thickness not exceeding 0.025 mm, with a prismatic surface on one side, certified by the importer as intended for use in lighting fixtures (provided for in subheading 3920.61.00).....	Free (CA)
9905.39.19	Plates, sheets, film, foil and strip certified by the importer as intended for use in the manufacture of tubes (provided for in subheading 3920.72.00).....	Free (CA)
9905.39.20	Polyimide film (provided for in subheading 3920.99)..	Free (CA)
9905.39.25	Bobbins with metal shafts and phenolic heads and bases; Spools for typewriter or business machine ribbons; and Spools for the packaging of pintlepins (all the foregoing goods provided for in subheading 3923.40.00).....	Free (CA)
9905.39.27	Flooring designed for use in livestock buildings (provided for in subheading 3925.90.00 or 3926.90.95).....	Free (CA)
9905.40.05	Strip certified by the importer as intended for use in passenger rail cars (provided for in subheading 4008.11).....	Free (CA)
9905.40.09	Matting or mats certified by the importer as intended for use in passenger rail cars (provided for in subheading 4008.21.00, 4016.99.25 or 4016.99.50).....	Free (CA)
9905.40.12	Conveyor belt cleats (provided for in subheading 4008.29.00).....	Free (CA)
9905.40.15	Motorcycle rear drive belts and belt splice kits (provided for in subheading 4010.99).....	Free (CA)
9905.40.18	Tire treads or retreads (provided for in subheading 4012.90.20, 4012.90.50, 4016.99.25 or 4016.99.50).....	Free (CA)
9905.40.25	Chalkboard erasers (provided for in subheading 4016.10.00, 6307.90.99 or 9603.90.80).....	Free (CA)
9905.40.30	Automotive weatherstripping (provided for in subheading 4016.10.00 or 4016.93.00).....	Free (CA)

(A)(3) (con.):

	[Goods originating...:]	
9905.40.40	Capacitor covers, grommets, flanges, and vibration-absorbing motor mounts, all the foregoing certified by the importer as intended for use in air conditioners; Conveyor belt pegs or lugs; Elasticized tubular bandage and a textile-backed rubber boot, packaged together for retail sale, designed to be worn over an animal hoof; Rubber bands; and Rubber labels certified by the importer as intended to be cured on solid rubber tires during the tires' manufacture (all the foregoing goods provided for in subheading 4016.99.25 or 4016.99.50)	Free (CA)
9905.42.12	Golf bags (provided for in subheading 4202.92.15, 4202.92.20, 4202.92.30 or 4202.92.45)	Free (CA)
9905.42.25	Golf gloves (provided for in subheading 4203.21.80)	Free (CA)
9905.44.08	Brick-veneered panels having a plywood backing (provided for in subheading 4412.19.50)	Free (CA)
9905.53.10	Fabrics solely of flax, in the grey or unfinished condition (provided for in subheading 5309.11.00)	Free (CA)
9905.54.01	Yarn certified by the importer as intended for use in belts, belting or tire cord fabric (provided for in subheading 5402.10.60)	Free (CA)
9905.54.02	Yarn certified by the importer as intended for use in automotive or industrial belts or belting (provided for in subheading 5402.20.60)	Free (CA)
9905.54.03	Yarn certified by the importer as intended for use in woven fabrics other than narrow fabrics (provided for in subheading 5402.33)	Free (CA)
9905.54.13	Yarn of nylon, certified by the importer as intended for use in tires or reinforced hoses (provided for in subheading 5402.51.00 or 5402.61.00)	Free (CA)
9905.54.16	Yarn certified by the importer as intended for use in tires (provided for in subheading 5402.62.00)	Free (CA)
9905.55.15	Fibers certified by the importer as intended for use in carpets (provided for in heading 5506)	Free (CA)
9905.55.20	Yarn certified by the importer as intended for use in carpets (provided for in subheading 5509.11.00, 5509.12.00 or 5509.21.00)	Free (CA)
9905.55.30	Yarn solely of polyesters certified by the importer as intended for use in carpets (provided for in subheading 5509.22.00)	Free (CA)
9905.57.10	Axminster floor coverings (provided for in subheading 5702.31.20 or 5702.32.20)	Free (CA)
9905.58.15	Braid certified by the importer as intended for pintlepins or pintlepin assemblies (provided for in subheading 5808.10.30)	Free (CA)
9905.59.02	Chafer fabric of nylon certified by the importer as intended for use in tires (provided for in subheading 5906.99)	Free (CA)
9905.62.10	Protective clothing accessories of a kind used by chain saw operators (provided for in subheading 6217.10.00)	Free (CA)
9905.64.30	Spikes certified by the importer as intended for use in golf shoes (provided for in subheading 6406.99.30 or 6406.99.90)	Free (CA)
9905.69.10	Insulators for precipitators (provided for in subheading 6909.19 or 8546.20.00)	Free (CA)
9905.72.10	Wire certified by the importer as intended for use in hoses, tires and conveyor or automotive belting (provided for in subheading 7217.13, 7217.23 or 7217.33)	Free (CA)
9905.72.20	Wire certified by the importer as intended for pintlepins or pintlepin assemblies, whether or not fitted with a metal tube (provided for in subheading 7217.31.30 or 7223.00.10)	Free (CA)
9905.72.30	Wire certified by the importer as intended for use in reinforced hoses (provided for in subheading 7217.32.10)	Free (CA)
9905.73.02	Tubes certified by the importer as intended for use in the manufacture of pintlepin assemblies (provided for in subheading 7304.41.00)	Free (CA)

VOL 58 ISS 129 JL 8 1993 UMI

(A)(3) (con.):

	[Goods originating...:]	
9905.73.06	Feedwater heater tubes in U-bend configuration; and Tubes certified by the importer as intended for use in tubular automotive manifolds (all the foregoing goods provided for in subheading 7306.40).....	Free (CA)
9905.73.07	Tubes, pipes and hollow profiles of aluminized welded steel (provided for in subheading 7306.60.10 or 7306.60.50).....	Free (CA)
9905.73.08	Milking parlor stall systems (provided for in subheading 7308.90.90).....	Free (CA)
9905.73.09	Steel cord strands certified by the importer as intended for use in tires; Stranded alloyed steel wire, of a diameter exceeding 5 mm, certified by the importer as intended for use in tires; Stranded wire certified by the importer as intended for use in conveyor belting; and Tire cord (all the foregoing goods provided for in subheading 7312.10).....	Free (CA)
9905.73.11	Conveyor belt fastener hinge pins (provided for in subheading 7312.10, 7326.20.00 or 7326.90.90).....	Free (CA)
9905.73.12	Tire cord fabrics (provided for in subheading 7314.19.00).....	Free (CA)
9905.73.13	Bead or ball chain (provided for in subheading 7315.89.50).....	Free (CA)
9905.73.14	Couplings for bead or ball chain (provided for in subheading 7315.90.00).....	Free (CA)
9905.73.16	Elevator bolts (provided for in subheading 7318.15.20).....	Free (CA)
9905.73.18	Cotter pins certified by the importer as intended for use in passenger rail cars (provided for in subheading 7318.24.00).....	Free (CA)
9905.73.19	Breakneck lock fasteners with striated rings (provided for in subheading 7318.29.00).....	Free (CA)
9905.73.20	Portable workbenches with wooden surfaces (provided for in subheading 7323.99.90 or 7326.90.90).....	Free (CA)
9905.73.21	Clamping rings and clevis pins certified by the importer as intended for use in passenger rail cars (provided for in subheading 7325.99).....	Free (CA)
9905.73.22	Bottoms certified by the importer as intended for use in insect control devices and cylindrical nonpressurized containers for deodorizers; Insert cups certified by the importer as intended for use in insect control devices; and Stampings for drum tops and bottoms (all the foregoing goods provided for in subheading 7326.19.00).....	Free (CA)
9905.73.25	Bedpan liner dispenser racks; Bedpan support racks; Closing rings for drums; Conveyor or transmission belt (including V-belting) fasteners; Spools for typewriter or business machine ribbons; Urinal holders; and Unthreaded collars for breakneck lock fasteners with striated rings (all the foregoing goods provided for in subheading 7326.90.90).....	Free (CA)
9905.74.40	Continuous cast bronze tubes (provided for in subheading 7411.29).....	Free (CA)
9905.74.50	Brass bead or ball chain, whether or not nickel-plated (provided for in subheading 7419.10.00).....	Free (CA)
9905.74.60	Brass forgings (provided for in subheading 7419.91.00).....	Free (CA)
9905.76.30	Forgings certified by the importer as intended for use in passenger rail cars (provided for in subheading 7616.90.00).....	Free (CA)
9905.82.25	Conveyor and transmission belt fastener installation and splicing tools (provided for in subheading 8205.59.55, 8205.59.60, 8205.59.70 or 8205.59.80).....	Free (CA)
9905.82.30	Vises and clamps, precision, for toolmakers, machinists or metal workers (provided for in subheading 8205.70.00).....	Free (CA)
9905.82.35	Knives and their handles, the foregoing of stainless steel containing 17 percent or more by weight of chromium (provided for in subheading 8211.91.20, 8211.91.25, 8211.91.30, 8211.91.40 or 8211.91.60).....	Free (CA)

(A)(3) (con.):

	(Goods originating...:)	
9905.82.40	Knife blades of stainless steel containing 17 percent or more by weight of chromium (provided for in subheading 8211.94).....	Free (CA)
9905.82.45	Forks, spoons, spoon blanks and table forks in the rough, the foregoing of stainless steel containing 17 percent or more by weight of chromium (provided for in subheading 8215.99).....	Free (CA)
9905.83.35	Gold-plated or silver-plated saddle trim (provided for in subheading 8302.49.20).....	Free (CA)
9905.83.45	Door handles certified by the importer as intended for use in passenger rail cars (provided for in subheading 8302.49.60 or 8302.49.80).....	Free (CA)
9905.83.50	Electronic keyboxes and parts thereof (provided for in heading 8303.00.00).....	Free (CA)
9905.83.55	Eyelets (provided for in subheading 8308.10.00).....	Free (CA)
9905.83.60	Blind rivets (provided for in subheading 8308.20).....	Free (CA)
9905.84.03	Window-type air conditioning machines, less than 2.93 kW per hour (provided for in subheading 8415.10.00).....	Free (CA)
9905.84.04	Parts of furnace burners of subheading 8416.10.00 or 8416.20.00 (provided for in subheading 8416.90.00).....	Free (CA)
9905.84.21	Parts of dishwashing machines of subheading 8422.11.00 (provided for in subheading 8422.90.05).....	Free (CA)
9905.84.31	Parts of washing machines of subheading 8450.11.00 (provided for in subheading 8450.90.00).....	Free (CA)
9905.85.01	AC electric motors certified by the importer as intended for use in heating, air conditioning or refrigeration units (provided for in subheading 8501.10).....	Free (CA)
9905.85.16	Isolating transformers for airfield lighting (provided for in subheading 8504.31).....	Free (CA)
9905.85.23	Dry cell batteries, other than 6 volt alkaline lantern batteries (provided for in subheading 8506.20.00).....	Free (CA)
9905.85.27	Nickel-cadmium storage batteries certified by the importer as intended for use in passenger rail cars (provided for in subheading 8507.30.00).....	Free (CA)
9905.85.44	Motorcycle ignition modules and motorcycle spark coils (provided for in subheading 8511.30.00).....	Free (CA)
9905.85.48	Motorcycle alternator kits, regulators and sensor assemblies (provided for in subheading 8511.80).....	Free (CA)
9905.85.54	Motorcycle distributor contact (breaker point) sets and ignition equipment; and Parts of motorcycle ignition modules, spark coils, generators, alternator kits and regulators, sensor assemblies, distributor contact (breaker point) sets or ignition equipment (all the foregoing goods provided for in subheading 8511.90).....	Free (CA)
9905.85.56	Motorcycle lamps, side beams and signaling equipment (including siren kits), and parts thereof (provided for in subheading 8512.20.40, 8512.30.00 or 8512.90.20).....	Free (CA)
9905.85.57	Hot water dispensers, of a capacity not exceeding 2.5 liters (provided for in subheading 8516.10.00).....	Free (CA)
9905.85.58	Warm-steam vaporizers (provided for in subheading 8516.10.00 or 8516.79.00).....	Free (CA)
9905.85.59	Amplifiers for telephone headsets (provided for in subheading 8518.40).....	Free (CA)
9905.85.61	Telephone headsets (provided for in subheading 8518.50.00).....	Free (CA)
9905.85.62	Unrecorded magnetic tape certified by the importer as intended for automatic data processing uses (provided for in subheading 8523.13.00).....	Free (CA)
9905.85.63	Unrecorded compact discs specially encoded for the permanent laser beam recording of photographic images (provided for in subheading 8523.90.00).....	Free (CA)
9905.85.64	Lightning or lighting arresters certified by the importer as intended for use in passenger rail cars (provided for in subheading 8535.40.00).....	Free (CA)

Annex (con.)
6 of 11

(A)(3) (con.):

	[Goods originating...:]	
9905.85.74	Plug-in busways, fusible or circuit breaker type (provided for in subheading 8536.10.00, 8536.20.00 or 8536.30.00).....	Free (CA)
9905.85.75	Protectors certified by the importer as intended for use in electric motors (provided for in subheading 8536.20.00).....	Free (CA)
9905.85.76	Thermal protectors certified by the importer as intended for use in ballasts for fluorescent lamps (provided for in subheading 8536.30.00).....	Free (CA)
9905.85.78	Microswitches rated at 20 amperes or less for use in machinery and other industrial applications (provided for in subheading 8536.50.00).....	Free (CA)
9905.85.79	Busway connector assemblies; Connector kits for airfield lighting; and Electrical plugs and cylindrical multicontact connectors, certified by the importer as intended for use in passenger rail cars (all the foregoing goods provided for in subheading 8536.69.00).....	Free (CA)
9905.85.82	Cable assemblies certified by the importer as intended for use in airfield lighting (provided for in subheading 8544.41.00, 8544.51.80 or 8544.60).....	Free (CA)
9905.85.83	Cable fitted with connectors for telephone headsets; and Igniter wires certified by the importer as intended for use in heating, air conditioning or refrigeration units (all the foregoing goods provided for in subheading 8544.41.00). ...	Free (CA)
9905.85.84	Carbon brushes certified by the importer as intended for use in passenger rail cars (provided for in subheading 8545.20.00).....	Free (CA)
9905.85.85	Insulation tubes; Insulators for pentographs; and Insulators certified by the importer as intended for use in switchgear (all the foregoing goods provided for in subheading 8546.90.00).....	Free (CA)
9905.85.86	Electric motor fuse bases certified by the importer as intended for use in passenger rail cars (provided for in subheading 8547.90.00).....	Free (CA)
9905.90.06	Viewfinder eye cushions for cinematographic cameras (provided for in subheading 9007.91.80).....	Free (CA)
9905.90.13	Mechano-therapy equipment (provided for in subheading 9019.10.20).....	Free (CA)
9905.90.14	Thermocouple tips (provided for in subheading 9025.90.00).....	Free (CA)
9905.90.17	Airfield lighting regulators; Automatic voltage controllers; Control instruments under 1000 volts; and Float control switches (all the foregoing goods provided for in subheading 9032.89).....	Free (CA)
9905.92.05	Lutes (provided for in subheading 9202.90.60).....	Free (CA)
9905.92.12	Lute strings (provided for in subheading 9209.30.00).....	Free (CA)
9905.92.14	Tuning pins for lutes (provided for in subheading 9209.92.40).....	Free (CA)
9905.92.16	Parts of lutes (provided for in subheading 9209.92.80).....	Free (CA)
9905.94.09	Light-emitting sources for electronic measuring equipment (provided for in subheading 9405.40.60).....	Free (CA)
9905.94.12	Airfield signs, static nonflashing, having an illuminating light (provided for in subheading 9405.60).....	
9905.95.01	Golf balls, hollow, for practice (provided for in subheading 9506.32.00 or 9506.39.00).....	Free (CA)
9905.95.07	Shuttlecocks (provided for in subheading 9506.99.12).....	Free (CA)
9905.95.08	Pitching machines (provided for in subheading 9506.99.15 or 9506.99.60).....	Free (CA)
9905.96.05	Hand-operated mechanical floor sweepers, not motorized (provided for in subheading 9603.90.80).....	Free (CA)
9905.96.10	Plastic tip pens and dry erase markers (provided for in subheading 9608.20.00).....	Free (CA)
9905.96.25	Chalk and crayons (provided for in subheading 9609.90.80).....	Free (CA)*

(A) (con.):

(4) By striking the following HTS subheadings:

9905.16.10	9905.39.10	9905.59.10	9905.84.16	9905.85.66
9905.30.02	9905.40.20	9905.66.10	9905.85.21	9905.85.67
9905.30.05	9905.42.10	9905.70.10	9905.85.25	9905.85.68
9905.30.10	9905.54.10	9905.73.10	9905.85.38	9905.85.71
9905.39.07	9905.54.14	9905.83.05	9905.85.39	9905.87.20
9905.39.08	9905.55.10	9905.83.10	9905.85.51	9905.95.03

and inserting in lieu thereof the following HTS subheadings in numerical sequence in subchapter V of chapter 99 in the HTS with the material which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively. Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.16.10	Prepared meals, not dehydrated and not requiring refrigeration, in vacuum-sealed airtight pouches or trays; and Prepared or preserved bovine meat, meat offal or blood (other than prepared meals) (all the foregoing goods provided for in subheading 1602.50.90).....	Free (CA)
9905.30.02	Clindamycin palmitate hydrochloride granules; Clindamycin phosphate topical solution; Erythromycin; Erythromycin lactobionate, injectable; Imipenem-cilastatin sodium; Spectinomycin hydrochloride sterile powder, injectable; and Vancomycin hydrochloride, injectable (all the foregoing goods provided for in subheading 3004.20.00).....	Free (CA)
9905.30.05	Oxytocin, injectable; Recombinant human erythropoietin; and Somatropin, injectable (all the foregoing goods provided for in subheading 3004.39.00).....	Free (CA)
9905.30.10	Acetazolamide in sustained-release dosage form for human use; Alprostadil sterile solution, injectable; Aminocaproic acid; Antibacterial creams containing sulfanilamide as the single active ingredient; Antihistaminic agents in tablet form containing terfenadine as the single active ingredient; Anthelmintic based on pyrantel pamoate or morantel tartarate for treating internal parasites in horses and in dairy and feed cattle; Antimicrobial ointments other than sulfonamides for the treatment of vaginal yeast infections in animals; Antiseptic liniment or gel for relief of muscular aches, arthritic pain or bruises; Attapulgite tablets, film-coated; Ciprofloxacin hydrochloride tablets; Ciprofloxacin, intravenous; Ganciclovir sodium; Iron-dextran complex; Ivermectin; Ketorolac tromethamine; Laxatives for animals; Lyophilized ribavirin in vials; Methotrexate sodium; Mitoxantrone hydrochloride; Nifedipine tablets; Nimodipine capsules, tablets or intravenous formulation; Nitroglycerin tablets, sublingual; Quinapril hydrochloride; Streptozocin sterile solution, injectable; Sumatriptan succinate; and Tubocurarine chloride, injectable (all the foregoing goods provided for in subheading 3004.90.60).....	Free (CA)
9905.39.07	Polyvinyl chloride edgebanding, of a width of over 1 cm, and of a thickness of over 0.03 cm but not over 1 cm; Tape certified by the importer as intended for use in the manufacture of disposable diapers; and Tape of polyesters, certified by the importer as intended for use in splicing or holding film during photographic processing (all the foregoing goods provided for in subheading 3919.10.20).....	Free (CA)

Annex (con.)
8 of 11

(A)(4) (con.):

	[Goods originating...:]	
9905.39.10	Construction debris chutes, Facemasks and visors specially designed for headgear used in ice hockey, Grommets certified by the importer as intended for use in ballasts for fluorescent lamps, Lip bands (handles) for glass decanters; Microfilm jackets of polyethylene terephthalate, Perforated 8 mm, 16 mm or 35 mm motion picture film leaders of cellulose acetate or polyethylene terephthalate; Perforated release film of polymers of tetrafluoroethylene, certified by the importer as intended to be employed in the manufacture of printed circuit boards; and Teethers and teething rings (all the foregoing goods provided for in subhead ng 3926 90 95)	Free (CA)
9905.40.20	Gaskets certified by the importer as intended for use in sealing steel or plastic drums; Gaskets and seals for locomotives and rail cars, Motor seals certified by the importer as intended for use in passenger rail cars; Oil seals; and Seals certified by the importer as intended for use in air conditioners (all the foregoing goods provided for in subheading 4016 93.00)	Free (CA)
9905.42.10	Bowling bags; and Ski carrying cases, portable, of polyethylene (all the foregoing goods provided for in subheading 4202 92.45)	Free (CA)
9905.54.10	Yarn certified by the importer as intended for use in weather stripping; Yarn of expanded polytetrafluoroethylene, and Yarn, solely of polyurethane, single, untwisted, not on beams (all the foregoing goods provided for in subheading 5402.49.00)	Free (CA)
9905.54.14	Strip and the like, of nylon or of polytetrafluoroethylene (the foregoing provided for in subheading 5404.90.00	Free (CA)
9905.59.10	Packing yarns with cores of glass fibers, whether or not incorporating a metal wire, covered with a textile wrapper, and Pure or prelubricated polytetrafluoroethylene yarns or strip (all the foregoing goods provided for in subheading 5911.90.00)	Free (CA)
9905.66.10	Canes specially designed for use by the blind, Orthopedic canes; and Seat-sticks (all the foregoing goods provided for in heading 6602.00.00)	Free (CA)
9905.70.10	Woven fabrics of electrically nonconductive continuous glass fiber filaments having a diameter of not less than 9.3 microns but not more than 10.7 microns, and impregnated, coated or covered with resorcinol-formaldehyde latex (the foregoing provided for in heading 7019.20)	Free (CA)
9905.73.10	Cable ties certified by the importer as intended for use in passenger rail cars, Treeball baskets; Underwires for brassieres; and Wire mesh minnow traps (all the foregoing goods provided for in subheading 7326.20.00)	Free (CA)
9905.83.05	Electronic door locks; and Push-button combination door locks (all the foregoing goods provided for in subheading 8301.40.60)	Free (CA)
9905.83.10	Parts of electronic door locks, Parts of goods of subheading 8301.50.00 Parts of locks of [illegible] Parts of push-button combination door locks (all the foregoing goods provided for in subheading 8301.60.00)	Free (CA)
9905.84.16	Parts of air conditioners of subheading 8415.82.00 for locomotives; and Parts of air conditioning machines of subheading 8415.10.00 or 8415.81.00 (all the foregoing goods provided for in subheading 8415.90.00)	Free (CA)
9905.85.21	9 volt batteries; 1.5 volt AAA batteries; and Dry cell batteries other than 1.5 volt AA, 1.5 volt C and 1.5 volt D alkaline batteries (all the foregoing goods provided for in subheading 8506.11.00)	Free (CA)

(A)(4) (con.):

	[Goods originating...:]	
9905.85.25	Parts of batteries having a lithium chemical system; Parts of primary cells or primary batteries of subheadings 8506.12.00 or 8506.13.00; Parts of 9 volt batteries, 1.5 volt AAA batteries, and dry cell batteries other than 1.5 volt AA, 1.5 volt C and 1.5 volt D alkaline batteries of subheading 8506.11.00; and Parts of dry cell batteries of subheading 8506.20.00 other than 6 volt alkaline lantern batteries (all the foregoing goods provided for in subheading 8506.90.00).....	Free (CA)
9905.85.39	Alternator assemblies for diesel locomotives; and Motorcycle generators (all the foregoing goods provided for in subheading 8511.50.00).....	Free (CA)
9905.85.51	Parts of automatic drip coffee makers; Parts of coffee percolators, of stainless steel; Parts of electrothermic hairdressing or hand-drying apparatus; Parts of electric flatirons; Parts of toasters; and Parts of warm-steam vaporizers of subheading 8516.79.00 (all the foregoing goods provided for in subheading 8516.90.60).....	Free (CA)
9905.85.66	Connector kits for isolating transformers for airfield lighting; and Pantographs (all the foregoing goods provided for in subheading 8535.90.00).....	Free (CA)
9905.85.67	Contactors certified by the importer as intended for use in passenger rail cars; and Shunt contactors for direct current controls (all the foregoing goods provided for in subheading 8536.49.00).....	Free (CA)
9905.85.68	Connector adapters for goods of subheading 9030.39.00; Contactors and terminals for automatic motor protectors; Terminal blocks and terminals certified by the importer as intended for use in air conditioning machines; and Y-adapter connectors for telephone headsets (all the foregoing goods provided for in subheading 8536.90.00).....	Free (CA)
9905.85.71	Direct current magnetic coils for switchgear of heading 8536; Parts of lightning or lighting arresters of subheading 8535.40.00, of contactors of subheading 8536.49.00, and of electrical plugs and cylindrical multicontact connectors of subheading 8536.69.00, all the foregoing certified by the importer as intended for use in passenger rail cars; Parts of connector kits for isolating transformers of subheading 8539.90.00 and parts of connector kits of subheading 8536.69.00, all the foregoing for airfield lighting; Parts of plug-in busways, fusible or circuit breaker type, of subheading 8536.10.00, 8536.20.00 or 8536.30.00; Parts of thermal protectors certified by the importer as intended for use in ballasts for fluorescent lamps, of subheading 8536.30.00; Parts of microswitches rated at 20 amperes or less for use in machinery and other industrial applications, of subheading 8536.50.00; Parts of busway connector assemblies of subheading 8536.69.00; Parts of terminal blocks and terminals certified by the importer as intended for use in air conditioning machines, of subheading 8536.90.00; Parts of Y-adapter connectors for telephone headsets, of subheading 8536.90.00; Ignition panels for motorcycles; and Parts of pantographs of subheading 8535.90.00 (all the foregoing goods provided for in subheading 8538.90.00)... ...	Free (CA)
9905.87.20	Brake drums for semi-trailers for road tractors; and Hubs, wheels and spindles for agricultural trailers (all the foregoing goods provided for in subheading 8716.90.50).....	Free (CA)
9905.95.03	Golf club shafts of fiberglass or wood; Golf club heads, of wood, rough cut; and Forged golf club heads of iron or steel, not ground, polished, plated or otherwise finished (all the foregoing goods provided for in subheading 9506.39.00).....	Free (CA)"

VOL 58 ISS 129 JL 8 1993 UMI

(A) (con.):

(5) General note 3(c)(vii) to the HTS is modified:

(i) By adding the following new subdivision (R)(15)(aaa) at the same level of indentation as subdivision (R)(15)(aa):

"(aaa) A change from a parts subheading to a subheading other than a parts subheading; provided that the value of the materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 per cent of the value of the goods when exported to the territory of the United States."

(ii) By striking the text of subdivision (R)(15)(jj) and inserting in lieu thereof the following:

"A change to headings of 7309-7311, 7313-7314, 7316, 7319 or 7321-7326 from any heading other than any of those headings."

(iii) By striking the text of subdivision (R)(16)(cc) and inserting in lieu thereof the following:

"A change to heading 8407 or 8408 from any other heading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States."

(iv) By adding the following new subdivision (R)(16)(eee) at the same level of indentation as subdivision (R)(16)(ee):

"(eee) A change to subheading 8471.99 from subheading 8471.93."

Section B. Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the date specified in a notice by the U.S. Trade Representive and published in the Federal Register (such date to coincide with the date of implementation of the North American Free Trade Agreement) the HTS is modified as follows:

(1) For HTS subheadings 5801.25.00, 5801.35.00 and 8540.11.00, in the Rates of Duty 1-Special subcolumn, by striking the symbol "(CA)" and the duty rate preceding it, and inserting in lieu thereof in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order.

(2) By deleting from the article description of HTS subheading 9905.00.30 "5801.25" and "5801.35".

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11 of 11

(B) (con.):

(3) By inserting the following HTS subheading in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.73.04	Tubes, pipes and hollow profiles of stainless steel containing by weight 24 percent or more of nickel (provided for in subheading 7304.41.00 or 7304.49.00).....	Free (CA)"

Section C. Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For subheading 4421.90.95, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1994	1995	1996	1997	1998
4421.90.95	2%	1.5%	1%	0.5%	Free

[FR Doc. 93-16385
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VOL 58 ISS 129 JL 8 1993 UMI

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FEDERAL RE
35357-35840...
35841-36116...
36117-36300...
36301-36588...
36589-36852...

Reader Aids

Federal Register

Vol. 58, No. 129

Thursday, July 8, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587
Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357
Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
301.....36589, 36590, 36591
400.....36592
1097.....34359
1098.....35361
1099.....34362
1435.....36120
1755.....36252

8 CFR

245.....35832

9 CFR

78.....36593
94.....36593, 36594
Proposed Rules:
94.....36624
98.....36625

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131
71.....36596
72.....36296
108.....36802
Proposed Rules:
Ch. I.....36626
1.....36738
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

16 CFR

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
249.....35367

18 CFR

Proposed Rules:
35.....36172
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
510.....36134
520.....36134
Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

VOL 58 ISS 129 JL 8 1993 UMI

24 CFR

203.....35369
572.....36518, 36546
Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908, 36516

28 CFR

0.....35371
55.....35371

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

920.....36135
938.....36139
Proposed Rules:
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357, 36597
Proposed Rules:
117.....36629

34 CFR

378.....35762
685.....36008
Proposed Rules:
692.....36110

36 CFR

51.....36598

39 CFR

233.....36598

40 CFR

82.....36516
131.....36141
180.....36358, 36359
185.....36358
228.....35884
Proposed Rules:
88.....35420
180.....36366
186.....36366
261.....36367
372.....36180

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

46 CFR

170.....36601
Proposed Rules:
171.....36374

47 CFR

1.....36142
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410
76.....36604
90.....36362
Proposed Rules:
Ch. I.....36630
73.....35420, 35421, 36184, 36374, 36375, 36376

48 CFR

904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363

49 CFR

218.....36605
229.....36605
541.....36376
571.....36152, 36615
Proposed Rules:
543.....35422

50 CFR

17.....35887
85.....36619
285.....36154
625.....35891
646.....35895, 36155
658.....35897
672.....35897
675.....35897
Proposed Rules:
17.....36184, 36379, 36387
642.....36632

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 765/P.L. 103–48

To resolve the status of certain lands relinquished to the United States under the Act of June 4, 1897 (30 Stat. 11, 36), and for other purposes. (July 2, 1993; 107 Stat. 234; 5 pages)

H.R. 1876/P.L. 103–49

To provide authority for the President to enter into trade agreements to conclude the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, to extend tariff proclamation authority to carry out such agreements, and to apply congressional "fast track" procedures to a bill implementing such agreements. (July 2, 1993; 107 Stat. 239; 2 pages)

H.R. 2118/P.L. 103–50

Supplemental Appropriations Act of 1993 (July 2, 1993; 107 Stat. 241; 29 pages)

Last List July 7, 1993

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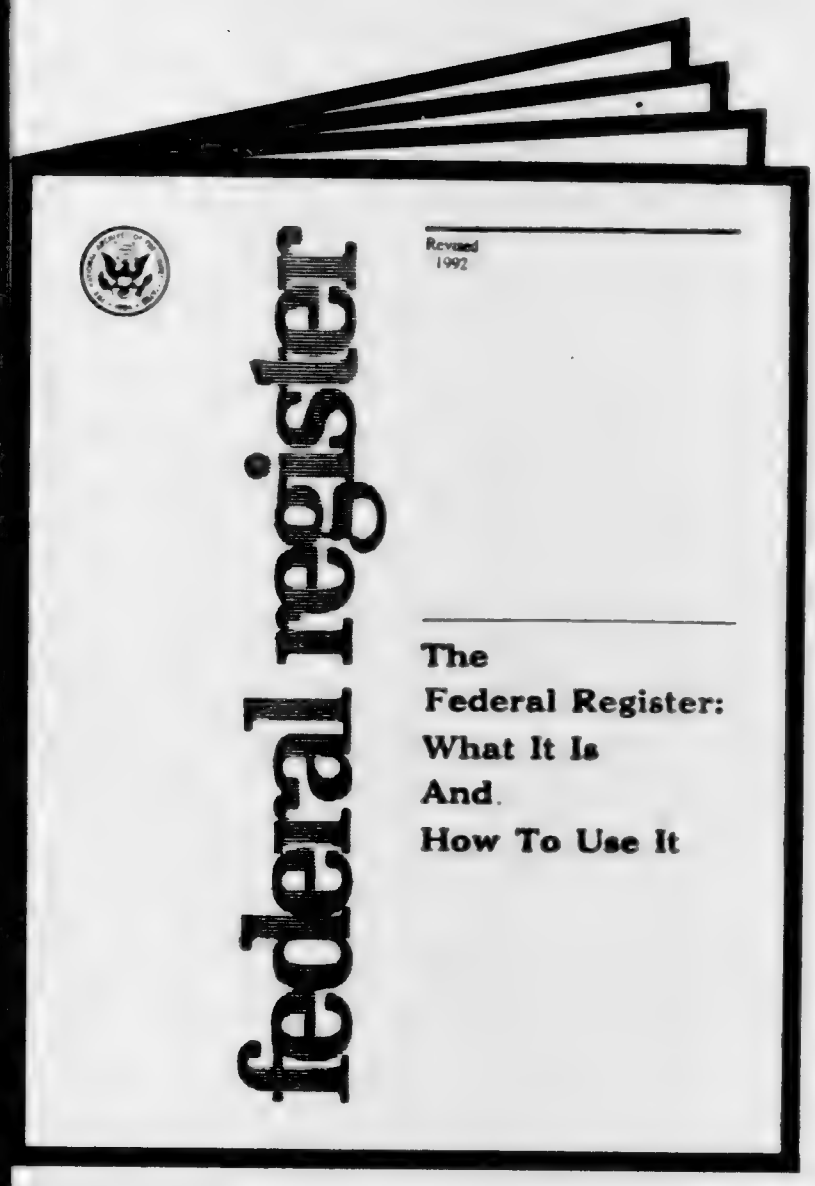

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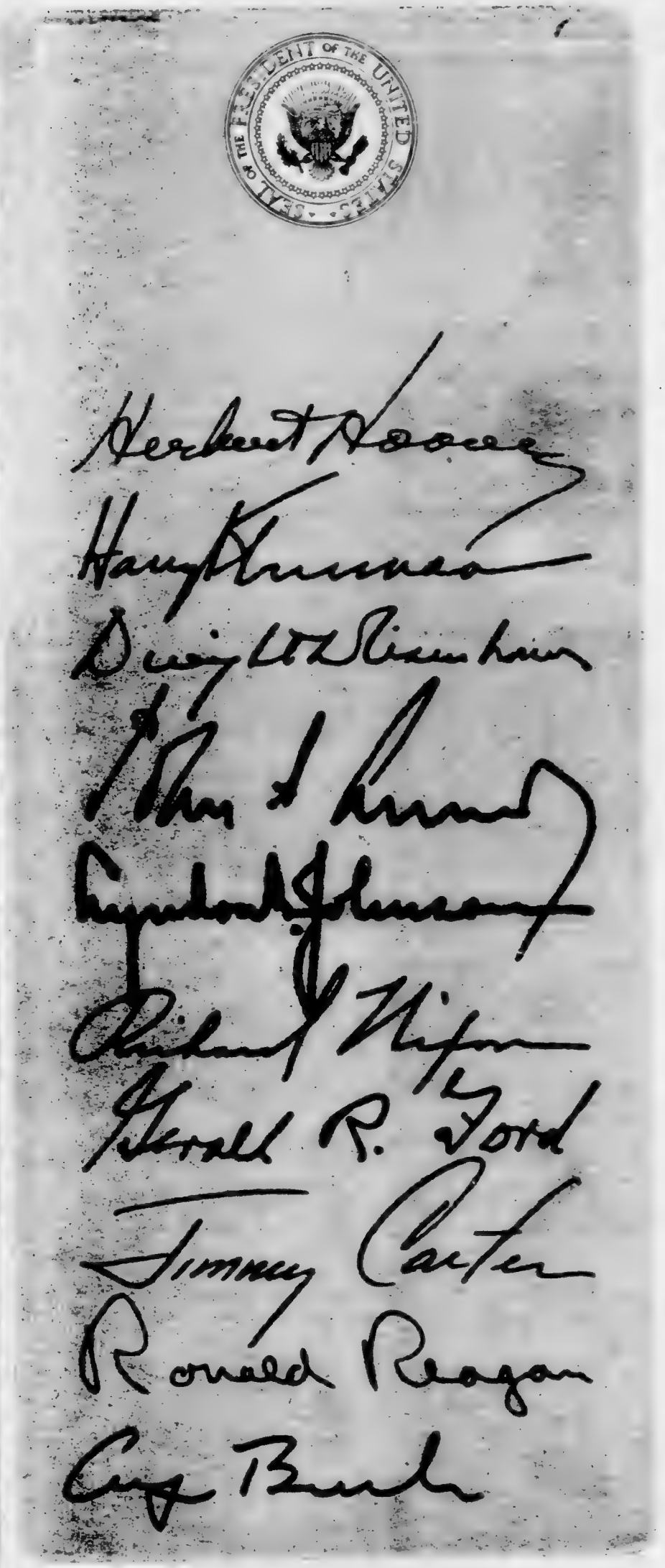

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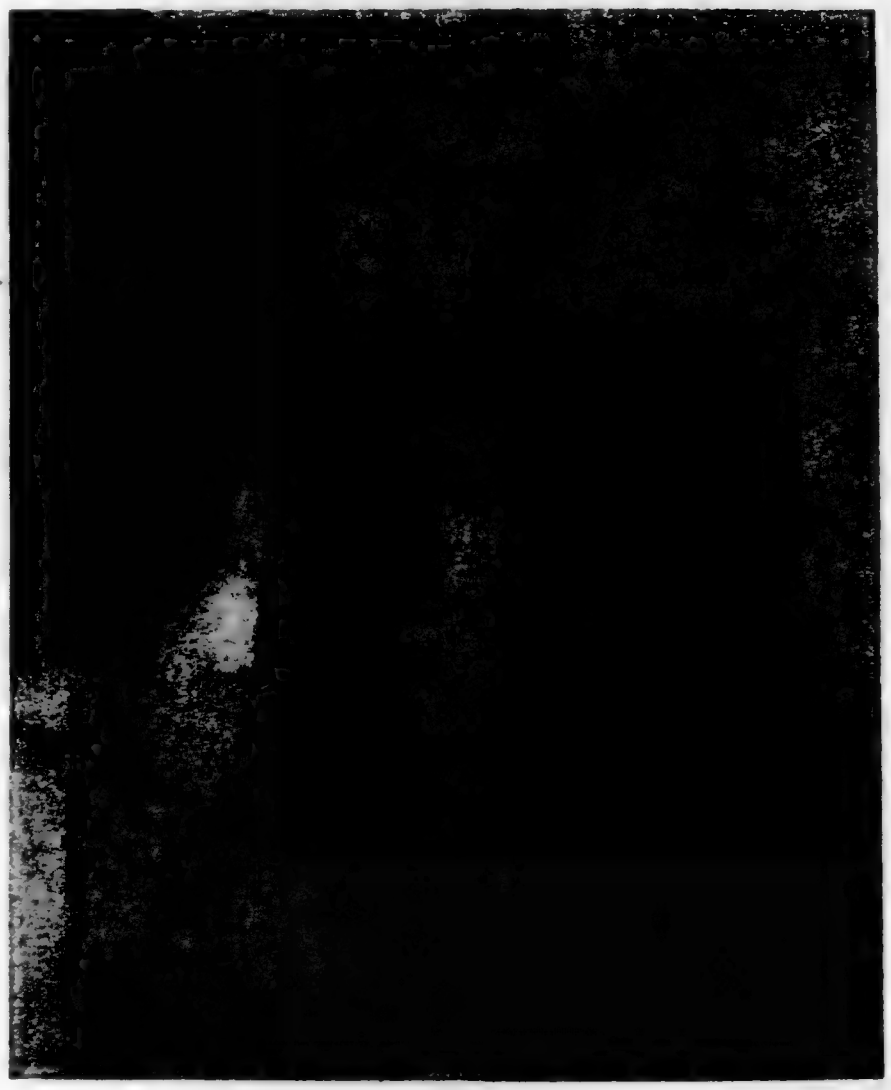

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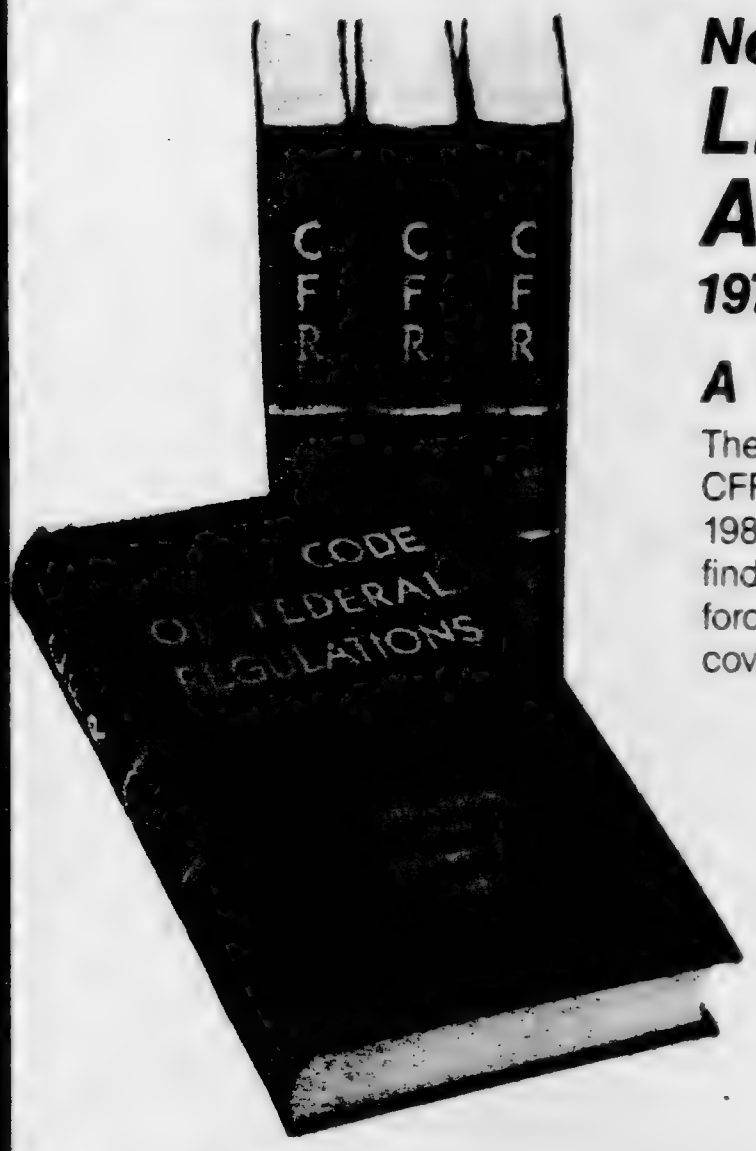

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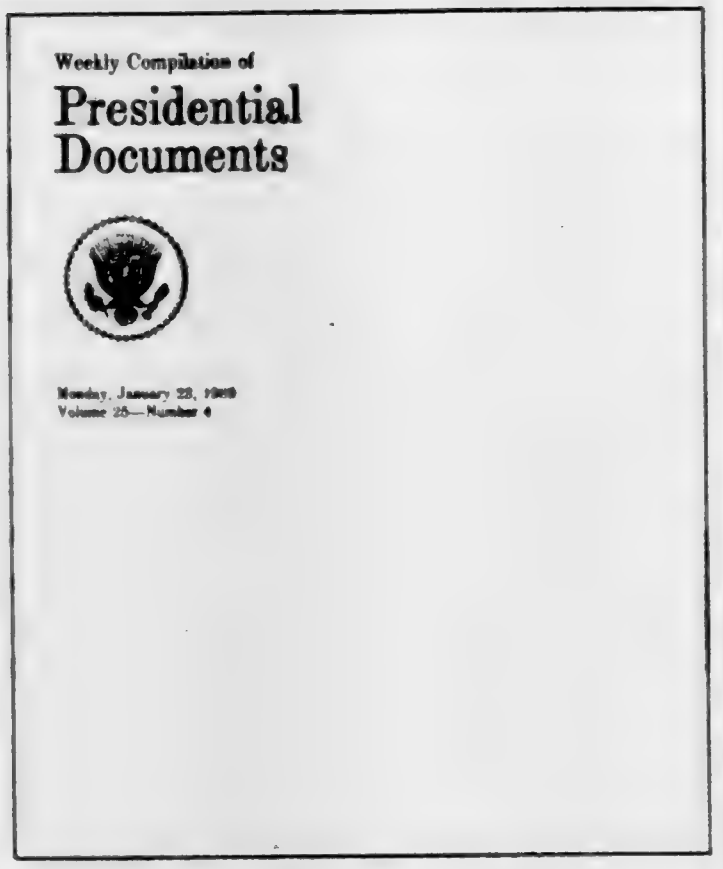

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Contents

Federal Register
Vol. 58, No. 130
Friday, July 9, 1993

Agricultural Marketing Service
RULES
Milk marketing orders:
Central Arkansas, 36859

Agricultural Stabilization and Conservation Service
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Tobacco, 36853

Agriculture Department
See Agricultural Marketing Service
See Agricultural Stabilization and Conservation Service
See Commodity Credit Corporation
See Forest Service
See Soil Conservation Service

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Alaska; military operations areas improvements, 36948
Buckley Air National Guard Base, CO; 140th Fighter Wing, Colorado Air National Guard; military special use airspace modification, 36948
Meetings:
Scientific Advisory Board, 36949

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
USAir Group, Inc., 36996
National cooperative research notifications:
SQL Access Group, Inc., et al., 37026

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings, 37052
NOTICES
Americans with Disabilities Act:
Research priorities 1993 and 1994 FY, 37058

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Fort Ord, CA, 36949

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 36966

Coast Guard
RULES
Ports and waterways safety:
New London, CT; safety zone, 36868
PROPOSED RULES
Merchant marine officers and seamen:
Foreign trade vessels; Federal pilotage requirement, 36913
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 37047

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission on National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Defense conversion assistance program, 36945

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 36944

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Taiwan, 36943

Commodity Credit Corporation
RULES
Loan and purchase programs:
Price support levels—
Tobacco, 36857, 36861

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
See Navy Department

Education Department
RULES
Effective date announcement, 36869

Employment and Training Administration
NOTICES
Adjustment assistance:
Communications Instruments, Inc., 37027
G.E.O., Inc., 37027
Shenango, Inc., et al., 37027

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally assisted construction; general wage determination decisions, 37028

VOL 58 ISS 130 JL 9 1993 UMI

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
PROPOSED RULES
Acquisition regulations:
Interagency agreements, 36917
NOTICES
Grant and cooperative agreement awards:
Ohio State University Research Foundation, 36950

Engineers Corps
NOTICES
Meetings:
Inland Waterways Users Board; correction, 36949

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Urban bus retrofit/rebuild equipment certification; 1993 and earlier model years; public workshop, 36871
Water pollution; effluent guidelines for point source categories:
Organic chemicals, plastics, and synthetic fibers category, 36872
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 36904
Air quality planning purposes; designation of areas:
Montana, 36907
NOTICES
Clean Water Act:
Section 404 permit program; dredged or fill material discharge—
New Jersey, 36958
Drinking water:
Public water supply supervision program—
Arizona, 36960
California, 36961
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 36961
Weekly receipts, 36962
Toxic and hazardous substances control:
Premanufacture exemption approvals, 36962

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 36863, 36865
NOTICES
Exemption petitions; summary and disposition, 37047

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 36963
Common carrier services:
Personal communications services; industry proposals, 36963

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Bangor Hydroelectric Co., 36950
Puget Sound Power & Light Co., 36951
Applications, hearings, determinations, etc.:
Arkla Energy Resources Co., 36952
Carnegie Natural Gas Co., 36952
Equitrans, Inc., 36952, 36953
Florida Gas Transmission Co., 36953
Granite State Gas Transmission, Inc., 36954
High Island Offshore System, 36954
K N Energy, Inc., 36955
National Fuel Gas Supply Corp., 36955
Northwest Pipeline Corp., 36955
Panhandle Eastern Pipe Line Co., 36956
Texas Eastern Transmission Corp., 36956
Transcontinental Gas Pipe Line Corp., 36956, 36957
United Gas Pipeline Co., 36957
Westmoreland-LG&E Partners, 36957

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Los Angeles County, CA, 37048

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36964
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI)—Firms certified for batch filing capability; list, 36964

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 37050
Applications, hearings, determinations, etc.:
Breeden, Douglas T., 36964
CCB Financial Corp. et al., 36964
Fidelity Southern Corp., 36965
KeyCorp et al., 36965

Federal Transit Administration
RULES
Charter services:
Government, civic, charitable, and other community activities; transit needs; demonstration program, 36894

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 36923
Importation, exportation, and transportation of wildlife:
Designated port status—
Orlando, FL, 36924
NOTICES
Endangered and threatened species permit applications, 36992
Environmental statements; availability, etc.:
Desert National Wildlife Range, OR; mineral withdrawal, 36992

Food and Drug Administration
NOTICES
International harmonisation conference:
Clinical safety data management; definitions and standards for expedited reporting; guidelines availability, 37402
Dose-response information to support drug registration; guideline availability, 37408

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida, 36932
Illinois—
Sanofi Winthrop L.P.; warehouse/distribution facility, 36933
Puerto Rico—
Sterling Pharmaceuticals, Inc.; pharmaceutical products manufacturing facility, 36933

Forest Service
NOTICES
Appeal exemptions; timber sales:
Flathead National Forest, MT, 36927
Idaho Panhandle National Forests, ID, 36927
Kootenai National Forest, MT, 36928, 36929, 36930
Environmental statements; availability, etc.:
Idaho Panhandle National Forests, ID, 36930

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review, 36966

Health Care Financing Administration
NOTICES
Medicaid and medicare:
Program issuance and coverage decisions; quarterly listing, 36967

Health Resources and Services Administration
See Public Health Service
NOTICES
Privacy Act:
Systems of records, 36972

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 36958

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 36981

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Cast iron pipe fitting from Japan, 36933
Cold-rolled carbon steel flat products, etc., from—
Italy, 37152
Spain, 37211
Cold-rolled carbon steel flat products from—
Argentina, 37062
Austria, 37082
Corrosion-resistant carbon steel flat products from—
Australia, 37079
Mexico, 37192
Cut-to-length carbon steel plate from—
Finland, 37122
Poland, 37205
Romania, 37209
Sweden, 37213
United Kingdom, 37215
Fabric expanded neoprene laminate from Japan, 36934
Hot-rolled carbon steel flat products, etc., from—
Belgium, 37083
Brazil, 37091
Canada, 37099
France, 37125
Germany, 37136
Japan, 37154
Korea, 37176
Netherlands, 37199
Pistachio nuts from Iran, 36934
Solid urea from—
Armenia, 36938
Azerbaijan, 36939
Belarus, 36940
Georgia, 36940
Kazakhstan, 36938
Kyrgyzstan, 36935
Moldova, 36935
Romania, 36935
Russia, 36938
Tajikistan, 36937
Turkmenistan, 36937
Ukraine, 36936
Uzbekistan, 36936
Synthetic methionine from Japan, 36939
Countervailing duties:
Corrosion-resistant carbon steel flat products from—
New Zealand, 37366
Steel products from—
Austria, 37217
Belgium, 37273
Brazil, 37295
France, 37304
Germany, 37315
Italy, 37327
Korea, 37328
Mexico, 37352
Spain, 37374
Sweden, 37385
United Kingdom, 37393
Grants and cooperative agreements; availability, etc.:
American business centers in newly independent states of former Soviet Union; establishment and operation, 36941

International Trade Commission
NOTICES
Import investigations:
Lens panels for lighting fixtures, kits containing same, and fixtures containing same, 36992

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 36993
Railroad services abandonment:
Vermont et al., 36993

UMI
VOL 58 ISS 130 JL 9 1993
UMI

Justice Department
See Antitrust Division
RULES
Organization, functions, and authority delegations:
Veteran Affairs Secretary et al.; administrative claims, 36867
PROPOSED RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings, 37052
NOTICES
Pollution control; consent judgments:
Boliden Intertrade A.G. et al., 36994
I. Jones Partnership et al., 36995
MTD Products, Inc., et al., 36995
Pacific Coast Producers, Inc., 36995

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Far West, Inc., 36983
Boundary establishment, descriptions, etc.:
Lower Crooked River, OR, 36983
Middle Deschutes and Lower Crooked Rivers, OR, 36983
Environmental statements; availability, etc.:
California Desert District, CA, 36983
Meetings:
Craig District Advisory Council, 36984
Motor vehicle use restrictions:
California, 36984
Oil and gas leases:
New Mexico, 36984
Ohio, 36985
Opening of public lands:
Idaho, 36985
Realty actions; sales, leases, etc.:
Arizona, 36985
Idaho, 36986
Montana, 36991
Nevada, 36986
Oregon, 36986
Utah, 36989
Recreation management restrictions, etc.:
Arkansas Headwaters Recreation Area, CO; commercial boating use decision record and rationing plan, 36990
Survey plat filings:
Idaho, 36990
Withdrawal and reservation of lands:
California, 36991

Legal Services Corporation
PROPOSED RULES
Freedom of information Act; implementation
Disclosure procedures, 36909

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands king and Tanner crab, 36900

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 3703, 37031

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Oldendorf, 36867

Nuclear Regulatory Commission
PROPOSED RULES
High-level radioactive wastes disposal, geologic repositories:
Investigation and evaluation of potentially adverse conditions, 36901
NOTICES
Abnormal occurrence reports:
Quarterly reports to Congress, 37031
Meetings:
Digital systems reliability and nuclear safety workshop, 37034
Reactor Safeguards Advisory Committee, 37034

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Underwriters Laboratories Inc. et al., 37030

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review, 36974

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Intrastate shippers and carriers; regulation compliance, 36919

Securities and Exchange Commission
RULES
Securities:
Employee benefit plan exemptive rules; phase-in period extension, 36866
NOTICES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Phase-in changes and corrections, 37036
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 37041
Applications, hearings, determinations, etc.:
Alpine Meadows of Tahoe, Inc., 37045
Bombay Co., Inc., 37045
Jennifer Convertibles, Inc., 37046

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Upper Killbuck Creek Watershed, OR, 36932

State Department
NOTICES
Agency information collection activities under OMB review, 37046
Meetings:
Historical Diplomatic Documentation Advisory Committee, 37046
International Radio Consultative Committee, 37046

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless individuals demonstration program, 36975

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Co-operative Savings Bank, 37049
Fox Cities Bank, F.S.B., 37049
Glenway Loan & Deposit Co., 37049

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc., 37034

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Research and Special Programs Administration
PROPOSED RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings, 37052

Treasury Department
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 37048

U.S. Commission on Improving Effectiveness of United Nations
NOTICES
Meetings, 37049

Separate Parts In This Issue

Part II
Department of Justice; Architectural and Transportation Barriers Compliance Board; Department of Transportation; Department of Transportation, 37052

Part III
Architectural and Transportation Barriers Compliance Board, 37058

Part IV
Department of Commerce, International Trade Administration, 37062

Part V
Department of Health and Human Services, Food and Drug Administration, 37402

Part VI
Department of Health and Human Services, Food and Drug Administration, 37408

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

UMI
VOL
58
ISS
130
JL
9
1993
UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
723 (2 documents).....36853, 36857
1108.....36859
1464 (2 documents).....36857, 36861

10 CFR
Proposed Rules:
60.....36901

14 CFR
39 (2 documents).....36863, 36865

17 CFR
240.....36866

28 CFR
14.....36867
Proposed Rules:
36.....37052

32 CFR
706.....36867

33 CFR
165.....36868

34 CFR
12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
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408.....36869
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411.....36869
412.....36869
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415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

36 CFR
Proposed Rules:
1191.....37052

40 CFR
85.....36871
414.....36872
Proposed Rules:
52.....36904
81.....36907

45 CFR
Proposed Rules:
1602.....36909

46 CFR
Proposed Rules:
15.....36913

48 CFR
Proposed Rules:
917.....36917

49 CFR
604.....36894
Proposed Rules:
37.....37052
171.....36919

50 CFR
671.....36900
Proposed Rules:
17.....36923
24.....36924

Rule

This sect
contains
applicabil
are keye
Federal F
50 titles p

The Code
the Supe
new book
REGISTE

DEPART

Agricult
Conserv

7 CFR P

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1993 Ma
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AGENCY:
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ACTION:

SUMMAR
codify t
the 1993
tobacco
312 and
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1993 ma
fire-cure
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(ASCS),
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Rules and Regulations

Federal Register
Vol. 58, No. 130
Friday, July 9, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560-AC81

1993 Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44 and 53–55), and Cigar-Filler (Type 46) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to codify the national marketing quotas for the 1993 crops for several kinds of tobacco. In accordance with sections 312 and 313 of the Agricultural Adjustment Act of 1938, as amended (the Act), the Secretary determined the 1993 marketing quotas to be as follows: fire-cured (type 21), 1.975 million pounds; fire-cured (types 22–23), 38.2 million pounds; dark air-cured (types 35–36), 11.16 million pounds; Virginia sun-cured (type 37), 128,000 pounds; cigar-filler and binder (types 42–44 and 53–55), 14 million pounds; and cigar-filler (type 46), zero pounds.

This rule is necessary to adjust the production levels of these kinds of tobacco to more fully reflect supply and demand conditions.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3736, South Building, P.O. Box 2415, Washington, DC 20013–2415, 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from Robert L. Tarczy.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since ASCS is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act Requirements

The amendments to 7 CFR part 723 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR part 723 have been approved through August 31, 1995, by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0058. Public reporting burden for these collections is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0058), Washington, DC 20503.

Statutory Background

This final rule is issued pursuant to the provisions of the Act. On March 1, 1993, the Secretary determined and announced the national marketing quotas for the 1993 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos. A number of related determinations were made at the same time which this final rule affirms. On the same date, the Secretary also announced that referenda would be conducted:

(1) By mail with respect to cigar-filler and binder (types 42–44 and 53–55) tobacco; and

(2) At polling places with respect to cigar-filler (type 46).

During March 22–25, 1993, (March 24 for cigar-filler producers) eligible cigar-filler and binder (types 42–44 and 53–

55) tobacco producers voted in separate referenda to determine whether such producers disapprove marketing quotas for the 1993, 1994, and 1995 marketing years for these tobaccos. Of the producers voting, 82.6 percent favored marketing quotas for cigar-filler and binder tobacco and 100.0 percent favored marketing quotas for cigar-binder tobacco. Accordingly, quotas for both kinds are in effect for the 1993 marketing year.

In accordance with section 312(a) of the Act, the Secretary of Agriculture is required to proclaim not later than March 1 of any marketing year with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next three marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to cigar-filler and binder (types 42–44 and 53–55) tobacco, the 1992 marketing year is the last year of three such consecutive years. For cigar-filler (type 46) tobacco, producers rejected quotas in 1992. But, since this represented the first such rejection since 1952, producers must again hold a referendum in 1993.

Accordingly, marketing quotas for cigar-filler (type 46) and cigar-filler and binder tobaccos (types 42–44 and 53–55) have been proclaimed for each of the three marketing years beginning October 1, 1993; October 1, 1994; and October 1, 1995. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos for the marketing year beginning October 1, 1992, and the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos for the marketing year beginning October 1992, and for the 1993 marketing year, the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments.

Marketing Quotas

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed that will make available during such marketing year a supply of such tobacco equal to the reserve supply level.

Section 313(g) provides that the Secretary may convert the national marketing quota into a national acreage allotment for apportionment to individual farms.

Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments would allow, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

The calculations of acreage allotments are in accordance with Public Law 102–566, enacted on October 28, 1992, which repealed section 318(e) of the Act to permit the sale or lease of allotments between farms by producers of fire-cured, dark air-cured, and Virginia sun-cured tobaccos on an acre-for-acre basis.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to ensure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal" year's domestic consumption is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A normal year's exports is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

In accordance with section 313(g) of the Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that the national reserve, noted herein, for the 1993 crop of each of these kinds of tobacco is adequate for these purposes.

On January 12, 1993, a proposed rule was published (58 FR 3869) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Thirty-four written responses were received during the comment period which ended February 5, 1993. Some respondents discussed more than one kind of tobacco. A summary of these comments by kind of tobacco follows:

(1) *Fire-cured (type 21) tobacco.* Three comments were received. Two comments recommended that the quota be reduced by 20 percent, the other recommended that the marketing quota be reduced by 10 percent from the 1992 marketing year.

(2) *Fire-cured (types 22–23) tobacco.* Eleven comments were received. Recommendations ranged from no change from the 1992 marketing quota to a 20 percent increase in quota.

(3) *Dark air-cured (types 35–36) tobacco.* Ten comments were received. Recommendations ranged from no change to a 20 percent increase in the quota.

(4) *Virginia sun-cured (type 37) tobacco.* Three comments were received. Two comments recommended that the quota be reduced by 10 percent. The other recommended that the marketing quota established for this kind of tobacco be at the same level that was applicable for the 1992 marketing year.

(5) *Cigar-filler and binder (types 42–44 and 53–55) tobacco.* Seven comments were received. These comments ranged from a 10 percent to 30 percent decrease in quota.

(6) *Cigar-filler (type 46) tobacco.* No comments were received.

Based upon a review of these comments and the latest available

statistics of the Federal Government, which appear to be the most reliable data available, the following determinations have been made.

(1) Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1992–93 marketing year is approximately 1.6 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1992–93 marketing year was 2.7 million pounds (farm sales weight basis). Domestic use has trended sharply downward. For that reason, a normal year's domestic consumption has been determined to be 0.5 million pounds and a normal year's exports have been determined to be 2.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 5.8 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1992, of 4.5 million pounds. The 1992 fire-cured (type 21) tobacco crop is estimated to be 2.6 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1992 marketing year is 7.1 million pounds. During the 1992 marketing year, it is estimated that disappearance will total approximately 3.2 million pounds. By deducting this disappearance from the total supply, a carryover of 3.9 million pounds at the beginning of the 1993 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1993, is 1.9 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed that will make available during such marketing year a supply equal to the reserve supply level. Over 95 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a national marketing quota of 1.975 million pounds is necessary to make available production of 1.9 million pounds. Accordingly, the national marketing quota for the 1993 marketing year is 1.975 million pounds. In accordance with section 313(g) of the Act, dividing the 1993 national marketing quota of 1.975 million pounds by the 1988–92, 5-year national average yield of 1,342 pounds per acre results in a 1993 national acreage allotment of 1,471.68 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.70 is determined by dividing the national acreage allotment for the 1993 marketing year, less a national reserve of 3.50 acres, by the total of 1993 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(2) Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1992 marketing year was approximately 18.3 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1992 marketing year was 17.3 million pounds (farm sales weight basis). Domestic use has trended upward recently while exports have trended downward. A normal year's domestic consumption has for that reason been determined to be 21.0 million pounds and a normal year's exports have been determined to be 16.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 89.6 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco held on October 1, 1992, of 61.6 million pounds. The 1992 fire-cured (types 22–23) crop is estimated to be 32.4 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1992, is 94.0 million pounds. During the 1992–93 marketing year, it is estimated that disappearance will total approximately 35.0 million pounds. By deducting this disappearance from the total supply, a carryover of 59.0 million pounds at the beginning of the 1993 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1993, is 30.6 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed that will make available during the 1993 marketing year a supply equal to the reserve supply level. Over 95 percent of the announced national marketing quota is expected to be produced in the absence of adjustments.

Accordingly, it has been determined that a national marketing quota for the 1993 marketing year of 31.8 million pounds is necessary to make available production of 30.6 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1993 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1993 marketing year of 38.2 million pounds.

In accordance with section 313(g) of the Act, dividing the 1993 national marketing quota of 38.2 million pounds by the 1988–92, 5-year national average yield of 2,259 pounds per acre results in a 1993 national acreage allotment of 16,910.14 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.07 is determined by dividing the national acreage allotment for the 1993 marketing year, less a national reserve of 64 acres, by the total of 1993 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(3) Dark Air-Cured (Types 35–36) Tobacco

The yearly average quantity of dark air-cured (types 35–36) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1992–93 marketing year was approximately 11.2 million pounds. The average annual quantity of dark air-cured (types 35–36) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1992 marketing year was 1.9 million pounds (farm sales weight basis). Both domestic use and exports have trended downward. Accordingly, a normal year's domestic consumption has been determined to be 10.0 million pounds and a normal year's exports have been determined to be 1.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 31.5 million pounds.

Manufacturers and dealers reported stocks of dark air-cured (types 35–36) tobacco held on October 1, 1992, of 23.5 million pounds. The 1992 dark air-cured (types 35–36) tobacco crop is estimated to be 10.0 million pounds. Therefore, the total supply of dark air-cured (types 35–36) tobacco for the 1992 marketing year is 33.5 million pounds. During the 1992 marketing year, it is

estimated that disappearance will total approximately 10.5 million pounds. By deducting this disappearance from the total supply, a carryover of 23.0 million pounds at the beginning of the 1992 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1993, is 8.5 million pounds. This represents the quantity of dark air-cured (types 35–36) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

Around 90 percent of the announced national marketing quota is expected to be produced in the absence of productivity adjustments. Accordingly, it has been determined that a national marketing quota of 9.3 million pounds is necessary to make available production of 8.5 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1993 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1993 marketing year of 11.16 million pounds.

In accordance with section 313(g) of the Act, dividing the 1993 national marketing quota of 11.16 million pounds by the 1988–92, 5-year average yield of 2,101 pounds per acre results in a 1993 national acreage allotment of 5,311.76 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1993 marketing year, less a national reserve of 29.0 acres, by the total of 1993 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(4) Virginia Sun-Cured (Type 37) Tobacco

The yearly average quantity of Virginia sun-cured (type 37) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1992–93 marketing year was approximately 250,000 pounds. The average annual quantity produced in the United States and exported during the same period was approximately 140,000 pounds (farm sales weight basis). Domestic use has shown a sharp downward trend, and exports have shown a moderate downward trend. Accordingly, a quantity of 130,000 pounds has been determined to be a normal year's domestic consumption and a quantity of 70,000 pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 497,000 pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured (type 37) tobacco held on October 1, 1992, of 410,000 pounds. The 1992 Virginia sun-cured (type 37) tobacco crop is estimated to be 130,000 pounds. Therefore, the total supply of Virginia sun-cured (type 37) tobacco for the 1992 marketing year is 540,000 pounds. During the 1992 marketing year, it is estimated that disappearance will total approximately 150,000 pounds. By deducting this disappearance from the total supply, a carryover of 390,000 pounds at the beginning of the 1993 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1993, is 107,000 pounds. This represents the quantity of Virginia sun-cured (type 37) tobacco which may be marketed that will make available during such marketing year a supply equal to the reserve supply level. Around 80 percent of the announced national marketing quota is expected to be produced in the absence of productivity adjustments. Accordingly, it has been determined that a national marketing quota of 128,000 pounds is necessary to make available production of 107,000 pounds. Accordingly, the national marketing quota for the 1993 marketing year is 128,000 pounds.

In accordance with section 313(g) of the Act, dividing the 1993 national marketing quota of 128,000 pounds by the 1988–92, 5-year national yield of 1,290 pounds per acre results in a 1993 national acreage allotment of 99.22 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.80 is determined by dividing the national acreage allotment for the 1993 marketing year, less a national reserve of 0.34 acre, by the total of the 1993 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(5) Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1992 marketing year was approximately 18.3 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1992 marketing year was very small. Domestic use has trended downward and exports are almost nonexistent. Accordingly, a normal year's domestic consumption has been established at 13.0 million pounds while a normal year's export has been established at zero pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 37.6 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 and 53–55) tobacco held on October 1, 1992, of 28.5 million pounds. The 1992 cigar-filler and binder crop is estimated to be 12.4 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 and 53–55) tobacco for the 1992 marketing year is 40.9 million pounds. During the 1992 marketing year, it is estimated that disappearance will total about 13.0 million pounds. By deducting this disappearance from the total supply, a carryover of 27.9 million pounds at the beginning of the 1993 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1993, is 9.7 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed that will make available during such marketing year a supply equal to the reserve supply level. Slightly more than 80 percent of the announced national marketing quota may be produced. Accordingly, it has been determined that a 1993–94 national marketing quota of 11.7 million pounds is necessary to make available production of 9.7 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1993 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1993 marketing year of 14.0 million pounds.

In accordance with section 313(g) of the Act, dividing the 1993 national marketing quota of 14.0 million pounds by the 1988–92, 5-year national average yield of 1,932 pounds per acre results in a 1993 national acreage allotment of 7,246.38 acres.

Pursuant to the provisions of section 313(g), a national factor of 0.70 is

determined by dividing the national acreage allotment for the 1993 marketing year, less a national reserve of 1,250 acres, by the total of the 1993 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

(6) Cigar-Filler (Type 46) Tobacco

There is no demand for cigar-filler (type 46) tobacco. Accordingly, the reserve supply level is zero. The estimated carryover (at the start of MY 93) is 1.6 million pounds.

Because the estimated carryover exceeds the reserve supply level, the quantity of tobacco which may be marketed during MY 1993 and the 1993 acreage allotment are both zero.

(7) Referendum Results for Cigar-Filler and Binder (Types 42–44 and 53–55) and Cigar-Filler (Type 46) Tobaccos

Marketing quotas shall be in effect for the 1993 marketing year for cigar-filler and binder (types 42–44 and 53–55) and cigar-filler (type 46) tobaccos. In a referendum held March 22–25, 1993, 82.6 percent of producers of cigar-filler and binder (types 42–44 and 53–55) tobacco voted in favor of marketing quotas. In a separate referendum held March 24, 1993, 100.0 percent of cigar-filler (type 46) tobacco producers voted in favor of marketing quotas.

The following is a summary of the results of the separate referenda:

State	Total votes	Yes votes	No votes	Percent yes votes
Cigar-filler and binder tobacco:				
Minnesota	18	8	10	44.4
Ohio	81	39	42	48.1
Wisconsin	1,574	1,336	238	84.4
Cigar-filler tobacco:				
Puerto Rico	8	8	0	100.0

List of Subjects in 7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, 7 CFR part 723 is amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Sections 723.113 through 723.118 are added to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

The 1993-crop national marketing quota is 1.975 million pounds.

§ 723.114 Fire-cured (types 22–23) tobacco.

The 1993-crop national marketing quota is 38.2 million pounds.

§ 723.115 Dark air-cured (types 35–36) tobacco.

The 1993-crop national marketing quota is 11.16 million pounds.

§ 723.116 Sun-cured (type 37) tobacco.

The 1993-crop national marketing factor is 128,000 pounds.

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

The 1993-crop national marketing quota is 14 million pounds.

§ 723.118 Cigar-filler (type 46) tobacco.

The 1993-crop national marketing quota is zero pounds.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–16304 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–05–P

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AC80

1993 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation (USDA).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1993 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938 (1938 Act), as amended, the Secretary determined the 1993 marketing quota for burley tobacco to be 603.0 million pounds. In accordance with the Agricultural Act of 1949 (1949 Act), as amended, the Secretary determined the 1993 price support level to be 168.3 cents per pound.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3736, South Building, P.O. Box 2415, Washington, DC 20013–2415, 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "nonmajor." The matters under consideration will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from Robert L. Tarczy.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are

not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither ASCS nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act Requirements

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR parts 723 and 1464 have been approved through August 31, 1995, by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0058. Public reporting burden for these collections is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404 W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0058), Washington, DC 20503.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act, as amended, and the 1949 Act, as amended. On January 29, 1993, the Secretary announced the national marketing quota for the 1993 crop of burley tobacco; the price support level was announced on April 15, 1993.

Marketing Quota

Section 319(c)(3)(A)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

However, any downward adjustment in such loan inventories may not exceed the greater of 35 million pounds or 50 percent of the amount which the loan inventories exceed the reserve stock level.

Section 319(c)(3)(C) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The reserve stock level is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1993 crop of burley tobacco by January 15, 1993. Six such manufacturers were required to submit such a statement for the 1993 crop and the total of their intended purchases for the 1993 crop is 361.0 million pounds. The three-year average of exports is 205.8 million pounds.

The national marketing quota for the 1992 crop year was 726.0 million pounds (57 FR 43178). Thus, in accordance with section (b)(14)(D), the reserve stock level for use in determining the 1993 marketing quota for burley tobacco is 100.5 million pounds.

As of January 15, 1993, the Associations had in their inventory 192.5 million pounds of burley tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, since the adjustment to maintain loan stocks at the reserve stock level exceeded 70 million pounds, half of the excess amount was used in the quota calculation.

Accordingly, the reserve stock level for 1993 shall be minus 46 million pounds.

The total of the three marketing quota components for the 1993–94 marketing year is 520.8 million pounds, or 22.3 percent below 1992's quota level. However, section 319(c)(3)(C) requires that any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. Accordingly, the national marketing quota for the marketing year beginning October 1, 1993, for burley tobacco is 603.0 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national quota in an amount equivalent to not more than 1 percent of the national quota for the purpose of making corrections in farm quotas adjusting for inequities, and for establishing quotas for new farms. The Secretary has determined that a national reserve for the 1993 crop of burley tobacco of 1,851,019 pounds is adequate for these purposes. In setting farm quotas for the 1993 burley crop, it was also determined based on past practice that a factor of 90.0 percent would be used to adjust preliminary farm quotas to reach the national poundage quota.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1993 crop of burley tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1993 crop of burley tobacco shall be:

(1) The level, in cents per pound, at which the 1992 crop of burley tobacco

was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A)(I) and (II)) is 6.0 cents per pound. The difference in the cost index from January 1 to December 31, 1992, is 3.7 cents per pound. Applying these components to the price support formula (6.0 cents per pound, two-thirds weight; 3.7 cents per pound, one-third weight) results in a weighted total of 5.2 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1993 crop of burley tobacco will be supported at 168.3 cents per pound, 3.4 cents higher than in 1992.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs-agriculture, Price support programs, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C 1301, 1311–1314, 1314–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.112 is added to read as follows:

§ 723.112 Burley (type 31) tobacco.

The 1993-crop national marketing quota is 603.0 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1441, 1445, 1445–1, 1421, and 1423; 15 U.S.C 714b and 714c.

4. Section 1464.19 is added to read as follows:

§ 1464.19 Burley (type 31) tobacco.

The 1993-crop national price support level is 168.3 cents per pound.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–16303 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 1108

[DA–92–36]

Milk in the Central Arkansas Marketing Area; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rule.

SUMMARY: This action terminates certain provisions of the Central Arkansas order. The action terminates the base-excess plan which was designed to encourage a leveling of seasonal production. The termination was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of producers who supply milk for the market. An evaluation of data, views, arguments, and other pertinent information disclosed that none of the cooperatives representing producers pooled under the Central Arkansas order are paying these producers according to the base-excess plan. As a result, it is concluded that the base-excess plan for the Central Arkansas market should be terminated because it is not being utilized and because its termination is favored by cooperative associations that represent a substantial majority of the producers who supply the market.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Termination: Issued October 26, 1992; published October 29, 1992 (57 FR 49025).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on dairy farmers who will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This termination rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. Upon adoption, this action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

VOL 58 ISS 130 JL 9 1993 UMI

with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Central Arkansas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on October 29, 1992 (57 FR 49025) concerning a proposed termination of certain provisions of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1108.32(b)(1)(ii), the words "including, for the months of March through July the pounds of base milk".
2. In the heading of § 1108.61, the words "and uniform prices for base and excess milk".
3. In § 1108.61(a), the words "for each month"; "of the"; the "s" from the word months; and "of August through February".
4. In § 1108.61(a)(6), the words "of August through February".
5. In § 1108.61, paragraph (b) in its entirety.
6. In § 1108.73(a)(2), the words "or base milk and excess milk,".
7. In § 1108.73(c)(2), paragraph (ii) in its entirety.
8. In § 1108.75(a), the words "and uniform price for base milk".
9. Sections 1108.90 through 1108.96.

Statement of Consideration

This action terminates the base-excess plan for paying producers for their milk under the Central Arkansas order. The base-excess plan is a seasonal pricing plan which is intended to relate a producer's individual payment more directly to that producer's seasonal patterns of delivery. Currently, none of the cooperative associations marketing milk under the Central Arkansas order are paying their producers the base and excess milk prices. This is permissible since cooperatives are allowed by law to reblend the order proceeds among their members in any way they wish. Since the base-excess plan provisions of the order are not being utilized to level seasonal production, they should be terminated.

The termination of the base-excess plan was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association which represents a large percentage of the producers who supply the Central Arkansas milk market. AMPI indicated in its initial request that the base-excess plan was a joint plan for both the Memphis, Tennessee, and the Central Arkansas orders. The cooperative stated that with the scheduled termination of the Memphis order, there would be no additional orders included in the Central Arkansas base-excess plan and requested that the plan be terminated. Interested parties were invited to submit comments regarding the proposed termination. Three cooperative associations, including AMPI, and a large number of individual dairy farmers responded.

In its comments filed in support of the termination, AMPI reiterated the fact that the base-excess plan would no longer be an interorder plan upon the termination of the Memphis order. AMPI further stated that producers associated with the Memphis order prior to its scheduled termination may not be pooled on the Central Arkansas order and thus would not be able to build a base under the order. Finally, AMPI stated that none of the cooperatives pooled on the Central Arkansas order have been paying producers according to the base-excess plan. Mid-America Dairymen, Inc., also filed comments in support of the termination. Together these two cooperatives represent 88 percent of the producers and approximately 85 percent of the total pounds of milk pooled in the Central Arkansas market.

Comments in opposition to the termination were filed by the Arkansas Dairy Cooperative Association (ADCA) and by over 85 individual dairy farmers, a large percentage of whom are ADCA members. ADCA stated that the base-excess plan has resulted in substantial differences between base and excess milk values, which, they contend, signals to producers the importance of supplying the market in the short-production months in order to participate in the base price in the flush-production months. ADCA argued that the base-excess plan cannot be terminated without an on-the-record rulemaking hearing because it establishes a minimum price paid to producers. ADCA further argued that the termination of the plan would result in larger volumes of milk being associated with the Central Arkansas order. Finally, ADCA contested that the scheduled termination of the Memphis order was not a substantial reason to terminate the Central Arkansas base-excess plan.

Although the base-excess provisions of the Central Arkansas order were part of an interorder base-excess plan which included the Fort Smith, Arkansas, order, which was merged into the Southwest Plains order May 1, 1987, and the Memphis order, which was scheduled to be terminated December 1, 1992, but has been delayed due to a Temporary Restraining Order issued by a federal judge in the U.S. District Court for the Western District of Tennessee, the nonexistence of these orders is not a sufficient reason for terminating the base-excess plan. In addition, the concern addressed by the proponent as to where producers would be pooled after the termination of the Memphis order is irrelevant to the termination of the base-excess plan. The point addressed by the proponents that none of the cooperative associations are paying producers according to the base-excess plan is, however, a sufficient basis for the termination of the plan.

The purpose of the plan is to encourage a leveling of seasonal production. The base-excess plan provides for the formation of bases by producers during the months of September through January, and the payment of a higher price on all base milk during the months of March through July and a lower price during these months on all milk produced in excess of their base production. Although the opponents provide evidence that the base-excess plan has resulted in an average difference of $2.11 between base and excess milk values between March and July of 1992, they do not indicate that they pay their producers according to these values. Hence, the value difference between base and excess milk cannot be serving its stated purpose of leveling seasonal production variations if the producers are not being paid accordingly.

The base-excess plan is a method of dividing total revenues among producers. The plan has no effect on minimum handler costs under the order. The handlers' total payments with a base-excess plan for paying producers are identical to the total amount which

they would be required to pay for the milk at the class prices. This procedure does not require a formal rulemaking hearing because the minimum prices to handlers are not affected.

The opponents raised several concerns about the impact of removing the base-excess plan on the Class I utilization of milk under the Central Arkansas order. They also expressed concern about the accessibility of the Texas and Southwest Plains markets for Central Arkansas producers. These arguments address pooling issues which are immaterial to the termination of the base-excess plan. However, a Central Arkansas pool distributing plant shifted regulation to the Texas order in January. The producers supplying this plant have earned bases under the Central Arkansas order which can be transferred to producers still supplying the market and thereby distort the intended impact of the base-excess plan.

A review of relevant marketing data supported the proponents' statement that none of the cooperative associations representing producers whose milk is pooled under the Central Arkansas order were actually paying these producers base and excess prices for their milk. Since the base-excess plan is not being utilized by the cooperative associations pooling milk under the order, the plan is not fulfilling its intended purpose and should be terminated.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. Three cooperative associations and numerous producers responded.

Therefore, good cause exists for making this order effective for milk marketed on and after August 1, 1993.

List of Subjects in 7 CFR Part 1108

Milk marketing orders.

It is therefore ordered that the aforesaid provisions of § 1108.32(b)(1)(ii), the heading of § 1108.61, § 1108.61(a), § 1108.61(a)(6), § 1108.61(b), § 1108.73(a)(2), § 1108.73(c)(2)(ii), § 1108.75(a), and §§ 1108.90 through 1108.96 are hereby terminated as follows:

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. The authority citation for 7 CFR part 1108 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1108.32 [Amended]

2. Section 1108.32(b)(1)(ii) is amended by removing the words "including, for the months of March through July the pounds of base milk".

§ 1108.61 [Amended]

3. The heading of § 1108.61 is amended by removing the words "and uniform prices for base and excess milk".

4. Section 1108.61(a) is amended by removing the words "for each month"; "of the"; the "s" from the word months; and "of August through February".

5. Section 1108.61(a)(6) is amended by removing the words "of August through February".

6. Section 1108.61 is amended by removing and reserving paragraph (b) in its entirety.

§ 1108.73 [Amended]

7. Section 1108.73(a)(2) is amended by removing the words "or base milk and excess milk,".

8. Section 1108.73(c)(2) is amended by removing and reserving paragraph (ii) in its entirety.

§ 1108.75 [Amended]

9. Section 1108.75(a) is amended by removing the words "and uniform price for base milk".

§§ 1108.90 through 1108.96 [Removed]

10. Sections 1108.90 through 1108.96 are removed.

Dated: July 1, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16207 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AC82

1993 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44 and 53–55), and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule codifies the national price support levels for the 1993 crops for several kinds of tobacco. In accordance with the Agricultural Act of 1949, as amended (the Act), the Secretary determined the 1993 levels of support to be as follows (in cents per pound): Fire-cured (type 21), 139.5; fire-cured (types 22–23), 146.4; dark air-cured (types 35–36), 125.5; Virginia sun-cured (type 37), 123.3; cigar-filler and binder (types 42–44 and 53–55), 107.4; and cigar-filler (type 46), 83.4. These actions are required by section 106 of the Act.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller or Kenneth Robison, Tobacco and Peanuts Analysis Division Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3739–S, P.O. Box 2415, Washington DC 20013–2415, or call 202–720–8839.

SUPPLEMENTARY INFORMATION:

Final Regulatory Impact Analysis

A Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from Mr. Robison.

Executive Order 12291 and Department Regulation 1512–1

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions under consideration will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment,

productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases; 10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3105, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State law, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

This final rule does not require clearance under the Paperwork Reduction Act in that it does not create or impose information collection requirements subject to the provisions of 44 U.S.C. chapter 35.

Statutory Background

This rule is issued pursuant to the provisions of the 1949 Act. On March 1, 1993, the Secretary announced the price support levels for six kinds of tobacco for the 1993 marketing year.

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1993 crop of the six kinds of tobacco which are the subject of this rule, the respective maximum level of support is determined in accordance with section 106 of the Act.

The announcement of the price support levels for the 1993 crops of the six kinds of tobacco must be made insofar as practicable before the beginning of the planting season.

Section 106(f)(6)(A) of the Act provides that the level of support for the 1993 crop of a kind of tobacco (other than flue-cured and burley) shall be the level in cents per pound at which the 1992 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1993 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1992 crop, as determined under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, the support level for the 1993 crop of such kind of tobacco will be the 1992 level, adjusted by the difference (plus or minus) between the 1992 "basic support level" and the 1993 "basic support level."

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for the respective kind of tobacco to more accurately reflect the market value and improve the marketability of such tobacco. Accordingly, the price support level for a kind of tobacco set forth in this rule could be reduced if such a request is made.

Determinations

The levels of price support for the 1992 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows.

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	136.7
KY–TN fire-cured (types 22–23)	142.1
Dark air-cured (types 35–36)	121.7
Virginia sun-cured (type 37)	120.8
Cigar-filler and binder (types 42–44 and 53–55)	105.4
Cigar-filler (type 46)	[1] 81.3

[1] Quotas for cigar-filler (type 46) were disapproved by producers for the 1992-crop. This is the 1991 support level.

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers, including wage rates, interest, and taxes, (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year. For the 1993 crop year:

(1) Average parity indexes for calendar years 1989–1992 are as follows.

Year	Index	Year	Index
1989	1,221	1990	1,265
1990	1,265	1991	1,298
1991	1,298	1992	1,298
Average	1,261	Average	1,287

(2) Average parity index, calendar year 1959 = 298.

(3) 1992 ratio of 1,261 to 298 = 4.23; 1993 ratio of 1,287 to 298 = 4.34.

(4) Ratios times 1959 support levels and 1993 increase in basic support levels are as follows.

Kind and type	1959 Support level	Basic support level [1]		Increase from 1992 to 1993	
	(¢/lb.)	1992 (¢/lb.)	1993 (¢/lb.)	100% (¢/lb.)	65% (¢/lb.)
VA 21	38.8	164.1	168.4	4.3	2.8
KY-Tenn 22–23	38.8	164.1	168.4	4.3	2.8
KY-Tenn 35–36	34.5	145.9	149.7	3.8	2.5
VA 37	34.5	145.9	149.7	3.8	2.5
Cigar-filler and binder 41–44, 54–55	28.6	121.0	124.1	3.1	2.0
Cigar-filler 46	29.7	125.6	128.9	3.3	2.1

[1] 1992 ratio is 4.23, 1993 ratio is 4.34.

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, anticipated domestic and export demand, based on the maturity, uniformity, and stalk position of such tobacco.

For the marketing year (MY) 93, the flue-cured support level was increased by 65 percent of the formula increase to within 9 percent of average market price. For the kinds of tobacco subject of this rule, MY 92 prices were further above the support level, and overall loan receipts remained low. However, loan placements remained at the MY 91 level of about 15 percent of sales for fire-cured (type 21) and rose sharply to 15.2 percent of sales for Virginia sun-cured compared to 10.9 percent of sales for MY 91. Loan placements for cigar-filler and binder (types 42–44 and 53–55) rose sharply to 20 percent for MY 92 over the 1 percent for MY 91. For fire-cured tobacco (type 21), Virginia sun-cured tobacco (type 37), and cigar-filler and binder tobacco (types 42–44 and 53–55), the MY 93 support levels consist of the 1992 support levels increased by 65 percent of the difference between the 1993 "basic support level" and the 1992 "basic support level." The supply-use ratios suggest adequate supplies, except for fire-cured (types 22–23), for which supplies are tight. For fire-cured (types 22–23) and dark air-cured (types 35–36) tobaccos, the MY 93 support level for the two kinds consists of the MY 92 level of support increased by the difference between the MY 93 "basic support level" and the MY 92 "basic support level". Also, chewing tobacco, smoking tobacco, and snuff manufacturing formulas limit the substitutability of one of these kinds of tobacco for another. Cigarettes, the principal outlet for flue-cured and burley tobaccos, do not require any of these six kinds of tobacco in their blends.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1993, in accordance with section 106(f)(8)(A) of the Act are established for MY 1993 for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos.

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	139.5
Kentucky-Tennessee fire-cured (types 22–23)	146.4
Dark air-cured (types 35–36)	125.5
Virginia sun-cured (type 37)	123.3
Cigar-filler and binder (types 41–44 and 53–55)	107.4
Cigar-filler (type 46)	83.4

List of Subjects in 7 CFR Part 1464

Loan programs—agriculture, Price support programs, Tobacco, Warehouses.

Accordingly, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1441, 1445, 1445–1, 1421, and 1423; 15 U.S.C. 714b and 714c.

2. Sections 1464.13 through 1464.18 are added to read as follows:

§ 1464.13 Fire-cured (type 21) tobacco.

The 1993-crop national price support level is 139.5 cents per pound.

§ 1464.14 Fire-cured (types 22–23) tobacco.

The 1993-crop national price support level is 146.4 cents per pound.

§ 1464.15 Dark air-cured (types 22–23) tobacco.

The 1993-crop national price support level is 125.5 cents per pound.

§ 1464.16 Virginia sun-cured (type 37) tobacco.

The 1993-crop national price support level is 123.3 cents per pound.

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

The 1993-crop national price support level is 107.4 cents per pound.

§ 1464.18 Cigar-filler (type 46) tobacco.

The 1993-crop national price support level is 83.4 cents per pound.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–16305 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–238–AD; Amendment 39–8615; AD 93–13–02]

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Model 737–200C series airplanes, that requires a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. This amendment is prompted by reports of cracking in the body frames between body stations 360 to 500B and between stringers 19 left and 25 left. The actions specified by this AD are intended to prevent a cargo door from opening while the airplane is in flight, which could result in rapid decompression of the airplane.

DATES: Effective August 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

VOL 58 ISS 130 JL 9 1993 UMI

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Model 737–200C series airplanes was published in the **Federal Register** on February 19, 1993 (58 FR 9131). That action proposed to require a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter requests that the proposal be revised to include the recommendations contained in Revision 1 of Boeing Service Bulletin 737–53A1160, that describes procedures for performing repetitive inspections and installing a preventative modification, which would eliminate the need for the repetitive inspections. The FAA concurs.

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993, that not only describes inspections to detect cracks of the fuselage skin and frames in the lower lobe cargo compartment, and repair of cracked parts, but also describes procedures for installation of a preventative modification for the frames. The preventative modification entails installation of doublers on the frames, as shown in Boeing Drawing 65C27514, which would prevent cracking of the frames. If accomplished, this preventative modification would provide frame reinforcement and eliminate the need for repetitive internal detailed visual inspections of the subject area. Paragraphs (a) and (b) of the final rule have been revised to cite Revision 1 as an additional source of service information. Also, a new paragraph (c) has been added to the final rule to provide an optional terminating modification for the repetitive internal detailed visual inspections required by paragraphs (b)(1) and (b)(2) of the final rule.

Paragraphs (b)(1) and (b)(2) of the final rule have been revised to clarify that repetitive inspections are required following repair of any cracks in the subject area.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 100 Model 737–200C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,880, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–13–02 Boeing: Amendment 39–8615. Docket 92–NM–238–AD.

Applicability: All Model 737–200C series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a cargo door from opening while the airplane is in flight, which could result in rapid decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 29,000 flight cycles or within 250 flight cycles after the effective date of this AD, whichever occurs later, accomplish an external detailed visual inspection to detect cracks of the fuselage skin between stringers 19 left and 25 left and at body stations 360 to 540, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. If any crack is found, prior to further flight, accomplish the requirements of paragraph (a)(1) and (a)(2) of this AD.

(1) Perform an internal detailed visual inspection to detect cracks of the frames between stringer 19 left and 25 left and body stations 360 to 500B, in accordance with either service bulletin.

(2) Repair all cracks in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 3,000 flight cycles after completing the requirements of paragraph (a) of this AD, unless accomplished within the last 6,000 flight cycles prior to the effective date of this AD, perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Thereafter, repeat the internal detailed visual inspection at intervals not to exceed 9,000 flight cycles. If any crack is found, prior to further flight, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any crack is found that does not exceed the limits specified in the Boeing 737 Structural Repair Manual (SRM), repair the crack in accordance with the Boeing 737 SRM. Repeat the internal detailed visual inspection at intervals not to exceed 9,000 flight cycles.

(2) If any crack is found that exceeds the limits specified in the Boeing 737 SRM, repair the crack in an accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Repeat the internal detailed visual inspection at intervals not to exceed 9,000 flight cycles.

(c) Installation of the preventative modification in accordance with Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993, constitutes terminating action for the repetitive inspections required by paragraphs (b)(1) and (b)(2) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and modification shall be done in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 9, 1993.

Issued in Renton, Washington, on June 25, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–16223 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–239–AD; Amendment 39–8614; AD 93–13–01]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, that requires an examination of the nameplate on the static inverter to determine the part number; replacement of the static inverter with an improved model, if necessary; and performance of an operational test of the static inverter following replacement. This amendment is prompted by several reports of loss of 115-volt AC electrical power to the standby bus during ground power transfer operations. The actions specified by this AD are intended to prevent shutdown of the static inverter during power transfer, which could result in the inability to restart the engines in the event of a dual engine flameout.

DATES: Effective August 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 1993

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on February 17, 1993 (58 FR 8723). That action proposed to require an examination of the nameplate on the static inverter to determine the part number; replacement of the static inverter with an improved model, if necessary; and performance of an operational test of the static inverter following replacement.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Numerous commenters support the proposed rule.

Several commenters request that the proposed rule be withdrawn, because the proposed actions do not add to the safety of the fleet, and therefore, place an unnecessary burden on the operators of Boeing Model 757 and 767 series airplanes. Boeing Commercial Airplane Group contends that several actions have been initiated to replace the affected inverters, including: (1) Revising its Model 757 and 767 Master Illustrated Parts Catalogs (IPC) to remove the affected inverters from the list of acceptable parts; (2) issuing a telex to inform all operators of Model 757 and 767 series airplanes of the problem with the affected inverters; (3) removing the affected inverters from its production lines; (4) issuing service bulletins that address this problem; and (5) launching a program to retrofit the affected inverters. Another commenter asserts that the proposed actions can be accomplished during routine maintenance; therefore, the FAA needs only to contact the cognizant Flight Standards office to verify compliance. The FAA does not concur with these commenters' request to withdraw the proposed rule.

Although the FAA has verified that most operators are complying voluntarily with Boeing's inspection/replacement program, and that this program addresses positively the static inverter problem, the FAA does not concur with Boeing's contention that revising the IPC will prevent future reentry of the affected parts into the fleet of Boeing Model 757 and 767 series airplanes. Since the IPC is not an FAA-approved document, the FAA cannot be assured that replacement parts will always be chosen in accordance with the IPC. Although, the affected inverters are also used on Boeing Model 737 and 747 series airplane, they have not exhibited the potential for shutdown when installed on these airplanes; therefore, these airplanes have not been included in the applicability of this rulemaking action. However, the FAA finds that an AD is necessary to ensure that the affected inverters do not migrate from the Model 737 and 747 series airplanes to the Model 757 and 767 series airplanes. Therefore, the final rule has been revised to add a new paragraph (b) to clarify that these affected static inverters may not be installed on Model 757 and 767 series airplanes after the effective date of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 479 Boeing Model 757 series airplanes of the

affected design in the worldwide fleet. The FAA estimates that 297 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of Boeing Model 757 series airplanes is estimated to be $16,335, or $55 per airplane.

There are approximately 451 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 158 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of Boeing Model 767 series airplanes is estimated to be $8,690, or $55 per airplane.

Based on these figures, the total cost impact of the AD on U.S. operators of Boeing Model 757 and 767 series airplanes is estimated to be $25,025, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-13-01 Boeing: Amendment 39-8614. Docket 92-NM-239-AD.

Applicability: Model 757 series airplanes, line numbers 1 through 411 inclusive, 413 through 444 inclusive, 446 through 470 inclusive, and 472 through 480 inclusive; and Model 767 series airplanes, line numbers 1 through 451 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to restart the engines in the event of a dual engine flameout, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an examination of the nameplate on the static inverter to determine the part number of the static inverter, in accordance with Boeing Service Bulletin 757-24A0069, Revision 1, dated December 10, 1992 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767-24A0085, dated September 17, 1992 (for Model 767 series airplanes); as applicable.

(1) If Boeing part number (P/N) S282T004-7 appears on the nameplate of the static inverter, prior to further flight, replace the static inverter with an improved model and perform an operational test, in accordance with the applicable service bulletin.

(2) If Boeing P/N S282T004-7 does not appear on the nameplate of the static inverter, no further action is required by this AD.

(b) As of the effective date of this AD, no person shall install a static inverter having P/N S282T004-7 on any Model 757 or 767 series airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The examination, replacement, and operational test shall be done in accordance with Boeing Service Bulletin 757-24A0069, Revision 1, dated December 10, 1992 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767-24A0085, dated September 17, 1992 (for Model 767 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 9, 1993.

Issued in Renton, Washington, on June 25, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-16224 Filed 7-8-93; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34-32574; 35-25843; IC-19556]

RIN 3235-AB14

Employee Benefit Plan Exemptive Rules Under Section 16 of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Extension of phase-in period for § 240.16b-3.

SUMMARY: The Commission today is extending the phase-in period for compliance with the substantive conditions of new § 240.16b-3 regarding employee benefit plan transactions under the Securities Exchange Act of 1934 pending further notice and rulemaking under the provision.

DATES: The phase-in period for compliance with new § 240.16b-3, which previously has been extended to September 1, 1993, is extended until September 1, 1994, or such earlier date as set in further rulemaking under Section 16.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Office of the Chief Counsel, Division of Corporation Finance, at (202) 272-2573.

SUPPLEMENTARY INFORMATION: On February 8, 1991, the Commission adopted comprehensive revisions to

rules under section 16 [1] of the Securities Exchange Act of 1934 (the "Exchange Act"). [2] The new regulatory scheme generally became effective on May 1, 1991, but a 16 month phase-in period was provided with respect to specified rules affecting employee benefit plans, in order to give registrants ample time to review the rule changes and amend their plans accordingly. [3] The Adopting Release provided that registrants could continue to rely on the exemptions from section 16(b) of the Exchange Act [4] afforded by former Rules 16a–8(b), [5] 16a–8(g)(3), [6] and 16b–3 [7] after May 1, 1991, but would be required to adopted the substantive conditions of new Rule 16b–3 [8] by September 1, 1992. [9]

On June 23, 1992, the Commission extended the Rule 16b–3 phase-in period from September 1, 1992 until September 1, 1993, in contemplation of further rulemaking under Section 16 with regard to employee benefit plans. [10] Because further Section 16 rulemaking remains under consideration, the Commission has determined to extend the phase-in period for new Rule 16b–3 until September 1, 1994, or such earlier date as is set in such rulemaking.

By the Commission.

Dated: July 2, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16208 Filed 7–8–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 14

[Civil Division Directive No. 1–93]

Administrative Claims Under the Federal Tort Claims Act; Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Directive delegates authority to the Secretary of Veterans Affairs and the Secretary of Defense to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of settlement does not exceed $200,000. The Directive implements the Administrative Dispute Resolution Act. This Directive will alert the general public to the new authority, and is being published in the CFR to provide a permanent record of this delegation.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, (202) 501–7075.

SUPPLEMENTARY INFORMATION: This Directive has been issued to delegate settlement authority and is a matter solely related to division of responsibility between the Department of Justice and the Departments of Defense and Veterans Affairs. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 14

Authority delegations (government agencies), Claims.

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, including §§ 0.45, 0.160, 0.162, 0.164, and 0.168, 28 CFR part 14 is amended as follows:

PART 14—[AMENDED]

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 2672; 38 U.S.C. 224(a).

2. The Appendix to Part 14 is amended by revising the heading and text for the "Delegation of Authority to the Administrator of Veterans Affairs" and by revising the "Delegation of Authority of the Secretary of Defense" to read as follows:

Appendix to Part 14—Delegations of Settlement Authority

Delegation of Authority to the Secretary of Veterans Affairs

Section 1. Authority to compromise tort claims.

(a) The Secretary of Veterans Affairs shall have the authority to adjust, determine, compromise and settle a claim involving the United States Department of Veterans Affairs under Section 2672 of Title 28, United States Code, relating to the administrative settlement of federal tort claims, if the amount of the proposed adjustment, compromise, or award does not exceed $200,000. When the Secretary of Veterans Affairs believes a claim pending before him presents a novel question of law or of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) The Secretary of Veterans Affairs may redelegate in writing the settlement authority delegated to him under this section.

Section 2. Memorandum.

Whenever the Secretary of Veterans Affairs settles any administrative claim pursuant to the authority granted by section 1 for an amount in excess of $100,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTC Staff, Torts Branch of the Civil Division.

* * * * *

Delegation of Authority to the Secretary of Defense

Section 1. Authority to compromise tort claims.

(a) The Secretary of Defense shall have the authority to adjust, determine, compromise and settle a claim involving the United States Department of Defense under section 2672 of title 28, United States Code, relating to the administrative settlement of federal tort claims, if the amount of the proposed adjustment, compromise, or award does not exceed $200,000. When the Secretary of Defense believes a claim pending before him presents a novel question of law or of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) The Secretary of Defense may redelegate in writing the settlement authority delegated to him under this section.

Section 2. Memorandum.

Whenever the Secretary of Defense settles any administrative claim pursuant to the authority granted by section 1 for an amount in excess of $100,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTCA Staff, Torts Branch of the Civil Division.

Dated: June 27, 1993.

Stuart E. Schiffer,

Acting Assistant Attorney General, Civil Division.

[FR Doc. 93–16024 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

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[1] 15 U.S.C. 78p.

[2] 15 U.S.C. 78a *et seq.*

[3] Exchange Act Release No. 28869 (February 8, 1991) [56 FR 7242] ("Adopting Release"). *See* Section VII of the Adopting Release for transition provisions generally and Section VII.C for transition provisions relating to employee benefit plans.

[4] 15 U.S.C. 78p(b).

[5] 17 CFR 240.16a–8(b).

[6] 17 CFR 240.16a–8(g)(3).

[7] 17 CFR 140.16b–3 (1990).

[8] 17 CFR 240.16b–3 (1991).

[9] The phase-in period applies only to the exemption from Section 16(b), not to the revised reporting requirements under Section 16(a) that became effective on May 1, 1991.

[10] *See* Exchange Act Release No. 30850 (June 23, 1992) [57 FR 28781].

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS OLDENDORF (DD 972) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 13, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS OLDENDORF (DD 972) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of section 706.2 is amended by revising the existing entry for USS OLDENDORF (DD 972) to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Oldendorf	DD 972	N/A	X	X	45

Dated: May 13, 1993.

William L. Schachte,

Rear Admiral, Acting Judge Advocate General of the Navy.

[FR Doc. 93–16292 Filed 7–8–93; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 01–93–020]

Safety Zone: Thames River Fireworks Extravaganza, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in New London Harbor at Anchorage A, New London, CT on July 10, 1993. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 9:15 p.m. through 10 p.m. on July 10, 1993 unless terminated sooner by the Captain of the Port. The rain date for this event is July 11, 1993 at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D. D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR D. D. Skewes, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** Publication. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location and position, which are essential information for the purposes of establishing a safety zone, until May 28, 1993. Publishing a NPRM and delaying its effective date would be contrary to the public interest since the fireworks display is for the benefit of the public and immediate action is needed to respond to any potential hazards.

Background and Purpose

On March 26, 1993, the sponsor, Marine Commerce and Development Committee, New London, CT requested that a 45 minute fireworks display launched from three floating platforms, be permitted in the port of New London in the vicinity of New London Harbor, New London, CT. This zone is required to protect the maritime community from the dangers associated with this fireworks display. The zone covers all waters of New London Harbor within a 1000 foot radius of each of the fireworks barges YPS3 and BAY3, and a 1200 foot radius of the barge AM1, which will be anchored in Anchorage A.

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policy and Procedures (44 FR 11040; February 26, 1979). Although the shipping channel

will be closed, the event will last only 45 minutes and disruptions to commercial traffic should be few. Anchorage A is rarely used and alternate anchorages are available. Vessels requiring information concerning the alternate anchorages may contact Coast Guard Station New London on Channel 16 VHF–FM. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 16212, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are in action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–020 is added to read as follows:

§ 165.T01–020 Safety Zone: Thames River Fireworks Extravaganza, New London, CT.

(a) *Location.* The following area is a safety zone: All waters of New London Harbor within a 1000 foot radius of the barge YPS3 located in approximate position 41° 21′ 02″N, 072° 05′ 23″W; and the barge BAY3 in approximate position 41° 20′ 53″N, 072° 05′ 23″W, and a 1200 foot radius of the barge AM1 in approximate position 41° 20′ 53″N, 072° 05′ 23″, the fireworks launching platforms, which will be located in Anchorage A.

(b) *Effective date.* This section is effective from 9:15 p.m. through 10 p.m. on July 10, 1993 unless terminated sooner by the Captain of the Port. The rain date for this project is July 11, 1993 at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: June 21, 1993.

Philip J. Heyl,

Lieutenant Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound

[FR Doc. 93–16318 Filed 7–8–93, 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Parts 12, 74, 75, 76, 77, 81, 86, 99, 200, 201, 206, 208, 212, 218, 221, 222, 230, 231, 236, 237, 238, 263, 280, 282, 300, 301, 303, 305, 307, 309, 315, 316, 318, 319, 324, 327, 356, 361, 363, 376, 380, 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, 431, 432, 433, 434, 435, 436, 437, 438, 441, 460, 461, 462, 463, 464, 471, 472, 473, 474, 475, 476, 477, 489, 490, 491, 555, 562, 581, 600, 612, 617, 624, 625, 626, 627, 628, 630, 636, 637, 639, 648, 653, 654, 664, 668, 671, 674, 675, 676, 682, 690, 755, 757, 758, 762, 769, and 770

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Section 431(d) of the General Education Provisions Act requires that most Department of Education regulatory documents be published in the **Federal Register** for forty-five (45) calendar days, or longer if Congress takes certain adjournments, before they take effect. Since future congressional adjournments cannot be predicted with certainty when a document is published, the Department cannot announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of section 431(d).

DATES: For effective dates, see "**SUPPLEMENTARY INFORMATION.**"

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, 400 Maryland Avenue, SW., room 5125, FOB–6, Washington, DC 20202–2241. Telephone: (202) 401–2884. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The effective date provision for each of the regulatory documents included in this notice stated that the effective date would be announced in a notice published in the **Federal Register**. Accordingly, this notice announces the following effective dates:

1. 34 CFR part 208, final regulations for the Eisenhower Mathematics and Science Education—State Grant Program, published May 21, 1992 (57 FR 21708).

DATES: *Effective date:* July 20, 1992.

VOL 58 ISS 130 JL 9 1993 UMI

2. 34 CFR parts 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, 441, 460, 461, 462, 463, 464, 471, 472, 473, 474, 475, 476, 477, 489, 490, and 491, final regulations for the Adult Education and Literacy Programs, published June 5, 1992 (57 FR 24084).

DATES: *Effective date:* July 29, 1992.

3. 34 CFR part 201, final regulations for the Chapter 1—Migrant Education Program, published June 11, 1992 (57 FR 24751).

DATES: *Effective date:* July 29, 1992.

Note: Section 201.52(b)(1), (c), and (d) requiring Office of Management and Budget (OMB) approval was approved and took effect on the same date.

4. 34 CFR part 671, final regulations for the Foreign Periodicals Program, published June 12, 1992 (57 FR 24953).

DATES: *Effective date:* July 29, 1992.

5. 34 CFR part 212, final regulations for Even Start, published June 19, 1992 (57 FR 27556).

DATES: *Effective date:* August 3, 1992.

6. 34 CFR parts 361, 363, 376, and 380, final regulations for The State Vocational Rehabilitation Services Program; the State Supported Employment Services Program; Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth; and Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects, published June 24, 1992 (57 FR 28432).

DATES: *Effective date:* August 8, 1992.

7. 34 CFR part 690, final regulations for the Pell Grant Program, published June 25, 1992 (57 FR 28568).

DATES: *Effective date:* August 9, 1992.

8. 34 CFR parts 307, 309, 315, 324, and 327, final regulations for certain Office of Special Education and Rehabilitative Services discretionary grant programs, published June 29, 1992 (57 FR 28964).

DATES: *Effective date:* September 18, 1992.

9. 34 CFR part 664, final regulations for Higher Education Programs in Modern Foreign Language Training and Area Studies—Group Projects Abroad Program, published June 29, 1992 (57 FR 28976).

DATES: *Effective date:* September 18, 1992.

Note: Sections 74.75, 75.261, 75.720, and 76.720 requiring OMB approval were approved and took effect on the same date.

10. 34 CFR parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, 654, and 762, final regulations for the Education Department General Administrative Regulations, published July 8, 1992 (57 FR 30328).

DATES: *Effective date:* September 18, 1992.

11. 34 CFR parts 674, 675, and 676, final regulations for the Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program, published July 21, 1992 (57 FR 32342).

DATES: *Effective date:* September 18, 1992.

12. 34 CFR parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428, final regulations for State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education, published August 14, 1992 (57 FR 36720).

DATES: *Effective date:* September 28, 1992.

13. 34 CFR parts 300 and 303, final regulations for Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers with Handicaps, published August 19, 1992 (57 FR 37652).

DATES: *Effective date:* October 3, 1992.

14. 34 CFR part 200, final regulations for the Chapter 1 Program in Local Educational Agencies, published August 27, 1992 (57 FR 39066).

DATES: *Effective date:* November 6, 1992.

15. 34 CFR part 668, final regulations for the Student Assistance General Provisions, published on August 27, 1992 (57 FR 39088).

DATES: *Effective date:* November 6, 1992.

16. 34 CFR parts 300 and 301, final regulations for Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities, published September 29, 1992 (57 FR 44794).

DATES: *Effective date:* November 13, 1992.

17. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions, published October 19, 1992 (57 FR 47752).

DATES: *Effective date:* December 3, 1992.

18. 34 CFR parts 300 and 301, correction to final regulations for Assistance to States for the Education of Children with Disabilities Program, published October 27, 1992 (57 FR 48694).

DATES: *Effective date:* November 13, 1992.

19. 34 CFR part 769, final regulations for the Library Literacy Program, published October 30, 1992 (57 FR 49264).

DATES: *Effective date:* December 14, 1992.

20. 34 CFR part 639, final regulations for the Law School Clinical Experience Program, published November 3, 1992 (57 FR 49650).

DATES: *Effective date:* December 18, 1992.

21. 34 CFR part 555, final regulations for the Bilingual Education: Evaluation Assistance Centers Program, published November 6, 1992 (57 FR 53194).

DATES: *Effective date:* December 21, 1992.

22. 34 CFR parts 755, 757, and 758, final regulations for the National Program for Mathematics and Science Education, FIRST: Schools and Teachers Program, and FIRST: Family-School Partnership Program, published November 6, 1992 (57 FR 53200).

DATES: *Effective date:* December 21, 1992.

23. 34 CFR part 637, final regulations for the Minority Science Improvement Program, published November 18, 1992 (57 FR 54301).

DATES: *Effective date:* January 2, 1993.

24. 34 CFR parts 76, 81, 86, 218, 221, 222, 300, 361, and 581, final regulations containing amendments to certain program regulations to permit filing by facsimile, published November 30, 1992 (57 FR 56794).

DATES: *Effective date:* January 29, 1993.

25. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions, published December 3, 1992 (57 FR 57304).

DATES: *Effective date:* January 29, 1993.

26. 34 CFR part 668, final regulations for the Student Assistance General Provisions, published December 17, 1992 (57 FR 60032).

DATES: *Effective date:* January 31, 1993.

27. 34 CFR part 682, final regulations for the Federal Family Education Loan Program, published December 18, 1992 (57 FR 60280).

DATES: *Effective date:* February 1, 1993.

28. 34 CFR part 12, final regulations for Disposal and Utilization of Surplus Federal Real Property for Educational Purposes, published December 18, 1992 (57 FR 60394).

DATES: *Effective date:* February 1, 1993.

29. 34 CFR part 206, final regulations for Special Educational Programs for

Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program, published December 18, 1992 (57 FR 60406).

DATES: *Effective date:* February 1, 1993.

30. 34 CFR parts 674, 675, and 676, final regulations for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, published December 21, 1992 (57 FR 60700).

DATES: *Effective date:* February 4, 1993.

31. 34 CFR part 280, final regulations for the Magnet Schools Assistance Program, published December 24, 1992 (57 FR 61508).

DATES: *Effective date:* February 25, 1993.

32. 34 CFR parts 316, 318, and 319, final regulations for Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers, Grants for Personnel Training, and Grants to State Educational Agencies and Institutions of Higher Education, published on December 29, 1992 (57 FR 62094).

DATES: *Effective date:* February 25, 1993.

33. 34 CFR part 682, final regulations for the Federal Family Education Loan Program, published January 7, 1993 (58 FR 3174).

DATES: *Effective date:* February 25, 1993.

34. 34 CFR part 668, final regulations for the Student Assistance General Provision, published January 7, 1993 (58 FR 3180).

DATES: *Effective date:* February 25, 1993.

35. 34 CFR part 99, final regulations for Family Educational Rights and Privacy, published January 7, 1993 (58 FR 3188).

DATES: *Effective date:* February 25, 1993.

36. 34 CFR part 282, final regulations for the Territories and Freely Associated States Educational Grant Program, published January 19, 1993 (58 FR 5174).

DATES: *Effective date:* March 5, 1993.

37. 34 CFR part 305, final regulations for Regional Resource and Federal Centers, published February 19, 1993 (58 FR 9462).

DATES: *Effective date:* April 28, 1993.

38. 34 CFR part 628, final regulations for the Endowment Challenge Grant Program, published February 23, 1993 (58 FR 11162).

DATES: *Effective date:* April 28, 1993.

39. 34 CFR part 770, final regulations for the Library Services and Construction Act State-Administered Program, published February 23, 1993 (58 FR 11166).

DATES: *Effective date:* April 28, 1993.

40. 34 CFR part 200, final regulations for the Chapter 1 Program in Local Educational Agencies, published March 1, 1993 (58 FR 11920).

DATES: *Effective date:* April 28, 1993.

41. 34 CFR parts 230, 231, 236, and 238, final regulations for Drug-Free Schools and Communities, published March 9, 1993 (58 FR 13176).

DATES: *Effective date:* April 28, 1993.

42. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance General Provisions, published March 10, 1993 (58 FR 13336).

DATES: *Effective date:* April 28, 1993.

43. 34 CFR part 612, final regulations for Drug Prevention Programs in Higher Education, published May 6, 1993 (58 FR 27140).

DATES: *Effective date:* June 20, 1993.

44. 34 CFR part 630, final regulations for the Fund for the Improvement of Postsecondary Education, published May 6, 1993 (58 FR 27144).

DATES: *Effective date:* June 20, 1993.

45. 34 CFR part 318, final regulations for Training Personnel for the Education of Individuals with Disabilities - Grants for Personnel Training, published May 7, 1993 (58 FR 27440).

DATES: *Effective date:* June 21, 1993.

46. 34 CFR parts 617, 624, 625, 626, 627, 636, and 648, final regulations removing regulations, published May 14, 1993 (58 FR 28504).

DATES: *Effective date:* June 28, 1993.

47. On March 15, 1985 (50 FR 10710) the Department of Education published regulations for 34 CFR part 690—Pell Grant Program. In the EFFECTIVE DATE section, the Department stated that the final regulations, with the exception of certain sections, would take effect either 45 days after publication in the **Federal Register** or later if the Congress took certain adjournments. The Department stated that the excepted sections, including § 690.72, would become effective following the Department's submission and OMB approval of information collection requirements contained in those sections under the Paperwork Reduction Act of 1980. The effective date statement in the regulations is corrected to reflect the determination of OMB that § 690.72 does not contain information collection requirements subject to OMB approval. Section 690.72 therefore became effective on the same date as other provisions of the regulations not containing these requirements.

DATES: *Effective date:* April 29, 1985.

48. On July 12, 1984 (49 FR 28520) the Department of Education published regulations for 34 CFR part 628—Endowment Challenge Grant Program. In the EFFECTIVE DATE section, the Department stated that the final regulations, with the exception of certain sections, would take effect either 45 days after publication in the **Federal Register** or later if the Congress took certain adjournments. The Department stated that the excepted sections, including § 628.30, would become effective following the Department's submission and OMB approval of information collection requirements contained in those sections under the Paperwork Reduction Act of 1980. The effective date statement in the regulations is corrected to reflect the determination of OMB that § 628.30 does not contain information collection requirements subject to OMB approval. Section 628.30 therefore became effective on the same date as other provisions of the regulations not containing these requirements.

DATES: *Effective date:* September 14, 1984.

Dated: June 30, 1993.

Judith A. Winston,

General Counsel

[FR Doc. 93-16213 Filed 7-8-93; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL-4677-3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Workshop for Equipment Certifiers

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop for equipment certifiers.

SUMMARY: This notice announces a public workshop concerning the certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1405 through 85.1414. EPA will conduct the workshop for prospective certifiers as well as other interested parties in order to provide and explain generic certification application formats. Recommended certification formats will be tailored for each of the two compliance options and will distinguish between exhaust aftertreatment equipment and engine-based equipment.

DATES: The workshop will be held Monday, July 19, 1993, from 10 am to 5 pm.

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VOL
58
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ADDRESSES: The workshop will be held at the EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313) 668–4200.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Technical Support Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program, intended to reduce the ambient levels of particulate matter (PM) in urban areas, is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 sets particulate matter emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced; Option 2 is a fleet averaging program that sets out a specific annual target level for average PM emissions from 1993 and earlier MY urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. Emissions requirements under either of the two options depend heavily on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. Technology must be certified in order for urban bus operators to take credit for a reduction in PM provided.

The certification process outlined in the retrofit/rebuild rule is based on existing regulations for aftermarket parts certification for light-duty vehicles and trucks. However, in order for equipment to be a trigger under Option 1 for an engine model, additional information regarding cost must be submitted in the application for certification. The certifier must guarantee that the equipment will be offered for sale under an appropriate life cycle cost ceiling to all affected urban bus operators for which the equipment is certified to be a trigger under Option 1.

In order to provide sufficient lead time for urban bus operators to make plans and procure retrofit/rebuild equipment, it is important to have certified equipment available to urban bus operators as soon as possible. For this reason, and because most potential certifiers have had no previous experience with the similar aftermarket parts certification program or the life cycle cost requirements, EPA feels it would be worthwhile to provide and explain standardized formats for meeting the rebuild/retrofit equipment certification requirements as quickly and efficiently as possible.

II. Workshop Structure

EPA will arrange the workshop agenda to provide an overview of the retrofit/rebuild program followed by a detailed explanation of the equipment certification program and the standardized certification application formats. Ample time will be allowed for questions. Specific written questions or suggestions are encouraged to be provided in advance to the Contact Person. Further, all those planning to attend are requested to notify the Contact Person in advance to facilitate our planning.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–16312 Filed 7–8–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 414

[FRL–4610–7]

RIN 2040–AB65

Organic Chemicals, Plastics and Synthetic Fibers Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments limiting effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTWs) by existing and new sources in the organic chemicals, plastics, and synthetic fibers (OCPSF) point source category.

EPA is adding Subpart J limitations based on the Best Available Technology Economically Achievable (BAT) and New Source Performance Standards (NSPS) for 19 additional pollutants as well as Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) for 11 of these 19 pollutants. These amendments respond to the U. S. Fifth Circuit Court of Appeals' remand decisions on the OCPSF regulation, *Chemical Manufacturers Association* v. *U.S. EPA*.

EPA is also correcting the criteria for designating "metal-" and "cyanide-bearing" waste streams, and is adopting two nonsubstantive formatting changes.

DATES: These regulations are effective August 23, 1993. In accordance with 40 CFR 23.2 , this regulation shall be considered promulgated for purposes of judicial review at 1 p.m. Eastern time July 23, 1993.

The compliance date for PSES is as soon as possible but no later than July 23, 1996. The compliance dates for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BAT are established in permits.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be had only by filing a petition for review in the United States Court of Appeals within 120 days after the promulgation date of today's regulation for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The supporting information and all comments and responses on this amendment to 40 CFR part 414 will be available for inspection and copying at the EPA Water Docket, room L–102, Waterside Mall, 401 M Street SW., Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. The basis for this amendment is detailed in the supplement to the OCPSF record which is also in the Water Docket. For additional information contact George M. Jett, Project Officer, Chemicals Branch, Engineering and Analysis Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George M. Jett, (202) 260–7151, for information regarding the technical data, and Debra Nicoll, (202) 260–5386 for information regarding the economic data. Copies of the supplemental development document and

supplemental economic analysis may be obtained by writing or calling Mr. George Jett or Ms. Debra Nicoll, respectively, Engineering and Analysis Division (WH–552), U.S. EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Organization of this Document:

I. Legal Authority
II. Background and Rationale for Amendments
III. New Source Performance Standards and Pretreatment Standards for New Sources
IV. BAT Subcategorization
V. BAT Subpart J and Corresponding Amendments
  A. Background
  B. Final Regulatory Amendments
  C. Basis for Economic Analysis
  D. Summary of Economic Impacts
  E. Small Plant Analysis
  F. Cost-Effectiveness Analysis
VI. Correction of Criteria for Designating "Metal-" and "Cyanide-Bearing" Waste Streams
VII. Nonsubstantive Format Changes
VIII. Public Participation and Summary of Selected Responses
  A. Scope of the Remand
  B. Appropriate Technology Basis for New Source Standards
  C. Appropriate BAT Subcategorization
  D. Applicability of the Revised Pass-Through Methodology
  E. Land Availability
  F. Guidance for Laboratory Analysis of Complex Matrices
  G. Guidance for the Appropriate Flow Basis for Converting Concentrations into Mass-Based Limitations and Standards
IX. Executive Order 12291
X. Regulatory Flexibility Analysis
XI. Paperwork Reduction Act

I. Legal Authority

The amendments to 40 CFR part 414 described in this notice are promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S.C. 1251 et seq.)), also referred to as "the Act" or "CWA."

II. Background and Rationale for Amendments

EPA's explanation of the background and rationale for today's amendments are contained in the December 6, 1991 proposal (56 FR 63897), the January 21, 1992 extension of comment period and correction notice (57 FR 2238), and the December 1, 1992 notice of availability and request for comments (NOA) (57 FR 56883), as supplemented by the information and references in the following sections of this preamble and by the rulemaking record.

Briefly, these amendments respond to the U.S. Fifth Circuit Court of Appeals' remand decisions on the November 5, 1987 OCPSF regulation, *Chemical Manufacturers Association* v. *U.S. EPA*, 870 F.2d 177 (5th Cir.), modified, 885 F.2d 253 (5th Cir. 1989), *cert. denied, PPG Industries, Inc.* v. *U.S. EPA*, 495 U.S. 910 (1990). The Court remanded three aspects of the OCPSF guideline: the New Source Performance Standards (NSPS) and the Pretreatment Standards for New Sources (PSNS) for consideration of whether zero discharge limits would be appropriate for new plants in the OCPSF industry based on recycle of wastewater; the subcategorization of the industry into two subcategories imposing differing limitations based on Best Available Technology Economically Achievable (BAT), on the ground that the Agency did not provide sufficient notice of the scheme; and limitations for 19 of the 20 BAT Subpart J pollutants that were based upon in-plant biological treatment technology (and the corresponding New Source Performance Standards (NSPS) for these pollutants, as well as 13 corresponding Pretreatment Standards for Existing Sources and Pretreatment Standards for New Sources (PSES and PSNS respectively)), on the ground that the model treatment systems used to estimate the cost of compliance had shorter detention times than the systems on which the limitations were based.

In reconsidering new source performance standards, EPA has decided not to revise the NSPS and PSNS standards that were promulgated in the OCPSF guideline because, among other things, EPA's database does not demonstrate that total recycle is a demonstrated technology.

EPA also has decided not to revise the BAT subcategorization scheme for Subpart I and Subpart J. The Agency concluded that this is the most appropriate approach for the OCPSF industry.

EPA is promulgating the same numerical effluent limitations and standards that were proposed on December 6, 1991 for the 19 remanded BAT Subpart J and NSPS pollutants and for 11 of the 13 corresponding PSES and PSNS pollutants based on revised estimates for the cost of compliance derived from revised model in-plant biological treatment system designs. Pretreatment standards for phenol and 2,4-dimethylphenol are not being promulgated because, based on the revised pass-through methodology presented in the December 1, 1992 NOA, EPA has concluded they do not pass through POTWs.

These amendments also correct the criteria for designating "metal-" and "cyanide-bearing" waste streams, and adopt two nonsubstantive formatting changes. These actions do not arise out of the litigation; rather, they result from independent EPA review of the regulation.

III. New Source Performance Standards and Pretreatment Standards for New Sources

In the 1987 OCPSF promulgation, the Agency promulgated NSPS for all direct discharging sources based on the best available demonstrated technology, as required by CWA section 306 (52 FR at 42545). NSPS was established for the three conventional pollutants regulated under the OCPSF guideline on the basis of BPT model treatment technology, and for the 63 OCPSF-regulated priority pollutants on the basis of BAT model treatment technology. The numerical standards are equivalent to the BPT and the BAT limitations (52 FR 42545). EPA also promulgated PSNS on the same technology basis as PSES; the numerical standards for 47 priority pollutants that were determined to pass through or otherwise interfere with the operation of publicly owned treatment works (POTWs) are equivalent to the PSES standards (52 FR 42549).

The Natural Resources Defense Council (NRDC) challenged the final NSPS and PSNS standards arguing, in part, that the Agency failed to give adequate consideration to better pollution control technologies that could be used by new sources.

On March 30, 1989, the Fifth Circuit rejected all but one of NRDC's challenges to the NSPS standards and remanded the NSPS standards to EPA "for consideration of whether zero discharge limits would be appropriate for new plants in the OCPSF industry because of the existence of recycling" (870 F.2d at 264). However, the Court left the standards in place during the Agency's response to the remand (870 F.2d at 266).

The Agency has reconsidered the issues related to establishing new source zero discharge standards based on process wastewater recycle and, as proposed, has decided not to revise the existing NSPS and PSNS standards. EPA received comments from NRDC urging EPA to promulgate zero discharge standards based on recycle of process wastewater, and numerous industry comments supporting EPA's proposal to retain the existing NSPS and PSNS standards. As explained more fully in Section VIII.B., below, the Agency has concluded that it has no basis to impose a zero discharge technology-based NSPS standard on any OCPSF source, and that, even if it were to undertake an extensive data collection and technical development effort, it is unlikely EPA could impose a zero discharge standard

on more than a few of the 25,000 product/processes in the OCPSF industry. First, the "concentration-based" approach which forms the framework of the OCPSF guideline limits the opportunities for the promotion of recycling and re-use of wastewater through a national guideline, in contrast to the "mass-based" approach adopted in other guidelines. The Agency explicitly recognized this limitation during the guideline development process, but opted for this approach nonetheless because it provided the basis for a guideline with more expansive coverage. This was a rational regulatory decision made by the Agency. Moreover, because the OCPSF record was imprecise with regard to its use of the term "recycle," both NRDC and the Fifth Circuit in its remand order misinterpreted the support in the database for zero discharge through recycling. In fact, the record contains very few reports of complete recycle and does not demonstrate that recycle is a demonstrated technology on which EPA can base a zero discharge standard.

IV. BAT Subcategorization

The original OCPSF guideline had two technology-based BAT subcategories for the control of toxic pollutants: one for any direct discharge point source that uses end-of-pipe biological treatment or installs end-of-pipe biological treatment to comply with BPT effluent limitations (Subpart I, § 414.90), and one for any direct discharge point source that does not use end-of-pipe biological treatment or does not install end-of-pipe biological treatment to comply with BPT effluent limitations (Subpart J, § 414.100). Subparts I and J set limits for 63 and 59 pollutants, respectively. Of the 59 Subpart J Maximum for Monthly Average limitations, 9 are identical to, 20 are more stringent than, and 30 are less stringent than the corresponding Subpart I limitations.

As explained in the proposal, EPA established this scheme based, in part, on its conclusion that there are plants in the OCPSF industry whose wastewaters have such low levels of Biochemical Oxygen Demand (BOD) that they will not be able to operate biological treatment systems effectively and do not need biological treatment systems to comply with the BPT BOD effluent levels (56 FR at 63899). Biological treatment systems rely on microorganisms to biodegrade or "eat" the organic pollutants in the wastewater. BOD, a measure of the organic pollution strength in water or wastewater, is determined by measuring the oxygen used by microorganisms to oxidize or "eat" the organic contaminants of a sample. Consequently, BOD measures the amount of substrate or "food" available for the survival of microorganisms (*id.*). Biological treatment systems therefore require sufficient BOD levels to operate (*id.*).

NRDC challenged the BAT subcategorization scheme in the litigation over the OCPSF guideline, arguing that the Agency had failed to present its BAT subcategorization scheme for comment and also asserting that this type of BAT subcategorization violated the CWA because it allowed a discharger who chooses not to employ end-of-pipe biological treatment to be subject to fewer and less stringent BAT Subcategory J limitations, rather than the more stringent Subcategory I limitations which apply to plants with end-of-pipe biological treatment systems. NRDC also argued that, if it had had an opportunity to comment, it would have urged EPA to establish a raw waste BOD "floor" above which plants would not be able to qualify for Subpart J, or to limit the applicability of Subpart J to those categories of OCPSF production that tend to have low raw waste BOD levels (NRDC 6/30/88 Brief at 54).

On March 30, 1989, the Fifth Circuit Court of Appeals, without ruling on NRDC's substantive arguments, remanded the BAT subcategorization of the industry for notice-and-comment proceedings. The Court left the scheme in effect pending further rulemaking, reasoning in part that the notice-and-comment proceedings may disclose that the BOD floor urged by NRDC is neither necessary nor feasible (870 F.2d at 236).

The Agency has reconsidered the issues related to revising the BAT subcategorization scheme or otherwise limiting the applicability of Subpart J and has decided not to revise the existing scheme. The scheme accommodates the complexity of the industry and encourages source control and rational waste management decisions. In addition, EPA does not believe revision of the scheme is necessary. Plants must comply with low BPT limits, and plants that need to achieve significant BOD reductions will generally install biological treatment because other treatment alternatives are significantly more expensive. EPA does not believe plants' treatment decisions will be motivated by the desire to be subject to Subpart J. In any event, Subpart J is not significantly less stringent than Subpart I.

Moreover, the Agency does not have a technical basis to determine which plants can sustain biological treatment because of the lack of a theoretical BOD floor for sustaining biological treatment and the great variability of OCPSF production and wastewater characteristics. For these reasons, as explained more fully in response to NRDC's comments, below, in the 1991 proposal, and in the rulemaking record, the Agency has decided not to establish a BOD floor or otherwise limit the applicability of Subpart J.

V. BAT Subpart J and Corresponding Amendments

A. Background

In the 1987 OCPSF guideline, EPA promulgated toxic pollutant effluent limitations based on the two subcategory scheme described in Section IV above. Subpart J established direct discharge toxic pollutant limitations for plants that comply with BPT limitations without the use of end-of-pipe biological treatment or contract hauling. The Subpart J toxic pollutant numerical limitations were based on the performance of in-plant wastewater treatment technology including steam stripping to remove volatile priority pollutants, chemical precipitation for metals, alkaline chlorination for cyanide, and in-plant biological treatment for removal of selected priority pollutants including polynuclear aromatics, phthalate esters, acrylonitrile, phenol, and 2,4-dimethylphenol (52 FR 42538—45; Final "Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics, and Synthetic Fibers Point Source Category," (EPA 440/1–87/009), October 1987 (hereafter referred to as 1987 DD), Vol. I, pp II–8 to 11).

Numerical standards for 20 of the Subpart J pollutants were based on the performance of three biological treatment systems with detention times of 1.6, 3.5, and 17.2 days. In contrast, detention times between 1 and 2.1 days were used to estimate the costs of compliance based on the model in-plant biological treatment systems (1987 DD, p VIII–189; R.93970–4020; EPA 9/23/88 Response Brief at 244–59).

The Chemical Manufacturers Association (CMA) challenged the Subpart J limitations based on in-plant biological treatment arguing, in part, that the plants used by EPA to derive the limitations based on in-plant biological treatment have more treatment in place than EPA's model treatment technology used to estimate costs of compliance and that EPA therefore significantly underestimated the costs of installing in-plant biological

treatment (CMA's 4/25/88 Brief at 58–76).

After the Fifth Circuit initially upheld these Subpart J limitations (870 F.2d at 240–42), CMA petitioned for reconsideration, again arguing, in part, that the Agency underestimated the costs of compliance due to the differences between the detention times of the plants that provided the basis for the numerical standards and the detention times of the model technology that provided the basis for estimating the engineering costs of compliance (CMA's 5/3/89 Brief on Petition for Rehearing, pp 8–11). The Court concluded that the detention time was a key variable in determining the effectiveness of biological treatment and that EPA had failed to demonstrate a reasonable basis to conclude that biological systems with a 1 or 2.1 day detention time would control pollutants as effectively as the biological systems with the 3.5 and 17.2-day detention times (885 F.2d at 265).

The Court remanded limitations for the Subpart J pollutants based on the two plants with these longer detention times. In a June 29, 1990 revocation notice (55 FR 26691), the Agency withdrew the BAT limits for the 19 of the 20 Subpart J limits that were based on these two plants. EPA left in effect the limitations for acrylonitrile, which were based upon the treatment system with the 1.6 day detention time. In this notice EPA also withdrew the 19 corresponding NSPS standards, and the 13 corresponding PSES and PSNS standards that were based on the remanded Subpart J limits.

The remand was based on the discrepancy between the detention times of the systems that provided the technical basis for the Subpart J limits and the detention times of the costed model in-plant systems, and not on the technical achievability of the limits generally. EPA therefore proposed on December 6, 1991 and January 21, 1992 the same numerical standards with revised estimates of costs of compliance. The revised compliance costs were based on revised model in-plant biological treatment systems with increased detention times as a function of reported or projected raw waste toxic pollutant concentrations.

A large number of the comments on the proposal challenged EPA's determination in the original 1987 OCPSF promulgation that phenol—one of the 13 pollutants for which pretreatment standards were remanded—passes through POTWs. Several comments raised the same issue with respect to 2,4-dimethylphenol—another of the 13 pollutants. Based on EPA's assessment that these comments had merit, EPA announced in a notice of availability (NOA) published in the **Federal Register** on December 1, 1992, that it was considering revising its determination that phenol and 2,4-dimethylphenol pass through POTWs, based on a proposed modification to the Agency's traditional pass-through methodology (57 FR 56883). The revised methodology as proposed applied scientific and engineering judgment in conjunction with biological treatment performance data to determine that phenol and 2,4-dimethylphenol do not pass through POTWs.

EPA collected additional POTW phenol removal data and reviewed it in conjunction with the data that EPA used in the 1987 pass through analysis, and performed a chemical and engineering assessment of the fate of phenol and 2,4-dimethylphenol in biological treatment systems. EPA has concluded that these pollutants are highly biodegradable and that the removals of these pollutants achieved by POTWs are essentially equivalent to those achieved by direct dischargers. In addition, since phenol and 2,4-dimethylphenol are low volatility pollutants, the removals achieved by POTWs do not simply result from the transfer of the pollutants to the air.

Based on these conclusions, today's amendments are based on revised engineering costs of compliance and pollutant loading reductions for 11 of the 13 remanded pollutants. Final pretreatment standards for phenol and 2,4-dimethylphenol are not being promulgated today because the Agency has concluded they do not pass through POTWs.

B. Final Regulatory Amendments

As explained above, EPA is adding PSES and PSNS standards for 11 additional pollutants in the table appearing in the new § 414.111 (see Section VII). The 11 pollutants are acenaphthene, anthracene, bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, diethyl phthalate, dimethyl phthalate, fluoranthene, fluorene, naphthalene, phenanthrene, and pyrene.

EPA is adding BAT and NSPS limitations and standards for 19 additional pollutants in the table in § 414.101. The 19 pollutants are acenaphthylene, benzo(a)anthracene, benzo(a)pyrene, 3,4-benzofluoranthene, benzo(k)fluoranthene, chrysene, 2,4-dimethylphenol, phenol, and the 11 pollutants listed in the previous paragraph.

C. Basis for Economic Analysis

The economic analysis of today's final BAT and PSES limitations is based on revised compliance costs for the same BAT numerical limitations and, with the exception of phenol and 2,4-dimethylphenol, for the same PSES numerical standards that were promulgated in 1987 and proposed in December 1991. Phenol and 2,4-dimethylphenol are not regulated under PSES because EPA has determined that they do not pass through POTWs (see Section V.A.).

EPA has revised its costing analysis in response to comments by CMA that the Agency underestimated the costs of compliance because the technical data base was not revised to reflect the information gathered in EPA's April 1991 survey of the 84 direct discharge plants that did not report the use of end-of-pipe biological treatment in the original OCPSF CWA Section 308 survey. The principal changes based on the April 1991 survey reflect the shift in discharge status for 14 plants from direct to indirect discharge and the revised projection that 47 rather than 23 plants are subject to the BAT Subpart J limitations (May 1993 Supplement to the Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category, (EPA 821–R–93–007)). These changes are reflected in the economic analysis performed by EPA, described below. The changes do not materially affect EPA's analysis, nor do they affect the determination that today's rule is economically achievable.

In response to the remand of the Subpart J limitations, EPA considered whether the limitations are economically achievable given the revised compliance costs. The Agency's analysis of the revised costs parallels the economic analysis conducted for the 1987 rulemaking. The methodology for that analysis was described in the preamble to the 1987 final rule (52 FR 42550) and in the Agency's economic impact analysis that was published in support of that rule ("Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Industry," (EPA 440/2/87–007), September 1987). The economic analysis for today's final rule is documented in a report: "Re-Evaluation of the Economic Impact Analysis of Effluent Limitations Guidelines for the Organic Chemicals, Plastics, and Synthetic Fibers Industry," May 1993. This report is available from

EPA; see the contacts identified at the beginning of this notice.

EPA undertook a revised plant impact analysis, a revised regulatory flexibility analysis, and a revised cost-effectiveness analysis to evaluate the effects of the final compliance costs. The plant impact analysis is the primary basis for evaluating economic achievability. The regulatory flexibility analysis provides information to determine whether small plants are disproportionately affected by the revised costs. The cost-effectiveness analysis provides information about the relative efficiency of the control option selected for reducing pollutant discharges.

The methodology for assessing plant impacts is the same as was used for the 1987 final rule. The impact of the compliance costs on OCPSF plants was evaluated using the following criteria: total annualized cost of the treatment technology, potential plant closures, potential product line closures, significant sales or profit impacts, and the job losses associated with closures. Additional information regarding the calculation of these impact measures and their significance is found in the economic impact analysis prepared for the 1987 final rule.

D. Summary of Economic Impacts

The costs used to evaluate today's final rule are based on the capital and annual operating costs of the model treatment technology, as described in the May 1993 final "Supplement to the Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category." In the following discussion, all cost estimates are reported in 1986 dollars to facilitate comparisons to the 1987 promulgated rule. Cost estimates in that preamble were reported in 1986 dollars.

For approximately 265 direct dischargers for which EPA has estimated compliance costs, the total annualized costs of the OCPSF guideline, as amended, are $231.1 million. This is a $6.9 million (3.1 percent) increase over the cost of the rule as promulgated in 1987. However, today's rule results in fewer incremental impacts (i.e., plant closures, product line closures, or employment losses) than those estimated for the 1987 promulgation. Two of the plants that were projected to close under BAT in 1987 were among the 14 plants that switched their discharge status to indirect and are now projected to close as indirect discharge plants under today's rule. The Agency estimates that 9 OCPSF direct discharging plants or product lines may close as a result of the compliance costs imposed by today's rule. These closures represent 3 percent of all direct discharging plants. For the 1987 rule and the 1991 proposal, the Agency estimated that 11 OCPSF plants or product lines would close as a result of the compliance costs. The employment reduction associated with the closures for today's rule is 1,060 (0.6 percent of total OCPSF employment).

For approximately 380 indirect dischargers for which EPA has estimated compliance costs, the total annualized costs of the OCPSF guideline, as amended, are $254.4 million. This is a $50.1 million (24.5 percent) increase over the cost of the rule as promulgated in 1987. Today's final cost estimate is $7.0 million (2.8 percent) higher than the costs estimated for the December 1991 proposed rule; the net change in estimated costs reflect the shift in discharge status for 14 plants that were direct discharge facilities in 1987 but now discharge to POTWs, and the exclusion of phenol and 2,4-dimethylphenol in the final pretreatment standards. Overall, plant impacts for indirect dischargers increase slightly when compared to the 1987 and 1991 results. Sixty (60) plant and product line closures are projected to result from compliance with the OCPSF guideline as amended by today's rule. As originally promulgated, the number of plant and product line closures was 52. For the 1991 proposal, the estimate of plant and product line closures was 56. (Two of the additional four closures over the 1991 estimate result from the switch to indirect discharge status of two direct discharging plants that were projected to close.) When expressed in percentage terms (relative to the number of indirect dischargers), the closure rate for today's final pretreatment standards is 16 percent; at promulgation in 1987, the closure rate for indirect dischargers was 14 percent. The employment reduction associated with the closures for today's rule is 2,946, which is an increase (of 0.4 percent of total OCPSF employment) from 2,190 at the 1987 promulgation.

The Agency finds that the impacts imposed by the revised compliance costs for both BAT and PSES are not significantly different from the impacts projected in 1987, and that today's amendment is economically achievable.

In addition, EPA received comments that its approach understates the actual cost of compliance with today's rule. EPA disagrees and believes the costs it has presented are an accurate industry-wide estimation of compliance costs. However, EPA has conducted two sensitivity analyses examining the projected impacts of increased compliance costs with today's rule, one which doubled the projected costs of compliance, and one based on assignment to individual plants of additional treatment unit operations that commenters claimed would be required (see Response to Comments Section of the Public Record). These highly conservative sensitivity analyses project one additional and four additional plant closures, respectively, which EPA finds would still be economically achievable. EPA believes that the closures estimated using the sensitivity analyses overstate the actual closures that will result from compliance with today's rule.

E. Small Plant Analysis

A regulatory flexibility analysis addresses the burden of regulatory actions on small entities. For today's final regulation, as in the 1987 final rule, the regulatory flexibility analysis examined whether small plants, as defined by a plant production threshold of 5 million pounds, were disproportionately affected by the regulation. The assessment includes consideration of plant and product line closures and profit and sales impacts. The assessment reflects the shift in discharge status for 14 plants, the revised compliance costs, and, for indirect discharge plants, the exclusion of phenol and 2,4-dimethylphenol from the PSES standards, as explained in Section V.C., above.

In the 1987 final rule, based on its small plant analysis, EPA set BAT equal to BPT for plants whose annual OCPSF production is less than or equal to 5 million pounds (52 FR 42539); EPA did not establish different PSES for any sector of indirect dischargers (52 FR 42548).

At promulgation in 1987, the Agency projected that 79 percent of the small direct discharging plants would be affected by plant or product line closures or profit or sales impacts; for today's rule, 77 percent of the small direct discharging plants are projected to be affected.

At promulgation in 1987, 61 percent of the small indirect discharging plants were projected to be affected; for today's rule, 63 percent of the small indirect discharging plants are projected to be affected by plant or product line closures or profit or sales impacts.

These plant impacts on small direct and indirect dischargers are not significantly different from the impacts evaluated for the 1987 final rule, and the basis for establishing BAT and PSES, as presented in the 1987 final

rule, is unchanged by the revised economic analysis. Thus, there is no change in the small plant analysis findings.

F. Cost-Effectiveness Analysis

EPA conducted a cost-effectiveness analysis for the 1987 final rule and reported the results in the preamble and in supporting documents. EPA's cost-effectiveness analysis compares the incremental cost of a control option (in 1981 dollars) to the pounds of pollutants removed by the control option, where those pounds are weighted by their relative toxicity. Additional descriptions of the cost-effectiveness methodology are found in the preamble to the 1987 final rule (52 FR 42552) and in a document included in the administrative record for that rule: "Cost-Effectiveness Analysis for the Organic Chemicals, Plastics, and Synthetic Fibers Industry," September 1987 (R. Sec. VI–11, pp 5155 to 98).

For today's final rule, EPA recalculated the cost-effectiveness ratios for BAT and PSES using the revised compliance costs and revised pollutant removal data to account for the exclusion of phenol and 2,4-dimethylphenol in the final pretreatment standards. The cost-effectiveness of the OCPSF BAT limitations, as amended, is $4 per pound equivalent removed. The cost-effectiveness of the OCPSF PSES standards, as amended, is $39 per pound equivalent removed.

The cost-effectiveness of the BAT limitations as amended is virtually the same as the result reported for the 1987 final rule. The notice of proposed rulemaking in December 1991 stated that as part of the assessment for publishing the final rule, EPA would consider the cost-effectiveness ratio of BAT Subpart J (56 FR 63905). The result of that calculation is a cost-effectiveness ratio of $6 per pound equivalent removed for the final BAT limitations for Subpart J direct dischargers. The cost-effectiveness ratio for Subpart I direct dischargers is, when examined separately, $4 per pound equivalent removed.

The cost-effectiveness ratio of PSES, as amended, is $39 per pound equivalent removed; this result is comparable to the $38 cost-effectiveness ratio reported in the December 1991 proposal. The result reported for the 1987 final rule was $34 per pound equivalent removed. The cost-effectiveness of PSES as amended is not significantly different from the cost-effectiveness of PSES as originally promulgated.

VI. Correction of Criteria for Designating "Metal-" and "Cyanide-Bearing" Waste Streams

To control chromium, copper, lead, nickel, zinc, and total cyanide, the 1987 OCPSF guideline established concentration-based limitations that apply only to metal-bearing or cyanide-bearing waste streams. Other waste streams have a zero discharge allowance for these pollutants. EPA listed the product/processes considered to have metal-bearing or cyanide-bearing process wastewater in Appendix A of the regulation. However, EPA recognized that at some sites process wastewaters not listed in Appendix A may contain significant levels of metals or cyanide. In such cases, EPA intended for the regulations to authorize the permit writer or control authority to designate such waste streams as "metal-bearing" or "cyanide-bearing" on a case-by-case basis and to apply the concentration limitations set forth in the regulation to these waste streams.

The 1987 final regulation included language intended to require separate treatment of Appendix A waste streams and waste streams designated as metal-bearing or cyanide-bearing on a case-by-case basis, unless combination of such waste streams prior to treatment would result in substantial reduction of the metals or cyanide contained in the waste streams. The requirement was intended to prevent facilities from combining waste streams containing different metals prior to treatment, thereby complying, in whole or in part, with the promulgated limits through dilution rather than through treatment. However, as promulgated, the regulation incorrectly provided that a non-Appendix A waste stream, even if it contained significant quantities of metals or cyanide, could not be designated as metal-bearing or cyanide-bearing unless the combination of such waste stream with an Appendix A waste stream prior to treatment would result in substantial reduction of the pollutants. In other words, the prohibition against combined treatment inadvertently appeared as an independent restriction on the designation of non-Appendix A waste streams as "metal-bearing" or "cyanide-bearing," rather than a restriction on how those streams must be treated once they have been determined to be metal- or cyanide-bearing. The Agency did not intend to narrow the scope of waste streams that can be designated as metal- or cyanide-bearing, and intends that any waste streams with significant levels of metals or cyanide should be regulated as metal-bearing or cyanide-bearing, respectively. The Agency is adopting the proposed revision that correctly reflects EPA's intent to restrict combined treatment, rather than to narrow the scope of metal-bearing and cyanide-bearing waste streams.

VII. Nonsubstantive Format Changes

The Agency is adopting the two nonsubstantive formatting changes that were proposed to improve the organization and utility of 40 CFR part 414 (56 FR 63904). First, the Agency is revising the order of the toxic pollutant listings in the regulatory tables to list the limitations and standards alphabetically by pollutant name. Second, the Agency is deleting multiple listings of the same table. With the exception of the footnotes for the zinc pretreatment standards in the tables for §§ 414.25 and 414.35, each of the tables in §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85 is identical. To consolidate the regulation, the Agency is adding Subpart K to list the pretreatment standards in one table with introductory text and an appropriate footnote for zinc (identical to Footnote 2 to the table in § 414.101), and deleting the tables of pretreatment standards and a portion of their introductory text from §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85. Appropriate references to Subpart K are replacing the tables in §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85. EPA is making corresponding changes to §§ 414.26, 414.36, 414.46, 414.56, 414.66, 414.76, and 414.86, so that both the PSES and PSNS regulations correctly refer to the consolidated table, rather than to the former, separate tables.

VIII. Public Participation and Summary of Selected Responses

The Agency received comments from 28 separate commenters on the December 6, 1991 proposal and January 21, 1992 extension of the comment period. These included three trade associations, two POTWs, 22 individual companies, and NRDC. The Agency received comments from 26 separate commenters on the December 1, 1992 NOA. These included four trade associations, four POTWs, the City of Philadelphia, and 17 individual companies.

The Agency's responses to comments are contained in the "Comment Summary and Response" section of the rulemaking docket. This section presents the Agency's responses to the principal comments relating to the remand issues. In addition, this section provides guidance in response to two

VOL 58 ISS 130 JL 9 1993 UMI

general OCPSF implementation issues raised in the public comments.

A. Scope of the Remand

Contrary to the assertions of CMA and other commenters (including ICI Americas, Inc., the Eastman Chemical Company (Kodak), Union Camp Corporation, and Allied-Signal, Inc.), EPA believes it correctly interpreted the Fifth Circuit's remand as limited to the re-costing of in-plant biological treatment systems based on the detention times used by the end-of-pipe systems on which the Subpart J limitations and corresponding pretreatment standards were based, and to the land availability issues associated with the larger systems EPA has costed (56 FR at 63903). The Court originally upheld the limits based on in-plant biological treatment, rejecting all of CMA's and other petitioners' arguments and concluding that the petitioners "have failed to demonstrate that end-of-pipe biological treatment systems are *sufficiently different* to make EPA's reliance on end-of-pipe data irrational" (*CMA* v. *EPA*, 870 F.2d at 240 (emphasis added)). As explained in Section V.A., above, the Court remanded 19 of the 20 BAT Subpart J limits on rehearing, based on the fact that the two plants used to derive those 19 limits had treatment systems with detention times that were significantly longer than the detention times of the model in-plant systems costed by EPA (*CMA* v. *EPA*, 885 F.2d at 265). The Court concluded that EPA had not adequately demonstrated that variation of other features of a plant's biological treatment system, such as the concentration of biodegrading organisms (MLVSS), could compensate for the shorter detention times. On this basis, the Court concluded that EPA "failed to demonstrate a reasonable basis for its conclusion that in-plant treatment can eliminate pollutants as effectively as the end-of-pipe systems of Plants 1293T and 948F [the two plants with the long-detention-time treatment systems]" (*id.*). EPA has fully addressed the remand by recosting the limits in question by projecting the cost of installing in-plant biological systems with the same detention times as the end-of-pipe systems on which the limits were based.

The commenters argue that the Court's remand requires a broader examination and demonstration of the technical achievability of the limits. First, they point out that the Court's remand language was not expressly limited to cost, but rather stated that EPA "failed to demonstrate" that in-plant biological treatment systems "can remove pollutants as effectively as the end-of-pipe systems of Plants 1293T and 948F" (*see, e.g.*, CMA comment at 15). The commenters thus conclude that the Court's remand re-opened the general issue of whether EPA rationally relied on data from end-of-pipe biological treatment systems to establish limits for which the model treatment technology is in-plant biological treatment (*id.* at 16). Commenters raise numerous arguments related to the technical achievability of the limits generally, focusing largely on purported differences between the in-plant model technology and the end-of-pipe systems on which the limits are based, and on the purported differences between in-plant and end-of-pipe waste streams (*see, e.g., id.* at 16–38).

The commenters' reading of the remand is wrong. The Court remanded only the limitations based on the two plants with the end-of-pipe treatment systems that had significantly longer detention times (3.5 and 17.2 days) than the model systems costed by EPA. The Court left in place the limitations for acrylonitrile, which were based on the end-of-pipe biological treatment system with the shorter detention time (1.6-day) that was within the range of detention times (1–2.1 days) used to estimate the cost of compliance for the model treatment systems (885 F.2d at 253; *see also* January 3, 1990 Settlement Agreement between CMA and EPA (agreeing that remand left in place limitations for acrylonitrile)). Had the Court generally rejected EPA's approach of establishing limits based on end-of-pipe treatment systems, it would have remanded all of the Subpart J limits and analogous pretreatment standards. It is clear from the scope of the remand and the Court's discussion that it remanded the 19 Subpart J limits and 13 analogous PSES standards based solely on the discrepancy in detention times between the costed model treatment systems and the two end-of-pipe systems. That is to say, the Court concluded that EPA had not demonstrated the achievability of the limits only in the sense that EPA had not demonstrated that the short-detention-time systems it costed could achieve the same removals as the longer-detention-time systems on which it based the limits. The Court's remand based on the limited issue of detention time did not otherwise negate its earlier determination that in-plant and end-of-pipe systems were not "sufficiently different" to make EPA's approach irrational (870 F.2d at 240). By recosting the model in-plant technology based on the longer detention times employed at Plants 1293T and 948F, EPA has fully addressed the only basis for the remand.

CMA in addition argues that the Court's remand should be interpreted as re-opening the technical achievability of the limits generally on the ground that CMA's challenges to the limits in comments during the original OCPSF rulemaking and in litigation raised issues relating to technical achievability generally (CMA Comments at 13–15). CMA points out, among other things, that it cited in litigation a number of concerns regarding the feasibility and effectiveness of in-plant biological treatment (*id.* at 13). However, the scope of the Court's remand, of course, is determined by the Court's decision, not by the issues raised by the litigants. The Court considered CMA's arguments and rejected them on the grounds that in-plant and end-of-pipe biological systems are not appreciably different (270 F.2d at 240). On reconsideration, the Court remanded the limits based solely on the discrepancy in detention times (285 F.2d at 265). It is clear that, aside from this single issue, the Court considered and rejected the range of arguments raised by CMA.

CMA and a number of other commenters raise essentially the same achievability arguments in this rulemaking as they had raised in their challenge to the 1987 OCPSF guideline. In addition to pointing out the discrepancy in detention times between the costed and the end-of-pipe systems, CMA argued extensively before the Fifth Circuit that the end-of-pipe systems involved more extensive treatment (including pre- and post-biological treatment and equalization for flow and concentration) than the costed system (e.g., CMA Brief at 51–60), and that the influent to in-plant biological systems would have different characteristics (specifically, that it would have higher influent concentrations) than the influent to end-of-pipe systems (CMA Reply brief at 58 n.108, 62 n.13).

In addition, CMA and other commenters raise in comments now the same kinds of costing issues arising from their technical critique as they did in their challenge to the 1987 OCPSF guideline (*see, e.g.*, CMA Brief at 56 n.94, CMA Reply Brief at 61 n.112 (EPA has grossly underestimated cost of compliance and economic impacts because it did not cost sufficiently extensive treatment systems)). These issues have been litigated and decided in EPA's favor, and were not re-opened by the Court's remand. Rather, the issues opened by the remand are whether EPA has accurately re-costed the model in-plant technology to reflect the longer detention times assigned to the plants and whether EPA has

adequately accounted for land availability.

EPA has exhaustively addressed the technical and related costing issues raised by the commenters during the OCPSF rulemaking and litigation. Nevertheless, EPA has again addressed these issues raised by CMA and other commenters in the response to comments document accompanying today's rule, but it does not thereby concede that the issues raised are within the scope of the Court's remand or waive its position that the issues addressed are not open to further challenge in future litigation (*see Natural Resources Defense Council, Inc.* v. *Thomas*, 838 F.2d 1224, 1252 (D.C. Cir. 1988)).

B. Appropriate Technology Basis for New Source Standards

NRDC in its comments challenges the sufficiency of EPA's response to the Court's remand of NSPS. Contrary to NRDC's suggestion, EPA did take a "hard look" at the practicability of imposing a zero discharge NSPS and concluded that the administrative record for the guideline does not support recycle as a demonstrated technology for the promulgation of a technology-based NSPS zero discharge standard within the OCPSF industry. Simply put, recycle of wastewater is not a zero discharge technology. It is a water conservation method that may be implemented on a plant-by-plant basis—and is widely used in the OCPSF industry—but rarely, if ever, results in zero discharge.

EPA thoroughly reviewed its database and performed a detailed technical analysis of the potential candidates for zero discharge standards, and identified only three products—out of 25,000 in the industry—that held the potential to achieve zero discharge based on total recycle of process wastewater. (Technically, even for these products, EPA does not believe that zero discharge can be based on recycle *alone* since, as explained in the proposal, wastewater that is vacuum stripped from the reaction vessels must be partially evaporated before it can be recycled back to the reaction vessel (56 FR 63909)). As EPA explained, the record does not disclose the means actually employed to achieve zero discharge at the plants reporting zero discharge for these products (*id.*). Thus, even for these three products, EPA does not have a technical basis to impose a zero discharge NSPS.

Overall, NRDC faults EPA for not undertaking a major new data collection and technical development effort in response to the remand. The commenter argues that EPA improperly rejected the imposition of zero discharge NSPS on the ground that it was impracticable for EPA to develop such standards, whereas the proper inquiry, they assert, is the practicability to the industry of achieving zero discharge. However, NRDC ignores EPA's point that, within the OCPSF industry, recycle is not a "technology" that can be applied across a range of OCPSF production, but, rather, is the result of a range of water use practices and process modifications that are practicable to a greater or lesser extent for individual product/processes (56 FR at 63907).[1] Recycle can be broadly divided between general water conservation practices—such as recycle of vent or air scrubber water—and recycle of water that is actually used in or generated from chemical reactions at a plant. This latter category can be further divided into recycle within individual processes and recycle of combined waste streams back into one or more processes (*id.*). Water in the first category is generally used to remove a substance from a medium, e.g., in an air pollution control device, to remove hydrochloric acid from the emissions from a reactor vessel. This type of recycle never results in zero discharge because the recycled water becomes progressively more saturated with the by-products or contaminants it is removing and must be released through a "blowdown" and replaced by clean water in order to perform its function (*id.*). The frequency of blowdown and quantity released is highly dependent on the specific process and the function of the water.

The second general category of recycle will seldom, and only under plant-specific circumstances, achieve zero discharge. Wastewater virtually always contains contaminants that, except in very rare cases, will prevent complete recycle (*id.* at 63908–09). As water is recycled, it becomes progressively more contaminated and, in almost all circumstances the Agency is aware of, will have to be released and replaced periodically or progressively. The extent to which recycle can be employed, and the frequency and quantity of discharge, will vary greatly from one product/process to another, depending on the types and amounts of contaminants in the wastewater, the sensitivity of the product/process to contamination, the grade of product required by a manufacturer's customers (the more contaminated the water input to a process, the lower the grade product that will be produced), and other factors (*id.*)

In general, OCPSF products are produced through chemical reactions in reaction vessels that are carefully maintained to maximize production of the desired product. Chemical processes almost never convert 100 percent of raw materials into the desired product; they inevitably result in the manufacture of by-products because there are a variety of "reaction pathways" which result in a variety of outputs of the chemical reaction. Depending on the nature of the by-products produced and a given facility's operations, the facility may be able to use some of the by-products in other processes or sell them; some of the by-products may need to be disposed of. In order to minimize production of undesirable by-products, as well as low grade products and "off-spec" products that may require disposal, OCPSF facilities typically "fine tune" the operations of reaction vessels by controlling the purity of raw material inputs, the physical condition of the chemical species (gas, liquid, or solid state), method of adding and mixing the reactants, temperature, pressure, the mix and quantities of solvents and catalysts, and the configuration of the process equipment. The appropriate balance of these factors will favor a particular reaction pathway and maximize the conversion of the raw materials into the desired product, thus minimizing the amount of raw material that is wasted or used inefficiently by being converted into undesirable by-products.

The chemical reactions used to produce the 25,000 OCPSF products are extremely complex and varied, and the complexity increases as the purity of the raw material inputs decreases (e.g., through recycle of concentrated, contaminated wastewater). The addition of impurities can affect chemical processes in ways that are difficult to predict. As explained in the proposal, the attempt to develop a zero discharge NSPS would require a detailed study and technical development effort on a product/process-by-product/process basis to determine the feasibility and effects of wastewater recycle. This type of major research and development effort is far beyond the scope of what EPA can practicably accomplish, and far beyond the inquiry into available technologies that EPA has taken in past guideline development efforts.

[1] In this respect, EPA disagrees with industry commenters who suggested that total recycle is not demonstrated because it is used by only 0.012% of the industry, e.g., CMA at 52. The application of a technology by a single industry plant, or even a pilot plant, might well provide a demonstrated basis for NSPS. EPA has concluded that total recycle is not demonstrated not simply because there are so few examples of it, but because the few examples are not transferable to the manufacture of other products.

Moreover, virtually all chemical reactions will reach a tolerance level for accumulated contaminants in recycled wastewater and will require a discharge at some point, unless the contaminated water can periodically be incorporated directly into the facility's product. This will result in lower grade product, and the ability of individual facilities to do this will depend on customer demands. Since most OCPSF products are sold as intermediate products that will in turn be part of the raw material for a consumer product, customer demands vary greatly, depending on the purity of the raw material needed for the manufacture of the consumer product. In addition, although it is possible that individual facilities may be able to adjust other variables in their chemical processes to compensate to some extent for increased impurity from recycled wastewater, these adjustments would be highly facility-specific and would likely not reduce the production of by-products and/or off-spec products to the levels that could be achieved without the added contamination from the recycled wastewater. Some of the resulting by-product and off-spec product would likely be hazardous and require treatment and disposal under Subtitle C of the Resource Conservation and Recovery Act. Again, even if zero discharge were attainable, the extent to which the imposition of a zero discharge standard would result in non-water quality environmental impacts, and how those impacts would compare to the reduction of pollutant loadings to receiving waters, could only be evaluated on a product/process-by-product/process basis. (*See* Rohm and Haas Co. Comment at 2 (identifying non-water quality impacts that could result from total recycle, including impacts from increased use of solvents to replace water in cleaning operations and energy consumption resulting from evaporation or off-site transfer of wastewater, as well as from increased production of off-grade material requiring disposal)).

In the case of the three products identified in EPA's technical analysis as potential zero discharge candidates—melamine, phenolic, and urea resin—water that is produced in the process can be removed, partially evaporated to raise the concentration of raw materials, and reintroduced to the reactor vessel (56 FR 63909). (Again, even for these products, zero discharge is not achievable through recycle alone, but requires an evaporation step.) Even in this situation, the concentration of contaminants in the water will build as it is recycled and evaporated, and the need to discharge (or otherwise dispose of) the wastewater could be eliminated only if the partially-evaporated water or "syrup" could be periodically incorporated directly into the facility's product (*id.*). This incorporation would result in lower grade product (which may or may not be saleable, depending on customer demands), and possibly off-spec product that would have to be disposed of. Therefore, EPA does *not* consider these products to be good candidates for a national zero discharge standard; rather, they are the only products EPA is aware of that appear to hold the potential to achieve zero discharge through "total" recycle under particular circumstances. Moreover, EPA believes that the potential for these products to be manufactured without wastewater discharge based on total recycle is limited by the unique process chemistry involved and would not be transferable to other industry product/processes (*id.* at 63909).

In addition, even if EPA were to study the plants that reported zero discharge based on recycle for these products, the most EPA could do would be to develop a technical basis for a zero discharge standard for the particular chemical processes employed by these plants to produce these products. The three products in question are produced through a variety of processes. The OCPSF rulemaking record identified six reaction pathways or process routes for the manufacture of melamine resins, eight process routes for urea resin manufacture, and 14 process routes for the manufacture of phenolic resins. With respect to new sources, this list of processes is almost certainly not a comprehensive list of possible processes; there are numerous ways to make most OCPSF products, and companies often choose or develop specific processes to maximize the use and re-use of raw materials and to respond to customer specifications. For example, a company may produce a product through a process that creates a by-product that can be used as an input for the manufacture of another product; the use of this by-product as an input would dictate the range of process options for production of the second product. Similarly, a plant may choose to employ a particular process to make a given product because the process creates a by-product that the plant can sell or use in another process. The development of new, valuable products through the beneficial use of by-products has been characteristic of the development of the OCPSF industry in this century (1983 DD, pp III–1 to 2).

Each of the processes used to manufacture the three candidate resins differs significantly in terms of the raw material inputs to the reaction vessels, and likely differs significantly in terms of other variables associated with reactor vessel conditions. Even if EPA could determine that zero discharge was demonstrated for a particular process used to manufacture urea resin for example, that would not demonstrate that the manufacture of the same product through a different chemical process could achieve zero discharge, and would not provide the technology basis to impose a zero discharge standard on new plants using different processes to manufacture urea resin. It is entirely possible that no new plant will ever manufacture any of the three candidate products through the specific processes used by the plants identified in EPA's database. For EPA to go further and impose a zero discharge standard on manufacture of the product itself, without regard to process, would likely significantly constrict the manufacturing options open to future plants. EPA would be extremely reluctant to do this, given the flexibility that has characterized the development of the OCPSF industry and the inability to project the impacts of such a constriction, including non-water quality environmental impacts.

Kodak supports EPA's conclusions. Kodak states that the principal technical constraints on complete recycling include product specifications that require the use of very pure water, chemical reactions that generate water, and the need to eliminate from the water recycle loop trace contaminants that accumulate to undesirable concentrations when water is continually recycled and evaporation concentrates the contaminants. Kodak also notes that very few chemical processes share the necessary characteristics that might permit total recycle of wastewater—"* * * processes where any process wastewater and associated contaminants can be contained in the products and byproducts without infringing on product quality, and * * * processes in which all excess process water is evaporated * * *" (Kodak Comments at 3–4).

CMA in its comments also states, "The need for blowdown (a wastewater discharge) is characteristic of all recycle processes—accumulation of contaminants present in the process feedstocks and catalysts, generated by the chemical reactions, or brought in with the makeup water will eventually accumulate to unacceptable levels and adversely affect the product. The only time a process is truly zero discharge is when the blowdown is accomplished by

letting contaminants leave with the products. For basic organic chemicals, plastics, and synthetic fibers, this is rarely an acceptable approach" (CMA Comments at 50).

EPA cannot rule out the possibility that the manufacture of one or more of the remaining 25,000 products in the industry could achieve zero discharge through recycle, but EPA believes the number would be very small and the investment in resources to develop the technology basis would be enormous. As explained, it would require a detailed technical study of individual product/processes, treating separate product/processes as separate subcategories, and then determining the feasibility of total recycle and establishing design and operating parameters for each subcategory (56 FR 63906–07). EPA rejected this product/process-by-product/process approach as unworkable in the 1983 proposal that formed the basis for the entire OCPSF regulation, deciding to regulate the OCPSF industry through concentration-based rather than mass-based limits due to the complexity and variable production within the industry (*id.* at 63907). EPA recognized at the time that the concentration-based approach involved a trade-off, permitting broader industry coverage but diminishing the opportunity to promote recycle on a national level. This diminished opportunity arises because the concentration-based approach does not focus on specific product/processes but regulates through end-of-pipe limits imposed on broad, general subcategories of production (*id.*). EPA concluded at the time, and continues to believe, that the attempt to regulate the OCPSF industry through the analysis and regulation of individual product/processes is simply infeasible.

As EPA has explained, the concentration-based approach did not mean that recycling and reuse of wastewater would not be encouraged at individual plants. Rather, the guideline is structured so that recycling and reuse evaluations will be made on a facility-by-facility basis (which is the only way they can be made) by the permit writer or control authority, rather than through the national guideline (*id.*). In both the Development Document accompanying the final OCPSF guideline and in subsequent guidance, EPA provided guidance to permit writers in using flow reduction as the basis to set permit limits (*id.*). Elsewhere in today's preamble, EPA discusses this guidance further and urges permit writers to carefully evaluate the opportunities for wastewater recycle and reuse at individual plants.

EPA believes the detailed technical review it has performed fully complies with the Fifth Circuit's remand and the Clean Water Act. EPA developed a 600,000-page record for the OCPSF rule and, based on this record, has determined that the potential opportunity for total recycle in the OCPSF industry is extremely limited.[2] In this situation, EPA believes it has discretion to determine the utility of undertaking extensive additional data collection and technical analyses and, in this sense, believes it is appropriate to consider the "practicability" to the Agency of developing the technology bases for zero discharge standards. The Fifth Circuit, based upon its understanding of the OCPSF administrative record, ordered EPA to reconsider the appropriateness of zero discharge standards through recycling. EPA has done that and does not believe the remand imposed an obligation to undertake significant new data collection and analysis where, based on its review of the administrative record, EPA does not believe that a zero discharge standard based on recycle would be feasible for more than a few of the product/processes in the OCPSF industry. *See CMA* v. *EPA*, 870 F.2d at 209 (upholding EPA determination not to establish BPT limitations based on polishing ponds following biological treatment where EPA determined that, although 17 plants successfully employed ponds, the experience of these plants could not be transferred to other plants in the OCPSF industry due to the diversity of OCPSF wastewater characteristics).

C. Appropriate BAT Subcategorization

In its comments, NRDC argues that EPA's establishment of the BAT subcategorization scheme violates the Clean Water Act because it allows the discharger to choose the technology basis for the BAT limitations based on whether the discharger installs end-of-pipe biological treatment to comply with the BPT limitations. EPA disagrees. As a general matter, NRDC is correct in stating that it is EPA's responsibility to identify the best available technology and to establish limitations based on its application. However, as EPA explained in its proposal, the Agency concluded that it was not feasible, necessary or desirable to eliminate or limit the applicability of the Subpart J, non-end-of-pipe biological treatment subcategory. Based upon these determinations, as described in the proposal and below, EPA believes the subcategorization scheme represents the best approach for the OCPSF industry and is a lawful application of EPA's discretion in selecting BAT. EPA does not believe the Clean Water Act requires the Agency to develop a scheme which is not technically defensible and which would create undesirable treatment incentives within the regulated community.

NRDC identifies three alternatives to the present scheme that it considers valid. Each is addressed in turn.

1. BOD Floor

First, as explained above in Section IV, NRDC suggests that EPA should develop a BOD "floor" (i.e., a minimum BOD level) to limit the applicability of Subpart J. However, as EPA explained in the proposal, the development of a floor is technically infeasible due to the lack of a theoretical minimum BOD level for sustaining biological treatment and the great variability of OCPSF production and wastewater characteristics.

EPA received a number of comments supporting its conclusion that it would be infeasible to establish a BOD floor for the OCPSF industry. CMA points out that there are a number of factors that affect a plant's ability to operate a biological treatment system effectively, including not only the plant's BOD load but also the variability of the plant's waste concentration, wastewater flows, and chemical composition and treatability (CMA Comments at 9). The Synthetic Organic Chemicals Manufacturing Association (SOCMA) states that, even though it may be theoretically possible to establish a BOD floor under steady-state laboratory conditions for a particular waste stream, it would be futile to try to establish cutoffs for the large number of full scale production facilities in the highly complex and diverse OCPSF industry (SOCMA Comments at 11). The Society of the Plastics Industry (SPI) agrees with EPA's view, presented in the proposal, that process streams in the OCPSF industry "may change frequently and dramatically" (SPI Comments at 2).

EPA continues to believe that the complexity of the industry and the frequent changes in production and wastewater characteristics, as described in the proposal and in comments, make

[2] EPA notes that the 1987 Development Document accompanying the final OCPSF guideline stated that "[r]ecycling systems can achieve significant pollutant load reductions or zero discharge at relatively low cost," at VII–6. Based on EPA's comprehensive re-evaluation of the OCPSF record and technical analysis in response to the remand, this statement is incorrect. Recycle is widely practiced in the industry and, depending on individual plant processes and configurations, can achieve significant pollutant load reductions. However, recycle alone, except in very limited circumstances, does not achieve zero discharge.

it infeasible to establish a BOD floor for the operation of biological treatment systems. While a given plant may be able to operate a biological system at a given long-term average BOD level, that does not assure that another plant with the same long-term average BOD level, but with a different waste stream composition or varying BOD levels, will also be able to operate a biological system.

The feasibility of establishing a floor is further limited by the complexity of the OCPSF industry and EPA's consequent inability to develop a detailed knowledge of the production practices and other factors affecting wastewater treatment at each OCPSF plant. In the face of this complexity, EPA based the OCPSF guidelines on a number of simplifying assumptions and conclusions (see, e.g., 56 FR at 63901). For example, in view of the fundamental, delicate inter-relationships among conventional, toxic, and non-conventional pollutant controls, EPA developed a scheme under which it recognized that different plants would exercise discretion to adopt plant-specific treatment configurations in order to comply with the promulgated BPT and BAT limits (*id.* at 62901–02). Without a more detailed working knowledge of individual plants, which would be extraordinarily difficult to develop, the establishment of a BOD floor or series of floors that would require plants to install end-of-pipe biological treatment systems would likely interfere with the comprehensive waste management systems that have been appropriately instituted at individual plants.

Moreover, as EPA explained in the proposal, the Agency does not believe it is necessary to establish a BOD floor because plants that need to achieve significant BOD reductions will generally be motivated by economic considerations to install biological treatment over the more costly alternatives. In addition, as explained in the proposal, the existence of Subpart J will not result in significantly increased discharges of pollutants to the environment over Subpart I. Based on EPA's 1991 survey of the 84 direct discharge plants that did not have end-of-pipe biological treatment at the time of promulgation of the OCPSF guideline, EPA concluded that 47 of the plants have not installed biological treatment to comply with the OCPSF guideline (April 26, 1991 memorandum to the December 6, 1991 Public Record: "Current Status of Direct Non-Biological Facilities," R.00365–428). (This is more than the 23 plants projected at OCPSF promulgation to comply without installing biological treatment.) The maximum projected increased loadings of the OCPSF-regulated toxic pollutants to receiving waters associated with these plants' complying with Subpart J rather than Subpart I is estimated to be 2,471 lbs/yr for the 47 plants that have not installed end-of-pipe biological treatment as of April 1991. These estimates are lower than the comparable estimates presented at proposal because they account for the incidental removals of the four pollutants that are not regulated under Subpart J (the proposal noted that the estimates presented were high because incidental removals were not accounted for (56 FR at 63901)). These pollutants appear in waste streams with other pollutants that are regulated by Subpart J limits based on in-plant biological and/or activated carbon treatment, and are incidentally removed by these technologies (April 29, 1993 memorandum to the OCPSF Public Record "Toxic Pollutant Loadings for the 47 Projected Subpart J Plants). (The total estimated industry loadings (before BAT and PSES) are 24,166,480 lbs/yr; projected loadings after compliance are 571,723 lbs/yr, 56 FR at 63901.) In addition, as explained in the proposal 1,188 lbs/yr (48 percent) of the additional removals accomplished by Subpart I are projected to result from volatilization of the pollutants into the air during end-of-pipe biological treatment.

In addition, EPA believes that a BOD floor would be undesirable in that it would likely result in irrational and undesirable wastewater treatment and waste management decisions. In particular, as explained in the proposal, EPA is concerned that plants that would otherwise be able to control BOD and TSS levels, and thereby comply with BPT, through in-plant product and by-product recovery or other source control measures would eliminate or otherwise reduce the effectiveness of these in-plant controls in order to ensure sufficient organic matter to operate a biological system, or to operate such a system in a cost-effective fashion. Even if a BOD floor could be developed, e.g., based on raw waste BOD load, such a structure would create incentives to maximize BOD at the end-of-pipe. One of the distinguishing features of the OCPSF industry, noted throughout EPA's development of the OCPSF guideline, is the variability of wastewater characteristics at individual plants, including BOD levels, and the need for plants to take protective measures to ensure stable, healthy populations of microorganisms to biodegrade the organic pollutants in their waste streams (e.g., 56 FR at 63900). Plants that are required to comply with BAT limits most readily achieved through end-of-pipe biological treatment will often have the incentive to maximize end-of-pipe BOD levels to assure consistently adequate BOD levels to sustain biological treatment in the face of variability.

In-plant source controls can recover valuable manufacturing by-products (thus eliminating these by-products as wastes), reduce or eliminate waste streams, reduce in-plant and end-of-pipe treatment costs, and reduce or eliminate pollutants inhibitory or not amenable to end-of-pipe treatment systems. Process modifications, improved instrumentation, added operator training, and solvent recovery as well as water reuse, recovery, and recycle are the first considerations in the waste management and wastewater treatment process (Proposal "Development Document for Effluent Limitations Guidelines and Standards for the Organic Chemicals and Plastics and Synthetic Fibers Point Source Category," (EPA 440/1–83/009–b), February 1983 (hereafter referred to as 1983 DD, Vol. I pp 119 to 122, Vol II pp VII–1 to 2; 1987 DD pp VII–1 to 10). Simple good housekeeping, such as proper maintenance and clean-up practices, contribute to reduced pollutant loadings. In addition to these water use techniques and best management practices, certain in-plant treatment techniques, such as steam stripping, recover valuable products and effectively eliminate pollutants from a plant's waste stream.

EPA believes these in-plant waste management practices are generally preferable to the alternative of letting pollutants remain in the waste stream to be removed by end-of-pipe treatment. In the 1983 OCPSF proposal, EPA discussed the advantages of a regulatory scheme that focuses on in-plant controls rather than end-of-pipe treatment: "Such an emphasis would result in a reduction of the overall pollutant release through various environmental media that might otherwise occur through a heavier reliance on end-of-pipe biological treatment. For example, biological treatment can, in some instances, cause the transfer of some volatile organic pollutants from the wastewater to the air, and the adsorption of some other organic pollutants, as well as metals, to the biological sludge, which is then disposed of through methods which may effect other media. While some in-plant physical/chemical controls may similarly transfer pollutants to other media * * *, other in-plant controls

and treatments return at least some pollutants to the process, thereby minimizing total environmental releases" (48 FR 11838; March 21, 1983).

In addition, the reduction of pollution or treatment of pollution in concentrated waste streams close to the process source is more efficient and often less energy-intensive than end-of-pipe biological treatment of combined waste streams (which is a relatively energy-intensive treatment method), and EPA intended under the OCPSF guideline that plant managers, who will have a far better working knowledge of the optimal treatment configurations for individual plants than EPA can acquire, have the discretion to weigh such factors. EPA is reluctant to establish a scheme that discourages plants from doing what it would otherwise encourage them to do, which is to reduce pollutants at the source, recycle waste streams to the extent practicable, or treat pollutants close to the source when that is the most efficient treatment alternative. SOCMA, in its comments, at 12, raises a similar concern, stating that limitation of Subpart J would prevent dischargers from selecting alternative in-plant controls and techniques such as recycling, waste reduction and material recovery.

EPA is especially reluctant to change the structure of the OCPSF guideline as suggested by NRDC at this point, more than five years after promulgation. Most plants in the industry are now required to be in compliance with all of the OCPSF limitations and standards including the BPT limits. Many of these plants may not have sufficient BOD levels to operate end-of-pipe biological treatment systems. Compliance with the OCPSF subcategorical "maximum for monthly average" and "maximum for any one day" BOD limitations requires plants to achieve long-term annual-average BOD effluent levels ranging from 12 to 41 mg/l depending on the subcategory or subcategory mix for any plant (12 mg/l BOD for Other Fibers, 16 for Rayon and Thermoplastics, 20 for Commodity Organics, 23 for Bulk Organics, 30 for Specialty Organics, and 41 for Thermoplastics; p VII–176, Vol. I, 1987 DD). These levels are below the levels for which the Agency has data demonstrating the feasibility of biological treatment. The OCPSF record has BOD data for 98 plants with end-of-pipe biological treatment. The influent long-term average BOD levels for these plants ranged from 60 mg/l (a single plant) to 9,420 mg/l, with only 12 plants below 125 mg/l. (The Agency's field sampling efforts identified one additional plant with a two-week average influent value of 37 mg/l, but this value may not be representative of the plant's long-term average influent BOD concentration.) Thus, plants that have achieved compliance with BPT without the use of end-of-pipe biological treatment would likely have to (and, in any event, would likely have the incentive to) eliminate the in-plant source controls and/or cease operation of the in-plant treatment systems they have installed in order to elevate their BOD levels. EPA does not believe this is a rational regulatory result.

NRDC suggests, based on the OCPSF record, that even in instances of low BOD levels, nutrient addition, pure oxygen, or extended aeration could be used to operate end-of-pipe biological treatment systems. However, as EPA explained in the December 1991 proposal, these practices are not generally applicable substitutes for sufficient BOD to sustain biological treatment. In their comments, CMA, at pp 11–12, and Ashland Chemical, at p 3, agree. The several brief references identified by NRDC to practices used in the OCPSF industry, out of the 600,000-page OCPSF record, do not provide a basis to treat these techniques as "available technologies" on which EPA could base limits.

EPA agrees with CMA's assessment that the pure oxygen variation of activated sludge biological treatment offers no particular advantages because it is not used to treat *low*-strength (i.e., low BOD) wastewaters (CMA Comments at 11). The pure oxygen activated sludge variation generally treats widely fluctuating organic loadings and *high*-strength wastewaters more effectively than "standard" activated sludge designs. CMA also notes that high oxygen transfer rates in the aeration basins due to the use of pure oxygen assure that sufficient oxygen is available for biological removal of organics with high biomass populations. However, high biomass concentrations can only be achieved when ample biodegradable organic compounds (BOD) are available in the wastewater. Pure oxygen activated sludge treatment is not a solution for biological treatment of wastewater with low raw waste BOD concentrations.

In the case of extended aeration, which is a variation of the complete mix activated sludge design, low organic loadings and long aeration times permit more complete wastewater degradation and partial aerobic digestion of the microorganisms (p VII–63, Vol. I, 1987 DD). However, as CMA also notes, effective extended aeration operation requires a wastewater with sufficient organic substrate to form a biomass that can be flocculated and kept in the treatment system for extended periods of time. Wastes with low BOD may not generate enough biomass that can be settled from the treated effluent by gravity and recycled to the aeration basin. In the case of insufficient raw waste BOD, the biological solids would wash out of the system, and extended aeration operation would not work. (CMA comment at 12). Extended aeration treatment is not a substitute for an adequate BOD level, and, as discussed above, whether an extended aeration system or any other type of biological system were used, the BOD level that would be sufficient to sustain biological treatment would vary from plant to plant.

NRDC also misunderstands the function and purpose of "nutrient addition." As generally practiced in the OCPSF industry, nutrient addition is the process of adding nitrogen or phosphorous in a chemically combined form to a waste stream. (p XV–14, Vol. II, 1987 DD) These nutrients are analogous to vitamins; they may help a viable biological system operate optimally, but they are not a substitute for adequate substrate or "food." CMA's comments state that it is possible to add supplemental organic substrate to a treatment system, but this practice is at odds with the purpose of effluent treatment. CMA also correctly observes that the addition of readily biodegradable substrate, such as molasses, to a low strength wastewater does not ensure the growth of an activated sludge that is capable of effectively removing organic toxic pollutants. The biomass must be acclimated to the same or similar compounds that must be removed. This may create the need to add toxic pollutants to the wastewater to assure that they can be removed consistently by the treatment system. (CMA Comments at 12.) EPA is not aware that this technique is practiced in the OCPSF industry, and does not encourage it. The Agency believes that the framework of the OCPSF regulation should encourage plants to minimize the overall generation of raw wastes rather than create an incentive to increase the discharge of "biodegradable" compounds to ensure the operation of biological treatment systems.

With respect to these suggested solutions to low BOD levels, NRDC argues that EPA has based its rulemaking on ignorance, and that the Agency was obligated to collect additional information or perform additional technical analyses to evaluate whether nutrient addition or other techniques might be a substitute for low

BOD. EPA disagrees. EPA has evaluated these options, based on the voluminous OCPSF record and on comments received, and does not believe they are viable substitutes for adequate BOD. Rather, they are approaches that, under plant-specific circumstances, can be used to improve the operation of biological treatment systems. EPA does not have an obligation to collect data and perform extensive technical analyses to investigate options that it does not believe provide viable bases for technology-based limits in a national guideline.

More generally, NRDC argues that EPA has performed a "paper review" in response to the Fifth Circuit's remand rather than collecting additional data and performing additional technical analyses regarding the feasibility of establishing a BOD floor. NRDC believes that EPA should have evaluated the plants that have not installed end-of-pipe systems to determine a BOD floor for the subcategory. Again, EPA disagrees. EPA conducted a detailed technical re-evaluation in response to the Court's remand and concluded that the present subcategorization scheme is the best approach for the OCPSF industry; EPA does not believe the establishment of a BOD floor is necessary or desirable.

In addition, EPA does not read into the Fifth Circuit's remand the same requirements as NRDC does. The court remanded the subcategory scheme "for notice-and-comment proceedings," and remarked that such proceedings may disclose that NRDC's suggestions are neither necessary nor feasible (870 F.2d at 236). Prior to publishing the December 1991 proposal, EPA conducted an in-depth review of its OCPSF database, an extensive literature search, and additional pollutant loadings analyses to evaluate NRDC's suggestions. The Agency does not believe that the Court's remand, the Clean Water Act or general principles of administrative law require EPA to collect data and perform extensive additional analyses where, based upon the information before it, the Agency concludes that such efforts are not likely to be valuable.

The Clean Water Act authorizes EPA to consider non-water quality environmental impacts (including energy requirements) and other factors EPA deems appropriate in setting BAT limits. CWA 304(b)(2)(B). EPA believes it has discretion to create a BAT scheme that does not discourage plants from complying with BPT through in-plant source control and treatment, with the potential to recover product and by-product and otherwise to reduce pollution at the source. EPA continues to believe that the current BAT subcategorization scheme is the appropriate scheme for the OCPSF industry.

2. Subcategory Limited to Certain Processes

Alternatively, NRDC argues that EPA should limit subpart J to those processes for which an adequate showing of low-BOD wastewater has been created through industry comments, such as the chlorosolvent industry. NRDC argues that EPA has impermissibly extended subpart J beyond the scope of the comments and data that support it. EPA disagrees. The OCPSF record supports the conclusion that the phenomenon of low BOD levels is not limited to specified industry segments; rather, low BOD wastewater may occur throughout the OCPSF industry. Therefore, EPA believes the availability of subpart J should not be limited to specific industry segments.

As NRDC notes, the specific comments and data during the 1987 OCPSF rulemaking with respect to low BOD levels related principally to the chlorosolvent industry. Nonetheless, EPA had already concluded that the characteristics associated with low BOD levels extended beyond chlorosolvent manufacture to other generic process chemistry and other product/processes. In response to the Halogenated Solvent Industry Alliance 1985 comment that EPA should set separate BAT limitations for stand-alone chlorosolvent production plants because biological treatment methods are not used and would be ineffective if used, EPA declined to establish a subcategory limited strictly to chlorosolvent plants, recognizing that other types of facilities are also expected to have low BOD levels (1987 Public Record comment response No. 254, R103,160).

In 1983, the Agency had studied 46 generic OCPSF process groups and their potential to generate various BOD loadings. The study identified 19 generic processes expected to generate wastewater of relatively low BOD when refractory chemical species predominate in the wastewater and when relatively few chemical species are present in the wastewater (1983 DD, Vol. I, p 63–68). EPA concluded at the time that the manufacture of halogen compounds in general, not just chlorosolvents in particular (chlorosolvents are included among halogen compounds), tend to generate relatively low raw waste BOD levels. Other generic process groups that tend to produce wastewater with the lowest BOD concentrations include alkylation, isomerization, polymerization (bulk & addition), and phosgenation (*id.*). Plants with manufacturing activity limited to these groups generally, but not always, produce wastewater with relatively low BOD concentrations.

Further analysis following the 1983 OCPSF proposal revealed that, although generic process groups provide a rough correlation with raw waste BOD levels, individual product/processes within the generic process groups exhibit widely varying raw waste BOD levels, and generic process groups cannot be confidently classified as "low-BOD" or "high-BOD" raw waste groups. For example, even within the low BOD halogenation group, there is a significant variation of raw wastewater BOD concentrations—chlorobenzene processing averaged 20 mg/l BOD and trichloroethylene averaged 36 mg/l BOD; however, 2-dichloroethane averaged 1,869 mg/l BOD (Appendix S, draft "Contractors Engineering Report Analysis of Organic Chemicals and Plastics/Synthetic Fibers Industries," November 1981, pp S–1839, S–3301, and S–2084, respectively). Similar variability exists among the product/processes within the generic process chemistry groups that are projected to generate the highest levels of BOD. For example, within the high BOD esterification group, n-butyl acrylate/ethylhexyl acrylate processing averaged 5,481 mg/l BOD and dimethyl terphthalate processing averaged 1,310 mg/l; however, n-butyl methacrylate processing averaged 4 mg/l (*id.*, pp S–1,666, S–2,166, and S–1,770, respectively).

In supporting EPA's current BAT subcategorization scheme, CMA observed (and EPA agrees) that the Subpart J limits cannot be confined to a small number of subcategories since low-BOD wastewaters may occur across various subcategories, citing data from the OCPSF database showing low BOD levels across a range of product groups (CMA Comment, pp 3–4).

Thus, generic reaction chemistry and general product groups are incomplete predictors of the raw wastewater characteristics necessary to support effective biological treatment. EPA believes that the phenomenon of low BOD levels, and the availability of Subpart J, cannot be limited to certain industry segments, and, as explained above, believes that such a limitation would create undesirable incentives in other industry segments.[3]

[3] NRDC similarly argues that BOD levels in the OCPSF industry generally appear high, and low BOD wastewater appears concentrated in the zero or alternative discharge categories (citing the 1987

3. FDF Variance Alternative

Finally, NRDC argues that EPA should eliminate Subpart J altogether and address low-BOD situations through fundamentally different factors (FDF) variances (or maintain the Subpart but apply it only where a site-specific showing of necessity is made). However, as explained above, EPA believes the current subcategorization scheme appropriately reflects the potential for low BOD levels throughout the OCPSF industry. Moreover, the current subcategorization scheme does not discourage source control and other in-plant waste management techniques. EPA has discretion in determining whether to account for industry characteristics through subcategorization or through the FDF process. In this instance, EPA's decision to subcategorize the industry was rational and within its discretion, for the reasons explained above.

D. Applicability of the Revised Pass-Through Methodology

A number of industry commenters supported the Agency's proposed conclusion presented in the December 1, 1992 NOA that phenol and 2,4-dimethylphenol do not pass through POTWs, but urged that the modified pass through analysis used to reach that conclusion be applied to the remaining 11 remanded PSES pollutants to determine that they also do not pass through. EPA disagrees, for the reasons explained below.

1. Background

Under section 307(b) of the Clean Water Act, EPA is required to promulgate categorical pretreatment standards for pollutants which are determined not to be susceptible to treatment by POTWs or which would interfere with the operation of POTWs (33 U.S.C. 1317(b)(1)). The methodology EPA used to evaluate whether a pollutant is susceptible to treatment (i.e., whether it "passes through" POTWs) for purposes of establishing categorical pretreatment standards for the OCPSF point source category, as well as in previous guidelines, compared the median percent removal of each pollutant of concern achieved by direct dischargers employing BAT-level treatment to the median percent removal achieved by well-operated POTWs with secondary treatment (1987 DD, pages VI–22 to 32). The source of EPA's data on POTW removals used to determine pass through was a 1982 study of the performance of 50 POTWs (the 50 POTW Study; EPA 440/1–82/303).

Where EPA had data on pollutant removals from both POTWs and direct dischargers, EPA relied exclusively on a comparison of the percent removals demonstrated by the data (1987 DD, page VI–23). If the data showed that direct dischargers with BAT-level treatment achieved a higher percent removal of a pollutant than well-operated POTWs, then the pollutant was determined to pass through, and EPA established categorical pretreatment standards to regulate the pollutant. If the POTWs showed removals equal to or greater than the direct dischargers, then the pollutant was determined not to pass through, except for volatile and semi-volatile pollutants, for which EPA determined that some of the removals from the wastewater were accomplished as a result of "air stripping" (*id.*, p VI–27). Because these removals were the result of transfer of the pollutants to the air rather than treatment, EPA applied a "volatile override" to determine that they passed through and established pretreatment standards (*id.*, p VI–37). EPA also applied the volatile override to several pollutants for which it lacked POTW removal data based on its professional judgment that these pollutants volatilize based on their physical characteristics.

In determining the percentage of a pollutant that a plant removed, EPA compared the concentration of the pollutant in the influent to the concentration in the effluent. Where effluent concentrations for either direct dischargers or POTWs were below the analytical minimum level, usually 10 ppb, EPA assigned this value to the effluent (*id.*, p VI–23). Although the actual concentrations may have been below the analytical minimum level, EPA concluded that this represented a reasonably conservative approach, since the actual levels could not be quantified. For phenol and 2,4-dimethylphenol, both the direct dischargers and well-operated POTWs in EPA's data base generally achieved effluent concentration levels that were below the analytical minimum level, which is 10 ppb, (*id.*, p VII–186). Accordingly, EPA assigned 10 ppb to the effluents. EPA's pass through methodology was upheld in the OCPSF litigation (*CMA* v. *EPA*, 870 F.2d at 243–48).

Allied Signal, Inc. and other commenters on the December 6, 1991 proposal argued that phenol and 2,4-dimethylphenol are highly biodegradable and are treated by POTWs to the same degree as direct dischargers, and that EPA's pass through analysis for these pollutants was therefore overly conservative. The commenters argued that the apparent difference between direct discharger and POTW performance arises from the fact that the direct dischargers in EPA's database have significantly higher influent concentrations than the POTWs; as a result, the direct dischargers show higher removals than the POTWs because their wastewater concentration is treated from a high concentration down to 10 ppb, whereas the POTWs' wastewater is treated from a comparatively lower concentration down to 10 ppb. The commenters also submitted performance data to support their claims, which consisted of pilot-scale biological treatment studies as well as actual sampling data from POTWs that receive industrial wastewaters containing these two pollutants showing their high biodegradability.

EPA concluded that the commenters' arguments might have merit. Using 2,4-dimethylphenol as an example, the median percent removal of this pollutant demonstrated by direct dischargers was 99.8 percent. This was based on data from four OCPSF plants with average influent concentrations ranging from 697 to 29,868 ppb, and with 30 of 37 effluent values below the analytical minimum level and therefore assigned values of 10 ppb. For POTW performance, EPA had a single observation of a POTW with an average influent concentration of 20.5 ppb and an average effluent concentration below the analytical minimum level, which was also assigned a value of 10 ppb.

DD at IV–30–36 and V–32–33). However, the tables cited by NRDC display *mean*, aggregated BOD values for plants within different subcategories, and do not reflect variability of plants within the subcategories. For example, Table V–20, 1987 DD at V–32, shows a mean BOD value for 62 direct discharge thermoplastics plants (Part 414, Subpart D) of 725.190 mg/l. Despite this relatively high mean, individual plants within the Subcategory will exhibit a broad range of BOD values, and the mean reveals nothing about whether individual plants will have sufficient BOD levels to sustain biological treatment. As explained above, varying BOD levels occur throughout the industry, whether the average BOD level for a particular subcategory is low or high. In any event, the tables cited by NRDC contain too little zero/alternative discharge plant data for any meaningful comparison between regulated and zero discharge plants. For example, the data base used to display the average raw waste BOD levels presented in Table V–20 contained only one zero discharge plant with 2.28 percent of its production in the Specialty Organic Chemical Manufacturing subcategory. At this plant, 280 mg/l BOD in raw wastewater was attributed to Specialty Organic Chemical production. In contrast, the entire data base used to display average raw waste BOD levels for the industry contained the equivalent of 60.37 Specialty Organic Chemical plants on a production-weighted basis. The data derived from 2.28 percent of one zero discharge plant cannot be meaningfully compared with the data from 60.37 discharging plants to draw any conclusion about the BOD levels exhibited by zero discharge as opposed to discharging facilities.

Thus, POTW removal was calculated at 51.2 percent, and the pollutant was determined to pass through. In this case, the pass through determination may be an artifact of the differing influent concentrations and does not necessarily reflect a real difference in removals.[4]

In the December 1, 1992 NOA, EPA presented a comprehensive assessment of the available data with respect to phenol and 2,4-dimethylphenol, as well as a chemical and engineering analysis of the fate of these two pollutants in biological treatment systems. Based on this analysis, EPA proposed to conclude, and today has concluded, that these pollutants are treated to essentially the same levels by direct dischargers and POTWs and, therefore, do not pass through. However, as the Agency explained in the NOA, EPA generally is continuing to apply the median percent removal methodology used to determine pass through at promulgation of the OCPSF guideline (57 FR at 56885). This methodology was upheld in litigation as an appropriate, conservative approach to determining pass through (870 F.2d at 243–48), and EPA continues to believe it is the correct approach as a general matter. EPA determined that the approach is overly conservative for the highly-biodegradable phenol and 2,4-dimethylphenol, but believes it is appropriate for the other 11 remanded pollutants. As explained in the NOA and below, EPA believes these pollutants are less biodegradable and, consequently, less readily treatable by POTWs, which typically have biological treatment systems with much shorter detention times than the systems employed by direct dischargers.

[4] EPA acknowledged this phenomenon in developing the OCPSF rule and proposed several modifications of the pass through analysis, including applying a "removal differential" under which EPA would determine that a pollutant passed through only if the analysis found a difference between direct discharger and POTW removals that exceeded 5% or 10% (see, e.g., 50 FR 29084–85 (July 17, 1985)). However, after carefully reviewing comments arguing, among other things, that this approach would bias the analysis against a finding of pass through, EPA decided to employ its historical approach to pass through, with one variation. In the final OCPSF rule, EPA edited its database to exclude POTWs with influent concentrations of less than ten times the analytical minimum level (typically 100 ppb), unless there was no plant in the data base with influent concentrations that high, in which case EPA retained the 20 ppb cut-off used in previous guidelines (1987 DD at VI–33). This mitigated the underestimation of removals that could occur when comparing very low influent concentrations to the analytical minimum level.

2. Assessment of the Remanded Phthalate Esters and Polynuclear Aromatics

In the NOA and accompanying Technical Support Document (TSD; "Technical Support Document for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category Notice of Availability of New Information, November 30, 1992), EPA did perform a data review and technical analysis for the other 11 remanded pollutants similar to that performed for phenol and 2,4-dimethylphenol. The Agency reviewed the available data on the removal of the two phenols as well as the two other general pollutant categories covering the remaining 11 pollutants, phthalate esters (PEs) and polynuclear aromatics (PNAs). The Agency also reviewed the available literature on the biochemical mechanisms of biodegradation for all 13 pollutants, and investigated the adequacy of biological treatment systems at POTWs in effectively treating these pollutants via biodegradation. The Agency included all of its performance data from various data sources as well as information collected from the literature on the biochemical mechanisms of biodegradation of these pollutants in the Record supporting the NOA.

EPA's decision to modify its traditional pass through methodology for phenol and 2,4-dimethylphenol is based on EPA's conclusion that *both* the data available for these two pollutants and the chemical and engineering analysis performed by EPA indicated that the OCPSF pass through methodology is overly conservative for these pollutants. The data and technical analyses do not support a similar conclusion for the other 11 pollutants.

EPA's analysis focused first on the data from the OCPSF Record relating to phenol removal. A comparison of median removals (the original OCPSF methodology) indicated that phenol passes through POTWs (TSD at 11, Table II–2). However, when EPA arrayed all of the direct discharge and POTW data for phenol, it became apparent, as explained in the NOA, that the pass through conclusion was strictly an artifact of the higher influent concentrations for direct dischargers in EPA's database. Viewing the data as a whole, POTWs appeared to achieve removals that are essentially equivalent to those achieved by direct dischargers (57 FR 56886–87). This conclusion was confirmed by additional data EPA solicited from three POTWs, that demonstrated phenol removals from very high influent concentrations (e.g., 4,043 ppb at the Sheboygan Regional Wastewater Treatment Facility) to below the analytical minimum level. In addition, as explained in the NOA and the accompanying TSD, EPA determined that 2,4-dimethylphenol would be removed by POTWs to the same degree as phenol, given its similar molecular structure.

Three of the remaining eleven pollutants—fluoranthene, bis(2-ethylhexyl)phthalate and di-n-butyl phthalate—were detected in POTW effluent in the 50 POTW Study (TSD at 11, Table II–2). For these pollutants, the results of the pass through determination clearly are not merely an artifact of differing influent concentrations but reflect worse performance by POTWs. EPA has no basis to conclude that these pollutants do not pass through.

With respect to the remaining eight pollutants, EPA does not have data comparable to the data that provided a basis to modify the pass through methodology for the phenols. In addition, EPA's technical analysis confirmed that phenol and 2,4-dimethylphenol are the most readily treatable by POTWs of the 13 pollutants. EPA noted that while phenols are rapidly biodegraded in biological treatment systems due to their simple molecular structure, PEs and PNAs would be expected to biodegrade at a much slower rate because of the additional time required to convert these pollutants into a form that can be readily biodegraded (TSD at 6).

Biodegradation does not commence until a pollutant is "sorbed" by (i.e., attached to) the microorganisms in the biological treatment system that degrade the pollutant ("OCPSF Remand Issues—Assessing the POTW Compatibility of Remanded Organic Pollutants Regulated by PSES," November 20, 1992 memorandum, Item No. 73 of the OCPSF December 1, 1992 NOA Public Record). Once sorbed, pollutants degrade at different rates that depend on structural complexity. In order to be biodegraded, a pollutant must be able to pass through the cell wall of a microorganism. This transfer will occur only if the pollutant is compatible with the proteins in the cell wall. While small, simple molecules are generally compatible, the more complex structures typical of PE and PNA organic pollutants must first be broken down into smaller chemical units by extra-cellular enzymes secreted by the microorganisms. Thus, biodegradation depends on the ability of the microorganisms to structurally alter pollutants outside the cell wall while they are sorbed.

As EPA explained in the NOA, the phenols have simple chemical structures that permit them to be rapidly transferred through the cell wall and biodegraded (57 FR 56888). This molecular-level analysis is confirmed by the fact that wastewaters containing phenol and 2,4-dimethylphenol have high "biodegradation rate constants" (*id.* at 56887). (As explained in the NOA (57 FR at 56887), "biodegradation rate constant" is a measure of how rapidly a compound or mixture of compounds biodegrades). In addition, these two pollutants have the highest compound-specific estimated biodegradation rate constants of the 13 remanded pollutants (TSD at 11, Table II–2)(biodegradation rate constants can be assigned to both individual pollutants and to waste streams containing mixtures of pollutants). In contrast, as further explained in the Supplement to the Development Document accompanying today's rule, the phthalate esters and polynuclear aromatics are structurally more complex, and require additional transformation steps before they can be transferred through the cell wall of the biodegrading microorganisms and biodegraded. These steps require additional time in the aeration basin of a biological treatment system that is generally available at OCPSF direct discharge facilities, which typically have detention times that exceed 24 hours, but may not be available at POTWs, where aeration basin detention times are usually four to eight hours.

Thus, based on rate of biodegradation, EPA believes that phenol and 2,4-dimethylphenol are more readily treatable by POTWs than the eight remaining pollutants. EPA recognizes, as several commenters on the NOA pointed out, that organic pollutants may be removed from wastewater by biological treatment systems to varying degrees by removal mechanisms other than biodegradation. In particular, pollutants may be removed by volatilization and by adsorption to sludge. However, as explained below, EPA believes that a pollutant's biodegradation rate is the most accurate indicator of whether the pollutant will pass through POTWs.

In general, volatile pollutants are not readily treated in POTWs; rather, these pollutants are volatilized or "stripped" to the atmosphere. As EPA explained above, EPA applied the volatile override in the 1987 OCPSF guideline to determine that several volatile and semi-volatile pollutants pass through where POTWs showed equal or better percent removals than direct OCPSF dischargers or where no POTW removal data were available. In determining whether to apply the volatile override, EPA considered total estimated volatilization of a pollutant after leaving an indirect discharge facility—i.e., volatilization in both the aeration basin (i.e., the treatment basin) of the biological treatment system and volatilization in the sewer systems and pre-biological unit treatment operations that convey the pollutant to the aeration basin (1987 DD at VIII–281).

For five of the PNAs that were remanded—naphthalene, acenaphthene, anthracene, fluorene, and phenanthrene—EPA would have applied the volatile override in the 1987 OCPSF rule to determine these pollutants passed through if the percent removal analysis had not shown pass through. These pollutants have overall volatilization rates comparable to the rates for which the override was applied. For example, EPA applied the override to hexachlorobenzene, hexachloroethane and hexachlorobutadiene in promulgating the 1987 guideline (1987 DD at VIII–279). These pollutants have a 5 to 10 percent estimated volatilization rate in the aeration basin; the pre-biological volatilization rates for hexachlorobenzene, hexachloroethane and hexachlorobutadiene are estimated to range from 19 to 39 percent, 59 to 66 percent, and 48 to 73 percent, respectively (1987 DD at VIII–281). Similarly, the estimated aeration basin volatilization rates for the five remanded PNAs at issue range from 10 to 30 percent, and the estimated pre-biological volatilization rates range from 12 to 82 percent (*id.*) EPA notes that estimated volatilization rates for individual pollutants vary depending on the source of the estimate, and the aeration basin volatilization rates that appear in the TSD, at 11, Table II–2, vary from those presented in the 1987 Development Document because they are based on different technical studies. TSD Table II–2, however, does not account for pre-aeration-basin volatilization, and the overall estimated volatility of the five pollutants at issue is comparable to the estimated volatility of the pollutants to which EPA applied the volatile override in 1987. Because these pollutants are chemically more complex than phenol and 2,4-dimethylphenol and, EPA believes, therefore less readily biodegradable in POTWs, and because much of the "removal" of these pollutants prior to and during POTW biological treatment is likely the result of volatilization, EPA continues to conclude, based on its traditional methodology, that these five pollutants pass through POTWs.

EPA believes the remaining three pollutants—diethyl phthalate, dimethyl phthalate, and pyrene—are likely adsorbed to sludge in the biological treatment system. A compound's propensity to separate from the water phase and adsorb to sludge (which includes the microorganisms that degrade the compounds) is predicted by its "octanol/water partition coefficient." Pyrene, in particular, has a high estimated octanol/water partition coefficient, and would be expected to adsorb rapidly to the sludge in a biological system (TSD at 11, Table II–2). However, pollutants that are initially adsorbed onto the sludge may become "desorbed" (i.e., may detach from the sludge) and pass through into the receiving stream if they are not rapidly transferred through the cell wall and biodegraded.

The ability of complex, organic pollutants such as phthalate esters and polynuclear aromatics to remain absorbed prior to being converted to simpler compounds for transfer through the cell wall can be affected by many conditions in the treatment system, including the presence of other pollutants, electrolytes, oils and greases and other more highly adsorbent compounds ("Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works," February 1986, (EPA/530–SW–86–004), p 4–5). This can cause the pollutants to desorb prior to conversion and biodegradation and pass through the POTW to the receiving water. EPA believes this phenomenon explains why organic pollutants which are generally considered highly adsorbable can sometimes be found at detectable levels in the POTW effluent. For example, anthracene and phenanthrene have high estimated octanol-water partition coefficients and therefore would be expected to adsorb rapidly to sludge (TSD at 11, Table II–2). POTW Number 6 from the 50 POTW Study shows an average influent concentration of anthracene and phenanthrene of 62.2 ppb and an average effluent concentration of 16.2 ppb, while POTW Number 52 has a much higher average influent concentration of 225.3 ppb for anthracene and 195.8 ppb for phenanthrene, both reduced to not detected at 10 ppb (1987 Public Record at 115910–115976). Based in this data, the propensity of these pollutants to adsorb to the sludge does not appear to be a good indicator of POTW removal performance. EPA believes that external conditions in a biological treatment system can affect the ability of a POTW

to remove more complex pollutants by adsorption or biodegradation.

The overall removal data for the 13 remanded pollutants appears to confirm that octanol/water partition coefficient is not a reliable indicator of pass through. Phenol has the lowest octanol/water partition coefficient of the 13 pollutants but is rapidly and virtually completely removed by biological systems, including POTW systems. In contrast, bis(2-ethylhexyl)phthalate and di-n-butyl phthalate have among the highest octanol/water partition coefficients, but achieved lower POTW removal levels (TSD at 11, Table II–2). In fact, the only pollutants among the 13 remanded that were detected in POTW effluents in the 50 POTW study—bis(2-ethylhexyl)phthalate, di-n-butyl phthalate and fluoranthene—also had the highest octanol/water partition coefficients of the 13 pollutants (TSD at 11, Table II–2).

In sum, EPA believes that a pollutant's estimated biodegradation rate is the best theoretical indicator of whether it will pass through POTW biological treatment systems. As a result, EPA continues to conclude that diethyl phthalate, dimethyl phthalate, and pyrene pass through based on its traditional pass through methodology. These pollutants are structurally more complex and consequently less readily biodegradable than phenol and 2,4-dimethylphenol, and are therefore more likely to pass through POTW biological treatment systems. Moreover, EPA does not have data demonstrating that these pollutants are adequately treated by POTWs.

E. Land Availability

CMA in comments asserts that EPA overestimated the land available for the construction of biological treatment systems in its survey of eight indirect discharge facilities by including in its analysis parcels of non-contiguous land and land that is obstructed by railroad tracks, buildings and other physical obstacles. (CMA Comments at 39–41). This is not true. Each of the eight facilities EPA surveyed has sufficient contiguous, unobstructed land for the installation of the model biological treatment system costed by EPA at proposal. Furthermore, the available land is configured such that it can accommodate the costed biological treatment systems.

In the December 1991 proposal, the Agency recognized that the larger in-plant biological treatment systems costed for compliance with the BAT Subpart J limits and corresponding pretreatment standards would require more land than the smaller systems costed for the 1987 OCPSF promulgation. EPA investigated whether land availability would be a constraint on the ability of OCPSF plants to install in-plant biological treatment. EPA's investigation included the land requirements for treatment of all 13 of the remanded PSES pollutants, including phenol and 2,4-dimethylphenol, which are not being regulated by today's final rule. At that time, 20 of the 242 indirect discharge plants costed for in-plant biological treatment were projected to require more than one acre of land. EPA projected land requirements for individual facilities based on the modeled raw waste concentrations for the facilities developed by the Agency for purposes of costing compliance with the 1987 OCPSF guideline. The Agency visited the eight indirect discharge facilities with land estimates greater than one acre in the three-state area of New York, New Jersey, and Delaware. Indirect discharge facilities were selected because their typical location in urban areas makes them more likely than direct dischargers to have land-availability constraints. EPA believes the combination of large land requirements and an urban setting makes these eight plants a "worst case" sample of land availability.

Five of the plants visited had sufficient land based on the land requirements projected from their modeled raw waste concentrations (the remaining three had from 78 to 96 percent of the projected requirements). The remaining three had enough land based on their actual reported raw waste concentrations (the three plants had from 1.9 times to 3.7 times more than the required land). EPA generally was conservative in projecting raw waste characteristics in order to err on the side of overestimating rather than underestimating plant compliance costs. EPA thus believes its raw waste projections will often be higher than actual loadings (April 19, 1993 memorandum to the OCPSF Public Record "Estimation of BAT and PSES Compliance Costs). Based on this assessment, the Agency concluded that land availability is not a constraint for installing the model treatment technology (56 FR 63904; 1991 Supplement to the DD, p III–33).

The three plants for which CMA asserted the record shows insufficient contiguous land—Plants 257, 1853, and 1667—are the plants for which EPA determined that there is sufficient land based on the plants' *reported* raw waste concentrations (56 FR 63904). CMA apparently overlooked this portion of the analysis and based its comments on the land estimates based on the plants' projected raw waste concentrations. As described in more detail below, all of the plants EPA visited have more than sufficient contiguous land to install in-plant biological treatment systems to comply with the land requirements estimated by EPA for compliance with the 13 remanded pretreatment standards.

Furthermore, based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, the estimated land requirements are lower for six of the eight plants visited than the requirements estimated at proposal for these plants based on their projected raw waste concentrations. Two plants no longer require in-plant biological treatment (257 and 2300), reducing their land requirements to zero. The estimated land requirements for four additional plants were reduced by 29, 69, 75 and 74 percent (plants 814, 1667, 1853 and 2485, respectively). The estimated land requirements for the remaining two plants have not changed from the 1991 estimates.

Addressing the plants individually, the commenter states that the available land claimed by the Agency for Plant 257 was made up of three parcels, that one parcel would require demolishing two buildings and that another parcel is crisscrossed by railroad tracks. At the time of the site visit, plant personnel informed EPA that plans called for the demolition of the two buildings in question and in fact demolition was already underway at the time of the site visit; the Agency reasonably concluded that the land made available by the demolition of these two buildings would be available, and notes that the pretreatment standards to which this plant was to be subject do not become effective until three years after the promulgation of today's amendments. The area made available by the demolition of these buildings in addition to the contiguous, open area designated as "A" to the left of the railroad tracks on the plot plan submitted by the facility will more than accommodate EPA's land requirement estimate of 0.55 acres for Plant 257 (1991 Supplement to the DD, p III–35). This land is contiguous and is not intersected by the railroad tracks. Finally, based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, Plant 257 no longer is projected to install in-plant biological treatment.

The commenter also claims that "part" of one of the parcels of land at Plant 1706 is unavailable because of a

nearby flare stack. But the commenter does not explain, and EPA does not understand, how a nearby flare stack would prevent installation of a biological treatment system. Nor did it indicate how much of the four-acre parcel in question it considered to be unavailable, and EPA has no basis to conclude that the presence of a nearby flare stack renders unavailable the 1.8 acres estimated as necessary for plant 1706 to install the costed biological treatment system.

The commenter also states that the Agency unrealistically utilized two parcels of land (1 acre and 0.2 acres) to meet the estimated land requirement of 1.25 acres for Plant 1667 (CMA Comment at 41). In addition to stating that the two parcels of land are not contiguous, the commenter states that the 0.2 acre parcel contains a 2 story brick building and the 1 acre parcel has a railroad track running through it. Again, the commenter has overlooked portions of the Agency's analyses contained in its Record. Even if the railroad track bisected the 1 acre parcel, the Agency's revised land estimate of 0.38 acres based on the facility's reported raw waste concentration (1991 Supplement to the DD, p III–35) could still be accommodated by either one of the two 0.5 acre parcels. Moreover, the Agency's Record clearly states that the 2 story brick building was confirmed as not in use and available (1991 Proposal Record, p R01236).

In a related argument, the commenter argues that EPA has included land in its analysis that is unavailable because of contamination and related factors. EPA disagrees with CMA's analysis of the record, as explained below.

The commenter states that personnel from Plant 2756 informed EPA that the availability of its land depended on getting clearance from the state agency because contamination was suspected. However, the plant provided no information during EPA's site visit or in comments regarding the likelihood, nature or extent of the suspected contamination, the procedures involved in obtaining clearance from the state, or the extent to which the contamination might preclude the installation of a biological treatment system to comply with today's regulations within the three years allotted. The Agency has conservatively estimated that 32 percent of the facility's unused land (equal to the 1.61 acres required) will be available to accommodate the installation of in-plant biological treatment.

The commenter also states that "* * * Four of the eight acres identified for Plant 1853 were under investigation for possible contamination. EPA was told by plant personnel that the availability of the land was dependent on the results of the investigation * * *" (CMA Comment at 41). However, the Agency's Record shows that the uncontaminated 4-acre parcel at the site will accommodate EPA's estimated land requirement of 2.16 acres, based on reported raw waste concentrations, for Plant 1853 (1991 Supplement to the DD, p III–35). In addition, EPA has insufficient information regarding the "possible" contamination to evaluate its effect on compliance with today's amendments.

The commenter states that plant personnel informed EPA that of the 130 acre site for Plant 2485, some unspecified portion of the plant site was under investigation for contamination and 30 percent of the site was considered fresh water wetlands. Since 30 percent of the total plant site totals 39 acres and since no accurate estimate of the extent of the contamination at the 130 acre plant site could be made by plant personnel, the Agency has conservatively estimated the amount of land available at 20 acres or about 15 percent of the total plant site, which is more than adequate for the 6.64 acres projected to be required at proposal. EPA also notes that no comments have been received to date regarding the results of the site investigation of potential contamination which was scheduled for completion in 1991. Finally, based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, the land requirements for Plant 2485 have been reduced from 6.64 acres to 1.68 acres.

The commenter also states that plant personnel at Plant 814 informed EPA that 11 of the 13 acres EPA included in its available area was under investigation for possible contamination. Subsequent correspondence from Plant 814 confirmed the presence of contamination but did not detail the extent of the contamination, only that remediation would be necessary and "* * * a large portion of these areas will not be available for future construction other than that related to remediation * * *" (1991 Proposal Record, p R01210). However, even according to the plant's information, 2.3 acres of land are not under investigation for contamination. Although this land is comprised of two separate parcels, the larger of the two alone is sufficient to install the costed biological treatment system. Based on the Agency's decision not to promulgate pretreatment standards for phenol and 2,4-dimethylphenol, this plant only requires 1.55 acres of land to install the Agency's current recommended treatment system. Subtracting the smaller of the two available parcels (designated as area "J" on the facility plot plan, estimated at 0.5 acres) from the 2.3 acre total, approximately 1.8 contiguous, uncontaminated acres remain available, which will accommodate the current land requirement (1991 Proposal Record, p R01243). Moreover, only 14 percent of the 11 contaminated acres would be required to install the *entire* treatment system, not counting any of the 2.3 acres which the commenter admits is available. The information that "a large portion" of the 11 acres is unavailable does not provide a basis to conclude that the facility could not install a biological treatment system to comply with the promulgated pretreatment standards within three years.

Overall, EPA reasonably concluded that each of the plants visited should have sufficient contiguous, unobstructed, uncontaminated land to install the costed biological treatment systems. In addition, even if EPA's analysis indicated a lack of contiguous, available land, this would not necessarily preclude installation of the costed biological treatment systems. Individual pieces of a plant's treatment system, including separate aeration basins, can be physically located on non-contiguous parcels, or on different portions of a single parcel. In the OCPSF industry, plant manufacturing and/or treatment areas are sometimes segmented or separated by such things as utility roads, railroad tracks, canals, parking lots, warehouses, or other unrelated parcels of land. EPA cannot perform a detailed evaluation, in a national guideline, of how individual facilities in the industry can best comply with the promulgated limitations and standards. Especially with considerations as inherently plant-specific as land availability and potential contamination and remediation requirements, EPA can only assess whether, for the industry as a whole, sufficient land should be available to comply with the requirements of the guideline. EPA has performed such an assessment and has concluded that land availability will not be a constraint on compliance with today's limitations and standards. To the extent that an individual plant determines, after making a good faith effort to use the land available to it, that it is unable to comply with the requirements of today's rule, the plant may apply for an FDF variance.

F. Guidance for Laboratory Analysis of Complex Matrices

Several commenters stated that they were unable to measure some of the regulated pollutants in OCPSF wastewater at the concentrations required by the regulation due to matrix interferences, i.e., that the composition of wastewater samples complicates measurement of OCPSF-regulated pollutants at the low levels required to show compliance with the rule. They suggested that EPA provide notice that relief is available to the regulated community under this regulation when a permittee is unable to measure pollutants due to matrix problems.

At the time of promulgation of the OCPSF guideline in 1987, EPA found that for well-designed, well-operated treatment systems, matrix interferences should not present a problem. The limitations were based upon data that demonstrated that the pollutants have been and thus can be measured at the regulatory levels (52 FR 42563). EPA's determination that the regulated pollutants could be measured at the compliance levels was upheld by the Fifth Circuit (*CMA* v. *EPA*, 870 F.2d at 231).

Since promulgation of the OCPSF guideline, the Analytical Methods Staff of the Engineering and Analysis Division has been assisting EPA Regions and States in evaluating claims of matrix interferences and other analytical difficulties associated with OCPSF compliance monitoring. Since 1990, the Analytical Methods Staff has issued a series of draft reports that provide guidance to control authorities and laboratories for accommodating matrix-related problems that complicate laboratory measurements of the analytes of interest. These documents have been updated and expanded in one final publication, the May 1993 "Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring," (EPA 821–B–93–001) that is available from Mr. William A. Telliard, Chief, Analytical Methods Staff, Engineering and Analysis Division (WH–552), USEPA, Washington, DC 20460. The document includes: (1) A checklist of laboratory data required to support a claim that a permittee was unable to measure pollutants due to matrix problems, (2) guidance for analysts attempting to identify and quantify pollutants in wastewaters discharged from plants manufacturing OCPSF products, (3) cost estimates for resolving matrix interferences, (4) guidance for reviewing data from the analysis of organic compounds using EPA 600/1600 series analytical methods, (5) case histories of data submitted for claims of matrix interferences under the OCPSF rule, and (6) guidance on contracting for analytical services.

The Agency's past experience is that nearly all matrix interference problems can be resolved when industries and their laboratories apply the philosophy and techniques suggested in the draft documents. Based on this experience, EPA does not believe matrix interferences will present a problem in demonstrating compliance with the OCPSF guideline.

Finally, EPA notes that this guidance regarding matrix interference is beyond the scope of the Fifth Circuit's remand and today's rule. As stated above, the Fifth Circuit upheld EPA's determination that the OCPSF-regulated pollutants can be measured at the compliance levels, and no issues relating to measurement were remanded. The above discussion is guidance only, and it relates only to implementation and enforcement issues; it does not provide a basis to challenge today's amendment.

G. Guidance for the Appropriate Flow Basis for Converting Concentrations Into Mass-Based Limitations and Standards

The Passaic Valley Sewerage Commissioners, referring to supporting correspondence from the State of New Jersey, complained about conflicting guidance and differing interpretations of the appropriate flow basis for calculating the mass-based permit limits. They requested that the Agency clarify its guidance for (1) determining the appropriate flow basis for establishing the permit limitations and standards as well as (2) the appropriate flow basis for converting compliance monitoring concentration data into mass-based figures.

Regarding the first issue—the appropriate flow basis for establishing permit limits—the promulgated OCPSF effluent limitations guidelines and standards listed in 40 CFR 414 are concentration-based and thus do not regulate flow. As required by the regulation, the permitting or control authority must multiply a reasonable estimate of a plant's regulated process wastewater discharge by the concentration limitations to develop mass limitations for each NPDES or industrial user permit.

The appropriate process wastewater flow to be used must be determined by the permitting or control authority on a case-by-case basis using current information provided by the applicant and other available data. EPA strongly urges the permit writer or control authority to develop an appropriate process wastewater flow for use in computing the mass effluent or internal plant limitations based on water conservation practices. The factors that should be considered in developing the appropriate process wastewater flow include: review of the component flows to ensure that the claimed flows are, in fact, process wastewater flows as defined by the regulation; review of plant operations to ensure that sound water conservation practices are being followed (examples include minimization of process water uses; cascading or countercurrent washes or rinses, where possible; reuse or recycle of intermediate process waters or treated wastewaters at the process area and in wastewater treatment operations (e.g., pump seals, and equipment and area washdowns)); and review of barometric condenser use at the process level (barometric condensers often generate relatively large volumes of slightly contaminated wastewater; replacement of barometric condensers with surface condensers can reduce wastewater volumes significantly and result in collection of condensates that may be returned to the process). (1987 DD, p IX–9–10)

Assuming proper water conservation is being practiced, the 1987 OCPSF Development Document accurately advises the control authority to "use the plant's annual average process wastewater flow to convert the concentration-based limitations into mass-based limitations" (*id.* at p IX–10). To clarify, the annual average flow is defined as the *average of daily flow measurements* calculated over at least a year. These average flows could be based on a single year's data; however, if available, multiple years' data are preferable to obtain a representation of annual average flow. The regulated OCPSF process wastewater flows, as defined by 40 CFR 401.11(q), are the process waste streams that are subject to 40 CFR Part 414.

Based on current guidance issued by the Office of Water Enforcement and Compliance, the permitting or control authority is advised to establish, for each direct or indirect point source discharge, a single estimate of the regulated long-term average of daily flow measurements based on three to five years of facility data. In the event that no historical or actual process wastewater flow data exists, such as for a new source, the permitting or control authority is advised to establish a reasonable estimate of the facility's projected flow. Historical or projected daily maximum, weekly maximum, or

monthly maximum flows and design-based or plant-capacity-based flows *are not recommended as appropriate bases* for determining a facility's regulated long-term or annual average of daily flow measurements and corresponding mass limits. The permitting or control authority is advised to establish a flow rate that is expected to be representative during the entire term of the permit or other individual control mechanism. If a plant is planning for significant changes in production during the effective period of the permit, the permitting or control authority may consider establishing multiple tiers of limitations as a function of the significant, projected changes in production. In addition, or in the alternative, a permit may be modified during its term, either at the request of the permittee (or another interested party) or on EPA's initiative, to increase or decrease the flow basis in response to a significant change in production (40 CFR 124.5, 122.62). A change in production could be an "alteration" of the permitted activity or "new information" that would provide the basis for a permit modification (40 CFR 122.62(a) (1), (2)).

Guidance for determining appropriate process wastewater flow is presented in several documents published by the EPA Office of Wastewater Enforcement and Compliance, Washington, DC: "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula," 1985 (NTIS Order No. PB92–114438) and "Training Manual for NPDES Permit Writers, 1993 (EPA 833–B–93–003).

Confusion as to the recommended basis for determining appropriate process wastewater flow has arisen, however, due to several OCPSF guidance memoranda that present guidance that is in conflict with the guidance presented in the OCPSF preamble and the above-mentioned guidance documents. Specifically, two EPA guidance memoranda recommend, as a basis for establishing long-term average flow, that the permit writer or control authority use "the highest monthly average flow during the past twelve (12) months or the highest yearly mean of the twelve monthly average flows during the past five (5) years." These incorrect examples were listed in the February 16, 1989 memorandum to Regional Water Management Division Directors and NPDES Authorized State Directors from James R. Elder, Director, Office of Water Enforcement and Permits, entitled "NPDES Permitting Strategy for OCPSF Direct Dischargers" (pp. 29, 40, & 44), and in the October 12, 1988 memorandum to Regional Water Management Division Directors and NPDES State Directors from Mr. Elder entitled "Questions and Answers Regarding the OCPSF Effluent Limitations Guidelines" (p. 4). This guidance establishes an inappropriate basis for determining permit limits because the promulgated OCPSF maximum daily and maximum monthly average limitations were derived by multiplying the long-term average performance level of well-designed, well-operated treatment systems by the respective variability factors for the treatment system. The variability factors already include, among other components, the variability associated with day-to-day and month-to-month production and flow variations. As a result, the OCPSF limits and standards are, in general, considerably less stringent than the long-term averages achieved by the plants on which the limits and standards were based, and plants that design their operations and treatment systems to achieve the long-term averages for individual pollutants should be able to achieve the OCPSF limits and standards even during high-flow days and months. The data from any given day or month may not be representative of the plant's annual or long-term flow. Use of the highest monthly mean to set permit limits would "double count" the effect of flow variability, since the potential for high flow periods is already accounted for in the promulgated limits and standards. The approach presented in the two memoranda from Mr. Elder results in an overly generous permit limit. Therefore, the time period of the measure of production or flow should correspond to the time period used to derive the promulgated limitations, which is an annual average or long-term average measure.

Regarding the second issue—the correct flow basis for determining compliance—the Agency intends that compliance with the OCPSF standards should be evaluated based on the actual total applicable OCPSF-regulated flow discharged during the period for collecting the effluent sample, typically 24 hours. The cumulative 24-hour flow corresponding to the day on which sampling is performed, when combined with concentration data from 24-hour sampling, gives the best indication of the actual mass of pollutants discharged on a given day. The OCPSF mass-based permit limits are calculated using the regulated long-term or annual average of daily flow measurements, adjusted downward as appropriate based on potential for flow reduction, as discussed above. The limits in 40 CFR part 414 are expressed as maximum for any one day and maximum for monthly average values. Since the limits in the permits are mass-based, the compliance data must also be mass-based. A daily mass value is defined as the total mass discharged over a 24-hour period (unless the operating day is less than 24 hours). Similarly, the monthly average is derived from averaging the available daily mass values in each calendar month. Compliance with the mass-based limits should be based on the actual total applicable OCPSF-regulated flow discharged on the day of sampling, not on the long-term average flow rate that provided the basis for establishing the permit limitations and standards.

Therefore, to determine compliance for OCPSF facilities, the measured concentration of the pollutant in question in the effluent sample should be multiplied by the total applicable OCPSF-regulated flow during the effluent sampling period. For example, if analytical data from a 24-hour sample period for a particular plant demonstrates a pollutant concentration of 0.055 mg/l, and the measured process wastewater flow for the same 24-hour period is 0.600 million gallons, then the plant's reported mass compliance value for that day is 0.275 pounds of the pollutant.

EPA notes that this guidance regarding the proper flow basis is beyond the scope of the Fifth Circuit's remand and today's rule. This guidance simply addresses conflicts in existing guidance and reaffirms that the contemporaneous guidance presented in the 1987 OCPSF Development Document correctly reflects EPA's judgment regarding appropriate implementation of the OCPSF guideline. The above discussion is guidance only, and it relates only to implementation and enforcement issues; it does not provide a basis to challenge today's amendments.

IX. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This action is not a major rule because the estimated cost of today's rule is $78 million annually. This figure differs from the $61 million cost presented in the December 6, 1991 proposal because: (1) The costs reflect the shift in discharge status for 14 plants that were direct discharge facilities in 1987 but now discharge to POTWs; (2) the costs reflect the revised projection

that 47 direct discharge facilities are subject to the Subpart J BAT limitations rather than the 23 facilities estimated in 1987; (3) the costs associated with compliance with the pretreatment standards for phenol and 2,4-dimethylphenol have been eliminated since EPA is not promulgating pretreatment standards for these pollutants; (4) the cost is expressed in 1992 dollars rather than 1986 dollars as was done at proposal, because EPA has concluded that this approach more accurately reflects the cost of today's rule; and (5) the cost presented today reflects the total projected cost of the model in-plant biological treatment systems that provide the technology basis for the promulgated limits and standards, rather than simply the incremental cost of today's rule over the cost of the 1987 OCPSF guideline. This last point is explained further in response to the comments of Allied-Signal, Inc. Today's rule meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

X. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires EPA and other agencies to prepare a final regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As noted in Section V.E., the regulatory flexibility analysis for today's final rule, as in the 1987 final rule, examined whether small plants, as defined by a plant production threshold of 5 million pounds, are disproportionately affected by the regulation. The Agency's assessment concludes that no change in the small plant analysis findings is necessary. That is to say, the regulation continues to set BAT equal to BPT for plants with production less than or equal to 5 million pounds of OCPSF products per year, and makes no special provision for small plants complying with PSES standards.

XI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq., EPA must submit a copy of any rule that contains a collection-of-information requirement to the Director of the Office of Management and Budget for review and approval. This rule contains no additional information collection requirements beyond those already required by 40 CFR part 403 and 40 CFR part 122, and therefore the review requirement of the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 414

Organic chemicals manufacturing, Plastics manufacturing, Synthetic fibers manufacturing, Water pollution control, Water treatment and disposal.

Dated: May 28, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 414 is amended as set forth below:

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Public Law 92–500, 86 Stat. 816, Public Law 95–217, 91 Stat. 156, Public Law 100–4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. Sections 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85 (including the tables) are revised to read as follows:

§ 414.____ Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve discharges in accordance with § 414.111.

3. Sections 414.26, 414.36, 414.46, 414.56, 414.66, 414.76, and 414.86 are revised to read as follows:

§ 414.____ Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve discharges in accordance with § 414.111.

4. In § 414.91, paragraphs (b)(1) and (b)(2) are removed and the second sentence of the introductory text of paragraph (b), the flush paragraph of paragraph (b), and the table are revised and combined to form one paragraph to read as follows:

§ 414.91 Toxic pollutant effluent limitations and standards for direct discharge point sources that use end-of-pipe biological treatment.

* * * * *

(b) * * * The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional OCPSF process wastewater streams identified by the permitting authority on a case-by-case basis as metal or cyanide bearing based upon a determination that such streams contain significant amounts of the pollutants identified above. Any such streams designated as metal or cyanide bearing must be treated independently of other metal or cyanide bearing waste streams unless the permitting authority determines that the combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants. This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	Effluent limitations BAT and NSPS [1]	
	Maximum for any one day	Maximum for for any monthly average
Acenaphthene	59	22
Acenaphthylene	59	22
Acrylonitrile	242	96
Anthracene	59	22
Benzene	136	37
Benzo(a)anthracene	59	22
3,4-Benzofluoranthene	61	23
Benzo(k)fluoranthene	59	22
Benzo(a)pyrene	61	23
Bis(2-ethylhexyl) phthalate	279	103
Carbon Tetrachloride	38	18
Chlorobenzene	26	15
Chloroethane	268	104
Chloroform	46	21
2-Chlorophenol	98	31
Chrysene	59	22
Di-n-butyl phthalate	57	27
1,2-Dichlorobenzene	163	77
1,3-Dichlorobenzene	44	31
1,4-Dichlorobenzene	28	15
1,1-Dichloroethane	59	22
1,2-Dichloroethane	211	68
1,1-Dichloroethylene	25	16
1,2-trans-Dichloroethylene	54	21
2,4-Dichlorophenol	112	39
1,2-Dichloropropane	230	153
1,3-Dichloropropylene	44	29
Diethyl phthalate	203	81
2,4-Dimethylphenol	36	18
Dimethyl phthalate	47	19
4,6-Dinitro-o-cresol	277	78
2,4-Dinitrophenol	123	71
2,4-Dinitrotoluene	285	113
2,6-Dinitrotoluene	641	255
Ethylbenzene	108	32
Fluoranthene	68	25
Fluorene	59	22
Hexachlorobenzene	28	15
Hexachlorobutadiene	49	20
Hexachloroethane	54	21
Methyl Chloride	190	86
Methylene Chloride	89	40
Naphthalene	59	22
Nitrobenzene	68	27

Effluent characteristics	Effluent limitations BAT and NSPS [1]	
	Maximum for any one day	Maximum for for any monthly average
2-Nitrophenol	69	41
4-Nitrophenol	124	72
Phenanthrene	59	22
Phenol	26	15
Pyrene	67	25
Tetrachloroethylene	56	22
Toluene	80	28
Total Chromium	2,770	1,110
Total Copper	3,380	1,450
Total Cyanide	1,200	420
Total Lead	690	320
Total Nickel	3,980	1,690
Total Zinc [2]	2,610	1,050
1,2,4-Trichlorobenzene	140	66
1,1,1-Trichloroethane	54	21
1,1,2-Trichloroethane	54	21
Trichloroethylene	54	21
Vinyl Chloride	268	104

[1] All units are micrograms per liter.

[2] Total Zinc for Rayon Fiber Manufacture that uses the viscose process and Acrylic Fiber Manufacture that uses the zinc chloride/solvent process is 6,796 µg/l and 3,325 µg/l for maximum for any one day and maximum for monthly average, respectively.

5. In § 414.101, paragraphs (b)(1) and (b)(2) are removed and the second sentence of the introductory text of paragraph (b), the flush paragraph of paragraph (b), and the table are revised and combined to form one paragraph to read as follows:

§ 414.101 Toxic pollutant effluent limitations and standards for direct discharge point sources that do not use end-of-pipe biological treatment.

* * * * *

(b) * * * The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional OCPSF process wastewater streams identified by the permitting authority on a case-by-case basis as metal or cyanide bearing based upon a determination that such streams contain significant amounts of the pollutants identified above. Any such streams designated as metal or cyanide bearing must be treated independently of other metal or cyanide bearing waste streams unless the permitting authority determines that the combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants. This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

Effluent characteristics	BAT effluent limitations and NSPS [1]	
	Maximum for any one day	Maximum for monthly average
Acenaphthene	47	19
Acenaphthylene	47	19
Acrylonitrile	232	94
Anthracene	47	19
Benzene	134	57
Benzo(a)anthracene	47	19
3,4-Benzofluoranthene	48	20
Benzo(k)fluoranthene	47	19
Benzo(a)pyrene	48	20
Bis(2-ethylhexyl) phthalate	258	95
Carbon Tetrachloride	360	142
Chlorobenzene	360	142
Chloroethane	295	110
Chloroform	325	111
Chrysene	47	19
Di-n-butyl phthalate	43	20
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	360	142
1,4-Dichlorobenzene	360	142
1,1-Dichloroethane	59	22
1,2-Dichloroethane	574	180
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
Diethyl phthalate	113	46
2,4-Dimethylphenol	47	19
Dimethyl phthalate	47	19
4,6-Dinitro-o-cresol	277	78
2,4-Dinitrophenol	4,291	1,207
Ethylbenzene	380	142
Fluoranthene	54	22
Fluorene	47	19
Hexachlorobenzene	794	196
Hexachlorobutadiene	360	142
Hexachloroethane	794	196
Methyl Chloride	295	110
Methylene Chloride	170	35
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
Phenanthrene	47	19
Phenol	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Total Chromium	2,770	1,110
Total Copper	3,380	1,450
Total Cyanide	1,200	420
Total Lead	690	320
Total Nickel	3,980	1,690
Total Zinc [2]	2,610	1,050
1,2,4-Trichlorobenzene	794	196
1,1,1-Trichloroethane	59	22
1,1,2-Trichloroethane	127	32
Trichloroethylene	69	26
Vinyl Chloride	172	97

[1] All units are micrograms per liter.

[2] Total Zinc for Rayon Fiber Manufacture that uses the viscose process and Acrylic Fibers Manufacture that uses the zinc chloride/solvent process is 6,796 µg/l and 3,325 µg/l for maximum for any one day and maximum for monthly average, respectively.

6. Part 414 is amended by adding subpart K to read as follows:

Subpart K—Indirect Discharge Point Sources

Sec.

414.110 Applicability; description of the subcategory of indirect discharge point sources.

414.111 Toxic pollutant standards for indirect discharge point sources.

Subpart K—Indirect Discharge Point Sources

§ 414.110 Applicability; description of the subcategory of indirect discharge point sources.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the OCPSF products and product groups defined by § 414.11 from any indirect discharge point source.

§ 414.111 Toxic pollutant standards for indirect discharge point sources.

(a) Any point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table.

(b) In the case of lead, zinc, and total cyanide the discharge quantity (mass) shall be determined by multiplying the concentrations listed in the following table for these pollutants times the flow from metal-bearing waste streams for metals and times the flow from the cyanide-bearing waste streams for total cyanide. The metal-bearing waste streams and cyanide-bearing waste streams are defined as those waste streams listed in Appendix A of this part, plus any additional OCPSF process wastewater streams identified by the control authority on a case-by-case basis as metal or cyanide bearing based upon a determination that such streams contain significant amounts of the pollutants identified above. Any such streams designated as metal or cyanide bearing must be treated independently of other metal or cyanide bearing waste streams unless the control authority determines that the combination of such streams, prior to treatment, with the Appendix A waste streams will result in substantial reduction of these pollutants. This determination must be based upon a review of relevant engineering, production, and sampling and analysis information.

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Effluent characteristics	PSES and PSNS [1]	
	Maximum for any one day	Maximum for any monthly average
Acenaphthene	47	19
Anthracene	47	19
Benzene	134	57
Bis(2-ethylhexyl) phthalate	258	95
Carbon Tetrachloride	380	142
Chlorobenzene	380	142
Chloroethane	295	110
Chloroform	325	111
Di-n-butyl phthalate	43	20
1,2-Dichlorobenzene	794	196
1,3-Dichlorobenzene	380	142
1,4-Dichlorobenzene	380	142
1,1-Dichloroethane	59	22
1,2-Dichloroethane	574	180
1,1-Dichloroethylene	60	22
1,2-trans-Dichloroethylene	66	25
1,2-Dichloropropane	794	196
1,3-Dichloropropylene	794	196
Diethyl phthalate	113	46
Dimethyl phthalate	47	19
4,6-Dinitro-o-cresol	277	78
Ethylbenzene	380	142
Fluoranthene	54	22
Fluorene	47	19
Hexachlorobenzene	794	196
Hexachlorobutadiene	380	142
Hexachloroethane	794	196
Methyl Chloride	295	110
Methylene Chloride	170	36
Naphthalene	47	19
Nitrobenzene	6,402	2,237
2-Nitrophenol	231	65
4-Nitrophenol	576	162
Phenanthrene	47	19
Pyrene	48	20
Tetrachloroethylene	164	52
Toluene	74	28
Total Cyanide	1,200	420
Total Lead	690	320
Total Zinc [2]	2,610	1,050
1,2,4-Trichlorobenzene	794	196
1,1,1-Trichloroethane	59	22
1,1,2-Trichloroethane	127	32
Trichloroethylene	69	26
Vinyl Chloride	172	97

[1] All units are micrograms per liter.

[2] Total Zinc for Rayon Fiber Manufacture that uses the viscose process and Acrylic Fiber Manufacture that uses the zinc chloride/solvent process is 6,796 µg/l and 3,325 µg/l for maximum for any one day and maximum for monthly average, respectively.

[FR Doc. 93–16313 Filed 7–8–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. 92–E]

RIN 2132–AA40

Charter Services Demonstration Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: Section 3040 of the Intermodal Surface Transportation Efficiency Act (ISTEA) directs the Federal Transit Administration (FTA) to issue regulations establishing a demonstration program which would permit transit operators to provide charter services for purpose of meeting the transit needs of government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner. Section 3040 also requires the FTA to consult with a board representing public transit operators and privately owned charter services. Today's final rule describes the demonstration program that the FTA has developed in consultation with a committee equally representative of the public and private sectors. During the demonstration program, recipients in eight sites within four States will be allowed to provide direct charter service as determined by local officials according to certain set criteria.

EFFECTIVE DATE: August 9, 1993.

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SUPPLEMENTARY INFORMATION:

I. Background

On April 13, 1987, the FTA, then the Urban Mass Transportation Administration, revised its charter service regulation, 49 CFR part 604. The principle underlying this regulation is that federally funded equipment and facilities may not be used to compete unfairly with private charter operators, in keeping with sections 3(f) and 12(c)(6) of the Federal Transit Act, as amended (49 U.S.C. 1602(f) and 1608(c)(6)). When the regulation went into effect on May 13, 1987, it was subject to five limited exceptions, set out in 49 CFR 604.9. Under these exceptions, a recipient of Federal funds may provide charter services if: (1) there is no willing and able private charter operator; (2) the private charter operator does not have the capacity needed for a particular charter trip; (3) the private charter operator is unable to provide equipment accessible to the elderly and persons with disabilities; (4) is non-urbanized areas, the charter service that would be provided would result in a hardship on users; or, (5) private charter operators are not capable of providing service for special events.

On December 22, 1987, the President signed the Department of Transportation and Related Agencies Appropriations Act, 1988 (Pub. L. 100–202, 101 Stat. 1329; hereafter the "FY 1988 Act"). In the Conference Report accompanying the FY 1988 Act, the FTA was directed to amend its charter service regulation to "permit non-profit social service agencies to seek bids for charter service from publicly funded operators." (Conf. Rept., Committee Print accompanying Department of Transportation and Related Agencies Appropriations Act, 1988, 100th Cong., 1st Sess. 62). This report suggests that "[t]hese non-profit agencies * * * be limited to government entities and those entities subject to sections 501(c) 1,3,5[sic] and 19 of the Internal Revenue Code." The Report recommends that "[i]n such cases, the public operator * * * be required to identify to the chartering organizations any private operator that has notified it of its willingness and ability to provide comparable charter service."

Further to this congressional directive, the FTA amended its charter regulation on December 30, 1988, to provide three additional exceptions to the general prohibition on the use of federally funded equipment and facilities for charter service (53 FR 53348).

The first exception allows the use of FTA-funded equipment and facilities for direct charter service with non-profit social service agencies that are governmental entities or organizations exempt from taxation under Internal Revenue Code 501(c) (1), (3), (4) and (19), provided that the agency is contracting for service for persons with disabilities; is a recipient of funds under certain U.S. Department of Health and Human Service ("USDHHS") programs; or has been State-certified according to the procedure set forth in § 604.9(b)(5)(iii) of the Charter Service Regulation.

The second exception provides an additional exemption for nonurbanized areas by allowing FTA-funded equipment and facilities operated by recipients in such areas to be used incidentally in direct charter service for

social services agencies that are governmental entities or organizations exempt under Internal Revenue Code 501(c) (1), (3), (4) and (19), provided that the agency is contracting for service for elderly persons. The third exception allows FTA-funded equipment and facilities to be used on an incidental basis in any particular charter service for which the FTA recipient and the local private operators have reached an agreement as part of the willing and able determination allowing the recipient to provide such service.

II. Section 3040 of ISTEA

On December 18, 1991, the President signed the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 3040 of ISTEA directs the FTA to issue regulations implementing a charter services demonstration program in not more than 4 states. Under this demonstration program, transit operators would be permitted to provide charter service for the purposes of meeting the transit needs of government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner. Section 3040 provides that in developing such regulations, the FTA shall consult with a board that is equally represented by public transit operators and privately owned charter services. The FTA is directed to transmit to Congress, not later than 3 years after the date of enactment of the Federal Transit Act, a report containing an evaluation of the effectiveness of the demonstration program regulations established under this section and to issue regulations to improve the current charter services regulation.

The Conference Report accompanying ISTEA, (H.R. Rep. No. 404, 102nd Cong., 1st Sess. 424 (1991)), explains that the demonstration program has been mandated in response to the concerns expressed by local transit operators regarding the existing charter service regulation. The Report states that the implementing regulations should be designed to enable public transit operators to provide charter services to government, civic, charitable and other community organizations that serve a public purpose and help address unmet transit needs. According to the Report, it is intended that these regulations will grant public transit operators additional flexibility that is not afforded under the existing charter regulations, without creating undue competition for privately owned charter operators. The Report indicates that the results of the demonstration program should provide Congress and the FTA with data to determine the most effective method for providing charter services to local communities, and whether the current regulations are in need of modification. The Report recommends that the FTA select the state of Michigan as a participant in the program.

III. The NPRM

On October 28, 1992, the FTA issued in the **Federal Register**, a Notice of Proposed Rulemaking (NPRM) outlining its proposed demonstration program. The NPRM did not propose to overhaul the charter regulation during the demonstration period, but instead to amend the regulation to allow grant recipients in demonstration sites additional flexibility in adjusting to local circumstances. Since these circumstances are defined by specific local conditions, rather than attempting to predetermine the adjustments needed, the FTA proposed that such decisions should be made locally by appropriate officials.

Moreover, both section 3040 of ISTEA and the Report made it clear that the demonstration program should not interfere with the viability of the private charter industry, nor generate unfair competition with private operators. Accordingly, the FTA's proposed demonstration project would allow service decisions to be made by local officials, with the advice and recommendations from a panel composed of an equal number of representatives of the public and private sectors.

In formulating the proposal which appeared in the NPRM, the FTA consulted with a board equally representatives of public and private transit providers. Pursuant to section 3040(b) of ISTEA, the FTA appointed a Charter Services Demonstration Program Federal Advisory Committee (Advisory Committee), composed of 24 representatives of the public and private sectors. The Advisory Committee met for the first time on May 4, 1992, to provide advice and comments on a draft proposal for a demonstration program developed by the FTA. The advice and comments of the Advisory Committee were incorporated into the NPRM.

The committee membership is as follows:

Public Transit Operators and Their Representatives

1. Capital Area Transportation Authority, Lansing, Michigan •
2. Metropolitan Transit Authority of Harris County, Houston, Texas
3. Monterey-Salinas Transit Authority, Monterey, California
4. Central Oklahoma Transit Authority, Oklahoma City, Oklahoma
5. Toledo Area Transit Authority, Toledo, Ohio
6. Mass Transit Administration, Baltimore, Maryland
7. Metropolitan Atlanta Regional Transit Authority, Atlanta, Georgia
8. Pinellas-Suncoast Transit Authority, Clearwater, Florida
9. Greenville Transit Authority, Greenville, South Carolina
10. American Public Transit Association, Washington, DC
11. Michigan Department of Transportation, Lansing, Michigan
12. Sacramento Area Council of Governments, Sacramento, California

Privately Owned Charter Services and Their Representatives

1. Indian Trails Bus Company, Oswosso, Michigan
2. American Bus Association, Washington, DC
3. Lake Front Lines, Brookpark, Ohio
4. American Coach Lines, Tuxedo, Maryland
5. Academy Bus Tours, Newark, New Jersey
6. Kerrville Bus Lines, San Antonio, Texas
7. Antelope Valley Bus, Lancaster, California
8. Hotard Destinations Services, New Orleans, Louisiana
9. Airport Ground Transportation Assn., Knoxville, Tennessee
10. Arrow Stage Lines, Phoenix, Arizona
11. California Bus Association, San Francisco, California
12. Northfield Lines, Inc., Northfield Minnesota

Under the demonstration program as outlined in the NPRM, a State Department of Transportation (State DOT) or metropolitan planning organization (MPO) in each of the selected sites would appoint a local advisory panel composed of representatives of the public and private sectors. The advisory panel would recommend to the State DOT or MPO that a public transit agency participating in the program be allowed to provide certain types of charter service. The State DOT or MPO would accept recommendations which received a unanimous vote from the advisory panel, and decide to grant or deny other recommendations, based on certain set criteria. These criteria include cost, equipment uniqueness, service nature, and specific local factors. There would be a limited appeal to the FTA of the State DOT's or MPO's decision. The demonstration would take place during a 12 to 18 month period, in six different sites. Data collected during the demonstration would be presented to Congress as directed by section 3040(c) of ISTEA.

The NPRM requested proposals from localities wishing to participate in the demonstration program. It also sought comments from interested parties on the substance and structure of the proposed demonstration program. Comments and

VOL 58 ISS 130 JL 9 1993 UMI

proposals were due on or before December 28, 1992. The Advisory Committee met on January 11, 1993, to discuss the comments and proposals, and to provide recommendations on the selection of sites for the demonstration. The FTA has modified the demonstration program as it appeared in the NPRM in keeping with the comments and with the recommendations of the Advisory Committee.

The FTA received comments and proposals from 22 organizations, which break down as follows:

1	Senior Citizens' Association.
3	Private Trade Associations.
1	Public Trade Association.
4	Private Charter Operators.
10	FTA Recipients.
2	Metropolitan Planning Organizations.
1	State Department of Transportation.
22	Total

A summary of the significant comments and the proposals and the FTA's response to them is set forth in the following section, which also identifies the localities selected to participate. In the Analysis of the Amendment, the FTA will describe in detail the Charter Services Demonstration Program.

IV. Comments and Proposals Submitted in Response to the NPRM

A. Comments

In the NPRM, the FTA sought responses to the following questions:

1. *Who should comprise the advisory panel that makes recommendations to the State Department of Transportation (DOT) or metropolitan planning organization (MPO), and who should appoint its members?*

In the NPRM, the FTA proposed that either a State DOT or MPO be empowered to receive and rule on applications by FTA recipients to provide charter service during the demonstration program. Applications would be forwarded to the State DOT or MPO by an advisory panel composed of 4 to 6 persons, with equal representation of public transit providers or local business organizations and representatives of local private operators. Members of the advisory panel would be appointed by the State DOT or MPO.

Most commenters agreed that a local advisory panel should be set up in each of the demonstration sites, and that it should serve the purpose described in the NPRM. Some commenters, however, felt that existing private sector committees could serve the same function, and that the creation of a special ad hoc panel would create unnecessary duplication. Others stated that the FTA should either appoint the members of the advisory committee, or that the FTA, and not local bodies, should decide what types of service would be provided under the demonstration.

As indicated above, the Conference Report accompanying ISTEA states that the demonstration program should not create undue competition for privately owned charter companies. In keeping with this intent of the Conference Report that private operators not suffer financial injury as a result of the demonstration, the FTA believes it is essential that private operators be consulted on the types of charter service public agencies may provide during the demonstration period. The FTA believes that a local advisory panel equally representative of public and private operators is an appropriate means for ensuring such consultation.

The FTA recognizes, on the other hand, that many localities already have in place committees of public and private operators that serve as consultative forums. The FTA agrees that where such local committees exist and adequately represent the interests of public and private operators, the creation of an additional body would constitute unnecessary duplication. This final rule therefore allows participating sites having demonstrated in their proposals that their existing local advisory committees can effectively represent both public and private operators, to utilize these committees for the purposes of the demonstration. In all other sites, the creation of an advisory panel as outlined in the NPRM, would be required.

Moreover, since needs for and access to charter services vary greatly from one locality to another, the FTA believes that local officials are best able to determine which services should be provided during the demonstration program. The FTA thus proposes a demonstration program that provides for local decisionmaking. In accordance with this local decisionmaking structure, the FTA believes that local officials, and not the FTA, should appoint members of advisory panels to be created under the demonstration, and should decide what types of service are to be provided.

2. *Should there be criteria for exceptions other than those listed in subsection III(C) of the NPRM (i.e., cost, equipment uniqueness, service nature, specific local factors)?*

In the NPRM, The FTA proposed that the State DOT or MPO be allowed to grant or deny exceptions to the charter regulation which would allow FTA recipients to provide direct charter service during the demonstration program, on the basis of the following criteria: (1) The difference between the cost of service provided by public and private operators; (2) customers' needs for specific types of vehicles, e.g., trolleys or buses accessible to the elderly and persons with disabilities; (3) the nature of the service is such that only an FTA recipient can adequately provide it; (4) a specific local need that is important to the social or economic vitality of the locality that cannot be met by the private sector.

Most commenters supported the use of the criteria proposed by the FTA for determining which types of charter service should be provided by participants in the demonstration. Some commenters found, however, that certain criteria, such as "service nature" or "cost," were too vague or failed to provide sufficient flexibility. One commenter suggested that "service nature" be replaced by "service deficiency," i.e., public agencies may provide service if private operators are unwilling or unable to do so, or if the service they offer is inordinately expensive.

The FTA notes that given the great variation in local conditions, it is difficult to establish one universal set of criteria that will apply to all localities. The criteria must necessarily be broad if they are to be adapted to a wide range of local circumstances. Moreover, any one or a combination of these criteria can be used in deciding which types of service should be provided. The fourth criterion, "specific local circumstances," affords especially wide latitude in formulating exceptions which respond to local conditions, and should address the "service deficiency" concerns described above. Accordingly, with the exception of "cost evaluation" discussed in subsection 3, below, the FTA believes that there is no need to modify the criteria set out in the NPRM.

3. *When evaluating public and private costs of providing charter service, what difference should be considered "significant?"*

In the NPRM, the FTA proposed that a State DOT or an MPO may grant an exception if an FTA recipient offers service at a significantly lower cost than can private charter operators. Under the NPRM proposal, cost differences may be considered significant when there is approximately a twenty percent difference between the average charge for service by private operators, and the FTA recipient's fully allocated cost of providing the service.

Commenters representing the private sector agreed that a difference of at least twenty percent between the fully allocated cost of providing charter service and a private operator's charges for comparable service could be considered "significant." On the other hand, commenters representing the public sector felt that twenty percent was excessive and that the differential should be much lower, or that it should not include capital costs for non-profit and government-related charters. One commenter stated that "cheaper is cheaper," and that a public agency should provide the service when it can do so at lesser cost, regardless of the differential.

The FTA maintains that a difference of twenty percent between public and private charges can be generally recognized as "significant" and provides a reasonable benchmark. At the same time, however, the FTA recognizes that a key element of the demonstration is local decisionmaking, and that participants must respond to a great diversity of local conditions. Therefore, the final rule provides that participants should use a twenty percent figure when gauging whether the difference in public and private costs are significant. However, the final rule allows the local advisory panel to set its own cost differential, which may be higher or lower, depending on local circumstances.

The FTA notes that this rule creates an additional exception to, but does not supersede the existing charter regulation. Therefore, participants should, in conformance with the regulation, provide only "incidental" charter service. As a general rule, service which does not meet its fully allocated cost cannot be considered "incidental." See 52 FR 42252, November 3, 1987. Under the FTA's fully allocated cost guidelines, capital costs should be reflected in a public agency's cost of providing a particular service. See, "Fully Allocated Cost Analysis—Guidelines for Public Transit Providers," April 1987. The FTA intends to provide all participants in the demonstration with specific guidance on the fully allocated cost methodology.

4. *Which groups are not being served under the current charter regulations?*

The Conference Report accompanying ISTEA explains that the demonstration program has been mandated in response to the concerns expressed by local transit operators regarding the existing charter service regulation. The Conference Report states that the implementing regulations should be designed to enable public transit operators to provide charter services to government, civic, charitable and other community organizations that serve a public purpose and help address unmet transit needs. In the NPRM, the FTA asked commenters to identify the groups that are not being served under the current regulation, but to whom recipients could provide service under the demonstration.

Among the groups identified by commenters as having unmet charter needs were the following: Persons and groups in rural areas; local economic development organizations; County and State government organizations; chambers of commerce; and certain groups of disadvantaged individuals and persons with disabilities.

The FTA points out that exceptions to the current charter regulation allow recipients to provide direct charter service to most of these groups. For instance, under 49 CFR 604.9(b)(3), a recipient in a non-urbanized area may petition the FTA to provide charter service directly when service provided by a private operator would create a hardship for the customer. Moreover, 49 CFR 604.9(b)(7) permits a recipient to provide any type of charter service it may specify when there is an agreement to that effect between the recipient and local private operators. It is the FTA's position that the charter needs of most of the groups mentioned by commenters can be accommodated under the current regulation.

However, during the demonstration, the FTA will conduct a process of data collection, validation, and evaluation. The data to be collected will include the number and duration of charter trips provided; the number and type of groups served; whether or not the group served used a private charter for the same trip before the demonstration; variation between public and private costs for the same types of trips; and the effect of this cost variation on the frequency of charter trips.

A report to Congress will be prepared following the demonstration. This report will serve as the basis for determining whether there are unmet needs for charter service, and, accordingly, whether the current regulation is in need of modification.

5. *Should there be an appeal to the FTA of a decisionmaker's denial or granting of an exception?*

In the NPRM, the FTA proposed that the FTA entertain appeals of an MPO's or State DOT's denial or granting of an exception if the four regulatory criteria were not properly applied in the decisionmaking process of the MPO or State DOT.

The commenters were overwhelmingly opposed to the creation of an appeal to the FTA of a decisionmaker's denial or granting of an exception. One commenter stated that the appeal process associated with the local private operator's council should be used. Another stated that the two-step NPRM process for determining exceptions is sufficient, and that an appeal to the FTA would constitute an administrative burden. Only one commenter felt that there should be an appeal to the FTA, indicating that private operators might otherwise be harmed under the demonstration.

Because of the general tenor of the comments, the FTA will not provide an appeal to FTA as part of the regulations establishing the demonstration program. However, the FTA notes that § 604.15 of the current regulation provides a complaint process under which any interested party may seek redress of alleged charter violations. Consequently, any aggrieved private operator may file an appeal under this provision of a decision on a charter exception it believes is in violation of the regulation.

B. Proposals

Because of the difficulty and cost associated with conducting demonstrations on a statewide basis, the FTA proposed that three pairs of sites be selected. The NPRM stated that these sites should fall into the following population ranges: (1) Under 250,000; (2) 250,000 to 999,999; and (3) 1,000,000 to 2,999,999. The FTA excluded very large metropolitan areas because of the difficulty of monitoring programs in these areas, and because they are generally well served by local charter operators. The FTA considers that conducting the demonstrations in matched pairs of sites should provide a basis for comparison and ensure that the data collected does not reflect only unique local circumstances.

In the NPRM, the FTA solicited proposals from public agencies wishing to participate in the demonstration. The FTA asked that the proposals include the following:

—The geographic area of the demonstration and a list of public and private charter operators,
—Evidence of local consensus on the demonstration among public and private operators, e.g., a written agreement by public and private operators that they are willing to participate in the demonstration,
—A plan for providing demonstration data,
—A proposed procedure for establishing an advisory panel and the identification of either the State DOT or MPO to rule on local exceptions to

VOL 58 ISS 130 JL 9 1993 UMI

be allowed under this proposed demonstration,
—An indication of a willingness of the local public operators and private charter service providers to coordinate their activities during this demonstration effort,
—Identification and analysis of groups not being served under the current charter regulation but which would be eligible under the criteria for exceptions set out in the NPRM.

The FTA received proposals from six public agencies: (1) Monterey-Salinas Transit; (2) the Central Oklahoma Transportation and Parking Authority; (3) the Bi-State Development Agency; (4) the Metro-Dade Transit Agency; (5) the Sacramento Area Council of Governments on behalf of the Sacramento Regional Transit Authority and the Yolo County Transit Authority; and (6) the Michigan Department of Transportation on behalf of four transit agencies within the State of Michigan.

The FTA presented the proposals to the Advisory Committee, which discussed them at the January 11, 1993, meeting. On the basis of FTA staff evaluations, the responsiveness of the proposals to the factors set out in the NPRM, and the population ranges of the areas served by the respondents, the Advisory Committee recommended that the following public agencies be selected to participate in the demonstration program:

(1) Monterey-Salinas Transit Authority

Monterey-Salinas Transit (MST), headquartered in Monterey, California, is a small transit authority that serves the major tourist demand on the central coast of California, about 100 miles south of San Francisco. The American Public Transit Association 1992 Membership Directory (APTA Directory) reports that MST serves a population of some 250,000 with 57 buses and 167 employees. The Association of Monterey Bay Area Governments, the local MPO, will oversee the local demonstration program.

(2) Central Oklahoma Transportation and Parking Authority

The Central Oklahoma Transportation and Parking Authority (COTPA) serves the Oklahoma City, Oklahoma, urbanized area, which includes Canadian, Logan, Oklahoma, and Pottawatomie Counties, an area of 2,884 square miles having a population of approximately 1,000,000. According to the APTA Directory, COTPA has about 100 buses and 200 employees. The Private Operators Coordinating Council, composed primarily of private operators, will serve as an advisory panel.

(3) Bi-State Development Agency

The Bi-State Development Agency (Bi-State), located in St. Louis, Missouri, provides service to the St. Louis/East St. Louis metropolitan area, and serves a population of about 2 million. According to the APTA Directory, Bi-State has 638 buses, including 457 lift-equipped vehicles, and 1,900 employees. The East-West Coordinating Council, the local MPO, will oversee the local demonstration.

(4) Michigan Department of Transportation

The Michigan Department of Transportation (Michigan DOT), will oversee demonstrations in four sites within the State. These sites will include two nonurbanized areas (under 250,000 population), and two small urban areas (between 250,000 and 999,999 population). Michigan DOT will create a statewide steering committee composed of representatives of Michigan DOT, private transportation companies and public transit agencies, to act as an advisory panel.

(5) Yolo County Transit Authority

Yolo County, California is directly west of Sacramento County, and has a population of about 160,000. The Yolo County Transit Authority (Yolo) operates 23 buses and 6 paratransit vehicles serving the cities of Woodlake, Davis, West Sacramento and Winters. Yolo will establish a seven-person advisory panel composed of three public transit providers, three private charter operators, and a staff person from the Sacramento Area Council of Governments.

Moreover, section 3040 of ISTEA specifies that demonstrations should be conducted in not more than four States. It should be noted that the sites selected include four participants in areas with populations under 250,000, two more than proposed in the NPRM. The inclusion of the two additional sites is intended to address the concerns of the Michigan DOT, one of the selected participants, that rural areas, as well as smaller sized cities, be covered by the demonstration. The demonstration program in Michigan will therefore include two matching sites in rural areas. The data collected in these sites during the demonstration should allow Congress and the FTA to determine whether the current exception for rural areas, § 604.9(b)(3) of the regulation, is adequate, or whether an additional exception is needed to accommodate needs for charter service in such areas.

With the selection of these participants, the demonstration will be conducted in eight different sites, in matched pairs varying in population size from rural to large urban areas.

Demonstrations will be conducted for a 12-month period, to be followed by a 6-month period of data collection. This will provide the FTA with sufficient time to evaluate the effect of the demonstration program on the availability of local charter service, given seasonal variations. It will also provide the FTA with sufficient time to analyze the data gathered during the demonstration and prepare for Congress the report required by section 3040(c) of ISTEA.

V. Analysis of the Amendment

Section 604.9 is amended by adding subparagraph 604.9(b)(8), which allows a State DOT or MPO to receive and rule on applications by FTA recipients to provide charter service during the demonstration program. Applications will be based upon the criteria outlined in subsection (A) below, and will be forwarded to the State DOT or MPO by an advisory panel. The local advisory panel will be either created by the grantee, the State DOT or the MPO for the purposes of the demonstration, or will be part of the grantee's existing private sector consultation process. If there is unanimity by the advisory panel, the State DOT or MPO will accept the panel's recommendation. If there is not unanimity, the State DOT or MPO will take into consideration the various positions expressed and will make a decision based on the criteria listed in Subsection (A) below.

A. Criteria for Exceptions

The FTA has determined that the State DOT or MPO will be allowed to grant or deny exceptions to the charter regulation which would allow FTA recipients to provide direct charter service during the demonstration program, on the basis of the following criteria:

1. Cost Evaluation

A State DOT or an MPO may grant an exception if an FTA recipient offers service at a significantly lower cost than can private charter operators. Cost differences may be considered significant when there is approximately a twenty percent difference between the average charge for service by private operators and the FTA recipient's fully allocated cost of providing the service, or if the local advisory panel determines that the difference is significant.

2. Equipment Uniqueness

A State DOT or an MPO may grant an exception if an FTA recipient possesses equipment not available from private operators and which, if obtained from a public source, would result in a substantial surcharge for charter customers. The equipment must be essential to the purpose of the charter. Examples may include lift-equipped vehicles for persons with disabilities, air-conditioned buses during the summer months, and special vehicles such as trolley buses for special events that would be enhanced by such equipment.

3. Service Nature

A State DOT or an MPO may grant an exception if the nature of the service is such that only an FTA recipient can practically provide it. For example, unscheduled or demand responsive service may not be available from a private provider without advance notice and a considerable cost increase to the customer. Public mass transit schedules also may make it impractical to lease public transit equipment to a private operator for certain types of service and at certain times of day.

4. Specific Local Factors

A State DOT or an MPO may grant a waiver to accommodate a specific local need that cannot be met by the private sector, and which is important to the economic or social health and vitality of the local area. Given the great diversity of conditions from one locality to another with respect to the availability of charter service, the participants in the demonstration program should be given wide latitude in formulating exceptions which respond to these conditions. One such example of specific local needs could be the use by a municipality of FTA-funded buses to transport potential investors to the site of a future industrial complex.

B. Protection or Private Charter Operators

Under subparagraph 604.9(b)(8)(iii), exceptions may not be granted if the MPO or State DOT determines that exceptions would jeopardize the economic viability of individual private charter operators or would seriously detract from private charter business. Moreover, service provided by recipients under these exceptions should meet its fully allocated cost.

C. Length of the Demonstration

Subparagraph 604.9(b)(8)(iv) provides that demonstrations will be conducted for a 12-month period, to be followed immediately by a 6-month period of data collection. This will provide the FTA with sufficient time to evaluate the effect of the demonstration program on the availability of local charter service, given seasonal variations. It will also provide the FTA with sufficient time to analyze the data gathered during the demonstration and prepare for Congress the report required by section 3040(c) of ISTEA.

VI. Regulatory Impacts and Assurances

A. Executive Order 12291

This action has been reviewed under Executive Order 12291. The FTA believes that the rule will not result in an annual effect on the economy of $100 million or more, and therefore is not a major rule under Executive Order 12291. Because this rule would only implement a limited demonstration, the FTA finds that the economic impact of this proposed regulation is so minimal that a full regulatory evaluation is not necessary. The costs of the demonstration would be included in the fully allocated costs to the public operators of providing charter services during the demonstration. Further, applications to provide service will not be granted if they would jeopardize the economic vitality of individual private charter operators or would seriously detract from private charger business. Moreover, in the NPRM, the FTA solicited, but received no comments on, the potential costs or benefits of the demonstration program. An appropriate regulatory evaluation would accompany any rules proposed as a result of this demonstration program.

B. Departmental Significance

This regulation is considered to be a significant rule as defined by the Department's Regulatory Policies and Procedures on Improving Governmental Regulations. This regulation allows FTA recipients to provide a limited number of direct charter trips in up to eight sites nationwide for the purpose of implementing the demonstration program mandated by Congress in ISTEA to improve the charter service regulations.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, the FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

The FTA anticipates a small additional collection of information required by the regulations proposed in this document that is subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. chapter 35. This increase has been calculated in the collection of information for 49 CFR part 604 (Control #2132–0543) that has been submitted to the Office of Management and Budget.

E. Federalism

This regulation has been reviewed under Executive Order 12612 on Federalism and the FTA has determined that this action does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty. Moreover, this demonstration program has been mandated by statute (section 3040 of ISTEA).

List of Subjects in 49 CFR Part 604

Bus, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, title 49, Code of Federal Regulations, part 604, Charter Service, is amended as follows:

PART 604—[AMENDED]

1. The authority citation for part 604 continues to read as follows:

Authority: Federal Transit Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by adding paragraph (b)(8) to read as follows:

§ 604.9 Charter service.

* * * * *

(b) * * *

(8) During the demonstration period described in paragraph (b)(8)(iv) of this section, recipients in the FTA-selected sites may submit applications to provide charter service to an advisory panel equally representative of public transit providers or local business organizations and local private operators, and which has either been created for such purpose by the grantee, the State Department of Transportation (State DOT), or metropolitan planning organization (MPO), or which is part of the recipient's existing private sector consultation process.

(i) The advisory panel will forward these applications to the State DOT or

MPO, which will grant those recommended by unanimous vote of the advisory panel.

(ii) If the advisory panel does not unanimously endorse an application, the State DOT or MPO will make a decision to grant or deny the application based on the following criteria:

(A) *Cost evaluation.* A recipient may provide charter service when it can do so at a significantly lower cost than can private charter operators. Cost differences may be considered significant when there is approximately a twenty percent difference between the average charge for service by private operators and the recipient's fully allocated cost of providing the service, or when the advisory panel determines them to be significant.

(B) *Equipment uniqueness.* A recipient may provide charter service using equipment that is not available from a private source, when such equipment is essential to the purpose of the charter trip.

(C) *Service nature.* A recipient may provide unscheduled or demand responsive service that could not be provided by a private operator without advance notice or at a substantial surcharge to the customer.

(D) *Specific local factors.* A recipient may provide service which responds to a clear need that cannot be met by the local private sector, and which is important to the economic or social health and vitality of the local area.

(iii) The State DOT or MPO may not grant applications to provide service that would jeopardize the economic vitality of individual private charter operators or would seriously detract from private charter business.

(iv) The service described in this subsection may be provided only during the demonstration program to be conducted from August 9, 1993 to August 9, 1994 in the following sites:

(A) Monterey, California;

(B) Oklahoma City, Oklahoma;

(C) St. Louis, Missouri;

(D) Yolo County, California;

(E) Four sites within the State of Michigan to be selected by the Michigan Department of Transportation and approved by the Federal Transit Administration prior to the start of the demonstration program.

Issued on July 6, 1993.

Robert H. McManus,

Acting Administrator.

[FR Doc. 93–16297 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 921105–3165; I.D. 063093A]

King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Removal of interim final rule.

SUMMARY: NMFS is issuing a technical amendment to regulations at 50 CFR part 671, which are applicable to the king and Tanner crab fisheries in the Bering Sea and Aleutian Islands management area (BSAI). The technical amendment removes an interim final rule that had been published to supersede State of Alaska regulations establishing certain crab pot limits in the exclusive economic zone in the management area. This action is necessary because the State of Alaska rescinded the regulations that had implemented the pot limits in question, obviating the need for the interim final rule. It is intended to promote the goals and objectives of the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI (FMP).

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NFMS, 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

Fishing for king and Tanner crab by U.S. vessels in the BSAI is governed by the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and the Secretary of Commerce, delegates management of the crab resources in the BSAI to the State of Alaska.

During its March 3–5, 1992, meeting, the State of Alaska's Board of Fisheries (Board) adopted certain uniform crab pot limits to manage the king and Tanner crab fisheries. Specifically, the Board established the following pot limits, which became effective as State regulations at 5 Alaska Administrative Code (AAC) on June 19, 1992: 250 king crab pots in Bristol Bay (5 AAC 34.825); 100 king crab pots in the Bering Sea (5 AAC 34.925); and 250 Tanner crab pots in the Bering Sea (5 AAC 35.525). On December 3, 1992, NMFS published an interim final rule (57 FR 57112) that superseded these State of Alaska regulations in the management area. Reasons for this action by NMFS are contained in the preamble to the interim final rule.

On December 12, 1992, the State of Alaska promulgated an emergency order rescinding the aforementioned pot limits, obviating the need for the interim final rule. Therefore, NMFS removes the interim final rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this technical amendment is necessary for the conservation and management of the king and Tanner crab fisheries in the BSAI, and that it is consistent with the Magnuson Act and other applicable laws.

This action removes an interim final rule, which is no longer necessary, because the State of Alaska has rescinded the pot limit regulations that the interim final rule superseded. As such, provision for advance public comment is not necessary under 5 U.S.C. 553(b)(B), and good cause exists under 5 U.S.C. 553(d) not to delay the effective date of the technical amendment for 30 days. Furthermore, the Assistant Administrator has determined that it is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216–6.

This rule is being issued without prior comment and is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis. Therefore, none has been prepared.

This rule removes an inoperati[illegible] rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. No changes in the regulatory impacts previously reviewed and analyzed will result from implementation of the technical amendment.

The Director of the Alaska Region, NMFS, has determined that this technical amendment will not adversely affect endangered or threatened species. Therefore, further consultation pursuant to section 7 of the Endangered Species Act is not required for the

implementation of this technical amendment.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: July 2, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 671—[REMOVED]

For the reasons set out in the preamble, 50 CFR part 671 is removed and reserved.

[FR Doc. 93–16214 Filed 7–2–93; 4:59 pm]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 58, No. 130
Friday, July 9, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

RIN 3150–AE40

Disposal of High-Level Radioactive Wastes in Geologic Repositories; Investigation and Evaluation of Potentially Adverse Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to clarify its regulations with respect to the consideration of certain defined geologic and other conditions that, if present, are potentially adverse to the ability of a geologic repository to meet the prescribed performance objectives with respect to isolation of high-level radioactive waste. The proposed revisions attempt to make clear that the adequacy of a license applicant's investigations and evaluations will be judged in terms of their significance to compliance with post-closure performance objectives. In addition, provisions that deal with information presentation in the license application would be completely separated from the technical criteria and moved to the section that defines the required contents of the license application.

DATES: Comments must be submitted on or before October 7, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Mark S. Delligatti, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852, telephone (301) 504–2430.

SUPPLEMENTARY INFORMATION: As reflected in the Nuclear Waste Policy Act of 1982, as amended, the Nuclear Regulatory Commission exercises licensing and related regulatory authority with respect to geologic repositories that are to be constructed and operated by the U.S. Department of Energy (DOE) for the disposal of high-level radioactive waste. The Commission's regulations pertaining to such geologic repositories appear at 10 CFR part 60. The Commission has lately been engaged, with the assistance of its federally-funded research and development center (the Center for Nuclear Waste Regulatory Analyses, or "CNWRA"), in a review of the requirements of part 60, with particular attention to any matters that may be ambiguous or inconsistent with other expressions of its regulatory policy. The results of CNWRA's review were reported in CNWRA 90–003, "Identification and Evaluation of Regulatory and Institutional Uncertainties in 10 CFR part 60." The proposal that is presented by this notice deals with a matter that was brought to light by this review.

Background

To place the issue at hand in context, it would be useful to describe generally the principal features of part 60.

1. Before construction of the repository, DOE is required to obtain a "construction authorization" from NRC (10 CFR 60.3(b)).

2. DOE's license application, which is to be submitted when it seeks construction authorization, must contain the information described in a detailed section on "Content of application" (10 CFR 60.21).

3. Upon consideration of DOE's application, the Commission may authorize construction, considering whether required information has been submitted and whether the site and design comply with the Technical Criteria (10 CFR 60.31(a)).

4. The "Technical Criteria" in 10 CFR part 60, subpart E include, among other things, certain performance objectives (10 CFR 60.111–60.113) as well as siting criteria (10 CFR 60.122) and design criteria (10 CFR 60.130–134).

The issues to be addressed concern: (1) The meaning of two provisions of the siting criteria, particularly as they may relate to the performance objectives; (2) the way individual potentially adverse conditions must be considered; and (3) the appropriateness of moving, from the siting criteria to the content of application section, those requirements that deal with information to be provided by DOE, including the provisions of the siting criteria described above.

The siting criteria include a listing (in 10 CFR 60.122(b)) of certain "favorable conditions" and also (in 10 CFR 60.122(c)) of certain "potentially adverse conditions." The significance of these conditions is that they may affect the performance of the repository in isolating any emplaced waste—i.e., inhibiting the transport of radioactive materials from emplaced waste so amounts and concentrations entering the environment will be kept within prescribed limits.

CNWRA's review of the regulation did not identify any regulatory uncertainty with respect to the treatment of favorable conditions. The treatment of potentially adverse conditions was viewed, however, as being unclear. The regulation appropriately notes that if any of the potentially adverse conditions is present, it may compromise the ability of the geologic repository to meet the performance objectives relating to isolation of the waste.[1] It then goes on to specify ways in which it can be demonstrated that such a condition does not so compromise the performance of the repository. For the demonstration to meet the requirements of the rule, the potentially adverse condition must have been "adequately investigated" and its effect must have been "adequately evaluated."

Each of these terms gives rise to a regulatory uncertainty. Specifically, the issue concerns the standard by which the "adequacy" of the investigation and evaluation is to be measured: Is the proper standard that which is relevant

[1] See Staff Position 60–002, "The Meaning of the Phrase 'Performance Objectives Relating to Isolation of the Waste,'" where it was concluded, on the basis of the rulemaking record for 10 CFR part 60, that the subject phrase (in 10 CFR 60.122) refers to the performance objectives set out in 10 CFR 60.112, "Overall Performance Objective for the Geologic Repository after Permanent Closure," and 10 CFR 60.113, "Performance of Particular Barriers after Permanent Closure," but does not refer to the performance objectives set out in 10 CFR 60.111, "Performance of the Geologic Repository Operations Area through Permanent Closure." Availability of this staff position was noted at 55 FR 33565; August 16, 1990.

and material to judging whether the performance objectives relating to isolation of the waste have been met, or is it some other standard, (and if so, what standard)?[2] In addition, the CNWRA interpreted 10 CFR 60.122(a)(2) to require analyses of the effect of each potentially adverse condition on performance and therefore, 10 CFR 60.122(a)(2) constitutes a separate regulatory requirement independent of the performance objectives in 10 CFR 60.112 and 10 CFR 60.113. The CNWRA concluded that even if compliance was demonstrated with 10 CFR 60.112 and 10 CFR 60.113, additional demonstration of compliance would be necessary to address the potentially adverse conditions listed in 10 CFR 60.122(c).

Discussion

The Commission believes that its intention has been consistent and manifest throughout the rulemaking process. The Commission has endeavored to establish a set of regulations that would facilitate a judgment, in accordance with the Atomic Energy Act, of whether the proposed disposal of high-level waste in a geologic repository would create any unreasonable risk to the health and safety of the public. Although certain requirements may be stated in unqualified terms, we have noted that we do not expect that complete assurance that they will be met can be presented. A reasonable assurance, on the basis of the record before the Commission, that the objectives and criteria will be met, is the general standard that is required. In particular, proof of the future performance of engineered barrier systems and the geologic setting over time periods of many hundreds or many thousands of years is not to be had, in the ordinary sense of the word. What is required is reasonable (not complete) assurance that the outcome will be in conformance with those objectives and criteria. The Commission has stated that demonstration of compliance will rely on data from accelerated tests and predictive models that are supported by such measures as field and laboratory tests, monitoring data, and natural analog studies. 10 CFR 60.101(a)(2).

Reasonable assurance that the outcome will be in conformance with the stated objectives and criteria represents a judgment that the *overall* performance of the geologic repository, and the performance of particular subsystems, would achieve specified levels of radionuclide containment and isolation, coupled with an expectation that certain design and quality assurance features would be incorporated so as to enhance confidence that such performance would be achieved. Concern with potentially adverse conditions was spelled out clearly: it was to assure that they would be "* * * assessed *in order to assure that they will not compromise the ability of the geologic repository to meet the performance objectives* [relating to isolation of the waste]." (Emphasis added.) 48 FR 28194, 28201, June 21, 1983 (final rulemaking).

It was our inclusion in the technical criteria of provisions that relate not to the performance of the repository, but to methodology for demonstrating that performance that gave rise to the regulatory uncertainty identified by CNWRA. Such matters are ordinarily dealt with in procedural sections of the regulations, and in particular those sections that define the requirements for the content of license applications, and should have been treated in like manner in 10 CFR Part 60. Had this been done, there would be no uncertainty. The rule would then have been a straightforward reflection of the Commission's intent. DOE would need to demonstrate that the performance objectives would be met, taking into account the presence of potentially adverse conditions. DOE would not have to demonstrate, as well, that there had been an "adequate investigation" or "adequate evaluation" above and beyond what might be needed to show, with reasonable assurance, that the performance objectives related to isolation of the waste would be met. We do, in fact, anticipate that quite thorough investigations will be undertaken and that very sophisticated evaluations will be needed, but the measure to be applied is only that which is relevant and material to a finding that the performance objectives have been satisfied.

It is also appropriate to clarify our expectation that the evaluation of potentially adverse conditions should take into account the interaction of such conditions. Indeed, it would be inappropriate to attempt to evaluate a condition such as evidence of dissolutioning (60.122(c)(10)) without considering, as well, the potential for changes in hydrologic conditions resulting from reasonably foreseeable climatic changes (60.122(c)(6)). The very reason for requiring consideration of potentially adverse conditions is to ensure that the performance objectives will be met and this cannot be accomplished if combined effects are not taken into account. While the regulation does refer to evaluating the significance of each of the potentially adverse conditions, this was intended to mean that the evaluation must demonstrate how the potentially adverse condition is taken into account in meeting the performance objectives (i.e., the application would need to describe the presence of the condition and consider that condition in the evaluation of performance). The rule does not and was never intended to exclude the consideration of other conditions, whether favorable or potentially adverse, that would have a bearing upon performance and the sensitivity of such performance to the potentially adverse condition in question. That is exactly what is called for by 10 CFR 60.21(c)(1)(ii)(B), which requires the applicant's Safety Analysis Report to include an assessment that, among other things, analyzes "* * * the extent to which it contributes or detracts from isolation." Although we acknowledge that the wording of the existing rule could be read to call for a more compartmentalized approach to the analysis of potentially adverse conditions, we view that construction as inappropriate.

The first change that is proposed, therefore, is to remove from the technical criteria that portion of the text

[2] The full text of the pertinent regulation, 10 CFR 60.122(a), reads as follows:

(a)(1) A geologic setting shall exhibit an appropriate combination of the conditions specified in paragraph (b) of this section so that, together with the engineered barriers [sic] [barrier] system, the favorable conditions present are sufficient to provide reasonable assurance that the performance objectives relating to isolation of the waste will be met.

(2) If any of the potentially adverse conditions specified in paragraph (c) of this section is present, it may compromise the ability of the geologic repository to meet the performance objectives relating to isolation of the waste. In order to show that a potentially adverse condition does not so compromise the performance of the geologic repository the following must be demonstrated:

(i) The potentially adverse human activity or natural condition has been adequately investigated, including the extent to which the condition may be present and still be undetected taking into account the degree of resolution achieved by the investigations; and

(ii) The effect of the potentially adverse human activity or natural condition has been adequately evaluated using analyses which are sensitive to the potentially human activity or natural condition and assumptions which are not likely to underestimate its effect; and

(iii)(A) The potentially adverse human activity or natural condition is shown by analysis pursuant to paragraph (a)(2)(ii) of this section not to affect significantly the ability of the geologic repository to meet the performance objectives relating to isolation of the waste, or

(B) The effect of the potentially adverse human activity or natural condition is compensated by the presence of a combination of the favorable characteristics so that the performance objectives relating to isolation of the waste are met, or

(C) The potentially adverse human activity or natural condition can be remedied.

that deals with methodology, as contrasted with the physical characteristics of the site. Section 60.122 will still include a list of favorable conditions and potentially adverse conditions. Section 60.122(a)(1) will continue to require that the geologic setting exhibit an appropriate combination of favorable conditions to provide reasonable assurance that the performance objectives relating to isolation of the waste (clarified by incorporating specific reference to 10 CFR 60.112 and 10 CFR 60.113) will be met. However, the treatment of potentially adverse conditions would be modified. Instead of setting out a methodology for demonstrating that a potentially adverse condition does not compromise the geologic repository's ability to meet the performance objectives relating to isolation of the waste, this portion of the rule would simply declare that the presence of potentially adverse conditions must not so compromise repository performance. Under § 60.21(c)(1)(ii)(B), the applicant would still be required to carry out the investigations needed to determine whether or not a potentially adverse condition may be present.

Although the means for evaluating the significance of potentially adverse conditions would no longer appear in the technical criteria, they would still be an integral part of the regulation as a whole. This can be demonstrated readily, as follows:

Currently, 10 CFR 60.122(a)(2) requires that the potentially adverse human activity or natural condition be *adequately investigated*, including the extent to which the condition may be present and still be undetected taking into account the degree of resolution achieved by the investigations. The proposed rule would accomplish exactly the same thing by amending 10 CFR 60.21(c)(1)(ii)(B), which deals with a site assessment that must be included in the Safety Analysis Report, to specify that "for each potentially adverse condition, the analysis shall demonstrate either its absence or the extent to which its presence may have been underestimated or undetected, taking into account the degree of resolution achieved by the investigations." The phrase "adequately investigated," which was found to be a source of regulatory uncertainty, is to be removed from the regulation. Note that the description of the investigation has been refined to reflect possible underestimation of, as well as nondetection of, potentially adverse conditions. Currently, 10 CFR 60.122(a)(2) requires that the effect of the potentially adverse human activity or natural condition on the site be *adequately evaluated* using analyses which are sensitive to the potentially adverse human activity or natural condition and assumptions which are not likely to underestimate its effect. Again, the proposed rule serves the same purpose, by amending the "Content of Application," § 60.21(c)(1)(ii)(C), to incorporate the same level of detail. The amended language requires evaluations of performance that "shall consider all of the potentially adverse conditions and favorable conditions enumerated in § 60.122 that have not been determined to be absent," and "in considering any such potentially adverse condition, assumptions should be used that are not likely to underestimate its effects." The phrase "adequately evaluated" is eliminated, but the standard for adequacy of evaluation is made explicit by stating that: "The evaluations must demonstrate that, considering the potentially adverse conditions in combination with other characteristics of the site and design, the performance objectives relating to the isolation of the waste as set out in §§ 60.112 and 60.113 of this part will be met."

The proposed rule would differ in two other respects from the existing rule. The new rule clearly indicates that the required evaluations are to be undertaken in combination. This means that the effect of a particular potentially adverse condition would not be studied in isolation but in the context of other characteristics of the site and design as well. This is accomplished by requiring the evaluation of the potentially adverse conditions "* * * in combination with other characteristics of the site and design." The second difference relates to the elimination of three clauses currently contained in § 60.122(a)(2)(iii) that set out alternative ways how the applicant can deal with the presence of potentially adverse conditions—by showing that they are not significant, that they are compensated for by the presence of favorable conditions, or that they can be remedied. What is required is clear: reasonable assurance that the performance objectives relating to isolation of the waste will be satisfied. For the reasons indicated above, the three clauses currently appearing as § 60.122(a)(2)(i)(ii) and (iii) that indicate how the requirement might be satisfied are unnecessary. Thus, even though the alternative ways of dealing with the presence of potentially adverse conditions are not listed, the applicant may continue to employ any of them in demonstrating that the pertinent performance objectives have been satisfied.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on a DOS-formatted (IBM compatible) 5.25 or 3.5 inch computer diskette. Text files should be provided WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label.

Environmental Impact

The NRC has determined that this proposed regulation is the type of action described in 10 CFR 51.22(d), pertaining to the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications, under part 60. Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0127.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies may be obtained from Mark S. Delligatti, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852, telephone (301) 504–2430.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The only entity subject to regulation under this rule is DOE.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because affected facilities are not licensed under 10 CFR part 50, and therefore, a backfit analysis is not required. This proposed rule affects only those facilities that will

be used for the disposal of high-level waste.

List of Subjects in 10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting requirements, and Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to 10 CFR part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141).

2. Section 60.21 is amended by revising paragraphs (c)(1)(ii)(A), (B), and (C) to read as follows:

§ 60.21 Content of application.

* * * * *

(c) * * *

(1) * * *

(ii) The assessment shall contain:

(A) An analysis of the geology, geophysics, hydrogeology, geochemistry, climatology, and meteorology of the site.

(B) Analyses to determine the degree to which each favorable condition and potentially adverse condition enumerated in § 60.122 has been characterized and has been found to be present. For each potentially adverse condition, the analysis shall demonstrate either its absence or the extent to which its presence may have been underestimated or undetected, taking into account the degree of resolution achieved by the investigations. For these purposes, investigations shall extend from the surface to a depth sufficient to determine critical pathways for radionuclide migration from the underground facility to the accessible environment. Potentially adverse conditions shall be investigated outside of the controlled area if they may affect isolation within the controlled area.

(C) An evaluation of the performance of the proposed geologic repository for the period after permanent closure, assuming anticipated processes and events, giving the rates and quantities of releases to the accessible environment as a function of time; and a similar evaluation that also assumes the occurrence of unanticipated processes and events. The evaluations shall consider all of the potentially adverse conditions and favorable conditions enumerated in § 60.122 except those that have been determined to be absent. In considering any such potentially adverse condition, assumptions should be used that are not likely to underestimate its effects. The evaluations must demonstrate that, considering the potentially adverse conditions in combination with other characteristics of the site and design, the performance objectives relating to the isolation of the waste, as set out in §§ 60.112 and 60.113, will be met.

* * * * *

3. Section 60.122 is amended by revising paragraph (a) to read as follows:

§ 60.122 Siting criteria.

(a)(1) A geologic setting shall exhibit an appropriate combination of the conditions specified in paragraph (b) of this section so that, together with the engineered barrier system, the favorable conditions present are sufficient to provide reasonable assurance that the performance objectives relating to isolation of the waste, as set out in §§ 60.112 and 60.113, will be met.

(2) The presence of potentially adverse conditions must not compromise the ability of the geologic repository to meet the performance objectives relating to isolation of the waste.

* * * * *

Dated in Rockville, Maryland, this 2d day of July, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–16240 Filed 7–8–93; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 37–7–5882; FRL–4677–7]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision, South Coast Air Quality Management District, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on March 6, 1992 and by the Santa Barbara County Air Pollution Control District (SBCAPCD) on November 5, 1991. The California Air Resources Board (CARB) submitted these revisions to EPA on September 14, 1992 and June 19, 1992 respectively. The revisions concern the following rules: revised SCAQMD Rule 1115, Motor Vehicle Assembly Line Coating Operations; and new SBCAPCD Rule 339, Motor Vehicle and Mobile Equipment Coating Operations. These rules control the emissions of volatile organic compounds (VOCs) from motor vehicle assembly line and motor vehicle refinishing coating operations. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated both the revisions to SCAQMD Rule 1115 and SBCAPCD 339 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before August 9, 1993.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and the new rule, and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions and new rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation, 2020 L Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

Santa Barbara Air Pollution Control District, 26 Castilian Drive, B–23 Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Los Angeles-South Coast and Santa Barbara Air Basins. 43 FR 8964; 40 CFR 81.305. Because the Los Angeles-South Coast and Santa Barbara Air Basins were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The Los Angeles-South Coast and the Santa Barbara Air Basins did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD and the SBCAPCD portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Publib Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme and the Santa Barbara Air Basin is classified as moderate;[2] therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many new and revised RACT rules to EPA for incorporation into its SIP on September 14, 1992 and June 19, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for the following rules: revised SCAQMD Rule 1115, Motor Vehicle Assembly Line Coating Operations; and new SBCAPCD Rule 339, Motor Vehicle Assembly and Mobile Equipment Coating Operations. These submitted rules were found to be complete on November 20, 1992 and August 27, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[3] and are being proposed for limited approval and limited disapproval.

Rules 1115 and 339 control VOC emissions from motor vehicle assembly line coating operations and from motor vehicle refinishing operations. VOCs contribute to the production of ground level ozone and smog. Rule 1115 was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Rule 339 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rule 1115 and SBCAPCD Rule 339.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SCAQMD and SBCAPCD were redesignated as nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act. For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1115 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks" EPA–450/2–77–008. There is no applicable CTG for automobile refinishing operations, covered by SBCAPCD Rule 339. Therefore Rule 339 and Rule 1115 were also evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**; May 25, 1988 (EPA's "Blue Book"), and against other EPA policy including the EPA Region 9 CARB document entitled, Guidance Document for Correcting VOC Rule Deficiencies (April, 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD revised Rule 1115 is significantly improved from its current SIP version, which dates back to August 21, 1989, and includes the following significant changes:

- An expanded definitions section with an added definition of exempt compounds,

- New alternative emissions control plan requirements by reference to SCAQMD Rule 108,
- Added surface preparation and cleanup standards by reference to SCAQMD Rule 1171,
- An expanded test methods section.

SBCAPCD Rule 339 is a new rule which was adopted to control VOC emissions from motor vehicle refinishing operations. It requires the use of low VOC coatings and the use of an application method that achieves at least 65 percent transfer efficiency in mobile equipment coating operations.

EPA has evaluated SCAQMD's submitted Rule 1115, and SBCAPCD's submitted Rule 339 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions in Rule 1115 and new Rule 339 address and/or correct many deficiencies previously identified by EPA. These corrected deficiencies in Rule 1115 have resulted in a clearer, more enforceable rule. Rule 339 is new rule for the SBCAPCD and serves to strengthen the SIP by controlling a previously unregulated source category.

Although SCAQMD Rule 1115 and SBCAPCD Rule 339 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. These deficiencies are related to rule applicability, recordkeeping requirements, VOC limits (Rule 1115), executive officer's discretion in determining test methods (Rule 339), and insufficient test method references for determining transfer efficiencies. A detailed discussion of rule deficiencies can be found in the Technical Support Document for SCAQMD's Rule 1115, and SBCAPCD's Rule 339 (both dated 4/12/93) which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD's submitted Rule 1115 and SBCAPCD's submitted Rule 339 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Sanctions related to highway funding and to offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and the SBCAPCD and are currently in effect in the South Coast and in Santa Barbara. EPA's limited disapproval action in this NPR does not prevent EPA, SCAQMD, or SBCAPCD from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: June 30, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–16314 Filed 7–8–93; 8:45 am]

BILLING CODE 6560–50–P

VOL 58 ISS 130 JL 9 1993 UMI

40 CFR Part 81

[MT16-1-5699; FRL-4677-1]

Designation of Area for Air Quality Planning Purposes; Montana; Designation of Whitefish PM10 Nonattainment Area

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Clean Air Act as amended in 1990, EPA is authorized to promulgate new designations of areas (or portions thereof) as nonattainment for the PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS). In this notice, EPA is proposing to revise the PM10 designation for a portion of Flathead County, Montana. Previously, consistent with the Act, EPA notified the Governor of Montana that the area around Whitefish, Montana should be redesignated from unclassifiable to nonattainment for PM10. The redesignation is based upon violations of the PM10 NAAQS which were monitored during February and March of 1992.

DATES: All written comments should be submitted by August 9, 1993.

ADDRESSES: All comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART-AP), EPA Region VIII, 999 18th Street, suite 500, Denver, CO 80202-2466.

Information supporting today's action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 6th Floor, South Tower, Denver, Colorado 80202-2466.

The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, Air Programs Branch, EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 293-1754.

SUPPLEMENTARY INFORMATION:

I. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for PM10 pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), on July 16, 1992, the Administrator of EPA Region VIII notified the Governor of Montana that EPA believed that the area around Whitefish should be redesignated as nonattainment for PM10. Under section 107(d)(3)(B), the Governor of Montana was required to submit to EPA the designation he considered appropriate for the area around Whitefish within 120 days after EPA's notification. The EPA received the State's response for Whitefish, Montana on November 13, 1992. Now, the EPA must promulgate the redesignation that it deems necessary and appropriate, consistent with section 107(d)(3)(C) of the Act.

Based upon EPA's review of the State submittal for Whitefish, EPA is proposing redesignation which is consistent with the request submitted by the Governor of Montana. EPA is requesting comments on today's proposal and will consider any relevant comment in taking final action on today's proposal.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. The EPA has proposed that Whitefish, Montana, addressed in today's notice, be redesignated nonattainment. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for PM10[1] [see section 107(d)(1)(A)(i)]. Thus, in determining the appropriate boundaries for the nonattainment areas proposed today, EPA has considered not only the area where the violations of the PM10 NAAQS are occurring, but nearby areas which significantly contribute to such violations.

II. Background for PM10

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM10, that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth the regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy, elaborating PM10 control strategies necessary to assure attainment and maintenance of the PM10 NAAQS [see generally 52 FR 24672]. The EPA adopted a PM10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM10 NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the PM10 NAAQS and whose existing SIPs most likely needed less adjustment were placed in Group II; and (3) areas with a strong likelihood of attaining the PM10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679-24682). At that time, Whitefish was categorized as a Group III area.

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the PM10 NAAQS prior to January 1, 1989, were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for PM10. All other areas of the Country, such as the Whitefish area, were similarly designated unclassifiable for PM10 (see section 107(d)(4)(B)(iii) of the Act; 40 CFR 81.327 (1992) as amended by 57 FR 56762, 56772 (Nov. 30, 1992) (PM10 designations for Montana)). After EPA adopted the PM10 NAAQS, EPA identified and listed the Group I and Group II areas in a **Federal Register** notice published on August 7, 1987 (52 FR 29383). In that notice, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a **Federal Register** notice dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. EPA announced all areas which were designated nonattainment by operation of law for PM10 upon enactment of the 1990 Amendments in a **Federal Register** notice dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up notice correcting the boundaries and designations of some of the areas in light of comments received addressing that March 1991 notice (see 56 FR 37654 (August 8, 1991)). Formal codification in 40 CFR part 81 of those areas designated nonattainment for PM10 by operation of law upon enactment was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694). The November 6, 1991 **Federal Register** notice was

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

subsequently amended on November 30, 1992 (57 FR 56762).

III. Today's Action for Whitefish, MT

As noted above, pursuant to section 107(d)(3) of the Act, EPA is authorized to initiate the redesignation of areas as nonattainment for PM10. Based on eight exceedances of the 24-hr PM10 NAAQS recorded between February 4 and March 13, 1992, ranging from 163 to 333 μg/m3, EPA notified the Governor of Montana on July 16, 1992, that the area around Whitefish, Flathead County, Montana should be redesignated from unclassifiable to nonattainment for PM10. (See 40 CFR 50.6.)

Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist of that area violating the PM10 NAAQS or contributing significantly to violations in a nearby area. Generally, the PM10 nonattainment area boundaries are presumed to be, as appropriate, the county, township, or municipal subdivision in which the ambient particulate monitor recording the PM10 violations is located. EPA has presumed that this would include both the area violating the PM10 NAAQS and any area significantly contributing to the violations. However, a State may demonstrate that a boundary other than the county perimeter or municipal boundary may be more appropriate.

In response to EPA's July 16, 1992 letter, on November 13, 1992, the Governor of Montana requested that the City of Whitefish and surrounding vicinity, in a portion of Flathead County, Montana, be redesignated as nonattainment for PM10. The more detailed boundaries are provided in the table below. Based on the information provided by the Governor, including monitoring data, EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The table below indicates how EPA is proposing to revise the PM10 designation for a portion of Flathead County, Montana in 40 CFR 81.327 from unclassifiable to nonattainment.

Designated area	Designation date	Designation type	Classification date	Classification type
Flathead County (part)—The City of Whitefish and surrounding vicinity bounded by lines from Universal Transmercator (UTM) coordinates 695000 mE, 5370000 mN, east to 699000 mE, 5370000 mN, south to 699000 mE, 5361000 mN, west to 695000 mN, 5361000 mN, and north to 695000 mE, 5370000 mN.	Proposing	Nonattainment ..	Proposing	Moderate.

The technical information supporting the redesignation request and the boundary selection are available for public review at the address indicated above.

IV. Significance of Today's Action for Whitefish, MT

If the Whitefish area of Montana is redesignated nonattainment when EPA takes final action on today's proposal, such area will be classified as moderate PM10 nonattainment area by operation of law at the time of the designation (see section 188(a)). Montana must submit an implementation plan to EPA for such area within 18 months after final action on today's proposal and promulgation of the nonattainment redesignation, meeting the requirements of Part D, Title I of the Act (see section 189(a)(2)(B) of the Act).

The Clean Air Act provides that the plan for the area must contain, among other things, the following requirements:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM10 NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable;
2. Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation;
3. A permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM10; and
4. Quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(l), toward timely attainment.

See, *e.g.*, sections 188(c), 189(a), 189(c) and 172(c) of the Act. EPA has issued detailed guidance on the statutory requirements applicable to moderate PM10 nonattainment areas (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

If EPA ultimately redesignates the Whitefish area as nonattainment in taking final action on this notice, EPA will also establish a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act (see 57 FR 13498 at 13510–12 and 13543–44). Section 172(b) of the Act provides that such date shall not be later than 3 years from the date of the nonattainment redesignation. EPA would likely establish a schedule requiring that contingency measures be submitted within 18 months from the redesignation, to coincide with the due date for the rest of the moderate PM10 nonattainment area SIP.

V. Request for Public Comments

The EPA is, by this notice, proposing that the PM10 designation for a portion of the Flathead County, Montana be revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified in **ADDRESSES** by August 9, 1993.

VI. Other Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the

redesignation request will not affect a substantial number of small entities.

B. Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: May 26, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–16309 Filed 7–8–93; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA") by giving authority to process and to grant or deny requests for records of the Corporation's Office of Inspector General ("OIG") to an official within the OIG. In addition, this proposed rule also makes other technical and procedural changes intended to reflect the Corporation's internal administrative structure and procedures and to better conform the regulation to the FOIA.

DATES: Comments must be received by August 9, 1993.

ADDRESSES: All comments should be addressed to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, 202–336–8810.

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978 was amended in 1988 to provide for the statutory establishment of Offices of Inspector General at 33 "designated Federal entities," one of which is LSC. 5 U.S.C. App. 3 Sec. 8E. The primary function of LSC's OIG is to promote economy and efficiency and to prevent and detect fraud, waste and abuse in LSC's programs and operations. Because of the independent and investigative nature of the OIG, OIG records are kept separate from other LSC records, and many are of a confidential nature. Although not required, it is appropriate to amend Part 1602 to give the OIG the authority to process and to grant or deny FOIA requests for OIG records.

Accordingly, this proposed rule adds a definition for "Office of Inspector General records" as records that are in the exclusive possession and control of the OIG. This proposed rule also gives the authority to process and to grant or deny a request for OIG records to the Counsel to the Inspector General, and maintains the authority to process and to grant or deny a request for all other Corporation records with the General Counsel. It further makes clear that the General Counsel may delegate this authority to a designee and provides that the Counsel to the Inspector General also may delegate to a designee. Also, the proposed rule gives the Inspector General the authority to decide appeals of requests for OIG records, while the President of the Corporation retains the authority to decide all other appeals.

Although requests for OIG records will be processed by the OIG, the proposed rule provides that all requests be directed initially to the Office of the General Counsel ("OGC"). The General Counsel or his designee is required by the proposed rule to promptly refer to the OIG any request or portion thereof determined to be for OIG records and to send the requester notice of such referral.

In addition, this proposed rule adds the requirement that the OGC consult with the OIG before granting any requests for records or portions of records which originated with the OIG or contain information which originated with the OIG, but which are maintained by other components of the Corporation. Examples of such records would be written reports by OIG personnel; minutes, notes or transcripts of oral reports by the Inspector General to the Board of Directors of the Corporation during closed portions of Board meetings; and travel vouchers prepared by OIG personnel. Such reports, minutes, notes and vouchers all have the potential to reveal the identity of confidential sources or targets and the investigative or audit strategy of the OIG or to otherwise interfere with its ongoing activities. Similarly, this proposed rule requires the OIG to consult with the OGC prior to granting any request.

This proposed rule also amends § 1602.9(6)(iv) by adding language found in the corresponding FOIA exemption that appeared to be unnecessary prior to the establishment of the OIG. The FOIA exemption at 5 U.S.C. 552(b)(7)(D) protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's current rule has no language protecting such documents. Because the OIG conducts investigations into criminal activities, addition of the language would appear to be appropriate.

Technical and Procedural Revisions

This proposed rule also amends Part 1602 by making numerous technical and procedural changes that reflect the Corporation's internal administrative structure and procedures. For example, the proposed rule states that all LSC records are maintained at the Corporation's headquarters in Washington, DC, and that the OGC is responsible for handling FOIA requests, except requests for OIG records. Also, the proposed rule deletes references to a central records room to better reflect LSC's practice of maintaining its records in the various divisions of the Corporation.

The fees section has been revised to better reflect categories of employees and to update labor costs. It has also been amended to add an assumption that requesters agree to pay all charges for services associated with their requests up to $25. For requests estimated to exceed $25, the Corporation will consult with the requester prior to processing the request. Also, requests estimated to exceed $25 will not be deemed to be received by the Corporation for purposes of the initial ten-day response period until the requester agrees to pay all fees for services. This amendment allows requesters to reconsider their request before generating fees they may not have anticipated.

In addition, the proposed rule amends the language of Part 1602 that applies to matters specifically exempted from disclosure by statute. *See* § 1602.9(a)(2). The change is intended to better conform the rule to the corresponding FOIA exemption, 5 U.S.C. 552(b)(3).

List of Subjects in 45 CFR Part 1602

Freedom of information. For reasons set out above, it is proposed that Part 1602 of Title 45 of the Code of Federal Regulations be amended as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1–2. The authority citation for Part 1602 is revised to read as follows:

Authority: 5 U.S.C. 552 and 42 U.S.C. 2996d(g).

3. Section 1602.2 is revised to read as follows:

§ 1602.2 Definitions.

As used in this part—

Commercial use request[s] means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

Duplication means the process of copying a document to send to a FOIA requester. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, and an institution of professional or vocational education which operates a program or programs of scholarly research.

FOIA means the Freedom of Information Act, 5 U.S.C. 552. *Labor charges* means those costs which the Corporation incurs in searching for, reviewing, and duplicating records to respond to a FOIA request. A schedule of labor charges appears at § 1602.13(e)(1).

Non-commercial scientific institution means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Office of Inspector General records means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

Records means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, *inter alia*, books, magazines, or other materials acquired solely for library purposes.

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

Review means the process of examining documents located in response to a commercial use request to determine whether any portion of any such document may be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search will be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

4. Section 1602.4 is revised to read as follows:

§ 1602.4 Location of Corporation headquarters.

The Corporation's headquarters are located at 750 First Street, NE, Washington, DC 20002–4250. The telephone number for the Corporation's headquarters is (202) 336–8800.

5. Section 1602.5 is revised to read as follows:

§ 1602.5 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of section 1602.6(b) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters, located at the address stated in section 1602.4.

6. Section 1602.6 is added to read as follows:

§ 1602.6 Records available.

(a) The Corporation will maintain its records as described in paragraph (b) of this section at its headquarters, located at the address stated in § 1602.4, during the regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be available:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.5.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public.

(d) Certain records made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion.

7. Section 1602.7 is revised to read as follows:

§ 1602.7 Procedures for public inspection of records.

Any member of the public may inspect or copy records regularly maintained by the Corporation at the Corporation during regular business hours. Because it will sometimes be impossible to produce records or copies of them on short notice, a person who wishes to inspect or copy Corporation records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel at the address and telephone number stated in § 1602.4. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to inspect the records on a specific date. The Corporation will endeavor to advise the requester as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

8. Section 1602.8 is amended by revising paragraphs (a), (b) (3), (4) and (5), (c) introductory text and (d) to read as follows:

§ 1602.8 Availability of records on request.

(a) In addition to the records described in § 1602.6, the Corporation will make all other Corporation records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9.

(b) * * *

(3) The Corporation is not required to create a record or to perform research to satisfy a request for information.

(4) Requests for records under this section should be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request" and should be addressed to the LSC Office of the General Counsel at the address stated in section 1602.4. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until it is received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or his designee shall notify the requester of the date on which the time period began.

(5) All requests should identify the records sought with reasonable specificity and should indicate the number of copies desired. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed $25 or any limit indicated by the requester. If a waiver or reduction of fees is requested, the grounds for such request as set out in § 1602.13(f) should be included in the letter.

(c) The General Counsel or his designee, upon request for any records made in accordance with this part, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the General Counsel or his designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or his designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or his designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

* * * * * *

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall nevertheless continue to process the request. On expiration of the time limit, the General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of the requester's right to treat the delay as a denial and to appeal to the President of the Corporation, or to the Inspector General of the Corporation, in accordance with § 1602.12. The General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, may ask the requester to forego appeal until a determination is made.

* * * * * *

9. Section 1602.9 is amended by revising paragraphs (a)(2) and (6)(iv) to read as follows:

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) * * *

(2) Matter which is specifically exempted from disclosure by statute other than section 552b of the FOIA, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

* * * * * *

(6) * * *

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal

investigation, information furnished by a confidential source;

* * * * *

10. Section 1602.10 is revised to read as follows:

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation. The General Counsel or his designee and the Counsel to the Inspector General or his designee, are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this regulation. The General Counsel or his designee shall consult with the Office of Inspector General prior to granting any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or his designee shall consult with the Office of the General Counsel prior to granting any request for records.

11. Section 1602.12 is revised to read as follows:

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the Corporation's headquarters, located at the address stated in § 1602.4. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the Inspector General, or their designees, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.6(b).

12. Section 1602.13 is revised to read as follows:

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) For commercial use requests, fees shall be limited to reasonable standard charges for document search, review and duplication.

(c) When records are not sought for commercial use and the request is made by a representative of the news media or by an educational institution or a non-commercial scientific institution whose purpose is scholarly or scientific research, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of Corporation records is as follows:

(1) Manual search for and review of records will be billed at the following labor charges:

(i) Salary levels 1–4: $14 per hour;

(ii) Salary levels 5–6: $25 per hour;

(iii) Salary level 7-unclassified: $34 per hour.

(iv) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual charges as incurred;

(3) Duplication by paper copy: $0.10 per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation," the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation";

(ii) The informative value of the information to be disclosed:

Whether the disclosure is "likely to contribute" to an understanding of Corporation operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation operations or activities.

(2) In order to determine whether disclosure of the information "is not primarily in the commercial interest of the requester," the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section if the cost of routine collection and processing of the fee payment is

UMI
VOL 58 ISS 130 JL 9 1993
UMI

likely to equal or exceed the amount of the fee charged. That cost is currently $6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester. For requests estimated to exceed the $25 amount, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) That requester has previously failed to pay a required fee (within 30 days of the date of billing), in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made;

(2) The Corporation determines that an estimated fee will exceed $250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 10-day response period until an advance payment of the entire fee is made.

(j) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: June 30, 1993.

Victor M. Fortuno,

General Counsel.

[FR Doc. 93–15991 Filed 7–8–93; 8:45 am]

BILLING CODE 7565-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 92–061]

RIN 2115–AE28

Federal Pilotage Requirement for Foreign Trade Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to require Federal pilots for foreign trade vessels navigating at certain offshore marine oil terminals located within the U.S. navigable waters of the States of California and Hawaii, or while making intra-port transits within certain designated waters of the States of New York and New Jersey, or while transiting certain designated waters of the State of Massachusetts. This action is necessary to ensure that vessels are navigated by competent, qualified individuals, skilled and knowledgeable of the local area. The Coast Guard believes this requirement will promote navigational safety and reduce the risk of an accident and the discharge of oil or other hazardous substances into these waters.

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LFA/3406) (CGD 92–061), U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket for this rulemaking, and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Bennett, Project Manager, Office of Marine Safety, Security and Environmental Protection (G–MVP–7/1210), (202) 267–6102.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to participate in this proposed rulemaking by submitting written data, views or arguments. Each person should include their name and address, identify this rulemaking (CGD–92–061), and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this rule are Mr. John R. Bennett, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purposes

Generally, vessels engaged in foreign trade, which includes foreign vessels and U.S. vessels sailing on registry, are piloted under State authority, and vessels engaged in domestic trade are piloted under Federal authority (46 U.S.C. chapter 85). Section 8503 of title 46, United States Code, further provides that the Secretary may require a Federal pilot on self-propelled vessels when a pilot is not required by State law and the vessel is engaged in foreign commerce and operating on the navigable waters of the United States. Additionally, the statute provides that Federal authority to require a Federally licensed pilot on foreign trade vessels is terminated when the State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Secretary of that fact.

In the absence of State law, the Coast Guard is proposing under the provisions of 46 U.S.C. 8503 to establish a Federal pilot requirement for foreign trade vessels mooring at eight offshore marine oil terminals located off the coast of California and two offshore marine oil terminal located off the coast of Hawaii, and for foreign trade vessels making intra-port transits in certain waters of New York and New Jersey, and for foreign trade vessels in transit, but not bound to or departing from a port, in certain waters of Massachusetts. The primary reason for this action is to enhance safety of vessels making transits in Massachusetts, intra-port transits in New York and New Jersey, and to enhance safety for vessels performing difficult mooring maneuvers. It should be noted that on February 21, 1991 a similar notice of proposed rulemaking (NPRM) was published in the **Federal Register** (56 FR 6598) entitled Federal Pilotage Requirement for Foreign Trade Vessels in Certain Designated Waters Within the States of Oregon and Washington. The State of Oregon enacted superseding legislation establishing compulsory pilotage for foreign trade vessels on waters identified in the NPRM and notified the Coast Guard of their action. As a result, the Coast Guard published a withdrawal notice in the **Federal Register** (56 FR 65206) on December 16, 1991 withdrawing the rule.

A. Pilotage at Offshore Marine Oil Terminals in California and Hawaii

There are several offshore marine oil terminals (sites) located off the coasts of California and Hawaii which are within the navigable waters of the United States. These sites either consist of a single-point mooring (SPM) buoy which permits a vessel to swing 360 degrees, or a multi-buoy sea berth at which a vessel is positioned by releasing two anchors forward and securing its stern to the mooring buoys. Once in position at either type of site, the vessel is loaded or discharged through a submarine pipeline connected to the vessel's manifold. Positioning a vessel at these sites is a relatively arduous and complex process, and may take up to four hours.

In 1991, the combined number of known vessels calling at the eight sites located off the coast of California was:

U.S. flag vessels in coastwise trade	184
U.S. flag vessels in foreign trade	2
Foreign flag vessels	36
Total	222

In 1991, the combined number of known vessels calling at the two sites located off the coast of Hawaii was:

U.S. flag vessels in coastwise trade	137
U.S. flag vessels in foreign trade	33
Foreign flag vessels	51
Total	221

The States of California and Hawaii do not require a State pilot for vessels engaged in foreign trade mooring at these sites. Pursuant to 46 U.S.C. 8502, the Coast Guard began enforcing Federal pilotage requirements for domestic vessels documented for coastwise trade calling at the eight sites located off the coast of California on January 1, 1991, and at the two sites located off the coast of Hawaii on May 1, 1991.

The Coast Guard believes that terminal managers routinely require foreign trade vessels to embark a "mooring master." The term mooring master refers herein to an individual who maneuvers vessels in and around offshore marine oil terminals. Even if terminal managers continue to enforce their own special requirements, which they are not obligated to do by law or regulation, no vessel engaged in foreign trade could be compelled to take a pilot.

The proposed rulemaking would require a Federal pilotage endorsement for the waters encompassing the mooring sites for foreign trade vessels mooring at the eight sites located off the coast of California, and the two sites located off the coast of Hawaii.

The Coast Guard believes the current situation is unacceptable because loaded tank vessels are allowed to engage in difficult maneuvers in the vicinity of potential navigation hazards without any assurance that the person controlling the vessel has adequate skills to do so safely. This is of particular concern for foreign flag vessels whose officers are subject only to the qualification requirements of the flag state and who may have little or no knowledge of the navigational hazards and operating conditions in the vicinity of the offshore moorings. Requiring the vessel to take a pilot with local knowledge should reduce the risk of casualties.

B. Pilotage During Intra-port Transits in New York and New Jersey

Vessels engaged in foreign trade make numerous intra-port transits within the U.S. navigable waters of the States of New York and New Jersey, particularly in New York Harbor, the Kill Van Kull, the Arthur Kill, and Newark Bay. Intra-port transits include dock to dock, anchorage to dock, and dock to anchorage movements in these waters.

In 1991, a total of more than 4,500 port calls by self-propelled vessels were made to at least one of the port areas within the waters enumerated above. Of this total, approximately 2,100 were by freight ships, and approximately 2,400 were by tankships. Further, it has been estimated that 70% of the tankships had anchored prior to making an intra-port shift in order to lighter or proceed on the flood tide because their draft exceeded the channel depth at low tide. In addition to the self-propelled vessels referred to above, there are numerous tug and barge tows and recreational vessels all using the same waterway.

The States of New York and New Jersey do not require vessels engaged in foreign trade to take a State pilot while making intra-port transits. While most of these vessels do employ a State or Federal pilot for these moves, it is voluntary and not a State requirement.

This proposed rulemaking would require foreign trade vessels making intra-port transits within certain designated waters of the States of New York and New Jersey to engage a Federally licensed pilot.

During the last two years, at least ten foreign trade vessels grounded while making intra-port transits in New York Harbor, and one vessel's cargo boom hit the Bayonne Bridge when transiting the Kill Van Kull channel. The Coast Guard believes the current situation is unacceptable because the lack of a requirement by either State allows a foreign trade vessel to traverse these congested and confined waters without a licensed pilot knowledgeable of the area to be traversed. The Coast Guard believes that if all foreign trade vessels are required to take a licensed pilot, the incidence of casualties should be decreased.

C. Pilotage in the Cape Cod Canal

Vessels engaged in foreign trade make numerous transits within the U.S. navigable waters of the State of Massachusetts, particularly in Buzzards Bay, the Cape Cod Canal, and Cape Cod Bay. These transits are made by vessels that may or may not be bound for a Massachusetts port.

Cape Cod Canal is a deep draft, sea level waterway which is influenced by tidal currents that may exceed 5 knots in the spring. At the western end, the Canal is connected to Buzzards Bay which has a broken rocky bottom with several shallow areas, some of which are situated on either side of the entrance to the Canal. At the eastern end, the Canal is connected to Cape Cod Bay.

The State of Massachusetts requires a State pilot for vessels engaged in foreign trade that are in transit within the

waters of Buzzards Bay, the Cape Cod Canal, and Cape Cod Bay only if they are bound for or departing a Massachusetts port. While many vessels not bound for or departing a Massachusetts port also employ a State or Federal pilot for transits of these waters, it is voluntary and not a State requirement.

This proposed rulemaking would require foreign trade vessels transiting within certain designated waters of the State of Massachusetts but not bound for a departing a Massachusetts port to engage a Federally licensed pilot.

Recently a foreign containership ran aground in Buzzards Bay after hitting an underwater reef near the entrance to the Cape Cod Canal. Though there was no environmental damage, the vessel carried hazardous cargo, and more than 380,000 gallons of fuel oil when it grounded. The Coast Guard believes the current situation is unacceptable because the lack of a requirement by the State of Massachusetts allows a foreign trade vessel not bound for or departing a port within the State to traverse these congested and confined waters without a licensed pilot knowledgeable of the area to be traversed. The Coast Guard believes that if all vessels are required to take a licensed pilot, the incidence of casualties should be decreased.

D. Conclusions

For the reasons stated, the Coast Guard believes it is an unsafe practice for vessels to moor at or depart the eight sites off the coast of California or the two sites off the coast of Hawaii, or to make intra-port transits within certain designated waters of the States of New York and New Jersey, or when in transit, but not bound to or departing from a port, in certain designated waters of the State of Massachusetts without taking a pilot. The Coast Guard believes this represents an unacceptable risk to human life, property, and the environment. Therefore, the Coast Guard is proposing to make mandatory the requirement that vessels engaged in foreign trade take a Federally licensed pilot when transiting the waters designated in each State.

The Coast Guard believes that requiring an individual to obtain a Federal first class pilot's license would increase maritime safety. In order to obtain a Federal pilot license or endorsement, an individual must pass a comprehensive examination, which among other things, includes such subjects as ship maneuvering and handling, navigational aids, winds, tides, currents, and a chart sketch. Additionally, an individual must complete a specific number of round trips and demonstrate specialized local knowledge of the waters for which the endorsement is issued.

Regulatory Evaluation

This proposed rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Foreign trade vessels normally take a Federal or State pilot to moor at the offshore marine oil terminals, or to make intraport transits, or when making transits in congested waters. However, in those few instances where the vessel does not presently take a State pilot or does not utilize the services of a docking master holding a Federal pilot's license, there would be an additional cost for the use of a Federal pilot. This additional cost for foreign trade vessels to use a Federally licensed pilot as opposed to using individuals presently not licensed as a Federal pilot is believed to be insignificant.

The Coast Guard believes that there are a sufficient number of individuals holding a Federal pilot's license for the waters indicated. However, for an individual to continue providing pilotage service to foreign trade vessels calling at the eight sites in California and two sites in Hawaii, and when making intra-port transits within certain designated waters of New York and New Jersey, and when transiting within certain designated waters of Massachusetts, a Federal pilot's license for the specific waters would be required. The cost to obtain a Federal pilot's license by those individuals presently providing services who do not have the necessary endorsement would include study materials and an annual physical. The Coast Guard believes that these costs will have little economic impact.

This project would promote safety by requiring a Federal pilot for foreign trade vessels mooring at the offshore marine oil terminals in the States of California and Hawaii, and for making intra-port transits within the waters of the States of New York and New Jersey, and for making transits within the waters of the State of Massachusetts. The Coast Guard believes that the benefits of avoiding a casualty significantly outweigh the small costs associated with implementing this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects that this proposed rulemaking will have minimal economic impact on small entities. The Coast Guard does not believe that vessels affected by this proposed rule are owned or operated by small entities. However, small entities affected by this rule may include individual State pilot associations and other companies that provide a pilotage service when assisting a foreign trade vessel to moor or depart a particular area within the States of California, Hawaii, New York and New Jersey, and Massachusetts. The Coast Guard believes that most individuals presently providing pilotage services to foreign trade vessels calling at the eight sites in California and two sites in Hawaii, and making intra-port transits within certain designated waters of New York and New Jersey, and transiting certain designated waters of Massachusetts, would continue to provide pilotage services because most individuals already hold a Federal first class pilot's license for those waters. As a result, the Coast Guard believes few small entities would be effected by this rulemaking.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

Congress specifically provided, under 46 U.S.C. 8503(a), that the Federal Government may require a Federally licensed pilot when a pilot is not required by State law. The States of California, Hawaii, New York and New Jersey, and Massachusetts do not have a requirement for a State pilot in the areas to which this rule would apply, therefore, the Federal Government may act to require a Federally licensed pilot. However, under 46 U.S.C. 8503(b), the Federal government's authority to require pilots is only effective until the State having jurisdiction establishes a superseding requirement for a State

pilot, and notifies the Coast Guard of that fact.

Since this action is aimed primarily at requiring the use of Federal pilots in instances where State pilots are not required, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted. This rule would not impact existing State laws. If the States of California, Hawaii, New York and New Jersey, and Massachusetts adopt superseding legislation requiring State pilots for foreign vessels and U.S. vessels sailing on registry, the Coast Guard would be required to withdraw the proposed requirement for a Federally licensed pilot. Thus, the States of California, Hawaii, New York and New Jersey, and Massachusetts are authorized by statute to preempt the Coast Guard's proposal in this rulemaking. The Coast Guard specifically seeks public comment on the Federalism implications of this proposal.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The Coast Guard believes that most individuals presently providing pilotage services to foreign trade vessels calling at the eight sites in California and two sites in Hawaii, and making intra-port transits within certain designated waters of New York and New Jersey, and transiting, but not bound to or departing from a port, within certain designated waters of Massachusetts would continue to provide pilotage services because most individuals already hold a Federal first class pilot's license for those waters. Therefore, this rule would permit affected vessels to continue to operate according to current industry practice. The Coast Guard also recognizes that this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings of vessels. However, this impact is not expected to be significant enought to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 15

Citizenship, Crewmembers, Marine safety, Mobile offshore drilling units, Navigation (water), Offshore supply vessels, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8101, 8503; 49 CFR 1.45, and 1.46.

2. Subpart I, consisting of § 15.1001 through 315.1040, is added to read as follows:

Subpart I—Vessels in Foreign Trade

Sec.

§ 15.1001 General.
§ 15.1010 California.
§ 15.1020 Hawaii.
§ 15.1030 New York and New Jersey.
§ 15.1040 Massachusetts.

Subpart I—Vessels in Foreign Trade

§ 15.1001 General.

Self-propelled vessels engaged in foreign commerce are required to use a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard when operating in the following navigable waters of the United States.

§ 15.1010 California.

The following offshore marine oil terminals located within U.S. navigable waters of the State of California:

(a) *Carlsbad, CA.* The waters including the San Diego Gas and Electric, Encina Power Plant, lying within an area bounded by a line beginning at latitude 33°10′06″ N, longitude 117°21′42″ W, thence southwesterly to latitude 33°08′54″ N, longitude 117°24′36″ W, thence southwesterly to latitude 33°04′30″ N, longitude 117°21′42″ W, thence northeasterly to latitude 33°05′36″ N, longitude 117°18′54″ W, thence northwesterly along the shoreline to latitude 33°10′06″ N, longitude 117°21′42″ W.

(b) *Huntington Beach, CA.* The waters including the Golden West Refining Company, Hunting Beach Marine Terminal, lying within an area bounded by a line beginning at latitude 33°39′06″ N, longitude 118°00′0″ W, thence westerly a latitude 33°39′18″ N, longitude 118°05′12″ W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 33°35′30″ N, longitude 118°00′00″ W, thence easterly to latitude 33°35′30″ N, longitude 117°52′30″ W, thence northwesterly along the shoreline to latitude 33°39′18″ N, longitude 118°00′00″ W.

(c) *El Segundo, CA.* The waters including Chevron USA, El Segundo Marine Terminal, lying within an area bounded by a line beginning at latitude 33°56′18″ N, longitude 118°26′18″ W, thence westerly to latitude 33°56′18″ N, longitude 118°30′48″ W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 33°51′48″ N, longitude 118°27′54″ W, thence easterly to latitude 33°51′48″N., longitude 118°24′00″ W, thence northwesterly along the shoreline to latitude 33°56′18″ N, longitude 118°26′18″ W.

(d) *Oxnard, CA.* The waters including Southern California Edison Company, Mandalay Generating Station, lying within an area bounded by a line beginning at latitude 34°14′12″ N, longitude 119°16′00″ W, thence westerly to latitude 34°14′12″ N, longitude 119°21′30″ W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 34°09′24″ N, longitude 119°17′42″ W, thence easterly to latitude 34°09′24″ N, longitude 119°13′24″ W, thence northwesterly along the shoreline to latitude 34°14′24″ N, longitude 119°16′00″ W.

(e) *Goleta, CA.* The waters including ARCO, Ellwood Marine Terminal, lying within an area bounded by a line beginning at latitude 34°26′12″ N, longitude 119°57′00″ W, thence southerly to latitude 34°22′48″ N, longitude 119°57′00″ W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 34°21′06″ N, longitude 119°50′30.5″ W, thence northerly to latitude 34°24′18″ N, longitude 119°50′30″ W, thence northwesterly along the shoreline to latitude 34°26′12″ N, longitude 119°57′00″ W.

(f) *Gaviota, CA.* The waters including Texaco Trading and Transportation, Gaviota Marine Terminal, lying within an area bounded by a line beginning at latitude 34°28′06″ N, longitude 120°16′00″ W, thence southerly to latitude 34°25′06″ N, longitude 120°16′00″ W, thence easterly along a line drawn the nautical miles from the baseline to latitude 34°25′24″ N, longitude 120°08′30″ W, thence northerly to latitude 34°28′24″ N, longitude 120°08′30″ W, thence westerly along the shoreline to latitude 34°28′06″ N, longitude 120°16′00″ W.

(g) *Moss Landing, CA.* The waters including Pacific Gas and Electric Company Power Plant, lying within an area bounded by a line beginning at latitude 36°57′00″ N, longitude 122°04′12″ W, thence southerly to latitude 36°53′48″ N, longitude 122°04′12″ W, thence southeasterly to latitude 36°38′18″ N, longitude 121°51′08″ W, thence southwesterly to

longitude 36°38′48″ N, longitude 122°00′06″ W, thence southerly along a line drawn three nautical miles from the baseline to latitude 36°31′18″ N, longitude 122°01′30″ W, thence easterly to latitude 36°31′18″ N, longitude 121°57′18″ W.

(h) *San Luis Obispo Bay, Morro Bay, and Estero Bay, CA.* Various moorings, including Unocal Corporation, Avila Terminal, Avila Beach, CA, Pacific Gas and Electric Company Power Plant, Morro Bay, CA, U.S. Naval Fuel Facility, Morro Bay, CA and the Chevron Oil Company Terminal, Morro Bay, CA. The waters of San Luis Obispo Bay, Morro Bay, and Estero Bay within an area bounded by a line beginning at latitude 35°27′36″ N, longitude 121°00′00″ W, thence southerly to latitude 35°24′24″ N, longitude 121°00′00″ W, thence in a southeasterly direction along a line drawn three nautical miles from the baseline to latitude 35°05′48″ N, longitude 120°41′30″ W, thence easterly to latitude 35°05′48″ N, longitude 120°37′48″ W.

§ 15.1020 Hawaii.

The following offshore marine oil terminals located within U.S. navigable waters of the State of Hawaii:

(a) *Barbers Point, Island of Oahu.* The waters including Hawaiian Independent Refinery, Inc. and Chevron moorings lying within an area bounded by a line bearing 180 degrees true from Barbers Point Light to latitude 21°14.8′ N, longitude 158°06.4′ W, thence easterly to latitude 21°14.8′ N, longitude 158°03.3′ W, thence northeasterly to latitude 21°15.6′ N, longitude 158°01.1′ W, thence northwesterly to latitude 21°18.5′ N, longitude 158°02.0′ W, thence westerly along the shoreline to latitude 21°17.8′ N, longitude 158°06.4′ W.

(b) [Reserved]

§ 15.1030 New York and New Jersey.

The following U.S. navigable waters located within the States of New York and New Jersey when the vessel is making an intra-port transit, to include, but not limited to, a movement from a dock to a dock, from a dock to an anchorage, or from an anchorage to a dock, within the below listed operating areas:

(a) East River from Execution Rocks to New York Harbor, Upper Bay;

(b) Hudson River from Yonkers, New York to New York Harbor, Upper Bay;

(c) Raritan River from Grossman Dock/Arsenal to New York Harbor, Lower Bay;

(d) Arthur Kill Channel;

(e) Kill Van Kull Channel;

(f) Newark Bay;

(g) Passaic River from Point No Point to Newark Bay;

(h) Hackensack River from the turning basin to Newark Bay; and

(i) New York Harbor, Upper and Lower Bay.

§ 15.1040 Massachusetts.

The following U.S. navigable waters located within the State of Massachusetts when the vessel is in transit, but not bound to or departing from a port within the below listed operating areas:

(a) Cape Cod Bay south of latitude 41°48′54″ N;

(b) the Cape Code Canal; and

(c) Buzzards Bay east of a line extending from the southernmost point of Wilbur Point (latitude 41°34′55″ N longitude 70°51′15″ W) to the easternmost point of Pasque Island (latitude 41°26′55″ N longitude 70°50′30″ W).

Dated: July 2, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–16082 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF ENERGY

48 CFR Part 917

Acquisition Regulation; Interagency Agreements

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rule.

SUMMARY: The Department proposes to amend the Department of Energy Acquisition Regulation (DEAR) to revise its guidance regarding interagency agreements. The revision will provide additional definitions, define the responsibilities of program and procurement personnel, and address the method of financing for funding interagency agreements. It is intended that these changes will assist both DOE personnel and other government agency personnel awarding and administering interagency agreements. All of these changes are summarized in the "Section by Section Analysis" appearing later in this document.

DATES: Written comments should be submitted no later than August 9, 1993.

ADDRESSES: Comments should be addressed to the Procurement Contact, Richard B. Langston, at the address below.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Procurement, Assistance and Program Management (PR–121) Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202 586–1900.

SUPPLEMENTARY INFORMATION:

I. Section by Section Analysis
II. Public Comments
III. Procedural Requirements
A. Regulatory Review
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act

I. Section by Section Analysis

A detailed list of proposed changes follows:

1. The authority citation for subpart 917.5 is restated.

2. A new section 917.501, Definitions, is added.

3. A new section 917.502–70, Responsibilities, is added. It identifies the responsibilities of program and procurement personnel in the processing of interagency acquisitions.

4. Section 917.504 is revised to only specify use of a DOE form. The previous listing is eliminated as duplicative of the forms content.

5. Section 917.505–70 is revised to better state DOE policy on the reimbursement of costs under interagency acquisitions.

II. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be

exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. DOE's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

III. Procedural Requirements

A. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposal was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule will not affect states. It deals with relations between Federal agencies.

F. National Environmental Policy Act

DOE has concluded that this proposed rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 917

Government procurement.

Issued in Washington, DC, on June 29, 1993.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

For the reasons set out in the preamble, part 917 of chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 917—SPECIAL CONTRACTING METHODS

1. The authority citation for part 917 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subpart 917.5 is amended by adding a new section 917.501 to read as set forth below.

917.501 Definitions.

Funds-in interagency acquisition means an interagency acquisition in which another Federal agency agrees to reimburse DOE for materials or services to be provided by DOE to another Federal agency.

Funds-out interagency acquisition means an interagency acquisition in which DOE agrees to reimburse another Federal agency for materials or services to be provided to DOE by another Federal agency.

Memorandum of understanding means a written agreement broadly stating basic understandings and describing a mechanism for coordinating activities to be engaged in by the DOE and another Government agency. A memorandum of understanding cannot be used to obligate or commit funds, cannot obligate or require performance, and is not to be used as the basis for the transfer of funds from one agency to another.

3. A new section 917.502–70 is added to read as set forth below:

917.502–70 Responsibilities.

(a) Interagency acquisitions do not follow the acquisition process that is typical of other Federal acquisitions. In the case of funds-out interagency agreements, the policy of this subpart is supplemented by DOE Directive 1270.1, Funds-Out Interagency Agreements (most recent version). In the case of funds-in interagency agreements involving work for others, basic policy is found at DOE Directive 4300.2B, Non-Department of Energy Funded Work (Work For Others) (most recent version). Responsibilities associated with the

acquisition process for the interagency acquisition process are described in paragraphs (b) and (c) of this section.

(b) Program officials are responsible for:

(1) Determining requirements, drafting a scope of work, and arranging with another Federal agency to perform the required task(s);

(2) Reviewing the other agency's response to DOE's request to determine programmatic acceptability; and,

(3) Preparing the authorizing documents which shall include a procurement request accompanied by copies of applicable correspondence between DOE and the other agency, scope of work, pricing data, funds approvals and any special provisions that must be included in the interagency acquisition, such as security considerations, technical data, or travel restrictions.

(c) Contracting officers shall be responsible for:

(1) Reviewing the proposed interagency acquisition request for conformance with FAR 17.5 and this subpart, and any memorandums of understanding that may exist with the servicing agency;

(2) Coordinating the method of financing an interagency agreement with the Field Chief Financial Officer, when a method other than reimbursement is contemplated; and,

(3) Obtaining legal and patent counsel concurrence whenever there is a question as to compliance with applicable laws and patent or technical data policy.

4. Section 917.504 is revised to read as follows:

917.504 Ordering Procedures.

(b) The DOE Form 1270.1, Interagency Agreement Face Page, shall be used for interagency acquisitions including appropriate elements of the model agreement illustrated at DOE Order 1270.1 (most recent version).

5. Section 917.505–70 is amended by revising paragraphs (a) and (b) to read as follows:

917.505–70 Methods of financing employed by DOE.

(a) OMB Circular A–34, Instructions on Budget Execution, requires agencies to obtain an advance of funds when performing work for anyone other than another Federal agency. In the case of another Federal agency, work can be performed on a reimbursable basis. Expenses, in the interim, are charged to an account established for reimbursements from other Federal agencies. Consequently, except as specified in paragraph (b) of this section, DOE prefers to finance work done by servicing agencies by reimbursement on the basis of current billings for work completed.

(b) DOE will provide cash advances only in those instances in which no other means exist to obtain the services. While, the Economy Act, 31 U.S.C. 1536, provides authority for making cash payments in advance to other Federal agencies for work performed under authority of the Economy Act, it is DOE's policy to not make cash advances except when required by law or the provisions of an interagency agreement. Agencies with revolving funds or Department of the Treasury approved consolidated working funds are examples of instances when cash advances may be required. Transfer appropriations may also be used to fund work performed by other Federal agencies. Payment by means other than reimbursement will not be undertaken without the approval of the Office of Chief Financial Officer, Headquarters.

* * * * *

[FR Doc. 93–15752 Filed 7–8–93; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket HM–200; Notice No. 93–17]

RIN 2137–AB37

Hazardous Materials in Intrastate Commerce

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations (HMR) to require that all intrastate shippers and carriers comply with the HMR. This action is necessary to comply with the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandating that DOT regulate the safe transportation of hazardous materials in intrastate commerce. The intended effect of this notice is to raise the level of safety in the transportation of hazardous materials throughout the nation.

DATES: Comments must be received on or before October 13, 1993.

ADDRESSES: Comments to this NPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number (i.e., Docket HM–200). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–5046; FAX (202) 366–3753. Public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, (202) 366–4401, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, RSPA, or Jackie Smith, (202) 366–4488, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990

On November 16, 1990, the President signed into law the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101–615. The HMTUSA amended Section 105 of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, to require the Secretary to regulate hazardous materials transportation in intrastate commerce.

ANPRM

On June 29, 1987, in the **Federal Register** under Docket HM–200 (Notice No. 87–6; 52 FR 24195), RSPA published an advance notice of proposed rulemaking (ANPRM) which requested comments on extending the application of the HMR to all intrastate transportation in commerce as a means of promoting national uniformity and transportation safety. At the present time, the HMR generally do not apply to highway transportation by intrastate carriers, with the exception of registration requirements and transportation of marine pollutants and oil, hazardous wastes, hazardous substances, and flammable cryogenic liquids in portable tanks and cargo tanks (see 49 CFR 107.601 and 171.1(a) and (b)). The HMR apply to all hazardous materials transported in commerce by rail car, aircraft, or vessel. The ANPRM invited comments on the need for, and possible consequences of, DOT

extending the application of its hazardous materials regulations to all intrastate transportation of hazardous materials in commerce. The need for such regulations was highlighted in a July 1986 report by the Office of Technology Assessment (OTA) entitled "Transportation of Hazardous Materials."

State/Federal Relationship

Historically, the HMR have focused primarily on transportation of hazardous materials by interstate carriers. Over time, however, the HMR have been extended to intrastate transportation of hazardous substances, hazardous wastes, and flammable cryogenic liquids, marine pollutants, oils and registration. RSPA has encouraged States to adopt the HMR through the RSPA-sponsored Cooperative Hazardous Materials Enforcement Development Program and previously, the State Hazardous Materials Enforcement Development Program. In addition, FHWA requires States to adopt and enforce the Federal Motor Carrier Safety Regulations, 49 CFR parts 390–397, and the highway-related portions of the HMR (or compatible State rules and regulations) to qualify for grants under FHWA's Motor Carrier Safety Assistance Program (MCSAP).

For highway transportation, all States have adopted hazardous materials regulations, most of them similar to the HMR. However, certain States deviated from the HMR, particularly regarding intrastate highway shipments. Some States, for example, "grandfathered" non-DOT specification cargo tanks, exempted farmers, or required special prenotification or routing of hazardous materials shipments.

Even if every State adopted the HMR without change, it would be difficult for many of them to maintain consistency with the HMR and revise their statutes and regulations concurrently with the Federal regulations. Many State constitutions preclude open-ended incorporation by reference of the HMR.

A publication of the National Governors' Association entitled "Hazardous Materials Transportation Regulatory and Enforcement Programs, A Governor's Guide" discusses this issue and the need for uniform regulations and enforcement:

> * * * it is not the specific requirements of any one State that make compliance difficult, but rather the cumulative impact of many individual State requirements. * * * For example, Massachusetts has rules in effect which could cause carriers in compliance with fire extinguisher and placarding requirements in the Federal system and in neighboring States to inadvertently violate Massachusetts law upon crossing the State line. In other instances, State constitutional restraints dictate how States adopt the Federal regulations. California, like many other States, is permitted to adopt the Federal hazardous materials regulations by reference. Therefore, when portions of the regulations that were adopted are amended, the amendments may become State law without further legislative action. * * * In New Mexico, the State constitution prohibits adoption of the Federal regulations by reference. Instead, there must be specific enabling legislation for any regulations the State adopts. In addition, the language of the enabling legislation must be specific enough to ensure the State is not 'legislating by regulation'. Thus, the entire body of Federal regulations has to be not only identified, but also described in the State statute. Once adopted, the process for amending the regulations varies with each State. * * * Utah need only issue a transportation commission resolution adopting the amended regulations. California, Illinois, and New Jersey must initiate a rulemaking proceeding, and each State sets different timetables for updating the regulations.

Comments to the ANPRM

Commenters to the ANPRM were asked to address the potential impacts on certain populations which might occur if the HMR were applied to all hazardous materials transportation in intrastate commerce. Specific groups urged to comment were businesses (especially small businesses engaged in local distribution), farmers hauling fertilizer (other than hazardous substances in reportable quantities) for application on their lands, and consumers. In addition, commenters were asked to respond to the following questions:

1. Should RSPA extend application of the HMR to all intrastate transportation of hazardous materials?
2. Should RSPA consider exceptions to the application of the HMR to the intrastate transportation of hazardous materials by highway?
3. If RSPA decides to apply the HMR to the intrastate transportation of hazardous materials by highway, what time frame should be allowed for compliance with the new requirements? Should different time frames be allowed for different requirements (e.g., communications vs. packaging, bulk packaging vs. non-bulk)? If so, what should these times frames be?
4. Section 103(5) of the HMTA includes, within the definition of "State", the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam. Should any special consideration be given to the implementation of the HMR requirements in these or other jurisdictions if this proposal is adopted? (The HMTUSA amended the HMTA to also include within the definition of "State" the Commonwealth of the Northern Mariana Islands.)

Forty-four commenters responded to Notice No. 87–6. The majority of commenters were in favor of the proposal. Commenters in favor include nine States or organizations representing States, 23 shippers, carriers, and shipper/carrier organizations, one utility, and one union. Few were opposed. One organization took no position. Arguments in support of the proposal included uniformity, safety, and the advantage of having to consult only one source to stay current with regulations. Arguments in opposition to the proposal included lack of safety enhancement, no clear established need, adverse impact on small business, excessive cost, and States' rights. Some commenters recommended that the regulations, if extended to intrastate carriers, not apply to farmers, small businesses, private carriers, and cargo tanks. Several commenters suggested that cargo tanks be grandfathered or exempted from the regulations in States that regulate and inspect the design, fabrication and/or manufacture of cargo tanks and regularly inspect cargo tanks in service. California stated it had grandfathered from 1,500 to 2,000 non-DOT specification cargo tanks used to transport flammable and combustible liquids after approving their design. The cargo tanks are subject to mandatory annual inspection and certification. Minnesota said it has a similar provision for tank motor vehicles.

Of 18 commenters who addressed implementation time frames, half recommended a phased-in approach. Generally, these commenters recommended that requirements concerning classification and communications (labeling, marking, and shipping papers) be implemented first. Recommended time frames for this phase ranged from 60 days to three years. One commenter suggested that personnel training and compliance requirements be phased-in next, within a three-to-five-year period. Some commenters recommended that equipment specifications involving bulk packagings be implemented last, within one to ten years.

Few commenters addressed the question whether any special consideration should be given to the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam. Generally, those who did address the question thought that no special consideration should be given. A commenter did write that a review of

VOL 58 ISS 130 JL 9 1993 UMI

the existing levels of enforcement in the more "remote areas should be undertaken and that perhaps a special education program should be implemented prior to extension of the regulations to these areas."

II. Proposed Rule

Based on the HMTUSA mandate and the comments received to the ANPRM, RSPA proposes to extend, in two steps, the applicability of the HMR to cover all highway transportation of hazardous materials in intrastate commerce. First, RSPA proposes to require all intrastate shippers and carriers to comply with the HMR. Except for bulk packagings, compliance would be required one year after publication of the final rule. RSPA invites comments on the one-year transition period.

Second, except for hazardous substances, hazardous wastes, flammable cryogenic liquids, marine pollutants, and oils (which are currently subject to the HMR when transported in intrastate commerce), RSPA proposes a three-year transition period for certain bulk packagings. This proposed transition period would apply to non-DOT specification bulk packagings used for transportation of hazardous materials in intrastate commerce only, provided these packagings are used exclusively by intrastate carriers, and are specifically authorized, prior to October 1, 1993, by the State in which they are operated. The transition period is proposed in response to several comments indicating that several States have construction requirements for particular bulk packagings, used in intrastate commerce of hazardous materials, different from those required by the HMR. RSPA proposes a three-year transition period to provide sufficient time to bring these bulk packagings into conformance with the HMR. (This delay would have no effect on § 173.315(a) (note 17), (k), and (m) pertaining to the use of cargo tanks in intrastate commerce.) Comments are solicited regarding the proposed three-year transition period.

As mandated by HMTUSA, RSPA proposes to extend the applicability of the HMR to highway transportation by "intrastate" carriers in the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands concurrently with the extension of the HMR to that transportation in each State. Forty-eight states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, and Guam receive Motor Carrier Safety Assistance Program (MCSAP) funds annually from FHWA contingent upon the adoption and enforcement of the HMR. In fiscal year 1991, these funds totaled over $44 million. In addition, during fiscal year 1993, grants totaling over $12.8 million will be made available to the States, the District of Columbia and the other five jurisdictions for emergency response planning and training programs involving hazardous materials. Although no comments to the ANPRM opposed extension of the HMR to these other jurisdictions, RSPA invites comments on whether there is a need to defer the extension beyond the one-year proposed transition date for this rule.

Paragraph 171.1(a) would be revised to clarify the applicability of the HMR to all intrastate transportation of hazardous materials. In addition, it would address the Department's authority regarding the transportation of hazardous materials even though the hazardous material is not present. Paragraph 171.1(b) would be unchanged. Paragraph 171.1(c) would be redesignated as paragraph 171.2(h) for clarification, and a new paragraph 171.1(c) would be added to provide for a three-year transition period exclusively for a non-conforming bulk packaging in a State where: (1) its use is specifically authorized by statute or regulation of that State and was specifically and continuously authorized on or before October 1, 1993; (2) the packaging complies with all requirements of the State; and (3) each shipment is offered in conformance with all other applicable requirements of this subchapter.

The HMTA, as amended by HMTUSA, requires the Secretary to regulate hazardous materials transportation in intrastate commerce. The HMTA does not provide an exception for farmers and small businesses. Based on the mandate of the HMTA, this NPRM proposes to extend the HMR to cover all hazardous materials transportation in intrastate commerce to promote national uniformity and transportation safety. RSPA encourages comments from farmers and small businesses on whether the two transition periods proposed provide adequate time for compliance.

III. Federal Preemption Under the HMTA

The HMTA now more specifically delineates the relationship of Federal and non-Federal requirements governing the transportation of hazardous materials and the administrative and judicial processes which are to be used in the event of a conflict between Federal and non-Federal requirements. These provisions, which are described below, were published by RSPA in regulations implementing the HMTUSA [56 FR 8616, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991].

First, with certain exceptions, any requirement of a State, political subdivision, or Indian tribe concerning the following "covered subjects" is preempted if the non-Federal requirement is not "substantively the same" as any provision of the HMTA or any Federal regulation issued under the HMTA. The covered subjects are:

1. The designation, description, and classification of hazardous materials.
2. The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
3. The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
4. The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
5. The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials, 49 App. U.S.C. 1804(a)(4) (A) and (B).

RSPA has completed a rulemaking to define "substantively the same" as meaning that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted [57 FR 20424, May 13, 1992].

Second, the HMTA provides, with certain exceptions, that after the last day of the two-year period beginning on the date of the issuance of Federal standards for highway routing, no State or Indian tribe may establish, maintain, or enforce:

1. Any highway route designation over which hazardous materials may or may not be transported by motor vehicles, or
2. Any limitation or requirement with respect to such routing, unless such designation, limitation, or requirement is made in accordance with the procedural requirements of the Federal standards and complies with the substantive requirements of the Federal standards, 49 App. U.S.C. 1804(b)(4).

The HMTA now requires issuance of Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing highway

routes. These highway routing standards were proposed August 13, 1992, by the Federal Highway Administration (FHWA) in Docket MC–92–6 [57 FR 39522].

Third, the HMTA provides that, with certain exceptions, any requirement of a State, political subdivision, or Indian tribe is preempted if:

1. Compliance with both the State, political subdivision, or Indian tribe requirement and any requirement of the HMTA or of a regulation issued under the HMTA is not possible, or

2. The State, political subdivision, or Indian tribe requirement, as applied or enforced, creates an obstacle to the accomplishment and execution of the HMTA or the regulations issued under the HMTA.

Congress, thus, has included the "dual compliance" (or "impossibility") and "obstacle" tests for preemption in the HMTA. These tests previously had been included in RSPA's regulations and applied in RSPA's advisory inconsistency rulings.

Fourth, the HMTA provides that any person, including a State, political subdivision, or Indian tribe directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Secretary of Transportation for a determination of whether that requirement is preempted by the HMTA. Unlike the advisory inconsistency rulings previously issued by RSPA, the new preemption determinations are legally binding and subject to judicial review, 49 App. U.S.C. 1811(c).

Fifth, the HMTA provides the Secretary with discretionary authority to waive preemption if two specific tests are met, 49 App. U.S.C. 1811(d).

Sixth, the HMTA allows a party to a preemption or waiver of preemption determination proceeding to seek judicial review in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, 49 App. U.S.C. 1811(e).

If adopted as final, this rule would preempt State, local, or Indian tribe hazardous materials transportation requirements in accordance with the standards discussed above.

IV. Administrative Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

The effect of this rule, as proposed, does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034) because of the significant public and congressional interest. This proposed rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act 942 FR 4321 et seq.). A preliminary regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). This proposed rule would extend the application of the Hazardous Materials Regulations to all intrastate transportation of hazardous materials. RSPA is proposing to implement the HMTA at the minimum level required by the statute.

The Hazardous Materials Transportation Act (HMTA) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if: (1) Compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. If adopted as final, this rule would preempt any State, local, or Indian tribe hazardous materials transportation requirements in accordance with the preemption standards in the HMTA. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Impact on Small Entities

This proposal would have minimal impact on shippers and carriers, some of whom may be small business entities. Based on limited information concerning the size and nature of entities likely affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

There are no new information collection requirements contained in this rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda In April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

§§ 171.1 and 171.2 [Amended]

2. Section 171.1(c) would be redesignated as § 171.2(h).

3. In § 171.1, paragraph (a) would be revised, and a new paragraph (c) would be added to read as follows:

§ 171.1 Purpose and scope.

(a) This subchapter prescribes requirements of the Department of Transportation governing—

(1) Offering for and transportation of hazardous materials in interstate, intrastate, and foreign commerce by rail car, aircraft, vessel (except as delegated at § 1.46(t) of this title), and motor vehicle (except as provided in paragraph (c) of this section).

(2) Manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold for use in any transportation specified in this paragraph (a).

(3) Representation that a hazardous material is present in a package, container, motor vehicle, rail car, aircraft, or vessel.

(b) * * *

(c) Except for the offering or transportation of a hazardous substance, a hazardous waste, or a flammable cryogenic liquid in a portable tank or cargo tank, the requirements of subparts D through H of part 173 of this subchapter as they pertain to bulk packagings, and the requirements of part 180 of this subchapter do not apply to the transportation of hazardous materials by an intrastate carrier by motor vehicle in a non-specification bulk packaging until October 1, 1996, if:

(1) The packaging is used exclusively in a State where its use for the material

being transported was specifically authorized by statute or regulation of that State, and was specifically and continuously authorized on or before October 1, 1993;

(2) The packaging complies with all requirements of the State; and

(3) Each shipment is offered in conformance with all other applicable requirements of this subchapter.

Issued in Washington, DC, on July 1, 1993 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–16107 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Not Substantial Petition Finding on the North Cascades Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Endangered Species Act of 1973, as amended (Act), requires the Service to evaluate petitions and determine whether or not substantial information has been presented indicating that the requested action may be warranted. On April 28, 1993, the U.S. Fish and Wildlife Service (Service) agreed to reevaluate its negative 90-day finding on the petition to list the North Cascades population of the lynx, in light of the anticipated receipt of new information. The Service has completed its reevaluation and finds that the petition does not present substantial information indicating that the requested action may be warranted. The North Cascades lynx is not a listable entity, because it is not a distinct population segment. This finding supersedes the earlier 90-day finding dated February 4, 1992.

DATES: The finding announced in this petition was approved on July 1, 1993. Comments from all interested parties will be accepted until further notice.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE., suite 102, Olympia, Washington 98501–2192. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Frederick, at the above address (206/753–9440).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1991, the U.S. Fish and Wildlife Service (Service) received a petition from the National Audubon Society, The Humane Society of the United States, Defenders of Wildlife, Greater Ecosystem Alliance, Friends of the Loomis Forest, Methow Valley Forest Watch, Save Chelan Alliance, Lower Columbia Basin Audubon Society, Tonasket Forest Watch, Pilchuck Audubon Society, North Cascades Audubon Society, and Sierra Club Cascade Chapter (collectively "petitioners") to list the North American lynx *(Felis lynx canadensis)* of the North Cascades ecosystem of Washington as an endangered species under the emergency provisions of the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. On October 6, 1992, the Service announced its finding that the petition had not presented substantial information indicating that the requested action was warranted in the **Federal Register** (57 FR 46007). On April 28, 1992, a settlement agreement was reached whereby the Service agreed to reevaluate its 90-day finding on the petition, in light of new information that was to be submitted by the petitioners.

The new information consisted of the draft "Status of the North American Lynx in Washington," prepared by the Washington Department of Wildlife (WDW 1993), 1992 landsat photograph (Radarsat International 1992), and written comments provided by the Greater Ecosystem Alliance in regard to the draft status review.

The Service has reconsidered the plaintiffs' petition and finds that the petition and other recent information provided by the petitioner does not present substantial information that the requested action may be warranted. In cases where a petitioner only requests listing of a species throughout a portion of its range, the Service must first determine whether or not the population petitioned represents a "distinct population segment" listable under the Act.

"Distinct population segments" listed as endangered or threatened species typically consist of: (1) Populations that are reproductively isolated from other members of the species, or (2) the entire coterminous United States population of a species. Reproductive isolation is usually the result of a complete (or nearly so) geographic barrier; the dispersal of just a few individuals per generation would suffice to maintain a mixed gene pool.

The North American lynx inhabits coniferous forests and wet bogs from Newfoundland and Labrador on the east to Alaska and British Columbia on the west, and from the arctic treeline to as far south as Colorado in the northern United States (WDW 1993). Therefore, the North Cascades population of the lynx does not constitute the entire coterminous United States population of the species.

In addition, the Service fails to find substantial information indicating that lynx in the North Cascades of Washington is isolated from other parts of its range in British Columbia. Lynx typically undergo long-distance dispersal during and after a decline in the hare populations (Adams 1963, Mech 1973, 1980, Ward 1985, Ward and Krebs 1985, as cited in WDW 1993). During a low in the hare cycle, lynx will move greater distances in search of food (Brand et al. 1976, Alaska Dept. Fish and Game 1977, as cited in WDW 1993). Lynx in Washington have been documented to move several hundred miles into British Columbia (WDW 1993).

Examination of the landsat photograph covering a large portion of the North Cascades ecosystem shows no evidence of a geographical barrier along the international border between the United States and Canada. Clearcut areas may prevent lynx from dispersing into other areas for a short period of time, but they do not constitute long-term barriers. Within 10 to 20 years following harvest, most clearcut areas likely provide regrowth allowing cover for dispersal (Engbring, USFWS, pers. comm., 1993). Much of the area depicted in the landsat photograph is within the Pasayten Wilderness and is not subject to logging. Within approximately 20 miles of the border, the landsat photograph depicts only a minor amount of logging. The area is likely suitable for lynx. Approximately 25 to 40 miles north of the border, a series of clearcuts suggests that there may be a partial barrier to dispersal at that latitude. This barrier, however, is not complete, and no evidence has been presented that would suggest lynx do not occasionally traverse and disperse across this area.

In summary, the Service finds that substantial information is not available to demonstrate that the lynx population in the North Cascades ecosystem of Washington constitutes a distinct population segment. Therefore,

substantial information does not exist indicating that the North Cascades population of the lynx should be listed under the Act, because it is not a listable entity. However, the Service believes sufficient evidence exists indicating that an in-depth rangewide status review for the lynx should be conducted and intends to commence this status review.

References Cited

Radarsat International. 1992. Projection UTM Zone: 11/N27. Radarsat International Inc. Satellite Data Distribution Centre, 3851 Shell Road, suite 200, Richmond, British Columbia, Canada V6X 2W2.

Washington Department of Wildlife (WDW). 1993. Status of the North American Lynx *(Lynx canodensis)* in Washington, Draft, March 1993. Washington Department of Wildlife, Olympia, Washington. 112 pp.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 1, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–16218 Filed 7–8–93; 8:45 am]

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50 CFR Part 24

RIN 1018–AB28

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to amend the regulations establishing designated ports for the importation, exportation, and reexportation of plants by adding Orlando, Florida, to the list of designated ports. The U.S. Department of Agriculture is proposing to open a plant inspection station in Orlando, and it appears that the station has adequate facilities and personnel to qualify as a designated port for the importation, exportation, and reexportation of plants under the terms of the Endangered Species Act of 1973, as amended (the Act)(, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The addition of Orlando to the list of designated ports would facilitate plant trade and the enforcement of the Act and CITES.

DATES: Comments must be submitted on or before September 7, 1993. Requests for a public hearing must be received by August 23, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the same address between the hours of 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 430, Arlington, Virginia 22203, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of listed plants.

The regulations contained in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Section 24.12(e) of the regulations contains a list of 87 USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not required to be accompanied by documentation under 50 CFR part 17 or 23. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those 87 ports.) Plants that are listed as endangered or threatened in 50 CFR 17.12 or in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in § 24.12(a) through (d) of the regulations.

On August 20, 1992, the USDA published a proposed rule in the **Federal Register** (57 FR 37735–37736, Doc. No. 92–096–1) to add Orlando, Florida, to the list of USDA ports of entry in 7 CFR 319.37–14. Because it possesses the special inspection and treatment facilities needed to process plants that are imported under a written quarantine permit, Orlando would be further designated a USDA plant inspection station. The USDA has now asked the Fish and Wildlife Service (the Service) to add Orlando to the lists of USDA ports in 50 CFR 24.12, paragraphs (a) and (e).

For the purposes of its enforcement of the Act and CITES, the Service requires that a port have personnel with expertise in identifying endangered or threatened plants to ensure that such plants are properly identified by their accompanying documentation. A port must also possess adequate facilities for holding live plants and plant material, since plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. The Service further requires that, whenever possible, ports be located to coincide with established patterns of plant trade in order to help reduce shipping costs.

After consultations with the USDA, the Service has determined that the Orlando port of entry, as described by the USDA in its August 20, 1992, proposal, appears to possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, the location of the Orlando facility appears to coincide with established patterns of plant trade. Therefore, the Service proposes to add Orlando, Florida, to the lists of USDA ports in 50 CFR 24.12, paragraph (a) and (e).

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. These requests should be sent to the Office of Management Authority address listed in the **ADDRESSES** section of this document.

Executive Order 12291 and Regulatory Flexibility Act

The Service is issuing this proposed rule in conformance with Executive Order 12291, and has determined that it

VOL
58
ISS
130
JL
9
1993
UMI

is not a "major rule." The Service has determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The addition of Orlando, Florida, as a designated port would facilitate the importation, exportation, and reexportation of plants listed as threatened or endangered as well as other terrestrial plants. The Service believes the addition of this port would have a positive, albeit limited, economic impact.

The volume of traffic currently handled by the designated ports in Florida indicates that an additional port would be utilized for the importation, exportation, or reexportation of plants. The Service has no way of knowing how heavily the new port would be used, but the USDA estimates that 20 or more commercial exporters/importers, many of them small entities, would use this new facility on a regular basis. The USDA also projects that commercial importers based in the northern Florida area would realize at least a small savings in transportation costs as a result of the opening of the Orlando facility. The primary impact, however, would be the increased convenience of having an additional port in Florida through which plants could be imported, exported, or reexported.

Under these circumstances, the Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Office of the Solicitor has determined that the requirements of Executive Order 12778 have been satisfied.

National Environmental Policy Act

The Service has determined that this proposed rule to add a designated port under authority of the Endangered Species Act of 1973 for the importation and exportation of plants is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 24

Import, Export, Endangered and threatened plants, Treaties (Agriculture).

Accordingly, we propose to amend 50 CFR part 24 as follows:

PART 24—IMPORTATION AND EXPORTATION OF PLANTS

1. The authority citation for part 24 would continue to read as follows:

Authority: Secs. 9(f)(1), 11(f), Public Law 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

§ 24.12 [Amended]

2. Section 24.12(a) is proposed to be amended by adding "'Orlando, Florida" immediately under "Miami, Florida".

3. Section 24.12(e) is proposed to be amended by adding "'Orlando, Florida" immediately under "Miami, Florida".

Dated: May 28, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–16203 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–55–M

Notic

This section contains do proposed ru public. Noti committee rulings, dele petitions an statements examples o section.

DEPARTM

Forest Se

Exemptio Project Fi

AGENCY: F

ACTION: N timber sal windstorm is exempt provision

SUMMARY: Ranger, F proposes 600,000 b material f Timber Sa prepared salvage 3(adjacent t Ranger ha environm the Cyclo Environm there is g actions to System la resources sawtimbe pulp mat must be a further de risk of wi infestatio mature a

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Notices

Federal Register
Vol. 58, No. 130
Friday, July 9, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Cyclone Timber Salvage Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover windstorm-damaged and dead material is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: The Glacier View District Ranger, Flathead National Forest, proposes to salvage approximately 600,000 board feet (MBF) of down pulp material from four units of the Cyclone Timber Sale that have not yet been site-prepared for reforestation and also salvage 30 MBF of windthrown trees adjacent to one clearcut. The District Ranger has determined, through an environmental analysis documented in the Cyclone Pulp Salvage Environmental Assessment (EA), that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber, along with merchantable pulp material within the affected area, must be accomplished quickly to avoid further deterioration and to reduce the risk of wild fire and spruce bark beetle infestation that could damage adjacent mature and old-growth timber stands.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Hope; District Ranger; Glacier View Ranger District; Flathead National Forest; P.O. Box W; Columbia Falls, MT 59912. Telephone: (406) 892–4372.

SUPPLEMENTARY INFORMATION: In 1992, an interdisciplinary team was formed on the Glacier View Ranger District to analyze the opportunity to salvage down pulp material from four units of the Cyclone Timber Sale that have not yet been site-prepared for reforestation. The pulp material was not considered merchantable when the Cyclone Timber Sale was logged (1990–1991) and was left as logging slash. The team also looked at the opportunity to salvage windthrown trees adjacent to an existing clearcut. The activities are proposed in areas designated as suitable for timber production by the Flathead National Forest LRMP.

This proposal is designed to meet the following needs: (a) To help satisfy the short-term demands for timber by utilizing dead trees that would otherwise become unmerchantable from insects and decay and by utilizing merchantable logging slash that would otherwise be burned for fuel reduction and site preparation, (b) to maintain a healthy forest by reducing the risk of losses to insects and wildfires, and (c) to rehabilitate timber stands through site preparation and planting.

The interdisciplinary team began scoping in 1992. Six issues were identified and were the basis for the environmental analysis disclosed in the EA. Two alternatives were considered; a no action alternative and one action alternative.

The selected alternative would salvage approximately 600 MBF of down pulp material from four existing units of the Cyclone Timber Sale that have not yet been site-prepared for reforestation and salvage 30 MFB of windthrown trees adjacent to one clearcut. No new road construction is planned.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible. Prompt implementation of the salvage sale is necessary to capture potential losses due to deterioration. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Cyclone Pulp Salvage EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR Part 217.

Dated: June 30, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16230 Filed 7–8–93; 8:45 am]
BILLING CODE 3410–11–M

Exemption of Red Norton SSTS Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover fire-killed timber is exempt from appeal under provisions of 36 CFR part 217.

SUMMARY: In the spring of 1992, 18 acres of timber were killed in the Norton Creek drainage, St. Maries Ranger District, Idaho Panhandle National Forests, when a prescribed fire escaped control lines. The St. Maries District Ranger has proposed a salvage timber sale designed to accomplish the following objectives: (a) Reduce potential for Douglas-fir beetle infestation in adjacent, drought-stressed timber stands; (b) rehabilitate affected lands through reforestation efforts and (c) utilize the timber resource before it deteriorates to the point of being unsalvageable. Following recommendations of the Interdisciplinary Team and careful review of the project file, the Acting District Ranger has determined there is good cause to expedite this project to meet silvicultural and utilization objectives.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pat Sheridan; Acting District Ranger; St. Maries Ranger District; Idaho Panhandle National Forests; P.O. Box 407; St. Maries, ID 83861; telephone 208–245–6401.

SUPPLEMENTARY INFORMATION: The proposed sale consists of approximately 229,000 board feet of timber and qualifies under FSH 1909.15.30 for Categorical Exclusion from documentation.

VOL 58 ISS 130 JL 9 1993 UMI

The affected area is designated as suitable for timber management and is classified as Management Area 1 (Idaho Panhandle Forests Plan, August 1987). The project will call for the construction of 0.47 miles of low-standard temporary road. Upon completion of the sale, this temporary road will be ripped, water barred, seeded and permanently closed at its point of origin.

The salvage timber sale and accompanying work is designed to accomplish the objectives as quickly as possible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters and other natural phenomena * * * when the Regional Forester determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the project file and the Acting District Ranger's Decision Memo, I have determined good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 30, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16229 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Dunn Down Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage project to recover insect-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Dunn Creek drainage (Compartment 13) on the Fisher River Ranger District, Kootenai National Forest, has killed approximately 90 percent of the lodgepole pine within the analysis area. In February 1993, the Fisher River District Ranger proposed a salvage timber sale to recover damaged timber in the affected area.

The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Dunn Down Salvage Timber Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, minimize fire danger by removing accumulations of merchantable, dead lodgepole pine timber and increase the health, vigor, stocking and species diversity for long-term vegetative growth.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Froberg; Fisher River District Ranger; Kootenai National Forest; 12557 Hwy. 37; Libby, MT 59923. Telephone: 406–293–7773.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic has occurred in the Dunn Creek drainage (Compartment 23) on the Fisher River Ranger District, Kootenai National Forest during the last several years. The project area is located within Management Areas 11 and 12 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland with timber management goals and suitable big-game winter and summer range.

This proposal is designed to meet the following needs: (1) Reduce the risk of wildfire in stands killed by the beetle infestation by reducing fuel loading and continuity; (2) improve long-term timber growth and productivity by reforesting the affected area with coniferous species less susceptible to insect damage; (3) expedite the re-establishment of coniferous species to provide security for wildlife and watershed protection by harvesting, site preparation and planting; and (4) contribute to a continuing supply of timber for industry by salvaging dead lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in February 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 100 thousand board feet from 15 acres. Upon completion of harvest activities, the unit would be burned and planted with a combination of ponderosa pine, larch and Douglas-fir. The salvage area is accessible from existing roads, no new road construction or reconstruction will occur.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for wildfire, and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal.

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Project File and Decision Memo for the Dunn Down Salvage Timber Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 317.

Dated: June 30, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16225 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Roberts Creek Blowdown Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged

approximately 5 acres of timber in the Roberts Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987).

In the winter of 1991, the Rexford District Ranger, Kootenai National Forest, proposed salvage of wind-damaged timber in the Roberts Creek area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading. An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed no treatment (no action) and a salvage and rehabilitation proposal (proposed action).

The selected alternative will salvage approximately 30,000 board feet of dead and damaged timber from approximately 5 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the Roberts Creek Blowdown Salvage Decision Memo and project file, I have determined that good case exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 1, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16226 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Dry Fork Shed Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage project to recover insect-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the West Dry Fork drainage (Compartment 29) on the Fisher River Ranger District, Kootenai National Forest, has killed approximately 20 to 100 percent of the lodgepole pine within the analysis area. In February 1993, the Fisher River District Ranger proposed a salvage timber sale to recover damaged timber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Dry Fork Shed Salvage Timber Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of high-value, dead lodgepole pine that is suitable as house logs must be accomplished quickly to avoid further deterioration.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Froberg; Fisher River District Ranger; Kootenai National Forest; 12557 HWY. 37; Libby, MT 59923. Telephone: 406–293–7773.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic occurred in the West Dry Fork drainage (Compartment 29) on the Fisher River Ranger District during the last several years. The project area is located within Management Area 15 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland.

This proposal is designed to meet the following needs: (1) Expedite the salvage of high-value house logs before they are no longer merchantable or useable for house logs and (2) contribute to a continuing supply of timber for industry by salvaging dead lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in February 1993. Two alternatives were analyzed: no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 450 thousand board feet of timber from 320 acres. Harvest systems include 130 acres of horse and/or helicopter logging and 190 acres of helicopter yarding. The salvage area is accessible from existing roads.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to recover merchantable house logs before they deteriorate and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and project file for the Dry Fork Shed Salvage Timber Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR 217.

Dated: July 1, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16227 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Jim Cricket Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project, designed to recover insect-killed and high-risk timber, is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A windstorm in the fall of 1991 on the Fortine Ranger District, Kootenai National Forest, within the Jim Creek drainage, caused an accumulation of blowdown of mixed conifer sawlogs within the analysis area. In 1993, the Fortine District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Jim Cricket Salvage Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of catastrophic wildfire

and spruce bark beetle infestations that could damage adjacent stands.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jane P. Kollmeyer; Fortine District Ranger; Kootenai National Forest; P.O. Box 116; Fortine, MT 59918; Telephone 406–882–4451.

SUPPLEMENTARY INFORMATION: A windstorm in the fall of 1991 damaged approximately 20 acres of timber in the Jim Creek drainage on the Fortine Ranger District, Kootenai National Forest. The windthrown timber is located within Management Area 15, which is designated by the Kootenai Forest Plan, September 1987, as suitable timberland with timber management goals.

In July of 1992, the Fortine District proposed a timber harvest within the Jim Creek drainage. This proposal is designed to meet the following needs: (1) Reduce the risk of catastrophic wildfire in stands killed by the beetle infestation by reducing fuel loading, (2) rehabilitate affected forest resources and reduce spruce bark beetle levels by harvesting down spruce trees, and (3) contribute to a continuing supply of timber for industry by salvaging dead sawtimber before it deteriorates and loses value.

An interdisciplinary team was convened, and scoping began in the winter of 1992. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 50 MBF from 20 acres. The silvicultural prescription includes 20 acres intermediate sanitation salvage (a stocked stand would remain). This sale would use existing roads.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for catastrophic wildfire and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and project file for the Jim Cricket Salvage Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project would not be subject to review under 36 CFR part 217.

Dated: June 30, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16228 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Little North Fork Blowdown Salvage Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through a Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 15 acres of timber in the Little North Fork area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber from the Little North Fork Area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading. An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed: no treatment (no action) and a salvage and rehabilitation proposal (proposed action).

The selected alternative will salvage approximately 90,000 board feet of dead and damaged timber from approximately 15 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the Little North Fork Blowdown Salvage Project File and Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 1, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16231 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Prichard Project Area, Idaho Panhandle National Forests, Shoshone County, ID; Intent to Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, road construction and

closures, precommercial thinning, and watershed/fisheries habitat enhancement projects in the Prichard Creek watershed. The area is located approximately 12 air miles north of Wallace, Idaho and 42 air miles east of Coeur'd Alene, Idaho. Management activities would be administered by the Idaho Panhandle National Forests, Wallace Ranger District, Shoshone County, Idaho.

The proposals' actions to harvest, reforest and precommercially thin timber stands, construct and reconstruct roads, and close roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purpose and need for the proposed action is to promote timber resource health, contribute to furnishing timber to local lumber mills, contribute to watershed recovery, and initiate a trend toward improvement of fisheries habitat. This project-level EIS will tier to the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan) and final EIS (September, 1987), which provides overall guidance of all land management activities on the Idaho Panhandle National Forests, including timber and road management.

DATES: The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For more effective use, comments should be sent to the agency on or before August 23, 1993.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Steve E. Williams, District Ranger, Idaho Panhandle National Forests, Wallace Ranger District, Box 14, Silverton, Idaho, 83867–0014.

FOR FURTHER INFORMATION CONTACT: Don Garringer, Planning Staff Officer, Idaho Panhandle National Forests, Wallace Ranger District, Phone: (208) 752–1221.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 2,794 acres of forested land which has been designated as suitable for timber management by the Idaho Panhandle National Forests Plan. The timber harvest operations, precommercial thinning, and general administration of National Forest lands will require reconstruction or reconditioning of approximately 27.1 miles of existing roads, and construction of approximately 21.56 miles of new road. Road closures involve closing the 21.56 miles of new roads and 73 miles of existing roads to wheeled vehicles year-round. To propagate future timber volumes approximately 893 acres are proposed for precommercial thinning.

The purpose and goals for the proposed project are to (1) provide a sustained timber yield that is responsive to local industry and national needs; (2) initiate harvesting of timber stands created by the 1910 fire to better distribute the harvest and provide for future age class distribution; (3) manage the forest's resources to protect against insect and disease; (4) maintain high water quality for fisheries habitat protection, water based recreation, public water supplies, and be within state water quality standards; (5) manage resource development to protect the integrity of stream channel systems; and (6) manage fisheries habitat to provide a carrying capacity that will allow an increase in the Forests' trout population. Additionally, the purpose of road construction and reconstruction is to facilitate access to the timber stands to be harvested.

The project area is approximately 29,740 acres in size and takes into account 7,988 acres of other public and private lands located in T49N, R4E, Sec. 1, 2, and 12, Boise Meridian; T49N, R5E, Sec. 1–18, 20–28, and 33–36, Boise Meridian; T49N, R6E, Sec. 5–8, 16–20, and 29–31, Boise Meridian; T50N, R4E, Sec. 21–29, and 33–36, Boise Meridian and T50N, R5E, Sec. 19, and 28–33, Boise Meridian are included.

Because of the potential for significant impacts resulting from the proposed action (as defined by 40 CFR 1508.27) an environmental impact statement will be prepared. The proposed actions are consistent with Forest Plan guidance for management activities in the potentially affected areas. The potentially affected area is within the following Management Areas:

Management Area 1: (62% of project area) Consists of lands designated for timber production. These lands are to be managed for long-term production of commercially valuable wood products as well as provide for soil protection, wildlife habitat, dispersed recreation opportunities and visual quality objectives.

Management Area 4: (21% of project area) Consists of lands designated for timber production with big game winter range. The goal is to manage big game winter range to provide forage to support projected big game habitat needs, through scheduled timber harvest and permanent forage areas.

Management Area 6: (5% of project area) Consists of lands designated for timber production within important big game summer range. Management goals are to provide big game summer range and forage to support projected big game habitat needs.

Management Area 9: (11% of project area) Consists of areas mainly unsuited for timber production in which are located isolated lands capable of timber production. The management goals are to maintain and protect existing improvements and other resource production potentials while meeting visual quality objectives.

Management Area 16: (1% of project area) Consists of areas with distinctive resource values and characteristics that are comprised of an aquatic ecosystem and adjacent upland areas that have direct relationships with the aquatic system.

A range of alternatives will be considered. One of these will be the "no-action" alternative, which would leave the analysis area in its existing condition and defer all timber harvest and associated road building activities. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternative. Past, present, and projected activities on other land ownerships and National Forest lands are to be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7). In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives.

Some public comments have already been received about the proposed

UMI
VOL
58
ISS
130
JL
9
1993
UMI

project area. The following preliminary issues have been identified so far:

1. The effect of harvest type and locations on the visual quality.
2. The effect that forest insect and disease have on timber production.
3. The effect that the proposal may have on water quality, fishery resources and riparian habitat.
4. The effects that roads can have on other resources such as water quality, wildlife and recreation.
5. The cumulative effects of past timber harvesting.
6. The effects of project work on wildlife species.
7. The cumulative effects on soils and their productivity. Other issues commonly associated with timber harvesting and road construction include: effects on cultural resources, water quality, old growth, and scenic values. This list may be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to the filed with the Environmental Protection Agency (EPA) and available for public review in August, 1993. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Prichard project area participate at that time. The Final EIS is scheduled to be completed December, 1993.

The Forest Service believes, at this stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objectives that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 016, 1022 (9th Cir. 1986) and Wisconsin *Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comment and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. I will make my decision regarding this proposal based on consideration of public comments and responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision. My address is Idaho Panhandle National Forests, Wallace Ranger District, Box 14, Silverton, Idaho 83867–0014.

Dated: June 30, 1993.

Steve E. Williams,

District Ranger, Wallace Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–16293 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Upper Killbuck Creek Watershed, OH; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Killbuck Creek Watershed, Wayne, Medina, and Holmes Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 200 North High Street, room 522, Columbus, Ohio 43215, telephone (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This supplement number two to the original plan adds water quality as a purpose. The planned works of improvement include providing technical assistance for the installation of 100 animal waste management systems.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, an local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Burris, Water Resources Planning Staff Leader.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with sate and local officials.)"

Dated: June 29, 1993.

Joseph C. Branco,

State Conservationist.

[FR Doc. 93–16221 Filed 7–8–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–92]

Foreign-Trade Zone 79—Tampa, FL, Application for Expansion; Amendment of Application

The pending application of the City of Tampa, Florida, grantee of FTZ 79, requesting authority to expand its zone in Tampa, Florida (Docket 12–92, filed 4/20/92, 57 FR 19596, 5/7/92 and amended on 5/24/93, 58 FR 31362, 6/2/93), has been further amended.

The initial application requested authority to expand the zone to include five new sites and delete existing Site 1 at the Tampa International Center. This amendment requests that Site 1 not be deleted from the zone project based on changed circumstances.

The comment period is reopened until August 23, 1993.

Dated: July 2, 1993
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 93–16351 Filed 07–08–93; 8:45 am]
BILLING CODE: 3510–DS–P

[Docket 28–93]

Foreign-Trade Zone 22—Chicago, IL, Application for Subzone; Sanofi Winthrop Warehouse/Distribution Facility, Des Plaines, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special-purpose subzone status for the warehouse/distribution facility of Sanofi Winthrop L.P. (joint venture between Elf Sanofi (France) and Sterling Winthrop Inc., a subsidiary of Eastman Kodak Company) in Des Plaines, Illinois, within the Chicago, Illinois, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 28, 1993.

Sterling Winthrop is a global pharmaceutical firm whose primary product lines include: diagnostic imaging agents, hormonal products, cardiovasculars, analgesics, antihistamines and muscle relaxants. In 1991, Sterling Winthrop and Elf Sanofi, a French pharmaceutical and health care products company, formed the Sanofi Winthrop alliance to jointly develop, manufacture and market products worldwide. This proposal is part of an overall company cost reduction effort. Subzone applications are pending for other company plants in Barceloneta, Puerto Rico (FTZ Doc. 18–93, 58 FR 29192, 5–19–93); Rensselaer, New York, (FTZ Doc. 22–93, 58 FR 33254, 6–16–93); and McPherson, Kansas (FTZ Doc. 24–93, 58 FR 33609, 6–18–93).

Sanofi Winthrop's Illinois facility (7 acres, 86,000 sq. ft.) is located at 200 East Oakton Street, Des Plaines, in the northeast metropolitan Chicago area. The facility (50 employees) is the company's primary export/import distribution center for finished products. Pharmaceutical products manufactured under zone procedures at the company's U.S. plants would be shipped to the Des Plaines facility in zone status. Certain finished products produced at Elf Sanofi plants abroad may be imported for distribution. The facility is also used for assembly of delivery system kits and promotional packages for finished pharmaceutical products. Foreign-sourced materials include packaging, plastic cases, medical instruments/appliances and parts thereof, medicaments, and other pharmaceutical products.

Zone procedures would exempt Sanofi Winthrop from Customs duty payments on foreign materials used in production at other company plants with subzone status for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 16.2%, with most falling in the 6.3%–6.9% range). The duty rates on foreign-sourced items range from duty-free to 16.2 percent. The application indicates that zone savings will help improve the international competitiveness of the company's domestic plants.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 7, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period September 22, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 1406, 55 East Monroe St., Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 30, 1993.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 93–16353 Filed 07–08–93; 8:45 am]
BILLING CODE: 3510–DS–P

Foreign-Trade Zone 61—San Juan, PR, Application for Subzone; Sterling Pharmaceutical Plant, Barceloneta, PR, Amendment to Application

Notice is hereby given that the application submitted by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical products manufacturing facility of Sterling Pharmaceuticals, Inc. (Sterling) (subsidiary of Sterling Winthrop Inc., a subsidiary of Eastman Kodak Company) in Barceloneta, Puerto Rico (58 FR 29192, 5/19/93), has been amended to expand the scope of products that could be manufactured under zone procedures to include cardiovascular, oncological and certain other diagnostic products. The application includes a request for manufacturing authority within planned plant expansion facilities (current—450,354 sq.ft., 6 bldgs.; proposed—568,085 sq. ft., 8 bldgs.).

The application remains otherwise unchanged.

The comment period is reopened until August 23, 1993.

Dated: July 2, 1993
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 93–16352 Filed 07–08–93; 8:45 am]
BILLING CODE: 3510–DS–P

International Trade Administration

[A–588–605]

Cast Iron Pipe Fitting From Japan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on cast iron pipe fittings from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1987, the Department of Commerce (the Department) published an antidumping duty order on cast iron pipe fittings from Japan (52 FR 25281). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it

VOL 58 ISS 130 JL 9 1993 UMI

is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16341 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–404]

Fabric Expanded Neoprene Laminate From Japan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on fabric expanded neoprene laminate from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1985, the Department of Commerce (the Department) published an antidumping duty order on fabric expanded neoprene laminate from Japan (50 FR 29466). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16340 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–507–502]

Pistachio Nuts From Iran; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on pistachio nuts from Iran. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1986, the Department of Commerce (the Department) published an antidumping duty order on pistachio nuts from Iran (51 FR 25922). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16338 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–835–801]

Solid Urea From Kyrgyzstan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Kyrgyzstan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Kyrgyzstan among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16343 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–841–801]

Solid Urea From Moldova; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Moldova. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Moldova, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16344 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–485–601]

Solid Urea From Romania; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Romania. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from Romania (52 FR 26367). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16345 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–844–801]

Solid Urea From Uzbekistan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Uzbekistan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Uzbekistan, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16350 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–823–801]

Solid Urea From Ukraine; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke Antidumping Duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Ukraine. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Ukraine, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16349 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–843–801]

Solid Urea From Turkmenistan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Turkmenistan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Turkmenistan, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16348 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–842–801]

Solid Urea From Tajikistan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Tajikistan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Tajikistan, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objection should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16347 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

VOL 58 ISS 130 JL 9 1993 UMI

[A-821-801]

Solid Urea From Russia; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Russia. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Russia, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-16346 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-834-801]

Solid Urea From Kazakhstan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Kazakhstan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Kazakhstan, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-16342 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-831-801]

Solid Urea From Armenia Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Armenia. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Armenia, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16334 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–041]

Synthetic Methionine From Japan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on synthetic methionine from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1973, the Treasury Department published an antidumping finding on synthetic methionine from Japan (38 FR 18382). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16339 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–832–801]

Solid Urea From Azerbaijan Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Azerbaijan. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION: .

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Azerbaijan, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

VOL 58 ISS 130 JL 9 1993 UMI

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this anitdumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16335 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–822–801]

Solid Urea From Belarus Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Belarus. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Belarus, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(K)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16336 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–833–801]

Solid Urea From Georgia; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on solid urea from Georgia. Domestic interested parties who object to this revocation must submit their comments in writing no later than July 31, 1993.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on solid urea from the U.S.S.R. (52 FR 26367). On June 29, 1992, the order was transferred to Georgia, among other states, when the Department transferred the antidumping duty order on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 28828). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to object

No later than July 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by July 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by July 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–16337 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 930635–3135]

New Cooperative Program to Establish and Operate "American Business Centers" in the Newly Independent States of the Former Soviet Union

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In Title III, section 301 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act), Congress calls for the establishment of "American Business Centers", hereafter referred to as "Centers", in the Newly Independent States of the former Soviet Union (NIS). The International Trade Administration (ITA) is soliciting competitive applications to establish and operate the Centers for approximately a three-year period.

The Centers will provide a broad range of business development and facilitation services to United States companies in the NIS. Services provided by the Centers will be designed to encourage more U.S. firms to explore opportunities for trade and investment in the NIS and to assist U.S. firms to conduct business in the NIS more effectively. Services will include as appropriate: Telecommunications; short-term rental of office space; facilities and services to support business meetings, seminars, and product display and demonstration; secretarial services; photocopying; business counselling on NIS markets; matchmaking; arranging appointments with NIS business contacts; and translation and interpretation.

The Centers also will: Gather and prepare commercial information (e.g. market research, trade and investment leads, etc.) for broad dissemination to the U.S. business community through ITA channels; cooperate with ITA to promote the expansion of U.S. trade and investment in the NIS; cultivate close contacts with local NIS firms and help them develop trade and investment ties with U.S. firms; and serve as a venue for business-related training activities for NIS firms conducted by U.S. organizations.

The Centers will be established in various locations in the NIS in order to enable U.S. firms to conduct business in the substantially decentralized NIS economy. The Centers supported under the terms of this notice will be located in NIS cities or regions that constitute promising markets for U.S. exports and investment but that are not locations where Centers will be established and operated directly by ITA's U.S. & Foreign Commercial Service (US&FCS). NIS cities in which US&FCS-operated Centers will be located are: St. Petersburg and Vladivostok (Russia); Kiev (Ukraine); Almaty (Kazakhstan); and Tashkent (Uzbekistan).

In ITA's view, the best prospects for location of Centers supported under this notice will be those NIS cities in which the prospects for development of U.S. trade and investment are good but in which business services to support such commercial development are lacking at present. Examples of such NIS cities in priority order include (but are not limited to): Tyumen (Russia), Nizhni Novgorod (Russia), Yekaterinburg (Russia), Kazan (Russia), Minsk (Belarus), Novosibirsk (Russia), Volgograd (Russia).

DATES: ITA will accept only those applications which are received no later than 3 p.m. E.D.T. on August 23, 1993.

ADDRESSES: To obtain a copy of the application kit, please send a written request with a self-addressed mail label to: Russia-NIS Program Office, U.S. & Foreign Commercial Service, room 1235, HCHB, U.S. Department of Commerce, Washington, DC 20230. Requests for application kits also may be faxed to 202–482–2456. Only one application kit will be provided to each organization requesting it, but the kit may be reproduced by the requester. All forms necessary to submit an application will be included in the application kit.

Completed applications should be sent to the Russia-NIS Program Office, U.S. & Foreign Commercial Service, room 1235, HCHB, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Applicants wishing further information should contact Mr. Barry Friedman, Director, Russia-NIS Programs Office, U.S. & Foreign Commercial Service, U.S. Department of Commerce, room 1235, HCHB, Washington, DC 20230, telephone: (202) 482–2902 or 482–2179.

SUPPLEMENTARY INFORMATION: Program Authority: The program to establish the Centers was authorized by Section 301 of the Freedom Support Act. Pursuant to section 632(b) of the Foreign Assistance Act of 1961, as amended, (the "Act") funding for the program will be provided by the U.S. Agency for International Development (USAID). Pursuant to an agreement with USAID, ITA will award financial assistance and administer the program under the authority contained in section 635(b) of the Act.

Eligible Countries: The following NIS countries are eligible to be locations of the Centers supported under this notice: Russia, Ukraine, Belarus, Moldova, Georgia, Armenia, Kyrgyzstan, Uzbekistan, Kazakhstan, Tajikistan, and Turkmenistan.

Eligible Applicants: United States citizens, for-profit firms, non-profit organizations, non-Federal government agencies, industry and trade associations, and educational institutions are eligible to apply. An enterprise which includes or intends to include participation of host country citizens or entities will be considered an eligible applicant so long as the applicant is and will remain, throughout the award period, controlled by citizens or entities of the United States.

Funding Guidelines: Since it is anticipated that ITA will be involved in the implementation of each project for which an award is made, the funding instrument for the program will be a cooperative agreement.

Each cooperative agreement under this program will not exceed $1,000,000 regardless of the duration of the award. Funds for each cooperative agreement will be dispersed incrementally over the period of time required to complete the scope of work, but no funds will be provided beyond three years from the date of the award. Funding beyond the initial increment of funds will be contingent upon satisfactory performance of the recipient and at the sole discretion of ITA.

The total amount of funds available for awards under this notice in FY 1993 is $2 million. It is anticipated that a minimum of two cooperative agreements will be awarded to eligible entities for the program in 1993 for Russia. Subject to availability of funding, the Department intends to make available an additional $5 million for award in FY 1994. It is anticipated that a minimum of five cooperative agreements will be awarded to eligible entities for the program in 1994 for Russia and other eligible NIS countries. Applications not selected for funding in FY 1993 will be carried over and be evaluated for possible funding in FY 1994 unless the applicant requests otherwise.

Eligible entities may propose the establishment of one or more Centers. Applicants must submit a separate application for each proposed Center. Each Center will be funded through a

separate cooperative agreement. More than one cooperative agreement may be awarded to a single eligible entity. No more than one Center will be funded in any given NIS city. ITA reserves the right to make awards in such a way as to ensure an appropriate geographical distribution of the Centers in the NIS.

Applicants must supply at least one fifth (⅕) of total project costs, with the Federal portion of total project costs to be no more than four fifths (⅘). A minimum of one half (½) of the support supplied by the applicant must be in the form of cash. The remaining portion of the applicant's support may consist of cash or in-kind contributions (goods and services).

Publication of this notice does not constitute an obligation by the Department of Commerce to enter into a cooperative agreement with any responding entity.

Application Requirements: Competitive application kits will be available from the Department of Commerce beginning [insert date three calendar days after publication in the **Federal Register**]. Applicants must submit a signed original and two copies of the application and supporting materials. It is anticipated that it will take ten weeks to process applications and make awards.

Evaluation Criteria: Consideration for financial assistance under the program will be based on the following evaluation criteria:

(1) *Quality of Work Plan:* Creativity and innovation displayed by the work plan while at the same time being realistic;

(2) *Qualifications of Applicant:* Institutional, personnel, and financial qualifications of the applicant to carry out the work plan;

(3) *U.S. Small Business Utility:* The degree to which the facilities and services of the Centers will be accessible to and appropriate for U.S. small businesses. Especially important will be the extent to which the fees for services are affordable for small U.S. firms;

(4) *Market Potential of Locations:* This addresses both the prospects for development of U.S. trade and investment in an NIS city or region for which a Center is proposed, as well as the applicant's demonstrated familiarity with the market conditions in the proposed city or region;

(5) *Project Timetable:* The ability of the applicant to complete major stages in the scope of work quickly, particularly bringing a Center into the fully-operational stage;

(6) *Self-Sustainability:* The likelihood that a proposed Center will be able to continue to operate on a self-sustaining basis beyond the three-year term of U.S. Government financial assistance;

(7) *Cost-Effectiveness:* Reasonableness and cost-effectiveness of the itemized budget to carry out the work plan;

For purposes of the selection process, the above criteria will be weighted as follows: criterion (1) will be worth a maximum of 40 (forty) percent; criterion (2) will be worth a maximum of 20 (twenty) percent; criterion (3) will be worth a maximum of 15 (fifteen) percent; criterion (4) will be worth a maximum of 10 (ten) percent; criteria (5) through (7) will be worth a maximum of 5 (five) percent each.

Selection Procedure

Each application will be evaluated by one or more review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the evaluation criteria set forth above. Awards will be based on highest total accumulated score and geographic location.

Notifications

All applicants are advised of the following:

(1) Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(2) If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may be received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(3) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(4) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department of Commerce are made.

(5) All applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions;" the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(6) Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

(7) A false statement on the application may be grounds for fines or imprisonment as provided in 18 U.S.C. 1001 and denial or termination of Federal funding.

(8) All recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards. For-profit organizations shall be subject to OMB Circular A–110 and 15 CFR 29a.

(9) All applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters

which significantly reflect on the applicant's management honesty or financial integrity.

(10) Recipients are subject to the Fly America Act (49 USC sec. 1517 as implemented by 41 CFR sec. 301–3.6).

(11) Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: July 6, 1993.

Barry Friedman

Director, US&FCS/Russia-NIS Program Office.

[FR Doc. 93–16325 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–FP–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

July 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6719. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53885, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 13, 1993, you are directed to amend further the directive dated November 6, 1992 to adjust the limits for the following categories, as provided under the terms of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I:	
225/317/326	35,328,878 square meters.
300/301/607	1,678,314 kilograms of which not more than 1,398,595 kilograms shall be in Category 300, not more than 1,398,595 kilograms shall be in Category 301, and not more than 1,398,595 kilograms shall be in Category 607.
611	2,856,721 square meters.
613/614/615/617	17,865,709 square meters.
625/626/627/628/629	17,087,277 square meters.
Within Group I subgroup:	
314	26,179,286 square meters.
Sublevels in Group II:	
336	113,853 dozen.
338/339	861,506 dozen.
340	1,161,797 dozen.
347/348	1,523,982 dozen of which not more than 1,298,232 dozen shall be in Categories 347–W/348–W [2].
433	13,928 dozen.
435	19,552 dozen.
442	38,936 dozen.
443	47,354 numbers.
444	126,589 numbers.
633/634/635	1,602,180 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 817,817 dozen shall be in Category 635.
638/639	6,215,074 dozen.
640	947,576 dozen.
642	803,635 dozen.
644	1,071,574 numbers.
647/648	5,085,241 dozen of which not more than 5,084,491 dozen shall be in Categories 647–W/648–W [3].
659–S [4]	1,808,265 kilograms.
Within Group II subgroup:	
351	399,520 dozen.
447/448	19,170 dozen.
636	347,894 dozen.
651	397,320 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204 12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 93-16326 Filed 7-8-93; 8:45 am]
BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 9, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Refill, Ballpoint Tape
7510-01-357-6831
7510-01-357-6832
7510-01-357-6833
7510-01-357-6834
7510-01-357-6835
7510-01-357-6836

Nonprofit Agency: Kansas City Association for the Blind, Kansas City, Missouri.

Tape, Red
7510-00-NIB-0068
7510-00-NIB-0069
7510-00-NIB-0070

(Requirements for the Fleet and Industrial Supply Center, Bremerton, WA)

Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio.

Box, Shipping
8115-00-117-8249

Nonprofit Agency: National Center for Employment of the Disabled, El Paso, Texas.

Services

Janitorial/Custodial
Basewide, Homestead Air Force Base, Florida

Nonprofit Agency: Goodwill Industries of South Florida, Miami, Florida.

Janitorial/Custodial
Illinois Waterway Visitor Center, Dee Bennett Road, Utica, Illinois

Nonprofit Agency: Gateway Services, Inc., Princeton, Illinois.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93-16332 Filed 7-8-93; 8:45 am]
BILLING CODE 6820-33-F

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled

ACTION: Additions to Procurement List

SUMMARY: This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 9, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On April 30 and May 21, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 26125 and 29569) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service are hereby added to the Procurement List:

Commodity

Side Rack, Vehicle
2510-00-571-6968

Service

Janitorial/Custodial
Social Security Administration Building, 612 N. Church Street, Rockford, Illinois.

This action does not affect contracts awarded prior to the effective date of

this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–16333 Filed 7–8–93; 8:45 am]

BILLING CODE 6820–33–P

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Community Service—Defense Conversion Assistance Program

AGENCY: Commission on National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Commission on National and Community Service (the Commission) hereby announces the availability of approximately $10 million to state and local governments, the District of Columbia, Indian Tribes, the Commonwealths (Puerto Rico and the Northern Mariana Islands), the Territories (Virgin Islands, Guam, American Samoa, and Palau), institutions of higher education, and public or private nonprofit organizations, to fund programs that will recruit participants from and serve residents of areas impacted by the Department of Defense (DoD) cutbacks affecting both military bases and industry. The intent of these funds is to create and/or expand service activities which can address, in a visible and measurable way, the compelling human, educational, environmental, and public safety needs created by military cutbacks in areas of defense downsizing. Although the organizations to be funded must be existing ones, with a proven track record in community service, the proposed activities may be newly designed or expanded to meet the aims of this project.

The Commission will make grants on a competitive basis. The funds are provided under the authority of the National and Community Service Act of 1990 as amended (42 U.S.C. 12501 *et seq.*). Funding levels will depend on the size and scope of the proposed service activities; however, the Commission expects to award from five to eight grants. Funding for this program is made possible because of a one-time Congressional appropriation. Programs selected for funding may be eligible for future funding under the National Service Trust Act of 1993 if it is enacted. This Notice contains information on: eligible applicants, program guidelines, application requirements, and review criteria.

DATES: All grant applications under this program must be received by the Commission by 6 p.m. Eastern Daylight Savings Time, August 30, 1993. Facsimiles will not be accepted.

ADDRESSES: Applications should be submitted to the Commission on National and Community Service, 529 14th Street, Suite 452, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Clara Shin at the Commission on National and Community Service, (202) 724–0600, 529 14th Street, NW., suite 452, Washington, DC 20045.

SUPPLEMENTARY INFORMATION: Please call or write the Commission to request an application packet with the appropriate forms. Technical assistance for applicants will be provided by means of telephone conferences. Please call the Commission to make an appointment for technical assistance telephone conferences or if you have further questions. Additionally, applicants should refer to the National and Community Service Act of 1990 for descriptive information about the Commission's existing program types.

The primary emphases of this program are to:

(1) Fund high quality service activities that target needs specifically resulting from the defense downsizing process and can make a measurable impact in areas affected by military cutbacks and

(2) Enable program participants, particularly military and civilian personnel affected by military cutbacks and residents of areas affected by defense downsizing, to make a sustained commitment to national and community service.

I. Eligible Applicants

States and local governments, Indian Tribes, the District of Columbia, the Commonwealths (Puerto Rico and the Northern Mariana Islands), the Territories (Virgin Islands, Guam, American Samoa, and Palau), institutions of higher education, and public or private nonprofit organizations, operating existing nonresidential community service programs are eligible to apply for these funds.

II. Program Guidelines

1. Program Description

(A) The Commission shall fund activities that can make a measurable impact in areas affected by the defense conversion process, particularly those activities which address human, educational, environmental, and public safety needs.

(B) Proposals must be for operational programs but they may include both planning and implementation components, for instance, a planning period to design and/or expand the service activities to be implemented may be included.

(C) In general, the Commission is not stipulating any specific program types. Program examples might include:

(1) A full-time youth corps program, such as a conservation corps or youth service corps, that performs service projects with visible benefits to an area, including natural resources, urban renovation, or human service projects. Such programs might involve organized teams or crews of young people in such activities as conservation of wildlife habitats and rangelands, rehabilitation or improvement of public facilities, and assisting in daycare centers. Displaced military personnel might function as team leaders or trainers to provide highly structured and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services;

(2) A professional corps program that recruits and places qualified participants (e.g., military and civilian personnel affected by military cutbacks) in individual or team-based placements in positions such as teachers, recreational sports team coaches, police officers, and health care staff. Participants could also participate in regular group activities such as leadership development training, team-building, and designing and implementing special service projects. Program participants would receive in-service stipends and post-service education and training benefits. However, as is the case with all programs funded by the Commission, program participants cannot displace paid employees;

(3) An institution of higher education in partnership with a vocational-technical school to administer a skills training or retraining program for displaced military and civilian personnel. During such training, participants might be placed with sponsoring organizations to develop and perform the learned skills or participate in activities related to the civilian reuse of military installations such as converting available buildings, land areas, transportation systems, and any unique physical conditions for nonprofit institutions' or community agencies' use;

(4) Programs that involve area K–12 school-age youth, displaced military and civilian personnel, and senior citizens in such activities as building bike paths on former military installation sites, planting vegetation,

VOL 58 ISS 130 JL 9 1993 UMI

literacy training, leadership development training, tutoring and serving as mentors. Such programs should develop service-learning curricula with age-appropriate learning components, for the K–12 school-aged youth. Programs might engage service-learning experts and other participants capable of providing specialized training to assist in designing program activities; and

(5) A service program that involves qualified military or civilian personnel, affected by military cutbacks, training area residents in specialized skill areas. During training, participating area residents might be placed as apprentices in local organizations to provide necessary services as well as to engage in further skill development.

(D) As stipulated in Section 1094 of the Defense Reauthorization Act (P.L. 102–484), the Commission shall give special consideration to programs:

(1) Located in communities where facilities of military installations have been closed;

(2) That employ retired, inactive, or discharged military personnel;

(3) That involve military personnel participating in volunteer services;

(4) That test whether a nonresidential, community-based, youth service corps can engender in young men and women a commitment to civic responsibility and involvement in their communities;

(5) That the test whether such nonresidential corps permit young people who have received military-based training to use their skills and knowledge to improve their communities; and

(6) That test whether retired, discharged, or inactive members and former members of the Armed Forces can play a meaningful role in service learning by acting as mentors, teachers, counselors and role models.

(E) While geographic distribution will be considered, the Commission will give preference to service activities that can make a measurable impact in areas most severely affected by the defense transition process.

(F) The Commission will also give preference to proposals that evidence a partnership between States and a private or public nonprofit organization.

(G) Proposals may be for a period of up to two years and not less than nine months.

2. Program Requirements

(A) Applicants shall:

(1) Solicit broad-based and local input in a bi-partisan or non-partisan manner to identify the compelling human, educational, environmental, and public safety needs created by the defense conversion process. Applicants might assign this function to an existing committee or establish an advisory board including, but not limited to, military and civilian personnel affected by military cutbacks, area residents, service program practitioners, young people, schools, economic development experts, and other appropriate parties. Such advisory bodies shall attempt to involve individuals from diverse backgrounds, that reflect the area to be served, including diversity of gender, race, ethnicity, socioeconomic status, age, and physical ability;

(2) Designate a service coordinator for the program;

(3) Design or expand service activities that address the unmet human, educational, environmental, and public safety needs specifically resulting from defense conversion in an area affected by military cutbacks and that can make a measurable impact;

(4) Develop measurable program goals and objectives for service activities;

(5) Provide a training component for participants and staff which may include leadership development, team building, administrative and organizational development, instilling the ethic of service in participants, specialized training in the service(s) the participant will perform, and community organizing skills development;

(6) Ensure that a service-learning component is an integral part of the service experience, including reflection on services performed;

(7) Participate in the Commission's evaluation efforts;

(8) Ensure that participants do not drop out of school for the purpose of participating in the service activities; and

(9) Provide reasonable accommodation for individuals with disabilities.

(B) The Federal share of the cost of activities for which a grant is made shall not exceed 75% of the total cost of such activities; the remaining funds may be provided in cash or in kind contributions.

(C) Up to 5% of the Commission funds may be expended on administrative expenses.

(D) Applicants must comply with all applicable OMB circulars and Federal laws, including the supplementation, nonduplication, and nondisplacement provisions set forth in 45 CFR 2506.2.

(E) Programs may not be administered by any:

(1) Business organized for profit;

(2) Labor union;

(3) Partisan political organization; or

(4) Organization engaged in religious activities, unless such activities are unrelated to religious instruction, worship services, or any form of proselytization.

(F) The following rules shall apply to participants:

(1) Participants shall be citizens or nationals of the United States or lawful permanent residents aliens of the United States;

(2) Programs shall be responsible for selecting participants. Preference for participation shall be given to military and civilian personnel affected by military cutbacks, their family members, and residents of the affected area. Moreover, programs shall attempt to involve individuals from diverse backgrounds, that reflect the area to be served, including diversity of gender, race, ethnicity, socioeconomic status, age, and physical ability, who will serve together; and

(3) In general, individuals of all ages may participate in the service activities. However full-time participants in year-round programs must be 17 years of age or older.

3. Stipends and Post-Service Benefits

(A) Programs may offer in-service stipends and post-service benefits to participants 17 years of age and older. In-service stipends may also be provided to individuals 14 years of age and older participating in full-time service activities during academic school year breaks. Post-service benefits may only be used for education or training purposes.

(B) Although programs may provide additional amounts from other sources, the Federal contribution to in-service stipends and post-service benefits are subject to the following limitations:

(1) Full-time service, defined for the purposes of this program as not less than 1700 hours over nine months to one year:

(a) In service stipends shall not exceed 100 percent of the poverty line for a family of two (as defined in 42 U.S.C. section 9902(2)); and

(b) Post-service benefits shall not exceed $100 per week of service or $5,000 per year of service, whichever is less.

(2) Part-time service, defined for the purposes of this program to be not more than 850 hours over nine months to one year:

(a) In service stipends shall not exceed an amount equal to a share of such stipends offered to a full-time participant under paragraph (1)(a) above, that has been prorated according to the number of hours such part-time participant serves in the program; and

(b) Post-service benefits shall not exceed an amount equal to a share of

such post-service benefit offered to a full-time participant under paragraph (1)(b) above, that has been prorated according to the number of hours worked per week of service or $2000 per years of service, whichever is less.

(C) A program participant who receives an in-service stipend and/or a post-service benefit shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

II. Application Requirements

Proposals must provide the requested information and contain the following sections. Failure to do so shall result in the disqualification of the proposal. Please Call Or Write The Commission To Request An Application Packet With The Appropriate Forms. Proposals shall not exceed 20 pages, one-sided and double-spaced, and inclusive of all requested information. In general, the following information will be requested:

(A) Title page.

(B) Program narrative.

(1) Area needs:

(a) Provide a map with clear delineations of the military base site and/or industry site undergoing defense conversion and the area to be served;

(b) Describe the needs assessment process, including such information as the participants involved in the design and implementation of the assessment, and outreach efforts;

(c) Provide the dates of the defense conversion process;

(d) Describe, in a qualitative and quantitative manner, the needs of the area to be served and how they are a result of the defense conversion process. In particular, provide a total economic picture of the area to be served and how the defense conversion process has affected it. Information should include, but is not limited to:

(i) Percentage of local jobs attributable to defense spending in the area to be served,

(ii) DoD related percentage of unemployment in the area,

(iii) DoD related number of job losses in the area,

(iv) Population of area and the DoD related percentage of individuals moving out of the area,

(v) Local and State unemployment rates compared to the national rate, and

(vi) Projected short-term and long-term effects of the defense conversion on unemployment.

(2) Program goal(s): Provide a mission statement and describe the long term goals of the program.

(3) Program objectives: (a) Describe the proposed service activities in a clear and detailed manner, and how they relate directly to the identified needs;

(b) Describe, in a qualitative and quantitative manner, the measurable objectives of the program and the projected quantifiable outcomes or impacts;

(c) Describe any training, service learning, participant development, and or/evaluation program components; and

(d) Provide a timeline for program activities, including the needs assessment process.

(4) Program participants: (a) Describe how participants will be recruited and the selection criteria used to choose them;

(b) Provide the proposed number of stipended participants, participants receiving post-service benefits, and non-stipended participants;

(c) Provide the number of military and civilian personnel affected by military cutbacks participating in the program and describe their roles; and

(d) Describe the procedure for organizing and supervising participants.

(5) Discuss whether programs will:

(a) Provide career and education guidance and counseling to participants using in-service training, counseling with respect to additional study, job skills training or employment, retraining, and job placement assistance where appropriate;

(b) Ensure that participants who are not high school graduates participate in an educational curriculum to earn a high school diploma or the equivalent of such diploma;

(c) Seek academic credit, from appropriate state or local officials, for participants performing service activities;

(d) Develop plans to prepare participants for future community service leadership activities when their participation in the program is over;

(e) Develop a plan for an independent evaluation of the program;

(f) Include volunteers in service activities, provide for incidental costs due to such involvement of volunteers, including transportation, supplies, recruiting, training, and supervision;

(g) Provide health insurance to full-time participants who do not otherwise have access to it; and

(h) Provide child-care for those participants with young children.

(6) Such other information as the Commission shall require.

(C) Institutional and personnel information.

(1) Administering organization: describe and provide evidence of the organization's past experience in and track record of administering community service programs as well as the organization's present activities. Additionally, discuss the organization's institutional capacity to manage the proposed program as well as to manage a Federal grant; and

(2) Leadership and management: describe the experience and major accomplishments of the staff. Applicants are encouraged to include resumes, however, keep in mind that the 20-page limit includes resumes.

(D) Budget form and narrative.

(E) Assurance and certification forms.

IV. Selection Criteria

(A) Special consideration shall be given programs that:

(1) Are located in communities where facilities of military installation have been closed;

(2) Employ retired, inactive, or discharged military personnel;

(3) Involve military personnel participating in volunteer services;

(4) Test whether a nonresidential, community-based, youth service corps can engender in young men and women a commitment to civic responsibility and involvement in their communities;

(5) Test whether such nonresidential corps permit young people who have received military-based training to use their skills and knowledge to improve their communities; and

(6) Test whether retired, discharged, or inactive members and former members of the Armed Forces can play a meaningful role in service learning by acting as mentors, teachers, counselors and role models.

(B) Preference shall be given to proposals that evidence a partnership between States and a private or public nonprofit organization.

(C) The Commission shall also consider:

(1) Quality 60%

(a) 20%. Needs of the area to be served are compelling, and are clearly delineated in a qualitative and quantitative manner; information that shall be considered includes:

(i) Percentage of local jobs attributable to defense spending in the area to be served;

(ii) DoD-related percentage of unemployment in the area;

(iii) DoD-related number of job losses in the area;

(iv) DoD-related percentage of individuals moving out of the area;

(v) The area unemployment rate compared to the State and national unemployment rates; and

(vi) The projected short-term and long-term effects of the defense conversion on unemployment in the area.

(b) 20%. Program:

(i) The applicant's process for identifying an area affected by military

cutbacks and the needs assessment process involved broad-based community input;

(ii) Applicant clearly delineates program goals;

(iii) Program offers valuable services which address the identified human, educational, environmental, and public safety needs in the area affected by military cutbacks;

(iv) Applicant clearly delineates program objectives and proposes specific and concrete plans for achieving its stated objectives.

(v) Applicant specifies the measurable objectives, qualitative and quantitative, of the program and the projected quantifiable outcomes. Moreover, the proposed measurable impact will be significant in addressing the identified needs of the area to be served.

(vi) Applicant can achieve the projected measurable impacts in the area to be served with the proposed service activities;

(vii) Program timeline is reasonable;

(viii) Number of civilian and military personnel affected by military cutbacks serving as program participants;

(ix) Program involves civilian and military personnel affected by military cutbacks and area residents, particularly youth, in the design and implementation of the service/planning activities;

(x) For school-based programs, students are actively involved in the design and implementation of service activities;

(xi) Program involves individuals who will serve together from diverse backgrounds, that reflect the area to be served, including diversity of gender, race, ethnicity, socioeconomic status, age, and physical ability; and

(c) 20%. Institutional and personnel information:

(i) The administering organization has a proven track record in community service;

(ii) The proposed local organization possesses the institutional capacity to manage the program as well as to manage a Federal grant; and

(iii) The leadership and management has the experience to manage the program.

(2) Sustainability 15%

(a) Program has active and broad-based community support;

(b) Program is integrated with other existing program and community resources;

(c) Program has obtained financial resources aside from Commission funds; and

(d) There is evidence that the program can obtain the financial resources necessary to continue the program beyond the term of the Commission grant.

(3) Cost-effectiveness 15%

(a) Budget request relative to the perceived impact of activities is reasonable;

(i) Reasonableness of participant support costs, and

(ii) Reasonableness of staff support costs

(b) Funds are strategically allocated to achieve the greatest impact.

(4) Innovation 5%

(a) Program is innovative in developing and implementing such program components as the needs assessment, recruiting and training participants, and service activities; and

(b) Program uses military resources creatively.

(5) Replicability 5%

(a) Program is high quality and can serve as an effective model to be replicated elsewhere; and

(b) Program is high quality and should serve as an effective model to be replicated elsewhere.

Terry Russell,

General Counsel.

[FR Doc 93–16306 Filed 7–8–93; 8:45 am]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Environmental Impact Statement for the Improvements to Military Operations Areas in Alaska

The United States Air Force is announcing their intent to prepare an Environmental Impact statement (EIS) to analyze proposed modifications and creation of new Special Use Airspace (SUA) in the state of Alaska.

The proposed action under consideration would modify the existing military airspace structure and convert existing temporary SUA to permanent SUA. Supersonic aircraft operations are proposed in certain parcels of special use airspace. These actions are in support of the Pacific Air Forces. The proposed actions are needed to provide a near-realistic air combat training environment in the Alaskan theater. The proposed air combat training areas will support major flying exercises; joint training; introduction of new and/or improved weapon systems and aircraft; changes in air combat tactics; composite air wing training, and routine operations for present and future Alaskan theater needs into the next century. The proposed action will meet the increased demand for all aspects of air combat training such as air-to-air intercept, air escort, tactical air-to-surface attack, air refueling, electronic combat, aerial resupply, and search and rescue training. To provide adequate airspace, it is anticipated that the MOAs will extend from 100 feet above ground level to 18,000 feet mean sea level and that each MOA will range in size with the largest complex extending from 200–300 nautical miles long and 80–120 nautical miles wide.

The EIS will address potential impacts of the proposed action and alternatives, including the no action alternative, on airspace, physical, natural, and human environments of the affected geographic areas as well as the potential cumulative impacts on the environment and human resources of all USAF actions (past, present, and foreseeable future) in the State of Alaska. Scoping meetings will be held to identify issues and concerns related to the proposed actions. Scoping meeting sites and times will be published in local and regional newspapers.

For further information concerning the preparation of the EIS for the Alaska Military Operations Areas proposal, or to provide written comment, contact: Lt. Col. Jimmy L. Harris, 11 AF/DOO, 5800 G Street, Ste. 102, Elmendorf AFB, Alaska 99506–2130.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–16060 Filed 7–8–93; 8:45 am]

BILLING CODE 3910–01–M

Notice of Intent to Prepare Environmental Impact Statement for the Modification of Military Special Use Airspace To Support the 140th Fighter Wing, Colorado Air National Guard, Buckley Air National Guard Base, CO

The United States Air Force and the Air National Guard are announcing their intent to prepare an Environmental Impact Statement (EIS) to analyze proposed modifications known as the Colorado Airspace Initiative (CAI).

The proposed action under consideration would modify the existing military airspace structure in order to facilitate operations into and out of the new Denver International Airport and meet the training requirements of the 140th Fighter Wing, Buckley Air National Guard Base, Colorado.

The Air Force and Air National Guard are planning to conduct a series of

Scoping meetings on the following dates and times at the indicated locations:

August 2, 1993—7 p.m.
Penrose School, Penrose, CO
August 3, 1993—7 p.m.
Custer County School, Westcliffe, CO
August 4, 1993—7 p.m.
Moffat School District, Moffat, CO
August 5, 1993—7 p.m.
Rye High School, Rye, CO
August 9, 1993—7 p.m.
Fowler High School, Los Animas, CO
August 10, 1993—7 p.m.
Los Animas High School, Los Animas, CO
August 11, 1993—7 p.m.
Greeley County High School, Tribune, KS
August 12, 1993—7 p.m.
Kit Carson Town Hall, Kit Carson, CO
August 17, 1993—7 p.m.
Prairie School, New Raymer, CO

The purposes of these meetings are to present information concerning the proposed actions and alternatives under consideration and to solicit public input with respect to issues to be addressed, effort to be expended and alternatives that should be addressed in the EIS. Questions or clarifications concerning the proposal or any other information presented will be answered as they relate to the scope of the effort anticipated.

The Scoping meeting will include opportunities for clarification of the proposal and statements from representatives of government agencies and the public. To insure the maximum opportunity for public participation, initial presentations and questions by individuals will be limited to a maximum of five minutes until all those desiring an opportunity to speak have been accommodated. Additional presentations and questions will be accepted at the end of the meeting. Submission of written comments and questions will be accepted. Submission of written comments is encouraged but is not required. Written comments and questions of any length submitted at the meeting or during the scoping period will be considered in their entirety.

To ensure the Air Force and the Air National Guard have sufficient time to consider public input on issues and alternatives in the preparation of the Draft EIS, comments should be submitted to the address below by September 3, 1993. The Air Force and the Air National Guard will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the preparation of the EIS for the CAI, or to provide written comment, contact: Environmental Support, Air National Guard Readiness Center, ANGRC/CEVS, Attention: MSgt Katherine Jones, 3500 Fetchet Avenue, Mail Stop 18, Andrews Air Force Base, MD 20331–5157, Telephone: (301) 981–8143.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–16061 Filed 7–8–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Mission Mobility Panel will meet on 10 August 1993 from 8 a.m. to 5 p.m. at the Scott AFB, IL.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to the Mobility Mission. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–16291 Filed 7–8–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of Final Environmental Impact Statement (FEIS) To Assess the Impacts of Disposal of Fort Ord Property and Potential Reuses of the Property and the Socioeconomic Impacts of the Closure of Fort Ord, CA on the Monterey Community

AGENCY: Department of Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Defense Base Closure and Realignment Commission was mandated by Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, to recommend military installations for realignment and closure. The Commission's recommendations were presented to the President in their report on July 1, 1991, and were approved by the President and forwarded to the Congress on July 11, 1991. Included in the Commission's report was the recommendation to close Fort Ord. The recommendations became law on October 2, 1991.

Public Law 101–510 exempted the decision making process of the Commission in recommending installations to be closed or realigned from the provisions of the National Environmental Policy Act of 1969. The law also exempted the Department of Defense from considering the need for closing, realigning or transferring functions and, from looking at alternative installations to realign or close. The Department of Army still must prepare environmental impact analyses to assess the environmental effects of property disposal and the environmental effects of potential reuse of the property after disposal. This FEIS meets that requirement.

The FEIS analyzes the effects of the disposal and reuse of Fort Ord on the surrounding area. Alternative actions are analyzed in the document, including a modified Presidio of Monterey annex proposal developed by the City of Seaside and a proposal to have no annex or reserve center at For Ord. A wide range of reuse alternatives including high-, medium-, and low-density mixed use alternatives; an alternative composed primarily of institutional uses (educational, governmental, and public/quasi-public); an open space alternative; and an anticipated reuse plan are compared to 1991 baseline conditions. As required by House Resolution 2100 for the National Defense Authorization Act for fiscal years 1992 and 1993, the FEIS also analyzes the socioeconomic effects of the Army relocating from the Monterey Bay area.

FOR FURTHER INFORMATION CONTACT:

Mr. Bob Verkade, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814–2922 or call (916) 557–7423.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA (I,L&E).

[FR Doc. 93–16063 Filed 7–8–93; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers Open Meeting, Inland Waterways Users Board; Correction

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Correction to previous notice (58 FR 36189; July 6, 1993).

This is to correct the location of the Inland Waterways Users Board meeting scheduled for 27 July 1993.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: 27 July 1993.

Place: Kingman Building (Bldg #2593), 7701 Telegraph Road (Telegraph & Leaf

Roads), Ft. Belvoir, Virginia 22060–5576, Telephone: 703–355–0137.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16232 Filed 7–8–93; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Ohio State University Research Foundation

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B) and (D) to the Ohio State University Research Foundation (OSURF), Columbus, Ohio, under Grant Number DE–FG01–93EP10053. The DOE intends to make a noncompetitive financial assistance award. The purpose of the proposed grant is to support two seminars on the implementation of the Energy Policy Act of 1992 (EPACT). This effort will have a total estimated cost of $150,587, of which $80,587 (53.52%) will be provided by the DOE, $40,000 (26.56%) will be provided by the OSURF, and the remaining $30,000 (19.92%) will be provided by the effort's program income.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, PR–322.4, 1000 Independence Avenue, SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to the OSURF, which is the centralized business unit, administrative entity, and sole recipient for any or all financial assistance rendered to the Ohio State University (OSU) or any unit thereof. OSURF will provide the funding to the National Regulatory Research Institute (NRRI), a nonprofit research institute associated with and supported by the OSU. NRRI is also the official research arm of the National Association of Regulatory Utility Commissioners (NARUC). The grant's funding will specifically support: (1) A seminar to be held on July 15 and 16, 1993, in Portland, Oregon; (2) a seminar to be held on July 19 and 20, 1993, in Indianapolis, Indiana; and, (3) a preliminary assessment of data for subsequent DOE development of a report for presentation to the President and the Congress.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an approach for addressing State public utility commission responsibilities under EPACT. The project will provide forums for State regulators, the DOE, other Federal agencies, and other industry experts to discuss, evaluate, and develop methods to address important issues relating to EPACT, particularly sections 111 and 712. A preliminary assessment of data will provide fundamental information for a report to the President and the Congress which will encompass: (1) A survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement existing law; and, (2) an evaluation by the Secretary of Energy of whether and to what extent, integrated resource planning is likely to result in higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers, enhanced or reduced reliability of electric service, or increased or decreased dependence on particular energy resources. Supplementing the OSURF's share and the financial support of program income, the DOE's share will ensure that the seminars and subsequent assessment will have information perspectives for the widest possible range of contributors. The applicant has over 16 years of technical expertise in conducting research and performing policy analysis at universities, utility commissions, and National Laboratories. Because the NRRI is the official research arm of NARUC, it has an established relationship with NARUC and its member State commissions. The NRRI has assembled an array of experts in regulatory research and applied economic regulation. This staff represents a variety of academic disciplines including economics, law, public policy, and engineering. The applicant has exclusive domestic capability to perform the activity successfully, based upon experience, technical expertise, and the wide variety of work on the issue of electric utility regulation particularly as it relates to State regulatory commission activities. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to disseminate to the public, State public utility commissions, the DOE, and other Federal agencies comprehensive information on the implementation of EPACT.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–16319 Filed 7–8–93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10981–000]

Bangor Hydroelectric Co.; Intent to Hold Scoping meetings and Site Visit

July 2, 1993.

The Federal Energy Regulatory Commission (FERC) published on April 15, 1993, in the **Federal Register** a notice of intent to prepare an Environmental Impact Statement (EIS) for the Basin Mills Project No. 10981, Maine. The proposed project consists of the Veazie (existing, proposed expansion), Orono (existing to be decommissioned), and Basin Mills (proposed) developments situated on the Penobscot River and Stillwater Branch of the Penobscot River in Penobscot County, Maine. FERC will conduct a project site visit on Wednesday, July 28, and two scoping meetings on Thursday, July 29, 1993, in Orono, Maine.

All interested individuals are invited to attend the project site visit. Trip participants meet at 9 a.m. at the Black Bear Inn, 4 Godfrey Drive, in Orono (on the right at exit 51 off I–95), and vans will be available to take participants to the site. Please make reservations for the site visit by calling (207) 945–5621 before July 21, 1993.

All interested individuals, representatives of organizations, and agencies with environmental expertise and concerns are invited to attend the two scoping meetings to be held also at the Black Bear Inn. The purpose of the scoping meetings is to obtain agency and public comment on environmental issues that should be addressed in the EIS. The scoping meetings, scheduled for Thursday, July 29, 1993, will consist of a morning meeting, from 9 a.m. to 12 noon, which is primarily for government agencies to voice their concerns and recommendations; and an evening meeting, from 7 to 10 p.m., which is primarily for the public to voice their concerns and recommendations.

Objectives

To help focus discussion, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by

mail to parties on the FERC service list and FERC mailing list. Copies of the preliminary scoping document will also be available at the scoping meetings.

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statement from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become part of the formal record of the Commission proceedings on the Basin Mills Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Participants at the public meetings are asked to keep comments to 5 minutes to allow everyone an opportunity to speak.

Persons choosing not to speak at the coping meetings, but who have views on the issues or information relevant to the issues, may submit written statements at the meetings for inclusion in the public record. In addition, written scoping comments may be filed until August 27, 1993, with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show the following caption on the first page: Basin Mills Project No. 10981, Maine.

All those that are formally recognized by the Commission as intervenors in the Basin Mills project are asked to refrain from discussing the merits of the project with the staff or its contractor outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing written comments or documents with the Commission, to serve a copy of the written comments or documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Sabina Joe at (202) 219–1648.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16263 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2493]

Puget Sound Power & Light Co.; Intention to Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

July 2, 1993.

The Federal Energy Regulatory Commission (FERC) has received an application for a new license for the Snoqualmie Falls hydropower project, FERC No. 2493. The hydropower project is located on the Snoqualmie River in Washington.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

The FERC staff will conduct two scoping meetings. The evening scoping meeting is primarily for public input while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to parties on the FERC service list. Copies of the preliminary scoping document will also be available at the scoping meetings.

Two public scoping meetings will be conducted by staff. The first meeting will be held on Monday, August 2, 1993, from 7 p.m. to 10 p.m., at the Mt. Si High School auditorium located between Snoqualmie and North Bend, Washington. This meeting is primarily designed for public input. The second meeting will be held on Tuesday, August 3, 1993, and will focus on resource agency concerns, and will be held from 9:30 a.m. to 12 p.m. at the Bellevue Community College, Multi-purpose Room J–116 on the Upper Campus. This building is located on SE 22nd Street, which is just off 148th Avenue NE in Bellevue, Washington. Access to Bellevue Community College is via Interstate 90 and the 148th Avenue exit.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Snoqualmie Falls Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend either or both of the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, until September 3, 1993.

All correspondence should clearly show the following caption on the first page: Snoqualmie Falls Projects, Washington, Project No. 2393.

All those that are formally recognized by the Commission as intervenors in the Snoqualmie Falls Project proceeding are

asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list for this proceeding. *See* 18 CFR 4.34(b).

For further information please contact Kathleen Sherman at (202) 219–2834.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16264 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–517–000]

Arkla Energy Resources Co.; Application

July 2, 1993.

Take notice that on June 25, 1993, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed an application with the Commission in Docket No. CP93–517–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon the transportation of natural gas for a direct sales customer, Central Louisiana Electric Company, Inc. (CLECO), which was authorized in Docket No. CP81–400–000,[1] all as more fully set forth in the application which is open to the public for inspection.

AER proposes to abandon the firm transportation of up to 50,000 MMBtu equivalent of natural gas per day,[2] because their sales contract expired January 1, 1992, and CLECO has made other arrangements for its natural gas supplies. AER would not abandon any facilities in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed amendment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AER to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16265 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–10–63–000 and TM93–10–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 2, 1993.

Take notice that on June 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Forty-Fifth Revised Sheet No. 8
Forty-Fifth Revised Sheet No. 9

Carnegie states that pursuant to sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) to reflect changes in its projected purchased gas costs and projected Account No. 858 costs. The proposed effective date of the tendered tariff sheets is July 1, 1993.

Carnegie states that the revised tariff sheets incorporate a decrease of $0.3681 per Dth in the commodity PGA sales rates under Carnegie's Rate Schedules CDS and LVWS, as well as to the maximum and minimum PGA rates under Rate Schedule SEGSS, and a TCA demand rate increase of $1.6045 per Dth, a TCA commodity rate decrease of $0.0096 per Dth, and an increase in the DCA charge of $0.0527 per Dth, as compared to Carnegie's most recent PGA and TCA filing in Docket Nos. TQ93–8–63–001 and TM93–8–63–001, filed on June 11, 1993, and supplemented on June 17 and June 23, 1993.

Carnegie states that the commodity PGA rate decrease was necessitated by revised projections in Carnegie's purchased gas costs due to an unanticipated decline in the cost of spot gas supplies available on and after July 1, 1993, and that the TCA demand rate increase was necessitated by a reservation charge increased recently proposed by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation ("TETCO"), to recover gas supply realignment costs pursuant to Order No. 636, citing TETCO's filing on May 28, 1993, in Docket No. RP93–125–000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16271 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–24–000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

July 2, 1993.

Take notice that on July 1, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with a proposed effective date of September 1, 1993:

Forty-Fourth Revise Sheet No. 10
Thirty-Second Revised Sheet No. 34

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[1] See order issued at 18 FERC ¶ 61,220 (1982).

[2] See order issued at 35 FERC ¶ 61,089 (1986).

Equitrans states that the changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the commodity cost of $0.1080 per dekatherm (Dth). The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1725 per Dth. The Account 858 adjustment is an increase of $1.9765 per Dth for the demand rate and an increase of $0.0179 per Dth for the commodity rate.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16258 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–62–005]

Equitrans, Inc.; Motion To Place Revised Tariff Sheets Into Effect

July 2, 1993.

Take notice that on June 30, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 3, the following tariff sheets:

Original Volume No. 1

Substitute Forty-Third Revised Sheet No. 10
Substitute Second Revised Sheet No. 13
substitute Third Revised Sheet No. 22
Substitute Thirteenth Revised Sheet No. 23
Substitute Thirty-First Revised Sheet No. 34

Original Volume No. 3

Substitute Third Revised Sheet No. 2
Substitute Thirteenth Revised Sheet No. 4
Substitute Third Revised Sheet No. 5
Substitute Thirteenth Revised Sheet No. 8
Substitute Second Revised Sheet No. 32
Substitute First Revised Sheet No. 39A

These tariff sheets are proposed to become effective July 1, 1993.

Equitrans states that this filing represents a reduction in both rates and the transportation retention percentage over those proposed by Equitrans in its December 31 filing in Docket No. RP93–62. The reductions reflect the following revisions:

(1) Reduction in the purchased gas cost component of PLS and ISS rates based on Equitrans' last PGA filing in Docket Nos. TQ93–7–24–000 and TQ93–7–24–001 which was approved by letter order dated June 25, 1993;

(2) Inclusion of current contract demand volumes for the new 30-day storage service under Rate Schedule 30SS, which service was certificated by the Commission's April 16, 1993 order in Docket No. CP93–44 and was commenced during the test period in Docket No. RP93–62. The storage volumes and related transportation volumes have the effect of reducing storage and related transportation rates;

(3) Correction of a miscalculation in Equitrans filed fuel retention factor for transportation services in Docket Number RP93–62. This correction results in a reduction in the transportation retention factor for company fuel, loss, and unaccounted for from 4.35% to 4.19%.

Equitrans states that the revised tariff sheets submitted with its transmittal letter are filed in substitution for the tariff sheets that were filed on December 31, 1992 in Docket No. RP93–62, and are filed on the express condition that they become effective on July 1, 1993. Concurrently with these revised tariff sheets, Equitrans is filing a motion to place its proposed rate filing in Docket No. RP93–62 into effect on July 1, 1993. Equitrans states that the revised tariff filing is intended to take effect in conjunction with the motion filing to effectuate a reduction in filed rates to the benefit of Equitrans' customers, and therefore should be permitted to take effect on July 1. Although Equitrans does not believe that any waivers are necessary, Equitrans requests that the Commission grant any waivers of its regulations that it deems appropriate to permit this filing to become effective as proposed.

Equitrans states that copies of the filing are being served on each of Equitrans' customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16270 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–7–34–000]

Florida Gas Transmission Co.; Proposed Changes In FERC Gas Tariff

July 2, 1993.

Take notice that on June 30, 1993 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1993:

Forty-Fourth Revised Sheet No. 8
Sixth Revised Sheet No. 224
Eighth Revised Sheet No. 227
Sixth Revised Sheet No. 231

FGT states that Forty-Fourth Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's regulations and pursuant to section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Out-of-Cycle PGA filing, Docket No. TQ93–6–34–000 effective June 1, 1993.

Under the Commission's regulations, FGT's projected purchased cost of gas should be for the period August 1993 through October 1993. However, due to FGT's anticipated implementation of Order No. 636 effective October 1, 1993, FGT requests waiver of the Commission's regulations to allow FGT to project purchased gas costs for the period of August 1993 and September 1993.

FGT's projected purchased cost of gas for the period August 1993 and September 1993, shown in detail on Schedule Q1, represents a decrease from $3.5226/MMBtu saturated, as reflected in FGT's Out-of-Cycle PGA filing in Docket No. TQ93–6–34–000, effective June 1, 1993 to $3.1990/MMBtu saturated in the instant filing.

FGT is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to Section 9 of the General Terms and Conditions of its Tariff and has included such changes on Sixth Revised Sheet Nos. 224 and 231, and Eighth Revised Sheet No. 227.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16255 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

[Docket No. TM93–18–4–000]

July 2, 1993.

Take notice that on June 29, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twentieth Revised Sheet No. 25, containing changes in rates for effectiveness on June 1, 1993.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that, on June 15, 1993, CNG made a filing in Docket Nos. TQ93–6–22–000 and TM93–5–22–000 changes several components in its Rate Schedule GSS rates effective June 1, 1993. According to Granite State, its filing tracks in its Rate Schedule GSS the changes proposed by CNG in its rates for Rate Schedule GSS service.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission. 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16257 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–9–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 2, 1993.

Take notice that on June 30, 1993, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twenty-Eighth Revised Sheet No. 21, containing changes in rates for effectiveness on July 1, 1993.

According to Granite State, it filed a regular quarterly purchased gas cost adjustment on June 7, 1993 in Docket No. TQ93–7–4–000 revising its sales rates based on projected gas costs and sales for the third quarter of 1993. It is stated that the filing was accepted, subject to refund, in a Letter Order issued June 25, 1993. Granite State further states that the instant filing revises its sales rates for the third quarter based on current projections of gas purchase costs applied to the same sales projections as in the prior filing.

Granite State also states that, in addition to reflecting current projected gas costs, its filing reflects the costs for certain transportation services for the services its receives under Algonquin Gas Transmission Company's (Algonquin) Rate Schedules F–2 and F–3 as a result of the effectiveness of Order Nos. 636, et al. compliance filings by Algonquin in Docket No. RS92–28–000, Texas Eastern Transmission Corporation in Docket No. RS92–11–000 and Transcontinental Gas Pipe Line Corporation in Docket No. RS92–86–000. According to Granite State, it has pending in Docket No. RP93–138–000 a Petition for Temporary Waiver of the Commission's purchased gas cost regulations to permit it to recover these transportation costs through its purchased gas cost adjustment procedures until the effectiveness of its restructuring compliance plan in Docket No. RS93–1–000.

Granite State indicates that the revised sales rates on Twenty-Eighth Revised Sheet No. 21 are applicable to Granite State's wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16269 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–50–005]

High Island Offshore System; Report of Refunds

July 2, 1993

Take notice that High Island Offshore System (HIOS) on March 26, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with Article I of the Settlement Agreement in Docket No. RP92–50–000, *et al.*, as approved by the Commission's order issued December 28, 1992.

In accordance with Article I of the Settlement Agreement, as approved, HIOS states that on March 14, 1993 it made a refund totalling $20,506,780.13 in principal and interest to shippers listed in Appendix A attached to its filing.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16256 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–519–000]

K N Energy, Inc.; Application

July 2, 1993.

Take notice that on June 28, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–519–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate pipeline facilities between the Springdale Storage Field and the Yenter Plant in Logan County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N proposes to construct and operate approximately two miles of 8-inch pipeline and appurtenant facilities located in Logan County, Colorado.

K N states that the proposed facilities would be used to connect the Springdale Storage Facility to existing 8-inch and 10-inch pipeline in order to facilitate the movement of withdrawal gas to the Yenter Plant.

K N states further that the estimated cost of the proposed construction is $250,000 and proposes to finance the proposal through internally generated funds or interim bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16268 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–8–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1993.

Take notice that on June 29, 1993, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on July 1, 1993:

Thirty-Sixth Revised Sheet No. 5

National states that the filing is made to implement an Out-of-cycle Purchased Gas Adjustment ("PGA") rate change. National's revised demand and commodity rates are $10.28 per Dt and 309.47 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16261 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

Northwest Pipeline Corp.; Request Under Blanket Authorization

July 2, 1993.

Take notice that on June 29, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–525–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization partially abandon its existing facilities at the Walla Walla Metering Station in Walla Walla County, Washington, and to construct and operate replacement facilities at this station in order to better accommodate its existing firm delivery obligations to Cascade Natural Gas Corporation (Cascade) under the authorization issued in Docket No. CP82–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the existing maximum delivery capacity of its Walla Walla Meter Station is less than Northwest's existing firm delivery obligations to Cascade at that point under currently authorized firm service agreements.[1] Accordingly, Northwest proposes to replace the two existing 2-inch regulators at the Walla Walla Meter Station with two 3-inch regulators with 75 percent trim. Northwest also proposes to replace a 4-inch x 6-inch relief valve with a 6-inch x 8-inch relief valve. Northwest states that these facility changes will increase the maximum design delivery capacity of this station from 7,400 MMBtud to

[1] Northwest states that the meter station has a current maximum design delivery capacity of approximately 7,400 MMBtu per day (MMBtud), while Northwest has existing firm obligations to delivery up to 13,939 MMBtud through the station to Cascade.

VOL 58 ISS 130 JL 9 1993 UMI

approximately 16,300 MMBtud at a pressure of 250 psig.

Northwest states that the total cost of replacing the described facilities at the Walla Walla Meter Station is estimated to be approximately $37,880, including the cost of removing the old facilities. Since the proposed facility upgrades are necessary to enable Northwest to deliver up to its current firm obligations to Cascade at the subject points, Northwest states that it will not require any cost reimbursement from Cascade.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-16266 Filed 7-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-146-000]

Panhandle Eastern Pipe Line Co.; Proposed Filing

July 2, 1993.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 30, 1993, tendered for filing a proposal to recover by means of a direct bill to certain of its former sales customers their proportionate share of the net debit balance in Panhandle's Unrecovered Transportation Cost Account.

Panhandle states that because its sales services were terminated as a result of the implementation of restructured services in Docket No. RS92-22-000 effective May 1, 1993, it is now time to dispose of the balance in the Unrecovered Transportation Cost Account in the manner approved by the Commission. Panhandle proposes, consistent with the Commission's prior authorizations in Docket No. RP91-229-000 et al., that it be permitted to include the direct bill amounts in the normal invoices for July operations to be sent to the affected former sales customers. Accordingly, Panhandle requests Commission approval of this proposal not later than July 30, 1993.

Panhandle states that a copy of this filing was mailed to each affected party and to affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules of 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-16254 Filed 7-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-125-000]

Texas Eastern Transmission Corp.; Technical Conference

July 2, 1993.

In the Commission's order issued on June 30, 1993, the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for Wednesday, July 21, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All parties wishing to attend should contact Mary Hain at (202) 208-0996 before July 9, 1993 to indicate the number of persons attending.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-16259 Filed 7-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-16-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on June 30, 1993 Sixth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheet is proposed to be effective August 1, 1993.

TGPL states that the purpose of the instant filing is to revise the Great Plains Volumetric Surcharge (GPS) effective August 1, 1993 pursuant to Section 39 of the General Terms and Conditions of TGPL's FERC Gas Tariff. The revised GPS Surcharge included in the instant filing consists of two components—the Current GPS Surcharge calculated for the period August 1, 1993 through July 31, 1994 and the Great Plains Deferred Account Surcharge which is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 1993.

Attached in Appendix A to the filing are workpapers supporting the calculation of the revised GPS Surcharge of 2.70¢ per dt reflected on the tariff sheet included therein.

TGPL states that copies of the filing are being mailed to its customers, State Commissions and other interested parties. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-16262 Filed 7-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-687-010]

Transcontinental Gas Pipe Line Corp. Petition to Amend

July 2, 1993.

Take notice that on June 30, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), Post Office Box 1396, Houston, Texas 77251, filed to

further amend the certificate of public convenience and necessity granted by the Commission by orders issued January 17, 1991 and June 11, 1991 and amended by order issued November 30, 1992 in Docket Nos. CP90–687–000, *et al.*, to relocate the proposed metering station at Chatham, New Jersey (Chatham M&R) from milepost 1812.36 on TGPL's system to milepost 1813.61.

TGPL states that the Chatham M&R will be a point of delivery to Public Service Electric and Gas Company (PSE&G) under TGPL's Rate Schedule FT–NT. Through the local zoning and permitting process, TGPL, PSE&G and the Chatham Township Board of Adjustment have agreed that the new location is better suited for the Chatham M&R. TGPL states that the new location no only has more space for the metering station equipment, but is advantageous because it is in the immediate vicinity of a point where the existing systems of TGPL and PSE&G cross.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 12, 1993, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16272 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–02–M

[Docket No. CP89–759–013]

Transcontinental Gas Pipe Line Corp.; Sale of Natural Gas

July 2, 1993.

Take notice that on October 30, 1992, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas, 77251, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transco's Rate Schedule IS, pursuant to the authorization granted by an order issued March 24, 1989, in Docket Nos. CP89–759–000, *et al.* (46 FERC ¶ 61,351).

(1) Name of Buyer: Transco Energy Marketing Company (TEMCO).

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Transco and Buyer: Both Transco and TEMCO are subsidiaries of Transco Energy Company.

(4) Nature of the Transaction: Purchase for resale.

(5) Term of Sale: One year, commencing July 25, 1993.

(6) Estimated Maximum Daily Quantity: 1,000,000 MMBtu. Estimated Total Quantity: 365,000,000 MMBtu.

(7) Rates: Maximum: 100% load factor derivative of TGPL's Rate Schedule FS rate plus adjustments. Minimum: Zero, pursuant to Commission Order Approving Settlements as Modified and Issuing Certificates, 55 FERC 61,446 (1991).

Rate to be Charged During the Billing Period: The simple average of the four regional prices set forth in the table "Gas Price Report" (in $/MMBtu) published in the first issue of such month of Natural Gas Week for the following regions: (1) Texas, Gulf Coast Offshore, Spot Delivered to Pipeline; (2) Texas, Gulf Coast Onshore, Spot Delivered to Pipeline; (3) Louisiana, Gulf Coast Offshore, Spot Delivered to Pipeline; and (4) Louisiana, Gulf Coast Onshore, Spot Delivered to Pipeline.

Transcontinental Gas Pipe Line Corporation; Docket No. CP89–759–013

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 24, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transco may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16267 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–26–000]

United Gas Pipeline Co.; Conference

July 2, 1993.

Take notice that in accordance with the Commission's order of July 2, 1993 in this proceeding, a conference will be convened in the above-captioned docket to discuss a gas diversion mechanism to be incorporated in United's tariff. The conference will be held on Thursday, July 15, 1993 at 1 p.m.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status.

Linwood A. Watson,

Acting Secretary.

[FR Doc. 93–16260 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–57–000]

Westmoreland-LG&E Partners; Application for Commission Determination of Exempt Wholesale Generator Status

July 2, 1993

On June 28, 1993, Westmoreland-LG&E Partners ("Applicant"), a Virginia general partnership with its principal place of business at 300 Preston Avenue, Charlottesville, Virginia 22902, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant intends to own a coal-fired electric generating facility with a maximum net power production capacity of approximately 165 MW (summer) and 167 MW (winter). All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before July 16, 1993 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–16253 Filed 7–8–93; 8:45 am]

BILLING CODE 6717–01–M

VOL 58 ISS 130 JL 9 1993 UMI

Office of Hearings and Appeals

Cases Filed During Week of June 11 Through June 18, 1993

During the Week of June 11 through June 18, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 1, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 11 THROUGH JUNE 18, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
June 14, 1993	Aransas Pass I.S.D., Aransas Pass, TX	RR272–107	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The June 3, 1993 Dismissal Letter (Case No. RF272–87413) issued to Aransas Pass I.S.D. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
June 14, 1993	Plumbers and Steamfitters Local 150, Atlanta, GA.	LFA–0304	Appeal of an Information Request Denial. If Granted: Plumbers and Steamfitters Local 150 would receive copies of certified payroll records submitted by Sig Cox, Inc. and Gold Mechanical Service, Inc.
June 14, 1993	Quantum/Wilcox Oil Company, Hardin, KY	RR330–1	Request for Modification/Rescission in the Quantum Refund Proceeding. If Granted: The January 2, 1992 Decision and Order (Case No. RF339–46 issued to Wilcox Oil Company would be modified regarding the firm's application for refund submitted in the Quantum Refund Proceeding.
June 15, 1993	South Orange-Maplewood School District, Maplewood, NJ.	RR272–108	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The June 3, 1993 Dismissal Letter (Case No. RF272–87465) issued to South Orange-Maplewood School District would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
June 18, 1993	David Rodriquez Soler, Cranbury, NJ	LFA–0305	Appeal of an Information Request Denial. If Granted: David Rodriquez Soler would receive access to records including the contractors applicable sections cited in Mr. Misso's letter of February 26, 1993.

REFUNDS APPLICATIONS RECEIVED

[WEEK OF JUNE 11 TO JUNE 18, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case number
6/11/93 ..	Bailey's Texaco	RF321–19770
6/11/93 ..	Charles Labadie Super 100.	RF342–321
6/14/93 ..	Hamilton & Home Products, Inc.	RF321–19971
6/15/93 ..	Auburn Gas–W 31st Street.	RF321–19772
6/15/93 ..	Auburn Gas–W 31st Street.	RF321–19773
6/15/93 ..	Schougen Oil Company, Inc.	RF342–322
6/15/93 ..	Cooper's Texaco #2	RF321–19774
6/15/93 ..	Girard Bros., Inc	RF321–19775

REFUNDS APPLICATIONS RECEIVED Continued

[WEEK OF JUNE 11 TO JUNE 18, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case number
6/18/93 ..	Brianwood Gulf, Inc	RF300–21745
6/18/93 ..	Butane Gas Company, Inc.	RF340–185
6/11/93 Thru 6/18/93.	Atlantic Richfield Applications Received..	RF304–14094 Thru RF304–14109
6/11/93 Thru 6/18/93.	Crude Oil Refund Applications Received..	RF272–94749 Thru RF272–94756

[FR Doc. 93–16320 Filed 7–8–93; 8:45 am]

BILLING CODE 6450–01–P

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[FRL–4677–2]

Public Notice for New Jersey's Request to Assume the Section 404 Program Under the Clean Water Act

AGENCY: United States Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Federal Clean Water Act (CWA) established the Section 404 Permit Program, under which the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into "waters of

the United States" as identified in the CWA. Section 404(g)(1) of the CWA allows any State to apply to the United States Environmental Protection Agency (USEPA) to administer its own individual and general permit program for the discharge of dredged or fill material into state regulated waters within its jurisdiction. The State of New Jersey has submitted a full and complete Request for State Program Approval and proposes to operate the State permit program for regulated activities into waters within the jurisdiction of the State in accordance with the CWA. USEPA will approve or disapprove the program transfer by October 13, 1993.

DATES: Public comment period for the proposed transfer closes on August 27, 1993. USEPA will hold three public hearings on New Jersey's application, on August 10, 1993 (Moorestown, NJ), August 11, 1993 (Hightstown, NJ), and August 12, 1993 (Chatham, NJ).

ADDRESSES: Any interested persons may comment upon New Jersey's application by writing to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, USEPA Region 2, 26 Federal Plaza, New York, NY 10278. The hearings will be held at the following locations:

(1) Tuesday August 10, 1993 from 3 p.m. to 5 p.m. and 7 p.m. to close, at the auditorium of Moorestown High School, 803 N. Stanwick Road, Moorestown, New Jersey.

(2) Wednesday August 11, 1993 from 3 p.m. to 5 p.m. and 7 p.m. to close at the auditorium of the Grace Rogers School, Stockton Street, Hightstown, Mercer County, NJ.

(3) Thursday August 12, 1993 from 3 p.m. to 5 p.m. and 7 p.m. to close, at the auditorium of the Chatham Middle School, 480 Main Street ("old" Route 24) Chatham, Morris County, NJ.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch at 212–264–5170.

SUPPLEMENTARY INFORMATION: The State's submission is on file and may be inspected and copied (for a per page charge) at the USEPA Region 2 office in New York City. In addition, copies of the complete submission package are available for review at the New Jersey Department of Environmental Protection and Energy (NJDEPE), CN 401, 501 East State Street, Trenton, New Jersey, 08625–0401, (609–633–6755). The regulations establishing the requirements for the approval of State programs under Section 404 of the CWA were published in Volume 53, No. 108 of the **Federal Register**, June 6, 1988 (40 CFR Parts 232 and 233), beginning at page 20764.

Background

The Federal Clean Water Act (33 U.S.C. 1251 *et seq.*) established the Section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into "waters of the United States" as identified in the CWA.

Section 404(g)(1) of the CWA provides that the Governor of any State can apply to the Administrator of the EPA to administer its own individual and general permit program for the discharge of dredged or fill material into state regulated waters within its jurisdiction. "State regulated waters" are defined in 40 CFR 232.2(p) as "those waters of the United States in which the Corps suspends the issuance of Section 404 permits upon approval of a State's Section 404 permit program by the Administrator under Section 404(h). The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the high tide line, including wetlands adjacent thereto."

The State application to administer the Section 404 program must include the following:

(a) A letter from the Governor of the State requesting program approval.

(b) A complete program description as set forth in 40 CFR 233.11.

(c) An Attorney General's statement, as set forth in 40 CFR 233.12.

(d) A Memorandum of Agreement with the EPA Regional Administrator, as set forth in 40 CFR 233.13.

(e) A Memorandum of Agreement with the Secretary of the Army, as set forth in 40 CFR 233.14.

The State of New Jersey has submitted a full and complete Request for State Program Approval and proposes that the New Jersey Department of Environmental Protection and Energy operate the State permit program for regulated activities into waters within the jurisdiction of the State in accordance with Section 404 of the CWA.

New Jersey's Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B–1 et seq (Pub. L. 1987, c. 156) requires the State to "take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers pursuant to the Federal Act," providing the impetus to allow the pursuit of this goal. Since the State program was established with the idea that the State would pursue assumption of the 404 program, many aspects of the State's program parallel the Federal 404 program. However, the State program is more comprehensive in that it regulates more activities than just the disposal of dredged or fill material in regulated areas, and includes the regulation of transition areas (non-wetland buffers) adjacent to most wetlands. These buffer areas and the State regulated activities that go beyond the purview of the Federal program are not subject to EPA approval or oversight.

The State program provides for the issuance of two types of permits: Statewide general permits and Individual permits. Applicants must submit applications with accompanying documentation and plans to the State for review and approval prior to undertaking any regulated activities pursuant to either Statewide general permits or Individual permits. The State has adopted 23 Statewide general permits. In order to issue a general permit, the State must determine that the proposed activities "will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands, will be in conformance with the purposes of the Act, and will not violate any provision of the Federal Act" (N.J.S.A. 13:9B–23C). An applicant must meet specific conditions in order for the State to authorize regulated activities pursuant to a specific Statewide general permit. If a proposed activity does not meet the standards for authorization under a general permit, the applicant may apply for authorization under an individual permit.

Individual permits are issued by the State upon the finding that there are no practicable alternatives to the proposed activity. A complete description of the Individual permit process and the standards for granting of an Individual permit are found at N.J.S.A. 7:7A–3.

In addition, there are standard requirements for all regulated activities in freshwater wetlands and State open waters (N.J.S.A. 7:7A–3.5.) For example, an Individual permit cannot "cause or contribute to a violation of any applicable State water quality standard." Included within the standard requirements are criteria for the determination of whether a proposed activity is in the "public interest."

VOL 58 ISS 130 JL 9 1993 UMI

The Regional Administrator is required to approve such submitted application by the State to assume the Section 404 program unless the State program does not meet the requirements of Section 404 (h) of the CWA. Among other authorities, the State must have: (1) Adequate authority to issue permits which comply with all pertinent requirements of the CWA, including the guidelines developed under Section 404 (b)(1); (2) Adequate authority, including civil and criminal penalties, to abate violations of the permit or permit program; and (3) authority to ensure that the Administrator, the public, and any other affected State and other affected agencies, are given notice of each application for permit and are provided an opportunity for comment before a ruling on each such application.

The following is a brief description of EPA's procedure for Program approval:

(a) Once EPA determines that NJDEPE's assumption package is complete, a 120 day statutory review period commences.

(b) EPA will provide copies of a complete assumption package within 10 days of receipt to the Corps, the National Marine Fisheries Service (NMFS), and the United States Fish and Wildlife Service (USFWS) for review and comment.

Within 90 days of EPA's receipt of a complete program submission, the Corps, FWS and NMFS shall submit to EPA any comments on the State program.

(c) EPA will publish notice of the State's application in the **Federal Register** and in enough of the State's largest newspapers to attract statewide attention.

(d) EPA will provide for public hearings not less than 30 days after such notice is published in the **Federal Register**.

(e) EPA will approve or disapprove the program transfer within 120 days of receipt of the complete program submission.

(f) If the Regional Administrator approves the State's program, he shall notify the State and the Secretary and publish notice in the **Federal Register**. Transfer of the program to the State shall not be effective until this notice is published.

(g) If the Regional Administrator disapproves the State's program based on the State not meeting the requirements of the Act or of the transfer regulations, the Regional Administrator shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State's program which are necessary to obtain approval. If the State resubmits a program submission remedying the identified problem areas, the approval procedure and statutory review period shall begin upon receipt of the revised submission.

EPA Region 2 has scheduled three public hearings to consider this request by the State of New Jersey and to enable all interested parties to present their views on the State's submission. At the public hearings, oral statements will be heard and considered, and a stenographer will be present to record the proceedings. Testimony should be submitted in writing. Oral presentations will generally be limited to five (5) minutes and should generally summarize the written testimony to allow time for all interested parties to be heard. Persons are encouraged to bring extra copies of their written statements for the use of the hearing panel and other interested persons.

The hearing record will be left open for a period of 15 days following the last hearing to allow any person to submit additional written statements or to present views or evidence tending to rebut testimony presented during the hearing. All comments or objections presented at the public hearings and during the entire public comment period will be considered by USEPA before taking final action on the New Jersey request for State Program Approval. Please bring this notice to the attention of persons you know would be interested.

Dated: June 30, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 93–16307 Filed 7–8–93; 8:45 am]

BILLING CODE: 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4676–7]

Public Water System Supervision Program; Revision for the State of Arizona Surface Water Treatment and Total Coliform Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Arizona is revising its approved State Public Water System Supervision Program. Arizona has adopted a revised drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water. Arizona has also adopted a drinking water regulation for total coliform bacteria. These state regulations correspond to National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27486 and 27544). EPA has determined that the State program revisions are no less stringent than the corresponding federal rules. Therefore, EPA has tentatively decided to approve the State program revisions. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the State of Arizona prior to this notice.

All interested parties are invited to request a public hearing on EPA's decision to approve the state program revisions. A request for a public hearing must be submitted by August 9, 1993, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective August 9, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Arizona Department of Environmental Quality, Drinking Water Compliance Unit, 3033 N. Central Ave, Phoenix, Arizona 85012; and EPA, Region IX, Water Management Division, Water Supply Section (W–6–1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: José T. Caratini, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744–1852.

[Sec. 1413 of the Safe Drinking Water Act as amended [1986]; and 40 CFR 142.10 of the National Primary Drinking Water Regulations]

Dated: June 29, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–16311 Filed 7–8–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4675–6]

Public Water System Supervision Program Revision for the State of California Surface Water Treatment and Total Coliform Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of California is revising its approved State Public Water System Supervision Program. California has adopted a revised drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water. California has also adopted a drinking water regulation for total coliform bacteria. These state regulations correspond to National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27486 and 27544). EPA has determined that the State program revisions are no less stringent than the corresponding federal rules. Therefore, EPA has tentatively decided to approve the State program revisions. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the State of California prior to this notice.

All interested parties are invited to request a public hearing on EPA's decision to approve the state program revisions. A request for a public hearing must be submitted by August 9, 1993, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective August 9, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: California Department of Health Services, Office of Drinking Water, 601 North 7th Street, P.O. Box 942732, Sacramento, CA 94234–7320; and EPA, Region IX, Water Management Division, Water Supply Section (W–6–1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: William M. Robberson, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744–1857.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: June 30, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–16310 Filed 7–8–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4622–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 21, 1993 through June 25, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–G65056–NM Rating EC2, La Manga Timber Sales, Implementation, Carson National Forest, El Rito Ranger District, Rio Arriba County, NM.

SUMMARY: EPA expressed environmental concerns regarding cumulative impacts on the Rio Vallecitos Watershed, old growth timber and the Mexican Spotted Owl. EPA requested additional information be included in the final EIS.

ERP No. D–AFS–L02021–00 Rating EC2, Umatilla and Malheur National Forests Oil and Gas Exploration and Development, Lease Offerings, several Counties, WA and OR.

SUMMARY: EPA had environmental concerns based on the potential for adverse water quality and air quality effects. Additional information and clarification about groundwater effects, air quality effects, definition of several terms and phrases, and mitigation feedback was requested.

ERP No. D–COE–G11025–00 Rating LO, Roving Sands Joint Training Exercise Program and White Sands Missile Range, Implementation, 11th Air Defense Artillery Brigade, Site Specific, Fort Bliss, El Paso County, TX and Otero and Dona Ana Counties, NM.

SUMMARY: EPA had no objections to the proposed project if the mitigation is incorporated as part of the proposed project action. EPA requested that additional endangered species documentation be included in the final EIS.

ERP No. DS–NOA–B91021–00 Rating LO1, Northeast Multi-Species Fishery Management Plan, Amendment 5, Updated Information, Implementation, Gulf of Maine, Georges Bank ME, NH, CT, RI and MA

SUMMARY: EPA had no objections to the activities suggested in this document.

Final EISs

ERP No. F–FHW–C40123–NY NY–96 Improvement, Meadow Street in the City of Ithaca to Duboise Road in the Town of Ithaca, Funding and COE Section 10 and 404 Permits, Tompkins County, NY.

SUMMARY: EPA expressed environmental concerns with regard to the potential impacts to Cayuga Lake. EPA requested that the ROD include specific commitments requiring further analysis as well as the inclusion of appropriate mitigation measures.

ERP No. F–GSA–E81035–GA Atlanta Federal Center Consolidation for the housing of several Federal Agencies, Site Specific, Rich's Department Store, Martin Luther King, Jr. Drive, Atlanta, GA.

SUMMARY: EPA had no objections to the proposed project.

Dated: July 6, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–16331 Filed 07–08–93; 8:45 am]

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[ER-FRL-4622-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Weekly receipt of Environmental Impact Statements filed June 28, 1993 through July 2, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930215, DRAFT SUPPLEMENT, COE, KS, Arkansas and Walnut Rivers Flood Control Plan, Updated Information, Implementation, Arkansas City, Cowley County, KS, Due: August 23, 1993, Contact: J. Paul Mace (918) 669-7188.

EIS No. 930216, DRAFT EIS, AFS, OR, Eagle Creek Timber Sale and Road Construction, Implementation, Estacada and Zigzag Ranger Districts, Mt. Hood National Forest, Clackamas County, OR, Due: August 23, 1993, Contact: Janet Anderson-Tyler (503) 630-6861.

EIS No. 930217, DRAFT EIS, AFS, ID, Katka Peak Timber Sale and Road Construction, Implementation, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Boundary County, ID, Due: August 23, 1993, Contact: Mark A. Grant (202) 267-5561.

EIS No. 930218, FINAL EIS, BLM, CA, Cajon Crude Oil Pipeline Project, Construction, Operation and Transportation, from the Santa Barbara Channel and the San Joaquin Valley to the Los Angeles Basin, Granting of Right-of-Way Permit, San Bernardino and Los Angeles Counties, CA, Due: August 9, 1993, Contact: Stephen Johnson (909) 697-5234.

EIS No. 930219, FINAL EIS, AFS, MT, South Beal Project, Beal Mountain Gold and Silver Mine Expansion Project, Construction and Operation, Plan of Operation, Mining Reclamation, Approval of Permits, Butte Ranger District, Deerlodge National Forest, Silver Bow County, MT, Due: August 9, 1993, Contact: Margie Ewing (406) 494-2147.

EIS No. 930220, FINAL EIS, USA, CA, Fort Ord Disposal and Reuse Installation, Implementation, Establishment of Presido of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA, Due: August 9, 1993, Contact: Bob Verkade (916) 557-7423.

EIS No. 930221, FINAL EIS, AFS, OR, Spirit Fire Recovery Project, Harvest Timber and Road Construction, High Spirit Fire Area, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: August 9, 1993, Contact: Robert L. Barsted (503) 782-2291.

EIS No. 930222, DRAFT EIS, AFS, FL, Sopchoppy River Corridor, Wild and Scenic River Study, National Wild and Scenic Rivers System, Suitability or Nonsuitability, Wakulla Ranger District, Apalachicola National Forest, Wakulla County, FL, Due: October 7, 1993, Contact: Terry Tenold (904) 681-7337.

EIS No. 930223, DRAFT EIS, SFW, NV, Desert National Wildlife Ranger Mineral Withdrawal Project, Implementation, Clark and Lincoln Counties, NV, Due: September 7, 1993, Contact: Mark A. Strong (503) 231-2235.

EIS No. 930224, DRAFT EIS, NOA, HI, Pelagic Fisheries of the Western Pacific Region, Amendment 7 to the Fishery Management Plan, Implementation, Exclusive Economic Zone, (EEZ), HI, Due: August 23, 1993, Contact: Nancy Foster (301) 713-2239.

EIS No. 930225, DRAFT EIS, NPS, MN, Mississippi National River and Recreation Area (NRAA) Comprehensive Management Plan, Implementation, US Coast Guard, COE Sections 10 and 404 Permits, Minnesota and St. Croix Rivers, Harriet Island, Anoka, Ramsey, Washington, Dakota and Hennepin Counties, MN, Due: August 23, 1993, Contact: Joanne Kyral (612) 290-4160.

Amended Notices

EIS No. 930182, DRAFT EIS, FRC, NH, Upper Androscoggin River Basin Hydroelectric Projects, Issuance of New Licenses/Relicensing for Operation of Seven Hydroelectric Projects, Coos County, NH, Due: August 10, 1993, Contact: Mr. R. Feller (202) 219-2796. Published FR—06-11-93—Review period extended.

Dated: July 6, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-16330 Filed 7-8-93; 8:45 am]

BILLING CODE 6560-60-U

[OPPTS-59324A; FRL-4632-2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-93-20. The test marketing conditions are described below.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Laura A. Stalter, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-0028.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-93-20. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-93-20. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–93–20

Date of Receipt: May 12, 1993.
Notice of Receipt: June 8, 1993 (58 FR 32123).
Applicant: Confidential.
Chemical: (G) Methyl amine esters.
Use: (G) Intermediate.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: June 24, 1993.

Denise M. Keehner,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–16329 Filed 7–8–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 6, 1993

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0069
Title: Application for Commercial Radio Operator License
Form Number: FCC Form 756
Action: Revision of a currently approved collection
Respondents: Individuals or households
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 19,000 responses; .33 hours average burden per response; 6,270 hours total annual burden
Needs and Uses: This information collection is necessary to establish the identity of persons applying for radio operator licenses. The Commission is authorized under section 303(l)(1) of the Communications Act to issue radio operator licenses to those persons found to be qualified. To properly identify those qualified persons, it is necessary to collect the full name and date of birth for each applicant. The FCC Form 756 has been revised to add a certification question concerning the Anti-Drug Abuse Act of 1988. Information concerning examinations has been removed.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–16323 Filed 7–8–93; 8:45 am]
BILLING CODE 6712–01–M

[GEN Docket No. 90–314; DA93–786]

Reply Comment Period for Industry Proposals Regarding Unlicensed Personal Communications Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this Public Notice, in response to a request received from the Wireless Information Network Forum, the Commission extends the period for filing reply comments in GEN Docket No. 90–314. This action is intended to ensure that a complete and thorough record is developed in this proceeding.

DATES: Reply comments must be received on or before July 20, 1993.

ADDRESSES: Reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Means, Office of Engineering and Technology, (301) 725–1585 ext. 206.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, released June 30, 1993. The full text of this notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this notice also may be purchased from the Commission's duplicating contractor, International Transcription Services at (202) 857–3800 or 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of the Public Notice

On July 16, 1992, the Commission adopted a Notice of Proposed Rule Making and Tentative Decision in GEN. Docket No. 90–314 proposing amendment of the Commission's Rules to establish new personal communications services (57 FR 40672, September 4, 1992). In this proceeding, the Commission proposed to allocate twenty megahertz of spectrum (1910–1930 MHz) for unlicensed PCS devices. In a related action, on September 17, 1992, the Commission adopted a Report and Order in ET Docket No. 92–9 permitting current fixed microwave operations in the 1850–1990 MHz band to continue operating for an indefinite period but providing for their voluntary relocation to other bands (57 FR 49020, October 29, 1992).

On May 18, 1993, the Commission requested comments in GEN Docket No. 90–314 on a Report and Recommendations from the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM), and a proposed Spectrum Etiquette from the Wireless Information Network Forum (WINForum) (58 FR 31183, June 1, 1993). Comments on these documents were requested by June 21, 1993, and reply comments by July 6, 1993.

On June 23, 1993, the Commission received a request from WINForum to extend the reply comment deadline to July 20, 1993. WINForum states that, due to the number of substantive comments that were filed, this extension is necessary for it to give due consideration to the viewpoints of all interested parties.

In order to ensure as complete a record as possible in this proceeding, we believe that extending the reply comment deadline is appropriate. Accordingly, the reply comment deadline is extended to July 20, 1993.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–16324 Filed 7–8–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Inter-American Freight Conference Area River Plate/ Puerto Rico and U.S. Virgin Islands/ River Plate, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–010122–002.

Title: Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate.

Parties: Crowley American Transport, Inc. A/S Ivarans Rederi d/b/a Ivaran Lines, Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas.

Synopsis: The proposed amendment would permit the parties to change their space chartering authority, add sailing provisions and change voting procedures.

Agreement No. 203–011421.

Title: IADA Agreement.

Parties: Inter-American Freight Conference, Pan American Independent Line.

Synopsis: The proposed amendment would establish a discussion agreement between the parties in the trade between U.S. Atlantic and Gulf ports, and inland points via such ports (excluding states bordering the Pacific Coast), and ports in Argentina, Brazil, Paraguay and Uruguay. The parties have requested a shortened review period.

Dated: July 2, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–16202 Filed 7–8–93; 8:45 am]

BILLING CODE 6730–01–M

Automated Tariff Filing and Information System Firms Certified for Batch Filing Capability [Of At Least One Type of Tariff] As of June 30, 1993

Dart Maritime Service, Bethlehem, Pennsylvania

Distribution Publications, Inc., Oakland, California

D.X.I., Inc., Pittsburgh, Pennsylvania

Effective Tariff Management Corporation ("ETM"), Bowie, Maryland

Expeditors International ("EI"), Seattle, Washington

Japan-Atlantic and Gulf Freight Conference, Tokyo, Japan

Japan-Puerto & Virgin Island Freight Conference, Tokyo, Japan

Logistical Concepts Ltd. ("LCL"), Drexel Hill, Pennsylvania

Maersk Inc., San Francisco, California

Mariner Systems, Inc., San Francisco, California

Maritime Management International, Inc., Miami, Florida

Matson Navigation Company, Inc., San Francisco, California

Miller Traffic Service, Inc., Maywood, California

Nippon Yusen Kaisha ("NYK"), San Francisco, California

NVO Tariff Services, Fremont, California

NX Corp., Columbia, Maryland

Ocean Tariff Bureau, Long Beach, California

Pacific Coast Tariff Bureau ("PCTB"), San Francisco, California

Paramount Tariff Services, Ltd., Torrance, California

Rijnhaave Information Services, Inc., and World Tariff Services, Inc. ("WTS"), Union, New Jersey

Summer Tariff Service, Inc. ("STS"), Washington, D.C.

Tariff Data Services, Houston, Texas

Transamericas T.I.S., Inc., Falls Church, Virginia

Transax Data, Bridgewater, New Jersey

Trans-Pacific Freight Conference of Japan, Tokyo, Japan

U.S. Traffic Service, Torrance, California

Wallenius Lines AB, Woodcliff Lake, New Jersey

Zim Container Service, Inc., New York, New York

Joseph C. Polking,

Secretary.

[FR Doc. 93–16220 Filed 7–8–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Douglas T. Breeden; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Douglas T. Breeden, Chapel Hill, North Carolina; to acquire an additional 10 percent of the voting shares of Community First Financial Group, Inc., formerly known as Crawford Bancshares Corporation, English, Indiana, for a total of 33.65 percent, and thereby indirectly acquire English State Bank, English, Indiana.

Board of Governors of the Federal Reserve System, July 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16233 Filed 7–8–93; 8:45 am]

BILLING CODE 6210–01–F

CCB Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. CCB Financial Corporation, Durham, North Carolina; to acquire 100 percent of the voting shares of Graham Savings Bank, Inc., Graham, North Carolina.

2. Monocacy Bancshares, Inc., Taneytown, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Taneytown Bank & Trust Company, Taneytown, Maryland.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. North State Bancshares, Inc., Minneapolis, Minnesota; to acquire 94 percent of the voting shares of First North Financial Services, Inc., Karlstad, Minnesota, and thereby indirectly acquire Karlstad State Bank, Karlstad, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Partnership, Ltd., Lockney, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lockney Holding Company, Wilmington, Delaware, and First Lockney Bancshares, Inc., Lockney, Texas, and thereby indirectly acquire First National Bank in Lockney, Lockney, Texas.

2. J-D Financial, Inc., Lockney, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lockney Holding Company, Wilmington, Delaware; First Partnership, Ltd., Lockney, Texas; First Lockney Bancshares, Inc., Lockney, Texas, and thereby indirectly acquire First National Bank in Lockney, Lockney, Texas.

Board of Governors of the Federal Reserve System, July 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16234 Filed 7–8–93; 8:45 am]

BILLING CODE 6210–01–F

Fidelity Southern Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that the board has determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fidelity Southern Corporation, Decatur, Georgia; to engage *de novo* through its subsidiary, Fidelity National Capital Investors, Inc., Decatur, Georgia, in providing management consulting services to depository institutions pursuant to § 225.25(b)(11); and arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y. In addition, Applicant proposes to engage, through its subsidiary, in underwriting and dealing in municipal revenue bonds, residential mortgage related securities, consumer receivable-related securities, and commercial paper. *See Citicorp, J.P. Morgan & Company, Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and riskless principal transactions. *See Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). These activities will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, July 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16236 Filed 7–8–93; 8:45 am]

BILLING CODE 6210–01–F

KeyCorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 2, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. KeyCorp, Albany, New York, and Key Bancshares of New York, Inc., Albany, New York; to acquire Capital Trust Company, Albany, New York, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. **Comments on this application must be received no later than July 23, 1993.**

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire Old Stone Bank of North Carolina, a Federal Savings Bank, High Point, North Carolina, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Birmingham, Alabama; to acquire First Federal Bancshares of DeFuniak Springs, Inc., DeFuniak Springs, Florida, and thereby indirectly acquire its thrift subsidiary, First Federal Savings Bank of DeFuniak Springs, DeFuniak Springs, Florida, which will then be merged with and into Sunshine Bank, Pensacola, Florida, pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991.

Board of Governors of the Federal Reserve System, July 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16235 Filed 7–8–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (45 CFR Part 92)—0990–0169—Extension—Preaward, post-award and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close-out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds, and detect fraud, waste and abuse.

Respondents: State or local governments;

Number of Respondents: 4000;

Average Annual Burden per Respondent: 70 hours;

Estimated Burden: 280,000 hours.

2. Jobs Evaluation—Two Year Follow-up—These surveys will be administered to AFDC recipients in experimental and control groups, JOBS staff, income maintenance staff, and adult education teachers at the providers of Jobs basic education. The data will be used to identify participation variables, provide descriptions of the population, describe program practice and content, and provide control variables for more precise impact regression.

Respondents: Individuals, State or local governments;

Burden Information for the Recipient Survey

Number of Respondents: 9,200;

Frequency of Response: one-time;

Average Burden per Response: 56 minutes;

Total Recipient Burden: 8,550 hours.

Burden Information for the Teacher Survey

Number of Respondents: 250;

Frequency of Response: one-time;

Average Burden per Response: 1 hour;

Total Teacher Burden: 250 hours.

Burden Information for the Jobs/Income Maintenance Workers Survey

Number of Respondents: 815;

Frequency of Response: one-time;

Average Burden per Response: 41 minutes;

Total Staff Burden: 558 hours.

Total Burden 9358 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 30, 1993.

Dennis Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93–16247 Filed 7–8–93; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval for the continued use of information collection requirements previously approved by OMB under Control Number 0970–0043. As provided by section 412(a)(3) of the Immigration and Nationality Act, the Director, Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF) shall compile and maintain information on the secondary migration of refugees in the United States. This information request, titled: "Refugee State-or-Origin Report" (Form ORR–11) will be used to collect this data.

ADDRESSES; Copies of the information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to:

Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC. 20503, (202) 395–7316.

Information on Document:

Title: Refugee State-of-Origin Report (Form ORR–11)

OMB No.: 0970–0043

Description: The Director of the Office of Refugee Resettlement (ORR) is

required by Section 412(a)(3) of the Immigration and Nationality Act "to compile and maintain data on secondary migration of refugees within the United States * * *." To carry out this requirement, ORR requires States to submit annual tabulations of the first three digits of the social security number of refugees currently receiving assistance or services. A nationwide compilation of such data will provide ORR in-migration and out-migration statistics on refugees initially served in one State and who resettled in another State.

Data compiled by the States and submitted to ORR will be analyzed and used in the computation of the ORR social services allocation formula. This information will also be summarized by ORR and included in the Annual Report to the Congress on the Refugee Resettlement Program.

Annual Number of Respondents: 50
Annual Frequency: 1
Average Burden Hours Per Response: 20 mins.
Total Burden House: 217
(includes an additional 200 hours for 10 States that compile data manually or use sampling techniques to estimate)

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93-16188 Filed 7-8-93; 8:45 am]

BILLING CODE 4184-01-M

Health Care Financing Administration

[OIS-021-N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—First Quarter 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during January, February, and March 1993 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

There are no revisions to the Medicare Coverage Issues Manual this quarter. However, two notices were published in the **Federal Register** during the first quarter of 1993 that announced changes made to the Medicare Coverage Issues Manual before to January 1, 1993.

FOR FURTHER INFORMATION CONTACT:
Margaret Cotton, (410) 966-5260 (For Medicare Instruction Information)
Sam DellaVecchia, (410) 966-5395 (For Medicare Coverage Information)
Dusty Kowalewski, (410) 965-3377 (For Medicaid Instruction Information)
Jacqueline Webb, (410) 966-4682 (For All Other Information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 35 million Medicare beneficiaries and 31 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries, and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during this timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice, Medicaid issuances and Medicaid substantive and interpretive regulations published from January 1 through March 31, 1993.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare.

III. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication.

In order to aid the reader, we have replaced the tables and reorganized and divided this current listing into four addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989, constitute a complete

manual as of March 31, 1993. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents where interested individuals can get a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, Attn: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the Federal **Register** by contacting the GPO at the same address indicated above for manual issuances. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Beginning July 1, 1993, HCFA's laws, regulations, and manuals will be available on CD–ROM, which may be purchased from the GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles are current as of the September 1, 1992, update of the Compilation of the Social Security Laws, and the regulations are those in effect as of October 1, 1992.

The CD–ROM does not contain Appendices M (Interpretative Guidelines for Hospices) and R (Resident Assessment for Long Term Care Facilities) of the State Operations Manual. Copies of these appendices may be seen at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM as Lotus files. Lotus software is required to view the reports once the files have been copied to a personal computer disk.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 1—Fiscal Administration (HCFA–Pub. 14–1) transmittal entitled "Checks Paid Method of Advancing Funds Under the Letter-of-Credit System," use the Superintendent of Documents No. HE 22.8/7–2, and the HCFA transmittal number 118.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Addenda III may be addressed to Dusty Kowalewski, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 965–3377.

Questions concerning all other information may be addressed to Jacqueline Webb, Regulations Staff, Health Care Financing Administration, room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4682.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: June 30, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual.
March 20, 1990 (55 FR 10290)
February 6, 1991 (56 FR 4830)
July 5, 1991 (56 FR 30752)
November 22, 1991 (56 FR 58913)
January 22, 1992 (57 FR 2558)
March 16, 1992 (57 FR 9127)
June 11, 1992 (57 FR 24797)
October 16, 1992 (57 FR 47468)
January 7, 1993 (58 FR 3028)
March 31, 1993 (58 FR 16837)

Addendum II

Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was previously published on June 9, 1988 at 53 FR 21730 and supplemented on September 22, 1988 at 53 FR 36891 and December 16, 1988 at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989 at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 at 57 FR 47468.

Addendum III

Medicare and Medicaid Manual Instructions January through March 1993

Trans. No.		Manual/Subject/Publication Number
		Intermediary Manual Part 1—Fiscal Administration (HCFA-Pub. 13–1) (Superintendent of Documents No. HE 22.8/6–3)
124	•	Checks Paid Method of Advancing Funds Under the Letter-of-Credit System. Electronic Funds Transfer. Electronic Remittance Advice.
		Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13–20) (Superintendent of Documents No. HE 22.8/6–2)
391	•	Maximum Payment Per Visit For Rural Health Clinics.
		Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1588	•	Sleep Disorder Clinics.
1589	•	Review of Form HCFA–1450 for Inpatient and Outpatient Bills. Bill Review Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers. Reporting Outpatient Services Using HCFA Common Procedure Coding System. HCPCS Codes for Diagnostic Services and Medical Services. Payment for Drugs Furnished in Independent Dialysis Facilities. Blood and Blood Services Furnished in Hospital-Based and Independent Dialysis Facilities.
1590	•	Exceptions Background and Purpose. Payment to Bank. Handling of Request—No Amount in Controversy—Beneficiary Appeals Before Initial Determination Is Made Or After Initial Favorable Coverage Determination Is Made, But Before He/She Is Notified.
		Carriers Manual Part 1—Fiscal Administration (HCFA-Pub. 14–1) (Superintendent of Documents No. HE 22.8/7–2)
118	•	Checks Paid Method of Advancing Funds Under the Letter-of-Credit System. Electronic Funds Transfer. Electronic Remittance Advice.
		Carriers Manual Part 3—Claims Process (HCFA-Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1443	•	Processing Assigned and Unassigned Claims for Services of Participating Physicians and Suppliers.
1444	•	Sleep Disorder Clinics.
1445	•	Exceptions Background and Purpose. Reassignments by Nonphysician Suppliers. Payment to Physician for Purchased Diagnostic Tests. Payment to Agent. Indirect Contractual Arrangement. Health Care Delivery System In Clinics. Payment to Supplier of Diagnostic Tests for Purchased Interpretations. Payment to Bank.

Trans. No.		Manual/Subject/Publication Number
		Payment Under Reciprocal Billing Arrangements.
		Payment Under Locum Tenens Arrangements.
		Payment to Special Accounts.
		Billing Procedures for Entities Qualified to Receive Payment on Basis of Reassignment.
1446	•	Maintaining a Directory of Billing Vendors.
		Requirements for Processing Electronic Media Claims.
		The System for Processing Electronic Media Claims.
		EMC Testing and Verification.
		Data Sets and Formats for Electronic Media Claims.
		National Standard Format for Medicare Input from Automated Billers.
		Technical Assistance for Electronic Media Claims Submitters.
		Prohibition of Exclusive Use of Proprietary Software.
		Personal Computer Software.
1447	•	Home Dialysis Supplies and Equipment.
		Program Memorandum Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–92–11	•	Submission of Form HCFA–2552–92 (Hospital and Hospital-Health Care Complex Cost Report).
		Program Memorandum Intermediaries/Carriers (HCFA-Pub. 60 A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–92–5	•	Revised Claims Payment Floors.
		State Operations Manual Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)
256	•	Blood Bank Inspection Checklist and Report, HCFA–282.
		Survey of Blood Banks and Transfusion Services.
		Survey Procedures and Interpretive Guidelines for Laboratories and Laboratory Services.
257	•	Exhibits 122 and 124 (Pages replaced to correct pagination error).
		Peer Review Organization (HCFA-Pub. 19) (Superintendent of Documents No. HE 8/8–15)
7	•	Purpose of Management Information Reporting.
		Reporting Requirements.
		PRO/Fiscal Intermediary Data Exchange Reports.
		Medical Review Activity Reports.
		Quality Control Reports.
8	•	Background
		Renewal.
		Determination.
		On-site Review Requirements.
		File Specifications.
		Delivery Date
9	•	Authority.
		Cases to Be Reviewed.
		Site and Timing of Review.
		Qualifications of Reviewers.
		Notification and Opportunity for Discussion.
		Review Process.
		Error Rate Computation.
		Intensified Review.
		Authority.
		General Instructions.
10		Generic Quality Screen Review—General.
		Operational Use of Screens and Guidelines.
		Reporting Results of Screen Application.
		Explanation of Acronyms/Abbreviations Used in Generic Quality Screens.
		Generic Quality Screens—Inpatient Hospital.
		Generic Quality Screens—Skilled Nursing Facility.
		Generic Quality Screens—Home Health Agency.
		Generic Quality Screens—Hospital Outpatient Area
		Generic Quality Screens—Outpatient Surgery.
		Examples of Screen Failures and Confirmed Problems.
		Examples of Application of Severity Levels.
		Generic Quality Screens—Psychiatric.

Trans. No.	Manual/Subject/Publication Number
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
647	• Drugs Furnished in Dialysis Facilities. Blood and Blood Services Furnished in Hospital-Based Dialysis Facilities. Reporting Outpatient Services Using HCFA Common Procedure Coding System. HCPCS Codes for Diagnostic Services and Medical Services.
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
319	• Part B Billing
	Rural Health Clinic and Federally Qualified Health Center Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
4	• Rural Health Clinics. Federally Qualified Health Centers.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)
59	• Payment for Drugs. Blood and Blood Services Furnished in Independent Dialysis Facilities.
	Provider Reimbursement Manual. Part 1—Chapter 27. Reimbursement for ESRD and Transplant Services. (HCFA-Pub. 15-I-27) (Superintendent of Documents No. HE 22.8/4)
21	• Reimbursement for Home Dialysis Beneficiaries Who Choose to Deal Directly with Medicare Program. Items and Services Furnished to Direct Dealing Home Dialysis Beneficiaries. Support Services Furnished to Home CAPD Patients.
	State Medicaid Manual (Part 7—Quality Control (HCFA-Pub. 45–7) (Superintendent of Documents No. HE 22.8/10)
48	Sample Sizes. Sample Selection. Requirements for Sampling Plan Documentation. Random Sample Selection Procedures. Guidelines for Further Stratification. MEQC Error Rate Calculation. Criteria for Adjusting Anticipated Error Rates, Pursuant to 42 CFR 431.804(d).
	Medicare/Medicaid Sanction—Reinstatement Report (HCFA-Pub. 69)
93–1	• Report of Physicians/Practitioners, Providers and/or other Health Care Suppliers Excluded/Reinstated.
93–2	• Report of Physicians/Practitioners, Providers and/or other Health Care Suppliers Excluded/Reinstated.
	Program Memorandum Medicaid State Agencies (HCFA-Pub. 17) (Superintendent of Documents No. HE 22.28)
93–1	• Title XIX, Social Security Act, Medicaid Eligibility and Coverage, Section 4211 of OBRA 1987.
93–2	• Title XIX, Social Security Act, Medicaid Eligibility and Coverage, Section 4501(b) of OBRA 1990.

Addendum IV

Regulations and Notices Published
January through March 1993

VOL 58 ISS 130 JL 9 1993 UMI

Publication date/citation	42 CFR Part	Title
		FINAL RULES
01/19/93 (58 FR 4904)	433,435,436	Medicaid Program; Exemption of Poverty Level Pregnant Women from the Cooperation Requirements of Establishing Paternity and Obtaining Medical Support and Payments as a Condition of Eligibility; Technical Correction.
01/19/93 (58 FR 4908)	435, 436, 440	Medicaid Program; Eligibility and Coverage Requirements.
01/19/93 (58 FR 5212)	493	Medicare, Medicaid and CLIA Programs; CLIA Program Fee Collection; Correction.
01/19/93 (58 FR 5215)	493	Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and Clinical Laboratory Improvement Act Program Fee Collection.

Publication date/citation	Title
	NOTICES
01/06/93 (58 FR 630)	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1993 (Correction).
01/07/93 (58 FR 2989)	Medicare and State Health Care Programs, Fraud and Abuse; Safe Harbors for Protecting Health Plans—Extension of Comment Period.
01/07/93 (58 FR 3028)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Third Quarter 1992.
01/15/93 (58 FR 4705)	Medicare Program; Uniform Hospital Billing and Payment Mechanisms.
01/21/93 (58 FR 5402)	Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions.
01/22/93 (58 FR 5617)	Health Care Programs; Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100–93.
01/26/93 (58 FR 6095)	Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals; Corrections.
02/12/93 (58 FR 8291)	Medicare Program; Meeting of the Practicing Physicians Advisory Council.
02/16/93 (58 FR 8568)	Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations.
02/19/93 (58 FR 9120)	Medicaid Program; Eligibility and Coverage Requirements.
02/19/93 (58 FR 9244)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions (Correction).
03/02/93 (58 FR 12042)	Medicare Program; Peer Review Organizations: New PRO Contracts for All States and Territories and the District of Columbia.
03/31/93 (58 FR 16837)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Fourth Quarter 1992.

[FR Doc. 93–16243 Filed 7–8–93; 8:45 am]
BILLING CODE 4120–01–P

Health Resources and Services Administration

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records: 09–15–0059, Health Resources Services Administration Correspondence Control System, HHS/HRSA/OA."

DATES: PHS invites interested parties to submit comments on or before August 9, 1993. PHS has sent a report of a New System to Congress and to the Office of Management and Budget (OMB) on June 28, 1993. The new system will be effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to the Privacy Act Officer, Health Resources and Services Administration, 5600 Fishers Lane, room 14A–20, Rockville, MD 20857; telephone (301) 443–3780. (This is not a toll-free telephone number.) Comments received will be available for inspection at this address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Associate Administrator for Policy Coordination, Health Resources and Services Administration, 5600 Fishers Lane, room 14A–12, Rockville, MD 20857; telephone (301) 443–2033. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: 09–15–0059, "Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA." This system of records will be used by HRSA personnel to control and track all correspondence addressed or directed to the Administrator, HRSA, or his/her principal subordinates, as well as documents initiated by them, to assure timely and appropriate attention.

The system will be comprised of hard copies of the actual correspondence and computer printout and disk control system records of that correspondence. The records will be indexed by the name of the addressee and date of the outgoing correspondence; or by the name of the sender and the date of the incoming correspondence; or by the subject of the correspondence. The records may also be cross-referenced.

The records in this system will be maintained in a secure manner compatible with their content and use. HRSA personnel will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The system managers will control access to the data. Only authorized users having official duties requiring the use of the information will have regular access to the records in this system. Authorized users are the HRSA employees responsible for implementing the HRSA Correspondence Control System. Records will be stored in file folders and on computer disks. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS

General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Security guards perform random physical security checks.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use proposed for this system, permitting disclosure to a congressional office, allows subject individuals to obtain assistance from their representatives in Congress. The second allows disclosure to the Department of Justice or a court in the event of litigation.

The following notice is written in the present, rather than the future tense, to avoid unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: June 30, 1993.

Wilford J. Forbush,

Director, Office of Management.

09–15–0059

SYSTEM NAME:

Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1. Executive Secretariat, Office of Policy Coordination, Office of the Administrator, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 14A–08, Rockville, MD 20857.

2. Office of Program Support, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8–15, Rockville, MD 20857.

3. Extramural Activities Branch, Office of Program Development, Bureau of Health Resources Development, HRSA, 5600 Fishers Lane, Room 13A–22, Rockville, MD 20857.

4. Office of Program and Policy Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Room 7–34, Rockville, MD 20857.

5. Office of the Director, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18–05, Rockville, MD 20857.

6. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted the Administrator, HRSA, the Deputy Administrator, an associate administrator, or a bureau director, or individuals who have been contacted by one of these officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Hard copies of the actual correspondence and computer printout and disk control system records of that correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 "Departmental Regulations."

PURPOSE(S):

To control and track all correspondence documents addressed or directed to the Administrator, HRSA, or his/her subordinates as indicated above, as well as documents initiated by them, to assure timely and appropriate attention.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (DHHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when:

(a) DHHS, or any component thereof; or

(b) Any DHHS employee in his or her official capacity; or

(c) Any DHHS employee in his or her individual capacity where the Department of Justice (or DHHS, where authorized to do so) has agreed to represent the employee; or

(d) The United States, or any agency thereof where DHHS determines that the litigation is likely to affect DHHS or any of its components, is a party to litigation or has an interest in such litigation, and DHHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, DHHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records are maintained in hard copy. Control records are maintained on computer disks.

RETRIEVABILITY:

Hard-copy records are indexed by name of addressee and date of outgoing correspondence; or by name of sender and date of incoming correspondence; or by subject. Records may also be cross-referenced.

SAFEGUARDS:

1. *Authorized users:* Office directors, correspondence assistants, and professional and support staff with designated functional responsibilities directly relating to the purpose of the correspondence.

2. *Procedural safeguards:* Confidential and/or sensitive documents are either hand carried or transmitted in sealed envelopes. Employees who handle correspondence are instructed to observe established office procedures to protect correspondence documents from unauthorized access. The computerized subsystem is protected by passwords assigned to specific correspondence assistants; passwords are changed periodically; the password is changed when a correspondence assistant terminates employment.

3. *Physical safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Security guards perform random physical security checks.

RETENTION AND DISPOSAL:

Hard-copy records are cut off at the end of each calendar year, retained two years, transferred to the Washington National Records Center, and destroyed five years later. Control records are cut off at the end of each calendar year, retained two years, and destroyed. Computer records are purged after correspondence is finalized to a history file.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinator: Associate Administrator for Policy Coordination, HRSA, 5600 Fishers Lane, Room 14–15, Rockville, MD 20857.

System Manager: Chief, Executive Secretariat, Office of Policy Coordination, Office of the Administrator, HRSA, 5600 Fishers Lane, Room 14A–08, Rockville, MD 20857.

System Manager: Correspondence Coordinator, Office of Program Support, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8–15, Rockville, MD 20857.

System Manager: Chief, Extramural Activities Branch, Office of Program Development, Bureau of Health Resources Development, HRSA, 5600 Fishers Lane, Rockville, MD 20857.

System Manager: Information Systems Specialist, Office of Program and Policy Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Room 7–34, Rockville, MD 20857.

System Manager: Correspondence Coordinator, Office of the Director, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18–05, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Inquiries should indicate the name of the individual with whom the HRSA corresponded, the date of the incoming correspondence, if any, and the date of the outgoing correspondence. Inquiries should be addressed to the appropriate system manager, listed above, not to the policy coordinator.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters must state that they are who they claim to be and understand that obtaining information under false pretenses is subject to a maximum statutory penalty of $5,000.

Requesters may also ask for an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate system manager at the address for that official specified under "System Location" above, and reasonably identify the record, specify the information to be contested, the corrective action sought, and the reason for seeking the correction, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are derived from incoming correspondence to, and the outgoing correspondence of, the Administrator, HRSA, or his/her subordinates as indicated above.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–16184 Filed 7–8–93; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 11, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. Case-Control Study to Determine if College Attendance is a Risk Factor for Development of Invasive Meningococcal Disease—New—Each year the Centers for Disease Control and Prevention (CDC) receives a number of reports of fatal or life-threatening meningococcal disease in previously healthy college students. The reports raise the possibility that college students are at increased risk of meningococcal disease. To determine if college attendance is a risk factor for meningococcal disease, CDC has designed a retrospective, case-control study based on cases identified by State health departments. *Respondents:* Individuals or households; *Number of Respondents:* 400; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .352 hr.; *Estimated Annual Burden:* 142 hours.

2. 1994 National Health Provider Inventory—0920–0267—This survey will be conducted by mail among long-term care facilities, home health agencies and hospices. The purposes are to provide a sampling frame for future surveys and to provide national data on the number, type and geographic distribution of long-term care service providers. *Respondents:* Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 30,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .33 hr.; *Estimated Annual Burden:* 10,000 hours.

3. Vibrio Illness Investigation Report Form—New—Vibrio is the organism responsible for cholera, a severe, dehydrating diarrheal illness. The purpose of this investigation form is to collect information on illnesses occurring as a result of infection with Vibrio species to gain a better understanding of the incidence, etiology, and epidemiology of all Vibrio-related illnesses occurring in the U.S. *Respondents:* State or local governments; *Number of Respondents:* 50; *Number of Responses per Respondent:* 3; *Average Burden per Response:* .5 hr.; *Estimated Annual Burden:* 75 hours.

4. Survey of Mental Health Services: NIDA/BPHC Linkage Programs—New—The fifteen currently funded linkage programs integrate primary care and substance abuse treatment. Increasingly, mental health services are viewed as a valuable component within a coordinated care system. This study examines mental health issues, including client characteristics, client need for mental health services, scope of services, linkage features, and delivery systems barriers. *Respondents:* Non-profit institutions; *Number of Respondents:* 15; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 14 hrs.; *Estimated Annual Burden:* 210 hours.

5. Evaluation of the HHS Access to Community Care and Effective Services and Supports (ACCESS)—New—The Center for Mental Health Services is requesting concept clearance for an evaluation study that will assess services integration (SI) approaches for homeless persons with severe mental illnesses. SI sites will be contrasted with comparison sites to assess the impact of SI. Case studies will describe approaches to SI, the process by which SI takes place, and factors that influence SI. *Respondents:* Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. *Burden estimate:* 1 hour. Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaires are final and the final clearance quest is submitted.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: July 2, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–16183 Filed 7–8–93; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Cooperative Agreements for CMHS/CSAT Collaborative Demonstration Program for Homeless Individuals

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Request for applications.

Introduction

The Center for Mental Health Services (CMHS) and the Center for Substance Abuse Treatment (CSAT) announce the availability of support for projects that will document treatment models for homeless individuals who suffer from substance use disorders and co-occurring mental illnesses. In addition, such projects must document their potential effectiveness.

Funds will be awarded through a cooperative agreement mechanism that will authorize the Federal Government or its representative contractors to advise projects, coordinate the development of manuals, design evaluations, collect and analyze data and convene meetings.

This program will be divided into 2 phases. Community-based public and private nonprofit entities that provide treatment services to homeless individuals with substance use disorders and mental illnesses may compete for a Phase 1 award. During Phase 1, the awardees will develop a treatment manual. At the completion of Phase 1, awardees may compete for a Phase 2 grant. During Phase 2, grantees will conduct a pre-test/post-test evaluation of the documented treatment. Approximately one-half of the grantees from Phase 1 may be selected for competing awards for Phase 2.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This RFA, CMHS/CSAT Collaborative Demonstration Program for Homeless Individuals, is related to Healthy People 2000 objectives established for Alcohol and Other Drug Abuse (Chapter 4), Mental Health and Mental Disorders (Chapter 6), and HIV Infection (Chapter 18). Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0; or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402–9325 (telephone: 202–783–3238).

Program Description

History

CSAT (formerly the Office for Treatment Improvement) was created in January of 1990 to improve the Nation's addiction treatment and recovery system by providing funds to States and treatment providers to assist them with expanding the availability of high quality health and human services for those who suffer from alcohol and drug problems. Among numerous initiatives, CSAT funded grant demonstration programs in FY 1990 and 1991 to assist States and communities in enhancing existing drug abuse treatment programs for "critical populations," with the ultimate goal of improving treatment outcome for these groups. The critical populations under this announcement were adolescents, racial/ethnic minorities and residents of public housing projects. In addition to focusing on one or more of the critical populations listed above, CSAT funded proposed projects that addressed special subgroups of these critical populations, particularly homeless persons and those individuals with co-occurring alcohol and/or other substance use disorders and diagnosable mental illnesses.

CMHS was created by the ADAMHA Reorganization Act of 1992 to provide national leadership in the prevention and treatment of mental illnesses. CMHS also serves as the lead within the Department of Health and Human Services (HHS) for administering programs and interdepartmental initiatives that meet the housing, treatment, and support needs of homeless persons with mental illnesses. In this capacity, CMHS has initiated a broad array of demonstration, technical assistance and national leadership projects to assist States and localities in meeting the needs of homeless individuals with mental illnesses.

Specifically, CMHS currently administers three programs authorized by the McKinney Act: the Projects for Assistance in Transition from Homelessness (PATH) Formula Grant Program, the Access to Community Care and Effective Services and Supports (ACCESS) Program, and the Community Mental Health Research Demonstration Projects for Homeless Chronically Mentally Ill Persons. CMHS also provides professional leadership for interdepartmental initiatives designed to assist the homeless mentally ill population, including the Federal Task Force on Homelessness and Severe Mental Illness.

CMHS and CSAT recognize that an individual's addiction cannot be treated in isolation from his or her primary health, mental health, or socioeconomic deficits and disorders. Alcohol, drug abuse and mental health providers, however, are often not trained or prepared to treat individuals who suffer from both a mental illness and a substance use disorder.

There are many treatment programs that are currently serving individuals who are homeless and who have substance use disorders and co-occurring mental illnesses. Yet providers consistently identify the treatment needs of this population as difficult to address. Problems in assessing the co-occurrence of the disorders, in effectively preparing clients for treatment and recovery, and in matching appropriate treatment approaches to subgroups of dually diagnosed clients present challenges to providers. This program hopes to draw on the wealth of experience to identify and evaluate the most promising approaches to the treatment of alcohol, drug abuse and mental illness (ADM disorders) among this target population.

Program Goals

One goal of the CMHS/CSAT collaborative program is to document and evaluate effective interventions which can be used by local programs serving homeless substance abusing persons that treat persons with co-occurring mental illnesses within their service population. For the purposes of this announcement, an "intervention" is defined as "a targeted attempt to produce favorable client/patient outcomes." This includes improving the capacity of service providers to provide outreach, administering appropriate screening and assessment instruments, developing individualized treatment plans, triaging persons whose mental illness is severe enough to warrant comprehensive systems of mental health care, and providing effective treatment and supports to their alcohol and drug abusing homeless population with co-occurring mental illnesses.

Another goal is to reduce functional impairments associated with mental illnesses, achieve abstinence from alcohol and other drug use, and reduce the days spent homeless by the target population. The objectives of this program are to document treatment approaches that address the multiple needs of homeless individuals who have co-occurring substance use and mental disorders and to determine their potential effectiveness.

Project Requirements

CMHS/CSAT co-sponsored demonstration programs follow the public health practice of treating and

VOL 58 ISS 130 JL 9 1993 UMI

preventing infectious diseases in all treatment programming. Therefore, programs are required to provide screening, treatment and prevention of the following diseases: HIV/AIDS (includes pre- and post-test counseling); tuberculosis; sexually transmitted diseases (STDs); hepatitis; bacterial pneumonia; and other infectious disease entities that typically have a higher incidence among homeless persons, chronic alcohol users and drug abusers. These services may be provided through linkages with existing public health agencies and/or they may be supported using a combination of cooperative agreement funds and entitlements (e.g., Medicaid). All applicants will be expected to provide evidence that the cooperative agreement project will meet this requirement.

Where services are targeted to individuals with severe mental illnesses (disorders that include, but are not limited to, schizophrenia, major affective disorders, schizoaffective disorders, and severe personality disorders), the applicant must provide evidence that a comprehensive community support system, either within or outside of the applicant organization, is available.

Additionally, all proposed projects must meet the following requirements:

- Applicants must concisely describe screening and assessment procedures in place for treating co-occurring substance use disorders and mental illnesses in the target population.
- Applicants must indicate how the special needs of the target population (e.g., alcohol and drug abuse, mental health, health, housing and income supports and entitlements) are addressed, with emphasis on procedures and costs associated with inter-system case management and managed care approaches applicable to the target population.
- Applicants must describe how the proposed intervention is consistent with the CSAT Comprehensive Care Continuum as provided in the grant application kit.
- During Phase 1 of this project, each grantee will be expected to develop the following products:
- Produce a manual that describes an intervention or a refinement of an intervention;
- Document the potential effectiveness of the intervention through case studies;
- Prepare a logic model of the intervention that depicts the interrelationships among the goals, objectives and desired outcomes of the intervention;
- Describe the implementation of the intervention;
- Develop an evaluation plan for conducting a more systematic pretest/post-test assessment of the intervention during the second phase of the program; and
- Develop a budget for implementing the evaluation plan.
- Nine months after award of Phase 1 grants, in order to be considered for Phase 2, Phase 1 grantees must submit competing continuation applications that demonstrate the development of the above-mentioned products.

Applications will be assessed by a peer review group comprised of experts from the fields of alcohol and drug abuse, mental health and homelessness. The applications will be funded according to their technical merit and the availability of funds within three (3) months following receipt of the competing continuation applications. The review criteria will be as follows: Thoroughness in describing the intervention in the manual; evidence of potential effectiveness of the intervention; a cogent logic model; thoroughness in describing the implementation of the intervention; adequacy and appropriateness of the evaluation plan; and appropriateness of the proposed budget for implementing the evaluation.

- If more than one intervention is proposed, or the proposed intervention has more than one component (e.g., it includes both residential and case management components), the applicant must describe the anticipated effect of each component and address in their evaluation plan how the relative effects will be determined.
- During Phase 2, grantees will be expected to conduct a systematic pretest/post-test evaluation of the intervention and develop a report that summarizes the evaluation findings and includes recommendations for improving the intervention.

Target Population

The target population includes individuals ages 13 and over, who are homeless and who have a diagnosable substance use disorder that may result in psychiatric symptomatology or those who have both a diagnosable substance use disorder and a serious mental illness or serious emotional disturbance. Homeless individuals who have a primary diagnosis of substance abuse and are not suffering from mental illness may not be excluded from services provided with grant funds from this program.

The term "homeless" or "homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals not intended to be institutionalized; or a public or private facility not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Diagnosable substance use disorders include both DSM–III–R abuse and dependence categories. Substance use dependence or addiction is a biopsychosocial disease phenomenon and is known to be a chronic relapsing disorder for many individuals. Relapse tends to be an inherent characteristic of the disease of addiction for those experiencing a significant degree of socio-economic dysfunction. Many such individuals must be provided with a series of interventions along a sustained continuum if they are to effect and maintain recovery.

For purposes of this announcement, "serious mental illness" in adults and "serious emotional disturbance" in adolescents are defined as follows:

Definition of Serious Mental Illness in Adults: Adults with a serious mental illness are persons age 18 and over, who currently or at any time during the past year, have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within DSM–III–R that has resulted in functional impairment which substantially interferes with or limits one or more major life activities.

These disorders include any mental disorders listed in DSM–III–R or their ICD–9–CM equivalent (and subsequent revisions), with the exception of DSM–III–R "V" codes, substance use disorders, and developmental disorders, which are excluded unless they co-occur with another diagnosable serious mental illness. All of these disorders have episodic, recurrent, or persistent features; however, they vary in terms of severity and disabling effects.

Functional impairment is defined as difficulties that substantially interfere with or limit role functioning in one or more major life activities including basic daily living skills (e.g., eating, bathing, dressing); instrumental living skills (e.g., maintaining a household, managing money, getting around the community, taking prescribed medication); and functioning in social, family, and vocational/educational contexts. Adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services

are considered to have serious mental illnesses.

Definition of Serious Emotional Disturbance in Adolescents: Adolescents with serious emotional disturbances are persons between the ages of 13 and 18 who currently or at any time during the past year, have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within DSM–III–R, that resulted in functional impairment which substantially interferes with or limits the adolescent's role functioning in family, school, or community activities.

These disorders include any mental disorder listed in DSM–III–R or their ICD–9–CM equivalent (and subsequent revisions), with the exception of DSM–III–R "V" codes, substance use and developmental disorders, which are excluded, unless they co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, they vary in terms of severity and disabling effects.

Functional impairment is defined as difficulties that substantially interfere with or limit an adolescent from achieving or maintaining one or more developmentally-appropriate social, behavioral, cognitive, communicative, or adaptive skills. Functional impairments of episodic, recurrent, and continuous duration are included unless they are temporary and expected responses to stressful events in the environment. Adolescents who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services are included in this definition.

Service Approaches

Services which must be implemented by all applicants may be found under the Project Requirements section of this announcement. The CSAT Comprehensive Care Model (provided in the grant application kit) sets out an idealized process and basic service array from which treatment regimes can be constructed to serve all individuals with alcohol and drug problems and their families. The components of this Model may be provided either on-site or through formal linkages with existing, community-based health and human service providers. In developing applications, CSAT recommends using the Model as a framework which should be modified based on the sociodemographic characteristics of the target population(s), including age, gender, race, ethnicity, culture, socioeconomic status, geographic location and other distinguishing characteristics.

To reiterate, due to the increasing incidence and the public health threat posed by certain infectious diseases among alcohol and drug-involved individuals and their collaterals, all providers must propose methods by which individuals in treatment will be provided with testing and pre- and post-test counseling for HIV/AIDS, and mandatory testing and treatment for TB, hepatitis B and STDs.

In addition to the above, services considered to be particularly appropriate for the target population are described below. All applications must address the following:

* outreach and engagement (or be part of a referral network which provides these services)
* screening, intake, assessment, and periodic reassessment and appropriate individual treatment plans for each patient/client who presents for treatment;
* detoxification and ongoing toxicologic screening;
* group and/or individual therapy and psychopharmacologic support [1];
* linkage to self-help and other mechanisms for peer support (AA, NA, CA and other 12-step based programs);
* family support or involvement;
* relapse prevention support or responsibility for long-term care; and
* linkage to housing.

Examples of Interventions

All applications should identify interventions that include, at a minimum, screening, assessment, and treatment of the target population. Examples of interventions that would be supported by this program include, but are not limited to the following:

- Intensive multi-disciplinary case management teams that are trained to serve the target population and provide treatment throughout or during critical times in the continuum of treatment and services, with a special emphasis on the development of client/patient typologies, the identification of diagnostically related groupings, and refinement of procedures appropriate to managed care for the target population(s).
- Linkage to mental health providers that treat the target population through contractual or shared funding mechanisms.
- Behavioral, cognitive, and/or pharmacologic interventions that increase abstinence and decrease psychiatric symptoms.
- Group and/or individual therapy sessions which focus on readiness for residential placement for homeless persons with co-occurring disorders.
- Self-help groups to increase abstinence and promote engagement with essential providers of health and human services.
- Specialized group residential settings which provide on-site, integrated, residential treatment of mental and addictive disorders, to include psycho-social rehabilitation.
- Family interventions that re-unite families with run-away adolescents having co-occurring disorders.

These types of interventions can be arrayed on a continuum that has been characterized by Ridgely and Dixon (1993) as: (1) *sequential*, in which the mental illness or substance use disorder is dealt with by separate systems or staff that alternate in their interaction with the client/patient; (2) *linked*, in which the disorders may be addressed by separate systems or staff, but there are mechanisms (case review, telephone contact, data exchange, etc.) for relatively continuous contact about the treatment, the treatment plan, and the client/patient's progress; or as (3) *integrated*, in which the disorders are addressed as simultaneously as possible, either via the competencies of the staff or the consolidation of treatment responsibility in one authority.

Although no formal evaluations have been completed that assess the effectiveness of approaches on this continuum, there is growing consensus among clinicians that programs using either integrated or linkage approaches may potentially be more effective.

Technical Assistance

Technical assistance for Phase 1 and 2 activities will be provided by the Centers through their representative contractor(s) that will assist grantees in refining the intervention, developing the logic model, manual, and evaluation design, implementing the evaluation and analyzing the data.

Description of Manual

The manual must provide a thorough description of the intervention. At a minimum, it must include the following information:

- Relationship to existing literature
- Logic model
- Principles
- Goals
- Setting
- Clients targeted
- Description

[1] CSAT and CMHS believe that prescribed medication necessary to improve or sustain mental or physical functioning should not be classified in the same manner as drugs which are used for purposes of recreation and/or self-medication without physician authorization.

VOL 58 ISS 130 JL 9 1993 UMI

- Implementation plan
- Materials, activities, and administrative arrangements
- Staff and funding resources
- Case studies

Description of Evaluation Plan

The proposed evaluation plan must be able to document whether the intervention had some positive impact on client outcomes. At a minimum, the plan must include the following information:

- Purpose
- Design
- Measures
- Data collection
- Protection of human subjects
- Staffing and management
- Budget

Eligibility requirements

Community-based public and private non-profit entities that provide treatment services to homeless individuals with substance use disorders and mental illnesses are eligible to apply. Entities that provide services to homeless individuals who have a primary diagnosis of substance abuse, and are not suffering from mental illness, are also included. As required by section 506 of the Public Health Service Act, in awarding these cooperative agreements, CMHS/CSAT "shall give preference to entities that provide integrated primary health care, substance abuse and mental health services to homeless individuals."

Capability statements must accompany each applicant's proposal, and must include one of the following:

1. Documentation regarding an infrastructure in which the treatment program can be provided for the target population. Such documentation must be in the form of a letter from the Single State Agency for Alcohol and Drug Abuse Treatment (SSA) and from the State Mental Health Authority (SMHA) in each State, or the local governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment and mental health services in the applicant's jurisdiction.

2. Documentation that the applicant has provided substance abuse treatment services to the target population for a minimum of two years prior to the date of application. A letter from the Single State Agency (for substance abuse or mental health services, or both if appropriate) or the governmental entity (e.g. county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment and mental health services in the applicant's jurisdiction, certifying the applicant's experience, as above, will suffice to meet this requirement.

3. Documentation that the applicant is licensed, accredited, certified, or chartered to provide substance abuse and mental health treatment services by appropriate certification or credentialing bodies (e.g. State or sub-State licensing, Joint Commission on Accreditation for Health Care Organizations, Commission on Accreditation of Rehabilitation Facilities). Such documentation may be in one of two forms:

- A notarized copy of the applicant's license or certification of accreditation, or;
- A letter from the SSA, or the governmental entity (e.g. county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment in the applicant's jurisdiction, certifying the applicant's licensure status (addiction treatment program, mental health care program, primary health care facility, rehabilitation facility, recovery home, etc.).

Note—Providers that are not licensed or accredited to provide substance abuse and mental health treatment services at the time of application and that receive awards under this announcement are expected to obtain licensure prior to completion of Phase 1 of this project, except in cases where the State does not offer licensure.

Eligibility to apply for Phase 2 awards will be limited to Phase 1 grantees. Eligibility is limited in order to assure selection of the most promising treatment interventions and continuation of established collaborations between the Centers and projects.

Availability of Funds

It is estimated that approximately $3.5 million will be available to support up to twenty (20) awards under this RFA in FY 1993, and approximately $3.5 million will be available to support up to ten (10) competing continuation awards under this RFA in FY 1994. Actual funding levels will depend upon the availability of funds at the time of the award.

Period of Support

There will be two periods of support. The first phase of funding will be for twelve (12) months. The second phase of funding will be for up to eighteen (18) months. Second phase awards will be made to those Phase 1 award recipients who successfully compete and subject to availability of funds.

Special Requirements

Supplantation of Existing Funds

It is the intent of this RFA to support new or augmented services or programs. Therefore, award recipients may not use funds awarded under this RFA to replace funds that are currently supporting or are committed to support activities proposed in the application. A letter from the sponsoring institution/agency which certifies that Federal funds will not be used to supplant or replace funds already committed for proposed projects must be provided in the appendices.

Letters of Intent

Organizations planning to submit an application in response to this announcement are requested to submit a letter of intent 30 days prior to the receipt date. Such notification is used by the Centers for purposes of review and program planning. This letter is voluntary and does not obligate the organization to submit an application. In addition, the letter should be no longer than one page and should succinctly indicate:

—the number and title of the RFA
—the name of the potential applicant
—the name and affiliation of the proposed project director, i.e., the individual who will be assigned to coordinate the development and conduct of the project
—the overall scope of the proposed project and a brief description of the likely goals and objectives.

Letters of intent should be directed to: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 18C–07, Rockville, Maryland 20857 ATTN: CMHS/CSAT RFA/Letter of Intent.

Coordination with Other Federal/Non-Federal Programs

Examples of Federal agencies and programs with which applicants may find coordination productive include:

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration:

- Center for Mental Health Services
  Access to Community Care and Effective Services and Supports (ACCESS)
  Projects for Assistance in Transition from Homelessness
  Community Support Program
  Refugee Mental Health Program
  Emergency Mental Health Services Program

- Center for Substance Abuse Treatment
  - Drug Abuse Treatment Improvement Projects
  - Grants for Substance Abuse Treatment in State and Local Criminal Justice Systems
- Center for Substance Abuse Prevention
  - Communication Programs for the Prevention of Illegal Drug Use or Illegal
  - Use or Abuse of Alcohol

Social Security Administration

National Institutes of Health
- National Institute of Mental Health
- National Institute on Alcohol Abuse and Alcoholism
- National Institute on Drug Abuse

Health Care Financing Administration
- Medicaid

Health Resources and Services Administration
- Health Care for the Homeless Program
- Health Care in Public Housing Program

Administration for Children and Families
- Basic Center Programs for Runaway and Homeless Youth
- Transitional Living Programs for Homeless Youth
- Drug Abuse Prevention Programs for Runaway and Homeless Youth

Centers for Disease Control

Indian Health Service

Other Federal Departments

Department of Agriculture
- Food Stamps
- USDA Food Programs
- Farmers Home Administration Surplus Properties

Department of Education
- Adult Education for the Homeless Program

Department of Housing and Urban Development
- Shelter Plus Care
- Supportive Housing Program—Permanent Housing for Handicapped Homeless
- Supportive Housing Program—Transitional Housing
- Section 8 Moderate Rehabilitation Assistance for SRO Dwellings
- Housing Opportunities for Persons with AIDS
- Emergency Shelter Grants Program
- Supplemental Assistance for Facilities to Assist the Homeless
- Section 202/811
- Comprehensive Housing Affordability Strategy
- Title V Surplus Properties

Department of Labor
- Job Training for the Homeless Demonstration Program
- Homeless Veterans Reintegration Projects

Intergovernmental Review (E.O. 12372)

Applications submitted in response to this RFA are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through HHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instruction on the State's applicable procedure. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to the following address:

Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 18C–07, Rockville, Maryland 20857, ATTN: SPOC.

Due to the limited time frame between receipt of applications and date of awards, a SPOC will not have the 60-day comment period allowed under Executive Order 12372. The due date for State process recommendations is no later than 30 days after the deadline date for the receipt of applications. The CMHS does not guarantee to accommodate or explain SPOC comments that are received after the 30-day cut-off.

Public Health System Reporting Requirements

Community-based, nongovernmental applicants to this program are subject to the Public Health System Reporting Requirements. Each community-based, nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the application receipt date of August 23, 1993:

1. A copy of the face page of the application (Standard Form 424).

2. A summary of the project (PHSIS), not to exceed one page, which provides:

- A description of the population to be served.
- A summary of the services to be provided.
- A description of the coordination planned with the appropriate State or local health agencies.

State and Tribal Authority applicants to this program are not subject to the Public Health System Reporting Requirements.

Role of CMHS/CSAT Staff in Cooperative Agreements

A Cooperative Agreement is the mechanism by which financial and technical assistance will be provided to grantees. Cooperative agreements entail substantial postaward involvement by CMHS/CSAT staff and their representative contractor(s) beyond the levels required for traditional grant program management, to include: providing direction in defining the intervention and in describing its implementation; providing expert advice and guidance in developing a manual of the intervention; providing consultation in designing and implementing the evaluation, and in analyzing the data.

Role of Grantee in Cooperative Agreements

The grantee is expected to refine the intervention, develop the manual using a standardized protocol, describe the implementation of the intervention, use a uniform approach to presenting a logic model of the intervention, design and implement the evaluation, collecting a uniform, minimum data set, and analyze the data. In addition, the grantee is expected to take advantage of the technical assistance that will be provided by CMHS/CSAT staff and their representative contractor(s) in postaward activities.

Participant/Human Subject Protection

Applicants and awardees are expected to develop and implement appropriate procedures to address confidentiality and other ethical issues pertinent to the protection of participants in proposed projects, including agreement, where applicable, to maintain the confidentiality of alcohol and drug abuse client data in accordance with 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

Inclusion of Women, Youth and Minorities

CMHS and CSAT urges applicants to give added attention (where feasible and appropriate) to the inclusion of racial/ethnic minority groups, youth, and women in the program. Applicants

VOL 58 ISS 130 JL 9 1993 UMI

should describe the racial/ethnic, age and gender composition of the program's target population, and racial/ethnic minority group, age and gender differences must be noted and evaluated. If such groups are not included in the program population, a clear rationale for their exclusion must be provided.

Evaluation

Grantees will be required at the end of Phase 1 to submit a logic model of the intervention, an evaluation design which will assess the effectiveness of the intervention and an evaluation budget. At the end of Phase 2, grantees will be required to submit a report that summarizes the results of the evaluation and includes recommendations for improving the intervention.

Application Procedures

All applicants must use application form PHS 5161–1 (Rev. July, 1992), which contains Standard Form 424 (face page). The following information must be typed in Item Number 10 on the face page of the application form: CMHS/CSAT Collaborative Program for Homeless Individuals, #SM93–08.

Grant application kits (including Form PHS 5161–1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from:

United Information Systems, 3206 Tower Oaks Boulevard 4th Floor, Rockville, MD 20852,(301) 984–4222.

Applicants must submit: (1) an original copy signed by the authorized official of the applicant organization, with the appropriate appendices; and (2) two additional legible copies of the application and all appendices to the following address:

United Information Systems, 3206 Tower Oaks Boulevard 4th Floor, Rockville, MD 20852, ATTN: CMHS/CSAT Collaboration.

Only one application seeking support for the same programmatic service demonstration activities with the same population may be submitted to the Substance Abuse and Mental Health Services Administration, and that same application may be submitted in response to only one Program Announcement or Request for Applications.

Application Receipt and Review Schedule

The schedule for receipt and review of applications under this announcement is as follows:

Receipt date	IRG review	Earliest start date
August 23, 1993.	September, 1993.	September, 1993.

Applications will be considered to be "on time" if they are either received on or before the established deadline date, or sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Consequences of Late Submission

Applications received after the above receipt date will not be accepted and will be returned to the applicant without review.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/Substance Abuse and Mental Health Services Administration (SAMHSA) peer review procedures for grants.

Applications will be screened for completeness and compliance with instructions for submission.

Returned applications may not be resubmitted due to the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Notification of the IRG's recommendation will be sent to the applicant upon completion of the initial review.

Review Criteria

Each grant application is evaluated on its own merits. The following are the review criteria that will be used:

Adequacy and Appropriateness of the Intervention

Feasibility, Capability, and Commitment to Project

- Feasibility of accomplishing the project
- Qualifications and experience of applicant organization, project coordinator, and other key personnel
- Commitments from proposed collaborators to participate in all aspects of the program

Target Population

- Demonstrated need
- Evidence of access to, and availability of appropriate and adequate target populations

Reasonableness of Resource Allocation

- Adequacy of available resources
- Appropriateness of the proposed budget for the project.

Award Criteria

Applications recommended for approval by the Initial Review Group will be considered for funding on the basis of their overall technical merit as determined through the review process. Pre-award site visits may also be conducted. Other award criteria will include:

- Availability of funds
- Geographical distribution throughout the United States
- Focus on cultural and ethnic minority populations and sensitivity to special needs of females
- Relevance of the project to CMHS/CSAT demonstration priorities as stated in this RFA (see "Program Goals")
- Preference for entities that provide integrated primary health care, substance abuse and mental health services to homeless individuals.

Terms and Conditions of Support

Allowable Items of Expenditure

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs that can be specifically identified with the project and allowable indirect costs. In order to recover allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, applicants should contact the appropriate office of the DHHS Division of Cost Allocation referenced in the list of "Offices Negotiating Indirect Cost Rates," included in the application kit.

Funds cannot be used to supplant current funding for existing activities (see section on Supplantation of Existing Funds). Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out service activities under the approved project;
- Supplies, communications, and rental of equipment and space directly related to approved project activities;

• Contracts for performance of activities under the approved project; and

• Other such items necessary to support approved project activities.

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period or cover non-programmatic activities.

Grant funds may not be used to pay for inpatient hospital treatment, including detoxification, or for any housing cost.

Other Costs

During Phase 1, grant funds may be used to support a project coordinator, an alcohol and/or drug abuse clinician, a mental health clinician, housing specialist, editor, secretary, as well as other relevant staff. During Phase 2, the editor should be replaced by an evaluator.

Grantees will receive technical assistance to facilitate the proposed model development and manualization as well as technical assistance in designing the evaluation of their model and in developing outcome measures. During the first year, applicants must budget for the attendance of the Project Director at one 3-day meeting in the Washington, DC, area. During the second year, the budget must include both the Project Director and the evaluator attending two 3-day meetings in the Washington, DC, area.

Reporting Requirements

Annual and final progress reports and financial status and expenditure reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Contacts for Additional Information

Questions concerning program issues may be directed to:

Frances L. Randolph, Dr.P.H. or Walter Leginski, Ph.D., Homeless Program Section, Adult Serious Mental Illnesses Branch, Division of Demonstration Programs, Center for Mental Health Services, 5600 Fishers Lane, room 11C–05, Rockville, MD 20857, (301) 443–3706.

Edwin M. Craft or Donald Streater, J.D., Critical Populations Branch, Division of National Treatment Demonstrations, Center for Substance Abuse Treatment, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6533.

Questions regarding grants management issues may be directed to:

Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, room 15–81, Rockville, MD 20857, (301) 443–4456.

Authority and Regulations

Statutory Authority: Grants awarded under this RFA are authorized under Section 506 of the Public Health Service Act.

Applicable Federal Regulations: Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

PHS Grants Policy Statement: Grants must be administered in accordance with the PHS Grants Policy Statement (Updated September 1, 1991).

Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.148.

Dated: July 6, 1993.

Joseph R. Leone

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–16359 Filed 7–8–93; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other

Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447–3338; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: July 2, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 07/09/93

Suitable/Available Properties

Buildings (by State)

Minnesota

Eric & Laura Brittain—Cabin
Section 18 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320004
Status: Unutilized
Comment: 708 sq. ft., 2-story, needs repair, most recent use—recreation cabin, endangered species habitat, off-site use only

Kenneth Krienke—House
Govt Lots 7, 8, 9 & 10 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320005
Status: Unutilized
Comment: 2288 sq. ft., 2-story, most recent use—residence, endangered species habitat, off-site use only

Kenneth Krienke—Garage/Shed
Govt Lots 7, 8, 9, & 10 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320006
Status: Unutilized
Comment: 3840 sq. ft., 1-story pole bldg., earth flooring, endangered species habitat, off-site use only

Kenneth Krienke—Shed
Govt Lots 7, 8, 9, & 10 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320007
Status: Unutilized
Comment: 126 sq. ft., 1-story, needs repair, most recent use—fish cleaning shed, endangered species habitat, off-site use only

Lundeen—House
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320008
Status: Unutilized
Comment: 1440 sq. ft., 2-story, wood frame, needs roof replaced, eagle habitat, most recent use—summer residence, off-site use only

Lundeen—Shed
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320009
Status: Unutilized
Comment: 64 sq. ft., 1-story, eagle habitat, most recent use—fish cleaning shed, off-site use only

Lundeen—Garage
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320010
Status: Unutilized
Comment: 192 sq. ft., 1-story, needs repair, eagle habitat, most recent use—garage, off-site use only

Lundeen—Cabin (North)
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320011
Status: Unutilized
Comment: 960 sq. ft., 2-story, eagle habitat, most recent use—summer residence, off-site use only

Lundeen—Cabin (South)
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320012
Status: Unutilized
Comment: 960 sq. ft., 2-story, eagle habitat, most recent use—summer residence, off-site use only

Unsuitable Properties

(Buildings (by State)

Arkansas

Bldg. 12, Cass Job Corps Cntr Hwy 23
Ozark Co: Franklin AR 72949–
Landholding Agency: Agriculture
Property Number: 159320013
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Florida

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608–
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Hawaii

Bldg. 989
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320025
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 990
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320026
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 996
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320027
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1026
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg 1028
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320029
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. S959
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320030
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

New York

Bldg. 517, USCG Support Center
Governors Island Co: Manhanttan NY 10004–
Landholding Agency: DOT
Property Number: 879320025
Status: Unutilized
Reason: Secured Area

[FR Doc. 93–16174 Filed 7–8–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-966-4230-05-P; AA-6652-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Far West, Inc. for 1.25 acres. The lands involved are in the vicinity of Chignik, Alaska.

Lot 4, Block 4; lot 6, Block 5; lot 6, Block 6, U.S. Survey No. 4896, Alaska. Townsite of Chignik, situated at Chignik, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until August 9, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Acting Chief, Branch of Southwest Adjudication.

[FR Doc. 93-16279 Filed 7-8-93; 8:45 am]

BILLING CODE 4310-JA-M

[OR056-4333-02:GP3-287]

Availability for a Wild and Scenic River Management Plan and Final Corridor Boundary, Oregon

AGENCY: Prineville District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of the Final Management Plan and Corridor Boundary for the designated segment of the Lower Crooked River (Chimney Rock Segment), a component of the Wild and Scenic Rivers System.

The final corridor boundary for the designated segment of the Lower Crooked River (Chimney Rock Segment) lies entirely within the general legal description below.

Willamette Meridian

T. 16 S., R. 16 E.
Portions of Sections: 20, 21, 28, 29, 32, 33, 34
T. 17 S., R. 16 E.
Portions of Sections: 2, 3, 4, 5, 10, 11

A more detailed legal description is available upon request.

FOR FURTHER INFORMATION CONTACT: James G. Kenna, Area Manager, Deschutes Resources Area, Bureau of Land Management, Prineville District Office, 185 E. 4th Street, Prineville, OR 97754; telephone (503) 447-8757.

Dated: June 28, 1993.

Donald L. Smith,

Acting District Manager, Prineville District Office.

[FR Doc. 93-16193 Filed 7-8-93; 8:45 am]

BILLING CODE 4310-33-M

[OR056-433302:GP3-288]

Availability for a Wild and Scenic River Management Plan and Final Corridor Boundary, Oregon

AGENCY: Bureau of Land Management, Prineville District, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of the Final Management Plan and Corridor Boundaries for the designed segments of the Middle Deschutes and Lower Crooked Rivers', components of the Wild and Scenic Rivers System.

The final corridor boundaries for the designated segments of the Middle Deschutes and Lower Crooked Rivers' lie entirely within the general legal descriptions below.

Middle Deschutes River

Willamette Meridian

T. 14 S., R. 12 E.
Portions of Sections: 3, 4, 9, 10, 11, 14, 15, 16, 22, 23, 26, 27
T. 13 S., R. 12 E.
Portions of Sections: 5, 6, 7, 8, 17, 20, 21, 22, 27, 28, 29, 33, 34
T. 12 S., R. 12 E.
Portions of Sections: 29, 31, 32

Lower Crooked River

Willamette Meridian

T. 13 S., R. 13 E.
Portions of Sections: 19, 30, 31, 32
T. 13 S., R. 12 E.
Portions of Sections: 3, 4, 9, 10, 11, 13, 14, 15, 24, 25, 36

More detailed legal descriptions are available upon request.

FOR FURTHER INFORMATION CONTACT: James G. Kenna, Area Manager, Deschutes Resource Area, Bureau of Land Management, Prineville District Office, 185 E. 4th Street, Prineville, OR 97754; telephone (503) 447-8757.

Dated: June 28, 1993.

Donald L. Smith,

Acting District Manager, Prineville District Office.

[FR Doc. 93-16192 Filed 7-8-93; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-5101-10-B016,CACA 27497]

Availability of Final Cajon Pipeline Environmental Impact Statement/ Environmental Impact Report

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management, California Desert District, has prepared a joint Federal/State Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the proposed Cajon Pipeline Project, with the City of Adelanto. This Final (EIS/EIR) describes and analyzes the proposed Project, project alternatives, and marketing alternatives. This Project, as proposed, will traverse both Federal and private lands in San Bernardino and Los Angeles Counties in southern California.

DATES: Written comments will be accepted until August 9, 1993.

ADDRESSES: Written comments should be sent to the District Manager, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507-0714, ATTN: Cajon Pipeline Project.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507-0714; phone (714) 697-5234.

SUPPLEMENTARY INFORMATION: Discoveries in the Santa Barbara Channel off the coast of California along the Outer Continental Shelf (OCS) and on-shore through thermal enhanced oil recovery in the San Joaquin Valley (SJV) have yielded significant new reserves of heavy, high sulphur crude oil. As a result of these discoveries and the desire of producers to transport this heavy crude to the Los Angeles Basin

refineries, a heated pipeline system capable of handling this crude in its "neat" state is being considered. Existing pipelines do not have the capacity to handle the anticipated volume. In addition, heavy crude requires the addition of heat to allow it to be efficiently pumped through pipelines, and no heated common carrier pipeline exists today into the Los Angeles Basin.

To connect the producers and refiners, the Cajon Pipeline Company proposes to build a 142-mile-long, 20-inch diameter insulated buried pipeline from 12-Gauge Lake (27 miles west of Barstow), California, to the Los Angeles crude oil terminals in Carson and Long Beach. Crude oil from the Santa Barbara Channel and the San Joaquin Valley would be delivered to 12-Gauge Lake by the existing All American Pipeline. From there it would be conveyed in the Los Angeles Basin by the proposed Cajon Pipeline. The Cajon Pipeline would have a maximum capacity of 180,000 barrels per day (BPD), but would be expected to operate at an average flow of 150,000 BPD. Two pump stations would be needed to move heated crude oil through the Cajon Pipeline. One pump station, together with storage, would be located at 12-Gauge Lake. The other pump station, together with control and maintenance facilities, would be located at Adelanto. The Final (EIS/EIR) for the proposed Cajon Pipeline Project includes an analysis of the environmental impacts of the proposed pipeline system during construction and operation.

This Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed Cajon Pipeline Project has been prepared in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). A new alternative was identified during the review period for the Draft (EIS/EIR). This alternative, the Etiwanda Terminal Alternative, is now the BLM preferred alternative. Since this alternative would utilize an existing Southern California Edison (SCE) pipeline it would reduce impacts by not requiring any new construction across the Los Angeles basin. However, if an agreement between Cajon Pipeline and SCE cannot be consummated in a timely fashion, then the Bureau of Land Management (BLM) will consider the Proposed Project, as modified by the Sycamore Segment, as the BLM preferred alternative.

During the public review of the Draft EIS/EIR, agencies and the general public expressed concerns regarding revegetation, system safety, location relative to an elementary school and mitigation monitoring. In response to these concerns, the proposed project and mitigation measures which would be imposed have been modified. Besides the changes incorporated into Volume 1 of the Final EIS/EIR, a new section entitled Mitigation Monitoring Program has been included in Volume II to assure compliance if the Cajon Pipeline Project is approved.

Dated: July 1, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–16180 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–010–03–4320–01]

Craig Colorado Advisory Council Meeting

Time and Date: 9 a.m., July 22, 1993
Place: Jerelin Wattenberg Community Center, Jackson County Fairgrounds, Walden, Colorado
Status: Open to public; interested persons may make oral statements at 9:10 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.
Matters To Be Considered:
1. North Park Habitat Partnership Project (HPP)
2. Tour of Liquid Carbonics Facility
3. Trip to Arapaho National Wildlife Refuge
4. Tour of Owl Ridge HPP

Contact Person For More Information: Pam Golden, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: July 1, 1993.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 93–16327 Filed 7–7–93; 11:10 am]

BILLING CODE 4310–JB–M

[CA–050–03–4333–12]

Manila Dunes Closure Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given related to the emergency temporary closure of Bureau of Land Management (BLM) administered lands to all Off-Road Vehicle (ORV) use in accordance with regulations contained in 43 CFR 8341.2. This action affects approximately 112 acres of public land located on the Manila Dunes parcel, Samoa Peninsula, Humboldt County (T.6N., R.1W., parts of Sec. 26, 27, 34, and 35, Humboldt Meridian). These public lands will be temporarily closed to all ORV use to protect prehistoric and historic cultural sites, habitat for the Western Snowy Plover (federally listed as threatened), and endangered populations of Menzie's Wallflower (*Erysimum menziesii*) and Beach Layia (*Layia carnosa*). This special area is also presently going through administrative review to ensure that fencing is compatible with the Endangered Species Act as well as the Archaeological Resources Protection Act and the National Historic Preservation Act. This closure will remain in effect until the *Arcata Area Resource Management Plan Amendment* addressing the Manila Dunes is formally approved.

DATES: This closure order is effective July 6, 1993.

ADDRESSES: Maps and supporting documentation of the areas temporarily closed to ORV use are available for review at the following location: Bureau of Land Management, Arcata Resource Area, 1125 16th Street, room 219, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, at the Arcata address given above. Telephone: (707) 822–7648.

SUPPLEMENTARY INFORMATION: The purpose of temporarily closing the Manila Dunes parcel is to prohibit ORV use to conserve and protect rare and endangered plants and animals, and cultural resource values. Habitat restoration plans for the Manila Dunes parcel are underway.

Dated: June 21, 1993.

Lynda Roush,

Area Manager.

[FR Doc. 93–16284 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–40–M

[NM–940–4110–03; NMNM 13277]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 13277, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00

per acre or fraction thereof and 18⅔ percent, respectively. Payment of $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 93–16275 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–FB–M

[ES–943–01–4110–03–257D; OHES 43056]

(Ohio): Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OHES 43056, Trumbull County, Ohio, was timely filed by Everflow Eastern, Inc. (Lessee) and was accompanied by all required rentals and royalties accruing from December 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. Payment of a $500 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson at (703) 440–1528.

Dated: June 30, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–16280 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ID–943–03–4210–04; IDI–28084]

Notice of Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued an exchange conveyance document to Squaw Creek Farms, of Mountain Home, Idaho, under section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchange, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

T. 4 S., R. 6 E.,
Sec. 24, NW¼SW¼;
Sec. 26, E½SE¼;
Sec. 35, W½NE¼.
Comprising 200.00 acres of public lands.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 5 S., R. 6 E.,

Tracts 37 and 38 together with easement for ingress-egress over and across the following described property:

A fifty (50) foot wide strip of land being 25 feet on each side of centerline described as follows:

Beginning at east section corner common to section line located between south ½ of section 24 and north ½ section 25;

N. 89°49' W., 5,353.92 ft. to east section corner common to section line located between south ½ section 23 and north ½ section 26 and continuing N. 89°49' W., 401.28 ft to point of terminus. Comprising 337.94 acres of private lands.

The purpose of the exchange was to acquire non-Federal lands which have high public values for wildlife and riparian habitat. The public interest was well served through completion of this exchange. The values of the Federal and private lands involved in this exchange were each appraised at $24,000.00.

3. At 9 a.m. on August 9, 1993, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 9, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on August 9, 1993, the reconveyed private lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 30, 1993.

Larry R. Lievsay,

Acting Chief, Realty Operations Section.

[FR Doc. 93–16281 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–020–03–5410–11–A104; AZA–27528]

Notice of Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The private lands described in this notice aggregating approximately 5 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals

VOL 58 ISS 130 JL 9 1993 UMI

ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090. Serial Number AZA–27528.

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 3 N., R. 3 E.,
Sec. 11, Lot 10, Except the West 25 feet and the East 40 feet.

Minerals Reservation—All Minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: June 30, 1993.

David J. Miller,

Acting District Manager.

[FR Doc. 93–16277 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–32–M

[ID–040–4210–03, IDI–29545]

Realty Action; Lease of Public Lands, Challis Resource Area, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action for the lease of public lands for airport purposes for the Challis Resource Area in Custer County, Idaho.

SUMMARY: The following public lands in Custer County, Idaho have been found suitable for lease to Idaho Department of Aeronautics for airport purposes under the Act of May 24, 1923, as amended.

Boise Meridian

T. 7 N., R. 20 E.,
Sec. 9: W½SW¼
T. 7 N., R. 20 E.,
Sec. 17: E½NE¼
Containing approximately 60 acres.

Lease of the lands is consistent with applicable Federal and County land use plans and will help meet the needs of Custer County residents for air transportation. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

ADDRESSES: For a period of 45 days from the date of this publication, interested parties may submit comments to the Challis Resource Area Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, Challis Resource Area Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho, 83467 or telephone (208) 756–5400. Documents relevant to this issue will be maintained in the Challis Resource Area Office at the above address and are available for public viewing during normal office hours.

This notice segrates the above described public lands from operation of the public land laws, including the mining laws. The segrative effect will end upon issuance of the lease or one year from the date of this publication, whichever occurs first.

Dated: June 22, 1993.

Mark E. Johnson,

Challis Area Manager.

[FR Doc. 93–16189 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–03–4210–05; N–57141]

Non-Competitive Sale of Public Lands in Clark County, NV; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of NORA.

SUMMARY: The Notice of Realty Action published in the **Federal Register** on April 16, 1993 (58 FR 19840; FR Doc. 93–8889), is hereby amended to change the legal description of the following sites:

T. 16 S., R. 56 E. (Indian Springs),
Sec. 16: S½NW¼SE¼NE¼.
T. 16 S., R. 68 E. (Overton/Logandale),
Sec. 7: W½NW¼NE¼NW¼.
T. 24 S., R. 58 E. (Goodsprings),
Sec. 26: SW¼SW¼SW¼SE¼, SE¼SE¼SE¼SW¼.
T. 28 S., R. 63 E (Searchlight),
Sec. 35: SW¼NW¼NE¼NE¼.
Containing 35 acres more or less.

In addition the Searchlight site will be subject to:

5. Those rights for a pipeline which have been granted to Southwest Gas Corporation by grant no. Nev–060005 for a natural gas pipeline under the Act of February 25, 1920.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes, leasing under the mineral leasing laws and disposals of mineral materials.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, PO Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

All of the other terms and conditions of the original NORA continue to apply.

Dated: July 1, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–16276 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR–48500; OR 035–01–3110–02–H021; GP3–272]

Realty Action; Exchange of Public Lands in Wallowa, Union and Umatilla Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed exchange involving public lands in Wallowa, Union and Umatilla Counties, Oregon.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), and Section 6 of the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1277). These public lands were determined suitable for exchange by the Baker Resource Management Plan (RMP), dated July 29, 1989, and the exchange is in accordance with the Baker RMP. Final determination for disposal will be made through the Environmental Assessment process pursuant to the National Environmental Policy Act of 1969, as amended.

Note: Not all of the lands identified below will be involved in this land exchange. Some may be deleted to eliminate resource conflicts that are identified or arise during the environmental review and processing of this exchange. The final selection of properties will be made to achieve fair market value between the selected public and the offered private lands.

Selected Public Land:

Willamette Meridian, Oregon

Parcel W–7–S

T. 6 N., R. 44 E.,
Sec. 14, Lots 2, 3 & 4.

Parcel W–8–S

T. 6 N., R. 46 E.,
Sec. 20, SW¼SW¼.

Parcel W–9–S

T. 6 N., R. 44 E.,
Sec. 26, NE¼NE¼.

Parcel W–10–S

T. 6 N., R. 44 E.,
Sec. 32, NW¼SE¼.

Parcel W–11–S

T. 6 N., R. 45 E.,
Sec. 31, Lot 1.

Parcel W–12–S

T. 5 N., R. 43 E.,
Sec. 31, SE¼NW¼.

Parcel W–13–S

T. 4 N., R. 43 E.,
Sec. 4, NW¼SE¼.

Parcel W–14–S

T. 4 N., R. 43 E.,
Sec. 4, Lot 4,W½SW¼.

Parcel W–15–S

T. 4 N., R. 43 E.,
Sec. 6, Lot 3.

Parcel W–16–S

T. 4 N., R. 43 E.,
Sec. 10, SE¼NE¼.

Parcel W–17–S

T. 4 N., R. 43 E.,
Sec. 11, SE¼SE¼.

Parcel W–18–S

T. 3 N., R. 45 E.,
Sec. 35, NW¼NW¼.

Parcel W–19–S

T. 3 N., R. 45 E.,
Sec. 35, W½SW¼.

Parcel W–20–S

T. 3 N., R. 46 E.,
Sec. 34, SE¼NW¼.

Parcel W–21–S

T. 2 N., R. 42 E.,
Sec. 17, SE¼NW¼.

Parcel W–22–S

T. 2 N., R. 42 E.,
Sec. 19, Lot 1.

Parcel W–23–S

T. 2 N., R. 45 E.,
Sec. 36, SW¼NE¼.

Parcel W–24–S

T. 2 N., R. 45½ E.,
Sec. 6, Lot 2.

Parcel W–25–S

T. 2 N., R. 46 E.,
Sec. 6, Lot 10.

Parcel W–26–S

T. 2 N., R. 46 E.,
Sec. 30, Lots 7 & 8.

Parcel W–27–S

T. 2 N., R. 47 E.,
Sec. 14, W½SE¼.

Parcel W–28–S

T. 2 N., R. 47 E.,
Sec. 17, SW¼SW¼.

Parcel W–29–S

T. 2 N., R. 47 E.,
Sec. 24, W½NW¼.

Parcel W–30–S

T. 2 N., R. 47 E.,
Sec. 26, N½SE¼, NE¼SW¼.

Parcel W–31–S

T. 2 N., R. 47 E.,
Sec. 27, SE¼NW¼.

Parcel W–32–S

T. 2 N., R. 47 E.,
Sec. 27, SW¼SW¼.
Sec. 28, S½SE¼.
Sec. 34, NW¼,NW¼.

Parcel W–33–S

T. 2 N., R. 47 E.,
Sec. 31, Lots 8, 11 & 18.

Parcel W–34A–S

T. 2 N., R. 48 E.,
Sec. 20, W½NW¼.

Parcel W–35–S

T. 2 N., R. 48 E.,
Sec. 21, NE¼NW¼.

Parcel W–36–S

T. 2 N., R. 48 E.,
Sec. 21, SW¼NE¼.

Parcel W–37–S

T. 2 N., R. 48 E.,
Sec. 21, NE¼SW¼.

Parcel W–38–S

T. 2 N., R. 48 E.,
Sec. 21, SW¼SE¼.

Parcel W–39–S

T. 2 N., R. 48 E.,
Sec. 28, NW¼NW¼.

Parcel W–40–S

T. 2 N., R. 48 E.,
Sec. 28, SW¼, SW¼SE¼.

Parcel W–41–S

T. 2 N., R. 48 E.,
Sec. 34, SE¼SW¼.

Parcel W–42–S

T. 1½ N., R. 45 E.,
Sec. 35, Lot 1.

Parcel W–43–S

T. 1½ N., R. 45 E.,
Sec. 35, Lots 2 & 3.

Parcel W–44–S

T. 1 N., R. 42 E.,
Sec. 17, SE¼NW¼, E½SW¼, SW¼SE¼.

Parcel W–45–S

T. 1 N., R. 42 E.,
Sec. 35, SE¼NW¼, N½SW¼.

Parcel W–46–S

T. 1 N., R. 42 E.,
Sec. 35, SE¼SE¼.
T. 1 S., R. 42 E.,
Sec. 1, Lots 3 & 4, SE¼NW¼, SW¼NE¼, NW¼SE¼, N½SW¼, 2, Lots 1 & 2.

Parcel W–47–S

T. 1 S., R. 42 E.,
Sec. 2, W½SW¼.

Parcel W–48–S

T. 1 N., R. 45 E.,
Sec. 1, Lot 7.

Parcel W–49–S

T. 1 N., R. 45 E.,
Sec. 2, Lot 6.

Parcel W–50–S

T. 1 N., R. 46 E.,
Sec. 9, NE¼SE¼.

Parcel W–51–S

T. 1 N., R. 47 E.,
Sec. 1, S½NE¼, N½SE¼, SE¼SE¼, 12, E½NE¼.

Parcel W–52–S

T. 1 N., R. 47 E.,
Sec. 2, S½SE¼, 11, NE¼, N½S½, SE¼NW¼.

Parcel W–53–S

T. 1 N., R. 47 E.,
Sec. 3, SE¼SW¼.

Parcel W–54–S

T. 1 N., R. 47 E.,
Sec. 9, SW¼NE¼.

Parcel W–55–S

T. 1 N., R. 48 E.,
Sec. 6, SE¼SE¼.

Parcel W–56–S

T. 1 N., R. 48 E.,
Sec. 17, SW¼NW¼, 18, SE¼NE¼.

Parcel W–57–S

T. 1 N., R. 48 E.,
Sec. 18, W½SE¼.

Parcel W–58–S

T. 1 S., R. 43 E.,
Sec. 21, Lot 13.

Parcel W–59–S

T. 1 S., R. 45 E.,
Sec. 24, SW¼SE¼.

Parcel W–60–S

T. 1 S., R. 46 E.,
Sec. 1, Lot 3.

Parcel W–61–S

T. 1 S., R. 46 E.,
Sec. 8, SE¼NW¼.

Parcel W–62–S

T. 1 S., R. 46 E.,
Sec. 20, SE¼SE¼.

Parcel W–63–S

T. 1 S., R. 46 E.,
Sec. 23, SE¼SW¼.

Parcel W–64–S

T. 1 S., R. 46 E.,
Sec. 28, SE¼SW¼.

Parcel W–65–S

T. 1 S., R. 47 E.,
Sec. 3, Lot 13.

Parcel W–66–S

T. 1 S., R. 47 E.,
Sec. 3, SW¼SW¼.

VOL 58 ISS 130 JL 9 1993 UMI

Parcel W–68–S
T. 1 S., R. 47 E.,
Sec. 17, NE¼SW¼.
Parcel W–69–S
T. 1 S., R. 47 E.,
Sec. 30, Lot 4, 31, Lot 1.
Parcel W–72–S
T. 2 S., R. 46 E.,
Sec. 10, NW¼SE¼.
Parcel W–73–S
T. 2 S., R. 46 E.
Sec. 23, NE¼SE¼.
Parcel W–74–S
T. 2 S., R. 46 E.,
Sec. 24, SE¼NE¼.
Parcel W–76–S
T. 2 S., R. 47 E.,
Sec. 22, SW¼SW¼.
Parcel W–77–S
T. 2 S., R. 47 E.,
Sec. 29, SW¼SW¼.
Parcel W–78–S
T. 3 S., R. 46 E.,
Sec. 1, NE¼SE¼.
Parcel W–79–S
T. 3 S., R. 46 E.,
Sec. 13, NW¼SW¼.
Parcel W–80–S
T. 3 S., R. 46 E.,
Sec. 13, S½SE¼.
Parcel W–81–S
T. 3 N., R. 41 E.,
Sec. 5, NW¼SW¼.
Parcel W–82–S
T. 4 N., R. 42 E.,
Sec. 9, E½NE¼.
Parcel W–83–S
T. 1 N., R. 42 E.,
Sec. 31, SE¼NW¼, NE¼SW¼, W½SE¼.
Parcel W–84–S
T. 2 N., R. 44 E.,
Sec. 17, SW¼NW¼.
Parcel W–85–S
T. 1 N., R. 45 E.,
Sec. 6, Lots 1 & 2.

The area described aggregates 4,898.04 acres, more or less, in Wallowa County, Oregon.

Parcel Un–01–S
T. 1 N., R. 41 E.,
Sec. 19, SE¼SE¼.
Parcel Un–02–S
T. 1 N., R. 41 E.,
Sec. 30, NE¼SE¼.
Parcel Un–03–S
T. 1 S., R. 39 E.,
Sec. 25, SE¼NW¼, E½SW¼.
Parcel Un–04–S
T. 1 S., R. 39 E.,
Sec. 26, S½NE¼, NW¼SE¼.
Parcel Un–05–S
T. 1 S., R. 39 E.,
Sec. 26, SW¼SW¼;
Sec. 35, NW¼NW¼.
Parcel Un–06–S
T. 1 S., R. 39 E.,
Sec. 35, NE¼SW¼, NW¼SE¼.
Parcel Un–07–S
T. 2 S., R. 39 E.,
Sec. 2, Lot 2.
Parcel Un–08–S
T. 1 S., R. 40 E.,
Sec. 15, NE¼SW¼.
Parcel Un–09–S
T. 1 S., R. 40 E.,
Sec. 25, W½SE¼, E½SW¼, SE¼SE¼.
Parcel Un–10–S
T. 1 S., R. 40 E.,
Sec. 26, S½NE¼, N½SE¼.
Parcel Un–11–S
T. 1 S., R. 40 E.,
Sec. 32, NE¼NE¼.
Parcel Un–12–S
T. 1 S., R. 40 E.,
Sec. 33, NW¼NE¼.
Parcel Un–13–S
T. 1 S., R. 40 E.,
Sec. 34, NW¼NW¼.

The area described aggregates 1,037.82 acres, more or less, in Union County, Oregon.

Lands transferred from the United States will be offered for purchase to adjoining landowners by Clearwater Investments, Inc., a private land exchange facilitation company.

In exchange for these lands, the United States will acquire the following described private lands from Clearwater Investments, Inc.

Offered Private Lands

Willamette Meridian, Oregon

Parcel W–01–O
T. 3 N., R. 40 E.,
Sec. 11, E½SE¼, SW¼SW¼;
Sec. 14, NW¼NE¼, NW¼, E½SW¼;
Sec. 23, NW¼.

Excepting therefrom a tract of land lying in the SW¼NW¼, Section 23, T. 3 N., R. 40 E., W.M. described as follows: Beginning at a point which bears south 21° 40′ East a distance of 2,840.7 feet from the NW¼ corner of said Section 23, said point being situated on the Northerly right-of-way line of the O.W.R. & N. Co. Railroad and 25 feet North of the South line of the SW¼NW¼ of said Section 23, thence East 11.6 feet, thence North 23° 40′ East, 360.6 feet; thence North 64° 24′ West, 386.0 feet to the East bank of the Grande Ronde River; thence South 17° 41′ West up and along the East bank of the Grande Ronde River a distance of 347.3 feet to a point on the Northerly right-of-way of the said O.W.R. & N. Co. Railroad; thence in a southeasterly direction along said right-of-way line which is a 523 foot radius curve to the right, the sub-chord of which bears South 49° 53′ East a distance of 258.0 feet to the point of beginning.

Also excepting therefrom Right of Way Deeds recorded in Book M of Deeds, at pages 153, 161, 186, 214, 215, 216, 419, 420, 421, and 530 to the Oregon Railroad & Navigation Company.

Parcel W–02–O
T. 3 N., R. 40 E.,
Sec. 23, E½SW¼;
Sec. 26, Those portions of the W½W½ & W½E½W½ lying east of the Wallowa River, E½NE¼NW¼, E½SE¼SW¼, W½SW¼SE¼;
Sec. 35, Those portions of the W½NE¼, SE¼NE¼, E½NW¼ & SE¼ lying east of the Wallowa River, W½NE¼NE¼;
Sec. 36, S½S½NW¼, SW¼, SW¼SE¼.
T. 2 N., R. 40 E.,
Sec. 1, Lot 4.

Excepting therefrom Right of Way Deeds recorded in Book M of Deeds, at pages 153, 161, 186, 214, 215, 216, 419, 420, 421, and 530 to the Oregon Railroad & Navigation Company.

Parcel W–03–O
T. 2 N., R. 40 E.,
Sec. 12, N½SE¼, that portion of the E½SW¼ & SW¼SE¼ lying north & east of the Wallowa River.

Excepting therefrom Right of Way Deeds recorded in Book M of Deeds, at pages 153, 161, 186, 214, 215, 216, 419, 420, 421, and 530 to the Oregon Railroad & Navigation Company.

Parcel W–04–O
T. 2 N., R. 41 E.,
Sec. 18, NE¼NW¼.
Parcel W–05–O
T. 2 N., R. 41 E.,
Sec. 17, SW¼SW¼;
Sec. 18, Lot 4, SE¼, E½SW¼, that portion of Lot 3 lying south of the Wallowa River;
Sec. 19, NE¼NW¼, that portion of the NE¼ lying north & east of the Wallowa River;
Sec. 20, SW¼NW¼.

Excepting therefrom Right of Way Deeds recorded in Book M of Deeds, at pages 153, 161, 186, 214, 215, 216, 419, 420, 421, and 530 to the Oregon Railroad & Navigation Company.

Parcel W–06–O
T. 2 N., R. 41 E.,
Sec. 29, that portion of the NW¼NW¼ lying south of the north boundary of the PP&L R–O–W.
Parcel W–07–O
T. 3 N., R. 40 E.,
Sec. 11, NW¼SW¼.
Parcel W–08–O
T. 3 N., R. 40 E.,
Sec. 14, SW¼SW¼.
Parcel W–09–O
T. 6 N., R. 43 E.,
Sec. 25, N½NW¼.
Parcel W–10–O
T. 6 N., R. 43 E.,
Sec. 25, W½SW¼, SE¼SW¼.
Parcel W–11–O
T. 6 N., R. 43 E.,
Sec. 26, SE¼SE¼;
Sec. 35, E½NE¼.

Parcel W–12–O

T. 6 N., R. 44 E.,
Sec. 17, Lots 3, 5 & 6;
Sec. 18, Lots 1, 2, 7 & 8, those portions of Lots 3, 5 & 6 lying east of the Grande Ronde River;
Sec. 19, NE¼;
Sec. 20, W½W½NW¼.
The area described aggregates 2,729.71 acres, more or less, in Wallowa County, Oregon.

Parcel Un–01–O

T. 2 N., R. 40 E.,
Sec. 2, Lots 1, 2 & 3, SW¼NE¼.
Excepting therefrom the strip of land for railroad right of way of the Oregon-Washington Railroad and Navigation Company.

Parcel Un–02–O

T. 2 N., R. 40 E.,
Sec. 13, that portion of the NE¼ lying east of the right of way of the Oregon-Washington Railroad and Navigation Company.

Parcel Un–03–O

T. 3 N., R. 40 E.,
Sec. 15, SE¼SE¼;
Sec. 20, E½SW¼SE¼, SW¼SW¼SE¼, that portion of the SE¼SE¼ lying north of the Grande Ronde River;
Sec. 21, S½N½, that portion of the S½ lying north or the Grande Ronde River;
Sec. 22, NE¼NE¼, S½N½, that portion of the SW¼ lying north of the Grande Ronde River.
Excepting therefrom the strip of land for railroad right of way of the Oregon-Washington Railroad and Navigation Company.

Parcel Un–04–O:

T. 3 N., R. 40 E.,
Sec. 29, That portion of the SW¼NE¼ and the NW¼SE¼ lying westerly of the Grande Ronde River, that portion of the SE¼NW¼ and the NE¼SW¼ lying east of the road, the line of which is described as follows: Commencing 7.20 chains west of the northeast corner of the SE¼NW¼; thence South 2 chains to a point; thence South 25 East 4 chains to a point; thence South 29° East 6.60 chains to a point; thence South 2° East 9.21 chains to a point which is 2 chains west of the southeast corner of the SE¼NW¼ of said section; thence South 2° East 0.30 chains to a point; thence South 23½° West 8.70 chains to a point; thence South 44½° West 3.0 chains to a point; thence due East 2 chains to a point; thence North 49° East 7.30 chains to a point on the west line of the premises described in the lease recorded in Book 134, Page 187 of the Deed Records of Union County, Oregon.
Excepting therefrom a parcel of land situate in the NW¼SE¼, as conveyed to Oregon-Washington Railroad and Navigation Company, an Oregon corporation, by deed dated July 20, 1958 and recorded in Book 141 at Page 238 of the Deed Records of Union County, Oregon.
Also excepting therefrom the strip of land for railroad right of way of the Oregon-Washington Railroad and Navigation Company

Parcel Un–05–O:

T. 3 N., R. 40 E.,
Sec. 31, NW¼NE¼, that portion of the NE¼NE¼ lying north of the Grande Ronde River, that portion of the S½NE¼ lying west of the Grande Ronde River;
Sec. 32, That portion of the NW¼NW¼ lying north of the Grande Ronde River.
Excepting therefrom the strip of land for railroad right of way of the Oregon-Washington Railroad and Navigation Company.
The area described aggregates 1198.90 acres, more or less, in Union County, Oregon.

Parcel Um-01-O:

T. 4 N., R. 37 E.,
Sec. 11, Lot 3, NE¼SW¼, NW¼SE¼;
Sec. 12, Lots 1, 2, 3, & 4, N½S½;
Sec. 13, N½N½, N½S½N½.
The area described aggregates 681.54 acres, more or less, in Umatilla County, Oregon.

SUPPLEMENTARY INFORMATION: The purpose of this land exchange is to implement management direction for land tenure adjustment contained in the Baker Resource Management Plan (RMP). Non-federal lands within the Grande Ronde Wild and Scenic River corridor, the Grande Ronde Area of Critical Environmental Concern (ACEC), the South Fork of the Walla Walla River ACEC, and Baker RMP's Retention/Acquisition Zone would be acquired in exchange for more isolated, hard to manage lands. The exchange would create a more logical and efficient land management pattern and will help provide for protection and management of anadromous fisheries, riparian, aesthetic, and recreation values within the Baker Resource Area and the above management areas. The exchange is being pursued with the view that disposal of isolated public lands and the acquisition of the offered private lands within the above special management areas will serve the public interest. The exchange is consistent with the Bureau's land-use planning for the lands involved.

The value of the lands to be exchanged is approximately equal. The acreages will be adjusted to equalize the values following completion of the final appraisal.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights, including but not limited to any right-of-way, easement or lease of record.

3. Mineral rights may be reserved, depending upon the findings of the mineral report.

4. Grazing leases authorized under the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), will remain in effect until the end of the two year prior notification period as provided for in 43 CFR 4110.4–2(b), unless unconditionally waived by the lessee.

All necessary reports and clearances, including the environmental assessment, cultural resources inventory, and threatened and endangered species evaluations/consultations, shall be completed prior to conveyance of title. When completed, these documents and other information concerning the exchange will be available for review at the Baker Resource Area Office, 1550 Dewey Avenue, Baker City, Oregon 97814. All parties making comments on this action shall receive notice upon completion of the environmental assessment.

The publication of this notice in the **Federal Register** will segregate the public lands described above from appropriation under the public land laws, including the mining laws, except from exchange pursuant to Section 6 of the Wild and Scenic River Act of 1968 and Section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Jim Ledger, BLM Baker Resource Area Office, P.O. 987, Baker City, OR 97814 (503) 523–6391, Ext. 324.

PUBLIC PARTICIPATION: On or before August 23, 1993, interested parties may submit comments to the Area Manager, Baker Resource Area Office, P.O. 987, Baker City, OR 97814. Comments should specify the parcel number or the legal description of the specific parcel affected by the comment.

Dated: June 25, 1993.

Geoffrey B. Middaugh,

Acting District Manager.

[FR Doc. 93–16278 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–33–M

[UT–050–4210–05 U–68984]

Recreation and Public Purposes (R&PP) Act Classification; Utah; Realty Action

AGENCY: Bureau of land management, Interior.

ACTION: Notice of realty action.

UMI
VOL 58 ISS 130 JL 9 1993
UMI

SUMMARY: The following public lands in Sevier County, Utah have been examined and found suitable for classification for conveyance to Sevier County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) for a regional sanitary landfill site:.

Salt Lake Meridian, Utah .....
T. 23 S., R. 1 W.
Sec. 3, Lots 3 through 6, Lot 12, and W½S¼
Sec. 4, Lots 1, 9, 10, and E½SE¼
Sec. 9, NE¼NE¼
Sec. 10, W½NW¼MW¼
Containing 461.94 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with the current BLM land use plan, as amended, and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

The land will not be conveyed until Sevier County has submitted evidence to BLM, that the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste has issued or will issue simultaneously with conveyance of the land, an operating permit for the sanitary landfill.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Richfield District, 150 East 900 North, Richfield, Utah. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a regional sanitary landfill. Comments on the classification are restricted to whether the land is physically suited for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sanitary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: July 1, 1993.

Jerry W. Goodman,

District Manager.

[FR Doc. 93–16282 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–050–4333–04]

Decision Record and Rationing Plan for Commercial Boating Use of the Arkansas River

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) Canon City District, in cooperation with the Colorado Division of Parks and Outdoor Recreation (DPOR), announces the availability of the Decision Record and Rationing Plan for commercial boating use of the Arkansas River within the Arkansas Headwaters Recreation Area (AHRA). The AHRA is jointly managed by BLM and DPOR through a Cooperative Management Agreement. Through this Agreement, both agencies were involved in the development of this decision and plan.

DATES: The date of approval of the decision record is June 30, 1993.

ADDRESSES: Copies of the Decision Record and Rationing Plan are available from: Arkansas Headwaters Recreation Area, P.O. Box 126, Salida, CO 81201, telephone (719) 539–7289.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Outdoor Recreation Planner, BLM Canon City District, P.O. Box 2200, Canon City, CO 81215–2200, telephone (719) 275–0631 or Steve Reese, Park Manager, Arkansas Headwaters Recreation Area, P.O. Box 126, Salida, CO 81201, telephone (719) 539–7289.

SUPPLEMENTARY INFORMATION: Development of the Rationing Plan was based on decisions in the Arkansas River Recreation Management Plan and Environmental Analysis, approved in 1989. That Plan identified a specific threshold for triggering the development of a rationing plan. That threshold was met during the 1991 use season. During the last 18 months, BLM and DPOR have been gathering and analyzing data, preparing a draft plan and accepting public comment on it, and revising portions based on those comments

The Decision Record approves all aspects of the Rationing Plan. Two issues in the Rationing Plan remain the subject of continuing analysis: the cap on the number of commercial boating permits and the transfer of those permits; as they both relate to potential permit value. While these two issues have been approved, they are subject to monitoring, further analysis, and possible modification. Monitoring will occur over the next several years. Further analysis of the monitoring data will evaluate and document any changes in a number of key areas that may be tied to a cap and permit transfer. If the further analysis shows significant changes, it may lead to revisions of the decisions on capping and permit transfer. Changes to these decisions will be made through the normal planning process, when the Arkansas River Recreation Management Plan is updated.

On February 5, 1992, a notice was published in the **Federal Register** (Vol. 57, No. 24, page 4478) placing a moratorium on the issuance of commercial outfitting permits. With the approval of the Decision Record, the moratorium is hereby withdrawn and replaced by a cap level of 45 permits established as part of the Rationing Plan.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93–16274 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–JB–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 2, 1993.

The plat, in two sheets, representing the dependent resurvey of a portion of the Idaho-Wyoming state boundary (east boundary), a portion of the

subdivisional lines and 1900 meanders of the right and left banks of the Snake River and left bank of the Salt River, the subdivision of sections 9, 22, and 34, and a metes-and-bounds survey in sections 9, 15, 16, and 22, Township 3 South, Range 46 East, Boise Meridian, Idaho, Group No. 798, was accepted June 21, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 2, 1993.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-16283 Filed 7-8-93; 8:45 am]

BILLING CODE 4310-66-M

[MT-930-5410-10-EO21; MTM 82294; MT-930-5410-10-EO22; MTM 82295; MT-930-5410-10-EO23; MTM 82296]

Applications for Conveyance of Mineral Interests; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that, pursuant to section 209b of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)), Aspen Groves Development Corporation, Edward G. Chiles, and John M. Radick/James L. Jones/Madilyn G. Jones have applied to purchase the mineral estate described as follows:

Principal Meridian, Montana

T. 6 S., R. 3 E.,
Sec. 34, that portion of the SE¼, excepting therefrom Tract 1 of Certificate of Survey No. 1677 dated September 2, 1992.
Containing 139.578 acres, more or less.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface minerals ownership where there are no known mineral values or in those instances where the United States mineral reservation interferes with or precludes appropriation nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, Land Law Examiner, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2829.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests within the legal description given above will be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a conveyance document, final rejection of the application, or 2 years from the date of filing of the application, June 11, 1993, which ever occurs first.

Dated: June 25, 1993.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93-16191 Filed 7-8-93; 8:45 am]

BILLING CODE 4310-DN-M

[CA-060-343-7122-10-D063; CACA 28709]

Partial Cancellation of Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal insofar as it affects 2,644.36 acres of public land requested by the United States Department of the Army to expand the Army's National Training Center at Fort Irwin. This action will open 2,644.36 acres to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 56 FR 49792, October 1, 1991, which segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The United States Department of the Army has determined that certain land will not be needed in connection with the National Training Center at Fort Irwin and has canceled its application as to that land. The land is described as follows:

San Bernardino Meridian

T. 11 N., R. 1 E.,
Secs. 22, 23, and 24.
T. 11 N., R. 2 E.,
Sec. 19.
The area described contains 2,644.36 acres in San Bernardino County.

At 10 a.m. on August 9, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 9, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on August 9, 1993, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: June 28, 1993.

Dianna L. Storey,

Acting Chief, Lands Section

[FR Doc. 93-16194 Filed 7-8-93; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-343-7122-10-D063; CACA 23486]

Cancellation of Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Withdrawal application CACA 23486 for the expansion of the National Training Center at Fort Irwin has been canceled by the United States Department of the Army (USDA). The lands will remain closed to surface entry and mining under USDA withdrawal application CACA 28709. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California, 916-978-4820.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published

in the **Federal Register** 54 FR 42053, October 13, 1989, as corrected by 54 FR 47750, November 16, 1989, which segregated the lands described therein for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The 2-year segregation expired October 12, 1991, and the lands were relieved of the segregative effect of application CACA 23486. The above reference **Federal Register** publications provide a legal description of the lands and indicate that the application will be processed unless it is canceled or denied. The USDA has canceled application CACA 23486. The lands remain closed to surface entry and mining under withdrawal application CACA 28709.

Dated: June 28, 1993.

Dianna L. Storey,

Acting Chief, Lands Section.

[FR Doc. 93–16195 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement

AGENCIES: U.S. Fish and Wildlife Service (Service), Department of the Interior (lead agency); U.S. Bureau of Land Management, Department of the Interior, and U.S. Air Force, Department of the Air Force (cooperating agencies).

ACTION: Notice of Availability of a draft Environmental Impact Statement (EIS) on the proposed mineral withdrawal at Desert National Wildlife Range (Range). Comments are requested from the public and any interested agency or organization.

DATES: Comments will be accepted until September 7, 1993.

ADDRESSES: Comments should be sent to Mark Strong, EIS Team Leader, Desert National Wildlife Range Mineral Withdrawal, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181, (503) 231–2235.

CONTACT: For further information or to request a copy of the draft EIS, contact Mark Strong at the above address and telephone number or Ken Voget, Refuge Manager, Desert National Wildlife Range, 1500 N. Decatur Boulevard, Las Vegas, Nevada 89108, (702) 646–3401. Service representatives are also available to meet with any interested party who would like more information or would like to provide oral comments on the draft EIS.

SUPPLEMENTARY INFORMATION: The Service proposes to withdraw approximately 770,000 acres of the Range from entry from locatable minerals for a period of 20 years. The purpose of the proposed withdrawal is to protect the biological and cultural resources of the Range and prevent uses that would be incompatible with the purposes of the Range. The Range was originally established for the protection, enhancement, and maintenance of wildlife, especially the desert bighorn sheep. Other approved purposes of the Range include conservation of biological diversity with emphasis on endangered and threatened species and protection and maintenance of cultural resources.

Dated: July 2, 1993.

Willie R. Taylor,

Acting Director, Office of Environmental Affairs.

[FR Doc. 93–16111 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Daniel Chase, Baker, LA, PRT–774408.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas)* culled from the captive herd maintained by Ciskei Government, "Tsolwana Game Reserve", Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Columbus Zoological Gardens, Powell, OH, PRT–780539.

The applicant requests a permit to import one male captive-born white-cheeked gibbon (*Hylobates concolor leucogenys*) from the Royal Melbourne Zoo, Parkville, Victoria, Australia, for the purpose of enhancement of propagation and survival of the species.

Applicant: Zoo Atlanta, Atlanta, GA, PRT–780459.

The applicant requests to import tissue samples from hunter-killed drills (*Papio leucophaeus*) from the island of Bioko, Equatorial Guinea, for purposes of scientific research (mitochondrial DNA analysis).

Applicant: Jeffrey Halstead, Clovis, CA, PRT–769304.

The applicant requests amendment of his current permit to live-trap and release Tipton kangaroo rats (*Dipodomys nitratoides nitratoides*) to include other locations within California for determining the presence and abundance of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: July 2, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–16217 Filed 7–8–93; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–353]

Certain Lens Panels for Lighting Fixtures, Kits Containing Same, and Fixtures Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 3, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Alan-Tracy, Inc., 2051–2061 NE 160 Street, North Miami Beach, Florida 33162–4913. An amended complaint was filed on June 25, 1993. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lens panels for lighting fixtures, kits containing same, and fixtures containing same by reason of alleged infringement of U.S. Patent Des. 312,511, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 2, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lens panels for lighting fixtures, kits containing same, or fixtures containing same by reason of alleged infringement of the claim of U.S. Patent Des. 312,511; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Alan-Tracy, Inc., 2051–2061 NE 160 Street, North Miami Beach, Florida 33162–4913.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Trans Globe Imports, 8238 Lankershim Boulevard, North Hollywood, California 91605.
Bel Air Lighting, 12600 Saticoy South, North Hollywood, California 91605.
Punder Enterprise, Co., Ltd., 4F, 396, Min Sheng W. Road. Taipei, Taiwan.
Snehao Co., Ltd., No. 3, 271, Lung Chiang Road, Taipei, 10483, Taiwan.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: July 6, 1993.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16322 Filed 7–8–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

Parent

Thor Industries, Inc. (Delaware Corporation) 419 West Pike Street, Jackson Center, OH 45334.

100% Wholly-Owned Subsidiaries

Haul Away, Inc. (Ohio Corporation) 419 West Pike Street, Jackson Center, OH 45334.

Dutchmen Manufacturing, Inc. (Indiana Corporation) 313 Steury Avenue, Goshen, IN 46526.

Airstream, Inc. (Nevada Corporation) 419 West Pike Street, Jackson Center, OH 45334.

Thor Industries of Pennsylvania, Inc. (Pennsylvania Corporation) Road #3, Box 38, North Creamery, Middleburg, PA 17842.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16246 Filed 7–8–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–265 (Sub-No. 3X)]

State of Vermont and Vermont Railway, Inc.—Discontinuance of Service Exemption—Over North Burlington Branch in Chittenden County, VT

Decided: July 2, 1993.

Applicants, the State of Vermont (Vermont) (owner of the line) and Vermont Railway, Inc. (Vermont Railway) (lessee and operator of the line), have filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments and Discontinuances to discontinue service over a portion of the North Burlington branch, beginning at Main Line Subdivision chaining station 6472+32.5 (milepost 122.582) and extending northerly 1,632.5 feet to Main Line Subdivision chaining station 6488.65 (milepost 122.891), in Burlington, Chittenden County, VT.[1]

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no potential for overhead traffic on the line, therefore, rerouting over other lines is not necessary; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor or the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR

[1] Vermont acquired this line as part of a larger purchase following the abandonment of all railroad properties by the Rutland Railway Corporation. *See Rutland Ry. Corp. Abandonment of Entire Line*, 317 I.C.C. 393 (1962). In *State of Vt. and Vermont Ry., Inc., Acquisition and Op.*, 320 I.C.C. 330 (1963), as modified at 320 I.C.C. 609 (1964), the Commission approved Vermont Railway's application to lease and operate the line and dismissed Vermont's application to purchase the line, finding that Vermont was not a common carrier within our jurisdiction and that its acquisition of an abandoned line did not require prior approval under 49 U.S.C. 10901. Thus, the only authority necessary for these parties to abandon the line is authority for Vermont Railway to discontinue its operations.

VOL 58 ISS 130 JL 9 1993 UMI

1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 8, 1993 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by July 19, 1993.[3] Petitions to reopen must be filed by July 29, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representatives: William S. Bruzzese, Vermont Agency of Transportation, 133 State St., Montpelier, VT 05633–5001 and John R. Pennington, Vermont Railway, Inc., One Railway Lane, Burlington, VT 05401.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants do not seek to abandon any properties, only to discontinue service. Because of its scenic beauty and its contiguity to parks and other publicly owned properties, the subject right-of-way is suitable for trail use during the period of time that rail service remains discontinued. The applicants and the City of Burlington, VT, have entered into an agreement, dated October 15, 1991, whereby the City of Burlington will assume full responsibility for management of the right-of-way and for any legal liability arising out of the transfer or use and for the payment of any and all taxes that may be levied or assessed against the right-of-way. The right-of-way is appropriate for use as a trail and the City of Burlington has the financial capacity to make the commitment required by the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

While a petition containing an interim trail use statement need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) are applicable and all the criteria for imposing interim trail use/rail banking have been met. Accordingly, based on the agreements between applicants and the City of Burlington, an NITU will be issued now under 49 CFR 1152.29. Additional trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 19, 1993. If additional statements are filed, applicants are directed to respond to them. The use of the right-of-way for trails purposes is subject to restoration for railroad purposes.

Applicants have filed an environmental report which addresses the effects of the discontinuance, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 14, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, Vermont Railway may discontinue service, cancel tariffs for this line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. If another interim trail use/rail banking agreement is reached, it must require the trails user to assume, for the term of the agreement, full responsibility for management of, any liability arising out of the transfer of use (if the user is immune from liability, it need only indemnify Vermont Railway against any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service.

4. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. Interim trail use under the agreements described above may be implemented immediately. If another agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reached by the 180th day, Vermont Railway may fully discontinue service on the line.

6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective August 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–16245 Filed 7–8–93; 8:45 am]

BILLING CODE 7035–01–M

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Boliden Intertrade A.G., et al.

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Boliden Intertrade A.G., et al.*, Civ No. 1–93–CV–279, was lodged with the United States District Court for the Eastern District of Tennessee on June 25, 1993. This Consent Decree resolves a judicial enforcement action brought by the United States against the defendants pursuant to sections 111 and 113 of the Clean Air Act, 42 U.S.C. 7411 and 7413. In its complaint, the United States alleged that Boliden Intertrade A.G. ("Boliden") and its U.S.-based subsidiary BIT Manufacturing, Inc., ("BIT") violated the New Source Performance Standards ("NSPS") promulgated under section 111 of the Clean Air Act, 42 U.S.C. 7411, by failing to maintain and operate the Boliden facility in Copperhill, Tennessee, in a manner consistent with good air pollution control practice for minimizing emissions. The violations alleged in the Complaint pertain to the start-up of a Sulfuric Acid Plant at the Copperhill facility.

The proposed Consent Decree provides that Boliden and BIT will pay a total civil penalty of $25,000 in settlement of claims alleged in the Complaint. In addition, the Decree requires that the defendants install a warning system designed to prevent a recurrence of the condition which gave rise to the alleged violation.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boliden Intertrade A.G., et al.*, D.O.J. Ref. No. 90–5–2–1–1611.

This proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Tennessee, 1110 market street, suite 301, Chattanooga, Tennessee 37402, at the Office of Regional Counsel, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the consent Decree Library.

Peter R. Steenland, Jr.,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–16196 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act; United States v. I. Jones Partnership et al.

In accordance with the policy of the Department of Justice, notice is hereby given that on May 8, 1993, a proposed consent decree in *United States* v. *I. Jones Partnership, et al.*, Civil Action No. 91 C–3285 was lodged with the United States District Court for the Northern District of Illinois. This action was brought, pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.* ("CERCLA"), for the recovery of costs expended by the United States in connection with the cleanup of the I. Jones Recycling Site ("Site") located in Ft. Wayne, Indiana.

Under the consent decree, defendant Ivo Zoso will pay $450,000 to the Hazardous Substances Superfund to reimburse the United States for response costs incurred at the Site in connection with emergency cleanup and removal activities at the Site.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *I. Jones Partnership et al.*, DJ Ref. # 90–11–2–507.

The proposed consent decrees may be examined at the office of the United States Attorney, Everett Dirksen Building, 14th Floor, Chicago, Illinois 60604, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3rd floor, Chicago, Illinois 60604. Copies of the proposed consent decrees may also be examined at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington DC 20005, (202) 624–0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 93–16197 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act and the Clean Water Act; United States v. MTD Products, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *MTD Products, Inc. and Columbia Manufacturing Company, Inc.*, Civil Action No. 91–30044–F, was lodged on June 28, 1993, with the United States District Court for the District of Massachusetts.

The proposed consent decree resolves the action brought by the United States against defendants Columbia Manufacturing Company, Inc. ("Columbia") and MTD Products, Inc. ("MTD"), seeking civil penalties and injunctive relief for violations of section 307(d) of the Clean Water Act ("CWA"). 33 U.S.C. 1317(d), and injunctive relief and civil penalties under sections 3008(a), 3008(h) and 7003 of Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a), (h) and 6973. Under the proposed consent decree, defendants Columbia and MTD will implement a clean-up of the Columbia manufacturing facility, located in Westfield, Massachusetts. The clean-up will be based upon a RCRA Facility Investigation ("RFI") which has been prepared by defendants. In addition, defendants will pay a civil penalty of $100,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *MTD Products, Inc., and Columbia Manufacturing Company, Inc.*, DOJ No. 90–5–1–1–3592.

The proposed consent decree may be examined at the Office of the United States Attorney, Attn: Karen Goodwin, AUSA U.S. Attorney's Office, 1550 Main St., room 533, U.S. Courthouse, Springfield, MA 01103; the Region 1 Office of the Environmental Protection Agency, Attn: Michael Wagner, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region I J.F. Kennedy Federal Building, Boston, MA 02203–2211; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–16198 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Pacific Coast Producers, Inc.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby

given that a proposed consent decree in *United States* v. *Pacific Coast Producers, Inc.*, Civil Action No. 93–1048–DFL–JFM, was lodged on June 28, 1993, with the United States District Court for the Eastern District of California. Pacific Coast Producers, Inc. owns and operates a can manufacturing facility located in Lodi, California, at which volatile organic compounds (VOCs) are emitted. The proposed consent decree requires the defendant to pay a civil penalty of $100,500 and to comply with Rule 409.6 of the federally-enforceable California State Implementation Plan. The Complaint in this action alleged that Pacific Coast Producers, Inc. violated Rule 409.6 by using an end-sealing compound that exceeded the VOC limit specified in the Rule.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pacific Coast Producers*, DOJ Ref. #90–5–2–1–1681.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of California, suite 500, 555 Capitol Mall, 15th Floor, Sacramento, California 95814; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street NW., Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–16199 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

[Civil Action No. 93–0530 (TFH), D.D.C.]

United States v. USAir Group, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *USAir Group, Inc.*, Civil Action No. 93–0530 (TFH), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Introduction

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d) (the "APPA" or "Tunney Act"), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on March 15, 1993, when the United States filed a Complaint alleging that a proposed partial integration of operations between USAir Group, Inc. ("USAir") and British Airways Plc ("BA"), which included a purchase by BA of some of USAir's stock, would violate section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the transaction may be substantially to lessen competition in the provision of scheduled airline passenger service and nonstop scheduled airline passenger service in various U.S.-London city pair markets. Both USAir and BA provide such service.

The Complaint seeks an order directing USAir to divest all authority it holds to provide nonstop scheduled airline passenger service between the United States and London. That authority consists of the right to provide service to and from London's Gatwick airport from three U.S. gateways, Baltimore, Philadelphia and Charlotte.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement ("CIS") and a Stipulation signed by USAir for entry of the proposed Final Judgment. The proposed Final Judgment resolves the antitrust violation alleged in the complaint by imposing on USAir the absolute obligation to divert the three London route authorities within a prescribed and limited time frame.

As required by the APPA, on March 25, 1993, USAir filed with this Court a description of written and oral communications on its behalf within the reporting requirements of section 15(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal were published in the Washington Post for seven days over a period of two weeks beginning March 21, 1993. The proposed Final Judgment and CIS were published in the **Federal Register** on March 30, 1993. 58 FR 16698 (1993).

The 60-day period for public comments commenced on March 31, 1993 and expired on May 29, 1993.[1] The United States received four comments on the proposed Final Judgment. Two of the comments were from competing airlines, American Airlines, Inc. ("American"), and Delta Air Lines, Inc. ("Delta"), both of whom had vigorously opposed a USAir-BA joint venture before the Department of Transportation ("DOT").[2] Comments were also filed by Continental Airlines, Inc. ("Continental"), and a group designated the Raleigh-Durham Parties. In addition, USAir submitted comments responding to some of the comments made by other commenters. All of those comments are being filed with the Court along with this response.

I. Legal Standards Governing the Court's Public Interest Determination

The procedural requirements of the Tunney Act are intended to eliminate secrecy from the consent decree process, to ensure that the Justice Department has access to information from the widest spectrum of persons with knowledge of the issues bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. Hearings on H.R. 9703, H.R. 9947, and S. 782, Consent Decree Bills Before the Subcom. on Monopolies and Commercial Law of the House Judiciary Committee, 93d Cong. 1st. Sess. 40 (1977) (hereinafter "Hearings") (Statement of Senator Tunney). *See also United States* v. *Western Electric Co.*,

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[1] The United States has treated as timely all comments it received up to the time of the filing of this response.

[2] DOT reviewed the transaction to determine its effect on USAir's U.S. citizenship (see 49 U.S.C. App. §§ 1301 and 1371). The parties were also required to obtain DOT approval for their wet-lease and code-sharing operations (see 14 CFR part 207). The review of the transaction's compliance with the federal antitrust laws, however, is the responsibility of the Department of Justice.

No. 91–5263, slip op. at 11–15 (D.C. Cir. May 28, 1993); *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The issue in a Tunney Act proceeding is whether the relief provided by the decree adequately protects the public interest. Although the Tunney Act requires the Court to make an independent determination that a decree is in the public interest, the Court's role is limited. Congress intended to preserve the viability of the consent decree process by avoiding lengthy and protracted judicial proceedings, and therefore, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *United States* v *National Broadcasting Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978). Underscoring the "deferential character of the inquiry," the Circuit Court in *United States* v *Western Electric Co.*, No. 91–5263, Slip op. at 12 (D.C. Cir. May 28, 1993) reiterated its earlier conclusion that:

> [t]he court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities "is one that will *best* serve society," but only to confirm that the resulting "settlement is 'within the reaches of the public interest.'"

Western Electric Co., 900 F.2d at 309 (emphasis in orginial) (citing and quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) in turn quoting *United States* v. *Gillettee Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975).

II. Public Comments

A. Effect of the Proposed Final Judgment on DOT Authority

Comments have suggested that the Final Judgment could be read to alter or restrict the authority of the DOT to approve the transfer of the international route authority that USAir would be required by the Final Judgment to divest.[3] Comments of Delta at 2, 5-10; Comments of Continental at 3, 5; Comments of American at 11–13; Comments of Raleigh-Durham Parties at 2, 8. According to the commenters, one of the arguments USAir has advanced in seeking DOT's approval for the proposed sale of its three London gateway authorities is that the proposed Final Judgment requires DOT to approve the sales.[4] Continental, Delta, and the Raleigh-Durham Parties correctly assert that such an argument has no basis in law or in the language of the proposed Final Judgment, but suggest that the proposed Final Judgment be clarified to ensure that DOT's route transfer authority is in no way constrained. American likewise asserts that the proposed Final Judgment cannot, as a matter of law, constraing DOT's authority, but it nonetheless suggests that all references to a sale of USAir's routes be deleted to eliminate any implication that USAir has been given a right to sell the routes. Comments of American at 14. In its comments, USAir states that the other commenters have misread as legal contentions the policy arguments it made before DOT, and it acknowledges that the proposed Final Judgment does not limit DOT's authority with regard to any proposed route sale.

Section IV.B of the proposed Final Judgment expressly acknowledges the requirement that DOT approve any transfer and anticipates that DOT might approve, disapprove, or dismiss a petition by USAir for approval of a proposed sale. USAir's ultimate obligation under the proposed Final Judgment is to divest itself of the route authority; failing a sale timely made, USAir must return the authority it holds to DOT to do with as it shall determine. Nothing in the proposed Final Judgement is intended to or would act to limit DOT's authority.

In matters involving enforcement of the antitrust laws in the airline industry, the Department of Justice ("Department") generally confers with DOT, and in this case it did so both prior to and following the filing of the Complaint and proposed Final Judgment. DOT does not understand the proposed Final Judgment to limit its authority. USAir followed normal procedures in seeking DOT approval for its proposed sale of its three London route authorities. DOT recently issued an order dismissing USAir's applications to sell its Philadelphia and Baltimore routes, and it is considering, along with other proposed dispositions, the proposed sale of USAir's Charlotte authority. U.S. Department of Transportation Order 93–6–6, June 4, 1993. In short, DOT is exercising its authority as it sees fit.

B. Jurisdiction of the Court Over USAir as a Partner in a Joint Venture

American erroneously contends "no cause of action under section 7 of the Clayton Act, as pled by the United States, lies against USAir." Comments of American at 4. American characterizes USAir as the "acquired" entity in a transaction concerning which it contends only BA can be held to have violated the Act. American's statements are erroneous; USAir is both an acquired and acquiring entity in this transaction.

USAir, as a party to a joint venture with BA, is acquiring a share of a joint enterprise that clearly brings its actions within the board sweep of section 7. Section 7 is not limited to a proscription of full mergers or stock purchases. Rather, with its broad reach, it extends to firms that may attempt through a joint venture to effect the firms' partial integration.[5]

"The statute imposes no specific method of acquisition. It is primarily concerned with the end result of a transfer ['by means of purchase, assignment, lease, license, or otherwise'] *of a sufficient part of a bundle of legal rights and privileges from the transferring person to the acquiring person to give the transfer economic significance* and the proscribed adverse 'effect.'" *United States* v. *Columbia Pictures Corp.*, 189 F. Supp. 153, 182 (S.D.N.Y. 1960) (emphasis supplied). American itself characterizes this joint venture as a "strategic alliance of the two carriers. (sic) intended to operate ultimately as one carrier." Comments of American at 8.[6] The joint operations, described in Paragraph 16 of the Complaint, include "code-sharing" operations, pursuant to which each of the carriers involved grants the other the right to hold out its flights under the first carrier's name and airline designator code. USAir also is acquiring similar rights through the integration of advertising, scheduling and reservations, referred to in Paragraph 16 of the Complaint. BA will contribute to the USAir system international service at an important USAir hub that does not now offer USAir consumers such service. The carriers' agreement to conduct joint operations also includes a "wet-lease" agreement which obligates USAir to operate service for BA in the Charlotte-London, Pittsburgh-London

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[3] Any sale or transfer of international airline route authority must be approved by the DOT pursuant to 49 U.S.C. App. 1371(h). The proposed Final Judgment anticipates such review, and expressly provides that USAir's time period for divesting its London routes shall be tolled while DOT is considering any proposed sale presented to it by USAir. Proposed Final Judgment Section IV.B.

[4] USAir agreed when it stipulated to the entry of the Final Judgment that it would be bound by the proposed Judgment's terms through the review and approval process, and it has begun efforts to effect the prescribed divestitures.

[5] See, *e.g.*, *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, 167–72 (1964)

[6] Neither does American dispute that the joint venture would have an anticompetitive effect. Comments of American at 15.

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and Baltimore-London markets, in exchange for which USAir will acquire from BA the right to receive a share of the profits on those routes. In all, the Complaint alleges a more than adequate basis for naming USAir as a defendant based upon its partnership in the joint venture.

C. The Necessity for and Timing of the Relief Mandated by the Proposed Final Judgment

American suggests that, because the USAir-BA Stock Purchase Agreement provides that USAir sell or relinquish its three London routes, it was unnecessary for the United States to seek the divestiture that would be mandated by entry of the proposed Final Judgment. Comments of American at 6. The USAir-BA agreement, however, is a private and prospective arrangement that could be changed at any time by private agreement between BA and USAir. The parties well could have found, for example, that their mutual interest would best be served by the delay of the entry of a new competitor to their jointly provided services. Where the divestiture that would cure a competitive problem is prospective and not otherwise enforceable by the Courts, it has been the longstanding policy of the Department to insist on the entry of a court order to effect such divestiture.

The consent decree strictly limits USAir's discretion as to the sale of the route, providing the Department absolute discretion to disapprove the purchaser and terms, and requiring that the routes be relinquished if the prescribed deadline is not met. It was clearly not in USAir's interest to irrevocably commit to divestiture or to give up so much control over the divestiture process. In fact, USAir sought to avoid this antitrust enforcement action and the consequent divestiture relief. USAir's agreement to stipulate to the proposed Final Judgment was made contingent upon the United States concluding that, without the required divestiture, the proposed transaction with BA would violate the antitrust laws.

Having urged, on one hand, that the decree is unnecessary, American urges, on the other hand, that the already short time period for effecting the required divestiture should be further shortened. Comments of American at 15–16. The proposed Final Judgment requires USAir to divest or return to DOT each of its three London routes within 45 days after it begins to operate code-sharing service with BA over that route.[7]

As discussed at page 7 of the CIS, the competitive harm threatened by the USAir-BA agreements results from the elimination of each carrier's incentive to compete independently with the other. The loss of incentive on any given route results from the combination of BA's stock ownership and the carriers' joint operations. Accordingly, the proposed Final Judgment would not require USAir to divest a route authority until after it initiated joint operations with BA on that route.

Until joint operations begin over a given gateway, the carriers will continue to have some incentive to compete independently over that gateway. Thus, requiring USAir to stop offering independent service before it begins participating in the joint service could needlessly reduce existing competition. Moreover, as noted at page 9 of the CIS, the initiation of joint USAir-BA service will produce procompetitive efficiencies.[8] By tying the obligation to divest to the initiation of the procompetitive operations, the proposed Final Judgment preserves the independent competition of USAir until the new, procompetitive joint service begins to be offered.[9]

D. American's Allegation of Misconduct by the United States

American makes the reckless and irresponsible allegation that the settlement in this case was the result of an improper backroom deal between the United States and USAir. American asserts that this settlement in no way adversely affects any interest of USAir, and that it in fact benefits USAir. This benefit, American speculates, is consideration for USAir's agreement to settle in *United States* v. *Airline Tariff Publishing Co.*, Civil Action No. 92–2854 (GHR) (D.D.C.). American's contention is entirely groundless, as American knows.[10]

First, the premise upon which American's theory is based—that USAir somehow benefit from this settlement apart from resolution of this case—is wholly false. American asserts, based upon the above-discussed criticisms of the decree, that the United States knew or should have known that this Court has no jurisdiction under section 7 over USAir and that the proposed Final Judgment was intended by the United States and USAir to advantage USAir by limiting DOT's jurisdiction. In fact, as discussed above, this Court does have jurisdiction over USAir, and DOT's authority is in no way limited by the proposed Final Judgment. USAir would not have stipulated to its entry by the Court were the United States not to have found an antitrust violation here.

American, along with USAir and most other major U.S. airlines, are defendants in *U.S.* v. *ATP*, a case in which it is alleged that the airlines engaged in extensive price-fixing activities. Two of the airline defendants, USAir and United, agreed to the terms of a proposed Final Judgment shortly before the complaint was filed in that case on December 21, 1992. The circumstances surrounding the *ATP* settement, which are well known to American, provide no basis for any suspicion that USAir's decision to settle was anything less than prudent, and based on the merits of that case. American actively participated throughout the joint settlement negotiation process that produced what American now implies was an extraordinary settlement. That settlement, however, was sufficiently reasonable in the eyes of American for it to have expressed to the United States that it was seriously considering acceptance of its terms. In any case, whatever American's reasons were for rejecting the *ATP* settlement, another defendant besides USAir, United, accepted it. American alleges no backroom deal involving United. Moreover, United, like American, aggressively opposed the USAir-BA transaction before DOT. The actions of the airlines, including American, demonstrate that the *ATP* settlement was a reasonable one based entirely on the merits of that case alone.[11]

III. Conclusion

The Department has carefully considered each of the comments it received. Nothing in the comments has

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[7] American suggests that the proposed Final Judgment's definition of "code-sharing service" should be clarified to include wet-leasing operations. Comments of American at 15, n.1. There is no need for clarification, as such operations are clearly included within the definition as written.

[8] American comments elsewhere that the only effective relief for the violation alleged is divestiture by BA of its USAir stock, because the stock acquisition was one of the causes of the section 7 violation alleged. Comments of American at 8. The analysis at pages 8–9 of the CIS demonstrates, however, that the proposed relief is a superior outcome because it preserves the pro-competitive effects of the transaction while eliminating the anticompetitive effects.

[9] The vigorous opposition of American and other competitors to the joint venture testifies to the venture's likely procompetitive effects.

[10] Indeed, American's accusations so lack any reasonable basis that sanctions under Rule 11 of the Federal Rules of Civil Procedure would be appropriate were the rule applicable to comments filed under the Tunney Act.

[11] Curiously, although American is actively opposing the settlement in *U.S.* v. *ATP*, it has not raised this allegation in the pending Tunney Act proceeding involving that settlement.

altered the United States's conclusion that the proposed Final Judgment is in the public interest.

In consenting to the decree, the government has upheld its duty to the public. The decree provides relief entirely adequate to redress the harm caused by defendants' conduct, and still preserve the procompetitive benefits of the underlying transaction. Entry of the decree is in the public interest.

Respectfully submitted,

Anne K. Bingaman,
Assistant Attorney General.
John W. Clark,
Deputy Assistant Attorney General.
Constance K. Robinson,
Deputy Director of Operations.
Mark C. Schechter,
Roger W. Fones,
Robert D. Young, DC Bar # 248260,
Attorneys, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., (202) 307–6318.

Dated: June 23, 1993.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing United States Response to Public Comments to be served upon Charles F. Rule, Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC 20044 by first class mail, postage pre-paid.

Dated: June 23, 1993.

Robert D. Young, D.C. Bar # 248260,
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George F. Trowbridge, 1916–1989, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 790–7900, Facsimile (703) 821–2397

May 28, 1993

By Messenger
Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Judiciary Center Building, 555—4th St., NW., room 9104, Washington, DC 20001.

Re: Comments on Proposed Final Judgment, Stipulation and Competitive Impact Statement In *U.S.* v. *USAir Group, Civil Action No. 93–0530.*

Dear Mr. Schechter: Pursuant to the Antitrust Procedures and Penalty Act and the Notice of Proposed Final Judgment published on March 30, 1993 in the **Federal Register** (58 FR 16698), Delta Air Lines, Inc. hereby submits comments regarding the proposed Final Judgment, Stipulation and Competitive Impact Statement filed with the United States District Court for the District of Columbia by the United States Department of Justice in *United States* v. *USAir Group, Inc.*, Civil Action No. 93–0530.

Respectfully submitted,

Robert E. Cohn,
Counsel for Delta Air Lines, Inc.

In the United States District Court for the District of Columbia: United States of America, Plaintiff, v. USAIR, Group, Inc., Defendant. Civil Action No. 93 0530.

Comments of Delta Air Lines, Inc.

Communications with respect to this document should be addressed to:

Don M. Adams, Assistant Vice President, Associate General Counsel, Law Department, DELTA AIR LINES, INC., 1030 Delta Boulevard, Atlanta, Georgia 30320, (404) 715–2444, and
D. Scott Yohe, Vice President-Government Affairs, DELTA AIR LINES, INC. 1629 K Street, NW., suite 501 Washington, DC 20006 (202) 296–6464
Robert E. Cohn, SHAW PITTMAN POTTS & TROWBRIDGE, 2300 N Street, NW., Washington, DC 20037, (202) 663–8060, Attorneys for Delta Air Lines, Inc.

May 28, 1993.

In the United States District Court for the District of Columbia: United States of America, Plaintiff, v. USAIR, Group, Inc., Defendant. Civil Action No. 93 0530.

Comments on Delta Air Lines, Inc.

Pursuant to the Antitrust Procedures and Penalties Act and the Notice published in the **Federal Register** on March 30, 1993 (58 FR 16698) Delta Air Lines, Inc. ("Delta") hereby files these Comments on the proposed Final Judgment, Stipulation and Competitive Impact Statement ("Consent Decree") submitted in connection with the above-referenced civil antitrust lawsuit challenging the proposed transaction between USAir Group, Inc. and British Airways, PLC.

The Justice Department brought this civil antitrust lawsuit because it determined that the substantial equity investment by British Airways in USAir and the proposed integration of the two airlines' services would substantially lessen competition in various relevant markets, including markets between cities and metropolitan areas in the Northeastern and Mid-Atlantic regions of the United States and London, and nonstop scheduled airline passenger service between Philadelphia and London and between Baltimore/Washington and London. The proposed Consent Decree would resolve the lawsuit by requiring USAir to divest or relinquish all of its U.S.-London authority, including its authority to provide scheduled airline passenger service to London from Philadelphia, Baltimore/Washington and Charlotte.

For the reasons discussed below, Delta opposes the proposed Final Judgment to the extent that it purports, implies or infers or can be used in such a way to purport, imply or infer that the Final Judgment in any way supersedes, diminishes, reduces or alters any of the powers, rights or responsibilities vested in the Department of Transportation ("DOT") to take appropriate action with respect to USAir's U.S.-London routes under the public interest standards and requirements of the Federal Aviation Act of 1958, as amended. Specifically, Delta requests that the Final Judgment be amended as set forth below to preclude any such interpretations. In support of its position, Delta states the following:

Delta ordinarily would be reluctant to participate in a proceeding of this nature involving an antitrust lawsuit brought by the U.S. Department of Justice in a matter in which Delta is not a party. However, Delta has a substantial interest in replacing USAir's U.S.-London authority which is the subject of this lawsuit. In this connection, Delta has filed an application with the Department of Transportation seeking the issuance of a certificate of public convenience and necessity which would authorize Delta to provide scheduled combination (passenger, cargo and mail) foreign air transportation between Salt Lake City and London and further requested the designation of Salt Lake City as a U.S.-gateway to London in lieu of either Baltimore or Charlotte. In addition to Delta's application, other applications have been filed to replace USAir's U.S.-London services, including so-called "route transfer" applications filed by USAir-United, USAir-Northwest, and USAir-Nashville in which the applicants request DOT approval of agreements which purport to sell USAir's authorities and have them transferred to other cities.

In connection with the so-called "route transfer" applications, USAir and certain of the other joint applicants before the DOT have mischaracterized and misrepresented the proposed Final Judgment in their pleadings with the DOT. Thus, USAir and Nashville and USAir and Northwest have filed joint DOT pleadings asserting that DOT is required to approve the USAir route transfer applications because: (1) The route transfer applications are "governed by a consent decree between USAir and the United States" (Joint Reply of Northwest Airlines and USAir in DOT Docket 48761 filed May 5, 1993, a copy of which is attached hereto,

emphasis added); (2) the antitrust consent decree "protects USAir's right to divest its assets for the highest value it can obtain" (*Id.*); (3) that "for the Department now to deprive USAir of this right would be utterly inconsistent with the provisions of the agreement reached between the United States and USAir and with fundamental competition policy" (*Id.*); and (4) that USAir has an unqualified right to sell each of its routes and that denial or disapproval of the route transfer applications (or consolidation of the proposed route transfers in a larger comparative proceeding in which the Department would select carriers and gateways for USAir's London routes) would "strip USAir of the right to sell these assets" (*Id.*).

These assertions go far beyond the scope or intent of the Consent Decree. While the Department of Justice has the authority to file lawsuits and seek remedial measures to redress anti-competitive transactions, the DOT has the authority under the Federal Aviation Act with respect to the public interest in approving or disapproving route transfer applications or deciding how, when and under what procedures for foreign air transportation rights should be apportioned among U.S. carriers. Thus, the Consent Decree cannot supersede, alter or impair DOT's authority to take action it deems appropriate and consistent with the public interest and the public convenience and necessity. USAir's DOT filing clearly imply the DOT's authority has been (or more correctly, will be) curtailed if the Final Judgment is issued without amendment.

First, at the time these statements were made and contrary to the assertions contained in the DOT pleadings, there was, in fact, no final Consent Decree that governed the divestiture of USAir's London routes. Second, USAir's DOT pleading clearly conveyed the implication that the Justice Department intended the Consent Decree to strip the Department of Transportation of jurisdiction under the Federal Aviation Act to take appropriate action with respect to USAir's London routes.

Certain ambiguous language in the Competitive Impact Statement and the Final Judgment may have inadvertently provided a basis for allowing USAir to mischaracterize the intent of the Consent Decree. Thus, USAir has argued that part IV of the Consent Decree granted USAir a protected 45-day right to sell its routes and asserted to the DOT that "if the Department [DOT] were to disapprove a proposed transfer, USAir would have the balance of the 45-day period to negotiate an alternative sale." Page 9 of the Competitive Impact Statement adds to the potential for confusion in its description of Section V of the Final Judgment by stating that if USAir does not complete a sale as required under section IV, it must surrender its route authority to the DOT "which will then aware another United Stated airline the route authority that enabled USAir to service Baltimore-London, Philadelphia-London and/or Charlotte-London." Competitive Impact Statement at 9.

While the Consent Decree can mandate a particular course of action which *USAir* must take if it wishes to implement the British Airways transaction, the Consent Decree cannot limit the U.S. DOT's authority to take or not take specific action. The Consent Decree simply allows USAir a period of time in which to sell its routes and, in the event that it does not sell its routes within the period of time prescribed, USAir must relinquish its authority to DOT. The DOT should not and cannot be bound by the time limits agreed to between USAir and the Justice Department. Under USAir's erroneous interpretation of the Consent Decree's "tolling" provision, USAir could tie up the allocation of valuable U.S.-London routes while it continually searches for purchasers that would pass muster under DOT's standards. DOT clearly has the statutory authority to short-circuit any such delay in order to maximize public interest benefits pursuant to its obligations under the Federal Aviation Act.

In order to avoid any potential mischaracterization of the Consent Decree, Delta recommends that there be added a new Sub-paragraph D to Article III to read as follows:

"D. Nothing herein shall suggest and nothing herein shall be construed to provide that any portion of this Final Judgment supersedes, diminishes, reduces or alters any of the powers, rights or responsibilities vested in the Department of Transportation to take any action it deems appropriate under the Federal Aviation Act with respect to USAir's U.S.-London routes, including but not limited to approval or disapproval of route transfer applications, denial or dismissal of route transfer applications, institution of carrier/gateway selection proceedings, or reassignment of USAir's U.S.-London routes to other carriers."

Thus, Delta opposes the Consent Decree to the extent that it could be read to give USAir an unqualified right to sell its London routes without exercise of jurisdiction by the Department of Transportation, and only the Department of Transportation, to issue certificates of public convenience and necessity and to approve or disapprove applications for transfers of certificates under the public interest standards set forth in the Federal Aviation Act. The proposed Final Judgment cannot diminish the Department of Transportation's authority and obligation to determine public interest issues with respect to the allocation of U.S.-London authority and the Consent Decree cannot supersede those statutory obligations.

In particular, the Consent Decree cannot make valid a proposed route transfer that is not proper under section 401(h) of the Federal Aviation Act. With respect to the pending route transfer applications filed by USAir, those applications are not proper under section 401(h) because in each instance the applications seek the transfer of certificate authority different than the certificate authority held by USAir. USAir cannot transfer authority it does not hold. Thus, USAir seeks to transfer its Philadelphia-London route to United so that United can operate Chicago (not Philadelphia)-London service; USAir seeks to transfer its Baltimore and Charlotte authority to Northwest and Nashville, respectively, so that Northwest and American can operate London service to Detroit (not Baltimore) and Nashville (not Charlotte). Established DOT precedent provides that such requests do not properly fall under section 401(h) of the Federal Aviation Act, but rather under section 401(h) of the Act, which requires comparative and contemporaneous consideration with other mutually exclusive applications for certificate authority. In addition, the "route transfer" applications involving USAir-United and USAir-Northwest are defective because the current U.S.-U.K. bilateral does not authorize the recipient to operate the proposed service.

USAir and its contract partners have also asserted to DOT that failure to approve the route sales would "punish" USAir by requiring it to divest its property "for nothing", a result that is claimed to be inconsistent with U.S. competition policy. If the DOT decides to deny the route transfer applications (as it must under a proper reading of law and precedent), USAir will not be punished financially. The Investment Agreement between USAir and British Airways contains an elaborate mechanism to protect USAir from losses as a result of divestiture. USAir will share indefinitely in the cumulative profits received by British Airways with respect to the London routes or, if the profit sharing cannot be performed, British Airways will "reimburse" USAir up to $50 million dollars. USAir's Proxy

Statement issued April 26, 1993 to shareholders stated that "the Company's U.K. routes were carried on its books at approximately $48.7 million at December 31, 1992 and the Company expects to recover such amount in full from the sale of such routes or pursuant to the described provision of the Investment Agreement." (Proxy Statement at 48–49, copy attached, emphasis added.) In any event, the extent to which any alleged financial hardship may or may not be a relevant public interest factor is solely within the jurisdiction of the Department of Transportation to evaluate consistent with the public interest standards of the Federal Aviation Act.

Finally, the Consent Decree cannot be allowed to be used as a vehicle to trample the due process rights of other carriers and cities to fair, comparative and contemporaneous consideration of their DOT applications to replace USAir's London routes. Because the pending USAir "route transfer" applications all require certificate amendments by the DOT under Section 401(d) of the Federal Aviation Act, Delta is entitled, under well-established due process principles (embraced under the so-call *Ashbacker* doctrine),[1] to contemporaneous consideration and decision by DOT of its application for Salt Lake City-London authority with other similarly situated applications, including those USAir "route transfer" applications that are consistent with the current U.S.-U.K. bilateral agreement. The *Ashbacker* doctrine has its roots within the due process clause of the United States Constitution. It is a legal requirement that ensures the right of a prospective license (Delta) to a comparative hearing with another applicant under circumstances where the grant of one license would be mutually exclusive to the grant of the other. The Department of Justice and the Court must prevent the Consent Decree from adversely affecting Delta's basic legal entitlements.

Wherefore, Delta Air Lines, Inc. hereby requests that the Consent Decree be revised to reflect the concerns discussed in detail above.

[1] *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945).

Respectfully submitted,

Robert E. Cohn,

Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, (202) 663–8060, Counsel for Delta Air Lines, Inc.

Attachment 1

Before the Department of Transportation, Office of the Secretary, Washington, DC.

Joint Application of Northwest Airlines, Inc. and USAir, Inc., for a certificate transfer pursuant to Section 401(h) of the Federal Aviation Act of 1958, as amended (Baltimore-London), Docket 48761.

Joint Reply of Northwest Airlines, Inc. and USAir, Inc. to Answers of American, Continental, Delta and Raleigh/Durham

Communications with respect to this document should be sent to:

James T. Lloyd, Executive Vice President and General Counsel, Frank J. Cotter, Assistant General Counsel, USAir, Inc., Crystal Park Four, 2345 Crystal Drive, Arlington, Virginia (703) 418–5220.

Richard D. Mathias, Frank J. Costello, Zuckert, Scoutt & Rasenberger, 888 17th Street, NW., Washington, DC 20006 (202) 298–8660, Counsel for USAir, Inc.

Richard B. Hirst, Senior Vice President and General Counsel, Northwest Airlines, Inc., 5101 Northwest Drive, St. Paul, MN 55111.

Elliott M. Seiden, Vice President Law and Government Affairs, Peter B. Kenney, Jr., Associate General Counsel, Northwest Airlines, Inc., 901 15th Street, NW., Washington, DC 20005 (202) 842–3193.

May 5, 1993.

Before the Department of Transportation, Office of the Secretary, Washington, DC.

Joint Application of Northwest Airlines, Inc. and USAir, Inc. for a certificate transfer pursuant to Section 401(h) of the Federal Aviation Act of 1958, as amended (Baltimore-London), Docket 48761.

Joint Reply of Northwest Airlines, Inc. and USAir, Inc. to Answers of American, Continental, Delta and Raleigh/Durham

Northwest Airlines, Inc. ("Northwest") and USAir, Inc. ("USAir"), pursuant to the Department's Notice, served April 23, 1993, hereby submit this joint reply to the answers of American Airlines, Inc. ("American"), Continental Airlines, Inc. ("Continental"), Delta Air Lines, Inc. ("Delta") and Raleigh/Durham.[1]

Each of these carriers has peppered the Department with applications for new U.K. route authority. What distinguishes these applications from Northwest's is the fact that none of these applicants valued new U.K. route authority enough to offer USAir a dime to buy its rights. Northwest, on the other hand, has agreed to pay USAir $5 million for the right to obtain its Baltimore-London authority and transfer it to Detroit. This fact alone demonstrates that Northwest's urgent desire to offer London service from its largest hub constitutes the highest and most productive use of USAir's Baltimore-London authority. The timely transfer of that authority to Northwest should not be derailed by the fact that other carriers have now composed wish lists for new authority that they claim to want but were unwilling to buy.

The opponents of the proposed transfer urge the Department to second-guess the market by conducting a carrier selection proceeding to reassign USAir's U.S.-London routes. That approach would both violate the consent decree the United States entered with USAir and violate longstanding Department precedent and policy to rely principally on market forces to govern the transfer of route rights. Fidelity to the consent decree and its own precedents requires that the Department promptly approve the proposed route transfer.

I.

The Antitrust Consent Decree Requires that USAir be Given an Opportunity to Divest Its U.K. Routes

The opponents of the Northwest-USAir transfer have ignored the fact that the divestiture of USAir's three London routes is governed by a consent decree between USAir and the United States. *United States* v. *USAir Group, Inc.*, Civil Action No. 93–0530 (D.D.C. March 15, 1993). The consent decree, consistent with consent decrees in all other antitrust divestiture cases, clearly protects USAir's right to divest its asset for the highest value it can obtain. For the Department now to deprive USAir of this right would be utterly inconsistent with the provisions of the agreement reached between the United States and USAir and with fundamental competition policy.

Part IV of the decree clearly, explicitly and quite deliberately grants USAir a

[1] For the reasons set forth herein, Northwest and USAir also oppose motions to modify the scope and/or to consolidate filed by Continental (with Dockets 48755 and 48756), Delta (with Docket 48757 and Tower (with all pending applications).

period of time to sell each of its routes. Specifically, USAir must sell each route within 45 days after the commencement of BA-USAir code-share operations at that gateway. Further, the 45-day period is tolled during the pendency of a transfer application before the Department pursuant to section 401(h). Thus, if the Department were to disapprove a proposed transfer, USAir would have the balance of the 45-day period to negotiate an alternative sale. In addition, Part IV provides that USAir may request additional time to divest any of its routes, which the Justice Department may grant. It is only after the time permitted under Part IV, including any extensions the Justice Department may grant, has expired that USAir is obligated under Part V to relinquish its authority to the Department.

The purpose of these provisions is to insure that USAir is not required to divest its property for nothing or at fire-sale prices, while at the same time insuring the relief required under the antitrust decree is accomplished promptly. These provisions give effect to the longstanding principle that divestitures ordered in civil antitrust cases may not be "punitive." *United States* v. *E. I. Du Pont De Nemours*, 366 U.S. 316, 326 (1961). More broadly, they give effect to fundamental competition policies of the United States. U.S. competition policy recognizes the need not only to prevent anticompetitive mergers and investments, but to "avoid deterring the larger universe of procompetitive or competitively neutral mergers." U.S. Department of Justice Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) Para. 13,104 (1992). Mergers and investments that create efficiencies and do not result in anticompetitive effects are desirable and should be encouraged. Curative divestiture orders, such as that in *USAir*, permit otherwise efficient transactions to occur by eliminating the assets or lines of business that may give rise to potential anticompetitive effects. If parties to potential mergers or investments faced the prospect that valuable assets would be lost without compensation because of the transaction, they would refrain from entering agreements that otherwise would be productive and efficient. Such a needless restraint on the efficient allocation of assets and resources would be contrary to sound competition policy.

Accordingly, antitrust divestiture decrees uniformly afford the divesting party a reasonable opportunity to divest the assets at a fair market price. Thus, for example, the consent decree in *United States* v. *Texas Commerce Bancshares, Inc.*, 1993 Trade Reg. Rep. Para. 50,743 (February 11, 1993), accords the defendant three months from the entry of the decree to divest the assets subject to the order, with a further provision that if the assets are not divested in that period a trustee will be appointed to divest the assets "at such price and on such terms as are then obtainable upon a reasonable effort by the trustee."[2]

The *USAir* divestiture decree is in accord with these fundamental competition policies. USAir, like Texas Commerce Bancshares and parties to other divestiture decrees, is to be accorded a reasonable opportunity to sell its assets at the best market price it can obtain. Only if it fails to do so in the period allowed under Part IV of the Decree is it then required to relinquish them (without compensation) to the Department. In this way USAir is able to consummate its agreement with British Airways—an agreement the Department concluded in Order 93–3–17 created procompetitive efficiencies and was in the public interest—without subjecting USAir to a punitive divestiture regime.[3]

The opponents of the proposed transfer in effect ask the Department to strip USAir of the right to sell these assets, punishing USAir in a way unlike any other party subject to an antitrust divestiture order. Nothing could be more at odds with the consent decree and settled antitrust policy.

At the most extreme, American, Delta and Raleigh/Durham argue that the Department simply should not permit USAir to sell its route rights to anyone. To the same effect are arguments that the proposed route transfer be considered in a larger comparative proceeding in which the Department would select carriers and gateways for the USAir routes. Delta argues that such a comparative proceeding is in order because Northwest proposes to transfer the service from Baltimore to Detroit. Delta's reliance on Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc., Orders 91–3–20 and 91–4–3, to support this argument is misplaced. That case involved a voluntary transfer agreement, not a divestiture mandated by an antitrust consent decree, and there were no competing antitrust policies to consider.[4] The effect of Delta's argument in this context would be to prevent USAir from divesting the route to anyone, even though the route is moveable under the bilateral. Such a result would clearly be at odds with the decree.[5]

In sum, this is not an ordinary route transfer. Rather, it is a route divestiture being performed to satisfy the mandate of an antitrust consent decree. Well-established competition policy requires that such a divestiture be accomplished without "deterring the larger universe of procompetitive" transactions. Under section 102(a)(4) of the Act, the Department is required to exercise its duties under the Act in a manner that furthers these competition policies in the air carrier industry. The Department, therefore, in fulfilling its responsibilities under the Federal Aviation Act, can and should give effect to these fundamental competition policies by refusing to succumb to other carriers' demands to convert this route transfer agreement into a comprehensive comparative proceeding—a proceeding that would serve no purpose other than to prevent the sale of USAir's routes to anyone.

II.

The Department's Precedents Require Approval of the Proposed Transfer

The Department's precedents for considering route transfers under section 401(h) are clear. The Department "generally approve[s] such transfers unless they conflict with important international aviation policy objectives or are otherwise inconsistent with the public interest." Joint Application of Delta Air Lines, Inc. and Pan American

[2] *See also, e.g., United States* v. *Society Corp. and Ameritrust Corp.*, 1992–2 Trade Cases (CCH) Para. 69,892 (six months to divest assets before appointment of Trustee); *United States* v. *Tidewater, Inc.*, 1992–1 Trade Cases (CCH) Para. 69,782 (four months to divest assets before appointment of trustee); *United States* v. *Fleet/Norstar Financial Services, Inc.*, 1991–2 Trade Cases (CCH) Par. 69,646 (six months to divest assets before appointment of trustee).

[3] In some respects, the USAir decree is less generous than the typical divestiture order, under which a trustee would still try to sell the assets for the benefit of the divesting party at the expiration of the divestiture period. If USAir fails to sell the route rights in time, it will lose any economic interest in them.

[4] As the Department has recognized in the past, the *Ashbacker* doctrine on which Delta relies " 'is basically a rule of procedural fairness in comparative consideration [that] must be applied with common sense and in a practical fashion' [quoting *Delta Air Lines* v. *CAB*, 497 F.2d 608, 612–13 (D.C. Cir. 1973)] and that it does not require the Board to change the 'fundamental purpose' of a proceeding [quoting *Eastern Air Lines* v. *CAB*, 247 F.2d 562, 565 (D.C. Cir. 1957)]." *Braniff South American Route Transfer Case*, Order 82–9–81, p.8.

[5] Notably, the Justice Department considered and explicitly rejected any requirement that USAir sell the route only for service at a specific point, concluding that such a limitation could "harm airline passengers traveling to London as a whole by producing an inefficient allocation of the limited authority to serve London." *United States* v. *USAir Group, Inc.*, Proposed Final Judgment and Competitive Impact Statement, 58 *Fed. Reg.* 16698, 16702 (March 30, 1993).

World Airways, Inc., Order 91–9–53, p.3.[6] The proposed Northwest-USAir transfer is entirely consistent with U.S. international aviation policy objectives and no opponent of the proposed transfer has offered any argument that would justify a departure from these precedents.

The policy underlying the Department's route transfer precedents is that the market, not the Department, is better able to identify the highest economic use of limited route rights. As the Department stated in its Final Order in *Delta-Pan Am*, "[s]ince deregulation of the air transport industry, we have found that the marketplace is generally a far better allocator and provides a far more efficient solution in the long term than does government interference." Order 92–4–33, p. 20. This "market for foreign routes" has been expressly approved by the Court of Appeals, *City of St. Louis* v. *Department of Transportation*, 936 F.2d 1528, 1537 (8th Cir. 1991), and has served as the legal predicate for the Department's approval (without comparative proceedings) of the transfer of substantial amounts of international route authority.

The Northwest-USAir transaction is a classic example of the marketplace at work. As the Department well-knows, Northwest was unsuccessful in its efforts to acquire Pan American's Detroit-London route, which was sold to Delta in 1991 together with the balance of Pan Am's European route system, and Northwest remains committed to obtaining the rights to serve London from its largest hub.[7] For that reason, Northwest places a high value on the USAir route rights and is prepared to pay $5 million to obtain the Baltimore-London route if it can be transferred to Detroit in time for the 1993 summer season. In contrast, other carriers who now claim to want to serve London from various U.S. points (including points that could have been served with no amendment to the bilateral) were unwilling to spend anything for the routes. Under the Department's precedents, the proposed transfer to Northwest should be deemed the highest and more efficient use of the Baltimore-London route authority.

In opposing the transfer, Continental has labelled it as "fictitious" because it involves both the sale of the Baltimore authority and the transfer of the authority to Detroit. Delta similarly argues that the proposed transfer of authority to Detroit must trigger an *Ashbacker* comparative hearing. There is, of course, nothing fictitious about the $5 million Northwest will pay for the route authority if the transfer is approved. Nor is there any dispute that Continental and Delta were afforded exactly the same opportunity to buy USAir's rights and they elected not to do so, even though, as they point out in their own applications, the authority could be transferred to Cleveland or Salt Lake City without any adjustment in the bilateral. Their failure to do so, together with the absence of any other evidence of a burning interest to serve these markets, strongly suggests that the real purpose of their competing applications is to put before the Department their own wish lists for the pending U.S.-U.K. negotiations. While understandable—Northwest has its own wish list as well—the presence of such future ambitions should not be allowed to torpedo a concrete transaction before the Department. *Ashbacker*, after all, only applies to "bona fide" applications that are mutually exclusive.[8]

While invoking *Ashbacker*, Delta ignores the fact that the Department has consistently concluded that *Ashbacker* does not apply to applications where the authority at issue could not be awarded to any other applicant. See, *e.g.*, Application of American Airlines, Inc. (Chicago-Milan/Rome), Order 90–10–46; Application of Northwest Airlines, Inc. (U.S.-Australia), Order 91–8–30. In this case there would be no authority to award to other carriers if the transfer is disapproved; the Baltimore-London authority remains with USAir. USAir has the right to continue operating on that route as well as the right, preserved under its consent decree with the United States, to attempt to sell its authority to another bidder in the event that the instant route transfer application, on its merits, is disapproved. Under these circumstances, the Department should adhere to its well-established policy not to expand the scope of route transfer proceedings under section 401(h) into generalized section 401(d) carrier selection proceedings. See, *e.g.*, Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc., Order 92–9–59.

American argues that the Northwest-USAir transfer application should be dismissed on the ground that it is the Department's policy not to entertain requests for international routes "that do not exist." In point of fact, however, the route does exist and the bilateral permits it to be moved; thus, the only bilateral issue is whether the U.K. would permit it to be moved to Detroit. There is ample precedent in such circumstances for the Department to rule on an application even when there is uncertainty that the foreign government will grant the corresponding approvals.

For example, in Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., Order 91–2–5, the Department approved the transfer of the bulk of Pan Am's U.S.-London authority subject to the condition that the U.K. permit United to operate to Heathrow. In the Show Cause Order, the Department observed "[W]e have always been reluctant to predicate our regulatory decisions on the possible posture a foreign government might assume in response," and "we cannot allow the inability [to predict precisely the future character of any bilateral relationship] to hamstring our regulatory process." Order 91–1–11, p.9 n.30. See also, Joint Application of American Airlines, Inc. and Trans World Airlines, Inc., Order 91–1–12, *finalized*, Order 91–1–72 (U.S. undertook to seek permission to permit American to serve Heathrow); Application of American Airlines, Inc. (Chicago-Milan/Rome), Order 90–10–46 (grant of authority dependent on further negotiations with Italy); U.S.-London Case (1982), Order 82–4–64 (selection of Air Florida for Newark-London service even though British Airways had already exercised its right to choose the Newark gateway and invoked the

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[6] See also Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc., Order 92–9–59, p.6; Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., Order 92–3–30, finalized, Order 92–7–9; Joint Application of Trans World Airlines, Inc. and USAir, Inc., Order 92–3–51, finalized, Order 92–4–49; Joint Application of America West Airlines, Inc. and Northwest Airlines, Inc., Order 92–1–39, finalized, Order 92–3–47; Joint Application of American Airlines, Inc. and Trans World Airlines, Inc., Order 91–3–28; Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., Order 91–1–11, finalized, Order 91–2–5; Joint Application of American Airlines, Inc. and Trans World Airlines, Inc., Order 91–1–12, finalized, Order 91–1–72; Joint Application of American Airlines, Inc., Eastern Air Lines, Inc., and Continental Airlines, Inc., Order 90–4–11, finalized, Order 90–5–5.

[7] Northwest has sought judicial review of the Department's decision approving the transfer of Pan Am's Detroit-London authority to Delta. *Northwest Airlines, Inc.* v. *U.S. Department of Transportation*, Case No. 92–1251 (D.C. Cir.).

In addition, there remains pending in Docket 48090 the joint application of Northwest and Pan Am to transfer Pan Am's Detroit-London authority to Northwest pursuant to a back-up contract between Northwest and Pan Am, approved by the Pan Am bankruptcy court, that Northwest and Pan Am contend came into effect upon Delta's breach of its contract with Pan Am.

[8] In light of the Department's commitment to secure a substantial liberalization of the U.S.-U.K. aviation regime, it is not clear that the competing applications are even mutually exclusive. Neither Continental nor Delta propose service start-up dates in their respective Cleveland and Salt Lake City applications (in contrast to Delta's New York-London application, which commits to start service by July 15, 1993).

market protection provision of the bilateral). Thus, the fact that the proposed Northwest-USAir transfer would require the consent of the U.K. cannot, consistent with the Department's precedents, preclude approval of the transfer application.

American further argues that the United States should not engage in "piecemeal" negotiations with the U.K. to seek specific new routes requested by individual carriers. While Northwest supports a comprehensive liberalization of the U.S.-U.K. agreement, that undertaking is not inconsistent with also securing U.K. consent to the transfer of USAir's Baltimore-London authority to Northwest for operation at Detroit. Northwest believes that there is every reason to expect that the U.K. will be receptive to this request, if for no other reason than to save British Airways the $5 million it might otherwise be obligated to pay USAir under the indemnity provisions of the investment agreement. Moreover, the U.K. authorities recently granted extrabilateral authority for American Trans Air to operate to Belfast and made a point of stating that the action was intended as a gesture of good faith in the larger U.S.-U.K. talks. Under these circumstances, the Department surely should not deny the proposed transfer on the supposition that the U.K. will not approve.

American (and Delta) also argue that USAir should not be allowed to sell its routes to anyone—an especially convenient argument for parties that elected not to bid for the routes. (American, of course, is well-positioned to have it both ways, having agreed to operate on the Charlotte-London route that Nashville purchased on its behalf.)

Such an action by the Department not only would be directly at odds with the USAir consent decree, as discussed above, but would be wholly without precedent. American cites no legal predicate for disapproving the route transfer merely on the grounds that approval may free British Airways of a portion of its indemnification obligation to USAir.[9] We know of no case in which the Department has disapproved a transfer on the ground that it may benefit a foreign carrier.[10] Rather, the Department has approved marketplace route transfers in the past because it has found the marketplace to be most efficient means to allocate routes—not because it approved of who benefits economically from the transfer.

In sum, the arguments advanced by the opponents of the transfer have failed to make any case that the proposed transfer "conflicts with important international aviation policy objectives" or otherwise is inconsistent with the public interest. In the absence of such a showing, the Department's precedents clearly require that the proposed transfer be approved.

Conclusion

Wherefore, Northwest Airlines, Inc. and USAir, Inc. respectfully request that the Department deny all motions to modify scope or to consolidate and that the Department grant this application and approve the transfer of USAir's Baltimore-London authority to Northwest.

Respectfully submitted,

Richard D. Mathias,

Frank J. Costello, Zuckert, Scoutt & Rasenberger, 888 17th Street, NW., Washington, DC 20006 (202) 298–8660, Counsel for USAir, Inc.

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Associate General Counsel, Northwest Airlines, Inc., 901 15th Street, NW., Washington, DC 20005 (202) 842–3193.

May 5, 1993.

Attachment 2—Proxy Statement

Each $10,000 aggregate principal amount of such Notes will be entitled to a number of votes equal to the number of votes to which each share of BA Preferred Stock, including Series T Preferred Stock, was entitled at the time of its exchange for Notes, subject to adjustment.

Shares of Series T Preferred Stock may be converted at the option of the holder thereof at any time on or after January 21, 1997 into a number of fully paid and non-assessable shares of Common Stock or Non-Voting Class ET Stock, at the holder's election (subject to Foreign Ownership Restrictions and assuming prior conversion in full of Series C Preferred Stock into Class B Common Stock), equal, in the aggregate, to $10,000 divided by the conversion price (determined in the manner set forth in the Investment Agreement), as adjusted. Each share of Series T Preferred Stock may be converted, at the option of the Company (such a conversion, a "*Mandatory Conversion*"), at any time after January 21, 1998 (the "*First Mandatory Conversion Date*"), into shares of Common Stock or Non-Voting Class ET Stock if the Company previously has exercised its right to cause a mandatory conversion of the Series F Preferred Stock, the Series C Preferred Stock or the Series G Preferred Stock (which right resulted from the average composite closing market price of Common Stock during any 30-day calendar period (the "*Average Market Price*") being at least 133% of the conversion price), or if all the Series C Preferred Stock and Series E Preferred Stock previously have been converted at the option of the holders thereof, at any time after the First Mandatory Conversion Date, if the Company would have been entitled to cause mandatory conversion thereof. Upon any Mandatory Conversion of Series T Preferred Stock, the holders thereof will have the option, subject to Foreign Ownership Restrictions, exercisable within 10 business days following the Company's election to declare a Mandatory Conversion, to cause the Company to redeem all outstanding shares of Series T Preferred Stock in exchange for the number of shares of Common Stock equal to the Redemption Price divided by the then current market price (as defined in the Series T Preferred Stock Certificate of Designation). Any holder may elect, within 10 business days following the date on which the holder elects to require the Company to redeem the shares of Series T Preferred Stock, to receive cash out of funds legally available therefor in respect of the portion of the Redemption Price representing the excess over the amount represented by the number of shares of Non-Preferred Stock into which the Series T Preferred Stock is then convertible, multiplied by the then current market price of the Common Stock.

U.S.-U.K. Routes

The Company has agreed that as promptly as commercially practicable it will divest or, if divestiture is not possible, relinquish all licenses, certificates and authorities for routes between the U.S. and the U.K. (the "*Company's U.K. Routes*") at such time as BA and the Company can implement the code sharing arrangement contemplated by the Investment Agreement. See "Code Sharing" below. Recognizing that the divestiture or relinquishment of the Company's U.K. Routes is necessary to comply with relevant competition laws, that such divestiture or relinquishment could disadvantage the communities served and the Company employees affected and that the Company may suffer losses in such divestiture or relinquishment, the Company and BA have agreed that insofar as possible, such disadvantage to the communities and Company employees should be mitigated and that the Company and BA should share any losses suffered as a result of such divestiture or relinquishment with due regard to their respective interests. Accordingly, BA will apply for all necessary, licenses and, subject to obtaining all necessary approvals and to the extent permitted by applicable law, will operate so long as commercially feasible and be solely responsible for marketing Charlotte-London, Pittsburgh-London and Baltimore-London routes pursuant to BA's route authority, operate such routes under a "wet lease" (a lease under which USAir would

[9] Nor is there any merit to American's argument that the route transfer should not be allowed because USAir is controlled by British Airways. Regardless of what American may believe, the Department has determined in Order 93–3–17 that USAir is not under the control of British Airways and the Department surely cannot disapprove the proposed route transfer on the grounds, as American contends, that it is.

[10] Were the Department to go out of its way, as American recommends, to disapprove a route transfer simply because it would result in an economic benefit for British Airways, it could hardly be viewed as a positive gesture by U.K. authorities and would only serve to undercut the U.S. initiative to negotiate a liberalized aviation regime without the U.K.

provide pilots and cabin crews to operate the leased aircraft) for rentals based on the Company's costs, and share, at the end of each fiscal year of BA, the cumulative profits received by BA in respect of such routes with the Company with BA retaining a share of profits equal to the BA Percentage and the Company receiving the remainder. The Company does not expect that the wet lease arrangements will materially affect its results of operations, cash flow or financial position. If the contemplated profit sharing cannot be performed, BA will reimburse the Company a portion of any losses suffered by the Company in the divestiture or relinquishment of the Company's U.K. Routes, beginning on the date all such divestitures or relinquishments become final, by paying the amounts of $5 million, $5 million, $15 million, $15 million and $10 million per annum, respectively, on such date and on the first, second, third and fourth anniversaries of such date. Such first, second, third, fourth and fifth reimbursement payments, respectively, will be reduced (but not below zero) by an amount equal to 10%, 10%, 30%, 30% and 20%, respectively, of the aggregate amount realized by the Company from the sale of the Company's U.K. Routes. If the parties are legally prohibited from performing any of the foregoing provisions, the parties will negotiate in good faith alternative arrangements having, to the extent permitted by applicable law, substantially the same economic value as the arrangements so specified. See Section 10.5 of the Investment Agreement. The Company's U.K. Routes were carried on its books at approximately $48.7 million at December 31, 1992, and the Company expects to recover such amount in full from the sale of such routes or pursuant to the described provisions of the Investment Agreement.

On March 29, 1993, USAir agreed to sell for $14.5 million its operating authority between Philadelphia and London Gatwick Airport to United Air Lines, Inc. ("*United*"). Consummation of the sale is subject to a number of conditions, including that United obtain governmental approval to transfer the authority to Chicago and operate flights from Chicago's O'Hare International Airport to London's Heathrow Airport. Either USAir or United can terminate the agreement if the sale has not been consummated by May 14, 1993. USAir cannot predict whether or when the sale will close.

On April 15, 1993, USAir agreed to sell for $5 million its operating authority between Baltimore and London Gatwick Airport to Northwest Airlines, Inc. ("*Northwest*"). Consummation of the sale is subject to a number of conditions, including that Northwest obtain governmental approval to transfer the authority from Baltimore to Detroit, Michigan. The agreement becomes null and void if the sale has not been consummated by June 15, 1993. USAir cannot predict whether or when the sale will close.

On April 20, 1993, USAir reached an agreement in principle to sell to the Metropolitan Nashville Airport Authority, Nashville, Tennessee for $5 million its operating authority between Charlotte and London Gatwick Airport. Consummation of the sale is subject to a number of conditions, including documentation of the agreement and governmental approval to transfer the authority from Charlotte to Nashville. USAir cannot predict whether or when the sale will close.

Insurance

For so long as the BA Holding, as defined in "Amendment No. 2 to Restated Charter—Certain Goverance Matters—Reduction in BA Rights" below, is at least $100 million, (i) the Company will maintain in full force and effect (to the extent determined by the Company in its commercially reasonable judgment after consultation with BA) all policies of insurance covering liability to third parties currently in force with respect to the Company or its subsidiaries or their respective businesses or such renewed or substitute policies as provide substantially similar or better coverage, and (ii) the Company will arrange to have BA named as additional insured under such policies.

Non-Solicitation

Prior to the effectiveness of Amendment No. 1, the Company has agreed that neither the Company nor any of its subsidiaries nor any of the respective officers and directors of the Company or any of its subsidiaries will, and the Company will direct and use its best efforts to cause its employees, agents and representatives (including, without limitation, any investment banker, attorney or accountant retained by the Company or any of its subsidiaries) not to, initiate, solicit or encourage, directly or indirectly, any inquiries or the making of any proposal or offer with respect to a merger, consolidation or similar transaction involving, or any sale of all or any substantial portion of the assets or any equity securities of, the Company and any of its subsidiaries, taken as a whole (an "*Acquisition Proposal*"), or, except as required in connection with the fiduciary obligation of the Board of Directors as advised by counsel, to engage in negotiations, provide information or discuss an Acquisition Proposal with any person, or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal.

May 28, 1993.

Mark C. Schechter, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street, NW., Room 9104, Washington, DC 20001.

Re: *United States* v. *USAir Group, Inc., D.D C. Civil Action No. 93–0530*

Dear Mr. Schechter: On behalf of the Raleigh-Durham Parties, and pursuant to 58 Fed. Reg. 16698, March 30, 1993, I am enclosing Comments on the proposed Final Judgment in the above-captioned proceeding.

Very truly yours,

Theodore I. Seamon,

Attorney for the Raleigh-Durham Parties.

Enclosure

In the United States District Court for the District of Columbia: United States v. USAIR Group, Inc., Civil Action No. 93–0530.

Comments of the Raleigh-Durham Parties in Response to Notice of Proposed Final Judgment

Communications with respect to this document should be addressed to:

John C. Brantley, Airport Director, Raleigh-Durham Airport Authority, P.O. Box 80001, RDU Airport, NC 27623, Telephone: (919) 840–2100.

Theodore I. Seamon, Howard G. Feldman, 1000 Potomac Street, NW., suite 300, Washington, DC 20007, Telephone: (202) 337–6200, Attorneys for Raleigh-Durham Parties.

May 28, 1993.

In the United States District Court for the District of Columbia: United States v. USAIR Group, Inc., Civil Action No. 93–0530.

Comments of the Raleigh-Durham Parties in Response to Notice of Proposed Final Judgment

The Raleigh-Durham Parties ("Raleigh-Durham") herewith respectfully submit their comments in response to Notice of Proposed Final Judgment, Stipulation and Competitive Impact Statement filed with the United States District Court for the District of Columbia in the above-captioned proceeding. The Notice was given and the proposed Final Judgment was published in the **Federal Register** on March 30, 1993, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (58 FR 16698).

The Investment Agreement between USAir and British Airways, partially approved by the Department of Transportation ("DOT" or "Department") in Order 93–3–17, provided, *inter alia*, that USAir would relinquish its route authority in all of its U.S.-London markets, Philadelphia-London, Baltimore-London and Charlotte-London. Following the issuance of DOT Order 93–3–17 and the publication of the proposed Final Judgment on March 30, 1993 the Raleigh-Durham Parties filed Petition with the Department of Transportation to transfer the designation of Charlotte under the U.S.-U.K. Agreement to Raleigh-Durham, and American Airlines contemporaneously filed application for certificate of public convenience and necessity authorizing it to engage in foreign air transportation between Raleigh-Durham and London (DOT Dockets 48743 and 48744). American also had pending application for certificate authority between Nashville and London (Docket 47726). A number of applications were filed by other carriers, including Continental for authority between Cleveland and

London (Docket 48755) and Delta for authority between Salt Lake City and London (Docket 48754).

USAir has entered into proposed purchase and route transfer agreements with United, Northwest and Nashville relating to the proposed sales respectively of the Philadelphia-London, Baltimore-London and Charlotte-London routes; but each requiring the designation of a different gateway.

For the reasons hereinafter set forth, Raleigh-Durham respectfully urges that the proposed Final Judgment be amended so as to delete reference to sales of the routes and with requirement that USAir be ordered to divest or relinquish each of its U.S.-U.K. routes, subject to the jurisdiction of the Department of Transportation. Alternatively, it should be made crystal clear that the proposed Final Judgment does not and is not intended in any way to diminish or influence the exercise by the DOT of its exclusive jurisdiction over the issuance, approval, assignment and allocation of international routes, consistent with the public interest and the precedents established by the Department under the appropriate provisions of Title IV of the Federal Aviation Act.

Raleigh-Durham, American, Continental and Delta, among others, have urged in various pleadings to the DOT that a consolidated proceeding is required for comparative selection of the conflicting carrier/city applications under established DOT precedent and as legally compelled by the *Ashbacker* doctrine.[1] Two of the three USAir-London routes are moveable and may be switched under the U.S.-U.K. bilateral aviation agreement. With more than two combination carrier/city applications, due process and *Ashbacker* require the right of each applicant to a comparative hearing.

USAir has, on the other hand, contended, in reliance upon the Consent Decree and proposed Final Judgment, that it has a vested right to sell each of the three London routes to the highest bidder; and has argued, in effect, that the proposed Final Judgment as a practical matter ousts the Department of Transportation from its exclusive jurisdiction to construe the public interest in the allocation of international routes.

USAir has so construed the proposed Final Judgment as well nigh to arrogate to itself the disposition of the three London routes to the highest bidders subject to the transfer of the gateways, without regard to the public interest factors.

It should further be noted that the routes being sold are not the routes held by USAir, but involve different routes and authorities which are not held by USAir; i.e. sale of Philadelphia-London to United for operation from Chicago; sale of Baltimore-London to Northwest for operation from Detroit; and sale of Charlotte-London to Nashville for operation by American from Nashville. Department precedent teaches that in such circumstances what is involved is new route authority under Section 401(d) rather than the transfer of existing authority under Section 401(h) of the Act, and in such case a consolidated comparative selection proceeding must be held. (*Northwest/Hawaiian*, Order 91–3–20, March 11, 1991)

We do not believe that the proposed Final Judgment was intended to require the Department of Transportation to rubber stamp under Section 401(h) *any* sales and transfer agreements which USAir might present for approval, without exercising independent judgment of public interest requirements and with regard for due process. We believe that the proposed Final Judgment intended, as lawfully required in any event, to maintain the exclusive jurisdiction of the DOT to determine the reallocation and the disposition of the routes at issue, as required by *Ashbacker* procedures and established precedent and practice. Thus, Section VI of the proposed Final Judgment recognizes that ". . . a U.S. carrier holding authority to serve London from the Baltimore/Washington or Charlotte gateways may seek permission from the Department of Transportation to transfer that authority to another U.S. gateway point. "It also recognizes that such transfer of gateway designation may result in different service patterns "If permission is sought from and approved by the Department of Transportation. . . ."

Thus, the foregoing would indicate that the proposed Final Judgment recognizes the paramount function of the DOT and did not intend to influence a departure from its independent public interest consideration and processing of applications.

However, as above noted, we are constrained to submit these comments by reason of USAir's pleadings before the Department of Transportation urging that the Proposed Judgment gives it an absolute "right" to sell the routes; that the consent decree "protects USAir's right to divest its assets for the highest value it can obtain"; and the *Ashbacker* is not applicable. (Reply of USAir in DOT Docket 48761, May 5, 1993).

The Department has exclusive statutory jurisdiction to approve the issuance, transfer, allocation and reassignment of international route authority under public interest standards as defined by statute and established DOT precedent. The mistaken interpretation argued before the DOT by USAir and parties to the proposed purchase agreements offers the proposed Final Judgment as basis to oust the independent jurisdiction of the Department and to preclude it from doing no more than rubber stamp proposed sales, regardless of requirements of the public interest and due process, subordinate to the sales prices offered by the highest bidders.

We therefore believe it necessary, for clarification, to amend the proposed Final Judgment to eliminate references to the required sale of USAir's London routes, in favor of merely directing the divestment or relinquishment of each such route, subject to the discretionary jurisdiction of the Department of Transportation. At the very minimum the proposed Final Judgment should be amended by revision of Sections III, VI or otherwise to make crystal clear that it is not intended to diminish or influence the exclusive jurisdiction of the Department of Transportation to reallocate and assign the route authorities in accordance with the public interest and the established standards and precedent of the Department.

The importance of insuring complete clarification by the above recommended amendments is underscored by the representations and discussions submitted to the Department of Transportation in various pleadings by most of the parties, save parties to the sales agreements. The following extracts from pages 12–16 of the Answer of the Raleigh-Durham Parties to the Joint Application of USAir and Nashville in Docket 48786, filed May 11, 1993, exemplify the concerns underlying these Comments.

USAir and its contracting purchasers in their "rush to judgment" are pressing the Department to adopt a position as a matter of policy and as a matter of law under which USAir and its partners would arrogate to themselves the disposition of scarce international resources, based on "private interest money" rather than "public interest merit".

The transfer applications cannot be so cavalierly treated as USAir and its three prospective purchasing partners would have it, with request for expedited show cause proceeding excluding other applications for U.S.–U.K. authority. These are not simplistic section 401(h) route transfer applications to

[1] *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

be measured by past cases and precedent where the purchaser has stood squarely in the shoes of the seller over the route and between the market terminals involved. The United, Northwest, and Nashville purchase agreements involve requests for new certificate authorities which are different from the authorities held by USAir; United for Chicago-London, in lieu of Philadelphia, Northwest for Detroit-London, in lieu of Baltimore, and Nashville for Nashville-London, in lieu of Charlotte which are not USAir's to sell, and which it could not lawfully sell to Nashville in any event. They must be treated as new route authority under section 401(d), and subject to *Ashbacker* under long established policy and precedent.

To treat these requests for new certificate authority as route transfers as contended by the Joint Applicants, would mean that contrary to law and settled Department policy, the Department would give up a significant measure of its authority to allocate scarce national resources to a private party, USAir, and indirectly to a foreign air carrier, British Airways. It is exclusively for the Department to determine the public interest, and not for USAir to pick the highest bidder, guided by its own private interests and those of British Airways * * *.

Only two years ago the Department faced a situation almost identical to the three route "transfer" agreements here. Northwest and Hawaiian had contracted to transfer Hawaiian's Honolulu-Sydney route to Northwest, which Northwest proposed to use to operate Los Angeles-Sydney service. The Department ruled in *Northwest Airlines, Inc.-Hawaiian Airlines, Inc.*, Order 91–3–20., March 11, 1991 that what Northwest sought was new or amended certificate authority, not a Section 401(h) route transfer. Moreover, since there were pending competitive applications, the route which Northwest sought could only be granted in a carrier selection proceeding involving comparative consideration. To quote the Department at 7:

"Northwest initially proposed to implement the transferred Australian route by operating Los Angeles-Sydney nonstop. Both America West and Delta have applied for certificate authority to serve U.S.-New Zealand/Australia. They correctly note that to the degree Northwest would acquire more or different authority than what Hawaiian has now, *Northwest is effectively applying for new or amended certificate authority.* In view of applications by other carriers and the fact that Hawaiian's certificate authority extends only to service between Honolulu-Sydney, Northwest could only be granted Los Angeles-Sydney authority pursuant to *comparative consideration in a carrier selection proceeding.* This result is mandated both under long-term Department policy and precedent and under the *Ashbacker Doctrine.* We therefore tentatively conclude that Northwest may not obtain certificate authority to serve Los-Angeles-Sydney through a certificate transfer from Hawaiian." (Emphasis supplied)

The *Northwest/Hawaiian* situation is indistinguishable from the instant case, and what the Department ruled two short years ago, as a matter of policy, law and *Ashbacker*, is dispositive of the three "transfer" applications here involved.

As in the *Northwest/Hawaiian Case* there are pending numerous applications involving U.S.-London service: i.e. Raleigh-Durham-London; Cleveland-London; Salt Lake City-London; Nashville-London and other applications for various types of U.S.-U.K. service. Since what is at issue is a limited entry market involving only three routes and only two switchable gateways, it must be concluded that grant of one or more of the route transfer agreements, rubber stamped in a highly restricted show cause proceeding as the applicants would have it, would effectively prevent grant of one or more of the other pending applications. A carrier/gateway comparative selection proceeding is clearly required by *Ashbacker.*

On the basis of the foregoing we would urge that references to sale of the routes be deleted; or that, at minimum, the proposed Final Judgment be amended so as to provide clearly that nothing therein contained is intended to diminish, detract from or influence the exclusive jurisdiction of the Department of Transportation to determine the reallocation of routes, however divested, under the established standards of the public interest and with due regard for Ashbacker considerations and the requirement for comparative proceedings necessary to consider a number of competing mutually exclusive carrier/city combinations for limited U.S.-London route availability.

Respectfully submitted.

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May 28, 1993

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Mark C. Schechter, Esq.,
Chief, Transportation, Energy and, Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., Room 9104, Washington, DC 20001

Re: United States v. USAir Group, Inc., Civil Action No. 93–0530

Dear Mr. Schechter: Continental Airlines, Inc. ("Continental") is submitting comments on the proposed Final Judgment in the above case because of its concern that USAir is seeking to use the proposed Final Judgment to prevent the Department of Transportation ("DOT") from exercising its statutory functions to determine the U.S.-U.K. route structure required by the public interest and to delay expanded competition for its partner, British Airways.

USAir has been unable to sell the routes for which it actually holds authority (Baltimore/Charlotte/Philadelphia-London), and USAir's proposed agreements to sell routes it does not hold could delay both the operation of new services competing with USAir and its partner, British Airways, and the negotiation of a new bilateral air transport agreement expanding rights for U.S. airlines between the U.S. and the U.K.

By proposing sales which involve new routes for which the U.S. is unable to designate additional U.S. airlines under the U.S.-U.K. bilateral air transport agreement, USAir's actions would require negotiations with the U.K. and, under DOT precedents, extensive proceedings before any new services could be implemented. In the meantime, USAir and British Airways will continue to profit from the absence of competitive services in the U.S.-U.K. market. USAir's invlaid transfers of routes which it does not hold and which are unavailable for U.S. airlines must not toll the 45 day period given to USAir to divest its Baltimore/Charlotte/Philadelphia-London routes after commencing code-sharing on the particular route with British Airways. By seeking to make transfers which will require negotiations with the United Kingdom, USAir will delay negotiation of comprehensive revisions in the U.K. bilateral which could offer significant new route opportunities for U.S. airlines and the traveling public.

USAir has entered agreements to sell the Philadelphia-London route to United Air Lines, the Baltimore-London route to Northwest Airlines, and the Charlotte-London route to the Metropolitan Nashville Airport Authority ("Nashville"). None of the purchasers, however, propose to operate such routes from the existing gateway. To implement what the purchasers seek to achieve will require the grant of new certificate authority by DOT and/or the negotiation of new rights from the United Kingdom under the bilateral air transport agreement between the United States and that country as well as approval of the transfer itself. The USAir "transfer" applications as presented to DOT raise important and novel issues of policy and law for DOT to decide before such applications can be acted on.

USAir's sale of the Philadelphia route to United is conditioned on moving that route to Chicago, where United would become the second U.S. carrier. The U.S.-U.K. bilateral does not permit the Philadelphia route to be moved or two U.S. carriers on the Chicago-London route at this time. USAir's sale of the Baltimore route to Northwest is conditioned on moving that route to Detroit, where Northwest would become the second U.S. carrier. The U.S.-U.K. bilateral does not permit two U.S. carriers on the Detroit-London route. Finally, USAir's sale of the Charlotte route to Nashville raises novel legal and policy issues concerning whether a city can buy a route, move it to the purchasing city, and designate the carrier to operate it. American, the carrier Nashville proposes to

VOL 58 ISS 130 JL 9 1993 UMI

serve it, has no Nashville-London certificate authority.

In a recent joint filing before DOT[1] USAir appears to contend that the proposed Final Judgment compels favorable DOT action on its proposed transfer applications. For example, that document states as follows:

That approach [a carrier selection proceeding] would violate the consent decree the United States entered with USAir . . . (Joint Reply at 2)

Fidelity to the consent decree . . . requires that the Department promptly approve the proposed route transfer. (Joint Reply at 2)

The opponents of the Northwest-USAir transfer have ignored the fact that the divestiture of USAir's three London routes is governed by a consent decree between USAir and the United States. (Joint Reply at 2)

The consent decree, consistent with consent decrees in all other antitrust divestiture cases, clearly protects USAir's right to divest its assets for the highest value it can obtain. (Joint Reply at 2)

The opponents of the proposed transfer in effect ask the Department to strip USAir of the right to sell these assets, punishing USAir in a way unlike any other party subject to an antitrust divestiture order. (Joint Reply at 5)

USAir's contentions far exceed the scope of the proposed Final Judgment. That document does not permit USAir to divest assets it does not own and which do not even exist under the U.S.-U.K. bilateral. The proposed Final Judgment recognizes in Section IV.B that DOT must carry out its statutorily authorized functions in accordance with its established practice and procedure.[2] Under that section, USAir must submit any transfer agreement to DOT for approval and DOT may approve, disapprove, or dismiss that application. Pursuant to section 401(h) of the Federal Aviation Act, 49 U.S.C. 1371(h), DOT must determine whether to approve any certificate transfer and, pursuant to section 401(d), 49 U.S.C. 1371(d), it must determine whether to approve the issuance of new functions.[3] There is no indication the proposed Final Judgment intended to infringe these DOT functions.

In the proceedings before DOT, Continental and other parties have pointed out that, under long-established DOT precedents, DOT does not grant route rights which require bilateral negotiations prior to negotiations and, therefore, the "transfers" involving service to Chicago and Detroit should be dismissed. Alternatively, if DOT determines to deviate from its long-established precedents, it must comparatively consider the U.K. route requests of other carriers that require bilateral negotiations, rather than proceed to give piecemeal, preferential treatment to United and Northwest.

With respect to the transfer of Charlotte to Nashville,[4] which is permitted by the bilateral, Continental and other parties seeking the transfer of Baltimore or Charlotte to other permitted gateways have shown that, under established DOT precedent, where the transferee seeks to move the transferred point to a new city, mutually exclusive applications must be set for comparative consideration. In that situation, new authority is being sought rather than the transfer of existing authority to a new carrier.[5]

Even if DOT, after comparative consideration, does not approve the USAir transfers, USAir will receive offsetting compensation. Under its agreement with British Airways, USAir has the right to conduct wet-lease operations and share in profits from the operations between Baltimore/Charlotte/Pittsburgh and London as compensation for having to give up Baltimore, Charlotte, and Philadelphia. If such profit-sharing wet-lease operations cannot be performed, British Airways must make offsetting payments to USAir.

Any Final Judgment issued in this case must make it clear that it does not govern DOT's exercise of its statutory duties under Section 401 of the Federal Aviation Act or the negotiating role of DOT and the Department of State with respect to international aviation operating rights. The proposed Final Judgment appears to recognize specifically DOT's role as final arbiter on the matters within its statutory jurisdiction. Nevertheless, USAir has attempted to misuse that draft document to circumscribe DOT's authority. The Final Judgment should state specifically that DOT is authorized under Section 401 of the Federal Aviation Act to act on any transfer applications presented by USAir in the public interest in accordance with its established policies and precedents. Moreover, it should be made clear the consent decree gives USAir no right to sell assets it does not own or which do not exist under the bilateral air transport agreement between the United States and the United Kingdom.

Respectfully submitted,

Crowell & Moring,

By: R. Bruce Keiner, Jr.,

Calvin Davison,

Counsel for Continental Airlines, Inc.

cc: Charles F. Rule, Esq.,

Covington & Burling, 1201 Pennsylvania Ave., NW., Washington, DC 20004, Counsel for USAir Group, Inc.

American Airlines

May 28, 1993

Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., Room 9104, Washington, DC 20001

Re: United States v. USAir Group, Inc., D.D.C. Civil Action No. 93–0530

Dear Mr. Schechter: On behalf of American Airlines, Inc., and pursuant to 58 Fed. Reg. 16698, March 30, 1993, enclosed are comments on the proposed final judgment in the captioned proceeding.

Very truly yours,

Carl B. Nelson, Jr.,

Associate General Counsel, American Airlines, Inc., (202) 857–4228.

CBN/ab
Enclosure
cc: Service List

Service List

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In the United States District Court for the District of Columbia: United States v. USAIR Group, Inc., Civil Action No. 93–0530.

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[1] Joint Rely of Northwest Airlines, Inc. and USAir, Inc., DOT Docket 48761, May 5, 1993.

[2] See *e.g. New York Shipping Association* v. *Federal Maritime Com'n*, 854 F.2d 1338, 1371–72 (D.C. Cir. 1988), *cert. denied sub nom, International Longshoreman's Association, AFL-CIO* v. *Federal Maritime Com'n*, 488 U.S. 1041 (1989); *Marquette Cement Mfg. Co.* v. *Federal Trade Com'n*, 147 F.2d 589, 594 (7th Cir. 1945).

[3] "The powers and duties of particular administrative officers and agencies as against other officers and agencies are determined by the organic and statutory provisions which grant them their powers and define their duties, and, where specific powers and duties are restricted to, or vested in, a specific officer or body, others are prohibited from carrying out or exercising them." (footnotes omitted) 73 C.J.S. § 53.

[4] This transfer also raises serious issues related to the purchase of a route by a city.

[5] Comparative consideration of other cities would also be required in connection with the transfer of Baltimore to Detroit and Philadelphia to Chicago, even if such transfers were permitted by the bilateral, which they are not.

Comments of American Airlines, Inc. on Proposed Final Judgment

Communications with respect to this document should be sent to:

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Attorneys for American Airlines, Inc.

May 28, 1993

In the United States District Court for the District of Columbia: United States v. USAir Group, Inc., Civil Action No. 93–0530.

Comments of American Airlines, Inc. on Proposed Final Judgment

American Airlines, Inc., pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), hereby submits its comments on the proposed final judgment concerning the disposition of USAir's three U.S.-London routes in view of the alliance between USAir and British Airways. The proposed final judgment, stipulation, and competitive impact statement in this matter were published on March 30, 1993 (58 FR 16698).

First, American believes that no cause of action exists against USAir under section 7 of the Clayton Act, as pled by the United States. This raises a threshold issue of why USAir would consent to a settlement with the Department of Justice on this matter. One explanation may be that USAir hoped to gain this Court's imprimatur that it has a "right" to

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May 28, 1993

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First, American believes that no cause of action exists against USAir under Section 7 of the Clayton Act, as pled by the United States. This raises a threshold issue of why USAir would consent to a settlement with the Department of Justice on this matter. One explanation may be that USAir hoped to gain this Court's imprimatur that it has a "right" to sell its three U.S.–London routes to the highest bidder, notwithstanding the exclusive jurisdiction of the Department of Transportation to decide that issue. The proposed consent decree also comes to the Court at the same time as USAir's proposed stipulated settlement of a proceeding brought by the Department of Justice alleging price-fixing among U.S. air carriers, *United States* v. *Airline Tariff Publishing Company*. In the event this case is not dismissed for lack of jurisdiction, the Court should hold an evidentiary hearing to determine all the facts and circumstances surrounding the proposed decree.

If the Court does have jurisdiction, American agrees that USAir should be ordered to give up its three U.S.-London routes (from the Philadelphia, Baltimore, and Charlotte gateways). As the Department of Justice noted in the competitive impact statement, the Air Transport Agreement between the United States and the United Kingdom, known as Bermuda 2, limits the number of airlines allowed to serve between the two countries, and the number of flights each airline may provide. The British Airways-USAir global alliance, which features coordinated services such as wet-leasing and code-sharing, would adversely affect overall U.S -flag competition against British Airways and reduce the U.S.-flag share of the U.S.–U.K. market if USAir were allowed to retain its three London routes.

However, American objects to any implication in the proposed decree that USAir is required to *sell* its London routes, as distinguished from relinquishing this authority for reassignment by the Department of Transportation to other U.S. carriers. As we show below, DOT has exclusive jurisdiction under section 401(h) of the Federal Aviation Act to determine the transfer of international route authority in the public interest. The final judgment should explicitly acknowledge DOT's jurisdiction to decide the terms on which USAir must give up these routes. American's position before DOT is that it would be contrary to the public interest under section 401(h) for USAir to sell its London authority where the proceeds would benefit British Airways.

In addition, the proposed decree is deficient because it would allow USAir to retain its London authority until 45 days after commencement of code-sharing between USAir and British Airways on the routes, and even that period would be tolled pending DOT procedures to transfer the routes. This provision not only leaves the timing of competitive entry within the control of USAir, but would give USAir a free hand to pursue its global alliance with British Airways without any divestiture or relinquishment obligation on an affected route so long as code-sharing is not offered on that route. In order to preserve competition against British Airways between the U.S. and the U.K., the final judgment should require USAir to cede all three routes immediately.

These and other issues are discussed below.

I. No Cause of Action Exists Against USAir Under Section 7 of the Clayton Act

Section 7 of the Clayton Act prohibits "person[s] engaged in commerce, or in any activity affecting commerce * * * [from] acquir[ing], directly or indirectly, the whole or any part of the stock or other share capital * * * of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly" (15 U.S C. 18). By its term, therefore, section 7 prohibits the act of acquiring, but does not prohibit being acquired. See 16B J. von Kalinowski, *Antitrust Laws and Trade Regulation*, § 15.02[2], at 15–20, n. 58 (1993).

Accordingly, no cause of action under Section 7 of the Clayton Act, as pled by the United States, lies against USAir. See *United States* v. *Coca-Cola Bottling Co. of L.A.*, 575 F.2d 222, 230 (9th Cir. 1978) (both sellers and buyers named as parties defendant; the court noted that "sellers in Section 7 cases are not technical violators of the law," but found that "if effective implementation of public policy cannot be decreed without adversely involving third parties [such as sellers] courts in equity may, within limits, involve such third parties in the relief to be granted"); *United States* v. *E.I. duPont de Nemours and Co.*, 177 F. Supp. 1, 10–11 (N.D. Ill. 1959) (both acquiror of stock and seller named as parties defendant; while relief can be granted against the seller under the court's equitable powers, the seller did not violate Section 7); *United States* v. *Phillips Petroleum Co.*, 367 F. Supp. 1226, 1239–1242 (C.D. Cal. 1973) (same); *United States* v. *Pabst Brewing Co.*, 183 F. Supp. 220, 221 (E.D. Wis. 1960) (same).

There is not a case or controversy before the Court, and the Court thus lacks jurisdiction over the matter. Counsel for the parties are no doubt conversant with these elementary principles of jurisdiction and with the scope of Section 7 of the Clayton Act. So, American must ask whether USAir is being rewarded, rather than punished, by the proposed consent decree, and if the former, whether the proposed decree was reached by an unstated collateral accommodation.

In the underlying Investment Agreement between British Airways and USAir consummated on January 21, 1993—two months *before* USAir entered into the proposed consent decree—USAir agreed to divest or relinquish its three U.S.-London routes (Section 10.5, reproduced in Attachment 4). In approving code-sharing and wet-leasing arrangements between BA and USAir by Order 93–3–17, March 15, 1993, p. 15, DOT relied on the fact that USAir had consented to give up its U.S.-London routes ("USAir is relinquishing its route authority in all of its U.S.-London markets, including markets involved in the wet lease for which USAir and BA held common authority. That authority will be available for other U.S. carriers, which can compete with BA in those markets. Thus, we find no evidence that the wet-lease agreement between USAir and BA will reduce competition in the markets involved or be contrary to the antitrust laws"). By entering into the proposed decree despite the United States' obvious lack of jurisdiction under section 7 of the Clayton Act, USAir had nothing to lose but a lot to gain.

One explanation for USAir's conduct is that it wanted the benefits of a consent decree that it could assert gives it the "right" to sell its London routes, despite the exclusive jurisdiction of the Department of Transportation to determine that issue. Indeed, as we show in Section II below, USAir has already filed a pleading at DOT asserting that a ruling by the agency denying USAir's pending applications to sell the routes to the highest bidder would "violate" the consent decree. Another consideration is that the proposed decree—which clearly benefits rather than punished USAir—comes at the same time as USAir's proposed stipulated settlement of the Government's controversial price-fixing allegations in *United States* v. *Airline Tariff Publishing Co.*, Civil Action No. 92–2854 (CHR) (D.D.C.).

American submits that, in order to determine that the proposed consent judgment is in the public interest as required by 15 U.S.C. 16(e), the Court should inquire into the process by which the terms of the judgment were reached, and the extent to which USAir's agreement with the Department of Justice to settle the *United States* v. *ATPCO* case was consideration for the highly favorable consent judgment here.

Indeed, by seeking a consent decree which it can bootstrap into claiming a "right" to sell the routes, USAir is, with the assistance of the Antitrust Division of the Department of Justice, attempting to use this Court to erect barriers to competitive entry into these markets. Were the Court to approve this scheme, the result would be to add multi-million dollar barriers to the entry of competition on the affected routes. Bids already received by USAir, conditioned *inter alia* on this Court's approval of the proposed decree, total $24.5 million. The correct resolution is for DOT to exercise its jurisdiction governing the disposition of these route authorities, which carries with it the responsibility to weigh the public interest in preventing "anticompetitive practices in air transportation and the avoidance of * * * unreasonable industry concentration, excessive market domination and monopoly power" (Federal Aviation Act, section 102(a)). Therefore, the consent decree provision permitting sale of these routes is anticompetitive in and of itself, and cannot serve as a remedy for violation of section 7 of the Clayton Act.

Moreover, the complaint alleges that the elimination of competition between British Airways and USAir constitutes a violation of section 7 of the Clayton Act. The complaint further alleges that this elimination of competition is accomplished by BA's acquisition of USAir stock, as well as the overlap on the U.S.-London routes. The relief sought fails to cure, or even address, the anticompetitive effects of BA's stock ownership, which is the financial support for the strategic alliance of the two carriers, intended to operate ultimately as one company. If, as the complaint alleges, the elimination of competition between British Airways and USAir violates section 7, then that violation can be cured only by an order requiring BA to divest itself of the stock ownership, and prohibiting it from exercising its option to acquire an even greater equity interest in USAir in the future. As a consequence, the Court should order that British Airways be joined as a party defendant in order that such complete relief may be considered.

The Tunney Act is intended to prevent abuses of the consent decree process. See S. Rep. No. 298, 93d Cong. 1st Sess. 5 (1973). By eliminating the "excessive secrecy" in the consent decree process, the Tunney Act seeks to ensure that antitrust violators do not use their economic power to obtain "back room" deals. Hearings on H.R. 9702, H.R. 9947, and S. 782, Consent Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee, 93d Cong. 1st Sess. 40 (1977) (hereinafter, "Hearings") (Testimony of Sen. Tunney). See also *United States* v. *American Tel. & Tel Co.*, 552 F. Supp. 131, 148 (D.D C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The procedures under the Tunney Act are aimed at creating a public record of the reasoning behind the Government's consent to the decree, in order to ensure that the public interest is served thereby. Hearings at 40 (Testimony of Sen. Tunney). The decree proposed to this Court may involve just the sort of collateral accommodation that the Tunney Act is intended to prevent. Accordingly, unless the Court dismisses this case for lack of jurisdiction, it should schedule an evidentiary hearing to determine all the facts and circumstances behind the proposed settlement between USAir and the Department of Justice.

II. The Department of Transportation Has Exclusive Jurisdiction to Determine Whether USAir May Sell Its London Routes

The transfer of international route authority from one carrier to another is governed by section 401(h) of the Federal Aviation Act, 49 U.S.C. 1371(h),

which provides that "No certificate may be transferred unless such transfer is approved by the Board [now DOT] as being consistent with the public interest." This vests exclusive jurisdiction within DOT to determine the disposition of routes, including whether routes may be bought and sold, under the applicable public interest standard. See *City of St. Louis* v. *DOT*, 936 F.2d 1528, 1534 (8th Cir. 1991) ("the ultimate question is whether the route transfers are 'consistent with the public interest.' * * * Congress wants the standard defined, in the first instance and in the main, by the Department of Transportation"); *Continental Air Lines* v. *CAB*, 443 F.2d 745, 758 n. 20 (D.C. Cir. 1971) ("the responsibility for a rational pattern of airline routes, making for a healthy industry and good air transport service for the public, is vested in the Board, not the courts"); *Railway Express Agency* v. *CAB*, 345 F.2d 445, 449 (D.C. Cir.), *cert. denied*, 382 U.S. 879 (1965) ("under the Federal Aviation Act, the Board is given exclusive authority and responsibility for the economic regulation of the air transportation industry, as therein defined").

The proposed decree fails to recognize the jurisdiction of the Department of Transportation to allow or disallow the sale of international route authority. Indeed, in a reply submitted to DOT in Docket 48761 on May 5, 1993 (Attachment 1), USAir is already claiming that the proposed judgment gives it the "right" to sell the routes. In that pleading, USAir goes so far as to asset that if its proposed route sales are not approved, that would "violate the consent decree" which "protects USAir's right to divest its assets for the highest value it can obtain" (pp. 2, 3).

However, nothing in the consent decree can preclude the Department from carrying out its statutorily authorized functions, including its power to allow or disallow route sales and transfers under the public interest standard established by Congress in Section 401(h). See *City of Pontiac, Michigan* v. *CAB*, 361 F.2d 810, 813–814 (6th Cir. 1966), *quoting Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 183(1941) ("Congress entrusted the Civil Aeronautics Board with the duty of promoting the development of a sound air transportation system. * * * 'Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy' "); *Kent* v. *CAB*, 204 F.2d 263, 266 (2d Cir.), *cert. denied*, 346 U.S. 826 (1953) ("A private contract must yield to the paramount power of the Board to perform its duties under the statute creating it to approve mergers and transfers of certificates, such as are here involved, only upon such terms as it determines to be just and reasonable in the public interest"). See also *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 79–88 (1944); *New York Shipping Ass'n* v. *FMC*, 854 F.2d 1338, 1371–1372 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989); *Marquette Cement Mfg. Co.* v. *FTC*, 147 F. 2d 589, 594 (7th Cir. 1945). The proposed decree simply cannot create a "right" that exists apart from DOT's jurisdiction to determine the public interest under the Federal Aviation Act.

American's opposition to USAir's proposed sales of the three U.S.-London routes it is required to give up is detailed in several pleadings that American filed at DOT in April and May 1993 (Attachment 2):

1. There is no public interest justification under Section 401(h) for allowing USAir—as party to an investment agreement under which it has agreed to use its "best efforts" to become controlled by British Airways and achieve a total integration with BA's worldwide network—to sell its London routes. These are U.S. franchises, negotiated by our Government for use by U.S. carriers in the public interest and *not* for the monetary benefit of British Airways.

2. Under section 10.5 of the BA–USAir Investment Agreement of January 21, 1993, USAir will either participate in a profit-sharing arrangement with BA on the routes it must give up—with unlimited potential returns—or BA will "reimburse" USAir for any "losses suffered by [USAir] in the divestiture or relinquishment of [its] U.K. routes" up to an amount totalling $50 million (Attachment 3). In its Prospectus of April 28, 1993, USAir informed its shareholders that the U.K. routes "were carried on its books at approximately $48.7 million at December 31, 1992, and the Company expects to recover such amount in full from the sale of the routes *or pursuant to the provisions of the Investment Agreement described above*" (p. 35, emphasis added) (Attachment 4). In effect, British Airways has guaranteed that USAir will receive some $50 million for ceding its U.S.-London routes, even it these routes cannot be sold.

3. Routes sales occur only in the context of restrictive agreements, such as Bermuda 2, which is presently in force between the U.S. and the U.K. Under an "open skies" agreement—which Secretary of Transportation Pena has promised to seek from the U.K. this year—the value of an international route is zero. It would be incongruous for the U.S. to be processing London route sale applications, and declaring that it is in the public interest for a U.S. carrier or community to pay for these routes, while the U.S. is seeking to dismantle the very agreement that gives the routes value.

To be sure, it is not within the purview of the Court to decide whether or not it is in the public interest for USAir to be allowed to sell its London routes. As established by Congress, that role rests with the Department of Transportation under the Federal Aviation Act. By the same token, the Court should not approve a proposed consent decree that in any way implies that USAir has been given the "right" to sell the authority in issue.

Accordingly, if the Court does not dismiss this case for lack of jurisdiction, all references to the sale of USAir's London routes should be removed from the proposed decree. Consistent with DOT's exclusive jurisdiction to determine this matter, we urge that section V deleted, and that section IV be amended to read as follows:

> USAir is hereby ordered and directed to divest or relinquish each U.S.-U.K. Route on terms approved by plaintiff and subject to decisions with respect to these routes by the Department of Transportation under applicable provisions of the Federal Aviation Act, 49 U.S.C. 1301, et seq.

With respect to the timing of USAir's obligation to cede these routes, American believes that should occur immediately, as explained in the final section of these comments.

III. USAir Should Be Required To Cede Its Three London Routes Immediately

Under the terms of the proposed final judgment, USAir is not required to divest any of its London routes until 45 days after "that route's Commencement Date," meaning the date on which USAir and British Airways begin holding out to the public code-sharing service "at the U.S. gateway for that route" (Sections IV.A and II.D). "Code-sharing service" is defined as "scheduled airline passenger service between cities, all or part of which is operated by one airline but which is identified with the airline designator code of another airline" (Section II.E).[1]

[1] By the way "code-sharing service" is defined, wet-leasing operations provided by USAir on BA's U.S.-London routes would also be included. Otherwise, there would be a large loophole in the proposed consent decree, since USAir has not yet

Continued

Thus, despite the fact that USAir and British Airways have already entered into a global alliance and are holding out coordinated international services to the public (see Attachment 5), the proposed consent decree in effect leaves it up to USAir to determine the timing of competitive entry by another U.S. carrier or carriers over the routes USAir must relinquish.

Clearly, USAir should be required to give up its London routes now. This authority was granted to USAir in the first instance to maximize U.S. carrier competition against U.K.-flag carriers operating in the U.S.-London market. As of January 21, 1993—the date British Airways invested $300 million in USAir and the two carriers agreed to a global alliance—USAir ceased to be an effective competitor against British Airways. It would be contrary to the public interest and to competition policy for the U.S. Government to allow USAir to retain its London authority for any further period of time.

For these reasons, in the event the Court does not dismiss this case for lack of jurisdiction, the provisions in the proposed consent decree allowing USAir to hold on to each of its three London routes until at least 45 days after code-sharing begins on "that route" should be deleted. Instead, the final judgment should order USAir to cede its London authority immediately. That would facilitate restoration of the full measure of competition between US. gateways and London that was lost when USAir effectively ceased to compete with British Airways on January 21, 1993.

Respectfully submitted,

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May 28, 1993.

Before the Department of Transportation, Office of the Secretary, Washington, DC.: Joint Application of Northwest Airlines, Inc. and USAir, Inc. for a certificate transfer pursuant to Section 401(h) of the Federal Aviation Act of 1958, as amended (Baltimore-London), Docket 48761.

Joint Reply of Northwest Airlines, Inc. and USAir, Inc. to Answers of American, Continental, Delta and Raleigh/Durham

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May 5, 1993.

Before the Department of Transportation, Office of the Secretary, Washington, DC; Joint Application of Northwest Airlines, Inc. and USAir, Inc. for a certificate transfer pursuant to Section 401(h) of the Federal Aviation Act of 1958, as amended (Baltimore-London), Docket 48761.

Joint Reply of Northwest Airlines, Inc. and USAir, Inc. to Answers of American, Continental, Delta and Raleigh Durham

Northwest Airlines, Inc. ("Northwest") and USAir, Inc. ("USAir"), pursuant to the Department's Notice, served April 23, 1993, hereby submit this joint reply to the answers of American Airlines, Inc. ("American"), Continental Airlines, Inc. ("Continental"), Delta Air Lines, Inc. ("Delta") and Raleigh/Durham.[1]

Each of these carriers has peppered the Department with applications for new U.K. route authority. What distinguishes these applications from Northwest's is the fact that none of these applicants valued new U.K. route authority enough to offer USAir a dime to buy its rights. Northwest, on the other hand, has agreed to pay USAir $5 million for the right to obtain its Baltimore-London authority and transfer it to Detroit. This fact alone demonstrates that Northwest's urgent desire to offer London service from its largest hub constitutes the highest and most productive use of USAir's Baltimore-London authority. The timely transfer of that authority to Northwest should not be derailed by the fact that other carriers have now composed wish lists for new authority that they claim to want but were unwilling to buy.

The opponents of the proposed transfer urge the Department to second-guess the market by conducting a carrier selection proceeding to reassign USAir's U.S.-London routes. That approach would both violate the consent decree the United States entered with USAir and violate longstanding Department precedent and policy to rely principally on market forces to govern the transfer of route rights. Fidelity to the consent decree and its own precedents requires that the Department promptly approve the proposed route transfer.

I.

The Antitrust Consent Decree Requires That USAir be Given an Opportunity to Divest Its U.K. Routes

The opponents of the Northwest-USAir transfer have ignored the fact that the divestiture of USAir's three London routes is governed by a consent decree between USAir and the United States. *United States* v. *USAir Group, Inc.*, Civil Action No. 93–0530 (D.C.C. March 15, 1993). The consent decree, consistent with consent decrees in all other antitrust divestiture cases, clearly protects USAir's right to divest its assets for the highest value it can obtain. For the Department now to deprive USAir of this right would be utterly inconsentent with the provisions of the agreement reached between the United States and USAir and with fundamental competition policy.

Part IV of the decree clearly, explicitly and quite deliberately grants USAir a period of time to sell each of its routes. Specifically, USAir must sell each route within 45 days after the commencement of BA-USAir code-share operations at that gateway. Further, the 45-day period is tolled during the pendency of a transfer application before the Department pursuant to Section 401(h). Thus, if the Department were to disapprove a proposed transfer, USAir would have the balance of the 45-day period to negotiate an alternative sale. In addition, Part IV provides that USAir may request additional time to divest any of its routes, which the Justice Department may grant. It is only after the time permitted under Part IV, including any extensions the Justice Department may grant, has expired that USAir is obligated under Part V to

proposed beyond-gateway code-sharing service on the Baltimore or Charlotte routes. To remove any ambiguity on this point, Section II.E should be amended to state specifically that "code-sharing service" includes wet-lease operations.

[1] For the reasons set forth herein, Northwest and USAir also oppose motions to modify the scope and/or to consolidate filed by Continental (with Dockets 48755 and 48756), Delta (with Docket 48757) and Tower (with all pending applications).

relinquish its authority to the Department.

The purpose of these provisions is to insure that USAir is not required to divest its property for nothing or at fire-sale prices, while at the same time insuring the relief required under the antitrust decree is accomplished promptly. These provisions give effect to the longstanding principle that divestitures order in civil antitrust cases may not be "punitive." *United States* v. *E. I. Du Pont De Nemours*, 366 U.S. 316, 326 (1961). More broadly, they give effect to fundamental competition policies of the United States. U.S. competition policy recognizes the need not only to prevent anticompetitive mergers and investments, but to "avoid deterring the larger universe of procompetitive or competitively neutral mergers." U.S. Department of Justice Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) Para 13,104 (1992). Mergers and investments that create efficiencies and do not result in anticompetitive effects are desirable and should be encouraged. Curative divestiture orders, such as that in *USAir*, permit otherwise efficient transactions to occur by eliminating the assets or lines or business that may give rise to potential anticompetitive effects. If parties to potential mergers or investments faced the prospect that valuable assets would be lost without compensation because of the transaction, they would refrain from entering agreements that otherwise would be productive and efficient. Such a needless restraint on the efficient allocation of assets and resources would be contrary to sound competition policy.

Accordingly, antitrust divestiture decrees uniformly afford the divesting party a reasonable opportunity to divest the assets at a fair market price. Thus, for example, the consent decree in *United States* v. *Texas Commerce Bancshares, Inc.*, 1993 Trade Reg. Rep. Para. 50,743 (February 11, 1993), accords the defendant three months from the entry of the decree to divest the assets subject to the order, with a further provision that it the assets are not divested in that period a trustee will be appointed to divest the assets "at such price and on such terms as are then obtainable upon a reasonable effort by the trustee." [2]

The *USAir* divestiture decree is in accord with these fundamental competition policies. USAir, like Texas Commerce Bancshares and parties to other divestiture decrees, is to be accorded a reasonable opportunity to sell its assets at the best market price it can obtain. Only if fails to do so in the period allowed under Part IV of the Decree is it then required to relinquish them (without compensation) to the Department. In this way USAir is able to consummate its agreement with British Airways—an agreement the Department concluded in Order 93–3–17 created procompetitive efficiencies and was in the public interest—without subjecting USAir to a punitive divestiture regime.[3]

The opponents of the proposed transfer in effect ask the Department to strip USAir of the right to sell these assets, punishing USAir in a way unlike any other party subject to an antitrust divestiture order. Nothing could be more at odds with the consent decree and settled antitrust policy.

At the most extreme, American, Delta and Raleigh/Durham argue that the Department simply should not permit USAir to sell its route rights to anyone. To the same effect are arguments that the proposed route transfer be considered in a larger comparative proceeding in which the Department would select carriers and gateways for the USAir routes. Delta argues that such a comparative proceeding is in order because Northwest proposes to transfer the service from Baltimore to Detroit. Delta's reliance on Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc., Orders 91–3–20 and 91–4–3, to support this argument is misplaced. That case involved a voluntary transfer agreement, not a divestiture mandated by an antitrust consent decree, and there were no competing antitrust policies to consider.[4] The effect of Delta's argument in this context would be to prevent USAir from divesting the route to anyone, even though the route is movable under the bilateral. Such a result would clearly be at odds with the decree.[5]

In sum, this is not an ordinary route transfer. Rather, it is a route divestiture being performed to satisfy the mandate of an antitrust consent decree. Well-established competition policy requires that such a divestiture be accomplished without "deterring the larger universe of procompetitive" transactions. Under section 102(a)(4) of the Act, the Department is required to exercise its duties under the Act in a manner that furthers these competition policies in the air carrier industry. The Department, therefore, in fulfilling its responsibilities under the Federal Aviation Act, can and should give effect to these fundamental competition policies by refusing to succumb to other carriers' demands to convert this route transfer agreement into a comprehensive comparative proceeding—a proceeding that would serve no purpose other than to prevent the sale of USAir's routes to anyone.

II.

The Department's Precedents Require Approval of the Proposed Transfer

The Department's precedents for considering route transfers under section 401(h) are clear. The Department "generally approve[s] such transfers unless they conflict with important international aviation policy objectives or are otherwise inconsistent with the public interest." Joint Application of Delta Air Lines, Inc. and Pan American World Airways, Inc., Order 91–9–53, p. 3.[6] The proposed Northwest-USAir

[2] *See also, e.g., United States* v. *Society Corp. and Ameritrust corp*, 1992–2 Trade Cases (CCH) Para. 69,892 (six months to divest assets before appointment of trustee); *United States* v. *Tidewater, Inc.*, 1992–1 Trade Cases (CCH) Para. 69,782 (four months to divest assets before appointment of trustee); *United States* v *Fleet/Norstar Financial Services, Inc.*, 1991–2 Trade Cases (CCH) Para. 69,646 (six months to divest assets before appointment of trustee).

[3] In some respects , the *USAir* decree is less generous than the typical antitrust divestiture order, under which a trustee would still try to sell the assets for the benefit of the divesting party at the expiration of the divestiture period. If USAir fails to sell the rouge rights in time, it will lose any economic interest in them.

[4] As the Department has recognized in the past, the *Ashbacker* doctrine on which Delta relies "'is basically a rule of procedural fairness in comparative consideration [that] must be applied with common sense and in a practical fashion' [quoting *Delta Air Lines* v. *CAB*, 497 F.2d 608, 612–13 (D.C. Cir. 1973)] and that it does not require the Board to change the 'fundamental purpose' of a proceeding [quoting *Eastern Air Lines* v. *CAB*, 247 F.2d 562, 565 (D.C. Cir. 1957)]." Braniff South American Route Transfer Case, Order 82–9–61, p.8.

[5] Notably, the Justice Department considered and explicitly rejected any requirement that USAir sell the route only for service at a specific point, concluding that such a limitation could "harm airline passengers traveling to London as a whole by producing an inefficient allocation of the limited authority to serve London." *United States* v. *USAir Group, Inc.*, Proposed Final Judgment and Competitive Impact Statement, 58 *Fed. Reg.* 16698, 16702 (March 30, 1993).

[6] *See also Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc.*, Order 92–6–59, p.6; *Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc.*, Order 92–6–30, *finalized*, Order 92–7–9; *Joint Application of Trans World Airlines, Inc. and USAir, Inc.*, Order 92–3–51, *finalized*, Order 92–4–49; *Joint Application of America West Airlines, Inc. and Northwest Airlines, Inc.*, Order 92–1–39, *finalized*, Order 92–3–47; *Joint Application of American Airlines, Inc. and Trans World Airlines, Inc.*, Order 91–3–28; *Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc.*, Order 91–1–11, *finalized*, Order 91–2–5; *Joint Application of American Airlines, Inc. and Trans World Airlines, Inc.*, Order 91–1–12, *finalized*, Order 91–1–72; *Joint Application of American Airlines, Inc., Eastern Air Lines, Inc., and Continental Airlines, Inc.*, Order 90–4–11, *finalized*, Order 90–8–5.

VOL 58 ISS 130 JL 9 1993 UMI

transfer is entirely consistent with U.S. international aviation policy objectives and no opponent of the proposed transfer has offered any argument that would justify a departure from these precedents.

The policy underlying the Department's route transfer precedents is that the market, not the Department, is better able to identify the highest economic use of limited route rights. As the Department stated in its Final Order in Delta-Pan Am, "[s]ince deregulation of the air transport industry, we have found that the marketplace is generally a far better allocator and provides a far more efficient solution in the long term than does government interference." Order 92–4–33, p.20. This "market for foreign routes" has been expressly approved by the Court of Appeals, *City of St. Louis* v. *Department of Transportation*, 936 F.2d 1528, 1537 (8th Cir. 1991), and has served as the legal predicate for the Department's approval (without comparative proceedings) of the transfer of substantial amounts of international route authority.

The Northwest-USAir transaction is a classic example of the marketplace at work. As the Department well-knows, Northwest was unsuccessful in its efforts to acquire Pan American's Detroit-London route, which was sold to Delta in 1991 together with the balance of Pan Am's European route system, and Northwest remains committed to obtaining the rights to serve London from its largest hub.[7] For that reason, Northwest places a high value on the USAir route rights and is prepared to pay $5 million to obtain the Baltimore-London route if it can be transferred to Detroit in time for the 1993 summer season. In contrast, other carriers who now claim to want to serve London from various U.S. points (including points that could have been served with no amendment to the bilateral) were unwilling to spend anything for the routes. Under the Department's precedents, the proposed transfer to Northwest should be deemed the highest and more efficient use of the Baltimore-London route authority.

In opposing the transfer, Continental has labelled it as "fictitious" because it involves both the sale of the Baltimore authority and the transfer of the authority to Detroit. Delta similarly argues that the proposed transfer of authority to Detroit must trigger an *Ashbacker* comparative hearing. There is, of course, nothing fictitious about the $5 million Northwest will pay for the route authority if the transfer is approved. Nor is there any dispute that Continental and Delta were afforded exactly the same opportunity to buy USAir's rights and they elected not to do so, even though, as they point out in their own application, the authority could be transferred to Cleveland or Salt Lake City without any adjustment in the bilateral. Their failure to do so, together with the absence of any other evidence of a burning interest to serve these markets, strongly suggests that the real purpose of their competing applications is to put before the Department their own wish lists for the pending U.S.-U.K. negotiations. While understandable—Northwest has its own wish list as well—the presence of such future ambitions should not be allowed to torpedo a concrete transaction before the Department. *Ashbacker*, after all, only applies to "bona fide" applications that are mutually exclusive.[8]

While invoking *Ashbacker*, Delta ignores the fact that the Department has consistently concluded that *Ashbacker* does not apply to applications where the authority at issue could not be awarded to any other applicant. See, *e.g., Application of American Airlines, Inc. (Chicago-Milan/Rome)*, Order 90–10–46; *Application of Northwest Airlines, Inc. (U.S.-Australia*, Order 91–8–30. In this case there would be no authority to award to other carriers if the transfer is disapproved; the Baltimore-London authority remains with USAir. USAir has the right to continue operating on that route as well as the right, preserved under its consent decree with the United States, to attempt to sell its authority to another bidder in the event that the instant route transfer application, on its merits, is disapproved. Under these circumstances, the Department should adhere to its well-established policy not to expand the scope of route transfer proceedings under Section 401(h) into generalized Section 401(d) carrier selection proceedings. See, *e.g., Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc.*, Order 92–9–59.

American argues that the Northwest-USAir transfer application should be dismissed on the ground that it is the Department's policy not to entertain requests for international routes "that do not exist." In point of fact, however, the route does exist and the bilateral permits it to be moved; thus, the only bilateral issue is whether the U.K. would permit it to be moved to Detroit. There is ample precedent in such circumstances for the Department to rule on an application even when there is uncertainty that the foreign government will grant the corresponding approvals.

For example, in Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., Order 91–2–5, the Department approved the transfer of the bulk of Pan Am's U.S.-London authority subject to the condition that the U.K. permit United to operate to Heathrow. In the Show Cause Order, the Department observed "[W]e have always been reluctant to predicate our regulatory decisions on the possible posture a foreign government might assume in response," and "we cannot allow the inability [to predict precisely the future character of any bilateral relationship] to hamstring our regulatory process." Order 91–1–11, p. 9, n.30. See also, Joint Application of American Airlines, Inc. and Trans World Airlines, Inc., Order 91–1–12, *finalized*, Order 91–1–72 (U.S. undertook to seek permission to permit American to serve Heathrow); Application of American Airlines, Inc. (Chicago-Milan/Rome), Order 90–10–46 (grant of authority dependent on further negotiations with Italy); U.S.-London Case (1982), Order 82–4–64 (selection of Air Florida for Newark-London service even though British Airways had already exercised its right to choose the Newark gateway and invoked the market protection provision of the bilateral). Thus, the fact that the proposed Northwest USAir transfer would require the consent of the U.K. cannot, consistent with the Department's precedents, preclude approval of the transfer application.

American further argues that the United States should not engage in "piecemeal" negotiations with the U.K. to seek specific new routes requested by individual carriers. While Northwest supports a comprehensive liberalization of the U.S.-U.K. agreement, that undertaking is not inconsistent with also securing U.K. consent to the

[7] Northwest has sought judicial review of the Department's decision approving the transfer of Pan Am's Detroit-London authority to Delta. *Northwest Airlines, Inc.* v. *U.S. Department of Transportation*, Case No. 92–1251 (D.C. Cir.).

In addition, there remains pending in Docket 48090 the joint application of Northwest and Pan Am to transfer Pan Am's Detroit-London authority to Northwest pursuant to a back-up contract between Northwest and Pan Am, approved by the Pan Am bankruptcy court, that Northwest and Pan Am contend came into effect upon Delta's breach of its contract with Pan Am.

[8] In light of the Department's commitment to secure a substantial liberalization of the U.S.-U.K. aviation regime, it is not clear that the competing applications are even mutually exclusive. Neither Continental nor Delta propose service start-up dates in their respective Cleveland and Salt Lake City applications (in contrast to Delta's New York-London application, which commits to start service by July 15, 1993).

transfer of USAir's Baltimore-London authority to Northwest for operation at Detroit. Northwest believes that there is every reason to expect that the U.K. will be receptive to this request, if for no other reason than to save British Airways the $5 million it might otherwise be obligated to pay USAir under the indemnity provisions of the investment agreement. Moreover, the U.K. authorities recently granted extrabilateral authority for American Trans Air to operate to Belfast and made a point of stating that the action was intended as a gesture of good faith in the larger U.S.-U.K. talks. Under these circumstances, the Department surely should not deny the proposed transfer on the supposition that the U.K. will not approve.

American (and Delta) also argue that USAir should not be allowed to sell its routes to anyone—an especially convenient argument for parties that elected not to bid for the routes. (American, of course, is well-positioned to have it both ways, having agreed to operate on the Charlotte-London route that Nashville purchased on its behalf.)

Such an action by the Department not only would be directly at odds with the *USAir* consent decree, as discussed above, but would be wholly without precedent. American cites no legal predicate for disapproving the route transfer merely on the grounds that approval may free British Airways of a portion of its indemnification obligation to USAir.[9] We know of no case in which the Department has disapproved a transfer on the ground that it may benefit a foreign carrier.[10] Rather, the Department has approved marketplace route transfers in the past because it has found the marketplace to be most efficient means to allocate routes—not because it approved of who benefits economically from the transfer.

In sum, the arguments advanced by the opponents of the transfer have failed to make any case that the proposed transfer "conflicts with important international aviation policy objectives" or otherwise is inconsistent with the public interest. In the absence of such a showing, the Department's precedents clearly require that the proposed transfer be approved.

Conclusion

Wherefore, Northwest Airlines, Inc. and USAir, Inc. respectfully request that the Department deny all motions to modify scope or to consolidate and that the Department grant this application and approve the transfer of USAir's Baltimore-London authority to Northwest.

Respectfully submitted,

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May 5, 1993.

Before the Department of Transportation, Washington, DC: Application of American Airlines, Inc. for a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (Raleigh/Durham-London), Docket 48744.

Petition of The Raleigh-Durham Parties to transfer the designation of U.S. Point D from Charlotte, NC to Raleigh-Durham, NC as U.S. gateway to London on U.S. route 1 of the U.S.-U.K. Air Services Agreement, Docket 48743.

Reply of American Airlines, Inc.

Communications with respect to this document should be sent to:

Donald J. Carty, Executive Vice President, Finance and Planning, American Airlines, Inc., P.O. Box 619616, MD5624, DFW Airport, Texas 75261

David A. Schwarte, Associate General Counsel, American Airlines, Inc., P.O. Box 619616, MD5675, DFE Airport, Texas 75261

Carl B. Nelson, Jr., Associate General Counsel, American Airlines, Inc., 1101 17th Street, NW., Suite 600, Washington, DC 20036, (202) 857–4228

April 22, 1993.

Before the Department of Transportation, Washington, DC: Application of American Airlines, Inc. for a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (Raleigh/Durham-London), Docket 48744.

Petition of the Raleigh-Durham Parties to transfer the designation of U.S. point D from Charlotte, NC to Raleigh-Durham, NC as U.S. Gateway to London on U.S. Route 1 of the U.S.-U.K. Air Services Agreement, Docket 48743.

Reply of American Airlines, Inc.

American Airlines, Inc., pursuant to the Department's Notice of April 13, 1993, hereby replies to the answers submitted in the captioned dockets on April 19, 1993, the Continental Airlines, Inc., Delta Air Lines, Inc., Trans World Airlines, Inc., and USAir, Inc.

As we show below, the Department should promptly begin proceedings to transfer to the Raleigh/Durham gateway the Charlotte-London route USAir must relinquish, and award Raleigh/Durham-London authority to American. American is ready, willing, and able to begin such service at the earliest possible date, and is prepared to demonstrate to the Department that moving the Charlotte route to Raleigh/Durham—which is authorized by Bermuda 2 and requires no negotiations with the U.K. to accomplish—represents the best public use of this authority.

In the following sections, American specifically replies to each of the answers in these dockets.

1. Continental

In its answer, Continental claims that various applications it has filed—for authority to Heathrow from Newark, Denver, and Houston, for a Newark-Manchester route, and for a Cleveland-London route—should have a higher priority than Raleigh/Durham-London. With the exception of Cleveland-London, none of this authority can be granted to Continental under Bermuda 2. Continental's requests for such authority should be dismissed on the well-established ground that the Department will not entertain applications for international routes that do not exist. See *Chicago-Japan Applications, Dismissal*, Order 89–4–6, April 4, 1989, p. 4 (at a time when additional entry between Chicago and Japan was not authorized by the U.S.-Japan Air Transport Agreement, "we believe it would be inconsistent with the current aviation regime and would undermine our negotiations objectives for the Department to authorize additional carriers to serve the Chicago-Tokyo market at this time"); *U.S.-Vancouver Applications, Dismissal*, Order 87–6–52, August 24, 1987, p. 2 ("where limited entry routes not provided for in bilateral agreements are at issue, it is our general policy not to award U.S. carriers new route rights unless we have first obtained those

[9] Nor is there any merit to American's argument that the route transfer should not be allowed because USAir is controlled by British Airways. Regardless of what American may believe, the Department has determined in Order 93–3–17 that USAir is not under the control of British Airways and the Department surely cannot disapprove the proposed route transfer on the grounds, as American contends, that it is.

[10] Were the Department to go out of its way, as American recommends, to disapprove a route transfer simply because it would result in an economic benefit for British Airways, it could hardly be viewed as a positive gesture by U.K. authorities and would only serve to undercut the U.S. initiative to negotiate a liberalized aviation regime with the U.K.

VOL 58 ISS 130 JL 9 1993 UMI

rights from the foreign governments involved"); *TWA Exemption, Dismissal*, Order 85–9–1 September 1, 1985, p. 3 ("our general policy on limited-entry routes not provided for in bilateral aviation agreements is to negotiate new route rights in advance of awarding new certificate authority"); *American Airlines, Chicago-London Dismissal*, Order 85–4–44, April 9, 1985, p. 4 ("we believe this approach—*i.e.*, negotiate route rights first and then later conduct a proceeding to select a carrier for the route—is a sensible policy").

Nor should the Department enter into piecemeal negotiations with the U.K. to seek specific new routes sought by individual carriers. When the Department authorized code-sharing and wet-lease arrangements between British Airways and USAir by Order 93–3–17 on March 15, 1993, it did so for one year only, with the full expectation that during that period the restrictive and anticompetitive Bermuda 2 agreement would be dismantled in favor of a true "open skies" regime.

Secretary Pena announced then that "I have communicated with the appropriate officials in the British government the need to re-negotiate the current bilateral agreement entered into by an earlier administration. I strongly believe that we must eliminate restrictions that undermine competition and which limit U.S. carriers access to the British markets. * * * [T]he Administration will pursue a new agreement this year that incorporates 'open skies' provisions. * * * And let me . . . emphasize to all that the approvals granted to BA and USAir are fixed at one year."

Yesterday, speaking before a joint meeting of the Aero Club and the International Aviation Club in Washington, D.C., Secretary Pena reiterated the Department's commitment to replacing Bermuda 2 with an "open skies" agreement: "By allowing the first stage of the BA-USAir deal to go forward, we have fulfilled our commitment under the existing bilateral but we are firmly committed to renegotiating our agreement with the U.K. to obtain improved market access for U.S. carriers. * * * [W]e are pursuing a new agreement that would incorporate 'open skies' provisions. * * * [T]he aim of [the new agreement] is to replace the restrictions in the current air services agreement with a regime that enables airline managements to determine the price and supply of air services."

Accordingly, engaging in negotiations with the U.K. to seek anything short of "open skies" would be an abandonment of the Secretary's clear commitment.

As for the Cleveland-London route, it is true that under Bermuda 2 the Baltimore or Charlotte gateways could be moved to Cleveland by the Department without any negotiations with the British. But American's Raleigh/Durham-London and Nashville-London service would provide far greater public benefits than Continental's Cleveland-London proposal. Geographically, Cleveland is bracketed by London gateways at Cincinnati and Detroit; moreover, Continental's operations at Cleveland—consisting of just 76 daily jet departures—are far smaller than American's at either Raleigh/Durham or Nashville. Both Raleigh/Durham and Nashville have been seeking a London route for many years; Raleigh/Durham would balance the pending BA-USAir alliance at Charlotte with a strong U.S. presence in the growing southeast region, while Nashville would open an entire section of the country to new London service. There is no compelling reason to transfer either of USAir's moveable gateways to Cleveland.

2. Delta

Delta's answer touts its application for one route—Salt Lake City-London—and yet opposes American's applications for Raleigh/Durham-London and Nashville-London without explaining why both should denied to preserve one opportunity for Delta. In any event, while one of USAir's moveable routes could be switched to Salt Lake City under Bermuda 2, that would not represent the best use of this authority. Salt Lake City has no history of civic efforts to secure U.K. route authority, and no obvious community of interest with London in terms of multinational corporations or other business interests.

While Delta would obviously prefer to avoid the vigorous competition that American's proposed Raleigh/Durham and Nashville to London service would bring to bear against Delta's entrenched Atlanta-London and Cincinnati-London operations, there is not much reason for the Department to look to Salt Lake City as a viable London gateway.

3. TWA

TWA's answer is entirely gratuitous and should be disregarded. TWA says it is applying for New York-London/Stansted authority, but "is not seeking Nashville-London or Raleigh/Durham-London authority, nor does it seek to switch the Baltimore or Charlotte gateways to other U.S. gateways" (p. 2). It nonetheless goes on to complain about "Big Three" dominance and other matters; we dispute each of TWA's unfounded allegations. In the absence of competing applications for the Baltimore or Charlotte routes that qualify under Bermuda 2, TWA simply has no standing to participate in these dockets.

4. USAir

In its answer, USAir says it is "currently seeking a buyer for its Charlotte-London authority" and that the Department "has a long-standing policy of approving market-based route transfers" (p. 2), and complains that "American has not offered to purchase USAir's Charlotte-London route" (p. 3).

USAir should not be allowed to sell any of its London route authority. It would be contrary to the public interest of the United States—and unprecedented in CAB or DOT proceedings under section 401(h)—for our Government to authorize the sale of U.S. routes by a U.S. airline controlled or seeking to become controlled by the very foreign airline that would directly benefit from the proceeds of the sale.

There is no conceivable public interest justification for allowing USAir—as party to an investment agreement under which we believe it is already controlled by British Airways and under which it has agreed to use its "best efforts" to achieve a total integration with BA's worldwide network—to sell its London routes.

These are U.S. franchises, negotiated by our Government not for the monetary benefit of British Airways but for use by U.S. carriers in the public interest.[1]

Approving the sale of London routes by USAir would contravene important U.S. policy objectives in international aviation. Route sales occur only in the context of restrictive agreements. Under an "open skies" agreement—which Secretary Pena has promised to seek from the U.K. this year[2]—the value of

[1] Moreover, as the Metropolitan Nashville Airport Authority pointed out in its Reply to the United-USAir transfer application (Philadelphia-London) in Docket 48722 on April 19, 1993, USAir will not be prejudiced if the Department refuses to allow it to sell its London routes: "Under the terms of its January 21, 1993 Investment Agreement with British Airways, USAir may do either one of two things. It may . . . share in the profits generated by British Airways' operations on certain London routes. * * * Alternatively, British Airways may pay USAir up to $50 million to compensate for losses associated with divestiture of the London routes * * * As the Investment Agreement makes clear, USAir will be left whole under any given scenario, even without the sale of its London routes. Permitting USAir to 'double dip' by selling these routes would unjustly enrich USAir and would have the perverse effect of benefitting British Airways" (pp. 10–11).

[2] USAir is publicly opposed to the Secretary's desire for rapid replacement of Bermuda 2 with an "open skies" regime. In a speech before the International Aviation Club on March 16, 1993, Seth E. Schofield, Chairman, President, and CEO of USAir, said this: "My advice to Secretary Pena: Put

an international route is zero. If the U.S. Government entertains route sale proposals from USAir, that would be the strongest imaginable signal to the U.K. Government—and to British Airways—that the U.S. is not serious about doing away with Bermuda 2 and all of its restrictions and entry barriers. It would be utterly incongruous for the U.S. to be processing London route sale applications—and declaring that it is in the public interest for a U.S. carrier to buy these routes—while the U.S. is seeking to dismantle the very agreement that gives the routes value. Allowing any such sales during what the Administration has pledged are the final months of Bermuda 2's existence would hopelessly conflict with important international aviation policy objectives.

Conclusion

For the foregoing reasons, the Department should move USAir's Charlotte-London route to Raleigh/Durham pursuant to Annex 1, Section 6, paragraph 7 of Bermuda 2, and grant American's application for Raleigh/Durham-London authority in Docket 48744.

Respectfully submitted.

Carl B. Nelson, Jr.,

Associate General Counsel, American Airlines, Inc.

April 22, 1993.

Before the Department of Transportation, Washington, DC: Application of American Airlines, Inc. for a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (Nashville-London), Docket 47726.

Reply of American Airlines, Inc.

Communications with respect to this document should be sent to:

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your toe in the water first. Do it gradually. Do not make the mistake of diving in. * * * Insisting on an instant grant of 'Open Skies' will only lead to deadline." The Northwest-USAir transfer proposal is tailor-made to thwart "open skies" negotiations, and Mr. Schofield's remarks clearly reflect the controlling influence of British Airways in this matter.

April 22, 1993.

Before the Department of Transportation, Washington, DC: Application of American Airlines, Inc. for a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (Nashville-London), Docket 47726.

Reply of American Airlines, Inc.

American Airlines, Inc., pursuant to the Department's Notice of April 13, 1993, hereby replies to the answers submitted in this docket on April 19, 1993, by Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., USAir, Inc., and the State of Maryland.

As we show below, the Department should promptly begin proceedings to transfer to the Nashville gateway the Baltimore-London route USAir must relinquish, and award Nashville-London authority to American. American is ready, willing, and able to begin such service at the earliest possible date, and is prepared to demonstrate to the Department that moving the Baltimore route to Nashville—which is authorized by Bermuda 2 and requires no negotiations with the U.K. to accomplish—represents the best public use of this authority.

In the following sections, American specifically replies to each of the answers in this docket.

1. Continental

In its answer, Continental claims that various applications it has filed—for authority to Heathrow from Newark, Denver, and Houston, for a Newark-Manchester route, and for a Cleveland-London route—should have a higher priority than Nashville-London. With the exception of Cleveland-London, none of this authority can be granted to Continental under Bermuda 2. Continental's requests for such authority should be dismissed on the well-established ground that the Department will not entertain applications for international routes that do not exist. See Chicago-Japan Applications, Dismissal, Order 89–4–6, April 4, 1989, p. 4 (at a time when additional entry between Chicago and Japan was not authorized by the U.S.-Japan Air Transport Agreement, "we believe it would be inconsistent with the current aviation regime and would undermine our negotiations objectives for the Department to authorize additional carriers to serve the Chicago-Tokyo market at this time"); U.S.-Vancouver Applications, Dismissal, Order 87–8–52, August 24, 1987, p. 2 ("where limited entry routes not provided for in bilateral agreements are at issue, it is our general policy not to award U.S. carriers new route rights unless we have first obtained those rights from the foreign governments involved"); *TWA Exemption, Dismissal,* Order 85–9–1, September 1, 1985, p. 3 ("our general policy on limited-entry routes not provided for in bilateral aviation agreements is to negotiate new route rights in advance of awarding new certificate authority"); *American Airlines, Chicago-London Dismissal,* Order 85–4–44, April 9, 1985, p. 4 ("we believe this approach—*i.e.,* negotiate route rights first and then later conduct a proceeding to select a carrier for the route—is a sensible policy").

Nor should the Department enter into piecemeal negotiations with the U.K. to seek specific new routes sought by individual carriers. When the Department authorized code-sharing and wet-lease arrangements between British Airways and USAir by Order 93–3–17 on March 15, 1993, it did so for one year only, with the full expectation that during that period the restrictive and anticompetitive Bermuda 2 agreement would be dismantled in favor of a true "open skies" regime.

Secretary Pena announced then that "I have communicated with the appropriate officials in the British government the need to re-negotiate the current bilateral agreement entered into by an earlier administration. I strongly believe that we must eliminate restrictions that undermine competition and which limit U.S. carriers access to the British markets. * * * [T]he Administration will pursue a new agreement this year that incorporates 'open skies' provisions. * * * And let me . . . emphasize to all that the approvals granted to BA and USAir are fixed at one year."

Yesterday, speaking before a joint meeting of the Aero Club and the International Aviations Club in Washington, D.C., Secretary Pena reiterated the Department's commitment to replacing Bermuda 2 with an "open skies" agreement: "By allowing the first stage of the BA–USAir deal to go forward, we have fulfilled our commitment under the existing bilateral but we are firmly committed to renegotiating our agreement with the U.K. to obtain improved market access for U.S. carriers. * * * [W]e are pursuing a new agreement that would incorporate 'open skies' provisions. * * * [T]he aim of [the new agreement] is to replace the restrictions in the current air services agreement with a regime that enables airline

managements to determine the price and supply of air services."

Accordingly, engaging in negotiations with the U.K. to seek anything short of "open skies" would be an abandonment of the Secretary's clear commitment.

As for the Cleveland-London route, it is true that under Bermuda 2 the Baltimore or Charlotte gateways could be moved to Cleveland by the Department without any negotiations with the British. But American's Nashville-London and Raleigh/Durham-London service would provide far greater public benefits than Continental's Cleveland-London proposal. Geographically, Cleveland is bracketed by London gateways at Cincinnati and Detroit; moreover, Continental's operations at Cleveland—consisting of just 76 daily jet departures—are far smaller than American's at either Nashville or Raleigh/Durham. Both Nashville and Raleigh/Durham have been seeking a London route for many years; Nashville would open an entire section of the country to new London service, while Raleigh/Durham would balance the pending BA–USAir alliance at Charlotte with a strong U.S. presence in the growing southeast region. There is no compelling reason to transfer either of USAir's moveable gateways to Cleveland.

2. Delta

Delta's answer touts its application for one route—Salt Lake City-London—and yet opposes American's applications for Nashville-London *and* Raleigh/Durham-London without explaining why both should denied to preserve one opportunity for Delta. In any event, while one of USAir's moveable routes could be switched to Salt Lake City under Bermuda 2, that would not represent the best use of this authority. Salt Lake City has no history of civic efforts to secure U.K. route authority, and no obvious community of interest with London in terms of multinational corporations or other business interests.

While Delta would obviously prefer to avoid the vigorous competition that American's proposed Nashville and Raleigh/Durham to London service would bring to bear against Delta's entrenched Atlanta-London and Cincinnati-London operations, there is not much reason for the Department to look to Salt Lake City as a viable London gateway.

3. Northwest and USAir

In their answers, Northwest and USAir cite their agreement whereby Northwest would buy the Baltimore-London route for $5 million and transfer it to Detroit; according to Northwest and USAir, the transfer agreement takes precedence, and American's application should be dismissed. The fact is, however, that Detroit is not eligible as a transfer point under Bermuda 2, since Detroit is already a designated gateway. It is the Northwest-USAir application that should be dismissed, as the parties are asking for route authority that does not exist under the current bilateral agreement.

But as a threshold matter, USAir should not be allowed to sell any of its London route authority. It would be contrary to the public interest of the United States—and unprecedented in CAB or DOT proceedings under section 401(h)—for our Government to authorize the sale of U.S. routes by a U.S. airline controlled or seeking to become controlled by the very foreign airline that would directly benefit from the proceeds of the sale.

There is no conceivable public interest justification for allowing USAir—as party to an investment agreement under which we believe it is already controlled by British Airways and under which it has agreed to use its "best efforts" to achieve a total integration with BA's worldwide network—to sell its London routes.

These are U.S. franchises, negotiated by our Government not for the monetary benefit of British Airways but for use by U.S. carriers in the public interest.[1]

Approving the sale of London routes by USAir would contravene important U.S. policy objectives in international aviation. Route sales occur *only* in the context of restrictive agreements. Under an "open skies" agreement—which Secretary Pena has promised to seek from the U.K. this year[2]—the value of an international route is zero. If the U.S. Government entertains route sale proposals from USAir, that would be the strongest imaginable signal to the U.K. Government—and to British Airways—that the U.S. is not serious about doing away with Bermuda 2 and all of its restrictions and entry barriers. It would be utterly incongruous for the U.S. to be processing London route sale applications—and declaring that it is in the public interest for a U.S. carrier to buy these routes—while the U.S. is seeking to dismantle the very agreement that gives the routes value. Allowing any such sales during what the Administration has pledged are the final months of Bermuda 2's existence would hopelessly conflict with important international aviation policy objectives.

Moreover, it would be equally incongruous for the U.S. Government to enter into negotiations with the U.K.—as would be required by the Northwest-USAir proposal—to amend Bermuda 2 to allow the transfer of the Baltimore route to Detroit. Secretary Pena has promised to seek an "open skies" agreement with the U.K. this year. Engaging in a piecemeal negotiation in the interest of individual carriers would be an abandonment of the Secretary's commitment.

Northwest audaciously asserts that "[i]n general, the Department has repeatedly refused to expand the scope of route transfer proceedings under section 401(h) into generalized section 401(d) carrier proceedings" (p. 3). Northwest fails to mention the Department's seminal decision, *involving Northwest itself*, that to the extent a carrier is seeking to acquire "new or different authority than what [the transferor] has now," such authority can only be granted "pursuant to comparative consideration in a carrier selection proceeding." See *Northwest-Hawaiian Transfer Case*, Order 91–3–20, March 11, 1991, p. 7. Removal of the Baltimore gateway to Detroit, as now proposed by Northwest and USAir, cannot escape comparative consideration; as the Department said in Order 91–3–20, "[t]his result is mandated both under long-term Department policy and precedent and under the Ashbacker doctrine" (*id.*).

Finally, there is no question that even if the Baltimore route could be moved to Detroit—and it cannot under Bermuda 2—Nashville and Raleigh/Durham would provide far greater

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[1] Moreover, as the Metropolitan Nashville Airport Authority pointed out in its Reply to the United-USAir transfer application (Philadelphia-London) in Docket 48722 on April 19, 1993, USAir will not be prejudiced if the Department refuses to allow it to sell its London routes: "Under the terms of its January 21, 1993 Investment Agreement with British Airways, USAir may do either one of two things. It may * * * share in the profits generated by British Airways' operations on certain London routes. * * * Alternatively, British Airways may pay USAir up to $50 million to compensate for losses associated with divestiture of the London routes * * * As the Investment Agreement makes clear, USAir will be left whole under any given scenario, even *without* the sale of its London routes. Permitting USAir to 'double dip' by selling these routes would unjustly enrich USAir and would have the perverse effect of benefiting British Airways" (pp. 10–11).

[2] USAir is publicly opposed to the Secretary's desire for rapid replacement of Bermuda 2 with an "open skies" regime. In a speech before the International Aviation Club on March 16, 1993, Seth E. Schofield, Chairman, President, the CEO of USAir, said this: "My advice to Secretary Pena: Put your toe in the water first. Do it gradually. Do not make the mistake of diving in. * * * Insisting on an instant grant of 'Open Skies' will only lead to deadline." The Northwest-USAir transfer proposal is tailor-made to thwart "open skies" negotiations, and Mr. Schofield's remarks clearly reflect the controlling influence of British Airways in this matter.

public benefits. Detroit already has nonstop service to London from two carriers—Delta and British Airways—and is located in a region that is well served with additional gateways at cities such as Chicago and Cincinnati. Nashville and Raleigh/Durham, by contrast, do not have any nonstop service to London, and clearly merit gateway status.

For all these reasons, the Department should not entertain the Northwest-USAir proposal to transfer the Baltimore-London route to Detroit.

4. TWA

TWA's answer is entirely gratuitous and should be disregarded. TWA says it is applying for New York-London/Stansted authority but "is not seeking Nashville-London or Raleigh/Durham-London authority, nor does it seek to switch the Baltimore or Charlotte gateways to other U.S. gateways" (p. 2). It nonetheless goes on to complain about "Big Three" dominance and other matters; we dispute each of TWA's unfounded allegations. In the absence of competing applications for the Baltimore or Charlotte routes that qualify under Bermuda 2, TWA simply has no standing to participate in this docket.

5. State of Maryland

Maryland urges the Department not to "hurry" a decision on the disposition of the Baltimore-London route USAir must relinquish (p. 1), and also makes various assertions—all of which we dispute—concerning Nashville's viability as a gateway to London (pp. 3–5). The fact is, however, that in the past few weeks, five carriers have filed 10 new or amended applications to serve the U.K. in the wake of the Department's order requiring USAir to give up its three London routes, and not one of these applications has sought authority from Baltimore. Accordingly, there is little likelihood that Baltimore will be able to attract a carrier applicant, and as a consequence the Baltimore-London route will be moved to another gateway.

Maryland asserts that the Department should take a "go slow" approach because "USAir does not intend to give [the Baltimore route] up before September" (p. 1). To the contrary, the Department should immediately undertake proceedings to reassign the Baltimore route elsewhere so that the successor carrier will be designated within 60 days—that is, by the end of June—and thus be in a position to start replacement service in September. Otherwise, USAir and BA will gain a competitive advantage, contrary to the Department's intent in Order 93–3–15 ordering USAir to relinquish its London routes.

Conclusion

For the foregoing reasons, the Department should move USAir's Baltimore-London route to Nashville pursuant to Annex 1, Section 6, paragraph 7 of Bermuda 2, and grant American's application for Nashville–London authority in this docket.

Respectfully submitted,

Carl B. Nelson, Jr.,

Associate General Counsel, American Airlines, Inc.

April 22, 1993.

Before the Department of Transportation, Washington, DC.: Application of Tower Air, Inc. for a certificate of public convenience and necessity (New York-London/Stansted), Docket 47698.

Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (New York-London), Docket 48734.

Application of Continental Airlines, Inc. for a certificate of public convenience and necessity (Cleveland-London), Docket 48755.

Application of Continental Airlines, Inc. for a certificate of public convenience and necessity (Newark-Manchester), Docket 48756.

Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (Salt Lake City-London), Docket 48757.

Joint Application of Northwest Airlines, Inc. for a certificate transfer (Baltimore-London), Docket 48761.

Consolidated Answer of American Airlines, Inc.

Communications with respect to this document should be sent to:

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Carl B. Nelson, Jr., Associate General Counsel, American Airlines, Inc., 1101 17th Street, N.W., Suite 600, Washington, D.C. 20036, (202) 857–4228

April 30, 1993.

Before the Department of Transportation, Washington, DC: Application of Tower Air, Inc. for a certificate of public convenience and necessity (New York-London/Stansted), Docket 47698.

Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (New York-London), Docket 48734.

Application of Continental Airlines, Inc. for a certificate of public convenience and necessity (Cleveland-London), Docket 48755.

Application of Continental Airlines, Inc. for a certificate of public convenience and necessity (Newark-Manchester), Docket 48756.

Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (Salt Lake City-London), Docket 48757.

Joint Application of Northwest Airlines, Inc. and USAir, Inc. for certificate transfer (Baltimore-London), Docket 48761.

Consolidated Answer of American Airlines, Inc.

American Airlines, Inc., pursuant to the Department's Notice of April 23, 1993, hereby files this consolidated answer in opposition to the captioned applications.

Each of these applications was filed or reactivated as a consequence of Order 93–3–15, March 17, 1993, by which the Department required USAir to relinquish its routes to London in light of its alliance with British Airways. Four of the applications—by Tower Air (New York-London), Delta (New York-London), Continental (Newark-Manchester), and Northwest-USAir (transfer of the Baltimore-London route to Detroit)—should be dismissed because no underlying route authority is available under Bermuda 2. Moreover, the Northwest-USAir transfer application should also be dismissed because the Department, as a matter of fundamental policy, should prohibit the sale of any of the routes USAir must relinquish.

While the two remaining applications—by Continental (Cleveland-London) and Delta (Salt Lake City-London)—qualify under Bermuda 2, American's competing applications for Nashville-London and Raleigh/Durham-London authority (Dockets 47726 and 48744) represent a far better use of USAir's two moveable gateways, and the Department should award this authority to American.

In support hereof, American respectfully states as follows.

I. All Applications Without Available Underlying Bilateral Authority Should Be Dismissed

As noted above, four of the captioned applications are for authority that is not available under Bermuda 2 (New York-London by Tower Air and Delta,

Newark-Manchester by Continental, and Detroit-London by Northwest). Each of these applications should be dismissed on the well-established ground that the Department will not entertain requests for international routes that do not exist. See *Chicago-Japan Applications, Dismissal,* Order 89–4–6, April 4, 1989, p. 4 (at a time when additional entry between Chicago and Japan was not authorized by the U.S.-Japan Civil Air Transport Agreement, "we believe it would be inconsistent with the current aviation regime and would undermine our negotiations objectives for the Department to authorize additional carriers to serve the Chicago-Tokyo market at this time"); *U.S.-Vancouver Applications, Dismissal,* Order 87–8–52, August 24, 1987, p. 2 ("where limited entry routes not provided for in bilateral agreements are at issue, it is our general policy not to award U.S. carriers new route rights unless we have first obtained those rights from the foreign governments involved"); *TWA Exemption, Dismissal,* Order 85–9–1, September 1, 1985, p. 3 ("our general policy on limited-entry routes not provided for in bilateral aviation agreements is to negotiate new route rights in advance of awarding new certificate authority"); *American Airlines, Chicago-London Dismissal,* Order 85–4–44, April 9, 1985, p. 4 ("we believe this approach—*i.e.,* negotiate route rights first and then later conduct a proceeding to select a carrier for the route—is a sensible policy").

Nor should the Department enter into piecemeal negotiations with the U.K. to seek specific new routes sought by individual carriers. When the Department authorized code-sharing and wet-lease arrangements between British Airways and USAir by Order 93–3–17 on March 15, 1993, it did so for one year only, with the full expectation that during that period the restrictive and anticompetitive Bermuda 2 agreement would be dismantled in favor of a true "open skies" regime.

Secretary Pena announced then that "I have communicated with the appropriate officials in the British government the need to re-negotiate the current bilateral agreement entered into by an earlier administration. I strongly believe that we must eliminate restrictions that undermine competition and which limit U.S. carriers access to the British markets. * * * [T]he Administration will pursue a new agreement this year that incorporates 'open skies' provisions. * * * And let me . . . emphasize to all that the approvals granted to BA and USAir are fixed at one year."

On April 21, 1993, speaking before a joint meeting of the Aero Club and the International Aviation Club in Washington, D.C., Secretary Pena reiterated the Department's commitment to replacing Bermuda 2 with an "open skies" agreement: "By allowing the first stage of the BA-USAir deal to go forward, we have fulfilled our commitment under the existing bilateral but we are firmly committed to renegotiating our agreement with the U.K. to obtain improved market access for U.S. carriers. * * * [W]e are pursuing a new agreement that would incorporate 'open skies' provisions. * * * [T]he aim of [the new agreement] is to replace the restrictions in the current air services agreement with a regime that enables airline managements to determine the price and supply of air services."

Accordingly, engaging in negotiations with the U.K. to seek anything short of "open skies" would be an abandonment of the Secretary's clear commitment. The New York-London, Newark-Manchester, and Detroit-London authority sought by Tower Air, Delta, Continental, and Northwest *does not exist under Bermuda 2,* and their applications should be dismissed.

II. The Department Should Not Allow USAir To Sell Any of Its London Route Authority

As shown above, the Department should dismiss the Northwest-USAir filing—by which the applicants seek the transfer of USAir's Baltimore-London route to the Detroit gateway—because under Bermuda 2 a second U.S.-flag designation at Detroit is not authorized. In addition, the Department should as a matter of fundamental policy prohibit USAir from selling any of the London routes it has been required to relinquish.

American acknowledges that the Metropolitan Nashville Airport Authority has entered into a contract with USAir for transfer of the Charlotte-London route to the Nashville gateway for $5 million. No city has worked more diligently than Nashville in trying to secure route authority to London, and it is manifestly in the public interest for Nashville to achieve London gateway status. It is unfortunate that the Nashville community should be forced into a position of having to pay for a route that should be awarded to it by the Department in the public interest—especially where, as shown below, the true beneficiary of the proposed USAir-Nashville transaction is British Airways. But if the Department rejects American's position on this score and authorizes such sales by USAir, American would of course accept a Nashville-London certificate, and vigorously serve and develop the route.

That said, American continues to maintain that it would be contrary to the public interest—and unprecedented in CAB or DOT proceedings under section 401(h)—for our Government to authorize the sale of U.S. routes by a U.S. airline that—like USAir—is controlled or seeking to become controlled by the very foreign airline that would directly benefit from the proceeds of the sale.

There is no public interest justification for allowing USAir—as party to an investment agreement under which we believe it is already controlled by British Airways and under which it has agreed to use its "best efforts" to achieve a total integration with BA's worldwide network—to sell its London routes. These are U.S. franchises, negotiated by our Government not for the monetary benefit of British Airways but for use by U.S. carriers in the public interest.

Beyond that, under section 10 of the BA-USAir investment agreement of January 21, 1993, British Airways has guaranteed that USAir will receive $50 million for relinquishing its U.S.-London routes.[1] The effect of Section 10 is that if the Department approves the three route sales USAir has announced—to United for $14.5 million, to Northwest for $5 million, and to Nashville for $5 million—British Airways would pay USAir the difference between that total of $24.5 million and the $50 million guarantee, or $25.5 million. If, however, the Department bars USAir from selling these routes, British Airways must pay USAir the full $50 million. Every dollar that USAir can get from route sales would end up in British Airways' pocket. Why should the Department participate in a scheme to extract tens of millions of dollars from U.S. carriers and communities for the direct monetary benefit of British Airways?

Approving the sale of London routes by USAir would contravene important U.S. policy objectives in international aviation. Route sales occur *only* in the context of restrictive agreements. Under an "open skies" agreement—which Secretary Pena has promised to seek from the U.K. this year[2]—the value of

[1] The $50 million figure appears to be related to USAir's purchase of the Baltimore and Philadelphia routes last year from TWA for $50 million. See Order 92–4–49, May 1, 1992.

[2] USAir is publicly opposed to the Secretary's desire for rapid replacement of Bermuda 2 with an "open skies" regime. In a speech before the International Aviation Club on March 16, 1993, Seth E. Schofield, Chairman, President, and CEO of USAir, said this: "My advice to Secretary Pena: Put

an international route is zero. If the U.S. Government entertains route sale proposals from USAir, that would be the strongest imaginable signal to the U.K. Government—and to British Airways—that the U.S. is not serious about doing away with Bermuda 2 and all of its restrictions and entry barriers. It would be incongruous for the U.S. to be processing London route sale applications—and declaring that it is in the public interest for a U.S. carrier or community to pay for these routes—while the U.S. is seeking to dismantle the very agreement that gives the routes value. Allowing any such sales during what should be the final months of Bermuda 2's existence would conflict with important international aviation policy objectives.

It would be equally incongrous for the U.S. Government to enter into negotiations with the U.K.—as would be required by the Northwest-USAir proposal—to amend Bermuda 2 to allow the transfer of the Baltimore route to Detroit. Secretary Pena has promised to seek an "open skies" agreement with the U.K. this year. Engaging in a piecemeal negotiation in the interest of individual carriers would be an abandonment of the Secretary's commitment.

Finally, there is no question that even if the Baltimore route could be moved to Detroit—and it cannot under Bermuda 2—Nashville and Raleigh/Durham would provide far greater public benefits. Detroit already has nonstop service to London from two carriers—Delta and British Airways—and is located in a region that is well served through other gateways at cities such as Chicago and Cincinnati. By contrast, Nashville and Raleigh/Durham do not have any nonstop service to London, and clearly merit gateway status.

III. Continental's Cleveland-London and Delta's Salt Lake City-London Applications Offer Far Fewer Public Benefits Than American's Nashville and Raleigh/Durham Applications

Of the six captioned applications, the only two that qualify for consideration under Bermuda 2 are Continental's for Cleveland-London and Delta's for Salt Lake City-London. Neither of them, however, promise sufficient public benefits to warrant their selection ahead of American's applications for authority to London from the Nashville and Raleigh/Durham gateways in Dockets 47726 and 48744.

A. Continental

Naming Cleveland as a new London gateway ahead of Nashville or Raleigh/Durham would be a mistake. Geographically, Cleveland is bracketed by London gateways at the nearby cities of Detroit (95 miles away) and Cincinnati (230 miles). Continental's operations at Cleveland—consisting of just 76 daily jet departures—are far smaller than American's at either Nashville or Raleigh/Durham. Both Nashville and Raleigh/Durham have been seeking a London route for many years; Nashville would open an entire section of the country to new London service, while Raleigh/Durham would balance the pending BA-USAir alliance at Charlotte with a strong U.S. presence in the growing southeast region. There is no compelling reason to transfer either of USAir's moveable gateways to Cleveland.

B. Delta

Assigning one of USAir's moveable routes to Salt Lake City would not represent the best use of limited-entry London rights. Salt Lake City has no history of civic efforts to secure U.K. route authority, and no obvious community of interest with London in terms of multinational corporations or other business interests. While Delta would obviously prefer to avoid the vigorous competition that American's proposed Nashville and Raleigh/Durham to London service would bring to bear against Delta's entrenched Atlanta-London and Cincinnati-London operations, there is not much reason for the Department to look to Salt Lake City as a viable London gateway.

Conclusion

For the foregoing reasons, the Department should transfer USAir's two moveable London routes to Nashville and Raleigh/Durham pursuant to Annex 1, Section 6, paragraph 7 of Bermuda 2. The captioned applications by Tower Air, Delta, Continental, and USAir-Northwest should be dismissed or denied.

Respectfully submitted,

Carl B. Nelson, Jr.,

Associate General Counsel, American Airlines, Inc.

April 30, 1993.

Before the Department of Transportation, Washington, DC; Joint Application of Northwest Airlines, Inc. and USAir, Inc. for certificate transfer pursuant to Section 401(h) of the Federal Aviation Act of 1958, as amended (Baltimore-London), Docket 48761.

Motion for Leave To File and Response of American Airlines, Inc., to Joint Reply of Northwest Airlines, Inc., and USAir, Inc.

Communications with respect to this document should be sent to:

DONALD J. CARTY, Executive Vice President, Finance and Planning, American Airlines, Inc., P.O. Box 619616, MD5624, DFW Airport, Texas 75261

DAVID A. SCHWARTE, Associate General Counsel, American Airlines, Inc., P.O. Box 619616, MD5675, DFW Airport, Texas 75261

CARL B. NELSON, JR., Associate General Counsel, American Airlines, Inc., 1101 17th Street, N.W., Suite 600, Washington, D.C. 20036, (202) 857–4228

May 10, 1993.

Before the Department of Transportation, Washington, DC: Joint Application of Northwest Airlines, Inc. and USAir, Inc. for certificate transfer pursuant to Section 401(h) of the Federal Aviation Act of 1958, as amended (Baltimore-London) Docket 48761.

Motion for Leave To File and Response of American Airlines, Inc., to Joint Reply of Northwest Airlines, Inc., and USAir, Inc.

American Airlines, Inc., hereby moves for leave to file the following response to the joint reply submitted in this docket on May 5, 1993, by USAir, Inc. and Northwest Airlines, Inc. The joint reply is misleading and incomplete in material respects, and American's response should be accepted in the interest of an accurate record for the Department's consideration.

1. The DOJ-USAir Proposed Consent Decree

USAir and Northwest baldly assert that "the divestiture of USAir's three London routes is governed by a consent decree between USAir and the United States"; that the consent decree "clearly protects USAir's right to divest its assets for the highest value it can obtain"; that opponents are asking the Department "to strip USAir of the right to sell these assets"; etc. (pp. 2, 5). This is a blatant example of bootstrapping—there is no final consent decree that "governs" the divestiture, and USAir has no "right" to sell the routes. In effect, USAir and Northwest would strip the Department of its jurisdiction under section 401(h)

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your toe in the water first. Do it gradually. Do not make the mistake of diving in. * * * Insisting on an instant grant of 'Open Skies' will only lead to deadlock." The Northwest-USAir transfer proposal is tailor-made to thwart "open skies" negotiations, and Mr. Schofield's remarks clearly reflect the controlling influence of British Airways in this matter.

of the Federal Aviation Act to determine the public interest.

Throughout their discussion, USAir and northwest neglect to mention that the proposed consent decree, filed with the United States District Court for the District of Columbia in *United States* v. *USAir Group, Inc.*, Civil Action No. 93–0530, on March 15, 1993, is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). See 58 Fed. Reg. 16698, March 30, 1993. The 60-day period ends on May 28, 1993; on or before that date, American intends to object to the proposed consent decree with respect to any implication that the *sale* (opposed to divestiture) of the London routes by USAir is either required or is in the public interest. American will advise the Court, as it has advised the Department in prior pleadings,[1] that:

- There is no public interest justification for allowing USAir—as party to an investment agreement under which it has agreed to use its "best efforts" to achieve a total integration with BA's worldwide network—to sell its London routes. There are U.S. franchises, negotiated by our Government for use by U.S. carriers in the public interest and *not* for the monetary benefit of British Airways.
- Under Section 10 of the BA–USAir investment agreement, British Airways has in effect *guaranteed* that USAir will receive $50 million for relinquishing its U.S.-London routes. Every dollar that USAir can get from route sales is one less dollar that British Airways must pay under its indemnification agreement. The Department should not participate in a scheme to extract tens of millions of dollars from U.S. carriers and communities to enrich British Airways.
- Route sales occur only in the context of restrictive agreements. Under an "open skies" agreement—which Secretary Pena has promised to seek from the U.K. this year—the value of an international route is zero. It would be incongruous for the U.S. to be processing London route sale applications—and declaring that it is in the public interest for a U.S. carrier or community to pay for these routes—while the U.S. is seeking to dismantle the very agreement that gives the routes value.

There is certainly no legitimate basis for USAir and Northwest to assert to the Department that USAir's "right" to sell the London routes is "governed" by a consent decree. The proposed consent decree to which they refer is not final but is subject to public comment procedures in U.S. District Court. Even is the decree were final, it would not and cannot divest the Department of its jurisdiction under Section 401(h) to approve or disapprove route sales under the public interest standard established by Congress. The proposed USAir-Northwest transfer is manifestly contrary to the public interest, and the Department should so rule.

2. BA's Indemnification Obligation To USAir

USAir and Northwest assert that opponents of the transfer are asking the Department to "publish" USAir by forcing it to divest its property "for nothing" (pp. 3, 5). It is astounding that USAir—as party to an investment agreement in which British Airways has in effect guaranteed that USAir will receive at least $50 million for its London routes—could submit a pleading to the Department suggesting that it would receive "nothing" for the routes if its proposed sales are barred.

Under Section 10.5 of the BA-USAir Investment Agreement, USAir will participate in a profit-sharing arrangement with British Airways on the routes it must relinquish—with unlimited potential returns—or British Airways will "reimburse" USAir for any "losses suffered by [USAir] in the divestiture or relinquishment of [its] U.K. routes" up to an amount totaling $50 million. In its Prospectus of April 28, 1993, USAir informed its shareholders that the U.K. routes "were carried on its books at approximately $48.7 million at December 31, 1992, and the Company expects to recover such amount in full from the sale of the routes or pursuant to the provisions of the Investment Agreement described above" (p. 35).[2]

The entirety of USAir's answer on this point is that "American cites no legal predicate for disapproving the route transfer merely on the grounds that approval may free British Airways of a portion of its indemnification obligation to USAir" (p. 13). The "predicate" of USAir's argument that it should be allowed to sell the routes is that otherwise it would be "punished" and receive "nothing." This is false, and we repeat what we said earlier—the effect of allowing USAir's London route deals would be to extract millions of dollars from U.S. carriers and communities to line the pockets of British Airways. That is not in the public interest.

3. Non-Movability of the Baltimore Route to Detroit

In our answer, we showed that the proposed USAir-Northwest transfer should be dismissed under the Department's well-established policy against processing applications for authority that does not exist. While the Baltimore route is a switchable gateway under Bermuda 2, Detroit is not an eligible transfer point. Accomplishing what Northwest seeks would require piecemeal negotiations with the U.K., contrary to the U.S. Government's clear commitment to replace Bermuda 2 with an "open skies" agreement.

We do not understand what Northwest and USAir mean by asserting that "the route does exist" (p. 11), but their further contention that the "only" bilateral issue is whether the authority can be moved to Detroit (*id.*) is an understatement of the issue, to say the least. Detroit is already designated as a London gateway for U.S.-flag service, and for that reason the Baltimore route cannot be moved to Detroit under Bermuda 2. The Department should resist limited-agenda negotiations with the U.K. on behalf of Northwest or any other individual U.S. carrier, and concentrate its full attention on achieving "open skies."

Moreover, USAir and Northwest continue to ignore the Department's ruling in the *Northwest–Hawaiian Transfer Case*, Order 91–3–20, March 11, 1991, that *requires* consolidation of route transfer and certificate applications where removal of a route to another gateway is sought. As the Department concluded, to the extent a carrier is seeking to acquire "new or different authority than what [the transferor] has now," such authority can only be granted "pursuant to comparative consideration in a carrier selection proceeding . . . [t]his result is mandated both under long-term Department policy and precedent and under the *Ashbacker* doctrine" (p. 7).

With respect to comparative selection, there is no question that even if the Baltimore route could be moved to Detroit—and it cannot under Bermuda 2—the Nashville-London and Raleigh/Durham routes American is seeking in Dockets 47726 and 48744 would provide far greater public benefits. Detroit already has nonstop service to London from two carriers, and is located

[1] See, *e.g.*, American's Consolidated Answer of April 30, 1993, in Dockets 47698, 48734, 48755, 48756, 48757, and 48761; Reply of April 22, 1993, in Docket 47726; Reply of April 22, 1993, in Dockets 48744 and 48743; and Answer of April 16, 1993, in Docket 48722.

[2] See also letter of May 7, 1993, from Secretary Pena to John H. Dasburg, President and CEO of Northwest Airlines, stating that "USAir's agreement with British Airways contains a provision that will permit USAir to be compensated even in the event that the routes are not sold."

in a region that is well served through other gateways. By contrast, Nashville and Raleigh/Durham do not have any nonstop service to London, and clearly merit gateway status before the Department considers an application to add incremental service at Detroit.

Conclusion

The USAir-Northwest transfer agreement should be denied as contrary to the public interest under Section 401(h) of the Federal Aviation Act.

Respectfully submitted,

Carl B. Nelson, Jr.,

Associate General Counsel, American Airlines, Inc.

May 10, 1993.

Before the Department of Transportation, Washington, DC: Application of American Airlines, Inc. under Section 401 of the Federal Aviation Act for a certificate of public convenience and necessity (Philadelphia-London), Docket 48734.

Joint Application of United Air Lines, Inc. and USAir, Inc. for certificate transfer under Section 401(h) of the Federal Aviation Act (Philadelphia-London), Docket 48722.

Application of American Airlines, Inc. for a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (Nashville-London), Docket 47726.

Joint Application of Northwest Airlines, Inc. and USAir, Inc. for certificate transfer pursuant to Section 401(h) of the Federal Aviation Act (Baltimore-London), Docket 48761.

Application of American Airlines, Inc. under section 401 of the Federal Aviation Act for a certificate of public convenience and necessity (Raleigh/Durham-London), Docket 48744.

Petition of The Raleigh/Durham Parties to transfer the designation of U.S. Point D from Charlotte to Raleigh/Durham as U.S. Gateway to London, Docket 48743.

Jointy Application of USAir, Inc. and Metropolitan Nashville Airport Authority for transfer of certificate of public convenience and necessity under Section 401(h) of the Federal Aviation Act, Docket 48786.

Motion for Leave To File and Supplemental Pleading of American Airlines, Inc.

Communications with respect to this document should be sent to:

DONALD J. CARTY, Executive Vice President, Finance and Planning, American Airlines, Inc., P.O. Box 619616, MD5624, DFW Airport, Texas 75261

DAVID A. SCHWARTE, Associate General Counsel, American Airlines, Inc., P.O. Box 619616, MD5675, DFW Airport, Texas 75261

CARL B. NELSON, JR., Associate General Counsel, American Airlines, Inc., 1101 17th Street, N.W., Suite 600, Washington, DC 20036, (202) 857–4228

May 25, 1993.

Before the Department of Transportation, Washington, DC: Application of American Airlines, Inc., under Section 401 of the Federal Aviation Act for a certificate of public convenience and necessity (Philadelphia-London), Docket 48734.

Joint Application of United Air Lines, Inc. and USAir, Inc. for certificate transfer under Section 401(h) of the Federal Aviation Act (Philadelphia-London), Docket 48722.

Application of American Airlines, Inc., for a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (Nashville-London), Docket 47726.

Joint Application of Northwest Airlines, Inc. and USAir, Inc., for certificate transfer pursuant to Section 401(h) of the Federal Aviation Act (Baltimore-London), Docket 48761.

Application of American Airlines, Inc. under section 401 of the Federal Aviation Act for a certificate of public convenience and necessity (Raleigh/Durham-London), Docket 48744.

Petition of The Raleigh/Durham Parties to transfer the designation of U.S. Point D from Charlotte to Raleigh/Durham as U.S. Gateway to London, Docket 48743.

Joint Application of USAir, Inc. and Metropolitan Nashville Airport Authority for transfer of certificate of public convenience and necessity under Section 401(h) of the Federal Aviation Act, Docket 48786.

Motion for Leave To File and Supplemental Pleading of American Airlines, Inc.

American Airlines, Inc., hereby moves for leave to file this supplemental pleading in the captioned dockets in the interest of a complete record for the Department's consideration.

First, British Airways reported last week that its pretax profits for the year ended March 31, 1993, totaled $284 millions (*New York Times*, May 19, 1993). It would be unconscionable for the United States Government to approve any route sales by USAir—which is seeking to extract some $24.5 million from U.S. carriers and communities—where the proceeds would directly benefit British Airways. The U.S. air carrier industry has lost more than $4 billion in the past three years. The Department should not compound the U.S. industry's woes by unjustly enriching British Airways.

Second, with each passing day of inaction by the Department on applications for the three U.S.-London routes USAir must relinquish as a consequence of its alliance with British Airways, competition in the U.S.-London market is being adversely affected. Upon consummation of the BA-USAir Investment Agreement on January 21, 1993, USAir ceased to be an effective competitor with British Airways in the U.S.-U.K. market; since May 1, 1993, the Philadelphia-London route has been an actual BA monopoly. To restore competition, the Department should immediately undertake expedited procedures to reassign USAir's three London routes.

Respectfully submitted,

Carl B. Nelson, Jr.,

Associate General Counsel, American Airlines, Inc.

May 25, 1993.

Investment Agreement Between USAir Group, Inc. and British Airways Plc

Dated as of January 21, 1993

Section 10.5 *U.S.-U.K. Routes.* (a) The Company shall, as promptly as commercially practicable, divest or, if divestiture is not possible, relinquish all licenses, certificates and authorities for each of the Company's routes between the U.S. and U.K. (the "Company's U.K. Routes") at such time as the Company and the Investor can implement code sharing arrangements with respect to the route in question. The Company and the Investor shall use their respective best efforts to implement such code sharing arrangements at the earliest practicable date.

(b) Recognizing that the divestiture or relinquishment of the Company's U.K. Routes is required to comply with relevant competition laws, that such divestiture or relinquishment could disadvantage the communities served and the Company employees affected, and that the Company may suffer losses in such divestiture or relinquishment, the Company and the Investor agree that insofar as possible such disadvantage to the communities and Company employees should be mitigated and that the Company and the Investor should share any losses suffered as a result of such divestiture or relinquishment with due regard to their respective interests. Accordingly, the Investor will apply for all necessary licenses and, subject to obtaining all necessary approvals and to the extent permitted by applicable law, (i) operate so long as commercially feasible and be solely responsible for marketing Charlotte-London, Pittsburgh-London and Baltimore-London routes pursuant to the Investor's route authority, (ii) operate such routes under a "wet lease" using the Company's pilots and cabin crews pursuant to the terms of a "wet lease" in the form attached as Exhibit H hereto, and (iii) share, at the end of each

fiscal year of the Investor, the cumulative profits received by the Investor in respect of such routes with the Company on the basis of the Investor receiving the percentage of such profits equal to the Investor Percentage (calculated on a weighted average basis for the relevant fiscal year of the Investor) and the Company receiving the remainder of such profits. Except as may be otherwise agreed by the Company and the Investor, the procedures for accounting for revenues and standard costings set forth in Schedule 10.5 to this Agreement will be applicable to the recognition of profits for purposes of clause (b)(iii) of this Section 10.5.

(c) If the profit sharing contemplated by this section cannot be performed, the Investor will reimburse the Company a portion of any losses suffered by the Company in the divestiture or relinquishment of the Company's U.K. Routes by paying the amount of $5 million on the date such divestiture or relinquishment becomes final with respect to all of the Company's U.K. Routes and by further paying the amounts of $5 million, $15 million, $15 million and $10 million, respectively, on the first, second, third and fourth anniversaries of such date. Such first, second, third, fourth and fifth reimbursement payments, respectively, shall be reduced (but not below zero) by an amount equal to 10%, 10%, 30%, 30% and 20%, respectively, of the aggregate amount realized by the Company from the sale of the Company's U.K. Routes.

(d) If following the Initial Closing Date, the parties are legally prohibited from performing any of the provisions of paragraphs (b) and (c) of this Section 10.5, the parties will negotiate in good faith alternative arrangements having, to the extent permitted by applicable law, substantially the same economic value as the arrangements so specified. In the event such alternative arrangements are legally prohibited, the remaining portions of this Agreement, including without limitation, paragraph (a) of this Section 10.5, shall remain in full force and effect.

(e) Nothing contained in this Section 10.5 shall be construed to evidence an intention by the Company and the Investor to share profits or losses, or operate a pool or joint business, with respect to any portion of their respective businesses other than the Charlotte-London, Pittsburgh-London and Baltimore-London routes.

Section 10.6 *Insurance*. From the date hereof for so long as the Investor Holding is at least $100 million, (i) the Company will maintain in full force and effect (to the extent determined by the Company in its commercially reasonable judgment after consultation with the Investor) all policies of insurance covering liability to third parties currently in force with respect to the Company or its subsidiaries or their respective businesses, all of which as of the date of this Agreement are listed on Schedule 10.6 to this Agreement, or such renewed or substitute policies as provide substantially similar or better coverage, and (ii) the Company will arrange to have the Investor and its subsidiaries designated under Section 13.2 of this Agreement named as additional insureds under such policies with effect from the Initial Closing Date.

PROSPECTUS

10,000,000 Shares

USAir Group

Common Stock

(par value $1)

The Company's Common Stock is listed on the New York Stock Exchange and is traded under the symbol "V." The reported closing price of the Common Stock on the New York Stock Exchange Composite Transactions Tape on April 28, 1993 was $21⅛ per share.

If the Company's holders of voting stock approve an amendment to the Company's Restated Charter at the Company's May 26, 1993 annual meeting, Common Stock held by non-U.S. Citizens may be subject to redemption and such holders may not be entitled to vote, or to receive dividends or other distributions on, their Common Stock. See "Risk Factors."

For information that should be considered by prospective investors, see "Risk Factors."

These Securities Have Not Been Approved or Disapproved by The Securities and Exchange Commission or Any State Securities Commission Nor Has The Securities and Exchange Commission or Any State Securities Commission Passed Upon the Accuracy or Adequacy of This Prospectus. Any Representation to the Contrary is a Criminal Offense.

	Price to Public	Underwriting Discount	Proceeds to the Company(1)
Per Share	$20.75	$.6225	$20.1275
Total(2)	207,500,000	6,225,000	201,275,000

(1) Before the deduction of expenses payable by the Company, estimated at $420,000.
(2) The Company has granted to the Underwriters an option, exercisable by the representatives of the Underwriters for 30 days from the date of the public offering of the shares of Common Stock offered hereby, to purchase up to an aggregate of 1,500,000 additional shares from the Company solely to cover over-allotments. If the option is exercised in full, the total Price to Public will be $238,625,000, the total Underwriting Discount will be $7,158,750 and the total Proceeds to the Company will be $231,466,250. See "Underwriting."

The shares of Common Stock offered by this Prospectus are offered by the several Underwriters when, as and if issued by the Company, delivered to and accepted by the Underwriters and subject to their right to reject orders in whole or in part. It is expected that the shares of Common Stock will be ready for delivery on or about May 4, 1993.

The First Boston Corporation Morgan Stanley & Co. Incorporated

Lehman Brothers Salomon Brothers Inc

The date of this Prospectus is April 28, 1993

Any holder may elect, within 10 business days following the date on which the holder elects to require the Company to redeem the shares of Series T Preferred Stock, to receive cash out of funds legally available therefore in respect of the portion of the Redemption Price representing the excess over the amount represented by the number of shares of Non-Preferred Stock into which the Series T Preferred Stock is then convertible, multiplied by the then current market price of the Common Stock.

U.S.-U.K. Routes

The Company has agreed that as promptly as commercially practicable it will divest or, if divestiture is not possible, relinquish all licenses, certificates and authorities for routes between the U.S. and the U.K. (the "Company's U.K. Routes") at such time as BA and the Company can implement the code sharing arrangement contemplated by the Investment Agreement. See "—Code Sharing." Recognizing that the divestiture or relinquishment of the Company's U.K. Routes is necessary to comply with relevant competition laws, that such divestiture or relinquishment could disadvantage the communities served and the Company employees affected and that the Company may suffer losses in such divestiture or relinquishment, the Company and BA have agreed that insofar as possible, such disadvantage to the communities and Company employees should be mitigated and that the Company and BA should share any losses suffered as a result of such divestiture or relinquishment with due regard to their respective interests. Accordingly, BA will apply for all necessary licenses and, subject to obtaining all necessary approvals and to the extent permitted by applicable law, will operate so long as commercially feasible and be solely responsible for marketing Charlotte-London, Pittsburgh-London and Baltimore-London routes pursuant to BA's route authority, operate such routes under a "wet lease," using USAir's pilots and cabin crews, for rentals based on the Company's costs, and share, at the end of each fiscal year of BA, the cumulative profits received by BA in respect of such routes with the Company, with BA retaining a share of profits equal to the BA Percentage and the Company receiving the remainder. The Company does not expect that the wet lease arrangements will materially affect its results of operations, cash flow or financial position. (Under a "wet lease," an airline leases its aircraft and cockpit and cabin crews to another airline for

the purpose of operating certain routes or flights.) If the contemplated profit sharing cannot be performed, BA will reimburse the company a portion of any losses suffered by the Company in the divestiture or relinquishment of the Company's U.K. Routes, beginning on the date all such divestitures or relinquishments become final, by paying the amounts of $5 million, $5 million, $15 million, $15 million and $10 million per annum, respectively, on such date and on the first, second, third and fourth anniversaries of such date. Such first, second, third, fourth and fifth reimbursement payments, respectively, will be reduced (but not below zero) by an amount equal to 10%, 10%, 30%, 30% and 20%, respectively, of the aggregate amount realized by the Company from the sale of the Company's U.K. Routes. If the parties are legally prohibited from performing any of the foregoing provisions, the parties will negotiate in good faith alternative arrangements having, to the extent permitted by applicable law, substantially the same economic value as the arrangement so specified. The Company's U.K. Routes were carried on its books at approximately $48.7 million at December 31, 1992, and the Company expects to recover such amount in full from the sale of the routes or pursuant to the provisions of the investment Agreement described above.

On March 29, 1993, USAir agreed to sell for $14.5 million its operating authority between Philadelphia and London Gatwick Airport to United Air Lines, Inc. ("United"). Consummation of the sale is subject to a number of conditions, including that United obtain governmental approval to transfer the authority to Chicago and operate flights from Chicago's O'Hare International Airport to London's Heathrow Airport. Either USAir or United can terminate the agreement if the sale has not been consummated by May 14, 1993. USAir cannot predict whether or when the sale will close.

On April 15, 1993, USAir agreed to sell for $5 million its operating authority between Baltimore and London Gatwick Airport to Northwest. Consummation of the sale is subject to a number of conditions, including that Northwest obtain governmental approval to transfer the authority from Baltimore to Detroit, Michigan. The agreement becomes null and void if the sale has not been consummated by June 15, 1993. USAir cannot predict whether or when the sale will close.

On April 23, 1993, USAir agreed to sell to the Metropolitan Nashville Airport Authority, Nashville, Tennessee for $5 million its operating authority between Charlotte and London Gatwick Airport. Consummation of the sale is subject to a number of conditions, including governmental approval to transfer the authority from Charlotte to Nashville. USAir cannot predict whether or when the sale will close.

Insurance

For so long as the BA Holding, as defined in "—Amendment No. 2 to Restated Charter—Certain Governance Matters—Reduction in BA Rights," is at least $100 million, (i) the Company will maintain in full force and effect (to the extent determined by the Company in its commercially reasonable judgment after consultation with BA) all policies of insurance covering liability to third parties currently in force with respect to the Company or its subsidiaries or their respective businesses or such renewed or substitute polices as provide substantially similar or better coverage, and (ii) the Company will arrange to have BA named as additional insured under such policies.

Non-Solicitation

Prior to the effectiveness of Amendment No. 1, the Company has agreed that neither the Company nor any of its subsidiaries nor any of the respective officers and directors of the Company or any of its subsidiaries will, and the Company will direct and use its best efforts to cause its employees, agents and representatives (including, without limitation, any investment banker, attorney or accountant retained by the Company or any of its subsidiaries) not to, initiate, solicit or encourage, directly or indirectly, any inquiries or the making of any proposal or offer with respect to a merger, consolidation or similar transaction involving, or any sale of all or any substantial portion of the assets or any equity securities, of, the Company and any of its subsidiaries, taken as a whole (an "Acquisition Proposal"), or, except as required in connection with the fiduciary obligation of the Board of Directors as advised by counsel, to engage in negotiations, provide information or discuss an Acquisition Proposal with any person, or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal.

Prior to the effectiveness of Amendment No. 1, BA has agreed that neither BA nor any of its subsidiaries nor any of the respective officers and director of BA or any of its subsidiaries will, and BA will direct and use its best efforts to cause its employees, agents and representatives (including, without limitation, any investment banker, attorney or accountant retained by BA or any of its subsidiaries) not to, initiate, solicit or encourage, directly or indirectly, any inquiries or the making of any proposal or offer or engage in any discussions or negotiations with respect to a merger, consolidation or similar transaction involving, or any purchase of all or any substantial portion of the assets or any equity securities of any U.S. Airline, provided that such entity and its subsidiaries do not own directly or indirectly in aggregate 15% or more of the common equity of a U.S. Airline.

Required Filings

The Company and BA have agreed to make any filings, notices or applications with any governmental or regulatory authority, agency, commission, court or other entity, domestic or foreign, required in connection with the consummation of the transactions and acts contemplated by the Investment Agreement. Accordingly, the Company filed an application for a statement of authorization and BA has filed an application for exemption with the DOT to permit BA's designator codes to be used on certain USAir flights as contemplated by the Code Share Agreement (as defined under "—Code Sharing"), and to permit the transactions and acts contemplated by the proposed wet lease to be entered into by BA and the Company. The DOT Order stated, among other things, that "BA's initial investment of $300 million does not impair USAir's citizenship" under Foreign Ownership Restrictions.

Two airlines. One philosophy.

The philosophy of "putting the customer first" is something USAir and British Airways both share. And now, we come together to form the Global Alliance that, over time, will join 339 cities and 71 countries. What will join us even more is the philosophy that brought us together in the beginning. Quite simply, we want to offer you a standard of service that's unequaled anywhere in the world.

USAir/British Airways

June 7, 1993

By Hand

Mark C. Schechter, Esq. Chief, Transportation, Energy, and Agriculture, Section, Antitrust Division, U.S. Department of Justice, 9th Floor—JCB 555 Fourth St., NW., Washington DC 20001.

Re: *United States v.* USAir Group, Inc., Civil Action No. 93–0530

Dear Mr. Schechter, We write on behalf of USAir Group, Inc. ("USAir"), as its counsel of record in the above-referenced matter. This letter responds to certain allegations made in comments filed with the Department by American Airlines, Inc., Delta Air Lines, Inc., and Continental Airlines, Inc. (the "airlines") in connection with the proposed Final Judgment, Stipulation, and Competitive Impact Statement (the "Consent Decree") in this matter.[1] Those comments, as well as this letter, have been filed pursuant to the Antitrust Procedure and Penalties Act (the "Tunney Act"). Nothing in the comments of the airlines raises any inference that the Consent Decree is not in the public interest or warrants any change in that decree which was negotiated in good faith between the United States and USAir.

Although the comments of the airlines purport to be directed to the Tunney Act proceeding, in fact they appear to be designed to influence the Department of Transportation ("DOT") in that agency's determination of the fate of the three route authorities (*i.e.*, Baltimore-London, Charlotte-London, and Philadelphia-London) (the "Routes") that the Consent Decree requires USAir to divest. USAir has responded to those arguments before DOT and will continue to do so. Nevertheless, there are two specific factual allegations made by the airlines that USAir feels it must address in the current Tunney Act proceeding.

First, all of the airlines incorrectly argue that USAir has claimed that, because the United States has agreed to the Consent Decree which requires USAir to divest the Routes by sale (section IV of the Consent

[1] USAir understands that the city of Raleigh-Durham, North Carolina, has also submitted comments. We have not yet received a copy of those comments, and therefore this letter may not address the issues raised by the city.

Decree) if possible or otherwise by relinquishment (section V), the power of the DOT to approve or disapprove a sale of a Route or to order a comparative route hearing under the Federal Aviation Act has been restricted, if not destroyed. The airlines' characterization of USAir's position is simply untrue. USAir does believe, and has indicated to the DOT, that the policies underlying the antitrust laws and the general positions articulated by the Department of Justice (as well as by the DOT) in the past support USAir's arguments that a sale of the Routes to the highest bidders is preferable to awarding the Routes on the basis of a comparative route hearing. Historically, the DOT (and the Civil Aeronautics Board before it) have declined to consider new route applications along with proposed route transfers. At the same time, USAir recognizes and hereby acknowledges that nothing in the Consent Decree limits (or expands) the Constitutional and statutory authority of the DOT to approve, *vel non*, a proposed sale by USAir of one or more of the Routes.

Second, American Airlines, Inc., ("American") alone has attempted to create the misimpression that the Consent Decree was the product of some secret deal between USAir and the United States. Specifically, American insinuates that by agreeing to settle an unrelated case, *United States* v. *ATPCO* ("*ATPCO*"), with the Department of Justice in December 1992, USAir was able to obtain an unduly advantageous decree in this matter. USAir categorically denies this baseless assertion—USAir's decisions in this case and in *ATPCO* have been made independently. Settlement of each case was discussed with separate staffs of the Department of Justice, and the two settlements were never linked in any way.

Such unfounded innuendo is particularly inappropriate since the same counsel that signed American's comments in this matter was personally involved in the joint negotiation of the settlement to which USAir has consented in *ATPCO*. American's counsel knows that the investment by British Airways Plc ("BA") in USAir was never discussed in those negotiations and that the same settlement in *ATPCO* was offered on the same terms to all of those defendants. Equally significantly, United Air Lines, Inc. ("United"), *which vigorously and publicly opposed the investment by BA in USAir*, has consented to the same settlement in *ATPCO* that USAir has signed. Even American does not have the temerity to suggest that United's settlement of that case was motivated by a desire to induce the Department of Justice to grant favorable concessions in connection with the USAir-BA transaction.

In fact, the reason for and form of the Consent Decree in this case are quite ordinary. Consistent with its long-standing policy, the Department of Justice indicated that it was unwilling to rely on USAir's divestiture obligations in the Investment Agreement between USAir and BA dated January 21, 1993 (the "Investment Agreement"), in order to solve the antitrust problems that the Department concluded would result from that agreement. Because the Investment Agreement would be consummated before the Routes were divested, the Department made clear that it would insist on a court decree in order to ensure that the Routes would be divested or relinquished regardless of whether USAir and BA changed the terms of the Investment Agreement. In light of USAir's desire to close the Investment Agreement, USAir agreed to the terms of the Consent Decree. Those terms are consistent with past decrees that the Department has required in connection with the settlement of other complaints alleging violations of Section 7 of the Clayton Act.

For the foregoing reasons, USAir respectfully submits that entry by the District Court of the Consent Decree in its current form is in the public interest.

Sincerely,

Charles F. Rule,

Counsel to USAir Group, Inc.

[FR Doc. 93–15696 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—the SQL Access Group, Inc. and X/Open Company Limited

Notice is hereby given that, on April 19, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group, Inc. ("the Group") and X/Open Company Limited ("X/Open") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain membership changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, (1) Software AG, and Unify Corporation, are no longer members of the Group; (2) SAS Institute, Inc., Cary, NC, has become a member of the Group; (3) A.S.E. Consulting, Cances, England; ATM/Modcomp, Ft. Lauderdale, FL; Amdahl Corporation, Sunnyvale, CA; Andersen Consulting, London, England; ASCII Corporation, Kanagawa, Japan; Bell Communications Research, Piscataway, NJ; Boldon James Limited, Stoke-on-Trent, Staffordshire, England; Booz Allen & Hamilton, Inc., McLean, VA and Bethesda, MD; British Telecom, Felixstowe, Suffolk, England; Bundesamt fur Informatik, Bern, Switzerland; CCTA, Norwich, England and London, England; Commission of the European Communities; Brussels, Belgium; COMPAREX Informationssysteme GmbH, Mannheim, Germany; Computer Associates International, Islandia, NY; Computer Sciences Corporation, Hanover, MD and Falls Church, VA; Compagnie des Machines Bull, Milan, Italy; Credit Lyonnais, Paris-La Defense, France; DHL Systems, Inc., San Mateo, CA; Daimler-Benz AG, Stuttgart, Germany; Department of Social Security, Lancs, England; Diab Data, Taby, Sweden; Digital Equipment Corporation, Nashua, NH; E.I. DuPont de Nemours & Co., Wilmington, DE; ETIS, Brussels, Belgium and C/O PTT Telecom BV, Groningen, Netherlands; Electricite de France, Cedex, France; Electronic Data Systems Corporation, Plano, TX; Elf Aquitaine, Cedex, France and SNEA(P), Pau, France; Ericsson, Stockholm, Sweden; Exxon Exploration Company, Houston, TX; FMV (Swedish Defense Material Administration), Stockholm, Sweden; Fujitsu, Ltd., Kawasaki, Japan; GTE Telephone Operations, Irving, TX; Gresham Telecomputing, Southhampton, England; Guide International, Chicago, IL and Greensboro, NC and c/o Burlington Industries, Greensboro, NC; HaL Computer Systems Inc., Campbell, CA; Harris Corporation, Melbourne, FL; Hewlett-Packard Company, Cupertino, CA; Hitachi, Ltd., Yokohama, Japan; Hughes Aircraft Company, Los Angeles, CA; Ing. C. Olivetti & C., SPA, Ivrea, Italy; Informix Software, Menlo Park, CA; Ingres Corporation, Alameda, CA; International Business Machines, Austin, TX; International Computers, Ltd., Berks, England; Innenministerium des Landes Nordrhein-Westfalen, Dusseldorf, Germany; KPMG Management Consulting, London, England; Liant Software Inc., Framingham, MA; Lotus Development, Dublin, Ireland; MicroFocus, Newbury, England; Microsoft Corporation, Redmond, WA; Migros Genossenschafts Bund, Zurich, Switzerland; Mimer Software AB, Uppsala, Sweden; Ministerie van Financie, Den Haag, Netherlands; Mortice Kern Systems, Waterloo, Ontario, Canada; NCR Corporation, Dayton, OH; NEC Corporation, Tokyo, Japan; National Institute of Standards & Technology, Gaithersburg, MD; National Health Service, Herts, England and Information Management Centre, Birmingham, England; Naval Computer and Telecomms Command, Washington, DC; Nestec SA (Nestle), Vevey, Switzerland; Netwise, Boulder, CO; Nippon Telegraph & Telephone Corporation, Kanagawa, Japan; Novell Inc., Sunnyvale, CA; Omron Advanced Systems, Santa Clara, CA; Oracle Corporation, Redwood Shores, CA and Chicago, IL; PRC, Inc., Reston, VA and McLean, VA; Progress Software, Bedford, MA; Quadratron Systems UK, Ltd., London, England; Raxco, Orem, UT; Republic of Hungary, Budapest, Hungary; Retix Corporation, Santa Monica, CA; Rikspolisstyrelsen Sverige

Databyran, Stockholm, Sweden; SITA, Atlanta, GA and Cedex, France; STET/CSELT, Torino, Italy; SWIFT, La Hulpe, Belgium; Santa Cruz Operation, Santa Cruz, CA; Sequent Computer Systems, Inc., Beaverton, OR; Sequoia Systems, Inc., Marlborough, MA; Shell Internationale Petroleum, AN Den Haag, Netherlands; Siemens Nixdorf Informationssysteme, Munich, Germany, Software AG, Reston, VA; Sony Microsystems Corporation, San Jose, CA; Statskonsult, Oslo, Norway; Statskontoret, Stockholm, Sweden; Stratus Computer, Inc., Marlboro, MA; Sun Microsystems, Mountain View, CA; Sweden Post, Stockholm, Sweden; Swedish Telecom, Farsta, Sweden; Swiss Bank Corporation, Basel, Switzerland; Sybase, Emmeryville, CA; TRW Inc., Fairfax, VA; Tandem Computers, Cupertino, CA; Tecsiel-IRI Finsiel, Milano, Italy; Telefonica, Madrid, Spain; Texaco, Inc., Houston, TX; The Boeing Company, Seattle, WA and Boeing Computer Services, Seattle, WA; The Inland Revenue, Telford, Shropshire, England; TRANSARC Corporation, Pittsburgh, PA; U.S. Department of Agriculture, Washington, DC; U.S. Department of Defense, Vienna, VA; U.S. Department of the Treasury (IRS), Washington, DC; Unify Corporation, Sacramento, CA and Surrey, England; Unilever plc, London, England; Union Bank of Switzerland, Zurich, Switzerland; Uniplex Limited, Hemel Hempstead, Hertfordshire, England; Unisys Corporation/Convergent, San Jose, CA; Unix International, Inc., Parsippany, NJ; and Unix Systems Laboratories, Summitt, NJ, are current members of X/Open; (4) Cable and Wireless, plc, London, England; Dansk Data Electronic, Herlev, Denmark; GPEM/IC & CIBA, Cedex, France; Logica, London, England; OSTIP, Paris, France; Systems Union Ltd., London, England; UNIFORUM Sweden, Djursholm, Sweden; U.S. National Security Agency, Fort George G. Meade, MD; and World Bank, Washington, DC, have become members of X/Open; and (5) Computer Power Group Ltd., Victoria, Australia; Eastman Kodak Company, Rochester, NY; Ford Motor Company, Dearborn, MI; McDonnell Douglas Corporation, St. Louis, MO; Motorola Computer Group, Tempe, AZ; Oki Electric Industry Co., Ltd., Warabi-shi, Japan; and Televerket Data, Haninge, Sweden, are no longer members of X/Open.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SQL and X/Open intend to file additional written notifications disclosing all changes in membership.

On July 16, 1993, the Group and X/Open filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1992 (57 FR 59128).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–16200 Filed 7–8–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,750]

Communications Instruments, Inc., El Paso, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Communications Instruments, Incorporated, El Paso, Texas. The review indicated that the application contained no new substantial information. Therefore, dismissal of the application was issued.

TA–W–28,750; Communications Instruments, Incorporated El Paso, Texas (June 29, 1993)

Signed at Washington, DC this 29th day of June, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–16295 Filed 7–8–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,783]

G.E.O., Inc., Casper, WY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 14, 1993 in response to a worker petition which was filed on behalf of workers at G.E.O., Incorporated, Casper, Wyoming. The workers are engaged in activities related to the exploration and drilling of crude oil and natural gas for unaffiliated customers.

The petitioning workers are in the same identifiable worker group as those workers of the ongoing investigation for G.E.O., Incorporated, Casper, Wyoming (TA–W–28,572), instituted April 19, 1993.

Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 29th day of June, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–16296 Filed 7–8–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,536; Shenango, Inc., Sharpsville, PA

TA–W–28,643; Donaldson Mining Co., Cedar Grove, WV

TA–W–28,446; French Oil Mill Machinery Co., Piqua, OH

TA–W–28,621; National Power Flow, Inc., Elwood, IN

TA–W–28,562; Rogue Valley Printed Circuits, Inc., Medford, OR

TA–W–28,416; Standard Tool & Mfg Co., Lyndhurst, NJ

TA–W–28,626; Medalist Industries, Vancouver, WA

TA–W–28,627; M & S Industries, Vancouver, WA

VOL 58 ISS 130 JL 9 1993 UMI

TA-W-28,600; Homogeneous Metals, Inc., Clayville, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,639; Homestake Mining Co., Golden, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,552; Act II dba Arctic Coiled Tubing, Inc., Anchorage, AK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,506; Nevada Equipment Wholesalers, Las Vegas, NV

U.S. imports of boring and drilling machines, milling machines and numerically controlled boring, drilling and milling machines declined in 1992 compared to 1991.

TA-W-28,644; Chevron Corp., Chevron USA Products Co., Philadelphia Refinery, Philadelphia, PA

Petroleum products declined absolutely and relative to domestic shipments in 1992 compared to 1991.

TA-W-28,721; The Boeing Commercial Airplane Group, Everett Div., Seattle, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,460 & TA-W-28,460A; The Boeing Co., Wichita, KS and Portland, OR

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,373; Wells Manufacturing Corp., Fond Du Lac, WI

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-28,702, TA-W-28,702A & B, TA-W-28,703, TA-28,704; MASX Energy Services Group, Inc., New Orleans, LA, Houma, LA, Broussard, LA, Evanston, WY and Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,708, TA-W-28,710, TA-W-28,711; MASX Energy Services Group Inc., Oklahoma City, OK, Hobbs, NM, and Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,628, TA-W-28,629; MASX Energy Service Group, Inc., Houston, TX and Bryan, TX

U.S. improts of oil and gas field machinery were negligible in 1992.

Affirmative Determinations

TA-W-28,572; GEO Corp., Casper, WY

A certification was issued covering all workers separated on or after March 15, 1992.

TA-W-28,619; Sutton Shirt Corp., Sparta, TN

A certification was issued covering all workers engaged in the production of men's and boys' pants separated on or after April 19, 1992.

TA-W-28,623; Ogden Apparel Ventures, Ogden, UT

A certification was issued covering all workers separated on or after April 19, 1992.

TA-W-28,616; Santa Rita Resources, Inc., Oklahoma City, OK TX

A certification was issued covering all workers separated on or after April 19, 1992.

TA-W-28,640; Fed Sportswear, Federalsburg, MD

A certification was issued covering all workers engaged in the production of ladies skirts and pants separated on or after April 25, 1992.

TA-W-28,588, TA-W-28,589; Carter Footwear, Inc., Wilkes Barre, PA and Country Cousins Shoes, Mocanaqua, PA

A certification was issued covering all workers separated on or after April 13, 1992.

TA-W-28,544; NERCO Minerals Co., Headquarters, Portland, OR

A certification was issued covering all workers engaged in the production of fish feed separated on or after March 30, 1992.

TA-W-28,544 B & F; NERCO Minerals Co., Pikes Peak Mine, Cripple Creek, CO and NEXCO Pikes Peak Mine, Cripple Creek, CO

A certification was issued covering all workers engaged in the production of gold separated on or after March 30, 1992.

TA-W-28,544A; NERCO Minerals Co., Delamar Mine (Located in Southwest Idaho 20 Miles From the Oregon Border, Jordan Valley, OR

TA-W-28,544C; NERCO Exploration Co (NEXCO), Portland, OR

TA-W-28,544D; NEXCO Reno Office, Reno, NV

TA-W-28,544E; NEXCO Delamar Mine (Located in Southwest Idaho 20 Miles from the Oregon Border), Jordan Valley, OR

A certification was issued covering all workers engaged in the production of silver and gold separated on or after March 30, 1992.

I hereby certify that the aforementioned determinations were issued during the month of June 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal businesses hours or will be mailed to persons who write to the above address.

Dated: June 30, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-16273 Filed 7-8-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects

to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Virginia
VA930085 (July 9, 1993)
VA930086 (July 9, 1993)

Volume II:

Texas
TX930072 (July 9, 1993)
TX930073 (July 9, 1993)
TX930074 (July 9, 1993)
TX930075 (July 9, 1993)
TX930076 (July 9, 1993)
TX930077 (July 9, 1993)
TX930078 (July 9, 1993)
TX930079 (July 9, 1993)
TX930080 (July 9, 1993)
TX930081 (July 9, 1993)

Volume III:

California
CA930026 (July 9, 1993)
Wyoming
WY930010 (July 9, 1993)
WY930011 (July 9, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being midified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut
CT930001 (Feb. 19, 1993)
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Georgia
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Virginia
VA930018 (Feb. 19, 1993)
VA930023 (Feb. 19, 1993)
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VA930028 (Feb. 19, 1993)
VA930060 (Feb. 19, 1993)
VA930067 (Feb. 19, 1993)
VA930073 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)

Volume II:

Iowa
IA930002 (Feb. 19, 1993)
Nebraska
NE930003 (Feb. 19, 1993)
NE930024 (Feb. 19, 1993)
Oklahoma
OK930013 (Feb. 19, 1993)
OK930014 (Feb. 19, 1993)
OK930016 (Feb. 19, 1993)
OK930018 (Feb. 19, 1993)
Texas
TX930001 (Feb. 19, 1993)
TX930070 (Feb. 19, 1993)

Volume III:

California
CA930001 (Feb. 19, 1993)
CA930002 (Feb. 19, 1993)
CA930004 (Feb. 19, 1993)
CA930006 (Feb. 19, 1993)
Nevada
NV930001 (Feb. 19, 1993)
NV930002 (Feb. 19, 1993)
NV930004 (Feb. 19, 1993)
NV930010 (Feb. 19, 1993)
Oregon
OR930001 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930005 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)
Wyoming
WY930005 (Feb. 19, 1993)
WY930006 (Feb. 19, 1993)
WY930007 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50

Regional Government Depository Libraries and many of the 1,400 Government Depositor Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 2nd day of July 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–16088 Filed 7–8–93; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Underwriters Laboratories Inc.; Factory Mutual Research Corp.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of applications for renewal of OSHA Recognition as Nationally Recognized Testing Laboratories by the Underwriters Laboratories Inc. and by the Factory Mutual Research Corporation.

SUMMARY: This notice announces the timely submittal of application by the Underwriters Laboratories Inc. (UL) and by the Factory Mutual Research Corporation (FMRC) for renewal of temporary recognition as nationally recognized testing laboratories (NRTLs) under 29 CFR 1910.7. While these applications are pending, OSHA recognition of these laboratories continues in effect.

Background

On April 12, 1988, OSHA published in the **Federal Register** a final rule on "Safety Testing or Certification of Certain Workplace Equipment and Materials * * * Definition of Nationally Recognized Testing Laboratory", which was promulgated as 29 CFR 1910.7. This rule also provided procedures for a testing organization to be recognized as a nationally recognized testing laboratory by OSHA.

This rule implemented the requirement in many OSHA safety standards that certain equipment be approved or certified by a nationally recognized testing laboratory. Appendix A to § 1910.7 provided temporary recognition for UL and FMRC (see section I.B.7.f.5. of Appendix A). This temporary recognition was granted to allow for an orderly transition into the new program, to permit OSHA to begin to process the applications of some heretofore unrecognized laboratories, and to avoid undue disruption and gaps in employee protection during the start-up period [see 53 FR 12102, 12115 (4/12/88)]. This temporary recognition was for a period of five years beginning June 13, 1988 and ending on July 13, 1993. At the end of the five-year period, UL and FMRC could apply for renewal of recognition by following the procedures established in the Appendix. These procedures state that a recognized NRTL may apply to renew its recognition by filing a renewal request not less than nine months, nor more than one year, before the expiration date of its current recognition.

Where an NRTL has filed a timely and sufficient renewal request, recognition will continue while the renewal application is pending (see 29 CFR 1910.7, Appendix A, II.C.2.c.). Both organizations submitted timely renewal requests which appear to be sufficient. Both organizations submitted timely renewal requests which appear to be sufficient within the meaning of appendix A (II.C.2.c.). OSHA is in the process of evaluating these applications and conducting on-site investigations. The recognitions of UL and FMRC will continue as the evaluation progresses. When OSHA's preliminary evaluation is completed, a notice of application and request for public comments will be published in the **Federal Register** under 29 CFR 1910.7.

ADDRESSES: For further information: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of July, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–16328 Filed 7–8–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45, part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 31, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

J. Ward Testa and Michael A. Castellini, University of Alaska Fairbanks, Fairbanks, Alaska 99775–1080

Activity for Which Permit Requested

Taking. Import into USA.

The planned research is focused on the physiological development of Weddell seal pups and its relationship to their diving behavior, growth and survival. This work is integrated into the continuing program on Weddell seal population ecology. Additional work tangential to the main proposal will be undertaken within the terms of the permit. Blood and tissue samples will be archived as the University of Alaska

for future pathology, pollutant and genetic analyses. Specimen material from natural fatalities will also be archived at the University of Alaska for future studies of morphology and systematics. Research activities involve tag/release and take by harassment. The proposed work involves no killing. The salvage and import of any parts of natural fatalities of the 6 seal species, as well as all blood and tissue samples collected, will be covered under this permit.

Location

Ross Sea, Antarctic.

Dates: October 1, 1993–December 31, 1995.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–16289 Filed 7–8–93; 8:45 am]

BILLING CODE 7555–01–M

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45, part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 25, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Gerald L. Kooyman, Center for Marine Biotechnology and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093–0204

Activity for Which Permit Requested

Taking.

Adult-Emperor penguins at Beaufort and Franklin Islands will have a satellite transmitter attached just before the moult. It is unknown where these birds forage after abandoning the colony and prior to moult. It is also unknown where the moult site is, and whether it is in a consistent area. The chicks will be weighed to compare to fledging weights of chicks from Coulman Is. and Cape Washington. It should be noted that there is only indirect evidence that a colony exists at Cape Colbeck. However, if one does exist the satellite tracks will make possible the determination of the foraging range and locality of this hypothetical colony.

Location

Cape Colbeck, Franklin Is., Beaufort Is.

Dates: October 1, 1993–May 1, 1994.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–16290 Filed 7–8–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1993; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the first quarter of CY 1993, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 16, No. 1, ("Report to Congress on Abnormal Occurrences: January–March 1993"). This report will be available at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

93–1 Steam Generator Tube Rupture at Palo Verde Unit 2

One of the AO reporting guidelines notes that a major degradation of the primary coolant pressure boundary can be considered an abnormal occurrence.

Date and Place—March 14, 1993; Palo Verde Unit 2, a Combustion Engineering-designed, System 80 model, pressurized-water reactor (PWR), operated by Arizona Public Service Company and located near Wintersburg, Arizona, about 80 kilometers (50 miles) west of Phoenix, Arizona.

Nature and Probable Consequences—At 4:34 a.m., while at 98.8 percent power, Unit 2 experienced a tube rupture in steam generator (SG) no. 2. A substantial and continuous decrease in pressurizer level and pressure were observed by the operators in the control room. In response, the operators started the third charging pump and isolated letdown at 4:37 a.m. Pressurizer level and pressure continued to decrease and the operators manually tripped the reactor at 4:47 a.m., at which time pressurizer level was about 25 percent. At 4:48 a.m., the safety injection and containment isolation signals actuated when the pressure reached 12.7 megapascal (MPa) absolute (1.837 pounds per square inch absolute (psia)). All engineered safety features equipment actuated as required.

The licensee declared an Unusual Event at 4:58 a.m., due to the safety injection system actuation. The licensee upgraded the emergency classification to an Alert at 5:02 a.m., based upon the operator's observation that reactor coolant system leakage was in excess of 167 liters per minute (L/min) (44 gallons per minute (gpm)). At a late date, the maximum tube leak rate was estimated to be about 909 L/min (240 gpm), which exceeded the makeup capacity (485 L/min (128 gpm)) of the three positive displacement charging pumps that were operating.

Immediately after the reactor trip, pressurizer level decreased to less than the 0-percent reference mark and remained less than 0 percent for about 1.5 minutes until high pressure safety injection restored the level to about 8 percent. The pressurizer did not empty and the minimum pressure reached was 11.6 MPa absolute (1,687 psia). The

operators commenced cooldown and depressurization at 6:03 a.m. and isolated the faulted SG at 7:28 a.m. The unit entered Mode 4 (hot shutdown) at 10:29 a.m. and the operators placed the unit on shutdown cooling at 10:35 p.m. on March 14, 1993. The Alert was terminated at 1:15 a.m. on March 15, 1993, and the unit entered Mode 5 (cold shutdown) at 5:56 a.m.

An Augmented Inspection Team (AIT) was sent by the NRC to investigate the Palo Verde Unit 2 event. The AIT concluded that the operating crew performed competently. However, weaknesses were identified in the licensee's implementation of emergency plan actions, including event classification, activation of the emergency response facilities, and promptly determining accountability for on-site personnel. Weaknesses were also found in the procedures, equipment, and training associated with responding to a SG tube rupture. The tube failure did not result in a radiological release to the environment that exceeded regulatory limits. The event did not result in exceeding a Technical Specifications (TS) safety limit. All notifications to the NRC and offsite agencies were made in a timely manner. The AIT report, documented in NRC Inspection Report No. 50–529/93–14, was issued on April 16, 1993.

It should be noted that several SG tube rupture events occurred at other nuclear power plants, and were previously reported as abnormal occurrences. North Anna Unit 1 had a SG tube plug failure February 25, 1989 (AO 89–1 in NUREG–0090, Vol. 12, No. 1) and another on July 15, 1987 (AO 87–15 in NUREG–0090, Vol. 10, No. 3). McGuire Unit 1 had a SG tube rupture on March 7, 1989 (AO 89–2 in NUREG–0090, Vol. 12. No. 1), while Ginna had one on January 25, 1982 (AO 82–4 in NUREG–0090, Vol. 5, No. 1).

Cause or Causes—The cause of the tube rupture is still under investigation by the licensee.

Actions to Prevent Recurrence

Licensee—The licensee conducted a root cause investigation.

NRC—The event is still under staff review. The NRC will review the AIT's findings and those of the licensee, and will take appropriate actions.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

93–2 Medical "Sodium Iodide" Misadministration at Ingham Medical Center in Lansing, Michigan

One of the AO reporting guidelines notes that a diagnostic dose of a radiopharmaceutical that is greater than five times the prescribed dose can be considered an abnormal occurrence.

Date and Place—May 11, 1992; Ingham Medical Center; Lansing, Michigan.

Nature and Probable Consequences—The referring physician's staff telephoned the licensee's nuclear medicine department on May 5, 1992, to schedule a thyroid scan to detect or rule out thyroid cancer. There was a miscommunication between members of the support staff. The technologist who received the call understood that the referring physician wanted a whole body scan to rule out thyroid metastasis and to look at a thyroid nodule. The medical technologist entered a whole body scan into the scheduling record.

On May 11, 1992, a 47-year old patient received 366.3 megabecquerel (MBq) (9.9 millicurie (mCi)) of iodine-131 in capsule form as preparation for a whole body scan. This procedure is normally used after a patient with thyroid cancer has had the thyroid removed or ablated to determine if the cancer originating in the thyroid has spread elsewhere in the patient's body. The patient still had an active thyroid and the patient's physician intended that the patient receive a thyroid scan to help determine if a thyroid nodule was cancerous. The thyroid scan is a different procedure from a whole body scan and as performed at the licensee's facility uses 370 MBq (10 mCi) technetium-99m, a different radiopharmaceutical than iodine-131.

On May 12, 1992, the patient returned to the licensee's nuclear medicine department for the scan. The image of the initial scan showed that the patient's thyroid was intact and that an error had been made. The technologist performing the scan immediately reported the situation to the supervising physicians. The licensee's procedures for an iodine-131 whole body scan specified that this diagnostic procedure be used only on individuals whose tyroid had been removed.

The referring physician and the patient were notified of the misadministration. The licensee has been monitoring the patient and has observed decreased thyroid function.

Initially, the licensee determined that the incident was not a misadministration and did not report it to the NRC. This was because the correct dosage and procedure were used for the study, as understood by the technologist to have been requested. The licensee contacted NRC Region III about the incident after reading about a similar case in an NRC Office of Nuclear Material Safety and Safeguards newsletter. A licensee consultant reviewed the case with NRC Region III on February 19, 1993. Following that discussion, the consultant reported the incident as a misadministration because the procedure requested by the patient's physician, a thyroid scan, would normally use a different radiopharmaceutical, technetium-99m.

Cause or Causes—The basic causes of this misadministration were a miscommunication between the referring physician's office and the licensee, and a failure of the licensee to follow its Quality Management (QM) Program for procedures using radioactive pharmaceuticals.

The licensee's QM Program, which was implemented in January 1992, requires that a written directive be prepared for procedures using more than 1.11 MBq (30 microcurie (μCi)) of iodine-131. However, no written directive was prepared for this procedure.

The licensee's procedure for a whole body iodine-131 scan required that the patient's thyroid had been removed previously. The licensee's procedures were not effective in determining if the patient had an intact thyroid.

The nuclear medicine department staff had not received training on the requirements of the licensee's QM Program which included the provision that a written directive had to be issued for a whole body scan (using more than 1.11 MBq (30 μCi) of iodine-131).

Actions Taken to Prevent a Recurrence

Licensee—The licensee has revised the procedures for thyroid cancer studies and provided training for nuclear medicine personnel in the QM Program requirements.

NRC—A special inspection was conducted from February 25 to 26, 1993, to review the circumstances surrounding the iodine-131 misadministration (Inspection Report No. 030–02132/93–001, April 1, 1993). The NRC has also retained a medical consultant to review the case.

The NRC consultant concluded that the most probable effect of the misadministration would be permanent hypothyroidism, and he noted that evidence suggested that this condition had already occurred. No other health effects would be expected as a result of the misadministration.

Several violations of NRC requirements were identified in the inspection. These violations and the implementation of the licensee's QM Program are still under review by the NRC for possible enforcement action.

On March 2, 1993, NRC Region III issued a Confirmatory Action Letter to

the licensee documenting its agreement to provide training to the nuclear medicine staff on the requirements of the QM Program, NRC regulations, and NRC licensee requirements (Confirmatory Action Letter No. CAL–RIII–93–001, Docket No. 030–02132, March 2, 1993). No procedures using more than 1.11 MBq (30 μCi) of iodine-131 were to be performed before the training was completed. The licensee also agreed to make certain that its procedures for iodine-131 studies are consistent with the QM Program.

93–3 Medical Therapy Misadministration Involving the Use of a High Dose-Rate Remote Afterloader Brachytherapy Device at Yale-New Haven Hospital in New Haven, Connecticut

One of the AO reporting guidelines notes that for a therapeutic exposure, if parts of the body receiving radiation improperly would have normally received radiation anyway, had the proper administration been used, and the actual dose is greater than 1.5 times that intended to the above described body part, the event can be considered an abnormal occurrence.

Date and Place—January 21, 1993; Yale-New Haven Hospital; New Haven, Connecticut.

Nature and Probable Consequences—A patient was prescribed to receive three treatments of 700 centigray (cGy) (700 rad) per treatment to the vagina using a Gamma Med high dose-rate remote afterloader brachytherapy device (HDR). During the first treatment on January 21, 1993, the physician mistakenly inserted the HDR applicator into the patient's rectum instead of the vagina, as prescribed. The licensee discovered the error immediately after the treatment was completed and the patient was immediately notified. The licensee estimated that the patient received approximately 350 cGy (350 rad) to the vagina and 700 cGy (700 rad) to the rectum. At the time of the NRC inspection on January 22, 1993, the licensee had planned to make up the dose to the vagina during the remaining two treatments and to add shielding to the applicator to prevent significant additional dose to the rectum.

The patient's physician, the physician who delivered the therapy, and an NRC Medical Consultant are presently evaluating the probable consequences of this misadministration.

Cause or Causes—The licensee did not confirm the treatment site before the treatment was given as required by its Quality Management (QM) Program.

Action Taken to Prevent Recurrence

Licensee—The licensee added a procedure requiring physicians to visually insert applicators. In addition, the licensee committed to a complete program assessment by an outside expert. This commitment was formalized by the NRC in a Confirmatory Order Modifying License (Violation and Proposed Imposition of Civil Penalties, and Confirmatory Order Modifying License, Docket No. 030–01244, April 26, 1993).

NRC—NRC Region I conducted a special inspection at the facility on January 22, 1993 (Confirmatory Action Letter No. CAL–RIII–93–001, Docket No. 030–02132, March 2, 1993). An NRC medical consultant was contacted to provide a clinical assessment of the effects of this misadministration. The licensee was offered the opportunity to participate in an Enforcement Conference but declined, believing that it would not be able to provide the NRC with any additional information. NRC recommended an enforcement action. A Notice of Violation and Proposed Imposition of Civil Penalties, and Confirmatory Order Modifying License were issued (Notice of Violation and Proposed Imposition of Civil Penalties, and Confirmatory Order Modifying License, Docket No. 030–01244, April 26, 1993). License modification required that the licensee's radiation safety program be improved as recommended by an outside expert. The enforcement action was based on this event and AO 92–19 (reported in NUREG–0090, Vol. 15, No. 4).

93–4 Medical Therapy Misadministration at Papastavros' Associates Medical Imaging in Wilmington, Delaware

One of the AO reporting guidelines notes that a therapeutic dose that is less than 0.5 times the prescribed dose can be considered an abnormal occurrence.

Date and Place—January 14, 1993; Papastavros' Associates Medical Imaging; Wilmington, Delaware.

Nature and Probable Consequences—On February 1, 1993, NRC Region I was notified by telephone that a therapeutic misadministration of iodine-131 occurred at the licensee's facility. In early January, the nuclear medicine technologist received a telephone call from the referring physician requesting that a patient be scheduled for a third treatment for hyperthyroidism and that 1.11 gigabecquerel (GBq) (30 millicurie (mCi)) of iodine-131 be administered. On January 13, 1993, the technologist ordered a 1.11 GBq (30 mCi) dose from the radiopharmacy. The dose was received on January 14, 1993. The technologist noted that the label on the lead container indicated 1.07 GBq (29 mCi) of iodine-131, but did not note that the label indicated that two capsules were present in the vial. A second technologist who removed the vial from the lead container and placed it in the dose calibrator for assay also failed to note that labels on both the lead container and the vial indicated the presence of two capsules. The assayed dose was consistent with the activity noted on the label. The technologist transferred the dose from the supplier's vial to a glass vial for administration to the patient. Only one of the capsules came out of the vial. The presumed empty lead container that still contained the plastic vial and remaining capsule was placed in the nuclear medicine hot laboratory for storage. The licensee discovered the remaining capsule on February 1, 1993, when the technologist was preparing lead containers for disposal. The patient was administered 0.56 GBq (15.1 mCi) of iodine-131, instead of the intended dose of 1.11 GBq (30 mCi). The misadministration was reported as required on February 1, 1993. The patient and the patient's physician were notified of the error and the patient was scheduled for follow-up therapy on February 10, 1993. The licensee's physician expected no adverse effects as a result of the misadministration. While the therapeutic dose administered was actually about 0.5 times the prescribed dose, the staff believes that this misadministration should still be considered an abnormal occurrence.

Cause or Causes—The misadministration was caused by failure of the licensee to establish and implement a Quality Management (QM) Program as required by 10 CFR 35.32(a). In particular, failure of the licensee to establish procedures to ensure that each therapy administration is in accordance with the written directive contributed to the misadministration.

Actions Taken to Prevent Recurrence

Licensee—The licensee's plan for preventing recurrence of the misadministration includes three steps: (1) To prepare and implement a written QM Program and provide training; (2) To have the radiopharmaceutical supplier indicate the number of capsules in each vial on the packing slip provided with iodine-131 therapy doses; and (3) To require the nuclear medicine technologists to read the label on the vials and lead containers to determine the number of capsules present in the vial, and then verify that the required number of capsules are administered to the patient. In addition, the vial into which the capsules are transferred after initial assay will be reassayed to ensure

that all capsules are transferred. The written QM Program was received by the NRC on February 11, 1993.

NRC—NRC Region I conducted an inspection on February 3, 1993 (Inspection Report No. 030–11379/93–001 and Closure of Confirmatory Action Letter (CAL) No. 1–93–001, Docket No. 030–11379, February 18, 1993). Because the misadministration resulted in an underdose to the patient and the therapy could be completed, the NRC did not contact a medical consultant to review this misadministration. A Confirmatory Action Letter (CAL) No. 1–93–001, Docket No. 030–11379, February 5, 1993) was issued to the licensee on February 5, 1993, which described the commitments made by the licensee to establish and implement a QM Program. An Enforcement Conference was held on March 1, 1993, to discuss the inspection findings and actions taken by the licensee in response to the CAL. On March 18, 1993, NRC Region I issued a Notice of Violation with a Severity Level III (Severity Levels I through V range from the most significant to the least significant) violation and $250 Civil Penalty (Notice of Violation and Proposed Imposition of Civil Penalty, Docket No. 030–11379, March 18, 1993). The licensee paid the Civil Penalty. The licensee's corrective and preventive actions will be reviewed during the next NRC inspection of the licensed program.

Dated at Rockville, MD this 2d day of July 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–16242 Filed 7–8–93; 8:45 am]

BILLING CODE 7590–01–M

NRC Workshop on Digital Systems Reliability and Nuclear Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Digital Systems Reliability and Nuclear Safety Workshop; open to public.

SUMMARY: The National Institute of Standards and Technology (NIST) is assisting the Nuclear Regulatory Commission (NRC) by hosting a public workshop titled Digital Systems Reliability and Nuclear Safety. The purpose of the workshop is to (1) provide feedback to the NRC from outside experts regarding proposed safety issues and proposed regulatory positions and research associated with the application of digital systems in nuclear power plants; and (2) to continue the in-depth exposure of the NRC staff to digital systems design issues related to nuclear safety by discussions with experts in the state of the art and practice of digital systems.

DATES: September 13–14, 1993, from 8:30 a.m. to 6 p.m. each day.

ADDRESSES: Holiday Inn Crowne Plaza, Rockville, MD.

PARTICIPATION: Nuclear Regulatory Commission Staff, Nuclear Industry Professionals, Digital Software Professionals, and others.

SUPPLEMENTARY INFORMATION: For registration inquiries contact Lori Phillips, NIST, Building 101, room A903, Gaithersburg, Maryland 20899–0001 (301) 975–4513; for technical inquires contact either Leo Beltracchi, U.S. Nuclear Regulatory Commission, MS NL/N–316, Washington, DC 20555, (301) 492–3549, Email or Dolores Wallace, NIST, Building 225, room B266, Gaithersburg, Maryland 20899–0001, (301) 975–3340, Email Wallace.

Thomas L. King,

Deputy Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 93–16239 Filed 7–8–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on July 28, 1993, in room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, July 28, 1993—10:30 a.m. until the conclusion of business.

The Subcommittee will discuss the fire PRA, fire hazards analysis, fire barrier design, and related matters associated with the General Electric Nuclear Energy (GE) Advanced Boiling Water Reactor Design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of GE and its consultants, and other interested persons regarding this review. Representatives of the NRC staff will participate, as appropriate.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 1, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–16241 Filed 7–8–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Results of the Review of Petitions Requesting Changes in the List of Countries and Articles Eligible for Duty-Free Treatment Under the GSP in the 1992 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of results of 1992 Annual Review of the GSP.

SUMMARY: The purpose of this notice is to announce the disposition of the petitions accepted for review in the 1992 Annual Review of the GSP program.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United

States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: This publication contains the dispositions of the petitions accepted for review in the 1992 Annual Review of the GSP program (57 FR 21327 and 57 FR 38088). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) (the 1974 Act). The review was conducted pursuant to regulations codified as 15 CFR 2007. These changes took effect on July 1, 1993. The President's decisions concerning the 1992 Annual Review have also been reflected in a proclamation (58 FR 34855) and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395–3230). All communications with respect to this notice should be addressed to the Director, Generalized System of Preferences, room 517, 600 17th Street, NW., Washington, DC 20506.

Reviews were also conducted concerning the beneficiary status of ten GSP beneficiary countries based on their practices in the area of internationally recognized worker rights. This includes review of El Salvador, Mauritania, Panama, and Thailand which were continued from the 1991 Annual Review and reviews of Bahrain, Fiji, Guatemala, Indonesia, Malawi, and Oman, which were accepted for review in the 1992 Annual Review. After reviewing these requests, the President determined that Panama has taken or is taking steps to afford internationally recognized worker rights. The President also determined that Mauritania is not taking such steps and therefore will be suspended from the GSP program. Bahrain, El Salvador, Fiji, Guatemala, Indonesia, Oman, Malawi, and Thailand will continue to be reviewed. The review of the worker rights practices of El Salvador, Guatemala, Malawi, Oman and Thailand will be continued until December 15, 1993. The review of the worker rights practices of Indonesia will be continued until February 15, 1994. The reviews of Bahrain and Fiji will be continued for one year.

The practices of Guatemala, Dominican Republic and Honduras were also reviewed concerning their alleged failure to provide adequate and effective protection for intellectual property rights. The review of Honduras will be continued until December 15, 1993, provided the government of Honduras enacts, by August 31, a comprehensive intellectual property law. The reviews of Guatemala and Dominican Republic will be continued for one year.

The review of Peru's actions regarding an alleged expropriation without compensation, which was accepted for review in the 1990 Annual Review and continued in the 1991 and 1992 Annual Review, has been extended.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

1992 GSP Annual Review: Product Cases

ANNEX I—PETITIONS TO ADD PRODUCTS TO GSP

Case No.	HTS No.	Product	Country—petitioner	1992 imports GSP beneficiaries ($ millions)
Petitions Granted:				
92–4	2902.60.00	Ethylbenzene	Brazil—Petroflex Industria	0
92–9	7202.50.00	Ferrosilicon chromium	Zimbabwe—Minerals marketing	7.7
Total				7.7
Petitions Denied:				
92–2	1604.13.10	Smoked sardines	Thailand—Govt	2.6
92–3	2009.40.40	Pineapple juice	All—Dole packaged foods	68.4
92–5	2906.12.00	Cyclohexanol	Brazil—Rhodia, S.A	[illegible]
92–6	4011.50.00	Bicycle tires	Thailand—Govt	14.1
92–7	4107.10.00	Pigskin leather products	Slovenia—Industija Unsnja Vrhnika	3.4
92–8	6505.90.80	Disposable nurses' hats	Dominican Republic—Boundary healthcare.	17.1
Total				88.5
Petitions Withdrawn:				
92–1	1302.39.00	Carrageenan thickener	Chile—Algas Marinas Algamar	
92–10	8527.31.50	Audio units, AC-only combination	Malaysia—Thomson Consumer	

ANNEX II—PETITIONS FOR WAIVERS OF COMPETITIVE NEED LIMITS

Case No.	HTS No.	Product	Country—petitioner	1992 imports petitioning country ($ millions)
Petitions Granted:				
92–18	8521.10.00.20	Video record. magnet. tape	Malaysia—Govt	412.3
92–19	8527.11.60	Port. radio cass. players	Malaysia—Santronics	203.5
Total				615.8

ANNEX II—PETITIONS FOR WAIVERS OF COMPETITIVE NEED LIMITS—Continued

Case No.	HTS No.	Product	Country—petitioner	1992 imports petitioning country ($ millions)
Petitions Denied:				
92–15	4104.31.20	Buffalo leather	Thailand—Lackawanna leather Co	15.4
92–16	7614.90.20	Aluminum electric conductors	Venezuela—General Cable Corp	8.1
92–17	8407.34.20.80	Passenger car engines	Brazil—General Motors Corp	37.6
92–20	8527.21.10	Radio-tape player comb	Brazil—Ford Motor Comp	53.5
Total				114.6
Petitions Pended:				
92–14	2909.19.10	MTBE (Methyl tertiary butyl ether)	Venezuela—Ecofuel S.P.A	93.9
Total				93.9

ANNEX III—PETITIONS TO REMOVE PRODUCTS FROM GSP

Case No.	HTS No.	Product	Principal country affected	1992 GSP imports principal country ($ millions)
Petitions Granted:				
*92–11	4418.20.00 (breakout requested)	French wooden doors	Malaysia	not available
Petitions Denied:				
92–13	2917.35.00	Flake phthalic anhydride	Venezuela	3.8
Total				3.8
Petition Moot (item exceeded competitive need limit):				
92–12	2917.35.00	Flake phthalic anhydride	Mexico	8.6
Total				8.6

*Product removed only with respect to Malaysia.

[FR Doc. 93–16201 Filed 7–8–93; 8:45 am]
BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. Nos. 33–7005, 34–32567, IC–19554]

Changes and corrections to the EDGAR Phase-in List

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Commission is publishing a list of changes and corrections to the EDGAR phase-in list for companies with filings processed by the Division of Investment Management.

FOR FURTHER INFORMATION CONTACT: Anthony A. Vertuno, Senior Special Counsel, Division of Investment Management at (202) 272–7710.

SUPPLEMENTARY INFORMATION: In connection with the adoption of interim rules to implement the operational phase of the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, on March 18, 1993, the Commission published a list of companies whose filings are processed by the Division of Investment Management to place registrants on notice as to when they would become subject to mandated electronic filing.[1]

The registrants were divided into six groups to be phase in over the next three years. Rule 902 of Regulation S–T[2] provides that registrants may request a change to their assigned phase-in dates. Such requests may be granted pursuant to delegated authority. In addition, corrections to the published list may be necessary. The Commission today is publishing a comprehensive list of all changes in the Division of Investment Management phase-in group assignments made since the list was published in the **Federal Register** on March 18, 1993; this procedure will be repeated from time to time, in order to notify the public of changes to the list. In addition, changes to the Division of Investment Management phase-in list will be published from time to time in the SEC News Digest, as are changes to the list maintained by the Division of Corporation Finance.

[1] See Release No. IC–19284 (February 23, 1993), published on March 18, 1993 at 58 FR 14848. The phase-in list and the timing for each phase-in group were included in that release as Appendix A. As is true with all rules promulgated by the Commission, persons making filings with Commission are responsible for apprising themselves of their new obligations associated with filing on the EDGAR system. While the Commission attempts to contact registrants in each phase-in group by furnishing a copy of the EDGAR Filer Manual and EDGARLink software prior to phase-in, filers will not be relieved of their electronic filing obligations in the absence of such notification.

[2] 17 CFR § 232.902.

A change to a company's phase-in date is of particular significance to persons filing documents with respect to that company, since generally such persons must file electronically when the company becomes subject to electronic filing.[3]

[3] Rule 901(b) provides that a party making a filing pursuant to section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n, respectively) with respect to a registrant that has become subject to mandated electronic filing is required to submit that filing in electronic format. Consequently, persons filing a Schedule 13D or 13G, a proxy statement, or tender offer material with respect to an electronic filer are required to make such filings electronically.

CHANGES IN THE EDGAR PHASE-IN LIST

From	To	CIK	Name of registrant
IM–06	IM–05	031710	Allegiance Separate Account A of Horace Mann Life Ins Co.
IM–06	IM–03	878351	Argentina Fund Inc.
IM–05	None.	277955	Ballard Biehl & Kaiser International Equity Fund.
IM–06	IM–05	866525	Ballard Biehl & Kaiser International Fund Group Inc.
IM–02	IM–06	887210	BJB Global Income Fund.
IM–02	IM–05	833154	Boston Co. Investment Series.
IM–02	IM–05	717341	Boston Co. Tax Free Municipal Funds.
IM–02	IM–05	053808	Boston Company Fund.
IM–06	IM–03	706111	Capital Appreciation Variable Account/Ma.
IM–02	IM–06	821466	CIM High Yield Securities.
IM–06	None.	821221	Colonial Hancock Liberty Separate Account.
IM–06	IM–02	276464	Corporate Trust Series 1.
IM–06	IM–01	752397	Directions Unit Investment Trust Twentieth Series.
IM–05	IM–02	895271	Equity Securities TR Series 2 Sig Ser Reic & Tan Gro & Val T.
IM–04	IM–02	883774	Equity Securities Trust Sr 1 Signat Sr Gabelli Comm Income T.
IM–04	IM–06	821051	Fidelity Investments Variable Annuity Account I.
IM–06	IM–04	870781	Financial Emerging Growth Fund Inc.
IM–02	IM–03	820675	First Iberian Fund Inc.
IM–05	IM–03	743861	Freedom Investment Trust.
IM–05	IM–03	791271	Freedom Investment Trust II.
IM–05	IM–03	852204	Freedom Investment Trust III.
IM–02	IM–06	884381	Glenmede Portfolios.
IM–06	IM–05	310407	Government Investors Trust.
IM–02	IM–03	745288	Government Securities Variable Account /Ma/.
IM–03	None.	760323	Hancock John Bond Trust /Ma.
IM–03	None.	750760	Hancock John Global Fund.
IM–03	None.	316005	Hancock John Government Spectrum Fund.
IM–03	None.	760285	Hancock John Growth Trust.
IM–03	None.	045293	Hancock John Income Securities Trust/Md.
IM–06	IM–03	092551	Hancock John Sovereign Investors Fund Inc.
IM–06	IM–03	357238	Hancock John Technology Series Inc.
IM–03	IM–05	045299	Hancock John Variable Annuity Account U.
IM–03	IM–05	785303	Hancock John Variable Series Trust I.
IM–05	None.	825551	Harvest Real Estate Variable Account.
IM–05	None.	804085	Harvest Real Estate Variable Annuity Account C.
IM–06	IM–03	706112	High Yield Variable Account /Ma.
IM–02	IM–01	049331	Hutton E F Corporate Income Fund First Series.
IM–02	IM–01	353476	Hutton E F Exempt Trust National Series 54.
IM–02	IM–01	817598	Hutton E F Tax Exempt Trust California Ins Ser 18 Nat Se 130.
IM–02	IM–01	783309	Hutton E F Tax Exempt Trust California Insured Series 14.
IM–02	IM–01	813823	Hutton E F Tax Exempt Trust California Insured Series 17.
IM–02	IM–01	817601	Hutton E F Tax Exempt Trust California Insured Series 18.
IM–02	IM–01	759247	Hutton E F Tax Exempt Trust California Insured Series 7.
IM–02	IM–01	815548	Hutton E F Tax Exempt Trust California Series 14.
IM–02	IM–01	783285	Hutton E F Tax Exempt Trust Multistate Series 26.
IM–02	IM–01	785981	Hutton E F Tax Exempt Trust Multistate Series 27.
IM–02	IM–01	788191	Hutton E F Tax Exempt Trust Multistate Series 28.
IM–02	IM–01	815020	Hutton E F Tax Exempt Trust Multistate Series 29.
IM–02	IM–01	736767	Hutton E F Tax Exempt Trust Multistate Series 3.
IM–02	IM–01	817596	Hutton E F Tax Exempt Trust Multistate Series 30.
IM–02	IM–01	785982	Hutton E F Tax Exempt Trust National Insured Series 19.
IM–02	IM–01	788193	Hutton E F Tax Exempt Trust National Insured Series 20.
IM–02	IM–01	748885	Hutton E F Tax Exempt Trust National Insured Series 6.
IM–02	IM–01	783310	Hutton E F Tax Exempt Trust National Series 121.
IM–02	IM–01	788302	Hutton E F Tax Exempt Trust National Series 123.
IM–02	IM–01	789465	Hutton E F Tax Exempt Trust National Series 124.
IM–02	IM–01	793554	Hutton E F Tax Exempt Trust National Series 125.
IM–02	IM–01	798054	Hutton E F Tax Exempt Trust National Series 126.
IM–02	IM–01	811418	Hutton E F Tax Exempt Trust National Series 129.
IM–02	IM–01	277189	Hutton E F Tax Exempt Trust National Series 23.
IM–02	IM–01	277190	Hutton E F Tax Exempt Trust National Series 24.
IM–02	IM–01	315664	Hutton E F Tax Exempt Trust National Series 46.
IM–02	IM–01	317766	Hutton E F Tax Exempt Trust National Series 47.

UMI
VOL 58 ISS 130 JL 9 1993
UMI

CHANGES IN THE EDGAR PHASE-IN LIST—Continued

From	To	CIK	Name of registrant
IM–02	IM–01	355367	Hutton E F Tax Exempt Trust National Series 56.
IM–02	IM–01	356135	Hutton E F Tax Exempt Trust National Series 57.
IM–02	IM–01	277166	Hutton E F Tax Exempt Trust National Series 7.
IM–02	IM–01	714983	Hutton E F Tax Exempt Trust National Series 78.
IM–02	IM–01	715112	Hutton E F Tax Exempt Trust National Series 79.
IM–02	IM–01	715064	Hutton E F Tax Exempt Trust National Series 80.
IM–02	IM–01	716717	Hutton E F Tax Exempt Trust National Series 81.
IM–02	IM–01	716800	Hutton E F Tax Exempt Trust National Series 82.
IM–02	IM–01	716829	Hutton E F Tax Exempt Trust National Series 83.
IM–02	IM–01	720325	Hutton E F Tax Exempt Trust National Series 84.
IM–02	IM–01	720668	Hutton E F Tax Exempt Trust National Series 85.
IM–02	IM–01	720863	Hutton E F Tax Exempt Trust National Series 86.
IM–02	IM–01	733965	Hutton E F Tax Exempt Trust National Series 89.
IM–02	IM–01	736491	Hutton E F Tax Exempt Trust National Series 90.
IM–02	IM–01	351734	Hutton E F Tax Exempt Trust New York Series 16.
IM–02	IM–01	354315	Hutton E F Tax Exempt Trust New York Series 17.
IM–02	IM–01	277184	Hutton E F Tax Exempt Trust New York Series 18.
IM–02	IM–01	701899	Hutton E F Tax Exempt Trust New York Series 20.
IM–02	IM–01	702603	Hutton E F Tax Exempt Trust New York Series 21.
IM–02	IM–01	275544	Hutton E F Trust For Government Guaranteed Securities.
IM–02	IM–01	795613	Hutton Investment Trust Convertible Unit Trust Series 11.
IM–02	IM–01	712371	Hutton Investment Trust GNMA Series 83 1.
IM–02	IM–01	752297	Hutton Investment Trust GNMA Series 85–A.
IM–02	IM–01	771624	Hutton Investment Trust GNMA Series 85–B.
IM–02	IM–01	786173	Hutton Investment Trust GNMA Series 86–A.
IM–02	IM–01	807880	Hutton Investment Trust GNMA Series 87–A.
IM–02	IM–01	756935	Hutton Investment Trust High Yield & Zero Coupon Trea Ser 1.
IM–02	IM–01	764070	Hutton Investment Trust High Yield & Zero Coupon Trea Ser 1B.
IM–02	IM–01	817139	Hutton Investment Trust Short Int Term US Treasury Series 4.
IM–02	IM–01	770467	Hutton Investment Trust Short Inter Term US Treasury Ser 3.
IM–02	IM–01	825180	Hutton Investment Trust Short Intermediate Term US Tre Ser 5.
IM–02	IM–01	759746	Hutton Investment Trust Short/Inter Term US Treas Ser 2.
IM–02	IM–01	721705	Hutton Telephone Trust First Tax Free Exchange Series.
IM–02	IM–01	737193	Hutton Telephone Trust Second Tax Free Exchange Series.
IM–02	IM–01	701680	Hutton Utility Trust First Public Utility Equity Series.
IM–02	None.	049719	IDS Nuveen Income Trust Series 1.
IM–06	IM–02	785855	Italy Fund Inc.
IM–02	IM–03	351754	Kemper Investors Life Insurance Co.
IM–06	IM–03	748691	Korea Fund Inc.
IM–06	IM–03	887590	Latin America Dollar Income Fund Inc.
IM–02	IM–03	827121	Managed Sectors Variable Account.
IM–02	IM–05	715144	Mann Horace Balanced Fund Inc.
IM–02	IM–05	062009	Mann Horace Growth Fund Inc.
IM–02	IM–05	715145	Mann Horace Income Fund Inc.
IM–02	IM–05	715143	Mann Horace Short Term Investment Fund Inc.
IM–06	None.	730762	Massachusetts Tax Exempt Money Market Fund.
IM–06	IM–03	867969	MFS Institutional Trust.
IM–05	IM–03	353896	MFS Separate Account Money Market Trust.
IM–02	IM–03	719269	MFS Sun Life Series Trust.
IM–02	IM–03	879808	MFS Utilities Fund.
IM–05	IM–03	202571	MFS Variable Account.
IM–06	IM–03	706113	Money Market Variable Account /Ma/.
IM–02	IM–03	733275	Multistate Tax Exempt Unit Trust Series 1.
IM–02	IM–03	736977	Multistate Tax Exempt Unit Trust Series 2.
IM–02	IM–03	740590	Multistate Tax Exempt Unit Trust Series 3.
IM–02	IM–03	742201	Multistate Tax Exempt Unit Trust Series 4.
IM–02	IM–03	745168	Multistate Tax Exempt Unit Trust Series 5.
IM–02	IM–03	746809	Multistate Tax Exempt Unit Trust Series 6.
IM–02	IM–03	750677	Multistate Tax Exempt Unit Trust Series 7.
IM–02	IM–03	752202	Multistate Tax Exempt Unit Trust Series 8.
IM–02	IM–03	791646	Multistate Trust.
IM–02	IM–03	759668	Multistate Trust Series 11.
IM–02	IM–03	761249	Multistate Trust Series 12.
IM–02	IM–03	763272	Multistate Trust Series 13.
IM–02	IM–03	763662	Multistate Trust Series 14.
IM–02	IM–03	763758	Multistate Trust Series 15.
IM–02	IM–03	763757	Multistate Trust Series 16.
IM–02	IM–03	764623	Multistate Trust Series 17.
IM–02	IM–03	766460	Multistate Trust Series 18.
IM–02	IM–03	770904	Multistate Trust Series 18, 19, 20 & 21.
IM–02	IM–03	768159	Multistate Trust Series 19.
IM–02	IM–03	769340	Multistate Trust Series 20.

CHANGES IN THE EDGAR PHASE-IN LIST—Continued

From	To	CIK	Name of registrant
IM–02	IM–03	773330	Multistate Trust Series 22.
IM–02	IM–03	799270	Multistate Trust Series 22, 23, 24 & 34.
IM–02	IM–03	777354	Multistate Trust Series 23.
IM–02	IM–03	783598	Multistate Trust Series 24.
IM–02	IM–03	783591	Multistate Trust Series 25.
IM–02	IM–03	790148	Multistate Trust Series 26.
IM–02	IM–03	790153	Multistate Trust Series 27.
IM–02	IM–03	790151	Multistate Trust Series 28.
IM–02	IM–03	793555	Multistate Trust Series 29.
IM–02	IM–03	793571	Multistate Trust Series 30.
IM–02	IM–03	793572	Multistate Trust Series 31.
IM–02	IM–03	793573	Multistate Trust Series 32.
IM–02	IM–03	799263	Multistate Trust Series 33.
IM–02	IM–03	799266	Multistate Trust Series 35.
IM–02	IM–03	808002	Multistate Trust Series 35, 36, 37 & 38.
IM–02	IM–03	799265	Multistate Trust Series 36.
IM–02	IM–03	807960	Multistate Trust Series 37.
IM–02	IM–03	807992	Multistate Trust Series 39.
IM–02	IM–03	807991	Multistate Trust Series 40.
IM–02	IM–03	811042	Multistate Trust Series 41.
IM–02	IM–03	811044	Multistate Trust Series 42.
IM–02	IM–03	811046	Multistate Trust Series 43.
IM–02	IM–03	754596	Multistate Trust Series 9.
IM–02	IM–03	756906	Multistate Tx Ex Unit Tr Se 6 & 7 & Multistate Tr Se 8, 9 & 1.
IM–03	IM–06	769100	Nations Fund Trust.
IM–03	IM–02	739611	New York Municipal Trust NY Discount & Zero Coupon Fd 4th S.
IM–03	IM–02	726936	New York Municipal Trust NY Discount & Zero Coupon Fund 2nd.
IM–03	IM–02	735579	New York Municipal Trust NY Discount & Zero Coup Fund 3rd Se.
IM–03	IM–02	276718	New York Municipal Trust Series 1.
IM–03	IM–02	315171	New York Municipal Trust Series 10.
IM–03	IM–02	316881	New York Municipal Trust Series 11.
IM–03	IM–02	317615	New York Municipal Trust Series 12.
IM–03	IM–02	317955	New York Municipal Trust Series 13.
IM–03	IM–02	318639	New York Municipal Trust Series 14.
IM–03	IM–02	000049	New York Municipal Trust Series 15.
IM–03	IM–02	352436	New York Municipal Trust Series 16.
IM–03	IM–02	353870	New York Municipal Trust Series 17.
IM–03	IM–02	355268	New York Municipal Trust Series 18.
IM–03	IM–02	700766	New York Municipal Trust Series 19.
IM–03	IM–02	278075	New York Municipal Trust Series 2.
IM–03	IM–02	705359	New York Municipal Trust Series 20.
IM–03	IM–02	707897	New York Municipal Trust Series 21.
IM–03	IM–02	709148	New York Municipal Trust Series 22.
IM–03	IM–02	710488	New York Municipal Trust Series 23.
IM–03	IM–02	714290	New York Municipal Trust Series 24.
IM–03	IM–02	715425	New York Municipal Trust Series 25.
IM–03	IM–02	716608	New York Municipal Trust Series 26.
IM–03	IM–02	718419	New York Municipal Trust Series 27.
IM–03	IM–02	719601	New York Municipal Trust Series 28.
IM–03	IM–02	278210	New York Municipal Trust Series 3.
IM–03	IM–02	310871	New York Municipal Trust Series 4.
IM–03	IM–02	311414	New York Municipal Trust Series 5.
IM–03	IM–02	312296	New York Municipal Trust Series 7.
IM–03	IM–02	313740	New York Municipal Trust Series 8.
IM–03	IM–02	314129	New York Municipal Trust Series 9.
IM–03	None.	073391	Nuveen Income Fund Series 1.
IM–05	None.	796307	Patriot Group Investment Trust.
IM–05	IM–03	868549	Patriot Premium Dividend Fund I.
IM–05	IM–03	855886	Patriot Premium Dividend Fund II.
IM–05	None.	836219	Patriot Premium Dividend Fund Inc.
IM–05	None.	852025	Patriot Private Dividend Term Trust.
IM–05	IM–03	863328	Patriot Select Dividend Trust.
IM–06	IM–01	225749	Penn State Tax Exempt Investment Trust Series 1.
IM–02	IM–06	882071	Preferred Income Opportunity Fund Inc.
IM–03	None.	711208	Pruco Life Series Fund Inc.
IM–02	IM–03	711175	Prudential Series Fund Inc.
IM–02	IM–04	822671	Putnam Capital Manager Trust /Ma/.
IM–02	IM–01	888790	Shearson Lehman Bro Unit Tr Uncommon Val Unit Tr 1992 Ser.
IM–02	IM–01	854855	Shearson Lehman Bro Unit Tr Fut Val Treas Ser Col Bound 2000.
IM–02	IM–01	875483	Shearson Lehman Bros Unit Tr Uncom Value Unit Tr 1991 Seri.
IM–02	IM–01	804145	Shearson Lehman Bros Unit Trusts High Yield Taxable Ser 1.
IM–02	IM–01	828599	Shearson Lehman Bros Unit Trusts High Yield Taxable Ser 11.

VOL 58 ISS 130 JL 9 1993 UMI

CHANGES IN THE EDGAR PHASE-IN LIST—Continued

From	To	CIK	Name of registrant
IM–02	IM–01	809755	Shearson Lehman Bros Unit Trusts High Yield Taxable Ser 4.
IM–02	IM–01	820532	Shearson Lehman Bros Unit Trusts High Yield Taxable Ser 8.
IM–02	IM–01	820542	Shearson Lehman Bros Unit Trusts High Yield Taxable Ser 9.
IM–02	IM–01	831952	Shearson Lehman Bros Unit Trusts Tax Exempt State Series 1.
IM–02	IM–01	836419	Shearson Lehman Brothers Un Tr Uti Value Tr II High Yield Eq.
IM–02	IM–01	870907	Shearson Lehman Brothers Unit Tr Dir Uit Series 90.
IM–02	IM–01	883173	Shearson Lehman Brothers Unit Tr Directions U I T Ser 95.
IM–02	IM–01	885982	Shearson Lehman Brothers Unit Tr Directions U I T Ser 96.
IM–02	IM–01	889422	Shearson Lehman Brothers Unit Tr Directions U I T Ser 97.
IM–02	IM–01	892794	Shearson Lehman Brothers Unit Tr Directions U I T Ser 98.
IM–02	IM–01	895825	Shearson Lehman Brothers Unit Tr Directions U I T Ser 99.
IM–02	IM–01	887245	Shearson Lehman Brothers Unit Tr Equ Val Tr Core Equ Series.
IM–02	IM–01	829687	Shearson Lehman Brothers Unit Tr High Yield Taxable Ser 12.
IM–02	IM–01	832498	Shearson Lehman Brothers Unit Tr High Yield Taxable Ser 13.
IM–02	IM–01	832807	Shearson Lehman Brothers Unit Tr High Yield Taxable Ser 14.
IM–02	IM–01	838238	Shearson Lehman Brothers Unit Tr High Yield Taxable Ser 16.
IM–02	IM–01	841689	Shearson Lehman Brothers Unit Tr High Yield Taxable Ser 18.
IM–02	IM–01	847427	Shearson Lehman Brothers Unit Tr Principal Return Trust 1.
IM–02	IM–01	818267	Shearson Lehman Brothers Unit Tru High Yield Taxable Sers 7.
IM–02	IM–01	869669	Shearson Lehman Brothers Unit Trust Directions Uit Ser 89.
IM–02	IM–01	872429	Shearson Lehman Brothers Unit Trust Directions Uit Ser 91.
IM–02	IM–01	878034	Shearson Lehman Brothers Unit Trust Directions Uit Ser 94.
IM–02	IM–01	816772	Shearson Lehman Brothers Unit Trust High Yield Mun Series 1.
IM–02	IM–01	836420	Shearson Lehman Brothers Unit Trust High Yield Taxable SE 15.
IM–02	IM–01	816336	Shearson Lehman Brothers Unit Trust High Yield Taxable Ser 6.
IM–02	IM–01	874291	Shearson Lehman Brothers Unit Trusts Dir Uit Ser 92.
IM–02	IM–01	867938	Shearson Lehman Brothers Unit Trusts Directions Uit Ser 88.
IM–02	IM–01	867686	Shearson Lehman Brothers Unit Trusts Eighth CMO Trust.
IM–02	IM–01	861086	Shearson Lehman Brothers Unit Trusts Fifth CMO Trust.
IM–02	IM–01	857790	Shearson Lehman Brothers Unit Trusts First CMO Trust.
IM–02	IM–01	846889	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 11.
IM–02	IM–01	848416	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 12.
IM–02	IM–01	850060	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 13.
IM–02	IM–01	82968	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 5.
IM–02	IM–01	832499	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 6.
IM–02	IM–01	832806	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 7.
IM–02	IM–01	841716	Shearson Lehman Brothers Unit Trusts High Yield Mun Ser 8.
IM–02	IM–01	819084	Shearson Lehman Brothers Unit Trusts High Yield Mun Sers 2.
IM–02	IM–01	819089	Shearson Lehman Brothers Unit Trusts High Yield Mun Sers 3.
IM–02	IM–01	840546	Shearson Lehman Brothers Unit Trusts High Yield Tax Ser 17.
IM–02	IM–01	874244	Shearson Lehman Brothers Unit Trusts Ninth CMO Trust.
IM–02	IM–01	895808	Shearson Lehman Brothers Unit Trusts Real Estate Value Tr 2.
IM–02	IM–01	841396	Shearson Lehman Brothers Unit Trusts Real Estate Value Tr I.
IM–02	IM–01	859167	Shearson Lehman Brothers Unit Trusts Second CMO Trust.
IM–02	IM–01	863246	Shearson Lehman Brothers Unit Trusts Seventh CMO Trust.
IM–02	IM–01	862130	Shearson Lehman Brothers Unit Trusts Sixth CMO Trust.
IM–02	IM–01	859453	Shearson Lehman Brothers Unit Trusts Third CMO Trust.
IM–02	IM–01	842165	Shearson Lehman Brothers Unit Trusts Utility Value Trust IV.
IM–02	IM–01	875197	Shearson Lehman Brothers Unit Trusts Utility Value Trust V.
IM–02	IM–01	893231	Shearson Lehman Brothers Unit Trusts Utility Value Trust VI.
IM–02	IM–01	842959	Shearson Lehman Hutton Unit Tr High Yield Taxable Ser 19.
IM–02	IM–01	864765	Shearson Lehman Hutton Unit TR Uncommon Val Unit Tr 1990 Ser.
IM–02	IM–01	850919	Shearson Lehman Hutton Unit TR Uncommon Values Un Tr 1989 SE.
IM–02	IM–01	830306	Shearson Lehman Hutton Unit TR Utility Value Tr III Merger &.
IM–02	IM–01	703546	Shearson Lehman Hutton Unit Trust Direction Uit Series.
IM–02	IM–01	861279	Shearson Lehman Hutton Unit Trust Directions Uit Ser 85.
IM–02	IM–01	843439	Shearson Lehman Hutton Unit Trusts Directions Uit Series 70.
IM–02	IM–01	856301	Shearson Lehman Hutton Unit Trusts Directions Uit Series 80.
IM–02	IM–01	857305	Shearson Lehman Hutton Unit Trusts Directions Uit Series 81.
IM–02	IM–01	858103	Shearson Lehman Hutton Unit Trusts Directions Uit Series 82.
IM–02	IM–01	859010	Shearson Lehman Hutton Unit Trusts Directions Uit Series 83.
IM–02	IM–01	860416	Shearson Lehman Hutton Unit Trusts Directions Uit Series 84.
IM–02	IM–01	863247	Shearson Lehman Hutton Unit Trusts Directions Uit Series 86.
IM–02	IM–01	865576	Shearson Lehman Hutton Unit Trusts Directions Uit Series 87.
IM–02	IM–01	860256	Shearson Lehman Hutton Unit Trusts Fourth CMO Trust.
IM–02	IM–01	819090	Shearson Lehman Hutton Unit Trusts High Yield Mun Ser 4.
IM–02	IM–01	846220	Shearson Lehman Hutton Unit Trusts High Yield Mun Series 10.
IM–02	IM–01	843441	Shearson Lehman Hutton Unit Trusts High Yield Mun Series 9.
IM–02	IM–01	810947	Shearson Lehman Hutton Unit Trusts High Yield TAX Series 5.
IM–02	IM–01	826726	Shearson Lehman Hutton Unit Trusts High Yield Taxable Ser 10.
IM–02	IM–01	805833	Shearson Lehman Hutton Unit Trusts High Yield Taxable Ser 2.
IM–02	IM–01	809295	Shearson Lehman Hutton Unit Trusts High Yield Taxable Sers 3.

CHANGES IN THE EDGAR PHASE-IN LIST—Continued

From	To	CIK	Name of registrant
IM–02	IM–01	821120	Shearson Lehman Hutton Unit Trusts Utility Value Trust I.
IM–06	IM–03	852954	Southeastern Thrift & Bank Fund Inc.
IM–02	IM–03	095324	Sun Growth Variable Annuity Fund Inc.
IM–02	IM–03	827119	Total Return Variable Account.
IM–06	IM–01	766493	Uncommon Values Unit Trust 1985 Ser & Subseq & Similar Serie.
IM–06	IM–01	832945	Uncommon Values Unit Trust 1988 Series.
IM–02	IM–04	889526	Van Kampen Merritt Advantage Municipal Income Trust.
IM–02	IM–04	889518	Van Kampen Merritt Advantage Pennsylvania Municipal Inc Trus.
IM–02	IM–04	877461	Van Kampen Merritt California Quality Municipal Trust.
IM–02	IM–04	895531	Van Kampen Merritt California Value Municipal Income Trust.
IM–02	IM–04	877701	Van Kampen Merritt Florida Quality Municipal Trust.
IM–02	IM–04	752203	Van Kampen Merritt Insured Tax Free Income Fund Inc.
IM–02	IM–04	877650	Van Kampen Merritt Michigan Quality Municipal Trust.
IM–04	IM–04	816305	Van Kampen Merritt Municipal Income Trust.
IM–02	IM–04	884152	Van Kampen Merritt Municipal Opportunity Trust.
IM–02	IM–04	877463	Van Kampen Merritt Municipal Trust.
IM–02	IM–04	877467	Van Kampen Merritt New York Quality Municipal Trust.
IM–02	IM–04	895530	Van Kampen Merritt New York Value Municipal Income Trust.
IM–02	IM–04	877649	Van Kampen Merritt Ohio Quality Municipal Trust.
IM–02	IM–04	889527	Van Kampen Merritt Ohio Value Municipal Income Trust.
IM–02	IM–04	877703	Van Kampen Merritt Pennsylvania Quality Municipal Trust.
IM–02	IM–04	895528	Van Kampen Merritt Pennsylvania Value Municipal Income Trust.
IM–02	IM–04	765821	Van Kampen Merritt Tax Free High Income Fund Inc.
IM–02	IM–04	880893	Van Kampen Merritt Trust For Insured Municipals.
IM–02	IM–04	889607	Van Kampen Merritt Trust For Insured Municipals II.
IM–02	IM–04	883266	Van Kampen Merritt Trust for Investment Grade California Mun.
IM–02	IM–04	883268	Van Kampen Merritt Trust for Investment Grade Florida Munici.
IM–02	IM–04	880892	Van Kampen Merritt Trust for Investment Grade Municipals.
IM–02	IM–04	883269	Van Kampen Merritt Trust for Investment Grade New Jersey Mun.
IM–02	IM–04	883265	Van Kampen Merritt Trust for Investment Grade New York Munic.
IM–02	IM–04	883267	Van Kampen Merritt Trust for Investment Grade Pennsylvania M.
IM–02	IM–04	895529	Van Kampen Merritt Value Municipal Income Trust.
IM–06	IM–01	794105	Vanguard Bond Market Fund Inc.
IM–06	IM–01	783401	Vanguard California Tax Free Fund.
IM–06	IM–01	069559	Vanguard Small Capitalization Stock Fund Inc.
IM–06	IM–01	313850	Vanguard Trustees Equity Fund.
IM–02	IM–04	816483	VKM Current Income Trust.
IM–02	IM–04	816306	VKM Municipal High Yield Trust.
IM–02	IM–04	820238	VKM New York Municipal Trust.
IM–06	IM–03	827118	World Governments Variable Account.
IM–06	IM–02	830142	ZENIX Income Fund Inc.

Total number of registrants: 320.

Dated July 1, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16209 Filed 7–8–93; 8:45 am]

BILLING CODE 8010–01–P

[Release No. 34–32572; File No. SR–Amex–92–10]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange Relating to Various Rule Revisions

July 1, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 28, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On May 4, 1992, the Amex submitted to the Commission Amendment No. 1 to the proposal.[1] On June 2, 1992, the Amex submitted to the Commission Amendment No. 2 to the proposal.[2] On June 25, 1993, the Amex submitted to the Commission Amendment No. 3 to the proposal.[3] The Commission is publishing this notice to

[1] The Amex submitted a letter to the Commission adding proposed Commentary .03(d) to Rule 111, Restrictions on Registered Traders, to state that members who are not regular members (as defined in Article IV of the Amex Constitution) may enter orders in accordance with Commentary .03, as described below, only in securities which members of their class are otherwise entitled to trade while on the Floor of the Exchange. Amendment No. 1 also would amend Rule 950(c), Floor Rules Applicable to Options, to provide that Rule 111 and certain of its commentaries shall apply to options transactions. See letter from Geraldine Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 1, 1992.

[2] The Amex submitted to a letter to the Commission requesting that its proposed amendment to Rule 170, Commentary.02, which would permit specialists to liquidate positions in specialty stocks on zero destabilizing ticks without Floor Official approval, be withdrawn from the instant proposed rule change. See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated May 29, 1992. Proposed Rule 170 was refiled in Amex filing Amex 92–26.

[3] Amendment No. 3 proposes additional changes to the Rules 7, 108(c), 115 and 131(h). The proposed changes include: Minor revisions to Rule 7, Commentary .01, in order to conform the reprint of Exchange Act Rule 10a–1 contained in the rule to its actual text; changes to Amex Rule 108(c), to include a citation to Section 11(a) of the Exchange Act; minor revisions to Rule 115, Commentary .02, to conform the reprint of Exchange Act rule 11Ac1–1 to its actual text; minor clarifying language changes to Amex Rule 131(h). See letter from Geraldine Brindisi, Corporate Secretary, Amex to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated June 24, 1993.

VOL 58 ISS 130 JL 9 1993 UMI

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing various revisions to Rules 2, 6, 7, 22, 103, 108, 110, 111, 115, 124, 126, 131, 134, 135, 154, 155, 156, 178, 179, 419, 420, 550, 560, 950 and 959 to either update them or conform them to comparable rules of the New York Stock Exchange ("NYSE").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepares summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange recently conducted a review of its rules and determined that certain revisions were necessary to (1) conform to recent changes to comparable NYSE rules or (2) update certain rules which contain provisions which are no longer applicable or fail to address current concerns. Each rule change is described below, including an explanation as to why the changes were required.

Rule 2. Visitors. Currently, this rule refers to the admission of visitors to the "Gallery" and the "Trading Floor." However, since the "Gallery" has been non-existent for many years, reference to it should be deleted.

Rules 6 and 550. Execution of Bonds on Exchange and Secondary Distributions. Currently, these rules refer to the "Rulings and Inquiries Department" as the department at the Amex to be contacted relative to those rules. However, such department no longer exists ("Rulings" and "Inquiries" are separate departments), and the reference should thus be changed to the "Rulings Department."

Rule 7. Short Sales. Commentary .01 is a reprint of Exchange Act Rule 10a–1. However, the reprint is an outdated version of the Commission rule and should be revised.[4]

Rule 22. Authority of Floor Officials. Rule 22 contains a cross reference which lists seventeen rules upon which Floor Officials may rule. However, currently there are at least twenty additional such rules which are not included in the list, and with future rule revisions, additional rules will provide for Floor Official involvement. Rather than attempt to provide an all-inclusive list, it is proposed that the cross reference in rule 22 be deleted.

Rule 103(a). Dealings When Option Granted or Held. Rule 103(a) prohibits a member, while on the Floor, from buying or selling any stock if the member or his firm holds or has granted an option to buy or sell the stock. This rule was adopted prior to 1961. In December 1985, Rule 175 was revised to permit a stock specialist to hedge his stock position with options.[5] Rule 103(a) should therefore be similarly revised to permit a stock specialist to engage in listed option transactions to hedge his stock position.

Rule 103(c). Discretionary Transactions. This rule, with certain exceptions, prohibits members from exercising discretion as to the choice of stock to be bought or sold, the price of such stock, the amount of stock to be bought and whether the transaction shall be one of purchase or sale. The prohibition applies except when the member is executing a transaction for a bona fide cash investment account or for the account of a person who due to illness, absence, etc., is unable to effect transactions for his own account. It is proposed that these exceptions be deleted since they are not appropriate in today's market. The NYSE has adopted a similar revision to a comparable rule.[6]

Rule 108. Priority and Parity at Openings. Paragraph (c) discusses parity at openings of limit orders in the crowd with orders on the specialist's book. Because Exchange Act Rule 11a1–1 impacts on the types of orders which may be on parity, Rule 108(c) should include a reference to it.[7]

Rules 110 and 111, Commentary .03. Registered Traders and Restrictions on Registered Traders. These rules, which require that only members registered as traders may trade for their own accounts while on the Trading Floor, were adopted in 1964 to restrict on-Floor transactions of Floor members, who, it was believed, had trading advantages due to their presence on the Trading Floor when market news unfolded and their ability to quickly react to such information.

Since current communications technology makes information readily available to off-Floor market participants, there appears to be no reason to continue to so restrict members' on-Floor orders. It is, therefore, proposed that the current Commentary .03 to Rule 111 be rescinded and new Commentary .03 be adopted. Such commentary will permit members, while on the Trading Floor, to enter orders for their own accounts provided such orders are entered through an on-Floor communication facility to an off-Floor clearing firm's order room where a time-stamped record of the order is maintained before the order is re-transmitted to the Trading Floor.

It also is proposed that a new paragraph (d) to proposed Commentary .03 be adopted to clarify that members who are not regular members of the Exchange (i.e., options principal members and limited trading permit holders) may only enter orders pursuant to proposed Commentary .03 in securities in which members of their class are otherwise entitled to trade while on the Floor of the Exchange.

In addition, Rule 110 should be revised to permit members other than Registered Traders to enter orders for their accounts while on the Trading Floor if such orders are entered in accordance with new Commentary .03 to Rule 111. This revision permits Rule 110 to maintain its proper relationship with Rule 111 as revised. The NYSE has adopted similar revisions to its comparable rules.[8]

Rule 115. Exchange Procedures for Use of Unusual Market Exception. This rule contains exceptions to Exchange Act Rule 11Ac1–1. However, there is no indication in Rule 115 as to the requirements of Rule 11Ac1–1. Commentary should therefore be added to Rule 115 to incorporate the text of Rule 11Ac1–1, as has been done by the NYSE in its Rule 60.[9]

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[4] Amendment No. 3 proposes minor language changes to conform the reprint of Exchange Act Rule 10a–1 which is contained in Commentary .01 of the rule to its official format.

[5] See Securities Exchange Act Release No. 22670 (November 27, 1985), 50 FR 49808 (December 4, 1985) (File No. SR-Amex-85–18).

[6] The Amex states that the proposed amendment is based on NYSE Rule 95.

[7] Amendment No. 3 further amends Rule 108(c) to include a citation to Section 11a of the Exchange Act.

[8] The Amex states that the proposed amendments are based on NYSE Rules 111 and 112.

[9] Amendment No. 3 proposes minor revisions in order to conform the reprint of Exchange Act Rule

Rule 124. Types of Bids and Offers. In discussing "next day" delivery of rights and warrants, the rule indicates that "bids and offers in rights and warrants shall specify 'next day' in accordance with Rule 17." Rule 124 should be revised to clarify that the reference in Rule 17 relates only to expiring rights and warrants.

Rule 126(e). Precedence of Bids and Offers—Sale Removes All Bids. Paragraph (e)3 states that a sale removes all bids. However, this applies only when not in contravention of Exchange Act Rule 11Ac1–1. Such a stipulation should be included in Rule 126(e)3.

Rule 126(h). Precedence of Bids and Offers—Disputes. This rule provides that, unless resolved by the members involved, disputes shall be settled, if practicable, by a vote of witnesses to a trade, and if not so settled shall be settled by a Floor Official. It is proposed that the rule be revised (and redesignated 126(i) due to a change in another rule filing) to provide that disputes will be settled by a Floor Official who may, in his deliberations, consider the comments of witnesses, and where only the amount traded was in dispute, the size of the order. The NYSE has adopted a similar revision to its comparable rule.[10]

Rule 131(a). Types of Orders—Market Order. Rule 131(a) states that the responsibilities of brokers handling certain orders are set forth in Rule 156. It is proposed that "switch" orders be included in the reference to the orders brokers handle. This revision follows the inclusion of such orders in Rule 156.

Rule 131(f). Types of Orders—At the Opening Order. It is proposed that the phrase "at the opening of the stock" be revised to clarify that an "at the opening order" is to be executed "on the opening trade in the stock." This revision incorporates into the rule a policy that is currently in effect on the Exchange. The NYSE has revised its comparable rule in the same manner.[11]

Rule 131(h). Types of Orders—Do Not Reduce. This paragraph relates to do not reduce orders ("DNR"), which are not reduced to reflect ordinary cash dividends but are reduced for other distributions such as when a stock goes "ex" a stock dividend or ex rights. To be more specific, the rule should indicate that DNR order will be reduced for "special cash" dividends.

The rule defines DNR orders to include, among other things, certain stop orders to sell odd-lots. It does not include stop order to sell round-lots, since specialists were not permitted to accept them when Rule 131(h) was adopted. In 1987, the Exchange changed Rule 154 to permit specialists to accept stop orders on round lots.[12] Therefore, it is proposed to modify Rule 131(h) to include stop orders to sell round-lots.[13]

Rule 131(i). Types of Orders—Fill or Kill. The definition of a "fill or kill" order in this paragraph includes a reference to two other types of orders, "immediate or cancel" and "all or none," which suggests that such orders are comparable in nature. This is not the case, because these types of orders have unique characteristics. For instance, a "fill or kill" order is to be executed in its entirety on presentation in the crowd or immediately cancelled. "Immediate or cancel" orders require an immediate execution of all or part of the order with the balance cancelled. The "all or none" order is to be executed in its entirety in one transaction but is not cancelled if not executed immediately on presentation in the crowd. It is therefore proposed that the reference to "immediate or cancel" and "all or none" orders be deleted, because this paragraph of the rule is not applicable to those types of orders.

Rule 131(l). Types of Orders—Not Held Order. It is proposed that orders marked "buy on the print" or "sell on the print" be included in the types of orders deemed to be "not held orders" because by their terms, these orders can only be executed if a print takes place at its limit. Additionally, as with other "not held" orders, there are no assurances that the broker handling the order will be able to execute the order at that same price. The NYSE has adopted a similar revision to its comparable rule.[14]

Rule 134. Cash and Seller's Option Transactions. Rule 134 requires Floor Official oversight for "cash" and seller's option transactions, two transactions that are not "regular way." However, although "next day" transactions are also not "regular way" transactions, they are not included in the rule. This appears to have been an oversight at the time Rule 124 was revised to permit "any additional settlement periods as the Exchange may from time to time determine." It is therefore proposed that "next day" transactions be referred to in the rule.

Rule 135. Cancellations. Currently, Rule 135 permits a member or member organization to cancel a transaction if it was made in error or for other proper reason provided that Floor Official permission is granted. This permits unilateral cancellations. It is proposed that Rule 135 be revised to require that cancellation of, or revision in, a transaction be approved by both the buying and selling members involved in the transaction to be cancelled or revised in accordance with the rule and its commentary. It is further proposed that the title of the rule be revised to indicate that the rule relates to revisions in, as well as cancellations of, transactions. The NYSE has revised its comparable rule which requires the cancellation of a transaction to be agreed to by both sides of the transaction in question in addition to obtaining the approval of a Floor Official.

Rule 154, Commentary .03. Orders Left With Specialist. Commentary .03 specifies that specialists may not accept "not held" orders. It is proposed that Commentary .03 be revised to include "buy on the print" and "sell on the print" as additional types of orders which a specialist is prohibited from accepting because under Rule 131, a "buy on the print" or "sell on the print" order is deemed to be a "not held" order.

Rule 154, Commentaries .06 and .07. Orders Left With Specialist. The Commission has approved the rescission of NYSE Rule 123A.55 which had required the periodic confirmation of good 'til cancelled ("GTC") orders on the specialist's book.[15] According to the NYSE, it felt that the requirement was no longer needed in view of the automated recordkeeping ability of member firms. It is proposed that Commentary .06 Amex Rule 154 be rescinded and Commentary .07 to that rule be revised to delete the reference to the return of the receipt stubs of periodic confirmation or renewals.

Rule 154, Commentary .14. Orders Left With Specialist. Commentary .14 treats elected but unexecuted stop and stop limit orders to sell the same as open limited price orders to sell, and indicates that such orders are not to be reduced on ex-date unless otherwise instructed. The Commentary is valid as it applies to cash dividends, but is inappropriate where other than cash dividends are involved. Such orders, pursuant to Rule 132, are to be adjusted

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11Ac1–1 which is contained in Commentary .02 to the rule, to the actual language of the Rule.

[10] The Amex states that the proposed amendment is based on NYSE Rule 75.

[11] See NYSE Rule 13.

[12] See Securities Exchange Act Release No. 24021 (January 21, 1987), 52 FR 3370 (February 3, 1987) (File No. SR–Amex–84–32).

[13] Amendment No. 3 proposes minor clarifying language changes.

[14] The Amex states that the proposed amendments are based on NYSE Rule 13.

[15] See Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1991) (File No. SR–NYSE–89–02).

as are all other orders to reflect stock dividends or stock distributions.

Rule 155. Precedence Accorded to Orders Entrusted to Specialists. This rule requires that a specialist give precedence to orders on his book before he can trade for his own account at that price. This prohibition is no longer an "across the board" type of prohibition. Because Exchange Act Rule 11a1–1 became effective, the specialist is not required to refrain from trading for his own account when in possession of inexecutable "G" orders. Other exemptions include on-Floor orders subject to the "two-tick" restriction and unelected percentage orders. It is proposed that the rule be amended accordingly.

Rule 156. Representation of Orders. It is proposed that paragraph (e) be added to provide that a broker may handle a "switch order" on a "best efforts" basis. This proposal recognizes the difficulties a member may encounter in executing this type of order since it requires the execution of orders in different securities at the same time at a designated price difference. The NYSE has similarly revised its comparable rule.[16]

Rule 178. Responsibility of Specialist. This rule establishes the liability for losses in those situations where a member firm has not received a report from the specialist on an order that was executed or should have been executed. The time-frames cited in the current rule are no longer appropriate in view of the time limits set forth in Rule 719 regarding "Next Day Comparison of Exchange Transactions." Rule 178 should be revised to conform its time limits to Rule 719.

Rule 179. Orders in Rights. Because this rule also applies to warrants, the title of the rule should be revised to incorporate warrants.

Rules 419 and 420. Statements of Accounts and Mailing Statements, etc., respectively. Commentaries to both rules refer to "Membership Compliance Division." The correct title of that division is "Compliance and Surveillance Division" and the commentaries to both rules should be revised to reflect that fact.

Rule 560. Special Offerings and Special Bids. Paragraph (i) incorporates the provisions of Article VI with respect to Floor brokerage commissions into Rule 560. However, paragraph (i) should be deleted since Article VI, to which it relates, was rescinded in 1976.

Rule 950(c). Floor Rules Applicable to Options—Rules of General Applicability. This paragraph provides that, with certain exceptions, the restrictions on Registered Traders as imposed by Rule 111 will apply to the trading of options. The Amex proposes to extend the proposed amendment to Rule 111, to permit members while on the Floor to enter orders in a manner that permits them to be deemed "off-Floor" orders, to options trading. Because the Exchange has determined that there is no reason why the proposed revisions to Rule 111 should not be applicable to transactions in non-equity securities as well as equity securities, the Exchange proposes to revise Rule 950(c).

Rule 950(e). Floor Rules Applicable to Options—Rules of General Applicability. Paragraph (e) of Rule 950 relates to the handling of orders unique to options. It is proposed that commentary be added to clarify that "At the Opening" orders in options are executable in whole or in part at the opening rotation in the pertinent option and that any such order or the portion thereof not so executed is to be treated as cancelled.

Rule 950(h), Commentary .05. Floor Rules Applicable to Options—Rules of General Applicability. Paragraph (h) of Rule 950 makes the specialist financial requirements contained in Rule 171 applicable to options trading. Commentary .05 to that paragraph details how the financial requirements are computed for options specialists, referring to specialists maintaining twenty option contracts of each class of options in which he is registered.

Rule 171 was revised a few years ago to require specialists to "maintain a cash or liquid asset position in the amount of $600,000 or an amount sufficient to assume a position of sixty trading units of each security in which such specialist is registered * * *"[17] The rule previously required specialists to assume a position of twenty trading units. Because Rule 171 now refers to sixty rather than twenty trading units, Commentary .05 should be amended accordingly.

Rule 959. Accommodation Transactions. This rule provides a "cabinet" trading facility for the trading of options which are out of the money to the extent that there is no buying interest at the minimum price at which options trade (1/16) of $1 or .06-1/2 per underlying share). Orders to sell at $1 per contract (.01 per underlying share) may be entered in the cabinet subject to a number of restrictions, including the requirement that only closing orders may be entered in the "cabinet." Because the rule applies only to orders left in the "cabinet," opening orders may be crossed in the crowd. However, there is no provision for this type of transaction in the rule. Therefore, it is proposed that the rule be amended to provide that opening or closing purchase and sell orders may be executed in the crowd in the absence of closing purchase or sale orders in the cabinet.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[16] The Amex states that the proposed amendment is based on NYSE Rule 13.

[17] See Securities Exchange Act Release No. 25863 (June 28, 1988), 53 FR 25225 (July 5, 1988) (File No. SR–Amex–88–14).

proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-10 and should be submitted by July 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16210 Filed 7–8–93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Alpine Meadows of Tahoe, Inc., Common Stock, $0.25 Par Value) File No. 1–9768

July 2, 1993.

Alpine Meadows of Tahoe, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, the Board of Directors of the Company approved resolutions on April 22, 1993 to withdraw the Company's Common Stock from listing on the PSE. Presently, such Common Stock is listed on both the PSE and the National Association of Securities Dealers Automated Quotations National Market System ("NASDAQ/NMS"). The decision of the Board followed a study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to the Company's stockholders than the present dual listing because:

(a) According to the Company, maintaining the dual listing is expensive for the Company and not necessary for the shareholders;

(b) According to the Company, the dual listing has been confusing for the shareholders. The Company has received numerous calls from shareholders expressing confusion over why the shares are trading in both markets and why different quotes exist;

(c) The Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for its Common Stock than is presently the case with the single specialist on the PSE;

(d) The Company believes that NASDAQ/NMS will offer the Company's shareholders more liquidity than is presently available on the PSE and less volatility in quoted prices per share when trading volume is light; and

(e) The Company believes that the firms making a market in the Company's Common Stock on NASDAQ/NMS will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before July 26, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated au9thority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16211 Filed 7–8–93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (The Bombay Co., Inc., Common Stock, $1.00 Par Value) File No. 1–7288

July 2, 1993

The Bombay Company, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on May 26, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before July 26, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16212 Filed 7–8–93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Jennifer Convertibles, Inc., Common Stock, $0.01 Par Value; Class A Warrants; Class B Warrants) File No. 2–9681

July 2, 1993.

Jennifer Convertibles, Inc. ("Company") has filed application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities

from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its Common Stock is listed on the National Association of Securities Dealers Automated Quotation National Market System ("NASDAQ/NMS") as of May 19, 1992. NASDAQ/NMS does not permit securities that it lists to also be listed on the BSE, and therefore the Company must request this withdrawal. According to the Company, the Class A and B Warrants should be delisted because all Class A and B Warrants have either been exercised or redeemed.

Any interested person may, on or before July 26, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16301 Filed 7–8–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1828]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet Thursday, August 5, 1993, at 9 a.m. in the Department of State.

The Committee will meet in open session from 9 a.m. on the morning of Thursday, August 5, 1993, until noon of that day, in room 1205, Main State. The remainder of the Committee's sessions, 1 p.m. until 4:30 p.m., will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting could be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123.

Dated: June 30, 1993.

William Z. Slany.

[FR Doc. 93–16286 Filed 7–8–93; 8:45 am]

BILLING CODE 4710–11–M

[Public Notice 1827]

Study Group 12 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 12 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on Wednesday, August 4, 1993, at the Department of Commerce, Herbert Hoover Building, 14th and Pennsylvania Avenue, Washington, DC, room 4830. Study Group 12 will meet at 1:30 p.m.

The agenda for the meeting will be as follows: opening remarks, introduction of attendees, adoption of the agenda, preparation for Study 12 meeting in Geneva on September 7–9, 1993, status of Study Group 12, announcement of the U.S. Delegation to the Study Group 12 meeting, and other business and future meetings.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Ms. Jane Davison, Department of Commerce, phone (202) 482–1138.

Dated: June 25, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 93–16287 Filed 7–8–93; 8:45 am]

BILLING CODE 4710–45–M

Bureau of Administration

[Public Notice 1829]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Department of State is requesting approval for the Nonimmigrant Fiance(e) Visa Application form. The Nonimmigrant Fiance(e) Visa Application, is used by aliens who are beneficiaries of a fiance(e) petition filed by a United States citizen and approved by the United States Immigration and Naturalization Service, who intend to enter the United States to conclude a valid marriage with the petitioner. The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant fiance(e) visa. The following summarizes the information collection proposal submitted to OMB:

Type of request—Existing information collection without an OMB control number.

Originating office—Bureau of Consular Affairs.

Form number—OF–156K.

Title of information collection—Nonimmigrant Fiance(e) Visa Application.

Frequency—On occasion.

Respondents—Aliens Applying for Nonimmigrant Fiance(e) Visas.

Estimated number of respondents—6,000.

Average hours per response—2 hours.

Total estimated burden hours—12,000.

Existing rule containing this collection of information was published in the **Federal Register** on November 5, 1987 (52 Fed Reg. 42597).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Steven H. Semenuk, (202) 395–7340.

Dated: June 30, 1993.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 93–16285 Filed 7–8–93; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–93–14]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 20, 1993, in the 29th floor boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the April 20, 1993 meeting.
3. Old Business.
4. New Business.
5. Report from the VTS Subcommittee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: June 11, 1993.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 93–16317 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–93–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 28, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 30, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 27284
Petitioner: Air One Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.411(a)(2) and 135.423 through 135.443
Description of Relief Sought: To allow Air One Helicopters (AOH) to carry more than nine passengers while performing fire fighting activities without complying with the maintenance requirements of § 135, Subpart J.

Docket No.: 27304
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 91.213 and 91.31
Description of Relief Sought: To allow pilots of Beech Model 400A to operate the aircraft without a second-in-command.

Dispositions of Petitions

Docket No.: 005SW
Petitioner: McDonnell Douglas Helicopter Company
Sections of the FAR Affected: 14 CFR 27.1(a)
Description of Relief Sought/ Disposition: To allow the MD900 helicopter to exceed the 6,000 pound maximum weight limit specified for normal category rotorcraft.
Denial, April 13, 1993, Exemption No. 5368

Docket No.: 26874
Petitioner: Gordon E. Smith
Sections of the FAR Affected: 14 CFR 61.155
Description of Relief Sought/ Disposition: To allow Gordon E. Smith to credit part of his military flight engineer (FE) flight time toward the minimum amount of flight time required to be eligible for an airline transport pilot (ATP) certificate.
Denial, June 15, 1993, Exemption No. 5668

Docket No.: 27046
Petitioner: Bay Cities Medical Supply
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To amend Exemption No. 5602 to add the Cessna 414–A aircraft to the terms of this exemption which allows appropriately trained and certified pilots employed by Bay Cities Medical Supply, Inc. (BCMSI) to remove and reinstall the left rear seat in BCMSI Cessna 401–A and Piper Pa–34–200T aircraft.
Grant, June 11, 1993, Exemption No. 5602A

Docket No.: 27063
Petitioner: Gulkana Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow the pilots employed by Gulkana to remove and reinstall aircraft cabin seats and approved stretchers on aircraft operated by Gulkana.
Grant, June 22, 1993, Exemption No. 5669

[FR Doc. 93–16250 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Mitigation Enhancement Report: Los Angeles County, California; Availability

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of enhancement and mitigation report availability.

SUMMARY: The FHWA is issuing this notice to advise the public of the

VOL 58 ISS 130 JL 9 1993 UMI

availability of the Route 710 Meridian Variation Enhancement and Mitigation Advisory Committee's Final Report, relative to CA–710/Long Beach Freeway Extension, from I–10/San Bernardino Freeway to I–210/Foothill Freeway (EIS No. 920134). Comments are requested and will be accepted for thirty (30) days following the publication of this notice. Comments should be submitted to: Lou Bedolla, Deputy District Director, Caltrans, 120 South Spring Street, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Mr. James Bednar, Chief, District Operations "B", Federal Highway Administration, 980 9th Street, Sacramento, California 95814–2724, Telephone: (916) 551–1310.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement (FHWA–CA–EIS–74–15–F) for the Route 710 project identified the Meridian Variation Alignment as the preferred alternative. The FHWA approved the Final EIS on March 2, 1992, as adequate for public disclosure of information on the preferred alternative and all reasonable alternatives considered, regarding potential impacts and proposed mitigation, as required by the National Environmental Policy Act (NEPA). However, because of the controversy surrounding the project and the magnitude of the impacts relating to potential community disruption, residential relocation, business relocation, and harm to cultural resources, an Enhancement and Mitigation Committee was established to develop more comprehensive mitigation and enhancement measures to further reduce the impacts of the preferred alternative.

The Committee met thirteen times between September 9, 1992 and the final meeting on April 29, 1993. The focus of the Committee was on both the mitigation and enhancement measures mentioned in the Final EIS and on identification and development of appropriate additional enhancement opportunities which will minimize the facility's "footprint" and other impacts through the environmentally and historically sensitive areas the project traverses. The Committee has formalized its recommendations in a Final Report prepared for the FHWA and Caltrans which is now available for review in the clerk's offices of the cities of Alhambra, South Pasadena, Los Angeles and Pasadena, California. It is the intent of FHWA to consider all recommendations of the committee, along with comments provided by Caltrans and the public, in the preparation of the Record of Decision for the project.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 2, 1993.

Roger Borg,

Division Administrator, Sacramento, California.

[FR Doc. 93–16222 Filed 7–8–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: July 2, 1993

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form
Type of Review: New collection
Title: Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement
Description: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeeper: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping.....2 hours, 38 minutes
Learning about the law or the form.....1 hour, 34 minutes
Preparing the form.....2 hours, 36 minutes
Copying, assembling, and sending the form to the IRS.....16 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 7,060 hours
OMB Number: 1545–1309
Form Number: IRS Form 1040PC
Type of Review: Revision
Title: U.S. Individual Income Tax Return 1040PC Format
Description: Form 1040PC is a computer-generated tax return answer sheet format prepared by tax preparation software. The 1040PC is an alternative method of filing Form 1040. It will offer direct deposit for taxpayers to have their refunds deposited into their personal savings or checking accounts by electronic funds transfer. It will also generate a preprinted payment voucher for use when payment is due to the IRS.
Respondents: Individuals or households
Estimated Number of Respondents: 6,500,000
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,625,000 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–16298 Filed 7–8–93; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

[AC–28: OTS No. 0034]

Co-operative Savings Bank, Lynchburg, Virginia; Approval of Conversion Application

Notice is hereby given that on June 29, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Co-operative Savings Bank, Lynchburg, Virginia to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of

Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 2, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–16204 Filed 7–8–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–27: OTS No. 2267]

Fox Cities Bank, F.S.B., Neenah, Wisconsin: Approval of Conversion Application

Notice is hereby given that on June 28, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fox Cities Bank, F.S.B., Neenah, Wisconsin to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: July 2, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–16205 Filed 7–8–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–26: OTS No. 5064]

Glenway Loan and Deposit Company, Cincinnati, Ohio; Approval of Conversion Application

Notice is hereby given that on June 25, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Glenway Loan and Deposit Company, Cincinnati, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois, 60601–4360.

Dated: July 2, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–16206 Filed 7–8–93; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

Meeting

AGENCY: United States Commission on Improving the Effectiveness of the United Nations.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this meeting is to discuss the Commission's final report and to conduct other Commission business. The meeting is open to the public.

DATES: July 26, 1993, 10 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in room 2222 of the Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Kathleen O'Leary, Administrative Officer, 1825 Connecticut Avenue, Ste. 1011, Washington, DC 20009: (202) 673–5012; telefax: (202) 673–5007.

Dated: July 6, 1993.

Gregory Wierzynski,

Executive Director.

[FR Doc. 93–16248 Filed 7–8–93; 8:45 am]

BILLING CODE 6820–BB–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 130
Friday, July 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 36250, July 6, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, July 8, 1993.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Publication for comment of proposed amendments to Regulation DD (Truth in Savings) regarding calculation of the annual percentage yield for certain time accounts.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 6, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16375 Filed 7–6–93; 4:30 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 14, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to Regulation DD (Truth in Savings) regarding (a) calculation of the annual percentage yield for certain time accounts, and (b) advertisements of certain bonus programs.

2. Proposed change in the Fedwire funds transfer service operating hours. (Proposed earlier for public comment; Docket No. R–0778)

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16401 Filed 7–7–93; 10:37 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, July 14, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16402 Filed 7–7–93; 10:37 am]

BILLING CODE 6210–01–P

VOL 58 ISS 130 JL 9 1993 UMI

federal register

Friday
July 9, 1993

Part II

Department of Justice

Office of the Attorney General
28 CFR Part 36

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Department of Transportation

Office of the Secretary
49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[Order No. 1746–93]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket 93–3]

RIN 3014–AA15

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings

AGENCIES: Architectural and Transportation Barriers Compliance Board, Department of Justice, and Department of Transportation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to conduct additional research on detectable warnings at curb ramps and hazardous vehicular areas in response to potential safety concerns raised by organizations representing individuals with disabilities and entities covered by the Americans with Disabilities Act of 1990.

The Access Board, the Department of Justice, and the Department of Transportation propose to suspend temporarily certain requirements for detectable warnings in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) until January 26, 1995 while the research is conducted.

DATES: Comments should be received by September 7, 1993. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. The Access Board will provide copies of all comments received to the Department of Justice and the Department of Transportation.

Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m. on regular business days.

This document is available in the following alternate formats: cassette tape, braille, large print, and computer disc. Copies may be obtained from the Access Board by calling (202) 272–5434 (voice) or (202) 272–5449 (TDD). The document is also available on electronic bulletin board from the Department of Justice at (202) 514–6193.

FOR FURTHER INFORMATION CONTACT: Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 (voice) or (202) 272–5449 (TDD).

Department of Justice: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, Post Office Box 66118, Washington, DC 20035. Telephone (202) 307–2222 (voice or TDD).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TDD).

The telephone numbers listed above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Introduction

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment, State and local government programs, public transportation, public accommodations, and telecommunications. Under section 504 of the ADA, the Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for certain titles of the Act.[1] The Access Board has carried out its responsibility and issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in July 1991. See 36 CFR part 1191. ADAAG contains scoping provisions and technical specifications for making those elements and spaces that typically comprise a building or facility and its surrounding site readily accessible to and usable by individuals with disabilities. ADAAG is to be applied during the design, construction, and alteration of buildings and facilities to the extent required by regulations issued by the Department of Justice and the Department of Transportation which are responsible for implementing certain titles of the ADA.

Under the Department of Justice's regulations implementing title III of the ADA, newly constructed and altered places of public accommodation and commercial facilities are required to comply with ADAAG, which is adopted as an appendix to the regulations. See 28 CFR 36.406. State and local government programs covered by title II of the ADA currently have the option of applying ADAAG or the Uniform Federal Accessibility Standards (UFAS) when constructing or altering buildings or facilities. See 28 CFR 35.151. The Department of Justice is considering adopting ADAAG as the single accessibility standard for newly constructed and altered State and local government buildings and facilities and will be issuing a separate notice of proposed rulemaking on this issue in the future.

Under the Department of Transportation's ADA regulations, public entities are required to comply with ADAAG, which is adopted as an appendix to the regulations, when constructing or altering transportation facilities. See 49 CFR 37.9, 37.41, and 37.43. Existing intercity rail stations and key stations in rapid, light, and commuter rail systems are also required to comply with certain ADAAG requirements. See 49 CFR 37.47, 37.51, and 37.55.

Detectable Warnings

Congress directed the Access Board to specifically address the area of communication accessibility for individuals with sensory impairments when developing ADAAG. See H. Rept. 101–485, pt. 2, at 139; S. Rept. 101–116, at 87. The Access Board included requirements for text telephones, volume control telephones, assistive listening systems, and visual alarms in ADAAG for individuals who are deaf or have a hearing loss. The Access Board also included requirements for building signage and detectable warnings in ADAAG for individuals who are blind or have low vision.

A detectable warning is a standardized feature built in or applied to a walking surface to warn individuals with vision impairments of hazards on

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

a circulation path. ADAAG 4.29.2 specifies that detectable warnings consist of small truncated domes at closely spaced intervals and contrast visually with adjacent walking surfaces. Detectable warnings used on interior walking surfaces must also contrast in resilience or in sound when contacted by a cane.

ADAAG requires that detectable warnings be provided at the following locations:

- Curb ramps (ADAAG 4.7.7);
- Hazardous vehicular areas (i.e., where walks cross or adjoin vehicular ways and there are no curbs, railings, or other elements separating the pedestrian and vehicular areas) (ADAAG 4.29.5);
- Reflecting pool edges that are not protected by railings, walls, or curbs (ADAAG 4.29.6); and
- Platform edges in train stations that are not protected by platform screens or guard rails (ADAAG 10.3.1(8)).

Detectable warnings are intended to give advance notice to individuals with vision impairments that they are approaching a potentially dangerous area and that they should proceed with caution. A technical assistance bulletin providing additional information on detectable warnings is available from the Access Board.

When the Access Board proposed to include requirements for detectable warnings in ADAAG, it received a large number of comments both for and against the proposal from individuals who are blind and their organizations. Those who supported the proposal asserted that individuals who are blind are exposed to greater risk of injury where there is no curb, railing, or other element separating pedestrian and vehicular areas. They viewed detectable warnings as an effective means of alerting individuals who are blind of hazards on a circulation path that might otherwise go unnoticed and result in serious injury. Those who opposed the proposal questioned whether detectable warnings are really needed. They asserted that individuals who are blind can readily detect dangers in the built environment by proper use of the long white cane or a guide dog. They viewed detectable warnings as unnecessary, interfering with normal cane use, and posing hazards to others.

The Access Board was concerned about the safety of individuals with vision impairments and retained the requirements for detectable warnings at the locations described above when the final rule was issued in July 1991. See 56 FR 35408, 35437–38 (July 26, 1991). The Access Board relied on studies which showed the small truncated dome pattern to be an effective detectable warning along the platform edges of train stations. See "Tactile Warnings to Promote Safety in the Vicinity of Transit Platform Edges," Urban Mass Transportation Administration (1987); "Pathfinder Tactile Tile Demonstration Test Project," Metro-Dade Transit Agency (1988).

Since ADAAG was issued in July 1991, several developments have caused the Access Board to further consider the requirements for detectable warnings. In May 1992, the Access Board published in the **Federal Register** an ADA research agenda listing areas where research and study is needed to further develop and refine ADAAG. See 57 FR 20360 (May 12, 1992). Public comments were requested on the ADA research agenda, including recommendations for prioritizing areas and identifying additional areas for research. Many of those who commented on the ADA research agenda urged the Access Board to conduct additional research on detectable warnings, including whether they are actually needed by individuals with vision impairments; whether they pose potential safety hazards for others; and their durability and maintainability, especially under certain climatic conditions (e.g., snow and ice, and the need for snow and ice removal). A national organization representing individuals with disabilities expressed specific concern about detectable warnings at curb ramps interfering with the ability of wheelchair users and other individuals with mobility impairments to safely negotiate the sloped surfaces. Other disability organizations and individuals with mobility impairments have also shared this concern with the Access Board through letters and testimony given at public forums.

In July 1992, the Access Board approved a proposed rule that added several new sections to ADAAG for certain State and local government facilities. See 57 FR 60612 (December 21, 1992). Among the facilities covered by the proposed rule are sidewalks and other site improvements constructed or installed in the public right-of-way by or on behalf of a State or local government. In certain limited situations, the proposed rule would permit sidewalk curb ramps to have a steeper slope than normally allowed under ADAAG where there is no level area at an intersection; the adjoining roadway slope equals or exceeds 1:12; and a level landing at the top of the curb ramp, or a parallel curb ramp, cannot be provided due to existing physical or site constraints. See proposed ADAAG 14.2.5 (4) Exception 2. Because of the concerns expressed about detectable warnings interfering with the ability of wheelchair users and other individuals with mobility impairments to safely negotiate sloped surfaces and the steeper sidewalk curb ramps permitted under the proposed rule, the Access Board decided to reserve the section on detectable warnings for sidewalk curb ramps pending further study of the issue.[2] See proposed ADAAG 14.2.5 (7).

Also in July 1992, several transit agencies submitted a petition for rulemaking to the Department of Transportation and the Access Board requesting changes to various requirements regarding key stations on existing rail systems, including detectable warnings.[3] The Department of Transportation reaffirmed the utility of detectable warnings as a safety feature for individuals with vision impairments using transit stations, but recognized that transit agencies may have legitimate concerns regarding how best to apply detectable warning materials to existing station platforms in a retrofit situation since the choice of materials is more limited than in new construction or alterations. Consequently, the Department of Transportation proposed to extend the date for transit agencies to complete the installation of detectable warnings along the platform edges of key stations from July 26, 1993 until January 26, 1995. See 57 FR 54210 (November 17, 1992).

In November 1992, the International Mass Retail Association (IMRA), which represents discount department stores, warehouse stores, catalog showroom stores, home building supply centers, and other retail establishments, submitted a petition for rulemaking to the Access Board and the Department of

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[2] The Access Board initially planned to request information on post-construction evaluations of sidewalk curb ramps with detectable warnings and possible alternate locations for placement of detectable warnings (e.g., level landings at the top of curb ramps, landings at the bottom of parallel curb ramps) in the preamble to the proposed rule for State and local government facilities. Since the Access Board subsequently decided to issue this notice of proposed rulemaking regarding detectable warnings, the information is sought in this document under the section headed "Request for Additional Information."

[3] The transit agencies requested that the requirements for detectable warnings along platform edges of key stations and communications requirements for individuals with hearing impairments be postponed indefinitely. The transit agencies also requested changes to the definition of "extraordinarily expensive" work to make key stations comply with ADA requirements and "grandfathering" provisions for stations made accessible before the ADA was enacted. The Department of Transportation and the Access Board did not grant these requests.

Justice regarding detectable warnings.[4] IMRA members operate over 40,000 retail stores nationally. According to IMRA, about two-thirds of its members have raised sidewalks with curb ramps in front of their store entranceways to separate pedestrian from vehicular areas. The other third, which includes large home building supply companies and warehouse clubs, have no curbs or railings in front of their store entranceways. Rather, the entranceways are at the same grade as the vehicular areas so that customers can take large shopping carts to their cars or utilize a loading zone along the entire length of the store front. Under ADAAG, detectable warnings would have to be placed on the curb ramps and along the curbless entranceways to the stores. IMRA asserted that placing detectable warnings at these locations will create a potentially hazardous condition for individuals with mobility impairments, as well as persons without disabilities, including children, women who wear high heels, and elderly persons. IMRA contended that there are significant differences between retail stores and train stations (e.g., use of heavily-loaded shopping carts, customer speed and expectations, degree of parental supervision over children) that make it inappropriate to extrapolate the results of research conducted on detectable warnings along transit platform edges to the retail shopping setting. IMRA also noted that the American National Standard Institute's (ANSI) A117 Committee deleted provisions for detectable warnings from the final draft of its revised A 117.1 standard.

IMRA requested that the Access Board conduct additional research that specifically focuses on the safety, durability, and maintainability of detectable warnings at curb ramps, retail shopping centers, and other exterior sites with high pedestrian traffic such as at hotel entrances and on college campuses. IMRA further requested that the Access Board and the Department of Justice suspend the ADAAG requirements for detectable warnings at curb ramps and hazardous vehicular ways until these concerns are addressed by the research.

[4] IMRA originally submitted a petition for rulemaking to the Access Board in July 1992 which raised concerns about detectable warnings being installed along accessible routes in parking lots. The Access Board subsequently published a technical assistance bulletin responding to frequently asked questions about detectable warnings which clarified that detectable warnings should not be installed as wayfinding aids through a parking lot. IMRA submitted an amended petition in November 1992 which clarified its other concerns about detectable warnings.

Proposed Common Rule

As discussed above, the Access Board relied on studies involving the installation of detectable warnings along transit platform edges when it issued ADAAG. The studies showed that the small truncated dome pattern was an effective detectable warning at these locations and did not indicate any significant safety concerns for other user groups. The small truncated dome pattern has been used as a detectable warning along the full length of transit platform edges in the Bay Area Rapid Transit (BART) system for five years and is safely negotiated by individuals with mobility impairments, as well as persons without disabilities.

In light of the potential safety concerns that have been raised by both organizations of individuals with disabilities and entities covered by the ADA regarding application of detectable warnings to curb ramps and hazardous vehicular areas in retail shopping and other settings, the Access Board plans to conduct additional research on detectable warnings at these locations. See notice announcing the Access Board's research priorities for fiscal years 1993 and 1994 published elsewhere in today's **Federal Register**. In addition to examining potential safety concerns, the Access Board will evaluate the need or lack of need for detectable warnings by individuals with vision impairments, and durability and maintainability issues. The Access Board expects that the research will provide the additional technical information needed to determine whether any changes in the ADAAG requirements for detectable warnings are justified. In the meantime, the Access Board believes that, because of the potential safety concerns that have been raised about the use of detectable warnings in settings other than along transit platform edges, it would be in the public interest to suspend temporarily until January 26, 1995 the requirements for detectable warnings at curb ramps (ADAAG 4.7.7); hazardous vehicular areas (ADAAG 4.29.5); and reflecting pools (ADAAG 4.29.6) while the research is conducted. The requirements for detectable warnings along platform edges of train stations (ADAAG 10.3.1 (8)) are not affected by this proposed rule.[5]

[5] As discussed earlier in this document, the Department of Transportation issued a notice of proposed rulemaking in November 1992 to extend the date for transit agencies to complete the installation of detectable warnings along platform edges of key stations until January 26, 1995. See 57 FR 54210 (November 17, 1992). Neither the Department of Transportation's November 1992 proposed rule nor this proposed rule relieves transit agencies from providing detectable warnings on newly constructed or altered transit platforms.

As discussed in the introduction to this document, the Department of Justice and the Department of Transportation have adopted ADAAG as an appendix to their regulations implementing certain titles of the ADA. The Department of Justice and the Department of Transportation join in this rulemaking and propose to adopt in their respective regulations a common rule to suspend temporarily the requirements for detectable warnings at the locations discussed above. For purposes of the Department of Transportation regulations, the temporary suspension would apply to curb ramps and curbless sidewalks serving entranceways to transit facilities and ancillary areas on the site such as parking lots, "kiss and rides", and bus stops. Comments on this proposed rule should be sent to the Access Board at the address listed at the beginning of this document. The Access Board will provide copies of all comments received to the Department of Justice and the Department of Transportation.

Request for Additional Information

In addition to comments on this proposed rule, the Access Board is interested in receiving information about research activities and studies relating to detectable warnings, including:

- Need or lack of need for detectable warnings;
- Data on accidents or injuries relating to the absence or presence of detectable warnings;
- Post construction evaluations of detectable warnings installed at curb ramps and hazardous vehicular areas at various sites (e.g., retail stores, hotels, and college campuses);
- Durability and maintainability under various climatic conditions (e.g., snow and ice, and the need for snow and ice removal);
- Alternate designs for detectable warnings and alternate materials for detectable warnings; and
- Alternate locations for placement of detectable warnings at curb ramps (e.g., level landings at the top of curb ramps, landings at the bottom of parallel curb ramps).

Regulatory Analyses and Notices

The Access Board, the Department of Justice, and the Department of Transportation have independently determined that this proposed rule is not a major rule under Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is a

significant rule under the Department of Transportation's Regulatory Policies and Procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board, the Department of Justice, and the Department of Transportation hereby independently certify that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The Access Board, the Department of Justice, and the Department of Transportation have also independently determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

Text of Proposed Common Rule

The text of the proposed common rule appears below.

§ _____._____ Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until January 26, 1995.

Adoption of Proposed Common Rule

The agency specific proposals to adopt the common rule, which appears at the end of the common preamble, are set forth below.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, Individuals with disabilities, Reporting and recordkeeping requirements.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186(b), and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

2. Section 36.407 is added to read as set forth at the end of the common preamble.

Dated: June 7, 1993.

Janet Reno,

Attorney General.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 is revised to read as follows:

Authority: Americans With Disabilities Act of 1990 (42 U.S.C. 12204).

2. The appendix to part 1191 is redesignated as appendix A to part 1191 and the heading is revised to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

3. Section 1191.2 is added to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on November 18, 1992.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans With Disabilities Act of 1990 (42 U.S.C. 12101-12213); 49 U.S.C. 322.

2. Section 37.15 is added to read as set forth at the end of the common preamble.

Dated: March 31, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93-15942 Filed 7-8-93; 8:45 am]

BILLING CODE 4410-01-P, 8150-01-P, 4910-62-P

VOL
58
ISS
130
JL
9
1993
UMI

federal register

Friday
July 9, 1993

Part III

Architectural and Transportation Barriers Compliance Board

Americans With Disabilities Act Research Priorities for Fiscal Years 1993 and 1994; Notice

UMI
VOL
58
ISS
130
JL
9
1993
UMI

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans With Disabilities Act Research Priorities for Fiscal Years 1993 and 1994

AGENCY: Architectural and Transportation Barriers Compliance Board.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its Americans with Disabilities Act research priorities for fiscal years 1993 and 1994. The Access Board will sponsor research on detectable warnings; technical requirements for ramps; clear floor space, maneuvering clearances and reach ranges for individuals using power wheelchairs and three-wheeled scooters; and public information for individuals with cognitive disabilities. The research is intended to evaluate the effectiveness of existing accessibility guidelines and to provide a basis for new guidelines. Regulatory impact analyses will also be prepared for planned rulemaking in the areas of recreational facilities, outdoor developed areas, and children's environments.

FOR FURTHER INFORMATION CONTACT: Laurinda Steele, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 (voice) or (202) 272–5449 (TDD). These are not toll-free numbers. This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Background

The Access Board is an independent Federal agency whose primary mission is to promote accessibility for individuals with disabilities. The Access Board is responsible for issuing guidelines to assist other Federal agencies in establishing accessibility standards for buildings and facilities under the Architectural Barriers Act of 1968 and the Americans with Disabilities Act of 1990. In 1991, the Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG). See 36 CFR part 1191. The Department of Justice and the Department of Transportation adopted ADAAG as the accessibility standards for newly constructed or altered buildings and facilities in regulations implementing certain titles of the ADA. See 28 CFR part 36; 49 CFR part 37. The Access Board has recently proposed to revise ADAAG by adding new sections for certain State and local government facilities. See 57 FR 60612 (December 21, 1992). The Access Board is also considering adopting the revised ADAAG as the applicable standard for newly constructed, altered, or leased Federal facilities under the Architectural Barriers Act. Standards issued by other Federal agencies under the Architectural Barriers Act or the Americans with Disabilities Act are required to be consistent with the Access Board's guidelines. As a result, it is anticipated that ADAAG will eventually be the single accessibility standard for places of public accommodation and commercial facilities, State and local government facilities, and Federal facilities.

During the initial rulemaking to establish ADAAG, the Access Board asked questions on a number of issues. See 56 FR 2296 (January 22, 1991). The comments received contributed considerably to the development of the guidelines. However, the comments also revealed several areas where existing information was insufficient to allow the Access Board to set specific requirements. Furthermore, some of the technical provisions in ADAAG are based on research that is several decades old and may not reflect the needs of the current population of individuals with disabilities. Consequently, the Access Board compiled a list of thirty-one areas that may be in need of further study before new or additional accessibility guidelines can be developed.

On May 12, 1992, the Access Board published a notice in the **Federal Register** requesting comments on the thirty-one areas identified during the initial ADAAG rulemaking. See 57 FR 2036 (May 12, 1992). The notice requested information on research activities which are being planned or sponsored by other public and private organizations in the areas identified, as well as recommendations for prioritizing the areas for the Access Board's technical assistance and research plan for fiscal years 1993 through 1997. Fifty-four comments were received in response to the research notice. Commenters identified seventeen studies and reports relating to the research areas. Commenters also suggested several areas in need of research that were not identified in the research notice.

Upon considering the responses to the notice, the Access Board has established the following objectives for its technical assistance and research program:

(1) To evaluate the effectiveness of existing accessibility guidelines. Many of the technical provisions of ADAAG are based on research conducted in the 1970's that supported the development of the ANSI A117.1–1980 and 1986 standards on which the guidelines are based. The Access Board will sponsor research to ensure that ADAAG remains consistent with technological advances, other research findings, and changes in model codes and standards, and that the guidelines continue to meet the needs of individuals with disabilities.

(2) To provide a basis to develop new accessibility guidelines. In light of evolving technology and to allow flexibility in design, the Access Board has established performance standards in several areas. For example, ADAAG 4.34.4 requires automated teller machines to be accessible to and usable by persons with vision impairments and ADAAG 10.3.1(14) requires effective communication for persons with hearing impairments in transit facilities where there is a public address system. In other areas, the Access Board did not have sufficient information to establish any guidelines and reserved provisions (e.g., ADAAG 4.12, Windows; ADAAG 5.9, Quiet Areas; 36 CFR 1192.177, Ferries, excursion boats and other vessels). The Access Board will sponsor research to determine whether performance standards have resulted in effective design solutions that are readily accessible to and usable by individuals with disabilities and to develop guidelines for reserved provisions and other areas identified in response to public need.

Consistent with these objectives, the Access Board selected the following research areas as priorities for fiscal years 1993 and 1994, subject to availability of funds:

(1) Detectable warnings;

(2) Technical requirements for ramps;

(3) Clear floor space, maneuvering clearances and reach range requirements for individuals using power wheelchairs and three-wheeled scooters; and

(4) Public information for individuals with cognitive disabilities.

These areas are further discussed below.

Detectable Warnings

The majority of commenters on the research notice urged the Access Board to sponsor additional research on detectable warnings, including whether they are actually needed by individuals with vision impairments; whether they pose potential safety hazards for others; and their durability and maintainability, especially under certain climatic conditions (e.g., snow and ice and the

need for snow and ice removal). A national organization representing individuals with disabilities expressed specific concern about detectable warnings at curb ramps interfering with the ability of wheelchair users and other individuals with mobility impairments to safely negotiate the sloped surfaces. In light of these comments and a petition for rulemaking filed by the International Mass Retail Association in November 1992 regarding detectable warnings, the Access Board will sponsor research on detectable warnings. This project will include an international literature review and post-construction evaluations of detectable warnings at curb ramps and on walkways that adjoin a vehicular area where there are no curbs. For additional information, see notice of proposed rulemaking published elsewhere in today's **Federal Register** to suspend temporarily certain requirements for detectable warnings until January 26, 1995, while research is conducted.

Technical Requirements for Ramps

During the initial ADAAG rulemaking, the Access Board asked questions regarding the adequacy of the 1:12 maximum slope requirement for ramps. This maximum ramp slope was originally established in 1961 by the ANSI A117.1–1961 standard. A large number of comments were received on this issue. While a majority of the responses favored a maximum ramp slope of 1:12, about a third of the commenters recommended that the maximum ramp slope be reduced. Some commenters suggested a ramp slope of 1:16 to 1:20. Although the 1:12 maximum ramp slope was retained in ADAAG, the Access Board recommended that further research be conducted and included a note in the appendix to ADAAG that ramp slopes between 1:16 to 1:20 are preferred. See ADAAG A4.8.2.

In response to the Access Board's research notice, the New Jersey Institute of Technology noted that considerable study has already been done on the "inadequacy of the present [ramp slope] standard for manual wheelchair users" and recommended that research address the difficulty that individuals with mobility impairments who are ambulatory may have in negotiating sloped surfaces. Another commenter, the Institute for Technology Development, noted that manual wheelchair users participating in a residential access study found 14 foot ramps with a 1:12 slope difficult to use and that the majority of individuals with mobility impairments who are ambulatory had difficulty negotiating ramps and preferred to use steps. For example, individuals with above knee amputations may not have the ability to flex a prosthetic knee joint while walking. In addition, new types of wheelchairs have been introduced during the last decade such as sport models which have a different center of gravity which might cause them to tip more easily on a 1:12 ramp slope (the maximum allowed in ADAAG). The Access Board will sponsor a research project to study ramp slope in relation to distance, including the adequacy of the 1:12 maximum slope and 30 foot maximum length for today's population of individuals with mobility impairments. The research project will evaluate existing research and conduct human subject testing focused on individuals with disabilities who use mobility devices that have not been the subject of previous study.

Clear Floor Space, Maneuvering Clearances, and Reach Range Requirements for Individuals Using Power Wheelchairs and Three-Wheeled Scooters

Major advances in medical technology in the last decade have resulted in a significant increase in the number of persons using power mobility devices. Not only are people today living longer, but people are also surviving accidents and diseases resulting in severe disabilities. In addition, many more individuals with disabilities are taking advantage of power mobility aids to increase their range of activities partly in response to increased accessibility to public accommodations, transportation, and employment opportunities. As a result, three-wheeled scooters and power wheelchairs are one of the fastest growing segments of the mobility aid market. Existing ADAAG requirements for maneuvering clearances allow some of the clear floor space to extend under certain elements (e.g., lavatories and drinking fountains) provided that they have sufficient vertical clearance for knees and toes. However, the requirement for clearance under these elements assumes that the person is using a manual wheelchair. See ADAAG Fig. A3. The tiller of a three-wheeled scooter is in front of the user's knees and therefore cannot be accommodated under these elements. Moreover, the control box of most power wheelchairs will not fit under these elements.

Maneuvering power wheelchairs and three wheeled scooters in confined spaces is not just the function of the mobility device but also the ability of the user to manipulate the controls. Several commenters supported research on this issue. For example, Eastern Paralyzed Veterans Association stated "the longer (and often wider) wheelbases of power chairs and scooters, coupled with electric controls which make subtle position and direction adjustments more difficult than for those using manual chairs can adversely impact the usability of spaces which meet only the minimum accessible dimensions."

In regard to reach ranges, the tiller of three-wheeled scooters prevents individuals using these mobility devices from approaching elements (e.g., telephones, light switches) in the forward direction as closely as could be achieved from a manual wheelchair. Furthermore, individuals using power wheelchairs are more likely to have a restricted reach range due to limited upper body mobility. Thus, in addition to clear floor space and maneuvering requirements, the achievable reach ranges for individuals using power wheelchairs and three-wheeled scooters is different than individuals using manual wheelchairs upon which most previous studies have been conducted. The Building Owners and Managers Association International supported research in this area and recommended that "if guidelines are developed for persons using powered wheelchairs and three-wheeled scooters, strong consideration should be given to where and when the guidelines would apply."

The Access Board has also recently examined the reach range requirements for accessible automated teller and fare vending machines. See proposed rule amending the reach range requirement for automated teller and fare vending machines 57 FR 41006 (September 8, 1992). As discussed in that document, the 54 inch maximum height is taken from ANSI A117.1–1980. The original research for that reach height was conducted in the 1950's and consisted of measuring how high wheelchair users could extend their arms in a vertical direction on a wall. The studies appear not to have tested in depth whether wheelchair users or other individuals with disabilities could manipulate controls at that height, such as inserting a card in an automated teller or fare vending machine. Furthermore, the existing research does not appear to address the depth to which an individual can reach and manipulate controls at different heights. The Access Board has proposed to amend ADAAG to include a table of reach depths and maximum heights for automated teller and fare vending machines controls based on a straight line interpolation connecting the points between the maximum side reach with and without an obstruction as a reasonable way to

address the issue of increased reach depth resulting from recessed controls and the installation of surrounds in front of the machines. The Access Board recognizes that any reach range requirement must also take into account the needs of other user groups such as individuals who have difficulty stooping or bending and individuals who are short statured and that further research is needed to establish definitive specifications.

The Access Board will sponsor a research project on clear floor space, maneuvering clearances and reach range requirements for individuals using power wheelchairs and three-wheeled scooters. The project will also study whether additional specifications for interior circular in transportation vehicles are needed, including space limitations at fare boxes in buses and light rail vehicles and whether fare boxes in such vehicles could be made smaller or placed differently. In addition, the project will include a literature review on reach ranges focusing on the population that was tested by earlier research on reach ranges and the extent to which the earlier research tested the manipulation of controls at different heights and reach depths. The Access Board will consider sponsoring additional research on reach ranges after the literature review.

Public Information for Individuals With Cognitive Disabilities

Numerous commenters on the research notice expressed concern regarding the lack of accessibility provisions for individuals with cognitive disabilities. The Arc (formerly the Association for Retarded Citizens of the United States) pointed out that of the 43 million Americans with disabilities, it is estimated that 25 percent or about 11 million individuals have a cognitive disability such as mental retardation, traumatic brain injury, learning disabilities or Alzheimer's disease. At its 1991 national consensus development conference on title III of the ADA, the Arc concluded that signage and customer service are two major areas that must be considered when developing strategies to provide equal access for individuals with cognitive disabilities. The Arc felt the development and widespread use of a system of pictograms, for example, would reduce structural communication barriers and greatly enhance access. The Society of Environmental Graphic Designers supported addressing the needs of individuals with cognitive disabilities and stated that their members would support the development of a symbol system that would assist in integrating individuals with cognitive disabilities into everyday activities such as shopping, banking or using public transportation. The Center for Accessible Housing also urged "inclusion of research on communication problems resulting from cognitive impairments." Verbal Landmark, Inc. urged the Board to establish guidelines that "demonstrate equal consideration to the vision, cognitive, and mentally impaired individuals as well as the physically disabled." Metro-Dade Transit Agency felt that "uniform signage in transportation facilities that meet the needs of individuals with visual impairments and developmental disabilities would be extremely beneficial and consistent with the concept of universal design".

The Access Board will sponsor a research project on symbols, signage, and information that would effectively convey public information and wayfinding information to individuals with cognitive disabilities in buildings, transportation facilities and outdoor facilities.

Other Issues

The Access Board's research program for fiscal year 1993 and 1994 will also include the preparation of regulatory impact analyses for planned rulemaking in the areas of recreational facilities, outdoor developed areas, and children's environments.

The research notice also requested comment on proposed focus issues for fiscal years 1993 through 1997. The Access Board adopted the focus year policy prior to the Americans With Disabilities Act to assist in selecting technical assistance and research projects aimed at improving architectural, transportation, and communication accessibility. Few commenters expressed interest in the focus issues. In light of its increased responsibilities under the Americans With Disabilities Act, the Access Board has decided to drop the focus year policy and will devote all of its research funds to the development of accessibility guidelines for the Americans With Disabilities Act.

This notice of priorities does not solicit contract applications for these research areas. Requests for proposals for fiscal year 1993 projects were published in the Commerce Business Daily this spring and the research projects are expected to commence this fall.

Additionally, the Access Board is interested in receiving information on technical and research activities which are being planned or sponsored by other public and private organizations, including published and unpublished studies on issues related to architectural, transportation, and communication accessibility. Copies of reports or other information should be sent to Laurinda Steele at the address indicated at the beginning of this notice.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 93–15941 Filed 7–8–93; 8:45 am]

BILLING CODE 8150–01–P

Federal Register

Friday
July 9, 1993

Part IV

Department of Commerce

International Trade Administration

Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina; et al.; Notices

VOL 58 ISS 130 JL 9 1993 UMI

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-808]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3793.

Final Determination

We determine that imports of certain cold-rolled carbon steel flat products from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on February 4, 1993 (58 FR 7066), the following events have occurred.

In response to a request by Sociedad Mixta Siderurgia Argentina (SOMISA), the Department postponed the Final Determination until not later than June 21, 1993 (58 FR 8736 (February 17, 1993)).

SOMISA submitted its cost of production questionnaire response on March 8, 1993. On March 12, 1993, the Department issued its cost of production deficiency questionnaire. The Department did not receive the deficiency questionnaire response.

From March 15 through March 19, 1993, the Department conducted a verification of SOMISA's sales questionnaire responses in Buenos Aires, Argentina.

On March 24, 1993, SOMISA notified the Department that it would no longer participate in the Department's antidumping duty investigation of cold-rolled carbon steel from Argentina and requested the return of SOMISA's submissions. Subsequently, on April 19, 1993, the Department returned to SOMISA all of their proprietary and confidential submissions related to the investigation.

On February 12, 1993, petitioner requested to participate in an administrative hearing pursuant to 19 CFR 353.38(b). Petitioner filed a case brief on May 7, 1993. However, as a result of SOMISA's withdrawal from the investigation, on May 12, 1993, petitioner withdrew its request for the hearing.

Scope of Investigation

The products covered by this investigation constitute a single "class or kind" of merchandise: certain cold-rolled carbon steel flat products. The full description of the subject merchandise is included in Appendix I of this final determination.

Period of Investigation

The period of investigation (POI) is January 1, 1992 through June 30, 1992.

Such or Similar Comparisons

We have determined that the class or kind of the product covered by this investigation also constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because SOMISA failed to provide a deficiency response to the cost of production questionnaire and requested the withdrawal of all of its proprietary and confidential submissions related to the investigation, as discussed in the "Case History" section of this notice, the Department has no choice but to treat SOMISA as an uncooperative respondent and assign it a rate based on best information available (BIA), in accordance with section 776(c) of the Act. The withdrawal from the record of SOMISA's submissions has the consequence of removing from the administrative record any basis for showing, either now or on appeal, that SOMISA had been cooperative during these investigations. (See, *e.g.*, Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6205 (January 27, 1993)). We determine that BIA is information contained in the petition, and as an uncooperative respondent, have assigned SOMISA the highest of the margins calculated based on the information in the petitions. As BIA, we used prices provided in the petition. We compared U.S. prices derived from IM-145 import statistics to home market prices stipulated in an agreement between the Government of Argentina and the Argentine steel producers and based our determination on the comparison that yielded the highest margin.

In their case brief, petitioners urged the Department to apply as BIA the highest margins alleged in the petition. As noted above, we have done so.

United States Price

We based USP on information provided in the petition. Petitioners provided U.S. prices based on monthly customs values of imported cold-rolled steel during the months September 1991 through February 1992. The petitioners adjusted for the reembolso tax rebate.

Foreign Market Value

We based FMV on information provided in the petition. Petitioners based FMV on prices stipulated in the Steel Price Reduction Agreement, dated April 11, 1991, between the Argentine Undersecretary of Industry and Commerce and the Steel Industry Center, a trade organization comprised of the major steel producers, including SOMISA. The petitioners adjusted, where appropriate, for the reembolso tax rebate and credit expenses.

Interested Party Comments

Comment: The petitioners argue that the Department should modify the estimated dumping margins alleged in the petition because these margins adjusted for an Argentine "reembolso" tax rebate when, in fact, the Department did not adjust for this rebate in the preliminary determination (Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 7066, 7067 (February 4, 1993)).

Department's Position: We disagree with the petitioner. The Department inadvertently disallowed the adjustment for the "reembolso" rebate in the preliminary determination. Therefore, consistent with our determination in the Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina, 56 FR 37891, 37895 (August 9, 1991), we will not modify the estimated dumping margins in the petition, instead leaving the petition's margins intact.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel from Argentina that are entered, or withdrawn from warehouse, for

consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
SOMISA	51.58
All others	51.58

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in Certain Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review, 56 FR 28527 (June 21, 1991), which is 1.75 percent *ad valorem*, will be subtracted from the dumping margin for deposit or bonding purposes, resulting in a cash deposit rate of 49.83 percent *ad valorem* for SOMISA and all other exporters.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to the U.S. industry no later than 45 days after our final determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat-rolled products, of rectangular shape, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are certain seat belt retractor spring steel and certain carbon band saw steel, which are defined respectively by the following specifications:

Certain Seat Belt Retractor Spring Steel

Chemical Composition:
- Carbon—1.21%–1.35%
- Manganese—0.15%–0.35%
- Phosphorus—0.025% maximum
- Sulphur—0.010% maximum
- Silicon—0.10%–0.25%
- Aluminum—0.015% maximum
- Chromium—0.10%–0.30%
- Copper—0.15% maximum

Microstructure: Must be fully sorbitic with carbide size #1 absolute maximum.
Width: 14 inches maximum
Thickness: 0.07 inch–0.125 inch

Certain Carbon Band Saw Steel

Chemical Composition:
- Carbon—0.78%–0.83%
- Manganese—0.35%–0.50%
- Phosphorus—0.020% maximum
- Sulphur—0.008% maximum
- Silicon—0.10%–0.20%
- Aluminum—0.020%–0.060%
- Chromium—0.05%–0.15%
- Copper—0.12% maximum
- Non-Metallic Inclusion Rating:

(1) IPSI 10,000 maximum
(2) ASTM E45
- A: 2 maximum
- B and C: 1 maximum
- D: 1 maximum

(3) DIN 50602
- SS: maximum 3
- OA: maximum 1
- OS: maximum 1
- OG: maximum 2

Banding: #1 maximum
Decarburization:
- Complete=0.0005 inch maximum
- Total=0.002 inch maximum

Width: 14 inches maximum
Thickness: 0.07 inch–0.125 inch

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030,

VOL 58 ISS 130 JL 9 1993 UMI

7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Scope Issues Since the Preliminary Determinations

Since the Department issued its preliminary countervailing duty determinations and its preliminary determinations of sales at less than fair value (LTFV) in these investigations on November 27, 1992, and January 26, 1993, respectively, the Department has addressed the following scope issues. All memoranda referred to below are available in Import Administration's Central Records Unit located in room B–099 of the Main Commerce Building.

Several of these issues concern requests for modifications to, or exclusions from, the scope of particular LTFV or CVD investigations (*e.g.*, the LTFV investigation of certain cold-rolled carbon steel flat products from Japan). In the interest of maintaining a uniform scope description for all of the investigations (see next paragraph), we have evaluated these requests in the context of, and made any modifications to or clarifications of, the scope of all of the investigations regarding the relevant class or kind rather than just the particular investigation(s) cited in those requests.

On March 8, 1993, the Department aligned the scope of the countervailing duty investigations of certain carbon steel flat products with the scope description published in the preliminary determinations for the concurrent less-than-fair-value investigations of these products. (See Postponement of Final Determinations, Notice of Public Hearing Schedule, Revision of Scope, and Termination of the Suspension of Liquidation: Countervailing Duty Investigations of Certain Steel Products from Various Countries, 58 FR 12,935, 12,936 (March 8, 1993); and Appendix I to Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 7066, 7067 (February 4, 1993).)

American Goods Returned

Background. United States origin steel that is exported, processed abroad and returned to the United States for further processing is eligible to enter the United States under Customs "American Goods Returned" (AGR) program (HTS subheading 9802.00.60). When merchandise is imported under AGR, normal Customs duties are assessed only on the foreign value added.

Interested Party Comments. Respondents argue that certain merchandise entered under AGR is outside the scope of this investigation. Specifically, U.S. origin steel that has not been substantially transformed abroad remains U.S. origin merchandise, which is not subject to antidumping (AD) or countervailing duties (CVD). Respondents further argue that even if merchandise imported under AGR has acquired a new country of origin through substantial transformation, AD and CVD duties should be collected only on the foreign value added. Petitioners argue to the contrary that all merchandise imported under AGR is subject to AD and CVD duties, regardless of whether the merchandise has been substantially transformed outside the United States. However, petitioners agree with respondents that AD and CVD duties on AGR imports should be collected only on the foreign value added.

Department's Position. It is the Department's position that merchandise imported under AGR is subject to an AD or CVD order only if it has acquired a new country of origin through substantial transformation in the subject country. Further, the Act requires the Department to collect AD and CVD duties on all subject merchandise, including imports under AGR, in a manner that will offset completely the amount of any dumping or subsidy.

The Tariff Act of 1930, as amended ("the Act") states that "[n]otwithstanding the partial exemption from ordinary customs duties * * *, articles imported under subheading 9802.00.60 are subject to all other duties * * * imposed pursuant to Title VII of the Tariff Act of 1930 * * *. (HTS Chapter 98, subchap. II, note 6). Thus, the law specifically provides that merchandise imported as AGR is subject to AD or CVD duties, if that merchandise falls within the scope of an order.

The scope of an antidumping or countervailing duty order is defined by the type of merchandise and by the country of origin (e.g., widgets from Ruritania). For merchandise to be subject to an order it must meet both parameters, *i.e.*, product type and country of origin. In determining country of origin for scope purposes, the Department applies a "substantial transformation" rule. The term "substantial transformation" generally refers to a degree of processing or manufacturing resulting in a new and different article. Through that transformation, the new article becomes a product of the country in which it was processed or manufactured.

We disagree with petitioners' argument that all AGR imports are deemed to be "foreign" articles and, therefore, fall within the scope of an order regardless of whether they have been substantially transformed outside the United States. The general note in the tariff schedule concerning the treatment of all AGR imports as "foreign" articles for Customs purposes does not supersede the specific provisions concerning the imposition of AD and CVD duties. The AD/CVD provisions provide for the assessment of duties only on products of the subject foreign country—not on products of the United States. (*See, e.g.*, section 303 of the Act (whenever any country bestows a subsidy on any article "manufactured or produced in such country" CVD duties shall be imposed on "such article or merchandise"); *see also* section 701 of the Act; and section 771(16) of the Act (defining such or similar merchandise as merchandise subject to the investigation and similar merchandise "produced in the same country").) Therefore, even if a U.S. origin product is deemed to be "foreign" for Customs purposes, it is not subject to AD and CVD duties unless it is transformed through processing or manufacture into a product of the subject country.

The Department has consistently applied a substantial transformation rule to determine country of origin for scope purposes. (*See, e.g.*, Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan ("Microdisks from Japan"), 54 FR 6433 (February 10, 1989) (media produced in Japan and substantially transformed in Canada are outside the scope).) The contrary position advocated by petitioner would result in inconsistent application of the AD/CVD law and would, in fact, place U.S. origin products at a disadvantage. For example, assume there is an AD order on Mexican steel, but no order on Japanese steel. Japanese origin steel processed, but not substantially transformed, in Mexico before import into the United States would not be subject to the order on steel from Mexico. The Japanese steel is clearly "foreign", but would not be subject to the order because its country of origin is Japan, not Mexico. In contrast, under petitioners' analysis, U.S. origin steel that underwent the same process in Mexico would be subject to the order. It is unreasonable to interpret the Act to produce such an absurd result, particularly when the AGR program is, as petitioners point out, intended to promote U.S. industry.

We also disagree with the position advocated by both petitioners and respondents that AD and CVD duties on AGR imports should be assessed only on the foreign value added. Normal customs duties are *ad valorem*, i.e., the amount of duties is determined by the value of the goods. In contrast, AD and CVD duties are not an assessment against value. They are expressed as a percentage of value merely for estimated deposit purposes and to facilitate the mechanics of implementing assessment. Section 736 of the Act requires that the Department assess antidumping duties in an amount "equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise * * *." With respect to CVD duties, section 706 of the Act requires that the Department assess duties "equal to the amount of the net subsidy * * *." Therefore, the amount of AD and CVD duties is determined by the amount of price discrimination or subsidy, not by the value of the good. Moreover, the statute mandates that the Department assess AD/CVD duties in a manner that will fully offset any price discrimination (the dumping margin) or subsidy.

In contrast, the approach suggested by the parties would require that the Department allocate a portion of AD and CVD duties on AGR merchandise to the value of the U.S. origin content and leave that portion of the AD/CVD duties uncollected. (For a detailed discussion of the parties methodology, see Concurrence Memorandum on Treatment of Imports under HTS 9802.00.60.) We must reject such an approach because it directly contradicts the statutory mandate to fully offset the dumping margin or subsidy. The Department could calculate higher deposit and assessment rates for AGR imports so that the full amount of the dumping margin or subsidy would be offset when the rate was applied only to foreign value added. However, having a different rate for AGR imports would represent an unnecessary administrative complication. Therefore, the Department will continue to calculate deposit and assessment rates that will fully offset the dumping margin or

subsidy when applied to the full entered value of the merchandise.

Applying an AD or CVD duty rate to the full entered value of AGR merchandise does not conflict with the policies of HTS 9802.00.60. First, as noted above, AD and CVD duties are not an assessment against value, either U.S. or foreign. Antidumping and countervailing duties are an offset against dumping and subsidies; in effect, an assessment against an unfair trade practice. Because AD/CVD duties are based on the amount of dumping or subsidy, only pricing and subsidy practices affect the imposition of AD/CVD duties. United States origin components retain the full benefits of the exemption from normal Customs duties. Moreover, the AD/CVD duty exposure on subject merchandise would be the same regardless of the origin of the input materials. Therefore, U.S. origin materials are not disadvantaged vis-a-vis input materials from other countries.

We also note that our treatment of AGR imports is not inconsistent with the Department's methodology for tolling transactions. For tolling transactions, there is a difference in how the Department calculates foreign market value and United States price to determine dumping margins. Similarly, a tolling operation may affect calculation of the amount of a subsidy benefit. However, once the amount of the dumping margin or subsidy is determined, the method of collecting AD/CVD duties is the same for both regular and tolled sales. In both cases, the deposit and assessment rates are calculated so that the full amount of the price discrimination or subsidy is offset when the rate is applied to full entered value.

Galvanized Sheet: Substantial Transformation and Country of Origin

As noted above, in determining country of origin for scope purposes, the Department applies a "substantial transformation" rule. Customs also applies a substantial transformation rule in determining country of origin for normal Customs purposes. Customs has determined that galvanizing alone does not constitute substantial transformation. However, if the galvanized product is also fully annealed, Customs considers that to constitute a substantial transformation. Some annealing (*i.e.*, heating and slow cooling) occurs during the galvanizing process. However, "full annealing" requires a higher temperature, which causes changes in the metallurgical structure. It is the metallurgical changes resulting from full annealing that is the primary basis for the distinction in the Customs rulings. Respondents argue that the Department should adopt Customs' position that galvanizing alone does not constitute substantial transformation.

The Department has consistently taken the position that it is not bound by Customs rulings on substantial transformation. The Department's authority to make its own country of origin determinations is inherent in its independent authority to determine the scope of AD/CVD investigations. The Department's country of origin determinations, which have not always been consistent with Customs, reflect concerns specific to enforcement of the AD/CVD laws, such as the potential for the circumvention of orders. See EPROMS from Japan, 51 FR 39680 (October 30, 1986); *DRAMS of 256 Kilobits and Above from Japan*, 51 FR 28396 (August 7, 1986).

During verification in Mexico and Canada we reviewed the process of producing galvanized sheet. The process of galvanizing does not involve simply painting cold-rolled sheet with zinc. It is a bonding process, which changes the character and use of the sheet. The galvanizing transforms the physical character of the cold-rolled sheet from a non-corrosion resistant to a corrosion-resistant material. The galvanized sheet is intended for use in applications where corrosion-resistance is important because of exposure to the elements, such as construction or the production of certain products (*e.g.*, air conditioners). Cold-rolled sheet cannot be used for such applications. Thus, galvanizing changes the character and use of the steel sheet, *i.e.*, results in a new and different article. In fact, the differences between cold-rolled sheet and galvanized sheet are so significant they fall within different classes or kinds of merchandise. In addition, galvanizing adds substantial value.

Despite Customs' ruling, there are more similarities than differences in the extent to which galvanizing and full anneal/galvanizing affect the steel sheet. Both processes are done on the same production line, using the same material and labor, and the costs of production are essentially the same. As noted above, some heat treatment is done in converting cold-rolled sheet into galvanized sheet. The only difference in the process is that the full annealed product is heated to a higher temperature. Thus, we see no basis to conclude that, for AD/CVD purposes, the full annealing and galvanizing is a significant process, but galvanizing alone is not. Furthermore, both processes change the character of the product: Galvanizing gives the sheet corrosion resistant properties, and full annealing/galvanizing adds the additional characteristic of formability (*i.e.*, reduces the yield and tensile strength). Both processes also change the use: Galvanizing results in a product intended for applications requiring corrosion resistance, and full anneal/galvanized results in a product intended for similar applications, but which requires more formability. Galvanizing results in a product intended for applications requiring corrosion resistance, and full annealing results in a product intended for applications requiring more formability (*e.g.*, appliances).

Based on the foregoing, the Department has determined that galvanizing constitutes substantial transformation. Therefore, cold-rolled sheet that is galvanized in a subject country is substantially transformed into a product of that country and is within the scope of these investigations.

Products of Nonrectangular Shape

Background. The product descriptions in the AD and CVD petitions on carbon steel flat products specifically excluded nonrectangularly-shaped products from the investigations of all four classes or kinds (certain hot-rolled, cold-rolled, and corrosion-resistant products, and plate). The Department initiated all of the LTFV and CVD investigations of carbon steel flat products with scope language which specifically excluded products which have been cut, pressed, or stamped to nonrectangular shape.

In a submission of November 25, 1992 (two days before the Department's preliminary CVD determinations on flat-rolled products), petitioners amended the scope of their petitions to include nonrectangularly-shaped products in the scope of the investigations of all four classes or kinds. We received numerous comments from respondents and interested parties opposing petitioners' scope amendment. (See decision memorandum of January 25, 1993, from Roland MacDonald, Director of the Office of Agreements Compliance, to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, and Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations ("the January 25 memo").) On January 26, 1993, the Department issued its preliminary determinations in the LTFV investigations of certain carbon steel flat products. In those determinations, we decided not to expand the scope to include nonrectangularly-shaped products, as petitioners had explicitly excluded them from their petitions.

Interested Party Comments.
Petitioners argue that their exclusion of nonrectangularly-shaped products from their petitions was "inadvertent," and that, furthermore, the Department has in at least one other case (*Electrical Conductor Redraw Rods from Venezuela* ("Redraw Rods from Venezuela")) expanded the scope to include a product which had been excluded from the petition. They argue that their November 25, 1992, scope amendment was timely under the statute. Petitioners also argue that, according to the criteria outlined in *Diversified Products Corp.* v. *United States*, 572 F. Supp. 883 (CIT 1983) ("Diversified Products"), nonrectangular products fall within the four classes or kinds of merchandise subject to these investigations. They argue that inclusion of these products in the scope is necessary to prevent circumvention of prospective antidumping or countervailing duty orders. Petitioners state that they were not required to present evidence specifically indicating that nonrectangularly-shaped products are being dumped or subsidized. They claim that the U.S. International Trade Commission (ITC) did not exclude such products from its preliminary injury determinations in these investigations, and that those determinations were based on import data that included nonrectangularly-shaped products. Petitioners claim that they produce, have produced, or currently have the ability to produce nonrectangular shapes. They also state that "significant volumes" of nonrectangular shapes are entering the United States and competing with rectangularly-shaped products. Lastly, petitioners argue that including products of nonrectangular shape will impose no additional burden on the Department or the U.S. Customs Service, and actually would ease that burden by eliminating the need to distinguish between rectangular and nonrectangular products imported in the same Harmonized Tariff Schedule item when assessing AD/CVD duties.

Stelco, Inc. ("Stelco") notes that the petitions explicitly excluded such products from the investigations, and that the Department's initiation notice, questionnaires, and preliminary determinations likewise excluded those products. Stelco also notes that the ITC adopted the same product descriptions as did the Department and claims that the ITC's questionnaires and preliminary determinations were limited to rectangularly-shaped products. Stelco argues that the Department cannot expand the scope to include products which were not subject to an ITC preliminary positive injury determination, and that to do so would be in violation of the General Agreement on Tariffs and Trade (GATT) and the GATT Antidumping Code. Stelco claims that there is a long history of imports of nonrectangularly-shaped products from Canada and that sales of these products thus cannot be considered to represent a diversion of trade from rectangularly-shaped products. Stelco argues that inclusion of nonrectangularly-shaped products would result in "gross distortion of margins based on incomplete and misleading data," and would unfairly penalize producers of nonrectangular products against whom petitioners have made no allegations of dumping. Stelco argues that, regarding amendments to the scope late in an investigation, Department practice is to entertain amendments to *exclude* products but not to include products, a practice confirmed by the Court of International Trade in *Smith Corona* v. *United States*, 796 F. Supp. 1532 (CIT 1992). Stelco argues that, based on the *Diversified Products* criteria, nonrectangularly-shaped products constitute a different class or kind, and that, as Stelco believes that neither petitioners nor any of their related companies make nonrectangularly-shaped products, petitioners lack standing regarding these products. Stelco argues that petitioners have not alleged less-than-fair-value sales of nonrectangularly-shaped products. Lastly, Stelco argues that allowing a scope expansion at a late stage in an investigation could encourage future petitioners to manipulate the petition process to include at first only products with anticipated high margins and then introduce anticipated low-margin products into the scope late in the proceeding.

Empresa Nacional Siderúrgica ("Ensidesa") restricts its arguments specifically to steel circles. Ensidesa argues that, based on the *Diversified Products* criteria, circles constitute a separate class or kind, and that, as it is unclear whether petitioners currently manufacture circles, petitioners lack standing regarding this product. Ensidesa argues that, coming so late in the proceedings, petitioners' scope amendment is untimely. Ensidesa argues that petitioners seek to expand the scope to include products which the ITC has not found to cause or threaten injury. Lastly, Ensidesa claims that circumvention is impossible, as circles cannot be used in place of rectangular products.

Algoma Steel, Inc. ("Algoma") claims that no case, statute or regulation permits expanding the scope of an AD investigation at this stage of a proceeding, and that the Department has never granted an amendment to expand the scope this late in an investigation. Algoma argues that the Department cannot make an anticircumvention decision without first undertaking a scope investigation, and that this is the lesson learned from *Redraw Rods from Venezuela*. Algoma states that the Department's longstanding practice has been to exclude nonrectangularly-shaped products from investigations of flat-rolled products. Algoma argues that including nonrectangularly-shaped products late in the proceeding would be prejudicial to producers of these products who have not had an opportunity to participate in the investigations. Algoma also argues that allowing a scope expansion at a late stage in an investigation could encourage future petitioners to manipulate the petition process to include at first only products with anticipated high margins and then introduce anticipated low-margin products into the scope late in the proceeding. Algoma claims that petitioners failed to demonstrate that they produce nonrectangularly-shaped products and thus lack standing regarding these products, and that based on the *Diversified Products* criteria nonrectangularly-shaped products constitute a separate class or kind.

Department's Position. Petitioners' request to amend the scope of the investigations to include products of nonrectangular shape was filed timely under section 732(b)(1) of the Act and under section 353.12(e) of the Department's regulations. However, the LTFV and CVD petitions explicitly and unequivocally excluded flat-rolled products of nonrectangular shape from the scope of the investigations of all four classes or kinds of carbon steel flat-rolled products. We therefore disagree with petitioners' assertion in support of their amendment that this exclusion was "inadvertent." Petitioners' citation of *Redraw Rods from Venezuela* is irrelevant, as that case involved a scope determination following an allegation of circumvention of an existing antidumping order; it did not involve a scope expansion during an ongoing investigation. Furthermore, petitioners did not adequately substantiate their claim regarding the potential for circumvention.

All of the petitioners' bases for expanding the scope of the investigations to include nonrectangularly-shaped products, and the issue of which products were covered by the ITC's preliminary injury

UMI
VOL 58 ISS 130 JL 9 1993
UMI

determination, are overridden by the relatively advanced stage in the proceeding in which petitioners' scope expansion amendment was filed. Regarding scope modifications during an investigation, it has been the Department's consistent practice not to permit expansions of the scope during the latter stages of the proceeding. (See for example, *Final Determination of Sales at Less than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12,552, 12,566–12,567 (April 15, 1988).) In these investigations, the petitioners had first clearly excluded products of nonrectangular shape from their petitions. Subsequently, at a relatively late stage in the investigations, they submitted a scope amendment request. We are not satisfied that there is adequate information, comment, and rebuttal from parties to the proceeding to reverse the existing exclusion. We therefore deny petitioners' scope amendment to include products of nonrectangular shape in the investigations.

Products of Nonrectangular Cross-Section

Background. In describing the products subject to their LTFV and CVD petitions on carbon steel flat products, petitioners referred to the HTS description of flat products, which defines those products as having rectangular cross-sections. The Department initiated all of the LTFV and CVD investigations of carbon steel flat products with scope language which specifically excluded products of nonrectangular cross-section.

In a submission of November 25, 1992, petitioners clarified that the scope of their petitions include products of nonrectangular cross-section in the scope of the investigations of all four classes or kinds. We received numerous comments from respondents and interested parties opposing petitioners' scope clarification. (See the January 25 memo.)

On January 26, 1993, the Department issued its preliminary determinations in the LTFV investigations of certain carbon steel flat products. As petitioners had not excluded products of nonrectangular cross-section from their petitions, we clarified in those determinations that such products are included in the scope of the investigations.

Interested Party Comments. Petitioners claim that respondents have provided no evidence compelling the Department to overturn its decision that products of nonrectangular cross-section are within the scope of the investigation. Petitioners state that their scope clarification request was timely filed and that the Department may modify the scope at any time prior to the Secretary's final determination. They also state that the Department clarified, rather than expanded, the scope. Petitioners state that, according to the *Diversified Products* criteria, nonrectangular cross-section products fall within the same classes or kinds subject to these investigations. They claim that, as they are not required to produce every product within the class or kind, they have standing regarding nonrectangular cross-section products. Petitioners also state that, for certain countries, these products constitute a "significant percentage of imports," and that inclusion of these products is necessary to prevent circumvention. Petitioners argue that the lack of an ITC preliminary injury determination on nonrectangular cross-section products does not preclude the Department from including those products in the scope of the investigations. Petitioners argue that they were not required to present evidence specifically indicating that nonrectangular cross-section products are being subsidized or dumped and that the ITC is not required to make a preliminary injury determination on these products, as they belong to the same class or kind as the products subject to the investigation.

USIMINAS's and Primary Steel, Inc. ("Primary") joint comments relate to nonrectangular cross-section products generally and to bevelled plate specifically. USIMINAS and Primary argue that the Department's inclusion of nonrectangular cross-section products violates the Department's consistent practice not to expand investigations to include products expressly excluded from petitions and initiation notices. They claim that there was no ambiguity in petitioners' scope language, which excluded nonrectangular cross-section products. USIMINAS and Primary also argue that petitioners' scope amendment is untimely, as the Department has never expanded the scope so late in the proceeding. The two companies argue that, as the ITC's preliminary injury determination did not apply to products with nonrectangular cross-sections, including these products in the scope contradicts the GATT and U.S. law. They also argue that bevelled plate is a separate like product which petitioners do not produce and for which petitioners therefore lack standing, and that, based on the *Diversified Products* criteria, bevelled plate belongs to a different class or kind than do products of rectangular cross-section. USIMINAS and Primary claim that petitioners never made any allegations of LTFV sales of bevelled plate. They state that the Department, in its January 25, 1993, decision to include nonrectangular cross-section products in the investigations, stated that the lack of an affirmative ITC preliminary injury determination prevents the application of AD/CVD duties on imports of those products, and that, therefore, Commerce should instruct Customs to refund all cash deposits and release the bonds on all imports of this merchandise. Lastly, USIMINAS and Primary ask the Department to be mindful that petitioners limited their scope amendment to nonrectangular cross-section products that "do not assume the character of other articles."

AG der Dillinger Hüttenwerke ("Dillinger") argues that there is no evidence in the petitions indicating that petitioners intended to include nonrectangular cross-section products in the scope of the investigations. Dillinger notes that the petitions' only reference to such product is the citation of the HTS definition of flat-rolled products, which excludes products of nonrectangular cross-sections. Dillinger argues that including nonrectangular cross-section products constitutes an expansion of the scope, not just a clarification. Dillinger argues that there must be both preliminary and final determinations by both the Department and the ITC in order to collect AD duties on imported products. Lastly, Dillinger argues that the Department was inconsistent in denying petitioners request to include nonrectangular shapes (see above) while agreeing to petitioners' request to include non rectangular cross-sections.

Department's Position. In contrast to the petitions' explicit exclusion of products of nonrectangular shape, nowhere do the petitions specifically exclude nonrectangular cross-section products from the scope of the investigations. In fact, while the HTS definition of flat-rolled products cited by the petitions refers to products of rectangular cross-section, the HTS itself is inconsistent regarding cross-section: According to the Explanatory Notes to the HTS, products of *non*rectangular cross-section are classified in the HTS under headings for "flat-rolled"—*i.e.*, rectangular cross-section—products.

Consistent with the Department's practice, the written scope description is dispositive. Based on the written description in the petitions in these investigations, all products classified in the HTS items cited in the petitions fall within the written scope descriptions unless specifically excluded. Thus,

products of nonrectangular shape are not in the scope of the investigations, as they were explicitly excluded from the petitions. However, absent a specific exclusion of any other products from the written description of the scope, all other products covered in the HTS items cited in the petitions are included within the scope, including products of nonrectangular cross-section.

Products of nonrectangular and rectangular cross-sections belong to the same class or kind. In making this determination, we have considered the following factors: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the manner in which the merchandise is advertised and displayed. The Court of International Trade has endorsed these criteria in determining whether a product is within a "class or kind" of merchandise. (See *Diversified Products.*) Regarding their physical characteristics, nonrectangular cross-section products are no more different from rectangular cross-section products than are flat-rolled products of particular chemical composition, widths, or yield strengths different from each other. That is, edge specification is merely one of several specifications which a consumer may consider when purchasing carbon steel flat products. While products of nonrectangular cross-section may have particular ultimate uses, this again is no different than noting that flat-rolled products of particular yield strengths or grades, but within the same class or kind, may be suitable for certain but not all end uses. This holds true, by analogy, for the expectations of the ultimate consumer. Flat-rolled products are sold through the same channels of trade regardless of cross-sectional profile: flat-rolled products in the four classes or kinds are sold directly to end users as well as to service centers; that nonrectangular cross-section products are generally sold directly to end users does not differentiate them from other products within the class or kind. Lastly, we note that the method of advertising for flat-rolled products is not dependent upon the cross-section of the steel. Steel products manufactured to standard grades and/or sizes may be advertised in catalogs and other promotional company literature, while other, specific products developed by the manufacturer in cooperation with one or more end users might not necessarily be included in such advertising. This distinction holds true for various flat-rolled products within the four classes or kinds and is not just related to the shape of the cross-section. Thus, a difference in the method of advertising for nonrectangular cross-section products does not support the assertion that those products constitute a separate class or kind.

Regarding the issues of standing and like product, in the absence of persuasive evidence that the like products and domestic industries identified by the ITC are inappropriate to follow for purposes of standing, it is the Department's usual practice to defer to the like product descriptions developed by the ITC. (See *Final Determination of Sales at Less than Fair Value: Nepheline Syenite from Canada* ("Nepheline Syenite from Canada"), 57 FR 9237, 9242 (March 17, 1992).) In these investigations, the like product descriptions written by the ITC in its preliminary injury determinations are equivalent to the Department's scope definitions. Thus, we believe that products of nonrectangular cross-section do not constitute a separate like product. We also believe that petitioners have standing regarding nonrectangular cross-section products. Petitioners have demonstrated that they produce all four like products and thus that they are manufacturers or producers of those four like products under section 771(9)(C) of the Act. Further, petitioners' statement that they have filed the petition on behalf of the relevant domestic industries is sufficient absent evidence to the contrary. (See Appendix B to *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Germany* ("AFBs from Germany"), 54 FR 18,992, 19,004, (May 3, 1989); and *Microdisks from Japan*, 54 FR 6433, 6435 (February 10, 1989).) Finally, there is no requirement that interested parties manufacture every product within the like product designation, only that they are producers of a like product. (See *Negative Final Determination of Circumvention of Antidumping Order: Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.* ("PETs from Japan"), 56 FR 58,031, 58,038, November 15, 1991.)

As to the issue of which products were covered by the ITC's preliminary injury determination, because of the wording of the petition it is unclear whether the ITC investigated products of nonrectangular cross-section. ITC officials have confirmed to the Department that its questionnaire did not explicitly exclude all nonrectangular cross-section products and that there is no evidence demonstrating that the responses to its questionnaire did not include data on such products. (See memorandum of June 16, 1993, from Art Stern, Office of Agreements Compliance, to the file.) Accordingly, such a clarification of the scope of an investigation does not violate section 733(a) of the Act, which requires a preliminary injury determination by the ITC, nor does it violate the international obligations of the United States. Moreover, if it is clarified that such products are included, the ITC would be able to take account of this for purposes of its final determination.

Petitioners' request to clarify the scope of the investigations to include nonrectangular products was timely under section 732(b)(1) of the Act and under section 353.12(e) of the Department's regulations. We therefore have clarified the four classes or kinds subject to the investigations to indicate that products of nonrectangular cross-section are included in the scope.

Lastly, USIMINAS's and Primary's characterization of petitioners' scope clarification request as including products of nonrectangular cross-section which "do not assume the character of other articles" is not entirely accurate. Petitioners' November 25, 1992, scope clarification request referred to "flat-rolled products which have bevelled edges or other surface or edge characteristics which might render their cross-section other than rectangular, so long as those modifications do not cause them to assume the character of *products of other HTSUS item numbers.*" (Emphasis added.) We believe that, having relied on HTSUS item numbers as a distinguishing factor, petitioners intended to limit their clarification to flat-rolled products whose nonrectangular cross-sections have been imparted onto the steel after the rolling process, *i.e.*, to products which have been "worked after rolling"—for example, products which have been bevelled or rounded at the edges. Thus, we have further clarified that, regarding products of nonrectangular cross-section, only those products whose nonrectangular cross-sections are achieved subsequent to the rolling process are included within the scope of the investigations.

Painted vs. Unpainted Products

Interested Party Comments. Stelco argues that, based on the *Diversified Products* criteria, two of the classes or kinds subject to investigation, cold-rolled carbon steel flat products and corrosion-resistant carbon steel flat

products, should each be divided into two classes or kinds, for a total of four new classes or kinds: painted cold-rolled, unpainted cold-rolled, painted corrosion-resistant, and unpainted corrosion-resistant. Stelco also argues that including painted and unpainted products together in a class or kind will distort the dumping calculations, as painted products cost significantly more than unpainted products. Stelco argues that there are no circumvention concerns, as there have been U.S. imports of Canadian painted products "for years."

Petitioners argue that, based on the *Diversified Products* criteria, painted and unpainted cold-rolled belong to the same class or kind, and likewise painted and unpainted corrosion-resistant. Petitioners claim that including painted and unpainted products in the same class or kind will not distort margin calculations: they argue that, as the Department made painted/unpainted the first characteristic in the model-match hierarchy, sales of painted and unpainted products would never be matched by the Department in its dumping calculations. Lastly, petitioners argue that the Department has consistently included both painted and unpainted products in the same class or kind in its previous investigations.

Department's Position. The petitions are clear that both painted and unpainted products are covered by the scope of these investigations. Further, based on the *Diversified Products* criteria, we agree with petitioners that painted and unpainted steel products belong to the same class or kind. The physical characteristics between painted and unpainted products are very similar, in that painted steel can be subjected to the same types of operations as unpainted steel, *e.g.*, stamping, blanking, drawing, and welding. In most cases, paint is applied to steel merely to improve the steel's appearance. The ultimate use and expectations of the ultimate purchasers are much the same for painted and unpainted products. Both types of products are used in the manufacture of consumer goods, vehicles, and equipment, and in construction. Ultimate purchasers have already decided they want to buy either a cold-rolled or corrosion-resistant steel product because of the physical properties each of these products possesses and the performance they therefore expect from the steel. A particular steel consumer knows that the product he fabricates with the purchased steel will at some point be painted; however, *when* the steel is painted—*i.e.*, prior to delivery and at the direction of the steel company, or after delivery (and, perhaps, after fabrication) and at the direction of the steel consumer—is only a matter of customer preference and does not reflect any essential difference between the physical characteristics, end uses and consumer expectations of painted and unpainted steel. Both products are sold through the same channels of trade, *i.e.*, to end-users and service centers. And both products are advertised together by steel companies in their product literature. Regarding the calculation of dumping margins, our placement of the painted/unpainted characteristic at the top of our model match hierarchy and our twenty percent difference-in-merchandise ("difmer") cap virtually eliminated the possibility that sales of painted and unpainted products would be matched to each other. We therefore deny Stelco's request to divide the cold-rolled and corrosion-resistant classes or kinds into painted and unpainted cold-rolled and painted and unpainted corrosion-resistant products.

Certain Hot-Rolled, Cold-Rolled, and Corrosion-Resistant Flat Products

Interested Party Comments.

Mitsubishi International Corporation ("MIC") requested that the Department exclude specific types of the following 16 products from the investigations of certain hot-rolled, cold-rolled and corrosion-resistant carbon steel products:

1. High tensile (60kgf/mm^2) strength 1.6mm gauge hot-rolled steel
2. High-tensile (85,338 PSI) strength hot-rolled steel SPFH–60 1.8mm gauge
3. Cu-P cold-rolled steel with high corrosion resistance
4. Fingerprint free electrogalvanized zinc-nickel steel with K2-coat
5. Electrogalvanized Zn-Ni coated steel
6. High carbon cold-rolled steel
7. Cold-rolled steel for extra deep drawing usage
8. Thin gauge pre-painted galvanized steel sheet with high formability
9. Ultra-thin aluminized coated steel with chromate
10. Cold-rolled high carbon steel
11. Corrosion resistant zinc-nickel electrolytically galvanized sheet without organic coating and with a thickness of 1.8mm (0.070") and over
12. Electrogalvanized product with chromate treatment
13. Galvanized steel with thin gauge and irregular width
14. Galvanized steel with thin gauge and irregular width
15. Hot dip aluminized steel sheet in coil
16. Battery can tin mill black plate

MIC claims that: Petitioners cannot produce and/or cannot meet MIC's customers' specifications (products 1–14, and 16); these products are not substitutable (products 1, 12, 13, and 16); petitioners will not provide the steel in small quantities (product 2), will not supply small volumes at "commercially reasonable terms" (product 12), or cannot supply sufficient quantities to satisfy U.S. demand (product 15).

Petitioners oppose excluding these products from the scope of the investigations.

Department's Position. All 16 products are clearly within the scope of the investigations as described in the petitions, the ITC's preliminary injury determinations and the Department's preliminary LTFV and CVD determinations: Products 1 and 2 are within the scope of the investigations of hot-rolled products; products 3, 6, 7, 10, and 16 are within the scope of the investigations of cold-rolled products; and products 4, 5, 8, 9, and 11–15 are within the scope of the investigations of corrosion-resistant products. These products are flat-rolled and clearly fall within the chemical (*i.e.*, carbon steel), dimensional, and, regarding the above-mentioned corrosion-resistant products (products 4, 5, 8, 9, and 11–15), metallic-coating characteristics indicated in the scope description. Furthermore, unless specifically excluded, all hot-rolled, cold-rolled, and corrosion-resistant flat products meeting those criteria are included within the scope regardless of any other technical properties of the steel.

Petitioners have demonstrated that they produce all four like products and thus that they are manufacturers or producers of those four like products under section 771(9)(C) of the Act. Further, petitioners' statement that they have filed the petition on behalf of the relevant domestic industries is sufficient absent evidence to the contrary. (See *Suramerica de Aleaciones Laminadas* v. *United States*, 966 F.2d 660 (Fed. Cir. 1992). See also Appendix B to *AFBs from Germany*, 54 FR 18,992, 19,004, (May 3, 1989); and *Microdisks from Japan*, 54 FR 6433, 6435 (February 10, 1989).) There is no requirement that interested parties manufacture every product within the like product designation, only that they are producers of a like product. (See *PETs from Japan*, 56 FR 58,031, 58,038, November 15, 1991.) Furthermore, the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny MIC's

request to exclude the above-mentioned 16 products from the investigations.

Certain Hot-Rolled Precision Steel Products

Background. In a submission of November 19, 1992, Theis Precision Steel Products ("Theis") requested that the Department determine that certain hot-rolled precision steel products are outside the scope of the LTFV investigations of certain hot-rolled carbon steel flat products from Germany and Japan. The five specific types of hot-rolled products for which Theis requested an exclusion are referred to as seat belt retractor spring steel, piston ring steel, shock absorber steel, throwaway blade steel, and carbon band saw steel.

On January 26, 1993, the Department issued its preliminary determinations in the LTFV investigations of certain carbon steel flat products. In those determinations, the Department did not exclude these products from the scope of the above-mentioned investigations.

In a submission of April 1, 1993, Theis provided specifications for two of the five products for which it had originally requested a scope exclusion—seat belt retractor spring steel and carbon band saw steel—and requested that the Department exclude these two products from the scope of the investigation. In a submission of April 8, 1993, petitioners supported the exclusion of seat belt retractor spring steel and carbon band saw steel from all of the LTFV and CVD investigations of certain hot-rolled carbon steel flat products. In a submission of June 17, 1993, petitioners clarified the descriptions of the seat belt retractor spring steel and carbon band saw steel for which they support exclusion from the investigations.

Department's Position. Petitioners have indicated that they no longer have any interest in pursuing unfair trade remedies for certain seat belt retractor spring steel and certain carbon band saw steel. Petitioners support Theis's request to exclude these products from the scope of the investigations, and there is no opposition to this request on the record. Therefore, we have excluded certain seat belt retractor spring steel and certain carbon band saw steel from the investigations of certain hot-rolled carbon steel flat products.

Certain Hot-Rolled Products

Interested Party Comments. AMBRAKE and Itochu requested that the Department exclude a specific type of hot-rolled steel product from the LTFV investigation of hot-rolled carbon steel flat products from Japan: hot-rolled carbon steel flat products, of high tensile strength, equal to or greater than 50,000 pounds per square inch, in thicknesses of 1.6mm and 2.9mm. AMBRAKE and Itochu claim that petitioners cannot and do not produce this product or a substitutable product: while AMBRAKE requires the product in thicknesses of 1.6mm and 2.9mm, AMBRAKE and Itochu claim that no U.S. mill can produce the product in the 1.6mm thickness, and that, for liability purposes, AMBRAKE must purchase steel in both thicknesses which has been manufactured by the same supplier. AMBRAKE and Itochu also state that neither the petition nor the Department's initiation notice indicate an intent to include this product within the scope of the investigations.

Department's Position. The hot-rolled product described by AMBRAKE and Itochu is clearly within the scope of the investigations, as that product is hot-rolled and clearly falls within the chemical (*i.e.*, carbon steel) and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all hot-rolled flat products meeting those criteria are included within the scope regardless of tensile strength or other technical properties of the steel. Petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the scope exclusion request regarding "certain hot-rolled, cold-rolled, and corrosion-resistant flat products" ("the MIC scope exclusion request") above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny AMBRAKE's and Itochu's request to exclude the above-mentioned product from the investigations.

Full Hard Cold-Rolled Steel

Interested Party Comments. Hoogovens argues that, based on the *Diversified Products* criteria, full hard (*i.e.*, unannealed) cold-rolled steel constitutes a separate class or kind of merchandise distinct from cold-rolled steel which has been annealed.

Department's Position. All cold-rolled steel is in a full hard state after cold-rolling and prior to annealing. Aside from differences in yield strength and formability, full hard and annealed cold-rolled flat products are identical in their physical characteristics. Differences in yield strength and formability merely reflect differences in quality and do not rise to the level of a class or kind distinction. Rather, these differences only demonstrate that, as certain applications may require cold-rolled products of particular yield strengths, certain products within a class or kind may not be suitable for all end uses. In general, however, both full hard and annealed cold-rolled flat products are suitable for use in similar applications, such as machinery manufacturing and construction. Expectations of the ultimate purchaser are identical, in that consumers of both products expect the benefits of a cold-rolled product, *i.e.*, a product with particular mechanical properties and surface conditions which are achieved through the cold-rolling process. Both types of cold-rolled products are sold through identical channels of trade, *i.e.*, directly to end users or to service centers, and both products are advertised in the same manner in company catalogs. We therefore deny Hoogovens's request to create a new class or kind for full hard cold-rolled products.

Certain Tin Mill Black Plate

Interested Party Comments. Teledyne Rodney and Kanematsu requested that the Department exclude a certain type of tin mill black plate from the scope of the LTFV investigation of cold-rolled carbon steel flat products from Japan. They note that the product has particular properties regarding grain direction, camber, flatness, etc. Teledyne Rodney and Kanematsu claim that neither the product nor a substitutable product is produced domestically. Teledyne Rodney and Kanematsu also state that neither the petition nor the Department's initiation notice indicate an intent to include this product within the scope of the investigations.

Department's Position. The tin mill black plate described by Teledyne Rodney and Kanematsu is clearly within the scope of the investigations, as that product is cold-rolled and clearly falls within the chemical (*i.e.*, carbon steel) and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all cold-rolled flat products meeting those criteria are included within the scope regardless of grain direction, camber, flatness, or other technical properties of the steel. Petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding "the MIC scope exclusion request" above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a

scope exclusion request. We therefore deny Teledyne Rodney's and Kanematsu's request to exclude the above-mentioned product from the investigations.

Certain Battery Can Steel Products

Interested Party Comments. Worthington Industries, Inc. (Worthington) requested that the Department exclude a certain type of battery can tin mill black plate from the scope of the LTFV investigation of cold-rolled carbon steel flat products from Japan. According to Worthington, this product is distinguished by its extremely low level of nonmetallic inclusions. The product also has particular properties regarding chemical composition, ferrite grain size, surface finish, hardness, etc. Worthington claims that certain battery can tin mill black plate is not made in the United States, and that no U.S. producer is qualified to supply the product. Worthington argues that, according to the *Diversified Products* criteria, battery can tin mill black plate constitutes a separate class or kind of merchandise, and that petitioners do not make a like product.

Hoogovens requested that the Department exclude certain ultra clean "battery quality" hot-rolled sheet and strip from the investigations of carbon steel hot-rolled flat products. According to Hoogovens, this product is distinguished by its minimal nonmetallic inclusions and superior flatness. Hoogovens claims that there is no substitutable product. Hoogovens argues that, based on the *Diversified Products* criteria, certain ultra clean "battery quality" hot-rolled sheet and strip is outside of the scope of the investigations or, at a minimum, should be considered to be a separate class or kind of merchandise. The company also argues that petitioners lack standing regarding this product.

In a submission of June 17, 1993, petitioners supported the exclusion of certain battery can tin mill black plate in thicknesses between 0.008 inch and 0.0141 inch inclusive from all of the current LTFV and CVD investigations of certain cold-rolled carbon steel flat products. In a submission of June 18, 1993, Worthington supported petitioners' action but requested that the Department enlarge the thickness range of the exclusion to between 0.008 inch and 0.0303 inch.

In a submission of June 18, 1993, Hoogovens and Thomas Steel Strip Corp. ("Thomas") argued that the Department should not grant petitioners' request to amend their petitions to exclude certain battery can tin mill black plate from the investigations of cold-rolled carbon steel flat products, without also excluding ultra clean "battery quality" hot-rolled steel from the investigations of hot-rolled carbon steel flat products, as the cold-rolled battery quality product Thomas manufactures from the imported hot-rolled ultra clean product competes directly with the cold-rolled product for which petitioners' have requested a petition amendment. According to Hoogovens and Thomas, to exclude the cold-rolled product but not also the hot-rolled product would put Thomas at a competitive disadvantage vis-a-vis the Japanese producer which supplies Worthington with cold-rolled battery can material.

Department's Position. The Department believes that the petitions, the Department's preliminary determinations, and the ITC's preliminary injury determinations clearly indicate that these two products are within the scope of the investigations and within the cold-rolled and hot-rolled classes or kinds, respectively. Certain battery can tin mill black plate is cold-rolled, and certain ultra clean "battery quality" hot-rolled sheet and strip is hot-rolled, and both products clearly fall within the chemical (*i.e.*, carbon steel) and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all cold-rolled and hot-rolled flat products meeting those criteria are included within the scope regardless of ferrite grain size, surface finish, hardness, flatness, or other technical properties of the steel. While these two products have a physical characteristic—an extremely low or minimal inclusion level—which distinguishes them from other cold-rolled and hot-rolled flat products, this difference does not rise to a level of a class or kind distinction. Rather, it only demonstrates that certain products within a class or kind may be more suitable than other such products for particular uses. In general, however, these products and other cold-rolled and hot-rolled flat products are, respectively, suitable for use in similar applications, such as in industrial and consumer goods.

Regarding these two products and other products in their respective classes or kinds, expectations of the ultimate purchaser are identical, in that consumers of both products expect the benefits of a cold-rolled, or hot-rolled, product, *i.e.*, a product with particular mechanical properties and surface conditions which are achieved through the cold-rolling, or hot-rolling, process. Certain battery can tin mill black plate, and certain ultra clean "battery quality" hot-rolled sheet and strip, and other cold-rolled, and hot-rolled, flat products are sold, respectively, through identical channels of trade, *i.e.*, directly to end users or to service centers, and both products are advertised in the same manner as other products in their respective classes or kinds in company catalogs and other promotional literature. Particular products may be developed by the manufacturer in cooperation with one or more end users and might not necessarily be included in such advertising. However, this possible difference in the method of advertising does not support the assertion that certain battery can tin mill black plate or certain ultra clean "battery quality" hot-rolled sheet and strip constitute separate classes or kinds.

Regarding the claim that certain battery can tin mill black plate and certain ultra clean "battery quality" hot-rolled sheet and strip constitute separate like products, in the absence of persuasive evidence that the like products and domestic industries identified by the ITC are inappropriate to follow for purposes of standing, it is the Department's usual practice to defer to the like product descriptions developed by the ITC. (*See Nepheline Syenite from Canada*, 57 FR 9237, 9242 (March 17, 1992).) In these investigations, the like product descriptions written by the ITC in its preliminary injury determinations are equivalent to the Department's scope definitions. Thus, we believe that these products do not constitute separate like products, and that petitioners do have standing regarding these products. (See like product discussion regarding the MIC scope exclusion request above.) Moreover, the allegation that petitioners lack standing was submitted after the deadline specified in the regulations (10 days prior to the Department's preliminary determination; see 19 CFR 353.31(c)(2)) and is therefore untimely. Furthermore, petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request.

In their June 17, 1993, submission to amend their petitions in these investigations, petitioners indicated their support for Worthington's request to exclude certain battery can tin mill black plate from the cold-rolled investigations, but not for Hoogovens'

similar request to exclude the hot-rolled product which is subsequently cold-rolled in the United States to make the same product. Both products eventually are manufactured into nickel-plated steel for use in manufacturing battery cans. Worthington itself noted that while Thomas imports a similarly clean hot-rolled version of battery can quality sheet from Hoogovens, "their [Thomas's] end-product is also a [cold-rolled and] nickel-plated sheet for battery cans that competes directly with Worthington's." (See Worthington's May 13, 1993, "Request for Exclusion of Battery Can Tin Mill Black Plate from the Scope of These Investigations," at page 7. See also Worthington's May 20, 1993, pre-hearing scope brief, at pages 14–15.)

Petitioners' June 17, 1993, submission expressing support for Worthington's scope exclusion request was submitted at an extremely late stage in these investigations. The Department, therefore, did not have adequate opportunity to examine fully the complex issues raised by these two exclusion requests: each of these requests raises significant issues, as does the interplay between the two requests. Furthermore, we are not satisfied that there is adequate information, comment, and rebuttal from parties on this issue to render a decision to exclude these two products from the investigations.

For all of the above reasons, we deny the requests by Worthington and Hoogovens to exclude, respectively, certain battery can tin mill black plate and certain ultra clean "battery quality" hot-rolled sheet and strip from the scope of these investigations.

Certain Cold-Rolled Strip Products

Interested Party Comments. Röchling Kaltwalzwerk KG ("Röchling") requested that the Department exclude certain carbon steel strip products from the scope of the LTFV and CVD investigations of cold-rolled carbon steel flat products from Germany. The products have either a surface coating of zinc phosphate or are surface conditioned for such coating. Röchling claims that petitioners cannot and do not produce these products and do not produce a substitutable product, and that petitioners therefore did not intend to include these products within the scope of the investigations.

Department's Position. The cold-rolled strip products described by Röchling are clearly within the scope of the investigations, as those products are cold-rolled and clearly fall within the chemical (*i.e.*, carbon steel) and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all cold-rolled flat products meeting those criteria are included within the scope regardless of the type of nonmetallic coating or other technical properties of the steel. Petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny Röchling's request to exclude the above-mentioned products from the investigations.

Certain Cold-Rolled Spheroidized Steel

Interested Party Comments. American Steel and Aluminum Corporation ("American Steel") requested that the Department exclude certain cold-rolled spheroidized steel from the scope of the investigations of cold-rolled carbon steel flat products. The product has a specific chemistry and a light matte finish. American Steel claims that this product is not produced in the United States, and has different physical characteristics and end uses than the other cold-rolled products covered by the investigations.

Department's Position. The cold-rolled product described by American Steel is clearly within the scope of the investigations, as that product is cold-rolled and clearly falls within the chemical (*i.e.*, carbon steel) and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all cold-rolled flat products meeting those criteria are included within the scope regardless of the type of surface finish or other technical properties of the steel. American Steel did not substantiate its claim that cold-rolled spheroidized steel has physical characteristics and end uses different from other cold-rolled products. Furthermore, petitioners are not required to manufacture every product within the like product designation (see like product analysis discussion the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny American Steel's request to exclude the above-mentioned product from the investigations.

Certain Cold-Rolled Ultra Bright Steel

Interested Party Comments. American Nickeloid requested that the Department exclude two specific types of cold-rolled ultra bright steel from the scope of the investigations of cold-rolled carbon steel flat products. These products have a mirror bright surface finish which is free of defects. American Nickeloid claims that these products are not produced in the United States, and have different physical characteristics and end uses than the other cold-rolled products covered by the investigations.

Department's Position. The cold-rolled products described by American Steel are clearly within the scope of the investigations, as those products are cold-rolled and clearly fall within the chemical (*i.e.*, carbon steel) and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all cold-rolled flat products meeting those criteria are included within the scope regardless of the type of surface finish or other technical properties of the steel. American Nickeloid did not substantiate its claim that certain ultra bright cold-rolled steel has physical characteristics and end uses different from other cold-rolled products. Furthermore, petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny American Nickeloid's request to exclude the above-mentioned products from the investigations.

Certain Galvanized Steel

Interested Party Comments. Champion Metal Co. ("Champion Metal") and Rolled Steel Products, Inc. ("RSP") requested that the Department exclude 30 gauge, ASTM A–446 grade E galvanized steel from the LTFV investigation of corrosion-resistant carbon steel flat products from Japan. Champion Metal and RSP claim that this product is not available domestically, that petitioners may have included this product inadvertently in the scope of the investigations, and that a lower grade steel product is not substitutable for grade E in applications which require grade E steel.

Department's Position. Thirty (30) gauge, ASTM A–446 grade E galvanized steel is clearly within the scope of the investigations, as that product is flat-rolled and clearly falls within the chemical (*i.e.*, carbon steel), metallic-coating, and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all corrosion-resistant flat

UMI
VOL 58 ISS 130 JL 9 1993
UMI

products meeting those criteria are included within the scope regardless of the particular ASTM grade or other technical properties of the steel. Petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny Champions Metal's and RSP's request to exclude the above mentioned product from the investigations.

Certain Lithographed Tinplate and Tin-Free Steel

Interested Party Comments. Eveready requested clarification of the scope of the investigations of corrosion-resistant carbon steel flat products. Eveready notes that the petitions and the Department's initiation notices excluded products coated with tin ("tinplate"), chromium, chromium oxides, or chromium and chromium oxides ("tin-free steel"). However, *lithographed* tinplate and tin-free steel are classified in the same HTS item as other products subject to the investigation. As a result, Customs has determined that certain entries of lithographed tinplate and tin-free steel are subject to the preliminary cash deposits deposit and bonding requirements for corrosion-resistant products. Eveready notes that the written scope descriptions are dispositive and requests that the Department clarify that these products are not subject to the investigations. Petitioners support this clarification.

Department's Position. We agree that lithographed tinplate and tin-free steel are clearly outside of the scope of the investigations, and confirmed this in a memorandum to the file of March 18, 1993. (See memorandum of March 18, 1993, from Art Stern, Office of Agreements Compliance, to the file.) We have clarified the written description of the corrosion-resistant class or kind to indicate that the products already listed as excluded from the scope are in fact excluded "whether or not painted, varnished, or coated with plastics or other nonmetallic substances in addition to the metallic coating."

Certain Stainless Clad Products

Background. In a submission of November 20, 1992, Regal Ware, Inc. ("Regal") requested that the Department exclude certain carbon steel sheet in coil that is clad on both sides with cold-rolled stainless steel from the LTFV investigation of certain corrosion-resistant carbon steel flat products from Japan. On January 26, 1993, the Department issued its preliminary determinations in the LTFV investigations of certain carbon steel flat products. In those determinations, the Department did not exclude this product from the scope of the above-mentioned investigation.

In a submission of January 25, 1993, petitioners supported the exclusion of Regal's imported product from the scope. Petitioners' March 9, 1993, submission restated their support for the exclusion of "stainless clad steel sheet, a corrosion-resistant carbon steel sheet product that consists of carbon steel clad on both sides with stainless steel, generally used in the ratio of 20%–60%–20%, used in the manufacture of cookware," from all of the LTFV and CVD investigations of corrosion-resistant carbon steel flat products. In a submission of June 17, 1993, petitioners clarified the description of the stainless clad steel for which they support exclusion from the investigations.

Department's Position. Petitioners have indicated that they no longer have any interest in pursuing unfair trade remedies for the noted stainless clad products. Petitioners support Regal's request to exclude these products from the scope of the investigations, and there is no opposition to this request on the record. Therefore, we have excluded the noted stainless clad steel from the investigations of certain corrosion-resistant carbon steel flat products.

Certain Nickel-Plated Steel

Interested Party Comments. Osram Sylvania Inc. ("Osram Sylvania") requested that the Department exclude certain nickel-plated corrosion-resistant steel coil from the LTFV investigation of corrosion-resistant carbon steel flat products from Japan. This product has particular properties regarding chemistry, tensile strength, elongation, grain structure, etc. Osram Sylvania claims that this product is not available domestically, that no substitutable or directly competitive or like product is produced in the United States, and that petitioners have informed Osram Sylvania that they do not produce the specific type of nickel-plated steel. Osram Sylvania argues that, while there may be a U.S. producer of nickel-plated steel, that producer imports hot-rolled carbon steel and then processes the steel into nickel-plated steel; and as that U.S. company does not add 99 percent of the value of the finished product, the nickel-plated steel produced by that producer cannot be considered a U.S.-origin product for antidumping purposes.

Department's Position. Certain nickel-plated steel is clearly within the scope of the investigations, as that product is flat-rolled and clearly falls within the chemical (*i.e.*, carbon steel), metallic-coating, and dimensional characteristics indicated in the scope description. Furthermore, unless specifically excluded, all corrosion-resistant flat products meeting those criteria are included within the scope regardless of the particular tensile strength, elongation, grain structure, or other technical properties of the steel. Petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny Osram Sylvania's request to exclude the above-mentioned product from the investigations.

Certain Duplex Zinc-Iron Coated Steel

Interested Party Comments. Nippon Steel Corporation ("NSC"), Diamond Star Motors ("DSM"), Mitsubishi International Corporation ("MIC"), New United Motor Manufacturing, Inc. ("NUMMI"), Toyota Motor Manufacturing, U.S.A., Inc. ("TMM"), TABC, Inc. ("TABC"), and Toyota Tsusho America, Inc. ("TAI") requested that the Department exclude "duplex zinc-iron coated steel," a corrosion-resistant steel product with two coating layers, from the scope of the LTFV investigation of corrosion-resistant carbon steel flat products from Japan. These companies claim that petitioners do not and cannot produce duplex zinc-iron coated steel and that no domestic manufacturer will be able to produce this product in commercial quantities until late 1995. They also claim that petitioners do not produce a substitutable product. Given these assertions, the above-mentioned companies argue that petitioners therefore likely did not intend to include duplex zinc-iron coated steel in the scope of the investigation. They also argue that it is unclear whether the petitions include products with two coating layers in the scope.

Department's Position. Certain duplex zinc-iron coated steel is clearly within the scope of the investigations, as that product is flat-rolled and clearly falls within the chemical (*i.e.*, carbon steel), metallic-coating, and dimensional characteristics indicated in the scope

description. Furthermore, unless specifically excluded, all corrosion-resistant flat products meeting those criteria are included within the scope regardless of the number of coatings or other technical properties of the steel. Petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny the above-mentioned companies' request to exclude certain duplex zinc-iron coated steel from the investigations.

Universal Mill Plate

Interested Party Comments. Caterpillar argues that, according to the *Diversified Products* criteria, universal mill ("UM") plate is different from sheared plate and constitutes a separate class or kind. Caterpillar argues further that, as none of the petitioners make UM plate, petitioners lack standing regarding UM plate and that the product therefore should be excluded from the investigations. Caterpillar claims that there is no acceptable domestic substitute for the UM plate it purchases from foreign suppliers.

Petitioners state that their petitions and the Department's initiation notices explicitly included UM plate within the cut-to-length plate class or kind. They argue that UM plate does not constitute a separate class or kind, and, as petitioners are not required to produce every product within the class or kind, that they do have standing regarding UM plate.

Department's Position. Universal mill plate is explicitly in the scope as described in the petitions, the ITC's preliminary injury determinations and the Department's preliminary LTFV and CVD determinations. We agree with petitioners that, under the *Diversified Products* criteria, UM plate is not in a class or kind separate from sheared plate. While UM plate has rolled edges and usually is narrower in width than sheared plate, they are both plate products in all major physical characteristics and generally have identical applications and end user expectations, in that both types of plate are used in such industries as machinery manufacturing and construction and that end users expect similar performance in those applications from either product. Both products are sold directly to end users or to service centers, and both are advertised in the same manner in company literature. Therefore, we deny Caterpillar's request to create a new UM plate class or kind.

Certain Cut-to-Length Plate Products

Interested Party Comments. Titan Wheel International ("TWI") requested that the Department require cash deposits or bonds at the rate applicable to hot-rolled flat products on the cut-to-length plate it wishes to import from Canada. TWI states that it purchased the steel in coil form from a Canadian steel company, but that the steel was then cut to length by a reseller related to TWI in Canada. Petitioners state that TWI's request is vague and should be rejected without further inquiry.

Department's Position. The Department's instructions to Customs regarding the implementation of the Department's preliminary LTFV determinations clearly indicate that, when a reseller processes a steel product and transforms it into a different class or kind, the cash deposit or bonding rate for the new class or kind will apply. As the processing performed by TWI's Canadian affiliate transformed the class or kind of the steel from hot-rolled flat products to cut-to-length plate, the proper cash deposit or bonding rate is the rate for cut-to-length plate. We have not been presented with any reason to deviate from the strict enforcement of our instructions and confirm that the rate for cut-to-length plate applies to the merchandise in question which TWI wishes to import.

Other Scope Exclusion Requests

Background. Following is a list of all other scope exclusion requests submitted to the Department in these investigations.

Interested Party Comments. In general, the respondents and interested parties indicated below claim that the specified products are not available domestically, either at all or not in sufficient quantities. Some also claim that there are no domestically available substitutable products. All of these requests are supported by arguments stating that the specified product belongs to a separate class or kind and is therefore out of the scope of the investigations. Other requests are also supported by arguments claiming that these products constitute separate like products and that, as petitioners do not produce these products, petitioners therefore lack standing to bring AD and CVD actions regarding these products and that these products should be excluded from the scope of the investigations. Scope exclusion requests supported by like product arguments in addition to class or kind arguments are indicated by ("LP") in the table below. Following the table below is a brief description of each specified product.

Interested party	Product(s)	Class or kind
Eberle, Nedwick, Pacific/Hoe	Certain doctor blade steel, certain flapper valve steel, certain coater blade steel, certain creping blade steel, certain lapping carrier steel, certain elevator tape steel, certain precision spring steel (7 types in total).	Cold-rolled.
NOTE: Eberle is joined by Nedwick Steel regarding all seven of the above-mentioned products, and by Pacific/Hoe regarding certain coater blade steel, certain doctor blade and certain creping blade steel.		
Hitachi Metals	Certain hardened carbon steel (1 type)	Cold-rolled.
Kem-Liebers (LP)	Certain seat belt retractor steel (1 type)	Cold-rolled.
Mitsubishi (LP)	Certain bright finish/tin mill black plate (2 types)	Cold-rolled.
Okura (LP)	Certain bright finish/tin mill black plate (3 types)	Cold-rolled
Paturle (LP)	Certain cold-rolled special-processed high carbon steel (1 type)	Cold-rolled
Nichimen (Wayne-Dalton) (LP)	Certain corrosion-resistant steel (1 type)	Corr.-resist.
Nichimen (AMPS) (LP)	Certain corrosion-resistant steel (2 types)	Corr.-resist.
Nichimen (BeadeX) (LP)	Certain corrosion-resistant steel (1 type)	Corr.-resist.
Usinor Sacilor, Creusot-Loire, Creusot-Marrell	Clad plate (all types)	Corr.-resist.

Eberle, et al.: Seven certain cold-rolled and hardened strip products with specific chemical compositions, high cleanliness requirements, specific surface, flatness, and straightness requirements, tight dimensional

tolerances, and other technical requirements.

Hitachi Metals: Certain hardened carbon steel with a specific chemical composition, a microstructure free of decarburization, free of nonmetallic inclusions, higher bending and impact fatigue strength, and other technical requirements.

Kem-Liebers: Certain cold-rolled seat belt retractor spring steel with a specific chemical composition, restricted inclusion levels, and a particular microstructure and tensile strength.

Mitsubishi: Certain bright finish, or "ultra bright," ASTM A366–91 cold-rolled sheet with a luster finish and specific requirements for surface roughness, dimensions, tempering, and carbon content; and certain tin mill blackplate, or single reduced "specialized blackplate," meeting ASTM A625–68 to A625–76, with a bright finish and specific requirements for surface roughness, dimensions, tempering, and carbon content.

Okura: Certain cold-rolled carbon steel sheet meeting ASTM A366, with an excel bright finish and specific requirements for surface roughness and dimensions; certain cold-rolled carbon steel sheet meeting ASTM A366 with a bright brushed finish and specific requirements for surface roughness and dimensions; and certain cold-rolled tin mill black plate, type DT–1, meeting ASTM A625, with a luster bright finish and specific requirements for surface roughness and dimensions.

Paturle: Certain cold-rolled special-processed high carbon steel with a carbon content of 0.7%–1.30%, tempered or work hardened, which may also be subjected to polishing, edge conditioning or shape control.

Nichimen (Wayne-Dalton): Certain prepainted, hot-dipped galvanized corrosion-resistant steel meeting ASTM A642–85 with specific requirements for coating weight, nonmetallic coatings, dimensions, tensile strength, and other technicel requirements.

Nichimen (AMPS): Certain corrosion-resistant steel, "Galkobe Galvanized-S Coat," hot-dipped galvanized with chromate treatment, meeting ASTM A527/LFQ and with specific requirements for coating weight and dimensions; and certain corrosion-resistant steel, "Zinkobella-DC Coat," coated with electrolytic zinc and with organic coatings, meeting ASTM A591/LFQ and with specific requirements for coating weight and dimensions.

Nichimen (BeadeX): Certain corrosion-resistant steel, electrogalvanized on both sides and with a phosphate chemical treatment, meeting ASTM A591 and with specific requirements for coating weight and dimensions.

Usinor Sacilor, et al.: Clad plate produced by the roll bond or direct explosion methods.

Department's Position. The Department believes that the petitions, the Department's preliminary LTFV and CVD determinations, and the ITC's preliminary injury determinations clearly indicate that all of these products are within the scope of the investigations and within the classes or kinds indicated in the table above. As described in the scope exclusion requests and briefs, all of the products listed above are flat-rolled and clearly fall within the chemical (*i.e.*, carbon steel), dimensional, and, regarding the corrosion-resistant products in the table above, metallic-coating characteristics indicated in the scope description. Furthermore, unless specifically excluded, all hot-rolled, cold-rolled and corrosion-resistant flat products meeting those criteria are included within the scope regardless of any other technical properties which the steel may possess. While all of these products possess some physical characteristics which make them different from other steel products, none of those differences rise to the level of class or kind distinctions and only reflect relatively minor variations within the overall hot-rolled, cold-rolled, and corrosion-resistant classes or kinds. Were the Department to subdivide the scope to reflect every particular type of carbon steel flat product produced, we would have been faced with creating an absurdly large or even infinite number of classes or kinds. (*See* Appendix B to *AFBs from Germany*, 54 FR 18,992, 19,002, May 3, 1989.)

Regarding the other *Diversified Products* criteria, the ultimate uses and purchaser expectations of the products listed above are similar to those of other products within their respective classes or kinds. Thus, for the hot-rolled products described above, purchasers will expect the performance of a steel product with the technical properties achieved through rolling at a temperature above the recrystallization temperature, and will use the product in applications in which surface appearance is not important. The cold-rolled products in the list above will be used in applications in which surface characteristics and narrower tolerances are important, and consumers will expect the product to possess the qualities of a steel product which has been flat-rolled at ambient temperatures. Regarding the above-mentioned corrosion-resistant products, consumers will use those products in applications requiring corrosion-resistance and will expect the steel to have a longer service life due to the corrosion-resistant metallic coating on the surface. Carbon steel flat products in the three classes or kinds are generally sold both directly to end users as well as to service centers; that the products in the chart may be more likely to be sold directly to end users does not differentiate them from other products in those classes or kinds. Lastly, products in the hot-rolled, cold-rolled, and corrosion-resistant classes or kinds are all advertised in the same manner, that is, in producer catalogs and other promotional literature. Certain products, including those listed in the chart above, may be developed by the manufacturer in cooperation with one or more end users and might not necessarily be included in such advertising. However, this possible difference in the method of advertising does not support the assertion that the products listed above constitute separate classes or kinds.

Regarding like product issues, in the absence of persuasive evidence that the like products and domestic industries identified by the ITC are inappropriate to follow for purposes of standing, it is the Department's usual practice to defer to the like product descriptions developed by the ITC. (See *Nepheline Syenite from Canada*, 57 FR 9237, 9242 (March 17, 1992).) In these investigations, the like product descriptions written by the ITC in its preliminary injury determinations are equivalent to the Department's scope definitions. Thus, we believe that the products listed in the chart above do not constitute separate like products, and that petitioners do have standing regarding these particular products. (See like product discussion regarding the MIC scope exclusion request above.) Moreover, all such allegations that petitioners lack standing were submitted after the deadline specified in the regulations (10 days prior to the Department's preliminary determination; see 19 CFR 353.31(c)(2)) and are therefore untimely. Furthermore, petitioners are not required to manufacture every product within the like product designation (see like product discussion regarding the MIC scope exclusion request above), and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request. We therefore deny all of the scope exclusion requests listed in the table above

Appendix II

Issues Common to all Antidumping Investigations of Flat-Rolled Steel Products

A. Arm's Length Test for Related Party Transactions

In many of these investigations petitioners argue that respondents' failure to, or failure to properly, report sales made by related resellers (*i.e.*, downstream sales) in the home market warrants the use of total BIA when sales to those related resellers were found not to be at arm's-length. Petitioners maintain that the Department should not merely disregard those missing or improperly reported sales because it lacks the data needed to calculate FMV. Petitioners note that the failure to report a significant percentage of home market sales in other investigations, including companion steel cases involving Germany and Austria, led the Department to use total BIA in those cases. Petitioners contend that the respondents' failure to report downstream sales is tantamount to non-compliance with an information request which warrants the use of total BIA under the Federal Circuit's decision in *Olympic Adhesives, Inc.* v. *United States* and that the use of total BIA would be consistent with numerous cases in which the Department used total BIA when respondents failed the arm's-length test and refused to provide downstream sales data.

We agree with petitioners in that BIA is called for in certain situations where respondents have refused to report downstream sales. However, we disagree with petitioners' characterization that the Department either has disregarded or will simply disregard improperly reported or missing downstream sales, and their argument that the use of total BIA is appropriate.

As outlined in the preliminary determinations, when the respondents could not, or would not, report downstream sales, we applied margins based on BIA to any U.S. sale matched only to a sale to a related reseller in the home market that failed the arm's-length test, and we will continue to do so for these final determinations. In other words, we did not simply disregard the fact that respondents failed to report downstream sales. Once a related reseller fails the arm's-length test, the need for downstream sales becomes evident, but only as an alternative to the sale to that related reseller. The integrity of FMV is not seriously challenged because in all other cases U.S. sales are matched to unrelated party sales in the home market or to related party sales at arm's length. For that reason, the use of total BIA in these situations is inappropriate.

As for petitioners contention that the refusal to report downstream sales constitutes non-compliance with an information request, we agree. However, as the court stated in *Olympic Adhesives, Inc.* v. *United States* such non-compliance "* * * may justify resort to the best information available rule * * * " Again, it is our position that we have resorted to BIA. The argument then is whether we are required to use total BIA instead of partial BIA, and we find nothing in the above decision that indicates the Department is required to rely on total BIA. Indeed, most cases in which the Department relies on partial BIA stem from respondents' non-compliance with an information request.

We received comments from Usinor-Sacilor (Usinor), the respondent in the French investigations, and petitioners in several of the Canadian investigations concerning the application of the arm's-length test. Usinor argues that the Department's test is methodologically unsound because it does not take into account price differences that result from comparisons of sales of significantly different quantities of merchandise. Usinor claims that the test is inherently biased against related customer sales because it gives the greatest weight to those product-specific ratios where the related customer has purchased the largest quantities, precisely those sales where the related customer would be expected to pay lower prices. In the Canadian investigations petitioners maintain that Stelco sells at two commercial levels of trade, end users and steel service centers or distributors. Petitioners maintain that prices to end-users are generally higher than prices to distributors, and that the arm's-length test is inaccurate because it fails to account for the effect on price that different levels of trade may have.

We agree that Usinor has highlighted a method for fine-tuning our arm's-length test, and we agree with petitioners in the Canadian cases that there is no reason not to consider level of trade, if possible, in our arm's-length test. Adopting Usinor's proposal, however, would require us to identify quantity ranges within which quantities are "comparable." Given the failure of Usinor or other parties to provide factual information on this subject, this would be a highly subjective task that neither petitioners nor respondents could comment on at this point in our investigations. Moreover, we believe that consideration of level of trade in our arm's-length analysis should take precedence over the consideration of quantities in any event because such consideration takes into account a broader array of factors that could effect price (*e.g.*, distribution systems, selling expenses, etc.). Finally, we believe that consideration of level of trade could address Usinor's concern to the extent that different quantities are associated with different levels of trade.

It should be noted that consideration of level of trade in our arm's-length analysis is consistent with the Department's recent practice in *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea (A–580–812)* (58 FR 15467).

Consequently, we have for these final determinations incorporated a consideration of level of trade in our arm's-length analysis, where possible. Where a related customer price ratio is composed of comparisons between sales of identical products to unrelated customers at both the same and different levels of trade, only those sales of identical products at the same level of trade were used to construct this ratio. (*See* Appendix II to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* for a detailed explanation of how related customer price ratios were determined.) Where a related customer ratio is composed of comparisons between sales of identical products to unrelated customers but never at the same level of trade, we will continue to rely on all such comparisons regardless of level of trade to construct this ratio as we did for the preliminary determinations. Lastly, as at the preliminary determinations, where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, we were unable to determine that these sales were made at arm's length and, thus, excluded them from our LTFV analysis.

In most of the other investigations petitioners asserted that the Department's methodology with respect to the application of the arm's-length test is reasonable. Notwithstanding the above comments, we agree.

B. Secondary Merchandise

At the beginning of these investigations, the Department developed physical matching criteria for each "class or kind" of merchandise in order to match sales in the home and U.S. markets and to prevent the

matching of prime to non-prime material. The physical matching criteria specified in Appendix V in the Department's questionnaire was organized into a hierarchy and required respondents to report all salient characteristics of the subject merchandise.

The quality characteristics in the hierarchies could have been used to prevent matching prime to non-prime merchandise. Many respondents identified non-prime merchandise by other means. When respondents reported all of the physical matching criteria and identified the sales as non-prime, the Department used the criteria for calculation purposes to match U.S. sales to home market sales, pending verification.

For the preliminary determinations, we excluded sales of non-prime merchandise where respondents claimed that their records did not contain the necessary level of detail for them to fully comply with the Department's reporting criteria. We applied best information available (BIA) where respondents made no claim about their record keeping.

For these final determinations, where sales of non-prime merchandise constituted an insignificant portion of total U.S. sales, we disregarded all sales of such merchandise in both the U.S. and the home markets. We calculated dumping margins for companies which sold significant amounts by volume of non-prime merchandise in the U.S. market. (In these investigations, excluded sales of seconds accounted for less than five percent of U.S. sales by volume in all cases.) We continued to apply BIA if claims regarding record keeping were not supported at verification.

C. Foreign Taxes

For the preliminary determinations of these investigations, the Department added to U.S. price an amount for foreign taxes that would have been collected had the merchandise not been exported, calculated on the basis of the price of the U.S. product, and made a circumstance-of-sale adjustment to FMV for the difference between the tax on home market sales and the tax added to U.S. price. On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, for the final determinations of these investigations, the Department has changed its methodology for foreign taxes from that used in the preliminary determinations and has not made a circumstance-of-sale adjustment to FMV. Also, we have not calculated a hypothetical tax on the U.S. product, but have added to U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price. This policy has been articulated in Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review (58 FR 25803, April 28, 1993).

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

D. Critical Circumstances

Petitioners have alleged that "critical circumstances" exist with respect to imports of: hot-rolled steel from Belgium, France, Japan and Korea; cold-rolled steel from Belgium, France, Japan and Spain; corrosion-resistant steel from Japan, Korea and Mexico; and steel plate from Belgium, France, Spain, Korea, the United Kingdom, Poland and Romania.

Section 735(a)(3) of the Act provides that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period of time.

Under section 735(a)(3)(A)(i) of the Act, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise as evidence of a history of dumping. We consider margins of 25 percent or more to be sufficient to impute knowledge of dumping when U.S. price is based on purchase price (PP), and margins of 15 percent or more to be sufficient if the U.S. price is based on exporter's sales price (ESP). If the U.S. price is based on both PP and ESP, we normally weight-average the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, to arrive at a weighted-average benchmark percentage for imputing knowledge of dumping.

According to 19 CFR 353.16(f), we normally examine the following to determine whether imports have been massive: (1) Volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data to determine whether imports have been massive over a relatively short period of time, we compare the export volume for equal periods immediately preceding and following the filing of the petition (the "pre-petition period" and the "post-petition period"), in accordance with 19 CFR 353.16(g). Under 19 CFR 353.16(f)(2), unless the imports in the post-petition period have increased by at least 15 percent over the imports during the pre-petition period, we will not consider the imports to have been "massive."

To determine whether there have been massive imports of those steel products from the countries named by the petitioners, we relied upon the company-specific export data submitted by those respondents, or import statistics provided by the U.S. Bureau of the Census.

To determine the length of the comparison periods, we generally use the longest period for which information is available up until the effective date of the preliminary determination. However, when there is a concurrent countervailing duty (CVD) investigation involving the same merchandise, we perform the comparison up until the date the Department directed the U.S. Customs Service to suspend liquidation, as a result of the affirmative preliminary determination in the CVD investigation (see, *Pure and Alloy Magnesium from Canada*, 57 FR 30939 (July 13, 1992). Therefore, in cases for which there was

an affirmative preliminary CVD determination in a companion case, we analyzed data for the five months before the effective date of the suspension of liquidation in the concurrent CVD investigation. In all other cases, we analyzed as much data as was available for the seven months between the initiation of the cases and the publication of our preliminary antidumping determination.

The notices for Belgium, France, Korea, Spain, the United Kingdom, Mexico, Romania, Poland, and Japan include the results of our analysis based on the foregoing methodology, specific to each of the classes or kinds of merchandise for which petitioners have alleged critical circumstances.

[FR Doc. 93–15610 Filed 7–8–93; 8:45 am]
BILLING CODE 3510–DS–P

[A–602–803]

Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Craig or Wendy Frankel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1391 or (202) 482–0159, respectively.

Final Determination

We determine that imports of certain corrosion-resistant carbon steel flat products from Australia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination and postponement of final determination (58 FR 7071 (February 4, 1993)), the following events have occurred:

Verification of respondent's responses to the Department's questionnaires regarding home market (HM) and U.S. sales information and HM Section E1 costs took place in Australia during March of 1993. Verification of respondent's responses to the Department's questionnaires regarding U.S. sales and Section E2 costs took place during April of 1993.

We received requests for a public hearing from The Broken Hill Proprietary Company Ltd., BHP Trading, Inc. (BHP Trading), SupraCote, Inc. (SupraCote), and ASC Pacific, Inc. (ASC Pacific), (collectively, BHP), and from petitioners on February 16, 1993. BHP and petitioners filed case briefs on May 14, 1993, and rebuttal briefs on May 19, 1993. A public hearing was held on May 21, 1993.

Scope of Investigation

The products covered by this investigation constitute a single "class or kind" of merchandise: Certain corrosion-resistant carbon steel flat products (corrosion-resistant steel). The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute a single category of such or similar merchandise.

Best Information Available

Section 776(c) of the Act requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." Because respondent had substantial and pervasive deficiencies in the data submitted, we based our determination on BIA.

The following is a list identifying various problems in BHP's databases which prohibited the use of substantially more than a majority of BHP's U.S. sales for purposes of calculating a margin. For a more detailed discussion of these items, see, the Final Concurrence Memorandum in this investigation, on file in Room B–099 of the Department's main building.

1. Certain BHP Trading PP sales have incorrect product control numbers (CONNUMUs) and therefore cannot be properly compared to sales of products in the home market for purposes of margin calculations.

2. Certain PP transactions could not be matched to sales in the home market because their assigned CONNUMUs were not provided in the product concordance, which is the vehicle we use to merge the U.S. and home market databases.

3. At verification the respondent provided a list of previously unreported SupraCote further-manufactured U.S. sales, which we consider untimely.

4. For SupraCote's Section E1 (HM costs for U.S. sales) database, BHP did not provide the CONNUMU variable. Because this variable is required for merging the Section E1 costs into SupraCote's Section C (U.S. further-manufactured sales) database, we are unable to combine the two databases as required for purposes of calculating the dumping margins.

5. BHP provided incorrect cost data in the Section E1 (HM costs on U.S. sales) databases, and in the product concordances (cost data used in the adjustment for differences in cost attributable to physical differences in merchandise). This incorrect and, thus, unusable data affected all similar PP matches as well as all remaining further-manufactured sales (by ASC Pacific).

6. BHP reported ESP sales in the PP database that should not have been reported, because BHP's ESP sales were excluded from this investigation.

7. In BHP's post-verification computer tape submission, which was requested by the Department in order for BHP to make specific data corrections, we discovered changes to the data that had not been solicited and were left unexplained by the respondent. Thus, these unsolicited changes are considered unverified and untimely. Specifically, these changes encompassed: (a) For certain transactions, replacement of positive values with zero values under the variables gross unit price, thickness, and width; (b) BHP reclassified several previously reported PP sales as ESP sales; and (c) Certain sales in the PP database show amounts greater than zero for U.S. commissions, U.S. direct selling expenses, and other expenses.

For the remaining sales, we note that the following adjustments to HM price would have been denied because the respondent was unable to substantiate the claimed amounts at verification: (1) HM packing and (2) HM inland freight. In addition, we note that the following adjustments, where applicable, for the remaining sales would have required the use of BIA: (1) U.S. packing done in the home market, (2) foreign inland freight on U.S. sales, (3) marine insurance (BHP Trading), (4) U.S. brokerage (SupraCote), and (5) credit expense (certain PP sales). For a full discussion of these data problems, see the Final Concurrence Memorandum,

on file in Room B–099 of the Department's main building.

We note that, because of the substantial and pervasive nature of the problems in BHP's data submissions, there only remained unaffected certain of BHP's identical PP sales, which encompassed a small portion of BHP's total U.S. transactions. However, as noted above, these sales would have been subject to the use of partial BIA for numerous adjustments. After weighing the effect on these PP sales of the deficiencies discovered at, left unresolved by, or created after, verification, we determined that BIA was the only viable basis for making our final determination. In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department must determine what is the best information available on a case-by-case basis.

In this case, BHP has attempted to comply with all of the Department's requests for information. In addition, its questionnaire responses were always submitted on a timely basis. Therefore, we consider BHP to have been a cooperative respondent throughout this investigation. Therefore, we have assigned a cooperative BIA rate to this respondent. As BIA, we have applied the average of the margins in the petition.

Fair Value Comparisons

To determine whether sales of corrosion-resistant steel from Australia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Petitioners based USP on two different "offers" by BHP of corrosion-resistant steel in the United States. One offer specified the total c.i.f. duty-paid price, whereas the second offer specified a basis price plus applicable price extras. Petitioners, thus, developed a total landed price for this offer by determining applicable price extras. Petitioners then adjusted USP for movement charges (ocean freight and insurance) based on average c.i.f. charges, as derived from publicly-available census import data. Petitioners also made adjustments for U.S. duty based on the 1992 U.S. Harmonized Tariff Schedules.

Foreign Market Value

Petitioners calculated FMV based on HM prices derived from a pricing study, conducted by a market research consultant, of corrosion-resistant carbon steel sheet sold in Australia. Petitioners stated that this pricing study contains actual transaction prices, determined by the market research consultant, of virtually identical merchandise sold in Australia during December 1991. Petitioners adjusted the HM prices for inland freight, using information obtained in the pricing study. They deducted HM packing costs from, and added U.S. packing costs to, the HM prices, using information obtained in the pricing study. Petitioners made a circumstance-of-sale adjustment for credit expenses, using information obtained in the pricing study and one of the "offers" noted in the USP section above. In addition, petitioners used the average short- and medium-term interest rate for Australia published by the International Monetary Fund in determining this adjustment.

Petitioners calculated FMV based on constructed value information provided in the petition. Petitioners based constructed value on the alleged cost to BHP of producing corrosion-resistant coils, adding amounts of applicable plant overhead, depreciation and financial expenses. Petitioners added the statutory minimum eight percent for profit.

Currency Conversion

The petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1:

Respondent states that the compilation of its extensive home and U.S. market sales databases represented an enormously complicated task, notwithstanding the difficulties introduced by the Department's specialized reporting format. Respondent asserts that, when the Department announced that it would not consider factual information submitted after December 21, 1992, it departed from its rules. Respondent cites 19 CFR 353.31(a)(1)(i) and § 353.31(a)(2), which allow parties to rebut, clarify, or correct submitted information until seven days prior to verification. Respondent states that, when the Department shortened the period for submission of factual information, "it became virtually impossible for BHP to correct any errors in its submissions, if by definition the correction of an error precludes the submission of factual information." Thus, BHP submits that the Department's action carries with it the corollary that "minor correction" be defined more expansively than in investigations where the Department adheres to 19 CFR 353.31(a).

Respondent further asserts that, in view of this unexplained decision to depart from 19 CFR 353.31(a), the Department's refusal to permit BHP to correct certain "minor" errors in its data is arbitrary and not in accordance with law. Respondent further states that "[t]runcating the period for submitting factual information without expanding the opportunity to submit corrections at verification implicates due process interests and contravenes congressional intent."

BHP states its objection to the limited nature of the Department's May 3, 1993, letter requesting updated information and minor corrections. BHP asserts that the Department should permit it to correct the following additional "minor" errors in its PP and cost of manufacture data and that such corrections would not constitute new factual information: (1) The missorting of certain BHP Trading PP transaction records with mismatched control numbers (CONNUMs); (2) the omission of the CONNUM column in the Section E1 (HM costs for U.S. products) database, (3) the double-counting of a portion of variable overhead costs in the Section E1 database, and (4) the inconsistency between the calculations of certain cost variables in the Section E1 and the product concordance databases.

Respondent, thus, argues that the Department has a legal obligation under the circumstances of this investigation to permit these "minor" programming and calculation errors. Respondent argues that the effects of these errors are pervasive and affect the preponderance of BHP Trading's and all of SupraCote's and ASC Pacific's further-manufacturing sales; therefore, respondent maintains that, if the Department does not allow these corrections, it ensures that any calculated final estimated dumping margin will be meaningless. Respondent further states that, if the Department

refuses to allow these corrections, BHP should be assigned a cooperative BIA rate, *i.e.*, either the margin calculated for the preliminary determination, or the average of the margins in the petition, whichever is higher.

Petitioners assert that, "[o]n the home market side, the Department should, if possible, correct the metal coating coding problem using the information submitted by BHP" on February 19, 1993. Petitioners suggest that the Department disregard the affected HM sales for purposes of calculating FMV if it cannot correct the problem. On the U.S. side, petitioners suggest that the Department apply a BIA margin (the highest non-aberrant margin calculated from BHP's data or the average of the petition margins) to the extent that the "sales characteristics" are incorrect and if the Department is unable to determine which sales are incorrect.

Petitioners term respondent's argument that the Department violated its own regulations and acted arbitrarily and capriciously when it determined that it would not accept new or corrected information up until February 22 (which was the seventh day before verification, until which time factual information may be submitted under 19 CFR 353.31(a)(i), a "red herring." They note that BHP's brief demonstrates that it made no attempt to submit the corrected data until well after the February 22 "deadline" and that BHP does not challenge this deadline, which is in accord with 19 CFR 353.31(a).

Department Position

We disagree with respondent's assertion that the Department should allow corrections to the items discussed above and its characterization of these errors as "minor." Rather, as respondent notes, and we agree, the effect of these errors on BHP's data is "pervasive." Therefore, the Department does not view these corrections as minor. In addition, respondent neither found these errors nor brought them to the Department's attention until verification, which was long after the Department's stated December 21, 1992, deadline for the submission of information that would "remedy potential deficiencies" related to previous questionnaire responses, as required by 19 CFR 353.31(b)(2). Further, this was also after the deadline for submitting information under § 353.31(a)(1)(i). For these reasons, the Department considers these corrections to be new information, as well as untimely, and thus the Department may not consider them for purposes of the final determination.

We disagree with respondent's assertions that the Department has inexplicably departed from 19 CFR 353.31(a)(1)(i), implicated due process interests, and contravened congressional intent by not allowing the noted corrections. In this investigation the Department set time limits for the submission of questionnaire responses and other specifically solicited factual information in accord with § 353.31(b)(2). Thus it was entirely proper and within the discretion of the Department, pursuant to § 353.31(b)(2) to set December 21, 1992, as the final deadline for submissions of all corrections to questionnaire responses.

Additionally, respondent's reliance on 19 CFR 353.31(a)(1)(i) is misplaced. Generally, that regulation pertains to those situations in which an interested party is submitting information to the Department on its own for the Department's consideration, and which was not requested by the Department. Again, normally, in all instances where the Department is requesting information from interested parties, § 353.31(b)(2) applies. Although past Department practice has allowed for submission of minor corrections under § 353.31(a)(1)(i) up until seven days prior to verification, even under this practice, the corrections that were discovered at verification and thereafter were not minor and were also untimely. In addition, respondent's reliance on § 353.31(a)(2) is misplaced. This section solely relates to time limits for when petitioners or other domestic interested parties, as defined under § 353.2(k)(3), (k)(4), (k)(5), and (k)(6), may submit information to rebut, clarify, or correct new factual information submitted by other interested parties, as defined under (k)(1) or (k)(2) of § 353.2.

Regarding petitioners' assertion that the Department should correct the metallic coating coding problem on the HM side, petitioners have misunderstood the nature of this problem. The reported HM sales were not affected by the CONNUMU missort problem, and there is no problem with the metallic coating categorization on the HM side. Due to the significance of BHP's data problems (as discussed in the BIA section of this notice), we have determined that the calculation of a dumping margin using any of BHP's reported data is inappropriate. However, BHP has attempted to comply with all the Department's requests throughout this investigation, therefore, we have assigned BHP a cooperative BIA rate based on the average of the margins in the petition.

Comment 2

BHP and petitioners submitted comments on numerous other items as follows:

1. Unreported U.S. further-manufactured sales;
2. Adjustments for differences in cost attributable to physical differences in merchandise;
3. Credit expenses on Supracote sales;
4. Interest expenses on Supracote and ASC Pacific sales;
5. Post-sale warehousing expenses incurred by BHP Trading;
6. Third party commissions incurred by BHP Trading and ASC Pacific;
7. HM warranty costs;
8. HM technical service expenses;
9. Constructive quantity adjustment on HM sales;
10. Item mass adjustment on HM sales;
11. HM cash discounts;
12. ASC Pacific cash discounts;
13. HM sales to related resellers;
14. U.S. sales based on theoretical minimum weight;
15. Ocean freight expenses;
16. U.S. and HM packing costs;
17. U.S. duty, brokerage, and handling charges;
18. HM freight costs;
19. U.S. inland freight charges;
20. Port to plant freight charges incurred by ASC Pacific;
21. HM advertising expenses.

Department's Position

These issues have all been rendered moot by the application of overall BIA to BHP's U.S. sales. Therefore, we have not addressed these issues for this final determination.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of corrosion-resistant steel from Australia that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Margin percent-
BHP	24.96
All others	24.96

VOL 58 ISS 130 JL 9 1993 UMI

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry no later than 45 days after our final determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-15611 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-433-803]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: (July 9, 1993).

FOR FURTHER INFORMATION CONTACT: Judith Wey or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6320 or (202) 482-0656, respectively.

Final Determination

We determine that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) from Austria are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on January 26, 1993, (58 FR 7073, February 4, 1993), the following events have occurred:

On February 12 and February 16, 1993, respectively, respondent, Voest Alpine Stahl AG (Voest) and petitioners in this investigation requested that a public hearing be held. Voest and petitioners submitted case briefs and rebuttal briefs on April 30, 1993, and May 5, 1993, respectively. The hearing was held on May 7, 1993.

A draft suspension agreement was initialed on May 21, 1993. No suspension agreement was subsequently signed.

Scope of the Investigation

The products covered by this investigation constitute a single "class or kind" of merchandise: certain cold-rolled carbon steel flat products. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that the class or kind of merchandise covered by this investigation constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Austria to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

As detailed in the preliminary determination in this investigation (58 FR 7073, February 4, 1993), Voest failed to report the majority of its home market sales. Therefore, in accordance with section 776(c) of the Act, our results are based on best information available (BIA). As at the preliminary determination, we used price and constructed value information provided in the petition as BIA. We compared actual U.S. import prices and average customs value U.S. prices derived from IM-145 import statistics to actual home market prices and constructed value.

Because Voest attempted to cooperate with our requests for information but failed to provide the information in a timely manner, we have based our BIA margin on an average of all of the margins in the petition. (See *Comment 2*).

United States Price and Foreign Market Value

We calculated USP and FMV using the methodologies described in the preliminary determination. We have, however, now included certain margins in the average which were inadvertently omitted from the preliminary determination.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Interested Party Comments

Comment 1: Voest argues that the Department's decision not to conduct verification of its questionnaire responses and to base Voest's final dumping margin on BIA is unreasonable. Voest contends that the Department should have allowed it to submit the unreported home market sales data, because it offered to provide the unreported sales data while this investigation was in its "preliminary phase." Voest claims that the unreported sales information would only have been used to confirm Voest's model matching, and would not have affected the Department's less than fair value analysis. Voest contends that the Department had the discretion to accept additional home market sales data, and accepting this data would only have placed a minimal burden on the Department.

Petitioners contend that respondent's failure to report the vast majority of its home market sales, coupled with the numerous other deficiencies in Voest's responses, requires the Department to use BIA for the final determination.

DOC Position: We agree with petitioners. As discussed at length in our preliminary determination notice, the magnitude of unreported home market sales was so great as to compel the Department to base its determination on BIA. It appears that Voest may have failed to report over 90 percent of its home market sales of such or similar merchandise. The Department has an established practice of using BIA when a company fails to report a substantial portion of its home market sales (see, *e.g.*, Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany, 58 FR 6205, 6207 (January 27, 1993) (*Comment 1*); Brass Sheet and Strip from Sweden; Final Results of Antidumping Duty Administrative Review (57 FR 29278, July 1, 1992)).

Although Voest had the opportunity on three separate occasions to provide

the Department with these sales, it was not until after the Department directly questioned Voest concerning the completeness of its home market sales data that Voest offered to provide the missing information. Moreover, Voest did not offer to provide the missing home market sales data until January 15, 1993, after the Department's December 21, 1992, deadline (applicable to all respondents) for the submission of additional information, and less than two weeks prior to the preliminary determination.

Concerning Voest's claim that the unreported sales information would only have been used to confirm Voest's model matching, the Department must "make the required determination of what constitutes the most similar match," not the respondent. (*See Timken Company* v. *United States*, 10 CIT 86, 630 F.Supp. 1327 (CIT 1986). *See* also, *United Engineering and Forging* v. *United States*, 779 F.Supp. 1375 (CIT 1991), *aff'd without opinion*, 92–1489 (Fed. Cir. 1993).)

Comment 2: Petitioners contend that the Department should determine Voest to be an uncooperative respondent and assign it the highest margin in the petition as BIA. If the Department considers Voest to be a cooperative respondent, petitioners contend that the Department should select as BIA the average of the constructed value margins in the petition. Petitioners contend that if the Department takes the price-to-price comparisons into account, it is rewarding Voest for failing to provide complete and accurate section D information.

Voest contends that if the Department bases its final determination on BIA, Voest should again be considered a cooperative respondent. Further, Voest contends that the calculated average petition margin used for the preliminary determination did not include all of the petition margins.

DOC Position: We agree with respondent that it should be considered a cooperative respondent. Voest has attempted to comply with the Department's requests for information and requested that it be allowed to submit the unreported home market sales data, albeit on an untimely basis.

We disagree with petitioners' contention that the Department should select as BIA the average of the constructed value margins in the petition. To initiate an investigation of sales below cost of production, the Department must have reason to believe that *some* of the sales were below cost. If we were to base Voest's BIA margin only on the constructed value margins, we would be assuming that all or almost all of Voest's sales were below cost. Instead, we based Voest's BIA margin on the average of all of the margins in the petition, including the constructed value margins, as recognition of the likelihood that some of Voest's sales were below cost.

We agree with Voest that the preliminary determination BIA margin did not include all of the margins in the petition and have revised the average BIA margin accordingly.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel from Austria that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
Voest Alpine Stahl AG	18.11
All Others	18.11

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. In the final affirmative determination in the concurrent countervailing duty investigation involving sales in the United States of cold-rolled steel from Austria, the Department has determined that the export subsidy program provided a zero benefit. Therefore, no adjustment to the estimated dumping margin is required.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry no later than 45 days after our final determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15612 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–803, A–423–804, and A–423–805]

Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium

AGENCY: Import Administration, International TradeAdministration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3003 or (202) 482–0186, respectively.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel) and certain cut-to-length carbon steel plate (steel plate) from Belgium are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our January 26, 1993, preliminary determinations (58 FR 7113, February 4, 1993), the following events have occurred:

On February 10, 1993, we requested clarification of certain information that respondents had provided in their responses to our questionnaires. We received responses to these requests on February 16, 1993.

On March 2, 1993, we amended our preliminary hot-rolled steel and cold-

VOL 58 ISS 130 JL 9 1993 UMI

rolled steel determinations to correct certain clerical errors (58 FR 13056, March 9, 1993).

During February and March of 1993, we received initial and supplemental responses to section D of our questionnaire from respondents in these proceedings, S.A. Forges de Clabecq (Clabecq), Fabrique de Fer de Charleroi (FFC), and Sidmar N.V (Sidmar). (Section D deals with production costs of products sold in the home market (HM) and the United States.)

During March and April of 1993, we conducted verification in Belgium and the United States of cost and sales information contained in respondents' responses to the our questionnaires.

Petitioners and respondents requested a public hearing. Petitioners and respondents filed case briefs on May 6, 1993, and rebuttal briefs on May 11, 1993. A public hearing was held on May 13, 1993.

Scope of the Investigations

The products covered by these investigations constitute three separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Final), which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of products covered by these investigations constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, which is on file in Room B–099 of the main building of the Department of Commerce (the Department).

We excluded Clabecq's home market sales of secondary merchandise from our analysis because there were no corresponding U.S. sales of secondary merchandise. See Appendix II of the Argentine Final.

Fair Value Comparisons

To determine whether sales to the United States of hot-rolled steel, cold-rolled steel, and steel plate from Belgium were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Cockerill Sambre, a mandatory respondent in the hot-rolled steel investigation, did not respond to our questionnaire. In addition, Sidmar's response was unusable because it incorrectly reported the date of sale for all home market sales of both hot-rolled and cold-rolled steel, as well as certain U.S. sales of cold-rolled steel. Accordingly, for these companies, we have based our final determinations on best information available (BIA) pursuant to 19 CFR 353.37.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation.

When a company refused to cooperate with the Department or otherwise significantly impeded our investigation, we have used as BIA the higher of: (1) The highest margin calculated for the same class or kind of merchandise for another responding firm in the same country; (2) the margin from the preliminary determination for that firm for the same class or kind of merchandise; or (3) the highest margin alleged in the petition for the same class or kind of merchandise in the same country. When a company cooperated with our requests for information but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of: (1) The average of margins in the petition; or (2) the calculated margin for another firm for the same class or kind of merchandise from the same country. See, e.g., Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany (54 FR 18992, 19033; May 3, 1989).

Because Cockerill Sambre was an uncooperative respondent in the hot-rolled steel investigation, we assigned as BIA the highest margin calculated based on information in the petition. Sidmar, on the other hand, is considered to be a cooperative respondent because the firm attempted to comply with our requests for information. Accordingly, in both the hot-rolled steel and cold-rolled steel investigations, we assigned Sidmar the average, class-or-kind-specific margin calculated based on information in the petition.

United States Price

For both Cockerill Sambre (hot-rolled steel) and Sidmar (hot-rolled steel and cold-rolled steel), we based USP on information contained in the petition. Petitioners based USP on actual delivered prices of hot-rolled steel sold in the United States and on U.S. Customs values of hot-rolled steel imported from Belgium. Petitioners made deductions for foreign inland freight, ocean freight, insurance, U.S. duties, harbor maintenance fees, and merchandise processing fees, where applicable.

For FFC and Clabecq, we calculated USP using the methodology described in the preliminary determination, with the following exceptions:

A. FFC

We recalculated reported credit expenses using the average U.S. borrowing rate available to FFC during the POI (see FFC-Specific Comment 2, below). In addition, in accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value-added tax (VAT) collected on those sales in the home market to which the U.S. sale was compared (see General Comment 1, below).

B. Clabecq

We made deductions for discounts and recalculated credit expenses to reflect a price net of discounts. In addition, we adjusted USP for VAT as described above for FFC.

Foreign Market Value

For Cockerill Sambre and Sidmar's sales of hot-rolled steel, and Sidmar's sales of cold-rolled steel, we based FMV on the petition, which included FMV based on both home market delivered prices and constructed value (CV). Petitioners deducted foreign inland freight and made circumstance-of-sale adjustments, where appropriate, for differences in credit terms, packing, and VAT (in accordance with the Department's then-current practice on calculating and adjusting for VAT). We accepted and included in our analysis petitioners' December 30, 1992, amendment to the hot-rolled petition for purposes of our final determination.

For both FFC and Clabecq, we calculated FMV using the methodology described in the preliminary determination, with the following exceptions pertaining to Clabecq.

We accepted Clabecq's reported warranty expenses, which had been rejected for our preliminary determination, and we made a circumstance-of-sale adjustment for documentary collection fees, found at verification, on Clabecq's U.S. sales. Before making circumstance-of-sale adjustments for credit expenses, we recalculated Clabecq's reported U.S. credit using a discount-net price. Where payment dates were not reported, we assumed as BIA that the sale was paid on the date of the final determination (for U.S. sales) or the date of the start of verification (for HM sales). Where the shipment and payment dates were missing we calculated credit using the average credit period (in the appropriate market) for sales that were shipped. (See Clabecq-Specific Comment 2 in the "Interested Party Comments" section of this notice, below).

As stated in our preliminary determinations, the Department initiated cost-of-production (COP) investigations with respect to Clabecq's and FFC's home market sales of steel plate. We tested home market sales to unrelated customers to determine whether they were at prices below COP as follows:

A. Calculation of COP

We calculated COP based on the sum of the individual respondent's cost of materials, fabrication, labor, factory overhead, selling expenses, general & administrative (G&A) expenses, and home market packing. For each company, we derived selling expenses from its respective home market sales listing. For Clabecq we added home market packing expenses derived from the sales listing. (No packing was added to FFC's COP because that company did not pack POI sales of subject merchandise.) (See FFC-Specific Comment 3 in the "Interested Party Comments" section of this notice, below). We relied on the submitted COP and CV data, except in the following instances where cost data was recalculated:

Clabecq

1. We revised Clabecq's submitted G&A expenses to reflect reclassification of certain items from G&A expenses to factory overhead. (See June 15, 1993, Memorandum to the File regarding the calculation of Clabecq's COP and CV.)
2. We recalculated interest expense using Clabecq's audited consolidated 1992 financial statements. Short-term interest income was offset against total interest expense.
3. We included prepension expense and certain miscellaneous expenses in our calculation of G&A expenses (see Clabecq-Specific Comments 6 and 7 in the "Interested Party Comments" section of this notice, below).
4. We revised Clabecq's cost of sales used in the denominator to calculate the G&A expense ratio and the interest expense rate.

FFC

1. We revised depreciation expense to reflect the appropriate allocation basis.
2. We recalculated G&A expenses for the following adjustments: Increase in prepension provision, actual research-and-development costs (R&D) (Cercume), and actual accounting services (Cecofer) for COP only.
3. We allocated revised G&A expenses based on the cost of sales calculated for 1992.
4. We adjusted fixed overhead for the appropriate amount of technical labor and related labor variance reclassified from G&A expenses.
5. FFC did not report selling expenses incurred by its related commissionaire on HM sales. Therefore, we considered FFC's related party commissions (reported in its section D response) a reasonable surrogate for these unreported selling expenses (which we assumed to be indirect) which are part of the total costs associated with producing the subject merchandise.

B. Test of HM Sale Prices

After calculating COP, we tested whether HM sales of steel plate were at prices below COP over an extended period of time.

We compared model-specific COP to reported prices that were net of movement charges, discounts, and rebates. If over 90 percent of respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities. If between ten and 90 percent of the sales of a given product were made at prices below the COP, and such sales were made over an extended period of time, we discarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product and calculated FMV based on CV.

In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

C. Results of COP Test

For both Clabecq and FFC, we found that for certain models more than 90 percent of HM sales were at below-COP prices over an extended period of time. For U.S. sales left without a match as a result of disregarding these below COP sales, we based FMV on CV.

D. Calculation of CV

In accordance with section 773(e)(1)(B) (i) and (ii) of the Act, we included in CV the greater of (1) Respondent's reported selling, general and administrative expenses (SG&A), adjusted as detailed above; or (2) the statutory minimum of ten percent of cost of manufacture (COM). For profit, we used the statutory minimum of eight percent of the sum of COM and general expenses (because actual profit on home market sales was less than eight percent). Selling expenses (direct and, where appropriate, indirect) were derived from the individual respondent's HM sales database.

For the reasons described above, we used FFC's reported related party commissions a reasonable surrogate for certain unreported selling expenses. Packing cost was, or was not, added for the reasons described above with respect to the calculation of COP.

In instances where we compared Clabecq's U.S. prices to CV, we made circumstance-of-sale adjustments, where appropriate, for warranty expenses, documentary collection fees, and credit expenses. We recalculated Clabecq's U.S. and HM credit expenses as described above.

In instances where we compared FFC's U.S. prices to CV, we made circumstance-of-sale adjustments, where appropriate, for credit insurance costs and credit expenses.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of hot-rolled steel from Belgium. We determine that critical circumstances do not exist with respect

to imports of cold-rolled steel and steel plate from Belgium.

We have analyzed the allegations using the methodology described in Appendix II to Steel from Argentina.

To determine whether there have been massive imports of a given product, we compared, on a company- and class-or-kind-specific basis, export volume for the five months subsequent to the filing of the petition to export volume for the five months prior to the filing of the petition, using data submitted by Clabecq, FFC, and Sidmar.

In the case of Sidmar, we found that imports of the hot-rolled steel and cold-rolled steel during the period following the filing of the petition (the "post-petition period") increased by more than 15 percent over the period preceding the filing of the petition (the "pre-petition period"). However, with respect to cold-rolled steel, our analysis of shipments during the same periods in preceding years reveals that the increase observed in the post-petition period can be explained by seasonal trends. Therefore, we determine that imports were not massive for cold-rolled steel.

With respect to Sidmar's shipments of hot-rolled steel, we compared the observed change (increase) in import volumes during the post-petition period over the pre-petition period to changes over corresponding periods in previous years. We noted no evidence that the increase observed was the result of seasonal trends. With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate whether the increase in absolute volume of Sidmar's shipments of hot-rolled steel can be accounted for by a change in domestic consumption. Thus, we find that imports of Sidmar's hot-rolled steel were massive during the post petition period.

Because Cockerill Sambre failed to participate in the investigation, and because import statistics do not permit an analysis that we could reasonably apply to Cockerill Sambre, we assume, as BIA, that its shipments to the United States have also been massive since the filing of the petition.

In analyzing steel plate shipments by Clabecq and FFC, we found that imports of steel plate during the period subsequent to receipt of the petition did not increase by more than 15 percent and thus were not massive.

Because we determined that imports of steel plate and cold-rolled steel were not massive, we do not need to address the question of whether the importers of those products knew, or should have known, that the products were being sold at less than fair value. We therefore determine that critical circumstances do not exist with respect to imports of steel plate or cold-rolled steel.

To determine whether the importers of hot-rolled steel from Belgium knew, or should have known, that the products were being sold at less than fair value, we first considered the margins in these investigations, as discussed in Appendix II to Steel from Argentina. We do not know the percentages of imports constituting purchase price and exporter's sales price transactions, respectively. Therefore, we have no way of calculating a weighted-average benchmark margin and we must assume as BIA that the appropriate benchmark is 15 percent. Because the margins for hot-rolled steel are above the 15 percent, we determine that importers of hot-rolled steel from Belgium knew, or should have known, that prices were below fair value.

Therefore, we determine that critical circumstances exist with respect to all companies' imports of hot-rolled steel from Belgium.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

General Comments

Comment 1: Petitioners contend that, pursuant to the recent decision by the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* versus *United States* (No. 92–1043, Slip Op. 12–17, March 19, 1993), the Department should not make a circumstance-of-sale adjustment to FMV for differences in the VAT, but should add to FMV the amount of VAT actually incurred on HM sales. Petitioners also state that case precedent precludes the Department from attempting to achieve a tax neutral result by adding the amount of the HM tax to USP. Petitioners also contend that the Department must determine the extent to which the tax is passed through to customers in the HM.

FFC contends that the Department should add to USP the absolute amount of taxes on the comparison merchandise sold in the country of exportation. FFC also notes that the Act does not require analysis of the pass-through of taxes to customers, citing *Federal-Mogul Corp.* versus *United States*, Slip Op. 93–17 (CIT Feb. 4, 1993).

Clabecq claims that the Department should, in calculating VAT, take into account the new Belgian VAT law (effective January 1, 1993) which requires that VAT be collected on all sales made within the European Community.

Petitioners counter that the change in Belgian law should not be considered because it has no bearing on the selling practices that existed during the POI.

DOC Position: We have adjusted for Belgian VAT according to the methodology described in Appendix II of Steel from Argentina. As stated in Appendix II, we have not made a circumstance-of-sale adjustment to FMV. Also, we have not calculated a hypothetical tax on the U.S. product, but have added to U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation.

We imposed no limitation on consumption taxes added to USP, based on the incidence of such taxes in the home market, because the statute requires no such limitation. We are not following *Zenith* versus *United States*, 633 F. Supp. 1382 (CIT 1986), *appeal dismissed*, 875 F.2d 291 (Fed. Cir. 1989), and its progeny with respect to this issue, because we do not agree with that decision and have appealed this issue to the Court of Appeals for the Federal Circuit in *Daewoo* versus *United States*, Fed. Cir. Nos. 92–1558–62. The Court of International Trade has upheld our position that the statute does not require a measurement of "tax pass-through" in *Federal-Mogul Corp.* versus *United States*, Slip Op. 93–17 (CIT Feb. 4, 1993).

We disagree with Clabecq that VAT should be calculated on all HM sales because of a change in the VAT law in January 1993. The Department correctly calculated VAT based on the law in effect during the POI.

Comment 2: In determining whether imports of the subject merchandise have been massive, petitioners argue that a comparison of imports in the five-month pre- and post-petition periods is most appropriate because the Department directed Customs to suspend liquidation on or after December 7, 1992, as a result of the affirmative preliminary determination in the companion countervailing duty (CVD) investigation. Including the months after the CVD suspension of liquidation in the critical circumstances analysis, petitioners contend, could mask Sidmar's attempts to increase imports prior to any suspension of liquidation in these investigations.

DOC Position: We agree with petitioners, and have analyzed five-month periods to determine whether imports were massive. See the "Critical

Circumstances" section of this notice, above, and Appendix II to Steel from Argentina.

Comment 3: Petitioners submit that critical circumstances should be found for companies covered by an "All Others" deposit rate because the Department's "All Others" margin will be based on the weighted average of all affirmative rates, which will exceed 15 percent and is thus a sufficient basis for imputing knowledge to all other companies.

DOC Position: We agree in part. An affirmative "All Others" critical circumstances determination is appropriate only when we have determined with respect to all investigated companies that (1) Importers knew, or should have known, that prices were below fair value or that there is a history of dumping and (2) that imports were massive over a relatively short period. In such instances, we can impute both knowledge of dumping and massive imports to non-respondent companies and thus satisfy both of the criteria necessary for determining that critical circumstances exist with respect to all other companies. We have therefore determined that critical circumstances exist with respect to all other companies only with respect to imports of hot-rolled steel (see the "Critical Circumstances" section of this notice, above).

Comment 4: Petitioners argue that the Department should find critical circumstances with respect to shipments of hot-rolled steel based on the information on the record.

Sidmar argues that the Department correctly determined that critical circumstances do not exist with respect to imports of its hot-rolled steel. Sidmar also contends that its imports should not be considered massive because Sidmar's share of domestic consumption accounted for by the imports is small.

DOC Position: We agree with petitioners, and find that critical circumstances do exist with respect to hot-rolled steel. See the "Critical Circumstances" section of this notice, above.

Comment 5: Petitioners posit that the Department should use the highest margin alleged in the hot-rolled petition, as amended, in determining BIA for the hot-rolled investigation.

Sidmar argues that the amended petition, filed six months after the date of the original petition, should be rejected by the Department because it is untimely and is based solely on petitioners' quest for high BIA margins.

DOC Position: We agree with petitioners in part. We do not consider the petition amendment untimely (see 19 CFR 353.12(e)), and have thus considered the entire petition, as amended, in determining appropriate BIA for the hot-rolled investigation. We do not agree with petitioners' contention that the highest margin from the petition should be applied to Sidmar (see BIA methodology in the "Fair Value Comparison" section of this notice, above).

Clabecq-Specific Comments

Comment 1: Petitioners contend that Clabecq's product concordance was improperly prepared and should be corrected, citing Clabecq's specification/grade-based family groupings as broad, unevenly mixed groups of product that have varying degrees of similarity. Petitioners also contend that Clabecq's faulty concordance warrants denial of all claimed adjustments for differences in merchandise ("difmer adjustments").

Clabecq claims that it matched U.S. products to HM products in accordance with the instructions set out in Appendix V of the Department's questionnaire. Clabecq also contends that products compared had physical differences and thus warrant difmer adjustments.

DOC Position: We agree with Clabecq. At verification, we examined Clabecq's matching methodology and difmer adjustments and noted no discrepancies.

Comment 2: Clabecq requests that the Department accept its updated shipment and payment information, claiming that the information was made available at verification on a computer tape. Clabecq notes that a verification exhibit contains all updated U.S. payment dates.

Petitioners urge the Department to use BIA for the unreported payment dates, recommending the date of the preliminary determination be used for all unpaid home market transactions and the date of the final determination be used for all unpaid U.S. transactions.

DOC Position: We agree with petitioners that BIA is warranted for unreported payment dates. Because no hard-copy listing of updated payment information was provided at verification, Department verifiers could not confirm that such information was correct.

As BIA for unpaid sales for which Clabecq reported a shipment date, we assumed that home market transactions were paid on the date verification started (*i.e.*, a shorter credit period) and that U.S. transactions were paid on the date of the final determination (*i.e.*, a longer credit period). For sales reported with no shipment date, we applied the average of the credit periods for shipped sales.

Comment 3: Petitioners argue that the Department should reclassify U.S. commissions as discounts, noting that DOC verifiers saw no written agreements or other evidence of services provided by the commissionaire. Petitioners cite the final determination of Color Picture Tubes from the Republic of Korea (52 FR 44186, November 18, 1987) as support for their position.

Clabecq contends that the Department should not reclassify commissions as discounts, arguing that absence of written contracts or other evidence does not disprove its claim that services were provided by U.S. commissionaires.

DOC Position: We agree with petitioners and have reclassified the reported commissions as discounts. At verification, Clabecq provided neither a written contract nor other evidence that services were provided by U.S. commissionaires. Further, the amounts in question were simply deducted from the gross price listed on the invoice to the U.S. customer; no evidence was provided that a third party commissionaire had ever been involved.

Comment 4: Petitioners contend that the Department should reclassify certain technical expenses that were included as G&A. Petitioners reason that while the technical overhead expenses may be administrative expenses, the vast majority of those expenses appear related to the factory and factory management rather than company-wide administrative functions.

Clabecq argues that reported technical overhead expenses are G&A and not factory overhead because the expenses in question are not related to production, but rather to the operations of the company as a whole.

DOC Position: We agree with petitioners. Our analysis showed that the majority of the technical overhead expenses relate to the production activities of the company. We therefore have reclassified from G&A to factory overhead the following expenses: Wages for security guard and concierge; salaries for technical management and engineers; taxes and insurance on building and machinery; maintenance on internal roads, electrical lines, and natural gas pipes; and auxiliary departments.

Comment 5: With respect to reported finance expenses, petitioners argue the following: (1) That the Department should recalculate the reported figure to reflect a reduction only for short-term interest income that is related to current production; (2) the Department should

disallow the deduction from financial charges for credit costs; and (3) finance expenses should be expressed as a percent of cost of sales and not on the basis of fixed assets and tonnage as presented by Clabecq.

Clabecq holds that the finance expenses were appropriate as submitted and should not be recalculated.

DOC Position: We agree with petitioners, whose arguments on this point accurately reflect the Department's normal practices (see, *e.g.*, Cellular Mobile Telephones from Japan (54 FR 48011, November 20, 1989) (Final Determination); Small Business Telephone Systems from Korea (54 FR 53141, December 27, 1989) (Final Determination)). Accordingly, we have recalculated finance expense using the audited 1992 financial statement, offsetting short-term interest income against total interest expense, and calculated the transaction-specific figure as a percentage of cost of goods sold.

Comment 6: Petitioners argue that the Department should increase Clabecq's COP and CV for certain unreported miscellaneous expenses.

DOC Position: We agree. Although excluded from reported costs because they were listed on Clabecq's June 30, 1992, financial statement as extraordinary expenses, examination at verification revealed that the expenses in question were not infrequent in occurrence and unusual in nature (two conditions that must be met for an expense to be considered extraordinary). Accordingly, we have included these expenses in the calculation of G&A.

Comment 7: Petitioners hold that COP and CV calculations should be revised to include all non-reimbursed prepension expenses reported in Clabecq's financial statements because these expenses fail to satisfy the "unusual and infrequent" definition of extraordinary expenses.

Clabecq contends that no prepension expenses should be included in its COP because they are designated as exceptional charges or "Once-Only Charges" on its books. Clabecq notes that prepension expenses are considered extraordinary as they are of a character significantly different from typical or customary business activities and would not normally be considered in evaluating Clabecq's operating results.

DOC Position: We agree with petitioners, and have included the prepension expense in our calculation of COP. These costs were not unusual in nature and infrequent in occurrence. The fact that they are classified as "Charges Exceptionnelles" on Clabecq's financial statement does not conclusively make these expenses extraordinary in nature. Given the fact that this expense recurs every year, it is also not infrequent in occurrence, nor are they unusual to the industry. Accordingly, we have included these expenses in COP and CV. Because Clabecq only manufactures steel plate and sheet, we allocated the expense over Clabecq's cost of sales.

Comment 8: Petitioners contend that the Department should adjust Clabecq's reported fixed overhead expenses included in COP and CV to include a pro-rated portion of the expense to reline the blast furnace, reasoning that the blast furnace was used in the production of the subject merchandise and blast furnace relining is a recurring cost in the steel industry.

Clabecq argues that the Department should reject petitioners' request, noting that it made annual accruals for the 15 years prior to the relining which took place during the 1990/1991 fiscal year. Because the funds for the relining were accrued in this manner, it would be inappropriate to depreciate blast furnace relining expenses.

DOC Position: We agree with Clabecq. Because we noted no discrepancies with respect to the company's treatment of this expense, we have made no adjustment to Clabecq's reported figure.

Comment 9: Petitioners argue that the Department should recalculate Clabecq's depreciation expense on an annual basis, rather than on the six-month basis as submitted by Clabecq, because the submitted depreciation expense fails to take into account the fixed costs associated with Clabecq's plant and equipment. Petitioners contend that Clabecq's depreciation calculation is also flawed because it does not take into account inventory changes, the correct total steel plate quantity, or the correct slab quantity.

Clabecq asserts that its calculation of depreciation expense on the six-month basis is appropriate because depreciation, like material costs, labor, and related expenses (cost of manufacturing), must be calculated based on the six-month POI.

DOC Position: We agree with Clabecq. We analyzed the difference between depreciation expense calculated on an annual basis and on a six-month POI basis, and found Clabecq's reported figures were reasonable. Therefore, we are accepting Clabecq's depreciation expenses for the final determination.

FFC-Specific Comments

Comment 1: Petitioners assert that the majority of FFC's U.S. sales were of Z-type merchandise (*i.e.*, steel with special testing and guarantees of its through thickness, or Z-axis, characteristics) because a customer's order specified "Lukens Fineline" specifications (a U.S. trade name for Z-type plate). Petitioners also claim that, based on the Department's Appendix V matching criteria, Z-type steel is a distinct grade/specification of steel plate. Thus, they contend, the U.S. sales in question should be matched only to HM sales of Z-type plate.

FFC contends that the U.S. customer did not request that the Z-test be performed, and that the U.S. sales were not of Z-type merchandise. FFC agrees with petitioners that Z-type and non-Z-type steel represent separate grades/specifications of steel plate. However, FFC claims that, without the Z-test, neither the seller nor the buyer can ascertain with certainty whether a given plate will have the through thickness characteristics required of Z-type plate. Therefore, FFC asserts that U.S. sales of non-Z-type merchandise cannot be compared to home market sales of Z-type merchandise.

DOC Position: We agree with FFC. Information examined at both the sales and cost verifications leads us to conclude that the U.S. sales in question do not constitute Z-type merchandise because there is no evidence that Z-testing was performed. While the customer's order mentioned Lukens Fineline, FFC's confirmation gave no indication that Z-type merchandise would be sold. We have also determined that Z-type plate and non Z-type plate constitute separate grades/specifications under the Department's matching criteria set out in Appendix V of the questionnaire. Therefore, we have accepted FFC's contention that it correctly did not match the U.S. sales in question to home market sales of Z-type plate.

Comment 2: Petitioners contend that because the Department verified that FFC had no short-term borrowing during the POI, and the short-term rates provided by FFC's bank are speculative, the Department should use the average lending rate of 13.25 percent (from the IMF statistics) as the interest rate for calculating home market and U.S. credit expenses. Petitioners cite *Coated Groundwood Paper From Belgium* (56 FR 56359, November 4, 1991) (Final Determination) (*"Groundwood Paper"*) as precedent for requiring that a respondent show it had actual borrowing in the United States before imputing credit expenses based upon U.S. interest rates.

FFC contends that the Department must apply the U.S. short term borrowing rate to calculate credit expenses for U.S. sales, claiming that dollar receipts from U.S. customers are

mainly used to pay FFC's debts to its U.S. suppliers.

DOC Position: We agree with FFC. The Department's decision in *Groundwood Paper* has been superseded by more recent proceedings (*see, e.g., CIT Remand of Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom, affirmed in United Engineering and Forging v. United States*, Slip Op. 92/94 (August 3, 1992), where the Court ordered us to use short-term rates at which respondent could have borrowed).

For both Belgian franc- and U.S. dollar-denominated loans, FFC provided evidence of the interest rates it would have been subject to had it engaged in short-term borrowing during the POI. It is therefore appropriate to use the currency-specific interest rates submitted by FFC to calculate credit on home market and U.S. transactions.

Comment 3: Petitioners contend that, because FFC refused to allow the Department to verify its claims that it incurred no packing costs in the home market, the Department should use the packing costs contained in the petition as BIA for FFC home market packing costs.

FFC asserts that it incurred no packing costs on U.S. or home market sales and that Department verifiers were able to confirm this during a plant tour which included an examination of FFC's shipping procedures.

DOC Position: We agree with respondent. We noted no evidence that FFC incurred any packing costs on its POI sales of subject merchandise.

Comment 4: Petitioners claim that FFC's reported depreciation expense was understated in three ways: (1) FFC incorrectly allocated depreciation of pre-fiscal year 1992 assets (*i.e.*, assets acquired before July 1, 1991) to different production lines based on current-year purchases of equipment rather than based on what the pre-fiscal year 1992 assets were actually used for; (2) FFC underreported depreciation expense for subject merchandise by allocating costs over the shipments of all products rather than just subject merchandise; and (3) FFC did not allocate depreciation based on the tonnage reported by its cost of production analysis system (COPAS). Petitioners argue that the Department should revise FFC's submitted depreciation expense to correct these discrepancies.

FFC contends that the methodology used was conservative because verification showed that a substantial portion of pre-fiscal year 1992 assets related to the production of subject merchandise had been fully depreciated, while most pre-fiscal year 1992 assets acquired after 1985 were related to the production of non-subject merchandise and were not fully depreciated. Thus, FFC argues, the majority of total, current-year depreciation expenses on pre-fiscal year 1992 assets pertained to non-subject merchandise.

With respect to allocation of the calculated product-specific depreciation amount, FFC asserts that it correctly used the tonnage shipped during fiscal year 1992 because the depreciation expense calculation was developed based on data from July 1, 1991, through June 30, 1992.

DOC Position: We agree in part with each party. Using the available records, FFC's method of calculating the depreciation expense for subject merchandise based on current-year asset acquisitions reasonably reflected the depreciation expense incurred in the production of subject merchandise. Petitioners are correct that the allocation base (total tons shipped) understated depreciation. The special equipment depreciation expense assigned to the subject merchandise category would be more appropriately allocated based upon tons shipped of only that category. However, FFC correctly allocated common equipment depreciation expense based on total tons of steel shipped. We disagree with petitioners' statement that the tons shipped data was not part of the COPAS. Tonnage shipped statistics were generated from the monthly shipping date used in the COPAS and the accounting system in place prior to implementing COPAS. Accordingly, we have revised FFC's reported depreciation expense to reflect the proper allocation basis.

Comment 5: Petitioners argue that the cost of services provided by two related parties, Cecofer and Cercume, should be reported at the higher of transfer prices or actual cost. In the case of Cecofer, petitioners argue that the Department should use the transfer price as a surrogate for the actual cost. In the case of Cercume, where transfer prices are less than cost, petitioners argue that the Department should adjust the reported R&D expenses upward to account for the difference between the transfer prices and the actual cost of production.

Respondent counters that, because Cercume's operating loss is minimal, the difference between transfer price and actual cost of services is insignificant. Respondent noted that the Cecofer transfer price was conservative because Cecofer 1992 financial statements show a net operating profit.

DOC Position: We disagree with petitioners that the higher of the transfer price or actual cost should be used for both COP and CV. Because FFC has over 50 percent ownership of both related parties, we used the actual costs of services for COP purposes in accordance with GAAP regarding related party transactions. These actual costs for Cecofer and Cercume services were included as G&A.

For CV purposes, according to section 773(e)(3) of the Act, Cecofer's accounting services were valued at transfer prices because the transfer prices were higher than the actual costs. Cercume's R&D services were valued at actual cost because Cercume's transfer price was lower than actual cost. See 19 CFR 353.50(c).

Comment 6: Petitioners argue that G&A and manufacturing expenses should be adjusted and allocated based on annual cost of sales, according to normal Department methodology. Petitioners also argue that, if the Department accepts FFC's G&A expense adjustments submitted at verification, the Department should also adjust fixed factory overhead costs by the corresponding amount.

FFC argues that G&A expenses are actual annual costs reconciled to audited financial statements and calculated according to Department methodology. FFC also claims actual annual G&A expenses were reconciled to audited financial statements, and that G&A expenses reclassified as fixed overhead were included in fixed overhead for the COP and CV calculations.

DOC Position: We agree in part with both parties. FFC is correct that total fixed overhead costs that were excluded from G&A expenses were reclassified as fixed overhead costs. Petitioners are correct that G&A should be allocated using annual cost of sales, and we have adjusted the G&A expense accordingly (see, *e.g.*, Small Business Telephone Systems from Taiwan (54 FR 42543, October 17, 1989) (Final Determination)).

Comment 7: Petitioners argue that all unreimbursed prepension expenses identified on FFC's financial statements should be included in COP and CV.

FFC argues that no adjustment to COP or CV is necessary, because the amount is accounted for in the labor cost reconciliation.

DOC Position: We agree with petitioners, and have included FFC's current year increase in its prepension provision in G&A expenses for COP and CV calculations. FFC's labor expense reconciliation incorrectly excluded this increase, which is shown as a separate

operating expense on the financial statements.

Comment 8: Petitioners argue that difmer adjustment data for Z-type merchandise was not supported at verification.

FFC contends that verification supported the reported cost of manufacture for Z-type merchandise.

DOC Position: We agree with FFC. Verification showed that FFC properly accounted for the cost of manufacture (which includes information used to calculate the difmer adjustment) related to Z-type merchandise in reported COP data.

Sidmar-Specific Comments

Because Sidmar's margins are based on BIA, only comments pertaining to BIA and critical circumstances are addressed below.

Comment 1: Petitioners claim that the Department should base its final determinations with respect to Sidmar on BIA because Sidmar's questionnaire responses were deficient in two significant areas.

First, petitioners contend that evidence on the record shows that, for home market and purchase price sales, Sidmar ignored the Department's instructions to report sales based on the date that price and quantity are first set (which petitioners contend is the order confirmation date) and instead incorrectly reported the sales based on the invoice date. Petitioners contend that the verification exhibits show that the order confirmation, change order and invoice are printed in exactly the same format and appear to be generated from a single database, thus disproving Sidmar's argument that reporting order confirmation date or change order dates as the date of sale was technically infeasible. Petitioners contend that this misreporting of date of sale calls into question whether appropriate HM sales were matched to U.S. sales and Sidmar's HM viability.

Second, petitioners contend that Sidmar refused to report HM sales by related customers ("downstream sales").

As BIA, petitioners believe that the Department should assign Sidmar margins based on the highest margins alleged in the hot-rolled and cold-rolled steel petitions.

Sidmar contends that it reported HM and purchase price sales using the proper date of sale because terms of sale changed between order confirmation date and invoice date. Sidmar further contends that reporting sales that had POI order confirmation dates would have been too burdensome, and that the order confirmation is an unreliable and unverifiable document that is not always printed or kept on file. Sidmar also notes that its recorded order confirmation date changes whenever the sales record is accessed on Sidmar's computer system. Sidmar maintains that the invoice is the first written, verifiable document that can demonstrate on a consistent basis a sale's agreed-upon price, quantity and specification. Finally, Sidmar notes that Departmental practice requires written evidence that the sale's basic terms have been agreed upon.

With respect to its failure to report downstream sales in the home market, Sidmar contends that (1) Its sales to related customers were at arm's-length prices; (2) the Department's arm's-length test is flawed; and (3) downstream sales would not have been matched to U.S. sales.

DOC Position: We agree with petitioners that Sidmar reported home market and purchase price sales using the wrong date of sale. Date of sale is a crucial consideration in evaluating a respondent's sales to determine whether and to what extent LTFV sales have taken place. Sidmar's reported date of sale proved to be incorrect, rendering useless its HM and purchase price listings of cold-rolled sales and its HM listing of hot-rolled sales. As petitioners correctly note, Sidmar's model matching and HM viability cannot be evaluated with certainty when date of sale is incorrectly determined. We therefore have no choice but to resort to BIA in both the hot-rolled and cold-rolled investigations.

For our preliminary determinations, we accepted Sidmar's date of sale methodology because it claimed that 50 percent of sale quantities change due to customer requests. However, verification did not support this claim, revealing that the basic terms of sale were established prior to date of invoicing, either on the order confirmation date or, in some instances, the change order date.

At verification we selected 13 home market (hot-rolled and cold-rolled) and seven purchase price (cold-rolled) sales for detailed examination. We noted very few changes in the quantity ordered, or price, between the order confirmation and invoice dates. For only two of the 20 selected sales was there no order confirmation, thus calling into question Sidmar's claim that order confirmation records are not maintained. The sales examined also did not support Sidmar's claim that approximately 50 percent of orders changed after the order confirmation was issued.

While Sidmar correctly notes that written proof of a sale is necessary, such evidence existed for all but two sales. Sidmar's claim that reporting order confirmation date would have been burdensome was not raised until verification, and does not address the issue of when price and quantity were fixed.

We do not agree that Sidmar's failure to report downstream sales is grounds for total BIA, but we do not need to address this issue because we have determined that total BIA is warranted because of Sidmar's flawed reporting of date of sale.

Comment 2: Sidmar argues that our preliminary critical circumstances determination analysis of its shipments of cold-rolled steel failed to take into account both seasonal trends and share of domestic consumption when determining whether imports were massive. Sidmar notes that, for some customers, its shipment patterns are affected by the closing of the St. Lawrence Seaway. Sidmar also claims that, because its share of domestic consumption is small, its imports should not be considered massive.

Petitioners counter that the Department should determine imports of cold-rolled steel to be massive because seasonal trends do not account for the increase in imports and Sidmar's data show abnormally high imports during August and September 1992, indicating an attempt to avoid dumping duties following the filing of the petition. Petitioners further argue that the figures on domestic consumption share cited in Sidmar's brief are unsupported and unverified, and in any case Sidmar's share is significant because the International Trade Commission (ITC) made a preliminary affirmative injury determination.

DOC Position: We agree with Sidmar that seasonal trends, explained by the closing of the St. Lawrence Seaway, appear to explain the increase in shipments during the post-filing period for cold-rolled steel.

Petitioners' argument that the first two months of the post-petition filing period show unusually high shipment volumes amounts to an attempt to examine a period shorter than the five-month period that petitioners themselves advocated.

With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate the increase in absolute volume of imports vis-a-vis domestic consumption of cold-rolled steel.

See the "Critical Circumstances" section of this notice, above.

Comment 3: Sidmar argues that the Department's benchmark margins for imputing knowledge of dumping in critical circumstances determinations

have no basis in law or regulation because they constitute the establishment of a substantive rule by the Department, which requires promulgation in accordance with the notice and comment procedures of the Administrative Procedure Act (APA). *IPSCO, Inc.* v. *United States*, 687 F. Supp. 614, 615 (Ct. Int'l Trade 1988).

Sidmar also claims that the Department made no determination of what benchmark margin levels for exporter's sales price and purchase price sales are appropriate to the facts in this case.

DOC Position: We disagree. The notice and comment requirements referred to in *IPSCO* do not apply "to interpretive rules, general statements of policy or procedure, or practice." 5 U.S.C. 553(b)(A) (1982). We consider the benchmark margins to be interpretive rules. Unlike the standard depreciation schedules utilized in *IPSCO*, the benchmark margins are not properly derived "from verified information pertaining to the country and company under investigation in this case." *Id.* at 626. Further, while verified information may affect the Department's determination of a benchmark margin, we note that Sidmar has not proffered any suggestions as to how the Department might modify the benchmark to accommodate the facts of this case.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel and steel plate from Belgium that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**, as previously directed under section 733(d)(1) of the Act. For imports of hot-rolled steel we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel from Belgium that are entered, or withdrawn from warehouse, on or after November 6, 1992, the date 90 days prior to publication of our preliminary determination pursuant to section 735(c)(4)(A) of the Act.

Because we have determined that critical circumstances do not exist with respect to cold-rolled steel, we are directing the Customs Service to release any bonds or other securities pertaining to, and liquidate all entries of, cold-rolled steel from Belgium that were entered, or withdrawn from warehouse, before February 4, 1993, for which liquidation was suspended solely as a result of this proceeding.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Hot-rolled steel:		
Cockerill Sambre.	62.11	Yes
Sidmar	21.84	Yes
All Others	41.98	Yes
Cold-rolled steel:		
Sidmar	14.73	No
All Others	14.73	No
Steel Plate:		
Clabecq	6.78	No
FFC	3.65	No
All Others	6.75	No

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In the Department's final affirmative determinations in the concurrent countervailing duty investigations involving sales in the United States of hot-rolled steel, cold-rolled steel, and steel plate from Belgium, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the AD deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. The ITC will make its determinations as to whether these imports materially injure, or threaten material injury to, U.S. industries within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, these proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue antidumping duty orders directing Customs officers to assess antidumping duty deposits on imports of hot-rolled steel, cold-rolled steel, and steel plate from Belgium (as appropriate) that are entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15613 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–814, A–351–815, A–351–816, and A–351–817]

Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230; telephone (202) 482–3793 or telefax (202) 482–1388.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), within the meaning of section

VOL
58
ISS
130
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735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our notice of preliminary determinations and postponement of final determinations (58 FR 7080—February 4, 1993), the following events have occurred.

On February 16, 1993, we received requests for a public hearing from respondents Companhia Siderúrgica Nacional (CSN), Companhia Siderúrgica Paulista (COSIPA), and Usinas Siderúrgicas de Minas Gerais S.A. (USIMINAS) as well as from petitioners.

We verified USIMINAS' responses to the Department's questionnaires regarding sales and cost information in Belo Horizonte and Ipatinga, Brazil, from March 23 through April 2, 1993.

On March 31, 1993, we issued a notice of Correction to Postponement of Final Antidumping Duty Determinations and Rescheduling of Public Hearing (58 FR 18201—April 8, 1993).

On May 7, 1993, we issued a notice of Amendment of Preliminary Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Brazil, Certain Cold-Rolled Carbon Steel Flat Products from Brazil, and Certain Cut-to-Length Carbon Steel Plate from Brazil (58 FR 28303—May 13, 1993). This notice modified the duty deposit rates for USIMINAS and "All Others," but not for COSIPA and CSN.

COSIPA, USIMINAS, and petitioners filed case briefs on May 7, 1993. USIMINAS and petitioners filed rebuttal briefs on May 11, 1993. CSN's case brief and rebuttal brief, both of which were filed improperly and untimely, were returned to CSN and stricken from the record. A public hearing was held on May 13, 1993. CSN was allowed to make a brief oral presentation at the hearing.

USIMINAS and petitioners filed comments on the amended preliminary determinations on May 18, 1993, and rebuttal comments on May 20, 1993.

A draft suspension agreement was initialed on May 21, 1993. No suspension agreement was subsequently signed.

Scope of Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain cold-rolled carbon steel flat products, certain hot-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992 for CSN and USIMINAS, and July 1, 1991 through June 30, 1992 for COSIPA.

Such or Similar Comparisons

We have determined that each class or kind of products covered by these investigations also constitutes a single category of such or similar merchandise.

Fair-Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Brazil were made at less than fair value (LTFV), we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate in these investigations for sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Brazil by each of the three respondents. Section 776(c) of the Act provides that the Department, in deciding whether to use BIA, must take into account whether the respondent refused or was unable to produce information requested in a timely manner and in the form required, or otherwise significantly impeded an investigation. Our BIA analysis for each respondent follows.

The Department has determined that the use of BIA is appropriate with respect to COSIPA because that company declined to respond to any of the Department's questionnaires.

A second respondent, CSN, based its cost of production (COP) and constructed value (CV) submissions on a "management cost system" which is unaudited, not prepared according to generally accepted accounting principles (GAAP) in Brazil, and in which all costs are denominated in U.S. dollars rather than Brazilian cruzeiros. The Department determined that the COP/CV submission CSN derived from its management cost system was not responsive to the Department's requests for information and was unverifiable.

The submission was not responsive to the Department's requests for information because, *inter alia*, (a) the management cost system methodology does not generate the average cost of each material for each month; (b) the methodology used to develop, in the management cost system, the fabrication cost for each product is insufficiently substantiated; and (c) the management cost system does not generate per-unit costs on the sales unit basis required by the Department.

The submission was unverifiable because, by CSN's own admission, all records used in converting costs from cruzeiros to dollars had been destroyed, making it impossible to tie the response back to source documents, accounting records, and audited financial statements. CSN acknowledged on the record that it maintains a "financial cost accounting system," which provides fully absorbed product-specific costs, is prepared according to Brazilian GAAP, ties in to the company's audited financial statements, and is denominated in cruzeiros.

The Department initially raised its concerns regarding the management cost system in a deficiency letter dated December 11, 1992. CSN declined to provide the requested information. The Department's subsequent repeated requests that CSN resubmit its COP/CV data based on its financial cost accounting system were in every case rebuffed. The Department, therefore, in the absence of any reliable information allowing it to perform a below-cost test on home-market sales, to calculate adjustments for differences in the physical characteristics of the merchandise (diffmers), and, where appropriate, to calculate CV, decided not to verify the information submitted by CSN and to base its final determinations with respect to CSN on BIA (see memorandum from Marie E. Parker to Joseph A. Spetrini, dated March 15, 1993). This issue is discussed at greater length in the response to Comment 3.

Finally, with respect to USIMINAS, the Department discovered at verification that there were serious, irreparable flaws in the respondent's submissions, *e.g.*:

- USIMINAS used an incorrect date-of-sale methodology in reporting its U.S. transactions;
- USIMINAS' COP/CV/diffmer responses were deficient in every major element;
- USIMINAS' product concordance did not conform to the Department's instructions; and
- USIMINAS improperly reported the quantity and value of its sales.

These flaws, which were outlined in detail in the sales and cost verifications

reports (dated April 29, 1993), are summarized below:

(A) *USIMINAS used an incorrect date-of-sale methodology in reporting its U.S. transactions.* USIMINAS reported incorrect sale dates in 38 percent of the U.S. sales that the Department reviewed at verification. In 23 percent of the reviewed sales (60 percent of the sales with erroneous dates), the correct sale date was outside the originally reported month of sale; in certain cases, the correct date of sale was outside the POI entirely. Thus, the Department was unable to verify (1) whether USIMINAS had reported the correct universe of sales for the period of investigation, and (2) whether USIMINAS had matched U.S. sales with same-month home-market sales, as required by the Department's methodology for hyperinflationary economies. Without knowing whether the correct universe of sales and month of sale have been reported, the Department is unable to carry out two essential components of its LTFV calculations. First, the Department is unable to determine to which home-market sale(s) any given U.S. sale should be compared since, in a hyperinflationary economy such as Brazil's, the Department's long-standing policy has been to match U.S. sales to same-month home-market sales only. Second, the Department is unable to calculate adjustments for differences in the physical characteristics of the merchandise (in the case of non-identical product comparisons), because the Department calculates these adjustments based on replacement costs in the month of sale. As stated in our preliminary determinations, publicly available information indicates that Brazil's rate of inflation, as measured by Brazil's "Índice Nacional dos Preços ao Consumidor" (INPC) index—equivalent to the Consumer Price Index in the United States—was never less than 20 percent a month during each month of the POI. Furthermore, in each of the past five years, Brazil's annual inflation rate has never been lower than 475 percent (*see Conjuntura Econômica*, Instituto Brasileiro de Economia, Fundação Getúlio Vargas, São Paulo, April 1993). Under these circumstances, the Department cannot but determine that Brazil's economy was hyperinflationary during the POI. In such a hyperinflationary situation, the issue of whether the proper date of sale was reported takes on an importance it does not have in cases where hyperinflation is not present. At such high monthly rates of inflation, it is crucial that LTFV comparisons be made, and diffmers calculated, on a monthly basis rather than over the entire POI, because erroneous cross-month comparisons—even if the date of sale is off by a single month—would distort LTFV margins by over 20 percent, which is unacceptable. The Department has determined, therefore, that distortions caused by date-of-sale errors in the data bases submitted by USIMINAS were both significant and irreparable.

(B) *USIMINAS' COP/CV/diffmer responses were deficient in every major element.* First, within the material cost category, USIMINAS reported coal costs based on estimated, rather than actual, coal costs. Second, USIMINAS did not report the labor costs reflected on its audited financial statements. Third, within the overhead category, USIMINAS understated its depreciation costs by changing the lives of depreciable assets to unrealistic figures (*see* memorandum dated June 9, 1992 from Richard Lutz to Marie Parker). Fourth, within the general expense category, USIMINAS submitted general and administrative (G&A) expenses that did not reflect the amounts reported in either the "legislação societária" (corporate legislation) or "correçáo integral" (constant currency) audited financial statements. Also, USIMINAS excluded from G&A certain non-operating expenses related to the subject merchandise. Fifth, USIMINAS' submissions did not include pension costs as estimated by an independent actuary. Sixth, USIMINAS' methodology for assigning costs to products did not differentiate between the cost of extras, as requested in the Department's questionnaire. Finally, the standard costs developed for certain new products did not accurately reflect the costs of those products. These fundamental flaws are discussed in more detail in Comments 6 through 14 below.

Based on these numerous flaws, the Department has determined that the responses were not sufficiently supported by USIMINAS' audited financial records and did not properly represent the costs to USIMINAS of producing the subject merchandise. USIMINAS' failure to account for significant expenses contributed to the understatement of its costs. This situation is similar to that in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754—October 29, 1985), where

> [t]he scope of the required recalculations and revisions found in the verification process in this investigation [went] far beyond the issues of accounting treatment and valuation and limited methodological problems and mathematical errors commonly uncovered at a verification. Faced with responses containing numerous fundamental flaws in both the methodology and mathematical calculations used in developing the production costs, the Department [could not] properly base its determination on the information submitted by respondents. Nor is it acceptable in such situations that the Department bear the responsibility of attempting to identify and perform the numerous and substantial recalculations necessary for the development of representative and accurate production costs. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of th[ese] investigation[s].

(aff'd, *Chinsung Indus. Co., Ltd.* v. *United States*, 705 F. Supp. 598).

(C) *USIMINAS' product concordance did not conform to the Department's instructions.* USIMINAS included alloy steel products as well as carbon steel in its sales listings and product concordances. USIMINAS also compared products with high-strength characteristics to products with low-strength characteristics. The overall effect of these errors was that not only was the universe of reported products in itself incorrect, but products sold in the U.S. market were susceptible to being improperly matched to products sold in the home market. Information available on the record was insufficient to allow the Department to determine the proper product matches.

(D) *USIMINAS improperly reported the quantity and value of its sales* USIMINAS incorrectly included sales of alloy products in its carbon steel sales listings. USIMINAS also erroneously included certain plate products in its hot-rolled home-market sales listing, but excluded these products from its listing of home-market plate sales.

Given the magnitude and scope of the above errors, which seriously compromise the accuracy and completeness of USIMINAS' submissions, the Department has determined that USIMINAS' responses do not constitute an adequate basis on which to calculate LTFV margins, and that use of BIA with respect to USIMINAS is appropriate for purposes of these final determinations.

For the various reasons stated above, the Department has based its final determinations in these investigations on BIA for all three respondents. COSIPA declined to respond to any of the Department's questionnaires; the Department, therefore, determines COSIPA to have been an uncooperative respondent. Although CSN did respond to the Department's initial questionnaires, the Department has determined that CSN's cost submissions

were, in fact, non-responsive and unverifiable. CSN declined to furnish COP and CV data in the form required by the Department, while indicating that it maintains records which would have allowed it to present such data in the form required by the Department. The Department, therefore, determines CSN to have been an uncooperative respondent. Accordingly, we have used as BIA for COSIPA and CSN the highest dumping margins alleged in the petitions for each class or kind of merchandise.

Because USIMINAS cooperated with the Department's investigations, we have used as BIA for that respondent the average dumping margin alleged in the petitions for each product.

United States Price

We based USP on information provided in the petitions. Petitioners provided U.S. price based on actual c.i.f. duty-paid prices quoted between November 1991 and February 1992, adjusted for movement and port charges and IPI tax.

Foreign Market Value

We based FMV on information provided in the petitions. Petitioners based FMV on the Brazilian manufacturers' home-market list prices, with extras. The petitioners adjusted FMV, where appropriate, for differences in credit expenses and IPI tax. Petitioners also alleged that home-market sales of all four classes or kinds of products were made at prices below COP, based on reports by authoritative world steel industry sources. Accordingly, for all four classes or kinds of merchandise, petitioners also calculated FMV based on CV. Petitioners based CV on COP plus the statutory amounts for general and administrative expenses and profit.

Verification

As provided in section 776(b) of the Act, we verified information provided by USIMINAS using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

COSIPA argues that none of the factors normally required to expand the POI (long-term sales contracts, seasonal sales patterns, custom- or special-order sales, or unusual sales depression resulting in too few sales for an adequate investigation) exist in this case, and that Commerce arbitrarily departed from its usual practice specifically to reach COSIPA.

Petitioners contend that the Department's discretion to expand the POI is not limited to cases meeting the four situations cited by COSIPA. Indeed, in *Kerr-McGee Chem. Corp.* v. *United States*, 739 F. Supp. 613, 622 (Ct. Int'l Trade 1990), the Court found that the POI could be extended in situations other than the four previously mentioned.

Department's Position: We agree with petitioners. Section 353.42(b)(1) of the Department's regulations gives the Department broad administrative discretion to extend a POI, stating that "the Secretary may examine the merchandise for any *additional* or *alternative* period the Secretary concludes is appropriate" (emphasis added) (19 CFR 353.42(b)(1)). Although the Department did list, in Electrolytic Manganese Dioxide from Ireland; Final Determination of No Sales at Less Than Fair Value (54 FR 8776—March 2, 1989), the four types of situations cited by COSIPA as examples of grounds to extend a POI, the Department never intended that list to be exhaustive, since the plain text of 19 CFR § 353.42(b)(1) does not limit the grounds on which the Secretary may extend a POI, as confirmed by the Court of International Trade in *Kerr-McGee*, cited *supra*.

In this case, the Department felt that the original POI, which excluded a company that for fifteen years had been a high-volume exporter of the subject merchandise to the United States, was not representative of the normal pattern of trade in steel products imported from Brazil. That in itself provides the Department with the justification for expanding the POI to cover COSIPA.

Comment 2: COSIPA alleges that its non-response to the Department's questionnaires should be construed as willingness to entrust its future to the Department and to accept the "all other" duty deposit rate, rather than as a failure to cooperate. COSIPA therefore argues it does not deserve the application of "first-tier" (uncooperative) BIA.

Petitioners contend that, because COSIPA never responded to any part of the Department's questionnaires, the Department must find COSIPA to have been non-cooperative and apply "first-tier" BIA to that company, in this case the highest of (1) the dumping margins calculated in the petitions, or (2) the final dumping margins calculated for USIMINAS with respect to the relevant class or kind of merchandise.

Department's Position: Refusing to answer questionnaires cannot be construed as cooperating with the Department in an antidumping investigation. The Department therefore finds COSIPA to have been uncooperative. Since the BIA provision is intended to encourage responsiveness by the firms involved in an investigation or administrative review, COSIPA's refusal to respond calls for use of an adverse BIA rate. Because we did not calculate margins for any company in these investigations, we applied to COSIPA the highest dumping margin calculated in the petitions for each class or kind of merchandise. The "all other" rate is not the appropriate rate for COSIPA, since this rate is applied to firms that were not asked to submit information. COSIPA refused to submit information to the Department after being asked to do so.

Comment 3: CSN argues that the Department erred in finding its cost submissions unresponsive and unverifiable, and suggests that this decision was based solely on the fact that its COP/CV submissions were denominated in U.S. dollars rather than Brazilian cruzeiros.

Petitioners support the Department's determination that CSN's COP/CV submissions were unverifiable for several reasons. First, because CSN's management cost system does not conform to Brazilian GAAP, the Department lacks assurances that the per-unit COP/CV data provided by CSN fairly reflect the actual cost of producing the merchandise. Second, CSN's management cost system bases the cost of raw materials on the last invoice of each month, rather than the monthly average costs required by the Department's hyperinflationary economy methodology. Third, the replacement costs reported by CSN based on its management cost system cannot be reconciled with the product standard costs used in CSN's audited financial statements. Fourth, CSN did not report its per-unit costs on the sales-unit basis required by the Department. Fifth, CSN could have submitted COP/CV information based on its audited financial cost system which can be reconciled to audited financial statements. Had the Department decided to verify CSN's COP/CV information based on its management cost system, petitioners argue, reconciling CSN's dollar-denominated replacement costs with the audited financial statements would have involved at least three steps:

- Converting all of CSN's dollar-denominated costs back into cruzeiros;
- Calculating total costs of production; and
- Reconciling with cost of goods sold.

Petitioners point out that CSN itself admitted that performing the first step was a virtual impossibility within the normal time limits of a verification, given the millions of individual inputs that would need to be converted.

Department's Position: We agree with petitioners. CSN misrepresents the Department's rationale for determining that its COP/CV submission was unusable and unverifiable as based solely, or even primarily, on the fact that replacement costs were dollar-denominated, rather than cruzeiro-denominated. The Department reached its determination for three main reasons, any one of which would have been sufficient to support the Department's decision.

First, CSN's COP/CV submission was not responsive to the Department's needs because, *inter alia*, (a) the management cost system methodology does not generate the average cost of each material for each month; (b) the development of fabrication costs in the management cost system is insufficiently substantiated; and (c) the management cost system does not generate per-unit costs on the sales unit basis required by the Department.

Second, even if such a submission were useable, it was not the data that the Department had requested. CSN based its replacement costs on an inappropriate set of accounting records (the unaudited management cost system) when it had the appropriate set of records at its disposal (the financial cost accounting system tied to audited financial statements). In *NTN Bearing Corp. of America* v. *United States* (14 C.I.T. 623, 633; 747 F. Supp. 726, 736 (1990)), the Court of International Trade stated that

> it is the administering authority rather than an interested party that should make the determination as to what methodology should be used.

Third, CSN's COP/CV submission was unverifiable. For example, CSN acknowledged that it kept no record of the exchange rates at which cruzeiros had been converted into dollars, and conceded that converting millions of cost inputs back into cruzeiros for verification purposes was a physical impossibility. Because the Department could not trace back to the original cruzeiro amounts, it was unable to verify that the monthly total fabrication costs allocated to the products under investigation reconcile with the total amount of such costs reflected in the historical financial statements. Furthermore, CSN's management cost system is not based on standard costs, unlike the financial cost accounting system, which is based on standard costs plus variances and ties in to the audited financial statements. Therefore, costs generated by the management system could not be traced back to the audited financial statements, regardless of the currency in which they were denominated. For these and other reasons discussed in the Department's memorandum dated March 15, 1993, the Department properly determined that verification of CSN's submissions was inappropriate.

Comment 4: CSN suggests that, if the Department persists in its decision not to base its determinations on the information submitted by CSN, the Department should consider CSN to have been a cooperative respondent and apply any dumping margins calculated for USIMINAS to CSN as well.

Petitioners contend that CSN could have reported COP and CV information based on its financial cost accounting system if it had chosen to do so. Petitioners therefore suggest that CSN has not been a cooperative respondent and that the Department should apply first-tier BIA to CSN (see Comment 2 above).

Department's Position: We agree with petitioners. Although the Department repeatedly requested that CSN provide a COP/CV response based on the audited financial cost accounting system that CSN acknowledged keeping, CSN insisted that the Department use information based on its management cost system instead. Applying a cooperative BIA rate to CSN, therefore, is unwarranted and inappropriate because CSN declined to provide the Department with requested information that was available to it. By refusing to provide this information, which the Department required in the context of its hyperinflationary economy methodology, CSN significantly impeded the Department from proceeding with its investigations. Therefore, the Department is justified in applying non-cooperative respondent BIA to CSN. In these cases, the non-cooperative BIA rate for CSN is the highest of (1) the highest dumping margin in the petition for the relevant class or kind of merchandise; (2) the highest final dumping margin calculated for any respondent; or (3) the preliminary dumping margin calculated for the relevant class or kind of merchandise with respect to the respondent in question. With respect to corrosion-resistant steel, however, we did not use as BIA the dumping margin calculated in our preliminary determination, although it was higher than the margin in the petition. The Department has determined that, in our preliminary determination with respect to corrosion-resistant steel, the computer program failed to perform price-to-price comparisons, resorting instead to CV. Furthermore, the COP test in the program mistakenly compared dollar-denominated COP's to cruzeiro-denominated prices. Therefore, we have used as BIA for corrosion-resistant steel the highest dumping margin in the petition for that class or kind of merchandise.

Comment 5: USIMINAS argues that the Department's conduct of these investigations has been inconsistent with prior practice and has made it virtually impossible for USIMINAS to obtain a fair decision based on the merits.

With respect to sales, USIMINAS asserts that the Department initially provided the respondents with no guidance as to how to calculate diffmers in the context of a hyperinflationary economy, then later developed a new rule, which it revised shortly thereafter, limiting what merchandise could be compared in a hyperinflationary economy.

With respect to cost, USIMINAS complains that the Department failed to define its replacement cost methodology in a manner which provided adequate notice to respondents or to explain how to develop adequate COP/CV responses. USIMINAS also protests that the Department did not advise USIMINAS until verification that it should have based its costs on its normal standard-cost system rather than on the system that USIMINAS had developed.

USIMINAS also contends that the Department violated its regulations concerning submission of factual information by refusing to allow USIMINAS to clarify and correct certain factual information on the record. USIMINAS objects to the Department's refusal to accept a revised computer tape reflecting clerical errors found during the verification. Finally, USIMINAS claims that respondents from other countries, such as Japan, were given less stringent deadlines for the submission and correction of factual information.

Petitioners contend that the Department has the right, indeed the duty, to refine its hyperinflationary economy methodology over time in order to be as fair and accurate as possible in its calculations. They note that USIMINAS has failed to explain how, if at all, it has been disadvantaged by the Department's revised methodology. Petitioners also claim that USIMINAS glosses over the fact that it was involved in the decision-making process that resulted in the revised

VOL 58 ISS 130 JL 9 1993 UMI

methodology and provided numerous substantive comments in writing.

Department's Position: We disagree with USIMINAS' contention that the Department has treated it unfairly. As illustrated by the specific responses given below, the Department has conducted these investigations in conformity with the applicable statute and regulations, and has endeavored to provide USIMINAS with opportunities for both correction and comment where appropriate.

First, the Department disagrees that it gave USIMINAS insufficient and untimely guidance as to how to calculate diffmers. Beginning in September 1992, in connection not only with the instant investigations but also with the concurrent investigations involving certain special bar-quality engineered steel and lead and bismuth bar, the Department consulted several times, by telephone and in person, with USIMINAS' legal counsel and solicited their input concerning the Department's proposals to revise its hyperinflationary economy methodology. After the Department issued a revised hyperinflationary economy methodology (on October 23, 1992), counsel for USIMINAS requested a meeting with the Department, during which they voiced objections to the revised methodology. (See memorandum from Alain Letort to the file dated June 21, 1993). Counsel subsequently submitted comments in writing. Based in part on the comments submitted by counsel for USIMINAS, the Department further revised its methodology on November 13, 1992. The Department also granted USIMINAS an extension, until December 7, 1992, of the deadline for submitting responses to sections B, C, and D of the questionnaire, in order to allow USIMINAS time to take the Department's revised methodology into account.

We disagree with the allegation that the Department failed to define its replacement cost methodology adequately. The Department specified the methodology in its questionnaire and gave USIMINAS further guidance in its deficiency letters.

With regard to the comment that the Department waited until verification to advise USIMINAS that it should have based its replacement costs on its normal standard-cost system (rather than developing its own system), the Department instructed USIMINAS that "if [it] uses a standard cost system [it] must use this system in reporting replacement costs on an average monthly basis" (questionnaire dated October 16, 1992, at 8).

The Department also disagrees with the contention that it violated its regulations by not allowing USIMINAS to submit certain clarifications and corrections of factual information. The record shows that the Department allowed USIMINAS to submit numerous clarifications and corrections, even quite late in the investigation. Between December 7, 1992 and March 19, 1993, the Department allowed USIMINAS to make various cost-related submissions. In addition, on May 14, 1993, the Department accepted from USIMINAS a revised sales listing, which the Department had solicited a week earlier, reflecting minor clerical, programming, and methodological errors presented at the beginning of the verification. The Department, however, is not required to accept any and all clarifications and corrections of factual information submitted after the regulatory deadline for such submissions has passed.

USIMINAS' allegation that the Department imposed less stringent deadlines on Japanese respondents than on Brazilian respondents is not relevant, since the Department makes most deadline decisions in these investigations on a case-by-case basis. The real issue is whether the Department acted reasonably, and in conformity with its statute and regulations, in setting deadlines for the respondents in these cases. For the reasons stated above, the Department believes it has fulfilled its statutory obligations of fairness and reasonableness towards Brazilian respondents.

Comment 6: Petitioners allege that USIMINAS significantly understated its coal costs, as evidenced by the Department's cost verification report. According to petitioners, USIMINAS itself concedes that it understated coal costs by using forecast, rather than actual, replacement costs for both coal prices and all associated movement charges.

USIMINAS contends that the Department verified its reported coal costs, and that it must therefore use them, with only minor modifications. USIMINAS notes that it reported the value of coal based on the actual amount paid in foreign currency for the coal at the time that USIMINAS took possession of the coal.

Department's Position: We agree with petitioners. USIMINAS admits that its reported coal costs were not based on actual current costs. In its questionnaire response, USIMINAS reported projected coal costs based on its anticipated expenses as of the date at which USIMINAS takes title to the merchandise. USIMINAS' anticipated expenses included ocean freight, port charges, taxes, and all related movement charges required to transport the coal to USIMINAS' mill at Ipatinga. Since USIMINAS takes possession of the coal at the time the ship leaves the foreign port, movement expenses incurred in transporting the coal from the port to the Ipatinga mill generally were estimated during the month before they were actually incurred. Some freight expenses were paid at sight, while others were paid one month after they were actually incurred. USIMINAS' questionnaire response did substitute actual costs for the coal itself, but continued to use estimates for movement charges associated with coal costs. In addition, at verification, we discovered little correspondence between the type and value of expenses (such as certain taxes and port charges) for which USIMINAS had made estimates and the type and value of expenses which were actually incurred. As a result, USIMINAS failed, at verification, to persuade the Department that its reported expenses accurately represent its current monthly costs for coal.

Comment 7: Petitioners claim that USIMINAS understated its labor costs by not including accruals for holiday pay, bonuses, and the "thirteenth-month" salary, which are paid in other months. Petitioners strongly disagree with USIMINAS' assertion that adjustments for holiday pay, bonuses, and the thirteenth-month salary are not additional costs. These additional labor costs must be included in the total cost of labor because they are needed to fund the provisions to provide payment to employees at a later date.

USIMINAS argues that it reported all labor costs and associated fringe benefits attributable to the month of production, including accruals for holidays, bonuses, and thirteenth-month salaries. USIMINAS now claims that, because accruals in the month of production must be adjusted in subsequent months to maintain their value relative to inflation, the amount of this adjustment—and not unreported accruals—represents the difference between the submitted labor costs and the amount in their monthly financial statements.

Department's Position: We agree with petitioners. During verification, company officials admitted that they had not reported accruals as part of the fringe benefit costs reported in their labor cost response for the selected month (January). These costs were included in the annual audited financial statement. Accordingly, the COP/CV data did not reflect all costs incurred.

Comment 8: Petitioners claim that USIMINAS improperly revised its depreciation rates in July 1992 (the petitions were filed on June 30, 1992), thereby greatly reducing subsequent depreciation expenses.

USIMINAS counters that the depreciation amounts it reported are accurate. USIMINAS claims that this change in the depreciable lives of certain assets was based on an examination of the real useful lives of the relevant equipment and was endorsed both by USIMINAS management and the company's auditors. USIMINAS claims that the fact that this change occurred during the POI is irrelevant as long as it was proper under Brazilian GAAP and reflected the reality of the useful lives of the relevant equipment.

Department's Position: Changing the depreciable lives of an asset in the middle of these investigations substantially distorted the submitted COP/CV and diffmer data. Products manufactured early in the POI reflect significantly different depreciation costs than those produced in the latter part of the investigation. Furthermore, the revised remaining lives are much longer than the life commonly utilized for such assets in the steel industry worldwide (see memorandum dated June 9, 1992 from Richard Lutz to Marie Parker). This inconsistency is even greater when considering the number of years the revalued assets have already been in use.

Comment 9: Petitioners argue that USIMINAS should have included non-operating expenses in selling general and administrative expenses (SG&A).

USIMINAS contends that the antidumping law does not, and should not, require the inclusion of non-operating expenses in SG&A. USIMINAS notes it has demonstrated that the vast majority of its non-operating expenses result from accounting losses incurred from the sale of completely unrelated assets, *e.g.*, real estate.

Department's Position: Non-operating expenses represent costs which are ordinarily incurred in a company's business. The Department includes these expenses in revenues in G&A except when such expenses/revenues are not specifically related to other business activities of the company. The cost verification exhibit relating to non-operating income and expenses shows that the great majority of these expenses relate to provisions for losses on loans to the electric company ELETROBRÁS, not from sales of real estate. The Department verified that USIMINAS provided these loans to ELETROBRÁS as part of its electricity payments. Since energy costs are related to the production of subject merchandise, these expenses should have been included in G&A.

Comment 10: Petitioners argue that USIMINAS improperly aggregated its production costs based on certain product characteristics. In particular, the verification of USIMINAS' costs of production revealed that the company had not itemized the cost of extras. Instead, USIMINAS submitted production costs which included the average cost of extras. As a result, petitioners contend the Department was unable to verify the accuracy of claimed diffmer adjustments based on replacement costs.

USIMINAS retorts that it properly calculated diffmers as specified by the Department's questionnaire. USIMINAS' replacement costs are generated based on the average monthly costs associated with the first four digits of each 27-digit product code. This monthly average replacement cost was then multiplied by a variance factor to obtain the production cost specific to each 27-digit product. USIMINAS claims it is unable to report costs on a product-specific basis in any other way without reconstructing its cost accounting system from the ground up.

Department's Position: We agree with petitioners. USIMINAS' submitted costs did not appropriately specify the cost of individual extras, as requested by the Department. We verified that USIMINAS itemized extras separately on customer invoices and that each extra increased the gross price by a certain amount. Allocating the total cost of all extras over many products without regard to whether or not they underwent additional processing is inappropriate. USIMINAS should have itemized the cost of these extras in its cost submissions to enable the Department to calculate diffmers and make "apples-to-apples" comparisons. Insufficient information exists on the record to allow the Department to adjust for this error and calculate diffmers when extras are involved.

Furthermore, the fact that USIMINAS is able to itemize the price of extras individually at the invoice level suggests that USIMINAS has the ability to allocate the cost of extras to those products incurring extras.

Comment 11: Petitioners claim that the Department found at verification that USIMINAS had understated its pension costs. Although Brazilian generally accepted accounting principles (GAAP) only require that companies account for amounts contributed to a pension plan, petitioners contend that expenses incurred during the year but not paid until a later year should be recognized as accruals and reflected in USIMINAS' production costs.

USIMINAS argues it included all pension costs as recorded in its normal accounting records and as approved by its auditors consistent with Brazilian GAAP. USIMINAS acknowledges, however, that according to an independent actuary's report, these costs may not be sufficient to cover USIMINAS' ultimate liability. Should the Department deviate from its practice of requiring that all production costs be tied to audited financial statements, USIMINAS claims the Department could make any necessary adjustment to reported pension costs, based on the findings and the calculations contained in the independent actuary's report.

Department's Position: We agree with the independent actuary's report, which the Department examined at verification, that USIMINAS's pension-fund accruals fell short of the amounts required to meet its pension obligations. USIMINAS should have recorded this shortfall in its labor costs for 1992.

Comment 12: Petitioners state that USIMINAS should have included its compulsory long-term loans to ELETROBRÁS, the state-owned electric company, in its production costs. USIMINAS contends that it included all electricity costs in its reported production costs, and that the compulsory loans are recorded as loans in USIMINAS' financial statement, with interest on the loans recorded as interest revenue. If compulsory loans were expenses, USIMINAS argues, they would serve to reduce the company's overall tax liability.

Department's Position: The Department agrees with petitioners. Since USIMINAS' own financial statements reflected write-offs of these loans as non-operating expenses, USIMINAS should have included these costs in G&A (*see* answer to Comment 9).

Comment 13: Petitioners argue that USIMINAS' production costs for new products were understated through the use of standard, as opposed to actual, costs. USIMINAS claims that this concern is unwarranted.

Department's Position: The Department uses standard costs, when properly developed. As noted in the cost verification report, however, USIMINAS' methodology in developing standard costs for new products, using normalized slab costs (which include costs for both conventional and continuous slab processes) can cause an underallocation of costs to new

products using only the conventional slab process. USIMINAS' methodology for calculating standards for new products caused distortion in the allocation of costs. The standard costs for new products were therefore significantly different from the actual cost incurred for those products.

Comment 14: Petitioners state that USIMINAS improperly included certain alloy steels, which are not within the scope of these investigations, in both its sales listings and product concordances. As a result, certain carbon steel products, which are within the scope of these investigations, were improperly matched to certain alloy steel products. Because the Department lacks information to delete all alloy-grade steels from sales listings and product concordances, petitioners argue, it should reject USIMINAS' submissions and base its final determinations on BIA.

USIMINAS does not deny that certain alloy-grade steel products were included in the sales listings and product concordances. USIMINAS, however, argues that such inclusion had only a limited effect and involved only hot-rolled steel and steel plate. USIMINAS contends that the Department could easily eliminate alloy steels from these product concordances.

Department's Position: While the Department is able to identify and delete alloy products from U.S. sales, it is unable to do so on the home-market side because numerous grades of steel were sold in the home market, many of which were manufactured to proprietary specifications or foreign standards. Because insufficient information exists on the record with regard to these specifications and standards, the Department is unable to carry out the detailed analysis of the chemical composition of each product which would be required for us to separate alloy from carbon steel products. It is not the Department's responsibility to correct significant substantive errors in a respondent's submission; rather, it is the respondent's responsibility to provide the Department with a complete and accurate sales listing and product concordance. Furthermore, in order to correct these errors, the Department would have had to revise substantially USIMINAS' product concordances. While the Department has not based its BIA determination on this factor alone, it is one of the factors the Department took into account in determining that USIMINAS' submissions did not provide an adequate basis for these final determinations.

Comment 15: Petitioners state, based on the sales verification report, that USIMINAS improperly classified all sales of SAE-grade material, which accounts for a significant amount of the sales universe in both the U.S. and home markets, as high-strength (as opposed to low-strength). Petitioners note that these errors in reporting product characteristics reinforce the unreliability of USIMINAS' sales listings and product concordances.

USIMINAS takes issue with the Department's verification report with respect to the possible misclassification of SAE-grade material as high-strength or low-strength. In response to the Department's stated concern that the "mill certificate noted no minimum yield strength" (sales verification report at 11), USIMINAS notes that SAE norms do not specify a yield strength and that USIMINAS, therefore, does not carry out yield-strength tests on a regular basis. In order, therefore, for USIMINAS to include a yield-strength variable in the product description, as required by the Department, USIMINAS used the best information available to it at the time. In response to the Department's statement that SAE-grade material "does not have enough carbon to meet [the] minimum yield strength" (sales verification report at 11), USIMINAS claims that the classification of such materials was correct, based on a study carried out by the three major Brazilian integrated steel producers and on the classification of such products under the Harmonized Tariff Schedule (HTS). In addition, USIMINAS argues, the Department based its yield-strength assumptions solely on carbon content. USIMINAS claims that carbon content is not the only factor determining yield strength, and that it considered other factors, such as manganese content and rolling conditions (*i.e.*, rolling, finishing, and coiling temperatures). USIMINAS also asserts that, should the Department persist in its view that certain SAE-grade products are low-strength, the Department could easily re-code and re-match those products itself.

Department's Position: We agree with petitioners that USIMINAS improperly classified sales of SAE-grade material as high-strength steel for purposes of model matching. High-strength steels are produced with certain mechanical characteristics in mind. Therefore, companies producing high-strength steels make a conscious effort to carefully control the chemical characteristics and/or production process and perform the necessary tests in order to ensure that their products meet high-strength specifications. At verification, we ascertained that, when USIMINAS produced material in certain high-strength ASTM grades, mill test certificates showed that the product met high-strength specifications.

In the case of SAE material that USIMINAS classified as high-strength steel, however, respondent was unable to provide at verification any information specifically supporting this classification. Contrary to respondent's assertion, the Department did not base its position that SAE material was not high-strength solely on carbon content. Rather, the Department focused its analysis only on various non-rephosphorized low-carbon steels with a manganese content not exceeding 0.60 percent (SAE grades 10xx), in which the carbon content influences the strength characteristics of the steel. We found that there were no test results supporting the high-strength classification of these steels by USIMINAS. The Department acknowledges that material made solely to SAE grades may have no specific test requirements. However, low-carbon steels designated solely by SAE grade and without rolling and/or processing information to suggest improved mechanical properties will not possess the minimum yield strength of 35,000 psi required to classify them as high-strength.

USIMINAS claims that SAE grades should be classified as high-strength based on a study carried out by the three major Brazilian integrated firms. Department officials were unable to review a copy of that study at verification, and were shown only handwritten notes taken by a USIMINAS employee at a meeting where this study was discussed (these notes were attached to the cost verification as an exhibit). According to the USIMINAS employee's notes, however, the study provides insufficient information that the SAE products in question have a minimum yield strength of 35,000 psi. The study only acknowledges that low-carbon non-rephosphorized steels have a minimum yield strength equal to or less than 40,000 psi, which is consistent with the Department's determination.

Comment 16: USIMINAS claims that it first realized at verification that the Department and USIMINAS have different thickness thresholds for distinguishing hot-rolled sheet from plate. USIMINAS defines any cut-to-length plate below 5mm in thickness as hot-rolled sheet, while the Department places that threshold at less than 4.75mm. USIMINAS claims that none of its home-market sales of hot-rolled sheet thicker than 4.75mm was used as a product comparison in the hot-rolled product concordance table, and that the

re-coding of these products as plate did not affect the product concordance table.

Petitioners request that, should the Department decide to calculate dumping margins for USIMINAS' U.S. sales that are matched to identical home-market products, it must remove improperly reported plate products from the hot-rolled sales listing.

Department's Position: Although USIMINAS improperly classified as hot-rolled sheet numerous entries of cut-to-length plate equal to or greater than 4.75mm in thickness, what USIMINAS calls "thick sheets" but the Department considers to be thin plate (*i.e.*, cut-to-length hot-rolled sheet equal to or greater than 4.75mm in thickness) were not matched to any products sold in the United States. (USIMINAS had no U.S. sales of cut-to-length hot-rolled sheet.)

USIMINAS' explanation of the cutoff point discrepancy is, however, incomplete. At verification, the Department found that if the product was less than 72 inches in width, USIMINAS' cutoff point for classifying the product as hot-rolled sheet or plate was at five millimeters or more in thickness, but that if the product was 72 inches or greater in width, USIMINAS had placed the cutoff point between hot-rolled sheet and plate at six millimeters. The scope of these investigations defines cut-to-length plate as 4.75mm or more in thickness. This definition was reflected in our questionnaire.

USIMINAS is correct that the cutoff point discrepancy did not affect the product concordance with regard to hot-rolled steel. With regard to plate products, however, this error had a significant effect on FMV, CV, and diffmers. Because "thick sheets" should have been included in plate thickness band "A" (*i.e.*, less than 0.3125 in.), which was used in comparing home-market plate products to many U.S. plate products, the absence of these products in the plate database distorted weighted-average FMV calculations. This error also caused incorrect CV's to be calculated, since CV's are weight-averaged for each control number. Finally, this error caused incorrect diffmers to be calculated for plate falling within thickness band "A," since USIMINAS did not include its "thick sheets" in the appropriate control numbers within the plate concordance. A significant number of USIMINAS' U.S. plate sales fell within this thickness band and could have been matched to the missing "thick sheets"

Other Comments

Petitioners and USIMINAS made a number of other comments relating to the calculation of less-than-fair-value margins, cost of production, constructed value, and the Department's hyperinflationary economy methodology, in particular the production-in-the-month requirement for diffmer adjustments. Because the Department has determined, for the reasons given above, to base its final determinations on BIA, these comments need not be addressed in the context of this notice.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after February 4, 1993, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The estimated weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Certain Hot-Rolled Carbon Steel Flat Products:	
CSN	87.00
COSIPA	87.00
USIMINAS	40.44
All Others	71.48
Certain Cold-Rolled Carbon Steel Flat Products:	
CSN	58.00
COSIPA	58.00
USIMINAS	35.76
All Others	70.59
Certain Corrosion-Resistant Carbon Steel Flat Products:	
CSN	43.00
All Others	43.00
Certain Cut-to-Length Carbon Steel Plate:	
COSIPA	109.00
USIMINAS	42.08
All Others	75.54

The products under investigation are also subject to concurrent countervailing duty investigations. Article VI¶5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. As part of its final affirmative determinations in the concurrent countervailing duty investigations involving sales in the United States of certain steel products from Brazil, the Department has determined that the products under investigation benefitted from an export subsidy program. Because this program terminated in 1991, however, the duty deposit rate for this program is zero. Accordingly, no adjustment to the dumping duty deposit rates is required.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15614 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–820, A–122–821, A–122–822, and A–122–823]

Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (Cold Metal Products); Jane Siegel (Dofasco); Elizabeth Patience or Jim Doyle (IPSCO); Jonathan Freilich (Sidbec-Dosco); Robin Gray, Eric Hassman or Daniel Miller (Stelco); Jackie Johnson (All Others); or Jean Kemp; Office of Agreements

VOL 58 ISS 130 JL 9 1993 UMI

Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3793.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination (58 FR 7085 (February 4, 1993)), and our notice of postponement of final determination (58 FR 12220 (March 3, 1993)), the following events have occurred:

On March 18, 1993, we issued our amended preliminary determination of cold-rolled flat rolled products from Canada (58 FR 14557).

Cost of production (COP) investigations were initiated on February 8, 1993. Questionnaires were issued February 9, 1993, and responses thereto were received on March 11, 1993, from Cold Metal Products, Ltd. (CMP); and on March 18, 1993, from Dofasco, Inc. (Dofasco); IPSCO, Inc. (IPSCO); Sidbec-Dosco, Inc. (Sidbec); and Stelco, Inc. (Stelco). Supplemental information was received from CMP on March 18, 1993; from Dofasco on April 2, 1993; from IPSCO on April 12, 1993; from Sidbec on April 12 and April 27, 1993; and from Stelco on April 5, 1993.

Verification of respondents' responses to the Department of Commerce's (the Department's) questionnaires regarding sales information took place in Canada and the United States during March and April 1993. Verification of respondents' responses to the Department's questionnaires regarding cost of production information took place in Canada and the United States during April 1993.

By letters of February 12, 1993, we received requests for a public hearing from counsel for respondents, CMP and Sidbec. Also, we received requests on February 16, 1993, February 23, 1993, and March 1, 1993, from counsel for Stelco, IPSCO, and Dofasco, respectively, expressing their desire to participate in the hearing. We received a request for a public hearing on February 12, 1993, from counsel for the petitioners, Armco Steel Company, L.P.; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company Inc.; National Steel Corporation; U.S. Steel Group—A unit of USX Corporation; and the United Steelworkers of America (AFL–CIO/CFL). Case briefs for respondents, petitioners, and Algoma, Inc. (Algoma), an interested party, were filed on May 18, 1993. Respondents and petitioners filed rebuttal briefs on May 21, 1993. A public hearing was held on May 25, 1993.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation (POI)

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations also constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in Room B–099 of the main building of the Department of Commerce. Dofasco, IPSCO, Sidbec, and Stelco sold secondary merchandise in the United States and/or Canada during the period of investigation. For a discussion of our treatment of these sales, see the section on "Secondary Material" in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice. For Dofasco, due to the large number of sales of secondary products into the U.S. market, we have included this merchandise in our calculation based on a product concordance previously submitted by respondent. For IPSCO, we excluded sales of secondary merchandise from our margin analysis, because these sales were insignificant. For Stelco, we excluded sales of secondary merchandise from both the arm's-length test and our margin analysis, because these sales were insignificant.

Fair Value Comparisons

To determine whether sales of certain hot-rolled steel, certain cold-rolled steel, certain corrosion-resistant steel, and certain steel plate from Canada to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Section 776(c) of the Act, requires the Department to use the best information available (BIA) "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

In deciding what to use as best information available, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine, case-by-case, what is the best information available (BIA). Partial BIA is applied in cases where we are unable to use some portion of a response in calculating a dumping margin.

Because Sidbec substantially cooperated with our requests for information, but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of: (a) The highest calculated rate found for any firm for the same class or kind of merchandise in the LTFV investigations, or (b) the average petition rate for the same class or kind of merchandise. Therefore, Sidbec's rate is 48.29, the highest calculated rate found for any firm for the same class or kind of merchandise in these investigations.

Because Stelco refused to cooperate with the Department or significantly impeded the steel plate proceedings by not responding to the section D questionnaire response, as BIA, we have assigned a margin to Stelco the highest margin for the relevant class or kind of merchandise from among: (a) The margins in the petition, (b) the highest calculated margin of any respondent within Canada that supplied adequate and verified response for this class or

kind or merchandise, or (c) the estimated margin found for Stelco in the preliminary determination. Therefore, Stelco's margin for steel plate is 68.70 percent, the highest margin in the petition on steel plate from Canada, as amended July 14, 1992.

Because a Stelco related party, Continuous Colour Coat, Ltd. (CCC), failed verification, we applied partial BIA for Stelco's U.S. sales of cold-rolled and corrosion-resistant steel which were sold by CCC and all of Stelco's U.S. sales which were matched to products sold in the home market by CCC. Because Stelco also omitted certain information on U.S. sales of corrosion-resistant steel from its corrected data tape submitted May 11, 1993, for that portion we are applying partial BIA. As partial BIA for these Stelco sales we applied the highest non-aberrant transaction margin, which was 106.98 percent for cold-rolled steel, and 129.91 percent for corrosion-resistant steel. In the preliminary determination, we applied BIA for any Stelco U.S. sales matched to similar merchandise due to insufficient difference-in-merchandise (difmer) information. However, we accepted Stelco's March 19, 1993, submission of difmer information and for our final analysis, we did not use BIA for these sales for insufficient difmer information.

We determined partial BIA is appropriate for certain of CMP, U.S. sales of cold-rolled steel: For certain U.S. sales, CMP, had unreported amounts for foreign inland freight. As partial BIA, we used CMP's highest foreign inland freight charge reported for U.S. sales. In addition, no further manufacturing cost information was provided for a partial U.S. product number. Therefore, as partial BIA, we applied for all U.S. sales of this product the higher of: (a) Highest non-aberrant transaction margin calculated for that firm from among the sales of the same class or kind or merchandise where we were able to calculate a margin, or (b) the average petition rate for the same class or kind of merchandise. As partial BIA for CMP's cold-rolled steel, we applied the highest non-aberrant transaction margin, which was 56.65 percent. Because CMP's further manufactured sales data was not submitted in time to be evaluated for the preliminary determination, we applied partial BIA. For this final determination, we are using CMP's submitted and verified further manufacturing data.

For Dofasco, we applied partial BIA for certain sales of hot-rolled steel because Dofasco's response did not contain the appropriate constructed value data, and for certain U.S. sales of cold-rolled and corrosion-resistant steel because there was no home market match for certain U.S. sales and Dofasco did not provide constructed value data for those products. Therefore, as partial BIA, we applied to these U.S. sales the higher of: (a) Highest non-aberrant transaction margin calculated for that firm from among the sales of the same class or kind or merchandise where we were able to calculate a margin, or (b) the average petition rate for the same class or kind of merchandise. As partial BIA for these Dofasco sales we applied the highest non-aberrant transaction margin, which was 133.12 percent for cold-rolled steel, 376.96 for hot-rolled steel, and 82.51 percent for corrosion-resistant steel.

We determined partial BIA is appropriate for certain of IPSCO's U.S. sales of hot-rolled steel: Seven products did not have actual period further manufacturing costs; and IPSCO failed to report certain U.S. sales. As partial BIA for IPSCO's hot-rolled steel, we applied the higher of: (a) Highest non-aberrant transaction margin calculated for that firm from among the sales of the same class or kind or merchandise for which we were able to calculate a margin, or (b) the average petition rate for the same class or kind of merchandise. As partial BIA for IPSCO's hot-rolled steel, we applied the highest non-aberrant transaction margin, which was 55.38 percent.

Dofasco, Sidbec, and Stelco reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include home market sales to related parties in our calculations of FMV is discussed in Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice. Because we are applying total cooperative BIA for Sidbec (see "Best Information Available" section, above), we did not conduct the arm's-length test for that company. We recalculated certain costs for hot-rolled steel noted in the "Cost of Production" section of this notice.

With regard to tax, petitioners state in their case briefs that the Department should correct the preliminary determinations' treatment of Canadian Goods and Services Tax (GST) by conforming treatment of this tax to the recent decision of the United States Court of Appeals for the Federal Circuit in *Zenith Electronics* v. *United States*, No. 92–1043, slip. op. Rader, C.J. (March 19, 1993) (*Zenith*). Petitioners contend that as a result of *Zenith*, the Department cannot grant a circumstance-of-sale adjustment to FMV to account for GST and that the Department must limit the adjustment to an increase of USP to compensate for a home market tax forgiven on export. Petitioners also urge that the Department apply the rate of the tax, not an absolute amount, for the U.S. sale adjustment, and that, if the Department decides to apply the home market tax rate, it should be applied to the USP net of rebates, U.S. movement charges, duty, and brokerage, as required by 19 U.S.C. section 1677 a(d)(1)(C). Margins would thus be calculated by dividing the aggregated absolute margins by the aggregated USP net of the hypothetical tax.

Dofasco, IPSCO, and Stelco also agree that the CAFC's *Zenith* decision applies but argue that the statute requires that the amount of the tax incurred on the home market comparison merchandise, not the rate, should be applied to USP These respondents also agree that calculating the amount of the adjustment to USP by applying the rate versus the absolute amount would violate Article VI(4) of the General Agreement on Tariffs and Trade (GATT) which does not allow imports to be subjected to dumping duties by reason of the refund (or exemption) of duties or taxes." CMP Ltd. and Stelco state that any changes in the tax methodology must correspond to the Department's statutory and regulatory obligations. CMP agrees with the Department's methodology used in the preliminary determination to account for GST.

Our treatment of tax for these final determinations is discussed in Appendix II, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination, with the following exceptions:

A. CMP

We recalculated CMP's claimed adjustment for inventory carrying costs. We reclassified CMP's claimed adjustment for quality control costs from a direct expense to cost of manufacturing. See Comment 6. We reclassified technical service expenses from direct to indirect expenses. See Comment 5. We added the absolute amount of Canadian Goods and Services Tax (GST) incurred on the home market comparison product to USP. See "Fair Value Comparison" section, above and Appendix II, Final Determination of

Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

In addition, where appropriate, we made further deductions for all value added to cold-rolled steel in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the cost of materials, fabrication, and general expenses associated with the production of the further manufactured cold-rolled steel in the United States, and a proportional amount of profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price of the cold-rolled steel. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added was deducted.

In determining the costs incurred to produce the further manufactured cold-rolled sheet, the Department included (1) the cost of manufacture, (2) movement and packing expenses, and (3) selling, general, and administrative expenses (SG&A), and interest expenses.

B. Dofasco

We reclassified Dofasco's claimed adjustment for a customer-specific rebate to a direct selling expense. See Comment 21. We also reclassified Dofasco's claimed adjustment for technical services from a direct to an indirect selling expense. We used Dofasco's indirect selling expenses, as verified, to offset U.S. sales commissions. See Comment 23. We used Dofasco's warranty expenses as a circumstance-of-sale adjustment. We did not recalculate credit, as we did for the preliminary determinations, but used respondent's verified credit expense as reported. We added the absolute amount of Canadian GST incurred on the home market comparison product to USP. See "Fair Value Comparison" section, above and Appendix II, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

C. IPSCO

As a result of verification of cost of production and further manufacturing information, we have adjusted certain of the costs used in the calculation of further manufacturing for hot-rolled steel. In addition to the cost recalculations noted in the "Cost of Production" section of this notice, we recalculated IPSCO Steel, Inc.'s (ISI's), and Paper Cal Steel Company's (Paper Cal's) reported further manufacturing G & A expense, as a percentage of cost of sales. We used the G & A expenses and cost of sales of IPSCO Enterprises, Inc. (IEI), the parent company of Paper Cal and ISI, which it reported on December 31, 1992. Also, we based threading and coupling adjustments on these further manufacturing costs, as adjusted.

We recalculated credit expenses to exclude discounts. See Comment 34.

We added the absolute amount of Canadian GST incurred on the home market comparison product to USP. See "Fair Value Comparison" section, above and Appendix II, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

D. Sidbec

We applied total cooperative BIA for Sidbec. See Comments 48 through 51 and the "Best Information Available" section above.

E. Stelco

We disallowed the claimed adjustments for royalties and determined that they were costs of production. See Comment 62. We also disallowed commission payments as adjustments to price and determined that they were costs of production. See Comment 63. In addition, we treated Stelco U.S.A.'s warehousing expenses as direct selling expenses instead of indirect selling expenses as reported. See Comment 64. We also adjusted the warehousing expenses to reflect corrections found at verification. See Comment 64.

We added the absolute amount of Canadian GST incurred on the home market comparison product to USP. See "Fair Value Comparison" section, above and Appendix II, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice. See Comment 60.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination, with the following exceptions:

A. CMP

We recalculated CMP's claimed adjustment for inventory carrying costs. See Comment 16. We reclassified CMP's claimed adjustment for quality control costs from a direct expense to cost of manufacturing. See Comment 6. We reclassified technical service expenses from direct to indirect expenses. See Comment 15.

B. Dofasco

We reclassified Dofasco's claimed adjustment for a customer-specific "rebate" as a direct selling expense. See Comment 21. We also reclassified Dofasco's claimed adjustment for technical services from a direct to an indirect selling expense. We used Dofasco's indirect selling expenses, as verified, to offset U.S. sales commissions. See Comment 23. We made a circumstance-of-sale adjustment for Dofasco's warranty expenses.

C. IPSCO

For both hot-rolled steel and steel plate, we recalculated credit expenses to exclude discounts.

D. Sidbec

We applied total cooperative BIA for Sidbec. See Comments 48 through 51 and "Best Information Available" section, above.

E. Stelco

We disallowed the claimed adjustments for royalties and determined that it was a cost of production. We also disallowed the adjustment for pre-sale freight and commissions. See Comments 61 through 63.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, the Department initiated investigations to determine whether CMP, Dofasco (for hot-rolled steel only), IPSCO, Sidbec, and Stelco had home market sales that were made at less than their cost of production (COP). Because we are applying total cooperative BIA for Sidbec (see "Best Information Available" section, above,) we did not conduct an analysis of whether Sidbec had home market sales at less than COP.

If over 90 percent of respondents' sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondents' below-cost sales were not made in substantial quantities. If between 10 and 90 percent of a respondent's sales were at prices above the COP, and such sales were made over an extended period of time, we disregarded only the below-cost sales.

In order to establish that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI

and there were sales below the COP for two or more months, then the below cost sales were considered to have been over an extended period of time.

Where we found that more than 90 percent of the respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of the respondents' cost of materials, fabrication, general expenses, and packing.

For each respondent, we relied upon their submitted COP data, except in the following instances where the costs were not appropriately quantified or valued:

CMP

1. We recalculated G & A expenses for CMP's Canadian and U.S. facility based on the annual financial statements for the year ended March 31, 1992.
2. We utilized the highest non-aberrant margin as BIA for one product without submitted further manufacturing costs. See "Best Information Available" section, above.
3. We reallocated scrap revenue based upon cost of sales instead of gross sales value.
4. We reclassified quality control expenses from selling expenses to cost of manufacturing.

Dofasco

1. We disallowed as an offset to interest expense interest income which was not short-term in nature.
2. We included early retirement and restructuring costs, net of certain provisions and a gain on the sale of a related supplier.
3. We rejected the reported cost of production of three related suppliers and instead used transfer prices in valuing the inputs. For the related supplier which was more than 50 percent owned, we used the actual costs in calculating COP and the transfer prices in calculating CV pursuant to section 773(e) (2) and (3) of the Act. We computed the transfer prices based on the best information available.

IPSCO

1. We recalculated COP taking into account the effects of the beginning and ending inventory values.
2. We recalculated interest expense without offsetting interest expense by foreign exchange gains.
3. We recalculated G & A expense using the total G & A expense of IPSCO, Inc.
4. We recalculated G & A expense as a percentage of cost of sales.
5. We recalculated a percentage cost of sales to include year-end accruals for pension, profit sharing, layoff, and management incentives.

These recalculations affected the COP, CV, and foreign manufacturing portion of the further manufacturing data.

Stelco

1. We included the expenses of the "Rockefeller Amendment" in current COP and calculated the expense as a percentage of the cost of sales of Hilton Works and Lake Erie Works. We allocated the percentage to the COM of the products under investigation.
2. We included the full amount of the reactivation of Stelco's #6 battery coke oven at Hilton Works in current COP, consistent with the financial statements.
3. We calculated interest as a percentage of cost of goods sold by adding the amount of capitalized foreign exchange losses relating to the translation of long-term debt in 1992 to financial expenses. We adjusted reported financial expenses by calculating them as a percentage of cost of goods sold and applying that percentage to the COM.
4. We have not included commission or pre-sale freight in the cost of manufacturing because there was no evidence which indicates it was excluded from COM. Furthermore, the impact on COM is de minimis.
5. We revised the cost of a related supplier's input by adding interest expense, royalties, and commissions and then adjusted reported corrosion-resistant steel fixed and variable overhead based on a proportionate amount of Z-line cost to total galvanized cost.
6. We adjusted reported G & A by calculating it as a percentage of cost of goods sold and applying this percentage to the COM.

In accordance with section 773(e)(1)(b) of the Act, we included in CV the greater of a company's reported general expenses, adjusted as detailed above, or the statutory minimum of 10 percent of cost of manufacture (COM). For profit, we used the statutory minimum of eight percent of the total of COM and general expenses because actual profit on home market sales was less than eight percent. See section 773(e)(b)(ii) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Algoma, Inc.

Comment 1: Algoma, Inc., argues that the calculation of the "all others" rate should be based on information that represents actual pricing practices of the Canadian steel plate industry. It also claims that the Department drew an improper adverse inference because Algoma failed to file a voluntary questionnaire response.

Petitioners state that the calculation of the "all others" rate in the preliminary determination for steel plate based on Stelco's BIA rate was consistent with established practice. Because Algoma failed to file a voluntary questionnaire response, petitioners argue that it cannot now object to Stelco's BIA rate being used for cash deposit requirement for "all other" producers and exporters of steel plate.

Department's Position: We agree with petitioners. In the absence of other margins above *de minimis* for steel plate from which to calculate a weighted-average, it was consistent with established practice and appropriate to use Stelco's BIA rate under section 776(c) of the Act. (See, Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 7066, 7070 (February 4, 1993); Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705, 53708 (November 12, 1992).) As required by 19 CFR 353.42(b)(1), the Department investigated producers of the subject merchandise and calculated its estimated antidumping margins based on at least 60 percent of sales of the subject merchandise during the POI. Petitioners also used information about alleged sales at less than fair value by Algoma in their steel plate petition. In August 1992, Algoma voluntarily asked to receive and the Department presented an antidumping duty questionnaire; however, in September 1992, Algoma withdrew its request for voluntary respondent status in a timely fashion.

For the final determination, however, the "all others" rate will be a weighted-

VOL 58 ISS 130 JL 9 1993 UMI

average of Stelco's BIA rate for steel plate and IPSCO's calculated rate, because IPSCO's calculated rate is now above *de minimis*.

Cold Metal Products (CMP)

Comment 2: The respondent states the Department verified the overall accuracy of CMP, Ltd.'s submitted costs, noting only a minor clerical error in one of CMP Ltd.'s numerous cost centers which actually increased CMP Ltd.'s reported costs. The Department should accept CMP Ltd.'s submitted data.

Department's Position: We agree with respondent. The errors found at verification were minor and clerical in nature. We found no evidence of systematic understatement of these charges. Consequently, we have used the amounts reported by CMP Ltd. for purposes of the final determination.

Comment 3: The respondent notes that the preliminary determination indicated that the reported sales data for CMP Ltd.'s further manufactured sales would be used for the final determination, subject to verification and comment. Because the verification reports established the accuracy of the reporting of the sales, this data should be used.

Department's Position: We agree. Because the Department verified the respondent's further manufactured sales data, we will use this information submitted on October 28, 1992 and January 22, 1993 to calculate the margin for the final determination.

Comment 4: The respondent notes that in the U.S. sales file, CMP, Ltd. reported foreign inland freight in Canadian currency. Therefore, the respondent asserts that for the final determination, in calculating U.S. price, the Department should convert foreign inland freight to U.S. dollars.

Department's Position: We agree. For the final determination, the Department will convert all foreign inland freight expenses to U.S. dollars when calculating U.S. price.

Comment 5: The respondent notes that in the home market sales file, CMP Ltd. reported all indirect selling expenses in Canadian currency, but that, for its preliminary determination, the Department believed that the indirect selling expenses were reported in U.S. dollars. Therefore, the respondent asserts that for the final determination, in calculating home market price, the Department should not convert indirect selling expenses.

Petitioners state that respondent's contention is incorrect because, although the Department's Concurrence Memorandum for the preliminary determination indicated that a portion of such selling expenses were reported in U.S. currency, the computer program used to generate the dumping margins in the preliminary determination was correctly formatted. Therefore, petitioners state no error was made.

Department's Position: We agree with petitioners. In the Department's Concurrence Memorandum for the preliminary determination, we inadvertently stated that home market indirect selling expenses were denominated in both Canadian and U.S. dollars. However, in the computer program the Department used to calculate the preliminary margin home market indirect selling expenses were treated as they were reported: as denominated in Canadian currency only. Therefore, no correction is necessary for the final determination.

Comment 6: The respondent states that CMP Ltd. reported its quality control expenses as direct selling expenses; however, for the preliminary determination, the Department treated the expense as an indirect selling expense. The respondent claims that the Department verified that CMP Ltd.'s quality control expenses are directly related to sales. That is, depending on the number of times a particular product goes through its quality control lab (pursuant to the customer's specifications), the quality control expenses differ. Therefore, respondent states that in accordance with 19 C.F.R. 353.56, quality control expenses should be treated by the Department as direct expenses.

Petitioners note that quality control expenses incurred at a respondent's plant are costs of manufacturing, not selling expenses. Petitioners state that CMP Ltd. admits that a large percent of the claimed adjustment is a manufacturing cost, not any form of selling expense, and so should be denied.

Petitioners also note, that the questionnaire at B–9, states that circumstance-of-sale adjustments, including direct selling expenses, "must bear a direct relationship to the sales under consideration. Fixed expenses, are not regarded as directly related expenses." Petitioners state CMP Ltd. did not relate the selling expense portion of its quality control costs to either market or to individual sales. Petitioners state that a large percentage of CMP Ltd.'s quality control costs were composed of salaries. Therefore, petitioners state that CMP Ltd. has not substantiated its claim regarding direct selling expenses.

Department's Position: We agree with petitioners. The Department agrees that the inspection of products produced at any factory is an integral part of the manufacturing process, and that therefore, the quality control expenses are a cost of manufacturing and should be included in the cost of production.

The Department did verify that all products pass through CMP Ltd.'s quality control lab for inspection. However, the quality control expenses are a manufacturing overhead expense that would have been incurred by CMP Ltd. whether or not any particular sale was made. In addition, the quality control expenses do not relate to any particular sale. Therefore, for purposes of calculating a margin for the final determination, we will disallow CMP Ltd.'s claimed selling expense adjustment for quality control expenses and we will add the quality control expenses to the cost of manufacturing.

Comment 7: The respondent states that the short-term interest rate changed on April 1, 1992. They argue that for purposes of calculating credit expenses for further manufacturing sales, the Department should apply the appropriate rates before and after that date.

Department's Position: We agree with respondents. Although respondent did not report a revised short-term interest rate in its questionnaire responses, at verification the Department verified CMP Inc.'s interest statements which indicate a reduction in its interest rate starting on April 1, 1992. Therefore, the Department will use the revised rate for the April 1, 1992 through June 30, 1992 period when calculating credit expense for the further manufactured sales for the final determination. The Department will continue to use the reported and verified short-term interest rate for the January 1, 1992 through March 31, 1992 period when calculating credit expense for the further manufactured sales for the final determination.

Comment 8: The respondent states that the Department's description of CMP Inc.'s date of sale in the May 11, 1993 verification report was not accurate. The sales verification report states that when there was a change in quantity for a particular sale, CMP Inc. sent a new order acknowledgment but kept the originally reported date as the date of sale. The respondent states that when CMP Inc.'s customers make changes to the requested quantity, CMP Inc. does not usually send out a new order acknowledgment with a new purchase order date. CMP Inc. changes the original order acknowledgment to include the new purchase order date and to conform to any requested quantity changes in its internal system only, as these changes in quantity are usually minor and infrequent.

Respondent argues that this system did not affect the completeness of the reporting of the further manufactured sales.

Department's Position: We agree with respondent that the manner in which CMP Inc. derived and reported its further manufacturing sales did not affect the date of sale or the completeness of its reporting. However, the Department verified that when there was a minor adjustment to quantity for a particular sale, CMP Inc. sent a new order acknowledgment, but kept the originally-reported date as the date of sale. This is reflected in the sales verification report.

Comment 9: Petitioners claim the Department should adjust general and administrative expenses reported by CMP Ltd. to reflect the use of annual financial information.

Respondent disagrees because the annual data only applies to three months of the POI.

Department's Position: We agree with petitioners. The audited financial statements for the year ended March 31, 1992 represent the only annual information available for G&A expense. The Department computes G&A expenses from annual audited financial statements because of the periodic nature of these costs.

We recalculated G&A expense based on the financial statements for CMP Ltd. for the year ended March 31, 1992.

Comment 10: Petitioners state that before computing U.S. price, the Department must weight average by product all U.S. further manufacturing costs reported by CMP Ltd. on an invoice specific basis.

Respondent contends that it reported U.S. further manufacturing costs in accordance with the Department's questionnaire.

Department's Position: We agree with the respondent. The respondent reported U.S. further manufacturing costs on a sales specific basis in accordance with the Department's questionnaire. In addition, we disagree with petitioners since the selling adjustments for further manufacturing are made on a sale specific basis.

Comment 11: Petitioners assert CMP Ltd.'s further manufactured U.S. sales, interest, general and administrative expenses should be adjusted to reflect the use of annual consolidated financial information.

Respondent states the use of the actual six month period is likely to be closer in accuracy to actual costs than any other period, even when based on audited statements, which covers only one-half of the period of investigation.

Department's Position: The Department agrees with petitioners. We calculated interest expense for further manufacturing based upon the consolidated financial statements for the year ended March 31, 1992 consistent with the Department's long standing policy. The Department based G&A expenses on an annual basis for the reasons enumerated in the Comment 8 above.

Comment 12: Petitioners maintain that the Department should apply BIA to one further manufactured product for which CMP Ltd. neglected to report cost information.

Respondent states the missing product's costs were inadvertently omitted.

Department's Position: The Department requested further manufacturing cost information for all U.S. sales. As no cost information was provided for a particular CONNUMU, the Department used best information available for purposes of the final determination. Since this reporting failure effects all sales of a particular CONNUMU, the Department used as BIA the higher of: (a) The highest non-aberrant transaction margin calculated for that firm from among the sales of the same class or kind of merchandise where we were able to calculate a margin, or (b) the average petition rate for the same class or kind of merchandise.

Comment 13: Petitioners assert the Department should not allocate scrap revenue to the cost of manufacturing based on gross sales value because revenues are better matched with relevant expenses.

Respondent believes that an allocation based on sales value is reasonable and appropriate in the circumstances because the scrap produced is directly, though not uniformly, proportional to the amount of processing performed to the product. This in turn, is directly proportional, though not uniformly, to the product's sales price.

Department's Position: We agree with petitioners. Sales price is not an appropriate methodology for allocating scrap revenues as the sales values may be determined based on market conditions and not solely on production costs. We have reallocated scrap revenue using cost of sales, as an allocation basis.

Comment 14: Petitioners argue that the Department should reject CMP Ltd.'s attempt to report certain further manufacturing costs for an eight month period, since factual information previously submitted contradicts the assumptions underlying this methodology.

Respondent states production costs for the POI sales occurred through August 1992 which makes this the most accurate method of reporting.

Department's Position: We agree with respondent. The methodology utilized by the respondent correctly matches sales with the related cost of production of the subject merchandise. We disagree with petitioners' assumption that the order and shipment dates must be within several days since the shipment dates for further manufactured sales indicate otherwise.

Comment 15: Petitioners argue that CMP Ltd.'s circumstance-of-sale claim for technical service expenses should be rejected in favor of partial BIA because CMP has not directly tied such expenses to sales of the subject merchandise or allocated the costs separately for U.S. and home market sales. As BIA, petitioners argue that the Department should treat all such expenses as direct selling expenses in the U.S. market.

CMP Ltd. states that it reported their technical services expenses "in the only manner that CMP Ltd.'s accounting records allowed" and that because their books do not permit reporting of these costs on an individual basis, the Department should allow the claim because it is based on a reasonable allocation of the costs involved. CMP Ltd. notes the Department's verification report confirms that the employees perform service calls in both the home market and in the U.S. market. Furthermore, CMP Ltd. argues the Department's report confirms both that CMP Ltd.'s records are not separated by market and that the time and effort involved to separate them would be unreasonable, given the relative size of the adjustment.

Department's Position: Because CMP Ltd. produces and sells only merchandise subject to this investigation, any technical service expenses are related to such merchandise. However, because CMP Ltd. could not directly relate the technical service expenses in their respective markets to individual sales and the Department verified that CMP Ltd. reported its technical services expenses in the only manner possible, the Department determines that it will instead treat the expense as an indirect expense on a per pound basis.

Petitioners correctly cite the Department's questionnaire which requires that direct selling expenses be directly related to individual sales. However, in this case the use of BIA is not a reasonable alternative because the Department verified that CMP Ltd.

reported these expenses in the only way they could. (*see e.g., Olympic Adhesives Inc.* v. *United States*, 899 F.2d 1565, 1574 (Fed. Cir. 1990)).

Comment 16: Petitioners claim that CMP has misreported its rate for inventory carrying costs by including property taxes and general insurance in addition to the costs associated with the financing of inventory. These costs should be considered either fixed overhead or corporate and administrative costs. Furthermore, petitioners claim that in cases involving exporter's sale price (ESP) transactions, the Department includes only the costs of financing inventory in the calculation of indirect selling expenses. The petitioners also argue that CMP utilized the wrong calculation formula by multiplying this total cost by two (to annualize the figure) and then dividing this product by the average monthly inventory during the POI, rather than dividing the number of days the goods remain in inventory by 365 and multiplying the quotient by the short term interest rate and the unit cost.

CMP Ltd. claims they have properly reported inventory carrying costs. To support their claim, CMP Ltd. states that the property taxes and insurance expenses related to those facilities that store the subject merchandise were specifically identified. Moreover, CMP Ltd. argues that the calculation methodology suggested by petitioners is less accurate because it uses average, instead of actual, days in inventory figure.

Department's Position: The Department agrees with the petitioners in that it is the Department's practice to treat property taxes and insurance as part of either fixed overhead or general administrative expenses because the expenses relate to the company's operations as a whole rather than to specific products.

We also agree with petitioners' characterization of the calculation of inventory carrying costs. The petitioners correctly state the Department's practice of computing inventory carrying costs by multiplying the quotient of the average number of days in inventory and 365 by the interest rate associated with carrying the inventory and the unit cost. CMP Ltd. provided the average days in inventory in a questionnaire response. However, during the verification the Department confirmed the actual number of days the goods remained in inventory for 7 sales selected for verification. Notwithstanding CMP Ltd.'s statement, the Department is unable to compute actual inventory time for all sales under investigation. Therefore, the Department adjusted CMP Ltd.'s average time in inventory accordingly. The interest rate associated with the inventory was likewise verified by the Department. The Department has recalculated CMP Ltd.'s inventory carrying cost by multiplying the quotient of the short term interest rate associated with carrying the inventory and 365 by the verified average number of days the goods remained in inventory and the quotient of the cost of goods sold and the total volume of steel sold during the period of investigation.

Comment 17: Petitioners argue that the Department should use BIA for certain unreported amounts of foreign and U.S. inland freight. Petitioners state that for certain sales, the respondent failed to report foreign inland freight. Therefore, petitioners state that, for unreported foreign inland freight, as BIA the Department should apply the highest per unit foreign inland freight amount reported on sales to the same destination.

In addition, petitioners state that for certain further manufactured sales, the respondent failed to report U.S. inland freight. Therefore, petitioners state that, for the unreported U.S. inland freight, as BIA the Department should apply the highest per unit U.S. inland freight amount reported on sales to the same destination.

The respondent states CMP Ltd. had to manually analyze these movement charges for every sale. Citing CMP Ltd.'s sales verification report, the respondent notes it reported its freight expenses accurately and the Department has verified freight, duty and brokerage costs for both purchase price and exporters sales price sales and noted no discrepancies.

The respondent also states that the adjustment for U.S. inland freight is reported correctly.

Department's Position: We agree with the petitioners in part. At verification, we examined certain purchase price sales and determined that they all contained accurate values in the designated field for foreign inland freight. However, after examining the entire data base we have concluded that petitioners are correct in stating that certain purchase price sales have unreported values for foreign inland freight charges. Therefore, for those U.S. sales where CMP Ltd. did not report foreign inland freight, the Department will use the highest foreign inland freight charge reported for U.S. sales.

We disagree with petitioners' conclusion that U.S. inland freight for further manufactured products has been incorrectly reported. The terms of sale on CMP Inc.'s sales vary. The Department verified that the terms of sale were accurately reported and that the corresponding freight expenses were also correctly reported, including those instances where CMP Inc. did not incur a U.S. freight expense.

Comment 18: The petitioners state that although the proper date of sale is the point in a transaction when the basic terms of sale, i.e. price and quantity, are agreed to by the purchaser and seller, CMP Ltd. has reported the "release date" as the date of sale for Canadian sales which did not go through its service center. Petitioners contend that a "release order" is the internal document that CMP Ltd. issues to its warehouse authorizing shipment, or to its factory authorizing production of the ordered products. Petitioners contend that the Department has consistently rejected the use of such internal documents to establish the date of sale, because an internal document neither indicates that an order has been placed nor establishes that the basic terms of sale have been agreed upon. The petitioners state that the Department should have required CMP Ltd. to furnish the purchase order date for all sales.

The respondent states, that at verification the Department thoroughly reviewed the date of sale issue and determined that CMP Ltd. reported its date of sale properly as the date on which the prices and quantities are agreed to by the purchaser and CMP Ltd. The respondent argues that for sales in which purchase orders were available the Department verified that the purchase order date was reported as the date of sale.

Department's Position: We agree with respondent. The Department thoroughly reviewed CMP Ltd.'s reporting of its date of sale and has verified that using CMP Ltd.'s shipping release date as the date of sale is an accurate reflection of their sales system. The Department examined at verification CMP Ltd.'s sales records and determined that the shipping release date is the "date of sale." Prices and quantities are not set until the shipping release date. As CMP Ltd.'s date of sale reporting methodology was verified, we recommend accepting the date of sale as reported in the sales response.

The two cases cited by petitioners in support of their argument, *Electrolytic Manganese Dioxide from Greece*, 54 FR 8771, 8775 (March 2, 1989) (final determination) and *Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea* (*Sweaters from Korea*), 55 FR 32659, 32670 (August 10, 1990) (final determination) are very different from the present case. In those

cases the Department did not consider the internal sales document date to be the date of sale because no agreement had been reached at that point between the respondent and the customer with respect to price and quantity, as evidenced by other documents and circumstances. CMP Ltd.'s shipping release date is the date that the prices and quantities are agreed upon with the customer.

Dofasco, Inc.

Comment 19: Petitioners contend that the Department must include Dofasco's U.S. sales of secondary merchandise in its dumping margin calculation because (i) they are representative of Dofasco's selling practices; (ii) their exclusion would artificially and substantially reduce Dofasco's dumping margins; and (iii) they can be accurately and fairly compared to Dofasco's home market sales of secondary products. Petitioners argue that Dofasco provided the Department with data concerning its secondary merchandise that it knew to be inaccurate, and ask that the Department apply BIA to Dofasco's sales of seconds.

Dofasco contends that the Department correctly excluded from its preliminary dumping analysis those secondary products for which Dofasco did not have complete physical characteristics. Because Dofasco does not or cannot track, and therefore record, all of the physical characteristics of its secondary merchandise, as required by the Department in these investigations (*see* questionnaire Appendix V), any comparison of selling prices based on physical characteristics would be inaccurate due to the lack of certain characteristics upon which to base a comparison of the merchandise. Furthermore, Dofasco states that even the abbreviated characteristics reported by Dofasco were inaccurate, and recommends that the Department apply the weighted average margin calculated for each class or kind of merchandise of Dofasco's sales of prime merchandise.

Department's Position: We agree with respondent that it did not and could not keep records on all of the physical characteristics required by the Department for products sold as seconds, i.e. defective products. This was verified by the Department. We note that where Dofasco could, it provided all physical characteristics, even when the product was sold as a second, e.g., "orphaned" from its original order and sold to a different customer. Additionally, the Department verified that secondary merchandise is not sold on the basis of the physical matching characteristics required by the Department which Dofasco could not provide.

Respondent provided a concordance of secondary products in which it matched its home and U.S. market sales based on three physical characteristics, thickness, width, and "form" for hot-rolled and cold-rolled steel, and four physical characteristics, thickness, width, "form" and metallic coating for corrosion resistant steel. Respondent was able to consistently report these characteristics. At verification, the Department noted that documentation for sales of secondary products reflect the customer's requirements. For sales of seconds, the customer did not care about those characteristics which respondent was unable to report, and did not specify them in ordering products. Moreover, if a customer, for example, wanted cut lengths, but did not specify exact dimensions, we found Dofasco's documentation to reflect, as accurately as possible, the customer's demand.

Respondent's contention that the abbreviated characteristics are "inaccurate," amounts to a claim that the characteristics or specifications for secondary merchandise are less precise than the more extensive and more exacting specifications used in the sale of prime steel products. However, as we have noted, customer requirements for secondary products are not as precise. Thus, model matches based on those characteristics important to buyers of secondary merchandise are not inaccurate. Indeed, insofar as secondary merchandise is concerned, given customer requirements, they are the most appropriate matching criteria. Margins which result from product comparisons of seconds to seconds would neither artificially inflate nor deflate Dofasco's margins for the sales of its prime products. Rather, given the significant number of respondent's sales of secondary merchandise into the U.S. market, inclusion of this secondary merchandise in our analysis more accurately represents respondent's trade.

Because U.S. sales of secondary merchandise in all three products were significant, and because respondent was able to provide a concordance which matched sales of seconds in the U.S. market with sales of seconds in the home market for all three products, we will include these sales in our dumping calculations using respondent's concordance.

Comment 20: Respondent contends that the Department should not collapse Dofasco and Sorevco. Dofasco claims that it has an independent relationship with Sorevco, that it has no operational control over Sorevco, that the board of directors of the two companies are not "interlocking," that sales offices are separate, that the two companies do not share marketing information, and that the two companies are in a competitive situation. Furthermore, respondent contends that there is no possibility that production could shift between Dofasco and Sorevco since both companies produce significantly different products.

Petitioners contend that in keeping with the Department's standard practice, the Department should have collapsed Dofasco and Sorevco, because there is a strong possibility of price manipulation between them.

Department's Position: We verified Dofasco's claim that it exercised no control over Sorevco during the period of investigation. We found good reason for believing the claim that it did not exercise operational control vis-a-vis price and/or production during the period of investigation, based on information relating to the start up of the company, the structure of the sales and marketing force of the company, the composition of the Board of Directors, and the degree of information sharing and competition between the two companies.

The Department does not merely look for historical control, but also for the possibility of future price manipulation. *Nihon Cement Co.* v. *U.S.*, Slip Op. 93–80 (CIT May 25, 1993). See also, *Cellular Mobile Telephones and Subassemblies from Japan*, 54 FR 48011 (1989). Based on the significant degree of ownership of Sorevco by Dofasco, the existence of consolidated financial statements, the significant transactions between the parties, the existence of similar production facilities with respect to the galvanized products within the scope of this determination, and other non-public factors, Dofasco remains in a position to shift production between the two companies so as to circumvent dumping tariffs. Therefore, we have collapsed these two parties and will instruct the Customs Service to treat sales by Sorevco as equivalent to sales by Dofasco.

Comment 21: Petitioners object to the inclusion of a customer-specific rebate which involves the lump sum payment of a certain loan prior to sales transactions on the grounds that the field in which the rebate was reported combined two distinct rebates, including certain rebates which are inconsistent with Dofasco's customary business practices. Petitioners also contend that customers who receive this rebate have not been identified, and that a component of the rebate does not bear

a reasonably direct relationship to any specific sale.

Respondent contends that the rebate in question was correctly reported as a competitive rebate, and that respondent's reporting of the gross unit price and rebate reflected the economic reality of the transaction: *i.e.*, the net price paid by this customer.

Department's Position: The Department views the adjustment to price for these sales not as a rebate, but as a circumstance of sale adjustment. Without the provision of the loan, respondent would have lost this customer's business. The payback of the loan is sales' specific, traceable to sales through the customers who received the price adjustment. A "rebate", as defined in Appendix II, page 2 of the questionnaire is "a return of monies, credit against monies due from buyer, or other value paid or credited to the buyer at some time after the buyer has been invoiced or has paid for the merchandise to the respondent or any affiliate." Therefore, we will disallow this adjustment to price as a rebate, since the monies in question were provided before the sales transactions, but allow it as a direct selling expense.

Comment 22: Petitioners state that the Department should now correct its treatment of the value-added tax that was incorrectly added to USP in the preliminary determination.

Department's Position: In the preliminary determination, the Department inadvertently added the imputed indirect tax to gross unit price, when this tax component had already been included by respondent in its reporting of gross unit price. We have corrected this error for the final determination. See treatment of tax as discussed in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Comment 23: Petitioners contend that the technical service expenses should not be treated as a direct selling expense in the U.S. market because Dofasco has not related such expenses to specific markets or sales, but that it could have done so, and so the Department should resort to BIA. Respondent contends that technical services expenses were correctly claimed as direct selling expenses, because such charges were directly tied to specific customers by tonnage amount involved, and that the company's record keeping did not allow these expenses to be directly tied to sales. Respondent further states that in the event the Department determines that technical service expenses are not directly tied to sales, it should treat these expenses as indirect selling expenses.

Department's Position: Respondent's methodology for calculating a technical expense rate was verified and appropriately accounts for the expenses incurred. However, in the sales data bases, the rate was allocated to all sales in both markets, rather than being limited to specific customers, sales or groups of sales. Therefore, the Department will treat the technical service expense as an indirect, rather than as a direct selling expense.

Comment 24: Dofasco argues that it properly excluded from reported COP and CV retirement and restructuring costs reported on its 1992 financial statements. Dofasco claims that these items are a cost, but not a part of its cost of production, as they do not relate to the production of the goods sold during the period of investigation.

Petitioners argue that the losses on restructuring are ordinary expenses borne by the entire corporation, and should be included as part of its COP and CV.

Department's Position: The company expensed the early retirement and restructuring costs, net of the gain from its sale of BeachviLime, in its 1992 fiscal year. Although the company contends that these costs should not be included for purposes of the antidumping law, we note that the costs were taken as a charge to income during the POI's fiscal year. As such, these costs must be borne in this fiscal year. Dofasco has not demonstrated that the costs do not relate to the subject merchandise. Because the Department includes all costs which relate to the subject merchandise, we included the early retirement and restructuring costs in the calculated COP/CV. We have offset these costs by the BeachviLime gain because BeachviLime provided inputs used in manufacturing the subject merchandise.

Comment 25: Dofasco argues that it properly determined that related party purchases from BeachviLime for COP and CV purposes should be valued at actual cost, not transfer price, because Dofasco was unable to provide evidence that the transfer prices fairly reflected the amount usually realized in sales in the market under consideration. For Wabush, Dofasco contends that the use of transfer prices are not valid because of the arrangement Dofasco has with Wabush. Additionally, Dofasco claims that it correctly calculated the costs of related party purchases from BeachviLime and Wabush.

Petitioners contend that the Department should reject Dofasco's submitted cost of manufacturing for materials purchased from its related parties BeachviLime, Guelph Dolime, and Wabush, and resort to BIA. These submitted costs contained numerous errors, and were based on estimates rather than actual costs.

Department's Position: The Department agrees that the transfer price of related party purchases must be recalculated. Dofasco reported the actual COP of Wabush's input because it claims there is no transfer price as evidenced by its partnership agreement with Wabush. Generally, where respondents own 50% or less of related companies, the Department uses the transfer price for valuing inputs from the companies. In reporting the actual COP of the input, Dofasco eliminated profit it received from Wabush. Therefore, the Department has recalculated a transfer price by adding the profit back to the COP, after making an adjustment for depreciation.

In situations where suppliers are more than 50% owned, for COP purposes, the Department uses the actual costs of the input obtained from the related party. In contrast, in computing CV, the Department may use transfer prices for valuing transactions unless the transfer price is less than the COP or not reflective of market value. See Section 773(e) (2) and (3). Accordingly, for the input provided by the related supplier of which Dofasco owned more than 50%, we revised Dofasco's submitted costs to reflect transfer price in calculating CV.

Comment 26: Petitioners assert that Dofasco incorrectly offset interest expense with income not deemed to be interest income generated from short-term investments.

In response to the Department's COP/CV questionnaire, Dofasco offset corporate interest expenses by short-term interest income related to the ordinary operation of the company. Therefore, the Department should conclude that Dofasco correctly reported its net interest expense for the COP and CV.

Department's Position: We agree with petitioners. At verification, Dofasco failed to demonstrate that its reported interest income was short-term in nature and was generated from operations. Accordingly, we disallowed interest income.

Comment 27: Petitioners argue that the Department should not allow Dofasco to reduce its cost of manufacturing by an amount relating to a "prior year's municipal tax reassessment credit," because income related to prior years does not comprise

part of the manufacturing costs for the period under investigation.

Dofasco argues that it correctly classified its sundry cost of sales as either cost of manufacture or general and administrative expenses.

Department's Position: Dofasco included certain items including the tax reassessment credit in cost of sales which are more appropriately considered general or non-operating items. Regardless of whether the credit should be included or excluded, we have made no adjustment, because the impact on COP is negligible.

IPSCO, Inc.

Comment 28: In the hot-rolled investigation, IPSCO submitted alternative model matches for "similar" products which differ from the matches which result from an application of the Department's model match hierarchy. IPSCO contends that the Department's hierarchy was constructed with large, integrated steel companies in mind. This causes U.S. sales of a "commodity product" to be compared to home market sales of "a niche product that commanded a premium price." IPSCO argues that the hierarchy results therefore violate 19 U.S.C. 1677(16)(B) because the hierarchy's matches are neither "approximately equal in commercial value" nor "like in the purposes for which used." To correct these perceived deficiencies, IPSCO assigned greater weight to the "edge" characteristic, which it argues has a far greater impact on its production processes and product applications and value than other characteristics, to arrive at its reported matches.

Petitioners argue that the IPSCO methodology is a difmer-minimizing deviation from the Department's questionnaire, which was incorrectly accepted by the Department for the preliminary determination. Petitioners contend that the Department, rather than interested parties, should make the determination as to what "similar" characteristics are of the most significance. Petitioners state that the ten characteristics listed in the Department's model match hierarchy ensure that what constitutes the most similar merchandise will also be of approximately equal commercial value and similar use.

Department's Position: Insofar as both petitioners and IPSCO contend that for the preliminary determination the Department accepted IPSCO's proposed model matching methodology, the preliminary determination Concurrence Memorandum makes clear that we merely selected the match with the lowest absolute value difmer in order to correct the computing problem posed by IPSCO's presentation of more than one home market control number for any given "similar" U.S. control number. This does not constitute Department acceptance of IPSCO's methodology.

The Department's model match hierarchy was developed to ensure matches of the greatest possible similarity (regardless of the nature of the producing company), thereby satisfying the statutory and precedential standards cited by IPSCO. The hierarchy's development was based on the Department's experience in administering several steel import agreements and consideration of interested party comments on a proposed hierarchy for these investigations. IPSCO did not submit any comments on the model match hierarchy. The criteria were selected in order to reflect equal commercial value. Additionally, the hierarchy represents one of the streamlining steps which the Department has adopted in order to make the task of completing nineteen simultaneous flat-rolled steel investigations possible within the statutory time frames. Courts have consistently held that it is the Department, rather than respondents, which have the responsibility for selecting appropriate matching criteria. See, *Timken Company* v. *United States*, 630 F. Supp. 1327 (CIT 1986); *United Engineering and Forging* v. *United States*, 779 F. Supp. 1375 (CIT 1991) *aff'd without opinion* 92–1489 (Fed. Cir. 1993). To examine individual company analyses of the comparability of several individual products would not only be impractical, but also would render the entire hierarchy meaningless and inconsistent in application. Finally, we note that the matches resulting from the hierarchy to which IPSCO objects fall within the Department's 20% difmer safety net, ensuring that we compare merchandise of "approximately equal commercial value." Accordingly, in order to ensure consistency among all hot-rolled steel investigations, we used the match resulting from application of the Department's hierarchy.

Comment 29: IPSCO's further manufacturing response indicates that it produces eighteen off-specification products at Paper Cal and ISI. IPSCO argues that these products should not be included in the margin analysis because they are "clearly atypical" of IPSCO's overall company performance. IPSCO notes that it is not in business to produce such products, and that to preserve the "fairness" of the dumping analysis, the Department should base IPSCO's margin exclusively on prime material. IPSCO states that the Department has consistently excluded defective/off-specification products. Additionally, IPSCO notes that exclusion would only affect off-specification products resulting from further manufacturing operations, and would not exclude any *imported* hot-rolled coil subject to the investigation.

Petitioners note that off-specification material is an unavoidable offshoot of IPSCO's further processing of coil into prime products, and is therefore not atypical of IPSCO's selling practices. Petitioners further note that the *IPSCO, Inc.* v. *United States*, 714 F. Supp. 1211 (CIT 1989), ruling mentioned above establishes requirements to determine the circumstances in which U.S. sales may be determined "atypical" and that IPSCO did not attempt to show that any of these requirements applied. Finally, petitioners note that the sales volumes reported by IPSCO for off-specification products have repeatedly been revised.

Department's Position: As the volume of secondary merchandise was a small portion of sales and is not representative of IPSCO's overall sales, they were excluded from the Department's analysis.

Our cite to *OCTG* at the preliminary determination was inapposite with respect to this issue (*OCTG* matched off-specification products to off-specification products in both markets, while this case involves off-specification products in the U.S. market only). In this case, the off-specification products are distressed merchandise which, although inevitably generated during the course of IPSCO's manufacturing process, is sold in very small quantities. The instant case is similar to the situation in *Silicon Metal From Argentina*, 56 FR 37891, 37897 (August 9, 1991) (final determination) in that this case features limited quantities of off-specification material. We note that IPSCO has consistently maintained its reported percentage of off-specification products at a small percentage of U.S. sales, and that petitioners' concern regarding changing underlying data applies to small changes to the total reported volume and value of subject merchandise, not the percentage of off-specification products. Additionally, we note that hot-rolled carbon steel further processed into off-specification pipe in the home market is not subject to the investigation. Accordingly, there are no matches for these products in the home market. As IPSCO's production of off-specification products is excludable as per the Department's decision on treatment of secondary merchandise in these investigations (See Appendix II, Final Determination of Sales at Less

Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina), we excluded off-specification products from the margin analysis.

Comment 30: Petitioners note that the physical characteristic introduced by IPSCO in the Product Specification computer field which distinguishes steel plate cut-to-length from a coil from steel plate which has never been coiled (discrete plate), was not identified by the Department in the model matching hierarchy and therefore represents a new characteristic. Petitioners note that the Department's clarification to Appendix V of the questionnaire rules out new characteristics by stating that "other physical characteristics NOT identified in our list of criteria are not relevant for the purposes of our analysis." Petitioners contend that the Department, and not interested parties, makes the determination as to what constitutes the most appropriate matches.

IPSCO contends that the Department's questionnaire required that IPSCO respond to every field in the database and that it placed in the Product Specification field what it, based on its invoices and sales literature, clearly regards as a key physical characteristic or "specification." IPSCO claims that there are "significant" cost, value, and use differences between steel plate cut-to-length from coil and discrete plate. IPSCO argues that the Department has "no authority to disregard fundamental differences in production process and physical properties in determining whether two products are identical for model match purposes."

Department's Position: We agree with petitioners, in part. There are certain terms which are considered universal in the steel industry (*e.g.*, "specification") and are included in standard industry handbooks, (*e.g.*, 1987 Annual Book of ASTM Standards, Section I, Iron and Steel Products, Volume 1.03, Steel-Plate, Sheet, Strip, Wire, the ASTM Handbook). We note that the ASTM Handbook clearly identifies "specifications" to be the complete standards for a particular product, such as "A–570." In other words, "specification" is a term of art in the steel industry, and it was reasonable for the Department to expect that all steel producers would be familiar with the term. We further note that IPSCO's September, 3, 1992, Section A questionnaire response at Exhibit VI, page four, lists several ASTM designations, indicating that IPSCO is familiar with the ASTM meaning of the term "specification." Accordingly, it was clear from the questionnaire what the Department was requesting in the product specification computer field. For certain specifications of steel, there are additional distinctions referred to as "grades," which the Department requested be reported in the product grade field, and which are clearly broken out as sub-categories in certain ASTM specifications (see ASTM Handbook, page 386, section 1.1.2). For example, IPSCO's Section A response includes a list of "Grade Codes." For Grade A570, IPSCO lists four subcategories which are considered, throughout the industry, to mean "grades." In fact, IPSCO's inclusion of the "GR" prefix before the exact grades and the presence of several ASTM product specifications on IPSCO's list of "grade codes" further confirms that IPSCO must be familiar with the distinctions sought in the Department's questionnaire. In addition, IPSCO's proposed "specifications" are clearly not the type of chemical and mechanical product characteristic sought in the product specification and product grade computer fields. Rather, IPSCO's addition is a physical characteristic, which not only was adequately captured in the Department's thickness and width categories (*i.e.*, certain width and thickness categories are mutually exclusive and thereby address IPSCO's concern), but also which was excluded by the Department's clarification to Appendix V. Finally, IPSCO's addition would be the second of ten characteristics in the product-matching hierarchy. For the first characteristic, IPSCO assigned all of its plate to the same quality group. In effect, IPSCO's introduction of the new characteristic assumes the highest level in the model-matching hierarchy. If the Department were to accept IPSCO's methodology, the new characteristic's position in the hierarchy would inevitably lead to a number of matches different from those intended by the Department. Accordingly, the Department rejected the data reported by IPSCO in the product specification field.

For further comment on the issue of model matching, *see* our response to Comment 28.

As the Department had the information necessary to correct this error and as the correction would not require a complete reconcordance of IPSCO's data, we removed the effect of the information contained in the product specification category. The Department identified those home market control numbers for which the product specification was a distinguishing characteristic, and collapsed these incorrectly separated home market control numbers and matched the collapsed control numbers to the appropriate U.S. control number.

Comment 31: Petitioners argue that the number of discrepancies found at verification at Paper Cal "undermines the reliability" of Paper Cal's sales data and that BIA should be applied to all of Paper Cal's sales as a result, in accordance with past practice and precedent. These errors include: Eight invoices on which subject merchandise was not reported; one reported sale of further manufactured steel plate merchandise which the Department previously excluded from the investigation as it represented a small percentage of IPSCO's business; a misreporting of the level of trade for one U.S. customer; one sale in which the thickness was misreported which led to the wrong U.S. control number selection for a home market match; the possibility of misreported U.S. control number selection because Paper Cal on occasion fills orders for mill edge coil with slit edge coil or vice versa; and the fact that estimates were used to determine three of the product characteristics for source coils of the cover sheets sold in the U.S. market. Petitioners argue that the estimates were developed on an inconsistent basis and that IPSCO provided no evidence that the estimates were based on actual data.

IPSCO contends that these deficiencies are minor, that the errors, and the appropriate corrections, were verified at Paper Cal and that most of these errors have been corrected.

Department's Position: These errors were not so numerous and so significant that the underlying reliability of the Paper Cal response is in question. The Department has responded to those errors not corrected as a result of our April 28, 1993 letter by applying BIA to the U.S. sales which were unreported as these products were in-scope merchandise. As BIA, we have used the highest non-aberrant transaction calculated margin. For the one sale with the misreported thickness, the issue is moot because the product in question is an off-specification product and has been excluded. As IPSCO maintains no information on the edge of the merchandise shipped to the customer, it used the only information it had available, which was duly verified. The Department used this data for final margin calculations. As the rejects were eliminated from IPSCO's final margin analysis, the issue of physical characteristics for these products is moot. IPSCO corrected the level-of-trade error and removed the further manufactured plate sale in its May 6, 1993, submission as requested by the Department.

Comment 32: Petitioners note that for one sale examined at verification, the freight rate reported in IPSCO's questionnaire response was substantially above the actual freight rate reported on the shipping documents. Petitioners further note that the Department found during verification that the reported amounts differed from the amounts billed by the freight carriers. Petitioners argue that as the freight rates which IPSCO charged its customers were different from the rates charged to IPSCO by the freight carrier, the Department should either deny an adjustment for freight in the home market or use BIA on inland freight.

IPSCO argues that the misreported rate in the sales trace was the result of a clerical error based on metric/imperial conversion that was verified and corrected in its revised computer tape submitted May 6, 1993. IPSCO argues that the differences in actual and reported freight expenses were "minute." IPSCO's October 20, 1992, sales response indicates that this minor difference resulted from IPSCO's practice of charging the customer for freight based on a quote from the carrier at the time the order is placed.

Department's Position: The clerical error found in the sales trace cited by petitioners was isolated and, therefore, not so significant that the underlying acceptability of the freight expense data was in question. IPSCO has corrected this error at the Department's request on May 6, 1993. The Department examined the pattern of freight variance during verification and determined that the variance was small and that IPSCO had consistently underreported the freight expense in the home market. This error worked to IPSCO's disadvantage so the danger that this error is self-serving is eliminated. As the method for reporting freight expense was verified and the variance had the effect of reducing IPSCO's claimed adjustment for home market freight expenses, we accepted the home market freight expenses as reported in the sales response.

Comment 33: Petitioners contend that for a number of home market sales where the payment terms were coded "Net 30 Days", a cash discount was inconsistently deducted from the sale. In addition, for one sale examined at verification, the cash discount reported was substantially above the actual cash discount calculated from actual invoice and payment data. They argue that the data reported for payment terms is "wholly unreliable" and that the Department should deny an adjustment for cash discounts in the home market.

IPSCO argues that the difference between the reported and actual discount was the result of a clerical error and does not indicate that the data reported for payment terms and cash discounts is unreliable. IPSCO argues that the Department verified during the sales verification that IPSCO has customers who receive discounts that are different from the reported data for the payment terms.

Department's Position: The Department confirmed at verification that the single identified instance of overreporting of a cash discount was the result of a clerical error and gave IPSCO the opportunity to correct its submission to report the correct value for the cash discount. IPSCO submitted the revised data on May 6, 1993. The Department uses discounts and rebates whenever it can verify that they were offered and paid. See, Antifriction Bearings and Parts Thereof From The Federal Republic of Germany, et. al., 56 FR 31692, 31717 (July 11, 1991) (final results). The Department verified original source documentation advising the customer of the availability of the discount. Because we verified the payment of a cash discount listed on the invoice and in the questionnaire response, any denial of IPSCO's claimed cash discounts based on this inconsistency alone would be unreasonable and speculative. Therefore, we accepted IPSCO's claimed home market adjustment for cash discounts.

Comment 34: Petitioners argue that IPSCO's home market credit expense is flawed in three ways and should be recalculated. First, they claim that IPSCO made no credible effort to provide the information which would allow the Department to reduce the home market credit expense in connection with partial payments. Second, petitioners claim that the IPSCO's practice of using the date of a credit note for any given transaction as the date of payment is "wholly inconsistent with the law and the Department's practice." Further, they state that sales documentation gathered by the Department at verification demonstrates that IPSCO miscalculated the credit period. Third, petitioners note that IPSCO's formula for calculating home market credit expense used gross unit price, rather than a discount-net price. As a result of these perceived flaws, petitioners suggest that the Department either deny the adjustment entirely or employ the shortest credit period reported for any sale as BIA.

IPSCO indicated that its recordkeeping system does not permit it to distinguish between receipt of partial payments on the one hand, and receipt of final payments for price-adjusted invoices on the other. Additionally, IPSCO states that BIA is unjustified in this case because the Department did not request that IPSCO provide any further information on these issues and because the frequency of partial payments is greater in the U.S. market than in the home market. IPSCO notes that it used both final payment date and the gross price-based credit formula in both the U.S. and home markets, and that any recalculation done to one side must be done on the other.

Department's Position: We agree with respondents, in part. Because IPSCO's records simply do not allow it to report partial payments (*see* sales verification report page 12), IPSCO cannot reasonably be required to present this information. Petitioners' cite to Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19052 (May 3, 1989) is inapposite because in that case the Department accepted a respondent's volunteered and verified submission of partial payment information for use in calculating U.S. credit expenses; the Department did not require submission of this information. Although petitioners cite one anomalous instance in IPSCO's response where the reported payment date did not match the credit note issuance date, neither the verification report nor the petitioners cite any further occurrences of this situation. Accordingly, we did not alter IPSCO's reported credit expense based on either of these rationales. However, because IPSCO calculated credit inclusive of discounts, we recalculated the expense by excluding discounts in both the U.S. and home markets as required by our standard practice as discussed in Sulfur Dyes Including Sulfur Vat Dyes from India, 58 FR 11835 (March 1, 1993) (final determination).

Comment 35: Petitioners note that under a certain rebate scheme, IPSCO pays rebates to a customer at a fixed rate for purchases totalling less than an annualized tonnage and another rate for additional tonnage purchased. Petitioners argue that IPSCO incorrectly calculated and allocated these rebates because IPSCO determined the amount of rebates on the basis of approximations as opposed to readily available actual sales information. Also, petitioners claim that IPSCO incorrectly included purchases to certain affiliates of the customer not subject to the rebate. Petitioners recommend that the Department reduce the amount of the rebate from the "speculative" amount to the "actual" amount.

VOL 58 ISS 130 JL 9 1993 UMI

Additionally, petitioners note that IPSCO reduced the amount of rebate payable to this customer by the amount of interest charges due on invoices outstanding over 45 days. Petitioners recommend that the Department should replace the understated total interest charge with a BIA figure.

IPSCO notes that at the time it submitted the responses, it did not have year-end information available to it. IPSCO also notes that it paid the rebates on a quarterly basis, which the Department verified. IPSCO indicates that the rebate was applicable to all affiliates of this customer, not just those specifically listed by petitioners. IPSCO states that it cannot segregate the impact of the interest charge deduction on specific product groups. IPSCO contends that Departmental precedent supports customer-specific adjustments of this nature. Finally, IPSCO argues that the interest formula was not only changed for the second quarter of 1992, but also verified in its application.

Department's Position: We agree with respondents. With respect to petitioners' charge that IPSCO based the calculation of the rebate due to this customer on approximated data, we agree with IPSCO that it provided the data it actually used to calculate the rebate payable for the first and second quarters of 1992. In Porcelain-on-steel Cooking Ware from Mexico, 55 FR 21061, 21062 (May 22, 1990) (final determination of administrative review), relied on by petitioners, the Department determined that reasonable allocations for rebate expenses were allowable when specific information on individual sales was not available. Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12522, 12571 (April 15, 1988) (final determination), also cited by petitioners, is not relevant here as it refers to the reporting of interest revenue adjustments as a part of credit expense. IPSCO pays this rebate net of interest and does not maintain records of interest receipts separately. The only additional information IPSCO could have submitted regarding this expense is the year-end accrual calculations, which not only would not have been available at the time IPSCO was completing the supplemental questionnaire, but also would have represented new factual information by the time it could have been submitted. The letters, calculation worksheets, and proof list by product entries examined at verification make clear that all affiliates of the customer are eligible for the rebate program.

The Department verified that IPSCO books the rebate, net of interest, into its proof list by product. Additionally, we note that IPSCO provided the greatest level of product-specific information it could by excluding the "HSS" product category from the reported rebate payment. Finally, the verification exhibit clearly explains the change in interest formula for the second quarter. As a result, we did not alter the reported rebate.

Comment 36: Petitioners note that for the rebate expenses IPSCO is claiming in the home market for one customer, there was no formal agreement for the rebate, and the expenses were purportedly the result of post sale price negotiations. Petitioners further note that IPSCO has indicated that this rebate was a one time verbal arrangement, which was not anticipated when the sale was made. As a result, petitioners state that under current Department practice the adjustment should be denied. Petitioners also contend that because IPSCO has indicated that the rebate could be characterized as "some form of price protection adjustment" but did not provide an adequate explanation of the price protection arrangements the adjustment should be disallowed.

IPSCO states that it was not unusual during 1992 for steel companies similar to IPSCO to negotiate post-sale rebates or other such price adjustments. Further, IPSCO states that the depressed steel market in 1992 supports its claim that the timing of the rebate, which it claims was reached only after extensive negotiation, is not relevant. Additionally, IPSCO claims that in previous cases, the Department has accepted similar post-sale rebates when they were found acceptable at verification. Finally, IPSCO states that the label "price protection agreement" should have no bearing because IPSCO clearly reported the payment in question.

Department's Position: We agree with respondents, in part. Although this rebate does not conform to the Department's standard for rebates, these expenses are classifiable as post-sale price adjustments. In Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, 57 FR 28360 28400–28402 (June 24, 1992) (final results of review), the Department treated post-sale price adjustments as indirect selling expenses, instead of direct selling expenses, solely because the adjustment was not tied to the products on which they were granted. As IPSCO properly tied the price adjustment to the products on which it was granted, and as it was verified, we have accepted the price adjustment as a direct selling expense.

We agree with petitioners that the Department's standard practice is not to accept price adjustments instituted retroactively after the filing of a petition. However, as it is clear from the evidence on the record that this adjustment was made before the June 30, 1992 filing of the petition, timing is not an issue.

Comment 37: Petitioners contend that IPSCO failed to report indirect selling expenses appearing on IEI's financial records. Additionally, petitioners point to two differing figures and state that the Department discovered at verification that the value used in IPSCO's calculation of indirect selling expenses paid out of IEI and attributed to ISI and Paper Cal had been understated. Petitioners request that the Department correct both of these errors in the final determination.

IPSCO states that it did not report certain selling expenses because they were attributable to PP activities conducted by IEI on behalf of IPSCO, because there is no deduction from PP for U.S. indirect selling expenses. With respect to the charge that IPSCO underreported relevant expenses, IPSCO counters that the Department did not note any discrepancy in its verification report and that, in any case, the lesser of the two figures, which it reported in the response, ties to the general ledger (as verified by the Department) and represents the actual expense in question.

Department's Position: Because there is no deduction from PP for indirect selling expenses connected with PP sales, IPSCO's failure to report the relevant IEI expenses is without effect. For those IEI expenses which IPSCO allocated to ISI and Paper Cal, we have identified, based on verification exhibits, which expenses are properly attributed to U.S. indirect selling expenses, and which to further manufacturing costs. Accordingly, we did not adjust IPSCO's reported U.S. indirect selling expenses.

Comment 38: Petitioners contend that as IPSCO's subsidiaries did not have any borrowings in the U.S. market, IPSCO should not be allowed to claim the U.S. prime interest rate for its calculation of credit expense on purchase price sales. Petitioners also request that because of the Department's discovery of incorrectly reported credit expenses on five sales records, the Department should reject IPSCO's claimed credit expense period in favor of BIA.

IPSCO cites *United Engineering & Forging* v. *U.S.*, 779 F. Supp. 1375, 1386–7 (CIT 1991) (decided November 18, 1991) (*United Engineering*) where the court held that a respondent should

be assigned an available U.S. borrowing rate if it is lower than the home market rate, if it had access to such loans. IPSCO argues that the absence of U.S. borrowings is matched with limited home market borrowings to cover "extremely short-term deficiencies." Finally, IPSCO notes it submitted a signed agreement from IPSCO's main bank constitutes "actual proof that such credit was available."

Department's Position: We agree with respondent. For ESP sales, although the Department does not agree with all aspects of *United Engineering*, the Department used the U.S. rate as IPSCO demonstrated that it was able to obtain funds at this rate, and we assume IPSCO would have used the lower rate available in the United States. At verification the Department was unable to confirm IPSCO's access to the reported interest rate based on actual U.S. borrowings during the POI. However, we did verify, through examination of original letters, the documentation IPSCO provided from its bank establishing terms of access to funds and listing rates in effect during the POI.

For PP sales, while the Department's normal policy is to use the home market rate in the absence of U.S. borrowings, we noted that IEI, which is located in Iowa, takes legal possession of all PP sales from IPSCO to customers in the United States (see the Sales Verification Report) and invoices the customers. Accordingly, it is reasonable to assume in this instance that IPSCO, through IEI, would have been able to borrow at the U.S. rate should the need have arisen. Therefore, we used the U.S. rate for both ESP and PP sales.

With respect to petitioners' request that we use BIA for the payment period, the errors found at verification were minor and clerical in nature. Consequently we used the corrected amounts reported by IPSCO at the request of the Department in the final determination.

Comment 39: Both petitioners and respondent addressed the issue of a value-added adjustment to off-specification material in their case briefs.

Department's Position: As we are excluding off-specification material from our analysis in this case, this issue is no longer pertinent. See Comment 29.

Comment 40: Petitioners state that IPSCO improperly excluded the costs associated with work-in-process inventory from the cost of production.

IPSCO contends that it excluded work-in-process inventory from its reported cost of manufacturing given its interpretation of the Department' questionnaire requesting information on manufacturing costs incurred during the period of investigation.

Department's Position: The Department agrees with the petitioners. Opening inventories are subject to processing during the period of investigation. In reporting cost of manufacturing, the effects of both the beginning and ending inventories are required in the calculation. Therefore, we have corrected the calculation by including the cost effect of beginning and ending work-in-process inventories based on verified information IPSCO submitted on the record.

Comment 41: Petitioners maintain that because IPSCO was unable to identify foreign exchange gains to the subject merchandise, IPSCO should not be permitted to offset its calculated interest cost with foreign exchange gains.

IPSCO argues that in *DRAMS of One Megabyte and Above From Korea*, 58 FR 15467 (March 23, 1993) (final determination), the Department recognized the amount of exchange gains and losses during the period, regardless of the respondent's inability to identify them with a product. IPSCO declares that while it was unable to identify the foreign exchange to the subject merchandise, it used the most reasonable and specific allocation method available to it, assigning the exchange loss or gain over all sales.

Department's Position: The Department agrees with the petitioners. Consistent with *DRAMS*, 58 FR at 15475 and 15480 the Department is requiring that foreign transaction gains be identified to the subject merchandise in order to be included in the interest expense calculation. The foreign exchange gain was disallowed given the fact that the respondent was unable to identify the transaction gains to the subject merchandise.

Comment 42: Petitioners argue that IPSCO's methodology used for its G&A expense calculation includes the G&A expense associated with only two of its four divisions, steel mill products and fabricated products. Therefore, the petitioners urge the Department to include all G&A expenses in the cost of production.

IPSCO contends that basing their submitted G&A expense calculation on the G&A expenses recorded for the steel mill products division and the fabricated products division yields a more accurate and consistent result than using the total G&A expense of IPSCO, Inc.

Department's Position: The Department agrees with petitioners. Because IPSCO initiated its divisional reporting system in 1992 and because the G&A expense allocation is based on an asset and historical (1991) sales/consumption allocation percentage, we revised the submitted amounts. The Department has based the revised amount on the total G&A expense of IPSCO, Inc.

IPSCO's allocation methodology attributed the same amount of G&A expense to all products. However, generally products with greater production costs require a larger portion of G&A expense. Accordingly, the Department has revised IPSCO's allocation methodology to be based on cost of sales.

Comment 43: Petitioners state that submitted G&A expense was allocated on a per ton basis instead of the Department's usual methodology, a percentage of cost of sales. They further state that ISI and Paper Cal calculated their G&A expense using six-month figures as opposed to annual figures.

IPSCO states that at the time it prepared its response to the Department's questionnaire, only six-month figures were available.

Department's Position: The Department calculates G&A expense based on annual amounts given the periodic nature of these costs. Accordingly, the Department has revised IPSCO's submitted amounts for purposes of the final determination.

Comment 44: Petitioners contend that IPSCO must include year end accrual costs for pension, profit sharing, layoff and management incentive in its submitted cost of production.

With respect to the pension accrual, IPSCO states that the accrual was a provision for IPSCO's potential future liability under its defined benefits pension plan and thus not attributable to 1992 production. IPSCO states that its profit sharing and management incentive provisions reflected actual and potential awards to company officials based on IPSCO's level of profitability in 1992. Because IPSCO made virtually all of its profits in 1992 through spiral product from its Energy Products division, the profit-sharing and management incentive generated through this operation are not properly included in IPSCO's cost of production for the subject goods. IPSCO stated that the layoff accrual was not included in submitted costs because it related to anticipated layoffs in 1993.

Department's Position: The Department agrees with petitioners. Consistent with IPSCO's financial statement and Canadian GAAP, the Department revised the response to include these costs. Regardless of when these items were paid, the costs were

incurred in 1992 and relate to the subject merchandise. IPSCO's profit sharing and Management incentive program costs were paid based on the company's performance, without consideration of which division was more profitable.

Comment 45: Petitioners contend that IPSCO must include the costs associated with idled plant facilities located in Hawaii and Richmond, B.C. in the cost of production.

IPSCO argues that because these facilities never have and never will produce flat-rolled steel, they had no impact whatsoever on IPSCO's costs of producing the products under investigation.

Department's Position: The Department agrees with the respondent. Because the costs associated with the idled facilities relate to non-subject merchandise, they have been properly excluded from the cost of production.

Comment 46: Petitioners contend that IPSCO's allocation of material and overhead costs should be rejected. Petitioners further state that because the company stated that total input scrap tons was the primary factor used in allocating production costs to the three product groups, an adjustment should be made to evenly distribute production costs based on input scrap tons.

IPSCO states that it utilizes scrap input tons as its primary factor in the allocation of production costs among its three product groups. However, IPSCO also uses other factors in allocating costs. IPSCO states that some costs, such as alloys, are charged to product groups based on usage.

Department's Position: The Department agrees with the respondent. In its response, IPSCO states that scrap input tons are the primary factor in allocating liquid metal production costs among its three product groups. IPSCO also states that some inputs are charged to product groups based on usage. Based on our review of IPSCO's allocation methodology and the fact that it is in conformity with its internal cost accounting practices, the Department finds the allocation methodology reasonable.

Comment 47: Petitioners state that certain G&A expenses incurred by IEI, the parent company of ISI and Paper Cal, on behalf of ISI and Paper Cal were not included in the submitted G&A cost.

IPSCO states that they properly attributed the expenses of its U.S. holding company, IEI, to the further manufacturing activities of ISI and Paper Cal.

Department's Position: The Department agrees with petitioners. All expenses incurred by IEI on behalf of ISI and Paper Cal should be included in the G&A expense calculation. The general expenses incurred by a parent company, without operations, relate to all of its subsidiaries with operations. Because the Department includes all costs in its calculations, it is necessary that all the G&A expenses of IEI, a non-operational entity, be included in the submitted costs. IPSCO did not include the general expenses in its submitted calculations. The Department revised the G&A expense of Paper Cal and ISI to account for the costs reflected on IEI's consolidated financial statement.

Sidbec-Dosco (Sidbec)

Comment 48: Petitioners argue that Sidbec's model match method, as used in the December 21, 1992, product concordance is fundamentally flawed. Petitioners allege this to be the case because Sidbec, rather than conforming to the Department's requirements, matched products to more narrowly drawn Sidbec product codes. Furthermore, once Sidbec matched a U.S. sale to a home market product, Sidbec removed that home market product from the "pool" of eligible matches. Therefore, some U.S. products were matched with a home market product which was not the most similar. Because of these errors, petitioners urge that the Department should reject the December 21, 1992, concordance, and resort to BIA.

Respondent maintains that its initial matching by product code produced matches that were identical. Therefore, Sidbec maintains that petitioners' argument against this step is without legal foundation. Sidbec acknowledges that its December 21, 1992, product concordance produced poor matches, but claims that the Department's instructions were ambiguous. Sidbec quotes from the Department's questionnaire which states that "*each* product will have a *unique control number.*" Sidbec presumed that the Department had stipulated this for computer programming reasons. Sidbec admits that as a result, "[i]n a number of instances, [it] was unable to match the *most* similar home market product to a product sold in the United States, simply because the desired home market product *had already been matched* to another product sold in the United States." Because of its contention that the error lay solely with the Department, Sidbec argues that the Department cannot apply BIA.

Department's Position: In the narrative that accompanied its concordance submitted on December 21, 1992, Sidbec made no reference to any difficulty or disagreement it had with the Department's model matching methodology. That submission was in response to two supplemental requests for information from the Department, dated December 11 and December 15, 1992, both of which advised respondent's counsel to contact the case analyst if they had any questions. (See memorandum to the file, June 1, 1993.)

Sidbec claimed that its December 21, 1992, concordance was defective due to the Department's allegedly faulty instructions which stated in part that, "each product will have a unique control number." Sidbec apparently interpreted this to mean that each home market product could only be matched to one U.S. product. Sidbec stated that for the December 21, 1992, concordance, once it had matched one U.S. product with a home market product, "* * * the product sold in the home market was removed from the pool of products 'eligible' for matching to U.S. products." Thus, Sidbec matched U.S. sales to an ever-decreasing pool of home market products. Sidbec admitted that, as a result, it matched "* * * some products sold in the United States with a product which was not the 'most similar' product sold in the home market." In fact, with each U.S. sale, the potential for an appropriate match became smaller and smaller.

The method Sidbec used for the December 21, 1992, concordance not only did not follow our instructions, it was clearly an unreasonable interpretation of our instructions which led to a comprehensive failure in Sidbec's concordance. The Department's instructions were sufficiently clear that no other respondent in these investigations interpreted the questionnaire this way. Sidbec admits that this method could not have been the Department's intent, and rendered the response unusable. Despite this, Sidbec never asked for clarification, as the Department's requests for information repeatedly urged.

Because of the way Sidbec misread the matching section of the original questionnaire, in the December 21, 1992, concordance, Sidbec chose which U.S. sale would be the first matched to a home market product. To accept any part of this concordance, in which Sidbec selected the first U.S. product to be matched, would be to open the door for respondents to manipulate their databases so as to select a sale with a low margin as the first, and possibly the only, usable match. Therefore, the Department cannot use Sidbec's December 21, 1992, concordance, which is the only one remaining on the record. (*See* Department's response to Comment 49.)

For these reasons, and because Sidbec filed no timely replacement concordance, the Department is applying total BIA. Because Sidbec substantially cooperated with the Department in its investigation, the Department is using a cooperative BIA rate.

Comment 49: Petitioners argue that if the Department does not use total BIA, the Department should attempt to recreate a new product concordance from Sidbec's data. Petitioners note, however, numerous and significant flaws in this approach.

Respondent contends that the way the Department should recreate Sidbec's product concordance is by using the February 22, 1993, concordance.

Department's Position: On February 12, 1993, the Department sent Sidbec a letter asking several questions about various issues. One question read, "[o]n page 27 of your [December 21, 1992,] response, you listed product control numbers for products 'not utilized in the concordance.' Please explain why some product control numbers are not utilized in the concordance." This letter stipulated that the Department was only trying to clarify information already on the record and that the Department would "* * * not accept any new information nor information previously requested (including new product concordances) which [had] not already been provided, unless otherwise specified." Despite these clear instructions, on February 22, 1993, Sidbec submitted a new concordance with its explanation about the unused control numbers.

The Department rejected the February 22, 1993, concordance as untimely. At the hearing, respondent claimed that the Department's regulations require it to accept information up to seven days before the start of verification. Therefore, Sidbec continued, the Department must accept the February 22, 1992, concordance. However, this provision does not apply to the Department's clarification letter of February 12, 1992, because, "[i]n the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response." 19 CFR 353.31(b)(2). Because the February 12, 1992, clarification letter clearly stated that respondents should not submit any new concordances, unless specifically requested by the Department, the last time a new concordance would have been timely was on December 21, 1992, in response to the Department's supplemental requests for information of December 11 and 15, 1992.

Comment 50: Respondent maintains that its February 22, 1993, concordance, which the Department rejected as untimely, was timely. Sidbec states that the Department rejected that concordance on the basis of the Department's "arbitrary" deadline, which Sidbec claims has no "legal or practical basis." Moreover, Sidbec states that the Department has "abandoned the standard language used in its February clarification requests ('no new concordances will be accepted' [sic]), and * * * has requested, and received, additional tapes from other respondents which include changes to their product concordances." Sidbec also states that the Department's extension of its final determinations, and initiate of cost investigations allowed it more time to review the February 22, 1993, concordance.

Petitioners reiterate that the February 22, 1993, concordance was untimely because it was submitted in response to the Department's February 12, 1993, clarification letter that stated that the Department would "not accept any new information nor information previously requested (including new product concordances) which [had] not already been provided."

Department's Position: Contrary to Sidbec's assertion, 19 CFR 353.31(b)(2) provides the Department with a legal basis setting deadlines and adhering to them. The deadline in question was necessary in order to make our preliminary determination and prepare for verification.

As for the tapes which Sidbec claims the Department "requested, and received," the Department notes that such information was submitted only in response to specific requests by the Department. Sidbec misquotes the Department in this comment. The Department's February 12, 1993, clarification letter stated that the Department would "not accept any new information nor information previously requested (including new product concordances) which [had] not already been provided, unless otherwise requested." Further, the Department requested replacement tapes from other respondents only to: (1) Allow for updated ship date and pay date information through the start of the verification; and (2) correct certain minor clerical, programming, and methodological errors. The Department requested no new product concordances.

The Department notes that, when it extended the deadline for its final determinations at the request of numerous respondents and in full compliance with applicable statutes, it was in order to have time to analyze more carefully information previously submitted. The extension of the investigation did not have the effect of waiving all prior deadlines.

Comment 51: Respondent states that the Department still has the February 22, 1993, concordance on the record because Sidbec submitted it as part of its response to Section D of the Department's original questionnaire.

Department's Position: On March 18, 1993, with its response to Section D of the Department's questionnaire, Sidbec submitted two tapes, one of which used a concordance which had been submitted on December 21, 1992, and the other of which used the February 22, 1993, concordance. On March 23, 1993, the Department removed Sidbec's response of February 22, 1993 (and public version dated February 23, 1993), which contained the untimely concordance, as well as the corresponding tape of March 18, 1993, from the official record. The Department left the tape using the December 21, 1992, concordance on the record. The Department instructed Sidbec to resubmit a verbatim text of the rest of that response without reference to the new concordance. The Department's clear intention was not to use the February 22, 1993, concordance for the final determination.

The Department later realized that Sidbec's March 18, 1993, proprietary response (and March 19, 1993, public version) to Section D of the Department's questionnaire contained a hard copy of the February 22, 1993, concordance which had inadvertently not been removed from the record. Therefore, the Department has removed these submissions from the official record and, on June 3, 1993, instructed Sidbec to resubmit a verbatim text of those documents without reference to the untimely February 22, 1993, concordance.

Comment 52: Sidbec claims that "[t]here can be no objection raised to the February 22 concordance on the grounds that it was not specifically verified. The product codes and related explanatory information are contained in both the December 21 and February 22 submissions. The Department examined the methodology used to match products in both the December 21 and February 22 concordances. [Footnote omitted] Second, during the sales verification, the Department tested extensively the reporting system [Sidbec] used for each product's physical characteristics. For both the pre-selected and surprise sales selected for a sales trace, Department personnel verified the physical characteristics as

reported in [Sidbec's] computer program. Finally, the Department selected data from both concordances in verifying specific information. See, e.g., Cost Verification Exhibits 2, 14. Lack of verification is thus not an obstacle to the Department's use of the February 22 concordance."

Petitioners respond that, although it is "less than clear * * *, apparently Sidbec's claim is based on the argument that the two concordances have much in common, and that, by verifying one, the Department essentially has verified the other."

Department's Position: The February 22, 1993, concordance was submitted in direct contradiction to the Department's instructions, and the Department has never accepted it. At verification, Sidbec attempted to have the Department verify the February 22, 1993, concordance, but the Department refused because it had already rejected the concordance and removed the February submission from the official record. The Department's clear intention was not to use the February 22, 1993, concordance for the final determination. The Department specifically stated in its sales verification report that the Department did not verify Sidbec's February 22, 1993, concordance. Pursuant to section 776(b) of the Act, the Department is prohibited from using unverified information in its final determination.

Comment 53: Petitioners and respondent comment on other issues related to non-prime products, FMV adjustments, U.S. and home market sales, sales to a related party, and COP.

Department's Position: Because of the Department's responses to the preceding comments, these issues are moot.

Stelco

Comment 54: Stelco informed the Department in its October 20, 1992 response to sections B-D of the questionnaire that it was unable to provide any of the requested section D cost of production information for cut-to-length plate. In order to respond to the section D questionnaire, Stelco stated that it would have to reconstruct a completely new standard cost accounting system by product. Stelco stated that the company did not have the resources to accomplish such a project, nor could it be accomplished within the Department's time frame for these investigations. In their rebuttal brief of May 21, 1993, respondent argued that they were unable to provide the cost information for cut-to-length plate due to time constraints. They suggest that the Department should have examined the reported price information before resorting to BIA.

Department's Position: The section D questionnaire explicitly instructs respondents to contact the Department's Office of Accounting to discuss any problems in responding to the section D questionnaire, and Stelco did not do so before the due date for section D. Because Stelco did not respond to the section D cost of production questionnaire, and because this failure was so significant as to render the entire response inadequate, the Department decided, in a January 5, 1993 memorandum, to resort to the BIA for its analysis of these sales. As a result, the Department did not analyze or verify Stelco's B and C questionnaire responses. As Stelco was uncooperative by not responding to section D of the questionnaire, the Department used, for purposes of BIA, the highest antidumping margin alleged for any producer of cut-to-length plate from Canada in the July 14, 1992 amended petition, which was 68.70 percent. We will use this margin for purposes of the final determination.

Comment 55: In the May 18, 1993 brief, petitioners argue that total BIA should be applied to Stelco not only for cut-to-length plate but also for hot-rolled, cold-rolled, and corrosion-resistant steel products due to the large number of errors found during verification.

Respondent has stated that its data is reliable, and that the number of errors found was small compared to the overall quantity of data. Respondents also argue that the verification focused almost exclusively on "outliers" which is not an accurate reflection of the majority of the data.

Department's Position: We agree with respondent's assertion that total BIA should not be applied to Stelco. In contrast to Continuous Colour Coat, Ltd. ("CCC) (*see* below), we were able to verify the value and volume of Stelco's sales. In addition, in contrast to CCC, we were able to verify all major adjustments such as sales price, credit, freight, brokerage, packing costs, selling expenses, inventory carrying costs and rebates. Petitioners have cited several cases in which the Department has determined BIA was appropriate. These cases all involved major errors. In the case of Stelco, however, we only found minor concordance errors in Stelco's submitted data for cold-rolled and corrosion-resistant steel during verification involving product characteristics such as misclassification of form, thickness, strength, width, finish, metal coating, and quality as well as the inclusion of non-subject merchandise. In addition, we encountered instances where Stelco had incorrectly labeled certain sales as normal which were actually sales of scrap or trial sales. There were also a few instances in which normal sales were erroneously labeled as trial sales. The Department corrected these minor errors. Therefore, we do not consider the level of errors sufficient to necessitate the application of total BIA to all Stelco sales.

In response to respondent's assertion that the Departments' verification almost exclusively relied on "outliers", the Department has the authority to examine the sales it deems necessary to check the accuracy and completeness of the entire data base. The purpose of verification is to spot-check the respondent's questionnaire response and is not intended to be an exhaustive examination of the response. See Antifriction Bearings from Germany, Appendix B, 54 FR 18992 (May 3, 1989). Given this fact, and the fact that the Department has limited time and resources to expend on verification, it is reasonable for the Department to focus on those aspects of the response which arouse suspicion. Moreover, we note that the verification report reveals that many aspects of Stelco's response were verified randomly, and that the Department did not rely exclusively on "outliers."

Comment 56: Petitioners state that the sales data of CCC, a related party of Stelco's that sells Stelco's merchandise, its own products, and also toll coats other merchandise, is unreliable in almost every respect. The most basic and necessary information such as total value, sales price, quantity, etc. was distorted and unreliable. Petitioners contend that this data is unusable, and that the Department should apply BIA to all CCC sales.

Respondent argues that the errors found at verification were relatively minor with regard to the size and effort involved, as CCC does not maintain computerized information after a sale is made. Almost all errors were due to mistakes during visual inspection and keypunch error due to an inexperienced staff. Therefore, according to respondent, the application of BIA in this case is unwarranted.

Department's Position: We agree with petitioners that BIA should be applied to all CCC's sales. In contrast to Stelco's information, CCC's data was highly unreliable. We were *not* able to verify CCC's information on volume or value and were unable to find a way to tie the sales data to CCC's audited financial statements. Second, CCC only provided estimates, not actual costs, with respect

to corrosion-resistant products. Third, CCC only reported sales of merchandise it had purchased from Stelco. CCC did not report its sales of subject merchandise that were made from material other than Stelco's. Finally, during verification we found that information regarding the sales price, quantity, commissions, rebates, as well as product characteristics were frequently reported incorrectly.

We have decided to apply partial BIA margins to CCC's U.S. sales and to all Stelco's U.S. sales which were matched to the CCC home market sales.

Comment 57: Petitioners note that the Department neglected to account for level of trade in its related-party test. This omission distorted the results of the arm's-length test in the preliminary determination and the Department must include the level of trade in its test and exclude from foreign market value all related purchasers that do not meet the arm's-length test.

Respondent claims that the prices it charged to related customers during the POI were the same or higher than to unrelated customers, *i.e.* at arm's-length, and argues that the Department's related party test is faulty and should be dropped, as no attempt was made to relate the test to either the antidumping statute or other laws, and that the test is applied in a mechanical manner with no attempt to relate to the individual circumstances in each case. Stelco also contends that comparing mean net returns does not make sense in light of price fluctuations.

Department's Position: We agree with the petitioners, and will include the level of trade in our related party test for purposes of the final determination. For each home-market related customer, we will perform an arm's-length test for each class or kind of merchandise. All transactions will be excluded from the analysis for each related home-market customer whose weighted-average net unit price for all products sold was less than or equal to 99.5 percent of the weighted-average net unit price of all of the same products sold to all unrelated customers, accounting for the level of trade at which that sale was made. (See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina for a description of this modification and further explanation of why such a modification was made.)

We disagree with respondent. Stelco provided no evidence to support its conclusion that transactions were made at arm's-length, nor did they suggest an alternate testing method. We believe the test fully conforms to the Department's regulations which broadly state that related prices must be comparable to unrelated party prices. See 19 CFR 353.45. Such instructions give the Department substantial latitude in defining "comparability." While the test applied in the preliminary determination may have been distorted because it gives the greatest weight to those product-specific ratios where the related customer has purchased the largest quantities, we have corrected for this and other potential distortions by modifying the arm's-length test used in these preliminary determinations to consider level of trade, as discussed above. However, we disagree that the Department's arm's-length test is distorted because it fails to relate to individual circumstances and price fluctuations. Because of 19 CFR 353.45(a), the Department may not rely on prices between related parties in its analysis, unless they are made at arm's-length prices. Thus, the Department's test has always been "strict" and arguably difficult to pass. As for respondent's assertion that our test does not make sense in light of possible price fluctuations, respondent has not presented any evidence to show that there were any fluctuations to examine during the POI. Prices in the world steel market were not very volatile during the POI, with the exception of countries with hyperinflationary problems, which did not exist in the Canadian market. Thus, there is no need to address the fluctuation issue at this time.

Comment 58: Petitioners cite the respondent's section A response, in which Stelco claimed it "owned a 50 percent or greater interest in CCC." Petitioners also state that because Stelco and CCC are "closely intertwined", there exists a strong possibility of price manipulation. Therefore, the two parties should be collapsed.

Respondent claims that CCC and Stelco should not be collapsed, as Stelco does not own stock in CCC, nor does it control the day-to-day activities of CCC. CCC and Stelco do not bill together, and have separate facilities and sales organizations.

Department's Position: We agree with petitioners. In determining whether to collapse related manufacturers, the Department inquires whether the relationship between the related parties is such that one company is in a position to manipulate another company's prices and/or production decisions (*Brass Sheet and Strip from France*, 52 FR 812, 814 (January 9, 1987); *Certain Iron Construction Castings from Canada*, 55 FR 460 (January 5, 1990)).

Administrative cases involving the decision of whether or not to collapse related parties for these purposes show that the percentage ownership by the parent of the subsidiary is not, itself, an indicator of when the Department determines collapsing is appropriate. *Certain Iron Construction Castings from Canada*, 55 FR 460 (January 5, 1990); *Gray Portland Cement and Clinker from Japan*, 56 FR 12156 (July 18, 1991); *Certain Granite Products From Italy*, 53 FR 27187, 27189 (July 19, 1988) (Final Determination). Thus, the Department's practice has been to regard percentage ownership as one of many factors to consider in making this determination.

Specifically, in the above-mentioned line of cases, the Department considers the following questions in a decision whether to collapse related parties:

—Do the related manufacturers have interlocking boards of directors;
—Do they have similar production processes, facilities or equipment so as to facilitate shifting of production between facilities;
—Do they operate as separate and distinct entities;
—Do they share marketing and sales information or offices; or
—Are they involved in the pricing or production decisions of the other entity?

Use of these factors was upheld by the Court of International Trade in *Nihon Cement Co., Ltd., et al.* v. *United States and The Ad Hoc Committee of Southern California Producers of Gray Portland Cement, et al.*, Slip Op.93–80 (CIT 1993). While each of these criteria does not have to be met, Commerce considers them all.

The Department established at verification that while Stelco has no direct ownership of its related party CCC, from our analysis of the above factors, it is clear that the two companies are closely intertwined so that Stelco is in a position to manipulate CCC's prices and/or production decisions. For a further discussion of the proprietary information which led to this decision, see the Stelco Concurrence Memorandum.

Comment 59: Petitioners contend that the submission of the March 19, 1993 difmers was untimely, as the Department had notified the respondents that no new information would be accepted. Therefore, the Department must apply BIA to all non-identical matches in its final determination, as the original difmer submission was inadequate and was rejected by the Department in its preliminary ruling.

Respondent states that the submission was provided pursuant to a formal request by the Department, the

information was submitted more than seven days before verification as required by Department regulations, and the data was verified during the cost verification, found to be acceptable, and will be used by the Department in performing its sales below cost test.

Department's Position: Pursuant to the Department's February 9, 1993 letter requesting clarifying information, Stelco submitted difmer information ten days prior to verification. At verification, the Office of Accounting verified the difmer information in question. We consider this submission to be timely and in response to a request by the Department as allowed under 19 CFR 353.31(b). Since the Department has determined the difmer information to be timely, the cases cited by petitioners in which the Department resorted to BIA in the face of untimely submissions have no bearing on the instant case. Therefore, the new difmer information will be used for purposes of the final determination.

Comment 60: Petitioners argue that the Department must deny a circumstance-of-sale adjustment to FMV for provincial sales tax (PST) and calculate a weighted-average home market provincial tax rate by product and apply the rate to U.S. sales with which those products are compared. Petitioners also argue that the Department should use the adjusted weighted-average tax rate to increase USP net of duty, brokerage, rebates, and freight and ensure that the amount of hypothetical tax added to USP does not exceed the amount of the home market tax. Finally, they assert that the Department should calculate margins by dividing the aggregated dumping margins by the aggregated USP net of the hypothetical tax.

Respondent argues that the Department should add PST to USP only when the U.S. sale is being compared to a home market sale with PST. The amount added should be the actual amount on the home market sale rather than a weighted-average home market tax rate.

Department's Position: As in the case of the Goods and Services tax (GST), the Department will no longer make a circumstance-of-sale adjustment to FMV and will no longer calculate a hypothetical tax on the U.S. product for PST. Instead, we will add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation (*see* "Fair Value Comparison" section, above).

However, as verification showed, Stelco does not pay PST on all of its home market sales. In instances where the product will be used as an input, there is an exemption from payment of PST. That is why original equipment manufacturers and re-sellers are exempt from paying the PST. Therefore, PST will be applied to USP only in those cases where the U.S. sale is matched to a home market model with PST.

Comment 61: Petitioners argue that the Department should not allow certain pre-sale freight charges as an adjustment because the merchandise that is shipped to outside processors is still in an unfinished state. Petitioners assert that such charges should be a cost of production.

Respondent argues that such goods are finished products and thus pre-sale freight of these products is a legitimate movement expense. In addition, respondent argues that if the Department makes the adjustment to USP for pre-sale freight, it must also make such an adjustment to FMV to ensure an apple-to-apple comparison.

Department's Position: We agree with petitioners that pre-sale freight charges for unfinished merchandise should not be considered a movement charge. Freight between a factory and the further processor of a work in progress is not a deductible adjustment under Antifriction Bearings (Other than Tapered Roller Bearings) from Germany 56 FR 31692 (July 11, 1991) (first admin. review) (section 10, Comment 1). In its own words, "Stelco frequently ships its coils to a processor for further processing prior to sale. Such processing may include painting, pickling, slitting or other treatment." See October 20, 1992 Section B, C, D response (p.6). The respondent referred to a number of cases (Tapered Roller Bearings from Japan, 56 FR 26054, 26056 (June 6, 1991); Television Receivers from Japan, 55 FR 35916, 35920 (September 4, 1990); Gray Portland Cement and Clinker from Mexico, 55 FR 29244, 29251 (July 18, 1990); Red Raspberries from Canada, 56 FR 677 (January 8, 1991); Gray Portland Cement and Clinker from Mexico, 58 FR at 25807) to support its assertion that the Department must allow pre-sale freight to be deducted from U.S. price. In all of these cases, however, the Department allowed pre-sale freight charges to be deducted because they involved the transfer of a finished product from the factory to a distribution center or warehouse. None involved the transfer of an unfinished product from the factory to a further processor. Therefore, because Stelco frequently ships unfinished products for further processing, the Department has decided that pre-sale freight charges can not be deducted. However, we have not included pre-sale freight in the cost of manufacture (COM) because there is no evidence on the record which indicates it was excluded from COM. Furthermore, there is no significant impact on COM because pre-sale freight charges as compared to the COM of the subject merchandise is *de minimis*.

Respondent's citation of *Ad Hoc Committee of AZ–NM–TX–FL Producers of Grey Portland Cement* v. *United States*, 787 F.Supp. 208, 213 (CIT 1992) is inapposite. That case held that once the Department adjusts USP for pre-sale freight of finished merchandise, it must also adjust FMV for pre-sale freight of finished merchandise. The "freight expense" in question in this case involves unfinished merchandise, and no adjustment is being made to either USP or FMV for it.

Comment 62: Petitioners argue that the royalty fees paid to an unrelated entity are not true selling expenses but a cost of production for Z–Line goods and should not be deducted from Stelco's gross unit price.

Respondent agrees that the royalty payments paid to the unrelated entity are actually costs of production and thus should not be deducted from either USP or FMV.

Department's Position: The Department agrees that the above adjustment should not be allowed as a selling expense. The royalty to the unrelated party is a payment for production technology rather than a selling expense and thus a cost of manufacturing.

Comment 63: Petitioners argue that commissions paid to a related party with respect to Z–Line, a partnership of which Stelco owns 60 percent, should not be allowed as adjustments because Stelco could not prove that the payments were at arm's length.

Respondent agrees that such commission payments are "intracorporate transfers" rather than actual payments. Thus, the Department should not deduct these payments from either the USP or the FMV.

Department's Position: The Department agrees that such payments should not be allowed as adjustments to price because these payments are intracorporate transfers which Stelco did not demonstrate to be made at arm's length. However, we have included these payments to the related party as a cost of production. See Comment 75. The Department has consistently refused to grant adjustments to price for this type of intracorporate transfer which are not made at arm's length. See e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India, 57 FR 54360, 54367.

Comment 64: Petitioners contend that Stelco had improperly included Stelco

U.S.A.'s warehouse costs in the indirect selling expense category. They contend that these costs are post-sale expenses directly related to the sales under investigation and therefore should be considered as a direct selling expense. Further, the petitioners note that the warehousing expenses were incorrectly calculated.

Department's Position: While at verification, the Department noted that Stelco U.S.A.'s warehousing expenses are post-sale expenses which are directly related to the sales under investigation. Therefore, we have considered these expenses as direct selling expenses for the final determination. In addition, we have adjusted the warehousing expense to reflect corrections found at verification.

Comment 65: Petitioners argue that two rebate categories, REBATE2H and REBATE3H, should not be deducted directly from gross unit price because they involve refunds which are linked to specific customers, products, and market, but which are not tied to specific transactions. Moreover, petitioners note that these refunds are adjustments resulting from clerical or other claim adjustments rather than from allowances afforded to the buyer under terms established at the time of sale.

Respondent contends that they have established that these adjustments bear a reasonably direct relationship to the sales under consideration and that Stelco was able to tie each rebate to the specific customer, in the specific market, for a specific cause, the specific class of product sold during the POI.

Department's Position: The Department agrees with respondent that the REBATE2H and REBATE3H are legitimate deductions to home market price. Although Stelco has allocated these adjustments, they are directly associated with the sales in question. Petitioners have cited several cases in which the Department has disallowed rebates because they were not sales specific. However, in those instances, the respondent was unable to limit the allocation pool to the subject merchandise. For these particular rebates, granted by Stelco, the allocation pool consists of subject merchandise by customer and therefore meets the Department's direct test. As noted by petitioners, several of the REBATE3H adjustments did consist of corrections of clerical or administrative errors. However, the Department verified that these were legitimate and accurate adjustments.

Comment 66: Petitioners argue the Department should base its final determination on a comparison of individual U.S. prices with average Canadian prices.

Respondent argues that the Department should base its final determination upon a comparison of average U.S. prices with average Canadian prices due to the "unique circumstances" which exist between the U.S. and Canadian markets. These circumstances result in the same or very similar average transaction prices for both markets, and individual U.S. prices that are lower than both average U.S. and average Canadian prices. Thus, respondent says that a comparison of average Canadian prices to individual U.S. prices would create artificial margins. Respondent urges the Department to compare a weighted-average USP with a weighted-average FMV, as opposed to comparing an individual U.S. sale with a weighted-average FMV.

Department's Position: Although section 777A of the Act allows the Department to average U.S. sales under certain conditions, the Department is not compelled to do so. The Department's preference is not to average USP, as doing so would potentially allow the masking of selective dumping. That is, a foreign producer could sell half of its merchandise in the U.S. at less than FMV, and the other half at greater than FMV, and subsequently arrive at a zero dumping margin.

The Department has made exceptions in certain cases but only when such cases involved a large number of sales, and the sale of perishable products. The two cases respondent cites (*Certain Fresh Winter Vegetables from Mexico*, 48 FR 20,512 (March 28, 1980) and *Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Kenya and Mexico*, 52 FR 2126 *et seq.* (January 20, 1987) are not on point because they involve perishable products. As stated in *Fresh Cut Flowers*, "unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price." Steel is clearly not a perishable product as are flowers or vegetables. In the case of such non-perishable products as steel, the Department has consistently compared individual U.S. prices to average home market prices. This was most recently affirmed in *Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.* v. *United States*, Slip Op 93–87 at 5 (CIT 1993) which stated that Section 777A "gives no indication that Commerce must average both sides of the equation." Furthermore, it agreed with the Department that, because the product was not a perishable product, "Commerce was justified in not averaging U.S. prices" even though it had averaged home market sales. (*Id.*). Therefore, for the purposes of these investigations, we have compared each U.S. sale with a weighted-average FMV.

We also note that nothing in Section 777A indicates that proximity of the respondent's home market to the United States requires the Department to weight-average USP. The legislative history of section 777A clearly indicates that Congress intended that section to give the Department the discretion to use averaging techniques in cases involving a large number of sales. H. Rep. No.1156, 98th Cong., 2nd Sess. 44–46 and 186 (1984). In addition, the Department has previously rejected arguments from Canadian respondents that an average USP is required. *Certain Iron Construction Castings from Canada*, 51 FR 2412, 2414 (January 16, 1986).

Comment 67: Petitioners argue that Stelco failed to report complete 1992 restructuring costs and the Department should include them in the cost of manufacture.

Respondent counters that during the 1992 fiscal year it did not incur any restructuring costs. The only restructuring costs incurred were by CCC, a related party. Respondent notes that some Stelco employees were laid-off in October of 1992, however, the cost of employee benefits associated with the laid-off workers were included in the reported COP/CV.

Department's Position: We agree with Stelco. As confirmed by Stelco's audited financial statements the company did not incur restructuring costs in fiscal 1992. However, Stelco did incur certain job training and employee relocation costs. At verification, Stelco established that these costs were included in the submitted cost information.

Comment 68: Petitioners claim that Stelco's interest expense relating to the Z-line must be included in the cost of production. Petitioners note that Stelco's submission indicates that interest expense was incurred in 1992 in connection with its Z-line facility. Petitioners believe that Stelco failed to report this information by using interest earned from a U.S. tax refund to offset the expense.

Department's Position: We agree with petitioners that Z-line's interest expense should be included in the cost of production and have revised the cost of the input provided from the related Z-line facility. See Comment 75.

Comment 69: Petitioners claim the Department must include in the cost of manufacture ("COM") Stelco's 1992 foreign exchange loss related to the raw materials used in producing subject

merchandise. Petitioners maintain that these amounts were not included in the submission. Petitioners also claim that the unrealized loss resulting from the translation of long-term debt should be included in COM.

Respondent argues that it has appropriately accounted for foreign exchange gains and losses in accordance with Canadian GAAP. Furthermore, Respondent argues that the Department usually adheres to foreign GAAP unless it materially differs from U.S. GAAP and the difference causes distortion.

Department's Position: We agree with respondent in part. A review of the verification exhibits indicates that Stelco had a net foreign exchange gain on its material purchases used for the subject merchandise. Therefore, we have made no adjustment. However, in calculating the COP, the Department included the unrealized loss resulting from the translation of long-term debt. If losses are deferred to some future time, the costs would not be appropriately matched to the sales. See final determination of *Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, 54 FR 15472 (March 23, 1993).

Comment 70: Petitioners argue that the Department must adjust Stelco's pension charge to include the full amount of this expense. Respondent claims that pension contributions required by the Government of Ontario differ from the pension obligation computed under Canadian GAAP. Respondent contends that the GAAP figures used for financial reporting are the appropriate costs to be included in COP/CV.

Department's Position: The Department agrees with respondent. Stelco included in the costs submitted to the Department the amount of the pension expense recorded in its audited financial statements. Although the provincial government imposed higher cash funding requirements in 1992, this does not change the amount of the company's actual corporate obligations for fiscal 1992 in accordance with Canadian GAAP. The higher funding required by the Government of Ontario is recorded as a deferred asset on Stelco's financial statements and as such is not properly included in current expenses.

Comment 71: Petitioners maintain that the Department should include Stelco's expenses for miner's health benefits in the COP/CV. Petitioners believe that these costs should be included since Stelco recognized the full present value of all future obligations for former mine workers in its 1992 financial statements.

Respondent counters that these expenses are not related to the production costs during the POI but instead relate to future periods and therefore the Department should exclude them from its COP analysis.

Department's Position: We agree with petitioners. Stelco recognized the current cost of these benefits in its 1992 financial statements and accordingly, these costs should be borne by the subject merchandise.

Comment 72: Petitioners insist that the Department must include, in the cost of manufacture, the full cost of Stelco's repairs on its #6 battery coke oven.

Respondent argues that the repairs to the coke oven were so extensive that the company virtually built a new oven and the costs incurred for this repair are comparable to start-up expenses. Respondent further claims that the cost is clearly extraordinary because the oven could not be reactivated in the normal course of business. In citing *Fresh Kiwifruit from New Zealand*, 57 FR 13695, at 13705 (April 17, 1992), respondent compares restoration costs necessary to return an orchard to an operable state to the reactivation of the coke oven. In that case, the Department allowed the costs to be capitalized and allocated them over the same period used in the amortization of its other capitalized costs. Respondent argues that its restoration costs can be considered capitalized costs because they were incurred in returning the coke oven to an operable state. Capitalized costs are amortized over the life of the asset under Canadian GAAP.

Department's Position: We disagree with respondent. Although Stelco argues that the restoration costs were an asset which *can* be capitalized and amortized over a period of time pursuant to Canadian GAAP, the company chose to expense the entire amount in 1992. We have allocated this cost to the subject merchandise to include all costs incurred during the POI.

Comment 73: Petitioners assert that the gain from Stelco's sale of the chemical lime works should not be an offset to the cost of manufacture because the sale is not an ordinary business activity.

Respondent counters that since the production from the lime works are direct inputs to the steelmaking process, the company included the gain in its costs. Respondent cites *Minivans from Japan*, (57 FR 21937, 21943, May 25, 1992) in support of its contention that the disposal of fixed assets is generally considered a normal part of a company's operations and any gains or losses generated by the transactions should be included in the COP/CV calculation.

Department's Position: We agree with respondent. The lime works provided inputs used in manufacturing the subject merchandise. The Department recognizes the disposal of fixed assets as an ordinary business activity, and gains or losses resulting from that activity as includable in the COP and therefore we have accepted the costs as submitted by Stelco.

Comment 74: Petitioners declare the Department must use BIA for all cost data of CCC. The Section D response did not supply actual cost of production data for CCC. Stelco weight averaged the cost of the product supplied to CCC for further processing and estimated CCC's further manufacturing costs.

Respondent states that it reported the cost of the substrate provided to CCC for further processing and CCC supplied Stelco with the cost of painting, laminating, electrogalvanizing, and slitting based on CCC's estimated cost worksheets, which are used in the normal course of business. Respondent argues that CCC provided sufficient information for the Department's cost of production analysis.

Department's Position: The point is moot. The Department's analysis of CCC's sales of subject merchandise are based entirely on BIA. *See* the Department's position on Comment 3.

Comment 75: Petitioners argue that the Department should use BIA for certain related party inputs and services. Stelco reported the actual cost rather than the transfer prices and did not substantiate fair market value with respect to inputs provided by these suppliers.

Respondent states that the Department's policy is to use transfer prices for sales of materials between related parties when sales are demonstrated to be at arms-length. Where transfer prices cannot be shown to be at arms-length then the use of actual costs is required.

Department's Position: We have used the cost information submitted by Stelco in valuing inputs obtained from related parties, except for the input provided by the Z-line. The questionnaire requested Stelco to report transfer prices for related parties. However, it reported costs instead for all related parties, which we accepted, except for Z-line. Stelco stated that it could not demonstrate that transfer prices were at arm's length, therefore, it reported actual costs. At verification, the Department reviewed information confirming that the cost data provided by Stelco represented the actual cost to the producing party after including

certain adjustments, in effect, the transfer price. We compared the transfer prices to the prices charged by unrelated suppliers, noting that they were comparable. For the Z-line, however, in computing COP/CV, we revised the cost of the related input by adding interest expense as reported in its financial statements. We also included royalties and commissions which have been disallowed as selling expenses. Because we are unable to determine which products were galvanized on the Z-line, as BIA, we revised all reported corrosion-resistant fixed and variable overhead based on a proportionate amount of Z-line costs to total galvanized costs to reflect this upward adjustment for interest expense, royalties, and commissions.

Comment 76: Petitioners assert that the selling, general and administrative expense included in the reported cost of production must be recalculated because the company allocated these expenses improperly.

Department's Position: We agree with petitioners. Stelco reported its G&A expenses on a per ton amount, instead of calculating the G&A expenses as a percentage of cost of sales and applying that amount to COM. Products which cost more to produce should bear a proportionately higher amount of G&A expense. Therefore, Stelco's methodology is improper and we have revised the reported G&A expenses.

Comment 77: Petitioners declare the Department must recalculate Stelco's interest expense because it used an improper methodology. Petitioners claim that the Department requires interest expense be allocated by (i) determining interest expense as a percentage of total cost sales for the consolidated entry; and (ii) applying that percentage of COM to determine a cost per unit.

Department's Position: We agree with petitioners. Stelco reported its interest expense on a per ton amount, instead of calculating the interest expense as a percentage of consolidated cost of sales and applying that amount to COM. Products which cost more to produce should bear a proportionately higher amount of interest expense. Therefore, Stelco's methodology is improper and we have revised the reported interest expense.

Comment 77: Petitioners state the Department must use best information available for the weighted average cost per CONNUM for hot rolled products because Stelco incorrectly weighted the hot-rolled cost of manufacturing (HRCOM) for each mill by the net tons sold. Instead, it should have weighted the HRCOM by the number of tons manufactured—the basis upon which it calculated costs—not the quantity that was sold.

Department's Position: We disagree with petitioners. There is nothing on the record which shows that the weighted average cost per CONNUM for hot-rolled products is distortive. The subject merchandise is generally not a stock item, therefore, its production and sale would be relatively the same. Therefore, weight averaging by sales does not appear unreasonable.

Comment 78: Petitioners assert the Department must recalculate the variances applied to the Hilton Works Plant.

Respondent argues that the Department should accept Stelco's use of annual variances because they account for year-end adjustments. The company claims that including these adjustments avoids distortions resulting from the use of a six-month POI, and is in conformity with Department practice.

Department's Position: We agree with respondent. At verification, the Department determined that the annual variances included year-end adjustments which, if excluded from the six-month POI, would distort costs. Applying the annual variance in this case provides an accurate representation of the actual costs incurred.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**. Our preliminary determinations with regard to IPSCO's entries of steel plate and Dofasco's entries of cold-rolled steel were negative. Therefore, the suspension of liquidation on these products for these companies is effective on the date of publication of this notice. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Company	Hot-rolled	Cold-rolled	Corrosion-resistant	Plate
CMP	n/a	7.49	n/a	n/a
Dofasco	32.79	11.73	10.89	n/a
IPSCO	20.08	n/a	n/a	1.47
Sidbec	n/a	48.29	n/a	n/a
Stelco	16.86	48.29	28.27	68.70
All Others	20.84	36.19	22.29	61.95

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) or their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15615 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–405–802]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Finland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0108 or (202) 482–4136, respectively.

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from Finland are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination and postponement of final determination (58 FR 7090 (February 4, 1993)), the following events have occurred:

Verification of Rautaruukki Oy's (Rautaruukki's) responses to the Department of Commerce's (the Department's) sales and cost of production (COP) questionnaires took place in Finland during March and April of 1993.

We received requests for a public hearing from Rautaruukki and from petitioners on February 16, 1993. Rautaruukki filed its case brief on April 28, 1993. Petitioners filed their case brief on April 27, 1993. Rautaruukki and petitioners filed rebuttal briefs on April 30, 1993. A public hearing was held on May 4, 1993.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Steel), which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in Room B–099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of certain cut-to-length carbon steel plate from Finland to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Rautaruukki reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include these transactions in our calculations of FMV is discussed in Appendix II to *Argentine Steel*.

United States Price

We calculated USP using the methodology described in the preliminary determination, with the following exceptions:

1. We recalculated U.S. credit expenses using the average interest rate found at verification (see page 11 of the Department's sales verification report).
2. We have not calculated a hypothetical tax on the U.S. product, but have added to U.S. price the absolute amount of tax on the comparison merchandise sold in Finland (see comment 7 below).

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination, with the following exceptions:

1. We adjusted Rautaruukki's difference-in-merchandise adjustment to account for a heat treatment reporting code which was incorrectly reported. (See the Department's concurrence memorandum, on file in the Central Records Unit, Room B–099 of the main Commerce building, for further details.)
2. We have now allowed Rautaruukki's claimed home market (HM) rebates (see Comment 3 and the concurrence memorandum).
3. We have reclassified Rautaruukki's claimed HM commission as a discount (see the concurrence memorandum).
4. We have adjusted FMV, reported on an actual-weight basis, to place it on a theoretical-weight basis, for comparison to U.S. sales reported on a theoretical-weight basis (see page 14 of the Department's sales verification report).
5. We have not used Rautaruukki's sales to one HM customer, since we found that the sales to that customer were not at arm's length.

Cost of Production

Based on petitioners' allegation, and in accordance with section 773(b) of the Act, we investigated whether Rautaruukki had home market sales that were made at less than COP.

If over 90 percent of respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales were at prices above the COP, and such sales were made over an extended period of time, we disregarded only the below-cost sales.

In order to establish that below cost sales were made over an extended period of time, we performed the following analysis on a product specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP for two or more months, then the below cost sales were considered to have been over an extended period of time.

Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales for that model and calculated FMV based on constructed value (CV). Furthermore, there is no evidence on the record of this investigation to indicate that such sales were at prices which would permit the recovery of costs over a reasonable period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of the respondent's cost of materials, fabrication, general expenses, and packing.

The submitted COP data was relied upon, except in the following instance where the costs were not appropriately quantified or valued:

1. The Department calculated a rate for general and administrative (G&A) expenses

based on financial data from Rautaruukki's response to Section A of the Department's questionnaire (see comment 9 below).

2. For CV, we have adjusted Rautaruukki's costs reported on an actual-weight basis to place them on a theoretical-weight basis, for comparison to U.S. sales reported on a theoretical-weight basis.

In accordance with section 773(e)(1)(b)(i) of the Act, we included in CV the greater of Rautaruukki's reported general expenses, adjusted as detailed above, or the statutory minimum of 10 percent of cost of manufacture (COM). For profit, we used the statutory minimum of eight percent of the total of COM and general expenses because Rautaruukki's actual profit on home market sales was less than eight percent, pursuant to section 773(e)(1)(b)(ii) of the Act.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the average monthly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Petitioners state that the Department should apply best information available (BIA) for those U.S. sales matched to HM products for which respondent has furnished erroneous, incomplete, or misleading product information. Respondent's errors, petitioners contend, include: (a) Product control numbers which improperly included products of different steel qualities; (b) products with incorrect control numbers or grade identifier designations; and (c) several products which have not been properly identified.

Respondent rebuts that it has properly reported all of the products in question.

Department Position: Petitioners' assertions regarding product information are not supported by evidence on the record. Respondent provided documentation at verification with regard to product matching and product characteristics and we found no discrepancies, aside from the heat treatment problems addressed in Comment 9 (see pages 8 and 9 of the Department's sales verification report). We have continued to use the information furnished by respondent.

Comment 2: Petitioners state that respondent has not supported its claim for the small item quantity adjustment with sufficient information and therefore, respondent's request for a quantity adjustment should be denied.

Respondent contends that it has provided ample evidence, in numerous submissions to the Department, that the item quantity factor accounts for significant differences in direct manufacturing costs between sales in the home market and sales in the U.S. market.

Department Position: We agree with petitioners. Respondent's support on the record for this claim consists merely of a single chart, lacking comprehensive, narrative explanation, and a figure reported in the sales listing field for this claimed adjustment. In its response to the Department's sales questionnaire, Rautaruukki claimed to be working on a "study" to justify the adjustment. However, no such study was ever placed on the record in this investigation. The information which Rautaruukki has presented does not adequately support or quantify the claim for a quantity adjustment. Therefore, we disallowed Rautaruukki's claimed quantity adjustment.

Comment 3: Petitioners contend that the Department should disallow several of respondent's claimed home market rebates. Petitioners claim that the existence and amount of the rebates was uncertain.

Respondent states that its customers in the Finnish home market know of the rebate in advance of their purchases and, therefore, the Department must make adjustments for those rebates.

Department Position: We agree with respondent. Based on exhibits collected by the Department during verification, the home market customers had knowledge of the existence and amounts of rebates prior to the sales in question (see the concurrence memorandum). We have included the reported rebates in our margin calculations.

Comment 4: Petitioners state that the Department should not make any adjustment for data included in the third party payment field of respondent's computer tape, since respondent previously confirmed that it had no third party payment expenses.

Department Position: We agree with petitioners. Respondent confirmed, several times, that it incurred no expense with regard to third party payments. Therefore, we disallowed the data contained in the computer sales listing field for third party payments.

Comment 5: Petitioners state that respondent's lack of preparedness prevented the verification of Rautaruukki's direct selling expenses, and therefore, the Department should classify respondent's claimed home market direct expenses as indirect selling expenses, while classifying respondent's claimed U.S. direct selling expenses as direct selling expenses.

Respondent contends that it provided a full explanation and supporting documentation for its claimed direct selling expenses and that the Department had ample opportunity to verify the information. Respondent maintains that to the extent that any information remains unverified, it was not due to respondent's inability to provide the Department with the documentation at verification.

Department Position: We agree with petitioners that respondent's HM selling expenses should be classified as indirect and its U.S. selling expenses should be classified as direct. As noted in the Department's sales verification report, we were unable to verify that any of the expenses in question were of the nature claimed by respondent. As stated in Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Antidumping Duty Administrative Review (57 FR 4956, February 11, 1992):

> [T]he burden is placed on the respondent to prove that U.S. selling expenses are indirect and home market selling expenses are direct. We classify expenses in each market based on the information submitted * * * and on the Department's verification reports. In instances where a respondent fails to provide sufficient information to support its claim that an adjustment is directly related to a sale in the home market, we will generally reclassify the adjustment as indirect. Likewise, when a respondent fails to provide information to support its claim that an adjustment is indirect in the U.S. market, we generally reclassify the adjustment as direct.

Therefore, we have treated all of Rautaruukki's claimed U.S. selling expenses as direct and all of Rautaruukki's claimed HM selling expenses as indirect.

Comment 6: Petitioners state that the Department should use U.S. indirect selling expenses as an offset to HM commissions.

Department Position: As stated in the "Foreign Market Value" section of this notice, we have reclassified respondent's HM commissions as discounts. Therefore, petitioners' comment is moot.

Comment 7: Petitioners state that, pursuant to the recent decision by the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United*

VOL 58 ISS 130 JL 9 1993 UMI

States (No. 92–1043, slip op. 12–17, March 19, 1993), the Department cannot make a circumstance-of-sale adjustment for Finnish turnover tax. Petitioners also state that the Department must determine the extent to which the tax is passed through to customers in the home market.

Department Position: We have adjusted for the Finnish turnover tax according to the methodology described in Appendix II of Argentine Steel. As stated in Appendix II, we have not made a circumstance-of-sale adjustment to FMV. Also, we have not calculated a hypothetical tax on the U.S. product, but have added to U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation.

We imposed no limitation on consumption taxes added to USP, based on the incidence of such taxes in the home market, because the statute requires no such limitation. We are not following *Zenith* v. *United States*, 633 F. Supp. 1382 (CIT 1986), *appeal dismissed*, 875 F.2d 291 (Fed. Cir. 1989), and its progeny with respect to this issue, because we do not agree with that decision and have appealed this issue to the Court of Appeals for the Federal Circuit in *Daewoo* v. *United States*, Fed. Cir. Nos. 92–1558–62. The Court of International Trade has upheld our position that the statute does not require a measurement of "tax pass-through" in *Federal-Mogul Corp.* v. *United States*, Slip Op. 93–17 (CIT Feb. 4, 1993).

Comment 8: Petitioners state that we should use BIA for U.S. products which are mismatched due to heat treatment reporting problems.

Respondent contends that we should use the corrected heat treatment information which it has submitted, and make the appropriate revisions to the product concordance.

Department Position: We agree with petitioners. We have used BIA for reported product matches which are incorrect because of erroneous heat treatment information in respondent's questionnaire responses (see the concurrence memorandum). The Department had requested that Rautaruukki identify U.S. sales which were mismatched due to heat treatment misreporting. In identifying those U.S. sales, Rautaruukki also noted the corrected heat treatment information for those sales. Those corrections were untimely and unsolicited new information and, therefore, could not be used for this determination. Because Rautaruukki failed to provide correct model matching data for certain U.S. sales, and because these errors were systemic in nature, we used, as BIA, for those particular transactions the higher of: (1) The highest non-aberrant transaction margin calculated for the firm from among the sales of the same class or kind of merchandise where we were able to calculate a margin, or (2) the average petition rate for the same class or kind of merchandise.

Comment 9: Petitioner states that, because Rautaruukki's reported G&A expenses failed to include an amount for corporate overhead, the Department should use BIA for the G&A rate.

Rautaruukki states that it provided verification exhibits which reflected not only the specific elements of G&A expenses but the absolute value of G&A expenses as well. It also states that no inquiry was made regarding corporate overhead during the verification.

Department Position: Rautaruukki presented data at verification to support its G&A expenses, as revised for its supplemental cost of production questionnaire response. However, as detailed in the Department's cost verification report, the data could not be tied to any specific data in the financial reporting system. Therefore, the Department has not used the revised G&A expenses and, making an adverse assumption, has used higher G&A figures based on data from Rautaruukki's original cost of production submission.

Comment 10: Petitioner states that Rautaruukki did not properly allocate interest expense because the company did not consider exchange gains and losses in its calculation.

Rautaruukki states that, at verification, it updated its interest expense based on its audited 1992 consolidated financial report.

Department Position: We agree with respondent. Rautaruukki's audited 1992 consolidated financial report, issued immediately prior to the Department's cost verification, encompassed the POI. Rautaruukki used the report at verification to update fully its previously reported interest expense calculation, in the manner prescribed in Section D of the Department's questionnaire. The exchange gains and losses in the financial statement relate to a devaluation by the government that occurred in 1991. Accordingly, respondent correctly excluded these items from its interest expense.

Comment 11: Petitioner maintains that Rautaruukki did not fully capture all of its indirect costs in its COP submission.

Rautaruukki states that all of the indirect costs were properly allocated.

Department Position: We agree with Rautaruukki. Analysis of the verification exhibits confirms that all indirect costs were appropriately allocated.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of steel plate from Finland that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Rautaruukki Oy	32.25
All others	32.25

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15616 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

(A–427–806, A–427–807, A–427–808, and A–427–809)

Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW; Washington, DC 20230; telephone: (202) 482–1777 or (202) 482–5288, respectively.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from France are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determinations and postponement of final determinations on January 26, 1993 (58 FR 7091, February 4, 1993), the following events have occurred:

On January 26, 1993, petitioners alleged that critical circumstances exist with respect to imports of hot-rolled steel, cold-rolled steel, and steel plate.

On February 12 and 16, 1993, respectively, petitioners and respondent, Usinor Sacilor (Usinor), requested that a public hearing be held.

Usinor submitted supplemental cost of production and further manufacturing information, revisions and corrections to its sales responses, and/or revised computer tapes in February, March, April, and May 1993.

On March 8, 1993, we issued negative preliminary determinations of critical circumstances with respect to imports of hot-rolled steel, cold-rolled steel, and steel plate (58 FR 12932, March 8, 1993).

We conducted verification of Usinor's sales and cost questionnaire responses in France in March 1993 and in the United States in April 1993.

Usinor and petitioners submitted case and rebuttal briefs on May 14 and 19, 1993, respectively. A public hearing was held on May 21, 1993.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full descriptions of the subject merchandise are included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Steel), which is being published concurrently with this notice.

Period of Investigations

The period of investigations (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of merchandise covered by these investigations also constitutes single categories of such or similar merchandise. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales at the same level of trade, where possible. Where we were not able to match sales at the same level of trade, we made comparisons without regard to the level of trade. We adjusted Usinor's reported levels of trade by treating automobile manufacturers as end users, not as a separate category of end users.

Fair Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For all four classes or kinds of merchandise, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States before importation and exporter's sales price (ESP) methodology was not otherwise indicated. (See Comment 31, below.)

For all four classes or kinds of merchandise, where sales to the first unrelated purchaser took place after importation of the subject merchandise into the United States, we based USP on ESP, in accordance with section 772(c) of the Act. All of the ESP sales of subject merchandise were reported as further manufactured in the United States.

We excluded U.S. sales of seconds because these constituted an insignificant percentage of total sales for each class or kind of merchandise (e.g., less than five percent) sales of merchandise that was not of French origin, and sales of non-Usinor merchandise.

For purchase price and ESP sales of each class or kind of merchandise, we made deductions, where appropriate, for discounts, rebates and the following movement charges: foreign brokerage, foreign inland freight, loading, marine insurance, ocean freight, U.S. brokerage, U.S. duty, and U.S. inland freight.

For ESP sales only, we deducted credit expenses, warranty expenses, indirect selling expenses, inventory carrying costs, and premiums for product liability insurance. In the investigation of cold-rolled merchandise, we deducted sales commissions to an unrelated commissionaire.

In addition, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported products and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added in the United States was deducted.

In determining the costs incurred to produce the further manufactured products, the Department of Commerce (the Department) included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general expenses, including selling, general and administrative expenses, and interest expenses.

We divided the restructuring costs reported on the December 31, 1992, consolidated financial statement of Edgcomb, one of Usinor's related steel service centers (SSC), by that company's production costs and used the resulting

ratio to increase its reported further manufacturing expense.

We added to U.S. price the absolute amount of value-added tax (VAT) paid on the comparison sale in France. (See Comment 37, below.) Based on our findings at verification, we made other miscellaneous modifications to USP. These changes are described in the section on "Interested Party Comments," below.

We converted U.S. sales made on either a theoretical minimum weight or a theoretical nominal weight basis to an actual weight basis using conversion factors provided by Usinor.

Foreign Market Value

We compared the volume of home market sales of subject merchandise to the volume of third country sales to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV in each of these investigations. We found that the home market was viable for sales of each of the classes or kinds of merchandise subject to investigation.

We excluded from our analysis any sales made by related resellers in France (downstream sales) of merchandise that had been purchased from Usinor, whether or not the product purchased from Usinor had been processed, further manufactured, or resold as the same product. To the extent that dropping these downstream sales leaves U.S. sales without a foreign market match, we have applied a BIA margin to these U.S. sales. (See Comments 1, 3, and 7, below.) In addition, we excluded home market sales that were outside the ordinary course of trade, including sample sales and sales of seconds, from the home market sales used for calculating FMV.

We then used the related party test applied at the preliminary determinations to determine whether sales to related customers were made on an arm's-length basis, although we modified it to consider differences in the level of trade. (See Appendix II to Argentine Steel.) We did not include in our analysis any sales to related customers that we determined were not at arm's-length.

Cost of Production

Petitioners alleged that Usinor's home market sales in each class or kind of merchandise were made at prices below the cost of production (COP). On the basis of petitioners' allegations, we gathered and verified data on production costs.

We compared the weighted average home market prices to the COP. If over 90 percent of the respondent's sales of a given model were at prices equal to or greater than the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities.

If between ten and 90 percent of the respondent's sales of a given model were at prices equal to or greater than the COP, we disregarded only the below-cost sales, if they were found to be made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP and over an extended period of time, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the Usinor's below-cost sales were made in substantial quantities over an extended period of time at prices that would not permit recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of Usinor's cost of materials, fabrication, general expenses, and packing. We relied on the submitted COP, except in the following instances where the costs were not appropriately quantified or valued:

1. The general and administrative (G&A) expenses were recalculated using the 1992 annual financial statements of Sollac, the Usinor company that produces nearly all of the hot-rolled, cold-rolled and corrosion-resistant merchandise subject to these investigations as well as some of the steel plate. In addition to the G&A expenses reported as a line item on the financial statements, the charge-offs for restructuring and the write-off of fixed assets were allocated over cost of goods sold.

2. Interest was recalculated using the annual financial statements of Usinor. The net financial expense was divided by the cost of sales. For ESP and purchase price calculations, a portion of the net interest expense was offset by the proportion of inventory and/or accounts receivable to total assets, as applicable.

For each class or kind of merchandise, we compared home market selling prices, net of movement charges and discounts and rebates to each product's COP. Within the different classes or kinds, we found that for some products, more than 90 percent of the sales were above the COP. For other products, between 10 and 90 percent of the sales were at prices above the COP. For others, there were fewer than 10 percent of sales at prices above the COP; therefore, we did not use these products in our analysis and instead based FMV on CV.

Price-to-Price Comparisons

For those products for which we have an adequate number of sales at prices equal to or greater than the COP, we based FMV on home market prices. For all four classes or kinds of merchandise, we calculated FMV based on delivered prices, inclusive of packing and value-added tax (VAT), to unrelated customers in the home market and to related customers, sales to whom have been determined to be at arm's-length under our related party methodology. We deducted inland freight and loading expenses from these prices. We also deducted home market packing costs and added U.S. packing costs.

For purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments for credit expenses, warranties, and warehousing for each class or kind of merchandise.

Where commissions were deducted from USP, the amount of indirect selling expenses deducted from FMV was capped by the U.S. commission amount in purchase price comparisons and by the sum of U.S. indirect selling expenses and the U.S. commission amount in ESP comparisons.

For ESP comparisons, we also deducted the appropriate direct selling expenses in the home market for each class or kind of merchandise. In addition, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Based on our findings at verification, we modified certain charges and adjustments relating to FMV for both purchase price and ESP comparisons. See the section on "Interested Party Comments," below.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We included the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM) in CV, as appropriate. For profit, we used the profit earned in the home market for the appropriate class or kind of merchandise because it exceeded the statutory minimum. In these investigations, we recalculated the weighted-average profit from the adjusted home market net sales prices and COPs.

Where USP is based on purchase price sales, we made circumstance-of-sale adjustments for differences in direct selling expenses, including credit, warranty, and warehousing expenses, where appropriate. Where USP is based on ESP sales, these direct expenses were deducted from the CV.

Final Determination of Critical Circumstances

See Appendix II to Argentine Steel for a general discussion of how we determined, for all of these steel investigations, whether critical circumstances exist, including the appropriate comparison periods for determining whether imports have been massive and the bases for determining whether importers knew or should have known that the merchandise was being sold at less than fair value.

We find that critical circumstances do not exist with respect to imports of hot-rolled, cold-rolled, or corrosion-resistant steel from France, in accordance with section 735(a)(3) of the Act. To determine whether or not there have been massive imports of cold-rolled steel, we compared export volume for the five months subsequent to the filing of the petition to the five months prior to the filing of the petition. Although we found that exports of this merchandise from France during the period subsequent to receipt of the petition increased by more than fifteen percent, the information available to us indicates that this increase is explained by the closing of the St. Lawrence Seaway.

Our analysis of the export volumes of hot-rolled steel and steel plate from France indicate that the imports of these products did not increase by amounts that could be considered massive.

Unless we find that imports of the subject imports were massive, we do not need to consider whether there is a history of dumping or whether the importer of the products knew or should have known that they were being sold at less than fair value.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by Usinor by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Petitioners contend that there are numerous errors in Usinor's data that warrant the use of total BIA for the final determinations in these investigations. Specifically, petitioners contend that: (1) Usinor's date of sale methodology is incorrect, calling into question the accuracy and completeness of its responses; (2) Usinor did not properly report requested home market resale information; and (3) there are numerous additional errors in Usinor's responses, the cumulative effect of which makes them unusable for margin calculations. Petitioners contend that, as BIA, the Department should assign to Usinor, for each class or kind of merchandise, the average of those margins alleged in the petition that are higher than the most conservative margins calculated using Usinor's data.

Usinor argues that the Department should rely on its data for the final determinations. Usinor contends that total BIA is unwarranted because: (1) It has reported the correct universe of home market and U.S. sales in accordance with its date of sale methodology; (2) it has properly reported downstream sales by related parties in the home market; (3) it has corrected virtually all of the deficiencies cited by petitioners; and (4) its information has been verified by the Department.

DOC Position: We agree with Usinor that the use of total BIA is not warranted in these investigations. Usinor's date of sale methodology is reasonable and accurate, given the nature and structure of its information system database. Moreover, there is no indication that Usinor's date of sale methodology has any distortive effect on the calculation of estimated dumping margins.

With regard to Usinor's failure to properly report downstream sales by related parties in the home market, we have determined to apply BIA in certain situations because of this failure. See Comment 3, below and the January 22, 1993, Memorandum from Acting Deputy Assistant Secretary for Investigations to Acting Assistant Secretary for Import Administration, at page 6 for more information.

Concerning petitioners' allegation that there are numerous deficiencies in Usinor's response, Usinor has corrected many of the deficiencies that were cited by petitioners, and those that were not corrected will be addressed through the application of partial BIA.

Comment 2: Petitioners argue that if the Department decides to use Usinor's data for the final determinations, partial BIA is warranted in the calculation of FMV and USP because of Usinor's date of sale methodology.

Usinor contends that its date of sale methodology is acceptable and that it has reported the proper universe of sales.

DOC Position: We disagree with petitioners, as discussed above in *Comment 1.*

Comment 3: Petitioners argue that Usinor's failure to report home market downstream sales, *i.e.*, sales made by related resellers, combined with the fact that many of its sales to related resellers were found not to be at arm's-length warrants the use of BIA for all affected U.S. sales. Specifically, petitioners state that the Department should determine for each home market product the percentage of home market sales made to related parties at levels of trade 2 and 4 that fail the arm's-length test, and weight into the margin for each affected U.S. sale the highest non-aberrant calculated margin for the portion represented by these sales to related parties.

Usinor asserts that this use of BIA is unwarranted because it properly reported downstream sales.

DOC Position: Although we agree with petitioners that Usinor should not be rewarded for failing to properly report downstream sales, we disagree with petitioners' proposed application of BIA. As we explained for all of the concurrent investigations of carbon steel flat products in the preliminary determinations (*see* Appendix II to Argentine Steel), it is the Department's position that we must determine whether sales to specific customers were made on an arm's-length basis, in accordance with past Departmental practice. To the extent that dropping related party sales that fail the arm's-length test from the product concordance leaves U.S. sales without a foreign market match, we have applied

BIA to these U.S. sales. As BIA we have used the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrant calculated margin for any other sale of merchandise of the same class or kind made by the same respondent. In our view, it is inappropriate to apply total BIA in situations where there is an adequate basis for determining foreign market value. For these reasons, we have continued to apply BIA in the context of the arm's-length test in the same manner as we did in the preliminary determinations.

To the extent that the downstream sales would have provided the most appropriate match to a U.S. sale, we have applied a margin based on BIA to those U.S. sales. As BIA, for each class or kind of merchandise, we are using the higher of the average margins in the petition, or the highest non-aberrant calculated margin in each investigation.

Comment 4: Usinor contends that the Department should base its arm's-length analysis on the study it provided because that study allegedly comports with our legal requirements. Usinor claims that the Department will calculate foreign market value on the basis of sales to a related party if it is satisfied that the price is comparable to the price at which the producer or related reseller sold such or similar merchandise to a person not related to the producer or reseller. Usinor submits that the Department has disregarded the requirement of price comparability and has arbitrarily substituted a highly restrictive test of price discrimination. Usinor notes that for the final results of the antidumping duty administrative review in Gray Portland Cement and Clinker from Mexico (58 FR 25,803, April 28, 1993), the Department refused to apply the arm's-length test used for the preliminary determinations in these steel investigations and instead used a test based on price comparability.

Petitioners argue that the Department should continue to employ the arm's-length analysis used for the preliminary determinations.

DOC Position: We disagree with Usinor. Usinor submitted no evidence whatsoever demonstrating that its arm's-length test is superior to the one used by the Department. Usinor's only argument is its contention that its test conforms to the Department's regulations while the test used by the Department does not. In our view, the test applied by the Department, which has been applied in past cases including the preliminary results of the antidumping duty administrative review in Titanium Sponge from Japan (56 FR 40,866, August 16, 1991), fully conforms to the Department's regulations which rather broadly state that related prices must be comparable to unrelated party prices. Such instructions give the Department substantial latitude in defining "comparability." As for Usinor's argument that the arm's-length test used in the final results of the administrative review of Gray Portland Cement and Clinker from Mexico ("Cement") diverged from the test used in these investigations, Usinor provided no detailed information demonstrating how that test was performed differently. Furthermore, nothing in the Cement determination supports the criticism of the arm's-length test used in the preliminary determinations of these steel investigations.

Comment 5: Usinor claims that the arm's-length test used by the Department in its preliminary determinations is methodologically unsound because it fails to take into account differences in price that result from comparisons of sales of significantly different quantities of merchandise and because the Department fails to take a statistical variance into account in its weighted-average prices.

Petitioners maintain that the Department's arm's-length test is reasonable because weight-averaging prices within the home market and U.S. databases eliminates any distortion that might be present on individual transactions. Petitioners also assert that by establishing a 99.5 percent ratio as a benchmark in lieu of a 100 percent ratio, the Department has accounted for variances between prices to related parties and prices to unrelated parties.

DOC Position: In an attempt to correct for the effect that a comparison of different quantities may have on our arm's-length analysis, we have modified the test used in these preliminary determinations to account for level of trade. (See Appendix II to *Argentine Steel* for a description of this modification and further explanation of why such a modification was made.)

We disagree with Usinor, however, that the Department's arm's-length test is distorted because it fails to take into account whether the related customers' weighted-average price is below the unrelated customers' weighted-average price by an amount that is within an accepted range of variability found in the related prices. Because of the Department's well founded reluctance to rely on prices between related parties in its analysis, the Department's test has always been a "strict" one. Usinor, however, did not need to pass this test in order to allow the Department to apply its less than fair value analysis. Usinor could have simply reported all of its sales in France to the first unrelated customer, as requested. However, Usinor failed to properly report such sales. The Department neither can nor should attempt to determine how much related party prices can fall below unrelated party prices before distortions result.

Comment 6: Usinor argues that if related party sales are found not to be at arm's-length, the Department should not rely on downstream sales but should instead rely exclusively on those sales made to unrelated parties in determining FMV. Usinor claims that the downstream sales it reported are unreliable because Usinor-sourced merchandise generally cannot be segregated by its related SSCs. Usinor contends that FMV should be based only on sales made to unrelated parties because these are a significant portion of Usinor's total sales. Further, Usinor maintains that in situations involving a significant volume of sales, the Department is authorized to use averaging and sampling techniques in determining FMV. Usinor contends, in turn, that sales to unrelated parties would be representative of all of the transactions under investigation because, in virtually all instances, there are available matches of merchandise sold to unrelated customers.

Petitioners argue that because Usinor's downstream sales are likely to reflect higher home market prices, sales by related parties that fail the arm's-length test should not simply be disregarded in the Department's calculation of FMV. Moreover, petitioners argue that because these sales are likely to reflect higher prices, a sample which excludes these sales would not yield a sample truly representative of home market prices.

DOC Position: We agree that Usinor's downstream sales are unreliable but not for the reason stated by Usinor. Instead, we found Usinor's downstream sales to be unreliable for the preliminary determinations because Usinor had not properly reported these sales, despite Usinor's claims to the contrary. Our position has not changed.

We disagree that the Department's past use of averaging and sampling techniques apply in this scenario. Averaging techniques were used in the final determination of the investigation in *Certain Fresh Cut Flowers from Peru* (52 FR 7000, March 6, 1987), cited by Usinor, because of the nature of the product under investigation, especially its price volatility. The cases cited by Usinor in which sampling techniques were used all confirm that the

Department decides early in an investigation, because of the large volume of sales involved, to sample transactions in ways that would not bias the less than fair value analysis. Usinor requested that the Department construct a sample after it had failed to properly report home market sales. The Department does not select or allow sampling methodology at this point in investigations, especially after respondents have failed to adequately report requested information, precisely because such a sample would not be truly representative, as petitioners note.

In sum, we believe that BIA is called for where the inability of Usinor to report downstream sales causes certain U.S. sales to be left with no reliable foreign market match as described in Comment 3, above.

Comment 7: Usinor argues that if the Department decides not to limit its investigation to unrelated party sales in France, and if sales to related parties are determined not to be at arm's-length, the Department is obligated to use its downstream sales in determining FMV. Usinor maintains that the Department allowed it to provide limited data for downstream sales with the knowledge that Usinor only believed that the sales involved would not match to U.S. products and never provided a guarantee to that effect. Moreover, Usinor contends that the Department's decision to disregard the company's downstream sales data on the basis that they were not fully reported is in violation of the GATT Antidumping Code because the Department has made its information requests so burdensome that they are virtually impossible for respondents to adequately comply with them.

Petitioners contend that the Department is not obligated to use Usinor's incomplete data concerning sales by related SSCs and resellers in its FMV calculations. Petitioners also assert that in light of the short statutory time frame to complete these antidumping duty investigations and Usinor's faulty assurances regarding the data it submitted, the Department's decision to disregard downstream sales data submitted by Usinor was not inconsistent with the GATT Antidumping Code.

DOC Position: We disagree with Usinor. The fact that Usinor never "guaranteed" that downstream sales would never be matched to U.S. sales is irrelevant. The letter to Usinor from the Department granting Usinor permission to submit less than full reporting of sales data expressly laid out the terms and conditions of such permission. It stated that limited reporting was possible "* * * only if sales to unrelated parties provided the identical or most similar match in all cases." Usinor accepted these conditions when it made the decision to provide limited data for these sales. In addition, petitioners correctly note that in at least one submission to the Department, Usinor stated that "* * * any sales by related home market SSCs of further processed/transformed products do not involve sales of products such or similar to merchandise under investigation which have been sold to the United States."

We disagree that the requirement that companies participating in these investigations report all home market sales to the first unrelated party constitutes "turning the questionnaire process into a verification process." Information on all sales to unrelated parties in the market on which foreign market value is based may be an essential and integral part of the questionnaire process because it can affect the calculation of FMV. In light of this, the Department's decision to disregard incomplete data can hardly be characterized as inconsistent with the GATT Antidumping Code.

Comment 8: Usinor contends that if the Department does not rely on unrelated home market sales or on downstream sales in cases where it finds Usinor's sales to related resellers not to be at arm's length, then it should use either CV or the weighted-average of all other margins for the matched U.S. sales. Usinor claims that use of CV would conform to the Department's longstanding practice in cases where such or similar comparisons do not exist in the home market. Usinor argues that the use of a punitive BIA rate is not appropriate for a cooperative party and that the use of the weighted-average margin calculated for all other sales would also be consistent with the Department's past practice.

Petitioners argue that since the Department determined that Usinor's home market sales were sufficient to form a basis for comparison to U.S. price in these investigations, and, in that Usinor failed to properly report its home market sales listing, the use of CV is inappropriate. Petitioners argue that the cases cited by Usinor are easily distinguishable insofar as the Department had before it complete sales listings and no such or similar merchandise was found in the home or third country markets. Petitioners also contend that the use of a weighted-average margin calculated for all other sales in such a situation would reward Usinor for its failure to respond completely to the Department's information requests.

DOC Position: We agree with petitioners because the use of either CV or the weighted-average of all other margins as partial BIA could reward Usinor for not properly reporting a large number of home market sales. We also agree with Usinor that it has been cooperative. The term "cooperative," in this context, however, is only relevant in assigning a margin based on total BIA. When the Department seeks to adjust a respondent's data that is by and large reliable, as is the case here with Usinor, it is because the respondent has been cooperative and the flaws are not so significant or extensive that the response as a whole is rendered unusable.

Comment 9: Usinor states that, in any event, the Department should exclude from its FMV calculation sales made by related SSCs over which Usinor maintains only a minority interest and exerts no operational control.

Petitioners maintain that Usinor has failed to demonstrate that it has no operational control over related SSCs in which it holds a minority interest.

DOC Position: Since we are not using any downstream sales in our analysis, this question is moot.

Comment 10: Petitioners contend that Usinor's improper inclusion of level of trade in its matching hierarchy warrants assigning to all improperly matched U.S. sales the highest non-aberrant margin calculated on any single U.S. transaction. Petitioners hold that Usinor's selection of inappropriate similar merchandise has inhibited the Department's ability to make proper product comparisons in these proceedings. Petitioners also note that in the preliminary determinations for the flat-rolled steel investigations from Japan involving Nippon Steel Corporation, the Department applied the BIA proposed here by petitioners when a virtually identical problem arose. Petitioners contend that the dispositive portions of the Department's questionnaire regarding the selection of similar merchandise do not identify level of trade as a matching criterion. Petitioners also assert that Usinor never specifically revealed its matching methodology.

Usinor insists that the Department's questionnaire instructions clearly require consideration of level of trade and that Usinor correctly reported its product concordance. Usinor also contends that, throughout these investigations, it fully disclosed its matching methodology to the Department. Usinor indicates that it did not learn that the Department was

ignoring its own methodology until it read of the preliminary determinations in the companion cases involving Nippon Steel in Japan. Usinor holds that if the Department continues to conclude that its product concordance is incorrect, the Department should not use a punitive BIA for its final determinations, but should instead use the weighted-average margin of the other sales calculated in order to properly reflect Usinor's status as a cooperative party in these investigations.

DOC Position: We agree with petitioners that Usinor improperly gave consideration of level of trade precedence over physical similarity in selecting its product matches. Nothing in Section B or Appendix V of the questionnaire (which set forth the instructions for selecting home market matches to U.S. products) or in the Department's standard computer program used in these investigations and provided at an early stage in the investigations should have led respondent to believe that the above methodology was appropriate. Nor did Usinor fully disclose the methodology it used to construct its product concordance.

The language used in its questionnaire response ("[w]hen matching home market products for U.S. sales of products where the identical product was not sold in the home market, Usinor searched first for the most similar merchandise at the same level of trade") is in accordance with the Department's general practice of considering both the level of trade and the most similar merchandise. Consequently, the Department had no reason to issue a deficiency letter to Usinor with respect to this item. Contrary to Usinor's assertion, the Department did not "ignore its own methodology" in these cases, which clearly and consistently emphasizes physical similarity before level of trade.

After this matter was brought to our attention, we carefully reviewed the questionnaire to determine how Usinor might have misunderstood the product matching instructions. Based upon our review, we acknowledge that Usinor could have been confused if it focused exclusively on the "General Instructions" in Section A of the Department's questionnaire. However, at the point when we discovered Usinor's error, we could not allow the correction of the errors nor can we now simply use the existing information in our margin analysis since we know that this information is incorrect. Because of the arguable ambiguity in Section A of the questionnaire and the limited number of U.S. sales involved, we have applied the weighted-average margin calculated for all other sales on a class or kind basis to sales of each U.S. product that were incorrectly matched to a home market product as described above.

Comment 11: Usinor insists that assuming, for the sake of argument, that its product concordance methodology was incorrect, the Department should have permitted Usinor to submit a revised concordance. Usinor asserts that a new product concordance would not constitute new factual information because it would be based on data already on the record.

Petitioners argue that because the Department, with its limited resources, must meet rigorous statutory deadlines during the course of antidumping investigations, the burden is on respondents to provide accurate and complete data to the Department in a timely fashion, and that the Department is not required to accept revised product concordances.

DOC Position: We agree with petitioners. Because of our difficulties with the product concordances submitted by respondents in these investigations as well as in various of the other steel investigations currently being conducted by the Department, we have decided not to accept corrections to, nor to significantly revise on our own, the product concordances submitted previous to our verifications in these cases. Because of the large volume of cases, the limited time available to conduct these investigations, and the strain upon the Department's resources, we were unable to allow any respondent to submit revised product concordances after December 1992. See Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands.

Comment 12: Usinor argues that if the Department refuses to allow it to submit revised product concordances, it is nonetheless the Department's duty to select the correct matches for use in its determinations. Usinor cites the U.S. Court of International Trade decision in *Timken Co.* v. *United States* ("Timken"), 630 F. Supp. 1327 (1986), in which Usinor claims the court stressed that it is the Department that is required to make the determination of what constitutes the most similar merchandise. Usinor also cites the final determination in the investigation of *Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan* ("Sweaters") (55 FR 34,585, August 23, 1990), in which the Department revised respondents' product concordances.

Petitioners assert that the Department does not have a *duty* to revise respondents' product concordances, even though the Department revised respondents' product concordances in *Sweaters*. Petitioners conclude that the *Timken* decision merely speaks to the Department's responsibility to ascertain what constitutes such or similar merchandise for comparison to U.S. sales, not to the proposition that the Department must reconfigure respondents' erroneous product concordances.

DOC Position: We agree with petitioners that *Timken* is inapposite here. In that case, the Department failed to collect data to verify that the respondent's selection of the most similar or identical merchandise was appropriate. Based on the information already on the record in these investigations, we know that several of Usinor's matches are incorrect. Regarding the *Sweaters* case, as noted above in the "DOC Position" to Comment 11, the limited time available and the number of cases we were required to investigate precluded the Department from engaging in the time consuming task of revising product concordances when those concordances were incorrect.

Comment 13: Petitioners argue that the Department should convert Usinor's purchase price sales and Interstate's further manufactured sales that were made on a theoretical minimum weight basis to an actual weight basis using the conversion factors furnished by Usinor at verification. Petitioners contend that the Department should reduce the gross unit price on sales invoiced on a theoretical minimum weight basis by the appropriate conversion factor.

Usinor contends that the Department should accept the weights as reported. In the alternative, if the Department decides to adjust U.S. sales reported on a theoretical minimum weight basis, it should use the conversion factors provided.

DOC Position: We agree with petitioners that Usinor's U.S. sales made on a theoretical minimum weight basis should be converted to an actual weight basis using the conversion factors provided by Usinor. We are using the conversion factors provided by Usinor to convert theoretical minimum weights to actual weights, which has the same effect as converting the gross unit prices, as petitioners suggest.

Comment 14: Usinor argues that no adjustment should be made for sales made on a theoretical nominal weight basis. Usinor contends that because the actual weight of a particular shipment could be either greater than or less than

the theoretical nominal weight, the weight is not necessarily understated, as may be the case with theoretical minimum weight.

Petitioners argue that there is no information on the record supporting Usinor's assertion that a theoretical nominal weight can be either higher or lower than the actual weight. Accordingly, petitioners contend that the Department should apply the conversion factors to all U.S. sales made on a theoretical nominal weight basis.

DOC Position: We disagree with Usinor that no adjustment is necessary. Where possible, comparisons should be made on the same weight basis. Furthermore, the conversion factor is based on actual weight variances and, therefore, takes into account the fact that the actual weight can be either greater than or less than the theoretical nominal weight. We are, therefore, using the conversion factors provided by Usinor to convert U.S. sales made on a theoretical nominal weight basis to an actual weight basis.

Comment 15: Petitioners contend that because Usinor failed to identify which sales in the home market were made on a theoretical weight basis, as BIA, the Department should not adjust any home market prices, thereby treating all home market sales as having been made on an actual weight basis.

Usinor argues that the Department verified the percentages of Usinor's home market sales of hot-rolled steel, corrosion-resistant steel, and steel plate that were based on a theoretical minimum weight. Usinor contends that the Department should make adjustments on the home market side, if the Department chooses to adjust all U.S. sales rather than individual U.S. transactions.

DOC Position: We agree with petitioners. Because Usinor did not identify which sales were made on a theoretical weight basis, as BIA, we are not adjusting Usinor's home market sales. Furthermore, throughout these investigations, Usinor has claimed that all home market sales were made on an actual weight basis, and it was not until late in the verification that the Department discovered that certain sales were made on a theoretical weight basis. Concerning Usinor's contention that the Department should make adjustments on the home market side if all U.S. sales are adjusted, we are not adjusting all U.S. sales, but are adjusting the identified affected U.S. transactions (see Comments 13 and 14, above).

Comment 16: Petitioners contend that the Department should assign the highest net home market price calculated on any transaction to the unreported home market sales Usinor presented at the start of verification. In addition, petitioners argue that the unreported home market sales of plate discovered at verification warrants the use of BIA for all home market plate sales manufactured by Usinor. As BIA, petitioners contend that the Department should assign all home market plate sales the highest net home market price calculated on any home market transaction.

Usinor argues that the Department should assign to these unreported sales the weighted-average margins calculated in the appropriate class or kind of merchandise.

DOC Position: We disagree with both petitioners and Usinor. We are disregarding the sales presented at the start of verification and those discovered during the verification because the volume of unreported sales is insignificant.

Comment 17: Petitioners contend that Usinor has made coding errors in reporting "type" (*i.e.*, yield strength) in the hot-rolled steel investigation and "quality" in the corrosion-resistant steel investigation. Petitioners argue that Usinor's failure to properly code certain products in the home market warrants assigning to sales of those products the highest net price calculated on any home market transaction in that class or kind of merchandise. Petitioners also contend that, in the steel plate investigation, Usinor has improperly coded merchandise in both markets as having one category of yield strength when it should have coded these sales as having a different yield strength. Petitioners recommend that the Department should assign to all U.S. sales with the incorrect classification the highest margin calculated on any single U.S. transaction in the steel plate investigation.

Finally, petitioners assert that Usinor's failure to properly code all products of a particular grade in the U.S. sales listing in the hot-rolled steel investigation warrants assigning to sales of those products the highest non-aberrant margin calculated on any individual transaction in the hot-rolled steel investigation.

Usinor argues that any coding problems should be treated as "errors" by the Department. Usinor contends that if an error is found in the reporting of a particular product characteristic, the Department should not apply punitive BIA to all products with that particular characteristic, but instead should assign the weighted-average margins calculated in the appropriate class or kind of merchandise.

DOC Position: We agree with both petitioners and respondent, in part. We believe Usinor's reporting errors in the corrosion-resistant and the steel plate investigations were in the nature of random errors rather than systemic problems. Therefore, because of the complexity of these investigations and the limited nature of the reporting problems, we are assigning, as BIA, all U.S. sales with these problems and all U.S. sales matched to home market sales with such errors in these investigations the weighted-average of all positive margin sales calculated for the appropriate class or kind of merchandise.

With regard to the product coding errors in both the home market and the U.S. market in the hot-rolled steel investigation, we have reason to conclude, based on our findings at verification, that Usinor incorrectly assigned product codes for an entire grade of steel in each market. Therefore, because these errors were not limited in nature, we are assigning, as BIA, to the product control numbers for all the U.S. products of the miscoded grade of steel the higher of the average margin in the petition, or the highest non-aberrant calculated margin in the appropriate investigation. In the case of the miscoded grade of steel in the home market, for the same reasons described above, we are assigning all U.S. sales matched to those home market sales the higher of the average margin in the petition or the highest non-aberrant calculated margin in the investigation.

Comment 18: Petitioners contend that Usinor was unable to reconcile its quantity and value figures in the steel plate investigation and, therefore, the Department should assign to all of GTS's home market plate sales the highest net home market price reported on any transaction.

Usinor argues that it did reconcile its quantity and value figures.

DOC Position: We disagree with petitioners. The quantity and value amounts that remained unreconciled at the conclusion of verification were insignificant. The Department considers these amounts verified.

Comment 19: Petitioners contend that the Department should assign the highest non-aberrant margin calculated on any U.S. sales transaction in the appropriate investigation to those unreported U.S. sales that were presented at verification.

Usinor argues that the Department should accept the additional U.S. sales information reported at verification. If the Department determines the use of BIA is justified, Usinor argues that the Department should assign to these

unreported sales the weighted-average margin calculated for the appropriate class or kind of merchandise.

DOC Position: We agree with petitioners, in part. As BIA, we are using the higher of the average margin in the petition for the relevant class or kind of merchandise, or the highest non-aberrant calculated margin in each investigation.

Comment 20: Petitioners argue that Usinor failed to report the prompt payment discount for a related U.S. SSC, Edgcomb, in a timely manner and that this failure warrants treating all Edgcomb sales as having received such discounts.

Usinor argues that the Department should accept the prompt payment discount information, as provided. Usinor contends that any deduction from USP should be made on the basis of the allocation of actual discounts over all reported sales.

DOC Position: We agree with petitioners. Because Usinor did not report the prompt payment discount on a timely basis, we must resort to the use of a BIA. As BIA, we are assuming that each customer received the prompt payment discount and are deducting the discount from each Edgcomb sale. Contrary to Usinor's contention, it is not Department practice to allocate discounts, especially prompt payment discounts, across all U.S. sales.

Comment 21: Petitioners argue that Usinor used the incorrect date of sale for blanket order sales made by Interstate and for all sales out of Edgcomb's Philadelphia facility. Petitioners argue that the date of sale for Interstate's blanket orders does not reflect the date at which price and quantity are established. As BIA, petitioners contend that the Department should assume that all transactions with order entry dates prior to the POI but with shipments during the POI constituted blanket orders. Petitioners argue that the volume of sales represented by these transactions should be divided proportionately by Interstate's sales of each class or kind of merchandise and that the highest margin calculated on any U.S. transaction should be assigned to the respective volume amounts.

Petitioners contend that Usinor's use of date of shipment as the date of sale for all sales by Edgcomb, regardless of the production facility, is incorrect because price and quantity are established prior to shipment (*i.e.*, when the work order is entered into Edgcomb/Philadelphia's "production inventory control" (PIC) system). As BIA, petitioners argue that the Department should divide the total volume of Edgcomb/Philadelphia sales by their share of sales in each class or kind of merchandise and assign the highest margin calculated on any single U.S. transaction in the relevant investigation to those amounts.

Usinor argues that the date of sale methodology used by Interstate was appropriate for most of the reported sales because the date reported by Usinor, the order entry date, was the date on which price and quantity were fixed. Usinor contends further that: (1) Interstate identified the potentially unreported blanket order sales; (2) a large portion of the blanket order sales were properly not reported because the date of sale for these sales was prior to the POI; and, (3) sales by Interstate comprise only a small percentage, by volume, of Usinor's U.S. sales. Usinor asserts that it would therefore be unreasonable and punitive to assign BIA to these transactions, as petitioners suggest. If the Department determines the use of BIA is justified, Usinor argues that it should assign the weighted-average calculated margin.

Concerning the Edgcomb/Philadelphia sales, Usinor contends that it has explained that the work order date is not retained in Edgcomb's PIC system and, therefore, was not available for use as the date of sale.

DOC Position: We agree with both petitioners and respondent, in part. Interstate's date of sale methodology with respect to blanket order sales was incorrect. The company had classified sales as being pursuant to blanket orders that had been entered into prior to the POI. It did not report the shipments of material during the POI pursuant to these blanket orders even when the shipments had far exceeded the original quantity specified in the order entry form. Therefore, as BIA, we are allocating the potential volume of unreported sales among the three classes or kinds proportionately, and to these sales we are assigning the higher of the average margin in the petition for each class or kind of merchandise or the highest non-aberrant calculated margin for the appropriate investigation.

We agree with respondent that the shipment date was the only date of sale reasonably available for Edgcomb sales because the work order entry date is not included in the PIC system and it is not saved on the company's other data retrieval system.

Comment 22: Petitioners argue that Usinor failed to report correct payment dates for Edgcomb sales. Petitioners contend that, as BIA, the Department should assign to all Edgcomb sales the longest period between shipment date and payment date reported for any further manufactured transaction in each investigation.

Usinor argues that the Department verified Edgcomb's payment date for a large number of sample sales, which demonstrated that the Department should accept the 30-day period for all of Edgcomb's sales.

DOC Position: We disagree with petitioners. Edgcomb's computer database erases actual shipment date and payment date information after payment is received. Edgcomb's use of 30 days is reasonable, given its terms of sale. Furthermore, the simple average of the transactions we examined at verification varied only slightly from the 30 day payment period reported by Edgcomb.

Comment 23: Petitioners argue that Usinor failed to identify an ocean freight provider and a brokerage and handling service provider as related parties. Petitioners contend that, as BIA, the Department should assign to all U.S. transactions the highest ocean freight and brokerage and handling charges reported on any single U.S. transaction in each investigation.

Usinor argues that it identified both the ocean freight and the brokerage and handling service providers as related parties, and that the Department was able to determine that these charges were at arm's-length.

DOC Position: We agree with Usinor. At verification we determined that Usinor's transactions with its ocean freight service provider were at arm's-length. Consequently, we have accepted Usinor's reported ocean freight and brokerage and handling expenses as arm's-length transactions.

Comment 24: Petitioners argue that because Usinor has not reported date of shipment as the date the merchandise left the French mill, the Department should add credit days to Usinor's credit expense claim to account for the time period from the date of shipment from the French mill until invoicing by Francosteel after the merchandise arrives in the United States. Petitioners contend that the Department should increase Usinor's U.S. credit period by adding the highest reported mill-to-European port shipment days for any of the four classes or kinds to Usinor's reported "time on the water" for trans-Atlantic shipments.

Usinor argues that, at verification, the Department confirmed the actual shipment days from the mill to the European port on a class or kind basis.

DOC Position: We agree with petitioners, in part. Usinor has understated its credit expenses by an amount reflective of the period between the date on which the merchandise

leaves the French mill and the date on which Francosteel issues the invoice. Concerning the mill-to-European port time period, it is the Department's preference to use information specific to each class or kind, when it is available. Therefore, we are increasing Usinor's U.S. credit period by the actual number of mill-to-European port credit days, as verified, for the cold-rolled, corrosion-resistant, and steel plate investigations. We increased the mill-to-European port credit days figure in the hot-rolled steel investigation, based on findings at verification.

To account for the time period that the merchandise is on the water, we are also increasing Usinor's credit period by its reported average number of ocean voyage days.

Comment 25: Petitioners argue that Usinor's reported freight rebate amounts on U.S. sales were found to be incorrect at verification and, therefore, the Department should increase Usinor's foreign inland freight charges on U.S. sales by the percentage rebate amount. Similarly, petitioners contend the freight rebate amounts on behalf of home market sales were found to be incorrect at verification and, therefore, the Department should deny the rebates on home market sales.

DOC Position: We agree with petitioners. Usinor's reported rebate percentages were incorrect and, therefore, we are increasing Usinor's foreign inland freight expenses on U.S. sales and its inland freight expenses on home market sales by the respective rebate percentages provided at verification.

Comment 26: Petitioners contend that Usinor failed to report marine insurance for merchandise warehoused prior to invoicing. As BIA, petitioners contend that the Department should double the reported marine insurance charge for all transactions where Francosteel also reported a warehousing expense.

Usinor argues that the Department should increase its reported marine insurance amounts by the percentage that the supplemental marine insurance premium represents of the total marine insurance premium.

DOC Position: We agree with respondent. We verified the percentage that the supplemental marine insurance premium represents of the total marine insurance premium, and are increasing Usinor's reported marine insurance expenses by that percentage.

Comment 27: Petitioners argue that because Usinor failed to demonstrate an historical basis for its claimed fidelity rebates on home market sales, the Department should deny these rebates. Usinor contends that the fidelity rebates were verified and should be allowed.

DOC Position: We disagree with petitioners that these rebates should be denied. Petitioners' claim that Usinor did not demonstrate an historical basis for its fidelity rebates is misleading. Due to the volume of data that had to be examined at verification, the Department set priorities for the information to be covered. Time did not allow for an examination of Usinor's reported fidelity rebates, and because we have no reason or evidence to doubt the accuracy of Usinor's fidelity claims, we are accepting them as reported.

Comment 28: Petitioners argue that the Department should deny Usinor's claim for an additional credit day to account for the one-day bank float in France.

Usinor argues that the bank float day represents a real cost to the company and should be allowed.

DOC Position: We agree with petitioners. Department precedent is to calculate the credit period from the time of shipment to the time payment is received, without allowing for additional credit days due to bank processing. Therefore, we are deducting one day from the number of credit days reported by Usinor for home market sales.

Comment 29: Petitioners argue that Usinor's claimed credit expenses for "consignment sales" should be disallowed. Usinor claimed credit expenses for these sales from the time the merchandise left its mill until the customer withdrew the merchandise from a consignment inventory at the customer's plant or warehouse. Petitioners assert that because Usinor maintains title to the merchandise until the date of withdrawal and invoicing, Usinor could resell the merchandise to other customers.

Usinor argues that it does not, in fact, withdraw the merchandise from its customers' inventories and resell the merchandise to other customers.

DOC Position: We verified that Usinor does not treat consignment inventory as merchandise for shipment to other customers and that such expenses were directly related to sales. Therefore, we have accepted Usinor's claimed credit expenses for these sales.

Comment 30: Petitioners contend that the Department erred in using the Banker's Acceptance Rates to calculate Francosteel's credit expenses for the purposes of the preliminary determinations. Petitioners argue that Usinor's related selling agent in France incurs the costs of financing Usinor's purchase price sales and, therefore, the Department should use Usinor's home market interest rate to calculate credit expenses on purchase price sales. Petitioners argue that, at a minimum, the Department should determine that Usinor's related selling agent in France incurs the costs of financing from the date of shipment from the mill to the date of invoicing by Francosteel and use Usinor's reported home market interest rate for that period. Petitioners contend that, in the event that the Department determines that Francosteel incurs the cost of financing Usinor's purchase price sales, the Department should use Francosteel's reported interest rate.

Usinor argues that Francosteel incurs the costs of financing Usinor's purchase price sales and, therefore, the Department should use Francosteel's reported interest rate. Usinor contends that there is no evidence on the record supporting petitioners' claim that Usinor's related selling agent in France, and not Francosteel, incurs the costs of financing purchase price sales.

DOC Position: We use U.S. interest rates to calculate credit expenses incurred on U.S. sales when a respondent demonstrates that it had either actual borrowings or access to U.S. dollar loans during the POI. The Department has not and does not concern itself with determining which of the corporate entities related to the respondent actually incurs the cost of financing.

We disagree with both petitioners and respondent regarding the use of Francosteel's reported interest rate for calculating U.S. credit expenses. Because of the relationship between Dillinger, a respondent in the companion investigation of carbon steel plate from Germany, and Usinor, it has come to the Department's attention that Francosteel borrows from banks related to it in both the United States and France. Because of Usinor's borrowings from related banks in both markets, and because we have no evidence to indicate that the interest rates reported by Usinor accurately reflect its costs of financing, we have used the U.S. prime rate and the French equivalent of the prime rate in our calculation of credit and inventory carrying expenses in the respective markets. Our recalculation of inventory carrying costs is an estimate because we do not have enough information to duplicate the methodology that respondent used. For that part of the inventory valued in U.S. dollars, we have used a simple average of the short-term debt rate of Usinor's U.S. selling companies.

Comment 31: Petitioners argue that the Department should reclassify Usinor's sales through Francosteel to unrelated parties as ESP transactions.

VOL 58 ISS 130 JL 9 1993 UMI

Petitioners claim that: (1) A number of these sales were warehoused after importation and, thus, were not shipped directly from Sollac/GTS to the unrelated U.S. purchaser; (2) Francosteel takes title to the merchandise prior to importation into the United States; and (3) Francosteel has a greater role in U.S. sales than that of a mere "processor" of sales documentation and a communication link.

Usinor argues that the Department properly classified Francosteel's sales to unrelated U.S. customers as purchase price sales. Usinor claims that: (1) The sales transactions with unrelated U.S. purchasers always occurred prior to importation and direct shipment from Usinor to unrelated purchasers was the customary channel of such sales; (2) it was only under special circumstances that Francosteel briefly inventoried the merchandise after a sale was made; (3) merchandise sometimes enters into Francosteel's accounting inventory without entering into Francosteel's physical inventory; (4) the Department's verification report confirmed Francosteel's role as a mere processor of sales related documentation; and (5) prices are negotiated between the unrelated U.S. customers and the mill, and Francosteel cannot reduce the negotiated prices.

DOC Position: We agree with respondent. Evidence on the record suggests that these sales are properly classified as purchase price sales. At verification, we confirmed that Francosteel's sales to its unrelated U.S. customers were made prior to importation into the United States, that Francosteel acts as nothing more than a sales facilitator, and that Francosteel does not warehouse the merchandise in the normal course of business.

Comment 32: Petitioners argue that evidence on the record indicates that Usinor's U.S. prices were reported inclusive of packing costs and should be treated as such.

Usinor stated that its "reported U.S. prices do include the cost of packing."

DOC Position: We agree with petitioners and respondents and are treating Usinor's reported prices as inclusive of packing costs.

Comment 33: Petitioners argue that the Department should treat Francosteel's U.S. credit insurance expense as a direct selling expense because it is assessed on the basis of sales rather than on a single fixed amount.

Usinor contends that its credit insurance expense should be treated as an indirect expense. Usinor claims that it is Department practice to treat credit insurance expenses as direct selling expenses only where they are assessed on a sale-by-sale basis and as indirect expenses when they cannot be tied to specific claims.

DOC Position: We agree with respondent that these credit insurance expenses are indirect selling expenses. The credit insurance premium is paid annually, regardless of whether any claims were made, and the expenses cannot be tied to specific sales. It is Department practice to treat selling expenses that cannot be tied to specific sales as indirect selling expenses.

Comment 34: Petitioners argue that Usinor failed to identify certain warranty expenses incurred by Edgcomb that are categorized as "money-only credits." Petitioners contend that, although Usinor claimed that Edgcomb incurred no warranty expenses, the practice of granting money-only credits when a customer finds defects in the merchandise indicates that Edgcomb incurs warranty expenses directly related to sales of the subject merchandise.

Usinor argues that it made adjustments for these money-only credits on the four sales of the subject merchandise that were affected.

DOC Position: We disagree with petitioners. At verification, we confirmed that Usinor made adjustments for the money-only credits. Furthermore, Usinor's money-only credits were not confined to instances where the customer was credited for defective merchandise.

Comment 35: Petitioners argue that Usinor failed to include "costs in excess of net assets acquired," land lease amortization costs, and amortization of intangibles in its reported SG&A expenses related to Francosteel's U.S. operations. Petitioners contend that the Department should increase Francosteel's indirect selling expense factor accordingly.

Usinor contends that its costs in excess of net assets acquired and land lease amortization costs are not expenses, but rather are the total accumulation of amortization expenses against Francosteel's assets accounts created upon the purchase of its related SSC, Metron. Concerning the amortization of intangibles, Usinor argues that these costs were not included in the reported SG&A expenses because they were not available at the time the responses were prepared. Furthermore, Usinor argues that these amortization costs are "too minuscule" to warrant making an adjustment at this stage in the proceeding.

DOC Position: We agree with Usinor, in part. The Department only includes current amortization expenses in SG&A. Therefore, Usinor's accumulated amortization expenses (*i.e.*, costs in excess of net assets acquired and land lease amortization costs) were correctly not included when calculating the indirect selling expense factor.

We agree with petitioners with respect to the amortization of intangibles expenses. The Department normally treats this type of expense as an SG&A expense, and we are therefore increasing the indirect selling expense factor accordingly.

Comment 36: Petitioners argue that commissions paid to Francosteel by Usinor's related selling agents, Daval and Le Fer Blanc, should be treated by the Department as direct selling expenses. Petitioners contend that these commissions are at arm's-length and are directly related to the sales in question.

Usinor contends that the Department verified that commissions paid to Francosteel are related party commissions and the Department properly treated them as indirect selling expenses.

DOC Position: We disagree with petitioners. While these commissions can be directly tied to sales, that is not relevant to a determination that they were at arm's-length and should be treated as direct selling expenses. At verification, we confirmed that related selling agents such as Francosteel perform many more services than unrelated commissionaires.

Comment 37: Petitioners contend that, pursuant to the recent decision by the Court of Appeals for the Federal Circuit (CAFC) in *Zenith Electronics Corp.* v. *United States* (No. 92–1043, Slip. op., 12–17, March 19, 1993), the Department should deny a circumstance-of-sale adjustment to FMV and add an imputed amount for the VAT which has been rebated or which has not been collected by reason of the exportation of the merchandise to the United States.

Usinor argues that the Department applied the correct VAT methodology in its preliminary determinations and should reject petitioners arguments.

DOC Position: We have adjusted our VAT methodology in conformance with the CAFC decision. Appendix II of *Argentine Steel* contains a detailed discussion of the Department's revised VAT methodology.

Comment 38: Petitioners argue that the cost of manufacturing should be increased to account for purchases of raw material at prices below their cost of production. Petitioners contend that the 1991 financial statements indicate that the transfer prices of Lorfonte, a

member of the Usinor Group, were insufficient to cover its fully-absorbed cost of production. Usinor's ownership of Lorfonte exceeds 50 percent; therefore, Sollac purchases from Lorfonte should be valued at the fully absorbed cost.

Usinor argues that Sollac reported its purchases of pig iron from Lorfonte at the fully absorbed actual cost of production for the POI, as the questionnaire directed.

DOC Position: We agree with respondent. The financial statements do not divulge whether or not the transfer prices were above or below the cost of production. Purchases of raw materials from related suppliers were reviewed at verification. Sollac reported the supplier's actual cost of production for the POI. Therefore, an adjustment to the cost of manufacturing is not warranted.

Comment 39: Petitioners argue that Usinor may have erroneously reduced its reported overhead by the amount by which its accruals exceeded its tax remittance during the POI.

Usinor argues that it is entitled to an adjustment to ensure that the actual amount of local taxes incurred during the POI, and not the amount accrued, is taken into account in calculating overhead expense. The tax is based on the prior year's salaries and wages and the value of fixed assets. The mills accrue the estimated amount of the tax as a fixed overhead cost. Sollac records in its cost of goods sold any difference between the tax accrued by the mills and the actual amount of the tax remitted.

DOC Position: Respondent included a portion of its year-end adjustment that was attributable to the POI. The amount reflects the expense incurred. Therefore, the Department did not adjust Usinor's reported local tax expense.

Comment 40: Petitioners argue that Sollac understated overhead by adjusting the accrual for profit sharing expense to reflect actual profits earned during the POI. For the same reasons that G&A expenses should be reported on an annual basis, profit sharing expense also must be reported on an annual basis.

Usinor argues that it was necessary to take into account the fact that the profit sharing costs for the POI had been overstated.

DOC Position: We agree with petitioners that profit-sharing expenses must be reported on an annual basis. The Department found that Usinor's adjustment to overhead was reasonable because there was no profit-sharing expense for the fiscal year.

Comment 41: Petitioners argue that the amortization of goodwill should be included in G&A expense. Goodwill represents the economic value of the company over the purchase price of its underlying assets. The excess over the value of assets is capitalized and amortized over the future periods.

Usinor argues that the Department should not include the amortization of goodwill in its calculation of Sollac's G&A expenses. Sollac appropriately excluded the amount of amortized goodwill, which is not a real production cost, from its reported cost of production. Goodwill is the intangible value of the company and hence the amortized portion of financial statement goodwill represents neither an actual cost incurred for manufacturing the subject merchandise nor a period expense related to operations.

DOC Position: We agree with petitioners. Tangible and intangible assets are recorded at their purchase price and expensed through amortization or depreciation over their estimated lives, in order to match the expense to the benefits received in future periods.

Comment 42: Petitioners argue that the restructuring costs incurred by Usinor and Edgcomb should be included in the calculation of G&A. Usinor's 1992 consolidated financial statements reported significant restructuring costs.

Usinor argues that the Department should utilize Sollac's six-month financial statements in calculating G&A expenses because this six-month financial statement most accurately reflects Sollac's G&A expense during the period of investigation. Respondent argues that Edgcomb properly excluded restructuring accruals from its calculation of G&A expenses. The restructuring expenses reported in its 1992 financial statements constituted a reserve accrued in 1992 for expenditures to be made in 1993 and were therefore properly excluded from G&A expenses for 1992.

DOC Position: We agree with petitioners. The Department's normal methodology is to calculate G&A expenses based on the audited annual financial statements which most closely correspond to the period of investigation, to account for seasonal fluctuations and year-end adjustments. If such financial statements are not available, the Department has relied on financial statements from the fiscal year prior to the POI, when such statements provide a reasonable approximation of the company's current financial position. Usinor incorrectly argues that the restructuring costs do not relate to expenses during the POI. Generally accepted accounting principles (GAAP) applied in France would require companies to recognize such an expense in 1992. Like U.S. GAAP, an estimated loss from a contingency is charged to income if assets have been impaired or a liability incurred and the amount is estimable. This expense is recorded in the current year because, unlike the depreciation of assets, it cannot be matched against future revenues. In the final determination in the investigation of *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France* (54 FR 19092, May 3, 1989), the Department rejected the treatment that restructuring costs were extraordinary and it allocated them over the cost of goods sold on the grounds that they were not unusual in nature and they were not infrequent in the industry. The same characteristics are present in this case.

The Department uses full absorption costing because, by statute, sales must be at prices which permit recovery of all costs within a reasonable period of time. Therefore, the classification of restructuring costs as "extraordinary" on the financial statements is not necessarily relevant to our analysis.

Comment 43: Petitioners argue that the Department should include the other "extraordinary items" incurred during 1992 in the calculation of G&A expense. Petitioners argue that Sollac's expenses relating to management transactions, capital transactions, and allotments for sinking funds and reserves are not extraordinary items. These transactions, petitioners assert, are neither unusual nor infrequent, and therefore should not be accounted for as extraordinary items.

Usinor argues that if the Department includes the extraordinary expenses, it must also recognize the extraordinary income reported in the financial statements.

DOC Position: The Department reviews each item listed separately from operating expenses to determine whether it merits inclusion or exclusion from the cost of production. The Department used Sollac's annual 1992 consolidated financial statements to calculate G&A expenses, which reported several exceptional gains and losses for the fiscal year. The Department did not include the reversal of a contingent liability recorded in prior years, an exceptional gain, because in substance the transaction merely corrects retained earnings for a contingency which was taken but which was never incurred. The Department included only the loss taken for the write-off of fixed assets because it was the only other item clearly identified in the footnotes to the financial statements.

Comment 44: Petitioners argue that the research and development (R&D) costs omitted by Sollac should be included. The Department should adjust its COP upward by this amount for subject merchandise produced by Sollac in order to account for this discrepancy.

Usinor argues that the amount was properly excluded because the R&D expenditures related to activities incurred for non-subject merchandise.

DOC Position: We agree with respondent. Sollac included both product-specific and general R&D in its reported costs, but the excluded R&D expenditures related to non-subject merchandise.

Comment 45: Usinor argues that the Department should base G&A expenses on the financial records of Sollac, which include an allocated share of its parent, rather than on the basis of Usinor's financial statements. Usinor argues that the G&A expenses of a parent company whose activities are not related to production of the subject merchandise should not be used in place of those of the company actually producing the subject merchandise. The parent, Usinor, is a holding company and its consolidated G&A is comprised of the G&A of a variety of affiliated companies which have no connection to the production of the subject merchandise.

DOC Position: We agree with respondent. The financial statements of Usinor were only used to calculate the financial expenses. Sollac's annual consolidated 1992 financial statements were used to calculate the appropriate G&A expenses.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot-rolled steel, corrosion-resistant steel, and steel plate from France that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Certain Hot-Rolled Carbon Steel Products:	
Usinor	79.54
All Others	79.54
Certain Cold-Rolled Carbon Steel Products:	
Usinor	75.33
All Others	75.33
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Usinor	44.40
All Others	44.40
Certain Cut-to-Length Carbon Steel Plate:	
Usinor	52.87
All Others	52.87

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of a margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In the final affirmative determinations in the concurrent countervailing duty investigations involving sales in the United States of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate by Usinor, the Department did not find any export subsidies. We therefore have not taken action to offset the antidumping deposit rate to comply with section 772(d)(1)(D) of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission of our determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15617 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–813, A–428–814, A–428–815, A–428–816]

Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Cynthia Thirumalai, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2613 and 482–4087, respectively.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determinations in these investigations on January 26, 1993 (58 FR 7095, February 4, 1993), the following events have occurred:

On February 4, 1993, Dillinger submitted its response to section D of the questionnaire.

On February 5, 1993, Klöckner was informed that the Department of Commerce (the Department) would not be accepting any new information from it, including the missing information on home market sales, and would not conduct verification of its responses.

On February 10, 1993, Preussag submitted unsolicited factual information. This information was

returned to Preussag on February 18, 1993.

On February 17, 1993, Dillinger, Klöckner, Preussag, and Thyssen requested a hearing concerning these investigations.

On February 17, 1993, Dillinger and Thyssen submitted responses to the Department's February 10, 1993, requests for clarification of information.

On February 19, 1993, the Department instructed Thyssen to provide updated computer printouts of sections B and C sales listings and updated information for its sections D and E responses. Thyssen submitted the printouts on March 1, 1993, and updated information on March 2, 1993.

In February, March, and April, 1993, the Department conducted verification of Thyssen's and Dillinger's questionnaire responses.

On March 3, 1993, the Department issued its section D deficiency questionnaire to Dillinger. Dillinger submitted its deficiency response on March 17, 1993.

On April 8, 1993, petitioners requested that the petition regarding hot-rolled steel be amended to exclude certain hot-rolled sheet products.

On May 6, 1993, the Department instructed Thyssen to submit updated computer tapes. The updated tapes were received May 13, 1993.

On May 20, 1993, a public hearing was conducted in these investigations.

On May 21, 1993, suspension agreements were initialled for all four classes or kinds of merchandise under investigation. No suspension agreements were subsequently signed.

On June 11, 1993, Dillinger, at the Department's request submitted its 1992 financial statements.

Likewise, on June 15, 1993, at the Department's request, Thyssen submitted a tape correcting certain U.S. sales data.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, (Argentine Steel)* which is being published concurrently with this notice.

Period of Investigations

The period of investigations (POI) is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of merchandise covered by these investigations also constitutes single categories of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons on the basis of the criteria defined in appendix V to the antidumping duty questionnaire, which is on file in Room B–099 of the main building of the Department.

We made comparisons at the same level of trade, where possible. Where we were not able to match sales at the same level of trade, we made comparisons without regard to level of trade.

Fair Value Comparisons

We have based our final determinations on the best information available (BIA) in accordance with section 776(c) of the Tariff Act of 1930, as amended, (the Act) for Klöckner (hot-rolled and cold-rolled steel) and Preussag (hot-rolled steel). (For further discussion, see Interested Party Comments regarding Klöckner and Preussag.)

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation.

When a company refused to cooperate with the Department or otherwise significantly impeded our investigation, we have used as BIA the higher of: (1) The margin from the preliminary determination for that firm for the same class or kind of merchandise; (2) the highest margin alleged in the petition for the same class or kind of merchandise in the same country; (3) the margin for any other responding company for the same class or kind of merchandise for which we have calculated a margin. When a company cooperated with our requests for information but failed to provide the information in a timely manner or in the form required, we have used as BIA the higher of (1) the average of margins in the petition or (2) the margin for any other responding company for the same class or kind of merchandise for which we have calculated a margin. See, *e.g., Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany* (54 FR 18992, 19033; May 3, 1989).

Since Klöckner and Preussag have attempted to comply with the Department's requests for information, and are the only two respondents in the Hot-rolled steel investigation, we have assigned to them a BIA rate which is the average of the margins in the petition.

In order to determine whether there was a sufficient volume of sales for Dillinger and Thyssen in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales for each class or kind of the subject merchandise to the volume of third country sales of each class or kind of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for Thyssen and Dillinger and their respective sales of the relevant classes or kinds of merchandise.

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel and steel plate from Germany to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV) for each company, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. As stated above, we based USP and FMV on information provided in the petition for Klöckner and Preussag. We based our margin calculations for Thyssen and Dillinger on their submitted data, modified, where appropriate, as described below.

Dillinger

In addition to the most similar product comparison, Dillinger included in its concordance some other less similar matches to U.S. products. In such cases, we deleted the less similar matches from the concordance and matched U.S. sales only to home market sales of the most similar product.

We also excluded from our calculations of FMV Dillinger's sales of second quality merchandise because no such sales were made in the United States.

Thyssen

We adjusted Thyssen's reported levels of trade by treating automobile manufacturers as end users. In addition, we did not use Thyssen's sales of second quality merchandise in our analysis since such sales in the United States were made in small quantities (less than five percent).

We used BIA to determine the margin for two U.S. products, one cold-rolled steel product and one corrosion-

resistant steel product, that were incorrectly matched to home market products by Thyssen. Because of the complexity of these steel investigations, and the fact that the errors in Thyssens' product matching are limited in nature, we have used, as BIA, the weighted-average of the calculated positive dumping margins in each class or kind of merchandise.

United States Price

Dillinger

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and exporter's sales price (ESP) methodology was not otherwise indicated (see Dillinger Comment 2).

We calculated purchase price based on prices to unrelated customers. Since Dillinger's sales of steel plate in the United States were made on a theoretical weight basis while home market sales were made on an actual weight basis, we converted U.S. theoretical weight values, prices and relevant adjustments to an actual weight basis (see Dillinger Comment 14). We made deductions, where appropriate, for the following movement charges: foreign inland freight and brokerage; insurance; ocean freight; U.S. brokerage and wharfage; U.S. duty; and U.S. inland freight. For price-to-price comparisons, we also added the absolute amount of value-added tax (VAT) collected on the home market comparison sales (see Appendix II of Argentine Steel for a discussion of our methodology regarding VAT). In addition, we made changes to Dillinger's data to reflect the results of verification as stated below in "Interested Party Comments" regarding Dillinger. We also changed the amount of U.S. duty on one sale based on findings at verification, and deleted sales to a related reseller which were inadvertently reported along with the sales by the related reseller to the first unrelated customer.

Because Dillinger failed to provide full reporting for sampled sales made by a related steel service center, Ancofer, we excluded from our analysis all home market products that had been sold by Ancofer (see memorandum to J. Spetrini, Acting Assistant Secretary, Import Administration of June 15, 1993). For U.S. sales matched to these excluded home market products, we assigned margins based on BIA. We also used BIA to assign margins to Dillinger's further-manufactured sales (see Dillinger Comment 4). We used the higher of the average margin in the petition or the highest non-aberrational margin calculated for any other sale as BIA in both cases.

Klöckner and Preussag

We based USP on information contained in the petition for Klöckner and Preussag as was done in our preliminary determinations in these investigations.

Thyssen

We calculated USP for Thyssen using the methodology described in the preliminary determinations except as follows.

We added the absolute amount of VAT collected on home market comparison sales rather than a hypothetical VAT that would have been collected on the U.S. sales as we did at the preliminary determinations (see appendix II to *Argentine Steel* for a discussion of our methodology regarding VAT).

In addition, we made adjustments to Thyssen's data based on the results of verification (see "Interested Party Comments" below for more detail).

We also used BIA for U.S. sales of cold-rolled steel product for which all home market sales of the comparison product failed the arm's-length test. For these sales, as BIA, we used the higher of either 1) the average of all margins alleged in the petition for cold-rolled steel, or 2) the highest non-aberrational calculated margin for any other sale of cold-rolled steel by Thyssen.

Foreign Market Value

Klöckner and Preussag

We calculated FMV using information in the petition for Klöckner and Preussag as was done for the preliminary determinations.

Dillinger and Thyssen

For Dillinger and Thyssen, we calculated FMV as noted in the "Price-to-Price" and "Constructed Value" sections of this notice below.

Home Market Sales to Related Parties

We excluded from our analysis all of Dillinger's home market sales to related parties, because Dillinger neither claimed, nor demonstrated, that its sales to related parties in the home market were at arm's-length. See, Dillinger comment 12.

We also excluded from our analysis Thyssen's home market sales to related parties that failed our arm's-length test. See, Thyssen comment 1. Note that we have modified the arm's-length test used for the preliminary determinations for these investigations to consider level of trade. See, Appendix II of *Argentine Steel.*

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether Dillinger and Thyssen had home market sales that were made at less than their cost of production (COP).

If over 90 percent of respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of respondent's sales of a given model were at prices above the COP, we disregarded only the below-cost sales if they were found to be made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of a respondent's cost of materials, fabrication, labor, factory overhead, general expenses, and packing. The submitted COP data was relied upon except as indicated below. We compared home market selling prices, net of movement charges, discounts and rebates, to each product's COP.

Dillinger

We calculated each product's COP using Dillinger's data with the following modifications: We increased COM for certain related party expenses which had previously been excluded; we disallowed the reduction to cost of manufacture (COM) for overstated indirect factory overhead costs; we included in G&A certain miscellaneous expenses which were previously excluded; we disallowed a reduction to general and administrative (G&A)

expenses for a 1991 manufacturing variance; we reduced G&A for 1991 pension expenses related to direct labor costs and included the POI amount in the cost of manufacturing; we disallowed certain reductions to G&A for unidentified year-end adjustments and other credits; we reduced G&A for 1991 property taxes and we included the POI amount in the cost of manufacturing as factory overhead; we disallowed a reduction to G&A for a reimbursement of 1991 direct labor training costs incurred; and we included in G&A the general research and development expenses incurred during the POI as a surrogate for the annual 1992 costs instead of the 1991 research and development (R&D) expenses.

We found that for some products, more than 90 percent of the sales were at prices above the COP. For other products, between 10 and 90 percent of the sales were at prices above the COP. For the remainder of the products, there were fewer than 10 percent of sales at prices above the COP; therefore, we did not use these products in our analysis and instead based FMV on CV.

Thyssen

We calculated each product's COP using Thyssen's data with the following modifications: We increased related party inputs to account for the adjustment of transfer prices to actual costs; we calculated interest expense based on the consolidated entity, Thyssen AG (TAG); we included Thyssen Steel Detroit's (TSD) portion of its joint venture costs in the further manufacturing costs; we included in further manufacturing costs restructuring and relocation expenses and a gain on sale of fixed assets in TSD's G&A expense; and we used the consolidated interest expense of TAG in the calculation of further manufacturing costs.

We found that for some products, more than 90 percent of the sales were at prices above the COP. For the remainder of the products, between 10 and 90 percent of the sales were at prices above the COP. Therefore it was not necessary to resort to CV for any of Thyssen's sales.

Price-to-Price Comparisons

Dillinger

We calculated FMV based on VAT-inclusive prices charged to unrelated customers in the home market (see Dillinger Comment 21 below). We deducted amounts for freight and insurance. Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit and warranty expenses. In addition, we made changes to Dillinger's submitted data to reflect the results of verification (see "Interested Party Comments" regarding Dillinger).

We did not use in our analysis any products containing sales made by Dillinger's related reseller, Ancofer, that were sampled. Sampling instructions in the Department's letter of November 18, 1992 to Dillinger directed it to provide full reporting for sales of steel plate whose origin was not known. However, for sales of steel plate whose origin was not immediately known because it lacked a mill test certificate, Dillinger did not provide full reporting. At verification, Ancofer officials acknowledged that steel plate sourced from Dillinger was likely to be included among sales of steel plate without mill test certificates for which full reporting was not provided. Since sampled sales were representative of a much larger universe, Dillinger's failure to provide full reporting of sampled sales constituted a reporting failure of material significance. Accordingly, we excluded all reported product comparisons that included Ancofer sales of steel plate which were sampled. U.S. sales that were matched to products that included sampled sales were assigned a margin based on BIA (see "United States Price" section of this notice).

Thyssen

All comparisons were made on a price-to-price basis, using the same methodology as was used for the preliminary determinations, except as follows:

We made adjustments to Thyssen's data based on the results of verification (see "Interested Party Comments" below for more detail).

Constructed Value

For those Dillinger products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, labor, general expenses. Since steel plate is generally not packed and the cost of packing, when used, is negligible compared to the cost of the merchandise, we made no addition for packing. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV Dillinger's reported general expenses, adjusted as detailed above, because these expenses were greater than the statutory minimum of 10 percent of the cost of manufacture. For profit, we used the statutory minimum of eight percent of the total COM and general expenses because Dillinger's actual profit on home market sales was less than eight percent, pursuant to section 773(e)(1)(B)(ii) of the Act. We made circumstance of sale adjustments, where appropriate, for differences in direct selling expenses, *i.e.*, credit and warranty.

Currency Conversion

We made currency conversions based on the official exchange rates in effect during the quarter in which sales to the United States were made, as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by Thyssen and Dillinger by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. We did not, however, verify the responses of Klöckner and Preussag (see the "Fair Value Comparisons" section, above).

Interested Party Comments

Dillinger

Comment 1: Petitioners argue that the Department should base its final determination on total BIA because Dillinger failed to submit timely responses and the Department was unable to verify the accuracy of its responses. Dillinger argues that the "*de minimis*" nature of the errors and discrepancies found at verification does not rise to the level of significance required for the application of total BIA.

DOC Position: We agree with Dillinger that our final determination should not be based on total BIA. With the exception of Dillinger's response to section E of the questionnaire (see section below on U.S. Further-Manufactured Sales), all other responses were timely received. While we did discover a number of errors and discrepancies at verification, the extent and magnitude of the errors and discrepancies did not exceed that commonly found at verification and were not so large as to render Dillinger's reported information unusable; therefore, we find the use of total BIA unjustified.

Comment 2: Petitioners argue that Dillinger's classification of its non-further-manufactured U.S. sales as purchase price is incorrect. Petitioners contend that since Dillinger's related U.S. selling agent (Francosteel) holds title to the merchandise during a portion of its transit, makes payment for certain expenses, invoices customers and collects payments, receives a

VOL 58 ISS 130 JL 9 1993 UMI

commission, allows a customer to warehouse the merchandise for a period of time before it is invoiced, etc., that all criteria required for ESP classification are met.

Dillinger argues that ESP classification is not warranted because the merchandise is sold prior to importation. According to Dillinger, whether a U.S. sales agent holds title to merchandise, whether that merchandise is warehoused after importation or whether the agent receives commission payments and plays an active role are not legitimate criteria for determining if sales are made on an ESP basis.

DOC Position: We agree with Dillinger. Since the essential terms of sale were set prior to importation, the merchandise was shipped immediately to the customer upon importation into the United States, the merchandise was not warehoused by Francosteel during the normal course of business, and Francosteel does not engage in activities beyond that of a normal sales facilitator, we disagree with petitioners that the criteria for ESP classification as articulated in *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France* (56 FR 56380, November 4, 1991) have been fulfilled. Accordingly, we are analyzing Dillinger's non-further-manufactured U.S. sales using purchase price methodology.

Comment 3: Dillinger claims that sales of steel plate that has been further manufactured into pipes by Berg Steel Pipe Corporation (Berg), its related processor located in a foreign trade zone (FTZ), are not subject to this investigation because the steel plate is not processed within the customs territory of the United States. Dillinger cites to section 772(e)(3) of the Act which refers to "* * * process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise * * *" to show that merchandise which is further manufactured outside the customs territory of the United States is not covered by the scope of this investigation.

Petitioners state that merchandise admitted into a FTZ that would be subject to antidumping or countervailing duties if entered into the customs territory of the United States are placed in privileged foreign status under 15 CFR 400.33(b)(2).

According to petitioners, 19 CFR 146.41 provides that goods placed in privileged foreign status are classified according to their original condition when admitted into the FTZ for purposes of assessing customs duty upon entry into the customs territory. Therefore, such merchandise should be included in the Department's analysis, petitioners argue, since it would be subject to an order.

DOC Position: The Department's regulations concerning FTZs, which were promulgated on October 8, 1991, require that items which are subject to an antidumping or countervailing duty order, of "which would be otherwise subject to suspension of liquidation," are automatically placed in "privileged foreign status" upon entry into an FTZ (15 CFR 400.33(b)(2)). Such merchandise retains its "privileged" status upon entry into U.S. Customs Territory (19 CFR 146.41(e)), and on this basis it remains subject to antidumping (AD) or countervailing (CVD) duties regardless of further manufacture (15 CFR 400.33 (b)(2)); Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Antidumping Duty Administrative Review, 57 FR 4951, 4961 (1992)).

Because future entries of Dillinger material exported to the United States through Berg could be subject to AD duties in the event that the Department issues an AD order, we have determined that it is appropriate to consider such sales for purposes of determining the appropriate estimated deposit rate in this investigation.

Comment 4: Dillinger states that the use of BIA regarding its further-manufactured sales is unjustified because the Department cannot use BIA unless three criteria have been met: (1) Respondent's questionnaire response *and* supplemental responses were incomplete, (2) the Department gave the respondent adequate notice to correct any deficiencies contained in its response, and (3) respondent's deficiency response was untimely filed (see Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada: Final Results of Antidumping Duty Administrative Review (Paving Equipment), 55 FR 20175, 20176 (May 15, 1990). In addition, Dillinger contends that since the information that should have been put on computer tape was contained in the narrative portion of its section E response and because the amount of that information was small, the Department should have waived its computer tape requirement.

Referring to four separate communications by the Department regarding Dillinger's requirement to submit a section E response, petitioners claim that Dillinger had adequate notice of its obligation; therefore, BIA should be used with respect to Dillinger's further-manufactured sales. Petitioners contend that BIA should consist of the highest margin computed for any U.S. sale.

DOC Position: We agree with petitioners. The list of items in *Paving Equipment* cited by Dillinger does not articulate the Department's policy regarding whether to apply BIA. Rather, those criteria were used to evaluate the sufficiency of individual portions of a particular respondent's submissions. Even though there are instances in which the Department has accepted late submissions, the administrative burdens placed on the Department as a result of the large number of flat-rolled steel cases made this impossible. We also disagree with Dillinger's contention that repeated attempts to solicit information are always required in advance of the application of BIA. In any event, Dillinger was given sufficient time to respond to section E, never requested to be relieved of the burden of producing a computer tape and printout, and did not request an extension to file the computer tape and printout (see memorandum to F. Sailer of November 17, 1992). Therefore, we are assigning a margin based on BIA with respect to Dillinger's further-manufactured sales. As BIA, we are using the higher of the average margin in the petition or the highest non-aberrational margin calculated for any other sale.

Comment 5: Dillinger requests that the Department ignore the "minuscule" discrepancies found at verification regarding the interest rates, number of days that payment is outstanding on home market and U.S. sales, and ocean freight expenses. Dillinger cites to 19 CFR 353.59 in making this request.

Petitioners point out that in some instances Dillinger argues that the Department should revise its data while in other instances it argues that the Department should ignore differences between its reported data and that verified. According to petitioners, Dillinger should not be allowed to have it both ways. Should the Department decide to base the final determination on Dillinger's reported data, petitioners state that it should make the necessary adjustments to that data.

DOC Position: We agree with petitioners. We have no reason to believe that the errors and discrepancies found at verification with respect to certain expenses in both the U.S. and home markets are of a *de minimis* nature; therefore, we disagree with Dillinger that these changes should be ignored.

Comment 6: Petitioners and Dillinger both argue that the Department should delete from the U.S. sales listing sales that were actually made to a country other than the United States.

DOC Position: We agree with both parties and are removing these sales from the U.S. sales listing.

Comment 7: Petitioners argue that the Department should make an adjustment for U.S. commissions paid to Francosteel because they were directly related to sales (a fixed percentage sales value), and were at arm's-length. Petitioners claim that these commissions were at arm's-length based on a comparison to other commissions paid to Francosteel by unrelated entities which serve as appropriate benchmarks. As justification for comparing commissions paid in different markets, petitioners said that "the court determined that the use of sales agent agreements in other countries may be used as a benchmark to determine whether related-party commission payments are made at arm's-length" in *LMI-La Metalli Industriale, S.p.A. v. United States* (LMI), 912 F.2d. 455, 459 (Fed. Cir. 1990).

Dillinger contends that the commission it pays Francosteel cannot be found to be at arm's-length because Francosteel did not receive any commissions on merchandise within the scope of this investigation produced in Germany and sold in the United States. In addition, Dillinger claims that petitioners' reference to *LMI* is misplaced.

DOC Position: We agree with Dillinger that the commission it pays to Francosteel cannot be found to be at arm's-length for two reasons. First, Dillinger paid no other commissions to unrelated parties in any market. Second, Francosteel did not receive any commissions from unrelated producers on sales of subject merchandise in the United States. This two-pronged arm's-length test for commissions was articulated in the investigations of Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom. See, *e.g., Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland*, 56 FR 56363 (November 4, 1991). Petitioners have misinterpreted *LMI* in citing it as support in arguing that sales agreements in other countries may be used as a benchmark for the arm's-length test. In *LMI*, the court determined that commissions paid to an unrelated party in a third country were adequate benchmarks for determining whether a related commission in the home market was at arm's-length. Nothing the court said in its *LMI* decision, however, would lead the Department to conclude that commissions paid on sales of non-subject merchandise could be used as adequate benchmarks in its arm's-length test for commissions.

Comment 8: Since Dillinger inaccurately reported home market freight expenses on three of the nine sales examined, and because some of Dillinger's sales have reported freight amounts in excess of the amounts found in the freight catalog obtained at verification, petitioners argue that the Department should deny Dillinger's home market freight expense claims. At a minimum, the Department should revise the reported freight expenses for the sales with reported amounts in excess of the amounts found in the freight catalog downward to the lowest reported freight rate found in the freight catalog. For the remaining home market sales, the Department should revise the reported freight expenses downward by the largest percentage by which reported freight expenses exceeded actual expenses.

Dillinger claims that since home market freight expenses generally verified, there is no basis to argue that the freight expenses for the sales with reported amounts in excess of amounts found in the freight catalog were not verified.

DOC Position: We disagree with petitioners that Dillinger's home market freight expenses should be denied. At verification we found that freight expenses were found to be accurately reported for most sales and for the remaining sales the actual amounts did not vary significantly from reported amounts. We do agree with petitioners, however, that Dillinger's inaccurately reported home market freight expenses should be adjusted and are decreasing reported home market freight expenses by the weighted-average percentage by which reported freight expenses exceeded actual expenses.

Comment 9: Petitioners argue that the Department should deny Dillinger's claimed home market credit expenses because it failed to use actual date of payment information and did not calculate its original interest rate (which was based on published information) for the entire POI. Should the Department not reject Dillinger's home market credit expense, Petitioners argue that the Department should then reject the rate based on Dillinger's actual borrowing experience because it is based on new information that was submitted for the first time at verification. In the event the Department decides to accept Dillinger's information on its actual borrowings, petitioners claim that the interest rate must be recalculated on a weighted-average basis.

Dillinger explains that it used the original interest based on publicly available information because it did not have time to calculate a rate based on actual borrowing experience and knew that this rate would be a conservative estimate of its actual borrowing experience. Dillinger then argues that the Department should accept its interest rate based on actual borrowing experience because it differs only minimally from the original interest rate.

DOC Position: We disagree with petitioners that Dillinger's claimed adjustment for home market credit expenses should be denied. We found Dillinger's use of the due date instead of the actual date of payment and its use of publicly available information to calculate an interest rate to be reasonable because it provided a conservative estimate of home market credit expenses. We do agree with petitioners, however, that the interest rate based on publicly available information should be recalculated to reflect the entire POI. Even though Dillinger did submit information in its responses to the questionnaire calculating an interest rate based on its actual borrowing experience, we are not using this interest rate because the information did not cover the entire POI.

Comment 10: Because Dillinger did not support certain aspects of its calculation of home market indirect selling expenses and included some expenses not related to sales (in particular expenses related to machinery used in the related warehouse), petitioners argue that Dillinger's home market indirect selling expense claim should be denied.

Dillinger counters that not every aspect of a response is examined at verification and that an entire item is considered to be verified if the portions of that item that are examined withstand verification. Such is the case with home market indirect selling expenses, according to Dillinger. As for the warehouse machinery costs included in the calculation, Dillinger maintains that these are properly included because the warehouse uses machines to move steel plates within the warehouse which is a selling activity.

DOC Position: Since we are not making an adjustment for U.S. commissions, home market indirect selling expenses will be used only in the calculation of CV. Because any reduction in reported home market selling expenses would only lower CV, we are using Dillinger's reported home market indirect selling expenses as a conservative estimate of its actual expenses. Since Dillinger calculated its indirect selling expenses as a percentage

VOL 58 ISS 130 JL 9 1993 UMI

of cost of goods sold and these expenses are being used only to calculate CV, we are applying the reported factor to COM to calculate the expenses.

Comment 11: Petitioners' aver that Dillinger failed to provide accurate payment data since all relevant U.S. sales examined had understated credit periods; therefore, the Department should use BIA to calculate Dillinger's U.S. credit period. As BIA, petitioners state that the Department should extend reported credit periods by the largest number of days that the actual payment date on a U.S. sale exceeded the reported date as found at verification. At a minimum, the Department should extend reported credit periods by the weighted-average difference between reported and actual credit periods, according to petitioners. Regarding Dillinger's suggestion that the Department extend its home market credit period, petitioners argue that the Department should not reward Dillinger for reporting inaccurate information.

Dillinger argues that if the Department makes corrections to U.S. sales, it should also correct home market sales (*i.e.*, extend the credit periods in both markets) using information provided at verification. According to Dillinger, petitioners suggestion that the credit period on U.S. sales be extended by the largest number of days would not result in a "reasonable estimate" for BIA.

DOC Position: We disagree with Dillinger's argument that the Department should increase the number of credit days in the home market. It is the duty of the respondent to provide accurate information and the purpose of verification is to verify overall reliability, not to correct information on the record (*Chinsung Indus. Co., Ltd.* v. *United States* (705 F.Supp. 598, 601–02 (CIT 1989)). Further, the purpose of BIA is not "accuracy" as urged by Dillinger. As the courts have stated, BIA "is information which becomes usable because a respondent has failed to provide accurate information." (*Associaion Colombiana de Exportadores de Flores* v. *United States*, 704 F.Supp. 1114, 1126, *aff'd*, 901 F.2d 1089 (Fed. Cir. 1990), *cert.denied*, 111 S.Ct. 136 (1990). In addition, we agree with petitioners that the use of BIA to determine the credit period for U.S. sales is justified since Dillinger under-reported the credit period on all U.S. sales examined, and the magnitude of the under-reporting was significant. As BIA, we are increasing the credit period on all U.S. sales by the weighted-average number of days that the credit period was understated for sales examined at verification with the exception of sales to two customers. For these two customers, we are increasing reported credit periods by the largest number of days of under-reporting found on sales to these two customers since the amount under-reported on these sales far exceeded the weighted-average number of days that credit periods were understated.

Comment 12: Petitioners argue that the Department should utilize the methodology employed in the preliminary determinations for these flat-rolled steel cases to determine whether home market sales to related customers are at arm's-length.

Dillinger states that sales to the related party that were reported as sales to an unrelated party should not be used in the Department's final analysis.

DOC Position: We disagree with petitioners that an arm's-length analysis should be conducted since Dillinger neither claimed, nor demonstrated, that its sales to related end users in the home market were at arm's-length; accordingly, we are excluding sales to related customers from our analysis. In addition, we agree with Dillinger that sales to the related customer that were improperly labeled as sales to an unrelated party should also be excluded from our analysis.

Comment 13: Petitioners argue that the Department should deny Dillinger's home market warranty expense claim because verification showed its expense calculation to be inaccurate.

DOC Position: While we agree with petitioners that Dillinger's home market warranty expense was inaccurately calculated, we disagree with the proposition that Dillinger's claim should be rejected. The errors that Dillinger made were relatively small in magnitude. Accordingly, we consider it appropriate to make minor revisions to Dillinger's reported warranty expense by using information obtained at verification.

Comment 14: Petitioners argue that the Department should adjust both reported U.S. prices and quantities to reflect the difference between actual and theoretical weight since U.S. sales are made on a theoretical weight basis. Petitioners also argue that Dillinger's reported theoretical/actual weight conversion factor cannot be relied upon because it is based on the theoretical and actual weights of a particular sale found in an exhibit in its November 18, 1992, submission, and that one sale cannot be found to be representative of all sales. Additionally, petitioners contend that Dillinger's data must be unreliable because the amount by which actual weight differed from theoretical weight for one sale examined at verification was other than would be indicated from Dillinger's reported conversion factor. As BIA, petitioners propose using a conversion factor computed from the documentation for one U.S. sale examined at verification.

Dillinger argues that the Department should use its reported data on the actual/theoretical weight conversion factor which is based upon an engineering study. According to Dillinger, the difference between actual and theoretical weight indicated by the reported factor seems small to petitioners because they believe it to be a factor based on minimum theoretical weight; however, Dillinger sells on a theoretical nominal weight basis.

DOC Position: We agree with petitioners that both prices and quantities on U.S. sales should be adjusted to account for the difference between actual and theoretical weights. In addition, we agree with Dillinger that its reported conversion factor should be used in our final analysis. Contrary to petitioners' assertions, Dillinger did not rely upon the exhibit in its November 18, 1992, submission for the calculation of its conversion factor. In addition, it is conceivable, and even probable, that any one particular sale would have a sale-specific conversion factor different from the reported factor because the reported factor is an average that applies to all sales.

Comment 15: According to petitioners, the Department should use the highest reported amount for ocean freight on all sales as BIA because Dillinger failed to provide accurate information with respect to its ocean freight expenses and did not demonstrate that ocean freight services provided by related companies were at arm's-length rates. At a minimum, the Department should increase reported ocean freight expenses by the weighted-average difference between actual and reported expenses found at verification.

Contrary to petitioners assertions, Dillinger states that while it uses related freight forwarders to arrange for transport, unrelated carriers are actually used. Dillinger argues that its reported ocean freight expenses should be increased by the simple average difference from actual amounts as verified by the Department.

DOC Position: Documentation gathered at verification supported Dillinger's claim that unrelated carriers were used to transport the merchandise. Accordingly, we are using Dillinger's reported ocean freight expenses as the basis of our calculation and increasing the reported amounts by the weighted-average difference between actual and reported charges found at verification. Since reported expenses did not vary by

much from actual expense on the sales examined, we felt it inappropriate to use the highest single reported amount for ocean freight as suggested by petitioners.

Comment 16: Petitioners argue that the Department should revise insurance expenses to reflect the results of verification.

DOC Position: Since verification showed that Dillinger had understated its insurance expenses, we agree with petitioners that these expenses should be recalculated to reflect the results of verification.

Comment 17: Petitioners point out that documentation obtained at verification showed that one U.S. customer required the use of wood block spacers as packing, directly contradicting Dillinger's assertions that packing is rarely used and when it is used, that it consists only of strapping. Accordingly, petitioners argue that the Department should make an adjustment for packing costs on U.S. sales based on BIA. Petitioners propose using information contained in the petition as BIA.

Dillinger argues that it rarely uses either strapping or wood block spacers. Dillinger submits that photographs included in its responses show that steel plate is not usually packed. According to Dillinger, information on packing contained in the petitions should not be used because it includes items never utilized by Dillinger. In any event, Dillinger contends that the cost of scrap wood, when allocated over an entire shipment, would amount to only a fraction of a penny.

DOC Position: Since verification showed that steel plate generally is not packed and because the cost of the packing indicated on one customer's order would be negligible compared to the per-ton cost of the merchandise, we are making no adjustment for packing.

Comment 18: Since Dillinger's U.S. sales listing includes sales to a country other than the United States, petitioners' claim that its warranty expenses need to be recalculated using a corrected sales volume.

DOC Position: We agree with petitioners that Dillinger's U.S. warranty expenses should be recalculated using a factor based on the corrected sales volume.

Comment 19: Petitioners argue that the Department should assign the highest reported amount for foreign inland freight and brokerage, U.S. duty, and U.S. inland freight to all sales as BIA because Dillinger did not accurately report its expenses.

DOC Position: Regarding foreign inland freight and brokerage, we disagree with petitioners that the use of the highest reported amount for all sales is warranted in this case. In all but one instance, Dillinger's reported amounts varied from actual amounts only very slightly. While there was a marked difference between the reported and actual amount for the one sale, this appeared to be an aberration due to Dillinger not receiving the applicable invoice before the sales listing was generated. We have used the actual amount for this one sale and have adjusted the amounts on the remaining U.S. sales by the weighted-average difference between actual and reported amounts found on the other sales examined at verification.

We also disagree with petitioners that BIA should be used for U.S. duty expenses. Dillinger's method of calculating this expense was used during the normal course of business, utilized documents and reports generated routinely, and provided a reasonable estimate of actual expenses.

Since Dillinger reported an average U.S. inland freight expense, the same amount is reported on all sales; therefore, petitioners' suggestion would not alter Dillinger's reported data. However, for the one sale examined for which an inland freight expense was incurred, the amount actually incurred differed significantly from the reported average amount. Therefore, we are adjusting reported amounts on sales whose terms indicate that U.S. inland freight expenses were incurred to the amount found on the one sale for which inland freight expenses were included in the price.

Comment 20: Since Daval (a related selling agent in France) must remit funds to Dillinger before Francosteel remits its funds to Daval, petitioners argue that it is Daval, not Francosteel, that actually incurs the cost of financing. According to petitioners, the Department will use the U.S. subsidiary's interest rate only if it bore the cost of extending credit (See, *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Korea* (PET Film), 56 FR 16305, 16311, March 22, 1991). In the event the Department determines that Francosteel bore the cost of extending credit, petitioners argue that the Department should use BIA for the interest rate since Francosteel incorrectly included loans from a related party to calculate its interest rate and did not demonstrate that the rates of these loans were at arm's-length.

Dillinger cites *PET Film* as a case in which the U.S. interest rate is not used because the respondent did not receive U.S. financing. According to Dillinger, *PET Film* implies that when there is U.S. financing, as there is in this proceeding, the Department will use the U.S. interest rate. Dillinger also argues that Francosteel bears the burden and risk of payment according to the agency agreement between the two entities. Dillinger states that it obtained financing from an unrelated bank during the same month as the loan cited by petitioners at a rate comparable to that from the bank whose majority holder is the French Government.

DOC Position: We disagree with petitioners' claim that we should use Dillinger's home market interest rate for U.S. credit expenses. Because Francosteel had access to U.S. dollar borrowings, we have determined that it is reasonable to use a U.S. interest rate to calculate the company's U.S. credit expenses. *United Engineering and Forging* v. *United States*, 779 F. Supp. 1375, 1387 (CIT 1991). However, there is no information on the record to demonstrate that the rate received from Francosteel's related party is accurate or reliable. Indeed, the Department was not made aware of the relationship until verification, and so the issue was not raised until the case briefs. For these reasons, we have determined that it is appropriate to use the U.S. prime rate to calculate Dillinger's U.S. credit expense.

Comment 21: Petitioners argue that the Department should recalculate the amount of VAT to be added to United States price.

DOC Position: Please see the discussion of our treatment of VAT in Appendix II of *Argentine Steel*.

Comment 22: Petitioners state that Dillinger failed to provide support for the reduction to COM due to the over-allocation of indirect expenses. Accordingly, the Department should reject this reduction to COM.

Dillinger argues that the method it used to calculate and apply the over-allocation of indirect cost centers was correct. Also, Dillinger claims it provided an explanation for this reduction to cost of manufacturing.

DOC Position: We agree with petitioners. Accordingly, we have rejected the decrease to cost of manufacturing because Dillinger provided no documentation supporting its claim that indirect costs were substantially over-allocated in 1992. Pursuant to the Department's request in the supplemental questionnaire, Dillinger eliminated the 1991 under-allocation (an increase to G&A) from its G&A expense. However, Dillinger then calculated this adjustment for 1992, claiming it was a significant decrease to COM. Dillinger was unable to provide

any information showing how their cost system over-allocated indirect costs in 1992.

Comment 23: Petitioners argue that the Department could not verify Dillinger's 1991 cost of goods sold, therefore, BIA should be the higher of G&A expenses calculated based on either Dillinger's 1991 or 1992 financial statements. Petitioners reason that if BIA is not used to determine G&A costs, then adjustments should be made to Dillinger's G&A expense (See Comments 3–10).

Dillinger claims it did reconcile the cost of goods sold used in G&A to the cost of goods sold per the turnover statement detail. Dillinger argues that it only had 1991 data accessible at the time the Section D response was prepared and at verification. However, Dillinger stated the original data adversely affected the calculation and the corrected data should be used. Dillinger contests that it could not provide complete fiscal 1992 G&A data.

DOC Position: The Department agrees partially with petitioners. Dillinger would not provide estimated total 1992 G&A expenses using the cost accounting system data and preliminary financial data available at verification. However, Dillinger did report certain 1992 G&A items and preliminary internal financial statements. This information was incomplete and not sufficient. Therefore, the Department was unable to recalculate G&A expenses based on 1992 information exclusively. The Department utilized the submitted 1991 cost of goods sold and 1991 G&A expenses with certain adjustments.

Comment 24: Petitioners argue that Dillinger should exclude the manufacturing variance from G&A expense (a reduction in G&A) because this amount relates to Dillinger's 1991 manufacturing operations.

Also, this 1991 manufacturing variance should not be used to reduce Dillinger's COM for the POI.

Dillinger states the manufacturing variance shown as a reduction to G&A is consistent with its usual accounting procedures. If the Department disallows this decrease to G&A, then COM should be reduced by the same amount.

DOC Position: The Department agrees with petitioners. The Department determined this reduction was related to 1991 manufacturing operations and should not be offset against 1991 G&A expenses. Also, Dillinger's 1992 COM should not be decreased by this variance because this reduction does not relate to POI production operations.

Comment 25: Petitioners contend pension expenses which relate to retirement benefits for factory workers should be reclassified from G&A to direct labor.

Dillinger asserts that if the Department treats pension expense as a part of cost of manufacturing rather than G&A, it will not change the reported COP and CV.

DOC Position: The Department agrees with the petitioners. Pension expenses related to factory workers should be included in COM not G&A. Therefore, G&A was reduced by the 1991 pension expense and COM was increased by the pension expense incurred during the POI.

Comment 26: Petitioners declare that the Department should deny Dillinger's reduction in general expenses for "expenses and revenues not included in cost accounting" because Dillinger provided no information to justify this reduction to G&A.

Dillinger states this item was discussed during verification and it was properly included in G&A because it related to a provision for repairs and maintenance expense.

DOC Position: We agree with petitioners. We increased G&A for these expenses because the information reported in its submission and during verification did not support the exclusion of these costs. Dillinger presented an explanation in its case brief which was considered new information and could not be used for purposes of this final determination.

Comment 27: Petitioners maintain that the Department should reject a reduction in general expenses for "others" because Dillinger did not provide an explanation regarding the nature of these amounts or supporting documentation to justify the reduction to G&A.

Dillinger claims that the two amounts called "others," were appropriately classified as G&A and the details supporting one amount was included in Verification Exhibit 27. However, the verifiers did not ask for information regarding the other item. Dillinger presented an explanation for this second amount in its case brief.

DOC Position: The Department agrees partially with both Dillinger and petitioners. Upon further review of the submitted data, we determined that the first "others" amount was properly classified as a G&A expense. However, the second "others" item was explained only in Dillinger's case brief using new information which was disregarded for purposes of the final determination.

Comment 28: Petitioners state the Department should reclassify Dillinger's property taxes from general expense to fixed overhead cost because Dillinger failed to demonstrate what portion of its property taxes relate to its production operations and what portion of its property taxes relate to its other operations.

Dillinger claims that the property taxes relate to its offices, sales and administrative areas, guest house, finished goods storage and loading areas, former plant buildings, as well as manufacturing plant facilities. Dillinger contends that these expenses (excluding manufacturing plant facilities) are not manufacturing in nature and should, therefore, be classified as G&A and not as a cost of manufacturing.

DOC Position: We agree with petitioners; these property taxes should be reclassified to fixed factory overhead because the taxes relate to the entire facility which is primarily a manufacturing operation.

Comment 29: Petitioners assert that Dillinger's reduction to G&A for the 1991 reimbursement of Europipe (a related company) training costs should be excluded because these costs are related to Dillinger's direct labor expenses for 1991. Although the Europipe plant was closed when these costs were incurred, Dillinger incurred these costs to train employees transferred to its own operations in 1991.

Dillinger states that the Europipe plant was closed when the training expenses were incurred and once the plant was closed, costs related to its closure are not factory costs, but rather general expenses.

DOC Position: We agree with petitioners that the reimbursement should be excluded from G&A expense. These training costs were included in Dillinger's direct labor expenses for 1991. Therefore, the income received as reimbursement for these direct labor training costs should not be categorized as a G&A item because it relates to a cost of manufacturing expense.

Comment 30: Petitioners argue each "operating extraordinary expense" found in the 1991 financial statements should be included in Dillinger's G&A calculation because Dillinger failed to demonstrate that its "operating extraordinary expenses" are not related to its operations.

Dillinger maintains that an itemized listing of "Operating Extraordinary Expenses" was provided in its Section D supplemental response and a certain portion was properly included in G&A.

DOC Position: We agree in part with both Dillinger and petitioners. Other operating expenses were reported in the details of Dillinger's turnover statement. Dillinger included a portion of these expenses as "other COP related costs" in the submitted G&A calculation.

However, Dillinger excluded the remaining amount claiming that it represented financial costs not related to the cost of production.

The Department determined that Dillinger provided no information at verification to support that the remaining costs should be excluded from the G&A calculation. Therefore, G&A was increased by the other operating expenses previously excluded.

Comment 31: Petitioners assert the 1992 R&D contribution amount to IRSID, a research and development company under the Usinor-Sacilor group, should be used instead of the 1991 IRSID contribution amount, as it more accurately reflects the R&D expenses incurred by Dillinger during the POI.

Dillinger states that it included its 1991 IRSID contribution in the G&A expense ratio because all G&A expenses included in the ratio were for 1991, and the 1992 G&A expenses had not been finalized by the time the response was prepared.

DOC Position: We agree with petitioners. IRSID is the company which performs the general research and development for all companies within the Usinor-Sacilor group. In order to account for Dillinger's general research and development expenditures, the POI amount should be included in G&A expense, because this figure was more representative of actual 1992 R&D expenses than the 1991 amount. In this case, the substantial increase in R&D expenditures from 1991 to 1992 demonstrates that the 1991 data was not representative of 1992 expenditures, that is, the period which coincides with the POI.

Comment 32: Petitioners contest that because Rogesa and Dillinger use estimated invoice values to record some of their material purchases, the Department could not verify the accuracy of the reported cost of materials. If the Department uses Rogesa's and/or Dillinger's reported material costs, it should not make an adjustment for the amounts contained in a specific account.

Dillinger asserts that Rogesa and Dillinger record input materials at actual cost based on actual invoices. The difference between final invoice and estimated invoices for these costs at the material entry are collected during the year in a particular account for Rogesa and Dillinger. Dillinger states the amount shown in this account should be a reduction to Rogesa COM.

DOC Position: We agree in part with Dillinger. Based upon further review of the data submitted, actual costs were reported for material inputs (ore, alloys, lime, etc.). However, the freight or insurance costs added to the material cost may be estimated only if actual price was not available. Dillinger explained the account used to accumulate any variances for shipping or insurance prices for materials purchased and calculated the credit to COM in their case brief. The Department considered this data to be new information and could not be relied upon for purpose of final determination. Therefore, no adjustment was made.

Klöckner

Comment 1: Petitioners contend that Klöckner's failure to report a significant percentage of home market sales and other deficiencies require that the Department use BIA in the final determinations. Petitioners further contend that BIA should consist of the highest margins alleged in the petitions for each class or kind of merchandise under investigation.

Klöckner argues that the Department did not meet minimum standards of due process and fairness in imposing BIA at the preliminary determination because the Department led Klöckner to believe that there was no deficiency and that the investigation was proceeding normally. Further, Klöckner contends that after the Department notified Klöckner of the deficiency it did not provide Klöckner an opportunity to remedy the deficiency. Klöckner contends that the Department should calculate a "neutral" margin to use for Klöckner since it believes that BIA is not warranted. Klöckner requests that the Department use the estimated antidumping duty rates cited by the Department in its notice of initiation of hot-rolled steel, or the average rate found for all German exporters in all of the classes or kinds involved in these investigations.

DOC Position: As we stated in our preliminary determinations, Klöckner failed to report a significant percentage of its home market prices. We have continued to assign Klöckner a margin based upon cooperative BIA because as we found in our preliminary determinations, Klöckner attempted reasonably to comply with the Department's requests for information. However, the use of a "neutral" margin, as requested by Klöckner, would be inconsistent with the purpose of BIA, which is to insure a reasonably adverse inference against respondents which fail to comply fully with the Department's requests for information.

We disagree with Klöckner's claim that the Department acted unreasonably by failing, after receipt of Klöckner's original questionnaire response, to identify specifically the fact that the company had failed to provide a significant portion of its pricing information. This is because, first and foremost, Klöckner must be presumed to have been fully aware of the magnitude of its own major reporting deficiency. This is unlike a party which submits documentary evidence in an effort to justify a particular adjustment or claim. There, provided the claim and accompanying information is submitted in a timely manner, the Department reasonably could be expected to notify the party whether and how "its diligent efforts were inadequate." *Bowe-Passat* v. *United States*, Slip Op. 93–68 at 7 (CIT May 7, 1993); *see also Olympic Adhesives* v. *United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990).

Although the questionnaire does indicate that parties can provide updated shipment information for "shipments made between the time of [the] response and the date of the preliminary determination as part of a supplemental response," this refers only to information that is not yet available because shipment has not occurred. In Klöckner's case, it indicated that it would be more convenient to report existing information after shipment.

Klöckner made only one passing reference to the missing prices throughout the preliminary stage of the investigations. In its October 20, 1992, questionnaire response (which consisted of close to 100 narrative pages), Klöckner stated:

> For products sold during the period of investigation ("POI"), but not yet shipped as of the closing date for this response, Klöckner will fill in the necessary prices and costs after the product is shipped.

On November 4, 1992, the Department issued Klöckner a deficiency questionnaire, which failed to refer to Klöckner's one-sentence explanation that it would provide missing prices. Moreover, due to the enormous number of countries and companies involved in the present investigations, the Department had been unable to evaluate Klöckner's computerized sales data at the time the deficiency letter was issued. Hence, the Department was unaware of the magnitude of Klöckner's deficiency until later.

Klöckner submitted its first supplemental questionnaire response on November 19, 1992. Despite the magnitude of its own deficiency, Klöckner made no reference to the missing price information. On December 11, 1992, the Department notified all respondents by letter that they had one more opportunity, until December 21,

1992, "to provide additional information for the Department to consider." Klöckner responded on December 21, 1992, and once again failed either to refer to the missing price information or even to request an extension.

Thereafter, the Department determined that the use of BIA was appropriate for the preliminary determinations. Subsequently, after considering requests by Klöckner that it be allowed to update its shipment and price information prior to verification, the Department determined that due to Klöner's previous deficient responses, it would be inappropriate to permit the company to provide such a significant amount of factual information at that late stage in the proceeding. For these reasons, the Department determined not to verify Klöckner's sales data and to assign Klöckner a rate based upon cooperative BIA for the final determinations.

Preussag

Comment 1: Petitioners argue that the circumstances concerning Preussag have not changed since the preliminary determination and thus BIA should continue to be assigned. In addition, petitioners contend that BIA should consist of the highest margins alleged in the petition because Preussag impeded the investigation by failing to respond completely and in a timely fashion to the Department's requests for information.

Preussag contends that the Department should not base its final determination on BIA and, instead, use information submitted by Preussag for the final determination. According to Preussag, BIA is not warranted because the Department did not afford it enough time to cure the deficiency of incomplete home market reporting, and because the Department failed to advise it of the final deadline to submit information. Preussag argues that if the Department does not reverse its decision to apply BIA, it should assign Preussag the rate for cooperative respondents because it sought to cooperate with the Department and compiled and submitted substantial amounts of information in response to the Department's requests. According to Preussag, the uncooperative BIA rate is reserved solely for those respondents that refuse to cooperate with the Department's investigations.

DOC Position: We agree with petitioners that the circumstances concerning Preussag have not changed since the Department's preliminary determination. For this reason, we are continuing to assign Preussag a margin based upon cooperative BIA.

We disagree with Preusseg's assertion that the Department did not afford it sufficient time to cure the deficiency in its response, specifically Preussag's failure to report its sales of slit coil and cut-to-length coil in the home market, both of which are merchandise subject to this investigation. First, the Department was justified in requiring Preussag to supply the requested information. The courts have consistently agreed that it is the Department, not respondents, which determines within reasonable boundaries what sales information is necessary to properly conduct an antidumping investigation. (See *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990); *Krupp Steel* v. *United States*, Slip Op. 93–84 at 7–8 (CIT May 26, 1993)). As the Department explained in the preliminary determination (58 FR at 7097–98), without the contested sales data, which represented a significant percentage of Preussag's home market data base, the Department was "unable to ascertain whether the products Preussag ha[d] reported [were] the most appropriate matches for U.S. products." Moreover, we explained, acceptance of Preussag's selective reporting "might encourage future respondents to also selectively report home market sales." (*Id.*)

Second, the Department gave Preussag ample opportunity to provide complete information on its home market sales. Upon receipt of the initial questionnaire on August 19, 1992, Preussag became aware that the Department required all sales information of subject merchandise in the home market. Following Preussag's failure to supply the slit coil and cut-to-length coil sales information in its initial questionnaire response, the Department provided Preussag with two deficiency letters (dated November 4 and December 11, 1992), both of which referred specifically to Preussag's incomplete home market data base. Preussag's response in each instance was unacceptable.

In its first deficiency response, dated November 19, 1992, rather than provide the requested information, Preussag first disputed whether the Department needed the information, then stated that it would "prepare the information given adequate time to do so." At that point, however, Preussag had already had over two months to prepare the information and submit it to the Department. Upon receiving the Department's second deficiency letter of December 11, 1992, Preussag again disputed the Department's need for the information, but stated that at that point it "immediately began compiling" the information. Preussag concluded in its December 18, 1992, response, however, that it would be unable to meet the Department's deadline for all parties of December 21, 1992. Preussag stated that it would submit the data by the end of January 1993, almost five and one-half months after receiving the initial questionnaire.

In light of these facts, the Department determined that Preussag's failure to supply the requested data in a timely manner, while not amounting to a total lack of cooperation, did justify resort to best information available based upon a cooperative rate for both the preliminary and final determinations.

Thyssen

Comment 1: Petitioners argue that the Department should base its final determination on total BIA because Thyssen failed to report sales made by related resellers (*i.e.*, downstream sales) in the home market.

Alternatively, petitioners argue that in the event the Department does not use total BIA, the Department should use partial BIA on all U.S. sales for which Thyssen failed to report downstream sales of the home market comparison product. Specifically, petitioners argue that the Department should determine for each home market product the percentage of home market sales made to related parties and weight into the margin for each affected U.S. sale the highest non-aberrational calculated margin for the portion represented by these sales to related parties.

Thyssen argues that the Department's analysis of the related home market customer issue at the preliminary determination conformed to longstanding administrative practice. Thyssen further argues that since petitioners have failed to present any new evidence as to why or how the Department's preliminary determination was contrary to law, it is inappropriate to resort to total BIA.

DOC Position: See Appendix II of *Argentine Steel* regarding our position with respect to respondents' failure to report downstream sales.

We disagree with petitioners' alternative argument for using partial BIA on all affected sales. As we explained for all of these cases in the preliminary determinations (See Appendix II to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*), we believe it is most appropriate to determine whether sales to specific

customers were made on an arm's-length basis, in accordance with past Departmental practice. To the extent that dropping related party sales that fail the arm's-length test from the product concordance leaves U.S. sales without an adequate foreign market match, we have applied BIA to these U.S. sales. As BIA we used the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrational calculated margin for any other sale of merchandise of the same class or kind made by the same respondent. Again, we believe that it is not appropriate to apply BIA in situations where there is an adequate basis for determining foreign market value. For these reasons, we have continued to apply BIA in the context of the arm's-length test as we did in the preliminary determinations.

Comment 2: Petitioners argue that the Department should base its final determination on BIA because the verification revealed that Thyssen had reported incomplete and inaccurate data in its questionnaire responses.

Thyssen argues that verification established that Thyssen's questionnaire responses were, overall, complete and accurate and should be the basis for the Department's final determination.

DOC Position: We agree with Thyssen. In some cases, petitioners have misinterpreted the verification reports and have cited non-existent errors. In other cases, the errors are minor and are either correctable with verified data or can be replaced with limited application of BIA.

Comment 3: Petitioners argue that we should deny Thyssen's home market inland freight claims for three reasons: (1) Thyssen did not report its price and inland freight information in a manner consistent with the Department's reporting requirements and consequently dumping margins may be obscured; (2) the claims could not be verified; and (3) warehouse expenses are included in Thyssen's reported freight adjustments.

Thyssen argues that we should accept the freight methodology for the following reasons: (1) Thyssen's methodology results in foreign market values that are net of inland freight costs; (2) the errors discovered at verification were *de minimis* and were both detrimental and beneficial to Thyssen; and (3) Thyssen did not include warehousing expenses in the freight adjustment. Instead, Thyssen acknowledges that in one case the freight adjustment was "influenced" by the warehousing expense.

DOC Position: We disagree with petitioners' first point. Thyssen did not report a freight-inclusive gross price in one field and the actual freight paid in another, as called for by our questionnaire. Instead, Thyssen reported in one field the ex-freight basis point price. (In Germany, all of the steel mills quote prices for a given product delivered to a common point—the freight basis point.) In a separate field, Thyssen reported a "freight adjustment." When the freight adjustment is subtracted from the ex-basis point price, the result is exactly the same as if the proper methodology had been employed. Thus, the methodology employed by Thyssen results in exactly the same ex-factory price as if Thyssen had adhered to the Department's reporting requirements.

We also disagree with petitioners' second point. In calculating the freight adjustment, Thyssen used a standard cost for freight, based upon the optimum shipping quantity, rather than the actual cost paid by Thyssen. In some cases, usually because a smaller than optimum quantity was shipped, the actual verified amount paid by Thyssen differed from the standard cost. In the majority of cases where we found differences, correcting the error would be favorable to Thyssen. Therefore, there is no indication that Thyssen miscalculated the adjustment for the purpose of lowering potential dumping margins.

We agree with petitioners' third point, although they misstate the problem. Thyssen did not include warehousing expenses in its freight adjustment. Rather, as stated in the verification report, in two examples we examined, Thyssen adjusted its freight cost by "the difference between warehousing expenses as routinely calculated by Thyssen's cost accounting department and those calculated for purposes of responding to the questionnaire." As noted in our verification report, Thyssen's personnel were unable to explain the rationale for this adjustment. Inasmuch as Thyssen was unable or unwilling to explain a component of the freight adjustment, we have determined that it is appropriate to use BIA.

As BIA we would normally not make the freight adjustment in all cases since it is based in part on information that Thyssen was unable to explain. In order to treat this item in a manner which is adverse to Thyssen, for these final determinations we have continued to make the freight adjustment with respect to cold-rolled steel, but not for corrosion-resistant steel, because the latter adjustment would benefit Thyssen.

Comment 4: Petitioners argue that the Department should disallow Thyssen's home market warranty expense claim for cold-rolled steel, because a portion of the expenses used to calculate the claimed adjustment pertained to merchandise which is not subject to these investigations.

Thyssen disagrees, claiming that it should not be required to separately itemize each and every warranty claim in this instance because sales of the non-subject merchandise were extremely small in relation to the sales of the subject merchandise.

DOC Position: We agree with Thyssen. In this instance, we have determined that the co-mingling of expenses is unlikely to affect the overall result, due to the extremely small quantity of non-subject merchandise involved.

Comment 5: Petitioners argue that we should disallow all G&A expenses claimed by Thyssen in its home market as indirect selling expenses. In support of its argument, petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, (Forklifts) 53 FR 12552 (April 15, 1988). Petitioners also argue that we should disallow a component of Thyssen's claimed indirect selling expenses because it includes both allowable and non-allowable expenses. Petitioners assert that Thyssen has included the cost of preparing mill certificates. Petitioners assert that such costs are production—not selling, costs.

Thyssen argues that we should allow all of the claimed expenses because they are comparable in nature to the U.S. selling expenses deducted in the calculation of exporter's sales price. Thyssen cites *Final Results of Administrative Review: Television Receivers Monochrome and Color from Japan* 55 FR 35916 (September 4, 1990) to support its position.

DOC Position: We disagree in part with petitioners. The case cited by petitioners, *Forklifts*, is not applicable to this situation. In *Forklifts*, the Department rejected an argument by petitioners that the non-U.S. selling expenses deducted in calculating exporter's sales price should include certain non-selling general and administrative expenses incurred in the home market. Also, petitioners have misread the verification report. The certificates whose expense is included are not mill certificates. Rather, they are certificates prepared by a part of the Research, Quality Engineering, and Chemical Laboratories group, and are provided to customers for the purpose

of certifying "that material can be used for a particular purpose."

We also disagree in part with Thyssen. In *Television Receivers* the Department stated:

> The pool of indirect selling expenses in the home market should include those expenses which are similar to the expenses incurred by the subsidiary in the United States whose function it is to sell the merchandise. In this instance, the equivalent home market expenses include certain general expenses *associated with selling* (55 FR at 35918, emphasis added).

Television Receivers accurately states the Department's policy regarding G&A expenses. Accordingly, we have allowed all expenses which appear to be sales related. We have disallowed expenses related to production and general overhead costs.

We disallowed these amounts allocated to the U.S. market for the same reasons that we disallowed the amounts allocated to the home market.

Comment 6: Petitioners argue that the Department should deny Thyssen's claimed home market inventory carrying cost for three reasons: (1) Thyssen based its inventory value on estimates; (2) Thyssen miscalculated its average inventory period because it included some shipments of certain non-subject merchandise and excluded some shipments of subject merchandise; and (3) Thyssen reported certain claimed pre-sale warehousing costs (payments to independent warehouses to facilitate just-in time deliveries) in the same column with inventory carrying costs. Verification revealed that Thyssen incorrectly calculated the warehousing cost for certain warehouses.

Thyssen argues that none of the above reasons are sufficient cause to disregard the reported inventory carrying cost.

DOC Position: We agree with Thyssen. The estimated average inventory values reported by Thyssen in its response to the Department's sales questionnaire for cold-rolled steel, and corrosion-resistant steel are both lower than the average costs of production later reported by Thyssen in its response to the Department's cost of production questionnaire. Therefore the estimates used in the section B response are conservative.

As to the errors found at verification with respect to the calculation of average inventory time, Thyssen provided the necessary data to correct this item at verification. These corrections changed the total adjustment by an insignificant amount—less than 0.1 percent. The errors in the calculation of warehousing cost are also insignificant.

For these reasons, we consider the reported data reliable and we have used it, as revised slightly, for our final calculations.

Comment 7: Petitioners argue that the Department should disallow Thyssen's foreign currency exchange gain claims because Thyssen has not demonstrated that the claimed adjustments are directly related to specific U.S. sales.

Petitioners alternatively argue that in the event that we decide to accept the claimed adjustment for currency hedging, in whole or in part, that our regulations require that any adjustment must be made as a circumstance-of-sale adjustment to FMV pursuant to section 773(a)(4)(B) of the Act, rather than to United States price.

Finally, petitioners argue that the Department should deny the foreign currency exchange gain adjustment claimed by Thyssen on sales of seconds, because Thyssen did not produce documents at verification to support such claims.

Thyssen claims that the verification did establish that the claimed foreign currency exchange gain adjustments are directly related to U.S. sales. Thyssen also argues that the Department's established practice is to make currency hedging adjustments to U.S. price and not to foreign market value, citing *Preliminary Results of Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the United Kingdom*, 56 FR 11197 (March 15, 1991). Lastly, Thyssen argues that it has been able to support an exchange gain on its sales of seconds, but that the DOC advised that such adjustment is not appropriate.

DOC Position: We agree with Thyssen. Based on its anticipated sales, Thyssen negotiates foreign currency exchange contracts with a private banker. The contracts specify that over a specific period of time, the banker agrees to purchase a particular amount of dollars at a fixed exchange rate. The contracts are non-specific with respect to market or merchandise, other than that they pertain to Thyssen's export business. As purchase orders are received from Thyssen's U.S. subsidiary, Thyssen Incorporated (TINC), they are assigned to a foreign exchange contract. The amount available on a contract is reduced by the amount of the sale until the entire amount of the contract is exhausted. Subsequent sales are assigned to the next contract. The agreed upon exchange rate is entered on the order from Thyssen Stahlunion (TSU), the exporter, to Thyssen Stahl AG, the factory. Therefore, the foreign exchange contract covers the CIF value of the transaction between TSU and TINC. The amount of the claimed currency exchange gain adjustment is calculated based on the price from TINC to the unrelated purchaser in the United States. All movement charges and expenses incurred in the U.S are deducted from the price to arrive at a FOB mill price. Thyssen keeps track of which sale is assigned to which exchange contract on documents entitled "EVA" lists. These documents list the TSU invoice number, the TSU order number, the foreign exchange contract number, the TINC order number, the net weight and the value in U.S. dollars. The EVA lists are generated monthly in the normal course of business by TSU as the basis of determining the TINC payables to TSU.

We also made such an adjustment in *Final Results of Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al.*, (Antifriction Bearings) 57 FR 28360 (June 24, 1992). In that review (as in the original fair value investigation) the exchange rate used in making the adjustment was the weighted average of the rates from all contracts which came due in the period of review. The foreign exchange contracts in *Antifriction Bearings* did not state the sales, the merchandise, or the markets to which they applied. In *Antifriction Bearings*, as in this case, the revenues based on the exporter's transfer prices to its U.S. subsidiary were applied against the foreign exchange contracts. In this case, the sales transactions were directly linked to the contracts by the EVA lists and by the fact that the TSU order includes the applicable exchange rate from the foreign exchange contract. By contrast, for certain respondents in *Antifriction Bearings*, "[t]he timing for forward purchases [was] arranged due to movements in the currency market and were wholly unrelated to specific customer orders or sales," 57 FR at 28413. The Department therefore denied that adjustment. *See also LMI*, 912 F.2d at 458 (upholding the Department's denial of a currency hedging adjustment).

We disagree with respect to petitioners' argument that our regulations require that any adjustment for currency hedging must be made as a circumstance of sale adjustment to foreign market value rather than to United States price. In recent administrative reviews involving antifriction bearings from Germany and the United Kingdom, we made the currency hedging adjustment to United States price. *See*, for example, *Preliminary Results of Administrative Review: Antifriction Bearings (Other*

Than Tapered Roller Bearings) and Parts Thereof from the United Kingdom, 56 FR 11197 (March 15, 1991). The adjustment directly affects the net revenue earned by Thyssen on its U.S. sales. Therefore, we regard this adjustment as a selling expense which in exporter's sales price situations, we deduct from the gross U.S. price pursuant to 19 CFR 353.41(e). In this case, a gain was realized. Therefore the adjustment constitutes a "negative expense" which we have added to United States price.

Finally, petitioners' argument that the Department should deny the foreign currency exchange gain adjustment claimed by Thyssen on sales of seconds is moot inasmuch as we have deleted sales of seconds from our analysis.

Comment 8: Petitioners argue that in calculating the credit expense for U.S. sales, we should use the German interest rate applicable to the parent company in Germany, rather than the U.S interest rate claimed by TINC, the U.S. subsidiary.

DOC Position: We disagree with petitioners. We use interest rates to calculate credit expenses incurred on U.S. sales when Thyssen demonstrates that it had either actual borrowings of or access to U.S. dollar loans during the POI. The Department has not and does not concern itself with determining which of the corporate entities related to the respondent actually incurs the cost of financing.

Comment 9: Petitioners argue that because TINC has substantial borrowings from related parties and did not establish that these borrowings were at arm's-length rates, we should disregard the U.S. interest rate calculated by Thyssen and instead, as BIA, base the U.S. credit cost calculation upon the U.S. prime rate.

Thyssen argues that the interest rate used by TINC and TSD in the response to the questionnaire reflected the rates of their actual borrowings during the POI.

DOC Position: We agree with Thyssen. Exhibit 53 of Thyssen's submission of November 18, 1993, which we verified, lists all of TINC's borrowings from both related and unrelated sources during the period of investigation. According to this exhibit, the weighted-average interest rate for all borrowings, both related and unrelated, was slightly lower than the weighted-average interest rate applicable to the related borrowings, as stated at Exhibit 55 of the submission dated November 18, 1992, and in verification Exhibit B–29.

Comment 10: Petitioners argue that we should adjust the prices of U.S. sales made on a theoretical weight basis to account for the difference between actual and theoretical weight.

Thyssen agrees and has indicated that it has made this adjustment in all of its submissions.

DOC Position: We agree with both parties.

Comment 11: Petitioners argue that we should recalculate U.S. inventory carrying cost based on the interest rate applicable in the home market due to the payment terms relating to particular U.S. sales.

Second, petitioners argue that our verification revealed that Thyssen made a minor error in the part of the inventory carrying cost calculation having to do with TINC's gross profit margin percentage. Because this mistake was not discovered until after the start of the verification, petitioners claim that to correct the error (which would be favorable to Thyssen) would constitute the use of new information, which is not permitted under pursuant to 19 CFR 353.31(a)(1)(i) and 353.31(a)(3). Therefore, petitioners argue, we should recalculate inventory carrying cost using a gross profit margin based on BIA. In this case, petitioners argue that the best information is the original, uncorrected, gross profit margin used in the response to the questionnaire.

Third, petitioners argue that because we were unable to verify the days-in-transit portion of the average inventory days for sales by Thyssen Steel Detroit Company (TSD), we should recalculate the inventory carrying cost for TSD sales basing the average inventory days on BIA.

Alternatively, petitioners argue that in the event we reject the above arguments, at a minimum we should correct the inventory carrying cost for TSD sales of cold-rolled steel using the verified data.

Thyssen argues that the payment terms referred to by petitioners apply only to the TSD sales to automotive customers. Terms for all other sales, as substantiated by verification exhibits, are different.

Second, Thyssen argues that the methodology they employed is correct, since they used the home market interest rate for the portion of inventory carrying cost covering the time the goods remained in Germany. Thyssen cited many cases in which the Department used such a method.

Third, Thyssen argues that the errors found at verification are not sufficient to cause the Department to rely on BIA.

Fourth, Thyssen argues that transit time was in fact verified. The fact that one particular document was not available at verification, Thyssen claims, does not mean that verification was not complete.

DOC Position: We agree primarily with Thyssen, but we have corrected the inventory carrying cost for all sales of cold rolled and corrosion-resistant steel by both TSG and TSD using the interest rate applicable to the U.S. market.

First, we have a longstanding practice of using the home market interest rate for the foreign inventory period and the U.S. interest rate for the U.S. inventory period, the payment terms between the exporter and the related purchaser notwithstanding. For instance, in *Final Determination of Sales at Less Than Fair Value: High Information Flat Panel Displays and Display Glass Therefor From Japan*, 56 FR 32376 (July 16, 1991), we stated that it was proper to use the U.S. subsidiary's U.S. interest rate for the purpose of calculating inventory carrying cost for the portion of time that the goods were held by the U.S. subsidiary.

Second, the errors we found in the calculation were insignificant, were both adverse and favorable to Thyssen, and are of the type which we routinely correct. Petitioners also misread the verification report. The gross profit margin was reported correctly. The error was that in calculating the adjustment Thyssen inadvertently used an incorrect figure for the profit margin. Our verification report stated that the errors were the result of rounding differences and a typographical error. Such errors do not constitute "new information."

Third, with respect to the verification of total average inventory time, we verified the largest portion of this item which was the time the goods were held in inventory in the United States. The remaining component, transit time from Antwerp to various ports in the United States, was verified by a letter which stated the transit times and advised that they were determined on May 14, 1992.

Comment 12: Petitioners argue that the Department should correct an error found at verification regarding the calculation of indirect selling expenses incurred in the United States.

DOC Position: We agree with petitioners. The error was corrected on the post-verification computer tape submitted by Thyssen.

Comment 13: Petitioners argue that because Thyssen listed the incorrect packing form for six of nine cold-rolled steel sales examined, the Department should use as BIA the highest packing cost reported for any sale of cold-rolled steel. Alternatively, petitioners suggest we use the highest packing cost reported for any sale of cold-rolled steel *coils*, since all the errors discovered related to sales of coils.

Thyssen argues that resort to BIA for cold rolled steel packing cost is not

appropriate because the packing form codes were listed for informational purposes only and do not relate to the reported packing costs which are weighted averages of the costs for cut to length sheets, coils to automotive customers, and coils to other customers.

DOC Position: We agree with Thyssen. The packing costs were reported on an average basis and were verified. Resort to BIA is not appropriate in this instance.

Comment 14: Petitioners argue that because verification revealed two instances in which a customer took a cash discount that was not reflected in the sales listings which accompanied the questionnaire response, the Department should deduct a cash discount on all sales.

Thyssen argues that inasmuch as the unreported cash discounts all pertain to sales to a single customer, the Department should not deduct a cash discount on all sales.

DOC Position: Inasmuch as all of the affected sales are of seconds which we have deleted from our analysis, the comment is moot.

Comment 15: Petitioners argue that because Thyssen was only able to provide a single ocean freight invoice to support the average amounts it reported for ocean freight, the Department should base its deduction of ocean freight on BIA. As BIA, petitioners suggest we use the highest non-aberrational freight charge which petitioners have calculated using the amounts shown by Thyssen in the list of ocean freight charges (verification exhibit C–47).

Thyssen argues that the ocean freight adjustment was adequately verified.

DOC Position: We agree with petitioners. Thyssen calculated this item on an average basis. Thyssen provided only one, self-selected, freight invoice to support its calculations. We therefore determine that Thyssen failed verification on this point and that as a result, resort to BIA is warranted. As BIA, we have used the highest non-aberrational ocean freight charge we calculated from Thyssen's ocean freight worksheet.

Comment 16: With respect to foreign inland freight applicable to U.S. sales, petitioners argue that since the portion of the reported amount for freight from the factory to the German border was based on estimates, we must base the deduction for the entire amount on BIA. As BIA, petitioners put forth the highest amount claimed by Thyssen for any single sale.

Thyssen argues that it provided information at verification which proved that the estimates were reasonable and should therefore be used in the final determination. Thyssen states that the Department has a longstanding practice of accepting reasonable estimates, when appropriate.

DOC Position: We agree with Thyssen. The records we examined at verification indicated that the Thyssen's estimate was in fact more than the actual amount and therefore adverse to Thyssen. A similar issue arose recently in *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea*, 58 FR 11029, 11038 (February 23, 1993), where we concluded:

> Based on our verification of estimated expenses for U.S. sales and estimated payment dates for home market sales, we find respondent's estimates to be accurate and, therefore, have employed them in this final determination.

Therefore, we have used the amount claimed by Thyssen for purposes of deducting foreign inland freight.

Comment 17: Petitioners argue that we should use BIA for U.S. inland freight from warehouse to customer, because the verified amount differed from the reported amount in all of the four instances examined at verification. As BIA, petitioners suggest we use the highest verified amount.

Thyssen argues that the verification established that the method used by Thyssen to report this item was reasonable and should be accepted by the Department.

DOC Position: We agree with Thyssen. Thyssen reported the same amount for each item on an order. If there were many shipments pursuant to a given order, Thyssen used a sampling of the freight invoices to calculate the amount to be reported for that sale. The actual amount for a given sale may vary depending on the destination, the carrier, and the load. In three of the four examples we verified to sale-specific freight invoices, we found that the actual freight was less than that reported by Thyssen in the questionnaire response.

Comment 18: Petitioners argue that U.S. inland freight from pier to warehouse and from warehouse to customer should be increased by 20 percent because Thyssen calculated the reported amounts using a freight rate net of a 20 percent discount even though the verification established that Thyssen did not enjoy the freight discount on a substantial portion of its shipments.

Thyssen argues that its methodology was reasonable, and that in any event, the discounted rate was only reported for pier to warehouse freight, and not warehouse to customer freight. Thyssen further argues that it over-reported pier to warehouse freight for sales through the Thyssen Steel Co. Detroit (TSD) channel, because Thyssen reported an amount for all such shipments, even though in many cases, such freight charges were not actually incurred.

DOC Position: We agree with petitioners with respect to pier-to-warehouse freight. Verification revealed that the discounted rate was not incurred in a substantial portion of the shipments. Therefore, we will recalculate pier to warehouse freight without regard to the discount. However, as Thyssen noted, the reported amount for warehouse-to-customer freight was not adjusted for the discount. Therefore no recalculation is necessary. With regard to Thyssen's claim that it overstated pier-to-warehouse freight for the TSD sales channel, this issue was first raised in the rebuttal brief, was not verified, and cannot now be considered.

Comment 19: Thyssen argues that we should exclude from our analysis U.S. sales of seconds, because they are *de minimis*.

Petitioners argue that we should include seconds in our analysis because: (1) Seconds are within the scope of investigations; (2) sales of seconds have been reported; (3) sales of seconds are representative of U.S. sales; and, (4) excluding these sales may distort the margins.

DOC Position: We have not included seconds in our analysis because, for both products, they represent less than 5 percent of Thyssen's sales to the United States during the period of investigation. See, Appendix II of *Argentine Steel* for a further explanation of the Department's position with respect to seconds in these investigations.

Comment 20: Thyssen argues that its automotive and other end-user customers constitute different levels of trade because: (1) Prices charged to automotive customers differ from prices charged to other end users; (2) the pricing differences are due to the differences in selling costs at the different levels of trade; (3) there are significant differences in quantities sold to automotive customers and to other end users; and (4) there are significant differences in the terms and conditions of sale and in the manner in which prices are established when Thyssen sells to automotive customers and to end users.

Petitioners argue that because Thyssen has provided no information distinguishing functional differences between its home market customers, it has failed to meet its burden to establish that distinct, discernible levels of trade exist.

DOC Position: We have collapsed the customers categorized by Thyssen as automotive and end users into a single level of trade. The verification revealed that Thyssen was not accurate in categorizing its customers. All customers located in the Detroit, Michigan, area were categorized as the automotive "level of trade" regardless of their actual status. Thus, we need not address the appropriateness of distinguishing between automotive and other end-users.

Comment 21: Thyssen argues that in cases where further processing is performed by unrelated outside processors, the Department should not allocate profit to the cost of further manufacturing because the price charged Thyssen by the outside processor already includes a profit. Thyssen cites *Final Results of Administrative Review: Certain Internal Combustion Industrial Forklift Trucks from Japan*, 57 FR 3167 (January 28, 1992).

Petitioners argue that the Department should include the profit because the Department now has a settled practice of calculating profit on the actual cost to the respondent of the further manufacturing performed in the United States.

DOC Position: We agree with petitioners. For purposes of calculating the value of further manufacturing performed in the United States, the Department is concerned with determining Thyssen's costs and profit, not those of an unrelated party. As we stated recently in *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, (Semiconductors) 58 FR 15467, 15476 (March 23, 1993), "the fact that the unrelated subcontractor performing further manufacturing earned a profit is irrelevant. The price paid by [the respondent] for the subcontracting services was a cost to [the respondent] and we considered it as such in calculating our profit adjustment." Similarly, with respect to Thyssen, the fact that it realized a profit on the sale of the finished merchandise, requires that that profit be allocated over its entire costs. To the extent *Forklifts* is inconsistent with this reasoning, the Department considers it to have been superseded by *Semiconductors*.

Comment 22: Petitioners argue that the Department should recalculate the amount of value-added tax to be added to United States price.

DOC Position: Please see the discussion of our treatment of VAT in Appendix II of *Argentine Steel*.

Comment 23: Petitioners contend that Thyssen failed to identify all its related party suppliers in its response to the Department's questionnaire and to report the fully absorbed cost of production for the inputs that it obtained from these suppliers. Petitioners assert that where Thyssen did not demonstrate that its transfer prices were above cost of production, the Department should use BIA.

Thyssen argues that during verification it provided the Department with sufficient information to establish that prices paid by Thyssen reflect market prices and were above the COP. Thyssen, therefore, argues that its related party material purchases should be valued at the submitted transfer prices and that a change to actual costs would only benefit Thyssen (see *High Tenacity Rayon Filament Yarn from Germany*, 57 FR 21770, 21772, May 22, 1992).

DOC Position: We agree with petitioners. Thyssen did not provide the actual COP for the relevant inputs. Thyssen provided financial statements from related suppliers, but information contained in financial statements does not allow for a determination on whether prices are above or below the cost of production. For the Department to be assured that the transfer prices are above costs, the Department must be able to test the transfer prices against the actual costs of production of the inputs during the POI. Thyssen failed to demonstrate that its transfer prices used for related party inputs were above the cost of production. Therefore, we have adjusted the related party inputs based on the information available for those items.

Comment 24: Since Thyssen is a subsidiary of another company, petitioners argue that Thyssen's interest expense should be calculated on the basis of the consolidated entity, TAG. According to petitioners, use of the parent company's interest expense, rather than Thyssen's own interest expense, is appropriate because debt is fungible and corporations can shift debt and related expenses to or away from subsidiaries in order to manage profit.

Thyssen contends that the consolidated interest amount is the sum of the actual interest expense of all members of the TAG (consolidated) group of companies. Thyssen claims that of the total consolidated interest figure, the portion directly related to Thyssen, itself, was used for the calculation. Thyssen argues that the Department should utilize Thyssen's actual interest expense for its interest expense calculation as it fully conforms to Department methodology.

DOC Position: We agree with petitioners. The Department's normal methodology is to calculate interest expense from the total borrowing costs incurred by the consolidated group, TAG.

Comment 25: Petitioners contend that TSD failed to include costs incurred by its joint venture whose primary activity was producing and marketing blanked components made from steel for sale to the automotive industry. Petitioners argue that because the joint venture did not begin production until after the POI, the expenses incurred by TSD during the POI for this joint venture were general expenses as opposed to production costs. Therefore, petitioners contend that the costs of the joint venture should be included in the further-manufacturing costs. In addition, petitioners assert that Thyssen did not demonstrate that costs associated with the joint venture do not relate to the subject merchandise.

Thyssen argues that its TSD joint venture costs should be excluded from the further-manufacturing cost adjustment because the joint venture costs do not relate to the production of the subject merchandise.

DOC Position: We agree with petitioners. The joint venture costs incurred by Thyssen constitute general research and development charges which should be allocated among all manufactured products. Therefore, we have recalculated G&A expense to include TSD's portion of these research and development charges.

Comment 26: Petitioners contend that TSD failed to include restructuring and relocation expenses in its further-manufacturing costs. Because the Department normally includes restructuring costs as part of general expenses, these costs should be included in the calculation of TSD's further-manufacturing costs.

Thyssen argues that TSD's restructuring and relocation cost should not be included as part of costs incurred for the subject merchandise as there is no connection between these costs and the further-manufacturing costs in that they were costs attributable to TSD's parent company, Thyssen Inc. (TINC). Furthermore, Thyssen claims that these expenses are extraordinary costs and were partially offset by the net gain realized by the sale of a slitter which also was not included as part of Thyssen's further manufacturing cost adjustment.

DOC Position: We agree with petitioners. Restructuring and relocation costs in the steel industry are not unusual in nature and infrequent in occurrence. These restructuring and

relocation costs included expenses related to TSD as well as TINC. Therefore, we have allocated these charges along with a gain on the sale of fixed assets by the cost of goods sold of TSD's parent, TINC, whose business is the production of steel products.

Comment 27: Petitioners contend that interest expense should be based on the consolidated corporation's (TAG's) interest expense, rather than applying the composite borrowing rate of TINC to TSD's average net fixed asset value. Petitioners argue that Thyssen should report finance charges using the same methodology as that used for Thyssen's COP/CV response.

Thyssen argues that the Department should accept the interest expense calculations reported by TSD in its submission, because the total interest expense reported for the purpose of Thyssen's antidumping submission exceeded the interest expense which appears on the company's financial statements for the POI.

DOC Position: We agree with petitioners. Interest expense should include all interest expenses incurred on long and short-term debt as reported in the consolidated financial statements. Because U.S. operations are consolidated with the financial statements of TAG, the interest expense of TAG should be used. We have recalculated interest expense based on the consolidated Thyssen entity, TAG.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Germany that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Hot-rolled steel, producer/manufacturer/exporter	Average margin percentage
Preussag Stahl AG	29.02
Klöckner Stahl GmbH	29.02
All others	29.02
Cold-rolled steel, producer/manufacturer/exporter	Weighted-average margin percentage
Klöckner Stahl GmbH	23.54
Thyssen Stahl AG	17.33
All others	19.52
Corrosion-resistant steel, producer/manufacturer/exporter	Weighted-average margin percentage
Thyssen Stahl AG	4.88
All others	4.88
Steel plate, producer/manufacturer/exporter	Weighted-average margin percentage
Dillinger Hüttenwerke	35.06
All others	35.06

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its affirmative final determinations in the concurrent countervailing duty investigations involving sales in the United States of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and plate from Germany, the Department did not find any export subsidies. Therefore, we did not make any offset to the antidumping deposit rates.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry no later than 45 days after our final determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15618 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–806 and A–475–807]

Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lori Way or Judith Wey, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–6320, respectively.

Final Determinations

We determine that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) and certain cut-to-length carbon steel plate (steel plate) from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determinations in these investigations on January 26, 1993, (58 FR 7100, February 4, 1993), the following events have occurred:

On January 28, 1993, ILVA, S.p.A. (ILVA), respondent in these investigations, requested that the Department postpone the final determinations to a date not later than 135 days following publication of the Department's preliminary determinations. On February 5, 1993 (58 FR 8254, February 12, 1993) the Department granted ILVA's request and postponed the date of its final determinations until not later than June 21, 1993.

On February 5, 1993, ILVA informed the Department that it would not participate in verification, and requested that the Department return all submissions it had previously made in

connection with these investigations. On February 24, 1993, ILVA clarified that its February 5, 1993, request should be limited to its questionnaire responses, supplemental questionnaire responses, deficiency responses, and other submissions of data pertaining to such responses filed in these investigations. ILVA did not request that submissions of data which were not direct responses to the Department's questionnaire and supplemental questionnaire (*i.e.*, entry of appearance, extension requests, request to postpone final determination, etc.) be withdrawn from the record. Counsel was informed of the adverse effect that the granting of ILVA's request could have on the best information available (BIA) rates assigned to the company.

On February 12, 1993, petitioner requested to participate in a hearing, if one were requested by another interested party pursuant to 19 CFR 353.38(b). Petitioner filed a case brief on March 26, 1993. No hearing was requested by any interested party.

Scope of the Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: certain cold-rolled carbon steel flat products and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, which is being published concurrently with this notice.

Period of Investigation

The period of investigation is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the two classes or kinds of merchandise covered by these investigations constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of cold-rolled steel and steel plate from Italy to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

At the preliminary determination, we determined ILVA to be an uncooperative respondent because it failed to provide a supplemental section D response. The Department was compelled to cancel verification.

Because ILVA failed to provide a supplemental section D response and requested the withdrawal of all of its submissions responding to the Department's antidumping questionnaire, as discussed in the "Case History" of this notice, the Department no longer has any choice but to continue to treat ILVA as an uncooperative respondent and assign it rates based on BIA, in accordance with section 776(c) of the Act. The destruction of ILVA's submissions has the consequence of removing from the administrative record any basis for showing, either now or on appeal, that ILVA had been cooperative during these investigations. (See, *e.g.*, *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6205 (January 27, 1993)). Because ILVA refused to cooperate with the Department and significantly impeded these proceedings, we have used as BIA the highest margin alleged in the petition for the same class or kind of merchandise. The comparison that yielded the highest margin was U.S. prices derived from IM–145 import statistics to constructed value for cold-rolled steel and U.S. prices derived from IM–145 import statistics to home market prices for steel plate.

In their case brief, petitioners urged the Department to adhere to its preliminary determination and apply as BIA the highest margins alleged in the petitions. As noted above, we have done so.

United States Price and Foreign Market Value

We calculated USP and FMV using the methodologies described in the preliminary determinations.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect during the quarter in which sales to the United States were made, as certified by the Federal Reserve Bank.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel and steel plate from Italy that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows: Certain Cold-Rolled Carbon Steel Flat Products:

Producer/manufacturer/exporter	Margin percent-age
ILVA, S.p.A	50.15
All Others	50.15
Certain Cut-to-Length Carbon Steel Plate:	
ILVA, S.p.A.	53.86
All Others	53.86

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its affirmative final determinations in the concurrent countervailing duty investigations involving sales in the United States of cold-rolled steel and steel plate from Italy, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the antidumping deposit rates.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry no later than 45 days after our final determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15619 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

VOL 58 ISS 130 JL 9 1993 UMI

[A-588-824]

Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or James Rice, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–3174, respectively.

Final Determination

We determine that imports of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV). We also determine that critical circumstances exist with respect to certain hot-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from Japan. Both determinations are made as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determinations and postponement of final determinations (58 FR 7103 (February 4, 1993)), the following events have occurred:

We received responses to the Section D Cost of Production/Constructed Value (COP/CV) questionnaires from Nippon Steel Corporation (Nippon) and NKK Steel Corporation (NKK) on February 26, and March 1, 1993 respectively. On February 17, 1993, Kawasaki Steel Corporation (Kawasaki) informed the Department that it would not be responding to the Section D Questionnaire. On March 5, and March 4, 1993, we issued supplemental Section D questionnaires to Nippon and NKK respectively. Both respondents submitted their responses to these supplemental cost questionnaires in March 1993

Verification of Nippon's and NKK's responses to the Department's questionnaires regarding sales information took place in Japan during March of 1993. Verification of Nippon's and NKK's responses to the Department's questionnaires regarding cost of production (COP) information took place in Japan during March and April of 1993, respectively.

We issued a notice of Amendment of Preliminary Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan (58 FR 21444 (April 21, 1993)) and a notice of Correction of Amendment of Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Japan (58 FR 29385 (May 20, 1993).

On April 26, 1993, the petitioners alleged that "critical circumstances" exist with respect to imports of hot-rolled carbon steel flat products, cold-rolled carbon steel flat products, and corrosion-resistant carbon steel flat products from Japan. We issued a notice of Preliminary Determinations of Critical Circumstances: Certain Hot-Rolled, Cold-Rolled, and Corrosion-Resistant Carbon Steel Flat Products From Japan, 58 FR 31503, on June 3, 1993. For further discussion of this issue please see the section in this notice on Critical Circumstances and Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

We received requests for a public hearing from Nippon on February 5, 1993 and from NKK and petitioners on February 12, 1993. Nippon, NKK and petitioners filed case briefs on May 19, 1993. Nippon, NKK, Kawasaki, Sumitomo Metal Industries (Sumitomo) and petitioners filed rebuttal briefs on May 24, 1993. A public hearing was held on May 26, 1993.

Scope of Investigation

The products covered by these investigations constitute three separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), and certain corrosion-resistant carbon steel flat products (corrosion-resistant steel). The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of products covered by these investigations also constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B–099 of the main building of the Department of Commerce. NKK requested that the high carbon steel category be divided into two separate subcategories. We did not agree to NKK's categorization of high carbon steel and therefore the Department is not subdividing the category for comparison purposes. For a discussion of our treatment of this issue please see the Comments section of this notice.

Both NKK and Nippon sold secondary merchandise in the home market during the period of investigation. We excluded these sales from our margin analysis because these sales were insignificant. For a discussion of our treatment on this issue, see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

Nippon reported four U.S. control numbers (CONNUMUs) with duplicate CONNUMUs in the product concordance database matched to different home market control numbers (CONNUMHs). We examined the costs attributed to the physical differences in merchandise between the U.S. and home market products for each duplicate listing. For comparison purposes we used the match with the smallest cost differential.

Fair Value Comparisons

To determine whether sales of certain hot-rolled steel, certain cold-rolled steel, and certain corrosion-resistant steel from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

As detailed in the preliminary determinations in these investigations (58 FR 7103, February 4, 1993), Sumitomo withdrew its information

from the record. In addition, Kawasaki refused to respond to the Department's COP/CV questionnaire. Therefore, in accordance with section 776(c) of the Act, we based our final determination margins for these two respondents on the best information available (BIA). Because we consider Kawasaki and Sumitomo to be non-responsive we are applying an uncooperative overall BIA rate to both respondents. As BIA we have used the higher of: (1) The highest calculated rate for any other firm for the same class or kind of merchandise from Japan, or (2) the highest rate in the petition for the same class or kind of merchandise from Japan.

Nippon incorrectly reported the strength classification of certain sales of hot-rolled steel and cold-rolled steel in both the U.S. and home markets. Therefore, in accordance with section 776(c) of the Act we have assigned a BIA rate to all U.S. sales affected by the incorrect strength categorization. This misclassification affected all Nippon's sales of hot-rolled steel in the United States. Therefore, we have applied an overall BIA rate to these sales. Because Nippon has substantially cooperated with the Department throughout this investigation we used as BIA the higher of: (1) The highest calculated rate for any other firm for this class or kind of merchandise from Japan, or (2) the average petition rate for the same class or kind of merchandise from Japan. For cold-rolled merchandise this pattern of misclassification affected only a specific portion of Nippon's U.S. sales. As partial BIA we applied the higher of: The highest non-aberrant transaction margin calculated for Nippon from among the sales of cold-rolled steel where we were able to calculate a margin, or the average of the rates in the petition for that class or kind of merchandise from Japan. For a more detailed discussion of this issue please see the Department's Position to Comment 9.

NKK and Nippon have reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include these transactions in our calculations of FMV is discussed in Appendix II to the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this notice.

As explained in the narrative portion of Nippon's questionnaire response, Nippon also reported sales to related parties in the United States. Although we did not clearly address this issue in a deficiency letter to Nippon, neither the statute nor the regulations contemplate reliance upon U.S. sales to related parties. Thus, we have not used these sales in our less than fair value calculations. Rather, for these sales, we applied the weighted-average margin calculated for Nippon for all other sales of the appropriate class or kind of merchandise.

As explained in the narrative portion of Nippon's questionnaire response, Nippon inappropriately included level of trade in the model match hierarchy for purposes of creating the concordance database. Although we did not address this issue in our deficiency letter to Nippon, we examined Nippon's methodology and determined that for certain U.S. transactions it resulted in different model matches than would have resulted had Nippon applied the Department's matching criteria. For all U.S. sales that were affected by the inappropriate methodology we applied the weighted-average margin calculated for Nippon for all other sales of that class or kind of merchandise. For a more detailed discussion of this issue please see the comment section of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determinations, with the following exceptions:

A. NKK

1. We adjusted USP for NKK's consumption taxes paid in the home market. See Concurrence Memorandum.
2. We deducted interest revenue from U.S. direct selling expenses. See Concurrence Memorandum.

B. Nippon

1. We adjusted USP for Nippon's consumption taxes paid in the home market. See Concurrence Memorandum.
2. We included indirect selling expenses incurred in Japan and the United States for U.S. purchase price sales in the offset to U.S. price for home market commissions. See Concurrence Memorandum.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determinations, with the following exceptions:

A. NKK

1. We have deducted interest revenue from home market direct selling expenses. See Concurrence Memorandum.
2. We have treated post-sale warehousing as a direct selling expense. See Concurrence Memorandum.
3. We have treated warranty expenses as an indirect selling expense. See Concurrence Memorandum.
4. We have treated technical services as an indirect selling expense. See Concurrence Memorandum.

B. Nippon

1. We adjusted the reported home market inland freight expenses for differences we found at verification. See Nippon Verification Report.
2. For one related manufacturer we disallowed the claimed home market warranty, credit, freight, and packing expenses. See Concurrence Memorandum.
3. For the same related manufacturer we adjusted the amount of home market rebates for differences found at verification. See Concurrence Memorandum.
4. For a second related manufacturer we disallowed warranty expenses. See Concurrence Memorandum.
5. For the same related manufacturer we increased the gross unit price to account for payments received by that manufacturer from customers. See Concurrence Memorandum.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether Kawasaki (for corrosion-resistant steel), Nippon (for both hot-rolled steel and corrosion-resistant steel) and NKK (for cold-rolled steel) had home market sales that were made at less than their COP. Because we are applying total uncooperative BIA for Kawasaki (see Fair Value Comparison section, above,) we did not conduct an analysis of whether Kawasaki had home market sales at less than COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondents' below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales were at prices above the COP, and such sales were made over an extended period of time, we disregarded only the below-cost sales.

In order to establish that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP for two or more months, then the below

cost sales were considered to have been over an extended period of time.

Where we found that more than 90 percent of the respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of the respondents' cost of materials, fabrication, general expenses, and packing.

The submitted COP data was relied upon, except in the following instances where the costs were not appropriately quantified or valued as detailed in the respective concurrence memoranda:

A. NKK

1. We adjusted the reported costs of certain base products to account for variances not reported by NKK.

2. We recalculated NKK's general and administrative expenses (G&A) based on the unconsolidated corporate financial statements.

3. We recalculated interest expense to eliminate the effect of long-term interest income.

4. We recalculated profit to reflect adjustments made to NKK's home market costs.

B. Nippon

1. We recalculated Nippon's reported general and administrative (G&A) rate based on Nippon's unconsolidated financial statements.

2. We disallowed the gain on the sale of land to a subsidiary as an offset to G&A costs. See verification report.

3. We weight-averaged Nippon's G&A costs and costs of sales (COS) with its related further manufacturers' G&A and COS, respectively, while ensuring that this recalculation would not double-count COS for steel product sales from Nippon to its related manufacturers.

4. We increased Nippon's manufacturing costs to account for transactions between related parties not considered to be at arms-length.

In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of a company's reported general expenses, adjusted as detailed above, or the statutory minimum of 10 percent of cost of manufacture (COM). For profit, we used the higher of the actual profit earned in the home market on the class or kind of merchandise, or the statutory minimum of eight percent of the sum of COM and general expenses. We recalculated the weighted-average profit from the adjusted home market net sales prices and COPs. See section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We used official certified rates of exchange, as furnished by the Federal Reserve Bank of New York, for the POI.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports from Japan of certain hot-rolled and cold-rolled carbon steel flat products produced by Sumitomo and certain corrosion-resistant carbon steel flat products produced by Kawasaki.

For our preliminary determinations we used U.S. Import Statistics (IM–145) country-wide data. However, the bases for our final critical circumstances determinations are different than those used in our preliminary critical circumstances determinations. For a discussion of the bases for our final determination regarding critical circumstances, please see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice. For these final determinations we used company-specific data submitted by Nippon (for corrosion-resistant steel and hot-rolled steel) and NKK (for both hot-rolled and cold-rolled steel). No other company-specific data was submitted. We used U.S. import data (IM–145) for Nippon (cold-rolled steel).

The Department has determined that critical circumstances do not exist with regard to Nippon's shipments of hot-rolled, cold-rolled, and corrosion-resistant steel, and NKK's shipments of hot-rolled and cold-rolled steel. Because the data examined indicated that imports of those products did not increase by at least 15 percent and therefore, were not massive, we do not need to address the question of whether the importers of those products knew, or should have known, that the products were being sold at less than fair value.

Because Kawasaki and Sumitomo refused to participate in these investigations, and because import statistics do not permit an analysis that we could reasonably apply to these two respondents, we assume, as BIA, that their shipments of hot-rolled steel and cold-rolled steel have been massive since the filing of the petition.

To determine whether the importers of hot-rolled steel and cold-rolled steel produced by Sumitomo and corrosion-resistant steel produced by Kawasaki knew, or should have known, that the products were being sold at less than fair value, we first considered the margins in these investigations. We do not know the percentages of imports constituting purchase price or exporter's sales price transactions, respectively. Therefore, we have no way of calculating a weighted-average benchmark and we must assume as BIA that the appropriate benchmark is 15 percent. Because the BIA margins for these two respondents for these final determinations are above the 15 percent benchmark, we determine that importers of hot-rolled and cold-rolled steel from Japan produced by Sumitomo, and importers of corrosion-resistant steel from Japan produced by Kawasaki knew, or should have known, that prices were below fair value. Therefore, we determine that critical circumstances do exist with regard to Sumitomo's exports of hot-rolled and cold-rolled steel from Japan, and Kawasaki's exports of corrosion-resistant steel from Japan.

Interested Party Comments

Nippon

Comment 1: Nippon contends that the Department's choice of partial best information available (BIA) ignored its own requirement to distinguish between cooperative and non-cooperative respondents in the application of BIA. Nippon argues that the Department uses BIA as an incentive for respondents to cooperate with an investigation. Nippon contends that despite its record of full cooperation, the Department applied as BIA against Nippon a rate that was virtually the highest it was legally authorized to apply against any respondent. Nippon argues that a more appropriate methodology would have been to establish a BIA rate equal to the average of the transaction margins the Department was able to calculate based on Nippon's data.

Department Position: In deciding what to use as best information available, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (See 19 CFR 353.37(b)). Thus, the Department must determine, on a case-by-case basis, what the best information available is for either overall or partial BIA. For an explanation of the BIA used in these final determinations, please see the section on Fair Value Comparisons, USP and FMV in this notice.

Comment 2: Nippon contends that the Department should not have penalized Nippon for incorporating level of trade into the product matching hierarchy. Nippon asserts that it reasonably

interpreted the Department's questionnaire and related materials as creating a hierarchy for selecting product matches where different levels of trade are involved. In addition, Nippon claims that it described in its response the methodology it used and the Department never indicated any reservations concerning Nippon's methodology in its deficiency request, or otherwise, until the preliminary determinations.

Nippon further notes that since the preliminary determinations, it has attempted to provide the Department with a new product concordance tape based on the level of trade approach outlined by the Department in its preliminary determinations, but the Department has refused to accept new product concordances. Nippon claims that it submitted a printout of the revised product concordance prior to verification so that the Department would have all necessary information upon which it could calculate an actual margin.

Nippon contends that because the matching methodology was verified, any use of BIA would be inappropriate for the final determinations, regardless of the level of trade methodology the Department adopts.

Finally, Nippon goes on to note that the statute declares that the Department may apply BIA where a respondent "refuses or is unable" to provide requested information in a timely manner, citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1573–74 (Fed. Cir. 1990), Nippon states the Department is prohibited from using BIA in this case because Nippon neither "refused" nor "was unable" to provide requested information in a timely manner. Nippon further asserts that there must be clear and adequate communication between the Department and the respondent regarding the information the respondent is expected to provide to the Department. Nippon contends such communication is absent in this investigation.

Petitioners assert that the Department should use BIA for unmatched sales resulting from Nippon's invalid incorporation of level of trade (LOT) in its model match concordance. Petitioners argue that Nippon should have followed the statute and Department practice for its model match concordance methodology.

Petitioners note that matches identified by Nippon as that were not affected by the LOT error in the concordance and new matches where the LOT was removed do not appear on Nippon's concordance tape and the Department does not have difference in merchandise information for these products. For the new matches, Petitioners contend that the Department should use the highest non-aberrant dumping margin for any sale.

Department Position: We note that Nippon informed the Department in the narrative portion of the questionnaire response that it had included level of trade in the model match criteria for purposes of creating the concordance database and that we did not address this issue in any deficiency letter to the respondent. Accordingly, we did not resort to the use of BIA. Nippon was able to identify which reported CONNUM matches would have remained the same had Nippon matched CONNUMs based on the Department's methodology. Since all hot-rolled steel and cold-rolled steel matches would have remained the same, we have used all sales, where appropriate, of hot-rolled steel and all sales, where appropriate of cold-rolled steel in our LTFV calculations. For corrosion-resistant steel we note that not all matches would have been the same had Nippon applied our methodology. Since Nippon was able to identify which corrosion-resistant concordance matches would have been the same as currently reported, we have included all sales of those products in our LTFV analysis. For the remaining sales (sales which would have been matched differently) we have applied the weighted-average margin calculated for all other sales for Nippon.

Comment 3: Nippon contends that the Department should have used an arm's-length test only for resellers controlled by Nippon. Nippon asserts that the arm's length methodology was flawed since the Department applied the test against several minority-owned trading companies that were not controlled by Nippon. Nippon argues the Department should have treated as "related" only those companies legally controlled by Nippon or where there was some other objective indication of a control relationship between the two companies.

Nippon claims that its sales pricing process to trading companies is the same whether a sale is made to an unrelated trading company or a related trading company. Nippon states that the Department's presumption that related trading companies are manipulated by Nippon improperly disregards Japanese antitrust and tax laws.

Petitioners contend that the Department should not revise its arm's-length test for related party transactions. Petitioners state the Department is obligated by law to ensure the price comparability of all sales between "related persons" when there is any stock ownership and that the Department properly analyzed the price comparability of resellers related to Nippon with a five percent or greater share ownership. Petitioners contend that the five percent threshold for companies is an objective test based on a long line of Department precedent.

Department Position: Pursuant to its regulations and precedent, the Department conducted an "arm's length" analysis of sales between Nippon and companies in which Nippon owns more than 5% share interest to determine whether those sales were comparable to sales to unrelated parties. See 19 CFR 353.45(a) (requiring Commerce to examine selling prices from exporter to persons related per section 771(13) of the Act); section 771(13) of the Act (19 U.S.C. 1677(13)) (defining "related" person as one in which the exporter owns any interest). Where the ownership interest between parties is less than 5 percent, Commerce will not consider those parties related. See, e.g., Certain Forged Steel Crankshafts from Japan, 52 FR 36984, 36985 (1987) (parties not related if ownership interest less than 5%); Portland Hydraulic Cement from Japan, 48 FR 41059, 41061 (1983) (practice of Commerce Department is not to consider parties related where less than 5% interest is owned).

Nippon asserts that Commerce may only look for price manipulation where there is actual control. The Department's regulations and precedent make clear, however, that it is concerned with the possibility of price manipulation by the respondent with related parties. See, e.g., Cellular Mobile Telephones and Subassemblies from Japan, 54 FR 48011, 48015 (1989). Five percent stock ownership is an appropriate indicator of such possibility. Moreover, Nippon's position is paradoxical, as it would require the Department to find actual control or price manipulation before it may conduct its arm's-length analysis.

Nippon's claim that it uses the same sales process for both related and unrelated companies is partly irrelevant and partly conclusory. Insofar as Nippon meant that the formal sales procedures are identical, the statement is irrelevant. Formal procedures are meaningless if they result in differential treatment of related and unrelated resellers. If Nippon meant that its commissions between related and unrelated resellers are comparable, its statement attempts to assert the very fact that Commerce's arm's-length analysis is meant to determine. As such it has no

bearing on the propriety of the Department's application of the analysis.

Finally, it is irrelevant for purposes of U.S. antidumping law that price manipulation between Nippon and its related resellers would be contrary both to Japanese antitrust laws and to Nippon's recognized Japanese tax liabilities. Japanese official definitions of arm's-length transactions are only meaningful in the context of Japanese domestic law. The logic of Nippon's assertion requires U.S. officials to accept Japanese official findings of fact and Japanese law in applying U.S. trade law. This is clearly untenable, without precedent in international or domestic law. There is no requirement that U.S. antidumping practice conform to Japanese antitrust laws or policies which have entirely different purposes and standards.

Comment 4: Nippon contends that the Department improperly included sales outside the ordinary course of trade (overroll production) in the arm's-length test and the LTFV margin calculation. Nippon states that these sales were clearly marked, in accordance with the field format instruction provided by the Department, as outside the ordinary course of trade on Nippon's data submissions to the Department.

Nippon asserts that when determining whether particular sales are made in the "ordinary course of trade" the Department examines several factors: (1) Relative quantities, (2) prices compared to all other home market sales and (3) the channels of trade for these sales. Nippon contends that these sales are made through totally different channels of trade and marketed by different divisions within Nippon; and they are sold in dramatically smaller quantities and at prices that are dramatically lower than sales made in the ordinary course of trade. Nippon contends that the Department examined the bases for Nippon's claim that these products are outside the ordinary course of trade at verification and that the Department noted this fact in its sales verification report. Nippon argues that the results of the price comparison are meaningful only if the products are comparable. Nippon contends, therefore, that these sales should have been excluded from the analysis since they are not comparable to sales made in the ordinary course of trade.

Petitioners agree with Nippon that the Department may not conduct an arm's length or base foreign market value on sales outside the ordinary course of trade. Petitioners contend that the Department should look at the following factors when determining whether the home market sales are in the ordinary course of trade: frequency of sales, quantities of sale, price comparisons, profit margins on the sales, and respondent's own categorization of the products.

Department Position: The Department has determined not to include sales of "overroll" production in the arm's length test for related resellers, the calculation of FMV, and in the COP test for the purposes of these investigations. In order to make the most accurate sales comparisons, we are comparing sales of prime products to only sales of prime products. For purposes of the administrative reviews, the Department will consider whether overrun or "overroll" production is equivalent to prime production if it is not sold outside the ordinary course of trade.

Comment 5: Nippon notes that in the Preliminary Determinations, the Department compared the weight-averaged total sales for each related trading company to total sales to unrelated parties of identical merchandise and then calculated an average related-to-unrelated price ratio for each related reseller. The Department excluded related party sales from Nippon's home market database when the trading company-specific ratio was less than 99.5 percent. Nippon contends that the standard of 99.5 percent is arbitrary and unreasonable, and cannot be justified by any commercial realities. Nippon argues that the regulations instruct the Department to determine whether the related party prices are "comparable" to unrelated prices, not whether they are higher. According to Nippon, the unreasonableness of the standard is shown by the fact that Nippon conducted the related party tests on unrelated parties in which a number of unrelated parties did not pass the test. Nippon argues that the Department should adopt a range of plus or minus five percent for the comparison of related party prices to unrelated party prices.

Petitioners assert that Nippon's arguments for raising the price margin threshold by a factor of ten times (0.5 percent to 5.0 percent) are unpersuasive. Petitioners contend that Nippon's argument that certain unrelated parties failed the test is not relevant since the test examines whether the transactions between Nippon and the related party are at arm's-length.

Petitioners contend that the 0.5 percent benchmark used by the Department is reasonable and consistent with antidumping practice since the benchmark is similar to the 0.5 percent used to establish when dumping margins are to be disregarded as *de minimis*. Consequently, petitioners urge the Department to maintain the 0.5 percent benchmark for the arm's-length test.

Department Position: We disagree with Nippon that the Department's arm's length test is arbitrary and unreasonable because it fails to take into account whether the related customers' weighted-average price is below the unrelated customers' weighted-average price by an amount that is within an accepted range of variability found in the related prices. Because of the Department's inherent and well founded reluctance to rely on prices between related parties in its analysis, the Department's test has always been "strict" and arguably difficult to pass. Nippon, however, need not pass this test in order to allow the Department to apply its less than fair value analysis. Nippon could have simply reported all sales in Japan to the first unrelated customer, obviating the need to perform the arm's length test. However, Nippon failed to report such sales and, consequently, contests the use of standards which have consistently been used by the Department in its arm's length test in LTFV investigations. The use of the 0.5 percent benchmark for the arm's length test is reasonable and has been applied in all of these investigations. Please see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Comment 6: Nippon contends that the Department had no legal or factual basis to treat Nippon and three related manufacturers as a single economic unit. Nippon states that the basis of the decision to collapse related manufacturers with Nippon was contained in a Department memorandum dated November 6, 1992 which stated the Department's practice to "collapse related parties where there is a strong possibility of price manipulation." Nippon states that the Department's memorandum is consistent with prior practice but that the Department ignored its own standard in reaching its decision on this case.

Nippon contends that the Department based its conclusion to collapse these companies with Nippon on little more than the existence of a non-controlling equity interest by Nippon. Nippon contends that the presumption that a company without legal control can manipulate the prices of another company is clearly contrary to well

established U.S. and Japanese tax and antidumping law.

Nippon contends that the objective evidence on the record indicates that the day-to-day management, production and marketing operations of Nippon and the related manufacturers are wholly independent. Nippon also argues that the Department never asserted that Nippon had "effective working control" of the three companies.

Nippon argues that the Department's decision to collapse one related manufacturer with Nippon was based on the argument that Nippon's partial ownership "suggest[s] an element of control, and hence the possibility of price manipulation." Nippon asserts that this standard of the "suggestion" of a mere "possibility" of control is not sufficient to collapse two companies under the Department's own legal standard.

Nippon also contends that the Department's decision to collapse two other related manufacturers was based on the Department's misunderstanding of the equity method of consolidating financial statements. Nippon argues that the consolidated financial reporting is used only to provide gross performance information about certain companies affiliated with Nippon and does not in any way indicate Nippon's control over these related manufacturers. Accordingly, Nippon asserts that its use of the equity reporting method has no bearing on the question whether Nippon can manipulate the related manufacturer's prices.

Nippon asserts that the Department compelled Nippon to collect highly sensitive data from its related manufacturers for the Department's questionnaire. Nippon contends that under Japanese law, Nippon could not compel three of the four related manufacturers to provide the requested price and sales data requested by the Department. Furthermore, under neither U.S. nor Japanese law are minority shareholders permitted access to the type of detailed, product-specific price and cost information requested by the Department.

Department Position: It is the Department's long-standing practice to calculate a separate dumping margin for each manufacturer or exporter investigated. This case presented the situation in which the Department properly "collapsed" Nippon and its three minority-owned related companies into one entity for purposes of calculating a dumping margin where it found a strong possibility of price manipulation.

Commerce does not focus only on the degree of voting control one company may have over another when determining whether to collapse entities. See *Nihon Cement Co.* v. *United States*, Slip Op. 93–80 at 50 (Ct. Int'l Trade May 25, 1993). Moreover, the decision to collapse related enterprises is not "based solely on the extent of their financial relationship." Cellular Mobile Telephones (CMTs) and Subassemblies from Japan, 54 FR 48011, 48015 (1989). In addition to these considerations, the Department uses other factors in determining whether to collapse related enterprises, which include whether: (1) The companies are closely intertwined; (2) the companies have transactions with each other; (3) the companies have similar production equipment, so that it would not be necessary to retool facilities in order to change either entity's manufacturing priorities; and (4) the entities are capable of manipulating prices or affecting production decisions, through their sales and production efforts. *Nihon Cement*, Slip Op. 93–80 at 50–51, Final Determination of Sales at Less Than Fair Value: Steel Wheels from Brazil, 54 FR 8780, 8781 (1989); Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy, 53 FR 27187, 27189 (1988); Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Spain, 53 FR 24335, 24337 (1988). The Department need not show all of these factors exist in order to collapse related entities, but only that the companies are sufficiently related to create the possibility of price manipulation. *Nihon Cement*, Slip Op. 93–80 at 51–52; cf. CMTs from Japan, 54 FR at 48015 (implying that not all these factors need be used). However, although the Department need not meet all of these requirements, it must consider all of them. *Nihon Cement*, No. 93–80, slip op. at 52; cf. Steel Wheels from Brazil, 54 FR at 8781 (finding some, but not all, of these factors); Granite from Italy, 53 FR at 27189 (same); Granite from Spain, 53 FR at 24337 (same).

Having considered all of these factors, the Department concluded that this is one of those "relatively unusual situations, where the type and degree of the relationship is so significant that we find there is a strong possibility of price manipulation." Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19089 (1989). As admitted by Nippon, the financial information of two of the related companies is consolidated in Nippon's financial statement, and both companies provide Nippon with regular financial reports. Although the content of these reports may be less extensive than that provided for the Department's supplemental questionnaire, they provide additional evidence that the companies are closely intertwined, and that they have a financial relationship. Additionally, Nippon is a substantial shareholder in each of the related companies, which indicates a level of voting control sufficient to affect the three companies' production and price decisions. Also, Nippon and its three minority-owned companies have substantial transactions between them, which seems relevant to the collapsing issue. Also, the basic production equipment of each particular product is such that significant retooling of facilities is not necessary to change manufacturing priorities between related companies. In Commerce's judgement, any minor retooling required could be accomplished swiftly and with relative ease.

All of these factors shows that Nippon has the necessary influence over its minority-owned companies to be "*capable* * * * of manipulating prices or affecting production decisions[.]" *Nihon Cement*, Slip Op. 93–80, slip op. at 51 (emphasis supplied). Given this analysis, it is the Department's judgment that these relationships are sufficiently close to create the strong possibility of price manipulation between the companies. See Memorandum for Holly A. Kuga, from Kathy McNamara, dated November 6, 1992, on file in room B–099 in the Department's main building.

Respondent's comments make much of the assertions that Nippon does not have "legal control" of its minority-owned related companies within the meaning of U.S. antitrust law; that the companies would be separate entities under U.S. tax law; and that Nippon had no legal right under the Japanese Commercial Code to the "highly sensitive information" it was required by Commerce to obtain from the three minority-owned entities. Regardless of these arguments, we note that this information was submitted to the Department, along with Nippon's information for purposes of these investigations. While each of these observations, if true, would be important in its respective field of law, none are dispositive in the setting of U.S. antidumping law. Each body of law has its own priorities, methodologies and concerns, which are not necessarily addressed by or relevant to other bodies of law. Consequently, the U.S. antidumping law, not other fields of law, is the proper source for a test to

VOL 58 ISS 130 JL 9 1993 UMI

determine if companies are sufficiently related to be treated as one entity for purposes of U.S. antidumping law.

Comment 7: Petitioners assert that the Department must use BIA to calculate margins on Nippon's U.S. sales to related parties. Petitioners contend that the questionnaire specifically stated that Nippon must report all sales to unrelated purchasers and that where a sale is made through a related company, Nippon must report the price charged to the unrelated buyer. Petitioners argue that Nippon's arm's-length test for these sales is irrelevant since related party transactions can never be used as the basis for U.S. price, given that the antidumping statute clearly states that U.S. price is based only on sales to unrelated parties. Petitioners state that it is contrary to Department practice and law to base U.S. price on sales to related parties. See *PQ Corporation* v. *United States*, 652 F. Supp. 724, 732–733 (Ct. Int'l Trade 1987) and *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1572 (Fed. Cir. 1983). Petitioners assert that since Nippon failed to report the correct price as well as movement, selling and other expenses for these sales, the Department must use BIA based on the highest transaction margin for any other U.S. sale of subject merchandise.

Nippon contends that neither the statute or the Department's regulations bar the use of a manufacturer's arm's-length sales to a related trading company when calculating U.S. price for purchase price sales.

Nippon argues that the cases cited by petitioners do not apply to a purchase price (PP) proceeding. Nippon contends that in *PQ Corporation* v. *United States*, 652 F. Supp. 724, 732–733 (Ct. Int'l Trade 1987), the only issue was whether the sale was an exporter's sale price (ESP), not whether a related-party arm's-length test could be used. Likewise, Nippon asserts that the *Smith-Corona Group* v. *United States* case also does not address whether an arm's-length test could be used for related parties for PP sales.

Nippon asserts that the Department precedent and the statute only require use of the price to the first unrelated party for ESP sales.

Nippon contends that on September 17, 1992, it requested clarification from the Department that it need not report sales by related resellers in either the home market or the U.S., so long as the sales were made at arm's-length. Subsequently, Nippon submitted evidence in an attempt to support its claim regarding the arm's-length nature of its sales to related dealers in both markets. Nippon notes that the Department indicated on October 9, 1992, that it would accept the related party sales in both markets as long as the sales were made at arm's-length.

Nippon suggests that it is reasonable to use the related party sales data since related U.S. trading companies earn profits on their sales to unrelated customers. In addition, Nippon contends that the arm's-length test it conducted and provided to the Department clearly indicates that its sales to related resellers were at arm's-length. Consequently, Nippon argues that the Department should base USP on sales to related resellers. Nippon contends that even if the Department does not consider it appropriate to use these sales, it should use them as BIA since petitioners themselves consider the price of the sale by the related company would probably be higher. Nippon also argues that if the Department considers the price to be unreliable, it could simply exclude the sales from the analysis, as it does for home market related party sales. Nippon suggests alternately that due to Nippon's full cooperation in the investigation, the Department should consider applying as BIA, weighted-average margin calculated for all of Nippon's other transaction margins.

Department Position: As explained in the narrative portion of Nippon's questionnaire response, Nippon reported sales to related parties in the United States. Neither the statute nor the regulations contemplate reliance upon U.S. sales to related parties in either a PP or ESP situation. See section 772 of the Act; 19 CFR 353.45. The Department has never based its calculations on other than U.S. sales to unrelated parties. See, e.g., Final Results of Antidumping Duty Administrative Review: Fishnetting of Man-Made Fibers from Japan, 55 FR 34042, 34043 (Aug. 21, 1990). Although, we have not used these sales in our less than fair value calculations. Rather, for these sales, we applied the weighted-average margin calculated for Nippon for all other sales of the appropriate class or kind of merchandise.

Comment 8: Petitioners contend that the Department should use partial BIA to account for Nippon sales in the home market to related parties that do not meet the Department's definition of arm's-length sales. Petitioners argue that if a respondent cannot show that the sales were at arm's-length, and the sales through the related party are a significant percentage of all sales in the home market, the Department will calculate foreign market value on the basis of the sales price to the first unrelated party. Petitioners contend that since Nippon chose to ignore the Department's request to report sales to the first unrelated party (i.e., downstream sales), it is likely to be hiding higher home market prices, as it is reasonable to assume that the related party made a profit on its sales to unrelated customers.

As BIA, petitioners suggest the highest price per ton charged for each applicable control number (CONNUMH) to an unrelated buyer be applied to the total tonnage of the non arm's-length sales to the related party.

Nippon contends that the use of punitive BIA for related reseller transactions found not to be at arm's-length would be improper for several reasons. First, Nippon contends that if sales outside the ordinary course of business were excluded from the arm's-length test, the vast majority of Nippon's sales to related resellers meet even the Department's unrealistic arm's-length criteria.

Second, the use of punitive BIA would contravene longstanding Department practice regarding cooperative respondents.

Third, the Department's practice with respect to related party sales found not to be at arm's-length is to disregard those sales where it has sufficient sales to unrelated parties to calculate fair market value.

Nippon asserts that the price to an unrelated buyer is the market price for a particular product and, therefore, the best information available about that price. To do more than exclude the related party price would unrealistically inflate the market price, which would effectively penalize Nippon. Nippon states that since punitive BIA is clearly not appropriate for Nippon, the Department should follow its practice merely to disregard any related party sales that fail the arm's-length test. Nippon argues that for CONNUMS where there are no contemporaneous sales of products to unrelated companies, the Department should use the weighted-average margin calculation for Nippon's other transactions within each class of merchandise as BIA.

Department Position: As we outlined in our preliminary determinations, in cases where respondents could not or would not report downstream sales, we applied margins based on BIA to any U.S. sale that remained unmatched as a result of sales to a related reseller in the home market that failed the arm's length test. We will continue to do so for these final determinations. We did not simply disregard the fact that respondents failed to report downstream sales. Once a related reseller fails the arm's length test, the need for downstream sales

becomes evident, but only as an alternative to the sale to that related reseller.

Nippon cites cases where the Department disregarded related party sales that failed the arm's length test. However, the Department's regulations give the Department substantial latitude in determining whether or not to apply BIA where a party fails to report downstream sales. The Department's questionnaire explicitly required all respondents, including Nippon, to report these downstream sales would result in the use of BIA. The Department has the authority to use BIA for unreported sales. See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Internal Combustion Industrial Forklift Trucks from Japan 57 FR 3167, 3179–83 (Jan. 28, 1992). To the extent that dropping related party sales that fail the arm's length test from the home market database leaves U.S. sales without an adequate foreign market match (because downstream sales were not reported), we have applied BIA to these sales. As BIA we used the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrant transaction margin calculated for Nippon from among the sales of the same class or kind of merchandise.

Comment 9: Petitioners note that Nippon unilaterally subdivided the strength "other" subcategories for hot-rolled and cold-rolled steel. Petitioners assert that the Department should reject Nippon's modification of the model match in these two cases and should collapse back Nippon's subcategories into the appropriate "other" category.

Petitioners note, however, that Nippon's inappropriate subdivisions of the strength categories will cause complications if the Department collapses the subdivisions. Petitioners contend that since Nippon is only required to report cost data for home market sales which are matched to U.S. sales, it is likely that Nippon will not have reported cost data for many home market products. Petitioners assert for such cases the Department should drop all "new" home market CONNUMHS that do not have complete cost data and apply the highest non-aberrant dumping margin for BIA.

Petitioners also remark that when the "other" category is collapsed, new CONNUMS will be created and the Department may not have all necessary difference in merchandise information. Petitioners contend that the Department should, as it did in the preliminary determinations, only compare identical merchandise and apply the highest transaction margin to all hot-rolled and cold-rolled sales in the U.S. that do not have an identical match.

Furthermore, petitioners assert that Nippon has presented no compelling reason to change the model matching criteria at this late time. Petitioners contend that Nippon submitted certain, mainly inconclusive, information on alleged price and cost differences between the various types of reported products, the Department did not verify this information and should not rely on this data for the final determinations.

Nippon contends that its categorization of high-strength hot-rolled steel was appropriate. Nippon stated that its creation of a new code in the category did not affect any hot-rolled matches in the concordance or the resulting margins. Nippon claims its categorization of high-strength hot-rolled steel more accurately and specifically identified the products without affecting product matches.

Nippon also asserts that collapsing Nippon's high-strength hot-rolled products would not affect the hot-rolled concordance. Nippon states that its use of the more precise category for hot-rolled products in no manner affected Nippon's CONNUM assignments.

In addition, Nippon asserts that its categorization of high-strength cold-rolled steel was also appropriate, based on Japanese Industrial Standards (JIS). Nippon notes that the Department's questionnaire failed to recognize the distinction used by Nippon under Japanese standards. Nippon contends that given the differences in physical properties for these products under the JIS system, it would have been improper for Nippon to include certain products that are high-strength under JIS standards with products classified under the Department's questionnaire as other than high strength.

Nippon states that the new category was created so that the Department could more accurately compare similar products for purposes of its margin analysis. In addition, Nippon asserts that the effect of adding this new category was *de minimis* as only a very small percentage of Nippon's cold-rolled sales were categorized into the new category.

Nippon notes that the Department's sales verification report asserts that cold-rolled products that "should" have been put into a specific category were instead put into another high-strength category. Nippon asserts that it accurately assigned its cold-rolled products into the proper strength categories based on its methodology to assign strength categories as explained to the Department at verification. Nippon states it began to categorize these products on the basis of the strength as listed in its product catalog which for each product specification indicates a corresponding minimum or maximum yield strength. Nippon states because the catalog identifies only minimum or maximum yield strength, Nippon used its mill specifications to determine the actual yield strength particularly when the minimum or maximum value in the catalog bordered on one of the Appendix V ranges. Accordingly, Nippon claims it was as accurate as possible in properly classifying products in their appropriate strength categories.

Nippon contends that petitioners request to collapse CONNUMS for high-strength into an imprecise category would create no new matches and would not affect the cold-rolled margin calculation. Nippon contends its use of the more accurate high strength category was appropriate and neutral in its affect on margin calculations. Consequently, Nippon asserts that the matches are legitimate and do not warrant the Department's use of BIA.

Department Position: In the course of verifying Nippon's cold-rolled and hot-rolled product matches, we discovered that contrary to the Department's instructions, Nippon had unilaterally subdivided codes in the STRENGTH variable for cold-rolled steel and the TYPEH variable for hot-rolled steel. However, Nippon did not indicate anywhere in the narrative portion of either its original or supplemental questionnaire response that it had created these new subdivisions.

At verification we further noted that Nippon failed to properly report the strength classification for certain product control numbers (CONNUMS), even within Nippon's modified classification criteria. We discovered this sort of error numerous times, and to various degrees, throughout the product matching verification. At verification, Nippon explained that it had used multiple resources for purposes of classifying the strength characteristic of hot-rolled and cold-rolled steel. The respondent further explained that the information contained in these resources specified either actual, minimum or maximum yield strength of the product. Thus, Nippon classified different CONNUMs within the same class or kind of merchandise on inconsistent bases.

Since there has been a pattern of misclassification by Nippon concerning these products, we cannot determine which steel products in the affected strength categories were properly classified and therefore cannot

determine appropriate matches for these products. Consequently, we have used BIA for all U.S. sales in these categories. For a more detailed description of this issue, please see the Concurrence Memorandum on file in room B–099 of the Department's main building.

No compelling reason exists for altering the matching criteria at this stage of the investigation. See Final Determination of Sales at Less Than Fair Value: Certain Residential Door Locks and Parts Thereof From Taiwan, 54 FR 53153, 53157 (Dec. 27, 1989). Since the hot-rolled and cold-rolled high strength steel failed verification, we have applied a BIA rate.

Since this affected only a portion of cold-rolled sales, we have applied a BIA rate to the affected U.S. sales. As partial BIA for cold-rolled steel we used the higher of: (1) The highest non-aberrant transaction margin calculated for Nippon from among the sales of the same class or kind of merchandise where we are able to calculate a margin or (2) the average petition rate for the same class or kind of merchandise from the same country of origin.

However, as Nippon reported all of its U.S. hot-rolled sales under the misclassified strength categories, all U.S. sales of this class or kind of merchandise are consequently affected by this reporting error. Therefore, we have applied an overall BIA to Nippon's U.S. sales of hot-rolled merchandise. Because Nippon has substantially cooperated with the Department throughout this investigation we used as BIA the higher of: (1) The highest calculated rate for any other firm for this class or kind of merchandise from Japan or (2) the average petition rate for the same class or kind of merchandise from Japan.

Comment 10: Nippon contends that it was improper of the Department to refuse to accept Nippon's rebates on extras. Nippon notes that its home market rebate program consisted of rebates paid for the base products and rebates paid on extras. Nippon contends that due to a computer programming error certain home market rebates paid on extras were not picked up and were omitted from the home market rebate amounts reported in the questionnaire response. Nippon contends that only a small volume of sales were affected by this omission and Nippon states that it discovered the programming error and offered a sales-specific printout of the extras rebates to the Department at the start of verification. However, according to Nippon the Department improperly rejected the data and refused to permit Nippon to submit a revised tape after verification that included the missing data. Nippon argues that despite the Department's refusal to examine the additional information on extra's rebates, the Department fully verified Nippon's base rebate programs.

Petitioners assert that the Department properly refused to verify the rebate data on extras. Petitioners contend that information on the extras rebate is new information and that all new factual information for the final determinations must be submitted seven days prior to verification. Furthermore, Petitioners contend that the claimed rebate amount on Nippon's sales tape could not be matched to the company's actual total rebates at verification. Petitioners contend it is impossible to know whether Nippon's claimed amounts are accurate. Petitioners urge the Department to disallow any adjustment for rebates in the home market.

Department Position: Nippon incorrectly reported its home market rebates. The rebate components on the base products and extras should have been added together for a rebate amount. Furthermore, Nippon failed to include any information concerning home market rebates paid on extras in the questionnaire response. At verification, we did not accept Nippon's information regarding rebates on extras because it constituted an untimely submission of new information which we could not accept at verification. (See Sales Verification Report of Nippon Steel Corporation, May 12, 1993 at pp. 11–12). Although we did not verify the rebates paid on extras, we did find that the rebate paid on the base product passed verification. (See Sales Verification Report of Nippon Steel Corporation, May 12, 1993 at p. 12). Consequently, the Department will use only the verified rebate segment on base products for the final determinations.

Comment 11: Petitioners contend that Nippon's submission of changes in the packing expense at the beginning of verification was not a clerical change but a complete revision of the packing data. Petitioners urge the Department to disregard the revised data as new and untimely information and use BIA for the packing expense for the final determinations.

Nippon states that the packing revisions submitted at the beginning of verification were the result of clerical errors and should be accepted.

Department Position: The Department examined all of the technical corrections provided for packing expenses. We determined that they were the result of minor clerical errors and as such does not constitute a complete revision of the data provided in the questionnaire response. We have therefore accepted Nippon's technical corrections for packing for the final determinations.

Comment 12: Petitioners further contend that Nippon's packing information was not successfully verified and must be rejected in favor of BIA. Petitioners note that the Department stated in its sales verification report that there were inconsistencies in Nippon's packing labor costs. Petitioners assert that Nippon was apparently unable to explain a major component of its labor expense calculation. Consequently, petitioners urge the Department to use BIA for Nippon packing expenses.

Nippon contends that its explanation of its packing labor cost methodology was not inconsistent and its labor cost calculations were fully verified. Nippon asserts that the inconsistencies discussed in the Department's verification report were in fact accurate statements that were fully consistent with the methodology used by Nippon to calculate packing labor costs. Nippon states that source documentation supporting this methodology was reviewed and fully verified by the Department. Therefore, Nippon contends that there is no reason to use any BIA with respect to Nippon's packing cost calculations.

Department Position: The Department verified Nippon's packing expenses, including packing labor costs and found no discrepancy between the source documentation and the corrected response. While we were sometimes provided inconsistent or confusing explanations on how the packing labor methodology was derived, the reported packing expense passed verification. (See Sales Verification Report of Nippon Steel Corporation, May 12, 1993 at pp. 16–19). Therefore, the Department will use Nippon's claimed packing expenses, as verified, for the final determinations.

Comment 13: Petitioners contend that the Department must deny any adjustment for home market packing expenses incurred by three of Nippon's four related manufacturers. Petitioners contend that Nippon failed to disclose in the response whether two of the related manufacturers used packing services from related packing companies. Since Nippon uses related packing companies, it is likely that these two related manufacturers do as well. Petitioners request that the Department deny any deduction from foreign market value for the reported packing expenses incurred by these two related manufacturers.

Petitioners note that the verification report for a third related manufacturer stated that the company failed to

provide evidence that payments for packing services performed by a related entity were at arm's-length. Petitioners urge that packing services for this related manufacturer be denied as well.

Nippon contends there is no reason for the Department to reject any related manufacturers packing adjustments. Nippon argues that since the Department determined that packing services performed by related companies for Nippon were at arm-length, it would be proper to assume that these related manufacturers' dealings with a related packing company are also at arm's-length.

Nippon further asserts that the packing charges, as reported, for the related manufacturers were reasonable and based on actual payments. Nippon comments that the packing charge for the third related manufacturer, specifically, is reasonable since the expense was virtually identical to packing expenses incurred by another related manufacturer whose packing expense passed verification.

Department Position: The Department elected to conduct verification at two out of four related manufacturers. We were unable to verify the accuracy of the packing expense reported for one of the two verified related manufacturers as the company did not submit any payment trace for this expense, nor did it provide any documentation concerning the arm's-length nature of the relationship with its related packing subcontractor. (See Sales Verification Report of Related Manufacturer, May 12, 1993, pp. 4–5). Therefore, we have disallowed any home market packing expense adjustment for that related manufacturer and have used the reported packing expense adjustment for U.S. sales as BIA. The packing expense for the other related manufacturer passed verification. As to the two other related companies, there is no indication that their packing expenses are inaccurate. For the purpose of these final determinations, we have allowed the packing expense adjustments for the related manufacturers other than the one who failed to substantiate its reported packing expense.

Comment 14: Petitioners contend that Nippon's inland freight expenses are estimated costs based on general schedules, instead of actual costs. Petitioners argue that Nippon has not demonstrated the reasonableness of its methodology and that Nippon's scheduled costs do not reflect its actual freight cost. Referencing the Department's verification report, petitioners assert that Nippon has overstated its home market freight costs. Petitioners urge the Department to either disallow any adjustment for certain freight and handling expenses or decrease the adjustment in the home market.

Nippon asserts its freight expense allocation methodology was reasonable. Nippon stated that it developed a methodology for allocating freight expenses based on actual costs for the highest volume end-user within each unique delivery pattern. Nippon contends that the methodology was fully explained in the questionnaire response and that the Department did not object to the methodology.

Nippon contends that any methodology based on actual costs to the highest volume user will have minor differences between the costs under that methodology and costs using actual data for each transaction. Nippon states that because the differences discovered at verification were minor its allocation was reasonable. Further, Nippon contends that the allocation is more reasonable and accurate than average cost methodologies used by the Department in past cases. Nippon urges the Department to accept Nippon's freight and handling expenses.

Department Position: At verification, the Department determined that there are fairly wide variations in Nippon's freight charges to different customers within the same pattern (See Sales Verification Report of Nippon Steel Corporation, May 12, 1993, pp. 12–14). We agree with Nippon that respondents may use reasonable allocation methodologies in calculating freight costs. See, e.g. Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, 57 FR 28360, 28398 (June 24, 1992); Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Korea, 57 fr 42943, 42945 (Sept. 17, 1992); and Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea, 57 FR 53693, 53696 (Nov. 12, 1992). According to Nippon, the freight allocation methodology should have closely reflected actual total freight costs incurred for the subject merchandise during the POI, since essentially all freight contractors charged the "same" rates for each freight service. The different freight charges discovered at verification, however, are large enough to call into question the reasonableness of Nippon's freight methodology and the premise upon which it was supposedly based. The Department is therefore, as BIA, decreasing Nippon's claimed adjustment for home market freight expenses by the largest noted overstatement of freight expenses discovered at verification.

Comment 15: Petitioners contend that the Department must deny any adjustment for home market freight expenses for Nippon's related manufacturers. Petitioners note that Nippon failed to disclose in the response whether the transportation services utilized by Nippon's related manufacturers were provided by related transportation companies. Petitioners state that Nippon uses related transportation companies so it is likely that these two related manufacturers do as well. Petitioners contend that the related transportation companies used by Nippon did not pass the arm's-length test and therefore the Department must deny any deduction from foreign market value for freight expenses incurred by the related manufacturers.

Nippon contends there is no reason for the Department to reject the related manufacturers freight adjustments. Since the Department determined that freight services performed by related companies for Nippon were considered to be at arm's-length. Nippon contends that it would be proper to assume that these related manufacturers' dealings with any related transportation company are also at arm's-length. Nippon further asserts that the weighted average freight-to-price ratio for the related manufacturers is comparable to Nippon's.

Nippon contends that the freight expense for the third related manufacturer is reasonable since the average expense is comparable to freight expenses for another related manufacturer whose freight expense passed verification. In addition, Nippon asserts that the Department should consider the freight expense adequately verified since the related manufacturer provided source documentation supporting its methodology used to calculate freight expenses which tied directly to the data reported to the Department.

Department Position: The Department elected to conduct verification at two out of four related manufacturers. We were unable to verify the accuracy of the freight expense for one company since that company failed to provide the necessary documentation at verification. Therefore, we have disallowed the claimed home market freight adjustment for the related entity which failed verification. We have, however, allowed the claim for foreign inland freight incurred for U.S. sales by this manufacturer as BIA. As stated in

VOL 58 ISS 130 JL 9 1993 UMI

comment 13, as to the other related manufacturers, there is no indication that their freight expenses are inaccurate. Therefore, for the purposes of these final determinations, we have allowed the claimed freight expenses as adjustments for the related manufacturers other than the one who failed to substantiate its reported freight expense.

Comment 16: Petitioners assert that Nippon failed to itemize each expense incurred in its home market warranty expense adjustment. Furthermore, petitioners contend that Nippon did not differentiate between variable and fixed expenses in its warranty claim or demonstrate that such expenses were directly related to sales. Moreover, petitioners claim that Nippon did not provide product-specific warranty information. Consequently, petitioners urge the Department to disallow any deduction from foreign market value for warranty expenses.

Nippon states that it provided substantial data supporting its warranty adjustment at verification including monthly lists of all warranty expenses. Nippon contends that the Department found no discrepancies in this information at verification. In addition, Nippon contends that it did not claim any home market adjustment for fixed warranty expenses and that the Department examined documentation solely for variable expenses. Nippon asserts that it adequately demonstrated that there is no fixed component in Nippon's reported warranty adjustment.

Finally, Nippon asserts that the Department's clear practice is to accept the allocation of warranty expenses across product lines to derive product-specific expenses. Nippon urges the Department to allow its warranty expenses since the methodology used to calculate the claimed warranty expense was reasonable and fully verified.

Department Position: We agree with Nippon. The Department examined extensive documentation on Nippon's warranty expenses at verification and determined that Nippon's warranty expenses were based on variable costs only. We agree with Nippon that since Nippon did not keep its warranty records on a class or kind basis, it used a reasonable allocation methodology to allocate warranty costs to the products under investigation. See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) from the Federal Republic of Germany, 54 FR 18992, 19070 (May 3, 1989). We have therefore allowed the claimed home market adjustment for warranty expenses for these final determinations.

Comment 17: Petitioners note that the four related manufacturers used Nippon's home market warranty expenses as a surrogate since company-specific information on warranty expenses was not available. Petitioners assert that the two related manufacturers that were verified by the Department were unable to demonstrate that Nippon's warranty expenses were representative of their actual expenses. Petitioners contend that the other two related manufacturers not verified by the Department provided warranty data on the same basis, hence their data are equally unreliable since there is no evidence that the warranty expenses of the related manufacturers is similar to Nippon's. Petitioners contend that using Nippon's warranty expenses as surrogate data for the related entities is improper. Therefore, according to petitioners, the Department should disallow these expenses for these final determinations.

Nippon contends that use of Nippon's warranty data for the related manufacturers was proper. Nippon asserts that since the Department decided to "collapse" the related manufacturers with Nippon, it was reasonable to use Nippon's information for the limited purposes of calculating the related manufacturers warranty expenses. Consequently, for the one related manufacturer that the Department verified, Nippon contends that since it was reasonable for the related manufacturer to use Nippon's warranty data, there was no need to provide additional documentation concerning the warranty expense.

Nippon contends that the use of Nippon's warranty information as a conservative estimate for another of the verified related manufacturers and is appropriate since the company manufactures prepainted and laminated steel products that are more likely to have warranty claims. In addition, Nippon claims that since it is a larger and more efficient producer, it has a lower rate of merchandise return for which warranties must be paid. For these reasons, Nippon claims, warranty payments by the related manufacturer would likely be much higher than Nippon's, and the use of Nippon's rate as a surrogate probably results in lower warranty claims.

Department Position: The Department elected to conduct verification at two out of four related manufacturers. As noted in our verification reports, the warranty expenses of these two related manufacturers did not pass verification. The purpose of verification is to examine documentation to verify the accuracy and integrity of the questionnaire response. We were unable to verify the accuracy of the warranty expense as both companies failed to provide any documentation to the support the warranty amounts claimed in the response. Furthermore, neither of the companies provided any data supporting the claim that its own warranty expenses were similar to Nippon's warranty expenses. We disagree with Nippon's contention that it was reasonable for these related manufacturers to use Nippon's warranty data as surrogate information, since neither party was able to establish that the Nippon expenses were representative of their own. As to the two other related companies, there is no indication that the reported warranty expenses were inaccurate. The Department has therefore allowed the claimed warranty expense adjustments for those two related companies for these final determinations.

Comment 18: Petitioners contend that Nippon's related manufacturers failed to prove the validity of their claimed home market credit expenses. Petitioners note that Nippon's credit expense was used as a surrogate for the related manufacturers. Petitioners state that the Department verified two of the related manufacturers and the verification report noted that neither of the two companies presented evidence to support the claim that Nippon's credit experience reflects any of the related manufacturers credit costs. Petitioners also contend that one of the related companies was unable to adequately trace its reported credit expense to source documentation at verification. Petitioners assert that since the other two related manufacturers, who were not verified, reported credit expense in the same manner as the two related manufacturers who were verified the Department must assume that the two unverified companies also incorrectly reported credit expenses, and deny the claimed adjustment.

Nippon contends that petitioner's assertions about Nippon's related manufacturer credit expenses are based on a misunderstanding of the methodology used by those companies to calculate their adjustment for credit expenses. Nippon notes that each related company's credit adjustment is based on two elements: (1) Company-specific information about the number of days outstanding; and (2) Nippon's discount rate as a surrogate for each company-specific discount rate.

Nippon asserts that the use of Nippon's discount rate as a surrogate for a company-specific rate was proper for two reasons. First, since the Department's decision to collapse these

companies with Nippon essentially means treating them as divisions of Nippon, it would be proper to use Nippon's discount rate. Second, since Nippon is a much large company, and therefore probably able to obtain more favorable discount terms, the use of Nippon's discount rate as a surrogate represents a conservative assumption.

Nippon contends that petitioners were incorrect when they argued that one of the related manufacturers was unable to substantiate its claimed credit expense. Nippon notes that the Department reviewed documentation related to the credit terms for that related company and confirmed certain credit terms. Nippon states that because it was reasonable for the related manufacturer to use Nippon's credit data, there was no need to provide additional documentation for the credit adjustment.

Department Position: We are allowing credit expenses for three of the four related manufacturers. We verified credit adjustments for two of the related companies. At verification, the first related manufacturer presented detailed documentation concerning the company's credit expenses. We found that the credit information contained in the company's sales response tied to the company's internal records. We specifically examined company-specific information about the number of days outstanding for credit. Although the company did not submit any specific data on how Nippon's discount rate is reflective of the related manufacturer, they did provide data that indicated that Nippon's rate was similar enough to be used as a surrogate. Consequently, we found that the use of Nippon's discount rate as a surrogate for a company-specific discount rate was reasonable given the company's other extensive credit expense documentation. Due to the fact that the credit expense passed verification, we have allowed the claimed credit expense for the final determinations.

As noted in our verification report, the credit expenses of the other related manufacturer did not pass verification. Unlike the first related manufacturer, we were unable to verify the accuracy of the credit expense as the second related manufacturer did not provide sufficient supporting documentation or any payment trace for the expense. Consequently, we have disallowed the claimed adjustment for the final determinations.

As to the two other related companies, there is no reason to believe that the reported credit expenses were inaccurate. The Department has therefore allowed the claimed home market credit expense adjustment for those two related companies for the final determinations.

Comment 19: Nippon contends that one of the related manufacturers properly excluded lump-sum payments from its customers who are trading companies. Nippon notes that the lump-sum payments did not relate to sales of individual payments or sales during a specific time period. Nippon asserts that since the payments could not be tied to individual sales, they could not be reported to the Department in the Department's required format. Consequently, Nippon contends that the related manufacturer properly excluded these payments from the sales response submitted to the Department.

Petitioners contend that the lump-sum payments are periodically negotiated and general in nature should apply to the related manufacturer's sales. Petitioners recommend that the Department use the amount of the lump-sum payments found in the investigation to adjust upwards the related manufacturer's foreign market value.

Department Position: We agree with petitioners that these lump-sum payments constitute additional sales revenue because they reflect an increase to home market prices based on negotiations with customers. Because these payments could not be tied to specific individual sales, we have increased the related company's gross home market price by the percentage value of the ratio of the lump-sum payments to the related entities total sales.

Comment 20: Petitioners contend that Nippon has failed to establish the arm's-length nature of its related party commissions. Petitioners assert that the Department twice requested evidence of the arm's-length nature of these commissions and Nippon has failed to provide the required information. Petitioners argue that since Nippon has not demonstrated the arm's-length nature of commissions to related trading companies, the Department should not deduct such commissions from foreign market value.

Nippon contends that it has fully explained the basis for its payment of commissions to related and unrelated commissionaires. Nippon asserts that the Department has recognized that there are certain circumstances in which it would be inappropriate to base its arm's-length determination solely on a comparison of the commission rates.

Nippon contends that its commission rates are based on the type of end-user serviced by the trading company. Consequently, Nippon argues that an arm's-length test that merely compared commission rates would be meaningless because any difference in rates are attributable to the nature of the end-user serviced. Furthermore, Nippon notes that the Department did not question its methodology in its preliminary determinations or at verification and should therefore accept Nippon's reported commissions without regard to whether the commissionaire is related to Nippon.

Department Position: As noted by the petitioner, in our deficiency letter we asked Nippon to provide information supporting its claim that related party commissions were made at arm's length. Nippon claimed that any arm's length test on these commissions would have to be based on a comparison of related and unrelated commissions by the type of end-user serviced by the commissionaire. However, Nippon did not provide us with any information to distinguish between types of end-users. Therefore, we compared commissions paid to related and unrelated commissionaires based on the level of trade. This comparison indicated that commissions paid to related parties were almost always higher than commissions paid to unrelated parties. The Department's stated policy regarding related commissions is that the Department adjusts for commission paid to a related party in the home market when the commissions were determined to be (1) at arm's length and (2) directly related to the sales in question. See Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from the Netherlands, 57 FR 9534, 9536 (Mar. 19, 1992) and Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, 56 FR 56363, 56372 (Nov. 4, 1991). Therefore, since it appears that these related party transactions were not arm's length in nature, we have disallowed the claimed adjustment for home market commissions paid to related parties for the final determinations.

Comment 21: Petitioners contend there was a clerical error in the Preliminary Determinations in which the Department incorrectly calculated the commission offset. Petitioners state that two additional indirect selling expenses should be included in the offset.

Department Position: We agree and have corrected the commission offset for the final determinations.

Comment 22: Petitioners argue that the Department should not make a circumstance of sale adjustment to foreign market value to account for the Japanese consumption tax. Citing *Zenith*

UMI
VOL 58 ISS 130 JL 9 1993
UMI

Electronics Corporation v. *United States*, No. 92–1043, slip opinion at 12–17, Rader, C.J. (March 19, 1993), petitioner notes that the decision does not permit changes to FMV for tax adjustments.

Petitioners state their sole objection to the Department's proposed methodology concerns the calculation of the amount of the "hypothetical" tax to be added to United States Price. Petitioners urge the Department to apply the rate of the tax, not the amount, to United States Price. Petitioners argue that section 1677a(d)(1)(C) requires that a percentage rate, not an absolute amount, be applied for the U.S. sale adjustment. Petitioners argue that 19 U.S.C. 1677a(d)(1)(c) requires the tax be calculated on U.S. merchandise as if it had remained in the home market. Therefore, petitioners contend that the tax rate should be applied to United States price net of rebates, movement charges, duty and brokerage.

Nippon supports the Department's use of a methodology that provides for tax neutrality in the dumping calculation is consistent with the Department's longstanding practice of eliminating any inflationary or deflationary effect of taxes on the absolute dumping margin.

Department Position: For our treatment of this issue, please see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Comment 23: Nippon argues that it appropriately calculated its general and administrative ("G&A") expense ratio which includes the net "other expenses" reported in its consolidated financial statements. Allocating consolidated net "other expenses" over the consolidated operations of the controlled group of companies ensures that all business operations of the group are allocated their fair share of these non-operating expenses. Additionally, Nippon argues that even if the Department elects to compute Nippon's G&A rate by including the "other expenses" reported in its non-consolidated financial statements, it is not appropriate to adjust the amount from these financial statements by eliminating the reported gain on sale of land to a subsidiary.

Petitioner argues that since Nippon failed to show that the gain on sale of land to a subsidiary was at arm's length, the Department should recompute Nippon's G&A rate exclusive of this gain.

Department Position: We disagree with Nippon. The Department normally computes the G&A and other non-operating income and expense ratio of a company based on its unconsolidated operations and includes an amount of G&A from related companies which pertains to the product under investigation. G&A and other non-operating income and expense items are not considered fungible in nature. Thus, other non-operating income and expenses realized by a related company does not necessarily affect the general activity of Nippon. Therefore, we recomputed Nippon's G&A rate based on Nippon's unconsolidated financial statements. Additionally, we excluded the gain on sale of land to a subsidiary as reported in Nippon's unconsolidated financial statements, because this sale of land was not related to the product under investigation.

Comment 24: Nippon claims that it was appropriate to calculate the G&A expense for related further manufacturers using Nippon parent company's G&A ratio only. By applying Nippon's G&A rate to both the cost of substrate and to the value added by the related manufacturers, it properly reported G&A expenses on related manufacturer transactions.

Department Position: We disagree with Nippon. G&A costs incurred by related further manufacturers, in addition to G&A costs incurred by Nippon, are relevant costs in determining the cost of production and constructed value for products sold by these related further manufacturers, since all of these expenses were necessary to manufacture the product. Therefore, the Department recalculated Nippon's G&A rate to include all related manufacturers' G&A.

Comment 25: Nippon argues that for the one tested related company transaction which appeared not to be arm's length, the Department's analysis resulted in the comparison of unlike transactions. Since the volume of transactions influence per unit fixed prices, differing volume levels make comparisons of total per unit prices (fixed plus variable) meaningless.

Petitioner argues that the Department must use best information available to restate Nippon's costs for transactions with related companies not deemed to be at arm's length.

Department Position: We disagree with Nippon. For a sample of the related company transactions, the Department requested Nippon to provide data to support that the prices were at market values and above the cost of production. For the specific related company transaction to which Nippon refers, during verification, Nippon only provided the Department with the prices that it paid both the related and the unrelated suppliers. Nippon did not state at the time that the transactions were not comparable and that an adjustment to the prices of these transactions was necessary. Not until its case brief did Nippon argue that these transactions are not comparable and an adjustment to the prices which it presented must be made in order to make them comparable. The Department has no verified information indicating that these transactions are not comparable. Therefore, the Department has no basis to reexamine Nippon's information which it supplied during verification. Accordingly, we have adjusted Nippon's related company costs to reflect the difference between the prices it paid to the related and unrelated suppliers, based on the sample reviewed during verification.

Comment 26: Nippon claims that the proper basis of comparison for determining whether sales are occurring at below cost prices is earnings before interest and taxes. Including consolidated interest expense in the cost of merchandise or services provided by a related company double-counts interest expense which is allocated to Nippon's cost of producing subject merchandise (which includes the cost of the transferred product or service). Comparisons on the basis of earnings before interest and taxes indicate that transactions between Nippon and its related freight and computer services companies were at above cost prices.

Petitioner argues that consolidated interest expense should be included for testing of whether sales occurred above cost. Additionally, petitioner argues that consolidated interest expense should be allocated on the basis of cost of sales because it is more reflective of the cost of production and is predictive of recovery of costs through sales.

Department's Position: We disagree with Nippon that determining whether sales are occurring at below cost prices should be based on costs excluding interest expense and taxes, because the input transfer prices must reflect the full cost of production. However, in this case, whether the Department tested such transactions using interest expense from the consolidated or unconsolidated financial statements has no effect. Therefore, no adjustment was made.

Kawasaki and Sumitomo

Comment 27: Petitioners state that the Department is compelled to use the best information available (BIA) to determine Kawasaki's dumping margin for the LTFV investigation on corrosion-resistant steel, and Sumitomo's margins for the LTFV investigations on cold-

rolled steel and hot-rolled steel from Japan.

Petitioners note that Kawasaki failed to respond to the Department's Section D COP/CV questionnaire and assert that without COP data, the Department is unable to determine what portion of Kawasaki's home market sales during the POI were made at below cost. Accordingly, petitioners contend, the Department must assume that all of Kawasaki's home market sales were made at prices below cost, and therefore, without CV data, there is no basis for calculating FMV. Petitioners argue that the Department must, therefore, reject Kawasaki's responses completely, and rely on total BIA to calculate Kawasaki's dumping margin. With regard to Sumitomo, petitioners note that the Department determined Sumitomo was "nonresponsive" because it withdrew its questionnaire responses from the record in these proceedings. The Department preliminarily assigned to Sumitomo, as BIA, the highest calculated rate for any firm within the appropriate class or kind of merchandise.

Petitioners argue that Kawasaki's refusal to provide certain information and Sumitomo's withdrawal of information has significantly impeded these investigations and the Department should, therefore, in accordance with past precedent, determine Kawasaki and Sumitomo to be uncooperative respondents.

Kawasaki contests the petitioners' assertion that its failure to respond to the COP/CV questionnaire renders it an uncooperative respondent in the LTFV investigation on corrosion-resistant products. Kawasaki contends that its response to Sections A, B, and C of the Department's questionnaire demonstrates that it has actively participated throughout most of this investigation and thus warrants continued treatment by the Department as a substantially cooperative respondent. As such, Kawasaki asserts that the Department should apply the same BIA methodology for the final as it applied in the preliminary determination.

Sumitomo argues that it fully cooperated in these investigations until faced with demands with which it asserts it could not comply. Sumitomo contends that it withdrew its information from the record in these investigations because of what it considered the "prohibitively expensive burden of" providing COP/CV and further manufacturing data, in addition to related party resale prices, "which neither Sumitomo nor any of its related companies possessed." Sumitomo contends that notwithstanding its subsequent withdrawal of information, until presented with these demands it had substantially cooperated with the Department's requests for sales information.

Department Position: Section 776(c) of the Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. See 19 CFR 353.37(b). Thus, the Department may determine, case-by-case, what constitutes BIA.

Although Sumitomo submitted timely sales responses, Sumitomo refused to respond to the further manufacturing section of the Department's questionnaire. Moreover, Sumitomo then withdrew all of its information from the record in these investigations.

With respect to Kawasaki, we note that in the preliminary determinations we did not apply the most adverse BIA rate because at that point Kawasaki had substantially cooperated with the Department's requests for U.S. and home market sales information. However, on February 17, 1993, after the date of publication of the preliminary determinations in these investigations, Kawasaki informed the Department that it would not respond to the COP/CV questionnaire. Without cost of production data, we are unable to determine whether Kawasaki's home market sales were made below cost, and therefore are unable to determine an appropriate FMV for purposes of calculating the respondent's dumping margins. As a result of Kawasaki's refusal to respond to the COP/CV questionnaire, we consider that Kawasaki has not substantially cooperated with the Department.

As discussed in Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Mexico, 56 FR 29621 (June 28, 1991) and Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Thailand, 56 FR 46290 (September 11, 1991) the Department has consistently used BIA when a respondent refused to provide cost information requested in a questionnaire. Notwithstanding their lack of cooperation, both respondents insist that the Department should not assign them the most adverse BIA rate. However, it is the Department's practice to treat respondents who refuse to provide requested information or otherwise significantly impede an investigation as uncooperative. See Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to Length Carbon Steel Plate from Italy, 58 FR 7100 (February 4, 1993) and Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 42961 (September 17, 1992). Therefore, to assign Sumitomo and Kawasaki a cooperative rate would be contrary to the Department's practice of using as BIA information that may be adverse to a noncooperative respondent. See Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review, 56 FR 47451 (September 19, 1991) ("the noncomplying respondent cannot find itself in a better position as a result of failing to comply with the Department's information request than had the respondent provided the Department with complete, accurate, and timely data."). It would also be contrary to judicial opinions affirming the Department's practice which have ruled that "Commerce may exercise discretion in determining what is the best information available when a [respondent] has failed to supply requested information." *Tai Yang Metal Industrial Co., Ltd.* v. *United States*, 712 F. Supp. 973, 977 (CIT 1989), citing *Chemical Products Corp.*v. *United States*, 645 F. Supp. 289, 295 (CIT 1986).

Because both these respondents refused to fully cooperate with the Department in these LTFV investigations we followed our long-standing practice and assigned to them the BIA rate for non-cooperative respondents.

Comment 28: Petitioners argue that when a respondent has been determined to be uncooperative, the Department will generally apply the most adverse information on the record.

Petitioners argue that the BIA rule serves two main purposes. The first is to induce respondents to comply with future requests for timely, complete, and accurate information. The second is to avoid rewarding a respondent for noncompliance. To that end, petitioners argue, the Department must ensure that it applies a BIA rate that is reasonably adverse or prejudicial to the uncooperative respondent. Petitioners contend that there is a common sense inference that a respondent withholds requested data because a margin calculated on that data would be more adverse than any margin already on the administrative record.

Therefore, according to petitioners, to use the rate calculated for a cooperative respondent as the BIA rate for an uncooperative respondent would in effect reward the uncooperative respondent for its noncompliance. Noting that the Department has broad discretion to determine what to use as BIA, petitioners propose that the Department calculate BIA for Kawasaki and Sumitomo as the "highest dumping margins found for [other respondents in each investigation] weight-averaged by the volume of their positive margin sales." Petitioners state that this methodology was used by the Department in the Notice of Final Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof From Japan, 56 FR 58040 (November 15, 1991) (hereinafter Microdisks). Petitioners explain that this methodology will usually result in a higher dumping margin than simple weight-averaging because all sales with zero or negative margins will be excluded from the calculation. Petitioners maintain that this methodology, based on the presumption that neither respondent had negative or zero margins, is appropriate for Kawasaki and Sumitomo because it would result in an adverse BIA margin and thus would not result in rewarding them for their lack of cooperation in these LTFV investigations.

Kawasaki argues that should the Department incorrectly determine Kawasaki to have been an uncooperative respondent, the Department should follow its longstanding practice for determining overall BIA margins for uncooperative respondents, as outlined in the Department's Antidumping Manual. Kawasaki contends that by using this methodology for the Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 58 FR 28556 (May 14, 1993), the Department acknowledged that this methodology represents the most adverse BIA. Furthermore, Kawasaki states the Court of International Trade has repeatedly upheld the Department's use of this methodology in prior cases.

Both Kawasaki and Sumitomo assert that the Department was correct to reaffirm its established BIA policy in Appendix II to the companion preliminary determination in Certain Cold-Rolled Carbon Steel Flat Products from Argentina 58 FR 7066, 7069–70 (February 4, 1993) by applying a common methodology to all of the flat-rolled steel cases.

Kawasaki argues that petitioners' proposed BIA methodology in the instant investigation contradicts petitioners' prior position with respect to Kawasaki (See February 8, 1993, letter from Robert E. Lighthizer and John F. Mangan), and petitioners' position with respect to the concurrent investigation on hot-rolled steel from Belgium. According to Kawasaki, in that investigation, the petitioner specifically noted in its case brief that use of the BIA methodology outlined in Appendix II "would be consistent with the Department's longstanding practice."

Kawasaki asserts that failure to follow a consistent approach (i.e., applying petitioners' different BIA proposals in the Japanese and Belgian investigations) would be arbitrary and capricious since, in previous investigations and administrative reviews involving similar products from various countries, the Department always has applied a common methodology to determine what overall BIA should be used for respondents whose data could not be used. Kawasaki notes that, in particular, the Department has applied a two-tiered approach: One test for cooperative respondents and another test for non-cooperative respondents.

Kawasaki and Sumitomo assert that the petitioners' proposed methodology constitutes an unprecedented and unwarranted departure from previous policy for dealing with respondents that the Department considers to have been uncooperative.

Sumitomo contends that this practice dates as far back as 1985 and argues that the Department has continued with its long-standing policy of using a regularly calculated dumping margin for another respondent as one of its two choices for BIA.

Kawasaki and Sumitomo argue that Microdisks, the case cited by petitioners as precedent for its BIA proposal, is not relevant to these investigations. Kawasaki argues that Microdisks is not relevant because in Microdisks, the "positive margin" calculation was based on respondent's own data and was applied as partial BIA for missing data that represented only a small portion of the respondents total U.S. sales.

Sumitomo argues that the "positive margin" methodology used in Microdisks simply should not be applied as a precedent for any overall BIA rate. According to Sumitomo, Sony (the subject respondent in Microdisks), offered no general objection to the Department's use of said methodology because the imports involved were relatively insignificant in value. Consequently, according to Sumitomo, the Department's final decision in that case cannot be considered a meaningful departure from the Department's standard. In support of this, Sumitomo asserts that the Department has never cited the Microdisks decision as precedent for a comparable BIA in a subsequent decision, nor did the Department adopt the Microdisks decision in any of the other cases cited in petitioners' brief. See Final Determination of Sales at Less Than Fair Value: Certain Hot-rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6203, 6204–05 (January 27, 1993); Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 42961, 42962 (Sept. 17, 1992); Final Determination of Sales at Less Than Fair Value: Silicon Metal from the People's Republic of China, 56 FR 18570, 18571–72 (April 23, 1991); or Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Sweden, 57 FR 29278, 29281 (July 1, 1992).

Kawasaki and Sumitomo both assert that, in addition to being inconsistent with past Department policy, petitioners' proposal is based upon unwarranted assumptions about these respondents' sales during the POI. Kawasaki notes that in suggesting that the Department determine a margin for Kawasaki by weight-averaging Nippon's LTFV margins by the volume of Nippon's positive margin sales, petitioners suggest that the Department disregard every zero or fair value sale and instead weight average only Nippon's LTFV sales. Kawasaki asserts that this is unwarranted because it assumes that every single sale made by Kawasaki had a positive margin (i.e., was sold at less than fair value). Kawasaki contends that its confidential data, which remain part of the record in this investigation, clearly rebut an inference that every Kawasaki sale was made at less than fair value. Kawasaki alleges, therefore, that the Department's use of petitioners' proposal would not be in accordance with the law, as interpreted by the Federal Circuit in Rhone Poulenc, which stated that a rate would be punitive if the Department rejected a lower rate in favor of high margin information that was demonstrably less probative of current conditions.

Sumitomo contests a similar inference by petitioners regarding Sumitomo's POI U.S. sales. Sumitomo asserts that petitioners are attempting to justify their BIA proposal on the basis of the incorrect premise that Sumitomo withdrew from the investigations because it was afraid the Department would discover that Sumitomo had been making sales with high margins. Sumitomo reiterates its claim that it

withdrew its information from the record in these investigations because of the high costs involved in responding to cost questionnaires and because it was asked to provide information regarding related resellers which it does not have.

Department Position: As discussed in our response to Comment 27 above, we agree with the petitioners' contention that Kawasaki and Sumitomo should be considered uncooperative respondents for purposes of these final determinations. We further agree with the petitioners' description of the common sense inference that a respondent withholds data because a margin calculated on such data would be more detrimental than any margin already on the administrative record. As a result, the Department's policy is to apply an adverse BIA rate to uncooperative respondents.

The Department has a well established practice for determining what to use as an overall BIA rate for uncooperative respondents. The Department's assumption is that the highest margin alleged in the petition is the most adverse rate unless a calculated margin is higher. Therefore, we disagree with petitioners' proposed BIA methodology for these final determinations. See Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes from India, 58 FR 11835 (March 1, 1993), Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) from Germany, 54 FR 18992 (May 3, 1989) (hereinafter AFBs Germany, 1989), Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al. 57 FR 28360, 28379 (June 24, 1992) (hereinafter AFBs from France), Final Determination of Sales at Less Than Fair Value: Certain Dried Heavy Salted Codfish from Canada, 50 FR 20819 (May 20, 1985), Final Determination of Sales at Less than Fair Value: Steel Wire Rope from Mexico, 58 FR 7531 (February 8, 1993); Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992); Final Determination of Sales at Less Than Fair Value: Personal Word Processors from Japan, 55 FR 31101 (July 19, 1991), NSK Ltd. v. United States, 809 F. Supp. 115, 119 (CIT 1992); and Asociacion Colombiana de Exportadores de Flores v. United States, 717 F. Supp. 834,836–7 (CIT 1989), aff'd 901 F. 2d 1089 (Fed. Cir. 1990) cert. denied sub nom., Floramerica, S.A. v. United States, 498 U.S. 848 (1990). In accordance with that longstanding practice, for these final LTFV determinations, we have applied as BIA for Kawasaki and Sumitomo, the higher of: the highest rate in the petition or the highest calculated rate found for any firm for the same class or kind of merchandise in these LTFV investigations.

NKK

Comment 29: Petitioners state that the Department must rely upon total BIA to calculate NKK's final margin, due to (1) NKK's failure to comply with the Department's explicit instructions regarding the submission of replacement sales tapes and (2) NKK's incorporation of several unrequested and unverified changes in the replacement sales tapes. Petitioners contend that these revisions amount to untimely new information which must be rejected under the regulations. Petitioners cite AFB's from Germany (1989), which states that the Department will allow revisions to responses after the preliminary determination and during verification only

> so long as the revisions are minor and do not constitute "new responses." * * * Substantial revisions submitted after the Preliminary Determination are not accepted because insufficient time exists at that point to analyze and verify the data.

NKK states that the Department has no factual or legal basis to apply total BIA against NKK in this investigation. NKK contends that petitioners have disregarded NKK's numerous submissions to Commerce which made clear what database was being used for purposes of the investigation and verification. According to NKK, the Department specifically stated that it wanted a single set of tapes after verification, and that such tapes would include the corrections that NKK had already put on the record and any further changes the Department might request at verification. After verification, the Department requested that NKK submit tapes using a December 1992 closing date, which according to NKK is fully consistent with Commerce's express instructions in the questionnaire for respondents to submit updated home-market sales information. NKK states that Department officials verified the corrected updated databases found in the May 11 tapes, not the December 7, 1992 computer tapes. The sales database and printouts used at verification included the rebate information and the product matching information that Commerce verified, and complied with Commerce's request in the questionnaire for updated data. The Department fully verified the underlying data, and the methods by which NKK extracted the data from its computer database.

Department Position: We agree with respondent. Petitioners arguments for using BIA arise from a basic misunderstanding of which tape was verified by the Department. The Department used a tape dated December 7, 1992, for purposes of calculating the preliminary dumping margins for NKK. On two occasions thereafter (December 21, 1992 and February 19, 1993), NKK submitted documents identifying errors it had discovered in its December 7 tape. On those occasions, NKK offered to submit new tapes to the Department. On each occasion, the Department declined, stating that if it deemed necessary, it would request a new tape incorporating corrections uncovered at verification.

The May 11, 1993 tape, which we requested, reflects all the changes which NKK pointed out in their December 21 letter. The Department agreed to the corrections noted by NKK and it is this subsequent updated tape (with shipment, rebate, and payment data through December 1992) which was the basis of our verification, as is made clear in the verification report. As a result, the information upon which we are basing our final determination has been fully verified by the Department. For further information, please see the June 3, 1993 Memorandum to the File, which further details the above chronology.

Petitioners are simply incorrect in stating that NKK did not indicate errors in its December 7 concordance matches In the letter of December 21, NKK made clear that certain variables were misclassified and thereby affected the matching criteria. These were then corrected on the later tape that was verified. Petitioners are also incorrect in alleging that the new tapes include numerous changes not requested by the Department at verification. The AFBs from Germany case is inapposite because in this case the revisions accepted by Commerce are minor and have been verified and were properly used in determining NKK's final dumping margins.

Comment 30: Petitioners contend that the Department improperly included in its FMV calculation NKK's sales that were made outside the ordinary course of trade. NKK indicated in its section B response that it made certain sales of material which was not produced in response to a customer order, but instead was material that was produced in excess of an order (overroll material), to more efficiently complete a production run.

Although overroll material is physically identical to ordinary material, petitioners contend that because NKK treats overrolls the same way it treats scrap in its internal cost accounting system, NKK's sales of overrolls are not made in the ordinary course of trade.

Petitioners add that, by law, the Department may not base FMV on sales out of the ordinary course of trade. Petitioners go on to say that although the Department considered the physical characteristics in determining prime and non-prime material, it should have also considered other circumstances of the transaction to determine whether all the sales were made in the ordinary course of trade. These other circumstances noted by petitioners are: frequency of sale; the quantities sold in total and in each transaction relative to sales of the primary product; whether the price reflects extraordinary circumstances rather than normal market forces; profit margins on the sales; and respondent's own categorization of the material.

Petitioners note that NKK treats the cost of producing the overroll material as part of the cost associated with production of subject merchandise sold in the ordinary course of trade. As a result, petitioners allege that NKK has inflated the costs of producing the "ordinary product" because these costs absorb the costs of the overroll transactions. For this reason, NKK claims that the Department should exclude sales of overrolls from the sales below cost investigation for cold rolled products. Petitioners contend that if such products are excluded from the sales below cost investigation, they should also be excluded from the home market database when calculating FMV, since it would clearly be improper to exclude overroll product from the cost test then include it in the FMV calculation.

NKK agrees with petitioners that overroll transactions should be excluded from the Department's cost test. NKK also states that overroll sales should be included in home market sales when calculating FMV because it produces overrolls to fill spare time between production for specific orders or to attain optimal production lots, and that the overroll material is physically identical material sold in the ordinary course of trade.

NKK also argues that a substantial proportion of its reported overroll transactions fall within the price range of "ordinary sales" established by its non-overroll transactions.

Department Position: The Department has determined not to include sales of "overroll" production in the arm's length test for related resellers, the calculation of FMV, and in the COP test for the purposes of these investigations. In order to make the most accurate sales comparisons, we are comparing sales of prime products to only sales of prime products. For purposes of the administrative reviews, the Department will consider whether overrun or "overroll" production is equivalent to prime production if it is not sold outside the ordinary course of trade.

Comment 31: Petitioners contend that the Department should use partial BIA to account for home market hot rolled related party sales which do not meet the Department's definition of arm's length sales. Citing Final Results of Antidumping Duty Administrative Review: Certain Internal Combustion Industrial Forklift Trucks from Japan, 57 FR 3157, 3179–83 (Jan. 28, 1992) (hereinafter Forklift Trucks from Japan), petitioners argue that if a respondent cannot show that sales are at arm's length, and sales through the related party are a significant percentage of all sales in the home market, the Department will calculate foreign market value on the basis of the sales price to the first unrelated party. Petitioners allege that since NKK chose to ignore the Department's requests to report the sale to the first unrelated party, it is likely to be hiding higher home market prices, as it is reasonable to assume that the related party made a profit on its sales to unrelated customers.

Because NKK did not report its first unrelated sales, petitioners argue that the Department should use BIA to impute a home market sales price whenever NKK's sales to related parties were not at arm's length prices. As BIA, petitioners suggest using the highest price per ton charged for each CONNUM to an unrelated buyer. For each CONNUMH, the highest price should be applied to the total tonnage of non-arm's length sales. Petitioners contend this follows Department practice as found in Fish Netting Fibers, Japan, 48 FR 43210 (Sept. 23, 1983).

NKK argues that if the Department applied a more reasonable methodology to test related party sales, all, or substantially all of NKK's sales of hot rolled material to related parties would be considered by the Department to be at arm's length.

NKK takes exception to petitioners argument that it "ignored" the Department's request to report the first unrelated sale of hot rolled merchandise. Citing Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 58 FR 25803, 25807 (April 28, 1993) (hereinafter Cement and Clinker from Mexico), Small Business Telephones, Japan, 57 FR 4949, 4950 (Feb. 11, 1992), and the Departments' questionnaire in this proceeding (page A–5), NKK chose instead to demonstrate that its sales to related customers were at arm's length. In any event, the first sale to an unrelated purchaser would have occurred at a different level of trade. Thus, according to NKK, considering that most of NKK's related party sales at the same level of trade are demonstrably at arm's length, NKK argues that there is no basis to use BIA in this instance. NKK relies upon the Department's preliminary determination to demonstrate that NKK's claim is substantially correct, and that a substantial majority of NKK's related party sales passed even the Department's "biased" related parties test. NKK argues the test is biased because it allows the Department to use related party prices only if they are higher than unrelated party prices, thus raising the average home market price and the dumping margin.

Department's Position: Although we agree with petitioners that NKK did not report downstream sales, we disagree with petitioners' proposed application of BIA. As we explained for all these cases in the preliminary determinations (See Appendix II to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina), we believe it is most appropriate to determine whether sales to specific customers were made on an arm's length basis, in accordance with past Departmental practice. To the extent that dropping related party sales that fail the arm's length test from the product concordance leaves U.S. sales without an adequate foreign market match, we have applied BIA to these U.S. sales. As BIA, we used the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrational calculated margin for any other sale of merchandise of the same class or kind made by the same respondent. Again, we believe that it is not appropriate to apply BIA in situations where there is an adequate basis for determining FMV. For these reasons, we have continued to apply BIA in the context of the arm's length test as we did in the preliminary determinations.

We agree with NKK's contention that comparing the first sale of NKK merchandise to an unrelated purchaser in the home market (i.e., a downstream

sale) to a trading company sale in the U.S. market would necessitate a comparison between two levels of trade. However, for purposes of matching, the Department emphasizes the physical characteristics of the merchandise over the level of trade at which the transactions occurred.

In Fork Lift Trucks from Japan, the Department stated that it would base FMV on the sales price to the first unrelated party when a "significant percentage" of home market sales are made to a related party. In this instance, NKK's total sales to related parties do not approach the percentage of related party sales made at prices below arm's length found in Fork Lift Trucks from Japan.

Comment 32: Petitioners argue that the Department should apply BIA to all NKK's home market cold rolled related party sales because NKK did not report these sales. Petitioners allege that NKK misinterpreted the Department's instructions regarding the Department's "Streamlining" procedures. According to petitioners, the Department's streamlining procedures excuse respondents in these steel cases from reporting "home market sales from related resellers to unrelated customers if the total of those sales to related companies comprises less than five percent of volume, of total * * * home market sales." Petitioners allege that NKK's failure to respond to the Department's request leaves open the possibility that NKK may be hiding higher home market prices. As a result, petitioners advocate partial BIA for these sales by taking the highest price charged per ton on a single sale and weight-averaging this price in the FMV calculation for each CONNUMH.

Respondent states that it was instructed by the Department to not report these sales, in accordance with the Department's October 9, 1992 letter to NKK regarding the Department's streamlining procedures.

Department's Position: We agree with respondent. NKK's home market cold rolled related party sales fell below the five percent cut-off noted in our streamlining procedures; thus NKK was not required to report these sales. This was made known to respondent in our letter of October 9, 1992 which stated "[b]ecause NKK's sales of cold rolled products to related trading companies are less than five percent of total home market sales, you need not report these sales." Therefore there is no justification to resort to BIA for these sales.

Comment 33: Petitioners argue that the Department should reject NKK's two proposed modifications to the Department's product matching methodology. First, NKK proposed dividing the high carbon steel category (i.e., steel with a carbon content of 0.26 percent or greater) into two subcategories: (1) Steel with a carbon content between 0.26 and 0.52 percent, and (2) steel with a carbon content greater that 0.52 percent. Second, NKK proposed changing the Department's definition of tin mill black plate (TMBP) to be consistent with the ITC's definition. Petitioners note that neither proposal was submitted when interested parties were given the opportunity to comment on the model match methodology, and thus NKK's proposals are untimely. In addition, citing *United Engineering & Forging* v. *United States*, 779 F.Supp. 1375, 1381 (CIT 1991), petitioners contend that NKK was unjustified in unilaterally changing the Department's model match hierarchy.

With regard to the establishment of two high-carbon categories, NKK argues that using a single category for high carbon steel guarantees that the Department will be making a distorted price comparison because the range of products which fall into this category is simply too great. NKK contends that the higher the carbon content, the higher the cost of manufacture, and that the pricing policies of both the U.S. and Japanese industry reflect that fact. NKK further states that it should not be penalized simply because it did not raise this issue during the August 1992 comment period, more than two months before the section B and C questionnaire responses were due.

Regarding its proposal to match TMBP with TMBP, NKK again argues that this modification will eliminate a pricing distortion that currently exists in the model match methodology. It would also ensure consistency with the ITC definition of TMBP, which defines it as an uncoated cold-rolled steel that "can be used as the substrate for tinplate, tin-free steel, or other coated flat products."

Finally, NKK points out that this proposed reclassification would require no adjustment to the model matching framework as the proposal merely reclassifies TMBP from category B1 to B3, and NKK has submitted tapes with this change already made.

Department Position: We agree with petitioner. Regarding NKK's proposal to split the high carbon category at the 0.52 percent carbon level, the Department notes that no interested party raised concerns about the decision to segregate high carbon steel from standard steel at the 0.26 percent level during the comment period on model match methodology. Further, no additional carbon level groupings were suggested by any interested party during the available comment period, including producers which specialize in high carbon steels. In addition, NKK specifically noted in its comments that the only suggested carbon level division in cold rolled merchandise should be at the 0.26 percent level. The Department also notes that the single category for high carbon steels is consistent with the Department's experience over the course of its enforcement of various steel trade programs.

NKK also proposed that the Department reclassify some of NKK's cold rolled steel sales of less than 0.014 inch as "other" because not all that material is considered tin mill black plate (TMBP) by NKK. The Department has determined to maintain the model matching criteria as initially presented.

NKK raised no concerns about non-black plate cold rolled sheet that was less than 0.0141 inch in thickness. In fact, NKK specifically noted in its comments that cold rolled sheet other than black plate was greater than 0.0141 inch in thickness. Therefore, for purposes of this investigation we will continue to classify material less that 0.014 inch as black plate.

Comment 34: Petitioners argue that the Department should not deduct any home market movement expenses from FMV because NKK's allocation methodology is inaccurate, unreasonable, and because these charges are, in part, based upon movement charges paid to related parties.

Petitioners allege that NKK's methodology of calculating movement expenses based upon the type or method of movement, the use of an overall average cost during the POI, and the allocation of these costs to specific transactions based on the way the material would "most likely" have been transported, is unreasonable and inaccurate. Citing AFBs from France, 57 FR 28398, petitioners argue that the Department "prefers expenses to be reported on a transaction-by-transaction basis," but that the Department may also accept other "reasonable allocation" methodology if respondent is incapable of providing transaction specific expenses, as stated by the Department in AFBs from Germany. Moreover, as stated in AFBs from France, any allocation methodology used by respondent must be "representative of actual expenses incurred." Petitioners contend that NKK's allocation methodology clearly falls short of these Departmental standards since it fails to show a concerted effort to reflect reality. Petitioners suggest this is exemplified by NKK's use of a six month POI average, instead of the more reasonable

VOL 58 ISS 130 JL 9 1993 UMI

monthly POI averages. Petitioners contend that by averaging over the entire POI, NKK is straying farther from actual movement expenses for no apparent reason, since more fluctuations and unrepresentative costs are likely to occur during a six month period than during the month in which a particular order is shipped.

Petitioners also allege that NKK improperly included related party charges in its movement expense calculation. NKK has claimed that these services were provided on an arm's length basis. Citing Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 58 FR 6207, 6211 (Jan. 27, 1993), petitioners argue that the Department considers expenses charged by related parties only if they are made at arm's length prices; a respondent can demonstrate the arm's length nature of such charges by "conclusively" showing that an unrelated party makes the same services available at an equal or lower cost than that actually paid by respondent. In doing so, respondent must compare the actual rates it is charged by the related company with those of an unrelated supplier, as stated in Final Determination of Sales at Less Than Fair Value: Cement and Clinker from Mexico, 55 FR 29244, 29251 (July 18, 1990). Petitioners contend that NKK's submissions indicating that related and non-related providers receive the same rate schedule are insufficient because there is no documentation to indicate that these rates were acceptable to NKK nor that NKK paid these rates. In addition, NKK provided only sample pages of its trucking rate schedule and did not provide information regarding non-price factors such as payment conditions and quantity discounts offered by the freight companies.

NKK argues that it submitted information indicating the "average per shipment ton" inland freight movement expense using the summary sheets NKK keeps in the ordinary course of business. It then allocated those averages over specific transactions based upon the way in which the particular transaction was most likely to have been transported. The Department verified the movement charges reported by NKK and tied reported movement charges to specific transactions and to the Summary of Average Inland Freight Movement Expenses. NKK contends that even though this system does not capture the exact movement expense on a transactional basis, it clearly represents a reasonable methodology, and it is a methodology used by NKK in its normal course of business (see AFBs from Germany). NKK asserts that the alternative, some form of overall average, is by its very nature less precise than NKK's methodology.

In addition, NKK claims that it has demonstrated that all of its related companies, which provide transportation services, do so at arm's length prices. NKK argues that the Department's verification confirmed that the amount paid to related and unrelated trucking companies for shipment to distribution warehouses or end users in the home market did not vary.

Department Position: We disagree with petitioner. The methodology used by NKK in calculating its home market movement expenses is not unreasonable. The Department considers the use of a six-month POI average in determining movement expenses to be reasonable because at verification we found no evidence to indicate that the six month average varies substantially from the six monthly averages. Further, the Department disagrees with petitioners' premise that NKK improperly included related party movement charges in its movement expense calculations. As stated in the verification report, the Department verified that related and unrelated suppliers were paid the same amount for identical transportation destinations. And as both these cases indicate, if the prices paid for services rendered by related parties are determined to be at arm's length, the Department will accept their associated price adjustments if they are otherwise warranted.

Comment 35: Petitioners argue that NKK's warehousing expenses are not directly related to sales of the subject merchandise. Because NKK acknowledges that it voluntarily and without contractual agreement provides warehousing services to its home market customers, petitioners contend that the Department should affirm its preliminary determination that such expenses are indirect.

Petitioners state that the Department may consider warehousing expenses to be direct selling expenses and deduct them from FMV only if the respondent is able to demonstrate that the expense was incurred after the sale and that it was directly related to the sale. Citing Final Results of Antidumping Duty Administrative Review: Portable Electric Typewriters from Japan, 53 FR 40926, 40934 (Oct. 19, 1988) (hereinafter PETS from Japan), and Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Federal Republic of Korea, 51 FR 40833 (Nov. 10, 1986) (hereinafter Brass Sheet and Strip from Korea), petitioners argue that NKK must prove that this post-sale warehousing was a "condition of sale", i.e., that the warehousing was pursuant to contractual requirements. To qualify as a direct selling expense, there must be a "specific" and "explicit" contractual agreement requiring respondent to warehouse subject merchandise, as stated by the Department in Final Determination of Sales at Less Than Fair Value: Porcelain-On-Steel Cooking Ware from Mexico, 51 FR 36435, 36438 (Oct. 10, 1986) (hereinafter Cooking Ware from Mexico) and Final Determination of Sales at Less Than Fair Value: Tool Steel from the Federal Republic of Germany, 48 FR 25247, 25249 (June 6, 1983). NKK's claims that customers "expect" it to warehouse subject merchandise after the sale does not amount to the "specific" or "explicit" contractual agreement required by the Department. As a result, the Department should not deduct warehousing from FMV as a direct selling expense.

NKK contends that its warehousing expenses are directly related to its sales, reflecting actual post-sale warehousing expenses rather that the cost of carrying home market inventory. NKK's merchandise is produced in response to specific orders and is occasionally stored in the warehouse pending distribution to particular customers pursuant to particular sales transactions. Thus, warehousing costs are incurred after the date of sale. Although there are no specific contractual agreements between NKK and its customers in the home market to assume warehousing expenses, NKK's customers know about these facilities and expect NKK to use them if the production and shipment schedules require holding the finished material. NKK argues that Final Determination of Sales at Less Than Fair Value: Carbon Steel Wire Rod from Trinidad and Tobago, 48 FR 43206, 43207 (Sept. 22, 1983) allows the Department to consider warehousing a direct selling expense. In addition, as verified by the Department, NKK tracks these expenses using the same accounting system as is used for movement expenses. In fact, all these items are summarized in NKK's monthly accounting records as direct selling expenses because they can be directly tied to particular sales transactions.

Department Position: NKK acknowledges that it provides post-sale warehousing to its customers and that it provides this service without the use of contracts or formal agreements. As such, petitioners are correct in citing Brass

Sheet and Strip from Korea, which discusses warehousing not done under contractual obligation to the purchasers but merely to position the merchandise for immediate delivery into the market. We also agree with petitioners' interpretation of Cooking Ware from Mexico. In this case, petitioner requested the Department deny an adjustment to home market prices because the "home market contracts [do] not explicitly require [respondent] to store merchandise before or after the date of sale." The Department agreed, determining that these expenses "are not directly related to the sales under consideration and, therefore, are not an allowable adjustment."

We note, however, that in two subsequent cases, PETs from Japan and AFBs from France, that the Department has determined that post-sale warehousing which can be directly tied to specific sales would be treated as a direct selling expense. In neither case did the Department state that a contractual obligation was necessary in order to consider post-sale warehousing tied to specific sales to be a direct expense.

In this instance, NKK's claimed post-sale warehousing expenses were fully verified and were tied to specific transactions. As a result, the Department agrees with respondent, considers NKK's home market post-sale warehousing expenses to be verified as directly related to the sales to which they apply, and will adjust FMV accordingly.

Comment 36: Petitioners note that NKK requires trading companies to make payments in two parts, a prepayment and a post-shipment payment. On the prepayment, NKK reports a "net financial benefit" equal to the gross benefit of having the use of the money prior to shipment minus the cost of the interest paid to the trading company which made the prepayment.

Petitioners contend that NKK is not entitled to an adjustment to U.S. price for the imputed benefit reported in its questionnaire response. Petitioners allege that there is no indication that NKK actually invested these funds at the short-term borrowing rate it used in its calculation of the benefit. Instead, petitioners believe it is likely that NKK used the advance funds to finance its operations, therefore the benefit that NKK reports is not an actual benefit but rather an imputed or theoretical benefit which does not reflect its actual cost of extending credit in the U.S. Petitioners cite Final Determination of Sales at Less than Fair Value: Certain Steel Pipes and Tubes from Japan, 57 FR 7105 (Jan. 11, 1983) (hereinafter Steel Pipes and Tubes from Japan) as an example of identical circumstances in which the Department denied the request of respondents, including NKK, for an adjustment for the same type of "benefit." Petitioners also cite Cement and Clinker from Mexico as a case in which the Department confirmed that "opportunity benefits" will only be taken into account by the Department at the "annual rate of short-term investments." Petitioners contend that even if NKK had invested the prepayments, and there is no evidence that it did, it is unlikely that it would have invested them at its short term borrowing rate. Instead, it would have received a much lower short-term investment rate, which would approximate the interest rates it paid to its customers for advance payment.

NKK argues that the Department requires respondents to calculate an imputed credit expense for its home market and U.S. sales in order to make an adjustment to reflect the different credit costs applicable in the home market and the U.S. market. NKK argues that it receives an undeniable net financial benefit from its prepayment arrangement.

According to NKK, the Department acknowledges that a company incurs expenses during the period of time between shipment of merchandise and payment for that merchandise. These expenses are incurred as a result of either borrowing funds pending receipt of payment or having funds tied up due to the existence of accounts receivable.

NKK argues that the benefits from the advance payment funds are no more theoretical than the opportunity cost the Department imputes from the delay in payment. Although petitioners focus on whether NKK actually invested the advance payment benefit, the Department admitted, in *Silver Reed America Inc.* v. *United States*, 679 F. Supp. 12, 17 (CIT 1988), that its "present practice of deducting imputed costs * * * is inconsistent with its former practice of deducting actual cash outlays." NKK insists that the Department's policies must be symmetrical. The same logic that compels the Department to impute credit costs should also compel it to recognize credit benefits. To do otherwise distorts the price comparison.

According to NKK, in Final Results of Antidumping Duty Administrative Review: Large Power Transformers from Italy, 52 FR 46806, 46810 (Dec. 10, 1987) (hereinafter LPTs from Italy), Commerce recognized the "opportunity benefits" of prepayments. Where respondents have use of pre-paid money prior to shipment, the Department has determined that FMV should be adjusted for the credit revenue on pre-paid sales because the respondent has had the use of the money prior to shipment.

Finally, NKK argues that at a minimum, the Department should allow the interest revenue to offset the imputed credit expense to reach a more accurate approximation of NKK's true credit cost. It would make no sense for the Department to calculate a credit expense on export sales when in fact NKK has a net financial benefit on the transaction. NKK states that the Department's established practice is to offset short-term interest expense with short-term interest income to determine credit expense, as indicated in AFBs from France and Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan, 56 FR 26054, 26060 (June 6, 1991).

Department Position: We disagree with petitioner. In Steel Pipes and Tubes from Japan, the Department indicated that it initially was willing to grant an offset to the cost of the advance funds on the assumption that they may have been invested by respondent. The Department only reversed its position when it became clear that the funds received through advance payment were used to finance ongoing operations. In NKK's case, there is no evidence to indicate that NKK used its advance payment funds to underwrite ongoing operations. Further, petitioners' reading of Cement and Clinker from Mexico is incorrect. In that determination, the Department stated only that its current policy is to recognize "opportunity benefits" in FMV calculations. In that case, the Department determined that it correctly adjusted FMV for credit revenue on pre-paid sales simply because the respondent "had use of the pre-paid money prior to shipment." In NKK's case, it had access and use of the pre-payment funds paid to it by the trading companies on sales to the U.S. Furthermore, there is nothing on the record to indicate that NKK used these funds to finance operations.

In the LPTs from Italy case, the Department stated that "if a manufacturer receives payment before shipping the merchandise the credit calculation would reflect a credit income. In our dumping calculations we need to establish a common point in order to accurately evaluate the total value to each customer of its credit terms." In this review, NKK clearly receives an economic benefit from its pre-payment program. The Department

VOL 58 ISS 130 JL 9 1993 UMI

is compelled to recognize this benefit in the calculation of credit expense, wherever the benefit occurs. Therefore we are allowing the claimed adjustment.

Comment 37: Petitioners argue that the Department should not make any adjustments to U.S. price or FMV for domestic taxes paid on sales to both markets. The Department, in its preliminary determination, added to U.S. price "the amount of consumption tax that would have been collected had the exported merchandise been taxed" and made a circumstance of sale adjustment to FMV "for the difference between consumption taxes on home market sales and those which would have been collected on U.S. sales if the export sales had been taxed."

The Department, in its preliminary determination, cited 19 U.S.C. 1677a(d)(1)(C), which explicitly limits adjustments for domestic taxes to situations where such taxes imposed on exported merchandise were not paid by respondent, or where they were rebated upon export (See Final Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from Norway, 57 FR 30942, 30945 (July 13, 1992). Petitioners contend that neither of these two situations is applicable here, as NKK charges the trading company for the consumption tax on export sales and then makes payment to the government.

Because the same domestic tax was paid on sales to both markets, there was no need for the Department to make a circumstance of sale adjustment to FMV. Furthermore, *Zenith Electronic Corporation* v. *United States*, Slip 92–1043, at 12, 17 (Fed Cir. 1993) forbids the Department from using the general circumstance of sale provision of 19 U.S.C. 1677b(a)(4)(B) to adjust FMV to correct for possible tax-related distortion of the dumping margin.

NKK states the consumption tax is owed on export sales made through Japanese trading companies since these are treated as domestic transactions by the Japanese government, as well as on domestic transactions.

Department Position: We agree with petitioner that the consumption tax is paid on all home market transactions as a matter of course. It was also paid on all U.S. sales during the POI because these sales were made through Japanese trading companies in the home market. For our treatment of this issue, please see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Comment 38: NKK requests that the Department ensure that selling expenses are treated consistently in the price and cost calculations. NKK notes, for example, that it considers movement expenses to be direct selling expenses in its accounting system while the Department will probably decide to treat these items as movement expenses. The Department should ensure that such expense items are treated symmetrically in the price and cost comparisons. Since these items have all been included in cost, the Department should not exclude any of these items from price when comparing price to cost. If for some reason it decides to subtract any of these items from the price side, the Department should also subtract the same items from the cost side. NKK's primary concern is that these items be treated consistently. Petitioners did not comment on this issue.

Department Position: We agree with respondent, and the final results of these investigations reflect the Department's regulations.

Comment 39: Petitioners argue that the Department should add to the reported general and administrative expenses an amount for NKK's corporate headquarters G&A incurred on behalf of the steel division.

Respondent agrees that the Department should increase the G&A allocation factor for corporate headquarters expenses.

Department Position: We disagree with the proposed methodology in calculating the G&A expense. NKK's calculation of G&A included only G&A expenses which management had allocated to the steel division and headquarters G&A expenses which the company claims could be identified with the steel division. Since NKK is primarily a manufacturer of steel, the Department recalculated the G&A rate utilizing general and administrative expenses in total from the audited unconsolidated financial statements of NKK for the year ended March 31, 1992.

Comment 40: Petitioners claim that the Department should add to the G&A an amount for termination allowances. According to petitioners, NKK is required to report all restructuring costs, such as termination allowances, that took place during the fiscal year covering the POI and to include these, on an allocated basis, in its cost of production data.

Respondent refutes this claim by stating that the termination allowances in question relate to prior periods outside the POI and therefore should not be included in the end-product cost.

Department Position: We agree with petitioners. NKK's provision for termination allowances represents an expense recognized within the period of investigation and should be reflected in the product cost in accordance with full absorption costing principles. Effective April 1, 1991, NKK changed the method of providing for estimated termination allowances in its financial accounting system. The Department revised NKK's submitted G&A to reflect the costs reported in its financial statements for the year ended March 31, 1992.

Comment 41: Petitioners state the Department must include certain restructuring losses as part of the G&A since NKK's audited 1992 consolidated financial reports include restructuring losses.

Respondent contends that the restructuring expenses referred to by petitioners in the consolidated financial statements relate primarily to National Steel, a U.S. affiliate of NKK. Restructuring costs at National Steel did not relate to production of the subject merchandise and should not be included.

Department Position: We agree with respondent. Restructuring costs in the consolidated financial statements for NKK for the year ended March 31, 1992, appear to relate primarily to entities outside of facilities producing the subject merchandise and do not impact the cost of production of the subject merchandise.

Comment 42: Petitioners assert the Department should include certain pension costs in NKK's labor costs. Alternatively, if the Department disagrees with the above it should allocate these expenses as part of the G&A allocation factor.

Respondent states that the pension costs for the period of investigation have been included in the cost of production. Respondent contends that the notes to NKK's annual reports and reports to the Ministry of Finance make clear that these past service pension costs are extraordinary items, and do not relate to NKK's cost of production during the period of investigation.

Department Position: The Department agrees with petitioner and does not consider NKK's pension cost expense for past services as extraordinary. These expenses are ordinary in the industry. NKK's financial statement reflected a revised provision for past service costs based on NKK's pension cost projections during the fiscal year ending March 31, 1992, recognizing a current additional expense to meet the company's pension obligations. This revaluation occurred during the period of investigation and was recognized as an actual expense in the financial statements. Therefore it should be included as part of the cost of production. We added these past service costs to the calculated G&A.

Comment 43: Petitioner maintains the Department should increase the interest expense reported by NKK to eliminate the reduction taken for long-term interest income.

Respondent agrees that the interest should be adjusted.

Department Position: We concur with petitioner and respondent and have corrected the interest expense to reflect a reduction in the expense percentage from short-term interest income only.

Comment 44: Petitioners contend that in accordance with section 773(e)(1) of the Act, the Department should determine that critical circumstances exist with regard to imports of corrosion-resistant steel by Kawasaki and Nippon, and imports of hot-rolled steel and cold-rolled steel by NKK, Nippon, and Sumitomo. The petitioners argue that in light of the preliminary determination margins, the importers knew or should have known that these products were being sold in the United States below fair value. Petitioners further allege that, in the six months following the filing of the petitions, imports of hot-rolled steel, cold-rolled steel, and corrosion-resistant steel surged 38.9, 18.9 and 44 percent, respectively, in comparison to the six months preceding the filings.

Petitioners argue that the Department is prohibited from using the company-specific data submitted by Nippon and NKK because this unverified data was submitted after the regulatory deadline for submission of new factual information in an investigation.

NKK contends that the Department should issue a negative critical circumstances finding with respect to its shipments of subject merchandise because its preliminary determination margins for hot-rolled steel and cold-rolled steel were below the 25 percent threshold for imputing knowledge of dumping. Furthermore, NKK contends that during the six months post-filing of the petition, its shipments of cold-rolled steel increased less than 15 percent, and its shipments of hot-rolled steel actually declined.

Nippon also contends that the Department should issue a negative critical circumstances determination with respect to shipments of its corrosion-resistant and hot-rolled steel since its imports of these two classes or kinds of merchandise increased less than 15 percent in the post filing comparison period.

Both NKK and Nippon dismiss the petitioners arguments that the Department should ignore their company-specific submissions because they are untimely and unverified as a blatant attempt to unfairly manipulate the Department's decision since, the allegations were not even filed until after the verifications had been completed.

Department Position: We agree with petitioners in part, and determine that critical circumstances exist with respect to imports of certain hot-rolled and cold-rolled carbon steel flat products produced by Sumitomo and certain corrosion-resistant carbon steel flat products produced by Kawasaki. For a discussion of our analysis please see the section on Critical Circumstances in this notice and Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

We agree with NKK and Nippon that we should use their company-specific data to conduct a critical circumstance analysis regarding their imports of subject merchandise. Although the information was not verified, we note that it could not have been submitted in time for verification as the allegation was not filed until after the verifications at both these companies had been completed. Since both respondents passed verification, there is no reason to doubt the integrity of the supplied data and we have, therefore, used all company-specific data supplied by these two respondents with regard to critical circumstances.

Comment 45: With regard to corrosion-resistant steel NKK asserts that it is not the Department's practice to impute knowledge for non-participating exporters even if the "all other" rate exceeds 25 percent. Moreover, its shipments of this merchandise increased only slightly during the post-filing period, therefore it would be inappropriate for the Department to issue an affirmative finding of critical circumstances with regard to NKK's shipments of corrosion-resistant steel.

Petitioners contend that the Department has in the past imputed knowledge for firms covered by the "all other" rate when the margin exceeded the 25 percent threshold and argues that in light of the high "all other" rate for corrosion-resistant steel for Japan the Department should impute such knowledge with respect to NKK.

Department Position: We agree with NKK that it is not the Department's practice to impute knowledge for non-participating importers, when we have determined that critical circumstances do not exist with regard to the participating respondent(s) who provided company-specific data. In such cases, we do not issue affirmative findings for "all others" with regard to critical circumstances because the company specific data on the record indicates that there were no critical circumstances.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products from Japan that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determinations in the Federal Register. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/ manufacturer/exporter	Weighted-average margin percentages		
	Hot-rolled	Cold-rolled	Corrosion resistant
Kawasaki	NA	NA	40.19
NKK	26.51	20.38	NA
Nippon	26.51	36.62	40.19
Sumitomo ...	26.51	36.62	NA
All Others ...	26.51	32.18	40.19

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

VOL 58 ISS 130 JL 9 1993 UMI

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15620 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–814, A–580–815, A–580–816, A–580–817]

Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, Karin Price, or Breck Richardson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determinations and postponement of final determinations (58 FR 7106, February 4, 1993), the following events have occurred:

We received requests for a public hearing from: Pohang Iron and Steel Company, Ltd. (POSCO) in the investigations of hot-rolled, cold-rolled and corrosion-resistant steel on February 10, 1993; Dongkuk Steel Mill Company Ltd. (Dongkuk) on February 9, 1993 in the investigation of steel plate; and USS-POSCO Industries, Inc. (UPI), one of POSCO's related companies in the United States, on February 16, 1993 in the investigation of hot-rolled steel.

On February 12, 1993 we received a request from petitioners in all the investigations. The petitioners are: Bethlehem Steel Corporation, Gulf States Steel Inc. of Alabama, Inland Steel Industries, Inc., and Sharon Steel Corporation, in all four investigations; Armco Steel Company, L.P., LTV Steel Co., Inc., National Steel Corporation, WCI Steel Inc., Geneva Steel, and Laclede Steel Company, in the investigation of hot-rolled steel; Armco Steel Company, L.P., LTV Steel Co., Inc., National Steel Corporation, WCI Steel Inc., and U.S. Steel Group, a Unit of USX Corporation, in the investigation of cold-rolled steel; Armco Steel Company, L.P., LTV Steel Co., Inc., National Steel Corporation, WCI Steel Inc., Lukens Steel Company, and U.S. Steel Group, a Unit of USX Corporation, in the investigation of corrosion-resistant steel; and Geneva Steel, Lukens Steel Company, and U.S. Steel Group, a Unit of USX Corporation, in the investigation of cut-to-length plate. Petitioners and respondents filed case briefs on May 17, 1993 and rebuttal briefs on May 20, 1993. A public hearing was held on May 24, 1993.

Verification of respondents' responses to the Department of Commerce's (the Department's) questionnaires regarding sales information took place at POSCO; at Kyung Ahn Company, Ltd. (Kyung Ahn), Pohang Coated Steel Company, Ltd. (POCOS), and Pohang Steel Industries, Inc. (PSI), companies related to POSCO; and at Dongkuk in Korea, all in March of 1993. Verification also took place at UPI and Feralloy Reliance Limited Partnership (FRLP) in the United States during March of 1993. Verification of respondents' responses to the Department's questionnaires regarding cost of production (COP) and constructed value (CV) information took place in Korea, and at UPI and FRLP in the United States during April of 1993.

Scope of Investigations

The products covered by these investigations constitute four "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations also constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire sent to respondents in the context of these investigations, which is on file in room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Korea to the United States were made at LTFV, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In the hot-rolled investigation, POSCO did not provide certain information for sales by FRLP, as requested by the Department. Therefore, we used the best information available (BIA) for FRLP's sales to the United States. See Comment 14.

POSCO has reported sales of the subject merchandise to related parties in the home market. POSCO has stated that home market sales to related parties are not made at arm's-length prices. Therefore, these sales have been excluded from our calculations of FMV, and we have used sales by the related parties to unrelated purchasers in our calculations of FMV. Dongkuk has also reported sales of the subject merchandise to related parties in the home market. None of these sales was of merchandise identical to that sold to the United States. Because we were able to compare all of Dongkuk's merchandise sold to the United States to identical merchandise sold to unrelated customers in the home market, sales to related parties in the home market have been excluded from our calculations of FMV.

United States Price

We calculated USP using the methodology described in the preliminary determinations, with the following exceptions:

1. In each investigation, we added to USP the absolute amount of value added tax (VAT) on the comparison

merchandise sold in the home market, rather than an imputed tax amount based on the price of the U.S. product. See Comment 4.

2. In the investigation of corrosion-resistant steel, we used BIA for the preliminary determination for U.S. sales by POCOS and PSI due to the late date of submission of the sales data. For the final determination, BIA was not used for these sales, except as indicated in #6 below.

3. In the investigation of corrosion-resistant steel, we denied the duty drawback claim for U.S. sales by POCOS. See Comment 8.

4. In the investigation of corrosion-resistant steel, we included warranties for POSCO's sales and bank charges for PSI's sales in total U.S. direct selling expenses.

5. In the investigation of hot-rolled steel, we have denied POSCO's claim that ocean freight services were provided to POSCO by a related freight company at arm's-length prices and have used, as BIA, the average rate charged by unrelated freight companies. See Comment 6.

6. In the investigation of corrosion-resistant steel, we used BIA for one U.S. sale made by POCOS, for which a product characteristic was incorrectly reported, and for the other U.S. sales of the same control number which are affected by this error.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determinations, with the following exceptions:

1. In each investigation, we eliminated the circumstance-of-sale adjustment to FMV for the difference between the amount of tax included in FMV and the amount added to USP. See Comment 4.

2. In the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel, we included in the calculation of FMV POSCO's local sales to customers who further manufactured the merchandise purchased from POSCO into products outside the scope of these investigations. See Comment 9.

3. In the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel, and steel plate, we excluded sales of non-prime merchandise from the calculation of FMV when there were no U.S. sales of non-prime merchandise. In the investigation of hot-rolled steel, we compared U.S. sales of non-prime merchandise by UPI to sales of non-prime merchandise in the home market. See Comments 10 and 34.

4. In the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel, we revised the difference in merchandise adjustment to FMV to reflect the costs of POSCO's normal accounting system. See Comment 18.

5. For Kyung Ahn's sales of pickled and oiled (PO) merchandise, we have disallowed the portion of inventory carrying costs from the time the merchandise was entered into Kyung Ahn's inventory records. See Comment 12.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether POSCO and Dongkuk had home market sales that were made at less than their COP.

If over 90 percent of respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a model were at prices above the COP, and such sales were made over an extended period of time, we disregarded only the below-cost sales.

In order to establish that below cost sales were made over an extended period of time, we performed the following analysis on a product specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP for two or more months, then the below cost sales were considered to have been made over an extended period of time.

Where we found that more than 90 percent of a respondent's sales were at prices below the COP, and such sales were made over an extended period of time, we disregarded all sales for that model and calculated FMV based on CV. Furthermore, there is no evidence on the record of these investigations to indicate that such sales were at prices which would permit the recovery of costs over a reasonable period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of the respondent's cost of materials, fabrication, general expenses, and packing.

We relied upon the submitted COP and CV data, except in the following instances where the costs were not appropriately quantified or valued:

1. In the investigations of hot-rolled, cold-rolled and corrosion-resistant steel, we adjusted POSCO's cost of manufacturing by the difference between its financial accounting system total POI costs and the submitted management accounting system total POI costs. See Comment 18.

2. In the investigations of hot-rolled, cold-rolled and corrosion-resistant steel, we recalculated POSCO's interest expense and general and administrative (G&A) expenses, using POSCO's audited unconsolidated financial statements for the year ended December 31, 1992. See Comment 21.

3. In the investigations of hot-rolled, cold-rolled and corrosion-resistant steel, we included amounts related to POSCO's gains and losses on foreign currency translation in general expenses. See Comment 22.

4. In the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel, we reduced the submitted cost of sales amount, as used to compute G&A and interest expenses, by the amount reflected on POSCO's related further manufacturers' financial statements. See Comment 23.

5. In the investigation of hot-rolled steel, we included amounts incurred during June 1992, at POSCO's new Kwangyang mill. See Comment 19.

6. In the investigation of hot-rolled steel, we recomputed UPI's amortization of start-up costs using the amortization period reflected in its financial statements. See Comment 26.

7. In the investigation of hot-rolled steel, we adjusted UPI's interest rate computation by adding back forgiven interest expense related to a prior year. See Comment 31.

8. In the investigation of hot-rolled steel, we adjusted FRLP's submitted costs by using the corrected allocation factor and by including a portion of its year-end physical inventory adjustment. See Comment 29.

9. In the investigation of steel plate, we revised Dongkuk's yield calculation to reflect the actual amount of yield loss.

10. In the investigation of steel plate, we revised the G&A calculation for Dongkuk to exclude income from items unrelated to the subject merchandise. See Comment 24.

11. In the investigation of steel plate, we revised interest expense for Dongkuk based on audited financial statements and included amortization of bond discount and bond costs. See Comment 41.

In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of a company's reported general expenses, adjusted as detailed above, or the statutory minimum of 10 percent of cost of manufacture (COM). For profit, we used the greater of a company's actual profit or the statutory minimum of eight percent of the total of

COM and general expenses. See section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Critical Circumstances

Petitioners alleged that "critical circumstances" exist with respect to imports of hot-rolled steel, corrosion-resistant steel, and steel plate from Korea. Pursuant to section 735(a)(3) of the Act, we analyzed the allegations using the methodology described in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

To determine whether there have been massive imports of hot-rolled steel and corrosion-resistant steel by POSCO, and steel plate by Dongkuk, we analyzed export data supplied by the respondents. Our analysis of the import data supplied for corrosion-resistant steel revealed that the volume of imports did not increase by 15 percent or more from the pre-initiation period to the post-initiation period. Pursuant to 19 CFR 353.16(f)(2), we determined that there were no massive imports of corrosion-resistant steel over a relatively short period of time. Because we did not find that massive imports existed with respect to corrosion-resistant steel from Korea, there was no need to establish whether POSCO's importers had knowledge of dumping, or whether there was a history of dumping. We therefore determine that critical circumstances did not apply to corrosion-resistant steel from Korea.

The data for hot-rolled steel and steel plate showed that the volume of imports increased by 15 percent or more from the pre-initiation period to the post-initiation period for both products. Because there is a concurrent countervailing duty (CVD) investigation involving the same merchandise, we performed the comparison for five-month periods before and after the petition was filed in this case (see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina). We did a similar analysis of the 1991 export data for these products to ensure that the increases in exports did not simply reflect seasonal trends. We found no indication that the increases were occasioned by seasonal trends. Therefore, in accordance with 19 CFR 353.16(f), we find that exports of hot-rolled steel by POSCO and steel plate by Dongkuk have been massive over a relatively short period of time. Our comparison of import penetration ratios shows that Dongkuk's share of U.S. steel plate consumption increased substantially over the period.

To determine whether the importers of hot-rolled steel and steel plate knew or should have known that merchandise was being sold at LTFV, we considered the final margins in these investigations; we also determined whether there is a history of dumping of the same class or kind of merchandise, both as discussed in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina. With respect to hot-rolled steel, there is no history of dumping of the same class or kind of merchandise, and the margins do not indicate that importers should have known that hot-rolled steel was being sold at LTFV. Based on our analysis, we do not find that critical circumstances exist with respect to hot-rolled steel from Korea. With respect to steel plate, a history of dumping of the same class or kind of merchandise has been established according to 19 CFR 353.16(a)(1)(i), as evidenced by the Antidumping Duty Order on Carbon Steel Plate from the Republic of Korea (49 FR 33298, August 22, 1984). Because we have determined that critical circumstances exist for Dongkuk, the only company for which plate exports were investigated, we determine that critical circumstances also exist with respect to imports of steel plate for "all other" firms.

Common Issues

Comment 1: POSCO and its U.S. importer, UPI, assert that a three-month comparison period is the most appropriate for determining whether there were massive imports for the purposes of a critical circumstances determination, but that a seven-month period is the next best alternative. POSCO claims that a period of any longer than three months would unfairly include data reflecting imports that entered before steel Voluntary Restraint Agreements (VRAs) were lifted at the end of March 1992.

Petitioners believe the Department should use a five-month comparison period, in accordance with the Department's normal practice when there is a concurrent countervailing duty case for the subject merchandise, and cite Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition (57 FR 30939, July 13, 1992) (Pure and Alloy Magnesium from Canada). POSCO rebuts this argument, stating that the long lead time between sale and delivery of hot-rolled coil makes it unreasonable to conclude that POSCO could have immediately stopped its shipments to the United States once suspension of liquidation in the CVD case became effective. UPI adds that the costs of abandoning production or shipments already undertaken would far exceed the amount of duties that could have been imposed as a result of the CVD suspension of liquidation.

POSCO, UPI, and Dongkuk all argue that even if the Department finds that imports have increased by more than 15 percent, the Department need not consider imports to be "massive" as long as the respondent can demonstrate reasons for the increase other than a plan to circumvent the dumping laws. In support of this position, they cite Final Rule, Antidumping Duties (54 FR 12742, March 28, 1989). POSCO and UPI state that the increase in hot-rolled imports was the direct result of a combination of the following factors: the expiration of the steel VRAs; POSCO's pre-existing supply agreement with UPI; and the availability of additional transportation several months after the petition was filed.

UPI argues that the Department cannot blindly rely on numerical thresholds to determine whether imports have been massive, and adds that the Department has recognized that the purpose of the critical circumstances provisions is to prevent attempts to circumvent the suspension of liquidation by stockpiling prior to a preliminary determination, regardless of numerical thresholds. In support of its position, UPI cites Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania (52 FR 17433, May 8, 1987) (TRBs from Romania) and Preliminary Determination of Sales at Less Than Fair Value: Sodium Thiosulfate from the People's Republic of China (55 FR 51140, December 12, 1990) (Sodium Thiosulfate from the PRC).

Dongkuk asserts that its exports of steel plate to the United States cannot

be considered massive if the Department takes into consideration the factors of import penetration and seasonal trends. Dongkuk further states that the increase in exports in the months after the initiation of this case reflects normal business patterns.

Department's Position: To determine the length of the comparison periods, the Department normally uses the longest period for which information is available up to the effective date of the preliminary determination. However, where there is a concurrent CVD investigation involving the same merchandise, we normally perform the comparison up to the suspension of liquidation resulting from the affirmative preliminary determination in the CVD investigation (see Pure and Alloy Magnesium from Canada). Since there is a CVD investigation of the subject merchandise from Korea, our comparison period for this investigation is five months, which takes into account the December 7, 1992 effective date of suspension of liquidation in the CVD investigation.

We did not use a three-month comparison period because we have no evidence that there was any distortion caused by the existence of the VRAs.

We disagree with UPI that we should disregard numerical thresholds in determining whether imports have been massive. We do not believe that our findings in TRBs from Romania, and Sodium Thiosulfate from the PRC, cited by UPI, contradict the methodology we have used in this case. Indeed, in TRBs from Romania, we stated that "the change in volume from the period immediately before the filing of the petition to the period immediately following the filing is the single most important factor we consider." In POSCO's case, the increase was above our 15 percent threshold.

In considering Dongkuk's claim that seasonal trends and import penetration levels offset any finding of massive imports, we did not find that recent trade statistics on Dongkuk's import levels and import penetration ratios for steel plate from Korea for equal periods immediately preceding and following the filing of the petition supported Dongkuk's claim. In fact, our comparison of import penetration ratios shows that Dongkuk's share of U.S. steel plate consumption increased substantially from the five months before the date of the petition to the five months after the date of the petition. Nor did we find any evidence on the record to suggest that Dongkuk's massive increase in exports to the United States after the petition was filed was the result of a particular seasonal factor. Although Dongkuk suggested a correlation between seasons and export quantity, it offered no explanation of how seasonality might affect its plate exports.

Comment 2: POSCO argues that the Department has no basis for using two different thresholds to impute knowledge of dumping, and claims that the Department should apply only the 25 percent threshold that the Department applies to purchase price (PP) sales when a respondent has both PP and exporter's sales price (ESP) sales. Petitioners point out that the Department's normal practice in this situation is to weight-average the 15 percent and 25 percent benchmarks by the volume of ESP and PP sales, respectively.

UPI maintains that no knowledge of dumping can be imputed to it because a partnership agreement with POSCO precluded UPI from having any authority to negotiate prices. Further, UPI claims that it did not have the means to monitor global prices, but trusted that POSCO was pricing merchandise fairly.

Dongkuk disputes that the 1984 antidumping duty order on steel plate is a valid basis on which to establish a history of dumping, because the order was revoked in 1986. In support, Dongkuk cites to the International Trade Administration (ITA) Antidumping Manual at chapter 10.2.

Department's Position: Regarding the knowledge prong of the critical circumstances test, we agree with petitioners that we should continue our practice of using a weighted-average benchmark of PP and ESP sales to impute knowledge of dumping, in accordance with High-Tenacity Rayon Filament Yarn From Germany (57 FR 21770, May 22, 1992). We require a lower margin for imputing knowledge on ESP sales to account for the greater probability that a U.S. importer has knowledge of dumping if it is related to the foreign producer than if it is unrelated. Because we found that critical circumstances did not exist for hot-rolled steel, UPI's claim that it had no way of determining fair global prices and that it had no authority to negotiate prices with POSCO under the partnership agreement is moot.

We disagree with Dongkuk that revoked orders cannot constitute a history of dumping. Although Dongkuk correctly quotes the ITA Antidumping Manual, the manual is merely a suggested guide to ITA policy and procedure, and may not accurately reflect current ITA policy. We believe that the sentence cited by Dongkuk is an error. The law and the regulations stating that we consider whether there is a history of dumping in the United States would be meaningless if we were not able to consider revoked orders, because if the order in question were not revoked, there would be no need to conduct a new investigation. Furthermore, the 1984 order on steel plate was revoked not because respondents were shown no longer to be dumping, but because the U.S. industry stated its lack of interest in the order subsequent to implementation of a VRA on the product.

Comment 3: Petitioners argue that the Department should find that critical circumstances apply to "all other" importers of hot-rolled steel because the Department will assign POSCO's rate to all other companies. Petitioners assert that IM–145 data show that Korean hot-rolled steel increased by 50 percent between the first and second halves of 1992.

Department's Position: Because we found that critical circumstances did not exist for hot-rolled steel, this issue is moot.

Comment 4: Petitioners argue that the Department's treatment of VAT for the preliminary determinations of these investigations was improper because the Department made a circumstance-of-sale adjustment to FMV for differences in taxes, and because the tax base used to calculate the amount of VAT on the U.S. merchandise was incorrect. Petitioners contend that the Department's methodology for dealing with foreign taxes is not in accordance with section 772(d)(1)(C) of the Act. The methodology, which adds the amount of home market tax to USP in order to achieve a tax-neutral result, was developed subsequent to the March 19, 1993 decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1043, –1044, –1045, –1046, (*Zenith III*), and was used in Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review (58 FR 25803, April 28, 1993) (Cement from Mexico). Petitioners argue that the Department should follow the methodology for dealing with foreign taxes used in Gray Portland Cement and Clinker from Japan; Preliminary Results of Antidumping Duty Administrative Review (58 FR 21442, April 21, 1993) (Cement from Japan).

Instead, petitioners argue that the Department should not attempt to achieve tax neutral results for the final determinations by adding the amount of home market tax to USP, but should add to USP an imputed amount of VAT

calculated on the basis of the price of the U.S. merchandise. Petitioners also claim that, for the purposes of the final determinations, the U.S. tax base should be the gross U.S. price less any expenses which would not have been incurred had the merchandise been sold in the home market, such as further manufacturing costs and offshore movement expenses associated with transporting the merchandise to the United States. Finally, petitioners contend that an amount for VAT should not be added to USP when FMV is based on CV.

POSCO and Dongkuk reply that the Department's new methodology for dealing with VAT—adding the amount of VAT on the comparison merchandise sold in the country of exportation to USP—is consistent with section 772(d)(1)(C) of the Act and the CAFC's decision in *Zenith III*. POSCO and Dongkuk contend that the CAFC explicitly approved the methodology the Department has adopted.

Department's Position: We agree with petitioners that a circumstance-of-sale adjustment to FMV for differences in taxes is not allowed by the CAFC decision in *Zenith III* and that taxes should not be added to USP when FMV is based on CV. However, we agree with POSCO and Dongkuk that the amount of tax added to USP should not be an imputed amount based on the price of the U.S. product. For these final determinations, we have added to USP the absolute amount of home market tax included in FMV, in accordance with the CAFC decision in *Zenith III*. Our methodology for dealing with foreign taxes has been detailed in the section titled "Uncollected Taxes" in Cement from Mexico and in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

With respect to petitioners' argument that we should follow the methodology set out in Cement from Japan, we note that this was a preliminary notice in which the Department stated that it was still considering how fully to implement the *Zenith III* decision. Accordingly, we did not rely on the methodology in Cement from Japan as a precedent for these final determinations. Instead, we have followed the precedent set in Cement from Mexico.

POSCO Issues

Comment 5: Petitioners argue that, in the investigation of corrosion-resistant steel, the Department should use total BIA for sales made by PSI because of PSI's failure to report accurate dates of sale for its home market order sales; its failure to report home market sales of merchandise which PSI calls "over roll" merchandise; its failure to report bank charges on its U.S. sales; and its failure to report that one of PSI's creditors is related to PSI.

With respect to the date of sale, petitioners note that the shipment date was incorrectly used as the date of sale for *all* of PSI's home market sales, regardless of whether the sales were made from inventory or were made to order. Petitioners contend that the order date is the appropriate sale date for PSI's home market made-to-order sales, since this is the first date on which price and quantity are agreed to by the parties involved. As support, petitioners cite to the Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany (52 FR 28170, July 28, 1987) and Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value (50 FR 45447, October 31, 1985). Petitioners charge that POSCO continued to report the incorrect sale date for these sales even when the Department, in its February 11, 1993 supplemental questionnaire, requested that the order date be reported as the date of sale for PSI's home market made-to-order sales. Petitioners note that it is possible for PSI to determine the order date for its home market order sales, as was done for one home market order sale at PSI's verification. Petitioners claim that, because the sale date reported for PSI's home market made-to-order sales is incorrect, the range of products reported to have been sold in the home market by PSI during the period of investigation has been altered.

At a minimum, petitioners recommend that the Department base PSI's FMV on the highest net home market price for corrosion-resistant steel on the record of this investigation, or on CV, since there is no way to distinguish between home market inventory sales and home market made-to-order sales.

POSCO responds that the Department should accept PSI's sales data because they are accurate and have been fully verified. With respect to the date of sale on PSI's home market made-to-order sales, POSCO argues that use of the date of shipment as the date of sale is representative of PSI's selling practices, and that the amount of time between date of order and date of sale for made-to-order sales does not have a distortive effect on the analysis. POSCO contends that the Department verified the accuracy of the reasons given for using the date of shipment as the sale date. POSCO claims that PSI sells only three comparison products in the home market, of which only a certain percentage were made-to-order sales, and that PSI bases prices on a price list. Therefore, according to POSCO, it is not likely that weighted-average prices could change significantly based on a change in the reporting period of approximately two weeks at the beginning and end of the period of investigation.

POSCO claims that over roll merchandise does not have specifications, and, therefore, should not have been reported, and that the creditor identified by petitioners as a related party is not related to PSI. POSCO contends that, as has been reported in its questionnaire responses and in PSI's financial statement, POSCO and Samsung Electro-Mechanics Company (SEM) own PSI. According to POSCO, despite a misunderstanding at verification, the creditor does not own a portion of PSI. Moreover, POSCO replies that bank charges incurred on PSI's U.S. sales were submitted for the record during verification, and agrees with petitioners that these charges should be deducted from USP.

Department's Position: We disagree with petitioners that BIA should be used for PSI's sales, and, accordingly, have used PSI's sales in our analysis for the final determination of the investigation of corrosion-resistant steel.

We agree with petitioners that PSI should have reported the order date as the date of sale for its home market order sales. However, we verified that the amount of time between the date of order and the date of shipment is approximately two weeks, and we found that the use of the shipment date as the date of sale has no effect on weighted-average prices. We tested this by comparing the weighted-average prices for each control number at the beginning of the POI, the end of the POI, and the entire POI. We found that the prices for each control number were stable over the period. See the June 13, 1993 memorandum from Case Analyst to the File regarding PSI's home market prices.

Although PSI has failed to report its home market sales of what it terms "over roll" merchandise, we found at verification that these are sales of defective merchandise. Because POSCO made no sales of non-prime merchandise to the United States, we are not using sales of defective merchandise in our analysis, therefore, the failure to report these sales has no effect. See Comment 10 and Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from

Argentina for a discussion of how we dealt with non-prime merchandise in these final determinations.

We agree with petitioners that the adjustment for bank charges for PSI's U.S. sales should be made. The correction for bank charges can be made using verified information. Finally, we agree with POSCO that the creditor in question does not own a portion of PSI. Although company officials at verification stated that the creditor owned the percentage share of PSI that is, in fact, held by SEM, PSI's 1992 audited financial statements indicate that POSCO and SEM, and not the company in question, are PSI shareholders.

Comment 6: Petitioners argue that the Department should use BIA with respect to ocean freight charges incurred on POSCO's ESP sales of hot-rolled steel to UPI. According to petitioners, POSCO has failed to establish that these services, which are provided to POSCO by a related freight company, occur at arm's length prices. POSCO's analysis of the prices charged to related parties and to unrelated parties for identical services is inadequate. As BIA, petitioners urge the use of the highest ocean freight charge reported by any of POSCO's related parties in the investigation of hot-rolled steel.

Petitioners argue that the ocean freight services provided to POSCO by unrelated freight companies for shipments to unrelated customers in the United States are not comparable to the services provided to POSCO by its related freight companies for shipments to UPI because the specially outfitted ships required to transport merchandise to UPI are not used for shipments to unrelated U.S. customers. For the same reason, petitioners contend that services provided by the related freight company to its unrelated customers are not comparable to those provided to POSCO for shipments to UPI. Further, petitioners argue that a shipment to UPI by an unrelated freight company in January 1993 on a specially outfitted ship cannot be used to establish the arm's-length nature of services provided by the related freight company because the shipment occurred after the initiation of these investigations; according to petitioners, the Department commonly disregards post-initiation data because such data could be used to avoid or reduce dumping margins. Also, petitioners argue that the arm's-length nature of the ocean freight services cannot be established on the basis of the related ocean freight company's profitability because this profitability could be attributable to the fact that the related freight company provides services to unrelated parties.

POSCO responds that there is more than sufficient evidence to show that the ocean freight services provided to POSCO by its related freight company for shipments to UPI were at arm's-length prices. POSCO contends that there is no evidence on the record to suggest that the environmental devices required on the specially outfitted ships going to UPI result in significantly different costs or prices charged by the related freight company. POSCO also argues that it would have been extremely difficult for the related company to have charged higher rates to unrelated parties while charging "sweetheart" rates to POSCO, and still remain profitable. POSCO further claims that the Department's practice that post-initiation data cannot be relied upon to support an arm's-length claim is limited solely to rebates; according to POSCO, rebates, unlike ocean freight charges, are within the control of the foreign producer. Finally, POSCO contends that petitioners have ignored two other points with regard to the related freight company to show that the ocean freight services were provided at arm's-length prices—shipments of raw materials by the related company compared with shipments by unrelated parties, and a March 1992 bid from an unrelated freight company for ocean freight services.

Department's Position: We agree with petitioners that ocean freight services for shipments of hot-rolled steel to UPI are not provided to POSCO by its related freight company at arm's-length prices and have used the average price charged to POSCO by unrelated freight companies for shipments to the U.S. west coast as BIA. We have found that the average price charged to POSCO by the related company for shipments to UPI is lower than the lowest price charged to POSCO by unrelated freight companies. Accordingly, we have determined that the prices charged by the related freight company are not arm's-length prices.

Comment 7: Petitioners argue that the Department should recalculate duty drawback on POSCO's U.S. and local sales in the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel. With respect to hot-rolled steel, petitioners contend that POSCO's statements regarding the duty drawback it has reported for local sales are inconsistent, and that POSCO has misallocated duty drawback from its local sales to its U.S. sales. According to petitioners, since the imported raw materials used to produce the hot-rolled merchandise sold in POSCO's third country, local, and U.S. sales are the same, the drawback should be spread evenly over all of these sales. Petitioners claim that by not reporting duty drawback on its local sales, POSCO is allocating a greater share of drawback to its U.S. and other export sales of hot-rolled steel. With respect to sales of cold-rolled and corrosion-resistant steel, petitioners argue that it is unclear whether POSCO charges the duty to its local sale customers or whether it provides the customers with the import certificate. Therefore, petitioners contend that the Department should recalculate POSCO's duty drawback for cold-rolled and corrosion-resistant steel so that the total amount of drawback is allocated over third country sales, local sales, and U.S. sales.

POSCO responds that it properly reported duty drawback on both its U.S. and local sales. According to POSCO, duty drawback was verified extensively by the Department and no discrepancies were found in POSCO's data or explanation of its claim. According to POSCO, the amount of duty drawback reported on its export sales does not include the duty passed through to local sale customers because POSCO does not receive duty drawback on local sales, except when the local sale is made to a customer in an export-free zone, in which case POSCO receives the duty drawback if the customer provides POSCO with the required documentation. POSCO notes that, except for this limited circumstance, it does not receive the duty drawback on its local sales of hot-rolled, cold-rolled, and corrosion-resistant steel since POSCO is not the exporter. Rather, POSCO transfers the required documentation, such as import permits, to the local sale customer, the exporter, who in turn receives the drawback. For hot-rolled merchandise only, according to POSCO, POSCO charges the duty drawback to the local sale customer. This is, because PO steel, a hot-rolled product for the purposes of these investigations, is classified as cold-rolled steel in POSCO's accounting system, and POSCO does not charge the customer for the duty for sales of PO steel.

Department's Position: We agree with POSCO. We verified POSCO's duty drawback claim for its U.S. sales and thus have made the appropriate addition to USP for duty drawback. However, POSCO received duty drawback only on certain of its local sales. For local sales for which POSCO received duty drawback, it reported the duty drawback it received. If it did not receive duty drawback, it reported zero. Because POSCO received duty

VOL 58 ISS 130 JL 9 1993 UMI

drawback on all of its U.S. sales, we added duty drawback to local sales.

With respect to the investigations of cold-rolled and corrosion-resistant steel, where duties on local sales were not reported in the home market sales databases, we added to FMV the amount of duty drawback reported for the matching U.S. sale. For hot-rolled steel, we added the amount of duties reported in the home market sales database for local sales; if an amount was not reported, we added the duty drawback reported for the matching U.S. sale.

Comment 8: Petitioners argue that, because POCOS has not yet applied for or received a duty drawback for its 1992 exports, the Department should deny the claim for duty drawback on U.S. sales made by POCOS in the investigation of corrosion-resistant steel. Petitioners cite as support for their argument the Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela (58 FR 27522, May 10, 1993) (Ferrosilicon from Venezuela).

POSCO responds that, in Ferrosilicon from Venezuela, the respondent did not pay import duties on any input and, therefore, was clearly ineligible to receive drawback. POSCO contends that the Department verified that POCOS paid import duties on inputs, verified the amount of the duty drawback claim, and verified that the duty drawback system operated properly. According to POSCO, POCOS qualifies for duty drawback, which it will apply for when there are sufficient exports to warrant filing the duty drawback application. Thus, POSCO argues that the Department should accept POCOS' claim for duty drawback.

Department's Position: We agree with petitioners and have not allowed the duty drawback claim for U.S. sales made by POCOS. Section 772(d)(1)(B) of the Act states that USP will be increased by the amount of any duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the merchandise to the United States. Although the verification documents from 1991 show that duty drawback was received, let alone applied for 1991, POCOS submitted no data for 1992 to show that any duty drawback was applied for, let alone received. The verification documents show that, during 1991, POCOS filed for duty drawback regularly throughout the year and received its rebate of duties soon after the application was filed. Therefore, it seems reasonable that POCOS should have been able to provide at verification in March 1993 drawback data on amounts applied for or received during 1992. In Ferrosilicon from Venezuela, duties were not paid by the respondent; in this case, POCOS has provided no evidence to show that duties were paid on its 1992 exports. Therefore, since we have no evidence that duties were paid or duty drawback applied for during 1992, we are disallowing this claim.

Comment 9: POSCO argues that its local sales should be classified as home market sales, rather than export sales, in the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel. POSCO cites as support for its position the Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea (58 FR 15467, March 23, 1993) (DRAMs from Korea).

POSCO notes that section 773(a)(1) of the Act defines home market sales as those sales which are "sold, or in the absence of sales, offered for sale in the principal markets of the country from which exported * * * for home consumption." According to POSCO, its local sales fit this definition because the sales transpire entirely within the borders of Korea and the merchandise is consumed in Korea. POSCO contends that its local sales are processed, documented, and invoiced as domestic sales, and that the only difference between domestic and local sales is that, for local sales, VAT is not paid and duty drawback documents are transferred to the local sale customer so that the customer can collect the drawback. Moreover, POSCO claims that, for its local sales, unlike its export sales, it does not know the product that will be exported or the identity of the ultimate customer of the further-manufactured merchandise; POSCO can only guess the type of product that will be exported and the identity of the local sale customer.

Petitioners reply that it is the Department's practice to treat local sales as export sales when the manufacturer knows at the time of sale that the merchandise will be exported. Petitioners argue that, at the time of the local sale, POSCO knows that the merchandise will be exported, and, therefore, that the merchandise is not sold for "home consumption." As support, petitioners cite to the Preliminary Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes, From the United Kingdom (57 FR 44163, September 24, 1992) (Sulphur Dyes from the United Kingdom) and the Final Determination of Sales at Less Than Fair Value; Color Picture Tubes from Korea (52 FR 44186, November 18, 1987) (CPTs from Korea). According to petitioners, whether POSCO treats such sales as domestic sales in its operations and whether POSCO knows the final destination of the merchandise are not relevant issues in determining whether such sales should be included in or excluded from the calculation of FMV. Petitioners argue that, unlike the situation in DRAMs from Korea, there is no way of knowing which merchandise sold by POSCO in its local sales has been further manufactured into non-subject merchandise. Therefore, according to petitioners, all local sales should be excluded from the home market sales databases.

Petitioners add that if the Department erroneously decides to include local sales in the home market sales databases, an amount for duties on imported raw materials, which would have been charged to home market customers had the merchandise not been subsequently exported, and an amount for VAT, calculated based on the fully loaded invoice price including freight, packing, and duties on raw materials, should be added to home market price, since these amounts are added to U.S. price.

Department's Position: For our final determinations, we have included in the home market sales databases and the calculation of FMV those local sales which are further manufactured into merchandise outside the scope of these investigations, in accordance with our practice detailed in DRAMs from Korea. Where a product within the scope of an investigation has been transformed into a product outside that scope before exportation, we consider that product to have been "consumed" within the country, and thus properly includable in home market sales. At POSCO's verification, the Department examined a list of local sale customers and the line of business for each of these customers. We found that certain local sale customers only further manufacture the merchandise they purchase from POSCO into products outside the scope of these investigations. Local sales of merchandise purchased by these customers have been included in our analysis for these final determinations. Other local sale customers further manufacture the merchandise they purchase into both subject and non-subject merchandise. Local sales purchased by these customers have been excluded from the home market databases since there is no way to determine the nature of the finished product that was exported from Korea, nor is there any evidence that POSCO knew the nature of that product. In addition, it is clear from verification

that POSCO has no way of knowing the ultimate export destination of the merchandise it sells to its local customers.

With respect to Sulphur Dyes from the United Kingdom, we note that, in that case, certain sales were classified by the Department as U.S. sales because the respondent had knowledge that the ultimate destination of the merchandise was the United States. In CPTs from Korea, in which the Department classified local export sales to Korean companies in bonded factory areas as export sales, the respondent "did not know the destination of these CPTs, except that they are for export as CPTs or as CPTs in CTVs." Since there was no knowledge as to whether the merchandise was exported as merchandise covered by the scope of the investigation, the sales were excluded from the calculation of FMV. Similarly, for these final determinations, when POSCO had no knowledge as to whether the finished product which was exported was covered by the scope of these investigations, through the identity of the local sale customer, we excluded the local sale from the home market sales databases.

We agree with petitioners that, for the local sales included in our analysis, we should add to FMV an amount for duties on imported raw materials, following our practice described in DRAMs from Korea, and an amount for VAT, and we have done so for our final determinations. *See* our response to Comment 7.

Comment 10: Petitioners contend that prime merchandise sold in the United States should be compared only with prime merchandise sold in the home market, i.e., that overrun sales and sales of seconds should be excluded from the calculation of FMV. Petitioners claim that matching prime merchandise only to prime merchandise is in accordance with the Department's prior practice.

POSCO argues that home market overrun sales and sales of seconds should be included in the Department's analysis because these sales are in the ordinary course of trade, and POSCO has identified product specifications that enable them to be considered such or similar merchandise according to the Department's own criteria.

Department's Position: Consistent with the Department's policy, outlined in Appendix II of the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, we have compared prime merchandise to prime merchandise and non-prime merchandise to non-prime merchandise.

In the case of UPI, a U.S. company related to POSCO which further manufactures hot-rolled coil, there were significant sales of non-prime merchandise in the United States; therefore, we compared non-prime merchandise to non-prime merchandise, as well as prime merchandise to prime merchandise. Because there were no product characteristics for UPI's U.S. sales of further-manufactured non-prime merchandise, we used the following methodology to make comparisons as BIA. For USP, we deducted from the gross sales price of each U.S. sale of non-prime further-manufactured merchandise the actual selling expenses for the individual sale and the weighted-average of all U.S. further-manufacturing costs. We allocated profit between POSCO and UPI based on the weighted-average COP of the matching product categories sold in the home market, and deducted the allocated profit from the gross U.S. sales price. For FMV, we used the weighted-average price of home market sales of non-prime merchandise.

POSCO sold no cold-rolled or corrosion-resistant non-prime merchandise to the United States during the POI. For the FMV comparisons of these products, we have deleted home market sales of non-prime merchandise from the home market database.

If orders are issued in these cases, the Department will consider at the administrative review stage whether overrun production is equivalent to prime production if it is not sold outside the ordinary course of trade.

Comment 11: Petitioners argue that the Department should use BIA with respect to POSCO's packing charges because POSCO has failed to establish that its related party provides services on an arm's-length basis. Petitioners argue that the cost verification shows that the study relied upon by POSCO to establish the arm's-length nature of these transactions is unreliable, and they claim that POSCO has failed to provide any other documentation of the arm's-length nature of these charges. As BIA, petitioners suggest that the Department not make an upward adjustment to USP for U.S. packing expenses, or make a downward adjustment to FMV for home market packing expense.

POSCO contends that the Department should use the reported packing costs in calculating USP and FMV. POSCO maintains that reliance on the study for proof of the arm's-length nature of the transactions with related parties is appropriate. POSCO disagrees with the Department's cost verification report, which questioned the study. POSCO maintains that the study demonstrated that the company had no bias towards related subcontractors and that the loss identified at a related company is not related to the work covered by the study.

Department's Position: Most of POSCO's packing services were provided by a related company. A small amount of packing was performed by an unrelated party during the POI, but the services performed were not comparable to those performed by the related party.

The documentation provided by POSCO to demonstrate that related party packing services were provided at arm's-length prices includes a study conducted by an independent accounting firm of 30 companies providing services to POSCO, most of which were unrelated to POSCO. At verification, we examined the study and compared the profit rate recommended by the study for the related packing company to the profit rate used to determine the packing fee the company charged POSCO. We found that the fee charged POSCO was higher than that recommended by the study, which supports POSCO's claim that the fee of the related packing company was an arm's-length price.

During the COP verification, we examined costs for a related provider of maintenance services, also covered by the study. In that case, we found that the maintenance company's financial statements showed a loss, but the study showed that the company had made a profit. In spite of this, the situation of the related packing company differs from that of the maintenance company examined during the cost verification in that the packing company provides services only to POSCO and its related companies, and its financial statement shows that it did make a profit, which is confirmed by the study. For these reasons, and absent any evidence to the contrary, we conclude that the packing charges were made at arm's-length and have used them in the calculation of FMV. We note that reported U.S. prices included packing, so no adjustment to U.S. price for packing is necessary.

Comment 12: Petitioners maintain that the Department should deny Kyung Ahn's home market inventory carrying cost claims on certain sales of hot-rolled merchandise (PO products) because during verification the Department found that those costs were incorrectly reported. These products were shipped directly from POSCO to the customer and did not enter into Kyung Ahn's inventory. Since no inventory carrying costs were incurred on those sales which did not enter into inventory, the Department should disallow this claim.

POSCO states that it and its related companies classify PO flat products as cold-rolled, but that the Department required that they be reported as hot-rolled products. To calculate an inventory carrying period for all hot-rolled products for purposes of calculating inventory carrying expenses, POSCO claims it had to be sure the calculation included both PO and other products the Department defined as hot-rolled.

POSCO further states that while PO products are shipped directly from POSCO, Kyung Ahn still incurs inventory carrying costs on those sales. POSCO states that, as verified, when POSCO confirms an order from Kyung Ahn, "on paper the merchandise is entered into Kyung Ahn's books." At the same time that the merchandise is entered into Kyung Ahn's inventory, it is removed from POSCO's inventory records. Therefore, Kyung Ahn carries this merchandise in inventory for POSCO until shipment.

Department's Position: POSCO reported sales of PO merchandise as hot-rolled merchandise, in accordance with the Department's questionnaire. However, because POSCO and Kyung Ahn classify PO merchandise as cold-rolled products, inventory carrying costs incurred for Kyung Ahn's PO merchandise are of the type incurred on its sales of cold-rolled merchandise. These differ from inventory carrying costs incurred on hot-rolled merchandise for the time after the inventory is transferred into Kyung Ahn's records. It would be inappropriate to allow an adjustment to sales of PO merchandise for inventory carrying costs incurred on sales of other types of hot-rolled merchandise, which were significantly greater than those incurred on sales of PO merchandise. Therefore, for Kyung Ahn's sales of PO merchandise, we have disallowed the portion of inventory carrying costs that were overstated, that is, costs attributable to the period after the merchandise was entered into Kyung Ahn's inventory records. We have used the verified allocated average inventory carrying costs for all other sales of hot-rolled merchandise.

Comment 13: Petitioners state that the Department should deny POSCO's claimed circumstance-of-sale adjustment for home market credit where company-wide credit periods were used to calculate credit. Petitioners state that the Department should deny the entire credit expense claims of PSI, Kyung Ahn, and Pohang Coil Center (PCC), which reported only company-wide credit periods. Petitioners state that the Department normally calculates credit periods on a sale-by-sale basis, but sometimes accepts customer-specific periods. They state that the Department should not accept credit expenses not reported at least on a customer-specific basis (or equivalent) and cite as precedent Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.: Final Results of Antidumping Duty Administrative Reviews (57 FR 28360, June 24, 1992) (AFBs from France); and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review (56 FR 31692, July 11, 1991) (AFBs from Germany).

POSCO claims that there is no basis for disallowing its reported credit claims for PSI, POCOS, and Kyung Ahn, even though they were reported on a product-specific basis rather than a customer-specific basis or sale-by-sale basis. POSCO acknowledges the Department's preference for data on a sale-by-sale or customer-specific basis, but maintains that the Department has stated it will accept product-specific or company-specific data as long as it is reasonable in light of the circumstances of the case (e.g., Color Television Receivers from the Republic of Korea (55 FR 26225, June 27, 1990); Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992, May 3, 1989) (Antifriction Bearings from Germany); and Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the United Kingdom (54 FR 15500, April 18, 1989)).

Department's Position: In both cases cited by petitioners, the Department states its preference for the reporting of credit expenses on a transaction-specific basis, or at least on a customer-specific basis. In the first case, AFBs from France, we qualified the reporting requirement by stating that we will not accept credit expenses that are not reported at least "on a customer-specific basis or some *reasonable equivalent*" (emphasis added), implying that we would consider accepting credit expenses reported other than on a customer-specific basis. In the second case, AFBs from Germany, we used reported credit expenses that were not calculated on a sale-specific or customer-specific basis for two companies, as the best information otherwise available.

During verification we examined the "open account" basis used to maintain receivables records by POSCO and its related companies. Where a company maintains a rolling receivables ledger, payments are often made on a regular basis and credited to a customer's account, but are not identified with a particular sale. Also, notes receivables ledgers sometimes are not specific enough for a company to trace payment even on a customer-specific basis. PSI, POCOS, and Kyung Ahn maintain their receivables records on an open account basis and, as a result, were not able to report credit period information on a sales-specific or customer-specific basis. We find the company-wide reporting of their credit periods, which we verified, to be a reasonable method of reporting this information, given their normal record-keeping system.

FRLP Issues

Comment 14: Petitioners contend that the use of BIA is warranted for sales by FRLP because POSCO failed to provide complete and accurate data. They argue that FRLP's elaborate system for reporting sales does not represent a proper basis on which to calculate FRLP's U.S. prices. Petitioners maintain that, because FRLP cannot identify which merchandise is purchased from POSCO or UPI, and which is purchased from other parties, there is no basis on which the Department could accurately judge the reasonableness of these data.

Petitioners further argue that POSCO refused to provide actual data for the thickness, width, and carbon content of FRLP's sales; terms of FRLP's sales; destination of the merchandise; date of sale; date of shipment; actual date of receipt of payment; actual quantity by control number (CONNUM); actual freight charges; actual cash discounts; relationship or identity of its commissionaire on a sale-specific basis; and warranty expenses on a sale-specific basis. Because of these deficiencies, no reasonable estimate of FRLP's U.S. sales prices can be made.

Petitioners also note that the Department, at verification, confirmed that FRLP could have reported the data requested by the Department for non-inventoried sales.

POSCO disagrees with petitioners, contending that the Department should not use BIA, but rather its reported sales data, in calculating U.S. price. POSCO maintains that the Department erred in using BIA in the preliminary determination and that it did provide complete and accurate data that were fully verified by the Department. Furthermore, POSCO contends that FRLP was not given adequate time in which to file its response. Moreover, according to POSCO, the Department normally would disregard FRLP's sales

as insignificant. Citing Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (57 FR 42942, September 17, 1992), and Antifriction Bearings from Germany (Comment 2), POSCO argues that the Department has established a policy of accepting estimated reporting methodologies developed by respondents if the methodologies are reasonable.

POSCO contends that it cooperated with the Department to the fullest extent possible, supplying for each of its sales the invoice number, customer name, date of sale, date of shipment, quantity, gross unit price, packing form and costs, commissions, complete product information for the further manufactured product, identity of the FRLP division that made the sale, all discounts paid, foreign inland freight, ocean freight and marine insurance, duty and brokerage, U.S. inland freight, credit expenses, warranty expenses, home market and U.S. indirect selling expenses, technical service expense, inventory carrying costs, duty drawback, complete further manufacturing costs, and all information necessary to match each sale to home market sales for comparison purposes.

POSCO also contends that the Department found at verification that it was impossible for FRLP to trace its input coil for any merchandise that was sold after being placed in inventory as well as any merchandise sent to an outside processor for additional processing. POSCO claims that the majority of its sales were of inventoried merchandise.

POSCO claims that the Department applied as BIA an extremely punitive rate that exaggerated the overall impact the use of BIA should have had on POSCO's overall margin; that the Department failed to use the highest non-aberrational rate; and that the Department applied the rate to the wrong value, i.e., the gross price of the further manufactured product, rather than the sales price of the input hot-rolled coil. POSCO contends that an analysis of UPI's sales indicates that the margin used for BIA on FRLP's sales was an aberrational rate.

Department's Position: Section 776(c) of the Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In considering what to use as BIA, the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine on a case-by-case basis what constitutes BIA.

While POSCO did supply the Department with information on invoice number, customer name, month of shipment, quantity, gross unit price, packing form and costs, commissions, product information on the further-manufactured product, the FRLP division which made the sale, discounts, movement expenses, credit and warranty expenses, indirect selling expenses, technical service expenses, duty drawback, and further-manufacturing costs, POSCO did not provide such key product information as thickness, width and carbon content, terms of sale, destination of the merchandise, specific date of sale, specific date of shipment, actual date of receipt of payment, actual quantity by CONNUM, actual freight charges, actual cash discounts, or the relationship or identity of its commissionaire on a sale-specific basis. In general, POSCO only estimated this information.

Particularly troublesome is POSCO's failure to provide product specifications for merchandise sold by FRLP, instead "estimating" the CONNUM, that is, the discrete number assigned to merchandise that is identical in all respects outlined in Appendix V to the Department's antidumping questionnaire. POSCO assigned CONNUMs to FRLP's sales according to the percentage of UPI's sales to FRLP accounted for by each CONNUM. For example, if one percent of UPI's sales to FRLP were of CONNUM X, then POSCO assigned CONNUM X to the first one percent of sales on FRLP's sales listing. Thus the CONNUM assigned bears no relation to the actual physical characteristics of the product sold by FRLP, and it is therefore not an acceptable model match for purposes of comparison with FRLP's U.S. sales.

The extensive nature of POSCO's estimates, with respect to information for which we normally require sales-specific data, calls into question not only the adjustments on these sales, but the actual identity of the sales subject to the investigation. In its case brief, POSCO stated that the majority of FRLP's sales were inventoried (which would indicate that POSCO did not keep information on those sales). However, there is no evidence of this on record, nor was this claim made prior to the submission of the case brief. As stated in POSCO's submission and at verification, the merchandise is not produced until it can be allocated to a coil, thus indicating that little would need to go into inventory. In fact, of the ten sales selected by the Department for verification, we found that only two were inventory sales.

Therefore, we cannot rely on the information submitted by POSCO with respect to FRLP's sales and must resort to BIA for all of FRLP's sales to the United States. As POSCO substantially cooperated with our requests for information, and only failed to provide certain requested information, we are using a cooperative BIA for all of FRLP's sales. For BIA, we used the higher of (1) the average rate in the petition, or (2) the highest non-aberrational margin of any of POSCO's sales of hot-rolled steel, calculated using the sales for which there are margins.

For this final determination, we have applied the highest non-aberrational margin to the quantity of U.S. sales made by FRLP. Therefore, there was no need to calculate a margin on individual sales by FRLP, and the issue of whether to use gross or net price in such a calculation is moot. As to POSCO's claim that the margin we used as BIA for the preliminary determination was aberrational, we note that our margin calculations for the final determination have yielded a different percentage as the highest margin, and the quantity of sales at and around that margin has led us to conclude that the margin is non-aberrational.

Comment 15: POSCO argues that in calculating net USP for ESP sales, the Department failed to include duty, brokerage and marine insurance in the total cost for its profit/loss calculation. POSCO argues that the Department, in its March 18, 1993 amendment to the preliminary determination, should have considered the double-counting of foreign inland freight and ocean freight, and the correction of the base on which BIA was applied as ministerial errors. POSCO further argues that the exclusion of these expenses from the total cost resulted in an incorrect profit calculation, which in turn resulted in an understated U.S. price.

Department's Position: We agree with POSCO. Marine insurance, U.S. brokerage and U.S. duty costs should be included in the computed total costs used for determining UPI's further-manufacturing profit. Because gross U.S. price is reduced by marine insurance, U.S. brokerage, and U.S. duties in computing the USP, we have ensured that the allocated profit, which also is deducted from USP, does not include expenses for marine insurance, U.S brokerage, or U.S. duties, in order not to double deduct for these items. For the final determination, we have included duty, brokerage, and marine insurance

and the total cost for POSCO's profit/loss calculation.

Comment 16: POSCO argues that the Department should correct its methodology for merging the further manufacturing cost file with the sales data file for ESP sales of hot-rolled merchandise. POSCO argues that, because one category of hot-rolled product that is sold by POSCO to UPI can be used to produce several different finished products by UPI, two printouts of the individual sales by UPI were submitted to the Department in order to track each sale to the specific U.S. cost for that sale. One printout was for the sales listing, and the other was for the cost of further manufacturing. However, rather than matching the sales listing to the observation number in field OBSNOU, as requested, the Department matched the sales and cost data sets by CONNUM. POSCO argues that, as verified by the Department, this approach does not correspond to UPI's system nor does it provide for an accurate reflection of the cost of the finished product.

Petitioners maintain that the methodology employed by the Department for merging POSCO's further manufacturing cost file with the ESP sales data file is correct. Petitioners argue that it is the Department's longstanding practice to use average costs for inputs in calculating home market costs, as well as in calculating U.S. value-added costs.

Petitioners further argue that even if the Department were to depart from its practice and consider UPI's request for item-specific input matching, the fact that UPI attempted to match its sales to individual coil inputs in the further-manufacturing process was not verified. They argue that such a system would be open to considerable manipulation, with higher-priced sales assigned to the higher-cost inputs, even though the input specifications would be identical.

Department's Position: We agree with POSCO. The CONNUMs on POSCO's submitted further-manufacturing tape represent the hot-rolled product used to produce the further-manufactured product by UPI. Since the same type of hot-rolled product can be used to produce different types of further manufactured products (e.g., cold-rolled and galvanized products), POSCO included on the further-manufacturing tape the OBSNOU from the sales listing to distinguish the further-manufacturing costs for the different types of further manufacturing. It would be distortive to weight-average further-manufacturing costs incurred in further manufacturing cold-rolled coil from hot-rolled coil with costs incurred in further manufacturing galvanized coil from the same hot-rolled product. Therefore, for the final determination, we have merged the further-manufacturing cost database with the ESP database by OBSNOU.

Comment 17: POSCO contends that the Department incorrectly calculated the ESP cap for home market sales of hot-rolled coil. POSCO believes the error occurred in the computer program.

Department's Position: We agree with POSCO. Upon reviewing the computer program we found that we had converted home market indirect selling expenses from won to U.S. dollars twice, thereby improperly reducing the home market indirect selling expenses. We have corrected the computer program for the final determination.

Cost Issues

Comment 18: Petitioners maintain that POSCO's submitted COP and CV information should not be relied upon because it was based on POSCO's internal management accounting system, which (1) is not used to prepare, and does not tie to, its audited financial statements; (2) is not used in the normal course of business; (3) was not developed using a reliable methodology; and (4) does not reasonably allocate costs between subject and non-subject merchandise. Petitioners, therefore, claim that BIA should be used and that such information should be the highest CV reported in the petitions.

POSCO claims that the Department should use the submitted cost response, which is based on its internal management accounting system, because it is complete, accurate and verified. POSCO explained that it used its internal management accounting system instead of its normal accounting system because the internal management system identifies costs for very specific individual products. POSCO defends its use of this system by stating that the record shows that (1) POSCO's product costs were submitted in full compliance with the instructions in the Department's antidumping questionnaire; (2) the internal management system was an existing cost accounting system that is part of the cost accounting system used in preparing the financial statements; and (3) the submitted costs were verified, and they reconciled to the audited financial statements. Additionally, POSCO argues that the allocation bases used under both systems are exactly the same, with the only difference being in the product definitions.

Department's Position: We agree, in part, with petitioners. POSCO relied on its management cost system for reporting specific per unit product costs in its submission. However, at verification, POSCO was unable to reconcile these per unit costs to company documents maintained and used in the ordinary course of business. The management accounting system was not used in conjunction with the preparation of POSCO's audited financial statements, nor was it audited by an independent firm. The company could reconcile, with adjustments, the total costs of production from this management system to the total costs of production used in the financial accounting system and its audited financial statements. However, the adjustments made to the financial statement system could not be supported (see Comment 28).

Reliance on the accounting system used for the preparation of the audited financial statements is a key and vital part of the Department's determination that a company's cost data are credible. A management cost system which has not been audited and is not used for the preparation of the financial statements or for any purpose outside internal deliberations of the company does not assure the Department that such costs have been stated in accordance with generally accepted accounting principles, or that all costs have been appropriately captured by the system. For the above reasons, we conclude that POSCO's management cost system cannot be relied upon and, therefore, we adjusted the submitted costs of manufacturing for COP and CV upward by the difference between the financial accounting system total costs and the submitted management system total costs.

Comment 19: Petitioners maintain that the Department should increase POSCO's submitted COP and CV amounts to account for costs incurred at the Kwangyang facility's new mill. Since these costs represent actual expenses incurred for increasing production capacity of a product that is already manufactured, all POI amounts incurred should be included in POSCO's submitted costs.

POSCO argues that the costs incurred at the Kwangyang hot-rolled mill during the POI were properly excluded from its submitted cost of manufacturing. The total costs incurred in June 1992, the first month of operation of the Kwangyang mill, were extraordinarily high even though the mill operated at low capacity. Since the costs incurred in June represent start-up expenses, which will benefit future production, POSCO argues that at most the Department should normalize costs incurred at this mill over the period of time it took to attain full capacity.

Department's Position: We agree with petitioners. We consider the amounts expensed at the Kwangyang facility's new mill during June, 1992, not to be start-up costs because they are related to increasing production capacity for a product POSCO already manufactures. The operating results of this mill are relevant to POSCO's manufacturing operations as a whole during the POI. However, a portion of the costs incurred during June, 1992, at this mill, were for replacement rollers and parts. The Department considers these maintenance expenses to be period costs (i.e., they benefit production throughout the fiscal year). Therefore, we adjusted POSCO's submitted hot-rolled steel costs to include only that portion of the replacement parts costs allocable to the POI, and all of the remaining costs incurred at the Kwangyang facility's new mill during June, 1992.

Comment 20: Petitioners argue that transactions between POSCO and certain related companies did not occur at arm's-length prices because their financial statements reflected an operating loss during 1992. Therefore, the Department should increase POSCO's submitted costs.

POSCO contends that the overall operating loss experienced by one of its related suppliers (conducting 100 percent of its business in 1992 with POSCO) does not undermine the validity of its transfer price study as an indication of arm's-length transactions between POSCO and each company included in the study. This related company provided POSCO with several types of services during 1992. The specific service covered by the study was profitable during 1992. Therefore, the Department has no reason to conclude that the study cannot be relied upon.

Department's Position: We agree with POSCO in part. The submitted financial statements of the related company which experienced an overall operating loss during 1992 included detailed operating results by types of services provided. This detailed income statement shows that the specific service covered by the study was profitable during 1992. Therefore, the Department concludes that the transfer price study can be relied upon.

We also agree with petitioners in part. If the other services used in the production of the subject merchandise provided by this related party, which showed an operating loss, had been performed by POSCO directly, the costs would have been higher by the amount of the operating loss. Thus, we computed the average operating loss percentage based on the sample services and increased all related party transactions by this percentage. However, since the amount of the operating loss experienced by this company was very small, and the effect of this adjustment would have no impact on COP or CV, no adjustment was made.

Comment 21: Petitioners argue that the Department should not rely on POSCO's submitted consolidated financial statements for calculating interest expenses, because the financial statements are unaudited. Instead, the Department should use POSCO's audited unconsolidated financial statements for calculating its interest expenses.

Department's Position: We agree with petitioners. POSCO's submitted interest expense rate was based on its unaudited consolidated financial statements. Absent detailed testing usually associated with an audit, the Department cannot rely on these statements as submitted. Therefore, the Department recalculated POSCO's interest rate using POSCO's 1992 audited unconsolidated financial statements, which reflect POSCO's operating results alone. We used these 1992 financial statements because they encompass the entire POI.

Comment 22: Petitioners argue that the Department should adjust POSCO's submitted cost of materials to include all foreign currency translation losses.

POSCO argues that it correctly excluded foreign exchange translation gains and losses from its submitted costs because these amounts are unrealized paper gains and losses that do not relate to production, and in no way can they be considered part of the "actual cost of production."

Department's Position: We disagree with POSCO. In reply to POSCO's contention that these translation losses are unrealized, the Department notes that pursuant to Korean Generally Accepted Accounting Principles (GAAP): (1) Only when a foreign currency translation loss is greater than 5 percent of its common stock value can the amount be deferred; and (2) when the translation loss is under 5 percent of its common stock value, it is recognized in full in the current period. The fact that the translation loss is expensed if it is under 5 percent of the company's common stock value confirms that Korean GAAP considers these losses to be real even if there is no outflow of funds. From analysis of POSCO's 1992 audited unconsolidated financial statements, it appears that the majority of items denominated in foreign currency relate to short and long-term debt. Therefore, we consider these translation losses to be related to the cost of acquiring debt, and thus related to production. Therefore, we included all foreign currency translation losses and gains in POSCO's financing expense calculation.

Comment 23: Petitioners argue that the Department should correct POSCO's cost of sales figures used to allocate G&A expenses so that the total cost of sales amount used as the denominator in this calculation does not include duplicate amounts for products resold by related parties that were initially sold to them by POSCO.

Department's Position: We agree with petitioners. POSCO's submitted G&A and interest expense computations were computed using a cost of sales figure which includes duplicate cost of sales amounts for products resold by related parties that were initially sold to them by POSCO. As BIA, we recalculated these expenses by excluding from the denominator the cost of sales of all related companies, because we could not isolate the costs relating to the inter-company sales.

Additionally, the Department recalculated G&A and interest expenses. The Department considers G&A and interest to be period costs (i.e., at a rate based on an entire accounting year, rather than the POI). For the preliminary determination, we based POSCO's G&A and interest rates on its audited financial statements for the fiscal year ending December 31, 1991 because this was the last completed fiscal year prior to initiation of this investigation. At verification, however, we acquired POSCO's audited financial statements for the fiscal year ending December 31, 1992, but not the 1992 financial statements for its related further-manufacturing companies. Because the 1992 financial statements encompass the POI, we based the revised G&A and interest expense computations on POSCO's 1992 audited financial statements, but relied on the 1991 financial statements for the related further-manufacturing companies.

Comment 24: Petitioners claim that POSCO has not established that its non-operating miscellaneous income items are related to production of subject merchandise. Therefore the Department should disallow the offset to G&A for these items. Petitioners continue that even if the Department accepts

POSCO's claim that certain of its miscellaneous non-operating items were related to production of subject merchandise, the income should only be allowed as an offset to non-operating expenses.

POSCO claims that all miscellaneous income items used to offset G&A

expenses in its calculation are related to production and therefore were appropriately included.

Department's Position: We agree with POSCO, in part. We reviewed in detail the miscellaneous income items used to offset the G&A expenses and determined that certain items related to the production of the subject merchandise and others did not. We have disallowed the miscellaneous income offset for the items that did not relate to production.

Comment 25: Petitioners argue that the Department should adjust POSCO's submitted costs to include amounts for inventory write-downs and write-offs as reflected in POSCO's audited financial statements.

POSCO contends that the inventory write-downs and write-offs are included in the financial statements in the miscellaneous line item for non-operating income and expenses. POSCO states that it has included the miscellaneous non-operating income and expenses in its reported costs.

Department's Position: We agree with POSCO. Upon further review of verification exhibits, we determined that the financial statement line item, "non-operating miscellaneous expenses," included inventory write-downs and write-offs. We included all non-operating miscellaneous expenses in our revised calculation of G&A expenses.

Comment 26: Petitioners argue that the Department should adjust POSCO's submitted cost of further manufacturing for UPI to reflect the amortization of start-up costs over the same period reflected in its financial statements.

POSCO contends that the start-up costs should be amortized over the expected useful life of the assets because UPI will gain future benefit from these costs for as long as the machinery is in use.

Department's Position: We agree with petitioners. Absent specific evidence to the contrary, we consider expenses recorded in a company's financial statements to reflect actual expenses incurred in its operations. Therefore, we amortized the start-up expenses over the same period as they were amortized in the financial statements.

Comment 27: Petitioners maintain that a credit to the production rate variance of UPI for reimbursement of expenses from another company is not related to production and that it should be eliminated from the COM.

POSCO contends that it incurred overhead costs in connection with activities this credit relates to, and thus, it is appropriate to offset these costs with income derived from these activities.

Department's Position: We agree with POSCO. This credit relates to reimbursement of certain expenses which were included in POSCO's submitted overhead costs. Therefore, we did not exclude the credit.

Comment 28: Petitioners argue that UPI's interest expense computation should not include interest income generated from long-term investments because this income is not related to current production.

POSCO argues that the long-term interest income in question relates directly to the production of subject merchandise.

Department's Position: We agree with petitioners. Interest income generated from long-term investments is not considered related to the production of subject merchandise. Thus, we do not allow an offset to interest expense for interest income generated from long-term investments. However, since this adjustment would have no impact on submitted costs, no adjustment was made.

Comment 29: Petitioners maintain that the Department should adjust FRLP's submitted costs to include the year-end adjustments for a programming error, and the year-end physical inventory adjustment that was noted at verification.

POSCO argues that FRLP's programming error only affects the values recorded in FRLP's accounting system for coil purchases. Since POSCO's cost of manufacturing the coil was used in lieu of the purchase price by FRLP, this programming error has no effect on the submitted coil costs.

Department's Position: We agree with petitioners in part. The Department considers year-end inventory adjustments to be a period expense, and therefore a relevant cost during the POI. Thus, we adjusted POSCO's submitted costs to account for FRLP's year-end inventory adjustment. However, we made no adjustment for FRLP's programming error because we used POSCO's cost of manufacturing for coil instead of coil transfer prices for submission purposes. Thus, the programming error had no effect on the submitted costs.

Comment 30: Petitioners contend that the G&A expenses of FRLP should be increased to reflect additional expenses incurred for FRLP by related companies.

POSCO claims that the additional G&A expenses incurred by the related companies on FRLP's behalf have been included in the general and administrative expenses as management fees.

Department's Position: We agree with POSCO. We have determined that the additional G&A costs, incurred by related companies on FRLP's behalf, have been included in the G&A expenses of FRLP. Therefore, no adjustment is necessary.

Comment 31: Petitioners maintain that the Department should follow its preliminary determination and include the amount of forgiven interest expense in the calculation of UPI's interest expense.

POSCO contends that it correctly excluded certain UPI interest expenses because these amounts were never paid

Department's Position: We disagree with POSCO. Interest expense related to prior years which was forgiven in the current year does not constitute interest revenue to be used as an offset to current year interest expense. Therefore we adjusted UPI's 1992 interest expense by not allowing this deduction for forgiven interest.

Comment 32: Petitioners argue that since POSCO was unable to demonstrate either the accuracy or reasonableness of the allocation methodology of the internal management system, the Department should increase POSCO's costs for items that were accounted for differently between the internal management accounting system and the normal accounting system.

POSCO argues that no adjustment is needed for these items since the allocation methodology was verified.

Department's Position: We disagree with POSCO. The specific reconciling items that were accounted for differently between the two systems could not be supported by POSCO As indicated in Comment 14, the Department cannot rely on POSCO's management system, and we adjusted the submitted costs of manufacturing for COP and CV by the difference between the financial accounting system's total costs and the submitted management system's total costs.

Comment 33: Petitioners argue that POSCO's home market submission considers non-prime merchandise to be such-or-similar merchandise, whereas its submitted UPI data treats revenue from non-prime merchandise as an offset to costs. Since the Department must compare POSCO's and UPI's data, petitioners contend that the Department should recalculate POSCO's further manufacturing costs at UPI without the claimed offset for sales of non-prime merchandise, which POSCO considers to be similar merchandise in its home market, in order to ensure a fair comparison of POSCO's and UPI's data.

POSCO argues that it reported UPI's costs in accordance with the cost accounting methodology that it used in the ordinary course of business.

Therefore, there is no basis for the Department to disallow UPI's reported offset to cost of manufacture for non-prime merchandise.

Department's Position: We agree with petitioners. Therefore, in order to ensure a fair comparison of POSCO and UPI data, the Department adjusted POSCO's per unit cost of further manufacture at UPI by disallowing the offset for non-prime merchandise sales revenue and by attributing an average cost of further manufacturing to non-prime products.

Dongkuk's Issues

Comment 34: Citing to Final Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods from Canada (51 FR 15029, April 22, 1986) and Preliminary Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 7066, February 4, 1993), petitioners state that it has been the Department's longstanding practice to compare U.S. sales of prime merchandise only to home market sales of prime merchandise, and U.S. sales of non-prime merchandise to home market sales of non-prime merchandise. To do otherwise would be contrary to law. Petitioners argue that prime and non-prime products are not sold as the same product. Additionally, petitioners contend that, in Federal Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cooking Ware from Korea (51 FR 42873, November 26, 1986) and Final Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers from Costa Rica (52 FR 6852, March 5, 1987), the Department excluded from its calculations sales of non-prime merchandise when such sales only existed in the home market, without determining whether the merchandise differed in terms of the Department's model matching methodology.

Petitioners insist that Dongkuk's failure to identify differences between prime and non-prime merchandise in terms of the Department's model matching criteria is not a relevant factor with regard to the issue of making comparisons of U.S. and home market sales. Petitioners note that Dongkuk reported at verification that non-prime merchandise "generally is used for low-tech projects that do not require strict specifications" and that non-prime merchandise is sold at a lower than usual price. Petitioners argue that this demonstrates that such merchandise "is of a lesser quality and likely does not meet the same specifications as Dongkuk's prime merchandise."

Dongkuk counters that the Department should continue to follow the same product matching criteria outlined in the issues appendix to the preliminary determination. Dongkuk argues that, according to the statute, as long as the merchandise contains the physical characteristics outlined by the Department, and was sold in the ordinary course of trade, it should be part of the pool of home market sales used in the analysis. Dongkuk cites section 771(16) of the Act in support of its argument that wherever possible the Department should match identical products. In this case, two products are the same to the extent that they share the same physical characteristics indicated in Appendix V of the questionnaires issued in these investigations.

Department's Position: We agree that Dongkuk properly reported its non-prime sales based on the Department's classification criteria. However, we also agree with petitioners' assertion that sales of prime merchandise should be compared only to prime merchandise, and non-prime merchandise should only be compared to non-prime merchandise.

Since Dongkuk only made sales of prime plate to the United States, we have excluded all home market sales of non-prime plate (see Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina). All of Dongkuk's U.S. sales have been matched either to home market sales of prime merchandise or to CV.

Comment 35: Petitioners contend that Dongkuk has not established that the related freight company, Chunyang Transportation Company, Ltd. (Chunyang), supplied its services to Dongkuk on an arm's-length basis. Citing to Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan (53 FR 12552, April 15, 1988), petitioners claim that the documentation Dongkuk submitted in its questionnaire response was not clearly related to the transportation of comparable plate products and that these charges should be disregarded. Petitioners claim that the Department's review, at verification, of a post-initiation freight contract does not demonstrate that Chunyang's services were provided to Dongkuk on an arm's-length basis. They assert that the Department's practice, as set forth in the Antidumping Manual, Import Administration, International Trade Administration, Chapter 8, VII at 15; and Final Determination of Sales at Less Than Fair Value; Certain Circular Welded Carbon Steel Pipes and Tubes from the Republic of Korea (49 FR 9926, March 16, 1984), has been to disregard post-initiation behavior. As a result, petitioners argue that the Department should use BIA with respect to Dongkuk's foreign inland freight charges. As BIA, the Department should use the highest inland freight charge reported for any U.S. sale.

Dongkuk claims that it demonstrated that freight services by Chunyang were provided at arm's-length rates and that the Department extensively verified the arm's-length nature of those services. The verification included a discussion with the general manager of Chunyang review of Chunyang's sales ledgers, verification of the figures provided, and tracing of the payment in detail. Dongkuk indicates that the random testing of invoices, by itself, would have been sufficient arm's-length test, citing Ferrosilicon from Venezuela. Dongkuk notes that Chunyang, under its contract with Dongkuk, marks up its loading and trucking costs, and claims that this clearly demonstrates that these services are being provided at arm's length Further, the Department confirmed in its cost verification that the rates for loading and trucking slab to the Pohang works from the Pohang port—rates which are based on those of an unrelated trucking company—are almost identical to those charged for loading and trucking slab between the port of Pusan and the Pusan plate works.

Department's Position: We agree with Dongkuk that domestic inland freight charges were made at arm's-length prices. At verification, we found that Chunyang charged Dongkuk the same as it charged an unrelated customer on sales made after the initiation of the investigation. (See Sales Verification Report, May 4, 1993 at 29.) We compared domestic inland freight charges for post-initiation shipments to domestic inland freight charges incurred on shipments made before the initiation of the investigation and found that the initiation of the investigation was not a factor which affected Chunyang's pricing of Dongkuk's domestic inland freight. Therefore, we have determined that Chunyang's domestic inland freight charges involving shipments made on behalf of Dongkuk were at arm's length. Accordingly, we disagree with petitioner's argument that BIA should be used in this instance.

Comment 36: Petitioners state that the Department should make revisions to Dongkuk's reported U.S. expenses to account for discrepancies in movement charges found at verification.

Department's Position: The discrepancies found at verification were

VOL 58 ISS 130 JL 9 1993 UMI

minor clerical errors. Since there were no discrepancies in other sales we examined, we made adjustments only to those sales that were affected by the discrepancies we discovered. (See the sales verification report at 3.)

Comment 37: Dongkuk claims that the Department verified Dongkuk's sales responses to be accurate and complete. Dongkuk claims that the Department verified that, during the POI, Dongkuk did not make "local" sales of cut-to-length plate, and that its home market sales of American Society for Testing and Materials (ASTM) specification plate were shown to have been made in the ordinary course of trade (i.e., quantities and prices of ASTM plate sold in the home market were comparable to similar Korean specification plate (see Final Determination of Sales at Less Than Fair Value; Certain Circular Non-Alloy Steel Pipe from Korea (57 FR 42942, September 17, 1992) and Final Results of Antidumping Duty Administrative Review; Electrolytic Manganese Dioxide from Japan (58 FR 28551, May 14, 1993) (Comment 1)); that its home market sales of ASTM plate were generally made to order and were not the result of overruns; and home market sales of ASTM plate were made in the same manner, using the same distribution channels, as home market sales of Korean specification plate).

Department's Position: We agree with Dongkuk that no local sales of cut-to-length plate were made during the POI. We also determine that home market sales of ASTM specification plate were made in the ordinary course of trade based on the factors mentioned by Dongkuk, which we verified. Therefore, in our analysis, we have compared U.S. sales to home market sales of ASTM merchandise.

Comment 38: Petitioners argue that Dongkuk's failure to report related party purchases of minor inputs and services prior to verification should result in the use of BIA. Petitioners urge that information submitted after verification be rejected as untimely and returned to Dongkuk. Petitioners argue that, because Dongkuk failed to report accurately its cost of production data, as BIA, the Department should adjust Dongkuk's reported cost of manufacture by increasing Dongkuk's factory overhead by the 8 percent statutory profit minimum.

Dongkuk notes that during verification the Department examined the arm's-length nature of transactions between Dongkuk and related parties that furnish minor inputs or services. Dongkuk claims it inadvertently did not specifically report these transactions because those inputs are insignificant components of the overall cost of producing plate and they do not relate solely or even primarily to the production of plate. Dongkuk argues that the Department verified that the omission of this small number of related party transactions for minor inputs results in no changes to Dongkuk's reported costs. Dongkuk argues that the Department therefore should not adjust Dongkuk's factory overhead upward as BIA.

Department's Position: We disagree with petitioners. At verification, we found these related party transactions to be insignificant in relation to Dongkuk's production activities as a whole. By reviewing Dongkuk's accounts payable sub-ledgers and invoices and summaries of purchases from related and comparable unrelated parties (see Cost Verification Report at 4 and 5), we also verified that these transactions were made at arm's-length prices, and that they did not affect the company's reported costs. Therefore, no adjustment was necessary.

Comment 39: Petitioners contend that Dongkuk's home market and U.S. prices, which are reported on a theoretical weight basis, should be adjusted downward in accordance with Dongkuk's cost of manufacture data, which are reported on an actual weight basis.

Petitioners note that the actual weight of any order will always be greater than its theoretical minimum weight, and therefore a comparison of prices and constructed value on differing weight bases would significantly skew the dumping margin. Petitioners cite Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Pipes from Taiwan (57 FR 53705, November 12, 1992) where the Department noted that comparisons should not be made between actual- and theoretical-weight-based data.

Petitioners argue that, because Dongkuk did not provide data sufficient to make an adjustment, the Department should use BIA and adjust Dongkuk's home market prices downward in the test for sales made below the cost of production. They also argue that to the extent that a CV is needed for comparison purposes, Dongkuk's U.S. prices should also be adjusted downward by the same percentage.

Dongkuk argues that, contrary to petitioners' allegation, Dongkuk reported its sales and cost of production data on the same weight basis. Dongkuk argues that both its cost and sales data are based on the theoretical weight calculated from the actual dimensions of the slab and/or finished plate (thickness, width and length). Therefore, Dongkuk argues, there is no basis for the use of BIA.

Department's Position: We agree with Dongkuk. The cost data are reported on the same basis as the sales data. Accordingly, no adjustment to home market price or U.S. price is necessary.

Comment 40: Petitioners argue that inspection and testing costs should be classified as factory overhead costs in accordance with the Department's normal practice. Petitioners argue that under the Department's normal practice, all expenses that relate to the manufacturing process are included in materials, labor, or factory overhead, rather than in selling, general, and administrative (SG&A) expenses. Citing Offshore Platform Jackets and Piles from Japan (51 FR 11788, April 7, 1986), petitioners argue that the Department should adjust Dongkuk's CV for such expenses.

Dongkuk states that it is confused as to which testing expenses petitioners are referring. Dongkuk maintains that if petitioners are referring to the quality control and testing expenses as performed on its plate line, these expenses were properly classified and reported as overhead expenses, and Dongkuk argues that the Department confirmed this at verification. If, on the other hand, petitioners are referring to testing expenses reported in the U.S. sales listing for individual U.S. sales, Dongkuk argues that these expenses were correctly reported on a transaction-specific basis, as required by the Department, since specific tests related to individual sales are identified with specific sales. Dongkuk argues that testing expenses associated with specific sales, such as these, are direct expenses for which the Department regularly grants a circumstances-of-sale adjustment. (See Antifriction Bearings from Germany and Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Japan (54 FR 19101, May 3, 1989).)

Department's Position: We agree with Dongkuk. At verification, we determined that inspection and testing costs that did not directly relate to a sale were properly classified as fixed overhead expenses. Sales-specific special testing and inspection was reported as direct selling expenses. Therefore, reclassification of these costs is not necessary.

Comment 41: Petitioners argue that Dongkuk's G&A expenses should be recalculated to exclude non-operating income items, as such items are, under the Department's normal practice, excluded from the calculation of G&A expenses. Petitioners cite Final Results

of Antidumping Duty Administrative Review; Certain Stainless Steel Cooking Ware from the Republic of Korea (56 FR 38114, August 12, 1991) and Final Determination of Sales at Less Than Fair Value; Titanium Sponge from Japan (49 FR 38687, October 1, 1984).

Dongkuk contends that its G&A expense properly includes both non-operating income and expense items. Dongkuk argues that in several recent cases, the Department has recognized that to include non-operating expense for an item without including its corresponding income is inconsistent and does not conform to basic accounting principles. Dongkuk cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan (54 FR 19076, May 3, 1989); Final Determination of Sales at Less Than Fair Value; New Minivans from Japan (57 FR 21937, May 26, 1992); and Final Results of Antidumping Duty Administrative Review; Television Receivers, Monochrome and Color, from Japan (56 FR 5392, February 11, 1991). Dongkuk further argues that because these expense and income items relate to the overall production operations of Dongkuk, they were correctly included in the submitted G&A expense. Dongkuk also cites Final Determination of Sales at Less Than Fair Value; Small Business Telephone Systems and Subassemblies Thereof from Korea (54 FR 53141, December 27, 1989).

Department's Position: We agree with Dongkuk, but only to the extent that non-operating expense and income relate to production. Certain non-operating income and expenses do not relate to production of subject merchandise. Accordingly, we have adjusted the G&A expense ratio to include only items that relate to production. The Department also reclassified amortization of bond discount and amortization of bond costs to interest expense as these items relate to financial costs.

Comment 42: Petitioners argue that R&D expenses must be included in the calculation of COP and CV and that failure to report such expenses should result in the use of BIA. Petitioners cite Final Determination; Rescission of Investigation and Partial Dismissal of Petition; High Information Content Flat Panel Displays and Display Glass Therefor from Japan (56 FR 32376, July 16, 1991) and Final Determination of Sales at Less Than Fair Value; Cell Site Transceivers from Japan (49 FR 43080, October 26, 1984).

Dongkuk argues that, contrary to petitioners' assertion, its general R&D expenses were properly included in its G&A, as verified by the Department.

Department's Position: We agree with Dongkuk that R&D was in fact reported. We verified that the R&D incurred by Dongkuk was general in nature and properly reported as a G&A expense. Accordingly no adjustments are necessary with respect to R&D. (See Cost Verification Report at 12 and Exhibit 9 to the Cost Verification Report.)

Comment 43: Petitioners claim that, since the preliminary determination, Dongkuk has submitted COP and CV information; therefore, the Department should perform a COP test and exclude home market sales found to have been made below the COP. Citing to the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand (57 FR 21065, May 18, 1992) and Final Determination of Sales at Less Than Fair Value; Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea (56 FR 16305, April 22, 1991), petitioners state that the Department should exclude home market sales of each product for which ten to ninety percent of the home market sales were made at prices that were below the COP, or if over ninety percent of such sales were made below the COP, FMV should be based on CV.

Department's Position: We agree with petitioners and, for the final determination, we have conducted a cost test. As a result of this test, we have found that, in the home market, for some models, between 10 and 90 percent of sales were made below the COP; for others, more than 90 percent of sales were made below the COP; and for the remaining models, less than 10 percent of sales were made below the COP. We have treated each home market model according to our sales below cost methodology outlined above in the section titled "Cost of Production."

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot-rolled, cold-rolled, and corrosion-resistant steel from Korea that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**, and entries of steel plate on or after November 6, 1992, which is 90 days prior to the publication of the preliminary determination as directed by 19 CFR 353.16(c). Because we have determined that critical circumstances do not exist with respect to hot-rolled steel, we are directing the Customs Service to release any bonds or other securities pertaining to, and liquidate all entries of, hot-rolled steel from Korea that were entered, or withdrawn from warehouse, before February 4, 1993, for which liquidation was suspended solely as a result of this proceeding. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the USP, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Certain Hot-Rolled Carbon Steel Flat Products:	
Pohang Iron and Steel Company, Ltd	8.19
All Others	8.19
Certain Cold-Rolled Carbon Steel Flat Products:	
Pohang Iron and Steel Company, Ltd	14.53
All Others	14.53
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Pohang Iron and Steel Company, Ltd	17.88
All Others	17.88
Certain Cut-to-Length Carbon Steel Plate:	
Dongkuk Steel Mill Company, Ltd	7.87
All Others	7.87

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea, published concurrently with this notice, which are 0.02 percent *ad valorem* for hot-rolled steel, 0.05 percent *ad valorem* for cold-rolled steel, 0.10 percent *ad valorem* for corrosion-resistant steel, and 0.02 percent *ad valorem* for steel plate, will be subtracted from the respective margins for cash deposit or bonding purposes. This results in

UMI
VOL 58 ISS 130 JL 9 1993

deposit rates of 8.17 percent for POSCO and all other exporters of hot-rolled steel, 14.48 percent for POSCO and all other exporters of cold-rolled steel, 17.78 percent for POSCO and all other exporters of corrosion-resistant steel, and 7.85 percent for Dongkuk and all other exporters of steel plate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15621 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–808; A–201–809]

Final Determinations of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Robin Gray, Gerry Zapiain, or Derek Parks at the Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

Final Determination

We determine that imports of certain corrosion-resistant carbon steel flat products (corrosion-resistant steel products), and certain cut-to-length carbon steel plate (cut-to-length steel plate) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). We also determine that critical circumstances exist with respect to corrosion-resistant carbon steel products from Mexico. Both determinations are made as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determinations (58 FR 7111 (February 4, 1993)), the following events have occurred:

Verification of responses to the Department's questionnaires regarding sales information took place in Mexico during March of 1993. Verification of respondent's responses to the Department's questionnaires regarding cost of production (COP) information took place in Mexico during April of 1993.

We received a request for a public hearing from petitioners on February 12, 1993. Industrias Monterrey, S.A. de C.V., (IMSA) and petitioners filed case briefs on May 17, 1993. IMSA and petitioners filed rebuttal briefs on May 20, 1993. A public hearing was held on May 24, 1993.

Scope of Investigation

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that the products covered by these investigations constitute one such or similar category for each class or kind of merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B–099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of certain corrosion-resistant carbon steel flat products from Mexico to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. IMSA did not report sales of the subject merchandise to related parties in the home market. For IMSA's purchase price sales to customers other than Duferco, we compared USP and FMV based on the provided concordance. When no match was available, we used constructed value (CV). For IMSA's sales to Duferco, IMSA did not provide usable control numbers in its database. Where possible, we matched product characteristics in the IMSA to Duferco database with identical product characteristics in the Duferco sales database to arrive at appropriate control numbers. The products in the IMSA to Duferco database were then assigned a control number from the identical product in the Duferco sales database. For sales without an identical match, the Department used the weighted-average margin calculated for IMSA's sales. The use of best information available (BIA) for these sales was not appropriate, because the Department did not instruct respondent to remedy the questionnaire response's deficiencies with regard to the control numbers in the IMSA to Duferco sales listing. Moreover, the Department had preliminarily accepted IMSA's claim that Duferco was a related party, and did not reject that claim until April 8, 1993, after the sales verification. Therefore, absent notice of a deficiency, it was reasonable for IMSA to conclude that the Department would not use the IMSA to Duferco sales listing, and that correction of that database was, therefore, unnecessary. After the Department's April 8 decision on the relationship was made, the correction to the IMSA to Duferco database would have been untimely. See Comment 9.

In the same database, respondent provided no information for 19 sales. The Department, therefore, used as best information available (BIA) the average quantity from all other sales in that listing and assigned to this value the higher of: the average petition rate or the highest non-aberrant margin calculated for this class or kind of merchandise.

As discussed below in the "best information available" section, the margin for cut-to-length steel plate is based on BIA.

United States Price

For IMSA we based USP on purchase price, in accordance with section 772(b) of the act, because the subject merchandise was sold to unrelated

customers in the U.S. prior to exportation to the United States.

For IMSA we calculated purchase price based on packed F.O.B. prices to unrelated customers in the United States. We made adjustments, where appropriate, for rebates, inland freight, foreign inland insurance, direct and indirect selling expenses, and inventory carrying expenses.

We added the absolute amount of the Mexican 10 percent value-added tax incurred on the home market comparison product to USP. See Appendix II, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

Foreign Market Value

In order to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of the subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of certain corrosion-resistant carbon steel flat products by IMSA. For home market to purchase price comparisons, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we calculated the FMV for IMSA based on F.O.B. point of delivery prices charged to unrelated customers in the home market. We made adjustments for discounts and rebates, movement expenses, and indirect and direct selling expenses. In addition, we made offset adjustments where commissions were paid in the home market and not in the United States. Furthermore, in the calculations of FMV we recalculated IMSA's home market credit expenses by subtracting discounts from the gross unit price.

We made no adjustment to FMV for the Mexican value-added tax. See, Appendix II, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

Price to Price Comparisons

We adjusted for taxes paid in Mexico by adding to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation.

For these final determinations we based FMV on home market prices. We calculated FMV based on ex-factory, FOB or delivered prices inclusive of packing, to unrelated customers. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. Where we were not able to match at the same level of trade, we made comparisons without regard to level of trade. We deducted home market packing costs and added U.S. packing costs. Where appropriate, we made an adjustment for physical differences in the merchandise, in accordance with 19 CFR 353.57.

Best Information Available

As stated in the Department's preliminary determination on cut-to-length, Altos Hornos de Mexico (AHMSA) withdrew its information from the record of these investigations; therefore, the Department, in accordance with section 776(c) of the Act, used BIA for AHMSA. Section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party fails to provide requested information, or otherwise significantly impedes the Department's investigation in determining what is the best information available. Because AHMSA failed to respond to the questionnaire, consistent with Department practice, we are using as BIA for AHMSA petitioners' highest adjusted margin of 49.25 percent. (See, e.g., Heavy-Forged Hand Tools from the People's Republic of China 56 FR 244 (January 1, 1991)).

For a discussion of our general application of best information available, see the section on "Best Information Available" in Appendix II of the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Cost of Production

Based on petitioner's allegations, and in accordance with section 773(b) of the Act, the Department initiated investigations to determine whether IMSA had home market sales that were made at less than its cost of production (COP).

If over 90 percent of respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between 10 and 90 percent of a respondent's sales were at prices above the COP, and such sales were made over an extended period of time, we disregarded only the below-cost sales.

In order to establish that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product for only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP for two or more months, then the below cost sales were considered to have been over an extended period of time.

Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing.

We relied on IMSA's COP data, except in the following instances where the costs were not appropriately quantified or valued. The Department:

1. Included employee profit sharing expenses;
2. Revised the profit calculation based on changes to the submitted COP data;
3. Based G&A expenses on actual annual amounts from the financial statement;
4. Recalculated material costs by weight-averaging the hot-rolled and the cold-rolled black steel purchases from the home market and from the export market.

Critical Circumstances

We made a preliminary affirmative determination of critical circumstances subsequent to our preliminary determination of sales at LTFV (58 FR 11835, March 1, 1993). The Department used BIA in determining the existence of critical circumstances for the preliminary determination since no other information was available. For the final determination we found critical circumstances to exist. We made this determination pursuant to section 735(a)(3) of the Act, based upon the methodology described in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia. For our analysis, we used company-specific data submitted by IMSA for corrosion-resistant carbon steel products to examine the level of imports in the pre- and post-petition periods. To determine the length of the comparison periods, the Department

normally uses the longest period for which information is available up to the effective date of the preliminary determination. However, where there is a concurrent countervailing duty (CVD) investigation involving the same merchandise, we normally perform the comparison up to the suspension of liquidation resulting from the affirmative preliminary determination in the CVD investigation (see Pure and Alloy Magnesium from Canada 57 FR 30939 (July 13, 1992)). Since there is a CVD investigation of corrosion-resistant carbon steel products from Mexico, our comparison period for this critical circumstances investigation is five months, to take into account the December 7, 1992, effective date of suspension of liquidation under the CVD investigation. Therefore, we compared sales during the five months prior to and the five months following the filing of the petition and found that sales increased by more than 15 percent. Based on our analysis, we found that there have been massive imports. Because IMSA's margin is greater than 25 percent, we have imputed to the company knowledge that the imports were being sold at less than fair value. See Comment 11.

Interested Party Comments

Comment 1: Petitioners claim that the Department should use BIA for its final determination for corrosion-resistant carbon steel products for various reasons, including: Allegations of an incomplete listing of its U.S. sales; lack of a proper product concordance; improper level of trade classifications; incorrect dates of sale; proposed home market comparisons that fail the Department's twenty percent product comparability test; improperly included returns in the home market sales listing; miscategorized matching characteristics; and incorrect cost reporting issues. Petitioners further argue that in selecting a BIA rate for the final determination, the Department may not choose a rate lower than that of the preliminary determination.

Department's Position: The Department based its preliminary determination on BIA because of what appeared at that time to be fundamental flaws in IMSA's responses, such as improper dates of sale and levels of trade. However, the Department afforded respondents an opportunity to remedy certain deficiencies. IMSA took advantage of that opportunity to address our concerns about its original submission. Based on IMSA's response to our concerns and the results of verification, the Department has determined that most deficiencies were resolved. We have, therefore, used IMSA's data, except in a few instances.

Petitioners' specific criticisms of IMSA's data are discussed individually below in comments 1A through 1J. Regarding petitioners' general legal argument, we find as inapposite the cases petitioners cite. Petitioners rely on Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, 57 FR 28380 (June 24, 1992), Aspheric Ophthalmoscopy Lenses from Japan, 57 FR 6703 (February 27, 1992), and Certain Welded Stainless Steel Pipe from Taiwan, 57 FR 53705 (November 12, 1992). All of those cases were situations in which the Department found the information to be "so flawed * * * as to render them completely unreliable." Lenses from Japan, 57 FR at 6705, see also Antifriction Bearings from France, 57 FR at 28380, ("[NPBS] home market database containing only 20 percent of required sales is not an adequate basis for [FMV]"); WSSP from Taiwan, 57 FR at 53708 ("[t]he number and severity of the problems * * * have been determined, by the Department, to constitute uncooperative behavior").

In contrast to the cases cited above, IMSA verification confirmed that there are no significant deficiencies in the data provided by IMSA. Therefore, we have concluded that IMSA's data is generally reliable. Because we have based the margin calculation on IMSA's data, petitioners' arguments concerning the selection of a BIA rate are moot.

Comment 1A: Petitioners indicate that since the Department ruled that IMSA is not related to a U.S. customer, Duferco, IMSA did not submit a complete listing of its sales to that company and, therefore, shielded certain of its U.S. sales to unrelated parties from the investigation process. Petitioners further argue that the Department should base FMV on BIA rather than constructed value.

Respondent indicates that it provided complete databases relevant to IMSA to Duferco sales, IMSA's U.S. sales to customers other than Duferco, and Duferco's sales to its customers.

Department's Position: During the completeness portion of the verification, we verified that the total value of U.S. sales reported in all of IMSA's sales databases tied to the value reported in the company's 1992 financial statement. The data on sales from IMSA to Duferco was analyzed and verified. However, the Department did not verify sales from Duferco to its unrelated customers because the Department determined that Duferco was not related to IMSA. Therefore, USP is based on IMSA's sales to Duferco, not Duferco's sales to third parties.

We disagree with petitioner that BIA is appropriate in for sales from IMSA to Duferco because that verified database provides a reasonable basis for fair value comparisons. See "Fair Value" section of this notice and comments 1B and 9.

Comment 1B: Petitioners claim that IMSA did not submit a product concordance for the IMSA to Duferco sales database for the preliminary determination and, therefore, the Department may not use the product concordance which IMSA provided in the cost verification exhibits.

Department's Position: The sales data provided for IMSA's sales to Duferco failed to provide usable control numbers which would correspond to the concordance provided. Subsequent to the Department's decision that IMSA and Duferco are not related, IMSA attempted to submit at the cost verification a revised concordance based on IMSA's sales to Duferco, which the Department rejected as untimely. However, IMSA had timely provided a concordance based on Duferco sales to its first unrelated customers. For our final analysis, where possible we utilized that concordance. We matched product characteristics in the IMSA to Duferco sales database with identical product characteristics in the Duferco sales base to arrive at appropriate control numbers. The products in the IMSA-Duferco database were then assigned a control number from the identical product in the Duferco sales database. The Department then had a usable concordance for its analysis. For sales without a concordance match, the Department used the weighted-average margin calculated for IMSA's sales. See "Fair Value" section of this notice.

We find petitioners' reliance on Certain Hot-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 7103, inappropriate. The concordance was not used in that case because respondent had improperly included in the concordance level of trade information, and because the level of trade accounting methodology was not correct. In contrast, there are no such flaws in IMSA's product concordance. Therefore, the Department determined that it could rely on the concordance for identical matches.

Comment 1C: Petitioners note that in the home market sales submissions prior to verification, IMSA failed to classify home market customers by level of trade, but rather classified customers by market sector. At verification IMSA claimed that these market sector

indications coincide with the level of trade distinctions. Petitioners argue, however, that information on the record does not support this claim. Specifically, petitioners cite information on the record which demonstrates that home market sales categorized as "industrial" or "construction" include sales to distributors and a number of sales categorized as "commercial" include sales to end-users.

Respondent argues that in its databases IMSA identified whether each transaction was made to the industrial, commercial or construction markets, and that each of these markets relate to a particular level of trade. Because the market segments reported in the databases identify unique levels of trade, IMSA argues that these market segments should be used to match IMSA's home market sales to U.S. sales.

Department's Position: In their responses, IMSA reported that it was not able to distinguish level of trade in either the home market or the U.S. market as instructed in the Department's original questionnaire, Appendix I, p. B–1–8. Instead, IMSA classified its customers by sector, i.e., commercial, industrial, or construction.

We confirmed at verification that IMSA's customer classification sectors correspond directly with the level of trade classifications used by the Department. In the home market, IMSA has customers in three different market sectors:

Industrial: These end-user clients use the steel for transformation into final products such as refrigerators and automobiles.

Commercial: These customers are distributors who purchase the steel for resale to the final producers.

Construction: These end-user clients use the steel in major construction projects such as shopping malls and industrial centers.

We verified that all customers in IMSA's commercial classification are resellers, while all the customers in the construction and industrial sectors are all end-users. Therefore, the market sector classifications used by IMSA correspond to the Department's standard levels of trade.

Level of trade adjustments were not a factor used by IMSA in the model match determinations.

Comment 1D: Petitioners contend that IMSA failed to follow the Department's date of sale reporting instructions and misreported the date of sale for both its U.S. purchase price and home market transactions.

They argue further that IMSA's justification for amending their submission to report date of shipment as date of sale is flawed. First, Petitioners maintain that evidence on the record and industry standard do not support a conclusion that terms of sale changed substantially prior to shipment. Second, Petitioners insist that while the Department found no evidence that IMSA's purchase order numbers were tracked within IMSA's sales data base, for either home market or U.S. sales, review of IMSA's own sample sales documents included in IMSA's response show information which could have been used to trace the documents to their source.

Respondent argues that they correctly used its shipment date as the sale date. They note material changes in the terms of the sale between receipt of a purchase order and shipment of the merchandise. Furthermore, because IMSA's computer system does not track purchase orders, it would be impossible to use the purchase-order date as the sale date.

Department's Position: We agree with the respondent. While the term "sale" is not defined in either the Act or the regulations, the Department has consistently found that a sale has occurred when all basic terms are agreed upon. (See, e.g., Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan, 53 FR 3227 (February 4, 1988)). During the course of verification it was established that the terms of sale change so frequently between order and shipment, that they are not firmly established until shipment. Therefore, use of the date of shipment as IMSA's date of sale is consistent both cases relied on by petitioners. Cellular Mobile Telephones and Subassemblies from Japan, 50 FR 45447, October 31 1985; Certain Forged Steel Crankshafts From the Federal Republic of Germany, 52 FR 28170, July 28, 1987. In *CMTs*, we noted that it is Departmental practice to date sales "from the point in the transaction where the basic terms of the contract are known and price to be paid is determined." Similarly, in Crankshafts, we determined that the purchase order represented the date of sale because the purchase order "reflect[ed] an understanding as to the price and quantity under which the shipments were made." 55 FR at 28175.

We also verified that IMSA followed this standard practice in determining its date of sale. Although there may be an occasional reference to an order number on shipping documents, the Department determined that IMSA does not maintain a sales data set which integrates order numbers.

Comment 1E: Petitioners argue that certain proposed home market product comparisons fail the Department's 20 percent product comparability test.

Department's Position: As discussed in comment 1B, the Department assigned control numbers for IMSA sales to Duferco on the basis of identical characteristics. As a result, this issue is moot.

Comment 1F: Petitioners argue that IMSA's inclusion of returns in its home market sales listing has distorted that data base.

Respondent contends that the total number of returns included in the home market sales database is so small that it did not affect the margin calculation.

Department's Position: The Department verified that IMSA had included returns in the home market data base, contrary to instructions in the Department's questionnaire. We verified the total value of returns. We also confirmed that, although IMSA could identify the total value of returns, it did not have the ability to identify which specific sales were returns. We determined that the verified total value of returns is so small that it would not affect the margin calculation. Therefore, we have used the home market data base to make the final fair value comparisons.

Comment 1G: Petitioners argue that IMSA incorrectly added the following matching characteristics to the "FINISHH" category:

1. Embossed
2. Silicon polyester
3. Straight polymodified
4. Two finished strength polyester
5. Bonderite

Petitioners claim that these characteristics should fall within the "METCATH" criteria. By miscategorizing them, petitioners contend that IMSA has skewed its proposed product comparisons because characteristics for a relatively important matching criteria (METCATH) were placed much farther down in the matching hierarchy than is appropriate.

Department's Position: IMSA stated in its May 20th rebuttal brief that the subcategories of embossed, silicon polyester, straight polymodified, and bonderized are used to describe the paint type and are not related to the METCATH field. In its September 11, 1992 Section A response, however, IMSA specifically listed the silicon polyester subcategory as a prepaint coating. The embossed and bonderized subcategories were correctly listed as finishes and the straight polymodified was not specifically listed. Overall, IMSA's product classification verified; silicon polyester is the only characteristic that was misclassified. Because the effect of this single characteristic on the final analysis

would be negligible, the Department determined that it is appropriate to use IMSA's classification of these characteristics.

Comment 1H: Petitioners state that IMSA improperly reported market-specific material costs outside the period of investigation.

IMSA maintains that it properly calculated a separate weighted-average cost for the black steel processed and sold to Duferco because the requirements of the American Goods Returned program make that material traceable.

Department's Position: IMSA revised its submitted material costs to reflect costs incurred during the POI. However, IMSA did not comply with the Department's request to provide weighted average costs consistent with the Department's standard practice. Furthermore, although requested during verification, IMSA did not provide supporting information supporting their claim that the American Goods Returned program required them to trace and use steel specific to the U.S. market, nor are the requirements of this program relevant to the Department's fair value determination. Therefore, the Department revised the submitted CV amounts to reflect weighted-average costs of materials related to all markets, not market-specific weighted average costs.

Comment 1I: Petitioners claim that IMSA did not report the actual costs of the corrugating, slitting and cutting performed by a related company.

IMSA states that it reported both the production costs and the transfer prices of the related company.

Department Position: The Department agrees with IMSA. IMSA provided evidence that the transfer prices from the related party were above the cost of production. Therefore, no adjustment was made.

Comment 1J: IMSA states that it calculated the cost of zinc and paints for a particular product by (1) adjusting the standard quantity for each product by the weight-averaged production yield for the period of investigation, and (2) multiplying that amount by the weight-averaged cost of the input. IMSA argues that its methodology provides an accurate calculation of the material expenses, and is in accordance with the Mexican GAAP.

Department's Position: The Department agrees with respondent. We analyzed this subject during verification and found that the costs were calculated properly.

Comment 2: Petitioners argue that the Department should deny IMSA's home market discount (OTHSIS1H) claims on certain sales. Petitioners state that IMSA reported that this discount is provided on products which undergo a special treating process. However, a review of IMSA's home market sales listing reveals that it also reported this discount for some sales of products that had not undergone that process.

Department's Position: The Department determined at verification that IMSA had in fact granted this discount to customers as an incentive to try the specially-treated product. However, IMSA gave this discount on sales of standard product as well. Although the discount was granted more broadly than IMSA originally indicated, the Department verified that the discount was indeed granted in the amounts reported. The Department, therefore, accounted for this discount in its final analysis.

Comment 3: Petitioners state that sales made in the U.S. market on the basis of Theoretical Mill Weight (TMW) contain an implicit discount as opposed to sales made in the home market based on actual weight. While pricing on a TMW basis, the customer is charged for less steel than is actually purchased. Petitioners therefore argue that IMSA's U.S. sales prices should be adjusted to account for reporting U.S. prices on a theoretical mill weight basis.

Department's Position: We verified that IMSA's sales to the United States were indeed made on a TMW basis and that their sales to the home market were based on actual weight. We adjusted for this difference by reducing all U.S. prices by the average difference between actual and theoretical mill weight.

Comment 4: Petitioners argue that IMSA's home market technical service expenses should be treated as indirect selling expenses because not all expenses included were variable expenses and because IMSA could not directly tie the expenses to the sale of subject merchandise.

Respondent contends that it properly reported its technical services as direct selling expenses. They argue that, although these expenses include both fixed and variable elements, they may still be classified as direct selling expenses as confirmed by the Court of International Trade in *AOC International* v. *United States*, 721 F. Supp. 314 (Ct. Int'l Trade 1989).

Department's Position: The Department agrees with respondent. In *AOC*, the CIT held that respondent was entitled to claim its warranty costs as direct expenses, without having to establish that each element of those costs (e.g., labor) constituted a direct expense. Likewise, in the present case the Department determined that technical service expenses are directly related to sales and verified the reported technical services costs. Therefore, it was unnecessary to determine that each element of these costs individually qualified as a direct selling expense.

Comment 5: Petitioners argue that the Department should recalculate IMSA's home market credit expenses and that the Department should recalculate IMSA's turnover rate using information obtained at verification.

Department's Position: We agree with petitioners, in part. IMSA stated in its November 24 Supplemental Response, and the Department has verified, that its calculation for credit expenses is the following:

$$\frac{A}{360} * B * C = \text{Imputed Credit}$$

Where:

A=IMSA's short-term interest rate.
B=Number of days between shipment of the merchandise from IMSA's warehouse to payment for the merchandise.
C=Gross unit price per metric ton.

Because IMSA did not adjust gross unit price to account for discounts, IMSA's home market credit expenses were misstated. Therefore, the Department recalculated IMSA's home market credit expenses to account for the discounts. At verification, we randomly selected sample sales and confirmed that the average turnover rate was consistent with IMSA's data. Therefore, we have used IMSA's reported turnover rate to calculate home market credit expenses.

Comment 6: Petitioners argue that IMSA's home market advertising expenses should be reclassified and treated as indirect selling expenses.

Respondent states that IMSA's advertising expenses were correctly classified as direct selling expenses, as verified by the Department.

Department's Position: Petitioners incorrectly state that IMSA provided no sample advertising to support its claim that its advertising costs are a direct selling expense. IMSA did, in fact, submit examples of its advertising (e.g., September 11, 1992 Section A Response, Exhibit 6–D). The Department verified that IMSA incurs the cost directed at its customers' customers. Therefore, the advertising expenses are properly classified as direct expenses.

Comment 7: Petitioners state that respondent did not report gross prices in the purchase price and the IMSA to Duferco sales listings in the appropriate currency, and suggests that the Department convert prices for purchase

price sales to U.S. dollars based on the highest monthly peso-to-dollar exchange rate.

Department's Position: The Department's questionnaire instructions directs respondents to report prices in the currency in which the transaction was made. We verified that IMSA invoices its purchase price and Duferco sales in both Mexican pesos and U.S. dollars. However, payments are made in pesos. Therefore, because the transactions are actually made in pesos, the company correctly reported price in their purchase price and Duferco sales listings.

Comment 8: Petitioners state that the Department cannot match IMSA's reported home market sales to U.S. sales made to Duferco because no usable product concordance, no product control numbers and no reliable difference in merchandise data are on the record for such sales.

Department's Position: For reasons discussed in the "Foreign Market Value" section of this notice, the Department matched sales in the IMSA sales to Duferco database to the home market database based on product characteristics for identical matches. The Department used the average margin for non-identical matches.

Comment 9: Petitioners state that in lieu of a concordance, the Department should not base FMV on CV because to do so would be inconsistent with Department practice where a respondent fails to report all home market sales.

Petitioners further indicate that according to section 733 (A)(1) of the Act that foreign market value be based on home market sales unless there were no home market sales or the quantity of home market sales is so small as to form an adequate basis of comparison. Petitioners argue that where the home market is the appropriate basis for foreign market value and where a respondent is unable or unwilling to report those sales, the Department must use BIA.

Department's Position: For margin calculations, the Department matched sales in the IMSA sales to Duferco database to the home market database based on product characteristics for identical matches. For sales with no matches we used the average margin. (See "Fair Value" section of this notice). Petitioners' reliance on Certain Internal-Combustion Industrial Forklifts from Japan, 53 FR 12552 (April 15, 1988) is unpersuasive. That case involved a failure to report home market sales. In contrast, the Department has verified that IMSA reported all home market and U.S. sales. Thus, we have a complete, verified sales listing and a verified concordance that enables the Department to compare sales of identical merchandise. (See "Foreign Market Value" section). Therefore, we determined that it is appropriate to use IMSA's data rather than BIA.

Comment 10: Respondent contends that, based on the General Agreement on Tariffs and Trade (GATT) Antidumping Code Article 10.3, the Department does not have the legal authority to suspend the liquidation of entries more than 120 days after the preliminary determination and before the final determination is published.

Petitioners argue that, because IMSA requested a postponement of the final determination, Article 10.3 of the GATT Antidumping Code authorizes the Department to continue to suspend liquidation for a period not exceeding six months.

Department's Position: We agree with petitioners. Under the GATT Antidumping Code (the GATT Code), there are limits on the amount of time provisional measures may be in place without affirmative findings of less than fair value sales and injury. Article 10.3 of the GATT Code provides for the imposition of provisional measures for up to four months in any case and for as long as six months "upon request by exporters representing a significant percentage of the trade." We deem a request by respondents to extend a final determination to be a "request" within the meaning of Article 10.3 of the GATT Code. This interpretation is evident in the U.S. antidumping law, in which deadlines for investigations are structured such that provisional measures can remain in place up to the time of the ITC final, consistent with the GATT Code. Section 735(b)(2)(A) of the Act provides that the standard deadline for an ITC final is 120 days (four months) after the preliminary, the point at which provisional measures begin. Upon the request of producers of a "significant portion of the merchandise" under investigation, the Department can extend the final determination up to 135 days. Section 735(a)(2). In such cases, the ITC must render a final injury determination within 45 days, i.e., 180 days (6 months) after provisional measures were instituted. Section 735(b)(2)(B).

In the present case, respondent requested an extension of deadline for the Department's final determination. Therefore, consistent with the GATT Code, the Department may maintain provisional measures in this case for a period of up to six months.

Comment 11: Respondents argue that the Department's preliminary determination of critical circumstances was baseless and should be disregarded because the Department relied on best information available rather than using information submitted by IMSA. Further, IMSA contends that the company-specific evidence submitted by IMSA demonstrates that IMSA's exports to the United States after the antidumping petition was filed were not massive relative to domestic production, nor did IMSA have the requisite knowledge that it was selling subject merchandise at less than fair value. Respondent alleges that the increase in imports was caused by other factors, such as an expansion in the mobile home market.

Respondent also objects to basing the critical circumstances determination on five-month comparison periods. Respondent advocates basing the critical circumstances determination on a comparison of IMSA's U.S. exports of subject merchandise during the six-month comparison periods, July through December and January through June.

Petitioners claim that U.S. imports of the subject merchandise from Mexico following the filing of the petition have been massive, i.e., greater than 15 percent, based on IMSA's own data filed with the Department. Petitioners' analysis is based on a comparison of imports from Mexico during the five months prior and the five months following the filing of the petition. Petitioners also maintain that imports of U.S. origin coils processed in Mexico should be included in the Department's critical circumstance analysis so long as the Department maintains its position that such merchandise is within the scope of this investigation.

Department's Position: The Department used BIA in determining the existence of critical circumstances for the preliminary determination since no other information was available. For the final determination we used respondent's data and found that critical circumstances exist. We compared sales during the five months prior to and the five months following the filing of the petition and found that sales increased by more than 15 percent. Therefore, we determine that post-filing imports were massive. Because the margin is greater than 25 percent, we have imputed to IMSA knowledge that the imports were being sold at less than fair value. (Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21061 (May 18, 1992); Antifriction Bearing (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy, 54 FR 19096, 19100 (May 3, 1989) (Final Determination of Sales at Less Than Fair Value)).

Other factors raised by respondents (e.g., increase in mobile home production) are not relevant to a determination of critical circumstances, as defined in the Act. In addition, IMSA failed to present a supporting analysis sufficient to warrant consideration of the ratio of imports to domestic consumption. See "Critical Circumstances" section of Appendix II of this notice.

We based our analysis on a five-month period because of a companion countervailing duty case. This is consistent with our practice of analyzing as much data as possible up to the date of the preliminary determination. See Pure and Alloy Magnesium from Canada, 57 FR 30939 (July 13, 1992), and the "Critical Circumstances" section of this notice.

Respondent's objection to this five-month period is misplaced. Nothing in (Antifriction Roller Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany), 54 FR 19030 (May 3, 1989) suggests that the Department is precluded from limiting the period of analysis of critical circumstances as a result of a concurrent countervailing duty case.

Comment 12: Petitioners argue that the Department should include goods imported under HTS item 9802.00.60, including Grade E sheet, in the scope of the investigation. Respondent argues that Grade E sheet should be excluded because it is not substantially transformed into a product of Mexico. Both parties argue that antidumping duties on subject merchandise imported under 9802.00.60 should be collected only on the foreign value added.

Department Position: It is the Department's position that merchandise imported under HTS item 9802.00.60 is subject to an antidumping duty order if it has acquired a new country of origin through substantial transformation in the subject country. The Department has determined that Grade E sheet is substantially transformed into a product of Mexico and is, therefore, subject to this investigation. Further, the Act requires the Department to assess antidumping duties on all subject merchandise, including imports under HTS item 9802.00.60, in a manner that will offset completely the amount of any dumping. Therefore, the Department calculates antidumping duty rates so that the full dumping margin will be offset when the rate is applied to the full value of the entered merchandise. (See Scope section of the General Issues Appendix for a more detailed discussion of these issues).

Comment 13: Petitioners argue that IMSA should include employee profit sharing expenses in its cost of production as a general expense.

Respondent likewise indicated that it inadvertently failed to include the amount disbursed under the company's profit-sharing plan in the cost of production.

Department Position: The Department agrees with petitioners and respondent and has increased general and administrative to account for these costs.

Comment 14: Petitioners state that for non-Duferco purchase price sales, the Department should use verified cost data in making physical difference in merchandise adjustments.

Department's Position: The Department agrees with the petitioners. At verification, the Department noted discrepancies between the variable costs IMSA reported for COP and CV, and those reported in the concordance files for difference in merchandise (DIFMER) comparisons. The Department verified variable costs from the COP and CV files and, therefore, used those verified costs to compute the difference in merchandise adjustments.

Comment 15: Petitioners argue that inflation losses related to non-monetary assets should be reflected in the costs of production, because Mexican accounting rules require IMSA to value its non-monetary assets at a net replacement value and determine the amount by which the net replacement value assets has changed with respect to inflation.

Respondent argues that since the Department does not include balance-sheet items in the calculation of COP and because non-monetary assets should not be included in COP, the gain or loss from non-monetary assets does not affect current income.

Department Position: The Department agrees with IMSA. IMSA's reported depreciation expense reflects the effect of valuing non-monetary assets at current replacement cost. Therefore, the gain or loss associated with the holding of non-monetary assets has been reflected in the reported costs. Therefore, we made no adjustment.

Comment 16: Petitioners believe that IMSA's reported selling expenses in its COP submission are misstated based on a comparison of these to the verified selling expenses for identical control numbers contained in the home market sales listing. Petitioners asked the Department to replace the selling expenses (TOTSELEX) in the COP file with the verified selling expenses contained in the sales listing.

Department's Position: We agree with petitioners. The Department verified each of the individual selling expenses in the home market sales listing and COP file. Selling expenses in these data bases are reported differently because in the sales data base, total selling expenses are allocated over revenue, and in the COP file total selling expenses are allocated over cost of manufacture. For purposes of determining COP we have used the verified total direct and indirect selling expenses reported in the sales listing.

Comment 17: Petitioners argue that revenue from second quality merchandise should not offset actual production costs because the second quality merchandise should be considered a separate product.

IMSA maintains that it reported the cost structure exactly as it is accounted for by the company, and in accord with Department practice.

Department Position: IMSA's submitted prime costs included the cost of second quality merchandise and scrap. IMSA offset the prime costs with revenue from the sale of seconds and scrap. While the Department does not agree with the accounting for second quality merchandise, we have accepted IMSA's calculations. In this case, no distortion was noted with regard to the costs of prime product. The sales of second quality merchandise were insignificant and were not used for this final determination.

Comment 18: Petitioners argue that the manufacturing costs in the COP submission do not reconcile to the financial statements, and that the Department should increase the cost of production to account for these discrepancies.

IMSA states that it reported the actual manufacturing costs and the actual weighted-average cost of materials, which required a change from its budgeted cost system.

Department Position: The Department agrees with IMSA. Because IMSA reported costs of materials required a change from IMSA's budgeted cost system, the material costs could not be reconciled to the financial statements. However, the Department verified the other actual costs reported by IMSA to its financial statements. Therefore, we have used these costs with appropriate revisions (see Comment 1H).

Comment 19: Petitioners argue that IMSA should have calculated its G&A expenses on an annual basis rather than a six month period.

Department Position: The Department agrees with petitioners. It is the Department's standard practice to calculate the G&A expense on an annual

basis and have recalculated this expense accordingly.

Comment 20: Petitioners argue that the profit ratio for constructed value should have been calculated based on production costs, not based on revenue as respondent presented in its submission.

Department Position: The Department agrees with the petitioners because section 773(e)(1)(B)(ii) requires a minimum profit to be eight percent of the sum of general expenses and costs. We have recalculated profit accordingly.

Comment 21: Petitioners argue that the statute and regulations authorize the Department to base AHMSA's margin entirely on BIA. Petitioners further argue that assigning AHMSA the highest antidumping duty alleged in the petition for cut-to-length is consistent with the Department's longstanding practice in cases involving a respondent company that refuses to supply any information.

Department's Position: We agree with petitioners that the Department should use best information otherwise available in the final determination for AHMSA in the cut-to-length carbon steel plate investigation. We also agree with petitioners that as best information available, the Department should use the highest alleged margin in the petition as had been done in the preliminary determination. (See "Best Information Available" section of this notice.)

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the Federal Reserve rates, we used the average monthly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of cut-to-length steel plate and corrosion-resistant carbon steel products from Mexico that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1993, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins for corrosion-resistant steel products are:

Producer/manufacturer/exporter	Weighted-average margin percentage
Industrias Monterrey S.A. de C.V.	64.50
All Others	64.50

The weighted-average dumping margins are as follows for cut-to-length steel plate:

Producer/manufacturer/exporter	Weighted-average margin percentage
AHMSA, S.A. de C.V.	49.25
All Others	49.25

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the affirmative final determination in the concurrent countervailing duty investigation involving sales in the United States of certain corrosion-resistant carbon steel products from Mexico which is 5.71 percent *ad valorem*, will be subtracted from the dumping margin for deposit or bonding purposes, resulting in a cash deposit rate of 58.79 percent for IMSA and all other exporters. In the concurrent countervailing duty investigation involving sales in the United States of certain cut-to-length carbon steel plate from Mexico which is .09 percent *ad valorem*, will be subtracted from the dumping margin for deposit or bonding purposes, resulting in a cash deposit rate of 49.16 percent for AHMSA and all other exporters.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15622 Filed 7–8–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–421–803 and A–421–804]

Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffery B. Denning or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4194 or (202) 482–4136, respectively.

Final Determinations

We determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel) and certain cold-rolled carbon steel flat products (cold-rolled steel) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determinations and postponement of final determinations (58 FR 7113, February 4, 1993), the following events have occurred:

We received requests for a public hearing from Hoogovens Groep BV (Hoogovens) on February 11, 1993, and from petitioners on February 16, 1993. Hoogovens and petitioners filed case briefs on May 4, 1993, and rebuttal briefs on May 7, 1993. A public hearing was held on May 10, 1993. Additionally, Hoogovens filed a "scope" brief on May 20, 1993 and rebuttal "scope" brief on May 25, 1993. Hoogovens included in its May 20 submission an allegation that petitioners lack standing as regards certain subject merchandise. However, pursuant to 19 CFR 353.31(c)(2), that allegation was made in an untimely manner, and has not been considered.

Sales and cost verifications took place in the Netherlands and the United States from February through April of 1993.

Scope of the Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products and certain cold-rolled carbon steel flat products. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Final), which is being published concurrently with this notice.

Period of Investigations

The period of these investigations (POI) is January 1, through June 30, 1992.

Such or Similar Comparisons

We made comparisons of such or similar merchandise as discussed in our Notice of Preliminary Determinations.

Fair Value Comparisons

To determine whether sales of hot- and cold-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Generally, we calculated USP according to the methodology described in our notice of preliminary determinations, except that we are now making an adjustment for returns and allowances for certain exporters sales price (ESP) sales. Based on our findings at verifications, we made the following revisions: (1) We recalculated packing expenses to adjust for the difference between reported standard costs and actual costs (see Comment 14); (2) we recalculated credit expenses for certain ESP sales to reflect a revised imputed interest rate; and (3) we recalculated indirect expenses incurred in the Netherlands on ESP sales so that the expenses calculation and the per-metric-ton expense factor calculation was derived from the same basis, i.e., net price (see Comment 15).

We revised the general and administrative expenses, and Netherlands-incurred interest costs components of our value added calculations, based on Hoogovens' 1992 financial statements (see Comments 11 and 12). We also adjusted further manufacturing costs on certain sales to account for revised packing costs incurred in the United States.

We excluded all U.S. sales of seconds quality merchandise from our calculations because these sales amounted to an insignificant portion of Hoogovens' U.S. sales (see Comment 2).

As a result of a recent decision by the Court of Appeals for the Federal Circuit, we are now adjusting USP to account for home market indirect taxes (see Appendix II to the Argentine Final, see also, Comment 5).

Foreign Market Value

Generally, we calculated FMV according to the methodology described in our notice of preliminary determinations. Based on our findings at verification, we made the following revisions: (1) We recalculated packing expenses to adjust for the difference between reported standard costs and actual costs (see Comment 14); (2) we recalculated credit expenses used in our circumstances of sales adjustment for home market sales and on purchase price sales to reflect a revised imputed interest expense (see Comment 17) and; (3) we recalculated indirect selling expenses so that the expenses calculation and the per-metric-ton expense factor calculation was derived from the same basis, i.e., net price (see Comment 15).

As a result of revisions to the related party test utilized in the preliminary determinations (see Appendix II to the Argentine Final) we have included in our analysis sales to an additional home market related party.

Cost of Production

We calculated Hoogovens' cost of production (COP) according to the methodology described in our notice of preliminary determinations, except that we are now making the following revisions, based on Hoogovens' 1992 financial statements: (1) We recalculated Hoogovens' general and administrative expenses, (see Comment 11) and; (2) we recalculated Hoogovens' interest expenses (see Comment 12).

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales were at prices above the COP, and such sales were made over an extended period of time, we disregarded only the below-cost sales.

In order to establish that below cost sales were made over an extended period of time, we performed the following analysis on a product specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP for two or more months, then the below cost sales were considered to have been over an extended period of time.

We did not find in either the hot-rolled or the cold-rolled investigations that more than 90 percent of Hoogovens' sales of a comparison product were at prices below the COP and over an extended period of time. In the hot-rolled investigation, where between 10 and 90 percent of the sales were at prices below COP, we found that some below-cost sales of comparison products were made over an extended period of time. These sales have been discarded from our FMV calculations. In the cold-rolled investigation, we found that, where between 10 and 90 percent of the sales were at prices below COP, none of the below-cost sales of comparison products were made over an extended period of time. Therefore, no home market cold-rolled sales have been discarded from our FMV calculations. Accordingly, as a result of our sales below cost investigations, it was not necessary to disregard all home market sales for any comparison product, nor was it necessary to calculate FMV based on constructed value (CV).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by Hoogovens by using standard verification procedures, including the

examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Hoogovens has argued that certain products should be excluded from the scope of these investigations.

Department's Position: For a complete response to Hoogovens' arguments (and those of other interested parties) see Appendix I to the Argentine Final.

Comment 2: Hoogovens argues that we should abandon our comparison of U.S. sales of seconds quality steel to home market sales of prime steel. Citing *Sinico Steel Tube Div., Ferrum, Inc.* v. *United States*, 694 F.Supp. 959 (CIT 1988), Hoogovens argues that the Department has the discretion to disregard U.S. sales that are "unrepresentative of respondent's practices in the U.S. market." Further, citing, *inter alia*, *Ipsco, Inc.* v. *United States*, 714 F.Supp. 1211 (CIT 1989), Hoogovens argues that we must disregard certain sales if their unrepresentativeness leads to inaccuracy in our determinations or unfairness to respondents. Among other reasons, Hoogovens argues that its seconds sales are unrepresentative because the sales involve an insignificant percentage of its total U.S. sales.

Department's Position: Because these sales amount to an insignificant portion of Hoogovens' total U.S. sales (less than five percent by volume) we will disregard them in our final determinations. See Appendix II to the Argentine Final.

Comment 3: Hoogovens argues that the Department should substantially revise the model matching methodology used in these investigations because of two alleged flaws. First, Hoogovens asserts that two of our matching criteria, product thickness and product width, are overly broad, resulting in circumstances where non-identical products are considered "identical," despite the fact that the differences in thickness and width of these products allegedly give rise to differences in the cost of producing such merchandise. Hoogovens argues that section 773(a)(4)(c) of the Act allows adjustments to FMV for differences in "similar" merchandise only, as defined by the Act, and prohibits such "difmer" adjustments to identical merchandise. Hoogovens concludes that the Department must either revise its matching hierarchy, creating smaller dimensional criteria, or it must allow a difmer adjustment for identical merchandise.

Second, Hoogovens argues that the Department erred in correcting certain product comparisons submitted in its product concordances. These product comparisons involve circumstances where Hoogovens employed a numerical methodology instead of our hierarchical model matching methodology. Hoogovens argues that the Department's instructions contained in Appendix V to the antidumping questionnaire (which describes the Department's model matching methodology) are ambiguous. Hoogovens alleges that Appendix V gives no guidance for circumstances where the home market and U.S. product share few specific criteria under the matching methodology for that class or kind of merchandise. Hoogovens argues that when fewer of the criteria for a particular comparison are identical under our hierarchical methodology than are identical under a numerical methodology, (where the "best" match is that match with the highest number of identical product characteristics) the comparisons should be made based on the latter methodology.

Petitioners respond that the Department should not alter its model matching methodology in any respect. Citing *United Engineering & Forging* v. *United States*, 779 F.Supp. 1375 (CIT 1991), petitioners argue that the Court of International Trade has held that it is the responsibility of the Department, not interested parties, to determine what constitutes most similar merchandise.

Department's Position: We disagree with Hoogovens' claim that our width and thickness criteria are too broad. These investigations involve numerous products with widely varying physical dimensions. In selecting our width and thickness ranges, we considered: (1) Steel producers' production capabilities (i.e., the dimensions of products which can be produced on certain rolling mills) and the production costs of the various rolling mills used by steel producers; (2) the burden of reporting requirements for narrower dimensional ranges, versus the decrease in the accuracy of our difmer adjustments for wider dimensional ranges (unduly narrow groupings would have required respondents to report an ever-increasing amount of data regarding the variable costs of production for products within each group, and the Department would have been faced with the need to perform an ever-increasing number of difmer calculations—with an uncertain increase in accuracy) and; (3) the specific dimensional ranges used by steel producers in their pricing. We note that steel producers, including Hoogovens, routinely base their pricing of hot- and cold-rolled steel products on dimensional ranges.

Furthermore, we reject Hoogovens' claim that we must expand our use of difmer adjustments if we do not revise our width and thickness ranges. As noted, steel producers routinely use identical base prices for products with differing physical dimensions. Moreover, when Hoogovens commented on our proposed model matching methodology at the beginning of these investigations, they never proposed any specific dimensional ranges (nor do they do so in their case brief). However, interested parties in other of these steel investigations did make specific proposals for dimensional ranges—some of which included ranges with greater breadth than those utilized in our matching criteria, and these parties did not raise concerns about our use of difmers. (See, e.g., comments by petitioners, and Japanese and Canadian interested parties located in the public general issues file and respective country files for these investigations.) We considered these facts and those mentioned above when we established our matching methodology, and the application of "difmer" adjustments. We believe our application of difmers under that methodology is reasonable because it follows the industries' pattern of treating products with differing dimensions similarly for purposes of pricing. We have done the same, except here it is for purposes of matching sales so that we can compare prices.

We also disagree with Hoogovens' claim that we should abandon our hierarchical model matching methodology. The specific product characteristic considered in these hierarchies, and that characteristic's location within the hierarchy, is based upon the Department's considered determination of the relative importance of the characteristic. Hoogovens' suggested numerical approach to matching in no way considers the relative importance of the particular product characteristic. Additionally, Hoogovens' suggested approach provides no objective measure of when the hierarchical approach should be abandoned for the numerical approach. If we accepted Hoogovens' recommendation, we would be faced with an unpredictable variety of matching methodologies which would likely be driven by what would be most advantageous to the particular responding party. Further, we simply reject Hoogovens' claim that our instructions in Appendix V were unclear. These instructions state:

VOL
58
ISS
130
JL
9
1993
UMI

"Similar comparisons must be made by applying the following criteria in the order specified." And, despite the fact that our questionnaire instructed all respondents to contact the case analyst immediately if they have any questions regarding the selection of similar merchandise, Hoogovens never contacted us with its alleged confusion.

The Court of International Trade has heard numerous challenges to model matching methodologies selected by the Department, most recently in *United Engineering & Forging* v. *United States*, 779 F.Supp. 1375 (CIT 1991). In that case the court reiterated its position in prior cases, stating:

> It is of particular importance that the administering agency itself make the required determination of what constitutes most similar merchandise * * * considering that the issue may be a complex one on which reasonable minds could differ * * *. It is the administering agency rather than an interested party that should make the determination as to what "similar" characteristics are of the most significance. Additionally, it is hard to imagine that a foreign manufacturer, given the opportunity of selecting what constitutes similar merchandise, and assuming that there exists more than one product from which a choice can be made, would not make the choice of merchandise most advantageous to itself.

Id., at 1381 (citation omitted). The issues raised by Hoogovens, as well as other interested parties, were considered in detail when we devised our matching methodology for these investigations. In fact, as noted by petitioners, we selected all matching criteria, including width and thickness, and marshalled those criteria into a hierarchy only after consultation with the petitioners in all the current steel investigations, with industry experts, and after taking into consideration comments from interested parties. Hoogovens has not persuaded us that we should now discard those considered efforts, and revise our matching methodology.

Comment 4: Petitioners argue that Hoogovens has systematically misreported a model matching product characteristic (tolerance) for home market and U.S. sales, and that for all such sales we should use, as best information available (BIA), pursuant to section 776(c) of the Act, the assumption that all affected home market sales have regular tolerances and all affected U.S. sales have tight tolerances. Further, petitioners argue that we should adjust the difmer calculations for all affected sales so that they reflect these assumptions.

Hoogovens argues that the correct tolerance information is on the record and that it should be used in the final determinations.

Department's Position: At the commencement of verification, Hoogovens stated that it had erred in its reporting of four product matching criteria for certain sales in the home market and purchase price databases for both classes or kinds of merchandise. Hoogovens concurrently submitted information correcting these errors, including tolerance. However, some of the errors noted by Hoogovens, if corrected, would establish new products and, consequently, entirely new product concordances for each class or kind of merchandise. Because of this revised product matching, we cannot properly incorporate these sales into our margin calculations using the concordances on the record in these proceedings.

Because of these and other difficulties with product concordances submitted by respondents in various of the steel investigations currently being conducted by the Department, we have decided not to accept any corrections to the product concordances submitted previous to our verifications in these cases.

The bases for this decision are as follows: First, the Department gave all responding parties in these steel cases the opportunity to submit any new correcting information, including product concordances, to the Department prior to all verifications. This submission was due on or before December 21, 1992; a date early enough in the proceedings to allow case analysts and other interested parties (with access to such information) time to review the submissions prior to verification. Second, there would be an extreme burden placed on the Department if we were either to attempt to correct the myriad errors in the various product concordances on the records in these cases, or, were we to allow submission of yet another concordance, in checking corrections to these concordances. Finally, this decision provides the most even-handed treatment to all respondents in these cases. Consequently, because of the complexity of these steel investigations, and because the errors in Hoogovens' reporting of product characteristics are limited in nature, we will use, as BIA, the weighted-average of the calculated positive dumping margins in each class or kind of merchandise.

Comment 5: Both Hoogovens and petitioners argue that the Department must discard its former practice, utilized in the preliminary determinations, of making a circumstance-of-sale adjustment to FMV for foreign value added taxes (VAT), citing *Zenith Electronic Corp.* v. *United States*, No. 92–1043 (CAFC March 19, 1993) (*Zenith*). Additionally, both parties indicate that they support the methodology announced by the Department in response to that decision (see Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Administrative Review, 58 FR 25803 (April 28, 1993) (Cement from Mexico). Petitioners, however, claim that we cannot use that methodology here because Hoogovens has reported its home market prices net of the Dutch VAT tax, and so the administrative record does not contain the information required for its application. Petitioners also stated (in the table of contents to their case brief) that we should measure the extent of pass through to home market customers of these taxes.

Department's Position: We agree that we must follow the Court's instructions in *Zenith* (see the "United States Price" section, above). However, we disagree with petitioners' claim that we cannot utilize the Cement from Mexico methodology in our final determinations. Since the Dutch VAT rate is on the administrative record, we have the information required to calculate the VAT, and have done so. Additionally, regarding the measurement of tax pass through, in applying the Cement from Mexico methodology we imposed no limitation on consumption taxes added to USP, based on the incidence of such taxes in the home market, because the statute requires no such limitation. We are not following *Zenith* v. *United States*, 613 F.Supp. 1382 (CIT 1986), *appeal dismissed*, 875 F.2d 291 (CAFC 1989), and its progeny with respect to this issue, because we do not agree with that decision and have appealed this issue to the Court of Appeals for the Federal Circuit in *Daewoo* v. *United States*, Fed. Cir. Nos. 92–1558–62. The Court of International Trade has upheld our position that the statute does not require a measurement of "tax pass-through" in *Federal-Mogul Corp.* v. *United States*, Slip Op. 93–17 (CIT Feb. 4, 1993).

Comment 6: Hoogovens argues that the Department erred in refusing to treat home market sales to automotive customers as a distinct level of trade, as regards sales to non-automotive customers. Hoogovens argues that sales to its automotive end-users are a separate level of trade because: (1) It has a unique sales force for automotive customers who, unlike all other sales groups, sell more than one type of steel product (cold-rolled, hot-rolled and galvanized steels); (2) sales to automotive customers are based on

unique agreements characterized by longer terms, and provisions for just-in-time delivery, tighter tolerance levels and an electronic order-entry system; and (3) it participates in "simultaneous engineering" projects with its automotive customers. Hoogovens cites, *inter alia*, Final Results of Sales at Less Than Fair Value; Limousines from Canada, 55 FR 11036 (March 26, 1990) (Limousines), as support of their argument.

Petitioners respond that the Department should continue to treat all home market end-user sales as a single level of trade. Petitioners argue that in Limousines, the Department relied upon the fact that the respondent had demonstrated that these customers purchased in larger quantities, at lower prices, and required different sales resources. Petitioners claim that Hoogovens has, at least, totally failed to demonstrate significant differences in selling expenses for its automotive customers.

Department's Position: We agree with petitioners. While Hoogovens has demonstrated, to some extent, that sales to automotive end-users are conducted differently than sales to other end-users, Hoogovens has not correlated differences in selling expenses as regards these sales versus non-automotive sales, nor has Hoogovens provided support for differences in pricing between these types of customers, as discussed in Import Administration Policy Bulletin, 92–1, and as was demonstrated by the respondent in Limousines. Consequently, we will continue to treat all end-user sales as a single level of trade.

Comment 7: Hoogovens argues that the Department's selection of BIA for the preliminary determinations did not follow the BIA selection methodology stated in Section B of the Appendix to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 58 FR 7066 (February 4, 1993). Specifically, Hoogovens argues that the Department's use of margins derived from the comparison of U.S. sales of seconds quality merchandise to home market sales of prime merchandise violated the proviso in Section B that BIA would be "* * * the highest non-aberrational calculated margin * * *." Hoogovens argues that margins derived from seconds-to-prime comparisons are inherently aberrational because they are substantially higher than margins derived from prime-to-prime comparisons, and because they occupy an extreme percentile of all calculated margins.

Department's Position: As discussed in Comment 2 above, for the final determinations we have excluded Hoogovens' sales of seconds quality merchandise from our analysis. Therefore, Hoogovens' argument is moot.

Comment 8: Hoogovens argues that the Department should include in its final determinations unreported ESP sales by two of its U.S. affiliates. These sales were first brought to the Department's attention at the beginning of the U.S. verifications. Hoogovens argues that they discovered the unreported sales while preparing for verification, and that the sales went unreported because of oversights which occurred during the press of preparing questionnaire responses. Hoogovens also argues that no statutory or regulatory provision prohibits the Department from accepting and using these sales data. Finally, Hoogovens claims that accepting reporting of these sales would not create an additional burden on the Department, and the fact that, if accepted, they would be unverified does not prohibit their use in our determinations, citing, *inter alia*, *Monsanto Co. v. United States*, 698 F. Supp. 275, 281 (CIT 1988) (*Monsanto*).

Petitioners argue that the Department should not accept reporting of these sales because Hoogovens has failed to fully respond to our questionnaires, and because it is against Department policy to allow Hoogovens to "reconstruct its response after the preliminary determination." Further, petitioners argue that we are authorized to use BIA for these sales.

Department's Position: We agree with petitioners. These unreported sales amount to a significant portion of the respective U.S. affiliate's POI sales of subject merchandise. The late submission of this information left no opportunity to analyze the sales reporting and provide deficiency questions, and no opportunity for petitioners to analyze and comment on these sales. In addressing this issue previously, we have stated:

> "The untimely submission of key information only days before, during, and after the verification precluded the Department from conducting a reasonable and *thorough analysis of this information prior to the verification, just as petitioners were unable to comment on the new responses.* * * * It is the responsibility of respondents to provide an accurate and complete response prior to the preliminary determination and verification so that the Department may fully analyze the response and other parties may comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department." (Emphasis added, citation omitted.)

Final Results of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina, 54 FR 13913 (April 6, 1989). Further, Hoogovens' reference to decisions of the Court of International Trade is of no assistance. These cases dealt with the standard of analysis to be used in verifications, and whether the Department is required to verify information used in our various investigative proceedings; neither of which is in dispute here. Consequently, pursuant to section 776(c) of the Act, we will use, as BIA, the higher of: (a) The highest non-aberrant transaction margin calculated for that firm from the sales of the same class or kind of merchandise where we were able to calculate a margin or, (b) the average petition rate for the same class or kind of merchandise from the same country of origin.

Comment 9: Hoogovens argues that our comparison of weight-averaged FMV's to sales-specific USP is unsupported by the Act because it produces unrepresentative margins. Citing section 777A(a) of the Act, Hoogovens claims that we may average only when to do so produces more representative margins, and that that section authorizes the Department to weight-average USP. Hoogovens concludes that we must, therefore, also weight-average USP.

Petitioners respond that, pursuant to section 777A and administrative precedent, the Department averages USP only where the volume of sales and/or adjustments being examined is overwhelming. Further, petitioners argue that the Department has only averaged USP in investigations if the subject merchandise is a perishable product, and then only if the exporters can show that they have no control over the prices at which the merchandise is sold in the United States, citing Final Results of Sales at Less Than Fair Value; Certain Fresh Cut Flowers from Ecuador, 52 FR 2128 (Jan. 20, 1987).

Department's Position: We agree with petitioners. We have previously rejected this argument with regard to antidumping investigations, see Final Results of Sales at Less Than Fair Value; Certain Iron Construction Castings from Canada, 51 FR 2412 (Jan. 16, 1986), and the Court of International Trade has recently upheld this position, stating:

> "[Plaintiffs] claim * * * that since Commerce averaged [FMV] then it also should have averaged [USP]. The statute * * * gives no indication that Commerce must average both sides of the equation."

VOL 58 ISS 130 JL 9 1993 UMI

Koyo Seiko Co. Ltd., et al. v. *United States*, Slip Op. 93–87, at 5 (CIT June 1, 1993). Since we are not required by the Act to use weight-averaged USP whenever we weight-average FMV, and since Hoogovens has provided no evidence that our comparisons lead to inaccuracies, we will continue to compare weight-average FMV's to sale-specific USP.

Comment 10: Petitioners argue that we must not adjust the sales price on certain home market sales because of post-sale price adjustments discovered at verification. Petitioners argue that the post-sale adjustment is in fact a rebate, and that the circumstances under which the price adjustment occurred do not meet the Department's criteria for allowing adjustments for price rebates.

Hoogovens responds that, despite the fact that the internal document which shows that this adjustment occurred calls it a "rebate," it is not considered a rebate, as defined by the Department in the antidumping questionnaire. Hoogovens claims that, therefore, our criteria for identifying rebates is not relevant. Hoogovens claims that this price adjustment arose from post-sale negotiations with the buyer, and that the Department has allowed similar price adjustments in previous cases, citing *inter alia*, Final Results of Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, 57 FR 28360, 28401 (June 24, 1992) (AFB's from France).

Department's Position: We agree with Hoogovens. Hoogovens documented the disputed adjustment, and explained that it arose from a request by the customer that Hoogovens revise its prices on past sales. We verified that a price adjustment had in fact been granted, and we have previously allowed adjustments to reported prices under these circumstances (see, e.g., AFB's from France).

Comment 11: Petitioners contend that Hoogovens' submitted general and administrative (G&A) expense should be adjusted to include reorganization costs reflected in Hoogovens' 1992 financial statement. Further, petitioners argue that because Hoogovens failed to provide the Department with any information regarding the breakdown of these restructuring costs by division, the Department should either allocate the expense based on cost of sales for each division, or, alternatively, allocate 75 percent of this expense to the steel division.

Hoogovens argues that it based its calculation of G&A expense on the 1991 audited financial statements to conform to the Department's longstanding practice of requiring use of full-year financial statements in order to capture year-end accruals. Hoogovens further argues that the 1992 restructuring charge does not relate to expenses incurred during the POI.

Department's Position: We agree with petitioners that the 1992 financial statement should be used in our analysis. We calculate G&A expenses based on the audited annual financial statements which most closely correspond to the POI. This practice captures seasonal fluctuations and year-end adjustments. If such financial statements are not available, the Department has relied on financial statements from the fiscal year prior to the POI, when such statements provide a reasonable approximation of the company's current financial position. In this case, Hoogovens' 1992 financial statements (which covers the POI) became available before our final determinations. Further, there are material differences between the 1992 and the 1991 financial statements. Consequently, we will use the 1992 financial statements for our final determinations.

Regarding Hoogovens' argument that the restructuring costs indicated in the 1992 financial statement do not relate to expenses incurred during the POI, we disagree. Netherlands' generally accepted accounting principles (GAAP) requires Hoogovens to recognize the entire expense in 1992. Like U.S. GAAP, an estimated loss from a contingency shall be charged to income if assets have been impaired or a liability has been incurred, and the amount can be reasonably estimated. Further, Hoogovens' submitted G&A calculations (based on its 1991 financial statements) included restructuring costs expensed in fiscal 1991. Restructuring costs in the steel industry are usual costs which are frequently incurred. Therefore, the classification of restructuring costs as "extraordinary" on the financial statements is not relevant to the Department's determination. Finally, according to the 1992 financial statement, Hoogovens' restructuring costs included expenses related to the steel division, as well as other units of its operations. Therefore, we have allocated the restructuring expense by cost of goods sold by the consolidated company.

Comment 12: Petitioners contend that the Department must recalculate Hoogovens' reported interest expense using amounts identified in the steel division's 1991 profit and loss statement. Hoogovens cites the Department's questionnaire which states that "interest expense should be derived from the total borrowing costs incurred by the consolidated group companies." Hoogovens argues that it calculated its interest charge based on the net interest expense of the consolidated Hoogovens Groep.

Department's Position: We agree with the methodology Hoogovens used in the interest expenses calculation. However, we have recalculated interest expenses using results taken from the 1992 financial statement, rather than the 1991 information.

Comment 13: Petitioners argue that Hoogovens' reported inland freight for certain home market sales, which was discovered at verification to have been incorrectly reported, should be corrected by using, as BIA, the lowest reported home market inland freight values. Hoogovens argues that since we have the correct information on the record and that that information has been verified, we should not use BIA for this expense.

Department's Position: We agree with Hoogovens. We verified the actual shipment charges for each of the sales at issue, and have the correct charges on the record. Consequently, we will use these data in our final determinations.

Comment 14: Petitioners argue that Hoogovens' reported packing expenses are based upon an improper, unverified methodology. Petitioners claim that the Department should either deny any adjustment for home market packing costs or, in the alternative, use, as BIA, the minimum reported cost for each class or kind of merchandise. Hoogovens responds that it has consistently relied upon the same calculation methodology in its reporting of packing costs to the Department, that the methodology is used in its standard record-keeping and, that the Department verified the methodology.

Department's Position: We agree with Hoogovens. We believe Hoogovens' methodology for adjusting standard packing costs, which is based upon variances in the form of packing and the bundled weight of the shipped product, is reasonable. We also note that this methodology is utilized in Hoogovens' normal record keeping system. Under these circumstances, we generally accept a respondent's methodology (see Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review, 54 FR 13917 (April 6, 1989)). Moreover the methodology was verified. Additionally, to account for the slight deviations of actual costs versus standard costs observed at verification, we have adjusted the reported packing expenses by the amount of the deviation to reflect the actual cost experience

during the POI. Further, we will also use the verified revisions to packing costs provided by Hoogovens at verification.

Comment 15: Petitioners argue that Hoogovens systematically overstated its home market indirect selling expenses by the amount of the ratio of net prices to gross prices. These expenses were calculated based upon net prices, but the reported indirect selling expense factor was derived on a gross-price basis. Petitioners argue that unless these expenses can be recalculated as a percentage of total sales, we should make no adjustment to home market sales for indirect selling expenses.

Hoogovens responds that it used the same methodology for calculation of indirect selling expenses for both its reported home market sales and its reported ESP sales, and so any improper downward adjustment to home market prices occurs in the same adjustment to U.S. prices for ESP sales.

Department's Position: We agree with petitioners, in part. We noted the differing basis for calculation and allocation of these expenses at verification. For the final determinations we have recalculated Hoogovens' indirect selling expenses factor for both markets by deducting, where appropriate, discounts, rebates, freight charges and credit charges. We will continue to deduct indirect selling expenses from both home market and ESP sales.

Comment 16: Petitioners argue that the Department should not include Hoogovens' reported weight-averaged home market inventory carrying costs in Hoogovens' home market indirect selling expenses factor, should the Department decide to allow a home market adjustment for indirect selling expenses (see Comment 15). Petitioners claim the inventory carrying costs calculation relies upon an incorrect time period. Additionally, petitioners argue that Hoogovens does not in fact incur any inventory carrying costs because it produces products to order, and so allegedly products are never placed in inventory.

Hoogovens responds that its inventory carrying costs calculations are correct, and, further, rejects petitioners' argument that it incurs no inventory carrying costs on its home market sales-to-order, stating that these products do remain in its possession for some time before they are shipped to the customer.

Department's Position: We agree with Hoogovens. The correct period for inventory carrying costs runs from the time the material is produced to the time of shipment to the first unrelated customer, see Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988). Further, we verified that these products remain in Hoogovens' possession for some time after they are produced and so petitioners' claim that Hoogovens incurs no inventory carrying costs on its sales because it produces to order is incorrect. Consequently, we will continue using Hoogovens' reported inventory carrying costs, as corrected in Hoogovens' February 24, 1993 submission.

Comment 17: Petitioners argue that the Department should not accept Hoogovens' recalculation of home market credit expenses because this recalculation excluded certain loans not denominated in the home market currency.

Hoogovens responds that it performed the recalculation (removing non-Guilder denominated loans) at the specific request of the Department and that it is the Department's standard practice to base home market interest rate calculations on loans denominated in the home market currency.

Department's Position: We agree with Hoogovens. We have verified Hoogovens' interest rate calculations, which are based on loans denominated in the home market currency. Moreover, our usual practice is to base home market credit calculations on loans denominated in the home market currency, see, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 42953 (Sept. 17, 1992), and Final Determination of Sales at Less Than Fair Value: Acetylsalicyclic Acid (Aspirin) From Turkey, 52 FR 24492 (July 1, 1987).

Comment 18: Petitioners argue that Hoogovens' direct and indirect selling expense factors are incorrect because they are not based on 1991 figures. Hoogovens responds that these factors were reported as directed by the Department, on an actual basis for the POI.

Department's Position: We agree with Hoogovens. We request that respondents calculate actual selling expenses, based upon the POI. Hoogovens calculated its selling expenses factors pursuant to our instructions.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of hot- and cold-rolled steel from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Hot-Rolled Carbon Steel Flat Products:	
Hoogovens	30.70
All Others	30.70
Cold-Rolled Carbon Steel Flat Products:	
Hoogovens	20.09
All Others	20.09

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15623 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–455–802]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Poland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Judith Wey, or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0161, 482–6320 or 482–0656, respectively.

UMI
VOL
58
ISS
130
JL
9
1993
UMI

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from Poland are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on January 26, 1993 (58 FR 7100, February 4, 1993), the following events have occurred:

On February 16, 1993, petitioners requested that a public hearing be held. On March 12, 1993, petitioners alleged that critical circumstances exist with respect to imports of steel plate from Poland.

We conducted verification of PHZ Stalexport's (Stalexport) sales questionnaire response and Huta Czestochowa's (Czestochowa) sales and factors of production information in March 1993. These companies accounted for all exports of steel plate from Poland to the United States during the period of investigation. Because it accounted for a very limited share of production, we did not verify the response of Huta Batory (Batory), one of two Polish factories producing the steel plate exported to the United States.

We issued an affirmative preliminary determination of critical circumstances on April 12, 1993 (58 FR 21143; April 19, 1993). On April 14, 1993, we requested that respondent provide monthly shipment information for purposes of conducting our critical circumstances analysis. We received respondent's shipment information on April 20, 1993.

Petitioners and respondent submitted case briefs and rebuttal briefs on May 3 and 6, 1993, respectively. A public hearing was held on May 10, 1993.

A draft suspension agreement was initialed on May 21, 1993. No suspension agreement was subsequently signed.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Steel), which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1 through June 30, 1992.

Revocation of Poland's Nonmarket Economy Country Status

A. Summary

In all past antidumping duty investigations involving Poland, the Department has classified it as a nonmarket economy (NME) country, and, in accordance with section 771(18)(C) of the Act, Poland's classification as an NME country remains in effect until revoked. As discussed at the preliminary determination, the Government of Poland (GOP) and respondent have requested, on the basis of recent and ongoing economic reforms, that the Department revoke Poland's status as an NME country under the U.S. antidumping law. The Department has now determined that Poland's NME country status shall be revoked, effective retroactive to January 1, 1992 (the beginning of the POI).

B. Argument

The GOP and respondent maintain that Poland's NME country status should be revoked for the following reasons: (1) The zloty is convertible into other currencies, including the U.S. dollar. (2) In 1989, Poland adopted a trade union law giving employees the right to create and associate in trade unions according to their needs and wishes. Wages and work conditions are subject to collective bargaining between the management of Polish enterprises and union representatives. (3) Poland has a long history of permitting foreign direct investment. The current statute is the Foreign Investment Act of 1991, which guarantees compensation in the event of expropriation and allows full repatriation of profits, dividends, and capital gains. (4) Under Polish law, the management of State-owned enterprises makes independent decisions in all business matters and organizes the enterprise's activity without government interference, to the extent authorized to do so by the company's statute (articles of incorporation). (5) Poland has eliminated price controls on virtually all producer and consumer goods, with the exception of some basic goods and services, e.g., certain foods, gas and electricity. (6) There are no restrictions on exports, except for weapons, goods in short supply, and products that have potential military use. (7) In 1990, Poland adopted an antimonopoly law that applies to all companies doing business in Poland. The aim of this law is to create conditions under which fair competition can be ensured. (8) Poland has a securities exchange, which is regulated by the Public Trading and Securities Act of 1991. There are no formal limits on the purchase of shares by foreigners. However, if a foreigner intends to buy more than 33 percent of one company, the investor must notify the Securities Commission, which may block the transaction. (9) Poland's Customs Law of 1989 is enforced in accordance with the GATT Customs Valuation Code. The Customs law also introduces antidumping rules that follow the GATT Antidumping Code.

C. Statutory Reference

Section 771(18) of the Act, governs NME country determinations under the U.S. Antidumping law. Section 771(18)(A) reads:

> In General.—The term "nonmarket economy country" means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

Section 771(18)(B) continues with:

> Factors To Be Considered.—In making determinations under subparagraph (A) the administering authority shall take into account—
>
> (i) the extent to which the currency of the foreign country is convertible into the currency of other countries,
>
> (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
>
> (iii) the extent to which joint ventures or other investments by firms of other countries are permitted in the foreign country,
>
> (iv) the extent of government ownership or control of the means of production,
>
> (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
>
> (vi) such other factors as the administering authority considers appropriate.

D. Analysis

The Department has considered these statutory factors in light of Poland's economic reforms and has determined, on the basis of information submitted by respondent and petitioners in this proceeding, verification findings, and reports and studies of Poland's reforms generated by other institutions and U.S. Government agencies, that Poland is no longer an NME country within the meaning of section 771(18) of the Act. Although Poland has not yet achieved its objective of complete political and economic integration with the European Community, the Department finds that Poland's domestic markets, unlike those of a traditional nonmarket economy, are open to trade and foreign investment and are not insulated or protected from

external market influences. The Polish government no longer exercises the type of microeconomic control over firms and economic agents that characterizes traditional nonmarket economies. For these reasons, the Department finds that Poland's economy operates on the basis of market principles to such an extent that Polish domestic prices can reasonably be used as a basis for calculating fair market value within the meaning of the U.S. antidumping law. The Department has determined that, by 1992, the major economic reforms begun in Poland in 1990 had progressed to the point that 1992 Polish domestic prices could be considered market-driven. (For a detailed discussion, see June 21, 1993, Memorandum from Albert Hsu to the File, which is on file in the Import Administration Central Records Unit, room B–099 of the main Department of Commerce building.)

Fair Value Comparisons

To determine whether sales of steel plate from Poland to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because we did not make a decision to revoke Poland's status as an NME country until June 21, 1993, we conducted the LTFV analysis and based this final determination margin on the NME factors methodology.

The Department intends to self-initiate a changed circumstance review, pursuant to section 751(b)(1) of the Act, if the International Trade Commission (ITC) issues an affirmative final injury determination with respect to steel plate from Poland, and we issue an antidumping duty order. Given that the Department has determined that by 1992, Polish domestic prices were market driven, the changed circumstance review will examine the same POI sales using a market economy analysis to calculate a new cash deposit rate. The review will address all issues in the context of Poland's market economy status.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and exporter's sale price (ESP) methodology was not otherwise indicated.

We calculated purchase price based on C&F U.S. port or FOB stowed Polish port prices to unrelated customers in the United States. Deductions from USP were made for foreign inland freight, foreign inland insurance, foreign brokerage, and ocean freight, as appropriate. We based the deduction for foreign inland freight on freight rates in Malaysia, the surrogate country in this case (see the "Surrogate Country" section of this notice), as respondent reported the use of Polish transportation services in incurring this charge. For foreign inland insurance we used the U.S. dollar value reported by respondent because we had neither surrogate nor petition data to value this expense. For foreign brokerage, we used amounts based on the verified experience of a Malaysian exporter (see Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia (57 FR 38465, (August 25, 1992)). We used the U.S. dollar ocean freight expense reported by Stalexport for one of its shipments to value ocean freight for all C&F U.S. port sales, because, for that shipment, the expense was incurred and paid for in U.S. dollars and the service was not provided by an NME carrier. We verified the reported U.S. dollar ocean freight expense and consider it to be representative.

Foreign Market Value

As discussed above in the "Fair Value Comparison" section, because we did not determine to revoke Poland's status as an NME country until June 21, 1993, and the verified information currently on the record does not permit the use of a market economy methodology, we have calculated the final determination margin using the factors of production methodology in accordance with section 773(c) of the Act. The factors of production used to establish FMV were those of Polish manufacturers, as valued in a surrogate country.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the NME country and that are significant producers of comparable merchandise. The Department has determined that Thailand, South Africa, Malaysia, Mexico, Argentina, and Turkey, in order of preference, are the most comparable to Poland in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP.

Of the countries that are comparable to Poland and produce comparable merchandise, our analysis of surrogate value information from Thailand and South Africa indicates that these values are aberrational when compared to surrogate values from other countries and world market prices. We, therefore, rejected the Thai and South African data for purposes of surrogate valuation. Since Malaysia is the next most comparable surrogate country, we valued the factors of production, whenever possible, using data from Malaysia. Data for valuing the factors of production in Malaysia were obtained from publicly available sources. Where information for valuing a factor was unavailable, we used data derived from the petition, as specified below. Furthermore, when surrogate data pertaining to the POI were unavailable, the available factor values dated prior to 1991 were inflated to the POI using the producer price indices for Malaysia as published by the International Monetary Fund (IMF).

We calculated the appropriate FMVs based on the factors of production information submitted by the two Polish producers of steel plate exported to the United States, Czestochowa and Batory. Based on findings at verification, we increased Czestochowa's reported direct labor hours to account for misclassified and unreported labor hours. Czestochowa did not report factors information for coke production or certain labor and energy factors for its other stages of production. Due to the general accuracy of Czestochowa's data, we are accepting its responses. However, for Czestochowa's missing data, we applied the energy and ingot production labor factors reported by Batory. For pig iron production labor, we used a labor factor derived from the petition because we had no other information on the record for this input.

We added an amount for the delivery of steel inputs to the factors to arrive at a delivered cost for these materials. Finally, we added to the reported factors of production amounts for factory overhead, selling, general, and administrative expenses, and profit. For factory overhead, we derived an amount based on information contained in the petition because we had no other information on the record. We used the statutory minimum percentages for applying selling, general, and administrative expenses, and for profit, since no useable information was available in the petition and we had no useable surrogate country information for these expenses.

Currency Conversion

When calculating FMV, we made currency conversions in accordance with 19 CFR 353.60(a). For conversions

VOL
58
ISS
130
JL
9
1993
UMI

from Malaysian currency, we used the exchange rates published by the International Monetary Fund, because official exchange rates, as certified by the Federal Reserve Bank, were not available.

Final Affirmative Determination of Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of steel plate from Poland. We have analyzed the allegations using the methodology described in Appendix II to Argentine Steel.

To determine whether imports of steel plate have been massive, we used actual shipment data provided by respondent to compare shipments for the six months subsequent to the filing of the petition (July through December 1992) to the six months prior to the filing of the petition (January through June 1992). We did not use a seven-month comparison period because respondent did not provide shipment data for January 1993. However, U.S. import statistics indicate that an analysis based on a seven-month period would yield the same results.

We found that imports of steel plate during the period following the filing of the petition increased by more than 15 percent over the period preceding the filing of the petition. Furthermore, we noted no evidence that the increase observed was the result of seasonal trends. With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate whether the increase in absolute volume of respondent's shipments of steel plate can be accounted for by a change in domestic consumption.

To determine whether the importers of steel plate from Poland knew, or should have known, that the products were being sold at less than fair value, we first considered the margin in this investigation, as discussed in Appendix II to Argentine Steel. Since the estimated margin for the respondent in our determination is sufficiently high (25 percent or greater for purchase price sales), we find that knowledge of dumping exists and, as such, we need not consider whether there is a history of dumping. Therefore, we find that critical circumstances exist with respect to imports of steel plate from Poland.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent using standard verification procedures, including the examination of relevant sales and production records, and the selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Petitioners contend that respondent has not met its burden of demonstrating that Poland is no longer an NME country.

Respondent argues that Poland should be reclassified as a market economy country.

DOC Position: As discussed above in the "Revocation of Poland's Nonmarket Economy Country Status" section above, the Department has determined that Poland is no longer an NME country within the meaning of section 771(18) of the Act.

Comment 2: Petitioners contend that the Department should use best information available (BIA) for the final determination because respondent failed to provide complete factors of production information and we were unable to verify certain factor information. They further claim that the cumulative errors and omissions in the response are so pervasive as to require the Department to resort to BIA.

DOC Position: We disagree with petitioners. The errors and omissions in the response were not so pervasive as to compel the Department to base its final determination margin on BIA. Moreover, contrary to petitioners assertion, the accuracy of the overwhelming majority of respondent's sales and factors of production information was verified.

Comment 3: Petitioners argue that the Department should assign a single margin rate to all imports of steel plate from Poland, contending that neither Stalexport nor Czestochowa demonstrated that it was entitled to a separate rate.

Stalexport and Czestochowa argue that because Poland is no longer an NME country and Polish companies are free of state control, they are entitled to individual dumping margins.

DOC Position: We are issuing a single rate in this final determination. If an order is issued, we will examine further any relationships between the Polish exporters in a changed circumstance review.

Comment 4: Petitioners contend that the Department should confirm its preliminary finding that critical circumstances exist in this case. They further argue that the shipper-specific export data provided by respondent confirms the affirmative preliminary critical circumstances determination.

Respondent argues that the Department should make negative final determinations of critical circumstances, claiming that the shipper-specific information does not demonstrate a massive increase in imports following the filing of the petition.

DOC Position: We agree with petitioners, in part. As discussed in the "Critical Circumstances" section above, an analysis of respondent's data supports an affirmative critical circumstances finding.

Comment 5: Petitioners contend that respondent's pre-hearing brief contains new factual information and should therefore be rejected.

DOC Position: We disagree with petitioners that respondent's pre-hearing brief contains new factual information and needs to be rejected. The majority of information in respondent's brief was either already on the record, could be extrapolated from information on the record, or was information readily available to the Department.

Comment 6: Respondent contends that USP should be increased to reflect the interest cost to the importers due to the fact that the importers pre-pay for the merchandise.

Petitioners argue that respondent's claim for an interest revenue adjustment is not supported by evidence or precedent.

DOC Position: We disagree with respondent. When using the factors of production methodology to calculate FMV, the Department does not make circumstance-of-sale adjustments such as that requested by respondent because we do not have the information to adjust both sides of the equation, and to make an adjustment to either USP or FMV without making the corresponding adjustment is unfair. (See Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China (56 FR 55271, (October 25, 1993))).

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of steel plate from Poland that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1992 (i.e., the date 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). For entries made on or after the date specified above, the Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in

effect until further notice. The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Average margin percentage
All Exporters	61.98

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before 45 days after our final determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15624 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–803]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0922 or (202) 482–1769, respectively.

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from Romania are being, or are likely to be, sold in the United States at less than fair value (LTFV). We also determine that critical circumstances exist with respect to steel plate from Romania. Both determinations are made as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our January 26, 1992, preliminary affirmative determination of (58 FR 7119, February 4, 1993), the following events have occurred:

On February 5, 1993, respondent, Metalexportimport (MEI), requested a public hearing pursuant to 19 CFR 353.38. Both MEI and petitioners filed case briefs on April 23, 1993, and rebuttal briefs on April 29, 1993. A public hearing was held on April 30, 1993.

On February 12, 1993, MEI requested postponement of the final determination in this proceeding until not later than 135 days after the date of publication of the preliminary determination, as permitted under 19 CFR 353.20(b)(1). As a result of MEI's request, we postponed our final determination in this proceeding until not later than June 21, 1993 (58 FR 12025, March 2, 1993).

On April 9, 1993, petitioners alleged the existence of critical circumstances as defined under 19 CFR 353.16. On May 7, 1993, we made our preliminary critical circumstances determination with respect to the subject merchandise (58 FR 28550, May 14, 1993). Respondent filed comments on our preliminary critical circumstances determination on May 21, 1993. Petitioners filed no comments on our preliminary critical circumstances determination.

A draft suspension agreement was initialed in May 1993. No suspension agreement was subsequently signed.

Scope of the Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation is January 1 through June 30, 1992.

Fair Value Comparisons

To determine whether sales of steel plate from Romania to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We based our determination on best information available (BIA) as required by section 776(c) of the Act.

Because MEI (the only Romanian exporter of steel plate) attempted to cooperate with our requests for information but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of (1) the average of acceptable margins in the petition or (2) the margin calculated for another responding company for the same class or kind of merchandise from the same country. See, e.g., Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany (54 FR 18992, 19033; May 3, 1989). In this case, as BIA, we have used the average of margins alleged in the petition based on information from acceptable surrogate countries.

United States Price

We calculated USP using the methodology described in the preliminary determination.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank or, where Federal Reserve Bank rates were not available, based on the average monthly exchange rates published by the International Monetary Fund.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of steel plate from Romania. The bases for our final critical circumstances determination are the same as those set forth in our preliminary critical circumstances determination.

Interested Party Comments

Comment 1: Respondent argues that its questionnaire responses should not have been rejected because its untimeliness in responding to section A of the questionnaire represented a "trivial transgression," and its responses to sections C and D of the questionnaire were filed by the deadline set forth in the questionnaire. Since the Department has the discretion to accept information

VOL 58 ISS 130 JL 9 1993 UMI

at any time during a proceeding, respondent argues, relying on the petition as BIA is not appropriate.

Petitioners argue that rejection of MEI's submissions was correct and well within the Department's discretion because the Department informed MEI of the consequences of untimely filings. They further argue that using information in the petition as BIA is appropriate because MEI's information was not on the record.

DOC Position: We disagree with both of respondent's central contentions. Rejecting MEI's information and resorting to information in the petition as BIA was appropriate.

MEI's untimeliness was not a "trivial transgression." Section A of our questionnaire requests important information (such as corporate structure, accounting practices, and merchandise characteristics) without which the Department cannot proceed in conducting its investigation. While the Department may, in its discretion, extend the deadline for filing information, doing so would have been detrimental to the administration of this case as well as the other concurrent steel cases because MEI did not request an extension prior to the deadline and, at the time MEI's late response was rejected, the Department was simultaneously soliciting questionnaire responses from scores of respondents in other concurrent proceedings. Accepting a party's late filing in one situation would require us to accord the same treatment to all similarly situated parties or risk the perception, in the eyes of the parties that met their deadlines, of providing an unfair advantage to the late filers.

Respondent cites to *Tehnoimportexport* v. *United States*, 766 F. Supp. 1169 (CIT 1991) for the proposition that untimely information must be accepted where the interests of justice require. In that case, however, the Court required the Department to correct a clerical error committed by respondent regarding the weights of rivets. Accepting information correcting a clerical error cannot be equated to accepting an entire response to section A.

MEI's subsequent responses to sections C and D of our questionnaire were unsolicited because, in returning MEI's response to section A, we stated that no further submissions would be accepted. The Department is not required to accept whatever information respondents choose to file once it has determined to use BIA.

Section 776(c) of the Act directs the use of BIA whenever a party "refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." Respondent's failure is grounds for BIA under this section of the Act.

The Department's decision to reject MEI's improperly filed and late response, and resort to BIA, was thus reasonable and appropriate. Since the information in the petition was the only information on the record, it was the only source for BIA.

Comment 2: Petitioners contend that the Department must find that critical circumstances exist because imports increased massively following the filing of the petition and because importers knew or should have known that steel plate from Romania was being sold in the United States below fair value.

Respondent contends that the preliminary margin was improperly based on BIA and therefore is an invalid measure of whether importers knew or should have known that steel plate from Romania was being sold in the United States below fair value.

Respondent also contends that imports were not massive because: (1) Examination of three-month, rather than seven-month, periods are more appropriate and would not show massive imports; (2) an affirmative massive imports finding is not required by the regulations when import volume increases by 15 percent or more; (3) month-to-month patterns are generally erratic, indicating that the increase noted for the period examined is the result of seasonal trends; (4) a comparison of the post-petition period to the same period one year earlier shows that imports dropped by 30 percent; and (5) MEI's share of the U.S. steel plate market is *de minimis* and shrinking.

DOC Position: We agree with petitioners. The BIA margin is a valid basis for determining that importers knew or should have known that import prices were below fair value. (See, e.g., Ferrosilicon from Kazakhstan and Ukraine (Final Determination) (58 FR 133050, March 9, 1993); Pure and Alloy Magnesium from Canada (Final Determination) (57 FR 30939, July 13, 1992).)

With respect to our determination that imports were massive, we analyzed seven-month periods because we prefer to analyze import volumes over the longest periods possible (between filing of the petition and suspension of liquidation) for which appropriate data are available. Our analysis of import statistics showed that import volumes during the post-petition period increased by more than 15 percent over the pre-petition period. That the regulations permit deeming imports massive when imports are found to have increased by more than 15 percent supports our having done so, absent other factors indicating that a determination of massive imports is inappropriate.

We do not agree that erratic month-to-month patterns support a finding that the increase is the result of seasonal trends. Further, our examination of the same periods exactly one year earlier showed that imports fell during the earlier period corresponding to the post-petition period (i.e., July 1991 through January 1992) vis-á-vis the earlier period corresponding to the pre-petition period (i.e., December 1990 through June 1991). Thus, there is no basis for determining that the increase noted for the post-petition period was the result of seasonal trends. We do not agree with respondent that the post-petition period should be compared to the same period one year earlier; such an analysis reveals nothing about whether import volumes during the post-petition period were massive in comparison to import volumes during the pre-petition period.

Finally, with respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate, with respect to the subject merchandise, whether the increase in absolute volume of imports from Romania can be accounted for by a change in domestic consumption. Respondent's claim that its share of domestic consumption should be considered *de minimis* is completely unsupported and is therefore not a valid basis for a determination that imports were not massive during the post-petition period.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) and 733(e)(2) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel plate from Romania that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1992 (i.e., the date 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). For entries made on or after that date, the Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
Metalexportimport and All Other Companies	75.04

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of steel plate from Romania entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15625 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–469–802 and A–469–803]

Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0108 or (202) 482–4136, respectively.

Final Determinations

We determine that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) and certain cut-to-length carbon steel plate (steel plate) from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determinations and postponement of the final determinations (57 FR 17883 (April 28, 1992)), the following events have occurred:

On February 16, 1993, respondent Empresa Nacional Siderurgica, S.A. (Ensidesa) failed to submit a response to section D of the Department of Commerce's (the Department) antidumping questionnaire, which pertains to cost of production data.

We received a request for a public hearing from the petitioners on February 12, 1993 and from Ensidesa on February 16, 1993. Petitioners and Ensidesa filed case briefs on April 23 and rebuttal briefs on April 28, 1993. A hearing was held on April 30, 1993.

Scope of the Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: Certain cold-rolled carbon steel flat products and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Steel), which is being published concurrently with this notice.

Period of Investigations

The period of investigations (POI) is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of products covered by these investigations constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of cold-rolled steel and steel plate from Spain to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because respondent failed to respond to section D of our questionnaire, we based our determinations on the best information available (BIA), pursuant to section 776(c) of the Act. A description of the BIA methodology applied to Ensidesa, the only respondent in these investigations, appears in the "Department Position" for Comment 2 below. Because we considered it to be an uncooperative respondent, as BIA, for cold-rolled steel we used the highest margin alleged in the petition and for steel plate we used Ensidesa's calculated margin from the preliminary determination, because that margin was higher than the highest margin alleged in the petition.

United States Price

For cold-rolled steel, we based USP on information in the petition. Petitioners based USP on U.S. Customs value of cold-rolled steel imported from Spain.

For steel plate we calculated USP using the methodology described in the preliminary determination.

Foreign Market Value

For cold-rolled steel, we based FMV on information in the petition. Petitioners based FMV on constructed value. Petitioners made a circumstance-of-sale adjustment for credit.

For steel plate we calculated USP using the methodology described in the preliminary determination.

Final Determination of Critical Circumstances

We find that critical circumstances exist with respect to imports of cold-rolled steel and of steel plate from Spain, in accordance with section 735(a)(3) of the Act. To determine whether or not there have been massive imports of cold-rolled steel and of steel plate, we compared export volume for the five months subsequent to the filing of the petition to the five months prior to the filing of the petition, using U.S. Department of Commerce import statistics (see Comment 3 below). In both cases, we found that imports of the subject merchandise from Spain during the period subsequent to receipt of the petition have been massive.

To determine whether or not the importers of the products knew or should have known that they were being sold at less than fair value, we considered the margins in these investigations, as discussed in

VOL 58 ISS 130 JL 9 1993 UMI

Appendix II of Argentine Steel. The margins indicate that importers of cold-rolled steel and of steel plate should have known that the merchandise was being sold at less than fair value.

Finally, with respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate, with respect to subject merchandise, whether the increase in absolute volume of imports from Spain can be accounted for by a change in domestic consumption.

Based on our analyses, we determine that critical circumstances do exist with respect to imports of cold-rolled steel from Spain and imports of steel plate from Spain.

Interested Party Comments

Comment 1: Petitioners contend that Ensidesa's failure to respond to the Department's cost of production questionnaire requires the use of BIA for the final determinations. Petitioners cite, among other determinations, Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Mexico, 56 FR 29691 (June 28, 1991), where the Department canceled verification and used BIA for a respondent which failed to submit a cost of production questionnaire response.

Respondent asserts that the Department should rely on BIA only for cost of production and constructed value data that respondent was unable to furnish. Respondent contends that its price information was verifiable, and, citing Final Determination of Sales at Less Than Fair Value: Digital Readout Systems and Subassemblies Therefor from Japan (DRO's), 53 FR 47844 (November 28, 1988), states that where a respondent was able to supply the Department with price-to-price or sales data only and was unable to respond to the Department's request for cost-of-production data, the Department has verified the respondent's sales data and has applied BIA with respect to the respondent's cost-of-production data. An approach consistent with this practice is warranted in the present investigation.

Department Position: We agree with petitioners that Ensidesa's failure to respond to the Department's cost of production questionnaire, and the lack of verified sales information, requires the use of total BIA for these final determinations. Without this information, the Department cannot determine which home market sales are appropriate for use in determining foreign market value pursuant to section 773(b) of the Act. Respondent's reference to the Department's practice in DRO's reinforces, rather than refutes, the need for total BIA. In DRO's, respondent Mitutoyo had failed to provide cost information required only for U.S. sales which were further manufactured in the United States, thus affecting just one portion of U.S. sales. The Department was able to limit the use of BIA to that portion. In contrast, in this case Ensidesa has failed to provide cost of production information for all home market sales. Without this information, the Department was unable to determine whether any of the home market sales were made above cost of production. As such, the appropriate recourse is the complete use of BIA.

Comment 2: Petitioners contend that, as BIA, the Department should use the highest margin alleged in the petitions for each class or kind of merchandise. Petitioners cite the Court of International Trade's decision in *Smith Corona Corp.* v. *United States*, 796 F. Supp. 1532, 1533 (Ct. Int'l. Trade 1992), where the court stated that "[p]arties * * * who refuse to participate in investigations are not entitled to special considerations. If they stand aside, they must accept any rate which is reasonably accurate based on information of record even petitioner's information."

Respondent contends that, where the use of BIA is necessary, the Department should apply a non-punitive BIA rate since Ensidesa has made every effort to cooperate with the Department during the course of these investigations. Respondent states that the Department may apply punitive BIA only to companies which significantly impede the conduct of the Department's investigation. Respondent further states that the Department has used non-punitive BIA even in cases where a non-cooperating company has failed to provide a questionnaire response at all (see Final Results of Administrative Review: Color Television Receivers, Except for Video Monitors, from Taiwan, 56 FR 65218 (December 16, 1991). Since respondent has consistently cooperated with the Department in this proceeding, but was unable to furnish the Department with certain data, respondent contends that the Department must not apply a punitive BIA rate. Finally, respondent states that if the Department should rely entirely on BIA for the final determinations, it should use the average petition rate for each class or kind of merchandise from Spain.

Department Position: We do not agree with either petitioners or respondent. Ensidesa's failure to respond to the Department's cost of production questionnaire demonstrates that Ensidesa has not cooperated with the Department in the conduct of these investigations. In these cases, as is the Department's practice for non-cooperative respondents, we have used the following hierarchy in determining the final margin percentages: the highest margin for the relevant class or kind among (1) the margins in the petition, (2) the highest calculated margin of any respondent within that country that supplied adequate and verified responses for the relevant class or kind of merchandise, or (3) the estimated margin found for the affected company in the preliminary determination. (See, Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19033 (May 3, 1989).)

Comment 3: Petitioners contend that the Department should affirm its preliminary determinations and find that critical circumstances exist with respect to imports of cold-rolled steel and steel plate from Spain. Petitioners state that, based on BIA margins which the Department should apply to Ensidesa, the Department should impute that importers knew or should have known that the cold-rolled steel and steel plate were being sold at less than fair value. Petitioners further state that import statistics for all relevant periods support findings of critical circumstances.

Ensidesa contends that the Department should not use BIA for the critical circumstances determinations, and should use the shipment data submitted by Ensidesa. Ensidesa also maintains that the categories used for import statistics include non-subject merchandise, and therefore cannot be used to determine critical circumstances.

Department Position: We agree with petitioners that we should use import statistics, rather than Ensidesa's unverified shipment data, in making our final critical circumstances determinations. We have used a five-month comparison period since longer periods would have been affected by the suspension of liquidation for the companion countervailing duty (CVD) investigation, which became effective during the sixth month after the filing of the petition. Based on our examination of import statistics, we found that there have been massive increases in shipments of both cold-rolled steel and steel plate. While some of the categories of import statistics used in our analysis may contain some non-subject merchandise, we note that using Ensidesa's shipment data for

subject merchandise for the same periods also shows massive increases in shipments.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled steel and steel plate from Spain that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1992, the date 90 days before the date of publication of our preliminary determination in the **Federal Register**.

The products under investigation are also subject to a countervailing duty investigation. The Department has determined that no benefits which constitute export subsidies within the meaning of the CVD law are being provided to manufacturers, producers, or exporters of the subject merchandise in Spain, and, therefore, no adjustment to the estimated dumping margins is required.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Cold-rolled Steel:	
Ensidesa	43.12
All Others	43.12
Steel Plate:	
Ensidesa	105.61
All Others	105.61

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before 45 days after our final determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Assistant Secretary for Import Administration.

[FR Doc. 93–15626 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–805]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0922 or 482–1769, respectively.

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from Sweden are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our January 26, 1993, preliminary determination (58 FR 7122, February 4, 1993), the following events have occurred:

On February 10, 1993, we requested clarification of certain information that respondent, Svenskt Staal AB (SSAB) had provided in its questionnaire responses. SSAB responded to this letter on February 17.

On February 15 and March 5, 1993, SSAB filed responses to section D of our questionnaire. (Section D was issued on January 19, 1993, and dealt with SSAB's production costs for it products sold in the HM and United States.)

During March 1993, we conducted verification of respondent's cost and sales responses to our questionnaire at the Oxelösund, Sweden, facilities of SSAB.

Respondent requested a public hearing on February 16, 1993. Respondent and petitioners filed case briefs on May 3, 1993, and rebuttal briefs on May 6, 1993. On May 11, 1993, we held a public hearing.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation (POI) is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We based our such or similar comparisons on the same methodology described in the preliminary determination.

Fair Value Comparisons

To determine whether SSAB made sales of steel plate from Sweden in the United States at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because of significant deficiencies in the data submitted by SSAB in response to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act.

As noted in our preliminary determination, respondent failed to report sales to the first unrelated customer. Further, the related-customer prices that respondent did report were determined not to be arm's length in nature. For our final determination, we re-tested the sales to the related customer to determine whether they were at arm's-length prices. Our final-determination arm's-length test compared SSAB's related-customer prices only to prices that SSAB charged unrelated customers at the same level of trade. SSAB's prices to its related customer still proved not to be arm's length in nature.

Based on the results of the arm's-length test, we determined that we could not include in our analysis any reported HM prices to SSAB's related customer. This resulted in an extremely large proportion of U.S. sales for which there were no corresponding FMVs when we used SSAB's proposed model match concordance.

After weighing the effect of the arm's-length test results and other major

VOL
58
ISS
130
JL
9
1993
UMI

deficiencies discovered at, or unresolved by, verification, we determined that there was insufficient reliable data left on which to base a final determination. Therefore, we used BIA as the basis for this final determination.

Because SSAB cooperated with our requests for information but failed to provide the information requested in the form required, and was the only respondent in this investigation, we have used as BIA the higher of: (1) The average of margins in the petition; or (2) the calculated margin for another firm for the same class or kind of merchandise from the same country. See, e.g., Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany (54 FR 18992, 19033; May 3, 1989). In this case, as BIA, we have used the average of margins alleged in the petition.

United States Price

We calculated USP using the methodology described in the preliminary determination. We reviewed the methodology and made corrections where necessary.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination. We reviewed the methodology and made corrections where necessary.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including examination of relevant sales and financial records, as well as relevant original documentation that supported information provided in the questionnaire response.

Interested Party Comments

Comment 1: Petitioners argue that the Commerce Department ("the Department") should reject SSAB's questionnaire response and resort to total BIA because (a) SSAB did not report HM sales to related end users; (b) SSAB neither reported resales by its related HM customer (known as "downstream" sales) nor demonstrated that reported sales to the related customer were at arm's-length prices; and (c) verification revealed numerous errors and inconsistencies in SSAB's questionnaire response.

Petitioners contend that as BIA the Department should use the highest margin based on information in the petition because it represents the best estimate of what the actual margin would have been and that resorting to non-punitive BIA would inappropriately reward SSAB's intransigence.

Respondent claims that it did not need to report sales to its related end users because it does not consider the sales to be arm's-length transactions.

With respect to sales of subject merchandise by its related customer, respondent contends that it should not have been required to report such sales because: (a) To do so would have been impossible; (b) downstream sales would have produced few more similar matches than did the sales reported; and (c) downstream sales by the related customer are at different levels of trade and different quantities than are U.S. sales.

Respondent contends that it cooperated fully, that its responses were essentially complete and accurate, and that it reported the appropriate sales in the home market. Therefore, respondent contends, there is no basis for BIA.

DOC Position: We agree with petitioners in part. SSAB failed to report HM sales to related end-users despite the questionnaire's instructions to do so. SSAB also failed to report HM sales by its related customer, despite both the questionnaire's instructions and repeated supplemental requests that it do so. SSAB did not state that reporting such sales would be burdensome until its November 19, 1992, supplemental questionnaire response (i.e., three months after it received our questionnaire), and it never requested any relief from reporting requirements (e.g., permission to report only a sample of its HM sales). SSAB's defense that such sales would not have been more similar to U.S. models or of comparable quantities is a determination that must be left to the Department and can only be made when all relevant sales information is on the record for examination. SSAB ignored explicit and repeated instructions from the Department, unilaterally deciding which sales to report. Since SSAB's relationship to its related customer proved not to be arm's length in nature (see the "Fair Value Comparisons" section of this notice, above), the reported prices to this related customer cannot be compared to U.S. sale prices.

Verification also revealed, or did not resolve, numerous problems with SSAB's data. Movement charges, adjustments, and expenses had been misreported, and U.S. prices had been routinely overstated.

In view of the number of unmatched U.S. sales and the unreliability of respondent's reported data, we must resort to BIA. Because SSAB substantially participated in this investigation, we have determined SSAB to be a cooperative respondent (refer to our discussion of BIA in the "Fair Value Comparisons" section of this notice, above).

Comment 2: SSAB contends that the Department's arm's-length test is flawed because (a) the benchmark for comparability (99.5 percent of weighted-average prices to unrelated parties for the same product) is too high, effectively requiring prices to be identical; (b) the Department should omit from its analysis sales of second-choice plate because they are made at lower prices and thus distortive; (c) the Department's definition of "comparable" merchandise is "identical for matching purposes," even though such products may in fact be different and sold at different prices; and (d) it relies on POI weighted-average prices, thus risking distorted comparisons due to non-contemporaneous prices.

Petitioners counter that (a) no reasonable benchmark shows SSAB's related customer sales prices to be arm's length; (b) inclusion of seconds in the analysis is not a significant factor; (c) there is no evidence that the definition of identical merchandise is distortive in the arm's-length test; and (d) there is no evidence that contemporaneity influenced the results of the arm's-length test.

DOC Position: We agree with respondent in part. We have revised the test to compare prices to related customers only against prices to unrelated customers at the same level of trade (where possible). Furthermore, because SSAB had no sales of seconds in the United States market, we excluded seconds from FMV and from consideration in the related party test.

We reject SSAB's claim that the 99.5 percent benchmark is too high. Section 353.45(a) of the Department's regulations provides that, ordinarily, the Department "* * * will calculate foreign market value based on that sale [a sale to a related customer] if satisfied that the price is comparable to the price at which the producer or reseller sold * * * to a person not related to the seller." In this case, the analysis provided by SSAB did not satisfy us that its related-customer prices were comparable to its unrelated-customer prices. Further, our own test, based on the reasonable assumption that prices'

comparability could be established if, on average, the prices were nearly the same, produced the same result.

With respect to our selection of comparable merchandise and the contemporaneity of prices, respondent has not provided a reasonable basis for us to consider these items differently in determining the comparability of home market prices (i.e., in conducting the arm's-length test) than we do in determining the comparability of home market and U.S. prices (i.e., in making LTFV comparisons).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication in the Federal Register of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Svenskt Staal AB	24.23
All Others	24.23

ITC Notification

We have notified the International Trade Commission (ITC) of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the steel plate from Sweden, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duty deposits on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15627 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–814]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Andrew McGilvray, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0108, respectively.

Final Determination

We determine that imports of certain cut-to-length carbon steel plate (steel plate) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination in this investigation on January 26, 1993, (58 FR 7124, February 4, 1993), the following events have occurred:

We received a request for a public hearing from British Steel plc (British Steel), the respondent in this investigation, on February 12, 1993. On February 12, 1993, petitioners indicated their intent to participate in a public hearing. On February 19, 1993, Caterpillar Inc. (Caterpillar), an importer of the subject merchandise, also indicated its intent to participate in a hearing.

Petitioners, British Steel, and Caterpillar filed case briefs on April 27, 1993. Petitioners filed a rebuttal brief on April 30, 1993. The Department held a public hearing on May 4, 1993.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of steel plate from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because respondent failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. Since British Steel did not cooperate in this investigation, we have assigned a BIA margin based on the most adverse assumptions. Accordingly, we compared U.S. prices to home market prices, as provided in the petition. As BIA, given that British Steel has been uncooperative, we based our determination on the comparison that yielded the highest margin.

VOL 58 ISS 130 JL 9 1993 UMI

United States Price

We calculated USP using the methodology described in the preliminary determination.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect during the quarter of the U.S. sale as certified by the Federal Reserve Bank.

Final Negative Determination of Critical Circumstances

For this final determination, we made the critical circumstances determination pursuant to section 735(a)(3) of the Act, based upon the methodology described in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

When critical circumstances are alleged and the respondent has been deemed uncooperative, resulting in the antidumping duty determination being based on BIA, Department practice has been to use, where possible, the volume of imports provided in the United States Import Statistics (IM–146) to analyze whether or not imports have been massive over a relatively short period of time (see, e.g., Pure and Alloy Magnesium from Canada, 57 FR 30939, 30941 (July 13, 1992) (Magnesium from Canada); Silicon Metal from the PRC, 56 FR 18570, 18571 (April 23, 1991)). The relevant Harmonized Tariff Schedule (HTS) categories under which import data for steel plate are collected consist of both "basket" (i.e., inclusive of both subject and non-subject merchandise) and "non-basket" (i.e., limited exclusively to the subject merchandise) categories. For our analysis, we examined the level of imports in the pre- and post-petition periods using those HTS categories limited exclusively to the subject merchandise. We also examined a comparison of imports using all of the HTS categories identified in the scope of investigation, as well as a comparison of non-basket HTS categories in the pre-petition period, to both basket and non-basket HTS categories in the post-petition period. This last comparison makes the most adverse assumption with respect to critical circumstances in that it assumes that none of the basket category imports in the pre-petition period were of subject merchandise, but that all of the basket category imports in the post-petition period were of subject merchandise.

To determine the length of the comparison periods, the Department normally uses the longest period for which information is available up to the effective date of the preliminary determination. However, where there is a concurrent countervailing duty (CVD) investigation involving the same merchandise, we normally perform the comparison up to the suspension of liquidation resulting from the affirmative preliminary determination in the CVD investigation (see, Magnesium from Canada). Since there is a CVD investigation of steel plate from the United Kingdom, our comparison period for this investigation is five months, to take into account the December 7, 1992, effective date of suspension of liquidation under the CVD investigation.

Based on our analysis of the IM–146 statistics of non-basket categories using five-month comparison periods, as described above, we do not find that there has been a massive increase in imports. We also note that we did not observe a massive increase under the other analyses examined. Because we find that imports have not been massive over a relatively short period of time, we do not need to determine whether there was a knowledge or history of dumping. Therefore, in accordance with section 735(a)(3) of the Act, we determine that critical circumstances do not exist with respect to imports of steel plate from the United Kingdom.

Interested Party Comments

Comment 1: British Steel claims that the margin used in the preliminary determination is inappropriate as BIA because it is based on a comparison of USP derived from average unit import values with a foreign market value based on actual home market price quotes. According to British Steel, this methodology artificially inflates the disparity between U.S. price and foreign market value because it includes a comparison of a high-priced home market sale to a USP based on an average of product prices. British Steel states that this comparison is also incorrect because it is based on a product which British Steel claims was not sold in the U.S. during the POI. Instead, British Steel proposes that the margin be based on the most adverse comparison of actual U.S. price quotes to actual home market price quotes contained in the petition.

Petitioners state that the use of average unit import values is reasonable and consistent with the Department's normal practice. In support of their position, petitioners cite a number of recent cases, such as Final Determination of Sales at LTFV: Ferrosilicon from the People's Republic of China, 58 FR 5356 (January 21, 1993), where the Department based a BIA rate on a comparison of average unit U.S. import values to foreign market value.

DOC Position: We agree with petitioners. British Steel did not respond to our antidumping duty questionnaire and thus is properly deemed to be an "uncooperative" respondent. Our standard and consistent practice in such cases is to assign such a respondent the highest margin found in the petition, unless there is another firm under investigation with an even greater margin. This was the approach used in the preliminary determination for this case and in all other cases involving non-cooperating respondents in the steel investigations, and also has been continued in recent final determinations such as Final Determination of Sales at LTFV: Certain Helical Spring Lock Washers from Taiwan, 58 FR 27709 (May 11, 1993), and Final Determination of Sales at LTFV: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea, 57 FR 61881 (December 29, 1992). Given this longstanding practice, which has been consistently applied by the Department since such cases as Final Determination of Sales at LTFV: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19033 (May 3, 1989), British Steel should have recognized that it would be subject to the highest rate alleged in the petition if it chose not to respond. British Steel's status as a non-cooperative respondent has not changed since the preliminary determination. Consequently, we find no basis to depart from our BIA methodology in the final determination.

We further note that the use of average unit import values as the basis for USP is appropriate, as it is based on information reasonably available to the petitioners, and has been used in a number of cases, as cited by the petitioners. British Steel's claim that it did not sell the product identified in the U.S. import statistics used to derive USP cannot be accepted because it did not submit a questionnaire response and thus there is no information on the record, subject to a verification, that would support this contention.

Comment 2: British Steel and Caterpillar contend that the preliminary determination of critical circumstances is improper. These parties state that, for comparison periods of four, five, and six

months before and after the filing of the petition, there is no evidence of "massive" imports according to U.S. Department of Commerce import statistics. Consequently, Caterpillar contends that, as British Steel was the exclusive or virtually exclusive exporter of the subject merchandise to the United States during the relevant period, it was improper for the Department to rely exclusively on the petitioners' allegations without any analysis of its own. Based on such analysis, these parties contend that there cannot be a finding of critical circumstances.

DOC Position: The Department has analyzed the available data, as discussed under the "Critical Circumstances" portion of this notice, and has made a negative determination of critical circumstances.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of steel plate from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
British Steel plc	109.22
All Others	109.22

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its affirmative final determination in the concurrent countervailing duty investigation involving sales in the United States of steel plate from the United Kingdom, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the antidumping deposit rates.

Because we now determine that critical circumstances do not exist, the retroactive suspension of liquidation ordered at the time of the preliminary determination are terminated for entries of steel plate from the United Kingdom. All cash deposits or bonds placed on entries of steel plate from the United Kingdom prior to February 4, 1993, shall be refunded.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before 45 days after our final determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15628 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–433–804]

Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Sullivan, Office of Countervailing Investigations, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0114.

Final Determination

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Austria of certain steel products.

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary affirmative determination in the **Federal Register** (57 FR 57781, December 7, 1992), the following events have occurred.

On December 8, 1992, we issued a final supplemental questionnaire to respondents. On December 23, 1992, we received a response from the Government of Austria (GOA). On January 8 and 15, 1993, we received responses from Voest-Alpine Stahl Linz Ges.m.b.H. (VA Linz) and Voest-Alpine Stahl AG (VAS).

In accordance with section 776(b) of the Act, we verified the responses of the GOA, VA Linz, VAS, and Austrian Industries (AI) (which provided information for Voest-Alpine AG (VAAG)) from January 25 through February 5, 1993.

On February 26, 1993, the Department returned to respondents a submission dated February 17, 1993, because it contained unsolicited factual information and was submitted after verification.

Petitioners and respondents filed case and rebuttal briefs on March 8–9 and March 12, 1993, respectively. A public hearing was held on March 15, 1993. A public hearing regarding general issues in this and the 11 other countervailing duty (CVD) investigations of certain steel products from various countries was held on May 5–6, 1993.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determination in this investigation in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that date (see Suspension of Liquidation section, below).

Scope of Investigation

The products covered by this investigation, certain steel products, constitute the following single "class or kind" of merchandise, as found in the Scope Appendix attached to this notice: certain cold-rolled carbon steel flat products.

Injury Test

Because Austria is a "country under the Agreement" within the meaning of

section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from Austria materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Austria of the subject merchandise (57 FR 38064, August 21, 1992).

Corporate History

Prior to 1987, the subject merchandise was produced in the steel division of VAAG, a large conglomerate which also contained engineering and finished products divisions. Vereinigte Edelstahlwerke (VEW), a producer of specialty steel products not subject to investigation, was an incorporated subsidiary of VAAG. In 1987, VAAG underwent a major restructuring and several new companies were incorporated to operate the three major divisions of VAAG. The steel division became VA Linz. VAAG became a holding company for these new companies and for VEW.

In 1988, the production assets of VEW were distributed to its two incorporated subsidiaries, Bohler and Schoeller Bleckmann. VEW was renamed VAS and it became a steel holding company (under VAAG) with VA Linz and Böhler two of its incorporated subsidiaries.

In 1989, VAS and all other subholdings of VAAG were transferred to Industrie und Beteiligungsverwaltung Ges.m.b.H. (IBVG). In 1990, IBVG, in turn, renamed Austrian Industries AG (AI). VAAG remained in existence, but separate from IBVG and AI, holding only residual liabilities and non-steel assets.

Respondents

We have determined that the GOA, VAAG, VAS, and VA Linz are respondents for the class or kind of merchandise subject to this investigation. As discussed below in the Best Information Available section, we have determined that VAAG and VAS, as holding companies for VA Linz in 1987–88 and 1988-present, respectively, received subsidies that benefitted VA Linz.

Best Information Available

Petitioners argue that the Department should reject the responses of VA Linz and VAS as deficient and apply best information available (BIA). Although VAS claimed that it did not have to respond to the Department's questionnaire, that is incorrect.

Petitioners state that, at verification, the Department discovered for the first time that VAS performed certain activities on behalf of VA Linz (*e.g.*, raw materials purchasing). Petitioners assert that these activities required a full response from VAS. Petitioners argue that these circumstances reflect those in Final Determination of Sales at Less Than Fair Value: Certain Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany ("AFBs from the FRG"), 54 FR 18992 (May 3, 1989), where, due to the magnitude of the problems encountered at verification, the Department had no alternative but to use BIA.

Respondents argue that both VA Linz and VAS provided full responses to the Department's original questionnaire. However, based on the Department's November 2, 1992, letter regarding whether related parties were required to respond to deficiency questionnaires, VAS did not respond to parts of the Department's deficiency questionnaire. The functions performed by VAS on behalf of VA Linz that were cited by petitioners as actions which require a response from VAS (e.g., raw materials purchasing), were, in respondents' view, simply intermediary functions for which VAS received reimbursement plus a fee. Respondents argue that no "transfer of assets" or "assumption of financial obligations" occurred which would have required a response from VAS. Respondents further contend that, in any event, the information not provided by VAS was trivial and cannot be likened to the situation in AFBs from the FRG where numerous errors and discrepancies were found (*Id.* at 19033–41).

As stated above by respondents, the Department issued a letter to respondents on November 2, 1992, clarifying the basis on which to identify the appropriate related parties that must respond to the Department's questionnaires. The following excerpt from that letter is instructive as to the determination of the appropriate respondents:

"You do not have to provide a complete response for a supplier, trading company that does not sell the subject merchandise, or a holding company (*i.e.*, a company that confines its activities to owning stock in, and supervising management of, other companies, including respondent) merely because it is related to the respondent. However, if the related supplier, trading company, or holding company has had 'financial transactions' with the respondent, as described below, please provide a complete response, along with an explanation of these transactions. If a holding company is in turn 'related' to other companies, other than a producer or seller of the subject merchandise, you do not have to supply a response for these other companies.

3. Please provide complete responses for all related companies that conducted either of the following types of financial transactions:

a. Any transfer of funds (*e.g.*, grants, financial assets) or physical assets to the respondent, the benefits of which were still enjoyed by the producer of the subject merchandise during the POI; or

b. Any assumption of a debt or other financial obligation of the respondent (e.g., loan payments, dividend payments, wage compensation) that the respondent would have had to pay during the POI.

In addition, please explain the nature of these financial transactions, including all relevant terms and conditions."

In response to the November 2, 1992, letter, VAS stated that it did not engage in "financial transactions," as described, with VA Linz. Therefore, it did not answer most of the questions contained in the supplemental/deficiency questionnaire.

On December 8, 1992, the Department issued a second supplemental/deficiency questionnaire requesting respondents to detail any functions performed by VA Linz's holding companies since 1987. Respondents stated that VAS only provides cash clearing and foreign currency management on behalf of VA Linz. No mention of any other activities was made, nor did the response indicate that any functions were performed by VAAG. We accepted these responses and stated that the responses of VA Linz, VAS, VAAG, and the GOA would be subject to verification (see Letter from Susan H. Kuhbach to Honorable Dr. Freidrich Hoess, dated December 8, 1992).

Contrary to the claims of respondents, we discovered at verification that both VAAG (through June 1988) and VAS (after June 1988) performed various functions on behalf of VA Linz (*e.g.*, raw materials purchasing, acting as an intermediary for financial services). Despite repeated requests at verification that respondents document their assertion that these functions comprise the universe of functions performed by VAAG and VAS on behalf of VA Linz, respondents failed to do so.

In order to know whether VAAG or VAS should have responded to the Department's questionnaire, it was incumbent upon the respondents to identify any interactions between VA Linz and its past and present holding companies. Then, these interactions would have to be analyzed to see if they fell within the term "financial transactions," as defined by the Department in its November 2, 1992,

letter. As discussed below, no such analysis was provided to the Department either in a response or at verification.

When VAS contended that it did not have to provide a response and, in a subsequent letter, that the only transactions between it and VA Linz involved management in foreign currencies and cash-clearing, the Department accepted those responses, subject to verification. At verification, expecting to verify these claims, the Department instead found that the statement that VAS performed only cash clearing and foreign currency management was inaccurate. It was clear that, prior to our questioning at verification, no systematic analysis of the interactions between VA Linz and its holding companies had ever been done for purposes of this investigation, despite the number and manner of transactions between VA Linz and VAS.

With respect to VAAG, despite repeated requests by the Department, respondents never addressed the role of VAAG as VA Linz's holding company from 1987 through June 1988. As explained above, at verification we discovered that VAAG purchased raw materials for VA Linz, acted as an intermediary for internal and external financing, provided workers to VA Linz, and may have provided a data processing system to VA Linz. As with VAS, prior to our questioning at verification no systematic analysis of the interactions between VA Linz and VAAG had been done.

The information discovered at verification did not correspond to the information or conclusions provided in the responses (or, in the case of VAAG, not provided at all). This fact, combined with the apparent lack of any analysis by respondents of the interactions between VA Linz and VAAG or VAS, compels us to determine that an adequate response was not provided. Lacking comprehensive information concerning the nature and degree of intercompany relationships, as well as any information not already on the record concerning the receipt of subsidies by VAAG and VAS, we are unable to determine whether and to what extent VA Linz benefitted from subsidies received by its holding companies.

Because of these deficiencies, we determine that BIA is appropriate with respect to subsidies received by VAAG and VAS and benefitting VA Linz.

We disagree with petitioners that the magnitude of these deficiencies warrants our rejection of all responses. In all other aspects, the responses provided by VA Linz and the GOA were complete and accurate. Therefore, we are only applying BIA with respect to subsidies given to VAAG and VAS while each was a holding company to VA Linz. We have used the responses to calculate subsidy rates for programs used by VA Linz.

We have based the BIA for subsidies to VAAG and VAS on information collected at verification and from public sources. These subsidies are equity infusions and grants given to VAAG in 1987–1988 as well as grants given to VAS in 1988–89.

We have analyzed the equityworthiness of VAAG for 1987, the only year in which an equity infusion was given. We determine VAAG to be unequityworthy in the 1987, as explained more fully in the Equityworthiness section, below. Therefore, the equity infusion given to VAAG in 1987 was inconsistent with commercial considerations.

Further, we determine that only a portion of those subsidies given to the holding companies benefit VA Linz because both VAAG and VAS were holding companies for subsidiaries other than VA Linz. We calculated the share attributable to VA Linz using the ratio of VA Linz's assets to its holding company's assets for each year in which subsidies were provided to VAAG or VAS. This methodology is consistent with the Restructuring section of the General Issues Appendix.

For 1988, we determine that the relevant share of only half of those subsidies given to VAAG in that year benefit VA Linz because VAAG was the holding company for VA Linz only through June 1988. With respect to the subsidies given to VAS, however, we determine that all subsidies given to VAS in 1988 benefit VA Linz proportionately. We did not halve the benefit from the subsidies received by VAS in 1988 because VAS did not exist until July 1988.

To determine the benefit from the portion of the countervailable subsidies allocable to VA Linz, we applied the methodology outlined in the Allocation and Equity sections of the General Issues Appendix. For the discount rate, we used the relevant industry bond rate from the Austrian National Bank Annual Report (see Comment 3, below). This discount rate was also used for all programs, where appropriate, in the Analysis of Programs section, below.

We then divided the benefit by total sales of VA Linz products during the period of investigation (POI). Based on BIA, we determine the net subsidies to be 2.08 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

Petitioners note that we found VAAG to have used the österreichische Kontrollbank Aktiengesellschaft (ÖKB) Export Financing program in Final Affirmative Countervailing Duty Determination of Certain Carbon Steel Products from Austria (Carbon Steel), 50 FR 33369 (August 19, 1985). While VAAG may have used the ÖKB Export Financing program in 1984, we determine that VAAG and VAS would not use any export financing or insurance programs or a tax deferral program for export receivables after 1987 because, as holding companies, neither would export. Therefore, we find it reasonable to conclude, as BIA, that VAAG and VAS received only the equity infusions and grants described above.

General Issues

Several issues raised by interested parties in this investigation and in other CVD investigations of certain steel products from various countries were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to this notice.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the POI) is calendar year 1991, which corresponds to the fiscal year of VA Linz.

In determining the subsidies received under the various programs described below, we calculated a country-wide rate for each program. This rate equaled the *ad valorem* subsidy received by VA Linz because it is the sole Austrian exporter of the subject merchandise. The rates for all programs were then summed to arrive at the final subsidy rate listed in the Suspension of Liquidation section, below.

Based upon our analysis of the petition and the verified responses to our questionnaires, we determine the following:

Equityworthiness

A detailed equityworthiness analysis can be found in Appendix 2 of the Concurrence Memorandum dated June 9, 1993. A summary of that analysis follows.

In this investigation, the Department preliminarily determined VAAG to be unequityworthy in the period 1978–84. This concurred with our decision in Carbon Steel, in which we determined VAAG to be unequityworthy during the same period. Respondents have not questioned this and no additional information concerning that period has come to light. Therefore, we determine VAAG to be unequityworthy during 1978–84.

In our preliminary determination, we also found VAAG to be unequityworthy in 1986. Respondents have claimed that the Department should include in its analysis additional information available in 1986. This information, which the Department did not consider for the preliminary determination, is two cost-cutting studies and restructuring plans.

One of the studies prepared by VAAG (called "VA Neu") was not supplied in the response and was first available to the Department at verification. Because respondents did not supply the Department with this study or an adequate summary of this study prior to verification, thereby denying the Department and petitioners an adequate opportunity to analyze its contents, we determine that any information contained therein cannot be considered in the Department's analysis.

The other study was prepared by McKinsey & Company ("the McKinsey study"). This study was a cost-cutting study done for the steel division which became VA Linz. Despite an explicit request by the Department that respondents submit this study in full (see Letter from Susan H. Kuhbach to Honorable Dr. Freidrich Hoess dated December 8, 1992) so that it could be properly analyzed, only a summary and sample pages were submitted immediately prior to verification. Respondents argue that this study was too voluminous to translate and submit.

A summary of a voluminous study such as this may be considered adequate if it thoroughly reviews such aspects as the scope and purpose of the analysis, the methodological approach used, and the conclusions drawn. These aspects are necessary so that the Department and petitioners have a sufficient basis upon which to evaluate the study prior to verification. The summary provided by respondents falls well short of the information needed on the record to perform such an evaluation. Therefore, we did not consider the contents of the McKinsey study or the summary in the equityworthiness analysis.

With respect to the planned restructuring of VAAG, a reasonable private investor would consider the anticipated benefits from these plans over past results. No information regarding the expected results from restructuring was presented other than the information contained in the two studies which are not being considered. Thus, there are no conclusions regarding the restructuring which affect the equityworthiness determination. With no information to counter the past performance of VAAG, we determine VAAG to be unequityworthy in 1986.

Since VA Linz was incorporated effective 1987, our equityworthiness analysis for 1987 shifts to that company. VA Linz's performance prior to 1987 is included in the financial statements of VAAG. As discussed above, VAAG performed poorly. Respondents have claimed, however, that VA Linz on its own was equityworthy in 1987 and based this claim on the restructuring and the cost-cutting studies discussed above.

As noted above, we did not consider the VA Neu or McKinsey studies. In addition, the restructuring plans submitted to Finanzierungsgarantie Gesellschaft (the Federal Guaranty Corporation—FGG) in 1987 were derived from the VA Neu study. These plans were not submitted, either entirely or in summary form, on the record prior to verification. Moreover, as noted above, no information regarding the expected results from restructuring was presented.

Respondents have also cited VAAG's annual reports for the years 1984–86, where references are made to the profitability of the steel division's operations at Linz. For a reasonable private investor examining the prospects of an investment in VA Linz in 1987, such brief references, devoid of any financial data, would not provide a sufficient basis to counteract the actual, documented, poor performance contained in the remainder of VAAG's annual reports. While we recognize that VAAG's financial data reflects more than just VA Linz, without any additional information, we are compelled to rely on VAAG's results as a surrogate for VA Linz.

We gathered at verification an internal OIAG memorandum which contained profit forecasts for the steel division at VA Linz. No analysis was associated with this memorandum which a private investor could examine in order to determine its accuracy.

Therefore, we determine VA Linz to be unequityworthy in 1987 because the evidence submitted does not provide a sufficient evidentiary basis to overcome the historical record of poor performance by VAAG.

As discussed above, we are applying partial BIA and assuming that a proportional amount of an equity infusion received by VAAG in 1987, while acting as holding company for VA Linz, benefitted VA Linz. Hence, we have also analyzed whether VAAG was equityworthy during 1987.

For 1987, the information on the record indicates that VAAG's past performance was poor. While the restructuring of VAAG had begun, we have no information regarding forecasts available in 1987 that VAAG as a whole would begin to perform better. Therefore, we determine that VAAG was unequityworthy in 1987.

A. Programs Preliminarily Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of certain steel products under the following programs:

1. Equity (Capital) Infusions to Voest-Alpine AG (VAAG): 1983–84, 1986

1983–1984

The GOA provided capital infusions through Österreichische Industrieholding-Aktiengesellschaft (ÖIAG) to VAAG while VAAG owned the facilities which became VA Linz, the producer of the subject merchandise. We verified that VAAG received capital infusions in 1983 and 1984.

At verification, we discovered that an equity infusion reported by respondents as received in 1978 was actually received in 1975. Therefore, since we have determined that the benefits from non-recurring subsidies should be allocated over 15 years (see Allocation section of the General Issues Appendix), benefits from this infusion would not be allocated to the POI.

The 1983 and 1984 infusions were given by ÖIAG pursuant to Law 589/1983. Law 589/1983 provides authority for disbursement of funds to companies of ÖIAG, of which VAAG is one. Therefore, we determine the infusions given under this law to be specific.

As discussed above, we determined that VAAG was unequityworthy in 1978–84. Therefore, these equity infusions were given on terms inconsistent with commercial considerations.

When VAAG was restructured and VA Linz became a separate company, we have determined that these subsidies

continue to benefit steel production. In accordance with the methodology outlined in the Restructuring section of the General Issues Appendix, we have applied the following methodology.

We divided VA Linz's asset value on January 1, 1987, by VAAG's total asset value on December 31, 1986 (i.e., pre-restructuring). This ratio best reflects the proportion of total VAAG assets accounted for in 1986 by what became VA Linz in 1987.

We applied this ratio to VAAG's subsidy amount to calculate the portion of these infusions allocable to VA Linz. We then applied the methodology described in the Allocation and Equity sections of the General Issues Appendix to calculate the benefit to VA Linz from these equity infusions. We divided the benefit by total sales of VA Linz products during the POI. On this basis, we determine the net subsidies for this program to be 0.20 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

1986

Petitioners alleged that an equity infusion was given by ÖIAG to VAAG in 1985 while VAAG was the holding company for VA Linz. However, the responses and verification indicate that, in fact, these funds were received by VAAG in 1986. The 1986 capital infusion was given as an advance payment under Law 298/1987 (the ÖIAG Financing Act). The companies eligible to receive funds were the same as those under Law 589/1983. Therefore, we find this infusion to be specific.

As stated above in the Equityworthiness section, we determine VAAG to be unequityworthy in 1986. Thus, we determine that this equity infusion was given on terms inconsistent with commercial considerations.

To calculate the benefit from this program, we used the same methodology described in the 1978–84 section, above. We then divided the benefit by total sales of VA Linz products during the POI. On this basis, we determine the net subsidies for this program to be 0.64 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

2. Grants Provided to VAAG: 1978–86

The GOA provided grants to VAAG through ÖIAG during the years 1978–86, pursuant to Law 602/1981, Law 589/1983, and Law 298/1987. In Carbon Steel, the Department found grants disbursed under Law 602/1981 and Law 589/1983 to be countervailable (50 FR at 33370–71). In addition, as stated above, we determine that benefits provided under Law 298/1987 are specific and, hence, grants under this law are countervailable.

As with the equity infusions to VAAG discussed above, respondents have argued that the funds provided by these grants were not disbursed to facilities which produced the subject merchandise and, therefore, did not benefit the subject merchandise. As discussed above, the Department has addressed this issue in the Denominator and Restructuring sections of the General Issues Appendix.

In accordance with the Allocation section of the General Issues Appendix, the grant amounts were combined with equity infusions provided under the same program in each year, if any, to determine whether the amount exceeded 0.5 percent of total VAAG sales in that year. In each year except 1981, the value was greater than 0.5 percent of sales. The 1981 grant was expensed in that year. To calculate the benefit from the other grants, we used the methodology described in Equity Infusions to VAAG: 1983–84, 1986 section, above. On this basis, we determine the net subsidies for this program to be 2.26 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

3. Assumption of Losses at Restructuring by VAAG on Behalf of VA Linz

Petitioners argue that if VAAG assumed debts or liabilities of VA Linz during the restructuring then subsidies given to VAAG after January 1, 1987, could be used to liquidate those debts or liabilities. Petitioners state that respondents do not indicate whether VAAG used any alleged programs.

At verification, we examined the distribution of liabilities and assets by VAAG to its newly incorporated subsidiaries. Any assets or liabilities not clearly associated with a new subsidiary, including general debts, were retained by VAAG.

We find no indication that VAAG retained liabilities or poorly-performing assets as a result of this distribution which were specifically related to any of the newly created subsidiaries, including VA Linz. In addition, even though VAAG retained all general liabilities, it appeared that VAAG attempted to allocate some of the cost associated with those liabilities by creating debt obligations to VAAG on the subsidiaries' books. Therefore, we conclude that the method used to allocate liabilities and assets to the new subsidiaries was reasonable and that no countervailable benefit was conferred in this action.

However, we did observe that VAAG retained a loss carried forward on its balance sheets which was not assigned to any of its newly created subsidiaries, including VA Linz. For VAAG, this loss carried forward nearly created a situation of negative equity. If VAAG had assigned these losses to its new companies, then each of the new companies would have been in a similar, precarious financial position. However, equity was established in each company, including VA Linz, and VAAG retained all the losses carried forward. VAAG later received funds from the GOA under Law 298/1987 to offset these losses.

Consistent with our analysis of the distribution of VAAG's assets and liabilities to the newly-formed subsidiaries, we have concluded that a portion of the losses should also have been allocated to the subsidiaries.

Based on our analysis of this distribution, we determine that VA Linz benefitted by not assuming any losses. Moreover, although VAAG did not receive funds to cover these losses until 1989, we have determined that VA Linz benefitted in 1987 when the restructuring occurred.

We calculated the benefit by treating the losses not distributed to VA Linz as a grant in 1987, determining VA Linz's share of the losses by reference to its asset value relative to total VAAG assets.

Using the methodology outlined in the Allocation and Equity sections of the General Issues Appendix, we calculated the benefit attributable to the POI and divided this amount by VA Linz's total sales to reach an *ad valorem* subsidy. On this basis, we determine the net subsidies for this program to be 0.76 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

4. Equity Infusion to VA Linz—1987

Two equity investments were made in VA Linz in 1987, one directly from ÖIAG and one from VAAG. The infusion by ÖIAG was made pursuant to Law 298/1987 (the ÖIAG Financing Act). The equity investment by VAAG is discussed below under Programs Determined Not to be Countervailable.

With respect to the ÖIAG infusion, the companies eligible to receive funds under Law 298/1987 were the same as those that were eligible under Law 589/1983. Therefore, we find this infusion to be specific. As stated above in the

VOL 58 ISS 130 JL 9 1993 UMI

Equityworthiness section, we determine VA Linz to be unequityworthy in 1987. Therefore, the ÖIAG infusion was given on terms inconsistent with commercial considerations.

Since the infusion was made directly in VA Linz and VA Linz was separately incorporated as of that year, we calculate the benefit from the entire equity infusion using the methodology described in the Allocation and Equity sections of the General Issues Appendix. We divided the calculated benefit by total sales of VA Linz during the POI to determine the *ad valorem* subsidy. On this basis, we determine the net subsidies for this program to be 0.10 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of certain cold-rolled carbon steel flat products.

5. Income Tax Deferral on Export Receivables

Under this program, the GOA, pursuant to section 6(2)(c) of the Austrian Income Tax Law (EStG), permits Austrian companies to deduct from their taxable income and place in a reserve 15 percent of receivables originating from exports. This income remains tax exempt until payment on the receivable is made.

Petitioners allege that this confers a countervailable benefit because by deferring payment of taxes on export receivables, an interest-free loan is being provided to the exporter for the deferral period. Respondents argue that this program is not a subsidy but, rather, exists to provide companies a mechanism for dealing with the risks associated with export receivables. VA Linz also argues that, due to the fact that the conglomerate, VAS, incurred losses during the POI, it paid no taxes. Therefore, it did not benefit from the program.

Regardless of accounting rules which require Austrian corporations to reflect the actual market value of assets in their books, including riskiness of receivables, this program specifically provides that a portion of export receivables may be placed in a reserve and go untaxed. There is no similar provision for domestic receivables. Thus, we determine that this program provides a countervailable benefit to exporters.

However, we find no benefit to VA Linz during the POI because VAS did not pay taxes in 1991 and, hence, no taxes were deferred.

B. Program Determined Not to be Countervailable

We determine that the following program does not provide subsidies to manufacturers, producers, or exporters in Austria of certain steel products:

Equity Investment in VA Linz by VAAG: 1987.

When VAAG restructured in 1987 and formed separate, incorporated subsidiaries, the start-up equity was merely a result of the distribution of its pre-existing assets and liabilities to VA Linz. As stated above, we determine this distribution to be reasonable, with the exception of the retention of losses by VAAG. Thus, benefits to VA Linz by the equity investment from VAAG are captured in the Assumption of Losses at Restructuring by VAAG on Behalf of VA Linz program, above.

C. Programs Determined Not to be Used

We determine that the following programs were not used by manufacturers, producers, or exporters in Austria of certain steel products:

1. Grants to VEW: 1981–1987
2. ÖKB Export Financing
3. Foreign Investment Credits
4. ÖKB Export Insurance

D. Program Determined Not to Exist

Loan Guarantee Program Under Law 569/1978

Petitioners alleged that under section 77 of the Insurance Supervisory Law of October 18, 1976 (Law 569/1978), the GOA provided guarantees on loans issued by Austrian insurance companies to VAAG. Petitioners further alleged that there is no evidence that VAAG paid for the guarantees and, therefore, these guarantees were provided at a rate lower than commercially available guarantees. The guarantees also permitted VAAG and VAS to obtain financing at a lower rate than they would otherwise have had to pay.

We discovered at verification, however, that section 77 of this law did not provide for the GOA to give guarantees to companies but rather provided guidelines for insurance companies' investments. Therefore, we determine that this program does not exist.

Interested Party Comments

The following are country-specific comments only. All other issues are either addressed in the sections above or in the General Issues Appendix.

Comment 1: Petitioners state that the 1989–90 equity infusions to VA Linz, which the Department preliminarily determined to be not countervailable, were given to VA Linz by VAAG in 1987. The Department verified that VAAG was subsequently reimbursed by ÖIAG for these infusions in 1989–90 under Law 298/1987. Insofar as VAAG was merely a holding company with no operations, the only need for an infusion from ÖIAG was to reimburse VAAG for its infusions to VA Linz. Petitioners argue, therefore, that 1987 is the year in which the equity infusion was made.

Respondents argue that the initial equity infusion of AS 3,700 million in 1987 was provided to VA Linz by VAAG, not the GOA. Moreover, there was no real transfer of funds from VAAG to VA Linz; this was merely a paper transaction. Respondents assert that the proper years of focus are 1989–90, when the GOA provided actual funds to VAAG to refinance the equity position it had previously taken in VA Linz. In addition, ÖIAG and its companies were required to fulfill conditions (e.g., submit business plans) before any funds were disbursed. Therefore, the equity infusions took place only when the conditions were met, which was in 1989–90.

DOC Position: As stated above in the Assumption of Losses By VAAG on Behalf of VA Linz and the Equity Investment in VA Linz: 1987 programs, the equity investment in VA Linz by VAAG in 1987 was merely a redistribution of existing assets. However, VAAG also retained losses instead of distributing them to its newly incorporated subsidiaries. We have determined that VAAG's failure to distribute these losses to the new subsidiaries amounted to a grant in VA Linz. Although VAAG was not reimbursed for this grant by ÖIAG until 1989–90, the benefit to VA Linz occurred at the time of restructuring, i.e., when it received assets and liabilities from VAAG.

Comment 2: Petitioners argue that the Department correctly determined at the preliminary determination that the Income Tax Deferral for Export Receivables Program conferred a benefit on VA Linz. Petitioners contend that funds placed in this reserve benefit VA Linz because VA Linz is permitted to defer payment of taxes on these funds until collection of the receivables is made. Petitioners assert that the Department should countervail VA Linz's contributions to this reserve not only in 1990 but in 1988–89 as well. These prior years should be examined because the Austrian Income Tax Law does not limit the time period for deferral. The tax which should have been paid should be treated as an interest-free, short-term loan.

Respondents contend that this program confers no preferential treatment on exporters. All Austrian companies are required to write off a portion of assets in accordance with the

risks associated with these assets. Therefore, the benefits are not linked to export sales (see *Can-Am Corp.* v. *United States*, 664 F. Supp. 1444, 1450 (CIT 1984)). Respondents also maintain that the law does, in fact, indicate there to be a time limit on the period for deferral.

DOC Position: The issue of whether this program is countervailable is addressed in the Income Tax Deferral for Export Receivables Program section, above. Furthermore, because we find no benefit from this program to VA Linz during the POI, no calculation of benefits under this program is required.

Comment 3: Petitioners contend that neither VAAG nor VA Linz supplied adequate information regarding its cost of long-term debt. Petitioners further argue that the national average long-term fixed interest rates provided by the GOA relate to "single issue" bonds, as listed in the Austrian National Bank annual report. Petitioners assert that the rates for these bonds, where the issuer is not known, were lower than the rates on bonds issued by low-risk borrowers. This makes the use of single issue rates highly questionable. VAAG, a borrower of considerable risk, has not shown, nor can the Department assume, that it could have borrowed or floated bonds at such rates.

Petitioners also contend that the Department should not use the long-term cost of debt reported by VA Linz for 1987–91. In 1987, VA Linz was newly incorporated; therefore, it had no debt on which a long-term rate could be based. For 1988–91, VA Linz incorrectly calculated its cost of long-term debt on the loans outstanding during the relevant period instead of basing it on new loans taken out in that period (see, e.g., Preliminary Countervailing Duty Determination: Certain Steel Products from Mexico, 57 FR 57813, 57816 (December 7, 1992)). Petitioners argue that the Department should use, as BIA, the commercial interest rates for loans from banks to prime customers submitted in its petition.

Respondents argue that the Department should use VA Linz's cost of long-term debt for the years 1987–1991 and the national average long-term interest rates the GOA provided for the years prior to 1987. VA Linz's reported interest rates were based on the loan amount outstanding each year, not the loans taken out in the relevant period. Respondents contend that neither the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations) nor its questionnaire require respondents to report the interest rates for loans taken out in a period. Rather, the questionnaire requests the cost of long-term debt incurred in a period.

For the period prior to 1987, respondents argue that the long-term rates reported by the GOA represent average yields for newly issued bonds as opposed to secondary market yields. Since large companies in Austria use the bond market to raise funds, this is an appropriate measure. It would be inappropriate, respondents argue, to use bank interest rates, as offered by petitioners, since only small- and medium-sized companies use banks for financing. Respondents contend that petitioners' interest rates are short-term and merely a sample of rates, while the GOA's rates are more technically precise.

DOC Position: We verified that the rates reported by VA Linz for 1987–91 corresponded to its cost of long-term debt outstanding in each year rather than the cost of long-term debt taken out in each year. We regret that the Department's questionnaire may have been vague by asking for the company's cost of long-term fixed rate debt incurred in each year. However, at verification we gave respondents the opportunity to amend their calculations to reflect the Department's methodology and they chose not to do so.

In calculating benchmarks and discount rates, we seek the cost of long-term fixed rate loans raised in a particular year because we are attempting to obtain a rate which would make the company indifferent, at the time the grant was approved, between receiving a grant in a lump sum versus in equal installments over time. The interest rate obtained by the firm at the point the grant is received best achieves this result.

Since no company-specific discount rates are available, section 355.49(b)(2) of the Proposed Regulations directs us to use a national average interest rate. We have determined that the secondary market yields for industry bonds, as listed in the 1991 Austrian National Bank (ANB) Annual Report under the category "Industry and other Austrian issuers," is the most appropriate rate.

First, we confirmed at verification that large Austrian firms obtain financing through the bond market, not through commercial bank loans. Second, the bond rate provided to the Department in the response, and sourced from the ANB Annual Report, was dominated by GOA bonds. We prefer to use a rate which is reflective of commercial rather than government borrowing where possible.

Of the other bond rates listed in the ANB Annual Report, only three were reflective of non-government activities: the power supply industry; industry and other Austrian issuers; and banks. The rates for the power supply industry and banks may reflect special characteristics of those industries. Therefore, we have chosen the broader category, "Industry and other Austrian issuers," as the source for our discount rates.

The 1991 ANB Annual Report did not contain rates for the period prior to 1982. At verification, we collected the same table, as referenced above, from an earlier ANB publication. However, this table did not contain a column for "Industry and other Austrian issuers" but rather just "Other issuers." Because it appears that this column most closely corresponds to the "Industry and other Austrian issuers" column, we have used these bond rates as discount rates for the period 1977–81.

Finally, petitioners' objections to the use of bond rates are without merit. Based on our conversations with officials from the ANB and from a commercial bank, as reflected in the verifications reports, we are satisfied that these bond rates provide an accurate measure of what it would cost a large company to raise capital in a given year. Petitioners' assertion that VAAG was a creditor of considerable risk, to whom these rates do not apply, is an allegation of uncreditworthiness which should have been raised at a point earlier in this investigation, not in petitioners' briefs. In addition, because we consider the ANB information to be accurate and reliable, there is no need to resort to the petition for the discount rates.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Austria which were entered, or withdrawn from warehouse, for consumption on or after

VOL 58 ISS 130 JL 9 1993 UMI

December 7, 1992, the date of publication of our preliminary determination in the **Federal Register**. This final CVD determination was aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Cold-Rolled Carbon Steel Flat Products

Country-Wide *Ad Valorem* Rate.....6.04%

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a CVD order, directing Customs officers to assess countervailing duties on entries of certain steel products from Austria.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Scope Appendix

Scope of the Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions and the scope of these proceedings are dispositive.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat-rolled products, of rectangular shape, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are certain seat belt retractor spring steel and certain carbon band saw steel, which are defined respectively by the following specifications:

Certain Seat Belt Retractor Spring Steel

Chemical Composition:

Carbon—1.21%–1.35%
Manganese—0.15%—0.35%
Phosphorus—0.025% maximum
Sulphur—0.010% maximum
Silicon—0.10%—0.25%
Aluminum—0.015% maximum
Chromium—0.10%–0.30%
Copper—0.15% maximum

Microstructure:

Must be fully sorbitic with carbide size # absolute maximum.

Width:

14 inches maximum

Thickness:

0.07 inch–0.125 inch

Certain Carbon Band Saw Steel

Chemical Composition:

Carbon—0.78%–0.83%
Manganese—0.35%–0.50%
Phosphorus—0.020% maximum
Sulphur—0.008% maximum
Silicon—0.10%–0.20%
Aluminum—0.020%–0.060%
Chromium—0.05%–0.15%
Copper—0.12% maximum

Non-Metallic Inclusion Rating:

(1) IPSI 10,000 maximum
(2) ASTM E45
A: 2 maximum
B and C: 1 maximum
D: 1 maximum
(3) DIN 50602
SS: maximum 3
OA: maximum 1
OS: maximum 1
OG: maximum 2

Banding:

ı1 maximum

Decarburization:

Complete=0.0005 inch maximum
Total=0.002 inch maximum

Width:

14 inches maximum

Thickness:

0.07 inch–0.125 inch

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X–70 plate

Interested Party Comments

Comments received from interested parties regarding the scope of these investigations and the Department's positions on these comments are addressed in Appendix I to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina which is being published concurrently with this notice.

GENERAL ISSUES APPENDIX

Allocation

Issue

Interested parties to these investigations have challenged several aspects of our grant allocation methodology including: (1) The application of the three-part recurring/nonrecurring test in the Preamble to Countervailing Duties; Notice of Proposed Rulemaking and Request for

Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations); (2) the manner in which the Department has applied the 0.50 percent test; and, (3) the use of a fifteen-year period for the average useful life of assets in the steel industry. Our decision with respect to these issues is addressed below.

Discussion

A. *Allocating Benefits.* Our policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. See section 355.49(a) of the Proposed Regulations and Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991) (Salmon from Norway).

1. The Recurring/Nonrecurring Test. The Preamble to the Proposed Regulations describes those types of benefits the Department has determined to be recurring and lists three factors the Department has considered when deciding whether a benefit is recurring:

> * * * recurring benefits (benefits which a firm receives, or is likely to receive, on an on-going basis from review period to review period) shall be expensed. Typical examples of such benefits are direct tax exemptions or deductions, excessive rebates of indirect taxes or import duties, preferential provision of goods and services. Factors the Department considers in determining whether a benefit is recurring are: (1) Whether the program providing the benefit is exceptional; (2) whether the program is longstanding; (3) whether there is any reason to believe that the program will not continue into the future

See the Proposed Regulations. In the preliminary determinations of these investigations, we stated that we intended to reexamine the approach to distinguishing recurring from non-recurring benefits set forth in the three-part test found in the Preamble of the Proposed Regulations.

In four final determinations subsequent to the preliminary determinations in these investigations, we modified the test for deciding recurring/nonrecurring issues. For example, in the Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221 (January 27, 1993) (France Bismuth) we stated the following:

> We have considered the grants * * * described below to be non-recurring * * * because the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from review period to review period and/or the provision of funds by the government must be approved every year.

See France Bismuth. We have adopted this revised test for these final determinations. We consider this test to be more appropriate than the one described in the Preamble of the Proposed Regulations for two reasons. First, this test makes it clear that the Department's focus should be on the nature of the benefit provided to the recipient. Secondly, this modified test omits the last two factors cited in the Preamble to the Proposed Regulations (i.e., is the program longstanding and will it continue in the future). These two factors have not proven helpful in evaluating the nature of the benefit to the recipient and have been difficult to interpret and apply in practice. While we do not consider that these two factors are necessarily irrelevant, their prominence in the three-part test of the Preamble to the Proposed Regulations was misplaced.

If any of the questions in the modified test are answered affirmatively, the benefit provided will generally be considered nonrecurring and we will allocate the benefit over time. In applying the modified test in these investigations, we have generally considered the following types of benefits to be nonrecurring: equity infusions, research and development grants, grants for loss coverage, grants for the purchase of fixed assets, debt forgiveness, and assumption of debt (including payments of principal and interest). In addition to the recurring benefits listed in the Preamble of the Proposed Regulations, we generally have considered the following types of benefits to be recurring: freight subsidies, export promotion assistance, early retirement payments, worker assistance, worker training, wage subsidies, price support payments, electricity discounts and upstream subsidies.

This list of the types of subsidies the Department has normally considered nonrecurring and recurring is provided for illustrative purposes only and should not be construed as a definitive rule. Of course, such a list is not exhaustive. The unique factual circumstances of a particular case may indicate that a program listed generally as recurring be found nonrecurring or vice versa. The list is proffered to offer general guidance to both the U.S. industry and foreign respondents.

Under the modified test, we are attempting to analyze the frequency and "automaticity" with which a benefit is provided. "Exceptional" benefits are those types of benefits which are not received on a regular and predictable basis; the recipient cannot expect to receive the benefits on an ongoing basis from review period to review period. The element of "government approval" relates to the issue of whether the program provides benefits automatically, essentially as an entitlement, or whether it requires a formal application and/or specific government approval prior to the provision of each yearly benefit. The approval of benefits under the latter type of program cannot be assumed and is not automatic. The receipt of a benefit after merely filling out the appropriate forms (e.g., tax benefits) or, after initial qualification for yearly benefits under a program (e.g., some types of price support programs), would meet the automaticity part of the test.

One particular recurring/nonrecurring issue which has arisen in several of these investigations involves the government provision of equity in numerous years. While receipt of government equity infusions may not require an application, it does require some type of special budgetary authorization or government approval prior to the provision of funds. Therefore, we consider equity infusions to constitute nonrecurring benefits because the government must approve or authorize each individual expenditure prior to the provision of funds.

In general, we have determined that the vast majority of grants examined in these investigations, unless otherwise noted, are nonrecurring under the modified test.

2. The 0.50 Percent Test. As noted above, our policy is to allocate nonrecurring grants over the useful life of assets in the industry being investigated unless the sum of grants provided under a particular program in a given year is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. We have decided to continue to apply this test on a program-by-program basis rather than applying the test against the aggregate amount of benefits received under all programs. We determine that this is consistent with our general practice of analyzing the nature of a benefit within the limits of a particular program rather than in the context of every program under investigation.

Several parties have argued that where the government has assumed or forgiven loans or exchanged them for equity, the Department should not allocate the benefit from these actions over 15 years.

Since the Department considers that assumption, forgiveness, or conversion to be a new countervailable event, we are maintaining our longstanding practice of allocating the grant benefit over the average useful life of the assets in the industry under investigation. This issue is discussed in more detail in the Department's Memorandum to the File regarding the Proper Allocation After Reclassification of a Subsidy.

B. Allocation Period. Since 1982, it has been the Department's practice to allocate benefits from nonrecurring subsidies, such as grants and equity, over the average useful life of renewable physical assets, as set out in the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System. During these investigations, the Department has received various comments on the appropriateness of this policy. After careful consideration of the comments made by the interested parties, and our own internal examination of this policy, we have concluded that the allocation period traditionally used by the Department is the most reasonable. Furthermore, our use of the IRS tax tables for the average useful life of renewable assets is consistent with the Guidelines Adopted By The GATT Committee On Subsidies And Countervailing Measures: Guidelines on Amortization and Depreciation (GATT Doc. No SCM/64 of July 11, 1985).

For a full discussion of alternative allocation periods considered by the Department, and the reasons why the Department retained its traditional policy, please see Comments 8 and 9 below, and the June 21, 1993 Memorandum from Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, regarding the Appropriate Period Over Which to Allocate the Benefits from Non-recurring Subsidies.

C. Allocation Methodology. The benefit from each of the nonrecurring grants countervailed in these investigations was calculated using the declining balance methodology described in the Department's Proposed Regulations (see section 355.49(b)(3)) and used in prior investigations (see e.g., Salmon from Norway). Our allocation period in these investigations is 15 years, which the Department considers to be reflective of the average useful life of assets in the steel industry (see section 355.49(b)(3) of the Proposed Regulations and the discussion below regarding the appropriate allocation period). For the discount rate in these calculations, we used the appropriate interest rate as described in each of the individual country determinations. If a company was uncreditworthy in the year in which the grant was approved, we added a risk premium to the benchmark interest rate in accordance with section of 355.44(b)(6)(iv) of the Proposed Regulations.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding these allocation issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: Respondents maintain that when a grant is provided to a company for the reimbursement of an expense already incurred, the grant should be considered recurring in nature. They cite as examples grants such as those provided for freight expenses, employment stimulation, and worker training. Respondents would make an exception to their rule for grants provided for the acquisition of capital assets.

Petitioners disagree with respondents' argument that subsidies which serve to reimburse expenses already incurred should be expensed. Petitioners contend that respondents' argument should be rejected because it is based on the assumption that only benefits used to purchase capital assets may appropriately be amortized.

DOC Position: We do not believe that the factor proposed by respondents is useful in determining whether a grant should be allocated or expensed. The timing of the grant, either before or after the expense has been incurred by a company, bears little, if any, relationship to the nature of the benefit received. Therefore, we have not adopted respondents' proposed methodology.

Comment 2: Petitioners argue that the only benefits which should be expensed are those where the benefit, if expensed, would approximately equal the amortized benefit of the same subsidy. Petitioners contend that the Department's three part test adequately provides a means of determining when expensed benefits would approximate the amortized benefit of the subsidy.

DOC Position: For these final determinations, the Department has modified the test used to determine whether or not program benefits will be expensed or allocated. Although, we have dropped two of the factors of the "three-part test" described in the Preamble of the Proposed Regulations, the actual determination of whether a specific benefit will be expensed or allocated, in almost all instances, has not changed. That is, a benefit which was previously allocated by the Department under the test espoused in the Proposed Regulations, would still be allocated under the revised test now adopted by the Department. Therefore, petitioners' statement that the three-part test adequately provides a means of determining when expensed benefits would approximate the amortized benefit of the subsidy, applies equally to the methodology now adopted by the Department.

Comment 3: The United Kingdom respondent, British Steel plc (BS plc), contends that the equity infusions it received are recurring benefits under the Department's three-part test and, therefore, should be expensed in the year received. According to respondent, the program under which equity was received by its predecessor, the British Steel Corporation (BSC), was not exceptional because the application for and disbursement of the equity infusions was a regular, routine process. Secondly, respondent argues that the Department's determination that the payments to BSC were not automatic is not relevant. Under the Department's test, there is no requirement that the payments be automatic, just that the program providing the benefit not be "exceptional."

Petitioners state that the equity infusions should be allocated. Citing certain potential impediments to the equity infusions discussed in the verification report (e.g., EC approval, legislative restrictions), petitioners argue that the funding was "exceptional." Petitioners add that the sheer magnitude of each of the equity infusions made by the U.K. government between 1978 and 1986 ensures their exceptional character. Secondly, petitioners state that the equity infusions provided to BSC were made on an *ad hoc* basis.

DOC Position: As noted above, we have modified the three-part test as specified in the Preamble of the Proposed Regulations. The test adopted by the Department for these final determinations analyzes the frequency and automaticity of a benefit to

determine whether or not it should be expensed or allocated. Under this test, the BSC equity infusions are allocated over time because BSC could not expect to receive infusions on an ongoing basis year after year and because each infusion was contingent upon specific government approval.

Comment 4: A Mexican respondent, AHMSA, argues that equity infusions provided by the Government of Mexico (GOM) should be considered recurring benefits, and should therefore be expensed in the year of receipt. AHMSA argues that the benefits were not exceptional, because they were regularly and routinely approved by the legislature. The respondent also argues that, because infusions were provided for nine consecutive years, the Department should consider that the benefits are consistently provided.

Petitioners disagree with respondent's argument, and contend that the Department should determine that equity infusions to AHMSA constitute nonrecurring benefits. Petitioners state that the benefits were subject to specific government authorization each year. Petitioners argue that the benefits were exceptional, and that infusions were made on a case-by-case basis depending on the financial need of the company. In addition, because the GOM has indicated that it will not continue to provide infusions, the company cannot reasonably expect to receive the benefits in the future.

DOC Position: In determining whether benefits are recurring or nonrecurring, the Department analyzes whether the benefits are exceptional, whether the recipient can expect to receive the benefits on an ongoing basis and whether the benefits must be approved by the government each year. Under this test, we determine that the GOM's equity infusions into AHMSA constitute nonrecurring benefits. The benefits are exceptional, the companies could not expect to receive benefits on an ongoing basis, and the benefits must be specifically approved or authorized by the GOM.

Comment 5: The French respondents argue that shareholder advances provided by the Government of France to Usinor and Sacilor during the period 1982 through 1986 were used only to finance the short-term needs of the companies. Therefore, they argue that these advances should be treated as recurring grants and expensed in the year of receipt. They also state that these advances were provided in relatively uniform amounts and were made on a regular, uninterrupted basis for five consecutive years.

Petitioners assert that respondents' argument that the benefits under this program are recurring is irrelevant. They maintain that the companies remained liable for these advances.

DOC Position: Although Usinor and Sacilor's shareholder advances may have been used to finance short-term needs, use of funds provided under a program is not relevant to a recurring/nonrecurring determination. We have determined that the shareholder advances to Usinor and Sacilor constituted nonrecurring benefits because each advance was contingent upon specific government approval.

Comment 6: Brazilian respondents argue that rebates of IPI taxes provided under Decree-Law 7554/86 are properly considered to be recurring grants.

Petitioners argue that the IPI rebate program constitutes a non-recurring benefit, and that the benefits from the program should be calculated according to the Department's non-recurring grant methodology. Petitioners state that the IPI rebate program is based on a one-time authorization of a capital expansion project, and as such, cannot be considered to be recurring. Petitioners argue that while respondents received multiple rebates, that fact relates only to the disbursement of benefits, not to the nature of the program itself.

DOC Position: We consider the benefits under the IPI rebate program to constitute a recurring benefit, consistent with our treatment of it in Final Negative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil, 57 FR 42968 (September 17, 1992) and Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil, 58 FR 6213 (January 27, 1993). This determination is also consistent with our modified test for deciding recurring/non-recurring issues. The benefits under this program are not exceptional and are received on an ongoing basis. After the initial qualification, no further application or specific government approval is required.

Comment 7: Petitioners object to the Department's determination to apply the 0.50 percent test on a program-by-program basis. Petitioners argue that the application of the present test could result in less subsidized respondents facing a greater countervailing duty (CVD) obligation than more heavily subsidized respondents. They also state that firms with equal total benefits could be treated differently. For example, if a firm received numerous small grants, each less than 0.5 percent, those grants would all be expensed, while a firm which received one grant equal to the sum of the first firm's grants, would have that grant allocated. Moreover, petitioners' argue that this anomaly would allow foreign governments to circumvent the law by providing multiple small subsidies rather than a single large subsidy.

Respondents assert that the Proposed Regulations are correct in expensing grants when the total amount received under a particular program is less than 0.50 percent of the company's sales. They argue that, in the past, respondents have had to capitalize grants as small as 0.01 percent.

DOC Position: In our investigations, we analyze benefits on a program-by-program basis. Each determination of countervailability and each benefit calculation by the Department, is made on a program-specific basis. Therefore, we have determined that it is appropriate to apply the 0.50 percent test on the same basis. In addition, we disagree with petitioners that the current 0.50 percent test has resulted in anomalies in the administration of the CVD law. Despite the extended period of time during which we have applied the 0.50 percent test on a program basis, petitioners have been unable to cite even one instance in which firms were treated differently, or in which foreign governments attempted to circumvent the CVD law through use of the Department's 0.50 percent test. In summary, nothing petitioners have argued leads us to conclude that we should alter the current 0.50 percent test.

Comment 8: Respondents argue that the grant equivalent of loans should also be expensed in the year the loans were received if such amounts are less than 0.50 percent of a company's sales.

Petitioners respond that the 0.50 percent test is applicable only to grants and equity infusions under the Department's Proposed Regulations. They assert that the Proposed Regulations also clearly state that a subsidy from a preferential loan provides benefits over the life of the loan.

DOC Position: Benefits from a preferential long-term loan accrue over the life of the loan because interest payments are made over the life of the loan. The grant equivalent of a loan is only calculated for determining the amount of subsidy conferred to the company in each of the years in which the loan is outstanding; it is not used to determine the duration of the benefit which is the life of the loan. As stated in section 355.48(a) of the Proposed Regulations, benefits are generally

deemed to be received at the time there is a cash flow effect on the company receiving the benefit. For loans, this occurs at the time a company is due to make a payment on the loan. (See section 355.48(b)(3)).

Comment 9: Respondents argue that the Department should change the formula for amortizing benefits over time. They state that the current methodology does not take into account the fact that companies may not fully benefit from a grant received at the end of the period of investigation. Therefore, respondents argue that the Department should pro-rate grants depending upon the month or quarter in which the grant is received.

Petitioners argue that the Department's current amortization methodology based on "annuity due," favors respondents because it assumes amortized benefits take place at the beginning of the year. Petitioners suggest that the Department modify its grant amortization formula by changing the discount rate ("d") to "d/2". According to petitioners, this methodology would reflect that benefits occur throughout the year, rather than at the beginning of the year.

DOC Position: Both the respondents and petitioners are incorrect on this issue. Respondents have provided no evidence to show that the methodology which they propose is more accurate than the Department's current amortization methodology which has been in effect for over 11 years. In the Department's view, before a change is made in established policy there should be evidence to show that the change is warranted. In CVD cases, the Department has always examined a one-year snapshot period corresponding to the respondent companies' fiscal year, and we gather information for both the snapshot year and prior years to determine the benefit to subject merchandise in the snapshot POI. Thus, for a benefit received at the end of the snapshot POI, respondents argue that some of that benefit should be shifted forward. Following that logic, however, the Department would have to examine the timing of the receipt of amortized subsidies for each of the last 15 years and move a portion of any benefit received in the last part of a year forward, thus resulting in a larger countervailable benefit in the POI. Thus, applying respondents' proposal might not achieve significantly different results than the Department's current methodology, and would entail a greater burden on both respondents, to identify the specific date when benefits were received in each of the last 15 years, and on the Department to perform the calculations. Moreover, although respondents do not make this argument for recurring benefits, it would have to apply equally to those benefits, thus resulting in allocating such benefits over time. In sum, it is inappropriate for the Department to take into account the timing of the receipt of benefits in its allocation methodology for nonrecurring benefits.

We also find fault with petitioners' argument. Petitioners proposed change to the amortization formula results in "overcountervailing" in the sense that the net present value in the year of receipt of the amount countervailed exceeds the face value of the grant. For these reasons, the Department determines that our current methodology for amortization is correct.

Comment 10: Petitioners advocate maintaining the Department's current methodology of amortizing subsidy benefits over the average useful life of assets as listed in the IRS class life tables. They argue that this methodology is in keeping with Congress's statutory guideline that the period chosen be reasonable. The methodology is reasonable, not because all benefits are used to acquire capital assets, but because the best proxy for how long such benefits last is, on average, the useful life of assets in the industry under investigation. They claim that using such a methodology does not overstate the benefit period for subsidies applied to all uses, as respondents claim, because the use of subsidy funds is irrelevant to the determinations of the countervailability of those funds.

Petitioners further argue that the fifteen-year amortization period based on the IRS class lives is an accurate reflection of the average useful life of the U.S. steel industry's assets and is also consistent with the actual depreciation practices currently utilized for financial reporting purposes by major steel producers in the United States. Petitioners add that, in addition to being reasonable, the Department's IRS class life methodology represents a consistent and predictable approach to measuring benefits.

Respondents claim that the average useful life methodology bears no relationship to the duration of benefits provided by untied, nonrecurring domestic subsidies. They argue that corporate funds are used for many purposes other than the acquisition of renewable physical assets, the benefits from which do not generally last as long as fifteen years.

Respondents also argue that the average useful life methodology produces results that are demonstrably inconsistent from one industry to the next. Since varied lengths are used from industry to industry, similar grants provided to different industries will be allocated over different lengths, resulting in widely inconsistent benefits.

DOC Position: The Department has determined that the average useful life of assets in the industry under investigation is a reasonable allocation period for non-recurring subsidies, other than long-term loans. In addition to being reasonable, this determination provides a predictable standard for interested parties, and is consistent with the Department's practice since the early 1980s.

In *British Steel Corp.* v. *United States* (605 F. Supp. 286, 295 (CIT 1985) (*BSC I*), the Court of International Trade (CIT) rejected the proposition that the length of the benefit stream from a subsidy is necessarily related to how the subsidy is used. Likewise, the Department has consistently held that money is fungible: funds used for one purpose serve to free resources for other applications. Therefore, the length of the benefit stream is not determined by how the subsidy is used.

Respondents argue that, in *British Steel Corp.* v. *United States*, 632 F. Supp. 59 (CIT 1986) (*BSC II*), the CIT rejected the use of the average useful life of assets as a reasonable allocation period. Petitioners counter that the *BSC II* decision was based on the lack of an adequate explanation of why the average useful life of assets is a reasonable allocation period. In part, both are correct. The Court did overturn the Department's decision to allocate benefits over the average useful life of assets. However, in reaching that decision, the Court stated that the agency had failed to explain why the allocation period was reasonable, and the court could not discern a rationale from the legislative history or the facts of the case. In contrast, in the present case, we have addressed both the legal and factual basis for our selection of an allocation period.

In the legislative history of the Act, Congress discussed the "special problem" of allocating the benefits of nonrecurring subsidies. S.Rep. No. 249, 96th Cong., 1st Sess., at 85–86 (1979). However, the only guidance Congress provided for addressing this issue was that the agency must allocate benefits over a "reasonable period based on the commercial and competitive benefit to the recipient as a result of the subsidy." *Id.*

The Department believes that the average useful life of assets is a reasonable estimate of the commercial and competitive benefits to the

recipient, regardless of whether the subsidy was invested in assets. The average useful life of renewable assets represents an average life cycle within an industry, i.e., if the assets are not renewed, operations would cease. Since the benefits from any subsidy can (in theory) continue indefinitely—regardless of use—it is reasonable to assume that benefits extend at least throughout one life cycle of the industry's assets. That assumption is reasonable because money itself is an asset. Therefore, allocating the benefits from an infusion of money over the average useful life of assets is essentially depreciating the monetary asset just like the physical assets.

The average useful life of assets has also been recognized by members of the General Agreement on Tariff and Trade (GATT) as a reasonable allocation period that is "generally practical and fair." GATT Committee on Subsidies and Countervailing Measures, Guidelines on Amortization and Depreciation, GATT Doc. No. SCM/64 (July 11, 1985).

In these investigations, the Department has determined that the average useful life of renewable assets in the steel industry is 15 years, as set out in the IRS tables. In *IPSCO, Inc.* v. *United States*, 701 F. Supp. 236 (CIT 1988) (*IPSCO II*), the CIT stated that the Department's use of the 15-year period set out in the IRS table must be supported by substantial evidence in record. Such evidence exists in the record of these investigations.

Petitioners and respondents agree that the IRS tax tables are an accurate representation of the experiences of U.S. steel producers. The tables are based on a study of the U.S. steel industry to determine the actual average useful life of assets. The information regarding average useful life of assets in the tax tables can also be used as a reasonable estimate of the useful life of steel industry assets throughout the world. The life of U.S. steel assets can be projected on a worldwide basis because we have no reason to believe, nor has any respondent claimed, that the general type of facilities and equipment used to produce steel in foreign countries is substantially different from that used in the United States, or that its useful life would be substantially different. Steel is a mature industry and though innovation does continue, we have no knowledge of the use of equipment in any foreign country that would have a significantly longer or shorter useful life than in the United States.

That conclusion is supported by information on the record in these investigations. Analysis of data on the depreciation of assets from the annual reports of several foreign companies currently under investigation demonstrates that 15 years is a reasonable estimate of the average useful life of assets in the steel industry worldwide. (See the Memorandum from Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, regarding the Appropriate Period Over Which to Allocate the Benefits from Non-recurring Subsidies, June 21, 1993.)

Therefore, based on our review of the legislative history and court decisions, and on the evidence in the record of these investigations, the Department has decided to allocate non-recurring grants over 15 years, which we determine is the average useful life of assets in the industry under investigation.

Comment 11: Respondents propose several alternative methodologies for amortizing benefits over time that they argue are administratively workable and would more consistently and accurately capture the competitive benefit associated with untied government grants, loans, and other provisions of capital to foreign manufacturers.

Respondents argue that the Department should make a distinction between benefits used for investment in assets and benefits used for other purposes, and allocate the benefits accordingly. Respondents argue that the Department's refusal to examine the uses of funds is contradicted by the Department's practice of tying funds to applications in certain other circumstances, such as domestic or foreign production. Respondents argue that analysis of the uses of funds is administratively simple and is the most appropriate measure of the benefit to the recipient.

A second alternative suggested by respondents is to tie the allocation of subsidy benefits to some measure of the term to maturity of corporate obligations of the U.S. integrated steel producers. They argue that this would be appropriate because the benefit of a government grant is that it relieves the recipient of the need to raise capital from other sources. The duration of the subsidy would be the duration of financing actually obtained by U.S. producers at the time foreign producers were receiving government grants. Basing the allocation on duration of obligations incurred by the U.S. industry would impose a burden of equivalent duration on the foreign producer, thereby creating a "level playing field." This method also provides a measure of consistency from industry to industry.

Respondents also propose allocating benefits over a standard 10-year allocation period, which would eliminate inconsistencies from industry to industry that respondents claim are the result of the Department's current methodology. Respondents argue that 10 years is a particularly appropriate period in this case, given that the U.S. steel industry negotiated for and received 10 years of extraordinary import relief in exchange for withdrawing CVD petitions addressing some of the very same programs at issue here. Respondents claim that, since pre-1982 matters have already been addressed by these VRAs, a 10-year period would avoid the problem of providing two forms of relief from pre-1982 subsidies.

Petitioners criticize respondents' proposed alternatives for several reasons. First, basing the allocation methodology on how the subsidy is used violates the Department's policy of not examining use—a policy which has been affirmed twice by the CIT. Also, it would be administratively impossible for the Department to monitor the precise usage of each subsidy it investigates.

Second, petitioners argue that the use of an amortization period based on borrowing periods is likely to produce unpredictable, inconsistent, and potentially meaningless results. This methodology is especially inappropriate in this case, because certain companies were uncreditworthy and would not have been able to obtain any source of alternative financing. Also, the average period of domestic borrowing may not be indicative of the borrowing period restraints faced by companies in other countries, even within the same industry.

Finally, petitioners argue that using a uniform ten-year amortization period for all subsidies is totally arbitrary because it treats all industries the same, regardless of the characteristics of a particular industry. Also, petitioners claim that the 10-year VRA in no way justifies amortization of all subsidies for the same length of time. The VRA did not constitute relief of pre-1982 subsidies because it did not replace the protection that a full offset of subsidies through the imposition of countervailing duties would have provided. Even if it did constitute relief, the domestic industry would still be entitled to relief of the unamortized portion of those subsidies that existed during the POI.

DOC Position: The Department has examined the three alternative amortization time periods proposed by respondents, and has found that the

VOL 58 ISS 130 JL 9 1993 UMI

average useful life of assets is preferable to each of those alternatives.

As stated above in the Department's response to Comment 6, the Department does not consider the use of the funds in determining the benefit from a subsidy. In accordance with section § 355.47(a) of the Proposed Regulations, the Department will allocate benefits to a product or products where a benefit is specifically bestowed to promote the production of a product or sales to a particular destination. This provision does not undermine the Department's position, supported by the CIT as noted above, that the uses of funds will not be examined.

Second, respondents have suggested using the average term of long-term borrowing by U.S. steel producers. Using the average term of long-term borrowing essentially measures the length of the benefit in terms of avoided costs. We find several disadvantages to this option. This proposal would measure the benefit of the avoided costs in terms of only one of the two alternative sources of capital: Borrowing. The other alternative source of funds, the issuance of equity, is not addressed. In addition, the average term of long-term borrowing can change over time, thereby establishing different allocation periods—not just for different subsidies or different companies, but over time, even for the same type of subsidy, within the same company. There is also no evidence in the record establishing that the average term of long-term borrowing in the U.S. bears any relationship to the commercial and competitive reality in any of the countries under investigation. See *IPSCO II*. Finally, contrary to respondents' claims, U.S. data may not be readily available for all industries, particularly for small industries dominated by privately held companies.

The third alternative, the fixed ten-year period, is described in the Preamble to the Proposed Regulations as both consistent and predictable. However, this approach is totally arbitrary. There is no evidence in the record of these cases that a ten-year period in any way reflects the commercial and competitive benefit to the recipient. Therefore, using this methodology would be inconsistent with the Court's ruling in *IPSCO II*. We agree with petitioners regarding respondents' argument that the VRAs constituted relief from pre-1982 subsidies. The fact that VRAs were in place during certain years is irrelevant to the Department's analysis of the countervailability of subsidies. While the benefits from pre-1982 subsidies which were amortized during the VRA period cannot be countervailed, the unamortized portions of those subsidies allocated to the POI are subject to these investigations.

Denominator

A. Foreign Production

Issue

This subsection addresses the issue of the appropriate sales denominator to be used in subsidy calculations when a respondent's total sales include not only sales of domestically produced merchandise, but also sales of merchandise produced in one or more foreign countries. This issue arises in the Certain Steel Products investigations where the respondent is a parent company producing the subject merchandise in the country under investigation and in one or more other countries, typically through subsidiaries.

Discussion

We addressed this issue for the first time in France Bismuth. There, the Department determined the appropriate sales denominator by employing an analysis that largely followed traditional Departmental analysis when addressing a domestic subsidy allegedly "tied" to a particular product. The Department adopted this analysis in France Bismuth after concluding that neither the Department's past practice nor the Proposed Regulations squarely addressed the issue of whether a domestic subsidy could be considered tied to domestic production of the subject merchandise, where the respondent engaged in both domestic and foreign production.

In France Bismuth, in applying the "tied" analysis to the facts before it, the Department determined that the subsidies at issue were tied to domestic production. The Department accordingly allocated the benefits of those subsidies to sales of domestically produced merchandise.

In these investigations, we have considered various approaches advocated by the parties as well as the "tied" analysis used in France Bismuth. The approaches advocated by petitioners would result, in every case, in the use of only sales of domestically produced merchandise in the denominator. On the other hand, the approaches advocated by respondents automatically would result in the use of total worldwide sales in the denominator. (See Comments 3–7 below and Memorandum to Joseph A. Spetrini from Staff, dated June 21, 1993.)

We have decided to continue using a "tied" analysis to resolve this issue, although we have refined the analysis that we used in France Bismuth. The refinements are intended to reflect what the Department has generally observed over the years. On the basis of our past administrative experience, we believe that it is reasonable to presume that the government of a country normally provides subsidies for the general purpose of promoting the economic and social health of that country and its people, and for the specific purposes of supporting, assisting or encouraging domestic manufacturing or production and related activities (including, for example, social policy activities such as the employment of its people). Conversely, that same government would not normally be motivated to promote, at what would be considerable cost to its own taxpayers, manufacturing or production or higher employment in foreign countries.

Thus, under the Department's refined "tied" analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production. However, this presumption is not irrebuttable. A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production. Relevant evidence may include the nature of the program at issue, whether the subsidy was bestowed specifically to provide other than a domestic benefit, communications between the government and the respondent relating to the subsidy provided pursuant to the program at issue, the government's ownership interest, if any, in the respondent, and any other evidence addressing the likely beneficiaries of the subsidy. Such determinations would have to be made on a case-by-case basis, in light of the facts presented. Therefore, the above list of evidentiary criteria is not exhaustive, nor can any one or several of these factors necessarily give decisive guidance in all cases.

The Department will allocate the benefit of the subsidy in accordance with the determination that we make on tying. If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise. If we determine that the subsidy is not tied, we will allocate the benefit of the subsidy to total worldwide sales of the respondent, i.e., sales of both domestically produced merchandise and foreign-produced merchandise.

Through this "tied" analysis, the Department is attempting to allocate the benefits of domestic subsidies in a

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VOL
58
ISS
130
JL
9
1993
UMI

reasonable manner by recognizing that, although domestic subsidies are generally provided to benefit domestic production, subsidies provided to a respondent with multinational manufacturing or production may benefit, at least in part, foreign manufacturing or production. This mirrors what the Department has done in the past by taking account of evidence that a domestic subsidy is tied to a particular product, see Proposed Regulations, § 355.47(a), or that an export subsidy is tied to a particular market, see Proposed Regulations, § 355.47(b). This approach allows both petitioners and respondents to present evidence supporting either the presumption that a domestic subsidy is tied to domestic production or the possibility that the subsidy tied benefits foreign production. Conversely, this approach avoids the rigid, inflexible rules sought by petitioners and respondents, which would ignore the facts of any particular case.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding these allocation issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: Respondents have criticized the Department's "tied" analysis in France Bismuth on the ground that it improperly focuses on the government's intent in bestowing the subsidy rather than on the effect of the subsidy. According to respondents, the Department's traditional "tied" analysis—and the CVD law generally—is concerned only with the unfair competitive effect of a benefit, and the government's intent in bestowing the benefit is irrelevant.

DOC Position: We disagree with respondents. The Department's "tied" analysis in France Bismuth, as refined in these investigations, does not focus exclusively on the government's intent in bestowing the subsidy, but it looks for evidence of intent among other criteria as a potential indicator of the ultimate destination of subsidy benefits. Consequently, the Department properly will consider the government's intent, at least to the extent that it looks at the government's stated purposes in authorizing the program at issue. However, the Department also considers other evidence presented to it which could shed light on the likely beneficiaries of the subsidy.

Furthermore, although the Department in the past has acknowledged that its inquiry should focus on the likely beneficiaries of subsidies, the Department has not determined that it should focus exclusively on the likely beneficiaries. See Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review, 52 FR 833 (January 9, 1987) (Industrial Nitrocellulose) (discussed below). Rather, the Department clearly has found the government's intent to be relevant. Indeed, the Department's traditional position on the tying of benefits to a particular product is that a subsidy "is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy." Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium, 47 FR 39304 (September 7, 1982) (Steel from Belgium). See, also, Proposed Regulations at 23374 (defining tied benefits as "e.g., a benefit bestowed specifically to promote the production of a particular product").

In addition, in Industrial Nitrocellulose, when confronted with the same criticism now offered by respondents, the Department explained:

> [W]e did not concentrate exclusively on the intent of the alleged [subsidy] * * *. Rather, we considered the effect of such a practice and concluded that it would encourage the production and sale of * * * a product not under investigation* * *.

The Department further explained that "only in those limited circumstances where the effect of a program is not demonstrable might we consider the intent to subsidize to be a surrogate for the effect of a subsidy." *Id.* The Department added:

> To the extent that our conclusions regarding tied benefits rely in some measure on intent, our position in this case is consistent with administrative precedent. Whenever we allocate a benefit tied to a product under investigation only to that product, there is an implicit assumption that the benefit is intended to affect only that product.
>
> *Id.*

Comment 2: According to respondents, the relevant inquiry is not the intent or effect when a past subsidy was bestowed, but the effect during the period of investigation. In support of this proposition, respondents cite to Department precedent relating to various types of corporate restructurings that occur after a subsidy has been provided.

DOC Position: We disagree with respondents. In conducting its traditional "tied" analysis when a domestic subsidy allegedly is tied to a particular product, the Department will examine what the likely effect of the subsidy would be. The Department will not try to determine the actual effect of the subsidy, either in the period of investigation or at any other time after the subsidy's bestowal. See Industrial Nitrocellulose (discussed in Comment 1 above). The Department has maintained this same approach in the "tied" analysis that it is using in these investigations when determining whether a subsidy is tied to domestic production.

In situations where some type of corporate restructuring occurs after the bestowal of a subsidy, the Department may adjust its subsidy calculation. This issue is addressed in the Restructuring section of this Appendix.

Comment 3: Petitioners take the position that sales of foreign-produced products must be excluded from the sales denominator as a matter of law. According to petitioners, as long as the Department adheres to the "transnational subsidies" rule, the Department must exclude these sales in order to be consistent with the statute and the Department's allocation methodology.

Petitioners point out that the transnational subsidies rule is a proposed regulation. It provides that "a countervailable benefit does not exist to the extent the Secretary determines that funding for a benefit is provided by a government other than the government of the country in which the merchandise is produced * * *." Proposed Regulations, section 355.44(o)(1). Thus, using the simplest example, if the government of country A provides a subsidy to a company producing merchandise in country B, then this rule states that a countervailable benefit does not exist.

Petitioners characterize the transnational subsidies rule essentially as a procedural, or "structural," rule which "effectively immunizes from countervailing duties, in a particular investigation, subsidies which are not provided by the government under investigation." (Petitioners' General Issues Case Brief, Tab G at 5.) Petitioners suggest that the Department adopted this rule solely for "the practical purpose of administering the CVD law." (Petitioners' General Issues Rebuttal Brief, Tab G at 3.) Without this rule, petitioners explain, the Department would be faced with "an

administrative nightmare." (*Id.*, Tab G at 3 n.6.) The Department would have to "countervail non-respondent government subsidies in every investigation involving a multinational company," and the Department therefore "would have to investigate the programs of each country which may have benefitted a respondent company or any of its subsidiaries." (*Id.*)

Nevertheless, petitioners continue, given that the Department has adopted this rule of administrative convenience, the Department's only option—unless the Department wants to abandon that rule—is to exclude sales of foreign-produced merchandise from the sales denominator. Petitioners assert that if those sales were included in the denominator, the Department would be violating section 701(a) of the statute.

In making this argument, petitioners first assume that the Department's existing allocation methodology would require the Department to allocate the benefit of the subsidy to both domestically produced merchandise and foreign-produced merchandise. Petitioners then argue that to capture the "net subsidy," as required by section 701(a), the Department would have to impose duties on sales of both domestic production and foreign production. Petitioners point out, however, that the transnational subsidies rule precludes the Department from imposing duties on sales of both domestic production and foreign production.

To remedy this perceived violation of section 701(a), petitioners suggest a solution which would not require the Department to abandon the transnational subsidies rule. Specifically, petitioners propose that the Department simply adjust its subsidy calculation by including only sales of domestically produced merchandise in the denominator. With that adjustment, petitioners assert, the Department would be able to capture the "net subsidy," in accordance with section 701(a).

Respondents argue that the Department legally may not "compensate" for the fact that the U.S. CVD law does not reach benefits from a third-country source by artificially concentrating the subsidy on one country's production. Respondents also argue that the transnational subsidies rule simply states that a benefit sourced from outside the country under investigation is not a benefit countervailable under U.S. CVD law, and that it does not relate to the allocation of subsidies. Thus, respondents conclude, nothing in the statute or the rule requires the Department to pretend that "subsidies do not cross borders."

Respondents maintain, further, that the statute does not authorize the Department to attempt to capture subsidies benefiting other merchandise by imputing those subsidies entirely or disproportionately to the merchandise under investigation. Respondents contend that this principle applies regardless of where a respondent manufactures or produces merchandise.

Respondents also contend that the country-based nature of the CVD law does not permit the Department to impute worldwide benefits to domestic production. The fact that the CVD order applies only to merchandise from the country under investigation is based on the statute and merely defines the scope of the order. According to respondents, it has no relevance to the amount of benefit received by the merchandise under investigation.

DOC Position: The underlying premise of petitioners' analysis is that the portion of a subsidy which benefits a respondent's foreign subsidiaries is, under the statute, countervailable. Indeed, according to petitioners, not only is it countervailable, it must be countervailed. However, as respondents point out, this premise conflicts with section 701(a) of the statute, 19 U.S.C. section 1671(a), which treats any subsidy provided by the country under investigation to a company in another country as a subsidy that is not countervailable.

Section 701(a) of the statute states the general rule as to when a subsidy is countervailable. This section was included in the statute in 1979 and is applicable where the country under investigation is a Subsidies Code signatory or the equivalent. It derives from section 303(a)(1) of the statute, 19 U.S.C. section 1303(a)(1), which since 1979 has only applied to non-Code signatory countries.

In interpreting section 701(a), it is instructive to look at the language of section 303(a)(1). The legislative history of section 701(a) states that Congress intended section 701(a) to have the same meaning and application as section 303(a)(1), with certain enumerated exceptions not relevant here. S. Rep. No. 96–249, 96th Cong., 1st Sess. at 429–31 (1979). Accord, 19 U.S.C. section 1677(5)(A) (the term "subsidy" in section 701 has the same meaning as the term "bounty or grant" in section 303).

Although the language of section 701(a) is not clear on this issue, section 303(a)(1) makes clear that a subsidy from the government of a particular country is countervailable only if it is given to a company manufacturing or producing the merchandise in, or exporting the merchandise from, that country. In this regard, section 303(a)(1) provides in pertinent part:

> Whenever any *country* * * * shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced *in such country*, * * * there shall be levied a duty equal to the net amount of such bounty or grant * * *.

19 U.S.C. section 1303(a)(1) (emphasis added). See S. Rep. No. 96–249, 96th Cong., 1st Sess. at 429. Conversely, under section 303 and, therefore, section 701, a subsidy is not countervailable if it is given by the government of one country to a company manufacturing or producing the merchandise in another country.

Thus, contrary to petitioners' argument, the transnational subsidies rule is not merely a rule of administrative convenience devised by the Department. Rather, that rule essentially re-states the statute, and its existence, therefore, cannot be "remedied" or otherwise compensated for in subsidy calculations, as petitioners urge the Department to do.

Comment 4: Petitioners briefly outline an alternative approach which would require the Department to abandon the transnational subsidies rule. Under this approach, in any investigation, the Department would countervail not only subsidies received by a company from the government of the country under investigation, but also subsidies received by that company from other countries' governments. This approach assumes that the information concerning the subsidies provided by the other countries' governments would be generated during concurrent investigations involving each of those other countries.

DOC Position: This approach, like petitioners' principal approach, treats the transnational subsidy rule as a rule of administrative convenience that can be discarded. This is an error. The rule essentially restates the statute and its dictates, it is a stricture which we cannot ignore.

Comment 5: Respondents insist that the Department's practice is defined by the plain language of section 355.47(c)(1) of the Proposed Regulations. That section provides that where, as here, "a countervailable benefit is not tied to the production or sale of a particular product or products, * * * the Secretary will allocate the benefit to all products produced by a firm, in the case of a domestic program * * *." Proposed Regulations, section

355.47(c)(1). In calculating the subsidy rate, section 355.47(c)(1) continues, "the Secretary will divide the benefit by a firm's *total sales* * * *." *Id.* (emphasis added). Respondents add that the term "total sales" must mean total worldwide sales in the context of the relevant Certain Steel Products investigations.

Respondents also find support for their interpretation of section 355.47(c)(1) in the specific context wherein the subsidies at issue are equity infusions. On this subject, as respondents point out, the Proposed Regulations state that "the Secretary will treat equity infusions as untied benefits." Proposed Regulations, section 355.47(c)(2). In addition, the Department previously has stated that "when a government buys equity in a company, it is providing funds for the corporation as a whole, not for particular divisions or projects." Final Affirmative Countervailing Duty Determinations: Carbon Steel Structural Shapes, Hot-Rolled Carbon Steel Plate, and Hot-Rolled Carbon Steel Bar from the United Kingdom; and Final Negative Countervailing Duty Determination: Cold-Formed Carbon Steel Bar from the United Kingdom, 47 FR 39384 (September 7, 1982).

According to petitioners, the Department precedent cited by respondents is inapposite. Petitioners point out that each of the cited cases concerns a respondent with only domestic—and not foreign—manufacturing or production activities.

DOC Position: There is no real dispute as to how the Department should interpret § 355.47(c)(1) when a respondent only sells domestically produced merchandise. For example, in a steel investigation, where there is an otherwise untied domestic subsidy to a company that produces domestically both steel and milk, the sales denominator clearly would include both steel sales and milk sales.

However, the proper interpretation of § 355.47(c)(1) is less clear where, as in the relevant Certain Steel Products investigations, the respondent's sales include not only sales of domestically produced merchandise, but also sales of foreign-produced merchandise. In some cases, as the Department acknowledged in France Bismuth, the Department may have used total worldwide sales in the denominator, but it did so without any discussion of this issue. On the other hand, in at least one case, the Department has excluded sales of foreign-produced merchandise from the denominator. See Final Affirmative Countervailing Duty Determination: Stainless Steel Hollow Products from Sweden, 52 FR 5794 (February 26, 1987) (SSHP from Sweden).

The Department has squarely addressed this issue only on one prior occasion, namely, in France Bismuth. The Department concluded in France Bismuth that § 355.47(c)(1) simply did not contemplate a respondent with multinational production. We reaffirm that conclusion here.

Moreover, we reach a similar conclusion with respect to respondents' reliance on § 355.47(c)(2), which addresses equity infusions. Neither that section nor any other section of the Proposed Regulations contemplated the possibility that the subsidy would be bestowed upon a respondent with multinational production.

Comment 6: Respondents also argue for their interpretation of "total sales" as total worldwide sales by explaining that the Department's allocation methodology recognizes that money is fungible. Respondents maintain that in measuring subsidies, the Department routinely allocates the subsidies over all products benefiting from them, even if some of the products are not subject to the investigation and therefore will not be subject to any resulting order. Respondents cite Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil, 51 FR 21961 (June 17, 1986) (Iron Ore Pellets from Brazil), Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (March 24, 1986) (Atlantic Groundfish from Canada), and Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992) (Softwood Lumber from Canada), in support of their argument that subsidies are allocated over all products benefiting from them.

Respondents go on to acknowledge that the Department has made two "narrow" exceptions to its fungibility of money approach, i.e., (1) where a domestic subsidy is tied to "a particular product or products," Proposed Regulations, section 355.47(a), and (2) where an export subsidy is tied to "a particular market," Proposed Regulations, section 355.47(b). Respondents nevertheless state that the subsidies at issue in the Certain Steel Products investigations do not fit within either of those exceptions and, therefore, the Department must allocate the benefits of those subsidies over total worldwide sales to be consistent with its fungibility of money approach.

Petitioners maintain that Iron Ore Pellets from Brazil, Atlantic Groundfish from Canada and Softwood Lumber from Canada, as cited by respondents, share a single, critical trait that this investigation does not, i.e., the benefits allocated to products not under investigation in those investigations were not allocated into a "black box" which placed them beyond the reach of the statute. Petitioners argue that it would plainly violate the law to allocate subsidies to products that are under investigation and then leave those subsidies uncountervailed.

DOC Position: Respondents' argument skips over the real issue before the Department. It would seem that the Department, in the first instance, must decide whether it is reasonable to create a third exception to the fungibility of money approach, which would recognize the possibility that a subsidy could be tied to domestic production. In France Bismuth, the Department expressly recognized such an exception. In these investigations, as is discussed above, the Department has refined the analysis that it used in France Bismuth, but nevertheless has continued to recognize that exception.

Comment 7: Respondents also have suggested an alternative approach. Under this approach, the Department would modify its existing practice—as respondents have characterized it—for calculating a subsidy rate for an untied subsidy. Very simply, the Department would make corresponding adjustments to the numerator and the denominator in the subsidy calculation. The Department would adjust the numerator so that it reflected an amount equal to only that portion of the subsidies which benefitted domestic production. In addition, the Department would adjust the denominator to include only sales of domestic production.

DOC Position: Respondents offer little rationale for this approach. They begin by insisting that their principal approach defines the appropriate measurement of the subsidies at issue. Then, they state simply that if the Department were to change the denominator to include only sales of domestic production as petitioners urge, it would only be fair if the Department correspondingly changed the numerator so that the appropriate result, i.e., the result under respondents' principal approach, could still be achieved. As is discussed above, however, the Department has concluded that the appropriate result is not defined by respondents' principal approach, which represents a rigid, inflexible rule that does not recognize that a subsidy is presumptively, but not irrebuttably, tied to domestic production.

Comment 8: Respondents argue that, as a procedural matter, the Department's

deductions from total sales for the value of foreign manufacturing activities is an abrupt and unexplained change in policy which is inconsistent with general principles of administrative law as well as specific prior rulings by the CIT. According to respondents, it is axiomatic that an agency has an obligation to provide a reasoned explanation for changes in policies and procedures.

According to petitioners, respondents were not denied due process with respect to the Department's position on the sales denominator. For example, respondents were on notice of the Department's practice when the Department's original CVD questionnaire, requesting the sales volume and value of domestically produced merchandise, was issued.

DOC Position: We disagree with respondents. We have not altered our administrative practice with regard to the proper allocation of subsidies. Rather, as we stated in France Bismuth, we had no prior practice because we had not previously addressed the question of whether we should include in the sales denominator total worldwide sales, including sales attributable to foreign production, or only sales attributable to domestic production, in calculating subsidy rates for a respondent with multinational production. In some cases, we may have used total worldwide sales, but we did so without addressing this question. In contrast, in at least one other case, aside from France Bismuth, we have excluded sales attributable to foreign production from the sales denominator. See SSHP from Sweden. In addition, as we also stated in France Bismuth, the Department's Proposed Regulations do not squarely address this question.

Through the France Bismuth decision, we have begun a practice of applying a "tied" analysis in situations where the government of the country under investigation is providing subsidies to a respondent with multinational production. We are following that practice, with some refinements, in these investigations.

Comment 9 (France): Petitioners argue that Usinor Sacilor's figures showing intra-group transactions, company by company, were not adequately verified. In particular, petitioners argue that although the Department consulted the documentation provided for Sollac and requested printouts for three other French companies, the Department did not check intra-group sales figures reported for any "non-French company." In addition, petitioners contend that even in its attempt to verify the French companies' entries in the tables, which constituted only half the task at hand, the Department focused almost exclusively on Sollac rather than making a broader and more systematic attempt to verify respondent's claimed totals.

Moreover, petitioners maintain that having requested and failed to receive or verify the information necessary to calculate the proper sales denominator, i.e., the F.O.B. (port) value of Usinor Sacilor's 1991 sales of French merchandise, the Department should continue to utilize petitioners' estimated sales denominator as the best information available.

DOC Position: We disagree with petitioners. The intra-company sales figures used to derive the value of French-produced merchandise for Usinor Sacilor were adequately and accurately verified, as were the methodology used by, and the other sales data provided by, respondents.

It has long been the Department's practice to test the integrity of the information provided by respondents through the examination of original source documents, accounting records, financial statements, and any other pertinent documentation on a selective basis. The Department has consistently recognized that given the vast amount of information provided during the course of an investigation and the strict time constraints imposed on the investigation and, particularly, verification, it is simply not possible to examine each and every piece of information provided by respondents. The Department has taken the position that by testing the validity and integrity of a significant amount of relevant information, the small portion of the remaining information not examined is accurate and complete.

Therefore, petitioners' assertion that the Department focused solely on Sollac to the exclusion of non-French companies in its verification of intra-company transactions is inapposite. As discussed in detail in the Department's verification report, the Department's verification of these data focused on Sollac, the producer of the subject merchandise, and several other companies, selected at random, in order to test the validity of the values reported in Usinor Sacilor's responses. The Department simply chose not to pursue an examination of the values reported for a non-French company. Nevertheless, through our selective examinations, we were able to establish that respondent's data were accurate.

Accordingly, the Department has used the value of French-produced merchandise reported by respondent in the denominator of its subsidy calculations for these final determinations. We note, however, that we have not used the aggregate figure indicated by respondent in its case brief. Rather, we have excluded from that figure an amount equal to the value of sales made by Usinor Sacilor group companies outside France to Usinor Sacilor group companies within France. This sales value represents sales of foreign production and, therefore, must be excluded from the denominator.

Comment 10 (France): Respondents argue that the subsidies at issue in this investigation are plainly untied subsidies. Respondents maintain that the PACS, FIS instruments and shareholders' advances have been analyzed as equity infusions or grants and, according to Department practice, equity infusions and grants have traditionally been considered as fungible and untied subsidies. Respondents also argue that the record evidence of this case demonstrates that the capital within Usinor Sacilor flows to the group's foreign subsidiaries.

Respondents further maintain that the number of major acquisitions made by the Usinor Sacilor group outside France, the group's foreign financing, and the number of foreign employees of the group demonstrate this flow of capital outside France. Finally, respondents argue that if the Department focuses on the circumstances when the alleged subsidies were originally received, it would find that the subsidies were not to benefit only domestic production but were preconditioned upon Sacilor becoming the partial owner of a German steel producer.

Petitioners argue that the subsidies conferred by the Government of France (GOF) to Usinor Sacilor were not only designed to, but according to the record of this investigation did, in fact, result in increased or modernized steel production in France. The nature of these subsidies, and the proper segment of Usinor Sacilor's production to which they must be allocated, was defined at the time of the GOF's decision to subsidize. Petitioners point to various statements made by the French government and others regarding the objectives of the subsidies. Petitioners maintain that nothing Usinor Sacilor has done since these subsidies were provided can change the nature, or the proper allocation, of the benefits arising from them. In any case, petitioners argue that the funds apparently have been used by Usinor Sacilor to invest in its various French productive operations or to cover losses realized on those French operations as a whole. For all of these reasons, petitioners conclude that the domestic subsidies should be

VOL 58 ISS 130 JL 9 1993 UMI

allocated by the Department to the Usinor Sacilor group's net sales of French-origin merchandise.

DOC Position: In determining whether the denominator should include Usinor Sacilor's total worldwide sales or be limited to sales of Usinor Sacilor's domestically produced merchandise, we applied the Department's "tied" analysis. Thus, we first presumed that the domestic subsidies at issue are tied to domestic production. Next, considering the evidence in the record, we concluded that this presumption had not been rebutted. Respondents relied principally on conclusory statements describing the subsidies at issue as untied. For the most part, the evidence to which respondents did cite—relating to foreign acquisitions, debts in foreign currencies and foreign employees—purportedly address the actual uses of the subsidies well after their bestowal, including during the period of investigation. As noted above, under a "tied" analysis, we do not attempt to trace the actual uses of a subsidy.

Further, respondents mischaracterize Sacilor's acquisition of a partial interest in the German steel producer in 1978. As one of several concessions made by one of Sacilor's shareholders at the behest of the GOF during the 1978 restructuring, that shareholder contributed its interest in the German steel producer to Sacilor. It is not clear how that development translates into evidence that subsidies provided by the GOF in 1978 or later were not tied to domestic production. Meanwhile, petitioners point to substantial evidence in the record that would support a finding that the subsidies were tied to domestic production, even in the absence of any presumption. (See Petitioners' Case Brief at 37–41.) We, therefore, determined that these subsidies were tied to domestic production and, accordingly, we allocated the benefits of those subsidies to sales of Usinor Sacilor's domestically produced merchandise and excluded sales of Usinor Sacilor's foreign-produced merchandise.

Comment 11 (United Kingdom): Respondents contend that, based on the record in this investigation, the Department cannot justify the view that U.K. government subsidies to BS plc or its predecessor, BSC, do not benefit BS plc's foreign operations. Citing Industrial Nitrocellulose, respondents state that it has been the Department's long-held view that untied equity infusions must be allocated to a company's total corporate output and not just to specific products or operations. According to respondents, this longstanding Departmental precedent applies to national and multinational corporations alike.

Petitioners argue that the Department correctly excluded the sales of BS plc's non-U.K. facilities from its sales denominator. Citing, for example, the U.K. Government's 1978 White Paper entitled "The Road to Viability," petitioners argue that the record in this investigation supports the Department's conclusion that domestic subsidies from the U.K. government benefitted only BS plc's activities in the U.K.

DOC Position: In determining whether the denominator should include sales of BS plc's non-U.K. facilities or be limited to sales of BS plc's domestic production, we applied the Department's "tied" analysis. Thus, we first presumed that the domestic subsidies at issue are tied to domestic production. Next, considering the evidence in the record, we concluded that this presumption had not been rebutted. Respondents did not present evidence to show that the subsidies were not tied. Moreover, petitioners point to evidence in the record, namely, the U.K. Government's 1978 White Paper, which supports a finding that the subsidies were tied to domestic production. We, therefore, determined that these subsidies were tied to domestic production, and accordingly, we allocated the benefits of those subsidies to sales of BS plc's domestic production and excluded sales of BS plc's non-U.K. facilities.

Comment 12 (Austria): Respondents point to the years 1983, 1984 and 1986 and argue that it is clearly inconsistent for the Department to include subsidies to U.S.-based Bayou Steel in the numerator while excluding sales of Bayou Steel from the denominator. Respondents explain that VAAG received grants and equity infusions from the Government of Austria (GOA) in those years, and VAAG used those funds to cover losses generated by its subsidiary, Bayou Steel, among other VAAG entities. Respondents conclude that because those funds went to Bayou Steel, the Department should exclude subsidies to Bayou Steel from the numerator.

Petitioners contend that because the subsidies were provided to VAAG, not to Bayou Steel, they were not subsidies provided solely to a foreign company. According to petitioners, the sales of Bayou Steel therefore should not be included in the denominator.

DOC Position: We have accounted for the subsidies at issue through a two-step process. First, we decided that the benefits of the subsidies at issue had to be allocated to VAAG's total worldwide sales, including Bayou Steel's sales, for the years in question. Then, we adjusted our subsidy calculation to reflect the subsidies lost through the 1986 sale of Bayou Steel.

In determining how to allocate the subsidies, i.e., whether to VAAG's total worldwide sales, which would include the sales of Bayou Steel's U.S. production, or only to sales of VAAG's domestic production, we applied the Department's "tied" analysis. Thus, we first presumed that the domestic subsidies at issue are tied to domestic production. Next, considering the evidence in the record, we concluded that this presumption had been rebutted. Specifically, the laws pursuant to which the GOA provided these subsidies expressly state that the funds were to be used, *inter alia*, to cover losses of VAAG and all companies under the umbrella of its parent, OAIG, at home or abroad. The record shows, moreover, that VAAG incurred relatively large losses in connection with its investment in Bayou Steel in each of the years at issue. Petitioners did not present any contrary evidence. We, therefore, determined that these subsidies were untied and, accordingly, we allocated the benefits of those subsidies to VAAG's total worldwide sales.

The subsequent adjustment that we made to our subsidy calculation to reflect the subsidies lost through the 1986 sale of Bayou Steel is explained in the Restructuring section of this appendix.

B.F.O.B. (port) Value

Issue

This subsection addresses the issue of whether the Department should continue to use an F.O.B. (port) sales value (i.e., a value which excludes shipping expenses such as ocean freight and marine insurance) in the denominator when calculating the *ad valorem* subsidy rate, or whether another sales value is more appropriate.

Discussion

The Department's practice has been to request respondents to report their sales on an F.O.B. (port) basis. It is this sales value that we have used as the denominator in the past when calculating the subsidy rate. Although the Department's practice of using an F.O.B. (port) value is not required by either the statute or the Department's regulations, and the Department has never articulated its rationale for using this approach, it appears that this practice developed in order that the Department and the U.S. Customs Service (Customs) would be consistent in the calculation and assessment of

countervailing duties, respectively. The Department instructs Customs to collect cash deposits and countervailing duties on an F.O.B. invoice price. Customs is directed to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States, in accordance with section 402(2)(A) of the Act.

It has become evident, however, that certain respondents do not maintain accounting systems which allow them to easily extract information pertaining to shipments on an F.O.B. (port) basis. Because these companies may sell on terms other than F.O.B. (port) value and may record sales in one account and their transportation expenses for all customers to all markets in another account, it is not possible to precisely segregate expenses by market. In these instances, respondents can only estimate the F.O.B. (port) value of their sales.

The Department has determined that it is more appropriate to use respondents' sales value as recorded in their financial statement and accounts in the denominator when calculating the *ad valorem* subsidy rate. This figure normally would reflect sales made on various terms of sale such as F.O.B., C.I.F., C.&F., and ex-factory and, as a result, would provide a more accurate representation of respondents' selling practices. In addition, a total sales value is more appropriate because the use of an F.O.B. (port) value, which excludes all shipping expenses such as ocean freight and marine insurance, ignores the fact that part of the sales transaction could be subsidized, i.e., transportation costs.

However, to ensure that Customs collects the correct amount of subsidy based on an F.O.B. invoice price of the imported merchandise, it is necessary to adjust the calculated subsidy rate. Where a respondents' terms of sale for all sales are not F.O.B. or ex-factory, we first must calculate the ratio of the value of exports of the subject merchandise to the United States as recorded in the companies' books to the F.O.B. value of exports of the subject merchandise to the United States. This ratio is then multiplied by the subsidy rate, to calculate the *ad valorem* rate, that will be applied by Customs. It should be noted that if all of a respondent's sales of the subject merchandise to the United States are made on an ex-factory or F.O.B. basis, no adjustment to the calculated subsidy rate is necessary.

However, in the instant investigations, if the information necessary to calculate the *ad valorem* subsidy rate in this manner is not on the record, or if the *ad valorem* subsidy rate cannot be easily calculated as a result of this modification in the choice of denominator values, the Department has reverted to the use of the F.O.B. (port) sales values as originally reported and verified in the denominator of the calculation.

(This issue is discussed more fully in a Memorandum to Joseph A. Spetrini and Barbara R. Stafford from Staff, dated June 21, 1993.)

Comment 1: Petitioners argue that the Department should exclude from the denominator all "value-added" outside the country under investigation, including shipping, warehousing, repackaging, further processing, and production.

DOC Position: In the Foreign Production section above, the Department has determined that the sales value of foreign production, which would include foreign further processing, will be excluded from the denominator whenever the Department determines that a domestic subsidy is tied to domestic production. In this situation, however, shipping, warehousing, and repackaging would be included in or excluded from the denominator depending on how and by whom incurred.

Comment 2: Petitioners argue that the Department should use ex-factory prices for measuring the value of domestic shipments. As no port is involved in domestic shipments, an analogue for F.O.B. (port) value for domestic shipments must be utilized to ensure symmetry in the way subsidization is measured.

Petitioners argue that, in the alternative, the Department could measure the value of domestic shipments at a point analogous to the port for export shipments, somewhere between the factory gate and the customer's place of business. Petitioners further argue that if domestic shipments move through a service center or warehouse, the value of such shipments could be measured at the point where the service center or warehouse is reached.

DOC Position: We disagree. The Department has determined that the appropriate sales value to use in the denominator of the subsidy rate calculation is the value based on how each respondent makes and records its sales. This value captures every part of the sales transaction that could benefit from subsidies.

Comment 3 (France): Petitioners contend that the key step in respondents' methodology for adjusting the total French sales figure to an F.O.B. (port) value is an unsubstantiated estimate of the percentage of Sollac's land and sea transportation costs pertaining to transporting the goods from the factory to the French border. In addition, petitioners contend that respondents derive a percentage based on a geographic sales breakdown using total sales (inclusive of intra-company transactions), and then apply that percentage to a consolidated number.

Moreover, petitioners maintain that respondents' estimate focuses only on Sollac, with no explanation of why Sollac's costs should be considered representative, and does not deduct an amount from the sales denominator for insurance costs associated with transportation, outside France, of exported goods. Therefore, petitioners argue, the Department should continue to utilize petitioners' previously submitted estimate of the F.O.B. (port) value of Usinor Sacilor's sales of French merchandise.

According to respondents, the verification report makes clear that transportation costs were carefully calculated and explained to the Department. The transportation costs were based on Sollac's experience because Sollac is the major exporting company in the Usinor Sacilor group, and detailed land and sea transportation cost information by sector was available. Respondents add that, as the verification report demonstrates, actual shipping costs were presented for domestic sales, sales to other EC countries and sales to the rest of the world.

DOC Position: Usinor Sacilor has insisted throughout the course of these investigations that it does not maintain F.O.B. (port) value information, as requested in the Department's questionnaire, in the regular course of business at either an operating or holding company level. Therefore, in its responses, Usinor Sacilor provided two methodologies to estimate the aggregate amount of transportation costs that should be deducted from Usinor Sacilor's sales figure to arrive at a figure representing the F.O.B. (port) value of those sales. One methodology derived an aggregate amount for transportation costs to be deducted, i.e., those incurred after the French border, while the other methodology set the amount at a particular percentage of Usinor Sacilor's total sales. (See the report on the Verification of Usinor Sacilor in France Bismuth on file in room B–099 of the Main Commerce Building for the verification of the second methodology. This report has been incorporated into the record of this case.)

VOL 58 ISS 130 JL 9 1993 UMI

In order to demonstrate that these were acceptable methodologies for estimating the F.O.B. (port) value of Usinor Sacilor's total sales, Usinor Sacilor officials provided two additional methodologies at verification which produced similar results.

Respondents' have attempted to provide the Department with as accurate an estimate as possible of its sales value based on F.O.B. (port). As stated above, the methodologies presented by respondents at verification were to provide additional support to the estimates submitted previously in the responses. Given that the various approaches have derived similar results, we consider the two additional approaches to be reasonable estimates to support those provided in the responses.

Accordingly, we have used the particular percentage provided in the responses to derive the amount of transportation charges to be deducted from the sales value of French-produced merchandise. Because we do not have the information on the record that would allow us to use as the denominator Usinor Sacilor's total sales value as recorded in its accounts, we have, in this case, reverted to the use of F.O.B. (port) sales value as originally reported and verified.

C. Services

Issue

In several of these investigations the Department has found it necessary to determine how to properly treat various types of "services," e.g., computer data services and the sales of staff training courses. The issue is whether or not a company's total sales should include the value of services sold during the POI. This is important because we use a respondent's total sales as the denominator when we calculate benefits from subsidies that are not tied to any particular product.

Discussion

We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its service functions.

However, when a subsidy is tied to productive activities, the value of services sold should be subtracted from the company's total sales. Whether a subsidy is "tied" to productive activities is a determination that must be made separately in each case. Because subsidies tied to productive activities benefit only production of merchandise, they cannot benefit a company's service functions.

It should be noted that this analysis only applies to services performed within the country subject to investigation. To the extent a respondent, e.g., through a subsidiary, performs services in a country other than the country under investigation, that service would constitute foreign production, which is treated in section A. above.

Comment 1 (United Kingdom): Respondent argues that the Department's adjustment of the total sales denominator for the retail activities, which includes some cutting and slitting, performed by British Steel Distribution (BSD) is without foundation. According to respondent, the Department's past practice dictates that government subsidies benefit all aspects of a company's operations, including retailing. Respondent argues that if the Department elects to exclude that portion of the subsidies attributable to retailing from the denominator, it must make appropriate deductions from the numerator as well.

According to petitioners, there is no evidence on the record that BSD adds value to the goods it sells. To the extent that BSD does add value, however, petitioners argue that only the value added by domestic subsidiaries of BS plc should be included in the denominator.

DOC Position: We agree with the respondent that BSD's retailing activities should be included in the denominator because these retailing activities are part of the production process.

A more detailed explanation of the calculation of BS plc's total sales can be found in Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, which is published concurrently with this **Federal Register** notice.

Comment 2 (Belgium): Sidmar claims that because the subsidies it received were not tied to the production of any particular product, the appropriate sales denominator is the total value of the company's sales of all products and services, including the sales of blast furnace gas and tolling services. Sidmar argues that these sales are generated by the same productive assets as its sales of steel products and that the sales of services, therefore, should be included in the company's total sales value.

DOC Position: We have included sales of blast furnace gas and tolling services in Sidmar's total sales when calculating the *ad valorem* benefit of subsidies which are not tied to productive activities.

D. Treatment of Returned Merchandise and Second Quality Goods

Comment 1 (Belgium): Petitioners argue that the Department should exclude from the denominator amounts attributable to sales of merchandise later returned to the producer, unless these returns were later resold. In addition, petitioners state that both Sidmar and Clabecq have included sales of "seconds" (i.e., merchandise produced at less than first quality) in the sales denominator. According to petitioners, sales of "seconds" should be excluded to prevent the possibility of double counting where "seconds" were returned and subsequently resold.

Clabecq claims that sales of "seconds" should not be excluded from the denominator. Clabecq argues that the Proposed Regulations require the subsidy amount to be divided by a firm's total sales in calculating the CVD rate, unless the subsidy is tied to the production of a particular product, which is not the case here. "Seconds" are produced at less than first quality and differ from returns, according to Clabecq. As such, Clabecq argues, sales of "seconds" represent "bona fide" sales and should be included in the denominator.

Sidmar notes that returns need not be deducted from its total sales value because the total is already net of returns of both first and second quality merchandise. Sidmar also argues that sales of "seconds" should be included in the denominator because they are made by the same company, at the same time, using the same processes as first quality merchandise. Therefore, they benefit equally from any subsidies, according to Sidmar.

DOC Position: According to our longstanding practice, the value of returned merchandise, regardless of whether it is of first or second quality, is subtracted from the value of a company's total sales. The reason for this practice is that the return of a previously sold good indicates that the sale has been cancelled. Such sales should not be included in a company's total sales. However, if the returned merchandise is later resold during the POI, we add the value of that sale to the value of the total sales.

We have never squarely addressed the issue of "seconds" (here defined as

merchandise not produced at first quality or not meeting customer specifications), in past CVD duty cases. However, we have determined that it is reasonable to include such sales in the denominator because such sales are produced with the benefit of the same subsidies with which first-quality merchandise is produced. In this context, we consider a sale of a second-quality good to be equivalent to a sale of a first-quality good. Because the sales of "seconds" contribute to the value of a company's total sales, we see no reason why such sales should be excluded from the total sales. Moreover, "seconds" are typically included in the scope of a proceeding (as they are in these investigations) and they are, therefore, covered by any potential CVD order.

Equity

A. Equity Methodology

Issue

The issue to be determined in this subsection is the appropriate methodology to be employed in measuring the benefit from equity infusions made or provided on terms inconsistent with commercial considerations (i.e., when the company receiving funds is determined to be unequityworthy). The methodologies discussed below are intended for use only when the company in question does not have a market benchmark by which to measure any countervailable benefit, i.e., a publicly-traded price or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

Discussion

We considered several methodologies offered by interested parties and generated internally (For a complete discussion of those options, see Memorandum from Staff to Joseph A. Spetrini, dated June 21, 1993). We determined that the most appropriate methodology to use in measuring the benefit from equity infusions made or provided on terms inconsistent with commercial considerations is what we call the "Grant" approach.

The key aspect of this approach is the Department's interpretation of its equityworthiness determination. Using the grant methodology for equity infusions into unequityworthy companies is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information. Thus, neither the benefit nor the equityworthiness determination should be reexamined *post hoc* since such information could not have been known to the investor at the time of the investment. Therefore, the grant methodology, when used for equity infusions into unequityworthy companies and for grants to all companies, should not be adjusted based on subsequent events (e.g, dividends, profits).

Under this approach, the Department continues to distinguish between grants and equity investments because equity investments represent a claim on the company's earnings whereas grants do not. Even in a 100 percent government-owned company, where a purchase of equity does not result in any larger claim on the firm's assets or earnings, an investor's purchase of equity is normally based upon an expectation of a reasonable return. Such an expectation is not present with a grant, which is a simple gift to the firm. Under the grant approach, percentage of government ownership of the firm is irrelevant. This approach is based on the distinction between grants and equity and, in the latter instance only, upon the Department's analysis of equityworthiness.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding these equity issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties will be identified when a comment is country-specific in nature.

Comment 1: Petitioners support the Department's preliminary decision to abandon the rate of return shortfall methodology (RORS) for measuring the countervailable benefit of a government equity infusion into an unequityworthy company.

Petitioners argue that the RORS method is an inappropriate cost-to-government, *ex post facto* approach that is unrelated to the benefit conferred by an equity infusion. According to the petitioners, the benefit-to-recipient standard, rather than any cost-to-government standard, is mandated by U.S. law, Department precedent, the policy of the U.S. government, and economic sense.

Furthermore, RORS focuses on individual years, rather than the life of the investment. Thus, even if an investor knew in advance that the company would be profitable in year X, there is no reason to think that the investor would have provided the equity infusion. And, if the company becomes enormously profitable after the year of receipt for unforeseen reasons, the company would continue to be on a higher competitive plane than it would have been without the government capital that private markets would not have provided.

Implicitly, the RORS method suggested that if a company shows a profit equal to the market average in the year of review, then capital previously provided on terms inconsistent with commercial considerations no longer constitutes a subsidy. There are two flaws in this reasoning. First, a single year of profitability does not make a company equityworthy. Second, even if a company would have access to private capital in the review year if it earned the average rate of return for the economy, this would not reduce the benefit of the prior equity infusion. The government-owned company would simply have the benefit of both the original equity infusion and the additional capital it could now raise from the private markets.

The overall purpose of the CVD law is to counteract the benefit that countervailable subsidies bestow upon merchandise imported into the United States. The methods the Department uses to calculate the countervailable benefit must therefore accurately reflect the true benefit bestowed upon the subject merchandise. The RORS method does not accomplish this determinative objective. Furthermore, the logical implication of the theory that the "ultimate success" of the investment is the standard for the equityworthiness determination, is that the Department should countervail infusions to equityworthy companies that prove to be unsuccessful; the absurdity of such an implication is reflective of the absurdity of its premise.

The petitioners assert the falsity of respondents' arguments to the effect that the RORS method is mandated by statute. The respondents mistakenly assume that equity has a cost to the company. They confuse the standard for determining the existence of a subsidy with the methodology for benefit measurement. They mistakenly argue that the Courts have held the RORS method to be the best method of subsidy measurement. They fail to recognize that the grant amortization methodology is both reasonable and the only

methodology that is consistent with the Department's treatment of grants.

Petitioners argue that even if the subsequent investment performance of the equity infusion were relevant to measuring the benefit from prior equity, the RORS method does not measure the return on the subsidy investment. The company's rate of return on equity in a single year and the actual return on an investment are two different things.

Furthermore, according to the RORS method, the better the equity investment performs between the year of receipt and the year of review, the greater the countervailable benefit. Moreover, the RORS method yields absurd results when a company has near zero net worth. The source of this problem lies in the role that shareholders' equity plays in the RORS formula. The RORS method calculates the return on total shareholders' equity for the review year only. The goal, however, should be to determine the rate of return on the equity infusion over the life of the investment.

Petitioners argue that there are no sound defenses of RORS. To say that "only the review year matters" ignores certain fundamental considerations. First, the RORS method itself implicitly examines the intervening years by using the shareholders' equity in the review year. Second, to properly measure the return on an investment, one must determine the overall return on the investment. Finally, the profitability of the company in the review year does not reduce the company's use of the government capital it acquired from the original transaction.

Furthermore, in petitioners' view, it cannot be validly argued that RORS measures the "cost" of equity. To begin with, this would mean that more profitable companies have higher costs than less profitable companies, which is absurd. In economic terms, the only "cost of equity" to the company is the expected return that a company has to demonstrate to attract equity capital. Once that equity has been attracted, there is no further cost of that equity for the company.

The return that a company generates with the equity capital it receives is not part of the company's cost structure. Respondents attempt to bootstrap the fallacious notion that companies "pay" for their equity capital once received on the concept that the return to the investor is the investor's opportunity cost of capital. The manner in which companies attract equity capital is not to "pay" for equity but to generate a return from it. Any return generated legally belongs to the provider of the equity.

Petitioners also argue that there is a bias in the RORS method created by the Department's application of the so-called "grant cap" whenever the RORS method results in a countervailable benefit greater than the benefit that would be assessed under the grant methodology. The "backwards" results of the RORS method (lower earnings lead to a lower countervailable benefits) helps respondents because in those circumstances in which the equity infusion is clearly countervailable (poor performance), the RORS method often finds no subsidy.

Finally, petitioners point out that the RORS method implies that new subsidies can reduce the company's benefit from old subsidies. According to the RORS method, the more subsidies the company gets in the review year, the lower the benefit conferred by the original infusion. However, the countervailable benefit conferred by a subsidy should be independent of subsidies the company subsequently receives.

Respondents argue that the Department should retain the RORS methodology. The Department has failed to offer an adequately reasoned and meaningful justification for abandoning RORS in favor of the grant methodology, as is required by law (see, e.g., *Armco, Inc.* v. *United States*, 733 F. Supp. 1514, 1530 (CIT 1990); *Hall* v. *McLaughlin*, 864 F.2d 868, 872 (D.C. Cir. 1989)). Respondents assert that this is not an instance where the Department's new method is more accurate than the old method.

Respondents argue that petitioners' statement that RORS is not defensible under U.S. law is just plain wrong. The courts have carefully scrutinized the RORS methodology and have explicitly concluded that it represents the most accurate and acceptable measure of benefits from an equity infusion.

Respondents argue that the RORS methodology is the most appropriate methodology for calculating the benefit from equity infusions. The Department has used the RORS methodology uniformly in past cases, this methodology is specified in the Subsidies Appendix to Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina, 49 FR 18006 (April 26, 1984) (Subsidies Appendix), and RORS is specifically incorporated into the Department's Proposed Regulations. Moreover, respondents cite *Saudi Iron and Steel Co.* v. *United States*, 698 F. Supp. 912, 916 (CIT 1988), in which the CIT upheld the use of the RORS methodology by the Department.

While RORS is not perfect, respondents argue that it is preferable to the grant methodology. If the Department determined that it had to adjust for the effects of past subsidies, it could do so despite the fact that the effect of past subsidies on a company's rate of return is secondary and speculative.

Moreover, the Department considers an equity investment to be on terms inconsistent with commercial considerations when the expected rate of return at the time of investment is less than what a reasonable private investor would expect. In light of the difficulty in measuring the expected rate of return at the time of investment, the RORS methodology serves as a good proxy for measuring the benefit. The nexus between the expected rate of return and the company's subsequent performance cannot be ignored, yet the treatment of equity investments as grants does just that.

If the Department is willing to wait until the POI to ascertain the benchmark for a long-term, variable rate loan, because there is no reasonable alternative, then it should do the same for equity infusions.

The Department's change in methodology may also have adverse financial implications for innocent third parties which may have invested in companies under investigation with the expectation that the Department would continue its past practice.

DOC Position: We have rejected the use of RORS to measure the benefit from countervailable equity infusions. As petitioners point out, and respondents concede, RORS has many flaws. We find six of these especially notable.

First, when measuring the rate of return in the period of investigation (POI), the Department does not account for the effect of current subsidies on the company's return. These subsidies could affect the rate of return, thereby distorting the RORS analysis. It is not clear whether the Department would be able to neutralize the effect of this distortion. Second, the RORS method only measures the rate of return in the POI, thereby allowing poorly-performing companies which by chance experience a profitable year in the POI to escape countervailability. Conversely, a company with historically good results which experiences a subpar year can be found to have a large benefit in the POI from a past equity infusion. Third, RORS does not measure the rate of return on each of the government's equity infusions but rather the rate of return in the POI on the firm's total equity. If the equity is near zero, a very small profit will result in a negative countervailability finding.

Fourth, this methodology does not adequately account for the expectation held by a potential investor (at the time of the infusion) of the company's future rate of return on equity. Fifth, RORS is biased because it is only applied when the Department finds a company unequityworthy. Finally, and perhaps most importantly, RORS implies a "cost to government" standard rather than a "benefit to recipient" standard. These are not minor flaws which could be easily resolved. Rather, many of these flaws are fundamental to the RORS methodology (e.g., the cost to government standard) and cannot be rectified without abandoning the RORS methodology outright.

The grant methodology offers a more accurate means by which to measure the benefit from equity infusions. The faults of RORS, as enumerated above, are clear. The grant methodology, as stated more fully in DOC Position to Comment 2, below, treats equity infusions into unequityworthy companies as grants. This corresponds with the meaning of unequityworthiness, i.e., a reasonable private investor could not expect a reasonable rate of return at the time of the government's equity infusion.

Moreover, we disagree with respondents that the Department's methodology for measuring the benefit from equity infusions should serve as a yardstick by which to measure the accuracy of, and adjust where necessary, the Department's equityworthiness determination. Respondents imply that the Department cannot accurately determine the equityworthiness of the company in question. The Department's equityworthy determination is done at the time the equity infusion is made, using the information available at that time. Therefore, any consideration of information or indicia after the time the equity infusion was made would invoke a practice of "second-guessing," a practice unavailable to our benchmark, the reasonable private investor.

We disagree with respondents' arguments concerning variable rate long-term loans. Respondents mischaracterize the reasoning behind the determination of whether variable rate long-term loans are countervailable. In doing so, they confuse the determination of whether a loan or equity infusion is inconsistent with commercial considerations, on the one hand, with the methodology applied to measure the benefit from the subsidy, on the other hand. It must first be determined whether the variable rate long-term loans were made on terms inconsistent with commercial considerations. To make that determination, the variable rate in effect in the year the loan was provided is compared to a benchmark rate in the same year. If the variable rate on the loan is equal to or less than the benchmark rate, the loan is found to be consistent with commercial considerations and is not countervailable. If the benchmark rate from the year in which the loan was provided is higher than the loan rate in that year, then the loan is countervailable and we apply the variable rate loan methodology to measure the benefit during the POI.

Finally, regarding respondents' statement that a change in the Department's methodology would penalize an individual who, relying upon the Department's prior practice, chose to invest in a company under investigation, it should be noted that the Act does not permit the Department to consider the effects of its determinations on third parties.

Comment 2: Respondents argue that the application of the grant methodology to equity infusions is inconsistent with, and unsupported by, the Department's test to determine equityworthiness, fails to recognize the potential for return inherent in equity, and is incorrect as a matter of law.

Respondents further argue that the Department's equityworthiness determination is inconsistent with the application of the grant methodology in valuing equity infusions to unequityworthy companies. According to respondents, the Department's equityworthiness test does not determine that a government investor in an unequityworthy company will not realize any return on his/her investment or lose the entire value of the investment. The Department's test only makes a judgment as to whether or not the likelihood of a reasonable return on the investment is sufficiently high, based on past performance and current financial indicators, to attract investment from a private investor. This is not equivalent to a finding that an unequityworthy company could not attract capital at all.

By using the grant methodology, respondents argue, the Department has necessarily made three invalid assumptions about its equityworthiness methodology: (1) Unequityworthiness is equal across all companies, (2) all investors are equal and the Department can predict whether any category of investor would make the investment in the unequityworthy company, and (3) the Department can determine with certainty the performance of a company over a 15-year period, and therefore, that company's attractiveness to a private investor at the time of investment. Where the determination that a firm is unequityworthy is a "close call," the Department cannot apply the grant methodology because clearly there is some expectation of return.

According to respondents, unlike the RORS methodology which recognized this flaw and provided a means for correcting it, the grant methodology imparts a certainty to the equityworthiness determination. Therefore, in order for the Department to continue to adopt the grant methodology for equity infusions into unequityworthy companies, a much more accurate equityworthiness test must be devised.

Respondents contend that equity is not a grant. A company undertakes potential obligations with respect to equity (e.g., dividends) which it never does with grants. The Department recognized this distinction in France Bismuth, when it stated that "[e]quity investments, unlike grants, do represent a claim on the company and even in a wholly government-owned company, equity investments are normally based upon some expectation of return." Therefore, by applying the grant methodology to equity infusions, the Department necessarily overvalues the benefits to the recipient unless the government never recovers any of its investment and never earns any return on that investment. Respondents also point to Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 56 FR 47185 (September 18, 1991) (the 1987 review of Carbon Steel from Sweden), in which the Department rejected the proposition that equity should be treated as grants on the grounds that equity has an expectation of financial return whereas grants do not.

Respondents further argue that the abandonment of RORS in favor of the grant methodology is based on a faulty assumption: RORS does not measure the benefit to the firm because the issuance of new equity is supposedly costless to the firm. Respondents argue that there is a cost associated with raising new capital. They cite a CIT decision (*Saudi Iron and Steel Co.* v. *United States*, 698 F. Supp. 912, 915 (CIT 1988)), which states that the measure of what a firm "pays" for equity is its rate of return on equity. According to this decision, the rate of return on equity reflects the price the firm must offer to attract equity, any dividends paid, and changes in the company's retained earnings and net worth.

According to respondents, the Department has provided brief and unpersuasive arguments in favor of

VOL 58 ISS 130 JL 9 1993 UMI

changing its methodology. Based on several court cases in which administrative agencies have been directed to adhere to existing policies or explain any deviation from past practice, respondents argue that the Department should not depart from its traditional RORS methodology in favor of the grant methodology.

Petitioners argue that there is no material difference between the provision of a grant or an equity infusion of the same amount to an unequityworthy company, and that the review year benefit is therefore identical. Petitioners further assert that although the grant methodology is a departure from past practice, an agency can diverge from past practice when it is necessary to reflect legislative intent or to achieve more accurate results. According to petitioners, the Department clearly explained the reasons for the change in its preliminary determination.

The benefit to the recipient cannot be less than the full value of the infusion when the recipient has been determined to be unequityworthy. This flows from the Department's definition of unequityworthy. The Department has defined unequityworthy to mean that the company could not have raised from private capital markets any portion of the funds it received from the government equity infusion (see Subsidies Appendix). Therefore, the entire amount of capital received by an unequityworthy company is a subsidy.

Petitioners contend that expected return, not potential return, is the basis for the determination of unequityworthiness. Companies from which private investors expect a market rate of return receive capital. Companies with the same level of risk that investors do not believe will attain a market rate of return receive zero capital, not a reduced portion of capital. An unequityworthy determination does not imply that the company will never produce a profit. It implies that a private investor cannot expect a market rate of return on the prospective investment.

DOC Position: We disagree with the notion that by finding a company to be unequityworthy, the Department is indicating that the company had no hope of ever making a profit. When a company is found to be unequityworthy, the Department has determined that a reasonable private investor would not have made the equity infusion in the company at the time the government did. Therefore, the infusion was provided when a reasonable investor would not have done so and application of the grant methodology is appropriate.

Our approach for equityworthiness determinations is delineated in the Equityworthiness subsection of this section. This basis is the same as that upon which a reasonable private investor would rely and provides a sufficient basis upon which to make the equityworthy determination.

We reject respondent's argument that the Department makes invalid assumptions about its equityworthiness methodology when applying the grant methodology. First, we evaluate each company's expected future financial performance, as reflected in its own past performance and forecasts, on an individual basis. Second, we examine whether a reasonable investor, not every investor, would make the equity investment at the time of the infusion. Third, we recognize that an element of uncertainty is present in this analysis. That is precisely the point. We are attempting to emulate the process by which a reasonable private investor evaluates the company in question at the time of the infusion. This process of calculating an expected return will, by definition, involve an element of uncertainty for the private investor which is also present in our analysis. The government made the same decision with the same uncertainty surrounding that decision and, therefore, it is unavoidable that our analysis of the decision of the reasonable private investor should also include uncertainty.

The respondents cite from France Bismuth is misleading. The Department was clarifying why we do not apply the equityworthiness methodology to grants into 100 percent government-owned companies. While we distinguish grants from equity on the basis that equity investments are normally based on an expectation of a reasonable return, our equityworthy analysis then determines whether the expected return at the time the equity infusion was made would cause a reasonable private investor to invest in the company in question.

Respondents' argument that firms incur a cost with the issuance of equity, in the form of rate of return on equity, is not applicable here. As stated above, we have determined that a *post hoc* analysis is not warranted under the Department's methodology.

Contrary to petitioners' beliefs, a determination of unequityworthiness does not imply that the reasonable private investor cannot expect a market rate of return at the time of the investment. That would imply a comparative analysis in which we do not engage (see the Equityworthiness subsection of this section). A determination of unequityworthiness does signify that the investor cannot expect a reasonable rate of return on the equity infusion. A reasonable rate of return does not require a comparative equityworthy analysis.

Comment 3: Petitioners argue that the RORS methodology was flawed in its treatment of 100 percent government-owned companies. Under the RORS methodology, the Department made a distinction between equity infusions, in which the government receives additional share certificates, and grants, in which the government does not receive any additional share certificates, even when the company under investigation was 100 percent government-owned.

Petitioners further point out that equity infusions into wholly state-owned companies are equivalent to grants to state-owned companies because they are nothing more than different names for the same material transaction and therefore promise identical returns on investment. The Department has always sought to base its decisions on the substance, not the form, of the transactions it evaluates. The difference between a grant and an equity infusion into a 100 percent government-owned company is solely a difference in form. Any review year benefit arising from a grant must therefore be identical to the benefit arising from an equity infusion.

Respondents argue that the Department itself recognized that "[e]quity investments, unlike grants, do represent a claim on the company and even in a wholly government-owned company, equity investments are normally based upon some expectation of return" (see France Bismuth).

Respondents further contend that petitioners' argument only applies to, if at all, an existing, 100 percent government-owned company which is both uncreditworthy and unequityworthy. Respondents argue that petitioners do not address the situation where the respondent company is less than 100 percent government-owned, newly formed, and found creditworthy but not equityworthy. Clearly, petitioners' arguments are not relevant with respect to a company in which the government has only, for example, a 50 percent ownership stake. A grant to that company would become an asset of all the shareholders whereas an equity infusion would provide shares, and the rights which come with those shares, only to the government. Additionally, if a company is creditworthy but unequityworthy, an equity infusion has a degree of safety which differentiates it from a grant and, in fact, makes equity resemble more a loan than a grant.

DOC Position: We agree with respondents. As stated above, there is a fundamental difference between equity infusions and grants, even in the case of 100 percent government-owned companies. Equity received in return for funds provided indicates that the holder of the equity expects a return on investment. Grants are funds given with nothing received in return and no expectation of a return on investment. Therefore, the basis for this methodology is the difference between equity and grants; thus making the level of government ownership inconsequential.

Finally, we disagree with respondents' assertion that a creditworthy company which is also found to be unequityworthy is somehow less unequityworthy than if the company was also found uncreditworthy. Uncreditworthy means just that, not worthy of credit. Unequityworthy means not worthy of equity. While the analyses use some of the same information, they are distinct, mutually exclusive analyses. Since loans must be paid before returns on equity are made, it is appropriate to have different standards for evaluating creditworthiness than equityworthiness, and an analysis of one has no dispositive effect on the outcome of an analysis of the other.

Comment 4: Respondents argue that, whatever methodology decided upon by the Department for calculating the benefit from equity infusions, dividends paid to the government should be deducted from the calculated benefit for the POI. The Department's proposed regulations and past practice require that any countervailable benefit calculated for the POI be reduced by the amount of dividends paid in the POI (see section 355.49(e)(1) of the Department's Proposed Regulations.

Moreover, dividends issued in the years shortly after an equity infusion would reduce the balance of the infusion on which any subsequent subsidy calculations should be based. If the dividends in a particular year exceed the allocated benefit from the equity infusion, the Department should treat the excess as extinguishing an equal amount of benefit in the following years. By their own admission, petitioners recognize that full repayment of the present value of the benefit of an earlier subsidy might extinguish that subsidy. Respondents contend that by extension, then, partial repayment extinguishes part of the subsidy.

Respondents also argue that dividends are not the only form of repayment to the government for equity infusions. These other forms of payments (e.g., the sale of subsidiaries to the government for a nominal value) should also be deducted from any calculated benefit.

Petitioners argue that respondents are incorrect in asserting that dividends are a "repayment" of the subsidy. Respondents' confusion in this argument is between the return on equity and the equity itself. A dividend is not a return of equity, it is a return on equity, which is generated by the equity. From the perspective of the investor, dividends are earnings, not repayment. From the perspective of the company, the equity is not being repaid: the company still has the equity but has simply taken some of the equity's earnings (which are not a component of cost) and provided them to their rightful claimants. Furthermore, respondents are once again relying on an inappropriate cost-to-government approach to measuring benefits. The fact that the government is getting dividends does not make it "incontrovertible" that the benefit to the recipient is being reduced. The benefit being countervailed is not "dividends not paid" but the equity itself, and the equity is not being paid back with the dividends.

Even if dividends were a repayment of prior equity infusions, the Department would need to establish which portion of a given dividend was attributable to which equity infusion; also, if such were the operative theory, dividends paid by private companies that received outright grants should also reduce benefits.

DOC Position: Dividends cannot be construed as a payback to the government for its equity investment. As petitioners state, they are a return on the investment, not a return of the investment. Any provision of funds to a company can contribute to a company's return, including loans, grants, and other types of subsidy payments. We do not and cannot permit a company's returns to reduce the level of the benefit to the company from such subsidies.

While we continue to maintain our long-held view that government equity infusions *per se* do not confer a subsidy, we now recognize that once the countervailable threshold has been crossed (i.e., we find the company to be unequityworthy), there is no justification for reducing the benefit by the amount of dividends paid to the government. Payment of dividends does not alter in any way the benefit received by the company from the infusions.

This is consistent with the Department's determination with respect to privatization (see Privatization section of this Appendix), where we have recognized that privatization constitutes at least a partial payback of all previously bestowed subsidies, such as grants and fixed rate long-term loans, not just equity infusions. The Department recognizes that all allocated subsidies contribute to a company's return, but the law does not permit us to reduce the benefits from those subsidies when a company generates a profit or return whether the company is government-owned or privately-held. A profit or return is not a payback of the subsidies. Classifying dividends as payback because a company is government-owned is illogical because dividends are not a payback of grants or loans provided to a privately-held company.

However, when a government-owned company is sold, the government is removing itself from the company and the price paid by the new owner constitutes a payback of at least some of the subsidies. It is getting back at least some of its investment; it is not getting a return on its investment.

Comment 5 (Sweden): The respondent notes that SSAB became profitable in the very year it was forecast to do so and that the company paid its first dividends to its shareholders in 1984. Therefore, the respondent argues, the equity infusions turned out to be successful equity investments and should, therefore, not be treated as grants.The respondent also asserts that equity infusions are not equivalent to grants even in wholly government-owned corporations.

According to petitioners, the respondent has not explained why the presence of minority shareholders should make a difference to the Department's determination. Petitioners note that in Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Sweden, 50 FR 33375 (August 19, 1985) (Carbon Steel from Sweden) and Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 57 FR 31714 (August 1, 1989) (the 1985 review of Carbon Steel from Sweden), the Department found that the presence of two private companies as investors in SSAB did not necessarily make the company a reasonable commercial investment. Petitioners contend that because no reasonable investor would have invested in SSAB, the Government of Sweden (GOS) could not have expected a reasonable rate of return on its investment. Equity infusions provided under these circumstances are, therefore, the same as grants.

DOC Position: The Department treats equity infusions as grants for companies

which are determined to be unequityworthy. We have determined that the level of government ownership is not a factor to be considered in determining the appropriate calculation methodology for equity infusions. As stated above, the Department considers an unequityworthy determination to mean that a reasonable private investor would not invest in the company given the information available at the time of the infusion. The fact that SSAB experienced profits subsequent to the infusion is a *post hoc* analysis which we have rejected (see above).

C. Equityworthiness

Issue

The issue discussed herein focuses on the methodology used by the Department to determine whether a company is equityworthy.

Discussion

The Department analyzes a government's equity infusion from the perspective of a reasonable private investor at the time of the equity infusion. As we have consistently stated, for a company to be equityworthy, it must show the ability to generate a reasonable rate of return within a reasonable period of time (see Proposed Regulations).

In making this determination, we examine the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts.
2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals.
3. Rates of return on equity in the three years prior to the government equity infusion; and
4. Equity investment in the firm by private investors.

The Department gives great weight to the company's recent rate of return on equity as an indication of financial health and prospects. However, in Final Affirmative Countervailing Duty Determination: Agricultural Tillage Tools from Brazil, 50 FR 34525 (August 26, 1985), the Department stated that a demonstration of profits or earnings alone is not sufficient for a company to be equityworthy. The rate of earnings per unit of equity, and not the absolute level of earnings, is a far more important determinant of a company's performance.

Beyond the company's past performance, the Department also analyzes the future prospects of a company. In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Saudi Arabia, 51 FR 4206 (February 3, 1986), (Wire Rod from Saudi Arabia) the Department explained that where the past experience of a company is of little utility in assessing future performance (such as in the start-up of a new company or in a major restructuring or expansion program), we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise.

Our analysis also takes into account the company's prospects, as reflected in market studies, and country and industry forecasts. In Carbon Steel from Sweden, the Department based its determination on the facts available to an investor at the time the equity investment was made concerning: (1) The anticipated rate of return on equity, (2) the extended length of time before the company was projected to become profitable, (3) the prospects of the world steel industry, (4) the expected demand in Sweden and export markets, (5) the amount of capital and loss coverage investment required, and (6) the cost structure of the company.

Comment 1: Petitioners argue that the Department should clarify its current position that prior subsidies will not be subtracted out for purposes of assessing a company's equityworthiness, but that the Department will consider the implications for the company's earnings prospects of a recent, nonrecurring gain as would a reasonable private investor. A private investor would focus on the trends of a company's underlying profitability rather than the level of a company's financial health if that level of health is the result of a recent, large, extraordinary gain such as a non-recurring subsidy.

DOC Position: When evaluating equityworthiness it is the Department's practice not to subtract subsidies received by a firm from the firm's financial data. To do otherwise would result in using a standard different from that used by a private investor, who will look to the financial position of the firm at the time of the investment. Additionally, any attempt to remove the effects of subsidies in adjudging a company's financial position would be a highly speculative exercise. The proposal put forward by petitioners, that we consider the implications of certain types of subsidies, would require even more speculation as we would have to look behind the subsidies to see if they have some long lasting effect then guess how much emphasis a private investor would place on these subsidies in deciding whether or not to invest.

Comment 2: Respondents argue that the focus of the Department's equityworthiness test should be on a company's current financial condition and future prospects at the time of the equity investment, not past financial indicators. Investors are interested in a company's future earnings potential, not its past profits or losses. The ability of a company to show profits in previous years is only one indicator of its future earnings potential. In fact, companies showing losses for several years are frequently able to raise capital from both shareholders and outside investors. Therefore, past performance should only be examined to the extent that it is useful as a predictor of future returns.

Respondents also argue that two factors: (1) The cyclical nature of the steel industry; and (2) the major restructurings undertaken by a number of companies during the past 10 years; have the greatest impact on a steel company's future earning potential. Investors would take these factors into account when making a decision to invest into a particular steel company. The Department must also examine these factors and weight them accordingly.

Petitioners refute respondents' statements that the Department does not consider the company's future prospects when determining whether the company is equityworthy, and that the Department relies too heavily on past financial indicators. Petitioners cite the France Bismuth investigation where, at the preliminary determination, the Department ruled that Usinor Sacilor was unequityworthy in 1991 based on recent financial indicators, yet the Department reversed its finding in the final determination based on a study of the company provided by the respondents.

DOC Position: The Department currently gives great weight to the company's recent rate of return on equity as an indication of financial health and prospects. The Department also analyzes the future prospects of a company. However, we tend to place greater reliance on past indicators as they are known with certainty and provide a clear track record of the company's performance, unlike studies of future expected performance which necessarily involve assumptions and speculation.

In the Wire Rod from Saudi Arabia, we explained that where the past experience of a company is of little utility in assessing future performance (such as in the start-up of a new company or in a major restructuring or expansion program), we recognize that the factors considered and the relative

weight placed on such factors may differ from the analysis of an established enterprise. Our analysis also takes into account the company's prospects, as reflected in market studies, and country and industry forecasts.

Whenever the Department is presented with reliable "pure" studies and forecasts they are considered. In Carbon Steel Wire Rod from Trinidad and Tobago, 49 FR 480 (January 4, 1984), we considered the independent evaluations of the project's feasibility.

Comment 3 (Brazil): Respondents argue that the Department's equityworthiness determination in the preliminary determination failed to take account of a number of factors which support the conclusion that equity infusions in COSIPA and USIMINAS from 1987 through 1991 were consistent with commercial considerations. The Department must examine equityworthiness on a case-by-case basis. In particular, the Department must take into account the financial restructuring plan of COSIPA and USIMINAS and re-examine its determinations of unequityworthiness.

Petitioners argue that where a firm has been found unequityworthy for a series of years, more than one or two years of improved performance are required to warrant finding a change to equityworthiness. A review of the firms' financial results for the three years prior to each of the infusions reveals that no private investor would have expected to earn a reasonable rate of return within a reasonable period of time from any of these subsequent capital infusions.

DOC Position: We agree with petitioners. The projections contained in a consultant's evaluation of the plan, as supplied by respondent, do not support a determination of equityworthiness for any of the companies in the years under investigation. The goal of the restructuring plan was that at the end of the restructuring period, the companies would provide a satisfactory return on equity. However, according to the plan itself and the projections provided, that goal would not be achieved until the end of the plans' implementation period, after the years under investigation.

In addition, a private investor would have to reconcile an analysis of past performance with projections of future earnings based on the financial restructuring plans. The information in the response regarding the projections does not support a finding of equityworthiness. The projections do not provide a sufficient basis to overcome the historical records of poor performance by the companies under investigation. Therefore, we find no evidence that SIDERBRAS' 1987 restructuring plan should have any material effect on our determinations that COSIPA, CSN, and USIMINAS were unequityworthy at the time they received equity infusions.

Comment 4 (Mexico): Respondent contends that the projections relied upon by the GOM demonstrate that Altos Hornos de Mexico, S.A. de C.V. (AHMSA) was equityworthy when the government assumed its debt in 1986. They argue that the projections showed that AHMSA would generate substantial positive real returns on equity in the foreseeable future, regardless of whether the government assumed AHMSA's debt. However, the projections also showed that AHMSA's cash flow would be insufficient to meet all interest payments on its debt in the absence of the GOM assuming its debt. Therefore, the GOM assumed AHMSA debt because it expected AHMSA to generate substantial returns, and because without such a debt assumption, there was risk of the company defaulting on its credit obligations and forfeiting these obligations to its creditors.

Petitioners contend that the Department should not rely on the GOM's 1986 financial projections submitted in support of the equityworthiness claim. First, petitioners argue that, under the factors laid out in the Department's Proposed Regulations, future financial prospects are not determinative of equityworthiness. While future financial prospects are considered as one of the factors, petitioners contend that this factor should not outweigh the others because it is speculative in nature. Petitioners further argue that AHMSA has not provided adequate explanation of the economic assumptions underlying the 1986 projections. Therefore, it is impossible to determine whether or not the projections are reasonable. Finally, they contend that AHMSA's projected return-on-equity consistently fell far short of the Mexican national average return-on-equity.

DOC Position: We agree with petitioners that future financial prospects are but one of the factors considered by the Department in determining the equityworthiness of a company. The 1986 financial projections submitted by AHMSA were made by AHMSA in connection with negotiations with the GOM to have the GOM assume a large portion of AHMSA's debt. The projections were done to show that with the GOM's assumption of AHMSA's debt AHMSA could achieve a level of cash flow and profitability such that the company would not be in danger of being taken over by its creditors. The focus of the analysis was not to demonstrate to a reasonable investor that AHMSA was a good investment. It is also clear, based on our examination of the debt assumption agreement at verification, that AHMSA was not required to achieve the projected results.

We believe that the reasonable investor would weigh AHMSA's dismal financial performance during the 1980s far more than a financial projection done by the company itself in an attempt to garner more financial aid from the GOM.

Comment 5 (Mexico): Petitioners argue that a study prepared by an outside consultant and submitted to the Department as evidence of AHMSA's equityworthiness is flawed and should not be considered by the Department. Petitioners argue that the study is irrelevant to the Department's equityworthiness analysis because (a) a comparison between the financial condition of AHMSA and a similar company proves nothing with respect to AHMSA's equityworthiness, and (b) even if a comparison such as this were valid to the Department's equityworthiness determination, the study itself fails to establish that AHMSA, in the years in which the Department is examining AHMSA's equityworthiness, was a reasonable investment.

Respondent argues that AHMSA's situation was no worse than that of similarly situated companies, many of which received equity infusions from private investors during the same period. They argue that all highly leveraged, asset-intensive Mexican companies faced difficulties meeting cash flow requirements in the 1980s. As a result, private owners of the companies had to restructure the companies' finances, in many instances making new equity investments. Respondent contends that its outside consultant study demonstrates that AHMSA's performance was comparable to that of other similarly situated studies.

DOC Position: The Department determines a firm is equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. We agree with petitioners that the outside consultant's study submitted by AHMSA is largely irrelevant to demonstrating this with respect to AHMSA. In addition, the consultant's report submitted by AHMSA did not

even exist at the time of the infusions during 1979–87. Therefore, the GOM could not have relied on it in making its investment decisions.

Comment 6 (Mexico): Petitioners argue that the Department was mistaken in its preliminary determination that AHMSA was equityworthy in 1977. Petitioners contend that the Department misread AHMSA's financial information in the three years prior to 1977 and did not adequately consider the company's financial performance in 1977. Petitioners argue that despite the fact that AHMSA's financial ratios were still largely positive in the years preceding 1977, the negative financial trend was clear.

DOC Position: Petitioners' arguments concerning the Department's preliminary determination that AHMSA was equityworthy in 1977 are unpersuasive. In general, for the three years prior to 1977 AHMSA's financial situation was strong. Since there has been no change to the data relied on in the preliminary determination, the analysis we performed at that time is still valid. Considering AHMSA's financial performance in 1977 when analyzing AHMSA equityworthiness for 1977, as suggested by petitioners, would amount to a post hoc analysis. Private investors considering investing in AHMSA during 1977 would not have had AHMSA's year-end 1977 financial results.

Comment 7 (Mexico): Petitioners contend that AHMSA's poor financial performance continued through 1990 and 1991, and that the Department should conclude, based on information on the record, that AHMSA was unequityworthy during these years. Petitioners argue that AHMSA's financial condition in 1989, 1990, and 1991 would lead any reasonable private investor to conclude that AHMSA was not a reasonable investment during this period.

Petitioners also argue that the Department should disregard as meaningless private investments made in AHMSA in 1988 and 1991. Specifically, they argue private investments made in these years were so small relative to the nominal value of AHMSA's stock outstanding that the Department should not consider these investments when analyzing AHMSA's equityworthiness. To support their argument, petitioners point to Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products from Spain, 57 FR 57999 (December 7, 1992) (Certain Steel from Spain). In that case, the Department found that private investments made in a company were too small to be a valid measure of equityworthiness.

Petitioners also argue that the information on the record regarding the 1988 and 1991 private investments is insufficient to establish whether or not the terms and conditions of these private investments were comparable to the terms and conditions of the GOM equity infusions.

Respondent asserts that private investments made in AHMSA in 1988 and 1991 demonstrate that AHMSA was equityworthy in 1990 and 1991. They assert that private investors paid the same share price as the government and that the investments were pursuant to the same board-of-directors resolutions as the government infusions. Respondent also contends that the private investments were sufficiently large to show that private investors were willing to make new investments in the company on the same terms as the government. They assert that petitioners' citation of Certain Steel from Spain is not on point; private investments in that case totalled only about $5,000, and investors made their investments only because they were told that the company would be dissolved if they did not.

DOC Position: The Department has determined that AHMSA was unequityworthy during 1990 and 1991. The specific analysis used to arrive at this determination is contained in the final equityworthiness/creditworthiness memorandum on file in the administrative record of this case. In making this determination, the Department relied primarily on financial data, such as rates of return on equity, in the three years prior to the government equity infusion. The Department can also consider equity investment by private investors. However, the fact that there was private investment is not, in and of itself, dispositive that the company in question is equityworthy. As stated in the final equityworthiness/creditworthiness memorandum, the dismal financial performance by AHMSA in the three years prior to each infusion in 1990 and 1991 are more indicative of AHMSA's equityworthiness than the extremely low level of private investment.

Comment 8 (Mexico): Respondent asserts that the 1990 and 1991 equity infusions should not be included in the investigation. They explain that these infusions were fully disclosed in AHMSA's October 5, 1992 questionnaire response but that petitioners did not request that the Department investigate the equityworthiness of AHMSA in 1990 and 1991 until December 18, 1992. The Department did not rule on this request until February 8, 1993, and respondent contends that it was not informed of the Department's decision until March 11, 1993. Respondent asserts that petitioners' failure to request this investigation in a timely manner seriously affected AHMSA's ability to respond to the issues raised by the infusions.

Petitioners state that the Department acted properly in including the 1990 and 1991 equity infusions in the investigation, and that respondent had ample opportunity to prepare and submit information about these infusions.

DOC Position: On February 8, 1993, subsequent to the preliminary determination, the Department expanded the equityworthiness investigation to include 1990 and 1991. This decision was made in accordance with the Department's regulations, which state that "[i]f during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review." See 19 CFR 355.39(a).

Respondents' arguments concerning notification of the inclusion of the 1990 and 1991 infusions in the investigation are without merit. They knew that these infusions were an issue since at least December 18, 1992, when petitioners requested that the Department include them in the current investigation. In addition, when the decision to include the 1990 and 1991 infusions in the investigation was made by the Department on February 8, 1993, the Department immediately informed the Government of Mexico of the decision and placed the accompanying decision memorandum in the official file of the case. It was the responsibility of the GOM to notify AHMSA.

Comment 9 (Mexico): Petitioners support the Department's methodology for calculating equityworthiness and urge the Department to reject respondent's alternative return-on-equity calculations. According to petitioners, respondent's calculations demonstrate only that Mexico suffered from extreme inflation during the period of investigation. The return-on-equity resulting from respondent's calculations is based not on AHMSA's operations, but rather on non-operational factors such as increases in capital stock,

capital contributions, additions to legal reserves and inflation adjustments. Petitioners contend that these returns reflect accounting adjustments, not real profits or the productive value of AHMSA's assets.

Respondent argues that the Department's equityworthiness analysis does not account for the effects of hyperinflation. Accounting for this hyperinflation leads to the conclusion that AHMSA was actually a very good investment throughout the relevant period.

In support of its argument, respondent first asserts that AHMSA's real rate of return was well above the real rate of interest in Mexico during the relevant period. Second, respondent notes that in periods of hyperinflation, investors favor investments that will protect them against the effects of inflation. In other words, they tend to avoid investment in financial assets and prefer investment in companies with a high proportion of physical assets—assets that appreciate in value faster than inflation. Third, respondent argues that because the appreciation of assets is not reflected in income statements, the company's return-on-equity will appear as less than its full value. Finally, they argue that, because the value of assets generally increases with inflation but the value of liabilities does not, AHMSA's net worth grew faster than the value of alternative investments during the relevant period.

DOC Position: Respondents' arguments concerning hyperinflation are unpersuasive. While it is true that during hyperinflationary periods investors may seek investments that will protect them against inflation, these types of investments would more likely be liquid investments rather than an unprofitable steel company. Returns in a hyperinflationary economy must be high in order to attract investment and compensate for the effects of hyperinflation throughout the economy. The decision by a reasonable investor about whether to invest in a steel company such as AHMSA would certainly be based on numerous factors other than simply that company's level of physical assets.

Respondents argue that hyperinflation distorts the rate of return on equity (net earnings/shareholders' equity) since the appreciation of assets due to inflation is not reflected in the income statement. AHMSA further states that the Department's preliminary equityworthiness analysis was flawed because it failed to consider the effects of inflation on AHMSA. AHMSA seems to believe that the proper test for determining equityworthiness is to compare these "real" rate of return on equity figures with the "real" Mexican interest, which it claims is represented by the Costo Porcentual Promedio (CPP) minus the rate of inflation.

AHMSA has proposed a type of comparison that is methodologically unsound. The CPP rates represent the average cost of short term funds to banks in Mexico and is not reflective of rates being paid to investors in Mexico. In addition, because equity investors generally assume more risk than creditors, an external benchmark rate for the type of comparison suggested by AHMSA would have to be significantly higher that the CPP. The preliminary analysis examined AHMSA's financial performance as shown in its rate of return, profitability figures, etc. By AHMSA's own admission, these figures are reported "net-of-inflation" (AHMSA Case Brief dated May 6, 1993, at page 17). This is exactly the type of information a reasonable investor would be interested in when considering whether to invest in a company. Even if the return on equity figures are distorted in the manner suggested by AHMSA, which it has failed to quantify in any meaningful way, AHMSA's profitability in "real" terms was quite low or negative during the relevant years.

As an accounting matter, AHMSA's argument that because the value of assets generally increases with inflation but the value of liabilities does not, AHMSA's net worth grew faster than the value of alternative investments during the relevant period, is wrong on its face. Inflation favors borrowers over creditors. Therefore, in a highly inflationary environment creditors require some sort of premium to compensate for the effects of inflation. This will cause the "value of liabilities" to grow in line with inflation.

Comment 10 (Mexico): Respondent requests that the Department adjust the data used in analyzing AHMSA's equityworthiness to reflect three accounting charges that did not represent real expenses to AHMSA: (1) An extraordinary expense resulting from a change in the firm's method for valuing its assets; (2) severance costs for 1992 that were recorded as a 1991 expense; and (3) a loss due to a paper transaction after privatization.

DOC Position: What respondents are suggesting would amount to the Department simply deducting items in AHMSA's financial statements that negatively affect the final results and leaving in only items that have a positive effect. It should be noted that there were some years for which extraordinary income was a significant portion of AHMSA's overall net income. Further, in determining the equityworthiness of a company, when the Department relies on financial statements for its analysis it uses financial statements prepared in accordance with Generally Accepted Accounting Principals (GAAP). Respondents are suggesting what would amount to a cash based accounting methodology, which is not considered GAAP.

Comment 11 (Belgium): Petitioners argue that at the time Cockerill and Clabecq received loans from (or at the direction of) government entities, they were not generating income sufficient to service the interest on outstanding debt and were uncreditworthy. With respect to Clabecq, petitioners note that the Department correctly determined that this company was uncreditworthy through 1989 (and should have found it uncreditworthy in 1990 and 1991 as well).

DOC Position: We found that petitioners' allegations were sufficiently well documented to justify an investigation of Cockerill's uncreditworthiness. Because Cockerill failed to respond to our CVD questionnaire, we are finding the company to be uncreditworthy from 1982 to 1989 based on the best information available, which is the documentation supplied in the petition. We note that, for purposes of these investigations, we have incorporated our finding in the 1982 investigations that Cockerill was uncreditworthy during the period 1978 to 1981.

We did not find Clabecq to be uncreditworthy in 1990 and 1991 because in the three-year periods preceding each of these years, Clabecq showed considerable improvement in its net profits and its ability to meet its costs and fixed financial obligations.

Comment 12 (Belgium): Several loans with both private and government bank participation were received by Clabecq prior to 1982 and were rescheduled in 1986 into two "pooled" loans. One of the pooled loans was subscribed by the government banks, the second, by the private banks. Petitioners claim that the pooled loan subscribed by the private banks and cited by Clabecq as evidence of its creditworthiness was not a private sector loan. As was made clear at verification, Clabecq did not receive a new loan in 1986, but only a rescheduling of earlier countervailable loans.

Under these circumstances petitioners argue that the rescheduling of these loans does not constitute evidence of Clabecq's creditworthiness. Moreover, when the original private bank loans were made to Clabecq they benefitted

from State participation. The Department found in 1982 that private bank funds channeled through state banks benefitted from the state guarantee.

Clabecq argues that the Department incorrectly determined that Clabecq was uncreditworthy through 1989. Such a determination is inconsistent with the Department's Proposed Regulations and does not take into account all relevant financial and valuation information regarding Clabecq. The Proposed Regulations state that, normally, receipt by a firm of comparable long-term commercial loans, provided without a government guarantee, shall indicate creditworthiness. Further, Clabecq claims that it received a private sector loan. In 1986, several of Clabecq's loans were pooled into two. The terms and rescheduling of one of these loans were negotiated with private banks without the Government of Belgium (GOB) or a loan guarantee from the GOB. Thus, Clabecq received comparable long-term commercial bank financing in 1986. Under the Proposed Regulations, this is dispositive evidence that Clabecq was creditworthy at this time.

DOC Position: We agree with petitioners. At verification, we found that bank statements and company records continued to reflect payment of principal and interest on the original loans. The only change was effected by the 1986 rescheduling after an extension of the original repayment periods.

Moreover, the pooling of these loans appears to have been essentially an accounting exercise, which regrouped the outstanding loan funds into a government-bank pool and a private-bank pool. We found no evidence of substantive independent negotiating by the private banks that would lead us to consider the pooled loan as a new loan.

Therefore, we have concluded that Clabecq did not receive private, commercial financing as a result of this transaction. Thus, we do not consider the pooled loan relevant to our creditworthiness analysis.

Comment 13 (Belgium): Clabecq claims that an independent financial study of Clabecq forecast the company's return to profitability. This 1984/1985 study determined that after undertaking certain restructuring actions, Clabecq would return to profitability. The company did turn around, as was reflected in Clabecq's publicly traded share price which increased more than quintuple by 1989.

Petitioners claim that certain 1984/1985 studies which predicted that Clabecq had a healthy financial future cannot serve as an indication of the company's creditworthiness. These studies were premised on Clabecq's undertaking certain restructuring measures. However, potential creditors would have had no certainty that Clabecq would actually undertake the necessary restructuring. In fact, historically, such restructuring in Europe has been accomplished by new government subsidies. The possibility of new subsidies can not be said to make a firm creditworthy.

DOC Position: During the government verification, we received the last two pages of a lengthy independent study of Forge Clabecq, which predicted a healthy financial future for the company. During the Clabecq verification, we received the comments of Clabecq's outside auditor on the independent study. Translations were not provided for these documents. Nor has Clabecq provided the substance of these reports in its responses. Therefore, we are unable to rely on these reports in making a creditworthiness determination for Clabecq.

Instead, we have analyzed the company's creditworthiness as reflected in its annual reports over this period. This analysis shows that the company was not meeting costs and fixed financial obligations.

Comment 14 (Belgium): Petitioners argue that there is sufficient information on the record to justify findings of uncreditworthiness and unequityworthiness for Sidmar as well.

Sidmar contends that petitioners' allegations concerning Sidmar's creditworthiness and equityworthiness are incorrect. Sidmar notes that the Department determined at initiation that it was creditworthy and equityworthy. Further, any new allegation contained in a case brief is untimely. According to the Department's regulations at 19 CFR 355.31(c), the Secretary will not consider any subsidy allegation submitted later than 40 days prior to the scheduled date of the preliminary determination.

DOC Position: Evidence on the record shows that in the three years prior to 1984, when Sidmar's debt was converted to equity, the company realized improving rates of return on both equity and return on investment. Profits also improved during this period. Additionally, the company was also generating sufficient revenue to meet its costs and fixed financial obligations. In view of this performance, the Department determined not to initiate on petitioners' uncreditworthiness and unequityworthiness allegations. Information supplied in the case brief on these allegations was essentially the same as that supplied in the petition. A small portion of the information in the case brief was new information, which we regarded as untimely. Therefore, we must affirm our determination at initiation that the petition did not provide good cause to initiate an investigation of Sidmar's unequityworthiness or uncreditworthiness.

Comment 15 (Belgium): According to Clabecq, its performance indicates that the firm was creditworthy from at least 1985. Clabecq earned profits in five of the six years from 1985 through 1990. It also paid dividends in 1989 and 1990. Its times interest earned ratios in 1988, 1989, and 1990 were healthy and, with the exception of one year, working capital has exceeded Belgian Francs (BF) 1 billion since 1984. Cash flow has been positive since 1986, increasing from BF 125 million in 1986 to BF 1.34 billion in 1989 and BF 2.8 billion in 1990.

DOC Position: In accordance with section 355.44(b)(6) of the Proposed Regulations, the Department considers a company's performance in the three years prior to the year in which a loan agreement was reached in determining the company's creditworthiness. The loan was made in 1989.

Although Clabecq's performance improved in 1988, the improvement was not sufficient to offset its weak performance in 1986 and 1987. Therefore, we determined the company to be uncreditworthy through 1989, based on our analysis of prior years including the three-year period from 1986 through 1988. Improved performance cited by Clabecq in 1989 and 1990 was not considered in our determination because the Proposed Regulations specify that an analysis be done of the three-year period prior to the year of the loan agreement, not the year of the agreement or subsequent years.

Comment 16 (Belgium): Under the creditworthiness test used by the Department in 1982, Clabecq claims that it would be found creditworthy. In addition, Clabecq claims that its substantial real estate holding must be taken into consideration in evaluating creditworthiness.

DOC Position: The Department has modified the creditworthiness standards used in 1982 and currently applies the test outlined in § 355.44(b)(6) of the Proposed Regulations. Under the current standards, we found Clabecq to be uncreditworthy. Regarding Clabecq's real estate holdings, we note that these are included as assets in Clabecq's financial statements and we have taken them into account in our analysis of these statements. We note also that

these assets cannot be considered a part of the company's cash flow, because they may not be readily convertible to cash.

Comment 17 (Belgium): Clabecq notes that the Department may have commenced the three year retrospective analysis called for in the Proposed Regulations on uncreditworthiness determinations in the wrong year.

DOC Position: We commenced our analysis in the three years preceding 1982 and concluded it in the three years preceding 1989. This approach is in accordance with § 355.44(b)(6) of the Proposed Regulations which require that we consider the three-year period immediately preceding the year in which the loan agreement was made.

D. Consideration of "Inside" Versus "Outside" Investor Standards Issue

The issue discussed in this subsection is whether special consideration should be given to a government's position as an existing shareholder (an "inside" investor, or owner-investor) when determining whether a government equity infusion into a firm has been provided on terms inconsistent with commercial considerations.

Discussion

As described in the subsection above, in determining whether a government equity infusion into a firm has been provided on terms inconsistent with commercial considerations, the Department must evaluate whether the firm is "equityworthy" in those situations where there is no appropriate market-determined share price to serve as a benchmark. According to the Department's Proposed Regulations, "[a] firm is equityworthy * * * if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time." See § 355.44(e)(2) of the Proposed Regulations.

In assessing what the "perspective of a reasonable private investor" would be, parties to these proceedings have disagreed over whether it is possible and appropriate for the Department to attempt to distinguish between the perspective of an investor who already has an ownership stake in the firm (an "inside" investor) and the perspective of an investor who does not (an "outside" investor). Respondents maintain that, in some situations, an inside investor's decision to invest may reasonably reflect a desire to reduce or forestall an expected loss rather than to increase income. For example, where the effect of the investment would be to reduce the losses by an amount greater than the amount of the investment, the inside investor would be acting to maximize the value of its existing stake in the company. Alternatively, if an additional investment by the inside investor would save the firm from insolvency, the reasonable rate of return on the additional investment would equate to the entire value of the company, i.e., the difference between zero and the company's current value. Moreover, in assessing the reasonableness of a government investment, respondents insist that the Department must consider how the returns on that investment will be shared. In those situations where the government is the sole or predominant owner of the firm, the return on any single investment would necessarily be greater than it would be for a new outside investor, which would have to share the return with other shareholders holding a claim on the firm's assets.

Beyond these behavioral and motivational considerations, respondents also contend that the inside investor is more advantageously situated than the outside investor because it is likely to have access to better information concerning the firm's investment plans, the firm's past problems and the measures taken to correct them, and the firm's prospects for future profitability. At the same time, respondents submit that for any given investment, an outside investor may demand a higher return than would an inside investor for the simple reason that the information known to the outside investor is less perfect and, consequently, the outside investor is apt to perceive the investment as being more of a risk than it really is.

Petitioners contend, in contrast, that the Department has consistently and correctly held that all commercially viable investment decisions are made at the margin, and relate solely to the marginal discounted net present value of the investment options being considered. (See Final Results of Countervailing Duty Administrative Review; Certain Carbon Steel Products from Brazil, 52 FR 829 (January 9, 1987) and Final Affirmative Countervailing Duty Determination: Steel Wheels from Brazil, 54 FR 15523 (April 18, 1989) (Steel Wheels from Brazil).) Regardless of whether the investor is or is not an inside investor, if the discounted net present value of the expected return from an investment is greater than that which would be earned from the alternative benchmark investment, the investment will be made. If, on the other hand, the discounted net present value of the investment's expected return is less than that which would be earned on the alternative benchmark investment, the investment will not be made. In light of this, petitioners assert that it is illogical to claim either that inside investors care less about making or losing money than do outside investors, or that any given investment will yield a different return depending upon whether it is made by an inside or an outside investor.

In past cases, when presented with analogous facts and arguments, the Department has expressed the view that the perspectives of inside and outside investors cannot legitimately be distinguished. (See, e.g., Final Results of Countervailing Duty Administrative Review; Stainless Steel Plate from the United Kingdom, 51 FR 44656 (December 11, 1986) (Stainless Plate). Most recently, in Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 58 FR 6237 (January 27, 1993) (U.K. Bismuth), the Department stated:

> We believe that, in general, both inside and outside investors make investment decisions at the margin. As we stated in Steel Wheels from Brazil, "a rational investor does not let the value of past investments affect present or future investment decisions. The decision to invest is only dependent on the marginal return expected from each additional equity infusion.

We continue to hold the view that it would be inappropriate, if not impossible, to fashion a unique inside investor standard as a variation of the Department's reasonable private investor standard. The Department employs the reasonable private investor standard merely as a tool for determining whether a given equity investment is or is not consistent with commercial considerations. Any exploration of alternative or supplemental motivations or interests on the part of the investor runs the risk of leading our analysis away from its intended objective—i.e., to determine if a particular investment reflected a rational assessment of whether a reasonable return on that investment would be generated in a reasonable period of time. From the perspective of the recipient firm, it is the viability of the investment itself which dictates whether or not a subsidy will be conveyed. The fact that an inside investor may be influenced by other considerations extending beyond the attractiveness of the particular investment in question cannot be permitted to determine whether or not a subsidy arises out of that new investment.

Consequently, the absence or presence of previous investments, and the status of those investments in terms of whether they have generated profits or losses, are extraneous considerations when looking at the equityworthiness of a potential additional investment in a firm. As petitioners point out, the irrelevance of past investments and "continuing obligations" to current investment decisions has been recognized by the CIT in (*BSC II*). In that case, the Court acknowledged that while it may make sense for an owner acting as a manager to want to continue to operate a loss-making operation so long as variable costs are covered, any investor acting according to economically rational considerations will only look to whether the expected returns from any new investment in such operations will exceed expected returns from the next best alternative investment. As the Department itself stated in Stainless Plate, "The tests that BSC proposes as a measure of equityworthiness may be useful tools for corporate management in deciding how long to operate a loss-incurring company, or in evaluating proposed projects, but they are not relevant to the 'reasonable investor' test."

Finally, with respect to whether the issue of access to "inside information" should cause the Department to assign some credence to inside investor arguments, it is essential to recognize that the Department must render its equityworthiness determinations on the basis of objective and verifiable evidence. The argument that an inside investor may have a greater appreciation of the workings of the firm does not provide the Department with a reliable means of distinguishing between those inside investor motivations that may be commercially based and those that are not. If there is substantial, verifiable evidence derived from an analysis of financial ratios, recent historical rates of return and/or any *bona fide* market studies or economic forecasts that an investment could not be expected to generate a reasonable rate of return in a reasonable time period, it is difficult to imagine how knowledge of allegedly "inside information" could be of sufficient weight to offset such contradictory evidence.

Comment 1: Respondents argue that creditors or holders of existing equity interests often have commercially reasonable bases for converting their "holdings" into equity even though a new investment by a purely outside investor may not be warranted. Respondents posit that changes in the financial leverage of a firm can affect its value and, considering the impact of corporate taxes and bankruptcy costs, there is an optimal debt/equity ratio that will maximize the value of a firm. Therefore, to properly evaluate the reasonableness of a conversion or reclassification of holdings (as opposed to a new equity investment), respondents submit that the Department must evaluate the effect of such a conversion on the value of the company as a whole.

In this regard, despite the Department's assertions that it makes no distinctions between the perspectives of inside and outside investors in judging equityworthiness, respondents contend that even the Department has acknowledged than an outside investor and an investor with an existing stake in the company may have good reason to behave differently. Thus, in Preliminary Affirmative Countervailing Duty Determination: Fresh Atlantic Groundfish from Canada, 51 FR 1010 (January 9, 1986), respondents state that the Department recognized that existing and new investors have different criteria for investing by refusing to accept the exchange of debt for equity by a private inside investor as a measure of the reasonableness of an initial equity infusion by the government into several major fish harvesters.

DOC Position: Although we agree that we have found that creditors may have special reasons for investing in firms which are indebted to them, this has no bearing on the Department's "reasonable investor" standard. Respondents' reliance on Groundfish is, therefore, misplaced. In that case, the Department found it inappropriate to use the motivations of a creditor exchanging debt for equity as a gauge for determining the reasonableness of an investor's infusion. In Groundfish, as well as in these steel investigations, the Department has based its equityworthiness determinations on the commercial soundness of the equity investment itself.

A determination of equityworthiness cannot be measured by, nor equated with, the decision of a creditor exchanging its debt for an equity position in a company in order to improve its chances for recouping money already loaned to that enterprise. Nor can it be based on whether an optimal debt to equity ratio can be achieved through the conversion of debt. These may both be important commercial considerations, but they are considerations that relate to interests distinct from the viability of any given investment. The Department is fundamentally concerned with whether it would have been reasonable for a private investor to invest money in the company in question. Such an examination must take place each time an investment occurs, whether it is an investment with "new" money or a conversion of previous debt to equity. However, in either circumstance, the proper focus of the Department's analysis is whether the individual investment, taken alone, made sound commercial sense.

Comment 2: Respondents submit that the Department ignores the commercial relevance of transaction costs when it claims that the perspectives of inside and outside investors are identical. If the transaction costs associated with selling or buying the company in question are significant, an inside investor faced with an equally attractive investment option (that is also available to an outside investor) will always choose to invest in the company in which it has an existing stake, whereas the outside investor would choose the alternative investment if the transaction costs related to that investment were lower.

DOC Position: While transaction costs may vary from investment to investment, no information exists on the record to indicate that these costs are of such a magnitude as to dissuade a reasonable investor from taking advantage of an otherwise attractive investment opportunity. Thus, it would be inappropriate to base a determination of equityworthiness on such speculative, if not marginal, differences in external costs.

D. Publicly Traded Shares

Issue

In section 355.44(e)(1)(i) of the Proposed Regulations, the Department states that the provision of equity by a government to a firm confers a countervailable benefit to the extent that:

> the market-determined price for equity purchased directly from the firm is less than the price paid by the foreign government for the same form of equity purchased directly from the firm.

Although the Proposed Regulations do not speak directly to the applicability of a share price determined in the secondary market as a benchmark, section 355.44(e)(1)(ii) does indicate that one is to proceed to an equityworthiness call only when "there is no market-determined price." In past cases, the Department has resorted to the use of secondary market share prices as a benchmark in instances where private investors did not purchase new shares from the firm at the same time they were issued to the government.

While acknowledging the intuitive appeal of comparing the government's investment to a secondary market price, petitioners argue that such an approach is flawed for several reasons. First, not every publicly traded company can raise new equity capital. Second, unlike a market price for new shares, which exclusively reflects a company's future prospects, the market price of existing shares reflects the overall worth of the firm. Finally, such an approach could lead to the anomalous situation in which government investments in companies with the same poor financial situation could be treated differently. In one case, the Department would forego an equityworthy analysis of the company and find the government's equity infusion not countervailable as long as the per share price paid by the government equals the share price traded on the stock market. In the other case, the Department would conduct an equityworthy analysis of the company and countervail the full amount of the government's equity infusion if the company was determined to be unequityworthy.

Therefore, petitioners argue, the Department should abandon its current practice and always apply an equityworthiness test in those situations where new shares are being purchased by a private buyer at the same time. If the company is unequityworthy, the Department should then countervail the full amount of the equity infusion as a grant.

Discussion

The Department is not persuaded that it should abandon its practice of comparing the price paid by the government to the market-determined share price in the secondary market when such publicly traded shares are the only market-determined benchmark available. Although section 355.44(e)(1)(i) of the Proposed Regulations does not specifically address the applicability of secondary market share prices, both the preamble to these regulations and the 1984 Subsidies Appendix lend support to the belief that the Department has always preferred using the share price in the secondary market over resorting to the equityworthy test. As stated in the Subsidies Appendix:

> If the government buys shares directly from the company (either a new issue or corporate treasury stock) and similar shares are traded in a market, a subsidy arises if the government pays more than the prevailing market price. We strongly prefer to measure the subsidy by reference to market price. This price, we believe, rightly incorporates private investors' perceptions of the company's future earning potential and worth.

The preamble to the Proposed Regulations states that Paragraph (e) is intended to codify existing practice (which the Department had previously outlined in the Subsidies Appendix). The preamble further states that the Department should determine the countervailability of a government equity infusion based on an equityworthiness determination "if there is no market-determined price for a firm's shares (e.g., the firm's shares are not publicly traded)." See Proposed Regulations. This indicates that, only in the absence of market-determined benchmarks, would the Department turn to the equityworthiness test.

Indeed, there are valid reasons underlying the Department's preference to measure the countervailability of government equity infusions by reference to the share price in the secondary market rather than an equityworthiness analysis. As a starting point, we can assume that an investor buys a share or interest in a business because of the returns he or she anticipates receiving. The price the investor is willing to pay for the share is the present value of the income stream discounted at some rate r. The rate of discount is logically the rate of return the investor could earn by investing in the shares of another company subject to the same risk as the shares under consideration. In other words, r is the opportunity cost of equity capital. The concepts of expected dollar returns and the rate at which they are discounted provide the means for arriving at a valuation of an interest in a business venture.

Thus, the secondary market not only provides a market-determined price for the outstanding shares in the company, it also provides a market reference point for the value of new shares. As long as the market price benchmark at the time of the infusion has not been shown to be deficient or tainted (e.g., if the volume of traded shares is too low to provide an accurate market price or prior knowledge of an impending infusion has affected the share price by the time of infusion), a government equity infusion must be determined to be made on an equityworthy basis whenever the government purchases shares at this price.

As to petitioners' final point, it cannot be denied that government equity infusions to two firms, ostensibly with the same financial situation, could be treated differently depending upon the existence of publicly traded shares at the time of the infusion. However, this argument is in no way compelling. The possibility of different treatment exists any time the facts at hand compel the Department to turn away from its preferred benchmark in one case and not in another. The Department cannot impose a less accurate benchmark in the latter case as a matter of "fairness" to the company in the former.

Comment 1: Petitioners argue that the Department's methodology for examining equity infusions into companies with publicly traded stock is not reasonable. First, they contend that not every publicly traded company can raise fresh capital, as the Department's current methodology implies. While there is always a market for outstanding shares, there may be no market for new shares. Petitioners assert that if it were not true that publicly traded shares connoted the availability of additional equity, then bankrupt companies with traded shares would not exist.

Second, petitioners contend that, under the current methodology, the Department is in essence stating that any company that has positive value (and, therefore, its shares have positive value) is equityworthy. They argue that the existence of publicly traded shares merely implies that those shares have value, which means nothing more than the company is not worthless. Thus, if the Department's treatment of equity into companies with publicly traded shares were correct, the Department's equityworthiness test would be simple—if a company's value is greater than zero, it would be equityworthy.

Therefore, petitioners assert that to decide whether a subsidy has been conferred, the Department should perform an equityworthiness test. This will determine if the company could have raised equity capital. If the company is found to be unequityworthy, then the capital provided has the same material effect as a grant.

Respondents contend that petitioners' arguments rest on the question of whether the investment would have occurred without government intervention. They assert, however, that government intervention is not the key to the "commercial considerations" standard. A publicly traded share price represents a minimum value for a company's shares. Where the government acquires a company's stock at the price observed by private investors in the marketplace, respondents argue that it is, by definition, acting consistently with commercial considerations.

Further, respondents contend that the Department's Proposed Regulations support their findings. Section

VOL 58 ISS 130 JL 9 1993 UMI

355.44(e)(1)(ii), in discussing the treatment of equity infusions in companies that are not equityworthy, begins by reserving such treatment to situations where "there is no market-determined price * * *" Therefore, petitioners' suggested approach is contrary to law and Departmental practice.

DOC Position: As explained above, the Department considers the market-determined price in the secondary market at the time of the infusion to be an accurate and preferred benchmark for measuring the countervailable benefit of a government equity infusion when new shares are not being purchased by a private buyer at the same time. The equityworthiness test is only a substitute for this standard analysis in cases where no market price benchmark exists or where such a benchmark has been shown to be deficient, tainted or distorted.

Petitioners' contention that the use of the secondary share price as a benchmark essentially transforms our equityworthiness analysis into a mere determination of whether a company's value is greater than zero is incorrect. When comparing the share price paid by the government to the share price in the secondary market, we are determining whether the government bestowed a countervailable benefit to a company by paying more for the company's shares than their market-determined worth. In cases where this comparison cannot be done because no market-determined price exists, we look to the equityworthiness test as an alternative means of measurement. That the entire amount of the infusion is countervailable, once we have determined a firm to be unequityworthy, is based upon the absence of a market-determined share price benchmark and our finding that no reasonable investor would have invested in the company. As long as a company's shares are being traded in the secondary market, we obviously cannot reach such a conclusion. Reasonable investors are investing in the company, albeit only at a certain price.

Petitioners' comment regarding bankrupt companies is not on point. None of the companies under investigation were in receivership.

Comment 2: If the Department adheres to its current methodology, petitioners argue that, at the very least, the Department should attempt to account for the dilution effect of the additional government-purchased shares on the value of each outstanding share.

DOC Position: We disagree. The market price after the infusion is not an accurate reflection of the market price at the time of the infusion. The post-infusion price reflects the market's revised analysis of the company after the infusion, not the market value of the company at the time of the infusion.

However, as the Department recognized in both its preliminary and final determinations in Steel from Belgium, prior knowledge of an investor's impending action may affect the market price, potentially tainting it for use as an undistorted benchmark of the value at the time of infusion. (In the Belgium investigation, the Department found that the secondary market price at the time of the infusion was inflated by knowledge of future subsidies under the plan being investigated. The Department, therefore, selected as a benchmark, the secondary share price from a period prior to the public's knowledge of the impending subsidies. See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Steel Products from Belgium, 57 FR 57750 (December 7, 1992) and the final determinations published concurrently with this **Federal Register** notice. If prior knowledge of an impending action is considered distortive for benchmark purposes, then the action itself must be considered distortive as well.

Comment 3 (Belgium): Petitioners argue that the Department erred in its analysis in the preliminary determinations by comparing the price paid by the GOB for shares in Cockerill and Clabecq with the companies' publicly traded share prices. Petitioners state that had the Department done an equityworthiness analysis of these companies, the companies would have been found to be unequityworthy in every year there was an infusion. Petitioners note, moreover, that Clabecq was found to be uncreditworthy from 1978–1989. Therefore, since no reasonable investor would have invested in Cockerill or Clabecq, the entire amount of the GOB's infusions should be countervailed as a grant.

DOC Position: We disagree. See response to Comment 1 above.

Comment 4 (Belgium): Petitioners argue that the Department erred by using the secondary markgt price of Clabecq's pre-existing common shares as a benchmark for determining the premium paid by the SNSN for its 1985 purchase of Clabecq's common and preferred shares. The Proposed Regulations provide for the use of a market-determined benchmark price only when the same form of equity is purchased directly from the firm. The Department has articulated no rationale for using the secondary market price for Clabecq's ordinary shares as a benchmark for the preferred shares, other than it lacks another benchmark. Lacking an appropriate benchmark, the Department should conduct an equityworthiness analysis of Clabecq and countervail the full amount of the equity infusion as a nonrecurring grant if it finds the firm unequityworthy.

Clabecq claims that the use of the secondary market share price for ordinary shares as a benchmark for its preferred shares is appropriate. The preferred shares issued to the GOB in exchange for debt forgiveness included a preferential two percent dividend and preference over ordinary shares in the event of liquidation. Consequently, these shares were at least as valuable as the ordinary shares and their minimum value should be measured by the publicly traded price of the ordinary shares.

DOC Position: We agree with respondent that the secondary market share price of the ordinary shares can serve as an appropriate benchmark for Clabecq's preferred shares. There is no evidence on the record that would lead the Department to believe that the market value of the preferred shares would be lower than that of the ordinary shares given the terms of the preferred shares. Therefore, given the absence of a market-determined share price for preferred shares, we will continue to use the secondary market share price for Clabecq's ordinary shares as our benchmark and countervail the premium paid by the government when it purchased these shares.

Comment 5 (Belgium): Respondents and petitioners both argue that the Department should not use the secondary market share price for Clabecq's stock as a benchmark in 1985 because it was so thinly traded. Respondents argue that the value calculated in an independent study of the company, commissioned by the GOB, provides a more reliable benchmark than the secondary market share price.

Petitioners argue that Clabecq's suggested approach is completely erroneous. The fact that Clabecq's shares were so thinly traded, plus the fact that the company was, by any reasonable measure, unequityworthy, indicates that the value of the shares was far less than the secondary market price.

DOC Position: We disagree with both parties. Although the volume of trading was low in 1985, we are not persuaded

by the evidence on the record that the volume of these traded shares was so low as to preclude their use as a market-determined price in this proceeding. Therefore, as discussed above, we are using the secondary market share price as our benchmark for determining the countervailable benefit of this infusion. See also our response to comment 10 below.

Comment 6 (Belgium): Petitioners claim that if the Department doesn't treat equity infusions in Clabecq as grants, then it should use the monthly average price of shares rather than the daily price as a benchmark because it is more likely that the daily average would reflect an artificial increase by reason of the impending government infusion.

Clabecq argues that the Department should base its calculations on the actual Clabecq share price on the date of conversion, rather than the average price for the month.

DOC Position: We agree with petitioners that the actual share price could reflect an artificial increase from knowledge of an impending government infusion and have adjusted for it when presented with evidence. See response to Comment 9 below. However, in this situation, we are not persuaded by evidence on the record that the actual secondary market share price on the date of conversion was inflated in any way.

Comment 7 (Belgium): Petitioners argue that the volume of Cockerill Sambre shares traded on the secondary market is too thin to provide an accurate benchmark. Therefore, the Department should conduct an equityworthiness analysis of Cockerill Sambre and countervail the full amount of the Conversion of Debt to Equity under the Gandois Plan as a grant if it determines that Cockerill was unequityworthy.

DOC Position: We disagree. We are not persuaded by the evidence on the record that the volume of these traded shares was so low as to preclude their use as a market-determined price in this proceeding. Therefore, as discussed above, we are using the secondary share price as our benchmark for determining the benefit of this infusion.

Comment 8 (Belgium): Petitioners argue that if the Department continues to use the secondary market price as a benchmark to measure the premium paid for the shares of Cockerill under the Gandois Plan, it must adjust the benchmark to account in full for public knowledge of the pending bail-out.

DOC Position: We agree. Evidence on the record indicates that the secondary market price at the time of the infusion may have been inflated by knowledge of future subsidies under the Gandois plan. Therefore, we are using as our benchmark the secondary share price from a period prior to the public's knowledge of the impending subsidies, adjusted for the representative increase in average stock prices over the two periods.

Comment 9 (Belgium): Petitioners argue that SOCOCLABECQ, a major shareholder of Clabecq, was directed by the GOB to purchase shares of Clabecq in exchange for its export commercialization rights as a pre-condition for further assistance to Clabecq. Petitioners claim that a subsidy to Clabecq results from this transaction, even if private funds were used, because the investment was required by government action. For example, in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany, 58 FR 6233 (January 27, 1993) (Germany Bismuth), the Department countervailed private bank loans to steel companies which had subsequently been forgiven by the bank at the direction of the federal/local governments as a condition for further government assistance.

Clabecq claims that SOCOCLABECQ's investment was a private transaction that did not involve government funds. In the past, the Department has determined that where government funds are not involved, no subsidy exists. In SSHP from Sweden, the Department found that investments by private shareholders typically do not confer benefits on the issuing company unless the government intervenes to provide government funds for such purposes.

DOC Position: We agree with petitioners. Under the statute, a subsidy is provided by a government, if it is provided directly or indirectly by that government, or if it is required by government action. In SOCOCLABECQ's report to its general shareholders, it stated that its purchase of additional Clabecq common shares was required by the GOB as a precondition to the government's further intervention on Clabecq's behalf. Therefore, we find that because the equity infusion made by SOCOCLABECQ was required by government action, it is, in effect, a subsidy provided by the government to Clabecq to the extent that the market-determined price for Clabecq shares is less than the price paid by SOCOCLABECQ.

Comment 10 (Belgium): Clabecq maintains that even if the Department were to conclude that government direction was the controlling factor in SOCOCLABECQ's investment, no subsidy existed because the investment was on terms consistent with commercial considerations. SOCOCLABECQ exchanged its export commercialization rights for the shares which it received in Clabecq. The value of these rights was established independently, based in part on past earnings and future projections of the value of the rights. The value of the shares was also established by an independent study.

DOC Position: We disagree. As discussed in comment 1 above, the Department considers the market-determined price in the secondary market at the time of the infusion to be an accurate and preferred benchmark for measuring the countervailable benefit of a government equity infusion when a market price for new shares does not exist. When such a price is available, there is no need to turn to studies to determine a value for the shares.

Comment 11 (Belgium): Petitioners claim that if the Department continues to use the secondary market price as a benchmark to measure the premium paid by SOCOCLABECQ, it should use the monthly average price rather than the daily price as a benchmark because it is more likely that the daily price would reflect an artificial increase by reason of the impending government infusion.

Clabecq argues that the Department should base its calculations on the actual Clabecq share price on the date of conversion, rather than the average price for the month.

DOC Position: We agree with petitioners that the actual share price could reflect an artificial increase from knowledge of an impending government infusion and have adjusted for it when presented with evidence. See response to Comment 9 above. However, in this situation, we are not persuaded by evidence on the record that the actual secondary market share price on the date of conversion was inflated in any way.

Comment 12 (New Zealand): Petitioners argue that the appropriate benchmark to use in measuring the benefit is the market price after the shares are issued to the Government of New Zealand (GONZ) in order to take into account the diluting effect of the shares.

Respondents argue that the pre-agreement market price for New Zealand Steel must be used as the benchmark for the shares issued to the GONZ. The Department evaluates government equity infusions by reference to the market price for publicly traded shares at the time the investment decision is made. For the Department to use a post-investment

UMI
VOL
58
ISS
130
JL
9
1993
UMI

market price would be inconsistent with its current practice and its Proposed Regulations.

DOC Position: We agree with respondents. See response to Comment 2 above.

Comment 13 (Spain): Petitioners assert that since ENSIDESA was unequityworthy in 1979 and 1981, all equity infusions should be countervailed as grants regardless of the presence of outstanding shares.

DOC Position: We disagree. See response to Comment 1 above.

E. The Classification of Hybrid Financial Instruments Issue

The issues to be determined in this subsection are: (1) How the Department categorizes hybrid financial instruments (funds provided by the government for which the firm issues securities/ instruments which appear to be neither debt nor equity (nor grants, since the funds are not given outright) and (2) once the Department categorizes these instruments, the appropriate methodology to be employed in measuring the benefit from them.

Discussion

We examined several options for addressing these issues (for a complete discussion of those options, *see* Memorandum from Staff to Joseph A. Spetrini, dated June 21, 1993), and have determined that the most appropriate methodology to categorize and calculate the benefit derived from hybrid instruments is the following: each hybrid instrument will be classified as either a grant, a loan or equity and a determination will be made if it is inconsistent with commercial considerations. Then the benefit calculated accordingly.

We have distinguished grants from both debt and equity by defining grants as funds provided without expectation of a: (1) Repayment of the grant amount, (2) payment of any kind stemming directly from the receipt of the grant (including interest or claims on profits of the firm (i.e., dividends) with the exception of offsets as defined in the Proposed Regulations § 355.46), or (3) claim on any funds in case of company liquidation.

To distinguish between debt and equity, we have determined that only one hierarchy is compatible with existing CVD methodology, and also with the Department's practice of measuring the subsidy as the benefit to the recipient. To classify a hybrid instrument as either debt or equity, we have applied the following hierarchy which in the Department's view establishes whether an instrument has the qualities of debt or equity: (1) Expiration/ Maturity Date/Repayment Obligation, (2) Guaranteed Interest or Dividends, (3) Ownership Rights, and (4) Seniority. For each hybrid instrument, we considered the four sets of criteria in order. Once a characteristic is clearly indicative of debt or equity, we will stop our analysis and categorize the hybrid as debt or equity.

Loans typically have a specified date on which the last remaining payments will be made and the obligation of the company to the creditor is fulfilled. Even if the instrument has no pre-set repayment date, but a repayment obligation exists when the instrument is provided, the instrument has characteristics more in line with loans than equity. Equity, on the other hand, has no expiration date. The rights to ownership theoretically extend to infinity.

If after applying the first set of criteria, we are unable to establish whether the hybrid instrument is debt or equity, we will turn to the second set of criteria. Debt instruments guarantee the creditor a certain payment (i.e., the firm is obligated to pay). The rate may be fixed or variable but the requirement for, or schedule of, payments is pre-determined. Any interruption in payment results in a default on the loan by the company. Equity on the other hand, has no guaranteed return. Companies are not required to issue a dividend to their stockholders. There is no counterpart to default for failure to pay a dividend on equity by the company.

The next set of criteria in the hierarchy is ownership rights. Equity, unlike debt, confers ownership rights. (See Principles of Corporate Finance, by Richard A. Brealey and Stewart C. Meyers (McGraw-Hill, Inc., 1988, page 305) which states that stockholders have ultimate control, through voting rights, on the company's affairs). Stockholders also have a claim on the profits of the firm, manifested in the form of dividends or capital appreciation.

Finally, the last set of criteria in the hierarchy, seniority, refers to the order of reimbursement in case a company liquidates. The order of payment of funds from liquidated assets are as follows: taxes and administrative expenses, wages, creditors (secured, priority, and unsecured), and, lastly, shareholders. Id. at 743.

Following the hierarchy outlined above, if an instrument has an expiration/maturity date or a clear repayment obligation, it will be treated as a loan.

The remaining three characteristics of criteria in the hierarchy should be used to classify the instrument if the first set of criteria fails to provide a clear indication of the proper classification. A guaranteed payment, whether interest or dividend, is more characteristic of debt than equity and can be an important element in calculating the subsidy. Ownership rights are considered more important than seniority in this hierarchy because they are definite characteristics of equity whereas seniority exists in a continuum. In this continuum, creditors come before owners but there is no definite line of distinction as to where one begins and the other ends. In addition, unlike ownership rights where potential profit sharing could affect subsidy calculations, seniority plays no quantitative role in determining countervailable benefits. Seniority matters only when the company is liquidated, whereas ownership rights are significant throughout the life of the company. Seniority does, however, play a qualitative role in discerning debt from equity which is why it is included in the hierarchy.

Comment 1 (Belgium): Petitioners argue that Sidmar's OCPCs (Convertible Profit-Sharing Bonds) constitute debt, and they point to various characteristics of OCPCs to support that conclusion. Sidmar, a respondent in this investigation, does not contest petitioners' argument. However, Sidmar contends that the conditional issuance of OCPCs in return for interest assumption was treated as a grant in the Department's 1982 determination. Therefore, Sidmar argues that the subsequent conversions of OCPCs should not alter the Department's methodology.

DOC Position: The Department has re-examined Sidmar's OCPCs using the hierarchical criteria discussed above. After applying the hierarchy outlined above, the Department concludes that these instruments constitute debt. With respect to the first set of criteria, these instruments contain an expected maturity date, but that date is contingent upon Sidmar becoming profitable. With respect to the second set of criteria, these instruments have guaranteed interest payments.

We acknowledge respondent's concerns regarding the treatment of OCPCs in our 1982 determination. However, the 1982 steel cases were the first large set of cases where the Department had to examine these types of programs and determine how their benefits should be allocated and measured over time. The methodologies used by the Department have been refined since the 1982 cases, and while the Department has not squarely

addressed how to treat hybrid instruments before, we found it necessary in these cases to develop an approach for classifying these instruments in order to ensure consistent, reasonable decisions on how hybrid instruments will be treated.

Comment 2 (Belgium): Petitioners argue that Sidmar's, Clabecq's and Cockerill's partes beneficiaries (PBs) constitute grants, and they point to various characteristics of PBs to support that conclusion. However, if the Department determines that PBs are equity, the Department should still countervail PBs using its grant methodology. Petitioners further argue that Clabecq and Cockerill were unequityworthy in 1985 and 1986 and thus would have no access to additional capital in the private market. They state that even though Sidmar may be equityworthy in 1985, Sidmar received a benefit in the amount of the converted OCPCs to PBs because the conversion was on terms inconsistent with commercial considerations.

Sidmar reiterates that the conditional issuance of OCPCs in return for interest assumption was treated as a grant in the Department's 1982 determination. Therefore, Sidmar argues that the subsequent conversions of OCPCs to PBs should not alter the Department's methodology. Sidmar also argues that PBs constitute equity, and it points to various characteristics of PBs to support that conclusion.

Clabecq argues that PBs constitute equity. They further argue that if the Department continues to treat debt cancellation in exchange for PBs as a grant, that the Department should take into account the value of PBs shares when calculating the benefit of the grant.

DOC Position: The Department disagrees with petitioners' argument that PBs represent grants to companies. We have concluded that PBs constitute equity. However the reasons for our determination are based on business proprietary information and therefore are addressed separately in a memorandum to the file.

We acknowledge Sidmar's concerns regarding the conversion of OCPC's to PBs. However, as previously addressed in Comment 1 we are classifying Sidmar's OCPCs as debt.

Because we have determined that OCPCs are debt instruments and PBs are equity instruments, the conversion of OCPCs to PBs is a debt to equity conversion.

Comment 3 (Belgium): Petitioners argue that Sidmar's preference shares constitute debt. In support of their argument, petitioners point to various characteristics of the preference shares, and to the amendment to the terms of the shares in June, 1987 which obligated Sidmar to repay the SNSN for its preference shares. Respondents, on the other hand, argue that the characteristics of preference shares constitute equity.

DOC Position: The Department has analyzed Sidmar's preference shares using the hierarchical set of criteria discussed above. After applying these criteria in order, the Department concludes that these instruments constitute equity. However the reasons for our determination are based on business proprietary information and therefore are addressed separately in a memorandum to the file.

Comment 4 (France): Petitioners argue that PACS (loans with special characteristics) constitute debt, and they point to various characteristics of PACS to support that conclusion. Respondents, on the other hand, argue that the characteristics of PACS constitute equity.

DOC Position: The Department has analyzed PACS using the hierarchical set of criteria discussed above. The Department concludes that these instruments constitute debt. With respect to the first set of criteria, these instruments carry an obligation for repayment, even though there is no predetermined maturity date. With respect to the second set of criteria, these instruments have guaranteed interest payments.

Comment 5 (France): Petitioners argue that Fonds d'Intervention Siderurgique (FIS) bonds constitute debt, and they point to various characteristics of FIS bonds to support that conclusion. Respondents, on the other hand, argue that the characteristics of FIS bonds constitute equity.

DOC Position: The Department has analyzed FIS bonds using the set of hierarchical criteria discussed above. The Department concludes that these instruments constitute debt. With respect to the first set of criteria, these instruments have fixed amortization schedules. The fact that the GOF met the amortization schedules on these bonds for Usinor and Sacilor is irrelevant when analyzing whether the instrument constitutes debt or equity.

Comment 6 (New Zealand): Petitioners argue that the GONZ's purchase of preference shares in NZS constitutes debt, and they point to various characteristics of NZS's preference shares to support that conclusion. Respondents, on the other hand, argue that the characteristics of NZS's preference shares constitute equity, and since the company is equityworthy, the preferential shares are not countervailable.

DOC Position: The Department has analyzed NZS's preference shares using the hierarchical criteria discussed above. The Department concludes that these instruments constitute debt on the basis of the first set of criteria, i.e., they have a specified term for repayment of the face value of the instrument.

In the event that the NZS preference shares are subsequently redeemed for NZS ordinary shares instead of a cash repayment as prescribed in the terms of preference shares, then the Department would have to examine whether this constituted a conversion of debt to equity.

Prepension Programs

Issue

The issue discussed in this section is the treatment of prepension programs.

Discussion

The Department has previously stated its position that in order for worker assistance programs to be countervailable, the company must be relieved of an obligation it would otherwise have incurred (Proposed Regulations, Steel from Belgium and Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Belgium, 47 FR 42403 (September, 27 1982) (Wire Rod from Belgium)).

The Department has identified two types of benefits conferred by the prepension/worker assistance programs being investigated in the current cases. The first type of benefit arises when companies are given the opportunity to reduce their labor force in a manner otherwise unavailable to them. The second type of benefit arises when the government helps companies meet their financial obligations to severed employees.

In these investigations, we found two programs conferring the first type of benefit. In Italy, steel companies are given the opportunity to reduce their labor force by retiring employees who would not otherwise be eligible for retirement benefits. Thus, these companies avoid the cost of keeping their employees on the payroll until they are eligible to retire. In Belgium, the companies are exempted from a general requirement to replace prepensioned workers. Thus, the Belgian companies are relieved of the cost of hiring and paying new workers to replace the prepensioned workers. These types of programs are countervailable to the extent that the companies were under an obligation to retain or replace the workers who were retired early.

There are two instances in which we have determined a company to be under an obligation to retain or replace workers who were retired early. The first instance is when there are legal requirements that workers must be replaced or cannot be laid-off. The second arises where social or political conditions are such that, although no legal or contractual obligation exists, as a practical matter workers cannot simply be fired.

The second type of benefit that was identified in these investigations was government assumption of part or all of the companies' obligations to severed employees (i.e., severance fees, pension payments, etc.). In order for this type of program to be found countervailable, the Department must determine, on a case by case basis, exactly what the companies' obligations to severed employees are. In situations where there is legislation pertaining to a company's obligations to its severed employees, a program which relieves a company of these legal obligations is clearly countervailable.

However, in situations where the government imposes further legal requirements on a specific industry and proceeds to relieve the companies in that industry of this additional requirement, the Department has determined that no countervailable benefit exists (see Wire Rod from Belgium). In such an instance the only beneficiaries of the government program are the workers who, absent the additional legal requirements, would only receive only the level of benefits available to workers in other industries. The company, therefore, acts merely as a conduit for government benefits provided to the workers.

In many instances, companies' obligations to their terminated employees are not outlined under the law, but under contracts negotiated with the workers. When these contracts are already in place and the government subsequently steps in to assume a portion of the amount the company is obliged to provide, we have determined that government assistance is countervailable. Thus, we are treating certain contractual obligations as legal obligations.

However, when the government's willingness to provide assistance is known at the time the contract is being negotiated, a different situation exists. This is because the government's contribution is likely to have an effect on the outcome of the negotiations. For example, assume the workers' goal in the negotiations is to obtain a retirement salary of $500 per week and the company's goal is to pay $400 per week. Absent any government contribution, the parties would negotiate and likely arrive at a number somewhere between $400 and $500. Where the number would end up would depend on the relative negotiating strength of the two sides.

Now assume that both sides know that the government will contribute $100 per week to the worker's retirement salary. In this instance, both sides in the negotiations can achieve their goals—the company will pay $400 and the worker will receive $500.

The issue faced by the Department in these instances is to decide what obligation the company would have faced if the government contribution were not known to the parties. What would the result of the negotiations have been? If the company had prevailed and its obligation would only have been to pay $400 per week, then the government contribution benefits only the workers. No obligation on the company has been relieved. On the other hand, if the workers had prevailed, the company would have been obligated to pay $500 per week. Thus, the government's contribution would offset the company's extra cost and would relieve the company of its obligation.

We have determined that in the above example there is a countervailable amount up to $100 per week. The question is what portion of the $100 should be countervailed. We have determined that for cash deposit purposes only, we will adopt the following simple method. We assume that the difference would have been split by the parties, with the result that one-half of the government payment goes to relieving the company of an obligation that would otherwise exist. We stress that this simple methodology is being adopted for cash deposit purposes. In any possible administrative reviews which may be requested for this proceeding, we will invite comments from the parties regarding possible improved methodologies for determining the amount to be assessed. Such a request will focus on the methodology only.

While we recognize that this is speculative, any other outcome is both as speculative and prejudicial. If we were to assume that the entire government contribution relieved an obligation that would otherwise have existed for the company, we are effectively assuming that the workers would have prevailed in the negotiations. Conversely, if we were to assume that the benefits of the government contribution went entirely to the workers, we would effectively be assuming that the company would have prevailed. We believe that these latter assumptions are less credible than the assumption we have made.

Therefore, where there is a reasonable basis to believe that the government will be contributing to worker retirement payments at the time the company's obligations are being negotiated, we will find countervailable, for cash deposit purposes, one half of the government's contribution until an improved methodology is developed in the context of a possible administrative review.

It should be noted that our discussion regarding the countervailability of prepension and retirement assistance does not in any way affect programs that are determined to be non-specific. For example, if a government program contributes equally to retirement payments for all workers, then we would find the contributions non-specific and, therefore, non-countervailable.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding prepension issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: The EC asserts that Redeployment Aid provided under ECSC Article 56(2)(b) should not be considered countervailable as it does not benefit the manufacture, production or export of steel. Rather, redeployment aid benefits the individuals who are hurt by the contraction of coal and steel production. The EC further contends that the program did not relieve steel companies of obligations they normally would have incurred (Final Negative Countervailing Duty Determination: Certain Fresh Cut Flowers from Mexico, 49 FR 15007 (April 16, 1989) (Flowers from Mexico)). The EC asserts that this fact was confirmed during the German and French verifications.

Petitioners assert that the EC's reliance on Flowers from Mexico is misguided. This case does not address the issue of whether legal or contractual obligations between a steel firm and its employees existed and were relieved by the redeployment program.

Petitioners contend that the EC's assertions regarding the relief of legal

obligations under the redeployment program are purely speculative. Petitioners argue that the EC has not provided support/evidence for this claim. They cite the verification reports for two German companies, Dillinger and Thyssen, which indicate that contractual obligations are relieved by redeployment aid.

DOC Position: Retired workers in France and Germany receive benefits under ECSC Article 56(2)(b). Under this program, the ECSC and the national governments contribute equal amounts to fund the payments. We have determined that the ECSC portion of these benefits is not countervailable because it is funded exclusively through company contributions. However, the government portion of the benefits is countervailable to the extent the government assumed obligations that exist or otherwise would exist for the steel companies.

In Germany, companies have no minimum legal obligation to severed employees. Rather, a company's obligations are determined through negotiations with the labor union. According to the record developed in these investigations, the German companies and their workers were aware of the ECSC and government funds at the time they negotiated their contracts. Therefore, in accordance with the discussion above, we have countervailed one-half of the national government contributions under this program.

In France, under collective bargaining agreements, retired workers in most industries receive as pension 65 percent of their salary for 12 months. Payment of this pension is divided between the government and the employer, with the government paying 35 percent, and the company paying 65 percent of the benefit. Retired workers in the steel industry, however, receive 70 percent of their salary for 24 months. Payment of this benefit is split three ways: The government pays 35 percent, the company 30 percent, and the ECSC the remaining 35 percent.

Because the French government routinely covers 22.75 percent of the workers' salaries when they retire (35 percent of 65 percent), we determine that payments in this amount for steel workers' pensions do not constitute a subsidy. However, government contributions to steel workers' pensions amount to 24.5 percent of the workers' salaries. Therefore, we determine that the difference between these two amounts, 1.75 percent, is countervailable to the extent that the government relieves the companies of obligations they would otherwise have.

Based on the record of the French investigations, we cannot say that the French companies and their workers had knowledge of the extra government contribution prior to negotiating their collective bargaining agreements. Therefore, we must assume that the government stepped in and relieved the companies of these obligations. Consequently, we have determined that the extra contribution to workers' pensions by the GOF is countervailable.

Comment 2 (Italy): Falck argues that the Department should determine that the early retirement program is not countervailable because it does not relieve Falck of any obligation it otherwise would have had to its employees. The company has no legal obligation to use the early retirement system. Instead, it could fire the workers, in which case its obligation would be to pay severance benefits. In fact, given the changes that occurred in 1991, Falck incurs significant costs for this program (30 percent of retirees' pension until retirement age is reached).

Falck cites Steel from Belgium, SSHP from Sweden, and the 1985 review of Carbon Steel from Sweden in which the Department determined early retirement programs were not countervailable as they did not relieve companies of costs they would otherwise be required to assume. Since Falck is not relieved of any obligations and, in fact, is required to spend more for its early retirees, the Department should determine the program to be not countervailable.

Falck further asserts that petitioners' calculation of the amount of early retirement benefits falsely assumes that the employees would have been retained and that they would have been non-productive and earn no offsetting revenue for the company. Falck contends that no evidence exists on the record to indicate that it would have incurred the costs of paying non-productive employees, absent the early retirement programs.

Falck further claims that any benefits under the program are recurring. Moreover, any calculation of a subsidy should reflect that the program changed in 1992, increasing the employer's obligation to 50 percent of each retirees' pension.

Petitioners assert that the early retirement program relieved the company of obligations it otherwise would have incurred. The programs provided a means for Falck to reduce its excess labor harmoniously. Petitioners claim that political pressure and the power of trade unions made it a practical impossibility for Falck to fire employees. Petitioners argue that even if Flack were able to fire excess labor, Flack would have been responsible for certain termination costs, including severance payments, paid notice and unemployment benefits.

Petitioners argue that the early retirement program provides non-recurring benefits because different laws were enacted for short periods of time to provide "exceptional" aid to an ailing industry. They note that in 1991, Flack may have incurred certain costs by participating in this program, but prior to 1991 there were no costs to the company associated with early retirement programs. Therefore, while the amount of the benefit in 1991 may have been lessened by these costs, Flack was still enjoying the benefits of earlier years.

DOC Position: Based on information obtained at verification, we agree with petitioners that political pressure and the power of trade unions made it a practical impossibility for Falck simply to fire employees. As a Falck representative stated, "legally, Falck was under no obligation to use early retirement, but labor unions could put pressure on the company, making early retirement more feasible than layoffs." For this reason, we believe that Falck would have been obligated to retain these workers. Therefore, because Falck was able to use the early retirement system and because the early retirement system for steelworkers allowed these employees to retire earlier than employees in other industries, we find that Falck was relieved of an obligation it otherwise would have assumed.

We have determined that benefits under early retirement programs are recurring. (See the Allocation section of this Appendix). Because of this, the benefit to Falck was calculated to reflect the costs the company would have incurred by keeping the employees on the payroll only during the POI, not for all the years until they reached retirement age. However, we did not take into consideration whether or not the employees who were retired early would have generated offsetting revenue for the company had they remained on the payroll, because there is no way to quantify their productivity, and because the fact that the company was retiring them indicates that the revenue they generated was less than their cost.

The Department acknowledges that Falck was required to incur substantial costs under the early retirement program in 1991 and we have taken those costs into account in our calculations. However, we have not taken into account the changes which occurred in 1992 because this occurred after our POI and our preliminary determinations. Thus, the increase in

Falck's costs in 1992 does not qualify as a "program-wide" change to be addressed in these investigations. (See section 355.50 of the Proposed Regulations.)

Comment 3 (Germany): The German respondents argue that payments by the Government of Germany under ECSC Article 56(2)(b) are not countervailable because the program did not relieve companies of obligations under their negotiated social plans. In support of their claims, respondents point out that Ilsenburg did not have a social plan during the POI, yet its employees still received benefits under Article 56(2)(b).

DOC Position: The countervailability of Article 56(2)(b) benefits for other German respondents is addressed in the Interested Party Comments from the EC.

Because we have determined that, since Ilsenburg had no social plan it had no obligations to its workers, we have determined the government's contributions to those workers under this program to be not countervailable.

Comment 4 (Belgium): Petitioners argue that the companies were obligated to make early retirement payments to certain laid-off workers under labor conventions and Belgian Law. The GOB assumed part of these payments for steel companies thereby relieving the companies of obligations they would otherwise have had. This results in a countervailable subsidy.

Petitioners argue that while the Department found early retirement assistance to the steel companies not countervailable in the 1982 steel determination, the present investigation is different. In the 1982 case, steel workers received higher prepension payments than workers in other industries. However, in the present investigations, the responses contain no evidence that steel workers received higher payments than other workers. They also argue that even if steel workers do receive higher prepension payments, full or partial assistance in making the payments confers a benefit. If otherwise, governments could avoid countervailing duties simply by imposing concurrent obligations on subsidy recipients.

The GOB argues that the early retirement system is general and applicable to workers holding an employment or labor contract and that the system for steel actually represents an additional burden for the steel industry. The government further argues that the steel companies have not received benefits through the system, because they had contractual obligations to pay their prepensioned personnel until normal retirement age.

Clabecq states that in the preliminary determination, the Department found that the GOB assumed a part of the prepension expenses which normally would have been paid by the companies. However, in 1982 Steel, the Department found that, since the prepension program required steel companies to pay extraordinary severance benefits, the GOB simply offset the excess that steel companies had to pay when compared to other Belgian industries.

Sidmar finds petitioners' statement that governments could avoid countervailing duties "simply by imposing concurrent obligations on subsidy recipients" nonsensical because if a company incurs additional expenses in order to receive assistance, it is only benefitted by the difference between the expenses incurred and the assistance received.

DOC Position: The country-wide Collective Labor Convention 17 of 1974 (CLC 17) instituted an early retirement plan for all Belgian workers, and established certain legal obligations for companies with respect to workers who take early retirement. First, in addition to regular unemployment benefits paid by the state, early-retired workers receive an additional allowance, paid by the company, of one-half of the difference between the workers' former salary and the unemployment benefits. Second, companies are required to replace workers who take early retirement.

Under CLC 17, companies in a "national" sector, i.e., the steel industry, could negotiate their own CLC with the government and the labor unions and, thus, modify their obligations. The steel industry negotiated its own CLC (the steel CLC) in 1978, which was confirmed by the Claes Plan later that year. This steel CLC altered CLC 17 in the following ways: (1) The company's obligation to pay the additional allowance under CLC 17 (one-half the difference between the workers' former salary and unemployment benefits) was reduced or eliminated by means of grants, loan guarantees, and assumption of interest costs; (2) the prepensioned steel workers would receive an additional 2,500 BF per week, to be paid by the company and reimbursed by the government; and (3) steel companies were exempted, until 1990, from the requirement that they replace workers who take early retirement.

The first alteration of CLC 17 confers a potentially countervailable benefit because it relieves the steel companies of their obligation to pay the additional allowance, an obligation they otherwise would have incurred. The means by which this obligation was relieved (grants, loan guarantees, etc.) are all specific to the steel industry; the extent to which each of these means provides a countervailable benefit is discussed in the comments and sections of the Belgian Notice.

The second alteration of CLC 17 under the steel CLC, i.e. the additional 2,500 BF paid to workers by the company and reimbursed by the government, does not provide a countervailable benefit. No benefit is conferred where a government creates and forgives an obligation of a company at the same time and under the same program. In such a situation, the company is not relieved of a cost it would otherwise have had to assume. See Steel from Belgium.

The third alteration of the country-wide CLC 17, relieved steel companies of the obligation to hire replacement workers from 1978 through 1990. This alteration is specific to the steel industry and provides a countervailable benefit. Without the steel CLC, the company would have had to incur the costs of hiring and paying the salaries of workers required to be hired as replacements for the employees given early retirement during this period. Thus, the company is relieved of an obligation it would otherwise have incurred.

Comment 5 (Belgium): Clabecq argues that the loans it received to cover prepension obligations were provided under the 1959 Law, which was previously found by the Department to be non-countervailable. Such financing was available to all sectors which met the specified criteria. In addition, as many as 1114 prepension labor conventions were in effect from 1984–1991. Prepensions were, thus, generally available. Therefore, Clabecq argues, its prepension loans should not be countervailed.

DOC Position: As discussed more fully in the Belgian notice, the loans in question were subsequently converted by Clabecq to OCPC's and, later, to PB's. The conversions were limited to the steel industry, and are, therefore, countervailable to the extent that conversions of debt to equity were on terms inconsistent with commercial considerations. (See the Equity section of this Appendix). While prepension labor conventions are widely available, we have determined that government relief of the costs associated with prepension is limited to the steel industry.

Privatization

Issue

Does the privatization of some or all of a government-owned company extinguish prior subsidies to that company? This question is important, not only because of its impact on these investigations, but because its resolution depends in large part upon defining the fundamental purpose of the CVD law.

Discussion

Petitioners argue, on the basis of legal and economic principles, that the privatization of government-owned companies does not relieve the Department of its statutory obligation to countervail prior non-recurring subsidies to such companies. Thus, goods produced by privatized companies remain countervailable during the period over which such prior subsidies are amortized under the Department's methodology.

Petitioners maintain that the CVD law is intended to offset the unfair competitive advantage that subsidies provide the subject merchandise. *See G.S Nicholas & Co.* v. *United States*, 249 U.S. 34 (1916), *Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1978). They contend that, although the courts have held that subsidization provides a competitive benefit to the subject merchandise, the courts have consistently held that the Department is not required to measure the effect of subsidies. See *BSC I*.

Petitioners assert that, from a legal and accounting standpoint, a corporation is an entity that is separate and distinct from its owners. Accordingly, the CVD law is concerned with whether the company (and thus the subject merchandise) is being subsidized, not with whether the owners of the corporation benefit from the subsidy. Because of this separation, if a government-owned company is subsidized, and subsequently privatized, the subsidy remains embedded in the company, continuing to benefit the goods it produces. Petitioners point out that each privatization at issue in these investigations involves an exchange of money for shares/ownership. Petitioners argue that a transaction of this sort has no impact on the company's cost structure. The new owners are paying the government for the future income stream they anticipate the company will generate; but while the wealth position of the owners of the company changes, this change has no impact on either the financial condition or the productive assets of the company itself.

Petitioners argue that the Department has previously determined that, if the government buys pre-existing shares directly from shareholders, rather than new shares from the company, there is no subsidy to the company regardless of the price paid for the shares. See Subsidies Appendix. In order to be consistent, the Department must apply this reasoning conversely with respect to privatization. Thus, if the government sells all or part of its shareholdings to private investors (or if a private investor sells its shares to the government), a transfer of corporate ownership takes place wholly apart from any countervailable benefits received by that company.

In addition, petitioners point out that if the Department were to determine that the sale of a government-owned company's shares at a fair market price extinguishes previous subsidies, then the sale of any publicly traded company's shares at a fair market price must also extinguish any previous subsidies. In order to administer the CVD law under this approach, petitioners argue that the Department would be required to track the trading of public shares of companies under investigation to determine the point at which company ownership changes hands. Any transfer of ownership would extinguish previous subsidies. Petitioners contend that this approach is contrary to the intent of the CVD law, administratively impossible, and an invitation to circumvention.

Petitioners also argue that subsidization distorts the allocation of resources in the market, which misallocation is not corrected through privatization. According to petitioners, in determining whether or not privatization affects the countervailability of existing subsidies, the Department must assess whether privatization eliminates or reduces the competitive benefit previously bestowed on the subject merchandise, and whether privatization eliminates the distortion in the allocation of resources caused by the original subsidy. Petitioners argue that, in order to reverse the overallocation of resources to a subsidy recipient, a subsidy must be repaid by the recipient to the government on terms inconsistent with commercial considerations.

Based on the reasons outlined above, petitioners conclude that there is no basis in law or economics for the Department to determine that subsidies received prior to privatization are extinguished as a result of privatization.

Respondents argue that, before deciding what effect privatization should have on prior subsidies to privatized companies, the Department must consider the purpose of the CVD law—to eliminate the competitive advantage that subsidized merchandise enjoys in the U.S. market. Because privatization eliminates this competitive advantage, prior subsidies must be viewed as having been extinguished.

Respondents argue that the privatization of a company is much more dynamic and complex than the ordinary trading of pre-existing shares. It is nothing less than a reconstitution of the entire company in which the purchase price equals the discounted value of the company's future income stream. According to respondents, this fair market value necessarily includes the residual value of any remaining countervailable benefits the company may have received. Because the new owners of the privatized company have paid for any continuing competitive benefits from prior subsidies, they thereafter compete on exactly the same terms as any other company in the market. This eliminates any competitive advantage from prior subsidies and, therefore, extinguishes those subsidies.

Respondents also point out that encouraging privatization is an important policy goal of the U.S. Government—it removes foreign governments from the commercial sector, reduces excess capacity, and ends government subsidization of production.

Respondents submit that Congress has directed the Department to consider circumstances which can change the benefit that past subsidies provide to subject merchandise. See 19 U.S.C. 1675(h) and 19 C.F.R. 355.22(h). Respondents contend that privatization constitutes an intervening event significant enough to warrant revaluation of prior subsidies by the Department. While the CVD law and the Department's regulations do not define the mechanism to evaluate the effect of privatization on past subsidies, past case precedent supports the position that privatization eliminates past subsidies. See Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review: Lime from Mexico, 54 FR 1753 (January 17, 1989) (Lime from Mexico) and Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada, 51 FR 15037 (April 22, 1986) (OCTG from Canada). Given this precedent, respondents argue that the Department's preliminary decision with respect to this issue is inconsistent with its past determinations.

Respondents further argue that the Department's approach in the preliminary determinations is contrary

to the Subsidies Code of the General Agreement on Tariffs and Trade (GATT); the CVD law; and the decisions of the Court of International Trade. For example, respondents point to the preamble of the Subsidies Code of the GATT which states that the effect and use of subsidies should be the focus of attention.

Respondents contend that the CVD law and its legislative history indicate that it was the intent of Congress that the actual benefit received be the countervailable benefit. See 19 U.S.C. 1677(5). Respondents also assert that the CIT has stated that the value of a subsidy and its measurement must be linked to the benefit that the recipient receives (see *BSC I*) and that any method used to value the subsidy must maintain the fundamental correspondence between the subsidy and the benefit (see *Michelin Tire Corp.* v. *United States*, 6 CIT 320 (1983), *vacated as moot* 9 CIT 38 (1985)). Moreover, in *Armco* v. *United States*, 733 F. Supp. 1514 (CIT 1990), the court determined that the commercial and competitive benefit of the subsidy to the recipient is the measure of the subsidy's value. Accordingly, respondents argue that in order for the Department to impose countervailing duties on the privatized firm, it must affirmatively establish how subsidies continue to benefit the subject merchandise sold in the POI after privatization at fair market value.

Respondents argue that according to the Department's own past practice, a financial benefit does not accrue to the production of an independent company that purchases assets or productive units from a subsidized, government-owned company. Instead of receiving funding from the government, the new owner pays funds to the government. A privatization at fair market value is analogous and, therefore, is not a mechanism which allows the pass-through of past subsidy benefits to the new company.

Respondents submit that examining the two possible continuing financial benefits of prior subsidies demonstrates that benefits are not passed-through to the new owner after privatization. First, a subsidy could provide a continuing benefit to the recipient if a portion of the original benefit is still outstanding under the Department's allocation methodology in the POI. However, if a company is purchased at its fair market value, any outstanding benefits are, by definition, included in the sales price. The company is no longer supported by the government because the commercial sector has assumed all costs and obligations. In other words, all funding is on terms consistent with commercial considerations. Second, the obligation to provide a reasonable return on an investment, if absent, could be considered a continuing subsidy benefit. This type of benefit, however, also ceases when the subsidized funding is replaced with funds provided by private investors.

Respondents assert that the Department should defer to the market in valuing the remaining benefit of subsidies received prior to privatization. Respondents argue that no reasonable approach to this issue can lead to a conclusion that the remaining value of pre-privatization subsidies is more than the market value of the company itself. Finally, should the Department decide to ignore the fair market valuation accomplished through privatization, respondents assert that, at the very least, the price paid for the company at privatization should be considered a partial repayment of the remaining subsidies.

Respondents argue that for all of these reasons the Department cannot impose a duty that (1) exceeds the original benefit or (2) is not based on an established benefit that the respondent company derived from past subsidies. The application of countervailing duties on the subject merchandise of a company that was privatized at fair market value violates both these points and is a position that the Department should reject.

A. The Nature of Countervailable Benefits

Section 771(5) of the Tariff Act of 1930, 19 U.S.C. section 1677(5), states that a subsidy "has the same meaning as the term 'bounty' or 'grant.'" The Supreme Court in *Nicholas & Co.* v. *United States*, 249 U.S. 34, 39 (1919) stated in respect to these statutory terms that:

> If the word "bounty" has a limited sense the word "grant" does not. A word of broader significance than "grant" could not have been used. Like its synonyms "give" and "bestow," it expresses a concession, the conferring of something by one person upon another.

Within this broad definition, Congress specifically included government action which results in the provision of capital and loans on "terms inconsistent with commercial considerations," the provision of goods or services at "preferential rates," the grant of funds or forgiveness of debt, and the like, to a specific group of beneficiaries. See 19 U.S.C. section 1677(5)(A)(ii). These types of subsidies, which are distortions in the market process for allocating an economy's resources by directing those resources to producers of merchandise exported to the United States, are the focus of the Department's analysis. See Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod from Czechoslovakia, 49 FR 19370 (May 7, 1984), and Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod from Poland, 49 FR 19374 (May 7, 1984), affirmed by the Federal Circuit in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986) (sustaining the conceptual approach developed in the two reviews: vacating CIT decision on other grounds); and the Department's Proposed Regulations and Softwood Lumber from Canada.

Nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. See 19 U.S.C. section 1677(6). Nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.

The legislative history of the Act confirms that Congress did not intend that such effects be taken into account. See statement of Senator Heinz during the congressional debate on the subsidy offset provision of the 1979 Act. 125 Cong. Rec. S20167–S20168 (July 23, 1979) (discussing allowable offsets and emphasizing intent to limit allowable offsets to those specifically listed in the statute). See, also, S. Rep. No. 96–249, 96th Cong., 1st Sess. 85–86 (1979); H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 74–75 (1979). Accordingly, whether subsidies confer a demonstrable competitive benefit upon their recipients, in the year of receipt or any subsequent year, is irrelevant—the statute embodies the irrebuttable presumption that subsidies confer a countervailable benefit upon goods produced by their recipients.

Judicial opinions also are in accord. For example, the CIT has noted: "One cardinal principle of the CVD law is that the subsidy is the money received, rather than whatever is purchased with that money." (See BSC II (citation omitted).) In addition, the court has stated that:

> whether the reduction in cost is occasioned by direct cash payments, or by an act of government reducing labor cost, capital cost, or the cost of any other factor of production is of no consequence. For if a benefit or advantage is *received* in connection with the production of the merchandise, that benefit or advantage is a bounty or grant on production[] * * * [and] comes squarely within our countervailing duty law * * *.

(*BSC I*, quoting *ASG Industries, Inc.* v. *United States*, 467 F. Supp. 1200, 1213 (Cust. Ct. 1979) (emphasis added).) Accordingly, the Department's practice is to countervail the value of subsidies at the time they are provided to a company (i.e., the cost savings to the company from receiving the subsidies), without regard to their actual use by that same company or their effect on its subsequent performance. See Softwood Lumber from Canada and *Michelin Tire Corp.* v. *United States*, 6 CIT 320, 328 (1983).

The Department allocates non-recurring subsidies over time in recognition of the fact that the statutory goal of providing a remedy against subsidies would be defeated by allocating the subsidies to a single moment or year. The statutory presumption that subsidies benefit goods produced by their recipients must, in order to have the intended effect, be applied over a reasonable period of time, the reasonable time being the useful life of assets in the relevant industry. See Proposed Regulations and Subsidies Appendix. See, also, S. Rep. 96–249, 96th Cong., 1st Sess. 85–86 (1979). But this does not imply that the Department evaluates the performance of that company over that period of time or examines other subsequent events to determine whether, or to what extent, the subject merchandise continues to benefit from the subsidy. As explained above, such an ex post facto analysis is not relevant under the statute.

Because the statute, legislative history, judicial opinions, and the Department's regulations do not permit an analysis of the use and effect of subsidies, the Department does not attempt such an analysis. In practice this means, for example, if a government were to provide a specific producer with a smokestack scrubber in order to reduce air pollution, the Department would countervail the amount that the company would have had to pay for the scrubber on the market, notwithstanding that the scrubber may actually reduce the company's output or raise its cost of production.

Similarly, the Department does not take account of subsequent developments that may reduce any initial cost savings or increase in output from a subsidy. For instance, if a government provides a piece of capital equipment to a company, the Department continues to countervail the value of that equipment as received, regardless of whether it subsequently becomes obsolete or is taken out of production. See *BSC I*.

The Department's practice in this regard is consistent with the ruling of the appellate court in *ASG Industries* v. *United States*, 610 F.2d 770 (C.C.P.A. 1979). That decision specifically rejected Treasury's efforts to consider the competitive benefit realized by the recipient from a subsidy, before deciding whether to countervail it.

> Despite the clear expression of Congressional intent that an injury test not be employed, the Secretary impliedly injected one into this case, finding that "the level of exports to the United States is a small percentage of the amount exported, and the amount of assistance * * * is less than 2 percent of the value of float glass produced * * *.
>
> Accordingly, we conclude that it was error to employ an injury (to United States trade) test in determining whether a bounty or grant was paid upon the manufacture or production of the involved merchandise.

Id. at 777. In this same vein, the CIT in another case involving ASG, (*ASG Industries* v. *United States*, 467 F. Supp. 1200, 1222–1224 (Cust. Ct. 1979)), also dismissed Treasury's interpretation that the CVD law was "intended to reach *only* those actions which have the effect of distorting international trade." (emphasis in original). *Accord Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982). The foregoing cases arose in the context of investigations in which no injury test was required. Here, of course, an injury test applies. But that injury test determines whether the U.S. industry is injured by reason of imports of subsidized merchandise. There is no requirement that injury be traced to demonstrated effects of particular subsidies. In any event, the injury test is the province of the International Trade Commission, not the Department of Commerce.

That the CVD law is not concerned with the subsequent use or effect (i.e., competitive benefit) of a subsidy is in no way undermined by the Department's arguments and the appellate court's reasoning in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986). In *Georgetown Steel*, the court simply concluded as a matter of law that the CVD statute is not applicable to nonmarket economies because the concept that the receipt of a subsidy constitutes a distortion in the normal allocation of resources has no meaning in such an economy. This is because resources in nonmarket economies are allocated by government fiat, rather than by market forces. Thus, *Georgetown Steel* cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production. Rather, *Georgetown Steel* stands simply for the proposition that, in a nonmarket economy, it is impossible to say that a producer has received a subsidy in the first place.

B. *The Effect of Privatization*

Accepting that the CVD law does not require a subsidy bestowed on a steel producer to confer a demonstrable "competitive benefit" on that producer in order to be countervailable, there is still disagreement about the effects of privatization. The issue is whether privatization can involve the repayment of subsidies. The disagreement must be understood in light of the fact that all parties agree that subsidies can be extinguished by being repaid to the government.

Respondents contend, first and foremost, that privatization at fair market value necessarily constitutes repayment of the residual value of any remaining subsidies. A number of respondents have also argued that, if the Department were to determine that privatization at fair market value does not, by definition, eliminate the countervailability of subsidies bestowed previous to privatization, the Department should still determine that some portion of the remaining value of those subsidies would be offset by the purchase price paid by the new owners.

Petitioners argue that privatization *per se* does not entail repayment of prior subsidies, because the new owners, not the privatized company, pay the purchase price. Petitioners maintain that the purchase of the company cannot extinguish the benefit of prior subsidies because the company's financial condition has not changed as a result. Therefore, according to petitioners, payment by the new owners to the government (even if it included the full unamortized amount of the subsidies) is irrelevant because such a payment only affects the financial position of the owners and in no way impacts the cost structure of the newly privatized firm. This argument rests entirely on the proposition that there is a complete and absolute distinction between a company and its owners.

Petitioners assert that previous subsidies can only be repaid by the privatized company itself. Petitioners contend that in order to repay the government, the company would have to remit to the government the residual value of all remaining subsidies on terms inconsistent with commercial considerations. In other words, the company would have to reverse the flow of excess capital that it received from the government. Because no one

UMI
VOL 58 ISS 130 JL 9 1993
UMI

engaged in profit maximization would ever purposefully act to reduce their competitiveness, petitioners describe a genuine subsidy repayment as an "anti-benefit."

Although plainly there is some distinction between a company and its owners, it is a distinction without a difference in the context of privatization. Merely because a company has been incorporated to protect its owners from the company's legal liabilities or for beneficial tax and accounting purposes (or both), it does not follow that the financial condition of the owners is irrelevant to the financial position of the firm. The form in which new owners purchase the government company creates no appreciable difference in how that company will be operated overall. The fact that the owners are shareholders and raise capital to purchase the government-owned company through new share issuings, rather than the company itself taking on debt, does not mean that the owners can be indifferent to the profit margin the company generates, as petitioners assert.

Rather, in the real-world marketplace, the owner-shareholders' expectations of a return on their investment cannot be separated from the profitability of the newly privatized company. Privatized companies (and their assets) are now owned and controlled by private parties who are profit-maximizers. Unlike the former company, which did not need to earn a return on capital when owned and controlled by the government (i.e., when the government is 100 percent owner there is no necessity of paying dividends to itself), the privatized firm now faces the same capital market as its competitors. In antidumping (AD) cases, for example, the Department recognizes that equity requires a reasonable rate of return as reflected in the 8 percent profit margin mandated by Congress to calculate constructed value. 19 U.S.C. 1677b(e)(1)(B)(ii); 19 CFR 353.50(a)(2). As such, regardless of whether the owners raise capital to purchase the government-owned company by issuing new equity, they do need to earn a return on that capital sufficient to attract investors. See Copeland, "Long-Term Sources Of Funds And The Cost of Capital," in Altman, Handbook of Corporate Finance at 12–7 (1986) ("The cost of capital is the rate of return that could have been earned by investors in alternative investments of equal risk.") See, also, *Michelin Tire Corp.* v. *U.S.*, 6 CIT 320, 326 (1983) vacated (on other grounds) 9 CIT 38 (1985), where the court recognized that a company has two options for raising capital, both of which carry obligations: (1) Issuing shares, obligating profit sharing; and (2) incurring debt, obligating repayment with interest.

Put another way, the privatized company now has an obligation to provide to its private owners a market return on the company's full value. The owners will seek to extract a rate of return from their company at least equal to that of alternative investments of similar risk. There is, then, no appreciable difference, as reflected in the marketplace, between the profit-making ability of the company and the owners' realization of a profitable return on their investment in that firm.

To adopt the petitioners' rationale that only a full repayment by the new company can extinguish past subsidies would create a test that would elevate form over substance and produce incentives for foreign governments merely to alter the form of the privatization to satisfy this artificial distinction. If the Department were to ratify such a test, owners could simply lend the company the money to repay at least some portion of the past subsidies, taking the capital out as loan payments, rather than dividends.

The distinction between the financial position of owners and their companies is one that the Department routinely refuses to recognize in administering both CVD and AD laws. In applying the CVD law, the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy. Thus, the Department has found that a subsidy provided to one corporate entity can bestow a countervailable benefit upon another entity within the corporate enterprise. See Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (January 12, 1987) and SSHP from Sweden. In *Armco, Inc.* v. *U.S.*, 733 F. Supp. 1514 (CIT 1990), the court endorsed countervailing the parent company for subsidies received by the subsidiary because both were part of the same business enterprise, and the parent exercised control over its subsidiary. Id. at 1523–1524. See Final Affirmative Countervailing Determination: Carbon Steel Wire Rod from Malaysia, 53 FR 13303 (April 18, 1988). We also generally allocate subsidies received by parents over sales of their entire group of companies. See France Bismuth. (Department allocated subsidies to all French subsidiaries of the parent company, a French holding company, which was the recipient of the subsidies.)

In administering the AD law, the Department has recognized that under generally accepted accounting principles (GAAP), financial burdens incurred by either the parent or the subsidiary are treated equally as obligations of the consolidated corporation where the parent has control over the subsidiary. See Final Determination of Sales at Less Than Fair Value: Carbon Steel Butt-Weld Pipe Fittings from Thailand, 57 FR 21065 (May 18, 1992), Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937 (May 26, 1992) (Minivans from Japan), and Final Results of Administrative Review; Brass Sheet and Strip from the Netherlands, 57 FR 9534 (March 19, 1992).

In short, GAAP would require (so long as the parent has control over the subsidiary) that the purchaser and the privatized company be treated as a single business enterprise. Therefore, any financial costs incurred by the owner, including those of purchase, would be considered costs of the acquired entity as well. Additionally, in AD matters we use group financial records to calculate the cost of capital and the like. In Minivans from Japan, the Department stated that,

> We followed our well-established practice of deriving net financing costs based on the borrowing experience of the consolidated group of companies * * *. Our practice is based on the fact that the group's parent, primary operating company, or other controlling entity, because of its influential ownership interest, has the power to determine the capital structure of each member company within the group.

If the Department adopted the position of petitioners, separating the financial position of companies and owners with respect to privatization, we would jeopardize well-established practices in both CVD and AD cases and leave open the potential for circumvention of the laws. For example, a government could channel subsidies to a subsidiary company by providing the monies to a parent holding company. Under petitioners' reasoning, since the owner/parent company is separate and apart from its subsidiary, the Department would be precluded from ascribing the subsidies to the subsidiary.

For all of these reasons, we cannot accept petitioners' argument that only the privatized company, and not its new owners, can repay prior subsidies to that company. Therefore, a private party purchasing all or part of a government-owned company (e.g., a productive unit) can repay prior subsidies on behalf of the company as part or all of the sales price. Therefore, to the extent that a portion of the price paid for a privatized company can reasonably be attributed to

prior subsidies, that portion of those subsidies will be extinguished.

There is no guidance in the statute, legislative history, or case law as to what proportion of the purchase price of a privatized company should be attributed to prior subsidies. Nor have the parties to the investigation had an opportunity to submit comments on this particular issue. Given this situation, we have decided that in attempting to estimate that portion of the purchase price attributable to prior subsidies, the most reasonable approach is to look at the following proportion—the privatized company's subsidies to the company's net worth—during the period from 1977 (the earliest point at which subsidies with benefits remaining countervailable in this investigation could have been bestowed) until the date of the privatization. We computed this by taking the simple average of the ratio of allocable subsidies received by the company in each year over the company's net worth in that year. The simple average of the ratios of subsidies to net worth serves as a reasonable historic surrogate for the percent that subsidies constitute of the overall value, i.e., net worth of the company. We then multiplied the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

To illustrate, consider a company with $60 in remaining subsidies that is sold for $72. Assume that, between 1977 and the date of privatization, subsidies averaged ¾ of the company's net worth. In that case, ¾ of the purchase price ($54) would be attributed to repaying those subsidies, reducing them from $60 to $6. If the average subsidies to a company during the period from 1977 to the date of privatization exceeded the average net worth of the company, then the entire purchase price would be treated as a repayment of those subsidies. For example, a company with $200 in residual subsidies and an average-subsidies-to-net-worth ratio of 2/1 that was sold for $70 would have the entire $70 purchase price applied to repay the prior subsidies, reducing them from $200 to $130.

The estimate so obtained of the proportion of prior subsidies repaid through privatization is the most reasonable that we have been able to devise. Although the "all-or-nothing" alternatives proposed by respondents and petitioners avoid difficult allocation problems inherent in the Department's approach, they are dependent on assumptions which we believe are incorrect.

Respondents' argument, that privatization automatically extinguishes prior subsidies, rests on the assumption that subsidies must confer a demonstrated benefit on production in order to be countervailable. They proffer that since the fair market price must include any remaining economic benefit from the subsidies, privatization extinguishes all remaining unamortized subsidies. As noted above, this is contrary to the CVD law, in which is embedded the irrebuttable presumption that nonrecurring subsidies benefit merchandise produced by the recipient over time.

In sum, the countervailable subsidy (and the amount of the subsidy to be allocated over time) is fixed at the time the government provides the subsidy. The privatization of a government-owned company, *per se*, does not and cannot eliminate this countervailability. As explained above, the statute does not permit the amount of the subsidy, including the allocated subsidy stream, to be reevaluated based upon subsequent events in the marketplace.

Regarding respondents' contention that ending government subsidization of production through privatization is a major policy goal of the United States, we do not disagree. However, that policy is separate and apart from the statutory provisions of the CVD law and the Department's application thereof. As such, the Government's policy to encourage privatization cannot impinge upon the statutory requirements of the CVD law which is designed to provide remedial relief to domestic industries materially injured by reason of subsidized imports.

In respect to respondents' reference to Lime from Mexico, we note that it was only a preliminary determination and, therefore, does not represent the Department's final thinking on the matter. Further, OCTG from Canada involved a situation where a company had become defunct and non-operational. Its assets were disposed of through a bankruptcy proceeding. This is a unique situation not involving the sale of an ongoing operating company exporting subsidized merchandise to the United States. That is not the case in any of the current steel investigations. Also, in neither of these cases was the issue of "privatization" specifically before the Department.

In the current steel cases, however, the issue of "privatization" is squarely before the Department. In addition, the Department has now had the benefit of numerous and lengthy comments from interested parties specifically addressing this issue. Moreover, the Department is not precluded from ever reconsidering its position in light of changing circumstances. See *Rust* v. *Sullivan*, 111 S. Ct. 1759, 1769 (1991). Given the significance of this issue, the Department has reviewed all of the comments submitted in the course of these investigations and has reconsidered its previous decisions involving privatization-type situations. The Department's new thinking regarding privatization is set out in detail above. To the extent that the approach adopted here arguably is inconsistent with prior decisions, such decisions are superseded by our conclusions here.

Finally, because the Department is countervailing no more than the allocated amount of the original subsidy, and, indeed, may even countervail less as a result of privatization, its approach to the issue of privatization is fully in accord with Art. VI (3) of the GATT and Art. 4 (2) of the GATT Subsidies Code which require that no countervailing duty be levied on an imported product in excess of the subsidy found to exist.

Petitioners' argument—that privatization does not affect prior subsidies—is incorrect because it does not account for the fact that the company's new owners are virtually certain to repay at least a portion of the subsidy as part of the purchase price. Petitioners answer this objection by saying that the company, rather than the owners, must repay the subsidy, but this is not persuasive. As discussed above, we believe the distinction between owners and companies, although valid, is by no means so absolute that the financial position of owners and companies are independent.

Petitioners' failure to attribute any of the purchase price paid for a government-owned firm to the repayment of prior subsidies would result in excessive repayment of subsidies. For example, assume that the government buys a company for $100 and, in that same year, gives that company a $60 subsidy. One year later, when the remaining countervailable amount of the subsidy has declined to $50, the government sells the company for $140, which also is the company's net worth in that year. Under petitioners' theory, the remaining amount of the subsidy, i.e., $50, is not affected by the privatization and must be repaid by the company in full in order to be extinguished. But this would leave the government with $190. The extra $40 could only be described as profit to the government.

VOL
58
ISS
130
JL
9
1993
UMI

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding privatization issues which have not been previously addressed in this notice or in other notices are addressed below.

For purposes of the comments received by interested parties, we use the term "respondents" to refer collectively to all respondents, rather than referring to each party individually. However, individual parties are identified when a comment is country-specific in nature.

Comment 1: Petitioners have argued that subsidies cannot be expunged through privatization because the distortion created by past subsidization still continues (lives on) in the productive capacity of the company. They define market distortion as what happens "when resources that would otherwise have gone to different uses in the economy, * * * (are) instead * * * employed to create assets." In their view such assets would not have existed except for the bestowal of subsidies. Therefore, privatization, because it cannot now re-allocate to their most efficient use the resources used in the past which created the capacity at issue, can have no effect on prior subsidies. The distortion continues even though a purchaser pays a market price, precisely because the excess capacity continues to exist in the company the day after privatization exactly as it did the day before.

Petitioners argue that the CVD law, which was designed to protect our domestic industries from the unfairly enhanced competitiveness that subsidies bestow, requires that in a circumstance such as privatization, subsidies can only be terminated when the initial market distortion which created excess productive capacity is corrected, and that this correction can only occur if and when the company (and not the owners) repays the remaining subsidy amount to the government by taking on debt as opposed to equity. In petitioners' view, the resulting debt obligation will serve to offset or correct the distortion because it will necessitate an additional cost/burden to actual production.

DOC Position: We disagree with petitioners' position. While the CVD law contains an irrebuttable presumption that subsidies bestow a competitive benefit upon the production of a company, it does not follow that the statute requires us to somehow "correct" market distortions which may have occurred due to the provision of subsidies, beyond countervailing the benefits received. The CVD law is designed to provide remedial relief as a result of subsidies; it is not intended to recreate the *ex ante* conditions that existed prior to the bestowal of such subsidies. Indeed, the remedy provided by law, additional duties, does nothing to eliminate excess capacity caused by the subsidization. Thus, there is no reason to require the recipient of the subsidies to correct the distortion in order to avoid or lift the duties. Accordingly, as explained above, the CVD law is concerned with the identification, measurement, and allocation of subsidies at the time of receipt. As part of our administration of the law, we have determined that there must be an allowance for the repayment of prior subsidies. See, e.g., Final Affirmative Countervailing Duty Determination: Pure and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992). In the context of privatization, we have concluded that a payback to the government by the new company or its owners (which we regard essentially as one and the same in these circumstances), regardless of how it is patterned, can indeed repay at least some amount of the subsidies remaining, as calculated according to the Department's methodology. The fact that the productive capacity may have been created or continues to exist is an irrelevant inquiry and beyond the scope of the law.

Comment 2: Petitioners argue that if the Department were to determine that the sale of a government-owned company's shares at a fair market price extinguishes previous subsidies, then the sale of publicly traded shares at a fair market price must also extinguish any previous subsidies. Petitioners argue that the Department would be required to track the trading of public shares of companies under investigation to determine the point at which company ownership changes hands. Petitioners contend that this approach is contrary to the intent of the CVD law, and an invitation to circumvention, as well as administratively impossible.

DOC Position: Petitioners' concern is unfounded. The issue addressed is whether the benefit from prior subsidies is extinguished as the result of privatization. The trading of stock normally involves private parties. Under these circumstances, the issue is not the repayment of subsidies, but rather their allocation.

Comment 3 (Mexico): Petitioners argue that if AHMSA's privatization were to be evaluated on the basis of the respondents' primary theory in support of the elimination of subsidies at privatization, i.e., the sale of a company at fair market value, it would fail. Petitioners assert that the price paid to the GOM for AHMSA was not the fair market value of AHMSA because the highest bid did not win the auction. Petitioners argue that by considering promises of post-privatization investment, the GOM considered factors other than the fair market value of AHMSA. In addition, petitioners urge that the Department reject respondent's claim that because the price paid was within the range of values specified in the independent appraisals commissioned by the GOM, fair market value was paid for AHMSA. Petitioners argue that the range of values mentioned by respondents is unclear and the price accepted by the GOM does not reflect the fair market value of AHMSA. Petitioners argue that even had the bid chosen been within the range of values determined by the appraisals, this does not alter the fact that the bid selected was not the highest cash bid.

Respondent contends that the price paid for AHMSA reflected AHMSA's fair market value. Respondent asserts that the bidding process was fair and open, and that all parties had equal access to AHMSA's confidential data. Respondent cites the Preliminary Results of Changed Circumstances Administrative Review: Lime from Mexico, 54 FR 1755 (January 17, 1989), where the Department found that the Mexican privatization program was an "open, competitive bidding process." Respondent argues that the price paid by GAN was within the range established by independent appraisal firms contracted to determine AHMSA's worth. Therefore, fair market value was paid by AHMSA's purchaser.

DOC Position: As outlined above, we determine that some portion of the remaining subsidies received prior to privatization will be repaid through privatization (as long as the company is not given away). The methodology described above has been applied to all total and partial privatizations at issue in these investigations. Given the Department's methodology, petitioners' and respondents' concerns regarding whether or not the sale of AHMSA was at a fair market price are irrelevant. To the extent that the purchase price may have been lower than the offer made by a different bidder, correspondingly less of any pre-existing subsidies were repaid.

Comment 4 (Mexico): Respondent argues that even if GAN had paid some amount less than fair market value for AHMSA, some amount of previously bestowed subsidies should be extinguished due to the sale. Respondent submits that the difference

between the price paid for AHMSA and AHMSA's fair market value would establish the value of any remaining subsidies. Respondents argue that the sale of AHMSA represents nothing more than the sale of goods by the GOM. Respondent suggests that this approach is consistent with the Department's established practice with respect to the government's sale of a good or service.

DOC Position: As outlined above, we determine that some portion of the remaining subsidies received prior to privatization will be repaid through privatization. The methodology described above has been applied to all total and partial privatizations at issue in these investigations. We determine, then, that a portion of AHMSA's sale price does, in effect, repay a portion of the subsidies bestowed on AHMSA previous to privatization.

Comment 5 (Brazil): Respondent contends that equity is a liability, not an asset, and in the case of a liability the countervailable benefit is not the fact that the company has acquired an asset for less than market value, but that the company has been granted access to funds on non-market terms. Because the company does not own the capital, respondent argues that a repayment to the government would not entail the company paying back the monies. Rather the Department should focus on whether and when a transfer of ownership of the company itself alters the terms of the company's access to funds. If, after privatization, the company relies on capital obtained on terms consistent with the market, respondent argues that subsidies granted prior to privatization will be extinguished.

DOC Position: As noted in the privatization discussion above, we countervail the value of subsidies at the time they are provided on terms inconsistent with commercial considerations, without regard to their use or effect on the subsidized company. The provision of equity is, in virtually all cases, a non-recurring subsidy under the Department's calculation methodology. Therefore, countervailable equity infusions are allocated over the useful life of assets in the relevant industry; in this case 15 years. Although the nature of equity may be different than the nature of other countervailable actions, in the interests of consistency, we see no reason to treat the provision of equity differently than other subsidies with respect to privatization. Whether or not the company "owns" the capital, it certainly has it, as it has money from grants and loans. In addition, whether or not at some time after the countervailable provision of equity, a company gains access to capital on commercial terms, is not relevant to the countervailability of equity previously provided on terms inconsistent with commercial considerations.

Comment 6 (Brazil): Respondent argues that the combination of a valuation process conducted by two independent consulting entities and the sale of equity in an auction process ensures that the privatization of USIMINAS was at market value.

DOC Position: Respondent's concerns regarding whether or not the sale of USIMINAS was made at a fair market price is not relevant under the Department's methodology.

Comment 7 (Brazil): Respondent argues that even if the Department decides that repayment of the full amount of equity received by the company prior to privatization is necessary for subsidies to be extinguished, the sale of USIMINAS exceeded the total amount of subsidies received by USIMINAS. Respondent argues that the use of a number of currencies in the privatization process does not alter the fact that the government recovered the full amount of its equity investment through privatization. In fact, through privatization, the government not only received its full investment, it received a reasonable return on its investment.

DOC Position: As outlined above, we determine that some portion of the remaining amount of subsidies received prior to privatization will be repaid through privatization. The methodology described above has been applied to all total and partial privatizations at issue in these investigations. Given the Department's methodology, petitioners' and respondents' concerns about the amount of equity received by the company prior to privatization is not relevant to the Department's privatization analysis.

Comment 8 (Brazil): Respondent argues that the distinction the Department draws in its privatization memorandum between repayment of subsidies to the government and recovery of the subsidy amount through privatization is meaningless. Respondent argues further that the financial structure of USIMINAS would be the same whether it repaid the government investment prior to privatization or the government recovered its investment through the sale of its equity through privatization.

DOC Position: We agree with respondent and our decision with regard to privatization's impact on the countervailability of pre-privatization subsidies reflects this agreement. The Department's privatization methodology provides that subsidies bestowed previous to privatization will be repaid, at least in part, through privatization. However, if a company were to document its repayment of the residual value of subsidies, separate and apart from privatization, the Department would have to consider such a repayment event on its own merits.

Comment 9 (New Zealand): Respondent argues that in its preliminary determination, the Department neglected to take into account the money the GONZ received when it sold its entire interest in New Zealand Steel, Ltd. (NZS) to Equiticorp. If the Department erroneously determines that previously bestowed subsidies are not extinguished by NZS's privatization, the Department should offset any remaining subsidy amount by the amount that the GONZ received for its ordinary shares as well as for its preference shares.

DOC Position: We disagree with respondent. The respondent's approach would require the Department to allocate the entire purchase price for NZS to the repayment of subsidies. This assumes, which we do not, that NZS, at the time of privatization, consisted of nothing but subsidies. However, as outlined above, we determine that some portion of the remaining amount of subsidies received prior to privatization will be repaid through privatization. The methodology previously described has been applied to all total and partial privatizations in these investigations.

Restructuring

Issues

Over the past fifteen years, steel companies in at least eight countries in these investigations (Austria, Belgium, Germany, Italy, New Zealand, Spain, Sweden, and the United Kingdom) have undertaken some form of corporate restructuring. The restructuring activities pursued in these countries have taken many forms including internal corporate restructurings, mergers, acquisitions, the spin off of assets to joint ventures and unrelated private parties, and the closure of production facilities.

In determining the impact of different corporate restructuring activities on the treatment and calculation of subsidy benefits, the Department identified the following issues as requiring attention:

(1) What types of restructuring "transactions" warrant an allocation of previously received subsidies?

(2) When previously received subsidies are allocated, what should the

VOL 58 ISS 130 JL 9 1993 UMI

basis of the allocation be, relative sales or relative book value?

(3) What portion of a sales price is allocable to the prior owner's subsidies?

(4) What denominator should be used to calculate the net subsidy?

(5) What effect, if any, does a plant closure have on the continued countervailability of previously received subsidies?

(6) Are payments received for the closure of production facilities countervailable?

Discussion

1. Types of Restructuring "Transactions" and the Allocation of Previously Received Subsidies

A. Internal Corporate Restructuring. One type of restructuring activity is the corporate reorganization in which, most typically, assets are shifted amongst and between various related corporate entities. New corporate structures and relationships are established through the liquidation of corporate entities, the creation of new corporate entities, and the "sale" or transfer of assets between such related entities. No truly "outside" parties enter the corporate organization; rather, a new "web" of corporate relationships is created between old and new corporate entities. However, regardless of what changes occur in the corporate structure, the ultimate shareholder remains unchanged. In these investigations, both state-owned companies and privately-held companies have undertaken such internal corporate restructurings. This type of restructuring occurred with state-owned companies in Austria, Italy, and Spain. It occurred with privately-owned companies in Belgium and Italy.

In Austria, for example, the state-owned steel company, VAAG, has always been owned by the state-owned company (OIAG) which has holdings in many different Austrian industries. Until 1987, VAAG was both a holding company for other companies and a productive enterprise with three separate divisions. It then became solely a holding company by spinning off its divisions, incorporating them, and directly holding each of its productive enterprises. Subsequently, it indirectly controlled its productive enterprises through another holding company it created. More recently, another holding company was created, IBVG, which later became Austrian Industries, which supplanted VAAG. As of 1990, VAAG had no significant holdings of its own, but its sole shareholder remained the state-owned holding company OIAG. OIAG still exercised control through Austrian Industries over the same entities which it had controlled through VAAG.

In Italy, Instituto per la Riscostruzione Industriale (IRI), a public agency of the Italian Government, exercised control of the state-owned steel producing enterprises through the state-owned holding company for the steel sector, Finsider. Throughout the 1980's, Finsider liquidated and created various corporate entities. Italsider previously was the corporate entity which produced merchandise subject to these investigations. It was placed into liquidation and succeeded by Nuova Italsider which was owned by Finsider and Italsider. Italsider eventually "sold" its shares in Nuova Italsider to Finsider. Nuova Italsider was eventually liquidated and Italsider reemerged.

Further changes were made to the corporate structure but one fact remained constant. All companies were held by IRI, a state-owned holding company, through its subsidiary Finsider, a holding company for state-owned steel companies. In 1989, Finsider was liquidated and succeeded by Ilva.

In Spain, a government-owned entity (AHM) sold a subsidiary which produced cold-rolled steel to another government-owned steel-producing entity (ENSIDESA). Each of these entities was owned by INI, a state-owned holding company.

In Belgium, the companies involved in the internal corporate restructuring were privately-held. In 1989, Phenix Works, a producer of coated metal products and a wholly-owned subsidiary of Cockerill Sambre, was merged with Cockerill Sambre. Before the merger, Cockerill Sambre produced hot-rolled and cold-rolled flat products.

In Italy, a similar restructuring occurred with AFL Falck, a privately-held company. Until 1990, AFL Falck was concurrently a manufacturing company, with divisions producing steel strip, steel plate, and steel tubes and a holding company for various subsidiaries, one of which produced a steel product. In 1990, AFL Falck became strictly a holding company by spinning off and incorporating its former divisions as subsidiaries. As part of Falck's restructuring, Ilva purchased a very small share of the company.

In New Zealand, the government entered into a joint-venture agreement with New Zealand Steel (NZS) as a 60 percent shareholder (NZS had 40 percent). Although NZS was a private company, the government was represented on the NZS board of directors.

The purpose of the joint venture, named NZS Development, was to assist NZS to construct additional production facilities that would make NZS a fully integrated producer. The legal structure of the project, a separate corporate entity in which NZS had minority ownership, in no way implies that the joint-venture was expected to operate as a separate company nor to generate sales independently of NZS. The development was legally structured as a corporation solely to shield NZS stockholders from the impact of the large amount of debt that would have been incurred in the start-up period of the project.

Subsequently, while the assets were still incomplete, the two partners agreed to (1) dissolve the joint venture, (2) transfer the assets and a fraction of the outstanding liabilities to NZS, (3) have the government take responsibility for repayment of the bulk of the outstanding debt, and (4) issue to the government shares in NZS that would give the government 81.2 percent ownership share in the consolidated company, NZS. See the New Zealand-specific comments below for a discussion of the Department's determination with respect to this restructuring.

In regard to the type of restructuring described above, the Department has received very few comments from interested parties suggesting that the "sale" or transfer of assets among related entities constitutes a true sale and that previously received subsidies have been paid back or extinguished. An exception is in Italy. During the course of the Italian investigation, the state-owned respondent, Ilva, made the argument that it "purchased" certain assets of Finsider's at a court-determined market price. It claimed that any countervailable benefit was extinguished by this transaction.

In the instant investigations, the Department has not considered internal corporate restructurings that transfer or shuffle assets among related parties to constitute a "sale" for purposes of evaluating the extent to which subsidies pass through from one party to another. Legitimate "sales," for purposes of evaluating the pass-through of subsidies, must involve unrelated parties, one of which must be privately-owned. A sale is necessary to our pass through analysis, because, as explained in the Privatization section of this Appendix, a sale can give rise to repayment of subsidies. In the restructurings described in this section, the purchaser and owner of the entity are ultimately the same and there can be no repayment of subsidies.

In the case of New Zealand, we determine that a reallocation of

previously received subsidies should not occur for two reasons. First, because the transaction under consideration was not a sale between unrelated parties, but rather a settlement between two related parties (in the joint venture). Second, because the government has a significant majority interest in both entities involved in the transaction: It had 60 percent interest in the development company prior to the transaction; it owns 82 percent of the consolidated company after the transaction. Therefore, all subsidies bestowed on NZS Development are passed through to NZS.

An important issue with respect to these types of restructurings is the relationship between restructuring and the Department's rules for tying subsidies. See 19 CFR 355.47.

When a company receives a general subsidy, the Department does not attempt to "trace" or establish how the subsidy was used. The countervailable benefit is not tied to the production or sale of a particular product or products. Nor is it tied to the sale of products to a particular market. Instead, the benefit is allocated to all products produced by the firm. See 19 CFR 355.47(c)(1).

However, there are instances in which the Department may determine that a countervailable benefit is tied to the production or sale of a particular product or products. For example, in Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Austria, 50 FR 33369 (August 19, 1985), VAAG was required to transfer a portion of the equity infusions it received to an affiliated company. The Department found these benefits to be tied to the affiliate's production.

Moreover, because the affiliated company did not produce or export the subject merchandise, the Department did not consider equity infusions to the affiliated company to benefit the subject merchandise. Thus, if the benefit is tied to a product other than the merchandise under investigation, the Department will not find a countervailable subsidy on the subject merchandise. See 19 CFR 355.47(a).

In many of the internal corporate restructurings at issue in these investigations, the subsidies provided by the government were not tied to a specific product or to a particular market. As a result, the net benefit will be calculated using a denominator which reflects the total sales of the company, excluding foreign production. See the Denominator section of this Appendix. In other internal corporate restructurings, the Department considers the benefits received by the company under certain programs to be tied to a specific product or products. If the product which benefitted from the subsidy is under investigation, the net benefit will be calculated using a denominator which reflects total sales of the benefitted merchandise.

Using the Austrian example from above, VAAG was provided capital by the Government of Austria and directed to make equity infusions into a subsidiary which did not, at the time, produce the subject merchandise. This subsidiary eventually spun off its production to two of its subsidiaries and subsequently became the holding company for the producer of the subject merchandise. In this instance, the Department has determined that the countervailable benefit from the equity infusions continue to be tied to the non-subject merchandise.

Another restructuring issue which the Department has addressed in Austria is how to allocate the subsidies VAAG received prior to 1987 to the divisions that became subsidiaries in 1987. The division that produced the subject merchandise became the wholly-owned subsidiary, VA Linz. In this instance, the Department has measured the amount of the subsidies which are attributable to VA Linz by calculating the percentage which VA Linz's assets as of January 1, 1987 represented of the value of VAAG's unconsolidated total assets on December 31, 1986 (i.e., pre-restructuring). See the Allocation of Subsidies Based on Asset Value section below for further discussion of the Department's allocation of previously-received subsidies. We applied this percentage to VAAG's subsidy amount to calculate the portion of the subsidy allocable to VA Linz. We then applied the methodology described in the Allocation and Equity sections of this Appendix to calculate the benefit to VA Linz from the subsidies. The benefit to VA Linz was divided by the total sales of VA Linz products during the POI.

The Department applied a similar methodology in order to calculate that portion of losses which VAAG assumed at the time of its restructuring in 1987 which was properly allocable to VA Linz. VA Linz's share of VAAG's losses was calculated by the Department based on the ratio of its asset value to total VAAG assets. Using the methodology outlined in the Allocation and Equity sections of this Appendix, the benefit for the POI was divided by VA Linz's total sales.

In Belgium, the Department has used BIA for Cockerill Sambre. Therefore, it has not evaluated the corporate restructurings of Cockerill Sambre and Phenix Works, including the Government of Belgium's assumption of costs related to the closing of the Cockerill's Valfil plant, and any possible effect such restructurings may have upon the methodological assumptions underlying the petition or preliminary determination. See the Best Information Available section of the **Federal Register** notice entitled Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, which is published concurrently with this **Federal Register** notice.

In Italy, the Department considers Falck's pre-restructuring subsidies to be tied to Falck's production of certain steel products. For each of these subsidy programs, Falck received benefits because it was a steel producer, not because of its other activities. For example, Falck received interest contributions under Law 193/1984 from the Government of Italy. These contributions were limited only to steel producing enterprises. Therefore, the denominator to be used in calculating the net benefit from this pre-restructuring subsidy is Falck's sales of those steel products which it produced prior to becoming strictly a holding company. An exception, however, is the closure payment which Falck received for its tube facility. As explained below, this payment is considered to benefit Falck's remaining production activities. Thus, it has been allocated over Falck's total consolidated sales.

With respect to Ilva and its corporate predecessors, Italsider and Nuova Italsider, the Department has used BIA. Therefore, we have not evaluated the corporate restructurings of these companies or any possible effect such restructurings may have upon the methodological assumptions underlying the petition or preliminary determination. See the Best Information Available section of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy, which is published concurrently with this **Federal Register** notice.

In New Zealand, the government's participation in the development project benefitted NZS because as a result of the project NZS became a fully integrated steel producer. The expansion of the production facilities resulting from the project changed the nature and the scale of the preexisting firm: NZS increased fourfold its iron and steel making facilities and expanded the range of its products. We have, therefore, determined that the subsidy bestowed by the government upon NZS Development through its capital infusions directly benefitted NZS from

the very inception of the project. We find that the subsidy was not tied to specific types of merchandise produced by NZS. Therefore, we allocated the benefit calculated for the POI over total sales by NZS for the same period.

In Spain, the Department has determined that the equity infusions made by the Government of Spain into AHM were not tied to specific uses or types of merchandise. Hence, the infusions benefitted all merchandise produced by AHM. However, AHM closed its hot rolling mill. For the reasons explained below, we have attributed AHM's subsidies to its cold rolling operations. When AHM spun-off its cold-rolled operations, the Department considered the benefit to have passed through to the "purchaser," ENSIDESA. The benefit to ENSIDESA was divided by its total sales of all products.

B. Mergers, Spin-Offs, and Acquisitions. Corporate restructurings may also be accomplished through mergers, spin-offs, and acquisitions. These transactions have occurred between a state-owned enterprise and a privately-owned enterprise, and between privately-owned enterprises. This type of restructuring activity may involve a "sale" of an operation to another party or a party can spin off, or contribute, a portion of its operation to a joint venture. These types of restructuring occurred in Austria, Sweden, and the United Kingdom.

Two issues arise in these types of restructurings: (1) What is a "productive unit"? and (2) On what basis should the Department allocate subsidies to the productive unit?

Subsidy Allocation to Productive Units Which Are Sold. In U.K. Bismuth, the Department determined that subsidies were not extinguished when a productive unit was sold. Instead, some portion of prior subsidies received by the seller "travel (with the productive unit) to its new home:"

> "* * * the Department determines that a company's sale of a 'business' or 'productive unit' does not alter the effect of previously bestowed subsidies. The Department does not examine the impact of subsidies on particular assets or tie the benefit level of subsidies to changes in the company under investigation. Therefore, it follows that when a company sells a productive unit, the sale does nothing to alter the subsidies enjoyed by that productive unit."

In U.K. Bismuth, the Department had to consider at what level it would apply a pass-through analysis. In other words, would subsidies pass-through whenever any asset was sold or would the Department require that the sale involve something more than physical assets?

Citing the administrative infeasibility of allocating subsidies to each individual asset sold by a company, the Department established a minimum threshold, the productive unit. Although the Department did not define what constituted a productive unit, the Department allocated subsidies to the steel works and re-rolling mills that BrSC transferred to United Engineering Steels Ltd.

In these determinations, the Department continues to use the concept of productive unit as the minimum threshold to be met before it will reallocate prior subsidies received by the seller. At the same time, we have attempted to define the term.

Petitioners suggest that the threshold for defining a business or productive unit is whether the operation in question is capable of sustaining sales independently of the parent company. Petitioners also suggest that a business or productive unit involves the bundling of productive assets with other indicia of an operating company such as employees, customers, revenues, and liabilities. Another indicator of whether a business or productive unit exists, in petitioner's view, is if the assets are treated as a profit center because profit centers incur costs and generate revenues.

The Department considers this definition of a productive unit as too restrictive. It would limit the allocation of subsidies to only the largest asset sales, thereby overlooking a number of asset configurations which clearly benefit from the subsidies under investigation. Moreover, it could result in different treatment where identical assets were sold depending on whether a company had set up that part of its operations as a profit center or not.

In these investigations, the Department has adopted the following threshold for defining those situations in which prior subsidies are potentially allocable to the operation being spun off. In order to be considered a productive unit, the spun-off operation must be capable of (1) generating sales and (2) operating independently.

The allocation of subsidies when productive units, as defined above, are sold is consistent with the statute and is administratively feasible. By allocating subsidies to the sale of these assets, we are fulfilling the intent of the statute to capture subsidies benefitting the manufacture, production or exportation of merchandise. 19 U.S.C. section 1671(a)(1).

In adopting this definition, the Department is excluding what are commonly referred to as "bare assets." Among the totality of assets owned by a company, there will be many that are not related to the production, manufacture, or exportation of merchandise. The Department will not consider allocating subsidies to these assets, when sold, because the allocation of subsidies to these types of assets is not contemplated by the statute.

Subsidy Allocation on the Basis of Sales Value or Book Value of Assets Having clarified our definition of productive unit, we must next identify the basis upon which any subsidy pass-through is calculated. In U.K. Bismuth, the Department stated that pass-through benefits should be measured on the basis of sales values, i.e., when a productive unit was sold the portion of prior subsidies allocable to the productive unit was determined by the ratio of the sales attributable to the productive unit compared to the seller's total sales. However, because we lacked the appropriate sales information to perform this calculation, the Department resorted to asset values, i.e., the book value of assets in the productive unit divided by the total book value of the seller.

In these investigations, the Department has determined that asset values are the more appropriate basis upon which to measure the portion of the subsidy which potentially passes through. The amount of the potential pass-through subsidy is calculated by applying the ratio of the book value of the productive unit sold to the book value of the assets of the entire company at the time the productive unit is spun-off to the net present value of the remaining subsidies received by the company selling the productive unit. For further discussion of the Department's pass-through calculation, see the "The Calculation of the Portion of the Sale Price Allocable to Previously Received Subsidies" section below.

The Department's preference for using asset value derives from the refinements we have made in identifying a productive unit. Given our definition, the value of a productive unit's sales may not be identifiable. Unless the productive unit is also a profit center, it would be necessary to make various assumptions to allocate sales to a given productive unit. This "constructed" sales value would be artificial and administratively cumbersome. Use of book value eliminates this problem because a company will normally maintain records of book values.

The Calculation of the Portion of the Sale Price Allocable to Previously Received Subsidies. The Department has defined productive units and identified how we will calculate the

potential amount of prior subsidies that can pass through when a productive unit is sold.

Additionally, in these investigations, the Department affirms its determination in U.K. Bismuth that subsidies "travel to their new home" when a productive unit is sold. However, unlike the U.K. Bismuth case, we no longer assume that the entire amount of subsidies allocated to the productive unit follows the productive unit. Instead, consistent with the Department's position regarding privatization, the Department will analyze the spin-off and acquisition of productive units to assess what portion of the sale price of the productive unit repays prior subsidies given to the seller of the productive unit.

To perform the calculation, we first determine the amount of seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divided the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then applied this ratio to the net present value of the seller's remaining subsidies.

We next estimated the portion of the purchase price going towards repayment of prior subsidies by dividing the face value of the allocable subsidies received by the selling company for each year from 1977 through the year prior to the spin-off by that company's net worth in the same year. A simple average of these amounts was then applied to the purchase price of the productive unit.

Finally, to determine the value of subsidies remaining with the selling company, we subtracted the portion of the purchase price going towards repayment of prior subsidies from the amount of subsidies the productive unit could potentially take with it. We next divided this result by the total value of the seller's subsidies in the year of the spin-off. The future subsidy benefit streams of the seller were reduced by this ratio.

Country Specific Mergers, Acquisitions, and Spin-Offs and Subsidy Allocations. As stated above, these types of restructurings occurred in Austria, Sweden, and the United Kingdom.

In Austria, one of VAAG's subsidiaries was Bayou Steel, a U.S. steel company. Bayou Steel was sold by VAAG in 1986. As stated in the Denominator section of this Appendix, we have determined that funds VAAG received from the GOA benefitted Bayou Steel. Therefore, the sale of this subsidiary requires that we allocate a portion of VAAG's previously received subsidies to Bayou Steel and reduce the amount of VAAG's subsidy, accordingly.

The Department, however, has not made this adjustment. At verification, the Department attempted to collect data from the respondents regarding the sale price of Bayou Steel. Respondent did not provide this information. Lacking this information, the Department cannot allocate a portion of the sale price to repayment of subsidies and cannot reduce the amount of subsidies remaining with VAAG.

In Sweden, the respondent, SSAB, received subsidies which were tied to specific products. The productive units producing these products were sold by the company prior to the period of investigation. For example, SSAB received a grant for an engineering workshop which it no longer owns. It also received specific subsidies for various projects at certain mines which it no longer owns.

The Department has concluded that, although a grant SSAB received was tied to the engineering workshop it no longer owns, the activities of the workshop may have benefitted the subject merchandise. Therefore, the grant has been included in calculating SSAB's subsidy. Consequently, when the workshop was sold, we allocated a portion of SSAB's subsidies to the engineering workshop according to the methodology described above. The future subsidy benefit streams of SSAB have been adjusted to reflect the sale of this productive unit.

The Department also considers the subsidies SSAB received for mines, which it no longer owns, to be tied to the mines. However, because these mines produced an input product for SSAB's production of the subject merchandise, the subject merchandise benefitted from these subsidies. Therefore, these grants have been included in SSAB's subsidy. However, we have not allocated subsidies to the mines that were sold. Because they were "sold" to the Government of Sweden, we do not consider this a legitimate "sale" for purposes of allocating subsidies. Therefore, we have not reduced SSAB's subsidies to reflect a payback of subsidies through the sale of its mines. For identical reasons, we have not adjusted SSAB's subsidies for the sale of the TGOJ railway.

Between 1979 and 1991, SSAB also sold to unrelated parties, or contributed to various joint ventures, a number of productive units. Pursuant to the methodology described above, we have allocated a portion of SSAB's subsidies to these productive units. Accordingly, we reduced the future subsidy benefit streams of SSAB.

In the U.K. case, respondent's predecessor, BSC, spun off a large number of productive units. For each transaction in which a productive unit was sold or contributed to a joint venture, we allocated a portion of BSC's subsidies to these productive units. Accordingly, we reduced the future subsidy benefit streams of BS plc.

C. Corporate Restructuring Through the Closure of Plants. The closure of plants or productive facilities is another type of corporate restructuring. It is distinguishable from the merger, acquisition or spin-off analysis because there is no sale or transfer of a productive unit. In this case, the productive unit is simply shut down.

There are two issues relevant to the closure of plants or other productive facilities. The first relates to the allocation of previously bestowed general subsidies provided to a company prior to the closing of certain productive facilities. The second relates to payments made to a company by the government for the express purpose of closing certain productive facilities.

The Allocation of Previously Received Subsidies to Plants. The Department maintains its position that subsidies are not extinguished either in whole or in part when a company closes facilities. Rather, the subsidies continue to benefit the merchandise being produced by the company. The rationale underlying this position is that once inefficient facilities are closed, the company can dedicate its resources to production at its remaining facilities. Thus, subsidies do not diminish or disappear upon the closure of certain facilities but rather are spread throughout, and benefit, the remainder of the company's operations.

This situation is present in the current investigation of certain products from Spain. In these final determinations, the Department found that all previously bestowed subsidies to AHM (which included one hot-rolled facility and one cold-rolled facility) flowed to the cold-rolled facility when the hot-rolled facility was closed down.

The Department's position on plant closure is supported by the CIT's finding in (*BSC I*) that "the competitive benefit of funds used to acquire assets does not cease upon the assets' premature retirement, but rather such benefit continues to contribute to the firm's manufacture, production or exportation of products accomplished by the firm's remaining assets." (*BSC I* at 295–296)

Payments for Plant Closure. The Department has determined in the past that subsidies which are used to shut down redundant facilities are countervailable because they relieve the

VOL 58 ISS 130 JL 9 1993 UMI

company of a financial burden. This was confirmed by the CIT in *BSC I*. In that decision, the Court stated that "The apparent purpose of "restructuring" *viz.*, closing obsolete facilities, eliminating excess capacity and laying off unnecessary workers, is to reduce costs and enhance the competitiveness of the remaining enterprise." (*BSC I*, at 293).

Therefore, the Court determined that the closing of plants resulted in the increased efficiency of the company as a whole. In turn, the increased efficiency makes the company more competitive. It necessarily follows that closure subsidies benefit a company's remaining production beyond the year of receipt. The basis for finding funds for government-directed plant closure countervailable is that these funds relieve the company of the costs it would have incurred in closing down the plant. Therefore, because the company has been relieved of a cost, the funds benefit the company as a whole, and the appropriate denominator for calculating the benefit of such funds would be total sales of all products.

In the current steel investigations, the issue of the countervailability of closure payments for plants which do not produce subject merchandise has been raised in the case of Italy. It has been argued that because plant closure results in the reduction of capacity, subsidies that promote such reduction cannot fall into the category of benefitting the manufacture, production or export of subject merchandise. However, as stated above, the Department's determination reflects the fact that once inefficient facilities are closed, the company can dedicate its resources to the efficient production of the remaining facilities. Therefore, closure payments for plants producing subject and non-subject merchandise alike are countervailable.

Interested Party Comments

All written comments submitted by the interested parties in these investigations regarding restructuring issues which have not been previously addressed in this notice or in other notices are addressed below.

Comment 1: Petitioners claim that in U.K. Bismuth, the Department properly focused on subsidy benefits to merchandise, and not on any alleged benefits to the owner of the productive units generating the merchandise. As in privatization, therefore, petitioners suggest that given (1) the language of the statute describing the countervailing of "subsidies" to merchandise, and (2) the definition of a subsidy followed by the Department, a change in ownership of a productive unit does not justify a reallocation of the subsidies to other merchandise.

Petitioners claim that because a change in ownership does not cause a reallocation of resources within the national economy and eliminate the distortion caused by the original subsidy, the subsidy continues to exist and benefit the same merchandise it benefitted prior to the sale. They contend that, even if the sale occurs at a fair market price, the sale does not result in a reallocation of resources. The distortion to the market for the merchandise continues because the productive units would not have existed without the subsidy.

Petitioners contend that *BSC II* does not support respondents' proposition that the CVD law is concerned with off-setting benefits to producers, as opposed to merchandise. Petitioners also contend that respondents' argument that the Department is required to "provide any analysis of how the past subsidies are benefitting the current producer of the subject merchandise" misstates the law and shows a basic misunderstanding of the statute. The Department is neither required nor permitted to determine in each year over which a benefit is amortized whether the competitive benefit continues to have an effect.

Respondents argue that past subsidies do not continue to benefit a productive unit once it is sold at a market price to an independent company. Respondents disagree with petitioner that subsidies benefit productive units or the merchandise produced by productive units. Respondents instead argue that subsidies only benefit the producer of the merchandise that actually received the subsidies.

Respondents submit that once a productive unit is no longer a part of the subsidized company, the productive unit no longer enjoys the lower costs that were a result of the subsidized company's lower capital costs. Accordingly, any future merchandise from this productive unit should not be subject to countervailing duties (unless the productive unit was not purchased at a market price).

DOC Position: The basic arguments raised here regarding the distortion caused by subsidies and whether subsidies benefit "products" or "producers" are identical to the arguments filed on privatization. We have addressed them in that context. See the Privatization section of this Appendix.

Comment 2 (Austria): Petitioners argue that, following the 1987 restructuring of the Austrian steel industry, the benefits from subsidies previously given to VAAG passed through to VA Linz. The subsidies benefitted not the companies, but rather the manufacture, production, and export of the subject merchandise by VAAG (pre-1987) and VA Linz (post-1987). The Department should, therefore, follow the precedent established in U.K. Bismuth and consider the benefits to have followed the productive unit (i.e., VA Linz).

Moreover, in calculating the benefit passed through by VAAG to VA Linz, petitioners argue that the amount of the benefit need not be adjusted for the disposal of any assets, as was done in U.K. Bismuth, since VAAG made no significant dispositions.

To determine the amount of subsidy benefits passed through to VA Linz, petitioners assert that the Department should use the ratio of the 1986 sales attributable to VA Linz (when it was a division of VAAG) to VAAG's unconsolidated 1986 sales. Petitioners argue that VAAG's unconsolidated sales should be used because its subsidiaries would not have benefitted from subsidies provided to VAAG.

Petitioners assert that Austrian Industries (AI) is not the corporate successor to VAAG and its sales should not be used as denominator for calculating the net subsidy. AI and VAAG are very different companies and cannot be equated. Petitioners also argue that the use of assets, instead of sales, to apportion past subsidy benefits has not been adequately justified by respondents.

Respondents contend that the VAAG annual reports do, in fact, identify significant asset dispositions prior to restructuring. This information was not provided in the response because the Department did not ask for it. However, since the issue of asset dispositions became relevant only after the final determination in U.K. Bismuth, the Department should request this information.

Respondents further argue that if the Department decides not to treat AI as the successor to VAAG, it should allocate subsidies received by VAAG to VA Linz using assets, not sales. However, if the Department chooses to allocate according to sales, it should use VAAG's consolidated sales as the denominator since VAAG's subsidiaries did benefit from subsidies to VAAG. In fact, respondents assert, it is because some of these subsidiaries suffered very large losses that the GOA provided funds to VAAG.

DOC Position: See sections I. A. and B. of the Restructuring discussion above. If the Department had been provided adequate information regarding the sale of productive units

prior to restructuring, the Department would have allocated a portion of previously received subsidies to those productive units. Respondents have made the general statement that there were sales of assets prior to restructuring. With the exception of Bayou Steel, however, respondents have provided no information regarding the assets which were sold. With respect to Bayou Steel, respondents failed to provide its sales price, despite the Department's request at verification. Therefore, the Department has not allocated any portion of VAAG's subsidies to assets it sold.

We agree with petitioners that AI is not a successor to VAAG as AI owns more and different businesses than VAAG. Instead, to calculate the benefit for the subject merchandise, we apportioned the benefit received by VAAG on the basis of the ratio of VA Linz's assets to VAAG's unconsolidated assets. We used VAAG's unconsolidated assets because we attribute the benefit from subsidies received by VAAG to the productive operations contained within VAAG, not to the production of any of its subsidiaries. VA Linz's sales for the POI were used to calculate the net subsidy.

Comment 3 (Austria): Respondents argue that since Bayou Steel was sold by VAAG in 1986, the Department cannot consider the subsidies given to Bayou Steel as currently benefitting VA Linz. In U.K. Bismuth, the Department determined that components of previously subsidized companies which are subsequently disposed of take a portion of the benefits with them. Respondents assert that to continue to attribute subsidy benefits to VA Linz which were provided to Bayou Steel would be entirely inconsistent with the Department's above-mentioned methodology.

Respondents request that the Department reject petitioners' arguments that subsidies do not follow productive units that are closed down or sold outside of the country that provided the original subsidy because these arguments are economically and legally illogical.

Petitioners assert that the precedent from U.K. Bismuth does not apply with respect to Bayou Steel. Bayou Steel was not an operating unit of VAAG, but merely a project of VAAG's engineering division which VAAG was forced to operate when the prospective buyers defaulted. Petitioners argue that because funds may have been used to support the Bayou project, they necessarily benefitted VAAG's engineering division and, thus, VAAG as a whole. In addition, petitioners assert that since Bayou Steel was spun off during the restructuring, not before, there is no need to adjust for subsidies previously passed-through.

DOC Position: See the Denominator section of this Appendix for a discussion of whether subsidies may be attributed to foreign subsidiaries.

For the years 1983, 1984, and 1986, the Department has determined that the subsidies which VAAG received benefitted its worldwide operations. Therefore, it would be appropriate to allocate a portion of VAAG's subsidies in these years to the productive units sold by VAAG, regardless of their location. However, as stated in the DOC Position to Comment 1, and in section I.B. of the Restructuring discussion, we have not made this adjustment.

Additionally, whether the sale of Bayou Steel occurred prior to or during VAAG's restructuring, it would not have affected that Department's decision to allocate subsidies to it or the portion of VAAG's subsidies which it potentially could have taken with it.

Comment 4 (Austria): Petitioners argue even if the Department finds that the 1981–82 equity infusions were, in fact, given to VEW, these infusions benefitted VAS when it was formed out of the "bare shell" of VEW. Despite the fact that the productive operations of VEW (Böhler and Scholler Bleckmann) were sold off, the subsidies given in 1981–82 were passed through to VAS through the assets remaining with VEW.

DOC Position: As stated above in section I.A., the Department has determined that the benefit from these infusions is tied to the merchandise produced by VEW's subsidiaries. The intent of the statute is to countervail those subsidies benefitting the manufacture, production or exportation of merchandise. See U.S.C. § 1671(a)(1). Because VEW spun off its productive units to its subsidiaries and became a "bare shell," no subsidies resided in VEW when it became VAS. Rather, all previously received subsidies remained with its former subsidiaries, Böhler and Scholler Bleckmann.

Comment 5 (Italy): Falck claims that closure payments do not fit the Department's definition of a subsidy because they are provided for the reduction of productive capacity, rather than for the manufacture, production or export of the subject merchandise. Respondent argues that where the Department previously determined that closure payments were countervailable, it was based on a finding that the capacity reductions increased the recipient company's efficiency and eliminated unprofitable or unproductive facilities.

In this instance, respondent states that no evidence exists on the record that the payments it received reduced its inefficiency, improved its efficiency, kept it from incurring closing costs it would have otherwise incurred, or provided a benefit which it would not have realized if its plants had stayed open. In fact, respondent asserts that it was operating efficiently, and cites as evidence of this the Department's preliminary determination that it was creditworthy for certain years.

Citing Final Affirmative Countervailing Duty Determinations: Stainless Steel Sheet, Strip and Plate from the United Kingdom, 48 FR 19048 (April 27, 1983), respondent adds that if the Department determines that closure payments are countervailable, the closure payments should be allocated over Falck's total sales of all products.

Petitioners argue that Falck's remaining facilities, not the closed facilities, benefitted from the closure payments. They claim that Falck's overall efficiency was increased by the closure. Petitioners further argue that the Department's preliminary determination of Falck's creditworthiness during those years is irrelevant. A more significant indicator is the fact that Falck lost money in each of the years that the company received the closure payments, thereby indicating that not all of its facilities were making money and operating near capacity. Petitioners maintain that absent the closure payments, the company would have had to bear either the costs of closing these facilities or the cost of maintaining inefficient operations.

DOC Position: See section I.C. of the Restructuring discussion above. Moreover, Falck is effectively asking the Department to trace the use and effect of subsidies received for plant closure. See the Privatization section of this Appendix for an elaboration as to why the Department rejects this argument.

Comment 6 (Germany): Respondent argues that the Department should have allocated the benefit of the debt forgiveness over the sales of Saarstahl AG rather than the total sales of Dillinger Hütte Saarstahl AG (DHS) because the forgiven debt was incurred with respect to Saarstahl's sales, which are not subject to this investigation. Furthermore, respondent argues that the Department should not consider any benefits bestowed upon Saarstahl's predecessor companies to have passed through to the new entity DHS because Saarstahl SVK was privatized in an arm's length transaction which involved a change of majority ownership and control.

VOL 58 ISS 130 JL 9 1993 UMI

Petitioners argue that the creation of the holding company DHS, which placed both Saarstahl AG and Dillinger under the same ownership, should not extinguish the subsidies provided to the predecessor of DHS, i.e., Saarstahl SVK. Petitioners state that this transaction was a mere restructuring of Saarstahl SVK's assets. Accordingly, the Department should continue to find Saarstahl SVK's debt forgiveness by the Government of Germany and the Government of Saarland countervailable. Petitioners state that this would be consistent with the Department's Germany Bismuth.

Petitioners maintain that the subject merchandise produced by Dillinger received a benefit through the debt forgiveness because DHS is the holding company, and the true beneficiaries of the forgiveness were its production subsidiaries. Furthermore, without the forgiveness, DHS would have been liable for this debt. Therefore, petitioners argue that the Department should conclude in its final determinations that Dillinger received a countervailable benefit resulting from the debt forgiveness.

DOC Position: The Department determined in Germany Bismuth that this debt forgiveness was allocable to DHS because the restructuring would not have occurred but for the government's intervention. However, the Department's decisions in these final determinations regarding privatization and restructuring have caused us to revisit our earlier analysis of the creation of DHS. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany, which is published concurrently with this Federal Register notice, for a complete description of the restructuring.

The Department has determined that the April 1989 agreement between the Government of Saarland and Usinor Sacilor constitutes a sale of Saarstahl by the Government of Saarland to DHS. In this transaction, the Government of Saarland sold one hundred percent of Saarstahl SVK in return for a 27.5 percent interest in DHS.

Therefore, the Department applied the calculation methodology described in the Privatization section of this Appendix. Because the portion of the sales price allocable to previously received subsidies was less than the maximum amount of the potential subsidy passed through, the Department attributed the remaining amount of the subsidies to DHS.

Comment 7 (New Zealand): The responderts allege that the GONZ's actions during the Reconstruction and Reconstruction Consolidation were specifically tied to the production of non-subject merchandise. All of the debt at issue was incurred to establish the NZS Development semifinished and hot- and cold-rolling production lines. Likewise, the NZS debt assumed by the GONZ in exchange for preference shares had been obtained specifically to finance continued work on the new hot- and cold-rolling facilities. As a result, the Department must follow its long-standing practice of allocating any subsidy that may exist entirely to hot- and cold-rolled steel, as only those facilities could have received any conceivable countervailable benefits from the GONZ's actions.

Petitioners contend that from its inception, NZS Development was set up to construct hot- and cold-rolling mills that would bridge the gap between producing semi-finished and galvanized products, and establish NZS as a fully integrated steel company. Therefore, they argue that the benefit bestowed by the GONZ when it assumed NZS Development's liabilities in 1985 benefitted the manufacture, production, or exportation of the subject merchandise.

DOC Position: We disagree with respondents. The GONZ participated in a construction project, NZS Development, aimed primarily at the overall expansion of the production facilities of the existing company, NZS. As a result of the project, NZS was to increase its iron and steel making facilities and expand the range of its products in the semi-finished, intermediate, and finished product areas. We have, therefore, determined that the subsidy bestowed by the GONZ upon NZS Development and NZS through its equity infusion and subsequent debt relief benefitted NZS directly because NZS became an integrated producer as a result of the project. We find that the subsidy was not tied to a specific type of merchandise.

As a general rule, subsidies will be allocated across all sales of the company receiving the subsidy (Proposed Regulations at 355.47(c)). Only if the agency determines that benefits were tied to the production or sale of a particular product or products will it allocate those benefits to the sale of those products only (Proposed Regulations at 355.47(a)). In the instant case, we have determined that the subsidies in question consist of debt relief and equity infusions to NZS and NZS's wholly-owned subsidiary NZS Development. These subsidies, by definition, benefit the company as a whole and are allocated over total sales.

Comment 8 (New Zealand): The respondents argue that the petitioners' failure to allege or demonstrate the existence of an upstream subsidy does not allow the Department to investigate whether any upstream subsidies are passed through to the galvanizing line as a result of the GONZ's prior involvement in NZS Development's hot- and cold-rolling facilities.

DOC Position: We disagree with respondents. As discussed in the previous comment, the Department has determined that the subsidies in question are untied and should be allocated to NZS's total sales. The Department has repeatedly held that equity infusions benefit all aspects of a firm's activities (see Industrial Nitrocellulose from France). Therefore, NZS's invocation of the upstream subsidies provisions of 19 U.S.C. section 1677–1 is misplaced.

Comment 9 (New Zealand): The respondents maintain that since the petitioners have not demonstrated that the subsequent completion and commissioning of the NZS Development's assets has encouraged or otherwise affected either the production or exportation of NZS's corrosion-resistant steel, it would be unreasonable to allocate any such benefits over NZS's galvanized steel products. NZS's capacity to produce corrosion-resistant steel has remained essentially constant since the original equipment was constructed in 1968. Therefore, there is no benefit to the subject merchandise.

DOC Position: We disagree with respondents that because the galvanizing capacity of New Zealand Steel may not have changed as a resu of the project, no benefit was bestowed on the manufacture or exportation of subject merchandise. The development project transformed NZS into a fully integrated steel producer. Furthermore, the expanded manufacturing facilities directly affected the substrate of the galvanized product in several very important respects: cost, quality, and delivery time. Therefore, we stand by our determination that the government's participation in the development project and its subsequent relief of the outstanding debt related to that project directly benefitted NZS total production, included the subject merchandise.

Comment 10 (Spain): Respondents assert that, if the Department allocates subsidies received by AHM only to ENSIDESA's sales of cold-rolled steel, it should include in the denominator the electro-zinc plated products that are also produced by SIDMED at the cold-rolling mill in the denominator. Also, as of July 1991, 32.5 percent of SIDMED

was sold to SOLLAC. Therefore, any subsidies should be diluted by this percentage.

Petitioners contend that AHM's subsidies should not be diluted by SIDMED's production of electro-zinc plated steel products because there is no verified information on the record to support its contention. Nor should SIDMED's subsidies be apportioned between ENSIDESA and SOLLAC (the French company that acquired a 32.5 percent interest in SIDMED in 1991) because the purchase of equity is irrelevant to the benefit provided.

DOC Position: As discussed above, we have determined that benefits received by AHM passed-through to ENSIDESA when ENSIDESA acquired SIDMED. Since we divided the benefits to AHM by total ENSIDESA sales, respondents' first comment is moot.

We agree in principle with respondent that SOLLAC's purchase of a minority stake of SIDMED from ENSIDESA, may require the allocation between SOLLAC and ENSIDESA of previously received subsidies. However, we do not have adequate information to analyze this transaction and, if appropriate, allocate the prior subsidies.

Comment 11 (United Kingdom): Petitioners argue that respondent failed to provide sales data for those disposals or joint ventures which may actually involve a business or productive unit, despite its likely possession of such information. Petitioners claim that much of the information is easily available to respondent in its own annual reports. Considering respondent's failure to provide adequate information in response to the Department's inquiry, as the best information available, the Department should consider only those dispositions for which sales figures are available as being eligible for subsidy pass-through.

Respondent argues that it informed the Department that it was unable to provide desegregated financial data on individual assets and productive units because (1) it was not given the definition of "productive unit" and (2) to provide data on individual asset transactions, some of which were nearly 12 years old, would have been impossible before the due date. Furthermore, respondent argues that the information cited by petitioners in the annual reports concerning the sales data for joint ventures and disposals is ten or more years old and is not audited. Moreover, preparation for verification of this information was not possible within the time given. According to respondent, the asset book values verified by the Department are the best information available.

DOC Position: Because the Department has decided to use asset value rather than sales value in its allocation of subsidies to productive units, x2petitioners argument that BS plc failed to provide sales information for some of the assets that BSC sold is not relevant. See section I.B. of the Restructuring discussion above.

We have allocated a portion of BSC's subsidies to those productive units which it reported as sold. We used the book value of assets sold to unrelated parties or transferred to joint ventures in which BSC held an interest of fifty percent or less or over which BSC had relinquished managerial control. These amounts were reported in BSC's audited financial statements.

Comment 12 (United Kingdom): According to petitioners, where a parent company disposes of a majority-owned affiliate of which it owns less than 100 percent, only that portion of the subsidies attributable to the parent company's interest in a productive unit should be passed through—the remainder must remain with the parent. Therefore, according to petitioners, in calculating the pass-through of subsidies where BSC disposed of partially-owned subsidiaries, the Department must be certain to adjust the sales of the subsidiary, and thus the allocation of subsidies, to reflect BSC's less than 100 percent ownership.

DOC Position: However, it is reasonable to assume that when BSC reported the value of the assets sold, it was reporting only that share of the affiliate which it owned. This is because BSC cannot sell someone else's assets. Therefore, we believe the adjustment sought by petitioners is implicit in our methodology because we calculated the potential amount of subsidies passed through to the spinoffs using the ratio of book value of BSC's assets spun off to total book value of BSC.

Comment 13 (United Kingdom): The ownership position of BSC/BS plc in various of its joint ventures changed between the time of their formation and the review year. Petitioners stress that the Department should not consider an additional pass-through of subsidies for each new sale of an interest in these joint ventures. According to petitioners, the Department should not set a precedent for allocating additional subsidies each time a new portion of ownership of a related company is sold. Petitioners argue that this would be administratively inconvenient and that share ownership is irrelevant—the unit continues to benefit from the full amount of the subsidy properly allocable to it before the transfer.

DOC Position: The Department determines that a change in ownership position, whereby a company's percentage of ownership fluctuates over time, is not a *bona fide* spin-off. Therefore, we did not perform the spin-off calculation with regard to change in ownership position.

[FR Doc. 93–15629 Filed 7–8–93; 8:45 am]
BILLING CODE 3510-DS-F

[C–423–806]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Vince Kane, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2239 or 482–2815, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Belgium of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the notice of preliminary determinations in the **Federal Register** (57 FR 57750; December 7, 1992), the following events have occurred.

On December 9, 1993, we issued an additional supplemental questionnaire to all respondents. We issued one more clarification questionnaire to Fabrique de Fer de Charleroi ("Fabfer") on January 6, 1993. Responses to both questionnaires were timely received.

From January 25 to February 11, 1993, we verified responses of the Government of Belgium (GOB) and companies—Sidmar N.V. ("Sidmar") and its related service center; Fabfer; and Forges de Clabecq ("Clabecq").

On February 26, 1993, the Department returned to the GOB its February 11, 1993, submission in accordance with the Department's policy that "new" information presented during verification must be filed at Department headquarters in Washington, DC, within

two days after its presentation at verification.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935). On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see, Suspension of Liquidation section, below).

On April 12 and 16, 1993, we received case and rebuttal briefs from both petitioners and respondents. On April 15, 1993, we returned to the GOB exhibits from its case brief as untimely submitted new factual information. Case-specific and general issues hearings were held on April 19, and May 5–6, 1993, respectively.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following three separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate as defined in the Scope Appendix to the **Federal Register** notice for the companion Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria.

Injury Test

Because Belgium is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from Belgium materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Belgium of the subject merchandise (57 FR 38064; August 21, 1992).

Respondents

The GOB is a respondent for each class or kind of merchandise subject to these investigations. The following is a list of respondent companies for each class or kind of merchandise:

Certain Hot-Rolled Carbon Steel Flat Products:
Sidmar, Cockerill Sambre ("Cockerill"), and Clabecq
Certain Cold-Rolled Carbon Steel Flat Products:
Sidmar and Cockerill
Certain Cut-To-Length Carbon Steel Plate:
Clabecq, Fabfer and Cockerill

Best Information Available ("BIA")

Section 776(c) of the Act requires the Department to use best information available (BIA) "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation. * * *"

One of the steel companies included in these investigations, Cockerill, did not respond to our countervailing duty questionnaire. On October 19, 1992, the GOB filed a partial response on the company's behalf. In cases where the government responds on behalf of a non-responding company, we have determined that we will use the government's response to the extent that it serves to establish non-use of certain programs by the company and/or to the extent that it serves to establish that certain programs used by the company are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries.

While we were able to verify Cockerill's non-use of certain programs, we have no verified information relating to Cockerill's use of the remaining programs. For those programs which Cockerill has used and which are specific, we have used BIA in determining to what extent Cockerill benefitted from the program. In light of Cockerill's refusal to participate in these investigations, we have applied BIA using the most adverse assumptions, i.e., using the highest rate among petitioners' rates or previous investigation and review rates on a program by program basis.

We are using petitioners' rates as they are calculated in their submissions to the extent that these rates are methodologically sound. We have reviewed petitioners' calculations and determined that the majority are methodologically reasonable. In those cases where petitioners' calculations are based on an unreasonable methodology, we have adjusted them accordingly or used the higher of the other companies' calculated rates, and rates from previous investigations or reviews.

For those programs for which we were able to verify Cockerill did not use the program or that the program was non-specific, we have adjusted the calculations accordingly. Additionally, in cases where we have verified non-company-specific information (e.g., program interest rates, interest rebate percentage, benchmark interest rates, etc.) we have used this information to adjust the petitioners' calculations.

Where the Department has changed its methodology, as discussed in the General Issues Appendix published concurrently with these determinations, we have not adjusted the petitioners' calculations. Notwithstanding our view that the methodological changes described in the General Issues Appendix represent the most accurate and appropriate methods for identifying and measuring the types of subsidies at issue in these investigations, we do not believe it is necessary to reconfigure the methodological assumptions underlying the petition for purposes of applying BIA. The petitioners' allegations were calculated on the basis of methodologies which were in effect at the time the allegations were made. Since BIA need not represent the most accurate information, but rather is merely a choice of information available on the record of the investigation, we have determined that modification of BIA rates to reflect new methodological thinking is unwarranted.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues;
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of these determinations, the period for which we are measuring subsidies (the period of investigation (POI)) for Sidmar is calendar year 1991, which corresponds to its fiscal year. For

Clabecq and Fabfer, the POI is July 1990 through June 1991, which corresponds to their respective fiscal years. For Cockerill, we are using calendar year 1991.

Calculation of Country-Wide Rate

In determining benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. The rates for programs were summed to arrive at a country-wide rate for each class or kind of merchandise.

Pursuant to 19 CFR 355.20(d) of the Department's regulations, for each class or kind of merchandise, we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rate for Cockerill was significantly different from the country-wide rate for all three classes or kinds of merchandise. With respect to cut-to-length plate, Fabfer's rate was also significantly different from the country-wide rate. Therefore, these firms received individual company rates. For the remaining firms, we recalculated the country-wide rate, based only on benefits received by these firms. We then assigned recalculated overall country-wide rates to remaining firms and all other manufacturers, producers, and exporters.

Equityworthiness

Petitioners have alleged that Sidmar was unequityworthy in 1984, Clabecq from 1980 to 1988, and Cockerill from 1980 to 1989; therefore, equity infusions received during those years were inconsistent with commercial considerations. We did not initiate an investigation on petitioners' allegation that Sidmar was unequityworthy because the petition did not contain sufficient evidence to support the allegation. Because Clabecq's and Cockerill's shares are publicly traded, the market price serves as a benchmark price for the value of the shares. Therefore, we have not made an equityworthiness determination for these companies.

Creditworthiness

Petitioners have alleged that Sidmar was uncreditworthy in 1984, Clabecq from 1980 to 1988, and Cockerill from 1980 to 1989. We did not initiate an investigation on petitioners' allegation that Sidmar was uncreditworthy because the petition did not contain sufficient evidence to support the allegation.

Both Cockerill and Clabecq were determined to be uncreditworthy from 1978 to 1981 in Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium 47 FR 39304, (September 7, 1982) (Belgian Steel). Because we have no new information that would lead us to reconsider these determinations, we are again considering the companies to be uncreditworthy during these years. We find Cockerill to be uncreditworthy from 1982 through 1989 based on information contained in the petition, as best information available.

We find Clabecq to be uncreditworthy from 1982 through 1989. From 1979 through 1986, the period three years prior to those years being investigated, Clabecq barely covered, or was unable to cover, interest expenses. In the same years, Clabecq's current assets barely covered current liabilities. For a more detailed explanation of the Department's methodology, please see the Department's memorandum concerning the equityworthiness and creditworthiness of the Belgian steel companies, on file in Room B–099 of the Main Commerce Building.

Related Company

On November 19, 1992, at the Department's request, Sidmar filed a response to our countervailing duty questionnaire on behalf of six related companies. One of these companies, a 99.99 percent-owned steel service center, received benefits from the following programs during the POI:

- Cash Grants/Interest Subsidies under the 1970 Law
- Accelerated Depreciation
- Real Estate Tax Exemption

In calculating Sidmar's subsidy rate, we have included the full amount of benefits received by the service center it acquired. If the appropriate information were available, the Department would have analyzed this acquisition in accordance with the methodology outlined in the Corporate Restructuring section of the General Issues Appendix to determine the portion of the subsidy which passed through to Sidmar. With respect to Sidmar's denominator, we have included the service center's sales for purposes of calculating the subsidy rate.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Belgium of certain steel products under the following programs:

1. *Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970.* The Economic Expansion Law of December 30, 1970 (the 1970 law), offers incentives to promote the establishment of new enterprises or the expansion of existing ones which contribute directly to the creation of new activities and new employment within designated development zones. Although funding for programs under the 1970 Law is from the GOB, the provisions of the 1970 Law are implemented and administered by regional authorities of the Belgian government. Effective January 1, 1986, steel companies in Belgium were precluded by Decree number 3984/85 of the Commission of the European Communities from receiving benefits under the 1970 Law, with the exception of certain explicitly authorized benefits.

Parties have argued the appropriateness of "linking" the 1970 Law with the 1959 Economic Expansion Law (the 1959 Law), under the Department's integral linkage test, to determine the amount of benefits conferred by the 1970 Law. The 1959 Law was found to be non-specific in Belgian Steel and, thus, not countervailable. As stated in the DOC Position to the comment addressing this issue below, we have determined that the integral linkage test applies only to those cases where the issue of specificity is in question. However, with respect to benefits granted under the 1970 Law, the question of specificity is not an issue. This law provides benefits specifically to firms in certain regions of the country. Therefore, we determine benefits provided under this law are provided to a specific enterprise or industry or group of enterprises or industries.

Having found the 1970 Law specific, it is necessary to determine the extent of the benefit provided by the 1970 Law. We have concluded that, absent the 1970 Law, most of the benefits provided under this law would be available under the 1959 Law. The only difference would be the level of benefit received. Therefore, we have determined it appropriate to countervail benefits provided under the 1970 Law only to the extent that they exceed benefits available under the 1959 Law. This approach is consistent with our treatment of tiered levels of benefits, see, for example, Final Negative Countervailing Duty Determination: Certain Granite Products from Italy, ("Granite") 53 FR 27197 (July 19, 1988).

Fabfer, Cockerill, and Sidmar received cash grants for capital equipment under this program to be used in basic steel production. Based on the methodology

outlined in the Allocation section of the General Issues Appendix, we found these benefits to be nonrecurring. Furthermore, where benefits to the companies were below 0.5 percent of sales in that year, we expensed the grants in year of receipt. Thus, Sidmar received no benefit during the POI.

For Fabfer and Cockerill, we allocated the benefit over the average useful life of the renewable physical assets in the steel industry, i.e., 15 years (see, the Allocation section of the General Issues Appendix). As our discount rate, we used where possible, company-specific rates, or in the alternative, the long-term fixed rates of Kredietbank, a Belgian private bank. For a further discussion on the topic of the benchmark and discount rates used for purposes of these final determinations, see, DOC Position to the comment addressing this issue below.

Finally, we divided the benefit allocated to 1991 by total 1991 steel sales made by the respective companies, since these benefits are tied to steel assets. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. As stated earlier, Cockerill and Fabfer have significantly different aggregate benefits. Therefore, we calculated an estimated net subsidy of 0.11 percent *ad valorem* for Cockerill and 0.46 percent *ad valorem* for Fabfer for each class or kind produced by each company.

Sidmar also received interest rebates on several loans received and repaid prior to the POI. Because Sidmar knew at the time the loans were received that its interest costs over the life of the loan would be reduced by interest subsidies provided under the 1970 Law, we are treating these interest subsidies as we would treat a reduced rate loan. Consequently, since these loans were not outstanding during the POI, we determine that Sidmar received no benefit from the program. We are assuming that Cockerill used this program based on BIA. We note that petitioners' BIA rate for this program was included in their BIA rate for Cash Grants under the 1970 Law. Therefore, we are not assigning an additional BIA rate for this sub-part of the program.

2. *Government Funding of Early Retirement Pensions.* The early retirement system was established as a result of the lengthy economic recession triggered by the first oil crisis. To alleviate the social hardships stemming from the recession, Collective Labor Convention ("CLC") Number 17 of the National Labor Council provided for additional allowances over and above unemployment benefits for certain laid-off workers over 60 years of age for all industries. Subsequently, the minimum age for requirement was changed to age 55. The amount of the allowance provided for by the Convention was at least one half of the difference between the worker's reference salary and the unemployment benefit. The allowance is to be paid by the last employer, which assumes a contractual obligation for up to 15 years.

Because of the large numbers of steel workers and the massive restructuring of the steel industry, a CLC was negotiated in 1978 specifically for steel companies. This steel CLC exempted steel companies from replacing prepensioned workers until 1990. Also under this steel CLC, steel company workers and employees retiring early receive a special additional allowance of BF2,500 per month.

We have determined that the steel companies have received two types of benefits under these programs. First, under the country-wide CLC 17, companies are clearly obligated to replace their pre-pensioned employees. One aspect of the steel CLC, however, is to allow steel companies to retire workers without replacing them. Therefore, the company is relieved of the obligation and costs associated with hiring and paying new workers until 1990 and is receiving a countervailable benefit from this portion of the program.

We have determined this first type of benefit to be recurring based on the criteria outlined in the Allocation section of the General Issues Appendix. However, we do not have sufficient information on the record to calculate the subsidy. Furthermore, this benefit has not been investigated in prior cases. As a result, we have found a countervailable subsidy, but we have no method by which to calculate the benefit. Given these circumstances, we have determined, absent any other information on the record, it is appropriate to apply a rate that is above *de minimis*. Therefore, we have assigned a rate of 0.50 percent *ad valorem* for this portion of the program.

Secondly, CLC 17 states what all companies in Belgium must pay to prepensioned employees. In the steel CLC, the GOB agreed to help steel companies meet these payments. Since only steel companies are receiving this government assistance to pay the early retirement costs required of all companies, we determine there is a countervailable benefit.

However, the assumption of the BF2500 per week must be differentiated from the assumption of the normal early retirement costs that all companies are required to pay. This additional payment to the workers arose as a result of the steel CLC. The government participated in the negotiation of this CLC and agreed to cover the cost of these payments. As such, the payment was never the obligation of the company. This decision is consistent with the Department's determination in Final Determination of Carbon Steel Wire Rod from Belgium, 47 FR 42403 (September 27, 1982). In that case, the Department investigated the government reimbursements for the additional BF2500. They were not countervailed because the additional payment was not a cost that the company would ordinarily incur.

However, because of the way the information was presented in this case, we are not able to break-out Government payments that served to reimburse the steel companies for the additional BF2500 per week. This is because the government not only reimbursed the companies for this amount, but it also covered a portion of the payments for which the companies were legally obligated and only the total amount of government payments was reported. Therefore, we have countervailed the entire amount of the government assistance under these other programs.

3. *Ecological Incentives.* Under the Royal Decree of April 9, 1975, firms unable to meet the requirements of the Clean Water Act of 1971 could apply for grants from the GOB to cover a portion of the investment needed to meet the requirements. To qualify for incentives, companies had to show that installations conformed with applicable regulations, that the investment would be completed by a specified date, and that building and operating costs were reasonably estimated. The program was established in 1975 and terminated due to budget shortfalls in 1981.

Although grants under this program are not *de jure* limited to a specific enterprise or industry or group of enterprises or industries, we verified that only eight industries (steel, food processing, paper, chemicals and fertilizer, mining, electromechanical, firearms, and cement and ceramics) received benefits under the program. We consider eight industries to be "too few" users and, therefore, constitute evidence of *de facto* specificity per section 355.43(b)(2)(ii) of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations). Furthermore, we verified that 45.9 percent of the benefits over the period 1975–1981 were granted to the

steel industry. Therefore, we determine that this program is countervailable. Fabfer, Clabecq and Cockerill received benefits under this program. Based on the methodology outlined in the Allocation section of the General Issues Appendix, we have found these benefits to be non-recurring. Where benefits to the companies were below 0.5 percent of sales in that year, we expensed the grants in year of receipt. Based on this, no benefit was realized during the POI by any responding company under this program. For Cockerill, as BIA we have applied the highest calculated rate for any responding company which was 0.00 percent *ad valorem* for each class or kind of merchandise.

4. *Assumption of Debt.*

a. Assumption of Debt Related to Closing of Valfil Plant-Cockerill Sambre. According to information contained in the petition, in 1984, pursuant to the Gandois Plan the Societe Nationale de Credite a l'Industrie (SNCI) provided BF1,616 million in credits to Cockerill to finance the closing of the company's Valfil plant. The SNCI is a public credit institution, which, through medium- and long-term financing, encourages the development and growth of industrial and commercial enterprises in Belgium, including the national industries. SNCI is organized as a limited liability company and is 50-percent owned by the Belgian government.

The Fund pour la Restructuration des Secteurs Nationaux en Region Walloon (FSNW) also advanced capital in the amount of BF236 million to assist in the plant closing. The FSNW was a regional subsidiary of the Societe Nationale pour des Reconstruction des Secteurs Nationaux (SNSN), created in 1983 to assist the SNCI in carrying out the restructuring of the five targeted national sectors (i.e., steel, shipbuilding, coal, textiles, and glass) in Walloon.

In 1984, the GOB directly assumed both debts, relieving the company of its debt obligations. Although related to a plant closing, these debt assumptions clearly benefitted the company. In our Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet, Strip and Plate from the United Kingdom (48 FR 19048, March 16, 1983), we determined that "subsidies used to close redundant facilities * * * clearly constitute countervailable benefits," because they relieve the recipient of significant financial burdens. This determination was upheld in *British Steel Corp.* v. *United States, et al.*, 605 F. Supp. 206 (CIT 1985).

We further note that the Gandois Plan was a plan commissioned and adopted by the GOB in 1983 specifically to assist the Belgian steel industry. In addition, respondents have provided no evidence that any company other than Cockerill benefitted from the particular assistance described under this program.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. As stated earlier, Cockerill and Fabfer have significantly different aggregate benefits. Therefore, we calculated an estimated net subsidy of 0.28 percent *ad valorem* for Cockerill and 0.00 percent *ad valorem* for Fabfer for each class or kind produced by each company.

b. Assumption of Financing Costs—Conversion to OCPC's. On November 23, 1978, and February 2, 1979, the Belgian Council of Ministers decided that the GOB would assume the interest costs of certain steel companies on all medium- and long-term loans agreed to before January 1, 1979. Pursuant to the decision of the Council of Ministers and agreements with the steel companies, the GOB agreed to assume the interest costs in exchange for the companies' promises of conditional future issuances to it of convertible debentures (OCPCs). On this basis, the GOB assumed the interest costs of Sidmar, Cockerill and Clabecq for the five-year period from 1979 through 1983. In 1985, the companies agreed (or in the case of Sidmar, conditionally agreed) to substitute parts beneficiaires for the OCPCs.

As discussed in the Equity Section of the General Issues Appendix, we have determined that the conversion of OCPCs into parts beneficiaires amounts to the conversion of debt to equity. In addition, the GOB's assumption of interest costs in return for parts beneficiaires is limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that the GOB's conversion of debt to parts beneficiaires is countervailable.

As stated previously, we did not initiate an equityworthiness investigation with respect to Sidmar. Therefore, we have determined that the GOB's conversion of its debt to equity does not provide a countervailable benefit to that company.

Because Clabecq's and Cockerill's shares were publicly traded on Belgian markets, we looked to the price in the market to determine whether the GOB paid a premium for the shares. In fact, the GOB paid considerably more for its shares than the market price at that time. Therefore, the GOB's acquisition was on terms inconsistent with commercial considerations.

To measure the benefit from the debt conversion into equity, we calculated the premium paid by the government as the difference between the price paid by the government for the PBs and the market price of the common shares. Consistent with the Allocation section of the General Issues Appendix, we find the resulting benefits to be non-recurring.

Using our declining balance grant methodology and the appropriate discount rate, we allocated the benefit to 1991. We then divided the amount allocated to the POI by the total value of 1991 sales.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.04 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent for certain cold-rolled carbon steel flat products and 2.34 percent for certain carbon steel cut-to-length plate, except for Cockerill and Fabfer, which have significantly different aggregate benefits. The estimated net subsidy for Cockerill is 16.78 percent *ad valorem* for all classes or kinds of merchandise. The estimated net subsidy for Fabfer is 0.00 percent *ad valorem* for cut-to-length plate.

c. Forgiveness of SNCI Loans to Cockerill Sambre. According to petitioners, loans granted by the SNCI in the amount of BF14,947 million were contributed to Cockerill's capital in 1981. Because shares were apparently not issued to SNCI or any government entity for its contribution, this transaction represents debt forgiveness.

Petitioners state that this contribution benefitted Cockerill solely and was undertaken pursuant to the 20–Point Plan developed in 1981 by the GOB in connection with the restructuring of the steel industry. Because this debt forgiveness was on terms inconsistent with commercial considerations and limited to a specific enterprise or industry, or group of enterprises or industries, we have determined it to be countervailable.

For the reasons stated in the Allocation section of the General Issues Appendix, we treated the amount of debt forgiven as a non-recurring grant and, using the appropriate discount rate, allocated the grant over 15 years. Dividing the portion allocated to the POI by total sales, we calculated a benefit for this program. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we

calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. As stated earlier, Cockerill and Fabfer have significantly different aggregate benefits. Therefore, we calculated an estimated net subsidy of 2.19 percent *ad valorem* for Cockerill and 0.00 percent *ad valorem* for Fabfer for each class or kind produced by each company.

5. *Debt Conversions.*

a. 1984 Conversion of Sidmar Debt to Preference Shares and Redemption of Preferred Stock. In 1984, the GOB made two share subscriptions in Sidmar pursuant to Royal Decree No. 245 of December 31, 1983. This Royal Decree allowed the GOB to make preference share subscriptions in the steel industry as long as the subscriptions did not go over one-half of the social capital of the company. The SNSN, the government agency purchasing the shares, paid cash for the first subscription, which consisted of ordinary shares in the company. The second subscription, also by SNSN, consisted of preference shares issued in return for the cancellation of certain debt claims held by SNSN against Sidmar.

As stated previously, we did not initiate an equityworthiness investigation with respect to Sidmar. Therefore, we are not investigating SNSN's purchases of ordinary shares.

However, because of the circumstances surrounding the redemption of the preference shares, we have included this debt conversion in our investigations. In 1987, the GOB requested that Sidmar redeem the preference shares early for budgetary reasons. Therefore, in 1989, Sidmar and the GOB agreed to fix the amount due in the year 2004. However, in order to receive some money back immediately, the GOB asked Sidmar to pay the net present value in 1991 for the total due in 2004.

We have determined that the redemption of the preferred shares in 1991 did not give rise to a countervailable benefit. In selling the preferred shares back to Sidmar, we analyzed whether Sidmar paid the net present value in 1991 of the amount due in 2004. Using Sidmar's benchmark interest rate for 1991, we determined that the total amount of money received by the GOB was more than what Sidmar should have paid for the preferred shares. Therefore, we find that this redemption does not provide a countervailable benefit to Sidmar.

b. Conversion of Clabecq Debt into Ordinary and Non-Voting Shares. Pursuant to the approval of the Belgian Council of Ministers on December 30, 1983, the SNSN and Clabecq agreed to convert Clabecq debt held by SNSN to ordinary and non-voting preference shares. On May 23, 1985, Clabecq converted BF211,835,100 in debt owed to SNSN into ordinary shares. Because Clabecq's ordinary shares were publicly traded on Belgian markets, we looked to the price in the market to determine whether SNSN paid a premium for the shares. In fact, SNSN paid considerably more for its shares than the market price at that time. Therefore, the SNSN acquisition was on terms inconsistent with commercial considerations. In addition, this debt conversion was carried out under the Claes Plan which was limited only to the steel industry.

Clabecq also converted BF1.288 billion in debt to non-voting preference shares. The non-voting shares have a right to a dividend of two percent of their nominal value, if the company makes a profit and there is a balance after transfers to reserves. The shares will entitle the holders to a vote after 20 years. The company has to offer to repurchase the preference shares before it can offer to repurchase the ordinary shares. In the event of liquidation, the shares rank after debts and charges but before ordinary shares. Consistent with the methodology outlined in the Equity Section of our General Issues Appendix, we are also treating the non-voting preference shares as equity.

The non-voting preference shares were not publicly traded. Lacking a benchmark for those shares, we have assumed that the government paid a premium for the preference shares equal to the premium paid for the ordinary shares. As mentioned above, the GOB paid considerably more for the ordinary shares than the market price. Therefore, we determine that the GOB's acquisition of these preference shares was also on terms inconsistent with commercial considerations.

To measure the benefit from the two debt conversions into equity, we calculated the premium paid by the government in purchasing the ordinary and the non-voting shares based on the difference between the price paid by the government for these shares and the market price of the common shares. Consistent with the Allocation Section of our General Issues Appendix, we then treated the premiums paid for both the common and the non-voting shares as non-recurring grant and, using our declining balance grant methodology and the appropriate discount rate, allocated them over 15 years. We then divided the amount allocated to the POI by the total value of sales during the POI. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.02 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 1.23 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

c. Conversion of Clabecq's Debt into Parts Beneficiaries. Pursuant to a Belgian Council of Ministers Decision on May 31, 1985, Clabecq converted BF1,499 million of government-held debt directly into 7,300 parts beneficiaries, at a price of approximately BF205,300 per share at the time. Pursuant to the same Council of Ministers Decision, Clabecq converted BF2,049 million of government-held debt into 10,000 parts beneficiaries, at a price of approximately BF204,900 per share. On August 13, 1987, BF104 million in debt owed to the FSNW was converted into 500 parts beneficiaries at a price of BF208,000 per share.

For reasons discussed in the Equity Section of our General Issues Appendix, we are treating these conversions of debt to parts beneficiaries as debt to equity conversions which are limited to a specific enterprise or industry or group of enterprises or industries. Since Clabecq's shares are publicly-traded, we have compared the per share price for the PBs to the price of Clabecq's ordinary shares to find the premium paid by the GOB for the PBs.

We treated the premium as a grant and consistent with the Allocation section of our General Issues Appendix, we allocated the grants over 15 years, using the appropriate discount rate, and divided the amount allocated to the POI by the total value of sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.03 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 1.74 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

d. Conversion of Cockerill Sambre Debt to Equity Under the Claes Plan. Petitioners state that in June 1979, pursuant to the Claes Plan, the GOB converted BF2.051 billion in outstanding SNCI claims against Cockerill into 1,578,150 shares, for approximately BF1,300 per share. The market price for Cockerill's shares at

that time was approximately BF491. Also in 1979, the GOB converted debts owed to the SNCI by Hainaut-Sambre and Thy-Marcinelle-Monceau into capital. These companies were later merged with Cockerill.

In Belgian Steel, we found that Cockerill was not a sound commercial investment (i.e., unequityworthy) at the time the GOB acquired these equity positions in it and that the debt conversions made to acquire the equity were on terms inconsistent with commercial considerations and were countervailable. In this investigation, based on petitioners recommendation, we are using the Belgian Steel finding that the equity was acquired on terms inconsistent with commercial considerations as best information available.

Because Cockerill's stock was publicly traded at the time of the government's equity infusions, we have looked to the market to determine the value of the benefit. By comparing the market value of these stocks at the beginning of the month in which the equity infusions were made to the actual price paid by the government, we were able to determine whether, and to what extent, a benefit existed. We found the value paid by the GOB to be greater than the market value. Therefore, consistent with the Allocation section of our General Issues Appendix we treated the difference as a non-recurring grant and allocated it over 15 years using the appropriate discount rate, and divided the portion allocated to the POI by the company's total sales value. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.14 percent and 0.00 percent *ad valorem*, respectively.

e. Conversion of Cockerill Sambre Debt Held by FSNW into Equity. According to petitioners, the FSNW was authorized under the Gandois Plan to loan up to BF26.8 billion to Cockerill through the end of 1985, BF5 billion of which was for interest payments. By reference to the company's financial reports, petitioners show that this debt was converted to equity in each of the years from 1985 through 1989. For each conversion, petitioners have also provided the market price for the stock and the price paid by GOB. In each year from 1985 through 1987, the GOB paid a premium for the shares it acquired. Petitioners allege that because the Gandois Plan was limited to the steel industry, the benefits of these debt-to-equity conversions are limited to a specific enterprise or industry. They also allege that Cockerill was unequityworthy and that the conversions were on terms inconsistent with commercial considerations.

Based on information contained in the petition, we have determined this program to be countervailable. By comparing the market value of these stocks at the beginning of the month in which the equity infusions were made to the actual price paid by the government, we were able to determine whether, and to what extent, a benefit existed. The value paid by the GOB was greater than the market value in certain instances. Therefore, consistent with the Allocation section of the General Issues Appendix, we treated the difference as a non-recurring grant and allocated it over 15 years using the appropriate discount rate. We then divided the benefit allocated to the POI by the company's total 1991 sales value. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.33 percent and 0.00 percent *ad valorem*, respectively.

With respect to the debt conversions in 1988 and 1989, however, we found that the GOB did not pay a premium for the shares it acquired. Therefore, we find these conversions to be on terms consistent with commercial considerations and not countervailable.

f. Conversion of Cockerill Debt to Equity under the Gandois Plan. According to petitioners, in 1983 the GOB forgave BF15.785 billion of SNCI debt in exchange for common shares in the company priced at BF160 per share, the average market price of Cockerill's shares traded between July and November 1983. Petitioners maintain that the "market-determined" prices were inflated in expectation of future subsidies under the Gandois plan and, hence, do not provide an adequate benchmark for determining whether the Belgian government paid a premium for its shares. Cockerill's average market price from July through November 1983 showed a 66 percent increase over the average price from January through May 1983, whereas the average market price of other steel companies increased only 17 percent over the same period.

Based on this information, we have concluded that the average market price from July through November 1983, which served as the benchmark price for the GOB investment, was inflated by knowledge of future subsidies and should not be used as a benchmark price for the shares. Instead, we have used the average market price for the period January through May 1983 and increased this price by 17 percent to reflect a representative increase in average stock prices over the two periods. On this basis, we found that the GOB paid a premium for these shares.

We treated the premium as a non-recurring grant and consistent with the Allocation section of our General Issues Appendix allocated the amount over 15 years using the appropriate discount rate. We then divided the benefit allocated to the POI by the total value of 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.77 percent and 0.00 percent *ad valorem*, respectively.

6. *Equity Infusions.*

a. Equity Infusions for Hainaut-Sambre. Under the Claes Plan, the GOB purchased equity in Hainaut-Sambre for BF888 million in cash. Hainaut-Sambre has merged entirely with Cockerill. In Belgian Steel, this equity infusion was determined to be countervailable because the GOB paid more per share than the market price of the stock at that time and, hence, its investment was inconsistent with commercial considerations. We have received no information in this investigation indicating that this equity purchase was consistent with commercial considerations.

Lacking any information on the nature of the merger between Hainaut-Sambre and Cockerill, we presume that the benefits to Hainaut-Sambre are now conferred on Cockerill as well. To calculate the benefit, we treated the premium paid by the GOB as a non-recurring grant and, consistent with the Allocation section of the General Issues Appendix, allocated the grant over 15 years using the appropriate discount rate. We divided the portion allocated to the POI by Cockerill's total 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.16 percent and 0.00 percent *ad valorem*, respectively.

b. SNSN Capital for Cockerill Sambre's Liege Cold-Rolling Mill. Petitioners note that, pursuant to the Gandois Plan, SNSN purchased 26,666,666 common shares of Cockerill's stock in 1985 for BF6 billion in order to finance an investment in Cockerill's cold-rolling facilities at Liege. SNSN purchased Cockerill's common shares at a price of BF225 per share. The market price of the stock at that time was BF197 per share.

SNSN's provision of capital is restricted to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine it to be countervailable. Because the GOB paid a premium for the shares it purchased, we find the GOB's purchase to be on terms inconsistent with commercial considerations.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.13 percent and 0.00 percent *ad valorem*, respectively.

c. 1981 Equity Infusion into Cockerill Sambre. Petitioners claim that in 1981, the GOB decided to increase the capital of Cockerill by infusing BF11 billion in cash in exchange for equity. The infusion occurred in three stages: BF2.75 billion in cash in 1981, BF5.204 billion in cash in November 1982, and BF3.046 billion in cash in December 1982.

Because Cockerill's stock was publicly traded at the time of the government's equity infusions, we looked to the market to determine the value of the benefit. By comparing the market value of these stocks at the beginning of the month in which the equity infusions were made to the actual price paid by the government, we were able to determine whether, and to what extent, a benefit existed. Since the value paid by the GOB was greater than the market value, we treated the difference as a non-recurring grant and consistent with the Allocation Section of the General Issues Appendix allocated it over 15 years using the appropriate discount rate and divided the portion allocated to the POI by the company's total 1991 sales value. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 1.72 percent and 0.00 percent *ad valorem*, respectively.

d. Clabecq Infusion from SOCOCLABECQ. In 1985, Clabecq issued ordinary shares to SOCOCLABECQ (a private shareholder of Clabecq) in return for SOCOCLABECQ's export commercialization rights, at a price of BF3,300 per share. The per share price for this transaction was determined by an independent outside study commissioned to evaluate the worth of the company.

Under the statute, a subsidy can be provided directly or indirectly by that government, or it can be required by government action. In SOCOCLABECQ's report to its general shareholders, it stated that its purchase of additional Clabecq common shares was required by the GOB as a precondition to the government's further intervention on Clabecq's behalf and was, therefore, necessary to preserve the value of SOCOCLABECQ's ownership interest in Clabecq. Therefore, we have concluded that the equity infusion made by SOCOCLABECQ was required by government action and was, in effect, provided by a government. Because this transaction was limited to a specific enterprise, we have determined it be countervailable. In addition, the price paid by SOCOCLABECQ was considerably above the market price of Clabecq's publicly traded shares at the time. Therefore, SOCOCLABECQ's acquisition was on terms inconsistent with commercial considerations.

To measure the benefit to Clabecq, we calculated the premium paid by SOCOCLABECQ over the market-traded price for the shares. We treated this premium as a non-recurring grant and consistent with the Allocation section of the General Issues Appendix allocated it over 15 years using the appropriate discount rate. We divided the amount allocated to the POI by the total value of 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.01 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.31 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

7. *SNCI Loans.* The SNCI is a public credit institution, which, through medium- and long-term financing, encourages the development and growth of industrial and commercial enterprises in Belgium, including the national industries. SNCI is organized as a limited liability company and is 50-percent owned by the Belgian government. We verified that in 1979, SNCI's board of directors agreed to provide the GOB with the funds needed to assist the steel industry under the 1978 restructuring plan (the Claes Plan) and to grant loans to steel companies within the framework of the plan and under the economic expansion laws of 1959 and 1970. Fabfer, Clabecq, Cockerill, and Sidmar received SNCI loans which were outstanding during the POI.

We have determined that all SNCI loans given to the steel companies expressly under one of the steel restructuring plans or as a result of steel being one of the five national sector industries in Belgium are *de jure* specific. Since we did not find the other SNCI loans to be *de jure* specific, we examined whether these SNCI loans are *de facto* limited.

In prior investigations, the Department has considered whether respondent companies received disproportionate benefits under a program in order to determine *de facto* specificity. See, e.g., Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil (Iron Ore); 51 FR 21961 (June 17, 1986); and Final Affirmative Countervailing Duty Determination: Pure and Alloy Magnesium from Canada (Magnesium); 57 FR 30946 (July 13, 1992). In those investigations, we analyzed whether respondents received a disproportionate share of benefits by comparing their share of benefits to the share of benefits provided to all other users and recipients of the program in question.

We have employed the same type of analysis in these investigations. Although the SNCI lends to many sectors of the Belgian economy, we have determined that the steel industry has received a disproportionately large share of non-plan, "investment loans" between 1975 and 1986. For each of the years for which we have data during this period, the steel industry was the largest single recipient of SNCI investment lending. The steel industry's share (as approximated by the share accounted for by the "Production and preliminary processing of metals industry") expressed as a percentage of all SNCI investment loans outstanding was as follows: In 1975, 17.2 percent; in 1980, 29.2 percent; in 1984, 20.9 percent; in 1985, 17.7 percent; in 1986, 16.9 percent; in 1987, 15.6 percent; and in 1988, 13.5 percent. We do not find disproportionality in 1987 and 1988 as the steel industry's share of benefits dropped significantly.

We recognize that the data may not accurately represent only the percentage of non-plan, non-national sector SNCI loans to the steel industry as it does not appear to distinguish these loans completely from those we have already found *de jure* specific. However, information on the record does not permit us to segregate non-plan, non-national sector loans from SNCI's more general lending activities. Lacking this information, we cannot presume that elimination of this distortion would change our finding of disproportionality.

Therefore, we determine SNCI loans to be *de facto* limited to a specific enterprise or industry, or group of enterprises or industries prior to 1987, based on the information above, and from 1989 onward, lacking any information for those periods. To the extent that these loans are provided on terms inconsistent with commercial considerations, we find them to be countervailable.

As our benchmark interest rate, except in certain instances, we used the long-term benchmark obtained from the Belgium Kredietbank. In the case of Clabecq and Cockerill, we added 12 percent of the prime to the benchmark, because these two companies were found to be uncreditworthy. See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, (54 FR 31991, August 3, 1989) and section 355.44(b)(6)(iv) of the Department's Proposed Rules. Because Belgium does not have a prime rate, we used the SNCI rate less one half percentage point as an approximation of the prime rate.

To calculate the benefit on these loans we used our long-term loan methodology and measured the cost savings conferred by the SNCI loans in each year the loans were outstanding. We then took the present value of each of these amounts as of the time the loan was received. Finally, using the benchmark as a discount rate, we reallocated the present value of the yearly benefits over the life of the loan. We then divided the amount allocated to the POI by the company's total sales during the POI.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.01 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.37 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.37 percent and 0.00 percent *ad valorem*, respectively.

8. *Belgian Industrial Finance Company (Belfin) Loans.* Belfin was established by Royal Decree on June 29, 1981, as a mixed corporation with 50 percent GOB participation and 50 percent private industry participation. We verified that Belfin's objective is to finance investments needed for the restructuring and development of various sectors of industry, commerce, and state services. Belfin borrows money in Belgium and on international markets, with the benefit of government guarantees, in order to obtain the funds needed to make loans to Belgian companies. The government's guarantee makes it possible for Belfin to borrow at favorable interest rates and to pass the savings along when it lends the funds to Belgian companies. Belfin loans to Belgian companies are not guaranteed by the GOB. However, these loans carry a one percent commission which is used to maintain a guarantee fund to support the GOB guarantee of Belfin's borrowings.

Although the objective of Belfin loans is to assist the restructuring and development of various sectors, we verified that Belfin loans were made to the steel companies under the Claes Plan because the loans were instruments for restructuring. Therefore, we determine that the Belfin loans to the steel industry are *de jure* specific with respect to an enterprise or industry or group of enterprises or industries.

Cockerill and Clabecq received Belfin loans which were outstanding during the POI. Because the interest rates on these Belfin loans are below the benchmark interest rate, we find that the loans were made on terms inconsistent with commercial considerations and determine the loans to be countervailable.

To calculate the benefit on these loans, we have used our long-term loan methodology and measured the cost savings conferred by the Belfin loans in each year that they were outstanding. We then divided the cost saving attributable to the POI by total 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

9. *The "Invests"*. Pursuant to the Belgian government's 20-point plan adopted in 1981 to restructure the steel industry, the GOB created holding companies ("INVESTS") that were financed jointly by Societe Nationale d'Investissement (SNI) and private companies. The right to establish Invests is limited to the five national sectors: Steel, coal, shipbuilding, glass, and textiles. We view these five sectors as constituting a specific group of industries. These holding companies were given drawing rights on SNI to finance specific projects. The drawing rights took the form of conditional refundable advances (CRAs), which were interest free but repayable to SNI based on a company's profitability.

The original goal of the Invests for the steel industry was to develop state-of-the-art steel companies. However, on July 7, 1983, the Ministerial Council revised the statutory purpose to include the start up or the expansion of all industrial or commercial companies that contribute to economic development. Participating companies were encouraged to diversify by pursuing ventures unrelated to their core business.

a. SidInvest. On August 31, 1982, SidInvest N.V. was incorporated as a holding company jointly capitalized by SNI and Sidarfin, a subsidiary of Sidmar. Although its original purpose was to invest in steelmaking activities, that purpose changed in 1983, as described above. We confirmed at verification that, in fact, few of SidInvest's investments have been steel-related.

SidInvest made periodic repayments of the CRAs it had drawn from SNI. However, the GOB decided it wanted to accelerate their repayment. The government agency SNSN and SidInvest discussed two options including (1) paying back the CRAs at a rate of three percent per year and (2) repaying immediately the discounted value calculated as if the full amount were due 32 years later. SidInvest actually made one payment to the SNSN using the first option.

However, the first option repayment method was not in effect after July 29, 1988, when the SNSN became a shareholder in SidInvest by contributing the CRAs owed to it by SidInvest at that time plus an additional contribution by SNSN. In exchange, the SNSN received 292,224 new shares of SidInvest's stock. According to Sidmar, by these acts SidInvest's obligations under the CRAs were extinguished.

In a second July 29, 1988 agreement, SNSN sold half of the 292,224 shares it had just received to SNI (another government agency) and the other half to Sidfin (a company in the Sidmar Group). The money received in these two transactions plus one additional payment by SidInvest equalled the total

amount foreseen in option 2 discussed above.

Finally, by a third agreement, also dated July 29, 1988, the SNI agreed to sell, over the course of eight years, certain of its shares to Sidfin (also a member of the Sidmar Group). Subsequent transactions ensued so that currently, Sidarfin holds 230,852 shares and the SNI holds the remaining 61,372 shares.

Petitioners and Sidmar have submitted extensive comments on the issue of whether any potential benefits arising from GOB contributions to SidInvest can be attributed to Sidmar's steelmaking activities. As discussed further in the comment section of this notice, we have concluded that any subsidies provided to SidInvest are not tied to SidInvest or to the specific activities in which it invested. Instead, any benefits flow to the Sidmar Group as a whole.

The next issue is whether and to what extent the Sidmar Group received a subsidy through its receipt of CRAs and the subsequent transactions involving them. Based on the information provided, we have determined that the CRAs were zero percent interest loans. More importantly, they had no fixed maturity date—because their repayment was contingent upon SidInvest's net income, the CRAs might have been outstanding for years.

The various agreements on July 29, 1988, changed that aspect of the CRAs. On that date, the GOB swapped its uncertain repayment schedule for a fixed schedule, consistent with the earlier discussions between the SNSN and SidInvest. The face value of the outstanding CRAs would be repaid in 32 years. In the meantime, no interest would be paid. Thus, the first benefit arising to Sidmar through the July 29, 1988, transaction was the creation of a 32-year interest free loan.

However, the GOB was seeking immediate repayment of at least some portion of the money owed to it. Therefore, it effectively sold this loan back to SidInvest for 292,224 new shares in SidInvest and some cash. These new shares were then sold for cash.

We have determined that this second transaction, i.e., the exchange of the loan for shares in SidInvest and SidInvest's cash payment, also gave rise to a benefit. In purchasing this loan back from the SNSN, SidInvest should have been willing to pay the net present value in 1988 of the amount due in 32 years. However, using Sidmar's benchmark interest rate for 1988, we determine that the total amount of money received by SNSN at the conclusion of the transactions on July 29 was less than what SidInvest should have paid to repurchase its loan. Therefore, we are treating the difference between what SidInvest should have been willing to pay and what the SNSN received as a subsidy.

The two subsidies described above, the issuance of a 32-year interest free loan to SidInvest and the sale of that loan on terms inconsistent with commercial considerations, were both calculated using Sidmar's company-specific benchmark for 1988. The benefits from the zero interest rate loan portion were allocated over the life of the loan. The benefits from the sale of the loan were allocated over 15 years. We divided these amounts by the total 1991 sales of the Sidmar Group.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.97 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.99 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.00 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

b. BoelInvest. In June 1983, BoelInvest was established as a holding company jointly owned by SNSN, Fabfer, and Boel. Since we verified that Fabfer owned only 14 percent of BoelInvest, we do not consider the two companies sufficiently related per the clarification letter sent by the Department to all parties in these investigations on October 30, 1992. Therefore, we will not consider any potential subsidies to BoelInvest in these investigations.

c. Clabecqlease. On March 5, 1987, Clabecqlease was incorporated as a joint holding company owned by Clabecq and SNSN. Clabecqlease was awarded drawing rights in a stipulated amount in the form of CRAs. Clabecq offered a guarantee to SNSN that it would repay the CRAs based on Clabecqlease's profits. We verified that Clabecq received a loan from Forge Finance S.A., a 99.99-percent owned subsidiary of Clabecqlease.

As noted above, the right to establish Invests is limited to the five national sectors: steel, coal, shipbuilding, glass, and textiles. We view these five sectors as constituting a specific group of industries. Therefore, benefits conferred via the Invests are limited to a specific enterprise or industry, or group of enterprises or industries.

To determine whether the loan to Clabecq from Clabecqlease was made on terms inconsistent with commercial considerations, we compared the interest rate on the loan to our benchmark rate and found that the Forge Finance loan carried a lower rate. For these reasons, we determine that the loan to Clabecq from Clabecqlease is countervailable.

To calculate the benefits from this loan, we calculated the cost savings conferred by the loan to Clabecq in each year it was outstanding. We then calculated the present value of each of these amounts as of the time the loan was received. Finally, using our benchmark rate as a discount rate, we reallocated the sum of these present values over the life of the loan. We then divided the amount allocated to the POI by total 1991 sales. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.00 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.03 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

10. *SNSN Loans.* We confirmed at verification that this program should more accurately be defined as "SNSN Advances." These advances were provided to companies, beginning in 1981, as temporary measures in anticipation of later, more comprehensive aid. We found that, upon receipt of the later aid, the SNSN advances were "rolled" into that aid. We also confirmed that the SNSN granted these advances to companies in the five national sectors.

We verified that Sidmar and Fabfer did not receive benefits under this program. We also confirmed that Clabecq received an SNSN Advance in early 1985. However, we found that this amount is already captured in the Clabecq Debt to OCPC Conversion program discussed above.

According to petitioners, Cockerill had BF6.408 billion in SNSN loans outstanding at the end of 1986. In 1987, the company received an additional loan in the amount of BF1.257 billion. We have found that SNSN's provision of loans to Cockerill was selective because SNSN was created to benefit only national-sector companies.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have

significantly different aggregate benefits which were 0.03 percent and 0.00 percent *ad valorem*, respectively.

11. *FSNW Loans*. In 1989, according to petitioners, after the conversion of large amounts of FSNW loans to equity, FSNW made a new loan to Cockerill in the amount of BF158 million to finance investments in accordance with the Gandois Plan. Therefore, petitioners maintain that any countervailable benefits derived from this loan are selective not only because FSNW is a regional governmental entity created to assist the restructuring of selected industries, but also because the Gandois Plan was adopted solely to aid the steel industry.

We are using information from petitioners as best information available for Cockerill's FSNW loans. Petitioners cite the benefit found in Belgian Steel for FSNW loans to Cockerill as best information available. Therefore, we have used the countervailing duty rate on FSNW loans to Cockerill from Belgian Steel to measure the benefit to Cockerill. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.03 percent and 0.00 percent *ad valorem*, respectively.

12. *Government-Guaranteed Loans*. Government loan guarantees issued pursuant to the Economic Expansion Laws of either 1959 and 1970 were received by Fabfer, Clabecq, and Sidmar on SNCI loans and, in the case of Clabecq, also on Belfin loans which were outstanding during the POI. We confirmed at verification that the lending institution, not the company, inquires about the guarantee. Furthermore, state guarantees are given for lending under the Economic Expansion Laws.

At verification, we learned that loan guarantees are not normally used in Belgium. Therefore, we were unable to obtain information on typical commercial guarantee fees. As section 355.44(c)1) of the Proposed Regulations indicates, lacking information on commercial loan guarantees, the Department compares the cost of the government guaranteed loan to the cost of the benchmark loan. Therefore, we have taken this approach and included the guarantee fee in the cost of the government loan.

13. *Exemption of Corporate Income Tax for Grants Received under the 1970 Law*. Under the 1970 Law, companies located in development zones are exempt from income tax on cash grants in the year in which the grant is received. Because this program is limited to specific zones, we have found the exemption to be countervailable. We find Cockerill to have received the income tax exemption based on BIA. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

14. *Accelerated Depreciation*. Under Article 15 of the 1970 Law, companies located in development zones may take twice the normal straight-line depreciation on assets acquired in part by grants received under this law. Because this benefit is limited to companies located in development zones, we have determined it to be countervailable.

Based on BIA, we find that Cockerill used accelerated depreciation on its income tax return filed in the POI. Sidmar's related service center had an accelerated depreciation allowance that it could have used on its 1990 income tax return. At verification, however, our examination of its 1990 tax return showed that the deduction for dividends and for losses carried forward were used to reduce taxable income to zero. Therefore, we found that Sidmar's related service center did not use accelerated depreciation on the tax return filed during the review period.

Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*. The BIA rate for Cockerill was based on the highest rate for a tax program applied to Cockerill in Belgian Steel.

15. *Exemption from Real Estate Taxes*. Assets acquired through investments financed in part under the 1970 Law may be exempted from real estate tax for up to five years, depending on the extent to which objectives of the 1970 Law are achieved. The exemption is provided for under Article 16 of the 1970 Law and is restricted to firms located in development zones.

Fabfer received benefits under this program but not during its POI. Sidmar, its related service center, and Cockerill did receive benefits during the POI.

For Sidmar and its related service center, consistent with the Allocation section of the General Issues Appendix, we treated their tax savings as recurring benefits and divided the combined tax savings by combined total sales during the POI. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

16. *Exemption from the Capital Registration Tax*. A capital registration tax is assessed at the time capital is formally registered with a company. Under the 1970 Law, companies located in development zones may be exempted from the one percent capital registration tax. (In 1986, the capital registration tax was reduced to 0.50 percent.) None of the responding companies reported using this program.

However, with respect to Cockerill, we found the exemption to be countervailable in Belgian Steel and that Cockerill's benefit from the registration tax exemption amounted to 0.40 percent. Therefore, as best information available in this investigation, we are using the 0.40 percent rate from Belgian Steel, which is the rate proposed by petitioners.

In Belgian Steel, we treated the tax savings as a grant and expensed it in the year of receipt. The entire amount of the savings was allocated over the total sales of all products. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.40 percent and 0.00 percent *ad valorem*, respectively.

17. *ECSC Article 54 Loans and Loan Guarantees*. Article 54 industrial investment loans are provided for the purpose of purchasing new equipment or financing modernization. We confirmed that Article 54 loans are direct loans from the Commission and that the funds are loaned at a slightly higher rate than that at which the Commission obtained them in order to cover its costs. We verified that the Commission uses this program to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain these loans.

These loans are only available to the steel and coal industries and are, therefore, limited. Thus, these loans are countervailable to the extent that they

are provided on terms inconsistent with commercial considerations.

We verified that Sidmar, Clabecq, and Fabfer did not benefit from this program during the POI. However, the EC indicated that Cockerill had Article 54 loans outstanding in 1991. Regarding the benefit to Cockerill, as BIA we are using the countervailing duty rate from Belgian Steel for this program. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.04 percent and 0.00 percent *ad valorem*, respectively.

18. *ECSC Redeployment Aid*. Under Article 56 (2)(b) of the ECSC Treaty, individuals employed in the coal and steel industry who lose their jobs may receive assistance for social adjustment. This assistance is provided for workers affected by restructuring measures, particularly as workers withdraw from the labor market into early retirement or are forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. Payments were made to steel workers under Article 56(2)(b). Funds for the ECSC portion of these payments are from the ECSC Operational Budget, made up entirely of levies on ECSC companies.

Since the ECSC portion of payments under this program comes from its Operational Budget (which it derived from payments from steel firms), we determine that the portion of payments provided by the ECSC, i.e., 50 percent, to be not countervailable. However, to the extent that their payments relieve companies of obligations they would otherwise incur, we determine that matching contributions by member governments are countervailable. Moreover, we determine that matching contributions by Member State governments should be treated as recurring grants in accordance with the methodology outlined in the Allocation section of the General Issues Appendix.

We verified that Sidmar, Fabfer, and Clabecq received no redeployment aid during the POI. For Cockerill, petitioners provided information in the petition regarding Cockerill's benefits under this program. On this basis, we have determined that Cockerill has received countervailable benefits. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.01 percent and 0.00 percent *ad valorem*, respectively.

19. *European Social Fund*. The ESF program is funded from the EC General Budget, the revenues for which are derived from customs duties, agricultural levies, Member State contributions, etc. The ESF is one part of the EC's Structural Funds. It is primarily responsible for two out of the five objectives of the Structural Funds. These two objectives relate to combating long-term unemployment and facilitating the occupational integration of young people.

The ESF also has a secondary role in implementing projects that fall under other objectives. These latter objectives relate to promoting the development of regions whose development is lagging behind, assisting regions affected by industrial decline, and promoting the development of rural areas. The ESF does not provide on-going support; each beneficiary may receive vocational training actions and subsidies for recruitment only once. According to the EC response, specific projects under this program benefit individuals, not companies.

ESF grants are paid to the Member State governments, which proceed to allocate and implement the funds under the Member States' provisions, be it on a regional or local level. As such, the EC delegates to the Member State the task of managing the grant.

We confirmed at verification that Sidmar, Clabecq and Fabfer did not receive benefits under this program. However, at verification we found that Cockerill did receive benefits under this program. Therefore, we have determined that Cockerill has received countervailable benefits. Since petitioners did not calculate a rate for this program, we have used the rate calculated from public information for Cockerill in Preliminary Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy 57 FR 57739 (December 7, 1992). Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.00 percent *ad valorem* for each class or kind of merchandise. Cockerill and Fabfer have significantly different aggregate benefits which were 0.18 percent and 0.00 percent *ad valorem*, respectively.

20. *Other Loans—Clabecq*. In the interest of completeness, Clabecq reported four additional loans in responding to our questionnaire regarding "other loans." Two of these were received from the Belgian Office of External Commerce, one in 1980 and the second in 1983, for the purpose of defraying expenses incurred as a result of the U.S. antidumping proceeding in 1982. Clabecq paid no interest on these loans nor was the company required to repay the principal.

Because these loans appear to have been limited to a specific enterprise, or industry or group of enterprises or industries, and were forgiven, we determine them to be countervailable non-recurring grants. For the reasons stated in the Allocation section of the General Issues Appendix, we expensed the grants to Clabecq in the year of receipt. Thus, no benefit was realized during the POI.

The third loan reported by Clabecq was for investment necessary to enable the company to comply with the provisions of the Clean Water Act. This loan is treated in the section of this notice entitled "Ecological Incentives." The fourth loan was for employee vacations and was not a loan received from the GOB or at the direction of the GOB. Therefore, we have not countervailed this loan.

21. *Water Purification Subsidies*. At the Sidmar verification, we came across an item for "water purification subsidies" in the company's grant account detail. Upon further inquiry, we did not receive any information regarding the source of benefits under this program.

Since Sidmar did not provide information regarding the authority under which the company received these benefits, as BIA we have treated these water purification subsidies as if they were provided under the Ecological Incentives program noted above. Therefore, we determine that this program is countervailable. Consistent with the methodology detailed in the Allocation section of the General Issues Appendix, we have found the benefits to be non-recurring. However, all but one grant were expensed in the year of receipt because the amount received was less than 0.50 percent of total sales in that year. Using the country-wide rate calculation methodology described in the "Analysis of Programs" section of this notice, we calculated an estimated country-wide rate of 0.04 percent *ad valorem* for certain hot-rolled carbon steel flat products, 0.04 percent *ad valorem* for certain cold-rolled carbon steel flat products and 0.00 percent for certain carbon steel cut-to-length plate. Cockerill and Fabfer have significantly different aggregate benefits which were 0.00 percent *ad valorem*.

B. Programs Determined To Be Not Countervailable

1. *Reimbursement of Worker Training Costs.* Under Article 76 of the Royal Decree of December 20, 1963, the Belgian National Employment Office ("OneM") can reimburse firms for various in-plant and outside professional training costs. Before 1980, the GOB funded and administered this program for the entire country. However, the Special Law of August 8, 1980, gradually decentralized authority with respect to this, and other programs. Separate administrative structures were gradually set up within OneM for both the Walloon and Flanders regions. By 1988, the Walloon, Flanders and Brussels regions completely assumed the administration of this program at the regional level. However, the program is still funded by the national government.

In 1987 and 1988, for budgetary reasons, the reimbursement was reduced by 50 percent in the Flanders region except for companies located in development zones. The amount was not similarly reduced in the Walloon or Brussels regions.

Sidmar, Clabecq and Cockerill received reimbursements of training costs during 1977–1991. Fabfer also received reimbursements, but after its POI.

We verified that this program is not *de jure* limited to any region or enterprise or industry or group of enterprises or industries. With respect to *de facto* limitations, we verified that training reimbursements have been provided to firms in many economic sectors throughout the Walloon, Flanders, and Brussels regions. Moreover, for the period 1987–1990, the Flemish steel industry received 7.3 percent by value of benefits disbursed under the program in Flanders. At least fifteen industrial sectors received benefits over this time period in Flanders. During the period 1988–1991, the Walloonian metals sector (which includes the steel industry) received 17.3 percent by value of the benefits disbursed under the program. At least 20 sectors received benefits over this time period in Walloon. Following the same disproportionality analysis described in the SNCI program section above, we do not consider the distribution of benefits noted above to constitute disproportionate benefits to the steel industry. Therefore, we have determined this program to be not countervailable.

2. *ECSC Research and Development Assistance Under Article 55.* According to Article 55 of the ECSC Treaty, assistance is available to promote technical and economic research relating to the production and increased use of coal and steel, and to occupational safety in the coal and steel industries. Since the end of 1986, this program has been funded solely through levies on steel producing companies.

Because the results of the research conducted under Article 55 are made publicly available, we find this program to be not countervailable. Moreover, we note that to the extent that Article 55 assistance is funded solely by levies on steel companies, we would find no benefit.

3. *European Investment Bank ("EIB") Loans and Loan Guarantees.* The EIB funds projects in various countries and different types of industries. It obtains most of its resources on international capital markets through issuance of bonds. The remainder of the resources come from the EIB's own funds, which are comprised of contributions from its member states. We found at verification that the EIB provides loans to numerous sectors in all parts of the various EC countries. Furthermore, between 1987–1991, the steel sector received only 0.5 percent of total loans provided by the EIB. We have no evidence of *de jure* or *de facto* specificity, and have determined that this program is not countervailable.

4. *Interest Rate Subsidies to Clabecq under the Gandois Plan and Interest Rate Subsidies to Clabecq, Boel and Fabfer.* At verification, we found that an interest subsidy to Clabecq in the amount of BF102 million was given under the 1969 Law, a program that the Department found non-countervailable in Belgian Steel. Petitioners had alleged that this amount was given under the Gandois Plan, a restructuring plan solely benefitting the steel industry.

We found no evidence of interest rate subsidies to Clabecq, Boel or Fabfer other than those already addressed in this notice.

C. Programs Determined to be Not Used

We determine that the following programs were not used by manufacturers, producers, or exporters in Belgium of certain steel products under the following programs:

1. *Interest Rate Subsidies Provided by Copromex.*
2. *Employment Premiums.*
3. *Short-term Export Credit.*
4. *New Community Instrument Loans.*
5. *European Regional Development Fund Aid.*
6. *ECSC Interest Rebates under Article 54.*
7. *ECSC Conversion Loans under Article 56.*
8. *ECSC Interest Rebates under Article 56.*

9. *Cancellation of Equity.* In 1983, 1985, and 1987, Cockerill extinguished BF60.26 billion in equity. The 1983 reduction of BF36 billion brought the company's capital to the minimum legal requirement. The equity cancellations in 1985 and 1987 effected reductions in capital infused in 1983 and later years. In fiscal year 1988, Clabecq reduced its Paid-In-Capital account by BF770 million which corresponded to a partial amortization of Clabecq's reported loss.

Consistent with the Equity Section of our General Issues Appendix, we have determined that a subsequent write-off of equity does not constitute a subsidy.

D. Programs Determined Not to Exist

We determine that the following programs do not exist:

1. *Other Loans to Clabecq on Terms Inconsistent with Commercial Considerations.* By fiscal year end June 30, 1982, Clabecq's long-term debt had increased by BF398 million over the preceding year. Petitioners alleged that these loans were most probably on terms inconsistent with commercial considerations because a government-imposed debt moratorium had been in effect during that year. We verified that the increase cited by petitioners was due to SNCI loans received by Clabecq. All of these loans were reported by the company and are treated in the notice section entitled "SNCI Loans."

2. *Tax Advantages for Clabecq, Boel and Fabfer.* Petitioners alleged that Clabecq, Boel, and Fabfer benefitted from tax advantages which were investigated in 1982 by the European Commission. We verified that these tax advantages are already covered in the sections of this notice dealing with the various types of tax exemptions. See the sections of this notice entitled "Exemption from Income Tax on Grants," "Accelerated Depreciation," "Real Estate Tax," and "Capital Registration Tax."

Interest Party Comments

The following are country-specific comments only. All other issues are either addressed in the sections above or in the General Issues Appendix.

Comment 1: Petitioners argue that a country-wide rate should be applied to all companies because there is potential for Belgian companies to evade the order. There is reason to believe that Belgian companies have shifted orders in the past to circumvent the U.S.–EC Voluntary Restraint Agreement, and Belgian steel producers are bound together by cooperation arrangements, joint ventures and overlapping

ownership/management that make order shifting a natural response to trade sanctions. At least, Cockerill and Sidmar should be treated as a single company. The record suggests that the two act as one in marketing their products in the United States.

According to Sidmar, a 1990 agreement between Cockerill and Arbed merely codified a 1984 agreement concerning cooperative undertakings. However, there is no evidence that these undertakings have been finalized or authorized by the EC, as required. Plus, the failure of the proposed merger between Arbed and Cockerill is well documented. Finally, despite petitioners' attempts to show that order-shifting will occur, all of their "evidence" pertains to Arbed (which is not being investigated) and long products (which is also not being investigated).

With respect to Cockerill's and Sidmar's joint marketing in the United States, Sidmar states that Cockerill's decision to use TradeARBED New York as its U.S. importer is not evidence of new cooperation because (1) many U.S. importers import from more than one foreign producer and (2) petitioners' own exhibit states that Cockerill's sales in the United States were not sufficient to support a full-fledged office here. Regarding the two joint production-related undertakings between the companies, neither suggests the need for a country-wide rate. Finally, there is no overlapping ownership between Sidmar and any other respondent company.

Respondents conclude that the Department has never applied a country-wide rate simply because of company relationships. Fabfer's relationships with other companies are not unusual, and should not compel the Department to depart from its practice. Finally, petitioners have provided no evidence that Fabfer will attempt to evade any orders.

DOC Position: We disagree with petitioners. Although the company-specific countervailing duty rates calculated in these investigations are quite divergent, we are not convinced from evidence on the record that firms with relatively higher rates would have the incentive or the ability to evade countervailing duties by shifting orders on sales for export to the United States. Petitioners refer to the possibility that Belgian companies have shifted orders to circumvent the U.S.-EC Voluntary Restraint Agreement. We note that petitioners appear to be referring to Carlam and Sollac, two firms not explicitly investigated in these investigations.

Furthermore, at verification we found that most of the cooperative arrangements cited by petitioners as a basis for suspecting order shifting were either not implemented or not implemented fully. For instance, petitioners cite the "Hanzinelle Accords" as evidence of the steel companies' agreement to divide markets by means of production cartels. However, this agreement appears not to have been a legally binding contract. In fact, with the merger of companies that became Cockerill in 1981, this agreement became obsolete.

Petitioners also point to the 1984 and 1990 "cooperation arrangements" between Cockerill and Sidmar as evidence of a favorable climate for cooperation. We note that, however, that such arrangements were subject to the approval of the European Community. Evidence on the record suggests that the EC has yet to approve the particulars of the arrangements. Furthermore, although Cockerill and Sidmar underwent extensive merger discussions, we confirmed that these talks ended without agreement.

Moreover, at verification we found that the overlapping ownership cited by petitioners is not extensive or unusual. Nor do we find the existence of joint ventures a reason to suspect that the companies concerned would likely resort to order shifting.

With respect to the marketing activities of Cockerill and Sidmar in the United States, we agree with Sidmar that it is not uncommon for an importer or a trading house to import from several different exporters. We further confirmed that TradeARBED simply responds to customer requests with respect to the type of steel it sells in the United States. It does not have the authority to switch sales between producers or to set prices.

Comment 2: Petitioners note that Section 607(a) of the Trade and Tariff Act of 1984 establishes a presumption in favor of country-wide rates with the possibility of company specific rates if the Department determines that a significant differential between companies exists (see, Final Administrative Review of Certain Iron-Metal Castings from India, (56 FR 1976, 1979; 1991) and Final Administrative Review of Carbon Black from Mexico, (55 FR 51745, 51747; 1990). The statute discourages company-specific rates, although the Department has discretion to set them in certain instances.

Petitioners also note that the statute's legislative history gives only one rationale for a presumption in favor of a country-wide rate (i.e., to lessen the administrative burden on the Department). However, the Department has stated that "equal weight should be given to the consideration that the basic purpose of the countervailing duty law is better served by the use of country-wide rates" (see, Carbon Black at 51748).

Sidmar and Fabfer argue that in order to apply a country-wide rate, the Department would have to ignore its own regulations and precedent. Further, potential order shifting among producers is an issue for the U.S. Customs Service. Regardless, Sidmar notes that petitioners' request for a high BIA rate for Cockerill (therefore, for Sidmar by extension) is sufficient evidence for separate rates. Sidmar has cooperated and should not be penalized because a competitor has not responded.

Fabfer states that these investigations are unlike the Final Determination of Certain Softwood Lumber Products from Canada; 57 FR 22570 (May 28, 1992) where it was found not practicable to investigate whether companies had significantly different rates. The Department has already investigated company rates and found that Fabfer has a significantly different one.

DOC Position: Section 355.20(d) of the Proposed Regulations provide for company-specific rates when the rates for particular companies are significantly different from the country-wide rate. It is the Department's established practice to apply company-specific rates in such instances, unless it has reason to believe that the application of company-specific rates would result in attempts to evade the countervailing duty orders. As explained in the Department's position to Comment 1 above, we are not convinced that attempts to evade the orders would occur in this case. Therefore, we are following our normal practice of applying company-specific rates when these rates are significantly different from the country-wide rate.

We disagree with respondents' claim that the possibility of order shifting is primarily the concern of the U.S. Customs Service. While the Customs Service in the normal course of assessing duties may in fact uncover attempts to shift orders, the Commerce Department has the primary responsibility for determining the likelihood of order evasion at the investigative stage.

Comment 3: Petitioners argue that Sidmar's wholly-owned service center should be investigated because (1) it meets the Department's minimum threshold for related parties of being at least 20 percent owned, (2) it produces/sells subject merchandise, and (3) subsidies conferred on a related party

are allocated to a respondent, particularly in the context of a parent and subsidiary (see, Final Determination of Brass Sheet and Strip from France (52 FR 1212, 1222; 1987)). Also there is no evidence that the GOB tied subsidies to the service center to non-U.S. or non-subject merchandise sales. Failing to include the service center would encourage Sidmar to use it for U.S. shipments. Further, the Department can consider "all foreign producers and exporters that are related * * * as a single entity" (Preamble to 19 CFR 355.20(d) of the Proposed Regulations).

Sidmar argues that the Department attributed tied subsidies for a downstream entity (that neither manufactured nor exported the merchandise to the United States) to an upstream producer. Section 701 of the Tariff Act of 1930, as amended, and the GATT Subsidies Code Article 4.2 provide that a countervailing duty may be imposed only to offset benefits on the manufacture, production, or export of products to the United States. Further, the Department's regulations at § 355.15(a) suggest that a countervailing duty may not be imposed to offset benefits conferred on products other than merchandise under investigation (i.e., imports of Belgian steel into the United States during the POI).

Congress stated when a subsidy is tied to the production of a particular product, the benefit is allocated entirely to that product (*see*, Report of the House of Representatives concerning the Trade Agreements Act of 1979; H. Rep. No. 317, 96th Cong. 1st Sess., 74–75 (1979). Furthermore, when the benefit is tied to sales to a particular market, and that market is not the United States, "the Secretary will not find a countervailable subsidy on the merchandise" (section 355.47(b) of the Department's Proposed Regulations). Moreover, in Final Determination of Porcelain-on-steel Cooking Ware from Mexico; 51 FR 36447, 36449 (1986) where a domestic subsidy was found to apply to other than U.S. sales, the Department did not attribute the subsidy to U.S. imports.

Sidmar notes that the Department has also determined that the bestowal of a subsidy on one company does not necessarily benefit another merely because they are related (see, *Armco, Inc.* v. *United States*, 733 F. Supp. 1514, 1521–22 (Ct. Int'l Trade 1990). When the Department attributes subsidies bestowed on one company to a related company, there are financial transactions not present here.

Only after the Department determines in administrative reviews that the service center has manufactured for export, or exported, the subject merchandise to the United States, may its benefits be included. Sidmar states it is illogical to assume that not including the service center would encourage Sidmar to ship to the United States through the related service center.

DOC Position: We have included the related service center in these investigations. Sidmar owns 99.99 percent of the company, an ownership amount significantly above the 20 percent minimum test outlined in our October 30, 1992 letter to parties in these investigations. Therefore, we have treated the two companies as if they were one. Plus, even though the related service center may be downstream, its production falls in the scope of these investigations. Furthermore, it is not the Department's domain to ascertain what likelihood there is that any company will export in the future. Regardless, we found no evidence at verification to suggest that the company is prohibited from exporting.

Moreover, we found no evidence at verification that the GOB tied subsidies to the service center to non-United States sales or non-subject merchandise. The company appears free to sell its merchandise both domestically and for export. Even though the service center received benefits under programs we traditionally define as domestic, rather than export, there is no evidence on the record that benefits are tied to Belgian sales only (unlike the factual situation in Porcelain-on-steel Cooking Ware from Mexico).

Sidmar appears to be arguing that the related service center must be treated separately since the related service center did not export the subject merchandise to the United States during the POI. We note that Sidmar is taking a fairly narrow view of the concept of merchandise under investigation. Should countervailing duty orders be published in these investigations, the orders will provide for the assessment of duties on imports into the U.S. under Section 701 of the Act. Including subsidies to the related service center in the calculation of such duties is not in violation of the Act.

With respect to *Armco*, we recognize that the facts in *Armco* are slightly different in that the subsidiary had already exported subject merchandise. However, the *Armco* decision does not prohibit the Department from including a potential exporter in its investigations. More importantly, *Armco* supports the proposition that corporate forms should not dictate whether countervailing duties are imposed. In *Armco*, the court said:

> It should be a fundamental consideration in the present and all countervailing cases; the attention in such cases should be focused upon the question of whether exports to the United States have been unfairly subsidized, as envisioned by Congress when it enacted the countervailing duty legislation. This legislation should not be circumvented by corporate formalities or maneuvering.

Comment 4: Sidmar claims that for any benefit to accrue to it by virtue of subsidies to its related service center, potential investors or lenders would had to have access to consolidated statements in 1991. However, the Sidmar Group did not consolidate its financials until FY 1991. In fact, the consolidated financial statement for 1991 was not available prior to 1992. In 1991, investors/lenders could not have made financing decisions using consolidated information. Thus, the Sidmar Group received no consolidation benefit in 1991 or previous years.

DOC Position: In countervailing subsidies to Sidmar's related service center, we are not concerned with any benefit these subsidies may or may not have conferred on the Sidmar Group. Rather, we are concerned with the benefit to the steel produced by Sidmar. Regardless of when the financials were consolidated, the related service center was, and remains to be, a wholly-owned subsidiary of Sidmar. Therefore, its production is properly treated as Sidmar's production.

Comment 5: Sidmar argues that if the Department does attribute benefits to the service center to the Sidmar Group, it must attribute them to total Sidmar Group sales. Furthermore, following petitioners' argument, the Department may not include in Sidmar's rate those benefits that the service center received prior to Sidmar's ownership of the service center.

Petitioner notes that if the Department includes sales of the Sidmar Group in the denominator, it must investigate and include all subsidies to all members of the Group in the numerator. Since the Department has not investigated these programs, it cannot include total Group sales in the denominator.

DOC Position: We have determined not to include sales of the Sidmar Group in the denominator. Therefore, the need to consider subsidies to the entire group is obviated. Because Sidmar owns the service center and because both produce the subject merchandise, we are considering these companies separate from other companies in the Sidmar group for purposes of these investigations. Therefore, we are attributing subsidies to the related service center to both of these related companies. For further discussion of our

treatment of the related service center, see "Related Party" section above.

Comment 6: Petitioners argue that neither company-specific, private, long-term lending rates nor SNCI rates, should be used as benchmarks or discount rates. Rather, the Department should use the IMF rates.

Petitioners note that SNCI loans are countervailable. Therefore, under the Department's Proposed Regulations, they cannot be used. Further, the GOB did not definitively state that SNCI lending rates were national average lending rates. It simply provided them in response to the Department's request for national long-term fixed and variable interest rates, without confirming that they were national average rates. Petitioners add that respondents' claim that SNCI rates are representative of long-term private bank rates suggests at most a correlation between SNCI and private long-term interest rates. Respondents provide no evidence of such a correlation. Also, neither Sidmar nor SNCI documented their assertions that SNCI rates exceed private-bank, long-term lending rates. At verification, SNCI officials indicated that SNCI rates served as a ceiling but only for loans with an interest rate subsidy or a state guarantee.

Petitioners also argue that company-specific lending rates reported in the responses cannot be used. Sidmar's loans were issued by the ECSC and the SNCI and have been found to be countervailable. Clabecq's data on the cost of long-term debt outstanding from 1983–1988 may not be used because it represents average interest rates on total debt outstanding, including subsidized loans. Moreover, the data excludes interest payments made by the GOB, indicating that it includes subsidized loans.

Petitioners also claim that the Sidmar verification report does not provide appropriate lending rates, either. Generale Bank officials stated that the Reuters rate is the national average long-term interest rate without documentation. Sidmar also provides no evidence that "prime" rates on medium-term loans for the period 1990 to 1993 are valid national average long-term interest rates. Clearly, because they are medium-term, they do not fit the Department's preference for long-term rates. Moreover, the Department has not verified their accuracy, and the rates are reported in Flemish so petitioners are unable to ascertain whether the rates are generally available national averages.

Petitioners also note that the Bank Brussels Lambert (BBL) industrial credit rates include SNCI loans, which the Department has determined to be countervailable. Further, both the BBL and Kredietbank (KB) average long-term interest rates involve a spread of up to 30 basis points in the case of KB loans, which is not included in the average interest rates reported.

Therefore, IMF lending rates provide the best alternative source of information on the record. These rates, because they are short-term, are a conservative estimate of the national average long-term rate in Belgium. Short-term rates are normally lower than long-term rates because of the element of uncertainty that characterizes a long period. Thus, their use does not prejudice respondents, especially in light of their failure to provide information.

Respondents argue that the Department justified use of the IMF rates by stating that the responses contained no information on private-bank, long-term lending rates. However, prior to the preliminary determinations, Fabfer submitted Credit General lending rates from 1976 to 1991 and Sidmar provided private-bank lending rates for its private-bank loans taken out in 1988. Additionally, Clabecq supplied information on its long-term debt cost for the period 1983 through 1988. Moreover, respondents assert that since the preliminary determinations in these investigations, Department officials have spoken with representatives of three large commercial banks and have obtained additional benchmark information.

Sidmar further notes that selection of the appropriate discount rate has never been contingent on the availability of "private-bank" lending rates. Rather, the Department's standard has been whether the rates are commercially available per Final Determination of Certain Fresh Atlantic Groundfish from Canada; 51 FR 10041, 10063 (1986). SNCI rates are commercial rates, in that private banks used them as reference rates in the early 1980s. Since that time, private bank rates have been below SNCI rates.

In the 1982 proceedings, the Department found that the SNCI was a lending institution that set the long-term interest rates generally adhered to by private banks in Belgium. In this investigation, no information has been placed on the record to alter such a view. Furthermore, the Department recognized the prevailing nature of the SNCI rates in its preliminary determinations when it used SNCI-based rates as the prime rate.

Additionally, Sidmar points out that the GOB has stated that SNCI rates are considered to be national lending rates. The fact that the SNCI rate on a particular loan is revised every five years is in accord with standard commercial practice in Belgium.

Sidmar claims that the fact that the SNCI is 50 percent government-owned does not negate the applicability of its rates as benchmarks. In the Final Determination of Certain Granite Products from Spain, 53 FR 24340, (1988), the Department stated that government ownership does not necessarily mean that the bank operates in other than a commercial fashion. In previous Belgian cases, SNCI rates were used as benchmark and discount rates (e.g., Certain Steel Products from Belgium, 47 FR 39304, 1982), et. al. The SNCI lends to all sectors of the Belgian economy.

Respondents also argue that Department's use of IMF rates as discount rates was inconsistent with its past practice. The IMF rate does not fit into any of the categories in the hierarchy outlined in the Department's Proposed Regulations. It is a short-term maximum rate to prime borrowers. Although the Department's hierarchy does indicate that a short-term rate may be used for calculating the benefit from long-term variable rate loans, the SNCI rates fit a category higher in the Department's hierarchy, and are more appropriate. Sidmar also notes that in Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221, 1993, the Department used the IMF rate as the benchmark rate for uncreditworthy customers, and the OECD rate for a creditworthy company. Sidmar, however, is creditworthy. Thus, the IMF rate is inappropriate.

DOC Position: We agree with respondents that IMF rates should not be used for benchmark and discount purposes in our final determinations since they reflect rates on short- to medium-term loans. Following the hierarchy outlined in our Proposed Regulations, we have used Sidmar's company-specific rates, not including loans found to be countervailable. We have not used Clabecq's cost of long-term debt outstanding for the period 1983–1988 because it reflects average interest rates on debt outstanding, not specific rates on loans taken out by the company in particular years. Further, we have not used the Credit General rates supplied by Fabfer because there is no evidence that Fabfer actually received loans at those rates.

Since the company-specific information is limited, it is necessary to go to the next step in our hierarchy (i.e., a national, average long-term rate). To this end, we have used Kredietbank rates. BBL rates were not used because they do not include the spread normally

included by banks. With respect to the Kredietbank rates, we verified that the margin can be anywhere from 0 to 30 basis points. Consequently, we have used 15 basis points in our calculations as an average estimate of this spread for creditworthy companies and 30 basis points for uncreditworthy companies.

With respect to SNCI rates, while we would use these rates for purposes of the benchmark in years where SNCI lending was found non-countervailable, we were unable to break-out lending under countervailable programs from the non-countervailable lending. Therefore, we were not able to utilize these rates in our benchmark calculations.

Comment 7: Petitioners and respondents provide substantial argumentation with respect to the issue whether the non-countervailable 1959 Law and the 1970 Law under investigation are integrally linked. Fabfer and Sidmar also argue that the Department should treat the overall program represented by the 1970 and July 17, 1959 Law as a "tiered" program and countervail 1970 Law cash grants only by the difference between what was received and what Fabfer and Sidmar could have received under the 1959 Law.

DOC Position: The discussion of integral linkage in section 355.43(b)(6) of the Proposed Regulations makes it clear that the test for integral linkage applies only when we are attempting to make a specificity determination for programs, which when considered on their own might be specific, but, when taken together, might be found non-specific. Before considering programs jointly for purposes of our specificity test, we must determine them to be integrally linked.

We have found the 1970 Law to be specific because benefits under the law are restricted to firms located in certain regions. Linking the 1970 Law with another law or program for purposes of determining its specificity is inappropriate because the law will always remain regionally specific. Therefore, the question of linkage does not apply here.

Instead, we had to determine how to treat countervailable benefits under the 1970 Law in view of the existence of the 1959 economic expansion law. This law (1959) is generally available and was found to be not countervailable in the 1982 case. Based on all of the relevant evidence on the record concerning these two laws, we have concluded that firms qualifying for benefits under the 1970 Law would also qualify for benefits under the 1959 Law. The only difference would be a somewhat lower benefit level under the 1959 Law. Therefore, we have determined to countervail benefits under the 1970 Law only to the extent that they exceed benefits available under the 1959 Law. This approach is in accordance with our treatment of programs with tiered levels of benefits in Granite from Italy.

Comment 8: Fabfer argues that the amount of cash grants it received under the 1970 Law should be reduced by the amount of taxes Fabfer paid on them. Fabfer argues that it has always been taxed on grants received over the life of the investment, proportionally to the amortization of the investment.

Petitioners argue that the Department may not offset benefits received under the 1970 Law by secondary tax effects. The Department's Proposed Regulations, Department practice, and the statute clearly provide that the Department will not subtract from a benefit the secondary tax consequence of its receipt.

DOC Position: We acknowledge that assets purchased in part with cash grants under the 1970 Law must be depreciated for tax purposes based on the asset value less the cash grant amount. As a result, the cash grants have the effect of reducing deductions for depreciation and, hence, higher taxes. Nevertheless, the Department's longstanding practice is to disregard the secondary tax effects on subsidies. Therefore, we did not make the requested adjustment.

Comment 9: Petitioners argue that where Fabfer has not specified the years in which they received portions of capital grants and interest rebates under the 1970 Law, the Department should assume that the benefits were received in the most recent year indicated.

Fabfer argues that at verification it established the dates it received of most grants. Also, Fabfer showed that the particular grants raised by petitioners were to be disbursed in three equal annual installments. However, Fabfer is not required to retain ledger and bank receipt details for more than ten years. Thus, even though Fabfer was fully cooperative in the verification, it was unable to show the actual dates on which it received certain payments. However, since the contracts specified three equal annual payments, there is no basis to assume that Fabfer received a single payment in the most recent year.

DOC Position: We disagree with petitioners. We found at verification from both government and company sources that cash grants were typically awarded in equal annual installments over a three-year period. For grants received within the past ten years, Fabfer was able to document that its grants had been received in such a manner. For these reasons, it is reasonable to assume the older grants were also received in three equal annual installments.

Comment 10: Petitioners claim that interest subsidies (e.g., those provided to Clabecq under the Gandois Plan) and loans granted under the 1959 Law, which is otherwise generally available, are countervailable when granted to steel companies under government plans to restructure the steel industry, such as the Claes and Gandois Plans. These plans are selectively targeted to steel. That the GOB may have availed itself of its authority under the allegedly generally available 1959 Law to implement selective programs should not negate a finding of countervailability.

Clabecq claims that just because the Claes Plan was also in effect it should not change the legal character of the 1959 Law or its general availability. Plus, the Department must have known at the time of its 1982 determination that the Claes Plan was in effect.

DOC Position: Although the 1959 Law was found to be generally available in the 1982 investigations, it was considered on its own merits and not in connection with other programs or plans. In these investigations, however, we have expressly considered the specific nature of the benefits provided under these restructuring plans and we have concluded that where 1959 Law benefits were selectively targeted using one of the specific restructuring plans, those benefits are countervailable. However, we also note that we found no evidence that Interest Rate Subsidies under the 1959 Law were given subject to the Gandois Plan as alleged by Petitioners.

Comment 11: Petitioners assert that the Department should countervail benefits provided under the program for reimbursement of training costs. First, firms in some regions receive higher levels of benefits than firms in other regions. Moreover, certain regions receive a disproportionately large share of benefits. In petitioners' view, this renders the program a regional program.

Sidmar claims that if a program is received in all regions, it is not specific, regardless of disproportionality among regions. The Department standard for a program not to be regionally specific is simply that benefits be available at least at a minimal level in all of the regions under consideration. Workers in all regions of Belgium have received training reimbursements. Therefore, the program is not regionally specific.

DOC Position: Benefits provided under the program for reimbursement of

worker training costs are provided in all regions of Belgium. However, the level of benefits differs among the regions. Therefore, we have countervailed the difference between the non-specific level of benefits and the level of benefits received by the respondent companies.

Comment 12: Petitioners argue that the Department correctly determined the steel industry to be the dominant user of the Ecological Incentives program, receiving nearly 40 percent of the benefits. They note that the Belgium steel industry's use of this program was disproportionate to its share of Belgium's gross domestic product.

DOC Position: We agree that the Ecological Incentives Program is countervailable. The Department's basis for the decision, however, is different than that of petitioners. We verified that only eight industries received benefits under this program. We have determined eight users to be too few and, therefore, constitute *de facto* specificity.

Comment 13: Petitioners note that the SNCI loans received by Fabfer in 1982 and 1983 remain outstanding. These loans are on terms inconsistent with commercial considerations. Thus, Fabfer continues to benefit in the POI from the below-market interest rate on these loans even though the GOB is no longer paying a portion of the interest costs. Petitioners suggest that the Department should calculate a rate for this benefit.

DOC Position: We agree. Because SNCI loans were found to be specific during these years, we have countervailed them to the extent they were inconsistent with commercial considerations.

Comment 14: Sidmar contends that SNCI's annual reports indicate that SNCI provides loans to a wide variety of industries and enterprises and groups of industries and enterprises. The 1988 Annual Report shows that the secondary sector, which is composed of at least eight separate industries and an unknown number of companies within each industry, received from 83.2 to 55.1 percent of total SNCI lending between the years 1975 and 1988. The services sector, also composed of untold numbers of companies, received from 16.8 to 44.9 percent during the same period.

DOC Position: We agree that SNCI loans have been made to many industries in the Belgian economy. We found, however, that the steel industry's shares of these loans was disproportionate in years prior to 1987.

Comment 15: Sidmar argues that the distribution of SNCI loans does not represent a situation any more disproportionate than that set forth before the Court of Appeals for the Federal Circuit in *PPG Industries* v. *United States* 978 F.2d 1232 (Fed. Cir. 1992) (*PPG Industries* v. *United States*). In that case, 23 companies received 60 percent of the FICORCA benefits granted by the Government of Mexico. The highest percentage of SNCI lending to companies engaged in the production and preliminary procession of metals occurred in 1980, at 29.2 percent.

DOC Position: In *PPG* v. *U.S.*, the court stated that "high concentration of beneficiaries in a given industry must be considered." The court then went on to decide that 60 percent of the benefits being received by 23 companies "*in varying industries*" (emphasis added) did not constitute a high concentration in any one industry. In contrast, as described above, we have found, in certain years a high concentration (approximately 13 to 29 percent) of benefits being provided to one industry (i.e., the steel industry). Therefore, we do not consider the facts in *PPG* v. *U.S.* to be analogous.

Comment 16: With respect to SNCI loans, Sidmar and Clabecq claim that the Department should not rely on the portion given to production and preliminary processing of metals sector in determining whether these loans have been given disproportionately to the steel sector. This is because the category includes, in addition to the steel industry, the zinc, copper and lead industries which are important mineral resources in Belgium.

In addition, Clabecq argues that the Department omitted statistics for a large number of years and it did not consider the percentage of new loans opened, by industrial sector, in each year to evaluate alleged disproportionate benefits.

DOC Position: Because the GOB did not provide a breakdown of SNCI loans by industry, we had to base our specificity determination on the sectoral breakdown provided. Similarly, the GOB did not provide data which would allow us to look at year-by-year shares or new loans issued as opposed to amounts outstanding.

Comment 17: Petitioners argue that the Belgian steel industry's use of the SNCI program was disproportionate when compared to the steel industry's share of Belgium's gross domestic product. For example, in 1988 the steel industry accounted for only 4.04 percent of gross domestic product, yet the steel industry received 22.6 percent of the new SNCI loans provided in that year.

Clabecq argues that the loan percentages to the steel industry are consistent with the size of the Belgian steel industry *vis-a-vis* the Belgian economy.

DOC Position: We based our specificity determination on the fact that the steel industry received a disproportionate share of SNCI loans compared to other users of the program. Therefore, we did not need to address the question of whether the steel industry's share of SNCI loans was excessive with respect to its share of GNP.

Comment 18: Clabecq and Sidmar contend that it is well-established that the GOB ownership of 50 percent of the stock in SNCI does not make SNCI loans countervailable (see, Granite Products from Italy 53 FR 27197, 27205 (1988)). Clabecq argues that SNCI loans are generally available and should not be countervailed. They argue that according to its Proposed Regulations, the Department cannot limit its consideration to only one of the four factors. They also note that according Certain Softwood Lumber Products from Canada ("Softwood Lumber"), 57 FR 22570, 22582–3 (1992), the Department considers no one factor dispositive.

DOC Position: We agree that government ownership in SNCI does not, in and of itself, render SNCI loans countervailable. Regarding Clabecq's comment concerning the specificity test, the Department's interpretation of the Proposed Regulations is that it will consider all relevant factors before concluding that a program is non-specific. However, in Softwood Lumber and other cases, the Department has noted clearly that a finding of specificity may be based upon the presence of a single factor.

Comment 19: Clabecq argues that, as previously found by the Department, SNCI loans are made on terms consistent with commercial considerations. For instance, Clabecq notes that in Industrial Phosphoric Acid from Belgium, 52 FR 25443, 25444 (1987), the Department refused to countervail SNCI credits because they were not on terms inconsistent with commercial considerations. Additionally, the current case is unlike the 1982 steel investigations in that the interest rates charged to steel companies are not lower than rates charged to other customers.

DOC Position: As discussed in our program write-up, we have found that SNCI loans are provided on terms inconsistent with commercial considerations.

Comment 20: Clabecq and Sidmar argue that the Department should recognize that in order to receive SNCI loans, these companies were required to

pay substantial loan and guarantee fees. They state that U.S. countervailing duty law provides an offset for moneys paid in order to qualify for receipt of a benefit. The Department verified that Sidmar paid guarantee fees on its SNCI loans and a reservation provision on one of those loans.

DOC Position: For the specific loans where we have information on loan and guarantee fees, we have compared the cost of the guaranteed loan, including the cost of guarantee fee, with the cost of the benchmark loan, not including a guarantee fee. This is because commercial loans are not normally guaranteed. Therefore, where these fees have been included in calculations, they have not been treated as an offset *per se*.

Comment 21: Clabecq contends that if the Department determines that SNCI loans should be countervailed, the Department needs to revise its calculations to reflect all interest paid by Clabecq.

DOC Position: We have treated each of the loans in question as variable rate loans and we have accounted fully for the interest paid by Clabecq on these loans.

Comment 22: With regard to its "S–6" loan, Clabecq states that use of a 1980–1982 benchmark does not accurately measure the benefit in 1990/1991, given that the company only started drawing down the loan in 1983 and interest rate revisions occurred substantially later. Because of this, the Department should use a later benchmark reflective of these developments. Sidmar makes a similar claim.

DOC Position: Because the S–6 loan was a variable-rate loan, we used our variable-rate loan methodology for this loan. Lacking a variable rate benchmark, we used a long-term fixed-rate benchmark as of the last renegotiation date under the variable-rate loan agreement. In choosing a long-term benchmark, we assume that if the company had not received a variable rate loan, it would have received a fixed-rate loan.

Comment 23: With respect to the SNCI loan program, Sidmar contends that even if the loans were specific and inconsistent with commercial considerations, the Department's calculation of the countervailable benefit is flawed, because the Department did not account for the variable-rate nature of Sidmar's loans.

In past cases where the Department did not have a long-term variable rate benchmark against which to measure any subsidy, the Department has treated variable-rate loans as a series of short-term loans, and applied a short-term benchmark from the POI (see, Final Determination of Certain Fresh Atlantic Groundfish from Canada; 51 FR 10041 (1986) and Final Determination of Oil Country Tubular Goods from Spain; 49 FR 47060, 47062 (1984)). Alternatively, Sidmar argues that because it renegotiates the rates on these loans periodically, the Department should take its benchmark from the year of the renegotiation (see, Final Administrative Review of Certain Carbon Steel Products from Sweden; 57 FR 1452, 1454 (1992).

DOC Position: According to the hierarchy in our Proposed Regulations for variable rate loans, when we do not have variable-rate benchmarks we go to fixed-rate benchmarks. For purposes of these calculations, we used a long-term fixed-rate benchmark as of the last renegotiation date under the variable-rate loan agreement.

Comment 24: Petitioners note that Belfin was created pursuant to the Claes Plan specifically for the purpose of raising money in the international market to aid in the restructuring of the steel industry. Thus, the loans were *de jure* specific. In addition, the steel industry was the dominant user of Belfin loans. Also, the loans were at favorable rates, because Belfin borrowed on international markets with the GOB's guarantee, and then passed on the favorable rates to steel companies. Finally, Belfin loans were made to Cockerill and Clabecq during years when the firms were uncreditworthy. Thus, the Department should countervail the Belfin loans in question as loans to uncreditworthy companies.

Clabecq argues that Belfin loans should not be countervailed. Clabecq argues that the Department did not analyze each of the specificity factors for this program. Clabecq claims that the GOB did not (i) limit the availability of Belfin loans, (ii) the Department made no specific finding of dominant use or disproportionality, and (iii) Belfin funds are not government funds but are funds raised on international money markets.

DOC Position: Because Belfin loans were granted to steel companies under the Claes Plan, we have found them to be *de jure* specific and have countervailed them to the extent that they were provided on terms inconsistent with commercial considerations. Because we have found them to be *de jure* specific we do not need to address *de facto* specificity considerations.

Comment 25: If the Department decides to countervail Belfin loans, it must recognize the full amount of interest paid by Clabecq. In the preliminary, such amounts were substantially understated. Finally, Clabecq should be credited for loan guarantee fees it paid to receive Belfin loans. These fees must be paid annually in order to qualify for receipt of Belfin loans.

DOC Position: In our calculations, we have included the loan guarantee fees since they must be paid annually to qualify for loan receipt. In addition, we have included the verified interest payments in our calculations.

Comment 26: Petitioners allege that a subsidy arose when the GOB agencies, SNSN and SNI, sold their shares in SidInvest to Sidarfin, a wholly-owned subsidiary of Sidmar, at a deflated price. Sidarfin, in turn, passed these benefits to Sidmar, through the payment of extraordinary dividends from 1988 through 1991. The portion of the dividends considered extraordinary, i.e., the excess over the historical average level of dividends, should be treated as non-recurring grants to Sidmar.

Sidmar contends that any potential subsidy to SidInvest cannot be attributed to the production of steel. SidInvest did not invest in Sidmar and SidInvest had no direct financial transactions with Sidmar during the POI. Moreover, any improvement in the Group's financial position potentially caused by cancellation of outstanding CRAs in 1988 would not be apparent to an investor because the Group's results were not consolidated until 1991.

Sidmar also objects to petitioners' claim that benefits were passed through to Sidmar via extraordinary dividends. First, dividends are paid from income and there is no evidence that Sidarfin's income was affected by its purchase or sale of SidInvest shares. Second, the alleged extraordinary dividends were for fiscal years prior to 1988, although paid after that time. Finally, Sidarfin's dividends arise from many sources and there is no evidence to support petitioners' claim that the extraordinary amounts came from Sidarfin's holdings in SidInvest.

Finally, Sidmar claims there was no subsidy to pass through to Sidmar. The CRAs conferred a benefit as a zero interest rate loan, but that loan was not outstanding during the POI. Also, there was no subsidy arising from the sale of SNSN's and SNI's shares to Sidarfin, as the price represented the present value of the outstanding CRAs at the time of the transaction.

DOC Position: We disagree with Sidmar that potential benefits arising from the CRAs and the subsequent transactions involving them cannot be attributed to steel production. SidInvest was set up as an "investment" joint venture, i.e., it would not itself engage in production of any products. Instead,

it would use the funds it received to invest in unspecified projects. The returns from these projects would go to paying off the CRAs and to the joint venture partners.

In situations such as this, where the government provides assistance to a non-producing joint venture (or subsidiary) and where there are no specific conditions on how or where the funds should be invested, it is reasonable to conclude that the subsidy benefits the participants in the joint venture rather than specific investments funded by the joint venture. In our view, subsidies to an investment joint venture, with no conditions on the use of the funds, are analogous to the receipt of "untied" subsidies. The Department's practice in such instances is to allocate the benefit over the total sales of the recipient company.

Because we are treating these subsidies as untied benefits to the Sidmar Group, we do not need to address the comments raised by petitioners and respondents regarding the specific transmittal mechanism raised in the briefs, extraordinary dividends. With respect to the issues of whether there is a subsidy to SidInvest and the amount of that subsidy, we disagree with Sidmar that the benefit from the interest free CRAs no longer exists during the POI. As discussed in the SidInvest section of the notice, we found that the July 29, 1988, agreements essentially turned the CRAs into a 32 year interest free loan. The fact that the loan was repurchased by SidInvest does not extinguish the benefit from that loan.

The other arguments put forward deal with the price paid by Sidarfin for the GOB-owned shares in SidInvest. In our analysis, we have not focused on that transaction directly. Instead, we have implicitly assumed that the price paid for the SidInvest shares by Sidarfin and the SNI was correct. However, as a consequence of this, SidInvest received a subsidy because the cash the GOB received on July 29, 1988, was less than the amount SidInvest should have paid in repurchasing its 32 year interest free loan. Thus, the subsidy was assigned to SidInvest, rather than Sidarfin. Given our decision to allocate these benefits over the entire Sidmar Group, the assignment of benefits to SidInvest or Sidarfin should not matter.

Comment 27: Petitioners argue that loans from ClabecqLease are *de jure* specific, because ClabecqLease was established to provide funds expressly to Clabecq. Although the loan may have been at commercial rates, it was on terms inconsistent with commercial considerations because Clabecq was uncreditworthy and had little access to the private lending market. Therefore, the Department should countervail this loan.

Clabecq argues that in the preliminary determinations, the Department found that the ClabecqLease loan made by Forge Finance S.A. to Clabecq was countervailable. However, in calculating the benefit from this loan, the Department used the grant equivalent for 1992 rather than for 1991. The erroneous use of 1992 considerably overstated the benefit. The Department should use the grant equivalent for 1991, the POI for this investigation. Finally, Clabecq argues that it should be credited with all interest paid on this loan.

DOC Position: For the reasons cited in petitioners' comment, we have found the ClabecqLease loan to Clabecq to be *de jure* specific and we have countervailed the loan to the extent that its terms were more favorable than the terms on benchmark financing, adjusted to take into account Clabecq's uncreditworthiness at the time the loan was negotiated.

We agree with Clabecq that we erroneously used the 1992 grant equivalent in calculating the subsidy amount for this loan in the preliminary determinations. For our final determinations, we have used the 1991 grant equivalent. Finally, as Clabecq has requested, we included all verified interest payments in our calculations.

Comment 28: Petitioners argue that the income tax exemption on capital grants received under the 1970 Law should be treated as a nonrecurring grant because it is a one-time benefit and applies only to the tax year in which the grant was received. Also, in view of the EC State Aids Code, companies could not expect the program to continue after 1985.

DOC Position: We disagree that we should treat this exemption as nonrecurring. The Department's longstanding practice is to treat income tax reductions or exemptions as benefits occurring entirely within the relevant tax year. Because income tax returns and payments are filed on a yearly basis, we have typically recognized income tax savings to be realized on a yearly basis as well.

Comment 29: Petitioners note that under the 1970 Law, companies located in development zones may depreciate plant and equipment at twice the normal linear rate for a maximum of three successive fiscal periods. This benefit is limited to specific regions and is countervailable. In addition, the benefit is nonrecurring because it is limited to three successive tax years following the purchase of the asset. Further, the companies could not have expected the program to remain in effect after 1985 because the EC State Aids Code prohibited capital grants after this year. Thus, the Department should countervail the benefit as a nonrecurring grant.

DOC Position: For the reasons explained above, tax benefits are allocated to the year in which the tax return is filed.

Comment 30: Petitioners claim that the Department must countervail the benefit from accelerated depreciation in the first year that the benefit is claimed. It would be administratively burdensome to trace carryforward deductions to the year of ultimate use. Furthermore, the Department should not allow respondents to select which specific deductions to allocate to what year; otherwise respondents will pick and choose the year in which to be countervailed.

DOC Position: Because Sidmar's related service center's income tax return had separate line items which clearly showed the amount of dividend deduction and the deduction for losses carried forward, we knew precisely which deductions the company had used. Therefore, it was clear that accelerated depreciation was not used.

Comment 31: Sidmar claims that the real estate tax exemption is also available under the July 17, 1959 Law. Therefore, this exemption should not be found to be specific.

DOC Position: We disagree. At verification, we confirmed that accelerated depreciation is available only under the 1970 Law.

Comment 32: Petitioners claim that neither Cockerill nor Fabfer responded to the Department's questionnaire with respect to EC programs. Therefore, the Department should apply BIA to these companies for these programs.

Fabfer contends that petitioners' claim with respect to Fabfer is incorrect. In its deficiency questionnaire response, Fabfer stated that it had never received benefits under the EC programs. Further, the EC verification report states that none of the companies under investigation had Article 56 conversion loans or loan guarantees, European Investment Bank loans or guarantees, or New Community Instrument Loans, outstanding during the POI. Finally, the Department found no evidence of assistance under the ECSC Redeployment Aid or ERDF programs in Fabfer's worksheet of annual reports.

DOC Position: We agree with Fabfer. Fabfer responded and we verified that it did not receive benefits under any of the programs under investigation.

Therefore, we have not applied a BIA rate to Fabfer. However, as noted above in this notice, because Cockerill did not respond to our questionnaire, we are applying BIA to this company.

Comment 33: Petitioners argue that 19 USC 1671(a), dealing with subsidies discovered in the course of the investigation, requires the Department to countervail the "water purification subsidies" received by Sidmar based on BIA. Moreover, using the Department's traditional analysis, the benefit is non-recurring.

Sidmar contends that the Department cannot find that the grants Sidmar received for water treatment provided countervailable subsidies. According to Article 2 of the GATT Subsidies Code, "Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with provisions of the Article." Sidmar argues that the Department has not initiated investigations on these grants and it did not request any information from Sidmar concerning these grants.

Sidmar claims that it complied fully with the Department's requests for information on investigated programs. However, the record indicates that the Department was not investigating these types of grants. These grants existed prior to the 1982 investigations and were expressly found not countervailable at that time. Moreover, the Department has no new evidence indicating that the 1982 determination was incorrect and, therefore, has no basis to overturn its prior determination (see, Initiation of Certain Softwood Lumber Products from Canada; 51 FR 21204, 21205 (1986)).

Sidmar further contends there is substantial evidence on the record that these water purification grants were not part of the same "Ecological Incentives" program which provided benefits to Fabfer and Clabecq. Sidmar received grants; Fabfer and Clabecq received loans which were later assumed by the GOB. Second, the GOB response indicates that, of the companies under investigation, only Fabfer and Clabecq received benefits. Third, the Department verified that the investigated Ecological Incentives program was terminated in 1981. However, Sidmar received water purification grants through 1983.

To find these grants to provide a countervailable subsidy to Sidmar this late in these investigations would deny Sidmar its right to present its views fully and to demonstrate that there is no countervailable subsidy. Sidmar was not given notice of the discovery of this subsidy practice during the investigation, as required under 19 CFR 355.39(c). As a result, Sidmar has not been given the opportunity to address this issue.

DOC Position: We have treated the water purification subsidies as countervailable. We agree with petitioners that the Department is required to countervail subsidies discovered during the course of an investigation. Further, section 355.39 of the Department's regulations allows for consideration of subsidy practices not necessarily initiated upon. Finally, in this case we have verified the exact benefits received under the program.

Sidmar contends that according to Article 2 of the Subsidies Code, "Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with provisions of the Article." It is true that we did not include Sidmar when we initiated our investigation into the Ecological Incentives Program. Therefore, no questions were asked of Sidmar. However at verification we discovered Sidmar had received water purification subsidies. At that point, the Department requested further information concerning these subsidies. We consider the request made for information at verification to have provided Sidmar with the appropriate notification as required by our regulations. Further, Sidmar was provided ample opportunity to address this issue in its case briefs.

As discussed previously, under the Ecological Incentives program, the GOB assumed the debt for companies with respect to water treatment projects. Although Sidmar regarded its water purification subsidies as grants, it is not unlikely that a company like Sidmar would treat receipt of benefits under the Ecological Incentives program as a grant given the nature of the program. Second, even though the GOB response indicates that, of the companies under investigation, only Fabfer and Clabecq received benefits, the GOB did not schedule a meeting with Flemish officials regarding this program. Third, even though the Ecological Incentives program was terminated in 1981, we verified that many companies including Fabfer had outstanding commitments which were incurred after 1981. We also note that Sidmar began receiving water purification subsidies before 1981. Finally, the program found not countervailable in the 1982 investigations was referred to as "Environmental Incentives". While it appears to be the same as the Ecological Incentives program investigated presently, there is no mention of a water purification program in the 1982 notice.

Sidmar's argument that to find these grants to provide a countervailable subsidy this late in these investigations would deny Sidmar its right to present its views fully and to fully demonstrate that there is no countervailable subsidy is inaccurate. We did give Sidmar adequate "notice" of the discovery of this subsidy practice during the verification, as required under 19 CFR 355.39(c). At verification, we asked numerous questions about the nature of these subsidies and their relationship to the already-investigated Ecological Incentives program. Further, our discovery of these "subsidies" was detailed in the Sidmar verification report. Finally, Sidmar was given adequate opportunity in their case briefs to argue this issue.

Comment 34: The Government of Belgium argues that the Department's decision to return the corrected share of industrial output and other statistical information contained in the Government's February 11, 1993 submission is a somewhat narrow interpretation of Section 355.31(a)(i) of the Department's regulations. They note that the original statistical information was provided to the Department before the verification of the Government of Belgium's responses. The returned February 11, 1993 submission is simply a correction to that original submission.

The Government of Belgium argues that it was never notified in writing, of the existence of a deadline to file "new" information presented during the Department's verification. The Government states that it was first aware of the written memorandum outlining this deadline on February 11, 1993, when petitioners' counsel attached it to a submission to the Department. Further, the Government argues that absence of written notification in this case most likely constitutes an administrative breach because in other cases, such as the concurrent countervailing duty investigation regarding New Zealand, written notification was made. The Government of Belgium also argues that given the schedule and release of other information in these investigations it is unfair to determine that because the information was filed with the Department six business days after the end of the Government of Belgium verification it has to be rejected. The GOB notes that if it had received written notification, it would have filed a request for a reasonable extension.

The Government of Belgium argues that according to 19 CFR 355.38(c)(2) of the Department's regulations, "the case brief shall separately present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination of final

VOL 58 ISS 130 JL 9 1993 UMI

results * * *." The Government maintains that the four points contained in their case brief submitted on April 12, 1993, are arguments that continue in the Government of Belgium's view to be relevant to the Department's final determinations and therefore should not be rejected. Returning the information included in the case brief means that the Department has no intention of taking into account arguments that continue to be relevant for the final determinations.

Further, the Government points out that the Department's decision to return the information is inconsistent with the opinion given by the U.S. Court of International Trade in the case of *Ornatube Enterprise Co., Ltd.* v. *United States and Hannibal Industries, Inc.* (1993) concerning the treatment of new information contained in a case brief.

DOC Position: With respect to the return of the corrected industrial share information, our regulations at 19 CFR 355.31(a)(i) are clear regarding time limits for submission of factual information. Factual information shall be submitted not later than the day before the date on which the verification is to commence. We originally asked for this information in a December 9, 1992 letter to the GOB. The GOB filed this information for the first time (on a timely basis) on January 13, 1993. We began verification in Belgium on January 25, 1993. Therefore, the last date in which the GOB could have submitted "updated" information was Friday, January 22, 1993. However, the information was received on February 11, 1993. We also note that the GOB did not even bring up these corrections to the Department when the verification team was verifying this information on the first day of verification—January 25, 1993.

The GOB is arguing that it has never been notified, in writing of the existence of a deadline to file "new" information presented during the Department's verification. However, the Department's verification team verbally made it clear to GOB officials on January 26, 1993 (and reminded them on later dates) of the two day deadline to file new information presented during the verification. Written notification in the verification outline would not have been possible. Unlike the case in New Zealand, when notification was contained in the verification outline, the Belgium verification had begun before the internal verification guidance memorandum from the Acting Assistant Secretary was sent to analysts.

Regarding the GOB's point that it is unfair to return the submission, we note that a rationale underlying the two day deadline is to give all parties to the proceeding as much time as possible to consider information previously not on the record. In that spirit and given that we did verbally inform GOB officials at verification of the deadline, and that the policy was followed in the other concurrent steel investigations, it would be unfair to make an exception to the rule for the GOB.

We further note that in our April 15, 1993 letter in which we returned this information, the Department explained that the exhibits included in the case brief and all references thereto will not be considered. The Department did not tell the GOB that it would be unable to set forth arguments with respect to the issues related to the untimely exhibits. Returning the information included in the case brief does not mean that the Department intends to ignore arguments that continue to be relevant for the final determination.

Finally, the GOB's reference to the United States Court of International Trade decision in the case of *Ornatube Enterprise Co., Ltd.* v. *United States and Hannibal Industries, Inc.* (1993) concerning the treatment of new information contained in a case brief actually supports the Department's actions in this case. In *Ornatube*, the Court ordered the Department to sever new information from a case brief, expunge it from the record, and retain the information that did comply with Commerce's instructions. In this case, we explained to the GOB in the April 15, 1993 letter that the exhibits and all references thereto will not be considered. However, the rest of the brief still remains on the record of these investigations.

European Community ("EC") Programs Interested Party Comments

Counsel for the EC and petitioners submitted the following comments on EC programs under investigation. Our responses to the following comments also apply to the concurrent countervailing duty investigations from France, Germany, Italy, Spain and the United Kingdom.

Comment 1: Petitioners argue that programs financed by the ECSC Operating Budget are countervailable. As the Department found in the 1982 steel investigations, budget-funded programs are countervailable to the extent that member state funds are included in the budget. In this case, the Department found that member state contributions made up a large portion of the ECSC Operating Budget. After 1985, even though a significant portion of the ECSC operating budget was funded through levies, it also appears to consist of residual member contributions. To the extent that the operating budget after 1985 contained funds from the extraordinary receipts, or contained net surplus from preceding years made up of member state contributions, ECSC programs financed with these funds are countervailable.

DOC Position: We verified that member state contributions were made during the period 1978–1984. Consistent with our finding in 1982, we are treating only that portion attributable to member state contributions as countervailable.

The only benefits prior to 1985 which continue to be countervailable are Article 54 interest rebates. In order to account for the effect of member state contributions in the calculation of Article 54 benefits, we calculated the ratio between the contribution from member states and the ECSC's total available funds for the year, and then multiplied this ratio by the rebate amount to calculate the subsidy.

Petitioners suggest that the member state contributions from 1978–1984 have affected post-1984 ECSC budgets. However, we found no evidence that "residual" benefits have affected later budgets. Therefore, we have not taken this further adjustment into account in our calculations.

Comment 2: The EC argues that the Department should find the ESF grant program to be not countervailable because the record demonstrates that aid under the program was distributed throughout the community. There is no evidence on the record showing that ESF funds are limited to a region in Italy, the only country where this issue is pertinent. Instead, the evidence on the record shows that ESF funds were provided in northern, central and southern Italy.

More generally, the EC argues that any aid provided under any government's assistance programs is likely in practice to be used within some geographic area constituting less than the complete land mass of a country. To be countervailable, the availability of aid must be limited, either *de jure* or *de facto*, only to specific regions. If aid which is generally available is not actually used in every part of a country, this does not mean that it is *de facto* specific. The criterion should be the availability and not *ex post facto* microscopic evaluation of the distribution of the aid within the country.

Petitioners argue that the EC's specificity analysis relating to ESF Aid fundamentally distorts the *de facto* specificity standard provided by Congress. The EC's statement that "[t]he criterion should be the availability and

not *ex post facto* microscopic evaluation of the distribution of the aid within the country," is clearly at odds with the countervailing duty statute. Petitioners state that the EC would write this law off the books by inviting the Department to look only at the nominal availability of the funds. The statute, however, calls for both a *de jure* and if necessary a *de facto* analysis of a program's specificity. Properly implemented, this test entails looking at actual disbursement of benefits under the program and not the availability of those benefits.

DOC Position: We found at verification that the ESF is primarily responsible for combating long-term unemployment and facilitating employment opportunities for younger workers. Its secondary role is to promote the development of regions that are (1) lagging behind, (2) affected by industrial decline, and (3) located in rural areas. We note that EC officials confirmed at verification that the program typically channels resources to these less-developed regions.

In Italy, we verified that in fact ESF funds were channeled to certain areas. Therefore, because under its primary and secondary objectives, the ESF has channeled resources to only certain regions, we view this program to be limited and, therefore, countervailable.

Comment 3: Petitioners note that an additional flow of member state funds into the ECSC budget has taken the form of aid designated for "Social Measures." This aid, in many cases, operates to relieve steel firms of legal or contractual obligations to redundant workers. Thus, to the extent that the Social Measures make funds available to steel producers on terms inconsistent with commercial considerations, and are financed through the extraordinary receipts made up of member state contributions, they are countervailable. In addition, when provided to steel workers or former steel workers in a manner that relieves steel companies of their legal obligations, aid disbursed under the rubric of this program is countervailable.

DOC Position: During the EC and member state verifications, we found no evidence that funds under the heading "Social Measures" were being received by any investigated company. Thus, we determine that no additional analysis on the nature of this line item from the EC budget is required for purposes of these investigations.

Verification: In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Belgium which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Hot-Rolled Carbon Steel Flat Products
- Country-Wide Rate—1.12 percent
- Cockerill—24.17 percent

Certain Cold-Rolled Carbon Steel Flat Products
- Country-Wide Rate—1.03 percent
- Cockerill—24.17 percent

Certain Cut-To-Length Carbon Steel Plate
- Country-Wide Rate—6.52 percent
- Cockerill—24.17 percent
- Fabfer—0.96 percent

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on entries of certain steel products from Belgium.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15630 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–816]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Laurel Lynn, Office of Countervailing Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3961 or 482–1168, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act),

are being provided to manufacturers, producers, or exporters in Brazil of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations (57 FR 57806, December 7, 1992) the following events have occurred. On December 22, 1992, we issued a supplemental questionnaire to the Government of Brazil (GOB). On January 12, 1993, we received a response to that questionnaire from the respondents. We conducted verification of the responses submitted in these investigations from January 27, 1993, through February 18, 1993. Public hearings were held on April 21, 1993, regarding case-specific issues, and on May 5–6, 1993, regarding general issues affecting this and other certain steel investigations from various countries.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see Suspension of Liquidation section, below).

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise, as found in the "Scope Appendix" to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria: (1) Certain hot-rolled carbon steel flat products, (2) certain cold-rolled carbon steel flat products, (3) certain corrosion-resistant carbon steel flat products, (4) certain cut-to-length carbon steel plate.

Injury Test

Because Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the certain steel products from Brazil materially injure, or threaten material injury to, U.S. industries. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reason of imports from Brazil of the subject merchandise (57 FR 38064, August 21, 1992).

Respondents

The GOB is a respondent for each class or kind of merchandise subject to these investigations. The following is a list of respondent companies for each class or kind of merchandise subject to these investigations:

Certain Hot-Rolled Carbon Steel Flat Products: USIMINAS, COSIPA, CSN.

Certain Cold-Rolled Carbon Steel Flat Products: USIMINAS, COSIPA, CSN.

Certain Corrosion-Resistant Carbon Steel Flat Products: CSN.

Certain Cut-To-Length Carbon Steel Plate: USIMINAS, COSIPA.

Analysis of Programs

Based on our analysis of the petition, the responses to our questionnaires, verification and comments by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in these investigations, and in other countervailing duty investigations of certain steel products from various countries were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of these final determinations, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991, which corresponds to the fiscal years of USIMINAS, COSIPA, and CSN.

Calculation of Country-Wide Rates

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the ad valorem benefit received by each firm weighted by each firm's share of exports, separately, for each class or kind of merchandise, to the United States. The rates for all programs were then summed to arrive at a country-wide rate for each class or kind of merchandise.

Pursuant to section 355.20(d) of the Department's regulations (19 CFR 355.20(d)(1992)), for each class or kind of merchandise, we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs. Only one company, CSN, is a respondent in the corrosion-resistant carbon steel flat products investigation. Its rate, therefore, is the country-wide rate for corrosion-resistant carbon steel flat products.

Of the three respondent companies in the hot-rolled carbon steel flat products investigation, two of the companies, USIMINAS and COSIPA, have rates that are significantly different than the country-wide rate as defined in section 355.20(d) of the Department's regulations. Therefore, USIMINAS and COSIPA received individual company rates for this class or kind of merchandise. For the remaining firm, CSN, we recalculated the country-wide rate, based solely on the benefits received by this firm for this class or kind of merchandise. This is the rate that will be applied to all other manufacturers, producers, and exporters, with the exception of USIMINAS and COSIPA.

For the cut-to-length carbon steel plate investigation, both companies under investigation, USIMINAS and COSIPA, were significantly different from the country-wide rate. Therefore, these firms received individual company rates for this class or kind of merchandise. Because all of the firms under investigation were significantly different from the country-wide rate, we are applying the weighted-average rate for these two companies to all other manufacturers, producers, and exporters of cut-to-length carbon steel plate, with the exception of USIMINAS and COSIPA.

For the cold-rolled carbon steel flat products investigation, all three companies under investigation, USIMINAS, CSN and COSIPA, were significantly different from the country-wide rate. Therefore, these firms received individual company rates for this class or kind of merchandise. Because all of the firms under investigation were significantly different from the country-wide rate, we are applying the weighted-average rate for these three companies to all other manufacturers, producers, and exporters of cold-rolled carbon steel flat products,

with the exception of USIMINAS, CSN and COSIPA.

Equityworthiness

The Department considers a company equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government equity infusions were made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. For a detailed explanation of the standards used by the Department to determine whether a company is equityworthy, please see the *Equity* section of the General Issues Appendix.

Petitioners have alleged that USIMINAS, COSIPA and CSN were unequityworthy during 1980–1988, 1977–1989 and 1991, and 1977–1991, respectively, and, therefore, that equity infusions received during those years were inconsistent with commercial considerations. The Department has previously analyzed the equityworthiness of some of these years. COSIPA has been previously found to be unequityworthy in the following years: 1977–1984 (See Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products From Brazil, 49 FR 17988 (April 26, 1984), (Carbon Steel), and subsequent administrative reviews); and 1985–1991 (See Final Negative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil, 57 FR 42968 (September 17, 1992) (Pipe and Tube)). USIMINAS was found unequityworthy from 1980–1987 (See Final Affirmative Countervailing Duty Determination: Steel Wheels From Brazil, 54 FR 15523 (April 16, 1989) (Steel Wheels)). CSN was determined to be unequityworthy in the following years: 1977–1982 (See Carbon Steel, 1984 Investigation); and 1983–1984 (See Certain Carbon Steel Products from Brazil: Final Results of Countervailing Duty Administrative Review, 52 FR 829 (January 9, 1987)).

In the present investigations, respondents submitted additional information for our consideration of whether they were equityworthy after 1986. A financial restructuring plan was adopted in 1987 by the GOB-owned steel holding company SIDERBRAS, which owned COSIPA, CSN and USIMINAS. The plan was based on internal studies and outside consultants' recommendations, and entailed financial restructuring of the three companies and government assistance in various forms. We have examined the financial restructuring plan, and particularly the projections contained therein, in analyzing the equityworthiness of COSIPA, CSN, and USIMINAS for the years after 1986.

The projections contained in a consultant's evaluation of the plan, as supplied by respondent, do not support a determination of equityworthiness for any of the companies in the years under investigation. The goal of the restructuring plan was that at the end of the restructuring period, the companies would provide a satisfactory return on equity. However, according to the plan itself and the projections provided, that goal would not be achieved until the end of the plan's implementation period, after the years under investigation.

In addition, respondents have argued that one of the reasons for their poor financial health was the failure of the GOB to provide equity infusions in accordance with long-term plans established by the GOB and the companies. Given that history, a reasonable investor would have had cause to be skeptical regarding the full implementation of the restructuring plan, which included future GOB assistance to the companies.

Projections of future earnings are only one part of the Department's analysis of equityworthiness. The Department's "Equityworthy and Creditworthy" memorandum dated November 27, 1992, outlines the analysis of the current and past indicators of the firms' financial health as calculated from financial statements and financial ratios. The analysis of these factors strongly indicates that the companies were unequityworthy during the years under investigation. A private investor would have had to reconcile such an analysis of past performance with projections of future earnings based on the financial restructuring plan. As noted above, the information in the response regarding the projections does not support a finding of equityworthiness. The projections do not provide a sufficient basis to overcome the historical records of poor performance by the companies under investigation.

This analysis of the impact of the SIDERBRAS financial restructuring plan on the companies' equityworthiness does not provide evidence which would cause us to change our preliminary determinations regarding equityworthiness.

Based on prior Department determinations and analysis of respondents' data, we have determined that respondents were unequityworthy in the following years: USIMINAS 1980–1988 (USIMINAS did not receive equity infusions after 1988); COSIPA 1977–1989, 1991; CSN 1977–1991. We, therefore, determine that equity infusions provided by the GOB to each company in these respective years were inconsistent with commercial considerations. See the Department's memorandum dated June 21, 1993, regarding final determinations of equityworthiness and creditworthiness.

Creditworthiness

The Department will find a firm uncreditworthy if the firm did not have sufficient revenues or resources to meet its fixed financial obligations in the three years prior to the year in which the firm and the government agreed upon the terms of the loan.

Based on petitioners' allegation, we initiated investigations to determine whether USIMINAS, COSIPA, and CSN were uncreditworthy during the period 1979–1991. For certain years, we had previously determined that these companies were uncreditworthy and respondents provided no new information that would lead us to reconsider those determinations. Based on previous Department determinations and respondents' submitted financial data, we determine that respondents were uncreditworthy in the following years: USIMINAS, 1980–1988; COSIPA, 1979–1991; and CSN, 1979–1991. See the Department's memorandum dated June 21, 1993, regarding final determinations of equityworthiness and creditworthiness.

Privatization

In these final determinations, we have decided that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We calculated the portion of the purchase price attributable to repayment of prior subsidies. We then reduced the benefit streams for each of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits from those prior subsidies at the time of privatization. A further explanation of the Department's determination on privatization and these calculations can be found in the Privatization section of the General Issues Appendix. The subsidies allocated to the POI for USIMINAS reflect, where appropriate, the application of the privatization methodology. USIMINAS was partially privatized in 1991.

Grant Methodology

The Department's methodology for calculating the net subsidy rate attributable to grants is discussed in the Allocation section of the General Issues Appendix.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain steel products under the following programs:

1. *Equity Infusions.* USIMINAS, COSIPA, and CSN received equity infusions from the GOB in the following years: USIMINAS, 1980 through 1988; COSIPA, 1977 through 1989 and 1991; and CSN, 1977 through 1991. We have consistently held that government provision of equity does not *per se* confer a subsidy (see section 355.44(e)(1) of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations)). Government equity infusions bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Therefore, we examined whether the responding companies were reasonable investments in the years they received infusions from the GOB in order to determine whether the infusions were inconsistent with commercial considerations. For the reasons specified in the Equityworthiness section of this notice, and in the Equity section of the General Issues Appendix, we determine that the GOB's equity infusions into USIMINAS between 1980–1988, into CSN between 1977–1991, and into COSIPA from 1977–1989 and in 1991, were made on terms inconsistent with commercial considerations, and thus countervailable.

In calculating the benefit from the equity infusions it was necessary to adjust the nominal values of the equity infusions to account for Brazilian hyperinflation that averaged over 350 percent per year since 1977. While various Brazilian inflation indices are available to hold nominal cruzeiro values constant, we have determined that it is more appropriate to convert the nominal cruzeiro amounts of the infusions into U.S. dollars using the exchange rate in effect at the time of the infusions. We have chosen dollarization over Brazilian inflation indices for a number of reasons. First, because of triple-digit inflation, there has been very little long-term cruzeiro lending in Brazil over the last decade. Consequently, no appropriate long-term cruzeiro discount rate for use in our grant calculation exists. Second, the Brazilian currency has undergone three reforms since 1977. With each currency reform, the Brazilian government introduced a new inflation index. Thus, indexing individual equity infusions across different currencies and indices becomes extremely complex. Third, the government-published indices have been generally criticized as understating real increases in prices. For these reasons, therefore, we have dollarized all equity infusions as a reasonable and workable alternative.

In calculating a benefit from the infusions, we first established a discount rate, as provided for in section 355.49(b)(2) of the Proposed Regulations. Because we have converted the equity infusions into dollars in order to account for hyperinflation, we must use a long-term discount rate in dollars. For our benchmark discount rates, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders as published in World Bank Debt Tables: External Debt of Developing Countries. For those years that respondents were found to be uncreditworthy, we added a risk premium to the discount rate. This risk premium was calculated in accordance with the Proposed Regulations.

To calculate the benefit from the subsidies, we used the calculation methodology specified in the Equity section of the General Issues Appendix.

On this basis, we determine the net subsidies for this program to be 28.10 percent *ad valorem* for certain hot-rolled carbon steel flat products except for USIMINAS (3.45 percent *ad valorem*), and COSIPA (43.12 percent *ad valorem*); and 19.20 percent *ad valorem* for certain cold-rolled carbon steel flat products except for USIMINAS (3.45 percent *ad valorem*), CSN (28.10 percent *ad valorem*), and COSIPA (43.12 percent *ad valorem*); 28.10 percent *ad valorem* for certain corrosion-resistant carbon steel flat products; and 19.66 percent *ad valorem* for certain cut-to-length carbon steel plate except for USIMINAS (3.45 percent *ad valorem*) and COSIPA (43.12 percent *ad valorem*).

2. *Fiscal Benefits by Virtue of CDI.* Under Decree-Law (D.L.) 1428, the Industrial Development Council (CDI) provides for the reduction of up to 100 percent of the import duties and up to 10 percent of the IPI tax (value-added sales tax) on certain imported machinery for specific projects in 14 industries approved by the GOB. In order to qualify for these reductions, the recipient must prove that the machinery or equipment to be imported is not available from a Brazilian manufacturer.

This program was repealed in 1979 under Decree-Law 1726. However, companies whose projects were approved prior to the repeal continue to receive benefits from this program pending completion of their respective project. We verified that only USIMINAS received benefits under this program, in the form of import duty and IPI tax reductions, during the POI.

This program was found to be limited to a specific enterprise or industry, or group of enterprises or industries, in Steel Wheels. In these investigations, respondents have provided no new information or evidence of changed circumstances to contradict that decision.

To calculate the benefit from the CDI program import duty and IPI tax exemptions, we computed the amount of import duties and IPI tax that would have been paid by USIMINAS in 1991 absent this program and divided that amount by sales of cut-to-length steel plate. We are allocating this exemption to the POI because this is a recurring benefit (see the Allocation Issues section in the General Issues Appendix). We used only sales of that product since the machinery imported under CDI can only produce cut-to-length carbon steel plate. On this basis, we determine the net subsidies for this program to be 0.21 percent *ad valorem* for cut-to-length carbon steel plate except for USIMINAS (0.36 percent *ad valorem*) and COSIPA (zero).

3. *IPI Rebate Program Under Law 7554/86.* The IPI Rebate Program, which consists of a rebate of 95 percent of the IPI tax paid on domestic sales of industrial products, was established by Decree-Law 1547 in 1977. Although the program was suspended in April 1990 (Decree-Law 8034), steel companies with projects approved before April 12, 1990, are eligible for IPI rebates until 1996 (pursuant to the old legislation, as amended by Law 7554/86).

In the Pipe and Tube and Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil (Leaded Bar), 58 FR 6213 (January 27, 1993), we determined this program was limited to a specific enterprise or industry, or group of enterprises or industries. The GOB did not provide any information or evidence of changed circumstances to contradict that decision. USIMINAS, COSIPA, and CSN received benefits under this program during the POI. These benefits are not tied to any class or kind of merchandise. We determine these benefits to be recurring, based on the analysis set forth in the Allocation Issues section in the General Issues Appendix. Therefore, to calculate the benefit, we divided the total amount of each company's IPI rebates received during the POI by their respective total sales during the POI.

On this basis, we determine the net subsidies for this program to be 2.04 percent *ad valorem* for certain hot-rolled carbon steel flat products except for USIMINAS (2.00 percent *ad valorem*), and COSIPA (0.58 percent *ad valorem*); 1.56 percent *ad valorem* for certain cold-rolled carbon steel flat products except for USIMINAS (2.00 percent *ad valorem*), CSN (2.04 percent *ad valorem*) and COSIPA (0.58 percent *ad valorem*); 2.04 percent *ad valorem* for certain corrosion-resistant carbon steel flat products; and 1.42 percent *ad valorem* for certain cut-to-length carbon steel plate except for USIMINAS (2.00 percent *ad valorem*) and COSIPA (0.58 percent *ad valorem*).

4. *Exemption of IPI and Duties on Imports under Decree-Law 2324.* Decree-Law 2324 of March 30, 1987, provided exporters of manufactured products exemptions from IPI and duties on imported spare parts and machinery. This program was used by CSN and USIMINAS during the POI. Because this exemption was limited to exporters, and because the imported goods were not physically incorporated into the subject merchandise, we determine this program to be countervailable.

We determine these benefits to be recurring, based on the analysis set forth in the Allocation Issues section in the General Issues Appendix. We calculated the benefit for CSN by dividing the amount of IPI and import duties exempted in 1991 by that company's total exports in 1991. The USIMINAS claim for this exemption is being challenged by the GOB, and the matter is presently before the Brazilian courts. Therefore, since the matter has not been resolved by the Brazilian judicial system and there is a possibility that USIMINAS may have to pay the IPI taxes and import duties, we are treating the amount of the exempted tax and duty as an interest-free loan. To calculate the benefit to USIMINAS, we determined the amount of IPI and export duties not paid in 1991 and multiplied that by the short-term interest rate in Brazil and the number of days those payments were outstanding during the POI. If a countervailing duty order is issued in these investigations, and if a section 751 administrative review is requested, we will reexamine this issue in an administrative review pending the resolution of this challenge in the Brazilian judicial system.

On this basis, we determine the net subsidy to be 0.01 percent *ad valorem* for certain hot-rolled carbon steel flat products except for USIMINAS (0.19 percent *ad valorem*) and COSIPA (zero); 0.11 percent *ad valorem* for certain cold-rolled carbon steel flat products except for USIMINAS (0.19 percent *ad valorem*), CSN (0.01 percent *ad valorem*), and COSIPA (zero); 0.01 percent *ad valorem* for certain corrosion-resistant carbon steel flat products; and 0.11 percent *ad valorem* for certain cut-to-length carbon steel plate except for USIMINAS (0.19 percent *ad valorem*), and COSIPA (zero).

The Department has verified that Decree-Law 2324 terminated by its own decree in 1991 and that no residual benefits have been provided. Because the program was terminated prior to the preliminary determination in these investigations and no residual benefits have been provided since before the preliminary determination, we will reduce the estimated cash deposit of countervailing duties to zero in accordance with section 355.50(a)(2) of the Department's Proposed Regulations.

5. *BNDES Financing.* The Banco Nacional de Desenvolvimento Economico e Social (BNDES) is Brazil's government-owned bank for economic and social development. BNDES lends to a variety of sectors of the economy through a set of operating programs in accordance with government economic objectives. BNDES is the only source of long-term cruzeiro lending in Brazil.

BNDES financing has been found to be non-specific and therefore not countervailable in prior Department determinations. See, e.g., Carbon Steel, 1984 Investigations. However, in these current investigations, petitioners have alleged that BNDES provided a disproportionate share of loans to the steel sector. Petitioners have also alleged that the loans were provided on terms inconsistent with commercial considerations because the companies were uncreditworthy at the time of receipt of the loans. USIMINAS, COSIPA, and CSN received loans from BNDES which were outstanding during the POI.

In prior investigations, the Department has considered whether respondent companies received disproportionate benefits under a program. See, e.g., Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil (Iron Ore). 51 FR 21961 (June 17, 1986); and Final Affirmative Countervailing Duty Determinations: Pure and Alloy Magnesium from Canada (Magnesium), 57 FR 30946 (July 13, 1992). In these investigations, we analyzed whether respondents received a disproportionate share of benefits by comparing their share of benefits to the collective or individual share of benefits provided to all other users of the program in question.

In Iron Ore, the Department compared the amount of BNDES lending to the mining sector (the notice mistakenly refers to the metallurgy sector) to the amount of BNDES lending provided to the total industrial sector. Based on that analysis, we determined that the mining sector did not receive a disproportionate share of BNDES lending. Similarly, in Magnesium we compared the amount of program assistance provided to each of the recipients to the amount of assistance provided to the respondent. Based on this examination, we found that the respondent received a disproportionate share of benefits under the program, and thus the benefits it received were countervailable.

We have employed the same type of analysis in these investigations. To determine whether the steel industry received a disproportionate share of loans under BNDES, we went back to the earliest year in which loans were received by any of the respondents which were still outstanding during the POI. We then compared BNDES lending to the steel industry in those years to total BNDES lending to all other industries in Brazil.

In every year from 1975 through 1986, the steel industry was the largest single industrial recipient of BNDES lending. The steel industry received two-and-a-half times more in BNDES lending than the second largest industrial recipient during that same time period. We also compared the lending received by the steel industry during those years to total BNDES lending to all sectors of the economy, not just lending provided to industry. A comparison of total lending provided to the steel industry to total BNDES lending, including funding for the development of electrical energy and infrastructure in Brazil, also shows that the steel industry is the single largest recipient of BNDES financing in those years. Therefore, BNDES provided more funding to one single industry, steel, than was provided for the entire development of electricity or infrastructure within the country. Based on this analysis, we determine that the steel industry in Brazil received a disproportionate share of BNDES lending for the years 1975 through 1986, and, therefore, loans provided to the respondents from BNDES in those years are specific to the steel industry.

We verified that BNDES sets the interest rates to be charged on indexed cruzeiro loans based on the long-term rates for U.S. dollars. Because there is no other source for fixed-rate, long-term cruzeiro lending, we converted the indexed BNDES loans into U.S. dollars, and used a U.S. dollar benchmark. Because respondents were

uncreditworthy in each of the years BNDES loans were approved, we added a risk premium to the benchmark. The risk premium was calculated in accordance with section 355.44(b)(6)(iv) of the Proposed Regulations. For further information on the calculation of the benchmark, please see Comment 8, below. A comparison of the benchmark interest rates to the interest rates on these loans indicates that at least some of the BNDES loans were provided on terms inconsistent with commercial considerations.

Because virtually all of the BNDES loans were contracted and recorded in the respondents' accounting system in inflation indices and not in cruzeiros, it was not possible to convert the loan principal into dollars at the time of loan contract. However, we do have verified information regarding the indexed amounts of each loan in cruzeiros outstanding at both the beginning and at the end of our POI. Therefore, instead of calculating the benefit from BNDES loans using our standard long-term, fixed-rate loan methodology we have used the following methodology: (1) We converted the cruzeiro amounts of principal outstanding at the beginning and at the end of the POI into dollars using the corresponding exchange rates, (2) we subtracted the year-end balance from the year-beginning balance to find the amount paid during 1991, (3) we multiplied the differential between our dollar benchmark and the interest rate on the loan by the amount of principal paid in 1991 to derive the dollar benefit during 1991, and (4) we divided the dollar benefit by 1991 total sales in dollars to calculate the *ad valorem* benefit.

On this basis, we determine the net subsidies for this program to be 0.24 percent *ad valorem* for certain hot-rolled carbon steel flat products except for USIMINAS (0.07 percent *ad valorem*), and COSIPA (0.96 percent *ad valorem*); 0.37 percent *ad valorem* for certain cold-rolled carbon steel flat products except for USIMINAS (0.07 percent *ad valorem*), CSN (0.24 percent *ad valorem*) and COSIPA (0.96 percent *ad valorem*); 0.24 percent *ad valorem* for certain corrosion-resistant carbon steel flat products; and 0.43 percent *ad valorem* for certain cut-to-length carbon steel plate except for USIMINAS (0.07 percent *ad valorem*) and COSIPA (0.96 percent *ad valorem*).

6. *Provision of Infrastructure: Port of Praia Mole.* Petitioners alleged that the use and sale of these port facilities, constitute a provision of subsidized infrastructure to USIMINAS.

Praia Mole Port consists of a pier, terminals, and other facilities designed for use by steel and coal companies. Praia Mole Port is located within the larger Vitoria Bay Port, which contains port facilities for a variety of industries. Praia Mole Port was jointly constructed by SIDERBRAS (GOB-owned steel holding company), CVRD (GOB-owned mining concern) and PORTOBRAS (GOB entity responsible for ports and associated infrastructure). The port was built for the exclusive use of CVRD and three steel manufacturers which were subsidiaries of SIDERBRAS: USIMINAS, CST, and ACOMINAS.

SIDERBRAS's interest in the port was sold in October 1991 in three equal shares to the three steel companies. USIMINAS's purchase agreement with SIDERBRAS stipulated that USIMINAS would have a grace period before principal and interest payments were required, but that monetary correction and interest would be computed from the date of the agreement.

We verified that, prior to the sale of the port, the three steel companies paid the following four types of fees for the use of the facilities: (1) To SIDERBRAS, a fee of twelve percent of the total of its invested capital per year for recovery of its investment; (2) to CST, which held a contract to operate the port, a fee for operating expenses such as management, maintenance, and insurance; (3) to PORTOBRAS, a GOB agency administering ports, a fee to cover costs of the general port infrastructure; and (4) to unrelated third parties, a fee for handling cargo.

We verified the origin and calculation of each of the charges. SIDERBRAS' charge is based on the cost to SIDERBRAS of constructing the port facilities plus a twelve percent return on investment. The operating costs are based on use of the facilities. The PORTOBRAS charges are based on the agency's standard charges applicable to all ports. The charges for cargo handling are negotiated directly with the outside parties.

After the sale, the fees paid by USIMINAS, CST, and ACOMINAS for the use of the port changed only in that there was no longer a fee to SIDERBRAS for its return on investment.

We determine that USIMINAS did not receive a benefit from the use of the port facilities in the form of preferential fees. The fees charged by PORTOBRAS were calculated on the same basis as the other companies' fees and reflect standard fees applied to all users of port facilities, thus, they are non-specific. We found no evidence that the fees charged by CST or the unrelated third parties were set by the GOB or at the GOB's direction.

However, we do determine that a benefit did accrue to USIMINAS in the form of a preferential interest rate on the purchase agreement with SIDERBRAS. For purposes of these final determinations, as in the preliminary determinations, we analyzed the purchase agreement effectively as a loan, and find that the interest rate is inconsistent with commercial considerations based on a comparison to a real short-term benchmark rate. Although the financing for the Praia Mole Port was at a fixed long-term interest rate, we had to use a short-term interest rate as our benchmark because there are no long-term fixed interest rates for cruzeiro loans available from commercial sources in Brazil. We calculated the differential between the actual interest deferred during the POI and the amount that should have been deferred using the benchmark rate. The amount of that differential was then divided by USIMINAS' total export sales.

On this basis, we determine the net subsidies to be less than 0.005 percent *ad valorem* for all products subject to these investigations.

B. Programs Determined Not to Exist

We determine that the following program does not exist:

Deferred Income Tax and Social Contribution

Interested Party Comments

The following are country-specific comments only. All other issues are either addressed in the sections above or in the General Issues Appendix.

Comment 1: Respondents argue that the Department's equity infusion calculation overstated the benefits received by respondents. First, the Department's use of U.S. dollars in the benefit stream distorted the calculation of benefits conferred by prior infusions. Second, even if the Department uses the dollar methodology, the Department must use the daily exchange rate in effect on the last day of each month to dollarize those amounts of equity infusions that were provided to the Department on a monthly basis in order to avoid overstating the amount of the equity infusion.

Petitioners argue that the Department's dollar-based methodology for quantifying the equity infusion benefit does not overstate the benefit. On the contrary, the methodology actually understates the benefits, but to a much lesser degree than the methodology advocated by respondents, which is indexing the cruzeiro values. Petitioners, therefore, state that the Department should continue to dollarize equity infusions.

Department Position: For the reasons explained in the Equity Infusions section of this notice, we find that dollarizing the equity infusions is the most reasonable and workable method to account for Brazilian hyperinflation. As for the respondents' argument that we should use the daily exchange rates in effect at the last day of each month, we must continue to use the monthly average exchange rates since the information provided by respondents shows only the month, not the particular day, in which the infusion occurred. Where the respondent provided only yearly totals, we continued to use the average annual exchange rate to dollarize the infusions.

Comment 2: Respondents argue that the Department should use COSIPA's equity infusion amounts tables net of interest. COSIPA accidently included interest as part of the equity infusion when it submitted its questionnaire response. Information for making this revision was provided to the Department at verification and is contained in the verification exhibits.

Department Position: We agree that interest should be deducted from the amount of the equity infusion. We have adjusted our calculations accordingly.

Comment 3: Petitioners argue that the World Debt Tables (World Bank publication) used by the Department are not appropriate measurements for discount rates in these investigations. World Debt Tables interest rates are rates for public and publicly-guaranteed debt in various currencies. As an alternative, the Department should use a variable, U.S. dollar-based rate that reflects each firms' actual borrowing experience.

Department Position: We disagree. Petitioner's request that we construct company-specific discount rates contravenes the ranking of discount rates in the Department's Proposed Regulations. Section 355.49(b)(2) of the Proposed Regulations establishes the hierarchy of discount rates used with respect to valuing equity infusions over time. The first two discount rates in the hierarchy are inappropriate because the respondents were found to be uncreditworthy at the time they received the equity infusions. Therefore, to determine the most appropriate discount rate, we have followed the interest rate hierarchy for uncreditworthy firms found in section 355.44(b)(6). We consider the rates in the World Debt Tables to be the closest proxy available for the highest fixed, long-term, rates commonly available to firms borrowing dollars in Brazil. They represent rates for private, nonguaranteed debt from private creditors. As such they are appropriate discount rates to use for our equity calculations. In those years that the respondent firms were uncreditworthy, we added a risk premium stipulated in section 355.44(b)(6) of the Proposed Regulations.

Comment 4: Petitioners contend that the Department should reject its preliminary determination that the IPI tax exemptions received by USIMINAS under the CDI program were also available to all companies in Brazil under Decree-Law 8191. Petitioners contend that the Department's verification report states that less than one percent of USIMINAS' CDI-related imports would have been covered under Decree-Law 8191.

Department Position: In our preliminary determinations, the Department stated that, based on the information on the record, the IPI exemptions received by USIMINAS under the CDI program were available to all Brazilian companies under Decree-Law 8191. At verification, the Department determined that while Decree-Law 8191 does provide for exemption from IPI on certain imports, less than one percent of the goods imported by USIMINAS under CDI would have been covered by Decree-Law 8191. Respondents have made no argument that benefits under these laws are integrally linked, and there is no evidence on the record that they are integrally linked; therefore, we have not included the industries benefitting from D.L. 8191 in our analysis of the specificity of the CDI program. Because the CDI program was the only program which offered these benefits, and the CDI program has been determined to be specific, we have included the IPI exemption in the subsidy calculation.

Comment 5: Respondents argue that in these investigations, the CDI program and its benefits, including eligibility for residual benefits, terminated prior to the preliminary determination. Therefore, they argue the cash deposit rate should be set at zero.

Department Position: At verification, the GOB informed the Department that USIMINAS' eligibility for CDI benefits expired on September 1, 1992. However, USIMINAS had been granted CDI benefits prior to September 1, 1992, for imports which would enter the country between September 1, 1992, and December 31, 1992. The GOB granted USIMINAS the right to receive its previously-approved CDI benefits through December 31, 1992. Because USIMINAS was still receiving benefits until December 31, 1992, the Department considers that benefits were provided under CDI after the preliminary determinations in these investigations. Therefore, the termination does not constitute a program-wide change in accordance with section 355.50(d) of the Proposed Regulations, and the cash deposit rate has not been set to zero.

Comment 6: Respondents argue that the Department should not countervail the IPI rebate program, because the IPI tax is selectively imposed by the GOB on only 14 sectors of the Brazilian economy, and the rebate of that tax merely places the steel sector in the same position as other sectors in Brazil. Petitioners argue that the IPI rebates do constitute a non-specific benefit. Petitioners contend that the industry sectors subject to IPI tax account for a major portion of the Brazilian economy. Therefore, they state it is incorrect to suggest that a rebate of the tax for the steel industry serves to place steel on an even basis with the rest of the economy. The rebate of IPI tax is specifically provided to the steel industry by the GOB, and should be countervailed.

Department Position: We agree with petitioners. The program under investigation in this case is the IPI rebate program, under which the steel industry in Brazil receives a specific subsidy not provided to other industries. While other industries may or may not be required to pay the IPI tax, the GOB rebates that tax only to the steel industry, and thus we have determined that the rebate is specific and countervailable. The Department has previously found the IPI rebate program specific to the steel industry (*see, e.g.*, Carbon Steel, Pipe and Tube (1992), and Leaded Bar (1993)). In these investigations, respondents provided no new information or evidence of changed circumstances to contradict our determination of specificity.

Comment 7: Petitioners state that the Department, in its preliminary determination in these investigations, correctly determined that Decree-Law 2324 provided countervailable benefits to USIMINAS and CSN through exemptions of IPI and import duties on machinery and spare parts, and that the Department should affirm this finding in its final determinations.

Respondents argue that none of the respondents in these investigations received countervailable benefits under the 2324 program during the POI. Respondents first state that the Department verified that COSIPA did not receive benefits under this program during the POI.

Respondents state that while the imports for which CSN received 2324 program benefits cleared Brazilian Customs in January 1991, those imports

VOL 58 ISS 130 JL 9 1993 UMI

were related to imports made in 1990, and therefore were assessed and exempted in 1990. Respondents argue that benefits under this program did not accrue to CSN during the POI, and therefore are not countervailable.

Respondents also argue that the Department should determine that USIMINAS did not receive countervailable benefits under this program during the POI. USIMINAS did claim 2324 program benefits during the POI, but that claim is currently being disputed by the GOB. The legal position of the GOB, as explained by respondents, is that USIMINAS was not eligible for these benefits in 1991. Respondents argue that, because the GOB itself disputes USIMINAS's claim to these benefits, the Department should not consider that a subsidy has been granted.

Department Position: In these final determinations, the Department affirms its preliminary determination that Decree-Law 2324 provided countervailable benefits to CSN and USIMINAS during the POI.

At verification, the Department examined documentation which showed that CSN's benefits did derive from imports which entered the country in 1990. However, because the imports cleared Brazilian Customs in 1991, CSN actually realized the benefit from this program during the POI. This is consistent with Department policy which states that a benefit is received at the time of the cash flow to the company from the subsidy program (see section 355.48(a) of the Department's Proposed Regulations). Under this program, the cash flow to the company from the program occurred in 1991, because it is during that year that import duties would have been paid, absent this program.

The Department also considers that USIMINAS received a benefit from the 2324 program during the POI. Respondents' argument that USIMINAS and the GOB are disputing the propriety of the benefit is not relevant to the Department's determination of whether a countervailable subsidy was received by USIMINAS. However, because the matter has not been resolved by the Brazilian judicial system, and there is a possibility that USIMINAS will ultimately have to pay the IPI taxes and import duties, we are treating the non-payment as an interest-free loan. If a countervailing duty order is issued in these investigations, and if a section 751 administrative review is requested, we will reexamine this issue in an administrative review pending the resolution of this challenge in the Brazilian judicial system.

Comment 8: Petitioners argue that the Department should develop a benchmark rate for fixed-rate, indexed BNDES loans that is based on U.S. dollar interest rates plus a spread derived from each respondent's real cost of U.S. dollar borrowings. The Department found support at verification for comparing indexed loans with a U.S. dollar-denominated benchmark. The most appropriate benchmark is a U.S. prime-based rate for COSIPA and a LIBOR-based rate for CSN and USIMINAS. In addition, the Department should include a 25 percent remittance tax in the nominal rate to reflect the actual cost of borrowing U.S. dollars in Brazil.

Respondents argue that the Department's Proposed Regulations state that the benchmark rate should be fixed and that variable rates such as the U.S. prime and LIBOR would violate the criteria established in the Department's regulations. The Proposed Regulations are concerned with the average cost of long-term debt in the country in question. Therefore, if the Department decides to base its discount rate on U.S. dollar interest rates, the Department should continue to use the World Debt Tables referred to in the preliminary determinations. Respondents also argue that U.S. dollar financing obtained in Brazil will not be subject to the 25 percent remittance tax. The income tax associated with each loan depends on the source of the loan and the particular agreements underlying some of the loan contracts stipulate that the lending bank will often pay the tax.

Department Position: As explained in the BNDES Financing section of this notice, we learned at verification that BNDES regularly sets the interest rates to be charged on fixed-rate, long-term indexed cruzeiro loans based on long-term rates for U.S. dollars. Moreover, there are no long-term rates for cruzeiro loans whether or not they are indexed. It is reasonable and consistent to convert indexed BNDES loans into U.S. dollars and to use a U.S. dollar benchmark. While petitioners have noted the logic and consistency of this approach based on a reading of the information in the record, we disagree with their argument for a company-specific benchmark.

For uncreditworthy firms, the first preference for a benchmark for a fixed-rate loan under section 355.44(b)(6) of the Proposed Regulations is the highest long-term fixed interest rate commonly available to firms in the country in question. In the case of Brazil, the Department has relied on the World Bank because that was the only source found during the course of these investigations which published interest rates on long-term dollar lending in Brazil. Of all the U.S. dollar rates published in the World Bank's Debt Tables, the highest rates are those for private, nonguaranteed debt from private creditors lending U.S. dollars in Brazil. Absent the availability of any other source providing statistics on the interest rates charged in Brazil on long-term U.S. dollar lending, we are using the highest interest rates published in the World Bank's Debt Tables.

Furthermore, in our view it is not appropriate to move outside of Brazil, such as to the U.S. lending market as suggested by petitioners, in search of another dollar-based benchmark. This decision is based on several specific facts unique to these Brazilian investigations. Both BNDES loans and equity infusions were originally provided in cruzeiros, but because of persistent hyperinflation over the last decade they were converted into U.S. dollars for purposes of calculating the benefits conferred by these programs. Therefore, because we have converted the loans and equity infusions into dollars for purposes of our calculations, we do not consider it appropriate to search outside of Brazil for a benchmark. In our view, only in-country dollar rates accurately reflect the unique factors involved in lending dollars in a hyperinflationary economy. These factors are presumably accounted for in the dollar interest rates available within Brazil, but are not reflected in interest rates on dollar lending within the United States. Therefore, due to these economic conditions which are unique to Brazil, it would be inappropriate to move to the U.S. market for our dollar benchmark.

Regarding the remittance tax, we found no evidence at verification that such a tax is levied in Brazil. An examination of the verified loan lists submitted by the respondents shows that the remittance tax was not required on U.S. dollar borrowings in Brazil from either BNDES or private commercial banks. Therefore, we do not find it appropriate to account for that tax when constructing our benchmark.

Accordingly, we determine that the World Bank's Debt Table rates are appropriate representations of "the highest long-term fixed interest rate commonly available to firms in the country." For those years that the respondents were found to be uncreditworthy we have also included a risk premium.

Comment 9: Petitioners argue that the Department must include FINAME loans as part of its analysis of the countervailability of the BNDES lending

system. FINAME financing is an integral part of BNDES preferential provision of capital to the steel industry.

Respondents argue that allegations regarding direct lending by BNDES do not pertain to FINAME, or any other of the various separate and distinct lending programs of BNDES. The Department has always investigated FINAME separately and has always found it to be noncountervailable. See, e.g., Construction Casting, (1986); Tool Steel, (1986); Wire Rod, (1982). Appropriately, the Department did not separately solicit information regarding FINAME lending.

Department Position: We disagree with petitioners. It has been the Department's practice to treat loan programs administered by these sub-agencies as separate programs. The Department did not initiate an investigation of the lending of BNDES sub-agencies BNDESPAR and FINAME, because, unlike the information provided regarding long-term BNDES loans, no argument or evidence regarding the steel sector's share of borrowing from these sub-agencies was provided in the petition. Thus, there was no new information in the petition that would have led the Department to reexamine the noncountervailability determinations cited by respondents.

Comment 10: Respondents argue that the question of disproportionate use must be analyzed on a case-by-case basis and is not subject to a simple mathematical test that would apply to all cases. Doing otherwise would be analyzing disproportionate use in the extreme abstract with no consideration of the program or policy being analyzed. There is no authority or logic for the proposition that the analysis of whether a benefit is disproportionally provided to a specific industry should ignore the nature of the alleged benefit. Particularly in this case, development banks such as BNDES should be given such case-by-case analysis. Bunching or spikes in the distribution of benefits may be justified given the natural course of economic development. Presumably, in the absence of other evidence, the market is the ultimate allocator of benefits rather than the government.

Department Position: Respondents' basic premise is that if a program provides specific benefits to selected industries due to the inherent nature of the program or the inherent needs of the recipients of the benefits under the program, then the program should not be found countervailable. This analysis is untenable and has been explicitly overturned by the Department in Final Results of Countervailing Duty Administrative Review: Carbon Black from Mexico, 51 FR 30385 (1986), and Final Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570, 22582 (1992).

We do agree, however, with respondents' statement that disproportionate use should be analyzed on a case-by-case basis. Our analysis in this case shows that for the years 1975 through 1986, the steel industry was the single largest recipient of BNDES lending. The steel industry received two-and-a-half times more loans under this program than the second largest industrial recipient of BNDES funds. The steel industry received more in BNDES financing than the total financing provided to either the development of electricity or infrastructure in Brazil. It is based on this case-specific analysis that we find BNDES lending disproportionate to the steel industry.

Comment 11: Respondent argues that neither the purchase nor the use of the Praia Mole Port conferred a countervailable subsidy to USIMINAS. The sale of Praia Mole was a fair-value, arm's-length sale based on market considerations. The financing terms available to USIMINAS were not preferential. The Department's use of an "overnight" rate (a daily rate) as a benchmark is unreasonable for comparison to an eight-year loan. The fees paid by USIMINAS for the use of the port did not confer a benefit.

Petitioner argues that because the interest rate on the loan used to purchase Praia Mole was below the Department's benchmark, the Department correctly found the terms preferential and therefore countervailable. In the absence of preferred information regarded benchmarks, the Department was correct in choosing a short-term interest rate for its benchmark in accordance with practice and the Proposed Regulations.

Department Position: Section 355.44(b)(2) of the Proposed Regulations state that the Department must take into account any deferral of principal repayments or interest payments on a loan. Unless such deferral is a normal or customary lending practice in the country in question, the deferral of principal or interest provides a countervailable benefit to the extent that the deferral results in a total loan repayment that is less than the repayment would have been in the absence of the deferral. While we find no evidence that grace periods on repayment of local currency loans were the normal or customary lending practice in Brazil, the interest on the loan began accruing from the date of the loan contract in 1990. Therefore, the grace period itself bestows no benefit. However, as long as the interest rate on the purchase agreement is preferential in relation to our benchmark, a countervailable benefit accrues to USIMINAS every time it makes an interest payment.

Regarding the benchmark, since USIMINAS was creditworthy in 1990, we followed the hierarchy for creditworthy firms established in section 355.44(b)(4) of the Proposed Regulations. The first five benchmarks in the hierarchy are long-term rates. Long-term rates for cruzeiro loans are not available. Therefore, we arrive at the sixth preferred rate in the long-term, fixed-rate hierarchy which is a benchmark based on the "predominant source of short-term financing in the country in question." The predominant source of short-term financing in Brazil in 1990 was the "overnight" rate. Monthly averages for overnight rates are published in Conjuntura Economica, a private Brazilian statistical publication. Since "overnight" rates are nominal rates, we use the same deflator index applied to USIMINAS' loan to derive a real "overnight" rate to use as our benchmark.

The benchmark derivation for this indexed cruzeiro loan is different from our treatment of indexed BNDES loans, which were converted into U.S. dollars. As explained in both the BNDES Financing section and an earlier comment, BNDES indexed loans were converted into U.S. dollars because rates set by BNDES were usually based on U.S. dollar rates. In this instance, there is no information that the interest rate charged by SIDERBRAS in the purchase agreement is based on U.S. dollar interest rates. Therefore, we used the "overnight" rate because it is consistent with the benchmark hierarchy prescribed by the Proposed Regulations.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

UMI
VOL 58 ISS 130 JL 9 1993
UMI

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Brazil, which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidy and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawal from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues final affirmative injury determinations, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

[In percent]

	Net subsidy rate	Deposit rate
Certain hot-rolled carbon steel flat products:		
Country-wide	30.39	30.36
USIMINAS	5.71	5.52
CSN	30.39	30.36
COSIPA	44.66	44.36
Certain cold-rolled carbon steel flat products:		
Country-wide	21.24	21.04
USIMINAS	5.71	5.52
CSN	30.39	30.36
COSIPA	44.66	44.36
Certain corrosion-resistant carbon steel flat products:		
Country-wide	30.39	30.36
Certain cut-to-length carbon steel plate:		
Country-wide	21.84	21.61
USIMINAS	6.07	5.88
COSIPA	44.66	44.36

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on entries of certain steel products from Brazil.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d) and 19 CFR 355.20(a)(4)).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15631 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–427–810]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Susan Strumbel, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0167 or 482–1442, respectively.

FINAL DETERMINATIONS

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671), are being provided to manufacturers, producers, or exporters in France of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of these preliminary determinations in the **Federal Register** on December 7, 1992 (57 FR 57785), the following events have occurred.

On December 15, 1992, we issued a supplemental/deficiency questionnaire to the Government of France (GOF) and Usinor Sacilor. On January 11, 1993, we received a response to this questionnaire. In response to our letter of January 13, 1993, we received additional information concerning the sales value of French-produced merchandise on January 22, 1993. In addition, on January 22, 1993, we received information from respondents to clarify the record on certain issues.

We conducted verification of the responses submitted on behalf of the GOF and Usinor Sacilor from January 25 through February 3, 1993.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see Suspension of Liquidation section, below).

Country-specific case and rebuttal briefs were submitted on April 19 and April 22, 1993, respectively, by petitioners and respondents. In addition, we received general issues case and rebuttal briefs on April 28 and May 3, 1993, from petitioners and respondents. A country-specific hearing was held on April 23, 1993 and the general issues hearing was held on May 5 and 6, 1993. On May 26, 1993, we returned to both petitioners and respondents certain information submitted in their respective case briefs because it constituted untimely presented factual information.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise, as described in the Scope Appendix attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria: (1) Certain hot-rolled carbon steel flat products; (2) certain cold-rolled carbon steel flat products; (3) certain corrosion-resistant carbon steel flat products; and (4) certain cut-to-length carbon steel plate.

Injury Test

Because France is a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that a U.S. industry is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise (57 FR 38064).

Respondents

The GOF and the Commission of the European Communities are respondents for each class or kind of merchandise subject to these investigations. Usinor Sacilor is the only respondent company for each class or kind of merchandise subject to these investigations.

Corporate History

At the end of 1986, Usinor and Sacilor, which previously had been stated-owned corporations, were merged into a single holding company called Usinor Sacilor.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments by interested parties, we determined the following:

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries, were not case-specific but rather general in nature. We included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Issues;
- Privatization Issues;
- Restructuring Issues;

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Final Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of these final determinations, the period for which we are measuring subsidies (the period of investigation ("POI")) is calendar year 1991, which corresponds to the fiscal year of Usinor Sacilor.

Equityworthiness

Petitioners alleged that Usinor, Sacilor, and Usinor Sacilor were unequityworthy from 1982 through 1991. Therefore, any equity infusions received during those years were provided on terms inconsistent with commercial considerations.

The Department has previously determined that Usinor and Sacilor were unequityworthy for the years 1979 and 1982 in Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France, 47 FR 39332 (September 7, 1982) (Certain Steel). In these current investigations, respondents did not provide nor did we verify any information regarding Usinor's and Sacilor's financial position for these years that would lead us to reverse our earlier finding.

Also, respondents have not provided any information to show, nor have they argued, that Usinor and Sacilor were equityworthy during the entire 1979 through 1985 period. Therefore, for the reasons stated in our preliminary determinations, we continue to find that Usinor and Sacilor were unequityworthy in those years.

With respect to the period following 1985, we have considered comments raised by both petitioners and respondents concerning our preliminary finding that Usinor Sacilor was unequityworthy from 1986 to 1988, and equityworthy during 1991. Based on our analysis, we continue to determine that Usinor Sacilor was unequityworthy in 1986 through 1988, and equityworthy in 1991.

Respondents have argued that they were equityworthy beginning in 1986 through 1991. However, because there were no infusions in 1989 and 1990, we need not determine whether Usinor Sacilor was equityworthy in those years.

Respondents argue that the Department's preliminary finding ignored the firm's prospects for future profitability. Rather, according to respondents, the Department focused on past performance without taking into consideration the restructuring and consolidation activities of the company and the cyclical downturn being experienced by the steel industry. We have addressed this issue, as well as respondents' arguments regarding the owner-investor viewpoint and conversion of past investments, in the Equityworthiness section of the General Issues Appendix.

When determining whether a company is equityworthy in a particular year, it is the Department's practice to evaluate the company's financial performance over the three years prior to the year in which the infusion was provided. Therefore, to evaluate whether Usinor Sacilor was equityworthy beginning in 1986, we have evaluated the financial position of Usinor and Sacilor three years prior to each year in which investments were made.

Usinor, Sacilor, and Usinor Sacilor reported substantial losses in each year until 1987. Stockholders' equity was negative in every year except 1986. Accordingly, certain financial indicators, such as rate of return on assets and equity and profit margin on sales, were negative until 1987. In 1988, Usinor Sacilor reported positive rates of return on assets and equity, profit margin on sales, and a positive debt to equity ratio. However, given its history of losses and poor financial condition in the years preceding 1988, we cannot say that Usinor Sacilor was equityworthy in 1988. Therefore, we determine that Usinor, Sacilor, and Usinor Sacilor were unequityworthy in 1986 through 1988.

Respondents have argued that earnings before interest, taxes and depreciation (EBITD) is an important measure of the equityworthiness of a company. Respondents maintain that a potential investor may view strong gains in EBITD as a positive indicator that a company's restructuring efforts are paying off. In addition, according to respondents, investors may be less concerned with net income if they can see that the company is actively working toward retiring debt and unproductive assets.

However, as we stated in the *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France* 58 FR 6222 (January 27, 1993) (*Lead and Bismuth*), we are not persuaded that EBITD is the best means of measuring the rate of return on

equity. While potential investors may consider EBITD, it is not as accurate a reflection of the potential return on investment as a measure which is net of interest, taxes, and depreciation, *i.e.*, net income. The Department considers that the net income of a company, not EBITD, reflects the amount which would potentially accrue to the benefit of the shareholders. For these reasons, we have relied upon the companies' return on assets and return on equity, calculated as net income divided by the assets and average shareholder's equity, respectively.

Petitioners have observed that most of the ratios used by the Department to evaluate equityworthiness (*e.g.*, current, quick, debt-to-equity, profit margin, etc.), deteriorated over the period 1988 through 1990, despite Usinor Sacilor's two profitable years in 1988 and 1989. Therefore, according to petitioners, Usinor Sacilor could not have attracted equity capital in 1991.

Two measures of liquidity, the current ratio and quick ratios, indicated that the firm was sufficiently able to meet its short-term obligations during the period 1988 and 1991. However, petitioners maintain that the decline in Usinor Sacilor's times-interest earned ratio indicates that the firm was barely able to meet its interest payments. Respondents point out, however, that this ratio is below normal, particularly with respect to 1991, because of the restructuring undertaken by Usinor Sacilor.

Petitioners also argue that although there was a global upturn in the steel cycle from 1988 through 1990, which allowed Usinor Sacilor to increase its net sales, its profit on those sales declined. Respondents answer that if petitioners had calculated the profitability ratios using EBITD, they would find that the ratios were very good for these years. Further, respondents argue that although Usinor Sacilor posted a loss in 1991, it was due to a large restructuring charge taken in that year.

We agree with petitioners that although the company reported positive rates of return on both assets and equity for 1988 through 1991, the financial position of the firm weakened yearly. However, we do not believe that the firm's financial position, as indicated by the ratios during these years, was such that it would not be able to attract investment. Ratio analysis only provides a "snapshot" of the financial position of the firm at a particular point in time. While that snapshot is important, it must be weighed against evidence regarding the future prospects of the company.

In these investigations, we have such evidence—a report of an analysis of Usinor Sacilor performed by an independent Swiss consulting firm. The Swiss consulting firm was hired by the European Commission to evaluate Credit Lyonnais' proposed acquisition of 20 percent of Usinor Sacilor's voting stock. The European Commission ordered the study to determine whether the proposed investment by Credit Lyonnais was one that a prudent investor would make, and whether Credit Lyonnais was paying a fair price, in accordance with the European Communities' State Aids Code.

Petitioners contend that the Swiss consulting report is error-ridden, fundamentally biased, and that it fails to establish that a reasonable investor would have provided capital to Usinor Sacilor. We disagree. We find the Swiss consulting report to be reliable and probative. Due to the proprietary nature of this report, we have set out our evaluation of the arguments with respect to this report in a separate memorandum to the file.

Thus, in considering Usinor Sacilor's potential to generate a reasonable rate of return within a reasonable period of time, we have looked to both the relevant financial data and the Swiss consulting report. On that basis, we have concluded that Usinor Sacilor was equityworthy in 1991. For further discussion of our equityworthiness analysis and our analysis of the Swiss Consulting Report, *see* Memorandum to File, dated June 21, 1993, regarding the Evaluation of Usinor Sacilor's Equityworthiness and Creditworthiness, on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Creditworthiness

In our preliminary determinations, we found Usinor Sacilor to be uncreditworthy during the years 1978 through 1989. Respondents have not challenged this finding nor have they provided any information for the record that would lead us to reach a different conclusion for the period 1978 through 1981. Therefore, for purposes of these final determinations, we determine that Usinor and Sacilor were uncreditworthy in the years 1978 through 1981.

Based on our analysis of certain liquidity ratios and debt ratios, *i.e.*, current and quick, times interest earned, long-term debt, and debt-to-equity, we continue to determine that Usinor, Sacilor, and Usinor Sacilor were uncreditworthy during the years 1982 through 1988. In reaching this determination, we evaluated financial data for the three years prior to each year in which borrowings were made.

For the period, 1979 through 1987, Usinor, Sacilor, and Usinor Sacilor consistently incurred substantial losses. As a result, the interest ratios were negative and the liquidity ratios indicated that the companies may have had difficulty in meeting their short-term obligations. Moreover, Usinor and Sacilor reported net losses in each of these years. Therefore, we find Usinor, Sacilor, and Usinor Sacilor to be uncreditworthy from 1982 through 1988.

The picture began to change, however in 1988. Usinor Sacilor reported a profit in that year, as well as in 1989, and 1990. In addition, the times-interest earned, long-term debt, and debt-to-equity ratios indicated that Usinor Sacilor was in a position to cover its interest obligations, and had improved its debt structure. Based on this, we find Usinor Sacilor creditworthy for the years 1989, 1990, and 1991. For further discussion of our creditworthiness analysis and our analysis of the Swiss Consulting Report, see Memorandum to File, dated June 21, 1993, regarding the Evaluation of Usinor Sacilor's Equityworthiness and Creditworthiness, on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in France of certain steel products under the following programs. The analysis provided below applies equally to each of the four classes or kinds of merchandise.

1. Equity Infusions

Loans with Special Characteristics (PACS): A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into "loans with special characteristics," or PACS. As a result of this process, the steel companies were no longer liable for the

loans and bonds, but did take on PACS obligations.

Respondents argue that PACS were an instrument akin to redeemable subordinated nonvoting preferred stock. PACS would be included in shareholders' equity on the balance sheet, and had the following characteristics: (1) A symbolic 0.10 percent remuneration for the first five years and 1.0 percent thereafter; (2) no repayment schedule, but in the event the steel companies became profitable, the PACS holders could elect to redeem their PACS or share in profits according to a predetermined formula; and (3) PACS were subordinated to all but the common stock.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986 and 1991, respectively.

For the reasons discussed in the *Equity* section of the General Issues Appendix, we have determined that PACS were debt, rather than equity, when issued. *Fonds d'Intervention Siderurgique (FIS)* The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. The FIS, or steel intervention fund, was created by a decree of May 18, 1983, in order to implement that authority. Usinor and Sacilor issued convertible bonds to the FIS, which, in turn, with the GOF's guarantee, floated bonds to the public and to institutional investors.

In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS. These FIS bonds were converted to common stock in 1986 and 1988.

For the reasons discussed in the *Equity* section of the *General Issues Appendix*, we have determined that FIS bonds were debt, rather than equity, when issued.

Calculation Methodology

Consistent with the equity methodology adopted in these investigations, we have concluded that any benefits to Usinor Sacilor occurred at the point when these debt instruments, *i.e.*, PACS and FIS bonds, were converted to common stock. Because we have determined that Usinor Sacilor was unequityworthy from 1978 through 1988 and equityworthy in 1991, we consider the conversion of PACS to common stock in 1981 and 1986 to constitute equity infusions on terms inconsistent with commercial considerations. However, because we have determined that Usinor Sacilor was equityworthy in 1991, the PACS-to-equity conversion in 1991 has been determined to be consistent with commercial considerations.

Similarly, we consider the conversion of FIS bonds to common stock in 1986 and 1988 to constitute equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was unequityworthy in 1986 and 1988.

Equity Infusion 1978

The GOF provided an infusion of capital to Usinor and Sacilor in 1978. Given our determinations that Usinor and Sacilor were unequityworthy in 1978, this equity infusion was provided on terms inconsistent with commercial considerations.

We followed the grant methodology discussed in the Allocation section of the General Issues Appendix in allocating the benefits from the 1978 infusion, and the 1981, 1986, and 1988 debt-to-equity conversions. We divided these benefits, as well as all other benefits discussed below, by total 1991 sales of either Usinor Sacilor or the producers of the subject merchandise, as appropriate. (See, the Denominator section of the General Issues Appendix for a discussion of the methodology used). On this basis, we calculated an estimated net subsidy of 10.91 percent *ad valorem*.

2. Other Equity Infusions in 1979, and 1981 Through 1983

Petitioners alleged that the GOF made equity infusions into Usinor and Sacilor in 1979, pursuant to the Plan Acier launched in 1978, and in 1981 when PACS held by the FDES were cancelled in exchange for stock. In addition, petitioners asserted that President Mitterrand's 1982 Plan Acier called for equity infusions in Usinor and Sacilor in 1982 and 1983. Petitioners maintained that these injections were accomplished through the creative use of loss reserves.

We verified the detailed exposition provided by the GOF and Usinor Sacilor of the events of 1978 through 1991, specifically with respect to the conversion of loans to PACS in 1978, the reclassification of PACS to common stock in 1981, and the subsequent reductions in paid-in-capital. In addition, we examined the changes in capital for the years 1982 and 1983. On this basis, we confirmed that neither Usinor nor Sacilor received any equity infusions in addition to those already discussed.

3. Grants in the Form of Shareholders' Advances

The GOF financed the recurring needs of Usinor and Sacilor through shareholders' advances beginning in 1982. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. The GOF, in 1986, paid out the last of the advances it had agreed to make under this program. These advances were converted to common stock in 1986.

With respect to shareholders' advances, we have determined that the advances constitute countervailable grants, as no shares were received for them (see, the Equity section of the General Issues Appendix). We calculated the benefit from shareholders' advances for the POI using the methodology discussed in the Allocation section of the General Issues Appendix. We divided this benefit by total 1991 sales (*see*, the Denominator section of the General Issues Appendix. On this basis, we calculated an estimated net subsidy of 3.97 percent *ad valorem*.

4. Investment Subsidies

At verification, we confirmed that pursuant to the French Accounting Plan in 1984, all French companies had to report in their accounting records all subsidies which they received according to whether the subsidies were for the purchase of fixed assets or other than fixed assets. If the subsidy was for the purchase of fixed assets, it would be reported as an investment subsidy. Within this category, there is a further breakdown for subsidies going to the purchase of specific fixed assets, *i.e.*, equipment subsidies. For example, a subsidy for the purchase of anti-pollution equipment would be treated as an equipment subsidy. If the subsidy was for other than fixed assets, it would be reported as an operating subsidy.

Funds are provided by (1) the health insurance offices for investments to reduce work-related illnesses and accidents; (2) the water agencies to assist in the financing of projects for the public good, such as water protection, pollution control and water rehabilitation; (3) the agency for energy control for projects promoting the rational use of energy; and (4) the ECSC for research and development, the results of which, according to officials, must be made available to all Community members. These funds can take the form of investment, equipment, or operating subsidies depending on how the funds are used.

Respondents provided brochures from the various agencies in an effort to demonstrate that these funds were generally available. However, during the verification of the GOF, although requested, we were not provided with

VOL 58 ISS 130 JL 9 1993 UMI

any documentation concerning the actual distribution of funds under these programs to demonstrate that these subsidies are not specific on a *de facto* basis.

Because we did not receive sufficient information, we have based our determination on "best information available" (BIA). Section 776(c) requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation . . ." Therefore, as BIA we have determined that investment subsidies are *de facto* specific.

Based on the criteria outlined in the Allocation section of the General Issues Appendix, we have determined that investment subsidies are nonrecurring grants. However, because we have no information on the record concerning receipt of investment subsidies in any year other than 1991, we are expensing the amount received in 1991. By expensing the total amount received in 1991, rather than allocating it, we create a proxy for the benefit that would have existed if past subsidies had been allocated over time.

Accordingly, we have divided the amount of grants received in 1991 by total 1991 sales (see, the Denominator section of the General Issues Appendix). On this basis, we find no benefit during the POI.

5. Grants in the Form of Cancellation of Debt by Denain Nord-Est Longwy and Marine-Wendel

Denain Nord-Est Longwy ("DNEL") and Marine-Wendel, the former private majority shareholders of Usinor and Sacilor, respectively, cancelled a portion of the debt owed to them by Usinor and Sacilor. In Certain Steel, the Department stated that since this forgiveness of debt was provided at the direction of the GOF as part of the 1978 Rescue Plan, it conferred a couuntervailable benefit. Accordingly, in the final determination, we treated the cancelled amount of debt as a grant and allocated the benefits over a 15-year period.

Although respondents have argued that these debt cancellations by private parties are not countervailable, they have provided no information that would lead us to overturn our 1982 determination that the cancellations were directed by the GOF. In addition, the Protocols which implemented the 1978 restructuring, provided in the responses, support the conclusion made in Certain Steel that the debt cancellations were directed by the GOF.

Because the debt forgiveness represented by the loan write-off was specific to Usinor and Sacilor, we find it counteravailable. We have calculated the benefit from this program using the methodology outlined in the Allocation section of the General Issues Appendix.

In addition, in the 1978 restructuring, many of the loans made to the companies by the private majority shareholders were converted to PACS. Sacilor's former majority shareholder redeemed its PACS in 1989. Although Sacilor paid no interest on the PACS, the full value was repaid. Therefore, we are treating this as a zero interest rate loan for which benefits expired prior to the POI.

The loans from Usinor's former majority shareholder, which also were converted to PACS, were essentially written off in 1981 at a redemption value of FF100. Accordingly, we are treating the difference between the original value of the loan and the amout repaid as a grant. However, the benefit arising from the write-off of Usinor's PACS did not exceed 0.50 percent of sales in that year. Therefore, we have expensed the benefit in the year received. (See the methodology discussed in the Allocation section of the General Issues Appendix.)

Adding the benefits from the debt forgiveness and the write-off, we divided this amount by total 1991 sales (see, the Denominator section of the General Issues Appendix.) On this basis, we calculated an estimated net subsidy of 0.05 percent *ad volorem*.

6. ECSC Article 54 Loans and Loan Guarantees

ECSC Article 54 industrial investment loans are provided for the purpose of purchasing new equipment or financing modernization. At verification, it was established that Article 54 loans are not funded through the ECSC budget. Rather, they are direct loans from the EC Commission carrying a slightly higher rate than that at which the Commission obtained them, in order to cover its costs.

We confirmed at verification that the Commission uses this program to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain loans. These loans are only available to companies in the steel and coal industries. The ECSC has never provided any loan guarantees under Article 54.

We determine that this program is limited to the coal and steel industry. Therefore, these loans are countervailable to the extent that they are provided on terms inconsistent with commercial considerations, *i.e.*, on terms more favorable than the benchmark financing.

For those years in which Usinor, Sacilor, and Usinor Sacilor were uncreditworthy, we have used as the benchmark and the discount rate the rate for the Credit National Bank Equipment Loans reported in the OECD Financial Statistics publication for 1991. We added a risk premium in accordance with section 355.44(b)(6)(iv) of the Proposed Regulations. For those years in which Usinor, Sacilor, and Usinor Sacilor were creditworthy, we did not add a risk premium to the benchmark interest rate.

We then compared the appropriate benchmark financing to the financing received from the ECSC and found that loans under ECSC Article 54 were provided on terms inconsistent with commercial considerations. Therefore we determine that these loans are countervailable.

To calculate the benefit from these loans, we employed our long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations). (See also Final Affirmative Countervailing Duty Determination: Certain Granite Products from Spain, 53 FR 24340 (June 28, 1988).) We divided the total benefit during the POI by 1991 total sales (see, the Denominator section of the General Issues Appendix.) On this basis, we calculated an estimated net subsidy of 0.16 percent *ad valorem*.

7. Long-Term Loans From CFDI

The Law of July 13, 1978, created participative loans (prets participatifs) which were by law available to all French companies. Under these loans, which were issued by the Caisse Francaise de Developpement Industriel (CFDI), the borrower paid a lower-than market interest rate plus a share of future profits according to an agreed upon formula. These loans were obtained by either Usinor, Sacilor, or their subsidiaries. In our preliminary determinations, we stated that loans outstanding to CFDI were consolidated into a new loan in 1991. Because we were treating this consolidation as a new loan taken out in 1991, no payment would be due until 1992. Hence, there would have been no cash flow effect or the firm until 1992.

Nevertheless, the old loans which were consolidated in 1991 remained outstanding during a portion of the POI and potentially gave rise to a benefit. Therefore, we also analyzed the old

loans and found that they were specific because respondents had not provided sufficient evidence concerning the distribution of lending at the time these loans were given.

During verification, we confirmed that the outstanding balances on the CFDI loans which were issued to Usinor and Sacilor prior to their merger were not, in fact, consolidated. Rather these debts were transferred to Usinor Sacilor. The purpose of this transaction was simply to change the identity of the debtor from Usinor and Sacilor to Usinor Sacilor. We established that the terms of the loans did not change in any way.

Therefore, because there was no change in the terms of these loans in 1991, we have examined whether these loans were specifically provided at the time they were originally given, *i.e.*, from 1983 through 1988, to Usinor, Sacilor, and Usinor Sacilor.

The GOF has claimed that loans from CFDI are not limited to a specific enterprise or industry or group of enterprises or industries. Respondents provided a letter from CFDI regarding the distribution of loans during the period 1983 through 1988. However, during verification, GOF officials could not provide any documentation supporting the data provided in the letter. Therefore, because we do not have sufficient verified information on the record regarding the distribution of CFDI loans, we have determined that these loans are *de facto* limited to a specific enterprise or industry or group of enterprises or industries. Therefore, these loans are countervailable to the extent that they were provided on terms inconsistent with commercial considerations.

For those years in which Usinor, Sacilor, and Usinor Sacilor were uncreditworthy, we have used as the benchmark and the discount rate the rate for the Credit National Bank Equipment Loans reported in the OECD Financial Statistics publication for 1991. We added a risk premium in accordance with section 355.44(b)(6)(iv) of the Proposed Regulations. For those years in which Usinor, Sacilor, and Usinor Sacilor were creditworthy, we did not add a risk premium to the benchmark interest rate.

We then compared the appropriate benchmark financing to the financing received from the CFDI and found that these loans were provided on terms inconsistent with commercial considerations. Therefore, we determine that these loans are countervailable.

To calculate the benefit from these loans, we employed our long-term loan methodology as described above in the ECSC Article 54 Loans and Loan Guarantees section. We divided the total benefit during the POI by 1991 total sales (see, the Denominator section of the General Issues Appendix). On this basis, we calculated an estimated net subsidy of 0.35 percent *ad valorem*.

8. ECSC Redeployment Aid (Article 56(2)(b)

Grants under Article 56(2)(b) of the ECSC treaty have been provided since the 1950's to coal and steel workers. The main purpose of the grants is to assist workers affected by the restructuring of the coal and steel industries. Application for assistance under this program must be submitted by the Member State on behalf of the workers affected by the restructuring. Such application must contain information relating to the specific production process that will result in the elimination of jobs.

The maximum amount of aid provided by the ECSC is ECU 3,000, and this amount must at least be matched by the Member State. Funds for the ECSC portion of these payments are from the ECSC operational budget, made up entirely of levies on ECSC companies.

Since the ECSC portion of payments under this program comes from its operational budget, we determine the portion of payments provided by the ECSC, *i.e.*, 50 percent is not countervailable.

With respect to the matching GOF contributions, we have learned that companies in France have no minimum legal obligations to severed employees. Typically, employees receive pensions equal to 65 percent of their salaries, of which the government pays 35 percent and the company pays 65 percent. However, under the collective bargaining agreements for steel, employees receive 70 percent of their salary. The GOF pays 35 percent of this amount. However, because the GOF is paying 35 percent of a higher pension, its absolute contribution towards steelworkers retirement is higher than its absolute contribution to other workers.

Because the GOF typically provides 22.75 percent, (*i.e.*, 65 times 0.35) of a workers salary, we determine that this amount of the GOF contribution to steel workers' pensions is not countervailable. However, it is necessary to determine with respect to the increment provided only to steel whether Usinor Sacilor has been relieved of an obligation it would otherwise incur.

Consistent with the policy described in the Prepension Assistance section of the General Issues Appendix, we have attempted to determine whether Usinor Sacilor and its workers were aware when they negotiated their collective bargaining agreement that the GOF would contribute their extra amount. Based on our review of the record in these investigations, we have no information that these extra payments were expected by the company or the workers. Therefore, we have assumed that the extra government contribution relieved Usinor Sacilor of an obligation that it had incurred under the collective bargaining agreement, and treated this contribution as countervailable in its entirety.

In accordance with the allocation methodology discussed in the Allocation section of the General Issues Appendix, we have treated these benefits as recurring grants. To calculate the benefit during the POI we took that extra portion that the GOF paid towards the retirement of steel workers and divided it by 1991 total sales (see, the Denominator section of the General Issues Appendix). On this basis, we calculated an estimated net subsidy of 0.01 percent *ad valorem*.

9. Loan Guarantees 1978 Through 1982

In *Certain Steel*, the Department found countervailable a wide variety of loan guarantees. These guarantees were provided by, or were provided to guarantee loans from, Credit National, bank syndicates in which Credit National, participated, Caisse des Depots et Consignations (CDC), Groupement de l'Industrie Siderurgique (GIS), FDES, the ECSC, and the European Investmemt Bank. According to petitioners, Usinor Sacilor and its affiliates have continued to carry outstanding debts to these organizations since 1982.

Based on our review of Usinor Sacilor's long-term loan accounts during verification, we saw no indication that there were any CDC or GIS loans outstanding. In addition, our review of loan contracts and supporting documentation for FDES established that these loans did not carry a GOF guarantee. Furthermore, during our review of the loan accounts, we did not find any reference to loan guarantee payments.

During our review of other loans outstanding, we established that GOF guarantees had been received on certain loans. Notwithstanding our requests, GOF officials did not provide any information concerning:

(1) The basis on which the GOF guarantees were given;

(2) The value of the guarantee fees charged by the GOF;

(3) Whether it is normal commercial practice in France for the government to guarantee commercial loans; or

(4) The value of fees charged by the commercial banks for comparable guarantees.

Given the lack of information on the record concerning whether these fees are *de jure* or *de facto* specific and provide a benefit, we have determined as best information available that guarantee fees are limited to a specific enterprise or industry or group of enterprises or industries. Therefore, we find loan guarantees to be countervailable.

Under section 355.44(c)(1) of the Proposed Regulations, we find that loan guarantees confer a benefit to the extent that (1) the fee paid is less than the fee that would have been paid for a comparable commercial guarantee or (2) the amount paid on a guaranteed loan is less than the firm would have paid for a comparable commercial loan.

In this instance, we have no information that would allow us to determine what Usinor Sacilor would have paid for a comparable commercial guarantee. Therefore, we are measuring the benefit from these guarantees by comparing the interest rates on the loans in question to the benchmark interest rates discussed in the ECSC Article 54 Loans and Loan Guarantees section, above.

As a result of this methodology, for those loans otherwise being countervailed, any benefit arising from the guarantee will be captured in the loan calculation. For the remaining loans with guarantees, we applied our normal long-term loan methodology, discussed above, to calculate the benefit from the loan guarantees attributable to the POI. We divided the calculated benefit by 1991 total sales see, the Denominator section of the General Issues Appendix. On this basis, we find no benefit during the POI.

10. Outstanding Loans Discovered at Verification

During our review of the company's loan accounts at verification, officials of Usinor Sacilor informed us that another category of loans outstanding, "other participative loans," were "loans to other members of the Group." However, officials could give no further explanation of this category.

Because these loans were unreported and we have no information about the programs under which these loans might have been issued, we are applying best information available.

To calculate the benefit from these loans, we treated the outstanding principals as a zero rate short-term loan. We then calculated what the company would have paid using the 1990 short-term benchmark interest rate. This short-term benchmark interest rate was taken from the OECD's Financial Statistics (Short-Term Financial Credit and Overdrafts and Advances). We divided the benefit by total 1991 sales (*see*, the Denominator section of the General Issues Appendix). On this basis, we calculated an estimated net subsidy rate of 0.01 percent *ad valorem*.

B. Programs Determined To Be Not Countervailable

We determine that the following programs do not provide subsidies to manufacturers, producers, or exporters in France of certain steel products:

1. Regional Development Subsidiaries ("SODIs")

There were a number of regional development subsidiaries, known as SODIs, which had been established by Usinor and Sacilor in 1983 to assist in retraining of personnel who had lost their jobs. These SODIs loaned funds given to them by Usinor and Sacilor to enterprises in various depressed steel regions. These loans were provided to establish new businesses and to train workers for jobs outside the steel industry. When the funds were repaid to the SODIs, the principal plus any interest paid was reloaned.

The GOF found that these SODIs had developed an expertise in regional development during this period, 1983 through 1986, and as a result requested that Usinor Sacilor not only continue its work in the depressed steel regions but also serve other depressed regions. The GOF originally had wanted Usinor Sacilor to assume all funding responsibility for the SODIs, but through negotiations Usinor Sacilor and the GOF agreed to contribute funds to the SODIs on an equal basis.

When the GOF advanced funds to the SODIs (through Usinor Sacilor), the GOF specified the areas where the SODIs should lend those funds. The GOF funds provided to the SODIs were initially recorded on the books of Usinor Sacilor as shareholders' advances.

In 1991, Usinor Sacilor repaid FF250 million of the funds it received from the GOF, as discussed in the Annual Report (1991). This situation arose when, for reasons of administrative convenience and simplification, numerous loans made by Usinor, Sacilor, and Usinor Sacilor to the SODIs through the years were transferred or "sold" to the parent company, Usinor Sacilor.

In order to accomplish that transfer, the GOF and Usinor Sacilor analyzed the accounts and attempted to equate the amounts given by the GOF to Usinor Sacilor in the form of shareholders' advances, with the amounts contributed by Usinor Sacilor since 1986. They found that Usinor Sacilor had not always matched equally the advances given by the GOF. As a result, of the amount outstanding in shareholders' advances, the GOF determined that Usinor Sacilor owed FF250 million in matching contributions. Rather than put this amount into the SODIs, Usinor Sacilor "repaid" it to the GOF.

By virtue of this repayment, Usinor Sacilor was considered to have satisfied fully its matching obligation, and any claim of the GOF on the balance of shareholders' advances was thus eliminated. As a result, the amount of shareholders' advances remaining in the Usinor Sacilor Group's consolidated accounts, FF567 million, was moved from the shareholders' advances account to the stockholders' equity account as a share premium. As discussed above, this settlement of accounts and subsequent equity transfer is reflected in Usinor Sacilor's 1991 Annual Report.

Petitioners argue that shareholders' advances were converted to equity in 1991 at a time when Usinor Sacilor was unequityworthy and, therefore, must be countervailed in the final determinations. Petitioners maintain that these funds should be considered debt until cancelled or converted to equity.

Respondents contend that the GOF funding of the SODIs did not relieve Usinor Sacilor of any legal obligations. Respondents maintain that at verification, the Department established that these funds did not benefit Usinor Sacilor because the GOF monitored the funds provided for the SODIs to ensure that they were being used for the purposes established by the GOF.

We disagree with petitioners that these shareholders' advances should be treated as loans which were subsequently converted to equity. It is clear that the advances were payments by the GOF for its share of the SODI's contributions. Moreover, as respondents noted, we verified that the GOF monitored the funds it contributed to ensure that they were being used for the purposes established by the GOF. Thus, we can conclude that the GOF funds in question did not go to support Usinor Sacilor's steel operations.

Although this is the case, the issue remains whether Usinor Sacilor was relieved of any costs it would legally bear with respect to the SODIs. In other words, if Usinor Sacilor was obligated to provide full funding for these activities, the GOF's contributions would be

relieving Usinor Sacilor of costs it would otherwise be incurring.

According to GOF and Usinor Sacilor officials, Usinor Sacilor's obligation to fund the SODIs ceased in 1986. At that time, it appears that a new obligation was created. While there is no hard evidence to support this, it is clear that (1) the nature of the parties' obligations changed, *i.e.*, contributions would be made on a matching basis, and (2) the SODI's mission expanded, *i.e.*, they were to begin servicing depressed regions other than those suffering from steel industry lay-offs.

This latter consideration, in particular, would seem to indicate that a new obligation was created in 1986. It is highly unlikely that Usinor Sacilor would have had a prior obligation to provide funding in areas outside of steel regions.

Based on these facts, we have determined that Usinor Sacilor was not relieved of any obligations with respect to the SODIs when the GOF began making contributions. Therefore, since Usinor Sacilor merely channeled these contributions to the SODIs, we find no benefit to the company as a result of the GOF's contributions. Accordingly, we find this program to be not countervailable.

2. Long-Term Loans From FDES

The Law of July 13, 1978, created participative loans (prets participatifs) which were by law available to all French companies. Under thee loans, which were issued by the FDES, the borrower paid a lower-than-market interest rate plus a share of future profits according to an agreed upon formula. These loans were obtained by either Usinor, Sacilor or their subsidiaries.

We have determined that these consolidations amount to new loans. Unlike the consolidations of CFDI and CN loans discussed in other sections of this notice, the consolidations of the FDES loans resulted in a different structure for the loan and a different interest rate. Our treatment of the FDES consolidation as a new loan in 1990 is consistent with our final determination in *Lead and Bismuth*.

Unlike Bar, however, we find that the "new" FDES loan in 1990 is not countervailable. In the *Lead and Bismuth* case, in making our specificity finding, we considered a chart showing the distribution of FDES loans in 1990. However, we lacked definitive information regarding the composition of this chart and, therefore, did not rely on it.

At verification in these investigations, we were able to confirm that Usinor Sacilor's consolidated loan was not included in this chart. This is because from FDES' perspective no new funds were lent. Therefore, it would not record the consolidation in a chart designed to show the public what its lending activities were.

We note, however, that Usinor Sacilor was undertaking consolidations with other major creditors at the same time. Those consolidations were undertaken as a matter of administrative convenience for both Usinor Sacilor and its creditors. The same considerations played an important part in the FDES consolidations as well, as Usinor Sacilor officials explained at verification.

We also have, in the various FDES distribution charts, indirect indicia showing the "new" loans to be non-specific. The 1990 FDES distribution chart shows that the metallurgical sector, which includes steel, did not receive any FDES funds in that year. Looking at earlier years, FDES has not been a significant lender to the metallurgical sector since 1986. This sector received approximately one to two percent of FDES funds in 1986, 1997, and 1988. In 1989, the metallurgical sector did not receive any funds.

Nevertheless, we need not decide this specificity issue. Rather, after examining the interest rates charged on the "new" FDES loans to Usinor Sacilor, it would seem that these "new" loans did not provide a special benefit. Those rates are consistent with the benchmark interest rate information for 1990 (*see, Comment 9*, below). We note that this benchmark data is different from that used in *Lead and Bismuth*. Accordingly, we have determined that Usinor Sacilor's consolidated FDES loans are not countervailable.

3. Loans From Credit National

In 1991, Usinor Sacilor's outstanding loans from Credit National were consolidated. In addition, in 1991, Credit National converted an overdraft facility available to various companies within the Usinor Sacilor Group to a loan to Usinor Sacilor.

For purposes of the preliminary determinations in these investigations, we treated both events as consolidations and considered these consolidations to be new loans given in 1991. As with CFDI, because we treated these loans as new loans taken out in 1991, no interest was due until 1992. However, the old loans which were consolidated in 1991 were outstanding during a portion of the POI and potentially gave rise to benefit.

At verification, we established that the consolidated loan was constructed so that Credit National would obtain the same return that it would have earned on the pre-consolidated loans. Thus, while the interest rate or maturity on the consolidated loan differed from the terms of any individual loans included in the consolidation, overall the terms did not change. Because of this, we no longer consider the consolidation to be a new loan. Therefore, it is inappropriate to base our specificity determination on the year of the consolidation. Instead, we have looked to the years in which the original loans were issued.

The law creating Credit National does not in any way limit the industries to which loans can be made. Further, we have reviewed Credit National's Annual Reports for the years in which the old loans were given to determine whether these loans were provided to a specific enterprise or industry or group of enterprises or industries on a *de facto* basis. Credit National's Annual Reports demonstrate that loans in these years were in fact provided to numerous sectors and were not disproportionately provided to the steel industry. Industries which received Credit National loans include, among others, the agricultural, metallurgical (which includes steel), electrical, energy and chemical, textiles and clothing industries.

Based on this, we determine that Credit National loans are not provided to a specific enterprise or industry or group of enterprises or industries. Therefore, they are not countervailable.

4. European Investment Bank (EIB) Loans

The European Investment Bank ("EIB") was created to fund projects in various countries and different types of industries. The EIB's main objective is to grant loans and give guarantees which facilitate the financing of projects (1) for less developed regions, (2) for modernizing or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, and (3) of common interest to several Member States.

The EIB borrows the major part of its resources on international capital markets—mainly through public bond issues. The remainder of its resources come from its own funds, which are comprised of contributions from its Member States.

The Department established, at verification, that EIB provides loans to numerous sectors of the various economies (*e.g.*, energy, transportation, telecommunications, urban infrastructure, mining, electronics, and many more). The metal production category (which includes production of

VOL 58 ISS 130 JL 9 1993 UMI

the subject merchandise) historically has received a very small percentage of the loans granted by the EIB. For example, between 1987–1991, this sector received only 0.50 percent of total loans provided by the EIB. On this basis, we find EIB loans to be non-specific and therefore, not countervailable.

5. ESCS Research and Development Assistance Under Article 55

According to Article 55 of the ESCS Treaty, assistance is available to promote technical and economic research relating to the production and increased use of coal and steel, and to occupational safety in the coal and steel industries. Since the end of 1986, this program has been funded solely through levies on steel producing companies.

Because the results of the research conducted under Article 55 are made publicly available, we find this program to be not countervailable. Moreover, we note that to the extent that Article 55 assistance is funded solely by levies on steel companies, we would find no benefit.

C. Programs Determined To Be Not Used

We determine that the following programs were not used by manufacturers, producers, or exporters in France of certain steel products:

1. ECSC Article 54 Interest Rebates
2. ECSC Article 56 Conversion Loans, Guarantees and Interest Rebates
3. European Regional Development Fund (ERDF) Loans
4. New Community Investment (NCI) Loans

E. Programs Determined Not To Exist

We determine that the following programs do not exist:

1. Additional Financing from FIS and CAPA
2. Withdraw and Recover Order
3. Grants in the Form of Interest Rebates (Redemption Premiums)

Interest Party Comments

The following are country-specific comments only. See the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium for additional discussion and comments relating to EC programs. All other issues are either addressed in the sections above or in the General Issues Appendix.

Comment 1: Petitioners argue that the 1986 conversion of FF54.4 billion of PACS, FIS bonds and shareholders' advances to common stock and the subsequent write-off of this stock represented a debt cancellation. Petitioners further argue that this cancellation was a single, non-recurring event.

Respondents argue that because the company's obligations regarding these instruments were minimal, Usinor Sacilor did not benefit from the forgiveness of these obligations.

Moreover, respondents state that the reclassification of PACS and FIS instruments into common stock conferred no countervailable benefit to the company because there was no cash flow effect on the firm at that time. In support of their argument, respondents cite *Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 30,774 (July 24, 1986) and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 56 FR 50,854 (October 9, 1991). In these cases, the Department stated that benefits are received based the cash flow effect of the subsidy instrument. Respondents contend that to properly measure the cash flow effect, the Department must calculate the net present value of the forgiven obligations.

DOC Position: Consistent with the equity methodology adopted in these investigations, we have concluded that any benefits to Usinor Sacilor occurred at the point when these instruments were converted into common stock. Therefore, the benefit from these conversions began in 1986. We do not, however, recognize any benefit in connection with equity write-offs. Because the equity methodology does not recognize the subsequent performance of the company receiving the equity investment and treats the equity investment as a grant, the write-off of the equity is irrelevant.

With respect to respondents' cash flow argument, respondents misinterpret the role of a "cash flow effect" in the Department's analysis. A cash flow effect does not define what a subsidy is, it merely directs the Department when to begin allocating benefits. For example, a subsidized loan unquestionably affects a company's cash flow the moment it is received. However, there is no cash flow effect, as the Department uses that term, until an interest payment is due. Only at that time does the subsidy, *i.e.*, a lower interest payment, have an effect on the company's cash flow. For this reason, we do not begin allocating benefits from long-term loans until an interest payment would be due.

Because the Department has classified PACs as interest free loans, the cash flow effect from the subsidies conferred by those loans occurred as long as Usinor Sacilor did not have to make interest payments. When the loans were forgiven, there was a new cash flow effect. This was because the forgiveness was tantamount to giving Usinor Sacilor a grant to pay off the old loans.

Comment 2: According to petitioners, the mere fact that the 1986–87 restructuring of Usinor Sacilor was required by Article 241 of the French Corporation Law of 1966 does not render the restructuring not countervailable. Petitioners state that Usinor's and Sacilor's obligations to repair their finances do not affect the countervailability of the GOF's decision to donate FF54 billion to that effect.

Respondents maintain that the absence of any benefit to Usinor Sacilor from PAC/FIS reclassifications was recognized by the EC Commission.

DOC Position: We agree with petitioners. Article 241 of the French Corporation Law of 1966 requires companies to dissolve if they cannot meet the requirement that shareholders' equity equal at least 50 percent of their stated capital. Usinor Sacilor faced two options, shutting down or obtaining new equity. It chose the latter and we have found those equity infusions to be inconsistent with commercial considerations. Therefore, we have determined that they are countervailable, irrespective of whether the EC Commission considered them to be compatible with the internal EC State Aids guidelines.

Comment 3: Petitioners argue that any PACS which were outstanding but then exchanged for equity during the POI should be treated as loans while they were outstanding, and as a countervailable equity infusion at the time of conversion.

DOC Position: We disagree. Because we do not prorate equity benefits to correspond to the amount of time the equity was "outstanding" during the year of receipt, we can only countervail the equity portion of debt to equity conversions in the year of conversion. To do otherwise would lead to overcountervailing.

Comment 4: Petitioners state that in 1988 the remaining FF9.132 billion in FIS bonds were eliminated, with part being written off against accrued losses and the remainder exchanged for new shares in Usinor Sacilor. Petitioners argue that to the extent the transaction involved cancelling FF5.9 billion of debt, without shares or other instruments being issued, there is no need for the Department to examine Usinor Sacilor's equityworthiness in 1988 as no equity was provided. Petitioners contend that the Department should calculate this portion of the benefit as a nonrecurring grant given in 1988, amortizable over the 15-year useful life of assets in the steel industry.

Petitioners also state that the portion of the cancelled debt that was not written off against accrued losses was exchanged for shares in Usinor Sacilor at a time when Usinor Sacilor was unequityworthy. Petitioners contend, therefore, that the Department should treat this portion of the benefit as a countervailable equity infusion.

DOC Position: We disagree with petitioners' characterization of the 1988 FIS bonds transaction. In 1988, all of the remaining FIS bonds were first converted to common stock. Thereafter, part of this stock was written off, and part remained as stock. Therefore, the entire transaction was properly treated as a debt to equity conversion.

Comment 5: Respondents state that the Department improperly reamortizes the full face value of a forgiven loan. Thus, in their view, assessing countervailing duties in excess of the amount of the subsidy. This practice, respondents argue, violates U.S. law and the GATT.

Respondents state that the proper timeframe in which to countervail a benefit is the period over which the subsidy actually benefits a firm. Further, the period begins when the firm receives cash from the government and extends, in the case of subsidies tied to equipment, over the useful life of that equipment. Respondents argue that reclassification of a security does not extend that period, and that the Department's current methodology should, therefore, be abandoned.

Petitioners state that respondents confuse interest and principal when analyzing the Department's loan forgiveness methodology. Petitioners argue that the Department only countervails interest savings, not the principal, when it measures the benefit from low-interest loans. In debt forgiveness, by contrast, the interest savings cease to be countervailed because the low-interest loan is no longer outstanding. At that point, petitioners state, the Department begins to countervail the forgiveness of the principal.

Petitioners further argue that neither GATT nor the countervailing duty law is violated by the Department's loan forgiveness methodology. Petitioners contend that respondents are improperly defining the countervailable event as the original receipt of a loan. Respondents fail to recognize that the loan forgiveness constituted a new countervailable event, the benefit from which is associated with the principal of the loan.

DOC Position: We agree with petitioners. "Overcountervailing" only exists when the net present value (NPV) of allocated benefits exceeds the face value of the subsidy. Since it is the Department's practice to treat a reclassification of debt to equity as a new countervailable event, two distinct subsidies exist where debt is converted to equity. Our loan and grant methodologies are designed to ensure that neither instrument is overcountervailed. We note, in addition, that a comparison of the face value of the loan to the NPV of all benefits countervailed in connection with debt to equity conversions, shows that the Department still does not overcountervail, in the sense discussed above.

Comment 6: Respondents object to our preliminary determination that investment subsidies are specific despite our statement that, with respect to eligibility criteria, investment subsidies are generally available. Respondents argue that the Department incorrectly shifted the burden of proof when it required respondents to provide evidence that these subsidies were not specific on a *de facto* basis. Respondents maintain that, the Department has an affirmative obligation to investigate and support its findings with substantial evidence on the record. Respondents contend that because the subsidies in question were provided by local and regional agencies throughout France, it was not feasible to gather information regarding the actual distribution of funds under each of the programs.

DOC Position: We agree that our findings should be based on substantial evidence on record. However, it is the respondent who possesses the relevant evidence. Whenever a respondent refuses or is unable to provide requested information on the specificity of a program in a timely manner and in the form required, the Department may find, as best information available, that the program was specific. See, e.g., Final Affirmative Countervailing Duty Determination; New Steel Rail, Except Light Rail, from Canada, 54 FR 31991, 31995 (Aug. 3 1989); Final Affirmative Countervailing Duty Determination; Fresh, Chilled, and Frozen Pork from Canada, 54 FR 30774, 30779–80 (July 24, 1989); Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763, 24767 (June 30, 1988).

Comment 7: Petitioners contend that the Department did not verify respondents' claim that the aid subject to the ECSC's "withdraw and recover order" is covered by, and not additional to, the subsidies already reported to the Department. Petitioners argue further that the firm's only documented repayment of FF500 million was insufficient to repay the principal and interest on the original funds granted. Therefore, petitioners argue that the Department should determine based on best information available that the withdraw and recover procedure dealt with additional countervailable subsidies, and the Department should countervail all but the FF500 million repayment.

Respondents argue that the subsidies subject to the withdraw and recover order were disbursed by the GOF in the form of PACS, FIS bonds, and shareholders' advances. Respondents maintain, indeed, that PACS, FIS bonds, and shareholders' advances were the only types of funds given to Usinor Sacilor during the period subject to the withdraw and recover order. Therefore, all subsidies provided in conjunction with the withdraw and recover order were fully accounted for by the Department.

DOC Position: We agree with respondents. Based upon our review of accounting records, financial statements, and other supporting documentation at verification, we found no indication of additional subsidies that Usinor Sacilor had not reported. For a complete discussion of the Department's analysis of the "Withdraw and Recover Order," see the Concurrence Memorandum to Barbara R. Stafford from Team, dated June 21, 1993.

Comment 8: Respondents disagree with the Department's preliminary decision to use the long-term loan benchmark rate—the IMF interest rate plus a risk premium—as a discount rate used for amortizing grants and equity in the years when the company was uncreditworthy. Respondents state that the Department's Proposed Regulations regarding the discount rate to be used in amortizing grants and equity infusions differ from the guidance for selecting loan benchmarks. Respondents argue that, for amortizing grants and equity, the Department is required to use the average cost of long-term, fixed-rate debt in the country under investigation, as the interest rate.

Petitioners state that respondents' recommended discount rates do not account for the risk associated with uncreditworthy and unequityworthy firms. Therefore, the Department should continue to use an "uncreditworthy" discount rate for allocating benefits received in years when the company is unequityworthy and uncreditworthy.

DOC Position: We have continued to use an "uncreditworthy" discount rate to allocate benefits received in years

when the company was found uncreditworthy. Although the respondents are correct that our Proposed Regulations do not provide for uncreditworthy discount rates, we believe that their use is consistent with our methodology.

In allocating benefits over time, we attempt to create a stream of benefits in such a way that the company in question would be indifferent between: (1) Receiving the benefit in a lump sum, and (2) receiving a series of payments over the allocation period. The use of a company-specific discount rate is what guarantees that we will achieve indifference. This is because a company-specific rate reflects the company's own time preference for money.

Because company-specific rates should be used to allocate benefits over time, it would be incorrect to rely on a creditworthy discount rate (as the Proposed Regulations would have us do) for a company which has been found to be uncreditworthy. If we did so, we would be understating the benefit stream and would make the recipient indifferent between current and future values.

Comment 9: Respondents object to our use of the IMF lending rate as the benchmark interest rate for long-term loan calculations. They contend that the IMF rates are inappropriate because they are neither long-term rates, nor corporate rates used in France, as section 355.49(b) contemplates. Respondents argue that this was confirmed at verification be bank officials, who indicated that the IMF lending rate did not correspond with long-term commercial rates in France.

Respondents suggest that the Department use the information on long-term, fixed interest rates in France published by the OECD. However, if the Department determines these rates are not applicable, it should use information obtained at verification. At verification, French bank officials informed the Department's analyst that their commercial interest rates were based on PIBOR or the prime rate plus a number of basis points. Respondents state that this information is in the verification report.

Petitioners argue that the IMF rates are preferable to the imprecise and undocumented rates provided by the respondents, since the former are French-specific and not OECD-wide rates. Petitioners also state that the IMF rates are appropriate benchmarks because they are normally differentiated according to creditworthiness of borrowers and the objectives of financing.

DOC Position: Because we have found loans from Credit National to be not counteravailable, we are using the interest rates provided in the OECD Monthly Financial Statistics for Credit National equipment loans as our benchmark rates in years when Usinor Sacilor was creditworthy. These rates are described as "the prime rate charged by the Credit National Bank on fixed-rate loans to enterprises, in principal periods of between eight and fifteen years and only exceptionally for amounts of less than one million francs."

We find these rates to be more consistent with our Regulations than either the IMF or the PIBOR rates because they reflect the cost of corporate long-term borrowing. We also disagree with petitioners argument that the IMF rates are appropriate benchmarks because they are normally differentiated according to the creditworthiness of borrowers and the objectives of the financing. Although the IMF description says this, the rate we used, the "Lending rate," did not have a minimum and maximum rate to account for a company's creditworthiness. In any case, our methodology accounts for uncreditworthiness by requiring us to include a risk premium.

Verification

In accordance with section 776(b) of the Act (19 USC 1677e(b)), we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from France which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspensions of liquidation under section 703(d) of the Act (19 USC (1671b(d)), if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

Certain Hot-Rolled Carbon Steel Flat Products
Country-Wide Rate—15.49
Certain Cold-Rolled Carbon Steel Flat Products
Country-Wide Rate—15.49
Certain Corrosion-Resistant Carbon Steel Flat Products
Country-Wide Rate—15.49
Certain Cut-To-Length Carbon Steel Plate
Country-Wide Rate—15.49

ITC Notification

In accordance with Section 705(d) of the Act (19 USC 1671d(d)), we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on entries of certain steel products from France.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the

return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15632 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–817]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes or Kristin M. Heim, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4412 or 482–3798, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Germany of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations (57 FR 57772, December 7, 1992), the following events have occurred.

We conducted verification from January 27 through February 17, 1993. On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see Suspension of Liquidation section, below).

The parties submitted case and rebuttal briefs on April 1 and 6, 1993, respectively. A public hearing was held on April 8, 1993.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute four separate "classes or kinds" of merchandise, as found in the Scope Appendix to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice: (1) Certain hot-rolled carbon steel flat products, (2) certain cold-rolled carbon steel flat products, (3) certain corrosion-resistant carbon steel flat products, (4) certain cut-to-length carbon steel plate.

Injury Test

Because Germany is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the certain steel products from Germany materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC determined that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reason of imports from Germany of the subject merchandise (57 FR 38064, August 21, 1992).

Respondents

The GOG and the Governments of Niedersachsen and Nordrhein-Westfalen are respondents for each class or kind of merchandise subject to these investigations. The Government of Saarland is a respondent only with respect to certain cut-to-length carbon steel plate. The following is a list of the respondent companies for each class or kind of merchandise subject to these investigations:

Certain Hot-Rolled Carbon Steel Products:
- Hoesch
- Klöckner
- Preussag
- Thyssen

Certain Cold-Rolled Carbon Steel Products:
- Hoesch
- Klöckner
- Preussag
- Thyssen

Certain Corrosion-Resistant Carbon Steel Flat Products:
- Hoesch
- Preussag
- Thyssen

Certain Cut-To-Length Carbon Steel Plate:
- Dillinger
- Ilsenburg
- Preussag
- Thyssen

Analysis of Programs

Based on our analysis of the petition, the responses to our questionnaires, verification and comments by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries, were not case-specific, but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of these determinations, the period for which we are measuring subsidies (the period of investigation (POI)) is 1991.

Calculation of Country-Wide Rate

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* subsidy received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. The rates for all programs were then summed to arrive at a country-wide rate for each class or kind of merchandise.

Pursuant to 19 CFR 355.20(d) and to the extent practicable, for each class or kind of merchandise, we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs to determine whether a significant differential existed. On the basis of this comparison, the rates for Ilsenburg, Preussag and Thyssen were significantly different from the country-wide rate with respect to certain cut-to-length carbon steel plate. Therefore, these firms received individual company rates. For the remaining firm, Dillinger, we recalculated the country-wide rate, based on the benefits received

by this firm. We then assigned the recalculated overall country-wide rate to Dillinger, and all other manufacturers, producers, and exporters.

Privatization

In these final determinations, we have decided that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We reduced the benefit streams for each program of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits from those prior subsidies at the time of privatization. A further explanation of the Department's determination on privatization and these calculations can be found in the Privatization section of the General Issues Appendix. The subsidies allocated to the POI for Dillinger reflect, where appropriate, the application of the privatization methodology.

Spin-offs

In these final determinations, we have also decided that a portion of the price paid when a "productive unit" is sold is allocable to the value of subsidies received in prior years by the seller of the "productive unit." The subsidies allocated to the POI have been reduced (where appropriate) as described above, but adjusted by the asset value of the "productive unit." For a further explanation of the Department's determination regarding "spin-offs" and these calculations, see, the Restructuring section of the General Issues Appendix.

A. Programs Determined To Be Countervailable

We determine that countervailable subsidies are being provided to manufacturers, producers, or exporters in Germany of certain steel products under the following programs:

1. Capital Investment Grants

The Steel Investment Allowance Act promotes investment for the modernization of the iron and steel industry. As amended on December 22, 1983, this program provided grants amounting to 20 percent of the acquisition cost of assets purchased or produced prior to January 1, 1986, and ordered or produced after July 30, 1981. If the Minister of Finance approved the application, a certificate of approval would be forwarded to the German tax authorities. The tax authorities would then decide whether to provide the funds directly to the company or whether to offset them against taxes due.

Because benefits under this program are available only to the iron and steel industry, we determine the program is provided in law to a specific enterprise or industry or group of enterprises or industries. See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23368, 23379 (May 31, 1989) (Proposed Regulations), section 355.43(b)(2)(i). Therefore, the grants provided to Dillinger, Hoesch, Klöckner, Preussag, and Thyssen under this program are countervailable.

Three of the companies had to return small portions of their grants after audits by the German tax office. These amounts were returned before the POI. Interest was charged on the disallowed portion of the grant from the date of the original disbursement to the date of repayment. We deducted the returned portions of the grant from the amount of funds initially received by the companies before calculating the benefit under this program.

We have determined that benefits received under this program are nonrecurring and calculated the benefit in accordance with the allocation issues section of the general issues appendix. For the discount rates, we used, whenever possible, each company's actual cost for long-term, fixed-rate debt. If a company did not report this cost, or when a company had no long-term borrowing in the year in which a grant was approved, we used the rates for industrial bonds provided by the Deutsche Bundesbank.

We calculated the portion of the benefit attributable to the period of investigation and divided that benefit by the total steel sales of each company within each respective class or kind of merchandise. On this basis, we determine the net subsidies for this program to be 0.45 percent *ad valorem* for hot-rolled carbon steel products; 0.39 percent *ad valorem* for cold-rolled carbon steel products; 0.39 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.15 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.00, 0.44, and 0.36 percent *ad valorem*, respectively.

2. Structural Improvement Aids

On December 28, 1983, the Federal Minister of Economics enacted the "Directive for the Provision of Structural Improvement Assistance to Companies in the Iron and Steel Industry." This program provided funds for companies in the iron and steel industry to (1) cover severance pay and transitional assistance for steel workers affected by the restructuring plan within the industry, and (2) assist steel companies with the costs associated with plant closures. Funds were provided to cover expenses incurred in laying off employees from the period January 1, 1980, through December 31, 1986. Plant closures had to occur by December 31, 1985, or in exceptional cases by December 31, 1989, in order for steel companies to receive funds under this program.

To qualify for assistance, a company had to file an application with the Federal Minister of Economics. This program was funded by the federal and state governments.

Structural improvement assistance was provided on a conditionally repayable, interest-free basis. Repayment of this assistance was scheduled to begin in 1986 and was tied to the company's yearly profits. During the period of investigation, three companies, Hoesch, Klöckner, and Preussag, had outstanding balances under this program. Thyssen also used this program, but repaid all the funds it received before the period of investigation.

Because benefits under this program were available only to the iron and steel industry, we determine the program is provided in law to a specific enterprise or industry or group of enterprises or industries. It is, therefore, countervailable to the extent that it was inconsistent with commercial considerations.

Because of the possibility of repayment, we have treated the funds as short-term zero interest rate loans, rolled-over each year until repayment. Zero-rate loans are inconsistent with commercial considerations. Therefore, we determine this program to be countervailable.

To calculate the benefit, we took the amounts outstanding during the POI and calculated the interest that would have been paid on those amounts at a commercial interest rate. We calculated the national average short-term interest rate benchmark for 1991 by adding a spread to the Frankfurt Interbank Offer Rate (FIBOR). We determined the benchmark to be 10.00 percent.

We then divided these results by the total steel sales of each company within each respective class or kind of merchandise. On this basis, we determine the net subsidies for this program to be 0.25 percent *ad valorem* for hot-rolled carbon steel products; 0.22 percent *ad valorem* for cold-rolled carbon steel products; 0.05 percent *ad valorem* for corrosion-resistant carbon

steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate for all companies.

3. Investment Premium Act

Under the Investment Allowance Act, in effect from 1969 through 1989, grants were provided to companies investing in three regions of Germany: the zonal border area (a zone bordering Czechoslovakia and the former German Democratic Republic (GDR)), the hard-coal mining region in Saarland and the areas laid out in the Federal/State Joint Scheme for the Improvement of Regional Economic Structures (Joint Scheme). Under the Joint Scheme, federal and state officials provided guidelines for designating certain regions as depressed areas (Gemeinschaftsaufgabe or "GA" Areas). The investment allowance grant equalled 10 percent of eligible expenditures in the zonal border area and 8.75 percent of eligible expenditures in the GA Areas.

A condition for approval of the investment allowance was that the investment project be particularly worthy of promotion from the perspective of the economy as a whole. A certification for the investment allowance is issued only for a specific investment project. Generally, the project must be implemented by the company within three years of the certification. The investment allowance is paid by the local tax office, although the program is funded by both federal and state tax revenues. Dillinger and Preussag were the only companies to use this program.

Because this program is limited to enterprises or industries located in specific geographical areas within Germany, we determine the program to be specific and, therefore, countervailable. (Proposed Regulations, 54 FR at 23379, section 355.43(b)(3)). We further determine the grants under this program to be nonrecurring. Therefore, we calculated the benefit under this program using the methodology for nonrecurring grants as described in the "Capital Investment Grant" program (see A.1., above). We divided these results by the total steel sales of each company within each respective class or kind of merchandise. On this basis, we determine the net subsidies for this program to be 0.05 percent *ad valorem* for hot-rolled carbon steel products; 0.02 percent *ad valorem* for cold-rolled carbon steel products; 0.00 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.06 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.00, 0.29, and 0.00 percent *ad valorem*, respectively.

The rate calculated for Dillinger under this program is based upon the best information available as provided for under section 355.37 of the Department's regulations (19 CFR 355.37). In its response to our questionnaire, Dillinger stated that it did not recall receiving any funds under this program. At verification, however, Dillinger was unable to document that no benefits were received under this program. Moreover, according to the Official Journal of the European Communities, which was provided in the petition, and the Department's Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany 47 FR 39345 (September 7, 1982), Dillinger did receive funds under this program. Therefore, we calculated the benefit for Dillinger using the information provided in the Official Journal of the European Communities.

4. Joint Scheme: Improvement of Regional Economic Structure—GA Investment Grants and Other GA Subsidies

The primary goal of this program is to assist companies in depressed areas. Pursuant to the Grundgesetz (the constitution of the Federal Republic of Germany), regional policy basically lies within the competency of the individual states. However, pursuant to Article 91 of the Grundgesetz, the federal government participates in regional economic assistance measures through the Federal/State Joint Scheme for the Improvement of Regional Economic Structures. The law governing the Joint Scheme was signed October 6, 1969, and came into force on January 1, 1970. The European Communities' (EC) Commission Decision 322/89/ECSC of February 1, 1989, prohibited regional aid to the iron and steel industry after January 1, 1989 (exceptions were made for the new states of the former GDR). Therefore, iron and steel companies within the EC, except those in eastern Germany, are no longer eligible to receive assistance under this program.

The German federal government and the states participate in the planning and the financing of the Joint Scheme. Although the financing is shared equally by the federal government and the states, the implementation of the Joint Scheme is left to the states.

The body responsible for implementing the Joint Scheme is the Planning Committee for Regional Economic Structures. This Committee designates GA Areas. At the point of German unification, all of the former GDR states became GA areas. The Committee also adopts five-year framework plans.

Under this program, companies located in GA Areas are eligible for grants equal to 10 to 23 percent of fixed investments, depending on the location and type of investment. Once approved, the grants are paid out based on the progress of the investment project. The investment project must be completed within three years of approval. If a company makes several investments in various years and wishes to receive assistance under this program, then applications must be made for each investment. Applications must be submitted to the economic ministry of the state prior to the start of the investment.

Because this program is limited to enterprises or industries located in specific geographical regions, we determine that federal assistance provided under this program is specific and, therefore, countervailable. Moreover, except for the five former East German states, the GA Areas are not co-extensive with state boundaries. For these reasons, we determine that state assistance under this program in all but the former GDR states limited to enterprises or industries located in a specific geographic region and, therefore, is specific and countervailable. (Proposed Regulations, 54 FR at 23380, sections 355.43(5)).

For the former GDR states we did not request information on actual usage of the program. Such information is necessary to determine whether the state-provided portion is specific. Sachsen-Anhalt is the only former GDR state in which a respondent company, Ilsenburg, operates. Because we did not ask for information, we are deferring examination of Sachsen-Anhalt contributions under this program until an administrative review, pursuant to section 775 of the Act (19 USC 1677d (1988)) and 19 CFR 355.39. Therefore, we are not including the portion funded by Sachsen-Anhalt in our calculation of benefits provided to Ilsenburg.

Thyssen and Ilsenburg received grants under this program, which were tied to the production of subject merchandise. However, Hoesch only received assistance under this program for investment projects involving pipes, tinplates, and technical gases, which are not subject to these investigations. Therefore, we determine that Hoesch did not use this program with respect to the production of the subject merchandise.

We also determine that these grants are nonrecurring. Therefore, we calculated the benefit under this program using the methodology for nonrecurring grants as described in the section on the "Capital Investment Grant" program (*see* A.1., above). We then divided these results by the total steel sales of each company within each respective class or kind of merchandise.

In addition, Ilsenburg made one investment eligible for a grant prior to the currency unification. That investment subsequently was revalued and written down by company auditors to reflect the effects of the currency unification. In auditing the grant for this investment, the internal revenue auditors adjusted the investment grant accordingly. The company has been advised that it will be required to repay a part of the grant. The company is also liable for interest on the amount to be repaid. Therefore, this amount was deducted from the amount of Ilsenburg's grant before the calculation of the grant benefit.

To calculate a benefit conferred by the repayable amount of the grant, we treated the amount outstanding during the period of investigation as a short-term loan with an interest rate of six percent. As discussed above in the "Structural Improvement Aids" program section (*see* A.2 above), the average short-term lending rate in Germany during the POI was 10.00 percent. We calculated the difference in the amount of interest paid and the national average short-term lending rate of 10.00 percent. We then divided that difference by Ilsenburg's total sales of steel products.

We added this benefit to the benefit calculated from the grants received under this program. On this basis, we determine the net subsidies for this program to be 0.00 percent *ad valorem* for hot-rolled, cold-rolled, and corrosion-resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.11, 0.00, and 0.00 percent *ad valorem*, respectively.

5. Special Subsidies for Companies in the Zonal Border Area

This federal program was established in 1971 by the Act to Promote the Zonal Border Area. The aim of the program was to mitigate the competitive disadvantages for the companies in the zonal border area and to maintain attractive jobs in order to prevent the population from moving out of the region. Assistance under this program was open to all companies headquartered in the zonal border area.

The need for this assistance disappeared with unification of the country. Therefore, all of the assistance measures offered under this program will expire by 1996.

Because this program is limited to enterprises or industries located in specific geographical regions of Germany, we determine the program is specific and, therefore, countervailable. German steel companies received two types of benefits under this program: special depreciation for investments in the zonal border area up to 50 percent and freight assistance.

Both Preussag and Hoesch were eligible to use the special depreciation allowance on tax returns filed during the period of investigation. Although Hoesch claimed this special depreciation, it did not use the allowance to offset taxes paid during the period of investigation. Therefore, we determine that only Preussag received a benefit under this program during the POI.

To calculate the benefit, we divided the tax savings under the program by the total sales of the company. On this basis, we determine the net subsidies for this program to be 0.17 percent *ad valorem* for hot-rolled carbon steel products; 0.07 percent *ad valorem* for cold-rolled carbon steel products; 0.01 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.00, 0.95, and 0.00 percent *ad valorem*, respectively.

6. Ruhr District Action Program

From 1980 through 1984, the Ruhr District Action Program provided grants for investments in the Ruhr region. Funds for this program were provided by both the federal government and the Government of Nordrhein-Westfalen. Under this program, grants relating to environmental protection were available exclusively to the steel industry.

Because benefits under the portion of the program that involves environmental clean-up grants were available only to the steel industry, we determine the program is provided in law to a specific enterprise or industry and it is, therefore, countervailable. Hoesch and Thyssen received grants under this program.

We further determine that the grants received under this program are nonrecurring. Therefore, we calculated the benefit under this program using the methodology for nonrecurring grants as described above in the section on "Capital Investment Grant" program (*see* A.1., above). We then divided these results by the total steel sales of each company within each respective class or kind of merchandise.

On this basis, we determine the net subsidies for this program to be 0.01 percent *ad valorem* for hot-rolled carbon steel products; 0.01 percent *ad valorem* for cold-rolled carbon steel products; 0.00 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate for all companies.

7. Aid for Closure of Steel Operations

The GOG adopted two measures to reduce the economic and social costs of plant closings in the steel industry between 1987 and 1990. First, pursuant to the Rules on Providing Funds to Iron and Steel Companies to Give Social Assistance for Structural Adjustment, adopted on May 3, 1988, the federal and state governments provided grants to the iron and steel industry for expenses incurred with respect to displaced employees. This program was administered by the Federal Ministry of Economics and the equivalent state ministry. The total amount of federal and state aid provided to steel companies was not permitted to exceed 50 percent of a company's net expenditures incurred as a result of these plant closings.

Second, on June 27, 1988, the federal government adopted the Guideline for Granting Aid to the Iron and Steel Industry. This measure increased the amount of aid provided to employees under Article 56(2)(b) of the European Coal and Steel Community (ECSC) Treaty.

Although it was claimed that closure assistance was provided so that companies would lay off older rather than younger workers, the amount of assistance provided by the GOG does not appear to take into account the difference in the costs of laying off the differently aged workers. Instead, it is calculated using the total costs of reducing the work force. Therefore, in accordance with the Department's general determination regarding early retirement, we determine that the assistance did not merely benefit the older employees who were retired early. Instead, it relieved the company of a portion of the early retirement costs it otherwise would have incurred. The Department has determined that this benefit constitutes a countervailable subsidy pursuant to section 771(5) of

the Act. (See Prepension Programs section of the General Issues Appendix.) On this basis, and because benefits under the Aid for Closure program were provided in law to a specific enterprise or industry, we determine the program to be countervailable. We further determine the grants provided under the program to be nonrecurring.

Therefore, we calculated the benefit under this program using the methodology for nonrecurring grants as described in the "Capital Investment Grant" program (see A.1., above). This program was used by Hoesch, Preussag, and Thyssen.

Two of the companies had to repay portions of their grants after audits by the German tax authorities. To calculate a benefit conferred by the repayable amount of the grants, we treated the amount outstanding during the period of investigation as a short-term interest-free loan. Short-term interest free loans are not consistent with commercial considerations and are, therefore, countervailable. As discussed above in the "Structural Improvement Aids" program section (see A.2 above), the average short-term lending rate in Germany during the POI was 10.00 percent. Using this interest rate, we calculated the interest that should have been paid on the outstanding repayable portion of the grant.

We added the benefits calculated from the grants and the interest savings and divided that sum by the total steel sales of each company within each respective class or kind. On this basis, we determine the net subsidies for this program to be 0.03 percent *ad valorem* for hot-rolled carbon steel products; 0.04 percent *ad valorem* for cold-rolled carbon steel products; 0.06 percent *ad valorem* for corrosion resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.00, 0.00, 0.07 percent *ad valorem*, respectively.

8. Joint Program: Upswing East

For the region encompassing Germany's new states of the former GDR, a special Federal/State Joint Scheme Program was enacted. (For additional information on the Joint Scheme Program, see A.3., above.) This new program is called Joint Program: Upswing East. According to the GOG, this special program was designed only for 1991 and 1992, and will not be extended. The Upswing East program was created by the Investment Act of 1991, which provided a special investment allowance in the five new states and in Berlin. Applications for this investment grant are submitted to the local tax office. The program is equally funded by the GOG and state government. Only one company under investigation, Ilsenburg, which is located in the former GDR state of Sachsen-Anhalt received a grant under this program.

Because federal government funding under this program is provided only to enterprises or industries located in specific regions of Germany, we determine the federal government portion to be specific and, therefore, countervailable. With respect to the state portion, as noted above, we learned during verification that the entire state of Sachsen-Anhalt was designated a GA Area. Based on our examination of the actual usage of the program in Sachsen-Anhalt during the POI, we determine that the state funded portion is not provided to a specific enterprise or industry or group of enterprises or industries. Over twenty separate industries in various sectors received benefits under this program (*e.g.*, plastics, foodstuffs, timber, chemicals, construction, education, etc.). Furthermore, the steel industry was not a disproportionate user of this program. For these reasons, we determine that the portion of the program funded by the state of Sachsen-Anhalt is not *de facto* specific and, therefore, not countervailable. (See Proposed Regulations, section 355.43(b)(2)).

We further determine that grants provided under this program are nonrecurring. Therefore, we calculated the benefit under this program using the methodology for nonrecurring grants as described in the "Capital Investment Grant" program (see A.1., above). We then divided these results by the total steel sales of each company within each respective class or kind of merchandise. On this basis, we determine the net subsidies for this program to be 0.00 percent *ad valorem* for hot-rolled carbon steel products, for cold-rolled carbon steel products, and for corrosion-resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.67, 0.00, and 0.00 percent *ad valorem*, respectively.

9. Treuhandanstalt Subsidies

The Treuhandanstalt (TRA) is an institution under the federal government. The task of the TRA is to take over the "people's-owned" assets in the former GDR and place them within the competition-directed market-economy of the unified country.

To achieve this, the GOG stated that the TRA is privatizing as many companies as possible. Where rapid privatization is not possible, viable companies are being prepared for later privatization and non-viable companies are being closed down. The TRA aims to reach its goal of comprehensive privatization by 1995.

Within the framework of the privatization, the TRA provides financial assistance to companies on a case-by-case basis. This assistance is intended to help companies adjust to the normal competitive situation in a market economy.

Ilsenburg received loan guarantees from the TRA during the period of investigation. The loan guarantees were for short-term loans provided by commercial banks. The TRA guarantees terminated in 1992 when the short-term loans were replaced by a long-term loan.

Because this program is limited to industries or enterprises located in a specific geographical region within Germany, we determine the program to be specific. Therefore, the loan guarantees received by Ilsenburg were countervailable to the extent that they were provided on terms inconsistent with commercial considerations.

Ilsenburg was charged a fee of 0.8 percent for the guarantee. According to information in the record, Ilsenburg could have received a loan guarantee from a commercial bank at the same rate. Consequently, we determine that the guarantee fee charged by the TRA was consistent with commercial considerations and, therefore, not countervailable.

However, Ilsenburg has not yet paid the guarantee fee to the TRA. This deferral is inconsistent with commercial considerations. We determine that the deferred payment of the fee constitutes a countervailable benefit specific to Ilsenburg.

To calculate the benefit, we treated the outstanding amount of the fee as a short-term interest-free loan. We calculated the interest that would have been paid on that outstanding fee based on the national average short-term interest rate in Germany during the POI. (See the "Structural Improvement Aids" program section A.2 above.) We divided the interest savings by Ilsenburg's total steel sales.

On this basis, we determine the net subsidies for this program to be 0.00 percent *ad valorem* for hot-rolled carbon steel products, for cold-rolled carbon steel products, and for corrosion-resistant carbon steel flat products; and

VOL 58 ISS 130 JL 9 1993 UMI

0.00 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates are 0.02, 0.00, and 0.00 percent *ad valorem*, respectively.

10. Subsidies Related to the Creation of Dillinger Hütte Saarstahl AG (DHS)

In April 1989, an agreement was reached between the Government of Saarland and Dillinger's parent company, Usinor Sacilor, regarding the transfer of Saarstahl Volklingen GmbH (Saarstahl) and of Dillinger to a newly created holding company, Dillinger Hütte Saarstahl AG (DHS). Under the terms of this agreement, Saarstahl and Dillinger became wholly-owned subsidiaries of DHS.

The Government of Saarland contributed the assets of Saarstahl and DM 145.1 million in cash in return for 27.5 percent ownership of the holding company, DHS. Usinor Sacilor contributed its shares of Dillinger to DHS in return for 70 percent ownership of the holding company. A third party bought 2.5 percent of DHS. Pursuant to the purchase agreement, the Governments of Germany and Saarland forgave all of the outstanding debts owed to them by Saarstahl. The amount of forgiven debt was DM 3.936 billion. In addition, private creditors forgave debt amounting to DM 217.1 million as part of the restructuring of the two companies.

This transaction was examined in the Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany, 58 FR 6223 (January 27, 1993), in which Saarstahl was a respondent. However, the Department has reexamined its earlier analysis regarding the creation of DHS in light of its decisions concerning privatization and restructuring. Pursuant to the Department's determination regarding restructuring issues, we determine that because the debt forgiveness afforded by the Governments of Germany and Saarland was provided in fact to a specific enterprise, it constitutes a countervailable benefit within the meaning of section 771(5) of the Act. (See Proposed Regulations, section 355.43(k), and the Restructuring section of the General Issues Appendix.)

In addition, we determine that the private debt forgiveness is countervailable because it was required by the governments as part of a government-led debt reduction package, and because the two governments guaranteed the future liquidity of Saarstahl, thereby implicitly assuring the private banks that the remaining portion of Saarstahl's outstanding loans would be repaid. (See Proposed Regulations, section 355.44(k); Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Israel, 52 FR 1649, 1655 (January 15, 1987)).

We also determine that the debt forgiveness provided by the Governments of Germany and Saarland and the private creditors, provided benefits to Saarstahl which were then passed through to DHS with the 100 percent spin-off of Saarstahl to DHS.

To derive the benefit arising from the debt forgiveness, we applied the spin-off calculation described in the Restructuring section of the General Issues Appendix. For each specific class or kind of merchandise, we divided these results by the total steel sales of all the companies within each respective class or kind of merchandise. On this basis, we determine the net subsidies for this program to be 0.00 percent *ad valorem* for hot-rolled carbon steel products, for cold-rolled carbon steel products, and for corrosion-resistant carbon steel flat products; and 14.63 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.00, 0.00, and 0.00 percent *ad valorem*, respectively.

Petitioners also alleged that because of the creation of DHS, Dillinger received subsidies indirectly from the federal government and the Saarland government in connection with the construction of the ROGESA iron production facility and the Zentralkokerei Saar Company coking plant.

ROGESA was a joint venture between Dillinger and ARBED Saarstahl (a predecessor company of Saarstahl) which was formed in 1981. ROGESA was created to produce pig iron for both companies. ARBED Saarstahl made a capital contribution to ROGESA in the amount of DM 200 million. This amount was financed by a repayable contribution from the Governments of Germany and the Saarland, which was part of the DM 3.936 billion forgiven by the Governments of Germany and Saarland. Dillinger made a contribution in kind by transferring its blast furnace to the newly-created company. According to the response, an independent accounting firm determined that the market value of the blast furnace was between DM 218 and 234 million.

Zentralkokerei was founded in 1982 by Dillinger, Stahlwerke Rochling-Burbach GmbH (another predecessor company of Saarstahl) and Saarbergwerke AG. According to its response, Dillinger made a capital contribution in the amount of DM 255,000 to Zentralkokerei. The stated capital of the company is DM one million; therefore, Dillinger acquired ownership of 25.5 percent of Zentralkokerei's stock.

Because Dillinger received shares in ROGESA and Zentralkokerei equal to the contribution that Dillinger made into both companies, we determine that these transactions are not countervailable. To the extent that Dillinger did receive a subsidy based on the assistance provided by the Governments of Germany and Saarland to Saarstahl as part of the creation of DHS (which was used to finance a portion of the ROGESA and Zentralkokerei transactions), the subsidy is accounted for in our calculation pertaining to the forgiveness of debt.

11. ECSC Redeployment Aid Under Article 56(2)(b)

Under Article 56(2)(b) of the ECSC Treaty, persons employed in the iron, steel, and coal industries who lose their jobs may receive assistance for social adjustment. This assistance is provided to workers affected by restructuring measures, particularly workers withdrawing from the labor market into early retirement and workers forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. Payments were made to German steel workers under Article 56(2)(b).

Since the ECSC portion of payments under this program comes from the operational budget, which is funded by levies on the companies, we determine that this portion (i.e., 50 percent of the amount received) is not countervailable. However, with respect to the portion funded by the Government of Germany, we must decide whether the government payments have relieved the steel companies of an obligation they would otherwise have.

In Germany, benefits for workers who retired or are laid off are subject to negotiations between labor and management. Those negotiations result in a social plan for each company.

Following the policy explained in the Prepension Programs section of the General Issues Appendix, we have determined that the German steel companies and their workers were aware when they negotiated their social plans that the German government would pay a portion of the costs.

Therefore, we have determined that one half of the amount paid by the government constitutes a countervailable subsidy.

One company, Ilsenburg, is located in the former GDR. During the POI, it had not yet negotiated a social plan with its workers. Based on this, we find that Ilsenburg had no obligation, legal or contractual, to provide payments to workers who were laid off. Lacking such an obligation, we have concluded that the portion of Article 56(2)(b) payments (funded by the GOG) made for Ilsenburg's workers do not constitute a subsidy because they did not relieve the company of an obligation it would otherwise have had.

We consider the benefits provided under this program to be recurring. Therefore, we took 50 percent of the funds provided in 1991 by the GOG, and divided it by the total steel sales of each company within each respective class or kind of merchandise. On this basis, we determine the net subsidies for this program to be 0.08 percent *ad valorem* for hot-rolled carbon steel products; 0.07 percent *ad valorem* for cold-rolled carbon steel products; 0.08 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate except for Ilsenburg, Preussag, and Thyssen, which have significantly different aggregate benefits. The net subsidy rates for these three companies are 0.00, 0.03, and 0.07 percent *ad valorem*, respectively.

12. ECSC Article 54 Long-Term Loans

ECSC Article 54 long-term loans are available only to the iron, steel, and coal industries to purchase new equipment or finance modernization. The EC stated in its questionnaire response that Article 54 loans are direct loans from the EC Commission, and that the funds are loaned at a slightly higher rate than that at which the Commission obtained the funds in order to cover its costs. According to the EC response, the Commission developed this program to facilitate the lending process for companies within the ECSC, some of which may not otherwise be able to acquire necessary funding. Hoesch, Klöckner, Preussag, and Thyssen received loans under this program.

Because benefits under this program are available only to the iron, steel, and coal industries, we determine the program is provided in law to a specific enterprise or industry or group of enterprises or industries. Therefore, these loans are countervailable to the extent they were provided on terms inconsistent with commercial considerations. We compared the interest rates charged on these loans to the benchmark which was, whenever possible, each company's actual cost for long-term, fixed-rate debt. If a company did not report this cost, or when a company had no long-term borrowing in the year in which a loan was approved, we used the rates for industrial bonds provided by the Deutsche Bundesbank. We found that some Article 54 loans were provided at an interest rate below the applicable benchmark. Therefore, we determine that some loans under this program provided countervailable benefits.

We calculated the benefit for the POI using our long-term loan methodology described in section 355.49(c)(1) of the Department's Proposed Regulations, and used in prior investigations (see, e.g., Final Affirmative Countervailing Duty Determination: Certain Granite Products from Spain, 53 FR 24340, 24343 (June 28, 1988)).

Using this methodology, we determine the net subsidies for this program to be 0.02 percent *ad valorem* for hot-rolled carbon steel products; 0.02 percent *ad valorem* for cold-rolled carbon steel products; 0.00 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.00 percent *ad valorem* for cut-to-length carbon steel plate for all companies.

13. Interest Rebates on ECSC Article 54 Loans

Article 54 loan interest rebates were available only to the iron, steel and coal industries. Steel companies received rebates during the restructuring and modernization of the industry beginning in the 1980's. Steel companies applying for these rebates had to meet certain criteria such as a reduction in steel production and improvements in processing that would yield energy savings and improve efficiency.

The interest rebates were limited to a maximum of three percent of the eligible investment and were provided over a period of three years. The rebates were funded by the ECSC operational budget which is financed by levies on all ECSC companies. Deficits in the operational budget are made up by Member State contributions. While no Member State contributions have been made to the operational budget since 1984, it was supplemented by Member States from 1978 through 1984. Preussag and Thyssen received interest rebates on Article 54 loans.

Because the interest rebates given prior to 1985 were partially financed through Member State contributions, a portion of those interest rebates are countervailable. Consistent with past cases, *e.g., Bismuth*, we have not countervailed the portion financed by the ECSC's operating budget because those funds are obtained from company levies. To calculate the countervailable portion of the rebates, we calculated the ratio between the contribution from Member States and the ECSC's total available funds for the year, and then multiplied this ratio by the rebate amount.

Moreover, because companies were aware that interest rebates would be available when the loans were taken out, we have treated these interest rate subsidies as reduced interest loans. Therefore, in calculating the benefits from the ECSC Article 54 Loans, we reduced the interest paid on those loans by the amount of interest rebates received before 1985. The estimated subsidy calculated for that program includes all benefits conferred by these interest rebates.

B. Programs Determined Not To Be Countervailable

We determine that the following programs do not provide countervailable subsidies to manufacturers, producers, or exporters in Germany of subject merchandise:

1. Wage Subsidies (Kurzarbeitergeld)

Kurzarbeitergeld is a wage subsidy provided within the framework of unemployment insurance. Benefits under this program consist of payments of unemployment insurance to individual employees to compensate them for reductions in their hours worked. The program is funded by the Federal Labor Office whose budget consists solely of premiums paid by German employers and employees. The period for receiving Kurzarbeitergeld may be extended or shortened depending on the situation in the labor market.

Assistance provided under this program is paid only to employees. On occasion, an employer will pay employees the benefits they are due under this program and subsequently receive reimbursement from the Federal Labor Office.

We determine that benefits under this program are not countervailable because the program is funded by employees and employers, rather than by the government.

2. Nordrhein-Westfalen's Technology Program Materials and Substances Development

This program provides grants for projects in the field of material development. The program is administered by Nordrhein-Westfalen's Ministry of Economics and Technology.

Grants can be provided to companies, universities, polytechnics, and research institutes for the development of both ferrous and non-ferrous metallic materials, non-metallic materials, ceramics, composite materials, and fibers.

Recipients must either publish their results or obtain patents and licenses protecting their findings. However, if the grant recipient receives any revenue from any licensing agreement for up to five years after the expiration of the grant period, the NRWG will require the repayment of the grant.

We verified that the results of individual projects were made public through articles in technical journals and through papers given at national and international symposia. Both Thyssen and Hoesch have received grants under this program.

The Department's practice regarding the countervailability of research and development assistance is that when the results of the research are made available to the public, the assistance does not confer a countervailable benefit. (See Proposed Regulations, section 355.44(l); see also, e.g., Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991)). Applying this standard, we determine that this program is not countervailable.

3. Loan Guarantees From Nordrhein-Westfalen

Various statutes of the Government of Nordrhein-Westfalen authorize the Finance Minister to issue loan guarantees to companies. In order to receive a loan guarantee, the applicant must be of good standing, the projects for which the applicant is seeking financing must provide a benefit to the economy, and the borrower must demonstrate its ability to repay the guaranteed loan according to schedule. One company under investigation, Hoesch, received a loan guarantee under this program.

We verified that these loan guarantees are *de jure* available to all industries and professionals in Nordrhein-Westfalen. Furthermore, we examined the actual usage of the program during the period of review. We noted that over twenty separate industries received benefits under this program (e.g., services, construction, energy, electronics, textiles, plastics, etc.). Finally, we noted that the steel industry was not a disproportionate user of this program. For these reasons, we determine this program to be not countervailable.

C. Programs Determined Not To Be Used

We determine that the following programs were not used by manufacturers, producers, or exporters in Germany of the subject merchandise:

1. Loans with Reduced Interest Rates under the Steel Restructuring Plan
2. Federal and State Government Loan Guarantees under the Steel Restructuring Plan
3. Special Ruhr Plan
4. Zukunftsinitiative Montanregionen (ZIM) Initiative
5. Kreditanstalt für Wiederaufbau (KfW) Investment Loans for Eastern Germany
6. Deutsche Ausgleichsbank Investment Loans for Eastern Germany
7. European Recovery Program Loans for Eastern Germany
8. Loan Guarantee Program for Eastern Germany
9. Peine-Salzgitter Profit Transfer Agreement and Other Operating Loss Subsidies
10. Elimination of Duisburg Harbor Tolls
11. Export Credits at Preferential Rates
12. Miscellaneous Tax Subsidies
13. Loans from the Government of Nordrhein-Westfalen
14. Tax Subsidies for Eastern Germany
15. ECSC Article 54 Loan Guarantees
16. ECSC Article 56 Conversion Loans
17. Interest Rebates on ECSC Conversion Loans under Article 56
18. European Investment Bank Loans and Loan Guarantees
19. New Community Instrument Loans
20. European Regional Development Fund Aid
21. Nordrhein-Westfalen's Air Pollution Control Program

D. Program Determined Not To Exist

We determine that the following alleged programs do not exist:

1. Early Retirement Subsidy
2. Nordrhein-Westfalen and Niedersachsen Grants

Comments

All written comments submitted by the interested parties in these investigations which have not been previously addressed in this notice are addressed below.

Comment 1: Petitioners argue that the Department correctly used the German "Lending Rate" published by the International Monetary Fund (IMF) as the long-term benchmark interest rate and the discount rate in the preliminary determinations. According to petitioners, even though the IMF lending rate is a short-term interest rate, it constitutes the best information available because long-term interest rates are not readily available in Germany. Petitioners further assert that the IMF lending rate is a conservative estimate because in Germany long-term interest rates are higher than short-term rates. Finally, petitioners object to the use of mortgage-based interest rates proposed by the GOG because corporate borrowing is far less secured than residential borrowing.

Respondents collectively disagree with the use of the IMF lending rate as the long-term benchmark because this rate applies only to loans of less than DM 1 million which are mainly used to meet cash flow shortfalls. Where company-specific rates are not available, respondents suggest that the Department use the mortgage-based rate provided by the GOG. They argue that this rate more accurately reflects the costs of long-term borrowing of companies in Germany, including those under investigation.

Alternatively, should the Department decide not to use the mortgage-based rate, respondents suggest that the Department use the "second" lending rate published by the IMF. This rate applies to short-term loans of between 1 and 5 million German marks. As a third alternative, Preussag suggests that the Department use the long-term interest rate for loans—applicable to fixed income securities—provided in its October 5, 1992 response.

DOC Position: The Department has determined that the average preferred benchmark in this case is the rate for industrial bonds in Germany as published by the Deutsche Bundesbank. Our practice, as stated in section 355.44(b)(4) of the Proposed Regulations, sets out a hierarchy for selecting long-term interest rate benchmarks. The most preferred options are (1) the interest rate the company under investigation pays for long-term loans, (2) the interest rate the company under investigation pays on debt obligations, *i.e.*, bonds, and (3) the variable rate the company under investigation pays for long-term loans. The next preferred option is the national average long-term interest rate in the country in question. The fact that the benchmark hierarchy does not specify either long-term loan rates or bond rates indicates that either is preferable to a long-term variable rate or a short-term rate.

This is clear because the Department's aim is to obtain an objective measure of the company's long-term (rather than short-term) borrowing ability. We obtain such a measure by comparing the rate charged by the government to the

company's commercial cost of borrowing, if possible. Absent a company-specific benchmark, we turn to a national average long-term rate, either for loans or bonds. In this instance, we note that the national average bond rates are consistent with the bond rates offered by Hoesch, one of the responding companies.

Accordingly, we are using the yields on industrial bonds, as documented by the Deutsche Bundesbank, as the long-term interest rate benchmarks and discount rates. During verification, we examined the yields on "industrial bonds" published by the Deutsche Bundesbank. Similar to the mortgage-based rates suggested by the GOG, the yields on industrial bonds reflect the cost of secured long-term borrowing. According to the Deutsche Bundesbank's financial statistics, the yield on industrial bonds for 1985 and 1989 was 7.1 and 7.2 percent, respectively. These rates are very similar to the rates shown for the 10-year bonds issued by Hoesch in 1985 and 1989, *i.e.*, 7 percent for both years.

Comment 2: Petitioners argue that the Department should also use the IMF lending rate as its short-term benchmark interest rate. They argue that the FIBOR rate used by the Department in the preliminary determinations understates the cost of short-term borrowing in Germany because this rate reflects the rate at which German banks lend to each other on a short-term basis. It does not represent the "predominant source of short-term financing" for German companies.

Klöckner argues that the Department should use the overnight rate published by the Deutsche Bundesbank as the short-term interest rate benchmark. Klöckner submits that if the company had the choice between the overnight rate and the "three-month rate" (apparently Klöckner is referring to the FIBOR interest rate used by the Department in its preliminary determinations), the former would have been more attractive in 1991.

DOC Position: We disagree with both respondents and petitioners and have continued to use the FIBOR short-term interest rate, which we have adjusted as explained below. Our practice as stated in the Proposed Regulations requires that in the case of a short-term loan provided by the government, " . . . the Secretary will use as a benchmark the average interest rate for an alternative source of short-term financing in the country in question. In determining this benchmark, the Secretary normally will rely upon the predominant source of short-term financing in the country in question." Although the cost of borrowing for certain companies and commercial banks may be comparable, usually the cost of borrowing for companies will be higher. In recognition of this, we contacted a commercial German bank, the Deutsche Bank, in Frankfurt and asked for the average short-term interest rate charged to firms in 1991. The Deutsche Bank informed us that for short-term loans in 1991, it added to the FIBOR rate a spread ranging from 0.5 to 1 percent depending on the risk associated with the transaction.

Accordingly, we have determined that a reasonable short-term benchmark interest rate is 10 percent. This rate was calculated by taking the mid point of the spread range provided by the Deutsche Bank, *i.e.*, 0.75 percent, and adding it to the FIBOR rate published by the OECD. We believe this rate represents a reasonable approximation of the predominant source of short-term financing in Germany.

Comment 3: Klöckner argues that the Department should use the company's total sales figure as the denominator for purposes of calculating its benefit. Klöckner states that all of its products and by-products benefitted from the subsidies provided to the company during the POI.

Petitioners reject this argument because the Department found in the preliminary determinations that the benefits received by Klöckner were tied to the production of subject merchandise. Therefore, the denominator properly includes only steel sales.

DOC Position: We disagree with both Klöckner and petitioners. The total sales figure which we used includes sale of steel products and by-products (*e.g.*, slag and blast furnace sand) which were sold during the POI. At verification, however, a close examination of the company's total sales revealed that certain items included by Klöckner (*e.g.*, sale of oil to employees and personnel costs) did not relate to the production of the subject merchandise nor to the production of by-products. Accordingly, the total sales value which we have relied upon reflects an adjustment to exclude revenues from activities totally unrelated to steel production.

Comment 4: Dillinger contends that contrary to the Department's conclusion in *Bismuth* and in the preliminary determinations in these investigations, the forgiveness by private banks of a portion of debt owed by Saarstahl SVK was commercially rational and was not at the direction of the government. Dillinger maintains that, absent this debt forgiveness, Saarstahl SVK would have been forced into bankruptcy and, consequently, private banks would have lost more money than the amount of debt forgiven. Moreover, if Saarstahl SVK had been forced into bankruptcy, the inevitable lay-offs would have negatively impacted the banking business in the state of Saarland. Accordingly, no government incentives were necessary to induce the banks to forgive the debts. Dillinger, therefore, argues that the Department should not countervail the private debt forgiveness.

Petitioners state that the forgiveness by private banks of DM 217 million is countervailable because the forgiveness was limited to a specific enterprise or industry.

DOC Position: In *Bismuth*, 58 FR at 6234–35, we determined the forgiveness of DM 217 million to be countervailable because (1) it was part of a government-led debt reduction package; (2) the Governments of Germany and Saarland guaranteed the liquidity of Saarstahl, thereby implicitly assuring the private banks that the remaining portion of Saarstahl's outstanding loans would be repaid; and (3) it was provided to a specific enterprise within the meaning of section 771(5) of the Act. We have reexamined our determination in Bismuth and have determined that it was reasonable and otherwise in accordance with law. In so doing, we placed on the record of these investigations the evidence relating to our determination in *Bismuth*.

Comment 5: Dillinger maintains that the value of the Ruckzahlungsverpflichtungs (RZV), as determined by the Department, is incorrect. Dillinger argues that, according to the appraisal of Dillinger and Saarstahl SVK's assets conducted by two independent accounting firms (KPMG and Treuarbeit), Saarstahl SVK's RZVs had no economic value. Therefore, they were not regarded as a factor in determining Saarstahl SVK's value. This occurred because the RZVs were subordinate to all other debt obligations and were contingent upon the unlikely event that Saarstahl SVK would make a profit.

DOC Position: Although the independent appraisals determined that the RZVs had no economic value, that determination simply reflected the fact that the RZVs would be repaid. Likelihood of repayment does not, however, mean the company received no benefit from the use of the funds and the subsequent forgiveness of any obligation to repay them.

In *Bismuth*, we determined that the debt forgiveness by the Governments of Germany and Saarland was countervailable because it was provided to a specific enterprise or industry. The

RZVs were integral to that debt forgiveness. (*See Bismuth*, 58 FR at 6233–34). As with the "private" debt forgiveness, we have reexamined our determination in *Bismuth* regarding the governmental debt forgiveness, and we have determined that it was reasonable and otherwise in accordance with law.

Comment 6: Ilsenburg argues that subsidies provided to companies located in a former nonmarket-economy (NME) which is adapting to a market economy should be exempt from countervailing duties. According to Ilsenburg, the exemption would be similar to that which the Department grants companies located in countries still considered to be NMEs.

In addition, Ilsenburg states that if the Joint Scheme grants are treated as countervailable subsidies, there will be a disparity of treatment between companies in the former GDR and companies in other former East Bloc countries with respect to the application of U.S. countervailing duty rules. Ilsenburg states that while antidumping proceedings were initiated against Poland and Romania, no countervailing duty action was taken with respect to those countries. Ilsenburg argues that this is because the U.S. countervailing duty law does not apply to those countries because of their former and transitional nonmarket economy status.

Finally, Ilsenburg states that the United States should consider its obligation under the General Agreement on Tariffs and Trade (GATT) with respect to most-favored-nation (MFN) treatment, and exempt U.S. imports produced by companies located in the former GDR from countervailing duties. According to Ilsenburg, this exemption would be similar to the one granted by the Department in Oscillating and Ceiling Fans from the People's Republic of China, 57 FR 24018 (June 5, 1992).

Petitioners counter that imports from the Federal Republic of Germany (FRG), not the GDR, are under investigation, and the subsidy programs being examined were provided and funded by the FRG. Furthermore, the Department's rationale for exempting NME countries from the countervailing duty law is founded in part on the notion that subsidies in an NME system have no meaning and cannot be fairly identified or quantified. Because Ilsenburg is operating within a market-economy, that rationale does not apply. Petitioners state that the type of assistance received by Ilsenburg is precisely the type of assistance which the countervailing duty law was intended to counteract.

Finally, petitioners state that imposing countervailing duties on subsidies received by Ilsenburg would not be inconsistent with the United States' MFN obligation under the GATT. Petitioners argue that if the Department were to follow Ilsenburg's suggestion, then it would be providing Ilsenburg with preferential treatment. Because producers in other market oriented economies would be unable to receive such an exemption from the countervailing duty law, this would be inconsistent with MFN.

DOC Position: The Department has determined that the countervailing duty laws are not applicable to NME's because the concept of subsidies and the mis-allocation of resources that result from subsidization have no meaning in an economy that has no markets and in which commercial activity is controlled according to central plans. Carbon Steel Rod from Poland, 49 FR 19374 (1984). This position was sustained by the Court of Appeals for the Federal Circuit in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986).

However, as of October 1990, Ilsenburg has been operating in a market-oriented economy for which the concept of subsidies does have meaning. As a result, comparison of Ilsenburg's situation with those of companies within countries which are still NMEs would not be meaningful. With regard to other Eastern European countries, which were not absorbed into a market-oriented economy as was the former GDR, but are undergoing a transitional process, U.S. law does not prohibit a domestic industry from filing a countervailing duty petition. If the Department initiates an investigation and determines the economy is sufficiently market-oriented, a countervailing duty order could be issued against subsidies found to exist. Furthermore, the application of the countervailing duty laws to Ilsenburg is consistent with our GATT obligations. Article 15 of the GATT subsidies code allows a country to use either countervailing duty law or antidumping law for imports from a country with a state-controlled economy.

Comment 7: Petitioners argue that because Ilsenburg did not repay any portion of the grants received under the Joint Scheme program during the period of investigation, the Department should not make any adjustments to the grants received by the company.

Ilsenburg argues that because the company will be required to repay a portion of the grant, the Department properly deducted that portion from its grant calculation. In support of its claim, Ilsenburg refers to a statement by the German tax office auditor during verification, that "* * * a repayment schedule would be set soon."

DOC Position: As a result of an audit by the government, Ilsenburg will be required to repay a portion of grants received under the joint scheme program. During verification, we noted that the repayment dates had not yet been determined because Ilsenburg was challenging the finding of the tax office. However, also during verification, we met with an auditor from the German tax office who indicated that a repayment nevertheless would be required, and that a repayment schedule should be set soon.

Because Ilsenburg will be required to repay a portion of the grants received with interest, we have continued to treat this portion of the grant as a contingent liability, and have continued to adjust the amount of the grant for purposes of the benefit calculation. To do otherwise, as petitioners suggest, would lead to overcountervailing in the (likely) event of repayment.

Comment 8: Petitioners argue that because the grant received by Ilsenburg under the Joint Program Upswing East program was used to improve the company's plate production, the Department should allocate this grant only over Ilsenburg's sales of plate.

Conversely, Ilsenburg argues that the Department should allocate this grant over sales of plate and pressed parts (e.g., tops and bottoms for fuel and water tanks) because the grant benefitted both plate production and the production of pressed parts.

DOC Position: In its response, Ilsenburg stated that the "grant received under this program was used to improve the quality of plates which benefitted the production of both plate and pressed parts." The Department has determined that unless a subsidy is expressly tied to a specified aspect of a production process, the benefits associated with that subsidy should be allocated over a company's entire production of the subject merchandise. (See Denominator section of the General Issues Appendix.) Accordingly, because both the production of plate and pressed parts benefitted from this program, we are allocating the grant received under this program over sales of plate and pressed parts.

Comment 9: Preussag argues that the special depreciation under the Zonal Border Area (ZBA) program resulted only in deferral, not forgiveness, of taxes. Therefore, the tax effect should have been treated as an interest-free loan, rather than as a grant. Although the special ZBA depreciation provides greater depreciation in the first year, over time the total amount of depreciation taken under the special ZBA depreciation is the same as under

"normal" tax rules. Preussag argues that the Department's past treatment of the benefit under such programs as a grant improperly fails to recognize that the repayment that occurs in later years is an inherent part of the accelerated depreciation.

According to Preussag, when a company is able to take greater depreciation at an earlier stage, the company's taxable income will be greater in future years; thus, the tax benefit received during the initial years of depreciation should be viewed as a mere deferral of taxes, not a reduction in tax liability. Preussag states that in Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 57 FR 57781 (December 7, 1992), the Department recognized that tax deferral is equivalent to an interest-free loan. Because the Austrian scenario is similar to the accelerated depreciation under the ZBA, Preussag argues that the benefit should be treated as an interest-free loan, rather than as a grant.

Petitioners argue that special depreciation benefits should be countervailed to the extent the taxes paid were less than the producer's taxes would have been absent the subsidy. Furthermore, petitioners state that the tax savings amount should be treated as a recurring grant in accordance with the Department's proposed regulations.

DOC Position: Preussag's argument that the company will pay more taxes in the future due to a reduction of its depreciation deduction is speculative. The future tax liability of the company will depend on a number of factors that cannot be anticipated. However, during the period of investigation, we know that the company was liable for less taxes than it would have been absent this program. Therefore, consistent with our past practice on accelerated depreciation schemes (see, e.g., Final Affirmative Countervailing Duty Determination; Cold-Rolled Carbon Steel Flat-Rolled Products from Korea; and Final Negative Countervailing Duty Determination; Carbon Steel Structural Shapes from Korea 49 FR 47284 (December 3, 1984)), we continue to view this program as a grant. We countervailed the difference between the taxes paid and the taxes that would have been paid absent this program.

Contrary to Preussag's argument, we believe that this program can be distinguished from the tax program in the current Certain Steel Products from Austria investigations. In that investigation, the tax program provides specifically for a tax deferral. There is no speculation as to whether the company will be liable for the deferred amount in the future. It will.

Comment 10: Petitioners argue that the Department should use the lending rate published by the IMF as the benchmark for the ECSC loan received by Hoesch in 1988. Petitioners contend that the benchmark rate provided by Hoesch should be rejected because it "differs substantially from the publicly-available data presented by Petitioners."

Hoesch argues that petitioners' objection is without merit. Hoesch submits that the Proposed Regulations express a clear preference for using "the interest rate on fixed-rate debt obligations issued in the same year by the firm receiving the government loans," as the benchmark interest rate for long-term loans.

DOC Position: We found no discrepancies between the benchmark information provided by Hoesch in its response and the source documents examined during verification. Therefore, in accordance with the Department's Proposed Regulations, section 355.44, we are using Hoesch's company-specific benchmark information. (See also the explanation in comment 1, above).

Comment 11: Petitioners claim that, according to Hoesch's response, the company received a higher amount under the Aid for Closure of Steel Operations program than the Department accounted for in its preliminary determinations.

Hoesch indicates that the figure petitioners refer to reflects the assistance received by the company under (1) aid for closure of steel operations and (2) Article 56(2)(b) of the ECSC Treaty.

DOC Position: Hoesch is correct. The total amount listed under the Aid for Closure of Steel Operations comprises assistance from both programs. The two amounts have been dealt with separately under our calculations.

Comment 12: Thyssen submits that the grants received under the Capital Investment Grants program do not constitute subsidies because: (1) the payments were received during a period when the U.S. steel industry was protected by a Voluntary Restraint Agreement (VRA) limiting steel imports, and (2) Thyssen's general application conditioned payments on Thyssen reducing its steel production and becoming more energy efficient, goals which are consistent with the U.S. policy.

Petitioners state that Thyssen's belief that the VRAs extinguished countervailable benefits has no legal foundation. The VRA was merely an agreement by petitioners to refrain from filing petitions in return for the European Community's agreement to limit its steel exports to the United States.

DOC Position: We agree with petitioners that the VRAs did not serve to extinguish countervailable benefits. Furthermore, while Thyssen may have reduced output or become more efficient, the funds that made this possible were received as grants from the GOG. Because the grants were provided specifically to steel companies, they are countervailable under U.S. law.

Comment 13: Petitioners argue that there is not enough evidence on the record to support respondents' claim that results of the research funded by grants under Nordrhein-Westfalen's Technology program are made publicly available. Further, the dissemination of the results of the research funded by these grants appears to be limited by law. Petitioners also claim that recipients under the program are actually required to obtain patents or similar protection for results of funded projects which later might entitle recipients to collect royalties for licensing the technology.

Even if the results of the research are published, petitioners argue that these grants should be countervailed because the grants are specific to the steel industry. Petitioners cite *Agrexco, Agricultural Export Co., Ltd.* v. *United States*, 604 F. Supp. 1238 (CIT 1985), in support of this claim.

Hoesch submits that petitioners' assertions are unsupported. Hoesch notes that the Department's verification report of Hoesch's data clearly indicates that research results funded under this program are made public. Furthermore, Hoesch submits that such results are disseminated worldwide through symposiums given by Hoesch employees or articles published in trade magazines. Thyssen and Hoesch state that because there is sufficient evidence to support their claim that results are made publicly available, the program provides no countervailable benefit.

DOC Position: We disagree with petitioners. The Department's practice, as set forth in the Proposed Regulations, section 355.44(l), is that assistance provided for purposes of research and development does not confer a countervailable benefit if the results of the research are made available to the public, including the U.S. competitors of the recipient of the assistance. Although, as noted by petitioners, this practice was called into question by the CIT in *Agrexco*, the Department has consistently disagreed with that aspect of the court's decision.

With regard to the allegation that grant recipients are required to obtain patents and licenses, we note that the verified response of Nordrhein-Westfalen government (NRWG) states that recipients must either publish their results or obtain patents and licenses protecting their findings. During verification, we reviewed published results of research conducted by various companies and institutions. We also reviewed publications at the Hoesch verification. Moreover, if the grant recipient receives any revenue from any licensing agreement for up to five years after the expiration of the grant period, the NRWG will require the repayment of the grant.

Therefore, because (1) the research results are made publicly available and (2) there is no evidence that any company under investigation took out a patent, we determine that grants under this program are not countervailable.

Comment 14: Petitioners argue that loans from the Kreditanstalt für Wiederaufbau (KfW) should be considered countervailable. Based on information gathered at verification, petitioners claim that low-interest rate loans were provided (1) to companies in East Germany for development and (2) to companies throughout Germany for environmental protection.

Dillinger claims that KfW loans were examined at verification for purposes of establishing benchmark rates only. In addition, Dillinger points out that there is no evidence on the record that these loans are specific to the steel industry or that they are provided at preferential rates. Hoesch points to the 1982 Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany, 47 FR 39345 (September 7, 1982), in which the Department found KfW loans to be not specific. Hoesch further argues that since the structure and operation of the KfW have not changed since 1982, the Department should continue to view KfW loans as not specific and, therefore, not countervailable.

DOC Position: We are not determining whether KfW loans are countervailable for purposes of these investigations. In their petition, petitioners alleged that certain KfW loans to companies located in Eastern Germany were countervailable. That program was found to be not used by companies under investigation. However, no allegation was made in the petition regarding other countervailable subsidies provided by the KfW.

In light of the fact that KfW loans were found not countervailable in the 1982 Certain Steel from Germany investigations, and without information indicating otherwise, the Department had no reason at the outset of these investigations to examine the program's current status. For these reasons, the Department did not solicit information regarding this program at any point prior to verification.

At verification, we consulted with company representatives and government officials regarding the KfW program for purposes of establishing benchmark rates for other programs. In so doing, we received contradictory information regarding KfW loans, some of which indicated that the program might provide an unfair subsidy to producers of the subject merchandise and might warrant further investigation.

However, due to the number of programs being investigated and the limited time to prepare for the final determinations, after verification the Department did not pursue the issue of whether KfW loans provide countervailable benefits. We have decided, therefore, that because we did not gather sufficient information regarding KfW loans during these investigations to determine whether they are provided to a specific enterprise or industry, or group thereof, we will defer examination of the program until an administrative review pursuant to section 775 of the Act (19 U.S.C. 1677d) and 19 CFR 355.39.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Germany which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Hot-Rolled Carbon Steel Flat Products
- Country-Wide Ad Valorem Rate—1.06 percent

Certain Cold-Rolled Carbon Steel Flat Products
- Country-Wide Ad Valorem Rate—0.84 percent

Certain Corrosion-Resistant Carbon Steel Flat Products
- Country-Wide Ad Valorem Rate—0.59 percent

Certain Cut-To-Length Carbon Steel Plate
- Country-Wide Ad Valorem Rate—14.84 percent
- Ilsenburg—0.80 percent
- Preussag—1.72 percent
- Thyssen—0.50 percent

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty

orders, directing Customs officers to assess countervailing duties on entries of certain steel products from Germany.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4)).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15633 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–808]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Jennifer Yeske, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4105 or 482–0189, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Italy of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations in the **Federal Register** (57 FR 57739, December 7, 1992), the following events have occurred.

On December 10, 1992, we issued supplemental questionnaires to the Government of Italy (GOI), ILVA S.p.A (ILVA) and Acciaierie e Ferriere Lombarde Falck SpA (Falck). We received responses from the GOI, ILVA and Falck on January 15, 1993. On January 25, 1993, ILVA informed us that it declined to be verified.

In accordance with section 776(b) of the Act, verification of the responses received from the GOI and Falck was held in Italy from February 8 through February 18, 1993.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see Suspension of Liquidation section, below).

Parties submitted case and rebuttal briefs on March 19 and 24, 1993, respectively. A public hearing was held on March 26, 1993. A public hearing regarding general issues in this and the 11 other investigations of certain steel products from various countries was held on May 5–6, 1993.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following two separate "classes or kinds" of merchandise, as found in the Scope Appendix included in the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria (Austria Steel): (1) Certain cold-rolled carbon steel flat products and (2) certain cut-to-length carbon steel plate.

Respondents

The GOI is a respondent for each class or kind of merchandise subject to these investigations. The following is a list of respondent companies for each class or kind of merchandise subject to these investigations:

Certain Cold-Rolled Carbon Steel Flat Products: ILVA and Falck.

Certain Cut-To-Length Carbon Steel Plate: ILVA and Falck.

Corporate History of Respondent Companies

Finsider/ILVA

Between 1937 and 1990, Finsider was the Italian public sector steel holding company. Finsider was a financial subholding of the Instituto per la Riscostruzione Industriale (IRI), an agency of the Italian government. Prior to 1981, the main operating companies in the Finsider group were Italsider (primary producer of the subject merchandise), Dalmine, Terni and Acciaierie di Piombino.

In 1981, the Finsider group was restructured into five operating companies: Nuova Italsider (flat rolled products), Dalmine (tubes and pipes), Terni (special steels), Acciaierie di Piombino (common long products) and Nuova Sias (special long products). At the same time, Italsider transferred all of its assets (except two plants) to Nuova Italsider. Italsider became a one-company holding company with Nuova Italsider's stock as its primary asset.

In 1983, Finsider subscribed for additional Nuova Italsider shares and placed Italsider in liquidation. In 1984, Italsider, in liquidation, transferred its shareholdings in Nuova Italsider to Finsider. At the end of 1984, Finsider owned 100 percent of Nuova Italsider.

In 1987, Finsider restructured three of its main operating companies. Nuova Italsider spun off its assets to Italsider (by then, out of liquidation) and transferred its Italsider shares to Finsider. Deltasider spun off its assets to Nuova Deltasider, Deltacogne and Deltavaldarno and transferred the shares of these three companies to Finsider. Then, Finsider transferred Deltacogne and Deltavaldarno to Nuova Deltasider. Terni spun off its assets to Terni Acciai Speciali, Lovere Sidermeccanica and Attivita Industriali Triestine, and transferred its shares in each to Finsider. Then, Lovere Sidermeccanica and Attivita Industriali Triestine were transferred to Terni Acciai Speciali. After this restructuring, Nuova Italsider, Deltasider, and Terni ceased operations. Italsider re-emerged as the steel sector's flat-rolled producer.

In 1988, the GOI liquidated Finsider and its main operating companies and assembled the group's most productive assets, including Italsider's flat-products facilities, into a new company, ILVA S.p.A. ILVA became operational on January 1, 1989, when it took over the viable assets from the liquidating companies (Italsider, Terni Acciai Speciali, Nuova Deltasider) owned by the Finsider Group. Later, Nuova Deltasider sold its ILVA shares to Italsider, and Nuova Deltasider was merged into ILVA.

On March 31, 1990, ILVA's remaining stockholders gave ILVA additional assets and shareholdings for additional ILVA shares. Later that year, Finsider sold 100 percent of Italsider's stock to ILVA, and Italsider was merged into ILVA.

On November 1, 1990, Finsider and Terni Acciai Speciali (ILVA's two remaining stockholders) sold 100 percent of ILVA to IRI and IRI assumed all of Finsider's and Terni Acciai

VOL 58 ISS 130 JL 9 1993 UMI

Speciali's remaining debts. As of October 1, 1990, 100 percent of ILVA's capital stock was owned by IRI.

Falck

Falck was established in 1906 in Milan as "Societa Anonima Acciarierie e Ferriere Lombarde." In 1931, the company became Acciaierie e Ferriere Lombarde Falck.

Prior to 1991, Falck was the main industrial company of Gruppo Falck. The company was organized into divisions, four of which produced steel (Nastri, Lamiere, Tubi SS, and Lunghi). The company also held four separately incorporated financial and energy companies. In July of 1990, ILVA and Falck signed an agreement, which rationalized the production and commerce of the two companies. Pursuant to the agreement, ILVA produces large quantities of mass consumption steel and Falck specializes in smaller quantities of high quality product. The agreement resulted in the incorporation of Falck's strip and plate divisions, Nastri and Lamiere. ILVA bought 30 percent interest (minority interest) in each of these newly formed companies, and five percent interest in Falck. At verification, we established that ILVA does not exercise, nor is it entitled to exercise, any control over Falck or its affiliates, *i.e.*, Falck operates independently of ILVA.

As part of the 1991 restructuring, Falck was transformed from a production company to a holding company, AFL Falck. AFL Falck is organized into five areas including steelmaking, energy, property, ecology and services.

Analysis of Programs

Based on our analysis of the petition, the responses to our questionnaires, verification and comments by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty (CVD) investigations of certain steel products from various countries were not case-specific, but rather were general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Austria Steel notice which is published concurrently with this notice.

Period of Investigation

For purposes of these final determinations, the period for which we are measuring subsidies, the period of investigation (POI), is calendar year 1991, which corresponds to the fiscal years of ILVA and Falck.

Calculation of Country-Wide Rate

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by the firm's share of exports of each class or kind of merchandise, separately, for each class or kind of merchandise to the United States. The rates for all programs were then summed to arrive at a country-wide rate for each class or kind of merchandise. All benefits calculated under the programs described below apply to both classes or kinds of merchandise.

Pursuant to 19 CFR 355.20(d) of the Department's regulations (19 CFR 355.20(d)(1992)), for each class or kind of merchandise, we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs. The rate for Falck was significantly different from the country-wide rate, within the meaning of 19 CFR 355.20(d)(3). Therefore, this firm received an individual company rate. For ILVA, we recalculated the country-wide rate, based solely on the benefits received by that firm. This is the rate that will be applied to all other manufacturers, producers, and exporters, with the exception of Falck.

Based upon our analysis of the petition and the responses to our questionnaire, we determined the following:

Equityworthiness

For a discussion of equity methodology, see the Equity section of the General Issues Appendix.

In our preliminary determinations, we found that ILVA and its predecessor companies, Italsider and Nuova Italsider, were unequityworthy during the period 1977–1991. Therefore, equity infusions received during those years were provided on terms inconsistent with commercial considerations. The Department previously determined Italsider to be unequityworthy throughout the period 1977–1981 in Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy, 47 FR 39356 (September 7, 1982) ("*Steel Products*"). Respondents have not contested this finding; therefore, we continue to determine that Italsider was unequityworthy during the period 1977–1981.

To determine whether ILVA was equityworthy from 1982 through 1991, we examined several ratios, including the rate of return on assets and rate of return on equity, in each of these years and the three years prior to each infusion. Examination of these ratios shows that ILVA was unprofitable in every year from 1977 through 1988. Moreover, ILVA's rate of return on assets ratio was negative between 1977 and 1988 and its rate of return on equity was negative between 1977 and 1988, indicating that ILVA has been unable to earn a positive rate of return for its shareholders. Based on above, we determine ILVA to have been unequityworthy at the time of each government infusion. For a complete discussion of our equityworthiness analysis, see Memorandum to File dated June 21, 1993.

Creditworthiness

ILVA

In our preliminary determinations, we found that ILVA and its predecessor companies, Italsider and Nuova Italsider, were uncreditworthy during the period 1977–1991. Therefore, loans received during those years were made on terms inconsistent with commercial considerations. The Department previously determined Italsider to be uncreditworthy throughout the period 1977–1981 in Steel Products. Respondents have not contested this finding; therefore, we determine that Italsider was uncreditworthy during the period 1977–1981.

To determine whether ILVA was creditworthy from 1982 through 1991, we examined the current ratio, quick ratio, times interest earned ratio, debt ratios, and profit margin on sales for each of these years and the three prior years, where information was available. In certain years, our analysis was limited to petitioners' data because the respondents had not reported any information.

Examination of these ratios show that ILVA was unprofitable in every year from 1977 through 1988. Moreover, ILVA's times interest earned and rate of return on assets ratios were negative between 1977 and 1988. Based on above, we determine ILVA to be uncreditworthy in each year from 1977 through 1991. For further discussion of

our analysis, see Memorandum to File dated June 21, 1993.

Falck

In our preliminary determinations, we found that Falck was uncreditworthy from 1977 through 1979. Therefore, loans received during those years were made on terms inconsistent with commercial considerations.

To determine whether Falck was creditworthy from 1977 through 1979, we examined the current ratio, times interest earned ratio, debt to equity ratios, and profit margin on sales for 1976 through 1979 (Falck did not provide financial information for years prior to 1976). Examination of these ratios show that Falck was unprofitable from 1976 through 1979. In addition, Falck's interest coverage was negative between 1976 and 1979. Based on above, we determine Falck to be uncreditworthy in each year from 1977 through 1979.

Falck received medium- and long-term loans from private sources in 1980 through 1984 and in 1986 through 1987. On this basis, we have determined Falck to be creditworthy for 1980 through 1988.

For the period 1989 through 1991, Falck's profit margin steadily increased and its interest expense on long-term debt decreased. Falck's current ratio was stable during this period. The company's quick ratio for 1990 was 1:1, which indicates that Falck had sufficient liquidity to meet its current debt obligations. Based on this information, we determine Falck to be creditworthy for the period 1988 through 1991. For a complete discussion of our creditworthy analysis, see Memorandum to File dated June 21, 1993.

Best Information Available

Section 776(c) of the Act requires the Department to use the best information available (BIA) "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *".

One of the companies included in these investigations, ILVA, declined to be verified. While we were able to verify from government records that ILVA did not use certain programs, we have no verified information relating to ILVA's use of the remaining programs. For those programs which ILVA has used and which are specific, we have used BIA in determining the extent to which ILVA benefitted from the program. In light of ILVA's refusal to permit verification of its initial questionnaire response and to participate further in the investigation, we have applied BIA using the most adverse assumptions, *i.e.*, using the highest rate among the petitioners' rates, the preliminary determination rates, and previous investigation and review rates on a program by program basis. For most programs, the highest rate was that alleged by petitioners.

For those programs which we were able to verify ILVA did not use or which were non-specific, we have adjusted the calculations accordingly. Additionally, in cases where we have verified non-company-specific information (*e.g.*, program interest rates, interest rebate percentage, benchmark interest rates, etc.), we have used this information to adjust both the petitioners' and the preliminary determination calculations.

Where the Department has changed its methodology, as discussed in the General Issues Appendix published concurrently with these determinations, we have adjusted neither the petitioners' nor the preliminary determination calculations. Notwithstanding our view that the methodological changes described in the General Issues Appendix represent the most accurate and appropriate methods for identifying and measuring the types of subsidies at issue in these investigations, we do not believe it is necessary to reconfigure the methodological assumptions underlying the petition or preliminary determinations for purposes of applying BIA. The petitioners' allegations and the Department's preliminary determinations were calculated on the basis of methodologies which were accepted as legitimate and reasonable at the time the allegations or determinations were made. Since BIA need not represent the most accurate information, but rather is merely a choice of information available on the record of the investigation, we have determined that modification of BIA rates to reflect new methodological thinking is unwarranted.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Italy of certain steel products under the following programs:

1. Equity Infusions into Italsider/Nuova Italsider/ILVA and Extinguishment of Equity Infusions

The GOI, through IRI, made equity investments in Italsider and Nuova Italsider between 1978 and 1987. The GOI made these investments by transferring funds to the IRI Group, which either directly or through Finsider made equity infusions into the two companies. In 1989, ILVA was formed by IRI with an equity infusion of 2.3 trillion lira. IRI then made additional equity infusions into ILVA between 1990 and 1991. IRI also extinguished equity in Finsider to cover losses from 1981 through 1986 and in 1988.

We determine these equity infusions to be specific since they were provided by IRI to specific enterprises. Moreover, as discussed above, we have determined that Italsider and ILVA were unequityworthy between 1977 and 1991. Therefore, we find that the equity infusions were made on terms inconsistent with commercial considerations. As a result, they are countervailable.

As BIA, we have used the rate from the preliminary determinations, adjusted to reflect verified discount rate information. For the final determinations, we used the reference rate published by the Bank of Italy as the discount rate. (For those years where we have determined the companies to be uncreditworthy, we added to this interest rate an amount equal to 12 percent of the prime rate in Italy to derive our benchmark interest rate.) On this basis, we determine the country-wide subsidy rate for this program to be 24.80 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

With respect to equity extinguishments, we have continued to follow the reasoning set forth in our preliminary determination, i.e., that any potential benefits arise at the time of the equity investment. Because the equity methodology adopted in the preliminary determinations did not recognize the subsequent performance of the company receiving the equity investment, and treated the equity investment as a grant, the later write-off of the equity was considered irrelevant. Therefore, no additional benefits arise at the point of extinguishment.

2. Debt Forgiveness in Connection with the 1981 Restructuring Plan

The 1981 restructuring plan for the iron and steel industry included the closure of plants, the assumption by Finsider of Italsider's debts to IRI, and the subsequent forgiveness of these debts in 1985.

On September 19, 1981, Italsider conveyed all of its company facilities to Nuova Italsider, and received 99.99 percent of Nuova Italsider's shares in return. In December 1984, Italsider sold

those shares to Finsider. The sales price was 714.6 billion lire. As payment, Finsider assumed Italsider's 696.4 billion lire debt to IRI. The remaining amount Finsider paid directly to Italsider.

In 1984, when Italsider's liquidation was revoked, Finsider forgave a 563.5 billion lire loan it had granted to Italsider.

We have determined that the restructuring described above merely shifted assets and debt within a family of companies, all of which were owned by Finsider and, ultimately, by the GOI. Therefore, we determine that both the 696.4 billion lire debt forgiveness and the 563.5 billion lire debt forgiveness were specifically limited to the steel companies and are countervailable.

As BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. On this basis, we determine the country-wide subsidy rate for this program to be 5.63 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

3. Debt Forgiveness in Connection with the 1987–88 Restructuring Plan

The Finsider Group restructuring plan was developed at the end of 1987 and was approved by the GOI on June 19, 1988, and by the EC's Council of Ministers on December 23, 1988. (According to respondents, there was not a separate 1988 restructuring plan.) The plan was aimed at restoring industrial, financial, and economic balance to the public iron and steelmaking sector in Italy. The restructuring plan included the voluntary liquidation by IRI of the Finsider Group, and IRI's assumption of the debts not covered by the assets of the companies being liquidated. The Group's industrial and financial assets were to be sold to ILVA.

The Finsider Group's total liabilities were 10.6 trillion lire, of which ILVA assumed 4.3 trillion lire and IRI covered the remaining 6.3 trillion lire. Respondents state that under Italian law regarding voluntary liquidations, the shareholder (IRI) is obliged to pay all liabilities. The GOI expects the liquidation to conclude in 1993.

We determine that the debt assumption incurred by IRI related to the 1987–88 restructuring plan was specifically limited to these steel companies and is countervailable. Based on our determination in Steel Products, we consider IRI to be a government entity. IRI is 100 percent owned by the GOI and its board of directors is made up of representatives from the major ministries in Italy. Therefore, this restructuring transaction amounted to government assumption of debt.

As BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. On this basis, we determine the country-wide subsidy rate for this program to be 20.78 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

4. Debt Forgiveness to ILVA (1990)

Prior to the creation of ILVA, Finsider assumed 48.2 billion lire in Italsider's losses. Later when ILVA was created, ILVA paid 150 billion lire for Italsider's shares, which included the 48.2 billion lire debt assumption. We have considered this debt forgiveness as grants to cover losses within the meaning of 771(5)(A)(ii)(III) of the Act.

As BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. Petitioners treated this debt assumption as a non-recurring grant. However, because the benefits provided in 1990 were less than 0.50 percent of the company's sales in that year, we have expensed the benefit in 1990. Therefore, there is no countervailable benefit attributable to the POI.

5. Government Loan Guarantees

Italsider and Nuova Italsider obtained guarantees from IRI on all of their loans. ILVA asserts that these guarantees were obtained at commercial rates and, thus, provide no countervailable benefits. ILVA, however, provided no evidence of what fees were actually paid. At verification, Italian bank representatives stated that it is common for government-owned companies to be responsible for their subholdings' financial obligations. However, they were unable to provide us information regarding the average guarantee fees charged by Italian banks.

Based on the fact that we received no information on the guarantee fees paid by Italsider, and no supporting evidence that it is standard practice for private Italian companies to guarantee their subsidiaries' loans, we determine that government loan guarantees are countervailable.

Because we did not receive sufficient information regarding guarantee fees, we have based our determination on BIA. As BIA, we have turned to the methodology used in *Steel Products*. In that case, for the years in which Italsider was uncreditworthy, we added to Italsider's benchmark interest rate an amount which Italsider paid to its parent, Finsider, as a guarantee fee for all loans which Finsider guaranteed. Thus, any subsidy provided by guarantees will be reflected in the subsidy rates for each loan program discussed below.

6. Grants to ILVA

Petitioners assert that ILVA received grants worth 38.996 billion lira in 1989 and 68.327 billion lira in 1990. According to ILVA, the grants cited by petitioners were provided to ILVA under ECSC Articles 54 and 56, and Italian Laws 64/88, 308/82, 46/82, and 675/77. While these grants have been analyzed under each of the respective programs, the aggregate amounts listed in the annual reports do not match the amounts listed under the individual programs.

Since we did not verify ILVA's response, we were unable to reconcile the amounts with the annual reports. On this basis, we determine that these grants are countervailable. Additionally, since the annual reports do not list the amounts provided under the individual programs, we are unable to adjust for those programs ILVA did not use or that we found to be not countervailable. Therefore, as BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. On this basis, we determine the country-wide subsidy rate for this program to be 0.23 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

7. Law 675/77 Preferential Lending, Interest Contributions, Capital Grants, Personnel Retraining, and VAT Reductions

Law No. 675/77 established the Committee of Ministers for the Coordination of Industrial Policy ("CIPI") and created a framework for planned intervention by the GOI in the economy. The law was implemented to integrate various types of assistance to specific industrial sectors. Law 675 specified that CIPI was responsible for designating those sectors which would be eligible for assistance.

CIPI identified the following economic sectors where industrial restructuring and reconversion were necessary: (1) Research, development and industrialization for electronic technology, (2) technological and marketing development of production machinery for the manufacturing industry, (3) the agro-food industry, (4) the chemical industry, (5) the steel industry, (6) the paper paste and paper

industry, (7) the fashion sector, (8) optimal exploitation of energy resources, and (9) production plants for ecological and environmental recovery. The automobile and aeronautical sectors were identified and added to this list later.

When the industries were selected and approved by CIPI, specific investment plans were written for each industrial sector by the Ministry of Industry. These investment plans, which Ministry of Industry officials described as having varying levels of specificity, needed the approval of CIPI before their implementation. At verification, GOI officials stated that certain plans contain very specific recommendations because of the high degree of production concentration in the specific industrial sector and significant government ownership, *i.e.*, steel and chemicals. The investment plans for the textile, paper and pulp and the machine tool sectors contain less specific recommendations because of the diversity and large number of companies in those sectors.

Companies proposed specific projects to CIPI. Project proposals were evaluated according to the targeted projects and goals issued by the CIPI, for each industry covered.

Three types of funding were provided under this program: (1) Interest payments on bank loans and bond issues, (2) low interest loans granted by the Ministry of Industry, and (3) grants for companies located in the south. The law also provided personnel retraining grants, and increased VAT deductions for firms located in the Mezzogiorno area. The interest rate charged on the loans differed according to the location of the company, with companies in the south of Italy paying a lower rate of interest.

Falck received direct mortgage loans and interest contributions under this program. ILVA received direct mortgage loans, interest contributions, and capital account grants between 1977 and 1991 under this program. Italsider received retraining grants and increased VAT deductions under this program.

One of the factors we typically consider in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries is the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users. Law 675 applied to all industries in need of restructuring and reconversion, and provided that CIPI would target those industries in need of restructuring. CIPI identified 11 sectors, including the steel industry, for restructuring. We verified that of the ten sectors which actually received Law 675 funding, steel accounted for 36.4 percent of the total funding, and 31 percent of the loans provided by Law 675. Combined, the steel and auto sectors accounted for 66 percent of total funding, and 77 percent of the loans provided by Law 675.

On this basis, we have determined that the steel industry was a dominant user of the Law 675 program. Therefore, we determine that any assistance provided to steel producers under Law 675/1977 is limited to a specific enterprise or industry, or group of enterprises or industries.

A. Ministry of Industry Loans

We have used as the benchmark interest rate the reference rate as reported by the Bank of Italy. (Falck did not break out subsidized loans from unsubsidized loans in reporting its actual cost for long-term, fixed-rate debt.) For those years where we have determined Falck and ILVA to be uncreditworthy, we added to this interest rate an amount equal to 12 percent of the prime rate in Italy to derive our benchmark interest rate. See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989) and section 355.44(b)(6)(iv) of the Department's Proposed Regulations.

We then compared the benchmark financing, as constructed above, to the financing received under Law 675 and found that these loans were provided on terms inconsistent with commercial considerations. Therefore, we determine that ILVA's and Falck's 675/77 loans are countervailable.

To calculate the benefit to Falck from these loans, we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Rules. (See also, Final Affirmative Countervailing Duty Determination; Certain Granite Products from Spain, (*Spanish Granite*) 53 FR 24340, (June 28, 1988).) We divided the benefit by Falck's 1991 total sales (see, Denominator section of the General Issues Appendix). Falck's subsidy rate is 0.04 percent *ad valorem*, which has been determined to be significantly different.

As BIA for ILVA, we have used the preliminary determination rate. We have adjusted this rate to account for the new benchmark interest rate. On this basis, we determine the country-wide subsidy rate for this program to be 3.00 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate.

B. Interest Contributions

Because companies knew at the time they took out the loans in question that the GOI would cover part of the interest, we are treating the interest contributions as reduced rate loans.

We calculated the benchmark interest rate as described in A. above. We then compared the benchmark financing to the financing received under Law 675/77 and found that these loans were provided on terms inconsistent with commercial considerations. Therefore, we determine that Law 675/77 interest contributions are countervailable.

To calculate the benefit to Falck from these interest contributions, we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Rules. (See also, Final Affirmative Countervailing Duty Determination; Certain Granite Products from Spain, (*Spanish Granite*) 53 FR 24340, (June 28, 1988).) We divided the benefit by Falck's 1991 total sales (see, Denominator section of the General Issues Appendix). Falck's subsidy rate is 0.05 percent *ad valorem*, which has been determined to be significantly different.

As BIA for ILVA, we have used the preliminary determination rate. We have adjusted this rate to account for the new benchmark interest rate. On this basis, we determine the country-wide subsidy rate for this program to be 2.08 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate.

C. Capital Grants

As stated earlier, ILVA is the only investigated company that received capital grants under Law 675. As BIA for ILVA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. On this basis, we determine the country-wide subsidy rate for this program to be 1.20 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

D. Personnel Retraining

As stated earlier, ILVA is the only investigated company that received personnel retraining grants under Law 675. As BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. Petitioners treated benefits provided under the personnel retraining grants as non-recurring.

VOL 58 ISS 130 JL 9 1993 UMI

However, we have determined that retraining programs provide recurring benefits (see, Allocation section of General Issues Appendix). On this basis, we determine the country-wide subsidy rate for this program to be 0.21 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

E. VAT Reductions

As stated earlier, ILVA is the only investigated company that received VAT reductions under Law 675. As BIA, we have used petitioners' rate. On this basis, we determine the country-wide subsidy rate for this program to be 0.12 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

8. Certain ILVA Debt Outstanding During the Review Year

We have found that the majority of ILVA's outstanding debt has been included in our analysis of certain programs in these investigations, *i.e.*, Law 675/77, Law 308/82, and Law 64/86 (previously Law 717/65). However, certain loans, reported in the government's response to questions regarding this debt, were not included under the individual programs, *i.e.*, Law 675/77 and ECSC Article 54. Therefore, where those programs were found to be countervailable, we have included these unreported loans in our analysis of those programs.

With respect to the Medio Credito Ligure loan, the GOI asserts that this loan was provided pursuant to a disaster relief program that was generally available in the Genoa area. We requested the GOI to provide information regarding the eligibility for and distribution of the disaster relief benefits. Since we did not receive specificity information regarding this loan, we have determined that assistance under this program is provided on a regional basis and is, therefore, limited to a specific enterprise or industry, or group of enterprises or industries.

As BIA for the Medio Credito Ligure loan, we have used the preliminary determination rate. We have adjusted this rate to account for the new benchmark interest rate as described in 7.A. above. On this basis, we determine the country-wide subsidy rate for this program to be 0.00 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

Since there is no specific government program associated with the remaining bank loans, we determine that no countervailable benefits were provided to ILVA by the GOI pursuant to these loans.

9. Interest Grants for "Indirect Debts" under Law 750/81

Law 750/81 was implemented to achieve IRI's intervention plans for the public sector steel industry for 1981–83. The program provided grants to cover the debts of the public steel industry. Italsider and Nuova Italsider received grants under this program in 1983 and 1984. Because this program is limited to the steel industry we determine it to be countervailable.

As BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. On this basis, we determine the country-wide subsidy rate for this program to be 0.49 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

10. Urban Redevelopment Packages under Law 181

Law 181 was created to finance reindustrialization efforts to ease the impact that employment reductions have on priority areas hit by the steel crisis. The program provides grants covering up to 25 percent of the total investment, with projects in the Mezzogiorno receiving the greatest benefit. Under Law 181, ILVA received a grant to develop initiatives in Taranto, Terni and Genova to create 1,000 new jobs.

We determine that assistance under this program is provided on a regional basis and is, therefore, limited to a specific enterprise or industry, or group of enterprises or industries. The GOI asserts that these grants were not provided for steelmaking activities. However, since we were unable to verify what the grants were provided for, we are assuming that the assistance benefits ILVA's steel production.

As BIA, we have used petitioners' rate. We have adjusted this rate to account for the new discount rate described in 1. above. Petitioners treated the urban redevelopment grants as non-recurring. However, because the benefits provided in each year were less than 0.50 percent of the company's sales in each of those years, we have expensed the benefits received under this program. On this basis, we determine the country-wide subsidy rate for this program to be 0.20 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

11. Interest Subsidies under Law 193/1984

Article 3 of Law No. 193/84 provided grants for interest payments on medium-term loans (exceeding 18 months and at either a fixed or variable interest rate) outstanding on January 1, 1983, and those loans taken out within three months after the law came into effect on May 31, 1984. These grants reduced the rate of interest on medium-term financing to 11 percent as long as any reduction did not exceed a maximum of ten percent. The beneficiaries of this program were private steel enterprises which rationalized the production of finished steel products and some categories of semi-finished products. Falck received interest subsidies under this program in 1985 and 1986.

Because benefits under Law No. 193/1984 are available only to the private steel industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries.

We verified that prior to June 6, 1984, Falck did not know at the time that it received loans that the GOI would cover part of the interest expense. Therefore, we are treating the interest rebates on these loans as grants.

We have determined these grants to be non-recurring. We calculated the benefit for the POI as described in the Allocation section of the General Issues Appendix. We divided the benefit by Falck's 1991 sales (see, Denominator section of the General Issues Appendix). On this basis, we determine the country-wide subsidy rate for this program to be 0.00 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.47 percent *ad valorem*.

Given Falck's knowledge that it would receive rebates on loans provided after June 6, 1984, we are treating these interest rebates as reduced interest loans. However, because the loans on which interest rebates were provided after June 6, 1984 were repaid prior to the POI, there is no benefit attributable to the POI.

12. Closure Payments under Laws 46 and 193/84

Pursuant to an agreement introduced by the ECSC and approved by the European Commission, No. 2320/81/ECSC, a massive reduction in hot-rolled steel production capacity of 26.7 million tonnes was authorized. Italy was to contribute a reduction of 5.8 million

tonnes. This measure was adopted and implemented by the GOI through Laws 46/1982, 193/1984, and 706/1985.

Law 46/1982, Article 20, provided capital account grants for privately-owned steel companies that reduced their production capacity of raw, semi-finished or rolled steel by closing down plants which were technologically obsolete or had marginal economic viability. The grants provided up to 100,000 lire for every ton of raw steel capacity which was reduced and up to 150,000 lire for every ton of semi-finished or rolled steel capacity which was reduced. Grants could be issued for 30, 50, and 80 percent of the maximum set by the law. Falck received closure payments under Laws 46 and 193/84. ILVA did not use this program.

Because benefits under Law No. 46/1982 are available only to the private steel industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries.

We have determined these grants to be non-recurring. Therefore, we calculated the benefit for the POI as described in the Allocation section of the General Issues Appendix. We divided the benefit by Falck's 1991 sales (see, Denominator section of the General Issues Appendix). On this basis, we determine the country-wide subsidy rate for this program to be 0.00 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 1.55 percent *ad valorem*.

13. Social Security Exemptions

Employer contributions to the National Institute for Social Insurance ("INPS") are normally equal to approximately 31 percent of salaries. However, pursuant to various laws, the GOI reduced the social security contribution for companies located in the south of Italy in certain industrial sectors.

Law 1089/1968 allowed industrial companies and small-scale craft industries in southern Italy a ten percent reduction in social security contributions for all workers employed on September 30, 1968. (This base reduction was reduced to eight and one-half percent by Law 887/1984.) An additional reduction of ten percent was subsequently granted for all employees hired after September 30, 1968, and numbering more than the total number of persons employed on this date.

Law 589/1971 raised the additional reduction from ten to twenty percent for employees hired after January 1, 1971. A total waiver from social security contributions was granted to companies for all employees hired after July 1, 1976. The total waiver was for ten years from the date the worker was hired. The waiver was terminated on December 1, 1991, and replaced by Law 345/1992.

ILVA received social security reductions between 1978 and 1984. Falck did not use the program.

Because this program is limited to firms in the Mezzogiorno region, we determine that the social security exemptions are countervailable.

As BIA, we have used petitioners' rate. On this basis, we determine the country-wide subsidy rate for this program to be 1.63 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

14. Capital Grants/Interest Rate Reductions Under Law 902

Under Laws 218/1978 and 64/1986, the GOI, through the Cassa per il Mezzogiorno ("CASMEZ"), and, since 1984, its successor agency, Agenzia per la Promozione dello Sviluppo del Mezzogiorno, provides capital grants and low-interest loans to projects establishing new factories in the Mezzogiorno, or for extending, modernizing, reactivating, converting or reorganizing existing plants. The size of the grant varies according to the size of the fixed investment. The grant may also be increased by one-fifth if the enterprise is in a sector of the economy considered to have priority and/or is situated in a particularly disadvantaged area.

The low-interest loans are provided through a loan contract between an investor and the bank. The GOI pays a part of the interest which otherwise would be incurred by the borrower. For fixed investments up to 25.5 million dollars, the GOI will pay 64 percent of the interest. For investments above 25.5 million dollars, the GOI will pay 40 percent of the interest. The interest rates on these loans are fixed at the government-set reference rate in effect at the time of the loan.

ILVA received grants and interest contributions under Law 902. Falck did not use this program.

We determine that assistance under this program is provided on a regional basis and is, therefore, limited to a specific enterprise or industry, or group of enterprises or industries.

We have used the preliminary determination rate as BIA. We have adjusted this rate to account for the new discount rate described in 1. above. We determined that the capital grants are non-recurring. However, for those grants where the benefits were less than 0.50 percent of the company's sales, we have expensed the benefits in the years they were received. On this basis, we determine the country-wide subsidy rate for this program to be 0.23 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

As BIA for the interest rate reductions, we used our preliminary determination rate. We adjusted this rate to account for the new benchmark interest rate. On this basis, we determine the country-wide subsidy rate for this program to be 0.29 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

15. Interest Subsidies Under Law 617/81

In 1981, the GOI passed a law titled "Urgent Measures in Favor of the Steel Industry and in Matters of Antipollution Equipment." In February 1982, IRI issued two trillion lira of variable rate bonds for which the GOI guaranteed repayment of principal and interest. IRI then relent the money to Finsider and its operating companies. The companies were required to repay IRI with interest. However, the GOI would pay an amount equal to 11 percent of the interest on the bonds to the steel companies to subsidize their interest costs. Of the two trillion lira in bonds, 935 billion lira was provided to Nuova Italsider.

The GOI claimed that neither ILVA nor its predecessor companies received interest grants pursuant to Law 617. However, we were unable to verify ILVA's non-use of this program.

We determine that Law 617/81 interest grants are countervailable because they are limited to a specific enterprise or industry, or group of enterprises or industries.

As BIA, we have assumed ILVA paid a maximum interest rate on its Law 617 debt. (We used our uncreditworthy benchmark as the highest rate in 1982.) In order to calculate the interest rebate, we multiplied the interest paid by 11 percent. On this basis, we determine the country-wide subsidy rate for this program to be 0.69 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

17. Interest Contributions Under the Sabatini Law

The Sabatini Law was enacted to encourage the sale of machine tools and production machinery. The law provides for deferred payment of up to five years on installment contracts for

the purchase of such equipment and for a one-time, lump sum contribution from Mediocredito Centrale, the administering agency, toward the interest owed by the buyer under the installment contracts.

We were unable to verify ILVA's non-use of this program. However, we do not have any calculated rates to use as BIA from petitioners and the program was found not countervailable for companies in central and northern Italy in *Granite*. (ILVA has plants in southern Italy.)

Acccording to the verification report in *Granite*, the interest contribution is calculated as 65 percent of the reference rate for companies in southern Italy, and 55 percent of the reference rate for companies in other parts of Italy. Based on these facts, as BIA we calculated a rate using the company's purchases of raw, ancillary, and consumable materials as well as semifinished and finished products, as surrogate information concerning the purchase of machine tools and production machinery, because the 1991 ILVA Annual Report did not separately report ILVA's purchases of machine tools and production machinery. In order to calculate the amount of the interest contribution, we multiplied ten percent (the difference between the rate available throughout Italy and the rate for southern Italy) by the reference rate. We multiplied this result by ILVA's purchases of raw, ancillary and consumable materials and semifinished and finished products in order to derive the benefit.

We treated this amount as a non-recurring grant. Therefore, we calculated the benefit for the POI as described in the *Grant Methodology* section of the preliminary determination. We have adjusted this calculation to account for the new discount rate. On this basis, we determine the country-wide subsidy rate for this program to be 0.26 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

18. Early Retirement

There are a variety of laws the GOI provides for early retirement of workers. Laws 193/1984 and 181/1989 provided different requirements for steel workers, in particular, lowering the age workers can retire. Law 223/1991 extended early retirement to private steel companies, the aluminum industry and the shipbuilding industry.

Because benefits provided pursuant to Laws 193/1984 and 181/1989 are limited to steel workers, and benefits provided pursuant to Law 223/1991 are limited to steel workers, public shipbuilding workers, and workers in refractory materials and graphite electrode industries, we have determined that the users of these programs comprise a specific enterprise or industry, or group of enterprises or industries.

Law 193 and all successor early retirement laws allowed ILVA and Falck to reduce their labor force by retiring employees who would not otherwise be eligible for retirement benefits. To the extent that the companies were under an obligation to retain the workers who were retired early, the companies receive a countervailable benefit.

We have determined that there are social factors in Italy, such as the threat of labor strikes and social unrest, which prevent companies from simply laying-off surplus labor. At verification, a Falck representative stated that "legally the company was under no obligation to use early retirement, but labor unions could put pressure on the company, making early retirement more feasible than lay-offs." Therefore, the companies are avoiding the cost of keeping their employees on the payroll until they are eligible to retire, and are receiving a countervailable benefit.

We have determined the benefits under this program are recurring. Therefore, we have calculated the benefits by multiplying the number of employees retired early in 1991 by the estimated annual salary for a steel worker. We divided the benefit by Falck's 1991 sales (see the Denominator section of the General Issues Appendix). On this basis, we determine Falck's that significantly different subsidy rate is 0.95 percent *ad valorem*.

As BIA for ILVA, we have used petitioners' rate. However, because petitioners treated this as a non-recurring program, we have adjusted the rate to reflect only the benefits received in the POI. Therefore, we determine the country-wide subsidy rate for this program to be 6.83 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate.

19. Exchange Risk Guarantee Program

Prior to 1976, Italian companies could not benefit from ECSC Articles 54 and 56 loans because of high inflation and fluctuating exchange rates. However, Law 796 of November 30, 1976, provided state guarantees against exchange risk on foreign currency loans received from the ECSC. Eligibility for the program was limited to projects approved by the EC which would create or maintain jobs. The Ministry of Treasury pays the differential between the exchange rate at the signature of the contract and the exchange rate at the moment of repayment, minus two percent.

Both ILVA and Falck received exchange risk guarantees on their ECSC loans.

We verified that premiums are not charged for the exchange risk guarantees. Therefore, we conclude that premiums are not adequate to cover the long-term operating costs and losses of the exchange rate risk guarantee program. Moreover, because we have determined ECSC Article 54 loans to be limited to steel producers, we have determined that the users of this program comprise a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that this program confers a countervailable benefit to the extent that borrowers received any compensation for exchange rate losses.

As BIA for ILVA, we used petitioners' rate, adjusted for the fact that the grants are recurring. On this basis, we determine the country-wide subsidy rate for this program to be 0.51 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length plate.

For Falck, we treated the payouts received as recurring grants. Therefore, we calculated the benefit for the POI as described in the Allocation section of the General Issues Appendix. We divided the benefit by Falck's 1991 sales (see the Denominator section of the General Issues Appendix). On this basis, we determine Falck's that significantly different subsidy rate is 0.21 percent *ad valorem*.

20. Exemptions from ILOR and IRPEG Taxes

Articles 101, 102, and 105 of Decree 218/1978 exempt firms operating in the Mezzogiorno from the local income tax (ILOR) and the profits tax (IRPEG).

Companies are eligible for 100 percent exemption from the 16.2 percent ILOR tax on profits arising from eligible projects in the Mezzogiorno and less developed regions of the center-north for ten consecutive years after profits first arise.

New companies undertaking productive activities in the Mezzogiorno are entitled to a 100 percent exemption from the 36 percent IRPEG tax on profits for ten consecutive years after the project is completed.

We determine that exemptions from ILOR and IRPEG taxes are countervailable because they are provided on a regional basis and are, therefore, limited to a specific enterprise or industry, or group of enterprises or industries.

We were unable to verify ILVA's non-use of this program. Therefore, as BIA, we are assuming that ILVA claimed ILOR and IRPEG tax exemptions on its 1991 tax return. Since we do not have information regarding ILVA's projects or new productive activities in the Mezzogiorno, as BIA we have calculated the benefit using the total company profit for 1990 contained in the petition. Based on these figures, we calculated the amount of ILOR and IRPEG taxes the company would have been exempted from paying. We divided the result by ILVA's 1991 sales. On this basis, we determine the country-wide subsidy rate for this program to be 0.83 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

21. ECSC Article 54 Loans

Article 54 loans are provided for the purpose of purchasing new equipment or financing modernization. The EC stated that Article 54 loans are direct loans from the Commission and that the funds are loaned at a slightly higher rate than that at which the Commission obtained them in order for the Commission to cover its costs. According to the EC response, the Commission has this program to facilitate the lending process for companies in the ECSC, some of which may not otherwise be able to obtain these loans. Both ILVA and Falck received Article 54 loans.

We determine that this program is limited to the iron and steel industry. Therefore, these loans are countervailable to the extent that they are provided on terms inconsistent with commercial considerations.

As BIA for ILVA's Article 54 loans, we adjusted the preliminary determination rate to account for the new benchmark interest rate described in 7.A. above, and the interest rebates. On this basis, we determine the country-wide subsidy rate for this program to be 2.63 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate.

For Falck, we calculated the benchmark interest rate as described in program 7.A. above. We then compared the benchmark financing to the financing received under Article 54 and found that these loans were provided on terms inconsistent with commercial considerations. Therefore, we determine that Article 54 financing is countervailable.

To calculate Falck's benefit from these loans we employed our normal long-term loan methodology as described in program 7.A. We divided the benefit by Falck's 1991 sales (see, the Denominator section of the *General Issues Appendix*). On this basis, we determine Falck's significantly different subsidy rate is 0.44 percent *ad valorem*.

22. Interest Rebates on ECSC Article 54 Loans

Article 54 loan interest rebates were granted to steel companies during the restructuring and modernization of the industry beginning in the 1980's. Companies applying for these rebates had to meet certain criteria such as a reduction in steel production and improvements in processing that would yield energy savings and improve efficiency.

The interest rebates were limited to a maximum of three percent of the eligible investment and were provided over a period of three years. Funds were provided by the ECSC operational budget which is made up of levies charged to all ECSC companies. Deficits in the operational budget are made up by Member State contributions. While no Member State contributions have been made to the operational budget since 1984, the budget was supplemented by Member States from 1978 through 1984.

In its response, ILVA claimed that it did not receive any Article 54 interest rebates. However, during the EC verification we discovered that ILVA received interest rebates on loans outstanding in 1991. The rebates were granted in 1981 and ended by 1985. Because we did not verify ILVA's use of this program in Italy, we do not have any information regarding the amount of the interest rebates or the terms of the loans.

Based on the lack of information on the record, we have assumed that ILVA received the maximum interest rebate amount (three percent), for the period 1981 to 1985, on the Article 54 loans outstanding in 1991.

Because the interest rebates given prior to 1985 were partially financed through Member State contributions, a portion of those interest rebates are countervailable. Consistent with past cases, *e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany* ("*Bismuth*") (58 FR 6233, January 27, 1993), we have not countervailed the portion financed by the ECSC's operating budget because those funds are obtained from company levies. To calculate the countervailable portion of the rebates, we calculated the ratio between the contribution from Member States and the ECSC's total available funds for the year, and then multiplied this ratio by the rebate amount.

Moreover, because companies were aware that interest rebates would be available when the loans were taken out, we have treated these interest rate subsidies as reduced interest loans. Therefore, in calculating the benefits from the ECSC Article 54 Loans (see, 21., above), we reduced the interest paid on those loans by the amount of interest rebates. The estimated subsidy calculated for that program includes all benefits conferred by these interest rebates.

23. European Social Fund (ESF) Grants

The ESF program is funded from the EC General Budget, the revenues for which are derived from customs duties, agricultural levies, Member State contributions, etc. The ESF is one part of the EC's Structural Funds. It is primarily responsible for two out of the five objectives of the Structural Funds. These two objectives relate to combating long-term unemployment and facilitating the occupational integration of young people.

The ESF also has a secondary role in implementing projects that fall under other objectives. These latter objectives relate to promoting the development of regions whose development is lagging behind, assisting regions affected by industrial decline, and promoting the development of rural areas. The ESF does not provide on-going support; each beneficiary may receive vocational training actions and subsidies for recruitment only once. According to the EC response, specific projects under this program benefit individuals, not companies.

ESF grants are paid to the Member State governments, which proceed to allocate and implement the funds under the Member State's provisions, be it on a regional or local level. As such, the EC delegates to the Member State the task of managing the grant.

We verified that in Italy preference was given to the southern region of the country. GOI officials stated that "first priority was to employees under 25 residing in southern Italy; second priority was given to employees under 25 residing in central northern Italy; and third priority was given to employees over 25 in southern Italy."

Therefore, because the Italian government has distributed benefits on a regional basis, we determine the program to be countervailable.

As BIA for ILVA, we used the preliminary determination rate. We adjusted this rate to account for the new discount interest rate. On this basis, we determine the country-wide subsidy rate

for this program to be 0.44 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

24. ECSC Redeployment Aid (Article 56(2)(b))

Under Article 56(2)(b) of the European Coal and Steel Community (ECSC) Treaty, persons employed in the coal and steel industry who lose their jobs may receive assistance for social adjustment. This assistance is provided for workers affected by restructuring measures, particularly workers withdrawing from the labor market into early retirement and workers forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. Payments were made to Italian steel workers under Article 56(2)(b). ILVA received benefits under this program.

Since the ECSC portion of payments under this program comes from its Operational Budget, we determine the portion of payments provided by the ECSC, i.e., 50 percent, to be not countervailable. However, with respect to the matching contributions made by the GOI, we have no information regarding the obligations that ILVA had towards its workers. Therefore, we have assumed as BIA that the entire amount of GOI payments relieved ILVA of obligations it would otherwise have had. Therefore, we find them to be countervailable.

We have used the preliminary determination rate as BIA. On this basis, we determine the country-wide subsidy rate for this program to be 0.09 percent *ad valorem* for cold-rolled carbon steel flat products and cut-to-length carbon steel plate. Falck's significantly different subsidy rate is 0.00 percent *ad valorem*.

B. Programs Determined Not to be Countervailable

We determine that the following programs do not provide subsidies to manufacturers, producers, or exporters in Italy of certain steel products under the following programs:

1. Investments in Energy Conservation Law 308/82

Law 308 was initiated on May 29, 1982, and repealed on January 15, 1991. Law 308/82 provided grants to encourage lower energy consumption and the use of renewable energy sources. Projects are evaluated and approved based on whether a 20 percent energy savings will be realized.

We verified that Law 308 grants are provided to the following wide range of industries: (1) Food; (2) paper; (3) chemicals; (4) leather tanning; (5) distilleries; (6) pharmaceuticals; (7) brickworks; (8) wood; (9) machine tools; (10) metallurgicals; (11) mining; (12) petrochemicals; (13) iron and steel; (14) district heating; (15) the service sector; (16) textiles; and (17) glass, as well as to individual households. We also verified the amount of grants provided to each industrial sector since 1982. This indicated that benefits under this program are widely and fairly evenly distributed throughout the sectors with no sector receiving a disproportionate amount.

Because Law 308/82 grants are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine them to be not countervailable.

2. Transportation Subsidies Under Law 210

Law 210 of May 17, 1986, provides that the National Railway Agency may enter into reduced rate agreements with its clients based on volume and competition. In 1991, the agency entered into 1900 agreements.

We verified that companies in a wide range of industries entered into reduced rate agreements. We also verified that a majority of the Agency's clients enjoy reduced rate agreements and that most of the tonnage shipped between 1988 and 1992 was pursuant to reduced rate agreements. Additionally, the iron and steel industry's reduced rates were within the median range of the rates charged other industries.

Because Law 210 Transportation Subsidies are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine them to be not countervailable.

C. Programs Determined Not to be Used

We verified that the following programs were not used by manufacturers, producers, or exporters in Italy of certain steel products:

1. Preferential Export Financing under Law 227/77
2. Rebate of Indirect Taxes under Law 639
3. Riconversider
4. Research and Development Aid under Law 46 of 1982
5. Closure Payments Under Law 706/85
6. European Regional Development Fund (ERDF) Loans
7. NCI Loans
8. Certain Falck Debt Outstanding During the Review Year
8. Illic Loan Outstanding
9. EIB Loans
10. ECSC Article 56 Interest Rebates
11. ECSC Article 56 Conversion Loans (Article 56(2)(a))

D. Programs Determined Not to Exist

We verified that the following programs do not exist:

1. Transportation Subsidies under Law 866
2. Other ECSC Programs (ECSC Exchange Risk Guarantee Program)

Interested Party Comments

The following are country-specific comments only. All other issues are either addressed in the sections above, or in the General Issues Appendix. See, the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium for comments relating to European Community programs.

Comment 1: Petitioners assert that the Department must use the highest rate in Italy adjusted upward for risk premiums as the discount rate in years that ILVA or Falck were uncreditworthy. They claim that the GOI did not provide the highest rate available in Italy. Rather, it provided the average cost of borrowing for creditworthy firms in Italy. Petitioners contend that the "top rate" published by the Italian Banker's Association (ABI) is an appropriate proxy for the highest rate available in Italy. In the alternative, petitioners assert that the Department should use the discount rate it used for uncreditworthy companies in the preliminary determination as BIA for the highest rate available in Italy.

Petitioners also argue that the Department should use the discount rates from the preliminary determination as benchmarks for Falck in creditworthy years, since Falck did not separately report its subsidized and unsubsidized loans.

Falck contends that, since it was creditworthy between 1977 and 1991, the highest interest rate available would not be an appropriate discount rate for Falck. Falck contends that petitioners' suggestion that the Department adopt the "top rate" published by the ABI as a "proxy for the highest rate available in Italy" is not supported by substantial evidence on the record. Falck asserts that even if it were determined to be uncreditworthy, the ABI rate would be inapplicable.

DOC Position: We have used the reference rate reported by the Bank of Italy as the benchmark interest rate. We were unable to use company-specific benchmark interest rates because the companies did not break out their subsidized loans from unsubsidized loans in reporting their actual cost for long-term, fixed rate debt. For those years where we have determined Falck and ILVA to be uncreditworthy, we

VOL 58 ISS 130 JL 9 1993 UMI

added to this interest rate an amount equal to 12 percent of the prime rate in Italy to derive our benchmark interest rate. See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989) and § 355.44(b)(6)(iv) of the Department's Proposed Rules.

We disagree with petitioners' assertion that the "top rate" published by the ABI is an appropriate proxy for the highest rate available in Italy. We verified at Italian commercial banks that the ABI rate is a short-term rate applied to overdrafts, and that it is never used for long-term lending. Based on these facts, it would be inappropriate to use the ABI rate as the benchmark interest rate for long-term loans even if the companies are determined to be uncreditworthy.

Comment 2: Petitioners state that the Department should treat the interest rebates received pursuant to Law 193/84 as grants, regardless of whether Falck knew at the time it took out the loan that it would receive the rebate. They assert that the rebates were not provided pursuant to a below-market rate loan financing program. Petitioners further assert that even if the Department decides to treat these interest grants as below-market loans, it does not have the necessary information with which to calculate a benefit.

Falck asserts that interest rebates provided pursuant to Law 193 should be treated as low interest loans since it knew at the time it obtained the loans that a portion of the interest would be rebated. According to Falck, petitioners wrongly assert that the Law 193/84 interest rebates should be treated as grants merely because the rebates were not tied to particular loans. Petitioners ignore the fact that borrowers, knowing their interest obligations would be reduced by Law 193/84 interest rebates, would take the interest reduction into account in their decision to undertake new financing. Since the Department verified that Falck knew at the time that it took on the post-program loans that the interest would be reduced, the Department should amortize the interest rebates over the terms of the loan and treat them as part of a low interest loan.

DOC Position: In evaluating how to treat interest rebates, we have determined it appropriate to consider what expectations a company could reasonably be expected to have at the time a loan is taken out. When a company knows in advance that the government is likely to pay or rebate interest on a loan, the company will take this into account in deciding whether to take out the loan. In such a case, we would treat the rebate as a reduced interest loan. However, if the government decides to pay or rebate interest on a loan which the company took out not knowing there would be a government repayment or rebate, then we have determined that it is appropriate to model the repayment or rebate as a grant.

We verified that regarding the loans it took out after June 6, 1984, Falck knew at the time it took out the loans it would receive Law 193 interest rebates on them. Contrary to petitioners' claim, we did verify the details of these loans and interest rebates, and have used this information in our calculations. As stated above, we have treated Law 193 interest rebates received on loans taken out prior to June 6, 1984, as grants. After that time, they were treated as reduced interest loans.

Comment 3: Respondents urge the Department to use in the final determinations the actual loan proceeds and repayment data for Falck's Law 675 loans. They argue that the use of actual information supplied at verification which clarifies or corroborates previously submitted information, and which does not substantially amend previously submitted data, is supported by Department practice and precedent. For the same reasons, respondents argue the actual amounts of the interest contributions as verified at Falck should be used.

DOC Position: Consistent with Department practice, we have used all verified information regarding Falck's Law 675 loans and interest contributions in our calculations. The clarifications submitted at verification were minor.

Comment 4: Falck argues that since it maintained its line of short-term debt with commercial financial institutions, and because unprofitable periods were aberrations within the review period, the Department should determine that Falck was creditworthy throughout the entire period 1977 through 1991.

Petitioners disagree. They state that there is no evidence that the unprofitable periods were aberrations and that it is irrelevant that Falck maintained its line of short-term credit. They maintain that since Falck was unprofitable and its interest coverage was negative from 1977 to 1979, Falck was uncreditworthy during the period.

DOC Position: We have determined Falck to be uncreditworthy during the period 1977–1979. In determining the creditworthiness of a company, the Department normally considers the current ratio, quick ratio, times interest earned ratio, debt ratios, and profit margin. While we also consider the extent to which the company was able to obtain long-term financing from private sources, the Proposed Regulations direct us to consider a firm's receipt of comparable long-term commercial loans in our analysis of its creditworthiness. Moreover, the default risk of short-term loans is minimal. Consequently, the receipt of short-term loans from private sources is not indicative of the creditworthiness of the borrower. Therefore, Falck's maintenance of short-term loans from private sources is irrelevant.

We examined Falck's ratios and financial statements at verification, and found no evidence that the unprofitable periods were aberrational. See creditworthy section of notice for a complete description of our determinations regarding ILVA and Falck's creditworthiness and the Memorandum to the File dated June 21, 1993.

Comment 5: Petitioners contend that the Department should determine based on BIA that Law 155/81 grants are *de facto* specific. They assert that Law 155/81 grants were provided at the discretion of CIPI, similar to Law 675/77. Additionally, since the GOI did not provide the sector-by-sector distribution of benefits under this program, the Department should determine based on BIA that the GOI limited Law 155/81 benefits to a specified group of industries and provided the steel industry with a disproportionate amount of benefits.

DOC Position: Law 155/81 expired in 1982. Therefore, as we have determined early retirement benefits to be recurring, there could be no benefits from this program during the POI. For this reason, we have made no determination regarding the specificity of this law.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Italy which

were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Cold-Rolled Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—72.91
Falck's *Ad Valorem* Rate—3.71
Certain Cut-To-Length Carbon Steel Plate
Country-Wide *Ad Valorem* Rate—72.91
Falck's *Ad Valorem* Rate—3.71

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain steel products from Italy.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4)).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15634 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–580–818]

Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Jacqueline Arrowsmith, Office of Antidumping Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4794.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations (57 FR 57761 (December 7, 1992)), the following events have occurred. On December 23, 1992, we issued a second supplemental questionnaire, the response to which was received on January 19, 1993. On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935). On March 16, 1993, we published the preliminary negative determinations of critical circumstances (58 FR 14200). We conducted verification in Korea from March 15, 1993 to March 29, 1993. On April 6, 1993, we discontinued suspension of liquidation (see Suspension of Liquidation section below). Interested party comments were submitted on May 6, 1993 and May 11, 1993. A public hearing was held on May 13, 1993.

In calculating the estimated net subsidies for these determinations, we have taken into account:

(1) Respondents' November 13, 1992 related party responses and November 20, 1992 corrections submission, neither of which was considered for the preliminary determinations;

(2) Various minor corrections submitted by respondents since the preliminary determinations; and

(3) Our findings at verification. See the calculation memo for further details.

Scope of Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as found in Appendix 1 to this notice: (1) Certain hot-rolled carbon steel flat products, (2) certain cold-rolled carbon steel flat products, (3) certain corrosion-resistant steel flat products, and (4) certain cut-to-length carbon steel plate.

Injury Test

Because Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from Korea materially injure, or threaten material injury to, U.S. industries. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reason of imports from Korea of the subject merchandise (57 FR 38064, August 21, 1992).

Respondents

The GOK is a respondent for each class or kind of merchandise subject to these investigations. The following is a list of the selected respondent companies for each class or kind of

merchandise subject to these investigations:

Certain Hot-Rolled Carbon Steel Flat Products:
Pohang Iron & Steel Company (POSCO)
Certain Cold-Rolled Carbon Steel Flat Products:
POSCO, Union Steel Manufacturing Co., and Dongbu Steel Ltd.
Certain Corrosion-Resistant Carbon Steel Flat Products:
POSCO, Union and Dongbu
Certain Cut-To-Length Carbon Steel Plate:
POSCO and Dongkuk Steel Mill Co.

In addition, we have investigated whether subsidies were provided to the following trading companies, which sold subject merchandise during the POI, and related producers and sellers of the subject merchandise: Daewoo Corporation, Hyosung Corporation, Hyundai Corporation, Keoyang Company, Ltd., Samsung Co., Ltd., Ssangyong Corporation, Dongbu Corporation, Dongkuk Industries, Sunkyong Corporation, Korea Iron & Steel Co., Ltd., Kyung Ahn Industries Co., Ltd., Pohang Coil Center Co., Ltd., Pohang Coated Steel Co., Ltd., Pohang Steel Industries Co., Ltd.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification and comments by interested parties, we determine the following.

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries, were not only case-specific, but also general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues briefs and the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix, which is attached to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, which is published concurrently with this notice.

Period of Investigation

For purposes of these final determinations, the period for which we are measuring subsidies (the period of investigation (POI)), is calendar year 1991.

Calculation of Country-Wide Rate

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* subsidy received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. The rates for all programs were then summed to arrive at a country-wide rate for each class or kind of merchandise.

Pursuant to 19 CFR 355.20(d), for each class or kind of merchandise, we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs. There were no cases where the rate for a particular company was significantly different from the country-wide rate.

Equityworthiness

Petitioners have alleged that POSCO was unequityworthy during 1978–80, and, therefore, that equity infusions received during those years were inconsistent with commercial considerations. The Department has previously ruled that POSCO was unequityworthy during these years. See, Final Affirmative Countervailing-Duty Determination: Cold-Rolled Carbon Steel Flat Products from Korea, 49 FR 47284 (1984) ("Flat Products"). The respondents have not challenged this finding. Accordingly, we will adhere to the 1984 determination concerning the unequityworthiness of POSCO during these years.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Korea of certain flat-rolled steel products under the following programs:

1. Government Equity Infusions in POSCO

Petitioners allege that in 1978 and 1980 the Government of Korea provided equity to POSCO on terms inconsistent with commercial considerations.

Government equity infusions bestow a countervailable benefit when they occur on terms inconsistent with commercial considerations. See, § 355.44(e) of the Proposed Regulations. In 1984, we determined that POSCO was unequityworthy, *i.e.*, not a reasonable commercial investment, during 1978 and 1980. See, Flat Products at 47286. Neither POSCO nor the Government of Korea contests the Department's previous determination. Because we determined previously that POSCO was unequityworthy in these years and because there is no new information to repudiate this determination, we determine that POSCO was unequityworthy during 1978 and 1980. As such, we determine that the 1978 and 1980 equity infusions from the Government of Korea, through the Ministry of Finance (MOF) and the Korea Development Bank (KDB), bestow a countervailable benefit on POSCO.

To calculate the benefit, we used the grant methodology described in the Equity section of the General Issues Appendix. As the discount rate, we used the three year corporate bond yield on the secondary market, as stated in the "Loans inconsistent with commercial considerations" program, below. We then divided the benefit attributable to the POI by POSCO's total sales. On this basis, we calculated estimated net *ad valorem* subsidies of 0.16 percent for certain hot-rolled carbon steel products, 0.13 percent for certain cold-rolled carbon steel products, 0.10 percent for certain carbon steel cut-to-length plate, and 0.07 percent for certain corrosion-resistant carbon steel products.

2. Loans Inconsistent With Commercial Considerations/Preferential Access to Foreign Loans

We have investigated whether the GOK directs commercial banks and/or other Korean lending institutions to extend credit to the steel industry at preferential rates, or on terms or in quantities that otherwise demonstrate preferential treatment of this sector. In our preliminary determinations, we found that:

(1) The GOK effectively controls the practices of lending institutions in Korea; (2) long-term loans were provided to the steel industry on a selective basis; and (3) the selective provision of these regulated loans resulted in a countervailable benefit. See Preliminary Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea, 57 FR 57761, 57764 (December 7, 1992). Information submitted for the record subsequent to the preliminary determinations, including information obtained at verification, supports these findings.

As noted in the preliminary determinations, the following institutions play a significant role in the extension of credit in the Korean economy:

a. Bank of Korea

The BOK performs the functions of a central bank, serving as issuer of bank notes and coins, banker to the banking

sector, banker to the government, controller of the money supply, and supervisor of banking operations under the instructions of the Monetary Board, its policy-making organ. The Bank has the authority to set maximum interest rates on deposits and loans of banking institutions and to control the volume of bank credit directly in periods of pronounced monetary expansion.

b. Development Institutions

Korea Development Bank. The KDB was created by the Korea Development Bank Act in 1954 with capital wholly subscribed by the government. The original purpose was to finance industrial and agricultural projects necessary for economic rehabilitation. The KDB has traditionally supported the development of export industries and of heavy and chemical industries, including the steel industry. Its major financial activities are:

(1) Medium- and long-term loans (more than one year maturity);

(2) Investment in the form of underwriting of corporate bonds and stock; and

(3) Loan payment guarantees to help finance industrial projects.

Export-Import Bank of Korea. The Export-Import Bank of Korea was created in 1976 under the authority of the Export-Import Bank of Korea Act. The Export-Import Bank finances exports of capital goods, provides technical services and overseas investments, and extends credit to foreign governments and others for importing goods and technical services from Korea.

c. Commercial Banks

Commercial banks are deposit-money banking institutions established and operated according to the provisions of the General Banking Act as well as to orders, instructions, and regulations issued by the Monetary Board under the Bank of Korea Act. Significant commercial banks include Cho Hung Bank, Commercial Bank of Korea, Korea First Bank, Hanil Bank, and the Bank of Seoul & Trust Co.

d. Specialized Banks

In the early 1960s through the 1980s, the GOK introduced "specialized banks" to facilitate financial support for underdeveloped or strategically important sectors, including the Small & Medium Industry Bank (renamed the Industrial Bank of Korea in 1987), Citizens National Bank, and the Korea Housing Bank. Specialized banks, like commercial banks, function as deposit money banks.

e. Foreign Banks

Beginning in the 1960s, foreign banks were allowed to open branch offices in Korea. As of June, 1990, there were 67 foreign bank branches, including 23 U.S., 14 Japanese, 7 French, and 5 British banks. We learned at verification that although regulations for foreign banks operating in Korea may be different from those that apply to Korean banks, foreign banks are still highly regulated. See Memorandum to File, May 4, 1993, at 2–3 ("Bankers Verification Report").

f. Nonbank Financial Institutions

Nonbank financial institutions (NBFIs) consist of savings institutions including the trust accounts of banking institutions, mutual savings and finance companies, credit unions, mutual credit facilities, and postal savings; investment companies comprising investment and finance companies and merchant banking corporations; and life insurance companies. Bank of Korea, Financial System in Korea, December 1990, at 55. The BOK also includes development institutions, discussed above, in the NBFI category.

Government Control of the Korean Financial System

In the preliminary determinations, we found that the GOK uses a variety of formal and informal means to control the lending practices of government-owned and private commercial banks. Respondents assert that government-owned development and specialized banks, as well as the nominally private banks, which were privatized in the early 1980s, act primarily as commercial banks and are not effectively controlled by the GOK.

We disagree with respondents' claim. Information gathered since the preliminary determinations confirms that the GOK effectively controls long-term lending practices in Korea.

The GOK directly controls a majority of long-term lending in Korea, in the form of: (1) Government provision of long-term fund loans, e.g., National Investment Fund (NIF) loans, Petroleum Business Fund Loans, etc.; and (2) financing of long-term loans through BOK rediscounts. Data published by the BOK that we examined at verification indicate that over half of the long-term loans made by commercial banks were ultimately sourced either through government funds or through government rediscounts. See GOK Verification Report at 10. In these cases, the commercial bank acts only as an intermediary between the customer and the GOK.

Information on the record indicates that the GOK also controls the Korean financial system through several other means:

(1) Control of lending practices pursuant to the authority granted to the GOK under the General Bank Act;

(2) The appointment of banking officials;

(3) Informal intervention in the allocation of loans; and

(4) The strict regulation of interest rates.

1. Control of Long-Term Lending Pursuant to the General Bank Act

The General Bank Act, which, according to documents supplied in the GOK response was last amended on December 31, 1991, and which applies to "all banking institutions operating in the Republic of Korea," provides the GOK's Monetary Board with extensive authority over the allocation of credit, including the authority to disapprove all loans above a specified amount, and the ability to "fix and restrict a total amount of loans or guarantee or acceptance of obligations" with respect to a particular business group.

Respondents contend that GOK controls, as listed in the General Bank Act, are no more extensive than controls that are commonly used by other governments. However, independent reports published by international organizations suggest otherwise. The Organization for Economic Cooperation and Development (OECD), states that "Control by the [Ministry of Finance] goes beyond the mere monitoring and supervisory functions usually exercised by official bodies and has included allocation of financial resources and setting of interest rates." OECD, Financial Market Trends, number 47, October 1990, at 21.

An independent report by the World Bank also confirms the role of the GOK in the allocation of credit. The report states:

> The promotion of the [heavy and chemical industries] sector was supported by a broad range of policy instruments, including import protection and fiscal preferences. But the intervention which mattered most, and had the greatest impact on industrial incentives and structure, was the allocation of credit. Government relied heavily on its control of the entire credit system and provided "strategic" industries preferential access at substantially subsidized rates.

World Bank, Korea: Managing the Industrial Transition, 1988, at 39.

Although this report later states that the GOK began to liberalize the financial system in the 1980s, it observes that "* * * large borrowers probably continue to have wider borrowing

options, despite their high indebtedness, because the banks, and by extension the Government, became risk-sharing partners in the course of the 1970s and have yet to extricate themselves," and further, "* * * there are lingering effects of the distorted system of industrial finance that characterized much of the 1970s." *Id.* at 54.

We disagree with respondents' claim that the citation to the regulatory controls listed in the General Bank Act is the "cornerstone" to the Department's finding that the GOK effectively controls long-term lending institutions in Korea. Although these statutory provisions strongly support a finding of government control, they are not the sole, or even primary, basis upon which we make this determination. Other means of control are described below.

2. Appointment of Banking Officials

At verification, BOK officials stated that prior to 1982, Chapter 10, Article 39 of the General Banking Act allowed the government to appoint and dismiss banking officials. This law was amended in 1982 to eliminate this authority except in cases where "remarkable injury" had been caused by the official. See GOK verification report at 8. Respondents cite this amendment in support of their contention that, except in extraordinary circumstances, the GOK no longer has the ability to control the selection of banking officials at private commercial banks.

However, the Korea Development Institute, which is administered and financed by the GOK, reported in 1992 that, notwithstanding the GOK's assertions to the contrary, the GOK still regularly engages in the "selection of bank presidents." Korea Development Institute, "Liberalization of Korean Financial Market," May 1992, at 47. In addition, the majority of interviews that we conducted at verification, including interviews with BOK and MOF officials, demonstrated that the government continues routinely to select, or influence the selection of, bank officials at commercial banks. See GOK Verification Report at 16; see also Bankers Verification Report, May 4, 1993, at 1–2 ("all of the bankers said that either the MOF or the Blue House [the President's residence] exerts substantial influence over the selection of commercial bank presidents"). Therefore, despite the change in law, we conclude that in practice both the ability and the proclivity of the GOK to intervene in the selection of commercial bank officials has not changed.

3. Informal Control Over Loan Allocation

MOF officials, as well as representatives of private banks and nonbank financial institutions, agreed at verification that the GOK exercises influence over lending practices of commercial banks through what the MOF refers to as "moral suasion." All of the officials of private banks that we interviewed said that these practices reflect the reality of "a substantial amount of control by the GOK over the commercial banks in Korea." Bankers Verification Report at 1.

Informal influence by the GOK over lending institutions in Korea extends to the allocation of loans to various sectors within the Korean economy. One of the methods used by the BOK to influence lending is the policy of granting preferential rediscounts (central bank funding of commercial loans) on specified loans. For example, specific regulations provided preferential rediscounts for heavy and chemical industries before 1983. Currently, specific regulations provide for preferential rediscounts to small and medium industries. Apart from formal regulations, the rediscounting mechanism can be used on an informal basis to allocate funds to specific sectors. The GOK informed us that preferential rediscounts are used to encourage lending to the manufacturing sector, even though no law or regulation provides for this preference. GOK Verification Report at 11.

4. Strict Control of Interest Rates

The evidence on the record also indicates that the GOK has determined the allowable interest rates on long-term lending by all commercial lending institutions for virtually the entire period during which the outstanding loans in question were received. This control has been in the form of both strict interest rate equalization, e.g. the 10–10.5 rate applicable to all loans that was in place from 1982–1988, or through what the BOK calls "window guidance," i.e., allowing interest rates to fluctuate within a narrow band of one or two percentage points. In both cases, ceilings were placed on long-term loan interest rates, partially in order to control excessive inflation. Interest rate ceilings on domestic foreign currency loans were also maintained until 1988, and were primarily sourced through government funds (known as the special foreign currency fund) from 1986–1989. GOK Verification Report at 14.

The GOK originally maintained that interest rates were liberalized in December, 1988. However, at verification the BOK and MOF both acknowledged that this liberalization was judged to be a failure and that interest rate ceilings were reinstated months after this attempt at reform.

The corporate bond market is controlled in a similar fashion. Interest rates on primary issues of corporate bonds were controlled for virtually the entire period that we are investigating; the first stage of interest rate liberalization of corporate bond rates did not begin until November, 1991. BOK 1991 Annual Report at 18. Interest rates on corporate bonds are further depressed by government issues of monetary stabilization bonds (MSBs) with below-market interest rates, which are sold mainly to financial institutions by coercion. Sang-Woo Nam, Korea's Financial Reform Since the Early 1980s, Korea Development Institute, March 1992. The KDB's practice of selling below-market KDB bonds in return for KDB loans (discussed in GOK Verification Report at 20) has the same effect.

Respondents do not deny that the GOK extensively regulates long-term interest rates; rather, they contend that government regulation of interest rates is:

(1) A common practice in all countries, and

(2) Irrelevant to a countervailing duty investigation unless the regulation provides a preference to specific groups or industries.

With respect to the first argument, we agree that virtually all governments maintain some minimal form of control over allowable interest rates, for example, by setting discount rates, through open market operations, and by limiting allowable rates under usury laws. However, the control by the GOK over interest rates in Korea is different than that exerted by most governments. For example, the Federal Reserve in the United States influences bank lending rates by raising and lowering the discount rate (the rate charged to member banks) or by changing reserve requirements. These policies affect the cost of funds to banks. The cost of funds to consumers, or bank lending rates, find their own level—the market-clearing rate—given the cost of funds to banks. By contrast, in Korea, the GOK regulates the bank lending rates directly without regard to the cost of funds to banks. At a controlled interest rate below market levels, banks are not willing to supply sufficient funds, and excess demand is created.

Given the excess demand for long-term funds at the regulated rates in Korea, i.e., interest rates will immediately increase if the government-

imposed ceilings were lifted. This was demonstrated when interest rates immediately rose during the short period of liberalization in 1988 to a level higher than that allowed under subsequent window guidance.

Concerning the argument that government regulation is irrelevant absent selectivity, we note that the question of government control is a separate issue from the question of whether any benefits resulting from this control have been selectively provided to the steel industry. The selectivity issue is addressed below.

Finally, petitioners have placed on the record a considerable body of evidence suggesting that the tendency in Korea toward control by the GOK over commercial banks is continuing. The current head of the Bank of Korea, Mr. Cho Soon, noted in 1991 that the Korean financial system remains the area where what he refers to as Korea's "rigged price system" remains most evident. Department of Treasury Memorandum, April 1, 1991, at 1. Numerous business journals have reported on this topic. For example, in April, 1992, The Economist stated, "Officials at the all powerful finance ministry tell bankers to whom they should lend money. As a result big and politically favored companies get their loans at regulated rates." The Economist, April 4, 1992, at 100.

The weight of the evidence accordingly leads us to conclude that the GOK controls the long-term lending institutions in Korea. This finding of government control is sufficient to establish a government program, defined as "any government act or practice" in § 355.2(r) of our regulations, concerning long-term lending in Korea. It also constitutes "government action" for the purposes of § 771(5)(A)(ii) of the Act (requiring domestic subsidies to be "provided or required by government action"). Respondents argue to the contrary that we must find a specific government policy to provide or require the alleged benefits as a prerequisite to a specificity analysis. Respondents cite Cold-Rolled Steel Flat Products from Korea for the proposition that a government action "which does not target benefits or otherwise effectively predetermine the provision of benefits to an industry or limited group of industries is not a subsidy." 49 FR 36538, 36545 (September 18, 1984). Respondents argue, for example, that KDB loans made from the KDB's own funds, as opposed to KDB loans sourced from government programs such as the NIF, should not be considered to be directed by the GOK.

We disagree with respondents concerning the elements that are necessary in order to determine the existence of a government program. The regulations do not require a finding of a "purposeful government action" as a prerequisite to conducting a specificity analysis. See, Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570, 22580–22581 (May 28, 1992) (neither "purposeful government action" nor government "targeting" is necessary in order to establish a government act or practice). To do so would be effectively to read a *de jure* requirement into the analysis of whether there is a government program, which would vitiate the purpose of the 1988 "Special rule" (the *de facto* test), discussed in the Selectivity section below.

Having determined that GOK control of long-term lending in Korea constitutes a government act or practice, we turn to the issue of whether this control provided selective benefits to respondents.

Selectivity of Loans Provided To the Steel Industry

The period during which long-term loans outstanding during the POI were received by respondents is 1977–1991. Accordingly, we must examine long-term lending patterns in this period in order to determine whether respondents have selectively benefitted from the GOK's control of the Korean financial system.

Initially, we note that respondents acknowledge that all export industry facility loans (EIFLs), as well as the KDB's special facility loans (SFLs), were contingent upon export, and are therefore export subsidies to the extent they are provided at preferential rates.

At verification, officials from the BOK, MOF, and KDB stated that the steel industry was one of the major beneficiaries of the GOK's Heavy and Chemical Industry (HCI) promotion program. The policy behind this program was to develop certain priority sectors, using government-funded and directed financial assistance as a primary form of support. GOK officials noted that the steel industry was a favored industry under HCI and was specifically listed as a priority industry in government lending guidelines, such as those of the KDB and NIF, until the early 1980s.

Respondents maintain, however, that any financial preferences for the steel industry, with the exception of certain export incentives such as export industry facility loans, were terminated by 1985. In support of this contention, respondents reference changes in the above-noted lending guidelines that eliminated *de jure* preferences to the steel industry. For instance, the KDB Act, Section 1, Article 18(1), which specifically lists the iron and steel industry as an industry to which the KDB will lend when funds are not readily available elsewhere, was amended by adding Article 18(2), which provides that industries "other than those prescribed in Subparagraph 1" may borrow from the KDB. The KDB business plan was also changed so that the iron and steel industry was not specifically named as a priority industry. Similarly, the NIF lending guidelines were changed in 1984 so that industries, including iron and steel, that formerly were specifically listed in the NIF guidelines were not able to receive funds due solely to their status as priority industries, but instead received NIF loans on the basis of their need for purchases of domestically produced machinery.

In determining whether an industry has selectively received benefits from a government act or practice, we are obligated to investigate both *de jure* and *de facto* evidence of preferential treatment. Section 771(5)(B) of the Act, which codified the *de facto* test, states in relevant part:

> * * * the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law *or in fact* is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

19 U.S.C. 1677(5)(B).

Accordingly, we must determine whether, despite the removal of certain *de jure* preferences provided to the steel industry, there has been a *de facto* change in the patterns of lending to this industry from the time of the HCI drive, which GOK officials acknowledged was a period during which the GOK actively favored the steel industry as a priority industry through the provision of subsidized long-term financing.

Section 355.43(b)(2) of the Department's regulations directs us, when investigating whether a government act or practice provides *de facto* selective benefits to respondents, to consider:

(1) The number of enterprises, industries, or groups thereof that actually use the program;

(2) Whether there are dominant users of a program;

(3) Whether certain enterprises, industries, or group thereof received

VOL 58 ISS 130 JL 9 1993 UMI

disproportionately large benefits under a program; and

(4) The extent to which the government exercises discretion in conferring benefits under a program.

The facts in this case do not show that the program has been selectively limited to a small number of users; likewise, there is no dominant user of the program. However, if the lending patterns to the steel industry have not changed since the HCI drive, *i.e.*, if the GOK continued to target the steel industry for government-controlled long-term loans during the POI, a finding of *de facto* specificity may be made, if the steel industry receives a disproportionate share of the benefits.

An appropriate test for measuring whether the Korean steel industry has continued to receive a disproportionate share of the benefits from government controlled long-term loans is to compare the share of long-term loans held by the steel industry over the relevant time period (1977–1991) with the share of gross domestic product (GDP) accounted for by this industry. As petitioners note, the volume or proportion of loans received by the steel industry, must be compared with some objective benchmark in order to determine disproportionality.

In this case, comparing the steel industry's share of long-term loans with its share of GDP is an appropriate measure of disproportionality. The program under investigation, government controlled long-term lending in Korea, is a "nationwide program," *i.e.*, a program in which virtually every segment of the economy in the market naturally participates to some extent. Accordingly, given the broad, nationwide nature of this program, share of GDP is an appropriate point of comparison because it is a reasonable and objective nationwide measure of the expected share of restricted credit, all else being equal.

The share of benefits to share of gross domestic product test was used in the 1984 steel investigations, and in the preliminary determinations in this case. In 1984, the Department found that medium- and long-term loans were not provided to the iron and steel industry on a selective basis. See, Final Affirmative Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat Products From Korea; and Final Negative Countervailing Duty Determination; Carbon Steel Structural Shapes From Korea, 49 FR 47284, 47289 (1984) ("Steel Products"). In that investigation, we compared the share of loans received by the basic metals sector (of which respondents state the iron and steel industry is the predominant group) with the share of GNP accounted for by this sector. We determined that, "over the last 15 years, the steel industry has accounted for approximately 6 to 13 percent of GNP. During the same period the basic metals sector * * * received 5 to 8 percent of medium- and long-term loans," (*Id.*) and that therefore the iron and steel industry did not receive a disproportionate amount of loans.

In the current investigations petitioners and respondents agree that our disproportionality test in 1984 significantly overestimated the percentage of GNP/GDP comprised by the steel industry. The GOK has also supplied figures that demonstrate that this industry has received a volume of loans over the last 15 years that in percentage terms has consistently remained two to four times higher than the share accounted for by iron and steel in the country's GDP.

Respondents acknowledge that, despite the removal of the majority of the *de jure* lending preferences to the steel industry in the early 1980s, the pattern of long-term lending to the steel industry remains largely unchanged. See Respondent Case Brief, May 6, 1993, at 26–27. In fact, while the basic metals industry's share of GDP has remained relatively constant at approximately 2–2.5 percent since the early to mid-1980s, the industry's share of long-term loans has actually risen slightly since the *de jure* preferences were terminated at this time. This trend is characteristic of both long-term Korean won loans and domestic foreign currency loans (*i.e.*, foreign loans received from banks in Korea, which the GOK has controlled during the relevant period through regulated interest rates and ceilings on lending amounts).

It is especially true concerning the largest source of long-term lending in the country, the Korea Development Bank. The basic metals industry's share of long-term (equipment) loans from the KDB more than doubled from the date of the termination of *de jure* key industry targeting (via the above-noted change in the KDB business plan in 1985) to the POI. In 1991 alone, this industry received over 20 percent of new KDB loans to the manufacturing sector.

We note that Article 18(1), which specifically lists the iron and steel industry as a priority industry, is still included in the KDB Act. We were told by the KDB at verification that, at least until the 1985 change in the KDB business plan, industries specifically named in Article 18(1) received preferential access to KDB funds, despite the addition of Article 18(2), which nominally allows all other industries access to KDB loans. In addition, at verification we found that the interest rate on KDB loans to POSCO was not always in accordance with the KDB's lending guidelines, and that POSCO had received KDB funds at a lower interest rate than its KDB credit rating would justify.

Respondents contend that the share of GDP test does not take into account the fact that certain industries consume more fixed capital per unit of output, and also have higher levels of investment, and will therefore require more loans. Respondents compare the iron and steel industry, which they assert consumes a high amount of fixed capital relative to other industries and is therefore a "capital-intensive" industry, with the textiles industry, which they maintain is not a capital-intensive industry.

As noted in the preliminary determinations, we used the data supplied by respondents, which were taken from various Bank of Korea Economic Statistics Yearbooks from 1976–1991, to confirm that the iron and steel industry consumes more fixed capital relative to its share of GDP than the textiles industry, and may therefore be considered more capital-intensive. We also analyzed certain industries, such as electricity, gas and water, that are more capital-intensive than the iron and steel industry according to the statistics provided by the GOK. We then compared the percentage of loans received by each industry to its share of GDP.

Following the argument advanced by the GOK and respondents, we would expect to find a positive correlation between the capital-intensity of an industry and the amount of loans received by that industry. For instance, we would expect the textiles industry to receive a smaller percentage of loans in proportion to its share of GDP than the iron and steel industry. However, the data supplied by the GOK failed to demonstrate conclusively this correlation between the relative capital-intensity of an industry and the amount of loans it received relative to its share of GDP. Although certain capital-intensive industries received a higher proportion of loans relative to their share of GDP, certain other industries that were more capital-intensive than the iron and steel industry received a smaller proportion of loans to GDP and vice-versa.

Respondents further argue that the fact that the steel industry raises a large portion of its funds internally (e.g., through paid-in capital and retained earnings) relative to other Korean companies suggests that the GOK is not

directing credit to this industry. While this argument may indicate that the steel industry is unusually profitable, it does not affect our analysis of whether the funds are selectively provided to the steel industry and whether they bestow a countervailable benefit. If the steel industry were less profitable, it arguably would have received even more loans relative to its share of GDP.

Finally, respondents object to our position in the preliminary determinations that the fact that the steel industry did not have any long-term loans outstanding during the POI from NBFIs is further evidence of government direction of regulated long-term credit. As noted in the preliminary determinations, NBFIs are somewhat less regulated than deposit-money banks, and the interest rates charged on NBFI loans are correspondingly higher.

Respondents state that NBFI loans are not relevant to our investigation of long-term lending practices in Korea because NBFIs are not viable sources of long-term financing. At verification, we found conflicting information concerning the feasibility of financing on a long-term "rollover" basis with NBFI funds. The MOF said that this was not an alternative to borrowing on a long-term basis (see GOK Verification Report at 15), but information from our meetings with independent bankers suggested otherwise (see Bankers Verification Report at 7). While we agree that NBFIs are not a viable source for all of the steel industry's long-term lending needs, we are not persuaded that the industry would not have resorted, at least to some degree, to NBFIs for long-term loans absent government direction of credit.

Petitioners also allege that the Korean government, through the Ministry of Finance (MOF), has provided the steel industry with preferential access to direct foreign loans. At verification, the MOF acknowledged that, as part of the GOK's economic policy, it exercises oversight of foreign capital through the Foreign Capital Inducement Act particularly with respect to balance of payments concerns, but stated that the guidelines for approval do not indicate selective treatment for respondents. The MOF states that it does not currently approve direct foreign currency loans; however, the respondent steel companies had extensive foreign loans outstanding during the POI that had to be approved by the MOF.

The MOF periodically issues guidelines in accordance with the "Loan Contract" section of the Foreign Capital Inducement Act. The MOF explained at verification that a company must be able to negotiate a direct foreign currency loan with the creditor at or below a set ceiling established by the MOF. If the company cannot negotiate a loan with an interest rate below the ceiling, it cannot borrow on foreign currency markets.

The MOF maintains that its guidelines concerning the ceiling rate apply equally to all companies. However, at verification, the MOF acknowledged that in the mid-1980s it intentionally lowered the allowable ceiling so that in effect very few companies would be allowed to receive direct foreign loans. The MOF stated that this was done in order to force most companies to borrow foreign currency domestically in order to recycle the current account surplus that existed at the time, and in order to protect Korea's international credit standing by only permitting the most creditworthy companies to borrow directly on foreign capital markets. See GOK Verification Report at 12. Virtually all of the direct foreign loans held by respondents during the POI were attributable to POSCO. The MOF stated that POSCO is able to borrow extensively on foreign currency markets because it is a creditworthy company that is able to negotiate loans at or below the MOF ceiling.

As noted in the section above (Loans inconsistent with commercial considerations), in determining whether a government policy may be considered to constitute selective treatment for purposes of the countervailing duty law, the Department is required to determine whether benefits are provided to a specific enterprise or industry, or group of enterprises or industries, on either a *de jure* or a *de facto* basis. See section 771(5)(A) of the Act. We must accordingly analyze whether there are any *de jure* preferences to the steel industry in the direct foreign loan approval process, and also whether this approval process has resulted in the conferral of *de facto* selective benefits to the respondent steel companies.

The MOF direct foreign loan guidelines specifically list the iron and steel industry as an "eligible business," along with several other major industries including the automotive, electronic components, and machinery industries. At verification, the MOF explained that these industries were only listed as "examples" of industries that could borrow abroad, and noted that the last category in the guidelines included "any other project," although the project would have to be a necessity.

The data submitted by respondents, which we further examined at verification, suggest that the GOK has not treated the steel industry as merely an example of an industry that may borrow on direct foreign capital markets, but has instead enforced its guidelines in a manner that provides the steel industry with *de facto* selective treatment under this program. The steel industry has received a volume of direct foreign loans that is overwhelmingly higher than that received by any other industry in Korea. According to foreign loan borrowing statistics supplied by the GOK, the iron and steel industry has received approximately 60 percent of all direct foreign loans to the manufacturing sector since 1985, and over 40 percent of all direct foreign loans to all industries since this time.

Respondents have not contested the fact that since 1985 the GOK has permitted the iron and steel industry to borrow on foreign loan markets to a far greater extent than any other segment of the manufacturing sector, and they have submitted data that corroborate this proposition. Nor have they denied that foreign loans are generally provided at interest rates significantly below the prevailing effective rates in Korea. Respondents' argument that the foreign loans in question do not provide a countervailable benefit rests instead on the observation that the benefit was not provided by the GOK (which did not supply the funds to the steel industry) but was instead provided by the foreign lenders. The GOK cites § 355.44(o) of the Proposed Regulations in support of its contention that the Department will not find a benefit to be countervailable if it is provided by an international institution and not by the government of the country in which the subject merchandise is produced or from which the merchandise is exported.

However, the benefit that is alleged with respect to direct foreign borrowings is preferential access to loans that are not generally available to Korean borrowers, not the actual *funding* of these loans. It is the GOK that is providing this preferential access, and this preference confers a countervailable benefit to the extent that the iron and steel industry has available a significantly greater volume of funds at lower interest rates than it would have absent this government preference. The disparity between foreign and won interest rates, and the resultant limitation of access to direct foreign loans, has been noted by the GOK financed Korea Development Institute. See Korea's Financial Reform in the Early 1980s, Sang-Woo Nam, March 1992, at 53–54 (discussing the "large disparities [that] exist in the cost of borrowing between domestic and foreign markets," and the "[limitation by the GOK] of foreign borrowing to

specified uses"). The preferential access conferred by the GOK effectively channels direct foreign bank funds to the Korean steel industry on a disproportionate basis.

Respondents further argue that a comparison of direct foreign loans received by the steel industry with all direct foreign loans received by other industries is too narrow, since Korean companies can also borrow foreign currency through: (1) Indirect foreign currency loans through banks in Korea (*i.e.*, domestic foreign currency loans) and (2) foreign currency securities on the international market. Respondents state that during the relevant period all Korean companies had access to foreign currency through one or more of these instruments, and that in each year the respondents had foreign currency loans outstanding, the amount of domestic foreign currency loans exceeded the amount of direct foreign currency loans. Accordingly, respondents argue that the relevant *de facto* test is to compare the steel industry's foreign borrowings with the total pool of foreign currency sources in Korea.

We do not agree that the correct standard of comparison includes all three sources of foreign currency. Regarding domestic foreign currency loans, the GOK stated at verification that, unlike the direct foreign loan market, the domestic foreign loan market could not have adequately supplied POSCO with the volume of, and/or terms of payment on, loans that POSCO required during the mid to late 1980s for construction of its Kwangyang Bay mill. GOK Verification Report at 14. Moreover, loan information submitted by respondents indicates that direct foreign loans are provided on terms that are more favorable than those of domestic foreign currency loans.

With respect to the issuance of foreign currency securities, the MOF stated at verification that, starting in 1986, funds raised through this form of financing had to be invested abroad or used to repay foreign debt in order to prevent excessive inflation in Korea. Considering that a primary purpose of direct foreign borrowing, both in general and specifically with respect to POSCO's construction of the Kwangyang Bay mill, is for purchases of imported capital equipment, foreign currency securities cannot be regarded as a fungible substitute for direct foreign loans.

Accordingly, we are not factoring in domestic foreign currency loans or foreign currency securities into our analysis of the selectivity of this program. The preponderance of evidence stated above suggests that the steel industry is the dominant beneficiary of this program and therefore has received *de facto* selective treatment in the form of preferential access to foreign loans.

Based on the sum of this evidence, we determine that the GOK has provided the steel industry with preferential access to medium- and long-term credit from government and commercial banking institutions. Since we find that the GOK has directed long-term credit to the steel industry, we do not reach petitioners' argument that GOK restriction of long-term interest rates to below-market levels, coupled with the fact that the steel industry borrows a significantly larger percentage of long-term loans than it accounts for in the country's GDP, provides this industry with a selective benefit.

Analysis and Measurement of the Benefit

The benefit we have identified relates to preferential access to specific sources of credit. It is not access to credit *per se*, but the relative access to those long-term credit markets that offer favorable interest rates compared with the rates prevailing in other long-term credit markets. In the case of domestically available loans, the more favorable credit markets are those that offer government-regulated interest rates. The more favorable credit markets for long-term foreign currency loans are those that offer loans from foreign banks at world market rates. The less favorable credit markets are those that offer loans from such less regulated or unregulated sources as NBFIs, the curb market, and domestic foreign currency lenders.

The existence of more favorable and less favorable credit markets is to a large extent the result of actions taken by the GOK. The dichotomy in the interest rates among the various credit markets in Korea has created excess demand for loans in the more favorable credit markets. The competition for access to these favorable credit markets means that while some industries may have complete access to the favorable markets, others will be locked out either partially or completely from them. This does not mean that all industries that have access to the more favorable markets receive a countervailable benefit because, due to their number and variety, industries that have such access constitute more than a group of enterprises or industries. Rather, it is only those industries that have disproportionate access to the favorable markets that enjoy a specifically provided benefit, within the meaning of the Act.

As a result of our investigation, we have found that the GOK has intervened in the market to direct credit available in the favorable markets to the steel industry. In the case of access to favorable domestic credit markets, we have based this determination on the disproportionate share of government-regulated loans obtained by the steel industry in relation to that industry's share of GDP. In the case of access to favorable foreign credit markets, we have based this determination on the disproportionate share of foreign loans obtained by the steel industry in relation to all other industries.

Companies that cannot obtain sufficient credit on the more favorable markets must turn to the less favorable ones. Similarly, if a company were not specifically targeted by the GOK to have special access to favorable credit markets, it would have to turn to the less favorable markets to obtain credit. Absent government targeting of specific industries, all industries would compete on an equal footing for the scarce credit available on the favorable markets. However, there would be insufficient capital available for all of the industries' needs because banks would only be willing to supply a limited amount of credit at the government-regulated, below-market interest rates. For the remainder of their credit needs, industries would have to resort to the less favorable markets. Thus, the average cost of credit to the industries would be somewhere between the rates available on the two types of markets.

In the preliminary determinations, we used a composite benchmark consisting of interest rates on loans from commercial banks, NBFIs, and the curb market. Petitioners argue that the curb market is the best representative of the true market rate in Korea, as well as a large and viable source of funding for the companies under investigation. Petitioners further state that NBFI interest rates are too regulated to represent the market rate, but acknowledge that these rates represent a "middle ground" between GOK regulated rates and curb market rates.

Evidence on the record, including our findings at verification, does not support the use of interest rates from either NBFIs or the curb market as part of a benchmark for long-term loan rates for the companies under investigation. There is conflicting information on the record as to whether NBFIs lend in substantial quantities on a long-term basis, and we found at verification that the curb market is not a viable source of long-term loans for large manufacturing firms. Rather, the evidence suggests that the three-year

corporate bond yield on the secondary market is more widely accepted than the curb market as the true market rate in Korea, particularly with respect to large companies such as those under investigation. Sources that we interviewed at verification were in agreement that the best indicator of a market rate in Korea is the three-year corporate bond yield on the secondary market. See Bankers Verification Report, May 4, 1993, at 6.

Petitioners argue that non-payment of compensating balances on loans received by respondents should be taken into account in determining the extent to which the long-term loans in question should be countervailed. Petitioners claim that compensating balances are generally required in Korea, and contend that since all respondents reported that they do not pay compensating balances the benchmark should include the effective interest cost of maintaining compensating balances.

We disagree with petitioners. The information on the record is inconclusive concerning which companies pay compensating balances, and does not support a finding that the GOK has selectively intervened to prevent banks from requiring compensating balances from respondents. Accordingly, we are not factoring compensating balances into the benchmark.

Regarding direct foreign currency loans, because the steel industry, absent MOF approval, would not have access to direct foreign currency loans, and because we find that domestic foreign currency loans are countervailable as directed credit, we are using a local (won) currency benchmark (the yield on three-year corporate bonds on the secondary market).

On this basis, we calculated estimated net *ad valorem* subsidies of 3.64 percent for certain hot-rolled carbon steel products, 2.94 percent for certain cold-rolled carbon steel products, 2.82 percent for certain carbon steel cut-to-length plate, and 1.83 percent for certain corrosion-resistant carbon steel products.

3. Government Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay

In both their case brief and their rebuttal brief, petitioners assert that the Department ruled correctly in the preliminary determination by countervailing the benefit from the provision of infrastructure at the Kwangyang Bay industrial estate. Petitioners note the GOK's acknowledgment of the following GOK investments at the Kwangyang Bay industrial estate: construction of an industrial waterway, construction of a railroad station near the industrial estate, construction of a road to the site, dredging the harbor, and construction of three finished goods berths. See Petitioners' Case Brief (May 6, 1993) and Petitioners' Rebuttal Brief (May 11, 1993).

Respondents acknowledge that the GOK had a significant role in providing infrastructure at Kwangyang Bay. However, they argue that the provision of infrastructure is a function of the government both generally and through the country-wide system of industrial estates, and therefore its provision was not specific to POSCO and should not have been countervailed. See Respondents' Case Brief (May 6, 1993) and Respondents' Rebuttal Brief (May 11, 1993).

After examining all of the information on the record and analyzing all of the comments, we determine that the GOK's provision of infrastructure to POSCO at the Kwangyang Bay Industrial Estate is countervailable.

We have consistently held that selective treatment and a potential countervailable benefit exist where benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. With regard to infrastructure we used the three-prong test described in § 355.43(b)(4) of the Department's Proposed Regulations to determine whether such infrastructure is specific. The provision of basic infrastructure does not confer a countervailable subsidy when the following three conditions are met: (1) The government does not limit who moves into the area where the infrastructure has been built, (2) the infrastructure that has been built is in fact used by more than a specific industry or enterprise, or group of enterprises or industry, and (3) those that locate there have equal access or receive the benefits of the infrastructure on the basis of neutral criteria. Conversely, in the absence of an affirmative finding for each of the three prongs, we will determine that the infrastructure is specific.

With regard to the first prong, the GOK acknowledges that it limits who moves into particular industrial estates, but argues that the Korean industrial estate system as a whole should be analyzed and not the individual estate in question. The GOK asserts that because all companies in all industries have access to an industrial estate, the government does not limit access. The GOK contends that it uses "objective criteria" such as climate, labor supply, and pollution control to guide the placement of industries within the industrial estate system. The GOK further argues that it provides infrastructure at all industrial estates, and that "the infrastructure provided at Kwangyang * * * is representative of the type and scope of services that the government typically provides to industrial estates." Respondents' Case Brief (May 6, 1993). Moreover, the GOK states that "every industry in Korea has access to an industrial estate." Respondents' Case Brief (May 6, 1993).

For purposes of determining the existence of a countervailable benefit under the governmental provision of infrastructure, we normally examine the limitations with regard to the particular industrial estate under investigation. Respondents suggest that the Department should examine the provision of infrastructure within the Korean industrial estate system.

While we are not rejecting the possibility of examining an industrial estate within a national industrial estate system, the burden is on the respondent to provide the information necessary to explain and document how a specific industrial estate fits within the national system. In this case, respondents have made numerous assertions about the nature of the national industrial estate system but have failed to provide the Department with the information necessary to analyze the provision of infrastructure at the Kwangyang Industrial Estate within the context of Korea's industrial estate system. For example, they have not provided information on the extent of actual government investment in other existing industrial estates, the number and identity of the industries located in all of the industrial estates, and the relative use made by the industries in those estates. Without this information, we are unable to determine the relative importance, in terms of financial commitment and actual use, of the Kwangyang Bay facility within the industrial estate system. We can only examine Kwangyang Bay based on the information in the record.

The GOK claims that its practice of designating industrial estates for particular types of industries is a means of allocating space efficiently and enforcing zoning requirements. However, the GOK limited which industries moved into the Kwangyang Bay Industrial Estate. The GOK stated that "certain industries are considered inappropriate for Kwangyang Bay." See GOK Questionnaire Response at 50. The Industry Basic Placement Plan shows that GOK guidance extended beyond

zoning considerations to the selection of priority industries, such as the iron and steel industry, petro-chemicals, automobiles, machine tools, and computers. See GOK Supplemental Questionnaire Response November 5, 1992, Exhibit DD–7 at 7. In addition, the Plan makes abundantly clear that the Kwangyang Bay industrial sphere will be centered around the "mother" enterprise, that is, the iron and steel industry, and its subsidiary and related industries. Id. at 9. Therefore, we determine that the first prong of the infrastructure test is not met.

With regard to the second prong, both POSCO and the GOK report that POSCO is the primary user of the infrastructure at Kwangyang Bay. Only eight out of 52 other companies located in the Kwangyang Industrial Estate use the Kwangyang port facilities. See GOK questionnaire response, at Exhibit D–10. In addition, the GOK states: "the vast majority of the goods shipped in and out of the port are by POSCO." GOK questionnaire response, at 53.

The construction of the Kwangyang Steel Works caused a shortage of industrial water, which prompted the Ministry of Construction to construct a second dam in the area and to expand the pipe facilities. While the construction and improvement of the waterway was for the benefit of both potential and existing users in the Kwangyang Bay area as well as POSCO, the facts on the record suggest that had POSCO not constructed the Kwangyang Steel Works, there would have been no need for the expansion of the industrial waterway in the Kwangyang area.

The GOK also built a road to the site and a railroad to a station near POSCO's facility. POSCO is the dominant user of both the road to the site and the railroad station near its facility. See GOK Questionnaire Response at 50.

Based on all of this information, we determine that the infrastructure is used primarily by POSCO, not by more than a specific enterprise or industry, or group of enterprises or industries. Therefore, the second prong is not met.

With respect to the third prong, equal access on the basis of neutral criteria, we determine that the information on the record is not conclusive. However, because the nature of the infrastructure provided to POSCO at the Kwangyang Bay Industrial Estate fails at least two out of the three prongs of our test, we determine that the provision of infrastructure is specific.

Both petitioners and respondents suggest that Carbon Steel Wire Rod From Saudi Arabia; Final Affirmative Countervailing Duty Determination, (Carbon Steel Wire Rod) supports their arguments. See 51 FR 4206, (February 3, 1986). Respondents suggest that Carbon Steel Wire Rod has set a precedent for examining an industrial estate within the framework of a national system. Although we examined an industrial estate that was not under investigation in Carbon Steel Wire Rod, we did not base our determination on this information. With regard to the first prong, we stated that "the Saudi government does not limit who can locate in any of the industrial estates, including Jubail, and that basic infrastructure is not countervailable as a regional bounty or grant." The methodology in Carbon Steel Wire Rod supports our analysis of Kwangyang Bay Industrial Estate as an individual estate, because our finding was based on the specific industrial estate in question, Jubail. However, in our analysis of Kwangyang, unlike our analysis of Jubail, we determined that Kwangyang Industrial Estate did not meet the first prong of our three-prong test.

With regard to the second prong, we stated in Carbon Steel Wire Rod: "We found no evidence that any of the primary, light, or support industries in Jubail has [sic] been or is [sic] being prohibited from using any of the infrastructure facilities in Jubail * * *. We also ascertained that a wide variety of enterprises and industries use the infrastructure in Jubail." *Id. at 4211. In contrast, we found that POSCO is the primary user of all infrastructure at Kwangyang Bay Industrial Estate.*

Finally, in Carbon Steel Wire Rod, we found that "the infrastructure in Jubail is available on equal terms for use by all companies and industries locate[d] in that industrial estate." *Id.* at 4211. In this case, we found that the information on the record was inconclusive with respect to whether industries had equal access to the facilities at the Kwangyang Bay industrial estate.

For these reasons, we conclude that our determination with respect to the provision of infrastructure at Kwangyang Bay industrial estate is consistent with that made in Carbon Steel Wire Rod.

To measure the benefit, we used the grant methodology as described in § 355.49(b)(1) of the Proposed Rules. We treated the costs of constructing the infrastructure incurred by the GOK as nonrecurring grants in each year in which the costs were incurred. We did not use the cost of POSCO's long-term fixed-rate debt listed in § 355.44(2)(i) of the Proposed Rules as the first-choice discount rate because we have found virtually all of POSCO's long-term loans countervailable. Instead, we used the average cost of long-term fixed-rate debt in Korea, the three-year corporate bond rate on the secondary market, the second choice listed in § 355.44(2)(i) of the Proposed Rules. We then divided the benefit attributable to the POI by POSCO's total sales. On this basis, we calculated estimated net *ad valorem* subsidies of 0.74 percent for certain hot-rolled carbon steel products, 0.58 percent for certain cold-rolled carbon steel products, 0.44 percent for certain carbon steel cut-to-length plate, and 0.30 percent for certain corrosion-resistant carbon steel products.

Dockyard Fees

Petitioners alleged that respondents benefitted from preferential port charges as part of the Iron and Steel Industry Rehabilitation Order. We determine that respondents did not receive preferential port charges under this program because the program was terminated in 1986. However, during the course of our investigation, we discovered that POSCO enjoys the use of 15 berths in the Kwangyang Bay port facility at no charge. The GOK normally charges a user fee, or dockyard fee, for the use of berths at all of Korea's ports. We countervailed this benefit in the preliminary determinations.

In both their case brief and their rebuttal brief, petitioners assert that the Department ruled correctly in the preliminary determination by countervailing the benefit from the free use of fifteen port berths. See, Petitioners' Case Brief, (May 6, 1993), and Petitioners' Rebuttal Brief (May 11, 1993). Respondents claim that POSCO's exemption from dockyard fees is based on a statutory provision that entitles a company that built port berths and then deeded them back to the government to an exemption of dockyard fees. In addition, the provision gives the company the right to collect fees up to the amount of the investment. See, Respondents' Case Brief (May 6, 1993). Therefore, according to respondents, the GOK is merely reimbursing POSCO for expenses POSCO incurred to build the berths.

Both POSCO and the GOK reported in their questionnaire responses that POSCO uses 15 berths (eight raw material and seven finished goods berths) free of charge, and that POSCO is the only company located in Kwangyang Bay Industrial Estate that does not pay dockyard fees for the use of these berths. Other users of these berths are required to pay POSCO berthing fees as set out in the GOK tariff schedules. Because this privilege is limited to POSCO and because the privilege relieves the company of costs it would otherwise have had to pay

absent the privilege, we determine the free use of 15 berths by POSCO in the Kwangyang Bay Industrial Estate constitutes a countervailable benefit.

The provision of infrastructure at Kwangyang Bay and the exemption from payment of dockyard fees are two separate programs. Even if we viewed the non-payment of dockyard fees as repayment by the government for POSCO's assumption of the costs of constructing the berths, we would still find the exemption to be countervailable. If the government had paid for the costs of construction of berths dedicated solely or principally to POSCO's use, we would have found such government expenditures to constitute a countervailable infrastructure subsidy to POSCO, just as we are finding the three berths actually built by the GOK to be part of the overall infrastructure benefit to POSCO.

The exemption from payment of the dockyard fees, with or without government funding of the construction of the 15 berths, constitutes a separate benefit to POSCO over and above any potential benefit from the actual construction of the berths. As it happens, there is naturally no countervailable benefit to POSCO resulting from the construction of the 15 berths because POSCO funded the construction itself. The GOK cannot claim that the exemption from payment of the dockyard fees is an "offset" to a countervailable benefit because there is no countervailable benefit *per se* from the construction of the 15 berths; nor can the GOK claim the exempted dockyard fees are an "offset" to some hardship POSCO incurred as a result of building the berths itself. After all, POSCO built the berths for its own benefit and, as we discussed earlier, even if the GOK had built them for POSCO, we would have countervailed the construction funding as a specific infrastructure benefit.

Each exemption from payment of the dockyard fees, or "reimbursement" to POSCO, creates a countervailable benefit as it occurs because the GOK is relieving POSCO of an expense the company would have otherwise incurred. This is true regardless of whether we consider the relieved expense to be construction funding or a generally applicable user fee.

To measure the benefit, we determined the amount that POSCO would have had to pay for the use of the berths during the period of investigation from information provided in respondents' January 19, 1993 supplemental response. We then divided this benefit by POSCO's total sales. On this basis, we calculated estimated net *ad valorem* subsidies of 0.01 percent for certain hot-rolled carbon steel products, 0.01 percent for certain cold-rolled carbon steel products, and less than 0.005 percent for certain carbon steel cut-to-length plate and certain corrosion-resistant carbon steel products.

4. Reserve for Export Loss

Under Article 22 of the Tax Exemption and Reduction Control Act (TERCL), a corporation engaged in export activities can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. If certain export losses occur, they are offset from the reserve fund. Any amount that is not used for offset must be returned to the income account and taxed over a three-year period, after a one-year grace period. The balance in the reserve fund is not subject to corporate income tax in that year, although all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the one-year grace period expires.

The following producers and exporters of the subject merchandise received benefits under this program during the POI: Dongbu, POSCO, Union, Daewoo, Dongbu Corporation, and Dongkuk Industries.

We determine that this export reserve program confers a benefit that constitutes an export subsidy because it provides a deferment, contingent upon export performance, of direct taxes. To calculate the benefit conferred by this program, we followed the methodology that was previously used in Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Republic of Korea: Final Negative Countervailing Duty Determination, 54 FR 15513, 15515 (1989) ("Industrial Belts") and in Certain Stainless Steel Cooking Ware from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 51 FR 42687 (1986) ("Cooking Ware"). We calculated the tax savings by multiplying the amount maintained in the reserves by the companies' corporate tax rates. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefit, the amount of the companies' tax savings was multiplied by a short-term benchmark provided by respondents (12.5 percent). We also used this methodology with respect to benefits provided by the reserve for overseas market development and calculated an *ad valorem* rate for these two programs (see below).

5. Reserve for Overseas Market Development

TERCL Article 23 operates in a similar fashion to Article 22, cited above. This provision allows a corporation engaged in export activities to establish a reserve fund for overseas market development amounting to one percent of its foreign exchange earnings from the export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning an amount equivalent to the expense to the income account. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account after a one-year grace period. As is the case with the reserve for export loss (see Article 22, above), the balance of the reserve fund is not subject to corporate income tax in that year, although all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the one-year grace period expires.

The following producers and exporters of the subject merchandise received benefits under this program during the POI: Dongbu, Union, Daewoo, Dongbu Corporation, Dongkuk Industries, Hyosung, Hyundai, Samsung, Ssangyong, and Sunkyong.

We determine that this export reserve program confers a benefit that constitutes an export subsidy because it provides a deferment, contingent upon export performance, of direct taxes. The benefits from this program were calculated using the same methodology as that used for the reserve for export loss. On this basis, we calculated the estimated net *ad valorem* subsidies the combined benefits from both reserves of 0.02 percent for certain hot-rolled carbon steel products, 0.04 percent for certain cold-rolled carbon steel products, 0.02 percent for certain carbon steel cut-to-length plate, and 0.09 percent for certain corrosion-resistant carbon steel products.

6. Unlimited Deduction of Overseas Entertainment Expenses

Petitioners allege that the Korean steel companies referenced in the Petition may receive countervailable benefits under Article 18–2(4) of the Corporation Tax Act (Unlimited Deduction of Overseas Entertainment Expenses). Petitioners assert that deductions for domestic entertainment expenses are limited by a ceiling that is calculated according to an established formula, but

that deductions for overseas entertainment expenses are not subject to a cap.

The GOK acknowledges that only domestic entertainment expenses are subject to a ceiling, which is based on the amount of a company's paid-in capital and its sales volume. The following trading companies claimed overseas entertainment expenses during the relevant tax year: Daewoo, Dongbu Corporation, Hyosung, Hyundai, Samsung, Ssangyong, and Sunkyong. The only producer of the subject merchandise that claimed this expense during the relevant tax year was Union. Respondents argue that, to the extent that this program provides any countervailable benefits, they should be measured by the difference between the overseas entertainment expenses claimed and the capped expenses claimed in the domestic market.

Because entertainment expense deductions are unlimited only for export business activities, we determine that this program confers benefits that constitute countervailable subsidies. To calculate the countervailable benefit from this program, we determined the amount of entertainment expenses that would have been allowed if overseas entertainment expenses had not been factored out of the cap formula. We then subtracted this amount from the total amount of domestic and overseas entertainment expenses actually claimed and multiplied the result by the corporate income tax rate provided by respondents.

On this basis, we calculated estimated net *ad valorem* subsidies of less than 0.005 percent for all classes or kinds.

7. Reserve for Investment

Industries that engage in manufacturing and mining using production facilities outside of metropolitan Seoul are allowed to establish a reserve amounting to ten percent of the value of their assets used in these activities. The reserve operates in the same manner as the reserves for export loss and overseas market development (described above), *i.e.*, any amounts in the reserve must be returned to income over a three-year period. POSCO used this reserve during the POI.

Because this reserve provides benefits to only those industries that use certain production facilities outside of metropolitan Seoul, we determine that this program is a regional subsidy, as described at § 355.43(b)(3) of our regulations. We measured the benefit as follows.

We calculated the tax savings by multiplying the amount maintained in the reserves by POSCO's corporate tax rate of 39.75 percent. We treated the tax savings on these funds as short-term interest-free loans, and multiplied the amount of POSCO's tax savings by a short-term benchmark provided by respondents (12.5 percent). On this basis we calculated estimated net *ad valorem* subsidies of 0.04 percent for certain hot-rolled carbon steel products, 0.03 percent for cold-rolled carbon steel products, 0.02 percent for certain cut-to-length plate, and 0.02 percent for certain corrosion-resistant carbon steel products.

8. Duty Drawback

Petitioners alleged that the steel industry receives countervailable duty drawback on excess wastage or recoverable or resalable scrap and on other items that are not physically incorporated into the finished product. Petitioners also argue that the Department found at verification that Union, PSI and POCOS received excess duty drawback.

The GOK contends that, although all producers subject to this investigation qualified for and received drawback of duties on imported inputs, these rebates applied only to inputs that are physically incorporated into the exported merchandise.

In addition, respondent steel producers stated that, with respect to the subject merchandise, they did not receive any duty drawback for items that were not physically incorporated into the finished product.

With respect to the allegation that respondent companies received duty drawback on recoverable or resalable scrap, the GOK states that the Industrial Advancement Administration (IAA) factors recoverable scrap into the calculation of the usage rates based on the economic value of the scrap, and that this is done for all products under Korea's duty drawback regime. The IAA periodically (approximately every three years) conducts surveys of producers of exported products in order to obtain raw material input usage rates for manufacturing one unit of output. In situations where production methods are similar and technology relatively stable, the IAA issues an average input usage rate. However, the GOK states that if a producer becomes appreciably more efficient than the average, it is supposed to use its own rate. Otherwise, if it is inspected and found to be overcompensated for its duty drawback, it is liable for a penalty assessment. In addition, since POSCO operates the only integrated steel mill in Korea, POSCO's actual production records are used for those inputs that are used only by POSCO at an earlier stage of production.

The Department has previously determined that duty drawback is allowed for certain products that are not physically incorporated into the exported items under the Korean duty drawback system. See, Stainless Steel Cooking Ware, 51 FR 42867, 42870 (1986). Accordingly, in our supplemental questionnaire we asked the GOK whether the standard cited in the IAA's internal guidelines, whereby only physically incorporated raw materials are eligible for drawback, applies to all products exported from Korea or is limited to the subject merchandise. The GOK responded that this standard applies to all merchandise exported from Korea and that it was issued in April, 1985.

Consistent with the Subsidies Code of the General Agreement on Tariffs and Trade, the Department does not consider duty drawback provided on goods that are physically incorporated into the exported product, making normal allowance for waste, to be a countervailable subsidy. See, § 355.44(i)(4)(i) of the Department's Proposed Regulations. Respondents have stated, and our verification confirmed, that none of the producers subject to this investigation received duty drawback on inputs that were not physically incorporated into the exported product. The GOK has further stated that it prevents the receipt of drawback on excessive waste/scrap by factoring recoverable scrap into the calculation of the usage rates based on the economic value of the scrap. Our verification confirmed that POSCO, the only company having integrated steel-making facilities, appropriately factored recovered scrap into its calculated usage rates. None of the producers we verified, except Union and PSI, received excessive duty drawback. We did not find that duty drawback by POSCO was excessive. However, we found that PSI claimed and received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. We also found at verification that, for some of its cold-rolled steel products, Union claimed duty drawback at the higher, standard rates when it should have claimed duty drawback at its own usage rate, which was lower than the standard.

Accordingly, we have calculated the countervailable benefits received by Union and PSI by applying to each company's total drawback claim for the POI the ratio of the excessive amount of the claimed usage rate to the total usage rate. On this basis we calculated estimated net *ad valorem* subsidies of

0.01 percent for certain cold-rolled steel products, 0.01 percent for certain corrosion-resistant carbon steel products, and less than 0.005 percent for certain hot-rolled carbon steel products and certain cut-to-length plate.

9. Preferential Utility Rates

Petitioners alleged that POSCO receives discounts on electricity, water, gas and railroad charges under the Iron and Steel Industry Rehabilitation Order at both its Pohang and Kwangyang facilities. We find that countervailable benefits were provided to the steel industry only with respect to certain discounts applied to electricity charges for certain firms.

In its response to the questionnaire, the GOK stated that the Iron and Steel Industry Rehabilitation Order was terminated in 1986. The steel companies also stated that they did not receive discounts under the Order. In response to further questions by the Department, the GOK stated that no other laws conferred discounts on the iron and steel industry, and POSCO stated that it did not receive any other utility discounts. The respondents also stated, and we verified, that the steel producers paid electricity and water charges at rates specified in published utility rate charts, except that certain discounts were applied to electricity charges for some companies. At verification, we found that all steel producers in fact did receive discounts on their electricity charges. Because these discounts were not reported, and since we therefore had no information to verify with respect to whether the discounts were selectively provided, we determine that, as BIA, these discounts are selectively provided.

At verification, we found that steel producers received two types of discounts. One discount is known as a "power factor" discount and usually ranges from zero to five percent of the base charge for electricity usage. This type of discount was received by POSCO and Dongbu. A second discount was received by POSCO and POCOS in certain months when the companies limited their power usage in response to requests from the power company (KEPCO) to do so. The latter discount was provided for in a written agreement between POSCO and KEPCO.

To measure the benefit from these discounts, we calculated the ratio of the discounts received to total electricity charges in the months examined at verification and applied this ratio to each company's total electricity expenses for the POI. For each company, we then divided this total benefit for the POI by the company's total sales. On this basis, we calculated estimated net *ad valorem* subsidies of 0.03 percent for certain hot-rolled carbon steel products, 0.03 percent for certain cold-rolled carbon steel products, 0.05 percent for certain carbon steel cut-to-length products and 0.02 percent for certain corrosion-resistant carbon steel products.

10. Short-term Export Financing

We verified that during the POI the only respondent to receive short-term loans contingent on export was the Pohang Coated Steel Company (POCOS), which received three short-term export loans during the POI.

To measure the benefit, we compared the interest paid on these loans during the POI with the interest that would have been paid using the benchmark short-term interest rate supplied by respondents (12.5 percent). On this basis, we calculated estimated net ad valorem subsidies of less than 0.005 percent for all classes or kinds.

B. Programs Determined Not to be Countervailable

We determine that the following programs do not provide subsidies to manufacturers, producers, or exporters in Korea of certain flat-rolled steel products.

1. Government Assistance for the Construction of POSCO's Integrated Steel Mill at Kwangyang Bay (Land Transfer)

In their case brief, petitioners reassert that the GOK provided POSCO with land for its Kwangyang facility at preferential rates or free of charge. See, Petitioners' Case Brief, (May 6, 1993). Respondents state that POSCO's land purchases and land reclamation were verified and cite to POSCO's verification report. See, Respondents' Rebuttal Brief, (May 11, 1993).

In our preliminary determination, we categorized government assistance for the construction of POSCO's integrated steel mill at Kwangyang Bay as an item for which we needed more information. The GOK and POSCO assert that the majority of the land (about 70 percent) was acquired through the process of land reclamation. See, POSCO's Verification report at 13. POSCO was able to reclaim land from the Kwangyang Bay pursuant to the Public Water Surface Reclamation Law. See, POSCO's Verification Exhibit GOK–19. POSCO obtained GOK approval and paid the costs for land reclamation. There is no evidence on record to suggest that the GOK accorded POSCO preferential treatment in allowing POSCO to reclaim the land.

The majority of the remaining land was purchased from private land owners through the local government, which served as POSCO's agent. At verification, we examined independent studies and other documentation which showed that POSCO had paid the market value for the purchased land. Accordingly, we determine that no subsidy for land has been provided to POSCO.

2. Exemption from Acquisition Tax in Rural Areas

Petitioners allege that POSCO, under the Law for the Promotion of Income Sources in Rural Areas, was exempted from paying the acquisition tax on purchases of land, buildings, and capital equipment at Kwangyang Bay Industrial Estate.

The GOK states that Article 110–3 of the Local Tax Act exempted POSCO from the two percent tax on immovable property while in effect. The GOK further notes that POSCO was not eligible for the general exemption for companies that relocate to rural areas. POSCO states that it benefitted from this law between 1983 and 1987, when it was acquiring land and buildings for its Kwangyang facility. According to POSCO, the exemption expired on December 31, 1987, although the law was not formally terminated until a year later. Since 1987, POSCO has paid tax on all acquisitions. According to the GOK, the benefit from this program was immediate since the tax that did not have to be paid was due when the property was acquired. The GOK further states that no successor laws have been passed since the termination of this provision that confer an exemption on POSCO from the acquisition tax.

At verification, we examined the calculations of the acquisition tax that would have been paid on the property acquired between 1983 and 1987, had POSCO been required to pay it. We also examined POSCO's records and determined that POSCO has paid the acquisition tax on all immovable property since January of 1988. Because this tax exemption was nonrecurring, there was no benefit during the POI.

3. Selective Depreciation Due to Revaluation of Assets

TERCL Article 56–2 (Special Treatment for Revaluation of Assets at the Time of Going Public) allows a company that is making an initial public offering to revalue its assets without meeting the requirement in the Asset Revaluation Act of a 25 percent change in the wholesale price index since the company's last revaluation. Petitioners allege that the GOK has administered

Article 56(2) in a manner that provided specific benefits to POSCO with respect to its 1989 revaluation, and have submitted data concerning the size of POSCO's revaluation relative to other companies that revalued under Article 56(2). Petitioners maintain that this revaluation has allowed POSCO to declare a higher amount of tax deductible depreciation than it otherwise would have.

We initially investigated whether the Korean government provided POSCO with a specific exemption from the requirements for asset revaluation by allowing POSCO to revalue in 1982 and 1988/1989, despite the fact that Korea's wholesale prices increased by only 5.09 percent in the interim—less than the required 25 percent. Respondents provided the following information, which we subsequently verified, concerning TERCL Article 56(2) and its application to POSCO's revaluation.

POSCO was partially privatized in 1988, a process that culminated in the listing of POSCO's shares on the Korea Stock Exchange on June 10, 1988. Article 56–2 was enacted on November 28, 1987, and applied to all companies making an initial public offering from January 1, 1987 until the provision was abolished effective December 31, 1990. The GOK notes that during this period 316 companies were newly listed on the Korea Stock Exchange, of which 207 revalued their assets under Article 56(2). Pursuant to this Article, companies that listed on the Korea Stock Exchange between January 1, 1987 and December 31, 1988 (as was the case with POSCO) had until December 31, 1989 to revalue their assets. A company that listed its stock after December 31, 1988 had to revalue its assets prior to being listed on the stock exchange. The GOK argues that POSCO acted in accordance with this provision because it listed its shares in June of 1988, and the results of the investigation report on its revaluation were reported to the GOK on September 29, 1989.

We preliminarily determined that the timing of the revaluation was not granted on a selective basis, due to the fact that companies in a wide variety of industries, *e.g.*, fishing, food and beverages, textiles, leather goods, wood products, chemicals, petroleum, and mineral products, among others, also revalued under TERCL Article 56–2. We stated, however, that we required further information concerning the magnitude of the revaluation and whether the methodology used in the revaluation was performed in accordance with standard Korean accounting principles.

From the information available on the record, it appears that POSCO did not revalue more of its assets than is generally allowed under Korean law. The Asset Revaluation Act allows assets to be revalued if they are: (1) Actually used for carrying out the business purposes of the company; and (2) capable of being depreciated/amortized under Korea's tax laws. In addition, non-depreciable/amortizable assets purchased on or before December 31, 1983, may be revalued only once. In the case of POSCO's 1989 revaluation, the vast majority of the revaluation surplus (the newly revalued amount of assets subject to revaluation minus their former value) resulted from increases in the value of machinery and equipment. Revaluation of such assets is permissible under the relevant laws, and there is no evidence that the GOK intervened to allow POSCO to revalue more assets than other firms are allowed to revalue.

After verification, petitioners submitted additional information indicating, according to them, that POSCO's revaluation may have been significantly greater than that of the other companies that revalued. Because the information was untimely, we returned it but requested additional information on this subject. The additional information submitted by petitioners contained data on the amount of assets revalued of only 45 of the 207 companies that revalued pursuant to TERCL Article 56(2). Furthermore, it was not clear from petitioners' data which companies revalued pursuant to Article 56(2) and which revalued in accordance with the general provisions of the Asset Revaluation Act. Because of these shortcomings, and because the information was submitted too late in the proceeding for us to verify, we can draw no conclusions with respect to the relative benefit derived by POSCO from this program.

Accordingly, we reaffirm our holding that POSCO was not provided with a selective exemption from the 25 percent requirement in the Asset Revaluation Act. In addition, we determine that the GOK did not provide preferential treatment to POSCO concerning the method of the revaluation. Since there is no evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation under TERCL Article 56(2) or the method of POSCO's revaluation under the Asset Revaluation Act, we determine that this program is not countervailable.

4. Tax Reserves and Credits

Pursuant to § 355.39 of our regulations (subsidy practice discovered during investigation or review), on February 11, 1993, we asked respondents for information concerning the receipt and selectivity of the following tax programs: reserve for technology development, reserve for investment, reserve for overseas investment loss, investment tax credit, reserve for business rationalization, and the legal reserve.

With the exception of the reserve for investment (discussed above as a countervailable subsidy), we found no evidence at verification that these tax programs are not used by a wide variety of industries. Therefore, we determine that these programs are not selectively provided to the steel industry.

C. Programs Determined Not To Be Used

We determine that the following programs were not used by manufacturers, producers, or exporters in Korea of certain flat-rolled steel products:

1. Tax Incentive for a Factory Located in an Agricultural and Industrial Area.
2. Special Depreciation as a Tax Deductible Cost Contingent on Exports.
3. Export Credit from the Export-Import Bank of Korea.

D. Programs Determined Not To Exist

We determine that the following programs do not exist:

1. Preferential Port Charges—Iron and Steel Industry Rehabilitation Order.
2. Preferential Utility Rates—Iron and Steel Industry Rehabilitation Order.
3. Insurance Benefits.

Critical Circumstances

On March 16, 1993, we published our preliminary negative critical circumstances determinations (58 FR 14200). We found that critical circumstances did not exist with respect to hot-rolled carbon steel flat products, corrosion-resistant carbon steel flat products, and cut-to-length plate, because the export subsidies for all three classes or kinds were preliminarily determined to be *de minimis*. There was no allegation of critical circumstances regarding cold-rolled carbon steel flat products.

We have not received comments from any interested party concerning our preliminary critical circumstances determination, and no information has since been submitted for the record that would alter our determination. Further, as in the preliminary determinations, we find that the export subsidies for each class or kind are *de minimis*.

Accordingly, we determine that critical circumstances do not exist with respect to any of the classes or kinds of merchandise covered by these investigations.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. We also met independently with representatives of six bank and non-bank financial institutions and one academic institution. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Korea that were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 705(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Hot-Rolled Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—4.64%
Certain Cold-Rolled Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—3.76%
Certain Corrosion-Resistant Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—2.34%
Certain Cut-To-Length Carbon Steel Plate
Country-Wide *Ad Valorem* Rate—3.46%

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain steel products from Korea.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-15635 Filed 7-8-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-201-810]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon, Thomas McGinty, or Sarah Givens, Office of Countervailing Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2786.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of certain steel products. For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations (57 FR 57813 (December 7, 1992)), the following events have occurred.

On December 18, 1992, we issued supplemental questionnaires to the GOM, AHMSA, and IMSA. On January 11, 1993, we received responses from the GOM, AHMSA, and IMSA, and on February 8, 1993, we initiated an investigation into AHMSA's equityworthiness in 1990 and 1991.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935).

We verified the information used in making our preliminary determinations and the responses received on January 11, 1993, from March 22 through April 2, 1993.

On April 6, 1993, we terminated suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see, Suspension of Liquidation section, of this notice).

Parties submitted case and rebuttal briefs on May 6, 1993, and May 10, 1993, respectively. The General Issues hearing was held on May 5 and 6, 1993. The Mexican country-specific hearing was held on May 12, 1993.

Scope of Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise, as defined in the Scope Appendix that is attached to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria. These two "classes or kinds" of merchandise are: (1) Certain corrosion-resistant carbon steel flat products and (2) certain cut-to-length carbon steel plate. Comments regarding the scope of these investigations including comments on American Goods Returned and Grade E sheet are addressed in the Scope Appendix.

Injury Test

Because Mexico is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise materially injure, or threaten material injury to, U.S. industries. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reason of imports from Mexico of the subject merchandise (57 FR 38064, August 21, 1992).

Respondents

The GOM is a respondent for each class or kind of merchandise subject to these investigations. The following is a list of the selected respondent companies for each class or kind of merchandise subject to these investigations:

Certain Corrosion-Resistant Carbon Steel Flat Products:
- Industrias Monterrey, SA de CV (IMSA)
- Hojalata y Lamina, SA de CV (HYLSA)

Certain Cut-To-Length Carbon Steel Plate:
- Altos Hornos de Mexico, SA de CV (AHMSA)

Use of Best Information Available for HYLSA

Section 776(c) of the Act requires the Department to use the best information available (BIA) "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *".

One of the companies in these investigations, HYLSA, submitted a letter to the Department on October 5, 1992, stating that it would not be responding to the Department's questionnaire. On October 5, 1992, we also received the GOM's response which contained limited information regarding programs from which petitioners alleged HYLSA had benefited.

On November 18, 1992, we sent a letter to the GOM informing them that in cases where the government responds on behalf of a non-responding company, we will use the government's response to the extent that it serves to establish non-use of certain programs by the company and to the extent that it serves to establish that certain programs used by the company are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries (*i.e.*, non-specific programs). The letter stated that our use of the GOM's response in these two respects would be contingent upon the GOM's certification that non-use and non-specificity could be verified entirely from government books and records. We requested that the GOM respond to this letter with any pertinent information regarding programs under investigation and HYLSA's non-use of such programs.

Based on the GOM's November 23, 1992, response to our letter, we gave the GOM an opportunity to provide evidence at verification of non-use of the following programs: FOMEX, CEPROFIs, Nafinsa Debt Forgiveness, Nafinsa Short-term Loans, and Banobras Line of Credit. Based on information included in the GOM's January 22, 1993, letter, the Department also agreed to examine evidence of the non-countervailability of HYLSA's debt restructuring. The GOM did not, however, schedule any verification meetings concerning this restructuring.

In a March 5, 1993, letter to the GOM, the Department informed the GOM that, because it had not scheduled any meetings to verify the non-countervailability of HYLSA's debt restructuring, we did not intend to verify that program. In the same letter, we also declined the GOM's request to examine the PITEX program with respect to HYLSA because their November 23, 1992, questionnaire response did not state that HYLSA did not use PITEX, and because the GOM did not provide any new evidence with respect to the countervailability of the PITEX program.

Based on the GOM's questionnaire response with respect to the non-use by HYLSA of alleged countervailable programs and our verification of that response, we determine that HYLSA did not use five countervailable programs during the period of investigation. These are:

1. FOMEX;
2. CEPROFIs;
3. Nafinsa Debt Forgiveness;
4. Nafinsa Short-term Loans; and
5. Banobras Line of Credit.

For the remaining programs (except for those programs that are AHMSA- or IMSA-specific), we have used BIA because: (1) The GOM did not establish non-use; or (2) the GOM did not establish non-specificity. We have applied BIA to these programs individually. For purposes of clarity, we have divided our application of BIA into two sections: (1) Hylsa-specific programs; (*i.e.*, 1987 equity infusions from the GOM and debt restructuring agreements); and (2) other government programs; (*i.e.*, FONEI, Bancomext pre-export financing, Bancomext import financing, Nafinsa long-term loans, Nafinsa loan guarantees, Nafinsa Fonei-like financing, IMIS, PITEX, accelerated depreciation allowance, and Article 15 and 94 loans).

Where available, we used petitioners program-specific BIA information taken from either the original petition or petitioners' November 10, 1992, submission. We have reviewed petitioners' calculations and determined that they are methodologically reasonable. Data used in these calculations are supported by information reasonably available to petitioners. For programs (except PITEX) where petitioners did not provide information, we have used the higher of either: (1) The rate calculated for that program in these final determinations, or (2) the highest rate calculated for that program in any previous final determination in a Mexican investigation or review. For PITEX, we have reviewed all of the arguments and consider that the highest rate calculated in any previous final determination is aberrational and therefore inappropriate for use as a BIA rate. Instead, we have chosen the highest non-aberrational rate for PITEX in any previous final determination. (For a further discussion on the Department's selection of the BIA rate for PITEX, see, the Interested Party Comments section of this notice.)

The Department was unable to find a prior rate for three programs where petitioners did not provide any information: FONEI-like Nafinsa financing, Nafinsa loan guarantees, and accelerated depreciation allowance. While these programs are not used by either of the responding companies in these investigations, the GOM provided no evidence that HYLSA either did not use these programs, or that they are not countervailable. In our preliminary determinations, the Department requested comments regarding possible BIA rates for these three programs. Because (1) we have not received any such comments; (2) the Department has

not found use of these programs in any previous Mexican case; and (3) we have no other information on the record from which to derive or calculate rates for these programs, we are assigning as BIA to each of these programs a rate of 0.50 percent *ad valorem*. It is appropriate to assign a rate to each of these programs because the GOM was provided with an opportunity to demonstrate non-use or non-countervailability of these programs. Since the GOM chose not to provide that information, the Department has no choice but to assume that the programs are countervailable and are used by HYLSA. Given that, as BIA, we are assuming countervailability and use, it is appropriate, absent any other information on the record, to apply a rate that is above *de minimis* to each of these programs.

Where the Department has changed its methodology, as discussed in this notice and the General Issues Appendix that is described in the General Issues section of this notice, we have adjusted neither the petitioners' nor the preliminary determination calculations. Notwithstanding our view that the methodological changes described in this notice and the General Issues Appendix represent the most accurate and appropriate methods for identifying and measuring the types of subsidies at issue in these investigations, we do not believe it is necessary to reconfigure the methodological assumptions underlying the petition or preliminary determinations for purposes of applying BIA. The petitioners' allegations and the Department's preliminary determinations were calculated on the basis of methodologies which were accepted as legitimate and reasonable at the time the allegations or determinations were made. Since BIA need not represent the most accurate information, but rather is merely a choice of information available on the record of the investigation, we have determined that modification of BIA rates to reflect new methodological thinking is unwarranted.

The overall rate for HYLSA is 47.84 percent. The program-by-program BIA rates for HYLSA are:

	Percent
1. HYLSA-specific Programs:	
a. 1987 Equity infusions, debt restructuring agreements	31.64
2. Other Programs:	
a. FONEI	0.14
b. Bancomext pre-export financing	0.11
c. Bancomext import financing	0.07
d. Nafinsa long-term loans	1.05
e. IMIS	0.24
f. PITEX	11.85
g. Article 15 and 94 loans	1.24
h. FONEI-like Nafinsa financing	0.50
I. Nafinsa loan guarantees	0.50
j. Accelerated depreciation	0.50
Total	47.84

We included HYLSA's BIA rate when calculating the country-wide rate for certain corrosion-resistant carbon steel flat products on each program. We weighted the *ad valorem* subsidy received by each firm's share of exports to the United States using the export statistics for HYLSA provided by the GOM. The rates for all programs were then summed to arrive at a country-wide rate. In accordance with 19 CFR 355.20(d), we then compared each company's individual rate to the country-wide rate to determine whether the rate for either of the companies involved in these investigations was significantly different from the country-wide rate. HYLSA's rate was significantly different. Therefore, HYLSA is assigned its own company-specific *ad valorem* BIA rate, and its rate is not included in the rate listed at the end of each program section below.

Analysis of Programs

Based on our analysis of the petition, the responses to our questionnaires, verification and comments by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries were not case-specific but rather general in nature. These include:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case briefs and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of these final determinations, the period for which we are measuring subsidies (the period of investigation (POI)) is the calendar year 1991.

Calculation of a Country-Wide Rate

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate on each program for each class or kind of merchandise. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports to the United States. The rates for all programs were then summed to arrive at a country-wide rate for each class or kind of merchandise.

Pursuant to 19 CFR 355.20(d), for each class or kind of merchandise, we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs. Since AHMSA is the only company subject to the certain cut-to-length carbon steel plate investigation, its rate represents the country-wide rate for that class or kind of merchandise. For the investigation concerning certain corrosion-resistant carbon steel flat products, the rate calculated for IMSA represents the country-wide rate because HYLSA's BIA rate was found to be significantly different from the country-wide rate. HYLSA received its own individual company rate and was removed from the calculation of the country-wide rate which was then recalculated using the rate of the remaining corrosion-resistant producing firm under investigation, IMSA. The country-wide rates will be assigned to all other manufacturers, producers, and exporters of each respective class or kind of merchandise.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

Equityworthiness

The Department has consistently held that government provision of equity does not *per se* confer a subsidy. As outlined in the Equity section of the General Issues Appendix, government equity infusions bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Therefore, based on financial information presented in the petition, the Department initiated an equityworthy investigation of AHMSA for the years 1977 and 1979 through 1987. After publication of the preliminary determinations, the Department expanded the equityworthy investigation to include 1990 and 1991. This decision was made in accordance with the Department's regulations which state that "[i]f during an

investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review." See, 19 C.F.R. 355.39(a); and see, Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Director, Office of Countervailing Compliance, and CVD Team (February 8, 1993), which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

In our preliminary determinations, we found AHMSA to be equityworthy in 1977 and unequityworthy from 1979 through 1987. See, Memorandum to Management, from Norbert O. Gannon (November 27, 1992), the public version of which is on file in the Central Records Unit (room B–099 of the Main Commerce Building). After considering all comments, we find no reason to change that finding for these final determinations. Additionally, we find AHMSA unequityworthy for the years 1990 and 1991. See, Memorandum to Barbara E. Tillman, from Norbert O. Gannon (June 21, 1993), a public version of which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Creditworthiness

Petitioners alleged that AHMSA was uncreditworthy during 1977 and from 1979 through 1987, and that any subsidy calculation for long-term loans made during those years should include a risk premium. The Department initiated on and reviewed AHMSA's creditworthiness for the years 1983 through 1987. Based on the information on the record, we determine that AHMSA was creditworthy in 1987, and uncreditworthy in each year during the period 1983 through 1986. (For a more detailed discussion of the creditworthiness analysis, see, Memorandum to Barbara E. Tillman, from Norbert O. Gannon (June 21, 1993), a public version of which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Because we have found AHMSA to be uncreditworthy in each year during the period 1983 through 1986, we have used as our discount rate for equity infusions and grants the rate for loans to uncreditworthy companies which is discussed in the Discount Rate section of this notice. (See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989); Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989), (Proposed Regulations), 355.44(b)(6)(iv)). Because the GOM did not provide any long-term benchmark information or a prime interest rate, we are using a short-term Costo Porcentual Promedio (CPP) based rate as a proxy for both the highest long-term rate and the prime rate in the risk premium calculation. (For a description of the CPP and our calculation of the CPP-based rate, see, the Discount Rate of this notice; see also, Proposed Regulations, § 355.44(b)(6)(iv)(A)(3).) None of AHMSA's countervailable long-term loans were received by AHMSA during the years that we have determined AHMSA to be uncreditworthy; therefore, we have not added a risk premium to the benchmark used in any of AHMSA's long-term loan calculations.

Privatization

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM holds no stock in AHMSA.

In these final determinations, we have decided that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We calculated the portion of the purchase price attributable to repayment of prior subsidies. We then reduced the benefit streams for each of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits from those prior subsidies at the time of privatization. A further explanation of the Department's determination of privatization and these calculations can be found in the Privatization section of the General Issues Appendix. The subsidies allocated to the POI for AHMSA reflect, where appropriate, the application of the privatization methodology.

Hyperinflation Methodology

According to information provided by the GOM, Mexico was hyperinflationary during the years 1983 through 1988. In accordance with past practice, if a country is found to be hyperinflationary and companies in the country adjust for inflation in their financial statements (as is done by AHMSA), the Department will make adjustments, where necessary, to account for hyperinflation in the benefit calculations.

Because Mexico was hyperinflationary during only a portion of the past 15 years (the number of years the Department reaches back to gather information on non-recurring subsidies), indexing for the entire period or converting the amount of the infusions into dollars at the time of infusion (i.e. dollarization) for use in our calculation would inflate the benefit from these infusions by adjusting for non-hyperinflationary as well as hyperinflationary periods. In the preliminary determinations, we adjusted the grant allocation calculations for pre-hyperinflationary infusions once the benefit stream entered the hyperinflationary period. Adjustments for hyperinflation were made to the benefit stream during each year of hyperinflation and stopped once the benefit stream reached the end of the hyperinflationary period.

We have reexamined the hyperinflation methodology used for the preliminary determinations and have determined that for calculating the benefit from equity infusions and non-recurring grants, a loan-based methodology more accurately reflects the effects of hyperinflation. The methodology we have used assumes that, in lieu of a government equity infusion/grant, a company would have had to take out a 15-year loan that was rolled over each year at the prevailing nominal interest rates, which for purposes of our calculation were the CPP-based interest rates discussed in the Discount Rate section of this notice. The benefit in each year of the 15-year period equals the principal plus interest payments associated with the loan at the nominal interest rate prevailing in that year.

Since we have assumed that the infusion/grant was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit stream will be 0 in year 16, just as with the Department's grant amortization methodology. Because nominal interest rates are used, the effects of inflation are already incorporated into the benefit.

This methodology recognizes that, absent dollarization of the subsidy, there is no way given the hyperinflation in 1983–88 to (1) preserve a declining balance in the benefit stream, and (2) reflect accurately the effects of hyperinflation. The methodology we have used in these investigations recognizes that in a hyperinflationary environment, asset appreciation due to inflation can often outweigh normal asset depreciation and cause benefits in some years to be higher than in previous years.

Grant Methodology

The Department's methodology for calculating the net subsidy rate attributable to grants is discussed in the Allocation section of the General Issues Appendix. In the case of Mexico, we have modified this grant methodology to adjust for hyperinflation. These hyperinflation adjustments are explained in the Hyperinflation Methodology section of this notice.

Discount Rate

In order to establish the discount rate for allocating grants and certain equity infusions over time and the benchmark rates for calculating the benefits from countervailable loans, we requested the following information from the GOM: (1) The national average cost of long-term fixed-rate debt, (2) the national average long-term variable interest rate in Mexico, (3) the national interest rate analogous to the U.S. "prime rate," and (4) the highest long-term fixed or variable interest rate commonly available to firms in Mexico. The GOM responded that it either has no data on these interest rates or they simply do not exist. The GOM does state, however, that a close proxy to a national average interest rate is the Costo Porcentual Promedio (CPP), which is the percentage cost of funds for banks.

Because the GOM could not provide any information about the rates mentioned above, we turned to what we consider to be the most appropriate rate for use in the calculation. See, Proposed Regulations, § 355.49(b)(2)(iii). In past Mexican cases, we have used the CPP, a short-term rate representing the percentage cost of funds for banks, as the basis for calculating the most appropriate benchmark or discount rate for use in our calculations. For those years in which there were grants and equity infusions and for which the Department had previously calculated a benchmark interest rate in a prior case, we used the rates calculated in those cases (see, e.g., Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico, 56 FR 26064 June 6, 1991, Final Results of Countervailing Duty Administrative Review: Ceramic Tile from Mexico, 57 FR 24247, June 8, 1992, Final Results of Countervailing Duty Administrative Review: Certain Textile Mill Products from Mexico, 56 FR 12175, March 22, 1991). For those years in which there were grants or equity infusions where no benchmark rates have been calculated in prior cases, we have converted the CPP rate into a discount rate using the standard formula that has been used in past Mexican cases (See, Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico, 57 FR 562, January 7, 1992). We also used this rate as the benchmark interest rate for all long-term peso denominated loans (see, section on various loan programs in this notice).

If a company was uncreditworthy in the year in which the grant was approved, we added a risk premium in accordance with § 355.44(b)(6)(iv) of the Proposed Regulations.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Mexico of certain steel products under the following programs:

1. GOM Equity Infusions (AHMSA)

The GOM made equity infusions in AHMSA in 1977, each year from 1979 through 1987, 1990, and 1991. Shares of common stock were issued for all of these infusions and, according to GOM officials, these infusions were made annually as part of the Government's budgetary process as per the Federal Law on State Companies. At the time of these investments, AHMSA was almost entirely (97 to 99 percent) a government-owned company; a small percentage of stock was held by private investors.

As described in the Equityworthiness section of this notice, we found AHMSA to be unequityworthy in each year from 1979 through 1987, and in 1990 and 1991. Accordingly, we determine that the equity infusions by the GOM into AHMSA in these years were inconsistent with commercial considerations. Because we find that these government equity infusions are provided to a single enterprise (AHMSA), they are specific within the meaning of the countervailing duty law. Because these equity infusions are specific and inconsistent with commercial considerations, we find them to be countervailable.

For measuring the benefit of these infusions and calculating a subsidy rate, we have used a methodology consistent with that presented in the Equity section of the General Issues Appendix. We have modified this methodology to account for hyperinflation (as detailed in the Hyperinflation Methodology section of this notice). We have treated these infusions as non-recurring subsidies (see, Allocation section of the General Issues Appendix). As discussed in the Discount Rate section of this notice, we are using a short-term CPP-based rate as a benchmark discount rate. We allocated the benefit over total sales. On this basis, we determine the net subsidy rate to be 6.14 percent *ad valorem* for certain cut-to-length carbon steel plate.

2. GOM Assumption of AHMSA's Debt (AHMSA)

In February 1986, the GOM negotiated an agreement with AHMSA through which the GOM assumed a portion of AHMSA's debt. One part of this debt assumption was recorded as a reduction in the company's accumulated past losses. For a second part, shares of stock were issued; a third part was held for future capital increases for which new stock was issued to the GOM in 1987. The effective date of the debt agreement was February 1, 1986, but it was not finalized until September 11, 1986. Because of this, AHMSA continued to accrue interest and penalty payments on its books from February to December 1986.

This assumption of AHMSA's debt was provided by the GOM specifically to AHMSA. We consider the portion for which no stock was issued to constitute a grant. For the portions for which stock was issued, we determine that they are countervailable because AHMSA was unequityworthy in 1986. For these final determinations, we are countervailing the full amount of debt assumed by the GOM, including the interest and penalty payments which accrued while the debt remained on AHMSA's books between February 1986 and December 1986. The portions of this debt assumption for which shares of stock were issued are treated as equity infusions. However, we are calculating the benefits from equity infusions and grants using the same methodology (see, Equity and Allocation sections of the General Issues Appendix), the total benefit calculated for both the equity infusion and the grant in 1986 will be the same no matter what portion of the total face value of the assumption is exchanged for shares. Therefore, we have treated the entire debt assumption (principal and interest) as a grant even though AHMSA issued some shares in connection with this debt assumption. We have done this to avoid double counting any portion of the benefit for which shares were issued. Therefore, in the GOM Equity Infusions section of this notice, no portion of this debt assumption has been included in the calculation of the benefit from the 1986 equity infusion or the 1987 equity infusion.

In calculating the subsidy rate, we have treated this total debt assumption sum as a non-recurring grant (see, Allocation section of General Issues Appendix) using the methodology described in the Hyperinflation

Methodology section of this notice and using as the discount rate the CPP-based interest rate calculation described in the Discount Rate section of this notice. At verification, we learned that the full amount of the debt assumption occurred in 1986. Therefore, we have treated the entire amount of the debt assumption as a grant in 1986. Because we have determined that AHMSA was uncreditworthy in 1986, we added a risk premium to the 1986 discount rate used for allocating the 1986 portion of the grant. We allocated the benefit over total sales during the POI. On this basis, we have calculated a net subsidy rate of 6.86 percent *ad valorem* for certain cut-to-length carbon steel plate.

3. 1988 and 1990 Debt Restructuring (AHMSA)

In 1987, the GOM negotiated an agreement with foreign creditors to restructure the debt of AHMSA and several other Mexican parastatal companies. Under the agreement, the parastatal companies remained indebted to the foreign banks. The GOM again negotiated debt restructuring agreements in 1988 and 1990. Under these agreements, the GOM purchased AHMSA's debt from AHMSA's foreign creditors in exchange for GOM debt. The GOM thereby became the creditor for loans included in these agreements.

In these investigations, the Department is only concerned with what may have transpired between the GOM and AHMSA, not with what transpired between the GOM and the foreign creditors. Therefore, the Department has examined these debt restructuring agreements only with regard to possible GOM actions that may have benefited AHMSA under the 1988 and 1990 agreements subject to these investigations.

Our review of all the information on the record at the time of the preliminary determinations indicated that certain terms of the various foreign loans included in the 1988 and 1990 debt agreements may have changed as a result of these agreements, thereby providing a benefit to AHMSA. Accordingly, we preliminarily found the 1988 and 1990 debt restructuring agreements to confer countervailable subsidies because they were specifically provided to AHMSA on terms inconsistent with commercial considerations. We calculated a benefit attributable to the POI by treating the entire amount of restructured debt as a series of short-term interest-free loans.

At verification, we gave the GOM the opportunity to provide information on whether AHMSA's debt restructurings in 1988 and 1990 were limited to a specific enterprise or industry, or group thereof. The GOM declined to provide information on debt restructurings for other industries. Since specificity cannot be verified at the company, the Department has no choice but to find that the 1988 and 1990 debt restructurings were specifically provided to AHMSA. However, to be countervailable, a domestic subsidy must not only be specifically provided, it must also provide a benefit to the company. Therefore, at verification, AHMSA had the opportunity to demonstrate that it did not receive a benefit from these restructuring agreements.

At verification, AHMSA was unable to demonstrate that the 1988 and 1990 agreements conferred no benefit. During the GOM verification, officials stated that, although AHMSA's foreign creditors sold AHMSA's debt to the GOM at a discount in the 1988 and 1990 agreements, the GOM did not pass this discount on to the company. Instead, the GOM entered into loan contracts with AHMSA, using what AHMSA contends are the same terms and conditions of AHMSA's foreign loans under the 1987 restructuring agreement. We examined the 1988 and 1990 agreements and saw that the grace period, interest rate, and payment terms in the 1988 and 1990 agreements were the same as those listed in the 1987 agreement. We also saw documentation that showed that AHMSA has been paying interest on the principal of these loans during the grace period. Each of the 1987, 1988 and 1990 restructuring agreements contained the same grace period extending beyond the POI. Therefore, the principal of the loans arising out of the 1987 debt restructuring agreements should have remained the same when these loans were taken over by the GOM in 1988 and 1990. However, AHMSA could not demonstrate that the total amount of the principal of the loans covered by the 1987 agreement was unchanged by the 1988 and 1990 agreements.

Because we could not verify that none of AHMSA's principal obligations on its debt were forgiven in the 1988 and 1990 debt restructuring agreements, we determine, as BIA, that a portion of principal was forgiven through the 1988 and 1990 agreements and this forgiveness confers a subsidy on AHMSA.

In calculating the subsidy rate for this benefit, we are unable to simply use the difference between the principal following the 1987 restructuring and the principal after the 1988 and 1990 restructuring. If we had been able to trace the 1987 loans through the 1988 and 1990 agreements, we would have used this methodology. Instead, we have calculated a rate based on the BIA assumption that the GOM did pass on to AHMSA the discount benefit of its 1988 and 1990 agreements with foreign creditors. Specifically, we have assumed that the GOM discounted the principal of AHMSA's loans by the same amount that AHMSA's foreign creditors discounted the principal of these loans when they were transferred to the GOM in 1988 and 1990.

In calculating the subsidy rate attributable to this amount, we have treated the principal forgiveness as a non-recurring grant to the company using the CPP-based interest rate described in the Discount Rate section of this notice. We have adjusted these calculations because AHMSA's south division was separated from AHMSA prior to privatization. Under Mexican law, the south division was required to take with it a portion of AHMSA's liabilities equivalent to the share of assets transferred. To fulfill this requirement, AHMSA transferred a portion of its restructured 1990 debt to the south division in 1991. We verified the amount of the transfer and the fact that it was part of the restructured 1990 debt. In order to account for the transfer of liabilities in the calculation, we calculated the benefit on the liabilities transferred to the south division according to the BIA methodology previously described. This amount was then deducted from the face value of the grant in 1991 as calculated using the methodology described in the Hyperinflation Methodology section of this notice. We allocated the benefit over total sales during the POI. On this basis, we calculate a net subsidy rate of 4.00 percent *ad valorem* for certain cut-to-length carbon steel plate.

4. Bancomext Short-term Pre-Export Financing (AHMSA and IMSA)

Banco Nacional de Comerio Exterior, S.N.C. (Bancomext) offers a government program through which short-term financing is provided to producers or trading companies engaged in export activities; any company generating foreign currency through exports is eligible for financing under this program. In providing pre-export financing, Bancomext provides funds to commercial banks in U.S. dollars. These funds are then loaned to Mexican exporters in pesos. Although borrowers make principal and interest payments in pesos, these payments are pegged to U.S. dollars. At verification, we found that the company records the loan in both dollars and pesos, and payments are calculated as the peso equivalent of

U.S. dollar-denominated principal and interest payments. These loans provide financing for working capital (pre-export loans), and export sales (export loans). Both AHMSA and IMSA had Bancomext pre-export financing on which interest was due during the POI.

In its questionnaire response, IMSA provided a list of short-term financing outstanding during the POI in which Bancomext was involved. IMSA stated that although Bancomext was involved in these loans, it acted only as an agent of a commercial bank operating on terms consistent with commercial considerations. Because of IMSA's characterization of these loans as fundamentally commercial in nature, in our preliminary determinations, we did not subject these loans to countervailing duty examination. However, at verification, we found that these loans were, in fact, pre-export loans provided by Bancomext. Since all of the necessary information on IMSA's Bancomext loans was already on the record prior to verification, we have used IMSA's verified information on Bancomext loans for purposes of these final determinations.

Since these loans are available only to exporters, we determine that they are countervailable to the extent that they are provided at preferential rates.

Because loans are provided by Bancomext to commercial banks in dollars and indexed to dollars for repayment, we used a dollar benchmark. The GOM did not provide the information necessary to calculate short-term dollar loan benchmark rates; therefore, we are using the same source for calculating short-term dollar benchmarks used in the most recent final results of an administrative review of a Mexican case, Preliminary Results of Countervailing Duty Administrative Review: Ceramic Tile from Mexico, 57 FR 5997 (February 19, 1992), Final, 57 FR 24247 (June 8, 1992). In that case, when considering short-term loans under the Bancomext program, the Department used as a benchmark interest rate the average of the quarterly weight-averaged effective interest rates published in the Federal Reserve Bulletin. Using this same source, we calculated the short-term benchmark interest rate for the year in which AHMSA and IMSA's loan terms were agreed upon.

Based on our comparison between Bancomext loans made to AHMSA and IMSA and the benchmark interest rate, we find that the interest rates on Bancomext pre-export and export loans are preferential and, as such, countervailable.

To determine the benefit to AHMSA and IMSA, we multiplied the difference between the benchmark rate and the Bancomext rate by the principal and multiplied this amount by the length of the loan divided by 365. Because monthly sales figures are indexed to account for inflation in each company's books, we adjusted the benefit amounts to be on the same terms as the sales figures. Because each company's Bancomext export financing was provided on a product-specific basis, we allocated each company's benefit over its total exports of the subject merchandise during the POI. On this basis, we calculate an estimated net subsidy of 0.02 percent *ad valorem* for certain cut-to-length carbon steel plate and 0.36 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

5. Bancomext Short-Term Import Financing (AHMSA)

Bancomext provides short-term import financing to producers or trading companies engaged in export activities. Bancomext provides a line of credit for Mexican exporters whereby Bancomext disburses funds from this line of credit to the Mexican exporter's foreign supplier of the imported good, or its bank. Bancomext then charges the Mexican exporter interest on the credit. We verified that only AHMSA had Bancomext import financing on which interest was due during the POI. Bancomext import financing is provided by Bancomext in U.S. dollars.

Since these loans are available only to exporters, we determine that they are countervailable to the extent that they are provided at preferential rates.

Because loans are provided by Bancomext to commercial banks in dollars, we used a dollar benchmark. The GOM did not provide the information necessary to calculate short-term dollar loan benchmark rates; therefore, we are using the same source for calculating short-term dollar benchmarks used in the most recent final results of an administrative review of a Mexican case, (Ceramic Tile from Mexico: Preliminary Results of Countervailing Duty Administrative Review, 57 FR 5997, February 19, 1992, Final, 57 FR 24247, June 8, 1992). In that case, when considering short-term dollar-denominated loans under the Bancomext program, the Department used as a benchmark interest rate the average of the quarterly weight-averaged effective interest rates published in the Federal Reserve Bulletin. Using this same source, we calculated the short-term benchmark interest rate for the year in which the AHMSA loan terms were agreed upon.

Based on our comparison between Bancomext import loans made to AHMSA and the benchmark interest rate, we find that the interest rates on Bancomext import loans are preferential and, as such, countervailable.

To determine the benefit to AHMSA, we multiplied the difference between the benchmark rate and the Bancomext rate for import loans due in the POI by the principal, and we multiplied this amount by the length of the loan divided by 365. Because monthly sales figures are indexed to account for inflation in each company's books, we adjusted the benefit amounts to be on the same terms as the sales figures. We then allocated AHMSA's benefit over its total exports during the POI. On this basis, we calculate an estimated net subsidy of 0.07 percent *ad valorem* for certain cut-to-length carbon steel plate.

6. FONEI Long-term Financing (IMSA)

Until its dissolution on December 31, 1989, the Fund for Industrial Development (FONEI) was a GOM trust administered by Banco de Mexico. Designed to foster the efficient production of services and industrial goods by Mexican companies, FONEI was a specialized financial development fund that provided long-term loans at below-market rates. At verification, we were told that any outstanding financing which had been provided by FONEI was now administered by Nafinsa.

In previous Mexican cases (see, e.g. Certain Textile Mill Products From Mexico: Preliminary Results of Countervailing Duty Administrative Review, 55 FR 20504 (May 17, 1990)), we found FONEI financing to be specific because it restricts loan benefits to specific regions of Mexico. In these investigations, the GOM did not provide any new information that would cause us to reach a contrary conclusion in this case.

We verified that IMSA had one FONEI loan outstanding during the POI. This loan had a variable interest rate and was denominated in pesos. Because we could not find a long-term variable rate benchmark, we examined this loan as a series of short-term loans. See, Proposed Regulations, § 355.44(b)(v). As a basis for our benchmark, we have used the methodology described in the Discount Rate section of this notice for converting the CPP rate into a short-term benchmark for the POI. Since the rate on the FONEI loan is lower than the benchmark rate, we determine that this loan is inconsistent with commercial considerations and, as such, countervailable.

To determine the benefit from IMSA's FONEI loan outstanding during the POI, we calculated what the monthly interest payments would have been during the POI at the monthly CPP-based benchmark interest rate and compared these figures to the actual monthly interest payments made during the POI. The total benefit is the sum of the monthly differences between the actual payment and what would have been paid under the benchmark. We then allocated IMSA's benefit over IMSA's total sales during the POI. On this basis, we calculate an estimated net subsidy of less than 0.005 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

7. Nafinsa Long-term Loans (AHMSA and IMSA)

Nafinsa provides long-term financing to Mexican enterprises in various geographical areas of Mexico. Until December 31, 1988, Nafinsa acted as a first-tier bank, *i.e.*, a commercial bank, providing funds directly to Mexican firms. In 1989, Nafinsa began acting as a second-tier bank—a bank which acts as an intermediary between various international lending organizations and Mexican commercial banks. Both AHMSA and IMSA had outstanding Nafinsa long-term loans outstanding during the POI.

In previous Mexican cases, (see, e.g., Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Bars and Shapes from Mexico, 49 FR 161 (August 17, 1984), we found Nafinsa financing to be specific because it restricts loan benefits to specific regions of Mexico. In these investigations, the GOM did not provide any new information that would cause us to reach a contrary conclusion in this case.

We verified that, in its capacity as a second-tier bank for certain types of loans (*e.g.*, ExIm Bank loans), Nafinsa acts solely as an intermediary agent, setting neither the terms of the loans nor providing any of the funds. For these loans the eligibility criteria and the terms of the loans are set by foreign lenders. We also found that Nafinsa still administers (1) loans granted prior to 1989 for which it acted as the first-tier bank, and (2) other types of loans (*e.g.*, World Bank loans) for which Nafinsa contributed partial funding.

At verification, we found that AHMSA had one loan that was received in 1987 and that had outstanding principal and interest payments during the POI. Because the only apparent source of funds for this loan was Nafinsa funds (i.e., Nafinsa acted as both the first- and second-tier bank), we are countervailing the full amount of this loan attributable to the POI.

We also verified that IMSA entered into a loan agreement with Nafinsa in 1988. Funds for this loan came from the World Bank and Nafinsa. Accordingly, Nafinsa acted as an intermediary for World Bank funds and as both executor and lender for the Nafinsa-funded portion of the loan. Consistent with past practice, we have examined only that portion of IMSA's Nafinsa loan that was provided by Nafinsa as both executor and a lender. See, Final Affirmative Countervailing Duty Determination: Fuel Ethanol from Brazil, 51 FR 3361 (January 27, 1986).

Both AHMSA's and IMSA's Nafinsa loans were granted with variable interest rates. As noted in the *FONEI* section of this notice, we were unable to find a long-term variable interest rate benchmark. Therefore, we are using as a benchmark the short-term CPP-based rate described in the Discount Rate section of this notice. A comparison between the benchmark rate and AHMSA's and IMSA's Nafinsa loan rates indicates that these loans were provided on terms inconsistent with commercial considerations. Therefore, we find these loans countervailable.

As previously discussed, petitioners alleged that AHMSA was uncreditworthy from 1983 through 1987. However, because we have determined that AHMSA was creditworthy in 1987, no risk premium adjustment was made to the benchmark.

To determine the benefit to AHMSA and IMSA during the POI, we calculated what the quarterly interest payments would have been during the POI at the quarterly CPP-based benchmark interest rate and compared these figures to the actual quarterly interest payments made during the POI. The total benefit is the sum of the quarterly differences where the actual payment is less than what the payment would have been at the benchmark rate. We then divided the benefit by each company's total sales during the POI. On this basis, we calculate an estimated net subsidy of 0.03 percent *ad valorem* for certain cut-to-length carbon steel plate, and less than 0.005 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

8. PITEX Duty-free Imports for Companies That Export (IMSA)

The Programa de Importacion Temporal Para Producir Produtos Para Exportar ("PITEX" or Program for Temporary Import for Producing Products for Export) was established by a decree published in the Diario Oficial on September 19, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration.

Manufacturers who meet certain export requirements are eligible for the PITEX program. Those who qualify are exempt from paying import duties on temporarily imported goods that will be used in the production of exports. Categories of merchandise eligible for PITEX benefits are raw materials, packing materials, fuels and lubricants, machinery, and spare parts. All raw materials imported under this program must be fully incorporated into the finished product and re-exported (less a specified waste allowance), and fuels and lubricants must be completely consumed during the production process. Machinery imported under PITEX can stay in Mexico for five years initially; after five years, a manufacturer can renew the temporary stay annually, indefinitely. A company can cancel the temporary import of merchandise at any time by (1) re-exporting the merchandise, or (2) converting the merchandise to "permanent import status" by paying the duties applicable, at the rate in effect at the time of conversion. For machinery, the duty rate is applied to the depreciated value of the merchandise.

In prior Mexican cases, we have found PITEX benefits to be countervailable to the extent that they provide duty exemptions on imports of merchandise not physically incorporated into exported products and not converted to "permanent import status." See, Proposed Regulations, § 355.44(i)(4)(i); and prior determinations such as Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico, 57 FR 562, 564, (January 7, 1992); Final Results of Countervailing Duty Administrative Review: Certain Textile Mill Products from Mexico, 56 FR 12175, 12178 (March 22, 1991); and Final Results of Administrative Review: Ceramic Tile from Mexico, 57 FR 24248 (June 8, 1992). In the instant case, respondents have provided no new information or evidence of changed circumstances warranting a reexamination of these determinations in the present case. Therefore, we find PITEX benefits countervailable as an export subsidy, and we have calculated the subsidy rate based on the allocation of PITEX benefits over export sales.

We verified that, of the responding companies, only IMSA used the PITEX program during the POI (except for HYLSA, for which we have determined

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a PITEX rate based on BIA, see, Use of Best Information Available for HYLSA section of this notice). IMSA used the program to import raw materials, consumables (spare parts), and machinery. To calculate IMSA's benefit, we followed the methodology that we have previously used for this program. See, Final Results of Administrative Review: Ceramic Tile from Mexico, 57 FR 24248 (June 8, 1992). We first calculated the duties that should have been paid on the non-physically incorporated items (*i.e.*, everything except raw materials) that were imported under the PITEX program during the POI. We then divided that amount by IMSA's total exports. On this basis, we calculate an estimated net subsidy of 5.34 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

9. IMIS Research and Development (AHMSA)

The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), a government-owned research and development organization, performs independent and joint venture research within the iron and steel industry. Recently, IMIS has expanded its activities, particularly its quality control testing services, to include the petroleum industry.

Under § 355.44(l) of the Department's Proposed Regulations, research and development activity "does not confer a countervailable benefit where the Secretary determines that the results of such research and development have been, or will be, made available to the public, including competitors of the firm in the United States." We verified that IMIS's research arrangements with AHMSA fall into two categories: Joint venture activities and non-joint venture activities. The results of IMIS's joint venture activities are the property of the joint venture participants. The results of the non-joint venture activities are available for a fee to any company that requests it, including steel firms in the United States, *i.e.*, the results are publicly available.

In our preliminary determinations, we countervailed the full value of AHMSA's projects with IMIS using BIA because the information submitted on the record was insufficient to determine which activities were publicly available and which were related to the joint venture.

On January 11, 1993, in a supplemental questionnaire response, AHMSA submitted information clarifying which projects identified on the record were joint venture projects and which were publicly available.

During our verification at IMIS, we asked representatives of IMIS to describe the research programs conducted by IMIS and whether the results of that research were publicly available. The representatives replied that all IMIS research is publicly available and that IMIS had not engaged in joint venture activity with AHMSA or any other company.

At AHMSA, we found that IMIS had, in fact, engaged in a joint venture with AHMSA. We found that the results of IMIS's joint venture activities are solely the property of IMIS and AHMSA, and these results are not publicly available.

Prior to beginning the IMIS portion of our verification at AHMSA, AHMSA submitted a list of services contracted from IMIS for equipment and various processing technologies. We found that the majority of these services were related to the joint venture. In addition, during verification, we found a number of purchase orders for IMIS services which were not previously reported to the Department by AHMSA. We were unable to determine whether these purchase orders were related to the joint venture.

Because IMIS's research assistance is provided only to the iron and steel industry and the petroleum industry, we determine that it is limited to a specific group of industries. However, in keeping with past practice, we find those IMIS projects, products, processes and services that we verified to be publicly available (*i.e.*, the non-joint venture activities) to be non-countervailable. See, *e.g.* Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678–7682 (February 25, 1991); Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada; 54 FR 30774 (July 24, 1989). With respect to the joint venture activities, we determine that the assistance provided is countervailable because the results of the joint venture projects are not publicly available.

In both our original and supplemental questionnaires, we requested information from the GOM to determine the nature and amount of the benefit provided by IMIS to AHMSA. In response, the GOM only stated that AHMSA paid a market price for IMIS's research assistance. At verification, IMIS denied the existence of a joint venture with AHMSA or with any other company. Therefore, we were unable to obtain any possible benchmark information at verification. In the absence of any benchmark information and because we were unable to determine the exact value of IMIS's contributions to the joint venture, we are assuming, as BIA, that IMIS and AHMSA contributed equal amounts in all joint venture related activities. Further, because we were unable to verify that AHMSA's unreported IMIS purchase orders were publicly available non-joint venture activities, we are assuming, as BIA, that these purchase orders were related to the joint venture.

We are treating IMIS's contributions to the non-public joint venture projects as a non-recurring grant (see, Allocation section of the General Issues Appendix). For years in which we have determined AHMSA to be uncreditworthy, we have added a risk premium to the discount rate (see, Discount Rate section of this notice). Since this program is tied to the production of steel, we have divided the amount of the benefit allocated to the POI by AHMSA's total steel product sales. On this basis, we calculate the net subsidy for this program to be 0.18 percent *ad valorem* for certain cut-to-length carbon steel plate.

10. Pre-privatization Lay-off Financing (AHMSA)

In our original questionnaire, we requested information on any action taken in connection with privatization. The GOM's response stated that the GOM did not take any steps prior to the privatization of AHMSA regarding assumption of debt, renegotiation of liabilities or restructuring. AHMSA stated only that GAN (the purchaser of AHMSA) had no special payment terms. When we asked AHMSA in a supplemental questionnaire to provide all existing documentation detailing the agreed upon terms or conditions of the privatization process, the company responded that the GOM had all such documentation.

At verification, however, we learned that the GOM made a large peso loan to AHMSA to cover the severance costs of lay-offs made in 1991. According to GOM officials, these lay-offs occurred prior to privatization and were the result of the GOM's efforts to make the sale of AHMSA more attractive to potential buyers. Officials explained to us that this loan was to be repaid in full, and it was entered in AHMSA's accounts as a liability. However, we verified that the loan did not accrue interest after September 30, 1991, at which time its value was frozen. Moreover, the loan does not have to be re-paid in cash. Instead, it is being paid off by transferring those AHMSA assets that GAN did not wish to purchase, but that were included in the AHMSA sale package.

Since we did not know about this program at the time of our preliminary

determinations, we did not address it in those determinations or in our verification outline. Moreover, because GOM officials only informed us of this prepension financing at verification, not prior to verification, we have no information concerning whether or not the company was relieved of an obligation it would have incurred absent the GOM's financing of these lay-offs. (See, Prepension Programs section of the General Issues Appendix.) Therefore, for these final determinations, we are countervailing this lay-off financing on the basis of BIA.

Because this assistance is recorded as a liability in AHMSA's accounts and no interest is being paid, we are treating the total amount of this financing as a zero interest loan granted on January 1, 1991. We have calculated a subsidy rate for this loan by multiplying the total amount of the loan by the short-term CPP-based interest rate described in the Discount Rate section of this notice. We then allocated the benefits over total sales. On this basis, we determine that this loan provided a net subsidy of 2.95 percent *ad valorem* for certain cut-to-length carbon steel plate.

B. Programs Determined Not To Be Used

We determine that the following programs were not used by either AHMSA or IMSA (for information regarding HYLSA, (see, Use of Best Information Available for HYLSA section of this notice):

- *FOMEX*
- *Nafinsa FONEI-like financing*
- *CEPROFI's*
- *Article 15 and 94 Loans*
- *Accelerated Depreciation Allowance*
- *Nafinsa Loan Guarantees*
- *Nafinsa Debt Forgiveness*
- *Nafinsa Short-term Loans*
- *Banobras Line of Credit*

In addition, in our preliminary determinations, we stated that we needed more information regarding the ALTEX program. Since the preliminary determinations, we have received no information from interested parties as to the nature or possible benefits associated with membership in the ALTEX program. At verification, we found no evidence that ALTEX provides any countervailable benefits to either AHMSA or IMSA.

C. Program Determined Not To Exist

We determine that the Import Duty Reductions/Exemptions program alleged by petitioners does not exist.

Interested Party Comments

The following are country-specific comments only and do not address those issues identified as general issues, in the General Issues section of this notice.

HYLSA BIA

Comment 1: Petitioners contend that, in the preliminary determination, the BIA rate selected by the Department for HYLSA's PITEX benefits was reasonable, and given HYLSA's refusal to cooperate with the Department's investigation, the Department has a duty not to shrink from using BIA with an appropriate adverse inference—the highest viable rate. Moreover, petitioners assert that the Department should not use the PITEX rate calculated for IMSA as a BIA rate for HYLSA. They reason that since HYLSA refused to participate in the investigation, the Department should infer that the investigation would have uncovered information resulting in a higher rate than that proposed by the GOM.

The GOM asserts that the BIA rate selected for HYLSA's PITEX benefits is inappropriate for two reasons. First, relying on *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990), they argue that this rate does not reflect current conditions. The Department has noted that "duty rates in Mexico have been decreasing steadily over the last six years, further reducing any duty liabilities under PITEX." See, Final Results of Countervailing Duty Administrative Review: Ceramic Tile from Mexico, 57 FR 24247, 24249 (June 8, 1992).

Citing the Department's decision in Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Mexico, 56 FR 29621, 29623 (June 28, 1991), the GOM also contends that the 55.67 percent PITEX BIA rate used by the Department in the preliminary determination is inappropriate because it is enormously different from other company rates of zero to five percent. They also argue that the rate selected by the Department is too company-specific because it was calculated for a company that had a one to 75 ratio of export sales to domestic sales. Therefore, the benefit received by this company was allocated over a very small value of export sales, resulting in an unusually high rate.

DOC Position: In determining what rate to use as BIA, the Department follows a two-tiered methodology. The Department normally assigns lower BIA rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for respondents who did not. See, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Brazil, 57 FR 42940 (September 17, 1992). HYLSA did not cooperate in this investigation and, therefore, should be assigned a high rate.

At the same time, however, the Department has indicated that aberrational rates may not be appropriate under certain circumstances. See, Final Determinations of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools From Japan, 58 FR 30144, 30147, (May 26, 1993), and Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia, 57 FR 38465, 38467, (August 25, 1992). We have reviewed the facts underlying the PITEX BIA rate selected by the Department in the preliminary determinations and have determined that the rate was aberrational. That subsidy rate is 400 percent higher than the highest rate found for PITEX in this or any prior Mexican case.

Accordingly, the Department has determined that the rate used in the preliminary determinations was inappropriate for use in these investigations. For these final determinations, we have selected instead the highest non-aberrational rate found in any Mexican case as the PITEX BIA rate for HYLSA. This is an *ad valorem* rate of 11.85 percent, the verified rate for one of the respondent companies in Certain Textile Mill Products From Mexico: Final Results of Countervailing Duty Administrative Review, 56 FR 12178 (March 22, 1991). While the GOM might contend that this rate is also unacceptable because it was taken from a 1987 review and, therefore, not reflective of "current conditions," the Department does not find this argument persuasive. Although PITEX subsidy rates have decreased along with Mexican import duty rates, there is still a reasonable probability that a company could receive a PITEX rate of 11.85 percent. Therefore, we find that this rate carries with it an appropriate adverse inference.

Equity Infusions

Comment 2: AHMSA contends that, in the preliminary determination, the Department improperly measured the benefit to AHMSA from the GOM's equity infusions. The company asserts that the Department's grant methodology was inappropriate for two reasons. First, they argue that adjusting the principal for hyperinflation double-counts the effect of inflation because the effect of any inflation would be taken into account by the interest rate. Second, they assert that because fixed-

VOL 58 ISS 130 JL 9 1993 UMI

rate long-term loans were not available to AHMSA during the relevant period, the benefit of the equity infusions should be measured by the cost of a variable rate, not fixed-rate loan.

Petitioners assert that, if there is hyperinflation between the time the subsidy is received and the review year, and if no adjustment is made for hyperinflation when calculating the review year benefit arising from the subsidy, then the review year benefit will be grossly understated in relation to the denominator. Accordingly, the Department must make adjustments to account for hyperinflation.

Petitioners assert that the Department's choice of discount rates in its preliminary determination was reasonable, and they urge the Department to use these same discount rates in its calculations for the final determination. They argue that the only rates explicitly recommended in § 355.49(b)(2) of the Department's Proposed Regulations are fixed rates, and in its past practice, the Department has used as a discount rate the "weighted cost of capital" which is a fixed rate. Further, petitioners assert that the correct discount rate must be based on data contemporaneous with the subsidy. They note that the Proposed Regulations stipulate that the Department will select a discount rate based upon data for the year in which terms of the subsidy were decided (see, Proposed Regulations, 54 FR 23376).

DOC Position: We agree with AHMSA that, in calculating the benefit stream from equity infusions/grants in a hyperinflationary environment, the Department must adjust in some way for hyperinflation. In a situation of intermittent hyperinflation (which is the situation in Mexico) as opposed to continuous hyperinflation, the Department's traditional grant allocation methodology is inappropriate since it uses a fixed interest rate throughout the entire 15-year allocation period and there is no adjustment to the face value of the infusion/grant. We have determined that the best way to account for the effects of inflation and still allocate the benefits over 15 years is to use a loan-based methodology. This methodology is discussed in the Hyperinflation Methodology section of this notice.

We disagree with petitioners assertion that the Department must use a fixed rate throughout the allocation period. Section 355.49(b)(2) of the Proposed Regulations allows the Department to use a "rate which the Secretary considers to be most appropriate." Because of the hyperinflationary environment in Mexico during part of the 1980s, we determine that the other rates specified in section 355.49(b)(2) of the Proposed Regulations are inappropriate since long-term fixed-rate loans would be unavailable in Mexico. The methodology we have used for these final determinations to allocate the benefits of infusions/grants over time uses as a starting point the rates prevailing in the year of receipt. Therefore, it is based on data for the year in which the terms of the subsidy were decided.

1986 Debt Assumption

Comment 3: AHMSA claims that any interest accruing after the effective date of the debt agreement (February 1, 1986) was the responsibility of the GOM, not AHMSA. Therefore, AHMSA should not be held accountable for either the interest payments or the penalty payments that correspond to the debt assumed by the GOM. They argue that, presumably, the GOM was paying the interest on the assumed loans after February 1. Therefore, no penalty interest was actually incurred and AHMSA's accounting system overstated the actual amount of interest assumed by the government.

AHMSA further argues that a large portion of the amount reported as "interest" actually consists of foreign exchange losses arising from the principal and interest payments. Because neither of these charges constituted a real interest expense to either AHMSA or the GOM, the Department should adjust its calculations to remove this portion of interest from its calculations.

Petitioners contend that, because the interest and penalty payments accumulated on AHMSA's books, these payments were in fact AHMSA's responsibility. Moreover, they note that, absent government intervention, AHMSA would have had to pay the interest and penalty payments on this debt, and it would have experienced foreign exchange losses.

DOC Position: We agree with petitioners. Absent government intervention, AHMSA would have had to pay the interest and penalty payments on this debt, and it would have experienced foreign exchange losses. Further, the facts on the record are: (1) The agreement was not finalized until September 1986; (2) the debt remained on AHMSA's books until December 1986; and (3) interest and penalties on this debt accrued on AHMSA's books from February through December 1986. Therefore, we find that the interest and penalty payments were AHMSA's responsibility until December 1986. As such, we have included these interest and penalty payments in our grant calculations, and we have not made any adjustments for foreign exchange losses since such losses are part of the normal course of business and are not a legitimate offset under the Act.

Comment 4: AHMSA also contends that, because AHMSA was 100 percent government-owned at the time of the 1986 debt assumption agreement, this assumption necessarily increased the GOM's equity investment. Therefore, the Department should treat the 1986 debt assumption as an equity infusion rather than a grant.

DOC Position: AHMSA was not 100 percent government-owned at the time of the 1986 debt assumption. A small percentage of stock was held by private investors. Moreover, shares of stock were not issued for all of this debt assumption.

As discussed in the GOM Assumption of AHMSA Debt section of this notice, the Department would normally treat the portion of this assumption for which shares of stock were issued as an equity infusion; the remainder would be treated as a grant. However, because AHMSA was unequityworthy in 1986, the results of our methodology for treating grants and equity are the same. Therefore, to avoid any double-counting between the debt assumption and AHMSA's 1986 equity infusion, we have treated the total debt assumption as a grant in our subsidy calculation.

Comment 5: AHMSA asserts that the value of the new shares of stock issued in 1986 and 1987 to compensate the government for the debt assumption was double-counted as equity infusions in the preliminary determination.

DOC Position: We agree with AHMSA. Because AHMSA reported the portion of the debt assumption for which new shares were issued in both the total debt assumption figure and the equity infusion figures for 1986 and 1987, the Department inadvertently double-counted this portion of AHMSA debt in the preliminary determinations. We verified the correct amounts and, for purposes of these final determinations, we have removed from our equity calculation the portion of the 1986 and 1987 equity infusions that is attributable to the 1986 debt assumption. This portion has been included in the 1986 debt assumption calculations only.

Debt Restructuring

Comment 6: AHMSA protests the inclusion of the 1987 restructuring agreement in the investigation. It asserts that, despite ample information on the record, the Department did not even raise the issue of the 1987 restructuring

until the first day of the verification at the GOM. AHMSA claims that (1) because the issue was not raised until verification; (2) because of the passage of time since the agreement; and (3) because the company had a different owner (the GOM) at the time of the agreement, company officials were unable to provide detailed traces of each loan affected by the restructuring.

Further, AHMSA asserts that the GOM's role in the negotiation of the 1987 restructuring agreement is clearly indicated in those portions of the agreement that are included in AHMSA's January 11 questionnaire response. As for the effects of this restructuring, AHMSA asserts that the agreement itself, which was examined at verification, provides clear evidence that only three changes resulted from the 1987 restructuring agreement, none of which provided an economic benefit to AHMSA.

Petitioners assert that AHMSA did in fact have plenty of advance warning that the Department would need to examine information regarding the 1987 agreement at verification. First, they point out that it was AHMSA that provided the first record information regarding the 1987 debt restructuring and it is AHMSA that maintains that, in the 1988 and 1990 agreements, the GOM simply "stepped into the shoes" of AHMSA's foreign creditors. Secondly, they note that the Department's verification outline requested that the GOM be prepared to demonstrate that AHMSA's debt obligations to the GOM were identical to AHMSA's debt obligations to its foreign creditors before the 1988 and 1990 agreements. Finally, they point out that the Department suggested four different alternate means of conducting a trace of the loans at verification, yet AHMSA was still unable to provide necessary documentation.

DOC Position: The Department has not "included" the 1987 restructuring agreement in these investigations. AHMSA first mentioned this restructuring agreement in their November 20, 1992, submission. In that submission, AHMSA stated that the conditions of the 1990 credit agreement were the same as those that had applied to AHMSA's contracts with its foreign creditors under the 1987 agreement. In response to our request for further information about the 1988 and 1990 restructuring agreements, AHMSA included in its January 11, 1993, questionnaire response copies of the 1987, 1988 and 1990 debt restructuring agreements, and they explained that the GOM "merely stepped into the shoes of AHMSA's foreign lenders."

Based on this information, we requested in our verification outline that the GOM be prepared at verification to demonstrate that the debt obligations of AHMSA to the GOM were identical to the debt obligations of AHMSA to its foreign creditors before the agreements. At verification, we requested documentation of the loans included in the 1987 agreement only for the purposes of establishing whether or not AHMSA received a countervailable benefit from either the 1988 or 1990 agreement. Without establishing the terms and conditions (including principal) of the 1987 agreement, there is no way for the Department to verify the GOM's claim that subsequent agreements did not in fact change the terms of AHMSA's debt or forgive any of this debt.

Comment 7: Petitioners note that the Department was unable to verify AHMSA's assertion that the GOM's 1987, 1988 and 1990 restructuring agreements with foreign creditors did not change the terms of repayment of outstanding foreign debt in any way that would benefit AHMSA. Accordingly, petitioners argue that the Department should use best information available to measure the subsidy. They assert that these transactions should be considered as debt assumptions by the GOM and should be treated as a grant from the GOM to AHMSA equal to the total amount of the principal included in the agreements. Additionally, they urge the Department to countervail the interest that would have been payable during the POI on this debt.

AHMSA argues that AHMSA received no benefit from the GOM's purchase of a portion of AHMSA's foreign debt in 1988 and 1990 because the terms and conditions of AHMSA's debt were not altered by these transactions.

DOC Position: Because we were unable to verify that none of the principal of the foreign debt included in the 1987 agreement was forgiven as part of the 1988 or 1990 agreements, we have assumed as BIA that the GOM did forgive some of the AHMSA debt that was included in the 1987 agreement. However, the 1988 and 1990 contracts between the GOM and AHMSA clearly state that AHMSA is now indebted to the GOM for the portion of the 1987 debt covered by the 1988 and 1990 agreements. Moreover, we verified that AHMSA is paying interest on this debt. We therefore find petitioners' BIA recommendation to be inappropriate. Instead, we have made the BIA assumption that the GOM forgave the same amount of AHMSA debt that foreign creditors forgave in their agreement with the GOM.

Bancomext Financing

Comment 8: Petitioners argue that because Bancomext reimbursed the commercial bank for the difference between the amount of interest the bank charged AHMSA for short-term pre-export financing and the amount at which Bancomext offered financing to the commercial bank, the Department should countervail the amount reimbursed by Bancomext. Petitioners contend that if the loan were made on commercial terms, the portion of the lender's cost reflected in the reimbursement would have been passed on to the borrower.

DOC Position: We disagree with petitioners. At verification, we observed that on some loans, Bancomext reimburses commercial banks in the manner outlined by petitioners above. However, such reimbursements cannot replace the use of a short-term commercial interest rate as the Department's benchmark. The Department consistently seeks to measure the benefit to the recipient of a countervailable subsidy. However, petitioners' suggested methodology with respect to these loans would not be an appropriate measurement of the benefit to the recipient. By comparing the interest paid on these loans to that which would be paid using a short-term commercial interest rate, the Department has correctly estimated the benefit to the recipient, i.e., the amount by which AHMSA and IMSA benefited from GOM intervention.

Nafinsa Loans

Comment 9: Petitioners contend that, in addition to countervailing AHMSA's Nafinsa loan based on its preferential interest rate, the Department should also countervail the portion of penalty payments on this loan that Nafinsa forgave in 1987.

DOC Position: The amount of this penalty forgiveness is insignificant and does not meet the Department's 0.50 percent threshold for amortizing non-recurring subsidies over time. See, Proposed Regulations, § 355.49(a)(3)(i)(A), and the Allocation section of the General Issues Appendix. Therefore, because this non-recurring subsidy was not received during the POI, we are not countervailing Nafinsa penalty forgiveness.

PITEX

Comment 10: IMSA argues that benefits of the PITEX program are not "tied" to export sales. They point out that machinery imported under the program can be used to produce goods for both the domestic and export

markets, and IMSA did not export at any specified export level, despite their receipt of PITEX benefits. Accordingly, IMSA contends that the PITEX program does not provide export subsidies and that the Department should determine either that the program is not countervailable or, alternatively, that the benefit should be allocated over total sales, not just export sales.

In support of their argument, IMSA cites the Department's decision in Extruded Rubber Thread from Malaysia: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 57 FR 38472, 38476, 38480, 38481 (August 1992). In that case, the Department determined that, even if a subsidy program contains export requirements, the program will not amount to an export subsidy "where the * * * export criteria do not carry preponderant weight" in determining program eligibility and that the Department treats as an "export subsidy" only that portion of a subsidy program wherein "receipt of benefits becomes contingent on export performance" (p. 38476).

DOC Position: In previous cases, the Department has addressed arguments similar to those presented by IMSA. In Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico, 57 FR 562, 564 (January 7, 1992), we found that "the eligibility criteria for the PITEX program limit the benefits to exporters," and that "should a company using PITEX wish to sell its production (incorporating the imported raw materials or produced with the imported equipment) in the domestic market, it must obtain special authorization and pay the corresponding duties, thereby forfeiting the portion of benefits granted through PITEX to merchandise ultimately sold in the domestic market." In Final Results of Countervailing Duty Administrative Review: Certain Textile Mill Products From Mexico, 56 FR 50,858 (October 9, 1991), we determined that "whether or not the Government of Mexico properly authorized the exemption of duties under the PITEX program is not relevant to the fact that [the company] received the benefit of the exemption."

Moreover, we find that IMSA's cite to Extruded Rubber Thread from Malaysia is not appropriate. In that case, the Department verified that receipt of the tax incentive in question is dependent on a review of twelve criteria, only two of which "specifically address the export potential of the proposed product or activity" (57 FR 38475). Further, we found that "companies that produce only for the domestic market may also receive" tax benefits under this program, and that "some companies may be rejected even though their export potential is high" (57 FR 38475).

In contrast, under the PITEX guidelines, receipt of benefits is contingent upon just one criterion; the company must export. We therefore find that the export criterion in this case does "carry preponderant weight" in determining program eligibility and that receipt of benefits under the PITEX program is "contingent upon export performance."

IMIS

Comment 11: Petitioners argue that the evidence on the record to date suggests that IMIS provided certain goods and services to AHMSA on an exclusive basis. Although IMIS has asserted the general availability of a number of projects, there is no evidence in support of this claim. Petitioners request that the Department subject all non-publicly available transactions to countervailing duties. See, Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678–7682 (February 25, 1991).

AHMSA contends that the contractual arrangements between IMIS and AHMSA do not constitute countervailable benefits because they are publicly available. AHMSA further argues that information on the record indicates that IMIS's services were not limited to AHMSA or the Mexican steel industry; current research focuses on the petroleum industry.

DOC Position: Non-publicly available transactions between IMIS and AHMSA are subject to countervailing duty examination. See, Proposed Regulations, § 355.44(l). Contrary to AHMSA's assertions, information on the record, including our verification report, establishes only one IMIS joint venture, the one with AHMSA. The Department cannot assume the existence of other joint ventures, and such an assumption would not constitute substantial evidence that such joint ventures are not limited to AHMSA or to a specific enterprise, industry or group thereof. Furthermore, unlike IMIS's non-joint venture research activities which were publicly available and are not being countervailed, we were unable to verify the public availability of the joint venture activities.

With regard to AHMSA's statement that IMIS's current activities are focused primarily on the petroleum industry and are, therefore, generally available, IMIS historically, and during the POI, provided research for the iron and steel industry, and more recently, the petroleum industry. There is no compelling evidence on the record to suggest that, even now, IMIS has shifted its focus to petroleum. AHMSA's suggestion that the verification report establishes this fact is inaccurate and not supported by an examination of the verification report itself. Furthermore, as noted in the IMIS section of this notice, we find the iron and steel industry together with the petroleum industry to constitute a specific group of industries.

Comment 12: Petitioners contend that evidence on the record indicates that the services rendered by IMIS to AHMSA constitute massive subsidies to AHMSA. Petitioners suggest that, absent verified information, the Department should conclude that AHMSA is subsidized to the same degree that IMIS is subsidized by the GOM.

DOC Position: Although we agree with petitioners that the amount of all non-publicly available research assistance should be countervailed, we do not agree with petitioners suggested methodology. At verification, we established that AHMSA and IMIS entered into a joint venture. Absent IMIS's contribution, AHMSA would have had to contribute the full amount of the investment in the joint venture to accomplish the same research. Therefore, we conclude that the most appropriate methodology is to countervail the full amount of IMIS's contribution to the joint venture as a grant to AHMSA. Since no information was provided regarding IMIS's contribution to the joint venture and since IMIS's denial of the joint venture prevented verification of this issue at IMIS, we are assuming, as BIA, that IMIS contributed an amount equal to the amount AHMSA expended for all joint venture activities. Because 50/50 joint ventures are a common business practice, this is a reasonable assumption and appropriate for use as BIA. In contrast, any subsidization of IMIS does not necessarily bear any relationship to the joint venture arrangement between IMIS and AHMSA.

Comment 13: AHMSA contends that, at verification, IMIS officials provided documentation containing concrete evidence that prices charged to AHMSA were similar to prices charged to other firms. Therefore, there is no basis upon which the Department could determine that IMIS's prices to AHMSA were preferential.

DOC Position: The contracts examined at IMIS covered non-joint venture products and services. These IMIS activities are not being countervailed by the Department as they

were publicly available. IMIS's denial of joint venture activities prevented verification of the form and amount of the assistance provided by IMIS in the joint venture with AHMSA. Given the lack of verification and the Department's discovery of a significant amount of unreported transactions between IMIS and AHMSA, the Department cannot conclude that prices charged for publicly available research results should serve as a benchmark for examining prices on joint venture research results.

Lay-off Financing

Comment 14: AHMSA argues that by closing down an environmentally unsound blast furnace and laying-off workers, the GOM was doing what any private owner might do. In preparing a good for sale, a private owner will often take steps to spruce up the condition or appearance of the good in order to increase that good's sale price. AHMSA contends that the GOM's goal in taking these actions was to maximize the sale price of AHMSA, not to subsidize the company.

DOC Position: The GOM's intent is not the basis for a determination of whether assistance to a company is countervailable. The issue is whether the company benefited from the government's action. (See, *SSAB Svenskrt Staal AB* v. *United States*, 7647 Supp. 650, 657 (CIT 1991).) AHMSA benefited from this financing because, absent financing from the GOM, it would have had to finance the lay-off costs from other sources. As such, the GOM's lay-off financing constitutes a countervailable benefit to AHMSA. Therefore, as discussed in the Pre-privatization Lay-Off Financing section of this notice, we are calculating a rate for this benefit using BIA.

Comment 15: Petitioners argue that the pre-privatization lay-off financing should be treated as a preferential loan until September 30, 1991 (at which time the value of the loan was frozen), and as a no interest loan thereafter. Further, they urge the Department to make a BIA assumption that the loan was made on January 1, 1991, and to calculate the interest rate based on the difference between the original loan amount and the value of this loan as of September 30, 1991.

AHMSA argues that this payment should be treated as a loan and that this loan will be paid in full by the transfer of AHMSA assets to the GOM. They assert that each asset will be credited against the loan balance at its appraised value as of September 1991. Accordingly, AHMSA argues that no account will be taken of any inflation in the value of the assets between the end of 1991 and the date of the final transfer. Although no "real" interest is accruing on the loan, the asset inflation will essentially provide the government an interest rate equal to the Mexican inflation rate.

DOC Position: At verification, GOM officials told us that, when each asset is taken into possession by the GOM, the book value of the asset at that time is credited against the loan balance. Without knowing when each asset was transferred to the GOM, it is impossible to use AHMSA's proposed methodology to determine how much interest would be offset by inflation.

The GOM had full opportunity to provide information on this financing prior to verification, but failed to do so. Therefore, we are calculating the rate for the program based on BIA, and we are treating this financing as a no interest loan that was granted on January 1, 1991.

Other Issues

Comment 16: Petitioners argue that the GOM's forgiveness of the debt of a company related to AHMSA in exchange for AHMSA shares provides a countervailable benefit to AHMSA. Petitioners argue that this debt forgiveness provides a countervailable benefit to AHMSA because AHMSA owns shares in the company.

DOC Position: Petitioners raised this issue for the first time in their case brief, and they have not alleged or offered evidence that this debt for equity swap was inconsistent with commercial considerations or how it benefited AHMSA. Accordingly, we have not considered this issue in reaching our final determinations.

Comment 17: A portion of the assets of Fundadora de Monterrey, S.A. de C.V. (FMSA) were sold together with AHMSA. Petitioners argue that the Department should countervail sales and title taxes on the FMSA assets, taxes which were waived by the GOM.

DOC Position: We disagree with petitioners. At privatization, AHMSA's purchaser also bid on and purchased assets of FMSA, an inactive steel producer. At verification, we found that the GOM waived the sales and title taxes payable under Mexican law on the sale of assets. Although we find that the FMSA assets purchased along with AHMSA should have been subject to sales and title taxes, we have not considered this issue in reaching our final determinations because the FMSA assets do not produce subject merchandise in these investigations.

Verification

In accordance with section 776(b) of the Act, except as noted above, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Mexico, which are entered or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Corrosion-Resistant Carbon Steel Flat Products:
HYLSA—47.84 percent *ad valorem*
IMSA and all other manufacturers, producers, and exporters—5.71 percent *ad valorem*

Certain Cut-To-Length Carbon Steel Plate:
AHMSA and all other manufacturers, producers, and exporters—20.25 percent *ad valorem*

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs Officers to assess countervailing duties on entries of certain steel products from Mexico.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)) and 19 CFR. 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15636 Filed 7–8–93; 8:45 am]

BILLING CODE 3510-DS-P

[C–614–802]

Final Affirmative Countervailing Duty Determination: Certain Corrosion-Resistant Carbon Steel Flat Products From New Zealand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cameron Cardozo, Office of Countervailing Compliance, U.S. Department of Commerce, room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Final Determination:

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in New Zealand of certain corrosion-resistant carbon steel flat products.

For information on the estimated net subsidy, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determination (57 FR 57730, December 7, 1992), the following events have occurred. On December 18, 1992, and on January 25, 1993, we issued supplemental questionnaires to the Government of New Zealand (GONZ) and BHP New Zealand Steel Limited (NZS). On January 11, 1993, and February 3, 1993, we received responses to those supplemental questionnaires.

We conducted verification from February 10 through February 18, 1993. On March 8, 1993, we published in the **Federal Register** a notice postponing the final determination in this investigation in accordance with the postponement of the final determinations in the antidumping duty investigations of the same class or kind of merchandise (58 FR 12935).

The petitioners and respondents submitted their prehearing briefs to the Department on March 24, 1993. On March 26, 1993, the Department returned a prehearing brief to O'Melveny & Meyers, counsel to NZS, because the brief contained new factual information. On March 29, 1993, O'Melveny & Meyers resubmitted a redacted version of the prehearing brief. Both the petitioners and the respondents submitted rebuttal briefs on March 30, 1993. The Department held a case-specific hearing for New Zealand on March 31, 1993. The General Issues hearing was held on May 5 and 6, 1993.

In accordance with article 5, Paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade, on April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see Suspension of Liquidation section, below).

Scope of Investigation

The products covered by this investigation, certain corrosion-resistant carbon steel flat products, constitute one "class or kind" of merchandise, as defined in the Scope Appendix that is attached to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria. This "class or kind" of merchandise is certain corrosion-resistant carbon steel flat products. Comments regarding the scope of this investigation are addressed in the Scope Appendix.

Injury Test

Because New Zealand is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain corrosion-resistant carbon steel flat products from New Zealand materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from New Zealand of the subject merchandise (57 FR 38064; August 21, 1992).

Respondents

The GONZ is the respondent for the class or kind of merchandise subject to this investigation. The following is a list of the selected respondent companies for the class or kind of merchandise subject to this investigation:

Certain Corrosion-Resistant Carbon Steel Flat Products
BHP New Zealand Steel Limited (NZS)

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments by interested parties, we determine the following:

General Issues

Several issues raised by interested parties in this investigation and in other countervailing duty investigations of certain steel products from various countries, were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues case

and rebuttal briefs, as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Period of Investigation

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (POI)) is April 1, 1991 through March 31, 1992, which corresponds to the fiscal year of the only respondent company, NZS.

Creditworthiness

Petitioners alleged that in 1986, when NZS issued preferred shares to the GONZ for the assumption of NZ$ 199 million of NZS debt, NZS was uncreditworthy. The Department reviewed NZS's creditworthiness for the fiscal years ended March 1984, 1985 and 1986. Based on the information on the record, we determine that NZS was creditworthy. For a more detailed discussion of the creditworthiness analysis, see, Memorandum to File dated June 21, 1993, which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Privatization

In 1987, the GONZ sold its 89 percent share ownership and its preference shares in NZS to a private company. In this final determination, we have decided that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We calculated the portion of the purchase price attributable to repayment of prior subsidies. We then reduced the benefit streams for each of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits from those prior subsidies at the time of privatization. A further explanation of the Department's determination on privatization and these calculations can be found in the Privatization section of the General Issues Appendix. The subsidies allocated to the POI for NZS reflect the application of the privatization methodology.

Grant Methodology

The Department's methodology for calculating the net subsidy rate attributable to grants is discussed in the Allocation section of the General Issues Appendix.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in New Zealand of certain corrosion-resistant carbon steel flat products under the following programs:

1. 1985 Reconstruction Agreement

The petitioners contend that the Reconstruction Agreement provided a subsidy to NZS, because the assumption of debt by the GONZ benefitted NZS directly by relieving it of the debt incurred by its wholly-owned subsidiary, NZS Development. This debt assumption was not equal to the value of the NZS shares received by the GONZ. Petitioners state that the difference is a subsidy to NZS.

In order to properly analyze the Reconstruction Agreement, the Department found it necessary to first review the nature of the GONZ's involvement as a major shareholder in NZS Development. The commercial consistency of the GONZ's original investment decision affects our judgment on whether the GONZ's subsequent actions in the Reconstruction Agreement were consistent with commercial considerations. We obtained additional necessary documents to make this determination, such as contemporaneous feasibility studies, during our verification.

NZS and the GONZ entered into a joint venture project in 1980, NZS Development. The purpose of this project was to construct additional mining and steel making facilities, as well as new hot-rolling and cold-rolling mills, which would allow NZS to become a fully integrated steel-producing company. The rights and obligations of the two partners were established in the Formation Agreement and the Planning Memorandum. The Formation Agreement established the activities to be conducted by NZS Development, how those activities would be financed, and what would happen after completion of the construction. The Planning Memorandum outlined certain GONZ commitments to NZS, such as ensuring domestic market share through tariff protection, duty free treatment of imported machinery, adequate supplies of raw materials, and granting special tax treatment.

Under the terms of the Formation Agreement, NZS Development would effect the construction of the production facilities; as the plant groups came on stream, NZS Development would then lease to NZS each plant group from its commissioning date, which is the date when the assets would have been producing at 25 percent capacity over a fourteen-day period, until the transfer date, which would take place three years after the commissioning date. At that time, the plant groups would have been transferred to NZS at full cost with all outstanding liabilities. The GONZ would retain majority ownership of NZS Development until the last of the assets were transferred to NZS.

The development project had start-up capital contributed by the GONZ and NZS. The GONZ contributed NZ$6 million and took a 60 percent interest, while NZS contributed NZ$4 million and took a 40 percent interest. In accordance with the terms of the Formation Agreement, during the course of the joint venture project, the GONZ provided direct financing and guaranteed NZS Development's external financing, for which it charged guarantee fees.

The NZS Development project did not proceed as planned. NZS Development experienced cost overruns, construction delays, and labor strikes. In July 1984, a new government with a different ideological view was elected in New Zealand, and the GONZ began to liberalize and deregulate the New Zealand economy. In order to assess the status of the development project, the GONZ commissioned a study by a team made up of GONZ officials and independent consultants. The main conclusions of the study stated that additional capital investments were necessary to complete the project and that NZS would not be able to handle the estimated debt burden.

Considering the deterioration of the NZS Development project and the significant change in GONZ economic policy, the GONZ no longer regarded itself as a joint venture partner and would not extend support to the project beyond its legal obligations. NZS, on the other hand, believed that the GONZ was legally committed to the project until its completion. As a result, the GONZ and NZS entered into negotiations to dissolve the joint venture arrangement.

In December 1985, the GONZ and NZS signed a Reconstruction Agreement, which superseded the Formation Agreement and the Planning Memorandum. Under the terms of the agreement, NZS Development became a wholly-owned subsidiary of NZS. NZS received all of NZS Development's incomplete assets, NZS Development retained approximately 20 percent of its debt, and NZS agreed to indemnify the GONZ for any cost it incurred under the guarantees provided for the retained debt. The GONZ assumed the

VOL
58
ISS
130
JL
9
1993
UMI

responsibility to repay approximately 80 percent of NZS Development's existing liabilities in exchange for 291,006,764 newly issued shares in NZS, which resulted in the GONZ becoming 81.2 percent majority shareholder in NZS.

For the following reasons, we determine that the GONZ's decision to enter into the NZS Development joint venture was inconsistent with commercial considerations and that the subsequent debt assumption by the GONZ in exchange for NZS shares was also inconsistent with commercial considerations. First, as stated above, the Department has determined that in order to evaluate whether the 1985 assumption of debt in exchange for equity is countervailable, we must first determine whether the GONZ's investment in the joint venture construction project was on terms inconsistent with commercial considerations. For this purpose, we considered the nature of the project, the underlying formal agreements between the two partners (Formation Agreement and Planning Memorandum), and other factors, including the economic environment and feasibility studies compiled by NZS and the GONZ at the time the decision was made to undertake the project.

Our analysis of the feasibility studies shows that the studies relied on the implementation of specific commitments by the GONZ, such as the assurance of certain financing, domestic market share, supply of raw materials and favorable tax treatment, in their projection of the revenues of the project. Therefore, we find that the studies did not provide an objective assessment of the viability of the project, based on market conditions. Absent such government commitments, it is unlikely that a private investor would have made the investment.

The Department has in the past considered the presence of private investment made at the same time as the government's investment indicative of the commercial reasonableness of the government investment. However, the facts of each case must be carefully examined in order to make such a determination. Although NZS was a private investor in this joint venture project, it is clear from the record that NZS could not have undertaken this project without outside investors, and that, absent the government's commitments in the Formation Agreement and Planning Memorandum, no reasonable outside private investor would have undertaken this project. Thus, the participation of NZS is not dispositive that the GONZ's investment was consistent with commercial considerations. (For a more detailed discussion, see, Concurrence Memorandum dated June 21, 1993, on file in the Central Records Unit (Room B–099 of the Main Commerce Building) (Concurrence Memorandum)).

As such, the original investment, the NZ$6 million provided to the development project by the GONZ, was inconsistent with commercial considerations. We therefore find that at the time of the GONZ's investment, NZS Development received a countervailable subsidy. We have further determined that the subsidies bestowed upon NZS Development were passed through to NZS with the Reconstruction Agreement (see, the Restructuring section of the General Issues Appendix). To calculate the benefit during the POI passed through to NZS, we used our grant methodology and divided the benefit attributable to the POI by NZS's total sales during the POI. On this basis, we determine the estimated net subsidy to be 0.10 percent *ad valorem*.

With respect to the debt assumption by the GONZ in exchange for shares, we determine the following. Although we recognize that the GONZ was the guarantor of all of NZS Development's loans for which it assumed repayment responsibility, those guarantees were provided in the context of an agreement in which the GONZ, as an investor, acted inconsistently with commercial considerations. At the time the development assets were transferred to NZS, NZS did not give the GONZ equivalent value for the amount of debt it assumed, and as such the difference constitutes a countervailable benefit to NZS.

Before it assumed the debt, the GONZ required payment of fees for the guarantees provided as a result of its commitments under the Formation Agreement. In the Formation Agreement, if the GONZ had to assume payments on any loans, either NZS Development or NZS were required to repay to the GONZ principal and interest at the rate of "* * * one percent per annum over the Libor rate most nearly applying to that sum for 180 day loans for the period during which that sum remained outstanding." The Department compared the guarantee fees charged by the GONZ to this rate and determined that the fees paid were nominal. The payment of a nominal guarantee fee does not and cannot operate to convert these guarantees into instruments that are consistent with commercial considerations. However, in determining the benefit received by NZS, we are taking into account the fees paid by NZS Development to the GONZ by deducting the amount of the fees paid from the total amount of debt assumed by the GONZ.

Section 355.44(e)(1) of the Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, (54 FR 23366 (May 31, 1989)) (Proposed Regulations) states that "[t]he provision of equity by a government to a firm confers a countervailable benefit to the extent the Secretary determines that: (i) The market-determined price for equity purchased directly from the firm is less than the price paid by the government for the same form of equity purchased directly from the firm; * * *". Therefore, to calculate the benefit conferred by this transaction, we compared the price per share paid by the GONZ based on the number of shares received and the amount of the debt assumed, after deduction of the guarantee fees, to the average market-determined price of the shares over the month prior to the public announcement of the Reconstruction Agreement (see, Equity section of the General Issues Appendix). We find that the GONZ paid a premium over the contemporaneous market price. In accordance with § 355.44(e)(1), the Department determines that the premium paid by the GONZ in this transaction is a subsidy to NZS. We treated this premium as a non-recurring grant.

In the preliminary determination, we used as the discount rate the national average long-term (10-year) cost of debt in New Zealand as the basis for the discount rate. However, we learned at verification that there had been no issues of 10-year government bonds during the mid-1980's. During the relevant period, 5-year bonds were the only long-term debt instruments in New Zealand. Therefore, for this final determination, as the discount rate, we used the 5-year government bond rate plus an 0.8 percent spread based on information obtained at verification. Although the percentage spread was not obtained from published sources, but rather provided at meetings with commercial bankers during verification, we are using it in our calculations because we also learned at verification that a company in New Zealand would not have been able to obtain commercial financing at the same rate as the government. To calculate the benefit, we followed the standard grant methodology, see the Allocation section of the General Issues Appendix. We then divided the benefit attributable to the POI by NZS's total sales during the POI.

On this basis, we determine the estimated net subsidy for this program

to be 19.09 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

2. 1986 Reconstruction Consolidation Agreement

In December 1986, the GONZ and NZS signed a second Reconstruction Agreement (Reconstruction Consolidation Agreement). The GONZ assumed responsibility to repay NZ$621.8 million of the debt of NZS Development, which was now a wholly-owned subsidiary of NZS. This debt was previously retained by NZS Development under the terms of the first Reconstruction Agreement in 1985. Furthermore, NZS had agreed to indemnify the GONZ for any costs incurred in connection with the guarantees the GONZ had provided for this debt. In return for this debt repayment assumption, the GONZ received an additional 314.7 million new ordinary shares in NZS. As a result of this transaction, the GONZ ultimately assumed all of NZS Development's prior debt and increased its ownership in NZS to 90 percent.

We determine that the GONZ's assumption of this additional debt was inconsistent with commercial considerations because the value per share paid by the GONZ was substantially higher than the contemporaneous market price of NZS shares. The value per share was calculated by dividing the debt assumed by the GONZ by the number of shares it received.

In the instant case, we have determined that the GONZ paid a premium in assuming the debt of NZS Development. Therefore, in accordance with § 355.44(e)(1) of the Proposed Regulations, the Department determines that the premium paid by GONZ in this transaction is a subsidy to NZS. We treated this premium as a non-recurring grant and we used as our discount rate the national average cost of long-term fixed rate debt in New Zealand for the year in which the terms of the grant were approved (i.e., the 5-year bond rate for 1986 plus the 0.8 percent spread for a premium and commitment fee). We then divided the benefit attributable to the POI by the value of NZS's total sales during the POI.

On this basis, we determine the estimated net subsidy for this program to be 13.78 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

3. 1986 Government Purchase of Preferred Shares

Under the terms of the Reconstruction Consolidation Agreement, the GONZ also assumed two NZS loans totaling NZ$199.2 million in exchange for 20 million preference shares in NZS with a par value of NZ$10. The preferred shares are "zero coupon", meaning that they earn no interest or dividends, and are redeemable at a 50 percent premium (NZ$15) per share by the GONZ on a compulsory basis in three equal tranches in 1997, 1998, and 1999, or at the GONZ's option, for NZ$90 million in cash plus 10 million ordinary shares in the same three tranches (i.e., a total of NZ$270 million in cash and 30 million ordinary shares in NZS). NZS had the option to redeem the shares at any time at a premium for NZ$15 per share. These preference shares were not publicly traded and were only issued to the GONZ.

The preferred shares have characteristics of a loan with a fixed maturity date and interest payable at maturity (see, Equity section of General Issues Appendix). To determine whether the assumption of NZS' debt by the GONZ in exchange for preferred shares is countervailable, we compared the premium payable by NZS at the set maturity dates (1997, 1998, and 1999) with the total interest expense that NZS would have paid if NZS had taken out three long-term loans of NZ$66,427,527.33 each (the total principal amount assumed by the GONZ divided by three) for the equivalent duration. Because the total interest amount that would have been paid if NZS had to finance the debt that the GONZ assumed is greater than the premium payable on the preference shares, we treated the difference as a non-recurring grant. As our discount rate, we used the 5-year government bond as the national average cost of long-term fixed-rate debt in New Zealand for the year in which the terms of the grant were approved plus a 0.8 percent spread. We then divided the benefit attributable to the POI by the value of NZS's total sales during the POI.

On this basis, we determine the estimated net subsidy for this program to be 3.60 percent *ad valorem* for certain corrosion-resistant carbon steel flat products.

Interested Party Comments

The following are case-specific comments only and do not address those issues identified as general issues, above.

Comment 1: Respondents argue that the Department should analyze the GONZ's continuing investment in the NZS Development joint venture project in the context of the unique economic environment prevailing in New Zealand during the relevant time period. Given this unique economic environment, characterized by, among other factors, scarcity of capital, little competition, and heavy regulation, and given that the GONZ considered development of the iron and steel industry to be financially viable and in the national interest, it follows that the GONZ would have had a major role in the NZS Development project. They argue that in this unique economic context, none of the GONZ's actions with regard to NZS can be found inconsistent with commercial considerations. In support of their argument, the respondents point to Final Countervailing Duty Determination: Carbon Steel Wire Rod from Trinidad and Tobago, 49 FR 480 (January 4, 1984) (Trinidad and Tobago).

Petitioners contend that the Department must base its assessment of whether the GONZ's investment in the steel industry was consistent with commercial considerations upon its established standard of analyzing the investment from the perspective of a reasonable private investor. Features of the New Zealand economy would be relevant in an analysis of equityworthiness. However, the equityworthiness of NZS Development or NZS is irrelevant because it is not an issue in this case. Petitioners argue that the benefit, in this case, arose from the difference between the market value of the shares and the value of the shares issued to the GONZ based on the amount of the debt assumed. They also argue that the fact pattern in Trinidad and Tobago was different because ISCOTT did not have publicly traded shares. Therefore, the economic environment was a relevant factor in that case.

Department's Position: We agree with petitioners that the analysis of the economic environment is not relevant when the shares of the company under consideration are traded at the time of the transaction. However, in this case we have determined that in order to evaluate whether the 1985 debt assumption was countervailable, it was necessary to examine the 1980 joint venture investment by the GONZ when there was no market-determined price for the shares. Therefore, the relevant issue for the Department is "whether the investment, analyzed in terms of objective business or investment criteria operative at the time the investment was made, may be deemed commercially reasonable in that, from the perspective of a commercial investor making the same decision in the same circumstances, there is a reasonable expectation of return within an

VOL 58 ISS 130 JL 9 1993 UMI

acceptable period of time" (Trinidad and Tobago p. 483).

This is the context in which we examined whether or not the original commitment to the development project by the GONZ was commercially consistent. For this purpose, we considered the nature of the project, the underlying formal agreements between the two partners (Formation Agreement and Planning Memorandum) and other factors including the underlying economic environment. (For a full discussion, see, Concurrence Memorandum.)

In particular, we have analyzed the feasibility studies provided by the GONZ and NZS, and we find that the studies relied on the implementation of specific commitments of the GONZ; therefore, even under New Zealand economic conditions at the time of the project, the studies did not provide an objective assessment of the viability of the project based solely on market conditions. As a result of our analysis, we find that a reasonable private investor would not have undertaken the type of financial commitments assumed by the GONZ in connection with this project (see, Concurrence Memorandum). Therefore, overall, the GONZ's investment in the joint venture was inconsistent with commercial considerations.

With regard to similarities and differences between Trinidad and Tobago and the instant case, in Trinidad and Tobago the Department stated that "[t]he test whether a particular investment is not inconsistent with commercial considerations is based on a case-by-case analysis of the commercial context in which the investment decisions are made." Basic to any investment decision is an evaluation of the feasibility of the project under consideration.

In Trinidad and Tobago, the government's "* * * commitments to the * * * project were undertaken on the basis of at least three independent feasibility studies prepared by private consultants." The joint venture project was conceived and subsequently evaluated in response to market conditions.

For instance, the original joint venture, envisioning the construction of a greenfield steel mill dedicated primarily to billet production, was subsequently revised based on "* * * changed market conditions that led to reevaluation of the project." The subsequent construction of the minimill was based on the "* * * consensus among steel industry analysts that projected demand would require installation of considerable new world wide capacity by 1985." All of these studies concluded that the project was feasible and would be profitable.

In the New Zealand case, the record shows that the expansion of NZS had been planned in the 1960s and that action on the project began in the late 1970s more in response to the readiness of the company, NZS, to undertake the expansion than in response to specific market demand conditions (see, e.g., Plan for Reconstruction p. 5). Furthermore, in the case of NZS, the study was compiled by a team of NZS officials assisted by a team of experts and was further revised by NZS officials only. It is the Department's understanding that the GONZ conducted its own assessment of the project without the assistance of independent experts.

The assessment of the Department is that the studies lack the validity derived from the evaluation of independent experts without a direct interest in the project. For these and other reasons, fully outlined in the Concurrence Memorandum, the Department finds that, unlike the government's investment in the Trinidad and Tobago case, the GONZ's participation in this development project was commercially inconsistent.

Comment 2: Respondents argue that the GONZ loan guarantees do not confer a countervailable benefit either under the Formation Agreement or the Reconstruction Agreements because it is standard practice in New Zealand for a majority shareholder to provide loan guarantees without charging a fee. Furthermore, they argue that the fact that the GONZ was paid fees made these guarantees completely commercial. In support of their argument, respondents cite Trinidad and Tobago, in which the Department found that the requirement for a guarantee did not render the guarantees countervailable nor indicate that the project in question was uncreditworthy. Thus, respondents contend that loans and the associated guarantees should be evaluated as part of the overall project financing package and considered in terms of the project's commercial viability at the time the financing was arranged.

Petitioners contend that they have never alleged that the provision of loan guarantees by the GONZ conferred a countervailable benefit.

Department's Position: Generally, under our longstanding practice and Proposed Regulations, the Department examines whether the price or fee paid by a firm to a government for the guarantee is less than the price the firm would have paid for a comparable commercial loan guarantee. In the instant case, respondents suggest that we examine the provision of the guarantees in the context of the development project's commercial viability. In this respect, we agree with respondents. As a result of our analysis, the Department finds the GONZ's participation in the overall NZS Development project, which required the GONZ to provide guarantees as part of its obligations under the Formation Agreement, was inconsistent with commercial considerations. No reasonable private investor would have entered into a comparable agreement and, subsequently, provided guarantees for such a huge contingent liability with such limited recourse from the project in question. As a consequence, the argument as to whether the guarantees *per se* provided a countervailable subsidy is moot.

Comment 3: Respondents argue that the GONZ assumed the responsibility to repay the NZS Development loans it had guaranteed because it was legally responsible for the debt as the guarantor. A new or separate liability was not created. Therefore, no benefit was bestowed on NZS due to the GONZ's debt assumption in the two Reconstruction Agreements. Furthermore, the respondents argue that a financial restructuring was in the GONZ's best interest because the GONZ would have been faced with a substantial financial burden as guarantor if the NZS Development project had collapsed, since NZS was legally protected from NZS Development creditors. By taking an equity position in NZS, the GONZ could offset its losses with the proceeds from the sale of its shares in NZS. Therefore, respondents argue that the assumption of the loans by the GONZ does not confer a countervailable benefit; but rather it was in the GONZ's best interest, because it reduced the GONZ's cost in carrying out its legal obligations.

Petitioners argue that the assumption of NZS Development debt by the GONZ did not constitute the repayment of loans pursuant to a guarantee because the Reconstruction Agreement constituted an entirely new agreement between NZS and the GONZ that in fact terminated the earlier guarantees the GONZ had provided. Therefore, they argue that the GONZ's agreement to assume primary responsibility for those loans constituted a new and qualitatively different commitment, and NZS is benefiting from the GONZ's earlier agreement to guarantee the loans.

Furthermore, petitioners argue that NZS's argument would, if accepted, open a gaping loophole in the countervailing duty law: under NZS's

interpretation, if a government ever guaranteed a loan for which it was paid a guarantee fee, and then had to assume liability for the loan, there would be no countervailable benefit. Thus, to avoid imposition of the U.S. countervailing duty law, a government and a company could agree for the company to obtain a loan (guaranteed by the government), pay the guarantee fee (which would be a fraction of the loan) for some short period, and then default. The government would assume the loan and then sell the assets, at a greatly decreased liquidation value—back to the company. Or, as in the case of NZS, the parties could simply agree to have the government assume the loans after a stated period, because, after all, this was only equivalent to having to pay off under the guarantee, which NZS has defined as a non-countervailable event.

Department's Position: While we agree with the petitioners' argument that the Reconstruction Agreement constituted a new agreement which superseded the Formation Agreement, we agree with respondent that the GONZ's guarantees given under the Formation Agreement remained in full force and effect (and were not terminated as petitioners have argued) because the lenders did not release the GONZ from its obligations as guarantor of the NZS Development loans. However, even though the GONZ might be viewed as fulfilling its obligations as the guarantor in a rational manner, the underlying investment and agreement which gave rise to the guarantees was commercially inconsistent. Thus, we find that the transaction under the Reconstruction Agreement was commercially inconsistent and creates a subsidy, because NZS did not issue shares to the GONZ for the equivalent value of the liabilities assumed by the GONZ.

While there is no doubt that the legal obligations incurred by providing the guarantees was a key factor in the GONZ's decision to take over the payment of the loans, we note the fact that the obligation to take over the debt was the result of a "negotiated" settlement rather than a default event and that the language of the Reconstruction Agreement specifically states that NZS shares were issued in exchange for the GONZ's assuming certain liabilities, as opposed to in exchange for the assets only, as stated by respondents.

Comment 4: Respondents disagree with the Department's preliminary determination that, based on clause 19.5 of the Formation Agreement, NZS had to take all of NZS Development's liabilities when taking NZS Development as a subsidiary. They argue that under the Formation Agreement, NZS had the option of acquiring NZS Development as a wholly-owned subsidiary; however, this option was only operative upon completion of the NZS Development project, after all the asset groups had been transferred. There is nothing in the Formation Agreement about how any liability for the NZS Development debt would be transferred to NZS prior to the transfer date. A separate legal arrangement would had to have been negotiated with NZS Development lenders in which those lenders would agree to release NZS Development from its liabilities and hold NZS directly liable for the debt.

Petitioners agree with the Department's preliminary determination, but based on a different rationale. They acknowledge that, under the Formation Agreement, NZS was not legally liable for the debt of NZS Development, rather it was the GONZ that was legally liable as guarantor for debt it assumed under the Reconstruction Agreement. However, they contend that the debt assumption by the GONZ under the Reconstruction Agreement benefitted NZS because it relieved NZS and NZS Development of debt obligations. They argue that the benefit to NZS is evident when NZS obligations under the Formation Agreement are compared to its obligations under the Reconstruction Agreement.

Under the Formation Agreement, NZS would either acquire the plant groups from NZS Development with all related outstanding obligations, or acquire NZS Development as a wholly-owned subsidiary, with all its outstanding liabilities. However, as a result of the Reconstruction and Reconstruction Consolidation Agreements, NZS acquired NZS Development to a major extent unencumbered by liabilities. In return for this benefit, NZS issued stock to the GONZ. The value of the stock issued to the GONZ was less than the benefit conferred upon NZS, in terms of the liabilities of which it was relieved; therefore, a countervailable subsidy exists.

Department's Position: After further analysis and based on information obtained at verification, we agree with respondents that clause 19.5 would not have become operative until each completed plant group came on line. As such, NZS had not become liable for any of NZS Development's debt during or as a result of the Formation Agreement. However, our review of all the information on the record has led us to conclude that NZS benefitted from the GONZ's assumption of debt for the reasons we have discussed above. Although the GONZ and NZS relied on the Formation Agreement in the negotiations leading to the Reconstruction Agreement, NZS emerged as owner of the assets with only a portion of the pertinent liabilities. The GONZ assumed responsibility for repayment of the majority of NZS Development debt in return for an 81.2 percent ownership interest in NZS. To the extent that the value of the NZS shares issued to the GONZ is less than the liabilities assumed by the GONZ, we find that NZS benefitted from this transaction.

Comment 5: Respondents disagree with the Department's preliminary determination that the 1985/86 Reconstruction Agreement was a "debt for equity" conversion in which the GONZ assumed NZS debt obligations in exchange for NZS shares. They argue that NZS had no liability to NZS Development creditors. NZS "purchased" NZS Development from the GONZ in an arm's length commercial transaction. NZS would not have "purchased" NZS Development with its unfinished assets laden with massive debt for which the GONZ, not NZS, was ultimately liable. NZS Development had no positive economic value to NZS so long as the NZS Development assets were equivalent to its liabilities and the assets were still incomplete.

Petitioners argue that the aim of the Reconstruction Agreement was to restructure NZS's balance sheet so as to avoid excessive leveraging in order to make NZS saleable in the private sector. Therefore, they argue that the final agreement regarding the number of shares to be issued to the GONZ was not a straightforward issue of shares at market value in return for the net economic value of NZS Development assets.

Department's Position: We agree with the petitioners that the Reconstruction Agreement was not a straightforward exchange of shares for assets. The Plan of Reconstruction, which NZS prepared for its shareholders, clearly outlines the factors that were involved in this complex settlement (see, Concurrence Memorandum for full discussion). More importantly, as we have stated, the GONZ conferred subsidies on NZS by taking over a substantial portion of the debt of its subsidiary, NZS Development.

Comment 6: Petitioners argue that the total value of the GONZ's investment in NZS was approximately NZ$291,006,764, rather than the NZ$436.5 million upon which the

VOL 58 ISS 130 JL 9 1993 UMI

Department based its preliminary determination. Petitioners state that the Department should use the price immediately after the shares were issued to the GONZ to account for the dilutionary effect this issuance had on the value of NZS outstanding shares.

Respondents argue that the Department has no stated practice with respect to the acquisition of a firm in exchange for shares in another firm. However, consistent with the Department's standard of valuing the benefit to the recipient, the Department should determine that no countervailable benefit is conferred to NZS since the market-determined price for all NZS's shares issued to the GONZ equals or exceeds the economic value of the company acquired, NZS Development. They argue that NZS purchased an entity with a net economic value of NZ$436.5 million and issued shares at a market-determined price worth NZ$436.5 million no benefit was bestowed upon NZS.

Department's Position: Although the issuance of shares in NZS to the GONZ in 1985/86 caused dilution of the outstanding NZS shares, it is the Department's long standing practice to use the price at which shares are trading before the investment by the government is made public (see, Equity section of the General Issues Appendix).

We disagree with respondents that NZS issued shares to the GONZ only in consideration of the economic value of the company acquired. The transaction involved in the Reconstruction Agreement was not a simple acquisition of assets: As a result of that transaction the GONZ assumed the obligation for repayment of the NZS Development loans, a legally separate entity, in exchange for shares in NZS, and NZS received NZS Development as a wholly-owned subsidiary with all of the assets.

To calculate the benefit conferred by this transaction, we compared the price per share paid by the GONZ based on the number of shares received and the amount of debt assumed, after deduction of the guarantee fees, to the contemporaneous market price of the NZS shares. We find the GONZ paid a premium: The premium multiplied by the number of shares issued to the GONZ constitutes the amount of the subsidy.

Comment 7: Respondents argue that the Reconstruction Consolidation Agreement in 1986 was a continuation of the financial restructuring that had been undertaken with the Reconstruction Agreement. Having emerged from the Reconstruction Agreement as a controlling shareholder of the consolidated NZS, the GONZ had a strong interest in ensuring that the new entity, NZS and NZS Development, was in fact on a commercially sound footing, since it was planning to sell its shares in NZS at the earliest opportunity. Respondents also argue that the further reduction to NZS in the value of the NZS Development assets due to the write-down in 1986 was offset by the GONZ's assumption of the liability to repay four NZS Development loans. The loans assumed by the GONZ, less the additional write-down of the NZS Development assets resulted in a gain to NZS. NZS compensated the GONZ for this gain by issuing shares in itself of equal value. Thus, the Reconstruction Consolidation Agreement was consistent with commercial considerations and no countervailable benefit was conferred on NZS.

Petitioners argue that there was no provision in the Reconstruction Agreement or the Reconstruction Consolidation Agreement for NZS Development or NZS to decrease their liabilities to reflect any write-downs in the value of NZS Development assets, Therefore, the entire cost of these debts was assumed by the GONZ, thereby conferring a countervailable benefit to NZS.

Department's Position: We agree with the petitioners that none of the agreements provided for the write-downs of NZS Development assets and for how write-downs should be treated in this context. In the Reconstruction Consolidation Agreement, the GONZ's assumption of the remaining NZS Development loans, which it had originally guaranteed, conferred a countervailable subsidy to NZS because under the Reconstruction Agreement, the loans of NZS Development amounting to approximately NZ$412 million were to have been repaid by NZS Development, now a wholly-owned subsidiary of NZS. Furthermore, in the Reconstruction Agreement, NZS had agreed to indemnify the GONZ if the GONZ, as guarantor, had to make any payments on those loans. A new agreement, the Reconstruction Consolidation Agreement, released NZS from this indemnification clause.

Comment 8: Respondents argue that the Department should use a discount rate that is based on the cost of long-term debt that is representative of NZS's actual experience. In the preliminary determination, the Department ignored both the NZS Development and NZS cost-of-debt calculations and used instead a national average long-term cost of debt in New Zealand dollars, even though the NZS Development and NZS loans were in foreign currencies.

It was established at verification that it was not possible for companies in New Zealand to obtain significant amounts of long-term financing in New Zealand in the early to mid-1980s. Therefore respondents argue that where a firm is unable to borrow the funds in its own country, the company under investigation should not be penalized with a discount rate that is not applicable to its experience. This problem can be addressed by converting loan interest payments to New Zealand dollars on the date that they were made and calculating the actual cost of debt on that basis. Thus, the cost of debt would actually reflect the cost to the borrower in New Zealand dollars. This is consistent with the Department's preference for a company-specific benchmark in that country's currency.

Petitioners argue that the debt assumed by the GONZ in the 1985 Reconstruction Agreement was denominated in a number of currencies, but, because the outstanding balances were converted to New Zealand dollars for purposes of identifying and valuing the GONZ's obligations, it would be appropriate for the Department to use, as the discount rate, the long-term rate for the New Zealand currency.

Department's Position: We disagree with the respondents. These loans of various currencies are not the focus of the analysis. Because at the time of the countervailable event the value of the shares issued to the GONZ was in New Zealand dollars and the amount of the outstanding debt was expressed in New Zealand dollars, it is appropriate to look for a New Zealand dollar discount rate.

Furthermore, during the NZS fiscal year in which the Reconstruction Consolidation Agreement occurred (1986/87), NZS negotiated two long-term, variable-rate loans. Both loans (from Mitsubishi Bank, Ltd. and Bank of New Zealand) were denominated in U.S. dollars. However, the debt assumed by the GONZ in the agreement was denominated in British pounds, Norwegian kroner, and Japanese yen, as well as in U.S. dollars. Therefore, a discount rate based solely on U.S. dollar interest rates would not accurately reflect the interest rates associated with these various currencies, as well as the fact that NZS received its benefit in New Zealand dollars. The use of a national discount rate to allocate benefits converted to the national currency is consistent with our approach in Certain Steel Products from Spain, 47 FR 51,438, 51,451 (1982)(final); and Carbon Steel Wire Rod from Belgium, 47 FR 42,403, 42,412 (1982)(final). Therefore,

in accordance with the Proposed Regulations § 355.44(b)(4), it is appropriate for the Department to use, as the discount rate, the national average long-term fixed interest rate in the country in question, given that the other benchmarks in order of the Department's preference are non-existent in this case.

Finally, because NZS is the firm in question, its cost of long-term debt during 1985/86 is relevant. NZS Development negotiated its long-term yen debt, backed by a GONZ guarantee, six months before it was incorporated into NZS as part of the Reconstruction Agreement. It is uncertain whether NZS and NZS Development would have been able to obtain the same interest rates; therefore, NZS Development's experience would represent at most an estimate of the interest rate that NZS, the company for which a discount rate is at issue, could have received on long-term, fixed-rate debt during the relevant time period.

Comment 9: Petitioners contend that it is appropriate for the Department to use the 5-year bond rate as the basis for the discount rate. However, they argue that the Department should adjust this rate by adding 0.8 percent to reflect the additional margin that a private borrower would have to pay.

Respondents argue that the 0.8 percent spread should not be used because it is speculative, since banking officials at verification only verbally approximated what the margin could have been during the mid-1980s. Should the Department not use the company-specific loan benchmark as the discount rate, then the Department should use the unadjusted 5-year government bond rate.

Department's Position: We verified that no 10-year bonds were issued in New Zealand during the time of the government's debt/equity conversion in NZS. Therefore, we used the 5-year government bond rate as the discount rate. We added the 0.8 percent spread, based on information obtained at verification, to reflect the premium and commitment fees a company would have to pay over the GONZ rate. While we recognize that the fee was an estimate provided to the Department verifiers, we were also told at verification that no private investor would have been able to borrow at the government's rate.

Comment 10: Petitioners argue that NZS was uncreditworthy at the time the preference shares were issued, therefore, the Department should adjust its benchmark to reflect the additional costs NZS would have had to incur to borrow funds. NZS had to issue the preference shares because it was not able to meet its current debt obligations with respect to the very debt that the GONZ assumed in return for the preference shares.

Respondents agree with the Department's preliminary determination that NZS was creditworthy in fiscal year 1986/87. The Proposed Regulations state that the Department will determine that a firm is uncreditworthy if the firm did not have sufficient revenues or resources to meet its costs and fixed financial obligations in the three years prior to the year in which the firm and the government agreed upon the terms of the loan. Based on this analysis, NZS is creditworthy.

Department's Position: We disagree with the petitioners. We examined NZS's financial statements for fiscal years ended March 31, 1984 through March 31, 1986, to determine whether NZS was uncreditworthy at the time of the debt/preferred shares exchange with GONZ, and found the company creditworthy based on the financial statements (see, Memorandum to File on Creditworthiness dated June 21, 1993).

Comment 11: Respondents argue that because the NZS preference shares were not publicly traded, there is no market-determined price available to compare to the price at which the preference shares were issued to the GONZ in order to determine whether NZS received a countervailable benefit. As stated in the Department's regulations, the provision of equity by a government confers a countervailable benefit only to the extent that the firm is not equityworthy and a rate of return shortfall exists. However, since the petitioners did not allege that NZS was unequityworthy, there would be no basis for such determination. Therefore, the Department should determine that the preference shares issued to the GONZ were consistent with commercial considerations.

Petitioners contend that an unequityworthiness allegation of NZS was not made in connection with the preference shares because the shares are more characteristic of debt. However, they argue that even if the preference shares constituted equity in NZS, they represented an investment inconsistent with commercial considerations. Petitioners argue that NZS preference shares could not generate a reasonable rate of return. The shares show an estimated simple average annual rate of return of 5 percent or less. The rate of return could never be higher, because the preference shares carried no right to receive dividends. At the same time the preference shares were issued, in 1986, GONZ 5-year bonds, the safest investment in New Zealand, carried a rate of return of 17.4 percent.

Department's Position: In this case, because we consider that the preference shares constitute debt not equity, the issue of an equityworthy analysis is moot (see, Equity section of the General Issues Appendix).

Comment 12: Petitioners contend that the Department should deduct ocean freight charges from the consolidated sales figure because ocean freight charges do not reflect the actual proceeds from sales. Therefore, the Department should allocate the benefits to NZS across NZS's f.o.b. sales during the POI.

Respondents contend that the Department should use the verified and revised total f.o.b. sales figure to allocate any countervailable benefit.

Department's Position: We have allocated the benefits over NZS's verified f.o.b. sales during the POI. For a full discussion of the denominator issue, see the Denominator section of the General Issues Appendix.

For additional comments not addressed in this notice, please refer to the Restructuring section of the General Issues Appendix.

Verification: In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Suspension of Liquidation: In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from New Zealand which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determination in the **Federal Register**. This final countervailing duty determination was aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S.

UMI
VOL
58
ISS
130
JL
9
1993
UMI

Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Corrosion-Resistant Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—36.57 percent

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain steel products from New Zealand.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4)).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15637 Filed 7–8–93; 8:45 am]

BILLING CODE 3510-DS-P

[C–469–804]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Kristal Eldredge or Stephanie Hager, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0631 or 482–5055, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Spain of certain steel products. For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations (Preliminary Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain, 57 FR 57799 (December 7, 1992)), the following events have occurred.

Supplemental questionnaires were issued on December 31, 1992 and January 19, 1993 and responses were received on January 8, 1993 and January 28, 1993, respectively.

We verified the information used in making our preliminary determinations from February 1 through February 12, 1993.

The parties submitted case-specific briefs and rebuttal briefs on March 26 and 31, 1993, respectively. General issues briefs and rebuttal briefs were submitted on April 28, 1993 and May 3, 1993, respectively. Case-specific and general issues public hearings were held on April 2, 1993, and May 5 and 6, 1993, respectively.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations, in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935). On April 6, 1993, we terminated the suspension of liquidation of all entries of subject merchandise entered or withdrawn for consumption on or after that date (see, the Suspension of Liquidation section, below).

Scope of Investigations

The products covered by these investigations, certain steel products, constitute two separate "classes or kinds" of merchandise, as found in the Scope Appendix attached to the Final Affirmative Countervailing Duty Investigation: Certain Steel Products from Austria: (1) Certain cold-rolled carbon steel flat products and (2) certain cut-to-length carbon steel plate.

Injury Test

Because Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the certain steel products from Spain materially injure, or threaten material injury to, U.S. industries. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reason of imports from Spain of the subject merchandise (57 FR 38064 (August 21, 1992)).

Respondents

Petitioners alleged that Altos Hornos de Vizcaya (AHV), Altos Hornos del Mediterráneo (AHM), and ENSIDESA benefitted from subsidies during the period of investigation (POI). We verified that ENSIDESA represents over 85 percent of the exports of each class or kind of merchandise to the United States. Therefore, ENSIDESA was the only required respondent company for both classes or kinds of merchandise.

ENSIDESA is a state-owned integrated steel producer established in the 1950's. The National Industrial Institute (INI) owns 97.5 percent of ENSIDESA (as of 1983). INI is currently a state-owned holding company. We consider all benefits provided to ENSIDESA by INI prior to 1988 as being provided by the Government of Spain (GOS) (see, the Interested Party Comments section, below).

In December 1985, AHM, which is 100 percent owned by INI, spun-off its cold-rolling plant into a separate corporation, Siderúrgica del Mediterráneo, S.A. (SIDMED), and sold it to ENSIDESA. SIDMED is now a subsidiary of ENSIDESA. In the

preliminary determinations we used the best information available (BIA) with respect to AHM because, although requested to do so, ENSIDESA did not respond to our questionnaire with respect to alleged subsidies provided to AHM. However, for purposes of these final determinations, we have concluded that because AHM itself was not a required respondent and ENSIDESA was not in the position to provide answers regarding subsidies received by AHM prior to 1985, the use of BIA is inappropriate. Therefore, we are using petition information concerning amounts of subsidy benefits received, but we have modified that information where appropriate, based on our verification of ENSIDESA and the GOS. See, the Restructuring section of the General Issues Appendix which is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, for information regarding the pass-through of subsidies.

General Issues

Several issues raised by interested parties in these investigations and in the other countervailing duty (CVD) investigations of certain steel products from various countries, were not case-specific but rather general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues briefs and the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix.

Analysis of Programs

For purposes of these determinations, the period for which we are measuring subsidies (the POI) is calendar year 1991, which corresponds to the fiscal year of ENSIDESA. In determining the benefits received under the various programs described below, we first calculated the *ad valorem* subsidy for each program. The subsidy rates for each program were then summed to arrive at the country-wide total subsidy rate.

Based upon our analysis of the petition, responses to our questionnaires, verification of those responses, and consideration of the arguments of the interested parties, we determine the following.

Creditworthiness: ENSIDESA

ENSIDESA received long-term loans, equity infusions, and/or grants in each year from 1979 through 1991, with the exception of 1980. In the Final Countervailing Duty Determination: Certain Steel Products from Spain, 47 FR 51438 (November 15, 1982) (Certain Steel from Spain) the Department determined that ENSIDESA was uncreditworthy in each of the years 1979 through 1982. Respondents did not contest nor ask the Department to reexamine this finding.

To determine whether ENSIDESA was creditworthy from 1983 through 1991, we examined the quick ratio, times interest earned ratio, debt ratios, and profit levels for each of these years and the three years prior to each loan, grant, or infusion in question.

Examination of the ratios listed above shows that ENSIDESA sustained substantial net losses in every year from 1983 through 1991 with the exception of 1989. Furthermore, the company's interest coverage ratios were extremely weak, even in 1989, and in several years the company had negative interest coverage ratios. Its debt-to-equity ratios show that the company's debt far outweighed its equity in every year. In fact, the financial indicators show that there has been no change in the company's performance since the 1979–1982 period in which we previously found ENSIDESA uncreditworthy. Therefore, we determine ENSIDESA to be uncreditworthy in each year from 1979 through 1991.

Equityworthiness: ENSIDESA

We verified that ENSIDESA received equity infusions in 1979, 1981, 1983, 1984, 1985, and 1986. In 1979 and 1981, ENSIDESA's shares were publicly traded. Therefore, an equityworthiness determination is not necessary for these years, see, the Equity section of the General Issues Appendix.

To determine whether ENSIDESA was equityworthy from 1983 through 1987, we examined the same ratios discussed above and, in addition, we examined the profit margin as a percentage of sales, the rate of return on assets, and the rate of return on equity for each of these years and the three years prior to each infusion. These ratios are the basis for analyzing the question of whether ENSIDESA was able to generate a reasonable rate of return within a reasonable period of time. These ratios indicate that the company was in poor economic health for the entire period with little prospect for improvement, and that a reasonable private investor would not have put capital into the company. Therefore, we determine that ENSIDESA was unequityworthy at the time of each government infusion after 1982.

Creditworthiness: AHM

AHM received long-term loans, equity infusions, and/or grants in each year from 1978 through 1985, with the exception of 1979. To determine whether AHM was creditworthy from 1982 through 1985 (AHM's financial statements were only provided for these years), we examined the same creditworthiness ratios discussed above with respect to ENSIDESA.

Examination of the ratios listed above shows that AHM sustained substantial net losses in every year from 1982 through 1985 and consecutive operating losses since 1977. Furthermore, the company's interest coverage was negative in every year except 1984. The debt-to-equity ratios show that the company's debt far outweighed equity and increased in every year except 1984. Therefore, we determine AHM to be uncreditworthy in each year from 1978 through 1985.

Equityworthiness: AHM

AHM received equity infusions in 1978, 1980, 1981, 1982, 1984, and 1985. To determine whether AHM was equityworthy from 1978 through 1985, we examined, when possible, the same equityworthiness ratios discussed above with respect to ENSIDESA.

From 1978 through 1985, the company had negative profits as a percentage of sales. Moreover, AHM had significant negative rates of return on both assets and equity in these same years. See, the Creditworthy section above, for a discussion of the results of the other ratios. Therefore, we determine AHM to be unequityworthy in each year from 1978 through 1985.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of certain steel products under the following programs:

ENSIDESA

1. *Law 60/78*

On December 23, 1978, a set of emergency measures in support of the steel industry was enacted. Law 60/78 appropriated 15 billion pesetas (pts) to the budgets of the Ministry of Industry and Energy and INI for this purpose. Because Law 60/78 is limited to the steel industry, we determine that benefits under this program are *de jure* specific to an enterprise or industry, or group of enterprises or industries.

a. *Long-Term Loans from Bank of Industrial Credit (BCI).* We verified that ENSIDESA had three loans under this program outstanding during the POI. These loans were received in 1979. (Loans under Law 60/78 were found countervailable in Certain Steel from Spain).

Since benefits under this program are specific, ENSIDESA's loans under this program are countervailable to the extent that they were provided on terms inconsistent with commercial considerations.

Because we have found ENSIDESA to be uncreditworthy in 1979, we have used as the benchmark interest rate the highest long-term fixed interest rate applicable to firms in Spain, plus an amount equal to 12 percent of that country's prime rate. See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989) and section 355.44(b)(6)(iv) of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) (Proposed Regulations).

We then compared the benchmark financing, as constructed above, to the financing ENSIDESA received under this program and found that the BCI loans were provided on more favorable terms than the benchmark financing. Therefore, we determine that ENSIDESA's BCI loans are countervailable.

To calculate the benefit from these loans we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Regulations. (See also, Final Affirmative Countervailing Duty Determination: Certain Granite Products from Spain, 53 FR 24340 (June 28, 1988).) We then divided the benefit attributable to the POI by ENSIDESA's total sales of all products.

As discussed in the Denominator section of the General Issues Appendix, certain adjustments for shipping costs and services have been made to the denominators in several of the other investigations. However, because ENSIDESA's sales were verified as being ex-factory and no other services were reported, no adjustments were made to the denominator in these investigations.

On this basis, we calculated an estimated net subsidy of 0.25 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Equity infusion.* ENSIDESA received an equity infusion from INI in 1979, at which time ENSIDESA's stock was traded on the stock exchange. We verified that INI paid 1,000 pts/share and the average market price was 110.52 pts/share.

Because INI paid more than the average market price for ENSIDESA's stock, we determine the difference between the two prices to be countervailable. We have calculated the benefit as a grant in 1979 equaling the difference between what INI paid for ENSIDESA's stock and the average market price for ENSIDESA's stock.

We have treated this grant as a non-recurring benefit and have, therefore, allocated it over the average useful life of renewable physical assets in the steel industry, i.e., 15 years, in accordance with our normal grant methodology (see, the Allocation section of the General Issues Appendix). Because we have determined ENSIDESA to be uncreditworthy in the year in which the company received this grant, we used an "uncreditworthy discount rate" for the appropriate year, as described in A.1.a.

We then divided the benefit during the POI by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.52 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

2. *Royal Decree 878/81*

On May 8, 1981, the GOS enacted Royal Decree (R.D.) 878/81 which set forth the "Integrated Iron and Steel Reconversion Plan." The basic objective of this reconversion plan was the financial recovery of ENSIDESA, AHV, and AHM. Benefits from R.D. 878/81 were found countervailable in Certain Steel from Spain.

Outlined below are the benefits which were provided to ENSIDESA pursuant to R.D. 878/81. Because R.D. 878/81 is limited to the steel industry, we determine that each of these measures is *de jure* specific to an enterprise or industry, or group of enterprises or industries.

a. *BCI exceptional credits.* We verified that ENSIDESA had five BCI loans outstanding under this program during the POI. These loans were received in each of the years 1981 through 1985.

To determine whether the loans were made on terms inconsistent with commercial considerations, we employed the same analysis as described in A.1.a. above. Because we have found ENSIDESA to be uncreditworthy in each of the years 1981 through 1985, we have used an uncreditworthy benchmark rate. Based on a comparison of the interest rates charged on these loans and the benchmark interest rates, we determine these loans to be countervailable.

To calculate the benefit from these loans, we used the same long-term loan methodology as described in A.1.a. above. We then divided the benefit attributable to the POI by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.15 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Grants Provided to "Decrease Financial Charges" and to "Compensate for Losses".* We verified that ENSIDESA received grants in 1982 and 1983 to decrease financial charges and to compensate for losses. R.D. 878/81 approved a maximum amount to compensate for losses, but the actual amounts were determined each year in light of the actual amount of losses.

We have treated these grants as non-recurring benefits and have, therefore, allocated them over the average useful life of the renewable physical assets in the steel industry, i.e., 15 years, in accordance with our normal grant methodology, (see, the Allocation section of the General Issues Appendix). Because we have determined ENSIDESA to be uncreditworthy in the years in which the company received grants under this program, we used an uncreditworthy discount rate. We then summed the benefits during the POI from each grant and divided by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.97 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

c. *Equity infusion.* ENSIDESA received an equity infusion from INI in 1981, at which time ENSIDESA's stock was traded on the stock exchange. We verified that INI paid 1,000 pts/share and the average market price was 61.47 pts/share.

Because INI paid more than the average market price for ENSIDESA's stock, we determine the difference between the two prices to be countervailable. We have calculated the benefit as a grant in 1981 equalling the difference between what INI paid for ENSIDESA's stock and the average market price for ENSIDESA's stock.

We have treated this grant as a non-recurring benefit and have, therefore, allocated it over the average useful life of the renewable physical assets in the steel industry, i.e., 15 years, in accordance with our normal grant

methodology (see, the Allocation section of the General Issues Appendix). Because we have determined ENSIDESA to be uncreditworthy in the year in which the company received this grant, we used an uncreditworthy discount rate the same rate. We then divided the benefit during the POI by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.66 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

3. *The 1984 Council of Ministers Meeting*

R.D. 878/81 stipulated that the Coordinating Commission of the Integrated Steel Sector should present an industrialization plan for the integrated steel companies ten months after the effective date of the decree. In R.D. 1853/83, the GOS adopted a series of industrial measures for the reconversion and restructuring of the production installations of the integrated steel companies. The Council of Ministers, on March 14, 1984, approved the labor and financial plans included in the steel reconversion package and the measures necessary to implement these plans.

Outlined below are the benefits which were provided to ENSIDESA pursuant to the 1984 Council of Ministers Meeting. Because these measures were limited to the steel industry, we determine that each of these measures is *de jure* specific to an enterprise or industry, or group of enterprises or industries.

a. *Equity infusions.* In the preliminary determinations, we determined that INI made equity infusions during each of the years 1984 through 1987. However, since the preliminary determinations, we have found that the 1984 equity infusion was actually received as grants in 1982, 1983, and 1984 (see, the Contributions to INI Special Finance Accounts section of this notice).

As stated above, we have determined ENSIDESA to be unequityworthy in each of these years and, therefore, that the infusions made in 1985, 1986, and 1987 were on terms inconsistent with commercial considerations.

As discussed in the *Equity* section of the General Issues Appendix, we have determined that such equity infusions should be treated as grants. Therefore, to calculate the benefits allocated to the POI from these infusions, we used the same methodology as discussed in the *Allocation* section of the General Issues Appendix. We then summed the benefits from each infusion and divided by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 8.26 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Loan guarantees.* We verified that INI loan guarantees were provided for loans received in each of the years 1985 through 1987. INI charged a fee equal to .77 percent of the face value of the loan which was added to the interest paid per quarter. Respondents provided information on the guarantee fees charged by private banks on ECSC Article 54 peseta-denominated loans as a commercial benchmark for these loan guarantees. This fee was corrected based on information presented at verification.

To determine whether the fees charged by INI for these loans were inconsistent with commercial considerations, we compared the fees charged by INI to the fees charged by commercial banks, consistent with section 355.44(c) of the Proposed Regulations. We found that the INI fees were lower than the commercial fees. Therefore, we determine that the INI loan guarantees are countervailable.

At verification, we collected a representative sample of the repayment terms of the guaranteed loans and used this information to calculate the benefit from this program. To calculate the benefit from these guarantees, we used the same long-term loan methodology as described in A.1.a. above, with the difference in the guarantee fee comprising the interest differential. We then divided the benefit attributable to the POI by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.00 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

c. *Share "Issue Premium".* We verified that, in 1986, a premium was paid by INI on ENSIDESA's series three shares which were issued in conjunction with the 1986 equity infusion. ENSIDESA did not issue shares for this premium. Because the premium was so small, it was not worth incurring the financial charges associated with issuing new shares.

We treated the issue premium as a non-recurring grant and calculated the benefit in accordance with the grant methodology described in the *Allocation* section of the General Issues Appendix. On this basis, the estimated net subsidy is 1.88 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

d. *Grants Provided to "Decrease Financial Charges" and to "Compensate for Losses".* We verified that grants were received under this program in 1984, 1985, and 1987. However, at verification, we found that the 1984 grant for compensation of losses had also been reported by respondents partially as the 1984 equity infusion and partially as a grant to the INI Special Finance—1983 Account. Therefore, the benefits from this grant are already included in those calculations.

This is the same type of grant program as was authorized under R.D. 878/81 and is similarly limited by law to the steel industry. Therefore, we calculated benefits under this program in the same manner as discussed in A.2.b. above. On this basis, the estimated net subsidy is 4.69 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

4. *The 1987 Government Delegated Commission on Economic Affairs*

We verified that Protocol 10 of Spain's Treaty of Accession to the European Communities (EC) stipulated that after Spain's accession on January 1, 1986, the European Commission and the GOS would evaluate the implementation of the reconversion plans already approved by the GOS.

In the event that the viability of the companies could not be satisfactorily guaranteed within three years following the accession (i.e., by January 1, 1989), the Commission would propose a number of complementary measures to be executed by the GOS in order to assure viability after the three-year period. The actions of the Government Delegated Commission for Economic Affairs provided for the additional new measures authorized by the European Commission in March 1987.

Outlined below are the benefits which were provided to ENSIDESA pursuant to the 1987 Delegated Commission. Because the measures authorized by the 1987 Delegated Commission are limited to the steel industry, we determine that each of these measures is *de jure* specific to an enterprise or industry, or group of enterprises or industries.

a. *Deferral of social security and other tax obligations.* The 1987 Delegated Commission authorized the Ministry of Economy and Finance and the Ministry of Labor and Social Security to defer payments due as of December 1, 1986, by ENSIDESA to the Public Treasury and Social Security and to charge zero percent interest on the deferred amount. The payments were deferred until 1992.

At the preliminary determinations we treated the deferred amount as an

interest-free long-term loan given in 1986 and calculated the benefit by reference to a commercial benchmark. However, we verified that deferrals are routinely permitted under the Spanish social security system. Unlike ENSIDESA's deferral though, routine deferrals incur an interest penalty.

Therefore, to determine whether the deferral conferred a benefit to ENSIDESA, we compared the interest penalty applied to other companies in similar circumstances to the interest penalty applied to ENSIDESA during the POI. Based on this comparison, we determine this deferral to be countervailable.

To calculate the benefit from this deferral, we calculated the difference between what ENSIDESA paid as an interest penalty during the POI and what ENSIDESA should have paid in interest penalties during the POI. We then divided the benefit by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 1.72 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Grants.* We verified that one grant was received under this program in 1987. As discussed in the Allocation section of the General Issues Appendix, we have treated this grant as a non-recurring benefit and have, therefore, allocated it over the average useful life of renewable physical assets in the steel industry, *i.e.*, 15 years. To calculate the benefit, we used the same grant methodology as described in the Allocation section of the General Issues Appendix. On this basis, we calculated an estimated net subsidy of 3.19 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

c. *Fund For Employment Promotion and Early Retirement.* R.D. 678/81 specifically provided for early retirement of excess steelworkers between the ages of 60 and 65. A subsequent measure, Law 27/84, established Funds for Employment Promotion for industries declared to be in reconversion. A Fund was set up under Law 27/84 for the iron and steel industry because Protocol 10 of Spain's accession to the EC required a reduction in steel production and, therefore, a reduction in workforce.

Excess workers can voluntarily join the Fund. Workers at or over the age of 55 who choose to join are promised economic protection until the age of 65, at which time normal retirement benefits begin. Workers under the age of 55 who choose to join the Fund are given some economic protection and retraining. If a worker joins the Fund, the worker pays the Fund the indemnification received from the company and in return receives all of the benefits from being a member of the Fund. If the worker chooses not to join, the worker keeps the indemnification received from the company.

At verification, we learned that, as a general matter, these Funds were not initially intended to cover any company obligations. However, the 1987 Delegated Commission for Economic Affairs authorized the GOS to cover ENSIDESA's obligations (i.e., costs resulting from the labor force reductions in the steel industry) for each of the years between 1987 and 1992. Because the 1987 Delegated Commission covered part of the indemnification costs of ENSIDESA, thereby relieving it of its legal obligation to pay these fees, we determine the program to be countervailable. See, the Prepension Programs section of the General Issues Appendix.

Because funds under this program were provided on an ongoing basis, year-after-year, we have determined the benefits to be recurring. See, the Allocation section of the General Issues Appendix. Therefore, we divided the amount provided in 1991 by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 1.73 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

5. *Contributions Made to INI Special Finance Accounts*

According to ENSIDESA's Annual Reports, INI made contributions to ENSIDESA which were put in INI Special Finance Accounts in 1982, 1983, and 1984. These special financial contributions were given by INI to compensate ENSIDESA for its previous year's losses. Because INI had no expectation of return either in the form of dividends or capital appreciation (see, the Equity section of the General Issues Appendix) on these funds, we consider them to be grants.

Two contributions were made in 1982, one in 1983, and one in 1984. In 1984, ENSIDESA offset reductions in the capital share account and the accumulated loss account by converting almost all of the INI special financing reflected on the books into new share capital. (A portion of this INI special financing remains in a capital reserve account and no shares were ever issued.) These conversions were countervailed at the preliminary determinations as 1983 and 1984 equity infusions. However, because these amounts were actually received as grants in 1982, 1983, and 1984, we are not countervailing them as equity infusions in 1983 and 1984.

We calculated the benefits from these non-recurring grants in the same manner as described in the Allocation section of the General Issues Appendix. On this basis, the estimated net subsidy is 5.40 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

6. *ECSC Article 54 Loans and Loan Guarantees*

Article 54 industrial investment loans, which are only available to the iron and steel industry, are provided for the purpose of purchasing new equipment or financing modernization. We verified that Article 54 loans are direct loans from the Commission and that the funds are loaned at a slightly higher rate than that at which the Commission obtained them in order to cover its costs. We verified that the Commission maintains this program to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain loans.

Because these loans are *de jure* limited to the iron and steel industry, they are countervailable to the extent that they are provided on terms inconsistent with commercial considerations.

We verified that ENSIDESA received four loans under this program. Two loans were received in 1988, and one each in 1990 and 1991. The loans received in 1988 were long-term variable rate loans and the loans received in 1990 and 1991 were long-term fixed rate loans.

Of the two loans received in 1988, one was denominated in Deutsche Marks (DM) and the other in European Currency Units (ECU). Both of these loans were guaranteed by INI. We calculated the amounts paid under these loans, including the guarantee fee paid to INI.

For the DM loan, we used as our benchmark the maximum-yield on industrial bonds in Germany in 1988, plus a risk premium (12 percent of the average 1988 prime rate in Germany), plus the commercial guarantee fee as discussed in the Loan Guarantee section above.

We compared what ENSIDESA did pay on this loan during the POI to what ENSIDESA would have paid using the benchmark rate described above, and found that ENSIDESA paid more

interest during the POI than it would have paid using the benchmark interest rate. However, because this is a variable rate loan, a single year's comparison is not sufficient to find that the DM loan was provided on terms consistent with commercial considerations. Circumstances in later years may be such that less would be paid than the benchmark amount. For these reasons, we cannot find the loan non-countervailable, but we have calculated a zero benefit for the POI.

For the ECU loan, we converted the principal outstanding in 1991 into pts. We then applied the uncreditworthy Spanish benchmark interest rate plus the commercial guarantee fee.

We then compared the benchmark financing, as constructed above, to the financing ENSIDESA received under this program and found that the ECSC ECU variable rate loan was provided on more favorable terms than the benchmark financing. Therefore, we determine that ENSIDESA's ECSC variable rate loan is countervailable.

To calculate the benefit, we took the difference between the amount that would have been paid under the benchmark and what was actually paid.

The fixed-rate loans received in 1990 and 1991 were calculated as long-term loans provided to an uncreditworthy company, as described in A.1.a. above. We summed the benefits attributable to the loans received in 1988, 1990, and 1991 and divided the total by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 1.72 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

AHM

As mentioned above, although AHM itself was not a mandatory respondent, we have determined that subsidies received by AHM were passed through to ENSIDESA when AHM sold its cold-rolling mill to ENSIDESA. Therefore, it is necessary to calculate both the benefits received by AHM and the percentage of these benefits that were passed through to ENSIDESA. See, the Restructuring section of the General Issues Appendix.

To determine what percentage of AHM's subsidies were passed through to ENSIDESA, we divided the value of the cold-rolling mill's assets on the day prior to the "sale" by the total value of AHM's assets on the day prior to the sale (not including any remaining value from the closed hot-mill) and found that 100 percent of the benefits received by AHM were passed through to ENSIDESA. See, also, the Restructuring section of the General Issues Appendix.

1. *Law 60/78*

a. *Equity infusions.* Petitioners alleged that AHM received equity infusions in 1978 from both INI and private investors. They stated that Law 60/78 (discussed above) conditioned a government bail-out of the company on additional private sector contributions. In addition, petitioners alleged that INI made equity infusions into AHM in 1980, 1981, 1982, 1984, and 1985.

As stated in the Equityworthiness: AHM section above, we have determined AHM to be unequityworthy in each year that an equity infusion was received. Therefore, the infusions were made on terms inconsistent with commercial considerations.

As discussed in the Equity section of the General Issues Appendix, we have determined that such equity infusions should be treated as grants. We have treated this benefit as a non-recurring grant and allocated it over the average useful life of renewable physical assets in the steel industry, *i.e.*, 15 years. We used petition information concerning the amounts of the equity infusions received, but based our discount rates on verified information. We summed the benefits allocated to the POI for each equity infusion and divided the benefit passed through to ENSIDESA by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 2.67 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Loans from BCI.* Petitioners alleged that AHM received loans from BCI under this program (which is described above) in 1979.

To determine whether the loans were made on terms inconsistent with commercial considerations, we employed the same analysis as described in A.1.a. above with respect to ENSIDESA. Because we have found AHM to be uncreditworthy in 1979, we have constructed the same benchmark interest rate as described in A.1.a. above. Based on a comparison of the interest rates charged on these loans and the benchmark interest rates, we determine these loans to be countervailable.

To calculate the benefit from these loans, we used the amounts of the loans provided in the petition and the same long-term loan methodology as described in A.1.a. above. We then divided the benefit passed through to ENSIDESA, attributable to the POI, by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of .18 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

2. *R.D. 878/81*

a. *BCI Exceptional Credits.* Petitioners alleged that AHM received loans under this program (which is described above) in 1981.

To determine whether the loans were made on terms inconsistent with commercial considerations, we employed the same analysis as described in A.1.a. above with respect to ENSIDESA. Because we have found AHM to be uncreditworthy in 1981, we have constructed the same benchmark interest rate in the same manner as described in A.1.a. above. Based on a comparison of the interest rates charged on these loans and the benchmark interest rates, we determine these loans to be countervailable.

To calculate the benefit from these loans, we used the amounts of the loans provided in the petition and the same long-term loan methodology as described in A.1.a. above. We then divided the benefit passed through to ENSIDESA, attributable to the POI, by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.03 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Grants to Decrease Financial Charges and to Compensate for Losses.* Petitioners alleged that AHM received grants under this program (which is described above) in 1982 and 1983. We calculated benefits under this program in the same manner as discussed in A.2.b. above, with respect to ENSIDESA. We then divided the benefit passed through to ENSIDESA, attributable to the POI, by ENSIDESA's total sales of all products. On this basis, the estimated net subsidy is 1.37 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

3. *1984 Council of Ministers Meeting*

a. *Investment loan.* Petitioners alleged that AHM received a loan pursuant to the 1984 Council of Ministers Meeting (described above) in 1984.

To determine whether the loan was made on terms inconsistent with commercial considerations, we employed the same analysis as described in A.1.a. above, with respect to ENSIDESA. Because we have found AHM to be uncreditworthy in 1984, we

VOL 58 ISS 130 JL 9 1993 UMI

have constructed the benchmark interest rate in the same manner as described in A.1.a. above. Based on a comparison of the interest rate charged on these loans and the benchmark interest rate, we determine this loan to be countervailable.

To calculate the benefit from this loan, we used the amount of the loan provided in the petition and the same long-term loan methodology as described in A.1.a. above. We then divided the benefit passed through to ENSIDESA, attributable to the POI, by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.11 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

b. *Loan guarantees.* Petitioners alleged that AHM received loan guarantees under this program in 1985. To determine whether the fees charged by INI for these loans were inconsistent with commercial considerations, we compared the fees charged by INI (as verified with respect to ENSIDESA) to the fees charged by commercial banks consistent with section 355.44(c) of the Proposed Regulations. We found that the INI fees were lower than the commercial fees. Therefore, we determine that the INI loan guarantees are countervailable.

To calculate the benefit from these guarantees, we used the same long-term loan methodology as described in A.1.a. above, with the difference in the guarantee fee comprising the interest differential. We then divided the benefit passed through to ENSIDESA, attributable to the POI, by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.00 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

c. *Grants to "Decrease Financial Charges" and to "Compensate for Losses".* Petitioners alleged that AHM received grants under this program in 1984 and 1985. We calculated benefits under this program in the same manner as discussed in A.2.b. above, with respect to ENSIDESA. We then divided the benefit passed through to ENSIDESA, attributable to the POI, by ENSIDESA's total sales of all products. On this basis, the estimated net subsidy is 1.23 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

4. *Deferral of Social Security and Other Tax Obligations*

Petitioners alleged that AHM did not pay its social security and treasury taxes during the 1979 through 1981 period (the same period during which ENSIDESA did not pay its taxes) and was not charged interest on the deferred amount. For a full explanation of this program, see, section 4.a. above.

To determine whether the deferral conferred a benefit to AHM, we compared the interest penalty applied to other companies in similar circumstances to the interest penalty applied to AHM during the POI. Based on this comparison, we determine this deferral to be countervailable.

To calculate the benefit from this deferral, we calculated the difference between what AHM paid as an interest penalty during the POI and what AHM should have paid in interest penalties during the POI. We then divided the benefit passed through to ENSIDESA by ENSIDESA's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.13 percent *ad valorem* for all manufacturers, producers, and exporters in Spain. This rate applies to both classes or kinds of merchandise.

B. *Programs Determined Not To Be Countervailable*

We determine that the following programs do not provide subsidies to manufacturers, producers, or exporters in Spain of certain steel products:

1. Partial Extinguishment of AHM Equity in 1982

Petitioners alleged that AHM extinguished equity in the amount of 7,800 million pesetas in 1982. For the reasons discussed in the Equity section of the General Issues Appendix, we do not consider the write-off of equity to constitute a separate subsidy event. Instead, any benefit arises at the time of the equity investment. Therefore, we determine this program to be not countervailable.

In this instance, we are countervailing equity investments made in 1978, 1980, and 1981. Therefore, to the extent that the equity being written off in 1982 was received in 1978, 1980, and 1981, we are already capturing the benefit to AHM.

2. Electricity Discounts

At the preliminary determinations, we countervailed this program based on a market research report supplied by petitioners. The market research report indicated that ENSIDESA pays, on average, almost half the price paid by other large users of electricity (the G–4 rate). Prior to the preliminary determinations, neither the GOS nor ENSIDESA responded to any of our questions regarding the G–4 electricity rate. Therefore, we relied on BIA in making our determinations.

After the preliminary determinations, we again asked the GOS and ENSIDESA to provide information regarding electricity rates. In response, the GOS and ENSIDESA provided information which was further clarified during verification.

Electricity "discount programs" or the "preferential provision of electricity" have been examined in several previous investigations. In the Final Affirmative Countervailing Duty Determination: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992) (*Magnesium*), we stated that "* * * the first step the Department takes in analyzing the potential preferential provision of electricity * * * is to compare the price charged with the applicable rate on the power company's non-specific rate schedule."

In two prior cases, we did not countervail programs which were alleged to provide preferential electricity rates. In the Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (January 12, 1987), we stated that Trefimetaux did not receive electricity under any agreement providing preferential electricity rates. Instead, Trefimetaux purchased electricity from the French electricity company "* * * at rates established in the published tariffs, based on the level of consumption." Furthermore, in the Final Negative Countervailing Duty Determination: Silicon Metal from Brazil, 56 FR 26988 (June 12, 1991), we stated that "* * * the silicon metal producers under investigation paid normal published rates for all electricity consumed and we found no evidence of the existence of any schedule of preferential electricity rates."

In Spain, we verified that all electricity rates are based on the volume of electricity consumed and are published in an "Official Bulletin." Companies are simply charged the rate which is applicable to them, based on their level of consumption. The G–4 rate is listed along with other rates in the Official Bulletin. We found no evidence that the GOS provides special tariff rates through a particular program or through private contracts.

Furthermore, we verified that ENSIDESA is charged the G–4 rate, as published, for only those facilities that meet the requirements, whereas it is charged a higher rate, as published, for

those facilities that do not meet the requirements for G–4.

Therefore, consistent with our approach in previous cases, we find this program not to be countervailable because the rate charged ENSIDESA was from a non-specific rate schedule according to the company's level of consumption.

3. Negative Corporate Taxes

At the preliminary determinations, we stated that we required further information to decide whether this program is countervailable. After the preliminary determinations, we asked the GOS and ENSIDESA to provide additional information regarding the Spanish corporate tax system. We received further information in response to this questionnaire. That information was further clarified during verification.

We verified that, for corporate income tax purposes, the Spanish Consolidated Tax Structure allows a corporate group to be treated as a single company. This income tax is based upon the consolidated results of the group as a whole, with the parent company making the required payments. Thus, the losses of one subsidiary are offset by the profits of the parent company or other subsidiaries, or vice versa. The parent company later allocates the tax liability among the members of the group, negatively or positively, as a function of each member's contribution to the total amount paid by the group.

We verified that this is the manner in which INI pays its taxes, and that hundreds of companies in Spain file as groups and allocate tax liability among their subsidiaries in a similar manner.

In addition, at verification, officials explained that there is a difference between a company's accounting results and its tax results (*i.e.*, there is a difference between whether and when an item can be considered an expense for accounting purposes and whether and when an item can be considered an expense for tax purposes). With respect to the difference between ENSIDESA's accounting results and tax results, officials explained that this resulted from timing differences. (Certain revenue and expense items may be deferred or accelerated for tax purposes, resulting in a different net profit or loss on the tax return than that reflected on the financial statement.) Such timing differences meant that, in 1990, ENSIDESA's tax losses were 59 million pts while its reported accounting losses amounted to 5,300 million pts.

Based on our analysis, we find this "program" not countervailable because it is not specific to an enterprise or industry or group of enterprises or industries. Furthermore, there is no evidence to indicate that ENSIDESA received any amounts in excess of what it was due; or that it otherwise benefitted from special treatment by the government.

C. *Programs Determined Not To Be Used*

We determine that the following programs were not used by manufacturers, producers, or exporters in Spain of certain steel products:

1. Long-Term Loans Provided Under Decree 669/74
2. BCI Exceptional Credits (Two Loans Prior to POI)
3. Long-Term Loans From INI Under R.D. 878/81 (Repaid Prior to POI)
4. Loan Guarantees Provided Between 1979–1982
5. Payment for Capacity Closures
6. Tax Exemptions Under Royal Decree 612/82
7. Regional Aid Programs
8. EC Programs
   a. ECSC Article 54 Interest Rebates
   b. Interest Rebates on ECSC Conversion Loans Under Article 56
   c. ECSC Redeployment Aid
   d. European Investment Bank Loans and Loan Guarantees
   e. New Community Instrument Loans
   f. ERDF Aid
9. Export Grants From the Basque Government
10. Deferral of Social Security and Other Tax Obligations Owed to the Basque Government
11. Deferral of Social Security and Other Tax Obligations Owed to the Navarre Government

Interested Party Comments

The following are country-specific comments only and do not address those issues identified as general issues, above. In addition, see, the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium for comments relating to European Community programs only.

Comment 1: At the preliminary determinations, we found each of the reconversion measures for the steel industry *de jure* specific to that industry. At verification, officials pointed out that law 27/84 (the general reconversion law) applied to all industries in reconversion, not just steel. Under this law, labor and management would have to come to an agreement and present a plan to the GOS before reconversion status could be obtained. The law itself does not specify which industries were declared to be in reconversion. Petitioners argue that each of the reconversion measures are *de jure* and *de facto* specific (see, below). Respondent argue that these measures are not *de jure* or *de facto* specific as discussed below.

De Jure: Respondents argue that benefits under the reconversion program established under Law 60/78, R.D. 878/81, the 1984 Council of Ministers Meeting, and the 1987 Delegated Commission are not specific because the assistance provided to steel companies under these programs was available under Law 27/84 to a broad spectrum of Spanish industries suffering from economic crisis. Therefore, respondents effectively argue that the various assistance measures are "integrally linked" as provided for in section 355.43(b)(6) of the Proposed Regulations.

Petitioners argue that Law 27/84 is not the appropriate level at which the Department should conduct a specificity analysis. Petitioners assert that Law 27/84 merely sets forth the basic procedures by which industries may be declared to be in reconversion and the parameters for the provision of assistance. Furthermore, petitioners assert that there is no information on the record linking Law 27/84 to the individual assistance packages for steel. Petitioners point out that for the programs to be integrally linked they must be linked at inception and reflective of a government policy to treat industries equally. See, Final Results of Countervailing Duty Administrative Review: Carbon Steel Wire Rod from Saudi Arabia, 56 FR 48158 (September 24, 1991) (*Saudi Wire Rod*). According to petitioners, neither of these conditions are present in the instant case.

Petitioners further assert that the measures adopted by the 1984 Council of Ministers Meeting and the 1987 Delegated Commission were explicitly designed to further the reconversion process of the integrated steel companies. While petitioners acknowledge that the Deferral of Social Security and Other Treasury Taxes and the Fund for Employment Promotion programs were established under Law 27/84, they argue that these programs, as they apply to the steel industry, were later significantly modified by the 1987 Delegated Commission.

De Facto: Number of Users: Respondents assert that Law 27/84 extended to 11 additional industrial sectors the same assistance extended to the steel sector, and that these 12 sectors together included 792 firms and over ten percent of the industrial sector work force.

Dominant Use or Disproportionality: Petitioners argue that: (1) The steel industry is the dominant user of assistance (only 12 industrial sectors are

VOL 58 ISS 130 JL 9 1993 UMI

in reconversion and the steel industry received approximately 34 percent of GOS investment in the 12 sectors), and (2) the steel industry received a disproportionate share of the reconversion benefits (steel made up approximately 0.50 percent of Spain's GNP but received 34 percent of the benefits).

Respondents argue that the figure used by petitioners (*i.e.*, that 34 percent of GOS investment went to the steel sector) is incorrect because the figure does not "represent GOS investment in the sectors, but investments made by the industrial sectors." Respondents further argue that the contribution of any industrial sector to GNP is irrelevant for determining whether benefits are disproportionate because the reconversion programs allocate available resources based upon the needs of the qualifying sectors. They assert that any comparison of benefits received under the reconversion programs should be broader, looking at such factors as financial restructuring, work force reductions, and new investments required in order to carry out the restructuring plans. In this regard, the steel industry accounted for 38 percent of the total work force reduction and 37 percent of the total investments made by sectors in reconversion. Therefore, it is appropriate that the steel industry received the level of assistance that it did.

DOC Position: We continue to find each of the reconversion measures for the steel industry *de jure* specific to that industry. Of the reconversion measures included in this investigation, three measures (Law 60/78, R.D. 878/81, and the 1984 Council of Ministers decisions) were enacted prior to Law 27/84. Only two of the measures (the Fund for Employment Promotion and the Deferral of Social Security and Other Tax Obligations) were explicitly discussed in Law 27/84. Moreover, these two measures were significantly modified specifically for the steel industry by the 1987 Delegated Commission. Therefore, each of the reconversion measures being investigated was enacted with direct reference to the integrated steel industry.

With respect to the question of integral linkage, section 355.43(b)(6) of the Proposed Regulations states that "in determining whether programs are integrally linked, the Secretary will examine, among other factors, the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation, and the manner of funding the programs."

We note first of all, that Law 60/78, R.D. 878/81, and the 1984 Council of Ministers programs were enacted prior to the promulgation of Law 27/84 (see, *Saudi Wire Rod*). As regards the Fund for Employment Promotion and the Deferral of Social Security and Other Tax Obligations, there is little information on the record that would allow us to analyze integral linkage. Indeed, at no time prior to the filing of case briefs did respondents even argue or submit information supporting their contention that the programs are integrally linked. In fact, respondents stated in their questionnaire responses that the reconversion programs were, by law, designed specifically for the steel industry.

While there is information identifying other industries in reconversion, there is no information regarding the types and manner of assistance, if any, that such industries received. Therefore, we were unable to analyze the reconversion programs in terms of the aforementioned factors. Moreover, as noted above, the benefits available under Law 27/84 were significantly modified by the 1987 Delegated Commission.

For these reasons we continue to find the reconversion measures *de jure* specific to the steel industry. Because we have determined that specificity exist on *de jure* grounds, arguments concerning *de facto* specificity are rendered moot. Therefore, we have not addressed them.

Comment 2: Petitioners argue that the G–4 electricity tariff is both *de jure* and *de facto* specific to a group of industries. They assert that *de jure* specificity exists as a result of the specific eligibility requirements set forth in the Ministry of Energy's Order. In petitioners' view, these requirements are neither neutral nor objective.

Petitioners also contend that *de facto* specificity exists because only three industries use the G–4 electricity rate and these industries represent a discrete group of industries. Moreover, the GOS exercises considerable discretion in determining the actual recipients of G–4 status. For example, they argue that even though ENSIDESA did not satisfy the requirements for receipt of the G–4 rate, the GOS waived these requirements for ENSIDESA.

Respondents argue that the G–4 electricity rate is available to all consumers of electricity that meet the established power input, tension, and usage requirements. Therefore, the rate is not specific and not countervailable. Respondents point out that Spanish electric rates are published in the Official State Bulletin each year and consumers of electricity are charged the rate which is applicable to them, based on their level of consumption. Respondents also point out that ENSIDESA does not receive this rate for the entire company. Only the two plants which meet the consumption requirements are billed the G–4 rate, while the rest of the company is billed separately at a higher rate. Also, respondents contend that ENSIDESA's failure to meet the intensity requirement is through no fault of ENSIDESA's, but rather solely due to the fact that the local power company is not able to supply the required level of tension.

DOC Position: As discussed in detail in the Programs Determined Not to be Countervailable section above, we determine that the electricity rate in Spain does not provide a countervailable subsidy because the rate charged ENSIDESA is from a published, non-specific rate schedule and is set solely as a result of the company's level of consumption. Given this, we do not believe that the limited number of customers using the G–4 rate renders it specific.

Comment 3: Petitioners assert that the G–4 rate allegation was properly included in the investigation because the Department has the authority to examine any practice it discovers during the course of an investigation, provided sufficient time remains prior to the scheduled date for the final determination.

Respondents claim that the allegations with respect to G–4 rates were not included in the petition and, therefore, should not properly be subject to investigation. They contend that petitioners did not amend their petition to include the G–4 rate within the deadline specified by 19 CFR 355.31, and the Department did not take the necessary steps to properly initiate an investigation with respect to the alleged program. Further, respondents argue that the information regarding G–4 rates in petitioners' October 9, 1992 submission was not sufficient to warrant investigation of this program.

DOC Position: We note that an allegation of electricity discounts to ENSIDESA was in the original petition, and was included as a program under investigation in our notice of initiation. Furthermore, information regarding the G–4 rate was submitted by petitioners more than 40 days prior to the preliminary determination, in conformity with 19 CFR 355.31 (c)(1)(i).

Comment 4: Petitioners argue that for purposes of the "Negative Corporate Tax" program and INI/ENSIDESA

parent-subsidiary financing, the Department should continue to treat all funds from INI as funds from the GOS. Despite the fact that INI was converted into a state holding company in 1988, the GOS ultimately decides the amount of GOS funding and INI merely serves as the vehicle for disbursing the funds. Finally, petitioners contend that even when a government holding company has actually operated without government direction, the Department has treated the funds flowing from the holding company as funds from the government, see, Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218, 1222 (January 12, 1987) (*Brass Sheet*).

DOC Position: In 1941, INI was created as a government agency for the purposes of developing an industrial infrastructure in Spain. In 1988, legislation was passed which officially changed INI from a government agency to an autonomous holding company wholly-owned by the GOS. INI is currently devoted to managing different companies in a variety of different sectors. Income from these different companies gives INI its own source of funds. As discussed above, it pays corporate income tax. Also, INI employees are no longer considered civil servants. Given these changes in INI's status, we do not agree that any monies flowing from INI to ENSIDESA should automatically be viewed as transfers from the GOS.

In the *Brass Sheet* investigation, the holding company directly received monies from the Government of France and at the same time was providing equity infusions into its brass sheet-producing subsidiary. In this case, there is no evidence indicating that the GOS used INI as a means of channeling funds to ENSIDESA after 1988.

Comment 5: Petitioners argue that ENSIDESA appears to receive an unexplainably higher "negative tax" compensation from INI than the amount to which it is entitled. They contend that the information on the record only reveals what ENSIDESA should have received, based on its accounting results, and the GOS's explanation for the differences between ENSIDESA's accounting and tax recording systems is unsupported. Petitioners assert that because ENSIDESA did not report its 1990 pre-tax loss as recorded in ENSIDESA's tax books (and, therefore, the amount was not verified), it is impossible to detect with any certainty whether or not ENSIDESA received an excessive negative tax amount. Therefore, they contend that this possible excess provides a countervailable benefit to ENSIDESA.

DOC Position: As discussed in the Programs Determined Not to be Countervailable section above, we find that any differences between ENSIDESA's accounting results and its tax results can be explained by standard tax and accounting principles that are employed by most, if not all, large companies and throughout the world. There is no evidence to indicate that ENSIDESA received any amounts in excess of what it was due.

Comment 6: Petitioners contend that the entire amount of the 1984 equity infusion (as listed in ENSIDESA's audited 1984 financial statement) should be treated as an equity infusion in 1984. According to petitioners, the funds provided under INI Special Finance Facility in 1981 and 1982 were not recorded as capital contributions in ENSIDESA's 1981 or 1982 audited financial statements.

Respondents argue that the 1981 and 1982 contributions to INI Special Financing (which became in part the 1984 equity infusion) should be treated as equity provided in 1981 and 1982. They assert that these earlier dates represent when the benefits were conveyed to ENSIDESA and when this money became a part of shareholders' equity.

DOC Position: As discussed in the Contributions to INI Special Finance section above, we are treating these contributions as grants in the years they were originally received because at the time the funds were received by ENSIDESA, INI did not expect any return in the form of dividends or capital appreciation. With respect to petitioners' statement that these contributions are not found in ENSIDESA's annual reports, we note that these contributions, and the times they were received, are found on page 25 of ENSIDESA's 1983 audited annual report and pages 33 and 35 of its 1984 audited annual report.

Comment 7: Petitioners contend that the INI one-year financing discovered during verification and INI short-term credit accounts should be countervailed by the Department. Petitioners state that money from INI is effectively money from the GOS, and ENSIDESA was considered uncreditworthy at the time of this financing. Thus, the Department must find the financing discovered at verification to be countervailable. Petitioners argue further that since respondents did not provide the Department with adequate information with which to evaluate this program, the Department should assume as BIA that this financing was interest-free.

Respondents argue that the information concerning interest rates charged for what they refer to as "short-term financing" from INI was supplied in respondents' January 28, 1993 submission. Respondents also point out that petitioners did not make a subsidy allegation and, therefore, no investigation was initiated with respect to this financing.

DOC Position: We determine that this financing is not countervailable because there is no indication that the funds are provided through any steel-directed program, but are rather self-generated funds used for normal parent-subsidiary financing. Moreover, for the reasons discussed in response to *Comment 4*, we are not automatically treating funds from INI to ENSIDESA as government funds.

Comment 8: Petitioners argue that one of the private loans reported in the questionnaire responses for possible use as a company-specific benchmark (2,500 million pesetas issued in 1991 from Banco Exterior de Espana) should be countervailed by the Department because the bank was effectively controlled by the GOS and ENSIDESA was clearly uncreditworthy at this time. According to petitioners, since respondents did not provide information regarding any other forms of assistance provided by the GOS to ENSIDESA, the Department should use BIA in calculating the benefits to ENSIDESA.

Respondents argue that the 2,500 million peseta loan from Banco Exterior de Espana in 1991 had terms identical to eight other commercial loans issued by private banks. As a result the Department should not find that the loan conveyed a countervailable benefit.

DOC Position: Because there is no allegation from petitioners nor evidence on the record that this loan was provided at the direction of the government or with funds provided by the government as required in section 355.44(b)(9) of the Proposed Regulations, we are not countervailing this loan. In addition, we declined to investigate these types of loans prior to the preliminary determinations for the same reason.

Comment 9: With respect to the July 13, 1979 BCI loan for 3,250 million pesetas provided under Law 60/76, petitioners argue that the apparent grace period on the payment of interest should be factored into the calculation of the countervailable benefit.

DOC Position: As stated in the GOS, ENSIDESA, and commercial bank verification reports, there were no grace periods for repayment of interest on any loans provided to ENSIDESA; i.e.,

interest accrued consistently on the outstanding balance of all loans. The "apparent grace period" referred to by petitioners is a typographical error in that portion of the response.

Comment 10: With regard to the BCI Exceptional Credits given to ENSIDESA under R.D. 878/81, petitioners assert that, despite the fact that this loan was discovered at verification to have had variable rates after 1986, the same benchmark should be used throughout the life of the loan to determine ENSIDESA's benefit. Since the Department's preferred benchmark for a government variable rate loan is not on the record, the Department should use the highest long-term fixed interest rate available.

DOC Position: We agree with petitioners. According to section 355.44(b)(5) of the Proposed Regulations, the preferred alternative, if a maximum long-term variable rate is not available, is a maximum long-term fixed rate.

Comment 11: Petitioners argue that, because the Department was not able to verify the amounts of grants provided to decrease financial charges for 1982 and 1983, the Department should not accept the amounts reported by ENSIDESA in its questionnaire response. Petitioners argue that the Department should countervail the amounts indicated by petitioners in their petition for these years.

DOC Position: We disagree with petitioners. We verified that respondents accurately reported the amounts they received in grants to decrease financial charges and to compensate for losses. We are not required to verify every fact or number submitted in the questionnaire responses. Merely because we chose not to examine backup documentation for these years, there is no reason to believe that these amounts were not provided in the same manner as those figures where backup documentation was checked. To the contrary, the purpose of verification is not to examine source documentation for each piece of information provided, but rather to confirm the completeness and reliability of the response by testing the accuracy of a sampling if information.

Comment 12: With respect to the deferral of social security and other tax obligations, petitioners argue that ENSIDESA enjoys the general benefits of having received a deferral without having to pay. Petitioners also argue that since the Department treated this deferral as interest-free long-term loans in its preliminary determinations, the Department should continue to rely upon the interest rate benchmark used in the preliminary determinations to calculate the countervailable benefit. Petitioners assert that there is no verified information on the record supporting the use of 10 percent as the benchmark for a loan agreed upon in 1988. Petitioners state that Treasury Debt should be treated in the same manner.

Respondents argue that the Department's verification established that the Spanish Social Security Administration cannot charge interest on unpaid debt until a deferral is requested. Therefore, according to respondents, the 1987 Delegated Commission did not give ENSIDESA preferential treatment because interest payments on unpaid obligations do not have to be paid by companies that have not requested a deferral.

In addition, respondents argue that if a subsidy is determined to exist, the Department should use a benchmark interest rate of 10 percent to calculate the benefit under this program since a 10 percent penalty is applied when a deferral is requested. Respondents assert that the deferral system is not the same as providing a loan to a company. These are taxes due from ENSIDESA; they are not loans provided to ENSIDESA.

DOC Position: We agree with petitioners insofar as we determine that ENSIDESA benefitted from not having to pay interest on its deferred taxes. While it may be true that other companies, which did not request a deferral, are not charged interest, such companies would eventually be subject to liquidation in order to collect the unpaid debts (see, pages 20 and 22 of the Government Verification Report). On the other hand, ENSIDESA requested a deferral (so as to avoid possible liquidation) and was then relieved of the interest penalty applied to all other companies in similar situations.

However, we agree with respondents regarding the benchmark interest penalty that should be used to calculate the benefit received by ENSIDESA. Instead of calculating the benefit using our standard long-term loan methodology, as we did in the preliminary determinations, we now determine that it is appropriate to apply the 10 percent penalty as this measures what ENSIDESA would otherwise have to pay in conjunction with a tax deferral. As we are only concerned with 1991 and are uncertain as to when ENSIDESA will pay off its debt, we have applied the 10 percent penalty in 1991 to derive the countervailable benefit for the POI. This is the manner in which the social security authority calculates interest for all companies in similar circumstances.

Comment 13: Petitioners argue that the Department should continue to use the uncreditworthy discount rate for allocating grants and equity infusions over time. They argue that the Department has utilized and recognized risk measurement in its analysis of a firm's weighted average cost of capital, whether equity- or debt-based, since 1984. Petitioners assert that the underlying premise regarding opportunity costs remain valid, see, Final Affirmative Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat Products from Argentina, 49 FR 18006, 18017 (April 26, 1984).

Respondents argue that the Department was incorrect in using the uncreditworthy discount rate to allocate the benefits from grants and equity infusions over time. They argue that under section 355.48(b)(2) of the Proposed Regulations, the preferred discount rate in the calculation of grants and appropriate equity infusions when the company's cost of debt is unavailable, is the "average cost of long-term debt in the country in question." Respondents contend that there is no provision in this section for a risk premium. The risk premium, according to respondents, is provided for in section 355.44(b)(6)(iv) of the Proposed Regulations, but only applies to constructing a benchmark rate for determining the benefits from a long-term government loan. Respondents argue that in its final determinations, the Department should use the average cost of long-term fixed rate debt as the discount rate in allocating the benefits conveyed by grants and equity infusions over time as provided for in section 355.49(b)(2)(ii) of the Proposed Regulations.

DOC Position: We have continued to use an "uncreditworthy" discount rate to allocate benefits received in years when the company was found uncreditworthy. Although respondents are correct that our Proposed Regulations do not provide for uncreditworthy discount rates, we believe that their use is consistent with our methodology.

In allocating benefits over time, we attempt to create a stream of benefits in such a way that the company in question would be indifferent between: (1) Receiving the benefit in a lump sum, and (2) receiving a series of payments over the allocation period. The use of a company-specific discount rate is what guarantees that we will achieve indifference. This is because a company-specific rate reflects the

company's own time preference for money.

Because company-specific rates should be used to allocate benefits over time, it would be incorrect to rely on a creditworthy discount rate (as the Proposed Regulations would have us do) for a company which has been found to be uncreditworthy. If we did so, we would be understating the benefit stream that would make the recipient indifferent between current and future values.

Comment 14: Respondents argue that since 20,095,952,000 pesetas of the 1984 23,450,000,000 peseta grant for compensating losses was converted into share capital in 1984 and the rest remained as 1983 INI Special Finance, the Department can calculate the benefit as either (1) the total amount given for compensating losses or (2) separately as 1983 INI Special Finance and as a portion of the 1984 equity infusion. To do otherwise would be to double-count the subsidy in question.

In addition, respondents argue that ENSIDESA's total sales figure should be increased by 4,062 million pesetas to account for residuals (*i.e.*, scrap metal).

DOC Position: We agree with respondents on both points. Therefore, we have included the 23,450,000,000 peseta grant in our calculation of benefits with respect to INI Special Finance and not as a grant to decrease financial charges or to compensate for losses. In addition, we increased ENSIDESA's denominator to account for residuals.

Comment 15: Petitioners argue that the Department should reject ENSIDESA's request that the ECSC Article 54 loans be tied to specific projects. Instead, the Department should countervail the full benefit of the loan in accordance with the approach it took in the preliminary determinations.

DOC Position: We agree with petitioners. None of the information supplied in the response with respect to whether Article 54 loans could be tied to specific projects could be verified by the Department. Furthermore, respondents have not offered any additional explanation as to why we should tie these loans to particular projects.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examining relevant accounting records, and examining original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building)."

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Spain which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation for all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain cold-rolled carbon steel flat products
Country-wide *Ad Valorem* Rate—36.86 Percent
Certain cut-to-length carbon steel plate
Country-wide *Ad Valorem* Rate—36.86 Percent

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain steel products from Spain.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to Section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4)).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15638 Filed 7–8–93; 8:45 am]
BILLING CODE 3510–DS–P

[C–401–804]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Annika L. O'Hara or Stephanie L. Hager, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 or 482–5055, respectively.

Final Determinations

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of certain steel products.

For information on the estimated net subsidy, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determinations in the **Federal Register**, 57 FR 57793 (December 7, 1992), the following events have occurred.

On December 9, 1992 and January 21, 1993, we issued supplemental questionnaires to the Government of Sweden (GOS) and SSAB Svenskt Stål Aktiebolag (SSAB), the only producer of the products covered by these investigations. On January 5 and January 29, 1993, we received responses to our questionnaires.

We conducted verification between February 1 and 5, 1993. On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations in accordance with the postponement of the final determinations in the companion antidumping duty investigations (58 FR 12935). On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see the Suspension of Liquidation section, below).

The parties submitted case and rebuttal briefs on April 2 and 7, 1993, respectively. A public hearing was held on April 9, 1993. Briefs and rebuttal briefs on the general issues in these investigations were submitted by the parties on April 28 and May 3, 1993, respectively. A public hearing on general issues was held on May 5 and 6, 1993.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute two separate "classes or kinds" of merchandise: certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate (see the Scope Appendix to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, which is published concurrently with this **Federal Register** notice).

Injury Test

Because Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from Sweden materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reason of imports from Sweden of the subject merchandise (57 FR 38064).

General Issues

Several issues raised by interested parties in these investigations and in other countervailing duty investigations of certain steel products from various countries were not case-specific but rather general in nature. These included:

- Allocation issues;
- Denominator issues;
- Equity issues;
- Prepension program issues;
- Privatization issues; and
- Restructuring issues.

The comments submitted by the interested parties concerning these issues, in both the general issues case and rebuttal briefs as well as the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria which is published concurrently with this notice.

Analysis of Programs

Based on our analysis of the petition, the responses to our questionnaires, verification, and comments by the interested parties, we determine the following:

Period of Investigation

For purposes of these final determinations, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991, which corresponds to SSAB's fiscal year.

Equityworthiness

Petitioners have alleged that SSAB was unequityworthy in the years the company received equity infusions from the GOS (i.e., 1978 and 1981) and that the equity infusions, therefore, are inconsistent with commercial considerations. In Final Affirmative Countervailing Duty Determination: Carbon Steel from Sweden, 50 FR 33375 (August 19, 1985) (the investigation of Carbon Steel from Sweden), we determined that SSAB was unequityworthy in 1978 and 1981. The respondent has not contested this determination and has not submitted any information on the record of these investigations which would lead us to reconsider our previous unequityworthiness determination. Therefore, we determine that SSAB was unequityworthy in 1978 and 1981.

Discount Rates

Unless otherwise noted, we have used, as the discount rate for allocating benefits over time, SSAB's company-specific interest rate on fixed-rate long-term loans.

Denominator

All subsidies received by SSAB were domestic subsidies. We have, therefore, used SSAB's total sales as the denominator when calculating the *ad valorem* rate for each program except for the NJA grant and the outstanding reconstruction loans. Because these two programs are directly related to productive activities, we subtracted the value of services sold from SSAB's total sales when calculating the *ad valorem* benefit from these programs. This is consistent with the methodology outlined in the Denominator section of the General Issues Appendix.

Privatization

SSAB was partially privatized on two occasions. The first partial privatization took place in 1987 when the GOS, which by then had become the sole owner of SSAB, sold one-third of its shares in the company to a consortium of six institutional investors. A second partial privatization followed in 1989 when the GOS and the institutional investors sold part of their shareholdings in a public offer. Shortly afterwards, SSAB's shares were introduced on the stock exchange. In the POI, the GOS owned 47.8 percent of the share capital, but due to a difference in voting power between different classes of shares, 60.4 percent of the votes were under government control.

In these final determinations, we have decided that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We calculated the portion of the purchase price attributable to repayment of prior subsidies. We then reduced the benefit streams for each program by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. A further explanation of the Department's determination on privatization and these calculations can be found in the Privatization section of the General Issues Appendix. The subsidies allocated to the POI for SSAB reflect (where appropriate) the application of the privatization methodology.

Spin-offs

In these final determinations, we have also decided that a portion of the price paid when a "productive unit" is sold is allocable to the value of subsidies

received in prior years by the seller of the "productive unit." The subsidies allocated to the POI have been reduced (where appropriate) as described above, but adjusted by the asset value of the "productive unit." For a further explanation of the Department's determination regarding "spin-offs" and these calculations, see the Restructuring section of the General Issues Appendix. The subsidies allocated to the POI for SSAB reflect (where appropriate) the application of the spin-off methodology.

Calculation of Country-Wide Rate

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the *ad valorem* benefit for each program received by SSAB and, where appropriate, reduced the benefit to take into account spin-offs and the two partial privatizations, as described above. The benefits for all programs were then summed to arrive at SSAB's total subsidy rate, which, because SSAB is the only respondent company in these investigations, equals the country-wide rate. In this case, this subsidy rate is the same for both classes or kinds of merchandise.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of certain steel products under the following programs:

1. Equity Infusions

SSAB was formed in 1978 as a joint venture between two private companies, Gränges AB (Gränges) and Stora Kopparbergs Bergslags AB (Stora); a state-owned steel company, Norrbottens Järnverk (NJA); and the Swedish government. At SSAB's formation, Gränges, Stora and NJA each contributed 700 million Swedish Kronor (MSEK) in physical assets to the joint venture, while the GOS contributed the same amount in cash.

Before the formation of the joint venture, outside appraisers evaluated the assets of Gränges, Stora, and NJA and concluded that they were of approximately equal value. After negotiations between the parties, the value of their respective assets was set at 700 MSEK. In return for their contributions, Gränges and Stora each received 25 percent of the shares in SSAB with corresponding voting rights. The GOS received 50 percent of the shares in return for a total equity infusion of 1,400 MSEK (*i.e.*, 700 MSEK in cash and 700 MSEK in NJA assets).

In 1981, the GOS provided SSAB with 575 MSEK in cash and converted 550 MSEK worth of structural loans into equity. In return for this total equity infusion of 1,125 MSEK, the GOS received 75 percent of a new share issue.

Also in 1981, Gränges paid 375 MSEK in cash in return for the remaining 25 percent of the new share issue. However, in order to induce Gränges to participate in the new issue, the GOS agreed to purchase all Gränges' shares in SSAB for 875 MSEK in 1991.

Because of this arrangement, we determined in Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 54 FR 31714 (August 1, 1989) (the 1985 review of Carbon Steel from Sweden) that the 375 MSEK paid by Gränges was an equity infusion provided indirectly by the GOS (through Gränges) specifically to SSAB. Therefore, we added the 375 MSEK to the 1,125 MSEK provided directly to SSAB in 1981. We thus arrived at 1,500 MSEK as the total amount of equity infusions received by SSAB in 1981.

Since the equity infusions were provided only to SSAB, we determine the benefit to be limited to a specific enterprise or industry or group of enterprises or industries. Therefore, the equity infusions are countervailable to the extent they were provided on terms inconsistent with commercial considerations.

As stated above, we determine that SSAB was unequityworthy in both 1978 and 1981. The equity infusions received in those years are, therefore, countervailable.

In accordance with the Equity section of the General Issues Appendix, we treated the equity infusions as grants. We calculated the benefit using our grant methodology, which is described in the Allocation section of the General Issues Appendix. On this basis, we determine the estimated net subsidy from these equity infusions during the POI to be 1.56 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

2. The NJA Grant

In connection with the formation of SSAB in 1978, the GOS provided NJA with a grant of 530 MSEK, which we determined in the investigation of Carbon Steel from Sweden to be compensation to NJA for having sold its assets to SSAB below value. We arrived at this determination because the value of NJA's assets was higher than their negotiated price of 700 MSEK and, also, because the transfer was conditioned upon NJA receiving an extra contribution from the GOS. We determined that the GOS assumed the cost of acquiring the assets on behalf of SSAB and that the GOS's payment to NJA, therefore, conferred a countervailable benefit upon SSAB. The U.S. Court of International Trade (CIT) later upheld the Department's decision to countervail the payment to NJA as a grant to SSAB (see *SSAB Svenskt Staal AB* v. *United States*, 764 F. Supp. 650, 656–57 (CIT 1991)).

Nothing on the record of these investigations would lead us to change our earlier determination. Because the GOS paid NJA for a portion of the value of NJA's assets transferred to SSAB, we determine that SSAB indirectly received a grant in the amount of 530 MSEK. Since this assistance was provided only to SSAB, we determine the benefit to be limited to a specific enterprise or industry or group of enterprises or industries. The NJA grant is, therefore, countervailable. We calculated the benefit using the grant methodology outlined in the Allocation section of the General Issues Appendix. On this basis, we determine the estimated net subsidy of the NJA grant during the POI to be 0.24 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

3. TGOJ Railway Grant

The book value of the assets that Gränges contributed at SSAB's formation in 1978 also exceeded the assets' negotiated value of 700 MSEK. Because the resulting book loss would have brought Gränges to near bankruptcy, it was decided that Gränges' TGOJ railway was to be transferred to SSAB in a separate transaction. As payment for TGOJ, Gränges received 343.3 MSEK from the GOS. The payment was effectuated through a promissory note issued by the GOS to SSAB, which turned it over to Gränges so that all payments were made directly from the GOS to Gränges.

In Carbon Steel from Sweden, we determined that the GOS's payment to Gränges conferred a countervailable benefit on SSAB because it relieved SSAB of a debt that the company otherwise would have incurred. Nothing on the record of these investigations would lead us to change our earlier determination.

Since the TGOJ grant was provided only to SSAB, we determine the benefit to be limited to a specific enterprise or industry or group of enterprises or industries. The TGOJ grant is, therefore, countervailable. We calculated the benefit using the grant methodology outlined in the Allocation section of the

General Issues Appendix. On this basis, we determine the estimated net subsidy of the TGOJ grant during the POI to be 0.16 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

4. Structural Loans

SSAB has received three 25-year structural loans from the GOS for investment purposes. The loans were disbursed to SSAB in installments between 1978 and 1983. One loan was partially converted to equity in 1981 (see section A.1, above). However, portions of all three loans were outstanding in the POI.

All three structural loans were interest-free for three years after disbursement. Thereafter, one loan incurred interest at a fixed rate of five percent per annum while the other two loans incurred interest at a rate which is recalculated every five years. Pursuant to the loan terms, the variable interest rate on these two loans is set as the rate of long-term government bonds plus a margin of 0.25 percent. For all structural loans, no principal payments are made in the first five years of the loan. Thereafter, the principal is repaid in 20 equal installments.

Because the structural loans were provided specifically to SSAB, we determine the benefit to be limited to a specific enterprise or industry or group of enterprises or industries. Therefore, the structural loans are countervailable to the extent they were provided on terms inconsistent with commercial considerations. Comparing the interest rates charged on the structural loans to SSAB's company-specific long-term benchmark interest rates, we found that all three loans were provided at interest rates below our benchmark. Therefore, we determine that all three structural loans are countervailable.

To calculate the benefit from the fixed-rate structural loan, we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Regulations. (See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations).)

To calculate the benefits from the variable-rate loans, we used our variable-rate long-term loan methodology as described in section 355.49(d)(1) of our Proposed Regulations. Thus, we first calculated the difference between what SSAB paid in interest on these loans during the POI and what SSAB would have paid during the POI, had the loans been provided on normal commercial terms. We then divided the resulting difference by SSAB's total sales in the POI.

On this basis, we determine the estimated net subsidy of both fixed-rate and variable-rate structural loans during the POI to be 0.37 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

5. Reconstruction Loans

SSAB has received several long-term reconstruction loans from the GOS for loss coverage, investment, and employment promotion purposes. The loans were interest-free for three years after disbursement, after which a fixed interest is charged. Pursuant to the loan terms, half of the principal may be written off two years after disbursement of the loan. The loan terms also stipulate that the remaining principal and all accrued, unpaid interest may be forgiven nine years after disbursement. However, according to the loan terms, SSAB must make repayments on the loans in those years the company declares a dividend.

a. *Outstanding reconstruction loans.* Only two of SSAB's reconstruction loans showed outstanding balances during the POI (the others had been forgiven; *see* below). Because the loans were provided specifically to SSAB, we determine the benefit to be limited to a specific enterprise or industry or group of enterprises or industries. Therefore, the outstanding reconstruction loans are countervailable to the extent they were provided on terms inconsistent with commercial considerations. Comparing the fixed interest rates charged on these two loans (9.5 and 11.5 percent, respectively) to SSAB's company-specific long-term benchmark interest rate, we found that both loans were provided at interest rates below our benchmark. Therefore, we determine that both outstanding reconstruction loans are countervailable.

Because of the condition linking repayment of the reconstruction loans to dividends, we have treated the loans as contingent liabilities (*see* the *Equity* section of the General Issues Appendix). Our methodology for calculating the benefit of these loans is similar to the one used for the variable-rate structural loans described in section A.4, above, *i.e.*, we compared the difference between what SSAB paid in interest on these loans during the POI with what SSAB would have paid during the POI, had the loans been provided on normal commercial terms. We divided the resulting difference by SSAB's total sales in the POI, reduced by the value of services sold, as described above. On this basis, we determine the estimated net subsidy of the outstanding reconstruction loans to be 0.02 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

b. *Forgiven reconstruction loans.* Pursuant to the terms of the reconstruction loans described above, the GOS wrote off large portions of principal and accrued interest on these loans between 1980 and 1990. One reason for the write-offs was that some reconstruction loans were used to finance employment promotion projects or investments which created new jobs. Other reconstruction loans were used to cover SSAB's operating losses. In an agreement between the GOS, Gränges, and Stora dating from the time of SSAB's formation, the GOS promised to cover SSAB's losses during its first five years of operation. By writing off reconstruction loans used for loss coverage, the government was meeting this obligation.

Because the reconstruction loans were provided specifically to SSAB and, therefore, also forgiven specifically for SSAB, we determine the benefit to be limited to a specific enterprise or industry or group of enterprises or industries. We treated the written-off reconstruction loans as countervailable grants received in the years the loans were forgiven and calculated the benefit using our grant methodology as described in the Allocation section of the General Issues Appendix.

On verification, we were unable to reconcile the amount reported in the response as forgiven in 1990 and the amount indicated by SSAB's audited 1990 annual report. Therefore, we used the higher amount as recorded in the annual report. At the same time, we excluded from our benefit calculation a forgiven reconstruction loan in the amount of 2.8 MSEK. This loan was provided for employment promotion projects at a former SSAB subsidiary, Flexiform. We excluded this loan because (1) Flexiform does not produce the subject merchandise, and (2) we verified that SSAB only served as conduit for the loan to Flexiform.

On this basis, we determine the estimated net subsidy of the forgiven reconstruction loans during the POI to be 1.90 percent *ad valorem* for all manufacturers producers, and exporters in Sweden of the subject merchandise.

6. Outstanding Research and Development (R&D) Loans

The Swedish National Board for Industrial and Technical Development (NUTEK) provides loans to Swedish industries for R&D purposes. The loans accrue interest equal to the official

discount rate plus 3.75 percent from the date of disbursement. However, no interest or principal payments are due until the R&D projects are finished, which may take several years. The length of these loans is thus not predetermined, but once a research project is completed, the loans must be repaid within five years.

However, the R&D loans may be forgiven if the companies receiving them decide not to utilize the research results for commercial purposes and, therefore, do not claim proprietary treatment for the results (see section B.2, below). Forgiveness is contingent upon public dissemination of the results of the research financed by the loan. If, on the other hand, a company receiving a loan wishes to retain the research results for commercial use, the loan must be repaid with interest and the research results become proprietary to the company.

One type of R&D loan (industrial development loans) is mostly aimed at "new" industries such as the biotechnical, electronic, and medical industries. Another type of R&D loan (energy efficiency loans) is directed towards big energy consumers. The GOS has stated that both types of loans are available to all industries, but it has not provided any information showing the *de facto* distribution of the benefits.

We verified that in the POI, SSAB had several outstanding R&D loans received between 1985 and 1991. Because the research projects were ongoing, SSAB did not make any interest or principal payments on these loans in the POI. However, we verified that interest was accruing on all of SSAB's R&D loans.

As discussed further in section B.2, below, we have determined that forgiven R&D loans are not countervailable. With respect to the outstanding R&D loans, we cannot determine whether SSAB has received a countervailable benefit until the research is completed. This is because, until then, it is unknown (1) whether the loans will have been forgiven (in which case they are not countervailable), and (2) whether the accumulated interest on the loans is lower than it would have been had the loans been provided on normal commercial terms.

Therefore, we will examine any potential benefits from the R&D loans in future administrative reviews of this case. If the R&D loans provide a countervailable benefit to SSAB, it will be captured once SSAB starts repaying the loans.

On this basis, we determine the estimated net subsidy from this program during the POI to be 0.00 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

7. Special Employment Subsidies for the Steel Industry

Grants under this program have been countervailed in the investigation and all subsequent administrative reviews of *Carbon Steel from Sweden* under the name "employment promotion grants." In the investigation of *Carbon Steel from Sweden*, we found that Government Bill 1976/77:95, passed by the Swedish Parliament in March 1977, authorized grants to companies recognized as being the dominant employers in a particular community. In order to prevent layoffs, these grants were designed to cover 75 percent of the wages and salaries of surplus workers who underwent retraining programs and/or performed work at the company unrelated to normal production activities.

These benefits were available to all types of industries throughout Sweden until June 1978. However, in November 1977, the Swedish Parliament passed Government Bill 1977/78:59 which extended the benefits for an additional year specifically for the steel industry. Since grants pursuant to Bill 1977/78:59 were available only to the steel industry from July 1978 through June 1979, we determined in the investigation of *Carbon Steel from Sweden* that these grants were countervailable.

In Certain Carbon Steel Products From Sweden; Preliminary Results of Countervailing Duty Administrative Review, 53 FR 35883 (September 15, 1988) (the 1985 review of Carbon Steel from Sweden), we determined that although grants under Government Bill 1976/77:95 were *de jure* available to all Swedish industries, the GOS had not provided any information showing the *de facto* distribution of the benefits. Therefore, we determined that the program was limited to a specific enterprise or industry or group of enterprises or industries and, thus, countervailable. Our decision regarding this program remained unchanged in the final determination of the 1985 review (54 FR 31714 (August 1, 1989)).

We have not found any information during the course of these investigations that would cause us to change our earlier determinations regarding this program. In addition to the lack of the *de facto* distribution of the grants discussed above, SSAB has not provided any information on its obligations with respect to these workers and whether those obligations were relieved through these grants. Therefore, we determine that the special employment subsidies for the steel industry, provided for in the two Government Bills cited above, are countervailable.

In the investigation of Carbon Steel from Sweden, we determined that grants under this program were disbursed from 1977 through June 1979. In these investigations, SSAB has provided a lump sum as the amount received under this program in both 1978 and 1979, but has not shown how much it received in each of these years. (Because SSAB was not created until 1978, this is the first year the company could receive these grants.) Therefore, as a reasonable estimate, we allocated the total amount received in 1978 and 1979 (49.6 MSEK) on the basis of information provided in the grant chart attached to SSAB's September 29, 1992 questionnaire response. We thus allocated 17.3 MSEK to 1979, which is the total amount of employment promotion grants received by SSAB in that year, and the remainder, i.e., 32.3 MSEK, to 1978.

We calculated the benefit from the grant received in 1978 using our grant methodology described in the Allocation section of the General Issues Appendix. Because the 1979 grant amounted to less than 0.5 percent of the value of SSAB's total sales in that year, we expensed the amount received in 1979 in the year of receipt in accordance with the Allocation section of the General Issues Appendix. On this basis, we determine the estimated net subsidy from this program during the POI to be 0.01 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

8. Grants for Temporary Employment for Public Works

These grants, which in the preliminary determinations were misnamed "building and construction grants," are provided by the GOS to companies and government agencies which temporarily hire unemployed people to perform different types of public works, (e.g., construction, road building, repairs). SSAB received such grants between 1979 and 1988.

The GOS has argued that grants under this program are available to all Swedish industries. However, because the GOS has not documented which industries received benefits under this program, we determine that the program is limited to a specific enterprise or industry or group of enterprises or industries. The grants for temporary employment for public works are, therefore, countervailable.

We calculated the benefit of the grant received in 1979 using our grant methodology outlined in the Allocation section of the General Issues Appendix.

VOL 58 ISS 130 JL 9 1993 UMI

The amounts received by SSAB under this program in all other years were less than 0.5 percent of the value of the company's total sales in each year. Therefore, we expensed all amounts received from 1980 through 1988 in the year of receipt in accordance with the Allocation section of the General Issues Appendix. On this basis, we determine the estimated net subsidy of grants for temporary employment for public works during the POI to be 0.01 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

9. Regional Development Grants

Between 1979 and 1987, SSAB received regional development grants under the Norrbotten Scheme as well as location-of-industry grants, another regional program. The purpose of the Norrbotten Scheme is to promote industries and increase employment in the province of Norrbotten in northern Sweden. Location-of-industry grants are provided to companies in certain regions of Sweden which undertake job-creating investments.

These grants were limited to certain regions of Sweden and are, therefore, countervailable. Because the amounts received as regional development grants were less than 0.5 percent of the value of SSAB's total sales in every year the company received such grants, we expensed all amounts received in the year of receipt in accordance with the Allocation section of the General Issues Appendix. On this basis, we determine the estimated net subsidy from the regional development grants during the POI to be 0.00 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

10. Mining Exploration Grants

Between 1983 and 1985, SSAB received grants for exploration of new mineral deposits in its Grängesberg mines. These grants were mistakenly classified as regional development grants in the preliminary determinations. We have since learned that grants under this program were provided specifically to mining companies, regardless of geographic location.

Because these grants were limited to a specific enterprise or industry or group of enterprises or industries, they are countervailable. The amounts received under this program were less than 0.5 percent of the value of SSAB's total sales in every year the company received the grants. Therefore, we expensed all amounts received in the year of receipt in accordance with the Allocation section of the General Issues Appendix. On this basis, we determine the estimated net subsidy from the mining exploration grants during the POI to be 0.00 percent *ad valorem* for all manufacturers, producers, and exporters in Sweden of the subject merchandise.

B. Program Determined Not To Be Countervailable

We determine that the following programs do not provide subsidies to manufacturers, producers, or exporters in Sweden of certain steel products:

1. 700 MSEK Convertible Loan

In 1987, SSAB received a ten-year 700 MSEK loan from LKAB, a state-owned mining company and one of SSAB's suppliers. The loan is convertible to shares in SSAB at par value (i.e., 100 Swedish Kronor (SEK)). In March 1989, the loan was divided into an A-loan of 300 MSEK, which can be converted to A-shares, and a B-loan of 400 MSEK, which can be converted into B-shares. (The only difference between the two types of shares is that owners of A-shares are entitled to one vote per share while owners of B-shares get one-tenth of a vote per share. Both types of shares have the same right to dividend payments.)

In April 1989, LKAB requested a conversion of 150 MSEK of the B-loan. Accordingly, 1.5 million new B-shares were issued to LKAB, which sold them for 140 SEK each in the public offer that was part of the 1989 partial privatization of SSAB. We verified that 550 MSEK of the convertible loan was still outstanding in the POI.

According to the loan terms, any portion of the convertible loan that is not converted at maturity shall be repaid by SSAB in 1997. Interest has been accruing at an annual rate of six percent since the disbursement of the loan and is payable twice a year. We verified that SSAB has paid interest on the loan.

At verification, we found that the loan terms were determined through negotiations between LKAB and SSAB without any government involvement. Moreover, in discussions with officials of a Swedish commercial bank, we also found that convertible loans were common in Sweden at the time, as was lending between companies. According to these bank officials, the interest rate and terms associated with the loan were compatible with normal commercial considerations. Accordingly, we determine that the 700 MSEK convertible loan to SSAB was provided on terms consistent with commercial considerations. It is, therefore, not countervailable.

2. Forgiven R&D Loans

As explained in section A.6 above, government loans are provided to Swedish industries for R&D purposes. The loans may be forgiven if the companies receiving them disseminate publicly the results of the research financed by the loans. In Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 56 FR 47185 (September 18, 1991) (the 1987 administrative review of Carbon Steel from Sweden), we verified that 3.2 MSEK in R&D loans provided to SSAB in prior years were written off in 1987.

The Department's practice regarding the countervailability of R&D grants and forgiven R&D loans is that when the results of the research are made available to the public, such assistance does not confer a countervailable benefit. (See, e.g., Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991).) Because we verified in these investigations that the results of R&D projects financed with forgiven loans are made public and that the public's access to such results is unrestricted, we determine that SSAB's forgiven R&D loans are not countervailable.

3. Grants for Company Health Centers

Through its National Insurance Office, the GOS reimburses companies for part of the costs incurred in operating occupational safety and health centers. The purpose of these centers is to reduce work-related injuries through preventive measures and, thereby, contribute to a reduction in health care costs, which are paid by the government for all residents in Sweden. SSAB received grants under this program in each year from 1979 through 1991.

We preliminarily determined these grants to be countervailable. However, we verified that there were 898 occupational safety and health centers in Sweden which received funding from the GOS. We also found that approximately 70 percent of all employees in Sweden are covered by such centers. Because of the large number of government-funded health centers and, also, because of the high proportion of employees in Sweden that have access to such centers, we determine that this program is not specific and, therefore, not countervailable.

4. Grants for Drainage of Mines

In 1979, SSAB decided to close its two iron ore mines at Håksberg and Blötberget which had become unprofitable. The GOS opposed the closure mainly because of the high unemployment in the area and requested SSAB to keep the mines drained while a government committee studied their future. In return, the GOS promised to pay SSAB's costs for such drainage. In 1981, SSAB stopped draining the mines after the government committee had concluded that continued mining at Håksberg and Blötberget would be uneconomical due to the poor quality of the iron ore. We verified that SSAB was reimbursed for its draining costs in 1981.

Because the payment to SSAB did not relieve the company of an expense that it otherwise would have incurred and because these funds enabled SSAB to carry out a government directive unrelated to the company's steel operations, we determine that the grant did not confer a countervailable benefit upon SSAB.

C. Programs Determined To Be Not Used

We verified that the following programs were either not used by SSAB or only benefitted products other than the subject merchandise:

1. Transportation Grants
2. Location-of-Industry Loans
3. State Stockpiling Subsidies

Interested Party Comments

The following are country-specific comments only and do not address those issues identified as general issues, above.

Comment 1: The NJA Grant: SSAB objects to the Department's decision to countervail the payment to NJA. SSAB argues that the grant was paid to NJA for political reasons in order to restore the company's balance sheet, thereby preventing NJA from being liquidated. Therefore, the grant did not benefit SSAB. Moreover, SSAB asserts that the payment was made from the GOS to NJA through the government-owned holding company Statsföretag and that SSAB, thus, was not even a conduit for the payment.

SSAB further argues that the Department's past decisions to countervail the NJA grant incorrectly rely on the assumption that the book value of NJA's assets was a real value of those assets. However, the book value is a purely historical figure. The true value of NJA's assets was the value arrived at in arm's length negotiations between the founders of SSAB, i.e., 700 MSEK.

Finally, SSAB argues that the GOS was repaid for the grant when NJA was liquidated in 1991. SSAB states that the GOS received 624.6 MSEK from NJA in connection with its liquidation and that this amount included the 530 MSEK grant.

Petitioners argue that SSAB has not provided any new information that would lead the Department to change its past determination that the 530 MSEK payment to NJA was a benefit to SSAB. According to petitioners, the payment to NJA allowed SSAB to acquire NJA's assets, thereby, relieving SSAB of costs it otherwise would have incurred. Petitioners refer to *SSAB Svenskt Staal AB* v. *U.S.* in which the CIT upheld the Department's decision to countervail the payment to NJA as a grant provided to SSAB because the court found that NJA's participation in the SSAB joint venture was contingent upon NJA receiving the grant.

Petitioners respond to SSAB's allegation that the Department has mistakenly relied on the book value of NJA's assets by pointing to the fact that book value was an important consideration in the GOS's decision to authorize the payment to NJA. Therefore, the Department should not disregard the book value.

Finally, petitioners find no support in the record for SSAB's argument that the grant was repaid to the GOS upon the liquidation of NJA in 1991. Moreover, petitioners argue that any repayment by NJA would be irrelevant. Since SSAB benefitted from the grant, SSAB should repay it.

DOC Position: We continue to find that the transfer of NJA's assets to SSAB at the joint venture's formation in 1978 was conditioned upon NJA receiving an extra payment for those assets above and beyond their 700 MSEK negotiated value. We verified in Carbon Steel from Sweden that NJA received a 530 MSEK payment from the GOS in addition to the 700 MSEK worth of shares that NJA got from SSAB as payment for its assets.

Because NJA's contribution of its assets to the joint venture was conditioned upon such extra payment, we consider the 530 MSEK payment to NJA to be a cost that the GOS assumed on behalf of SSAB. It is irrelevant whether or not the motive behind the GOS's payment was to save NJA from liquidation because the effect of the payment was that SSAB was able to obtain assets that it otherwise would not have obtained.

Regarding the valuation of NJA's assets, it is the GOS that used the book value as the basis for calculating the amount of the extra payment to NJA. Based on the book value of NJA's assets, the GOS determined that the amount needed to save NJA from liquidation was 530 MSEK. The Department's decision with respect to the NJA grant is, thus, based solely on the facts of this case and not on any judgment of the "real value" of NJA's assets.

Finally, the Department does not consider the grant to be repaid to the GOS simply because the GOS received a total value exceeding the amount of the grant in connection with NJA's liquidation. At verification, we were not able to tie the 530 MSEK grant to the amount received by the GOS at NJA's liquidation. Moreover, even if we had been able to verify this, it is not clear that the grant would have been considered to be repaid.

Comment 2: TGOJ Grant: SSAB considers TGOJ to be part of the assets originally contributed by Gränges to the SSAB joint venture. Similar to the NJA grant, the GOS's 343.3 MSEK payment to Gränges was made to cover the book loss that Gränges otherwise would have incurred because it transferred all of its steel and mining businesses to SSAB at less than their book value. Therefore, respondent argues, the payment benefitted Gränges, not SSAB.

Moreover, SSAB maintains that the promissory note, through which the GOS's 343.3 MSEK payment to Gränges was effectuated, was turned over to Gränges without even entering SSAB's books. Thus, SSAB only served as a conduit and that the Department has recognized that a conduit does not receive a countervailable benefit in Certain Fresh Cut Flowers from the Netherlands, 52 FR 3301 (February 3, 1987). Furthermore, SSAB argues that the TGOJ railroad did not provide any advantage to SSAB and that a prerequisite for imposing a countervailing duty is the finding of an unfair competitive advantage to a foreign producer, as established in *Zenith Radio Corp.* v. *United States* (437 U.S. 443, 455–56, 98 S. Ct. 2441, 2448 (1978)) and *Georgetown Steel Corp.* v. *United States* (801 F.2d 1308, 1315 (1986)).

Finally, SSAB argues that if the Department continues to treat the TGOJ grant as benefitting SSAB, then 50 percent of the grant should be considered repaid in 1982 when SSAB transferred 50 percent of its ownership in TGOJ to the Swedish railway company. According to the respondent, the remaining 50 percent should be considered to be repaid in 1987, when the Swedish railway company took over SSAB's remaining shares in TGOJ.

Petitioners argue that SSAB has not provided any new information that would lead the Department to change its past determinations that the TGOJ grant conferred a benefit on SSAB. As the

Department concluded in the 1985 review of Carbon Steel from Sweden, the TGOJ grant relieved SSAB of a debt obligation that the company otherwise would have had to assume.

Petitioners object to SSAB's allegation that TGOJ was part of the steel-making assets which Gränges transferred to SSAB at the formation of the joint venture. Petitioners point to a passage in a Swedish government bill stating that TGOJ was to be transferred from Gränges to SSAB "in addition to the steel and mining businesses." The bill also indicates that SSAB needed a grant in order to be able to acquire TGOJ and that, in addition, SSAB had to take over the railroad's pension liabilities in order to discharge its remaining debt to TGOJ.

DOC Position: We have consistently treated the TGOJ grant as a subsidy to SSAB because it relieved the company of a debt it would otherwise have incurred when purchasing the railroad. We have not found any information during the course of these investigations that would lead us to change our earlier determinations with respect to the countervailability of the TGOJ grant. Although the railroad is no longer part of SSAB, SSAB would still be benefitting from the relief of the debt obligation. Accordingly, we determine that SSAB's disposal of TGOJ did not affect the countervailable benefit from the grant provided by the GOS when SSAB acquired the railroad in 1978 or from any other program received by SSAB.

Moreover, as outlined in the Restructuring section of the General Issues Appendix, assets and debt that are merely shifted around between companies that are owned, or partially owned, by the government do not constitute true sales. Therefore, we have not treated the transfer of the railroad as a spin-off when calculating the countervailable benefit from subsidies.

Comment 3: Structural Loans: SSAB argues that the Department properly applied the calculation methodology for variable-rate loans described in section 355.49(d)(1) of the Proposed Regulations. According to SSAB, this methodology does not omit consideration of interest grace periods, but rather assigns the benefit from such periods to the years in which the grace periods apply.

Petitioners argue that the calculation methodology used by the Department in the preliminary determinations does not capture the full benefit of the variable-rate structural loans because it does not take into account the three-year interest-free period associated with these loans. Petitioners urge the Department to calculate a separate subsidy to capture the benefit conferred by the grace period.

DOC Position: We agree with SSAB. Because these are variable-rate loans, we followed the calculation methodology outlined in section 355.49(d)(1) of our Proposed Regulations. This section directs the Department to calculate the difference between what a company paid during the POI under the government loan and what the company would have paid during the POI under a benchmark loan.

Comment 4: Forgiven Reconstruction Loans: SSAB argues that the Department should treat the forgiven reconstruction loans as grants received in the years the loans were disbursed. Such treatment would be consistent with the fact that reconstruction loans used for loss-coverage and employment promotion purposes were recorded by SSAB as taxable income upon receipt. SSAB adds that these particular reconstruction loans were treated as conditional liabilities and kept off the company's balance sheet. Finally, SSAB argues that by treating each forgiven loan as a fresh grant received in the year of the write-off, the Department ignores the fact that the GOS intended to write off the loans following a time schedule established in the loan terms.

Petitioners reject SSAB's proposed treatment of the forgiven reconstruction loans and argue that the Department should continue to treat the forgiven loans as grants received in the years the loans were written off. Petitioners' position is based on the conditional nature of the reconstruction loans. Because SSAB is required to make repayments on the loans in those years when the company pays dividends to its shareholders, it was not known at the time of disbursal whether the loans were going to be repaid. Petitioners emphasize that it is not until the GOS forgives a loan that it ceases to be a liability and becomes revenue to SSAB. Moreover, petitioners argue, SSAB's proposed treatment of the forgiven loans would not capture the full benefit of the write-offs because any accrued interest subsequently forgiven would not be taken into account.

DOC Position: Pursuant to section 355.44(k) of our Proposed Regulations, the Department treats a forgiven loan as a grant provided in the year the loan is forgiven. We are not persuaded by the respondent's argumentation that we should not apply this methodology. It is true that SSAB treated these loans differently in its accounts depending on how the loans were used. Only reconstruction loans used for investments were recorded as long-term liabilities on the company's balance sheet while loans used to cover operating losses and finance employment promotion projects were carried off the balance sheet as contingent liabilities. Nevertheless, SSAB was obliged to make payments on all the reconstruction loans, regardless of the use to which they had been put, in those years the company declared a dividend. Thus, the loans did not cease to be debt obligations until the GOS had decided to write them off. Therefore, we determine that the forgiven reconstruction loans constitute grants received in the years they were forgiven.

Comment 5: Forgiven Reconstruction Loans: Petitioners urge the Department to change the benefit calculation used in the preliminary determinations because of an unreconciled discrepancy between SSAB's September 29, 1992 questionnaire response and the 1990 annual report regarding the amount of reconstruction loans forgiven in 1990. Petitioners argue that because only reconstruction loans used for investments are included among the long-term liabilities in SSAB's annual reports, it is reasonable to assume that the amount displayed as forgiven loans in the annual report only includes the forgiven amount of investment loans. Petitioners further argue that because reconstruction loans received for loss-coverage and employment promotion purposes are carried off the balance sheet, it is reasonable to assume that the amount shown as forgiven loans in the response only represents forgiven loss-coverage and employment promotion loans. Therefore, the Department should countervail both amounts as the total amount of reconstruction loans written off in 1990.

DOC Position: We agree with petitioners that we must use best information available to determine the amount of reconstruction loans that were forgiven in 1990 because we have not been able to tie the amount reported in SSAB's response to the amount listed in its 1990 annual report. However, we are not prepared to assume that the amount listed in the annual report only refers to forgiven investment loans while the amount reported in SSAB's response only includes forgiven loans used for the other two purposes described above. Therefore, we have decided to use the amount listed in the audited annual report (which is higher than the amount listed in the response) as best information available of the total amount of reconstruction loans forgiven in 1990.

Comment 6: Outstanding Research and Development (R&D) Loans: SSAB argues that the interest rate charged on the R&D loans is at level with or close

to the benchmark interest rate for long-term loans. Therefore, these loans provide little, if any, benefit to SSAB.

Petitioners agree with the Department's preliminary determinations that the outstanding R&D loans conferred a countervailable benefit on SSAB because they were provided at an interest rate below the benchmark rate. Also, petitioners request that the Department include in its calculations the four unreported R&D loans that were found at verification.

DOC Position: As explained in section A.6 above, the Department cannot determine whether SSAB has received a countervailable benefit from the R&D loans until (1) the loans are forgiven (in which case they are not countervailable; see section B.2, above), or (2) the company starts repaying the loans (because it is not until then that we can compare the interest paid to what SSAB would have paid had the loans been provided on commercial terms). We, therefore, determine that outstanding R&D loans are potentially countervailable. As outlined in section A.6 above, any benefits from the R&D loans will be countervailed once SSAB starts repaying these loans.

Comment 7: Grants for Temporary Employment for Public Works (Building and Construction Grants): SSAB argues that, pursuant to the Proposed Regulations, smaller, non-recurring grants such as the grants for temporary employment for public works should be expensed in the year of receipt when the grant amounts to less than 0.5 percent of the total sales in that year. SSAB urges the Department to apply this rule retroactively, at least as far back as 1989, when the Proposed Regulations were issued.

Petitioners argue that among the factors the Department considers in determining whether a grant is provided to a specific enterprise or industry or group of enterprises or industries are the number of enterprises or industries using the program, whether there are dominant or disproportionate users, and the extent to which the government exercises discretion in conferring benefits under the program. Petitioners argue that the GOS has not demonstrated that the grants for temporary employment for public works are non-specific.

DOC Position: In our questionnaire and at verification, we requested the GOS to show which industries received benefits under this program. Because the GOS has failed to provide such documentation, we assume that the program is specific and determine that grants for temporary employment for public works are countervailable. However, as outlined in the Allocation section of the General Issues Appendix, we have expensed the benefits received from grant programs in the year of receipt if the benefit amounts to less than 0.5 percent of SSAB's total sales. Accordingly, we have expensed all but one grant received by SSAB under this program.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meetings with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce building).

Suspension of Liquidation

In accordance with our affirmative preliminary determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from Sweden which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determinations in the **Federal Register**. These final countervailing duty determinations were aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

	percent
Certain Corrosion-Resistant Carbon Steel Flat Products	
Country-Wide *Ad Valorem* Rate	4.27
Certain Cut-To-Length Carbon Steel Plate	
Country-Wide *Ad Valorem* Rate	4.27

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on entries of certain steel products from Sweden.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to an Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15639 Filed 7–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–412–815]

Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1993.

UMI
VOL 58 ISS 130 JL 9 1993
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FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Kristal A. Eldredge, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5055 or 482–0631, respectively.

Final Determination

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in the United Kingdom (UK) of certain steel products.

For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register**, 57 FR 42974 (December 7, 1992), the following events have occurred.

A supplemental questionnaire was issued on December 31, 1992 and responses were received on January 15, 1993 and January 19, 1993.

We verified the information used in making our preliminary determination from January 25 through January 29, 1993. At the request of the Department, respondent submitted a post-verification clarification on February 10, 1993.

On March 8, 1993, we published in the **Federal Register** a notice postponing the final determinations in these investigations, in accordance with the postponement of the final determination in the companion antidumping duty investigation (58 FR 12935). On April 6, 1993, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn for consumption, on or after that date (see, the Suspension of Liquidation section, below).

The parties submitted case-specific briefs and rebuttal briefs on March 26 and 31, 1993, respectively. General issues briefs and rebuttal briefs were submitted on April 28, 1993 and May 3, 1992, respectively. Case-specific and general issues public hearings were held on April 2, 1993, and May 5 and 6, 1993, respectively.

Scope of Investigation

The products covered by this investigation, certain cut-to-length carbon steel plate, constitute one "class or kind" of merchandise, as described in the Scope Appendix attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria; which is being published concurrently with this notice.

Injury Test

Because the UK is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of certain steel products from the UK materially injure, or threaten material injury to, a U.S. industry. On August 21, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the UK of the subject merchandise, 57 FR 38064 (August 21, 1992).

Respondents

The UK government, the Commission of the European Communities (EC), and British Steel plc (BS plc) are respondents for the class or kind of merchandise subject to this investigation. BS plc is the only respondent company for the class or kind of merchandise subject to this investigation: certain cut-to-length carbon steel plate.

Glynwed Steels Limited ("Glynwed") did not respond to the Department's questionnaire. Therefore, because Glynwed refused to cooperate, we assigned to Glynwed, as the best information available, a rate of 0.66 percent, which is the sum of the *ad valorem* rates (not adjusted for spin-offs or privatization) calculated for programs which were not specifically applicable to BS plc, such as regional development grants and EC programs.

Corporate History

BS plc is the corporate successor to the British Steel Corporation (BSC), a company that was wholly-owned by the UK government. In 1988, the UK government sold BSC through a public offering of shares. With the exception of a Special Share which represents approximately 0.000017 percent of the total number of shares issued and which is intended to prevent persons, or persons acting in concert, from having an interest of 15 percent or more in the company, the UK government currently holds no ownership interest in BS plc.

General Issues

Several issues raised by interested parties in this investigation and in other countervailing duty investigations of certain steel products from various countries were not case-specific but rather were general in nature. These included:

- Allocation Issues;
- Denominator Issues;
- Equity Issues;
- Prepension Program Issues;
- Privatization Issues; and
- Restructuring Issues.

The comments submitted by interested parties concerning these issues, in both the general issues briefs and the country-specific briefs, and the Department's positions on each are addressed in the General Issues Appendix which is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria.

Analysis of Programs

For purposes of this final determination, the period for which we are investigating subsidies, the period of investigation (POI), is April 1, 1991 through March 31, 1992, which corresponds to the fiscal year of BS plc.

Privatization

In this final determination, we have determined that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We calculated the portion of the purchase price attributable to repayment of prior subsidies. We then reduced the benefit streams for each program by the ratio of the repayment amount to the net present value of the remaining benefits at the time of privatization. A further explanation of the Department's determination on privatization and these calculations can be found in the Privatization section of the General Issues Appendix. The subsidies allocated to the POI for BS plc reflect, where appropriate, the application of the privatization methodology.

Spin-offs

In this final determination, we have also determined that a portion of the price paid when a "productive unit" is sold is allocable to the value of subsidies received in prior years by the seller of the "productive unit." The subsidies allocated to the POI have been reduced, where appropriate, as described above, but adjusted by the asset value of the "productive unit." For a further explanation of the Department's determination regarding "spin-offs" and these calculations, see the Restructuring section of the General Issues Appendix.

Based upon our analysis of the petition, responses to our questionnaires, verification of those responses, and consideration of the arguments submitted by the interested parties, we determine the following:

Equityworthiness

The Department previously determined that BSC was unequityworthy between 1977 and 1982. See, Stainless Steel Sheet, Strip and Plate from the United Kingdom (Stainless Steel), 48 FR 19048 (April 27, 1983). In Stainless Steel Plate from the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review (Stainless Steel Review), 51 FR 34112 (September 25, 1986), the Department determined that BSC was unequityworthy in financial years 1982/83 and 1983/84. Respondent has presented no new evidence in this investigation that would lead us to reconsider the Department's previous findings.

With respect to the period 1984/85 through 1985/86, we examined the financial condition of BSC. The analysis of prior years' results indicates that BSC was unequityworthy for financial years 1984/85 and 1985/86. For fiscal year 1984/85, BSC yielded negative returns on assets and equity. Times interest earned (a measure of BSC's long-term solvency) and BSC's profit margin were both negative for financial year 1984/85. BSC only reported a profit margin of one percent by 1986. In addition, no dividends were distributed by BSC between 1977 and 1986. Consequently, based on Stainless Steel, Stainless Steel Review, and our review of BSC's financial results prior to years 1984/85 and 1985/86, we determine that BSC was unequityworthy from 1977/78 through 1985/86.

Creditworthiness

The Department previously determined that BSC was creditworthy from its formation through its fiscal year 1976/77 and was uncreditworthy for fiscal years 1977/78 through 1981/82. See Certain Steel Products from the United Kingdom (Steel Products), 47 FR 39384, 39386 (September 7, 1982). In the Stainless Steel Review, the Department determined that BSC was uncreditworthy in financial years 1982/83 and 1983/84. Respondent has provided no new information in this investigation that would lead us to reconsider the Department's previous findings.

With respect to the period 1984/85 through 1985/86, we examined the financial condition of BSC. The analysis of prior years' results indicates that BSC was uncreditworthy for financial years 1984/85 and 1985/86. Times interest earned and BSC's profit margin were both negative for financial year 1984/85. The debt to equity ratios for both financial years 1984/85 and 1985/86 indicated that it would be very difficult for BSC to meet its debt obligations. Based on this information, we determine that BSC was uncreditworthy in 1984/85 and 1985/86. Based on Steel Products, the Stainless Steel Review, and our review of BSC's financial results for years 1984/85 and 1985/86, we determine that BSC was uncreditworthy for the period 1977/78 through 1985/86.

BS plc's Total Sales Value

We verified that British Steel Distribution (BSD) purchases steel from both BS plc's own mills and from other producers in both the UK and overseas. BSD stocks this material and then sells it to end-users, either in its original form or after further processing.

BSD's sales are included in the volume and value data reported by BS plc. In order to arrive at BS plc's total sales, we first subtracted from the company's verified total sales of British-produced merchandise, all sales made by BSD. We then added back the value of steel purchased by BSD from BS plc's steel mills in the UK. Although this has the effect of removing the value added by BSD, we did not have information to make the adjustment otherwise. Thus, BS plc's total sales value used in our benefit calculations only includes the company's sales of its own merchandise produced in the UK. For an explanation of why we are only using sales of products produced in the UK, see, the Denominator section of the General Issues Appendix.

As also outlined in the Denominator section of the General Issues Appendix, we subtract the sales of services unrelated to the production of merchandise from a company's total sales value when measuring the benefit from subsidies that are tied to productive activities. Accordingly, we have subtracted the verified sales by BS plc's non-manufacturing companies from BS plc's total sales when calculating the benefit from two of the subsidy programs used by the company: the Regional Development Grants and the ECSC Article 54 loans. Because the Regional Development Grants were received for the purchase of specific assets, this program is tied to productive activities. Likewise, because the ECSC Article 54 loans are provided for the purchase of new equipment, they are also tied to production.

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in the United Kingdom of certain steel products under the following programs:

1. Government Equity Infusions Into BSC

BSC received equity capital from the Secretary of State for Trade and Industry pursuant to Section 18(1) of the Iron and Steel Acts of 1975, 1981, and 1982 (Section 18(1)). This equity capital was received every financial year from 1977/78 through 1985/86. The UK government's equity investments in BSC were made pursuant to its agreed external financing limit, which was based upon medium-term financial projections. BSC's performance was monitored by the UK government on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC under Section 18(1) since it already owned 100 percent of the company.

As stated above, we determine that BSC was unequityworthy from 1977/78 through 1985/86. Thus, we determine that the equity infusions provided to BSC by the UK government between 1977/78 through 1985/86 were on terms inconsistent with commercial considerations.

BSC wrote off its Section 18(1) equity capital through two capital reconstructions. The first capital reconstruction involved the write-off of capital in recognition of trading losses that could not be recovered out of existing assets. It was effected in two stages under the Iron and Steel Acts of 1981 and 1982. First, the 1981 Act itself reduced by £3,000 million the sums invested in BSC by the UK government under Section 18(1). Second, a further reduction of £1,000 million was taken in 1982 pursuant to a statutory instrument (the British Steel Corporation Reduction of Capital Order) under the Iron and Steel Act of 1982.

A second capital reconstruction of BSC took place in 1988 in accordance with the British Steel Act of 1988. The purpose of this second reconstruction, involving a reduction of £2,980 million in Section 18(1) funds, was to prepare BSC for privatization by bringing it into a form appropriate for a Public Limited Company (i.e., "plc").

As discussed in the Equity section of the General Issues Appendix, we have treated equity infusions in unequityworthy companies as grants. We have further determined that these equity infusions constitute subsidies to BSC because they were provided on terms inconsistent with commercial considerations, pursuant to section

771(5)(A)(ii) of the Act, and not through the subsequent write-off of the equity. Therefore, we are countervailing the equity infusions as grants given in the years the capital was received. Because we determine that BSC was uncreditworthy from 1977/78 through 1985/86, we have used an uncreditworthy rate as the discount rate (see, section 355.44(b)(6)(iv) of the Department's Proposed Regulations, 54 FR 23366, 23380 (May 31, 1989) (Proposed Regulations)).

In the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 58 FR 6237 (January 27, 1993), we determined that £30 million of the 1985/86 equity infusion received by BS plc was tied to the purchase of a bloom caster for its joint venture company, UES. Therefore, we excluded this amount from BS plc's "pool" of benefits. Accordingly, in this investigation, we have subtracted £30 million from the total equity infusion received by BS plc in 1985/86.

We have determined these infusions to be non-recurring benefits for the reasons outlined in the Allocation section of the General Issues Appendix. Therefore, we allocated the benefits over the average useful life of renewable physical assets in the steel industry (i.e., 15 years) in accordance with our grant methodology. See, the Allocation section of the General Issues Appendix. We divided the benefit by BS plc's total sales of all products during the POI, adjusted as discussed above. On this basis, we determine the net subsidy for this program to be 8.63 percent *ad valorem* for BS plc.

2. Cancelled NLF Debt

In conjunction with the 1981/1982 capital reconstruction of BSC, Section 3(1) of the Iron and Steel Act 1981 extinguished £509,308,569 of National Loan Fund (NLF) loans, together with accrued interest thereon, at the end of BSC's 1980/81 financial year.

Because this cancellation of debt was provided specifically to BSC, we determine that it is a countervailable benefit pursuant to section 771(5)(A)(ii) of the Act.

We consider this debt forgiveness to be a non-recurring grant. Therefore, we calculated the benefit for the POI using our grant methodology (see Allocation section of the General Issues Appendix). Because we have determined that BSC was uncreditworthy for financial year 1981/82, we used an uncreditworthy rate as the discount rate. We divided the benefit by BS plc' total sales of all products to calculate the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 0.71 percent *ad valorem* for BS plc.

3. Regional Development Grants

Regional development grants were made to BSC under the Industry Act of 1972 and the Industrial Development Act of 1982. In order to qualify for assistance under these two acts, an applicant had to be wholly or mainly engaged in manufacturing and located in an assisted area. Assisted areas are older industrial areas identified as having deep-seated and long-term problems, high levels of unemployment, migration, slow economic growth, derelict land, old and obsolete factory buildings, and a relatively low level of amenities.

Regional development grants paid for the purchase of specific assets. According to the UK government, they involved one-time grants the disbursement of which was sometimes spaced over several years.

BSC received regional development grants during financial years 1977/78 through 1985/86. In any year, the amounts claimed by BSC for these grants arose out of a number of successful applications that had met the required criteria.

Since this program is limited to certain regions, we find it specific within the meaning of section 771(5)(A)(ii) of the Act. We further determine the benefits under this program to be non-recurring.

We calculated the benefit for the POI using our grant methodology. When the total grants received under this program in any year were less than 0.50 percent of sales in that year, we expensed the benefit in the year of receipt. See, the Allocation section of the General Issues Appendix. Since we have determined that BSC was uncreditworthy from 1977/78 through 1985/86, we used an uncreditworthy rate as the discount rate. We then divided the benefit by BS plc's total sales of all products to calculate the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 0.35 percent *ad valorem* for BS plc.

4. European Regional Development Fund (ERDF) Aid

Created under the Treaty of Rome, which established the EEC, the ERDF provides grants to help redress the principal regional imbalances in the EC by participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions. The ERDF is one of the programs administered by the EC that, since June 24, 1988, has been unified under the heading of "Structural Funds." The program is funded through the EC general budget.

Since this program is limited to certain regions, we find it specific within the meaning of section 771(5)(A)(ii) of the Act.

In 1991/92, ERDF assistance was provided to the UK for BS plc's Deeside Industrial Park to fund infrastructure development (roads, sewers, water, gas, electricity, etc.). The goal of the infrastructure project is to make the site, formerly agricultural land, suitable for light industry. At verification, company officials informed us that the developed area was not to be owned and operated by BS plc, but rather by other companies to replace plants in the area that had been lost. The assistance was not provided for steelmaking activities.

The amount of assistance which BS plc reported as having been received under this program in 1991/92 was £939,000. This was the amount the Department used in its calculations for purposes of the preliminary determination. At verification, however, we learned that BS plc applied to the regional (Welsh) office for ERDF funding in stages, as phases in the infrastructure were completed. An application was submitted for each phase of the infrastructure project. The application was based on audited payments made to contractors for the infrastructure.

At the time of verification the Deeside Industrial Project was in Phase VI. We verified that a grant in the amount of £9325,000 was approved for Phase VI. We also verified that, as of 1990, £9287,938 had been paid out to BS plc for the Deeside Industrial Project. Company officials were unable to break out the exact amounts provided for Phases I through V of the Deeside project.

With respect to BS plc, we found no evidence that the ERDF grants are related to steel production. The information reviewed at verification supports the fact that this aid went solely to land development and had nothing to do with the steel industry (the Deeside plant was closed in 1980). However, there is no information to indicate whether BS plc would have been obligated to provide this infrastructure because, for example, it had closed steel facilities in the area. Therefore, we are treating the funds provided under this program as countervailable grants.

If it were the case that the total received by the company through 1990 (£9287,938) was received in equal installments in each of the fiscal years

1984/85 through 1989/90, the amounts received under this program in each year would be less than 0.50 percent of the company's sales in each year. Therefore, each of these amounts were expensed in the years of receipt. Furthermore, because the amount of the 1990/91 grant is less than 0.50 percent of BS plc's total sales in 1991, we have expensed it in the year of receipt (i.e., 1991). Thus, we divided the amount of the 1991 grant by BS plc's total sales of all products to calculate the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 0.00 percent *ad valorem* for BS plc.

5. ECSC Article 54 Loans/Interest Rebates

The European Coal and Steel Community's (ECSC) Article 54 industrial investment loans, which are only available to the iron and steel industry, are provided for the purpose of purchasing new equipment or financing modernization. We verified that Article 54 loans are direct, long-term loans from the EC Commission and that the funds are loaned at a slightly higher rate than that at which the Commission obtained them in order to cover its costs. We also verified that the purpose of this program is to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain loans.

We determine that this program is limited to the iron and steel industry. Therefore, the loans provided under this program are countervailable to the extent that they were provided on terms inconsistent with commercial considerations.

Interest rebates on Article 54 loans were granted to steel companies during the restructuring and modernization of the industry in the early 1980s. Companies applying for these rebates had to meet certain criteria, such as a reduction in steel production capacity and improvements in processing that would yield energy savings and improved efficiency.

Interest rebates were limited to a maximum of three percent of the total investment over a period of five years. These rebates were funded from the ECSC operational budget. Since 1985, levies imposed on ECSC steel companies have provided the revenues for the operational budget. Deficits in the operational budget are made up by Member State contributions. While no Member State contributions have been made to the operational budget since 1984, it was supplemented by Member States from 1978 through 1984.

Because the interest rebates given prior to 1985 were partially financed through Member State contributions, a portion of those interest rebates are countervailable. Consistent with past cases, we have not countervailed the portion financed by the ECSC's operating budget because those funds are obtained from company levies. To calculate the countervailable portion of the rebates, we calculated the ratio of the contribution from Member States to the ECSC's total available funds for the year, and then multiplied this ratio by the rebate amount.

Moreover, because companies were aware that interest rebates would be available when the loans were taken out, we consider the rebates to constitute reductions in the interest rates charged rather than grants.

We verified that BSC received three Article 54 long-term loans in 1977, all of which were provided in U.S. dollars. It also received rebates during the first five years on one of these loans. We verified that BSC knew that it qualified for the interest rebate at the time the loan was granted. We also verified that the rebate was paid to BSC on the dates that interest on the loan was due.

We considered the loan made to BSC during its creditworthy period (i.e., prior to April 1977) separately from the two loans made during its uncreditworthy period (i.e., from April 1977). For the Article 54 loan provided when BSC was creditworthy, we applied a creditworthy interest rate (i.e., the average U.S. long-term commercial rate for 1977) as our benchmark. To calculate the benefit from this loan we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Regulations. We then compared the benchmark financing to the financing BSC received and found that BSC paid more interest than it would have paid using the benchmark interest rate. Therefore, we did not find that this loan was provided on terms inconsistent with commercial considerations.

For the loans provided after BSC became uncreditworthy, we used an uncreditworthy rate (i.e., the highest U.S. lending rate available for long-term fixed rate loans, plus a risk premium equal to 12 percent of the U.S. prime rate for 1977). See Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989), and section 355.44(b)(6)(iv) of the Department's Proposed Regulations. We used as our benchmark interest rates on U.S. dollar loans borrowed in the United States because we do not have information on U.S. dollar loans borrowed in the UK in 1977.

We then compared the benchmark financing to the financing BSC received under this program and found that the two Article 54 loans to BSC during its uncreditworthy period were provided on terms inconsistent with commercial considerations.

To calculate the benefit from these loans we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Regulations. (See, also, Final Affirmative Countervailing Duty Determination: Certain Granite Products from Spain, 53 FR 24340 (June 28, 1988).) We then divided the benefit attributable to the POI by BS plc's total sales of all products. On this basis, we calculated an estimated net subsidy of 0.00 percent *ad valorem* for BS plc.

6. Transportation Assistance

Petitioners allege that BS plc receives benefits in the form of preferential railroad rates provided by British Rail, a government-owned company. Petitioners rely on Certain Steel Products from the United Kingdom, 47 FR 39384, 39386 (September 7, 1982), in which the Department determined, based on BIA, that BSC was receiving preferential railroad rates. In its 1983 Stainless Steel investigation, the Department found that BSC did not appear to receive preferential rates. The decision in Stainless Steel, however, seemed to be limited to the subject merchandise.

According to the UK government's responses, British Rail is required by the government to operate on a commercial basis with set financial targets. It is British Rail's policy not to discriminate between comparable customers in determining its charges. According to the UK government, such discrimination would be counter to the commercial objectives set by the government and would distort the terms of competition between rail freight users, exposing British Rail to action under EC competition law.

However, government officials refused to allow us to examine prices charged other rail customers. Therefore, using the 1982 Certain Steel investigation as BIA, we determine the program to be countervailable and the estimated net subsidy rate to be 0.07 percent *ad valorem* for BS plc.

B. Program Determined Not To Be Countervailable

We determine that the following program does not provide subsidies to manufacturers, producers, or exporters in the United Kingdom of certain steel products:

VOL 58 ISS 130 JL 9 1993 UMI

European Investment Bank (EIB) Loans

The European Investment Bank was created by the Treaty of Rome to fund projects in various countries and different types of industries. During verification, we found that the EIB provides loans to numerous economic sectors in all regions of Europe. Furthermore, the metal production category, which includes production of the subject merchandise, historically has received a very small percentage of the loans granted by the EIB. For example, from 1987 through 1991, this sector received only 0.5 percent of total loans provided by the EIB. Therefore, we determine that this program is not countervailable because the program was available and widely used on a *de jure* and *de facto* basis throughout Europe.

C. Programs Determined Not To Be Used

We determine that the following programs were not used by manufacturers, producers, or exporters in the UK of certain steel products:

1. Loan Guarantees.
2. NLF Loans.
3. ECSC Redeployment Aid.
4. ECSC Conversion Loans.
5. Article 56 Rebates.

Interested Party Comments

The following are country-specific comments only and do not address those issues identified as general issues, above. Also, for comments relating to EC programs see, the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium which is being published concurrently with this notice.

Comment 1: Petitioners argue that the interest rates provided by the UK government and relied upon by the Department in calculating its preliminary CVD rates are unrepresentative of the rates which an uncreditworthy company such as BSC would have been forced to pay. To correct this discrepancy, petitioners urge the Department to use a rate series provided by petitioners based upon the average interest rates paid by the most highly leveraged UK public companies during the POI.

DOC Position: We agree that the interest rates used in the preliminary determination were not reflective of the interest rates an uncreditworthy company would have paid. In the calculations for this determination, we have used the information submitted by the petitioners.

Comment 2: During verification, respondent BS plc was unable to break out freight expenses from the sales denominator for sales to ECSC and European Free Trade Association (EFTA) countries. Petitioners argue that the Department should subtract an estimate of freight costs on export sales to ECSC and EFTA customers.

DOC Position: We have used as our denominator BS plc's total sales of all products produced in the UK. As described in the Denominator section of the General Issues Appendix, when freight expenses are included in the total sales figure, we are not adjusting for these expenses unless freight expenses are included in the value of a company's sales of the subject merchandise to the United States. Because sales of the subject merchandise to the United States are recorded on an ex-factory basis, we have not made any such adjustment.

Comment 3: Petitioners argue that, in determining whether Article 54 loans were not provided to BSC on terms inconsistent with commercial considerations, the Department incorrectly used as a benchmark the highest U.S. lending rate available, plus a risk premium based on the U.S. prime rate. According to petitioners, this comparison is clearly erroneous because it is inconsistent with section 355.44(b)(4) of the Department's Proposed Regulations which state that the Department should use as its benchmark "the national average long-term fixed interest rate in the country in question."

DOC Position: We argue that the preferred benchmark for the dollar-denominated Article 54 loans is a rate in the United Kingdom for long-term dollar-denominated loans. However, we were unable to obtain this information. Therefore, we used U.S. interest rates, which we consider to be a reasonable alternative.

Comment 4: According to petitioners, insofar as the ECSC Article 54 rebates were stipulated in advance to be of a limited duration, they should be countervailed as non-recurring grants in accordance with 355.49(b) of the Department's Proposed Regulations.

DOC Position: In those instances where the company expects to receive the rebate when it applies for the loan, we have treated the loan with the rebate as a reduced interest loan. We believe this is appropriate because expectation of the rebate will affect the firm's decision of whether or not to apply for the loan. However, where that expectation does not exist, and the government forgives interest in the course of the loan, we have treated the forgiven amounts as grants.

Comment 5: Petitioners argue that the benefits provided under the ERDF should more correctly be treated as recurring grants, in accordance with section 355.49(a)(2) of the Department's Proposed Regulations, because the ƒ287,983 received by BSC/BS plc between the years 1984/85 and 1989/90 were disbursed in equal increments each year.

DOC Position: Although we do not agree that the grants under ERDF are recurring, we have, nevertheless, expensed the benefits provided under this program because they were less than 0.50 percent of BSC/BS plc's total sales in each year benefits were received. (See, the Allocation section of the General Issues Appendix.)

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain steel products from the United Kingdom which were entered, or withdrawn from warehouse, for consumption on or after December 7, 1992, the date of publication of our preliminary determination in the **Federal Register**. This final countervailing duty determination was aligned with the final antidumping duty determinations on certain steel products from various countries, pursuant to section 705(a)(1) of the Act.

Under article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 6, 1993, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 7, 1992, and April 6, 1993. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a

cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Certain Cut-To-Length Carbon Steel Plate
Country-Wide *Ad Valorem* Rate—9.76 percent.

Because Glynwed's rate is significantly different, in accordance with 19 CFR 355.20(d), it is assigned its own rate of 0.66 percent *ad valorem*.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain steel products from the United Kingdom.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4)).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15640 Filed 7–8–93; 8:45 am]

BILLING CODE 3510-DS-P

UMI

VOL
58

ISS
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JL
9

1993

UMI

federal register

Friday
July 9, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Dose-Response Information to Support Drug Registration; Notice of Availability of Draft Guideline

UMI
VOL
58
ISS
130
JL
9
1993
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0194]

International Conference on Harmonisation; Dose-Response Information to Support Drug Registration; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline for comment entitled "Dose-Response Information to Support Drug Registration." This draft guideline was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline discusses various considerations, such as obtaining dose-response information, study designs for assessing dose-response, and acceptable approaches to deriving valid dose-response information. The draft guideline also discusses when dose-response data are desirable, the use of three dosage levels, information derived from dose-response relationships suggesting beneficial and undesirable effects, the use of new analytical techniques, and when dose-ranging studies should be conducted. The draft guideline is intended to help ensure that dose-response information to support drug registration is generated according to sound scientific principles.

DATES: Written comments by August 9, 1993.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Eileen Leonard, Center for Drug Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with technical input from both regulatory and industry representatives. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Community (EC), Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. In addition, the ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the organizing bodies and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on March 8, 9, and 10, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Dose-Response Information to Support Drug Registration" should be made available for public comment. The draft guideline will be made available for comment by the EC and Japan, as well as by FDA, in accordance with their respective consultation procedures. After comments are analyzed and the guideline revised as necessary, FDA will determine whether it will adopt the guideline. The draft guideline discusses various considerations, such as obtaining dose-response information, study designs for assessing dose-response, and acceptable approaches to deriving valid dose-response information. The draft guideline also discusses when dose-response data are desirable, the use of three dosage levels, information derived from dose-response relationships suggesting beneficial and undesirable effects, the use of new analytical techniques, and when dose-ranging studies should be conducted.

Interested persons may, on or before August 9, 1993, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Dose-Response Information to Support Drug Registration

I. Introduction

Each regulatory agency will require the demonstration of safety and efficacy of a drug according to procedures specific to the drug's desired indications and therapeutic class. A dose-response study in itself is not the only approach to demonstrating the safety and efficacy of a drug. Additional core studies may include single fixed doses or flexible doses compared to placebo or positive controls.

Knowledge of the relationships among dose, drug-concentration in blood, and clinical response (effectiveness and undesirable effects) is important for the safe and effective use of drugs in individual patients. This information can help identify an appropriate starting dose, the best way to adjust dosage to the needs of a particular patient, and a dose beyond which increases would be unlikely to provide added benefit. Dose-concentration and/or dose-response information is used to prepare dosage and administration instructions in product labeling. In addition, knowledge of dose-response may provide an economical approach to global drug development, by enabling multiple regulatory agencies to make approval decisions from a common database.

Historically, drugs have often been initially marketed at what were later recognized as excessive doses (i.e., doses well onto the plateau of the dose-response curve for the desired effect), sometimes with adverse consequences (e.g., thiazide-type diuretics in hypertension). Attempts have been made to improve this situation by seeking the smallest discernible dose with a useful effect or maximum dose beyond which no further beneficial effect is seen. There may be situations in which these concepts are useful, but expanding knowledge indicates that they do not adequately account for individual differences. In principle, any given dose provides a mixture of desirable and undesirable effects, with no single dose necessarily optimal for both.

What is most helpful in choosing the dose of a drug is knowing the shape and location of the dose-response curve for both desirable and undesirable effects. Selection of dose is best based on that information together with a judgment about the relative importance of

desirable and undesirable effects. For example, a relatively high starting dose (on or near the plateau of the effectiveness dose-response curve) might be recommended for a drug with a large demonstrated separation between its useful and undesirable dose ranges or where a rapidly evolving disease process demands rapid effective intervention. However, a large starting dose might be a poor choice for a drug with a small demonstrated separation between its useful and undesirable dose ranges or when the drug is administered to treat a chronic condition. In this case, the recommended starting dose might be the lowest dose exhibiting a clinically important effect in even a fraction of the population. The choice of a starting dose might also be affected by potential intersubject variability in pharmacodynamic response to a given blood concentration level, or by anticipated pharmacokinetic differences (a lower starting dose would protect patients who obtain higher blood concentrations). It is entirely possible that different physicians and even different countries would, looking at the same data, make different choices as to the appropriate starting doses, titration steps, and maximum recommended dose, based on different perceptions of risk/benefit relationships. Good dose-response information allows the use of such judgment.'

Concentration-response data are not always needed but may be helpful for anticipating the effects of disease interactions (e.g., renal failure), new dosage forms (e.g., controlled release), or new dosage regimens without additional clinical trial data. Concentration-response data are especially useful when pharmacokinetic variability among patients is great; they may allow detection of differences in defined endpoints between groups in a prospective study with a smaller number of subjects than would be needed in a standard dose-response study. The collection of concentration-response information, however, does not require the institution of postmarketing therapeutic blood level monitoring to be useful. If the relationships between concentration and observed effects (e.g., an undesirable or desirable pharmacologic effect) are defined, patient response can be titrated without the need for further blood level monitoring. Concentration-response information can also allow selection of doses most likely to lead to a satisfactory response.

As a practical matter, it is generally easier to obtain good dose-response information when the response is measured by a continuous variable and is both relatively rapidly obtained after therapy is started and rapidly dissipates after therapy is stopped (e.g., blood pressure, analgesia, bronchodilation). In this case, relatively small, simple studies can give useful information. Placebo-controlled individual subject titration designs typical of many early drug development studies, properly conducted and analyzed, can give guidance for more definitive parallel, fixed dose, dose-response studies or may be definitive on their own.

In contrast, when the response is delayed, persistent, or dichotomous (e.g., stroke or heart attack prevention, asthma prophylaxis, arthritis treatments with late onset response, survival in cancer, treatment of depression), titration and simultaneous assessment of response is usually not possible (nevertheless, a titration design could conceivably be used where response was delayed if very long durations of treatment at such dose levels were acceptable and if the prolonged placebo treatment needed could also be maintained). Thus, where responses are delayed or dichotomous, early initiation of parallel design dose-response trials has major advantages. Unfortunately, there is often little firm basis for the choice of doses to study, so that it is important to cover as wide a dose range as possible initially, with studies of narrower dose ranges to follow. The parallel group dose-response study also offers protection against missing effective doses because of an inverted U-shaped (umbrella or bell) dose-response curve, where higher doses are less effective than lower doses.

Where titration designs do not give good dose-response information, there is a tendency to choose, as a recommended dose, the highest dose that was reasonably well-tolerated. This often leads to dosing at levels well in excess of what is really necessary, with the potential for a considerable increase in late onset of undesirable effects (e.g., diuretics). When an early answer is essential, the titration-to-tolerable-dose approach is acceptable because it often requires a minimum number of patients. For example, the first marketing of Zidovudine (AZT), for the treatment of acquired immune deficiency syndrome (AIDS), was based on studies at a high dose. Later studies showed that lower doses were as effective and far better tolerated. The urgent need for the first effective anti-HIV treatment made the absence of dose-response information at the time of approval (with the condition that more data were to be obtained in phase IV) reasonable, but in less urgent cases this approach may not be optimal.

Dose-response information does not assure adequate risk/benefit assessments in all clinical situations. Even where adequate dose-response relationships are established, other influences, such as drug interactions, can greatly affect the safety profile of a drug. In cases where commonly utilized doses are already higher than needed, such situations may more readily arise.

II. Obtaining Dose-Response Information

Dose-response information can be derived from many sources and can be of varying degrees of precision. Different therapeutic areas have evolved different therapeutic and investigational behaviors; these affect the kinds of studies that tend to be carried out and the kinds of data considered most critical. Parallel dose-response study designs or placebo-controlled titration study designs (both as typically used in hypertension trials) might not be acceptable in other therapeutic areas, such as life-threatening infections or potentially curable tumors. In those cases considerable toxicity could be accepted, as doses of drugs are chosen to achieve the greatest possible effect immediately. Use of low, possibly subeffective doses or titration to effect may be unacceptable, as an initial failure in these cases may represent an opportunity for cure forever lost. Nonetheless, even for life-threatening diseases, drug developers should always be weighing the gains and disadvantages of varying regimens and considering how best to choose dose, dose-interval and dose-escalation steps. Even in indications involving life-threatening diseases, it will not always be true that the highest tolerated dose will be the optimal dose. Early study of several doses may allow use of a lower dose with little loss of effect and a greater net clinical usefulness. Where only a high dose is studied, blood concentration data, which almost always shows individual variability, may give clues to possible dose-concentration relationships or the absence of them.

Probably the most important implication of the need for good dose-response information is that dose-finding should be considered as an integral component of drug development, an inherent part of establishing the safety and effectiveness of the drug. If dose-finding and assessment is built into the development process it can usually be accomplished with no waste of time and little extra effort compared to development plans that ignore dose-response.

Well-laid plans are not invariably successful, however, and regulatory agencies must appreciate the difficulties that can be encountered. Even in a well-designed dose-response study, doses may have been selected that are too high, or too close together so that all are equivalent (albeit superior to placebo). In that case, there is the possibility that the lowest dose studied is still too high. Nonetheless, an acceptable balance of observed undesired effects and beneficial effects might make marketing at the doses studied reasonable. This decision would be easiest, of course, if the drug had special value, but even if it did not, further dose-finding might be pursued in the postmarketing period. Similarly, while seeking dose response data should be a goal of every development program, where benefit from a new therapy for a serious disease is clear, approval based on data from studies using a single dose might be appropriate (this is quite typical of mortality studies). Sometimes additional data may be generated in phase IV, especially if there is significant toxicity at the dose studied. Even for mortality studies, the potential advantages of studying more than a single dose should be considered. It may be possible to simplify the study by collecting less information on most patients, allowing study of a larger population treated with several doses without significant increase in costs.

In addition to seeking dose-response information from studies specifically designed to provide it, the entire database should be examined intensively for possible dose-response effects, despite limitations due to study design features. For example, many studies titrate the dose upward for safety reasons. As most side effects of drugs occur early and may disappear with continued treatment, this can result in a spuriously higher rate of undesirable effects at the lower doses. Similarly, in studies where patients are titrated to a desired response, those

patients relatively unresponsive to the drug are more likely to receive the higher dose, giving an apparent, but misleading, inverted U-shaped dose-response curve. Despite these kinds of limitations, clinical data from all sources should be analyzed using multivariate, population-based or other alternative approaches. For example an inverse relation of effect to weight could reflect a dose-response relationship. If pharmacokinetic screening is carried out, or if other approaches to obtaining drug concentrations during trials are used, a relation of effects (desirable or undesirable) to blood concentrations may be discerned. The relationship may be a persuasive description of concentration response on its own or suggest further study.

The information obtained through targeted studies and analyses of the entire database can be used by the sponsor to:

1. Identify a reasonable starting dose, ideally, with specific adjustments (or a firm basis for believing none is needed) for patient size, gender, age, concomitant illness, and concomitant therapy, reflecting an integration of what is known about pharmacokinetic and pharmacodynamic variability. Depending on circumstances (the disease, the drug's toxicity) this may range from the lowest dose with any useful effect to a dose that is at or near the full-effect dose.

2. Identify reasonable titration steps and the interval at which they should be taken, again with appropriate adjustments for patient characteristics. These steps would be based on the steepness of the dose-effect curves (desirable and undesirable effects) and time to measurable effect.

3. Identify a dose or a response (desirable or undesirable), beyond which titration should not ordinarily be attempted because of a lack of further benefit or an unacceptable increase in undesirable effects.

III. Study Designs for Assessing Dose-Response

The choice of study design and study population in dose-response trials will depend on the phase of development, therapeutic indication under investigation and the severity of the disease in the patient population of interest. By example, a more homogeneous patient population will allow for greater ease of study with smaller numbers of subjects per treatment condition. The lack of appropriate salvage therapy for life threatening or serious conditions with irreversible outcomes may ethically preclude conduct of studies at doses below the maximal well-tolerated dose.

In general, useful dose-response information is best obtained from specifically designed trials comparing several doses. A comparison of results from controlled single-dose trials might sometimes be informative, although the many across study differences that occur in separate trials makes this approach problematic. It is also possible in some cases to derive blood concentration-response relationships from the variable concentrations attained in a fixed dose trial. While these analyses are potentially confounded by other patient factors, the information can be useful and can guide subsequent studies. Conducting dose-ranging studies at an early stage of clinical development may reduce the number of failed phase III trials, speeding the drug development process and conserving development resources.

Pharmacokinetic information can be used to help choose dose levels that diminish the overlap between expected concentrations in dose-response trials. In the case of drugs exhibiting very high pharmacokinetic variability, a greater spread of doses could be chosen or patient-characteristic adjusted dosage or drug concentration-control procedures may be used to conduct efficient clinical trials.

Trials intended to evaluate dose or concentration response should be well controlled, using randomization and blinding (unless inapplicable) to assure comparability of treatment groups and to minimize potential patient, investigator, and analyst bias, and should be of adequate size. It is important to choose as wide a range of doses as is compatible with practicality and patient safety, to discern clinically meaningful differences.

There are a number of study designs that can assess dose-response. The same approaches can also be used to measure concentration-response relationships.

The following are acceptable approaches to deriving valid dose-response information. Some approaches outlined in this guidance are better established than others, but all are worthy of consideration. These designs can be applied to the study of established clinical endpoints or surrogate endpoints.

A. Parallel Dose-response

Simplest in concept is randomization to several fixed dose groups. The fixed dose is the final or maintenance dose; patients may be placed immediately on that dose or titrated more gradually (in a scheduled forced titration) to it if that seems safer. In either case, the final dose should be maintained for an adequate time to allow the dose-response comparison. Although it is desirable to include a placebo group in dose-response studies, it is not theoretically necessary in all cases (a positive slope shows drug effect). To measure the size of the drug effect, however, an ineffective (placebo) or minimally effective comparator is generally needed. Moreover, because it can unequivocally show effectiveness, a placebo group will salvage, in part, a study that used doses that were all too high and therefore showed no dose-response slope, by showing that all doses were superior to placebo. In principle, having the power to detect a statistically significant difference in pairwise comparisons between doses is not necessary if a statistically significant trend across doses can be established using all the data.

As with any placebo-controlled trial, it may also be useful to have in addition an active drug control group. Inclusion of both control groups establishes assay sensitivity allowing a distinction between an ineffective drug and an ineffective (null, no-test) study.

B. Crossover Dose-response

A randomized multiple crossover study can be successful if drug effect develops rapidly and patients return to baseline conditions quickly, if responses are not dichotomous and irreversible (cure, death), and if patients have reasonably stable conditions. However, this design suffers from the liabilities of all crossover studies: serious problems in the event of treatment withdrawals, long duration, uncertainty about carry over effects, baseline comparability and period by treatment interactions. An advantage is that each individual receives several different doses so that individual dose-response information may be examined.

C. Forced Titration

A forced titration study is similar in concept and limitations to a multiple crossover dose-response study, except that assignment to dose levels is ordered, not random. If successful (most patients complete all doses), and if controlled using a parallel placebo-group, the forced titration study allows a series of comparisons of an entire randomized group given several doses of drug with a concurrent placebo, as does the parallel fixed dose trial. A disadvantage is that by itself this study design cannot distinguish response to increased dose from response to increased time on drug therapy and it is therefore an unsatisfactory design when response is delayed, unless treatment at each dose is quite prolonged. A tendency toward spontaneous improvement is also a problem for this design, as higher dose may find little room for effect. This design can give a reasonable first approximation of the dose-response relationship if the cumulative (temporal) drug effect is minimal and the number of treatment withdrawals are not excessive. Compared to a parallel dose-response study, this design uses fewer patients, and it is possible, simply by extending the study duration, to investigate a very broad range of doses.

D. Optional Titration (Placebo-controlled Titration to Endpoint)

In this design patients are titrated until they reach a well characterized response, as defined by dosing rules expressed in the protocol.

This approach is applicable only to conditions with a reasonably prompt and continuous (or multi-level categorical; i.e., not dichotomous) response to treatment. With a crude analysis of such studies, e.g., comparing the effects in the subgroups of patients titrated to various dosages, this design often gives a misleading inverted U-shaped curve, as only poor responders tend to be titrated to the highest dose. More sophisticated approaches that correct for this, however, such as nonlinear mixed effects modeling, appear to allow calculation of valid dose-response information. It is important to maintain a concurrent placebo group to correct for secular trends, investigator expectations, etc. Like other designs that use several doses in the same patient, this design uses fewer patients than a parallel fixed dose study of similar power and can provide individual dose-response information.

IV. Guidance

1. Dose-response data are desirable for almost all new chemical entities entering the

market. These data should be derived from study designs that are sound and scientifically based, and there are a variety of different designs that are applicable. The trials should be well controlled, using accepted approaches to minimize bias. In addition to formal trials, the entire database should be intensively examined for possible valid dose-response information.

2. An acceptable, but not the only, study design for obtaining dose-response data is the parallel, randomized dose-response study with three or more dosage levels, one of which may be zero (placebo). From such a trial, a plot or equation can be constructed that defines the relationship between drug dosage, or concentration, to clinical beneficial or undesirable effects in individuals or populations of patients.

Three dose levels are needed as two levels (drug versus placebo) only allow a test of the null hypothesis of no difference between them. While a linear relationship can be derived from responses to two active doses, this approximation is usually not sufficiently informative.

3. Dose-response data from which relationships to both beneficial and undesirable effects can be derived may provide information that allows approval of a range of doses that encompass an appropriate benefit to risk ratio. The same dose-response data may be used by different regulatory agencies to arrive at different approved dosage regimens that are appropriate to the medical, cultural, and regulatory needs of specific countries.

4. New data analytical techniques, including increased use of retrospective population-type analyses, may help define the dose-response relationship.

Regulatory agencies and drug developers should be receptive to the concept of reasoned and well documented exploratory data analysis of existing or future databases in search of dose-response data. Although retrospective analyses may be informative, this approach should not subvert the requirement for dose-response data from prospective, randomized multi-dose-level clinical trials. Post hoc exploratory data analysis in search of dose response information from databases generated to meet other objectives will often generate new hypotheses, but will only occasionally provide definitive discovery of dose-response relationships. Agencies should also be receptive to the use of various newer statistical and pharmacometric techniques such as Bayesian and population methods, modeling, and pharmacokinetic-pharmacodynamic approaches.

5. It is prudent to carry out dose-ranging studies early in development (i.e., phase I, early phase II) in order to avoid failed phase III trials or accumulation of a database that consists largely of exposures at ineffective or excessive doses.

6. Approval decisions are based on a consideration of the totality of information on a drug. Depending on the kind and degree of effectiveness shown, a variety of imperfections in the database may be acceptable with the expectation of further studies after marketing. Thus, good dose-response information, like information on responses in special populations, on long-term use, on potential drug-drug and drug-disease interactions, is expected but might, in the face of a major therapeutic benefit or urgent need, or very low levels of observed toxicity, become a deferred requirement.

Dated: June 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 93–16237 Filed 7–8–93; 8:45 am]

BILLING CODE 4160–01–F

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federal register

Friday
July 9, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guideline on Clinical Safety Data Management: Definitions and Standards for Expedited Reporting; Availability, Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0203]

International Conference on Harmonisation; Draft Guideline on Clinical Safety Data Management: Definitions and Standards for Expedited Reporting; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline for comment entitled "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting." This draft guideline was prepared by the Expert Working Group on Efficacy of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline provides standard definitions and terms for key aspects of clinical safety reporting. The draft guideline also discusses mechanisms for expedited reporting. The draft guideline is intended to help harmonize methods for gathering and evaluating clinic safety data.

DATES: Written comments by August 9, 1993.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Joyce Johnson, Center for Drug Evaluation and Research (HFD–735), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4227,

or

Murray Lumpkin, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4310.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization, and FDA is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with technical input from both regulatory and industry representatives. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Community, Japan, and the United States. The six ICH sponsors are: The European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the U.S. Food and Drug Administration, and the U.S. Pharmaceutical Manufacturers Association. In addition, the ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the organizing bodies and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

The ICH Steering Committee agreed at a meeting held on June 23 and 24, 1993, that the draft tripartite guideline entitled "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting" should be made available for public comment. The draft guideline will be published for comment by the European Community and by Japan, as well as by FDA, in accordance with their respective consultation procedures. After the comments are analyzed and the draft guideline revised as necessary, FDA will determine whether it will adopt the guideline. The draft guideline defines basic terms, such as "adverse event," "adverse drug reaction," and "unexpected adverse drug reaction." The draft guideline also provides guidance on determining whether an adverse drug reaction is "expected," suggesting, for example, that the investigator's brochure serve as a source document if the drug is not marketed anywhere in the world. The draft guideline also contains standards for expedited reporting, describing what information should be reported, recommends 5-, 10-, and 15-calendar day reporting timeframes, recommends the use of the CIOMS-I form for reporting information or, alternatively, suggests that basic information or data elements be used. These elements include items such as patient details (initials, relevant identifiers, sex, age and/or date of birth, and weight), suspected medicinal products, concomitant drugs, details of the suspected adverse drug reactions, details on the party or person reporting the event, and administrative and sponsor/company details. The draft guideline also discusses whether and when blinded studies should be broken; reporting reactions associated with comparison drug or placebo treatments; products with more than one dosage form, route of administration, or use; and adverse events that occur after the patient has completed the clinical study.

Interested persons may, on or before August 9, 1993, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit single copies. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Clinical Safety Data Management Definitions and Standards for Expedited Reporting

I. Introduction

Consensus has been reached by all six parties on appropriate specific objectives for international agreement at ICH–2 under the general topic of clinical safety data management. Although the overall goal of the ICH process is the harmonization of technical requirements for pharmaceutical product registration, it is also important to harmonize the way we gather and, if necessary, take action on important clinical safety information arising from signals during clinical development. Thus, agreed definitions and terminology as well as procedures will ensure uniform Good Clinical Practice standards in this area. The initiatives already undertaken for marketed medicines through the CIOMS–1 and CIOMS–2 Working Groups on expedited (alert) reports and periodic safety update reporting, respectively, are important precedents and models. However, there are special circumstances involving drugs under

development, especially in the early stages and before any marketing experience is available. On the other hand, it must be recognized that a drug will be under various stages of development and/or marketing in different countries, and safety data from marketing experience will ordinarily be of interest to regulators in countries where the drug is still under investigational-only (Phase 1, 2, or 3) status. For this reason, it is unwise and impractical to treat independently pre-marketing and post-marketing clinical safety reporting concepts and practices.

Our Expert Working Group (EWG) has been chosen to concentrate on (1) Development of standard definitions and terminology for key aspects of clinical safety reporting, and (2) the appropriate mechanism for handling expedited (rapid) reporting. Our EWG has also provided input to EWG E6 (GCP Guidelines) to ensure consistency between both groups' proposals covering clinical safety.

Other topics that have been suggested for possible discussion are those concerning technical definitions for toxicity (lab normal/abnormal ranges, etc.) and standards for safety data analysis and presentation (as in clinical study reports). However, it is our EWG's opinion that neither of these topics falls within its primary remit. The first is an exceedingly complex and difficult area that requires expertise and time beyond current resources. The second falls more properly within the responsibilities of the EWG on Clinical Study Reports (E3) or perhaps as a joint project for the future within our EWG (E2).

In addition to the expedited reporting covered in this proposal, periodic summary safety (update) reports may also be desirable during pre-approval phases of drug development. However, EWG E2 believes that this and other important subjects not addressed under ICH–2 should be pursued under ICH–3 as an extension of this present proposal; recommendations to the Steering Committee are made in a separate document.

As part of the documentation and rationale for the proposals to be presented at ICH–2 (October 1993) by EWG E2, a summary of existing regulatory requirements will be presented to illustrate the critical need for harmonization; the paper by Gordon and Petrick (*Drug Information Journal*, vol. 26, pp. 1 to 15, 1992) can serve as a basis. Furthermore, an attempt will be made to gather data prior to October 1993 on the type and quantity of expedited reports managed per year (e.g., 1992) by multinational companies; this would allow better understanding of the extent and complexity of the information that industry and regulatory authorities must handle and might guide implementation of the proposals for harmonization.

Many of the proposals presented below are accompanied by explanations or clarifications as footnotes. These footnotes are integral parts of this document and must be read along with the main text.

II. Definitions and Terminology Associated With Clinical Safety Experience

A. Basic Terms

Definitions for the terms adverse event (or experience), signal, adverse reaction, and unexpected adverse reaction have previously been agreed to by consensus of the more than 30 Collaborating Centers of the WHO International Drug Monitoring Center (Uppsala, Sweden). (See British Medical Journal, 304:465 (February 22, 1992)) Although those definitions can pertain to situations involving clinical investigations, some minor modifications are necessary, especially to accommodate the pre-approval, development environment. The following definitions, with input from the WHO Collaborative Center, have been agreed upon.

1. *Adverse event (or experience).*[1] Any untoward medical occurrence in a patient treated with a pharmaceutical product but which does not necessarily have a causal relationship with this treatment.

2. *Adverse drug reaction (ADR)*[2]. A response to a drug which is noxious and unintended, and which occurs at doses normally used or tested in man for prophylaxis, diagnosis, or therapy of disease, or for the modification of physiological function.

3. *Unexpected adverse drug reaction.*[3] An adverse reaction, the nature or severity of which is not consistent with applicable product information or labeling (e.g., Investigator's Brochure for an unapproved experimental drug; Data Sheet for a marketed product).

4. *Signal.* Reported information on a possible causal relationship between an adverse event and a drug, the relationship being unknown or incompletely documented previously. Usually more than a single report is required to generate a signal, depending upon the seriousness of the event and the quality of the information.

B. Serious Adverse Event or Reaction

During clinical trials, adverse events may occur which, if suspected to be drug-related (adverse drug reactions), might be significant enough to lead to important changes in the way a drug is developed (e.g., change in dose, population, needed monitoring, consent forms). This is particularly true for reactions which, in their most severe forms, threaten life or function. Such reactions should be reported promptly to regulators.

Therefore, special medical or administrative criteria are needed to define reactions that, either due to their nature ("serious") or due to the significant, unexpected information they provide, justify expedited reporting.

After reviewing the various regulatory and other definitions in use or under discussion elsewhere (FDA, WHO, CIOMS–1 for example), the following proposed definition is believed to encompass the spirit and meaning of them all:[4]

A serious adverse event (experience) or reaction is any untoward medical occurrence that at any dose:

- Results in death
- Requires inpatient hospitalization or prolongation of existing hospitalization
- Results in persistent or significant disability/incapacity
- Is life-threatening.[5]

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[1] The old term "side effect" has been used in various ways in the past, usually to describe negative (unfavorable) effects, but also positive (favorable) effects. It is recommended that this term no longer be used and particularly should not be regarded as synonymous with an adverse event or adverse reaction.

[2] Modified from WHO Techical Report No. 498 (1972) by adding the phrase "or tested."

[3] The original WHO definition referred to "domestic labeling or marketing authorization," but for unapproved drugs, no data sheet or "label" may exist. Original also defined unexpected as an ADR not "expected from characteristics of the drug;" this is a separate concept (i.e., not anticipated on pharmacological grounds) and is not by itself a criterion for defining the regulatory reporting standards developed herein.

[4] To ensure no confusion or misunderstanding of the difference between the terms "serious" and "severe," the following note of clarification is provided:

The term "severe" is often used to describe the intensity (severity) of a specific event (as in mild, moderate, or severe myocardial infarction); the event itself however, may be of relatively minor medical significance (such as severe headache). Severe is *not* synonymous with "serious," which is based on patient/event *outcome or action* criteria usually associated with events that pose a threat to a patient's life or functioning. Seriousness (not severity) serves as a guide for defining regulatory reporting obligations. In order to facilitate the distinction between these terms in different languages, recommended translations are given in Attachment 1.

[5] The term "life-threatening" in the definition of "serious" refers to an event in which the patient was at risk of death at the time of the event; it does not refer to an event which hypothetically might have caused death if it were more severe.

Cancers and congenital anomalies/birth defects should also be regarded as "serious" even if they do not result in one of the outcomes listed above.

There are other important medical events that may not be immediately life-threatening or result in death or hospitalization but may jeopardize the patient or may require intervention to prevent one of the outcomes listed in the previous two paragraphs. Examples of such events are blood dyscrasias, convulsions, intensive treatment in an emergency room or at home for allergic bronchospasm without inpatient hospitalization, or development of drug dependency or drug abuse. Medical and scientific judgment should be exercised in deciding whether expedited reporting is appropriate in such situations.

C. Expectedness of an Adverse Drug Reaction

The purpose of expedited reporting is to make regulators aware of new, important information on serious reactions. Therefore, such reporting will generally involve events previously unobserved or undocumented (see II.A.3. of this guideline), and a guideline is needed on how to define an event as "unexpected" or "expected" (expected/unexpected from the perspective of previously observed, *not* on the basis of what might be anticipated from the pharmacological properties of the drug).

An "unexpected" adverse reaction is one, the nature or severity of which, is not consistent with information in the relevant source document(s). Note that until source documents are amended, expedited reporting is required for additional occurrences of the reaction.

The following documents or circumstances will be used to determine whether an adverse event/reaction is expected:

1. For a drug not yet marketed anywhere in the world, a company's Investigator's Brochure will serve as the source document.[6]

2. Once a drug is marketed in one or more countries, it is recommended that a company develop a "core safety data sheet" (CSDS).[7] The information contained in the CSDS should then become an integral component of the Investigator's Brochure. The Investigator's Brochure remains the source document for defining "expectedness" in countries where the drug is not yet approved for marketing.

3. Reports which add significant information on specificity or severity of a known, already documented serious ADR constitute unexpected events. For example, an event more specific or more severe than described in the Investigator's Brochure or core safety data sheet would be considered "unlabeled" (unexpected). Specific examples would be acute renal failure as a labeled ADR with a subsequent new report of interstitial nephritis, and hepatitis with a first report of fulminant hepatitis.

III. Standards for Expedited Reporting

A. What Should be Reported?

1. *Single cases of serious, unexpected ADR's.* All adverse drug reactions (ADR's) that are both serious and unexpected are subject to expedited reporting.[8] This applies to reports from spontaneous sources and from any type of clinical or epidemiological investigation, independent of design or purpose. It also applies to cases not reported directly to a sponsor or manufacturer (for example, those found in regulatory authority-generated ADR registries or in publications).[9] The source of a report (investigation, spontaneous, other) should always be specified.

Causality assessment is required for clinical investigation cases. All cases judged by either the reporting health care provider or the sponsor as having a plausible causal relationship to the drug qualify as ADR's. As defined under CIOMS–1 standards, spontaneous reports have implied causality (suspected causality always assumed).

2. *Other Observations.* There are situations in addition to single case reports of "serious" adverse events or reactions that may necessitate rapid communication to regulatory authorities; appropriate medical and scientific judgment should be applied for each situation. In general, information that might materially influence the risk-benefit assessment of a drug or that would be sufficient to consider changes in drug administration or in the overall conduct of a trial represents such situations. Examples include:

a. A clinically significant increase in the rate of occurrence of an "expected," serious ADR.

b. A significant hazard to the patient population, such as lack of efficacy with a drug used in treating life-threatening disease.

C. A major safety finding from a newly completed animal study (such as carcinogenicity).

B. Reporting Time Frame

1. Serious, unexpected reactions (ADR's) must usually be filed within 15 calendar days following first knowledge by the company that the case meets the minimum criteria for expedited reporting.[10] Reports must be sent to those regulators or other official parties requiring them (as appropriate for the local situation) in countries where the drug is under development and/or on the market.

2. Certain ADR's may be sufficiently alarming so as to require more rapid notification to regulators in countries where the drug is still not approved for marketing, since such reports may lead to consideration of suspension of, or other limitations to, a clinical program. Fatal and life-threatening unexpected ADR's occurring in clinical investigations qualify for more rapid

[6] It is expected, at least with regard to clinical safety information, that the Investigator's Brochure used for a given product will be consistent throughout the world. It is not the intention of this EWG to propose standards for the content, or periodicity for update, of an Investigator's Brochure (see GCP Guidelines proposed by EWG E6); however, it is important that the document be kept current (for example, through amendments/attachments), particularly for medically important safety data.

[7] A core safety data sheet (or the safety components of an International Prescribing Information document) is the set of facts and recommendations prepared by the pharmaceutical manufacturer, containing all relevant safety information, such as adverse drug reactions, warnings, precautions, contraindications, use in pregnancy, etc., which the manufacturer believes should be listed (minimum core safety information) for the drug in all countries where the drug is marketed. It is a possible reference document by which "labelled" (expected) and "unlabelled" (unexpected) can be determined. It is recognized that the local data sheet (country-specific prescribing information) is the document which the local regulator requires a manufacturer to use. Unless there are extenuating circumstances, it is expected that a local data sheet will include all the clinical safety information in a core safety data sheet. However, it is understood that local data sheets may contain additional information or alternative wording.

[8] Expedited reporting of reactions which are serious but *expected* will ordinarily be inappropriate. Expedited reporting is also inappropriate for serious events from clinical investigations that are considered *not* related to the study drug, whether the event is expected or not. Similarly, nonserious adverse reactions, whether expected or not, will ordinarily not be subject to expedited reporting.

[9] Information obtained by a sponsor or manufacturer on serious, unexpected reports from any source should be submitted on an expedited basis to appropriate regulatory authorities if the minimum criteria for expedited reporting can be met. (See section III.B. and footnote 10 of this guideline.)

[10] For serious spontaneous reports, and more infrequently for clinical trial reports, information for proper description and evaluation may not be available within the required time frame after first learning of a case. Nevertheless, for regulatory purposes such incomplete reports should be submitted within the prescribed time frame as long as the following minimum criteria are met: an identifiable patient, a suspect drug, an identifiable reporting source, and an event or outcome that can be identified as serious and unexpected. Followup information should be actively sought and submitted as it becomes available.

reporting. Regulatory agencies should be notified (by telephone or in writing, e.g.) within 5 calendar days of first knowledge that an event qualifies, followed by as complete a written report as possible within 10 additional days. This report must include an assessment of the importance and implication of the findings, including relevant previous experience with the same or similar drugs.

In countries where the drug is already marketed, reporting of these special cases (for example, from Phase 4 Trials) should be made within 15 calendar days, except in those instances when the cases arise in studies for use of the marketed drug outside the approved labeling (e.g., new population, dosage form, or indication). Under the latter circumstances, fatal and life-threatening unexpected reactions should be communicated to regulators within 5 calendar days.

C. How to Report

It is recommended that the CIOMS–I form, currently a widely accepted standard, be used. However, no matter what the form or format, it is important that certain basic information/data elements, when available, be included with any expedited report, whether in a tabular or narrative presentation. The listing in Attachment 2 covers those data elements that are regarded as desirable; if all are not available at the time of expedited reporting, efforts should be made to obtain them. (See footnote 10 of this guideline.)

D. Managing Blinded Therapy Cases

When the sponsor and investigator are blinded to individual patient treatment (as in a double-blind study), the occurrence of a serious event requires a decision on whether to open (break) the code for the specific patient. If the investigator breaks the blind, then it is assumed the sponsor will also know the assigned treatment for that patient. Although it is advantageous to retain the blind for all patients prior to final study analysis, when a serious event is judged reportable on an expedited basis (unexpected, and causally related), it is recommended that the blind be broken only for that specific patient by the sponsor even if the investigator has not broken the blind. However, it is also recommended that when possible and appropriate, the blind be maintained for those persons, such as biometrics personnel, responsible for analysis and interpretation of results at the study's conclusion.[11]

E. Miscellaneous Issues

1. *Reactions associated with comparator or placebo treatment.* Comparator drug reactions should be reported to the other manufacturer and/or directly to appropriate regulatory agencies. Events involving placebo will usually not satisfy the criteria for an ADR and, therefore, for expedited reporting.

2. *Products with more than one presentation or use.* To avoid ambiguities and uncertainties, an ADR that qualifies for expedited reporting with one presentation of a product (e.g., a dosage form, formulation, delivery system) or product use (e.g., for an indication or population), should be reported or referenced to regulatory filings across other product presentations and uses.

It is not uncommon that more than one dosage form, formulation, or delivery system (oral, IM, IV, topical, etc.) of the pharmacologically active compound(s) is under study or marketed; for these different presentations there may be some marked differences in the clinical safety profile. The same may apply for a given product used in different indications or populations (single dose vs. chronic application for example). Thus, "expectedness" may be product or product-use specific. Separate Investigator Brochures and/or core safety data sheets may be used for such variations; however, such documents are expected to cover ADR information that applies to all products and uses (e.g., systemic side effects). When relevant, separate discussions of pertinent product-specific or use-specific safety information should also be included.

Cross-reporting to different product or use regulatory filings is recommended. For example, a single Investigator's Brochure (or core safety data sheet) may exist for an oral and IV dosage form. If only the oral form is studied or sold in country A, anaphylaxis that is still unexpected (unlabelled) and occurs with the IV dosage form in country B would still be reported to regulators in country A.

This may result in a certain amount of overreporting or unnecessary reporting in obvious situations (for example, a report of phlebitis on IV injection sent to authorities in a country where only an oral dosage form is studied or marketed). However, underreporting is completely avoided.

3. *Post-study Events.* Serious, adverse events may be reported by an investigator to the sponsor as having occurred in patients after they have completed a clinical study (including any protocol-required posttreatment followup). Such cases should be regarded for expedited reporting purposes as though they were study reports no matter how long the "lag time." Therefore, a causality assessment and determination of expectedness are needed for a decision on whether or not expedited reporting is required.

F. Informing Investigators and Ethical Review Committees of New Safety Information

International standards regarding such communication are discussed in the ICH proposal for GCP Guidelines (EWG E6).

[11] There are several disadvantages to maintaining the blind under the circumstances described which outweigh the advantages. By retaining the blind, placebo and comparator (usually a marketed product) cases are filed unnecessarily; when the blind is eventually opened, which may be many weeks or months after reporting to regulators, it must be ensured that company and regulatory data bases are revised. If the event is serious, new, and possibly related to the drug, then if the Investigator's Brochure is updated, notifying relevant parties of the new information in a blinded fashion is inappropriate and possibly misleading. Moreover, breaking the blind for a single patient, who will in most cases have left the study because of the adverse reaction, usually has no significant implications for the conduct of the trial or on the analysis of the final trial data.

It should be noted, however, that when a fatal or other "serious" outcome is the primary efficacy endpoint in an investigation, the integrity of the investigation may be compromised if the blind is broken. Under these and similar circumstances, it may be appropriate to reach agreement with regulatory authorities in advance on serious events that would be treated as disease-related and not subject to routine expedited reporting.

VOL 58 ISS 130 JL 9 1993 UMI

Attachment 1—Serious vs. Severe in Different Languages

English	Serious	Severe.
Danish	Alvorlig	Svaer.
Dutch	Ernstig	Zwaar (also "ernstig").
French	Grave	Sévère.
German	Schwerwiegend	Schwer (stark ausgepraegt).
Greek	11511198971141111100 (Sovarós)	9897114110100 (Varys).
Italian	Serio	Severo (or Grave).
Japanese	Juhtoku	Juhshoh
Portuguese	Grave	Severo (Intenso).
Spanish	Grave	Severo (Intenso).

Attachment 2—Key Data Elements for Inclusion in Expedited Reports of Serious Adverse Drug Reactions

The following list of items has its foundation in several established precedents, including those of CIOMS-I, the WHO International Drug Monitoring Center, and various regulatory authority forms and guidelines in effect or proposed. Some items may not be relevant depending on the circumstances. The minimum information required for expedited reporting purpose is: an identifiable patient, the name of a suspect drug, an identifiable reporting source, and an event or outcome that can be identified as serious and unexpected. Attempts should be made to obtain followup information on as many other listed items pertinent to the case.

1. *Patient Details:*
- Initials,
- Other relevant identifier (hospital number, for example),
- Sex,
- Age and/or date of birth,
- Weight.

2. *Suspected Medicinal Product(s):*
- Brand name as reported,
- International Nonproprietary Name (INN),
- Batch number,
- Indications for which suspect drug was prescribed or tested,
- Dosage form and strength,
- Daily dose and regimen (specify units—e.g., mg, mL, mg/kg, etc.),
- Route of administration,
- Starting date and time of day,
- Stopping date and time, or duration of treatment.

3. *Other Treatment(s):*
- For concomitant drugs (including OTC medicines) and nondrug therapies, provide the same information as for the suspected product.

4. *Details of Suspected Adverse Drug Reaction(s):*
- Full description of reaction(s) including site and severity, as well as the criterion (or criteria) for regarding the report as serious (fatal, life-threatening, etc.). In addition to a description of the reported signs and symptoms, whenever possible, attempts should be made to establish a specific diagnosis for the reaction.
- Start date (and time) of onset of reaction.
- Stop date (and time) or duration of reaction.
- Dechallenge and rechallenge information.
- Outcome: information on recovery and any sequelae; what specific tests and/or treatment may have been required and their results; for a fatal outcome, cause of death and a comment on its possible relationship to the suspected reaction should be provided. Any autopsy or other post-mortem findings (including a coroner's report) should also be provided when available.
- Other information: anything relevant to facilitate assessment of the case, such as medical history, including allergy, drug or alcohol abuse, etc.; family history; findings from special investigations; etc.

5. *Details on Reporter of Event (Suspected ADR):*
- Name,
- Address,
- Telephone number,
- Profession (specialty).

6. *Administrative and Sponsor/Company Details:*
- Source of report; was it spontaneous, from a clinical investigation (provide details), from the literature (provide copy), other?
- Date event report was first received by sponsor/manufacturer,
- Country in which event occurred,
- Type of report filed to authorities: initial or followup (first, second, etc.),
- Name and address of sponsor/manufacturer/company,
- Name, address, telephone number, and FAX number of contact person in reporting company or institution,
- Identifying regulatory code or number for marketing authorization dossier or clinical investigation process for the suspected product (for example IND or CTX number, NDA number),
- Sponsor/manufacturer's identification number for the case.

Dated: June 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–16238 Filed 7–8–93; 8:45 am]

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INFORMA
Federal Re
Index, find
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Index, find
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Laws
Public Law
Additional
Presidentia
Executive
Public Pap
Weekly Co
The United
General inf
Other Serv
Data base a
Guide to R
Legal staff
Privacy Ac
Public Law
TDD for th
ELECTRO
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a list of Cl
FEDERAL
35357–3584
35841–3611
36117–3630
36301–3658
36589–3685
36853–3741

Reader Aids

Federal Register

Vol. 58, No. 130

Friday, July 9, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587

Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
301.....36589, 36590, 36591
400.....36592
723.....36853, 36857
1097.....34359
1098.....35361
1099.....34362
1108.....36859
1464.....36857, 36861
1435.....36120
1755.....36252

8 CFR

245.....35832

9 CFR

78.....36593
94.....36593, 36594

Proposed Rules:
94.....36624
98.....36625

10 CFR

Proposed Rules:
60.....36901

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36863, 36865
71.....36596
72.....36298
108.....36802

Proposed Rules:
Ch. I.....36626
1.....36738
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

16 CFR

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
240.....36866
249.....35367

18 CFR

Proposed Rules:
35.....36172
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134

510.....36134
520.....36134
Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
572.....36518, 36546
Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908, 36516

28 CFR

0.....35371
14.....36867
55.....35371
Proposed Rules:
36.....37052

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

920.....36135
938.....36139
Proposed Rules:
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357, 36597, 36868
Proposed Rules:
117.....36629

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
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419.....36869
421.....36869
422.....36869
423.....36869
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427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869
Proposed Rules:
692.....36110

36 CFR

51.....36598
Proposed Rules:
1191.....37052

39 CFR

233.....36598

40 CFR

82.....36516
85.....36871
131.....36141
180.....36358, 36359
185.....36358
228.....35884
414.....36872
Proposed Rules:
52.....36904
81.....36907
88.....35420
180.....36366
186.....36366
261.....36367
372.....36180

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

45 CFR

Proposed Rules:
1602.....36909

46 CFR

170.....36601
Proposed Rules:
15.....36913
171.....36374

47 CFR

1.....36142
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410
76.....36604
90.....36362
Proposed Rules:
Ch. I.....36630
73.....35420, 35421, 36184, 36374, 36375, 36376

48 CFR

904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363
Proposed Rules:
917.....36917

49 CFR

218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894
Proposed Rules:
37.....37052
171.....36919
543.....35422

50 CFR

17.....35887
85.....36619
285.....36154
625.....35891
646.....35895, 36155
658.....35897
671.....36900

672.....35897
675.....35897

Proposed Rules:
17.....36184, 36379, 36387, 36923
24.....36924
642.....36632

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 8, 1993

VOL
58
ISS
130
JL
9
1993
UMI

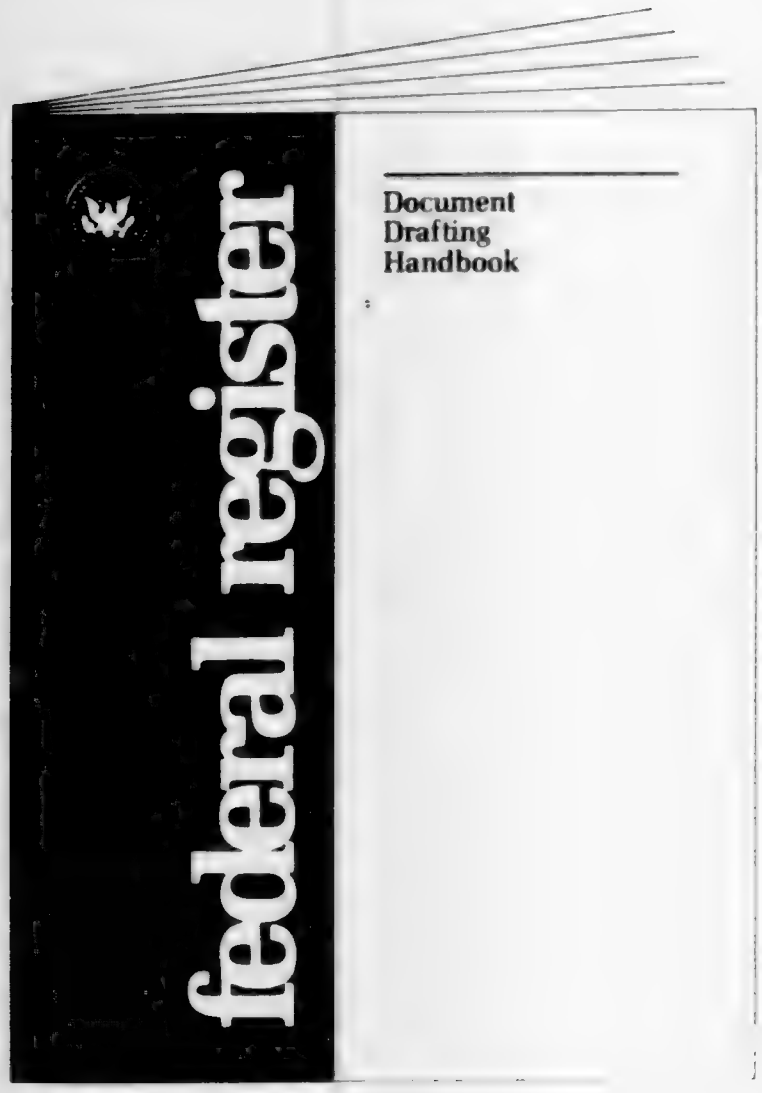

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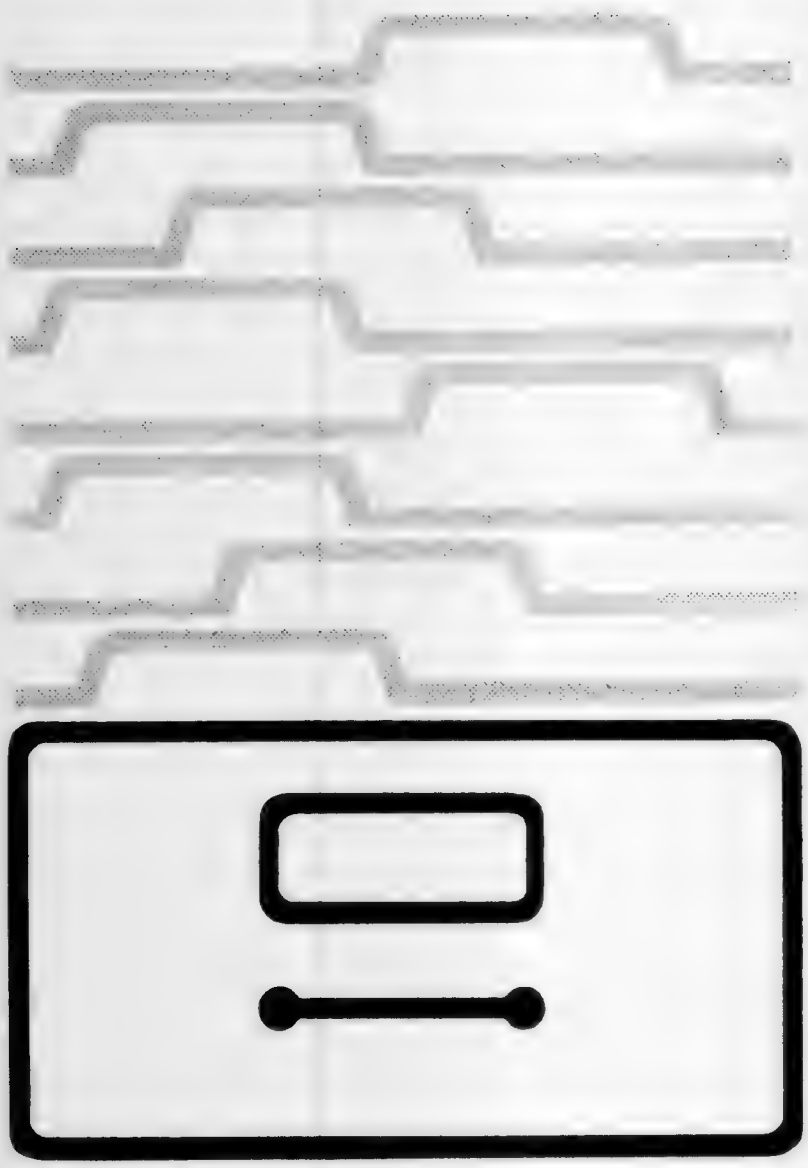

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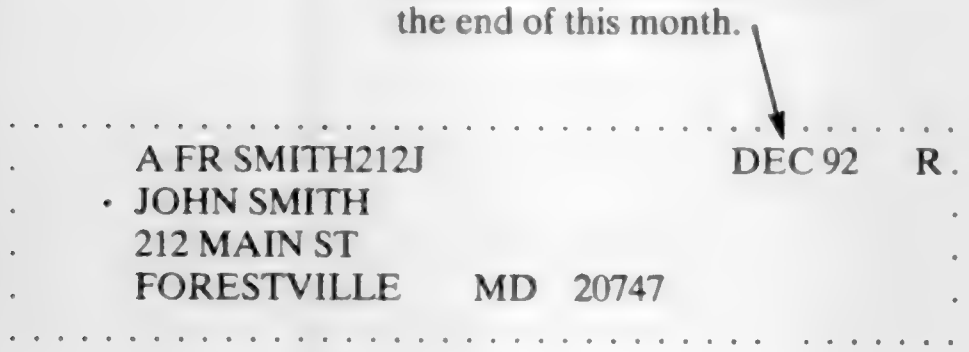

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JL
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Vol. 58 No. 131
Pages 37413–37630

Monday
July 12, 1993

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VOL
58
ISS
131
JL
12
1993
UMI

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NOTICES
Grants and
Elevated b
37489
Specific y

Commerce
See Internati
See National
See National
NOTICES
Privacy Act:
System of

Consumer P
RULES
Consumer Pr
Cigarette li
Cigarette li
NOTICES
Meetings:
Cigarette F

Defense Dep
See Engineer
NOTICES
Agency infor
review,

Drug Enforc
NOTICES
Applications
Chemical I
Cuong, Tra
Doell, Will
Gillis, Dav
Osafo, Geo
Topel, Stev

Energy Depa
See Energy R
See Federal
NOTICES
Atomic energ
Natural gas e
Cascade Na

Contents

Federal Register

Vol. 58, No. 131

Monday, July 12, 1993

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Exposure-dose reconstruction research program, 37487

Agriculture Department
See Forest Service
See Soil Conservation Service

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Elevated blood-lead (PbB) levels surveillance in children, 37489
Specific youth violence interventions evaluation, 37491

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Privacy Act:
System of records, 37460

Consumer Product Safety Commission
RULES
Consumer Product Safety Act:
Cigarette lighter safety standard, 37557
Cigarette lighters, child resistant, 37554
NOTICES
Meetings:
Cigarette Fire Safety Technical Advisory Group, 37470

Defense Department
See Engineers Corps
NOTICES
Agency information collection activities under OMB review, 37470

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Chemical Dependence Associates of Houston, 37505
Cuong, Tran Trong, M.D., 37506
Doell, William E., D.O., 37506
Gillis, David H., M.D., 37507
Osafo, George D., M.D., 37508
Topel, Steven I., M.D., 37509

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements subsequent arrangements, 37475
Natural gas exportation and importation:
Cascade Natural Gas Corp., 37476

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research program—
Pre-freshman enrichment program, 37475

Engineers Corps
RULES
Danger zones and restricted areas:
Definitions, procedural type requirements, etc., 37606

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 37421
South Dakota, 37423
Washington, 37426
PROPOSED RULES
Air programs:
Architectural and Industrial Maintenance Coatings Negotiated Rulemaking Advisory Committee; meetings, 37450
Air quality implementation plans; approval and promulgation; various States, etc.:
Indiana, 37450
Ohio, 37453
NOTICES
Drinking water:
Public water supply supervision program—
Ohio, 37476
Meetings:
Municipal solid waste flow control, 37477
Science Advisory Board, 37479
Pesticide programs:
University of Minnesota—
Nonindigenous microbial pesticide; field test, 37479
ZENECA Ag Products—
Nonindigenous microbial pesticide; field test, 37480
Pesticides; experimental use permits, etc.:
Monsanto Co., 37481

Federal Communications Commission
RULES
Radio frequency devices:
Electromagnetic emissions measurement, intentional and unintentional radiators, 37429
Radio stations; table of assignments:
Pennsylvania, 37431
Wyoming, 37431
PROPOSED RULES
Radio stations; table of assignments:
North Carolina, 37455
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 37481
Applications, hearings, determinations, etc.:
TMC Long Distance et al., 37481

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act:
Interstate pipeline—
Electronic bulletin boards; uniform standards, 37447
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Boston Edison Co. et al., 37471
Polk Power Partners, L.P., 37474
Environmental statements; availability, etc.:
Minnesota Power Co., 37474
Meetings; Sunshine Act, 37549
Applications, hearings, determinations, etc.:
Black Marlin Pipeline Co., 37475
Northwest Pipeline Corp., 37475

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
San Luis Obispo County, CA, 37545

Federal Maritime Commission
NOTICES
Agreements filed, etc., 37482
Freight forwarder licenses:
Bok Kun Chung et al., 37483
Investigations, hearings, petitions, etc.:
Ocean Tariff Bureau, 37483

Federal Register, Administrative Committee
See Federal Register Office

Federal Register Office
NOTICES
American Institute in Taiwan and Coordinating Council for North American Affairs; agreements, 37535

Federal Trade Commission
NOTICES
Prohibited trade practices:
ASFE, Association of Engineering Firms Practicing in Geosciences, 37483
Audio-Logics, 37484
Audio RX Hearing Aids, 37484
Bay Colony Audiology Center et al., 37484
Brooklyn Audiology Assocs., P.C., et al., 37485
Brown-Potter Hearing Aid Center, 37485
Center for Improved Communications et al., 37485
Conair Corp., 37486
Fone Telecommunications, Inc., 37486
Hearing Care Associates-Arcadia et al., 37486

Fish and Wildlife Service
RULES
Endangered and threatened species:
Apalachicola rosemary, etc. (five Florida plants), 37432
NOTICES
Meetings:
Aquatic Nuisance Species Task Force, 37503

Forest Service
NOTICES
Environmental statements; availability, etc.:
Beaverhead National Forest et al., MT, 37457
Tongass National Forest, AK, 37458

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Exceptional financial need and financial assistance for disadvantaged health professions students programs, 37494
National vaccine injury compensation program:
Petitions received, 37497

Housing and Urban Development Department
PROPOSED RULES
Privacy Act; implementation, 37598
NOTICES
Agency information collection activities under OMB review, 37500
Meetings:
Occupancy Standards in Public and Assisted Housing Task Force; correction, 37501
Privacy Act:
System of records, 37601

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Crow Indian Tribe, 37604

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Professional electric cutting tools from Japan, 37461
Welded stainless steel pipe from Malaysia, 37462
Export trade certificates of review, 37463
Grants and cooperative agreements; availability, etc.:
Special American business internship training program, 37463

International Trade Commission
NOTICES
Import investigations:
Aramid fiber formed of poly para-phenylene terephthalamide from Netherlands, 37503

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Boston & Maine Corp. et al., 37504
Railroad operation, acquisition, construction, etc.:
Connecticut Central Railroad Co., 37504
Railroad services abandonment:
Chicago & North Western Transportation Co., 37505

Justice Department
See Drug Enforcement Administration
RULES
Foreign Agents Registration Act:
Fee assessment and collection, 37417

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 37502
Environmental statements; availability, etc.:
Beaverhead National Forest et al., MT, 37457
Meetings:
Winnemucca District Multiple Use Advisory Council, 37502

Minerals Management Service
RULES
Royalty management:
Oklahoma; oil and gas product valuation, 37420
NOTICES
Organization, functions, and authority delegations:
Royalty management activities—
New Mexico, 37502

National Archives and Records Administration
See Federal Register Office

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 37550

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 37465

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 37443
PROPOSED RULES
Fishery conservation and management:
South Atlantic shrimp, 37456
NOTICES
Grants and cooperative agreements; availability, etc.:
Antarctic marine ecosystem, projects to provide information on, 37465
Permits:
Foreign fishing, 37470

Nuclear Regulatory Commission
NOTICES
Low-level radioactive waste disposal facilities; revisions to the license application review plan, 37529
Meetings:
Nuclear Waste Advisory Committee, 37529
Applications, hearings, determinations, etc.:
Castle Medical Center, 37530
Georgia Power Co., 37534
Southern California Edison Co. et al., 37534
Virginia Electric & Power Co., 37535

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Kimball International, Inc., et al., 37510
Southwest-Tex Leasing Co., Inc., et al., 37512

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Performance oriented packaging standards—
Miscellaneous amendments, 37612

Securities and Exchange Commission
RULES
Securities:
Penny stock sales practice and disclosure rules, 37413
PROPOSED RULES
Securities:
Blank check rule; penny stock definition, 37445
NOTICES
Applications, hearings, determinations, etc.:
First Prairie Cash Management et al., 37535
Public utility holding company filings, 37538
Smith Barney, Harris Upham & Co., Inc., 37539
Van Kampen Meritt Trust et al., 37541

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Indian Creek Watershed, CA, 37460

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kansas, 37447
North Dakota, 37449

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Highway Administration
See Research and Special Programs Administration

Treasury Department
NOTICES
Agency information collection activities under OMB review, 37546
Boycotts, international:
Countries requiring cooperation; list, 37546

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 37546, 37547

Separate Parts In This Issue

Part II
Consumer Product Safety Commission, 37554

Part III
Department of Housing and Urban Development, 37598

Part IV
Department of Interior, Bureau of Indian Affairs, 37604

Part V
Department of Army, Engineers Corps, 37606

Part VI
Department of Transportation, Research and Special Programs Administration, 37612

VOL
58
ISS
131
JL
12
1993
UMI

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS

A cumulative li
Reader Aids s

16 CFR
1145.....
1210.....
17 CFR
240.....
Proposed Rules
240.....
18 CFR
Proposed Rules
284.....
24 CFR
Proposed Rules
16.....
28 CFR
5.....
30 CFR
202.....
206.....
Proposed Rules
916.....
934.....
33 CFR
334.....
40 CFR
52 (3 documer
Proposed Rules
Ch. I.....
52 (2 documer
81.....
47 CFR
2.....
15.....
73 (2 documer
Proposed Rules
73.....
49 CFR
Proposed Rules
171.....
172.....
173.....
174.....
177.....
179.....
50 CFR
17.....
630.....
Proposed Rules
659.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

16 CFR
1145.....37554
1210.....37557

17 CFR
240.....37413

Proposed Rules:
240.....37445

18 CFR

Proposed Rules:
284.....37447

24 CFR

Proposed Rules:
16.....37598

28 CFR
5.....37417

30 CFR
202.....37420
206.....37420

Proposed Rules:
916.....37447
934.....37449

33 CFR
334.....37606

40 CFR
52 (3 documents).....37421, 37423, 37426

Proposed Rules:
Ch. I.....37450
52 (2 documents).....37450, 37453
81.....37453

47 CFR
2.....37429
15.....37429
73 (2 documents).....37431

Proposed Rules:
73.....37455

49 CFR

Proposed Rules:
171.....37612
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612

50 CFR
17.....37432
630.....37443

Proposed Rules:
659.....37456

VOL
58
ISS
131
JL
12
1993
UMI

Rules

This section
contains regu
applicability a
are keyed to
Federal Regu
50 titles purs

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SUMMARY: T
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Rules and Regulations

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32576]

RIN 3235–AF46

Penny Stock Sales Practice and Disclosure Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to certain rules under the Securities Exchange Act of 1934 ("Exchange Act") that apply to transactions in low-priced securities traded in the non-NASDAQ over-the-counter market. Specifically, the Commission is amending Rule 15c2–6, which makes it unlawful for a broker or dealer to sell or effect the purchase of a "designated security" in a non-exempt transaction, unless the broker or dealer has specifically approved the purchaser's account for transactions in designated securities and received the purchaser's written agreement to the transaction. The amendments conform the definition of "designated security" in Rule 15c2–6 to the definition of "penny stock" in Rule 3a51–1, and, with certain exceptions, replace the transactional exemptions under the rule with the exemptions under Rule 15g–1. For consistency, the amendments also redesignate Rule 15c2–6 as Rule 15g–9. In addition, the Commission is amending Rule 15g–2 and Schedule 15G under the Exchange Act to require broker-dealers to obtain, prior to effecting any transaction in a penny stock, a written acknowledgement from the customer that he or she has received the risk disclosure document required by Rule 15g–2. This requirement will facilitate the ability of the Commission and the self-regulatory organizations to examine for compliance with Rule 15g–2. Finally, the Commission is clarifying the operation of Rule 15g–3, which mandates the disclosure of current quotation prices or similar market information in penny stock transactions.

EFFECTIVE DATES: The amendments to Rule 15c2–6 (§§ 240.15c2–6 and 240.15g–9) and Rule 15g–2 (§ 240.15g–2) under the Exchange Act become effective on August 11, 1993. The amendments to Schedule 15G (§ 240.15g–100) become effective on November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, John M. Ramsay, Deputy Chief Counsel, or Belinda Blaine, Branch Chief, at (202) 504–2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1989, the Commission adopted Rule 15c2–6 under the Exchange Act to address sales practice abuses involving certain speculative low-priced securities being traded in the non-NASDAQ over-the-counter ("OTC") market.[1] The rule, which became effective on January 1, 1990, generally prohibits a broker-dealer from selling to or effecting the purchase of a "designated security" by any person, unless the broker-dealer has approved the purchaser's account for transactions in designated securities and received the purchaser's written agreement to the transaction. In approving an account for transactions in designated securities, a broker-dealer must obtain sufficient information from the customer to make an appropriate suitability determination, provide the customer with a written statement setting forth the basis of the determination, and obtain a signed copy of the suitability statement from the customer.

Subsequent to the adoption of Rule 15c2–6, Congress passed the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Reform Act").[2] The Penny Stock Reform Act mandated that the Commission adopt rules requiring broker-dealers to provide customers with certain trade and market information prior to effecting a transaction in a penny stock. Pursuant to this authority, in April 1992, the Commission adopted Rule 3a51–1, which defines the term "penny stock" to exclude certain categories of equity securities, and Rule 15g–1, which exempts certain transactions from the disclosure requirements of Rules 15g–2 through 15g–6.[3] Rules 15g–2 through 15g–6, which were adopted at the same time, generally require broker-dealers effecting transactions in penny stocks to provide their customers with: a document describing the risks of investing in the penny stock market, information regarding market quotations, if any, information on the compensation of the broker-dealer and salesperson involved in the penny stock transaction, and monthly statements giving the market value of penny stocks held in the customer's account. Like Rule 15c2–6, the Penny Stock Rules are designed to address sales practice abuses and manipulation involving speculative low-priced securities that are traded outside of an organized securities market.

II. Rule 15c2–6

A. Description of the Amendments

In proposing the Penny Stock Rules, the Commission solicited comment on whether Rule 15c2–6 should be amended to be consistent with those rules.[4] In response, several comments urged the Commission to adopt conforming changes to Rule 15c2–6. These comments argued that making the scope of Rule 15c2–6 consistent with the Penny Stock Rules would eliminate costs and facilitate compliance. Accordingly, in April 1992, the Commission published for comment amendments to Rule 15c2–6.[5] The Commission received one comment letter from the National Association of Securities Dealers, Inc. ("NASD"), which reiterated its position that the rules should be harmonized.

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[1] Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468.

[2] Public Law 101–429, 104 Stat. 931 (1990).

[3] Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 ("Adopting Release"). All of the rules adopted pursuant to the Penny Stock Reform Act are referred to collectively herein as the "Penny Stock Rules."

[4] See Securities Exchange Act Release No. 29093 (April 17, 1991), 56 FR 19165.

[5] Securities Exchange Act Release No. 30610 (April 20, 1992), 57 FR 18046.

VOL 58 ISS 131 JL 12 1993 UMI

In light of these comments, the Commission today is adopting amendments to Rule 15c2–6 that will conform the scope of the rule to the scope of the Penny Stock Rules. Specifically, the amendments replace the definition of "designated security" in paragraph (d)(2) of Rule 15c2–6 with Rule 3a51–1's definition of "penny stock," and, with two significant exceptions, substitute the list of exempt transactions in Rule 15g–1 for the exempt transactions in paragraph (c) of Rule 15c2–6.[6] In addition, for consistency, Rule 15c2–6 has been redesignated as Rule 15g–9.[7] The Commission believes that the reach of Rule 15c2–6 and the Penny Stock Rules generally should be the same because, as noted above, these rules were designed to address abuses in the same market—namely, the non-NASDAQ OTC market for low-priced securities.[8] Moreover, making the scope of Rule 15c2–6 consistent with the Penny Stock Rules will simplify compliance with all of the rules.

1. Definition

Although the definition of "penny stock" is substantially the same as the definition of "designated security," it differs in a few respects.[9] Thus, amended Rule 15c2–6 now covers a slightly different universe of securities transactions.

For example, the definition of "penny stock" in Rule 3a51–1 is similar to the definition of "designated security" in that it contains an exclusion for securities whose issuer has demonstrated net tangible assets of $2 million or more. This exclusion, however, is limited to issuers that have been in operation for at least three years. Issuers that have been in operation for less than three years must have at least $5 million in net tangible assets to be excluded from the definition of "penny stock."[10] In addition to the exclusion based on issuer net tangible assets, however, Rule 3a51–1 includes an alternative exclusion for any security that is issued by an issuer with average revenues of $6 million for the past three years.[11]

Like the definition of "designated security," the definition of "penny stock" excludes any security that is authorized, or approved for authorization upon notice of issuance, for quotation on NASDAQ.[12] It also provides an exclusion for any security that is registered, or approved for registration upon notice of issuance, on a national securities exchange,[13] provided that current price and volume information with respect to transactions in that security is required to be reported and is made available to vendors pursuant to the rules of the national securities exchange. Unlike the analogous exclusion under the definition of "designated security," however, this exclusion is available only for regional exchange-listed securities that actually are purchased or sold through the facilities of the exchange or in a distribution.[14] As the Commission noted in the Adopting Release, the exclusion is limited in order to address Congress' concern that securities that would otherwise be considered penny stocks because they are primarily traded in the non-NASDAQ OTC market, nevertheless may be able to avoid Commission rules solely by registering on an exchange.[15]

Securities with a price of five dollars or more also continue to be outside of the coverage of Rule 15c2–6,[16] but in calculating the price of a security for purposes of the rule, broker-dealers will now be required to exclude the amount of any commission, commission equivalent, or mark-up charged in both agency and principal transactions. Finally, securities issued by a registered investment company and put and call options issued by the Options Clearing Corporation continue to be excluded from the requirements of the rule.[17]

2. Exempt Transactions

(a) Standard Exemptions. Paragraph (c) of Rule 15c2–6 currently provides an exemption for any transaction: (1) In which the price of the security is five dollars or more (including any share of any unit that has an independent exercise or conversion price); (2) in which the purchaser is an accredited investor, as defined in Regulation D under the Securities Act of 1933 ("Securities Act"); (3) that is not recommended by the broker-dealer; and (4) by a broker-dealer who is not acting as a market maker in the designated security and whose commissions, commission equivalents, and mark-ups from transactions in designated securities during a specified period, did not exceed five percent of its total commissions, commission equivalents, and mark-ups from transactions in securities during that period. Rule 15c2–6 also contains an exemption for transactions with established customers, as defined in paragraph (d)(3) of the rule.

With two significant exceptions, described below, these exempt transactions have been replaced with the exemptions under Rule 15g–1.[18] As a result, Rule 15c2–6 as amended no longer exempts transactions with all accredited investors.[19] Instead, the rule

[6] The term "penny stock" also has replaced the term "designated security," which was used solely for purposes of Rule 15c2–6.

[7] This change is being made pursuant to 15 U.S.C. 78*o*(g)(5). As discussed further below, however, Rule 15c2–6 continues to have a different specific purpose than the Penny Stock Rules. See n.23, *infra*.

[8] This market principally consists of securities that are quoted on the NASD's OTC Bulletin Board and in the "pink sheets" published by the National Daily Quotation Service.

[9] For a detailed discussion of Rule 3a51–1 and the rationale for the specific exclusions from the definition of "penny stock," see the Adopting Release.

[10] In the Adopting Release, the Commission stated that the rule imposes a separate higher standard for start-up companies in order to prevent the types of abusive activities that have occurred both prior to and since the adoption of Rule 15c2–6 in August of 1989. 57 FR at 18013.

[11] I.e., revenues of at least $18 million by the end of the three-year period.

[12] The exclusion in Rule 3a51–1(f) is subject to the condition that price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the NASD. Last year, the Commission approved a NASD proposal to require members to report to the NASD the execution price and the number of shares of each trade in NASDAQ securities within 90 seconds of execution. Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13398. Accordingly, all NASDAQ securities now meet the conditions of the exclusion in Rule 3a51–1(f).

[13] This exclusion is conditioned on the national securities exchange making transaction reports available for at least some securities pursuant to Rule 11Aa3–1 (17 CFR 240.11Aa3–1). Securities that are solely listed on a foreign exchange therefore do not qualify for this exclusion.

[14] "Reported securities," as defined in 17 CFR 240.11Aa3–1(a)(4), are separately excluded from the definition of "penny stock" pursuant to paragraph (a) of Rule 3a51–1, and therefore are not required to meet the conditions set forth in paragraph (c) of the rule. See Adopting Release, 57 FR 18008.

[15] Adopting Release, 57 FR at 18010.

[16] The exemption under paragraph (c)(1) of Rule 15c2–6 for transactions in securities priced at five dollars or more has now become an exclusion from the definition under paragraph (d)(1).

[17] Pursuant to Commission order, options issued by Trans Canada Options, Inc. also are exempt from the provisions of Rule 15c2–6 and the Penny Stock Rules. Securities Exchange Act Release No. 32106 (April 5, 1993).

[18] Moreover, as noted above, the transactional exemption in Rule 15c2–6 for securities priced at five dollars or more has become a definitional exclusion.

[19] The term "individual accredited investor" is defined in 17 CFR 230.501(a) (4), (5), and (6).

As the Commission stated in the Adopting Release, in the absence of price and trading information about particular penny stocks and the penny stock market in general, many affluent individual investors have been convinced through abusive sales practices to purchase penny stocks without sufficiently understanding the risks or the nature of their investment. See Adopting Release, 57 FR at 18016. As amended, Rule 15c2–6 provides a measure of protection to these investors by requiring broker-dealers to determine that the investor, regardless of his or her affluence, is capable of evaluating the risks of investing in speculative low-priced securities. The rule also protects these investors from high pressure sales

includes the Rule 15g–1 exemption for transactions with institutional accredited investors,[20] as well as transactions with the issuer of the penny stock and any director, officer, general partner, or beneficial owner of more than five percent of any class of equity security of the issuer. In addition, the rule continues to provide an exemption for transactions by non-market makers receiving less than five percent of their total sales-related revenue from transactions in low-priced non-NASDAQ OTC securities. This exemption, however, is now based on transactions in "penny stocks," as defined in Rule 3a51–1, rather than transactions in "designated securities," as defined in former Rule 15c2–6(d)(2).[21] Transactions that are not recommended by the broker-dealer also continue to be exempt under Rule 15c2–6.[22]

(b) Exemptions for Established Customers and Private Placements. As noted above, amended Rule 15c2–6 incorporates all of the provisions of Rules 3a51–1 and 15g–1, with two significant exceptions. First, although Rule 15g–1 does not contain an exemption for transactions with established customers of the broker-dealer, this exemption has been retained solely for purposes of Rule 15c2–6. The Commission believes that persons who have previous investment experience in penny stocks or who are familiar with their broker-dealers are less susceptible to high pressure sales tactics and therefore are less in need of the particular protections provided by Rule 15c2–6.[23]

Second, Rule 15g–1 exempts all private offerings; that is, transactions that meet the requirements of Regulation D, or Rules 501 through 508 under the Securities Act,[24] as well as transactions with an issuer not involving any public offering pursuant to section 4(2) of that Act.[25] Although amended Rule 15c2–6 also exempts transactions that meet the requirements of Rules 501 through 503 and Rules 505 through 508, as well as other transactions pursuant to section 4(2) of the Securities Act, it does not exempt transactions that meet the requirements of Rule 504. At the time the Penny Stock Rules were adopted, Rule 504 prohibited the issuer and any person acting on its behalf from offering or selling the securities through general solicitation or advertisements. In addition, securities sold in an offering pursuant to Rule 504 generally were subject to resale restrictions. As a result, the market for those securities was limited and the securities were not a vehicle for the type of high pressure sales tactics that Rule 15c2–6 was designed to address.

Since that time, however, the Rule 504 exemption has been expanded, and all of the restrictions on transferability and general solicitation have been removed.[26] In light of these developments, the Commission believes that the protections provided by Rule 15c2–6 should continue to apply to customers purchasing securities in a Rule 504 offering.[27] Amended Rule 15c2–6(c)(2) therefore excludes all Regulation D offerings, except for those conducted pursuant to Rule 504 under Regulation D of the Securities Act. This limitation is consistent with paragraph (a)(3) of Rule 504, which, because of the history of abuses involving blank check companies, prohibits certain development stage companies from relying on the exemption.

B. Effective Date

The amendments to Rule 15c2–6 become effective on August 11, 1993. The Commission recognizes, however, that broker-dealers currently relying on the *de minimis* exemption for transactions in designated securities may need a period of time after the effective date of the amendments to modify their data retrieval systems in order to determine whether their revenue from penny stock transactions exceeds the five percent level. Broker-dealers therefore will be permitted to calculate their five percent revenue based on transactions in "designated securities," as defined in Rule 15c2–6(d)(2) as of August 22, 1989 (the date on which the rule was adopted), rather than "penny stocks," as defined in Rule 3a51–1, for a period of six months following publication of this release in the **Federal Register**.

III. Penny Stock Rules

A. Amendments to Rule 15g–2 and Schedule 15G

In April 1992, the Commission adopted Rule 15g–2 to implement the provisions of section 15(g)(2) of the Exchange Act.[28] The rule makes it unlawful for a broker-dealer to effect a transaction in a penny stock with or for the account of a customer unless the broker-dealer distributes a risk disclosure document to the customer prior to effecting the customer's first transaction in a penny stock. The risk disclosure document, as set forth in Schedule 15G,[29] defines the term "penny stock," identifies certain risks associated with investing in penny stocks, describes the penny stock market, provides a brief description of a broker-dealer's obligations under the Penny Stock Rules, and informs customers of their rights and remedies under federal and state law.

At the time Rule 15g–2 and Schedule 15G were adopted, the Commission considered whether to implement a recordkeeping requirement that would enable broker-dealers to demonstrate, and regulators to examine for, compliance with the rule. Mindful of the compliance burdens this would impose on broker-dealers, however, the Commission instead determined to solicit further comment on the need for such a requirement.[30]

In response to the Commission's request for comment, the NASD strongly urged the Commission to amend Rule 15g–2. The NASD stated that:

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tactics by requiring broker-dealers to obtain the investor's written consent to the transaction.

[20] The term "institutional accredited investor" is defined in 17 CFR 230.501(a) (1), (2), (3), (7), and (8).

[21] As a result, the new exemption is somewhat broader in that it allows broker-dealers to exclude from their five percent revenue calculation transactions in securities that are priced at five dollars or more. Broker-dealers also may exclude transactions based on the average revenues of the issuer. As discussed above, however, broker-dealers may only exclude from their five percent revenue calculation securities that are issued by an issuer with $2 million in net tangible assets if the issuer has been in business for at least three years.

In addition, broker-dealers now have the option of calculating their revenue over a six-month period, rather than on a monthly basis.

[22] In addition, the rule continues to include a provision giving the Commission the authority to exempt by order any transaction or persons or class of persons from the rule if it determines that an exemption would be consistent with the public interest and the protection of investors. See n.17, *supra*.

[23] In contrast to Rule 15c2–6, which is designed to restrict the use of high pressure sales tactics by broker-dealers, the Penny Stock Rules are intended to provide investors with market and other relevant information with respect to penny stocks. Accordingly, established customers of a broker-dealer may benefit from the disclosures provided pursuant to the Penny Stock Rules.

[24] 17 CFR 230.501 through 230.508.

[25] 15 U.S.C. 77d(2).

[26] The amendments to Rule 504 were adopted as part of the Commission's Small Business Initiative. Under new Rule 504, a public offering of up to $1 million in a 12-month period by a company that is not required to file reports under the Exchange Act is subject only to the antifraud and other civil liability provisions of the federal securities laws. No specific disclosure document is prescribed, and there is no proscription on general solicitation. Moreover, investors purchasing Rule 504 securities receive freely transferable securities. Securities Act Release No. 6949 (July 30, 1992), 57 FR 36442.

[27] Sales to institutional accredited investors, however, are separately exempt from the rule. See discussion, *supra*.

[28] See Adopting Release, 57 FR at 18017.

[29] 17 CFR 240.15g–100.

[30] Adopting Release, 57 FR at 18031.

> The [NASD] views the risk disclosure document of Rule 15g–2 as representing the heart of the new Penny Stock Reform Act Rules. In this regard, the NASD believes that the purpose of the Rule would be better served by requiring a broker-dealer to evidence compliance with Rule 15g–2, by way of written verification that the customer has received the document * * *. We believe that [this] simplifies broker-dealer compliance by providing a uniform standard, enhances investor protection, and serves to further harmonize the Penny Stock Disclosure Rules with Rule 15c2–6, a goal sought by the Commission and supported by the NASD.

The Commission therefore is adopting amendments to Rule 15g–2 to require a broker-dealer to obtain a signed and dated acknowledgement from its customer demonstrating that the customer has actually received the required risk disclosure document prior to his or her first transaction in a penny stock. Corresponding amendments also have been made to Schedule 15G to include a brief description of this new requirement.[31]

The requirement to obtain the customer's signature is intended to accomplish two purposes. First, it should serve to emphasize to customers the importance of making an informed and deliberate investment decision. Second, it will enable broker-dealers to demonstrate, and the Commission and the self-regulatory organizations to examine for, compliance with the rule.[32] In this regard, the amended rule requires broker-dealers to maintain a copy of the customer's written acknowledgment for at least three years following the date on which the risk disclosure document was provided to the customer, the first two of which must be in an accessible place.[33]

In order to allow each broker-dealer to determine the most cost effective way of complying with the new requirement, the rule does not specify precisely how the customer's signature must be obtained. A broker-dealer, for example, could provide the customer with two copies of the risk disclosure document; the customer would sign and date one copy and return it to the broker-dealer, while maintaining the other copy for his or her own records. Alternatively, the broker-dealer could send the customer one risk disclosure document with an attached receipt to be signed, dated, and returned to the broker-dealer. This receipt could accompany the suitability statement and written agreement required by Rule 15c2–6.

The amendments to Rule 15g–2 apply only to customers of a broker-dealer that have not received, and that were not required to have received, the risk disclosure document as of August 11, 1993. Accordingly, broker-dealers will not be required to obtain a signature from customers that already have received the risk disclosure document in the past year, but will be required to do so for customers entering into a penny stock transaction after August 11, 1993, who have not yet received the document from the broker-dealer that is effecting the transaction.

B. Validation Procedures Under Rule 15g–3

Rule 15g–3 makes it unlawful for a broker-dealer to effect a non-exempt transaction in a penny stock without first disclosing and subsequently confirming to the customer current quotation prices or similar market information for the penny stock. The rule sets forth different procedures for the disclosure of quotations in principal transactions, on the one hand, and agency and riskless principal transactions on the other.[34]

For transactions effected on a principal basis (other than on a riskless principal basis), Rule 15g–3 requires the broker-dealer to provide the inside bid and offer quotations for a penny stock appearing on a Qualifying Electronic Quotation System, as defined in the rule.[35] If this quotation information is unavailable, the broker-dealer must disclose its own bid and offer quotes in the stock to the customer, provided that it can validate those quotes; that is, the broker-dealer must disclose its own quotes if: (1) The broker-dealer has effected at least three *bona fide* interdealer transactions consistently at its bid or offer prices over the previous five business days, (2) no less than 75% of these transactions have occurred consistently at such quotes, and (3) the broker-dealer reasonably believes that such quotes accurately reflect the prices at which it is prepared to trade with other dealers.

Under this validation procedure, the broker-dealer must disclose to the customer both its bid and offer quotations for a penny stock. Accordingly, if the dealer cannot validate its quotes, the rule specifies that the dealer must state that it has not traded consistently at its quotes, and it must disclose the price at which it last purchased the penny stock from, or sold the penny stock to, another dealer in a *bona fide* transaction.

Although the procedures for disclosure are clear when both sides of the trade can be validated, and when neither side of the trade can be validated, there has been some confusion as to the procedures for disclosure when a dealer is able to validate one side of the trade, but not the other. The Commission wishes to clarify that, consistent with the language of the rule, in those instances the dealer must disclose the validated quote, and then follow the procedures set forth in subparagraph (a)(2)(i)(C) of Rule 15g–3 for the side of the trade that cannot be validated.[36] In other words, the broker-dealer must state that it has not consistently effected interdealer purchases or sales of the penny stock at its quotation for the unvalidated side of the trade, and disclose to the customer the price at which it last purchased the penny stock from, or sold the penny stock to, another dealer in a *bona fide* transaction.

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[37] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the conforming amendments to Rule 15c2–6 and the amendments to Rule 15g–2 and Schedule 15G will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[38] regarding the amendments. The FRFA indicates that

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[31] Specifically, the Schedule has been revised to include the following statement: "Your broker-dealer is required to obtain your signature to show that you have received this statement before your first trade in a penny stock. You are urged to read this statement before signing and before making a purchase or sale of a penny stock." In order to allow sufficient time for broker-dealers to reprint the document, the amendments to Schedule 15G do not become effective until November 1, 1993.

[32] In the Adopting Release, the Commission stated that: "compliance with the rule may be monitored by review of the broker-dealer's internal procedures, and, if necessary, by contacting the clients of the broker-dealer." 57 FR at 18019. This process, however, has proved to be cumbersome and time-consuming.

[33] See 17 CFR 240.17a–4(b).

[34] For a complete description of Rule 15g–3, see Adopting Release, 57 FR at 18019.

[35] See 17 CFR 240.15g–3(c)(5).

[36] To the extent that footnote 125 in the Adopting Release is inconsistent with this interpretation, it no longer applies.

[37] 15 U.S.C. 78w(a)(2).

[38] 5 U.S.C. 603.

the amendments will eliminate some of the existing costs imposed on small broker-dealers and small issuers. A copy of the FRFA may be obtained from Belinda Blaine, Branch Chief, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549, (202) 504–2418.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Amendments

In accordance with the foregoing, part 240 of chapter II of title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

§§ 240.15c2–6 [Redesignated as § 240.15g–9]

2. By redesignating § 240.15c2–6 as § 240.15g–9, and reserving § 240.15c2–6.

3. By revising § 240.15g–2 to read as follows:

§ 240.15g–2 Risk disclosure document relating to the penny stock market.

(a) It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g–100, and has obtained from the customer a manually signed and dated written acknowledgement of receipt of the document.

(b) The broker or dealer shall preserve, as part of its records, a copy of the written acknowledgment required by paragraph (a) of this section for the period specified in 17 CFR 240.17a–4(b) of this chapter.

4. In newly redesignated § 240.15g–9, by amending paragraphs (a) introductory text (two places), (a)(2)(ii), and (b)(3)(ii) by removing the words "designated security" and in their place adding the words "penny stock," and by removing the words "designated securities" and in their place adding the words "penny stocks" in paragraphs (a)(2)(i), (b) introductory text, and (b)(2) in two places; and by revising paragraphs (c) and (d) to read as follows:

§ 240.15g–9 Sales practice requirements for certain low-priced securities.

* * * * *

(c) For purposes of this section, the following transactions shall be exempt:

(1) Transactions that are exempt under 17 CFR 240.15g–1 (a), (b), (d), (e), and (f).

(2) Transactions that meet the requirements of 17 CFR 230.505 or 230.506 (including, where applicable, the requirements of 17 CFR 230.501 through 230.503, and 17 CFR 230.507 through 230.508), or transactions with an issuer not involving any public offering pursuant to section 4(2) of the Securities Act of 1933.

(3) Transactions in which the purchaser is an established customer of the broker or dealer.

(d) For purposes of this section:

(1) The term *penny stock* shall have the same meaning as in 17 CFR 240.3a51–1.

(2) The term *established customer* shall mean any person for whom the broker or dealer, or a clearing broker on behalf of such broker or dealer, carries an account, and who in such account:

(i) Has effected a securities transaction, or made a deposit of funds or securities, more than one year previously; or

(ii) Has made three purchases of penny stocks that occurred on separate days and involved different issuers.

5. By amending § 240.15g–100 by revising the first paragraph after the section heading "Important Information on Penny Stocks" to read as follows:

§ 240.15g–100 Schedule 15G—Information to be included in the document distributed pursuant to 17 CFR 240.15g–2.

Schedule 15G

* * * * *

Important Information on Penny Stocks

This statement is required by the U.S. Securities and Exchange Commission (SEC) and contains important information on penny stocks. Your broker-dealer is required to obtain your signature to show that you have received this statement before your first trade in a penny stock. You are urged to read this statement before signing and before making a purchase or sale of a penny stock.

* * * * *

By the Commission.

Dated: July 2, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16299 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 1757–93]

Fees Under the Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is implementing a statutory requirement that the Department assess and collect fees for registrations required by, and other services provided pursuant to, the Foreign Agents Registration Act (Act). This rule establishes the initial fees and delegates authority to the Assistant Attorney General for the Criminal Division to adjust those fees from time to time to recover the costs of operating the Registration Unit. The rule also revises the circumstances in which the Criminal Division will review proposed conduct of any present or prospective agent of a foreign principal and state its present enforcement intentions under the Act.

The rule also allows registrants to file an original and two copies of documents required to be filed under the Act rather than multiple originals. The rule increases the cost of copies of documents filed under the Act provided to the public to fifty cents per page. This change reflects the increased cost to the Department of producing the copies. The rule establishes fees to cover the cost of personnel and computer time for research requests and the cost to the public for a copy of the periodic report to the Congress. In addition, the rule provides for the administrative termination of registrations when the registrant is no longer able to file a final statement.

EFFECTIVE DATE: August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph E. Clarkson, Chief, Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, NW., room 9300, Washington, DC 20530, telephone (202) 514–1216, facsimile (202) 514–2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the Act, 22 U.S.C. 611–621, agents of foreign principals are required to register with the Department of Justice. Title I of Public Law 102–395 requires the Attorney General to establish and collect fees to recover the cost of administering the Registration Unit.

The Registration Unit accepts the filing of required registration statements, administers the registration

process and makes available to the public the registration statements. The fees imposed by this rule are designed to recover the costs of the Registration Unit from the registrants, prospective registrants, and public users of the documents filed, and relieve taxpayers of the burden of supporting this function.

The fees are determined by calculating the costs of the operation and administration of the Registration Unit and allocating those costs between requests for statements of the enforcement posture of the Department, initial, supplemental and final registration statements, and other filings, copies and services. The costs will change over time to reflect the workload of the Registration Unit. Accordingly, the Assistant Attorney General is authorized to change these fees from time to time to reflect the current costs of operating and administering the Registration Unit and to recover those costs from registrants and public users of these services.

The rule also lessens the burden on registrants in meeting the filing requirements of the Act by allowing them to file copies of registration statements rather than multiple originals. It also will enable the Department to terminate registrations when the registrant is unable to file the appropriate forms.

In FR Doc. 92-31400 (57 FR 62274, December 30, 1992), The Department of Justice published a Notice of Proposed Rulemaking for public notice and comment. Twenty-seven written comments were received within the period provided for comment. In response to four comments received, the requirement that payments must be made by certified or cashier's check or postal money order has been dropped, and the schedule of registration fees has been revised to eliminate some ambiguity in the original rule as a result of three of the comments received. Four commentators suggested that the fees be waived for so called *pro bono* representation of foreign clients. This idea was rejected because in the context of the Act uncompensated representation rarely meets the criteria of true *pro bono* representation. Most often it is provided in the anticipation of future compensation employment. However, a provision has been added to allow the waiver of the registration fees, either in whole or in part, in instances where an individual registrant can demonstrate an inability to pay the fee in its entirely. Two commentators urged that inquiries made as to the applicability of the Act be treated as confidential, and paragraph (m) has been added to § 5.2 to codify the fact that inquiries made under this rule will be treated as confidential and exempt from disclosure. This reflects the Department's policy. While none of the comments challenged the principle of fees for registration, approximately half the commentators criticized either the amount of the fees or the way that they are apportioned. The amount of the fees is dictated by the Congressional mandate that the administration of the Act be self-supporting, and the Department believes that the method of apportioning the cost by the number of foreign principals is the most equitable. Other minor revisions in the wording of the rules, not affecting their meaning, have been made to improve their clarity.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

Accordingly, part 5 of title 28 of the Code of Federal Regulations is amended as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF THE FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

1. The authority citation for Part 5 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102-395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

2. Section 5.2 is revised to read as follows:

§ 5.2 Inquiries concerning application of the Act.

(a) *General.* Any present or prospective agent of a foreign principal, or the agent's attorney, may request from the Assistant Attorney General a statement of the present enforcement intentions of the Department of Justice under the Act with respect to any presently contemplated activity, course of conduct, expenditure, receipt of money or thing of value, or transaction, and specifically with respect to whether the same requires registration and disclosure pursuant to the Act, or is excluded from coverage or exempted from registration and disclosure under any provision of the Act.

(b) *Anonymous, hypothetical, non-party and ex post facto review requests excluded.* The entire transaction which is the subject of the review request must be an actual, as opposed to hypothetical, transaction and involve disclosed, as opposed to anonymous, agents and principals. Review requests must be submitted by a party to the transaction or the party's attorney, and have no application to a party that does not join in the request. A review request may not involve only past conduct.

(c) *Fee.* All requests for statements of the Department's present enforcement intentions must be accompanied by a non-refundable filing fee submitted in accordance with § 5.5.

(d) *Address.* A review request must be submitted in writing to the Assistant Attorney General, Criminal Division, Attention: Chief, Registration Unit. The mailing address is 1400 New York Avenue, NW., room 9300, Washington, DC 20530.

(e) *Contents.* A review request shall be specific and contain in detail all relevant and material information bearing on the actual activity, course of conduct, expenditure, receipt of money or thing of value, or transaction for which review is requested. There is no prescribed format for the request, but each request must include:

(1) The identity(ies) of the agent(s) and foreign principal(s) involved;

(2) The nature of the agent's activities for or in the interest of the foreign principal;

(3) A copy of the existing or proposed written contract with the foreign principal or a full description of the terms and conditions of each existing or proposed oral agreement; and

(4) The applicable statutory or regulatory basis for the exemption or exclusion claimed.

(f) *Certification.* If the requesting party is an individual, the review request must be signed by the prospective or current agent, or, if the requesting party is not an individual, the review request must be signed on behalf of each requesting party by an officer, a director, a person performing the functions of an officer or a director of, or an attorney for, the requesting party. Each such person signing the review request must certify that the review request contains a true, correct and complete disclosure with respect to the proposed conduct.

(g) *Additional information.* Each party shall provide any additional information or documents the Criminal Division may thereafter request in order to review a matter. Any information furnished orally shall be confirmed

promptly in writing, signed by the same person who signed the initial review request and certified to be a true, correct and complete disclosure of the requested information.

(h) *Outcomes.* After submission of a review request, the Criminal Division, in its discretion, may state its present enforcement intention under the Act with respect to the proposed conduct; may decline to state its present enforcement intention; or, if circumstances warrant, may take such other position or initiate such other action as it considers appropriate. Any requesting party or parties may withdraw a review request at any time. The Criminal Division remains free, however, to submit such comments to the requesting party or parties as it deems appropriate. Failure to take action after receipt of a review request, documents or information, whether submitted pursuant to this procedure or otherwise, shall not in any way limit or stop the Criminal Division from taking any action at such time thereafter as it deems appropriate. The Criminal Division reserves the right to retain any review request, document or information submitted to it under this procedure or otherwise and to use any such request, document or information for any governmental purpose.

(i) *Time for response.* The Criminal Division shall respond to any review request within 30 days after receipt of the review request and of any requested additional information and documents.

(j) *Written decisions only.* The requesting party or parties may rely only upon a written Foreign Agents Registration Act review letter signed by the Assistant Attorney General or his delegate.

(k) *Effect of review letter.* Each review letter can be relied upon by the requesting party or parties to the extent the disclosure was accurate and complete and to the extent the disclosure continues accurately and completely to reflect circumstances after the date of issuance of the review letter.

(l) *Compliance.* Neither the submission of a review request, nor its pendency, shall in any way alter the responsibility of the party or parties to comply with the Act.

(m) *Confidentiality.* Any written material submitted pursuant to a request made under this section shall be treated as confidential and shall be exempt from disclosure.

3. Section 5.3 is amended by removing the word "duplicate" from the first sentence and adding the word "triplicate" in its place, and adding after the first sentence, a sentence that reads "An original document and two duplicates meeting the requirements of Rule 1001(4), Federal Rules of Evidence (28 U.S.C. Appendix), shall be deemed to meet this requirement.".

4. Section 5.5 is added to read as follows:

§ 5.5 Registration fees.

(a) A registrant shall pay a registration fee with each initial registration statement filed under § 5.200 and each supplemental registration statement under § 5.203 at the time such registration statement is filed. The registration fee may be paid by cash or by check or money order made payable to "FARA Registration Unit". The Registration Unit, in its discretion, may require that the fee be paid by a certified or cashier's check or by a United States Postal money order.

(b) Payment of fees shall accompany any order for copies or request for information, and all applicable fees shall be collected before copies or information will be made available. Payment may be made by cash or by check or money order made payable to "FARA Registration Unit". The Registration Unit, in its discretion, may require that the fee be paid by a certified or cashier's check or by a United States Postal money order.

(c) Registration fees shall be waived in whole or in part, as appropriate, in the case of any individual person required to register under the Act who has demonstrated to the satisfaction of the Registration Unit that he or she is financially unable to pay the fees in their entirety. An individual seeking to avail himself or herself of this provision shall file with the registration statement a declaration made in compliance with section 1746 of title 28, United States Code, setting forth the information required by Form 4, Federal Rules of Appellate Procedure (28 U.S.C. Appendix).

(d) The fees shall be as follows:

(1) For initial registration statements (including an Exhibit A for one foreign principal) under § 5.200: $305.00;

(2) For supplemental registration statements under § 5.203: $305.00 per foreign principal;

(3) For Exhibit A under § 5.201(a)(1): $305.00 per foreign principal not currently reported under § 5.200 or § 5.203;

(4) For Exhibit B under § 5.201(a)(2): no fee;

(5) For Exhibits C and D (no forms) under § 5.201: no fee;

(6) For short-form registration statements under § 5.202: no fee;

(7) For amendments under § 5.204; no fee;

(8) For statements of present enforcement intentions under § 5.2: $96.00 per review request;

(9) For each quarter hour of search time under § 5.601: $4.00;

(10) For copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, under § 5.601: fifty cents ($.50) per copy of each page of the material requested;

(11) For copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, produced by computer, such as tapes or printouts, under § 5.601: actual direct cost of producing the copy, including the apportionable salary costs; and

(12) For computer searches of records through the use of existing programming: Direct actual costs, including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request and the salary costs apportionable to the search.

(e) The cost of delivery of any document by the Registration Unit by any means other than ordinary mail shall be charged to the requester at a rate sufficient to cover the expense to the Registration Unit.

(f) The Assistant Attorney General is hereby authorized to adjust the fees established by this section from time to time to reflect and recover the costs of the administration of the Registration Unit under the Act.

(g) Fees collected under this provision shall be available for the support of the Registration Unit.

(h) Notwithstanding § 5.3, no document required to be filed under the Act shall be deemed to have been filed unless it is accompanied by the applicable fee except as provided by paragraph (c) of this section.

5. Section 5.205 is amended by adding a new paragraph (d) to read as follows:

§ 5.205 Termination of registration.

* * * * *

(d) Registration under the Act may be terminated upon a finding that the registrant is unable to file the appropriate forms to terminate the registration as a result of the death, disability, or dissolution of the registrant or where the requirements of the Act cannot be fulfilled by a continuation of the registration.

VOL 58 ISS 131 JL 12 1993 UMI

6. Section 5.601 is revised to read as follows:

§ 5.601 Copies of records and information available.

(a) Copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, may be obtained from the Registration Unit upon payment of a fee as prescribed in § 5.5.

(b) Information as to the fee to be charged for copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, or research into and information therefrom, and the time required for the preparation of such documents or information may be obtained upon request to the Registration Unit. Fee rates are established in § 5.5.

(c) The Registration Unit may, in its discretion, conduct computer searches of records through the use of existing programming upon written request. Information as to the fee for the conduct of such computer searches, and the time required to conduct such computer searches, may be obtained upon request to the Registration Unit. A written request for computer searches of records shall include a deposit in the amount specified by the Registration Unit, which shall be the Registration Unit's estimate of the actual fees. The Registration Unit is not required to alter or develop programming to conduct a search. Fee rates are established in § 5.5.

7. Section 5.1101 is added to read as follows:

§ 5.1101 Copies of the Report of the Attorney General.

Copies of the Report of the Attorney General to the Congress on the Administration of the Foreign Agents Registration Act of 1938, as amended, shall be sold to the public by the Registration Unit, as available, at a charge not less than the actual cost of production and distribution.

Dated: June 28, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93-16021 Filed 7-9-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Valuation of Communitized Oil and Gas Production From Federal and Indian Leases in the State of Oklahoma

AGENCY: Minerals Management Service, Interior.

ACTION: Policy statement.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) hereby gives notice that provisions of Oklahoma Senate Bill No. 168 regarding royalty payments on oil or gas leases located in the State of Oklahoma do not apply to Federal and Indian leases that are committed to communitization agreements. For purposes of determining royalties on these leases, production must be valued in accordance with MMS' oil and gas valuation regulations at 30 CFR parts 202 and 206.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cobb, Minerals Management Service, Royalty Management Program, Valuation and Standards Division, Oil and Gas Valuation Branch, P.O. Box 25165, Mail Stop 3922, Denver, Colorado, 80225-0165, telephone (303) 275-7245.

SUPPLEMENTARY INFORMATION:

I. Background

Oklahoma Senate Bill No. 168, which becomes effective July 1, 1993, is the latest doctrine that has evolved from *Shell Oil Company* v. *Corporation Commission* (Okl., 389 P.2d 951 (1964)). The decision in that case, commonly known as the Blanchard Decision, governs the payment of royalties for oil and gas produced from leases committed to communitization agreements located in the State of Oklahoma. The major elements of Senate Bill No. 168 provide that:

- Working interest owners taking and selling gas production pay royalties (royalty share) to a "royalty pool" which is shared by all royalty owners in the agreement. The value of gas production for purposes of payments to the royalty pool is based on each lessee's sales proceeds and the terms of their lease royalty clauses;
- Royalty owners receive a royalty payment from the royalty pool, based on their lease royalty interest, within 90 days after the last day of the month of production; and
- Disbursements from the royalty pool to each royalty owner be performed primarily by the agreement operator. However, working interest owners may elect to pay royalties directly to the royalty owners.

Senate Bill No. 168 also contains special provisions regarding "Subsequently Created Interests" (SCI's) that are contained in certain leases in Oklahoma. SCI's are interests carved from a working interest other than a royalty interest, such as an overriding royalty interest. SCI's are not subject to the principal royalty provisions of Senate Bill No. 168.

II. MMS Requirements for Valuing Communitized Production

Because of the potential impact of the provisions of Senate Bill No. 168 on the payment of royalties on Federal and Indian leases that are committed to communitization agreements, MMS sponsored a meeting on March 5, 1993, at the Oklahoma State Capitol Building to discuss the relationship between the bill and Federal and Indian royalty requirements. Attendees at the meeting represented royalty owners, State agencies, major oil and gas companies, independents, and the Indian community. Attendees were advised that:

- The value of a Federal or Indian lease entitled share for royalty purposes is to be determined solely based on Federal or Indian lease terms and applicable regulations and not on the basis of a royalty pool where each contributing working interest owner uses its respective lease terms or other guidance to value its royalty share;
- The value of Federal and Indian production is to be based on no less than the gross proceeds accruing to the lessee; and
- The payment of royalties for Federal and Indian production is due no later than the end of the month following the month of production.

As discussed at the meeting, regulations governing the valuation of Federal and Indian communitized production differ substantially from the provisions of Senate Bill No. 168. The major differences are discussed below.

(a) The valuation of communitized production attributable to Federal or Indian leases is governed primarily by the regulations at 30 CFR 202.100 (1992) for oil and 30 CFR 202.150 (1992) for gas. Similar to Senate Bill No. 168, the principal requirement for valuing Federal and Indian communitized production is that royalty is due on the full share of production attributable to the Federal or Indian lease under the terms of agreement (also referred to as the allocated share of production to which the lease is entitled, or "lease entitled share").

The actual value for royalty purposes of the lease entitled share is determined under 30 CFR part 206 (1992). For production taken and sold by the lessee, the circumstances involved in the disposition of that production control the valuation under 30 CFR part 206. When the lessee takes less than the lease entitled share of production, the value of the portion not taken will also be determined under 30 CFR part 206 by the circumstances involved in the actual disposition of that portion by other taking lessees. That is, the valuation of the entire Federal or Indian lease entitled share is determined based on the actual disposition (e.g., sales) of production by the taking lessee under 30 CFR part 206. For gas under Senate Bill No. 168, each taking lessee's lease terms govern the valuation of the royalty share contributed to the royalty pool, from which the Federal and Indian royalty proceeds would be derived. Therefore, the value of Federal and Indian communitized gas production under the provisions of Senate Bill No. 168 would not be determined entirely in accordance with 30 CFR part 206.

(b) The use of Senate Bill No. 168 for valuing communitized gas production could nullify MMS' long standing requirement that value for royalty purposes be no less than the gross proceeds accruing to the lessee under its sales contract. Value of gas under the bill is determined on the basis of the gross proceeds paid to all working interest owners taking gas regardless of whether-or-not the Federal or Indian lessee takes and sells its lease entitled share.

(c) Valuation based on royalty pooling under Senate Bill No. 168 may violate standard Indian lease terms requiring that value be determined by considering the major portion of like-quality production from the same field or area.

(d) Royalty pooling under Senate Bill No. 168 may be inconsistent with dual accounting requirements specified in most Indian leases.

(e) Other inconsistencies between Senate Bill No. 168 and applicable regulations lie in the areas of timely receipt of, and responsibility for, royalty payments. Standard Federal and Indian lease documents and MMS regulations at 30 CFR 210.52 (1992) both require that royalty reports and payments be received by MMS by the end of the month following the month of production. Under Senate Bill No. 168, royalty payments may not be due until 90 days after the month of production. Under Senate Bill No. 168, the agreement operator is responsible for the disbursement of royalties to the royalty interest owners upon receipt of the royalty proceeds from the selling parties. For Federal or Indian leases, lessees, or their designated payors, are responsible for accurate and timely royalty payments.

III. MMS Policy

Because of the substantial differences between Senate Bill No. 168 and requirements relative to Federal and Indian oil and gas leases, as discussed above, MMS is giving notice that it will not accept royalties that are based on values less than those required under applicable lease terms and MMS regulations. Federal and Indian payors must continue to comply with the terms of their leases and the regulations at 30 CFR parts 202 and 206 for valuing and paying royalties for communitized production in Oklahoma that are otherwise subject to Senate Bill No. 168.

The MMS published a similar notice in the **Federal Register** on December 2, 1985 (50 FR 49465), advising royalty payors that MMS would not accept royalties for Federal and Indian leases in Oklahoma that were calculated in accordance with the Blanchard Decision. In that Notice, MMS advised payors that they must follow Federal and Indian lease terms and applicable MMS regulations to determine royalty value.

Although Federal and Indian royalty interests are not deemed SCI's under Senate Bill No. 168, MMS understands that treating the Federal and Indian royalty interests as such under the bill would both satisfy the bill's royalty pooling obligations and allow Federal or Indian payors to comply with their lease terms and MMS' royalty requirements. Under the SCI's methodology, Federal and Indian lessors would not share in the royalty pool and their royalty interests would be excluded in the computation of contributions to the royalty pool. However, Federal and Indian working interest owners may still be required to pay a royalty portion into the royalty pool under Oklahoma law. In any case, the procedures for determining the Federal and Indian lessees' royalty pooling obligations under the SCI's methodology, and their associated liabilities under Senate Bill No. 168, are outside the scope of this Notice. Federal and Indian lessees should contact their industry trade organizations, such as the Council of Petroleum Accountants Societies, the Mid-Continent Oil & Gas Association, the National Association of Division Order Analysts, or the Oklahoma Independent Petroleum Association, for further information regarding SCI's under Senate Bill No. 168.

Any inquiries regarding this Notice or the payment of Federal and Indian royalties for communitized production in the State of Oklahoma should be sent to the address identified above.

Dated: July 2, 1993.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–16393 Filed 7–9–93; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 12–5–5809; FRL–4674–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of four rule revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 28, 1992, October 1, 1992 and December 7, 1992. The revisions to the California SIP concern rules from the Bay Area Air Quality Management District (BAAQMD) and the San Diego County Air Pollution Control District (SDCAPCD). This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from can and coil coating operations, marine vessel coating operations, and graphic arts sources. Thus, EPA is finalizing limited approvals of these revisions into the California SIP under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. EPA is also finalizing limited disapprovals of these rules under provisions of the CAA cited above because these rules contain deficiencies, and as a result, do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to

VOL
58
ISS
131
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impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on August 11, 1993.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

Bay Area Air Quality Management District, 939 Ellis Street San Francisco, CA 94102.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1992, in 57 FR 44528, EPA proposed granting limited approval and limited disapproval of BAAQMD's Regulation 8, Rule 11 (Rule 8–11), Metal Container, Closure and Coil Coating, into the California SIP. On October 1, 1992, in 57 FR 45358, EPA proposed granting limited approval and limited disapproval of SDCAPCD's Rule 67.16, Graphic Arts, into the California SIP. On December 7, 1992, in 57 FR 57715, EPA proposed granting limited approval and limited disapproval of BAAQMD's Regulation 8, Rule 43 (Rule 8–43), Surface Coating of Marine Vessels, and SDCAPCD's Rule 67.18, Marine Coating Operations, into the California SIP. BAAQMD adopted Rule 8–11 on September 20, 1989, and Rule 8–43 on June 20, 1990. SDCAPCD adopted Rule 67.18 on July 3, 1990, and Rule 67.16 on May 21, 1991. The California Air Resources Board (ARB) submitted BAAQMD Rule 8–11 to EPA on December 31, 1990. The ARB submitted BAAQMD Rule 8–43 and SDCAPCD Rule 67.18 to EPA on April 5, 1991. The ARB submitted SDCAPCD Rule 67.16 to EPA on May 30, 1991. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their Reasonably Available Control Technology rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notices of proposed rulemaking (NPRs) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRs. EPA is today finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluations has been provided in the NPRs and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated June 10, 1992, for SDCAPCD Rule 67.16; September 8, 1992, for BAAQMD Rule 8–11; and October 27, 1992, for BAAQMD Rule 8–43 and SDCAPCD Rule 67.18).

Response to Public Comments

A 30-day public comment period was provided in each of the above referenced NPRs. EPA received one comment letter on Rule 8–11 from the BAAQMD. EPA has evaluated BAAQMD's comments and a summary of the comments and EPA's responses are set forth below.

Comment: BAAQMD commented that EPA's review and disapproval of Method 30 has not been a matter of public record. The BAAQMD's letter states, "At last contact, EPA staff requested additional information to help evaluate Method 30, and considerable data * * * was provided. There has been no notification or contact by EPA regarding this method since that time." The letter also states that EPA Method 24 is technically incorrect for nonheatset inks, that OAQPS staff has recognized this, and that the American Society for Testing and Materials (ASTM) is incorporating Method 30 as the approved standard for measuring the VOC content of nonheatset inks.

Response: EPA regrets that the BAAQMD was not notified sooner of EPA's determination regarding Method 30. A November 17, 1992, letter transmitted EPA review of several BAAQMD test methods, including Method 30, to the BAAQMD. This letter contained EPA's disapproval of Method 30. EPA believes that EPA Method 24 is the correct method to use for measuring the VOC content of nonheatset inks and OAQPS recommends that Method 24 be used for this purpose. In addition, ASTM incorporation of Method 30 does not confer nor imply EPA approval of the test method. EPA has documented why it finds this method unacceptable, and this documentation is included in the docket to this rulemaking.

Additional Comments: The BAAQMD also commented on several minor issues discussed in the TSD for Rule 8–11. The BAAQMD believes that the value of 4.3 pounds/gallon, which exceeds the CTG limit for VOC content of interior body spray and two piece can exterior end coating, is not deficient because the applicable limit, per Regulation 1, is 510 grams/liter, which meets the CTG limit. The BAAQMD also believes that Sections 302, 304, and 305 of Rule 8–11 do not require a capture efficiency test method because BAAQMD Method ST–7, as amended, is used to determine equivalency.

Response: EPA agrees that the applicable limit for interior body spray and two piece can exterior end coating is 510 grams/liter and that the simultaneous listing of 4.3 pounds/gallon is not a serious deficiency. However, EPA continues to request that the limit be revised to the CTG limit of 4.2 pounds/gallon. EPA has determined that Method ST–7 is not acceptable for use with incinerators or other combustion devices that may be used as control equipment for can and coil coating operations.

EPA's review of amended Method ST–7 was transmitted to the district on November 17, 1992 (documentation as to why EPA finds this method unacceptable is also included in the docket to this rulemaking). And while it is true that ST–7 contains a procedure for determining equivalency between VOC limits and capture and control efficiency, BAAQMD Rule 8–11 remains unenforceable because EPA has not approved test method ST–7 into the SIP.

EPA Action

EPA is today finalizing limited approvals and limited disapprovals of the above-referenced rules. The limited approval of these rules is being finalized

under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of rule deficiencies that were discussed in the NPRs. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPRs, upon the effective date of this NFR, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the state does not submit the required corrections and EPA does not approve the submittal within 18 months of the NFR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this NFR have been adopted by the BAAQMD and SDCAPCD and are currently in effect in those districts. EPA's limited disapproval action in this NFR does not prevent a local agency or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 23, 1993.

Harry Seraydarian,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (182)(i)(B)(*5*), (183)(i)(A)(*9*), (183)(i)(F), and (185)(i)(B)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(B) * * *

(*5*) Amended Regulation 8, Rule 11, adopted on September 20, 1989.

* * * * *

(183) * * *

(i) * * *

(A) * * *

(*9*) Amended Rule 67.18, adopted on July 3, 1990.

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(F) Bay Area Air Quality Management District.

(*1*) Amended Regulation 8, Rule 43, adopted on June 20, 1990.

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(185) * * *

(i) * * *

(B) * * *

(*4*) Amended Rule 67.16, adopted on May 21, 1991.

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[FR Doc. 93–16455 Filed 7–9–93; 8:45 am]

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40 CFR Part 52

[SD1–1–5755; FRL–4666–4]

Approval and Promulgation of State Implementation Plans; South Dakota; PM–10 New Source Review and Emergency Episode Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On September 25, 1991, the designee of the Governor of South Dakota submitted revisions to the State Implementation Plan (SIP). Revisions were made to Article 74:26, Air Pollution Control Program, which consisted of the following: Amendments to the New Source Review (NSR) regulations to be consistent with the July 1, 1989 version of subpart I of 40 CFR part 51, revisions to the emergency episode plans for PM–10, adoption of PM–10 ambient standards and methods of measurement, revisions to the variance provision prohibiting the granting of variances in nonattainment areas, and revisions to the State's operating permit program.

The revisions to Article 74:26 were made as called for in the State's PM–10 Group II Committal SIP, which was submitted by the State on July 12, 1988 and approved by EPA on October 5, 1990, as well as to correct other NSR deficiencies that had been previously identified by EPA. EPA reviewed the submittal and found the revisions to be consistent with federal policy and regulations, with the exception of the variance provision found in Chapter 74:26:01:31.01. The State's variance provision was found to be inconsistent with section 110(i) of the Clean Air Act (CAA), as amended. On November 2, 1992, EPA proposed to approve the regulatory revisions in Article 74:26, and EPA proposed to disapprove the variance provision. (EPA mistakenly listed Chapter 74:26:01:30 in November 2, 1992 **Federal Register** notice as the variance provision which EPA was proposing to disapprove. The correct citation for the variance provision is Chapter 74:26:01:31.01.) No comments were received pursuant to these proposed actions. Therefore, EPA is proceeding with its approval of the revisions to Article 74:26 and its

disapproval of the variance provision in Chapter 74:26:01:31.01.

EFFECTIVE DATE: This rule will become effective on August 11, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405

South Dakota Department of Water and Natural Resources, Division of Environmental Regulation, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181

Jerry Kurtzweg, ANR 443, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background of Revisions

On July 1, 1987, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for particulate matter 10 microns or less in size (PM–10) (see 52 FR 24634). As a result, states were required to revise their SIPs to attain and maintain the new PM–10 NAAQS. To implement the new SIP requirements, all areas of the country were divided into three groups, based on the area's probability for violating the PM–10 NAAQS. In South Dakota, the Rapid City area was classified as a Group II area (moderate probability of violating the PM–10 NAAQS), while the rest of the State was classified as a Group III area (low probability of violating the PM–10 NAAQS).

On July 12, 1988, the State submitted a Committal SIP for the Rapid City Group II PM–10 area. In that submittal, the State committed to ambient air monitoring for PM–10 and to revising its NSR regulations to trigger preconstruction review for PM–10, revise their emergency episode plans for PM–10, and adopt the PM–10 NAAQS. On October 5, 1990, EPA approved the State's Group II Committal SIP (55 FR 40831). However, because EPA had previously identified numerous deficiencies in the State's NSR regulations, the State committed to revise its NSR regulations to be consistent with federal requirements as part of EPA's approval of the Group II Committal SIP.

II. Evaluation of Submittal

The State subsequently adopted revisions to Article 74:26 addressing the NSR deficiencies and the other PM–10 Group II area SIP elements, along with other "housekeeping" revisions, and submitted the revised regulations to EPA for SIP approval on September 25, 1991. The submittal also included revisions to the State's New Source Performance Standards (NSPS) and Emission Standards for Asbestos Air Pollutants in Article 74:26, Standards of Performance for Municipal Waste Combustors in Chapter 74:26:26, and provisions for Disposal of Medical Waste in Article 74:35. EPA will take action on the NSPS and asbestos revisions in a separate notice. On February 10, 1992, the State withdrew Chapter 74:26:26, because a revised Chapter 74:26:26 would be submitted for SIP approval at a later date.

EPA initially reviewed the submittal for administrative and technical completeness. After receiving additional information from the State, EPA notified the State on December 2, 1991, that the submittal of Article 74:26 was administratively and technically complete. However, in that letter, EPA returned Article 74:35 as incomplete, because the State did not provide any response to the numerous public comments received pursuant to the proposed adoption of the medical waste disposal regulations.

On January 16, 1992, EPA notified the State of its technical adequacy review of the State submittal. EPA had the following concerns with the State submittal:

(1) The definition of "potential to emit" in Chapter 74:26:01:03 seemed to have potentially different interpretations. The definition could have been interpreted to imply that physical and operational limitations on the capacity of the source to emit did not have to be federally enforceable to be considered part of the potential to emit of the source. To verify that the definition was being interpreted consistent with the federal definition, EPA requested an interpretation from the State Attorney General.

(2) The State's variance procedure was not consistent with the requirements of the CAA. Section 110(i) of the CAA prohibits any action which modifies any requirement of an applicable SIP from being taken with respect to a stationary source by a state or the Administrator of EPA. EPA had previously required the State to revise its variance provision to prohibit the granting of variances in nonattainment areas. However, since many states, including South Dakota, have included numerous other requirements in their SIPs that apply regardless of the nonattainment status of an area, EPA determined that an approvable variance provision must prohibit the granting of any variance modifying any requirement of an applicable implementation plan in any affected area of the State, with respect to stationary sources. EPA recommended that the State withdraw its variance provision from this SIP submittal.

(3) In this submittal, the State also submitted revisions to its operating permit program, which was previously approved in the SIP. However, because of the new title V requirements of the CAA added in the 1990 Amendments, EPA believed that the submittal should be reviewed in accordance with the requirements of title V. Since the State's operating permit regulations did not meet the requirements of title V, EPA recommended that the State withdraw its operating permit provisions from this submittal.

EPA also included an attachment of deficiencies that were currently considered to be minor and requested a commitment from the State to address these other deficiencies during the next round of revisions to the State's NSR regulations.

The State responded to EPA's concerns in a February 10, 1992 letter by stating that it would address EPA's comments during the next round of revisions to Article 74:26. However, the State did not provide the requested Attorney General's opinion on the definition of "potential to emit." nor did the State withdraw its variance provision or its operating permit provisions from the SIP submittal.

EPA responded to the State in a March 26, 1992 letter. In that letter, EPA clarified its concerns regarding the definition of "potential to emit" and again requested a letter of interpretation from the State Attorney General, the State Air Director, or an attorney from the State air pollution agency. EPA also reiterated its concerns regarding the State's variance provision and recommended that the State withdraw the provision, or EPA would disapprove it. Lastly, EPA rescinded its condition that the State's operating permit program meet the requirements for a title V operating permit program at this time. Instead, EPA would apply the requirements of the June 28, 1989 **Federal Register** notice, in which a revised definition of "federally enforceable" was promulgated to include operating permits issued under an EPA-approved program (54 FR 27285). There were several requirements

listed in the June 28, 1989 **Federal Register** notice which state operating permit programs had to satisfy, if the permits issued pursuant to the State program were to be considered federally enforceable. Although South Dakota's operating permit regulations did not specifically contain all of the requirements, EPA determined that the State-issued operating permits could be considered federally enforceable, if the State abided by the requirements in the June 28, 1989 notice when issuing the operating permits. Therefore, no additional revisions to the State's operating permit provisions are required for EPA approval at this time. However, the State must revise its operating permit program to meet the requirements of title V of the CAA and submit the revision to EPA within the time-frame established in the CAA. EPA issued rules establishing the minimum requirements of state operating permit programs (57 FR 32250, July 21, 1992), and today's action in no way obviates the State's obligation to submit an operating permit program consistent with those rules.

On April 14, 1992, a staff attorney from the South Dakota Department of Environment and Natural Resources responded with the State's interpretation of the definition of "potential to emit." EPA's review found the State's interpretation to be consistent with the federal definition. However, the State did not withdraw the variance provision from this SIP submittal.

On November 2, 1992 (57 FR 49437), EPA proposed approval of the revisions to Article 74:26 and proposed disapproval of the State's variance provision. (EPA mistakenly listed Chapter 74:26:01:30 in November 2, 1992 **Federal Register** notice as the variance provision which EPA was proposing to disapprove. The correct citation for the variance provision is Chapter 74:26:01:31.01.) No comments were received on the proposed actions. Therefore, EPA is proceeding with its final approval of the revisions to Article 74:26 and its final disapproval of the State's variance provision in Chapter 74:26:01:31.01.

EPA would also like to clarify in this notice that in the definition of "federally enforceable" in Chapter 74:26:01:01(21) of the State's regulations, the term "administrator" is interpreted by EPA and the State to be the administrator of EPA. This clarification is necessary because the State has defined the term "administrator" in Chapter 74:26:01:01(2) to mean the Secretary of the Department of Water and Natural Resources. The State will correct this discrepancy during the next round of revisions to its regulations. In February, 1993, the State adopted regulatory revisions which, among other things, clarifies that the term "administrator" in the definition of "federally enforceable" means the administrator of EPA.

Final Action

EPA is approving the revisions to Article 74:26 which were submitted by the designee of the Governor of South Dakota on September 25, 1991. The revisions were made to correct deficiencies in the State's NSR regulations, to adopt the Group II requirements for protection of the PM–10 NAAQS, and to address other "housekeeping" revisions in the State's operating permit provisions.[1]

EPA is also disapproving the revisions to the State's variance provision in Chapter 74:26:01:31.01. Section 110(i) of the CAA prohibits any state or EPA from granting a variance from any requirement of a SIP with respect to a stationary source. Although the revision to the State's variance provision would strengthen the SIP by prohibiting the granting of variances in nonattainment areas, the revision will have little or no effect in South Dakota because the only current nonattainment area in the State is designated nonattainment for total suspended particulate (TSP). (See 40 CFR 81.342.) Such designations remain in place for implementing the particulate matter increments, measured in terms of TSP. (See section 107(d)(4)(B) of the CAA.) Therefore, because the revision will not provide adequate restrictions on variances, EPA is disapproving the revisions to the variance provision as inconsistent with section 110(i) of the CAA, as amended.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(14) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(14) On September 25, 1991, the designee of the Governor of South Dakota submitted revisions to the plan for new source review, operating permits, and the PM–10 Group II requirements.

(i) Incorporation by reference

(A) Revisions to the Air Pollution Control Program, Sections 74:26:01–74:26:08, effective May 13, 1991.

(ii) Additional material

(A) Letter dated April 14, 1992 from the South Dakota Department of

[1] The 1990 CAAA made significant changes to the planning requirements applicable to areas designated nonattainment for PM–10 and to the NSR program generally. See e.g., 57 FR 13498 (April 16, 1992) & 57 FR 18070 (April 28, 1992). The State of South Dakota has no nonattainment planning requirements currently due under the CAA, and EPA therefore has not reviewed the SIP revision approved today for consistency with these changes to the CAA. Thus, today's action has no bearing on the State's obligation to submit any nonattainment planning requirements that the State becomes subject to in the future or the approvability of any such submission.

Environment and Natural Resources to EPA.

3. A new § 52.2183 is added as follows:

§ 52.2183 Variance provision.

The revisions to the variance provisions in Chapter 74:26:01:31.01 of the South Dakota Air Pollution Control Program, which were submitted by the Governor's designee on September 25, 1991, are disapproved because they are inconsistent with section 110(i) of the Clean Air Act, which prohibits any state or EPA from granting a variance from any requirement of an applicable implementation plan with respect to a stationary source.

[FR Doc. 93–16467 Filed 7–9–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[WA 2–1–5407; FRL–4676–1]

Approval and Promulgation of Designation of Areas for Air Quality Planning Purposes; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving the revisions to the State of Washington Implementation Plans which were submitted on May 14, 1991 by the Washington Department of Ecology (WDOE). The purpose of these revisions is to bring about attainment of the national ambient air quality standards for volatile organic compound emissions from stationary sources in ozone nonattainment areas in a timely manner, as required by the Clean Air Act. This action to approve this plan permits EPA the authority to enforce the adopted requirements.

EFFECTIVE DATE: September 10, 1993.

ADDRESSES: Written comments should by addressed to: Montel Livingston, SIP Manager, Air Programs Branch (AT–082), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Air Programs Branch, Environmental Protection Agency, Docket #WA2–1–5407, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101; Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Michael J. Lidgard, Air Programs Branch (AT–082), United States Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, (206) 553–4233.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 172(a)(2) and (b)(3) of the Clean Air Act of 1977 required sources of volatile organic compound (VOC) emissions to install, at a minimum, reasonably available control technology (RACT) in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Techniques Guidelines (CTG) for the purpose of informing state and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the states of what EPA calls the "presumptive norm" for RACT. This general statement of Agency policy is based on EPA's evaluation of the capabilities and problems associated with control technologies currently used by facilities within individual source categories. EPA has recommended that the states adopt requirements consistent with the presumptive norm level.

On June 2, 1988, former EPA Regional Administrator Robie Russell notified Washington Department of Ecology (WDOE) by letter that the ozone State Implementation Plan (SIP) for nonattainment areas was substantially inadequate to provide for timely attainment of the national ambient air quality standards (NAAQS) under section 110(a)(2)(H) of the Clean Air Act. In that letter, EPA identified specific actions needed to correct deficiencies in WDOE regulations representing RACT for sources of VOC emissions.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required, by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Vancouver part of the Portland, Oregon-Vancouver, Washington nonattainment area is classified as marginal.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On May 14, 1991, WDOE submitted amendments to Washington Administrative Code (WAC) chapter 173–490, "Emission Standards and Controls for Sources Emitting Volatile Compounds," and WAC 173–400, "General Regulations for Air Pollution Sources," as revisions to the Washington SIP. This Notice is to propose approval of the amendments to chapter 173–490. The section below provides a brief summary of the changes in chapter 173–490.

A number of sections of chapter 173–400 are necessary to implement and enforce the standards of chapter 173–490. Parts of chapter 173–400 were revised specifically to address deficiencies raised in the EPA SIP call of 1988. Since chapter 173–400 applies to all pollutants and sources, it has been processed under a separate EPA action. However, the revisions to chapter 173–400, in part, address the deficiencies cited by EPA in Washington's VOC rules, and relevant revisions to the chapter 173–400 are also discussed below. Chapter 173–400 was approved on January 15, 1993 (58 FR 4578).

II. Today's Action

In this action, EPA is approving the revision to the Washington State Implementation Plan submitted on May 14, 1991 as an amendment. The revision

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[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[2] Vancouver, WA retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

for WAC chapter 173–490, "Emission Standards and Controls for Sources Emitting Volatile Compounds" meets all of the applicable requirements of the Act as determined by EPA.

III. Response to Comments

EPA received no comments on its April 19, 1993 (58 FR 21133–21135) **Federal Register** proposal of chapter 173–490 WAC "Emission Standards and Controls for Sources Emitting Volatile Compounds" as a revision.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 25, 1993.

Charles Findley,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(39) On May 14, 1991, the Director of the Department of Ecology submitted revisions to the State of Washington Implementation plans for volatile organic compound emissions (WAC 173–490 "Emission Standards and Controls for Sources Emitting Volatile Compounds") attainment from stationary sources in ozone nonattainment areas.

(i) Incorporation by reference.

(A) May 14, 1991 letter from Washington Department of Ecology to EPA Region 10 submitting the VOC nonattainment area state implementation plan for Washington.

(B) WAC 173–490 "Emission Standards and Controls for Sources Emitting Volatile Compounds" as adopted on February 19, 1991 and became effective on March 22, 1991.

3. Section 52.2479 is revised to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

The following sections of the Washington State Implementation Plan for Compliance with Requirements of the Federal Clean Air Act (as adopted on the dates indicated) have been approved and are part of the current federally-approved, state-submitted implementation plan.

Washington State Implementation Plan for Compliance With Requirements of the Federal Clean Air Act

WAC 173–400 General Regulations for Air Pollution Sources

Section 010 Policy and purpose (3/22/91)
Section 020 Applicability (3/22/91)
Section 030 Definitions (3/22/91)
Section 040 General standards for maximum emissions (except -040(1) (c) and (d); -040(2); -040(4); and the second paragraph of -040(6)) (3/22/91)
Section 050 Emission standards for combustion and incineration units (except for the exception provision in -050(3)) (3/22/91)
Section 060 Emission standards for general process units (3/22/91)
Section 070 Emission standards for certain source categories (except -070(7)) (3/22/91)
Section 100 Registration (3/22/91)
Section 105 Records, monitoring and reporting (3/22/91)
Section 110 New source review (NSR) (3/22/91)
Section 151 Retrofit requirements for visibility protection (3/22/91)
Section 161 Compliance schedules (3/22/91)
Section 171 Public involvement (3/22/91)
Section 190 Requirements for nonattainment areas (3/22/91)
Section 200 Creditable stack height and dispersion techniques (3/22/91)
Section 205 Adjustment for atmospheric conditions (3/22/91)
Section 210 Emission requirements for prior jurisdictions (3/22/91)
Section 220 Requirements for board members (3/22/91)
Section 230 Regulatory actions (3/22/91)
Section 240 Criminal penalties (3/22/91)
Section 250 Appeals (3/22/91)
Section 260 Conflict of interest (3/22/91)

WAC 173–402 Civil Sanctions Under Washington Clean Air Act (6/24/80)

WAC 173–405 Kraft Pulp Mills

Section 012 Statement of purpose (3/22/91)
Section 021 Definitions (3/22/91)

Section 040 Emission standards (except -040(1)(b), -040(1)(c), -040(3)(b), -040(3)(c), -040(4), -040(7), -040(8), and -040(9)) (3/22/91)
Section 045 Creditable stack height and dispersion techniques (3/22/91)
Section 061 More restrictive emission standards (3/22/91)
Section 072 Monitoring requirements (except -072(2)) (3/22/91)
Section 077 Report of startup, shutdown, breakdown or upset conditions (3/22/91)
Section 078 Emission inventory (3/22/91)
Section 086 New source review (NSR) (3/22/91)
Section 087 Prevention of significant deterioration (PSD) (3/22/91)
Section 091 Special studies (3/22/91)

WAC 173–410 Sulfite Pulping Mills

Section 012 Statement of Purpose (3/22/91)
Section 021 Definitions (3/22/91)
Section 040 Emission standards (except for the exception provision in -040(3) and -040(5)) (3/22/91)
Section 045 Creditable stack height and dispersion techniques (3/22/91)
Section 062 Monitoring requirements (3/22/91)
Section 067 Report of startup, shutdown, breakdown or upset conditions (3/22/91)
Section 071 Emission inventory (3/22/91)
Section 086 New source review (NSR) (3/22/91)
Section 087 Prevention of significant deterioration (PSD) (3/22/91)
Section 100 Special studies (3/22/91)

WAC 173–415 Primary Aluminum Plants

Section 010 Statement of purpose (3/22/91)
Section 020 Definitions (except -020(1) and (2)) (3/22/91)
Section 030 Emission standards (except -030(1) and -030(3)(b)) (3/22/91)
Section 045 Creditable stack height and dispersion techniques (3/22/91)
Section 050 New source review (NSR) (3/22/91)
Section 051 Prevention of significant deterioration (PSD) (3/22/91)
Section 060 Monitoring and reporting (except -060(1) (a), (b) and (d)) (3/22/91)
Section 070 Report of startup, shutdown, breakdown or upset conditions (3/22/91)
Section 080 Emission inventory (3/22/91)

WAC 173–420 State Jurisdiction Over Motor Vehicles (3/29/77)

WAC 173–422 Motor Vehicle Emission Inspection (12/31/81)

WAC 173–425 Open Burning

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 036 Curtailment during episodes or impaired air quality (10/18/90)
Section 045 Prohibited materials (10/18/90)
Section 055 Exceptions (10/18/90)
Section 065 Residential open burning (10/18/90)
Section 075 Commercial open burning (10/18/90)
Section 085 Agricultural open burning (10/18/90)
Section 095 No burn area designation (10/18/90)
Section 100 Delegation of agricultural open burning program (10/18/90)
Section 115 Land clearing projects (10/18/90)
Section 120 Department of natural resources—smoke management plan (10/18/90)
Section 130 Notice of violation (10/18/90)
Section 140 Remedies (10/18/90)

WAC 173–430 Burning of Field and Forage and Turf Grasses Grown for Seed

Section 010 Purpose (10/18/90)
Section 020 Definitions (10/18/90)
Section 030 Permits, conditions and restrictions (10/18/90)
Section 040 Mobile field burners (10/18/90)
Section 050 Other approvals (10/18/90)
Section 060 Study of alternatives (10/18/90)
Section 070 Fees (10/18/90)
Section 080 Certification of alternatives (10/18/90)

WAC 173–433 Solid Fuel Burning Device Standards

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 100 Emission performance standards (10/18/90)
Section 110 Opacity standards (10/18/90)
Section 120 Prohibited fuel types (10/18/90)
Section 130 General emission standards (10/18/90)
Section 150 Curtailment (10/18/90)
Section 170 Retail sales fee (10/18/90)
Section 200 Regulatory actions and penalties (10/18/90)

WAC 173–434 Solid Waste Incinerator Facilities

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 050 New source review (NSR) (10/18/90)
Section 070 Prevention of significant deterioration (PSD) (10/18/90)
Section 090 Operation and maintenance plan (10/18/90)
Section 100 Requirement for BACT (10/18/90)
Section 130 Emission standards (except -130(2)) (10/18/90)
Section 160 Design and operation (10/18/90)
Section 170 Monitoring and reporting (10/18/90)
Section 190 Changes in operation (10/18/90)
Section 200 Emission inventory (10/18/90)
Section 210 Special studies (10/18/90)

WAC 173–435 Emergency Episode Plan

Section 010 Purpose (1/3/89)
Section 015 Significant harm levels (1/3/89)
Section 020 Definitions (1/3/89)
Section 030 Episode stage criteria (1/3/89)
Section 040 Source emission reduction plans (1/3/89)
Section 050 Action procedures (1/3/89)
Section 060 Enforcement (1/3/89)
Section 070 Sampling sites, equipment and methods (except -070(1)) (1/3/89)

WAC 173–440 Sensitive Areas

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 040 Sensitive areas designated (10/18/90)
Section 100 Standards (10/18/90)
Section 900 Appendix A—Map (10/18/90)

WAC 173–470 Ambient Air Quality Standards for Particulate Matter

Section 010 Purpose (1/3/89)
Section 020 Applicability (1/3/89)
Section 030 Definitions (1/3/89)
Section 100 Ambient air quality standards (1/3/89)
Section 160 Reporting of data (1/3/89)

WAC 173–490 Emission Standards and Controls for Sources Emitting Volatile Organic Compounds

Section 010 Purpose (2/19/91)
Section 020 Definitions (2/19/91)
Section 025 General Applicability (2/19/91)
Section 030 Registration and Reporting (2/19/91)
Section 040 Requirements (2/19/91)
Section 070 Schedule of Control Dates (repealed 2/19/91)
Section 071 Alternative Schedule of Control Dates (repealed 2/19/91)
Section 080 Exceptions (2/19/91)
Section 090 New Source Review (2/19/91)
Section 120 Compliance Schedules (repealed 2/19/91)
Section 130 Regulatory Actions (repealed 2/19/91)
Section 135 Criminal Penalties (repealed 2/19/91)
Section 140 Appeals (repealed 2/19/91)
Section 200 Petroleum Refinery Equipment Leaks (2/19/91)
Section 201 Petroleum Liquid Storage In External Floating Roof Tanks (2/19/91)
Section 202 Leaks from Gasoline Transport Tanks and Vapor Collection Systems (2/19/91)
Section 203 Perchloroethylene Dry Cleaning Systems (2/19/91)
Section 204 Graphic Arts Systems (2/19/91)
Section 205 Surface Coating of Miscellaneous Metal Parts and Products (2/19/91)
Section 207 Surface Coating of Flatwood Paneling (2/19/91)
Section 208 Aerospace Assembly and Component Coating Operations (2/19/91)

WAC 463–39 General Regulations for Air Pollution Sources

Section 010 Purpose (7/23/79)
Section 020 Applicability (7/23/79)
Section 030 Definitions (except (4), (7), (10), (24), (25), (30), (35), (36)) (7/23/79)
Section 040 General Standards for Maximum Permissible Emissions (except introductory paragraph) (7/23/79)
Section 050 Minimum Emission Standards for Combustion and Incineration Sources (7/23/79)
Section 060 Minimum Emission Standards for General Process Sources (7/23/79)
Section 080 Compliance Schedules (7/23/79)
Section 100 Registration (7/23/79)

VOL 58 ISS 131 JL 12 1993 UMI

Section 110 New Source Review (except (1), the first two sentences of (3)(b),(3)(c), (3)(d), (3)(e)) (7/23/79)
Section 120 Monitoring and Special Report (7/23/79)
Section 130 Regulatory Actions (7/23/79)
Section 135 Criminal Penalties (7/23/79)
Section 150 Variance (7/23/79)
Section 170 Conflict of Interest (7/23/79)

Puget Sound Air Pollution Control Authority—Regulation I

Article 1 Policy, Short Title & Definitions (except 1.07(s), 1.07(rr) and 1.07(xx) (12/74)
Article 1.07(s) General Definitions, "Facility" (10/11/83)
Article 1.07(rr) General Definitions, "Source" (10/11/83)
Article 1.07(xx) General Definitions, "Volatile Organic Compound" (10/11/83)
Article 3 General Provisions (12/74)
Article 6 Notices of Construction and Orders of Approval (except 6.07(b)(7) and 6.08) (12/74)
Article 6.07(b)(7) Issuance of Approval or Order (10/11/83)
Article 6.08 Special Conditions for New Air Contaminant Sources Which Will Significantly Impact A NonAttainment Area (10/11/83)
Article 9.02 Outdoor Fires (6/13/73)
Article 9.02A (6/20/74)
Article 9.03 Emission of Air Contaminant: Visual Standard (1/77)
Article 9.04 Deposition of Particulate Matter (1/77)
Article 9.05 Incinerator Burning (1/77)
Article 9.06 Refuse Burning Equipment: Time Restriction (1/77)
Article 9.07(c) Emission of Sulfur Dioxide (8/12/70)
Article 9.07(d) Emission of Sulfur Dioxide (1/77)
Article 9.07(e) Emission of Sulfur Dioxide (1/77)
Article 9.09 Emission of Particulate Matter: Weight Rate Standard (1/77)

Puget Sound Air Pollution Control Authority—Regulation II

Article 1 Purpose, Policy, Short Title and Definitions (except 1.02) (4/8/82)
Article 1, Section 1.02 Policy (12/13/84)
Article 2 Volatile Organic Compound Emission Standards Group 1 (except 2.13) (4/8/82)
Article 2, Section 2.13 Schedule of Control Dates (12/13/84)
Article 3 Volatile Organic Compound Emission Standards—Group 2 (except 3.11) (4/8/82)
Article 3, Section 3.11 Schedule of Compliance Dates (12/13/84)
Article 4 General Provisions (except 4.02) (4/8/82)
Article 4, Section 4.02 Scope, Registration, Reporting and Notice of Construction (12/13/84)

Northwest Air Pollution Authority—Regulations

Section 455.11 Particulate Matter Standard (8/9/78)

Spokane Country Air Pollution Control Authority—Regulation II

Article IV, Section 4.01 Particulate Emissions—Grain Loading Restrictions (1/6/75)

[FR Doc. 93–16362 Filed 7–9–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket No. 89–116, 89–117 and 89–118, FCC 93–261]

Procedure for Measuring Electromagnetic Emissions From Intentional and Unintentional Radiators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action incorporates into the FCC Rules by reference the American National Standards Institute's (ANSI) test procedure C63.4–1992 as the standard the Commission will use for measuring electromagnetic emissions from intentional and unintentional radiators, including digital devices, regulated under part 15 of the FCC Rules. C63.4–1992 will be used instead of TP–3, TP–4, and TP–6, the test procedures proposed in the Notices of Proposed Rule Making (*NPRMs*) in this proceeding. This new procedure is a revision of ANSI test procedure C63.4–1991, incorporating additional instructions specific to the testing of intentional and unintentional radiators. C63.4–1992 also includes new criteria for site attenuation in a measurement facility description filing required by Part 2 of the FCC Rules.

EFFECTIVE DATE: August 11, 1993. The incorporation by reference of ANSI C63.4–1992 listed in the regulations was approved by the Director of the Federal Register as of August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh L. Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD, 21046, (301) 725–1585, extension 221.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*R&O*) in General Dockets 89–116, 89–117 and 89–118, adopted May 13, 1993, and released June 24, 1993. The full text of this *R&O*, including the Final Regulatory Flexibility Analysis, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This Report and Order amends part 15 of the rules to incorporate by reference ANSI C63.4–1992 as the procedure to be used by the Commission for performing radio-noise emission measurements on intentional and unintentional radiators, including digital devices. Consistent with the actions we have taken earlier with regard to digital devices, there are three sections of ANSI C63.4–1992 that we are not adopting in determining compliance of devices with the FCC Rules. We are not adopting section 5.7, which specifies the use of an artificial hand when measuring hand-held equipment. We believe that the use of an artificial hand adds complexity to testing, and there is insufficient evidence to show that it allows an accurate or repeatable measurement of the emission levels from a device. We also will not accept absorbing clamp measurements as a substitute for measuring radiated emissions as provided in Section 9. The Commission's limits are based on measurements of radiated emissions. There is no evidence to show that the results obtained with an absorbing clamp can be correlated with radiated emissions from electronic equipment. Finally, we are not allowing the relaxation of the limits for "click" or short duration emissions as provided in section 14. Short duration emissions can produce as much nuisance to radio communications as continuous emissions.

2. Currently the Commission requires the filing of a measurement facility description pursuant to Section 2.948 of the Rules, including measurements of site attenuation showing compliance with the horizontal test site attenuation values specified in FCC Office of Engineering and Technology Bulletin 55 (OET 55). ANSI C63.4–1992 contains vertical site attenuation measurement requirements as well as the horizontal site attenuation measurement requirements contained in OET 55. We are requiring site attenuation data to be taken pursuant to C63.4–1992.

3. We recognize that a time period is needed for transition to the new measurement procedure and test site requirements. We are implementing the use of C63.4–1992 for equipment authorizations other than digital devices filed on or after June 1, 1995. Digital devices are still subject to the May 1,

1994 transition date set forth in General Docket 89–44.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, these rules will not have a significant economic impact on a substantial number of small entities because it provides guidance and procedures consistent with the needs of industry.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to the approval of the Office of Management and Budget as prescribed by the Act.

6. Accordingly, it is ordered that under the authority contained in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303, part 2 and part 15 of the Commission's Rules and Regulations *Are Amended* as set forth below. These rules are effective August 11, 1993. *It is further ordered* that this proceeding is *Terminated*.

List of Subjects

47 CFR Part 2

Communications equipment, Incorporation by reference, Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Computer technology, Incorporation by reference, Radio, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission

Donna R. Searcy,

Secretary.

Amendatory Text

Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r) and 307, unless otherwise noted.

2. Section 2.948 is amended by revising paragraph (b)(8) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(8) A plot of site attenuation data.

(i) For a measurement facility that will be used for testing radiated emissions from a digital device on or after May 1, 1994, or for testing intentional and other unintentional radiators authorized under Part 15 of the rules on or after June 1, 1995, the site attenuation data shall be taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992 as document number SH15180. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of ANSI C63.4–1992 may be inspected at the following locations:

(A) Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (Room 7317), Washington, DC 20554,

(B) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, or

(C) Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(ii) For a measurement facility that will be used for testing radiated emissions from a digital device prior to May 1, 1994, or from intentional and other unintentional radiators authorized under Part 15 prior to June 1, 1995, or from devices authorized under Part 18 of the rules, the site attenuation data shall be taken pursuant to either ANSI C63.4–1992, Sections 5.4.6 through 5.5, or FCC/OET Bulletin 55.

(iii) This requirement does not apply to equipment that is not measured on an open field test site.

* * * * *

Part 15 of title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r), 304 and 307.

2. Paragraph (a) of § 15.31 is revised to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this Part. Except where noted, copies of these procedures are available from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer Assistance Office at 202–632–7000.

(1) FCC/OET MP–1: FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers. Note: This procedure may be used only for testing devices for which verification is obtained, or for which an application for equipment authorization is filed before June 1, 1995. For compliance testing of these devices after that date, see paragraph (a)(6) of this section.

(2) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(3) FCC/OET MP–3: FCC Methods of Measurements of Output Signal Level, Output Terminal Conducted Spurious Emissions, Transfer Switch Characteristics, and Radio Noise Emissions from TV Interface Devices. Note: This procedure may be used only for testing devices for which verification is obtained, or for which an application for equipment authorization is filed before June 1, 1995. For compliance testing of these devices after that date, see paragraph (a)(6) of this section.

(4) FCC/OET MP–4 (1987): FCC Procedure for Measuring RF Emissions from Computing Devices. Note: This procedure may be used only for testing digital devices for which verification is obtained, or for which an application for equipment authorization is filed before May 1, 1994. For compliance testing of digital devices on or after May 1, 1994, see paragraph (a)(6) of this section.

(5) FCC/OET MP–9: FCC Procedure for Measuring Cable Television Switch Isolation. Note: This procedure may be used only for testing devices for which verification is obtained, or for which an application for equipment authorization is filed before June 1, 1995. For compliance testing of these devices after that date, see paragraph (a)(6) of this section.

(6) Digital devices for which verification is obtained, or for which an application for equipment authorization is filed on or after May 1, 1994, and intentional and other unintentional

radiators for which verification is obtained, or for which an application for equipment authorization is filed on or after June 1, 1995 are to be measured for compliance using the following procedure excluding § 5.7, Section 9 and Section 14: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992, as document number SH15180. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Commission encourages the use of this procedure for testing digital devices, intentional radiators, and other unintentional radiators as soon as practical. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of C63.4–1992 may be inspected during normal business hours at the following locations:

(i) Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (Room 7317), Washington, DC 20554,

(ii) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, or

(iii) Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

[FR Doc. 93–16460 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–314; RM–8142]

Radio Broadcasting Services; Oliver, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Humes Broadcasting Corporation, substitutes Channel 235B1 for Channel 235A at Oliver, Pennsylvania, and modifies Station WASP–FM's construction permit to specify operation on the higher class channel. *See* 58 Fed. Reg. 5823, January 21, 1993. Channel 235B1 can be allotted to Oliver in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east, at coordinates North Latitude 39–55–15 and West Longitude 79–34–12, to accommodate petitioner's desired transmitter site. Canadian concurrence has been received since Oliver is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–314, adopted June 18, 1993, and released July 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 235A and adding Channel 235B1 at Oliver.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16416 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–20; RM–8177]

Radio Broadcasting Services; Cheyenne, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jackalope Broadcasting, allots Channel 285A at Cheyenne, Wyoming, as its fourth local FM transmission service. See 58 FR 11206, February 24, 1993. Channel 285A can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements at city reference coordinates without the imposition of a site restriction. The coordinates for Channel 285A at Cheyenne are North Latitude 41°08′18″ and West Longitude 104°48′48″. In addition, we make an editorial amendment to show Channel 264C1 in lieu of Channel 265C1 at Cheyenne. With this action, this proceeding is terminated.

DATES: Effective August 23, 1993. The window period for filing applications for Channel 285A at Cheyenne, Wyoming, will open on August 24, 1993, and close on September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–20, adopted June 24, 1993, and released July 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 285A at Cheyenne, and by removing Channel 265C1 and adding Channel 264C1 at Cheyenne.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16415 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

VOL
58
ISS
131
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Endangered or Threatened Status for Five Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines four Florida plant species to be endangered species, and one to be a threatened species, pursuant to the Endangered Species Act of 1973 (Act), as amended. The four species determined to be endangered are: *Conradina glabra* (Apalachicola rosemary) of Liberty County, threatened by habitat modification; *Conradina brevifolia* (short-leaved rosemary) of Highlands and Polk Counties, threatened by habitat destruction for agricultural or residential purposes; *Conradina etonia* (Etonia rosemary) of Putnam County, threatened by residential development; and *Cucurbita okeechobeensis* ssp. *okeechobeensis* (Okeechobee gourd) of the southern shore of Lake Okeechobee in Palm Beach County, threatened by vegetation management measures and the consequences of water level management. The Service determines threatened status for *Pinguicula ionantha* (Godfrey's butterwort), native to four counties in the Florida panhandle. It is threatened by habitat degradation due to lack of prescribed fire and shading by planted pines. This rule implements the protection and recovery provisions afforded by the Act for the five species.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Discussion of the Three Conradina Species

Conradina (minty rosemary) is a genus of minty-aromatic shrubs belonging to the mint family (Lamiaceae) that resemble the herb rosemary (*Rosmarinus officinalis*), native to the Mediterranean region. *Conradina* is characterized by dense hairs appressed or matted on the under surfaces of the leaves, and by the flower's corolla tube, which is sharply bent above the middle, rather than straight or gently curved (Shinners 1962).

The genus *Conradina* consists of six allopatric species, i.e., the ranges of the species do not overlap (Kral and McCartney 1991). The most widespread and variable species is *Conradina canescens* of the Florida panhandle, southern Alabama, and southern Mississippi. This species occurs on dry sand soils on coastal dunes, in sand scrub vegetation, and in dry longleaf pinelands. The other five species have more restricted geographic distributions and are considerably less variable (Gray 1965).

Conradina verticillata (Cumberland rosemary) is native to north-central Tennessee. It was federally listed as a threatened species in the **Federal Register** of November 29, 1991 (56 FR 60937).

Conradina grandiflora (large-flowered rosemary) is native to scrub vegetation near Florida's Atlantic coast from Daytona Beach south to Miami, as well as inland near Orlando and in Okeechobee County. Despite measures to protect the federally threatened Florida scrub jay that occurs in the same scrub vegetation, habitat of *Conradina grandiflora* is being lost to development, and Federal listing of *Conradina grandiflora* is probably warranted, but was not proposed with the other species of *Conradina* because other listing actions were of higher priority.

The three other species of *Conradina*—*Conradina glabra* (Apalachicola rosemary), *Conradina brevifolia* (short-leaved rosemary), and *Conradina etonia* (Etonia rosemary)—are subjects of this rule.

Conradina glabra is restricted to Liberty County, Florida, west of Tallahassee near the Apalachicola River (Gray 1965; Schultz 1987, citing personal communication from Wilson Baker; and S. Gatewood, The Nature Conservancy, Tallahassee, pers. comm. 1991). Plants collected from Santa Rosa County near Milton, northeast of Pensacola (by S.C. Hood in 1949) were assigned to this species by Shinners (1962). Gray (1965) searched the Milton area for *Conradina glabra* without finding it. Later, Godfrey (1988) found plants assignable to *C. glabra* north of Milton, in Blackwater State Forest. The Blackwater Forest plants are within the geographic range of the widespread, variable *Conradina canescens* and, except for being glabrous, the Santa Rosa County plants resemble *Conradina canescens* more than *C. glabra*. In 1989, Elaine Luna was studying the taxonomy and distribution of *Conradina glabra*, but results are not yet available (D. White, Florida Natural Areas Inventory, memo, October 1989; R. Hilsenbeck, Florida Natural Areas Inventory, *in litt.*, 1991). Kral and McCartney (1991) implicitly assign the Blackwater plants to *C. canescens*. Godfrey (1988) corrects an erroneous report by Godfrey and Ward (1979) that "most collections (of *C. glabra*) have been made in or near the Apalachicola National Forest" in Franklin County, Florida. The plant does not occur in the National Forest or Franklin County.

Conradina glabra occurs in an area of several square miles near State Road 12 and County Road 271, northeast of Bristol, Liberty County. The area is a gently undulating upland, originally with longleaf pine-wiregrass vegetation, dissected by ravines of the Sweetwater Creek system, which drain westward to the Apalachicola River. Parts of the Apalachicola ravines are incorporated in public and private nature preserves that protect rich hardwood forests with the narrowly endemic Florida torreya (*Torreya taxifolia*) and Florida yew (*Taxus floridana*). Heads of ravines, called steepheads, have slopes that are undermined by groundwater seeping into the ravine bottom, causing the slopes to gradually slump, carrying the vegetation with it. At least one steephead shrub, Florida yew, appears to be adapted to slowly moving down the slopes (Redmond 1984, cited in Platt and Schwarz 1990), and *Conradina glabra* may sometimes be carried into ravines. "Many older *Conradina* shrubs occur at the edge of the ravine and even extend a short distance down into open areas of the ravine; younger *Conradina* plants have become established in the barren, exposed soil adjacent to the pines and often extend into the pine stand. This suggests that *C. glabra* is able to compete effectively in open, newly exposed areas but is unable to compete in closed stands of mixed hardwoods or pines. This species probably features significantly in secondary plant succession in the area, much of which is frequently subjected to burning." (Gray 1965). Wilson Baker (pers. comm. cited in Schultz 1987) suggested that *Conradina* spread from the ravine edges into newly planted pine plantations on the uplands during the 1950's. Kral (1983) considered *Conradina glabra* to have inhabited the grassy understory of the upland longleaf pine-wiregrass vegetation before pine

plantations were developed, as well as steephead edges. Kral thought that *Conradina glabra* was increasing in slash pine plantations, along with another woody mint, *Calamintha dentata*. However, Kral thought it "premature to state that this will be a stable system" because the planted slash pine had not thrived, the plantations were probably more open than had been intended, and that if the slash pines matured, they might provide "more shade and more competition than is good for the *Conradina*". Most of the slash pine was cut in 1987 and replanted to sand pine (S. Gatewood, The Nature Conservancy, *in litt.*, 1987). *Conradina glabra* currently "is found on road edges, in planted pine plantations and along their cleared edges, and along the edges of the ravines" (Baker, pers. comm., in Schultz 1987).

At the present time, there are four distinct natural colonies of *Conradina glabra* on land owned by a forest products company and on public road rights-of-way. A fifth, artificial colony is being created a short distance from the plant's native range, on similar ravine edges, in the Apalachicola Bluffs and Ravines Preserve, owned by The Nature Conservancy (S. Gatewood, The Nature Conservancy, pers. comm., 1991).

Conradina glabra was named as a distinct species by Shinners (1962), a treatment that was upheld by Gray (1965). The plant had first been collected in 1931, and Small (1933, p. 1167) mentioned the specimen without assigning a name. *Conradina glabra* is a much-branched shrub up to 2 meters tall. Kral (1983) noted that it is "often clonal" and Wilson Baker (pers. comm. cited in Schultz 1987) thinks the species may spread by rhizomes; however, Dr. Ann Johnson (Florida Natural Areas Inventory) has noted that woody mints, including *Conradina brevifolia* and *Calamintha ashei*, are killed by fire and come back from seed. Regrowth from rhizomes has never been observed. She suggests that some excavation of roots of *Conradina glabra* should be performed to confirm that it is rhizomatous, rather than simply tending to occur in a clumped distribution pattern.

The branches of *Conradina glabra* are spreading or upright. The leaves are evergreen, opposite, with additional leaves in short shoots in the axils giving the appearance of fascicles. The leaves are needle-like, "very similar to the needles of fir" (Kral 1983, p. 949). The leaves are hairless on the upper surface—the only species of *Conradina* for which this is the case. The flowers are usually in groups of 2 or 3. The calyx and corolla are two-lipped. The corolla is 1.5–2.0 centimeters (cm) long, from its base to the tip of its longest lobe, with a slender corolla tube that is straight for about 5 millimeters (mm) long, then bends sharply downward to form a funnel-shaped throat 5 mm long, then widens out into upper and lower lips. The outside of the tube and throat are white, with the lobes and lips lavender blue at the tips. The lower lip of the corolla is three-lobed, with a band of purple dots extending along its inner side. The four stamens are paired. Many flowers are male sterile. In extreme cases, the stamens are "grossly malformed, being petaloid in shape, texture, and color. A less bizarre manifestation of male sterility is that in which only aborted pollen grains are contained in anthers that appear completely normal" (Gray 1965). Male sterility may be the result of inbreeding and homozygosity (Gray 1965). The plant is illustrated in Godfrey (1988).

Conradina brevifolia (short-leaved rosemary) inhabits sand pine scrub vegetation on the Lake Wales Ridge in Polk and Highlands Counties, Florida. Scrub vegetation on the ridge is typically dominated by evergreen scrub oaks and other shrubs, with sand pine and open areas with herbs and small shrubs. This vegetation has many endemic species, including 13 plants federally listed as endangered or threatened, the federally threatened Florida scrub jay (*Aphelocoma coerulescens coerulescens*), and two threatened lizards (blue-tailed mole skink and sand skink). *Conradina brevifolia* has a very restricted geographic distribution within the Lake Wales Ridge, occurring only in about 30 scrubs whose combined areas total less than 6,000 acres (Christman 1988). As such, it is one of the most narrowly distributed of the Lake Wales Ridge endemic plants. The plant is protected on Lake Arbuckle State Forest and on land currently owned by The Nature Conservancy at Saddle Blanket Lakes. This 568-acre tract is the nucleus of a planned 878-acre State acquisition. Further State, Federal, and private land purchases are contemplated in the area, including the proposed Lake Wales Ridge National Wildlife Refuge.

Conradina brevifolia was described as a new species by Shinners (1962). It is similar to *C. canescens* but has shorter leaves: the larger leaves on well-developed flowering branches are 6.0–8.2 mm long, mostly shorter than the internodes, versus 7.0–20 mm long, mostly longer than the internodes for *C. canescens*. *Conradina brevifolia* also tends to have more flowers per axil than *C. canescens*: 1 to 6 per axil versus 1 to 3. Gray (1965) made it clear that *C. brevifolia*, like *C. glabra*, is morphologically not strongly differentiated from, and is less variable than, *C. canescens*. Gray (1965), Wunderlin et al. (1980), Kral (1983), and Kral and McCartney (1991) have upheld *C. brevifolia* as a distinct species. Wunderlin (1982) includes *C. brevifolia* in *Conradina canescens*, without noting *C. brevifolia* as a synonym, and DeLaney and Wunderlin (1989) follow this practice.

Conradina etonia (Etonia rosemary) is known from only two sites near Etonia Creek, northeast of Florahome, Putnam County, northeastern Florida. It occurs in Florida scrub vegetation with sand pine and shrubby evergreen oaks. Scrub in this area is the northeastern range limit for several plant species of Florida scrub, including silk bay (*Persea humilis*), sand holly (*Ilex cumulicola*), *Garberia heterophylla*, and the scrub palmetto (*Sabal etonia*), which is named for this area but does not occur in the immediate vicinity of *Conradina etonia* (Kral and McCartney 1991; S. Christman, Florida Dept. of Natural Resources, pers. comm., 1991). The threatened Florida scrub jay occurs in the same habitat as *Conradina etonia*. The sites where this plant is known to occur are privately owned and are subdivided for residential development, or have been approved for such development.

Conradina etonia was discovered in 1990 and promptly described as a new species (Kral and McCartney 1991). It is similar to *Conradina grandiflora* in general habit of growth, and the flowers of both species are large and quite similar in appearance. However, the leaves of *Conradina etonia* are distinctly broader than those of *C. grandiflora* and have lateral veins that are clearly visible on the under surface, a feature that is seen in no other species of *Conradina*. The pubescence of the leaves and much of the rest of the plant is also quite different between the two species. Kral and McCartney (1991) are convinced "that *Conradina etonia* could well be the best marked species in a genus whose species differ mostly in very fine characters." They express hope that further searches of scrub vegetation in northeastern Florida may turn up more localities for *Conradina etonia* and that some intermediates between it and *C. grandiflora* might be found; they mention a specimen of *C. grandiflora* from south of Daytona Beach whose new shoots have a downiness similar to that of *C. etonia*. However, the extent of sand pine scrub suitable for *Conradina etonia* is limited and it is botanically reasonably well explored, primarily by Robert McCartney, with other visits by

VOL 58 ISS 131 JL 12 1993 UMI

Steven Christman, Robert Godfrey, and Robert Kral.

Discussion of Cucurbita Okeechobeensis ssp. Okeechobeensis

Cucurbita okeechobeensis ssp. *okeechobeensis* (Okeechobee gourd) is an annual, fibrous-rooted, high-climbing vine with tendrils, belonging to the gourd family (Cucurbitaceae). Its leaf blades are heart-to-kidney shaped, with 5–7 shallow, angular lobes and irregularly serrated margins (*C. o. martinezii* has more regularly serrated margins) (Walters and Decker-Walters 1993). Young leaves are covered with soft hairs. The cream colored flowers are bell-shaped, with the corolla 6–7 cm (2–3 in) long; they can be distinguished from flowers of *C. o. martinezii* (Martinez gourd) by the presence of dense pubescence (hairs) on the hypanthium (the tube formed by the fused bases of the petals and sepals) of the male flower and on the ovary of the female flower. The gourd is globular or slightly oblong, light green with 10 indistinct stripes, and hard shelled with bitter flesh. The seeds are gray-green and flat (Small 1930, Tatje 1980, Walters and Decker-Walters 1991).

Merrill (1944) and Harper (1958) speculated that William Bartram saw the Okeechobee gourd on the St. Johns River in northern Florida, but archeological study of seed remains indicates that another wild cucurbit (*Cucurbita pepo* ssp. *ovifera* var. *texana*) was present in the watershed until the 18th century, so Bartram did not necessarily see the Okeechobee gourd (Decker and Newsom 1988). Harshberger (1914) mentioned lianas in the pond apple (*Annona glabra*) hammocks along the south shore of Lake Okeechobee, including "a kind of gourd". Small saw and/or collected the Okeechobee gourd in 1913 and 1917, and he found it to be locally common in the Okeechobee pond apple forests, but at least 95 percent of this habitat had already been destroyed by 1930 when he named the gourd *Pepo okeechobeensis* (Small 1922, 1930).

Bailey (1930) transferred the Okeechobee gourd to the genus *Cucurbita*, which includes pumpkins, squashes, and gourds. In a subsequent publication, Bailey (1943) described two new gourd species, *Cucurbita martinezii* and *Cucurbita lundelliana* (Martinez and Lundell gourds, respectively). These two gourds were proven to be closely related to *C. okeechobeensis* (Rhodes et al. 1968, Bemis et al. 1970). The Okeechobee, Martinez, and Lundell gourds are the only members of the genus *Cucurbita* with small gray-green seeds, but the former two are the only species of *Cucurbita* with cream-colored corollas (all others are bright yellow). The Martinez gourd occurs in Mexico near the Gulf coast in the states of Veracruz, Tamaulipas, eastern San Luis Potosí, and Puebla, as well as in northern Oaxaca and Chiapas. The high-climbing vines grow at forest edges, along streams, and as a weed in coffee and citrus plantations. *Cucurbita lundelliana* is restricted to the limestone plains of Yucatan in Mexico, Belize, and Guatemala, as well as Honduras (Walters and Decker-Walters 1991).

Robinson and Puchalski (1980) re-examined the herbarium specimens Bailey had used or made from cultivated material, as well as more recent specimens, available cultivated material, and information on morphology, crossability, disease resistance, and isozymes (including their own work). They showed that the morphological distinctions Bailey had made between *C. okeechobeensis* and *C. martinezii* were incorrect, that the two taxa seemed indistinguishable, and that they should be assigned to the same species.

Previously, Filov (1966) had recognized the similarity between the Okeechobee and Martinez gourds, referring to them as varieties, with the Martinez gourd called *Cucurbita okeechobeensis* var. *martinezii*. However, this new combination of names by Filov failed to meet the requirements of the International Code of Botanical Nomenclature because neither Small's original name for the plant nor Small's nor Bailey's publications were cited.

Andres and Nabhan (1988) recognized the Okeechobee gourd and the Martinez gourd as geographical subspecies, based on a survey of 10 enzyme systems; the two taxa appeared distinct for one of the 10 systems. They also found that the Martinez and the Lundell gourd were identical for that one system. R.W. Robinson (*in litt.* 1988) rejected the idea of establishing a subspecies on the basis of a single allelic difference. The Service, agreeing with Robinson's assessment, took the position that until further systematic study showed otherwise, the Okeechobee gourd in Florida could not reasonably be considered distinct from the widespread Martinez gourd, and was consequently ineligible for Federal listing.

In 1990, the Service helped fund a field and systematic survey of the gourd sponsored by the Center for Plant Conservation and conducted by Terrence W. Walters and Deena Decker-Walters, experts on the systematics of *Cucurbita*. The new study coincided with a severe drought that lowered the level of Lake Okeechobee, exposing bare ground that provided optimal germination and growing conditions for the Okeechobee gourd. As a result, searches for the gourd by Walters and Decker-Walters were highly successful.

The systematic study by Walters and Decker-Walters analyzed morphological, phenological (time of flowering and fruiting) characters and isozyme characters. They found that *Cucurbita lundelliana* is morphologically distinct from the other two taxa (as other taxonomists had found). There is a general lack of morphological discontinuities between the Okeechobee and Martinez gourds, except that the two can be reliably distinguished by the presence of pubescence on the male hypanthium and female ovary in the case of the former. The isozyme analysis by Walters and Decker-Walters surveyed 10 enzyme systems, revealing 40 alleles at 20 loci. The analysis showed substantial genetic diversity within *C. lundelliana*—more than exists within the Okeechobee and Martinez gourds, if they are considered a single species. Walters and Decker-Walters confirmed the report of Andres and Nabhan (1988) that plants of *Cucurbita okeechobeensis* from all the known sites for the species are fixed for a unique allele at one locus, while the other two taxa are fixed for another allele.

Walters and Decker-Walters conclude that *C. lundelliana* is an older, genetically more diverse species than the other two, and that the Lundell gourd exhibits a closer relationship to the Martinez gourd than to the Okeechobee gourd. For the most part, the alleles present in the Okeechobee gourd are a subset of those present in the Martinez gourd, although the two taxa can readily be distinguished. Using the methods of Nei (1981) and Sarich (1977), Walters and Decker-Walters calculated an estimated time since divergence between the Okeechobee and Martinez gourds around 450,000 years ago. While these calculations must be interpreted cautiously, they suggest that the former is more likely a remnant population from a time when its ancestors had a continuous distribution around the periphery of the Gulf of Mexico, rather than a recent immigrant to Florida that floated across the Gulf of Mexico or was deliberately introduced by Native Americans.

Overall, Walters and Decker-Walters found that *C. lundelliana* was distinct, to an extent typical of full species, from the other two taxa, and that the Okeechobee and Martinez gourds should be considered distinct at the subspecies level. Following the rules of botanical nomenclature, Walters and

Decker-Walters will apply the name *Cucurbita okeechobeensis* to both the Okeechobee and Martinez gourds, with the Okeechobee gourd becoming subspecies *okeechobeensis* (Walters and Decker-Walters 1993), following the suggestion of Andres and Nabhan (1988).

Okeechobee gourd persisted around Indian villages with the Seminole pumpkin, *Cucurbita moschata* (Small 1930). The Seminole pumpkin, with edible flesh, had been an important food crop, while the extremely bitter flesh of the Okeechobee gourd precludes its use for food, although the seeds are edible and nutritious, and the flesh has detergent properties (Robinson and Puchalski 1980). Okeechobee gourd may have been used as "the fruit of [the Martinez gourd] was, at least until the recent past, as a ball or rattle, a utensil such as a small ceremonial cup, or for its detergent quality" (Andres and Nabhan 1988). The Seminole pumpkin is still cultivated in Florida, and may have been confused with the Okeechobee gourd by Avery and Loope (1980). Morton's (1975) suggestion that the Seminole pumpkin may be a derivative of the Okeechobee gourd is not supported by systematists (Bailey 1930, Andres and Nabhan 1988).

Cucurbita okeechobeensis ssp. *martinezii* is currently used as a source of disease resistance for summer squash, pumpkins, and gourds (*C. pepo*) (T. Andres, Cornell Univ., pers. comm., 1987). It and *C. o.* ssp. *okeechobeensis* are resistant to cucumber mosaic virus, powdery mildew, bean yellow mosaic virus, tobacco ringspot virus, tomato ringspot virus, and squash mosaic virus (Robinson 1980). Both of these wild gourds represent germplasm that can be used in breeding economically valuable cultivated members of the Cucurbitaceae family (Esquinas-Alcazar and Gulick 1983), and both of these wild gourds are maintained in cultivation for this purpose. Additionally, the Okeechobee gourd has in its leaves, roots, and fruits, the richest content of cucurbitacins in the genus. These bitter chemicals render the fruits inedible, if not poisonous, to humans, but are attractive to southern corn rootworm and striped cucumber beetle, so cucurbitacin-rich plants could be used to lure these pests away from crops (G. Nabhan, Desert Botanical Garden, *in litt.*, 1988).

The Okeechobee gourd was collected or observed infrequently after 1930; in 1941, it was found on Observation Island in Lake Okeechobee, Glades County. This mile-long island, covered with Australian pine, is accessible only by helicopter or airboat and lies within the critical habitat of the federally endangered snail kite (*Rostrhamus sociabilis plumbeus*). R.W. Robinson (*in litt.* 1987) failed to relocate the gourd on Observation Island in 1984 or 1987. W.M. Buswell, in a 1943 letter to Bailey, reported the gourd from the east side of the lake, about five miles north of the St. Lucie Canal. Hanna and Hanna (1946) mentioned the gourd, which "grows profusely in heavy tangled woods." A search of 22 sites on or near the southern shores of Lake Okeechobee (Tatje 1980) failed to find the gourd, but a 1981 search turned up the gourd in some of the same areas: lake, levee, and canal banks at Kreamer and Torry Islands in Lake Okeechobee near Belle Glade (Florida Natural Areas Inventory data). In 1965, it was seen north of Homestead in an agricultural area of Dade County (Florida Natural Areas Inventory data). A population on a disturbed roadside north of Andytown, Broward County, was discovered in 1978 and destroyed by road construction the next year (Tatje 1980). The plant was not observed until recently by personnel of the South Florida Water Management District, which manages much of the potential habitat in and near Lake Okeechobee (W. Dineen, South Florida Water Mgt. Distr., pers. comm., 1986). U.S. Army Corps of Engineers personnel (M. Mingea, USACOE, *in litt.*, 1992) are familiar with the gourd, and Florida Game and Fresh Water Fish Commission personnel report (pers. comm. 1992) a site for the gourd in Glades County near Fisheating Bay on spoil ridges and willows.

Gary Paul Nabhan (*in litt.* 1987; 1988) and Jono Miller searched for Okeechobee gourd in March 1987. They found three gourds in a small remnant stand of small pond apples, many of them apparently in decline, with dead branches. The stand was inundated in 1.5–2 feet of water with the lake at 15.2–15.3 feet above mean sea level (lake level provided by Mr. Walt Dineen, South Florida Water Management District). Nabhan noted that the gourd seemed to need the natural trellises of pond apple branches, although the pond apple persists at some sites where gourds have not been seen, including Ritta Island on the south side of the lake. Nabhan suggested that remnant pond apple stands could be managed to encourage both pond apples and gourds, possibly by erecting low levees to provide exposed bare ground where gourd seeds can germinate during winter low water. Gourd vines had last been seen in 1981, when a drought caused the lake to drop to its lowest recorded level of 9.75 feet (Florida Natural Areas Inventory).

In winter and early spring of 1990–91, during a drought when Lake Okeechobee's level was about 12 feet, Walters and Decker-Walters (1991) found 50 gourds at Nabhan's site, and 10 other population sites. Gourd plants were found climbing on pond apple trees, and, more abundantly, on elderberries and other woody plants, including papaya. Gourds also sprawled across herbaceous plants—something Nabhan had looked for but not seen. Walters and Decker-Walters and Nabhan suggested that Okeechobee gourds disperse by floating in canals; they provided evidence that marsh rabbits are the main terrestrial dispersal agent. They saw a rabbit gnawing on a green gourd and saw gnawed and broken gourds in animal nests, presumably made by marsh rabbits.

Okeechobee gourd seeds germinate readily on alligator nests, where water-dispersed gourds wash up on shores with warm soil, full sun, and no competition from other plants. The seeds germinate in early spring during the dry season, when the lake level is low. Seedlings do not tolerate water-soaked soils for extended periods of time. By the rainy season, the vines have climbed shrubs, avoiding complete inundation as the lake rises. Walters and Decker-Walters conclude that "for the gourd to maintain viable healthy populations, fluctuations in lake level are necessary. High lake levels facilitate gourd dispersal and inundate and destroy aggressive weeds in local habitats. As lake levels decrease, the cleared open habitats allow the quickly germinating Okeechobee gourd seeds to sprout and begin climbing before they have to compete with other pioneer species."

Discussion of Pinguicula lonantha

Pinguicula ionantha (Godfrey's butterwort or violet-flowered butterwort) is a member of the bladderwort family (Lentibulariaceae), a small family of carnivorous plants closely related to the snapdragon family (Scrophulariaceae). *Pinguicula ionantha* has a rosette of fleshy, oblong, bright green leaves that are rounded at their tips, with only the edges rolled upward. The rosette is about 15 cm (6 in) across. The upper surfaces of the leaves are covered with short glandular hairs that capture insects. The flowers are on leafless stalks (scapes) about 10–15 cm (4–6 in) tall. When a flower is fully open, its corolla is about 2 cm (almost 1 in) across. The five corolla lobes are pale violet to white. The throat of the corolla and the corolla tube are deeper

VOL
58
ISS
131
JL
12
1993
UMI

violet with dark violet veins. The corolla has a spur 4–5 mm (0.2 in) long that is yellow to olive.

Pinguicula ionantha is one of three *Pinguicula* species in the southeastern United States whose leaves are usually submerged and are relatively flat, rather than rolled up around the edges. The other two species are *Pinguicula primuliflora*, whose flowers have a differently shaped and colored corolla, and *Pinguicula planifolia*, which has red to reddish leaves and much narrower corolla lobes. All three species are endemic to northwestern Florida (Kral 1983). *Pinguicula ionantha* was not described as a distinct species until 1961, partly because the complex flowers and fleshy leaves of butterworts make poor herbarium specimens, partly because the species is rare (Godfrey and Stripling 1961, Godfrey and Wooten 1981, Wood and Godfrey 1957).

The geographic range of *Pinguicula ionantha* is in the Florida panhandle near the Gulf coast between Tallahassee and Panama City (Godfrey and Wooten 1981, Florida Natural Areas Inventory (FNAI) 1989). The FNAI database has 20 element occurrences (a technical term in Heritage program methodology) for this plant, representing herbarium specimens collected since 1956 and reliable sightings. Eight occurrences that date from before 1970 have not been seen since. Twelve occurrences are from 1980–1990. Four occurrences are in the Apalachicola National Forest in Liberty County (within the National Forest, the FNAI follows a practice of defining "occurrences" along compartment boundaries, which often results in more occurrences being recorded than would be the case on private land). A summary by Thomas Gibson of data available from herbaria (assembled in the late 1970's) showed the following number of sites by county: Bay 3, Franklin 4, Gulf 1, Liberty 2, for a total of 10 sites. Gibson defined sites as separated by at least 3 miles.

An extensive field survey for potentially threatened and endangered plants in the range of *Pinguicula ionantha* (FNAI 1989) located only one new site for this plant. Reports by Donald Schnell (*in litt.* 1990) and comments in Kral (1983), Thomas Gibson (*in litt.*, ca. 1978), and Loran Anderson (*in* FNAI 1989), show that *Pinguicula ionantha* is locally abundant in Apalachicola National Forest and is (or was until recently) locally abundant elsewhere. A survey for this butterwort during its flowering season could provide more detailed information on its status, but the available data are sufficient to proceed with listing.

Pinguicula ionantha inhabits seepage bogs on gentle slopes, deep quagmire bogs, ditches, and depressions in grassy pine flatwoods and grassy savannahs. It often occurs in shallow standing water. The most similar species, *Pinguicula primulifolia*, occurs in the same geographic area, but it often occupies a somewhat different habitat, occurring in flowing water and shaded areas. The habitat difference provided a clue to Godfrey and Stripling (1961) that the two species were distinct. Another endemic butterwort species, *Pinguicula planifolia*, occurs with *Pinguicula ionantha* at one site. In Franklin County, *Pinguicula ionantha* occurs at a savannah with a particularly rich flora, including *Macbridea alba* (white birds-in-a-nest) and *Scutellaria floridana* (Florida skullcap), both federally listed as threatened species.

Savannahs (i.e., grass-sedge bogs or wet prairies) (Frost et al. 1986) are nearly treeless and shrubless and have rich floras of grasses, sedges, and herbs. Savannah vegetation, grassy seepage bogs, and the grassy understory of flatwoods (largely wiregrass, *Aristida stricta*) are maintained by frequent, low-intensity fires. Lightning fires tend to occur during the growing season, and the region's history of fire-setting (and suppression) by humans is long and complex. The frequency and season of fire is important to the plant species that make up the vegetation, but fire effects can be subtle and more research is needed if fire management is to be applied scientifically to conserving the native flora (Robbins and Myers in preparation, Clewell 1986). Savannahs resembling those of the Apalachicola area occur in the Cape Fear region of North Carolina (Walker and Peet 1985) and in coastal Alabama and Mississippi (Norquist 1984).

Savannahs and related vegetation are commercially valueless unless they are planted to pine trees or converted to pasture or farmland. To prepare savannahs for planting pines, bedding and other mechanical methods are employed, which may be destructive to native herbs (Kral 1983). After site preparation, and for the first few years after a new crop of pines is planted, surviving native herbs often prosper (FNAI 1989 includes examples). One occurrence for *Pinguicula ionantha* in the FNAI database is from "bedded slash pine/pond cypress scrubby woods. Troughs between beds holding water. Intact *Aristida* groundcover." As the young pines grow large enough to cast shade, many understory grasses and herbs, including *Pinguicula ionantha*, are adversely affected (Kral 1983). Clewell (1986, p. 402) considered it "unlikely that many (pine) plantations will continue to support significant remnants of the original ground cover", and that because most ground cover plants reproduce slowly, there is little reason to expect them to be able to recolonize pine plantations from which they are extirpated; as a result, Clewell called the conversion of native pinelands to commercial pine plantations "an irreversible and irretrievable loss of habitat".

Savannah herbs, including *Pinguicula ionantha*, often persist under powerlines and on road rights-of-way. The permanence of such semi-artificial habitats is uncertain.

Lack of prescribed fire or prescribed fire during the dormant season is detrimental to much of the pineland and savannah flora (Robbins and Myers in prep.; Platt *et al.* 1988). In recent years, liability problems strongly discouraged private landowners in Florida from applying prescribed fire; the Florida legislature passed a prescribed burning bill in 1990 intended to encourage the responsible use of fire. Increasing interest in growing season burning by researchers and public land managers may influence some private landowners.

In the absence of frequent fire, titi (*Cyrilla racemiflora* and *Cliftonia monophylla*) invades savannahs and seepage bogs, creating thickets that exclude grasses and herbs, including *Pinguicula ionantha*. Titi encroachment into these habitats is so extensive that the Forest Service plans to reclaim 35,000 acres of titi for pine timber production (National Forests in Florida 1985).

Populations of *Pinguicula ionantha* fluctuate in size. A site at Carrabelle where Dr. Godfrey saw *Pinguicula ionantha* in abundance in 1990 seemingly had none in 1991. Such changes mean that long-term changes in abundance of this plant are probably difficult to assess.

Previous Federal Action

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. In these documents, *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula*

ionantha were included as endangered species and *Cucurbita okeechobeensis* as a threatened species. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report (including *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula ionantha*) to be endangered species pursuant to Section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382).

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula ionantha* as category 1 candidates (taxa for which the Service currently has on file substantial data on biological vulnerability and threats to support proposing to list them as endangered or threatened species). *Cucurbita okeechobeensis* was included as a category 2 candidate (a taxon for which data in the Service's possession indicates listing is possibly appropriate).

A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula ionantha* to category 2 candidates. A notice of review published September 27, 1985 (50 FR 39526) retained all four species as category 2 candidates.

A notice of review published February 21, 1990 (55 FR 6184) made several changes. *Conradina glabra* was returned to category 1, based on new information developed by the Florida Natural Areas Inventory. *Pinguicula ionantha* was returned to category 1, based on field work conducted by Loran Anderson, Wilson Baker, and Angus Gholson in the Apalachicola National Forest in 1987 (D. White, FNAI, *in litt.*, 1990) and outside the National Forest in 1988 (FNAI 1989). *Cucurbita okeechobeensis* was changed to Category 3B (a category for plants with names that, on the basis of current taxonomic understanding, does not represent a distinct taxon meeting the Act's definition of "species"). The change came after the Service concurred with comments by Richard W. Robinson (New York State Agricultural Experiment Station, *in litt.*, 1988), a specialist in the genus, who did not support the recognition of a taxonomic distinction between the Florida and Mexican plants of *Cucurbita okeechobeensis*. Gary Paul Nabhan (Desert Botanical Garden, Phoenix, *in litt.*, 1988 and pers. comm.) and other specialists in *Cucurbita* had urged proceeding with listing. The taxonomic questions that prevented listing have been answered by Walters and Decker-Walters (1993).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Conradina glabra*, *Conradina brevifolia*, *Cucurbita okeechobeensis* (*C. o.* ssp. *okeechobeensis*, since Walters and Decker-Walters 1993), and *Pinguicula ionantha* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of proposals to list these species, published on May 20, 1992, constituted the final petition findings for *Conradina glabra*, *Conradina brevifolia*, *Cucurbita okeechobeensis* (*C. o.* ssp. *okeechobeensis*, since Walters and Decker-Walters 1993), and *Pinguicula ionantha*.

Because *Conradina etonia* was described as a new species in 1991, it has not been covered by a notice of review or by the petition process, although Dr. Steven Christman (Florida Dept. Natural Resources, pers. comm., 1991) suggested emergency listing of the newly-described plant.

Summary of Comments and Recommendations

In the May 20 proposed rules (57 FR 21369, 21377, and 21381) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of final rules. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Palatka Daily News, Putnam County (June 5, 1992), the Highlander, Lake Wales, Polk County (June 6), The Star, Port St. Joe (June 4); the Apalachicola Times (June 4); the Calhoun County Record, Blountstown (June 4); the News-Herald, Panama City (June 8), and in the Palm Beach Post (June 7). A public hearing was held on September 16, 1992 (advertised in the Orlando Sentinel on August 23, 1992). The comment period closed September 28, 1992.

The public hearing was attended by eight persons, of whom six made statements. Two speakers opposed immediate listing of the Okeechobee gourd, preferring further study of its distribution and abundance, one opposed listing, and three supported immediate listing. Approximately 31 letters or phone calls commented on the proposals or provided information (several letters were sent twice, and several commenters sent more than one letter).

Support for all five proposed listings came from the Florida Natural Areas Inventory; the Florida Native Plant Society; and the Center for Plant Conservation. The State of Florida's Clearinghouse in the Governor's office stated that the proposals are consistent with State plans, programs, procedures, and objectives. The Florida Department of Agriculture and Consumer Services, Division of Plant Industry supported the proposed listings and pointed out that the proposals' wording failed to reflect a recent change in Florida Regulated Plant Index; the change is incorporated in the final rule.

Three commenters supported the listing of all three *Conradina* mints. In a fourth letter, an ecologist commented on the idea that *Conradina glabra* may be rhizomatous; that comment is incorporated in the text.

Two botanists and a medical doctor who are experts on carnivorous plants commented in support of the proposal to list *Pinguicula ionantha* (Godfrey's butterwort). One provided site-specific confirmation of threats to the plant. Another pointed out a useful reference, and a third provided information on trade that is incorporated in the final rule.

The U.S. Forest Service concurred in listing of *Pinguicula ionantha*, noting that bedding and planting for slash pine is a serious threat to this plant, and that no present or planned activities in the Apalachicola National Forest threaten this plant. For good measure, the Forest Service concurred with the proposal to list *Conradina glabra*, on grounds that this plant might occur in the Forest.

Eight letters supported the proposal to list the Okeechobee gourd as an endangered species. Two letters urged designation of critical habitat. Six of the letters were from botanists, economic botanists, botanical garden curators, and a plant breeder specializing in squashes. The plant breeder suggested a correction to the proposal's description of leaf lobing and serration in the Okeechobee and Martinez gourds. This has been done with the assistance of Dr. Terrence Walters. A botanist emphasized the threat to this plant from the proliferation of exotic plant species at the edges of Lake Okeechobee. A

botanical garden curator who has cultivated and collected Okeechobee gourd provided additional documentation of searches for the gourd at Lake Okeechobee and information on his experiences in cultivating the gourd in a semi-natural setting. An economic botanist who is familiar with the gourd in its native habitat pointed out that the listing proposal should not have applied the term "population" for each collection site; the sites probably represent only a single population. One commenter doubted the report that Okeechobee gourd plants survived although inundated in 1.5–2 feet of water (Nabhan 1988); another commenter noted that cultivated Okeechobee gourd plants in a semi-natural environment succumb to flooding. The U.S. Army Corps of Engineers commented that they are familiar with the localities where the gourd occurs and will take every step necessary to insure its survival.

The Florida Sugar Cane League opposed immediate listing of the Okeechobee gourd, arguing that detailed, multi-year surveys of its distribution and abundance are needed to properly appraise its status. An agricultural scientist who has been familiar with the Okeechobee gourd for over 35 years concurred with the Sugar Cane League, raised a number of additional questions about the proposal, and opposed its listing.

Specific issues raised by the comments are listed below with the Service's response to each:

Issue 1: Because the Service's proposal is based on incomplete information, the identification and evaluation of the natural or manmade factors that may affect the gourd's continued existence may not be complete nor accurate. One commenter added that the proposal and the literature cited contained misleading statements and incorporate what may be anecdotal information. There is no evidence that the Okeechobee gourd was restricted to pond apple forests or even that there is sufficient sunlight for its seeds to germinate in such forests. Searches for the gourd were inadequate: Tatje (1980) searched only unpromising areas, while Nabhan (1988) cannot be considered scientific literature because it is polemical and fails to cite references. None of the surveyors sought information that could be provided by knowledgeable local residents. Walters and Decker-Walters (1991) conducted their searches at the wrong times of year (March was early for this spring-germinating species, and January and February could have been late to find live gourd plants). Surveys for vines and fruit in early to midsummer would be more appropriate.

Service Response: The proposal noted that Okeechobee gourd probably met the current standards for Federal listing as an endangered or threatened species by the early 1930's due to destruction of its habitat. As noted in the proposal, early observers of the lake saw the gourd in pond apple forests. Its population biology in such forests is unknown because the forests no longer exist. Walters and Decker-Walters (1991) noted that alligator nests and other bare, sunny areas appear to be important germination sites.

Tatje's (1980) survey was a part of a comprehensive survey of endangered plants of southern Florida conducted by Dr. Daniel Austin of Florida Atlantic University. His examination of the rim of Lake Okeechobee was reasonable, based on the existence of herbarium specimens from the lake margin. R.W. Robinson searched for the gourd in 1984 and 1987, obtaining guidance from local residents and visiting Observation Island by airboat (R.W. Robinson, *in litt.*, 1987). Nabhan (1988) and Miller spent a great deal of time searching for the Okeechobee gourd, aided by a visit to the South Florida Water Management District and by boaters' reports of gourd sightings. They even placed "wanted" posters for the gourd at boat launching sites (Nabhan, *in litt.*, 1987). Walters and his collaborators conducted their survey with the written permission of the Water Management District. The Florida Game and Fresh Water Fish Commission provided airboat transportation. Richard Moyroud (*in litt.*, 1992, commenting on the proposal) has also spent considerable time searching for the Okeechobee gourd, partly with Walters and Decker-Walters. The survey by Walters and Decker-Walters was intended primarily to obtain germ plasm for a taxonomic assessment, not to exhaustively search the potential range of the gourd. Electrophoretic examination of cultivated material of Okeechobee gourd had shown little genetic variability (Andres and Nabhan 1988), and the study by Walters and Decker-Walters has not revealed more.

Issue 2: Two commenters noted that more thorough, systematic, probably multi-year surveys of the Okeechobee gourd will be needed to ensure its survival. The gourd has persisted along the lake's margins without Federal protection, so why not delay listing until after the surveys are done?

Service Response: The Service finds that the best available information indicates that the Okeechobee gourd is in danger of extinction throughout all or a significant portion of its range, thereby meeting the Act's definition of an endangered species (see following section).

Issue 3: Listing the Okeechobee gourd as an endangered or threatened species may not offer any protection to the species in addition to that already provided by Florida law because the protection against "take" that the Endangered Species Act provides for animals does not extend to plants (section 9(a)(2)). In addition, the proposal's failure to determine critical habitat for the Okeechobee gourd leaves the species unprotected from Federal government actions because only critical habitat is protected under the Act's section 7 consultation requirements for Federal agency actions; undesignated habitat is unprotected.

Service Response: Under section 9 of the Act, plants located on lands under Federal jurisdiction are protected from taking. Additionally, endangered plants are protected from malicious damage or destruction on Federal lands, as well as the removal, cutting, digging up, damaging, or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. The consultation requirements of section 7 of the Act, which provide protection with respect to Federal government activities, apply to endangered and threatened plants with or without critical habitat. In absence of critical habitat, Federal agencies must still insure, under section 7(a)(2), that their actions are not likely to jeopardize the continued existence of endangered or threatened species. In addition to the protection of section 7(a)(2) and section 9, section 7(a)(1) provides that Federal agencies "shall * * * utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act."

Issue 4: There is no support for the proposal's allegation that the Okeechobee gourd was abundant in the 1920's; the failure of local historian Lawrence Will (1964) to mention the gourd indicates that it was not important.

Service Response: The Okeechobee gourd's status today (and its future prospects) are more important than its past. The final rule provides some additional historical information on Okeechobee gourd.

Issue 5: Statements about lake levels in the proposal are inaccurate. The Service should have relied on primary records available from the Corps of

Engineers or the South Florida Water Management District.

Service Response: This issue was raised by an individual, not by the affected agencies. It would appear difficult to improve on Johnson's (1974) account of the history of attempts to manage the level of Lake Okeechobee, which is cited by a Water Management District survey of the lake's history (Pesnell and Brown 1977).

Issue 6: The proposal's statement that the gourd wasn't collected often after 1930 and similar statements in Walter and Decker-Walters (1991) are baseless. The plant has been frequently seen, just not noted by botanists.

Service Response: Because the Okeechobee gourd is a member of an economically important genus, there has been considerable interest over the years in collecting this species, and specimens have been obtained by J.H. Davis, Erdman West, John Beckner, and Donovan Correll, who were hard-working, persistent collectors. Given this level of interest, it is significant that a very rare species like *Spigelia gentianoides* is better represented than the gourd in Florida herbaria. The Okeechobee gourd is obviously persisting without human assistance, but it is by no means an abundant plant, and genetic test results suggest little genetic variation.

Issue 7: How did Walters and Decker-Walters (1991) analyze phenological characters? Why did they examine fewer specimens for some characters than from others and fail to utilize all the plant material they collected?

Service Response: Phenological and other characters were measured from plants grown from seed at Fairchild Tropical Garden. The gourd trellis at Fairchild was a large facility, but it could accommodate only a limited number of these large plants. As a result, characters that require adult plants were measured from fewer plants than characters taken from seeds or seedlings.

Issue 8: Andres and Nabhan (1988) provided no valid statement on the rarity of Okeechobee gourd.

Service Response: The paper is cited with respect to the gourd's systematics, not its rarity.

Issue 9: Why was Small (1918) cited? This paper didn't mention the Okeechobee gourd.

Service Response: This paper was cited in Walters and Decker-Walters (1991) but not in the proposal. John Kunkel Small observed and collected the species on trips he reported in the 1918 paper.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Conradina glabra*, *Conradina brevifolia*, *Conradina etonia*, and *Cucurbita okeechobeensis* ssp. *okeechobeensis* (Okeechobee gourd) should be classified as endangered species, and *Pinquicula ionantha* should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Conradina glabra* Shinners (Apalachicola rosemary), *Conradina brevifolia* Shinners (short-leaved rosemary), *Conradina etonia* Kral & McCartney (Etonia rosemary), *Cucurbita okeechobeensis* ssp. *okeechobeensis* (= *Pepo okeechobeensis* Small) (Okeechobee gourd), and *Pinquicula ionantha* Godfrey (Godfrey's butterwort), are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range

Conradina Species

Conradina glabra is a narrowly distributed species that was originally restricted to a specialized habitat, the edges of steephead ravines and possibly also to upland longleaf pine-wiregrass vegetation. The plant appears to require full sunlight or light shade. Planted pine trees are likely, by the time they mature, to produce dense shade that could kill this species. Another possible problem in planted pine stands is that sand pine (which is currently grown in the area) does not tolerate prescribed fire, which may help keep habitat open for *Conradina glabra*. Other *Conradina* species grow in habitats with varying natural fire frequencies. Forestry practices may kill *Conradina glabra* directly: S. Gatewood (The Nature Conservancy, memorandum, 1987, provided by FNAI) reported that when most of the range of this plant was cut and site-prepared in 1987, he observed some *Conradina glabra* plants surviving on areas where chopping had not occurred, none where it had. The long-term consequences of the 1987 activity is not yet known; planting of slash pines in the area may have allowed *Conradina glabra* to spread through the plantations and onto road rights-of-way, but the site preparation methods used then were probably different from those in use today, and the slash pines never thrived well, casting less shade than can be expected of sand pines. The herbicide hexazinone (Velpar) is sometimes used in timber regeneration areas (S. Gatewood, memorandum, May 1987), and its use could affect *Conradina glabra*. The very limited distribution of *Conradina glabra*, and management of most of that range by a single landowner exacerbates the threat to this plant from forestry practices, simply because the same management practices are likely to be applied rangewide, at the same time. Some land with *Conradina glabra* has been converted to improved pasture, destroying the plant (Kral 1983) and rendering the land uninhabitable for it.

Except for two protected sites, *Conradina brevifolia* is threatened by destruction of its central Florida scrub habitat for agricultural purposes (citrus groves and pastures) and for residential development. As explained in the background section, 13 plant species from this habitat are federally listed (Fish and Wildlife Service 1990), and *Conradina brevifolia* is more narrowly distributed than most of the listed species. Its listing was delayed only because of uncertainty over its taxonomic status due to its treatment in Wunderlin (1982). *Conradina brevifolia* will benefit from the recovery plans that have already been prepared for these plants, from actions that are being taken to protect the threatened Florida scrub jay from take as defined by the Endangered Species Act, from planning that is underway to create a Lake Wales Ridge National Wildlife Refuge for endangered and threatened plants and animals, and from State and private land acquisition projects.

Conradina etonia is threatened by residential development of its two sites, one in a subdivision where houses are being built, and the other in an area where the landowner has obtained all necessary permits to create a residential development.

Okeechobee Gourd

Until the 1920's, Okeechobee gourd was abundant in swampy pond apple forests along the shore of Lake Okeechobee. John K. Small (1930) estimated that 95 percent of the former range of Okeechobee gourd had already been destroyed by agricultural development. It would appear that by 1930 Okeechobee gourd met the present-day standards for listing as an endangered species.

Since 1930, natural vegetation that remained along the lake shores was

further affected by lowering of the lake level from a maximum of about 20 feet above sea level (with an extreme range of stage of 7 or 8 feet). During the 1920's attempts were made to keep the lake within 13.5 to 16.5 feet (with the lake staying below minimum for most of three years). The current preferred range is 15.5 to 17.5 feet (Johnson 1974, Blake 1980, Fernald and Patton 1984). The lake level has fallen below the preferred range during dry periods in recent years, providing bare muck where the Okeechobee gourd's seeds can germinate. Any change in lake level management that would reduce the likelihood of low water would threaten this species, and changes in management that would result in more frequent low-water episodes might be beneficial.

Construction of the Hoover Dike and other water management facilities, planting of exotic melaleuca trees, the spread of Australian pine (*Casuarina*), and the use of Torry and Kreamer Islands for pasture also affected the habitat of this plant (these islands are now owned by the State and withdrawn from agricultural use). Herbicide use for vegetation management purposes may have affected the gourd. The Okeechobee gourd persists, in small numbers, in highly modified vegetation, and is highly vulnerable to further modifications of that vegetation.

Godfrey's Butterwort

Pinguicula ionantha has a limited geographic distribution. Within its range, it has been collected or observed at only 20 localities. Because it was only recognized as a distinct species in 1961, there has not been a long record of observations of this plant. Donald Schnell (*in litt.* 1990) considers the plant to be visible mostly in Apalachicola National Forest, where it is locally abundant. On a roadside where *Pinguicula ionantha* has been known to occur since 1960 (FNAI), Schnell commented: "The areas * * * north of Carrabelle have fallen off tremendously in the past ten years due to roadside work, lumbering and development—This area is outside the Forest".

The effects of forest management on *Pinguicula ionantha* are as follows: logging of cypress or pine and site preparation that removes other plants without lowering the water table is likely to favor this plant at least temporarily. Because *Pinguicula ionantha* does not tolerate shade, canopy closure in pine plantations results in loss or diminishment of the species, at least until the next logging (Kral 1983). At the present time, it is not known whether *Pinguicula ionantha* will persist indefinitely under a regime of commercial pulpwood production, but the prospects are unfavorable. If Clewell (1986) is correct in his belief that pinelands and savannahs, once converted to pulpwood production, cannot be restored, then the effects of pulpwood management on *Pinguicula ionantha* are irreversible once they occur.

The Forest Service's practice of conducting prescribed burns during the growing season to reduce the incidence of brown-spot infection of longleaf pine seedlings (Robbins and Myers in preparation) appears to favor many herbs, including *Pinguicula ionantha*. Most private land is planted with slash pine rather than longleaf, reducing the silvicultural need for prescribed fire.

Both commercial forest management and management of the Apalachicola National Forest have had the effect of allowing titi to encroach into grassy bog and savannah vegetation. This encroachment appears to pose the most serious threat to *Pinguicula ionantha* (J. Palis, Florida Natural Areas Inventory, pers. comm., 1991). Roadside maintenance, fireline cutting, and drainage ditch construction also threaten *Pinguicula ionantha* habitat.

Forest Service management practices are intended to benefit sensitive plant species, especially in the 469-acre Apalachicola Savannah Research Natural Area, which was established in 1978 (National Forests in Florida 1985). Unfortunately, management of this area to date has been based on casual observation of plant species rather than scientific monitoring to determine whether management practices benefit sensitive plants in the natural area (J. Walker, D. White, pers. comm., 1990). Folkerts (1977) had already noted the importance of conserving this plant in the National Forest.

In the Tates Hell area of Franklin County, the new owner of a 182,000 acre tract is selling small parcels to individuals; such sales may affect *Pinguicula ionantha* because an increase in the number of landowners and construction of dispersed houses will result in fire suppression. Fire suppression will reduce the habitat available to this species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is commercial trade in the genus *Conradina*, whose species have considerable horticultural potential. Robert McCartney (Woodlanders, Inc., Aiken, SC) reports that all the species of *Conradina* are easily propagated and are in cultivation (cited in U.S. Fish and Wildlife Service 1991). The Woodlanders catalog shows that the widespread, variable *Conradina canescens* is a rich source of horticultural selections, and it appears to be the species of greatest horticultural interest. Commercial trade in the rarer species of *Conradina* should not adversely affect those species, provided that it is dependent upon plants propagated from plants in cultivation. Inappropriate collecting from plants in the wild is a threat to the three *Conradina* species listed as endangered in this rule.

Due to the limited distribution and small population sizes of Okeechobee gourd, indiscriminate collecting of any nature could seriously affect this species. Hobbyist interest in gourds raises the possibility of such collecting.

During the 1970's, *Pinguicula ionantha* was one of the native carnivorous plants "most sought after and actually collected by hobbyists for personal use" (D. Schnell, *in litt.*, 1978), but the fashion for exotic green plants has died down since then. Collection of *Pinguicula ionantha* by carnivorous plant enthusiasts probably still occurs, and the species is at least periodically offered for sale in the United States by at least three nurseries (P.A. Thomas, *in litt.*, 1992). The international market is taken up by commercially propagated Mexican species (D. Schnell, R. Hanrahan, T.L. Mellichamp, *in litt.*, 1990).

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Conradina glabra is listed as a threatened species, and *Cucurbita okeechobeensis* ssp. *okeechobeensis* and *Pinguicula ionantha* are listed as endangered species on the Florida Regulated Plant Index (Florida Department of Agriculture and Consumer Services Rule Chapter 5B–40). The list was formerly part of the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes). The Regulated Plant Index regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through sections 7 and 9, and recovery planning. The Florida law provides for automatic addition of federally listed plants to the State's list as endangered species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The threats listed above are exacerbated by a number of factors, including: The limited geographic distributions of each of the five species, the fragmentation of remaining habitat for *Conradina brevifolia* into small segments isolated from each other, the small sizes of the two known *Conradina etonia* populations and the very small number of *Cucurbita okeechobeensis* ssp. *okeechobeensis* plants in the wild add to the threats faced by these species. The lack of morphological variation in *Conradina glabra* and *Conradina brevifolia* compared to *Conradina canescens*, and the high incidence of male sterility in *Conradina glabra* suggest that these species are inbred, and gene pools may be limited. Limited gene pools may depress reproductive vigor, or single human-caused or natural environmental disturbances could destroy a significant percentage of the individuals of these species, especially *Conradina glabra* and *C. etonia*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Conradina glabra, C. brevifolia, C. etonia*, and *Cucurbita okeechobeensis* ssp. *okeechobeensis* as endangered species. Each of these species is likely to become extinct in a significant portion of its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species. As discussed under Factor E for *Cucurbita okeechobeensis* ssp. *okeechobeensis*, the great majority of this species' habitat was destroyed 50 years ago, and the species has barely persisted in heavily modified areas that are subject to erratic flooding.

The preferred action for *Pinguicula ionantha* is to list it as a threatened species, in part because the uniformity of land use practices in most of its range exacerbates the risks posed by Factors A, B and D; therefore, unless conservation measures are taken, this species is likely, in the foreseeable future, to be in danger of extinction throughout a significant portion of its range, fitting the Act's definition of a threatened species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these five species.

All of the occurrences of the *Conradina* species, except for two protected sites with *Conradina brevifolia*, and many of the *Pinguicula ionantha* sites, are on unprotected private land. The sites on private land are unlikely to be affected by any Federal action in which there would be added protection from designation of critical habitat, and such a designation might motivate landowners to protect their property values and/or property rights from potential State regulation by extirpating the plants. Because *Pinguicula ionantha* occurs on commercial forest land, landowners might be inclined to attempt its extirpation to avoid limitations on the use of herbicides. Designation of critical habitat might also attract persons wishing to collect plants for horticultural purposes, with or without the written permission of the landowner that is required by Florida law. In particular, *Pinguicula ionantha* is vulnerable to carnivorous plant enthusiasts. Carnivorous plants in general are in great demand by commercial interests, although this species appears not to be in demand at the present time. For these reasons, it would not be prudent to determine critical habitat for these four species. The State and The Nature Conservancy are aware of the need to conserve *Conradina brevifolia* on lands they own. Owners of privately owned sites for the other two species have been, or will be contacted by the Service or other conservation agencies. Protection of these four species will be addressed through the recovery process and the Section 7 jeopardy standard.

The Forest Service will be able to incorporate management measures for *Pinguicula ionantha* into its planning and management systems, probably by formal agreement with the Fish and Wildlife Service. Principal private landowners can be notified of locations and the importance of protecting this species' habitat through several mechanisms, including Florida's system for protecting endangered and threatened species from pesticide (including herbicide) application, and Florida's procedures for regional and local planning.

For the Okeechobee gourd, the Service finds that designation of critical habitat is not prudent because of the populations of Okeechobee gourd are very small and localized. Designation of critical habitat could attract collectors and curiosity-seekers, inasmuch as there is hobbyist interest in gourds. Although Federal listing as endangered provides penalties in addition to those provided in Florida law against unauthorized removal of Okeechobee gourd plants from public land, such prohibitions against take are difficult to enforce, and publication of critical habitat descriptions and maps would only add to the threats faced by this species. The Army Corps of Engineers and the South Florida Water Management District are aware of the Okeechobee gourd on areas they manage. Restoration and protection of this species' habitat will be addressed through the recovery process and through the Section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The populations of *Conradina brevifolia* on public and private conservation lands will require management of the vegetation, as part of management to benefit other endangered and threatened plant and animal species in the same habitat (Fish and Wildlife Service 1990). Land acquisition within the range of *Conradina brevifolia* is planned by the State of Florida and the Fish and Wildlife Service.

VOL
58
ISS
131
JL
12
1993
UMI

Protection of the threatened Florida scrub jay from take due to destruction of its scrub habitat may benefit *Conradina brevifolia* and *C. etonia*, both of which occur in scrub vegetation inhabited by scrub jays.

Conservation of *Conradina glabra* may require ensuring that use of herbicides in forestry or road right-of-way maintenance does not jeopardize this plant.

The populations of Okeechobee gourd at the periphery of Lake Okeechobee will require careful management, possibly including a program of habitat modification and enhancement, should such measures prove feasible. Control or extirpation of exotic pest plants such as melaleuca and Brazilian pepper and planting of pond apple may be necessary or desirable to protect existing populations of Okeechobee gourd or to restore former habitat.

Pinguicula ionantha's federally listed status will encourage efforts to conserve it in Apalachicola National Forest. The Florida Department of Agriculture and Consumer Services will ensure that it is not jeopardized by herbicide use under a program approved by the Environmental Protection Agency. Listing of *Pinguicula ionantha* also will encourage its conservation through Florida's planning procedures, supervised by the Florida Department of Community Affairs, and may encourage land acquisition or other land conservation measures by the State.

The Fish and Wildlife Service will prepare recovery plan(s) for all five species and encourage conservation efforts by the State, private landowners, and private conservation groups.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 (for endangered species), and 17.71 and 17.72 (for threatened species) set forth a series of general prohibitions and exceptions for all endangered or threatened plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Enforcement of the Endangered Species Act's trade prohibitions on *Conradina glabra* and *C.brevifolia* could be difficult because *Conradina canescens*, a widespread, secure species, is morphologically variable, and some individuals belonging to this species may be indistinguishable from individuals belonging to *C. glabra* and *C. brevifolia*. The Endangered Species Act (Sec. 4(e)) would allow for *Conradina canescens* to be treated as a threatened or endangered species, even though not listed as such, to facilitate enforcement of trade prohibitions, if doing so would "substantially facilitate the enforcement and further the policy of this Act" (Sec. 4(e)(C)). However, this course of action is unnecessary because none of the species of *Conradina* is presently threatened by taking for purposes of horticultural trade. Information available to the Service indicates that *Conradina* plants in trade are of cultivated origin. It is anticipated that trade permits will be sought and issued for members of the genus *Conradina* because every member of the genus is currently in commerce across state lines.

It is also anticipated that trade permits will be sought and issued for Okeechobee gourd because its seeds are transported across state lines, and probably internationally, in the course of plant breeding activities and maintenance of cultivated stocks of germplasm. Hobbyists may also trade seeds or possibly cuttings. The Okeechobee gourd does not appear to be sold across state lines to any large extent.

For *Pinguicula ionantha*, it is anticipated that relatively few trade permits will be sought or issued because this plant is not known to be traded at the present time. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited herein is available upon request from the Service's Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •		•	•	•	•	•
Cucurbitaceae—Gourd family:						
Cucurbita okeechobeensis	Okeechobee gourd.	U.S.A. (FL)	E	507	NA	NA
• • •		•	•	•		
Lamiaceae—Mint family:						
• • •		•	•	•	•	•
Conradina brevifolia	Short-leaved rosemary.	U.S.A. (FL)	E	507	NA	NA
Conradina etonia	Etonia rosemary .	U.S.A. (FL)	E	507	NA	NA
Conradina glabra	Apalachicola rosemary.	U.S.A. (FL)	E	507	NA	NA
• • •		•	•	•	•	•
Lentibulariaceae—Bladderwort family:						
Pinguicula ionantha	Godfrey's butterwort.	U.S.A. (FL)	T	507	NA	NA
• • •		•	•	•	•	•

Dated: June 8, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–16302 Filed 7–9–93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140; I.D. 070193A]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of the drift gillnet fishery.

SUMMARY: The Secretary of Commerce (Secretary) closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that the entire annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 16, 1993. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota established for this category.

EFFECTIVE DATES: Closure is effective 1200 hours local time July 16, 1993, through 2359 hours local time December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

By final rule effective August 4, 1992 (57 FR 34246, August 4, 1992), the Secretary implemented quota provisions for Atlantic swordfish. A quota of 47,583 pounds (21,584 kg) was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, and July 1 through December 31. On June 17, 1993 (58 FR 33568, June 18, 1993), the 1993 Atlantic swordfish TAC adjustment was filed with the Office of the Federal Register as an interim final rule. This adjustment, based on revised historical data, increased the semi-annual swordfish quota for the drift gillnet category. From this revised semi-annual swordfish drift gillnet quota of 69,286 pounds (31,428 kg), a total of 39,820 pounds (18,062 kg) were landed by drift gillnet vessels during the January 1 to June, 30, 1993, season opening. The underharvest of 29,466 pounds (13,366 kg) is therefore added to the second semi-annual quota to yield a total of 98,752 pounds (44,794 kg).

Under 50 CFR 630.25(a), the Secretary is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a notice with the Office of the Federal Register at least 8 days before the closure is to become effective.

The Northeast Fisheries Science Center, NMFS, estimates that 11 drift gillnet vessels will begin fishing on or about July 1, 1993. Based on recent average catch per set data for the months of June and July, NMFS has determined that the adjusted drift gillnet quota for the July 1 through December 31, 1993 period of 98,752 pounds (44, 794 kg) of swordfish will be reached on or before July 16, 1993. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 1200 hours local time July 16, 1993, through 2359 hours local time December 31, 1993.

During the closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet (1) may not fish for swordfish from the North Atlantic swordfish stock; (2) may not possess more than two swordfish per trip in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. lat.; and (3) may not land more than two swordfish per trip in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and complies with E.O. 12291. Notice of this action will be mailed to permit holders and dealers.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

VOL
58
ISS
131
JL
12
1993
UMI

Dated: July 6, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16354 Filed 7–6–93; 3:45 pm]

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[Release N
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[1] 17 CFR 24

Proposed Rules

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33–7006; 34–32575; File No. S7–20–93]

RIN 3235–AF90

Penny Stock Definition for Purposes of Blank Check Rule

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise the definition of "penny stock" in Rule 3a51–1 under the Securities Exchange Act of 1934 ("Exchange Act") for purposes of its rules relating to registration statements filed by blank check companies under the Securities Act of 1933 ("Securities Act"). The proposed revision would make the exclusion from the penny stock definition for securities priced at five dollars or more inapplicable to securities offerings subject to section 7(b) of the Securities Act and Rule 419 thereunder.

DATES: Comments should be received on or before August 11, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549. All comment letters should refer to File No. S7–20–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. 20549.

FOR FURTHER INFORMATION CONTACT: Richard Wulff, Division of Corporation Finance (202) 272–2644, or Belinda Blaine, Branch Chief, Division of Market Regulation (202) 272–2844.

SUPPLEMENTARY INFORMATION: The Commission is proposing to revise its penny stock definition, Rule 3a51–1 [1] under the Exchange Act,[2] as applicable to blank check offerings so that offerings registered with the Commission under the Securities Act [3] by blank check companies will be required to comply with the Commission's rules governing blank check registration statements, regardless of the price at which the securities are offered.

I. Background

On April 20, 1992, the Commission, pursuant to the requirements of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990,[4] adopted rules governing the activities of broker-dealers engaging in transactions in penny stocks with or for their customers.[5] These rules included a definition of the term "penny stock" to implement new section 3(a)(51) of the Exchange Act,[6] which defines the term to include any equity security other than those excluded pursuant to Commission rulemaking. Rule 3a51–1 excludes certain equity securities from the definition of "penny stock." [7]

On April 13, 1992, pursuant to the same legislative authority, the Commission adopted rules relating to Securities Act registration statements filed by blank check companies.[8] For purposes of Securities Act registration statements, a blank check company is a development stage company [9] that is issuing a penny stock and that has no specific business plan or purpose or has indicated that its business plan or purpose is to merge with an unidentified company.[10] Congress found the offerings of blank check companies to be common vehicles for fraud and manipulation in the penny stock market and directed the Commission to develop disclosure-based regulations so that investors might make informed investment decisions with respect to these securities offerings. Thus, as contemplated by section 7(b) of the Securities Act,[11] Rule 419 [12] prescribes special requirements with regard to the registration statements filed by blank check companies. The rule (1) requires issuers to provide timely and specific disclosure about companies to be acquired and the application of proceeds; (2) places limits on the use of proceeds and distribution of the securities by way of a mandatory escrow or trust procedure until the disclosures have been made through a post-effective amendment; and (3) provides a refund right to investors. The provision is strengthened by Rule 15g–8,[13] which

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[1] 17 CFR 240.3a51–1.

[2] 15 U. S. C. 78a *et seq.*

[3] 15 U. S. C. 77a *et seq.*

[4] Pub. L. No. 101–429 (October 15, 1990).

[5] Release No. 34–30608 (April 20, 1992)[57 FR 18004].

[6] 15 U. S. C. 78c(a)(51)(A).

[7] Rule 3a51–1 excludes from the definition of penny stock any security that is a "reported security," i. e., a security for which last sale reports are collected and made available pursuant to an effective transaction reporting plan as defined by Rule 11Aa3–1(a)(4). Securities listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("AMEX"), as well as securities that meet NYSE or AMEX listing standards but are listed only on regional exchanges, are reported securities for purposes of the rule. Securities quoted on the National Association of Securities Dealers, Inc.'s ("NASD") automated quotation system ("NASDAQ") that are designated as National Market System ("NMS") securities also are reported securities.

Also excluded from the definition of penny stock, for most purposes, are securities that are registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to Rule 11Aa3–1, 17 CFR 240.11Aa3–1, provided that (1) current price and volume information with respect to transactions in those securities is required to be reported and is made available to vendors pursuant to the rules of the national securities exchange; and (2) the securities are purchased or sold in a transaction on or through the facilities of a national securities exchange, or as part of a distribution of the security. Similarly excluded are securities authorized, or approved for authorization upon notice of issuance for quotation on NASDAQ, subject to the condition that current price and volume information with respect to transactions in those securities be reported and made available to vendors pursuant to the rules of the NASD.

Other exclusions cover securities that have a price of five dollars or more (including any share of any unit that has an independent exercise price) and securities issued by an issuer that has either (1) net tangible assets in excess of $2 million, if in continuous operation for at least three years, or $5 million, if not in continuous operation for such period; or (2) average revenue of at least $6 million for the last three years.

Securities issued by an investment company registered under the Investment Company Act of 1940, 15 USC 80a–1 *et seq.*, and put and call options issued by the Options Clearing Corporation also are excluded from the definition of "penny stock."

[8] Release No. 33–6932; 34–30577; IC–18651 (April 13, 1992) (57 FR 18037).

[9] Rule 1–02(h) of Regulation S–X, 17 CFR 210.1–02(h), defines such a company as one that is devoting substantially all of its efforts to establishing a new business in which planned principal operations have not commenced, or have commenced but there has been no significant revenue therefrom.

[10] See section 7(b) of the Securities Act, 15 U. S. C. 77g(b); Rule 419(a)(2), 17 CFR 230.419(a)(2).

[11] See also H. Rep. No. 101–617 at 34–35.

[12] 17 CFR 230.419.

[13] 17 CFR 240.15g–8.

VOL
58
ISS
131
JL
12
1993
UMI

makes unlawful transactions of any kind in securities that are contained in a Rule 419 escrow or trust account.

II. Discussion

The Commission is proposing to delete the exclusion from the definition of penny stock for securities priced at five dollars or more, as it applies to the rules governing registered offerings by blank check companies. After more than a year of experience with the new Commission rules, it appears that, for blank check offerings, the price threshold presents a mechanism for avoiding the regulatory scheme contemplated by Congress.

In enacting the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Congress responded to extensive evidence of fraudulent and manipulative practices involving the issuance and secondary market trading of penny stocks and blank checks.[14] Among other things, Congress was specifically concerned about the validity of blank check vehicles and their frequent involvement in manipulative schemes that harm investors. In this regard, Congress included in the Act a specific finding that:

> The present regulatory environment has permitted the ascendancy of the use of particular market practices such as "reverse mergers" with shell corporations and "blank check" offerings, which are used to facilitate manipulation schemes and harm investors.[15]

While most of the penny stock rules adopted by the Commission deal with secondary trading transactions, the blank check rule, as Congress directed, is targeted toward the initial offering by the issuer of the securities. Its purpose is to provide complete issuer disclosure to investors, not only when funds are first sought, but also when a specific use of proceeds is identified, with a right to obtain a refund when such information is provided. Applying the five dollar exclusion contained in Rule 3a51–1 to offerings by blank check issuers has not operated to further the intended purpose of Rule 419.

Ordinarily, the price at which securities are to be offered takes into account a number of factors, including book value, asset value, projected earnings, the price-earnings ratio of other companies in the same industry, and current market price. In an initial public offering, certain of these typical factors—for example, those relating to the market for the issuer's securities—are not available. Where an offering is made by a blank check company, objective pricing factors are scarce and pricing is largely arbitrarily determined.[16]

A comparison of the pricing determinations made for blank check registration statements filed before the effective date of Rule 419, and those made after that date, reflect this arbitrariness. Before the effective date, such offerings were almost always priced below five dollars per share. After the rule's effective date, however, a high proportion of registered offerings by registrants with no business plan or purpose other than acquisitions were priced at or higher than five dollars per share, the threshold for falling outside the scope of Rule 419. Indeed, some registration statements filed after the new rule became effective state expressly that the offering price was chosen to avoid the rule's requirements.

III. Proposed Revision and Request for Comments

The Commission proposes to revise the definition of "penny stock" for purposes of section 7(b) of the Securities Act and Rule 419 thereunder so that the five dollar price exclusion provided by Rule 3a51–1(d) would not apply to the offerings of blank check companies.[17] All other provisions of the penny stock definition and its exclusionary provisions would continue to apply to blank check companies.

The Commission requests comment on this proposal. Furthermore, comments are also solicited as to other ways in which the remedial purposes of the blank check rules can be fully accomplished. For example, comment is sought on whether the dollar threshold should continue to be applicable to the offerings of blank check companies, but at a higher amount, such as $10, $20 or $40. Comments also are sought about the other exclusions from the penny stock definition for purposes of the blank check rule and whether they too should be modified in order to protect investors. For example, should the asset or revenue levels[18] be increased for purposes of exclusion from the penny stock definition in the blank check rules, and if so, what higher levels should be used?

The Commission also is considering whether this proposed revision, if adopted, should become effective immediately upon publication in the **Federal Register**, and apply to all filings currently pending with the Commission as well as to registration statements filed by blank check companies after such date. Comments on this matter are requested.

IV. Effects on Competition

Section 23(a) of the Exchange Act[19] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects, if any, of such rules and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. Comment is solicited as to whether the proposal, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a).

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act.[20] The Analysis notes that the Penny Stock Reform Act defines "blank check company" and directs the Commission to prescribe special registration procedures for those companies. Many small entities are within the definition of blank check company provided by Congress. Congress excluded from that definition, however, small entities with a specific business plan or purpose. Accordingly, those entities are not subject to the requirements of the rules. To consider exclusion of additional small entities from the scope of the rules would be inconsistent with the Congressional definition of blank check company and Congressional directive to the Commission to adopt special procedures for those specified entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 7–8, Washington, DC 20549, (202) 272–2644.

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[14] For example, Congress found that "[u]nscrupulous market practices and market participants have pervaded the 'penny stock' market with an overwhelming amount of fraud and abuse." Section 502(4), Pub. L. 101–429 (October 15, 1990); see also, H. Rep. No. 101–617 at 20 ("The penny stock market is not an 'efficient market'. In the penny stock market, little or no useful information upon which the small investor can base a decision is provided.").

[15] Section 502(8), Public Law 101–429 (October 15, 1990).

[16] See, e.g., W. Prifti, Securities: Public & Private Offerings at 1A–8 (Jan. 1993).

[17] As a result, this exclusion also would be unavailable for purposes of Rule 15g–8, which refers to Rule 419.

[18] Rule 3a51–1(g). See n.7, *supra*.

[19] 15 U.S.C. 78w(a).

[20] 5 U.S.C. 603.

VI. Statutory Basis, Text of Proposal and Authority

The amendment to the Commission's rule is being proposed pursuant to sections 7(b) and 19(a) of the Securities Act and sections 3(a)(51)(A) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. In § 240.3a51–1, revise the introductory text of paragraph (d) to read as follows:

§ 240.3a51–1 Definition of penny stock.

* * * * *

(d) Except for purposes of section 7(b) of the Securities Act and § 230.419 of this chapter, that has a price of five dollars or more;

* * * * *

By the Commission.

Dated: July 2, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16300 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

July 7, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of filings and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received filings from five industry working groups relating to standards for Electronic Bulletin Boards and is permitting interested persons an opportunity to file comments on these filings.

DATES: Comments due by July 14, 1993.

ADDRESSES: Comments should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0566.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Notice of Filings

Take notice that Industry Working Groups 1, 2, 4, and 5 made filings in this proceeding on July 1, 1993, and Working Group 3 made a filing on July 6, 1993, regarding proposals for standards governing Electronic Bulletin Boards which pipelines are required to implement under Commission regulations.

Any person desiring to submit comments on these filings should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 on or before July 14, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16399 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is reopening the public comment period and announcing the receipt of revisions to a previously proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revised amendment proposes further changes to the State's revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This documents sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t., August 11, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining

VOL
58
ISS
131
JL
12
1993
UMI

Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Discussion of Proposed Amendment

By letter dated September 4, 1992, (Administrative Record No. KS–533) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment on its own initiative to improve its program.

OSM announced receipt of the proposed amendment in the October 29, 1992, **Federal Register** (57 FR 49051) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 30, 1992. The public hearing scheduled for November 23, 1992, was not held because no one requested an opportunity to testify.

On December 15, 1992, Kansas requested that OSM meet with the State in a public meeting to discuss any concerns that OSM had with the proposed amendment (Administrative Record No. KS–544). By letter to Kansas dated March 24, 1993 (Administrative Record No. KS–552), OSM identified some 37 deficiencies and 27 editorial comments concerning the September 4, 1992, amendment submission. On April 15, 1993, OSM held a public meeting in Pittsburg, Kansas to discuss these concerns. As a result of this public meeting and in response to OSM's letter, Kansas has submitted a revised amendment by letter dated June 24, 1993 (Administrative Record No. KS–559). This new amendment submission contains further revisions to the Revegetation Guidelines and Requirements for Kansas Coal Mine Reclamation, Second Edition, Version 6.0, June 23, 1993. These guidelines include the revegetation bond release requirements for Phase II and Phase III liability release.

The revised guidance document submitted by Kansas is intended to fulfill the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) that standards for revegetation success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in the approved regulatory program. The substantive changes proposed Kansas respond to the 37 deficiencies and 27 editorial comments of the OSM issue letter dated March 24, 1993. Due to the numerous revisions throughout the revised guidance document, OSM only provides a summary of the proposed standards for revegetation success and the major contents of the revegetation guidelines for the measurement of revegetation success.

The phase II requirements for previously mined areas without topsoil are that the area must have 1 year of ground cover success. The phase III requirements for previously mined areas without topsoil are that the area must have 2 years of ground cover success. For both phase II and III liability release there are no productivity requirements. The ground cover success standard may be established by a premine survey or by an acceptable reference area.

The phase II requirements for pasture or grazing land uses are that: (1) The areas must have 1 year of ground cover success; and (2) the success standard for ground cover is 100-percent cover (alternative success standards may only be used if a valid premine survey is conducted and approved by Kansas as part of the permit). The phase III requirements are that: (1) These areas must have 2 years of ground cover success; and (2) the areas must have 2 crop-years of forage production success. This forage production standard may be calculated or a reference area, established with the procedures described in the guidelines, may be used.

The phase II requirements for cropland land use areas are that: (1) These areas must have 1 year of ground cover success; or (2) (if the area is to be all row cropped) there must be 1 crop-year of production success, and the productivity success standard will be established using the procedures in the guidelines. The ground cover success standard is established as 100-percent cover. The phase III requirements are that: (1) If test plots are used, (a) there must be 2 years of ground cover success from the adjacent forage area, (b) there must be 1 crop-year of forage production success from the adjacent area, and (c) there must be 1 crop-year of crop production success (this may need to be of a deep rooted crop as required in the permit application); and (2) if the entire area is row cropped, then the area must meet 2 crop-years of production success (one of those crop-years of production success may need to be of a deep rooted crop as indicated in the permit application).

The phase II requirements for prime farmland are that: (1) The success standard for ground cover is 100-percent cover (alternative success standards may only be used if a valid premine survey is conducted and approved by Kansas as part of the permit); (2) one crop-year of production success with the deep rooted crop will be required; and (3) if test plots are to be used, 2 years of ground cover success and 1 crop-year of forage production success will be required.

The guidelines consist of the eight major sections including: (1) The applicability of the document in the introduction; (2) the regulatory requirements, references, terms and definitions; (3) how to establish revegetation success standards with reference areas or technical standards for productivity, cover, and stem density; (4) vegetation standard applicability, sampling options, and requirements discussing exclusions, sample adequacy, test plots selection, and averaging of data; (5) phase II and III bond release requirements by land use for previously mined and permanent program pasture and grazing land use, prime farmland, cropland land use, previously mined and permanent program fish and wildlife habitat, recreation, shelterbelts, and forest products land uses, and industrial, commercial, or residential land uses; (6) a description of the methods for vegetation measurement for production including the annual biomass and row crop methods, including a description of the point intercept method for measurement for ground cover and a description of the sampling circle method for measuring woody stem density; (7) list of reference citations; (8) five appendices including (a) the USDA Soil Conservation Service (SCS) Soil Survey Database with crop yields, (b) the USDA SCS Technical Guide Notice KS–145 with crop yields, (c) the method for conversion of Animal Unit Months (AUM) data, (d) a list of acceptable plant species in Kansas, (e) forms for reporting planting data, and (f) example calculations for revegetation.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional revisions submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–16453 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 934

North Dakota Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the North Dakota Abandoned Mine Land Reclamation (AMLR) Program (hereinafter the "North Dakota Program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would implement a State-administered Abandoned Mine Land Emergency Program in accordance with section 410 of SMCRA.

This document sets forth the times and locations that the North Dakota Program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t., August 11, 1993. If requested, a public hearing on the proposed amendment will be held on August 6, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t., on July 27, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota Program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Louis A. Ogaard, Director, Abandoned Mine Lands Division, Public Service Commission, State Capitol, Bismarck, ND 58505–0480, Telephone: (701) 224–4086.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota AMLR Program

On December 23, 1981, the Secretary of the Interior approved the North Dakota AMLR program. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota AMLR program can be found in the December 23, 1981, **Federal Register** (46 FR 62253). Subsequent actions concerning North Dakota's program amendments can be found at 30 CFR 934.25.

II. Proposed Amendment

By letter dated May 25, 1993, (Administrative Record No. ND–R–01), North Dakota submitted a proposed amendment to its AMLR program pursuant to SMCRA. North Dakota submitted the proposed amendment at the request of OSM. North Dakota proposes to amend the North Dakota Reclamation Plan to implement a State-administered Abandoned Mine Land Emergency Program in accordance with section 410 of SMCRA.

III. Public Comment Procedures

In accordance with the provisions at 30 CFR 884.15, OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria at 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. July 27, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meeting will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

VOL 58 ISS 131 JL 12 1993 UMI

IV. Procedural Determinations

1. Executive Order No. 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or disapproval of State abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State abandoned mine land reclamation plans and revisions thereof, since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State abandoned mine land reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 1993.

W. Hord Tipton,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 93–16454 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4677–9]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Washington, DC to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on July 28–30. On July 28, we'll start at 9 a.m. and run until completion. On July 29, we'll start at 8:30 a.m. and run until completion. On July 30, we'll start at 8:30 a.m. and end by 4 p.m.

ADDRESSES: The meeting will be held at the Stouffer Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036, [202] 347–3000.

FOR FURTHER INFORMATION CONTACT:

Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919–541–5408. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–468–5822.

Dated: July 6, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–16435 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[IN26–1–5748; FRL–4678–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On February 4, 1992, the Indiana Department of Environmental Management (IDEM), submitted requested revisions to the Indiana State Implementation Plan (SIP) for Lead. They include: Source-specific lead emission limitations and operating provisions for the Refined Metals Inc. (Refined Metals) Marion County lead smelting facility in the portion of Marion County designated nonattainment for lead, a facility name change from General Battery Corporation to Exide Corporation, and several editorial changes. USEPA has completed its evaluation and is proposing to fully approve the editorial changes; to give a limited approval of the emission limitations and the other requirements applicable to the Marion County nonattainment area; and acknowledges the facility name change. At the same time, USEPA is proposing to disapprove the requirements applicable to the nonattainment area because of certain enforceability and modeling deficiencies and because the State failed to address all pertinent federal requirements.

DATES: Comments on this revision request and on the proposed USEPA action must be received by August 11, 1993.

ADDRESSES: Copies of the SIP revision request and related technical information are available for inspection at the following address: (It is recommended that you telephone Rosanne Lindsay at (312) 353–1151, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay, Regulation Development Branch, Regulation Development Section (5AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1151.

SUPPLEMENTARY INFORMATION:

I. Background/History

In a **Federal Register** notice published on November 6, 1991, USEPA announced that a portion of Marion County, Indiana was being designated nonattainment for lead under section 107(d)(5) of the 1990 CAA based on violations of the lead NAAQS, monitored in 1990, in the vicinity of the Refined Metals facility in Marion County. See, e.g., 56 FR 56694 (codified at 40 CFR 81.315). The lead nonattainment designation for this area became effective on January 6, 1992. On February 4, 1992, IDEM submitted to the USEPA a site-specific revision request to the Indiana lead SIP to address these 1990 NAAQS violations. This revision request amends emission limitations and other requirements for Refined Metals as specified in Title 326 IAC 15–1–2,[1]. Additional revisions to Rule 15–1–2 include a facility name change from General Battery Corporation to Exide Corporation, and several editorial changes.

Section 191(a) of the CAA requires that States containing areas designated nonattainment for lead submit a SIP meeting the requirements of part D, title I of the CAA within 18 months of the nonattainment designation. Section 192(a) further provides that such SIP must provide for attainment of the lead NAAQS as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation. Thus, Indiana must submit a SIP by July 6, 1993, for the portion of Marion County designated nonattainment meeting the requirements of part D, title I of the CAA. Among other things the requirements include: Implementation of all reasonably available control measures (RACM), including reasonably available control technology (RACT); demonstration of reasonable further progress (RFP); a comprehensive, accurate and current inventory of all sources of lead in the nonattainment area; a new source review (NSR) program meeting the requirements of section 173 of the CAA (i.e., require permits for construction and operation permits for new or modified major stationary sources of lead in the nonattainment area); enforceable emission limits, timetables and schedules for compliance; the applicable requirements of section 110(a)(2); and provisions for implementation of specific measures (contingency measures) upon a determination by USEPA that the nonattainment area fails to make RFP or meet the NAAQS by the applicable date (see, e.g., sections 172(c), 173 and 171 of the CAA). USEPA provided the States with guidance SIP requirements for lead nonattainment areas in the April 16, 1992, General Preamble for the Implementation of title I of the CAA of 1990 (see, e.g., 57 FR 13498; see also 57 FR 18070, April 28, 1992), and in a July 16, 1992, draft addendum of supplemental information to the General Preamble (see, e.g., 57 FR 31477). The State's February 4, 1992, submittal is available for inspection at the USEPA Region 5 Office.[2]

II. Identification of Review Criteria

USEPA has evaluated the revisions to Indiana's lead SIP for consistency with the requirements of sections 191(a) and 192(a) of the CAA, and other applicable federal requirements. Additional guidance documents containing USEPA policy include: Questions and Answers prepared by the Office of Air Quality Planning and Standards (OAQPS) from April-July 1992; the April 16, 1992, General preamble (see, e.g., 57 FR 13498; and 57 FR 18070); and the July 16, 1992, draft addendum of supplemental information to the General Preamble (see, e.g., 57 FR 31477).

III. USEPA Review and Findings

A. Review of Submittal Applicable to Portion of Marion County Designated Nonattainment for Lead

This revision request provides for a total enclosure of the building housing the sources considered to be responsible for the monitored violations (i.e., blast and dust furnaces). In addition, a new baghouse control system and stack, as well as revised emission limits for existing stacks, and several operating provisions are intended to combine and minimize emissions to prevent any further violations of the NAAQS at the Refined Metals facility. The emission limit for the new baghouse stack (M–4) is 0.30 lbs lead/hr. Lead emission limits for three other existing baghouse stacks, supported by modeling, are presented below:

EXISTING BAGHOUSE STACKS

Baghouse stack	Old limit (lb/hr)	New limit (lb/hr)
M–1	1.132	0.91
M–2	.015	.15
M–3	.005	.15

In addition to the above, 326 IAC 15–1–2, sections 2(1)(A) to 2(1)(I) contain the following provisions to reduce the release of fugitive emissions containing lead to the atmosphere: (1) The installation and operation of several hooding systems in several areas of the facility, (2) enclosure of the screw conveyors used to transport lead dust, (3) a 3 percent opacity limit for all stacks with compliance determined through the use of continuous opacity monitor (COM) data, and (4) stack testing of the above stacks. Compliance dates for requirements 1 and 2 are on or before June 1, 1987; for requirement 3, compliance is required by April 30, 1992; and for requirement 4, compliance is required by June 30, 1992.

B. Review of SIP Deficiencies

USEPA has reviewed Indian's rule for consistency with the CAA, USEPA regulations and policy, and has found that the revised rule does not adequately address certain applicable requirements necessary for full approval. Three TSD's dated March 18, 1992, February 1, 1993, and May 4, 1993, provide a technical basis for this action.

Section 110(a)(2)(C) of the CAA requires that the SIP contain a program for the enforcement of SIP measures, and for the regulation of the modification and construction of stationary sources. USEPA has also reviewed this SIP submittal for enforceability. A technical support document (TSD), dated March 18, 1992, identifies several enforceability deficiencies in the submitttal that must be addressed to fulfill USEPA requirements. The deficiencies are:

Section 2(a)(1)(D)

- A definition for "natural draft opening" is not incorporated in this section of the State's rule.
- A method to measure average air velocity through natural draft openings is not incorporated in this section of the State's rule.

[1] Subsequent to USEPA's approval of Indiana's Lead rule in 325 IAC Article 15, Indiana recodified this rule (and its other air pollution control rules) under title 326. USEPA has not taken action on this recodification nor on subsequent modifications to 326 IAC Article 15. Action on this recodification will be addressed in a future **Federal Register**.

[2] USEPA approved the Indiana lead SIP called for in response to the issuance of lead NAAQS and subject to the requirements of then section 110 of the CAA (see Title IAC 326 15–1 on April 10, 1988 (53 FR 12896) and October 3, 1988 (53 FR 38719)).

VOL 58 ISS 131 JL 12 1993 UMI

Section 2(a)(1)(F)

• A definition for "building opening" is not incorporated in this section of the State's rule.

Section 2(a)(1)(G)

• The State's rule does not specify certification requirements for continuous opacity monitors (COMs).

• The COM operating requirement specified in 325 IAC 3–1.1 is not federally enforceable because 326 IAC 3–1.1 is not part of the SIP. Although USEPA approved the incorporation of 325 IAC 3–1.1 into the Indiana SIP on October 5, 1981, (46 FR 44448), the recodified rule, which is substantially revised, has been submitted (but not yet approved) as a SIP revision.

Section 2(a)(1)(I)

• Reference methods for stack testing are not provided as part of the State's rule. (USEPA Reference Methods 1 through 5 should be employed.)

• This paragraph of the State's rule does not include a definition for "subdivision" or "division".

• This paragraph of the State's rule should require operation at full capacity during compliance stack testing.

Section 110(a)(2)(K) of the CAA authorizes USEPA to require modeling of a complete and current inventory of all lead sources including industrial (stack emissions) and open dust sources (fugitive emissions) (see also sections 191(a) and 172(c)(3)). USEPA's review indicates that fugitive emissions were not considered in the modeling. USEPA recognizes that Refined Metals is controlling lead emissions from process (industrial) sources by way of enclosures and operating procedures. However, Indiana's requested SIP revision does not consider open dust sources (i.e., exposed materials that generate fugitive emissions of solid particles by the force of wind or machinery). Potential sources or activities include dust piles, unpaved roads, parking lots, the open transport, storage, or transfer of materials containing lead, and heavy construction activities. Significant airborne lead emissions could come from roadways near the facility and wind erosion due to lead deposition on the soil. It is suggested that a silt content analysis be done on roadways and open areas. Then, using USEPA guidance, emissions can be calculated and modeled.

When supplementary modeling is performed, fugitive emissions must be considered. The modeling should include an explanation and/or description of sources that were explicitly modeled and how their emission rates were developed. In the previous modeling, emission limits of casting fugitive emissions were not substantiated by calculations showing the derivation of the numbers. Final modeling must be performed according to provisions set forth in USEPA's *Guideline on Air Quality Models (Revised)*, and other appropriate USEPA guidance, and must demonstrate attainment as expeditiously as practicable (see sections 192(a) and 172(c)(1) of the CAA).

Furthermore, section 172(c)(1) calls for the implementation of RACM in lead nonattainment areas. USEPA has, for example, made available draft guidance identifying available measures for sources of fugitive lead-bearing dust that represent the suggested starting point for specifying RACM in a SIP (see, e.g., 57 FR 31477). Where these measures are not implemented, a justification showing why they were not "reasonably" available for a particular area should be prepared. There are several reasons why otherwise available measures may not be "reasonably" available for a particular area. *Id.*; see also 57 FR 13540–44.

Previously, areas that were not attaining the lead NAAQS were not designated nonattainment and therefore were not required to have a nonattainment NSR program (see, e.g., 57 FR 13550). Further, the 1990 Amendments to the CAA made changes to the NSR program. (see, e.g., 57 FR 13498 & 57 FR 18079, app. D). Pursuant to sections 191(a) and 172(c)(5) of the CAA, States containing areas designated nonattainment for lead must submit as part of the applicable SIP for such area, provisions requiring permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area that meets the requirements of revised section 173 of the CAA. Thus, Indiana must submit such a program by July 6, 1993, for the portion of Marion County designated nonattainment for lead.

USEPA also notes that the fugitive lead dust control plan, submitted for Refined Metals as part of a State-wide control plan, and disapproved on February 1, 1993 [3], is still required under part D, title I of the CAA which requires compliance with the provisions of section 110(a)(2) (see, e.g., section 172(c)(7)). The State of Indiana has notified USEPA of its intention to submit fugitive lead control plans for several facilities including Refined Metals. Pursuant to section 191(a) of the Act, the State of Indiana must submit such control plans for Refined Metals to USEPA by July 6, 1993.

[3] Pursuant to the Indiana SIP, the State is required to submit approvable source-specific fugitive lead dust control plans as revisions to the SIP.

IV. Proposed Rulemaking Action; Solicitation of Public Comment

USEPA is proposing a "limited" approval of the emission limits and other provisions of the submittal specifically applicable to the portion of Marion County designated nonattainment for lead because not all of the applicable requirements under sections of the CAA have been met (see, e.g., section 110(k)(3)). Further, this portion of the submittal is not composed of separable parts which meet all applicable CAA requirements.

The portions of the submittal that apply to the lead nonattainment area in Marion County do not meet all of the requirements of sections 191(a) and 192(a) of the CAA because, among other things, the SIP does not:

(1) Provide for the implementation of RACM (including RACT) for sources of lead in the area or does not otherwise demonstrate why available control measures are not "reasonably" available for such sources (see, e.g., section 172(c)(1), 57 FR 13540–44, 57 FR 18070 and 57 FR 31477);

(2) Contain a nonattainment NSR program meeting all of the requirements of section 173 of the CAA (see, e.g., sections 172(c)(5) and 173, 57 FR 13498 and 57 FR 18070);

(3) Adequately and appropriately demonstrate attainment of the lead NAAQS as expeditiously as practicable but no later than January 6, 1997 (see, e.g., sections 192(a), 110(a)(2)(K), and 57 FR 13550);

(4) Contain a comprehensive, accurate current inventory of actual emissions in the area (see, e.g., section 172(c)(3) and 57 FR 13550);

(5) Provide for reasonable further progress (see, e.g., sections 172(c)(2) and 171(1), and 57 FR 31477); and

(6) Contain contingency measures (see, e.g., section 172(c)(9) and 57 FR 31477).

Nevertheless, the portions of the submittal applicable to the portion of Marion County designated nonattainment for lead do contain measures and other provisions that advance the NAAQS-related air quality protection goals of the CAA. Therefore, USEPA is proposing a "limited" approval of the Indiana Title 326 IAC 15–1–2 for Refined Metals' emission limitations and related requirements due to the SIP strengthening which will result (see, e.g., sections 110(k)(3), 301(a) and 101(b)(1) of the CAA). USEPA is proposing to fully approve the editorial changes to the statewide

Indiana SIP for lead. USEPA acknowledges the facility name change from General Battery to Exide Corporation. However, USEPA is also proposing to disapprove these provisions as a whole for failing to meet all of the requirements of sections 191(a) and 192(a) of the CAA as cited above and in the March 18, 1992, February 1, and May 4, 1993, TSDs. *Id.* However, USEPA does not intend to finalize this "limited" approval and corresponding disapproval until after July 6, 1993, the due date for lead nonattainment area SIPs. This is to provide the State with an opportunity to submit a SIP revision for the Marion County lead nonattainment area that meets all of the applicable requirements of sections 191(a) and 192(a).

If USEPA ultimately disapproves all or part of the SIP submittal for the Marion County nonattainment area, the disapproval would constitute a final disapproval for purposes of section 179(a)(2) of the CAA. As provided under section 179(a) of the CAA, the State of Indiana would then have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before the CAA imposes either the requirement to provide 2 to 1 new source review offsets or the highway funding sanction (see also section 110(m) of the CAA). If the State has not corrected its deficiency within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance (i.e., until USEPA has published final rulemaking approving a SIP revision). Any final disapproval would also trigger the requirement for the USEPA to impose a Federal Implementation Plan as provided under section 110(c)(1) of the CAA within 24 months of the final disapproval if the deficiencies have not been corrected and the corrections approved by USEPA by that time.

Public comment is solicited on the State's submittal and on all aspects of USEPA's proposed rulemaking action. Comments received by the date listed above will be considered in the development of USEPA's final rule.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State submittal under section 110 and subchapter I, part D of the CAA would not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability of the rules. Moreover, USEPA's disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

The CAA Amendments of 1990 were enacted on November 15, 1990, Public Law 101–549, 104 stat 2399, codified at 42 U.S.C. 7401–7671q. Sections 191(a) and 192(a) of the CAA contain new requirements for lead nonattainment areas. In addition, section 193 of the CAA provides that each regulation, standard, rule, notice, order and guidance promulgated or issued by USEPA prior to the Amendments' enactment shall remain in effect (with certain exceptions).

List of Subjects in 40 CFR Part 52

Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 20, 1993.

Janet Mason,

Acting Regional Administrator.

[FR Doc. 93–16434 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 52 and 81

[OH41–1–5775; FRL–4670–3]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a redesignation request and maintenance plan for Cuyahoga County, Ohio as a revision to Ohio's State Implementation Plan (SIP) for carbon monoxide.

The revision is based on a request from the State of Ohio to redesignate this area, and approve its maintenance plan, and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATES: Comments on this requested redesignation, SIP revision, and on the proposed USEPA action must be received by August 11, 1993.

ADDRESSES: Written comments should be addressed to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Region 5, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the carbon monoxide (CO) attainment status for each area of every State. For Ohio, Cuyahoga County was designated nonattainment for CO, see 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). On November 15, 1990, the Clean Air Act Amendments (CAAA) of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(1)(C), Cuyahoga County retained its designation of nonattainment for CO by operation of law, see 56 FR 56694 (November 6, 1991). At the same time

the area was classified as a moderate CO nonattainment area based on a design value of 10.1 parts per million. The Ohio Environmental Protection Agency requested that the area be redesignated to attainment in a letter dated October 16, 1992, and received by USEPA on October 21, 1992. The CO nonattainment area consists of Cuyahoga County. The State of Ohio has met all of the CAAA requirements for redesignation pursuant to section 107(d)(3)(E).

USEPA has provided guidance on processing redesignation requests in a September 4, 1992, memorandum from John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Redesignation Memorandum). This guidance memorandum was used in the evaluation of the submittal. The requirements of section 107(d)(3)(E) are set forth in the following sections.

Section 107(d)(3)(E)(i). The Administrator determines that the area has attained the National Ambient Air Quality Standard.

Consistent with the requirements of 40 CFR 50.8, the most recent two years of carbon monoxide air quality monitoring data, 1991 and 1992, for Cuyahoga County show that the County is currently meeting this requirement. In addition, modeling data submitted by the State supports the monitoring data by showing that the worst traffic intersections in the area are in attainment.

Section 107(d)(3)(E) (ii) and (v). The Administrator has fully approved the applicable implementation plan for the area under section 110(k) and the State containing such area has met all requirements applicable to the area under section 110 and part D.

USEPA has interpreted section 107(d)(3)(E) (ii) and (v) to mean that for purposes of redesignation a State must have a fully approved SIP that meets all of the requirements of section 110 and part D that became due on or before the date of submittal of a complete redesignation request.

On October 31, 1980 (45 FR 72122), USEPA approved a CO SIP for Cuyahoga County, with the exception of the I/M program and the conditionally approved Part D New Source Review (NSR) program (45 FR 72119). The State has submitted an I/M program for the Cleveland area. This program is currently under review and must be approved for the State to have met all of the applicable section 110 and part D requirements. The amended Clean Air Act established new submittal requirements with respect to I/M and NSR. Therefore, USEPA must review the State's submittal, not to determine whether the State met the pre-amended I/M and NSR requirements, but whether the State has acted consistently with respect to the requirements of the amended Act. Section 187(a)(4) establishes the I/M requirements applicable to moderate CO nonattainment areas. Section 187(a)(4) requires the State to have submitted an I/M program immediately upon enactment of the Clean Air Act Amendments of 1990. USEPA has interpreted this provision to not require an actual submittal to USEPA until November 15, 1992, see 57 FR 52950 (Nov. 5, 1992); therefore, November 15, 1992, is the date on which the I/M requirement became applicable. Although Ohio is not required to submit an approvable I/M program in order for USEPA to determine that the State has met the applicable requirements of part D, the State must have an approved I/M program prior to redesignation because it has relied on such a program to demonstrate maintenance of the NAAQS.

With respect to NSR, the applicable requirement for moderate CO areas is section 172(c)(5). Section 172(b) establishes a date no later than November 15, 1993, for submittal of the section 172(c) requirements. Since USEPA has not established an earlier date for submittal, the NSR requirement does not become an applicable requirement until November 15, 1993. Since Ohio submitted the redesignation request for Cuyahoga County prior to November 15, 1993, the State need not submit NSR for purposes of USEPA's review of its redesignation request.

The amended Act also specifies new requirements—i.e., requirements not established under the pre-amended Act—for CO nonattainment areas. These include an oxygenated fuels program and an emissions inventory. These requirements were due on November 15, 1992. Since Ohio submitted the redesignation request prior to November 15, 1992, the State was not required to submit these plan elements for purposes of redesignation. However, the State did submit an oxygenated fuels SIP on November 3, 1992. In addition, the State was required to submit an emissions inventory as part of its maintenance plan; USEPA is reviewing that submittal for approval in conjunction with the maintenance plan.

Once the area is redesignated to attainment, the Prevention of Significant Deterioration (PSD) program, which has been delegated to Ohio, will become effective immediately. The PSD program was delegated to Ohio at Code of Federal Regulations 40 CFR 52.21(u), on May 1, 1980, and amended November 7, 1988.

The State has committed to follow USEPA's conformity regulation upon issuance, as applicable (proposed on January 11, 1993, 58 FR 3768).

Section 107(d)(3)(iii). The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.

The submittal states that the reductions are due to the Federal Motor Vehicle Control Program and changing the existing 1990 anti-tampering program to a tailpipe inspection program coupled with a three point anti-tampering check. The tailpipe inspection program was implemented in January 1991. This provided a 43 percent reduction in CO emissions for mobile sources and a 17 percent reduction in overall CO emissions from 1990 to 1992. The submittal indicates that in 1990, mobile source emissions were 117.77 tons per day and total actual CO emissions were 297.535 tons per day for Cuyahoga County. For 1992, the actual emissions were estimated at 67.17 tons per day for mobile source emissions and 246.982 tons per day for total CO emissions. Therefore, USEPA believes that the improvement in air quality is due to permanent and enforceable reductions in emissions.

Section 107(d)(3)(E)(iv). The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

The State submission addresses the attainment inventory, maintenance demonstration, tracking plans progress, and the contingency plan. The State has included a 1992 emissions inventory as the attainment inventory. The inventory satisfies USEPA guidance for an attainment emissions inventory for a redesignation request. The 1992 CO attainment emissions inventory totals in tons per day are 98.55, 81.25, and 67.17 for the point, area, and mobile sources, respectively.

For the contingency plan, the submittal states that in order to assure that ambient CO levels remain below the National Ambient Air Quality Standards (NAAQS), a contingency plan encompassing a seven-county oxygenated fuels program as outlined in this submittal will be implemented to correct any violation of the CO standard. The submittal further states that Ohio

will continue to track the progress of this maintenance demonstration by reviewing both the factors used in preparing the inputs for the hot-spot modeling analyses and the 1992 attainment inventory. This review will be done in 1996 and every three years after.

The CO concentrations were computed using MOBILE4.1, CALINE3, and CAL3QHC for 1992, 1993, 1994, 1995, 1996, 1997, 2000, and 2005. The modeling that was performed used USEPA recommended guideline models. The results of the modeling show that the area is expected to maintain the NAAQS through the year 2005.

The State relied on an I/M program as part of its maintenance demonstration. Therefore, in order for USEPA to fully approve the maintenance demonstration, USEPA must first approve the State's I/M submittal. USEPA anticipates taking action on this submittal in the near future. Final action on the maintenance plan and redesignation request will not be taken until such time as USEPA grants final approval to the State's I/M submittal.

USEPA believes that the State submission will satisfy the requirements of section 175A, provided that the State submits a schedule for implementing the contingency plan, USEPA approves the State's I/M plan submittal, and the State commits to maintain an acceptable CO monitoring network in the maintenance area. Therefore, USEPA proposes to fully approve the maintenance plan as meeting the requirements of section 175A, provided that the schedule and commitments are received by the end of the comment period and USEPA takes final action on the State's I/M submittal.

Ohio has adequately responded to May 26, 1988 SIP call.

The State has adequately responded to the SIP call under Section 110(a)(2)(H) of the CAA, which was issued by USEPA to Ohio on May 26, 1988, concerning the Cleveland-Akron-Lorain Consolidated Metropolitan Statistical Area (CMSA) consisting of Portage, Summit, Cuyahoga, Geauga, Lake, Medina, and Lorain Counties, Ohio. In the General Preamble at 57 FR 13564–13565 (April 16, 1992) the requirements for satisfying SIP calls are discussed. The requirements for SIP calls were divided into two phases. In order for CO areas to meet phase I requirements, a Post-1987 emission inventory must be developed. The State submitted a Post-1987 inventory on December 29, 1989, and March 1, 1990. Included in Ohio's redesignation request is a revised version of this emissions inventory for 1990. For phase II the area had to meet the applicable requirements of section 187 of the CAA. Since the applicable requirements of Part D, which includes Section 187, are proposed as being met, provided the I/M program is approved, phase II of the SIP call is also proposed as being met.

Proposed Rulemaking Action

It is proposed that if the I/M program is approved as a part of the CO SIP, the State submits a schedule for implementing the contingency plan and the State commits to maintain an acceptable CO monitoring network in the maintenance area, then the redesignation request will be approved as meeting the section 107(d)(3)(E) conditions of the CAA for redesignation. It is also proposed that the State has met the terms of the May 26, 1988, SIP call for the Cleveland area when Cuyahoga County is redesignated to attainment.

Public comment is solicited on USEPA's proposed rulemaking action. Comments received by August 11, 1993 will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. I certify that the approval of the redesignation request will not affect a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 30, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–16433 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–184, RM–8277]

Radio Broadcasting Services; Norlina, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert Carver and Frank White d/b/a Carver-White Broadcasting Company seeking the allotment of Channel 232A to Norlina, North Carolina, as the community's first local FM service. Channel 232A can be allotted to Norlina in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) north, at coordinates North Latitude 36–29–02 and West Longitude 78–11–23, to avoid short-spacings to Stations WRQR, Channel 232A, Farmville, North Carolina, and WQDR, Channel 234C, Raleigh, North Carolina.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank White, Carver-White Broadcasting Company, P.O. Box 1487, Roanoke Rapids, North Carolina 27870 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–184, adopted June 18, 1993, released July 7, 1993.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16417 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 659

Shrimp Fishery off the Southern Atlantic States

AGENCY: National Marine Fisheries Service (NMFS), (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council has submitted the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) for review by the Secretary of Commerce (Secretary). The FMP is available for public review and comments are requested from the public.

DATES: Written comments must be received on or before September 7, 1993.

ADDRESSES: Comments should be mailed to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of the shrimp FMP, which contains a regulatory impact review and a final environmental impact statement, may be obtained from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that a council-prepared fishery management plan to be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP, immediately publish a notice that is available for public review and comment. The Secretary will consider public comment in determining approvability of the FMP.

The FMP proposes that, when North Carolina, South Carolina, Georgia, or Florida closes the fishery for brown, pink, and white shrimp in its waters following severe cold weather that results in an 80 percent or greater reduction in the population of white shrimp, such state may request, and NMFS may effect, a concurrent closure of the fishery for brown, pink, and white shrimp in the exclusive economic zone (EEZ) adjacent to closed state waters. Such closures would not preclude continued fishing for royal red shrimp, rock shrimp, or whiting in the closed portion of the EEZ.

During a closure, no trawling for brown, pink, or white shrimp would be allowed in the adjacent EEZ and no shrimp could be possessed aboard a fishing vessel in the adjacent EEZ, except aboard a vessel in transit with all nets having a net size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, stowed below deck. During a closure of the EEZ, a buffer zone could be established in that part of the closed area within 25 nautical miles of the baseline from which the territorial sea is measured. A vessel that trawls in that buffer zone would not be allowed to use or have aboard a trawl net with a mesh size less than 4 inches (10.2 cm).

Proposed regulations to implement the FMP are scheduled for publication within 15 days.

Dated: July 7, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16419 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–22–M

VOL 58 ISS 131 JL 12 1993 UMI

Notices

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead Oil and Gas Leasing; Beaverhead National Forest and Parts of Deerlodge National Forest; Beaverhead, Madison, Gallatin, Silver Bow, and Deerlodge Counties, MT

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management will prepare an environmental impact statement (EIS) for oil and gas leasing on the Beaverhead National Forest. The Forest Service and the BLM will be joint lead agencies for this EIS (40 CFR 1501.5). The EIS will be designed to satisfy the requirements of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing regulations (36 CFR 228.102).

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than September 15, 1993.

ADDRESSES: Send written comments to Ronald C. Prichard, Forest Supervisor, Beaverhead National Forest, 420 Barrett Street, Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Peri Suenram, Environmental Analysis Team Leader, Beaverhead National Forest, as above, or phone: (406) 683–3967.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to make certain lands within the Beaverhead and Deerlodge National Forests administratively available for oil and gas leasing, subject to constraints given in the 1986 Beaverhead National Forest Land and Resource Management Plan. The Forest Service also proposes to authorize the BLM to offer those lands for lease, subject to specified stipulations. The BLM proposes to offer for lease the lands authorized by the Forest Service, with stipulations attached by the Forest Service.

The EIS will examine the effects of the proposal and alternatives. The primary purpose of this analysis is to determine which lands should be available for leasing, what stipulations should be applied to any leases, and which specific lands should be offered for lease at this time.

Lands affected are within the boundaries of the Beaverhead National Forest and that portion of the Deerlodge National Forest which is administered by the Beaverhead Forest. These lands are roughly within 75 air miles of Dillon, Montana. The following types of land will be considered unavailable for leasing under all alternatives: existing and proposed wilderness, further planning areas, Wilderness Study Areas, and stream segments eligible for "wild" status under the Wild and Scenic Rivers Act of 1968.

This analysis is required by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing regulations promulgated in 1990 (36 CFR 228.102). The purpose and need for the proposal include:

1. To respond to interest and activity by the energy industry in oil and gas exploration and development in and adjacent to the Beaverhead National Forest;
2. To implement forest plan goals, objectives, standards, and management direction for oil and gas leasing;
3. To implement Congressional direction for oil and gas leasing (Mineral Leasing Act of 1920, Mineral Leasing Act for Acquired Lands of 1947, Mining and Minerals Policy Act of 1970, National Materials and Minerals Policy, Research and Development Act of 1980);
4. To ensure orderly development and conservation of the oil and gas resource (Forest Service Policy at FSM 2800 and 1990 RPA);
5. To ensure oil and gas leasing analysis and decisionmaking are conducted according regulations for the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (36 CFR 228E).

The Forest Supervisor for the Beaverhead National Forest has been assigned the task of compiling the EIS. However, the responsible officials who will make the decision are: David F. Jolly, Northern Region Regional Forester, Federal Building, 200 E. Broadway, P.O. Box 7669, Missoula, MT 59807; and Robert H. Lawton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

They will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Potential issues that have been identified to date are the effects of oil and gas activities on:

1. Threatened and endangered species.
2. Sensitive fish, wildlife, and plant species.
3. Increased vulnerability to big game because of new roads.
4. Public safety.
5. Soil stability.
6. Inventoried roadless areas.

Public participation will be important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues identified above. People may visit with Forest Service officials at any time during the analysis and prior to the decision. No former scoping meetings are planned. However, two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species. Portions of the project area have been identified as bald eagle or peregrine falcon habitat. A scoping document will be prepared and mailed to parties known to be interested in the proposed action by August 1, 1993. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

In addition to the proposed action, a range of alternatives will be developed in response to issues identified during

scoping. One of these will be the "no-action" alternative, in which no leasing would be authorized at this time. The Forest Service will analyze and document the direct, indirect, and cumulative effects of all alternatives. They will develop stipulations to mitigate effects and protect other resources, and assess the effectiveness of those stipulations.

The BLM prepares a Reasonably Foreseeable Development (RFD) scenario to predict the scope of potential oil and gas activity. The RFD is based on known geologic, economic, and technical information for the local area. This RFD is used to analyze the effects of the proposed action and alternatives.

The Forest Service will continue to involve the public and will inform interested and affected parties as to how they may participate and contribute to the final decision. Another formal opportunity for response will be provided following completion of a DEIS.

The draft EIS should be available for review in March 1994. The final EIS is schedule for completion in January 1995.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 2, 1993.

Ronald C. Prichard,

Forest Supervisor, Beaverhead National Forest.

[FR Doc. 93–16386 Filed 7–9–93; 8:45 am]

BILLING CODE 3410–11–M

Notice of Intent To Prepare an Environmental Impact Statement To Disclose the Environmental Impacts of Proposed Actions Within the Northwest Baranof Project Area; Tongass National Forest, Chatham Area, Sitka Ranger District, Sitka, AK

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental impacts of proposed actions within the Northwest Baranof Project Area. The proposed action provides for: (1) Construction of approximately 80 miles of road; (2) harvest of 7,000 acres of timber, and regeneration of new stands of trees. This level of development would result in the harvest of approximately 140 million board feet of sawlog and utility timber volume to support local mills. (3) 1,000 foot uncut timber buffers along Nakwasina Passage, St. John Baptist Bay, and the north side of Fish Bay for the protection of wildlife and subsistence uses; (4) temporary log transfer facilities in Nakwasina Passage and Nakwasina Sound (VCU 301); (5) permanent log transfer facilities in St. John Baptist Bay, Fish Bay, and Rodman Bay; (6) no harvest in areas which are visible from the Alaska Marine Highway route between Fish Bay and Nakwasina Passage; (7) no harvest in VCUs 290, 299, 310, 312, and 313; (8) no harvest in Rodman Creek drainage or on the east side of Rodman Bay; (9) development of a recreation trail to Fish Bay Hot Springs; (10) development of a road connection between Nakwasina Passage and Rodman Bay; and (11) no road connection between Rodman Bay and Appleton Cove.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action.

DATES: Comments concerning the scope of the analysis should be received in writing by August 31, 1993.

ADDRESSES: Send written comments to Northwest Baranof Planning Team, USDA Forest Service, 204 Siginaka Way, Sitka, Alaska 99835.

FOR FURTHER INFORMATION CONTACT: Gordon Anderson, Interdisciplinary Team Leader, Chatham Area Supervisors Office, 204 Siginaka Way, Sitka, AK 99385, (907) 747–6671.

SUPPLEMENTARY INFORMATION: This EIS will tier to the 1979 TLMP EIS, including the 1985–86 and 1990 amendments. The TLMP provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the desired future condition for the area in which the project is proposed.

The Northwest Baranof Project Area is located about 10 air miles north of Sitka, Alaska, and 30 miles east of Angoon, Alaska, on the northwestern part of Baranof Island and encompasses Value Comparison Units (VCUs) 287, 288, 289, 290, 291, 292, 299, 300, 301, 310, 312, and 313 as designated in the Tongass Land Management Plan (TLMP). These VCUs are located within Management Areas C40 and C41 as described in the TLMP. The project area is administered by the Sitka Ranger District of the Chatham Area, Tongass National Forest in Sitka, Alaska.

The purpose and need for the Northwest Baranof project is to make timber available in compliance with the Alaska Pulp Corporation Long-term Timber Sale Contract Number 12–11–010–1545 (Forest Service 1956). A comparison of the desired future condition for the project area, identified in the TLMP, with the existing condition shows the need to convert suitable stands of old-growth timber to managed productive stands capable of long-term timber volume production. Approximately 90 to 120 million board feet of sawlog volume, and another 20 to 30 million board feet of utility volume, is needed from the project area in one or more timber offerings to contribute to volume requirements under the contract. This is enough timber volume to maintain operation of

the Sitka and Wrangell mills for one year.

Gary A. Morrison, Forest Supervisor, Chatham Area, will be the Responsible Official and will decide whether or not to authorize timber harvest within the Northwest Baranof Project Area. He will decide: (1) If the design of the timber sale offerings are consistent with meeting resource protection standards and guidelines in the TLMP; (2) how much timber volume to make available; (3) the location and design of the arterial and collector road system needed to develop the project area; (4) the location and design of timber harvest units and log transfer facilities; (5) mitigation and monitoring measures for sound resource management; and (6) whether there may be a significant restriction on subsistence uses, and if so, other determinations required by section 810 of the Alaska National Interest Lands Conservation Act.

Issues are expected to revolve around: (1) Management of wildlife and fish habitat; (2) subsistence needs; (3) location, design and impacts of transportation systems and log transfer facilities; (4) recreation and visual impacts relative to the marine highways; (5) the economic health of southeast Alaska; and (6) possible road connections between Sitka and Rodman Bay.

To proceed with the timber harvest as proposed, various permits must be obtained from other agencies. Applications for these permits would take place after the Final EIS is filed with the Environmental Protection Agency (EPA) and not sooner than 30 days following publication of this decision in the Juneau Empire newspaper, published in Juneau, Alaska. Both the EPA and the U.S. Army Corps of Engineers have been requested to participate as cooperating agencies in preparation of the EIS. The agencies and their responsibilities are as follows: U.S. Army Corps of Engineers has the responsibility for approval of discharge of dredged or fill materials into the waters of the United States (Section 404 of the Clean Water Act), and approval of construction of structures or work in navigable waters of the United States (Section 10 of the Rivers and Harbors Act of 1899); EPA has responsibility for the National pollutant Discharge Elimination System review (Section 402 of the Clean Water Act). Other agencies which will participate are as follows: State of Alaska, Department of Natural Resources has responsibility for authorization for occupancy and use of tidelands and submerged lands; State of Alaska, Department of Environmental Conservation has responsibility for the Solid Waste Disposal Permit (Section 402 of Clean Water Act) and the Certificate of Reasonable Assurance (Section 404 of Clean Water Act); U.S. Coast Guard has responsibility for Coast Guard Bridge Permits (in accordance with the General Bridge Act of 1946) required for all structures constructed within the tidal influence zone.

Preparation of the EIS will include the following steps: (1) Public notification and scoping on or before August 26, 1993; (2) identification of issues related to the proposed action (significant issues) and a discussion of reasons for not considering other issues (non-significant issues) in this analysis; (3) identification of issues to be analyzed in depth; (4) development of reasonable alternatives to the proposed action which meet the stated purpose and need for the proposed action and address significant issues; and (5) Identification of the potential environmental effects of the alternatives.

For step 1, a scoping brochure will be mailed to interested persons following publication of this Notice in the Federal Register. This brochure will briefly explain the timing and location of the proposed project and will request a response. It will also contain specific information about the location and timing of public involvement meetings. A scoping meeting will be held in Sitka, Alaska at 7 pm, August 5, 1993, at the Centennial Building. A second scoping meeting will be held at 7 pm August 10 in the City Hall at Angoon. Locations and times of the scoping meetings will also be announced in local newspapers and on radio station public service announcements in addition to the scoping brochure.

Step 4 will consider a range of alternatives developed to address significant issues. One of these will be the "No Action" alternative, in which there is no harvest or road building activity. Other alternatives will consider various levels and locations of harvest and regeneration in response to issues and non-timber objectives.

Step 5 will analyze the environmental effects of each alternative. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, site specific mitigation measures for each alternative will be identified and their effectiveness evaluated.

In addition to commenting on the proposed action and the Draft EIS when it is released, agencies and other interested persons or groups are invited to contact with Forest Service officials at any time during the planning process.

The Draft EIS is expected to be filed with the EPA during September 1994. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.

The Final EIS is expected to be released May 1995. The Forest Supervisor for the Chatham Area of the Tongass National Forest will, as the responsible official for the EIS, make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decisions and supporting reasons will be documented in a Record of Decision.

VOL 58 ISS 131 JL 12 1993 UMI

Dated: July 1, 1993.

Gary A. Morrison,

Forest Supervisor.

[FR Doc. 93–16387 Filed 7–9–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Indian Creek Watershed, Plumas County, CA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Indian Creek Watershed, Plumas County, California.

FOR FURTHER INFORMATION CONTACT: Pearlie S. Reed, State Conservationist, Soil Conservation Service, 2121–C Second Street, Davis, CA 95616, telephone (916) 757–8200.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Pearlie S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are watershed protection and agricultural water management for water quality improvement. The planned project includes long-term land treatment contracts with individual land users for a grazing management program along 13.7 miles of the creek, and structural measures for stream stabilization and restoration along 2.8 of the 13.7 miles.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Pearlie S. Reed.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: July 1, 1993.

Pearlie S. Reed,

State Conservationist.

[FR Doc. 93–16388 Filed 7–9–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice; request for comments.

SUMMARY: This notice announces the Department's proposal to establish a new system of records under the Privacy Act. The system is entitled, "COMMERCE/DEPT–22, Small Purchase Records." This notice is submitted in accordance with the requirements of the amended Privacy Act, 5 U.S.C. 552a, and OMB Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

EFFECTIVE DATE: The establishment of this system of records will be effective September 10, 1993, unless Commerce receives comments that would result in a contrary determination.

ADDRESS: Please address comments to: Daniel J. Rooney, Chief, Planning, Coordination and Management Division, Office of Management Support, room H6020, U.S. Department of Commerce, Washington, DC 20230. Comments received at this same address will be available for public inspection at this same address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel J. Rooney: 202–482–4115.

SUPPLEMENTARY INFORMATION: The Department of Commerce is establishing a new system of records for its small purchasing/imprest fund activity. This system covers personally identifiable information collected by the Department of Commerce offices on Bankcard holders and authorizing Bankcard officials; and information collected concerning reimbursement for small purchases as well as other payments that are made through the imprest fund.

As instructed in OMB Circular A–130, Appendix I, the Department's Report has been filed with Congress and the Office of Management and Budget.

The proposed system, "COMMERCE/DEPT–22, Small Purchase Records," will read as follows.

Proposed System Notice

COMMERCE/DEPT–22

SYSTEM NAME:

Small Purchase Records.

SYSTEM LOCATIONS:

1. Records on cardholders and authorizing officials: the Office of the Secretary's computer facilities in Springfield, Virginia at 5285 Port Royal Road, Springfield, Virginia 22151. 2. Records reflecting information on imprest funds paid to individuals: Finance Services Division, Office of Administration, National Oceanic and Atmospheric Administration, Germantown, Maryland 20876.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commerce employees established as Government Credit Card (BankCard) holders and their authorizing officials; and individuals seeking reimbursement through the Department's imprest funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, official duty station; background information and authorities given to BankCard holders and authorizing officials, and claim for reimbursement forms filed by imprest fund claimants; receipts for small purchases, and receipts and/or other documentation for nominal expenses incurred for ground transportation.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3321 and 40 U.S.C. 486(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed, as necessary, (1) to Members of Congress who respond to inquiries for individual constituents that are record subjects; (2) to representatives of the General Services Administration or to the National Archives and Records Administration who conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) to a non-government company providing credit card consulting or contracting services to the Government.

Also, records and data may be disclosed, as necessary, (1) in responding to a request for discovery or for the appearance of a witness,

provided that what is disclosed pertains to the subject matter involved in a pending judicial or administrative proceeding; and (2) to respond to a Federal agency's request made regarding the hiring or retention of an employee, provided that the information disclosed is relevant and necessary to the requesting agency's decision on the matter. If material in this system indicates a violation of civil, criminal, or regulatory law whether arising by general statute, by regulation, or order issued pursuant thereto, then the relevant records may be disclosed to the appropriate Federal, state, local or foreign agency charged with investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN A SYSTEM:

STORAGE:

System records will be stored on paper, computer printouts, magnetic tape, word processor diskettes, microform media or other electronic media.

RETRIEVABILITY:

Records are retrieved by employee name, social security number or account number.

SAFEGUARDS:

Paper records and backup diskettes are located in locked metal file cabinets; data on personal computer is password protected. Other machine readable records are stored on magnetic tape in a safe accessible only to security personnel; captured social security numbers will be invisible and will be maintained and sealed in a record system maintained solely in the Springfield office.

RETENTION AND DISPOSAL:

Records will be retained and disposed of at the time specified in the National Archives and Records Administration General Records Schedules 7 and 20. Records on electronic media will be erased, and records on paper, microform or microfiche will be destroyed through shredding or burning.

Records that must be retained longer than the specified retention period (e.g., records kept under court order, etc.) shall be maintained until appropriate releases are issued. At that time, such records will be disposed of in the method described above.

SYSTEM MANAGER AND ADDRESS:

1. For Charge Card Management Information System: Director, Office of Financial Policies and Procedures, Office of Financial Management, room H6818, U.S. Department of Commerce, Washington, DC 20230.

2. For Imprest Management Information System: Chief, Finance Services Division, Office of Administration, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20230.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager(s). Requester should provide his or her name pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be sent to the address stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing the initial determination appear in 15 CFR part 4b. Use above address.

RECORD SOURCE CATEGORIES:

The subject individual, commercial entities involved, contractors, and those authorized by the individual to furnish information.

Dated: July 2, 1993.

Gloria Gutierrez,

Acting Chief Financial Officer and Assistant Secretary for Administration.

[FR Doc. 93–16471 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–FA

International Trade Administration

[A–588–823]

Antidumping Duty Order and Amended Final Determination: Professional Electric Cutting Tools From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Pamela Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–1766 or (202) 482–1174, respectively.

Scope of Order

This order covers professional electric cutting tools (PECTs). The tools may be assembled or unassembled and corded or cordless.

- The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features.
- The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool.
- The term "unassembled" means components, which when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations, (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs.

- Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface.
- Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: Cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include:

- professional sanding/grinding tools;
- professional electric drilling/fastening tools;
- lawn and garden tools;
- heat guns;
- paint and wallpaper strippers; and
- chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

(1) The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);

(2) Helical, spiral bevel, or worm gearing;

(3) Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;

(4) Power supply cord with a separate cord protector;

(5) Externally accessible motor brushes;

(6) The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and

(7) The presence of more than one coil per slot armature. If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 8508.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Amendment of Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on May 26, 1993, the Department of Commerce (the Department) published its final determination that PECTs from Japan were being sold at less than fair value (58 FR 30144). After publication of our final determination, we informed petitioner (Black & Decker (U.S.) Inc.) and respondent (Makita Corporation, Makita U.S.A., Inc., and Makita Corporation of America) (collectively Makita) that a hardware/software problem with the mainframe computer prevented us from including in the PECT final margin computer program appropriate instructions which would yield a unique foreign market value for each U.S. product. We considered this a ministerial error within the meaning of 19 CFR 353.28(d). We informed both parties that we would correct this error and amend the final determination accordingly.

On June 15, 1993, we corrected the PECT program and released the revised program to petitioner and respondent. On June 17, 1993, we conducted a disclosure conference for the program changes with respondent. There were no clerical error allegations of the corrected PECT program. Accordingly, pursuant to section 735(e) of the Act, we are correcting the ministerial error in the final determination of sales at less than fair value. The final estimated margin changes from 54.43 percent published in the final determination of PECTs for Makita to 54.52 percent. The "All Others" rate also changes from the 54.43 percent published in the final determination to 54.52 percent.

On July 2, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry. Regarding the companion investigation of professional electric sanding/grinding tools (PESGTs), the ITC notified the Department that such imports do not materially injure a U.S. industry.

In addition, on June 9, 1993, Makita alleged that the Department made a clerical error by including two finishing sanders, U.S. models BO4510 and BO4530, in the scope of the companion PESGTs. Because the ITC determination was negative in the PESGT's investigation, this issue is moot.

Antidumping Duty Order

In accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the Department pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of PECTs from Japan. These antidumping duties will be assessed on all unliquidated entries of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after January 4, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 81). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage
Makita Corporation, Makita USA, Inc and Makita Corporation of America	54.52
All others	54.52

Regarding the PESGTs investigation, in accordance with section 735(c)(2) of the Act, because of the negative final determination by the ITC, the Department will direct the Customs Service to terminate suspension of liquidation and release any bond or other security and refund any cash deposit required under section 733(d)(2) of the Act of all entries of PESGTs.

This notice constitutes the antidumping duty order and amended final determination with respect to PECTs from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16465 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–557–807]

Postponement of Preliminary Antidumping Duty Determination: Welded Stainless Steel Pipe From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–1776.

POSTPONEMENT: On July 1, 1993, we received a letter from petitioners in this investigation requesting that the Department postpone the preliminary determination in accordance with section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), as amended (19 U.S.C.

1673b(c)(1)(A)). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determination until August 30, 1993.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: July 6, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16466 Filed 07–09–93; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review.

A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–A0009."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 92–00009, which was issued on October 6, 1992 (57 FR 46843, October 13, 1992).

Summary of the Application

Applicant: Northern Textile Export Trading Company, Inc., D/B/A Textile Trading Company of America ("NTETC"), 230 Congress Street, Third Floor, Boston, Massachusetts 02110. Contact: Karl Spilhaus, President. Telephone: (617) 542–8220.

Application No.: 92–A0009.

Date Deemed Submitted: July 6, 1993.

Request for Amended Conduct: NTETC seeks to amend its Certificate to add Hanora Spinning, Inc. of Woonsocket, RI (Controlling Entity: The First Republic Corporation of America, New York, NY) and Dyecraftsmen, Inc. of Taunton, MA as "Members" within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)).

Dated: July 6, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–16469 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–DR–M

[Docket No. 930523–3123]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives and scientists (also referred to as "interns") from the Independent States of the former Soviet Union (Independent States). The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the Independent States with U.S. firms which sponsor them for short-term management training programs.

Under this program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. ITA will interview and recommend eligible interns to participate in SABIT. Interns may be from any of the following Independent States: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tazikistan, Turkmenistan, Ukraine, and Uzbekistan. The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management operations. At the end of the training program, interns return to the NIS.

DATES: The closing date for application is November 9, 1993.

ADDRESSES: Request for Applications: Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please telephone (202) 482–0073, or telefax (202) 482–2443 (these are not toll free numbers) or send a written request with two self-addressed mailing labels to Cynthia M. Anthony, Director, Special American Business Internship Training Program, room 3413 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. An original and two copies of the application (Standard Form 424 (Rev. 4–88) and supplemental material) are to be received at the address designated in the Application Kit no later than 3 p.m., 120 days from publication of this notice. Applications will be considered on a "rolling" basis as they are received, subject to the availability of funds. All awards are expected to be made prior to October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: SABIT exposes business managers and scientists from the Independent States to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-

hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers travelling to their territories.

Managers: The expanded SABIT program assists economic restructuring of the Independent States by providing business managers with exposure to American ways of innovation and management through three to six month management internships in U.S. firms. ITA reserves the right to allow an intern to stay for a shorter period if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. Sponsoring U.S. firms will benefit by establishing relationships with key managers in similar industries who are uniquely positioned to assist their U.S. sponsors do business in the Independent States.

Scientists: The goals of the SABIT program for scientists are to provide opportunities for gifted scientists to apply their skills to peaceful research and development in areas such as defense conversion, pharmaceutical and other medical research, energy, and environment, and expose them to the role of scientific research in a market economy where applicability of the research relates to the success of the firm. Sponsoring firms in the U.S. scientific community also will benefit from the exchange of information and ideas, and different approaches to new technologies. As with the managers, internships are for three to six months; however, ITA reserves the right to allow an intern to stay for a shorter period if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities.

Funding Availability: Pursuant to section 531 of the Foreign Assistance Act of 1961, as amended, (the "Act") and section 632(b) of the Act, funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The maximum amount of financial assistance available for the program is $1,700,000.

Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. With funds provided by A.I.D., ITA will reimburse companies for the roundtrip air travel of each intern from Moscow (or other cities in the NIS as approved in advance by ITA) to the U.S. internship site, upon submission to ITA of the travel invoice. ITA will reimburse companies a stipend of $30 per day per intern for up to six months. Disbursement of funds for reimbursement of the stipend will be made upon certification by the companies that the internship program has been completed, and submission of a report on the training program. Each award will have a cap of $7,500 per intern for total cost of airline travel and stipend. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including housing, insurance, any food and incidentals costs beyond $30 per day, and any training-related travel within the U.S. Host firms provide training for the interns. Federal funding will be provided for this program for not more than eighteen months from the date of this Notice. U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

Eligibility: Eligible applicants for SABIT will be any for profit or non-profit U.S. corporation, association, organization or other public or private entity. Each application will receive an independent, objective review by one or more three-member review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive, "rolling" basis as they are received in accordance with the selection criteria set forth below. ITA reserves the right to reject any application; to limit the number of interns per applicant; and to consider other than competitive procedures to distribute assistance under this program if appropriate and in accordance with law.

Evaluation Criteria: Consideration for financial assistance will be given to those SABIT proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide an appropriate management training experience to the intern(s), i.e., "on-the-job," practical, non-academic training;

2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern(s) and by applicants that state in their applications that they will provide medical insurance for the interns during their internships;

3. Respond to the priority business needs of managers in the Independent States, as determined by ITA. Host firms must be solidly committed to interns' return to their own countries upon completion of the internships.

In addition, priority consideration will be given to the following:

4. Applications that present a realistic work plan describing the program to be provided to the SABIT intern(s).

5. U.S. companies in the following fields: Energy, environment, including environmental clean-up; agribusiness (including food processing and distribution, and agricultural equipment and machinery); medical equipment, supplies, pharmaceuticals, and health care management; defense conversion; financial services (including banking and accounting); transportation; telecommunications; housing, and product standards and quality control.

6. Applicants open to sponsoring interns from a variety of NIS countries;

7. Applicants which provide U.S. geographic diversity;

8. Applicants which provide industry diversity; and

9. Applicants which provide diversity in terms of size.

Evaluation criteria 1–3 will be weighted equally. Priority consideration factors 4–9 will also be weighted equally. Evaluation criteria will take precedence over the priority consideration factors.

Notifications: All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until the debt has been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

2. Applicants are subject to Government-wide Debarment and Suspension (Non-procurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

3. A false statement on the application may be grounds for denial or termination of funds.

4. Awards under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards. Participating companies will be required to comply with all relevant U.S. tax and export regulations.

5. This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. The Grants Officer is the only individual who may legally commit the Government to the expenditure of

public funds. No costs chargeable to the proposed cooperative agreement may be incurred before receipt of either a fully executed cooperative agreement or a specific, written authorization from the Grants Officer.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

10. Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

11. Drug-Free Workplace: Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

12. Anti-Lobbying: Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

13. Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

14. Lower Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontractors, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Cynthia M. Anthony,

Director, Special American Business Internship Training Program.

[FR Doc. 93–16468 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–HE–M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Thursday, July 29, 1993, and Friday, July 30, 1993, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on July 29 and 30, 1993, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at National Institute of Standards and Technology, I–270 and Quince Orchard Road, Gaithersburg, MD 20899 in the Green Auditorium, Administration Building.

AGENDA:

—Welcome and Update
—Views of Law Enforcement Community on Cryptography
—Multi-National Corporation Perspectives on Key Escrowing Technology (Potential Users)
—Public Participation
—Board Discussion
—Pending Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by July 23, 1993. Approximately 250 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: July 6, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–16357 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[Docket No. 930518–3118; I.D. 041993A]

Projects To Provide Information on the Antarctic Marine Ecosystem

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: Subject to the availability of funds, NMFS issues this notice describing funding for directed scientific research conducted under the Antarctic Marine Living Resources Convention Act of 1984 (Act). As directed by the Act, the Antarctic Marine Living Resources (AMLR) program was created to provide information needed to advise the U.S. delegation to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), part of the Antarctic treaty system. One of the principal tenets of the Convention is that the harvest of Antarctic marine living resources shall be managed with the goal of preserving species diversity and stability of the entire Antarctic marine ecosystem. NMFS issues this notice describing the conditions under which applications will be accepted and

VOL
58
ISS
131
12
1993
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how NMFS will determine which applications will be funded.

DATES: Applications for funding under this program must be received by 4:30 P.S.T. on July 16, 1993. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

Successful applicants generally will be selected by September 1, 1993.

ADDRESSES: Applications will be inspected at the NMFS Southwest Fisheries Science Center's La Jolla Laboratory. Send applications to: Dr. Roger P. Hewitt, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

Written inquiries of an administrative nature should be sent to: Grants Management Division, Attn: Jean West, Chief, Grants Operations Branch, NOAA, SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Telephonic inquiries of an administrative nature should be directed to Jean West, 301–712–0926.

Telephonic inquiries of a programmatic nature should be directed to Dr. Roger P. Hewitt, 619–546–7007.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Act (Title III of Pub. L. 98–623, 16 U.S.C. 2431 *et seq.*) provides the legislative authority necessary to implement, with respect to the United States, the Convention (CCAMLR). The Act provides for Federal agency cooperation in carrying out the policies and objectives of the Convention or to implement any decision of CCAMLR. It further provides that the Secretary of Commerce, in conjunction with the Director of the National Science Foundation, the Secretary of State, and the heads of other appropriate Federal agencies, shall design and conduct a program of directed scientific research pursuant to a plan entered in accordance with the Act. The plan is to describe priority directed research and identify needs to be fulfilled by the United States. The research to be funded is in support of the U.S. AMLR Program, which provides information needed to formulate U.S. policy on the conservation and international management of resources living in the oceans surrounding Antarctica.

The AMLR program monitors finfish and krill fisheries, projects sustainable yields where possible, and formulates management advice and options. In addition, the program conducts field research designed to describe the functional relationships between krill, their predators, and key environmental variables. Three cooperative agreements will be awarded to conduct research on the Antarctic marine ecosystem in a 15,000 square mile (38,850 km^2) area around Elephant Island, South Shetland Islands, Antarctica. This program is described in the Catalog of Federal Domestic Assistance under program number 11.446.

Research Methods

The research to be funded will be accomplished during a research cruise, consisting of two 30-day legs, and will be conducted in the vicinity of Elephant Island, Antarctica, during the months of January, February, and the first half of March, 1994. A large-area survey grid of approximately 90 stations and covering the area around Elephant, Clarence, and the eastern end of King George Islands will be occupied once during each leg. A small-area survey grid of approximately 25 stations covering the shelf/slope break area north of Elephant Island will also be occupied at least once during each leg. In addition, directed sampling, fine-scale sampling, and other specialized studies will be conducted. Additional research details will be provided to principal investigators prior to the cruise.

Sampling gear and supplies may be loaded aboard the NOAA Ship *SURVEYOR* in Seattle in mid-November, 1993, and during a port call in San Diego in early December, 1993. The scientific party will fly to Punta Arenas, Chile, to meet the ship in early January, 1994. Proposals should include the cost of travel to and from Punta Arenas, Chile. Airline tickets bought with cooperative agreement funds must be fully refundable and reservations alterable due to last minute changes in ship scheduling. There will be a mid-cruise port call in Punta Arenas in early February, 1994, and a final Punta Arenas port call in mid-March, 1994.

Depending on funding availability, a pre-cruise meeting for principal investigators may be held in Seattle in early November, 1993. Also, a post-cruise data workshop for principal investigators may be held in Seattle at the end of May, 1994. The Government will provide travel reimbursement for these meetings if they should occur; the cost of travel for these meetings should not be included in proposals.

A report of accomplishments and tentative conclusions will be due from each principal investigator by April 1, 1994. Final reports, including copies of all data sets on magnetic media, will be due by July 1, 1994. It is expected that results will be published in peer-reviewed journals. Proposals should include provisions for the preparation of collaborative manuscripts, publishing costs, and presentation of significant results at scientific meetings.

It is highly desirable that the principal investigators participate on at least one of the cruise legs. Minimum requirements for each of the three research disciplines are listed in this notice (see Funding Priorities). Applicants are encouraged to propose research elements to be conducted in addition to the minimum requirements, but they must understand that funding will not be increased for these additional elements.

II. Funding Priorities

A. Physical Oceanography

The objectives for this component are to:

(1) Describe the hydrography of the upper ocean waters in the vicinity of Elephant Island throughout the 1994 austral summer;

(2) Describe the physical setting in relation to the observed vertical and horizontal distribution of phytoplankton and zooplankton; and

(3) Provide a continuous record of sea surface and atmospheric conditions annotated by date, time, and ship's position.

Minimum observations should include: (1) Salinity, temperature, and oxygen profiles at each station; and (2) continuous measurements of air temperature, wind speed and direction, relative humidity, barometric pressure, sea surface temperature, and sea surface salinity.

The Government will supply a Seabird thermosalinograph, a General Oceanics rosette with 10-liter Niskin bottles, a Guideline salinometer, a Magnavox GPS receiver, and a Seabird SBE-9 CTD (to be used as a backup unit). All other equipment, supplies, and necessary personnel must be provided by the recipient.

B. Phytoplankton and Primary Productivity

The objectives for this component are to:

(1) Determine available food sources for zooplankton, including particulate organic carbon, phytoplankton organic carbon, cell-size distribution, and dominant species composition;

(2) Determine rates of primary production and associated levels of incident radiation and light attenuation;

(3) Describe the seasonal change of phytoplankton growth of grazing, vertical mixing, nutrient depletion, and settling on the distribution of phytoplankton biomass.

Minimum observations should include:

(1) Profiles of chlorophyll-a and inorganic nutrient content from discreet bottle samples and solar irradiance, beam attenuation and fluorescence from continuous measurements at each station;

(2) Primary production rates from shipboard incubations and associated irradiance levels;

(3) Continuous measurements of sea surface fluorescence and beam attenuation;

(4) Cell size distribution and floristics composition of the phytoplankton;

(5) Organic carbon and nitrogen content of the particulate material; and

(6) Total microbial biomass.

The Government will supply a General Oceanics rosette with 10-liter Niskin bottles equipped with teflon springs. All other equipment, supplies, and necessary personnel must be provided by the recipient. Laboratory space is very limited; however, fresh water, salt water, and electrical supplies can be provided to portable laboratory vans and incubation arrays.

C. Krill Demographics

The objectives of this component are to: (1) Describe the population structure and biological characteristics of krill collected throughout the study area and over the duration of the cruise; and (2) correlate and interpret the krill data with information on phytoplankton biomass, primary production, circulation pattern, and water mass boundaries.

Minimum observations should include distributions of animal length, maturity stages, sex ratios, reproductive condition, moult stages, and feeding condition. Specimen processing should be done at sea.

The Government will provide a small interior lab with fresh water, salt water, and electrical supplies. All other equipment, supplies, and necessary personnel must be provided by the recipient.

III. How To Apply

A. Eligible Applicants

1. Applications for cooperative agreements under the AMLR research program may be made, in accordance with the procedures set forth in this notice, by any state, university or college, institution, or laboratory, or any public or private nonprofit institution or organization qualified to perform the research described in this notice. All applications must be received in the office listed (see ADDRESSES) on or before the date specified (see DATES). All solicited proposals will be considered by NMFS. Applicants will be expected to identify the principal investigators who will be conducting the research. Curriculum vitae should also be provided for all essential personnel.

2. NOAA reserves the right to withhold the awarding of a cooperative agreement to any individual or organization delinquent on a debt to the Federal Government. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or (3) other arrangements satisfactory to the Department of Commerce (DOC) are made. Any first-time applicant for Federal cooperative agreement funds is subject to a pre-award accounting survey prior to execution of the award. Women and minority groups and individuals are encouraged to submit applications. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the AMLR program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing or planned NOAA programs and activities that may have implications for an application.

B. Amount and Duration of Funds

Approximately $185,000 was requested in the President's FY 1994 budget to fund three cooperative agreements for research on the Antarctic marine ecosystem: (1) Physical oceanography, for $65,000; (2) phytoplankton and primary productivity, $65,000; and (3) krill (*Euphausia superba*) demographics, $55,000. Depending on available funding, cooperative agreements shall be awarded for a period of 1 year, beginning November 1, 1993, and ending October 31, 1994. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any part of the available funds. Awards generally will be made no later than 90 days after the funding selection is determined and negotiations are completed. If an applicant incurs any costs prior to an award being made, he or she does so solely at his or her own risk of not being reimbursed by the Government. Applicants are also hereby notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover preaward costs.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the AMLR program.

D. Format

1. Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing the harvest of Antarctic marine living resources with the goal of preserving species diversity and stability of the entire Antarctic marine ecosystem, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown by category of expenditure with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described by the application.

2. Applications must be submitted in the following format:

a. Cover sheet: An applicant must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project. Applicants may obtain copies of the form from the NMFS Southwest Fisheries Science Center's La Jolla Laboratory, or the Department's Grant Management Division (see ADDRESSES).

b. Project Summary: Each project must contain a summary of not more than one page that provides the following information:

(1) Project title.

(2) Project status (new or continuing). If continuing, show previous financial assistance award number and beginning/ending date.

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal investigator(s).

(6) Project objectives.

(7) Summary of work to be performed. For continuing projects, the applicant must briefly describe progress to date, in addition to any changes to the statement of work previously submitted.

(8) Total Federal funds requested. Although non-Federal funds or in-kind

contributions are not required under this program, where they will be provided the applicant should state the amount of non-Federal funds or the value of in-kind contributions that will be provided for the project.

(9) Total project cost.

c. Project Description: Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public. NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows: (1) Identification of Research Discipline: State which of the three research disciplines (see Funding Priorities) is being applied for.

(2) Project Goals and Objectives: State what the proposed project will accomplish and describe how this will contribute to the description of the Antarctic marine ecosystem. Describe the time frame in which tasks would be conducted.

(3) Participation by Persons or Groups Other Than the Applicant: Describe the level of participation required in the project by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal, even though the applicant may wish to acknowledge government expertise in an allied area.

(4) Federal, State, and Local Government Activities: List any programs (Federal, State, or local government or activities) this project would affect and describe the relationship between the project and those plans or activities.

(5) Project Outline: Describe the work to be performed during the project, starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant.

(6) Project Management: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(7) Monitoring of Project Performance: Identify who will participate in monitoring the project.

(8) Project Impacts: Describe the impact of the project in terms of anticipated increased production, sales, exports, product quality and safety, improved management, social values or any other that will be produced by this project. Describe how these products or services will be made available to the fisheries and management communities.

(9) Evaluation of Project: The applicant is required to provide an evaluation of project accomplishments in the final report. The application must describe the methodology to be followed to determine technical feasibility.

(10) Total Project Costs: Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. Costs must be allocated to the Federal and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(i) Personnel. (a) Salaries: Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

(b) Fringe Benefits: Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to this project.

(ii) Consultants and Contract Services: Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliveries expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" or 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" as applicable.

(iii) Travel and Transportation: Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses.

(iv) Equipment, Space or Rental Costs: Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

(v) Other Costs. (a) Supplies: Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies must be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(b) Postage and Shipping: Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(c) Printing Costs: Include costs associated with producing materials in connection with the project.

(d) Long Distance Telephone and Telegraph: Identify estimated monthly bills.

(e) Utilities: These costs should be included under Indirect Costs unless purchased in a large quantity to be specifically identified to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(f) Indirect Costs: This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current, approved, negotiated Indirect Cost Agreement must be included. It is the policy of the Department that indirect costs shall not exceed direct costs.

(g) Additional Costs: Indicate any additional costs associated with the project that are allowable under OMB circulars A–21, A–87, or A–122 as applicable.

d. Supporting Documentation: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the

significance of the discipline addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question the assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

E. Application Submission and Deadline

1. Deadline: (see DATES)

2. Submission of Applications to NMFS: Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application to the NMFS Southwest Fisheries Science Center's La Jolla Laboratory (see **ADDRESSES**). Questions of an administrative nature should be referred to the Grants Management Division (see **FOR FURTHER INFORMATION CONTACT**).

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. Unless otherwise specified by statute, in reviewing applications for cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

a. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from applicant's participation?

2. For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Scientific merit and investigator qualifications (34 points).

b. Relevance to the objectives outlined in Research Methods in this notice (see Introduction and Funding Priorities) (33 points).

c. Soundness of planning and proposed methodology (33 points).

3. Applications will be ranked by NMFS into three groups: (a) Highly recommended, (b) recommended, and (c) not recommended. These rankings will be presented to a panel of fishery experts convened by NMFS.

B. Consultation With Others

NMFS will make project descriptions available for review as follows:

1. Public Review and Comment: Applications may be inspected at the NMFS Southwest Fisheries Science Center's La Jolla Laboratory (see **ADDRESSES** and **DATES**).

2. Consultation with Members of the Fishing Industry, Management Agencies, Environmental Organizations, and Academic Institutions: NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

3. Consultation with Government Agencies: Applications will be reviewed in consultation with the Director, Southwest Fisheries Science Center, NMFS, and appropriate laboratory personnel, NOAA Grants Officer, and, as appropriate, Department bureaus and other Federal agencies, for elimination of duplicate funding. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

C. Funding Decision

After projects have been evaluated, the Director of the Southwest Fisheries Science Center, NMFS, in consultation with the Assistant Administrator for Fisheries, NOAA, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NMFS program staff. A project must not be initiated by a recipient until a signed award is received from the Grants Office.

V. Other Requirements

Recipients and subrecipients are subject to all applicable Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

A. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace: Recipients of cooperative agreements (as defined at 15 CFR part 26, subpart F) are subject to 15 CFR part 26, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying: Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single-family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure: Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

B. Lower Tier Certifications

Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. An SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

All non-profit and for-profit applicants are subject to a name check

VOL
58
ISS
131
JL
12
1993
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review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If an application for an award is selected for funding, the Department has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

NMFS reviewed this solicitation in accordance with E.O. 12291 and DOC guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state, or local agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. This notice involves information collection requirements approved by OMB Control No. 0348–0043.

This program is not subject to the provisions of E.O. 12372.

Dated: July 6, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–16355 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–22–M

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) in 1993 under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice announces the receipt of an application from the Russian Federation which requests authorization for the tanker DARNITSA to conduct cargo transport and bunkering operations in the Northwest Atlantic Ocean area of the EEZ. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910

and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: July 6, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16444 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Cancellation of Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The meeting of the Technical Advisory Group for Cigarette Fire Safety scheduled for July 9, 1993, and announced in the **Federal Register** of June 23, 1993 (58 FR 34038) has been canceled. The meeting will not be rescheduled.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0470.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 93–16462 Filed 7–9–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 227, Patents, Data, and Copyrights; OMB Control Number 0704–0240

Type of Request: Extension

Number of Respondents: 16,560

Responses Per Respondent: 1

Annual Responses: 16,560

Average Burden Per Response: 79 hours and 28 minutes

Annual Burden Hours (Including recordkeeping): 2,307.240

Needs and Uses: This proposal meets the collection and recordkeeping requirements in the areas of technical data, software, copyrights, and contracts.

Affect Public: Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of

the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

Dated: July 6, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-16358 Filed 7-9-93; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-729-000, et al.]

Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 2, 1993.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER93-729-000]

Take notice that on June 25, 1993, Boston Edison Company (Edison) of Boston, Massachusetts, filed an All-Requirements Service Agreement dated March 17, 1993 between Edison and the Massachusetts Bay Transportation Authority (MBTA). Under the terms of the Agreement, Edison will provide the MBTA all-requirements service as that service is defined in the Agreement. Edison states that the MBTA currently has a peak demand of about 93 MW. Edison asks that the Agreement be allowed to become effective as a rate schedule as of February 1, 1993 consistent with the Commission's policy as stated in Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106 at 61,338 (August 3, 1992).

Edison states that this filing has been posted as required by the Commission's regulations. Edison states that it has filed the Agreement with the consent of the MBTA as evidenced by the MBTA's execution of the Agreement. Edison further states that it has served the filing on the affected customer and upon the Massachusetts Department of Public Utilities.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

PacifiCorp; Portland General Electric Co., Puget Sound Power & Light Co., Washington Water Power Co.

[Docket No. ER93-744-000]

Take notice that PacifiCorp, on June 30, 1993, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Letter Agreement dated June 24, 1993 between Puget Sound Power & Light Company (Puget) and PacifiCorp. The Letter Agreement provides for the continued sale of generation owned by Puget, Portland General Electric Company (Portland), the Washington Water Power Company (Water Power) and PacifiCorp, among others, from the Skookumchuck Hydroelectric Project to Puget. PacifiCorp's filing is on behalf of Portland, Puget, Water Power and itself.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that the Letter Agreement be allowed to become effective as of July 1, 1993.

Copies of the filing were supplied to the owners of the Skookumchuck Hydroelectric Project including Portland, Puget, and Water Power and to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Co.

[Docket No. ER93-697-000]

Take notice that on Wisconsin Electric Power Company (Wisconin Electric) on June 22, 1993, tendered for filing a letter requesting that the Service Agreement date in this docket be changed to June 9, 1993.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Grayling Generating Station Limited Partnership

[Docket No. ER93-736-000]

Take notice that Grayling Generating Station Limited Partnership (Grayling), a Michigan limited partnership, on June 29, 1993, tendered for filing, pursuant to 18 CFR 35.1 and 35.13, proposed supplement No. 9 to Rate Schedule FERC No. 1, applicable to the sale of energy and capacity to Consumers Power Company (Consumers) from a biomass waste wood generating facility located in Crawford County, Michigan. The facility is a qualifying small power production plant of more than 30 MW within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978. The proposed changes would increase revenues from jurisdictional sales and services by 0.01 cents per kilowatthour.

Supplement No. 9 makes two changes to Rate Schedule FERC No. 1. First, the capacity to be sold by Grayling to Consumers has increased by 8 MW. As a result of the increase in capacity to be sold, the capacity charges has changed from 4.05 cents per kilowatthour to 4.06 cents per kilowatthour. The capacity rate is a weighted average charge based on the MPSC determination of avoided cost and escalated for the appropriate time period. Second, the calculation of capacity charges is modified if the average of the Plant's Annual Availability for the prior two consecutive calendar years of operation is greater than .95. This change has occurred at the insistence of the MPSC.

Grayling also is requesting that the sixty-day notice period under 18 CFR 35.3 be waived.

Copies of this filing have been served on Consumers Power Company.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Cleveland Electric Illuminating Co.

[Docket No. ER93-471-000]

Take notice that on June 28, 1993, The Cleveland Electric Illuminating Company (CEI) tendered for filing revisions to its proposed Service Schedule F—Economy Power to the Agreement for Installation and Operation of a 138 kv Synchronous Interconnection between CEI and the City of Cleveland, Ohio (CEI Rate Schedule FERC No. 12). CEI states that its proposed Service Schedule F has been revised pursuant to the Order Noting and Granting Interventions, Granting and Denying Summary Disposition, Accepting For Filing And Suspending Rates, Establishing Hearing Procedures, and Dismissing Complaint, issued on May 28, 1993, in order to establish a rate for economy energy transactions based on the-of-pocket cost of the supplying party plus 50% of the gross savings of the transactions.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER93-742-000]

Take notice that on June 29, 1993, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its existing Contract for Interchange Service with the City of Wauchula, Florida (Wauchula).

Tampa Electric also tendered for filing a Letter Agreement amending its existing Letter of Commitment with Wauchula under Service Schedule D (Long-Term Interchange Service).

Finally, Tampa Electric tendered for filing a Service Agreement with Wauchula under Tampa Electric's FERC Electric Tariff, First Revised Volume No. 1, and a related revised tariff sheet.

VOL
58
ISS
131
JL
12
1993
UMI

Tampa Electric proposed the tendered documents be made effective on September 1, 1993.

Copies of the filing have been served on Wauchula, the other customers under Tampa Electric's tariff, and the Florida Public Service Commission.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Electric Power Co.

[Docket No. ER93–741–000]

Take notice that on June 29, 1993, Southwestern Electric Power Company (SWEPCO), by its counsel, submitted for filing Amendment No. 2 to SWEPCO's Electric System Interconnection Agreement with Cajun Electric Power Cooperative, Inc. (SWEPCO FERC Rate Schedule No. 100).

SWEPCO requests an effective date of the later of July 1, 1993 or the date on which SWEPCO completes its acquisition of the electric utility assets of Bossier Rural Electric Membership Cooperative, Inc., a Cajun member. Accordingly, SWEPCO requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Cajun, the Louisiana Public Service Commission, and copies of the transmittal letter only have been sent to other SWEPCO wholesale customers to advise them of the requested waiver of notice requirements.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER92–517–003]

Take notice that on June 18, 1993, Southern Company Services, Inc. (SCSI) tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Co. of Colorado

[Docket No. ER93–634–000]

Take notice that on June 24, 1993, Public Service Company of Colorado (Public Service) tendered for filing an amendment in the above-referenced docket.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Central Louisiana Electric Co., Inc.

[Docket No. ER93–738–000]

Take notice that on June 29, 1993, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing proposed changes in its FERC Rate Schedule Nos. 4 and 58. CLECO proposes to change its transmission service agreements with CAJUN Electric Power Cooperative, Inc. (CAJUN) and Southwestern Electric Power Company (SWEPCO). As a result of the sale of Bossier Rural Electric Membership Corporation (BREMCO) to SWEPCO, CLECO proposes to no longer provide transmission service to CAJUN at the delivery points of its member, BREMCO, and to provide such transmission service to SWEPCO at such delivery points under a revised interconnection agreement between CLECO and SWEPCO. CLECO requests that the proposed changes become effective simultaneously, and request waiver of the Commission's prior notice requirements so that the effective date of the change will be July 1, 1993.

CLECO states that copies of this filing were served upon SWEPCO, CAJUN, BREMCO, and the Louisiana Public Service Commission.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Co.

[Docket No. ER93–91–003]

Take notice that Detroit Edison Company (Edison) on June 18, 1993 tendered for filing its refund report in the above-referenced docket.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. PSI Energy, Inc.

[Docket No. ER93–351–000]

Take notice that on June 25, 1993, tendered for filing amended Service Schedules to the FERC Filing in Docket No. ER93–351–000 to comply with a FERC Staff request.

Copies of the filing were served on Illinois Municipal Electric Agency, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: July 16, 1993, in accordance with Standard Paragraph E end of this notice.

13. The Montana Power Co.

[Docket No. ER93–608–000]

Take notice that on June 28, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an amendment to its filing of a Form of Service Agreement with Louis Dreyfus Electric Power, Inc. under FERC Electric Tariff, 2nd Revised Volume No.1. This amended filing provides additional information requested by Commission Staff.

Copies of the filing were served upon Louis Dreyfus Electric Power, Inc.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Westmoreland-LG&E Partners

[Docket No. ER93–734–000]

Take notice that Westmoreland-LG&E Partners, owner of an electric generating facility located in Weldon Township, North Carolina, submitted for filing, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an initial rate schedule for sales to Virginia Electric and Power Company.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Power & Light Co.

[Docket No. ER93–735–000]

Take notice that on June 29, 1993, Puget Sound Power & Light Company (Puget) tendered for filing proposed changes in its Rate Schedule FERC No. 78 relating to the Centralia Transmission Agreement executed on September 22, 1980 between Puget and the City of Seattle (Seattle). The proposed changes would increase revenues for service provided under this schedule by $3,150 per year based on a 12-month period ending June 1991. A copy of the filing was served upon Snohomish.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas & Electric Corp.

[Docket No. ER93–733–000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on June 28, 1993, tendered for filing a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated June 1, 1993 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $3,823.17 to $3,300.58 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, no change in the monthly Transmission Charge in accordance with Articles V and VI of its Rate Schedule No. 22 and an increase in the annual Operation and Maintenance Charge from $4,367.57 to $4,564.11 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1993.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, P.O. Box 3607, Binghamton, New York 13902–3607.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. United Illuminating Co.

[Docket No. ER93–3–001]

Take notice that on June 17, 1993, The United Illuminating Company (UI) tendered its compliance filing in Docket No. ER93–3–000. That docket concerns UI's Wholesale Electric Sales Tariff, Rate Schedule FERC No. 100, and UI's Transmission Service Tariff, Rate Schedule FERC No. 101. Those rate schedules will govern UI's future wholesale electric sales to non-affiliates and UI's future provision of transmission services.

The compliance filing modifies the Transmission Tariff (1) by requiring cost support UI's proposed return on common equity, (2) by eliminating a separate out-of-rate charge, and (3) by eliminating a provision for recover of stranded investment.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. The Montana Power Co.

[Docket No. ER93–737–000]

Take notice that on June 29, 1993, The Montana Power Company (Montana Power) tendered for filing pursuant to part 35 of the Federal Energy Regulatory Commission's (FERC) Regulations under the Federal Power Act its proposed Rate Schedule REC–1, applicable for sales of electricity by Montana Power for resale to Central Montana Electric Power Cooperative, Inc. (Central Montana) (Rate Schedule FPC No. 39). Montana Power states that this filing has been served upon Central Montana. Montana Power has requested that the Commission allow the revised rates to be effective as of September 15, 1993.

Montana Power states that Rate Schedule REC–1 will provide it with an annual increase in revenues from sales to these customers of $866,000 as a result of a rate settlement agreement accepted by the above-mentioned parties.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. O'Brien Environmental Energy, Inc.

[Docket No. EL93–49–000]

Take notice that on June 28, 1993, O'Brien Environmental Energy, Inc. filed a request for a limited waiver of the 25 percent fossil fuel use limitation established for qualifying small power production facility (QFs) by § 292.204(b)(2) of the Commission's Rules and Regulations, 18 CFR 292.204(b)(2), implementing Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Petitioner requests that the waiver be applied to its small power production facility in Duarte, California and be effective as of July 15, 1993. The waiver requests authority to burn an additional 577.8 million btu's of natural gas, representing 25% of the btu's from lost landfill gas production at Petitioner's facility due to force majeure events. The Petitioner also requests expedited consideration of the request for waiver and public comment period not to exceed fifteen days.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Co.

[Docket No. ER93–731–000]

Take notice that on June 28, 1993, Delmarva Power & Light Company (DPL) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between DPL and Long Island Lighting Company (LILCO) dated June 21, 1993.

DPL states that the Agreement sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to LILCO. DPL requests that the Commission waive its standard notice period and allow this Agreement to become effective on August 1, 1993.

DPL states that a copy of this filing has been sent to LILCO and will be furnished to the New York Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas & Electric Corp.

[Docket No. ER92–726–000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on June 28, 1993 tendered for filing a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated June 1, 1993 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $3,823.17 to $3,300.58 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, no change in the monthly Transmission Charge in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $4,367.57 to $4,564.11 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1993.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, P.O. Box 3607, Binghamton, New York 13902–3607.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Co.

[Docket No. ER93–725–000]

Take notice that on June 24, 1993, Florida Power & Light Company (FPL) filed Supplement No. 8 to the Long-Term Agreement to Provide Capacity and Energy by Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc. FPL requests an effective date of June 30, 1993.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Co. of New Mexico

[Docket No. ER93–727–000]

Take notice that on June 25, 1993, Public Service Company of New Mexico (PNM) submitted for filing an Agreement for Exchange of Economy and Amendment 1 thereto (the Agreements) between PNM and the City of Anaheim, California (Anaheim). Under the terms of the Agreements, entered into pursuant to Service Schedule C to the PNM/Anaheim Interconnection Agreement (Banked Energy), the parties establish certain conditions under which Anaheim will be able to bank energy that Anaheim would otherwise be required to schedule from its anticipated ownership interest in Unit 4 of the San Juan Generating Station.

PNM requests waiver of the applicable notice requirements so that service may commence under the Agreements as of the closing date of the PNM/Anaheim San Juan Unit 4 purchase transaction, presently scheduled for July 28, 1993.

Copies of the filing have been served upon Anaheim and the New Mexico Public Utility Commission.

VOL 58 ISS 131 JL 12 1993 UMI

Comment date: July 15, 1993, in accordance with Standard Paragraph E end of this notice.

24. Wholesale Power Services, Inc.

[Docket No. ER93–730–000]

Take notice that on June 25, 1993, Wholesale Power Services, Inc. (WPS) petitioned the Commission for acceptance of WPS Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. WPS is an indirect subsidiary of PSI Resources, Inc. which is the parent company of PSI Energy, Inc., a public utility.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas & Electric Corp.

[Docket No. ER93–732–000]

Take notice that on June 28, 1993, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing a Rate Schedule and seven Supplements relating to an agreement for the installation, ownership and maintenance by CHG&E of certain facilities at its Rock Tavern and Roseton Substations in connection with the construction by the Power Authority of the State of New York (NYPA) of its Marcy South Transmission Lines. CHG&E has requested waiver of notice requirements so that the Rate Schedule can be made effective as of December 7, 1983, Supplement No. 1 as of September 11, 1985, Supplement No. 2 as of November 1, 1987, Supplement No. 3 as of July 1, 1988, Supplement No. 4 as of July 1, 1989, Supplement No. 5 as of July 1, 1990 and Supplement No. 6 as of July 1, 1991, Supplement No. 7 as of July 1, 1992.

CHG&E states that a copy of this filing has been served by mail upon NYPA and upon the Public Service Commission of the State of New York.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Electric and Gas Co.

[Docket No. ER93–500–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on June 25, 1993, tendered for filing a Second Supplement to the Agreement for the Sale of Energy and Capacity to Central Hudson Gas and Electric Corporation (CHG&E) to provide replacement power for generating units (Roseton) damaged in a fire on March 18, 1993.

Copies of the Second Supplement have been served upon CHG&E and interested state commissions.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16370 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF92–54–003]

Polk Power Partners, L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 6, 1993

On June 25, 1993, Polk Power Partners, L.P. of 3753 Howard Hughes Parkway, suite 200, Las Vegas, Nevada 89109, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in central Florida, near Bartow, in Polk County, Florida. On December 23, 1991, in Docket No. QF92–54–000 applicant filed a notice of self certification. The Commission subsequently certified and then recertified the facility as a qualifying cogeneration facility in Polk Power Partners, L.P., 61 FERC ¶ 61,030 (1992), and 61 FERC ¶ 61,300 (1992), respectively. The instant request for recertification is due to the fact that the maximum net electric power production capacity will decrease from 118.7 MW to 118.3 MW and an additional or alternative thermal host, an ethanol manufacturing plant, is contemplated. The ethanol manufacturer will use steam for the production of ethanol.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16373 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2454–018 Minnesota]

Minnesota Power Co.; Availability of Environmental Assessment

July 6, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Sylvan Hydroelectric Project, located on the Crow Wing River in Cass and Morrison Counties, Minnesota, near Rosing Township, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices

at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16374 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–70–000]

Black Marlin Pipeline Co.; Informal Settlement Conference

July 6, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, July 12, 1993 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Russell B. Mamone at (202) 208–0744 or Anja M. Clark at (202) 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16371 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1129–001]

Northwest Pipeline Corp.; Petition To Amend

July 6, 1993.

Take notice that on June 24, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91–1129–001, a petition pursuant to section 7(c) of the Natural Gas Act seeking a conforming amendment to a Certificate of Public Convenience and Necessity issued June 16, 1991, in Docket No. CP91–1129–000. Such amendment should reflect the differences between the actually installed new mainline compressor station near Ignacio, Colorado, and the originally certificated station, all as more fully set forth in the petition that is on file with the Commission and open to public inspection.

Northwest states that the original order authorized Northwest to construct and operate a new 13,000 horsepower compressor station, now referred to as the La Plata "B" Compressor Station. The new compressor station was proposed to be located within the boundaries of the existing La Plata "A" Compressor Station site. Northwest states that, because of design changes, the new 13,000 horsepower station was actually built on an adjacent site, with a modification to the originally proposed suction and discharge piping connecting the station with Northwest's transmission system and the Ignacio Processing Plant.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 27, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16372 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the sale to the Compagnie Generale des Matieres Nucleaires (COGEMA) Pierrelatte, France of the following materials: 611,028 pounds of natural uranium, and 6,804,559 pounds of uranium, enriched to less than 1.25 percent in the isotope uranium-235, for use as fuel in power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 7, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–16458 Filed 7–9–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Notice 93–15]

Special Research Grant Program; Pre-Freshman Enrichment Program (PREP)

AGENCY: Office of Energy Research (ER), Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of University and Science Education Programs (USEP) of the U.S. Department of Energy (DOE), announces its interest in receiving grant applications from four-year and two-year (community colleges) institutions of higher education that will support the development of programs and approaches to encourage underrepresented populations in science-based careers. Examples of these approaches include, but are not limited to, summer institutes and academic year activities that prepare students in science and mathematics subject matter and motivate them to take future college-preparatory courses in science, mathematics, and engineering.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., e.d.t., September 15, 1993, to permit timely consideration for award in Fiscal Year 1994. No electronic submissions of formal applications will be accepted.

ADDRESSES: Formal applications referencing Program Notice 93–15 should be forwarded to: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION: John Ortman, Program Manager, Office

VOL
58
ISS
131
JL
12
1993
UMI

of University and Science Education Programs, ST–50, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–8949.

SUPPLEMENTARY INFORMATION: The DOE is concerned about whether there will be enough science, engineering and mathematics professionals to perform its research and development mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools and other institutions * * *" 42 U. S. C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of science and engineering manpower is threatened by two factors: fewer students enrolling in science-based courses in high school and fewer students available to join the science, engineering and math pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science-based course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university science and engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in science, engineering and math careers by preparing and guiding students entering sixth through tenth grades (have not completed the tenth grade) in the selection of college-preparatory courses in science, mathematics and engineering. Therefore, in accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is limited to four-year accredited institutions of higher education which grant baccalaureate degrees in science, mathematics and engineering and to two-year institutions (community colleges). Community colleges are encouraged to maintain articulation agreements with four-year institutions which offer degrees in science, mathematics and engineering. Eligibility is restricted to these institutions because they offer the science, mathematics and engineering degrees which the student participants entering sixth through tenth grade will be encouraged to pursue.

PREP projects are required to have a summer component. The summer component must be no less than four continuous weeks, reaching a minimum of 24 students in grades six to ten (have not completed the tenth grade). These 24 students must participate in the program for four continuous weeks. Typically, PREP grantee institutions work collaboratively with local school districts, local industry, students' parents and peers to ensure success. Other elements which may strengthen applications include, but are not limited to: follow-up activities during the academic year; interdisciplinary approach to teaching science and mathematics; the use of role models and field trips; and students' active participation in hands-on activities. DOE financial support is expected not to comprise the totality of funding for an individual project. In FY 1993, projects were supported at 50 institutions. DOE funds of approximately $2 million were augmented by over $2.7 million in non-DOE (private industry and university) funds and it is desirable that applications for the FY 1994 program indicate similar non-DOE support.

Contingent upon availability of appropriated funds, DOE expects to make several two-year grants in FY 1994 to meet the objectives of the program. The amount of each grant award will be limited to a maximum of $42,000 or $21,000 per year.

Information about the development and submission of applications, eligibility, limitations, program requirements, evaluation and selection processes, and other policies and procedures may be found in the ER Application Guide, and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Office of University and Science Education Programs, ST–50, Washington, DC 20585. Telephone requests may be made by calling (202) 586–8949.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This description of work should include:

(1) The conceptual design and how that design relates to program objectives;

(2) The target audience(s) the project will serve and efforts planned to serve that audience;

(3) The mechanisms to be used to organize and manage the project, including the roles and responsibilities, financial and otherwise, of any partnerships;

(4) The monitoring and evaluation plan, including how those plans can be used for possible modification;

(5) The planned outcomes and how these outcomes will be assessed and reported; and

(6) The anticipated significance of the project and how it will be confirmed.

Issued in Washington, DC, on July 1, 1993.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–16456 Filed 7–9–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 93–50–NG]

Cascade Natural Gas Corp; Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: In DOE/FE Order No. 810, issued June 22, 1993, the Office of Fossil Energy of the Department of Energy authorized Cascade Natural Gas Corporation to import up to 4,864 Mcf of Canadian natural gas per day from Canadian Hydrocarbons Marketing, Inc., beginning June 22, 1993, through October 31, 1996.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 24, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–16457 Filed 7–9–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4677–8]

Public Water System Supervision Program Revision for the State of Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2, and

40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Ohio is revising its Public Water System Supervision (PWSS) primacy program. The Ohio Environmental Protection Agency (OEPA) has adopted drinking water regulations for the treatment of surface water that correspond to the NPDWR for surface water treatment (SWT) promulgated by the United States Environmental Protection Agency (U.S. EPA) on June 29, 1989, (54 FR 27486). The U.S. EPA has completed its review of Ohio's primacy revision.

The U.S. EPA has determined that the Ohio SWT Rule meets the requirements of the Federal rule. Included in this determination is U.S. EPA's conclusion that the analytical methods referenced in the Ohio SWT Rule for determining compliance are as stringent as the Federal SWT Regulations.

As part of its review of the Ohio SWT Rule, U.S. EPA conducted a technical evaluation of the analytical methods referenced in the Ohio Analytical Techniques Rule (*Ohio Administrative Code* (OAC), Chapter 3745–81–27), which contains the analytical methods referenced in the Ohio rules for determining compliance for turbidity and residual disinfectant chlorine at treatment systems which have a surface water source. The OAC Chapter 3745–81–27 prescribes certain analytical methods from the 17th Edition of Standard Methods for the Examination of Water and Wastewater which have not been formally approved by the U.S. EPA. After conducting a side-by-side comparison of the proposed Ohio methods and those currently approved by the U.S. EPA, U.S. EPA concluded that the Ohio methods for turbidity and residual disinfection concentration (free chlorine and combined chlorine, chlorine dioxide and ozone) are scientifically identical to the Federally approved methods. The U.S. EPA has therefore determined that these referenced methods are as stringent as the corresponding citations in the Federal regulations for deciding compliance at water treatment systems which obtain public drinking water supplies from a surface water source.

All interested parties are invited to submit written comments on this proposed determination, and request a public hearing on or before August 11, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time, following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Please submit all comments and requests for a public hearing to William Spaulding (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

If requests which indicate sufficient interest and/or significance are received by the end of the Notice period, a public hearing will be held. Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Ohio. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Ohio. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, these determinations shall become effective on August 11, 1993.

Please bring this Notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266–0149.

U.S. Environmental Protection Agency, Region 5, Safe Drinking Water Branch (WD–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William D. Spaulding, Region 5, Drinking Water Section, at the Chicago address given above, telephone 312/886–9262.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 28th day of June, 1993.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 93–16431 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL 4676–5]

Public Meetings on Municipal Solid Waste Flow Control

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a series of three public, one-day meetings on municipal solid waste (MSW) flow control. These meetings will offer an opportunity for interested parties to express their views and provide information on the issues and impacts associated with the use of municipal solid waste flow control. The Agency will use this information in preparing a Report to Congress on flow control. Interested parties may submit written comments directly to the Agency without speaking or attending a meeting if they choose.

MEETING FORMAT, DATES AND LOCATIONS: The Agency is inviting interested parties, including representatives of State and local governments, waste management and recycling industries, financial markets, environmental, and other public interest organizations, to attend one of the meetings, present a statement, and/or submit written information to the Agency. Speakers should register at least two weeks in advance of the meeting at which they wish to speak. They may present a brief oral statement, not to exceed five minutes, and respond to questions from an EPA panel. Interested parties may submit written comments at the meeting without speaking, or directly to the public docket without attending the meeting (see information below). All written statements should be submitted in an original and two copies. Meeting attendees who do not wish to speak do not need to register in advance.

Each meeting will begin promptly at 9:30 a.m. and may continue until 6 p.m.,

VOL
58
ISS
131
JL
12
1993
UMI

depending on the number of speakers. The meeting may adjourn earlier than 6 p.m. if all attendees who have registered to make a statement have completed their presentations earlier than 6 p.m. Speakers generally will be scheduled in the order of registration. Speakers may be asked to limit their statement to less than five minutes, depending on the number of speakers. If there is sufficient time available after all pre-registered speakers have been scheduled, additional speakers who register at the meeting site between 8 and 9 a.m. will be able to present a statement.

The schedule for Flow Control Public Meetings is listed below. Please note that meeting space is limited to a first-come, first-serve basis. A block of rooms has been reserved at each hotel meeting site for your convenience. Please make your reservation directly with the hotel by asking for the U.S. EPA Flow Control Public Meeting.

August 17, 1993 9:30 a.m., Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418–6800

August 31, 1993 9:30 a.m., Holiday Inn Financial District, 750 Kearny St., San Francisco, California 94108, (415) 433–6600

September 15, 1993 9:30 a.m., The Palmer House Hilton, 17 East Monroe Street, Chicago, Illinois 60603, (312) 726–7500

FOR FURTHER INFORMATION CONTACT: For information on substantive matters, contact Patricia K. Cohn, Municipal and Industrial Solid Waste Division, U.S. Environmental Protection Agency (OS-301), 401 M St. SW., Washington, DC 20460, (202) 260–3132 or (202) 260–6261. For information on administrative matters or to pre-register to present a statement at any of the meetings, please call the U.S. EPA Flow Control Meeting Line at (703) 218–2550. Please pre-register no later than two weeks before the meeting at which you wish to speak.

Public Docket

A summary of the meetings and all written comments received by EPA on flow control will be placed in a public docket and made available for viewing in the RCRA Information Center (RIC), which is located in room M2616, U.S. EPA, 401 M Street, SW., Washington, DC, 20460. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call (202)260–9327 for an appointment. Copies cost $0.15 per page. The reference number for this docket is F–93–RFCN-FFFFF.

SUPPLEMENTARY INFORMATION:

A. Background

In September 1992, Congress directed EPA to conduct a study and submit a Report to Congress by September 1994 on flow control as a means of MSW management. The study is to contain a comparative review of states with and without such authority, and an analysis of the impact of flow control laws on (1) protection of human health and the environment, (2) development of state and local waste management capacity, and (3) achievement of state and local goals for source reduction, reuse, and recycling.

Flow controls are legal provisions used by local governments to designate where MSW from a specified geographic area must be processed, stored, or disposed. The purpose of flow control ordinances is to keep wastes within a specific area. In accomplishing this goal, flow control laws may restrict interstate movement of wastes.

There is a wide variation in the specific circumstances of flow controls from one locality to the next, reflecting a variety of public-private waste management roles and relationships, waste management systems, and public policy goals to be served by the flow controls. More than half of the States have granted local governments authority to exercise flow control over municipal solid waste.

Although many jurisdictions have used flow control over the years, there are several reasons why flow control has recently become more controversial. First, old, less protective disposal facilities are closing as new facility standards take effect. The costs of municipal solid waste management are increasing as local governments plan for new, state-of-the-art recycling, disposal and combustion facilities to replace closing facilities and meet growing capacity needs. Flow control has become a widely relied upon tool to cover the costs of existing facilities and may be a prerequisite to obtain financing for new facilities in many circumstances.

Second, state and local governments are taking more active roles in integrated waste management planning. They are looking at the whole waste management system to develop plans that rely on a combination of source reduction, recycling, disposal, and combustion to ensure more responsible materials use and solid waste management. Local governments see flow control as a key tool to follow through in their responsibility for implementing those plans.

Private waste management companies, recyclers, and secondary materials marketers have always been important participants in municipal waste management and materials reuse. These industries are facing dynamic changes to meet new standards and changing markets and management practices. They view flow control laws as serious impediments to their ability to compete and to continue to do business in a jurisdiction. As governments have become more involved in comprehensive planning and implementation, the potential for public-private conflict and competition has increased significantly.

Finally, court decisions over the last several years have raised serious questions about the legal status of flow controls. A number of recent decisions have overturned specific flow control laws as violations of the Commerce Clause of the U.S. Constitution. However, other decisions have supported flow control laws. Because each case is highly dependent on the factual circumstances, it is unlikely that there will be any clear understanding through the courts of what legislation is or is not acceptable for some years to come. (The Supreme Court recently accepted a flow control case, C & A Carbone v. Clarkstown.) In the interim, both government and the private sector are faced with uncertainty over how to proceed. Increasingly, flow control is a subject of national debate, with some parties raising the call for Congressional action.

EPA recognizes that these are critical issues to many parties with differing views. The Agency is convening three public meetings to provide all parties with a forum to present their positions and to provide factual information to assist the Agency in better understanding the impacts of flow control.

B. Issues Associated With Flow Control

EPA believes there are several key issues associated with the use of MSW flow control. EPA would also like to learn of any additional issues that the Agency should address in the Report to Congress. The Agency encourages interested parties to comment and provide factual information in the following areas.

- What materials are/should be covered by flow control laws, (e.g. residential, commercial, industrial solid waste, curbside separated recyclables, commercial separated recyclables)? When should recyclables be treated as separate from the municipal solid waste stream?

- What is the impact of flow control on source reduction and recycling—while some flow control laws are intended to promote recycling, are there near term or long term negative impacts associated with controlling certain activities associated with collection, separation, or transport of recyclables?
- How can local governments implement comprehensive, integrated waste management plans without flow control?
- Are there human health and environmental impacts associated with flow control?
- What are the economic impacts of flow control—how does it affect cost and delivery of services to taxpayers? Does flow control foster inefficiencies that may undermine sustainable waste management systems in the future?
- What effect does flow control have on waste management capacity—are jurisdictions with flow control more successful in financing, constructing and operating facilities?
- What are non-legislative options to achieve public policy goals served by flow control—what do States and localities without flow control do? Is there a free market approach to achieve flow control goals—is it effective?

C. Provisions for Written and Oral Comments

All interested parties may submit comments to EPA. Comments may be submitted directly to the docket (see information above) and need not be presented at the public meetings.

Dated: June 30, 1993.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 93–16425 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4678–1]

Science Advisory Board; Environmental Engineering Committee; Ground Water Monitoring and Network Design Review Subcommittee; Open Meeting; July 29–30, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Ground Water Monitoring and Network Design Review Subcommittee (GWMNDRS) of the Environmental Engineering Committee (EEC), will meet on Thursday, July 29, and Friday, July 30, 1993. The meeting will be at the U.S. Environmental Protection Agency (EPA), Environmental Monitoring Systems Laboratory (EMSL), P.O. Box 93478, Las Vegas, Nevada 89193–3478 (944 East Harmon = 89119). The meeting will begin at 9 a.m. on Thursday, July 29th and 8:30 am on Friday, July 30th and will adjourn no later than 4 p.m. on July 30th.

At this meeting, the GWMNDRS will receive briefings from Agency staff, as well as academic researchers conducting research under Cooperative Agreements with the Agency's EMSL–LV Laboratory, and comment on the draft document describing the Agency's research program dealing with data quality objectives for Ground-Water Monitoring, otherwise known as research on quantitative methods for ground-water monitoring network design. The review document was prepared by the staff of the Agency's Office of Research and Development (ORD). Copies of the draft document on the Agency's EMSL–LV research program, entitled "Monitoring Network Design Research Plan," dated 1993 may be obtained by contacting Mr. Steven Gardner (Tel. 702–798–2580) or Ms. Cherie Hooper of the Aquatic and Subsurface Monitoring Branch (AMW) of the Advanced Monitoring Systems Division (AMD) (Mail Drop AMW) at the U.S. EPA's EMSL–LV Laboratory at (702) 798–2368. The EMSL–LV FAX number is (702) 798–2692.

The proposed charge to the SAB's GWMNDRS from the Agency's EMSL–LV, as well as from the Office of Solid Waste (OSW) is to address the use of quantitative methods in the overall monitoring well network design research program dealing with quantitative data quality objectives (QDQO), to evaluate research-in-progress, and to examine what other technical expertise or resources that can be brought to bear on the research program to enhance implementation of the Resource Conservation and Recovery Act (RCRA) ground-water monitoring research program. The following monitoring network design research areas will be addressed in the review: (1) Computerized geostatistical tools; (2) stochastic simulation and optimization models, and (3) fractal mathematics to describe aquifer heterogeneity. The EMSL–LV staff will also present its plans for future research.

The following questions are being asked of the SAB/GWMNDRS: (1) Do the quantitative methods assist in designing monitoring networks? What advantages do they have over current network design methods, such as best professional judgement? Are the methods too complex, considering the user profile? Will user profiles be considered in developing the final project deliverables?; (2) Are the underlying assumptions of models used valid? Do the model assumptions make sense considering the physical system being modeled?; (3) Are the data requirements for the models realistic? How does the model address data reliability (e.g., accuracy and precision), variance, and sample sizes? What improvements could be made to address these concerns?; (4) How can the research be used to enhance implementation of the RCRA ground-water monitoring program?; and (5) What other technical expertise or resources within EPA, other Federal Agencies, national laboratories, and academic institutions could be utilized to better serve the client's needs?

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Dorothy M. Clark, Secretary to the Ground Water Monitoring and Network Design Review Subcommittee (GWMNDRS), Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260–6552 or FAX (202) 260–7118. Written comments received by July 15, 1993 will be mailed to the SAB/GWMNDRS; comments received after that date will be provided to the GWMNDRS at the meeting. Written comments of any length (at least 35 copies) may be provided to the Subcommittee up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than July 26, 1993 in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: June 28, 1993.

Samuel R. Rondberg,

Acting Staff Director, Science Advisory Board (A101F).

[FR Doc. 93–16432 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50765; FRL–4629–5]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a nonindigenous microbial pesticide (NMP) application from the Department of Entomology, University of Minnesota of intent to conduct small-scale field testing of an NMP microsporidian, *Nosema furnacalis*. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50765 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: An application for an NMP has been received from Dr. Cary T. Oien, Department of Entomology, University of Minnesota, 219 Hudson Hall, 1980 Folwell Ave., St. Paul, MN 55108, of intent to conduct small-scale field testing of microsporidian, *nosema furnacalis* (Microsporidia nosematidae). This NMP application EPA file symbol is 060219–NMP–II. The proposed small-scale field trials will involve the introduction of the microsporidia, *nosema furnacalis*, and the European corn borer, *Ostrinia nubilalis*. The testing will be conducted at the University of Minnesota Agricultural Experimental Station in Rosemount, Minnesota. The crop to be used is a hybrid Jubilee sweet corn which is widely planted and is not resistant to the European corn borer. Corn is naturally habitant for both, the natural host, *Ostrinia furnacalis*, and the experimental host, *Ostrinia nubilalis*. The entire test site will be less than 10 acres.

Since the microsporidian is host-specific, extra corporeal survival of the organism is not expected for this Ostrinia furnacalis species to be tested.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–16430 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50763; FRL–4629–3]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a nonindigenous microbial pesticide (NMP) application (NMP No. 10182–NMP–R) from ZENECA Ag Products of intent to conduct small-scale field testing. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before August 11, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50763 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: An application for an NMP has been received from ZENECA Ag Products, P.O. Box 751, Wilmington, Delaware 19897. This NMP application EPA file symbol is 10182–NMP–R. This proposed small-scale field trials will involve the release of the nonindigenous insect virus, *Heliothis Armigera* to be tested to determine its efficacy against *Heliothis Virescens* and *Heliocoverpa zea* on cotton in the United States during the 1993 growing season. The total acres to be tested on cotton will be no more than 10 acres.

The primary objectives of the proposed test are: (1) To determine the intrinsic efficacy valve of HaNPr A44EB (the best material) against field populations of *Heliothis virescens* and *Heliocoverpa zea* on cotton, and (2) to compare the physical and biological properties of different formulations of HaNPr A44EB under field conditions.

These viruses are ubiquitous in the environment worldwide, and it is not likely that this strain of nuclear polyhedrosis virus (NPV) could escape its natural constraints and survive in the environment in which testing will take place.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–16429 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50762; FRL–4629–2]

Receipt of an Amendment Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 17, 1993, EPA received from Monsanto Company an amendment application requesting an extension/expansion of their experimental use permit (EUP) EUP No. 524–EUP–73, issued on April 10, 1992. Monsanto intends to continue to conduct small-scale field testing of a genetically engineered microbial pesticide. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this amendment application request for extension/expansion of Monsanto's EUP.

DATES: Written comments must be received on or before August 11, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50762 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: On March 17, 1993, EPA received an application from Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Missouri 63198. This EUP application for extension/expansion is EPA Registration Number 524–EUP–73. Monsanto's EUP extension/expansion application is a request to allow for the continuation of field testing of several lines of cotton plants which contain several forms of insect control protein derived from the common soil microbes *Bacillus thuringiensis* variety *kurstaki* (B.t.k.). Monsanto is requesting that their EUP be amended to add an additional site in Maryland.

In addition to the originally approved EUP (April 10, 1992), Monsanto in cooperation with the Asgrow Seed Company plans to establish a plot containing up to 5 different genetically modified crops at the Asgrow Research Farm located near Queenstown, Maryland. The total plot area will be no more than 0.5 land acre. There will be no more than 80 cotton plants per 0.03 acre. The maximum of B.t.k. planted acre will be the same as the original EUP (147.9). A total amount of the B.t.k. proteins release will not exceed 134.22 grams.

The primary difference between the proposed extension/expansion is the addition of the State of Maryland, and the increase in the amount of seed to be planted from 1,289 pounds of transgenic cotton seed to 2,958 pounds of seed. Upon completion of the testing, some of cotton seed, lint, and vegetation will be collected and saved for future research, analysis, or plantings. No seed may be used for food or feed, and all other plant material must be destroyed.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–16428 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1951]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 2, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for reviewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment FM § 73.606(b), Table of Allotments, Television Broadcast Stations. (Albion, Lincoln, and Columbus, Nebraska) (MM Docket No. 91–304, RM No. 7787)
Number of Petitions Filed: 2

Subject: Competition in the Interstate Interexchange Marketplace.
(CC Docket No. 90–132)
Number of Petitions Filed: 1

Subject: Amendment of Part 69 Allocation of General Support Facility Costs.
(CC Docket No. 92–222)
Number of Petitions Filed: 1

Federal Communications Commission.

La Vera F. Marshall,

Acting Secretary.

[FR Doc. 93–16413 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 93–161, DA 93–640]

Clark Bader, Inc. d/b/a/ TMC Long Distance v. Pacific Bell; Designation for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice of designation for hearing.

SUMMARY: The Hearing Designation Order designates for hearing a formal complaint proceeding to resolve material questions of fact surrounding Pacific Bell's (Pacific's) provision of interstate access services to Clark-Bader, Inc., d/b/a TMC Long Distance (TMC), during the period from 1985 through 1988. The issues to be decided in the proceeding is whether Pacific's actions, policies and practices in providing the services complained of violated sections 201(b) and/or 202(a) of the Communications Act and, if so, whether TMC suffered any measurable harm as a consequence of such violations and is entitled to an award of damages from Pacific.

FOR FURTHER INFORMATION CONTACT: Thomas D. Wyatt, Chief, Formal Complaints and Investigations Branch, Common Carrier Bureau, (202) 632–4887.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Common Carrier Bureau's Hearing Designation Order in

VOL
58
ISS
131
JL
12
1993
UMI

CC Docket No. 93–161, adopted June 1, 1993, and released June 23, 1993.

The complete text of this Hearing Designation Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Hearing Designation Order

1. In February 1989, TMC filed a formal complaint with the Commission alleging that Pacific had violated the prohibitions against unjust, unreasonable practices and unlawful discrimination contained in sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. 201(b), 202(a), by failing to provide equal access for TMC's competitive long distance services in the San Diego area. The crux of TMC's complaint is its claim that a defectively engineered equal access tandem switch installed by Pacific caused TMC's customers to experience severe and repeated disruptions of service and that Pacific failed to remedy the service problems through an alternate arrangement. Pacific, while admitting the switch malfunctions and an alternate means of providing service, contends that TMC was repeatedly advised of the service alternative but failed to take steps to obtain the necessary service. Moreover, Pacific claims that TMC has greatly exaggerated the difficulties experienced and resulting damages.

2. After submission of numerous pleadings and motions to the Commission and substantial discovery by the parties directed at the identification and production of evidence to support their respective claims, both the facts and circumstances surrounding Pacific's provision and TMC's taking of the access services are sharply disputed. Although neither TMC nor Pacific has formally requested that the complaint be designated for hearing, both have informally advised Commission staff that they view a hearing as the most appropriate and expeditious way to resolve the issues raised by the complaint.

3. Based on review of the record adduced in this matter, the Acting Chief of the Common Carrier Bureau concluded that further proceedings are necessary to resolve material questions of fact bearing on whether Pacific violated the just and reasonable standard of the Communications Act in connection with its provision of interstate access services to the complainant during the period described in the complaint.

4. Accordingly, *It is ordered*, pursuant to sections 4(i), 4(j), 201, 206, 207, 208, and 209 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 206, 207, 208 and 209, and the authority delegated under § 0.291 of the Commission's Rules, 47 CFR 0.291, that the above-captioned complaint proceeding is designated for hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the facts and circumstances surrounding Pacific's provision of interstate access services to TMC during the period covered by the complaint.
2. To determine whether Pacific engaged in unjust and unreasonable practices and/or charged unjust and unreasonable rates in violation of Section 201(b) of the Communications Act in connection with its provision of interstate access services to TMC during the period covered by the complaint.
3. To determine whether Pacific engaged in unjust and unreasonably discriminatory practices and/or charged unjust and unreasonably discriminatory rates in violation of Section 202(a) of the Communications Act in its provision of interstate access services to TMC during the period covered by the complaint.
4. To determine, in view of the evidence adduced on the foregoing issues, whether and if so, in what amounts, Pacific should be required to pay monetary damages to TMC.
5. To determine, in view of the evidence adduced under the foregoing issues, whether TMC is entitled to an award of prejudgment interest on any damages recovered in this proceeding.

5. *It is further ordered*, that the burden of proof and the burden of proceeding with the introduction of evidence shall be upon TMC.

5. *It is further ordered*, that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with § 1.221 of the Rules, 47 CFR 1.221, within twenty (20) days of the mailing of this Order.

Federal Communications Commission.

Kathleen B. Levitz,

Acting Chief, Common Carrier Bureau.

[FR Doc. 93–16414 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; South Seas/Blue Star Cross Space Charter and Sailing Agreement

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, delivery a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 132–011420.

Title: South Seas/Blue Star Cross Space Charter and Sailing Agreement.

Parties:

South Seas Steamship Company
Blue Star (North America) Ltd.

Filing Agent: Lawrence N. Minch, Esquire, Lillick & Charles, Two Embarcadero Center, San Francisco, CA 94111.

Synopsis: The proposed Agreement would permit the parties to space charter and rationalize sailings in the trade between Samoa/Tahiti and the Pacific Northwest.

By Order of the Federal Maritime Commission.

Dated: July 7, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16421 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; United States/ Australasia Interconference and Carrier Discussion Agreement, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011117–015.

Title: United States/Australasia Interconference and Carrier Discussion Agreement.

Parties:

Australia-New Zealand Direct Line
Blue Star (North America) Limited
Hamburg-Sudamerikanische Dampfschiffahrts-Geselschaft Eggert & Amsinck
Ocean Star Container Line
Pacific Coast/Australia-New Zealand Tariff Bureau
U.S. Atlantic & Gulf/Australia-New Zealand Conference
Wilhelmsen Lines AS

Synopsis: The proposed amendment adds a new Article 5.3 which clarifies the terms and procedures to be used for space chartering and equipment interchange arrangements among members of the Agreement.

Agreement No.: 203–011422.

Title: Empresa Naviera Santa/ENS Containerline, Ltd. Discussion Agreement.

Parties:

Empresa Naviera Santa, S.A.
ENS Containerline, Ltd.

Synopsis: The proposed Agreement would establish a discussion agreement in the trade between U.S. Atlantic and Gulf ports, and inland or coastal points via such ports, and ports and points in Peru and Chile, and inland points in Bolivia.

Dated: July 7, 1993.

By order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16423 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3269
Name: Bok Kun Chung
Address: 6 Latina, Irvine, CA 92714
Date Revoked: June 4, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 3300
Name: Karen L. Nowell
Address: 8222 Wiles Rd., Ste. 120, Coral Springs, FL 33065
Date Revoked: June 6, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 2733
Name: Falcon Forwarding Co., Inc.
Address: 129 Hanse Ave., Freeport, NY 11520
Date Revoked: June 8, 1993
Reason: Surrendered license voluntarily.

License Number: 3619
Name: Gene Ronald Campbell dba Carolina Marine Services
Address: 1101 Tarrant Rd., Greensboro, NC 27410
Date Revoked: June 12, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 815
Name: Wood, Niebuhr and Co., Inc.
Address: 30 Vesey Street, New York, NY 10007
Date Revoked: June 13, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 3671
Name: Kanmar, Corp.
Address: 3400 NW. 64th Ave., Bldg. 1007, Miami, FL 33166
Date Revoked: June 17, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 2982
Name: Gada Navigation—USA, Inc.
Address: 50 Carnation Ave., Bldg. 6, Floral Park, NY 11001–1733
Date Revoked: June 17, 1993
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–16422 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P36–93]

Petition of Ocean Tariff Bureau for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline, on behalf of a number of carrier customers stating they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than July 16, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Capt. Alex Yang, President, Ocean Tariff Bureau, 161 W. Victoria Street, suite 240, Long Beach, California 90805.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16470 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3430]

ASFE, the Association of Engineering Firms Practicing in the Geosciences; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Maryland-based association of engineering firms from engaging in a variety of practices designed to prevent its members from participating in price competition, giving favorable pricing or credit terms, engaging in competitive bidding, or advertising. The order also requires the respondent to remove from its policy statements or guidelines any statements that violate the order.

VOL
58
ISS
131
JL
12
1993
UMI

DATES: Complaint and Order issued June 11, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Renee Henning, FTC/H–380, Washington, DC 20580. (202) 326–2610 or 326–2621.

SUPPLEMENTARY INFORMATION: On April 2, 1993, there was published in the **Federal Register**, 58 FR 17401, a proposed consent agreement with analysis In the Matter of ASFE, the Association of Engineering Firms Practicing in the Geosciences, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in deposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–16400 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3434]

Sherwin Basil d/b/a Audio-Logics; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in his offices or provide it to consumers prior to purchase, and prohibits him from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service he offers in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19108, a proposed consent agreement with analysis In the Matter of Sherwin Basil d/b/a Audio-Logics, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16407 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3435]

Susan Frugone & Patricia Keane d/b/a Audio RX Hearing Aids; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California hearing aid sellers to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19111, a proposed consent agreement with analysis In the Matter of Susan Frugone & Patricia Keane d/b/a Audio RX Hearing Aids, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16408 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3436]

Bay Colony Audiology Center, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Massachusetts corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19113, a proposed consent agreement with analysis In the Matter of Bay Colony Audiology Center, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60)

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[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16409 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3437]

Brooklyn Audiology Assocs., P.C., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19115, a proposed consent agreement with analysis In the Matter of Brooklyn Audiology Assocs., P.C., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–16410 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3438]

Brown-Potter Hearing Aid Center; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in her office or provide it to consumers prior to purchase, and prohibits her from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service she offers in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19118, a proposed consent agreement with analysis in the Matter of Sallye B. Carpentier d/b/a Brown-Potter Hearing Aid Center, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: (Sec. 6, 38 Stat. 721; 15 U.S.C 46. interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–16411 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–02–M

[Dkt. C–3433]

Center for Improved Communications, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19120, a proposed consent agreement with analysis In the Matter of Center for Improved Communications, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

VOL
58
ISS
131
JL
12
1993
UMI

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16406 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3431]

Conair Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Connecticut-based manufacturer of personal health care and consumer electronic products from representing that sound waves emitted by the California Facial Skin Rejuvenating System, or by any substantially similar product that uses sound waves with a frequency of no more than 20 kilohertz, will firm and tone facial muscles or improve the efficacy of a facial skin clarifying toner or scrub. The order requires the respondent to have competent and reliable scientific evidence to support certain future representations it makes regarding sound waves emitted from any product.

DATES: Complaint and Order issued June 14, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On April 9, 1993, there was published in the **Federal Register**, 58 FR 18400, a proposed consent agreement with analysis In the Matter of Conair Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16404 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3432]

Fone Telecommunications, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York marketer of "900" number information services from misrepresenting premium offers, requires a preamble statement at the beginning of each children's message giving the child a chance to hang up without charge, and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children. In addition, the consent order prohibits the respondent from misrepresenting the ease with which a premium is obtainable and requires the disclosure of all material terms and conditions for obtaining any premium offers.

DATES: Complaint and Order issued June 14, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Toby Levin or Carol Kando, FTC/S–4002, Washington, DC 20580. (202) 326–3156 or 326–3152.

SUPPLEMENTARY INFORMATION: On April 2, 1993, there was published in the **Federal Register**, 58 FR 17408, a proposed consent agreement with analysis In the Matter of Fone Telecommunications, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–16405 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3439]

Hearing Care Associates-Arcadia, et al; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California firms and their officer to correct false and deceptive claims in Yellow Pages advertisements, and to prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19122, a proposed consent agreement with analysis In the Matter of Hearing Care Associates-Arcadia, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–16412 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 326]

Research Program for Exposure-Dose Reconstruction

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program to develop a research program for exposure-dose reconstruction. The purpose of the program is to reconstruct, estimate, predict, and evaluate exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying emission characteristics that can be found at National Priorities List (NPL) sites, Resource Conservation and Recovery Act (RCRA) facilities, and other sites or facilities where a hazardous substance has been released into the environment.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information.**)

Authority

This program is authorized under section 104(i)(1)(E) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)(1)(E)] and RCRA, as amended (Hazardous and Solid Waste Amendments of 1984) [42 U.S.C. 6939a (b) and (c)].

Eligible Applicants

Eligible applicants are the official public health agencies of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $165,000 is available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period with a proposed project period of up to 4 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this project is to assist in research related to exposure-dose reconstruction associated with hazardous waste sites. This research will develop, evaluate, and apply computational tools and a decision support system for estimating exposure-dose relations resulting from exposure to contaminated environmental media and hazardous substances commonly found at sites.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop and implement research methods to characterize exposure-dose relations associated with hazardous waste sites.

2. Identify and pursue emerging technical advances in the exposure-dose reconstruction area to encompass reconstruction of exposure histories and determination of biologically effective doses. These advances should include assessment of methods such as environmental multi-media exposure, kinetic networks, and dose reconstruction as a means to bridge the gap between the release of hazardous substances into the environment, potential dose (exposure), and resulting health effects.

3. Reconstruct exposure and potential dose histories and determine potential for future exposure resulting from hazardous substances in the environment for populations in the environs around hazardous waste sites by use of methodology driven environmental assessment tools. These tools may include numerical simulators that can be run on 486-type personal computers such as: (a) Steady flow in Layered Aquifer Media (SLAM486); (b) Unsteady flow in Layered Aquifer Media (ULAM486); and (c) Contaminant transport in Layered Aquifer Media (CLAM486). The generalized description of the theory of these assessment tools can be found in the public domain literature.

4. Integrate the environmental assessment simulator tools (described in 3 above) to meet multi-environmental media customization requirements.

5. Develop a "user friendly" decision support system that may consider the following, but is not limited to:

(a) Site characterization and exposure scenario data;

(b) Environmental fate and transport computations;

(c) Chemical-compound intake and exposure-dose computations;

(d) Probability distributions and uncertainty analyses; and

(e) Access to the decision support system by means of desktop computational devices.

6. When the project is terminated, provide a report which includes the methodology describing the exposure-dose reconstruction process as applied to the public health assessment process.

B. ATSDR Activities

1. Assist in the development of plausible exposure-dose relations and criteria for the selection and use of computational tools and define appropriate assumptions.

2. Provide recipient organization with a list of hazardous waste sites from which they can choose to test and validate the acceptability of the environmental assessment simulator tools developed as part of the exposure-dose reconstruction research program.

3. Collaborate with recipient organization to identify and pursue emerging disciplines related to advances in assessment of exposure to hazardous chemicals and/or mixed wastes typically associated with hazardous waste sites.

4. Collaborate with recipient organization to extend the appropriate use of novel exposure characterization and dose relations protocols to hazard characterization and communication efforts.

5. Assist in communicating advances in the above areas to all relevant communities including state and local governments and the public.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

VOL
58
ISS
131
JL
12
1993
UMI

1. *Scientific and Technical Review Criteria of New Application*

a. Proposed Program (40%)

The extent to which the applicant's proposal addresses: (1) The development and implementation of methods designed to characterize exposure-dose relations associated with hazardous waste sites (10%); (2) the reconstruction of exposure histories through the identification and pursuit of technical advances such as environmental multi-media exposure, kinetic networks, and/or dose reconstruction (10%); (3) the methods for reconstructing exposure and potential dose histories and determining future exposure resulting from hazardous substances released into the environment for populations around hazardous waste sites (15%); and (4) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured (5%).

b. Experience and Technical Ability (30%)

The extent to which the proposal has described: (1) The familiarity, qualifications, knowledge, and experience of the principal investigator in his/her ability to utilize and apply methodology driven environmental assessment tools to reconstruct exposure histories at selected sites (10%); (2) the ability of the principal investigator to modify these tools in order to meet the program objective as described in the **Purpose** section of this announcement (10%); and (3) the demonstrated ability of the principal investigator to integrate the aforementioned computational tools into kinetic networks so as to develop a decision support system in order to support and enhance the preparation of public health assessments (10%).

c. Program Personnel (20%)

The extent to which the proposal has described: (1) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership (10%); and (2) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project (10%).

d. Applicant Capability (10%)

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed project.

e. Program Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

2. *Continuation awards within the project period will be made on the basis of the following criteria:*

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

B. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA, section 104(i)(13) [42 U.S.C. 9604(i)(13)].

C. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

D. Animal Welfare

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

E. Cost Recovery

CERCLA, as amended, provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site; then the records will be maintained until resolution of all issues on the specific site.

F. Disclosure

Recipient is required to provide proof by way of citation to state code or regulation or other state pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

G. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

(1) State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review (ATSDR selected peer reviewers), ownership of data, and the arrangement for copyright when publications, data,

or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

(2) State that any copyrighted or copyrightable works shall be subject to a royalty-fee, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

(3) State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

(4) State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall therefore retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before August 13, 1993. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6797. Programmatic technical assistance may be obtained from Allan Susten, Ph.D., Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, (404) 639–0610.

Please Refer to Announcement Number 326 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

Dated: July 2, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–16397 Filed 7–9–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

[Announcement 345]

Surveillance of Elevated Blood Lead Levels in Children; Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreement programs with state health departments and/or appropriate agencies of state governments to build capacity for conducting surveillance of elevated blood-lead (PbB) levels in children.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under section 317A of the Public Health Service Act [42 U.S.C. 247b–1], as amended by section 303 of the "Preventive Health Amendments of 1992" [Pub. L. 102–531].

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. Current recipients of cooperative agreement funds to develop childhood blood-lead surveillance activities are not eligible to apply. Applicants other than health departments must apply in conjunction with their state or territorial health department.

Eligible applicants must have regulations for reporting of PbB levels by both public and private laboratories or provide assurances that such regulations will be in place within six months of awarding the cooperative agreement. This program is intended to initiate and build capacity for surveillance of childhood PbB levels. Therefore, any applicant that already has in place a PbB level surveillance activity must demonstrate how these cooperative agreement funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. Cooperative agreement funds should be added to blood-lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for surveillance of PbB levels.

Awards will be made with the expectation that expanded or improved surveillance activities will continue when awarded funds are terminated at the end of the project period.

Availability of Funds

Approximately $200,000 will be available in FY 1993 to fund up to 4 new cooperative agreements. The

VOL
58
ISS
131
JL
12
1993
UMI

awards are expected to range from approximately $45,000 to $55,000 with the average award being approximately $50,000. The awards are expected to begin on or about September 30, 1993, and are made for a 12-month budget period within project periods of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement program is intended to assist state health departments or other appropriate agencies to implement a complete surveillance activity for PbB levels in children. For the purpose of this program, a complete PbB surveillance activity is defined as a process which: (1) Systematically collects information over time about children with elevated PbB levels using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; and (3) provides timely and useful analysis and reporting of the accumulated data including an estimate of the rate of elevated PbB levels among all children receiving blood tests. Development of surveillance systems at the local, state and national levels is essential for targeting interventions to high-risk populations and for tracking progress in eliminating childhood lead poisoning.

The childhood blood-lead surveillance program has the following five goals:

1. Increase the number of state health departments with surveillance systems for elevated PbB levels;
2. Build the capacity of state- or territorial-based PbB level surveillance systems;
3. Use data from these systems to conduct national surveillance of elevated PbB levels;
4. Disseminate data on the occurrence of elevated PbB levels to government agencies, researchers, employers, and medical care providers; and
5. Direct intervention efforts to reduce environmental lead exposure.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Revise and refine, in collaboration with NCEH, the methodology for surveillance as proposed in the respective program application.
2. Implement the revised and approved surveillance activity.
3. Collaborate with NCEH in any interim and/or final evaluation of the surveillance activity.
4. Provide quarterly and annual surveillance data to CDC.

B. CDC Activities

1. Provide consultation in the implementation of the surveillance activities throughout the project period.
2. Provide guidelines for evaluating surveillance activities.
3. Provide a format for reporting surveillance data to CDC.
4. Analyze the data, disseminate the results in public health publications and other appropriate media, and provide the results to childhood lead poisoning prevention constituents, and state, and local agencies.
5. Provide surveillance data to the recipient from other states and territories where surveillance data are reported to CDC.
6. Provide timely feedback to the recipient from the review of quarterly reports on the program activities conducted by the recipient.
7. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient's request, as resources permit.

Evalation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Surveillance Activity (35%)

The clarity, feasibility, and scientific soundness of the approach. Also, the extent to which a proposed schedule for accomplishing each project activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

a. How will laboratories report PbB levels?
b. How will data be collected and managed?
c. How will data quality and completeness of reporting be assured?
d. How and when will data be analyzed?
e. How will summary data be reported and disseminated?
f. What provisions are made for follow-up of individuals with elevated PbB levels?
g. What provisions will be made to obtain denominator data?

2. Progress Toward Complete Blood-Lead Surveillance (30%)

The extent to which the proposed activities are likely to result in substantial progress towards establishing a complete state-based PbB surveillance activity (as defined in the "Purpose" section).

3. Project Sustainability (20%)

The extent to which the proposed activities are likely to result in the long-term maintenance of a complete state-based PbB surveillance system. In particular, specific activities that will be undertaken by the state during the project period to continue surveillance after completion of the project period and the ability of states to assure reporting from all laboratories performing PbB tests on samples from residents of their state.

4. Personnel (10%)

The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.

5. Use of Existing Resources (5%)

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

6. Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to the Intergovernmental review of Federal programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving

more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The funding agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in May 1993.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6796. Programmatic technical assistance may be obtained from Carol Pertowski, M.D., Medical Epidemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–42, Atlanta, Georgia 30341–3724, telephone (404) 488–7330. Please refer to Announcement Number 345 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 6, 1993.

Robert L. Foster

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16396 Filed 7–9–93; 8:45 am]

BILLING CODE 4160–18–P

[Program Announcement Number 329]

The Evaluation of Specific Youth Violence Interventions; Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements for the evaluation of specific interventions designed to reduce interpersonal violence among high-risk youth. The interventions may be educational, regulatory, or environmental. The evaluation may pertain to a past, ongoing, or new interventions.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under Sections 391 and 392 (42 U.S.C. 280b and 280b–1) of the Public Health Service Act, as amended.

Eligibility

Eligible applicants include all non-profit and for-profit organizations. Thus state and local health departments and other state and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including minority institutions, community-based organizations, small, minority and/or woman-owned businesses, are eligible.

All applicants must be able to demonstrate that they have the capacity to implement and evaluate the intervention by themselves or that they have established a working partnership with others whose cooperation or participation assures the successful completion of the project. Collaboration with a community-based organization, a university or other academic institution, and a state or local health department is encouraged, especially for applicants proposing 3 year projects.

Availability of Funds

Approximately $2,000,000 is available in FY 1993 to fund up to 10 specific intervention projects.

Purpose

The purpose of this project is to evaluate specific interventions that may influence one or more of the factors in the causal chain that lead to interpersonal violence-related injuries or deaths among or by high-risk adolescents and young adults. The interventions should have a theoretical and empirical foundation. The specific interventions preferably should be designed to produce measurable behavioral or health (i.e., injuries or deaths) improvements. Interventions which influence awareness, knowledge, or other antecedent factors will be considered if their causal connection with behavioral or health improvements is established. The evaluation may pertain to a past, ongoing, or new intervention.

As a guide, adolescents and young adults may be generally defined as persons 12–24 years of age. The applicant should define the specific age span that will be the focus of the prevention strategy. The target population for a specific intervention may or may not be adolescents and young adults. For example, the intervention could be targeted towards parents, teachers, or other role models of youth. Interventions might also be directed towards younger children with the aim of reducing their violent behavior not only during childhood but also during adolescence and young adulthood.

Violence prevention interventions are defined as specific, targeted activities designed to prevent violent injury. They may be "freestanding" or a component of a larger program. Interventions are delivered in a defined setting (e.g., schools, juvenile detention centers, youth clubs, housing communities) and utilize a clear strategy (e.g., mentoring, skills building). Intervention strategies may be educational, regulatory, or environmental. Interventions may also be incorporated into existing programs (e.g., Head Start, Job Corps).

Combinations of interventions that are specific, complementary, yet narrow in scope are welcomed (e.g., mentoring in combination with job skills training).

VOL 58 ISS 131 JL 12 1993 UMI

Intervention strategies may include, but are not limited to the following:

social skills/social cognitive training
conflict resolution skills training
parental training
mentoring of children and adolescents
peer mentoring/tutoring/mediation
assault crisis teams
safe havens for walking through high-risk neighborhoods
job skills training/placement
metal detectors in schools
firearm licensing laws
waiting periods to purchase firearms
regulation of public firearm carrying

Applicants are encouraged to maximize the use of funds for research and evaluation purposes by collaborating with ongoing projects or utilizing previously collected data. Applicants may, for example:

- analyze data collected from a previously implemented intervention
- add a data collection and evaluation component to an existing intervention
- develop, implement, and evaluate a new intervention within an ongoing program

Program Requirements

The applicant must demonstrate a willingness to collaborate with CDC at all stages of the project. Applicant must also clearly identify the specific project period for the evaluation of proposed intervention(s) (i.e., one year, two year, or three year project period) and must provide information on each of the following issues: target group, proposed goals and objectives, intervention description, location of the intervention, study design, data collection and analysis, project management and staffing plan, collaboration, and project budget. See application instructions contained in the program announcement in the application kit for the information to be provided in each section.

The successful completion of the project is likely to require a close working relationship between the recipient and CDC. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for the activities under B., below:

A. Recipient Activities:

1. Develop procedures for collecting and compiling information relevant to the proposed project. This information should include, but not be limited to describing the target population; selecting the strategy to be evaluated; identifying the setting for implementing the strategy; developing the evaluation design; developing and pilot testing the data collection instruments; collecting process and outcome data; developing and implementing a data management plan; developing and implementing a plan for data analysis and dissemination of study findings.

2. Develop a final written scientific protocol for evaluating the specific intervention. This protocol will contain the following elements:

a. Statement of the questions to be answered (hypotheses to be tested);

b. Description of the intervention to be evaluated;

c. Specific process and outcome data that will be collected and analyzed, including data collected for purposes of intervention monitoring and management;

d. Description of methods (both scientific and operational) for collecting process and outcome data;

e. description of how data will be maintained (i.e., in what databases); and,

f. Description of statistical techniques that will be used to analyze the data.

3. Obtain the necessary clearances and agreements to proceed with all aspects of the proposed violence prevention project.

4. Develop and pilot test instruments for data collection.

5. Establish baseline rates for the pertinent outcomes within the target population.

6. Establish goals and realistic, measurable, time-oriented objectives for all remaining phases of the project.

7. Develop and implement the selected intervention.

8. Evaluate the intervention.

9. Collect and compile monitoring and prevention effectiveness data in an ongoing fashion. Compile "lessons learned" from the project.

10. Collaborate with CDC in the description and dissemination of the final results of the project.

B. CDC Activities

1. Provide consultation in defining the target population; selecting and implementing the intervention; determining the impact of the evaluation; and designing the scientific protocols.

2. Collaborate in the design of all phases of the study. Provide consultation on data collection instruments and procedures. Provide consultation on the choice and timing of the intervention, and training needs and composition of the implementation team.

3. Monitor intervention implementation and collection and analysis of process and outcome data.

4. Arrange for information sharing among the various evaluation projects.

5. Provide up-to-date scientific information about youth violence prevention.

6. Assist in the transfer of information and methods developed in these projects to other prevention programs.

Review and Evaluation Criteria

CDC-convened panels will review applications separately according to the project period specified in the application (i.e., all one year projects will be reviewed separately from two year projects, which will be reviewed separately from three year projects). Applicants will be evaluated according to the following criteria (Maximum of 100 total points):

1. *Target Group:* The extent to which the target group is described and access to the target is demonstrated. The extent to which the target group has a high incidence or prevalence of the risk factors to be influenced by the proposed intervention and the extent to which appropriate demographic and morbidity data are described. The extent to which the youth, who are the direct or indirect target group, have a high incidence of interpersonal violence and violence-related injuries and deaths. The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the intervention in an unbiased fashion. (13 points)

2. *Goals and Objectives:* The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which they encompass both process and outcome features of the intervention. The extent to which specific research questions and/or hypotheses are described. (12 points)

3. *Intervention Description:* The extent to which the potential effectiveness of the intervention is theoretically justified and supported with epidemiologic, methodological, and behavioral research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes (e.g., behavioral change, injury, or death) are specified and definitions of measurable endpoints are provided. The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. (25 points)

4. *Study Design and Analysis:* The extent to which the evaluation design and the analysis plan are clearly described and are appropriate for the target population, intervention, data collection opportunities, and proposed project period. The extent to which the various threats to the validity of the study are recognized and addressed. The extent to which the sampling methods, sample size estimates, power estimates, and attrition of the participating population are clarified. The extent to which data collection, data processing, and management activities are described. The extent to which the major phases of the project are clearly presented and logically and realistically sequenced. (25 points)

5. *Project Management and Staffing Plan:* The extent to which the management staff and their working partners are clearly described, appropriately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target population. The extent to which the applicant or a full working partner has the capacity and facilities to design, implement, and evaluate the proposed intervention. (13 points)

6. *Collaboration:* The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. The extent to which a full working partnership between a community-based organization, a university or other academic institution, and a state or local health department has been established for applicants seeking funds for a 3 year project period. Evidence should be provided that these funds do not duplicate already funded components of ongoing projects. (12 points)

7. *Proposed Budget:* The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds. (Not scored)

Funding Priorities

Approximately $2,000,000 is available to fund up to 10 specific intervention projects. It is expected that projects completed in one year will have an average award ranging from $75,000 to $175,000; projects completed in two years will have an average award ranging from $100,000 to $200,000 per year; and projects completed in three years will have an average award ranging from $150,000 to $225,000 per year. Applicant must clearly identify the specific length of the project period for which funds are requested. Institutions may request funds for more than one project period as long as the proposed projects are submitted separately and are distinctly different. Based on the quality of the applications received within each project period the estimates outlined above may vary.

Priority will be given to ensuring a geographic balance and a balance among educational, regulatory, and environmental strategies.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, GA 30305, no later than 30 days after the application deadline date. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate state and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate state and/or local health agency is determined by the applicant. The following information must be provided:

a. A copy of the face page of the application (SF 424)

b. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and to include the following:

(1) A description of the population to be served

(2) A summary of the services to be provided

(3) A description of the coordination plans with the appropriate state and/or local health agencies.

If the state and/or local health official should desire a copy of the entire application, it may be obtained from the state Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Confidentiality of Records

All identifying information obtained in connection with the provision of services to any person in any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a state or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

C. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

VOL
58
ISS
131
JL
12
1993
UMI

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, GA 30305, on or before August 26, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 329. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, GA 30305, (404) 842–6634. Programmatic technical assistance may be obtained from Timothy N. Thornton, Public Health Advisor, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop F–41, Atlanta, GA 30333, (404) 488–4400.

Please refer to Announcement Number 329 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington DC 20402–9325 (Telephone 202–783–3238).

Dated: July 6, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16395 Filed 07–09–93; 8:45 am]

BILLING CODE 4160–18–P

Health Resources and Services Administration

Final Definitions, Post-Residency Activities, and Student Agreement for Primary Health Care for the Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Programs

SUMMARY: The Health Resources and Services Administration (HRSA) announces final definitions, post-residency activities, and student agreement for Primary Health Care for the Exceptional Financial Need (EFN) Scholarship Program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Program, now found in sections 736 and 740 of the PHS Act as amended by the Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408, dated October 13, 1992). A notice which proposed these definitions, post-residency activities, and student agreement for these two programs was published in the **Federal Register** at 58 FR 15501, dated March 23, 1993. A comment period of 30 days was established to allow public comment concerning the proposed definitions, post-residency activities, and student agreement. Sixteen comments were received. This notice will discuss the comments received and will include the final definitions of "residency training program in primary health care" and "residency training program in general dentistry", final acceptable and unacceptable post-residency activities, and final student agreement for primary health care. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

EFFECTIVE DATE: The program elements described in this notice are for use in fiscal year (FY) 1993 and will become effective with scholarships made to medical, osteopathic medical, and dental students on or after July 1, 1993.

Definition of "Residency Training Program in Primary Health Care" and "Residency Training Program in General Dentistry"

Four comments were received concerning the definitions of "residency training program in primary health care" and "residency training program in general dentistry." One comment objected to the separation of general dentistry from the definition of primary health care. Section 723(d)(5) of the PHS Act defines the term "primary health care" as family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice. The definition of "residency training program in primary health care" is based on this statutory definition. The definition of residency training in general dentistry is separate. However, in all other references in this notice, including the student agreement, the term primary health care includes the practice of general dentistry.

Other comments suggested additional specialties that should be included in the list of approved residency programs such as Physical Medicine, Rehabilitation, Emergency Medicine, and primary care Obstetrics and Gynecology. Since the definition of primary health care is statutory, no change is made as a result of these comments.

Finally, one comment seeks to clarify that osteopathic primary care residency programs require a 1-year internship *and* 2 or 3 additional years of residency training. Both 2- and 3-year osteopathic residency programs are acceptable training programs for the maintenance of physician eligibility under the EFN and FADHPS programs. The language in the definition of "residency training program in primary health care" has been edited to be more clear about osteopathic residencies.

Final Definition of "Residency Training Program in Primary Health Care"

"Residency training program in primary health care" is defined as a 3-year residency program in allopathic or osteopathic family medicine, internal medicine, pediatrics, combined medicine/pediatrics, or preventive medicine approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA), or a rotating or primary health care internship or general practice residency program approved by the AOA.

Final Definition of "Residency Training Program in General Dentistry"

A "residency training program in general dentistry" shall include the following:

(1) Programs of advanced education for general dentistry, general practice residency programs, and pediatric dental residency programs, provided that they are accredited by the Commission on Dental Accreditation;

(2) Dental public health residency programs accredited by the Commission on Dental Accreditation (which may include one academic year in a program accredited by the Council on Education for Public Health, leading to the degree of Master's in Public Health or a similar graduate degree in public health); and

(3) Other continuous advanced education programs in general dentistry that are sponsored by an institution of higher education and that are recognized entities within the institution's administrative structure, as approved by the Secretary on a case-by-case basis.

This definition is intended to assure that a scholarship recipient is permitted to pursue any recognized advanced training program that would further his or her knowledge of general dentistry, including pediatric dentistry and dental public health. It also prohibits scholarship recipients from specializing in orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

Post-Residency Activities

Several respondents suggested that physicians who pursue careers in primary care research should retain their eligibility for EFN and FADHPS participation. This change was not adopted since most primary care research is conducted by faculty who are engaged in teaching, research and clinical activities and who are thus eligible on the basis of their teaching and clinical practice.

One respondent expressed concern that family physicians who wish to pursue additional training in the care of adolescents were not included. A formal system for recognizing added qualification in adolescent care is not in place for family physicians. However, a limited number of family medicine programs offer fellowship training in adolescent health care. Physicians who receive this training are expected to continue their generalist family physician careers. A new item #7 has been added under the list of Acceptable Activities to accommodate this training activity.

One respondent requested that sports medicine training, which was proposed as an Unacceptable Activity, be changed to an Acceptable Activity. Unpublished data indicate that family physicians who obtain added qualification in sports medicine continue in careers as generalist practitioners. The section on sports medicine has been deleted from the Unacceptable Activities list and added, as item #8, to the Acceptable Activities list.

Two respondents cited primary care public policy careers that EFN and FADHPS participants should be permitted to pursue. These activities are consistent with section 736 purposes and will be allowed. A new item #9 has been added.

Final Acceptable Activities

Medical and osteopathic medical residency graduates who will qualify to meet the new service obligation requirement under the EFN and FADHPS programs include: (1) Generalist physician graduates of a primary health care residency programs who enter clinical practice; (2) preventive medicine graduates who practice in the primary health care fields of clinical preventive medicine, occupational medicine, or public health; (3) senior (chief) residents in one of the residency programs defined above; (4) faculty, administrators, or policy makers who maintain certification in one of the primary health care disciplines; (5) family physicians and internists who obtain a certificate of added qualification in geriatrics; (6) internists and pediatricians who enter training to qualify for a certificate of added qualification in adolescent medicine or board certification in adolescent pediatrics; (7) family physicians who enter post-residency training to gain added skills in the care of adolescents; (8) primary health care physicians who enter training to qualify for a certificate of added qualification in sports medicine; and (9) special training to prepare physicians for primary care faculty or public policy careers, such as a Master's degree in a Public Health program, a public policy fellowship program, or faculty development training activities.

An individual shall be considered to be "practicing in general dentistry" as long as he or she is working in the field of dentistry and has neither specialized in, nor limited his or her practice to, orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

Final Unacceptable Activities

Physicians who will not meet the service obligation requirement under the EFN and FADHPS programs include those who: (1) enter medical or pediatric subspecialty training (e.g., cardiology, gastroenterology); (2) receive subspecialty certification; or (3) enter a non-primary health care specialty (e.g., obstetrics/gynecology, surgery, dermatology, radiology).

Dental scholarship recipients who specialize in orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology would be considered to be in breach of their service commitments.

Student Agreement for Primary Health Care and General Dentistry Service

A variety of comments related to the student agreement were received. One comment suggested that the parents' financial resources should be required in addition to the financial resources of the scholarship recipient. While this information was always required for the "formal needs analysis," this has been clarified in the final student agreement.

Several comments suggested an increased role of the DHHS in follow-up and monitoring of scholarship recipients. One of the responsibilities of the applicant schools for these programs is to monitor the scholarship recipients. This remains unchanged.

Several comments suggested that exit interviews by mail should be permitted. Because it is preferable to have a face-to-face interview, no change is made in this requirement.

Regarding penalties for scholarship recipients who fail to comply with the agreement, one comment requested additional information concerning the interest rate. As a result, in the final student agreement additional information is provided including the current maximum prevailing rate, how frequently and where the rate will be published, and when interest will begin to accrue. Several comments recommended a more flexible and longer payment schedule. However, the payment period of 3 years is specified in section 795(b)(3) of the PHS Act. No change is made in this requirement.

Regarding the contract, one comment requested more information about what is meant by the word "discipline." In the final student agreement, "discipline" is identified as medicine, osteopathic medicine, or dentistry. Several comments requested additional information regarding disposition of the student agreement. The school will retain the original, since the school will monitor the scholarship recipients compliance with the agreement. One copy of the agreement should be given to the student.

One comment suggested that the social security number should be

VOL
58
ISS
131
JL
12
1993
UMI

required rather than voluntary. Because of legal issues related to requiring the social security number, provision of this information remains voluntary.

Final Student Agreement

The following Student Agreement for Primary Health Care Service implements the new service obligation provisions applicable to sections 736 and 740 of the PHS Act and sets forth new requirements found in section 795(b) of the PHS Act with respect to breach of service obligation, waiver or suspension of liability, and repayment requirements.

Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Scholarship Programs; Student Agreement for Primary Health Care Service, Academic Year 1993–94

A. My Obligations as a Scholarship Recipient

I understand that by accepting the EFN/FADHPS Scholarship, I am agreeing to the terms outlined below:

(1) I will complete the program of education with respect to which such assistance is provided;

(2) If I receive such assistance to attend a school of medicine or osteopathic medicine, I will

(a) Not later than 4 years after completing the program of education for which I received such assistance, enter and complete a 3-year residency program in allopathic or osteopathic family medicine, internal medicine, pediatrics, combined medicine/pediatrics, or preventive medicine approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or a general practice residency program approved by the AOA. This may include participation in a rotation or primary health care internship approved by the AOA, and

(b) Practice in one of the primary health care specialties identified in paragraph (2)(a) for 5 years after completing the training identified in paragraph (2)(a).

(3) If I receive such assistance to attend a school of dentistry,

(a) I will practice in general dentistry for 5 years (exclusive of any period during which I am attending a residency training program in general dentistry). I will be considered to be "practicing in general dentistry" as long as I am working in the field of dentistry and have neither specialized in, nor limited my practice to, orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

(b) A "residency training program in general dentistry" shall include the following:

(i) Programs of advanced education for general dentistry, general practice residency programs, and pediatric dental residency programs, provided that they are accredited by the Commission on Dental Accreditation;

(ii) Dental public health residency programs accredited by the Commission on Dental Accreditation (which may include 1 academic year in a program accredited by the Council on Education for Public Health, leading to the degree of Master's in Public Health or a similar graduate degree in public health); and

(iii) Other continuous advanced education programs in general dentistry that are sponsored by an institution of higher education and that are recognized entities within the institution's administrative structure, as approved by the Secretary on a case-by-case basis.

(4) To receive the Scholarship, I must be a full-time (as determined by the health professions school) student at a school participating in the EFN/FADHPS Scholarship Program;

(5) I must maintain "good standing" as defined by the school;

(6) I must provide the school with all information regarding my financial resources and sources of income that the school requires to conduct a formal needs analysis including information on the financial resources of my parent(s) and spouse;

(7) I am aware that the Scholarship pays the equivalent of my tuition and other reasonable educational expenses, as determined by the school, including fees, books and laboratory expenses for a full academic year, but does not provide for any costs of living;

(8) I must keep the school informed at all times of any changes which affect my continued eligibility for the Scholarship, such as withdrawal from the health professions program;

(9) I must attend an entrance interview with school officials before or at the time I sign this contract to discuss the terms of my Scholarship and service obligation and the penalties for not meeting my obligation;

(10) I must provide the school with personal information that would help the school and the Federal Government to locate me if I fail to keep them informed of my location. This information will include, at a minimum, my current or permanent address, my telephone number, the names, addresses, and telephone numbers of my parents or other close relatives that may be contacted. I will also provide other information as requested, including for example: State driver's license number and expiration date, names, addresses and telephone numbers of other personal references, and the State(s) in which I plan to practice primary care;

(11) I must keep the school informed at all times of any changes in my name, address, and telephone number until I complete my service obligation as a primary care practitioner;

(12) Prior to graduating or leaving school for any reason, I must attend an exit interview with school officials to review information regarding eligible practice activities, to update personal information (as described in Item 10 above) and to review the terms of my service obligation and the penalties for not meeting the obligation. Should the school not inform me of a date and time for this interview, I must request an interview from the appropriate school officials.

B. Penalties if I Fail To Comply With Agreement

I understand that I am liable to the Federal Government (DHHS) for the entire amount of any scholarship funds I have received and for interest on such amount at the maximum legal prevailing rate, if I

(1) fail to maintain an acceptable level of academic standing in the program of education (as indicated by such program in accordance with requirements established by the Secretary);

(2) am dismissed from the program for disciplinary reasons;

(3) voluntarily terminate the program; or

(4) fail to begin or complete the service obligation required by this contract in accordance with the terms of the contract.

In the event of my failure to comply with the terms of the contract for any of the above reasons, the Scholarship funds become a debt owed to the Federal Government and I must repay all Scholarship funds that I received under this contract, plus interest, at the maximum prevailing rate, as determined by the Treasury Department. The maximum prevailing rate was 13.6 percent for the quarter ending 3/31/93, and is published quarterly in the **Federal Register** by the Secretary. Interest will begin to accrue as of the date of the breach of contract. I will be required to repay this amount in full within 3 years of the date that the Secretary determines that I failed to comply with the terms of this contract and will be required to make payments during the 3 years, in accordance with a repayment schedule which the Secretary will provide to me. If I fail to

make payments when they are due in accordance with the repayment schedule, I understand that the Federal Government will actively pursue me to collect the debt. This may include the use of collection agents, reporting the debt to credit bureaus, and other collection procedures (such as addition of late charges under the Department's Claims Collection Regulations).

C. Cancellation, Suspension, and Waiver of Obligation

I understand that my service or payment obligation may be canceled, suspended, or waived under certain circumstances described below:

(1) Should I die or become permanently and totally disabled, the Secretary will cancel my obligation under this contract. To receive cancellation in the event of my death, the executor of my estate must submit an official death certificate to the Secretary. To receive cancellation for permanent and total disability, I or my representative must apply to the Secretary, submitting medical evidence of my condition, and the Secretary may cancel this obligation in accordance with applicable Federal statutes and regulations;

(2) Upon receipt of supporting documentation the Secretary may waive or suspend my service or payment obligation under this contract if the Secretary determines that: (a) my meeting the terms and conditions of the contract is impossible or would involve extreme hardship; and, (b) enforcement of the obligations would be unconscionable. Supporting documentation should be submitted to: Division of Student Assistance, Student and Institutional Support Branch, room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

D. Scholarship Renewal and Extension of Contract

This contract provides funding for *1 year only*. Renewal of the contract is at the discretion of the school and is subject to the availability of funds.

EFN/FADHPS Contract 1993–94

Tuition: $_____
Other Educational Costs: $_____
Total: $_____
Name of Recipient _____
_____Mr _____Ms
Permanent Address _____
City, State, Zip Code _____
Social Security Number (voluntary) _____
Anticipated Graduation Date _____
Discipline: Medicine _____Osteopathic Medicine _____Dentistry _____

Scholarship Recipient: By my signature below, I certify that I have read and understand my rights and obligations under this contract

_____
Signature of Scholarship Recipient

_____
Date

Grantee Institution: I understand that this award is made upon the terms, conditions and obligations specified in this contract.

_____
Grantee Institution (Name)

_____
Signature of Authorizing Official

_____
Date

Any person who knowingly makes a false statement or misrepresentation or commits any other illegal action in connection with the EFN/FADHPS scholarship programs is subject to a fine or imprisonment under federal statute.

Additional Information

If additional programmatic information is needed, please contact: Mr. Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–1173.

Dated: July 6, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–16403 Filed 7–9–93; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on October 1, 1990.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the Table, or

VOL 58 ISS 131 JL 12 1993 UMI

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Claude Daniels on behalf of Jonah Daniels, Deceased, Longmont, Colorado, Claims Court Number 90–3426 V
2. John Garrison, Bell Gardens, California, Claims Court Number 90–3427 V
3. Randall Eaton on behalf of Randall Bradley Eaton, Bossier City, Louisiana, Claims Court Number 90–3428 V
4. Stephen Wilkins on behalf of Summer Wilkins, Deceased, Miami, Florida, Claims Court Number 90–3429 V
5. Teresa Snyder on behalf of Frank Snyder, Jr., Clifton Heights, Pennsylvania, Claims Court Number 90–3430 V
6. Earl Hall and Dorothy Davis on behalf of Jennifer Hall, Annapolis, Maryland, Claims Court Number 90–3431 V
7. Randall Wilson on behalf of Charles Wilson, Deceased, Fort Worth, Texas, Claims Court Number 90–3432 V
8. Melissa Sawyer on behalf of David Sawyer, Barnwell, South Carolina, Claims Court Number 90–3433 V
9. Rodney Burnette, Waynesville, North Carolina, Claims Court Number 90–3434 V
10. Theresa Rooney, St. Petersburg, Florida, Claims Court Number 90–3435 V
11. Joseph D'Agostino, Bloomfield, New Jersey, Claims Court Number 90–3436 V
12. Ralph Golub on behalf of Rebecca Golub, Norwood, Massachusetts, Claims Court Number 90–3437 V
13. Lisa Garove on behalf of Tiffany Garove, Washington, Pennsylvania, Claims Court Number 90–3438 V
14. Donald Patient on behalf of Donald Patient, Jr., Deceased, Sullivan, Illinois, Claims Court Number 90–3439 V
15. Lorrieanne Dirizziano on behalf of Dean McCartin, Torrance, California, Claims Court Number 90–3440 V
16. Evan Levy, New York, New York, Claims Court Number 90–3441 V
17. Alice Elam on behalf of Brian Elam, Sayreville, New Jersey, Claims Court Number 90–3442 V
18. Alice Elam on behalf of Robert Elam, Sayreville, New Jersey, Claims Court Number 90–3443 V
19. Alice Elam on behalf of Susan Elam, Sayreville, New Jersey, Claims Court Number 90–3444 V
20. Rhonda Wolford on behalf of Jessica Wolford, Newark, Ohio, Claims Court Number 90–3445 V
21. Darlene Crane on behalf of Leon Crane, Guilford, Connecticut, Claims Court Number 90–3446 V
22. Sandra Roberts on behalf of Jennifer Roberts, Deceased, Hazard, Kentucky, Claims Court Number 90–3447 V
23. Dominic Calabrese, Pittsburgh, Pennsylvania, Claims Court Number 90–3448 V
24. Wayne Huckabay on behalf of Charley Huckabay, Houston, Texas, Claims Court Number 90–3449 V
25. Billy and Margaret Phillips on behalf of Michael Phillips, Dallas, Texas, Claims Court Number 90–3450 V
26. Annette Hoffman, Pasadena, California, Claims Court Number 90–3451 V
27. Betty Jones, Munster, Indiana, Claims Court Number 90–3452 V
28. Dora Pastore on behalf of Jerry Pastore, Wheat Ridge, Colorado, Claims Court Number 90–3453 V
29. Wanda Bailey on behalf of Stephanie Bailey, Augusta, Georgia, Claims Court Number 90–3454 V
30. Gail Falk on behalf of Barry Buker, Waterbury, Vermont, Claims Court Number 90–3455 V
31. Maryalice Drew, Grand Forks, North Dakota, Claims Court Number 90–3456 V
32. Carol Belec on behalf of Joel Belec, Mt. Morris, New York, Claims Court Number 90–3457 V
33. Linda Rodriguez on behalf of Julie Hazelwood, Franklin, Indiana, Claims Court Number 90–3458 V
34. Alfred Gangi on behalf of Karen Gangi, Lawrence, Massachusetts, Claims Court Number 90–3459 V
35. Ronald Askew on behalf of Stacy Askew, Florence, Alabama, Claims Court Number 90–3460 V
36. Barbara Pratt on behalf of James Doros, Woodhaven, Michigan, Claims Court Number 90–3461 V
37. Scotty Griffith on behalf of Ashley Griffith, Oak Ridge, Tennessee, Claims Court Number 90–3462 V
38. Marsha Heisley, Columbus, Ohio, Claims Court Number 90–3463 V
39. Earl DeArmond on behalf of Darren DeArmond, Hammond, Louisiana, Claims Court Number 90–3464 V
40. Elizabeth McCabe, Winston-Salem, North Carolina, Claims Court Number 90–3465 V
41. Gail Falk on behalf of Milford Hill, Burlington, Vermont, Claims Court Number 90–3466 V
42. Sarah Fleming on behalf of Ronny Fleming, Clarksville, Texas, Claims Court Number 90–3467 V
43. Gail Falk on behalf of Katrina Centariczki, Hanover, New Hampshire, Claims Court Number 90–3468 V
44. Yoshikiyo Nagao on behalf of Lacey Nagao, Los Angeles, California, Claims Court Number 90–3469 V
45. Kathleen Shappee on behalf of Timothy Shappee, Canandaigua, New York, Claims Court Number 90–3470 V
46. Allen and Mary Legard on behalf of Allen Legard, Osburn, Idaho, Claims Court Number 90–3471 V
47. Paul Romander on behalf of Richard Romander, Deceased, Sacramento, California, Claims Court Number 90–3472 V
48. Diane Aalders, Pleasantville, New York, Claims Court Number 90–3473 V
49. Cindy Hayes on behalf of Megan Hayes, St. Joseph, Missouri, Claims Court Number 90–3474 V
50. Susan Olito on behalf of Natalie Ann Olito, Bishop, California, Claims Court Number 90–3475 V
51. Robert Graham, Casa Grande, Arizona, Claims Court Number 90–3476 V
52. Derek Norberg, Geneseo, Illinois, Claims Court Number 90–3477 V
53. Karen Pisano, Chicago, Illinois, Claims Court Number 90–3478 V
54. Betty Bernius on behalf of Scott Bernius, New Orleans, Louisiana, Claims Court Number 90–3479 V
55. Larry Stivers on behalf of Mark Stivers, Chicago, Illinois, Claims Court Number 90–3480 V
56. Marilyn George, Flint, Michigan, Claims Court Number 90–3481 V
57. Michael James, Norfolk, Virginia, Claims Court Number 90–3482 V
58. Linda Turnes on behalf of Robert Turnes, Hammond, Indiana, Claims Court Number 90–3483 V
59. Judith Anderson, Little Falls, Minnesota, Claims Court Number 90–3484 V
60. Garry Hunter on behalf of Michael Hunter, Garden Grove, California, Claims Court Number 90–3485 V
61. Mary Knapik on behalf of James Knapik, Cleveland, Ohio, Claims Court Number 90–3486
62. Steven DeKozlowski on behalf of Jocelyn DeKozlowski, Knoxville, Tennessee, Claims Court Number 90–3487 V
63. Patricia Clinkscales on behalf of Patrice Clinkscales, Anderson, South Carolina, Claims Court Number 90–3488 V
64. Walter Leginski, Detroit, Michigan, Claims Court Number 90–3489 V
65. Joel Ippolito, Tampa, Florida, Claims Court Number 90–3490
66. Karen Johnson on behalf of Adrian Johnson, Elmwood, Wisconsin, Claims Court Number 90–3491
67. Hillary Hill, Albuquerque, New Mexico, Claims Court Number 90–3492 V
68. Linda Newman on behalf of Chase Edward Newman, Tampa, Florida, Claims Court Number 90–3493 V

69. Sylvia Haynes on behalf of Deborah Bean, Newport, Rhode Island, Claims Court Number 90–3494 V
70. Margaret Ruble on behalf of Barbara Ruble, Warren, Indiana, Claims Court Number 90–3495 V
71. Lorinda Pletka on behalf of Kelly Pletka, Warren, Michigan, Claims Court Number 90–3496 V
72. Joseph Sikora on behalf of Lauren Sikora, Farmington Hills, Michigan, Claims Court Number 90–3497 V
73. Terry Spurgin on behalf of Andrew Spurgin, Fort Worth, Texas, Claims Court Number 90–3498 V
74. Diane De Vaul and Hagos Alemayehu on behalf of, Victor De Vaul, Wheaton, Maryland, Claims Court Number 90–3499 V
75. Sherry Salomon on behalf of Daniel Salomon, Bethesda, Maryland, Claims Court Number 90–3500 V
76. Gayle Tanbouz on behalf of Omar Tanbouz, Van Nuys, California, Claims Court Number 90–3501 V
77. Peter Manuel on behalf of Erik Manuel, Pasadena, California, Claims Court Number 90–3502 V
78. Carlos Diaz on behalf of Joseph Diaz, Chicago, Illinois, Claims Court Number 90–3503 V
79. Teena Spears on behalf of Shannon Spears, Grundy, Virginia, Claims Court Number 90–3504 V
80. Mary Hedges, Latrobe, Pennsylvania, Claims Court Number 90–3505 V
81. Jan Kochmeister on behalf of Sharisa Kochmeister, Pomona, New York, Claims Court Number 90–3506 V
82. William Johnson on behalf of Patrick Johnson, Deceased, Grosse Pointe Woods, Michigan, Claims Court Number 90–3507 V
83. Gunilla Duncan, no city or state available, Claims Court Number 90–3508
84. Sherry McWilliams on behalf of Carey McWilliams, Douglas, Arizona, Claims Court Number 90–3509 V
85. Jackie Purvis on behalf of Merrill Purvis, Indianapolis, Indiana, Claims Court Number 90–3510 V
86. Dorothy Frazier on behalf of Earl Frazier, Jr., Sacramento, California, Claims Court Number 90–3511 V
87. Elisa Thompson, South Hampton, New York, Claims Court Number 90–3512 V
88. Peggy Duval on behalf of Judy Duval, Houston, Texas, Claims Court Number 90–3513 V
89. James Hollis, Magnolia, Arkansas, Claims Court Number 90–3514 V
90. Mary Brendlinger on behalf of Robert Brendlinger, Philadelphia, Pennsylvania, Claims Court Number 90–3515 V
91. James and Denise Belpedio on behalf of James Belpedio, Ishpeming, Michigan, Claims Court Number 90–3516 V
92. Donna Snow on behalf of Stephen Scates, Upland, California, Claims Court Number 90–3517 V
93. Linnea Ficek on behalf of K. Matthew Ficek, Manchester, New Hampshire, Claims Court Number 90–3518 V
94. Samuel Matthews, Fayette, Alabama, Claims Court Number 90–3519 V
95. Elna Gimotea on behalf of Joy Dime, Bacolod City, Philippines, Claims Court Number 90–3520 V
96. Eugene Corntassel on behalf of Bradley Corntassel, Deceased, Kalispell, Montana, Claims Court Number 90–3521 V
97. Michael Spurlin, Memphis, Tennessee, Claims Court Number 90–3522 V
98. Eunice Gosman on behalf of Katherine Wilson, Orange, California, Claims Court Number 90–3523 V
99. Veldon Kouba on behalf of Allen Kouba, Okarche, Oklahoma, Claims Court Number 90–3524 V
100. Jack Larrison, Yakima, Washington, Claims Court Number 90–3525 V
101. David Poole, Eastlake, Ohio, Claims Court Number 90–3526 V
102. Kimberly Barnard, Bowling Green, Kentucky, Claims Court Number 90–3527 V
103. Karla Pedersen Evans, Des Moines, Iowa, Claims Court Number 90–3528 V
104. Darci Simmen on behalf of Keeley Simmen, no city or state available, Claims Court Number 90–3529 V
105. Linda Gravelle on behalf of Andrea Gravelle, Seattle, Washington, Claims Court Number 90–3530 V
106. Kandy Solesbee on behalf of Twyla Solesbee, Franklin, North Carolina, Claims Court Number 90–3531 V
107. Patricia Pollock on behalf of Stephanie Pollock, Delphos, Ohio, Claims Court Number 90–3532 V
108. Virginia Bonnin, San Diego, California, Claims Court Number 90–3533 V
109. Patricia Miller, New Orleans, Louisiana, Claims Court Number 90–3534 V
110. Mark Snow on behalf of Nicholas Snow, Port Orchard, Washington, Claims Court Number 90–3535 V
111. Mark Hessek on behalf of Katherine Hessek, Deceased, Alameda, California, Claims Court Number 90–3536
112. Susan Schuerlein, Uniondale, New York, Claims Court Number 90–3537 V
113. Margaret Sharkey on behalf of Margaret M. Sharkey, Deceased, Philadelphia, Pennsylvania, Claims Court Number 90–3538 V
114. Geevarghese Kochumman on behalf of Binoy Kochumman, Brooklyn, New York, Claims Court Number 90–3539 V
115. Kathleen Jakubasz, Haverhill, Massachusetts, Claims Court Number 90–3540 V
116. Edith Bergenn on behalf of Eric Bergenn, Patchogue, New York, Claims Court Number 90–3541 V
117. Linda Gravelle on behalf of Jessica Racette, Wadsworth, Ohio, Claims Court Number 90–3542 V
118. Anthony Sestito on behalf of Trisha Sestito, Columbus, Ohio, Claims Court Number 90–3543 V
119. Judith Vasquez, Fall River, Massachusetts, Claims Court Number 90–3544 V
120. Marcilyn Matson on behalf of Kristopher Matson, Munster, Indiana, Claims Court Number 90–3545 V
121. Guy Holtz on behalf of Renee Holtz, Elgin, Illinois, Claims Court Number 90–3546 V
122. Diane Jones, Columbus Grove, Ohio, Claims Court Number 90–3547 V
123. Andrew M. Jackson on behalf of Andrew C. Jackson, Monmouth, Illinois, Claims Court Number 90–3548 V
124. Eddie Merrell, Jr., on behalf of Holly Merrell, Jacksonville, Florida, Claims Court Number 90–3549 V
125. Nicholas Billardello on behalf of Frank Billardello, East Detroit, Michigan, Claims Court Number 90–3550 V
126. William Ford, Pineland, Texas, Claims Court Number 90–3551 V
127. Eugene Urias, Carson, California, Claims Court Number 90–3552 V
128. Delores Cox, Limon, Colorado, Claims Court Number 90–3553 V
129. Derek Phelps, London, Kentucky, Claims Court Number 90–3554 V
130. Sherry Ryan on behalf of Anna Ryan, Deceased, Elizabethtown, Kentucky, Claims Court Number 90–3555 V
131. Teresa Scarbrough on behalf of Ami Joy Scarbrough, Ozark, Arkansas, Claims Court Number 90–3556 V
132. Debra Synder-Diffin, Roseville, California, Claims Court Number 90–3557 V
133. Loraine Timmerman on behalf of Mark Prediger, Troy, New York, Claims Court Numbers 90–3558 V, 90–3559 V, 90–3560 V, and 90–3561 V
134. Randell Wilson on behalf of Abigail Wilson, Wiesbaden, Germany, Claims Court Number 90–3562 V
135. Rudolph Kroeger on behalf of Anneliese Kroeger, Boulder, Colorado, Claims Court Number 90–3563 V
136. Saeeda Hamid on behalf of Saeed Hamid, Denver, Colorado, Claims Court Number 90–3564 V
137. Terry Guymon on behalf of Nicholas Guymon, Evanston, Wyoming, Claims Court Number 90–3565 V
138. Pamela Pullen on behalf of Tina Pullen, Sapulpa, Oklahoma, Claims Court Number 90–3566 V
139. Florence Kamien on behalf of Jacques Kamien, Brick, New Jersey, Claims Court Number 90–3567 V
140. Mary Dailey on behalf of Charles Dailey, Sioux Falls, South Dakota, Claims Court Number 90–3568 V
141. Laura Westbrook, Detroit, Michigan, Claims Court Number 90–3569 V
142. Bernice Morgan on behalf of Evelyn Morgan, Chicago, Illinois, Claims Court Number 90–3570 V
143. David Proulox on behalf of John Proulox, Lewiston, New York, Claims Court Number 90–3571 V
144. Ron Viau on behalf of Danielle Viau, South Burlington, Vermont, Claims Court Number 90–3572 V
145. Robert MacNicholl on behalf of James MacNicholl, Sacramento, California, Claims Court Number 90–3573 V
146. Barbara Yajian on behalf of Haig Yajian, Deceased, Miami, Florida, Claims Court Number 90–3574 V
147. Joe David Johnson on behalf of Erin Blakley Johnson, Garland, Texas, Claims Court Number 90–3575 V
148. Vincent Scuotto, Fort Lauderdale, Florida, Claims Court Number 90–3576 V
149. Mario Cugini on behalf of Sergio Cugini, Boston, Massachusetts, Claims Court Number 90–3577 V

VOL
58
ISS
131
JL
12
1993
UMI

150. William Messick on behalf of Shari Messick, Miami, Florida, Claims Court Number 90–3578 V
151. Zelma Johnson on behalf of Thomas Martin, Jr., Franklin, Pennsylvania, Claims Court Number 90–3579 V
152. Myra Wallace, Fresno, California, Claims Court Number 90–3580 V
153. John Wagner on behalf of Edward Wagner, Hyattsville, Maryland, Claims Court Number 90–3581 V
154. Charles Butler, Sparta, Tennessee, Claims Court Number 90–3582 V
155. Carol Quaranda on behalf of Anthony Quaranda III, Deceased, Tampa, Florida, Claims Court Number 90–3583 V
156. Roberta Azpeitia on behalf of Edward Azpeitia, Los Angeles, California, Claims Court Number 90–3584 V and 90–3585 V
157. Patricia Gwen on behalf of James Kuyhendall, Jr., Walnut Grove, California, Claims Court Number 90–3586 V
158. Robert J. Guerrero, No city or state available, Claims Court Number 90–3587 V
159. Nora Findley on behalf of Paul Findley, Rome, New York, Claims Court Number 90–3588 V
160. Jack Wisell on behalf of Scott Wisell, Hialeah, Florida, Claims Court Number 90–3589 V
161. J. Frederick Barthmaier on behalf of Amy Barthmaier, Baldwinsville, New York, Claims Court Number 90–3590 V
162. Elvina Schultz on behalf of Roger Schultz, Cooperstown, North Dakota, Claims Court Number 90–3591 V
163. James Allen, St. Petersburg, Florida, Claims Court Number 90–3592 V
164. Virginia Johnson on behalf of Nathan Johnson, Flat Rock, Michigan, Claims Court Number 90–3593 V
165. Scott Grindle, Ellsworth, Maine, Claims Court Number 90–3594 V
166. Jerry Traylor on behalf of Brandi Traylor, Beaumont, Texas, Claims Court Number 90–3595 V
167. William Carrington on behalf of David Carrington, Doylestown, Pennsylvania, Claims Court Number 90–3596 V
168. Joanna Sue Bayless, Topeka, Kansas, Claims Court Number 90–3597 V
169. Sharon Kasecky on behalf of Kumara Kasecky, Honokaa, Hawaii, Claims Court Number 90–3598 V
170. Stephen Hawke on behalf of Kimberly Hawke, Tampa, Florida, Claims Court Number 90–3599 V
171. Anatole Wilson, Narberth, Pennsylvania, Claims Court Number 90–3600 V
172. Leischen Wells on behalf of Tyler Wells, Muskegon, Michigan, Claims Court Number 90–3601 V
173. Joyce Shoffner on behalf of Tasha Shoffner, Charleston, Missouri, Claims Court Number 90–3602 V
174. Cynthia Jones on behalf of Ashlie Burk, Redding, California, Claims Court Number 90–3603 V
175. Katherine Gooden on behalf of Jermainian Gooden, Oklahoma City, Oklahoma, Claims Court Number 90–3604 V
176. Joanna Sue Bayless on behalf of Racheal Bayless, Topeka, Kansas, Claims Court Number 90–3605 V
177. Harold Blackwell on behalf of Sarah Blackwell, Humble, Texas, Claims Court Number 90–3606 V
178. Gary and Donna Lamell on behalf of Shari Lamell, Deceased, Beaumont, Texas, Claims Court Number 90–3607 V
179. Janice Waggoner, Hendersonville, Tennessee, Claims Court Number 90–3608 V
180. Rudolph Dante on behalf of Mark Dante, Minneapolis, Minnesota, Claims Court Number 90–3609 V
181. Carol Singh, Springfield, Pennsylvania, Claims Court Number 90–3610 V
182. Carol Carr on behalf of Sarah Carr, Beverly, Massachusetts, Claims Court Number 90–3611 V
183. Theresa Chavez on behalf of Brenda J. Chavez, San Antonio, Texas, Claims Court Number 90–3612 V
184. Ann Beltran on behalf of Brian Beltran, Passaic, New Jersey, Claims Court Number 90–3613 V
185. Martha Harrison on behalf of Michael Harrison, Houston, Texas, Claims Court Number 90–3614 V
186. Wayne Lewis on behalf of Jenny Lynelle Lewis, Provo, Utah, Claims Court Number 90–3615 V
187. Beverly Lucas, Tipton, Indiana, Claims Court Number 90–3616 V
188. Elizabeth Scurich, New Orleans, Louisiana, Claims Court Number 90–3617 V
189. Albert Resnick on behalf of Henry Resnick, Deceased, Croton Falls, New York, Claims Court Number 90–3618 V
190. Joe Collins on behalf of Coretta Collins, Jackson, Mississippi, Claims Court Number 90–3619 V
191. Carl Hastings on behalf of Dustin Hastings, Decatur, Alabama, Claims Court Number 90–3620 V
192. Harold Gewirtz on behalf of Charles Gewirtz, Stamford, Connecticut, Claims Court Number 90–3621 V
193. Rebecca Moniz on behalf of Michael Moniz, Deceased, Providence, Rhode Island, Claims Court Number 90–3622 V
194. Charles McCready on behalf of Lisa McCready, Stratford, Connecticut, Claims Court Number 90–3623 V
195. Belinda Murff on behalf of Kevin Murff, Many, Louisiana, Claims Court Number 90–3624 V
196. Marty Cacares on behalf of Ashley Cacares, Tarzana, California, Claims Court Number 90–3625 V

Dated: July 6, 1993.

William A. Robinson,

Acting Administrator.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3647]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 24, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Personal Financial and Credit Statement.

Office: Housing.

Description of the Need For the Information and Its Proposed Use: Form HUD–92417, Personal Financial and Credit Statement, is submitted with the initial application for mortgage insurance of a project. The form is used by HUD to determine whether the sponsor will be able to develop a successful project and have the resources to complete the project.

Form Number: HUD–92417.

Respondents: Individuals or Households.

Frequency of Submission: On-Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Form HUD–92417	8,000		1		8		64,000

Total Estimated Burden Hours: 64,000.

Status: Extension.

Contact: Kerry J. Mulholland, HUD (202) 708–0283; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 24, 1993.

[FR Doc. 93–16381 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–01–M

Office of Fair Housing and Equal Opportunity

[Docket No. N–93–3558; FR–3428–N–08]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

ACTION: Notice of open meeting—correction.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550), the Federal Advisory Committee Act (FACA). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. **The Federal Register** on June 4, 1993 at 58 FR 31739 announced a meeting of the full Task Force on July 21–23, 1993. This is a notice revising the meeting dates to July 20–23 and announcing a new location for the meeting.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3727. (TDD) (202) 708–0113 (These are not toll-free numbers.) If a sign language interpreter is needed for this meeting, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION: Time and Place—The Task Force will meet on Tuesday, July 20, Wednesday, July 21 and Thursday, July 22, 1993 from 9 a.m. to 7 p.m. each day, and on Friday, July 23 from 9 a.m. to 12 noon. The meeting will take place at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA. This is an open meeting. Fifteen days advance notice of these changes could not be provided because the change in the Task Force's schedule necessitated finding a new meeting place.

Agenda—The Task Force expects to consider and approve its draft report which will be disseminated to the public prior to public hearings which are tentatively scheduled as follows:

September 21, 1993—San Antonio, TX

September 27, 1993—Boston, MA

October 1, 1993—Seattle, WA

A formal notice confirming these dates and locations and providing the precise time and place of the hearings will be published in the **Federal Register** following the July 20–23 meeting of the Task Force.

Public Participation

These are open meetings. The public is also invited to submit written comments on any aspects of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., Suite 1212, Washington, DC 20005–2765.

Dated: July 3, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–16382 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. N–93–3558; FR–3428–N–09]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of open meeting—correction.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. app 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and to make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. The Task Force has established an Executive Committee and three additional subcommittees—Admissions, Occupancy and Evictions. The **Federal Register** on June 4, 1993 at 58 FR 31739 announced meetings of the Executive Committee on July 21 and 23, 1993. This is a notice canceling the July 21st meeting and announcing a new place and time for the July 23rd meeting.

FOR FURTHER INFORMATION CONTACT:

VOL
58
ISS
131
JL
12
1993
UMI

Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3727, (TDD) (202) 708–0113 (These are not toll-free numbers.) If a sign language interpreter is needed for this meeting, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION: The Executive Committee meeting originally scheduled for July 21, 1993 from 9 a.m. to 12 noon has been cancelled. The Executive Committee meeting originally scheduled for July 23 from 1 p.m. to 5 p.m. has been moved to the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA, and is now scheduled to adjourn at 4 p.m. Fifteen days advance notice of these changes could not be provided because the change in the Task Force's schedule necessitated finding a new meeting place.

Agenda

The Executive Committee will plan for publication of the draft report of the Task Force, work out final details of the public hearings and make such other recommendations to the full Task Force as may be appropriate.

Public Participation

This is an open meeting. the public is also invited to submit written comments on any aspect of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., suite 1212, Washington, DC 20005–2765.

Dated: July 3, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–16383 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–03–4120–03, WYW129707]

Coal Lease Exploration Licenses; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as subpart 3410, title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, Wyoming.

T. 42 N., R. 70 W., 6th P.M., Wyoming
Sec. 28: Lots 1 thru 16;
Sec. 32: Lots 1 thru 16.
Containing 1,318.86.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality data on coal cores, water monitoring sites and coal thickness.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW129707): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the "The News-Record" of Gillette, Wyoming, once each week for two consecutive weeks beginning the week of July 5, 1993, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Robert J. Shevling, Powder River Coal Company, Caller Box 3034, Gillette, Wyoming 82717, and the Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003. The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Lynn E. Rust,

Chief, Branch of Mining Law & Solid Minerals.

[FR Doc. 93–16392 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–22–M

[NV020–4320–02]

Winnemucca District Multiple Use Advisory Council Meeting

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Winnemucca District Advisory Council will be held on Thursday, August 19, 1993. The meeting will be from 8:00 a.m. to 3:00 p.m. in the conference room of the Bureau of Land Management Office at 705 East 4th Street, Winnemucca. Nevada 89445.

The agenda for the meeting will include:

1. Update of the Black Rock/High Rock NCA Proposal.
2. Water Canyon Recreation Management Plan.

The meeting is open to the public. Interested persons may make oral statements to the council at 2:00 p.m. or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by August 16, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection (during regular business hours), within 30 days following the meeting.

Dated: July 2, 1993.

Robert J. Neary,

Acting District Manager.

[FR Doc. 93–16390 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Delegation of Royalty Management Authority to the State of New Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Royalty Management Program for the Minerals Management Service (MMS) hereby gives notice of a public hearing on a petition from the State of New Mexico for delegation of authority for the performance of certain royalty management activities. The petition was submitted pursuant to section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1735 and 30 CFR part 229. Written comments from interested persons will be accepted.

DATES: The public hearing will be held beginning at 9:30 a.m. on August 3, 1993. Written comments on the petition will be accepted by MMS through August 18, 1993.

ADDRESSES: The hearing will be held at the following address: Secretary's Conference Room No. 3004/3138,

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504.

Written comments on the petition should be sent to the Minerals Management Service, Royalty Management Program, State and Indian Program Audit Office, Attention: Mr. Todd R. McCutcheon, P.O. Box 25165, MS 3660, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Todd R. McCutcheon, Acting Area Manager, State and Indian Program, Minerals Management Service, P.O. Box 25165, MS 3660, Denver, Colorado 80225–0165, (303) 275–7472.

SUPPLEMENTARY INFORMATION: Section 205 of FOGRMA authorizes the Secretary of the Interior to delegate to States certain audit, inspection, and investigation authority for oil, gas, and mineral production on Federal and Indian leases located within the State. The MMS issued regulations implementing section 205 of FOGRMA at 30 CFR part 229. Part 229 defines the scope of authorities which may be delegated to States and the standards for such delegation. Section 229.102 requires that a public hearing(s) be held on a petition for delegation from a State to determine whether:

- The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the requirements of FOGRMA;
- The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the Senate can be effectively carried out;
- The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;
- The State's plan to carry out the delegated authority will be in accordance with MMS standards, and
- The State's plan to coordinate the delegated authority, with MMS and the Office of the Inspector General, audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil, gas or mineral leases within the State.

The purpose of the subject hearing is to provide a public forum to discuss the State of New Mexico's written request for delegation of audit activities for oil, gas, and mineral gas royalties with respect to Federal lands within the State. The State's written request for delegation will be available for public inspection at the hearing. Topics for discussion at the hearing include:

- The State's resources to be devoted to the delegated audit activity.
- The ability of the State to effectively and faithfully administer the rules and regulations of the Secretary under FOGRMA.
- Whether-or-not the delegation of authority will create an unreasonable burden on any lessee with respect to Federal and Indian lands within the State.

Dated: July 2, 1993.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–16394 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–MR–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to discuss new information on ruffe in Lake Superior, research needs, and the development of economic and environmental assessments for the proposed Ruffe Control Program.

DATES: The Ruffe Control Committee will meet from 9:30 a.m. to 4:30 p.m. on Wednesday, July 28, 1993.

ADDRESSES: The Ruffe Control Committee meeting will be held at the Clarion Hotel Rosemont (near O'Hare Airport in Chicago), 6810 North Mannheim, Rosemont, Illinois 60018, (708) 297–1234.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Ruffe Control Committee Chair, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806 at (715) 682–6185.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: July 6, 1993.

Gary Edwards,

Assistant Director—Fisheries Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–16459 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Preliminary)]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–652 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Netherlands of aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid fiber),[1] provided for in subheadings 5402.10.30, 5402.32.30, 5503.10.00, and 5601.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 16, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade

[1] The imported merchandise which is the subject of this petition is all PPD-T aramid fiber produced in the Netherlands and imported either directly or indirectly into the United States, whether in fiber, yarn, pulp, staple, or other form.

VOL
58
ISS
131
JL
12
1993
UMI

Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 2, 1993, by counsel on behalf of E. I. Du Pont de Nemours & Co., Wilmington, DE.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 23, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than July 21, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 28, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 8, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16597 Filed 7–9–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section or Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability.

AB–32 (SUB–NO. 50X), Boston and Maine Corporation and Springfield Terminal Railway Co.—Abandonment and Discontinuance of Service—Hillsboro County, New Hampshire. EA available July 2, 1993.

Comments on the following assessment are due 30 days after the date of availability:

AB–33 (SUB–NO. 79), Union Pacific Railroad Co.—Abandonment—In Canyon and Ada Counties, Idaho (Stoddard Branch). EA available June 28, 1993.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16451 Filed 7–9–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32312]

Connecticut Central Railroad Company—Trackage Rights Exemption—Connecticut Rail Systems, Inc.; Exemption

Connecticut Rail Systems, Inc. (CRSI), has agreed to grant approximately 10.2 miles of overhead trackage rights to Connecticut Central Railroad Company (CCRC) between milepost 4.8± at North Haven, CT, and milepost 15.0± at Reeds Gap, in Durham, CT.[1] The trackage rights were to become effective on June 29, 1993.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner,

[1] CRSI was authorized to acquire this line in Finance Docket No. 32233, Connecticut Rail Systems, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation (not printed), served April 5, 1993. The grant here will replace the overhead trackage rights that CCRC held prior to CRSI's purchase of the line. See Finance Docket No. 31045, Connecticut Central Railroad Company—Exemption Operation—Certain Lines of the State of Connecticut (not printed), served June 3, 1987.

[2] To qualify for an exemption under 49 CFR 1180.2(d), a railroad must file a verified notice of the transaction with the Commission at least a week before the transaction is consummated. See 49 CFR 1180.4(g). In this proceeding, the parties filed their verified notice of exemption on June 22, 1993, and indicated that the transaction would be consummated on or after seven days from the date of the notice or any time after June 25, 1993. Counsel for the parties has clarified that the parties did not consummate the transaction prior to the June 29, 1993, effective date.

Carpenter & Precup, 1700 K Street, NW., suite 1107, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16452 Filed 7–9–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–1 (Sub-No. 238)]

Chicago and North Western Transportation Company—Abandonment—Between Duck Creek and Kelly, WI; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company (CNW) to abandon 83.4 miles of railroad, extending from Duck Creek (milepost 4.23) to Kelly (milepost 17.5A) in Marathon, Shawano and Brown Counties, WI. The abandonment certificate will become effective August 12, 1993, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate CNW.

Any offers of financial assistance must be filed with the Commission and CNW no later than 10 days from the date of publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided June 25, 1993.

By the Commission Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons, joined by Chairman McDonald, dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16420 Filed 7–9–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 92–40, 92–51]

Chemical Dependence Associates of Houston; Revocation of Registrations

On March 16, 1992, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Chemical Dependence Associates of Houston (Respondent) of 7442 Park Place Boulevard, Houston, Texas 77087. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration BC0150639 and deny any pending applications for registration. Additionally, by this Order to Show Cause, and pursuant to 21 U.S.C. 824(d), the Administrator immediately suspended Respondent's DEA Certificate of Registration. The Order to Show Cause alleged that Respondent's continued registration as a narcotic treatment program would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(g).

On April 23, 1992, the Administrator of the DEA issued another Order to Show Cause to Chemical Dependence Associates of Houston (Respondent) located at a second address of 16 Pinedale, Houston, Texas 77006. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration RC0138481 and to deny any pending applications for registration. By this Order to Show Cause, and again pursuant to 21 U.S.C. 824(d), the Administrator immediately suspended Respondent's DEA Certificate of Registration. The Order to Show Cause alleged that Respondent's continued registration as a narcotic treatment program would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the matters raised in both Orders to Show Cause. On May 27, 1992, Administrative Law Judge Mary Ellen Bittner issued an order consolidating the two cases in light of the fact that Chemical Dependence Associates of Houston, while operating under two separate DEA Certificates of Registration and at two separate addresses, was owned and operated by the same individual, Dr. Tommy Swate. Dr. Swate acted as the Program Sponsor and Medical Director of both Respondent facilities. Following prehearing procedures, a hearing on the consolidated cases was scheduled for August 25, 1992, in Galveston, Texas. The hearing was commenced on that day, however, due to threatening weather, was continued until January 1993. The hearing was resumed on January 11, 1993, in Beaumont, Texas.

On February 17, 1993, the administrative law judge issued her opinion and recommended decision. Neither party filed exceptions to the administrative law judge's opinion and recommended decision. On March 22, 1993, Judge Bittner transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Administrator hereby issues his final order in this matter as set forth below.

The Orders to Show Cause alleged that Respondents had engaged in various violations of DEA, FDA and Texas State regulations including falsification of medical records, inadequate testing documentation, dispensing methadone to an undercover agent for no legitimate medical purpose, failing to account for methadone received and dispensed, and failing to maintain proper documentation of treatment in patient records. Before evidence relating to these allegations was presented at the hearing in Beaumont, Texas, counsel for the Government filed a motion for summary disposition. The Government alleged that since the previous hearing date of August 25, 1992, Dr. Swate had relinquished control over both sites where Respondents were located. The Government maintained, therefore, that even if the Administrator were to reinstate Respondent's DEA Certificates of Registration, there would be no locations to register. As the Government noted, registrations for narcotic treatment programs are issued to locations, not to individuals. See, 21 U.S.C. 822(e) and 21 CFR 1301.22(a)(6).

In response to the motion, Dr. Swate stipulated that should he seek any future employment with a narcotic treatment program it would be as a program director or sponsor, a position which would require him to be the applicant for a DEA Certificate of Registration. The Government agreed that if the motion for summary disposition were granted, the DEA would take no action against Dr. Swate's individual DEA Certificate of Registration as a practitioner based solely on the violations alleged in the Orders to Show Cause. The Government further agreed that it would not attempt to apply 21 CFR 1301.76(a), which restricts employment of individuals with revoked DEA registrations, against Dr. Swate for any employment in a traditional office setting in which he would have access to controlled substances.

VOL 58 ISS 131 JL 12 1993 UMI

Based on these stipulations, and in light of the fact that there was no longer any issue to be resolved at the hearing, the administrative law judge granted the Government's motion for summary disposition. The administrative law judge noted that where no question of fact is involved, or when the facts are agreed upon, an administrative proceeding including submission of evidence and cross-examination is not required. See, Philip E. Kirk, M.D., Docket No. 82-36, 48 FR 32887 (1983), aff'd. sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977). The administrative law judge recommended that Respondent's DEA Certificates of Registration be revoked subject to the conditions mentioned above.

The Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 USC 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration RC0138481 and BC0150639, issued to Chemical Dependence Associates of Houston, be, and they hereby are, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16439 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

Tran Trong Cuong M.D.; Revocation of Registration

On March 15, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Tran Trong Cuong M.D., of 4534 Seminary Road, Alexandria, Virginia 22304, proposing to revoke his DEA Certificate of Registration, AC6059960, and deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Dr. Cuong's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was served on Dr. Cuong on March 18, 1993. More than thirty days have passed since the Order to Show Cause was received by Dr. Cuong. The Drug Enforcement Administration has received no response from Dr. Cuong or anyone purporting to represent him. Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Cuong has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e), the Administrator enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that in December 1990, DEA, in a joint effort with the Virginia State Police, Virginia Department of Health Professions and the Alexandria, Virginia Police Department, initiated an investigation of Dr. Cuong after receiving information regarding his excessive prescribing of controlled substances. Various investigative means were employed, including extensive pharmacy surveys, patient interviews and successful undercover purchases of sixteen controlled substances from Dr. Cuong.

On September 15, 1992, a Federal Grand Jury in the United States District Court for the Eastern District of Virginia returned an indictment charging Dr. Cuong with 136 counts of illegal distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). The indictment alleged that, from April 1989 to January 1992, Dr. Cuong unlawfully prescribed to 30 individuals over 49,500 dosage units of controlled substances outside the usual course of medical practice and for other than legitimate medical purposes. On December 18, 1992, following a jury trial, Dr. Cuong was found guilty on 127 counts of illegal distribution of controlled substances, and on April 2, 1993, was sentenced to a prison term of 97 months. Based upon these convictions, the Virginia State Board of Medicine revoked Dr. Cuong's license to practice medicine on April 26, 1993.

The Administrator finds that as of April 26, 1993, Dr. Cuong's license to practice medicine in the State of Virginia has been revoked, and as a result, he is unable to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Cuong's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AC6059960, previously issued to Tran Trong Cuong, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16441 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

William E. Doell, D.O.; Revocation of Registration

On March 15, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William E. Doell, D.O., of 7777 W. 38th Avenue, #124 Wheatridge, Colorado 80033, seeking to revoke his DEA Certificate of Registration, AD8996716, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that Dr. Doell lacks authorization to handle controlled substances in the State of Colorado, effective August 17, 1990. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Doell by registered mail and was returned to DEA unclaimed. DEA Investigators then attempted to hand deliver the Order to Show Cause to Dr. Doell's residence as well as his business address, and both places were vacant. DEA Investigators were advised by local law enforcement authorities that Dr. Doell is no longer at his registered location and repeated attempts to locate him have been unsuccessful. The local authorities further informed DEA Investigators that there is no indication that Dr. Doell will be returning in the near future. As a result, Dr. Doell is deemed to have waived his opportunity for a hearing. The Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that, on August 1, 1988, the Colorado Attorney General at the direction of the Colorado State Board of Medical Examiners (Board) filed an eight-count complaint against Dr. Doell. The complaint alleged that from 1982 to 1988, Dr. Doell committed numerous acts of substandard care in connection with seventeen patients, including the

excessive prescribing of Dilaudid to a patient.

Following a hearing before the Board, the administrative law judge issued a decision on September 13, 1989, in which she concluded that the evidence in the record substantiated sixteen instances of substandard care on the part of Dr. Doell. The administrative law judge recommended that Dr. Doell's license to practice medicine be suspended for two years and then placed on probation for three additional years following the suspension. However, the Board ordered the revocation of Dr. Doell's license to practice medicine, effective August 17, 1990.

The Administrator finds that as of August 17, 1990, Dr. Doell's license to practice medicine in the State of Colorado has been revoked, and he is without authority to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Doell's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AD8996716, previously issued to William E. Doell, D.O., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16443 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–59]

David H. Gillis, M.D.; Granting of Registration

On June 1, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David H. Gills, M.D. (Respondent) of Cincinnati, Ohio proposing to deny his application for registration as a practitioner. The statutory basis for seeking the denial of the application was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Cincinnati, Ohio on October 28, 1992. On February 1, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended that the Respondent's application for a DEA Certificate of Registration be granted.

No exceptions were filed to Judge Tenney's opinion, and on March 11, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent graduated from medical school in 1971 and currently treats patients who are injured during employment and consults with a number of practitioners with respect to chronic spinal injury cases. The majority of Respondent's patients suffer from chronic low back pain or other injuries which result in "chronic pain syndrome" (CPS). CPS develops following an acute injury that does not improve after six weeks. Medications used in the treatment of CPS include Valium, a Schedule IV controlled substance, and muscle relaxants such as soma and flexeril, and analgesics such as Vicodin, a Schedule III controlled substance, and Tylenol with codeine #3 and #4, Schedule III controlled substances, which diminish pain. The Drug Enforcement Administration initiated its investigation of the Respondent in April 1991 after receiving information from the Clermont County Ohio Sheriff's Department that Respondent was prescribing controlled substances to known drug abusers and drug traffickers. The Sheriff's Department provided DEA with reports and patient filed that had been obtained as a result of two search warrants. In 1990, during the execution of one of the search warrants, the Sheriff's Department seized 22 patient records out of 3,000 to 4,000 active patient files. During its investigation, DEA went to Eastgate Pharmacy, which was located in a suite in the same building as Respondent's medical office, and obtained 800 to 1000 prescriptions written by Respondent, and dispensed by Eastgate Pharmacy.

During the hearing in this matter, the Government placed into evidence some of Respondent's patient charts. These charts indicated that Respondent prescribed a variety of controlled substances to these individuals over extended periods of time. In one instance, the patient chart had printed on its face: "Drug addiction to Vicodin." In another instance, a patient chart had a notation that the individual was increasingly using more medication and, "used much more medication than he should have in the amount of time." Finally, it was clear from the evidence presented that Respondent knew that one of his patients had a serious substance abuse problem.

After reviewing these charts and Respondent's testimony at the hearing, the administrative law judge concluded that Respondent issued controlled substance prescriptions to these individuals for legitimate medical purposes, such as relief of pain, muscle spasms, and anxiety.

During the course of the investigation, a DEA Investigator interviewed Respondent's former secretary/office manager who stated that Respondent "prescribed numerous amounts of controlled substances to individuals and prolonged their use, having them off work for long periods of time. [Dr. Gillis] prescribed controlled substances to patients that had minor injuries." However, the administrative law judge did not credit these statements since the former secretary/office manager had no medical training, was not present in the examination rooms and did not testify in these proceedings.

At the hearing, the Government presented evidence that an osteopathic family practitioner, treated five of Respondent's patients, and indicated to DEA that the patients appeared to be drug dependent and that their only focus was to obtain controlled substances. However, the administrative law judge did not credit this doctor's opinion since he was neither a specialist in orthopedics, nor did he specialize in pain care management; the medical records of the five referenced patients were not in evidence; no report or statement by the doctor himself was in evidence; and the doctor did not testify.

The Government presented evidence at the hearing that Respondent's previous DEA Certificate of Registration expired on September 30, 1990, yet Respondent prescribed klonopin, a Schedule IV controlled substance, to an individual on July 25, 1991. While it

was wrong for Respondent to prescribe controlled substances when not registered to do so, the administrative law judge concluded that there were mitigating circumstances. The individual had a seizure disorder, was maintained on klonopin, and needed an immediate dose of the drug. Further, at the time Respondent was not aware that klonopin was a controlled substance since he is an orthopedic surgeon and therefore, does not routinely prescribe anticonvulsive medications.

Finally, the administrative law judge found that no nexus had been established between the volume of controlled substances that the Respondent prescribed, and subsequently dispensed from Eastgate Pharmacy, and an illegitimate purpose for such prescribing practices. At the hearing, a pharmacist employed at Eastgate Pharmacy, testified that during 1989 through 1991, he filled approximately 20,000 of the Respondent's prescriptions annually, however, not all of these prescriptions were for controlled substances. The pharmacist further testified that since the expiration of Respondent's DEA registration, the pharmacy is filling approximately the same number of prescriptions, but they are all for noncontrolled substances.

The Administrator may deny any application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989). In addition, the DEA has the burden of proving that these factors are not satisfied. See, 21 CFR 1301.55(c). The Government's burden of proof for this administrative proceeding is a preponderance-of-the-evidence standard. See, *Steadman* v. *SEC*, 450 U.S. 91 (1980).

The administrative law judge found that factors two, four, and five are relevant in this proceeding. As to factors two and four, the administrative law judge concluded that although a suspicion exists that Respondent may have prescribed controlled substances absent a legitimate medical purpose, the DEA did not meet its burden of proof. The administrative law judge further concluded that the Government did not present persuasive evidence to controvert the Respondent's explanation of his prescribing practices. In addition, as to factor four, the administrative law judge found that the Government did not prove that Respondent violated any State, Federal or local laws relating to controlled substances.

Regarding factor five, the Government argued that Respondent is a danger to the public health and safety, as he has failed to acknowledge any illegal activity. A conclusion regarding this argument was not reached since the administrative law judge concluded that the Government had not met its burden of proof regarding any illegal activity.

The Administrator, having considered the entire record, adopts the administrative law judge's findings of fact, conclusions of law, and recommended ruling in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration of David H. Gillis, M.D., be, and it hereby is, granted. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16438 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–75]

George D. Osafo, M.D., Revocation of Registration

On July 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to George D. Osafo, M.D. (Respondent) of 800 Cottage Grove Road, Bloomfield, Connecticut 06002. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Order to Show Cause also alleged that revocation of Respondent's DEA certificate of Registration A01678412 could be based on 21 U.S.C. 824(a)(5).

Respondent, through counsel, requested a hearing on the matters raised in the Order to Show Cause. Following prehearing procedures, a hearing was held in Hartford, Connecticut, on December 1, 1992. On march 8, 1993, Administrative Law Judge Paul A. Tenney issued his findings of fact, conclusions of law and recommended ruling. No exceptions were filed to Judge Tenney's recommended ruling and on April 8, 1993, Judge Tenney transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Administrator hereby issues his final order in this matter based upon the findings of fact and conclusions of law set forth below.

The administrative law judge first addressed the issue of Respondent's prior convictions and subsequent exclusion from participation in a program pursuant to 42 U.S.C. 1320a–7(a), a basis for revocation pursuant to 21 U.S.C. 824(a)(5). On March 8, 1988, following a plea of *nolo contendere*, Respondent was convicted in the Superior Court of New Haven County on four counts of larceny for submitting false medical claims to Blue Cross & Blue Shield. The false claims included Respondent's miscoding of laboratory tests as well as billing for services not rendered. Upon Respondent's conviction, he was ordered to pay restitution in the amount of $22,516.16 and received a suspended sentence of four years.

On March 3, 1989, after entering a plea of *nolo contendere* to the charges, Respondent was convicted in the Superior Court of Hartford County of second degree larceny for defrauding a public community. This conviction was based on Respondent's submission of 1,198 false medical claims to the State of Connecticut's Department of Income Maintenance. Respondent's false claims resulted in his overbilling the Department of Income Maintenance in the amount of $10,804.75. Following his conviction, Respondent received a suspended sentence of two years, was placed on three years probation and was ordered to reimburse in full the Department of Income Maintenance.

Respondent's conviction also resulted in his being terminated, commencing July 8, 1989, as a vendor of goods and services by the State of Connecticut's Department of Income Maintenance. This exclusion was to be effective for a period of seven years and was in conformance with the requirements of

section 1128(a) of the Social Security Act. Effective August 14, 1989, the United States Department of Health and Human Services excluded Respondent from participation in the Medicare program, also for a period of seven years. Again as a result of Respondent's convictions, in March 1991, the State of Connecticut Department of Health Services placed Respondent on probation and censured his license to practice medicine. Shortly thereafter, the State of Georgia Composite Board of Medical Examiners issued a Consent Order placing Respondent's medical license on probation. The Consent Order prohibited Respondent from resuming the practice of medicine in Georgia without obtaining prior written approval from the State of Georgia Composite Board of Medical Examiners.

The administrative law judge noted that Respondent's exclusion from Medicare was a basis for revocation of Respondent's registration pursuant to 21 U.S.C. 824(a)(5). The administrative law judge rejected Respondent's argument in his brief that there must be a nexus between the ground for exclusion from Medicare and some type of offense relating to controlled substances. As the administrative law judge noted, the Administrator of the DEA has held that misconduct which does not involve controlled substances may constitute grounds for the revocation of a registration pursuant to 21 U.S.C. 824(a)(5). See Gilbert L. Franklin, D.D.S., 57 FR 3441 (1992).

The administrative law judge then turned to the issue of whether Respondent's continued registration was inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). With respect to the factors to be weighed when determining the public interest, the administrative law judge looked to 21 U.S.C. 823(f)(1) and noted that the State licensing boards of both Connecticut and Georgia have taken action against Respondent's medical licensure.

Respondent's experience in dispensing controlled substances, a factor which can be considered under 21 U.S.C. 823(f)(2), was also deemed significant. The administrative law judge concluded that Respondent's experience in dispensing controlled substances was questionable, in light of his prescribing of methadone to a patient for an unknown medical condition. This patient had a prior history of intravenous drug abuse. Respondent maintained that he prescribed methadone for this patient because the patient suffered from thalassemia or sickle-cell disease, and so noted on the prescriptions. Respondent did not perform any laboratory tests on the patient to confirm that she indeed had sickle-cell disease. The administrative law judge, however, found more reliable the findings of another doctor of the patient's. This doctor did perform a hemoglobin electrophoresis, a laboratory test which indicates the presence of sickle-cell disease. This test confirmed that the patient did not suffer from sickle-cell disease. The administrative law judge noted that this conclusion was corroborated by another expert in the field of hematology and oncology who reviewed the patient's medical records and stated in a notarized letter that the patient did not have sickle-cell disease.

Finally, the administrative law judge addressed Respondent's compliance with Federal regulations, another factor which can be considered when determining the public interest as provided in 21 U.S.C. 823(f)(4). After being advised by DEA's Long Island office that Respondent had ordered a "huge" amount of controlled substances, including Tussionex, a Schedule III controlled substance, and Xanax, a Schedule IV controlled substance, DEA Investigators executed an administrative inspection warrant at Respondent's office on December 6, 1991. The DEA Investigators asked Respondent for his initial and biennial inventories and his purchase invoices, none of which he was able to produce. When asked about his dispensing records, Respondent stated that they were intermingled in his patient records. Failure to maintain these records is a violation of Federal law and regulations.

After conducting an audit, the DEA Investigators found that Respondent was unable to account for 100% of the Tussionex purchased and almost 97% of the Xanax purchased. Respondent contended that he did not maintain proper records because he was not advised of the regulations and later testified that an injury prevented him from complying with the recordkeeping requirements of the Controlled Substances Act. The administrative law judge found that both these explanations lacked merit. The administrative law judge determined that Respondent failed to comply with numerous recordkeeping requirements and noted that it is a registrant's responsibility to be familiar with the Federal regulations applicable to controlled substances.

Finally, pursuant to 21 U.S.C. 823(f)(5), "other conduct which may threaten the public health and safety" may be considered when determining the public interest. The Government alleged that Respondent had attempted to assault the DEA Investigators. The administrative law judge determined that the evidence of such conduct was weak. However, the administrative law judge did conclude that Respondent's submission of fraudulent medical claims and subsequent convictions of larceny indicated that Respondent placed monetary gain above the welfare of his patients, and in so doing, endangered the public health and safety.

The administrative law judge concluded that Respondent's continued registration would be inconsistent with the public interest, a conclusion further bolstered by Respondent's exclusion from State and Federal programs under 21 U.S.C. 824(a)(5). The administrative law judge therefore recommended that Respondent's DEA Certificate of Registration AO1678412 be revoked and that any pending applications be denied.

The Administrator adopts the findings of fact, conclusions of law and recommended ruling of the administrative law judge in their entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AO1678412, issued to George D. Osafo, M.D., be, and it hereby is, revoked and that any pending applications be, and they hereby are, denied. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16440 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

Steven I. Topel, M.D.; Revocation of Registration

On April 5, 1993, the Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven I. Topel, M.D., of Natural Bridge Road, Slade, Kentucky 40376, seeking to revoke his DEA Certificate of Registration, AT8477615, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that on or about June 20, 1991, the Commonwealth of Kentucky, State Board of Medical Licensure ordered the revocation of Dr. Topel's state license to practice medicine, and therefore, he is not authorized to handle controlled substances in the State of Kentucky. 21 U.S.C. 824(a)(3).

VOL
58
ISS
131
JL
12
1993
UMI

The Order to Show Cause was served on Dr. Topel on April 9, 1993. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Topel is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that, on May 28, 1991, the Commonwealth of Kentucky, State Board of Medical Licensure (Board), ordered the temporary suspension of Dr. Topel's license to practice medicine. The Board found that Dr. Topel engaged in inappropriate sexual contact with patients and inappropriately prescribed controlled substances to patients. The Board therefore found that it had probable cause to believe that Dr. Topel was suffering from a physical and/or mental condition that impeded his ability to practice medicine. As a result, Dr. Topel was ordered by the Board to submit to a neuropsychological examination by June 18, 1991, and a psychiatric examination by June 25, 1991, with the examinations to be conducted by specialists appointed by the Board.

On June 12, 1991, Dr. Topel informed the Board by letter that he would not appear for the scheduled neuropsychological and psychiatric examinations. In light of Dr. Topel's failure to comply with the Board's order, the Board revoked Dr. Topel's license to practice medicine, effective June 20, 1991.

The Administrator finds that as of June 20, 1991, Dr. Topel's license to practice medicine in the Commonwealth of Kentucky has been revoked, and he is without authority to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *James H. Nickens, M.D., 57* FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Topel's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AT8477615, previously issued to Steven I. Topel, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-16442 Filed 7-9-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93-41; Exemption Application No. D-9258, et al.]

Grant of Individual Exemptions; Kimball International, Inc. Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kimball International, Inc., Retirement Plan (the Plan) Located in Jasper, IN

[Prohibited Transaction Exemption 93-41; Exemption Application No. D-9258]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of five parcels of real property (the Properties) to Kimball International, Inc., a party in interest with respect to the Plan, and the subsequent conveyance of one of the parcels to Springs Valley Bank and Trust Company of Jasper, Indiana provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a purchase price for the Properties which is no less than the sum of the fair market values of each of the Properties as of the date of the sale, plus a premium of no less than five percent of such sum;

(C) The Plan's interests for all purposes in the transaction are represented by Arthur L. Dillard, Esq., an independent fiduciary acting on behalf of the Plan with respect to the Properties; and

(D) The Plan does not incur any costs or expenses related to the transaction, other than any taxes imposed by law on a seller.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1993 at 58 FR 28046.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Local No. 60 Health and Welfare Fund (the Plan) Located in Leominster, MA

[Prohibited Transaction Exemption 93–42; Exemption Application No. L–9015]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the cash sale of a parcel of real property (the Property) by the Plan to the New England Joint Board of the Retail, Wholesale and Department Store Union, AFL–CIO (the Joint Board), for the greater of (1) $212,000 in cash or (2) the fair market value of the Property as of the date of the sale, provided the following conditions are satisfied: (a) The purchase price is not less than the fair market value of the Property on the date of the sale; and (b) the fair market value of the Property is determined by a qualified, independent appraiser as of the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 9, 1993 at 58 FR 18423.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by May 13, 1993. Interested persons were informed that they had until June 14, 1993, to comment or request a hearing with respect to the proposed exemption.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received six comments with request to the proposed exemption. One of the comments favored granting the exemption as it was proposed. Three of the comments did not focus on the merits of the transaction, but rather expressed concern that the proposed transaction would have a negative impact on the participants' retirement benefits. However, the transaction involves only the Plan, which is a health and welfare plan, and not any pension plan sponsored by the Joint Board or its local affiliate, Local No. 60. Accordingly, the exemption will not affect the pension rights of anyone entitled to pension benefits under such other pension plan.

One commentator expressed concern that the proceeds of the proposed sale of the Property would go to officials of Local No. 60. The commentator also inquired as to what the Plan had done with the proceeds from earlier rentals of the Property, as well as from the sale of another parcel of property (Spec Pond) previously owned by the Plan. The applicant responded to this comment by stating that a decision has been made to terminate the Plan and to pay out the remaining assets (after payment of administration and liquidation expenses, etc.) in equal shares to all participants and beneficiaries of the Plan who are living as of the date of Plan termination and asset distribution, and who are either: (1) Retirees of the Foster Grant Company (FG) from the Local No. 60—represented bargaining unit (including American Hoechst Corporation retirees who worked for FG in the Local No. 60 bargaining unit); or (2) "vested, terminated" (Local No. 60) bargaining unit employees of FG. The Plan, thus, has decided how to dispose of its remaining assets. The applicant represents that Local No. 60 will not receive any money from the sale of the Property, nor does Local No. 60 have any say in how the money will be distributed. The applicant further responded to the comment by stating that proceeds from past rentals of office space in the Property have been used by the Plan to pay for the various costs of owning and operating the Property, including mortgage, taxes, insurance, maintenance and utilities. Proceeds from the sale of Spec Pond will be distributed to the Plan's participants in the same manner as described above with respect to the sale of the subject Property. The applicant concluded by responding that all decisions by the trustees of the Plan have been made in accordance with procedures set forth in the Plan's governing documents. All decisions regarding the termination of the Plan and the distribution of its assets have been recorded in official minutes which are available for inspection by any of the Plan's participants and beneficiaries.

The final comment was submitted by the applicant to correct a statement that appeared in the Summary of Facts and Representations in the proposed exemption. That statement had indicated that no commissions would be paid with respect to the proposed sale. The applicant stated in its comment letter that the Plan had entered into an "Exclusive Right to Sell" agreement (the Agreement) with Century 21 Denault Realty (Century 21), an independent real estate broker on June 4, 1991. The Agreement was extended from December 2, 1991 until July 1, 1992, and again from July 1, 1992 through September 1, 1993.[1] The applicant thus represents that the Plan is under a binding legal obligation to pay a commission of $16,960 to Century 21 in connection with the sale of the Property. The Department notes this correction to the proposed exemption.

The Department received one request for a hearing with respect to the proposed exemption. However, after careful consideration of the entire record, including the comments submitted and the applicant's response to the comments, the Department does not believe that any issues have been raised which would require the convening of a hearing.

Accordingly, the Department has determined to grant the exemption as amended to permit the payment of the commission by the Plan to Century 21 as discussed above.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

[1] The Department notes that the decisions to enter into the Agreement and the extensions thereof are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not providing relief for any violations of Part 4 of the Act which may have arisen as a result of the Plan's entering into or extending the Agreement.

VOL
58
ISS
131
JL
12
1993
UMI

transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of July, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–16463 Filed 7–9–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–8871, et al.]

Proposed Exemptions; Southwest-Tex Leasing Co., Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Southwest-Tex Leasing Co., Inc. Profit Sharing Plan (the Plan) Located in San Antonio, TX

[Application No. D–8871]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain undeveloped real property (the Property) to Walker Resources, Inc. (WRI), a party in interest with respect to the Plan for the greater of $95,800 or the fair market value of the Property at the time the sale transaction is consummated.

This proposed exemption is conditioned on the following requirements: (1) the sale is a one-time transaction for cash; (2) the Plan does not pay any real estate fees or commissions in connection therewith; (3) the sales price reflects the greater of $95,800 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the sale; and (4) an independent fiduciary monitors the proposed sale transaction on behalf of the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 439 participants as of September 30, 1992. As of December 31, 1992, the Plan had total assets of $928,990. The trustee of the Plan (the Trustee) and the decisionmaker with respect to Plan assets is NCNB Texas of San Antonio, Texas.

2. Southwest-Tex Leasing Co., Inc. (SWT), the Plan sponsor, is a wholly owned subsidiary of WRI. SWT is engaged in the rental car business and conducts business under the registered trade name "Advantage Rent-A-Car" (Advantage). Advantage operates approximately 60 car rental locations in six states (Texas, New Mexico, Colorado, Arizona, Utah and Nevada). SWT, which was established approximately 30 years ago by Kenneth and Helen Walker, is based in San Antonio, Texas. The current officers and directors of SWT include members of the Walker Family.

3. WRI, the parent of SWT, is a Texas corporation engaged in the business of owning and leasing real property. WRI is located in San Antonio, Texas. The corporation is wholly owned by members of the Walker Family, some of whom also serve as officers and directors of this entity.

4. On August 27, 1980, SWT purchased a parcel of unimproved real property located on the south side of Halm Boulevard and the northeast side of U.S. Highway 281 North, City of San Antonio, Bexar County, Texas. The Property consists of 19,105 square feet of mostly vacant land.

5. SWT purchased the Property for $66,851 from unrelated parties. The sellers were Warren Marshall, individually and as independent executor of the Estate of Carrie Lou Bailey. Title to the Property was taken on behalf of SWT in the name of James P. Walker, as corporate trustee. Shortly thereafter during the Plan year 1981,

SWT donated the Property to the Plan as a voluntary, in-kind contribution.

6. On November 11, 1986, the Plan entered into a billboard lease with respect to a portion of the Property with the Patrick Media Group, Inc. (PMGI), an unrelated party, for a primary term of five years at an annual rental of $9,600 which was to be paid in quarterly installments of $2,400. The total rental received by the Plan under the initial term of the lease was $48,000. At present, the billboard lease continues on a month-to-month basis. Although PMGI still pays the Plan rent based upon the original, annual rate of $9,600, the applicant represents that it is doubtful the Plan can expect to receive this rental rate. Because of deteriorating economic conditions, it is likely that the Plan will be forced to receive a lesser rental rate. As of May 1993, the Plan had received total rental income with respect to the billboard lease of $60,000.

7. Since the Plan has owned the Property, WRI has acquired several parcels of contiguous real estate from unrelated parties. In this regard, WRI owns the vacant lots immediately east of the Property. In addition, WRI owns a small triangular parcel of land which is immediately south and adjacent to the Property. Further, WRI owns two of four lots that are immediately north of the Property on which SWT operates Advantage and a parking lot with shuttle service to the San Antonio Airport.

8. The Plan has incurred certain holding costs in connection with its ownership of the Property. These costs have been in the nature of real estate taxes and fees paid to independent appraisers. Other costs, such as insurance premiums, have been paid by SWT. Although records are not available showing real estate taxes that have been paid by the Plan between 1980 and 1983, the applicants state that for the years 1984 through 1990, the Plan paid total real estate taxes of $5,202. The applicants are uncertain about whether the Plan or SWT paid real estate taxes of $1,457 for 1991. The 1992 real estate taxes paid by the Plan were $1,567 thereby bringing the total real estate taxes paid by the Plan to $6,769. The 1993 real estate taxes assessed for the Plan are $1,618.

As for appraisal fees, the applicants again explain that records are not available showing the fees that might have been paid by the Plan before 1991. The applicants have, however, represented that the Plan paid $1,800 in 1991 for an independent appraisal of the Property.

Thus, based upon the foregoing analysis, the Plan had expended $8,569 as of May 1993 in connection with its ownership of the Property. Also as of May 1993, the Plan had received net income of $51,431 ($60,000–$8,569) with respect to rentals under its billboard lease with PMGI.

9. According to the applicants, the Plan has several options with respect to its continued holding or divestment of the Property. The applicants state that the Plan could continue to hold the Property in the anticipation of its future appreciation. However, the applicants believe that prospects for investment appreciation are bleak. The applicants also represent that the Plan could develop the Property. However, they do not believe this is an acceptable alternative because of the Property's small size and irregular shape. Further, the applicants do not believe real estate development is an activity in which the Plan should be engaged. Additionally, the applicants note that the Plan could hold the Property for condemnation by the Texas Department of Highways and Public Transportation (the Highway Department) which has expressed an interest in acquiring property in the vicinity of the Property. However, the applicants believe that due to current budgetary problems, there is no certainty that the Highway Department will acquire the Property and if acquired, the Property would be valued at far less than its appraised value. Finally, the applicants suggest that the Plan might be able to sell the Property to an unrelated party but they do not believe this is a viable alternative because WRI owns most of the contiguous property. Therefore, the applicants believe the only purchaser for the Property is WRI which could combine the Property with its other holdings and thereby expand its operations.

10. Between February and August 1992, the Property was listed for sale with an unrelated party, Trinity Asset Management, Inc. (Trinity) of San Antonio, Texas. As set forth in the Exclusive Sales Agreement, the listing price for the Property was $95,800. By letter dated August 19, 1992, Trinity's Senior Vice President, Mr. Edward Cross, II stated that he had installed a large sign on the Property and advertised the Property for sale in the San Antonio Light.[1] Mr. Cross also represented that although he had received a number of calls in response to these ads, none of the callers was interested in purchasing commercial property.

[1] The applicants note that the for sale sign stayed up until mid-January 1993.

11. An administrative exemption is requested to allow the Plan to sell the Property to WRI for the total cash consideration of $95,800. The Plan will not be required to pay any real estate fees or commissions in connection with such sale.

12. The Property has been appraised by Messrs. Charles H. Noble, Jr., MAI, CRE, SREA and Michael D. Hennessey, RM, independent appraisers associated with Noble and Associates, Inc. Real Estate Appraisers and Consultants of San Antonio, Texas. In an appraisal report dated January 24, 1991, Messrs. Noble and Hennessey determined that the subject land including the billboard site had a total fair market value of $95,800 as of January 18, 1991. Of this amount, the appraisers attributed a fair market value of $48,000 to the billboard site and a fair market value of $47,800 to the remaining land. In an updated appraisal report of April 15, 1992, the same appraisers determined that the entire Property had an aggregate fair market value of $91,000 as of April 14, 1992.[2] The appraisers again placed the fair market value of the billboard site at $48,000. For the remaining land comprising the Property, the appraisers estimated its value at $43,000.

In a December 23, 1992 addendum to the second appraisal report, the appraisers state that the Property is of no unique or special value to WRI by reason of its proximity to other real property also owned by WRI. The appraisers point out that the Property (a) has no access to U.S. Highway 281, (b) is on a dead end street, (c) is irregular in shape, (d) is separated by a street from properties fronting on Interstate Loop 410, (e) has a billboard with declining rental income, and (f) lacks main street frontage. These factors, coupled with the trend of mergers in the rental car business, lead the appraisers to conclude that Property has no intrinsic value.

13. Mr. John C. Long, IV will serve as the independent fiduciary for the Plan with respect to the subject sale transaction. In such capacity, he will monitor the proposed transaction on behalf of the Plan. Mr. Long is an attorney who is engaged in the practice of general civil law in San Antonio, Texas. He has 9 years of legal experience. Mr. Long represents that he is completely unrelated to the parties involved in the proposed transaction. As for experience under the Act, Mr Long states that he has advised clients

[2] According to the applicants, the Property declined in value between 1991 and 1992 because real estate in the vicinity of the Property declined as well during the same period.

VOL 58 ISS 131 JL 12 1993 UMI

of their rights and obligations. Mr. Long further represents that he has consulted with counsel familiar with the Act regarding the duties, responsibilities and liabilities imposed by the Act on Plan fiduciaries and that he states that he understands, acknowledges and agrees to abide by such duties, responsibilities and liabilities.

Mr. Long believes the proposed transaction is in the best interest of the Plan and its participants and beneficiaries. He states that the Property is virtually incapable of meaningful partition. Unlike shares of stock or money held in a certificate of deposit, he explains that the Property is almost impossible to divide and then distribute to Plan participants. Mr. Long also represents that the Property has very little potential to increase in value. He explains that the Property can receive income only from the lease of space for commercial sign usage. Furthermore, Mr. Long notes that the proposed sales price is greatly in excess of any offers that have been made to Trinity and that the terms of the transaction are competitive with other arm's length transactions in the San Antonio area.

In addition to his evaluation of the proposed sales transaction, Mr. Long states that he has examined the Plan's overall investment portfolio, considered the Plan's liquidity requirements and diversification needs and considered how the transaction will comply with the Plan's investment objectives and policies.

14. In summary, the applicants represent that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (c) the sales price for the Property will represent the greater of $95,800 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the sale; and (d) the Plan will be able to divest itself of real estate that is not appreciating in value, end the payment of real estate taxes and periodic appraisal fees.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 7 days of the publication, in the **Federal Register**, of the notice of proposed exemption. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and it will be provided to all Plan participants by personal delivery or by first class mail. The notice will inform interested persons of their right to comment on and/or to request a public hearing with respect to the proposed exemption. Written comments and requests for a public hearing are due within 37 days of the publication of the notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Prudential Mutual Fund Management, Inc. (PMF) Located in New York, NY

[Application No. D–9217]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan; collectively, the Plans) in the Target Portfolio Trust (the Trust) established in connection with such Plans' participation in the Target Personal Investment Advisory Service (the Target Program). In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the provision, by Prudential Securities Incorporated (Prudential Securities), of investment advisory services to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of portfolios of the Trust (the Portfolios) in the Target Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(1) The participation of Plans in the Target Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Prudential Securities and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(2) The total fees paid to Prudential Securities and its affiliates constitute no more than reasonable compensation.

(3) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(4) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(5) Prudential Securities provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(6) Any recommendation or evaluation made by Prudential Securities to an Independent Plan Fiduciary are implemented only at the express direction of such independent fiduciary.

(7) Prudential Securities provides investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios.

(8) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of Prudential Securities and its affiliates.

(9) The quarterly investment advisory fee that is paid by a Plan to Prudential Securities for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that PMF retains no more than 20 basis points from any Portfolio (with the exception of the U.S. Government Money Market Portfolio for which PMF retains an investment management fee of 12.5 basis points) containing investments attributable to the Plan investor.

(10) With respect to its participation in the Target Program prior to purchasing Trust shares,

(a) Each Plan receives the following written or oral disclosures or questionnaires from Prudential Securities or the Trust:

(1) A copy of the prospectus (the Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between Prudential Securities, PMF and its subsidiaries, the compensation paid to such entities and additional information explaining the risks attendant to investing in the Trust.

(2) Upon written or oral request to Prudential Securities, the Independent Plan Fiduciary will be given a Statement

of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize, including a description of the risks.

(3) As applicable, an Investor Profile Questionnaire given to the Independent Plan Fiduciary or eligible participant of a Plan providing for participant-directed investments (the section 404(c) Plan).

(4) As applicable, a written analysis of Prudential Securities' asset allocation decision and recommendation of specific Portfolios given to the Independent Plan Fiduciary or the participant in a section 404(c) Plan.

(5) A copy of the investment advisory agreement between Prudential Securities and such Plan relating to participation in the Target Program.

(6) Upon written request to the Trust, a copy of the respective investment advisory agreement between Prudential Securities and the Sub-Advisers.

(7) As applicable, an explanation by a Prudential Securities Financial Advisor (the Financial Advisor) to section 404(c) Plan participants or the Independent Plan Fiduciary of the services offered under the Target Program and the operation and objectives of the Portfolios.

(8) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(b) If accepted as an investor in the Target Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing to Prudential Securities, prior to purchasing Trust shares that such fiduciary has received copies of the documents described in subparagraph 10(a) of this section.

(c) With respect to a section 404(c) Plan, written acknowledgment of the receipt of such documents is provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, or, in some instances, the Plan participant). Such Independent Plan Fiduciary will be required to represent in writing to PMF that such fiduciary is (1) independent of PMF and its affiliates and (2) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(d) With respect to a Plan that is covered under title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to PMF that such fiduciary is (1) independent of PMF and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(11) Subsequent to its participation in the Target Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation:

(a) Written confirmations of each purchase or redemption transaction by the Plan with respect to a Portfolio.

(b) Telephone quotations from Prudential Securities of such Plan's account balance.

(c) A monthly statement of account from Prudential Securities specifying the net asset value of the Plan's investment in such account to the extent there are transactions by the Plan.

(d) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(e) A written quarterly monitoring report (the Quarterly Account Monitor) containing a record of the performance of the Plan's assets invested in the Target Program, the rates of return received by the Plan with respect to such investments, the Plan's actual portfolio with a breakdown of investments made in each Portfolio, year to date and cumulative realized gains and losses and income received from each Portfolio, a summary of purchase, sale and exchange activity, dividends and interest received or reinvested and market commentary. The Quarterly Account Monitor will also contain an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(1) In the case of a section 404(c) Plan where the Independent Plan Fiduciary has established an omnibus account in the name of the Plan (the Undisclosed Account) with Prudential Securities, the Quarterly Account Monitor will be provided to the Independent Plan Fiduciary.

(2) In the case of a section 404(c) Plan where the Independent Plan Fiduciary opens an account for each Plan participant (the Disclosed Account), the Quarterly Account Monitor will be furnished to each participant and will set forth information pertaining to the participant's individual account.

(f) Written disclosures to the Independent Plan Fiduciary, on a quarterly and annual basis, of the (1) percentage of each Portfolio's brokerage commissions that are paid to Prudential Securities and (2) the average brokerage commission per share paid by each Portfolio to Prudential Securities, as compared to the average brokerage commission per share paid by the Trust to brokers other than Prudential Securities, both expressed as cents per share.

(g) Periodic meetings with Financial Advisors, Independent Plan Fiduciaries or if applicable, participants of Section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

(12) PMF maintains, for a period of six years, the records necessary to enable the persons described in paragraph (13) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PMF and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than PMF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (13) below.

(13)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (14) of this section are unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (13) are authorized to examine the trade secrets of PMF or

VOL
58
ISS
131
JL
12
1993
UMI

commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of Prudential Securities includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Securities. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Prudential Securities and its affiliates and is either

(a) A Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares of a Section 404(c) Plan,

(b) A participant in a Keogh Plan,

(c) An individual covered under a self-directed IRA which invests in Trust shares, or

(d) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a title I Plan that does not permit individual direction as contemplated by section 404(c) of the Act.

Effective date: If granted, this proposed exemption will be effective March 15, 1993.

Summary of Facts and Representations

1. The parties to the transactions are as follows:

a. *Prudential Securities,* located in New York, New York, is an indirect, wholly owned subsidiary of the Prudential Insurance Company of America (Prudential), the largest insurance company in the United States and the second largest insurance company in the world. Prudential Securities offers a broad spectrum of financial services to both individual and institutional investors including cash management services, retirement and financial planning services, mutual funds, investment management services and insurance and annuity services. Among these services are a variety of asset allocation programs. The investment management and financial services that comprise Prudential Securities are involved with the management of more than $50 billion in assets. Prudential Securities assists investors in selecting Portfolios for investment in the Trust. In addition, Prudential Securities serves as the distributor of Trust shares and provides investment allocation advice to investors.

b. *PMF,* which is located in New York, New York, is an indirect wholly owned subsidiary of Prudential. PMF is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the 1940 Act). PMF was incorporated in May 1987 under the laws of the State of Delaware.

Currently, PMF is the investment manager to 35 open-end investment companies, constituting all of the Prudential mutual funds. In addition, PMF serves as investment manager or administrator to 19 closed-end investment companies. These companies collectively have total assets of approximately $41 billion. PMF serves as the investment manager of the Trust and the underlying Portfolios.

c. *Prudential Mutual Fund Services, Inc. (PMFS)* of Edison, New Jersey is a wholly owned subsidiary of PMF. PMFS will serve as Transfer Agent and Dividend Disbursing Agent for the Trust. In these capacities, PMFS maintains certain books and records for the Trust.

d. *Ibbotson Associates, Inc. (Ibbotson)* of Chicago, Illinois, is an investment consulting, data and software products firm that specializes in applying investment theories and empirical findings to current business practice. Ibbotson is not related to Prudential or its affiliates. Ibbotson has developed software for the Target Program (described herein) which involve investment profile matrices and asset allocation methodologies. These matrices and methodologies translate investor needs, preferences and attitudes into suggested portfolio allocations. Ibbotson will maintain and update the software package from time to time as deemed appropriate by Prudential Securities.

2. On July 31, 1992, Prudential Securities formed the Trust, a no load, open-end, diversified management investment company registered under the Investment Company Act of 1940, as amended. The Trust is organized as a Delaware business trust and it has an indefinite duration. As of September 22, 1992, the Trust had no assets.

The Trust consists of nine different portfolios which range from the U.S. Government Money Market Portfolio to the International Equity Portfolio and which pay monthly or annual dividends to investors. The composition of the Portfolios covers a spectrum of investments which include U.S. Government-related securities or equity or debt securities issued by foreign or domestic corporations. The Portfolios are further categorized under two major groupings—Equity and Income. No Portfolio of the Trust is permitted to invest any of its assets in securities issued by Prudential Securities or companies which are directly or indirectly controlled by, or under common control with Prudential Securities. Further, no Portfolio of the Trust may engage in principal transactions with Prudential Securities or its affiliates.

3. Shares in the Trust are being offered by Prudential Securities, as distributor, to participants in the Target Program. The Target Program is an investment advisory service pursuant to which the Asset Management Group of Prudential Securities, in its capacity as investment adviser to participants in the Target Program, in conjunction with Ibbotson, directly provides to investors asset allocation recommendations and related services with respect to the Portfolios based on an evaluation of an investor's investment objectives and risk tolerances.

The Target Program is designed for mid-sized investors with assets of $10,000–$1 million. To participate in the Trust, each investor must open a brokerage account with Prudential Securities by making a current, minimum initial investment of $10,000.[3]

Although PMF anticipates that investors in the Trust will consist of institutions and individuals, it is proposed that prospective investors include Plans for which PMF may or may not currently maintain investment accounts. A majority of these Plans may be IRAs or Keogh Plans. In addition, it is proposed that Plans for which PMF or an affiliate serves as a prototype sponsor and/or a nondiscretionary trustee or

[3] Shares in the Trust are not certificated for reasons of economy and convenience. PMFS, the Trust's transfer agent, however, maintains a record of each investor's ownership of shares. Although Trust shares are transferable and accord voting rights to their owners, they do not confer pre-emptive rights (i.e., the privilege of a shareholder to maintain a proportionate share of ownership of a company by purchasing a proportionate share of any new stock issues). PMF represents that in the context of an open-end investment company that continuously issues and redeems shares, a pre-emptive right would make the normal operations of the Trust impossible.

As for voting rights, PMF states that they are accorded to recordholders of Trust shares. PMF notes that a recordholder of Trust shares may determine to seek the submission of proxies by Plan participants and vote Trust shares accordingly. In the case of individual account plans such as Section 404(c) Plans, PMF believes that most Plans will pass-through the vote to participants on a pro-rata basis.

custodian be permitted to invest in the Trust.[4]

The applicants represent that the initial purchase of shares in the Trust by a Plan may give rise to a prohibited transaction where PMF or an affiliate has a party in interest relationship with the Plan. PMF also acknowledges that a prohibited transaction could arise upon a subsequent purchase or redemption of shares in the Trust by a participating Plan inasmuch as the party in interest relationship between PMF and the Plan may have been established at that point.

Accordingly, the applicants have requested retroactive exemptive relief from the Department with respect to the purchase and redemption from Prudential Securities of shares in the Trust by a participating Plan where Prudential Securities does not (a) sponsor the Plan (other than serving as a prototype sponsor) or (b) exercise discretionary authority over such Plan's assets.[5] No commissions or fees are being paid by a Plan with respect to the sale and redemption transactions or a Plan's exchange of shares in a Portfolio for shares of another Portfolio. If granted, the applicants request that the exemption be made effective as of March 15, 1993.

4. Overall responsibility for the management and supervision of the Trust and the Portfolios rests with the Trust's Board of Trustees (the Trustees) which will initially be comprised of seven members. The Trustees approve all significant agreements involving the Trust and the persons and companies that provide services to the Trust and the Portfolios. Three of the Trustees and all of the Trust's executive officers are affiliated with PMF and/or its affiliates. The four remaining Trustees are not affiliated with PMF.

5. Under its management agreement entered into with the Trust, PMF, as investment manager, manages the investment operations of the Trust, administers the Trust's affairs and is responsible for the selection, subject to the review and approval of the Trustees, of the Sub-Advisers of each Portfolio.[6]

Through the Target Program, Prudential Securities provides a Plan investor with non-binding, asset allocation recommendations with respect to such investor's investments in the Portfolios. In order to make these evaluations, Prudential Securities will furnish copies of an Investor Profile Questionnaire, designed to elicit information about the specific investment needs, objectives and expectations of the investor, to the Independent Plan Fiduciary or participant of a Title I Plan, as provided below, or to an IRA or a Keogh Plan. In the case of a Plan where the Independent Plan Fiduciary has established a Disclosed Account in the name of each Plan participant (such as in a Section 404(c) Plan), Prudential Securities will furnish copies of the Investor Profile Questionnaire to each of the Plan participants for response. However, if the Independent Plan fiduciary establishes an Undisclosed Account with Prudential Securities in the name of the Plan, Prudential Securities will provide the Independent Plan Fiduciary, upon oral or written request and at no additional cost, with sufficient copies of the Investor Profile Questionnaire so that the Independent Plan Fiduciary may distribute such questionnaire to Plan participants. Prudential Securities, if requested, will also perform, at no additional cost, the asset allocation analyses for each of these participants.

6. Based upon data obtained from the Investor Profile Questionnaire, Prudential Securities evaluates the investor's risk tolerances and financial goals. Prudential Securities then provides investment advice as to the appropriate mix of investment Portfolios of the Trust that are designed to balance the investor's goals, objectives and risk tolerances as part of a long-term investment strategy.

The applicants represent that Prudential Securities does not have any discretionary authority or control with respect to the allocation of an investor's assets among the Portfolios. In the case of an IRA or Keogh Plan, the applicants represent that all of Prudential Securities' recommendations and evaluations are presented to the Independent Plan Fiduciary and are implemented only if accepted and acted upon by such Independent Plan Fiduciary. However, in the case of a Plan such as a Section 404(c) Plan, PMF represents that Independent Plan Fiduciaries or participants in such Plan are presented with Prudential Securities' recommendations and evaluations depending upon the type of account the Independent Plan Fiduciary has established with Prudential Securities.

7. With respect to an Undisclosed Account, the applicants represent that Prudential Securities' recommendations will be presented to the Independent Plan Fiduciary and such fiduciary will advise Prudential Securities of the investment to be made for the Plan. However, with respect to a Disclosed Account, the applicants note that Prudential Securities' recommendations will be presented to the participants who will be responsible for acting upon that recommendation.

8. The applicants note that not all of the services described above will be provided to every Plan. The services provided to each Plan or to each Plan participant will depend on what is decided upon by the Independent Plan Fiduciary. The applicants represent that an Independent Plan Fiduciary may decide for its own reasons to establish an Undisclosed Account with Prudential Securities under which Prudential Securities is not required to provide investment allocation services to each Plan participant. The applicants state that an Independent Plan Fiduciary may already have an established relationship with a recordkeeper which, depending on the recordkeeper's accounting system, makes it administratively desirable for the Independent Plan Fiduciary to invest a Plan's assets on an undisclosed basis instead of on a disclosed basis. The recordkeeper would be responsible

[4] The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the Target Program by an Independent Plan Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Plan Fiduciary must act prudently with respect to the decision to enter into the Target Program with Prudential Securities as well as with respect to the negotiation of services that will be performed thereunder and the compensation that will be paid to Prudential Securities and its affiliates. The Department expects that an Independent Plan Fiduciary, prior to entering into the Target Program, to understand fully all aspects of such arrangement following disclosure by Prudential Securities of all relevant information.

[5] PMF represents that to the extent employee benefit plans that are maintained by PMF purchase or redeem shares in the Trust, such transactions will meet the provisions of Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). The applicants further represent that, although the exemptive relief proposed above would not permit PMF or an affiliate (while serving as a Plan fiduciary with discretionary authority over the management of a Plan's assets) to invest those assets over which it exercises discretionary authority in Trust shares, a purchase or redemption of Trust shares under such circumstances would be permissible if made in compliance with the terms and conditions of PTE 77–4 (42 FR 18732, April 8, 1977). The Department expresses no opinion herein as to whether such transactions will comply with the terms and conditions of PTEs 77–3 and 77–4

[6] Subject to the supervision and direction of the Trustees, PMF provides to the Trust investment management evaluation services principally by performing initial review on prospective Sub-Advisers for each Portfolio and thereafter monitoring each Sub-Adviser's performance. In evaluating prospective Sub-Advisers, PMF considers, among other factors, each Sub-Adviser's level of expertise, consistency of performance and investment discipline or philosophy. PMF has the responsibility for communicating performance expectations and evaluations to the Sub-Advisers and ultimately recommending to the Trustees whether the Sub-Advisers' contracts should be renewed.

for making allocations to each participant's account in the Plan.

However, if the Independent Plan Fiduciary requests a reduction in the level of services, there will be no corresponding reduction in the fee that the fiduciary pays Prudential Securities if the investment in the Target Program is $100,000 or less. Only investments in excess of $100,000 in the Target Program can result in the payment to Prudential Securities of a quarterly investment allocation fee that is lower than 1.35 percent. (See Representation 17.)[7]

9. Based upon the investment advice and recommendations, which may or may not be adopted, the Independent Plan Fiduciary, with respect to an Undisclosed Account, the Plan participant, with respect to a Disclosed Account, or the IRA or Keogh Plan participant, as applicable, selects the specific Portfolios. Prudential Securities will continue to render Portfolio selection advice to Plans or Plan fiduciaries relating to asset allocations among the selected Portfolios.

10. As stated above, PMF is responsible, subject to the supervision and direction of the Trustees, for selecting the Sub-Advisers which will provide discretionary advisory services with respect to the investment of the assets of the individual Portfolios on the basis of their performance in their respective areas of expertise in asset management. PMF represents that there are presently seven Sub-Advisers, all of which are independent of, and will remain independent of, PMF and/or its affiliates.[8] The Sub-Advisers are registered investment advisers under the 1940 Act. They maintain their principal executive offices in various regions of the United States.

11. Aside from the Investor Profile Questionnaire described above, in order for a Plan to participate in the Target Program, Prudential Securities will provide an Independent Plan Fiduciary with a copy of the Trust Prospectus. This document discusses the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between Prudential Securities, PMF and its subsidiaries, the compensation paid to such entities and information explaining the risks attendant to investing in the Trust. In addition, upon written or oral request to Prudential Securities, the Independent Plan Fiduciary will be given a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize including a description of the risks.[9] Further, each Independent Plan Fiduciary or if, applicable, Plan participant, will be given a copy of the investment advisory agreement between Prudential Securities and such Plan relating to participation in the Target Program including copies of the notice of proposed exemption and grant notice for the exemptive relief provided herein. Upon written request to the Trust, Prudential Securities will also provide an Independent Plan Fiduciary or if applicable, Plan participant, with a copy of the respective investment advisory agreement between PMF and the Sub-Advisers. (Independent Plan Fiduciaries or Plan participants will be apprised by Prudential Securities that they may receive the aforementioned information in sales and marketing material and/or in communications made by brokers.)

With respect to a section 404(c) Plan, Financial Advisors affiliated with Prudential Securities will also explain the services offered under the Target Program as well as the operation and objectives of the Portfolios to either the Independent Plan Fiduciary or to eligible section 404(c) Plan participants depending upon the type of account the Independent Plan Fiduciary establishes with Prudential Securities.[10]

If accepted as a Trust investor, an Independent Plan Fiduciary will be required by Prudential Securities to acknowledge, in writing, prior to purchasing Trust shares, that such fiduciary has received copies of the aforementioned documents. With respect to a Plan that is covered by title I of the Act (e.g., a defined contribution plan), where investment decisions will be made by a trustee, investment manager or a named fiduciary, Prudential Securities will require that such Independent Plan Fiduciary acknowledge in writing receipt of such documents and represent to Prudential Securities that such fiduciary is (a) independent of Prudential Securities and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program. With respect to a section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, or in some instances, the Plan participant). Such Independent Plan Fiduciary will be required to represent, in writing, to Prudential Securities that such fiduciary is (a) independent of Prudential Securities and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

12. Prudential Securities will provide all parties that execute the investment advisory agreement and in whose name the Target Program account is registered with written confirmations of each purchase and redemption of shares of a Portfolio, telephone quotations of such investor's account balance, a monthly statement of account specifying the net asset value of a Plan's assets that are invested in such account (to the extent there are transactions involving the account), and a written quarterly Target Program account statement. The Quarterly Account Monitor is designed to include a record of the performance of the client's assets and rates of return as compared to several appropriate market indices (illustrated in a manner that reflects the effect of any fees for participation in the Target Program actually incurred during the period), the

[7] In this regard, the Department emphasizes that it expects the Independent Plan Fiduciary to prudently consider the relationship of the fees to be paid by the Plan to the level of services to be provided by Prudential Securities. In light of the relatively fixed nature of the fees, Independent Plan Fiduciaries should consider the appropriateness of this arrangement in the contexd of a section 404(c) Plan where asset allocation advice is not provided directly or indirectly to Plan participants.

In response to the Department's concern over this matter, Prudential Securities represents that it will amend the Trust Prospectus and Investment Advisory Agreement to include the following statement: "The Independent Plan Fiduciary [has] [should] consider, in a prudent manner, the relationship of the fees to be paid by the Plan along with the level of services provided by Prudential Securities."

[8] Although there are presently nine Portfolios comprising the Trust, there are only seven Sub-Advisers because two of the Sub-Advisers manage two Portfolios.

[9] In the case of a section 404(c) Plan, Prudential Securities represents that the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, will make available the Trust Prospectus to section 404(c) Plan participants. If requested by such Plan administrator, trustee or named fiduciary, the Prudential Securities will make available to such Independent Plan Fiduciaries sufficient quantities of Prospectuses for distribution to Plan participants, as well as provide Statements of Additional Information to any parties upon request.

[10] The Department is expressing no opinion as to whether the information provided under the Target Program is sufficient to enable a participant to exercise independent control over assets in his or her account as contemplated by section 404(c) of the Act.

client's actual portfolio with a breakdown of investments made in each Portfolio, year to date and cumulative realized gains and losses and income received from each Portfolio, a summary of purchase, sale and exchange activity and dividends and interest received or reinvested as well as a market commentary. In addition, the Quarterly Account Monitor will contain an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations. The Quarterly Account Monitor is described in the summary of the Target Program attached to the front of the Trust's Prospectus.

If an Independent Plan Fiduciary of a section 404(c) Plan opens a Disclosed Account for each Plan participant, such participant will receive a Quarterly Account Monitor reflecting information that pertains to the participant's individual account. However, if an Independent Plan Fiduciary elects to establish an Undisclosed Account with Prudential Securities, then Prudential Securities will provide the Quarterly Account Monitor to the Independent Plan Fiduciary. Such report will contain information relative to the Plan's account.

In addition, on both a quarterly and annual basis, commencing with the first quarterly report due after this notice of proposed exemption is issued, Prudential Securities will provide, as applicable, an Independent Plan Fiduciary or a section 404(c) Plan participant with written disclosures of (a) the percentage of each Portfolio's aggregate brokerage commissions that are paid to Prudential Securities and (b) the average brokerage commission per share paid by each Portfolio to Prudential Securities, as compared to the average brokerage commission per share paid by each Portfolio to brokers other than Prudential Securities, both expressed as cents per share. With respect to a Disclosed Account established for a section 404(c) Plan participant, Prudential Securities will provide the brokerage report to the participant and not to the Independent Plan Fiduciary.

Further, the Independent Plan Fiduciary or section 404(c) Plan participant, as applicable, will have access to a Financial Advisor for the discussion of any questions that may arise.

13. A Plan wishing to redeem Trust shares must communicate such request in writing or by telephone to Prudential Securities. Redemption requests received in proper form prior to the close of trading on the New York Stock Exchange (the NYSE) will be effected at the net asset value per share determined on that day. Redemption requests received after the close of regular trading on the NYSE will be effected at the net asset value at the close of business of the next day, except on weekends or holidays when the NYSE is closed. A Portfolio is required to transmit redemption proceeds for credit to an investor's account with PMF or to an "introducing" broker[11] within 5 business days after receipt of the redemption request. Prudential Securities will place redemption proceeds in the client's brokerage account and will, in the absence of receiving investment instructions, place all such assets in a money market fund (other than the Trust's U.S. Government Money Market Portfolio) which may be affiliated with Prudential Securities.[12]

Due to the high costs of maintaining small accounts, the Trust may also redeem an account where the current value is $10,000 or less, provided the Plan has been given at least 30 days' advance written notice in which to increase the account balance to more than the $10,000 amount. The proceeds of such redemption will be deposited in the investor's brokerage account unless Prudential Securities is otherwise instructed.[13]

14. Shares of a Portfolio may be exchanged by an investor, without the payment of any fees, for shares of another Portfolio at their respective net asset values. However, Portfolio shares are not exchangeable with shares of other Prudential Mutual Funds.

15. With respect to brokerage transactions that are entered into under the Target Program for a Portfolio, such transactions may be executed through Prudential Securities, if in the judgment of the Sub-Adviser, the use of such broker-dealer is likely to result in price and execution at least as favorable, and at a commission charge at least as comparable to those of other qualified broker-dealers. In addition, Prudential Securities may not execute transactions for a Portfolio on the floor of any national securities exchange but it may effect transactions by transmitting orders to other brokers for execution. In this regard, Prudential Securities is required to pay fees charged by those persons performing the floor brokerage elements out of the brokerage compensation it receives from a Portfolio.

16. Each Portfolio bears its own expenses, which generally include all costs that are not specifically borne by PMF, Prudential Securities, the Sub-Advisers or PMFS. Included among a Portfolio's expenses are costs incurred in connection with the Portfolio's organization, investment management and administration fees, fees for necessary professional and brokerage services, fees for any pricing service, the costs of regulatory compliance and costs associated with maintaining the Trust's legal existence and shareholder relations. No Portfolio, however, will impose sales charges on purchases, reinvested dividends, deferred sales charges, redemption fees, nor will any Portfolio incur distribution expenses.

17. The total fees that are paid to Prudential Securities and its affiliates will constitute no more than reasonable compensation. In this regard, for its asset allocation and related services, Prudential Securities will charge an investor a quarterly investment advisory fee. The "outside fee," which is computed quarterly, ranges annually from .50 percent up to a maximum of 1.35 percent of the average annual net assets held in a Target Program account invested by the Plans in the Equity and Income Portfolios. The outside fee will be charged directly to an investor and it will not be affected by the allocation of assets among the Equity or the Income Portfolios nor by whether an investor follows or ignores Prudential Securities' advice.[14] The outside fee can be negotiated to below the 1.35 percent

[11] Prudential Securities provides clearance, settlement and other back office services to other broker-dealers. Prudential Securities may also provide confirmations and account statements to clients of brokers who have "introduced" clients to Prudential Securities. If a Plan uses an introducing broker, the arrangement between the Plan and that broker will define whether the broker is authorized by the Plan to accept redemption proceeds.

[12] The applicants are not requesting, nor is the Department proposing, exemptive relief with respect to the investment, by Prudential Securities, of redemption proceeds in an affiliated money market fund where the Plan investor has not given investment instructions. The applicants represent that to the extent Prudential Securities is considered a fiduciary, such investments will comply with the terms and conditions of PTE 77–4. However, the Department expresses no opinion herein on whether such transactions are covered by this class exemption.

[13] The 30 day limit does not restrict a Plan's ability to redeem its interest in the Trust. The 30 day notice period is provided to give a Plan an opportunity to increase the value of the assets in its Plan account with Prudential Securities to an amount in excess of $10,000. If desired, the Plan may still follow the redemption guidelines described in Representation 13 above.

[14] Prudential Securities represents that the outside fee is not imposed on the accounts of employees of Prudential and its subsidiaries, including PMF, the accounts of their immediate families, IRAs and certain employee pension benefit plans for these persons. With respect to employee benefit plans maintained by PMF or its affiliates for their employees, the applicants assert that such waiver would be required by PTE 77–3.

maximum only if the Plan invests an aggregate amount of $100,000 or greater in the Target Program. In the case of Plans, the outside fee may be paid by the Plan or by the Plan sponsor or, in the case of IRAs only, the fee may be paid by the IRA beneficiary directly.

For Plan investors, the outside fee will be payable in full within 6 business days after the trade date for the initial investment in the Portfolios and will be based on the value of assets in the Target Program on the trade date of the initial investment. The initial fee payment will cover the period from the initial investment trade date through the last calendar day of the calendar quarter, and the fee will be pro-rated accordingly. Thereafter, the quarterly fee will cover the period from the first calendar day through the last calendar day of the current calendar quarter. The quarterly fee is based on the value of assets in the Target Program measured as of the last calendar day of the previous quarter and is payable on the fifth business day of the current quarter.[15]

18. Each time that additional funds aggregating $10,000 or more are invested in the Portfolios during any one quarter, the applicable fee, pro-rated for the number of calendar days then remaining in the quarter and covering the amount of such additional funds, shall be charged and be payable 6 business days later. In the case of redemptions aggregating $10,000 or more during a quarter, the fee will be reduced accordingly, pro-rated for the number of calendar days then remaining in the quarter.

In addition, for investment management and related services provided to the Trust, PMF is paid, from each Portfolio, a management fee which is computed daily and paid monthly at an annual rate ranging from .25 percent to .70 percent of the value of the Portfolio's average daily net assets depending upon the Portfolio's objective. From these management fees, PMF compensates the Sub-Advisers. This "inside fee," which is the difference between the individual Portfolio's total management fee and the fee paid by PMF to the Sub-Adviser, varies from 12.5 to 30 basis points depending on the Portfolio. In addition, pursuant to a Transfer Agency and Service Agreement with the Trust, PMFS will be paid an annual fee of $35 per Target Program participant out of the operating expenses of the Portfolios.[16]

19. The management fees that are paid at the Portfolio level to PMF and the Sub-Advisers are set forth in the table below. As noted in the table, the sum of the management fees paid by a Portfolio to PMF and the Sub-Advisers (S-A) and retained by such entities equals the total management fee paid by the Portfolio.

Portfolio	Tot. mgt. fee (%)	S-A ret. fee (%)	PMF ret. fee (%)
Equity:			
Large capitalization value portfolio	.60	.30	.30
Large capitalization growth portfolio	.60	.30	.30
Small capitalization value portfolio	.60	.30	.30
Small capitalization growth portfolio	.60	.30	.30
International equity portfolio	.70	.40	.30
Income:			
U.S. Government Money Market portfolio	.25	.125	.125
Mortgage backed securities portfolio	.45	.25	.20
Intermediate-term bond portfolio	.45	.25	.20
Total return bond portfolio	.45	.25	.20

20. PMF proposes to offset, quarterly, against the outside fee that will be paid to Prudential Securities such amount as is necessary to assure that PMF retains no more than 20 basis points (the Reduction Factor) from any Portfolio on investment of assets attributable to any Plan.[17]

Under the proposed fee offset, a Reduction Factor of .10 percent will be applied against Prudential Securities' quarterly outside fee with respect to the value of the Plan assets that have been invested in the Equity Portfolios only. As noted above, the Income Portfolios do not involve a Reduction Factor because the fee retained by PMF for these Portfolios does not exceed 20 basis points.

The Department, in conjunction with the applicants, has developed the following example to demonstrate how the fee offset mechanism will work and determine the aggregate fee that a hypothetical Plan investor might expect to pay to both Prudential Securities and PMF in a given calendar quarter or year:

Assume that as of March 31, 1993, the average daily value of Trust shares held by a Plan investor was $1,000. Investment assets attributable to the Plan were distributed among five Portfolios: (1) U.S. Government Money Market Portfolio in which the Plan made a $50 investment and from which PMF would not retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .125 percent; (2) Total Return Bond Portfolio in which the Plan made a $200 investment and from which PMF would retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .20 percent; (3) Small Capitalization Growth Portfolio in which the Plan made a $250 investment and from which PMF would be entitled to retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .30 percent; (4) Large Capitalization Growth Portfolio in which the Plan made a $250 investment and from which PMF would be entitled to retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee

[15] The applicants represent that an Independent Plan Fiduciary or Plan participant may change Portfolio allocations on any business day and there are no limitations as to how frequently Portfolio allocations can be made. The applicants also state that assets which are subsequently added to a Target Program account after the beginning of any calendar quarter (and are allocated in accordance with the Independent Plan Fiduciary's or participant's asset allocation decision) will not be subject to the outside fee for that quarter until such additional investments "aggregate" (i.e., new money invested during the quarter) $10,000 or more. When this occurs, the applicants explain that the outside fee will be assessed on such additional assets and will be payable six business days thereafter (pro-rated based on the length of time remaining in the current calendar quarter). If the additional investments have not reached the $10,000 level by the last day of the calendar quarter, the applicants state that such investments will start being subject to the outside fee as of the first business day of the next calendar quarter.

[16] The applicants represent that if an Undisclosed Account is established by an Independent Plan Fiduciary only one $35 fee will be levied.

[17] Prudential Securities asserts that it chose 20 basis points as the maximum net fee retained for management services rendered to the Portfolios because this amount represents the lowest percentage management fee charged by PMF among the Portfolios (except that the fee paid by the U.S. Government Money Market Portfolio to PMF is equal to 12.5 basis points).

of .30 percent and (5) International Equity Portfolio in which the Plan made a $250 investment and from which PMF would be entitled to retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .30 percent.

Assume that the Plan investor pays the maximum annual outside fee of 1.35 percent on the Portfolios so that the total outside fee for the calendar quarter April 1 through June 30, 1993, prior to the offset, would be:

Portfolio	Amount invested	Max. outside quart. fee	Outside fee for quart.
U.S. Government Money Market portfolio	$50	1.35%(.25)	$0 1688
Total return bond portfolio	200	1.35%(.25)	6750
Small capitalization growth portfolio	250	1.35%(.25)	8438
Large capitalization growth portfolio	250	1.35%(.25)	8438
International equity portfolio	250	1.35%(.25)	8438
Total	1.000		$3 3752

Under the proposed fee offset, the outside fee charged to the Plan must be reduced by the Reduction Factor to ensure that PMF retains an inside fee of no more than .20% from each of the Portfolios on investment assets attributable to the Plan. The following table shows the Reduction Factor as applied to each of the Portfolios comprising the Trust:

Portfolio	PMF. ret. fee (%)	Red. fact. (%)	PMF ret fee after red fact
Equity:			
Large capitalization value portfolio	0.30	0.10	0 20
Large capitalization growth portfolio	.30	.10	20
Small capitalization value portfolio	.30	.10	20
Small capitalization growth portfolio	30	.10	20
International equity portfolio	.30	.10	20
Income:			
U.S. Government Money Market portfolio	.125		125
Mortgage backed securities portfolio	.20		20
Intermediate-term bond portfolio	.20		20
Total return bond portfolio	.20		20

Under the proposed fee offset, the quarterly outside fee will be reduced with respect to Plan assets in the example that have been invested in the Small Capitalization Growth Portfolio, the Large Capitalization Growth Portfolio and the International Equity Portfolio only (i.e., the Equity portfolios). In the example above, the U.S. Government Money Market Portfolio and the Total Return Bond Portfolio do not require a reduction of the outside fee because the fee retained by PMF for these Portfolios does not exceed 20 basis points. Therefore, the quarterly offset for the Plan investor is computed as follows:

(.25) [($250) (.10%)+($250) (.10%)+($250) (.10%)]=$.1875.

In the foregoing example, the Plan investor, like all other investors in the Target Program, would receive a statement for its Target Program account during the fourth week of April 1993. This statement would include a debit notice for the outside fee for the calendar quarter April 1 through June 30, as adjusted by subtracting the quarterly offset from the quarterly outside fee as determined above. The net quarterly outside fee that would be paid to Prudential Securities would be determined as follows:

$3.3752 − $.1875=$3.1877.

The account of the Plan investor (as with other investors) would be debited on or about April 8, 1993 (i.e., the sixth business day of the calendar quarter) for the amount of the net quarterly outside fee (pursuant to the authorization contained in the Target Program investment advisory agreement, and as described in the Target Program description attached to the cover of the Trust's Prospectus.[18]

Assuming the Plan investor wishes to gain a more realistic perspective of the aggregate quarterly and annual fees that would be paid to both Prudential Securities and PMF at both the Plan level and the Portfolio level, the investor would include within the computation on the net quarterly outside fee, the quarterly inside fee that such investor would be paying to PMF.

The quarterly, aggregate fee calculation would be computed as follows:

$3.1877, representing the quarterly net outside fee paid to Prudential Securities+(.25)[(.125%)($50)+(.20%)($200)+(.30)($250+$250+$250)] or $.6781, representing the quarterly inside fee paid to PMF=$3.8658, which represents the quarterly fee that would be paid to Prudential Securities and PMF for services provided to the Plan investor.

The total annual fee that the Plan investor would pay to both Prudential Securities and PMF would be equal to (4)[$3.1877 (net outside fee) + $.6781 (inside fee)] or $15 4632 per $1,000 investment, or a total fee percentage of 1.55%.

21. Because PMF will retain an inside fee of 12.5 basis points with respect to assets invested in the U.S. Government Money Market Portfolio, the applicants note that a potential conflict may exist by reason of the variance in net inside fees among the U.S. Government Money Market Portfolio and the other Portfolios. The applicants also recognize that this factor could result in the recommendation by Prudential Securities of a higher fee-generating Portfolio to an investing Plan. To help address this potential conflict, Prudential Securities will disclose to all participants in the Target Program the fee differentials of the various Portfolios.

22. The books of the Trust will be audited annually by independent,

[18] The foregoing example illustrates that fact that the outside fee and the fee offset are computed contemporaneously and that Plan investors will get the benefit of the fee offset contemporaneously upon the payment of the outside fee. Because the inside fee is paid monthly and the fee offset is computed quarterly, the applicants represent that PMF will not receive the benefit of a "float" as a result of such calculations because the fee offset will always be realized no later than the time that the outside fee is paid (i.e., on or about the sixth business day of the first month of the calendar quarter). Since the inside fee is paid at the end of each calendar month, Plan investors will realize the full benefit of the offset before the time that the inside fee is paid for the second and third months of the calendar quarter.

VOL
58
ISS
131
JL
12
1993
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certified public accountants selected by the Trustees and approved by the investors. All investors will receive copies of an audited financial report no later than 60 days after the close of each Trust fiscal year. The books and financial records of the Trust will be open for inspection by any investor, including the Department, the Service and the Securities and Exchange Commission, at all times during regular business hours.

23. In summary, it is represented that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The investment of a Plan's assets in the Target Program will be made and approved by a Plan fiduciary which is independent of Prudential Securities and its affiliates such that Independent Plan Fiduciaries will maintain complete discretion with respect to participating in the Target Program; (b) Independent Plan Fiduciaries will have an opportunity to redeem their shares in the Trust in such fiduciaries' individual discretion; (c) no Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust; (d) prior to making an investment in the Trust, each Independent Plan Fiduciary will receive offering materials and disclosures from either PMF or Prudential Securities which disclose all material facts concerning the purpose, fees, structure, operation, risks and participation in the Target Program; (e) Prudential Securities will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria; (f) any Sub-Adviser that is appointed by Prudential Securities to exercise investment discretion over a Portfolio will always be independent of Prudential Securities and its affiliates; (g) the annual investment advisory fee that is paid by a Plan to Prudential Securities for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that PMF retains no more than 20 basis points from any Portfolio on investment assets attributable to the Plan investor; (h) each Plan will receive copies of the Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio; and (i) on a quarterly and annual basis, Prudential Securities will provide written disclosures to Independent Plan Fiduciaries with respect to (1) the percentage of each Trust Portfolio's brokerage commissions that are paid to Prudential Securities and its affiliates and (2) the average brokerage commission per share paid by each Portfolio to Prudential Securities as compared to the average brokerage commission per share paid by each Portfolio to brokers other than Prudential Securities and its affiliates, both expressed as cents per share.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Peoples Heritage Financial Group, Inc., Thrift Incentive Plan (the Thrift Plan); and Peoples Heritage Financial Group, Inc., Profit Sharing and Employee Stock Ownership Plan (the ESOP; Together, the Plans) Located in Portland, Maine

[Application Nos. D–9242 and D–9243]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past receipt of certain stock rights (the Rights) by the Plans, which are sponsored by Peoples Heritage Financial Group, Inc. (Peoples) and its affiliates, pursuant to a stock rights offering (the Offering) by Peoples to shareholders of record of Peoples common stock (the Stock) as of December 3, 1992; (2) the holding of the Rights by the Plans during the Offering Period; and (3) the disposition or exercise of the Rights by the Plans, provided: (a) The Plans' acquisition and holding of the Rights resulted from an independent act of Peoples as a corporate entity, and all holders of the Stock were treated in a like manner, including the Plans; (b) with respect to the Thrift Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to plan provisions for individually directed investment of such accounts; and (c) with respect to the ESOP, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by an independent fiduciary which made determinations as to whether and how the ESOP should exercise or sell the Rights acquired through the Offering.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 3, 1992.

Summary of Facts and Representations

1. The Thrift Plan is a defined contribution plan which currently has approximately 850 participants and had $6,767,410 in assets as of September 30, 1992. The Thrift Plan allows participants to contribute up to 15% of their compensation to the Plan. Peoples currently matches 50% of each participant's contribution, up to 6% of compensation. The Thrift Plan permits participants to direct the investment of their accounts, both with respect to employee contributions and Peoples matching contributions, among five investment funds, including one fund primarily invested in shares of the Stock (the Stock Fund) and four other funds invested in other types of assets (the Non-Stock Funds).

2. The applicant represents that the ESOP is an employee stock ownership plan within the meaning of section 407(d)(6) of the Act. Participants are not allowed to make contributions to the ESOP. Instead, Peoples has the discretionary authority to make contributions as it deems appropriate within the limits of the Code. Contributions for any year are allocated on the basis of the participants' compensation for that year. ESOP assets are to be invested primarily in the Stock. There are currently approximately 850 participants in the ESOP. As of January 7, 1993, the assets of the ESOP consisted of Stock having a fair market value of $397,431, plus $70,443 in cash.

3. Prior to the Offering, the total number of shares of Stock outstanding was 8,330,802, of which approximately 223,669 shares (2.68%) were held by the Plans. The Stock is publicly traded on the NASDAQ National Exchange. Peoples has distributed to its Stockholders the Rights, which are rights to acquire additional shares of Stock. The total number of shares of Stock outstanding after the Offering was 15,386,193, an increase of 7,055,391 shares. Of these additional shares, 5,600,000 were sold to shareholders upon exercise of the Rights, and the other 1,455,391 shares were sold to outside investors pursuant to standby purchase agreements. The following provides an overview of the Offering.

4. Rights have been distributed to holders of Stock at the rate of .67 Rights per share of Stock held as of the close of business on the Record Date, the date on which Peoples determined which holders of Stock could participate in the Offering. The Record Date for

participants in both Plans was November 16, 1992, and December 3, 1992 for all other Stockholders (see rep. 6, below). Rights were exercisable from the effective date (the Opening Date) of the Final Registration Statement filed with the Securities and Exchange Commission, which was December 3, 1992, until December 22, 1992 (the Ending Date). The Rights are separate securities under the Federal securities laws, and they were quoted on the NASDAQ National Exchange from the Opening Date until the Ending Date (the Offering Period). The price of each whole Right opened at $1.00, rose to a high of $3.00, and closed at $2.625 at the end of the Offering Period. Each whole Right entitled the holder to subscribe for and purchase one share of Stock at a stated exercise price set forth in the final Registration Statement, which was $5.75. The price per share of the Stock was $7.625 on December 4, 1992 and $8.625 at the end of the Offering Period.

5. Peoples determined that it was appropriate to allow Thrift Plan participants to determine the disposition of Rights allocated to their accounts. In providing this pass-through election, Peoples attempted to put participants in the same position as other shareholders receiving Rights, to the extent practicable. On December 4, 1992, participants were sent election forms which explained the Offering. The applicant represents that election forms and information were sent to the participants at the same time such information went to all shareholders. Each participant who had shares of Stock allocated to his account in the Stock Fund as of the Record Date was allowed to determine whether and to what extent to sell the Rights credited to his account on the open market, or to exercise those Rights. Eligible participants were permitted to make their elections during an election period that ran until December 16, 1992 (the Election Close-Out Date; see rep. 8, below).

6. The applicant represents that it was unable to use the same Record Date, December 3, 1992 for participants as for other holders of the Stock because of the time necessary to (i) value accounts, (ii) calculate relative interests, and (iii) timely notify participants of their rights so that they could prudently consider and exercise their elections. In order to protect participant interests to the fullest extent, Peoples allocated the Rights as of the closest date possible consistent with prudent administration. Peoples originally anticipated that the Offering would commence during early November, 1992, and be completed before the Thanksgiving holiday. Thrift Plan accounts are normally valued on a quarterly basis, but Peoples decided to undertake a special mid-period valuation of the Thrift Plan once the Opening Date was known, in order to allow participants to participate as fully as possible in the Offering. However, Peoples was not in control of the timing of the commencement of the Offering, which depended on the Securities and Exchange Commission (SEC) granting its approval of the transaction. When it realized the SEC's authorization would be delayed, Peoples planned to commence the Offering on Monday, November 30, 1992, based upon its understanding that the SEC would approve the transaction during the week of November 23–27.

Walker Associates (Walker), the record keeper for the Thrift Plan, was closed for the Thanksgiving holiday from Thursday, November 26 until Monday, November 30, 1992. As a result, November 25 was the last day prior to November 30 on which Walker could undertake the special valuation. Peoples decided to go forward with a mid-period valuation, and Walker conducted the special valuation on Wednesday, November 25, 1992, based on account balances as of the close of business on November 16, 1992. The special valuation thus occurred one week before the commencement of the Offering and covered all contributions to the Thrift Plan since the end of the third quarter of 1992, including contributions from the November 13 payroll.

The SEC approval was further delayed, and the Offering actually commenced on December 3. Once Peoples found out that the Opening Date would be December 3, and not November 30, it considered whether to conduct a second special payroll valuation to include contributions from the November 27 payroll. Peoples determined that it was probably not physically possible, and in any event it would not be prudent, to conduct another special valuation of the Thrift Plan. First, Walker advised Peoples that it might not be able to conduct a complete, accurate and timely valuation in the available time. Second, Peoples had to notify all eligible participants (both active and terminated) of the Offering as soon as it became effective on December 3, in order to give them a sufficient amount of time to determine the disposition of the Rights allocated to their accounts. The applicant represents that an updated valuation would likely have resulted in errors, late notice to participants or both. Peoples determined that providing participants with a sufficient amount of time to make their elections based upon the accurate valuation of November 25, greatly outweighed the minimal additional benefit to participants of trying to update the November 25 valuation. Third, the date of the special valuation of the Thrift Plan did not preclude any participant from participating in the Offering; use of the November 27 payroll would not have allowed any new participants to take advantage of the Offering.

With respect to the ESOP, the applicant represents that it is valued once a year, on December 31. The Rights which were distributed to the ESOP on December 3, 1992 pursuant to the Offering were allocated among ESOP participants based upon share balances as of December 31, 1991, the date of the last annual valuation. However, there were no contributions to, or withdrawals from, ESOP accounts from December 31, 1991 until the start of the Offering, and no relative account balances changed during that period. Therefore, the applicant represents that the fact that the Rights were allocated to the ESOP based on the December 31, 1991 valuation date was irrelevant; a December 3, 1992 valuation would have produced an identical allocation of income from the Rights.

In summary, Peoples represents that it used the closest valuation Record Date possible consistent with its duty to allocate accurately and to notify participants of their rights on a timely basis. In doing so, Peoples, as Plan Administrator, consulted daily with its legal and administrative advisers to assure it was doing everything possible to protect participants' interests.

7. Peoples appointed Heritage Investment Planning Group, Inc. (Heritage), its wholly owned subsidiary, as the Special Fiduciary (the Special Fiduciary) for the Thrift Plan. Heritage did not receive any fees or commissions for performing this function. A participant could elect to exercise his Rights by notifying the Special Fiduciary at any time up until the Election Close-Out Date. For participants who elected to have the Rights in their accounts exercised, the exercise price was obtained by liquidating a sufficient amount of their assets in the Non-Company Stock Funds, in the order directed by the participants, and transferring the proceeds of such liquidations to the Company Stock Fund. The Special Fiduciary only exercised Rights to the extent that proceeds were available in a participant's Company Stock Fund as a result of the intra-fund transfer. The actual proceeds transferred to the

VOL
58
ISS
131
JL
12
1993
UMI

Company Stock Fund for the purpose of exercising Rights were held in an account called the Exercise Account. If the amount of the participant's credit in the Exercise Account was insufficient to exercise the total number of Rights which the participant elected to exercise, the Special Fiduciary exercised the maximum number of Rights possible with the participant's available proceeds and sold the rest. Fractional Rights could not be exercised; any fractional Rights remaining after exercise were treated as though they were subject to an election to sell.

8. Those participants who elected to sell their Rights could make such an election up until the Election Close-Out Date. The Special Fiduciary then sold such Rights on the open market. Although the Ending Date, the date on which the Rights expired, was December 22, 1992, the Election Close-Out Date was December 16, 1992. The applicant represents that the Election Close-Out Date deadline was imposed by Mellon Securities Trust Co. (Mellon), the Offering subscription agent, and was noted in the Offering prospectus. The applicant represents that all shareholders of the Stock using Mellon as the selling agent had to submit their election by December 16, 1992. Since Mellon was to perform the exercise and sales transactions for the Thrift Plan, Peoples had to conform the Election Close-Out Date to Mellon's deadline. The Special Fiduciary sold the Rights as the participant elections were received; it did not sell the Rights all at one time. The proceeds from all such sales were allocated to the Thrift Plan accounts of those participants who elected to sell their Rights, in direct proportion to the number of Rights they elected to sell. Individual elections by the participants to sell Rights were accounted for on a transaction-by-transaction basis. For those participants who elected to sell their Rights, the Rights were sold on a daily basis from December 7, 1992 through December 16, 1992. The Special Fiduciary prepared a daily list of participants and the number of Rights each participant wanted to sell in order to notify Mellon of the correct number of Rights to sell. This daily list was also used to allocate the correct amount of proceeds to each participant who elected to sell. If a participant who had shares of Stock allocated to his Thrift Plan account failed to respond during the election period, or filed an invalid or untimely election, he was deemed to have elected to sell his Rights, and the Special Fiduciary proceeded accordingly to sell those Rights on the open market. These Rights were sold by Mellon on December 16, 1992.

9. The decision with respect to the disposition of the Rights allocated to the ESOP as a result of the Stock held therein was made by the independent fiduciary for the ESOP, Tucker Anthony Incorporated (TA). TA is a registered broker/dealer with total assets of $270 million. TA has $479 million of assets under management. TA, which is headquartered in Boston, Massachusetts and in New York, New York, is a wholly-owned subsidiary of John Hancock Mutual Life Insurance Company. TA does not currently provide any service to, or have any other business relationship with, Peoples or any of its subsidiaries. TA decided to sell the Rights allocated to the ESOP. TA did not solicit the views of participants with respect to this decision because investment decisions are not generally passed through under the ESOP. Fleet Bank of Maine, the ESOP's trustee, agreed to be the custodial trustee for these transactions, so Peoples was not involved in the actual trades. Since TA decided to sell the Rights acquired by the ESOP, the proceeds of such sale were allocated to each participant's ESOP Stock Account (as defined in the ESOP) in the same ratio as that particular ESOP Stock Account bore to all ESOP Stock Accounts on the Record Date.

10. TA represents that prior to making the decision on behalf of the ESOP to sell the Rights, it consulted with its research analyst who was well acquainted with Peoples and other regional banks. In addition, TA considered a variety of factors that it deemed relevant in considering whether the ESOP should exercise or sell the Rights. These factors included: (a) The current market price of the Stock; (b) the market price of the Rights; (c) the price/earnings ratio of the Stock; (d) the recent trading history of the Stock and the Rights, and how that trading compared to the trading of similar offerings of comparable financial institutions; (e) a comparison of Peoples' price/earnings ratio compared to that of comparable financial institutions; and (f) a comparison of Peoples' pro-forma book value to that of other financial institutions, and the relation of that value to the respective market values of those institutions. TA represents that it had complete authority to make the decision with respect to the Rights on behalf of the ESOP, and it made the decision to sell without any influence from Peoples. TA considered the objectives of the participants in the ESOP as well as the manner in which the ESOP operates. TA represents that it also considered the short-term needs of the ESOP's participants. After considering all these factors, TA determined that the sale of the Rights was appropriate for the ESOP and in the best interest of the ESOP's participants. The applicant represents that after TA made the decision to sell, the ESOP sold its Rights during the Offering Period.

11. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (a) The Plans' acquisition and holding of the Rights resulted from an independent act of Peoples as a corporate entity, and all holders of the Stock were treated in a like manner, including the Plans; (b) with respect to the Thrift Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to Plan provisions for individually-directed investment of such accounts; and (c) with respect to the ESOP, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by the ESOP's independent fiduciary, TA, which made determinations whether and how the ESOP should exercise or sell the Rights acquired through the Offering.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Federal Paper Board Salaried Employees' Pension Plan (the Plan) Located in Montvale, New Jersey

[Application No. D–9312]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed contribution to the Plan of approximately 11,051 acres of growing timber (the Timber) by the Federal Paper Board Company, Inc. (the Employer), the Plan's sponsor and as such a party in interest with respect to the Plan, in partial satisfaction of the Employer's obligation to make certain cash contributions to the Plan by September 15, 1993; and (2) the proposed sale of the Timber by the Plan to the Employer when the Timber is

harvested by the Employer at a later date; provided that the following conditions are met:

(a) The Timber is valued at an amount which is no greater than its fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contribution are at least as favorable to the Plan as terms and conditions which the Plan could obtain in a purchase of similar timber by the Plan from an unrelated party;

(c) The fair market value of the Timber does not exceed 10% of the Plan's total assets at the time of the contribution and at any time during which the Timber is held as an asset for the Plan's portfolio;

(d) In any sale of the Timber by the Plan to the Employer at a later date, the Plan receives an amount which is no less than the greater of either: (i) The fair market value of such Timber at the time of the transaction as established by an independent, qualified appraiser; or (ii) the fair market value of the Timber at the time of the contribution as established by the independent appraisal which was used for valuing the Timber when the contribution was made by the Employer;

(e) AmSouth Bank, N.A. (AmSouth), as an independent, qualified fiduciary for the Plan, determines that the proposed contribution of the Timber to the Plan is in the best interests of the Plan as an investment for the Plan's portfolio at the time of the transaction, and protective of the Plan and its participants and beneficiaries;

(f) AmSouth determines that upon any sale of the Timber by the Plan to the Employer, the sale would be in the best interests and protective of the Plan and its participants and beneficiaries;

(g) AmSouth monitors the performance of the Timber as an investment for the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

(h) AmSouth monitors the compliance by all parties with the terms and conditions of the exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of March 31, 1993, had 1,978 participants and total assets of approximately $74,267,863. The Plan is maintained by the Employer, a New York corporation with its executive offices located at 75 Chestnut Ridge Road, Montvale, New Jersey. The assets of the Plan are held in a master trust (the Master Trust) by Wachovia Bank of North Carolina, N.A. (Wachovia). The Master Trust also holds the assets of three other retirement plans maintained by the Employer—the Federal Paper Board Hourly-Wage Employees' Pension Plan, the Federal Paper Board Company, Inc. Pension Plan for Hourly Employees of the Paper Division-Carolina Operations, and The Imperial Cup Corporation 401(k) Profit Sharing Plan (the Other Plans). The applicant states that the proposed transactions regarding the Timber will only involve the assets of the Plan and will not be commingled for investment purposes with assets of the Other Plans held in the Master Trust.

2. The Employer proposes to satisfy part of its funding obligations to the Plan for the Plan year ending September 15, 1993 by contributing the Timber.[19] The Timber will be contributed in the form of a timber deed which passes ownership of a long term fee simple interest in the existing growing timber to the Plan at its fair market value as established by an independent appraiser at the time of contribution. The Employer states that its federal income tax deduction for the contribution will not exceed the fair market value of the Timber on the date the contribution is made. The fair market value of the Timber will equal approximately 7.2% of the Plan's total assets.

The Employer will continue to own the underlying land and will own any new timber which is grown after the Timber is harvested. In this regard, AmSouth will make all investment decisions for the Timber as the Plan's independent fiduciary (as discussed below) and will enter into an agreement with the Employer for the Employer to manage the Timber during the period prior to harvest. The management of the Timber will include maintaining fire protection, pest control, roads, drainage and other normal forestry practices. The fees that will be charged by the Employer for its services as manager of the Timber will reflect direct expenses only.[20] The Plan's payment of these expenses will be monitored by AmSouth to ensure that such expenses are appropriate.

3. The Timber is located on 11,054 acres of non-contiguous lands owned by the Employer in 14 counties in North Carolina, 3 counties in South Carolina, and 2 counties in Georgia. Most of the Timber is in pine plantations which will be harvested routinely during the twelve year period commencing in calendar year 2002 and ending in calendar year 2014.

The Employer owns more than 550,000 acres of timberland in the Southeastern United States and operates two large pulp and paperboard mills—one in North Carolina and one in Georgia. The Employer acquires approximately 25% of its annual wood needs from its own timberlands and the balance is purchased from other sources. When the Timber is eventually harvested, the Employer along with other pulp and paper manufacturers in the area will be potential purchasers for the Timber. The Employer proposes to purchase, pursuant to the terms of a written agreement which will be entered into by the parties at the time of contribution, any and all of the Timber at the time it is harvested or at an earlier date if AmSouth proposes to have the Plan sell the Timber.[21] The Employer will be obligated to buy the Timber at a price which is the greater of either (i) the fair market value of the Timber at the time of the transaction as established by an independent, qualified appraiser chosen by AmSouth, or (ii) the fair market value of the Timber at the time of the contribution, as established by the independent appraisal which was used for valuing the Employer's contribution. However, under the agreement, the Plan will not be obligated to sell the Timber to the Employer and can sell the Timber on the open market at the best possible price. The applicant states that the fair market value of the Timber for any such sale will be readily determinable by AmSouth through an analysis of market prices for similar timber or a contemporaneous appraisal of the Timber by a qualified independent appraiser.

4. The Timber has been appraised by Thomas R. Brickman RF/ACF (Mr. Brickman) of Resource Management Service, Inc. (RMS), an independent,

[19] The Department expresses no opinion in this proposed exemption as to whether the proposed contribution of the Timber would violate section 404(a) of the Act. Section 404(a)(1) of the Act requires, among other things, that plan fiduciaries act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[20] The applicant represents that the services provided by the Employer to the Plan as manager of the Timber will meet the statutory exemption for services by a party in interest under section 408(b)(2) of the Act and the regulations thereunder. However, the Department is providing no opinion herein as to whether the Employer's provision of such services under the arrangement described will satisfy section 408(b)(2).

[21] The applicant states that the agreement with the Plan to buy the Timber is meant to protect the Plan's interests in the event the value of the Timber declines due to damage from fire, disease or other natural causes. The applicant notes that the fair market value of the Timber is otherwise expected to increase as the Timber grows and the age of the trees becomes closer to the time for harvest

VOL 58 ISS 131 JL 12 1993 UMI

qualified timberland appraiser located in Birmingham, Alabama, as having a fair market value of $5,380,000 as of April 21, 1993. RMS used the income approach to value the Timber, with a discount rate of 8% used based on comparable sales of timber in the area. The property rights appraised were limited to the timber rights only in the existing timber which the Plan would acquire, subject to easements and encumbrances of record, and did not involve any mineral rights or other interests in the land owned by the Employer. Mr. Brickman represents that forestry experts from RMS thoroughly inspected the Timber in accordance with standard industry procedures. The findings of RMS indicate that the Timber is almost entirely planted pine in terms of total volume, 96% of which is under 28 years of age. The few natural stands that exist (approximately 9% of the total acres) are mostly narrow drains following the courses of small creeks interspersed in the planted stands. Mr. Brickman states that the land on which the Timber stands has been managed by the Employer to maximize pine production and that nearly all land capable of being converted to pine is being used with some thinning practiced in order to maximize saw timber production. Mr. Brickman notes that access to most of the tracts of the Timber is well established and that roads are in good condition. Mr. Brickman concludes that the highest and best use for the Timber would be as raw material for which there is a readily available market.

5. AmSouth, the Plan's independent fiduciary, represents that it has extensive experience in the management of assets of employee benefit plans and other institutional investors. AmSouth currently manages over $250 million in timberland assets in a fiduciary capacity and maintains a natural resources department that manages in excess of 500,000 acres of timber held in investment portfolios. AmSouth states that it has expertise with respect to timber acquisition, forest management, timber growth and timber sales. AmSouth represents that it has no relationship to the Employer or its affiliates.

6. AmSouth will enter into a written agreement with the Employer at the time of the contribution of the Timber which provides that AmSouth will have complete control over the timing and conditions of the harvesting and sale of the Timber. As part of this agreement, AmSouth will maintain discretionary control and oversee any forestry management undertaken by the Employer. AmSouth will also enter into an agreement with the Employer (as noted in Item 3 above) wherein the Employer will agree to purchase the Timber at a purchase price equal to the greater of its then current fair market value or its fair market value on the date of the contribution. However, AmSouth states that the current fair market value of the Timber as established by RMS is indicative of what the Timber would be worth in its present condition on the open market if the Plan had to sell the Timber prior to its scheduled time for harvest.

7. AmSouth has reviewed the contribution to the Plan of the Timber and considered the appropriateness of the Timber as an investment for the Plan. AmSouth has determined that the acquisition of the Timber by the Plan would be in the best interests of the Plan and its participants and beneficiaries, based on all relevant information concerning the proposed transaction including the appraisal of the Timber by RMS. In this regard, AmSouth believes that the terms and conditions of the contribution are at least as favorable to the Plan as terms and conditions the Plan could obtain in a purchase of similar timber from an unrelated party. AmSouth states that the Plan's investment in the Timber would be prudent and would add diversification to the Plan's investments. AmSouth states further that the Timber would comply with the Plan's investment objectives and policies and would not adversely affect the Plan's liquidity needs. Thus, AmSouth represents that the Timber as an asset for the Plan will not adversely impact the Plan's ability to make any current or projected benefit payments.

8. AmSouth will monitor the performance of the Timber as an investment for the Plan and will take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries. AmSouth will ensure that the fair market value of the Timber will not exceed 10% of the Plan's total assets at the time of the contribution and at any time during which the Timber is held as an asset for the Plan's portfolio. AmSouth will have the authority to require that the Plan sell any of the Timber, either on the open market or to the Employer, if necessary to ensure that the value of the Timber does not exceed the 10% limit. AmSouth will monitor compliance by all of the parties with the terms and conditions of the proposed exemption and understands that the effectiveness of the exemption, if granted, will be dependent of such compliance.

9. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Timber will be valued at an amount which is no greater than its fair market value at the time of contribution to the Plan, as established by an independent, qualified appraiser; (b) the Timber will be contributed under terms and conditions which are at least as favorable to the Plan as a purchase of similar timber on the open market; (c) the fair market value of the Timber will not exceed 10% of the Plan's total assets at any time during the proposed acquisition or holding of the Timber; (d) the Employer will purchase the Timber at the time it is harvested, or earlier if the Plan proposes to sell the Timber, at a price which will be the greater of either (i) the fair market value of such Timber at the time of the transaction, as established by an independent, qualified appraiser; or (ii) the fair market value of the Timber at the time of the contribution to the Plan, as established by the independent appraisal used for such contribution; (e) the Plan's interests with respect to the contribution of the Timber, and any subsequent sale of the Timber to the Employer, will be represented by AmSouth, a qualified, independent fiduciary; (f) AmSouth will monitor the proposed transactions, as well as the conditions of the exemption, and will take any appropriate action necessary to safeguard the Plan's interests; and (g) AmSouth has analyzed the contribution as an investment for the Plan and concluded that the transaction would be in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Riser Foods, Inc., Employee Savings and Retirement Plan (the Plan) Located in Bedford Heights, Ohio

[Application No. D–9323]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of

credit over a one-year period (the Loans) to the Plan by Riser Foods, Inc. (the Employer), the sponsor of the Plan, with respect to a group annuity contract (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loans (the Repayments) by the Plan; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The Repayments shall not exceed the amount of the Loans;

(D) The Repayments shall not exceed the amounts actually received by the Plan from Mutual Benefit, any state guaranty fund, and any other responsible third party payors with respect to the GAC (the GAC Proceeds); and

(E) The Repayment of the Loans shall be waived to the extent that the total amount of the Loans exceeds the total GAC Proceeds.

Temporary Nature of Exemption: This exemption, if granted, shall apply to Loans executed within one year from the date on which the first of such Loans is executed.

Summary of Facts and Representations

1. The Plan is a defined contribution retirement plan which includes a cash or deferred compensation arrangement under section 401(k) of the Code and provides for employer matching contributions and additional employer discretionary contributions. As of January 29, 1993, the Plan had 205 participants, and as of December 31, 1991, the Plan had total assets of approximately $865,775. The Employer is an Ohio corporation engaged in the wholesale and retail grocery business, with its principal offices in Bedford Heights, Ohio. Participants in the Plan include employees of the Employer and the following wholly-owned subsidiaries of the Employer: Rini-Rego Supermarkets, Inc., American Seaway Foods, Inc., and Seaway Food Service, Inc. The Plan has two trustees: J & W Seligman Trust Company (Seligman) and Capital Guardian Trust Company (Capital Guardian). The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of the Accounts among investment options offered by an investment vehicle selected by the Employer. Plan participants may change the directions for investment of their Accounts on a quarterly basis.

2. Effective May 30, 1990 and prior to August 27, 1992, all Plan assets were held in trust by Seligman and were invested and managed by Mutual Benefit under a group annuity contract (the GAC). Under the GAC, four different investment funds were offered to Plan participants for the investment of their Accounts. These investment choices included a general account fund (the GA Fund), which provides for the payment of interest at a guaranteed rate (the GA Rate) of no less than four percent per annum on principal deposits through May 30, 2027.[22] The GA Rate for contributions to the GA Fund during the GAC's first year, effective May 30, 1990, was 8.0 percent, and the GA Rate for contributions during the second year, effective May 30, 1991, was 7.25 percent. Principal contributions were not made to the GA Fund after July 16, 1991. As of December 31, 1991, the GA Fund held Plan assets totalling $171,923.95.

The terms of the GAC authorize withdrawals from the GA Fund to enable inter-fund transfers upon participant direction, distributions upon termination of employment, hardship withdrawals, and loans (collectively, the Withdrawal Events). Since August 27, 1992, Capital Guardian has served as trustee with respect to all Plan assets other than those invested in the GA Fund, and all Plan assets other than the GA Fund have been withdrawn from the GAC.

3. By an order entered July 16, 1991 in the Superior Court of New Jersey, Mutual Benefit was placed into receivership and rehabilitation by the New Jersey Commissioner of Insurance (the Receivership).[23] Since the commencement of the Receivership, withdrawals from the GA Fund have been suspended.[24] Consequently, Withdrawal Events are not being funded by the GA Fund.

The Employer represents that under prevailing circumstances it is likely that Plan assets invested in the GA Fund will be subject to restrictions for an extended period of time, and potentially subject to loss of interest and principal. In order to enable Plan participants to prevent loss of guaranteed principal and interest by transferring Account funds out of the GA Fund over a one-year period, and to resume funding of other Withdrawal Events by the GA Fund for one year, the Employer proposes to make the Loans to the Plan. The Employer is requesting an exemption to permit the Loans, and their potential Repayment by the Plan, under the terms and conditions described herein.

4. The terms of the Loans and the Repayments are set forth in a written agreement (the Agreement) between the Employer and Seligman. Under the Agreement the Employer will be obligated to make the Loans over a one-year period at such times and in such amounts as required to enable the GA Fund to fund Withdrawal Events, in lieu of the same amounts which otherwise would be paid by Mutual Benefit as withdrawals from the GA Fund under the terms of the GAC. Accordingly, the amount of each Loan will be determined on the basis of total principal deposits plus interest at the Contract Rate, less previous withdrawals, as of the date of the Loan. Each Loan will also be reduced by any amounts actually received by the Plan, with respect to the Withdrawal Event funded by the Loan, from Mutual Benefit or any other party making payment with respect to Mutual Benefit's obligation under the GAC. The Employer will receive no interest or fees for the Loans. The Employer's obligation to make the Loans pursuant to the Agreement will expire one year from the date on which the first Loan under the Agreement is executed.[25]

In return for the Loans, the Plan is obligated to make the Repayments of the Loans as specified in the Agreement. The Agreement provides that the Repayments will be made only from the proceeds received by the Plan with respect to the GAC from Mutual Benefit, any state guaranty fund, or any other responsible third party making payment with respect to the GAC (collectively, the GAC Proceeds). No other Plan assets may be used to repay the Loans. The Agreement provides that if the total

[22] Section 2.5 of the GAC provides that Mutual Benefit will guarantee the principal amount and will credit interest at a "guaranteed interest rate" of 4.0 percent compounded annually, or at one or more rates higher than the "guaranteed interest rate", to be changed no more frequently than once each year.

[23] The Department notes that the decision to acquire and hold the GAC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GAC.

[24] Plan assets other than the GA Fund are not affected by the suspension of payments on Mutual Benefit's obligations, and have been withdrawn from Mutual Benefit's custody, because such assets were invested in funds considered to be "separate accounts" to which the court-ordered withdrawal and transfer restrictions do not apply. The terms of the Receivership imposed by the Superior Court specifically allow payment from, and withdrawal of funds invested in Mutual Benefit separate accounts.

[25] The Employer anticipates that during the one-year period of the Agreement, all participants with Account balances invested in the GA Fund will withdraw such balances or will direct the transfer of such balances to one of the Plan's investment funds managed by Capital Guardian.

VOL 58 ISS 131 JL 12 1993 UMI

amount of GAC Proceeds is less than the total amount of the Loans, then the Employer will forgive repayment of the deficiency.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk of loss of principal or interest with respect to the GAC; (2) The Loans will allow the Plan to resume the funding of Withdrawal Events involving GA Fund assets; (3) The Loans will protect the Accounts' full investments in the GA Fund as of the date of the Loans, represented by total principal deposits in the GA Fund plus interest at the Contract Rate, less previous withdrawals; (4) The Plan will pay no interest or expenses for the Loans; (5) The Repayments will be restricted to the GAC Proceeds; and (6) The Repayments will be waived to the extent the Loans exceed the GAC Proceeds.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hanover Orthopaedic Associates, Inc. Profit Sharing Plan (the Plan) Located in Hanover, Pennsylvania

[Application No. D–9384]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale (the Sale) from R. James Rinker, M.D.'s (Dr. Rinker) individually-directed account (the Account) in the Plan of certain property (the Property) to Dr. Rinker, a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by a qualified, independent appraiser; and (4) the sales price for the Property reflects its fair market value on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Hanover Orthopaedic Associates, Inc. (the Employer), which as of March 24, 1993, had 17 participants, one of whom is Dr. Rinker. The Plan provides for individually-directed accounts by participants. As of September 30, 1992, the Plan had total assets of $2,287,272 and the Account had total assets of $881,077.61. Thomas K. Howard, M.D., James H. Ellison, M.D., and Dr. Rinker are the trustees of the Plan.

2. The Property is a parcel of vacant land located at the Long Cove Club, Hilton Head Island, Lot #85, county of Beaufort in the state of South Carolina. The Long Cove Club consists of 575 full size, single family lots on an eighteen (18) hole golf course. The Account originally purchased the Property on August 8, 1984 from Albert and Bettie Keske, unrelated parties, for a cash purchase price of $71,000. Dr. Rinker represents that the Account purchased the Property for use as an inflation hedge in the hopes that it would appreciate in value. Dr. Rinker further represents that the Property has not been used in any capacity for the past nine (9) years and that the Account has paid all expenses related to the Property during this nine (9) year period.

3. In order that the Account may divest itself of a non-income producing asset, Dr. Rinker requests an administrative exemption from the Department to purchase the Property for cash from the Account for its fair market value on the date of the Sale. Dr. Rinker represents that he does not own any of the properties adjacent to the Property. Because the Sale would be between Dr. Rinker and the Account, the accounts of the other Plan participants would not be affected. The Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction.

4. John E. McKenzie, Jr. (Mr. McKenzie) of John E. McKenzie, Jr. and Associates (McKenzie Associates) appraised the Property (the Appraisal). Mr. McKenzie's qualifications include nineteen (19) years of experience as a licensed South Carolina real estate broker with eight (8) years specialized experience as the broker-in-charge of Long Cove Club Realty, Inc. and approximately ten (10) years of appraisal experience. Mr. McKenzie represents that both he and McKenzie Associates are unrelated to and independent of the Employer.

In determining the fair market value of the Property, Mr. McKenzie relied on the Sales Comparison approach and concluded that as of January 12, 1993, the fair market value of the Property is $105,000 which includes a ten (10) percent sales commission fee. According to Mr. McKenzie's valuation, the fair market value of the Property without the commission is $95,455. The Appraisal provided comparisions to three (3) lots of similar size on the fairway of the Long Cove Club golf course. Thus, based upon the Appraisal, the Account will sell the Property to Dr. Rinker for $105,000, which is equivalent to the fair market value of the Property plus a ten (10) percent sales commission fee.

5. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with the transaction; (c) the Property has been appraised by a qualified, independent appraiser and (d) the sales price for the Property will reflect its fair market value on the date of the Sale.

For Further Information Contact: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

(1) The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of July 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–16464 Filed 7–9–93; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Revisions to the Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment on Proposed Revision 3 to NUREG–1200.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability for public comment a proposed Revision 3 to the Standard Review Plan (SRP) for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility (NUREG–1200).

The SRP (NUREG 1200) is guidance for NRC staff to review an application for a low-level radioactive waste disposal facility license. The NRC anticipated periodic review and updating of the SRP as a result of practical experience gained with use in actual reviews and as technological or regulatory changes occur which indicate a need to revise the SRP. Two revisions have already been issued and now the staff is proposing a third revision.

On December 18, 1991, a draft version of the proposed revision 3 to the SRP was made available to all Agreement and Non-Agreement States and Low-Level Waste Compacts. On January 16, 1992, the NRC staff discussed the proposed revision 3 to SRP with the Advisory Committee on Nuclear Waste (ACNW). A more detailed listing of the specific chapters modified by this proposed revision follows:

1.1 Licensing Process
3.2 Design Considerations
3.2–Appendix A Guidance on Soil Cover Systems Placed Over Low-Level Radioactive Waste
4.1 Receipt and Inspection of Waste
4.2 Waste Handling and Interim Storage
4.3 Waste Disposal Operations
6.1 Release of Radioactivity-Introduction
7.1 Occupational Radiation Exposures
7.2 Radionuclide Inventories
7.3 Radiation Protection Design Features and Operating Procedures
7.4 Radiation Protection Program

When revision 3 of the SRP is issued in final approved form, the NRC staff intends to make two additional administrative changes affecting every chapter. First, references listed at the end of each chapter will be separated into essential references which a reviewer should be familiar with and references which simply provide additional information that may be obtained from other sources as well. Second, at the first of each SRP section or chapter, the NRC staff will list technical disciplines sufficient to assure a meaningful review of a license application for that section.

Public comments are being solicited on the proposed revisions as described above, including the two administrative changes. Comments should be accompanied by supporting data.

DATES: The comment period expires August 31, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to 7920 Norfolk Avenue, Bethesda, MD, between 7:45 a.m. and 4:15 p.m. Copies of comments may be examined at the Commissions Public Document Room, the Gilman Building, 2120L Street NW. (lower level), Washington, DC.

The proposed revision 3 to the SRP is available for inspection at the Commissions Public Document Room, the Gilman Building, 2120 L Street NW. (lower level), Washington, DC. Request for single copies of the proposed revision 3 to the SRP should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Chief, Low-Level Waste Management Branch, Office of Nuclear Material Safety and Safeguards, Mail Stop: 5E–4. NUREG's are not copyrighted and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mr. John O. Thoma, Low-Level Waste Management Branch, Office of Nuclear Material Safety and Safeguards, Washington, DC, 20555: Telephone (301) 504–3450.

Dated at Rockville, Maryland, this 2nd day of July, 1993.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–16446 Filed 7–9–93; 8:45 a.m.]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 55th meeting on Tuesday, Wednesday and Thursday, July 20, 21 and 22, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on June 23, 1993 (58 FR 34068).

Portions of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

During this meeting, the Committee plans to consider the following:

Tuesday, July 20, 1993

1 p.m.–1:45 p.m.—The ACNW Chairman will make opening remarks regarding the conduct of the meeting and comment briefly regarding items of current interest (Open).

1:45 p.m.–5 p.m.—The Committee will discuss issues that will serve as topics for discussion during the Committee's meetings with several Commissioners. Possible topics to be discussed include: the revised ACNW Charter, renewal of appointments for members, and future ACNW resources (Open/Closed).[1]

[1] Portions of this session may be closed to public attendance to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

VOL 58 ISS 131 JL 12 1993 UMI

Wednesday, July 21, 1993

8:30 a.m.–10 a.m.—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the status of high-level waste management quality assurance (Open).

10:15 a.m.–11:30 a.m.—The Committee will hear a report by ACNW Members regarding recent activities including a visit to the Canadian Whiteshell Nuclear Laboratory and the Underground Research Laboratory in Manitoba, Canada, a report on a DOE workshop on multi-purpose canisters, and a report on a NWTRB meeting on thermal loads for the proposed HLW repository (Open).

1 p.m.–2:15 p.m.—The Committee will meet with Commissioners Rogers and de Planque to discuss items of mutual interest (Open/Closed).

2:30 p.m.–3:30 p.m.—The Committee will meet with Commissioner Remick to discuss items of mutual interst (Open/Closed).[1]

4 p.m.–5:30 p.m.—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters relating to ACNW members, staff and consultants (Closed).[1]

Thursday, July 22, 1993

8:30 a.m.–11 a.m.—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff, Public Service of Colorado, and the Long Island Power Authority regarding the status of decommissioning plans for Ft. St. Vrain and Shoreham Nuclear Power Plants (Open.)

11:15 a.m.–1 p.m.—The Committee will discuss proposed ACNW reports regarding items considered during this meeting and previous meetings. (Open).

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with ACNW Executive Director or call the recording (301)/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

Dated: July 2, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–16445 Filed 7–9–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–11883; License No. 53–16929–01; EA 93–040]

Castle Medical Center, Kailua, Hawaii; Order Imposing Civil Monetary Penalties

I

Castle Medical Center is the holder of Materials License No. 53–6929–01, first issued by the Nuclear Regulatory Commission (NRC or Commission) on June 4, 1976, and most recently renewed on March 5, 1993. The license authorizes the medical use of radioactive materials in accordance with the conditions specified therein and in 10 CFR 35.100, 35.200, and 35.300.

II

An inspection of the Licensee's activities was conducted on February 9–11, 19, and 22, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated March 31, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice in two letters dated April 30, 1993. In its response, the Licensee agreed that violations B, C, G, H, and I occurred as documented in the Notice. For reasons described in the Appendix to this Order, the Licensee denied Violations A.1, A.2, A.3, and F; denied a portion of Violation D; and argued that Violation E should not have been cited. In addition, the Licensee requested remission of the civil penalties.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation D should be modified to delete one example as provided in the Appendix, that the remaining violations occurred as stated, and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby Ordered That:* The Licensee pay civil penalties in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region V, 1450 Maria Lane, Walnut Creek, California 94596–5368.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in compliance with the requirements specified in Violations A.1, A.2, A.3, and F, as set forth in the Notice referenced in section II above, and Violation D as modified in the Appendix, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice that the Licensee admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Dated at Rockville, Maryland this 2nd day of July 1993.

Appendix—Evaluations and Conclusions

On March 31, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection conducted on February 9–11, 19, and 22, 1993. Castle Medical Center (Licensee or CMC) responded to the Notice in two letters dated April 30, 1993. The Licensee denied Violations A.1, A.2, A.3, and F, and a portion of Violation D; argued that Violation E should not be cited; and requested remission of the civil penalties. The NRC's evaluation and conclusion of the Licensee's requests are as follows:

Restatement of Violation A.1

A. 10 CFR 35.32 requires that a Licensee establish and maintain a written Quality Management Program (QMP) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

1. 10 CFR 35.32(a) requires in part that prior to administration, a written directive be prepared for administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131 or any therapeutic radiopharmaceutical, other than sodium iodide I–125 or I–131.

As defined in 10 CFR 35.2, a written directive means an order in writing for specific patient, dated, and signed by an authorized user prior to the administration of a radiopharmaceutical which includes the dosage and route of administration.

Contrary to the above, between January 27, 1992, and February 9, 1993, the Licensee administered greater than 30 microcuries of iodine-131 on 14 occasions and therapeutic administrations of phosphorus-32 on 4 occasions, without first preparing a written directive which included the signature of the authorized user, the route of administration, and the amount to be administered, prior to administering the radiopharmaceutical to the patient.

Summary of Licensee's Response

The Licensee denies the violation, arguing that it complied with its interpretation of the requirement between January 27 and December 16, 1992. CMC states that prior to December 16, 1992, it adequately implemented the QMP by having the authorized user sign either the Patient Consent Form or the written directive form (described in the QMP) prior to administration of a radiopharmaceutical, and provided representative copies of the completed forms. The Licensee states that, after December 16, 1992, the Licensee interpreted the QMP to require signature of the written directive form by the authorized user prior to administration, and that after December 16, 1992, no radiopharmaceuticals requiring a written directive were administered without the authorized user first signing the written directive form.

NRC Evaluation of the Licensee's Response

Although the Licensee claims that it misinterpreted the requirement, that fact does not nullify the violation. Further, the requirement is clear and leaves no room for misinterpretation. 10 CFR 35.2 defines written directive as an order in writing that is dated and signed by an authorized user prior to the administration of a radiopharmaceutical, which includes, for iodine-131, the dosage, and for phosphorous-32, the radiopharmaceutical, dosage and route of administration.

Moreover, section 3 of the Licensee's revised QMP submitted on March 10, 1992 states that: Prior to administration of a dosage of greater than 30 microcuries of sodium iodide I–131 and any therapeutic radiopharmaceutical, a written directive shall be signed and dated by an authorized user. The written directive shall contain the following information: (a) The name of the patient, (b) The date of the request, (c) The radiopharmaceutical, (d) The dosage, (e) The route of administration, and (f) The signature of the authorized user.

While the patient consent form could comply with the requirement for a written directive if all information and signatures were added prior to each administration, nine of fourteen patient consent forms did not include the amount of iodine-131 to be administered. Also, of the four patient consent forms used for phosphorus-32 therapy, two forms were signed by the referred physician instead of the authorized user, one of the two forms did not include the route of administration and the other form did not include the amount of phosphorus-32 to be administered, and two forms could not be located for the inspectors' review.

The Licensee enclosed two forms to show that it satisfied the intent of the QMP because the authorized user signed at least one of the forms. The patient consent form was signed by the authorized user; however, the amount of iodine-131 to be administered was omitted; further, the written directive form was completed by the technologist during or immediately after administration. It was not until after the administration that the technologist obtained the authorized user's signature on the written directive form.

Finally, the Licensee states that "[S]ince December 16, 1992, written directives containing all the necessary information and signed in advance have been used for therapy administrations." However, according to the Chief Technologist, a nine millicurie phosphorus-32 dosage was administered to a patient on December 21, 1992, before the patient consent form or the written directive form were dated and signed by an authorized user.

Restatement of Violation A.2

10 CFR 35.32(c) requires in part that the Licensee evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by: (1) Assembling the relevant facts, including the cause; (2) identifying what, if any, corrective action is required to prevent recurrence; and (3) retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if any, was taken.

Recordable events as defined in 10 CFR 35.2 include administration of a radiopharmaceutical without a written directive and administration of a radiopharmaceutical where a written directive is required without daily recording of each administered radiopharmaceutical dose in the appropriate record.

Contrary to the above, records of recordable events identified and evaluated by the annual audit of the QMP performed on December 16, 1992, did not include the relevant facts and the corrective action taken.

Summary of Licensee's Response

The Licensee denies the violation, arguing that the annual review of the QMP identified one administration where no written directive was found, and that the written directive for that administration was later found and thus did not constitute a recordable event. CMC also argues that under its interpretation of the regulations prior to December 16, 1992, the lack of the countersignature on the written directive when the physician had signed the patient consent form did not constitute a recordable event.

NRC's Evaluation of Licensee's Response

The audit performed by the consultant on December 16, 1992, identified problems that fall under the definition of *recordable event* in 10 CFR 35.2, including: (1) A patient treatment omitted from the radiopharmaceutical-dosage log and (2) written directives not found for two patient treatments. The Licensee's claim that it misinterpreted the rule does not change the fact that these problems were identified and that they are, by definition, recordable events.

The regulation requires that the Licensee retain a record of the relevant facts and corrective action for each recordable event, which the Licensee did not do. Although the Licensee claims that it later found one of the written directives, the violation still occurred as stated, because a record of the relevant facts and the corrective action was not retained for the other recordable events identified in the audit report.

Restatement of Violation A.3

10 CFR 35.25(a)(1) requires in part that the Licensee instruct supervised individuals in the Licensee's written QMP.

VOL 58 ISS 131 JL 12 1993 UMI

Contrary to the above, between January 27, 1992, and January 1993, the Licensee did not instruct a nuclear medicine technologist, a supervised individual, in the Licensee's written QMP.

Summary of Licensee's Response

The Licensee denies the violation, arguing that the technologist is the Director of Radiology and that he participated in discussions regarding the QMP at Radiation Safety Committee (RSC) meetings conducted on March 2 and September 28, 1992, when selected items of the QMP were discussed, and therefore he got the required training because, as the Director of Radiology, he is capable of assessing his own training needs in specific program areas.

NRC's Evaluation of Licensee's Response

During the Enforcement Conference, the Radiation Safety Officer (RSO) stated that an overview of the QMP was discussed during the Radiation Safety Committee meetings, but that it did not include specific requirements associated with the QMP. See NRC Enforcement Conference Report 93–02, dated March 31, 1993 at page 2, paragraph 2. Therefore, attendance at the RSC meetings did not fulfill the training requirement.

The NRC inspection report further documents the fact that the training requirement was not fulfilled. Specifically, the Director of Radiology stated to the NRC inspector that he had not received any QMP training until January 1993 and that, until that time, he was unaware of any requirement to complete a written directive prior to the administration of a therapy dose. Moreover, on December 14, 1992, the Director of Radiology administered 14.9 millicuries of iodine-131 to a patient even though the authorized user had not specified, on the patient consent form or on the written directive form, the amount of iodine-131 to be administered.

Summary of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations A.1, A.2, and A.3

The Licensee disagrees that Violations A.1, A.2, and A.3 demonstrate a significant failure to effectively implement and maintain the QMP, stating that the violations merely document CMC's changing interpretation of the regulations in an effort to meet the intent of the QMP, and its effort to make the record keeping requirements fit with the Licensee's existing record keeping requirements. The Licensee contends that the intent of the QMP was met, as evidenced by the fact that there were no misadministrations between January 27, 1992 and February 9, 1993. Accordingly, CMC continues, the violations should have been classified as Severity Level IV.

The Licensee also disagrees with the staff's escalation of the civil penalty based on the NRC's identification of the problems, arguing that CMC identified the need for the authorized user's signature on the written directive, as documented in the minutes of the RSC meeting of December 16, 1992. Additionally, the Licensee contends that the discrepancies identified in the annual evaluation of the QMP were not considered as recordable events due to CMC's interpretation of the regulations in effect at that time.

NRC's Evaluation of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations A.1, A.2, and A.3

In accordance with the NRC Enforcement Policy, 10 CFR Part 2, Appendix C, Supplement VI.C.6, a substantial failure to implement the QMP is an example of a Severity Level III problem regardless of whether or not a misadministration occurred. A review of the QMP requirements in 10 CFR 35.25 and 35.32 clearly shows that the three key elements of any quality management program must be: (1) Administration of therapy treatments in accordance with a written directive as defined in 10 CFR 35.2, (2) training of individuals in the requirements of the QMP, and (3) appropriate response to recordable events. The licensee had violations in all three areas. Therefore, Violations A.1, A.2, and A.3, when considered in the aggregate, represent a substantial failure to implement the QMP.

The 50% escalation for NRC identification of the violation is warranted because the Licensee failed to identify: (1) That the referring physician instead of the authorized user had signed the patient consent form (written directive) on two occasions, (2) that the amount of iodine-131 to be administered was not specified on the patient consent form (written directive) on nine occasions, (3) that the amount of phosphorus-32 to be administered was not specified on the patient consent form (written directive) on one occasion, (4) that the route of administration for phosphorus-32 was not specified on the patient consent form (written directive) on one occasion, (5) that it had not retained a record of the relevant facts and corrective action for recordable events, and (6) that the Director of Radiology had not been trained in the QMP as required.

NRC Conclusion

The NRC staff concludes that Violations A.1, A.2, and A.3 occurred as stated and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the Licensee. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

Violations B through I

The Licensee denies Violation F and a portion of Violation D, and argues that Violation E should not have been cited because the criteria in Section VII.B of the Enforcement Policy were satisfied. The Licensee admits the remaining violations.

Restatement of Violation D

10 CFR 35.51(c) requires, in part, that a Licensee check each survey instrument for proper operation with the dedicated check source each day of use.

Contrary to the above, as of February 9, 1993, the Licensee did not check its Xetex and Victoreen Model 293 with pancake probe survey meters with a dedicated check source on days when the instruments were used.

Summary of Licensee's Response

The Licensee admits that it failed to check the Xetex survey meter with a dedicated check source, but disagrees that the violation occurred with the Victoreen Model 493 survey meter, stating that the inspector misunderstood the certified nuclear medicine technologist when she stated she did not use the Victoreen survey meter and pancake probe for daily surveys to mean that she did not source check the meter before use.

NRC's Evaluation of Licensee's Response

Based on the Licensee's explanation, the portion of Violation D relating to the failure to source check the Victoreen pancake probe is withdrawn. Violation D should still be cited, however, because the Licensee did fail to source check the Xetex survey meter before use.

Restatement of Violation E

10 CFR 35.205(e) requires, in part, that a Licensee measure each six months the ventilation rates available in areas of use of radioactive gas.

Contrary to the above, the Licensee used radioactive xenon-133 gas in the imaging room but did not measure the ventilation rates therein from September 1991, to July 22, 1992, a period of 10 months.

Summary of Licensee's Response

The Licensee indicated that this violation should not have been cited because it was identified by its consultant during an audit performed on June 24, 1992.

NRC's Evaluation of Licensee's Response

In specified circumstances, Section VII.B(2) of the Enforcement Policy allows, but does not require, the NRC staff to refrain from issuing a Notice of Violation for licensee identified Severity Level IV violations. In this case, however, the Licensee performed four more xenon studies after the Licensee was aware that the surveillance test was past due. It is within the discretion of the NRC staff to cite this violation, and the staff has chosen to do so because the violation is indicative of the pattern of inadequate management attention to assure compliance with NRC requirements.

Restatement of Violation F

10 CFR 20.201(b) requires that each Licensee make such surveys as may be necessary to comply with the requirements of Part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, the Licensee did not make surveys to assure compliance with 10 CFR 20.202(a)(1), which requires the use of personnel monitoring equipment for those individuals who are likely to receive a dose in any calendar quarter in excess of 25 percent of the applicable value specified in 10 CFR 20.101. Specifically, between May 8, 1991, and February 9, 1993, the Licensee did not adequately evaluate the proper placement of finger dosimetry for nuclear medicine technologists.

Summary of Licensee's Response

The Licensee denies the violation, contending that an evaluation was made of the proper placement of the ring dosimeter in that the technologist wore the dosimeter on a finger, rather than on the wrist, and that the work performed by the technologist is so varied that it is pointless to evaluate which finger of which hand should be monitored.

To support its position, CMC references NCRP Report No. 57, "Instrumentation and Monitoring Methods for Radiation Protection, 1978," Section 4.2.2.3, and Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," Appendix I, regarding the criteria for placement of extremity dosimeters.

CMC contends that NCRP 57 supports the view that dosimeters can be worn on any finger rather than on a specific finger of a specific hand, and that Regulatory Guide 10.8 provides no specific guidance on this issue. CMC adds that based on a review of exposure records for 1991 and 1992, no monitoring was required because the technologist's extremity doses were 6.4% and 5.8%, respectively, of the limits specified in 10 CFR 20.101.

NRC's Evaluation of Licensee's Response

While NCRP guidance does not take precedent over NRC requirements, NCRP 57, Section 4.2.2.3, "Partial Body Exposure" does state in part:

Where sealed or unsealed radioactive sources are handled, it may be particularly important to determine the dose to the hands. Extremity dosimeters should be worn *as near to the point of maximum exposure as possible* (on a finger or the wrist) and should not be shielded from radiation by the extremity. (Emphasis added).

The Licensee's contention that it is acceptable to place the extremity dosimeter on either hand conflicts with the recommendation to place dosimeters "as near to the point of maximum exposure as possible."

Regulatory Guide 10.8, Appendix I, does not specify how dosimeters are to be worn. However, Appendix I does indicate that dosimeters should be worn as prescribed by the Radiation Safety Officer (RSO). As documented in the inspection report, the RSO stated that he had never evaluated which of the technologist's hands was likely to receive the highest dose.

The inspection report indicates that the technologist's method of drawing and injecting doses brought the left hand, where she wore the dosimeter, in proximity to shielded volumes of Tc-99m, and brought the right hand in proximity to unshielded volumes. The Licensee cannot use the dosimeter readings from the left hand to argue that no monitoring is required because the dose to the right hand, which was not measured, may be significantly greater based on the inspector's observation of the technologist's work habits.

Summary of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations B Through I

The Licensee admits six of the eight violations, but argues that individually these violations would be considered minor. CMC also disagrees that the violations collectively represent a programmatic breakdown in the Radiation Safety Program, and adds that the violations were identified as a result of an extremely detailed, three-day inspection.

CMC disagrees with the escalation of the penalty based on two NRC Information Notices (INs). CMC challenges the relevance of IN 90–71, "Effective Use of Radiation Safety Committees [RSCs] to Exercise Control Over Medical Use Programs," because, according to the Licensee, the six purposes of the RSC described in the discussion section of IN 90–71, including RSC review of the radiation safety program, were fulfilled at CMC, as documented in the RSC meeting minutes.

CMC also challenges the applicability of IN 91–71, "Training and Supervision of Individuals Supervised by an Authorized User," arguing that the significant incidents cited therein were caused in part by training problems which were of much greater significance than those at CMC. Specifically, while conceding that three of the six admitted violations were caused by training deficiencies, CMC contends that a training program was in place and that attention to the training of facility personnel is documented in the RSC meeting minutes.

Finally, CMC argues that the proposed civil penalty is not consistent with the enforcement actions described in IN 90–71, or with a recent unspecified enforcement action in Hawaii.

NRC's Evaluation of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations B Through I

The NRC Enforcement Policy, section IV.A, states in part that a group of violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or if the violations contributed to or were unavoidable consequences of the underlying problem. The NRC staff concluded that all of the violations stem from the same root cause, namely, a pattern of lack of attention by the RSO and management above the RSO to compliance with NRC regulatory requirements. Thus aggregation was warranted.

As to the relevance of IN 90–71, this notice indicates that the RSC should review the functions of the RSO to ensure that the RSO does not have other duties that prevent adequate attention to the safety program, and that the RSO has not delegated substantial responsibilities to other staff members or to consultants. As documented in the inspection report, the oversight of the Radiation Safety Program was primarily limited to administrative reviews of the program by the consultant. Further, CMC personnel conceded during the Enforcement Conference that the Radiation Safety Program had not received enough management attention.

Contrary to CMC's contention that its RSC fulfilled the six purposes of RSCs oulined in IN 90–71, the RSC failed to identify radiation safety problems; initiate, recommend or provide corrective actions; and verify implementation of corrective actions (Purpose One of IN 90–71). While the Licensee may have identified some problems, it failed to implement timely, lasting corrective action, as documented in NRC Inspection Report No. 93–01, section 3 Specifically, the Licensee failed to implement corrective actions concerning: (1) The failure to perform ventilation room checks, (2) The failure to obtain dose calibrator records for a "loaner" dose calibrator, (3) The failure to implement the Quality Management Program by using written directives, by evaluating recordable events, and by training personnel in the provisions of the QMP, (4) The failure to provide and document annual radiation safety refresher training, (5) the failure to perform required surveys (repeat violation), and (6) the failure to perform required dose calibrator constancy checks (repeat violation).

As to the relevance of IN 91–71, this Notice was written specifically to remind licensees of the importance of providing adequate instruction and supervision to individuals, such as technologists, who work under the supervision of an authorized user. This notice also highlights the need for adequate training of individuals such as part-time, cross-trained, or temporary technologists. As documented in the inspection report, the Licensee's primary technologist is a Certified Nuclear Medicine Technologist (CNMT), and two other, non-certified technologists fill in for her when she is not available. Violation B was caused by a non-certified technologist's lack of familiarity with the operation of the dose calibrator, resulting in his use of a loaner dose calibrator from the radiopharmacy and his lack of familiarity with the requirement for performing dose calibrator tests upon installation of the dose calibrator. Violation C occurred because the non-certified technologists did not understand the requirement for performing surveys at the end of each day of use of radiopharmaceuticals. Violation D occurred because the technologists assumed that if the instrument did not have an installed source, the source check did not have to be performed. Violation H occurred because the technologist assumed that removing gloves prior to leaving the area meant that there was no need to monitor her hands. Violation I occurred because the staff wrongly thought that the requirement applied to the use of iodine-131 for inpatient therapy and not for phosphorus-32 inpatient therapy.

Licensees are expected to be pro-active in identifying and correcting their own violations and are required to maintain compliance with NRC regulatory requirements at all times. Therefore, the degree of detail of an NRC inspection or the length of time devoted to it have no bearing on the consideration of any resulting enforcement action. Further, in this case, the inspection was extended due to the number and nature of the violations that were being identified.

It is also inappropriate to compare the monetary amount of civil penalties assessed among different licensees because the effect of the Enforcement Policy's mitigating and escalating factors on the final monetary

amount is case specific. Further, the total monetary amount was higher in this case because there were two separate Severity Level III problems and, in accordance with the Enforcement Policy, a separate civil penalty was assessed for each problem.

NRC Conclusions

The NRC has concluded that Violations B through I occurred as stated and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the Licensee. Consequently, the proposed civil penalty for violations B through I in the amount of $5,000 should be imposed.

[FR Doc. 93–16447 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–321 and 50–366]

Georgia Power Co.; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Virginia Electric and Power Company, (the licensee) for amendments to Facility Operating License Nos. DPR–32 and DPR–37 issued to the licensee for operation of the Surry Power Station, Units 1 and 2. Notice of Consideration of the amendments was published in the **Federal Register** on February 12, 1991.

The licensee's application of November 14, 1990, proposed three changes to the Technical Specifications (TS) relating to containment leak rate testing. One of these changes was previously granted. The second is authorized by the current amendments. The third requested a reduction in the emergency escape airlock seal from 45 psig to 10 psig. This specific change to reduce the leak test pressure for the airlock seal is not justified because the licensee has not adequately demonstrated the 10 psig pressure test provides the required assurance that the emergency airlock seal will function as required to minimize outleakage during and following a loss-of-coolant accident. The requested change is therefore denied. The licensee was notified of the Commission's denial by letter dated July 1, 1993.

By August 11, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza East Tower, 915 E. Byrd Street, Richmond, Virginia 23219, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 14, 1990, and (2) the Commission's letter to the licensee dated July 1, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 1st day of July 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Project Director, Project Directorate II-2, Division of Reactors Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16450 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Unit 1); Exemption

I

Southern California Edison Company, (SCE or the licensee) is the holder of Facility Operating License No. DPR–13, which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (Songs 1). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility consists of a permanently shutdown pressurized water reactor at the SCM site located in San Diego County, California.

II

Title 10 of the Code of Federal Regulations, § 50.54(x) (10 CFR 50.54(x)), allows each licensee to "take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent." Section 50.54(y) of 10 CFR states that such "action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator prior to taking the action." The underlying purpose of 10 CFR 50.54 (x) and (y) is to permit personnel to take emergency actions in response to abnormal conditions which may not have been considered when the License Conditions and Technical Specifications were formulated.

III

By letter dated February 8, 1993, the licensee requested an exemption from 10 CFR 50.54(y) for Songs 1. Songs 1 was permanently shut down in November 1992 and refueling of the reactor completed in March 1993. Upon licensee certification of the refueling on March 9, 1993, Amendment No. 150 to Facility Operating License No. DPR–13 became effective, changing the license to a possession only license. On May 27, 1993, the NRC staff issued Amendment No. 154 to Facility Operating License No. DPR–13 which permitted replacement of the 10 CFR part 55 licensed operator program with an approved Fuel Handler Program at Songs 1. The amendment established the nonlicensed Certified Fuel Handler position as the highest level of defueled plant operator, analogous to a licensed senior operator at an operational facility. This exemption allows a Certified Fuel Handler, in lieu of a Senior Reactor Operator, to approve the taking of actions under 10 CFR 50.54(x) for a facility with a possession only license and a defueled reactor presents no undue risk to the public health and safety.

The licensee will assure that the underlying purpose of 10 CFR 50.54(y) is fulfilled by establishing administrative controls requiring that any emergency action permitted by 10 CFR 50.54(x) must be approved, as a minimum, by a Certified Fuel Handler prior to taking the action. The administrative controls will be implemented following issuance of the exemption.

The Commission finds, pursuant to 10 CFR 50.12(a)(2)(ii), that special circumstances exist such that application of 10 CFR 50.54(y) in the particular circumstances existing at

Songs 1 would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule. A Certified Fuel Handler will have appropriate technical qualifications to carry out licensed activities under the possession only license, and a Senior Reactor Operator is not necessary to approve the taking of action under 10 CFR 50.54(x). Therefore, based on the considerations stated above, it is concluded that the request of the licensee for an exemption from the requirements of 10 CFR 50.54(y) is acceptable and should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the exemption request from the requirements of 10 CFR 50.54(y), for the San Onofre Nuclear Generating Station, Unit 1 to allow the approvals provided for therein to be granted by a Certified Fuel Handler.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (58 FR 35986, July 2, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of July, 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16448 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 179 to Facility Operating License No. DRP–32 and Amendment No. 179 to Facility Operating License No. DPR–37, issued to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. The amendments were effective as of the date of their issuance.

The amendments revised the Technical Specifications to increase the containment leak test pressure from 39.2 psig to 45.0 psig.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act of the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 12, 1991 (56 FR 5712).

Also in connection with the action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on January 28, 1993 (58 FR 6424).

For further details with respect to the action, see (1) the application for amendments dated November 14, 1990, (2) Amendment No. 179 to License No. DPR–32, and Amendment No. 179 to License No. DPR–37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland this 1st day of July 1993.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II; Office of Nuclear Reactor Regulation.

[FR Doc. 93–16449 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE FEDERAL REGISTER

Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs

AGENCY: Office of the Federal Register.

ACTION: Correction to Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Coordination Council for North American Affairs in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the **Federal Register** is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest. The list published in the **Federal Register** on June 9, 1993 (58 FR 32355) inadvertently omitted one agreement.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people in Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) is its nongovernmental Taiwan counterpart.

Under section 12(a) of the Act, agreements concluded between the AIT and the CCNAA are transmitted to the Congress, and according to Sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th floor, Arlington, Virginia 22209. For further information contact the Corporate Secretary of AIT at this address, telephone: (703) 525–8474, fax: (703) 841–1385.

Following is the agreement omitted from the June 9, 1993, **Federal Register** list: "Agreement concerning trade matters with annexes. Effected by exchange of letters at Arlington and Washington, October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980."

Dated June 29, 1993.

J. Richard Bock,

Deputy Managing Director and Corporate Secretary.

Dated: July 7, 1993.

Martha L. Girard,

Director, Office of the Federal Register

[FR Doc. 93–16398 Filed 7–9–93; 8:45 am]

BILLING CODE [illegible]

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–19558; 812–8402]

First Prairie Cash Management, et al.; Notice of Application

July 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Prairie Cash Management; First Prairie Diversified

VOL 58 ISS 131 JL 12 1993 UMI

Asset Fund; First Prairie Money Market Fund; First Prairie Tax Exempt Bond Fund, Inc.; First Prairie Tax Exempt Money Market Fund; First Prairie U.S. Government Income Fund; First Prairie U.S. Treasury Securities Cash Management (collectively, the "Funds"); and the First National Bank of Chicago.

RELEVANT ACT SECTIONS: Section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to deposit their uninvested cash balances into a joint trading account where the cash will be invested in short-term money market instruments and repurchase agreements.

FILING DATE: The application was filed on May 14, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, First Prairie Funds, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144; the First National Bank of Chicago, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Fund is a registered, open-end, management investment company. First Prairie Money Market Fund and First Prairie Tax Exempt Bond Fund, Inc. each consist of two portfolios ("Series"). The Funds and the Series are collectively referred to as "Portfolios." From time to time, the Portfolios have uninvested cash balances that otherwise would not be invested in portfolio securities at the end of each trading day. All the Portfolios are authorized to invest at least a portion of their uninvested cash assets in short-term liquid assets, including repurchase agreements.

2. The First National Bank of Chicago currently serves as investment adviser to each Portfolio. The Dreyfus Corporation ("Dreyfus") provides administrative services to each Portfolio, and the Bank of New York serves as custodian of the Portfolios (the "Custodian").

3. Applicants request that relief be extended to other registered investment companies for which the First National Bank of Chicago, or any entity under common control or controlled by the First National Bank of Chicago (collectively "FNBC") subsequently serves as investment adviser.

4. In general, on each trading day, most Portfolios have cash balances in their accounts maintained by the Custodian that are not invested in portfolio securities. Frequently, such cash balances are invested in repurchase agreements. Repurchase agreements are entered into with banks, non-bank government securities dealers, and major brokerage houses. Typically, the uninvested assets of some Portfolios are too small, or are received too late, to be invested effectively.

5. For its investments in repurchase agreements, each Portfolio has established substantially similar systems and standards. These systems and standards, adopted in compliance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and the SEC Division of Investment Management's interpretations set forth in letters to the Investment Company Institute dated January 25, 1985 (pub. avail. same day), April 17, 1985 (pub. avail. May 7, 1985), and June 19, 1985 (pub. avail. same day), include quality standards for issuers of the repurchase agreement and require that the repurchase agreements be at least 100% collateralized at all times. Applicants acknowledge that they have a continuing obligation to monitor published statements of the SEC on repurchase agreements, and in the event the SEC sets forth different or additional requirements, each Portfolio intends to modify its systems and standards accordingly.

6. Currently, the uninvested cash balances of the Portfolios typically are not invested in taxable and tax exempt short-term money market instruments with overnight, over-the-weekend, or over-the-holiday maturities ("Short-Term Money Market Instruments"). FNBC believes that such investments ordinarily cannot be made on a cost efficient basis because of the relatively high processing fees imposed in connection with the transactions. FNBC further believes that, if the joint account were established for investing in Short-Term Money Market Instruments, the larger size of the joint account's cash balances would permit such investments to be made on a cost efficient basis.

7. Applicants propose to deposit the uninvested cash balance in each Portfolio's custodial account into a single joint account at the end of each trading day. The daily balance in the joint account will be used to purchase one or more Short-Term Money Market Instruments and/or repurchase agreements. FNBC will invest Portfolio assets only in Short-Term Money Market Instruments that constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act.

8. When the joint account invests in more than one investment on a given day, each participant in the joint account would not necessarily have its cash invested in every investment purchased through the joint account. This may occur for a variety of reasons. FNBC believes that it is prudent to limit investment risk by entering into repurchase agreements with a number of different counter-parties and purchasing Short-Term Money Market Instruments of a number of different issuers. In some cases, certain Portfolios may be precluded by their investment restrictions from participating in a repurchase agreement with a particular counter-party or from purchasing certain Short-Term Money Market Instruments. In addition, on a given day, cash of a Portfolio may become available too late to be included in repurchase agreements that have already been negotiated, or may be too small to invest individually. In many such cases, however, it will still be advantageous for this cash to be invested jointly along with that of other Portfolios in a similar position on that day.

9. FNBC believes that no conflict of interest or potential for favoring one Portfolio over another arises merely as a result of the fact that the participating Portfolios may not always be allocated a *pro rata* portion of all of the investments made through the joint account. In determining which investments to allocate to which Portfolios participating in the joint account, FNBC will take into account each Portfolio's investment restrictions

and repurchase agreement collateral requirements, its obligation to fairly allocate investment opportunities among the Portfolios, the need for diversification, and the time when cash becomes available for investment on a given day.

10. A Portfolio will never be in a less favorable position than if the joint account were not in place. In many cases, a particular Portfolio will be in a better position, since it may not have enough cash to invest profitably in an individual investment. Any alternative structure, in which FNBC would have to limit investments to those which could include every participating Portfolio, would be less beneficial than the proposed structure.

11. All assets of participating Portfolios transferred to the joint account will continue to be held under proper bank custodial procedures. The joint account will not be distinguishable from any other account maintained by the Custodian for a Portfolio except that monies from multiple Portfolios will be deposited into it on a commingled basis.

12. The recordkeeping system of the joint account will be substantively identical to that which would be used if several joint accounts were set up. After agreeing on the trade details with a third party, FNBC's cash management desk will compile all necessary joint trade information, assign a control reference number to the trade, produce a joint trade ticket and breakdown sheet displaying each participant's *pro rata* portion of the joint investment (the "Trade Information"), and transmit the Trade Information to each participant in the investment. The Trade Information will be sent to Dreyfus' fund accounting department to be entered into its accounting system, and to the Custodian, to be used as authorization to transfer money from the individual participants' accounts to the joint account. FNBC's cash management desk will reconcile all joint transactions during the course of the day as transactions are processed. Dreyfus' fund accounting department will reconcile all Portfolio trades to cash transactions daily. The Custodian will reconcile all joint transactions, including money movement transactions, during the course of the day as transactions are processed and at the end of the day.

13. Applicants estimate that the joint account will save the Portfolios transaction fees totaling approximately $85,000 per year. In addition, the joint account will allow the Portfolios to negotiate higher rates of return on their overnight cash balances, invest funds which otherwise might not be invested, and reduce the possibility of errors by reducing the number of trade tickets.

14. Each participant's decision to invest in the joint account will be solely at its option. A participant will not be required either to invest a minimum amount or to maintain a minimum balance in the joint account. Each participant will retain the sole ownership rights to any of its assets invested in the joint account, including interest payable on the assets invested in the joint account. The assets of a participant held in the joint account will not be subject to the claims of creditors of other participants.

15. Except insofar as it is an "affiliated person" (within the meaning of the Act) of entities participating in the joint account, FNBC will have no monetary participation in the joint account, but will be responsible for investing assets in the account and establishing accounting and control procedures.

Applicants' Legal Analysis

1. The Portfolios participating in the proposed joint account and FNBC could be deemed to be "joint participants" in a "transaction" within the meaning of section 17(d). In addition, the proposed account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

2. The board members of each Fund have considered the proposed joint account and have determined that the use of such account will be beneficial to each Fund for the reasons set forth above and will not result in any conflicts of interest among the various participants. The board members believe that the operation of the joint account will be free of any inherent bias favoring one Portfolio over another. The board members considered the fact that, although FNBC can gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the participating Portfolios and their shareholders.

3. Although not every participant will participate in each and every investment held in the joint account on any given day, each participant's interest in a repurchase agreement and/or Short-Term Money Market Instrument will be on the same basis as every other participant's interest in such repurchase agreement and/or Short-Term Money Market Instrument.

4. Rule 17d–1(b) provides that, in passing upon applications under section 17(d) and rule 17d–1, the SEC will consider whether each party's participation in the proposed joint arrangement "is consistent with the provisions, policies and purposes of the Act," as well as the "extent to which such participation is on a basis different or less advantageous than that of other participants." For the reasons described above, applicants believe that the criteria of rule 17d–1 is met by the joint trading account as proposed.

Applicants' Conditions

The joint account will operate subject to the following conditions:

1. A separate cash account will be established with the Custodian into which each Portfolio will daily be permitted to deposit its uninvested net cash balances.

2. Cash in the joint account will be invested by FNBC in one or more repurchase agreements and/or Short-Term Money Market Instruments. Each participant's funds in the joint account will be invested consistent with that participant's investment objectives, policies, and restrictions. Not every participant in the joint account necessarily will have its cash invested in every repurchase agreement entered into and/or Short-Term Money Market Instrument purchased through the account. However, to the extent a participant's funds are applied to a particular investment made through the joint account, the participant will participate in and own a proportionate share of such investment and the income earned or accrued thereon, based upon the percentage of such investment purchased with such participant's funds.

3. FNBC and the Custodian will maintain records (in conformity with section 31 and the rules and regulations thereunder) documenting, for any given day, each participant's aggregate investment in the joint account and its *pro rata* share of each investment made through the joint account.

4. The joint account will invest only in repurchase agreements and Short-Term Money Market Instruments with overnight, over-the-holiday, or over-the-weekend maturities. Investments in repurchase agreements will be collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities. Each repurchase agreement entered into in connection with the proposed joint account will be collateralized to the extent required by the most restrictive collateral requirements of the participating Portfolios. The joint account will invest only in Short-Term Money Market Instruments which constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act.

5. All investments held by the joint account will be valued on an amortized cost basis.

6. Each participating Portfolio valuing its net assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the joint account in which such Portfolio has an interest for the purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in the joint account on that day.

7. To ensure that there will be no opportunity for one participant to use any part of the balance of the joint account credited to another participant, no participant will be allowed to create a negative balance in the joint account for any reason, although a participant will be permitted to draw down its entire balance at any time.

8. FNBC will manage the joint account as part of its duties under its existing or any future investment advisory contracts with the Portfolios. FNBC will not collect an additional fee from any participant for managing the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

10. The board members of each Fund will evaluate annually the joint account arrangements, and will continue a Portfolio's participation in the joint account only if they determine that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from continued participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16377 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25844]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 2, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 28, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. (70–8215)

System Energy Resources, Inc. ("System Energy"), 1340 Echelon Parkway, Jackson, Mississippi 39213, an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed an application-declaration under Sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Pursuant to a Commission order dated December 23, 1988 (HCAR No. 24791), on December 28, 1988 System Energy sold and leased back from certain trusts acting as lessors ("Lessors"), on a long-term net lease basis, an approximate 11.5% aggregate ownership interest ("Undivided Interests") from its 90% ownership interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station in two substantially identical, but entirely separate, transactions. The purchase price of the Undivided Interests was $500 million, of which approximately $64.898 million was provided by the equity contributions of two owner participants in the two respective Lessor trusts and approximately $435.102 million was provided by loans from a group of interim lenders.

Pursuant to subsequent order dated April 13, 1989 (HCAR No. 24861), on April 13, 1989 GG1A Funding Corporation ("Funding Corporation") issued $435.102 million of Secured Lease Obligation Bonds ("Original Bonds") in an underwritten public offering in two series. The two series consisted of $163.666 million principal amount, maturing on January 15, 2004 ("Series 11.07% Bonds") and $271.436 million principal amount, maturing on January 15, 2014 ("Series 11.50% Bonds"). The proceeds from the sale of the Original Bonds were applied to refunding of the interim loans.

System Energy now proposes to cause Funding Corporation or a comparable entity to issue not in excess of $456,857,100 of its Secured Lease Obligation Bonds in one or more separate series ("Refunding Bonds") through December 31, 1995. The Refunding Bonds will be issued under the Funding Corporation's Collateral Trust Indenture, dated as of April 1, 1989, as amended ("Indenture"), among Funding Corporation, System Energy and Bankers Trust Company, as trustee ("Trustee"), or a comparable instrument in order to refund the Original Bonds. Alternatively, System Energy proposes to refund the Original Bonds with interim borrowings obtained from banks or other institutions by either the Funding Corporation or similar entity or by the Lessors ("Interim Borrowings") and then to issue the Refunding Bonds in order to retire the Interim Borrowings.

The proceeds from the sale of the Refunding Bonds or the Interim Borrowings, together with funds provided by System Energy, will be applied to the cost of redeeming the Original Bonds and may be applied to meet associated issuance costs. The Series 11.07% Bonds are first optionally redeemable on January 15, 1994 at 105.535%. The Series 11.50% Bonds are first optionally redeemable on January 15, 1994 at 108.625%. If the Original Bonds are retired with the proceeds of Interim Borrowings, then the proceeds of the Refunding Bonds will be used to retire Interim Borrowings. There may be redemption premiums associated with the Interim Borrowings.

Each series of Refunding Bonds and the Interim Borrowings will have such interest rate, maturity date, redemption and sinking fund provisions, be secured by such means, be sold in such manner and at such price and have such other terms and conditions as shall be determined through negotiation and approved by the Commission. It is expected that the term of the Refunding Bonds or the Interim Borrowings, if any, will be in excess of 10 years. The Refunding Bonds will be structured and issued under the documents and pursuant to the procedures applicable to the issuance of the Original Bonds, or comparable documents having similar terms and provisions. Any Interim Borrowings will be structured and issued under documents and pursuant to the procedures comparable to those applicable to the issuance of the original interim borrowings.

Should there be no Interim Borrowings, the proceeds of the sale of

the Refunding Bonds will be loaned by the Funding Corporation or a comparable entity to the Lessors, and the Lessors will issue lessor notes ("Lessor Notes") to the Funding Corporation or a comparable entity pursuant to the terms of two Trust Indentures, Deeds of Trust, Mortgages, Security Agreements and Assignments of Facility Lease, dated as of December 1, 1988 ("Lease Indentures"), as supplemented and to be supplemented by Lease Indenture Supplements ("Supplemental Lease Indentures"), or a comparable instrument. The Lessors in turn will apply the proceeds to repayment of similar Lessor Notes issued in 1989 to secure the Original Bonds, and the Funding Corporation or a comparable entity will repay the Original Bonds with such payments.

System Energy is unconditionally obligated to make payments under the Leases of the Undivided Interests ("Leases") in amounts that will be at least sufficient to provide for scheduled payments of the principal of and interest on such Lessor Notes, which amounts, in turn, will be sufficient to provide for scheduled payments of principal and of interest on the Refunding Bonds when due. Upon refunding of the Original Bonds, amounts payable by System Energy under the Leases will be adjusted pursuant to the terms of Lease Supplements, and a similar procedure would apply in the event Interim Borrowings are used first.

Neither the Refunding Bonds, the associated Lessor Notes nor any Interim Borrowings will be direct obligations of, or guaranteed by, System Energy. However, under certain circumstances System Energy may assume all, or a portion of, the Lessor Notes or the Interim Borrowings. The Refunding Bonds will be secured by the Lessor Notes, which will be held by the Trustee under the Indenture. Each Lessor Note will be secured by, among other things: (1) A lien on and security interest in the Undivided Interest of the Lessor issuing such Lessor Note; and (2) certain of the rights of such Lessor under its Lease with System Energy, including the right to receive the basic rent and certain other amounts payable by System Energy. Interim Borrowings would be, in all probability, direct obligations of the Lessors, evidenced by Lessor Notes.

As an alternative to using Refunding Bonds issued by Funding Corporation or a comparable entity, System Energy may choose to use a trust structure in which one or more pass through trusts would be established to hold the Lessor Notes issued under the Lease Indentures. In lieu of issuing Refunding Bonds, the trust would issue certificates evidencing ownership interests in the trust. If such a structure were used, the debt terms of the Refunding Bonds described above, would generally be terms of the Lessor Notes and the Lease Indentures.

System Energy states that it will not enter into any of the proposed transactions regarding the sale of the Refunding Bonds or the trust certificates or the incurring of the Interim Borrowings to refund the Original Bonds unless: (1) The estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy and its subsidiaries, consolidated; or (2) System Energy shall have notified the Commission of the terms of the proposed refinancing transaction by amendment and obtained appropriate authorization from the Commission to consummate such transaction.

System Energy requests authorization, pursuant to paragraph (a)(5) of rule 50 under the Act, to undertake preliminary negotiations with respect to the issuance and sale of the Refunding Bonds or the trust certificates or arranging the Interim Borrowings. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16376 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19557; 812–8414]

Smith Barney, Harris Upham & Co. Inc.; Temporary Order and Notice of Application

July 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Temporary order and notice of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney, Harris Upham & Co. Inc.

RELEVANT ACT SECTIONS: Exemption from section 9(a) under section 9(c).

SUMMARY OF APPLICATION: Applicant has been granted a temporary conditional order, and has requested a permanent conditional order, under section 9(c) exempting applicant from section 9(a) to the extent necessary to permit applicant to employ an individual who is subject to a securities related injunction.

FILING DATE: The application was filed on June 3, 1993, and an amendment was filed on June 25, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, N.Y. 10105.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a securities brokerage and investment banking firm. Applicant also is a registered investment adviser. Applicant serves as (a) investment adviser to The Inefficient-Market Fund, Inc.; (b) sub-adviser to Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., Smith Barney Variable Account Funds, and Smith Barney World Funds, Inc.; (c) principal underwriter to the Smith Barney Funds, Smith Barney Money Funds, Inc., Smith Barney Muni Bond Funds, and Smith Barney Tax Free Money Fund, Inc.; and (d) a depositor and principal underwriter of numerous unit investment trusts.

2. Primerica Corporation is applicant's ultimate parent corporation. Other indirect subsidiaries of Primerica also are engaged in the broker-dealer, depositor, and investment advisory businesses, including with respect to registered investment companies.

3. On March 12, 1993, applicant entered into an acquisition agreement

VOL
58
ISS
131
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pursuant to which, among other things, applicant agreed to acquire (the "Acquisition") the domestic retail brokerage and asset management businesses of Shearson Lehman Brothers Inc. ("Shearson"). Applicant expects to complete the Acquisition sometime in the third quarter of 1993. Applicant then will change its name to Smith Barney Shearson, Inc.

4. In April 1993 Paul J. Williams ("Williams") applied for employment as a financial consultant at Shearson. Williams is subject to a securities related injunction. Due to the existence of the injunction, and to avoid a violation of section 9(a), Shearson declined to process Williams' application for employment. Applicant proposes to employ Williams as a registered representative at the earliest possible time, subject to receiving the requested exemption.

5. In 1985, while employed by McDonald & Company Securities, Inc. ("McDonald"), Williams was permanently enjoyed from engaging in certain manipulative or deceptive practices in connection with the offer or sale of securities. Williams also was ordered to disgorge $7,500 in profits. Williams consented to the injunction in a suit brought by the Commission alleging violations of section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 thereunder. The Commission's complaint alleged that in 1980 Williams, upon receipt of information from an insider of an issuer, purchased shares on behalf of the insider, utilizing accounts without identifying the true purchaser of the securities, and purchased shares for his own benefit. Williams also was suspended from association with any broker, dealer, or investment company for a period of thirty days.

6. Williams was the subject of a censure by McDonald in 1984. The censure resulted from Williams' alleged violation of Regulation T of the Federal Reserve Board rules by borrowing municipal securities from customers, with their prior knowledge and consent, in order to support a debit balance in his own margin account. McDonald reported its action to the New York Stock Exchange, which determined that no further action on its part was necessary.

7. From February 1986 until April 1993, Williams was a registered representative of PaineWebber Incorporated ("PaineWebber").[1] Williams terminated his employment with PainWebber in April 1993 in connection with his application for employment at Shearson.

8. In April 1993, a complaint was filed against PaineWebber in an Ohio State Court alleging that Williams purchased unsuitable securities on behalf of a former client who was not mentally competent. *Zarlingo* v. *PaineWebber, Inc.*, No. 93–CV–811 (Ohio C.P. (Mahoning), filed Apr. 1, 1993). Applicant states that Williams has advised applicant that he believes the complaint is without merit.

9. Since the entry of the injunction and suspension, Williams has not been enjoined by a court or sanctioned by the Commission, any self-regulatory organization, or any state securities commission. During the same period, to the best of applicant's knowledge, except for the aforementioned customer lawsuit, there have been no customer complaints relating to Williams.

10. Applicant notes that it has extensive compliance and registration procedures to ensure that prospective employees who are subject to a statutory disqualification under section 9 of the Act do not become employed by any Smith Barney company involved in investment company activities until the section 9 issues are appropriately resolved. These policies and procedures will continue to be applicable to Smith Barney Shearson, Inc. following the Acquisition.

Applicant's Legal Analysis

1. If Williams becomes an employee of applicant, applicant will be subject to the disqualification provisions of section 9(a). Applicant requests (a) a temporary exemption from the provisions of section 9(a) for a period of up to 90 days following the date of entry of the temporary order to relieve applicant from any ineligibility under section 9(a) by reason of the employment by applicant of Williams; and (b) a permanent order granting the requested relief.

2. Section 9(a)(2) of the Act, in pertinent part, prohibits any person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. A company with an employee or other affiliated person ineligible to serve in any of these capacities under section 9(a)(2) is similarly ineligible under section 9(a)(3).

3. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

4. Applicant asserts that the application of the prohibitions of section 9(a) to applicant by reason of the employment of Williams would be unduly and disproportionately severe. Applicant also asserts that the conduct of applicant and Williams has been such as to make it not against the public interest or the protection of investors to grant the requested relief.

5. Applicant states that Williams will not serve in any capacity related in any way to the provision of investment advice to any registered investment company or to acting as principal underwriter to any registered open-end investment company or as principal underwriter or depositor to any registered unit investment trust.[2] Williams will not be an officer of applicant or serve in a policy-making role or participate in the management or administrative activities of applicant relating to registered investment companies.

6. Applicant states that the conduct complained of by the Commission on the part of Williams does not relate to investment company activities. Applicant notes that the injunction against Williams was entered more than seven years ago. Williams has not been subject to similar action, nor to the knowledge of applicant have any complaints been filed against Williams (except as noted above) with the Commission, any self-regulatory organization, or any state securities commission, since the date of the injunction.

7. Applicant asserts that the balance of fairness requires that the requested relief be granted. If the exemption is not granted, applicant will not offer to employ Williams because to do so would subject applicant to a section 9(a)

[1] The Commission exempted PaineWebber from the disqualification provisions of section 9(a) with respect to its employment of Williams in 1990. *PaineWebber Incorporated*, Investment Company Act Release Nos. 17588 (Jul. 16, 1990) (notice) and 17789 (Oct. 10, 1990) (order).

[2] Applicant states that it expects that Williams will be involved to some degree in the retail sale of investment company securities.

bar on investment company activities. Consequently, Williams would be cut off from his livelihood.

8. Finally, as noted above, the Commission previously exempted PaineWebber from section 9(a) with respect to Williams. Applicant submits that, in the absence of evidence of wrongdoing by Williams subsequent to the granting of such relief to PaineWebber, the granting of the relief to PaineWebber should weigh heavily in favor of granting the requested relief to applicant.

Applicant's Condition

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the condition set forth below:

Applicant will not employ Williams in any capacity related directly to the provision of investment advisory services for registered investment companies, or acting as a principal underwriter for a registered open-end investment company, or as a principal underwriter or depositor for a registered unit investment trust.

Temporary Order

The Division of Investment Management, pursuant to delegated authority, has considered the matter and finds, under the standards of section 9(c), that applicant has made the necessary showing to justify granting a temporary exemption. Accordingly,

It is ordered, under section 9(c) of the Act, that applicant is hereby temporarily exempted from the provisions of section 9(a) of the Act until the earlier of September 30, 1993 or the date on which the Commission takes final action on the application for an order granting applicant a permanent exemption from the provisions of section 9(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16378 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19559; 812–8072]

Van Kampen Merritt Trust, et al.; Notice of Application

July 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen Merritt Trust, Van Kampen Merritt U.S. Government Trust, Van Kampen Merritt Equity Trust, Van Kampen Merritt Tax Free Fund, Van Kampen Merritt Pennsylvania Tax Free Income Fund (collectively, the "Trusts"), Van Kampen Merritt Investment Advisory Corp. (the "Adviser"), and Van Kampen Merritt Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on August 28, 1992, and amended on December 31, 1992, March 3, 1993, March 31, 1993, and July 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants request relief on behalf of the Trusts and any existing or future sub-trust or series thereof (each a "Fund" and collectively the "Funds"), and any existing or future registered open-end investment companies and any future sub-trust or series thereof, that are part of the same "group of investment companies," as defined in rule 11a–3 under the Act, and (a) whose investment adviser is the Adviser or an investment adviser that is directly or indirectly controlling, controlled by, or under common control with the Adviser, (b) whose principal underwriter is the Distributor or a principal underwriter that is directly or indirectly controlling, controlled by, or under common control with the Distributor, (c) who hold themselves out to investors as being related for purposes of investment and investor services, and (d) whose shares are divided into two or more classes of securities with varying front-end sales charges, CDSCs, distribution fees, shareholder services fees, exchange privileges, conversion features, voting rights, expense allocations, and investment requirements.[1]

2. Each of the Trusts is a Massachusetts business trust, except for Van Kampen Merritt Pennsylvania Tax Free Income Fund, which is a Pennsylvania business trust. The Trusts reserve the right to, and may, from time to time, reorganize from business trust to corporate form and/or under the laws of different states, consistent with applicable state and federal law and with their Declarations of Trust. Any order granting the requested relief is intended to apply to such reorganized entities that are in the same "group of investment companies," as defined in rule 11a–3.

3. The Adviser acts as the Funds' investment adviser. The Distributor acts as principal underwriter of the Funds' shares.

4. Pursuant to an order issued by the SEC in 1991,[2] the Funds offer two classes of shares (referred to herein as

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[1] Certain existing registered investment companies within the same "group of investment companies," as defined in rule 11a–3, have not signed the application and currently do not intend to rely on the requested relief. In the future, such investment companies may rely on any order granted pursuant to the application if they determine to create multiple classes of shares in accordance with the representations and conditions therein. In addition, the representations and conditions set forth in the application shall apply to all future investment companies and series and sub-trusts thereof described in the application.

[2] Investment Company Act Release Nos. 18166 (May 24, 1991) (notice) and 18209 (June 20, 1991) (order).

"Class A" and "Class B") representing interests in the same portfolio, and impose, and under certain circumstances, waive a CDSC on the redemption of Class B shares. Any order granting the requested relief will supersede and replace that order in its entirety.

A. The Alternative Distribution Plan

1. Applicants propose to establish a distribution plan (the "Alternative Distribution Plan"), pursuant to which each Fund initially intends to offer four classes of shares, as described below. Pursuant to the Alternative Distribution Plan, each Fund would also be able to create and sell new classes of shares, each class being subject to varying combinations of front-end sales charges, distribution fees, shareholder services fees, and CDSCs, or no front-end sales charges, distribution fees, shareholder services fees, or CDSCs.[3]

2. Each Fund will continue to sell Class A shares. Class A shares currently are sold at net asset value plus a front-end sales charge of 3.0% to 4.9% of the public offering price, and are subject to a rule 12b–1 plan and a non-rule 12b–1 shareholder services plan. A Fund may spend an aggregate amount of up to .30% per year of the average daily net assets attributable to its Class A shares under its rule 12b–1 plan and non-rule 12b–1 shareholder services plan. From such amount, a Fund, or the Distributor as agent thereof, may pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class A shares maintained in the Fund by such intermediaries' customers. Pursuant to its rule 12b–1 plan, a Fund may pay the Distributor the lesser of the balance of the .30% not paid to such financial intermediaries or the amount of the Distributor's actual distribution-related expenses attributable to Class A shares during the year. The minimum initial investment for Class A shares currently ranges from $1,000 to $1,500.[4]

3. Each Fund will continue to sell Class B shares. Class B shares currently are sold at net asset value and are subject to a CDSC, as described below, a rule 12b–1 plan, and a non-rule 12b–1 shareholder services plan. A Fund, or the Distributor as agent thereof, may pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class B shares maintained in the Fund by such intermediaries' customers. In addition, a Fund may spend, pursuant to its rule 12b–1 plan, the lesser of .75% of the average daily net assets attributable to its Class B shares or the amount of the Distributor's actual distribution-related expenses attributable to Class B shares during the year. The minimum initial investment for Class B shares currently ranges from $1,000 to $1,500.

4. Each Fund may sell Class C shares at net asset value, subject to a CDSC, as described below, a rule 12b–1 plan, and a non-rule 12b–1 shareholder services plan. A Fund may spend an aggregate amount of up to .30% per year of the average daily net assets attributable to its Class C shares pursuant to its rule 12b–1 plan and non-rule 12b–1 shareholder services plan. From such amount, a Fund, or the Distributor as agent thereof, will pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class C shares maintained in the Fund by such intermediaries' customers. Pursuant to the its 12b–1 plan, each Fund may pay the Distributor the lesser of the balance of the .30% not paid to such financial intermediaries or the amount of the Distributor's actual distribution-related expenses attributable to Class C shares during the year. The anticipated minimum initial investment for Class C shares is $1 million.

5. Each Fund may sell Class D shares at net asset value, subject to a CDSC, as described below, and to a rule 12b–1 plan and non-rule 12b–1 shareholder services plan. A Fund, or the Distributor as agent thereof, may pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class D shares maintained in the Fund by such intermediaries' customers. In addition, a Fund may spend up to .75% per year of the Fund's average daily net assets attributable to the Class D shares, pursuant to its rule 12b–1 plan. The anticipated minimum initial investment for Class D shares is $100,000.

6. The net asset value of all outstanding shares of all classes of a Fund will be computed separately for each class of shares of the Fund by first allocating gross income and expenses (other than fees under a rule 12b–1 plan, fees under a shareholder services plan, and other incremental expenses properly attributable to a particular class) to each class of shares based on the net assets attributable to each class at the beginning of the day, and then by allocating the differing rule 12b–1 fees, shareholder service fees, and other incremental expenses to the appropriate class. The net asset value attributable to each share of each class of the Fund will then be calculated by dividing the net assets calculated for each class by the number of shares outstanding in that class. Because of the different distribution expenses, shareholder service fees, and administration expenses that may be borne by each class of shares, the net income attributable to and the dividends payable on each class may be different than the net income attributable to and the dividends payable on other classes of the Fund.

7. Each Fund may issue one or more than one class of shares (each a "Purchase Class") that may convert to another class ("Target Class") after a specified period of time on the basis of the relative net asset value per share of the two classes without the imposition of an additional sales load, fee, or other charge. Shares of a Target Class will be subject to a lower distribution expense and/or service expense, in the aggregate, than the shares of the Purchase Class that converts to such Target Class.

8. Shares purchased through the reinvestment of dividends and other distributions with respect to a Purchase Class shall also be shares of such class, but will be considered held in a separate sub-account. Each time any Purchase Class shares in the shareholder's account, other than those in the sub-account, convert to shares of a Target Class, a proportionate number of shares in the sub-account also will convert to shares of the Target Class.

9. The Funds currently do not intend for Class A, Class C, or Class D shares to convert to another class. The Funds reserve the right to adopt a conversion feature with respect to such classes in accordance with the representations and conditions set forth in the application. Class B shares, other than those purchased through the reinvestment of dividends and distributions, currently convert to Class A shares after a certain specified number of years after the end of the calendar month in which the shareholder's order to purchase the Class B shares was accepted. Such number of years, which is the same with respect to all Class B shares of a Fund,

[3] Each Fund's rule 12b–1 fees and shareholder services fees, if any, applicable to each class of shares will comply with Article III, Section 26 of the NASD's Rules of Fair Practice, as amended from time to time.

[4] Under the proposed Alternative Distribution Plan, the Funds may establish different minimum initial investment requirements with respect to other classes of shares offered from time to time, and the minimum initial investment requirement with respect to a class of shares of a Fund may be reduced in connection with quantity of purchase discounts.

is at least three years but may not exceed eight years.

10. A shareholder of a Fund may exchange shares that have been registered in his or her name for at least 15 days for shares of the same class of any other fund distributed by the Distributor that offers an exchange privilege on the basis of the relative net asset value per share. In order to qualify for the exchange privilege without the approval of such Fund, the shares being exchanged are required to have a net asset value of at least $1,000. The Funds will approve all shareholder requests to exchange shares with a net asset value less than $1,000, provided that the shareholder is exchanging all of his or her shares of the original fund for shares of the acquired fund. Such policy will be applied consistently to all shareholders of each class of shares. The terms and conditions of any such exchange privilege will comply with rule 11a–3 as currently in effect and as amended from time to time, and will be set forth in the prospectus of each Fund.

B. The CDSC

1. Applicants propose to assess a CDSC on redemptions of certain classes of shares, and to waive or reduce the CDSC with respect to certain types of redemptions.

2. Proceeds from a redemption of Class B shares of a Fund made within a specified period of years of their purchase (which must be at least three years but may not exceed eight years) generally are subject to a CDSC. The CDSC is calculated as a specified percentage of the lesser of the then current net asset value or the original purchase price. The percentage may range from 3% to 7% on shares redeemed during the first year after purchase. The percentage is reduced each year over the applicable CDSC period.

3. The Funds initially contemplate that proceeds from a redemption of Class C shares within the first 12 months of their purchase will be subject to a CDSC equal to .75% of the lesser of the then current net asset value or the original purchase price of such shares. Proceeds from a redemption of Class C shares after the twelfth month but prior to the nineteenth month after their purchase generally will be subject to a CDSC equal to .25% of the lesser of the then current net asset value or the original purchase price. Class C shares redeemed thereafter will not be subject to a CDSC.

4. The Funds initially contemplate that proceeds from a redemption of Class D shares within the first year after purchase will be subject to a CDSC of up to 1.0% of the lesser of the then current net asset value or the original purchase price of such shares. Class D shares redeemed thereafter will not be subject to a CDSC.

5. No CDSC will be imposed on shares issued prior to any order granting the requested relief. A Fund that amends the terms and conditions of the applicable CDSC will amend or supplement its prospectus to reflect such changes. The changes will affect only those shares purchased subsequent to the prospectus being amended or supplemented, although changes that confer a benefit to the shareholder (*e.g.*, reduced fees) may apply to previously purchased shares.

6. No CDSC will be imposed on redemptions of shares purchased more than a specified period prior to redemption, shares derived from the reinvestment of dividends and other distributions, including capital gains distributions, or from an amount representing an increase resulting from capital appreciation above the amount paid for the shares. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares derived from reinvestment of dividends and distributions, then of shares held for a period longer than the CDSC period, then of shares subject to a front-end sales load, of any, and lastly of shares held by the investor for a period not longer than the applicable CDSC period. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the CDSC period.

7. The Funds propose to waive or reduce the CDSC on redemptions of shares (a) made within one year following the death of a shareholder, provided that the shares were held at the time of such death and provided that the decedent was an individual shareholder or owned such shares with his or her spouse as a joint tenant with right of survivorship, (b) to the extent that the redemption represents a minimum required distribution from an individual retirement account, a custodial account maintained pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), or a qualified pension or profit-sharing plan, to a shareholder who has attained the age of 70½, or, in the case of a qualified pension or profit-sharing plan, after termination of employment after age 55, and (c) which results from (i) the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, (ii) the return of excess deferral amounts pursuant to section 401(i)(8) or 402(g)(2) of the Code, or (iii) the death or disability of the employee (*see* sections 72(m)(7) and 72(t)(2)(A)(iii) of the Code). If a Fund waives or reduces the CDSC, such action will be uniformly applied to all offerees in the specified class.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed Alternative Distribution Plan might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants believe that the Alternative Distribution Plan would not involve borrowings, would not affect the Funds' existing assets or reserves, and would not increase the speculative character of the shares of the Funds. No class of shares would have a distribution or liquidation preference with respect to particular assets of a Fund, no class may require that lapsed dividends be paid before dividends are declared on another class, and no class would be protected by any reserve or other account. Applicants assert that a Fund's capital structure under the Alternative Distribution Plan would not induce shareholders to invest in risky securities to the detriment of other shareholders. A Fund's capital structure would not enable insiders to manipulate the expenses and profits among the various classes of shares because such Fund is not organized in a pyramid fashion.

2. Applicants further assert that the concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value Fund shares would not be present under the proposed Alternative Distribution Plan. Mutuality of risk would be preserved because all classes would have equal rights in the assets of the respective Fund.

3. Applicants believe that the Proposed Alternative Distribution Plan would enhance the ability of each Fund to select distribution alternatives that are more closely tailored to distribution costs for different groups of investors. Applicants believe that providing investors with various options in the same Fund would allow the investors to make the appropriate choice.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and will be

identical in all respects, except as set forth below. The only differences among the classes or shares will relate solely to (a) the impact of the disproportionate payments made under the rule 12b–1 distribution plans and the shareholder services plans, as applicable; (b) the following administrative expenses that may be allocated to a particular class of shares: (i) Transfer agent fees identified by applicants as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) SEC registration fees incurred by a class of shares; (iv) the expense of administrative personnel and services as required to support the shareholders of a specific class; (v) trustees' fees or expenses incurred as a result of issues relating to one class of shares; (vi) accounting expenses relating solely to one class of shares; and (vii) any other incremental expenses subsequently identified that should be properly allocated to one or more classes of shares that shall be approved by the SEC pursuant to an amended order; (c) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 plan and non-rule 12b–1 shareholder services plan, except as provided in condition 14; (d) the conversion feature applicable only to certain classes of shares; (e) the exchange privileges of the classes of shares of a Fund; and (f) the designations of the classes of shares of a Fund.

2. The trustees, including a majority of the independent trustees, will approve the Alternative Distribution Plan. The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Alternative Distribution Plan will reflect in detail the reasons for the trustees' determination that the proposed Alternative Distribution Plan is in the best interests of both a Fund and its shareholders.

3. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes of which such expenditures were made.

4. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares of each respective Fund. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing new registered management investment companies.

5. The trustees will receive quarterly and annual statements with respect to each Fund concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares of a Fund will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to its various classes of shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee and shareholder services fee payments relating to each respective class of shares will be borne exclusively by that class and any incremental administrative expenses relating to a class of shares set forth in condition 1 above and any other expenses determined by the trustees to be allocated to a class of shares and that shall have been approved by the SEC pursuant to an amended order will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of multiple classes of shares and the proper allocation of expenses among such classes were reviewed by the expert (the "Expert"), who rendered a report to applicants, which report was provided to the staff of the SEC prior to the issuance by the SEC of the notice of the proceeding initiated by this application, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon written request to the respective Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses between the various classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for

VOL 58 ISS 131 JL 12 1993 UMI

selling or servicing shares of such Fund may receive different compensation with respect to one particular class of shares over another in such Fund.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Alternative Distribution Plan will be set forth in guidelines that will be furnished to the trustees.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, shareholder services fees, front-end sales charges, deferred sales charges, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through its respective prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of its shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of a Fund's shares, it will also disclose the respective expenses and/or performance data applicable to all of its classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of its shares separately.

12. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards.

13. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset value per share of the two classes of shares, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or shareholder services fee (as those terms are defined in article III, section 26, of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and shareholder services fee to which they were subject prior to the conversion.

14. If a Fund implements any amendments to its rule 12b–1 plan or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan that would increase materially the amount that may be borne by a Target Class, existing shares of any affected Purchase Class will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the Adviser and the Distributor. The Purchase Class shares sold after the implementation of the proposal may convert to the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

15. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that a Fund may make pursuant to its rule 12b–1 plan or non-rule 12b–1 shareholder services plan in reliance on the exemptive order.

16. The non-rule 12b–1 shareholder services plans adopted by the Funds will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16379 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, San Luis Obispo County, CA

AGENCY: Federal Highway Administration.

ACTION: Notice of intent.

SUMMARY: FHWA, in cooperation with the California Department of Transportation, is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in San Luis Obispo County, California. FHWA sent the original Notice of Intent for this project to the **Federal Register** in June 1992. However, FHWA has been unable to verify that the June 17, 1992 original Notice of Intent was published, therefore this Notice will serve as an updated version.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, Chief, District Operations—A, 980 9th Street—Suite 400, Sacramento, California 95814–2724, Telephone (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the San Luis Obispo Council of Governments will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Highway Route 101 from 1.1 miles north of Reservoir Canyon Road to the Cuesta Overhead, a distance of 3.3 miles. Route 101 which climbs on a 7.4 percent grade within the project limits, is a four-lane conventional highway which does not meet current geometric design standards. The facility is currently operating between Level of Service D and E, owing to congestion caused by trucks which move slowly up the grade. Truck lane(s) are needed to ease congestion. Alternatives under consideration are: (1) The "No-Build" alternative, (2) a "Minimum Build" alternative providing for 20 feet of

widening on the eastern side to include a new northbound truck lane and a new outside shoulder, (3) a "Limited Build" alternative providing the new northbound truck lane and outside shoulder through widening on either or both sides of the existing highway; and (4) a "Full Build" alternative increasing the existing roadway cross-section to six lanes, providing both north- and southbound truck lanes and new outside shoulders. No increase in access control is proposed, but local access improvements will be considered under the Limited and Full Build Alternatives. Transit, Transportation Systems Management (TSM) and Travel Demand Management (TDM) improvements are included in all build alternatives. New dedicated bike lanes shall also be provided in the three "build" proposals. Letters describing the proposed action and soliciting comments were sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this proposal. Two public scoping meetings have been held, the first on June 17, 1992, at 6 p.m. at the Veterans Memorial Building (801 Grand Avenue), San Luis Obispo, and the second on June 18, 1992, at 6 p.m. at the Masonic Temple (6351 Olmeda), Atascadero. The Public Participation Program also provides for several community information meetings and a Public Hearing. To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 30, 1993.

John R. Schultz,

Chief, District Operations "A".

[FR Doc. 93–16391 Filed 7–9–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 6, 1993

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1212.

Form Number: IRS Form 706–QDT.

Type of Review: Extension.

Title: U.S. Estate Tax Return for Qualified Domestic Trusts.

Description: Form 706–QDT is used by the trustee or the designated filer to compute and report the Federal estate tax imposed on qualified domestic trusts by Internal Revenue Code (IRC) section 2056A. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents/Recordkeeper: 80.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 1 hour, 12 minutes.

Learning about the law or the form: 42 minutes.

Preparing the form: 1 hour, 34 minutes.

Copying, assembling, and sending the form to the IRS: 1 hour, 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 362 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–16418 Filed 7–9–93; 8:45am]

BILLING CODE 4830–01–P

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 2, 1993.

Sam Sessions,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 93–16369 Filed 7–9–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and
(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 11, 1993.

Dated: June 29, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement in Support of Claim, VA Form 21–4138
2. The form is used by claimants to provide self-certified statements in support of various types of claims processed by VA.
3. Individuals or households
4. 188,000 hours
5. 15 minutes
6. On occasion
7. 752,000 respondents

Extension

1. Notice of Department of Veterans Affairs of Veterans or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193
2. The form is used to gather the necessary information to adjust or discontinue the award of any person in receipt of compensation or pension who has been incarcerated in a penal institution in excess of 60 days.
3. State or local governments
4. 416 hours
5. 15 minutes
6. On occasion
7. 1,664 respondents

Reinstatement

1. Transfer of (Scholastic) Credit (Schools), VA Form Letter 22–315
2. The form letter is used to gather information to determine whether an eligible person who is enrolled in a program of training is entitled to receive educational allowance for a supplemental enrollment pursued at a second training institution.
3. Individuals or households—State or local governments—Businesses or other for-profit—Non-profit institutions—Small businesses or organizations
4. 237 hours
5. 10 minutes
6. On occasion
7. 1,419 respondents

Extension

1. Fuel and Heating Systems Inspection Report (Manufactured Home), VA Form 26–8731c
2. The form serves as an inspection report on fuel and heating systems of used manufactured home units proposed as security for guaranteed loans. The information is used to determine acceptability of the units for VA guaranteed financing.
3. Individuals or households—Businesses or other for-profit—Small businesses or organizations
4. 100 hours
5. 2 hours
6. On occasion
7. 50 respondents

Extension

1. Request for Determination of Reasonable Value (Used Manufactured Home), VA Form 26–8728
2. The form is used to obtain appraisal of used manufactured home units proposed for guaranteed financing. It is also used to request liquidation appraisal of such units.
3. Individual or households—Businesses or other for-profit—Small businesses or organizations
4. 333 hours
5. 10 minutes
6. On occasion
7. 2,000 respondents

Reinstatement

1. Property Management Consolidated Invoice, VA Form 26–8974
2. The form is completed by property management brokers and identifies brokers bills for reimbursement of expenses and payment of fees incurred with the management of VA acquired properties.
3. Businesses or other for-profit—Small businesses or organizations
4. 52,800 hours
5. One hour and 50 minutes
6. On occasion
7. 2,400 respondents

Reinstatement

1. Report of Statement by Attending Physician, VA Form Letter 29–551a
2. The information collected on this form is from the attending physician and is used to determine the insured person's eligibility of disability insurance benefits.
3. Individuals or households
4. 5,069 hours
5. 15 minutes
6. On occasion
7. 20,277 respondents

Extension

1. Claim for Disability Insurance benefits, VA Form 29–357
2. This form is used by the policyholder to claim disability insurance benefits on NSLI (National Service Life Insurance) and USGLI (United States Government Life Insurance) policies. The information collected is used by VA to determine the insured person's eligibility for disability insurance benefits.
3. Individuals or households
4. 10,125 hours
5. One hour and 15 minutes
6. On occasion
7. 8,100 respondents

[FR Doc. 93–16360 Filed 7–9–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

VOL
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DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 11, 1993.

Dated: June 29, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Verification of Eligibility for Burial in a National Cemetery, VA Form 40–4962
2. The form is used to process requests for burial in national cemeteries. Data collection also provides a means whereby other required forms can be completed which initiates headstone orders, schedules, interments, etc.
3. Individuals or households
4. 10,767 hours
5. 10 minutes
6. On occasion
7. 64,602 respondents.

[FR Doc. 93–16361 Filed 7–9–93; 8:45 am]

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Hydroele
CAH–5.
Project No.
Power Co
CAH–6.
Omitted
CAH–7.
Project No.
Municipa
CAH–8.
Project No.
Washingt
Project No.
Washingt
Docket No.
River Pro

Consent Agen

CAE–1.

Sunshine Act Meetings

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: July 14, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 983rd Meeting—July 14, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 4669–029, Rancho Riata Hydro Partners, Inc.
CAH–2.
Project No. 1858–004, Beaver City Corporation
CAH–3.
Project No. 10468–009, Marsh Valley Hydroelectric Company
CAH–4.
Project No. 3623–090, Youghiogheny Hydroelectric Authority
CAH–5.
Project No. 6329–004, Intermountain Power Corporation
CAH–6.
Omitted
CAH–7.
Project No. 3451–039, Beaver Falls Municipal Authority
CAH–8.
Project No. 1862–011, City of Tacoma, Washington
Project No. 10703–002, City of Centralia, Washington
Docket No. E–6454–010, The Nisqually River Proceeding

Consent Agenda—Electric

CAE–1.
Docket No. ER93–557–000, Lakewood Cogeneration, L.P.
CAE–2.
Docket No. ER93–471–001, Cleveland Electric Illuminating Company
CAE–3.
Docket No. ER93–3–002, United Illuminating Company
CAE–4.
Docket No. ER92–436–004 and EL92–29–003, Florida Power Corporation
CAE–5.
Docket No. ER92–517–004, Southern Company Services, Inc.
CAE–6.
Docket Nos. ER93–491–001 and ER93–513–002, Idaho Power Company
CAE–7.
Docket No. ER93–254–001, Consolidated Edison Company of New York, Inc.
CAE–8.
Docket No. ER93–222–001, Northeast Utilities Service Company
CAE–9.
Docket No. ER91–195–010, Western Systems Power Pool
CAE–10.
Docket No. ER92–343–002, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–11.
Docket No. ER93–295–001, Kentucky Power Company and Ohio Power Company
CAE–12.
Docket No. EL93–21–001, Vermont Yankee Nuclear Power Corporation
Docket No. EL93–32–001, Maine Yankee Atomic Power Company
Docket No. EL93–25–001, Town of Norwood, Massachusetts v. Vermont Yankee Nuclear Power Corporation and Maine Yankee Atomic Power Company
CAE–13.
Docket Nos. EG93–44–000 and EG93–53–000, Dominion Management Argentina S.A.
CAE–14.
Docket No. QF86–398–002, Pomona Cogeneration Limited Partnership
CAE–15.
Docket Nos. EL91–56–002, 003, ER92–774–002 and 003, Maine Public Service Company
CAE–16.
Docket No. ER85–477–013, Southwestern Public Service Company
CAE–17.
Docket No. ER93–401–000, Montaup Electric Company
CAE–18.
Omitted
CAE–19.
Docket No. ER81–177–008, Southern California Edison Company
CAE–20.
Docket No. EL92–38–000, Villages of Andover, Bergen, Boonville, Fairport, Freeport, Greenport, Jamestown, Lake Placid, Massena, Penn Yan, Rockville Centre, Solvay, and Westfield, New York v. Power Authority of the State of New York
CAE–21.
Docket No. RM93–20–000, Electronic Filing of FERC No. 1 and Delegation to Chief Accountant
CAE–22.
Docket No. RM93–22–000, Notice Provisions for Applications for Transmission Services Under Section 211 of the Federal Power Act
CAE–23.
Docket No. ER93–219–001, Western Massachusetts Electric Company

Consent Agenda—Oil and Gas

CAG–1.
Docket Nos. TM93–6–49–000, 001 and RP90–137–008, Williston Basin Interstate Pipeline Company
CAG–2.
Docket Nos. TQ93–6–22–000 and TM93–5–22–000, CNG Transmission Corporation
CAG–3.
Docket No. RP93–143–000, Carnegie Natural Gas Company
CAG–4.
Docket No. RP93–138–000, Granite State Gas Transmission, Inc.
CAG–5.
Docket No. RP93–111–001, Natural Gas Pipeline Company of America
CAG–6.
Docket No. CP91–2322–005, Paiute Pipeline Company
CAG–7.
Docket Nos. RP91–143–024 and RP92–159–003, Great Lakes Gas Transmission Limited Partnership
CAG–8.
Docket Nos. CP91–1186–002, CP91–2458–003 and RP91–143–011, Great Lakes Gas Transmission Limited Partnership
CAG–9.
Omitted
CAG–10.
Docket Nos. RP92–163–003, RP92–170–003 and RP92–236–001, Williston Basin Interstate Pipeline Company
CAG–11.
Docket No. RM87–34–067, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (In Re: Tennessee Gas Pipeline Company)
Docket Nos. TA91–1–21–003 and TM91–8–21–003, Columbia Gas Transmission Corporation
Docket No. RM85–1–184, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket No. CP87–115–004, Tennessee Gas Pipeline Company
CAG–12.
Docket No. AC92–22–001, CNG Transmission Corporation
CAG–13.

Docket Nos. TA91-1-17-004 and TM91-1-17-001, Texas Eastern Transmission Corporation

CAG-14.
Docket No. RP93-79-000, Natural Gas Processing Company v. El Paso Natural Gas Company

CAG-15.
Docket No. PR93-2-000, Transok, Inc.

CAG-16.
Docket No. PR92-19-000, Delhi Gas Pipeline Corporation

CAG-17.
Docket No. PR93-1-000, FRM, Inc.

CAG-18.
Docket No. RS92-75-003, Paiute Pipeline Company

CAG-19.
Docket No. CP92-259-002, Sumas International Pipeline, Inc.
Docket Nos. CP92-336-003 and CP92-383-003, Northwest Pipeline Corporation
Docket No. CP92-247-003, Northwest Pipeline Corporation and Washington Water Power Corporation

CAG-20.
Docket No. CP88-760-016, Transcontinental Gas Pipe Line Corporation

CAG-21.
Docket Nos. CP87-75-000 and 007, Tennessee Gas Pipeline Company

CAG-22.
Docket No. CP91-2206-006, Tennessee Gas Pipeline Company

CAG-23.
Docket No. CP92-459-000, Texas Eastern Transmission Corporation
Docket No. CP92-460-000, Trunkline Gas Company

CAG-24.
Docket No. CP93-201-000, Williams Natural Gas Company

CAG-25.
Docket No. CP93-48-000, Columbia Gas Transmission Corporation

CAG-26.
Docket No. CP93-147-000, CNG Transmission Corporation

CAG-27.
Docket No. CP93-266-000, Trunkline Gas Company

CAG-28.
Docket No. CP93-186-000, Blue Ridge Pipeline Company
Docket No. CP93-187-000, Transcontinental Gas Pipe Line Corporation

CAG-29.
Docket No. CP93-334-000, Arkla Energy Resources Company

CAG-30.
Omitted

Hydro Agenda

H-1
Reserved

Electric Agenda

E-1.
Omitted

E-2.
Omitted

E-3
Docket No. PL93-3-000, Policy Statement Regarding Good Faith Requests for Transmission Service and Good Faith Responses by Transmitting Utilities Under Sections 211 and 213 of the Federal Power Act. Policy Statement as to what constitutes good faith for purposes of Title VII, Subtitle B of the Energy Policy Act of 1992.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Reserved

II. Restructuring Matters

RS-1.
Docket Nos. RS92-46-000 and 002, Pacific Gas Transmission Company. Order on Compliance.

RS-2.
Docket No. RS92-24-000, Texas Gas Transmission Corporation. Order on compliance.

RS-3.
Docket No. RS92-79-001, Sea Robin Pipeline Company. Order on Compliance.

RS-4.
Docket Nos. RS92-10-001, RP92-134-004, RP93-15-002 and CP71-273-004, Southern Natural Gas Company. Order on compliance.

RS-5.
Docket Nos. RS92-5-000, RP90-108-000, RP91-82-000, RP91-161-000, RP92-3-000, RP93-66-000 and RP93-115-000, Columbia Gas Transmission Corporation
Docket Nos. RS92-6-000, RP90-107-000, RP91-160-000 and RP92-2-000, Columbia Gulf Transmission Company. Order on compliance.

RS-6.
Docket Nos. RS92-14-002, CP93-39-000, CP93-147-000, CP93-149-000, G-1391-000, RP93-72-000, CP88-197-002, CP88-388-002, CP87-5-002, CP87-312-001, CP87-313-001, CP87-314-001, CP84-306-000, 001, 002, CP80-223-000, 001, 002, CP92-397-000, CP91-554-000, CP92-491-000, CP61-198-000, RP89-124-000, 005, RP91-51-000, 001, 002, 003, RP91-98-000, RP91-125-000, TM91-5-22-000, TM91-6-22-000, 001, TM91-7-22-000, 001, 002, TM91-9-22-000, 001, TM92-1-22-000, RP91-222-000, 001, RP92-7-000, TM92-3-22-000, TM92-4-22-000, TM92-5-22-000, 001, 002, TM92-7-22-000, TM92-10-22-000, RP93-69-000, TM93-3-22-000, TQ93-3-22-000, 001, TQ93-4-22-000, 001, TQ93-2-22-000, TF93-3-22-000, TF93-2-22-000, TF93-1-22-000, 001, TQ93-1-22-000, TA92-1-22-001, TQ92-4-22-000, 001, TQ92-1-22-000, TA91-1-22-000, 001, 002, 003, 004, 005, 006, TQ91-3-22-000, 001, 002, TQ91-4-22-000, TF91-2-22-000, TF91-1-22-000, TQ91-1-22-000, 001 and TQ91-2-22-000, CNG Transmission Corporation. Order on compliance.

RS-7.
Docket Nos. RS92-27-002 and 003, Alabama-Tennessee Natural Gas Company. Order on compliance and rehearing.

RS-8.
Docket No. RS92-93-000, Blue Lake Gas Storage Company. Order on compliance and rehearing.

RS-9.
Docket Nos. RS92-86-003, RP92-108-000 and RP92-137-000, Transcontinental Gas Pipe Line Corporation. Order on proposed joint stipulation and settlement agreement filed by Transcontinental Gas Pipe Line Corporation and CNG Transmission Corporation.

RS-10.
Docket No. RS92-41-001, Midwestern Gas Transmission Company. Order on compliance and rehearing.

RS-11.
Docket No. RS92-52-001, Viking Gas Transmission Company. Order on compliance and rehearing.

RS-12.
Docket Nos. RS92-8-001, 002, RP92-1-015, CP92-71-000, RP91-224-000, RP88-259-053, TA93-1-59-000 and RP93-52-000, Northern Natural Gas Company. Order on compliance.

III. Pipeline Certificate Matters

PC-1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 93-16562 Filed 7-8-93; 2:02 am]

BILLING CODE 6717-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 2 p.m., Thursday, July 15, 1993.

PLACE: Embassy Suites Hotel and Athletic Club, Remington B Room, 1881 Curtis Street, Denver, Colorado 80202, (303) 297-8888.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.
3. Communications—Electronic Bulletin Board.
4. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meetings.
2. Final Rule: Amendments to Sections 701.21, 700.1, and 722.3, NCUA's Rules and Regulations, Regulatory Relief.
3. Final Rule: Amendment to Part 711, NCUA's Rules and Regulations, Management Official Interlocks.
4. Appeal by Columbus (Ohio) Teachers FCU of Regional Director's Denial of Overlap of Field of Membership.
5. Proposed Interpretive Ruling and Policy Statement on Chartering and Field of Membership.
6. Final Rule: Amendments to Section 701.12, NCUA's Rules and Regulations, Supervisory Committee Audits and Verifications.

VOL 58 ISS 131 JL 12 1993 UMI

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–16557 Filed 7–8–93; 12:58 pm]

BILLING CODE 7535–01–M

VOL
58
ISS
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12
1993
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Federal Register

Monday
July 12, 1993

Part II

Consumer Product Safety Commission

16 CFR Parts 1145 and 1210

Risks of Injury Associated With Lighters That Can Be Operated by Children; Safety Standard for Cigarette Lighters; Rules

VOL
58
ISS
131
JL
12
1993
UMI

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Elsewhere in this issue of the Federal Register, the Commission is issuing a safety standard for lighters to reduce risks of injury that are associated with cigarette lighters and similar lighters because such lighters can be operated by young children. In this document, the Commission determines by rule, under section 30(d) of the Consumer Product Safety Act ("CPSA"), that it is in the public interest to issue the safety standard, or to take any other regulatory action to address risks of injury that are associated with lighters due to the fact that they can be operated by children, under the CPSA, rather than under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

DATE: This rule is effective July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504-0980.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Commission determines by rule that it will regulate, under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2084, those risks of death and injury that are associated with lighters intended for igniting smoking materials and that are due to the fact that the lighters can be operated by young children. Such risks will be regulated under the CPSA rather than under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277, or the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471-1476,.

Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product that could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the **Federal Register**, the Commission is issuing a rule under the CPSA that will impose child-resistance requirements on disposable lighters and novelty lighters.

The Commission has considered (1) available information concerning risks of death and injury associated with lighters that can be operated by children and (2) the applicable provisions of the CPSA, the FHSA, and the PPPA. The Commission recognizes that it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than are the authorities of the FHSA or the PPPA.

B. Background

Lighters are flame-producing devices used by consumers primarily to light cigarettes and other smoking materials. More than 600 million lighters are sold each year in the United States. Disposable butane lighters account for over 95 per cent of those sales. These lighters are filled with liquid butane under pressure, which is released from a fuel reservoir in a gaseous state. Approximately five percent of all lighters sold in the United States are refillable, including some models defined in the rule as disposable. Some refillable lighters use petroleum distillate fuel; others use butane. Most lighters, both disposable and refillable, utilize a flint and thumb-activated roller mechanism to ignite the fuel. Others have an electronic ignition mechanism.

In the **Federal Register** of March 3, 1988 (53 FR 6833), the Commission published an advance notice of proposed rulemaking ("ANPR") to begin a proceeding for development of requirements for lighters to address risks of injuries from fires started by children playing with lighters. In the ANPR, the Commission estimated that during the years 1980 through 1985, residential fires started by children playing with lighters claimed an average of 120 lives each year. The Commission estimated that during the same period over 750 persons were injured each year, on average, in residential fires started by children playing with lighters.

The ANPR stated that the rulemaking proceeding which it initiated is authorized by the CPSA, the FHSA, and the PPPA. In the description of regulatory options under consideration by the Commission, the ANPR discussed the possibility of issuing a consumer product safety standard under provisions of the CPSA, a banning rule under provisions of the FHSA, and a rule to establish requirements to make lighters "significantly difficult for children under five years of age" to operate under provisions of the PPPA.

Pursuant to section 30(d) of the CPSA, the Commission proposed in the **Federal Register** of August 17, 1992, to regulate the risks that are associated with lighters because they can be operated by young children under the CPSA. 57 FR 36929. On the same day, the Commission proposed the safety standard for lighters. 57 FR 36932. Oral comments on the proposed safety standard were heard on October 21, 1992. On February 16, 1993, the Commission published a **Federal Register** notice announcing an opportunity to comment in writing on a report on tests of child-resistant lighters. 58 FR 8565. That comment period closed on March 18, 1993.

C. Statutory Authority

1. *The Consumer Product Safety Act.* A lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article that is produced or distributed for sale to consumers for use in or around a household, in recreation, or in other similar places and activities. Sections 7 and 9 of the CPSA, 15 U.S.C. 2056, 2058, authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

Section 14(a) of the CPSA, 15 U.S.C. 2063(a), requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA, 15 U.S.C. 2063(c), requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA, 15 U.S.C. 2063(b), also authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label. In that case, the label shall identify the private labeler and

contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA, 15 U.S.C. 2065(b), authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending before the promulgation of the consumer product safety rule.

2. *The Federal Hazardous Substances Act.* Butane or petroleum distillate fuel contained within a lighter meets the definition of the term "hazardous substance" in section 2(f)1(A) of the FHSA, 15 U.S.C. 1261(f)1(A), because it is "flammable," and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of customary or reasonably foreseeable use. Except for certain lighters containing petroleum distillate fuel that have been exempted at 16 CFR 1500.83(a)(20), lighters which contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA, 15 U.S.C. 1261(p), because they contain a hazardous substance that is intended or packaged in a form suitable for use in the household.

Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance. Section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(1)(B), authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: that is, a rule banning all lighters that do not meet certain performance or design requirements specified in the rule.

3. *The Poison Prevention Packaging Act.* Sections 2, 3, and 5 of the PPPA, 15 U.S.C. 1471, 1472, and 1474, authorize the Commission to issue a rule to require packaging that is "significantly difficult" for children younger than 5 years of age to open or "obtain a toxic or harmful amount" of the substance contained therein for any substance that is a "hazardous substance" as that term is defined in the FHSA. To issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance. As noted above, the fuel contained within a lighter is a "hazardous substance" as that term is defined in the FHSA. A lighter meets the definition of the term "package" set forth in section 2(3) of the PPPA, 15 U.S.C. 1471(3), because it is the "immediate container" in which a hazardous substance is contained for use by individuals in a household.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), provides that, for the purpose of making any substance that is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that (1) the substance is also supplied in child-resistant packaging; and (2) the conventional packaging is labeled with the statement "This package for households without young children."

Discussion. In its proposed rule under section 30(d) of the CPSA, the Commission preliminarily determined that the provisions of the CPSA are most appropriate for development of requirements for lighters to address risks of injury associated with lighters that can be oporated by children. Those risks of injury arise because lighters are mechanical devices intended to produce flame and can be operated by children who do not appreciate all of the consequences of using the product. Those consequences include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the lighter, or other persons.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to the lighter when such requirements are "reasonably necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with lighters.

The CPSA also authorizes the Commission to issue certification rules for products subject to a consumer product safety standard. Such rules may contain a prescribed testing program upon which the certificate of the manufacturer or private labeler is based. The effectiveness of the rule for lighters that is issued elsewhere in this issue of the **Federal Register** depends in large part on the testing conducted by the manufacturer under the certification rule. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is explicit in this regard.

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue stockpiling rules for products subject to a consumer product safety rule. Stockpiling rules prevent the manufacture or importation of excessive numbers of products that do not comply with the rule. The Commission has determined that a stockpiling rule is desirable for the standard for lighters. Such a rule could not be issued under either the FHSA or the PPPA.

The FHSA includes provisions that authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that contains or consists of a "hazardous substance." Provisions of the FHSA authorize the Commission to regulate lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term is defined in the FHSA. No provision of the FHSA authorizes the Commission to address any hazard which is associated with the mechanical operation of a lighter as a flame-producing device.

The PPPA authorizes the Commission to regulate a lighter as a "package" containing a "hazardous substance" — the lighter fuel. Under the PPPA, the Commission may issue a rule requiring the "package" — that is, the lighter — to be "significantly difficult" for children younger than 5 years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the lighter or "obtain a toxic or harmful amount" of the fuel contained within the lighter is not the risk of injury associated with lighters under

VOL 58 ISS 131 JL 12 1993 UMI

consideration by the Commission. Rather, it is the risk of death and injury from fires started by children with lighters. This risk arises from the mechanical operation of the lighter, and the ability of young children to manipulate the lighter to produce a flame. Additionally, the PPPA allows the manufacturer of a substance subject to requirements for special packaging to package that substance in conventional packaging that is not child-resistant if (1) the substance is also distributed in child-resistant packages and (2) the packages that are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant lighters of the types covered by the rule, could significantly impair the effectiveness of the rule to reduce the risk of injury.

No comments on the proposed rule under section 30(d) of the CPSA opposed regulating this risk under the CPSA. Therefore, for the reasons given above, the Commission is issuing a final rule determining that it is in the public interest to regulate under the CPSA any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children. This finding will be codified at 16 CFR 1145.16.

The Commission finds that it is in the public interest to issue the safety standard for lighters as soon as possible. Because this cannot be done until this rule under section 30(d) is issued, the Commission finds good cause for having the rule issued below become effective immediately. 5 U.S.C. 553(d)(3). (There is a 1-year delayed effective date for the safety standard itself.)

D. Impact on Small Businesses

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. A final regulatory analysis is required when a final rule is issued. 5 U.S.C. 604. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulation issued below does not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce risks of injury associated with lighters that can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA. In issuing the safety standard for lighters, the Commission has followed all applicable provisions of the CPSA. The provisions of the RFA also apply to the safety standard, and the Commission has prepared initial and final regulatory flexibility analyses for that rule.

Because the final rule under section 30(d) of the CPSA, published below, imposes no obligation on any person or firm, the Commission hereby certifies that the rule will not have a significant economic impact on a substantial number of small businesses.

E. Environmental Considerations

The rule issued below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment, and the Commission has no information that would indicate otherwise. Therefore, neither an environmental assessment nor an environmental impact statement is required.

F. Conclusion

After consideration of the information discussed above, the Commission finds that if regulatory action is needed to address risks of injury associated with lighters due to the fact that they can be operated by children, it is in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This determination does not affect other hazards associated with lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel that is flammable or toxic or generates pressure.

Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA. However, a lighter is more than a container or a package of a hazardous substance. It is a device that incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame.

The Commission determines that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device due to the fact that it can be operated by children to produce flame. The Commission also determines that it is in the public interest to regulate this risk associated with lighters under the CPSA because it is desirable to issue certification and stockpiling rules in connection with the requirements applicable to the performance of lighters; such rules are most appropriate, or only available, under the CPSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons given above, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for Part 1145 continues to read as follows:

Authority: Sec. 30(d), Pub. L. 92-573, 86 Stat. 1231, as amended 90 Stat. 510; 15 U.S.C. 2079(d).

2. A new § 1145.16 is added to read as follows:

§ 1145.16 Lighters that are intended for igniting smoking materials and that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children, rather than regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with lighters that are intended for igniting smoking materials, where such risks exist because the lighters can be operated by young children, shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks associated with such lighters, and that are based solely on the fact that the lighters contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: June 24, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–15434 Filed 7–9–93; 8:45 am]

BILLING CODE 6355–01–F

CONSUMER PRODUCT SAFETY COMMISION

16 CFR Part 1210

Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Under the Consumer Product Safety Act, the Commission issues a safety standard that requires disposable and novelty lighters, as those terms are defined in the standard, to meet specified requirements for child resistance. The requirements are intended to reduce the risk of the injuries and deaths that occur from fires started by children under the age of 5 playing with cigarette lighters. The standard also includes labeling, testing, recordkeeping, reporting, and stockpiling requirements for manufacturers and importers.

DATES: The standard applies to all disposable and novelty lighters manufactured in the United States or imported on or after July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0400.

SUPPLEMENTARY INFORMATION:

I. Background

Introduction. The Commission voted 3-0 to issue this rule to require disposable and novelty lighters, as defined in the rule, to meet specified child-resistance requirements. Chairman Jacqueline Jones-Smith, Commissioner Carol Dawson, and Commissioner Mary Gall each issued a separate statement concerning this decision; copies of these statements are available from the Office of the Secretary.

The product: lighters. There are two common types of fuel and three basic operating methods among the various models of lighters available to consumers. In the most widely used operating method, a flint and spark wheel ignite a jet of butane gas (or, rarely, a propane gas mixture) released by a thumb-operated valve-and-lever assembly; this "roll and press" method has been predominant among disposable pocket lighters since their general introduction in the early 1960's. In a past variation of this method, a push-button mechanism was used to roll the wheel and release the gas with a single motion; this variant is commonly known as a "ratchet" lighter.

A second, more recently introduced operating method uses a push-button-activated piezoelectric ignition module to ignite the (typically butane) gas without mechanical spark generation. A past variation of this method used a touch-sensitive light beam circuit for activation.

In these first two methods, the flame is extinguished when the lever or push button is released and the flow of gas is interrupted.

In a third operating method, a flint and spark wheel ignites liquid fuel (typically naphtha) drawn through a wick; these may be operated by rolling the spark wheel or, less commonly, by means of a mechanical push button. Liquid-fuel lighters may have a cap or other means of shutting off the fuel or oxygen supply.

Petition and ANPR. In April 1985, Ms. Diane Denton, a nurse at Kosair Children's Hospital in Louisville, Kentucky, petitioned the Commission (Petition No. 85-2) to require that disposable butane lighters be child resistant. Information available to the Commission at the time it received the petition indicated that residential fires started by children playing with cigarette lighters claimed an estimated 140 lives each year. Information available in 1985 indicated that children younger than 5 years old were the principal victims of fires set by child play, accounting for 125 of the 140 deaths, but the information did not establish whether children younger than 5 were also the principal operators of the lighters involved in the fires. Additionally, the types of cigarette lighters involved could not be identified. Information about the patterns of how children used lighters that could indicate how the products might be changed to make them child resistant was also not available.

During 1986 and 1987, a field study was conducted by the Commission with the help of fire departments around the United States. Two hundred seventy-seven fires involving identified lighters and child play were investigated. Ninety-six percent of the lighters involved in the incidents were disposable butane models.

Most of the children who operated the lighters in the child-play incidents were less than 5 years old, primarily ages 3 and 4. The most common method of operation by children was with two hands, using one hand to steady the lighter and the thumb or index finger of the other hand to roll the wheel and press the fuel lever.

In 1987, the Commission contracted with COMSIS Corporation to develop strategies for improving the child resistance of cigarette lighters and to develop a draft test protocol for evaluating child resistance. The test protocol recommended by COMSIS was based on the testing procedure for child-resistant packaging in the Poison Prevention Packaging Act Regulations at 16 CFR 1700.20. The protocol included a test using panels of children to determine the child resistance of cigarette lighters and a test using panels of adults to determine the ease of operation of the lighters by adults. A report, "Recommendations for Evaluation of Cigarette Lighter Child-Resistance," was provided by COMSIS in June 1988.

When testing whether children can operate a cigarette lighter, a "surrogate" lighter without fuel that does not produce a flame, but that produces an audible or visible signal when operated in a manner that would produce a flame in an ordinary lighter, must be used to ensure the safety of the children. One type of surrogate lighter was developed by the Commission's Engineering Sciences Laboratory for use in a pilot test. This surrogate lighter consists of a small radio transmitter, which is located inside the lighter body, and a separate receiver that is capable of receiving the transmitted signal up to 30 feet from the lighter. When the signal is received, a buzzer sounds and a small light shines. ("Development of the Surrogate Lighter", R. Reichel and W. Stratton, May 1988.)

On December 31, 1987, the Commission voted to grant the petition. At the same time, the Commission voted to publish an advance notice of proposed rulemaking ("ANPR") for child-resistant cigarette lighters and to expand the project to consider whether all lighters should be covered, rather than just disposable lighters. The ANPR was published in the **Federal Register** on March 3, 1988. 53 FR 6833. The ANPR stated that the Commission was considering a number of alternatives that would prevent or reduce the deaths and injuries caused by children playing with cigarette lighters. The ANPR also stated that the Commission would consider establishing performance requirements for cigarette lighters, either under sections 7 and 9 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2056, 2058, section 2(q)(1)(B) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1)(B), or sections 3 and 5 of the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1472, 1474. The Commission also said it would consider the possibility that the voluntary standard for cigarette lighters, ASTM F400-85, could be revised to include performance

VOL 58 ISS 131 JL 12 1993 UMI

requirements to make cigarette lighters resistant to operation by children or to require that lighters be marked with additional or revised warnings to keep these products out of the hands of children. Finally, the Commission stated that it would consider requirements for labeling cigarette lighters to warn adults to keep these products out of the hands of children.

The Commission received submissions from 13 commenters in response to the ANPR that was published in March 1988. In addition, some late submissions were received that were considered in the same manner as comments on the ANPR. The commenters raised the following major issues:

1. The need for a mandatory standard,
2. The relative risk of matches vs. lighters,
3. Alternative solutions to the problem,
4. The scope of the standard, and
5. Human factors issues.

The Commission's views on the major issues presented by the comments on the ANPR were explained in the preamble to the proposed rule. 57 FR 36932, 36936. A number of the same issues were also raised in the comments on the proposed rule, discussed below in Section VI of this notice.

Background of proposed rule. In September 1988, the Commission contracted with Perritt Laboratories, Inc., to conduct a pilot test of the draft protocol. The pilot test results indicated that the child and adult protocols recommended by COMSIS were suitable procedures for evaluating child-resistant lighters. ("Results of the Pilot Test of the Adult and Child Protocols for Testing Child-Resistant Cigarette Lighters". B.J. Jacobson, September 1, 1989.)

Subsequent to the pilot test, the staff stopped working on an adult test protocol. The Commission concludes that a mandatory performance test is not needed to assure that adults are able to operate child-resistant lighters. The Commission believes that the lighter manufacturers themselves will adequately ensure ease of use by adults so that their products will not be at a competitive disadvantage.

Baseline testing was conducted in 1989 and 1990 to determine the extent to which currently-marketed lighters can be operated by children and to support the establishment of an appropriate acceptance criterion for child-resistant lighters. The surrogate lighters used for the baseline testing were designed and provided by lighter manufacturers who serve on ASTM Task Group F15.02, Safety Standards for Lighters. Data were collected using two brands of roll-and-press lighters and two brands of push-button lighters. The proportion of children unable to operate currently available, non-child-resistant lighters was 55 percent for the roll and press lighters and 16 percent for the push-button lighters. When these results are weighted to reflect product usage, they indicate that the child resistance of "non-child-resistant" lighters is approximately 50 percent.

In January 1988, following the Commission's decision to grant petition PP 85-2, the Commission's staff wrote to ASTM's Task Group F15.02, Safety Standards for Lighters, requesting that they revise the current lighter standard to prohibit the design and marketing of lighters that are not child resistant. (Letter to Mr. Edward Lewiecki from Nicholas V. Marchica, January 22, 1988.)

In June of 1988, the ASTM Task Group formed a Technical Subcommittee to develop a voluntary requirement for child-resistant lighters. The first action by the Technical Subcommittee was a review of the protocol proposed by COMSIS. The protocol was reviewed at a meeting in July 1988, and a summary of the discussion and suggested changes were provided to the Commission's staff. (Edward M. Lewiecki memorandum to members of F15.02 Technical Subcommittee, July 30, 1988.)

The Technical Subcommittee began drafting a voluntary standard in September 1989, using the Commission's protocol as a base. Throughout the development of the test protocol, the staff worked closely with the Technical Subcommittee. The ASTM Task Group initially included an adult test protocol as an Appendix for advisory purposes. An adult test is not a requirement of the draft ASTM standard.

In July 1990, the Lighter Association Inc. requested that the Commission adopt the draft ASTM voluntary standard for child-resistant cigarette lighters as a mandatory consumer product safety standard under section 9 of the Consumer Product Safety Act. [86][1] The Association endorses a mandatory standard because this would assure that all lighter manufacturers and importers will comply and because a mandatory federal standard would preempt state-by-state regulations addressing this risk. The Association represents manufacturers, importers, and distributors of the majority of cigarette lighters sold in this country.

In March 1991, the members of ASTM Task Group F15.02 voted to suspend work on the voluntary standard and support the Commission's work on a mandatory standard. [124]

The Commission undertook tests to verify that the test results from the protocol are reproducible when the tests are conducted by different laboratories. (See CPSC staff report "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data," April 1992.) The CPSC's staff requested the cooperation of members of the ASTM Task Group F15.02 during their March 1990 meeting. One major lighter manufacturer and the Department of Consumer and Corporate Affairs of Canada offered to participate. The manufacturer completed a 50-child test and provided a report to the staff in July 1990. The results of those tests are consistent with the baseline testing conducted by the Commission. The initial testing in Canada was conducted in Montreal and Toronto; this testing was completed in December 1990. A preliminary analysis of the results of the Canadian testing indicated that the results of the tests in Montreal were consistent with the other results from the baseline testing and the tests by the manufacturer mentioned above. The tests from Toronto, however, showed that fewer of the children tested there were able to operate the surrogate lighters than would be expected from the previous test results and from the results of the Montreal tests.

A CPSC staff member went to observe some of the later testing in Toronto, and concluded that the testers there were not following the test protocol in the way that had been done for the baseline testing. In addition, the surrogate function of two lighters performed unreliably during this testing, and the lighters were returned to the manufacturer for repair. Because of these problems, the CPSC's staff concluded that the Toronto data should not be considered as part of the verification testing.

Because of the unexpected results from Toronto, the Canadian Government agreed to conduct additional tests there, using another contractor. Largely because of the need to determine that the test protocol for determining the child-resistance of cigarette lighters was repeatable and reproducible, the Commission voted in May 1991 to postpone a decision on whether to publish a proposed mandatory standard for child-resistant cigarette lighters until after receipt of the Toronto retest

[1] Numbers in brackets refer to the number of a document in the List of Relevant Documents at the end of this notice.

results. The staff received the final test data on March 2, 1992.

The results for this second round of testing in Toronto were consistent with the data from other test locations when two activations of the surrogate lighter are used as the criterion for whether a child has successfully operated the lighter (p=.097). (The symbol "p" represents the chi-square probability in a maximum likelihood analysis of variance. A factor, such as location, has a significant effect on the rate of success if p is 0.05 or less.) When one activation of the lighter is used as the criterion, the variation, while only slightly greater, became statistically significant (p=.043).

These borderline results around p=.05 for one and two lighter activations led the staff to investigate the effect of tester variability on the successful operation of lighters by children. The staff found that the results of the Toronto retest were affected by one tester (out of six) who was especially adept at obtaining the children's cooperation. That tester, who conducted 30 percent of the tests, had an excessive effect on the success rate. If that tester is weighted as having conducted one-sixth (17 percent) of the Toronto tests, the results in Toronto would have been consistent with the data from other sites for either definition of success (p=0.34 and p=0.12). As a result of the analysis of the verification testing data, changes were made in the proposed testing protocol so that future test results would be consistent. The changes include requiring panels of 100 children instead of panels of 50 children and requiring the testers to test approximately equal numbers of children (20 +or- 2 children each for 5 testers and 17 +or- 2 children each for 6 testers).

The verification tests show that the age and sex of the child being tested are significant factors affecting the likelihood of success, but that whether the child comes from a home with a smoker who uses a cigarette lighter is not a significant factor affecting the results. Therefore, the previous requirement in the draft test protocol that a minimum number of children be from homes with smokers who use cigarette lighters was deleted in the proposed rule.

Proposed rule. After the results of the Toronto retest had been analyzed and appropriate adjustments made to the draft test procedure, the Commission proposed a safety standard for lighters. 57 FR 36932 (August 17, 1992). The comments received on the proposal and the Commission's responses to those comments are discussed in Section VI of this notice.

The proposal discussed the general results of some tests of child-resistant lighters that had been performed prior to that time, but no formal report of such tests was then available. When the report was prepared, the Commission published a notice in the **Federal Register** of February 16, 1993, announcing the availability of the report and providing an opportunity for written comment on the report until March 18, 1993. 58 FR 8565. No additional comments were received.

II. Summary and Discussion of the Final Rule

A summary of the rule being issued and its statutory authorities is given below. Where there are differences between the final rule and the proposed rule, these are noted in the summary or discussed in the Commission's responses to comments received on the proposal. See Section VI of this notice.

A. Requirements for Lighters

1. Statutory Authority

In the ANPR of March 3, 1988, the Commission cited provisions of the CPSA, the FHSA, and the PPPA as authority for this rulemaking proceeding. Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. At the time of publication of the proposed safety standard, the Commission published a rule under the provisions of section 30(d) to express the Commission's finding that if regulatory action is needed to address the risk of injury associated with cigarette lighters that can be operated by children, it would be in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. Elsewhere in this issue of the **Federal Register**, the Commission is publishing its final rule under section 30(d) of the CPSA finding that it is in the public interest to regulate risks of injury associated with lighters, that can be operated by children, under the CPSA.

A cigarette lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article that is produced or distributed for sale to consumers for use in or around a household, in recreation, and in similar places and activities. Sections 7 and 9 of the CPSA, 15 U.S.C. 2056, 2058, authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

2. Estimates of Benefits

The standard issued below will increase the minimum allowable child resistance of lighters to 85 percent. This constitutes at least a 70 percent improvement over the preexisting degree of child resistance (the new 85 percent minimum minus the existing 50 percent equals 35 percent additional child resistance, which when divided by the original 50 percent child resistance gives a 70 percent improvement).

Because large numbers of child-resistant lighters have not been on the market (and for other reasons discussed below), the presently-available fire-incident data do not establish how closely the results of the child testing correlate to the prevention of fires in the home. The Commission concludes, however, that the results of the child-panel tests provide a reasonable approximation of the ability of children to operate lighters in the home, which in turn should be directly reflected in the incidence of fires started by children with lighters.

The Commission reaches this conclusion for the following reasons. First, there has been no suggestion of another test that would both (1) more accurately reflect the likelihood that children will start house fires with lighters and (2) result in a lower estimate of benefits for a standard using that test.

Second, because large numbers of child-resistant lighters have not been on the market for a long period of time, fire-incident data cannot be analyzed to provide an empirical corroboration of the correlation between child-test results and child-play house fires. It is not feasible for the Commission to conduct a test to demonstrate this correlation. Such a test would require that the Commission (1) distribute a huge number of child-resistant lighters to a representative sample of lighter users, (2) somehow ensure that the users used the child-resistant lighters in the same way they would if all disposable and novelty lighters were required to be child resistant, and (3) obtain information on the rate of fires started by children playing with the child-resistant lighters.

In addition, the accuracy of the estimate of benefits need not be great in

VOL
58
ISS
131
JL
12
1993
UMI

order to support the rule. Even if the benefits of the standard are only half what the child test results indicate, the benefits would have the prerequisite reasonable relationship to the costs. See Section IV of this notice, below.

Furthermore, the Commission's experience with a similar type of test for child resistance under the Poison Prevention Packaging Act of 1970 has shown reductions in the ingestion rate of a magnitude sufficient to justify this rule. For example, PPPA regulations requiring child-resistant packaging for aspirin and oral prescription drugs became effective in 1972 and 1974, respectively. A Commission staff analysis of these requirements found that CR packaging reduced the aspirin-related child death rate by about 0.6-0.9 deaths per million children under age 5, and reduced the oral prescription drug-related death rate by about 1.2-1.3 deaths per million children under age 5. ("The Safety Effects of Child-Resistant Closures," CPSC Directorate for Economic Analysis, G. Rodgers, May 1992.)

The number of deaths of children under age 5 due to all household chemicals has declined 81 percent since 1972. (1992 National Poison Prevention Week Editor's Fact Sheet, Q. No. 12.) The number of deaths of children under age 5 from ingestion of aspirin products has declined 93 percent over the same period. *Id.* Although not all of these declines may be due to child-resistant packaging, it seems likely that much of the decline is due to such packaging.

The child-resistance requirements being issued for lighters in this notice may be even more effective than child-resistant packaging, because prescription products can be ordered in non-child-resistant packaging and manufacturers of nonprescription products subject to PPPA requirements can package one size of the product in non-child-resistant packaging pursuant to 15 U.S.C. 1473. In contrast, there are no exceptions from child resistance provided for the disposable and novelty lighters subject to the rule issued in this notice.

Furthermore, users often render child-resistant packaging ineffective by leaving the cap off or loose, in order to make it easier to obtain the substance in the package. In the case of cigarette lighters, however, the rule requires the child-resistant feature to reset after every operation of the lighter. Therefore, the child-resistance requirements for lighters may be even more effective than the similar requirements for child-resistant packaging for this reason also.

For the reasons discussed above, the Commission concludes that the results of the child tests will provide a reasonable approximation of the extent to which a lighter will be used by children to start house fires and demonstrate that the benefits to be obtained by the rule will have a reasonable relationship to the costs imposed by the rule.

3. Summary of Provisions

The standard applies to "disposable" lighters and "novelty" lighters. The standard defines disposable lighters as those that either (1) are nonrefillable with fuel or (2) use butane or similar fuels and have a Customs Valuation or ex-factory price under $2. Novelty lighters are defined as those that have entertaining audio or visual effects, or that depict (by logos, decals, art work, etc.) or resemble in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food, or beverages, or that play musical notes or have flashing lights or other entertaining features.

The rule provides that lighters shall be capable of resisting operation by at least 85 percent of children in a specified test. The test involves giving the children 5 minutes to attempt to successfully operate the lighter. If they do not successfully operate the lighter within that time, they are given two visual demonstrations of the operation of the lighter, followed by another 5-minute period during which they are to attempt to operate the lighter.

If more than 15 percent of the children successfully operate the lighter, it fails the acceptance criterion. This percentage is applied to 200 children, but it may not be necessary to test that many. The test provides that panels of 100 children shall be tested sequentially. As explained below, depending on the results with the first panel, it may be possible to demonstrate statistically with the results from one panel that 85 percent of the 200 children would be unable to operate the lighter. The children must live in the United States, and the test must be conducted in the United States. (In the proposal, it would have been possible to use children from another country if tests of one child-resistant lighter design in the United States and in the other country gave results that are not significantly different at p=.05.)

The pass/fail criteria for the first test panel were designed so that, if the probability of operating the lighter is 10 percent or less, the lighter will be accepted as child-resistant 95 percent of the time. If the probability of operating the lighter is greater than 20 percent, the cigarette lighter will be rejected 95 percent of the time. If the lighter is not accepted or rejected under these probabilities for the first panel, the second panel is tested. Accordingly, in the first test panel of 100 children, the lighter passes if 10 or fewer children operate it, the lighter fails if 19 or more children operate it, and testing continues if 11 to 18 children operate it.

Table 1 gives the pass, continue to test, and fail criteria for sequential testing.

Table 1.—Sequential Testing Criteria

Test panel	Cumulative Number of Children	Successful Lighter Operations		
		Pass	Continue	Fail
1	100	0-10	11-18	19 or more
1	200	11-30	—	31 or more

Thus, the child test protocol specifies the use of 100 children initially, and, depending on the results, it would be determined that the lighter is either child resistant or not child resistant or that further testing, with a total of 200 children, is needed.

The protocol also divides the children on each child-test panel into 3 age groups, 42-44, 45-48, and 49-51 months old, with approximately 30, 40, and 30 percent of the children in each age group, respectively. Each age group consists of approximately two-thirds boys and one-third girls.

Because using an operable lighter in these tests could expose children to a

risk of injury from fire, the child tests use "surrogate lighters," which are lighters that are without fuel and that produce an audible signal or visible signal when operated in each manner that would create a flame in the lighters that they represent. (The Commission recommends that if a visual signal is used, it be located away from the lighter. If the visible signal is not away from the lighter, when the visible signal is demonstrated to the children, as required at the beginning of the test, the lighter's operation may also be demonstrated. Although a visible signal that is not remote from the lighter is permissible, it could increase the number of children who can operate the lighter in the test, because the children in effect will get an additional demonstration of the lighter's operation at the beginning of the first 5-minute test period.) A successful operation in the test is defined as one operation of the surrogate signal, of any time duration, during the 10-minute test. Because of the variability in the success rates related to different testers in the verification test data, the test procedures include considerable detail on how to interact with the children.

Surrogate lighters must approximate the appearance, size, shape, and weight of the lighter intended for use and must be identical in all other factors that affect child resistance (including operation and the forces(s) required to operate the lighter) as the lighter intended for use.

The child-resistant features of the lighter must reset automatically after each operation of the ignition mechanism and be effective for the reasonably expected life of the lighter.

B. Certification, Recordkeeping, and Reporting Requirements

1. Statutory Authority

Section 14(a) of the CPSA, 15 U.S.C. 2063(a), requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. The statute specifies that such certificates shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Section 14(c) of the CPSA requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label, in which case the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA, 15 U.S.C. 2065(b), authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

In addition to the authority in section 14 of the CPSA, the Commission has used the authority of sections 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2065(b), 2066(g), and 2076(e). Section 16(b) gives the Commission the authority to require manufacturers, importers, and private labelers to establish and maintain such records, make such reports, and provide such information as may be necessary to determine compliance with rules prescribed under the CPSA. Section 17(g) allows the Commission to condition the importation of a product on the manufacturer's (including importer's) compliance with the recordkeeping requirements and with the Commission's reporting rules relating to such requirements. Section 27(e) authorizes the Commission to require manufacturers to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the CPSA, which are specified at section 2(b) of the CPSA, 15 U.S.C. 2051(b). For the provisions under section 27(e), the Commission finds that the required information is performance and technical data and that its provision is required to protect the public against unreasonable risks of injury.

The recordkeeping and reporting requirements will allow the Commission's staff to ensure that lighters comply with the standard and will provide the Commission with important performance and technical data about product designs on the market.

2. Summary of Provisions

The cigarette lighter standard requires that cigarette lighters resist operation by children. The standard requires that surrogates of lighters subject to the standard be tested by children in order to determine that the surrogates meet the child-resistance requirement. 16 CFR 1210.5. For these tests to be meaningful, the surrogates must be identical, in all characteristics that affect child resistance, to the lighters that are produced for sale. It is, therefore, particularly important that manufacturers test surrogates, establish specifications, and maintain quality assurance programs to ensure that production lighters are identical in all crucial respects to the surrogates, within reasonable manufacturing tolerances.

The certification requirements include general requirements for certification, testing, recordkeeping, and reporting that are designed to ensure that manufacturers or importers (1) conduct tests with surrogate lighters, (2) develop reasonable specifications and manufacturing tolerances to ensure that production lighters are sufficiently identical to the surrogates, and (3) maintain those specifications and tolerances during production of their lighters. The Commission believes that these requirements reflect good engineering and manufacturing practice. Because the rule requires the manufacturer or importer of a cigarette lighter to issue the certificate of compliance, private labelers are exempted, pursuant to section 14(b) of the CPSA, from the requirement to issue a certificate. Private labelers must, however, ensure that any certificate that is provided with the product by the manufacturer or importer is provided to any distributor or retailer that receives the product directly from the private labeler.

The certification requirements will not only ensure that distributors and retailers will be aware that cigarette lighters comply with the standard but will also provide a mechanism for efficient monitoring and prompt enforcement of the requirements by the Commission. The provisions of the individual sections containing certification requirements are summarized below:

Section 1210.12 — *Certificate of Compliance.* This provision restates the requirement in section 14(a) of the CPSA that a certificate of compliance must accompany the product or be furnished to any distributor or retailer to whom the product is delivered by a manufacturer, importer, or private labeler. The provision also establishes labeling requirements and refers to the reporting and recordkeeping requirements described below. This section also summarizes the duties of parties subject to the regulation.

A certificate of compliance is required to accompany each shipping unit (for example, a case) of the product. This certificate is required to contain a statement that the product complies with the safety standard, the name and address of the manufacturer, importer,

VOL
58
ISS
131
JL
12
1993
UMI

or private labeler, the date(s) of manufacture, and, if it is not on the lighter, the address of the place of manufacture. Each lighter is required to bear a label, which may be in code, identifying the manufacturer or private labeler and identifying the time period, not to exceed 31 days, during which the lighter was manufactured.

Section 1210.13, .14 & .16 — *Certification testing.* These provisions establish minimum requirements for the reasonable testing program and require that manufacturers and importers perform qualification testing using surrogate lighters, followed by reasonable production testing. Corrective action or further testing must be undertaken when production testing indicates that lighters in a production interval may not comply with the standard. The Commission believes that this test scheme is consistent with normal manufacturing processes. The qualification testing and production testing required by this paragraph may be performed before the effective date of the standard.

Section 1210.15 — *Specifications.* This provision requires that manufacturers, private labelers, and importers establish specifications for their cigarette lighters to ensure that the production lighters will be as child resistant as the surrogates used in the child-based qualification tests. This will enable the Commission to compare actual production lighters to the firm's specifications to ascertain that the production lighters are identical, within reasonable manufacturing tolerances, to the surrogate lighters in all aspects that affect child resistance. The Commission has found that these provisions are necessary to ensure compliance with the standard, and issues them under the authority of sections 14(b) and 16(b) of the CPSA.

Section 1210.17(a) — *Recordkeeping requirements.* This provision, authorized by sections 16(b) and 27(e) of the CPSA, requires that the manufacturer or importer maintain records in English of its testing and specifications and provide the Commission's staff with access to these records. This will allow the Commission to determine whether the lighters being manufactured are sufficiently identical to the surrogate lighters and whether adequate controls have been placed on the manufacturing process.

Most of the required records and the surrogate lighters that were tested must be kept in the United States and be accessible to the Commission's staff within 48 hours of a request. This is so these records may be reviewed quickly to determine whether lighters comply with the standard, particularly where the lighters are being held by U. S. Customs. However, it may be convenient to maintain records of production testing at the production facility. Because many of the cigarette lighters subject to the standard are manufactured outside the United States, this provision allows these records to be kept outside the United States, so long as they can be provided to the Commission's staff within seven days of a request. The Commission may perform tests with the surrogate lighters in order to determine the accuracy of the records and the child resistance of the lighters.

The records and surrogate lighters are required to be kept for three years after the events to which they relate have ceased. Thus, records of qualification tests and surrogate specifications, and surrogate lighters, must be kept for three years after the production of that model has ceased, and records of production testing must be kept for three years after the date of testing.

Except for production records, records must be kept on paper, microfiche, or similar media that can be directly examined. Production records may be kept on these media or on computer tape or other retrievable media.

Section 1210.17(b) — *Reporting.* This section requires that the manufacturer or importer submit basic information about its product, and a prototype or production unit of the lighter model, at least 30 days prior to the initial importation or distribution in commerce of each model. This will make it easier to identify products that either do not comply with the standard or have not been properly certified. This will particularly assist the Commission and the U. S. Customs Service in recognizing noncomplying imports.

Section 1210.17(c) — *Confidentiality.* The Commission recognizes that some of the recordkeeping and reporting requirements may require firms to provide information to the Commission that the firms view as trade secret or as other confidential commercial information. Under section 6(a)(2) of the CPSA, information in the possession of the Commission that contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905 or subject to 5 U.S.C. 552(b)(4) shall be considered confidential and shall not be disclosed. 15 U.S.C. 2055(a)(2). Under this section, and in accordance with 16 CFR 1015.18-1015.19, persons submitting information for which they desire confidential treatment must request that the information be considered exempt from disclosure. If the Commission's staff nevertheless determines that the information may be disclosed because it is not confidential information, the person submitting the information will be given notice in writing of the staff's intention at least 10 working days before the information is released. This provision gives the submitter an opportunity to seek judicial review of the Commission's determination prior to release of the information. 16 CFR 1015.19; *see also,* 16 CFR part 1101.

C. Anti-Stockpiling Provision

1. Statutory Authority

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending before the promulgation of the consumer product safety rule. The rule includes a stockpiling provision in Subpart C.

2. Summary of Provision

Subpart C of the rule contains anti-stockpiling provisions of the standard that would limit the production or importation of noncomplying lighters between the promulgation of the rule and its effective date to 120 percent of each firm's rate during a base period; this base period could be any 1-year period of a firm's choosing during the 5 years prior to the publication date of the final rule. Noncomplying lighters manufactured in, or imported into, the United States before the promulgation date of the standard could be sold to consumers at any time without being affected by the stockpiling rule.

III. Effective Date

The rule shall become effective July 12, 1994. Lighters subject to the standard and manufactured in, or imported into, the United States on or after the effective date must comply. The 12-month period was selected in order to get child-resistant lighters into consumers' hands as quickly as reasonably possible, while allowing sufficient time for manufacturers and importers of most lighters to design, produce and import safer products. The 12-month period should also minimize any potential disruption that may occur among small importers of lighters subject to the standard. The potential effects on safety and on industry of this

and other effective dates are discussed in Sections IV-VI of this notice.

IV. Statutory Findings and Final Regulatory Analysis

A. Introduction

The rule is published under the authority of the CPSA. Section 9(f)(1) of the CPSA, 15 U.S.C. 2058(f)(1), requires the Commission, when issuing a final rule, to consider and make appropriate findings for inclusion in the rule regarding:

1. The degree and nature of the risk of injury the rule is designed to eliminate or reduce;
2. The approximate number of consumer products, or types or classes thereof, subject to such rule;
3. The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and
4. Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.Because these findings are required to be in the final rule, they are included in § 1210.5 of the rule below.

Section 9(f)(2) of the CPSA, 15 U.S.C. 2058(f)(2), requires that the Commission publish a regulatory analysis containing:

1. A description of the potential benefits and potential costs of the rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;
2. A description of any reasonable alternatives to the rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a rule; and
3. A summary of any significant issues raised by the comments on the proposed rule's preliminary regulatory analysis, and a summary of the Commission's assessment of such issues.

The following additional specific findings are required to be included in a final consumer product safety standard by section 9(f)(3) of the CPSA, 15 U.S.C. 2058(f)(3):

1. That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;
2. That the promulgation of the rule is in the public interest;
3. If the rule relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary safety standard, that either (a) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury or (b) it is unlikely that there will be substantial compliance with such voluntary safety standard;
4. That the benefits of the rule bear a reasonable relationship to its costs; and
5. That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

The following discussion addresses the subjects about which the Commission is required by section 9(f) of the CPSA to make appropriate findings. The findings that are required by the CPSA to be in the final rule are at § 1210.5.

B. Product and Market Information

Consumers purchased more than 600 million lighters in the United States in 1991. About 95 percent of these were nonrefillable disposable pocket cigarette lighters. The number of lighters sold in the United States is expected to increase somewhat during the early 1990's.

All nonrefillable lighters use butane fuel. These lighters are widely available through a variety of mass-merchandise retailers and are inexpensive (from under 50 cents to about $3.00 each).

About five percent of the lighters purchased by consumers in 1991 were refillable. Refillable lighters use butane or liquid fuel. About two percent of all lighters sold were inexpensive ($1.49-$4.00) pocket refillables. About three percent were luxury lighters, which are often distributed through higher-end retailers such as jewelers. Luxury lighters generally retail for above $10 and include pocket and table lighters. Less than one percent of all lighters sold were novelty lighters, which retail for about $5 and up.

There are about 50 lighter importers in the U.S. One firm manufactures disposable lighters in the United States, and another firm manufactures luxury lighters in the United States. In 1989, three firms marketed more than 95 percent of all disposable lighters (90 percent of all lighters) sold in the United States. By the end of 1991, these three firms marketed about 70 percent of all disposable lighters. The decline in their market share is the result of a steady market penetration by recently introduced, very low-priced ($0.35-$0.75 retail), disposable roll-and-press lighters. The estimated 1991 sales are shown in Table 2.

Table 2

Lighter Sales—Projected 1993 Sales*

Type	Units (millions)	Percent of Sales
Disposable		
Nonrefillable (roll & press)	600	88
Nonrefillable (pushbutton)	50	70
Inexpensive refillable**	10	2
Subtotal	660	97
Novelty	1	< 1
Luxury refillables		
Pocket butane**	9	1
Pocket Liquid**	7	1
Table	1	< 1
Subtotal	17	< 3
TOTAL***	678	100

* figures represent point estimates within ranges

** categories each include some pipe lighters, all of which total less than 1 million units and 0.2 percent

*** proportions are rounded within each category

Source: Lighter Association and individual company data and CPSC/Economic Analysis estimates

The popularity of the various lighter types is reflected in the composition of the stock of lighters in consumers' hands. Over one-half billion lighters are estimated to be "consumed" annually in the United States. The vast majority of lighters in use consists of butane-fueled nonrefillables. A CPSC-sponsored national household survey (L. Smith, C. Smith, & D. Ray, "Lighters and Matches: An Assessment of Risks Associated With Household Ownership and Use," CPSC, June 1991) revealed that in 1990:

- 29 million households owned one or more working lighters; average ownership was about 3.5 lighters per household;
- 104 million lighters were in consumers' hands, over 88 percent of which were disposable (72 percent roll and press, and 16 percent pushbutton); all types of pocket refillables accounted for about 10 percent of all owned lighters;
- Although many more households (a total of 60 million) owned matches, and matches in homes outnumbered lighters 10 to 1, lighters were used more than 600 million times per day, compared to about 200 million times per day for matches; and
- Lighting smoking materials accounted for 90 percent of lighter use, and about 60 percent of match use.
- Based on the survey data and on historical sales figures, it is estimated that roughly 3 to 5 percent of all lighters in use are inexpensive "refillable disposables," and that about 5 to 8 percent are "luxury" pocket refillables. Novelty lighters and table lighters

probably account for less than 1 percent each.

There are about 50 manufacturers and importers of lighters in the U.S. In 1989, three firms marketing traditional major brands — Bic Corp., Wilkinson Sword (Cricket/Feudor), and Scripto/Tokai — accounted for over 90 percent of all units, including over 95 percent of all disposables, shipped in the U.S. By the end of 1991, however, these proportions had changed significantly: the traditional "big three" accounted for about 70 percent of unit shipments. Since the late 1980's, there has been a steady market penetration of very low-priced ($0.35-$0.75 retail) disposable butane roll-and-press lighters, principally from Korea, China, Thailand, and the Philippines. Low labor costs in these nations and competition among local component part suppliers reportedly allow per-unit production costs of 10 cents or less for standard-size models. The market share of one importer, Westco, reportedly rivals those of the big three. The estimated market share of low-priced disposables was over 30 percent in 1991. Two firms, Ronson and Zippo, are dominant in the pocket refillables market, though their overall market shares are very low.

All of the major firms are importers. Bic also manufactures disposable butane lighters in the U.S. Zippo is the only known supplier of domestically-manufactured refillable lighters; there are roughly 10 other firms that import only "luxury" refillables. Though production estimates from industry sources vary, most lighters sold in the U.S. are imported. Each of the major firms manufactures or imports other products in addition to lighters; however, lighters constitute a significant portion of their total revenues.

C. Potential Benefits of the Rule

The product safety standard on cigarette lighters will reduce the unreasonable risk of death and injury from fires started by young children playing with lighters. The rule primarily addresses the risk of fire started by children under age 5; for the period 1988-90, these fires caused an annual average of 150 deaths, approximately 1,100 injuries, and nearly $70 million in property damage.

The total cost to the public of these child-play fires is roughly $385 million annually. The rule will substantially lower this cost. The savings to society comprise the benefits of the rule. Although the rule may prevent some fires started by older children, the extent to which this will occur is uncertain; therefore, this potential effect is not included in the estimate of likely benefits of the rule.

The rule will require disposable and novelty lighters to be child resistant. This covers about 98 percent of all lighters sold to consumers each year. Complying lighters will be resistant to operation by at least 85 percent of young children when tested in accordance with the test protocol in the rule. The Commission's test data show that previously-marketed "non-child-resistant" disposable lighters to be resistant to operation by roughly 50 percent of children in tests; thus, the 85 percent acceptance criterion in the rule could eventually reduce child-play fire losses by up to (85-50)/50=70 percent.

Not all child-play fire casualties will be eliminated after the effective date of the rule. Large numbers of non-child-resistant lighters, including some refillables not subject to the rule, will still be in use. Further, consumers may find the child-resistant features of some complying lighters unacceptably inconvenient and switch to matches instead. Although the extent of the influence of these factors is uncertain, both may reduce safety benefits somewhat. A range of adjustments to reflect these factors is therefore incorporated into the benefits estimate. It is assumed non-child-resistant lighters may comprise up to 20 percent of all disposable and novelty lighters in use after the issuance of the rule, and up to 10 percent of lighters subject to the rule may be replaced by matches (the match-substitution factor will reduce benefits by a less-than-proportional amount, since, for this age group, the rate of child-play fire deaths for matches is less than one-third the rate for lighters). The upper limits of the adjustment ranges are generous; the point estimate of annual safety benefits, which reflects the midpoints of the ranges, is therefore somewhat conservative.

Assuming full compliance with the rule and no substantial change in the relative market shares of the various available types of lighters, between 80 and 105 deaths per year may be averted by the issuance of the rule. The total annual value of reductions in deaths (valued for statistical comparison purposes at $2 million each), injuries, and property damage is approximately $205-270 million. Under the best point estimate, using the assumptions above, about 95 deaths will be avoided and total annual savings to the public will be about $230 million.

Manufacturers will probably strive to make lighters more child resistant than required, in order to assure compliance. This may vary with the quality-control practices of individual companies. Thus, the effectiveness of complying lighters at reducing child-play fire losses may be greater than estimated. To the extent this situation exists, the annual safety benefits of the rule could be increased.

The rule will have substantial annual net benefits to the public. As noted in the cost discussion below, the rule may cost consumers approximately $90 million per year. Thus, annual net benefits of $115-180 may accrue. Under the point estimate of about $235 million in safety benefits, expected yearly net benefits of the rule will be $145 million.

D. Potential Costs of the Rule

The rule will require disposable and novelty lighters to be modified from their existing designs to incorporate effective child-resistant features. Significant costs to industry and to consumers will accompany this rule. Industry costs of developing, producing, testing, and certifying complying lighters will be passed on through the chain of distribution to consumers in the form of higher prices. The utility derived from lighters by consumers may be slightly decreased, to the extent child-resistant products are less convenient to operate. Many lighter models, especially novelty lighters, will probably be discontinued. Small importers may be particularly affected, since their foreign suppliers may not be able to ship adequate numbers of complying products by the effective date of the rule. Small firms may also be adversely affected by the certification and anti-stockpiling provisions of the rule.

Effects on industry. Manufacturers will have to modify their disposable and novelty lighter designs to comply with the rule. Self-resetting, child-resistant features will have to be incorporated into all such lighters intended for distribution to consumers in the U.S. Child-resistant lighters currently on the market use a spring-loaded button or lever as part of the child-resistant mechanism.

In order to achieve compliance with the rule, producers will incur costs associated with research and development, product redesign, prototype assembly and testing, unscheduled tooling changes, new component production and assembly procedures, certification, production testing and recordkeeping, and other administrative and legal support. Some firms may lose sales or market share, at least temporarily, if distributors or consumers view complying lighters as too high in price or too inconvenient.

Based on information from manufacturers and importers, initial costs to develop, design, and produce, and test prototypes of, child-resistant lighters may approach $50 million. This cost, incurred over a period of 2-3 years, will be amortized over years of lighter production. Many producers will establish separate production facilities for U.S.-market child-resistant lighters and non-child-resistant lighters intended for other world markets. Some of the major firms marketing disposable lighters are already producing child-resistant models. Other companies are in the development stage. Some smaller firms are just beginning to develop complying designs. In addition, the cost of materials, components, and new assembly procedures may raise total variable costs somewhat. Recurring, production-related variable costs to domestic and foreign manufacturers are estimated to be roughly $20 million annually.

In addition to production-related costs, all manufacturers and importers subject to the rule will incur costs associated with the various certification, testing, and recordkeeping requirements in Subpart B of the rule. Firms will be required to certify compliance based on a reasonable testing program, which the rule specifies will include building surrogate test lighters, conducting child-panel tests of surrogates, conducting tests of production lighters, maintaining records, and reporting information and providing samples to CPSC. The largest component of this cost involves conducting tests with panels of children; such test series cost $5,000-10,000 each. Similar activities may be undertaken by some firms normally as a part of any new model development; however, the rule will require such activities to be performed and recorded. Industry costs associated with these certification activities are estimated to be approximately $2-5 million annually.

The overall, per-unit cost of producing disposable and novelty lighters will increase as a result of the rule. A wide range of manufacturing costs exists for the various kinds of lighters affected; some butane nonrefillables cost less than 10 cents each to produce. Most disposables cost about 15-25 cents each to produce, though some covered refillable models may cost 50 cents or more. Novelties may range in cost from 25 cents on up; the production cost of most models is probably under $2.00. The likely increase in total per-unit manufacturing cost attributable to the rule is roughly estimated at 1-5 cents for disposables, and 5-50 cents for most novelties.

These estimates do not reveal the entire cost to industry, since the value of lost sales of discontinued models is excluded. This potential adverse impact of the rule may be greater on small firms unable to arrive at commercially acceptable complying designs, despite the rule's 12-month effective date. For disposables, this effect will probably be temporary. Many novelties, however, may be discontinued indefinitely. Up to roughly $5-10 million in annual sales could be lost if, for example, half of all novelties were discontinued; the precise extent of this loss is unknown. Many discontinued novelties will still be marketed in other countries. No importer's entire novelty line will be covered by the rule. All known novelty importers also offer disposables, most of which can be made to comply with less difficulty, or other novelty or luxury lighters not subject to the rule. No firms are expected to leave the U.S. lighter market as a result of the rule.

The rule incorporates a cost cutoff in the definition of disposable lighters. Butane lighters that are refillable, are not novelty lighters, and are over $2.00 in Customs Valuation, or ex-factory price in the case of domestically-manufactured units (none presently exists), will not be subject to the rule. It is likely some foreign exporters will raise U.S. importers' prices of lighters with Customs Valuations just under this $2.00 cutoff, in order to avoid compliance with the rule. This will effectively add to the cost of the rule. The degree to which this may occur is uncertain. There are relatively few butane refillables with Customs Valuations in the $1.50-2.00 range (probably about 1-3 million units per year). Importers' prices of some — *e.g.*, those over $1.90 — may be raised, although the additional duty (9 percent of landed value) on higher-priced items may discourage such action. As noted in the discussion of alternatives below, alternate cost cutoff figures were considered; the potential for price-raising would exist regardless of the specific cost cutoff in the final rule.

The rule contains anti-stockpiling provisions, authorized by section 9(g)(2) of the CPSA, to prohibit excessive production or importation of noncomplying lighters during the 12-month period between the publication date and the effective date of the rule. These provisions limit production or importation to 120 percent of the rate in any selected 1-year base period within 5 years prior to the publication date of the rule. The anti-stockpiling provisions will have no significant impact on most firms, but could restrict sales growth for some small importers. There will probably not be any significant, long-term adverse effects on small firms, although some temporary disruption may occur.

Effects on competition and international trade. Most lighters subject to the rule are imported. All firms marketing disposable or novelty lighters are importers; only one of these (Bic Corporation, which markets only nonrefillable butane lighters) manufactures any of its lighters in the U.S. Thus, although the rule may have adverse competitive effects, there will not be a significant differential impact on domestic *vs.* foreign producers of covered lighters. The competitive position of Zippo Manufacturing Company, a luxury lighter manufacturer and the only nonimporter among U.S. firms, will not be adversely affected, since luxury lighters and liquid-fueled lighters are not subject to the rule.

The several largest firms marketing disposable lighters may gain some temporary competitive advantage in the U.S. market. These firms were involved more heavily in the development of the ASTM draft voluntary standard; they were also generally more aware of the details of CPSC's regulatory proceeding, through either ASTM or the Lighter Association. Some of these major firms expended resources to develop and test child-resistant lighter designs; two companies (Bic and Cricket) began marketing disposable lighters with child-resistant features around the time of the Commission's proposal, and others are expected to have done so by the time this final rule is issued.

The Commission gives special consideration to the potential impact of its rules on small businesses. An estimated 30-35 of the 40-45 covered importers, including all known importers of novelties, could be considered to be small firms. The rule may lead to some disruption of sales among smaller importers, to the extent their foreign suppliers are unable to furnish adequate numbers of complying lighters before the rule's effective date. Many models, especially novelties, may be discontinued as a result of the rule. The rule's anti-stockpiling provisions may have particular adverse effects on some small firms experiencing recent sales increases. This impact will tend to be greatest on importers of the least expensive models. The rule incorporates a number of provisions, related to the scope, performance requirements, and effective date, designed to minimize the potential adverse effect on small importers.

The rule may also have some differential effects on importers of lighters from certain countries. For

example, importers of lighters from Korea — a major supplier of low-cost refillables covered by the rule — may be disproportionately affected, since a greater proportion of their total sales is comprised of lighters required to comply, compared to the sales of importers of Japanese or European lighters. Similarly, virtually all lighters produced in China, the Philippines, and Thailand will be subject to the rule. No importers are expected to leave the U.S. lighter market or go out of business as a result of the rule.

Since luxury pocket lighters (refillable, non-novelty lighters above $2.00 in Customs Valuation) will not be covered by the rule, some market shift toward greater use of these products may occur, especially if consumers view child-resistant models as very inconvenient. The market share of luxury lighters could increase slightly as a result, presumably at the expense of low-cost refillables (or, to a lesser extent, the highest-cost nonrefillables). Since significant price differences will continue to exist between disposable and luxury lighters, and since most complying disposables are not expected to be very inconvenient, the magnitude of this effect is estimated to be small.

Effects on consumers. The Commission's rule may have the following adverse effects on consumers:

a. The increased cost of producing child-resistant lighters will be largely passed on to consumers in the form of higher retail lighter prices. These increases will vary by lighter type.

b. Some lighter models, particularly novelties, will probably be discontinued. While most disposables will simply be replaced by complying models, some disposables and many novelties may be dropped indefinitely from importers' product lines, thereby limiting consumer choice.

c. The utility derived from lighters may be adversely affected, depending on the extent to which consumers perceive child-resistant lighters to be less convenient to operate.

The approximate retail price ranges for covered lighters before the imposition of the rule, and the estimated ranges of price increases attributable to the rule, are given in Table 3.

Table 3

Existing Retail Prices of Disposable and Novelty Lighters and Expected Price Increases Attributable to CPSC Rule (Dollars)

Type	Overall Pre-rule Price Range	Typical Pre-rule Prices*	Overall Increase	Typical Increase*
Disposables				
Nonrefillable	.39—4.00	.79—1.79	.10—.40	.15—.20
refillable	.80—8.00	2.00—4.00	.10—1.00	.25—.50
Novelties	2.00 & up	5.00—10.00	.50—5.00	.75—1.00

* Majority of units in each category believed to be within "typical" ranges of prices and projected increases
Source: CPSC/Economic Analysis and industry estimates

As shown in the table, retail prices of nonrefillable lighters, which before the rule ranged from 39 cents to nearly $4.00 (and averaged about $1.00) will likely rise by 10-40 cents per unit. Price increases among inexpensive refillables, which before the rule ranged from 89 cents to over $8.00, could be up to nearly $1.00 per unit, though 20-50 cents will be more typical. Overall, most disposables will be replaced with child-resistant models priced about 15-20 percent higher. The projected price increases are higher for novelties than for disposables, since many novelty models have unusual ignition mechanisms not readily adaptable to the kinds of child-resistant features developed for disposables.

The total estimated annual cost of the rule to consumers is approximately $90 million. For the estimated range of 80-105 deaths avoided per year, the cost of the rule per life saved will be well under $1 million after considering the benefits of reduced injuries and property damage. This is well below the consensus of estimates of the statistical value of life.

A number of lighter models will probably be discontinued by importers after the rule's effective date. This will occur primarily among novelty lighters, which reportedly declined in sales since their popularity peaked in the late 1980's. Over 100 different novelty models, accounting for 100,000-500,000 units annually, could be covered by the rule. Many of these, particularly the least expensive ones, will likely not be modified to incorporate child-resistant features, and will no longer be available to U.S. consumers. Since novelty sales are declining, the magnitude of the potential loss to consumers is not great; however, purchase choices for some consumers will be restricted to those kinds of lighters not subject to the rule.

An even less quantifiable cost of the rule is the potential adverse impact on the utility derived from lighters by consumers. Child-resistant lighters may be viewed as less convenient for adults to use, due to the multi-action nature of child-resistant features. Some such features may incorporate small or hard-to-manipulate buttons or levers, and may be especially difficult for elderly or physically impaired consumers (e.g., with arthritis) to operate with one hand. This potential loss to adult users may diminish over time as improved child-resistant mechanisms are developed by manufacturers, and as consumers become accustomed to child-resistant operating mechanisms. As noted above, some consumers may switch, at least temporarily, to matches or to other lighters not subject to the rule if complying designs are perceived as unacceptably inconvenient.

E. Alternatives to the Rule

1. Scope

The Commission considered broadening or narrowing the scope of the rule. The considered alternatives included a rule that could be broadened in scope to cover more types of lighters, including some or all luxury lighters, low-cost liquid-fuel lighters, and novelty lighters. Another alternative is a rule that would be narrowed in scope to exclude some or all low-cost butane refillables, or to exclude some or all novelties.

a. *Broader scope.*

Luxury lighters. The final rule covers about 98 percent of all lighters sold annually in the U.S. If the rule were expanded to cover all lighters, roughly 15-20 million additional luxury units would have to be made child resistant. This would maximize the potential safety benefits of the rule.

As noted in the preliminary regulatory analysis, however, most child-play fire deaths and injuries

involve nonrefillable butane pocket lighters. The available fire data reveal no fatal fires started by children under age 5 involving any butane luxury lighters now on the market, and only one involving a liquid-fuel model. The number of child-play fire injuries associated with luxury lighters is also very small, despite the existence of millions of luxury lighters in use and their long service lives. The available data do not show that luxury lighters, as a class of products, pose a significant risk of fire death or injury.

Luxury lighters differ from disposables in certain characteristics affecting risk:

1. Though some luxuries may retail for as little as $5.00-6.00, they generally retail for $10.00 or more, or have equivalent value as promotional premiums. Consumers will therefore be less likely to (a) treat them like throwaway items and leave them in household locations accessible to young children or (b) view them as close substitutes for child-resistant disposables retailing for as little as $1.00 (nonrefillable) to $2.00 (refillable).

2. Luxury lighters are not sold to consumers in multi-packs, as are many disposables; thus, multiple product use (e.g., several working lighters in various locations around the household) is not encouraged.

3. Some luxuries have unusual ignition mechanisms, the operation of which may not be readily apparent or easily understood by young children; for example, most liquid-fuel luxury models have caps which must be opened before use.

These factors tend to reduce the likelihood of luxury lighter involvement in child-play fires. Allowing for the possibility that a few deaths and injuries could be averted if luxuries were covered, such an expansion of the scope of the rule might yield at most $5-10 million in increased annual benefits.

The estimated cost of the rule would also increase, however, if luxuries were covered. Even though child-resistant features could be incorporated readily into some luxury models, the unusual or complicated components and case configurations of others, combined with the low production volume of these products generally, tend to make the adoption of child-resistant features more difficult and costly per lighter than for disposables. The establishment of separate assembly lines for child-resistant and non-child-resistant models may also be especially costly for small, low-volume firms marketing luxury lighters.

Production, testing, and certification costs will be passed on to consumers in the form of higher retail prices. Using conservative estimates of $1.00 per unit for all luxury lighters and of 15 million units affected annually, the increased annual estimated cost to consumers of a rule covering all luxury lighters is at least $15 million. With increased annual safety benefits of at most $5-10 million, the estimated annual net benefits of such a rule are still slightly (at least $5-10 million) less than those of a rule covering only disposables and novelties.

Under another alternative, the Commission could, by deleting any reference to butane fuel in the rule's definition, have included liquid-fuel lighters in the scope of the rule. This would substantially disrupt the supply of such products to consumers, again without significant safety benefits. The least expensive liquid-fuel models might be discontinued, at least temporarily. There might be significant short-term adverse effects on the single domestic manufacturer (Zippo). Although this firm would probably not go out of business if its lighters were required to comply, sales could be substantially disrupted until successful child-resistant designs were developed and marketed.

Another way the scope of the rule could be broadened would have been to include the least costly butane luxury refillables. This could be achieved by raising the cost cutoff in the definition of disposable lighters above $2.00 in Customs Valuation or ex-factory price. A rule incorporating a $3.00 cutoff would cover approximately 3-4 million additional, moderately-priced ($5.00-12.00 retail) units; a $4.00 cutoff would cover about 4-5 million more moderately-priced units (mostly retailing for $5.00-15.00, but some up to about $20.00) than would a $2.00-cutoff rule.

Raising the cost cutoff would make it less likely that non-child-resistant lighters could be marketed at retail prices approaching those of child-resistant nonrefillables. The most expensive complying nonrefillables could retail for between $3.00 and $4.00. If non-child-resistant models were viewed as reasonably close in price, and if child-resistant models were viewed as unreasonably inconvenient, some consumers might prefer the convenience of the former to the lower price of the latter. Such substitution could reduce the effectiveness of the rule slightly, although the combined annual volume of sales of expensive nonrefillables and moderate ($2.00–4.00 Customs Valuation) refillables accounts for only 2-3 percent of all lighters sold.

Price markups in the chain of distribution are typically higher for refillables than for nonrefillables. Even at unusually low markup percentages averaging only 50 percent for importers and retailers, $2.00 Customs Valuation refillable lighters will retail for at least $4.50. Many lighters, particularly the relatively low-volume refillables, are distributed through wholesalers, who add an intermediate markup. If markups for inexpensive refillables approached typical markups for nonrefillables, products at $2.00 in Customs Valuation will likely retail for at least triple that figure, or approximately $6.00. The available information from importers suggests the potential volume of refillable lighters will probably not be sufficient to sustain very low markups on a long-term basis. Very few non-child-resistant lighters will be available to consumers in the $5.00-6.00 retail range. It is, therefore, unlikely that significant substitution will occur under any cutoff at or above $2.00. Even if some substitution resulted, the cost cutoff will have a negligible effect on safety benefits; it is estimated that less than $5 million in annual benefits will accompany an increase in the cost cutoff to either $3.00 or $4.00.

The cost of the rule to consumers, however, would increase with a rise in the cost cutoff, depending on the cost figure chosen. At roughly $1.00-2.00 per refillable lighter affected, a $3.00-cutoff rule may add roughly $6-8 million to consumers' annual retail expenditures; a $4.00-cutoff rule may add $8-10 million per year.

As noted above, the potential safety benefits of including all lighters were generously estimated at $5-10 million per year. If all of this were attributable to the lowest-cost luxury models, then the expected net benefits of the rule will not be significantly affected by a higher cost cutoff. Expected net benefits would be reduced to the extent potential benefits were allocated among higher-cost models. No information other than importers' sales estimates exists upon which such an allocation might be made; however, estimated net benefits will not increase, even if all benefits were associated with lighters under the cutoff. The most likely outcome of adopting a cutoff higher than $2.00 is a slight reduction in the annual net benefits of the rule.

In addition, adopting a higher cutoff will probably have some temporary disruptive effects on the short-term sales and profits of affected small importers and on the availability to consumers of moderately-priced luxury lighters. As noted above, if low-cost liquid-fuel lighters (which are not considered close substitutes for butane disposables) were covered, some would be discontinued,

VOL 58 ISS 131 JL 12 1993 UMI

at least temporarily, due to the relative difficulty of incorporating child-resistant features into these products. A small number of pushbutton butane refillables, including some premium lighters, may also be discontinued if their sales volumes is judged to be too low to justify the additional expense. Even if the net benefits of a higher-cutoff rule were equal to those of the $2.00-cutoff rule, the latter will be less burdensome to industry, particularly to small importers.

Low-cost liquid-fuel lighters. The Commission considered the alternative of including non-luxury liquid-fuel lighters in the scope of the rule by deleting the reference to butane fuel in the definition of disposable lighters. While liquid-fuel luxury lighters (such as those produced by Zippo, the only domestic firm that does not import any of its lighters) would not be covered, up to 1 million low-cost (under $2.00 in Customs Valuation) imported liquid-fuel lighters would be covered. This would prevent low-cost, non-child-resistant, liquid-fuel lighters from being substituted for child-resistant, butane disposables after the issuance of a rule.

The least expensive liquid-fuel lighters are price-competitive with the most expensive butane disposables. Liquid-fuel lighters are not particularly close substitutes for butane disposables, however, due to other, non-price, differences. The liquid fuel refilling procedure is relatively inconvenient and messy; the liquid fuel is unpressurized, and tends to evaporate. Thus, unlike butane lighters, liquid-fuel lighters are shipped and sold to consumers without fuel; consumers must purchase fuel and fill the lighters before initial use; liquid-fuel lighters are not sold to consumers in multi-packs; and the operation of liquid-fuel lighters is generally less convenient.

Unless child-resistant butane lighters are very difficult to use, most butane-lighter users will probably not give up the convenience of butane lighters for liquid-fuel models without child-resistant features. Non-child-resistant butane luxuries, some of which may retail for $5.00-6.00, will still be available after the issuance of the rule. Most child-resistant disposables will still be lower in price than any liquid-fuel models. A substantial consumer shift to the use of non-child-resistant liquid-fuel lighters is unlikely, given the fairly convenient child-resistant mechanisms being employed or developed for butane disposables. Thus, it is unlikely that safety benefits would increase as a result of adding low-cost liquid-fuel lighters to the rule's scope.

Adding low-cost liquid-fuel lighters to the scope of the rule would affect up to roughly 1 million such lighters, retailing for up to about $8.00-9.00 (or with equivalent value as promotional giveaways). It may be particularly difficult to incorporate child-resistant features into these designs; no such features currently exist. Most, if not all, low-cost liquid-fuel models would probably be discontinued, at least temporarily. Liquid-fuel luxury lighters could still be available, but consumer expenditures on liquid-fuel lighters would increase slightly. The annual cost of the rule to consumers would be on the order of $1-5 million, depending on the extent to which consumers substituted higher-cost liquid-fuel models for discontinued low-cost ones.

The estimated cost of including low-cost liquid-fuel lighters in the scope of the rule is slight; however, the likely benefits are negligible. The estimated annual net benefits of the rule would probably not increase if liquid-fuel lighters were covered, and could decrease slightly.

Novelty lighters. The rule covers novelty lighters depicting or resembling in physical form or function articles recognized as appealing to or intended for use by children under 5, including lighters with entertaining audio or visual effects. This definition has been changed from that in the proposal, which defined novelties as being lighters that resemble any other object in physical form or function. Regardless of whether a lighter meets the definition of novelty lighter in either the proposed or final rule, it is covered if it meets the definition of disposable by virtue of being nonrefillable or a refillable butane lighter under $2.00 in Customs Valuation or ex-factory price. The Commission considered whether the rule should cover all novelties included in the proposed definition; this would obviate the need to determine which refillable novelty models are appealing to or intended for use by children under 5. It would also cover numerous (possibly over 100) novelty models resembling ostensibly "adult" items, including tobacco-premium lighters in the form of cigarette packs and other articles; many of these are considered to be less appealing to young children.

No deaths in the Commission's child-play fire data are associated with any novelties. The potential safety benefits of the rule might be slightly increased if adult novelties were included, but any such increase would be negligible.

Most novelties included within the scope of the rule will probably be discontinued. Under 500,000 refillable adult novelties above the $2.00 disposable cost cutoff are estimated to be imported annually. Including these products would effectively increase the cost of the rule to consumers by up to $1 million, depending on the extent to which such lighters were modified to comply or were discontinued.

The likely impact of including "adult" novelties on the estimated overall yearly net benefits of the rule would probably be negligible. The burden of the rule on small importers, however, could be increased. The final rule's definition covering novelties resembling articles appealing to children will have less potential adverse impact on small firms, while covering those lighters presenting the greatest potential risk.

b. *Narrower scope.*

Low-cost refillable lighters. The rule's $2.00 cost cutoff in the definition of disposable lighters could have been lowered in order to reduce the potential economic burden on importers marketing low-cost refillable butane lighters. The Commission also considered whether it should not cover any refillable lighters, since the overall risk of child-play fires associated with refillables generally is low — and could eliminate refillables and their cost cutoff entirely from the definition of disposable lighters.

Price and operating convenience are the major factors influencing consumer purchases of disposable butane lighters. Low-cost refillable butane lighters are included in the scope of the rule because they may be reasonable substitutes for many nonrefillables. These two groups both use the same fuel; they use the same convenient ignition mechanisms; they are often sold in multi-packs; and they are often similarly priced. Price increases among nonrefillables after the imposition of the rule may make inexpensive non-child-resistant refillables even more attractive as potential substitutes. The inclusion in the rule of low-cost butane refillables will also discourage manufacturers from adding refill ports to nonrefillable models (a reportedly simple and inexpensive modification) in order to circumvent the rule.

The $2.00 cost cutoff for refillable lighters will cover existing models whose retail prices approach those of the most expensive nonrefillables. The highest observed retail price for nonrefillables is $4.00 (though almost all are under $3.00); the least expensive butane refillables retail for as little as $1.00, which is within the price range for nonrefillables. There may be 50 or more refillable models retailing for under $4.00; these may be considered by some consumers to be reasonable

substitutes for child-resistant nonrefillables. Although some refillables retailing for up to $8.00-9.00 may be covered by the rule due to price markups in the channels of distribution, the vast majority of products covered will be under $6.00 retail.

An estimated 8-10 million butane refillables were imported at under $2.00 in Customs Valuation in 1992; roughly 5-6 million of these were between $1.00 and $2.00. Thus, if the Commission adopted a $1.00 cutoff, a majority of low-cost refillable lighters whose retail prices are competitive with nonrefillables would be exempt from coverage by the rule. If some low-cost novelty lighters were also exempted from coverage, compliance costs would be reduced or eliminated for at least 50 foreign (mostly Korean) manufacturers, 5-10 U.S. importers, and numerous distributors of these products. The annual reduction in the total cost of the rule to consumers could be on the order of $5-10 million. If no refillables were covered, the annual cost of the rule could decrease by a total of up to $10-15 million.

The potential adverse effect of the rule on competition among imported lighters will also be affected by lowering or eliminating the cutoff. At $1.00, any advantage conferred upon manufacturers and importers of costlier lighters would simply be shifted down the cost scale. Some disincentive for manufacturing efficiency and lower prices will probably exist regardless of the cutoff level. Reducing the cutoff or exempting refillable lighters may provide a somewhat greater incentive for foreign suppliers to circumvent the rule (by either raising prices above the cutoff level or, if refillables were not covered, by modifying nonrefillables with refill ports), since price competition with child-resistant models could be more readily maintained.

Under a $1.00 Customs Valuation/ex-factory price cutoff, non-child-resistant butane refillable lighters would be available for as little as $3.00 retail. If no refillables were covered, non-child-resistant lighters would be available at $1.00 or less. The total cost of the rule to the public would be reduced, partly because cost increases for refillables would be avoided, but mainly because consumers would be more likely to substitute such products for child-resistant nonrefillables. Since some complying refillables and virtually all complying nonrefillables will still be available at lower prices, however, the impact of substitution on total costs to consumers might not be large. Costs to consumers may also be reduced to the extent competition from non-child-resistant lighters exerted downward pressure on prices of complying models.

The potential effect of lowering or eliminating the cost cutoff for refillable lighters on the safety benefits of the proposed rule also depends largely on the extent of consumer substitution of non-child-resistant refillables for child-resistant models. A low level of substitution would probably have little adverse impact. A higher level of substitution (e.g., a doubling or more of the market share of low-cost refillables, which was less than 5 percent in 1992) would result in a somewhat greater reduction in potential safety benefits. If the market share for inexpensive refillables grew dramatically (e.g., to 20 percent), the benefits of the rule could be reduced by $20 million or more.

With non-child-resistant refillable lighters retailing for as little as $3.00 after the issuance of a $1.00-cutoff rule, some substitution would be likely to occur. This could reduce the annual net benefits of the rule slightly — probably less than $5 million. An unknown but much greater reduction in net benefits might occur if no refillables were required to be child resistant and refillables were heavily substituted for complying nonrefillables. Significant substitution will be less likely under the $2.00 cutoff. Annual net benefits probably would not increase under any circumstances if the cost cutoff were lowered or eliminated, though the burden of the rule on some small firms could be reduced. Issuing the rule with the $2.00 cost cutoff will nearly minimize potential substitution without imposing a substantial economic burden on small importers, and without penalizing firms marketing complying lighters.

Novelty lighters. As noted above, the scope of the rule with respect to novelty lighters is narrower in the final rule than in the proposed rule. The Commission considered narrowing the scope further by eliminating the specific reference to novelties in the description of the scope of coverage of the rule.

Novelties that are not required by the rule to be child-resistant will probably not be. Excluding novelties from the rule could reduce the economic impact of the rule on importers of novelties, and many novelty models facing discontinuation from the U.S. market would remain unregulated. However, up to roughly half of all novelty shipments would still be covered, since they will meet the rule's definition of disposable lighters (i.e., nonrefillable or butane refillable under $2.00 in Customs Valuation).

Less than 1 million novelties were imported into the U.S. in 1992. If novelty lighters were not explicitly covered by the rule, estimated annual shipments of roughly 200,000-300,000 butane refillable novelties over $2.00 in Customs Valuation (plus a very small number of liquid-fuel novelties), which will otherwise have to be modified or discontinued, would remain unaffected. Raising or lowering the cost cutoff could affect this estimate by up to 100,000-200,000 units. The annual cost of the rule to consumers could be reduced by up to $1-5 million, depending on the compliance cost otherwise attributable to the various models affected, and on the extent of the potential loss to consumers if such models will otherwise be discontinued.

The potential safety benefits of the rule would also be reduced slightly if novelties were not explicitly covered. Since the number of products involved is very small, this potential reduction would be slight; however, some toy-like or otherwise appealing novelties would escape coverage by virtue of being refillable and above the cost cutoff.

Relying on the general definition of disposable lighters, including the cost cutoff, to identify covered novelties would obviate the need for judgments about which lighters are novelties and which are appealing to children. It also, however, would allow the marketing of some novelties that appeal to young children. Many novelty lighters the CPSC's staff regards as attractive to children are above the $2.00 cutoff.

The preliminary regulatory analysis estimated that $5-10 million in reduced benefits, and up to $5 million in reduced net benefits, would be associated with a rule excluding all novelties. As noted above, however, many novelties will still be covered as disposable, even if novelties were not explicitly subject to the rule. Some child-play fires could occur if novelties over $2.00 in Customs Valuation and considered appealing to young children were not required to be child-resistant. The expected annual net benefits of the rule could be reduced slightly (probably by less than $5 million) if the rule only applied to disposable lighters, which include only low-cost or nonrefillable novelties.

2. Performance and Technical Requirements

a. *Introduction.* The rule incorporates a test protocol for surrogate lighters representing each model or type of lighter subject to the rule. The rule requires such surrogates to be resistant to operation by 85 percent of tested children under specific test conditions. The rule also requires qualification tests for subject lighters be conducted in the

U.S. (the proposal did not restrict such tests to the U.S., if specified conditions were met). In order to increase safety or decrease costs, the Commission considered promulgating the rule with either a higher or a lower acceptance criterion than the 85 percent level; similarly, certain key technical aspects of the test procedure could be strengthened or relaxed. In addition, the Commission could have allowed foreign testing in order to reduce potential costs to small importers.

b. *Acceptance criterion.* As noted in the proposal, the Commission's baseline test data show that existing disposable lighters (i.e., those with no specific child-resistant feature) are about 50 percent child resistant. The proposed 85 percent level represents a balance of safety benefits and technical and economic feasibility for most manufacturers and importers. Information from a number of firms indicates the 85 percent criterion — which will essentially require surrogate lighters to exceed 90 percent child resistance in tests — is generally achievable.

Requiring lighters subject to the rule to meet a higher acceptance criterion may, on its face, appear to increase safety, but the Commission cannot show that it is either technically or economically feasible. Lighters would probably be so difficult to operate that many adults could not operate them. Nearly-child-proof lighters (as might be required under a 90 or 95 percent acceptance criterion) reportedly cannot be produced under reasonable manufacturing and quality control conditions. Such a requirement could virtually ban disposable lighters. This will have a serious adverse impact on manufacturers and importers, some of which could go out of business. The cost of a 90 or 95 percent rule to the public is uncertain; however, substantial adverse effects on the availability of disposable lighters will probably result.

Even a rule that ensures that the covered lighters are 100 percent child resistant would not guarantee the elimination of a number of child-play fires, deaths, and injuries equal to that currently involving disposable lighters. Deaths and injuries may be associated with an increased use of matches — the closest substitute for disposable lighters — and perhaps of non-child-resistant lighters, to the extent these products replaced disposable lighters in the stock of products in use. The extent to which such replacement occurs can be expected to be related to the degree of difficulty that complying lighters present to adults.

Substantially greater costs to industry and to consumers would result from a higher acceptance criterion; most, if not all, firms would be unable to comply with such a requirement. It is uncertain whether benefits will be significantly increased under this alternative. The annual net benefits of the rule could decrease significantly if an unattainably high acceptance criterion were adopted and consumers were limited to higher-priced, non-child-resistant refillable lighters or matches as substitutes for most disposables.

Lowering the acceptance criterion may increase the probability that some small firms' designs will comply, but many small firms will be able to meet the 85 percent proposal without significant disruption. The total cost savings associated with a 75 or 80 percent rule would not be substantial; many firms would offer similar or identical products to meet any criterion of at least 75 percent. Some cost reduction would probably result; annual cost savings to consumers are generously estimated at up to $10-20 million. Annual safety benefits, however, could also decrease by up to $10-30 million, depending on the extent to which complying lighters were actually less child resistant. The annual net benefits of the rule would probably be reduced slightly if the acceptance criterion were lowered to 75 or 80 percent.

c. *Test protocol specifications.* The test protocol in the rule calls for two demonstrations of the operation of the lighter surrogate being tested, and defines a successful operation as any single activation of the surrogate. The proposed rule, which called for three demonstrations and one activation, was slightly more stringent. Generally, a more stringent test will incorporate more demonstrations or fewer activations; a less stringent test will incorporate fewer demonstrations or more activations.

To the extent any combination of these elements in the test procedure discriminated among lighter designs (i.e., a surrogate will pass the less stringent test but fail the more stringent one), some models already under development or on the market might have to be modified or redesigned in order to comply with a more stringent alternative. This would increase costs for the affected firms. The availability of complying lighters from these firms could be delayed until any necessary improvements were made. The potential impact on total industry costs or on competition is uncertain; however, there is no information to suggest such impacts will be significant. Costs to consumers probably will not increase due to these factors. The potential benefits of the rule presumably would be greater under a more stringent test, although the likely increase is slight. A more stringent test will probably have a negligible overall impact on the expected annual net benefits of the rule.

A less stringent test might reduce the cost of the rule slightly, and might eliminate potential disruption among firms whose lighters might not otherwise be acceptable. Such lighters, however, need not be as child resistant. Thus, potential safety benefits of the rule may be slightly lower under a less stringent test, depending on the actual level of child resistance among lighters on the market after the rule became effective. Since child-resistant lighters are generally expected to comply when tested in accordance with the two-demonstration, one-activation scheme in the final rule, the potential adverse impact of a less stringent test on benefits is probably very small. In view of the small potential reductions in both costs and benefits, the likely effect of a less stringent test on the annual net benefits of the rule is negligible.

d. *Testing in the U.S.* The rule requires qualification testing of lighters to be conducted in the U.S. This minimizes the potential effects on test results of cultural or other differences among children in different countries, and helps ensure proper testing by affording CPSC ready access to testing facilities and records. The proposal did not restrict such testing to the U.S., if equivalency between the countries was demonstrated. The Commission considered whether to allow foreign testing to ease the potential burden of the rule on small importers and foreign suppliers.

Firms accounting for over 80 percent of all lighters subject to the rule, including all the major firms, reported they will conduct all their testing in the U.S., even if not required to do so. Allowing testing outside the country might reduce compliance costs for some small importers whose foreign suppliers are willing and able to conduct tests near their production facilities. Testing in foreign countries, however, is reportedly not appreciably less costly than in the U.S. Further, testing costs account for a relatively minor portion of total industry costs of compliance. Thus, even sizeable differences between foreign and domestic testing costs will not significantly affect total costs or importers' ability to obtain and market complying lighters. The cost of child-resistant lighters to consumers will also be unaffected.

If testing were not limited to the U.S., there may be a greater likelihood of improper tests being used to establish the child resistance of imported lighters. If improper tests were used, some lighters could be less child resistant than claimed, and the safety benefits of the rule may be lessened. Although most lighters subject to the rule would probably be tested in the U.S. anyway, a significant number — possibly up to 20 percent — of all lighters otherwise would be certified based on foreign tests.

3. Certification

Manufacturers and importers will be required to issue certificates of compliance with each shipping unit of lighters intended to be distributed to consumers; such certificates will go to the first purchaser in the chain of U.S. distribution. The rule will also require dates of manufacture to appear on all subject lighters and on certificates of compliance. Certificates of compliance will most likely be printed on shipping containers or on product packaging. Date codes (e.g., month and year) will be molded or stamped into the case of each lighter. Date coding will presumably be done in advance of anticipated assembly dates, since components of a given production batch of lighters are often manufactured over a period of weeks, or even months. Matching or inclusive dates will also have to be printed on each certificate of compliance.

Importers often package lighters from bulk shipments for sale to distributors or retailers. Shipments received by importers generally contain lighters from many assembly dates. Importers will have to establish detailed inventory controls to ascertain the appropriate range of dates for each certificate of compliance. This may involve checking individual lighters or small boxes (typically 50 units for the smallest) within a shipping container. Each shipping container may hold several hundred thousand individual lighters. The Commission considered the possibility of deleting the date code requirement for certificates of compliance in order to reduce importers' costs.

Dropping the date code requirement for certificates of compliance could lessen inventory control costs for some importers, and would eliminate the cost of multiple-date-code labels and certificates. Some major firms are expected to label every shipping container, including outer crates, inner cartons, and prepackaged cards or trays of lighters, whether required to do so or not. Most other firms probably could institute the appropriate inventory controls, though some small importers may have limited labor resources to perform extra, manual inventory checks. Total cost savings to importers associated with dropping the date code requirement would probably be under $1 million per year.

The date code requirement does not increase the child-resistancy of lighters. There may be benefits to consumers, however, if recalls or other corrective actions are facilitated by the presence of date codes on certificates of compliance in the possession of distributors or retailers. Some such corrective actions may be necessary, particularly during the first years following the issuance of the rule. The presence of a date code could also be an advantage to firms that had to recall noncomplying lighters by enabling the firms to limit the scope of the recall to specific coded units.

4. Stockpiling

The rule restricts the production or importation of noncomplying lighters of the types subject to the rule between the rule's promulgation date and effective date. Some small firms that are experiencing significant sales growth may be adversely affected by these anti-stockpiling provisions. Narrowing the application of these requirements might reduce the burden of the rule on some small importers.

If a higher allowable importation or production rate (e.g., 200 percent of the base period rate) were incorporated into the anti-stockpiling provisions, the potential disruption of small firms' sales would probably be eliminated. This would effectively lift the restriction on any reasonable amount of sales growth, but will also allow firms to increase the manufacture or importation of non-child-resistant lighters substantially, thereby giving potential price and convenience advantages over child-resistant lighters. In the short run (1-2 years), this could reduce the safety benefits of the rule significantly if major suppliers continued to offer mostly noncomplying units. Whether large firms will be likely to stockpile noncomplying lighters is uncertain. Although the commercial incentive to do so will exist, so will the disincentives of higher inventory and distribution costs and, possibly, greater liability exposure.

Exempting small firms (e.g., those with annual sales under $5 million) would have a similar salutary effect on up to 30-35 small importers, without allowing larger firms to stockpile noncomplying units. There could still be some adverse effect on potential benefits, if large sales increases among small firms for 1 year temporarily increased the proportion of non-child-resistant lighters otherwise available to consumers.

Exempting or raising the allowable increase for novelty lighters would reduce the short-term burden on roughly 5-10 small importers of these products. Since novelty lighters' sales are generally not increasing (and reportedly declined substantially for some firms in recent years), however, the reduction in costs for small firms would probably be slight.

The volume of sales for novelties is very small (under 1 million units per year of all types). It is very unlikely that non-child-resistant novelties will be substituted in significant quantities for child-resistant disposables (which will still be much lower in average retail price). Thus, even substantial increases in the number of novelty lighters imported without child-resistant features will probably have a negligible adverse impact on the safety benefits of the rule.

The potential effect on the expected net benefits of the rule of any burden-reducing modification to or exemption from the anti-stockpiling provisions depends on whether firms would produce or import significant additional quantities of noncomplying lighters. Assuming most firms will exploit the potential price and convenience advantages of non-child-resistant models, some reduction in net benefits could accompany a general rate raising or an exemption for small importers of refillables. A higher rate (or an exemption) for novelty lighters will probably have virtually no impact on net benefits, although the likely burden reduction for small importers will be slight.

5. Effective Date

The rule incorporates an effective date of 12 months from the date of publication of the final rule in the **Federal Register**. The Commission considered shorter and longer effective dates. Section 9(g)(1) of the CPSA calls for product safety rules to become effective not more than 6 months from their publication dates, unless the Commission extends the time period and finds that such an extension will be in the public interest. The 12-month effective date will lessen the economic burden of the rule while providing protection to consumers in a reasonably expeditious manner and, as discussed in more detail below is in the public interest.

Since the rule's anti-stockpiling provisions will limit the production or importation of noncomplying lighters between the promulgation and effective

VOL 58 ISS 131 JL 12 1993 UMI

dates of the rule, even the 12-month effective date will temporarily disrupt the sales of a small number (perhaps 5-10) of the 30-35 small firms importing lighters whose foreign suppliers could not develop commercially acceptable complying lighters by that time. The Commission could find 12 months insufficient to minimize potential adverse effects on small firms. An extension beyond 12 months could reduce, or at least delay, this disruption.

Most firms will probably be able to market complying products within 12 months. Even small companies will probably be able to obtain child-resistant versions of most models. Thus, the availability and cost of child-resistant lighters to consumers will probably not be significantly affected by extending the effective date beyond 12 months. Further, most small firms will not be substantially harmed by the 12-month effective date.

Delaying the effective date beyond 12 months would also delay the full measure of benefits to consumers. The amount of any reduction in benefits will depend on the extent to which consumers with young children purchase and use child-resistant lighters on the market before the effective date. The potential adverse impact on benefits could be significant if most consumers continued to use non-child-resistant lighters.

The Commission also considered whether 12 months provides inadequate protection to the public, and whether the effective date should be 6 months. Shortening the effective date to 6 months would substantially disrupt the sales of most firms, including some of the major importers, and would temporarily restrict the availability of lighters to consumers. This would probably confer a competitive advantage upon those large firms already marketing child-resistant disposable lighters. It is unlikely that any small firms, including all importers of novelty lighters, would be able to obtain complying models within 6 months.

Under a 6-month effective date, the benefits of the rule could be increased during the first year after the rule became effective. Substantial adverse effects on industry, especially on small firms, would also result. The likely extent of any increase in expected net benefits is uncertain.

Although extending the effective date beyond 12 months might reduce the burden of the rule on a few small firms, the 12-month effective date provides near-minimum adverse effects while providing a reasonable level of safety. The estimated first-year net benefits of the rule would probably not increase — and could decrease somewhat — if the effective date were extended beyond 12 months.

6. Labeling

The rule requires subject lighters to bear marks or labels identifying the manufacturer or importer and the date of manufacture. Many lighters currently carry warning or other labels with safety messages such as "keep out of the reach of children;" such labeling is part of the existing ASTM voluntary standard (not the ASTM draft child-resistance standard). The Commission could mandate the use of this or other safety messages on labels, either on lighter packaging or on lighters themselves. This labeling could be mandated instead of the performance rule or in addition to it.

The cost of the rule would be reduced to near zero if only labeling were required, even for all lighters. Since most disposable lighters marketed by all the major firms now carry such a label, any cost increase will affect only those small firms whose lighters are not now labeled. This cost will be negligible, and would not add to the retail prices of lighters.

On the other hand, since most lighters (including most lighters involved in child-play fires) already carry warning labels, a label-only rule will have slight benefits, if any. The estimated annual net benefits of such a rule would be verysmall — probably near zero; the annual net benefits of the Commission's performance rule will be much greater.

The cost to consumers of requiring additional or different warnings or other labeling would be very small (probably much less than one cent per lighter); again, this cost would add only slightly, if at all, to the cost of the rule to consumers. By the same token, no information exists to suggest that mandating additional warning or other labels — on an already crowded lighter case surface, in many instances — would measurably improve the safety afforded by the rule. Expected annual net benefits would probably not increase as a result of mandating additional labels.

7. No Action/Voluntary Standard

The draft voluntary safety standard for the child resistance of lighters developed by the ASTM F15.02 Task Group on Safety Standards for Lighters is similar in most respects to the final CPSC mandatory rule. Although the draft was not adopted as a final ASTM standard, lighters designed and produced to meet the draft standard are presently available to consumers. Conforming products were introduced by Cricket and Bic in 1992. It is assumed the Cricket and Bic products will meet the CPSC rule as well. Other firms are developing competitive lighters with child-resistant features. The Commission considered whether such voluntary action would adequately reduce the unreasonable risk of child-play lighter fires; if so, the Commission could find a mandatory rule is no longer reasonably necessary.

In the absence of a mandatory rule, the major firms will probably continue to offer lighters conforming to the ASTM draft. Some of the ASTM provisions (e.g., acceptance criterion, coverage of refillable butane and novelty lighters, and various technical specifications of the test protocol) are less stringent than CPSC's rule. Most of the safety benefits associated with the CPSC rule would, however, accompany widespread adoption of the draft ASTM standard.

The likely level of voluntary conformance, however, is not high. Most, if not all, firms offering child-resistant lighters will also market non-child-resistant ones. With suggested retail prices of up to 20 percent higher for child-resistant models, their market share may not be large. In the absence of a mandatory rule, or of high conformance expectations for the draft voluntary standard, many firms could not justify the development costs for child-resistant lighters.

Substantial voluntary conformance would probably occur only among higher-priced disposables; the lowest-priced models would probably not conform. If the overall voluntary conformance rate among disposable lighters purchased by consumers were generously estimated at 50 percent, total annual costs to consumers would be reduced to roughly $50 million. Consumer choice among low-priced lighters would be enhanced. The potential adverse impact of a mandatory rule on small businesses would be essentially eliminated. Benefits would also be reduced, however, and could decrease over time if child-resistant lighters were not widely accepted by consumers with young children. Voluntary action could avert at most 35-45 deaths per year, and have annual net benefits of up to $40-65 million. Decreases in the use of child-resistant models would reduce the likely net benefits. Although voluntary action could have significant net benefits to consumers, the CPSC mandatory rule will have far greater net benefits.

8. Issues Raised by Public Comments on the Proposal

A number of economic issues were discussed in the public comments on the proposal. These generally involved the potential benefits, costs, and overall economic burden of the rule. Many commenters recommended changes to the proposed rule in several areas. For example, different commenters recommended:

broader or narrower scope of coverage;
more or less stringent performance and test protocol requirements;
less burdensome certification requirements;
narrower coverage for anti-stockpiling provisions;
longer effective date; and
additional labeling requirements.

These comments are addressed generally in the discussion of the various alternatives to the rule above. Comments on specific aspects of the preliminary regulatory analysis centered on scope issues, and questioned the Commission's justification in the proposal for:

excluding luxury lighters and liquid-fuel lighters;
setting a $2.00 cost cutoff and a 5-year cost adjustment period in the definition of disposable lighters; and
including all novelty lighters.

These comments are specifically responded to in Section VI of this notice.

9. Conclusion

Substantial net benefits to the public will accompany the Commission's rule requiring lighters to be child resistant. Safety benefits, in terms of reduced deaths, injuries, and property damage from child-play fires, are estimated at $205-270 million per year. The cost of the rule to consumers, in terms of increased retail expenditures for lighters, is estimated at about $90 million per year. Thus, $115-180 million in annual net benefits may result. Using a cost point estimate of $235 million, annual net benefits will be $145 million. The rule will reach near-maximum effectiveness in a relatively short time — perhaps 1-2 years — since most lighters are replaced every few months.

Most manufacturers and importers will likely be able to market commercially acceptable, child-resistant lighters by the time the rule goes into effect July 12, 1994. Some small importers may have difficulty in obtaining complying lighters within 12 months, but any disruption of sales will be temporary; no firms are expected to leave the U.S. market or go out of business as a result of the rule.

A number of alternatives to the rule exist, including options regarding various aspects of the rule itself. While these alternatives may increase potential benefits slightly or reduce costs, none will increase expected net benefits. In cases where net benefits are unaffected, no alternative will significantly increase safety to consumers.

Some comments on the preliminary regulatory analysis in the proposal suggested improvements in the way benefits and costs were estimated, or recommended alternatives to various aspects of the proposed rule. In some instances, these suggestions and recommendations were incorporated into the final regulatory analysis and the rule. Chief among these alternatives was the narrowing of the coverage of novelty lighters in the scope of the rule; this change will reduce the potential adverse impact on small firms without reducing safety.

After considering the foregoing information, the Commission concludes that:

1. The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;
2. The promulgation of the rule is in the public interest;
3. The benefits of the rule bear a reasonable relationship to its costs; and
4. The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

V. Final Regulatory Flexibility Analysis

A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that rules be reviewed for their potential economic impact on small entities, including small businesses. The RFA, at 5 U.S.C. 603, requires agencies at the time a rule is proposed to prepare and make available for public comment an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities and identifying impact-reducing alternatives, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposal contained the Commission's Initial Regulatory Flexibility Analysis.

Section 604 of the RFA requires agencies issuing final rules to prepare and make available a final regulatory flexibility analysis containing:

1. a succinct statement of the need for, and the objectives of, the rule;
2. a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and
3. a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

About 40-45 firms produce or import lighters subject to the rule; all of these firms, including the single company manufacturing lighters domestically, are importers. An estimated 30-35 of these importers reportedly have annual sales of less than $5 million and fewer then 50 employees; these are considered to be small firms by the Commission. The single domestic producer affected by the rule is not small. One other domestic lighter manufacturer exists; this firm, which is also not considered to be small, markets no products known to be subject to the rule.

The Commission routinely considers potential effects on competition and small businesses as part of the agency's overall evaluation of the potential economic impact of its rulemaking actions. A summary of these effects is included in the final regulatory analysis required for rules issued under the Consumer Product Safety Act. Since a large proportion of the firms effected by this safety standard for cigarette lighters is comprised of small companies, the Commission gives particular consideration to the potential economic impact of the rule on small firms. The Commission's final regulatory flexibility analysis for this rule is set forth below.

The Commission took various steps to include small firms in the regulatory development proceeding. These steps include publishing and distributing the preliminary regulatory analysis with the proposal, directly notifying and soliciting comments from all known firms, and holding a public hearing on the proposal. Written comments were received from small firms; representatives of a number of these firms also attended the public hearing.

The rule on lighters may have significant short-term economic effects on small businesses, i.e., importers of disposable and novelty lighters, though the likely long-term impact on most such firms is small. The foreign suppliers of some small importers may lack the technical capability to develop complying, child-resistant lighters.

These importers may leave the U.S. market temporarily, or experience disruption in the supply of complying lighters; either outcome could adversely affect the competitive positions of some small companies.

The Commission considered a number of alternatives to the rule, some of which would lessen potential effects on small firms. As noted below, alternatives were generally adopted if they would not reduce the expected annual net benefits of the rule to consumers.

B. Small Business Impact

Objectives of the Rule. The safety rule on lighters would substantially reduce the risk of accidental death and injury from residential fires started by young children playing with lighters. This would be achieved by requiring lighters subject to the rule to be child resistant. The rule primarily addresses the risk of fires started by children under age 5; during 1988-90, an annual average of 150 deaths, about 1,100 injuries and nearly $70 million in property damage resulted from such fires. The total cost to the public is estimated at about $385 million per year.

Voluntary industry action to address this risk was undertaken during 1989-91 by members of ASTM Subcommittee F15.02, Safety Standards for Lighters. This group includes representatives of firms producing or importing lighters, including some small firms. Work to develop a voluntary child-resistance standard was undertaken in cooperation with CPSC and the Lighter Association, Inc., a group representing several of the firms. A draft standard, similar in many respects to the CPSC mandatory rule, was developed; however, work on implementing the draft voluntary standard was suspended in 1991, and the Lighter Association requested that the Commission adopt the ASTM draft's principal provisions as a mandatory rule. Although some of the major firms now market child-resistant lighters, and would probably continue to do so in the absence of a mandatory rule, the estimated overall level of conformance to a voluntary standard would be unacceptably low.

The rule specifies a test protocol by which the child-resistance of lighters may be established. All manufacturers and importers of subject lighters must perform tests to support certificates of compliance, which must be issued for each model of lighter intended for distribution to consumers in the U.S. The rule also contains labeling, reporting, recordkeeping and other certification requirements, and anti-stockpiling provisions designed to prevent the importation or manufacture of excessive numbers of non-complying lighters between the publication date and effective date of the rule.

The rule may save an estimated 80-105 lives per year. In addition, substantial reductions in injuries and fire-related property damage would result Estimated annual fire losses of about $205-270 million may be averted by the rule. The cost of the rule in terms of increased retail outlays by consumers is estimated to be about $90 million per year. This cost reflects the likely impact on small importers whose products may be subject to the rule. Thus, approximately $115-180 million in annual net benefits to the public would accompany the rule.

C. Public Comments

No public comments on the proposal criticized or responded specifically to the initial regulatory flexibility analysis. The comments did, however, raise economic issues bearing on the rule's potential impact on small firms. These issues include:

the scope of the rule;
various performance and technical requirements;
certification and anti-stockpiling requirements; and
the effective date.

A number of commenters recommended narrowing the scope of coverage, lowering the rule's acceptance criterion, narrowing the application of certain certification or anti-stockpiling provisions, or extending the effective date. Changes consistent with these recommendations may reduce the rule's potential adverse impact on small importers. Each of these issues is discussed in the Commission's final regulatory analysis in Section IV of this notice. The responses to the public comments are given in Section VI of this notice.

D. Significant Alternatives to the Rule

The Commission considered a number of alternatives to the rule; some of these could reduce the potential impact on small firms. The alternatives considered were:

the scope of the rule (broader to cover more lighters or narrower to cover fewer);
certain performance and technical requirements (acceptance criterion, testing in the U.S.);
certification and stockpiling requirements (date coding, certificates of compliance); and
the effective date (longer or shorter).

These alternatives are summarized in the discussion of public comments in Section VI of this notice. Generally, the Commission adopted changes in the final rule to reduce potential economic effects on small firms when such changes would not significantly reduce expected net benefits to consumers. An example of such a change is the treatment of novelty lighters in the scope of the rule. Alternatives for which significant reductions in expected net benefits might occur were rejected. The proposal incorporated various provisions (e.g., regarding scope, acceptance criterion, and effective date) designed to minimize potential adverse impacts on small firms; these were not changed in the final rule.

In addition, the Commission considered separately the general categories of (1) labeling requirements and (2) voluntary action as alternative means of achieving the safety objective of the rule. Either of these alternatives, if substituted for the performance rule, would virtually eliminate the potential economic impact on small firms.

If the Commission issued a labeling rule instead of child-resistance performance requirements, small importers would still incur some costs of compliance, depending chiefly on whether their products were previously labeled (some are). Costs would, however, be only a small fraction of the costs likely to be attributable to the performance rule. On the other hand, no information exists that would demonstrate that labeling alone would be effective in reducing the risk of child-play fires. The number of deaths and injuries is unacceptably high, despite the fact most lighters already carry such labels. The performance rule was developed to reduce the unreasonable risk of death and injury without relying on behavioral responses to safety messages on product or packaging labels. Although it is possible a labeling rule would have net benefits to consumers, the performance rule would have much greater net benefits.

If the Commission opted to rely on voluntary action to provide safety to consumers, most of the larger firms would probably market at least some child-resistant lighters. Smaller firms would generally not, although some may market child-resistant versions of higher-priced models. Some child-resistant lighters reportedly meeting the Commission's rule were introduced in 1992, and others are expected. Almost all firms would, however, continue to offer at least some non-child-resistant models. Although a draft voluntary standard was prepared by ASTM during 1989-90, the level of voluntary conformance to that standard among lighters available to consumers is expected to be low. Although small firms would incur very low, if any, costs under this alternative, safety benefits to consumers would be substantially lower

VOL 58 ISS 131 JL 12 1993 UMI

than under the mandatory rule. Although widespread voluntary action could have significant net benefits to consumers, the CPSC mandatory rule would have far greater net benefits.

E. Conclusion

The Commission's product safety rule on cigarette lighters may have significant, temporary adverse effects on some of the 30-35 small importers. Small firms may lack the technical capability to develop or obtain complying child-resistant lighters by the effective date of the rule. Sales revenues may be lost to the extent supplies from foreign manufacturers are disrupted. Although no small importers are expected to exit the U.S. market completely as a result of the rule, some may cease shipments of some types of lighters, at least temporarily. Larger firms with greater resources to invest in the development of child-resistant lighters may gain some competitive advantage once the rule is effective; two firms already market disposable lighters that are believed to comply with the performance requirements of the rule.

The proposed rule incorporated a number of provisions designed to minimize the potential impact on small firms. These included limiting the scope of the rule to exempt categories of lighters (luxury lighters, liquid-fuel lighters) typically marketed by small firms and not presenting significant risks of death or injury; establishing a reasonable acceptance criterion attainable by most small firms; and extending the effective date to give affected firms — especially small importers — more time to develop and obtain complying products.

Some of the recommendations in the public comments on the proposal were adopted in the final rule, in order to reduce further the potential impact on small importers. For example, the definition of novelty lighters was narrowed to exclude many novelty models marketed by small firms and presenting little risk of death or injury. Changing the final rule to require qualification testing in the U.S., suggested by commenters on the proposal, will have little or no effect on small firms' costs or ability to obtain complying lighters.

Several potentially burden-reducing alternatives (e.g., further narrowing the definitions of products covered, lowering the acceptance criterion for acceptable performance, further extending the effective date) were rejected. These alternatives would either reduce the safety benefits of the rule disproportionate to potential cost reductions, or would not reduce the burden on small firms. The final rule maximizes potential net benefits to consumers while nearly minimizing potential adverse impacts on industry, including small importers.

VI. Comments on the Proposal

A. Introduction

The public comment period on the Proposed Rule to Regulate under the Consumer Product Safety Act closed on September 16, 1992. The comment period on the Proposed Safety Standard for Cigarette Lighters closed on November 2, 1992. The comment period on the Report of Results of Child-Resistant Lighter Testing closed on March 18, 1993.

Twenty-two organizations, including the four who made oral presentations at the October 21, 1992, meeting, submitted written comments on the Proposed Safety Standard for Cigarette Lighters (one organization submitted two comments).

No commenters opposed promulgation of a final rule under the Consumer Product Safety Act, instead of under other possibly applicable Commission statutes. Fourteen commenters, including nine lighter importers, a research and development firm, the Lighter Association, Inc., and ASTM Subcommittee F15.02, Safety Standards for Lighters, specifically expressed support for a mandatory standard for child-resistant lighters.

The International Association of Fire Chiefs unanimously passed a resolution on September 18, 1992, to recognize the critical need for a comprehensive standard for child-resistant cigarette lighters and to support the CPSC's efforts to develop such a standard. The American Academy of Pediatrics submitted a letter strongly endorsing the proposed standard and requesting the standard be adopted in a most expeditious manner. The Executive Board of the South Carolina Chapter of the International Association of Arson Investigators voted to support the proposed standard.

After considering the comments and other available information, the final standard was changed to:

modify the definition of novelty lighter;

change the number of times the operation of the lighter is demonstrated to the children during the protocol test from three to two;

require the tester to use each child's lighter once to conduct the demonstrations during the protocol test;

require a photograph or videotape of the demonstration of the lighter's operation to be in the test report to record how testers hold the lighter to conduct the demonstration;

allow protocol testing to be conducted at one or more centralized locations as an alternative to conducting testing at 5 or more day care centers;

allow more flexibility in the number of children required in each age and sex category;

require protocol testing required for certification of lighters to be conducted in the United States;

clarify the legal obligations of importers; and

change the lighter date code labeling requirement to allow a manufacturing period of 31 instead of 30 days; and

provide a definition of lighter "model."

B. Comments and the Commission's Responses

A summary of the significant issues raised by the commenters and the Commission's responses is provided below.

1. *Relative risk of lighters and matches.* One commenter urged the Commission not to lose sight of the fact that matches are very available and account for a tremendous amount of fire losses and death among children under age 5. Two commenters maintained that matches are significantly more dangerous than cigarette lighters, that matches have been a greater cause of fires and fire deaths for many years, and that the CPSC's position that the risk is greater for lighters can mislead consumers. One of these commenters also stated the staff's risk analysis was based on a limited field study and on an erroneous assumption about the "accessibility" of the product to children.

The risks associated with both lighter and match child-play are matters of concern. However, the Commission believes the data used to estimate the relative risk of children playing with lighters and matches are both adequate and appropriate.

The commenters inappropriately cited CPSC fire loss data that include child-play fires started by children age 5 and older to support the argument that matches are more dangerous than lighters. Child-resistant features are likely to be most effective for addressing fires started by children under age 5. Therefore, it is appropriate to cite only data involving children under 5 when evaluating both the size of the hazard and the ability to reduce it.

Assessment of risk should consider both frequency of injury and consumer exposure to the product. The most appropriate measure in estimating risk among children under age 5 should

focus on products accessible to them. Using the number of lighters in accessible locations and the number of boxes or books of matches in accessible locations as the measure of exposure to the products, the risk of death caused by children under age 5 playing with a lighter is more than three times that of death caused by children under age 5 playing with matches.

2. *Effective date.* The proposed rule specified an effective date of 12 months from the date of publication of the final rule in the **Federal Register**. Two commenters requested prompt issuance of a final rule with an effective date by January 1, 1994, the effective date for state laws requiring child-resistant lighters in California and New Jersey.

One commenter requested a 30-month effective date (from the date a final rule is issued) to allow small manufacturers time to make necessary tooling or other production changes, and to allow sufficient time for importers to obtain complying lighters.

By the time a final rule is promulgated, a 6-month effective date would be required to coincide with the effective date of the state laws. The Commission believes a 6-month effective date would place an unreasonable burden on manufacturers and importers, especially small firms.

The 30-month effective date suggested by the commenter might further reduce the burden of the rule for some small firms but would result in a significant delay in achieving the full measure of benefits to consumers.

The effective date in the proposed rule was set at 12 months to minimize the likely adverse impact on small firms, while delivering the safety benefits of a rule to the public as expeditiously as possible. Most small firms would be able to obtain and market complying lighters within 12 months. The Commission believes a 12-month effective date will not have substantial long-term adverse effects on the profits or continued viability of small firms — most of which also produce or import products other than lighters.

3. *Scope of the standard.* The proposed rule covers "disposable" and "novelty" lighters. The proposed definition of disposable lighters included nonrefillable lighters and inexpensive refillable butane lighters (those under $2.00 in Customs Valuation if imported or under $2.00 in ex-factory price if manufactured domestically). The proposed definition of novelty lighter covered lighters resembling any other object in physical form or function. The proposed rule did not include any liquid-fuel lighters or refillable butane luxury lighters ($2.00 or more in Customs Valuation or ex-factory price).

a. *Luxury lighters.* One commenter supports the exclusion of luxury lighters from the scope on the basis they do not present an unreasonable child-play fire risk. The commenter stated the economic burden of the rule would be significantly greater if luxury lighters were covered due to the expense of changes in tooling to incorporate child-resistant features on lighters with limited production.

Another commenter stated all lighters sold in the United States should be covered by the standard. The commenter believes that luxury lighters present a greater hazard than described in the proposed standard due to their long useful lives. The commenter believes the Commission understated the benefits and overstated the costs of including luxury lighters in the proposed standard. This commenter stated that the Commission's estimate of a $5.00 maximum per-unit price increase from making certain liquid-fuel luxury models child resistant is too high.

Luxury lighters account for an estimated two percent of residential structural fires started by children under 5 years of age and for approximately 5 to 8 percent of lighters in use in the United States. This indicates that luxury lighters have a relatively low risk of involvement in lighter fire incidents, despite their long useful lives. The Commission is not aware of any deaths or injuries involving children under age 5 playing with luxury lighters that are currently on the market. The one death the staff is aware of involved a lighter with a unique operating mechanism. This lighter, which sold in low numbers, was withdrawn from the market in 1991.

The Commission believes the $5-10 million estimate of additional benefits for a rule including luxury lighters is generous rather than underestimated. The estimate assumes some deaths and injuries related to luxury lighters would be addressed by the rule.

The latest available industry information indicates that $1.00-3.00 would be a more appropriate range of per-unit retail cost increases for child-resistant luxury lighters. The best current estimate of the number of luxury lighters affected is 15-20 million units. Even using the most conservative cost increase of $1.00 per unit, for 15 million units, the total additional annual cost of a rule including luxury lighters would be approximately $15 million.

Therefore, the estimated annual net benefits of a rule that included luxury lighters would still be $5-10 million less than a rule covering only disposable and novelty lighters.

b. *Definition of disposable lighters.* Six commenters discussed the cost cutoff in the definition of disposable lighter. Two of these commenters supported the proposed definition, which requires refillable lighters under $2.00 in Customs Valuation or ex-factory price to be child resistant. Three commenters recommended a $1.00 cutoff, and one commenter recommended a $4.00 cutoff.

The cost cutoff in the proposed rule of $2.00 in Customs Valuation or ex-factory price covers refillable butane lighters the Commission considers to be reasonable, price-competitive substitutes for child-resistant nonrefillables. Complying nonrefillables are expected to retail for about $0.50-4.00. The vast majority would retail for under $3.00. Non-child-resistant refillables currently retail for as low as $1.00; many models retail for $3.00 or less. Under the proposed $2.00 cost cutoff, non-child-resistant models would probably not retail in significant numbers for less than about $5.00.

With a $1.00 cost cutoff, the majority of currently-available refillable lighters the Commission considers to be price-competitive with nonrefillables would not be covered by the rule. The least expensive non-child-resistant lighters could realistically be sold at retail for $3.00, a level considered price-competitive with some nonrefillables. Consumers might substitute significant numbers of such non-child-resistant lighters for complying lighters. In addition, a $1.00 cutoff may encourage manufacturers to add refill ports to nonrefillable lighters, at reportedly little cost or effort, to circumvent the rule. Such a practice is more likely at the $1.00 level since the lighters could be competitive with a larger proportion of complying lighters. Although the cost of the rule would be reduced with a $1.00 cost cutoff, the potential benefits could be reduced significantly. Estimated annual net benefits would probably be reduced by up to about $5 million.

With a $4.00 cost cutoff, the possibility that noncomplying refillable lighters could be sold at retail prices approaching those of nonrefillables would be minimized. Many refillable lighters the Commission does not consider to be price-competitive with nonrefillables would be covered. Up to 4-5 million additional units, including many retailing for over $15, could be subject to the rule. Up to about $8-10 million could be added to the annual cost of the rule to consumers. Given the small number of deaths and injuries

associated with any luxury lighters, it is unlikely the benefits of the rule would be greatly increased. Even if potential additional benefits were generously estimated at up to $10 million, expected net benefits would not significantly increase, and could decrease slightly. In addition, a $4.00 cutoff would have significant disruptive effects on the sales of small importers of moderately-priced refillable lighters, and on the availability of such lighters to consumers.

Issuing the rule with the proposed cost cutoff of $2.00 in Customs Valuation or ex-factory price would minimize potential consumer substitution of non-child-resistant lighters for complying models, without imposing a substantial economic burden on small businesses and without penalizing firms marketing complying lighters. The estimated annual net benefits of the rule would probably also be maximized. The Commission believes the proposed $2.00 cutoff provides the most reasonable balance of safety and commercial interests.

c. *Liquid-fuel lighters.* One commenter stated that inexpensive liquid-fuel lighters should be covered by the rule to prevent low-cost non-child-resistant liquid-fuel models from being substituted for complying lighters.

The Commission does not consider liquid-fuel lighters to be close substitutes for nonrefillable disposable lighters. Liquid-fuel lighters may be viewed as inconvenient to refill, do not use pressurized butane fuel, do not contain fuel when purchased, may have different, less convenient ignition mechanisms, are not sold in multi-packs, and, in general, are more expensive. Unless child-resistant butane lighters are very difficult to use, it is unlikely consumers would give up the convenience of butane lighters for non-child-resistant liquid-fuel lighters. The Commission believes that manufacturers in the highly-competitive lighter market will assure their child-resistant lighters are convenient to use.

The additional safety benefits for a rule including inexpensive liquid-fuel lighters would be negligible. The Commission is aware of one child-play fire death and one injury over the past 10 years involving a liquid-fuel lighter.

The cost of the rule to consumers would increase by up to approximately $1-5 million; many such lighters would probably be discontinued if required to be child resistant. Including inexpensive liquid-fuel lighters could decrease the estimated annual net benefits of the rule slightly.

d. *Definition of novelty lighters.* One commenter supported the definition of novelty lighter in the proposed rule, which is any lighter that resembles any other object in physical form or function. Four commenters asserted that the proposed definition is too broad or too subjective. One of the four recommended a definition that would include lighters with shapes that resemble toys or adult products, such as watches, that are adapted to toy-like uses. This commenter is concerned that regular lighters, if adorned with graphics, might be considered novelty lighters. The other three commenters supported the draft ASTM voluntary standard definition that was submitted to the Commission by the Lighter Association in July 1990. The ASTM novelty definition includes lighters that resemble a product "normally associated with children playing."

Two commenters requested a definition that excludes from the rule those novelty lighters whose Customs Valuation or ex-factory price is $1.00 or more and suggested that the industry could voluntarily incorporate a manual on-off switch for novelty lighters that are not required to be child resistant.

The Commission's primary intention is to assure that the scope of the rule includes novelty lighters that appeal to children. The Commission agrees that the proposed definition could include some lighters, such as crystal vases, that would not necessarily appeal to young children. Although the Commission did not use the draft voluntary standard definition of novelty lighter in the proposed rule, it did revise the scope of the definition to more closely distinguish the lighters that present higher risks from child-play.

The suggested cost cutoff of $1.00 for novelty lighters is not appropriate because most novelty lighters, including many considered to be appealing to children, are above $1.00 in Customs Valuation. The concept of a definition limited to the shape of the lighter is not acceptable because the Commission believes that lighters with appealing logos or graphics also are likely to be played with by children and thus should be considered novelty lighters. In addition, the Commission believes lighters with entertaining audio or visual effects, such as music or flashing lights, also would appeal to children and should be covered. Such lighters may not have modified shapes.

After considering these comments, the Commission developed the following revised definition:Novelty lighter means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food, or beverages, or that play musical notes or have flashing lights or other entertaining features.

The Commission's staff for many years has provided guidance on age appropriateness of toys and children's products in support of regulations under the Federal Hazardous Substances Act. The staff is prepared to make similar interpretations about the appeal of novelty lighters to children under 5.

Any reduction in potential safety benefits of a rule with the revised definition would be slight. The Commission is aware of no deaths or injuries involving novelty lighters that were covered by the proposed rule but that are not included in the revised definition. Lighters in the form of a cigarette pack and a gold brick, which were involved in child-play fire incidents, would have been covered under the proposal but will not, by virtue of their appearance alone, be covered under the revised novelty definition. However, these particular lighters would have been within the scope of the final rule because they are disposable because they either were nonrefillable or were refillable butane and under $2.00 in Customs Valuation or ex-factory price.

The Commission supports a revised definition largely because the burden on importers, particularly small importers, would be reduced without reducing the expected net benefits of the rule. If finalized, the definition that was proposed might result in the discontinuation of many, if not most, novelty lighters. Although the revised definition might also result in the discontinuation of many novelty lighters, it would allow a continued market for a larger number of novelty lighters.

Excluding some novelty lighters from the scope of the rule may reduce the annual cost of the rule to consumers by up to $1 million. The impact on annual net benefits would likely be negligible.

The revised definition of novelty lighter is at § 1210.2(d) of the final rule.

4. *Test protocol.* The rule requires subject lighters to be tested using panels of young children. The lighters are considered child resistant if at least 85 percent of the children are unable to operate them during a 10-minute test period.

a. *Acceptance criterion.* Three commenters supported the proposed 85 percent acceptance criterion. Two of the

three strongly opposed an acceptance criterion above 85 percent, stating that it would be an unreasonable burden on the industry.

One commenter requested that the Commission reduce the acceptance criterion to 65 percent because small firms with less technical resources to develop child-resistant lighters may be at a competitive disadvantage.

One commenter stated that no child under the age of 5 should be able to activate a lighter, implying a recommendation for a 100-percent acceptance criterion.

The commenters provide no basis for reducing the acceptance criterion to 65 percent or for increasing the acceptance criterion to 100 percent. A 65 percent acceptance criterion would not adequately reduce the risk of fires started by young children, since the average child resistance of currently marketed, non-child-resistant lighters is about 50 percent.

The child-resistant lighter test results clearly support the feasibility of an acceptance criterion of 85 percent. The data do not support the feasibility of an acceptance criterion of 100 percent. A lighter that no child under 5 could operate would likely be very difficult for adults to operate as well. In order for child-resistant lighters to address the risk of injury most effectively, adults must be willing to use them. If adults are unable or unwilling to use child-resistant lighters, they may switch to available non-child-resistant lighters.

Minimizing the potential for adverse competitive effects on small firms was considered when the 85-percent acceptance criterion was recommended; 85 percent is the highest acceptance criterion the Commission considers technically and commercially feasible for most firms.

b. *Definition of successful operation.* Three commenters opposed the proposed one-signal definition of successful operation and recommended a two-signal definition. These commenters argued that one instantaneous activation does not indicate a child's ability to start a fire and that electronic surrogate lighters may produce erroneous signals. One of the commenters stated that a change from a two-signal definition to one-signal definition can make as much as a 12 percent difference in the test results and can mean the difference between a lighter passing or failing the 85 percent acceptance criterion requirement.

One commenter supported the proposed one-signal definition. This commenter's testing experience shows a high percentage of the children who operated the lighter once operated it a second time.

The Commission does not find arguments against defining successful operation as one signal of the lighter persuasive. The final report of the results of the Commission's child-resistant lighter testing shows the majority (75 percent) of the children who operated the lighters once were able to operate the lighters a second time. Therefore, although a brief signal may not represent maintenance of a flame, it is a strong predictor of future success.

The test protocol procedures guard against reporting an erroneous signal as a successful operation. The tester is required to verify the surrogate lighter is functioning properly by operating the lighter before and after each child participates. In addition, if the tester hears a signal during the test without the child actually overcoming the child-resistant mechanism, the data for that child are eliminated from the test and replaced with results from another eligible child.

The statement by the commenter about one manufacturer obtaining a 12 percent difference in results between one and two operations also is not persuasive. These data appear to support a one signal definition as a more stringent requirement. In any event, the commenter did not supply sufficient data for any independent evaluation to be made of the possible reasons for a 12 percent difference, which is not consistent with the results from Commission-sponsored testing.

c. *Number of demonstrations of lighter operation.* Four commenters stated there is no adequate basis for requiring three demonstrations of lighter operation as proposed. They state the low number of successes after one demonstration in the child-resistant lighter test results is insufficient justification. The commenters state that there is no evidence that three demonstrations will enhance the safety of lighters.

Two commenters with experience conducting cigarette lighter testing supported the need for more than one demonstration to assure that the children have observed the lighter operation. However, one of these commenters expressed concern that three demonstrations is too stringent because it encourages the children to concentrate on the lighter in an unnatural fashion. The commenter stated the first demonstration serves to attract the children's attention with the "noise." The second demonstration shows them where to focus their attention, and the third demonstration literally teaches them how to use the lighter. This commenter recommended two demonstrations.

The final report of the results of the child-resistant lighter tests shows that, although more children were successful after three demonstrations than after one demonstration, the differences are not statistically significant. In addition, for the lighters tested, the number of demonstrations does not affect the final result — whether a lighter meets, or fails to meet, an 85 percent acceptance criterion. Although these data do not support the need for three demonstrations, the Commission believes it is important to assure that the children are provided with an adequate opportunity to observe lighter operation. The two demonstrations recommended by one commenter would accomplish this objective. The Commission revised § 1210.4(f)(3) of the final rule to require two demonstrations.

d. *Conducting the demonstration.* One commenter stated that the requirement in the proposed standard to use one of the children's lighters to conduct the demonstration could bias the test results. If the other child is disappointed because the tester did not operate his or her lighter too, the child's frustration may affect his or her performance in the second 5-minute period. This commenter recommended using a separate lighter to conduct the demonstration.

A second commenter recommended the tester demonstrate the lighter while kneeling between the two children being tested to assure that the children have a normal view of the operation and the child-resistant mechanism is not hidden from view.

A third commenter recommended specific guidelines for orientation of the lighter during the demonstration to assure uniformity among the testers. This commenter also recommended that, after one demonstration, the children switch places for the second demonstration, since one child may be on the opposite side of the child-resistant feature.

The purpose of using one of the children's lighters for the demonstration is to assure them the lighters they are using will make the signal. When a separate lighter is used to conduct the demonstration, some children still want the tester to try their lighter. To address the concern of potential bias, each child's lighter can be demonstrated one time in conducting the two demonstrations in the test procedure. This will assure each child that his or her own lighter is capable of making the signal.

Conducting the demonstration from a position between the children may not be the best orientation for all lighters. It would also be difficult for the tester to verify the children are watching the demonstration since he or she will be behind the children. Having the children switch places would assure both children have observed the mechanism from the same perspective. However, switching has the potential for adding confusion to the test and may result in mixing up the children's lighters and/or the data corresponding to each child. Accordingly, the Commission has not included these requirements in the final rule. However, the Commission has included more specific requirements for orientation of the lighter.

Revised § 1210.4(f)(3) of the final rule requires the use of each child's lighter once during the two demonstrations.

e. *Documentation of the demonstration.* One commenter recommended that the test require a photograph to be taken to show how the lighter is held during the demonstration.

Since how the demonstration is conducted could be critical to the test's ability to determine whether a lighter is child-resistant, the Commission decided to include such documentation in the qualification testing records required under § 1210.17(a). As an alternative to a photograph, a video tape would also be acceptable. For the same reason, the Commission decided to include documentation of the orientation of the tester's body and hand to the children during the demonstration. Revised sections 1210.5(g) and 1210.17(a) of the final rule require such documentation of the demonstration. Section 1210.5(g) has been revised to include conditions intended to ensure that any video taping or photographing does not distract the children during the test.

f. *Number of testers and maximum and minimum number of children per tester.* One commenter recommended that the five or six testers required in the proposed standard be reduced to three testers for each 100-child test panel.

A second commenter recommended allowing a 20 percent maximum number of children per tester whether 5 or 6 testers are used. This would preclude exceeding the maximum allowance when a test is begun with 5 testers (proposed maximum of 20 +or- 2 children), but completed with 6 testers (proposed maximum of 17 +or- 2 children), if one of the original 5 testers drops out because of illness or some other reason.

No rationale is provided for the recommendation for three testers instead of five or six. The results of the Toronto retest in the verification testing were affected by one tester (out of six) who was particularly adept at obtaining the children's cooperation. That tester, who conducted 30 percent of the test, had an excessive effect on the success rate. In order to minimize the potential for bias, the Commission determined the number of children tested by an individual tester should be approximately 20 percent of the panel for 5 testers, or approximately 17 percent of the panel for 6 testers.

The Commission does not support a revision to allow a maximum of 20 percent for all tests. Such a revision would be restrictive, since it would require each of 5 testers to test exactly 20 children. Currently, each tester of five is allowed to test 20 +or- 2 children (i.e., 18, 19, 20, 21, or 22 children). This flexibility facilitates expeditious testing and allows totals to be an odd number (i.e., 19 or 21) for circumstances where results for one child in a pair are dropped from the test. However, there is a need to address the very likely situation where a test is initiated with five testers but completed with six testers. When testing is initiated with 5 testers, no tester should test more than 19 children until it is certain that the test can be completed with 5 testers. This will preclude exceeding the maximum requirement in case six testers are needed.

The Commission added a "Note" to § 1210.4(b)(3) to discuss how the protocol applies to the circumstances when a tester drops out.

g. *Number of surrogate lighters.* One commenter asked (1) can the same 6 surrogate lighters be used in more than one 100-child panel and (2) if a surrogate lighter is damaged during testing, should it be replaced with an additional surrogate lighter or should the testing continue with less than 6 surrogate lighters?

If the surrogate lighters meet all of the requirements in § 1210.4(c), they may be used in more than one 100-child panel test. If a surrogate lighter is permanently damaged and/or no longer represents the production lighter intended for use, testing should continue using the remaining lighters.

To address these issues, and to make the minimum and maximum requirements equivalent to the requirements for testers, the Commission revised § 1210.4(c) in the final standard.

h. *Test site.* One commenter requested a modification of the test site requirement to allow testing at centralized locations.

The Commission agrees that this alternative methodology would improve the efficiency of test completion; accordingly, the Commission revised the final rule to allow testing at centralized locations. If a central facility is allowed, it is important the participating children be drawn from various locations throughout the geographical area to achieve the same objective as multiple test sites — varied economic and social backgrounds. Accordingly, the Commission included this limitation on the use of centralized locations in the final rule.

In order to accommodate a central test facility, the Commission revised § 1210.4(b) of the final standard.

i. *Test environment.* One commenter recommended the test be conducted with the children sitting on the floor, but with a table in the room so they can use it if desired.

The Commission does not support conducting the test with the children sitting on the floor. The purpose of seating children a specified distance apart at a table is to standardize the test and to facilitate the interaction of the tester with the children. The test procedure at § 1210.4(b)(2) does allow children freedom of movement to work with their lighters, so long as the tester can watch both children at the same time. Therefore, a child could get down on the floor and roll the lighter if he or she chose to.

The Commission revised the test environment requirement to change the specified distance between the children's chairs from 1.5 feet to 6 inches. In actual practice, the testers place the children approximately 6 inches apart in order to better observe both of the children. The Commission revised § 1210.4(b)(2) of the final rule accordingly.

j. *Age and sex distribution of child-test panel.* One commenter requested some flexibility in the age and sex quotas in the child-test panel. The commenter suggested the quotas allow for +or- 1 child in each age and sex category.

Allowing flexibility in the age and sex quotas is acceptable and would help expedite completion of test panels. To address this request, the Commission revised § 1210.4(a)(4) of the final rule. To ensure uniformity, the Commission also added a "Note" to provide a formula for calculating a child's age in months.

k. *Panel size.* One commenter supported the requirement in the proposed standard for a 100-child test panel.

A second commenter requested that the test be conducted with sequential panels of 50 children each, instead of 100 children each, in order to ease the

VOL 58 ISS 131 JL 12 1993 UMI

burden on testing organizations as well as providing efficient testing for manufacturers.

Sequential testing has been used successfully with panels of 50 children to test child-resistant packaging under the Poison Prevention Packaging Act. Initially, 50-child panels were also considered for cigarette lighter testing. During the statistical analysis of the verification testing, the effect of panel size on success rates was evaluated. Panels of 50 were significantly different, while panels of 100 were not. Due to the potentially higher variability associated with lighter testing than with child-resistant packaging, the Commission increased the panel size to 100 children. There is currently no basis for changing this provision.

l. *Testing in countries outside the United States.* Five commenters expressed concern about the comparability of results from testing outside the United States with results from testing within the United States. Two of the commenters were concerned that the differences in cultures, educational systems, laws, and attitudes of the various countries manufacturing lighters will make it difficult to achieve comparable results. Two commenters were concerned about the differences in abilities of children from different countries, since children in many countries outside the United States are not exposed to the types and variety of mechanical devices, toys, video games, etc., available in the United States that require a high degree of hand-eye coordination and problem-solving abilities.

Most of these commenters stated that the Commission should require testing to be performed in the United States in order to ensure compliance with the rule.

One commenter did not oppose testing outside the United States. However, this commenter recommended that foreign testing laboratories be approved (certified) by the Commission. Several other commenters also suggested testing be conducted by certified laboratories that have met criteria established by the Commission.

The Commission shares these commenters' concerns. Cultural differences, such as attitudes about fire, may influence the testers and/or the children and bias the test results. The potential for bias is a substantial concern, since tester bias was identified as a significant influence on test results during verification testing conducted in Canada. The proposed rule attempts to address this issue by requiring at least one test of a lighter in both the U.S. and the other country to confirm that results equivalent to those obtained in the United States can be obtained in the other country. Under the proposal, tests of other lighters could then be performed in the other country. However, restricting testing to the United States is the only certain way to assure the results represent the capabilities of children in the United States to operate lighters.

The Commission agrees that restricting testing to the United States would facilitate enforcement of the rule. The Commission staff can visit domestic testing firms, witness tests, and question testers and test subjects. Records and personnel of foreign testing firms are not subject to the Commission's authority.

The Commission is not planning to develop a program to certify or accredit testing facilities. The Commission would support the development of such a program by the Lighter Association, Inc., or other interested parties. The Commission does plan to conduct programs to educate manufacturers, importers, and testing organizations about the requirements of the rule.

Restricting testing to the U.S. would result in virtually no adverse impact on small firms. This is because: (1) testing costs are similar either in or out of the U.S., (2) all firms, including small firms, would have access to test facilities or services in the U.S., (3) testing costs are a minor portion of total compliance costs, and (4) there would be no effect on the availability of child-resistant lighters to the public. In view of this lack of impact and the possibility that not restricting testing to the U.S. could bias the test results, the Commission revised § 1210.4(a)(3) and § 1210.4(b)(2) of the final rule to restrict testing to the United States.

m. *Lighter label.* Two commenters recommended a requirement for a mandatory permanent warning label on the lighter stating "Keep lighters out of the reach of children." One of the commenters also recommended an information label to inform parents and care-givers that complying lighters are only 85 percent child resistant for children up to 51 months of age. One of the commenters stated the labeling requirement in the ASTM voluntary standard is not sufficient because it allows the warning label to be on the package, which is often discarded.

As stated in the preamble to the proposal, most lighters or their packaging, including virtually all disposables, are already labeled "keep away from children." ASTM Subcommittee F15.02, Safety Standards for Lighters, just completed revisions of the voluntary standard, ASTM F-400, to strengthen and emphasize this warning. The Commission does not see a need for an additional, and potentially confusing, warning that complying lighters are only 85 percent child resistant for children up to 51 months of age. The warning required by the voluntary standard is intended to inform parents and care-givers to keep lighters away from children of all ages. Although a mandatory label would not add significantly to manufacturers' costs, the benefits may also be negligible. To the extent that labeling would be effective, the benefits should be achieved by voluntary compliance with ASTM F-400.

n. *Consumer education.* One commenter asked the Commission to remember to continue efforts in the area of consumer education to further reduce the number of child-play fire incidents.

The Commission intends to take part in an aggressive and comprehensive public information and education campaign to increase consumer awareness of the involvement of lighters and matches in child-play fires. This information will make consumers aware of the availability and beneficial effects of child-resistant lighters. Consumer acceptance is critical to the effectiveness of the standard.

o. *Two-motion feature.* One commenter stated that single-motion child-resistant devices provide an unnecessarily low level of safety and recommended requiring the child-resistant mechanism to operate consecutively in at least two different directions. The commenter stated that well-known knowledge of child behavior provides the basis for this recommendation. The commenter submitted several patents for child-resistant designs to show the state of the art supports the recommended requirement.

This commenter does not provide facts to show a two-direction action is necessary to address the risk of injury associated with children playing with lighters. The recommended action is one of many effective child-resistant strategies described in the March 1988 COMSIS Corporation report "Abilities of Young Children to Operate Butane Cigarette Lighters." In addition, a lighter design that does not require a two-direction action exceeded the proposed 85 percent acceptance criterion in the Commission child-resistant lighter testing. The final rule is based on the conclusion that the child-panel testing is an adequate measure of the child-resistant effectiveness of a lighter design. The Commission can see no reason to limit the range of designs that could be utilized by imposing specific design requirements in the rule. Lastly,

and dispositively, section 7(a)(1) of the CPSA requires that, for other than labeling, warning, and instructions requirements, a "consumer product safety standard shall consist of ... [r]equirements expressed in terms of performance requirements." 15 U.S.C. 2056(a)(1). This statutory prohibition prevents adoption of this commenter's suggestion for a two-motion child-resistant mechanism.

p. *Lighter flame characteristics.* A commenter noted that the casualty rates in child-play fires started by children under 5 were higher for lighters than matches, and suggested that excessive lighter flame height or contaminated gas could be factors.

This commenter does not provide data to show that specifications for flame height or fuel composition would address the child-play hazard. Available investigative data indicated that, on average, children who started fires with lighters were younger than those who started fires with matches. This difference in age may indicate that once a fire has started, fewer of the children who started fires with lighters were able to respond to prevent injury or death than were the older children who started fires with matches. This could contribute to the higher casualty rates in lighter child-play fires.

In addition, the ASTM standard — F400, Consumer Safety Specification for Lighters — includes requirements for flame height and for the characteristics of the fuel mixture. Since conformance to this voluntary standard is reported to be high, many lighters currently on the market already meet such requirements.

5. *Certification requirements.*

a. *Legal obligations of the importer.* One commenter noted that different provisions of the certification requirements state "either the manufacturer or importer" or the "manufacturer and importer" have certain responsibilities. They requested clarification of who specifically is responsible.

For imported lighters, the importer is responsible for the certification that the lighters comply and for compliance with the appropriate certification label, testing, and recordkeeping requirements. Although importers may meet these obligations through actions by the foreign manufacturer, the importer is legally responsible for the products that it imports. (The Commission does not have jurisdiction over the manufacture of products in foreign countries, as such. Section 3(a)(4) of the CPSA defines the term "manufacturer" as including importers. 15 U.S.C. 2052(a)4).) The Commission made minor changes to § 1210.12(a)(1) to clarify the role of the importer.

b. *Certificate of compliance.* One commenter asked whether the certificate of compliance can be printed on the shipping carton. Another asked whether a certificate of compliance is required for lighter samples. Three commenters stated that requiring the date(s) of manufacture on the certificate of compliance is unduly burdensome because any shipping unit may contain lighters manufactured on many different dates. The commenters questioned the need for this requirement, since each individual lighter is date coded.

As long as the shipping carton is the shipping unit sent to distributors or retailers, or is included within the shipping unit, the practice of printing the certificate of compliance on the shipping carton is acceptable.

The standard applies only to lighters that are consumer products, i.e., those that are intended for consumers, or that are likely to be distributed to consumers more than occasionally. 15 U.S.C. 2052(a)(1). Samples shipped to distributors or retailers (for example, as promotional items not intended for resale), would not require a certificate of compliance unless they meet these criteria.

Section 14 of the CPSA states that a certificate of compliance shall include the date of manufacture. In addition, date(s) on the certificate of compliance will facilitate the identification of suspect merchandise in the event of a recall. Manufacturers may meet this requirement by providing a range of production dates. With proper inventory control, manufacturers should be able to identify the date(s) of manufacture at the time the lighters are boxed for shipping.

c. *Lighter date code labeling requirement.* One commenter requested a change to the lighter labeling requirement to allow a 31-day manufacturing period instead of the proposed 30 days, so calendar months can be used in date codes. The commenter also asked if the identification of the manufacturer can be met by the current industry practice of stamping the name on the plastic or metal lighter case.

The Commission changed the requirement, at § 1210.12(c)(1) in the final standard, to 31 days. The current practice of identification of the manufacturer on the lighter, described by the commenter, is acceptable.

d. *Definition of lighter "model."* One commenter recommended defining "model" in terms set forth under section 37 of the CPSA to identify the lighters a manufacturer must test. Section 37 defines model as "one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance." 15 U.S.C. 2084(e)(2).

The section 37 definition is unsuitable since it does not provide specific guidance on which variations in the design of lighters could affect child resistance. However, the Commission added the following definition of model at § 1210.2 of the final standard:

A "model" is one or more cigarette lighter(s) from the same manufacturer or importer that do not differ from each other in design or other characteristics in any manner that may affect child resistance. Lighter characteristics that may affect child-resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

The Commission also revised § 1210.15 to require the product specification to include the model name(s) or number(s) that correspond to the surrogate lighters used for qualification testing.

e. *Qualification testing.* One commenter requested a revision to the provision that requires new qualification testing if a corrective action changes the product in a manner that could affect its child- resistance. They suggest new testing is only required if the change "adversely" affects the child-resistance.

The Commission made this clarification in § 1210.14(b) but notes the manufacturer or importer must be able to establish that a change will not adversely affect child resistance. A similar clarification has been added to § 1210.14(a) to make it clear that a model that differs from a previously qualified model only by differences that do not have an adverse effect on child resistance need not be separately qualified.

f. *Production testing.* One manufacturer requested a modification to the production testing provision that would allow manufacturers to continue distribution of lighters unless a "statistically significant" population of failures is identified.

Such a modification is not necessary, because the provision allows manufacturers to devise production testing programs that work best for their products. The Commission encourages firms to use rigorous, statistically based quality assurance systems to ensure compliance with the standard. If the manufacturer's system discloses a real possibility that the product does not comply, manufacturing should cease

VOL 58 ISS 131 JL 12 1993 UMI

until corrective measures have been taken.

h. *Production records.* Two commenters requested that manufacturers be allowed to maintain production records in languages other than English and provide translations within thirty days of a Commission request instead of one week.

The Commission does not support these changes. Most production records are likely to be forms, which could be bilingual to allow employees to record data in a manner that can be understood by both the firm's employees and the Commission's staff. In addition, Commission staff may need to review records expeditiously if a potentially noncomplying product is being held at a Port of Entry by the U.S. Customs Service. Under the procedures governing cooperation between the CPSC's staff and Customs, staff must notify Customs within two weeks if a product violates a Commission rule.

i. *Reporting.* One commenter requested that the reporting provision be changed to delete the requirement for submission of surrogate lighter specifications at least 30 days before importation. The commenter stated that such specifications are sensitive, confidential commercial information and could be provided during an inspection if required by the Commission.

The Commission does not support this change. The specifications are important for the staff review of lighters being introduced into commerce. The Commission has established extensive procedures under section 6(a) of the CPSA to safeguard trade secret information. 16 CFR 1015, Subpart B. Trade secret specifications would be protected from public disclosure.

j. *Authority to request records.* One commenter requested that the provision requiring manufacturers or importers to provide records to "any designated officer or employee of the Commission" be changed to "employees of the Commission authorized or designated under 15 U.S.C. § 2065(a) to make inspections of firms."

The Commission believes that this revision would be too limiting. Legitimate requests for records may also be made by other field or headquarters staff charged with responsibility for monitoring compliance with the standard.

k. *Confidentiality.* One commenter requested clarification of the confidentiality provisions to provide automatic confidential treatment of production records and product specifications submitted to the Commission.

The Commission can withhold records only if the records fit into one of the exceptions to the Freedom of Information Act. Bona fide trade secrets fit into one of these exceptions. 5 U.S.C. 552(b)(4). A blanket finding of confidentiality cannot be added to the rule, because a determination of whether production records and product specifications are trade secret depends on each firm's handling of such information.

6. *Anti-stockpiling.* The proposed rule includes anti-stockpiling provisions designed to prevent the importation or manufacture of excessive numbers of noncomplying lighters between publication of the final rule and the effective date.

One commenter requested the Commission to exempt all refillable lighters, including novelty lighters, from the anti-stockpiling rule in cases where there are actual purchase orders to be filled. The commenter stated that the market share of these lighters is insignificant compared to the total amount of lighters produced. The commenter stated that for the smaller companies involved in this market, the filling of purchase orders during this period is crucial.

The Commission has not exempted refillable lighters, including novelty lighters, from the anti-stockpiling provisions. If such an exemption were provided, reductions in the safety benefits of the rule could result in the short term (1-2 years after issuance of a final rule) if large sales of noncomplying refillable lighters increased the proportion of non-child-resistant lighters available to consumers. Although some small firms experiencing significant sales growth may be limited by these provisions, the adverse impact would probably not be substantial. The stockpiling provision allows each firm to produce or import, during the 1-year period between publication of the final rule and its effective date, a total number of noncomplying "disposable" and "novelty" lighters that does not exceed 120 percent of the total number of such lighters produced or imported during any 1-year period during the 5 years prior to the publication date of the final rule. So long as the overall 120 percent limitation is observed, the number of lighters of a given model or type could exceed 120 percent of the number of lighters of that model or type during the 1-year base period chosen by the manufacturer or importer. The stockpiling rule does not limit the number of lighters that comply with the rule that are manufactured or imported prior to the rule's effective date.

7. *Lighters as packages of fuel.* One commenter objected to the Commission's statement in the proposal that a "cigarette lighter meets the definition of the term 'package' in section 2(3) of the PPPA, 15 U.S.C. 1471(3), because it is the 'immediate container' in which a hazardous substance is contained for use by individuals in a household." The commenter argues that the PPPA was intended primarily to address poisonings and that a lighter, instead of being a package, is a mechanical device intended to produce a flame.

Commission jurisdiction under the PPPA extends to any "household substance, which means any substance which is customarily produced or distributed for sale for ... use, or customarily stored, by individuals in or about the household and which is — (A) a hazardous substance as that term is defined in section 2(f) of the [FHSA] (15 U.S.C. 1261(f) ...." The FHSA confers jurisdiction over a number of hazards in addition to toxicity, including that the substance "is flammable or combustible ... [or] generate pressure." Thus, hazards other than poisonings can be addressed under the PPPA.

The Commission agrees with the commenter that a lighter can be viewed as a mechanical device intended to produce a flame. That is largely the reason the Commission decided to regulate lighters under the CPSA, rather than under the PPPA or FHSA, as to *the risk of children starting fires by operating lighters during child-play.* However, this does not detract from the fact that the lighter meets the definition in the PPPA of a package for the butane fuel, which is a hazardous substance. The Commission points out, however, that there is no requirement issued under the PPPA that would apply to lighters.

8. *Preemption.* A commenter expresses concern that some state regulations may prohibit the sale of stockpiled non-child-resistant lighters after the effective date of CPSC's safety standard. The commenter requests that the following statement be incorporated into § 1210.1 of the standard: "These requirements are intended to eliminate diverse, nonuniform and confusing state and local laws and regulations relating to the child resistant performance of disposable and novelty lighters."

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides: "[w]henever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or *to*

continue in effect any provision of a safety standard or regulation which prescribes any requirements ... which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard" (emphasis added). Because the standard allows the sale after the effective date of properly stockpiled disposable and novelty lighters manufactured before the effective date, a state regulation could not be applied to prevent the sale of such lighters after the standard's effective date. Thus, the statement requested by this commenter is unnecessary.

VII. Environmental Assessment

Pursuant to the National Environmental Policy Act and in accordance with CPSC's procedures, consideration was given to the potential environmental effects of the consumer product safety rule for lighters.

Most of the over 600 million lighters sold annually in the U.S. and subject to the rule are imported; only one firm presently manufactures lighters that will be subject to the rule in the United States. To achieve compliance with the rule, most producing firms will likely add mechanical child-resistant features to their products. Some models of lighters, accounting for less than one percent of all lighter shipments, may be discontinued as a result of the rule. The rule is prospective in nature, and will not require the recall, destruction, or disposal of existing units. Products manufactured or imported before the effective date of the rule can be sold after the effective date, so existing product inventories will be unaffected. Anti-stockpiling provisions of the rule will limit the production or importation of noncomplying lighters between the rule's promulgation date and effective date.

Molds used in the production of component parts are replaced periodically by manufacturers. While some of these may be replaced more quickly than normal for some firms, the effective date of 12 months after publication of a final rule will allow most firms ample time for such changes.

No changes in the amounts of butane or other fuels used in lighters will result from the issuance of the rule. Production of prototype test lighters may require occasional emptying of butane gas from production line samples, but the extent of this practice will be very slight (typically under 100 individual lighters per production facility; there are probably fewer than 5 such facilities in the U.S.).

The rule contains no labeling or packaging requirements that will change the way lighters are packaged for sale. There will be no significant impact on either domestic consumption of or domestic and foreign suppliers of raw materials used in the manufacture of the various plastic and metal lighter components. No significant change in the consumption or disposal of lighters by consumers is anticipated as a result.

It is concluded from the available information that the rule for lighters will not significantly affect raw material use, air or water quality, manufacturing processes, or disposal practices in a way that will cause any significant impact on the environment.

VIII. Paperwork Reduction Act

As explained above, the standard and certification provisions will require manufacturers and importers of disposable and novelty lighters to perform testing, maintain records, and report data to the Commission relating to the lighters that they produce or import. For this reason, the rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501-3520. Therefore, the proposed rule was submitted to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3504(h) and implementing regulations codified at 5 CFR 1320.13. The proposal also indicated that any person who desired to comment to OMB on the collection of information requirements in the proposal should address those comments to OMB's Office of Information and Regulatory Policy. No comments on the proposal were submitted to OMB, and OMB approved the collection of information requirements (OMB Control No. 3041-0116).

IX. Extension of Time To Issue Final Rule

Section 9(d)(1) of the CPSA, 15 U.S.C. 2058(d)(1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the **Federal Register**.

Executive Order 12662, which implements the United States-Canada Free-Trade Implementation Act, provides that publication of standards-related measures shall ordinarily be at least 75 days before the comment due date. Accordingly, the Commission provided a comment period of 75 days for the proposal. Additional time was required to analyze the comments and to prepare a briefing package for the Commission's consideration that described the comments received, the staff's recommended responses to the issues in the comments, new information concerning the relevant issues and findings, and the staff's recommendation that a final rule be issued. In addition, time was required for the Commission to consider and vote on whether to issue a final rule and approve a **Federal Register** notice responding to the comments on the proposal and containing the required findings to issue the rule.

In anticipation of these activities, the Commission in the proposal found that these activities constituted good cause for extending the 60-day period after publication of a rule that is provided by the CPSA as the time during which a final rule shall be published. Accordingly, in the proposal, the Commission extended the time during which it may publish the final rule to April 30, 1993.

Although the comment period on the proposal closed on November 2, 1992, comments were received as late as February 22, 1993. In addition, the Commission allowed an opportunity for comment on a report of results of child-resistant lighter testing; that comment period closed on March 18, 1993. These factors prevented the completion of the briefing package in time for the Commission to publish a final rule by April 30, 1993. The Commission finds that this constitutes good cause for extending by another 3 months the period during which a final rule will be published. Accordingly, the Commission extends the time during which it will publish the final rule to July 31, 1993.

Pub. L. No. 101-608 amended section 9(c) of the CPSA to require that a rule be issued within 12 months of the publication of an ANPR, unless the Commission determined that a rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury or that a rule is not in the public interest. Consumer Product Safety Improvement Act of 1990, Pub. L. No. 101-608, § 109, 1990 U.S. CODE CONG. & ADMIN. NEWS (104 Stat.) 3113. The Commission also may extend the 12-month period for good cause. *Id.*

Since the ANPR in this proceeding was issued more than 1 year before the enactment of Pub. L. No. 101-608, the Commission concludes that the requirement that a rule be published within 12 months of its ANPR is inapplicable to this proceeding and that it is unnecessary to formally extend the period for issuing the proposal. In any

event, the following facts constitute good cause for issuing this rule more than 12 months after publication of the ANPR:

1. that the statutory amendment was enacted more than 1 year after the publication of the ANPR, and

2. that additional testing was required to resolve inconsistent results obtained in the verification testing and to determine the performance of various designs in tests of child-resistant lighters.

List of Subjects in 16 CFR Part 1210

Cigarette lighters, Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations is amended as set forth below.

1. A new part 1210 is added to read as follows:

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

Subpart A—Requirements for Child Resistance

Sec.
1210.1 Scope and application.
1210.2 Definitions.
1210.3 Requirements for cigarette lighters.
1210.4 Test protocol.
1210.5 Findings.

Subpart B—Certification Requirements

Sec.
1210.11 General.
1210.12 Certificate of compliance.
1210.13 Certification tests.
1210.14 Qualification testing.
1210.15 Specifications.
1210.16 Production testing.
1210.17 Recordkeeping and reporting.
1210.18 Refusal of importation.

Subpart C— Stockpiling

Sec.
1210.20 Stockpiling.

Subpart A—Requirements for Child Resistance

Authority: 15 U.S.C. 2056, 2058, 2079(d).

§ 1210.1 Scope, application, and effective date.

This part 1210, a consumer product safety standard, prescribes requirements for disposable and novelty lighters. These requirements are intended to make the lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all disposable and novelty lighters, as defined in § 1210.2, that are manufactured or imported after July 12, 1994.

§ 1210.2 Definitions.

As used in this part 1210:

(a) *Cigarette lighter.* See *lighter.*

(b) *Disposable lighter*—means a lighter that either is:

(1) not refillable with fuel or

(2)(i) its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gage pressure of 15 psi (103 kPa), and

(ii) it has a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.

(c) *Lighter,* also referred to as *cigarette lighter,* means a flame-producing product commonly used by consumers to ignite cigarettes, cigars, and pipes, although they may be used to ignite other materials. This term does not include matches or any other lighting device intended primarily for igniting materials other than smoking materials, such as fuel for fireplaces or for charcoal or gas-fired grills. When used in this part 1210, the term *lighter* includes only the disposable and novelty lighters to which this regulation applies.

(d) *Novelty lighter* means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel.

(e) *Successful operation* means one signal of any duration from a surrogate lighter within either of the two 5-minute test periods specified in § 1210.4(f).

(f) *Surrogate lighter* means a device that: approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a lighter intended for use by consumers; has no fuel; does not produce a flame; and produces an audible or visual signal that will be clearly discernible when the surrogate lighter is activated in each manner that would normally produce a flame in a production lighter. (This definition does not require a lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a lighter without fuel as a surrogate lighter if a distinct signal such as a "click" can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production lighter without the signal. *But see* § 1210.4(f)(1).)

(g) *Model* means one or more cigarette lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child-resistance. Lighter characteristics that may affect child-resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

§ 1210.3 Requirements for cigarette lighters.

(a) A lighter subject to this part 1210 shall be resistant to successful operation by at least 85 percent of the child-test panel when tested in the manner prescribed by § 1210.4.

(b) The mechanism or system of a lighter subject to this part 1210 that makes the product resist successful operation by children must:

(1) reset itself automatically after each operation of the ignition mechanism of the lighter,

(2) not impair safe operation of the lighter when used in a normal and convenient manner,

(3) be effective for the reasonably expected life of the lighter, and

(4) not be easily overriden or deactivated.

§ 1210.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a lighter is resistant to successful operation by children uses a panel of children to test a surrogate lighter representing the production lighter intended for use. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1210.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30 +or- 2 children (20 +or- 1 males; 10 +or- 1 females) 42 through 44 months old;

(ii) 40 +or- 2 children (26 +or- 1 males; 14 +or- 1 females) 45 through 48 months old;

(iii) 30 +or- 2 children (20 +or- 1 males; 10 +or- 1 females) 49 through 51 months old.

Note: To calculate a child's age in months:

1. Subtract the child's birth date from the test date.

	Month	Day	Year
Test Date	8	3	94
Birth Date	6	23	90
Difference	2	-20	4

2. Multiply the difference in years by 12 months.

4 years X 12 months = 48 months.

3. Add the difference in months.

48 months + 2 months = 50 months.

4. If the difference in days is greater than 15 (e.g. 16, 17), add 1 month.

If the difference in days is less than -15 (e.g., -16, -17) subtract 1 month.

50 months - 1 month = 49 months.

If the difference in days is between -15 and 15 (e.g., -15, -14, ... 14, 15), do *not* add or subtract 1 month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate lighter. No child shall participate in both child-resistant package testing and surrogate lighter testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate lighters may be tested within the United States at one or more central locations, provided the participating children are drawn from a variety of locations within the geographical area.

(2) Testing of surrogate lighters shall be conducted in a room that is familiar to the children on the test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child-size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from a 100-child test panel (20 +or- 2 children each for 5 testers and 17 +or- 2 children each for 6 testers).

Note: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate lighters.* (1) Six surrogate lighters shall be used for each 100-child panel. The six lighters shall represent the range of forces required for operation of lighters intended for use. All surrogate lighters shall be the same color. The surrogate lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate lighters shall be used for the entire 100-child panel. The surrogate lighters may be used in more than one 100-child panel test. The surrogate lighters shall not be damaged or jarred during storage or transportation. The surrogate lighters shall not be exposed to extreme heat or cold. The surrogate lighters shall be tested at room temperature. No surrogate lighter shall be left unattended.

(2) Each surrogate lighter shall be tested by an approximately equal number of children in a 100-child test panel (17 +or- 2 children).

Note: If a surrogate lighter is permanently damaged, testing shall continue with the remaining lighters. When a lighter is dropped out, the requirement that each lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for a production lighter intended for use.

(5) Before and after testing surrogate lighters with each child, each surrogate lighter shall be operated outside the presence of any child participating in the test to verify that the lighters produce a signal. If the surrogate lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate lighter does not produce a signal when it is operated after the test, the results for the preceding test with that lighter shall be eliminated. The lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate lighter at any time unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right — never touch a real lighter — but

your [parent, etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate lighter and may tell or show each other how to operate it. (This interaction is *not* considered to be disruption as described in paragraph (e)(2) below.) However, neither child shall be allowed to operate the other child's lighter. If one child takes the other child's surrogate lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He(she) has to try to do it himself(herself)."

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than one minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say "I have a special lighter that will not make a flame. It makes a noise like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate lighter, so that the surrogate lighter cannot be seen by the child, and shall operate the surrogate lighter once to produce its signal. The tester shall say "Your parents [or other guardian, if applicable] said it is OK for you to try to make that noise with your lighter." The tester shall place a surrogate lighter in each child's hand and say "now *you* try to make a noise with your lighter. Keep trying until I tell you to stop."

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark — it won't hurt you — try to make the noise with your lighter." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate lighter during the 5-minute period specified in § 1210.4(f)(2), the adult tester shall demonstrate the operation of the surrogate lighter. To conduct the demonstration, secure the children's full attention by saying "Okay, give me your lighters now." Take the lighters and place them on the table in front of you out of the children's reach. Then say, "I'll show you how to make the noise with your lighters. First I'll show you with (child's name)'s lighter and then I'll show you with (child's name)'s lighter." Pick up the first child's lighter. Hold the lighter approximately two feet in front of the children at their eye level. Hold the lighter in a vertical position in one hand with the child-resistant feature exposed (not covered by fingers, thumb, etc.) Orient the child-resistant mechanism on the lighter toward the children. [This may require a change in your orientation to the children such as sitting sideways in the chair to allow a normal hand position for holding the lighter while assuring that both children have a clear view of the mechanism. You may also need to reposition your chair so your hand is centered between the children] Say "now watch the lighter." Look at each child to verify that they are looking at the lighter. Operate the lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, "Okay, now watch this lighter." Repeat the demonstration as described above using the second child's lighter. Note: Testers shall be trained to conduct the demonstration in a uniform manner, including the words spoken to the children, the way the lighter is held and operated, and how the tester's hand and body is oriented to the children. All testers must be able to operate the surrogate lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate lighter in the first 5 minutes is then given another 5 minutes in which to attempt the successful operation of the surrogate lighter. After the demonstrations give their original lighters back to the children by placing a lighter in each child's hand. Say "Okay, now you try to make the noise with your lighters - keep trying until I tell you to stop." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(5) At the end of the second 5-minute test period, take the surrogate lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: "These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that you'll never try to work a real lighter?" Wait for an affirmative response from each child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to the parents or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters, and shall remind the parent or guardian to keep all lighters and matches, whether child resistant or not, out of the reach of children. For children who operated the surrogate lighter, the notification shall state that the child was able to operate the child-resistant lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the lighters, so that the tester's full attention is on the children during the test period. If actual testing is

videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken *after* actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month, as specified in § 1210.4(a)(4)).

(4) The number of the lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, country, and the name of the site or an unique number or letter code that identifies the test site).

(7) The name of the tester who conducted the test.

(8) The elapsed time (to the nearest second) at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time (to the nearest second) at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(10) For a single pair of children from each 100-child test panel, photograph(s) or video tape to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate lighter resists operation by at least 85 percent of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered to be resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate lighter, the test results are inconclusive, and the surrogate lighter shall be tested with a second 100-child test panel in accordance with this § 1210.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

(2) If additional testing of the surrogate lighter is required by § 1210.4(h)(1), conduct the test specified by this § 1210.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered resistant to successful operation by at least 85 percent of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate lighter, the lighter represented by the surrogate lighter shall be considered not resistant to successful operation by 85 percent of the child test panel, and no further testing is conducted.

Table 1.—Evaluation of Test Results—§ 1210.4(e)

Test panel	Cumulative Number of Children	Successful Lighter Operations		
		Pass	Continue	Fail
1	100	0-10	11-18	19 or more
1	200	11-30	—	31 or more

§ 1210.5 Findings.

Section 9(f) of the Consumer Product Safety Act, 15 U.S.C. 2058(f), requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(a) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with lighters. From 1988 to 1990, an estimated 160 deaths per year resulted from such fires. About 150 of these deaths, plus nearly 1,100 injuries and nearly $70 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns — many of high severity — as well as anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $385 million (in 1990 dollars). Fires started by young children (under age 5) are those which the standard would be most effective at reducing.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as lighters, which are primarily intended for use in lighting cigarettes and other smoking materials. Lighters may be gas- or liquid-fueled, mechanical or electric, and of various physical configurations. Over 600 million lighters are sold annually to consumers in the U.S.; over 100 million are estimated to be in use at any given time. Over 95 percent of all lighters sold are pocket-sized disposable butane models; of the remaining 5 percent, most are pocket refillable butane models. A small proportion of refillables is comprised of pocket liquid-fuel models; still smaller proportions are represented by table lighters and by "novelty" lighters, that is, those having the physical appearance of other specific objects. Approximately 600 million pocket butane disposables (nonrefillable), 15-20 million pocket butane refillables, 5-10 million pocket liquid-fuel refillables, and 1-3 million novelty and other lighters were sold to consumers in 1991. The standard covers disposable lighters, including inexpensive butane refillables, and novelty lighters. Roughly 30 million households have at least one lighter; ownership of more than one lighter is typical, especially among smoking households.

(c) *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use lighters primarily to light smoking materials. Most other lighting needs that could be filled by matches may also be filled by lighters. Disposable butane lighters are, chiefly by virtue of their low price and convenience, the closest available substitutes for matches. Although matches are found in far more

VOL 58 ISS 131 JL 12 1993 UMI

households, lighters have steadily replaced matches since the 1960's as the primary light source among American consumers. The standard generally requires that lighters not be operable by most children under 52 months of age. This would likely be achieved by modifying products to incorporate additional-action switches, levers, or buttons, thereby increasing the difficulty of product activation. Depending on the method of compliance chosen by manufacturers, there could be some adverse effect on the utility of lighters. This may occur to the extent that operation of the products by adult users is made more difficult by the incorporation of child-resistant features. This may lead some consumers to switch to matches, at least temporarily, which could reduce the expected level of safety provided by the standard. In addition, some "novelty" lighters will probably be discontinued, due to the technical difficulty of incorporating child-resistant features or designs. Some loss of utility derived from those products by collectors or other users may result, though many novelty models will probably remain on the market. The cost of producing lighters subject to the standard is expected to increase due to manufacturers' and importers' expenditures in the areas of research and development, product redesign, tooling and assembly process changes, certification and testing, and other administrative activities. Total per-unit production costs for the various lighter types may increase by 10-40 percent, with an average of less than 20 percent. Cost increases will likely be passed on to consumers in the form of higher retail prices. Disposable lighters may increase in price by 10-40 cents per unit; prices of other lighters may increase by as much as $1-3. The estimated average per-unit price increase for all lighters subject to the standard is about 20 cents. The total annual cost of the standard to consumers is estimated at about $90 million. The estimated cost of the standard per life saved is well under $1 million after considering the benefits of reduced injuries and property damage; this is well below the consensus of estimates of the statistical value of life. A wide range of lighter types and models will continue to be available to consumers. As noted above, some models of novelty lighters — all of which account for less than 1 percent of lighters sold — will likely be discontinued; this should not have a significant impact on the overall availability of lighters to consumers.

(d) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices *consistent with the public health and safety.* The Commission considered the potential effects on competition and business practices of various aspects of the standard, and, as noted below, incorporated some burden-reducing elements into the proposal. The Commission also encouraged and participated in the development of a draft voluntary standard addressing the risk of child-play fires. A draft voluntary safety standard was developed by members of an ASTM task group (now a subcommittee) to address much of the risk addressed by the proposed CPSC rule. This draft voluntary standard contained performance requirements similar, but not identical, to those in the CPSC proposal. Development work on the voluntary standard ceased in 1991; industry representatives requested that the Commission issue the draft ASTM provisions in a mandatory rule. One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to this draft standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however; although some of the largest firms may market some child-resistant lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the draft ASTM standard would not adequately reduce the unreasonable risk associated with lighters.

(e) *The rule (including its effective date) is reasonably necessary to e*liminate or reduce an unreasonable risk. The Commission's hazard data and regulatory analysis demonstrate that lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective will provide manufacturers and importers of most products adequate time to design, produce, and market safer lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with lighters.

(f) *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with lighters. The cost of these accidents, which is estimated to be about $385 million annually, will also be greatly reduced. Estimated annual benefits of the standard are $205-$270 million; estimated annual costs to the public are about $90 million. Expected annual net benefits would therefore be $115-$180 million. Thus, the Commission finds that a reasonable relationship exists between potential benefits and potential costs of the standard.

(g) *The rule imposes the least b*urdensome requirement which prevents or adequately reduces the risk of injury for which the *rule is being promulgated.* (1) In the final rule, the Commission incorporated a number of changes from the proposed rule in order to minimize the potential burden of the rule on industry and consumers. The Commission also considered and rejected several alternatives during the development of the standard to reduce the potential burden on industry (especially small importers) and on consumers. These alternatives involve different performance and test requirements and different definitions determining the scope of coverage among products. Other alternatives generally would be more burdensome to industry and would have higher costs to consumers. Some less burdensome alternatives would have lower risk-reduction benefits to consumers; none has been identified that would have higher expected net benefits than the standard.

(2) The scope of this mandatory standard is limited to disposable lighters and novelty lighters; it does not apply to "luxury" lighters (including most higher priced refillable butane and liquid-fuel models). This is similar but not identical to the scope of a draft voluntary industry standard developed in response to the Commission's advance notice of proposed rulemaking of March 3, 1988 (53 FR 6833). This exclusion significantly reduces the potential cost of the standard without significantly affecting potential benefits.

(3) The Commission narrowed the scope of the final rule with respect to novelty lighters, and considered limiting the scope further to exclude all nondisposable novelty lighters. Though

further limiting the scope would ease the potential burden of the standard on manufacturers and importers slightly, inherently less safe non-child-resistant lighters that are considered to be especially appealing to children would remain on the market, thereby reducing the potential safety benefits to the public. The Commission finds that it would not be in the public interest to exclude novelty lighters.

(4) The Commission considered the potential effect of alternate performance requirements during the development of the standard. A less stringent acceptance criterion of 80 percent (rather than the standard's 85 percent) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90 percent) acceptance criterion was also considered. This higher performance level is not commercially or technically feasible for many firms, however; the Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying lighters not be operable by at least 85 percent of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

(5) The Commission believes that the standard should become effective as soon as reasonably possible. The standard will become effective 12 months from its date of publication in the Federal Register. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. While most lighters sold in the U.S. could probably be made child resistant within 6 months, some disruptive effects on the supply of some imported lighters would result; this could have a temporary adverse impact on the competitive positions of some U.S. importers. The 12-month period in the standard would tend to minimize this potential effect, and would allow more time for firms to design, produce, and import complying lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of lighters for the U.S. market.

(h) *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. While certain alternatives to the final rule are estimated to have net benefits to consumers, the adopted rule maximizes these net benefits. Thus, the Commission finds that the standard, if promulgated on a final basis, would be in the public interest.

Subpart B——Certification Requirements

Authority: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

§ 1210.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 1263(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1210 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Cigarette Lighters. This subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1210.12 Certificate of compliance.

(a) *General requirements.*

(1) *Manufacturers (including importers).* Manufacturers of any lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1210.13-1210.14 and 1210.16. Manufacturers must also label each lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1210.15 and 1210.17. For purposes of this requirement, an importer of lighters shall be considered the "manufacturer."

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that the importer is a resident of the United States or has a resident agent in the United States, the records are in English, and the records and the surrogate lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1210.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1210.17(a)(3). The importer is responsible for ensuring that the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1210.14-1210.16), the records provide a reasonable assurance that all lighters imported comply with the standard (§ 1210.13(b)(1)), the records exist in English (§ 1210.17(a)), (4) the importer knows where the required records and lighters are located and that records required to be located in the United States are located there, arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1210.17(a)), and the information required by § 1210.17(b) to be provided to the Commission's Division of Regulatory Management has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product "complies with the Consumer Product Safety Standard for Cigarette Lighters (16 CFR 1210),"

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (c)(2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each lighter with

VOL 58 ISS 131 JL 12 1993 UMI

the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the lighter was manufactured.

(2) An identification of the manufacturer of the lighter, unless the lighter bears a private label. If the lighter bears a private label, it shall bear a code mark or other label which will permit the seller of the lighter to identify the manufacturer to the purchaser upon request.

§ 1210.13 Certification tests.

(a) *General.* As explained in § 1210.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA must be based on a reasonable testing program.

(b) *Reasonable testing programs.*

(1) *Requirements.* (i) A reasonable testing program for lighters is one that demonstrates with a high degree of assurance that all lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1210.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on surrogates of each model of lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1210.14), and production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1210.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each lighter or lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1210.17 of this subpart.

§ 1210.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of lighters distributes lighters in commerce in the United States, surrogate lighters of each model shall be tested in accordance with § 1210.4, above, to ensure that all such lighters comply with the standard. However, if a manufacturer has tested one model of lighter, and then wishes to distribute another model of lighter that differs from the first model only by differences that would not have an *adverse* effect on child resistance, the second model need not be tested in accordance with § 1210.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a lighter design after it has been in production, this may be done by following the testing procedures at § 1210.4.

§ 1210.15 Specifications.

(a) *Requirement.* Before any lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate lighters used for qualification testing under § 1210.14 are described in a written product specification. (Section 1210.4(c) requires that six surrogate lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the lighters and any child-resistant features.

§ 1210.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of lighters subject to the standard as they are manufactured, to demonstrate that the lighters meet the specifications, required under § 1210.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other lighters produced during the interval will meet the standard.

(c) *Test failure.*

(1) *Sale of lighters.* If any test yields results which indicate that any lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the lighters or perform additional tests to ensure that only complying lighters are distributed in commerce. Lighters from other production intervals having test results showing that lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could adversely affect its child resistance, the lighter must undergo new qualification tests in accordance with § 1210.14, above.

§ 1210.17 Recordkeeping and reporting.

(a) *Records.* Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C.

2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (b)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by § 1210.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept until 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1210.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept until 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by paragraph (a)(3) of this section outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1210.15 shall be kept until 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) A detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) A description of the qualification testing, including a description of the surrogate lighters tested, the specification of the surrogate lighter required by § 1210.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) An identification of the place or places that the lighters were or will be manufactured,

(5) The location(s) where the records required to be maintained by paragraph (a) of this section are kept, and

(6) A prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1210.18 Refusal of importation.

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1210. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard and for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

Authority: 15 U.S.C. 2056(g)(2), 2079(d).

§ 1210.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base Period.* For purposes of this rule, "base period" means, at the option of the manufacturer or importer, any 1-year period during the 5-year period prior to July 12, 1993.

(c) *Prohibited act.* Manufacturers and importers of disposable and novelty cigarette lighters shall not manufacture or import lighters that do not comply with the requirements of this part between July 12, 1993 and July 12, 1994, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

Dated: July 1, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.)

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VOL 58 ISS 131 JL 12 1993 UMI

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VOL
58
ISS
131
JL
12
1993
UMI

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193. Memorandum from L. Smith, EPHA, to B. Jacobson, HSPS, "Response to Public Comments on the Cigarette Lighter Notice of Proposed Rulemaking," January 15, 1993.

194. Memorandum from W. Mathers, EPHF, to B. Jacobson, HS, "Response to Comments on Notice of Proposed Rule (NPR) for Child-Resistant Cigarette Lighters," January 27, 1993.

195. Memorandum from E. Perry, ESME, to B. Jacobson, HSPS, "Response to Public Comments on the Notice of Proposed Rulemaking for Cigarette Lighters," February 1, 1993.

196. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Analysis of Public Comments on Notice of Proposed Rulemaking on Lighters," February 5, 1993.

197. Proposed Safety Standard for Cigarette Lighters; Opportunity to Comment on Report of Tests of Lighters, 58 Fed. Reg. 8565 (February 16, 1993)

198. Memorandum from E. Stone, CEAL, & M. Bogumill, CERM, to B. Jacobson, Project Manager, Cigarette Lighters, "Analysis of comments on cigarette lighter proposal," March 5, 1993.

199. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Analysis on Lighters," March 9, 1993.

200. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Flexibility Analysis on Lighters," March 9, 1993.

201. Memorandum from B. Jacobson, HS, to J. Hoebel, HS, "Protocol for Testing Child-Resistant Lighters—Discussion of Comments Received in Response to the Notice of Proposed Rulemaking," March 30, 1993.

202. Briefing Package, "Draft Final Standard for Child-Resistant Lighters," B. Jacobson, Project Manager, May 13, 1993.

Tab A — Draft **Federal Register** notices.

Tab B — Memorandum from L. Smith, EPHA, to B. Jacobson, HSPS, "Response to Public Comments on the Cigarette Lighter Notice of Proposed Rulemaking," January 15, 1993.

Tab C — 1. Memorandum from D. Ray, ECPA to B. Jacobson, HS, "Analysis of Public Comments on Notice of Proposed Rulemaking on Lighters," February 5, 1993.

2. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Inclusion of Liquid-Fuel Lighters in Scope of Proposed Rule," January 11, 1993.

Tab D — Memorandum from W. Mathers, EPHF, to B. Jacobson, HS, "Response to Comments on Notice of Proposed Rule (NPR) for Child-Resistant Cigarette Lighters," January 27, 1993.

Tab E — Memorandum from B. Jacobson, HS, to J. Hoebel, HS, "Protocol for Testing Child Resistant Lighters — Discussion of Comments Received in Response to the Notice of Proposed Rulemaking," March 30, 1993.

Tab F — Memorandum from E. Stone, CEAL, and M. Bogumill, CERM, to B. Jacobson, HS, "Analysis of comments on cigarette lighter proposal," March 5, 1993.

Tab G — Memorandum from E. Perry, ESME, to B. Jacobson, HSPS, "Response to Public Comments on the Notice of Proposed Rulemaking for Cigarette Lighters," February 1, 1993.

Tab H — Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Analysis on Lighters," March 9, 1993.

Tab I — Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Flexibility Analysis on Lighters," March 9, 1993.

203. OMB Form SF-83 and justification for OMB approval of proposed rule.

204. Letter from Jin Ki Kim, President of Bultina America Corp., to Barbara Jacobson, June 2, 1993.

205. Memorandum to the Commission from Barbara Jacobson, Project Manager, "Follow-up to the May 26, 1993, Commission Briefing on the Final Standard for Child-Resistant Lighters," June 8, 1993.

206. Letter transmitting copy of final rule to OMB.

[FR Doc. 93–16181 Filed 7–9–93; 8:45 am]

BILLING CODE 6355–01–P

VOL
58

ISS
1
3
1

JL
12

1993

UMI

federal register

Monday
July 12, 1993

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 16

Privacy Act of 1974; Exemption and System of Records; Proposed Rule and Notice

VOL
58
ISS
131
JL
12
1993
UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 16

[Docket No. R-93-1669; FR-3436-P-01]

RIN 2501-AB60

Exemption of System of Records Under Privacy Act of 1974

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt a new system of records entitled "Tenant Eligibility Verification Files" from compliance with the applicable provisions of the Privacy Act. This additional exemption is necessary because the Department has created a new system of records to add to the Privacy Act system of records. The notification of the new system of records for "Tenant Eligibility Verification Files" is published today else where in this issue.

DATES: Comment due date: September 10, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are *not* acceptable.

FOR FURTHER INFORMATION CONTACT: David L. Decker, Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, Room 4122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0099. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-0850. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION:

I. Background

Except for the Office of Inspector General, the Department's implementation of the Privacy Act (5 U.S.C. 552a) is set forth in 24 CFR part 16. (The implementation of the Privacy Act for the Office of Inspector General appears in 24 CFR part 2003). The implementation of the Privacy Act includes the publication of a system of records which are exempt from certain requirements of the Privacy Act, as determined by the Secretary under the specific exemption authority of the Act, 5 U.S.C. 552a(k). The specific exemption provision of the Privacy Act authorizes exemption for systems of records from many of the notice and access requirements of the Privacy Act, but does not affect the applicability of the remaining Privacy Act requirements. The Department's specific exemptions appear at 24 CFR 16.15.

The establishment of the new system of records and this rule are necessary as a result of the recent transfer of computer matching/tenant eligibility verification functions from the Office of Inspector General to the Assistant Secretary for Public and Indian Housing. The transfer affects only rental assistance programs administered by the Assistant Secretary for Public and Indian Housing.

The proposed addition to section 16.15 clarifies the scope of the exemptions applicable to the Assistant Secretary for Public and Indian Housing's system of records entitled "Tenant Eligibility Verification Files" and provides reasons for the exemptions from particular subsections of the Privacy Act that are more detailed than those currently found at 24 CFR 16.15. The tenant records and other records referenced in the new "Tenant Eligibility Verification Files" system of records notice were previously included in the "Investigative Files of the Office of the Inspector General" (HUD/OIG-1, see 57 FR 25070). The Assistant Secretary for Public and Indian Housing will be adding records to the proposed new system based on computer matching results and verification of those results with tenant case files and records supplied by Federal agencies and private employers.

II. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

B. Regulatory Impact

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule only affects the way the Department implements the Privacy Act.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. Specifically, the requirements of this rule are directed to the Department of Housing and Urban Development, and do not impinge upon the relationship between the Federal government and State and local governments.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

F. Regulatory Agenda

This proposed rule was listed as item no. 1360 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24390) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 16

Privacy.

Accordingly, 24 CFR part 16 would be amended to read as follows:

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 16 would be revised to read as follows:

Authority: 5 U.S.C. 552a; 42 U.S.C. 3535(d).

2. Section 16.15 would be amended by adding new paragraphs (c) and (d) as follows:

§ 16.15 Specific exemptions.

* * * * *

(c) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of investigatory material compiled for law enforcement purposes. Relevant records will be used by appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting violations of law. Therefore, to the extent that information in the system falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), the system is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of an accounting of disclosures to an individual who may be the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1) because release of the records to an individual who may become or has become the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2) because amendment or correction of the records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the office that maintains the records to continuously retrograde its verifications of tenant eligibility attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in pre-investigative early stages. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the Assistant Secretary for Public and Indian Housing, or investigators, may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Assistant Secretary for Public and Indian Housing, or investigators, should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining the evidence, information may be provided which relates to matters incidental to the main purpose of the inquiry or investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(d) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of material that may be used for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in this system falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of the following subsection of the Privacy Act, for the reasons stated below.

(1) From subsection (d)(1) because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: June 30, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–16384 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–32–M

VOL 58 ISS 131 JL 12 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-93-3646; FR-3435-N-01]

Privacy Act of 1974—Notice of New System of Records

AGENCY: Office of Secretary, HUD.

ACTION: Notification of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Assistant Secretary for Public and Indian Housing proposes to establish a new system of records maintained by the Assistant Secretary for Public and Indian Housing. The system of records is entitled, "HUD/PIH–1. Tenant Eligibility Verification Files." It will contain the computer matching and tenant eligibility verification records necessary to support Government identification of tenants who have been or may be obtaining excessive housing assistance, and to support referrals of information concerning those tenants to law enforcement agencies or public housing agencies for possible legal and administrative actions, as appropriate.

DATES: Effective Date: This proposal shall become effective without further notice on August 11, 1993, unless comments are received on or before that date which would result in a contrary determination.

Comment Due Date: August 11, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. For program: David L. Decker, Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, Telephone Number (202) 708–0099. [These are not toll free numbers.]

SUPPLEMENTARY INFORMATION: The establishment of a new system of records entitled, "HUD/PIH–1. Tenant Eligibility Verification Files" is necessary because of the recent transfer of computer matching/tenant income verification functions from the Office of Inspector General (OIG) to the Assistant Secretary for Public and Indian Housing. Computer matching/tenant eligibility verification records created by the OIG, and transferred to the Assistant Secretary for Public and Indian Housing and new records obtained or created by the Assistant Secretary for Public and Indian Housing will be included in the Tenant Eligibility Verification Files. The OIG previously maintained the computer matching/tenant eligibility records as part of its Investigative Files (see 57 FR 25070, June 12, 1992). The new system of records for the proposed new Tenant Eligibility Verification Files is published in its entirety below.

A report of the Department's intention to establish the system has been submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Authority: 5 U.S.C. 552a; 41 U.S.C. 3535(d).

Dated: June 30, 1993.

Henry G. Cisneros,

Secretary.

HUD/PIH–1

SYSTEM NAME:

Tenant Eligibility Verification Files.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tenants receiving assisted housing benefits provided by programs administered by the Assistant Secretary for Public and Indian Housing, or information on tenants obtained from other Federal or state agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of: (1) Automated tenant data obtained from HUD's Multifamily Tenant Characteristics System; (2) automated tenant data provided by public housing agencies; (3) automated wage, salary and annuity data from state wage information collection agencies, the Office of Personnel Management's General Personnel Records (OPM/GOVT–1), the Civil Service Retirement and Insurance Records System (OPM/Central–1), the Department of Defense's Manpower Data Center (S322.10.DLA–LZ), the United States Postal Service's Finance Record-Payroll (USPS050.020); (4) automated records from the Social Security Administration's Master Files of Social Security Number Holders, known as the Enumeration Verification System; (5) applications for housing assistance and other related documentation obtained from tenant case files maintained by public housing agencies or Indian housing agencies; (6) data received from Federal and private employers confirming income or deductions supporting determinations of eligibility and the amount of housing assistance benefits; and (7) automated records provided by other Federal agencies for matching to tenant data under the investigative exclusion of the Computer Matching and Privacy Protection Act of 1988.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records will be obtained to detect excessive benefit payments under section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628; section 165 of the Housing and Community Development Act of 1987, Pub. L. 100–242; the National Housing Act, 12 U.S.C. 1701–1750g; the United States Housing Act of 1937, 42 U.S.C. 1437–1437o; and section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

The McKinney Amendments of 1988 authorized HUD to request wage and claim information for the state agency responsible for the administration of state unemployment law in order to undertake computer matching in HUD's rental assistance programs. The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (including all members of their household six (6) years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their Social Security Numbers (SSNs) as a condition of initial or continuing eligibility for participation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. In the event that records indicate a potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, state or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing a statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to public housing agencies in order to assist them in determining tenants' eligibility for housing assistance, and the amount of that assistance. The records may also be disclosed to public housing agencies to facilitate recovery of money or property or other administrative actions, i.e., eviction, necessary to promote the integrity of programs or operations of HUD or public housing agencies.

4. Records may be disclosed during the course of an administrative proceeding where HUD or a public housing agency is a party to the litigation and disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. Records may be disclosed to a Federal agency to initiate Federal salary or annuity offsets as necessary to collect excessive housing assistance received by the tenant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in tenant case files and electronically in office automation equipment and mainframe computer facilities.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices by the name, social security number, or public housing agency.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer files and printed listings are maintained in locked cabinets. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Only those computer files and printouts created from the computer matching that meet predetermined criteria are maintained. All records created from the matching which do not meet these criteria will be erased as soon as possible within 6 months except for those records necessary to complete pending investigative or other law enforcement activities, or administrative actions taken by HUD or public housing agencies. Paper listings containing personal identifiers will be shredded. Computer source files provided by other organizations will be returned to those organizations in accordance with computer matching agreements.

Information obtained through computer matching and tenant case file reviews will be destroyed as soon as follow up processing of this information is completed, unless the information is required for evidentiary reasons or needed by public housing agencies for use in program eligibility determinations. When needed for evidentiary documentation, the information will be referred to the HUD OIG or other appropriate federal, state or local agencies charged with the responsibility for investigating or prosecuting such violation. When referred to the HUD OIG the information then becomes a part of the Investigative Files of the Office of Inspector General, HUD/OIG–1. The information may also be referred to public housing agencies for administrative actions, i.e., recoupment of excessive housing assistance.

SYSTEM MANAGER AND ADDRESS:

Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410.

NOTIFICATION PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for amendment or correction of records appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The Assistant Secretary for Public and Indian Housing collects information from a variety of sources, including from HUD, public housing agencies, state wage information collection agencies, other Federal and state agencies, law enforcement agencies, program participants, complainants, and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from the requirements of: subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2); and from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5).

[FR Doc. 93–16380 Filed 7–9–93; 8:45 am]
BILLING CODE 4210–33–M

VOL
58
ISS
1
3
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JL
12
1993
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federal register

Monday
July 12, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approval of Agreement Between Crow Indian Tribe and State of Montana; Notice

VOL
58
ISS
131
JL
12
1993
UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[KOO160-93-35150]

Indian Gaming; Approval of Agreement Between the Crow Indian Tribe and the State of Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, has approved the Agreement Between the Crow Indian Tribe and the State of Montana Concerning Class III Gaming, which was enacted on March 25, 1993.

DATES: This action is effective July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-4066.

Dated: June 30, 1993.

Ron Eden,

Assistant Secretary-Indian Affairs.

[FR Doc. 93-16461 Filed 7-9-93; 8:45 am]

BILLING CODE 4310-02-P

Federal Register

Monday
July 12, 1993

Part V

Department of Defense

Department of the Army
Corps of Engineers

33 CFR Part 334
Danger Zone and Restricted Area Regulations; Rule

VOL
58
ISS
131
JL
12
1993
UMI

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations in 33 CFR part 334 to add procedural requirements used by the Corps in formulating, amending and repealing danger zone and restricted area regulations. The promulgation of these procedural type regulations will provide detailed direction to the Corps Divisions and Districts regarding danger zones and restricted areas and will replace some of the existing guidance in 33 CFR 209.200. We are also eliminating the designation "prohibited area" and redesignating those areas as restricted areas.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations in 33 CFR part 334 by adding the procedures to be used by the Corps in formulating, amending and repealing danger zone and restricted area (DZ/RA) regulations.

On October 2, 1989, we published the proposed procedural changes to DZ/RA's in the notice of proposed rulemaking section of the **Federal Register** (54 FR 40572 *et al.*), with the comment period ending on November 1, 1989. We received comments from the State of North Carolina, Department of Environment, Health and Natural Resources. No other comments were received. We will address the comments submitted by the State of North Carolina and make appropriate changes, where noted.

We will first describe, in a very brief and general manner, the normal sequence of events that leads to an action on a DZ/RA by the Corps. That action is to establish a DZ/RA, amend an existing DZ/RA or to delete the DZ/RA, due to a specific need identified, normally by a local base commander. That need may have arisen due to the installation of new equipment; a change in operations or training methodology or for security concerns at an existing or new facility. The local base commander requests the Corps District Engineer having jurisdiction in that area, to take appropriate action to effect the desired change. After the District Engineer completes his/her review which may include public notices and public hearings, the matter is referred for further review through the Division Engineer and to Headquarters, U.S. Army Corps of Engineers, for final decision.

The following is a summary of the changes we are making in the DZ/RA regulations. Certain changes are made as proposed; other changes are made as a result of our further review of this matter and other changes are being made in response to the comments. In § 334.1, we are adding the purpose of this part as proposed; in § 334.2, we are adding the definitions of "restricted area" and "danger zone." As indicated in the definitions of danger zones and restricted areas, the areas may be closed to the public on a full time basis or on an intermittent basis. The time or schedule in months, days, and/or times of day may be specified, depending on the Government's planned operations in, or use of the area. The duration of the restriction or closure should not greatly exceed the actual time(s) that use of the area is required by the Government. The DZ/RA regulations may also specify certain activities that are not compatible with ongoing Government operations or activities and are not allowed within the area, e.g., anchoring, fishing, stopping, waterskiing, towing of underwater devices, etc., The "degree" of the restriction to be placed on the operation of vessels will be clearly stated in proposed rules and public notices issued by the Corps and will be directly related to the risks associated with the Government's activities within the area or the sensitivity of the Government property that is to be protected. In addition, it is the Corps policy that it will impose restrictions on the public's use of waterways sufficient to protect the interests of the Government and safety of the public while assuring the public of maximum use of the Nation's waters. This policy is added to § 334.3 *Special policies.* Concerning the potential for inconsistent decision-making on the DZ/RA regulations between the Corps Divisions and Districts, all final decisions to approve or disapprove the final regulations are made by the Director of Civil Works, Office of the Chief of Engineers, Washington, DC.

In § 334.3, we are re-promulgating special policies which concern the establishment of DZ/RA's. In accordance with the Corps statutory authority in the 33 U.S.C. 3, the authority to establish DZ/RA's must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. We are expanding on existing regulations in 33 CFR 209.200 that require the District Engineers to consult with the Regional Director, U.S. Fish and Wildlife Service whenever a proposed DZ/RA may affect fishing operations by requiring that all public notices for DZ/RA's be furnished to all parties on the District's regulatory program mailing list for that geographic area. That would include, but is not limited to posting of the public notice at the local post office or other appropriate public places in the vicinity of the proposed DZ/RA, State and local agencies. This would include the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the State agency responsible for fish and wildlife resources, the U.S. Senators and the Representatives for the area and navigational and fishery organizations in the area. In addition, the Corps considers the Government's proposed use of the area and any long term or permanent affects the proposed use may have on the fisheries in the area.

We have also considered the comment(s) that the establishment of DZ/RA's must comply with the Resource Consideration and Recovery Act (RCRA), and that proposed sites should not be viewed in isolation, consistent with the National Environmental Policy Act (NEPA). With regard to RCRA, the Agencies involved are responsible for compliance with that statute and it would be inappropriate and redundant for the Corps to require compliance through its regulations. Furthermore, we are satisfied that the inclusion of an in-depth review pursuant to 33 CFR part 320 and the preparation of an environmental assessment or environmental impact statement in accordance with NEPA will address this comment without duplicating the contents of existing Corps regulations.

It should be noted that Corps regulations 33 CFR 325.2(b)(2)(i) address the responsible agency requirements for complying with the Coastal Zone Management Act.

In response to a comment regarding responsibility for an area if a danger zone is removed and the area is opened up for public use, we are adding the

requirement to these regulations that in the event an Agency has requested the disestablishment of a danger zone, the responsible Agency named in the regulation, shall certify that the area is safe for return to the public use before the danger zone regulations are removed. The Agency shall be responsible for clean-up or removal of any materials that may be hazardous to the public before an area is disestablished. These procedures are added in § 334.5.

It was suggested that the Corps establish a schedule for review of all DZ/RA regulations to determine their continuing need. We have considered this suggestion but believe that it would add a considerable amount of paperwork and expense to the program and rarely achieve results that would not occur under the existing practice. The establishment of DZ/RA's are normally for an extended period of time and needed for the life of the Government facility. In practice, the closure of a base or other facility is well publicized and if the Corps is not contacted by the affected Agency, the Corps District would investigate on its own initiative to determine the continuing need for the area.

The term "prohibited area" is being deleted because the function of denying access to a defined area is also achieved by designating the area as a restricted area.

The term "Temporary, occasional or intermittent use" in § 334.3(c) was described in comments as lacking in clarity regarding what constitutes temporary, occasional or intermittent use. This is a seldom used authority for the District Engineers to allow minor, short term, non-scheduled and low risk activities to occur. These procedures are intended to authorize activities with minimal paperwork, delays and costs to the public. We are amending this section to allow events that will not occur in successive years nor exceed thirty days in duration. District Engineers will provide information to the Coast Guard and other Agencies at least 14 days, or with enough advance notification prior to the date of commencement of the planned activity, to allow time for publication of notices to mariners.

Notes

1. The U.S. Army Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is in accordance with the exemption provided military functions.

2. These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. We do not believe that the establishment of these rules will have an impact on any small entities first because most of the procedures codified here are already agency policies and will not result in any increased regulatory burden on the public, including small businesses. In addition, although there may be minor impacts on private and commercial fisheries as well as vessel operations by controlling vessel access into certain water areas, the food fishing industry is specifically considered by the Corps in establishing these areas. Pursuant to these regulations, the authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Finally, no reporting or record-keeping requirements are imposed on any small entity as the result of the establishment of a danger zone/restricted area. Therefore, we have determined that this rule will not have significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

Accordingly, we propose to amend part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1 and 40 Stat. 892; 33 U.S.C. 3.

2. Section 334.1 *Purpose* is added as follows:

§ 334.1 Purpose.

The purpose of this part is to:

(a) Prescribe procedures for establishing, amending and disestablishing danger zones and restricted areas;

(b) List the specific danger zones and restricted areas and their boundaries; and

(c) Prescribe specific requirements, access limitations and controlled activities within the danger zones and restricted areas.

3. Section 334.2 *Definitions* is added as follows:

§ 334.2 Definitions.

(a) *Danger zone.* A defined water area (or areas) used for target practice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full-time or intermittent basis, as stated in the regulations.

(b) *Restricted area.* A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for Government property and/or protection to the public from the risks of damage or injury arising from the Government's use of that area.

4. Section 334.3 Special policies is added as follows:

§ 334.3 Special policies.

(a) *General.* The general regulatory policies stated in 33 CFR part 320 will be followed as appropriate. In addition, danger zone and restricted area regulations shall provide for public access to the area to the maximum extent practicable.

(b) *Food fishing industry.* The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the District Engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

(c) *Temporary, occasional or intermittent use.* If the use of the water area is desired for a short period of time, not to exceed thirty days in duration, and that planned operations can be conducted safely without imposing unreasonable restrictions on navigation, and without promulgating restricted area regulations in accordance with the regulations in this section, applicants may be informed that formal regulations are not required. Activities of this type shall not reoccur more often than biennially (every other year), unless danger zone/restricted area rules are promulgated under this Part. Proper notices for mariners requesting that vessels avoid the area will be issued by the Agency requesting such use of the water area, or if appropriate, by the District Engineer, to all known interested persons. Copies will also be sent to appropriate State agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic

Center, Washington, DC 20390, ATTN: Code NS 12. Notification to all parties and Agencies shall be made at least two weeks prior to the planned event, or earlier, if required for distribution of Local Notice to Mariners by the Coast Guard.

5. Section 334.4 *Establishment and amendment procedures* is added as follows:

§ 334.4 Establishment and amendment procedures.

(a) *Application.* Any request for the establishment, amendment or revocation of a danger zone or restricted area must contain sufficient information for the District Engineer to issue a public notice, and as a minimum must contain the following:

(1) Name, address and telephone number of requestor including the identity of the command and DoD facility and the identity of a point of contact with phone number.

(2) Name of waterway and if a small tributary, the name of a larger connecting waterbody.

(3) Name of closest city or town, county/parish and state.

(4) Location of proposed or existing danger zone or restricted area with a map showing the location, if possible.

(5) A brief statement of the need for the area, its intended use and detailed description of the times, dates and extent of restriction.

(b) *Public notice.* (1) The Corps will normally publish public notices and **Federal Register** documents concurrently. Upon receipt of a request for the establishment, amendment or revocation of a danger zone or restricted area, the District Engineer should forward a copy of the request with his/her recommendation, a copy of the draft public notice and a draft **Federal Register** document to the Office of the Chief of Engineers, ATTN: CECW–OR. The Chief of Engineers will publish the proposal in the **Federal Register** concurrent with the public notice issued by the District Engineer.

(2) *Content.* The public notice and **Federal Register** documents must include sufficient information to give a clear understanding of the proposed action and should include the following items of information:

(i) Applicable statutory authority or authorities; (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3)

(ii) A reasonable comment period. The public notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after publication of the notice.

(iii) The address of the District Engineer as the recipient of any comments received.

(iv) The identity of the applicant/proponent;

(v) The name or title, address and telephone number of the Corps employee from whom additional information concerning the proposal may be obtained;

(vi) The location of the proposed activity accompanied by a map of sufficient detail to show the boundaries of the area(s) and its relationship to the surrounding area.

(3) *Distribution.* Public notice will be distributed in accordance with 33 CFR 325.3(d)(1). In addition to this general distribution, public notices will be sent to the following Agencies:

(i) The Federal Aviation Administration (FAA) where the use of airspace is involved.

(ii) The Commander, Service Force, U.S. Atlantic Fleet, if a proposed action involves a danger zone off the U.S. Atlantic coast.

(iii) Proposed danger zones on the U.S. Pacific coast must be coordinated with the applicable commands as follows:

Alaska, Oregon and Washington:
Commander, Naval Base, Seattle
California:
Commander, Naval Base, San Diego
Hawaii and Trust Territories:
Commander, Naval Base, Pearl Harbor

(c) *Public hearing.* The District Engineer may conduct a public hearing in accordance with 33 CFR part 327.

(d) *Environmental documentation.* The District Engineer shall prepare environmental documentation in accordance with appendix B to 33 CFR part 325.

(e) *District Engineer's recommendation.* After closure of the comment period, and upon completion of the District Engineer's review he/she shall forward the case through channels to the Office of the Chief of Engineers, ATTN: CECW–OR with a recommendation of whether or not the danger zone or restricted area regulation should be promulgated. The District Engineer shall include a copy of environmental documentation prepared in accordance with appendix B to 33 CFR part 325, the record of any public hearings, if held, a summary of any comments received and a response thereto, and a draft of the regulation as it is to appear in the **Federal Register**.

(f) *Final decision.* The Chief of Engineers will notify the District Engineer of the final decision to either approve or disapprove the regulations. The District Engineer will notify the applicant/proponent and publish a public notice of the final decision. Concurrent with issuance of the public notice the Office of the Chief of Engineers will publish the final decision in the **Federal Register** and either withdraw the proposed regulation or issue the final regulation, as appropriate. The final rule shall become effective no sooner than 30 days after publication in the **Federal Register** unless the Chief of Engineers finds that sufficient cause exists and publishes that rationale with the regulations.

6. Section 334.5 *Disestablishment of a danger zone* is added as follows:

§ 334.5 Disestablishment of a danger zone.

(a) Upon receipt of a request from any agency for the disestablishment of a danger zone, the District Engineer shall notify that agency of its responsibility for returning the area to a condition suitable for use by the public. The agency must either certify that it has not used the area for a purpose that requires cleanup or that it has removed all hazardous materials and munitions, before the Corps will disestablish the area. The agency will remain responsible for the enforcement of the danger zone regulations to prevent unauthorized entry into the area until the area is deemed safe for use by the public and the area is disestablished by the Corps.

(b) Upon receipt of the certification required in paragraph (a) of this section, the District shall forward the request for disestablishment of the danger zone through channels to CECW–OR, with its recommendations. Notice of proposed rulemaking and public procedures as outlined in § 334.4 are not normally required before publication of the final rule revoking a restricted area or danger zone regulation. The disestablishment/revocation of the danger zone or restricted area regulation removes a restriction on a waterway.

(7) Sections 334.80, 334.260, 334.400, 334.500, 334.540 and 334.560 are amended by revising the section headings by replacing "prohibited area" with "restricted area", to read as follows:

§ 334.80 Narragansett Bay, R.I.; restricted area.

* * * * *

§ 334.260 York River, Va.; naval restricted areas.

* * * * *

§ 334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.

* * * * *

§ 334.500 St. Johns River, Fla. Ribault Bay; restricted area.

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§ 334.540 Banana River at Cape Canaveral Missile Test Annex, Fla.; restricted area.

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§ 334.560 Banana River at Patrick Air Force Base, Fla.; restricted area.

* * * * *

Stanley G. Genega,

Brigadier General, (P) U.S. Army, Director of Civil Works.

[FR Doc. 93–16389 Filed 7–9–93; 8:45 am]

BILLING CODE 3710–65–M

VOL
58
ISS
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12
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UMI

federal register

Monday
July 12, 1993

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Performance-Oriented Packaging Standards; Miscellaneous Amendments; Proposed Rule

VOL
58
ISS
131
JL
12
1993
UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 177 and 179

[Docket No. HM–181F, Notice No. 93–16]

RIN 2137–AC40

Performance-Oriented Packaging Standards; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing changes to certain provisions of the Hazardous Materials Regulations (HMR). The proposed changes are based on petitions for rulemaking and RSPA initiative. The intended effect of this action is to update the regulations, relax certain regulatory requirements, and reduce unnecessary economic burdens on industry without an adverse effect on safety.

DATES: Comments must be received by August 11, 1993.

ADDRESSES: Comments to this NPRM should be addressed to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the Docket (HM–181F) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Beth Romo or John Gale, telephone (202) 366–4488, Office of Hazardous Materials Standards, or Charles Hochman, Office of Hazardous Materials Technology (202) 366–4545, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402], which comprehensively revised the HMR with respect to hazard communication, classification, and packaging requirements based on the United Nations (UN) Recommendations on the Transport of Dangerous Goods. A document responding to petitions for reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. On October 1, 1992, under Dockets HM–181 and HM–189, RSPA issued editorial and technical corrections to the 1991 49 CFR parts 107–180. RSPA has received several petitions for rulemaking since the publication of the December 20, 1991 response to petitions for reconsideration. In addition, RSPA has identified other issues that merit public comment. This document proposes changes to the HMR based on either petitions for rulemaking or agency initiative. These proposed changes pertain primarily to requirements with a mandatory compliance date of October 1, 1993, as provided in the transitional provisions in § 171.14(b)(4). It is RSPA's goal to issue a final rule under Docket HM–181F prior to October 1, 1993; therefore, the comment period is limited to 30 days.

II. Summary of Petitions for Rulemaking

This summary addresses only those petitions which merit more extensive discussion because of their significance or general applicability. RSPA also has received other petitions, telephone calls, and letters requesting clarification of new requirements or minor revisions to the regulations. A discussion of these issues, and other proposed changes, is contained in the section-by-section review.

A. Petitions Requesting Revisions to Bulk Packaging Requirements for Poisonous by Inhalation Materials

The requirement to insulate bulk packagings for materials poisonous by inhalation which are also corrosive was the major concern of petitioners. Additionally, the petitions requested changes in various special provisions and a delay of the October 1, 1993 implementation date.

1. Revise Special Provisions B14 and T38 for Bulk Packagings Containing Materials That are Poisonous by Inhalation

Under the transitional provisions of § 171.14(b)(4), new packaging standards for materials which are poisonous by inhalation (referred to herein as PIH materials) must be met by October 1, 1993. This includes conformance to Special Provisions B14 and T38, which are assigned in Column 7 of the § 172.101 Hazardous Materials Table and contained in § 172.102. Special Provision B14 applies to all bulk packagings, except intermodal portable tanks; Special Provision T38 only applies to intermodal portable tanks. These special provisions read as follows:

B14—Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulation systems must not promote corrosion to steel when wet. Tank and jacket protective coatings are required. Additionally, all tank car tanks constructed after October 1, 1988 and tanks repaired after October 1, 1993, where the entire jacket is removed during repair, must have tank and jacket protective coatings. The jacket must be flashed around all openings so as to be weather tight.

T38—Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. The exterior surface of a carbon steel tank and the interior surface of a carbon steel jacket must be given a protective coating. The jacket must be flashed around all openings so as to be weather tight.

It is important to note that the insulation system on bulk packagings for materials poisonous by inhalation serves two purposes. The first purpose is to offer accident damage protection (impact resistance), and the second is to provide the packaging with thermal protection in the event of a fire situation.

RSPA received one petition for rulemaking (P–1144) requesting an alternative to insulation requirements on bulk packagings containing materials that are both corrosive and poisonous by inhalation. This petitioner suggested that a proportional increase in container shell and head thicknesses would compensate for the puncture resistance provided by the insulation and protective jacket.

The petitioner maintained that the § 172.101 Hazardous Material Table lists 49 combination corrosive/poisonous by inhalation materials, and noted a potential problem with undetected corrosion under an insulation blanket when transporting these combination

materials. Certain of these materials, such as chlorosulfonic acid or dimethyl sulfate, exhibit higher corrosivity when diluted with water. If such a material gets under the insulation, it can form a highly corrosive weak sulfuric acid if the integrity of the jacket flashing around the nozzles is breached by mechanical or chemical attack. The petitioner also described the difficulty in detecting a failure of the weather-tightness of flashing. This petitioner claimed that a 50% increase in tank shell and head thickness, especially with stainless steel, provides equal or greater product containment than current insulation requirements. A series of puncture tests conducted on bare and insulated ISO tank heads by the Association of American Railroads Transportation Test Center were provided as substantiating evidence. These tests concluded that a ⅜" thick stainless steel head was more resistant to puncture than the combination of a ¼" thick stainless steel head covered with 4¼" fiber glass insulation (in accordance with Special Provision B14) and a 20 gage aluminum jacket. As a result, the petitioner requested that two new special provisions, a B note and a T note, be assigned to these combination materials, allowing non-insulated bulk containers if the container shell and head thickness are increased a proportionate amount to compensate for puncture resistance provided by the insulation and protective jacket.

Another petitioner, the Compressed Gas Association (CGA) (P–1155), focused on insulation requirements for cargo tanks containing sulfur dioxide. This petitioner asked that: (1) Special Provision B14 be removed for bulk shipments of liquefied sulfur dioxide; (2) existing liquefied sulfur dioxide cargo tanks be grandfathered; or (3) RSPA delay implementation of the B14 insulation requirements for at least two years to provide adequate time to convert or replace existing cargo tanks. Alternatively, CGA asked RSPA to clarify if it is possible to leave an opening in the insulation for valves and fittings to provide clearance where there is insufficient clearance for flange bolts and valve handle movement.

The CGA claimed that currently all sulfur dioxide cargo tanks are built to MC 330 or MC 331 specifications, but are not insulated and are not designed for insulation. It asserted that, to comply with B14 requirements, nozzles, piping, valving and guards must be retrofitted or removed and replaced to accommodate four inches of insulation and weather-tight jacket flashing.

The petitioner cited the significant expense and insufficient time to retrofit all tanks by October 1, 1993, as justification for adoption of its recommendations. The CGA claimed that insulation will add about 2500 lbs to the tank, thus causing a 5% increase in the number of shipments and a proportionate increase in risk. It also alleged that insulation prevents external inspection of a tank, thus requiring more frequent internal inspections and resulting in higher operating costs and risk of release. The CGA was not aware of any puncture-related accidents in transporting sulfur dioxide.

RSPA has funded an on-going multi-year research effort at Sandia National Laboratory to study bulk packagings used to transport PIH materials. This effort is a systematic approach to development of specific accident survival performance criteria for PIH materials transported in bulk quantities. Except for radioactive materials, there are currently no standardized accident performance requirements for packages containing bulk quantities of hazardous materials in transport. Nor are there any requirements on the permitted leakage of package contents if an accident occurs.

The criteria developed in this effort will be supported by assessment and analyses of the existing regulatory structure, accident environments and survivability, release scenarios and release consequences. The final result will be accident survivability performance criteria, performance tests, pass/fail criteria, and specific acceptable designs for packaging of bulk quantities of PIH materials. It is anticipated that the contractor will finish work and submit a draft final report on this project to RSPA within six months.

Although RSPA believes that these petitions deserve further consideration, it would be premature to propose any major regulatory changes to the bulk packaging requirements until the final report on this research project is completed. In the interim, RSPA proposes to amend Special Provision B14 to delay compliance with this provision until October 1, 1994, for bulk packagings containing PIH materials which, when in contact with moisture, become highly corrosive and could cause corrosion under an insulation blanket.

2. Revise the Insulation Requirements in Special Provisions B14 To Exclude Tank Cars

The HMR requires shippers of PIH liquids to use packagings authorized in § 173.244. In addition, nearly all of these materials are assigned Special Provision B14, as well as either Special Provision B72 (for Hazard Zone A liquid materials) or Special Provision B74 (for Hazard Zone B liquid materials). As a result, only two tank specifications (i.e., DOT 105J300W and 105J300ALW tank cars) are authorized for these PIH liquids.

For example, sulfuric acid, fuming, greater than 30 percent free sulfur trioxide is assigned § 173.244 for bulk packaging authorizations. This section lists all DOT Class pressure tank cars (i.e., DOT 105, 109, 112, and 114 tank cars). The entry for sulfuric acid, fuming also is assigned Special Provisions B9 (no bottom outlets), B14 (requiring insulation), and B74 (thermally protected DOT 105J, 112J, 112T, 114J and 114T pressure tank cars with tank test pressures ≥300 psi.) as additional requirements. Class DOT 112 and 114 tank cars do not conform to Special Provision B14 because, prior to Docket HM–181, they were defined as non-insulated pressure tank cars. Class DOT 105 tank cars are defined as insulated pressure tank cars which conform to Special Provision B14. Therefore, based on the bulk packaging authorization and the special provisions, the only existing tank cars authorized for sulfuric acid, fuming are DOT 105J300W and 105J300ALW.

Based on recent requests for exceptions from the regulations (including requests for special approval) and FRA research, RSPA and FRA believe there is no need for a PIH packaging to have both a thermal protection system and an insulation system. As mentioned earlier, the purpose of applying an insulation system on tank cars was to offer accident damage protection and thermal protection in an accident or fire situation. Accident damage protection is provided by the use of an 11 gauge metal jacket and head shields on DOT 105S tank cars and DOT 112J and 114J tank cars. The metal jacket and head shields on these tank cars blunt the impacting forces from couplers, wheels, track, and infrastructures along the carrier's right-of-way that may result from an accident. Also, according to FRA research, this blunting effect is directly proportional to the thickness of the tank jacket or head shield and is effective in preventing tank punctures. Increasing the jacket thickness, or the tank head thickness, does increase the puncture resistance of the tank, but increasing the jacket thickness produces the larger effect for the same amount of added steel (see Coltman, M. & Hazel, M., Jr. (1992), Chlorine Tank Car Puncture Resistance Evaluation (DOT/FRA/ORD–92–11) Washington, DC: Federal Railroad Administration (NTIS DOT/FRA/ORD–92–11)). Fire protection

for these materials is provided by a jacketed insulation system, such as required for cargo tanks, portable tanks and DOT 105 tank cars and, to a greater extent, by a thermal protection system, such as required on DOT 105J, 112J and 114J tank cars. Below is a summary of the accident performance safeguards of DOT specification tank cars.

SUMMARY OF TANK CAR ACCIDENT PERFORMANCE SAFEGUARDS

Class	Head shields	Insulation	Thermal protection	Tank jacket	Large capacity relief valve
112/114 A					
112/114 S	x				
112/114 T	x		x		x
112/114 J	x		x	x	x
105 A		x		x	
105 S	x	x		x	
105 J	x	x	x	x	x

In this proposed rule, RSPA first is proposing to exclude tank cars from Special Provision B14. In conjunction with this proposal, RSPA is proposing to amend Special Provision B74 to authorize: (1) insulated, head shield equipped, Class DOT 105S tank cars; and, (2) non-insulated (or insulated), but thermally protected, head shield equipped, Class DOT 112J, and 114J tank cars. The proposed rule does not authorize DOT 105A, 112/114A, 112/114S, or 112/114T tank cars since these tank cars are not afforded the protection provided by a metal jacket or head shields.

3. Delay October 1, 1993 Implementation of New Packaging Standards for Tank Cars Containing PIH Materials

Any delay of the mandatory compliance date for packagings containing PIH materials will not apply to tank car shipments. Tank cars must conform to the new requirements by October 1, 1993. The continued use of specific existing tank cars will be considered, if it can be demonstrated (i.e., through the exemption process) that those existing tank cars provide an equivalent level of safety to DOT 105S, 112J, or 114J tank cars. Factors that will be considered include the type of material used in the construction of the tank, any increase in the overall shell and head thickness, the use of insulation or thermal protection, the thickness of any tank jacket, the use of fitting protection, and the vapor pressure to burst pressure ratio after subjecting the tank car and the commodity to a 100-minute pool fire. Fire modelling is acceptable.

4. Allow Chlorine (and Other Non-Flammable Gases) Tank Cars To Meet Class DOT 105S Requirements Rather Than Class DOT 105J Requirements.

A petition from the Chlorine Institute (P–1159) indirectly addressed Special Provision B14, but its major area of concern was Note 30 in § 173.314(c), which requires Class DOT 105 tank cars built after September 30, 1991, to meet 105J requirements. In order to meet the "J" requirement, the car must have a thermal protection system that conforms to § 179.105–4 and a tank head puncture resistance system conforming to § 179.105–5. The petitioner asked RSPA to revise Note 30 to allow tank cars containing chlorine and other non-flammable gases to conform to the requirements of DOT Class 105S rather than the 105J requirements. The Class DOT 105S tank car requirements specify only a tank head puncture resistance system. The petitioner also requested, for chlorine, the replacement of Special Provision B14 with a new provision allowing the use of certain types of insulation for chlorine tank cars.

As noted earlier, RSPA is proposing to exclude tank cars from the B14 requirement. In 1981, a joint effort between the Chlorine Institute and the Railway Progress Institute-Association of American Railroads Tank Car Safety Research and Test Project resulted in the development of an insulation system to protect a chlorine tank car involved in a fire. This insulation system maintains back plate (inside surface of the tank shell) temperatures below 250.56 °C (483 °F). Since 1985, chlorine tank cars have been equipped with full head shields and an insulation system that meets the above requirements (the system consists of two inches of ceramic fiber covered by two inches of glass fiber encased in an eleven gauge steel jacket). The insulation system was incorporated into the HMR under Docket HM–166U. After reviewing the Chlorine Institute's petition, RSPA and FRA have concluded that the current system is acceptable for the transportation of chlorine. The current system nearly conforms to the "J" requirement with the exception that chlorine tank cars do not have a thermal protection system applied to the discontinuities on the tank. Such discontinuities may provide a heat path into the commodity, but the overall heat input would be rather low, especially with the chlorine insulation system. Therefore, it is unlikely that the car will rupture in a 100-minute pool fire environment.

RSPA is proposing to amend § 173.314(c) to require, for all commodities subject to Note 30, that tank cars built after September 30, 1991, must conform to the requirements of Class DOT 105S. For chlorine, the note would further specify insulation requirements adopted under Docket HM–166U.

In an advance notice of proposed rulemaking issued under Docket HM–175A (Specifications for Tank Cars, 55 FR 20252, May 15, 1990), comments were solicited on the use of full head shields and thermal protection for new and existing tank cars transporting compressed gases, materials that meet the criteria of poisonous by inhalation, and reactive materials on tank cars constructed from aluminum or nickel plate. The interested reader is referred to Docket HM–175A for additional information.

B. Petitions Requesting Revisions to Non-Bulk Packaging Requirements for PIH Materials

RSPA received several petitions requesting revisions to non-bulk packaging requirements for materials poisonous by inhalation. These requests included changes to current minimum

thickness and cushioning requirements, additional packaging authorizations, and delay of the October 1, 1993 implementation date.

Authorize UN 1H1 Drums Used as Inner Packagings and UN 6HA1 Composite Drums Inside Metal Packagings for Hazard Zone A Materials

In the December 21, 1990 final rule, RSPA stated in the preamble that the use of 1H1 drums as inner packagings and 6HA1 composite packagings (plastic receptacles within steel drums) was authorized for Hazard Zone A materials. However, the regulatory text of § 173.226 did not include provisions for use of these packagings. Therefore, § 173.226(b) would be revised to include these packagings.

2. Use of Plastic Drums as Single Packagings for Materials Poisonous by Inhalation in Hazard Zones A and B

RSPA received one petition (P–1163) requesting authorization for use of plastic drums as single packagings for PIH materials in Hazard Zones A and B, if in dedicated transportation systems (i.e., a shipment from one origin to one destination where the shipper loads the material, blocks and braces the drums, and seals the transport vehicle). Another petitioner (P–1166) submitted a similar request, but limited to Hazard Zone B materials. The first petitioner (P–1163) noted a current unavailability of cost-effective double-drum packaging and cited the safety record of poison inhalation hazard materials packaged in DOT 34 and 2S/6D plastic packagings. Both petitioners claimed that a 110-gallon drum is the smallest commercially-available outer packaging meeting cushioning requirements in §§ 173.226(b)(5) and 173.227(b)(4), which require a minimum of two inches of cushioning material around the body of the inner drum and at least three inches on the top and bottom, between the inner and outer drum. Using a 110-gallon drum would significantly increase operational costs and create substantial reuse and disposal problems, according to one petitioner.

The other petitioner (P–1166) also noted potential difficulties and the additional expense of using 110-gallon drums. Claiming an excellent safety record in shipping materials poisonous by inhalation in this type of packaging, this petitioner requested that RSPA authorize an 85-gallon drum without minimum cushioning requirements.

RSPA does not agree with the petitioner's request (P–1163) to authorize plastic drums as single packagings for poison inhalation hazard materials in Hazard Zone A, even if in a dedicated transportation system, because single plastic drums do not provide an equivalent level of safety to double drums for Hazard Zone A PIH materials. However, RSPA is proposing plastic drums as single packagings for less toxic PIH materials in Hazard Zone B under highly-controlled conditions. Therefore, § 173.227(c) would be revised to include 1H1 plastic drums in the array of authorized single packagings in dedicated transportation systems.

In addition, based on a review of technical data concerning minimum cushioning thickness requirements between inner and outer drums, RSPA is proposing to remove the minimum cushioning thickness requirement in §§ 173.226 and 173.227.

3. Revise Certain Minimum Thickness Requirements for 1A1 and 6HA1 Drums

One petitioner (P–1166) asked RSPA to change the minimum thickness requirement for 1A1 drums in § 173.226(b)(4) for consistency with § 173.227(b)(3). This would change the minimum thickness for packagings over 120 L from 1.7 mm to 1.35 mm. For packagings under 120 L, the minimum thickness would be changed from 1.3 mm to 0.69 mm or 1.08 mm, depending on the size of the packaging. The petitioner also requested that the minimum thickness requirement for 6HA1 drums in § 173.227(b)(3)(i)(D) be changed to 0.69 mm (0.027 inch). This change would allow a 6HA1 drum used as an inner packaging to have the same required thickness as a 1A1 drum used as an inner packaging. According to this petitioner, both changes are necessary to ensure availability from normal commercial sources.

RSPA partially agrees with this petition and is proposing to revise § 173.227(b)(3)(i)(D) to require a minimum thickness of 0.70 mm (0.027 inch) for 6HA1 drums used as inner packaging. Because the 6HA1 is a two-part packaging, with the plastic inner packaging providing additional containment and structural support, there is no reason why the steel portion of it should be thicker than a single steel drum used in the same service.

The second request, to change the minimum thickness requirements in § 173.226(b)(4) for inner steel drums, for consistency with § 173.227(b)(3), is denied. There is no need for complete consistency between §§ 173.226 and 173.227. Section 173.226 is for materials which are more hazardous than the Hazard Zone B materials covered by § 173.227. A higher packaging integrity should be maintained for Hazard Zone A materials.

4. Delay Mandatory Compliance Date for Ethylene Oxide Packaging Requirements

One petitioner (P–1160), representing two producers of drummed ethylene oxide, requested a one-year delay in the October 1, 1993 mandatory compliance date for new ethylene oxide packaging requirements to facilitate reconsideration of the hazard classification of this material. The petitioner claimed that test data filed with RSPA indicates the toxicity of ethylene oxide to be far less than originally believed. The petitioner noted that the U.S. has proposed to make certain changes in the UN Recommendations for ethylene oxide mixtures. These proposals were adopted by the UN Committee of Experts in its December 1992 session. The petitioner believed this data may lead to a new rulemaking action revising the classification of ethylene oxide, and suggested delaying the October 1, 1993, packaging compliance date for ethylene oxide for one year to allow time for completion of any reclassification efforts. RSPA is not granting a one-year delay in compliance with new ethylene oxide packaging requirements. Packagings that meet the new requirements for ethylene oxide can be obtained, and the use of such packagings is encouraged. RSPA believes that the hazards of ethylene oxide warrant the level of packaging specified in § 173.323, whether the material is classified as poisonous by inhalation or flammable.

C. Other Petitions of Significance or General Applicability

In addition to petitions addressing packaging requirements for materials poisonous by inhalation, RSPA has received petitions and correspondence on various other issues such as classification changes for certain PIH materials, a Class 9 placarding exception, confusion over lithium battery provisions, and separation and segregation requirements for highway and rail shipments. Other miscellaneous issues that require clarification or correction, but do not merit a detailed discussion, are addressed in the section-by-section review.

1. Revisions to Classification and Hazard Zones for Certain Materials Poisonous by Inhalation

Based on acute inhalation toxicity data and related information obtained by RSPA, the Hazardous Materials Table would be amended to change the hazard zone for a number of materials poisonous by inhalation, and to remove or to add a number of materials to the

list of materials poisonous by inhalation. For certain materials, this revision would impose more stringent hazard communication and packaging requirements. Because hazard communication requirements are already in effect for materials poisonous by inhalation and new packaging requirements become mandatory October 1, 1993, immediate conformance to more stringent requirements could create a hardship. RSPA is aware of this potential problem and could delay the mandatory compliance date for those materials poisonous by inhalation for which a change in the hazard zone would result in more stringent requirements.

Those materials and a description of the data on which these proposals are based are listed as follows:

a. Boron trifluoride (UN1741). This material is a gas at 20°C and is currently listed as a Hazard Zone A inhalation hazard. The acute inhalation toxicity data used to designate boron trifluoride as a material poisonous by inhalation was: Rat; LCLo:20 ppm/7H (hours). The data was obtained from the Registry of Toxic Effects of Chemical Substances (RTECS) (RTECS: ED1925000). This value, converted to one hour, was approximately: Rat; LCLo:60 ppm/1H, and estimated to fall within Hazard Zone A. The Compressed Gas Association (CGA) submitted data indicating that boron trichloride is less toxic than previously believed (rat; LC50:2051 ppm/1H) and falls within Hazard Zone C. RSPA agrees with the CGA data and is proposing to identify boron trifluoride as a Hazard Zone C material poisonous by inhalation.

b. Carbonyl sulfide (UN2204). This material is a gas at 20°C and is currently listed as a Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate carbonyl sulfide as material poisonous by inhalation was: Mouse; LCLo:1200 ppm/35M (minutes). The data was obtained from the RTECS (RTECS: FG6400000). This value, converted to one hour, was approximately: Mouse; LCLo:700 ppm/1H, and estimated to fall within Hazard Zone B. The CGA submitted data indicating that carbonyl sulfide is less toxic than previously believed (rat; LC50:1700 ppm/1H) and falls within Hazard Zone C. RSPA agrees with the CGA data and is proposing to identify carbonyl sulfide as a Hazard Zone C inhalation hazard.

c. *Chlorine trifluoride (UN1749).* This material is a gas at 20°C and is currently listed as a Hazard Zone A inhalation hazard. The acute inhalation toxicity data used to designate chlorine trifluoride as material poisonous by inhalation was: Human; LCLo:50 ppm. This value was estimated to be for a one hour exposure and fall within Hazard Zone A. Also, data on rats was available: Rat; LCLo:400 ppm/4H. This value, converted to one hour, was approximately: Rat; LCLo:200 ppm/1H, and estimated to fall within Hazard Zone B. The data was obtained from the RTECS (RTECS: FO2800000). The CGA submitted data indicating that chlorine trifluoride is less toxic than previously thought (rat; LC50:299 ppm/1H), and falls within Hazard Zone B. RSPA agrees with the CGA data and is proposing to identify chlorine trifluoride as a Hazard Zone B inhalation hazard.

d. Ethylene oxide, pure or with nitrogen (UN1040). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate ethylene oxide as a material poisonous by inhalation was: Rat; LC50:800 ppm/4H. The data was obtained from the RTECS (RTECS: KX2450000). This value, converted to one hour, was: Rat; LC50:1600 ppm/1H. Copies of two recent studies on the acute vapor inhalation toxicity of ethylene oxide in rats were submitted to RSPA. One study was a one-hour exposure; the other study was a four-hour exposure. The one-hour LC50 values were: 5748 ppm for males, 4439 ppm for females, and 5029 ppm for the combined sexes. The four-hour LC50 values were: 1972 ppm for males, 1537 ppm for females, and 1741 ppm for the combined sexes. The four-hour values, converted to one hour, gave the following one-hour LC50 values: 3944 ppm for males, 3074 ppm for females, and 3482 ppm for the combined sexes. Data from these studies indicate that ethylene oxide is less toxic than previously believed and falls within Hazard Zone D. RSPA agrees with this data and is proposing to identify ethylene oxide as a Hazard Zone D inhalation hazard.

e. Hydrogen chloride, anhydrous (UN1050). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate hydrogen chloride as a material poisonous by inhalation was: Rat; LC50:4701 ppm/30M. The data was obtained from the RTECS (RTECS: MW9610000). This value, converted to one hour, was approximately: Rat; LC50:2350 ppm/1H, and falls within Hazard Zone C. The CGA submitted data indicating that hydrogen chloride is less toxic than previously believed (rat; LC50:3120 ppm/1H), and falls within Hazard Zone D. RSPA agrees with the data and has proposed to identify hydrogen chloride, anhydrous as a Hazard Zone D inhalation hazard.

f. Hydrogen chloride, refrigerated liquid (UN2186). The data that applies to Hydrogen chloride, anhydrous (UN1050) applies to this material. Therefore, RSPA is proposing to identify hydrogen chloride, refrigerated liquid as a Hazard Zone D.

g. Hydrogen fluoride, anhydrous (UN1052). This material is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate hydrogen fluoride as material poisonous by inhalation was: Rat; LC50:1276 ppm/1H. The data was obtained from the RTECS (RTECS: MW7875000). The CGA submitted data indicating that hydrogen fluoride is more toxic than previously thought (rat; LC50:976 ppm/1H), and falls within Hazard Zone B. RSPA agrees with the CGA data and, therefore, has proposed to identify hydrogen fluoride, anhydrous as a Hazard Zone B inhalation hazard.

h. Hydrogen iodide, anhydrous (UN2197). This material is a gas at 20°C and is currently identified as a Division 2.2 material; however, in the UN Recommendations (seventh revised edition), it is classed as a toxic gas (Class 2, Division 2.3). The RTECS and other sources did not list any acute inhalation toxicity data for hydrogen iodide (RTECS: MW3760000). The CGA submitted data indicating that hydrogen iodide is a gas poisonous by inhalation (rat: LC50:2860 ppm/1H (estimated)), and falls within Hazard Zone C. The CGA estimated the toxicity of hydrogen iodide by analogy with the toxicity of hydrogen bromide (rat; LC50:2860 ppm/1H) (RTECS: MW3850000; LC50 rounded up). The estimated toxicity of this material meets criteria in the HMR for a gas poisonous by inhalation (Class 2, Division 2.3) in Hazard Zone C. Anyone having test data on the acute inhalation toxicity of hydrogen iodide is encouraged to submit the data to RSPA.

i. Methyl bromide (UN1062). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate methyl bromide as material poisonous by inhalation was: Rat; LC50:302 ppm/8H. The data was obtained from the RTECS (RTECS: PA4900000). This value, converted to one hour, was approximately: Rat; LC50:1007 ppm/1H. The CGA submitted data that was based on a recalculation of the data from the RTECS, indicating that methyl bromide is more toxic than previously believed (rat; LC50:850 ppm/1H), and falls within Hazard Zone B. RSPA agrees with the CGA calculation

and is proposing to identify methyl bromide as a Hazard Zone B inhalation hazard.

j. Methyl isothiocyanate (UN2477). This material is a solid at 20°C, with a melting point of 35–36°C. It readily sublimes at room temperature and is treated as a liquid under the HMR. The acute inhalation toxicity data used to designate methyl isothiocyanate as material poisonous by inhalation, Hazard Zone A, was: Rat; LC50:20 ppm/1H. This data was obtained from information on file for a Special Approval that RSPA had issued. The RTECS and other sources did not list any acute inhalation toxicity data for methyl isothiocyanate (RTECS: PA9625000). A copy of a study on the acute inhalation toxicity of methyl isothiocyanate in rats for a one hour exposure was submitted to RSPA. The data indicate that methyl isothiocyanate is less toxic than previously believed (rat; LC50:635 ppm/1H), and falls within Hazard Zone B. RSPA agrees with this data and is proposing to identify methyl isothiocyanate as a Hazard Zone B inhalation hazard.

k. Methyl mercaptan (UN1064). This material is a gas at 20°C and is currently identified as a Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate methyl mercaptan as material poisonous by inhalation was: Rat; LC50:675 ppm. This value was estimated to be for a one hour exposure and fall within Hazard Zone B. The data was obtained from the RTECS (RTECS: PB4375000). The CGA reviewed the RTECS data and found that the exposure time was four hours. The value, converted to one hour, was: Rat; LC50:1350 ppm/1H. This information indicates that methyl mercaptan is less toxic than previously believed and falls within Hazard Zone C. RSPA agrees with the data and is proposing to identify methyl mercaptan as a Hazard Zone C inhalation hazard.

l. Methylamine, anhydrous (UN1061). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate methylamine as a material poisonous by inhalation was: Mouse; LC50:1889 ppm/2H (converted from: LC50:2400 mg/m^3/2H). The data was obtained from the RTECS (RTECS: PF6300000). This value, converted to one hour, was approximately: Rat; LC50:2523 ppm/1H. A copy of a study on the acute inhalation toxicity of methylamine in rats for a one-hour exposure was submitted to RSPA. The data indicated that methylamine is less toxic than previously thought (rat; LC50:7110 ppm/1H), and does not meet criteria in the HMR to be classified as a gas poisonous by inhalation (Class 2, Division 2.3). RSPA agrees with the data. Therefore, the hazard class and division assigned to methylamine, anhydrous would be changed from a gas poisonous by inhalation (Class 2, Division 2.3) to a flammable gas (Class 2, Division 2.1).

m. Nitric oxide (UN1660). This material is a gas at 20°C and is currently identified as Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate nitric oxide as material poisonous by inhalation was: Rat; LC50:870 ppm (converted from: Rat; LC50:1068 mg/m^3). The data was obtained from the RTECS (RTECS: QX0525000). The CGA submitted data indicating that nitric oxide is a gas poisonous by inhalation (rat; LC50:115 ppm/1H (estimated)) and falls within Hazard Zone A. The CGA estimated the acute inhalation toxicity of nitric oxide by analogy with the toxicity of nitrogen dioxide (rat; LC50:115 ppm/1H) (CGA data); RTECS data (RTECS: QW9800000): Rat; LC50: 88 ppm/4H). RSPA agrees with the CGA. Therefore, RSPA is proposing to identify nitric oxide as a Hazard Zone A inhalation hazard.

n. Nitric oxide and dinitrogen tetroxide mixtures (Nitric oxide and nitrogen dioxide mixtures) (UN1975). This material is a gas at 20°C and is currently identified as a Hazard Zone B inhalation hazard. The acute inhalation toxicity of this material is not "fixed" and depends on the concentration of nitric oxide and dinitrogen tetroxide in each mixture. The data used to designate the mixtures as material poisonous by inhalation was based on each component of the mixture. The acute inhalation toxicity for nitric oxide was: Rat; LC50: 870 ppm (RTECS: QX0525000) and for dinitrogen tetroxide was: Rat; LC50:88 ppm/4H (RTECS: QW9800000), which, converted to one hour, was: Rat; LC50:176 ppm/1H. Based on acute inhalation toxicity data submitted by the CGA on nitric oxide (rat; LC50:115 ppm/1H (estimated)) and nitrogen dioxide (rat; LC50:115 ppm/1H), the mixtures are more toxic than previously thought and fall within Hazard Zone A. RSPA agrees with the CGA and is proposing to identify this material as a Hazard Zone A inhalation hazard.

o. Perchloryl fluoride (UN3083). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate perchloryl fluoride as a material poisonous by inhalation was: Rat; LCLo:2000 ppm/40M. The data was obtained from the RTECS (RTECS: SD1925000). This value, converted to one hour, was approximately: Rat; LCLo:1333 ppm/1H and estimated to fall within Hazard Zone C. The CGA submitted data indicating that perchloryl fluoride is more toxic than previously thought (Rat; LC50:770 ppm/1H, which was converted from: Rat; LC50:385 ppm/4H), and falls within Hazard Zone B. RSPA agrees with the CGA data and, therefore, is proposing to identify perchloryl fluoride as a Hazard Zone B inhalation hazard.

p. Silicon tetrafluoride (UN1859). This material is a gas at 20°C and is currently identified as a Hazard Zone D inhalation hazard. The RTECS and other sources did not list any acute inhalation toxicity data for silicon tetrafluoride (RTECS: VW2327000). However, the material was classed as a poisonous gas in the UN Recommendations. Therefore, under Docket HM–181, silicon tetrafluoride was classed as a gas poisonous by inhalation (Class 2, Division 2.3) and estimated to fall within Hazard Zone D. The CGA submitted data indicating that silicon tetrafluoride is more toxic than was estimated (mouse; LC50:450 ppm/1H) and falls within Hazard Zone B. RSPA agrees with the CGA data and, therefore, is proposing to identify silicon tetrafluoride as a Hazard Zone B inhalation hazard.

q. Thionyl chloride (UN1836). This material is a liquid at 20°C and is currently identified as a Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate thionyl chloride as material poisonous by inhalation was: Rat; LC50:500 ppm/1H, and falls within Hazard Zone B. The data was obtained from the RTECS (RTECS: XM5151000). Copies of two studies on the acute inhalation toxicity of thionyl chloride in rats were submitted to RSPA. One study was a one hour exposure; the other study was a four hour exposure. The one hour value was approximately: Rat; LC50:1274 ppm/1H. The four hour value was: Rat; LC5 0:558 ppm/4H. The four hour value, converted to one hour, was: Rat; LC50:1176 ppm/1H. Data from these studies indicate that thionyl chloride is less toxic than previously thought. RSPA agrees with the data and is proposing to remove thionyl chloride from the list of materials poisonous by inhalation.

r. Trifluoroacetyl chloride (UN3057). This material is a gas at 20°C and is currently classified as a Division 2.2 material. In the UN Recommendations it is classed as a toxic gas (Division 2.3). The RTECS and other sources did not list any acute inhalation toxicity data for

trifluorochloroacetyl chloride. Data was submitted to RSPA indicating that the acute inhalation toxicity of trichloroacetyl chloride is as follows: Rat; LC50:>200 ppm but <1000 ppm/1H. Data was obtained from a four hour test, as follows: Rat; LC50:78 ppm/4H. The value, converted to one hour, was: Rat; LC50:156 ppm/1H. However, a limit test conducted on ten rats (5 male and 5 female) indicated that trifluoroacetyl chloride is not as toxic for a shorter exposure time. The rats were exposed to 208 ppm of trifluoroacetyl chloride for one hour. None of the rats died during the exposure or the 14-day post-exposure observation period. RSPA agrees with the data and concludes that trifluoroacetyl chloride is a material poisonous by inhalation and falls within Hazard Zone B.

s. Trifluorochloroethylene, inhibited, R1113 (UN1082). This material is a gas at 20°C and is currently classified as a Division 2.1 material. Acute inhalation toxicity data for trifluorochloroethylene was listed in the RTECS (RTECS: KV0505000), as follows: Rat; LC50:1000 ppm/4H. The value, converted to one hour, was: Rat; LC50:2000 ppm/1H, indicating that trifluorochloroethylene is a material poisonous by inhalation and falls within Hazard Zone C. RSPA agrees with this data and is proposing to identify trifluorochloroethylene, inhibited, as Hazard Zone C inhalation hazard.

2. Reinstate the Placarding Requirement for Class 9 Materials

In the October 1, 1992 revisions under Docket HM–181, RSPA provided a domestic exception from placarding for Class 9 materials. This exception was based on RSPA's agreement with petitions and comments stating that the Class 9 placard is unnecessary and unduly burdensome in domestic commerce. RSPA received three petitions for reconsideration in response to this action, submitted by the Chemical Waste Transportation Institute (CWTI), the Public Utilities Commission of Ohio (PUCO), and the State of Idaho. A subsequent letter was received from the Conference on Safe Transportation of Hazardous Articles (COSTHA) stating its opposition to the three petitions for reconsideration. PUCO promptly submitted a rebuttal comment to the COSTHA letter, claiming that petitioners opposing the Class 9 placarding exception were never provided evidence justifying the placarding exception nor were they offered an opportunity to comment prior to adoption of the exception.

The three petitioners requesting reconsideration of the domestic exception from Class 9 placarding requirements stated that the benefits of the Class 9 placards to emergency responders and enforcement personnel outweigh the regulatory burden on industry. The State of Idaho maintained that emergency responders and enforcement personnel need to be aware of the presence of potential health and environmental hazards. CWTI and PUCO claimed that exempting offerors and carriers from additional regulatory burdens, such as registration and fees, routing, permitting, commercial drivers' license (CDL) hazardous materials endorsement, and drug and alcohol testing requirements, does not promote public safety. CWTI suggested that "substantive negative outcomes will result from the abandonment of the Class 9 placard for domestic shipments."

Both PUCO and CWTI suggested narrowing the Class 9 placarding exception. PUCO emphasized that Class 9 hazardous wastes and hazardous substances should not be excepted from placarding requirements. CWTI thought that emergency responders should be consulted about the need for a Class 9 placard. It urged RSPA to open a docket before the October 1, 1994 placarding compliance date to consider a reversal of the Class 9 placarding exception and to solicit comments on this issue.

COSTHA stated that the minimal enhancement of safety does not justify the operational and administrative costs that will be incurred if the Class 9 placarding requirement is reinstated. Furthermore, COSTHA maintained that CWTI and PUCO did not provide any new evidence to support their claims that the Class 9 placard is necessary in domestic transportation. In conclusion, COSTHA urged RSPA to handle any further discussion of the Class 9 placarding exception in a rulemaking action under Docket HM–206.

RSPA continues to believe that the Class 9 placard is unnecessary and unduly burdensome in domestic commerce and, therefore, is denying these petitions for reconsideration. The decision to except Class 9 materials from placarding requirements was based on petitions and comments received from shippers, carriers, and their representatives. These petitioners claimed that the Class 9 placarding requirement imposed an unnecessary burden with no demonstrated safety benefit. One petitioner urged RSPA to consider specifically enumerated secondary costs. Another petitioner referenced small service and consumer-type vehicles carrying only Class 9 materials. The size of these vehicles and loads of less acutely hazardous commodities are small, yet they are subject to the identical hazard communication system relegated to long-range, heavy hauling, interstate industry. The petitioner emphasized that the issue is not whether the materials should be identified, but rather that the means of identification should be evaluated for additional requirements imposed by other regulations.

In developing the final rule under Docket HM–181, RSPA did not consider all the secondary costs associated with mandatory placarding for Class 9 materials. These secondary costs relate to compliance with additional requirements imposed by the Federal Motor Carrier Safety Regulations (FMCSR), such as the CDL hazardous materials endorsement, routing restrictions in certain States, drug testing, and other applicable FMCSR requirements. With the recent promulgation of regulations under Dockets HM–198A and HM–211 (which expand the scope of the HMR to include elevated temperature materials and marine pollutants), the economic impact of reinstating Class 9 placarding requirements would be dramatic. In addition, regulatory requirements for marking identification numbers on packages containing Class 9 materials provide emergency responders with sufficient information to assess potentially hazardous situations. The overall costs associated with requiring placards for Class 9 materials outweigh the benefits and, therefore, RSPA is denying those petitions which request reinstatement of the Class 9 placarding requirements.

3. Clarification of Compliance Date for Limited Quantities and Reclassification to ORM–D

RSPA has learned that there is some confusion as to the applicable compliance date for limited quantity and consumer commodity provisions. The Docket HM–181 final rule imposed a gross weight limit of 30 kg (66 pounds) per package for the "limited quantity" exceptions and the option to reclassify a material as a consumer commodity, ORM–D. The transitional provisions in § 171.14 allow for the continued use of both specification and non-specification packagings authorized under the pre-HM–181 regulations until October 1, 1996. However, there is some concern that, because reclassification of a material to ORM–D includes a weight limitation of 30 kg (66 pounds) per package, new requirements for limited quantities and consumer commodities will become mandatory on October 1, 1993.

Any new requirement effecting a change to packagings for limited quantities or consumer commodities goes into effect October 1, 1996. Until that time, either the pre-HM–181 quantity limits and packagings or the new Docket HM–181 quantity limits and packagings may be used, as long as consistency is maintained. In other words, if the new requirements authorize a greater capacity for each inner packaging than the comparable pre-HM–181 inner packaging quantity limit, and the new, larger packaging is selected, then the 30 kg (66 pounds) gross weight per package limit also applies.

4. Revise Lithium Battery Provisions for Consistency and Clarity

RSPA is proposing several editorial changes to clarify requirements for lithium batteries. First, the cargo aircraft quantity limitation in the § 172.101 Table would be corrected to read "35 kg gross" for solid and liquid cathode lithium batteries. Special provision A12 in § 172.102 would be separated into two special provisions to clarify the requirements on cargo and passenger carrying aircraft. In addition, § 173.185 would be revised to clarify that the exception provided in paragraph (i) applies to all lithium batteries, including rechargeable batteries and batteries contained in equipment.

5. Revise Separation and Segregation Requirements for Rail and Highway Transportation

RSPA adopted, under Docket HM–181, a revised Segregation and Separation Chart of Hazardous Materials (Chart) in §§ 174.81 and 177.848. The revised chart prohibits certain hazardous materials from being transported on the same transport vehicle and requires other categories of hazardous materials to be separated from each other. Two alternatives to accomplish separation are provided. First, transporters can implement systems that achieve separation so that, in the event of leakage from packagings, no commingling of hazardous materials would occur. This alternative is consistent with the philosophy of implementing performance standards in Docket HM–181. Alternatively, transporters can separate specified hazardous materials by a distance of 1.2 meters (4 feet) from each other at a minimum height of 10 centimeters (4 inches) off the floor, without development of performance systems.

Since the issuance of the revised chart, RSPA has received comments from the American Trucking Associations, Inc., the United Parcel Service, Yellow Freight Systems, and others critical of the 1.2 meter by 10 centimeter separation alternative. Commenters indicate that this alternative places unnecessary burdens on their operations and could cause unnecessary delays. There also is concern that enforcement will be based on the alternative rather than on the performance standard.

Based on the concerns expressed by these commenters, RSPA is proposing to revise §§ 174.81(e)(3) and 177.841(e)(3) by removing the references to the separation distances of 1.2 meters by 10 centimeters. The means of separation used by carriers, thereafter, must ensure that commingling of materials will not occur in the event of leakage from packagings of hazardous materials. Separation must be accomplished by some means of physical separation, such as by the use of non-permeable barriers, non-reactive freight, or non-combustible, non-reactive adsorbents between packagings of materials required to be separated. Restrictions on commingling Class 8 liquids and Classes 4 and 5 materials would be retained so that Class 8 liquids could not be loaded or stored above Class 4 and Class 5 materials.

To provide relief, RSPA also is proposing to allow carload and truckload shipments of Class 8 (corrosive) liquids and Class 4 (flammable solid) and Class 5 (oxidizer) materials, based on the shipper's determination that no dangerous evolution of heat or gas would occur should the contents of the packagings commingle.

Commenters suggested that RSPA remove the requirement to separate Class 8 liquids from Division 2.1 gases. RSPA agrees with these comments and is proposing to remove the letter "O" at the intersecting columns for Division 2.1 gas and Class 8 liquids.

6. Construction of Stainless Steel Pressure Tank Cars

RSPA has received several petitions for rulemaking and exemption applications requesting that stainless steel be authorized in the construction of pressure tank cars for materials such as chlorosulfonic acid and nitrogen tetroxide. RSPA and FRA agree with petitioners that there is a need to amend the regulations to authorize Type 304L and 316L stainless steel in the construction of pressure tank cars. Therefore, RSPA is proposing to add Type 304L and 316L as authorized materials for the construction of DOT 105, 109, 112 and 114 tank cars.

III. Review by Section

Part 171

Section 171.8. Definitions would be added for "Explosive material," "Miscellaneous hazardous material," "Nonflammable gas," and "Poisonous gas" to reference the appropriate hazard class definition section in part 173. In addition, the definitions for "Flash point" and "Etiologic agent" would be revised to correctly reference the applicable hazard class definition in part 173.

Part 172

Section 172.101. Based on the merits of a petition for rulemaking (P–1152), paragraphs (c)(12)(i) and (c)(12)(ii) would be revised to add a requirement to consider hazard zone, if applicable, when selecting a proper shipping name for a material.

In the § 172.101 Hazardous Materials Table, the entries for "Lithium battery, liquid cathode" and "Lithium battery, solid cathode" would be amended by correcting the cargo aircraft quantity limitation to read "35 kg gross" for solid and liquid cathode lithium batteries.

Entries for "Boron trichloride," "Carbonyl sulfide," "Chlorine trifluoride," "Ethylene oxide," "Hydrogen chloride, anhydrous," "Hydrogen chloride, refrigerated liquid," "Hydrogen fluoride, anhydrous," "Hydrogen iodide, anhydrous," "Methyl bromide," "Methyl isothiocyanate," "Methyl mercaptan," "Methylamine, anhydrous," "Nitric oxide," "Nitric oxide and dinitrogen tetroxide mixtures," "Perchloryl fluoride," "Silicon tetrafluoride," "Thionyl chloride," "Trifluoroacetylchloride," and "Trifluorochloroethylene, inhibited" would be revised as a result of new toxicity data which changes their hazard classification or hazard zone. In addition, for consistency with the proposed hazard zone change for ethylene oxide, carbon dioxide and ethylene oxide mixtures consisting of more than 6 percent ethylene oxide would be classed in Division 2.1 with a Special Provision 5 in Column 7 to indicate a potential poisonous-by-inhalation hazard.

RSPA is proposing new domestic entries for "Methanol or Methyl alcohol" and "Methyl cyanide" that would not specify a "POISON" subsidiary hazard label. These materials do not meet the hazard classification criteria for a Division 6.1 material under the HMR. In addition, RSPA is proposing a new domestic entry for "Chloroform" to change the hazard classification of this material from

Division 6.1, PG II to Division 6.1, PG III. The proposals for "Methyl cyanide" and "Chloroform" are consistent with recent amendments to the UN Recommendations.

By adding a new Special Provision 30 to the domestic entry for "Sulfur", RSPA is proposing to except from the HMR sulfur which is transported domestically in non-bulk packagings and sulfur which is formed to a specific shape (e.g., prills, granules, pellets, pastilles, or flakes). Data supplied to RSPA indicates that the hazards of sulfur are far less than originally believed. In addition, in the future, RSPA will examine the issue of regulating all other forms of sulfur in domestic transportation.

RSPA is proposing to reclassify PETN as a Division 1.1D explosive. Recent data received by RSPA substantiates the UN classification of PETN; therefore, RSPA is proposing to reclassify PETN as a Division 1.1D explosive.

For the entry "Poisonous liquid, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A*", RSPA is proposing to correct Column 9(b), which authorizes a 2.5 L quantity limitation on cargo aircraft. This entry is not consistent with the quantity limits for other poisonous by inhalation liquids, which prohibit any quantity of these materials on passenger or cargo aircraft. RSPA, therefore, proposes to revise the Column 9(b) entry from "2.5 L" to "Forbidden".

Section 172.102. Special Provision A12 would be separated into two special provisions to clarify the requirements for lithium batteries on cargo and passenger carrying aircraft. Under this separation, Special Provision 29 would be added and Special Provision A12 would be revised.

Based on the merits of petitions, Special Provisions B14 and T38 would be revised to delay, until October 1, 1994, compliance with these provisions for bulk packagings containing poisonous by inhalation materials which, when in contact with moisture, become highly corrosive and could cause corrosion under an insulation blanket. In addition, the applicability of Special Provision B14 to tank cars would be removed.

Special Provision B42 would be revised by removing the authorizations for DOT 105A and 105S tank cars to clarify that the only tank car authorized for acrolein, inhibited is the DOT 105J500W specification tank car. This clarification is needed because acrolein, inhibited is assigned both Special Provisions B42 and B72. Special Provision B42 currently authorizes DOT 105A and 105S tank cars, in addition to a DOT 105J tank car, but B72 restricts the packaging authorization to a DOT 105J500W tank car.

Special Provision B65 would be amended by revising the first sentence to read "Notwithstanding the provisions of § 173.244 of this subchapter, only DOT 105A500W tank cars are authorized." This revision would clarify that, despite the authorization in § 173.244 for use of other tank cars, the only tank car authorized for hydrocyanic acid, aqueous solutions, and hydrogen cyanide, anhydrous, stabilized is the DOT 105A500W tank car. However, this restriction does not supersede § 173.31(a)(3), which permits a class DOT 105S or 105J tank car (a higher-integrity tank car) to be used if it has an equal or higher marked test pressure than the DOT 105A500W.

"Acetone cyanohydrin, stabilized" is assigned Special Provisions B74 and B76. Special Provision B74 currently authorizes DOT 105J300W, 105J300ALW, 112J340W, 112T340W, 114J340W, and 114T340W tank cars. However, Special Provision B76 authorizes DOT 105S500W tank cars, but the safety relief devices on such cars must have a start-to-discharge pressure of 1,034 kPa (150 psi). Therefore, Special Provision B74 would be removed from Column 7 of the § 172.101 Hazardous Materials Table for "Acetone cyanohydrin, stabilized" and Special Provision B76 would be revised to include the tank cars currently in Special Provision B74, provided the safety relief devices on those cars have a set-to-discharge pressure setting of 1,034 kPa.

Part 173

Section 173.34. Various sources have informed RSPA that the terminology "Poison A gas or liquid" in § 173.34(d)(3) should be revised to reflect consistency with the new hazard classification nomenclature. RSPA agrees and is proposing that the phrase "Poison A gas or liquid" be revised to read "Division 2.3 gas in Hazard Zone A or a Division 6.1 PG I liquid in Hazard Zone A". RSPA is soliciting comments on the potential implications of this terminology change. Previously, safety relief devices were prohibited on cylinders containing Poison A gases or liquids but generally were required on cylinders containing other gases or liquids. Based on the defining criteria for materials poisonous by inhalation, some materials previously classed as Poison A materials are now in Hazard Zones B or C and thus might be required to be packaged in cylinders having safety relief devices. Conversely, certain gases and liquids fall into Hazard Zone A that previously were not classed as Poison A materials. Cylinders for these Hazard Zone A materials would be prohibited from having safety relief devices. Detailed comments addressing the specific impacts of this proposed terminology change are requested. Is the prohibition against safety relief devices on cylinders containing Hazard Zone A materials necessary? If warranted, RSPA may delay (beyond October 1, 1993) any retrofitting requirements involving safety relief devices that might result from the adoption of this terminology change.

Section 173.54. RSPA is proposing to add new paragraph (l), "Forbidden explosives," to clarify that explosive articles shipped with their means of initiation or ignition installed must be approved in accordance with § 173.56. In conjunction with this proposed addition, RSPA would revise Special Provision 109 and remove paragraph (b) of § 173.63.

Section 173.63. RSPA has learned that certain offerors of Class 1 detonating cords cannot utilize a packaging exception in § 173.63 because carriers refuse to accept this material when classed as Division 1.4D and marked "UN 0065". To resolve this problem, RSPA proposes to add a provision in § 173.63(a) to clarify that if detonating cord is offered or transported domestically as Division 1.4D, the identification number "UN 0289" should be used.

Section 173.185. Paragraph (i) would be revised to clarify that the exception provided in this paragraph applies to all lithium batteries, including rechargeables, and those contained in equipment.

Section 173.226. In the December 21, 1990 final rule, RSPA stated in the preamble that the use of 1H1 drums as inner packaging and 6HA1 composite drums inside metal packagings were authorized for Hazard Zone A materials. However, the regulatory text of § 173.226 did not include provisions for use of these packagings. Therefore, § 173.226(b) would be revised to include these packagings.

Sections 173.226 and 173.227. The required minimum thickness for cushioning in paragraphs (b)(5) and (b)(4), respectively, would be removed. This proposed revision is based on the merits of two petitions for rulemaking (P–1163 and P–1166), discussed earlier in this document, which noted the unavailability of cost-effective outer drums having a capacity less than 110 gallons for materials poisonous by inhalation.

Section 173.227. Proposed revisions to this section are based on the merit of

petitions (P–1163 and P–1166). First, the minimum thickness requirement in paragraph (b)(3)(i)(D) for a 6HA1 drum used as an inner packaging would be decreased to 0.70 mm (0.027 inch). In addition, paragraph (c) would be revised to authorize 1H1 plastic drums as single packagings under the provisions of this section.

Section 173.306. In the December 20, 1991 revisions to the HM–181 final rule, paragraphs (a)(3)(i) and (b)(1) were amended to increase the capacity of aerosols to one liter. Currently, the one liter SI measurement is shown in parentheses, preceded by "50 cubic inches". As prescribed in § 171.10, where SI units appear, they are the regulatory standard, with U.S. customary units to be shown for information only. Therefore, RSPA is proposing to revise § 173.306(a)(3)(i) and (b)(1) to clarify that one liter is the regulatory standard. In addition, the equivalent customary measurement of 50 cubic inches is incorrect, and RSPA is proposing "61.0 cubic inches" as the approximate equivalent of one liter.

RSPA also is proposing a revision to paragraph (h)(3) to reference the exception provided in § 173.156 for ORM–D materials. Adding this reference would be consistent with other packaging sections addressing ORM–D materials.

Section 173.314. Note 30 in paragraph (c) would be revised to specify insulation requirements for chlorine and to require that tank cars built after September 30, 1991, must conform to the requirements of Class DOT 105S. A proposed editorial correction to Note 21 would remove the parentheses in "§ 173.24(b)" to correctly read "§ 173.24b".

Section 173.323. Currently the HMR contains a requirement that drums intended to contain ethylene oxide must be fire-tested in accordance with CGA Pamphlet C–14 or other equivalent method. Ethylene oxide vapor, when exposed to fire, becomes very unstable and poses a danger of explosion. Tests conducted in the 1940s indicated the failure of ethylene oxide containers when exposed to fire. Subsequently, drums essentially the same as the DOT 5P successfully withstood fire exposure testing. Furthermore, safety relief devices used today are basically identical to those tested in the 1940s. Because there is a proven record of drums successfully passing the fire test, RSPA proposes to remove the requirement contained in § 173.323(b)(5) that drums be fire-tested. Instead, RSPA would require that these drums be capable of passing such a test.

Part 174

Section 174.83. This section was revised under the Docket HM–181 final rule, and incorporated text from the former § 174.84. A change in the wording of paragraph (b) may result in a misinterpretation that could affect the safe handling of placarded Trailers-On-Flatcars (TOFC) and Containers-On-Flatcars (COFC). The revised paragraph (b) could be interpreted to allow cars moving under their own momentum to strike cars placarded in Division 1.1 or 1.2, tank cars placarded in Division 2.3 Hazard Zone A or Division 6.1 PG I Hazard Zone A, Class DOT 113 tank cars placarded in Division 2.1, placarded flatcars, or flatcars transporting placarded vehicles or containers. Therefore, RSPA is proposing that paragraph (b) be revised to clarify that such a practice is not permitted.

Parts 174 and 177

Sections 174.81 and 177.848. RSPA is proposing to revise §§ 174.81(e)(3) and 177.848(e)(3) by removing the references to the separation distances of 1.2 meters by 10 centimeters. The means of separation used by carriers must ensure that commingling of materials will not occur in the event of leakage from packagings of hazardous materials. Separation must be accomplished by some means of physical separation, such as by the use of non-permeable barriers, non-reactive freight, or non-combustible, non-reactive adsorbents between packagings of materials required to be separated. However, in no case may Class 8 (corrosive) liquids be loaded or stored above Class 4 (flammable solid) and Class 5 (oxidizing) materials.

RSPA is also proposing a provision that authorizes carload or truckload shipments of Class 8 (corrosive) liquids and Class 4 (flammable) and Class 5 (oxidizers), based on the shipper's determination that no dangerous evolution of heat or gas would occur should the contents of the packagings commingle. In addition, RSPA is proposing to remove the letter "O" at the intersecting columns for Division 2.1 (flammable) gas and Class 8 (corrosive) liquids.

Part 179

Section 179.100–7. Based on petitions for rulemaking and applications for exemptions, this section would be amended to add Type 304L and 316L as an authorized material for the construction of DOT 105, 109, 112 and 114 tank cars.

Section 179.100–10. RSPA is proposing, in § 179.100–7, to authorize Type 304L and 316L stainless steels for construction of DOT pressure tank cars. In conjunction with this proposal, a new paragraph (c) would be added to § 179.100–10 to not require postweld heat treatment of Type 304L and 316L stainless steels.

IV. Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The proposed rule is not considered significant under the regulatory procedures of the Department of Transportation. A regulatory evaluation is available for review in the Docket.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act (49 U.S.C. App. 1801 et. seq.) contains an express preemption provision (49 U.S.C. App. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. With certain exceptions, a non-Federal requirement is preempted if: (1) Compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under 49 U.S.C. App. 1804(a)(4), concerning certain covered subjects, or 49 U.S.C. App. 1804(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. (49 U.S.C. App. 1804(a)(4) (A) and (B)).

Section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political

subdivision thereof or an Indian tribe * * * " which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations promulgated pursuant to the HMTA. (State and Indian tribe hazardous materials highway routing requirements governed by 49 U.S.C. App. 1804(b), and requirements "otherwise authorized by Federal law" are excepted.) In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d). Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

The proposed rule concerns the following covered subjects:

The designation, description, and classification of hazardous materials: definitions added or revised in § 171.8; requirement added to consider hazard zone of material when selecting proper shipping name; changes to hazard classification and/or hazard zone for 18 PIH materials; chloroform hazard classification change from PG II to PG III; reclassification of PETN to Division 1.1D explosive; clarification to lithium batteries provision that the exception from the regulations applies to all lithium batteries, including rechargeables and those contained in equipment; and clarification on ORM-D exceptions for gases.

The packing, repacking, handling, labeling, marking, and placarding of hazardous materials: Correct cargo aircraft quantity limitations for lithium batteries and for poisonous liquid, oxidizing, n.o.s. in PG I Hazard Zone A; removal of POISON label for methanol and methyl cyanide; special provisions revisions for lithium batteries on cargo and passenger carrying aircraft; delay in compliance date for insulation requirements for PIH bulk packagings; changes to tank car packaging authorizations for acrolein, hydrocyanic acid/hydrogen cyanide, and acetone cyanohydrin; terminology change for PIH materials in cylinders which may result in changes to safety relief valve requirements; relief for certain DoD Class 1 materials shipments; change in identification number prefix; clarification on exception for detonating cords; new packaging authorizations and other relief for PIH packagings; clarification on ORM-D packagings for gases; changes to tank car note for compressed gases in tank cars; delay in mandatory compliance date for segregation table; and clarification on switching placarded cars.

The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials: Capability requirement rather than fire test for ethylene oxide drums; and authorization to use stainless steel in constructing certain tank cars for PIH materials and exception for postweld heat treatment.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements relating to covered subjects that are not "substantively the same" as Federal requirements. Section 1804(a)(5)(B) states that the effective date of Federal preemption "may not be earlier than the 90th day following the date [a final rule is issued] and may not be later than the last day of the two-year period beginning on the date of such issuance." RSPA invites comments on when this Federal preemption should take effect.

Regulatory Flexibility Act

I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

There are no new information collection requirements in this proposed rule.

National Environmental Policy Act

This proposed rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, does not require the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321).

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Oil, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Oil, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

2. In § 171.8, the following definitions would be added or revised as indicated, in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

[Add:]

* * * * *

Explosive. See § 173.50 of this subchapter.

* * * * *

Miscellaneous hazardous material. See § 173.140 of this subchapter.

* * * * *

Nonflammable gas. See § 173.115 of this subchapter.

* * * * *

Poisonous gas. See § 173.115 of this subchapter.

* * * * *

[Revise:]

* * * * *

Etiologic agent. See § 173.134 of this subchapter.

* * * * *

Flash point. See § 173.120 of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

4. In § 172.101, paragraph (c)(12)(i) and the first sentence of paragraph (c)(12)(ii) would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(12) * * *

(i) If it is specifically determined that a material meets the definition of a hazard class, packing group or hazard zone, other than the class, packing group or hazard zone shown in association with the proper shipping name, or does not meet the defining criteria for a subsidiary hazard shown in Column 6 of the Table, the material shall be described by an appropriate proper shipping name listed in association with the correct hazard class, packing group, hazard zone, or subsidiary hazard for the material.

(ii) *Generic or n.o.s. descriptions.* If an appropriate technical name is not shown in the Table, selection of a proper shipping name shall be made from the generic or n.o.s. descriptions corresponding to the specific hazard class, packing group, hazard zone, or subsidiary hazard, if any, for the material. * * *

* * * * *

5. In § 172.101, the Hazardous Materials Table would be amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries to read as follows:

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required if not excepted	Special provisions	Packaging authorizations (§ 173.***) Exceptions	Nonbulk packaging	Bulk packaging	Quantity limitations Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8A)	(9A)	(9B)	(10A)	(10B)
	[Remove]												
	Carbon dioxide and ethylene oxide mixtures with more than 6 per cent but not more than 25 percent ethylene oxide.	2.2	UN1041		Flammable Gas		None	304	314, 315.	Forbidden.	25 kg	D	40
	Carbon dioxide and ethylene oxide mixtures with more than 25 percent ethylene oxide.	2.3	UN1041		Poison Gas	6, B9, B14.	None	304	314, 315.	Forbidden.	25 kg	D	40
	•	•	•	•	•	•	•	•	•				
	Chloroform	6.1	UN1888	II	Poison	N36, T14.	None	202	243	5 L	60 L	A	40
	•	•	•	•	•	•	•	•	•				
	Methanol or Methyl alcohol.	3	UN1230	II	Flammable Liquid, Poison	T8	None	202	242	1 L	60 L	B	40
	•	•	•	•	•	•	•	•	•				
	Methyl cyanide	3	UN1648	II	Flammable Liquid, Poison	T14	None	202	243	1 L	60 L	B	40
	•	•	•	•	•	•	•	•	•				
	[Add]												
	•	•	•	•	•	•	•	•	•				
	Carbon dioxide and ethylene oxide mixtures with more than 6% ethylene oxide.	2.1	UN1041		Flammable Gas	5	None	304	314, 315.	Forbidden.	25 kg	D	40
	•	•	•	•	•	•	•	•	•				
D	Chloroform	6.1	UN1888	III	Keep Away From Food	N36, T14.	153	203	241	5 L	60 L	A	40
I	Chloroform	6.1	UN1888	II	Poison	N36, T14.	None	202	241	5 L	60 L	A	40
	•	•	•	•	•	•	•	•	•				
D	Methanol or Methyl alcohol.	3	UN1230	II	Flammable Liquid	T8	150	202	242	1 L	60 L	B	40
I	Methanol or Methyl alcohol.	3	UN1230	II	Flammable Liquid, Poison	T8	None	202	242	1 L	60 L	B	40
	•	•	•	•	•	•	•	•	•				
D	Methyl cyanide	3	UN1648	II	Flammable Liquid	T14	150	202	242	1 L	60 L	B	40
I	Methyl cyanide	3	UN1648	II	Flammable Liquid, Poison	T14	None	202	242	11	60 L	B	40

	•	•	•	•	•	•	•	•	•				
	[Revise]												
	•	•	•	•	•	•	•	•	•				

D	Methyl cyanide	3	UN1648	II	Flammable Liquid	T14	150	202	242	1 L	60 L	B	40		
I	Methyl cyanide	3	UN1648	II	Flammable Liquid, Poison	T14	None	202	242	11	60 L	B	40		

[Revise]

	Hydrogen iodide, anhydrous.	2.3	UN2197		Poison Gas	3, B14 ..	None	304	314, 315.	Forbidden.	Forbidden.	D	40		
	Lithium battery, contained in equipment.	9	UN3091	II	Class 9	18, 29, A12.	185(i) ...	185	None	Forbidden.	See A12.	A.			
	Lithium battery, liquid cathode.	9	UN3090	II	Class 9	29	185(i) ...	185	None	Forbidden.	35 kg gross ...	A.			
	Lithium battery, solid cathode.	9	UN3090	II	Class 9	29	185(i) ...	185	None	Forbidden.	35 kg gross ...	A.			
+	Methyl isothiocyanate	3	UN2477	II	Flammable Liquid, Poison	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden.	60 L	A			
	Methylamine, anhydrous .	2.1	UN1061		Flammable Gas		306	304	314, 315.	Forbidden.	150 kg .	B	40		
	Pentaerythrite tetranitrate or Pentaerythritol tetranitrate or PETN, wetted with not less than 25 percent water, by mass or Pentaerythrite tetranitrate or Pentaerythritol tetranitrate or PETN, desensitized with not less than 15 percent phlegmatizer by mass.	1.1D	UN0150	II	Explosive 1.1D	117	None	62	None	Forbidden.	Forbidden.	B	1E, 5E		
D	Sulfur	9	NA1350	III	Class 9	30, A1 ..	None	None	240	25 kg ...	100 kg .	A	19, 74		
	Thionyl chloride	8	UN1836	I	Corrosive	A7, B6, B10, N34, T42.	None	201	243	Forbidden.	2.5 L	C	8, 40		
	Trifluoroacetylchloride	2.3	UN3057		Poison Gas	2, B9, B14.	None	304	314, 315.	Forbidden.	25 kg ...	D	40		

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VOL
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SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required if not excepted	Special provisions	Packaging authorizations (§ 173.***)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8A)	(9A)	(9B)	(10A)	(10B)
	•	•	•	•	•	•	•		•				
	Trifluorochloroethylene, inhibited, R1113.	2.3	UN1082	.....	Poison Gas	3, B14 ..	None	304	314, 315.	Forbidden.	150 kg .	B	40
	•	•	•	•	•	•	•		•				

§ 172.101

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§ 172.101 [Amended]

6. In addition, in the § 172.101 Hazardous Materials Table, the following changes would be made:

a. For the entry "Acetone cyanohydrin, stabilized", in Column (7), Special Provision "B74," would be removed.

b. For the entry "Boron trichloride", in Column (7), Special Provision "1," would be revised to read "3,".

c. For the entry "Carbonyl sulfide", in Column (7), Special Provisions "2, B9," would be revised to read "3,".

d. For the entry "Chlorine trifluoride", in Column (7), Special Provision "1," would be revised to read "2,".

e. For the entry "Ethylene oxide, *pure or with nitrogen*", in Column (7), Special Provision "3" would be revised to read "4".

f. For the entry "Hydrogen chloride, anhydrous", in Column (7), Special Provision "3" would be revised to read "4".

g. For the entry "Hydrogen chloride, refrigerated liquid", in Column (7), Special Provision "3," would be revised to read "4,".

h. For the entry "Hydrogen fluoride, anhydrous", in Column (7), Special Provision "3," would be revised to read "2,".

i. For the entry "Methyl bromide", in Column (7), Special Provision "3," would be revised to read "2, B9,".

j. For the entry "Methyl mercaptan", in Column (7), Special Provisions "2," and "B9," would be removed and Special Provision "3," would be added in appropriate alpha-numeric order.

k. For the entry "Nitric oxide", in Column (7), Special Provision "2," would be revised to read "1,".

l. For the entry "Nitric oxide and dinitrogen tetroxide mixtures", in Column (7), Special Provision "2" would be revised to read "1".

m. For the entry "Perchloryl fluoride", in Column (7), Special Provision "3," would be removed and Special Provisions "2," and "B9," would be added in appropriate alpha-numeric order.

n. For the entry "Silicon tetrafluoride", in Column (7), Special Provision "4" would be revised to read "2".

6a. In § 172.102, the following special provisions would be added, removed, or revised, as indicated:

a. In paragraph (c)(1), Special Provisions 29 and 30 would be added and Special Provision 109 would be revised.

b. In paragraph (c)(2), Special Provision A12 would be revised.

c. In paragraph (c)(3), Special Provisions B14, B42, B65, B74, and B76 would be revised.

d. In paragraph (c)(7)(ii), Special T38 would be revised.

The revisions and additions would read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

29 Lithium batteries or lithium batteries contained in equipment are forbidden for transportation by passenger-carrying aircraft and passenger-carrying rail car unless approved by the Associate Administrator for Hazardous Materials Safety.

30 Sulfur which is transported domestically is not subject to the requirements of this subchapter if transported in a non-bulk packaging or is formed to a specific shape (e.g., prills, granules, pellets, pastilles, or flakes).

* * * * *

109 Rocket motors must be nonpropulsive in transportation unless approved in accordance with § 173.56 of this subchapter. A rocket motor to be considered "nonpropulsive" must be capable of unrestrained burning and must not appreciably move in any direction when ignited by any means.

* * * * *

(2) * * *

Code/Special Provisions

* * * * *

A12 Lithium batteries in equipment, which have been approved by the Associate Administrator for Hazardous Materials Safety, must not exceed, in any piece of equipment, 12 g of lithium or lithium alloy per cell and 500 g of lithium or lithium alloy per battery.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B14 Each bulk packaging, except a tank car or a multi-unit-tank car tank, must be insulated with an insulating material so that the overall thermal conductance at 15.5°C (60°F) is no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulating materials must not promote corrosion to steel when wet. Notwithstanding the requirements in § 171.14(b)(4)(ii) of this subchapter, compliance with this provision is delayed until October 1, 1994, for a bulk packaging containing a material poisonous by inhalation which, when in contact with moisture, becomes highly corrosive and could cause corrosion under an insulation blanket.

* * * * *

B42 Each 105J500W tank car must be marked as 105J200W. Each tank car must have a safety relief valve with a start-to-discharge pressure of 1,034 kPa (150 psig).

* * * * *

B65 Notwithstanding the provisions of § 173.244 of this subchapter, only DOT 105A500W tank cars are authorized. Each 105J500W tank car must be marked as 105J300W. Each tank car must have a safety relief valve with a start-to-discharge pressure of 1,551 kPa (225 psig).

* * * * *

B74 Notwithstanding the requirements of § 173.244 of this subchapter, only the following are authorized: DOT 105S300W, 105S300ALW, 112J340W, and 114J340W tank cars; and Class DOT 106 and 110 multi-unit-tank car tanks.

B76 Each tank car must be marked DOT 105S200W, 105S200ALW, 112J200W, and 114J200. Each tank car must have a safety relief valve with a start-to-discharge pressure of 1,034 kPa (150 psig).

* * * * *

(7) * * *

(ii) * * *

Code/Special Provisions

* * * * *

T38 Each tank must be insulated with an insulating material so that the overall thermal conductance at 15.5 °C (60 °F) is no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulating materials must not promote corrosion to steel when wet. Notwithstanding the requirements in § 171.14(b)(4)(ii) of this subchapter, compliance with this provision is delayed until October 1, 1994, for a bulk packaging containing a material poisonous by inhalation which, when in contact with moisture, becomes highly corrosive and could cause corrosion under an insulation blanket.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.34 [Amended]

8. In § 173.34, in paragraph (d)(3), the wording "Poison A gas or liquid" would be revised to read "Division 2.3 or Division 6.1 materials in Hazard Zone A".

9. In § 173.54, paragraph (l) would be added to read as follows:

§ 173.54 Forbidden explosives.

* * * * *

(l) An explosive article with its means of initiation or ignition installed, unless approved in accordance with § 173.56.

VOL 58 ISS 131 JL 12 1993 UMI

§ 173.62 [Amended]

10. In § 173.62, the "Explosives Table" in paragraph (b) would be amended by removing the entry "NA0150 * * * E–3" and adding, in appropriate alpha-numerical order, the entry "UN0150 * * * E–3".

§ 173.63 [Amended]

11. In § 173.63, the following changes would be made:

a. In paragraph (a) introductory text, the wording "offered for transportation domestically and transported as Division 1.4 Compatibility Group D (1.4D) explosives," would be revised to read "offered for transportation domestically and transported as Cord, detonating (UN 0289), Division 1.4 Compatibility Group D (1.4D) explosives,".

b. Paragraph (b) would be removed and reserved.

12. In § 173.185, paragraph (a), paragraph (g)(1), the introductory text of paragraph (i), and paragraph (j)(1) would be revised, and paragraph (l) would be added to read as follows:

§ 173.185 Lithium batteries and cells.

(a) Except as otherwise provided in this subpart, lithium batteries and cells described in this section are authorized for transportation by highway, rail, vessel and cargo-only aircraft. Rechargeable lithium batteries and cells and devices containing regulated lithium batteries (including lithium batteries contained in equipment) and cells may not be transported except as approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

(g) * * *

(1) In strong inner fiberboard packagings containing not more than 500 g (17.6 ounces) of lithium or lithium alloy per inner packaging.

* * * * *

(i) Lithium batteries and cells, rechargeable and devices containing lithium batteries and cells, are not subject to this subchapter if they meet the following requirements:

* * * * *

(j) * * *

(1) When new, contained no more than 12.0 g (0.42 ounces) of lithium or lithium alloy per cell;

* * * * *

(l) Lithium batteries and cells which do not comply with the provisions of this section may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

§ 173.226 [Amended]

13. In § 173.226, the following changes would be made:

a. In paragraph (b) introductory text, in the first sentence, the wording "In 1A1, 1B1, or 1N1 drums" would be revised to read "In 1A1, 1B1, 1H1, 1N1, or 6HA1 drums".

b. In paragraph (b)(5), the second sentence would be removed.

§ 173.227 [Amended]

14. In § 173.227, the following changes would be made:

a. In paragraph (b)(3)(i)(D), the wording "0.96 mm (0.038 inch)" would be revised to read "0.70 mm (0.027 inch)".

b. In paragraph (b)(4), the period would be removed and replaced with "; and" at the end of the first sentence and the second sentence would be removed.

c. In paragraph (c), in the first sentence, the wording "1H1," would be added immediately following "1B1," and immediately preceding "1N1".

15. In § 173.306, paragraph (h)(3) would be revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(h) * * *

(3) Shipments of ORM–D materials are eligible for the exceptions provided in § 173.156.

* * * * * *

§ 173.306 [Amended]

16. In addition, in § 173.306, the following changes would be made:

a. In paragraph (a)(3)(i), the wording "50 cubic inches (1 liter)" would be revised to read "one liter (61.0 cubic inches)".

b. In paragraph (b)(1) introductory text, the wording "50 cubic inches capacity (1 liter)" would be revised to read "one liter (61.0 cubic inches)".

17. In § 173.314, in paragraph (c) table, Note 21 would be amended by revising the wording "§ 173.24(b)" to read "§ 173.24b", and Note 30 would be revised to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(c) * * *

Notes:

* * * * *

30 Tank cars must conform to Class DOT 105S and have an insulation system consisting of 10.16 cm (4 inches) of cork board, or 10.16 cm (4 inches) of polyurethane foam, or 5.08 cm (2 inches) of ceramic fiber placed over 5.08 cm (2 inches) of glass fiber. Tank cars used for chlorine and built after September 30, 1991, must conform to Class DOT 105S and have an insulation system consisting of 5.08 cm (2 inches) ceramic fiber placed over 5.08 cm (2 inches) of glass fiber.

* * * * *

§ 173.323 [Amended]

18. In § 173.323, in paragraph (b)(5), in the last sentence, the wording "the filled drum will not rupture when tested by the method described in CGA Pamphlet C–14 or other equivalent method." would be revised to read "the filled drum is capable of passing, without rupture, the test method described in CGA Pamphlet C–14 or other equivalent method."

PART 174—CARRIAGE BY RAIL

19. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

20. In § 174.81, paragraph (e)(3) would be revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(e) * * *

(3) The letter "O" in the Table indicates that these materials may not be loaded, transported, or stored together in the same rail car or storage facility during the course of transportation unless separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials would not occur. Notwithstanding the methods of separation employed, Class 8 (corrosive) liquids may not be loaded above or adjacent to Class 4 (flammable) or Class 5 (oxidizing) materials; except that shippers may load carload shipments of such materials together when it is known that the mixture of contents would not cause a fire or a dangerous evolution of heat or gas.

* * * * *

§ 174.81 [Amended]

21. In addition, in the Segregation Table in paragraph (d), in the column "8 liquids only", for the entry "Flammable gases", the letter "O" would be removed and in the column "2.1", for the entry "Corrosive liquids", the letter "O" would be removed.

22. In § 174.83, paragraph (b) introductory text would be revised to read as follows:

§ 174.83 Switching placarded rail cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(b) A rail car must not move under its own momentum, strike any other rail car, or couple to another rail car with

more force than necessary to complete coupling, when any rail car is:

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

23. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805; 49 CFR part 1.

24. In § 177.848, paragraph (e)(3) would be revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(e) * * *

(3) The letter "O" in the Table indicates that these materials may not be loaded, transported, or stored together in the same transport vehicle or storage facility during the course of transportation unless separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials would not occur. Notwithstanding the methods of separation employed, Class 8 (corrosive) liquids may not be loaded above or adjacent to Class 4 (flammable) or Class 5 (oxidizing) materials; except that shippers may load truckload shipments of such materials together when it is known that the mixture of contents would not cause a fire or a dangerous evolution of heat or gas.

* * * * *

§ 177.848 [Amended]

25. In addition, in the Segregation Table in paragraph (d), in the column "8 liquids only", for the entry "Flammable gases", the letter "O" would be removed and in the column "2.1", for the entry "Corrosive liquids", the letter "O" would be removed.

PART 179—SPECIFICATIONS FOR TANK CARS

26. The authority citation for part 179 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

27. Section 179.100–7 would be amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 179.100–7 Materials.

* * * * *

(c) *High alloy steel plate.* (1) High alloy steel plate must conform to the following specifications:

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
ASTM A240–70, Type 304L	70,000	30
ASTM A240–70, Type 316L	70,000	30

[1] Maximum stresses to be used in calculations.

(2)(i) High alloy steels used to fabricate tank must be tested in accordance with the following procedures in ASTM Specification A262–68 titled, "Recommended Practices for Detecting Susceptibility to Intergranular Attack in Stainless Steel," and must exhibit corrosion rates not exceeding the following:

Test procedures	Material	Corrosion rate i.p.m.
Practice B	Types 304L and 316L.	0.0040
Practice C	Type 304L	0.0020

(ii) Type 304L and 316L test specimens must be given a sensitizing treatment prior to testing.

* * * * *

28. In § 179.100–10, a new paragraph (c) would be added to read as follows:

§ 179.100–10 Postweld heat treatment.

* * * * *

(c) Tank and welded attachments, fabricated from ASTM A240–70 Type 304L or Type 316L materials do not require postweld heat treatment, but these materials do require a corrosion resistance test as specified in § 179.100–7(c)(2).

Issued in Washington, DC on July 1, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–16106 Filed 7–9–93; 8:45 am]

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VOL
58
ISS
131
JL
12
1993
UMI

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INFORMAT

Federal Reg
Index, findi
Public inspe
Corrections
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Code of Fe
Index, findi
Printing sch

Laws
Public Laws
Additional i

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General info

Other Servi
Data base an
Guide to Re
Legal staff
Privacy Act
Public Laws
TDD for the

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Law number
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FEDERAL R

35357–35840
35841–36116
36117–36300
36301–36588
36589–36852
36853–37412
37413–37630

Reader Aids

Federal Register

Vol. 58, No. 131

Monday, July 12, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials. 202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587
Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357
Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....35345
1209.....36345

7 CFR

2.....35359
301.....36589, 36590, 36591
400.....36592
723.....36853, 36857
1097.....34359
1098.....35361
1099.....34362
1106.....36859
1464.....36857, 36861
1435.....36120
1755.....36252

8 CFR

245.....35832

9 CFR

78.....36593
94.....36593, 36594
Proposed Rules:
94.....36624
98.....36625

10 CFR

Proposed Rules:
60.....36901

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36583, 36865
71.....36596
72.....36296
108.....36802
Proposed Rules:
Ch. I.....36626
1.....36738
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

16 CFR

1145.....37554
1210.....37557
Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
240.....36866, 37413
249.....35367
Proposed Rules:
240.....37445

18 CFR

Proposed Rules:
35.....36172
284.....37447
375.....35415

19 CFR

148.....35862

VOL 58 ISS 131 JL 12 1993 UMI

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
510.....36134
520.....36134
Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
572.....36518, 36548
Proposed Rules:
16.....37598
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908, 36516

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371
Proposed Rules:
36.....37052

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

202.....37420
206.....37420
920.....36135
938.....36139
Proposed Rules:
916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357, 36597, 36868
334.....37606
Proposed Rules:
117.....36629

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869
Proposed Rules:
692.....36110

36 CFR

51.....36598
Proposed Rules:
1191.....37052

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426
82.....36516
85.....36871
131.....36141
180.....36358, 36359
185.....36358
228.....35884
414.....36872
Proposed Rules:
Ch. I.....37450
52.....36904, 37450, 37453
81.....36907, 37453
88.....35420
180.....36366
186.....36366
261.....36367
372.....36180

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

45 CFR

Proposed Rules:
1602.....36909

46 CFR

170.....36601
Proposed Rules:
15.....36913
171.....36374

47 CFR

1.....36142
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431
76.....36604
90.....36362
Proposed Rules:
Ch. I.....36630
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455

48 CFR

904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363
Proposed Rules:
917.....36917

49 CFR

218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....
Proposed Ru
37.....
171.....
172.....
173.....
174.....
177.....
179.....
543.....

604.....36894

Proposed Rules:

37.....37052
171.....36919, 37612
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
543.....35422

50 CFR

17.....35887, 37432
85.....36619
285.....36154
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897
675.....35897

Proposed Rules:

17.....36184, 36379, 36387, 36923
24.....36924
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 8, 1993

VOL
58
ISS
131
JL
12
1993
UMI

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
13	(869–019–00041–1)	28.00	Jan. 1, 1993
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
*1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
400–499	(869–017–00064–7)	31.00	Apr. 1, 1992
500–End	(869–017–00065–5)	21.00	Apr. 1, 1992
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–017–00070–1)	29.00	Apr. 1, 1992
500–599	(869–017–00071–0)	21.00	Apr. 1, 1992
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–017–00076–1)	19.00	Apr. 1, 1992
23	(869–017–00077–9)	18.00	Apr. 1, 1992
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–9)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0–1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–017–00088–4)	38.00	Apr. 1, 1992
§§ 1.501–1.640	(869–017–00089–2)	19.00	Apr. 1, 1992
§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1, 1992
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–017–00096–5)	15.00	Apr. 1, 1992
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–017–00098–1)	15.00	Apr. 1, 1992
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–019–00101–8)	6.00	[4] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199			
200–End			
28			
29 Parts:			
0–99			
100–499			
500–899			
900–1899			
1900–1910 (§§ 1910.999)			
1910 (§§ 1910 end)			
1911–1925			
1926			
1927–End			
30 Parts:			
1–199			
200–699			
700–End			
31 Parts:			
0–199			
200–End			
32 Parts:			
1–39, Vol. I			
1–39, Vol. II			
1–39, Vol. III			
1–189			
190–399			
400–629			
630–699			
700–799			
800–End			
33 Parts:			
1–124			
125–199			
200–End			
34 Parts:			
1–299			
300–399			
400–End			
35			
36 Parts:			
1–199			
200–End			
37			
38 Parts:			
0–17			
18–End			
39			
40 Parts:			
1–51			
52			
53–60			
61–80			
81–85			
86–99			
100–149			
150–189			
190–259			
260–299			
300–399			
400–424			
425–699			
700–789			
790–End			
41 Chapters:			
1, 1–1 to 1–1			
1, 1–11 to Ap			

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[6] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[7] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–017–00154–6)	28.00	July 1, 1992
102–200	(869–017–00155–4)	11.00	[7] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–399	(869–017–00157–1)	23.00	Oct. 1, 1992
400–429	(869–017–00158–9)	23.00	Oct. 1, 1992
430–End	(869–017–00159–7)	31.00	Oct. 1, 1992
43 Parts:			
1–999	(869–017–00160–1)	22.00	Oct. 1, 1992
1000–3999	(869–017–00161–9)	30.00	Oct. 1, 1992
4000–End	(869–017–00162–7)	13.00	Oct. 1, 1992
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
1–199	(869–017–00164–3)	20.00	Oct. 1, 1992
200–499	(869–017–00165–1)	14.00	Oct. 1, 1992
500–1199	(869–017–00166–0)	30.00	Oct. 1, 1992
1200–End	(869–017–00167–8)	20.00	Oct. 1, 1992
46 Parts:			
1–40	(869–017–00168–6)	17.00	Oct. 1, 1992
41–69	(869–017–00169–4)	16.00	Oct. 1, 1992
70–89	(869–017–00170–8)	8.00	Oct. 1, 1992
90–139	(869–017–00171–6)	14.00	Oct. 1, 1992
140–155	(869–017–00172–4)	12.00	Oct. 1, 1992
156–165	(869–017–00173–2)	14.00	[8] Oct. 1, 1991
166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
500–End	(869–017–00176–7)	14.00	Oct. 1, 1992
47 Parts:			
0–19	(869–017–00177–5)	22.00	Oct. 1, 1992
20–39	(869–017–00178–3)	22.00	Oct. 1, 1992
40–69	(869–017–00179–1)	12.00	Oct. 1, 1992
70–79	(869–017–00180–5)	21.00	Oct. 1, 1992
80–End	(869–017–00181–3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1–51)	(869–017–00182–1)	34.00	Oct. 1, 1992
1 (Parts 52–99)	(869–017–00183–0)	22.00	Oct. 1, 1992
2 (Parts 201–251)	(869–017–00184–8)	15.00	Oct. 1, 1992
2 (Parts 252–299)	(869–017–00185–6)	12.00	Oct. 1, 1992
3–6	(869–017–00186–4)	22.00	Oct. 1, 1992
7–14	(869–017–00187–2)	30.00	Oct. 1, 1992
15–28	(869–017–00188–1)	26.00	Oct. 1, 1992
29–End	(869–017–00189–9)	16.00	Oct. 1, 1992
49 Parts:			
1–99	(869–017–00190–2)	22.00	Oct. 1, 1992
100–177	(869–017–00191–1)	27.00	Oct. 1, 1992
178–199	(869–017–00192–9)	19.00	Oct. 1, 1992
200–399	(869–017–00193–7)	27.00	Oct. 1, 1992
400–999	(869–017–00194–5)	31.00	Oct. 1, 1992
1000–1199	(869–017–00195–3)	19.00	Oct. 1, 1992
1200–End	(869–017–00196–1)	21.00	Oct. 1, 1992
50 Parts:			
1–199	(869–017–00197–0)	23.00	Oct. 1, 1992
200–599	(869–017–00198–8)	20.00	Oct. 1, 1992
600–End	(869–017–00199–6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869–019–00053–4)	36.00	Jan. 1, 1993
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Revision Date
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Apr. 1, 1993
Apr. 1, 1992
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Apr. 1, 1992
Apr. 1, 1993
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Apr. 1, 1993
Apr. 1, 1992
Apr. 1, 1993
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VOL 58 ISS 131 JL 12 1993 UMI

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VOL
58
ISS
1
3
1
JL
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1993
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58
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132
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7–13–93
Vol. 58 No. 132
Pages 37631–37846

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Tuesday
July 13, 1993

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VOL
58
ISS
1
32
JL
13
1993
UMI

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Cont

Agricultur
RULES
Almonds
Dates (do
Oranges a

Agricultur
See Agricu
See Anim
See Food
See Forest

Animal an
RULES
Exportatio
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Animal
Cattle fr
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Tacon
PROPOSED
Exportatio
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Louisv
Interstate
(quara
Brucello
Official
Viruses, se
Pasterell

Army Dep
See Engine
PROPOSED
Civil autho
Civil dis
Military re
Fort Jack
377

Arts and H
See Nation

Centers fo
NOTICES
Agricultur
NIOSH
Meetings:
Diabetes
Tech
Preventi
Occupation
project

Commerce
See Export
See Minori
See Nation

Contents

Federal Register

Vol. 58, No. 132

Tuesday, July 13, 1993

Agricultural Marketing Service
RULES
Almonds grown in California, 37636
Dates (domestic) products or packed in California, 37638
Oranges and grapefruit grown in Texas, 37635

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Animal semen importation, 37642
Cattle from Canada, 37641
Ports of designation—
Port Canaveral, FL, 37642
Ports of embarkation and export inspection facilities—
Tacoma, WA, 37639
PROPOSED RULES
Exportation and importation of animals and animal products:
Hoof importation, 37669
Ports designation—
Louisville, KY, et al., 37667
Interstate transportation of animals and animal products (quarantine):
Brucellosis ring test, 37665
Official pseudorabies tests, 37666
Viruses, serums, toxins, etc.:
Pasterella multocida vaccine, avain isolate, 37670

Army Department
See Engineers Corps
PROPOSED RULES
Civil authorities and public relations:
Civil disturbances, 37770
Military reservations and national cemetaries:
Fort Jackson, SC; improper associations of personnel, 37774

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agricultural workers; efforts to prevent injury and disease; NIOSH meeting, 37744
Meetings:
Diabetes Translation and Community Control Programs Technical Advisory Committee; change, 37744
Prevention of HIV Infection Advisory Committee, 37744
Occupational traumatic injury surveillance of farmers project; NIOSH meeting, 37744

Commerce Department
See Export Administration Bureau
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Self-regulatory organization governing boards and major disciplinary committees; composition, 37644

Copyright Office, Library of Congress
NOTICES
Computer program rental by libraries; report, 37757

Defense Department
See Army Department
See Engineers Corps
NOTICES
Meetings:
Science Board task forces, 37717
Wage Committee, 37717

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Urban community service program, 37718

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Atomic energy agreements; subsequent arrangements, 37720
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Project Chariot Site, AK, 37719
Savannah River Site, SC, 37719
Meetings:
Yucca Mountain waste package development workshop, 37720

Energy Information Administration
NOTICES
Forms; availability, etc.:
Standard contract for disposal of spent nuclear fuel and/or high-level radioactive waste, 37721

Engineers Corps
NOTICES
Meetings:
Inland Waterways Users Board, 37718

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Florida, 37658
PROPOSED RULES
Clean Air Act:
Hazardous air pollution; control technology determinations for major sources; requirements, 37778

VOL
58
ISS
132
JL
13
1993
UMI

Superfund progam:
National oil and hazardous substances contigency plan—
National priorities list update, 37693
NOTICES
Agency information collection activities under OMB review, 37733
Meetings:
Exposure factors handbook, 37735
Toxic and hazardous substances control:
Chemical substances releases and detection, environmental media; clarification and comment, 37735

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Regulations and Procedures Technical Advisory Committee, 37704
Transportation and Related Equipment Technical Advisory Committee, 37704

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Alabama, 37696
Colorado, 37696
Washington, 37696
NOTICES
Meetings; Sunshine Act, 37767
Applications, hearings, determinations, etc.:
Trinity Broadcasting Network et al., 37742

Federal Energy Regulatory Commission
PROPOSED RULES
Energy Policy Act:
Oil pipeline rates; index for setting rate ceilings, 37671
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Birchwood Power Partners, L.P., 37725
Entergy Services, Inc., et al., 37722
Meetings:
General Agreement on Parallel Paths, 37723
Natural gas certificate filings:
Northwest Pipeline Corp. et al., 37723
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 37728
Wyoming Oil and Gas Conservation Commission, 37730
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 37724, 37725
Carnegie Natural Gas Co., 37725
Columbia Gas Transmission Corp., 37726
Columbia Gulf Transmission Co., 37726
Eastern Shore Natural Gas Co., 37727
Mid Louisiana Gas Co., 37727
Northern Natural Gas Co., 37727
Pacific Gas Transmission Co., 37728
Tennessee Gas Pipeline Co., 37728, 37729
Texas Eastern Transmission Corp., 37729
Texas Gas Transmission Corp., 37729, 37730
Transcontinental Gas Pipe Line Corp., 37730
Williams Natural Gas Co., 37730

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 37767
Applications, hearings, determinations, etc.:
Intercounty Bancshares, Inc., et al., 37743
Internationale Nederlanden Group N.V., 37743
Kentucky Bancshares, Inc., et al., 37743

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 37699
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 37828

Food and Nutrition Service
RULES
Child nutrition programs:
Women, infants and children; special supplemental food program—
Emergency funding rule, 37633

Forest Service
NOTICES
Appeal exemptions; timber sales:
Kootenai National Forest, MT, 37702, 37703
Meetings:
Hawaii Tropical Forest Recovery Task Force, 37703
Memorandum of understandings:
Animal damage management, 37704
National Forest System lands:
Electronic communication sites; rental fee schedule, 37840

Health and Human Services Department
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grant and cooperative agreement awards:
Philadelphia metropolitan area, 37744

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Multifamily low income housing preservation, 37802
NOTICES
Grants and cooperative agreements; availability, etc.:
Low income housing—
Preservation technical assistance, outreach and training, and other preservation activity; funding methodology, 37819

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Burlington Northern Railroad Co., 37746
Wisconsin Department of Transportation et al., 37748

Labor Department
See Occupational Safety and Health Administration

NOTICES
Meetings:
Future of Worker-Management Relations Commission, 37748
Glass Ceiling Commission, 37748

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Rangeland management reform and proposed rulemaking, 37745

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Royalty Management Advisory Committee, 37746

Minority Business Development Agency
NOTICES
Business development center program applications:
Louisiana, 37705
Texas, 37706

National Aeronautics and Space Administration
PROPOSED RULES
Acquisition regulations:
Contractor employees; drug and alcohol testing, 37697

National Archives and Records Administration
NOTICES
Agency information collection activities under OMB review, 37758

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 37759

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 37660
Gulf of Alaska groundfish, 37660
NOTICES
Grants and cooperative agreements; availability, etc.:
Fishing industry research and development projects—Saltonstall-Kennedy grant program, 37707
Permits:
Endangered and threatened species, 37715
Marine mammals, 37715, 37716

National Telecommunications and Information Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Spectrum Planning Advisory Committee, 37717

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 37767

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Niagara Mohawk Power Corp., 37759
Meetings; Sunshine Act, 37768
Memorandums of understanding:
NRC emergency response data system utilization—Massachusetts, 37761
NRC-licensed facilities decomissioning radiological criteria; enhanced participatory rulemaking electronic bulletin board and 800 number; availability, 37760

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
ETL Testing laboratories, Inc., 37749
GTE TestMark Laboratories, 37750
MET Laboratories, Inc., 37752
Southwest Research Institute, 37752
State plans; standards approval, etc.:
Utah, 37755
Wyoming, 37756

Presidential Documents
ADMINISTRATIVE ORDERS
Haiti; funding for reconstruction and reconciliation (Presidential Determination No. 93-28 of June 25, 1993), 37631

Public Health Service
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Securities and Exchange Commission
RULES
Securities:
Net capital declines; early warning, 37655
NOTICES
Applications, hearings, determinations, etc.:
Bayfield Low Income Housing Limited Partnership et al., 37763

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Navajo Transmission Line Project, AZ, 37730
Power and transmission rate adjustments:
Parker-Davis Project, AZ, 37731

Separate Parts In This Issue

Part II
Department of Army, 37770

Part III
Department of Army, 37774

Part IV
Environmental Protection Agency, 37778

Part V
Department of Housing and Urban Development, 37802

Part VI
Department of Interior, Fish and Wildlife Service, 37828

Part VII
Department of Agriculture, Forest Service, 37840

VOL
58
ISS
132
JL
13
1993
UMI

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS

A cumulative
Reader Aids s

3 CFR
Administrative
Presidential Det
No. 93–28 of
June 25, 19
7 CFR
246
906
981
987
9 CFR
91
92 (2 documer
98
Proposed Rule
78
85
91
95
113
17 CFR
1
240
18 CFR
Proposed Rule
341
342
343
344
345
347
352
360
361
375
24 CFR
236
241
248
32 CFR
Proposed Rule
501
552
40 CFR
52
Proposed Rule
63
300
47 CFR
Proposed Rule
73 (3 documer
48 CFR
Proposed Rule
1823
1852
50 CFR
672
675
Proposed Rule
17
20

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 93–28 of June 25, 1993.....37631

7 CFR

246.....37633
906.....37635
981.....37636
987.....37638

9 CFR

91.....37639
92 (2 documents).....37641, 37642
98.....37642

Proposed Rules:

78.....37665
85.....37666
91.....37667
95.....37669
113.....37670

17 CFR

1.....37644
240.....37655

18 CFR

Proposed Rules:

341.....37671
342.....37671
343.....37671
344.....37671
345.....37671
347.....37671
352.....37671
360.....37671
361.....37671
375.....37671

24 CFR

236.....37802
241.....37802
248.....37802

32 CFR

Proposed Rules:

501.....37770
552.....37774

40 CFR

52.....37658

Proposed Rules:

63.....37778
300.....37693

47 CFR

Proposed Rules:

73 (3 documents).....37696

48 CFR

Proposed Rules:

1823.....37697
1852.....37697

50 CFR

672.....37660
675.....37660

Proposed Rules:

17.....37699
20.....37828

VOL
58
ISS
132
JL
13
1993
UMI

Federal Re
Vol. 58, N
Tuesday, J

Title 3—

The Pr

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–28 of June 25, 1993

Presidential Determination on Haiti Reconstruction and Reconciliation Fund

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 614(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby:

(1) determine that it is important to the security interests of the United States to furnish to Haiti up to $36.4 million in assistance from Development Assistance obligated for Haiti, and under Chapters 4, 5, and 6 of Part II of the Act from Economic Support Funds (ESF) previously allocated for Peru and ESF deobligated from Bolivia, without regard to sections 513 and 518 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391), and sections 620(q) and 660 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), or any other provision of law within the scope of section 614;

(2) determine that it is vital to the national security interests of the United States to furnish up to $918,000 in assistance under section 23 of the Arms Export Control Act from Foreign Military Financing (FMF) funds previously obligated for Haiti and $250,000 in FMF previously obligated for Peru, without regard to section 513, the proviso in section 515(b), and section 518 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391), and sections 620(q) and 660 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), or any other provision of law within the scope of section 614; and

(3) authorize the furnishing of such assistance and the making and financing of such sales.

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, and section 621 of the Act, I hereby:

(1) delegate to the Secretary of State the authority conferred upon the President to make determinations under section 610 of the Act for the purpose of transferring ESF funds available for assistance described in paragraph (1) of this determination to, and consolidating such funds with, funds available under Chapters 5 and 6 of Part II of the Act for Haiti; and

(2) authorize the Secretary of State to take any other actions appropriate with respect to such a transfer.

The Secretary of State is hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the Federal Register.

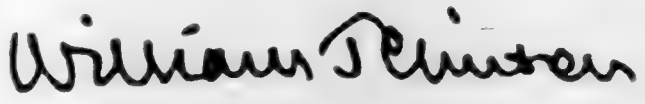

THE WHITE HOUSE,
Washington, June 25, 1993.

[FR Doc. 93-16716
Filed 7-9-93; 3:14 pm]
Billing code 4710-10-M

Editorial note: For the President's Executive order and message to the Congress on further economic sanctions against the current Haiti government, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1206).

VOL 58 ISS 132 JL 13 1993 UMI

Rule

This sectio
contains re
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Federal Re
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The Code
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REGISTER

DEPARTI

Food and

7 CFR Pa

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AGENCY: F
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ACTION: F

SUMMARY:
Appropri
chapter I,
provides
reallocati
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Supplem
Women, I
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Rules and Regulations

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Emergency Funding Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Supplemental Appropriations Act of 1993, title I, chapter I, enacted on July 2, 1993, provides that for any Fiscal Year 1993 reallocation process, the Secretary may waive the capping provision contained in departmental regulations governing funds allocation for the Special Supplemental Food Program for Women, Infants and Children (WIC) to ensure additional funds are received by States most in need. Accordingly, this rule, effective through September 30, 1993, implements an emergency revision to the food funds allocation formula for (WIC) to allow the allocation of additional funds to certain WIC State agencies which can utilize these funds to serve additional Program participants who would otherwise not be served in Fiscal Year 1993. For the remainder of Fiscal Year 1993 only, this rule will waive the provision which limits any State agency to a 15 percent increase in food funding. This waiver will apply to certain residual funds which remain after application of the current food funds allocation formula. As it would not be in the best public interest to delay the implementation of the provisions of this rule since such delay would prevent the rule from being effective and prevent the Department from allocating the funds needed to serve additional participants in this fiscal year, good cause exists to forego a public comment period.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291, and has been determined not to be major. The Assistant Secretary for Food and Consumer Services does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further, this rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. Some State and local agencies will be most affected because of the additional program administration involved; however, the effect on these entities will be minimal. Additional participants and applicants may be served by the Program, and accordingly would also be affected.

Paperwork Reduction Act

This rulemaking imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Emergency Provision Affecting the Food Funds Allocation Formula

Background

Each fiscal year, once an appropriation is enacted for the WIC Program, funds are allocated to State agencies through funding formulas. Food funds are first allocated for stability grants, which provide State agencies with their prior fiscal year's total food grant adjusted by an inflation factor, and with funds set aside to serve migrant participants. Any funds remaining after the stability food grants are satisfied are classified as residual funds and are allocated equally through targeting and growth components of the funding formula. All States receive targeting funds based on their service to Priority I participants (mainly prenatal women with identified health risks and/or who are at nutritional risk). Growth funds are allocated only to those States which, when compared to other States,

VOL 58 ISS 132 JL 13 1993 UMI

receive less than their equitable share of funds based primarily on the size of their income eligible populations. Census data from 1990, used for the first time in the allocation of Fiscal Year 1993 food growth funds, revealed that certain States are significantly underfunded based on the size of their income eligible populations.

Through the growth component of the funds allocation formula, particular States have already received substantial funding increases in Fiscal Year 1993 and are eligible for further increases from the July reallocation. However, many of these States eligible for growth funds from the July reallocation have declined to accept the full amount of funds which would be provided through the food funding formula. Due to the lateness in the fiscal year, as well as previous rapid caseload expansion, these States do not believe they can effectively utilize additional food funds in Fiscal Year 1993. Therefore, the funds declined by these State agencies are available for reallocation to other States eligible for growth funds which believe they can utilize more funds.

Although these food funds are available for reallocation, the allocation formula has a cap which limits the increase in residual funding that any State may receive from one fiscal year to the next to 15 percent above the level of the stability grant adjusted for inflation. The 15 percent capping provision was implemented to prevent State agencies from receiving funds beyond their growth capacity in one fiscal year. This limitation was also deemed necessary at the time of implementation to assure that residual funds were shared widely among all growth State agencies in need of funds. The result of the cap is to prevent some underfunded growth States willing to accept additional growth funds from receiving these funds in Fiscal year 1993.

The ability of State agencies to handle rapid Program growth efficiently and effectively is variable. Those State agencies which do not presently have space and staff readily available to expand participation are unwilling to accept funds that they may be unable to use, or unable to use in a manner which maintains the quality of service to participants. More importantly, however, some State agencies are able to absorb larger growth allocations than they would otherwise receive under the existing cap.

Justification for Emergency Waiver to the 15 Percent Capping Provision

The Supplemental Appropriation Act of 1993, title I, chapter I, enacted July 2, 1993, provides that for any fiscal year 1993 reallocation process, the Secretary may waive the 15 percent cap regulation to ensure additional funds are received by States most in need. The combination of the large number of growth States declining additional funds and other growth States desiring additional funds, but limited by the 15 percent capping provision, has resulted in an unprecedented complication with the current funds allocation formula. Without a revision to current regulations governing the allocation of food funds, FNS is unable to allocate the available growth funds in Fiscal Year 1993 to maximize the number of WIC participants who can be served in this fiscal year.

Congress was unambiguous about its findings and purpose in creating the WIC Program. As set forth in section 17(a) of the Child Nutrition Act of 1966 (the Act), it found that substantial numbers of pregnant, postpartum and breastfeeding women, and infants and children are from families with inadequate income and are at special risk with respect to their physical and mental health by reason of inadequate nutrition and health care. Section 17(a) further states that the purpose of the WIC Program is to provide supplemental foods and nutrition education to these individuals, "up to the authorization levels set forth in [this Act]."

Without waiving the 15 percent cap, available growth funds will not be optimally utilized in the fiscal year, and participants who could be served within current funding levels will not be served. Waiving the cap will not only maximize allocation of funding and permit the Program to serve more participants, it will do so with minimal disruption to the total Fiscal year 1993 grant levels anticipated by State agencies. In addition to permitting FNS to utilize all allocated Program funds, this modification to the regulations will permit FNS to reduce the severe inequities among State agencies in the percentage of income eligible population served. Moreover, as noted above, the Supplemental Appropriations Act of 1993, title I, chapter I, specifically permits this waiver, thereby ensuring the most effective use of available funds for the purpose of improving nutrition among pregnant, postpartum and breastfeeding women, and infants and children in those States most in need.

In view of the fact that the end of the fiscal year is fast approaching, the Administrator of FNS has determined that this action must be effective immediately in order to result in the effective allocation and utilization of WIC funding in Fiscal Year 1993. The Administrator of FNS has found, therefore, that it would be impracticable and contrary to the public interest to provide for a comment period, and that, accordingly, good cause exists pursuant to 5 U.S.C. 553(b) to waive notice and an opportunity for comment on this action.

Implementation of the Waiver to the 15 Percent Capping Provision

To resolve this issue for the Fiscal Year 1993 July reallocation and any other reallocations for the remainder of this fiscal year, food funds will be allocated through the current food funds allocation formula until the formula fails to allocate remaining available funds. FNS anticipates that these remaining funds will be from the growth component of the residual allocation. Accordingly, the remaining growth funds will be allocated through the growth component of the food funds allocation formula and the 15 percent capping provision will be removed. If any State agency reaches an allocation level beyond the funds it has requested, excess funds will go to State agencies willing to accept more funds. As with all reallocations, these funds will become a permanent part of participating States' stability grants for the next fiscal year.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is being amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101–147, 103 Stat. 877 (49 U.S.C. 1751); sec. 3201, Pub. L. 100–690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100–460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); sec. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.16, the introductory text of paragraph (c)(2)(ii) is revised to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) * * *

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(2)(i) of this section has been completed shall be allocated as follows; *Provided however,* That the aggregate amount of such residual funds allocated to any State agency for food costs in any fiscal year shall not exceed 15 percent of the amount of stability funds that would have been allocated to such State agency for food costs in such fiscal year if the inflation factor had been the anticipated rate of inflation as determined by FNS. For any Fiscal Year 1993 reallocation occurring after June 30, 1993, if any growth funds remain after the initial reallocation, either because a State agency has declined to accept those funds, or by operation of the 15 percent restriction in this paragraph, then the 15 percent restriction shall not apply to those remaining funds and such funds shall be allocated as growth funds.

* * * * *

Dated: July 7, 1993.

Christopher J. Martin,

Acting Administrator

[FR Doc. 93–16479 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93–906–1IFR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Texas Valley Citrus Committee (TVCC) under M.O. No. 906 for the 1993–94 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by August 12, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable citrus fruit handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable citrus fruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to

formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the TVCC's expected expenses.

The TVCC met on May 20, 1993, and on a vote of 11 in favor and four opposed, recommended total expenses for the 1993–94 fiscal year of $984,319 and an assessment rate of $0.15 per 7/10 bushel carton. A motion was made by four TVCC members to lower the assessment rate to $0.12 but the motion failed by the above vote. In comparison, the 1992–93 fiscal year expense amount was $577,200, which is $407,119 less than the recommended $984,319 for this season and the assessment rate has remained unchanged.

Assessment income for the 1993–94 fiscal year is expected to amount to $825,000 based upon estimated fresh domestic shipments of 5.5 million cartons of oranges and grapefruit. Adequate funds exist in the TVCC's reserve to cover budgeted expenses. In comparison, the assessment income for the 1992–93 fiscal year was estimated at $375,000 based upon anticipated fresh domestic shipments of 2.5 million cartons of oranges and grapefruit. Funds in the reserve at the end of the fiscal year, estimated at $170,000, will be within the maximum permitted by the order for one fiscal year's expenses.

Major expense categories for the 1993–94 fiscal year include $110,894 for shared administrative expenses with the South Texas Onion and Melon committees, $723,425 for TexasSweet Citrus Advertising, Inc., compared to $356,700 for the 1992–93 fiscal year, and $150,000 for the Mexican Fruit fly support program.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The TVCC needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the TVCC begins August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year; (3) handlers are aware of this action which was recommended by the TVCC at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows

Authority: 7 U.S.C. 601–674.

Note: This action will not appear in the annual Code of Federal Regulations.

2. A new § 906.233 is added to read as follows:

§ 906.233 Expenses and assessment rate.

Expenses of $984,319 by the Texas Valley Citrus Committee are authorized and an assessment rate of $0.15 per 7/10 carton on assessable oranges and grapefruit is established for the fiscal year ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: July 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16537 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[Docket No. FV93–981–3IFR]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1993–94 crop year. Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1993, through June 30, 1994. Comments received by August 12, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone number 209–487–5901; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and

has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1993–94 crop year, beginning July 1, 1993, through June 30, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 crop year was prepared by the Almond Board of California, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Because that rate will be applied to handlers' actual receipts, a rate must be established that will provide sufficient income to pay the Board's budgeted expenses.

The Board met May 18, 1993, and recommended by a vote of 8 to 1 a 1993–94 budget of $11,445,000, $950,049 less than the previous year. This amount includes administrative and other expenses of $7,803,454, $2,183,405 more than the previous year, and $3,641,546 for creditable advertising expenditures. Increases in administrative and other expenses include $146,378 for salaries, $13,000 for employee benefits, $17,000 for retirement, $23,400 for payroll taxes, $101,500 for travel, $5,000 for Board travel, $4,000 for research conference, $5,672 for office rent, $4,100 for financial audit, $8,000 for Board insurance, $500 for security, $5,000 for telephone, $2,000 for postage & delivery, $7,000 for office supplies, $6,000 for printing, $1,000 for miscellaneous, $22,000 for newsletter/releases, $10,000 for contingencies, $1,800,000 for promotional activities, $1,500 for crop estimate, and the addition of $15,000 for staff training, $8,000 for equipment rent, $30,000 for contract labor/consultant, $10,000 for utilities, $5,000 for dues and subscriptions, $40,000 for computers and software, and $46,500 for furniture and fixtures. These increases would be partially offset by decreases of $10,000 for meetings, $28,500 for compliance audits and analysis, $25,000 for data processing, $250 for publications, $9,895 for production research, $25,000 for econometric model/analysis, $15,500 for vehicle replacement, $23,000 for office equipment, $10,000 for relocation expenses, and $7,000 for generic packs/promotion for which no funding was recommended.

The Board also recommended by a vote of 8 to 1 an assessment rate of 2.25 cents per kernel pound, the same as last year. The Board also recommended that handlers should be eligible to receive credit for their own authorized marketing promotion (paid advertising) activities for up to 1.00 cent of this 2.25 cents assessment rate, 0.25 cent less than last year. The 1.25 cents per kernel pound portion of the assessment destined for administrative expenses is .25 cent more than last year. Revenues are expected to be $6,175,000 from administrative assessments (494,000,000 pounds @ 1.25 cents per pound), $699,998 from the portion of assessments eligible for credit but received by the Board from handlers who do not obtain credit for their own activities, $30,000 from interest, and $300,000 from the Board's reserve, for a total of $7,204,998. These projections would result in a $598,456 shortfall in revenue based on current estimates of the 1993 crop yield. In light of this projected revenue shortfall, the Board recommended that any shortfall be applied against its generic promotion (paid advertising) activities and that the amount of money spent for these activities be reduced accordingly. However, the Board decided not to reduce the total amount ($5,400,000) estimated for this activity by the amount of the expected shortfall because its assessment revenue projections are conservatively estimated and it expects additional revenue to accrue.

The remaining $3,641,546 of recommended 1993–94 expenses is the estimated amount which handlers are expected to spend and have credited for their own authorized marketing promotion activities during the 1993–94 crop year. Unexpended funds from 1993–94 may be carried over to cover expenses during the first four months of the 1994–95 crop year.

This action will impose the obligation to pay assessments on handlers. The assessments are uniform for all handlers. Some of the assessment cost may be passed on to producers. However, the assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other

VOL 58 ISS 132 JL 13 1993 UMI

available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on July 1, 1993, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was recommended by the Board at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 981.340 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.340 Expenses and assessment rate.

Expenses of $11,445,000 by the Almond Board of California are authorized for the crop year ending June 30, 1994. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per kernel pound of almonds less any amount credited pursuant to § 981.41, but not to exceed 1.00 cent per kernel pound of almonds.

Dated: July 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16535 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 987

[Docket No. FV93–987–1IFR]

Domestic Dates Produced or Packed in Riverside County, CA; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $672,440 and establishes an assessment rate of $1.25 per hundredweight of dates under Marketing Order No. 987 for the 1993–94 crop year. Authorization of this budget enables the California Date Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective October 1, 1993, through September 30, 1994. Comments received by October 12, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone number 209–487–5901; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended [7 CFR part 987], regulating the handling of dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, California dates are subject to assessments. Funds to administer the California date marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates during the 1993–94 crop year beginning October 1, 1993, through September 30, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 producers of California dates under the marketing order and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR

121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California date producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 crop year was prepared by the California Date Administrative Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dates. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on May 13, 1993, and unanimously recommended a 1993–94 budget of $672,440, $176,940 more than the previous year. Included in 1993–94 budgeted expenditures is an operating budget of $121,800, $97 more than last year, with a 20 percent surplus account allocation, for a net operating budget of $97,440, or $77 more than last year. Increases include $7,000 for the Executive Director's salary, $1,500 for telephone, $1,500 for travel/mileage, $200 for publications, $500 for professional services—accounting, $182,530 for market promotion, the addition of $15,000 for an administrative assistant, $4,000 for contingencies, $1,000 for an unemployment reserve, and $1,900 for USDA compliance audits. These would be partially offset by decreases of $6,000 for a clerk's salary, $1,000 in health and related benefits, $503 in payroll taxes, and the elimination of $25,000 for an assistant secretary for which no funding was recommended. Also, the Committee recommended no transfer to the market promotion reserve, for which $5,667 was allocated last year.

The Committee also unanimously recommended an assessment rate of $1.25 per hundredweight, $0.15 less than last season. This rate, when applied to anticipated date shipments of 38,000,000 pounds, will yield $475,000 in assessable income. This, along with $5,000 in interest income and $192,440 from the Committee's reserve, will be adequate to cover budgeted expenses. The maximum amount permitted in the Committee's reserve cannot exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers. The funds in the Committee's reserve were in excess of the maximum permitted by the order. Accordingly, the Committee has credited or refunded each handler's share of the excess funds. Funds in the reserve are now within the maximum permitted by the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on October 1, 1993, and the marketing order requires that the rate of assessment for the crop year apply to all assessable dates handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 90-dey comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 987.336 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 987.336 Expenses and assessment rate.

Expenses of $672,440 by the California Date Administrative Committee are authorized, and an assessment rate of $1.25 per hundredweight of assessable dates is established for the crop year ending September 30, 1994. Unexpended funds may be carried over as a reserve within the limitations specified in § 987.72 (c) and (d).

Dated: July 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16536 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 92–120–2]

Ports Designated for the Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by designating Tacoma, WA, as a port of embarkation and Pacific Rim Livestock Quarantine as an export inspection facility for that port. Tacoma, WA, and Pacific Rim Livestock Quarantine meet the requirements of the regulations for designation as a port of embarkation and an animal export inspection facility, respectively. We are also removing the listings for three export inspection facilities that are no longer operating and revising the listings for two others that have changed operators or locations. These actions will add a port

VOL 58 ISS 132 JL 13 1993 UMI

of embarkation and an inspection facility through which animals may be processed for export and will update the regulations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities.

In a document published in the **Federal Register** on January 5, 1993 (58 FR 262–264, Docket No. 92–120–1), we proposed to amend § 91.14(a) of the regulations by designating Tacoma, WA, as a port of embarkation and Pacific Rim Livestock Quarantine as an export inspection facility for that port. We also proposed to remove the listings for three export inspection facilities that had ceased operations and revise the listings for two others that had changed operators or locations.

We solicited comments on the proposed rule for a 30-day period ending February 4, 1993. We did not receive any comments. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, the State of Washington is served by designated ports of embarkation in Seattle, Olympia, and Moses Lake. Adding Tacoma as a fourth port of embarkation for the State of Washington will facilitate the export of animals from this part of the United States. We believe that adding this fourth port of embarkation will have little or no economic impact on animal exporters, the majority of which are small businesses, because it will not significantly change the cost of doing business. Although animal exporters based in the Tacoma area will realize some savings from reduced transportation costs, the primary impact on these animal exporters will be the increased convenience of having an additional port of embarkation from which to choose. The three export inspection facilities that we are deleting from the list have already ceased operating as animal export inspection facilities, so their deletion from the regulations will have no economic impact. The port of embarkation at John F. Kennedy International Airport, located approximately 60 miles south of Newburgh, NY, is available to animal exporters who had used the Stewart Airport animal export inspection facility. Similarly, animal exporters who used the Northwest Quarantine Station in Portland, OR, may use the animal export inspection facility located at the port of Olympia, WA, approximately 150 miles to the north. Animal exporters in Seattle, WA, still have a local animal export inspection facility available, despite the closing of S&W Export Ltd.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. Section 91.14 is amended as follows:

a. Paragraph (a)(10)(i) is removed and paragraph (a)(10)(ii) is redesignated as paragraph (a)(10)(i).

b. In newly designated paragraph (a)(10)(i)(A), the word "ASPCA" is removed and the words "Vetport, Inc." added in its place.

c. Paragraph (a)(13) is removed and paragraphs (a)(14) through (a)(17) are redesignated as paragraphs (a)(13) through (a)(16).

d. Newly designated paragraph (a)(16)(ii)(A) is removed, and paragraph (a)(16)(ii)(B) is redesignated as paragraph (a)(16)(ii)(A) and is revised as set forth below.

e. New paragraphs (a)(16)(iv) and (a)(16)(iv)(A) are added as set forth below.

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(16) * * *

(ii) * * *

(A) Stevedoring Service of America, 3415 11th Avenue SW., Seattle, WA 98134, (800) 422–3505.

* * * * *

(iv) Tacoma—airport and ocean port.

(A) Pacific Rim Livestock Quarantine, 17835 Highway 507 SE., Yelm, WA 98507, (206) 458–1762.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16533 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 91-187-2]

Cattle From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing calves at least 5 days but not more than 4 weeks of age to be imported from Canada into the United States without being tested for tuberculosis. This will expedite the international movement of the calves by allowing them to be transported upon demand, exempt from the requirement to be tested for tuberculosis and wait 72 hours for test results prior to importation into the United States. We are taking this action because the low incidence of tuberculosis in Canadian cattle does not justify the cost of testing such young animals. Moreover, this relaxed restriction will have the humane effect of reducing the amount of stress borne by calves in transit.

Further, by deleting outdated provisions concerning the port-of-entry detention of cattle from Canada that do not meet our import requirements, we are bringing the regulations into conformity with current practice.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Vogt, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of cattle from Canada to prevent the introduction into the United States of communicable diseases of livestock.

On December 31, 1992, we published in the **Federal Register** (57 FR 62501-62502, Docket No. 91-187-1) a proposal to amend the regulations by allowing calves younger than 4 weeks of age to be imported from Canada into the United States without being tested for tuberculosis.

In addition, we proposed to remove from § 92.418(a) the obsolete provision for the "detention at port of entry" of cattle inspected and found not qualified for immediate entry into the United States, and to remove the redundant footnote in the "Cattle from Canada" section heading.

We solicited comments concerning our proposal, for a 60-day comment period ending March 1, 1993. We received 1 comment by that date.

The commenter supported the proposed rule, but suggested that we establish a minimum age limit of between 5 and 8 days for calves imported into the United States from Canada. The commenter stated that this change would minimize morbidity and mortality and generally contribute to the calves' welfare. We agree, and are amending the regulations in § 92.418(b)(2)(ii)(C) to provide that calves imported into the United States from Canada be at least 5 days old.

Therefore, with the change discussed in this document, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

According to the most recent figures available (1990), approximately 44,000 calves younger than four weeks are imported from Canada into the United States annually, mostly for the production of veal. The market for these calves, which represent less than one-tenth of a percent of the total calf population in the United States, is extremely limited.

This rule will directly affect 10 entities that import calves from Canada. Nine of the ten are small entities. The single entity that is considered large accounted for 80 percent of the imports in 1990.

The change benefits all importers of young calves from Canada, who will be relieved of the costs incurred in testing the calves. Currently, the required tuberculin test, labor, feed, and retaining services amount to about $8 per animal. Further, young calves periodically die as a result of stress in the waiting stations where they remain for 72 hours. Death losses of imported young calves averaged 8 percent between 1976 and 1990, a death rate double that of U.S. calves. The value of an imported young calf (live) is about $170. Therefore, the small entities that import young calves from Canada will accrue only modest benefits from the proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Part 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR part 92 is amended as follows:

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.418, the section heading is amended by removing the reference to footnote 7; in paragraph (a), the heading and the last sentence are revised; paragraph (b)(2)(ii)(C) is redesignated as paragraph (b)(2)(ii)(D); and a new paragraph (b)(2)(ii)(C) is added, to read as follows:

§ 92.418 Cattle from Canada.

(a) *Health certificates.* * * * Cattle found unqualified upon inspection at the port of entry will be refused entry into the United States.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

VOL 58 ISS 132 JL 13 1993 UMI

(C) That the cattle are at least five days but not more than four weeks of age and, therefore, exempt from the tuberculosis testing requirement; or

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16531 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 92–103–2]

Ports Designated for Importation of Birds and Poultry; Port Canaveral, FL

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Port Canaveral, FL, to the list of ports designated for the importation of pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products, such as poultry test specimens, or hatching eggs and day old chicks, which do not appear to require restraint and holding facilities. This action will provide an alternative port of entry for these birds and poultry, and poultry products, thereby facilitating their importation into the United States.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of birds and poultry into the United States. These provisions are designed to prevent the introduction of exotic Newcastle disease and other communicable diseases of poultry into the United States.

Section 92.102(a) lists special ports designated for the importation of pet birds imported under the provisions of § 92.101(c)(3). Section 92.203(d) designates limited ports available for the entry of poultry and poultry products, such as poultry test specimens, or hatching eggs and day old chicks, which do not appear to require restraint and holding facilities. In accordance with § 92.101(f), performing or theatrical birds may be imported at any of the ports of entry listed in § 92.102 or § 92.203, and, in accordance with § 92.201(c), performing or theatrical poultry may be imported at any of the ports of entry listed in § 92.203.

On January 14, 1993, we published in the **Federal Register** (58 FR 4362–4363, Docket No. 92–103–1), a proposal to add Port Canaveral, FL, to the list of ports in §§ 92.102(a) and 92.203(d).

Comments on the proposed rule were required to be received on or before February 16, 1993. We did not receive any comments. Therefore, based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will affect owners of pet birds, performing or theatrical birds, performing or theatrical poultry and certain other poultry and poultry products, imported into the United States. This rule will benefit them by providing an alternative port of entry. The convenience this alternative port will provide will not result in any significant economic benefit. Further, we do not expect that this rule will result in any increase in the number of these birds and poultry, and poultry products, imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51 and 371.2(d).

§ 92.102 [Amended]

2. In § 92.102, paragraph (a) is amended by adding "and Port Canaveral" immediately after "Miami".

§ 92.203 [Amended]

3. In § 92.203, paragraph (d) is amended by adding "Port Canaveral," immediately after "Jacksonville,".

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16532 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 98

[Docket No. 92–128–2]

Importation of Certain Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of certain animal semen by: adding a provision requiring that all imported animal semen be accompanied by a health certificate; restoring the

exemption from the requirement for an import permit for animal semen being imported into the United States from Canada through a land border port; and restoring the list of ports of entry so that it includes all of the ports designated for the importation of animal semen into the United States. These actions will help to prevent disease from entering the United States and correct omissions that resulted from a reorganization of the regulations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in "Subpart C—Certain Animal Semen" of 9 CFR part 98 (referred to below as "the regulations") concern the importation of certain animal semen into the United States.

In a document published in the **Federal Register** on January 5, 1993 (58 FR 266–269, Docket No. 92–128–1), we proposed to amend the regulations by requiring that all imported animal semen be accompanied by a health certificate; restoring the exemption from the requirement for an import permit for animal semen being imported into the United States from Canada through a land border port; and restoring the list of ports of entry so that it includes all of the ports designated for the importation of animal semen into the United States.

We solicited comments on the proposed rule for a 30-day period ending February 4, 1993. We received two comments, one from a veterinary medical association and one from a horse industry group. Both comments offered support for the proposed rule.

One of the commenters did point out, however, that in proposed § 98.35(d)(2), we require that the health certificate state the name and address of the veterinarian who collected the semen. The commenter correctly noted that the current regulations do not require that a veterinarian collect the semen. We agree that it is not necessary for a veterinarian to personally collect the semen, although for the purposes of the health certificate it is necessary for a veterinarian to supervise its collection. Therefore, we have revised § 98.35(d)(2) to require that the name and address of the veterinarian who supervised the collection of the semen appear on the health certificate.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule with the one change noted above.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The provisions of this rule will have little or no economic effect. The requirement for a health certificate to accompany each shipment of animal semen being imported into the United States will not have any significant impact on importers. The health certificate will not require any additional tests or examinations to be conducted on the donor animal; rather, the health certificate will merely document the identification, collection, and examination activities that are already required by the regulations. The remainder of the changes are either non-substantive in nature or simply restore language that was mistakenly omitted from the regulations. Therefore, this rule will have little or no economic impact on importers of animal semen because it will not significantly increase or decrease the cost of doing business.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are amending 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 98.31 [Amended]

2. In § 98.31, the words "this part" are removed and the words "this subpart" are added in their place, both times the words appear.

3. Section 98.33 is amended by revising the section heading, redesignating paragraph (a) as paragraph (d) and revising it, redesignating paragraph (b) as paragraph (e), and adding new paragraphs (a), (b), and (c) to read as follows:

§ 98.33 Ports designated for the importation of certain animal semen.

(a) *Air and ocean ports.* The following air and ocean ports are designated as having inspection facilities for the entry of animal semen: Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York.

(b) *Canadian border ports.* The following land border ports are designated as having inspection facilities for the entry of animal semen from Canada: Eastport, Idaho; Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, and Champlain, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; Blaine, Lynden, Oroville, and Sumas, Washington.

(c) *Mexican border ports.* The following land border ports are designated as having inspection facilities for the entry of animal semen from Mexico: Douglas, Naco, Nogales, San Luis, and Sasabe, Arizona; Calexico and San Ysidro, California; Antelope Wells, Columbus, and Santa Teresa, New Mexico; Brownsville, Del Rio

Eagle Pass, El Paso, Hidalgo, Laredo, and Presidio, Texas.

(d) *Limited ports.* The following limited ports are designated as having inspection facilities for the entry of animal semen: Anchorage and Fairbanks, Alaska; San Diego, California; Denver, Colorado; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; International Falls and Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; Seattle, Spokane, and Tacoma, Washington.

* * * * *

§ 98.34 [Amended]

4. In § 98.34, paragraph (a)(1), the designations "§§ 98.26, 98.27, and 98.28," are removed and the designation "§ 98.36," is added in their place.

§ 98.35 [Amended]

5. In § 98.35, paragraph (a), the words "this part" are removed and the words "this subpart" are added in their place.

6. In § 98.35, the section heading is revised and paragraphs, (c) and (d), are added to read as follows:

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(c) All animal semen offered for importation into the United States shall be accompanied by a health certificate issued by:

(1) A full-time salaried veterinarian of the national government of the country of origin; or

(2) Any veterinarian authorized by the national government of the country of origin, provided that the health certificate is endorsed by a full-time salaried veterinarian of the national government of the country of origin.

(d) The health certificate must state:

(1) The name and address of the place where the semen was collected;

(2) The name and address of the veterinarian who supervised the collection of the semen;

(3) The date of semen collection;

(4) The identification and breed of the donor animal;

(5) The number of ampules or straws covered by the health certificate and the identification number or code on each ampule or straw;

(6) The dates, types, and results of all examinations and tests performed on the donor animal as a condition for importing the semen;

(7) The names and addresses of the consignor and consignee; and

(8) That the semen is being imported into the United States in accordance with subpart C of 9 CFR part 98.

7. Section 98.36, including the undesignated center-heading "CANADA [3]", is revised, and footnote 3 removed, to read as follows:

Canada

§ 98.36 Import permit, declaration, and health certificate for animal semen.

(a) For animal semen intended for importation from Canada, the importer shall first apply for and obtain from APHIS an import permit as provided in § 98.34: *Provided*, that an import permit is not required for animal semen offered for entry at a land border port designated in § 98.33(b) if the donor animal:

(1) Was born in Canada or the United States, and has been in no country other than Canada or the United States; or

(2) has been legally imported into Canada from some other country and unconditionally released in Canada so as to be eligible to move freely within that country without restriction of any kind and has been in Canada after such release for 60 days or longer.

(b) For all animal semen offered for importation from Canada, the importer or his or her agent shall present two copies of a declaration and a copy of a health certificate as provided in § 98.35.

§§ 98.37 through 98.39 [Removed]

8. The undesignated center-headings "Countries of Central America and West Indies [4]" and "Mexico [5]", §§ 98.37 through 98.39, and footnotes 4 and 5 are removed.

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16538 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted a rulemaking which implements the statutory directives of sections 5a, 8c and 17 of the Commodity Exchange Act ("Act") as they were amended by section 206 of the Futures Trading Practices Act of 1992 ("1992 Act"). This rulemaking establishes various requirements with respect to the composition of self-regulatory organization ("SRO") governing boards and major disciplinary committees. In general, section 206 requires a greater diversity of representation of SRO governing boards and disciplinary committees in order to promote the public interest in the self-regulatory process.

DATES: The following are the effective dates of this rulemaking's various provisions: the amendment to § 1.41(d) is effective July 13, 1993; the amendment to § 1.63 is effective August 12, 1993; § 1.64 is effective July 13, 1993; and, § 1.67 is effective August 12, 1993.

SRO rules complying with § 1.64 must have been submitted to and allowed to become effective by the Commission by October 12, 1993. Each SRO must comply with § 1.64(a), (b)(1), (c) and (d) immediately upon the Commission allowing the SRO's implementing rules to become effective. Each SRO must comply with § 1.64(b)(2) and (c) as of the date of its next governing board election.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 12, 1993, the Commission published for public comment in the **Federal Register** a proposed new Regulation 1.64 and proposed amendments to existing § 1.63.[1] The new regulation and regulation amendments were proposed in response to the statutory directives set forth in section 206 of the 1992 Act.[2] Section 206 of the 1992 Act amended the Act to require that the Commission establish various standards with respect to the composition of SRO governing boards and major disciplinary committees. Previously, the Act had not directly imposed any standards for service on such SRO deliberative bodies.[3]

[1] 58 FR 13565 (March 12, 1993).

[2] Pub. L. 102–546, section 206, 106 Stat. 3590 (1992).

[3] Commission Regulation 1.63, which imposes service standards for SRO governing boards, disciplinary committees and arbitration panels, was

The Commission received eleven written comments in response to the proposed rulemaking. The commenters included seven contract markets (Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Coffee Sugar & Cocoa Exchange, Inc. ("CSC"), Commodity Exchange, Inc. ("COMEX"), New York Cotton Exchange, Inc. ("NYCE"), New York Futures Exchange, Inc. ("NYFE") and New York Mercantile Exchange ("NYMEX"), a registered futures association (National Futures Association ("NFA")), a clearing organization (Board of Trade Clearing Corporation ("BOTCC")), a commodity industry trade association (Managed Futures Association ("MFA")) and a company which has a commercial interest in a commodity underlying a futures contract (Sunkist). The comments received on particular aspects of the proposed rulemaking are discussed below in the context of the specific rule provision to which they pertain. The Commission has carefully reviewed each of these comments and, based upon that review and its reconsideration of the proposed rulemaking, is now adopting rules which it believes are responsive to the concerns raised by commenters and the statutory objectives of this rulemaking.

II. Description of Proposed Rulemaking

A. Composition Requirements

1. Definition of SRO

a. *Proposed regulation.* In compliance with section 206 of the 1992 Act, the Commission proposed a new Commission § 1.64 which would impose various composition requirements on SRO governing boards and major disciplinary committees. In proposing § 1.64, the Commission pointed out that section 206(a) amended section 5a of the Act to establish composition requirements for the governing board of each "contract market's board of trade" and for the major disciplinary committees of each "contract market."[4] The Commission interpreted section 206(a) to mandate composition requirements for each futures exchange (*i.e.*, board of trade) but not for clearing organizations.

Although the Commission proposed that § 1.64's composition requirements be limited to the governing boards and major disciplinary committees of exchanges and registered futures associations, it also invited comment as to whether any or all of the requirements of proposed § 1.64 should apply to the governing boards and major disciplinary committees of clearing organizations.

b. *Comments received.* The BOTCC and CSC both commented that clearing organizations should not be considered SROs for the purposes of § 1.64 and that, accordingly, § 1.64's composition requirements should not apply to clearing organization governing boards and major disciplinary committees. The BOTCC particularly noted that "neither section 206 nor the legislative history of the 1992 Act suggests in any respect that Congress intended rules implementing the provisions of section 206 to apply to clearing organizations."

The Commission also received comments from the CME and NYMEX that clearing organizations which are divisions of futures exchanges (*e.g.*, CME and NYMEX Clearing Houses) rather than separate legal entities (*e.g.*, BOTCC) should not be included within the definition of SRO for purposes of § 1.64. NYMEX, for instance, contends that its Clearing House functions exactly as a separately-incorporated clearing organization does for other futures exchanges and that, accordingly, both separately-incorporated and integrated clearing organizations should be outside the scope of § 1.64.

c. *Regulation 1.64(a)(1).* The Commission has considered these comments and the pertinent aspects of section 206 and its legislative history and has determined to not include clearing organizations within § 1.64(a)(1)'s definition of SRO. The Commission notes that Section 206 does not explicitly apply to clearing organizations, and neither did the House and Senate bills which were the predecessors to the 1992 Act (H.R. 707, 102d Cong., 1st Sess. (1991) and S. 207, 102d Cong., 1st Sess. (1991)). The Senate bill's legislative history, in fact, indicates that a nearly identical provision in the Senate bill was not to be imposed on clearing organizations but that "contract markets should consider applying the principles of [the provision] to their clearinghouses and other bodies in appropriate cases to engender public confidence in the integrity and openness of exchange decisionmaking." S. Rep. No. 102–22, 102d Cong., 1st Sess., 38 (1991).

The Commission also concurs with the comments of the CME and NYMEX and will not extend the requirements of § 1.64 to those clearing organizations which are divisions of futures exchanges rather than separate legal entities. The Commission believes that this approach is consistent with Congress' intent to excuse clearing organization decisionmaking bodies from the standards of section 206 of the 1992 Act. This approach would not affect the governing board composition requirements of § 1.64 which fully apply to each futures exchange governing board regardless of whether the exchange does or does not have a clearing organization division. The only bodies which are affected are major disciplinary committees which deal with clearing organization disciplinary matters at exchanges with a clearing organization division.

The Commission expects that the only SRO major disciplinary committees which would not be subject to § 1.64's composition requirements are those committees at futures exchanges with clearing organization divisions which deal with violations of clearing organization rules. At the present time, there are three futures exchanges which use clearing organization divisions rather than a separately incorporated clearing organization—the CME, Minneapolis Grain Exchange ("MGE") and NYMEX. Based upon their present rulebooks, disciplinary committees at the CME, MGE and NYMEX are excused from § 1.64(c)'s composition requirements whenever they deal with disciplinary matters concerning CME's Chapter 9 rules, MGE's Chapter 21 rules and NYMEX's Chapter 9 rules, respectively. These rules principally address margin, reporting and various financial requirements for clearing members. If a disciplinary committee at one of these exchanges has jurisdiction over both clearing organization and non-clearing organization rule violations, the committee must comply with Regulation 1.64(c) when considering the non-clearing organization matter.[5]

2. Governing Board Diversity Standards

a. *Proposed regulation.* As originally proposed, Commission Regulation 1.64(b)(1) required each SRO to implement rules requiring that its governing board be comprised of persons from a variety of membership interests who would meaningfully represent the diverse interests of the SRO's members. In describing proposed § 1.64(b)(1) the Commission stated that each SRO should establish, by rule, some fixed form of categorical representation which would ensure that the various interests which could be

promulgated by the Commission pursuant to the general rulemaking authority of section 8a(5) of the Act. See 55 FR 7884 (March 5, 1990).

[4] Section 206(b) similarly amended section 17 of the Act to establish composition requirements for the governing board and major disciplinary committees of each registered futures association.

[5] This assumes that the disciplinary committee otherwise is within § 1.64(a)(2)'s definition of a major disciplinary committee. See Section II.A.3., below, for a discussion of this definition.

VOL 58 ISS 132 JL 13 1993 UMI

affected by the decisionmaking of an SRO governing board would be fairly represented on the board.

b. *Comments received.* The CBT commented that the Commission in adopting Regulation 1.64(b)(1) should clarify that complying SROs would not be required to establish a quota system for representation on their governing boards. In addition, the CME contended that the diversity standards in the 1992 Act were sufficiently clear so that it was not necessary for the Commission to act in this regard.

c. *Section 1.64(b)(3).*[8] Final § 1.64(b)(3) has been revised to state that SROs must establish their diversity standards pursuant to standards and procedures.[7] Regulation 1.64(b) requires that such SRO standards and procedures for meeting the composition requirements of section 206 of the 1992 Act must ensure that the governing board will fairly represent the diversity of membership interest at such SRO.[8] The Commission stresses that § 1.64(b)(3) does not necessarily require that each SRO's standards and procedures establish either a quota system or proportional representation for the different types of membership interests which must be represented on its governing board. However, such standards and procedures must provide for some representation of each enumerated membership interest and describe the manner in which the SRO's diversity of membership interests will be meaningfully represented on the board. The Commission believes that the application of § 1.64(b)(3) will provide each SRO with sufficient flexibility to structure its governing board so that it is reflective of all of its members. In particular, each SRO must take into account the premise of section 206 of the 1992 Act that non-floor interests have a role in the governing and regulatory process at the SRO.

The Commission seeks to clarify that this and all of § 1.64's composition requirements for SRO governing boards are intended to apply to the composition of a full SRO governing board and not to the composition at any one board meeting. Accordingly, SROs are not required to reconstitute their boards each time they meet because certain board members are absent, provided that all board members are properly notified of each board meeting.

Although section 206 of the 1992 Act did not specifically require that the Commission adopt an implementing regulation with respect to diversity standards for SRO governing boards, the Commission believes that such a regulation is necessary. For instance, section 206 only provides a list of what membership interests shall be represented on a contract market board and does not specify at all the types of membership interests which should be represented on registered futures association boards. Both of these issues are addressed in final § 1.64. In addition, § 1.64(b)(3) as adopted ensures that the Commission will be able to review each SRO's implementing standards and procedures and thus enhance the Commission's ability to enforce the requirements of section 206.

3. Governing Board Non-Member Representatives

a. *Proposed regulation.* As proposed by the Commission, § 1.64(b)(2) required each SRO to adopt a rule requiring that at least 20% of the members of its governing board be non-member representatives who are capable of contributing to the board's deliberations consistent with section 206 of the 1992 Act. Proposed § 1.64(b)(2) established a two-part test for who could qualify as such a representative. First, the person would generally have to be knowledgeable of futures trading or financial regulation. Second, the person could not have certain commodity industry affiliations. Proposed § 1.64(b)(2)(ii) specified that the non-member representative must not have been a Commission registrant or SRO member within the prior year. In addition, the non-member representative must not have received more than ten percent of his income for the prior year as compensation for work done for any particular SRO, SRO member or Commission registrant.

b. *Comments received.* The commenters generally criticized proposed § 1.64(b)(2) as establishing criteria that were too narrow in delineating what constitutes a non-member under section 206 of the 1992 Act. CME, COMEX and NFA particularly commented that the restriction on registrants serving as non-member representatives would exclude non-contract market member FCMs, IBs, CPOs, CTAs and APs whose primary interest may be in having fair and efficient markets for their customers.

The CME contended that the qualifications for non-member representatives to SRO boards should be limited strictly to persons who are non-members of the SRO with the requisite expertise in futures trading or other eminent qualifications.

The CBT commented that requiring that a governing board non-member representative not have been an SRO member for the past year exceeded Congress' intent and should be limited to persons who are not current SRO members. In addition, NFA urged that § 1.64(b)(2) be revised to provide that not less than twenty percent of an SRO's governing board be comprised of persons who are not members of the particular SRO, rather than of any SRO.

CME, NFA and NYMEX each commented that the proposed exclusion of persons who earned over ten percent of their income from an industry-affiliated entity was not necessary. NYMEX added that if any such compensation qualification for SRO employment was kept, the Commission should excluded compensation for service on SRO governing boards and for non-full-time employment.

c. *Regulation 1.64(b)(1)*[9] upon its review of the comments, the Commission has decided to alter § 1.64(b)(1) in several respects. Final § 1.64(b)(1) will require, as did the proposed version, that twenty percent or more of the regular voting members of each SRO governing board[10] be comprised of persons who "are knowledgeable of futures trading or

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[6] Proposed § 1.64(b)(1) has been renumbered Regulation 1.64(b)(3).

[7] Final § 1.64(b)(1) and (2) similarly require that SROs submit standards and procedures implementing the governing board composition requirements regarding non-member and commercial interest representatives, respectively. Each SRO's conforming standards and procedures must be submitted to the Commission for its review pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to section 17(j) of the Act.

[8] Final § 1.64(a)(4) defines what constitutes a "membership interest" for both contract markets and registered futures associations. Section 1.64(a)(4)(i) defines the following as separate membership interests at each contract market:

(A) floor brokers,

(B) floor traders,

(C) futures commission merchants,

(D) producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) other market users or participants . . .

For the purposes of § 1.64(b)(3)'s governing board composition requirements, § 1.64(a)(4)(ii) defines the following as separate membership interests at each registered futures association:

(A) futures commission merchants [("FCMs")],

(B) introducing brokers [("IBs")],

(C) commodity pool operators [("CPOs")],

(D) commodity trading advisors [("CTAs")]; and,

(E) associated persons [("APs")].

Of course, SROs may choose to recognize additional types of membership interests at their particular SRO.

[9] Proposed § 1.64(b)(2) has been renumbered as § 1.64(b)(1).

[10] Section 1.64(a)(3) defines a "regular voting member of a governing board" to mean "any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board."

financial regulation or are otherwise capable of contributing to governing board deliberations."

In setting the additional qualifications for non-member board representatives, the Commission has determined to exclude persons who are currently salaried employees of the SRO, as well as persons who primarily perform services for SRO in capacity other than as a member of that SRO's governing board.[11]

Section 1.64(b)(1) further provides that a person who serves on an SRO governing board will not be precluded from qualifying as a non-member of that SRO solely because of such service. This provision addresses the situation of non-member representatives to SRO governing boards who might otherwise become ineligible to serve as non-member representatives because of their board service.

The Commission agrees with the commenters that the proposed restriction on Commission registrants and their employees becoming non-member representatives to SRO governing boards would have excluded an important class of persons who have an expertise in futures trading, are significant users of the markets and are not necessarily closely aligned with any particular membership interest at a given SRO. Accordingly, under final § 1.64(b)(1), registration, in itself, will not render a person ineligible to serve as a non-member representative to an SRO governing board.

The Commission, however, has determined to retain § 1.64(b)(1)'s basic restriction on SRO members and their employees becoming non-member board representatives. As adopted, Commission § 1.64(b)(1)'s definition of an SRO non-member excludes persons who are members of the SRO and persons who are "officers, principals or employees of a firm which holds a membership at the [SRO] either in its own name or through an employee on behalf of the firm." The Commission believes that this approach to SRO members and their related officers, principals and employees is consistent with section 206's goal of ensuring that there always will be a twenty percent segment of each SRO governing board which will not have an exclusively member perspective.[12]

While § 1.64(b)(1)'s non-member representation requirements are based on the statutory directive of section 206 of the 1992 Act, neither section 206 nor any other provision of the 1992 Act defined "non-member." Section 404 of the 1992 Act, however, defines a contract market member as being "an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on a contract market or given members' trading privileges thereon." The Commission believes that CME's suggestion that Commission § 1.64(b)(1) treat any person who is an employee of a member of a given SRO as a non-member of that SRO would have unsatisfactory results and would be inconsistent with the fundamental intent of section 206. For example, under CME's approach, a person working for a firm which owned a membership at an SRO, could qualify as a non-member representative to the SRO's governing board regardless of how intimately involved the person was in the firm's operations at the SRO, so long as the person did not personally hold a membership or trading privileges at the SRO. While such a person would not be a "member" under section 404 of the 1992 Act, the Commission believes that it would be unreasonable to conclude that such a person could serve on an SRO board independent of his or her employing member's interests.

After full consideration of this issue, the Commission has concluded that there is no principled regulatory scheme which could effectively and reliably distinguish between employees of a member of an SRO who could and could not be expected to serve as independent and contributing non-member representatives to that SRO's governing board. The Commission believes that this view is consistent with the basic tenet of agency law that an agent's acts or knowledge may be imputed to its controlling principal. This notion is codified in section 2(a)(1)(A)(iii) of the Act which states that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person."[13]

The Commission seeks to clarify that § 1.64(b)(1) requires that there be a minimum of twenty percent non-SRO member representation on SRO governing boards. Any SRO composition scheme which was less than twenty percent representation for non-SRO members would be inconsistent with the 1992 Act and this provision. For example, an SRO governing board of seventeen persons must have at least four non-member representatives. This is required although, in fact, three non-members, constituting 17.6% of such a board, may be closer to twenty percent than four non-members, constituting 23.5% of such a board.[14]

4. Governing Board Commercial Interest Representatives

a. *Proposed regulation.* As proposed, Commission § 1.64(b)(3) stated that each contract market must adopt a rule which requires that at least ten percent of the regular voting members of its governing board be comprised of persons who primarily produce, manufacture, process, export, merchandise or commercially use any of the commodities underlying a futures product traded on that contract market. Like the other SRO board composition requirements of proposed § 1.64, the requirement for representation of commercial interests on contract market governing boards was intended to ensure effective representation for all market participants in each contract market's decisionmaking process.

b. *Comments received.* The CSC commented that commercial interest representatives should include not only individuals but also employees of corporations or other commercial entities. The CSC also contended that section 206 of the 1992 Act only imposes the ten percent requirement where the Commission determines that such a requirement is applicable and that, accordingly, the Commission should determine which contract markets need commercial representation on their governing boards.

Sunkist supported § 1.64(b)(3) and its general intent of providing market

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[11] In deciding whether a person primarily performs services for an SRO, the SRO should exclude any person who spends over half of his or her working time providing services to that particular SRO, regardless of the compensation arrangement.

[12] The Commission may refine the parameters of what constitutes a non-member under § 1.64(b)(1), however, if the SRO's implementation of this provision does not ensure that each SRO governing board has a segment of representatives which can act independent of membership interests at that SRO.

[13] The NYCE has suggested that § 1.64(b)(1) require that each SRO governing board include twenty percent non-SRO members, with at least one-third of that segment being neither officers, principals or employees of an SRO member. This approach would not ensure that there be a twenty percent segment of each board which will be independent of any membership interest perspective.

[14] The Commission notes that in addition to its obligations under § 1.64(b)(1), each SRO has an independent obligation to comply with the prohibitions on voting by interested governing board members as established by section 217 of the 1992 Act and any Commission regulation promulgated thereunder.

participants with representation on SRO governing boards. It pointed out that western citrus interests are not currently represented on NYCE's governing board and that the Commission's proposal might help to ensure fair representation for such interests.

c. *Section 1.64(b)(2).*[15] In response to CSC's comment, final § 1.64(b)(2) clarifies that its ten percent commercial interest representative requirement may be met by "persons representing" the appropriate businesses.

In further response to CSC, the Commission notes that section 206's and § 1.64(b)(2)'s references to having commercial interest representation "where applicable" provides discretion as to an SRO's choice of an appropriate type of enumerated commercial interest representative for its board.

As with the percentage calculation of non-member representatives on SRO governing boards, any contract market governing board composition scheme in which the percentage of commercial interest representatives must be rounded-up to reach ten percent of the board would be inconsistent with § 1.64(b)(2).

In complying with § 1.64, the Commission wishes to clarify that SROs may use a single person to help meet more than one of the governing board composition requirements. For instance, a board member representing a commercial concern who is also a non-SRO member, may count towards both the ten percent commercial interest and twenty percent non-member representation requirements.

5. Major Disciplinary Committee Definition

a. *Proposed regulation.* In its proposed rulemaking, the Commission proposed § 1.64(b)(4) through (6) which would establish compositional requirements for SRO major disciplinary committees consistent with the statutory directives of section 206 of the 1992 Act. Under proposed § 1.64(a)(2), a "major disciplinary committee" was defined as a panel of persons who, as a group, were "empowered by [an SRO] to bring disciplinary charges, to conduct disciplinary hearings, to settle disciplinary charges, to impose sanctions or to hear appeals thereof."

The Commission proposed to define major disciplinary committees in terms of panels which operate as a group in conducting disciplinary matters because it believed that any disciplinary matter which was significant enough to warrant an adjudicatory panel, should require the protections of § 1.64(b)(4) through (6).

The Commission also stated its belief that the ability "to bring disciplinary charges, to conduct disciplinary hearings, to settle disciplinary charges, to impose sanctions (and) to hear appeals" are each disciplinary powers which could have a detrimental effect if they were not applied fairly and impartially. Accordingly, the Commission's proposed definition of a major disciplinary committee would have covered any SRO panel which had any one of these powers.

b. *Comments received.* The commenters contended that the definition of major disciplinary committee should be narrowed. The CBT commented that the definition should not include panels which issue charges but do not hold adjudicative hearings. CBT argued that the benefits of the major disciplinary committee composition requirements would still be fully obtained by limiting the definition to hearing and appellate committees.

The NYCE recommended that the definition be clarified to cover panels which impose disciplinary sanctions, rather than any type of sanction, since delivery committees, which impose penalties for delivery disputes, otherwise could be considered major disciplinary committees.

The CME and CSC each urged that major disciplinary committees be defined in terms of the type of rule violation involved. The CME contended that any committee considering a disciplinary matter involving a "disciplinary offense," as that term is defined in Commission § 1.63,[16] should be a major disciplinary committee for purposes of § 1.64.

c. *Regulation 1.64(a)(2).* Based upon the CBT's and NYCE's comments the Commission has revised the definition of major disciplinary committee to include "a committee of persons who are authorized by [an SRO] to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof" for certain types of enumerated cases.[17] While the Commission has adopted the CBT's recommendation to delete charging committees from this definition, it has decided to retain committees which settle disciplinary charges and impose disciplinary sanctions. Section 206 prescribes composition requirements for major disciplinary committees in order to "ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties." The Commission believes that the settlement of disciplinary charges and the imposition of disciplinary sanctions both constitute the assessment of penalties and that panels which exercise such powers should be subject to § 1.64's composition requirements.

The Commission also has decided to follow CME's suggestions and, thus, has defined major disciplinary committees as disciplinary committees which are concerned with cases involving SRO rule violations which qualify as § 1.63 disciplinary offenses.[18] Under this approach, the Commission is assured that major disciplinary committees will be concerned with serious SRO rule violations. Additionally, because of their compliance with current § 1.63, the SROs should already have established their respective sets of "disciplinary offenses."[19] This should facilitate each SRO's ability to distinguish major and non-major disciplinary committees when implementing the composition requirements of § 1.64(c) (1) through (4).

The Commission believes that § 1.64(a)(2)'s definition of major disciplinary committee should ensure

[15] Proposed § 1.64(b)(3) has been renumbered as § 1.64(b)(2).

[16] Commission § 1.63, which is being amended as part of this same rulemaking. See section II.C., below, disqualifies persons who have committed disciplinary offenses from serving on various SRO bodies. The disqualifying disciplinary offenses include, among other things, various types of SRO rule violations.

[17] The Commission understands that at most SROs, governing boards hear appeals of disciplinary matters and, thus, qualify as major disciplinary committees under § 1.64(a)(2). In such a case, the Commission will only require that a governing board conform with § 1.64(b)'s board composition requirements, including when the governing board is considering a disciplinary case.

[18] Section 1.64(a)(2) defines an SRO major disciplinary committee as any committee which has disciplinary jurisdiction over cases involving:

* * * any violation of the rules of the [SRO] except those which:

(i) Are related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping; and,

(ii) Do not involve fraud, deceit or conversion.

The types of rule violations listed in § 1.64(a)(2) do not duplicate the SRO rule violations which constitute a § 1.63 disciplinary offense as § 1.63 also defines disciplinary offenses to include reporting or recordkeeping violations which result in an aggregate of more than $5,000 in fines in one calendar year. This aspect of the definition was not incorporated in § 1.64(a)(2), which defines major disciplinary committees exclusively in terms of the type rule violations over which such committees have jurisdiction and not the size of any possible sanctions.

For the purposes of § 1.64(a)(2)(i)(A), SRO violations related to decorum include trading decorum violations for which SROs summarily impose minor penalties such as bidding through offers.

[19] See section II.C.3., below, for a discussion of the list of § 1.63 disciplinary offenses each SRO is expected to maintain and publicize.

that persons who are involved in serious disciplinary matters will receive the protections offered by § 1.64(c)'s composition requirements for major disciplinary committees, while also ensuring that SRO disciplinary committees and personnel who deal with minor SRO disciplinary violations will be able to dispose of such matters in an efficient and expeditious manner.[20]

6. Major Disciplinary Committee Diversity Standards

a. *Proposed regulation.* Section 206 of the 1992 Act amended sections 5a(15)(A) and 17(b)(12)(A) of the Act to require that the major disciplinary committees of contract markets and registered futures associations, respectively, have a diversity of membership sufficient to ensure fair proceedings. In order to implement these provisions, the Commission proposed § 1.64(b)(4) which would require that each SRO maintain rules specifying diversity standards for its major disciplinary committees. As part of this proposal, the Commission stated that responsive SRO rules should establish some form of categorical representation on major disciplinary committees in order to ensure that the persons discharging disciplinary responsibilities would treat accused parties fairly and impartially.

b. *Comments received.* The CME submitted the only comment with respect to § 1.64's diversity standards for major disciplinary committees. The CME stated that it was not necessary to impose a system of fixed categorical representation on major disciplinary committees. The CME contended that the Commission could inspect the minutes of disciplinary hearings during rule enforcement reviews and verify that each SRO was complying with the diversity standards set forth in section 206 of the 1992 Act.

c. *Regulation 1.64(c)(4).*[21] As with § 1.64(b)(1)'s standard for diversity on SRO governing boards, § 1.64(c)(4) has been modified to provide discretion to SROs in ensuring that a diversity of membership interests are represented on their major disciplinary committees. The Commission will not require that each SRO establish a quota system regarding participation in any particular type of major disciplinary committee proceeding. The Commission, however, will require that each SRO have some established methodology for the selection of major disciplinary committee members which will prevent discriminatory treatment for the subjects of disciplinary matters.

The composition requirements of § 1.64(c)(4), as well as those of the other provisions of § 1.64(c), apply independently to each major disciplinary committee and to any hearing panel thereof. Accordingly, under § 1.64(c)(4), a hearing panel of a major disciplinary committee would itself have to include a diversity of membership interests, even if the hearing panel was a subcommittee of a larger major disciplinary committee which properly included a diversity of membership interests.

7. Major Disciplinary Committee Non-Member Representatives

a. *Proposed regulation.* The Commission's proposed rulemaking also included a § 1.64(b)(5) which would have required that each SRO specify by rule that each of its major disciplinary committees have at least one member who is not a member of the SRO. This requirement would have applied to all SRO major disciplinary committees proceedings, regardless of the person or rule violation involved in the proceeding.

b. *Comments received.* Some of the commenters criticized proposed § 1.64(b)(5) for requiring that major disciplinary committees include a non-member at all of their proceedings. The CBT indicated that this approach would be burdensome, would undercut SRO self-policing and could be costly if SROs had to pay non-members. The CME, CSC and NFA all urged the Commission to limit the scope of major disciplinary committee hearings for which a non-member must participate. CSC and NFA pointed out that section 206 of the 1992 Act only requires non-member participation in cases where the subject of the proceeding is a member of the governing board or of a major disciplinary committee, where there is a charge of manipulation and where appropriate to carry out the purposes of the 1992 Act. They both urged that the Commission modify the scope of proposed § 1.64(b)(5) accordingly.

The CME believed that it was not necessary to include non-members on major disciplinary committees unless they were hearing cases which involved § 1.63 "disciplinary offenses."

c. *Section 1.64(c)(1).*[22] The Commission has revised § 1.64(c)(1) by limiting the type of cases for which an SRO major disciplinary committee must include a person who is a non-member of that SRO. Consistent with the minimum conditions set by Section 206 of the Act, § 1.64(c)(1)(i) requires that SRO major disciplinary committees include a non-SRO member whenever the subject of the proceeding is a member of the SRO's governing board or major disciplinary committee or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract.

Final § 1.64(c)(1)(ii) also requires that contract market major disciplinary committees include a non-member whenever the rule violation they are considering involves conduct by a member which "directly results in financial harm" to a non-member of the contract market.[23] The Commission believes that this approach isolates the types of cases for which an outside presence or witness is most essential—cases involving alleged violative behavior by a contract market member that cause specific injury to a non-member of the contract market.

Section 206(c)(3) of the 1992 Act specifies that "at a minimum," the Commission's implementing regulations require that SRO major disciplinary committees include non-SRO member representatives when considering cases involving manipulation or members of SRO governing boards or major disciplinary committees. In addition, section 206(a) states that the Commission may require a non-member presence on major disciplinary committees "where appropriate to carry out the purposes" of the Act. Consistent with section 206's directive, the Commission believes that in contract market major disciplinary committee proceedings which involve the treatment of non-members by members, fairness requires that the accused contract market member not be judged exclusively by persons who might have close, daily contact with the accused member.

Based upon the NFA's comments, the Commission has determined to not require registered futures association major disciplinary committees to have a

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[20] As part of this rulemaking, the Commission also has amended Commission § 1.63(a)(2)'s definition of "disciplinary committee" under final § 1.64(a)(2). Accordingly, a § 1.63(a)(2) "disciplinary committee" would include any person or panel authorized by an SRO to "conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions and to hear appeals thereof."

[21] Proposed § 1.64(b)(4) has been renumbered as § 1.64(c)(4).

[22] Proposed § 1.64(b)(5) has been renumbered as § 1.64(c)(1).

[23] By referring to conduct which "directly results in financial harm" to a non-member, § 1.64(c)(1)(ii) includes particularized behavior which results in financial harm to specific non-members and excludes acts which might have had a general effect on the market as a whole.

non-member representative when considering cases involving either manipulation or financial harm to non-members of the association. In the first instance, manipulation cases would be outside the disciplinary jurisdiction of registered future associations. Such associations, however, do consider disciplinary cases involving members causing financial harm to non-members. Nonetheless, for a number of reasons, the Commission does not believe it necessary to have a non-member presence on major disciplinary committees hearing such cases. First, NFA, the only current registered futures association, has a widespread membership across the country. Accordingly, it likely will be the case that NFA members serving on major disciplinary committees will not have had close, daily contact with an NFA member who is the subject of a disciplinary hearing. By comparison, contract market members customarily have closer professional relationships with one another.

Second, virtually every NFA disciplinary matter involves financial harm to non-members. The Commission believes that requiring NFA to have a non-member on its major disciplinary committees nearly every time that they convene would be extremely burdensome to the NFA. By comparison, contract market major disciplinary committees generally hear a wider variety of cases including many which pertain to member conduct not involving financial harm to a non-member. Accordingly, the Commission has decided to limit the non-member representative requirement for registered futures association major disciplinary committees to those disciplinary cases where the accused is either a member of the association's governing board or major disciplinary committee.

The Commission also seeks to clarify two points with respect to final § 1.64(c)(1). First, the non-member requirement applies whenever a major disciplinary committee convenes for any of the enumerated types of cases.

Second, NYMEX has indicated to the Commission that there are circumstances in which major disciplinary committees have to act in an expedited fashion because time is of the essence. For instance, some contract markets, such as NYMEX, have major disciplinary committees which respond to serious infractions by imposing sanctions at the same time or on the same day as the infractions. In these circumstances, it may be difficult for an SRO to secure a qualified non-member representative to participate on its major disciplinary committee. In such instances, the Commission will allow SRO major disciplinary committees to proceed without a non-member representative.

If an SRO major disciplinary committee so convenes without a required non-member representative, the SRO must document its efforts to include a non-member and its reasons for proceeding without one. The Commission stresses that this exception is limited to instances where SRO major disciplinary committees must immediately address violative behavior due to possible market ramifications, and not simply because it is an SRO's practice. The Commission will carefully monitor the SROs to ensure that this exception is not used to circumvent the purpose of § 1.64(c)(1). This exception only applies to § 1.64(c)(1)'s non-member representative requirement for SRO major disciplinary committees and not to the diversity or differing membership interest requirements applicable to such committees under § 1.64(c) (2) through (4). The Commission believes that those other requirements can be met with SRO members, who should be more accessible on short notice than non-SRO members.

8. Major Disciplinary Committee Representatives of Differing Membership Interests

a. *Proposed regulation.* In response to section 5a(15)(B), as it was amended by section 206 of the 1992 Act, the Commission proposed a § 1.64(b)(6) mandating that each SRO establish rules requiring that more than fifty percent of each major disciplinary committee be made up of persons representing a membership interest other than that of the person who was the subject of the disciplinary proceeding.

The premise of proposed Commission § 1.64(b)(6) was that persons who work in close proximity to one another may not be, or may not appear to be, objective in adjudicating disciplinary proceedings involving their colleagues. By requiring that half of each major disciplinary committee consist of persons who have a different membership interest than the accused, proposed § 1.64(b)(6) was intended to prevent the possibility of preferential treatment in disciplinary proceedings.

b. *Comments received.* NFA made two comments pertinent to proposed § 1.64(b)(6). First, NFA pointed out that section 206 requires only that NFA disciplinary panels include "qualified persons representing segments of the association membership other than that of the subject of the proceeding" without any fifty percent criteria. Second, NFA urged that APs not be considered an individual membership interest category. NFA indicated that because nearly all of their business conduct committee ("BCC") members are APs, it would be difficult to secure non-APs to hear BCC cases involving APs. NFA suggested that for the purposes of defining NFA's different membership interests, APs be classified according to the membership interest of their sponsoring member.

In addition, the CME and CSC both requested that the Commission clarify various aspects of the membership interest definition related to proposed § 1.64(b)(6).

c. *Section 1.64(c) (2) and (3).* The Commission has revised proposed Regulation 1.64(b)(6) and divided it into two final regulations—§ 1.64(c)(2) addressing contract markets and § 1.64(c)(3) addressing registered futures associations.

Under § 1.64(c)(2), more than half of the members of each contract market major disciplinary committee must be drawn from membership interest groups other than the membership interest of the subject of the proceeding. Based upon § 1.64(a)(4)'s definition of membership interest, if the subject of a proceeding is a floor broker, fifty percent of the major disciplinary committee members considering the case must consist of persons who are not floor brokers.

For the purposes of § 1.64(c)(2), a contract market may alternatively choose to define membership interests according to the different pits or commodities traded at the SRO. So, for example, a contract market with five trading pits could decide to group its members according to the trading pit that each member primarily trades in. In such a case, if a major disciplinary committee at the SRO heard an appropriate case involving a member who primarily traded in pit one, under § 1.64(c)(2), at least fifty percent of the committee would have to consist of persons who were not members who primarily traded in pit one. With respect to the formulation of such alternative definitions of membership interests, the Commission reminds each contract market to adhere to the basic premises of § 1.64(c)(2) that at least fifty percent of each major disciplinary committee consist of persons who do not have relations with the accused member which might affect their objectivity.

In accordance with NFA's suggestions, § 1.64(c)(3) has been revised to require that each registered futures association major disciplinary committee include some persons

VOL 58 ISS 132 JL 13 1993 UMI

representing membership interest groups other than that of the proceeding's subject. For these purposes, NFA's membership interest groups are FCMs, IBs, CPOs and CTAs, with APs being deemed to belong to the membership interest group of its sponsoring member. The Commission believes that this approach is reasonable in that it is customary to expect that an AP's self-interests will be more closely aligned with those of its type of NFA member sponsor than with those of the general class of APs.

Accordingly, final Commission § 1.64(c) conforms to Section 206's intent that each major SRO disciplinary committee include persons with different self-interests than the accused in order to encourage objectivity and discourage preferential treatment in disciplinary proceedings.

9. Governing Board Composition Reporting Requirement

a. *Section 1.64(d).* The Commission did not propose any reporting requirement with respect to the composition of SRO governing boards in its proposed Commission § 1.64. The Commission has determined, however, that such a requirement will facilitate the Commission's ability to oversee and enforce each SRO's compliance with § 1.64(b)'s governing board composition requirements. Accordingly, final § 1.64(d) requires that each SRO submit to the Commission, within thirty days after each governing board election, a list of the board's members, the membership interests they represent and a demonstration of how the board's composition is consistent with § 1.64(b) and the SRO's own implementing standards and procedures. Each SRO's submission should particularly describe the qualifications of each non-member representative to its governing board.[24]

In addition to the reporting requirement, the Commission reminds each SRO that it has a continuing obligation under section 5a(8) of the Act and Commission § 1.51, or section 17(q) of the Act in the case of NFA, to take whatever steps may be necessary to ensure that its governing board is in compliance with § 1.64(b) and any SRO standards and procedures which implement § 1.64(b).

[24] Contract markets have been providing similar governing board information to the Division of Trading and Markets ("Division") since 1991 pursuant to an informal agreement between the Division and the members of the Joint Compliance Committee.

B. Customer Notification of Disciplinary Actions

1. *Proposed regulation.* In its rulemaking, the Commission proposed a § 1.64(c) which required that whenever a contract market took final disciplinary action against a member for trading violations resulting in financial harm to a customer, the contract market must provide written notice of the action to the FCM that cleared the transaction.[25] In addition, § 1.64(c) proposed to require that a clearing FCM provide the same written notice to the customer involved, or, in a case where two or more FCMs have cleared and carried the transaction, each FCM involved provide written notice to the FCM with which it dealt until notice was provided to the ultimate customer. The written notice describing the disciplinary action was to include the principal facts of the case along with the same type of information required in Regulation 9.11 notices.

2. *Comments received.* The commenters suggested that certain substantive refinements be made to the proposed customer notification provision. The CBT and COMEX commented that the requirement of section 206 of the 1992 Act and proposed § 1.65 that a customer notice include "the principal facts of the case involved" conflicted with section 8c(1)(B) of the Act, which prohibits contract markets from disclosing disciplinary matters to third parties. Accordingly, they suggested that the provision should only require the same information which would be provided in a § 9.11 notice.

The CSC commented that it would be unfair and prejudicial to notify a member's customer of a disciplinary action involving that member while appeal proceedings were still pending before either the contract market or the Commission. Finally, NYMEX suggested that the provision be amended to provide that any action based upon a settlement agreement without an adjudication of the truth of the allegations should not require customer notice.

3. *Section 1.67.*[26] Final § 1.67 continues to require that upon any disciplinary action involving a member causing financial harm to a non-member, the contract market must provide notice thereof to the clearing FCM involved and each FCM in the clearing and carrying chain must continue to pass on such notice until it reaches the ultimate customer. For purposes of this provision, the ultimate customer can be either an ordinary individual customer or a CPO or foreign broker who maintains an account at the FCM. Although entities such as CPOs and foreign brokers will not be required by § 1.67 to provide notice to their customers, they may have an independent obligation to provide such notice.

The notice required by § 1.67 must include the principal facts of the case as well as an indication that the contract market found that the violative behavior caused financial harm to the customer. The Commission has determined that the contents of a proper § 9.11 notice should be sufficiently informative to ensure that a public customer who receives such a notice will be able to exercise effectively their rights with respect to the treatment of their orders by contract market members.[27]

The Commission also has revised § 1.67's definition of "final disciplinary action" so that contract markets will not be required to issue a notice of customer financial harm until the member involved has exhausted his or her appeal rights at the contract market. With this approach, members will be able to fully defend their cases before the contract market, while still assuring prompt notice to injured customers.[28]

[25] For these purposes, proposed § 1.64(a)(5) defined "final disciplinary action" to mean any contract market final decision as that term is defined by contract market rules implementing the requirements of Commission § 8.20 and 8.28. Accordingly, a "final disciplinary action" under proposed Commission § 1.64 included all disciplinary committee decisions, regardless of whether such a decision was on appeal at the contract market, and all settlement agreements.

[26] Based upon an organizational recommendation from the CSC, the Commission has determined that it is more appropriate for the customer notification requirement to be contained in its own § 1.67, separate from the composition requirements of § 1.64. While the composition and customer notification requirements are both derived from section 206 of the 1992 Act, the Commission believes that addressing both subject matters in a single regulation could be confusing to regulatees and the public.

[27] Commission § 9.11(b) requires that notices of exchange disciplinary actions include:

(1) The name of the person against whom the disciplinary action or access denial action was taken;

(2) A statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(4) The terms of the disciplinary action or access denial action; [and,]

(5) The date on which the action was taken and the date the exchange intends to make the disciplinary or access denial action effective . . .

[28] Section 1.67's definition of final disciplinary action is substantially identical to the definition for

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With respect to NYMEX's suggestion regarding notice upon settlement agreements, the Commission points out that section 206 of the 1992 Act requires a contract market to issue a notice whenever the "contract market takes final disciplinary action against a member" for violative behavior which causes financial harm to a customer. The provision does not create any exception for settlement agreements or for any particular type of settlement agreement (*i.e.*, ones that do or do not adjudicate the truth of the allegations involved.) Accordingly, Regulation 1.67's notice requirement is triggered by each of these types of SRO actions.[29]

A customer who is notified of an abuse of his order by a contract market member, of which he might otherwise have been ignorant, will be better able to evaluate his business relationship with the member or to initiate legal action. Additionally, Regulation 1.67's notice requirement should generate closer scrutiny of exchange activities by market users.

C. Prohibition of Oversight Panel Service

1. *Proposed regulation amendments.* In compliance with section 206 of the 1992 Act, the Commission proposed amendments to existing § 1.63 which would disqualify persons with certain disciplinary histories from serving on any SRO oversight panel and which would require each SRO to implement rules in this regard.[30] Under the proposed amendments, a person who was found to have committed a disciplinary offense, would be barred from oversight panel service for a period of three years from the date of such finding or for the length of any criminal sentence, SRO expulsion or suspension, Commission registration suspension, or failure to pay a disciplinary fine, resulting from the finding, whichever was longer.[31]

The proposed amendments to § 1.63(a) would define an SRO oversight panel to mean any body of persons having the authority to "review, recommend or establish policies or procedures with respect to the self-regulatory duties of the [SRO], including, but not limited to, compliance activities and disciplinary policies."

As directed by section 206 of the 1992 Act, the Commission also proposed to amend § 1.63(d) to require that each SRO establish, maintain and make available to the general public a notice of all those rules of the SRO which if violated would constitute a "disciplinary offense" under § 1.63. The requirement was intended to enable any person who had been found to have committed a rule violation by an SRO to determine whether that violation was in fact a "disciplinary offense" for the purposes of § 1.63 and whether he or she would be disqualified from SRO committee service for a prescribed period.

2. *Comments received.* Several commenters criticized the proposed definition of oversight panel as being too broad. CME, CSC, NYCE and NYMEX each suggested alternative definitions which generally focused on bodies which oversee an SRO's surveillance, compliance, rule enforcement and disciplinary procedures.

3. *Amended regulation 1.63.* In accordance with the commenters' suggestions, the Commission has amended § 1.63(a)(4) to define "oversight panels" as panels which oversee an SRO's policies or procedures with respect to its surveillance, compliance, rule enforcement or disciplinary responsibilities.[32] Section 1.63's service prohibition applies to each committee which exercises any of the enumerated oversight duties, even if such duties are only part of the committee's responsibilities. Accordingly, SRO committees, such as executive committees which have a wide range of duties in addition to oversight duties, will still be considered an "oversight panel" for purposes of Commission § 1.63.

The Commission also is revising § 1.63(d) to require that each SRO submit its listing of disciplinary offenses to the Commission at the beginning of each calendar year to the extent necessary to reflect any revisions to the list over the previous year. This requirement would assist the Commission in monitoring each SRO's compliance with § 1.63.[33]

D. Submission of Rules Complying With Regulations 1.63 and 1.64

1. *Amended § 1.41(d).* The Commission has amended its § 1.41(d) to make clear that contract market rules which address § 1.63 and 1.64's requirements for SRO boards and committees are not exempt from the filing requirement of section 5a(a)(12)(A) of the Act and Commission § 1.41. Previously, 1.41(d) may have created a conflict with § 1.63 and 1.64 as § 1.41(d) exempted rules addressing the "organization and administrative procedures of a contract market's governing bodies" from the Commission's rule-filing requirements.

E. Additional Requirements of Section 206 of the 1992 Act

The Commission notes that various other requirements of section 206 of the 1992 Act are satisfied by Commission § 1.63, thus eliminating the need to establish any new Commission regulations. For instance, section 206 of the 1992 Act requires that SROs prohibit disciplinary committee service by persons with certain disciplinary records. As indicated above, Commission § 1.63 already prohibits service on SRO disciplinary committees, as well as on governing boards and arbitration panels, by persons who have committed certain enumerated disciplinary offenses.

III. Conclusion

The final § 1.64 and 1.67 and final amendments to §§ 1.41 and 1.63 implement the statutory directives of sections 5a, 8c and 17 of the Act, as they were amended by section 206 of the 1992 Act, with respect to composition of SRO governing boards and major disciplinary committees, restrictions on SRO oversight panel service and disciplinary action notices for customers.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract

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that term in Commission § 1.63. The term is used in § 1.63 to establish when a finding of a disciplinary offense will result in a bar to SRO committee service.

[29] It is unclear whether NYMEX believes that settlement agreements are not informative with respect to the behavior underlying the agreements. The Commission notes, however, that a contract market issuing a § 9.11(b) notice based upon a settlement agreement must include a statement as to the rule violations which the contract market has reason to believe were committed. Accordingly, this type of information should be of assistance to a customer who receives it pursuant to § 1.67's requirements.

[30] Commission § 1.63 already establishes disqualification standards for SRO disciplinary committees, arbitration panels and governing boards.

[31] Under Commission § 1.63, the disqualifying disciplinary offenses include, among other things, various SRO rule violations and any violation of the Act or the Commission's regulations.

[32] These responsibilities pertain to both the financial and trade practice requirements of an SRO.

[33] The CSC suggested in its comments that the Commission revise certain substantive provisions of current Commission Regulation 1.63. The Commission has determined to not revisit any other provisions of § 1.63 at this time.

markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982).

Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals effecting registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986). Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). The OMB approved the collection of information associated with this rule on June 14, 1993 and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response; 613.26
Number of respondents; 4,295
Frequency of response; on occasion

The burden associated with this specific final rule is as follows:

Average burden hours per response; 1.25
Number of respondents; 27
Frequency of response; annually

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Registered futures associations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b) the Commission hereby amends title 17, chapter I, part 1 of the Code of Federal Regulations by amending existing §§ 1.41 and 1.63 and by adopting new §§ 1.64 and 1.67 as follows:

PART 1— GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 USC 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41 is amended by revising paragraph (d) heading and (d)(1) introductory text to read as follows:

§ 1.41 Contract market rules; submission of rules to the commission; exemption of certain rules.

* * * * *

(d) *Rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act.* (1) Except as otherwise provided by §§ 1.63 and 1.64, contract market rules that do not relate to terms and conditions are exempt from the requirements of section 5a(a)(12)(A) of the Act and this section where such rules address:

* * * * *

3. Section 1.63 is amended by redesignating paragraph (a)(6) as (a)(7); by redesignating paragraph (a)(4) as (a)(6); by adding a new paragraph (a)(4); and by revising paragraphs (a)(2), (a)(5), newly redesignated paragraph (a)(6), (b) introductory text, and (c) through (f) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(2) *Disciplinary committee* means any person or panel authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

* * * * *

(4) *Oversight panel* means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

(5) *Final decision* means:

(i) a decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Disciplinary offense* means:

(i) any violation of the rules of a self-regulatory organization except those rules related to

(A) decorum or attire,

(B) financial requirements, or

(C) reporting or recordkeeping unless resulting in fines aggregating more than $5,000 within any calendar year;

(ii) any rule violation described in subparagraphs (a)(6)(i) (A) through (C) of this regulation which involves fraud, deceit or conversion or results in a suspension or expulsion;

(iii) any violation of the Act or the regulations promulgated thereunder; or,

(iv) any failure to exercise supervisory responsibility with respect to acts described in paragraphs (a)(6) (i) through (iii) of this section when such failure is itself a violation of either the rules of a self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any federal or state agency, or other governmental body.

(7) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels or governing board who:

* * * * *

(c) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b) (1) through (6) of this section.

(d) Each self-regulatory organization shall submit to the Commission a

VOL 58 ISS 132 JL 13 1993 UMI

schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6) (i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, post the schedule in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels, oversight panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either Section 17(h)(1) of the Act or Commission regulation 9.11.

4. Section 1.64 is added to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means "self-regulatory organization" as defined in § 1.3(ee), not including a "clearing organization" as defined in § 1.3(d).

(2) *Major disciplinary committee* means a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those which:

(i) are related to:

(A) decorum or attire,

(B) financial requirements, or

(C) reporting or recordkeeping; and,

(ii) do not involve fraud, deceit or conversion.

(3) *Regular voting member of a governing board* means any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board.

(4) *Membership interest* (i) In the case of a contract market, each of the following will be considered a different membership interest:

(A) Floor brokers,

(B) Floor traders,

(C) Futures commission merchants,

(D) Producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) Participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) Other market users or participants; except that with respect to paragraph (c)(2) of this section, a contract market may define membership interests according to the different pits or principal groups of commodities traded on the contract market.

(ii) In the case of a registered futures association, each of the following will be considered a different membership interest:

(A) Futures commission merchants,

(B) Introducing brokers,

(C) Commodity pool operators,

(D) Commodity trading advisors; and,

(E) Associated persons, except that under paragraph (c)(3) of this section an associated person will be deemed to represent the same membership interest as its sponsor.

(b) Each self-regulatory organization must maintain in effect standards and procedures with respect to its governing board which have been submitted to the Commission pursuant to section 5(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That twenty percent or more of the regular voting members of the board are persons who:

(i) Are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations; and,

(ii) (A) Are not members of the self-regulatory organization,

(B) Are not currently salaried employees of the self-regulatory organization,

(C) Are not primarily performing services for the self-regulatory organization in a capacity other than as a member of the self-regulatory organization's governing board, or

(D) Are not officers, principals or employees of a firm which holds a membership at the self-regulatory organization either in its own name or through an employee on behalf of the firm;

(2) In the case of a contract market, that ten percent or more of the regular voting members of the governing board be comprised where applicable of persons representing farmers, producers, merchants or exporters of principal commodities underlying a commodity futures or commodity option traded on the contract market; and

(3) That the board's membership includes a diversity of membership interests. The self-regulatory organization must be able to demonstrate that the board membership fairly represents the diversity of interests at such self-regulatory organization and is otherwise consistent with this regulation's composition requirements;

(c) Each self-regulatory organization must maintain in effect rules with respect to its major disciplinary committees which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That at least one member of each major disciplinary committee or hearing panel thereof be a person who is not a member of the self-regulatory organization whenever such committee or panel is acting with respect to a disciplinary action in which:

(i) The subject of the action is a member of the self-regulatory organization's:

(A) Governing board, or

(B) Major disciplinary committee; or,

(ii) Any of the charged, alleged or adjudicated contract market rule violations involve:

(A) Manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract, or

(B) Conduct which directly results in financial harm to a non-member of the contract market;

(2) In the case of a contract market, that more than fifty percent of each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered;

(3) In the case of a registered futures association, that each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and,

(4) That each major disciplinary committee or hearing panel thereof include sufficient different membership

interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibilities.

(d) Each self-regulatory organization must submit to the Commission within thirty days after each governing board election a list of the governing board's members, the membership interests they represent and how the composition of the governing board otherwise meets the requirements of § 1.64(b) and the self-regulatory organization's implementing standards and procedures.

5. Section 1.67 is added to read as follows:

§ 1.67 Notification of final disciplinary action involving financial harm to a customer.

(a) *Definitions.* For purposes of this section:

(1) *Final disciplinary action* means any decision by or settlement with a contract market in a disciplinary matter which cannot be further appealed at the contract market, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(b) Upon any final disciplinary action in which a contract market finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(1)(i) the contract market shall promptly provide written notice of the disciplinary action to the futures commission merchant that cleared the transaction; and,

(ii) a futures commission merchant that receives a notice, under paragraph (b)(1)(i) of this section shall promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. If the customer is another futures commission merchant, such futures commission merchant shall promptly provide the notice to the customer.

(2) A written notice required by paragraph (b)(1) of this section must include the principal facts of the disciplinary action and a statement that the contract market has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer. For the purposes of this paragraph, a notice which includes the information listed in § 9.11(b) shall be deemed to include the principal facts of the disciplinary action thereof.

Issued in Washington, DC on June 29, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-16525 Filed 7-12-93; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-32586; File No. S7-34-92]

RIN 3235-AF67

Early Warning Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending Rule 17a-11 under the Securities Exchange Act of 1934 (the "Exchange Act"). The amendments are designed to reduce certain reporting burdens on brokers and dealers by eliminating, among other things, the current requirement that a broker or dealer submit supplemental reports to the Commission and other regulatory bodies when its net capital declines below certain specified levels, or in other instances that indicate the existence of financial or operational difficulties.

EFFECTIVE DATE: The amendments shall become effective on August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Roger G. Coffin, (202) 272-7375, or Elizabeth K. King, (202) 272-3738, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a) of the Exchange Act provides the Commission with the authority to promulgate rules requiring registered broker-dealers to make and transmit reports that the Commission deems necessary in the public interest or for the protection of investors. Pursuant to this authority, the Commission adopted Rule 17a-11 (the "Rule") in 1971.[1] The Rule imposes a duty on broker-dealers to report net capital and other operational problems and to file reports regarding those problems within certain time periods. Although there have been minor revisions to the Rule since it was adopted, this is the first comprehensive examination of Rule 17a-11 in over 20 years. The Commission believes that the requirements to file FOCUS Reports may be eliminated without compromising the ability of the Commission or the Designated Examining Authorities ("DEAs") to monitor the condition of broker-dealers.

B. Proposal

On October 26, 1992, the Commission proposed for comment amendments to Rule 17a-11[2] that, in part, would relieve broker-dealers of the obligation to furnish the Commission with Part II or Part IIA of Form X-17A-5 ("FOCUS Report")[3] when their net capital declines below certain levels. During the public comment period, the Commission authorized the Division to issue a no-action letter permitting the DEAs to waive the requirement to file a FOCUS Report as currently required by paragraphs (a) and (b) of Rule 17a-11. In response to its proposal to amend Rule 17a-11, the Commission received two comment letters, one from the National Association of Securities Dealers, Inc. (the "NASD"), and one from the Chicago Mercantile Exchange (the "CME"), both of which supported the proposed amendments. The Commission is adopting the proposed amendments in substantially the form as proposed.

II. Rule Amendments

A. Paragraph (a)

Currently, paragraph (a) of Rule 17a-11 requires every broker-dealer whose net capital falls below its required minimum level, or whose total outstanding principal amounts of satisfactory subordination agreements exceed allowable levels for more than 90 days, to do two things. First, the broker-dealer must give notice of the event on that same day. Second, the broker-dealer must file a FOCUS Report within 24 hours of the notice.

The Commission is eliminating the requirement that broker-dealers file a FOCUS Report within 24 hours after notifying the Commission of a net capital deficiency. Broker-dealers will

[1] Securities Exchange Act Release No. 9268 (July 30, 1971), 36 FR 14725 (Aug. 11, 1971).

[2] Securities Exchange Act Release No. 31355 (Oct. 26, 1992), 57 FR 49156 (Oct. 30, 1992).

[3] FOCUS Reports contain schedules including the broker-dealer's: net capital; assets and liabilities; and income and expenses. Generally, Part IIA is filed by broker-dealers that do not clear or carry customer accounts, and those broker-dealers that are subject to the requirements of paragraphs (a)(2) and (a)(3) of Rule 15c3-1. Part II is filed by all other broker-dealers engaged in a general securities business and subject to paragraph (a)(1) of Rule 15c3-1.

remain obligated to transmit notice of a net capital deficiency on the same day of the occurrence. Unlike the previous rule, however, the amendments require the notice to specify the broker-dealer's net capital requirement and its current amount of net capital.[4] The amendments also require a broker-dealer who has been notified by the Commission or its DEA of a net capital deficiency to give notice of the deficiency, even if the broker-dealer disagrees with the Commission's or the DEA's determination. In such a case, the amendments permit the broker-dealer to specify the reasons for its disagreement in the notice.

The same-day notice requirement gives the Commission and the DEAs adequate early warning of financial or operational problems. After receiving notice of a capital deficiency, the Commission or a DEA will be able to increase its surveillance of a broker-dealer experiencing difficulty and to obtain any additional information necessary to assess the broker-dealer's financial condition.

The amendments also eliminate the notification requirement for broker-dealers whose total outstanding principal amounts of satisfactory subordination agreements exceed the maximum allowable for a period in excess of 90 days. A broker-dealer is currently required, pursuant to paragraph (c)(2) of Rule 15c3–1d, to give notice to its DEA if, after giving effect to all subordinated loans that are mature or which are scheduled to mature within six months, its net capital declines below the identical levels contained in paragraph (a) of Rule 17a–11. The Commission believes that the notice provided for in Rule 15c3–1d is sufficient to give regulators an early warning of problems involving a broker-dealer's subordinated loan agreements.

B. Paragraph (b)

Paragraph (b) of Rule 17a–11 currently requires every broker-dealer whose net capital does not equal or exceed a certain level to file a monthly FOCUS Report for at least three months. The capital level contained in paragraph (b) is higher than the minimum level referred to in paragraph (a), and is referred to as an "early warning level."[5] When a broker-dealer's net capital level is declining, it would first trigger the filing requirements set forth in paragraph (b) of the Rule. If the broker-dealer's net capital continues to drop, and it falls below the broker-dealer's base minimum capital requirement, the broker-dealer would be required to comply with the additional FOCUS Report filing and notice requirements of paragraph (a) of the Rule.

The amendments to paragraph (b) of the Rule eliminate the requirement that a broker-dealer file a FOCUS Report within 15 days after the end of each month for three successive months. In lieu of this requirement, the amendments require brokers-dealers to give notice promptly (but within 24 hours) after the event triggering the filing requirement. The Commission expects that this notice requirement will be sufficient to alert the Commission and the broker-dealer's DEA that a broker-dealer may be experiencing financial or operational difficulty. Thereafter, the Commission or the DEA may require any additional information that it deems necessary to monitor the condition of the broker-dealer.

In their comment letters, both the NASD and the CME supported the proposed elimination of the reporting requirements. The NASD and the CME agreed that prompt notice by a broker-dealer experiencing financial or operational difficulties will provide its DEA with sufficient early warning to monitor the broker-dealer's condition.

C. Paragraph (b)(4)

The Commission is amending certain other paragraphs of Rule 17a–11. For example, there are references in paragraph (b)(4) of Rule 17a–11 to three existing notice provisions set forth in the net capital rule requiring broker-dealers subject to those provisions to give notice in accordance thereto. However, paragraph (b)(4) of Rule 17a–11 does not reference all of the applicable net capital[6] or customer protection rule[7] notice provisions (such as the requirement to give notice of large withdrawals of capital under paragraph (e) of Rule 15c3–1), and the Commission believes it would be appropriate for the Rule to do so. Accordingly, the Commission is amending Rule 17a–11 to refer to five previously existing notice provisions contained in the net capital rule, the customer protection rule, and Rule 17a–5.

These amendments do not add any additional reporting burdens because they simply reference certain notice sections for clarification purposes and do not, by themselves, create an obligation to report. Additionally, the net capital rule, the customer protection rule and Rule 17a–5 will remain unchanged (with the exception of minor technical revisions to Rule 17a–5 and Rule 15c3–1d discussed below). Rather, the Rule will be clarified to contain a complete, rather than a partial, listing of the Commission's financial responsibility notice requirements.

D. Paragraph (c)

Under current paragraph (c) of Rule 17a–11, every broker-dealer is required to give notice immediately if it fails to make and keep current its required books and records. In order to clarify the time within which notice must be transmitted under paragraph (c) of the Rule, the amendments require notice to be provided the same day of the event.

E. Paragraph (f)

Paragraph (f) of the Rule (which will be redesignated as paragraph (g)) requires broker-dealers to give notice by telegraph and to transmit reports to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and the broker-dealer's DEA. The amendments specify that notice required by the Rule may be given or transmitted by means of either a facsimile transmission or telegraph. The amendments also state that the report required by paragraph (c) or paragraph (d) of Rule 17a–11 may be transmitted by overnight delivery.

F. Other Amendments

The Commission is adopting amendments that reorganize the Rule 17a–11's structure and make certain technical revisions. For example, references in the current Rule to "his" will be changed to "its" in order to eliminate any gender-specific language.

In addition, because the amendments will redesignate the notice requirement currently contained in paragraph (f) of Rule 17a–11 to paragraph (g), certain sections of Rule 17a–5 that refer to paragraph (f) require technical modification. Accordingly, the Commission is adopting revisions to

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[4] Many of the notices received by the Commission already contain this information. The Commission believes it would be appropriate, however, to specify the contents of the notice in the Rule to standardize the notices received.

[5] There are three early warning levels. First, a broker-dealer that has elected to compute its net capital under the basic method must give notice if its aggregate indebtedness, as defined in Rule 15c3–1, exceeds 1,200 percent of its net capital. Second, a broker-dealer that computes its net capital under the alternative standard is required to give notice if its net capital falls below 5 percent of its aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers under Rule 15c3–3. Third, a broker-dealer that computes its net capital under either standard is required to give notice if its total net capital declines below 120 percent of its minimum requirement. If a broker-dealer falls out of net capital compliance, it must comply with both paragraphs (a) and (b) of Rule 17a–11.

[6] Rule 15c3–1 (17 CFR 240.15c3–1).

[7] 17 CFR 240.15c3–3.

certain sections of Rule 17a–5 that would change the references to paragraph (f) of Rule 17a–11 to paragraph (g).

Finally, paragraph (c)(5)(i) of Rule 15c3–1d permits a broker-dealer to obtain temporary subordinated loans in certain circumstances in order to participate in activities such as securities underwritings. Currently, Rule 15c3–1d prohibits a broker-dealer from entering into a temporary subordinated loan during any period in which the broker-dealer is subject to "any of the reporting provisions" of Rule 17a–11.[8] This provision was intended to cover the period in which a broker-dealer was required to file FOCUS reports under Rule 17a–11, which requirement is being eliminated by the Commission.

In order to retain the net capital rule's prohibition against a broker-dealer obtaining a temporary subordinated loan during a period of financial or operational difficulty, the Commission is making a technical amendment to paragraph (c)(5)(i) of Rule 15c3–1d. Based on a recommendation by the NASD, paragraph (c)(5)(i) is being amended to prohibit a broker-dealer from obtaining a temporary subordinated loan if it has given notice under Rule 17a–11 within the preceding thirty calendar days. This amendment will enable the DEAs to prevent a broker-dealer from obtaining temporary subordinated loans during periods in which the broker-dealer may be experiencing financial or operational difficulties.

III. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 concerning the final rule amendments. The FRFA states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the FRFA may be obtained by contacting Elizabeth K. King, Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549, (202) 272–3881.

IV. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly section 15 thereof, 15 U.S.C. 78o, the Commission is amending §§ 240.17a–11, 240.17a–5, and 15c3–1d of Title 17 of the Code of Federal Regulations in the manner set forth below.

[8] 17 CFR 240.15c3–1d(c)(5)(i).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. § 240.15c3–1d is amended by revising the second sentence of the introductory text of paragraph (c)(5)(i) to read as follows:

§ 240.15c3–1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(c) * * *

(5) * * *

(i) * * * This temporary relief shall not apply to a broker or dealer if, within the preceding thirty calendar days, it has given notice pursuant to § 240.17a–11, or if immediately prior to entering into such subordination agreement, either:

* * * * *

2. § 240.17a–5 is amended by revising paragraph (c)(2)(iii) and revising the first three sentences of paragraph (h)(2) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(2) * * *

(iii) If in connection with the most recent annual audit report pursuant to § 240.17a–5, the independent accountant commented on any material inadequacies in accordance with paragraphs (g) and (h) of this section, and § 240.17a–11(e), there shall be a statement by the broker or dealer that a copy of such report and comments is currently available for the customer's inspection at the principal office of the Commission in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business; and

* * * * *

(h) * * *

(2) If, during the course of the audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or as otherwise defined in paragraph (g)(3) of this section, then the independent public accountant shall call it to the attention of the chief financial officer of the broker or dealer, who shall have a responsibility to inform the Commission and the designated examining authority by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a–11 (e) and (g). The broker or dealer shall also furnish the accountant with a copy of said notice to the Commission by telegram or facsimile within said 24 hour period. If the accountant fails to receive such notice from the broker or dealer within said 24 hour period, or if the accountant disagrees with the statements contained in the notice of the broker or dealer, the accountant shall have a responsibility to inform the Commission and the designated examining authority by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a–11(g). * * *

* * * * *

4. By revising § 240.17a–11 to read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

(a) This section shall apply to every broker or dealer registered with the Commission pursuant to section 15 of the Act.

(b) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1 shall give notice of such deficiency that same day in accordance with paragraph (g) of this section. The notice shall specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3–1 and the broker or dealer has not given notice of the capital deficiency under this § 240.17a–11, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3–1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2) or

VOL 58 ISS 132 JL 13 1993 UMI

(c)(3) of this section in accordance with paragraph (g) of this section:

(1) If a computation made by a broker or dealer subject to the aggregate indebtedness standard of § 240.15c3–1 shows that its aggregate indebtedness is in excess of 1,200 percent of its net capital; or

(2) If a computation made by a broker or dealer, which has elected the alternative standard of § 240.15c3–1, shows that its net capital is less than 5 percent of aggregate debit items computed in accordance with § 240.15c3–3a Exhibit A: Formula for Determination Reserve Requirement of Brokers and Dealers under § 240.15c3–3; or

(3) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that its total net capital is less than 120 percent of the broker or dealer's required minimum net capital.

(d) Every broker or dealer who fails to make and keep current the books and records required by § 240.17a–3, shall give notice of this fact that same day in accordance with paragraph (g) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer shall also transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) Whenever any broker or dealer discovers, or is notified by an independent public accountant, pursuant to § 240.17a–5(h)(2) of the existence of any material inadequacy as defined in § 240.17a–5(g), the broker or dealer shall:

(1) Give notice, in accordance with paragraph (g) of this section, of the material inadequacy within 24 hours of such discovery or notification; and

(2) Transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(f) Every national securities exchange or national securities association that learns that a member broker or dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of this section.

(g) Every notice or report required to be given or transmitted by this section shall be given or transmitted to the principal office of the Commission in Washington, D.C., the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, "notice" shall be given or transmitted by telegraphic notice or facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

(h) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3–1(a)(6)(iv)(B), § 240.15c3–1(a)(6)(v), § 240.15c3–1(a)(7)(iv), § 240.15c3–1(c)(2)(x)(B)(*1*), § 240.15c3–1(c)(2)(x)(F)(*3*), § 240.15c3–1(e), § 240.15c3–1d(c)(2), § 240.15c3–3(i) and § 240.17a–5(h)(2).

Dated: July 7, 1993.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16480 Filed 7–12–93; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FL–044–5614; FRL–4655–3]

40 CFR Part 52

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the Florida State Implementation Plan (SIP) to include the VOC Capture Efficiency Test Procedures rule to the Florida Administrative Code, Chapter 17–2. These revisions were submitted to EPA on January 15, 1992, in response to the May 1988 SIP call for areas in Florida which were not achieving the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the section 182(a)(2)(A) of the Clean Air Act requirement for States to correct their Reasonably Available Control Technology (RACT) rules. The revisions approved today correct the remaining deficiencies identified by EPA in Florida's VOC SIP, including all the submittals required under section 182(a)(2)(A) of the Act. Details regarding each revision being approved are discussed in the Supplementary Information section of this document.

EFFECTIVE DATE: This action will be effective September 13, 1993 unless notice is received by August 12, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Attn: Jerry Kurtzweg, ANR 443, 401 M Street, SW., Washington DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron of the EPA Region IV, Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Florida that areas of the State had failed to attain the NAAQS for ozone. Since the EPA approved attainment date of December 31, 1987, had passed, the Florida SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Florida respond to the SIP call in two phases. The Phase I response was due approximately one year following issuance of the SIP call. A Phase II response would have been due at a date specified following issuance of final EPA policy program requirements for ozone and CO non-attainment areas. However, the requirements and schedule for the Phase II SIP call are now provided in the Clean Air Act as amended in 1990. On June 15, 1989, August 24, 1990, and October 24, 1991, the Florida Environmental Regulation Commission approved the revisions to the Florida VOC regulations. The Florida Department of Environmental Regulation submitted these revisions of the Florida VOC regulation to EPA on August 16, 1989, August 27, 1990, and January 15, 1992. Florida requested that the revisions be adopted as part of the federally approved SIP. EPA approved the revisions submitted on August 16, 1989, and August 27, 1990, in an October 17, 1991, **Federal Register** notice (see 56 FR 51982). With this SIP revision the State of Florida has fulfilled

the phase II of the VOC regulations deficiencies stated above. EPA is therefore deleting 40 CFR 52.531 in its entirety. EPA is today approving the following revisions:

I. In Section 17–2.100, Definitions: "Building Enclosure," "Capture," "Capture Efficiency," "Control Device," "Control System," "Destruction or Removal Efficiency," "Gas/Gas Method," "Hood," "Liquid/Gas Method," "Overall Emission Reduction Efficiency," "Permanent Total Enclosure," "Removal Efficiency," "Temporary Total Enclosure," which define terms used in capture efficiency testing. Revised definitions are "Capture System," "Carbon Absorption System," and "Volatile Organic Compound (VOC)," all of which are consistent with current Agency policy.

II. Section 17–2.650, VOC RACT Rule, Emission limiting standards for surface coating operations has been amended to require compliance calculations for sources complying on a basis other than low solvent technology to be measured in units of pounds VOC/gallon of solids as applied.

III. Section 17–2.700 (6)(c) 7, Stationary Point Source Emission Test Procedures, adoption of the April 16, 1990, EPA established capture efficiency testing methods for sources of VOC.

This SIP revision is being approved because it meets the requirements set forth in the Clean Air Act as amended in 1990 and complies with the April 16, 1990, EPA's technical guidance memorandum dated Guidelines For Developing A State Protocol For The Measurement Of Capture Efficiency (CE).

Based on the instructions from the 1992 United States executive administration, Federal regulations are being reviewed to minimize their cost to industry. In response to this executive instruction EPA's Office of Air Quality Planning and Standards (OAQPS) is currently undertaking a study to develop and review possible alternatives to the recommended gas-gas and liquid-gas method which specifies a temporary total enclosure (TTE) to measure CE. The results will provide a comparative evaluation of the cost effective alternatives to measure CE with the TTE method. On April 6, 1992, EPA Region IV notified affected States that the requirement to adopt CE methods would be postponed until completion of the study. However, any CE test method proposed by the State can be approved if it complies with current CE test method regulations. On April 6, 1992, FDER requested that this CE test method be approved into the SIP.

Final Action

EPA is today approving the revisions to the Florida Volatile Organic Compound air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In the amended Act, Congress codified the requirement that States with areas classified as marginal or above revise their SIPs for these classified ozone nonattainment areas so that the SIPs conform with EPA's preamendment guidance.[1]

Section 182(a)(2)(A) established a deadline of May 15, 1991, for submittal of these RACT "fix-ups", the CE test method was one of those RACT "fix-ups." However, based on the March 20, 1992, memorandum from the Director of OAQPS, this deadline has been extended for the CE test method to all States which have not submitted the CE test method regulations until the results of the current CE test method measurement cost comparison study have been determined.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this **Federal Register** notice. However, if notice is received within 60 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1993. Filing a petition for reconsideration by the Administrator of the final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone,

[1] Among other things, the preamendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cut points, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

VOL 58 ISS 132 JL 13 1993 UMI

Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan (SIP) for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 13, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(76) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(76) The Florida Department of Environmental Regulation submitted revisions to chapter 17–2 of the Florida Administrative Code which were submitted on January 14, 1992. These revisions incorporate Capture Efficiency Test Procedures for Volatile Organic Compound sources into the Florida Administrative Code.

(i) Incorporation by reference.

(A) Florida Administrative Code (FAC) 17–2.100 (32), (37), (38), (39), (40), (60), (61), (68), (95), (101), (117), (155), (163), (180), (218), (237), effective December 31, 1991.

(B) FAC 17–2.650(1)(f) Introductory paragraph, 1., 2., 3., 4., 5., 6., 7., 12., 14., 15., and 16., effective December 31, 1991.

(C) FAC 17–2.700(6)(c)7, effective December 31, 1991.

(D) FAC 17–2.700(7), effective December 31, 1991.

(ii) Other material—NONE.

3. Section 52.531 is removed.

[FR Doc. 93–16363 Filed 7–12–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–3068; I.D. 070793A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 7, 1993, through 12 noon, A.l.t., October 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 62 is 4,420 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 third quarterly allowance of pollock TAC in Statistical Area 62 will soon be reached. The Regional Director established a directed fishing allowance of 3,920 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62, effective from 12 noon A.l.t., July 7, 1993, through 12 noon, A.l.t., October 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16473 Filed 7–7–93; 3:09 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 930487–3161; I.D. 040593A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; revision to Final 1993 Initial Specifications of Groundfish.

SUMMARY: NMFS announces the approval of Amendment 28 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management area (BSAI), which establishes three new management districts in the Aleutian Islands subarea (AI), amends the Final 1993 Initial Specifications of Groundfish and Prohibited Species Catch Allowances for the BSAI (1993 Specifications), and implements amendments to clarify existing regulations. These actions are necessary for conservation and management of the BSAI groundfish fisheries. They are intended to further the goals and objectives contained in the FMP.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: The final rule was analyzed as part of the environmental assessment/regulatory impact review (EA/RIR) prepared for Amendment 28. Individual copies of Amendment 28 and the EA/RIR may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fisheries Management Biologist, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed by the Secretary of Commerce (Secretary) in accordance with the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. fishery at

50 CFR part 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Amendment 28 to the FMP was approved by the Secretary on June 24, 1993, under section 304(b) of the Magnuson Act. This amendment establishes three new management districts in the AI for the purpose of apportioning total allowable catch (TAC) of groundfish, thereby improving TAC management, dispersing fishing effort, and minimizing the potential for undesirable effects of concentrated fishing effort. A notice of availability was published in the **Federal Register** on April 12, 1993 (58 FR 19087), and invited comments on the amendment through June 7, 1993. No written comments were received.

A proposed rule was published in the **Federal Register** on April 23, 1993 (58 FR 21695), that would (1) establish statistical reporting areas corresponding to the three new AI districts under authority provided by Amendment 28 to the FMP, (2) amend the 1993 Specifications (58 FR 8703, February 17, 1993), and (3) clarify existing regulations. The preamble to the proposed rule provides background information and presents a full description of, and the need and justification for, each proposed action. This rule contains a collection-of-information requirement under the Paperwork Reduction Act already authorized under OMB 0648–0213, and has only minor effects on check-in reporting for at-sea processor vessel operators who elect to operate in the new districts. Public comment on the proposed rule was invited through June 4, 1993. One letter supporting the proposed action was received during the comment period and is responded to below in the "Response to Comments" section. Upon reviewing the reasons for, and the comments on, this action, NMFS has determined that this rule is necessary for conservation and management and has approved it. The final rule implements the following three management measures.

1. Establishment of the Eastern, Central, and Western Districts of the Aleutian Islands Subarea

The final rule establishes three statistical reporting areas within the AI that coincide with the new FMP districts: the Eastern, Central, and Western Aleutian Districts. The boundary between the Eastern and Central Districts is at 177°W. longitude, and between the Central and Western Districts is at 177°E. longitude. These districts are described in definitions at § 675.2.

2. Revision of Final 1993 Initial Specifications for Atka Mackerel

Under the authority of regulations implementing Amendment 28, the 1993 Specifications for Atka mackerel (Table 1, Amended) are amended to facilitate a potential increase in the amount of Atka mackerel TAC available for harvest during 1993. The 1993 acceptable biological catch (ABC) and TAC for Atka mackerel previously specified for the BSAI at 58 FR 8703 is divided among the new AI districts and the Bering Sea subarea (BS) in accordance with the distribution of Atka mackerel from the 1991 stock assessment survey. Any TAC increase for a district or districts, anticipated to be recommended by the Council during 1993, may be accomplished inseason by apportioning amounts from the non-specific operational reserve to Atka mackerel under regulations at § 675.20(a)(3).

Table 1, Amended. Final 1993 Acceptable Biological Catch (ABC), Total Allowable Catch (TAC), Initial TAC (ITAC), and ITAC Apportionments of Groundfish in the Bering Sea and Aleutian Islands Area (1) (2).

Species	ABC	TAC	Initial TAC (ITAC)=DAP (3)(4)
• • • • •	•	•	
Atka mackerel:			
Eastern AI District/BS	12,881	3,520	2,992
Central AI District	52,695	14,400	12,240
Western AI District	51,524	14,080	11,968
• • • • •	•	•	

3. Technical Amendments to Existing Regulations

The final rule deletes Statistical area 540, adds Statistical areas 541, 542, and 543 to implement the three new AI management districts established under this rule, and adds references to the new districts as appropriate. Other amendments are incorporated to clarify or correct existing regulations: (1) To conform with the current format used by the Office of the Federal Register; (2) to clarify that the Bogoslof District is a district within the BS subarea; (3) to remove an obsolete map of the BSAI and correct figure references accordingly; and (4) to facilitate future additions of districts numbered between 500 and 539.

Specific Changes From the Proposed Rule in the Final Rule

This rule divides the 1993 ABC and TAC specified for Atka mackerel into three separate apportionments for the Eastern Aleutian District and the BS, Central Aleutian District, and Western Aleutian District, according to the distribution of Atka mackerel biomass in those areas found in the 1991 stock assessment survey. The proposed rule at 58 FR 21695 based the amounts of Atka mackerel for distribution to the Eastern AI/BS, Central AI, and Western AI Districts on: 10.8 percent; 44.7 percent; and 44.5 percent, respectively. For clarity and ease of calculation, this final rule revises Table 1 to reflect amounts of Atka mackerel ABC and TAC in the new districts based on the percent of biomass distribution rounded to the nearest whole number: 11 percent; 45 percent; and 44 percent, respectively.

Response to Comments

One letter of comment was received during the comment period. This comment is summarized and responded to below:

Comment 1: Division of the AI subarea is necessary to improve management, disperse fishing effort, and minimize the potential for undesirable effects of concentrated fishing effort. Industry will benefit from a potential TAC increase for Atka mackerel because it will provide an alternative fishery to other overcapitalized, highly competitive fisheries.

Response: NMFS concurs and approves this rule.

VOL 58 ISS 132 JL 13 1993 UMI

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 28 is necessary for the conservation and management of groundfish fisheries in the BSAI and that it is consistent with the Magnuson Act and other applicable laws.

NMFS prepared an EA for Amendment 28 and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A coy of the EA may be obtained (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the EA/RIR prepared by NMFS. A copy of the EA/RIR may be obtained (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. This determination is based on the EA/RIR prepared by NMFS. This rule creates new management districts, a management tool the Council may subsequently use to geographically apportion TACs, but would not directly alter apportionments of groundfish, or change participation in groundfish fisheries. Additional discussion is contained in the EA/RIR, a copy of which may be obtained (see **ADDRESSES**).

This rule contains a collection-of-information already authorized by OMB 0648–0213 requirement for purposes of the Paperwork Reduction Act.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The State agency did not comment within the statutory time period, and, therefore, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Informal consultations pursuant to section 7 of the Endangered Species Act (ESA) were concluded for Amendment 28 by NMFS for the Steller sea lion, Snake River spring/summer and fall chinook salmon, and Snake River sockeye salmon, and by the U.S. Fish and Wildlife Service for the short-tailed albatross, spectacled eider, and other seabirds which are proposed or candidates for listing under the ESA. Referenced consultations were concluded for Amendment 28 as follows: for the Steller sea lion on March 30, 1993; for listed species of salmon on June 7, 1993; and for seabirds on April 14, 1993. The informal consultations concluded that adoption of this rule will not affect endangered, threatened, proposed or candidate species or their habitat under jurisdiction of NMFS or the U.S. Fish and Wildlife Service, in a manner or to an extent not already considered in prior consultations. Therefore, further consultation under section 7 of the ESA is not required.

The Regional Director has determined that fishing activities conducted under this rule will have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 7, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 657—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.2, the definitions of "Bycatch limitation zone 1", "Bycatch limitation zone 2", and "Bycatch limitation zone 2H" are amended by removing the words "Figure 5" and adding in their place the words "Figure 2" and adding in their place the words "Figure 1"; the definition of "Length overall" is amended by removing the words "Figure 1" and adding in their place the words "Figure 2"; in the definition of "Pelagic trawl" paragraph (1) is amended by removing the words "Figure 4" and adding in their place the words "Figure 3"; in the definition of "Pelagic trawl" paragraph (2) is amended by removing the words "Figure 5" and adding in their place the words "Figure 4"; the definitions of "Bering Sea and Aleutian Islands management area", and "Fishery" are revised; and the definition of "Statistical Area" is amended by redesignating paragraphs (a) through (l) as paragraphs (1) through (12), revising the introductory text and newly designated paragraph (12), and adding paragraphs (13) and (14) to read as follows:

§ 675.2 Definitions

* * * * *

Bering Sea and Aleutian Islands management area means the exclusive economic zone (EEZ) in the Bering Sea, and that portion of the EEZ in the North Pacific Ocean that is adjacent to the Aleutian Islands and west of 170°00′ W. longitude.

(1) The Bering Sea subarea means that portion of the Bering Sea and Aleutian Islands management area exclusive of the Aleutian Islands subarea.

(i) The Bogoslof District of the Bering Sea subarea means Statistical area 518 as defined in this section.

(ii) [Reserved]

(2) The Aleutian Islands subarea means that portion of the Bering Sea and Aleutian Islands management area south of 55° N. latitude and west of 170° W. longitude.

(i) The Eastern Aleutian District means Statistical area 541 as defined in this section.

(ii) The Central Aleutian District means Statistical area 542 as defined in this section.

(iii) The Western Aleutian District means Statistical area 543 as defined in this section.

* * * * *

Fishery, for the purposes of this part, means all fishing for groundfish that is conducted in the Bering Sea and Aleutian Islands management area and adjacent territorial waters.

* * * * *

Statistical area means any one of the 14 geographical units of the Bering Sea and Aleutian Islands management area defined as follows (Figure 1):

* * * * *

(12) Statistical area 541 south of 55° N. latitude and between 170°00′ W. longitude and 177°00′ W. longitude.

(13) Statistical area 542—south of 55° N. latitude and between 177°00′ W. longitude and 177°00′ E. longitude.

(14) Statistical area 543—south of 55° N. latitude and west of 177°00′ E. longitude.

* * * * *

3. In § 675.20, paragraph (j)(1) is amended by revising the first sentence, and paragraph (j)(4) is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(j) * * *

(1) For purposes of this paragraph (j), only one primary product per fish, other

than roe, may be used to calculate the round-weight equivalent. * * *

* * * * *

(4) *Fishing trip.* For purposes of this paragraph (j), a vessel is engaged in a fishing trip when commencing or resuming the harvesting, receiving, or processing of pollock until the transfer or offloading of any pollock or pollock product or until the vessel leaves the subarea or district where fishing activity commenced, whichever comes first.

* * * * *

4. In § 675.24, the section heading is revised, the introductory text of the section is removed, and paragraphs (c)(1)(i), (c)(1)(ii), (d)(1), (d)(2), and the introductory text of paragraph (f)(1) are revised to read as follows:

§ 675.24 Gear limitations.

* * * * *

(c) * * *

(1) * * *

(i) In the Bering Sea subarea, hook-and-line and pot gear may be used to take up to 50 percent of each TAC for sablefish; trawl gear may be used to take up to 50 percent of each TAC for sablefish.

(ii) In the Aleutian Islands subarea, hook-and-line and pot gear may be used to take up to 75 percent of each TAC for sablefish; trawl gear may be used to take up to 25 percent of each TAC for sablefish.

* * * * *

(d) * * * (1) When the Regional Director determines that the share of each sablefish TAC assigned to any type of gear for any year and any subarea or district under paragraph (c) of this section may be taken before the end of that year, NMFS, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by publication in the **Federal Register**, prohibit directed fishing for sablefish by persons using that type of gear in that subarea or district for the remainder of the year.

(2) When the Regional Director determines that the share of each sablefish TAC assigned to any type of gear for any year and any subarea or district under paragraph (c) of this section is or will be reached, NMFS will, by publication in the **Federal Register**, require that sablefish be treated as a prohibited species by persons using that type of gear in that subarea or district for the remainder of that year.

* * * * *

(f) * * *

(1) Bering Sea subarea.

* * * * *

§§ 675.2, 675.20, and 675.27 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 675 remove the work "subarea" and add, in its place, the words "subarea or district" in the following places:

a. Section 675.2, in the definition of "Community Development Quota Reserve (CDQ reserve)";

b. Section 675.20(a)(2)(ii), (a)(2)(iii), (a)(3)(ii) [2 times], (a)(3)(iii), and (a)(8) [3 times]; and

c. Section 675.27(b)(1)(ii) and (c)(1).

§ 675.22 [Amended]

6. In § 675.22, paragraph (a) is amended by removing the words "figure 1" and adding in their place the words "figure 1".

7. Figure 1 of the part is removed; Figures 2 through 5 of the part are redesignated Figures 1 through 4 of the part; and newly designated Figure 1 is revised to read as follows:

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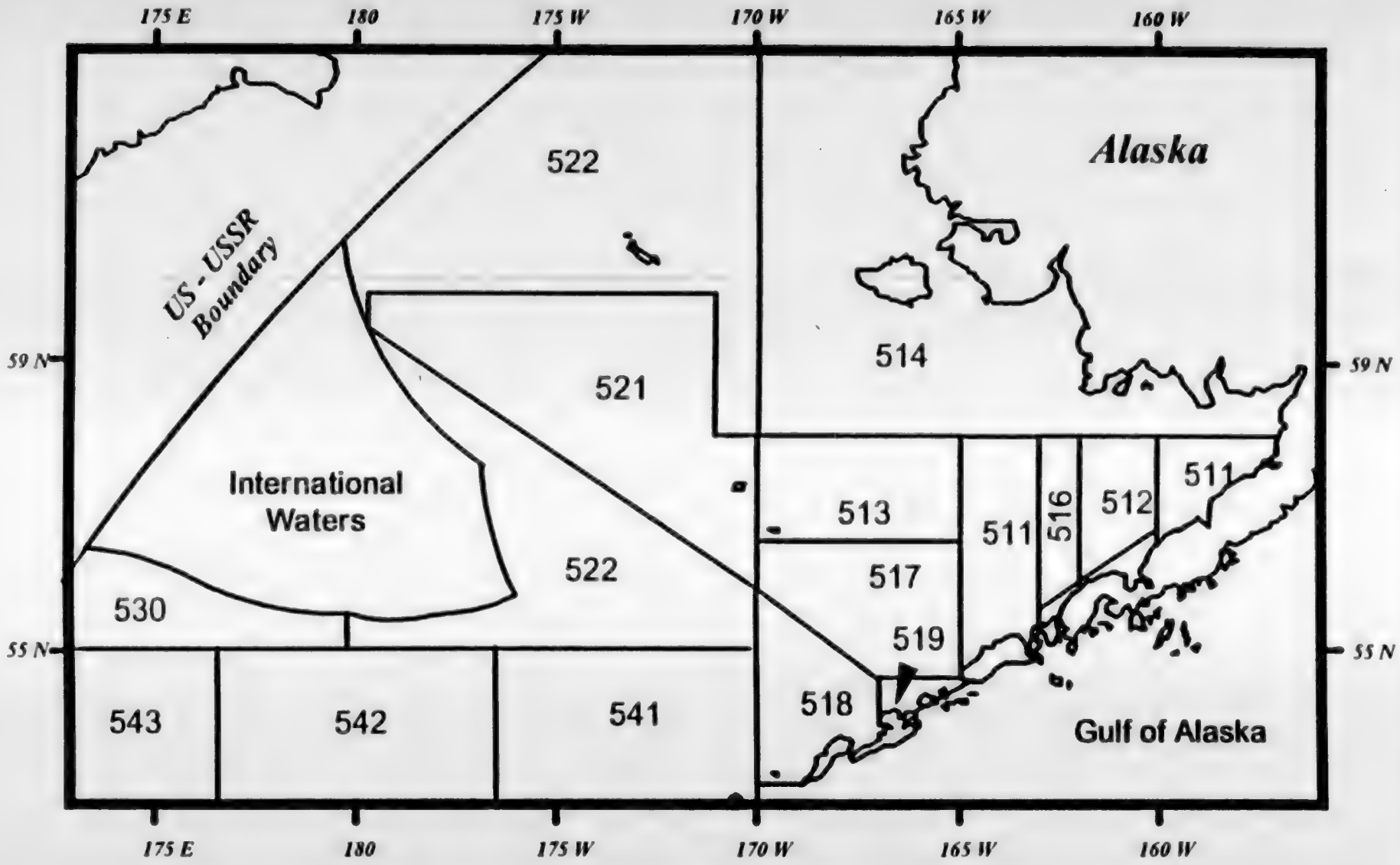

Figure 1. Reporting areas and bycatch limitation zones in the Bering Sea and Aleutian Islands Management Area.

Zone 1 = 511+512+516;
Zone 2 = 513+517+521; and
Zone 2H = 517.

[FR Doc. 93-16523 Filed 7-12-93; 8:45 am]
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Proposed Rules

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93-022-1]

Brucellosis Ring Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to brucellosis ring tests in Class Free States or areas. Currently, Class Free States or areas must conduct brucellosis ring tests at least four times per year at approximately 90-day intervals and ensure that every commercial dairy herd is included in at least three of the four tests. We are proposing to require instead that Class Free States or areas conduct as many brucellosis ring tests per year as are necessary to ensure that every commercial dairy herd is tested at least twice per year at approximately 6-month intervals. We believe that the current requirement is no longer necessary to ensure adequate brucellosis surveillance in Class Free States or areas, and that the proposed amendment would reduce testing requirements without increasing the risk of the interstate spread of brucellosis.

DATES: Consideration will be given only to comments received on or before August 12, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-022-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4918.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is an infectious disease of animals and humans; in its principal animal hosts, it is characterized by abortion and impaired fertility. Federal and State animal health officials are working cooperatively to eradicate brucellosis from domestic livestock and bison. To help prevent the spread of the disease, the regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine.

The regulations set forth terms used to classify States or areas according to levels of the eradication process. Under the regulations, States or areas can be classified as Class Free (meaning there are no cattle herds under quarantine for brucellosis and there is no known uncontrolled foci of brucellosis in any other species of domestic livestock), Class A, Class B, or Class C. Section 78.1 outlines the procedures States or areas must follow to attain and maintain each level.

The regulations currently require, among other things, that all States or areas that are Class Free conduct brucellosis ring tests (BRT) at least four times per year at approximately 90-day intervals. The BRT is a diagnostic test conducted on composite milk or cream samples from dairy herds. The samples are collected from milk receiving stations, dairy processing plants, or individual dairy farms.

For several reasons, including the fact that many small dairy herds are not in production year-round, the States cannot always ensure that all commercial herds are included in each of the four quarterly tests. In many cases, by the time animal health officials become aware that a particular herd was not included in the most recent BRT, the next test is about to take place. Because we recognize the difficulties involved in this process and because it would be impractical to require the States or areas to conduct an individual BRT on a missed herd when the next test is about to occur, the regulations do not require the States or areas to include all commercial dairy herds in each of the quarterly tests. However, the Class Free States or areas must ensure that every herd that produces milk for sale is included in at least three tests per year. The States or areas may conduct more BRT's per year if necessary to ensure that this occurs.

Because the BRT is a highly sensitive test that detects an animal's immune response to brucellosis, it produces positive readings for cattle that are infected with brucellosis as well as cattle that have been vaccinated against the disease. As a result, animal health officials in Class Free States or areas with large numbers of commercial dairy herds must spend a significant amount of time and resources investigating "false positives."

For this reason, the United States Animal Health Association has petitioned the Department to reduce the minimum annual BRT requirement for Class Free States or areas to two, conducted at 6-month intervals. Upon review of this request, we agree that two tests per year, conducted at approximately 6-month intervals, of every commercial dairy herd in a Class Free State or area would allow an acceptable level of disease surveillance to be maintained. With only 12 U.S. dairy herds known to be infected with brucellosis as of March 1993, we believe the degree of risk of reinfection in dairy herds in Class Free States or areas to be minimal at this time. Moreover, we believe any infection that might occur could be adequately detected and controlled in the proposed 6-month timeframes.

Therefore, we are proposing to amend 9 CFR part 78 to remove the requirements for Class Free States or areas to conduct BRT's at least four times per year at approximately 90-day intervals and ensure that every commercial dairy herd is included in at least three of the four tests. Instead, we are proposing to require Class Free States or areas to conduct as many BRT's per year as are necessary to ensure that every commercial dairy herd is tested at least twice per year at approximately 6-month intervals. It is feasible that some Class Free States or areas would need to conduct only two

Zone 2H = 517.
[FR Doc. 93-16523 Filed 7-12-93; 8:45 am]
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BRT's per year. We believe this change would ease the burden on State animal health officials of investigating false positive BRT results without negatively affecting the continued progress of Federal and State brucellosis eradication efforts.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Only State and Federal animal health agencies would be affected by this proposed rule; it would have no effect on the private sector. Animal health officials would need to collect and test milk samples at least twice per year instead of at least four times per year. These agencies do not charge for collecting and testing the samples.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78, Subpart A, would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, in the definition of *Class Free State or area*, paragraph (a)(1) would be revised to read as follows:

§ 78.1 Definitions.

* * * * *

(a) *Surveillance*—(1) *Brucellosis ring test.* The State or area shall conduct as many brucellosis ring tests per year as are necessary to ensure that all herds producing milk for sale are tested at least twice per year at approximately 6-month intervals.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16540 Filed 7–12–93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 85

[Docket No. 92–170–1]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the pseudorabies regulations by adding the Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official tests for pseudorabies. The PCFIA test is an effective diagnostic test that can be conducted in less time than other diagnostic tests currently allowed. Adding the PCFIA test to the list of official tests for pseudorabies will help prevent the spread of the disease by making available an additional means by which animal health personnel may obtain timely and accurate diagnoses of pseudorabies.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–170–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The regulations in 9 CFR part 85 (referred to below as "the regulations") govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

Official pseudorabies tests are used under certain circumstances to determine the pseudorabies status of swine. The regulations require that certain swine test negative to an official pseudorabies test before they may be moved interstate.

The Particle Concentration Fluorescence Immunoassay (PCFIA) test is an automated serologic test that has been used since 1988 to test for brucellosis in cattle and bison. Testing conducted by Animal and Plant Health Inspection Service (APHIS) personnel at the National Veterinary Services Laboratories (NVSL) in Ames, IA, has shown that the PCFIA test is an effective test for pseudorabies in swine and affords a high degree of sensitivity, specificity, and reproducibility. Additionally, the PCFIA test can be conducted in less time than other official diagnostic tests for pseudorabies. The effectiveness and speed of the PCFIA test would make the test a valuable tool in the effort to reduce the spread of pseudorabies in the United States. Therefore, we are proposing to amend the regulations by adding the PCFIA test to the list of official pseudorabies tests.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order

12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action would provide for the use of an additional official test for determining whether an animal is infected with pseudorabies. The testing requirements for pseudorabies would not change. Moreover, the use of the PCFIA test would not affect the market price for swine. Although the date of sale may change as a result of the faster testing, the economic effect on swine producers would not be significant.

According to information gathered by APHIS, animal health authorities in nine States have expressed interest in using the PCFIA test to test for pseudorabies in swine. Of those nine States, six already own PCFIA equipment, which they currently use in brucellosis testing. The PCFIA test for pseudorabies can be run on either a fully automated Screen Machine, which has a list price of $62,000, or a semi-automated FCA Machine, which has a list price of $27,000; used and reconditioned machines may be obtained at lower cost, according to the manager of the Livestock Business Unit at IDEXX Laboratories, Westbrook, ME (January 1993).

Of the five currently approved official pseudorabies tests, the one most often used is the enzyme-linked immunosorbent assay (ELISA) test. A HerdChek® ELISA screening kit for pseudorabies contains 480 tests and costs $187.20, or $0.39 per test. In comparison, a PCFIA pseudorabies screening kit contains 4,800 tests and costs $1,776, or $0.37 per test. When the per-test savings is added to anticipated savings in time and personnel costs, we estimate that the PCFIA could cost as much as $0.07 less per test than the ELISA test. If the $0.07 per-test savings were applied to the 1.19 million pseudorabies tests run during Fiscal Year (FY) 1992 in the nine States interested in using the PCFIA, those States would realize a total savings of $83,000 for the year. Some States require swine producers, nearly all of which are considered to be small entities, to pay a share of test costs. In the nine States that have expressed an interest in using the PCFIA, the savings to swine producers would work out to approximately $25,000 for the tests run in FY 1992.

Because of the small dollar savings that could be expected, and because its use would be optional, we anticipate that adding the PCFIA test to the list of official pseudorabies tests would have only a negligible economic impact on State animal health agencies and affected swine producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 would be amended as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 85.1, the definition of "Official pseudorabies test" would be amended by removing the words "tests and 5. Latex Agglutination Test (LAT)" and replacing them with the words "tests; 5. Latex Agglutination Test (LAT); and 6. Particle Concentration Fluorescence Immunoassay (PCFIA) Test".

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-16541 Filed 7-12-93; 8:45 am]

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9 CFR Part 91

[Docket No. 93-016-1]

Ports Designated for the Exportation of Animals; Kentucky and New Jersey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Inspection and Handling of Livestock for Exportation regulations by designating Standiford Field Airport in Louisville, KY, as a port of embarkation. Newton Paddocks (already listed in the regulations) would serve as the export inspection facility for that port. We are also proposing to designate Woodstown, NJ, as a port of embarkation and Deep Hollow Farm as an export inspection facility for that port. These two ports and Deep Hollow Farm appear to meet the requirements of the regulations for designation as ports of embarkation and an animal export inspection facility, respectively. These actions would add two ports and an inspection facility through which horses may be processed for export.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-016-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning the Kentucky port, contact Dr. Michael David, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room

761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7511.

For information concerning the New Jersey port, contact Dr. Najam Faizi, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported to Canada or Mexico, must be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

Newton Paddocks, Barn No. 8, Newton Pike, Lexington, KY 40511, (606) 253–3456, meets the requirements of § 91.14(c) and is listed in the regulations as an export inspection facility for horses for the Greater Cincinnati Airport. Standiford Field Airport in Louisville, KY, is more convenient for some horse exporters than the Greater Cincinnati Airport, and is at approximately an equal distance from Newton Paddocks as the Greater Cincinnati Airport. Newton Paddocks is large enough to service both ports. Therefore, we propose to add Standiford Field Airport to the regulations as a port of embarkation, to be serviced by Newton Paddocks export facility.

Deep Hollow Farm, RD 2, P.O. Box 360, Haines Neck Road, Woodstown, NJ 08098, (609) 769–0993, appears to meet the requirements of § 91.14(c), with respect to horses, for designation as an export inspection facility. This facility is accessible to exporters who wish to use the ocean port in Woodstown to export horses. Therefore, we also propose to add the ocean port at Woodstown, NJ, to the regulations as a port of embarkation and Deep Hollow Farm as an export inspection facility, for horses only, for that port.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We believe that adding the Standiford Field Airport in Louisville, KY, and the ocean port at Woodstown, NJ, as ports of embarkation for horses would have little or no economic impact on horse exporters, the majority of which are small businesses, because it would not significantly change the cost of doing business.

Currently, the State of Kentucky is serviced by the Greater Cincinnati Airport as a port of embarkation for horses. Our proposal to add the Standiford Field Airport as a designated port of embarkation would not increase the number of horses embarking from Kentucky. This action would simply facilitate the export of horses for some exporters in Kentucky for whom the Standiford Field Airport is more convenient than the Greater Cincinnati Airport.

There are no ports in New Jersey designated in the regulations as ports of embarkation for horses. Currently, horse exporters in New Jersey must go out of State to a port of embarkation, such as New York, NY, to export their horses. While these exporters may realize some savings in transportation costs if our proposal to add the ocean port at Woodstown, NJ, as a port of embarkation for horses is made final, the primary benefit would be the increased convenience of having a designated port of embarkation in their own State.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.14, paragraphs (a)(10) through (a)(17) would be redesignated as paragraphs (a)(11) through (a)(18), paragraph (a)(5)(i) would be revised, and a new paragraph (a)(10) would be added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(5) * * *

(i) Greater Cincinnati Airport, Covington; and Standiford Field Airport, Louisville—airport only.

* * * * *

(10) *New Jersey.*

(i) Woodstown—ocean port.

(A) Deep Hollow Farm (horses only), RD 2, P.O. Box 360, Haines Neck Road, Woodstown, NJ 08098, (609) 769–0993.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16542 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 95

[Docket No. 92–135–1]

Importation of Hoofs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal byproduct importation regulations to allow hoofs that have been disinfected in their country of origin to be imported into the United States without further processing. Currently, certain hoofs imported into the United States must be consigned from the port of first arrival to an approved establishment having facilities for their disinfection. We have determined, however, that hoofs that have been adequately disinfected in their country of origin may be imported into the United States without risk of introducing disease. This proposed change in the regulations would give importers of hoofs that require disinfection a choice between importing disinfected hoofs and importing unprocessed hoofs for disinfection in the United States.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–135–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 95 (referred to below as "the regulations") contain restrictions on the importation into the United States of certain animal byproducts and hay and straw in order to prevent the introduction of certain animal diseases. Among the regulated animal byproducts are animal hoofs, which, along with bones and horns, may be imported subject to the restrictions contained in §§ 95.11 and 95.12.

Hoofs that are clean, dry, and free from undried pieces of hide, flesh, and sinew may be imported as trophies or for consignment to museums without other restrictions under the provisions of § 95.11. Section 95.12 contains handling and treatment requirements for imported hoofs that do not meet the conditions or requirements of § 95.11.

Under the provisions of § 95.12, hoofs that are not imported as trophies or for consignment to museums must be consigned directly from the port of entry to an approved establishment that has facilities for their disinfection. The bags, burlap, or other containers in which the hoofs are transported must also be disinfected. While the hoofs are at the approved facility, they must be handled, under the direction of an Animal and Plant Health Inspection Service (APHIS) inspector, in a manner to guard against the dissemination of anthrax, foot-and-mouth disease, and rinderpest. With APHIS approval, the hoofs may be released from the establishment after disinfection.

Several methods of treatment are available for use by the establishments in which the hoofs are disinfected. These methods are shown in the table below. Although some establishments soak the hoofs in chemical solutions, hoofs are most often disinfected by exposure to high heat, either dry or wet.

Disinfection treatment	Time
Heating: 180 °F (82.2 °C)	30 minutes.
Soaking: Boiling water	20 minutes.
Soaking: 0.1% chlorine bleach solution.	2 hours.
Soaking: 5% acetic acid solution.	2 hours.
Soaking: 5% hydrogen peroxide solution.	2 hours.

Some U.S. importers of hoofs have expressed interest in importing hoofs that have been disinfected in their country of origin prior to being shipped to the United States. Such an option would give the importers a greater degree of flexibility, allowing them to choose between importing unprocessed hoofs that would require disinfection upon arrival in the United States or importing disinfected hoofs that could be imported without additional treatment. APHIS has determined that as long as the hoofs are adequately disinfected in their country of origin by one of the five approved methods listed above, they could be imported into the United States without increasing the risk of disease introduction. Therefore, we are proposing to amend the regulations to allow hoofs that have been disinfected in their country of origin, using one of the methods shown in the table above, to be imported into the United States without additional treatment.

We would require that the hoofs be accompanied by a certificate stating that they have been disinfected and describing the manner in which the disinfection was accomplished. The certificate would have to be issued by the national government of the country of origin and signed by an official veterinary inspector of that country. Upon their arrival in the United States, the hoofs would be examined by an APHIS inspector, who would confirm that the hoofs were clean, dry, and free from undried pieces of hide, flesh, and sinew.

This proposed rule, if adopted, would offer a choice of importation procedures, both of which would provide adequate safeguards to prevent the introduction of disease.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, certain hoofs imported into the United States must be consigned directly from the port of entry to an approved establishment that has facilities for their disinfection. This proposed rule would allow hoofs to be imported into the United States without further processing if the hoofs have been disinfected using an approved method

in their country of origin. We believe that adding this option would have little or no economic impact on U.S. importers of hoofs because it would not significantly decrease their cost of doing business. The primary impact on these importers would be the added convenience of having two importation options from which to choose.

The primary use of disinfected hoofs appears to be in the production of dog chews, but that industry is still in its infancy and is rather small in terms of production and numbers of producers. Based on information available to the Department, we estimate that there are currently fewer than 10 importers of hoofs and approximately 6 producers of dog chews made from hoofs. Using the Small Business Administration's size criteria of fewer than 100 employees, all of these businesses would be considered to be small entities.

We believe that a few of these businesses receive hoofs from both foreign and domestic sources. Because the industry is small and relatively new, however, there are no records available concerning the number of hoofs imported into the United States or the levels of dog chew production.

The facilities in which hoofs are disinfected handle a variety of items, with hoofs making up only a small percentage of the total volume of products processed. Therefore, we anticipate that allowing hoofs to be processed in their country of origin would have little, if any, adverse impact on domestic processors in terms of lost volume and revenue.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 95 would be amended as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 95 would continue to read as follows:

Authority: 21 U.S.C. 111; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 95.11 would be amended as follows:

a. The section heading would be revised as set forth below.

b. The undesignated text of the section would be designated as paragraph (a).

c. A new paragraph (b) would be added to read as set forth below.

As amended, § 95.11 would read as follows:

§ 95.11 Bones, horns, and hoofs for trophies or museums; disinfected hoofs.

(a) * * *

(b) Clean, dry hoofs may be imported without other restrictions if:

(1) The hoofs have been disinfected in the country of origin using one of the following methods:

(i) Dry heat at 180 °F (82.2 °C) for 30 minutes;

(ii) Soaking in boiling water for 20 minutes;

(iii) Soaking in a 0.1 percent chlorine bleach solution for 2 hours;

(iv) Soaking in a 5 percent acetic acid solution for 2 hours; or

(v) Soaking in a 5 percent hydrogen peroxide solution for 2 hours; and

(2) The hoofs are accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16539 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 113

[Docket No. 92–153–1]

Viruses, Serums, Toxins, and Analogous Products; Pasteurella Multocida Vaccine, Avian Isolate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the Standard Requirement for Pasteurella Multocida Vaccine, Avian Isolate. The effect of the proposed rule would be to revise the standard that a minimum of 16 of 20 vaccinated animals, rather than the current minimum of 14 of 20 vaccinated animals, must survive an exposure to live bacteria in order to demonstrate that the product protects against disease. All such vaccines licensed in recent years have met the proposed efficacy standard. This amendment is necessary to provide greater assurance that a licensed Pasteurella Multocida Vaccine, Avian Isolate, meets the efficacy standard that consumers have come to expect from this product.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–153–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT:

Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations contained in 9 CFR part 113, Standard Requirements are prescribed for the preparation of veterinary biological products. A Standard Requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product.

The Standard Requirement for Pasteurella Multocida Vaccine, Avian Isolate, in § 113.70, currently requires that a minimum of 14 of 20 vaccinates must survive exposure to live bacteria for a successful demonstration of efficacy.

Changes and Clarifications

This proposed rule would revise the Standard Requirement in § 113.70 to specify that a minimum of 16 of 20, rather than 14 of 20, vaccinated animals must survive a challenge with live bacteria for a successful demonstration of efficacy. All such vaccines licensed in recent years have met this proposed standard. The Agency has determined that failure to revise the efficacy standard could result in the licensure of vaccines that do not meet the level of efficacy that consumers of these veterinary biological products have come to expect.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if implemented, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed amendment should not have a significant economic impact on manufacturers since the proposed efficacy standard in one that has been readily achieved by all such vaccines licensed in recent years. The change from 14 of 20 to a minimum of 16 of 20 vaccinated animals surviving exposure to live organisms in order to demonstrate satisfactory protection against disease will help ensure that consumers receive a highly efficacious vaccine without adding undue cost to the manufacturer. The proposed efficacy standard assures that fewer animals will come down with disease with a vaccine that can still be produced at reasonable cost to the producer.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended to read as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.70, paragraph (b)(4), would be revised to read as follows:

§ 113.70 Pasteurella Multocida Vaccine, Avian Isolate.

* * * * *

(b) * * *

(4) Eight or more of the unvaccinated controls must die for the test to be valid. If at least 16 of 20 of the vaccinates do not survive the 14-day postchallenge period, the Master Seed is unsatisfactory at the selected bacterial count.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16543 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 347, 352, 360, 361, and 375

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Proposed Rulemaking

July 2, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its regulations of oil pipelines in order to implement the requirements of Title XVIII of the Energy Policy Act of 1992 (Act of 1992). The proposals would provide a simplified and generally applicable method for regulating oil pipeline rates by use of an index for setting rate ceilings for such rates. In certain circumstances, an oil pipeline would be permitted to charge market-based rates or establish rates using traditional cost of service.

The proposed rule would also revise certain procedural regulations as required by the Act of 1992, abolish the Oil Pipeline Board, and provide for the institution of alternate dispute resolution procedures for oil pipeline rate matters.

The Commission further proposes to change its existing regulations concerning the tariff filing requirements of oil pipelines.

DATES: Comments are due on or before August 12, 1993.

ADDRESSES: An original and 14 copies of written comments on this proposed rule must be filed in Docket No. RM93–11–000. All filings should refer to Docket No. RM93–11–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0696.

VOL 58 ISS 132 JL 13 1993 UMI

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Table of Contents

I. Introduction
II. Reporting Requirements
III. Background
A. Historical Background of Oil Pipeline Rate Regulation
B. Energy Policy Act of 1992—Specific Requirements
C. Energy Policy Act of 1992—Congressional Intent
D. One Rulemaking Rather Than Two
IV. Proposed Ratemaking Methodologies
A. Introduction
B. Indexing System
1. Purposes and Benefits
2. Choosing an Index
a. General Inflation Indices
b. Oil Pipeline Industry Indices
c. Conclusion
3. Procedures Related to the Indexing Methodology
a. Filing the Rates
b. Challenges to the Rates
C. Cost-of-Service Methodology
V. Procedures for Streamlining Commission Action on Rates
A. New Procedures
1. Identification of Information to Accompany a Tariff Filing
2. Availability to the Public of Staff Analysis of Tariff Filings
3. Standing of Parties to File Protests
4. Level of Specificity for Protests and Complaints
5. Guidelines for Commission Action on the Portion of the Tariff or Rate Filing Subject to Protest or Complaint
6. Opportunity for Pipeline to Respond to Protest or Complaint
7. Complaints Against "Grandfathered" Rates
8. Elimination of Staff-Initiated Investigations
B. Revisions to Existing Procedures
1. Tariff Filing Requirements
2. Revised Accounting Requirements
C. Alternative Dispute Resolution
1. Required Negotiation
2. Arbitration
a. Applicability to Commission Proceedings
b. Authorization
c. Arbitrator
d. Rules of Conduct
e. Arbitration Awards
f. Vacating an Award
VI. Environmental Analysis
VII. Regulatory Flexibility Act Certification
VIII. Comment Procedures
IX. Information Collection Requirements

I. Introduction

The Federal Energy Regulatory Commission ("Commission") proposes to revise its regulation of the rates of oil pipelines, pursuant to the Interstate Commerce Act (ICA), as amended,[1] to fulfill the requirements of Title XVIII, "Oil Pipeline Regulatory Reform," of the Energy Policy Act of 1992 (Act of 1992).[2]

On March 18, 1993, the Commission made available for public comment a proposal by its Staff which encompassed alternatives for regulation of oil pipeline rates in the future. This proposal emphasized three alternative ratemaking methodologies: indexing, market-based rates and cost-of-service ratemaking. Some 24 sets of comments were received on the Staff's proposal, and to the extent deemed necessary are referred to herein. Staff proposed that the Commission adopt as a primary means of regulating oil pipeline rates an indexing methodology based on the Producer Price Index for Finished goods, with a productivity incentive adjustment of minus one (−1) percent. Staff further proposed, as an alternative, a market-based approach if a pipeline could demonstrate, under a new streamlined approach to market delineation, that it lacked market power in markets to which it would apply such a methodology. Finally, Staff proposed that a pipeline be allowed to utilize a cost-of-service methodology as a means of establishing new just and reasonable rates in certain extraordinary cases, such as natural disasters which would require replacement of systems, where the pipeline could clearly show that the indexing methodology would not provide it the opportunity of earning a just and reasonable rate. Staff's other proposals were directed at the procedural reforms called for by the Act of 1992 and other reforms to existing regulations which were designed to "modernize" those regulations.

Based on the Staff proposal and the comments received thereon, the Commission proposes to use, as its primary means of regulating oil pipeline rates, an indexing scheme similar to that proposed by Staff. The Commission intends to establish thereby a "simplified and generally applicable"[3] oil pipeline ratemaking methodology consistent with its statutory mandates under the ICA and the Act of 1992. The Commission's proposal contains the following elements:

1. The Commission proposes to adopt an indexing methodology as its general approach to regulating the level of oil pipeline rates. Indexing is believed to meet the statutory criteria of simplicity and general applicability. The index would establish the maximum ceiling level for any given rate in a given year.

2. Under indexing, rate increase filings would be discretionary with the pipeline.

3. No cost-of-service or any other supporting information would be required to be filed with a rate increase that complied with the index.

4. A pipeline would not be precluded in an individual proceeding from demonstrating either (a) that the rate in question is to be charged in a market in which it lacks significant market power and therefore no price cap is required, or (b) that, due to extraordinary circumstances, application of the index methodology in a particular instance would not allow the pipeline to recoup its costs and therefore a cost-of-service methodology should be utilized.

5. The only challenges to rate change proposals of oil pipelines that the Commission proposes to entertain would be those made through clearly defined protest and complaint procedures which will require specific showings by protestors/complaints of why a particular rate methodology is inappropriate or why particular rate changes should not be allowed.

6. The Commission proposes to revise all rate filing requirements and procedural regulations to reflect these proposals; many of the procedural changes would become effective 30 days after publication of the final rule in the **Federal Register**, while others would take effect 365 days after issuance of a final rule in this proceeding as provided in the Act of 1992.

The Commission emphasizes that it is interested not only in the comments that it will receive on this proposal but also

[1] 49 App. U.S.C. 1 (1988).

[2] 42 U.S.C. 7172 note (1988). References to the Energy Policy Act are to this note, indicating the section number of the statute.

[3] *Id.*, Section 1801.

any proposals that interested parties may wish to put forth to achieve the purpose of establishing a ratemaking scheme that is "simplified and generally applicable," conform to the requirements that the rates of oil pipelines be just and reasonable under the ICA, and otherwise comport with the Act of 1992 and the ICA. In commenting on this proposal, parties are free to refer to comments previously filed, but are encouraged to file new or different comments on this proposal, to propose modifications to this proposal, or to propose other methods of pipeline ratemaking.

II. Reporting Requirements

The Commission estimates the public reporting burden for this collection of information under the proposed rule to average ten hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information will be collected under FERC–550, Oil Pipeline Rates: Tariff Filings. The current annual reporting burden associated with the FERC–500 information collection requirements is 6,500 hours based on an estimated 325 responses from approximately 150 respondents.

The proposed rule will reduce the existing reporting burden associated with FERC–550 by an estimated 1,150 hours annually—an average of ten hours per response based on an estimated 535 responses.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425); and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, DC 20503.

III. Background

A. Historical Background of Oil Pipeline Rate Regulation

Before describing the specifics of the Commission's proposal, it would be useful to review briefly the history of Federal regulation of oil pipelines.

In 1906 Congress passed the Hepburn Act,[4] which amended the ICA to include among the responsibilities of the Interstate Commerce Commission (ICC) the regulation of the rates and certain other activities of interstate oil pipelines. Specifically, oil pipelines were made common carriers,[5] were required to file for, and charge, rates that were just and reasonable and not unduly preferential,[6] and were required to file certain financial reports and follow certain accounting procedures.[7]

Many constraints commonly associated with utility-type regulation, such as review and approval of construction or acquisition, and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries.[8]

From enactment of the Hepburn Act until jurisdiction of oil pipelines was transferred from the ICC to the Commission in 1977, oil pipeline rates were fixed according to a cost-of-service methodology grounded upon use of a valuation rate base—a mixture of original and replacement costs.[9] Valuation ratemaking was heavily criticized in *Farmers Union I*, the first Federal judicial review of an oil pipeline rate case.

During the pendency of the appeal that culminated in *Farmers Union I*, Congress enacted the Department of Energy Organization Act of 1977,[10] which transferred Federal regulatory jurisdiction over oil pipelines from the ICC to the newly created Federal Energy Regulatory Commission. The Commission was required by this act to regulate oil pipelines under the provisions of the ICA as they existed on October 1, 1977. Thus, though the ICA was later revised and recodified,[11] the Commission continues by law to regulate oil pipelines under the ICA as it read at the time jurisdiction was transferred from the ICC to this Commission.

Because of this transfer of regulatory authority, the Commission requested and the court agreed in *Farmers Union I* to remand the rate case to the Commission. The Commission's decision on remand[12] was the first attempt to fashion a ratemaking methodology for oil pipelines that reconciled the modern day economic and competitive realities affecting oil pipelines with the regulatory directive contained in the governing statute. In Opinion No. 154, the Commission adopted a variation of the old ICC methodology, on the basis that the allowed rate levels would be so high they would rarely, if ever, be achieved in practice.[13] Opinion No. 154 was reversed and remanded by the DC Circuit in *Farmers Union II*.[14] The court found the Commission's opinion deficient in several respects, including the reasoning and factual documentation for its almost exclusive reliance on market forces to restrain rates. Summarizing the requirements of the ICA, the court stated:

> Most fundamentally, FERC's statutory mandate under the Interstate Commerce Act requires oil pipeline rates to be set within the "zone of reasonableness"; presumed market forces may not comprise the principal regulatory restraint. Departure from cost-based rates must be made, if at all, only when the non-cost factors are clearly identified and the substitute or supplemental ratemaking methods ensure that the resulting rate levels are justified by those factors.

Id., at p. 1530.

Following *Farmers Union II*, the Commission issued Opinion No. 154–B,[15] establishing a fairly traditional cost-of-service methodology for determining oil pipeline rates. This methodology used a trended original cost rate base, and a rate of return based upon the actual embedded debt cost and equity costs reflecting the pipeline's risks.

Cost-of-service proceedings for oil pipelines were long, complicated and costly and required considerable expenditure of participants' time and resources, including that of the Commission. For example, the *Williams* case took fourteen years to resolve. Even after the Commission's Opinion No. 154–B methodology was adopted, the

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[4] 34 Stat. 584 (1906).

[5] 49 App. U.S.C. 1 (1), (4), and (7).

[6] *Id.* at Sections 1(5), 2(1) and 6(1) and (3).

[7] *Id., at Sections 20(1), (2), (4) and (5).*

[8] See *Farmers Union Central Exchange* v. *FERC*, 584 F.2d 408, 413 (D. C. Cir., 1978), cert. denied 439 U.S. 995 (1978) ("Farmers Union I"). "* * * [We] may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business."

[9] The ICC also established generic rates of return for oil pipelines.

[10] 42 U.S.C. 7101.

[11] See Revised Interstate Commerce Act of 1978, 49 U.S.C. 1.

[12] Opinion No. 154, 21 FERC ¶ 61,260 (1982), *reh'g denied*, 22 FERC ¶ 61,086 (1983).

[13] See id., at p. 61,649: "Competition both actual and potential is a far more potent or price-constraining force in oil pipelining than it is in the other areas in which we work [fn. omitted]."

[14] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486 (D. C. Cir., 1984), *cert. denied*, 469 U.S. 1034 (1984).

[15] Williams Pipe Line Co., 31 FERC ¶ 61,377 (1985) (the *Williams* case).

VOL
58
ISS
132
JL
13
1993
UMI

next proceeding attempting to apply this methodology itself took four years to conclude.[16]

More recently, the Commission has authorized an experimental, market-based rate program for Buckeye Pipe Line Company.[17] This method uses rate caps to constrain rates in markets where the pipeline lacks significant market power. It uses a price change index, derived from rate changes in competitive markets, to limit rate increases in markets where the pipeline has significant market power. Under this approach, rate changes within the caps or within the price change index, as applicable, are allowed to take effect (after the statutory notice period) without investigation or suspension. Since *Buckeye*, the Commission has permitted pipelines the option of pursuing a market-based approach to ratemaking as an alternative to the cost-based methodology.

A critical predicate to the utilization of a market oriented rate regulation scheme is the ability to identify and measure the competitiveness of relevant markets. The first step in this process is to define the scope of the market. In *Buckeye*, the Commission held that markets would be delineated by product and geography, and determined that this would be done on a case-by-case basis.[18] To determine whether the pipeline exercises market power in a given market, the Commission stated that it would analyze a number of considerations, including market share, market concentration, excess capacity, transportation alternatives, and potential entry. The Commission rejected the notion that it should employ a single mechanism, such as the Herfindahl-Hirschman Index, to make a threshold determination of market power beyond which no further analysis would be undertaken. Finally, the Commission held that the pipeline carried the burden to demonstrate it lacked significant market power in each market in which it sought "light-handed" rate regulation.

Buckeye was also an experimental effort to see if the Commission's ratemaking methodology could be simplified. It was determined that the market-based approach was useful in those markets where the pipeline did not possess market power. However, using an analysis similar to that used in anti-trust cases to determine whether the pipeline possessed market power is itself a costly time and resource consuming effort. Moreover, the market-based methodology is not appropriated where the pipeline possesses market power.

B. Energy Policy Act of 1992—Specific Requirements

Section 1803 of the Act of 1992, deems certain existing rates to be just and reasonable within the meaning of section 1(5) of the ICA. These are rates that were in effect for the 365 day period ending on the date of enactment of the Act of 1992, or that were in effect on the 365th day preceding enactment, and which have not been subject to a protest, a compliant or an investigation during this 365-day period.[19]

Complaints under section 13 of the ICA may be filed against these "grandfathered" rates only under one of two circumstances: first, a substantial change has occurred, since enactment, in the economic circumstances or in the nature of the services which were the basis for the rate; or, second, the complainant was under a contractual bar against filing a compliant, and the bar was in effect prior to January 1, 1991 and on the date of enactment. Further, the complainant must file its complaint within 30 days of the expiration of the contractual bar.[20] These grandfathering provisions do not prohibit any "aggrieved person" from filing a complaint alleging that a pipeline tariff provision is unduly discriminatory or unduly preferential.[21]

Sections 1801 and 1802 of the Act of 1992 require the Commission to promulgate regulations establishing a "simplified and generally applicable ratemaking methodology * * * in accordance with section 1(5) of the Interstate Commerce Act" for oil pipelines, and streamlining Commission procedures relating to oil pipeline rates "in order to avoid unnecessary costs and delays." A final rule on ratemaking methodology must be issued not later than one year after the date of enactment, or by October 24, 1993 (and the rule may not take effect before the 365th day after its issuance). A final rule on rate procedures must be issued within eighteen months of the date of enactment, or by April 24, 1994.

The Act of 1992 directs the Commission to consider the following issues in streamlining its rate procedures:[22]

Type of information required to be filed with a tariff;
Availability to the public of the Commission's or the staff's analysis of the tariff filing;
Qualifications for standing of parties who would file protests or complaints;
The level of specificity required for protests and complaints;
Guidelines for Commission action on the portion of the tariff subject to a protest or complaint;
An opportunity for the pipeline to respond to an initial protest or complaint; and
Identification of circumstances under which Commission staff may initiate an investigation.

Further, the Commission is required by the Act of 1992 to establish, "to the maximum extent practicable," appropriate alternative dispute resolution procedures for use early in pipeline rate proceedings. These procedures must include required negotiations and voluntary arbitration. The Commission was directed to consider rates proposed by the parties through these procedures upon an expedited basis.[23]

Finally, Congress explicitly excluded the Trans-Alaska Pipeline, or any pipeline delivering oil directly or indirectly to it, from the provisions of the oil pipeline regulatory reform title of the act of 1992.[24]

C. Energy Policy Act of 1992—Congressional Intent

Title XVIII of the Act of 1992 requires the Commission to establish a simplified and generally applicable ratemaking methodology. Congress has also mandated a streamlining of the Commission's rate filing procedures to avoid unnecessary regulatory costs and delays. The lawfulness of certain existing rates has been grandfathered. The just and reasonable standard for rates has been explicitly retained.[25]

The Commission concludes that oil pipeline rates have not been deregulated and that the Commission must continue to ensure that oil pipeline rates are just and reasonable. Moreover, the new act requires regulation of oil pipeline rates to be accomplished in a manner that brings a degree of simplicity, expeditiousness, and economy to the process.

D. One Rulemaking Rather Than Two

The Commission is required under sections 1801 and 1802 of the Act of 1992 to promulgate certain substantive

[16] See ARCO Pipe Line Company, 52 FERC ¶ 61,055 (1990), *order on reh'g*, 53 FERC ¶ 61, 398 (1990).

[17] Opinion No. 360, 53 FERC ¶ 61,473 (1990).

[18] Buckeye Pipe Line Co., L.P., Opinion No. 360-A, 55 FERC ¶ 61,084 at p. 61,260 (1991).

[19] Section 1803(a).

[20] Section 1803(b).

[21] Section 1803(c).

[22] Section 1802(b).

[23] Section 1802(e).

[24] Section 1804(2)(B).

[25] Title XVIII follows years of consideration by the Congress of more sweeping deregulatory legislation that was the basis for the 1986 Report on Oil Pipeline Deregulation of the Department of Justice. See Oil Pipeline Deregulation, Report of the U.S. Department of Justice (May 1986).

and procedural rules respecting oil pipeline rate regulation. These sections have different timing requirements. Under section 1801 the Commission must issue a final rule on ratemaking methodology no later than one year after the date of enactment, but it must not take effect until 365th day after the date of issuance of that rule. Under section 1802 the Commission must issue a final rule on procedural reform no later than 18 months after enactment. There is no restriction on when the final rule on procedural reform may take effect. The Commission proposes to issue a single rule to cover the requirements of both sections, with the same effective date for both the ratemaking and filing procedures—i.e., one year after issuance of a final rule, except for those procedural changes discussed below which are proposed to become effective 30 days after publication of a final rule in the **Federal Register**. This is because the two rules in question are clearly and closely related. The two rules must and should work together, and they are more likely to do so if promulgated at the same time and in the same proceeding.

IV. Proposed Ratemaking Methodologies

A. Introduction

Section 1801(a) of Title XVIII reads as follows:

(a) ESTABLISHMENT—Not later than 1 year after the date of enactment of this Act, the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act.

It is apparent from section 1801(a) that it is the intent of the Congress that oil pipeline ratemaking must be done more simply and quickly than it has been done up to now. By referencing section 1(5) of the ICA, Congress re-affirmed the Commission's obligation under the ICA to ensure rates to be demonstrably just and reasonable. To accomplish this objective requires a rate-changing methodology that reduces the necessity and likelihood of prolonged litigation, that can be applied by pipelines and reviewed by shippers and by the Commission expeditiously, and that is usable without significant variation or modifications by most, if not all, pipelines.

The Commission believes that the approach of applying an industry-wide cap on rate changes derived by an appropriate index would achieve the above described policy objectives, as well as meet the statutory criteria of simplicity and general applicability. Importantly, Congress declared most existing rates to be just and reasonable, thus providing a foundation of just and reasonable rates from which to index. In addition, a rate cap approach would provide efficiency incentives for the industry, while at the same time producing economic benefits for the public.

Thus, the Commission proposes an index for determining the maximum rate the pipeline could charge. The pipeline will be free at any time to set a rate below this maximum ceiling rate. This indexing methodology would constitute the Commission's generally applicable methodology for regulating changes in rates in the oil pipeline industry.

The Commission, however, recognizes that circumstances vary by pipeline and by market and, further, that unforeseen and uncontrollable events substantially affecting the cost of providing service may arise from time to time. Regulation should take into account particularly circumstances and provide for a deviation from a generally applicable rate-setting policy when necessary or appropriate to comply with the statutory standard of just and reasonable rates. The Commission proposes, therefore, to allow pipelines to demonstrate in individual proceedings that rate levels should be established other than by indexing. First, pipelines will be allowed the opportunity to file for market rates for markets in which the pipeline can demonstrate that it lacks significant market power. Second, for recoupment of extraordinary costs, as discussed *supra*, a pipeline can seek to set rates using a cost-of-service methodology. In either event, a pipeline seeking approval to establish its rates other than by indexing would be required to justify its departure from indexing.

With respect to the market rates, a pipeline would still have the option of attempting to show that it lacks significant market power in some, or all, of the markets in which it provides service, and thus it should be permitted to establish rates based on its lack of market power in such markets. The pipeline would be permitted to show on a case-specific basis that it lacks significant market power in a proceeding similar to that utilized in *Buckeye*. Moreover, pipelines would be encouraged to submit market-rate filings that propose streamlined procedures to identify their competitive markets and implement market-based ratemaking. In other words, the Commission does not necessarily view *Buckeye* as the last word on how such proceedings should be conducted. Improvements and refinements are to be expected.[26] Over the years, it is hoped a body of precedent would be developed that would enable the Commission to utilize light-handed regulation where appropriate and justifiable without subjecting the concerned parties to protracted and expensive adjudicatory proceedings.

At this time, the Commission is not proposing to promulgate a rule containing procedures to streamline its consideration of these competitive-market showings. A simplified market-based methodology, even if it could be done for oil pipeline ratemaking under the Interstate Commerce Act, would not comply with the statutory directive of establishing a "generally applicable" methodology, because it would not apply to rates charged in markets where there is insufficient competitive pressure to protect shippers from rates that are unjust and unreasonable.

Establishment of a simplified and streamlined methodology for market-based ratemaking for oil pipelines would involve resolution of several complex antitrust issues[27] which do not appear to lend themselves to generic resolution.

Any attempt to establish threshold standards for determining pipeline market-power, in order to shortcut the decisionmaking process in competitive-market inquiries, would necessitate, under due process requirements, allowing shippers to rebut the evidentiary implications flowing from such thresholds. Moreover, to the extent the threshold standards were crafted to be broadly applicable (i.e., apply to more than just clearly competitive markets), the rebuttal presumption mechanism would be more frequently invoked by shippers, thus leading to the protracted litigation which Congress seeks to avoid.

Nor does it appear that the solution to this problem is to be found in establishing "conclusive" presumptions to identify competitive markets. Conclusive presumptions would have to be crafted narrowly so as to identify only the most clearly competitive markets. The procedure, then, would be successful in expediting the

[26] See 55 FERC at 61,261, where the Commission recognized the experimental nature of Buckeye's proposal and that it was not intended to be generally applicable to other oil pipelines. The Commission indicated that it would be receptive to alternative market-based ratemaking methodologies which might be proposed by other pipelines that are tailored more closely to their circumstances.

[27] These include issues of market delineation, market concentration thresholds, market share thresholds, water shipment competition, and shipper buying power.

competitive-market inquiry only rarely—the majority of cases would entail full hearings. This being so, it is doubtful that a conclusive-presumption procedure would make more than a minimal contribution toward accomplishing the statutory goal of streamlining and simplifying the Commission's decisionmaking on oil pipeline ratemaking.

For these reasons, the rulemaking approach may hold few, if any, advantages over the case-by-case approach in developing a market-based ratemaking methodology that meets the requirements of the ICA.

In any event, the index methodology gives pipelines considerable flexibility to change rates, and thus may accommodate a pipeline's need in a competitive market to respond to competitive pressures through rate changes. This is because the methodology only establishes a ceiling, and pipelines would be free to charge any rate not exceeding the ceiling.[28]

With respect to the cost-of-service methodology, a pipeline would be required to show that, due to extraordinary circumstances, application of the index in a particular instance would fail to result in a just and reasonable rate within the meaning of the Interstate Commerce Act. The cost-of-service alternative is proposed only as a temporary departure from the indexing methodology; subsequent changes to a rate established under the cost-of-service alternative would be governed by the index.

The extent to which a pipeline would be allowed to switch from one methodology to another for the same rate is largely answered by the proposed standards to determine which of the two alternatives to the generally applicable indexing methodology a pipeline will be permitted to employ. As stated above, allowing market rates will require a finding that the market in question is one in which the pipeline is unable to exercise significant market power, and the cost-of-service methodology will require a finding that the applicable index, due to extraordinary circumstances, will not provide the pipeline a just and reasonable rate. A pipeline would be permitted to depart from indexing and utilize one of these two alternatives only when it can make these requisite showings. Further, it follows as a logical and practical reality that a pipeline which is charging market rates would not voluntarily seek to switch to one of the other methodologies, since market rates would provide it with at least the same degree of pricing flexibility envisioned by the other two methods. Finally, the Commission proposes to employ the cost-of-service methodology only for those specific instances when the pipeline can show that, because of extraordinary circumstances, the index will not permit a just and reasonable rate within the meaning of the Interstate Commerce Act. As stated above, subsequent changes to a rate so established would be governed by the index or by establishing entitlement to market rates.

A final issue concerning implementation of the indexing methodology pertains to the establishment of an initial rate for new service either by an existing pipeline or a new pipeline. The Commission proposes to allow a rate agreed to between the pipeline and shippers to serve as the filed initial base rate for such new service. The Commission thus adopts the suggestion of the National Council of Farmer Cooperatives to use as the base rate the initial negotiated rate between the initial shipper to that market and the pipeline.[29]

B. Indexing System

1. Purposes and Benefits

An indexing scheme has a number of benefits. First, it would permit pipelines to adjust rates to just and reasonable levels for inflation-driven cost changes without the need of strict regulatory review of the pipeline's individual cost of service, thus saving regulatory expenses. Second, an indexing scheme is a form of incentive regulation. As such, it gives greater emphasis to productive efficiency in noncompetitive markets than does traditional cost-of-service regulation.[30] Third, indexing provides shippers protection from rate increases greater than the rate of inflation.

2. Choosing an Index

a. General inflation indices. There are a number of ways to compute a rate index. One is to use a general inflation index which measures overall inflation in the economy. Application of a general inflation index to initial base rates would ensure that rates measured in real, or non-inflated, terms do not increase over time. The most widely-recognized general inflation indices are the Gross Domestic Product (GDP) Implicit Price Deflator, the Consumer Price Index (CPI) and the Producer Price Index (PPI) for Finished Goods.[31] In *Buckeye*, the Commission permitted to use of the Gross National Product (GNP) deflator (since replaced by the GDP deflator) to determine Buckeye's maximum rates in markets where it lacks significant market power.[32]

The Commission has indicated that linking rates to a general price index has both the benefit and burden of simplicity.[33] A disadvantage of a general inflation index is that it will not precisely track cost changes in the oil pipeline industry.[34] To the extent that general price indices have little direct connection to the oil pipeline industry, they may miss important changes in a pipeline's costs, and rates could become unreasonably high or low.[35] On the other hand, general inflation indices would not be subject to concern over potential manipulation, and their use would not require Commission resources in compiling an industry-based index.

b. Oil pipeline industry indices. Instead of relying upon a general inflation index, an index scheme could employ an index of industry costs or rates. An industry-based index would better reflect cost trends in the oil pipeline industry. Since 1986, the Bureau of Labor Statistics (BLS) has reported component Producer Price Indices (PPI) for oil pipeline rates.[36]

[28] The only instance in which the indexing methodology might fail to meet the needs of a pipeline in competitive markets is where the market rate would be above the ceiling imposed by the index. In such a case, however, the pipeline would be permitted to make a filing with the Commission and propose that it be accorded market-based treatment of its rates.

[29] Response of the National Council of Farmer Cooperatives to the Staff Proposal for Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Docket No. RM93-11-000, at p. 5 (April 30, 1993).

[30] Indexing fosters efficiency by severing the linkage under traditional cost-of-service ratemaking between a pipeline's rate changes and changes in its current operating and investment costs. This provides the pipeline with the incentive to cut costs aggressively, since it is assured that it will retain the savings it generates.

[31] GDP Implicit Price Deflator: U.S. Dept. of Commerce, Economics and Statistical Administration, Bureau of Economic Analysis, Survey of Current Business. CPI: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review. PPI (Finished Goods): U.S. Dept. of Labor, Bureau of Labor Statistics, Producer Price Indexes.

[32] 53 FERC ¶ 61,473 at pp. 62,675, 62,681 (1990).

[33] See, e.g., Policy Statement on Incentive Ratemaking, Incentive Ratemaking for Natural Gas Pipelines, Oil Pipelines and Electric Utilities, 61 FERC ¶ 61,168 at p. 61,591 (1992).

[34] Buckeye Pipeline Company, LP, 53 FERC ¶ 61,473 at p. 62,681 (1990) (Opinion No. 380).

[35] Policy Statement on Incentive Ratemaking, 61 FERC ¶ 61,168 at p. 61,591 (1992).

[36] U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Indexes, Pipelines, Except Natural Gas. BLS reports price indices for all oil pipelines, crude petroleum pipelines and refined petroleum pipelines. For crude petroleum pipelines, BLS separates the Trans-Alaska pipelines from other crude petroleum pipelines. This is significant since the Trans-Alaska Pipeline is excluded from the definition of oil pipelines under the Act of 1992 and for purposes of this proposed rulemaking.

The PPI series for oil pipeline rates has three advantages. First, it tracks industry conditions more closely than does a general inflation index. Second, it does not require Commission resources in compiling a price index for the oil pipeline industry. Third, it is largely independent of the behavior of any individual regulated pipeline.[37]

A serious flaw in the use of the published PPI series for oil pipeline rates is that it is comprised of indices of pipeline rates, not costs. The use of a rate index could create a "circularity" problem if most oil pipeline rates were actually constrained by the rate index: The rate index would be determined by rate increases that are in turn determined by the rate index. While a price cap methodology based on the oil pipeline rate index might work if only a small fraction of oil pipeline rates were constrained by the index, the rate index might still develop a serious downward bias.[38]

The Commission could use PPI price data for oil pipeline inputs to construct a cost index for oil pipelines by creating a weighted average of the prices of oil pipeline inputs such as steel pipe, pumps, power, and labor. In theory, the appropriate weights would depend on the "production function" for oil pipelines: The relationship between an oil pipeline's inputs and its volumetric throughput. A disadvantage of a cost index would be the commitment of resources necessary to determine and compile such a cost index.

In *Buckeye*, the Commission adopted another type of index for capping rates in non-competitive markets. The Commission permitted the use of the weighted average of Buckeye's actual rates in those markets where it lacked significant market power to determine the price cap for rates in non-competitive markets. The Commission chose the weighted average method over Buckeye's original price-cap proposal to alleviate concern over the use of an endogenous index.[39] The Commission recognized that there could still be a risk that a pipeline would raise its rates in competitive markets in order to justify higher rates in non-competitive markets.[40]

c. Conclusion. The Commission proposes to use, in an indexing methodology for oil pipelines, the GDP Implicit Price Deflator. The GDP deflator is the best indicator of inflation in the overall economy.[41] Since it covers the broadest range of goods and services, the GDP deflator is the least volatile of general inflation indices. The GDP deflator is totally independent of the behavior of any pipeline. The GDP deflator will free the Commission from the difficulties associated with the construction of an oil pipeline industry cost index. Finally, the Commission believes that no other general inflation index is better than the GDP deflator in predicting future costs in the oil pipeline industry.[42] In *Buckeye*, the Commission recognized the predecessor of the GDP deflator to be "a widely used and well-understood broad-based index"[43] and noted that it is a reasonable index for price changes in a competitive market, especially for a short time period.[44]

The Commission is persuaded that the same inflationary forces which the indexed rate would be designed to reflect operate on non-competitive markets as well as on competitive markets. In view of the Congressional enactment of the Act of 1992 and its mandates for change as described *supra*, the Commission believes it has the authority to prescribe indexing for transportation service to those markets where a pipeline may have significant market power.

3. Procedures Related to the Indexing Methodology

a. Filing the rates. Under the Commission's proposal, the index would be applied to a rate which would be a just and reasonable rate established by the provisions of section 1803 of Title XVIII of the Act of 1992. The new rates derived from using the index also would be considered just and reasonable. For new service—either by an existing pipeline or a new pipeline—a negotiated rate may serve as an initial rate upon which to apply the index.

The Commission proposes that, for those rates that are in effect but under investigation and thus subject to refund, or that have not been determined to be just and reasonable, indexing would still be applicable. The new rates derived from use of the index would not be deemed automatically just and reasonable and would be made effective subject to refund.

Under the Commission's proposal, each pipeline will establish an annual ceiling level for each of its rates in that year. The annual ceiling level shall equal the ceiling level for the previous year times the current value of the index divided by the value of the index in the previous year.

At any time during the year, the pipeline may then file and charge a rate that is less than or equal to the annual ceiling level.[45] Should a pipeline file a rate below the annual ceiling level, it could file at any time during the year to increase its rates up to the ceiling. There would, of course, be no entitlement to recoup revenues forgone by not setting rates at ceiling levels in the current or previous years. If deflationary pressures push the ceiling level below the filed rate in any year, each pipeline would be required to reduce its rates so that the filed rates do not exceed the ceiling. The Commission proposes this requirement to ensure that pipeline rates will not exceed general cost levels in markets where the pipeline has significant market power.

When a pipeline files changed rates in accordance with the index, it would provide the following information:

- A cover letter describing the basis for the proposed change (i.e., that it is to change rates according to the index);

[37] The Commission regulates approximately 150 oil pipeline companies. In terms of trunkline barrel-miles, the ten largest oil pipeline companies in 1991 (together with their share) were as follows: Colonial Pipeline Co.—19.7%, Lakehead Pipe Line Co. Inc.—9.7%, BP Pipeline (Alaska) Inc.—7.7%, Exxon Pipeline Co.—4.5%, ARCO Transportation Alaska Inc.—3.4%, Plantation Pipe Line Co.—3.3%, Amoco Pipeline Co.—3.1%, Shell Pipe Line Corp.—3.1%, Ashland Pipe Line Co.—2.6%, and Explorer Pipeline Co.—2.5%. FERC Form 6, as compiled and reported in the Oil & Gas Journal, at pp. 43, 56–59 (November 23, 1992). BP Pipeline (Alaska), Exxon Pipeline, and ARCO Transportation Alaska have undivided interests in the Trans-Alaska Pipeline System, which is excluded from the definition of oil pipelines in the Act of 1992.

[38] The oil pipeline rate index could become biased downward in that it would reflect rate decreases resulting from downward shifts in demand for some pipelines, while rate increases resulting from upward shifts in demand for other pipelines could be constrained by the index.

[39] 53 FERC ¶61,473 at p. 62,683 (1990). The Commission has indicated elsewhere that actions taken by a pipeline should not change the value of the index used to adjust its rates. See Policy Statement on Incentive Regulation, 61 FERC ¶61,168 at p. 61,591 (1992).

[40] 53 FERC ¶61,473 at pp. 62,683–4 and 62,687, n. 5. While the Commission recognized the concern about the use of an endogenous index, it noted that Buckeye could not use an index based upon competitors' rates since it may not have current access to and accurate information about those rates.

[41] The Commission Staff proposed the use of the Producer Price Index for Finished Goods (PPI–FG) in an indexing methodology for oil pipeline ratemaking. The Commission believes the GDP Implicit Price Deflator would be a better measure of inflation in the overall economy, since the PPI–FG reflects only a fraction of the economy: those commodities that will not undergo further processing and are ready for sale to the final demand user.

[42] The Commission Staff also proposed that the inflation rate used in the index be reduced each year by one percent, as an offset for productivity. The Commission sees little justification for the productivity offset, and thus proposes to use the GDP Implicit Price Deflator without any adjustments.

[43] 53 FERC ¶61,473 at p. 62,681 (1990).

[44] 53 FERC ¶61,473 at p. 62,681 (1990).

[45] The Commission will not require a rate to equal its annual ceiling level because, in some cases, the rate may be constrained by competitive market forces.

VOL 58 ISS 132 JL 13 1993 UMI

* The revised tariff;
* Supporting information, including a compilation showing the revised rate compared with the previous rate for the same movement of product, and the ceiling rate, and including the calculation of the annual ceiling rate done in accordance with proposed § 342.3(c); and
* A certificate of service.

The Commission proposes to prohibit pipelines from filing rates that exceed the annual ceiling level. If the pipeline believes that in a particular instance the index would not yield a just and reasonable rate, it would be required to justify the need to utilize either the cost-of-service methodology described below[46] or to charge market-based rates.

b. Challenges to the rates. Under the Commission's proposed indexing methodology, just and reasonable pipeline rates that are changed within the applicable ceilings established by the index are presumed to be just and reasonable. Thus, the Commission does not propose to entertain, on the merits, any protest or complaint that makes a generalized allegation that the rates are unjust and unreasonable, or that they do not reflect the actual costs of rendering the service in question.

The statutory and proposed regulatory policies of streamlining and expediting oil pipeline ratemaking make it necessary and appropriate to circumscribe cost-of-service challenges to existing and proposed rates. Most of the existing rates on file with the Commission have been statutorily deemed, in the Act of 1992, to be just and reasonable. Certain other existing rates are just and reasonable by virtue of previous Commission orders. Changes of just and reasonable rates proposed by a pipeline that comply with the index are presumed, under the methodology, to reflect costs and result in rates that are just and reasonable.

Thus, the proposed regulations contain language to limit the consideration of cost-of-service challenges to rates by shippers. In the Act of 1992, Congress has supplied a standard defining the circumstances under which an existing rate deemed just and reasonable by that statute may be challenged in a complaint: when a substantial change has occurred, since the enactment date of the Act of 1992, in either the economic circumstances or in the nature of the services provided, which were a basis for the rate.[47]

The proposed regulation adopts this same standard for protests filed against index-based rate changes. The pipeline would be required to show in its rate filing that the proposed new rate level complies with the applicable ceiling mandated by the index. This would constitute a prima facie showing that the proposed rate level is just and reasonable. A protest that generally alleged that the proposed rate does not reflect the pipeline's cost-of-service would be dismissed. To obtain an investigation, the protestant would be required to allege in its protest, and present evidence through sworn affidavit to prove, that there has been a substantial change, since the rate was last changed, in either the economic circumstances or in the nature of the services provided that were a basis for the rate, and that such change renders the application of the index unjust and unreasonable.

When a complaint is brought against an existing rate that was itself the product of the application of the index to a prior rate, the same standard would obtain. That is, the complainant would be required to show that there has been a substantial change, since the rate was established, in either the economic circumstances or in the nature of the services provided that were a basis for the rate, and that such change renders the application of the index unjust and unreasonable.

Thus, the proposed regulations would limit rate challenges by shippers under the indexing system to those circumstances which Congress determined would be appropriate for challenges to rates legislatively deemed just and reasonable under the Act of 1992. This result strikes a fair and reasonable balance between the interests of shippers and the policy goal of streamlining and expediting the ratemaking process.

An exception to these limitations against challenges is provided in the proposed regulations for those rates in existence on the effective date of the new regulations which have neither been deemed just and reasonable by the Act of 1992, nor determined to be just and reasonable by a Commission order. Such rates would be subject to complaints under section 13(1) of the ICA as traditionally interpreted. However, when such a rate is proposed to be changed under, and in compliance with, the indexing methodology, a protest against the change would be subject to the Act of 1992 standard set forth above.

Finally, the restrictions described in this part of the proposed regulations apply only to cost-of-service challenges to rates, and would not apply to challenges alleging other specific violations of the ICA or the Commission's regulations, such as undue discrimination or preference; nor would they apply to non-rate matters.

C. Cost-of-Service Methodology

Under the Commission's proposal, an alternative to the generally applicable indexing methodology is a cost-of-service presentation constructed in accordance with Opinion No. 154–B and subsequent related opinions.[48] This is intended to be a rarely used exception to the indexing methodology; this alternative is to be used only when there are extraordinary circumstances under which the application of the index would fail to result in a just and reasonable rate within the meaning of the Interstate Commerce Act. By "extraordinary circumstances" the Commission means substantial, unforeseen, and uncontrollable increases in cost. The cost-of-service alternative is proposed to be only a temporary departure from the indexing methodology; subsequent changes to a rate established under the cost-of-service alternative would be governed by the index.

The Commission's rationale for proposing that the extraordinary-circumstances standard would be interpreted strictly is based upon two primary considerations. First, extraordinary circumstances must not be used as a means to compensate for inefficiency and thereby undercut the incentives intended to be provided by the generally applicable indexing policy. Second, extraordinary circumstances should not be invoked for expenses that are generally expected to be recovered under the indexing method. In particularly, extraordinary circumstances do not include increases in fuel and power costs, increases in insurance costs, and industry-wide expenses mandated by environmental and safety regulations. Such expenses are generally expected to be recovered by the general inflation index. Furthermore, extraordinary circumstances do not include the cost of pipe and other capital equipment incurred during normal replacement or throughput expansion. Revenues for such investments are generally expected to be recovered by the application of indexing to the entire base rate, not merely to some operating and maintenance component of such rate.

[46] Subsequent changes to a rate established by the cost-of-service methodology would be allowed to be made pursuant to the index.

[47] Section 1803(b).

[48] See Williams Pipe Line Company, 31 FERC ¶ 61,377 (1985) (Opinion No. 154–B); Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). See also ARCO Pipe Line Company, 52 FERC ¶ 61,055 (1990) (Opinion No. 351); Opinion No. 351–A, 54 FERC ¶ 61,398 (1990).

The Opinion No. 154–B cost-of-service methodology employs traditional cost-of-service rate making procedures based on a trended original cost (TOC) rate base. The Opinion No. 154–B methodology was adopted to replace the valuation methodology previously used by the ICC. To provide for minimum disruption to the industry in the initial switch from the valuation methodology to the Opinion No. 154–B methodology, the Commission allowed pipelines in existence prior to January 1, 1984 to adopt a starting or transition rate base based upon the previously used valuation rate base.[49]

Appendix A is an example of the basic information the Commission would require from pipelines filing for rate changes based on the Opinion No. 154–B methodology. At the time a pipeline files for rates based on the Opinion No. 154–B methodology, information must be provided for each year since 1983 (to the extent it has not been previously filed) up to the current year. This information is necessary for the Commission Staff, as well as other interested parties, to ascertain the basis for the proposed rates.

V. Procedures for Streamlining Commission Action on Rates

Section 1802 of the Act of 1992 requires the Commission to consider certain specific procedural issues in a rule to streamline its procedures relating to oil pipeline rates. Accordingly, certain new procedures are proposed for the treatment of protests and complaints that will expedite consideration of rates by reducing the frequency and the scope of adjudicatory proceedings. These new procedures are discussed in section A below.

The new procedures will be incorporated into the Commission's existing practices and procedures for administering oil pipeline tariffs and resolving challenges to those tariffs. The existing practices are codified in part 385 ("Rules of Practice and Procedure") of the Commission's regulations, and govern the filing of tariffs, protests, and complaints; service upon parties; time periods for responding to pleadings; and other details of uncontested and contested proceedings.

The Commission also proposes substantial revisions to the existing regulations on tariffs, which were inherited from the ICC, in order to eliminate archaic and unnecessary language.

A. New Procedures

Congress clearly intends for the Commission to expedite its handling of oil pipeline rate filings. Section 1802(b) of the Act of 1992 specifies certain matters for promulgation of new regulations by the Commission in order to define more sharply, and narrow, the issues when administrative adjudication is necessary. Accordingly, and in compliance with the explicit direction of section 1802(a) to consider certain specific procedural reforms, the Commission proposes to adopt new regulations addressing those reforms as explained below.

1. Identification of Information to Accompany a Tariff Filing

The Commission proposes to include in its new regulations particular guidance on the kinds of information pipelines must file with proposed rate changes, depending upon the methodology the pipeline utilizes for establishing its rates. This proposed guidance was explained above in the discussion of the procedures for implementing the rate methodologies.

2. Availability to the Public of Staff Analysis of Tariff Filings

No new regulation on public access to staff analysis of tariff filings is proposed. First, in those instances when no protest or complaint is lodged against a tariff there would seem to be no need for making staff analysis available. Second, in those instances when a protest or complaint is lodged but is dismissed by the Commission based upon the pipeline's response and without further investigation, the reasons for such dismissal would be set forth in the dismissal order. The Commission believes this would be sufficient to meet any public need or right to know of the basis for the Commission action. Finally, when an oil pipeline tariff is subject to investigatory proceedings or has been set for hearing, the usual rules of discovery found in § 385.401, *et seq.*, of the Commission's regulations would apply. The Commission believes these rules are adequate to ensure that interested parties have access to the information they require to make their respective cases before the Commission.

3. Standing of Parties to File Protests

Standing to file a protest under section 15(7) of the ICA is proposed to be limited to parties that possess a direct economic stake in the pipeline rate or practice in question. This means that the actual or potential customers of the pipeline would have standing to file protests. The proposed regulations would require that such parties submit a verified statement showing that the routes they have shipped over, have attempted to ship over, or plan to ship over are covered by the rates or practices they challenge.

Whether customers of customers of pipelines should be deemed to have an interest in pipeline rates or practices sufficient to confer standing is an open question. Pipeline charges for transportation constitute only a small percentage of the downstream price of petroleum products.[50] It would seem that direct customers of pipelines have a much larger stake in pipeline rates and practices. Should the Commission therefore rely solely upon shippers to bring claims alleging potential violations of the ICA? A factor that weighs against limiting standing to shippers is that many of them are affiliated with the pipelines they utilize for transportation of their products and thus may have reasons not to bring potentially meritorious claims. The Commission would therefore propose to confer standing upon a customer of a pipeline customer if it can demonstrate that its economic stake in the issue sought to be raised is "substantial" and no other party can adequately represent it.

The Commission would confer standing upon competitors of pipelines only for the limited purpose of alleging that a pipeline is engaging in unfair or anti-competitive practices that would violate the ICA. Thus, a competitor, without more, would not have standing to protest rate filings. Although the Commission is not charged with the responsibility, or the authority, to enforce the antitrust laws, its obligation under the ICA to ensure that pipeline rates and practices are just and reasonable gives it an interest in the competitive behavior of pipelines.[51] This interest would be particularly compelling in those markets where the pipeline is permitted to establish rates without prior regulatory restraints because the Commission has determined that the pipeline does not possess market power. A pipeline which engaged in anti-competitive practices in such circumstances would be undercutting the justification for market rate treatment. The Commission would

[49] Pipelines which were not in existence prior to December 31, 1983, or which were not previously relying on the valuation rate base to determine rate levels should also use the TOC method described above. These pipelines will not employ the starting or transition rate base. Rather, a new pipeline would simply start with its original cost.

[50] The average pipeline tariff rate in 1991 was 59.1 cents per barrel, and in 1990, it was 62.8 cents per barrel. FERC Form 6. By contrast, the current price of a barrel of gasoline is about 40 dollars.

[51] See *American Trucking Assn., Inc. v. United States*, 642 F.2d 916, 922 (5th Cir. 1981) (the ICA expresses a "general policy in favor of competition.")

obviously have a strong interest in having such activity brought to its attention. Thus, the proposed new regulations would grant standing to shippers, potential shippers or competitors of pipelines who allege that the pipeline is engaging in anti-competitive practices, including but not limited to allegations of predatory pricing.

4. Level of Specificity for Protests and Complaints

This issue has been addressed above, in the discussion of the kinds of claims the Commission would consider on the merits under the alternative rate methodologies.

5. Guidelines for Commission Action on the Portion of the Tariff or Rate Filing Subject to Protest or Complaint

If a rate change is filed and no protest from third parties is received, the Commission proposes, with one exception, that such rates take effect without suspension. The exception is a filing which proposes to change a rate that is itself subject to a refund obligation—such a filing may be suspended by the Commission in the absence of a protest.[52]

The Commission proposes that rates which are protested will be subject to suspension. Suspension will normally be of the minimum time allowed by law. Should the Commission decide, after review, that the protest is not valid, the pipeline would be relieved of any refund obligation as to such rate from the date the rate was collected.

The Commission would confine its investigations, and remedial actions (if any) to the disputed rate or practice, and no others. Protests and complaints raising certain specific issues (the proposed regulations require specificity in protests and complaints) should not be the basis for triggering a systemwide inquiry or going into other specific issues not raised. Limiting the scope of investigatory proceedings in this manner seems essential to achieving the Congress' objectives of increasing the efficiency and economy of the Commission's regulations of oil pipelines.

Thus, a proceeding on the issue of whether a given pipeline exercises market power in a market would be limited to evidence relevant to that issue. This would preclude, for example, the introduction or consideration of evidence related to the pipeline's cost of service.

There will be room for interpretation of this proposed restraint on the scope of proceedings. Relevancy is often subject to debate. Under the Commission's proposal, it would be the task of the presiding judge to make the proper rulings to ensure that proceedings remain focused on the issues raised.

6. Opportunity for Pipeline to Respond to Protest or Complaint

Protests to a rate filing must be filed no later than ten days after such filing. The pipeline would be permitted to respond to any protest within five days of the date of filing of the protest, and to any complaint within 30 days (as currently provided in § 385.213 of the Commission's rules). This proposal contemplates that the Commission would examine the pipeline's response to a protest or complaint to make a determination as to whether to commence a formal investigation of the tariff. If the Commission were to determine that formal investigation is not warranted, the protest or complaint would be dismissed. If the Commission were to determine that a formal investigation is warranted, then the matter would proceed to the next stage (ADR procedures, see discussion below). The determination of whether to initiate a formal investigation of a tariff filing will be made within the 30-day statutory notice period.

7. Complaints Against "Grandfathered" Rates

The Act of 1992 provides that complaints against otherwise grandfathered rates may be filed under certain circumstances: A substantial change has occurred since enactment in either the economic circumstances or the nature of the services which were a basis for the rate; the complainant was contractually barred from challenging the rate prior to enactment; or the rate was unduly discriminatory or preferential.[53]

The Commission will not enumerate in advance the specific factual allegations that would cause it to entertain a complaint against rates statutorily deemed to be just and reasonable. The Commission would apply the proposed regulations on standing to any complaints filed against such rates. Thus, the Commission would not investigate grandfathered existing rates unless a complaint meeting one of the statutory exceptions[54] were filed by a person with a direct economic interest in those rates, i.e., a shipper, or would-be shipper, or a person that meets one of the other tests for standing.

8. Elimination of Staff-Initiated Investigations

Section 1802(b) requires the Commission to propose a regulation defining the specific circumstances under which staff may initiate a "protest" (i.e., an investigation). Section 375.306(a) of the current regulations authorizes the Oil Pipeline Board (Board) to exercise the Commission's power under section 15(7) of the ICA to institute investigations of proposed tariff changes. This authority includes suspending a tariff filing on the Board's own motion.[55]

The Commission proposes to eliminate the Board and instead reserve to itself the authority to suspend tariffs, while delegating to Staff Office Directors certain of the other duties currently delegated to the Board.[56] Some duties currently delegated to the Board would not be applicable under the proposed regulations. For example, the granting of special permission to place tariffs in effect on less than 30 days notice and "Fourth Section" waivers—*i.e.*, from the provisions of section 4 of the ICA which would allow a pipeline to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates—will be granted automatically under proposed § 341.14 and § 341.15. Rates for depreciation will be considered only

[52] Authority to suspend rate filings, whether protested or not, would lie exclusively with the Commission under the proposed regulations.

[53] Sec. 1803 (b) and (c) of the Act of 1992, 42 U.S.C. 7172 note (1988).

[54] *Id.*

[55] The Board was initially established at the Commission pursuant to section 17(2) of the ICA. Under section 17(2) the Commission has the authority to rescind its delegation to the Board at any time. While section 17(2) does not specifically provide for delegation to Office Directors, it does not bar such delegation, particularly in light of the specific language of sections 401(g) and 402(b) of the DOE Organization Act, which gives the Commission the power to delegate and which transferred the functions and authority related to oil pipeline regulation from the ICC to the Commission.

[56] The Commission would authorize the Chief Accountant or the Chief Accountant's designee to pass upon applications to increase the size, add to or combine property units of oil pipeline companies, and sign all correspondence on behalf of the Commission relating to Annual Report No. 6. The Director of the Office of Pipeline and Producer Regulation or the Director's designee would be delegated authority to grant or deny petitions for waiver of annual charges; accept any uncontested item which has been filed consistent with Commission regulations and policy; reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and refer any matter to the Commission which the Director believes should be acted upon by the Commission.

in individual cost-of-service proceedings. Staff would have no independent authority to initiate investigations.

B. Revisions to Existing Procedures

1. Tariff Filing Requirements

The Commission has never significantly altered the tariff regulations it inherited from the ICC.[57] Some of these regulations have remained essentially unchanged for over 60 years.[58] The Commission proposes to revise the regulations contained in parts 341 through 345, 347, 352, 360 and 361 of title 18 of the Code of Federal Regulations. The Commission further proposes to make these revised regulations effective 30 days after issuance and publication of the final rule in the **Federal Register**.[59]

The recommended changes to the existing filing requirements should significantly reduce the burden of the preparation and filing of oil pipeline tariffs. In particular:

- Separate special permission applications would no longer be filed; rather, the request would be made concurrently with the tariff filing. The special permission would be deemed to be granted unless specifically denied within 30 days of the date of the tariff filing.
- Current regulations prohibit the withdrawal of pending tariffs. The revised regulations would permit pending tariff filings to be withdrawn prior to their proposed effective date.
- Format requirements would be revised and simplified to account for technological advances.
- The requirements to file concurrences and powers of attorney with the Commission would be eliminated.
- Requirements related to oil pipeline valuations would be eliminated in their entirety.

Finally, the Commission proposes to require a full 30 days' notice for newly-constructed-pipeline rate filings.

2. Revised Accounting Requirements

The Commission does not propose at this time to modify the regulations relating to the Uniform System of Accounts, with the exception of a minor technical change discussed below. These regulations, to the extent modification is needed, can best be revised following issuance of a final rule on pipeline rates. After issuance of a final rule, the need for any changes in the accounting regulations can better be evaluated.

The Oil Pipeline Board has been regularly granting pipelines waiver of the requirements of Instruction 3–2, relating to the minimum amount for capitalization of property acquisitions. Staff recommended that the Commission increase the minimum amount from $500 to $2,500. The Commission proposes that this technical amendment be made effective 30 days after issuance and publication of the final rule in the **Federal Register**.

C. Alternative Dispute Resolution

Further evidencing Congress' goal to reduce the time and expense associated with the regulation of oil pipeline rates, section 1802(e) of the Act of 1992 requires that the Commission, to the maximum extent practicable, establish alternative dispute resolution (ADR) procedures, including "required negotiations and voluntary arbitration," for use early in a contested rate proceeding.[60] Any rates derived from implementation of ADR must be considered on an "expedited basis."[61]

The Administrative Dispute Resolution Act of 1990 ("ADRA")[62] amends the Administrative Procedure Act[63] by adding a new subchapter to provide explicit statutory authorization allowing federal agencies to use ADR techniques in lieu of litigation to resolve a dispute in the agency's administrative programs when all the participants to the dispute voluntarily agree to its use. ADR methods include the use of a neutral, an individual who functions to aid the participants in resolving the controversy. The ADRA provides that ADR methods may include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination of these, as described below:

Conciliation is an informal process in which the third party tries to bring the parties to agreement by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement, either informally or, in a subsequent step, through formal mediation. Conciliation is frequently used in volatile conflicts and in disputes which the parties are unable, unwilling or unprepared to come to the table to negotiate their differences.[64]

Facilitation is a collaborative process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants. The facilitator functions as a neutral process expert and avoids making substantive contributions. The facilitator's task is to help bring the parties to consensus on a number of complex issues.[65]

Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences. Mediation is usually a voluntary process that results in a signed agreement which defines the future behavior of the parties. The mediator uses a variety of skills and techniques to help the parties reach a settlement but is not empowered to render a decision.[66]

Factfinding is a process used from time to time primarily in public sector collective bargaining. The Fact Finder, drawing on both information provided by the parties and additional research, recommends a resolution of each outstanding issue. It is typically nonbinding and paves the way for further negotiations and mediation.[67]

The *minitrial* is a privately-developed method of helping to bring about a negotiated settlement in lieu of corporate litigation. A typical minitrial might entail a period of limited discovery after which attorneys present their best case before managers with the authority to settle and a neutral advisor who may be a retired judge or other lawyer. The managers then enter settlement negotiations. They may call on the neutral advisor if they wish to obtain an opinion on how a court might decide the matter.[68] The neutral may also be called upon to mediate the dispute.

Arbitration is a relatively formal process in which parties jointly select the decisionmaker to whom they turn over the decisionmaking. The arbitrator, after hearing each side, issues a decision following the procedures agreed to in advance. The ADRA provides for a binding arbitration with limitations that

[57] The ICC's regulations were transferred from 49 CFR (containing ICC regulations) to 18 CFR (containing FERC regulations) by a 1984 rulemaking. See Regulations Preambles 1982–85, FERC Stats. and Regs. ¶30,552 (1984).

[58] In 1928, the ICC issued "Tariff Circular No. 20," which contained many of the filing provisions still extant in the regulations adopted by the FERC.

[59] Other changes, however, would be incorporated into the revised filing requirements effective with the implementation of the revised rate methodologies.

[60] Section 1802(e).

[61] *Id.*

[62] 5 U.S.C. 571–83, as amended by Public Law 102–354, 106 Stat. 944 (August 26, 1992).

[63] 5 U.S.C. 551–557 (1988).

[64] Administrative Conference of the U.S., Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution (Office of the Chairman, 1987) (Sourcebook) at 44.

[65] *Id.* at 45.

[66] *Id.*

[67] *Id.*

[68] *Id.*

VOL
58
ISS
132
JL
13
1993
UMI

protect the agency's statutory authority. The ADRA's arbitration provision is separately described and fully discussed below.

It is the policy of the Commission to conclude its administrative proceedings as fairly, effectively, efficiently, and expeditiously as possible. To that end, the Commission has long had in place flexible settlement regulations that encourage and promote the use of settlement negotiations and other means to resolve disputes. The Commission now has the opportunity to further develop and refine its policies to achieve less costly, less contentious, and more timely decisions in its oil pipeline rate proceedings. Under the existing framework for the review and determination of its proceedings, the Commission intends to foster the effective and sound use of innovative ADR procedures pursuant to the guidelines established in the ADRA.

Consistent with the Congressional mandate contained in both the Act of 1992 and the ADRA, the Commission encourages participants in its oil pipeline proceedings to consider the use of ADR procedures to assist them in resolving any differences among them. ADR techniques are informal procedures based on the informed consent of all the participants. Flexibility is the mainstay of ADR.

1. Required Negotiation

The Act of 1992 provides that the Commission shall include "required negotiations" in its ADR procedures. In this connection, with respect to all pipeline rates which are suspended, the Commission proposes to send all protested oil pipeline rate filings to a settlement judge for consideration of appropriate disposition of the protest and final action to be taken on the rate filing at the time the Commission issues a suspension order. The settlement judge would be required to convene a conference of all interested parties within a short period of time. Parties to the proceeding would be required to participate in the resolution of these issues. The settlement judge would, as necessary and appropriate, and as may be guided by Commission requirements in the individual proceedings, submit status reports on whether settlement efforts should continue or whether formal hearing procedures should commence. The Commission would, in appropriate cases, provide time limits on the settlement judge.

2. Arbitration

The ADRA establishes procedures for binding arbitration proceedings. To the extent participants wish to use a different arbitration procedure, they should feel free to propose one.

a. Applicability to commission proceedings. Section 1802(e) of the Act of 1992 requires the Commission to provide voluntary arbitration procedures for rate matters involving oil pipelines. The Commission believes that the form of binding arbitration provided in the ADRA should be among those ADR techniques available to participants.

b. Authorization. Participants may at any time submit a proposal to use binding arbitration to resolve all or part of any oil pipeline rate matter in controversy before the Commission. A proposal to use binding arbitration would follow the procedures to be developed consistent with the ADRA and the Commission's responsibilities under the Act of 1992. The proposal would be submitted in writing. To ensure that the use of arbitration is truly voluntary on all sides, the Commission would not require any person to consent to an arbitration proposal as a condition of receiving a contract or benefit. Similarly, no company regulated by the Commission may impose such a condition. Further, an arbitration proposal would be required to have the express consent of all interested parties.

Any agreement to arbitrate would be enforceable under the Arbitration Act.[69] The Senate Report accompanying the ADRA states that the purpose of section 589 of the ADRA is to coordinate and clarify the relationship between the ADRA and the existing Arbitration Act, and stresses that the existing Arbitration Act applies to enforcement of arbitration agreements reached pursuant to the ADRA.[70]

c. Arbitrator. Participants in an arbitration proceeding would be entitled to select the arbitrator. The particular procedure to be used in selecting an arbitrator is not provided; however, the arbitrator is required to meet the requirements of a neutral. An arbitrator, like a neutral as described in proposed § 342.9(e), may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual acceptable to the participants. The arbitrator must have no official, financial or personal conflict of interest with respect to the issues in controversy, unless the participants waive this restriction. The arbitrator's duties would include conducting hearings, administering oaths, issuing subpoenas to compel attendance of witnesses and production of evidence at hearing. The arbitrator would be expressly authorized to make decisions on rate matters subject to arbitration. As the Senate Report to the ADRA explains:

> This section is intended to provide arbitrators with the appropriate authority and flexibility to conduct arbitral proceedings in an informal and efficient manner and to keep the arbitral proceedings from becoming, in essence, full-blown litigation proceedings. An arbitrator should not use the authority granted in this section to indulge in or permit excessive discovery. Instead, the arbitrator should make appropriate use of the authority provided in this section to gather the necessary materials and information to conduct a fair, effective and expeditious inquiry.
>
> The section also limits arbitrators to the subpoena authority granted by the Arbitration Act and to the agency sponsoring the arbitral proceeding. This language is intended to ensure that the same practices and body of law apply to all arbitrations of disputes with federal agencies, whether initiated under the ADR subchapter in Title 5 or the Arbitration Act in Title 9. It is also intended to ensure that federal agencies do not gain, as a consequence of this Act, any subpoena powers that they do not already possess.[71]

d. Rules of conduct. The Commission proposes to incorporate into its rules the provisions in section 589 of the ADRA that establish basic rules for the conduct of binding arbitration proceedings, including hearing. The arbitrator would set the time and place for the hearing and notify the participants. A record would be prepared, if desired, and evidence presented. The hearing would be conducted expeditiously and informally. The arbitrator could exclude evidence that is irrelevant, immaterial, unduly repetitious or privileged. According to the Senate Report to the ADRA, this common arbitral standard ensures informal and expeditious proceedings.[72] *Ex parte* communications would be prohibited, allowing the arbitrator to impose sanctions for a violation of this prohibition. The arbitrator would be required to issue an award within 30 days of the close of the hearing, unless the participants and arbitrator agree otherwise.

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[69] 9 U.S.C. 1 (1982). Section 4 of the Arbitration Act provides that:

> "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement."

[70] S. Rep. No. 543, 101st Cong., 2d Sess. at 13, (1990).

[71] *Id.*

[72] *Id.*

e. Arbitration awards. The ADRA provides standards for the issuance and appeal of arbitral awards. The Commission proposes to adopt those standards. The award should be in writing and include a brief, informal discussion of the factual and legal basis for the award. The prevailing participants should file the award with the Commission and serve all participants. The award would become final 30 days after it is served on all participants; however, the Commission, upon motion or otherwise, could extend this period for and additional 30-day period upon notice of the extension to all participants.

A final award would be binding on the participants and may be enforced under the provisions of the Arbitration Act, as amended by the ADRA. Under the ADRA, a non-party will be able to seek to have an award vacated by courts. The ADRA amended section 10 of the Arbitration Act to provide that a person who was not a party to an arbitration proceeding may obtain judicial review of the award upon a showing that the appealing person has been adversely affected or aggrieved. In addition, that person must demonstrate, pursuant to the amended Arbitration Act, that the use of arbitration or the award is clearly inconsistent with the six factors in the ADRA that govern the determination to use ADR in a proceeding.

f. Vacating an award. As provided in the ADRA, the Commission would establish procedures for the Commission to vacate an award. Any person could request, within 10 days of the filing of an award, that the Commission vacate the award and require that person to provide notice of the request to all participants. Responses to such a request must be filed within 10 days after the request is filed. The Commission, upon request or otherwise, would be able to vacate an arbitration award before the award becomes final. To do so, it must issue a written order to that effect.

The Commission's review of an arbitration award would be based on the statutory standard that applied to the issues resolved, and depends, therefore, on the type of issues involved. The Commission would adopt the ADRA's provision that the award need only discuss informally the factual and legal bases for the award. If the participants wish to require that an award include formal findings of fact and conclusions of law, they may do so by adopting a different standard.

If the Commission vacates an arbitration award, a party to the arbitration proceeding would be able to petition the Commission for an award of the attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission could award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

A decision by the Commission to vacate an arbitration award would not be subject to judicial review. Moreover, such a decision would not be subject to rehearing. In this case, rehearing would not be provided because the Commission itself would be acting on the request to vacate so there is no occasion to be reviewing staff action.

VI. Environmental Analysis

The Commission is not preparing an environmental assessment or environmental impact statement in this proceeding because the proposed rules and amendments do not affect the construction or operation of facilities and deal only with rate filing requirements. They therefore have no significant effect on the human environment.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [73] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[74]

Pursuant to section 605(b), the Commission certifies that the proposed rules and amendments, if promulgated, will not have a significant impact on a substantial number of small entities.

VIII. Comment Procedures

Copies of this notice of proposed rulemaking can be obtained from the Office of Public Information, room 3104, 941 North Capitol Street NE., Washington, DC 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 not later than 30 days after the date of publication in the **Federal Register**.

The full text of this notice of proposed rulemaking also is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service, which provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, communications software should be set to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

As stated previously, the Commission intends to proceed with both the ratemaking and the filing procedures parts of this rulemaking simultaneously. The Commission therefore intends to complete the deliberative process in this docket, and issue a final rule, no later than October 24, 1993, the deadline established by Congress for issuance of the rule on ratemaking methodology.

IX. Information Collection Requirements

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rules.[75] While these proposed rules and amendments contain no new information collection requirements we expect the proposed rule will revise and reduce the reporting requirements under existing FERC–550, Oil Pipeline Rates: Tariff Filings (1902–0089).

The Commission uses the data collected under FERC–550 to investigate the rates charged by oil pipeline companies subject to its jurisdiction, determine the reasonableness of rates, and prescribe just and reasonable rates.

Because of the proposed revisions and expected reduction in public reporting burden under FERC–550, the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425; and to the Office of Information and Regulatory Affairs, Office of Management and Budget) (Attention: Desk Officer for Federal Energy

[73] 5 U.S.C. 601–612.

[74] 5 U.S.C. 605(b).

[75] 5 CFR 1320.13.

Regulatory Commission), Washington, DC 20503.

List of Subjects

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Parts 342, 343, 344, 345, 347, 360 and 361

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission gives notice of its proposal to amend, remove or revise parts 341, 342, 343, 344, 345, 347, 352, 360, 361 and 375, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

The following amendments are proposed to be effective 30 days after publication of the final rule in the **Federal Register**.

1. Part 341 is revised to read as follows:

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT AND CARRIERS JOINTLY THEREWITH

Sec.

341.0 Application; definitions.
341.1 Means of filing.
341.2 Filing requirements.
341.3 Form of tariff.
341.4 Filing requirements for amendments to tariffs.
341.5 Cancellation of tariffs and rates.
341.6 Adoption rule.
341.7 Concurrences.
341.8 Terminal and other services.
341.9 Index of tariffs.
341.10 Intermediate application of rates.
341.11 Rejection of tariffs and other filed materials.
341.12 Informal submissions.
341.13 Withdrawal of proposed tariff publications.
341.14 Special permission.
341.15 Long or short haul or aggregate of intermediate rates.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 341.0 Application; definitions.

(a) *General application.* (1) Tariffs are for the information and use of the general public. Each carrier must publish, post, and file tariffs which contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff. Tariffs will be published in a manner that ensures the tariffs are readable and that their terms and conditions are easy to understand and apply. The Commission reserves the right to reject any tariff publication or other document that is not in compliance with the law, or to require modification, correction, or reissuance.

(2) This part contains regulations issued by the Federal Energy Regulatory Commission under authority of the Interstate Commerce Act (ICA) to govern the construction and filing of tariffs of oil pipeline companies filing under the ICA. These regulations are in conformance with Title XVIII of the Energy Policy Act of 1992.

(3) All tariffs filed on or after [insert 30 days after date of publication of the final rule in the **Federal Register**] must conform to the rules of this part. Tariffs which are on file as of [insert 30 days after date of publication of the final rule in the **Federal Register**] will not have to be reissued solely to conform to this part.

(4) Each common carrier oil pipeline must post and maintain a complete and current set of all proposed, current, and suspended tariffs which it has issued or to which it is a party, together with an index. The carrier must identify in its posted tariff files any tariff publication under suspension and investigation. Each carrier must afford inquirers an opportunity to examine its tariffs and must provide a system of supervision that will insure the continued maintenance of the tariff files in a proper and readily accessible form.

(b) *Definitions.* (1) *Local rate.* The term "local rate" means a rate for service over the lines or routes of only one carrier.

(2) *Local tariffs.* "Local tariffs" are those which contain local only rates.

(3) *Joint rate.* The term "joint rate" means a rate that applies for service over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

(4) *Joint tariffs.* "Joint tariffs" are those which contain only joint rates.

(5) *Through rates.* The term "through rate" means the total rate from point of origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

(6) *Posting.* The term "post" or "posting" means making a copy of an oil pipeline company's tariff available during regular business hours for public inspection in a convenient form and place at the oil pipeline company's principal office and offices where business is conducted with affected shippers.

(7) *Proportional rates.* The term "proportional rates" means rates published to apply only to traffic having a prior transportation movement, a subsequent transportation movement, or both.

(8) *Rule.* The term "rule" means any regulation, term, or condition of service which applies to any rate or service provided by the pipeline under its common carrier obligation.

(9) *Subscriber.* The term "subscriber" means a party who voluntarily or upon reasonable request is furnished at least one copy of a particular tariff publication (including reissues) by the publishing carrier or agent. The term does not pertain to requests for a copy of a tariff without a request for future amendments thereto.

(10) *Tariff publication.* "Tariff publication" includes all parts of a filed tariff or tariff supplement.

§ 341.1 Means of filing.

Filings must be made with the Secretary of the Commission at 825 North Capitol Street, NE., Washington, DC 20426. Filings made by mail must be addressed to the "Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426," with the envelope clearly marked as containing "Oil Pipeline Tariffs."

§ 341.2 Filing requirements.

All tariff publications must be filed with the Commission and must comply with the following requirements:

(a) *Number of copies.* (1) Three copies of each tariff, supplement, and letter of transmittal together with any required justification, must be filed with the Commission.

(2) The carrier must provide each shipper or subscriber a copy of the tariff publication as well as any tariff justification, submitted by first-class mail, or by other means of transmission agreed upon in writing, at the same time it is sent to the Commission for filing.

(b) *Notice period.* All tariffs, or supplements to tariffs (except for adoption notices, adoption supplements, and tariff indexes, filed under §§ 341.6 and 341.9), must be filed with the Commission and posted not less than thirty (30) days nor more than sixty (60) days prior to the proposed

effective date, unless a different notice period is authorized by the Commission.

(c) *Transmittal letter.* (1) Letters of transmittal must contain a statement describing the filing that is being submitted and fully explain any changes to the pipeline's rates, rules, terms or conditions of service. In addition, the transmittal letter must state if a waiver is being requested, and specify the rule, policy or order requested to be waived. The carrier must also identify the tariff(s) or supplement number(s) and the proposed effective date of the tariff publication.

(2) Letters of transmittal must also contain the following certification:

I hereby certify that I have on or before this day sent one copy of each publication listed hereon to each subscriber thereto by first-class mail, or by other means of transmission agreed upon in writing.

(3) If there are no subscribers to the tariff publication being submitted for filing, the letter of transmittal must so certify.

(4) A pipeline filing a tariff publication who requests a receipt for such filing must submit a duplicate copy of the letter of transmittal marked "Receipt requested." Such a request must also contain a postage paid, self-addressed return envelope. The Commission will return one copy of the letter of transmittal showing the date of receipt to the requester.

§ 341.3 Form of tariff.

(a) *Form, size, and type.* (1) All tariffs and supplements thereto must be in book or pamphlet form of size 8½ by 11 inches and must be plainly printed, and legible so as to result in a clear and permanent record. Alterations in writing or erasures may not be made in tariffs or supplements filed with the Commission or posted by the carrier.

(2) The tariff publication must have a margin of ⅝ of an inch on the binding edge.

(b) *Contents of Tariff.* All tariffs must contain, as a minimum, the following information in the following order:

(1) *Title Page.* The title page of each tariff must contain the following information:

(i) The FERC tariff number designation in the upper right hand corner, numbered consecutively, and immediately thereunder will be shown the FERC tariff number designation of the tariff that is canceled, if any;

(ii) The exact corporate name of the carrier;

(iii) The type of rates, e.g., local, joint, or proportional rates and the commodity which the tariff applies on, e.g. crude, petroleum product, jet fuel;

(iv) Governing tariffs, e.g. separate rules and regulations tariffs, if any;

(v) If the tariff is issued pursuant to a specific Commission order;

(vi) The issue date must be shown on the lower left side and the effective date on the lower right side;

(vii) Expiration date, if applicable;

(viii) The name of the issuing officer or duly appointed official issuing the tariff as well as the complete street and mailing address of the carrier and the name and phone number of the individual responsible for compiling the tariff publication.

(2) *Table of Contents.* Tariffs of more than nine pages in length must contain a table of contents. Table of Contents for tariffs of less than ten pages in length are optional.

(3) *A list of participating carriers.*

(4) *Index of Commodities, if applicable.*

(5) *Explanatory statements.* The tariff must contain any necessary statements concerning the proper application of rates and rules in order to remove any ambiguity as to their proper application.

(6) *Rules governing the tariffs.* (i) All of the rules, which in any way affect the rates or the services provided for in the tariff must be published in the tariff. A special rule affecting a particular item or rate must be specifically referred to in such item or in connection with such rate.

(ii) Each rule must be given a separate item number (e.g., Item No. 1), and the title of each rule must be shown in distinctive type.

(iii) Except as provided in § 341.10, no rule will be included which in any way substitutes for any rate named in the tariff, a rate found in any other tariff. No rule will provide that traffic of any nature will be "transported only by special agreement" or any other provision of similar meaning.

(iv) Where it is not desirable or practicable to include the governing rules and regulations in the rate tariff, such rules and regulations may be separately published in a general rules tariff. Rate tariffs that do not contain rules and regulations must make specific reference, by FERC Tariff number, to the governing general rules tariff.

(v) When joint rate tariffs refer to a separate governing rules tariff such separate tariff must be concurred in by all joint carriers, as reflected in § 341.7.

(7) *Statement of Rates.* Only one rate will be on file for each service rendered. Rates must be stated in a clear and explicit form in cents, or in dollars and cents, per barrel or other specified unit. The rates must be arranged with the names or designations of the places from and to which they apply all arranged in a simple and systematic manner. Any related services performed by the carrier must be clearly identified and explained in connection with the rates. Duplicative or conflicting rates for the same service are prohibited.

(8) *Routing.* Routing over which the rates apply must be stated in such a manner that the actual routes may be definitely ascertained.

(9) *Explanation of abbreviations and reference marks.* Reference marks, abbreviations, and note references must be explained at the end of each tariff publication. U.S. Postal Service state abbreviations and other commonly used abbreviations need not be explained.

(10) *Changes to be indicated in tariff or supplement.* (i) All tariff publications must clearly identify where changes have been made, in close proximity to the change, in existing rates or charges, rules, regulations or practices, or classifications by use of one of the following letter designations or uniform symbols:

Description	Option 1	Option 2
Increase	↑	[I]
Decrease	↓	[D]
Change in wording only	▲	[W]
Cancel	■	[C]
Reissued item	□	[R]
Unchanged rate	≈	[U]
New	√	[N]

(ii) Reissued items must be designated with the number of the tariff supplement in the square in which the item was first issued or amended or if the letter designation is used, the number of the supplement must be shown in connection with the letter. In addition, the references must be explained at the end of the tariff. For example "[R2] Reissued from Supplement No. 2, effective _____ ____, 19____."

(iii) The symbols and letter designations contained in paragraph (10)(i) of this section must not be used for any other purpose.

(iv) When a change of the same character is made in all or in substantially all rates in a tariff or supplement or page thereof, that fact, and the nature of such change, must be indicated in distinctive type at the top of the title page of such issue, or at the top of each page, respectively, in the following manner: "All rates in this issue are increases," or "All rates on this page are reductions unless otherwise indicated."

(v) When a tariff or supplement, canceling a previous tariff publication, omits points of origin or destination, or

rates, rules, regulations, or routes which were contained in the prior tariff publication, the new tariff or supplement must indicate the cancellation; and further, if such omissions effect changes in charges or services, that fact must be indicated by the use of the symbols prescribed in paragraph (10)(i) of this section.

(11) Tariffs filed at the Commission are required to be consecutively numbered. Likewise, supplements to a tariff are required to be consecutively numbered.

§ 341.4 Filing requirements for amendments to tariffs.

(a) *Supplements to tariffs.* (1) The number of supplements will be limited to one effective supplement per tariff except that cancellation, postponement, adoption, correction and suspension supplements will not be included in the limitation.

(2) Any item numbers that are canceled or amended must be clearly identified. Reissued items from prior supplements must also be brought forward in the current supplement and properly referenced with the symbols in § 341.3(b)(10)(i). Cancellation of an item by supplement must be made by bringing forward the item number with an added capital letter suffix in alphabetical sequence. For example: "Item 445–A cancels Item 445."

(b) *Cancellation supplements.* When tariffs are canceled without reissue, a cancellation supplement must be filed.

(c) *Postponement supplements.* Supplements postponing the effective date of pending tariff filings must be filed prior to the proposed effective date of the filing. No postponement supplement may postpone the effective date for more than 30 days.

(d) *Adoption supplements.* An "adoption supplement" is a supplement filed to adopt the tariff of another carrier. An adoption supplement must be filed as necessary to provide the notice required in section 341.6.

(e) *Correction supplements.* A "correction supplement" is a supplement filed to correct a typographical or clerical error. A correction supplement is not counted in the number of effective supplements allowed per tariff. However, only three (3) correction supplements are permitted per tariff.

(f) *Suspension supplements.* Within fifteen days of the date of the suspension order, a suspension supplement must be filed for each tariff or part thereof suspended. The suspension supplement must also be served on shippers and subscribers. The supplement must contain the date it is issued (no effective date is used). Further, it must contain a reproduction of the ordering paragraphs of the Commission's suspension order followed by a statement that the tariff or portion thereof was suspended until the date stated in the Commission's order and reference the Commission's docket number under which the suspension order was issued.

§ 341.5 Cancellation of tariffs and rates.

Oil pipeline carriers must cancel prior tariffs and rates when the tariffs are reissued. When a tariff is canceled in whole or in part by a supplement thereto, the supplement must show where the rates will be found thereafter or what rates will thereafter apply. If the service in connection with the particular tariff is no longer in interstate commerce, the tariff or supplement must so state.

§ 341.6 Adoption rule.

(a) The Commission will be notified by the pipeline when there is:

(1) A change in legal name of carrier or when all carrier properties are transferred, or

(2) A change in ownership of only a portion of the carrier's property.

(b) Notification of these occurrences must be by tariff publication filed as soon as possible but no later than 30 days following such occurrence. Filing of adoption notices and adoption supplements require no notice period.

(c) *Complete adoption.* (1) When the legal name of a carrier is changed, or when ownership of all the carrier's properties is transferred to another company, the adopting carrier must file and post an adoption notice, numbered in its own FERC Tariff series, reading as follows:

The _____ (legal name of adopting carrier) hereby adopts and makes its own all tariff publications of _____ (name of adopted carrier), effective _____ (date).

(2) In addition to the above adoption notice, the adopting carrier must concurrently file a consecutively numbered supplement to each of the adopted carrier's tariffs covered by the adoption notice, reading as follows:

Effective _____ (insert date shown on adoption notice) this tariff publication because the tariff of the _____ (legal name of adopting carrier) as per its adoption notice FERC No. _____.

(3) Such supplements issued under authority of this section must contain no other matter, and must refer to section 341.6.

(4) Rates applying locally on the adopted line(s) must be transferred within thirty (30) days of the filing of the adoption notices and supplements into the FERC Tariff series of the adopting carrier on thirty (30) days' notice as provided for in § 341.2(b). Changes to the tariff(s) can be made at this time in accordance with the tariff filing requirements contained in this part.

(d) *Partial adoption.* (1) When the ownership of only a portion of a carrier's properties is transferred to another carrier, the carrier which will thereafter own the properties (adopting carrier) must file and post an adoption notice, numbered in its own FERC Tariff series, containing the statement as follows:

The _____ (legal name of adopting carrier) hereby adopts and makes its own, the tariffs of _____ (legal name of adopted carrier) for the following transportation movement(s) _____ (identify by FERC tariff number, origin, and destination point(s)), effective _____ (date of adoption).

(2) If there is a point on the transferred portion which will also continue to remain a point on the former owner's line, a reference must be provided in connection with the name of that point, explaining the common junction point.

(3) In addition to the above adoption notice, the former owner (adopted carrier) must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective _____ (date of adoption notice) this tariff became the tariff of the _____ (legal name of adopting carrier) for the following transportation movement(s) _____ (origin and destination point(s)), effective _____ (date of adoption), as per its adoption notice FERC tariff number _____.

(4) Adoption supplements must contain no other matter, and must refer to § 341.6.

(5) Rates applying locally on the adopted portion must be transferred within 30 days of the filing of the adoption notices and supplements into the FERC Tariff series of the adopting carrier on 30 days' notice as provided for in § 341.2(b). Where rates are transferred from tariffs of the adopted carrier to tariffs of the adopting carrier, the adopting carriers must establish the rates in its tariffs and the adopted carrier must cancel the corresponding rates from its tariffs effective on the same date with a reference to the FERC Tariff number of the adopting carrier for rates applying thereafter. Changes to the tariff(s) will be made in accordance with the tariff filing requirements contained in this part.

§ 341.7 Concurrences.

(a) A concurrence is the agreement of a carrier to participate in the joint rates or regulations published by another carrier.

(b) Concurrences must be maintained at carrier's offices and produced upon request. Cancellations or changes to concurrences affecting FERC tariffs, must be shown in those tariffs.

§ 341.8 Terminal and other services.

Specific rules must be published in the tariff for services (e.g. regulations governing the specifications, prorationing of capacity, demurrage, odorization, carrier liability, quality bank, reconsignment, in-transit transfers, storage, loading and unloading, gathering, terminalling, batching, blending, commingling, connection policy and all other charges, services, allowances, absorptions and rules which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of service to the shipper.) Tariffs authorizing such services or providing charges or allowances related to those services must clearly show their application.

§ 341.9 Index of tariffs.

(a) Each carrier must publish as a separate tariff publication, under its FERC Tariff numbering system, a complete index of all effective tariffs to which it is a party, either as initial, intermediate, or delivering carrier. The index must be arranged in sections as indicated in paragraphs (b), (c), and (d), of this section and must show as to each tariff:

(1) the FERC Tariff number,

(2) the full name of issuing carrier or agent,

(3) the type of tariff or description of the traffic to which it applies, including origin and destination points, and

(4) whether the tariff contains rates for transportation by mode other than pipeline.

(b) The first section of a tariff index will contain a list of all tariffs in which the carrier is an initial carrier in the following order: Specific commodity tariffs, general commodity tariffs, and miscellaneous tariffs (e.g. rules and regulations, terminal services, and transfers)—arranged alphabetically.

(c) The second section of a tariff index will contain a list of all tariffs in which the carrier is a delivering carrier arranged in the manner described in the first section. This section must also include those tariffs in which the carrier is an intermediate carrier, if any.

(d) The third section of a tariff index will contain a complete list of the FERC Tariff numbers of the pipeline's own effective tariffs arranged in numerical order.

(e) The index must be kept current by supplements numbered consecutively which may be issued quarterly. At a minimum, the index must be reissued every four years.

(f) The title page of each index and supplement thereto, must contain the issue date but not the effective date. The thirty (30) days' notice period contained in § 341.2(b) does not apply to indexes and their supplements.

§ 341.10 Intermediate application of rates.

(a) Tariffs may provide for the application of rates from, or to, intermediate points.

(b) If the intermediate point is to be used on a continuous basis, then the carrier must file a tariff publication applicable to the transportation movement within 30 days of the start of such service.

§ 341.11 Rejection of tariffs and other filed materials.

(a) The Commission may reject tariffs or any other material submitted for filing which fail to comply with the requirements set forth in this part or violate any statute, rule or order of the Commission.

(b) The FERC Tariff number assigned to a tariff publication which has been rejected may not be used again. The tariff publication filed in its place must bear the following notation: "Issued in lieu of _____ (here identify the rejected tariff publication), rejected by the Commission."

§ 341.12 Informal submissions.

Oil pipeline carriers may informally submit tariffs or material relating thereto for suggestions of Staff prior to the official filing.

§ 341.13 Withdrawal of proposed tariff publications.

A proposed tariff publication which is not yet effective may be withdrawn at any time by notice to the Commission, made by a letter addressed to the Secretary with a certification that all shippers have been notified by copy of such notice of withdrawal.

§ 341.14 Special permission.

(a) *Procedure for requesting waiver of notice and tariff requirements under section 6 of the Interstate Commerce Act.* (1) *Filing of tariffs simultaneously with applications.* Applications for waiver of Section 6(3) of the Interstate Commerce Act must be filed concurrently with the tariff publication being proposed. The letter of transmittal conveying this filing must prominently identify the filing as requesting a waiver under section 6(3) of the Interstate Commerce Act. The application must describe in detail any unusual circumstance or emergency situation which may aid the Commission in evaluating the application. If shortened notice period is requested, the applicant must state the emergency situation which would require shortened of the statutory notice. All applications for waiver of the notice requirements must be filed by the carrier or agent that holds authority to file the proposed changes. If the application requests permission to make changes in joint tariffs it must also state that it is made on behalf of all carriers party to the proposed change. Tariff publications issued on short notice must contain the following statement on the Title Page(s):

Issued on _____ [insert number] days notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a thirty review period.

(2) *Tariff publication conditionally accepted subject to refund.* To permit short-notice filings to become effective as requested, the tariffs filed concurrently with a special permission request for short (less than 30 days) notice will be conditionally accepted for filing, and will be made subject to refund until the Commission has had a full 30 days review period in which to process the filing. Refunds will be collected with interest as calculated according to § 340.1 of this chapter. The refund obligation will automatically terminate with no refunds due at the end of the full 30-day notice period absent an order to the contrary issued by the Commission.

(3) *Special permission granted.* The special permission requested will be deemed automatically granted at the end of the full 30-day notice period absent an order denying such request.

§ 341.15 Long and short haul or aggregate of intermediate rates.

(a) Requests for relief from the provisions of section 4 of the Interstate Commerce Act, allowing the pipeline to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge any greater compensation as a through rate that the aggregate of the intermediate rates, may be filed by any oil pipeline carrier. Such request will be deemed granted unless the Commission denies the request within 15 days of the filing.

(b) The information to be provided to the Commission upon filing of a request for section 4 relief must contain the following information:

(1) The name(s) of the carrier(s) for which the relief is being requested.

(2) The FERC tariff number(s) which contain the rates or charges referred to in the application, and identification of all the particular and related rates in question delineating origin and destination points.

(3) An accurate and complete statement giving the basis and reasoning why section 4 relief is necessary.

(4) A statement that the lower rates for longer than for shorter hauls over the same line or route are reasonably compensatory.

(5) A map showing the pipeline(s) and origin and destination points in question and other pertinent information.

(c) Applications for section 4 relief and the attendant information must be filed concurrently with the tariff or tariff supplement filing establishing those rates. The transmittal letter conveying this filing to the Commission must prominently identify the filing as requesting section 4 relief.

(d) Tariffs or supplements filed containing fourth-section rates must plainly state on the title page of the tariff or supplement that the rate(s) contained therein contravene section 4 of the ICA.

(e) All carriers are hereby authorized, in the making up of through rates by aggregating intermediate rates, to round the resultant through rate to the nearest 0.5 or whole cent.

PART 342—LONG-AND-SHORT-HAUL AND AGGREGATE-OF-INTERMEDIATE RATES—PIPELINES—[REMOVED]

2. Part 342 is removed and reserved.

PART 343—POSTING TARIFFS OF COMMON CARRIER PIPELINES—[REMOVED]

3. Part 343 is removed.

4. Part 344 is revised to read as follows:

PART 344—FILING QUOTATIONS FOR GOVERNMENT SHIPMENTS AT REDUCED RATES

Sec.
344.1 Applicability.
344.2 Manner of submitting quotations.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 344.1 Applicability.

The provisions of this part will apply to quotations or tenders made by all pipeline common carriers to the United States Government, or any agency or department, thereof, for the transportation, storage, or handling of petroleum and petroleum products at reduced rates as permitted by section 22 of the ICA. Excepted are filings which involve information, the disclosure of which would endanger the national security.

§ 344.2 Manner of submitting quotations.

a. *Copies.* Exact copies of the quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

b. *Filing in duplicate.* All quotations or tenders must be filed in duplicate. One of these copies must be signed and both copies must clearly indicate the name and official title of the officer executing the document.

c. *Filing procedure.* Both copies must be filed with a letter of transmittal which prominently indicates that the filing is in accordance with section 22 of the ICA. The filing must be filed with the Secretary and addressed to the "Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426," with the envelope marked as containing "Oil Pipeline Tariffs—Section 22 Quotations." A pipeline who requests a receipt for the accompanying documentation must submit the letter of transmittal in duplicate and include a postage-paid, self-addressed envelope. One copy showing date of receipt by the Commission will be returned to the requester.

d. *Numbering.* The copies of quotations or tenders which are filed with this Commission by each carrier must be numbered consecutively.

e. *Supersession of a quotation or tender.* A quotation or tender which supersedes a prior quotation or tender must, by a statement shown immediately under the number of the new document, cancel the prior document number.

PART 345—SECTION 5a APPLICATIONS—[REMOVED]

5. Part 345 is removed.

PART 347—COMPETITIVE BIDS OIL PIPELINE—[REMOVED]

6. Part 347 is removed.

PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

7. The authority citation for part 352 is revised to read as follows:

Authority: 49 U.S.C. 12, 20.

8. Part 352, instruction 3–2 of the Instructions for Carrier Property Accounts is revised to read as follows:

Instructions for Carrier Property Accounts

* * * * *

3–2. *Minimum Rule.* (a) To avoid undue refinement in accounting, carriers must charge to operating expenses acquisitions of property (other than land) including additions and improvements costing less than $2,500. Expenditures made under a general plan will not be parceled to meet the minimum nor will related items be combined to avoid the minimum.

(b) An amount of less than $2,500 may be adopted for purposes of this rule provided the carrier first notifies the Commission of the amount it proposes to adopt and thereafter makes no change in the amount unless authorized to do so by the Commission.

* * * * *

PART 360—REPORTING OF DATA FOR INITIAL PIPELINE VALUATION—[REMOVED]

9. Part 360 is removed.

PART 361—REGULATIONS GOVERNING THE REPORTING OF PROPERTY CHANGES, PIPELINE CARRIERS—[REMOVED]

10. Part 361 is removed.

The following amendments are proposed to be effective 365 days after publication of the final rule in the **Federal Register**.

1. Part 342 is added to read as follows:

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

Sec.
342.0 Applicability.
342.1 Definitions.
342.2 Ratemaking methodologies.
342.3 Indexing.
342.4 Other methods.
342.5 Protests and complaints.
342.6 Filing of protests and responses.
342.7 Commission action on rate filings in absence of protest.
342.8 Commission action on complaints.
342.9 Alternative dispute resolution in oil pipeline rate matters.

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

§ 342.0 Applicability.

The Commission's Rules of Practice and Procedure will govern procedural matters in oil pipeline proceedings under the Interstate Commerce Act, except to the extent a procedural rule is specified in this part, in which case the rule in this part will govern.

§ 342.1 Definitions.

(a) Protest—A filing challenging a rate change filed under section 15(7) of the Interstate Commerce Act.

(b) Complaint—A filing challenging an existing rate under section 13(1) of the Interstate Commerce Act.

§ 342.2 Ratemaking methodology.

Each pipeline subject to the jurisdiction of the Commission under the Interstate Commerce Act must establish its rates subject to such Act pursuant to §§ 342.3 and 342.4.

§ 342.3 Indexing.

A pipeline must establish rates pursuant to this section, unless § 342.4 applies.

(a) *Information Required to be Filed with Tariff.* The pipeline must provide a compilation showing the proposed new rate, the prior rate and the allowed ceiling for the same movement. No other information is required to accompany the proposed new tariff.

(b) *Rate Changes.* The rate charged by a pipeline may be changed, at any time, to a level which does not exceed the ceiling established by § 342.3(c), upon compliance with the applicable filing and notice requirements and with § 342.3(a).

(c) *Derivation of the Ceiling Level.* The change in the ceiling level will be derived by a pipeline in accordance with the following:

(1) A pipeline will average the final revised quarterly values for the most recent calendar year of the Gross Domestic Product, Implicit price Deflator (GDP–IPD) published by the U.S. Department of Commerce, Bureau of Economic Analysis.

(2) The pipeline will then average the quarterly values of the GDP–IPD for the next previous calendar year.

(3) The pipeline will then compute the ratio of the quarterly average of the GDP–IPD for the most recent year to that of the next previous year. The ratio so derived will be used by the pipeline to determine the total increase or decrease, for the current year, from the previous year's established ceiling for each individual tariff rate.

(d) *Rate Decreases.* If the ceiling level computed pursuant to § 342.3(c) is below the existing filed rate of a pipeline, the pipeline must, within 30 days of the publication by the Commerce Department of the final revised GDP–IPD for the 4th quarter of each year, file to reduce its existing rates to or below the new ceiling.

(e) *Notice Period.* A pipeline must provide at least 30 days' notice of the effective date of a rate change filed under this section, except as modified by special permission requested pursuant to § 341.14 of this Chapter.

§ 342.4 Other methods.

(a) *Cost-of-service rates.* A pipeline may establish rates pursuant to this section if it shows that it has been affected by such substantial unforeseeable and uncontrollable extraordinary circumstances that application of the index provided in § 342.3 would fail to result in a just and reasonable rate within the meaning of the Interstate Commerce Act. A pipeline must at a minimum submit information concerning such extraordinary circumstances and costs incurred in sufficient detail to demonstrate the severity of the adverse impact upon the financial condition of the pipeline. A pipeline that makes such a showing may establish the rate(s) in question based upon the cost of providing the service covered by the rate(s). Provided, that a rate established pursuant to this section can be subsequently changed only in accordance with § 342.3, unless the pipeline, in conjunction with and relevant to such subsequent change, makes a showing fulfilling the requirements of this section.

(b) *Initial base rates for new service.* Initial base rates for new service must be charged at the rate agreed upon between the pipeline and the shipper. Any changes to such rates must be in accordance with § 342.3.

(c) *Market-based rates.* Nothing in this section will preclude a pipeline from charging market-based rates upon establishing that it lacks significant market power in the market in which it proposes to charge such rates.

§ 342.5 Protests and complaints.

This section applies to protests and complaints filed under the Interstate Commerce Act.

(a) *Standing to File Protest.* The Commission will accept for filing only those protests filed by persons with standing. Protests filed by persons without standing will be dismissed. Except as provided in paragraph (a) (2), (3) and (4) of this section, no person will have standing unless it ships, has attempted to ship, or plans to ship, over the route covered by the rate(s) or is affected by the practice in question.

(1) Each person with standing must file, along with the protest, a verified statement that it has shipped, attempted to ship or plans to ship over the route in question.

(2) A person that competes with a pipeline will have standing to file a protest only with respect to a claim that the pipeline is engaging in anti-competitive practices in violation of the Interstate Commerce Act. Such a claim must be supported in the protest by a verified statement containing specific facts to demonstrate the nature and extent of the alleged anticompetitive practices.

(3) A person that does not fulfill the requirements of paragraph (a)(1) or (2) of this section, will have standing to file a protest only upon a showing that the rate or practice sought to be challenged causes the person substantial economic injury and that no other party can adequately represent such person's interests. Such a showing must be supported by a verified statement containing specific facts.

(4) State regulatory commissions or other affected State or Federal agencies will have standing to file a protest under this section.

(b) *Other Requirements for Filing Protests or Complaints.* (1) *Rates established under § 342.3.* A protest or complaint filed against rates established pursuant to § 342.3 must allege specific facts showing that the rates violate a provision of the Interstate Commerce Act, or of these regulations, or that the filing contains typographical or computation errors. The Commission will not consider an allegation, whether made in a protest or a complaint, that the rates to not reflect the pipeline's actual cost-of-service; provided, however, that a protestant or complainant will be heard upon a claim, supported by specific facts, that because of a substantial change in the economic circumstances of, or the nature of the service provided by, the oil pipeline which were a basis for the rate, the rate or the application of the index to the rate is not just and reasonable within the meaning of the Interstate Commerce Act; provided, further, that in any proceeding upon such a claim the fact that the rate level is within the applicable ceiling will constitute a prima facie showing that the rate is just and reasonable. This subparagraph will not apply to a complaint under section 13(1) of the Interstate Commerce Act against a rate in effect on the effective date of this part, and which has not been deemed just and reasonable under title XVIII of the Energy Policy Act of 1992 or determined to be just and reasonable by previous Commission order.

(2) *Rates established under § 342.4.* A protest or complaint filed against rates established pursuant to § 342.4 must allege specific facts showing that the rates violate a provision of the Interstate Commerce Act or of the Commission's regulations; or does not reflect the pipeline's cost-of-service applicable to the movement in question.

VOL 58 ISS 132 JL 13 1993 UMI

(3) *Non-rate matters.* A protest or complaint filed against a pipeline's operations or practices, other than rates, must allege specific facts showing that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations.

(4) A protest or complaint that does not meet the requirements of paragraph (b) (1), (2), or (3) of this section, whichever is applicable, will be dismissed.

§ 342.6 Filing of protests and responses.

(a) Any protest to a rate filing by an oil pipeline must be filed not later than 10 days after the filing of such rate change.

(b) The pipeline may file an answer to a protest no later than 5 days from the filing of the protest.

(c) Commission action, including any hearings or other proceedings, on a protest will be limited to the issues raised in such protest. If a filing is protested, the Commission will determine within 30 days of the tariff filing whether to initiate a formal investigation.

§ 342.7 Commission action on rate filing in absence of protest.

A filing for a rate which is not protested and which has been made in accordance with all applicable requirements will be permitted to go into effect without suspension upon the expiration of the applicable notice period; provided, that the Commission may suspend the effective date of a rate filing proposing to change a rate that is currently subject to investigation and refund.

§ 342.8 Commission action on complaints.

(a) The pipeline must file a response to a complaint no later than 30 days after the filing of such complaint.

(b) Commission action, including any hearings or other proceedings, on a complaint will be limited to the issues raised in such complaint.

§ 342.9 Alternative dispute resolution in oil pipeline rate matters.

In addition to the provisions in §§ 385.601–385.603 of this chapter pertaining to settlement of cases before the Commission, the following provisions are applicable to oil pipeline rate matters.

(a) *Conferences.* The Commission or other decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures.

(b) *Required Negotiation.* The Commission or other decisional authority may require parties to enter into good faith negotiations to settle oil pipeline rate matters. The Commission will refer all protested rate filings to a settlement judge pursuant to § 385.603 of this chapter for recommended resolution. Failure to participate in such negotiations in good faith will be grounds for decision against the party so failing to participate on any issue that is the subject of negotiation by other parties.

(c) *Alternative Dispute Resolution.* (1) Participants may, subject to the limitations of paragraph (c)(2) of this section, use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. The alternative means of dispute resolution will use voluntary procedures that supplement, rather than limit, other available dispute resolution techniques.

(2) The Commission will consider not using an alternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (c)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) A determination to use or not to use a dispute resolution proceeding is not subject to judicial review.

(5) Settlement agreements reached through the use of alternative dispute resolution will be subject to the provisions of § 385.602 of this chapter, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(d) *Definitions.*—(1) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve oil pipeline rate issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(2) *Award* means any decision by an arbitrator resolving the issues in controversy;

(3) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(4) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral may be appointed and specified parties participate;

(5) *In confidence* means information is provided:

(i) With the expressed intent of the source that it not be disclosed, or

(ii) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed;

(6) *Issue in controversy* means an issue which is or is anticipated to be material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants who would be substantially affected by the decision or between the Commission and any such participants;

(7) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(e) *Neutrals.* (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government

employee may serve if the interest is fully disclosed in writing to all participants and all participants agree.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges, from rosters kept by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(f) *Submission of proposal to use alternative dispute resolution.* (1) The participants may at any time during a proceeding submit a written proposal to use alternative means of dispute resolution to resolve all or part of any matter in controversy or anticipated to be in controversy before the Commission.

(2) For matters set for hearing, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

(3) Proposals involving binding arbitration must be filed with the Secretary for consideration by the Commission.

(4) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(5) The appropriate decisional authority will issue an order, approving or denying a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(6) Any request to modify a previously-approved ADR proposal must follow the same procedure.

(g) *Contents of proposal.* A proposal to use alternative means of dispute resolution must be in writing and include:

(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method;

(2) A description of the alternative dispute resolution method(s) to be used;

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service.

(h) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

(i) *Termination of alternative dispute resolution proceeding.* (1) The decisional authority, upon motion or otherwise, may terminate any ADR proceeding by issuing an order to that effect.

(2) A decision to terminate an alternative dispute resolution proceeding is not subject to judicial review.

(j) *Confidentiality in Dispute Resolution Proceedings.* (1) Except as provided in paragraphs (j) (4) and (5) of this section, a neutral in a dispute resolution proceeding will not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(i) All participants in the dispute resolution proceeding and the neutral consent in writing;

(ii) The dispute resolution communication has already been made public;

(iii) The dispute resolution communication is required by statute to be made public, but a neutral should make the communication public only if no other person is reasonably available to disclose the communication; or

(iv) A court determines that the testimony or disclosure is necessary to:

(A) Prevent a manifest injustice;

(B) Help establish a violation of law; or

(C) Prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(2) A participant in a dispute resolution proceeding must not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication; unless:

(i) All participants to the dispute resolution proceeding consent in writing;

(ii) The dispute resolution communication has already been made public;

(iii) The dispute resolution communication is required by statute to be made public;

(iv) A court determines that the testimony or disclosure is necessary to:

(A) Prevent a manifest injustice;

(B) Help establish a violation of law; or

(C) Prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(v) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(3) Any dispute resolution communication that is disclosed in violation of paragraph (j) (1) or (2) of this section will not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(4) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (j)(1) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (j)(2)(i) of this section will apply.

(5) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral will make reasonable efforts to notify the participants of the demand. Any participant who receives the notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(6) Nothing prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(7) Paragraphs (j) (1) and (2) of this section will have no effect on the information and data that are necessary to document any agreement reached or order issued pursuant to a dispute resolution proceeding.

(8) Paragraph (j) (1) and (2) of this section will not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(9) Paragraph (j) (1) and (2) of this paragraph will not prevent use of a dispute resolution communication to

resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

(k). *Arbitration.* (1) The participants may at any time submit a written proposal to use binding arbitration under the provisions of this Rule to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(2) The proposal must be submitted as provided in below.

(3) The proposal must be in writing.

(4) An arbitration proceeding under this rule may be monitored and terminated.

(5) No person may be required to consent to arbitration as a condition of entering into a contract or obtaining a benefit. All interested parties must expressly consent to arbitration under this rule.

(6) An agreement to arbitrate a matter pursuant to this provision will be enforceable pursuant to the Arbitration Act (9 U.S.C. 4), and no action will be dismissed nor will relief be denied on the grounds that the matter is against the United States or that the United States is an indispensable party.

(7) The participants to an arbitration proceeding are entitled to select the arbitrator. The arbitrator must be a neutral.

(8) An arbitrator to whom a dispute is referred under this section may:

(i) Regulate the course of and conduct arbitral hearings;

(ii) Administer oaths and affirmations;

(iii) Compel the attendance of witnesses and the production of evidence to the extent the Commission is authorized by law to do so; and

(iv) Make awards.

(v) The arbitrator will set a time and place for the hearing on the dispute and must notify the participants not less than 5 days before the hearing.

(vi) Any participant wishing that there be a record of the hearing must:

(A) Prepare the record;

(B) Notify the other participants and the arbitrator of the preparation of the record;

(C) Furnish copies to all identified participants and the arbitrator; and

(D) Pay all costs for the record, unless the participants agree otherwise or the arbitrator determines that the costs should be apportioned.

(vii) Participants to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(viii) The arbitrator may, with the consent of the participants, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each participant has an opportunity to participate.

(ix) The hearing must be conducted expeditiously and in an informal manner.

(x) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(xi) The arbitrator will interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(xii) No interested person will make or knowingly cause to be made to the arbitrator an unauthorized *ex parte* communication relevant to the merits of the proceeding, unless the participants agree otherwise. If a communication is made in violation of this prohibition, the arbitrator will ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of such communication, the arbitrator may require the offending participant to show cause why the claim of the participant should not be resolved against the participant as a result of the improper conduct.

(xiii) The arbitrator will make the award within 30 days after the close of the hearing or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the participants and the arbitrator agree to some other time limit.

(9)(i) The award in an oil pipeline rate arbitration proceeding will include a brief, informal discussion of the factual and legal basis for the award.

(ii) The prevailing participants must file the award with the Commission, along with proof of service on all participants.

(iii) The award in an arbitration proceeding will become final 30 days after it is filed, unless the award is vacated. The Commission, upon motion or otherwise, may extend the 30-day period for one additional 30-day period by issuing a notice of the extension before the end of the first 30-day period.

(iv) A final award is binding on the participants to the arbitration proceeding, and may be enforced pursuant to the Arbitration Act (9 U.S.C. 9–13). No action brought to enforce an award will be dismissed nor will relief be denied on the grounds that the matter is against the United States or that the United States is an indispensable party.

(v) An award may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. The award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding or in any other arbitration proceeding.

(10)(i) Within 10 days after the award is filed, any person may file a request with the Commission to vacate an arbitration award and must serve the request to vacate on all participants. Responses to such a request are due 10 days after the request is filed.

(ii) Upon request or otherwise, the Commission may vacate any award issued under this rule before the award becomes final by issuing an order to that effect, in which case the award will be null and void.

(iii) § 385.2202 of this chapter regarding separation of functions applies with respect to a decision to vacate an arbitration award.

(iv) If the Commission vacates an award, a party to the arbitration may, within 30 days of the action, petition the Commission for an award of attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission will award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

(v) An arbitration award vacated under this paragraph will not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

(vi) A decision by the Commission to vacate an arbitration award is not subject to rehearing or judicial review.

PART 375—THE COMMISSION

2. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107–7532.

3. In § 375.303, the introductory text and paragraphs (c) and (d)(1) are revised to read as follows:

§ 375.303 Delegation to the Chief Accountant.

The Commission authorizes the Chief Accountant or the Chief Accountant's designee to:

* * * * *

(C) Pass upon applications to increase the size, add to or combine property units of public utilities, licensees, natural gas companies and oil pipeline companies.

(d) * * *

(1) Relating to Annual Report Nos. 1, 1F, 2, 2A, and 6, and,

* * * * *

§ 375.306 [Removed]

4. Section 375.306 is removed and reserved.

5. In § 375.307, the introductory text is revised and paragraph (g) is added to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

The Commission authorizes the Director or the Director's designee to:

* * * * *

(g) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) grant or deny petitions for waiver of annual charges;

(2) accept any uncontested item which has been filed consistent with Commission regulations and policy;

(3) reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and

(4) refer any matter to the Commission which the Director believes should be acted upon by the Commission.

Appendix A—Commission Opinion No. 154–B Rate Base Calculation

Note.—This appendix will not appear in the Code of Federal Regulations.

This schedule is for ratemaking purposes only. The 1983 "Cost of Reproduction New" is directly from the Carrier's 1983 Valuation Docket for that year.[1] Complete a separate schedule for each system.

Name of system:

Item	1983	1993[2]
Plant:		
1 Cost of Reproduction New[1].		
2 Land.		
3 Rights of Way.		
4 AFUDC	N/A	
5 Additions at Cost	N/A	
6 Total plant.		
Accrued Depreciation:		
7 Plant in Service.		
8 Rights of Way.		
9 AFUDC	N/A	
10 Retirements	N/A	
11 Total depreciation.		
12 Accumulated Deferred Income Taxes.		
Working capital:		
13 Material and Supplies.		
14 Prepayments.		
15 Oil Inventory.		
16 Total working capital.		
17 Accrued Deferred Income.	N/A	
18 Amortization of Starting Rate Base Write-Up.	N/A	
19 Total Equity Rate Base (L6 – L11 – L12 + L16+L17 – L18.		
20 Parent Company Equity Capitalization.	N/A	
21 Equity Rate Base (L19 x L20).	N/A	

[1] Applicable only to pipelines in existence before January 1, 1984.

[2] This calculation sheet is for one year only (1993). It is intended only as a sample to demonstrate the form. It may be necessary to calculate each intervening year between 1983 and the current year to derive the current years' figures. If calculations have previously been filed for intervening years, only those years beginning with the last filing to the current year need be shown.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4678–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Pesticide Lab (Yakima) from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Pesticide Lab (Yakima) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that response actions have been carried out under the Resource Conservation and Recovery Act (RCRA), that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before August 12, 1993.

ADDRESSES: Comments may be mailed to: Sean Sheldrake, Environmental Protection Agency, 1200 6th Avenue, Mail Stop: HW–113, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the Yakima Site information repositories at the following locations:

Washington Department of Ecology, Central Regional Office, attn. John Jones, 106 South 6th Avenue, Yakima, Washington 98902.

United States Environmental Protection Agency, Region 10 Hazardous Waste Division—Records Center, attn: Lynn Williams, 1200 6th Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Sean Sheldrake, U.S. EPA Region 10, 1200 6th Avenue, Mail Stop: HW–113, Seattle, Washington 98101, (206) 553–1220.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete a site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. EPA has the discretion to use its authorities under CERCLA or RCRA, or to designate a state with remedial authorities to accomplish appropriate cleanup at sites listed on the NPL. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Pesticide Lab (Yakima) Site at 3706 West Nob Hill Boulevard, Yakima, Washington 98902 from the NPL.

EPA will accept comments on this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV

discusses the Pesticide Lab (Yakima) Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP, 40 CFR 300.425(e), provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, where hazardous substances are not above health based levels and future access does not require restriction, operation and maintenance activities and five-year reviews will not be conducted. However, if new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) A notice was published in the local newspapers and distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on EPA's clean closure determination under RCRA and the proposed No Further Action decision under CERCLA (no public comments were received in opposition to EPA's findings); (2) EPA Region 10 believes that the remedial investigation showed that the releases at the Site pose no significant threat to public health or the environment and, therefore, EPA issued a No Further Action Record of Decision (ROD) after the public comment period ended; (3) Ecology has concurred with the ROD and the proposed deletion decision; and (4) all relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. The Agency will prepare a Responsiveness Summary where significant public comments are addressed.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. Site Characteristics

The Site listed on the NPL as the Pesticide Lab (Yakima) Site is located within the Yakima Agricultural Research Laboratory (YARL) in the city of Yakima, Yakima County, Washington. Approximately 50,000 people are located in Yakima. The Research Laboratory consists of numerous office and laboratory research buildings, warehouses, storage sheds, maintenance buildings and greenhouse/hothouse buildings occupying approximately 15% of an approximately 10 acre parcel in Yakima. The remaining acreage is used for cultivation of row crops and fruit trees. YARL is situated in a residential area within one-half mile of three schools, two hospitals and three shopping centers. The Site consists of a septic tank, disposal pipe, washdown pad and drainfield system used for the disposal of dilute pesticide compounds used at the YARL.

B. History

The research laboratory, originally an orchard, has been in operation since 1961. The primary activity at the laboratory involves the development of insect control technologies that benefit fruit and vegetable agriculture in the Pacific Northwest. Records indicate that the area was sprayed with various pesticide compounds including persistent chlorinated hydrocarbon pesticides such as DDT, Dieldrin, and Lindane. Workers at the laboratory used a modified septic and drainfield system to discharge dilute waste pesticide compounds. The system consisted of a 300 gallon concrete septic tank which drained a conventional toilet/sink and an outside concrete surface washdown pad. Tank effluent was discharged through a tile drain connected to a sink in a storage shed. Approximately 5,000 gallons of rinsate from equipment cleaning operations and less than 250 gallons of residual pesticide solutions were discharged into the system annually for about 20 years (from 1965 to 1985). Diluted pesticides known to have been introduced into the system with wastewater include but are not limited to Guthion, Sevin, Malathion, Parathion, Tetraethylpyrophosphate (TEPP), DDT, Temik, Methoxychlor, Kelthane, Lindane, Captan, Cyprez and Benelate. Heavy metals, including lead arsenate, and pesticide concentrates were never discharged to the septic tank/drainfield system. The unpermitted discharges resulted in investigations under RCRA and CERCLA at the YARL facility. There were concerns that pesticides and solvents had leached into the uppermost, shallow, drinking-water aquifer because of the presence of highly permeable sands and gravels.

YARL submitted a RCRA part A permit application in September 1980 and received interim status. A preliminary assessment and site investigation (PA/SI) was conducted in June 1982. Field work for the PA/SI was limited to shallow soil sampling and a failed attempt to drill to groundwater. The PA/SI concluded that soil was contaminated due to discharges from the septic system and that groundwater contamination was likely, based on an assumed groundwater depth of 20 feet. (Later the correct depth was determined to be 35 feet). Based on the results of the PA/SI, the Site was proposed for the NPL in December 1982 and finalized on September 8, 1983 (48 FR 40658). The Site is currently on the NPL, based on the original 1982 Hazard Ranking Score of 29.33.

On June 2, 1988, a RCRA Facility Assessment (RFA) was completed which included a preliminary characterization of the conditions at the Site, identified additional work needed to fully characterize the Site, and

described the results from a visual inspection. The RFA assessed exposure pathways that may be of concern given the nature of the releases at the Site and the substances released. Preliminary on-site sampling identified pesticides in septic tank water and the surrounding subsurface soil. The report concluded that the extent of groundwater and soil contamination could not be assessed without more information.

C. Characterization of Risk

Prior to remediation, the preliminary environmental pathways of concern related to the hazardous waste disposal system were groundwater, on-site soils and possibly surface water.

In 1988, YARL removed the drainfield, sampled soil within and outside the excavated drainfield area, sampled and gathered additional groundwater monitoring and sampling information from four monitoring wells and performed in-situ aquifer testing. Sampling was conducted for a lengthy list of primary and indicator parameters developed to determine groundwater quality and to monitor for the presence of the compounds believed to have been discharged through the septic tank/drainfield system.

The results of the study indicated that the groundwater was generally uncontaminated and that the likelihood for groundwater contamination, as a result of the hazardous waste disposal activities, was very low at the Site. The study detected a variety of hazardous pesticides and carrier solvents in the tank sludge and drainfield. Based on these data, EPA decided that the Site was subject to the requirements for hazardous waste treatment, storage, and disposal (TSD) facilities, under RCRA.

D. Remedial Action Selected and Implemented Under RCRA

Based on the hazard ranking score and the initial groundwater data, clean closure pursuant to RCRA requirements for interim status facilities (40 CFR part 265) was undertaken instead of initiating either a subpart B application under RCRA or conducting a Remedial Investigation and Feasibility Study pursuant to CERCLA. This approach is consistent with Ecology's Model Toxics Control Act Cleanup Regulations.

An initial closure plan ("cleanup plan") for the septic tank and drainfield, including a monitoring plan for sampling and analyzing groundwater and soil, had been submitted by YARL to EPA in January 1985. Four groundwater monitoring wells were installed in April 1988 at the Site. With site risks further characterized, a final revised closure plan was submitted on September 12, 1989 for approval. The September 12, 1989 final draft Closure Plan was released for public comment in December 1989. No comments were received. The Closure Plan was approved on January 30, 1990. As required by the approved Closure Plan, three additional wells were drilled and completed by July 1990.

The principal elements of the Closure Plan focused on removing the potential sources of contamination through removal and disposal of the septic tank contents, excavation and removal of the septic tank itself, washdown pad removal, additional background soil sampling, excavation and removal of contaminated soil to obtain cleanup levels, confirmational soil sampling around the removed structures, installation of groundwater monitoring wells and one year of groundwater sampling. Calculation of cleanup levels for contaminants at this Site were based on EPA's proposed RCRA subpart S standards as described in 55 FR 30798, July 27, 1990. Where cleanup levels for specific contaminants were not identified, consistent with subpart S, the Agency approved cleanup levels based on a cumulative noncarcinogenic risk estimate of less than 1.0 assuming daily intake and a lifetime incremental cancer risk of less than one in a million (within EPA's and Ecology's acceptable risk range for carcinogens).

Approximately 40 cubic yards of contaminated soil containing pesticides above the cleanup levels were removed from the former tank/pad area and disposed of at a permitted hazardous waste TSD facility. Two background samples taken during the initial closure phase (tank/pad removal) show low parts-per-billion levels of pesticide residuals such as Dieldrin and DDT. These and similar substances are expected to be found in this area due to historical, legal application of pesticides totally unrelated to the former YARL septic disposal practices.

Confirmational analysis of samples of remaining soil has not detected significant concentrations of PCBs, volatile organics semi-volatile organics or metals. Organophosphorus pesticides, identified in the tank contents, were not present in significant quantities in Site soils. Final confirmational soil sampling indicated that average DDT and Dieldrin concentrations were below cleanup levels, Endrin and Endosulfan were several orders of magnitude (100 to 1000 times) below cleanup levels, and other organochlorine pesticides were not detected.

Analytical data based on quarterly monitoring (45 valid samples in 5 quarters) indicate groundwater concentrations of DDT, Dieldrin and other regulated pesticides did not exceed health-based criteria or cleanup levels. No organic compounds were detected. Minor quantities of metals, including mercury, vanadium, and zinc, were detected below the maximum contaminant levels (MCLs) for drinking water.

Confirmational monitoring of soil and groundwater demonstrate that no significant risk to public health or the environment is posed by residual materials remaining at the Site and operation and maintenance activities are not required at the Site. Based on the removal of contaminated equipment and excavation of contaminated soil, EPA and Ecology believe that hazardous substances have been removed from the Site so as to allow for unlimited use and unrestricted exposure within the Site, that the Site is protective of public health and the environment and no further remedial action is needed at the Site. Accordingly, EPA will not conduct "five-year reviews" at this Site.

No environmental risk has been identified for this Site. For example, no critical habitats or endangered species or habitats of endangered species have been identified for this Site.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if the "remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate." EPA, with concurrence of Ecology, believes that this criterion for deletion has been met. The abbreviated Remedial Investigation and Record of Decision for the Site conclude that there is no significant threat to public health or the environment and therefore no further remedial action is necessary. Therefore, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: June 2, 1993.

Gerald A. Emison,

Acting Regional Administrator, Region 10.

[FR Doc. 93–16544 Filed 7–12–93; 8:45 am]

BILLING CODE 6560-50-M

VOL 58 ISS 132 JL 13 1993 UMI

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-201; RM-8213, RM-8252]

Radio Broadcasting Services; Walla Walla and Waitsburg, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive rule making petitions. The first was filed by Walla Walla Christian Boardcasters proposing the allotment of Channels 256A and 270A at Walla Walla, Washington, as the community's fifth and sixth local commercial FM transmission services. The second was filed by Brett E. Miller proposing the allotment of Channel 270C3 at Waitsburg, Washington, as its first local aural transmission service. See Supplementary Information *infra*.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Counsel for Walla Walla Christian Broadcasters); and Brett E. Miller, 11608 Blossomwood Court, Moorpark, California 93021 (Petitioner for Waitsburg, WA).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-201, adopted June 24, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Channels 256A and 270A can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements at the same reference coordinates without the imposition of a site restriction. The coordinates for Channels 256A and 270A at Walla Walla are North Latitude 46-04-12 and West Longitude 118-19-48. Channel 270C3 can be allotted to Waitsburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) southwest to avoid a short-spacing to Station KTSL, Channel 270C3, Medical Lake, Washington. The coordinates for Channel 270C3 at Waitsburg are North Latitude 46-15-10 and 118-09-56. Since Waitsburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16579 Filed 7-12-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-182, RM-8269]

Radio Broadcasting Services; Columbiana, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Columbiana Broadcasting Company, requesting the allotment of FM Channel 268A to Columbiana, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are 33-10-04 and 86-38-45.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 13809 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-182, adopted June 18, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16580 Filed 7-12-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-185, RM-8249]

Radio Broadcasting Services; Estes Park, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making

filed by Hambric Associates, seeking the allotment of Channel 271A to Estes Park, Colorado, as that community's first local FM service. Coordinates used for this proposal are 40–22–22 and 105–33–45.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Hambric Associates, Attn.: M.R. Hambric, 10976 E. Crestline Place, Englewood, CO 80111.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–185, adopted June 18, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16581 Filed 7–12–93; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

Drug and Alcohol Testing of Contractor Employees

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA today publishes a proposed rule to implement the Civil Space Employee Testing Act of 1991 ("the Act"), which requires NASA contractors to institute and maintain a program for achieving a drug and alcohol-free workforce. Contractor programs shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees responsible for safety-sensitive, security, or National security functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance.

DATES: Comments must be submitted in writing on or before September 13, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to David Sudduth, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, 300 E Street, SW., Washington, DC 20546. Comments regarding paperwork reduction, in addition to being forwarded to the designated Agency point of contact, may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Jonas Neihardt, Desk Officer for NASA, telephone (202) 395–4814, 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Sudduth, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, (202) 358–0485.

SUPPLEMENTARY INFORMATION:

Background

NASA is publishing a proposed rule establishing NASA's policies and requirements regarding the development, implementation, and maintenance of a drug- and alcohol-free workplace by contractors and subcontractors performing work for NASA.

The Civil Space Employees Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619 ("the Act"), was signed into law by the President on December 8, 1991. The Act requires NASA to prescribe regulations within 18 months (June 9, 1993) that require testing of both NASA employees and NASA contractor employees conducting safety-sensitive, security, and National security functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. For purposes of this proposed rule, the term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulations at 21 CFR 1308.11–1308.15. Consistent with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" ("HHS Guidelines"), published by the Department of Health and Human Services (53 FR 11970), and NASA's proposed regulations for testing of NASA employees in accordance with the Act, the contractor's drug testing program shall test for the use of marijuana and cocaine. NASA may, at some point, publish regulations requiring contractor testing programs to test for phencyclidines, amphetamines, and opiates, but such testing is not part of this rulemaking.

Section 21(g)(1) of the Act preempts inconsistent state and local laws.

The Act mandates, among other things, privacy in collection techniques, incorporation of the HHS Guidelines and comparable safeguards for alcohol testing, quantified confirmation of any initial positive result, collection of split samples of body fluid specimens, confidentiality of test results, and scientifically random selection of employees to be tested. The Act requires preemployment, random, post-accident, and reasonable suspicion testing; periodic recurring (follow-up) testing is discretionary. NASA has elected to make periodic recurring (follow-up) testing a component of NASA's testing requirements. The regulations require contractors to establish and maintain a rehabilitation program which, at a minimum, provides for the identification and opportunity for treatment of those covered employees in need of assistance in resolving problems due to misuse of alcohol or controlled substances.

The contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in any instance where a test conducted and confirmed under the contractor's program indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance. Any covered contractor employee determined to have used, in violation of applicable law or

Federal regulation, alcohol or a controlled substance shall not be permitted to perform the duties which such employee performed prior to the date of such determination. The contractor's program shall further prohibit any employee from working in a sensitive position on a NASA contract, unless such employee has completed an appropriate program of rehabilitation and the contractor has obtained the approval of the NASA contracting officer.

The regulations shall apply to all NASA prime contracts and to any subcontract(s) where work is performed by an employee in a sensitive position.

The regulations require the contracting officer to comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to the failure to comply with these drug and alcohol testing requirements. The specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension are: (1) The contractor fails to institute and maintain a program for achieving a drug- and alcohol-free work force in accordance with the regulations; or (2) such a number of contractor employees having been convicted of violations of criminal drug statutes or substantive evidence of alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

NASA has established a "Mission Critical Space Systems Personnel Reliability Program." This program is designed to ensure that personnel assigned to mission-critical positions/duties relating to the Space Shuttle and other critical space systems, including Space Station Freedom, designated Expendable Launch Vehicles (ELV's), designated payloads, Shuttle Carrier Aircraft, and other designated resources that provide access to space, meet suitability screening requirements prior to unescorted access to areas where the Space Shuttle and/or any of the other systems are located. The Space Shuttle and other systems are "mission critical space systems." The regulations provide that any employees performing in positions designated as "mission critical" pursuant to the clause set forth in the NASA FAR Supplement at 18–52.246–70, "Mission Critical Space Systems Personnel Reliability Program" (if the clause is applicable to the subject contract), shall be subject to the drug and alcohol testing requirements.

At the time of enactment of the Act, NASA already had implemented a Drug-Free Workplace Program (DFWP) as mandated by Executive Order 12564, dated September 15, 1986, and section 503 of Public Law 100–71, dated July 11, 1987, to govern drug testing and address the use of illegal drugs by NASA employees.

The Act requires certain changes to the existing NASA drug testing rules for NASA employees (e.g., it requires split sample collections and preemployment testing regulations, neither of which are currently mandated by Executive Order 12664 or section 503 of Pub. L. 100–71), as well as regulations covering alcohol testing for NASA employees. NASA is separately publishing in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) amending 14 CFR part 1272, which includes the new drug testing (i.e., split sample collections and preemployment) and alcohol testing requirements for NASA employees.

Since the Act requires the same testing criteria for both NASA employees and covered NASA contractors, the contractor's testing program shall be consistent with the testing procedures for NASA employees being published in the NPRM amending 14 CFR part 1272.

Starting Date for Drug and Alcohol Testing of NASA Contractors

NASA requests comments on the amount of time that contractors will need, following contract award, to begin their drug and alcohol testing programs in order to meet the requirements of the proposed contract clause. Based on these comments, NASA will include in the final rule guidance to NASA contracting officers on the amount of time that is considered reasonable for implementing the required testing.

Procedural Requirements

Executive Order 12291

E.O. 12291, entitled "Federal Regulation," requires that regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from E.O. 12291. The NPRM falls into one of the types of regulations exempted by OMB. Nevertheless, NASA submitted this proposed rule to OMB for review because of its relationship to the proposed testing requirements for NASA civilian employees.

Review Under the Regulatory Flexibility Act

The NPRM was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant impact on a substantial number of small entities. The NPRM reflects the minimum requirements to be fully compliant with the requirements of The Civil Space Employees Testing Act of 1991, Public Law 102–195, section 21, 105 Stat. 1616 to 1619. The NPRM establishes no agency discretionary regulations or requirements beyond the minimum requirements imposed upon the agency by statute that requires testing of both NASA employees and NASA contractor employees conducting safety-sensitive, security, and National security functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. Therefore, NASA certifies that the NPRM will not have a significant economic impact on a substantial number of small entities, beyond the requirements of the Act.

Review Under the Paperwork Reduction Act

NASA believes that minimal recordkeeping requirements are being imposed by the NPRM. NASA, therefore, will be requesting an OMB clearance for the NPRM under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 1823 and 1852.

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1823 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 1823.5 is added to read as follows:

Subpart 1823.570—Drug- and Alcohol-Free Workforce

1823.570–1 Scope of subpart.
1823.570–2 Definitions.
1823.570–3 Contract clause.
1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 1823.570 Drug- and Alcohol-Free Workforce

1823.570–1 Scope of subpart.

This subpart sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor

personnel. This subpart implements section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; Civil Space Employee Testing Act of 1991, Public Law 102–195, section 21, 105 Stat. 1616 to 1619.

1823.570–2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of this section.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence.

1823.570–3 Contract clause.

(a) The contracting officer shall insert the clause at 1852.223–74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts that require contractor employees to have access to classified information; perform in positions responsible for safety-sensitive, security, or National security functions in the performance of work under a Government contract; perform in positions designated "mission critical" pursuant to the "Mission Critical Space Systems Personnel Reliability Program" clause set forth at 1852.246–70; or when the contracting officer determines that the clause is necessary for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) The clause shall not apply to commercial or commercial type products as contemplated in FAR 11.001. The clause shall not apply to a contract, or to the part of a contract, that is performed outside of the United States and its territories and possessions. The clause shall not apply to any contract below the small purchase threshold as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with NFS 1852.233–74, Drug- and Alcohol-Free Workforce.

(b) For purposes of NFS 1852.233–74, Drug- and Alcohol-Free Workforce, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to comply with the specific requirements of paragraphs (b), (c), (d) and (e) of the contract clause set forth at NFS 1852.233–74; or

(2) Such a number of contractor employees having been convicted of violations of criminal drug statutes or substantive evidence of alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223–74 is added to read as follows:

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–3, insert the following clause:

Drug- and alcohol-free workforce (xxxx 1993)

(a) *Definitions.* As used in this clause the terms *employee, controlled substance,* and *employee in a sensitive position,* are as defined in NFS 1823.570–2.

(b) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, and post-accident testing of contractor employees in sensitive positions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. NASA Management Instruction (NMI) 3792.3B, "NASA Plan for a Drug-Free Workplace," dated December 17, 1991, in Appendix C of the NMI, sets forth guidelines that NASA follows in making determinations as to which of its employees are in sensitive positions. Contractors may follow these NASA guidelines in making determinations as to which of its employees performing on this contract are "employee(s) in a sensitive position," and are thus subject to the testing requirements of this clause. Any employees performing in positions designated as "mission critical" pursuant to the clause set forth at 1852.246–70, "Mission Critical Space Systems Personnel Reliability Program" (if the clause is applicable to this contract), shall be subject to the testing requirements of this clause. The Contractor's drug testing program shall test for the use of marijuana and cocaine. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988, and the requirements set forth in 14 CFR part 1272, "Procedures for NASA Drug Testing and Alcohol Testing Programs."

(c) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in any instance where a test conducted and confirmed under the Contractor's program indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(d) Any such employee determined to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after the initiation of contract performance who engaged in such use while on duty; or prior to such use had undertaken or completed a rehabilitation program described in paragraph (e) of this clause; or following such determination, refuses to undertake such a rehabilitation program; or following such determination, fails to complete such a rehabilitation program, shall not be permitted to perform the duties which such individual performed prior to the date of such determination. The Contractor's program shall further prohibit any such employee from working in a sensitive position on a NASA contract, unless such employee has completed a program of rehabilitation described in paragraph (e) of this clause and the Contractor has obtained the approval of the Contracting Officer.

(e) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(f) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(g) This clause shall apply to the prime contract and to any subcontract where work is performed by an employee in a sensitive position.

(End of clause)

[FR Doc. 93–16182 Filed 7–12–93; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To List the Alaska Breeding Population of Dovekie as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Alaska breeding population of the dovekie (*Alle alle*) to the List of Endangered and Threatened Wildlife. The Service finds the petition did not present substantial information indicating the requested action may be warranted. The Alaska breeding population of dovekies does not meet the definition of species under section 3(15) of the Endangered Species Act.

DATES: The finding announced in this notice was made on July 6, 1993. Comments and materials related to this petition finding may be submitted to the Field Office at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the Alaska dovekie petition may be submitted to the Field Supervisor, Anchorage Ecological Services Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G–62, Anchorage, Alaska 99501. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jean Cochrane, Endangered Species Specialist at the above address (telephone 907/271–2888).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be promptly published in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On March 29, 1993, Mr. Scott Felker submitted a letter to the Secretary of the Interior petitioning the Service to list the Alaska breeding population of dovekies as an endangered species pursuant to the Act. The petition was received on April 7, 1993. The petitioner describes dovekies in Alaska as endangered because of their very low numbers and great distance to the nearest breeding colonies.

This finding is based on various documents, including published and unpublished studies, agency documents, and literature syntheses. Researchers, wildlife managers, and local residents familiar with the species were interviewed. All documents on which this finding is based are on file in the Service's Ecological Services Field Office in Anchorage, Alaska.

Any species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. The term "species" is defined by the Act to include "subspecies * * * and any distinct population segment of any species which interbreeds when mature" (16 U.S.C. 1532(16)).

Dovekies breed in the Palearctic at Greenland, Iceland, Russia, and, in Norway, at Jan Mayen Island, Bear Island and Spitsbergen (American Ornithologist's Union [A.O.U.] 1983). They probably breed on Bering Sea islands in Alaska and possibly in Canada (A.O.U. 1983, Smith 1973, Day et al. 1988). They winter in the North Atlantic and are seen infrequently south to Bermuda and the Mediterranean Sea (A.O.U. 1983). Dovekies are also seen infrequently along the Arctic coast of Alaska and Canada and in the interior of northeastern North America (A.O.U. 1983), and in southwestern Alaska (Kessel and Gibson 1978). Thus, the Service's primary objective was to determine whether the petition presented substantial information that indicated dovekies in Alaska meet the definition of species under section 3(15) of the Act.

The dovekie, a high-Arctic member of the alcidae or auk family of sea birds, breeds in greatest abundance at large colonies in Greenland. Evans (1984a) estimated the total population size for Greenland may be in the region of 8–25 million pairs. Farther east, a few pairs remain in colonies in Iceland, and in Norway, 50,000 pairs nest at Jan Mayen, 10,000 pairs at Bear Island, and 400,000–1.6 million pairs at Spitsbergen (Evans 1984b). In the Russian high Arctic, they nest at Novaya Zemlya (10–50,000 pairs), Franz Josef Island (250,000 pairs) and Severnaya Zemlya on the Laptev Sea (>75,000 pairs) (Golovkin 1984). Dovekies from Franz Josef Island and possibly Severnaya Zemlya are considered a distinct subspecies, *Alle alle polaris*, slightly larger than the more widespread *A. a. alle* (Stenhouse 1930, Vaurie 1965, Cramp 1984, all in Day et al. 1988).

Day et al. (1988) reviewed the distribution and subspecies of the dovekie in Alaska and summarized the following. No ornithologist has documented successful nesting in Alaska, but recent, repeated dovekie observations at auklet colonies on Little Diomede, King, St. Lawrence and St. Matthew islands suggest that dovekies are attempting to breed at these sites. The wintering area for Alaska dovekies is not known. The relative scarcity of dovekie sightings at sea in Alaska, despite thousands of hours of pelagic seabird surveys in the past 15 years, indicates how rare they are in Alaska (Day et al. 1988). Day et al. (1988) conclude that all 10 Alaska dovekie specimens they examined are the nominate race *A. a. alle*, rejecting the original identification of one St. Lawrence Island birds as *A. a. polaris* (Sealy et al. 1971).

While dovekies have not been documented breeding in Canada they are commonly sighted along the coast from Baffin Bay and Davis Strait to Hudson Bay, and rarely sighted westward to Banks and Victoria Islands, Northwest Territories and north to Melville and Ellesmere Islands (Smith 1973, Godfrey 1986). Smith (1973) reported that Native residents of western Victoria Island and Banks Island, Northwest Territories, have local names for dovekies, which they see almost every year.

The Service evaluated the petition's premise that dovekies in Alaska are a significant population segment distinct from abundant populations in Greenland, Norway and Russia. The petitioner states that "the fact that various Native groups [at Little Diomede and St. Lawrence Islands] have given the dovekie Eskimo names indicates they must have once been more common than today." Further, since the presumed Alaska breeding sites are nearly 2,000 miles from the closest documented breeding colony, the petitioner states that neighboring populations would not be expected to naturally reestablish the Alaska population if it were extirpated.

All available published records, dating back to the first half of this century, indicate that dovekies have always been rare in Alaska. Gabrielson and Lincoln (1959) found only one record for the species in Alaska and Fay and Cade (1959) did not record dovekies at St. Lawrence Island. In the Alaska Seabird Management Plan, the Service estimated that only 10 dovekies breed in Alaska (U.S. Fish and Wildlife Service 1991), although the source of this estimate was not documented (V. Mendenhall, U.S. Fish and Wildlife Service, Anchorage, AK, pers. comm.).

R. Menadelook collected a dovekie specimen at Little Diomede Island in 1948 (Hanna 1961). He claimed the dovekie "is very rare on this island, its occurrence being in my estimation about one in 50,000 of other auklets"

(Hanna 1961:338). Holmes (1968:86) observed a dovekie at St. George Island in 1958 and was told at the time by local Natives that they "usually see a few every year." He concluded dovekies were uncommon inhabitants of the Bering Sea islands. And in 1965, Breckenridge (1966) was shown a captured dovekie on Little Diomede Island. Based on comments from Native hunters, Breckenridge (1966) concluded that a very small population of dovekies had been nesting on Little Diomede for some years.

Bedard (1966) spent eight months on St. Lawrence Island in 1965 and 1966 and saw five dovekies. He reported local Natives' claims that dovekies are present in small numbers year after year. Bedard presumed that dovekies spend the winter in the Bering Sea. "The only time for their reaching the Bering Sea is during their post-breeding dispersal in the early fall when several water routes are opened between their breeding grounds [in Greenland or Russia] and the Bering Strait. It is also apparent that this process must be repeated with some regularity in order to account for their continuous presence, at least in the St. Lawrence Island waters." In other words, Bedard thought dovekies are routinely dispersing in small numbers from their major breeding grounds to Alaska, where they apparently remain to nest occasionally. Bedard (1966) provides no evidence that dovekies were ever more abundant.

Finally, Sealy et al. (1971) reviewed the evidence for dovekies on St. Lawrence Island and concluded the species had arrived recently on the island. "Their small numbers and bi-racial characters [now identified as *A. a. alle*, but earlier confused with the similar *A. a. polaris*] indicate that these pioneers reached this area very recently. While some breeding colonies may have become established already on some of the islands, their numbers are probably augmented occasionally also by the arrival of new immigrants from the North Atlantic centers. Specimens have been taken in recent years along the potential dispersion routes by which these birds must pass to reach the Bering Sea; e.g., * * * Northwest Territories * * * Barrow, Alaska * * * and New Siberian Islands * * *" (Sealy et al. 1971:332).

Alaskan ornithologists consider dovekies peripheral, "invasive" or naturally rare in Alaska (personal communications with B. Kessel, D. Gibson and E. Murphy, University of Alaska, Fairbanks; A. Fowler, T. DeGange, V. Mendenhall and J. Piatt, U.S. Fish and Wildlife Service, Anchorage, AK; A. Sowls, U.S. Fish and Wildlife Service, Homer, AK; and R. Day, Alaska Biological Research, Fairbanks, AK). Native elders from Gambell, St. Lawrence Island, report that a few dovekies are seen locally and they nest on the local mountain (W. James, Sr., G. Koonoka, and C. Ungott, pers. comm.). None of the Gambell informants have noticed a decline in dovekies. Elders from Savoonga, St. Lawrence Island, report seeing "a few" dovekies locally and three informants have seen them nesting on the mountains near town (A. Akeya, A. Alowa, N. Alowa, F. Kingeekuk, Sr., E. Kogassagon, and E. Toolie, pers. comm.). Five of the Savoonga elders (ages 50–80 years) believe dovekies were more common in the past, but none have heard of dovekies being harvested. S. Steinaker (U.S. Bureau of Land Management, Fairbanks, AK, pers. comm.) interviewed residents at Little Diomede in 1985 and 1987, and was told that dovekies had always been rare there. Despite searching for dovekies, she saw only two. Dovekies are occasionally caught by Natives netting auklets for food at Little Diomede (A. Fowler and J. Piatt, U.S. Fish and Wildlife Service, Anchorage, AK and S. Steinaker, pers. comm.).

In summary, ornithologists and marine bird specialists uniformly classify Alaska dovekies as a peripheral immigrant to the Bering Sea from the species' enormous breeding colonies in Greenland and Russia. Based on available anecdotal information, summarized above, dovekies have been rare in Alaska since at least the 1940s. Due to their historical and present rarity, the Service concludes that dovekies in Alaska do not constitute a significant component of the species' overall population.

The Service finds that the data contained in the petition, referenced in the petition, and otherwise available to the Service do not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Dovekies in Alaska do not meet the definition of a species or distinct population segment under section 3(15) of the Act. Hence, the Service finds that Alaska breeding dovekies should not be listed as endangered or threatened under the Act.

References Cited

A complete list of all the references cited herein, as well as others, is available upon request from the Anchorage Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Jean Fitts Cochrane (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1531–1544.

Dated: July 6, 1993.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–16518 Filed 7–12–93; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemptions of Bristow Cabin and Bristow Roadside Salvage Timber Sales From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber project to recover insect-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Bristow Creek drainage (Compartment 4) on the Fisher River Ranger District, Kootenai National Forest, has killed approximately 20 to 100 percent of the lodgepole pine within the analysis area. In February 1993, the Fisher River District Ranger proposed a salvage timber sale to recover damaged timber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Bristow Cabin and Roadside Salvage Timber Sales, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of high-value, dead lodgepole pine that is suitable as house logs must be accomplished quickly to avoid further deterioration of the house logs. In addition, salvage of dead lodgepole pine must be accomplished quickly to avoid further deterioration of the timber, to minimize fire danger and to clear road surfaces and ditches to allow free movement of seasonal runoff and decrease erosion potential.

EFFECTIVE DATE: Effective on July 13, 1993.

FOR FURTHER INFORMATION CONTACT:

Lawrence Froberg, Fisher River District Ranger, Kootenai National Forest, 12557 HWY. 37, Libby, MT 59923. Telephone: 406–293–7773.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic occurred in the Bristow Creek drainage (Compartment 4) on the Fisher River Ranger District during the last several years. The project area is located within Management Areas (MA) 11, 12 and 15 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland and big game winter/summer range. A small portion of the project area is located within MA 18 which has a goal to maintain existing vegetation until regeneration can be assured. This MA allows salvage harvest to prevent the spread of insects and disease to adjacent areas.

This proposal is designed to meet the following needs: (1) Clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material, allow free movement of seasonal runoff and reduce erosion potential; (2) minimize fire danger, protect existing regenerated stands and allow access for fire suppression by reducing dead lodgepole pine fuel accumulations adjacent to system roads; (3) expedite the salvage of high-value house logs before these products are no longer merchantable or useable for house logs; and (4) contribute to a continuing supply of timber for industry by salvaging dead lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in February 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 730 thousand board feet from approximately 221 acres. Bristow Cabin Salvage consists of helicopter yarding of quality house logs on approximately 125 acres. Bristow Roadside Salvage consists of salvaging 96 acres of dead lodgepole pine along existing system roads through use of conventional tractor methods. The salvage area is accessible from existing roads.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential of wildfire and to recover merchantable house logs before they deteriorate and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and the project file for the Bristow Cabin and Roadside Salvage Timber Sales, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 7, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16514 Filed 7–12–93; 8:45 am]
BILLING CODE 3410–11–M

Exemption of 7990 Blowdown Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: In October 1991, usually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through a Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 Highway 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms on October 16, 1991, damaged approximately 22 acres of timber in the Briery Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987). In the winter of 1991, the Rexford District Ranger proposed to salvage wind-damaged timber in the Briery Creek area. This proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading. An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action).

The selected alternative will salvage approximately 158 MBF of dead and damaged timber from approximately 22 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the 7990 Blowdown Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 7, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16515 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Good Creek Blowdown Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 25 acres of timber in the Good Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the Good Creek area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) reduce the potential for wildfire by reducing fuel loading, and (3) rehabilitate the affected timber stands. An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action).

The selected alternative will salvage approximately 200,000 board feet of dead and damaged timber from approximately 25 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the Good Creek Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 7, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16516 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

Hawaii Tropical Forest Recovery Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will meet in Honolulu, Hawaii, July 30, 1993, 9 a.m., to 5 p.m. The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii and eleven others appointed by the Governor of Hawaii and by the Secretaries of Agriculture and Interior. During this first organizational meeting, the members will review the legislative intent and background of the Task Force; elect a chairperson; and devise a 12-month process to develop recommendations to help better steward—manage, protect and use—the tropical forests of Hawaii through expanded assistance and research. This

first organizational meeting is open to observers from the public; however, participation is limited to Task Force members. Persons who wish to bring tropical forest recovery matters to the attention of the Task Force should file written statements with the Task Force before or after the meeting.

DATES: The meeting will be held July 30, 1993.

ADDRESSES: The meeting will be held at the Department of Land and Natural Resources, Chairman's Conference Room, 1151 Punchbowl St., room 130, Honolulu, Hawaii 96813. Send written comments to Michael Buck, Administrator, Division of Forestry and Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0166; FAX: (808) 587–0160.

FOR FURTHER INFORMATION CONTACT: Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry, (202) 205–1683.

Dated: July 7, 1993.

Michael T. Rains,

Acting Deputy Chief.

[FR Doc. 93–16524 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

Memorandum of Understanding With Animal and Plant Health Inspection Service on Animal Damage Management

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Forest Service gives notice of a Memorandum of Understanding (MOU) with the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit. This Memorandum clarifies responsibilities of the respective agencies and commits them to fostering a partnership in discharging the Federal obligation under the Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426–426b) in managing wild vertebrates causing damage on National Forest System lands.

The MOU recognizes the authority of APHIS and state agencies to conduct predator control activities on National Forest System lands. It further clarifies the role of each Forest Supervisor in cooperating with APHIS in completing necessary site-specific environmental analysis and documentation of actions proposed by APHIS and providing mitigation measures to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans.

EFFECTIVE DATE: This Memorandum of Understanding was signed on June 18, 1993, and remains in effect until superseded.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain single copies of the Memorandum of Understanding by writing or calling Tom Darden, Wildlife and Fisheries, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090; (202) 205–1275.

Dated: July 7, 1993.

George M. Leonard,

Associate Chief.

[FR Doc. 93–16474 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 5, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of recent revisions to the Export Administration Regulations.
5. Discussion of preparation for COCOM List Review and Missile Technology Control Regime (MTCR) Annex Review.
6. Discussion of Nonproliferation Sanctions.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA, Room 1621, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–482–2583.

Dated: July 6, 1993.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–16576 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–DT–M

Regulations and Procedures Technical Advisory Committee; Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held July 28, 1993, at 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on implementation of the Export Administration Regulations (EARS), and provides for continuing review to update the EARS as needed.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status report on working group projects.
4. Review of Regulatory Projects.
5. Election of new Chairman.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meetings date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: July 6, 1993.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–16577 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

[Project I.D. No. 06–10–94001–01]

Business Development Center Applications: Shreveport MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount (Applicable only for non-CPA firms. CPA firms are audited by the Office of the Inspector General). The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from December 1, 1993 to November 30, 1994. The MBDC will operate in the Shreveport, Louisiana MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters

which significantly reflect on the applicant's managements honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is August 27, 1993. Applications must be postmarked on or before August 27, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242, Attn: Bobby Jefferson, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on August 6, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance. 11.800 Minority Business Development)

Dated: July 7, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–16506 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–21–M

[Project I.D. No. 06–10–94002–01]

Business Development Center Applications: McAllen MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $184,260 in Federal funds. An audit fee of $4,607 has been added to the Federal amount (Applicable only for non-CPA firms. CPA firms are audited by the Office of the Inspector General). The total funding breakdown is as follows: $188,867 Federal and $33,329 non-Federal for a total of $222,196. The period of performance will be from January 1, 1994 to December 31, 1994. The MBDC will operate in the McAllen, Texas MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's managements honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is August 27, 1993. Applications must be postmarked on or before August 27, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Bobby Jefferson, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on August 9, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: July 7, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–16505 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 930529–3129]

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of solicitation of grant applications.

SUMMARY: Subject to the availability of Fiscal Year (FY) 1994 funds, NMFS issues this notice describing the conditions under which applications will be accepted under the Saltonstall-Kennedy (S–K) Grant Program and how NMFS will determine which applications it will fund. The S–K Grant Program assists persons in carrying out research and development projects that address aspects of U.S. fisheries involving the U.S. fishing industry (commercial or recreational) including, but not limited to, harvesting, processing, and associated infrastructures.

DATES: Applications must be received by September 13, 1993. No facsimile applications will be accepted.

ADDRESSES: Applications should be sent to any regional or Washington Office of the National Marine Fisheries Service. (For addresses, see section III.E.2. of **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Richard H. Wheeler or Shirley V. Smith, S–K Program Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, Telephone (301) 713–2358.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–3) makes available to the Secretary of Commerce (Secretary) up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. If appropriated, the Secretary may use a portion of these funds each year to make available grants to assist persons in carrying out research and development projects that address aspects of U.S. fisheries, including, but not limited to, harvesting, processing, and associated infrastructures. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals, or citizens of the Northern Mariana Islands, the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

B. Funding

Subject to the availability of FY 1994 funds, NMFS issues this notice of solicitation of S–K grant applications, describing the conditions under which applications will be accepted under the S–K Grant Program and how NMFS will determine the applications it will fund. There is no guarantee that sufficient funds will be available to make awards

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

VOL
58
ISS
132
JL
13
1993
UMI

for all approved proposals submitted in response to this notice of solicitation.

In the last three fiscal years, annual funding for the S–K Program has ranged from $1.0 million to $9.9 million.

II. Funding Priorities

Consistent with authorizing legislation, NOAA will emphasize the use of S–K funds appropriated by Congress for industry grants in the following manner. Priority areas and associated research and development activities that will be designated for funding will be those that are beyond the scope of any single entity to undertake without Government assistance because of one or more of the following: (1) There is a high degree of risk in achieving positive results; and (2) the potential benefits are too widely dispersed for any single entity to address with its own resources. Fisheries research and development project applications should relate to one or more of the priority areas in this section. Primary consideration for funding will be given to applications addressing the specific priorities. However, NMFS will also consider applications that address other significant industry problems or opportunities (note exceptions that follow).

Funding will not be provided for projects primarily involving infrastructure planning and construction, port and harbor development, and start-up or operational costs for business ventures.

NMFS has identified funding priorities in consultation with a wide cross-section of the U.S. commercial and recreational fishing industry, states, and Regional Fishery Management Councils.

If not adequately covered by proposals submitted in response to these priorities, NMFS will carry out a national program of research and development addressed to aspects of U.S. fisheries, as NMFS deems appropriate, pursuant to section 713c–3(d) of the S–K Act, as amended.

Applications addressing the priorities must build upon or take into account any past and current work in the area. Lists of ongoing and past studies, and more detail where necessary, are available from NMFS.

New applications must utilize and build upon relevant research in related fields. Applications proposing a continuation of S–K or other NOAA projects should fully describe how the work integrates past work with the proposed new work.

Consideration will be given to applications that address the following priorities, which are listed in no particular order.

A. Develop methods for eliminating or reducing the inadvertent capture or destruction of juvenile or sublegal-sized fish and shellfish, non-targeted species and/or protected species in commercial or recreational fishing operations. Studies may include the acquisition of information for managing bycatch issues or the technical development, demonstration, or evaluation of fishing gear or strategies. Projects primarily involving data collection should be directed at a specific problem or need and be of a fixed duration, not of a continuing nature. Examples of important problems are: Bycatch of species such as halibut, sablefish, reef fish, groundfish, finfish, billfish, bluefin tuna, undersized swordfish, striped bass, mackerels, shark, flounder, weakfish, spot, and croaker; mortality of released fish; incidental catch of turtles, sea lions, and other species in trawl gear; and killer whales, blue marlin and seabirds in fishing gear. The following areas of research have been identified, but are not all inclusive:

1. Determine optimal sampling strategies to estimate total catch and species composition by gear type and vessel size; evaluate whether current sampling strategies are adequate to estimate directed catch, bycatch, and discard with the accuracy required by fisheries managers. Investigation should include an evaluation of the adequacy of subsampling versus whole-haul sampling.

2. Develop cost-effective king, Tanner, or Dungeness crab pots that will reduce the capture of and the subsequent unnecessary handling mortality of sublegal sized crabs or female crabs.

3. Collect and analyze data describing mesh sizes currently utilized by the groundfish fleet in Washington, Oregon, and California.

4. Evaluate the effect of various leader strengths and hook types in reducing the bycatch mortality of bluefin tuna in the Gulf of Mexico fisheries.

5. Compare growth, physiology, condition, behavior, and reproductive success of marine mammals subjected to interaction with different regimes of commercial or recreational fishing.

B. Conduct biological, economic, social and other studies to improve fisheries management, including controlled access; resolution of user conflicts; impact of harvest gear types, area of capture, and season; and evaluation of competing gear groups on product type, quality, and market value. Projects primarily involving data collection should be directed at a specific problem or need, and be of a fixed duration, not of a continuing nature. The following research areas have been identified, but are not all inclusive.

1. Investigate potential implementation of limited entry schemes for the salmon, groundfish, reef fish, shark, tuna, and mackerel fisheries, including economic and social benefits/costs.

2. Analyze how Individual Quota systems have affected bycatch problems and the management effort needed for conservation of bycatch species.

3. Develop and test analytical tools to predict the effects of alternative management measures on total removals (landings and discards) from the West Coast groundfish fisheries.

4. Develop improved techniques for identifying individual stocks (subpopulations) of finfish to improve the ability of fisheries managers to direct fisheries away from protected species or untargeted stocks.

5. Develop and test improved survey instruments to collect social and economic data required to analyze various commercial fishery management alternatives.

6. Perform social and economic studies of fisheries of Washington, Oregon, and Northern California, including, but not limited to, surveys of harvest and processing costs and gross revenues; updated estimates of the net economic value of recreational fisheries; estimates of the demographic, type, amount, and opportunity cost of labor employed in fishing and fishery related business; estimates of the degree of fishermen's and communities' dependence on fishing income; estimates of demand, price flexibility, consumer surplus, and value-added processing and marketing channels and curves for important market categories. A related study might include an evaluation of the existing input-output West Coast Fisheries Economic Assessment Model to review the assumptions and appropriateness of the model given the increased emphasis on economics in allocation decisions since the model was originally developed.

7. Develop new and innovative methods to obtain independent assessments of groundfish species for which traditional approaches have not been effective. Studies could include application of hydroacoustic, sonar or video technologies to assess the distribution and abundance of species that inhabit rocky and rough topography, and aerial surveys of highly migratory species.

8. Develop innovative methods to determine time of migration, time of spawning, distribution of spawning

grounds, and size of spawning stocks of chinook salmon in remote, often turbid and braided, rivers and streams.

9. Evaluate the technical feasibility and cost of an ocean stock evaluation program for use in the management of mixed stock salmon fisheries on the West Coast.

10. Assess the social and economic dynamics and evaluate the impact of new entrants into the longline fisheries of the Western Pacific area.

11. Conduct research to qualitatively or quantitatively determine the social and economic values to the various constituencies of utilizing living marine resources in the exclusive economic zone surrounding Hawaii.

12. Analyze the social and economic effects on the shark and mackerel recreational fisheries of simple versus complex sets of bag limits, size limits, season, and area regulations.

13. Develop methods to differentiate unmanaged cultured species from the same species of wild stock. Research might include improving techniques of mass marking of hatchery-reared fish, focusing on mortalities resulting from tagging, effectiveness of tag in differentiating wild from hatchery fish, and cost and process required to tag hatchery fish.

14. Assess the genetic impacts, including disease resistance/susceptibility, resulting from the interaction between cultured salmon that escape from net pens and wild fish and/or between wild stocks of fish and cultured stocks that are intentionally released into the environment.

15. Develop consumer and recreational demand curves for snapper/grouper, red drum, and Spanish mackerel resources.

16. Develop and/or evaluate technological innovations for recordkeeping and reporting of commercial and recreational data for fisheries management, including, but not limited to, optical character recognition, pen-based bar code, satellite transmission, PC-based modem transmission, etc.

17. Improve assessments of commercially or recreationally important fish stocks that may be important forage for marine mammals.

C. Develop innovative approaches to achieving optimum use of living marine resources by the commercial and recreational fishing industry, and transferring effort from over-harvested to underutilized fisheries. Approaches may include new or improved harvesting/catching, handling, storing, and processing techniques (onboard and shoreside), new product development, market development, and, where necessary, collecting and summarizing basic biological and catch information. Projects primarily involving data collection should be directed at a specific problem or issue, and be of a fixed duration, not of a continuing nature. Particular attention should be given to arrowtooth flounder, spiny dogfish, skates, mackerels, herring, little tunny, pink and chum salmon, giant grenadier, freshwater clam (*Corbicula*), sardines, anchovy, squid, Dover sole, sanddabs, trochus, and artisanal fisheries. The following areas of research have been identified, but are not all inclusive:

1. Develop value-added products and markets for species that are not optimally utilized, e.g., dogfish, skates, mackerel, herring, pink and chum salmon, pelagic fishes, benthic invertebrates, incidentally caught long line species, and trochus flesh.

2. Create new economic opportunities through improved processing and expanded use of fish waste and conservation of waste water.

(a) Develop technology to produce commercially viable and environmentally sound byproducts from fish and seafood wastes generated by shoreside and floating processing facilities and net pen operations.

(b) Develop innovative, cost-effective technology to use/recycle or conserve fish processing and aquacultural waste water, and develop methods to meet new, more stringent effluent standards.

3. Develop harvest, shipping, and export market systems for the freshwater clam, *Corbicula*, in Japan and other countries.

4. Develop processes or techniques using fish, shellfish, marine algae, or byproducts, leading to innovative compounds or bioreactive agents with economic value to the fishing industry or the Nation as a whole. Examples of previous research of this type include the refinement of pearlescence from herring scales (used in synthetic pearls, iridescent paints, and the reflective backing of mirrors) and the isolation of the colloid carrageenan from marine algae, especially Irish moss (used as a stabilizer in paints and other emulsions, including ice cream).

5. Develop usable products from Tanner crabs and snow crabs suffering from bitter crab disease.

6. Study the nature and causes of withering syndrome disease of black abalone (*Haliotis cracherodii*) off the California coast.

7. Collect and summarize basic biological and catch information on the giant grenadier (*Albatrossia pectoralis*), a species caught incidentally in the Alaska groundfish trawl and longline fisheries.

D. Conduct research for domestication and mass culture of living freshwater and marine resources. The following areas of emphasis have been identified, but are not all inclusive:

1. Develop hatchery techniques for marine finfish species for both marine fisheries enhancement and commercial aquaculture. Such research could include: (a) Assessment of the physical, chemical and biological requirements of marine finfish enhancement and aquaculture, particularly as it applies to critical egg and larval stages of development; (b) efforts to refine captive broodstock technology, including emphasis on reproductive physiology, fitness of progeny for survival in the wild (including behavioral adaptations), and nutrition and health problems. Important species are halibut, cod, haddock, flounders, sea basses, red snapper, tautog, and tunas.

2. Conduct research to indicate the appropriate use of antibiotics in treating fish diseases. Research could include application methods (feeds, injection of brood stock), treatment regimens, efficacy in reducing disease, withdrawal and clearance times, and metabolic fate of the antibiotic.

3. Assess and demonstrate environmentally and economically sound use of offshore net pens to provide greater opportunities for expansion of the aquaculture industry.

4. Determine the technical and market feasibility of polyculture in salmonid net pen farming.

5. Develop methods for producing seed from Alaskan mollusks and Pacific oysters that will eventually lead to a source of low-cost and viable seed for Alaska's developing shellfish aquaculture industry.

6. Develop cultivation and marketing techniques for selected, high value species of fish, corals, and other invertebrates for use in the U.S. aquarium trade.

7. Define the basic biological parameters of growth, reproduction, and mortality of the black-lip pearl oyster found in the Western Pacific to allow improved pearl culture methods and better management of wild stocks.

8. Determine if satellite data used to determine coast-wide differences in wave energy can be useful in net-pen aquaculture operations concerning siting and mooring considerations.

E. Conduct studies on marine biotoxin fishery safety issues through the development and distribution of purified marine biotoxin standards; synthesis of derivatives to trace the accumulation of toxins in the foodweb;

VOL 58 ISS 132 JL 13 1993 UMI

development of new detection methods for toxin phytoplankton; determination of the role of environmental factors in toxin production; development of standard methods to prepare contaminated fish and indicator species for analysis, and standard disposal methods for biotoxin-containing catch. Particular areas of emphasis include, but are not limited to:

1. Develop standards (pharmacologic, analytical, and certified grades) for maitotoxin, ciguatoxin, and the different natural derivatives of saxitoxin. Perform stability studies on these standards and develop plan to provide standards to public and private research and monitoring programs.

2. Develop isotopic forms for the major classes of marine biotoxins suitable for pharmacokinetic studies of toxin uptake, metabolism, and depuration. Develop plan to provide isotopes to public and private research and monitoring programs.

3. Isolate the different toxic components from ciguatoxic fish and those produced by different strains of *Gambierdiscus toxicus*. Develop methods to determine their relative and differential toxicities.

4. Develop nucleic acid and (monoclonal) antibody probes specific for harmful algae species, including those producing marine biotoxins. Develop procedures for the use of these probes in the analysis of field and laboratory samples. Develop plan to provide probes to public and private research and monitoring programs.

5. Identify and characterize specific properties of harmful algae species and their ecology that are compatible with and can be incorporated into remote sensing algorithms for detecting and/or forecasting bloom events.

6. Develop standardized collection, preservation, and shipping and disposal procedures for biotoxin-contaminated shellfish, finfish, and phytoplankton samples. Particular emphasis should be placed on the fate and stability of marine biotoxins in natural seafood matrices of both commercially valuable and sentinel species.

7. Identify factors controlling the distribution of harmful phytoplankton species, e.g., paralytic shellfish poisoning or amnesiac shellfish poisoning using both existing and new hydrographic and experimental data.

8. Determine environmental conditions that enhance or control toxin production in diatoms producing domoic acid; conduct bioassays to determine if commercially important molluscan shellfish and Dungeness crab feed on these diatoms and become toxic; examine feeding habits of the shellfish to determine paths of domoic acid accumulation and retention/detoxification.

9. Determine the effects of various storage temperatures on generation of histamine in different scombroid fish, e.g., tuna, bluefish, dolphinfish and mackerel, and the relevance of current regulatory guidelines.

F. Conduct studies on the microbiological safety of fishery products by developing rapid methods of identification of bacteria and viruses, developing processes for their control, and determining the effect of various technologies and processes on product contamination and bacterial growth. Particular areas of emphasis include, but are not limited to the following:

1. Establish protocols, procedures, and techniques for restoration of molluscan shellfish harvesting areas closed due to bacterial pollution. Develop methods to monitor pollution sources, e.g., septic tanks, etc., which may contribute to the overall bacterial pollution load, and integrate with existing policies and procedures for managing shellfish harvesting waters.

2. Determine tissue distribution of Norwalk-like virus in shellfish.

3. Determine the possible effects of phosphates as inhibitors of salmonella and other harmful bacteria in shellfish.

G. Develop a nutrient composition data base, specific for the requirements of nutritional labeling, for the currently identified 20 most frequently consumed fish/shellfish specified in the final rule for Voluntary Labeling of Raw Fruit, Vegetables, and Fish, published at 56 FR 60880, November 27, 1991. Research should address details for quality evaluation of data produced within the past 5 to 10 years, determine additional analyses needed, and develop quality data to meet guidelines set forth by the Food and Drug Administration.

H. Conduct research in the area of habitat protection. The following needs have been identified, but are not all inclusive:

1. Develop and test environmentally sound and cost-effective methods for controlling species that have a deleterious impact on habitat, e.g., burrowing shrimp *Callianassa californensis* (ghost shrimp) and *Upogebia puttensis* (mud shrimp), which have destroyed intertidal areas and threaten oyster production. Such proposed methods must demonstrate that they have met the requirements of applicable Federal and state laws and regulations.

2. Evaluate the potential of using suction dredge mining and gravel mining as tools for restoring anadromous fish habitat in California streams.

3. Analyze the physical and economic impacts of bottom trawls on the ecosystem.

4. Analyze the physical and economic impacts of roller gear on reef habitat in the groundfish fishery.

I. Conduct biological and technological studies to enhance the management of threatened and endangered species of salmon in the western United States. Research could use unlisted species of salmon as models; however, results must be applicable to protected species. The following needs have been identified, but these are not all inclusive:

1. Determine the magnitude and effect of adult salmon mortality due to marine mammal predation on populations of protected species.

2. Develop and test new scientific methods for counting adult salmon escapement.

3. Develop and test genetic or other methods to differentiate among salmon runs.

4. Determine levels of toxic substances in estuaries and streams, and the associated sediments, and assess the impact of these toxic substances on salmon recruitment or survival.

5. Assess the tolerance of winter-run salmon eggs and fry to increases or fluctuations in temperature.

6. Determine the effects of the release of hatchery-raised fish on recruitment to wild populations.

J. Compare national and international regulatory agency methods of parasite detection and analysis with industry detection methodology and capabilities to establish a process to resolve existing differences regarding types, methodologies and tolerances currently in use for parasites.

K. Produce moisture level data for wild harvest and farm-raised shrimp and scallops, taking into account species, geographical, and handling variations, in order to establish baselines that may be used to measure the degree to which water weight is inappropriately added to the product through processing.

III. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI),

being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI;

3. Any individual who is a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia;

4. Any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 App. U.S.C. 802).[2]

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DOC are made. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. Successful applicants for S–K funding, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first time applicant for Federal grant funds may be subject to a preaward accounting survey by the Department of Commerce prior to execution of the award. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001). NMFS encourages women and minority individuals and groups to submit applications. NOAA employees, including full, part-time, and intermittent personnel, (or their spouses or blood relatives who are members of their immediate households) and NOAA offices or centers are not eligible to submit an application under this solicitation or aid in the preparation of an application, except to provide necessary information or guidance about fisheries research and development and the priorities and procedures included in this solicitation.

B. Duration of Funding

Generally, grants or cooperative agreements will be awarded for a period of 1 year, but no more than 18 months, at a time.

If an application for an award is selected for funding, the Department of Commerce has no obligation to provide any additional prospective funding in connection with that award.

Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

C. Cost-Sharing

Although the S–K Act, as amended, does not require that applicants share in the total costs of a project, it is encouraged. Cost-sharing will not be a factor in the technical evaluation of an application. However, the degree of cost-sharing may be taken into account in the final selection of projects to be funded. If applicants choose to cost-share, and if their applications are selected for funding, those applicants will be bound by the percentage of cost-share reflected in the grant awards.

If project costs are shared, NMFS must provide at least 50 percent of total project costs, as provided by statute. The percentage of the total project costs provided from non-Federal sources may be up to 50 percent of the costs of the project. The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds except as provided by Federal statute. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant or cooperative agreement between the applicant and an authorized representative of the United States Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, will be determined on the basis of guidance provided in the relevant OMB Circulars. In general, the value of in-kind services of property used to fulfill the applicant's cost share will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill the applicant's cost share.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must identify the specific priority(ies) to which they are responding. If an

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a state, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) The title of 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporations is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Project applications must be clearly and completely submitted in the following format:

1. Cover Sheet: An applicant must use OMB Standard Form 424 (REV 4–88) as the cover sheet for each project. (In completing item 16 of Standard Form 424 (REV 4–88), see section V.A.9. of this notice.)

2. Project Summary: An applicant must complete NOAA Form 88–204 (10–92), Saltonstall-Kennedy Project Summary, for each project. Applicants may obtain copies of these forms from NMFS; addresses are listed under the "Application Submission and Deadline" section, which follows.

3. Project Budget: A budget must be submitted for each project, using NOAA Form 88–205 (10–92), which is available from NMFS, along with instructions for completion; addresses are listed under the "Application Submission and Deadline" section, which follows. The applicants must submit cost estimates showing total project costs. Cost-sharing is discretionary. If applicants choose to cost-share, both the Federal and non-Federal shares must be shown. No cost-sharing can come from another Federal source except as provided by Federal statute.

Applicant's matching costs are to be divided into cash and in-kind contributions. To support its budget, the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Estimates of the direct costs must be specified in the categories listed on NOAA Form 88–205. The budget may also include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government. Estimated indirect costs may be included pending approval of a negotiated Federal indirect cost rate. NOAA will assist prospective applicants in obtaining a negotiated Federal indirect cost rate, if deemed appropriate. Indirect costs shall not exceed direct costs. NOAA will not consider fees or profits as allowable costs for applicants.

4. Project Narrative Description: The project must be completely and accurately described. As a guideline, the project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will not guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. Identification of Problem(s): For new projects, identify and completely describe the problem(s) the project addresses. As appropriate, in this description include: (1) The fisheries involved; (2) the specific problem(s) being addressed; (3) the sectors of the fishing industry that are affected; (4) the specific priorities to which the project responds; and (5) how the problem(s) prevent the fishing industry from developing a fishery or using existing fishery resources. If the application is for the continuation of an existing S–K funded project, describe in detail progress to date and explain why continued funding is necessary.

b. Project Goals and Objectives: State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above.

c. Need for Government Financial Assistance: Explain why members of the fishing industry or other entities cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

d. Participation by Persons or Groups Other Than the Applicant: Describe (1) the level of participation by NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. Federal, State, and Local Government Activities: List any existing Federal, state, or local government programs or activities which this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

f. Project Statement of Work: This section requires the applicant to prepare a detailed narrative fully describing the work to be performed that will achieve the previously articulated goals and objectives. A milestone chart that outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included. The narrative should include information that responds to the following questions:

(1) How will the project be designed?

(2) What major products, (e.g., research, services, or reports) will result and what is their specific nature?

(3) What supporting activities (be as specific as possible) will be undertaken to produce major products?

(4) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting).

(5) What methodology will be used to evaluate final products or services, and how will it be integrated into the project?

The milestone chart should graphically illustrate:

(1) Steps to accomplish the major products, research, services and/or activities;

(2) Supporting activities and associated timelines, e.g., month 1, month 2, etc.; and

(3) The individual(s) responsible for the various activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

g. Project Management: Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, applicants, as appropriate, must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualification of the consultant and/or subcontractor and the process used for selection.

h. Project Impacts: Describe the anticipated impacts of the project in terms of landings, production, sales, improvement in product quality or safety, or other measurable factors. Describe how the results of the project will be made available to the public.

i. Evaluation of Project: The procedures for evaluating the relative success or failure of a project in

achieving its goals and objectives should be clearly delineated within each application.

5. Supporting Documentation: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. The absence of adequate supporting documentation may cause reviewers to question assertion made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. Deadline. NMFS will accept applications for funding under this program between July 13, 1993 and September 13, 1993. An application will be accepted if the application is received by any of the offices listed below on or before September 13, 1993.

2. Submission of Applications to NMFS. Applicants must submit one signed original and two copies of the complete application to any of the following addresses. No facsimile applications will be accepted.

Director, Office of Trade and Industry Services, National Marine Fisheries Service, 1335 East-West Highway, room 6204, Silver Spring, MD 20910, Telephone: (301) 713–2358.

Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, Telephone: (508) 281–9267.

Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, FL 33702, Telephone: (813) 893–3142.

Regional Director, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213, Telephone: (310) 980–4033.

Regional Director, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115, Telephone: (206) 526–6150.

Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or Federal Building Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99801, Telephone: (907) 586–7224.

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. Consultation with Interested Parties: NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. NMFS will make project descriptions available in the following manner:

a. Public review and comment. Applications that are regional in nature may be inspected at the appropriate Regional Office. All applications will be available for inspection at the NMFS Office of Trade and Industry Services, 1335 East-West Highway, room 6204, Silver Spring, Maryland, from September 20, 1993 to October 4, 1993. Written comments will be accepted at a regional or the Silver Spring, Maryland, office until October 4, 1993.

b. Consultation with private individuals. NMFS shall, at its discretion, request comments from individuals outside of NMFS who have knowledge in the subject matter of a project or who would be affected by a project.

c. Consultation with Government agencies. Applications will be reviewed in consultation with NMFS Offices, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other Federal agencies. The Regional Fishery Management Councils will be asked to review applications that could impact a managed fishery, the bycatch of a managed fishery, or a fishery management issue.

2. Technical Evaluation: NMFS will solicit technical evaluations of each project application from appropriate private and public sector experts. All comments submitted to NMFS will be taken into consideration in the technical evaluation of applications. Point scores will be given to project applications based on the following evaluation criteria:

a. Problem Description and Conceptual Approach for Resolution. Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (25 points).

b. Soundness of Project Design/ Technical Approach. Evaluated will be whether or not the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and/or weaknesses of the technical design proposed for problem resolution. (25 points).

c. Project Management and Experience and Qualifications of Personnel. Evaluated will be the organization and management of the project, and the project's Principal Investigator and other personnel in terms of related experience and qualifications. Those projects that do not identify the Principal Investigator with his or her qualifications will receive a lower point score. (20 points).

d. Project Evaluation. Evaluated will be the effectiveness of the applicant's proposed methods to evaluate the project in terms of meeting its original goals and objectives. (10 points).

e. Project Costs. Evaluated will be the justification and allocation of the budget in terms of the work to be performed. Unreasonably high or low project costs will be taken into account. (20 points).

f. In addition to the above criteria, in reviewing applications for grants and cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

3. Panel Review: After the technical evaluation, comments will be solicited from a panel of representatives from the commercial and recreational fishing industry, state government, and others, as appropriate, to rank the projects. Considered in the rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. The panelists will rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Project Funding

After projects have been evaluated, the reviewing NOAA Fisheries offices will develop recommendations for project funding. These recommendations will be submitted to the Assistant Administrator for Fisheries, NMFS, who will determine the number of projects to be funded

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The Department of Commerce will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received. Any costs incurred prior to issuance of the award document are at the applicant's own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that the applicant may have received, there is no obligation on the part of the Department of Commerce to cover such costs. Generally, the time required to process applications is 120 days from the closing date of the solicitation.

V. Administrative Requirements

A. Obligation of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller General of the United States, or their authorized representatives.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter. These reports will be submitted to the individual specified as the NMFS Program Officer in the funding agreement.

6. If a project is awarded, submit an original and two copies of a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project. Formats for the quarterly and final reports, which have been approved by OMB, will be provided to the applicant.

7. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit three copies of all publications (in addition to the Final Report in V.A.6. above) printed with grant funds to the NMFS Program Officer.

8. Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." The following additional explanations are provided:

Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Drug Free Workplace. Grantees (as defined at 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

Anti-Lobbying. Persons (as defined at 15 CFR part 26, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosure. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B;

Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Recipients and subrecipients of awards under this program shall be subject to all Federal laws and DOC regulations, policies, and procedures applicable to Federal assistance awards.

9. This program is covered by E.O. 12372. Any applicant submitting an application for funding is required to complete item 16 on Standard Form 424 (REV 4–88) regarding clearance by the State Point Of Contact (SPOC) established as a result of E.O. 12372. A list of State Points of Contact may be obtained from any of the NMFS offices listed in this notice.

B. Obligations of the National Marine Fisheries Service

NMFS will:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects.

2. Provide advice, through the NMFS office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals. Interested applicants are encouraged to contact the NMFS Silver Spring, Maryland, or Regional Offices for clarification or explanation of any information appearing in this notice.

3. Monitor all projects after award to ascertain their effectiveness in achieving their objectives. Actual accomplishments of a project will be compared with stated objectives.

4. Maintain a mailing list for the annual S–K solicitations. Upon request, interested persons will be placed on the mailing list to receive the solicitation at the time it is published in the **Federal Register**.

C. Responsibility of the NOAA Grants Management Division

The NOAA Grants Specialist, assigned by the NOAA Grants Management Division, is the individual designated to serve as the NOAA official responsible for the business management aspects of a particular grant or cooperative agreement. The Grants Specialist serves as the counterpart to the business officer of the recipient organization. The Grants Management Division is responsible for all business management matters associated with the review, negotiation, award, and administration of grants, and interprets grants administration, policies and provisions. Questions from the recipient relating to these aspects will be referred to the NOAA Grants Management Division. The official grant

file will be maintained by the Grants Management Division, which will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable Federal, State and local laws.

Classification

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this notice is not a major action requiring a regulatory impact analysis under E.O. 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0135. Public reporting burden for preparation of the S–K application is estimated to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Project No. 0648–0135.

A notice of availability of financial assistance for fisheries research and development projects will also appear in the Commerce Business Daily.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: July 7, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 93–16475 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of permit (P545).

SUMMARY: On May 21, 1993, notice was published in the **Federal Register** (58 FR 29568) that an application had been filed by Dr. James R. Gilbert, Professor, Wildlife Department, University of Maine, Orono, ME 04469–5755, to conduct a population census on an unspecified number of harbor seals (*Phoca vitulina*) on coastal ledges in New England from Isle of Shoals north to the Canadian border using a fixed-wing aircraft.

Notice is hereby given that on July 6, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals, the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

ADDRESSES: Documents submitted in connection with this Permit are available by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301–713–2289); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508–281–9200).

Dated: July 6, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16517 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a Second Application for a Modification to Scientific Research Permit No. 818 (P211C).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a Modification to Scientific Research Permit No. 818 to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–222).

Permit No. 818 was issued on April 22, 1993 (58 FR 25811) as authorized by the ESA. It authorizes ODFW to take listed adult and juvenile Snake River spring/summer chinook salmon (Oncorhynchus tshawytscha) for scientific research purposes through December 31, 1996.

ODFW is requesting authorization for the following research on listed Snake River spring/summer chinook salmon: (1) Capture and Passive Integrated Transponder (PIT) tag 4,000 parr and smolt chinook salmon that are progeny of Rapid River Hatchery stock that spawned naturally above the hatchery; (2) Potentially harass up to 350 adult chinook salmon while surveying spawning grounds to count redds and adults, and to recover carcasses; (3) capture and handle an additional 13,800 juveniles during surveys conducted in Lookingglass Creek to determine growth rates and distribution. ODFW estimates an indirect mortality of up to 170 juveniles and zero adults as a result of this research. ODFW requests this additional take annually for the duration of the permit, through December 31, 1996.

Written data or views, or requests for a public hearing on this modification application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this Modification application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above modification application are available for review by interested persons in the following offices: Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Room 8268,

VOL 58 ISS 132 JL 13 1993 UMI

Silver Spring, Maryland 20910, (301–713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: July 7, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–16507 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Modification No. 1 to Scientific Research Permit No. 778 (P772#59)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: On May 19, 1993, notice was published in the **Federal Register** (58 FR 29199) that a request for modification of scientific research Permit No. 778 had been submitted by the Southwest Fisheries Science Center, NMFS, La Jolla, CA 92038.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and,

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: Notice is hereby given that under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 361 *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of section 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), Scientific Research Permit No. 778, issued on May 5, 1992 (57 FR 20250), has been modified to authorize the capture and instrumentation of an additional three animals, and to subsequently recapture them to retrieve the instruments. This modification becomes effective upon publication in the **Federal Register**.

Issuance of this Modification, as required by the Endangered Species Act of 1973, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and, (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Dated: July 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16508 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Scientific Research Permit (P538)

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

On April 28, 1993, notice was published in the **Federal Register** (58 FR 25812) that an application had been filed by Mr. Jan Ostman-Lind and Ms. Ania Driscoll-Lind, Kula Nai'a Wild Dolphin Research Foundation, Inc., P.O. Box 4044, Kailua-Kona, Hawaii 96745 for a permit to approach: up to 2300 spinner dolphins (*Stenella Longirostris*) up to 25 times each annually, up to 7000 spotted dolphins (*Stenella attenuata*) up to 50 times each annually, and up to 2000 bottlenose dolphins (*Tursiops truncatus*) up to 50 times each annually, over a 5-year period during the course of photo-identification studies in Hawaiian waters.

Notice is hereby given that on July 6, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), NMFS issued a permit to the above applicants to incidentally harass the species/numbers of marine mammal described above, subject to certain conditions set forth therein.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: July 6, 1993.

William Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16509 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Receipt of Application To Modify Permit No. 682 (P444)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: Notice is hereby given that Dr. Phillip J. Clapham, Director, Population Studies, Center for Coastal Studies, 59 Commercial Street, Box 1036, Provincetown, MA 02657, has requested a modification of Permit No. 682 issued on October 19, 1989 (54 FR 43844), under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 682 authorizes the Permit Holder to harass up to 50 right whales incidental to photo-ID activities. The Permit Holder now seeks authorization to approach up to 100 right whales up to three times annually during the course of photo-ID activities.

ADDRESSES: Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and,

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16510 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

National Telecommunications and Information Administration

Reestablishment of the Spectrum Planning Advisory Committee

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of reestablishment of the Spectrum Planning Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. appendix 2 and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, 41 CFR part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the reestablishment of the Spectrum Planning Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law. Effective June 30, 1993, the Spectrum Planning Advisory Committee has been reestablished as the Spectrum Planning and Policy Advisory Committee.

The Committee was first established on July 19, 1965 as the Frequency Management Advisory Council. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until the functions of that office were transferred to the Department of Commerce, National Telecommunications and Information Administration (NTIA), by Executive Order 12046 of March 27, 1978. In 1991, the committee name was changed to the Spectrum Planning Advisory Committee. Since the activities of the committee have extended into policy areas of concern, the advisory committee is being renamed the Spectrum Planning and Policy Advisory Committee. Its current charter terminated on April 24, 1993.

In reviewing the need for the Committee, the Assistant Secretary for Communications and Information has reaffirmed its original purpose of providing advice on radio frequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Secretary has further affirmed the need for the Committee to advise on strategic spectrum planning issues and increased commercial access to Federal Government spectrum. Research indicates that the Committee's function cannot be accomplished by any organizational element of other committee of the Department.

The Committee membership consists of 19 members, including a balanced representation of 15 non-Federal members, and 4 Federal members, chaired by the Secretary of Commerce or an individual appointed by the Secretary. The Committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's current Charter have been filed with appropriate committees of Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments may be addressed to the Executive Secretary, Spectrum Planning and Policy Advisory Committee, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, U.S. Department of Commerce, room 4090, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–4487; or Ms. Jan Witter, the Department Committee Management Analyst, U.S. Department of Commerce, room 6020, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–4115.

Dated: July 7, 1993.

Richard Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 93–16503 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Summer Study Task Force on Tactical Air Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Summer Study Task Force on Tactical Air Warfare will meet in closed session on July 20, 1993 at the Institute for Defense Analysis, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the nation's acquisition options for tactical air warfare over the next 10 to 10 years as force structure is drawn down. They should then recommend promising concepts and technologies to pursue that may have high leverage cost and effectiveness against foreseeable threats.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16478 Filed 7–12–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 3, 1993; Tuesday, August 10, 1993; Tuesday, August 17, 1993; Tuesday, August 24, 1993; and Tuesday, August 31, 1993, at 2 p.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense

VOL
58
ISS
132
JL
13
1993
UMI

(5 U.S.C. 552b(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: July 7, 1993.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-16477 Filed 7-12-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Notice of Open Meeting, Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Correction to open meeting location.

This is the third change to the location of the Inland Waterways Users Board meeting scheduled for 27 July 1993. Disregard all other meeting locations. This change was directed by the U.S. Army Corps of Engineers, Directorate of Civil Works.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: 27 July 1993.

Place: Ramada Hotel—Old Town, 901 North Fairfax Street, Alexandria, VA 22314, Telephone: 703-683-6000.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 93-16631 Filed 7-12-93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.252]

Urban Community Service Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: This program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities. The program furthers National Education Goal 5, that every American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by affording students in urban academic institutions an opportunity to learn more about the problems in their communities and participate in developing solutions to these problems.

Eligible Applicants: Eligible applicants include any nonprofit municipal university, established by the governing body of the city in which it is located, and operating as of July 23, 1992. Also eligible is any institution of higher education or a consortium of institutions with at least one member that (1) is located in an urban area; (2) draws a substantial portion of its undergraduate students from the urban area in which it is located or from contiguous areas; (3) carries out programs to make postsecondary educational opportunities more accessible to residents of the urban area or contiguous areas; (4) has the present capacity to provide resources responsive to the needs and priorities of the urban area and contiguous areas; (5) offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of the institution to provide these resources; and (6) has demonstrated and sustained a sense of responsibility to the urban area and contiguous areas and the people in those areas.

Deadline for Transmittal of Applications: August 12, 1993.

Deadline for Intergovernmental Review: October 13, 1993.

Applications Available: July 13, 1993.

Available Funds: $1,100,000.

Estimated Range of Awards: $200,000-$350,000.

Estimated Average Size of Awards: $220,000.

Estimated Number of Awards: 4 to 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to five annual budget periods.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) When published as final regulations, the Urban Community Service Program regulations in 34 CFR Part 636.

Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 1136b(b), the Secretary gives an absolute preference to applications that propose to conduct joint projects supported by other local, State, and Federal programs. The amount of funds to be reserved for this priority will be established after determining the number of high quality applications received.

Supplementary Information: On May 20, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 29373).

It is not the policy of the Department of Education to solicit applications before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993).

Summary of Anticipated Changes

Four comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making one change to the proposed regulations. All four commenters addressed the requirement in § 636.2(b)(2) that an applicant institution must draw "a substantial portion of its undergraduate students" from the urban area in which it is located, or from contiguous areas, to be eligible for a grant. The commenters believe that the definition of "substantial portion of its undergraduate students" in § 636.7(b) to mean 50 percent or more of the enrolled undergraduate student population establishes too high a threshold. The commenters contend that 50 percent is inappropriate since the statute did not require a "majority."

The Secretary agrees with the commenters and expects to change the definition of "substantial portion of its undergraduate students" in § 636.7(b) to mean 40 percent or more of the enrolled undergraduate student population.

Applicants should prepare their grant applications based on the provisions in the NPRM, as amended by the change to § 636.7(b) discussed in this summary of anticipated changes. If the Secretary makes any changes in the regulations that were not discussed in this notice, applicants will be given an opportunity to revise their applications.

For Applications or Information Contact: Patricia W. Gore, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3022, ROB-3, Washington, D.C. 20202-5251. Telephone: (202) 708-8849. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1136–1136h.

Dated: July 7, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–16529 Filed 7–12–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement for the Proposed Radioactive Soil Removal From the Project Chariot Site at Cape Thompson, Alaska Maritime National Wildlife Refuge, AK

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: DOE proposes to characterize and remediate affected soils contaminated in a 1962 radioactive tracer study conducted by its predecessor agency, the Atomic Energy Commission, located at the Project Chariot Site in Cape Thompson, Alaska, Maritime National Wildlife Refuge, Alaska. The proposed remedial action includes a program to: (1) Sample a disposal mound and all other areas potentially contaminated during the 1962 study to determine the present concentration of radioactive contaminants, (2) excavate and remove contaminated soils, (3) transport the excavated soils for disposal at a DOE low-level radioactive waste disposal site; either the Nevada Test Site or the Hanford Site in the State of Washington, (4) secure approval for final closure of the mound and test plots, and (5) revegetate the excavated site(s). Project activities would involve incidental crossing of the floodplain or wetlands of Ogotoruk and Snowbank Creeks in the conduct of remedial or site characterization activities. These same media would be sampled in the nearby Kisimilok Valley to aid in establishing regional background levels. In accordance with title 10 Code of Federal Regulations CFR part 1022, DOE is assessing the potential impacts to the floodplain and wetlands in the "Environmental Assessment of Proposed Radioactive Soil Removal from the Project Chariot Site at Cape Thompson." DOE will perform this proposed remedial action in a manner so as to avoid or minimize potential harm to or within the affected floodplains and wetlands.

DATES: DOE needs to begin the proposed action as soon as possible to ensure project completion before inclement seasonal weather makes further remedial action work impossible during 1993. In accordance with 10 CFR 1022.18(c), DOE waives the 15-day time periods for public review. DOE will consider comments received at the address below no later than July 28, 1993 to the extent practicable.

ADDRESSES: *For further information on this proposed action, contact:* Donald R. Elle, Director, Environmental Protection Division, Nevada Operations Office, U.S. Department of Energy, P.O. Box 98518, Las Vegas, NV 89193–8518, (702) 295–1146 FAX: (702) 295–0838.

For further information on general DOE floodplain/wetlands environmental review requirements, contact: Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 427–2756.

SUPPLEMENTARY INFORMATION: The proposed project would involve site characterization activities on the Alaska Maritime National Wildlife Refuge near Cape Thompson, removal of contaminated soil, and revegetation of disturbed tundra along some trials left from the 1962 radioactive tracer study. The Project Chariot Site is located approximately 680 miles northwest of Anchorage, Alaska. The radioactive contaminants were introduced during a 1962 tracer study conducted by the Atomic Energy Commission. Following the study, all contaminated soil and other radioactively contaminated material were placed in a mound (approximately 6 feet high and 40 feet square) at the site. The proposed project would remove this mound from the Project Chariot Site to a DOE low-level waste site in Nevada or Washington. The project would involve crossing floodplains and wetlands along the Ogotoruk and Snowbank Creeks to obtain access to the mound or characterization sampling sites.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE is assessing the impact of the floodplains and wetlands in the "Environmental Assessment of the Proposed Radioactive Soil Removal from the Project Chariot Site at Cape Thompson" being prepared in accordance with the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

Issued in Washington, DC, on July 8, 1993

C.W. Frank,

Acting Principal Deputy Assistant Secretary, Environmental Restoration and Waste Management.

[FR Doc. 93–16574 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetlands Involvement for Bridge Replacements of 603–71G and 603–72G (Road B Crossing Lower Three Runs Below PAR Pond Dam) and of 603–4G (Road 4 Crossing Fourmile Branch) Located on the Savannah River Site (SRS)

AGENCY: Department of Energy (DOE).

ACTION: Notice of Floodplain and wetlands involvement and solicitation of comments.

SUMMARY: Title 10, Code of Federal Regulations (CFR), part 1022, requires DOE to evaluate actions that may be taken in order to ensure consideration of protection of floodplains and wetlands in the decisionmaking process. As soon as practicable after a determination that a floodplain and/or wetland may be involved, the regulations require that a public notice be published in the **Federal Register**, including a description of the proposed action and its location.

DOE proposes to demolish three existing bridges 40–65 years old and to construct three new bridges conforming to current design and construction practices in a floodplain and wetland located in Aiken and Barnwell Counties, South Carolina. Discarded material will be disposed of in a sanitary landfill. In accordance with Title 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments on the proposed actions are due on or before July 28, 1993.

ADDRESSES: Comments should be addressed to Floodplain/Wetlands Comments, Stephen R. Wright, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. The phone number is (803) 725–3957. Fax comments to: (803) 725–7688.

FOR FURTHER INFORMATION ON DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S.

Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

A location map showing the project sites and further information can be obtained from the Savannah River Operations Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Each of the bridges included in this replacement project was identified in a sitewide bridge inspection as no longer capable of supporting the transportation of heavy loads across the site. The replacements shall be similar in design and construction with some latitude for length of span and end abutment configuration. The method of demolition is also considered similar for each of the three bridges with varying lengths of span.

Demolition of a bridge will require cutting the deck at the span joints and hoisting the deck in sections off of the pier caps. The pier caps can then be separated from the timber piles or concrete piles and removed. Depending on the final location of the piers, the timber piles or the concrete piles may be cut below the water surface and abandoned in-place, limiting disturbance to the stream and reducing costs. If the timber piles interfere with the new piles, they will be pulled to prevent decay of the piles, leaving an unacceptable void near the proposed pile foundation.

The existing bridge geometry shall be maintained for each bridge as closely as possible. The width of the proposed bridges is 44–0 as compared with 24–0 on existing bridges.

To accommodate the increased width of the bridge, the end abutments will require enlarging and may require tie-back walls, depending on site topography, to prevent erosion of the embankment.

Bridges shall be designed using prestressed, precast concrete beams or cast-in-place posttensioned beam construction with a reinforced concrete deck and asphalt or concrete wearing surface. Guardrails and parapets walls shall meet a South Carolina Department of Highways and Public Transportation (SCDHPT) and American Association of State Highway Transportation Officials approved standard.

Bridges shall be supported by approximately four reinforced concrete piers at each pier cap. The piers shall be supported by driven piles. The location of piers for each bridge is determined by the span lengths for the structure. The project anticipates using SCDHPT standard span lengths for each bridge, the maximum of which is 40–0.

The increase of span length may require an increase of the distance between the end abutments. This increased distance may provide a larger surface area of stream flow once the replacement bridges have been completed.

During construction, portions of roadways shall be closed to traffic and detoured. This will provide greater flexibility to implement construction methods to minimize environmental impacts that would be impossible to use while maintaining through traffic.

Erosion control measures will be installed at all areas to prevent impacts from disturbances reaching wetlands or entering waterways. Staging of construction activities shall be planned to reduce increased traffic in the waterway resulting from construction and to maintain the limits of disturbance to as small an area as possible to perform the bridge construction. The bridge contractor will also be required to provide equipment, materials, and labor in the event of any spills or uncontrolled discharges of sediment.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR, part 1022), DOE will prepare a flooodplain and wetlands assessment for this proposed DOE action.

After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register**.

Everet H. Beckner,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 93–16570 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–1

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale: Contract No. S–EU–1013, for the sale of 5 grams of uranium, enriched to 98.64 percent in the isotope uranium-235 to the Instituto di Geocronologia, Pisa, Italy, of use in isotopic dilution analyses of uranium in rock and mineral samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 7, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–16572 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Civilian Radioactive Waste Management

Yucca Mountain Waste Package Development Workshop

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of workshop.

TIME AND DATE: 8 a.m.–5 p.m. on September 20–22; and 8 a.m.–12 noon on September 23, 1993.

PLACE: The Howard Johnson Plaza Suite—Hotel located at 4255 South Paradise Rd. in Las Vegas, Nevada 89109.

This workshop will be a followup to the Engineered Barrier System Workshop held in Denver in June 1991 and will consist of presentations, discussions by selected experts, and audience participation.

SUMMARY: In this notice, the Office of Civilian Radioactive Waste Management announces the Yucca Mountain Waste Package Workshop. The Department is seeking participants who may be interested in presenting Waste Package concepts or supporting information on materials selection, fabrication, closure, nondestructive evaluation, performance assessment, and testing at this workshop.

SUPPLEMENTARY INFORMATION: The focus of this workshop will be the disposal container and those aspects of disposal container development currently of concern to the Yucca Mountain Site Characterization Project Office. Topics will include containment barrier degradation, materials selection, container fabrication, closure and nondestructive evaluation techniques, and performance assessment with an emphasis on data/testing needed to support modeling and performance

assessment. The objectives of the workshop will be to provide a forum to discuss ideas relative to these important aspects of disposal container development and to allow comment and input from all interested parties relative to the current status of waste package development as part of the site characterization process.

Presenters for the workshop will be selected on the basis of a Department of Energy evaluation of their qualifications and technical analysis of the proposed concept or approach. Interested presenters must submit a personal qualifications statement along with a technical analysis of the proposed concept they would like to address at the workshop. Concepts shall focus on the aspects of disposal container development previously specified. Those selected to present their concepts will receive an information package on the status of the Department of Energy waste package program.

Those interested in presenting at the workshop should submit their qualifications and proposals for consideration to the Department of Energy, by July 30, 1993. Send these to Diane J. Harrison, U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, M/S 523, P.O. Box 98608, Las Vegas, NV 89193–8608.

CONTACT PERSON FOR MORE INFORMATION: For anyone wishing to attend this workshop a block of rooms has been reserved at the Howard Johnson Plaza Suite-Hotel. Please contact Linda Evans (702–794–7693) by Wednesday, August 18, 1993, for reservations (credit card required. Single Room is $69 including tax).

A tour of Yucca Mountain is planned for Monday, September 20, 1993, for which reservations are required. The number that can be accommodated may be limited. Those wanting to participate in this tour must contact Carleen Hill, Science Applications International Corporation, (702–794–7375) by August 27, 1993.

This invitation for participation should not be interpreted as a request for proposal for future work in this area or as a commitment to compensate participants in any manner.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93–16571 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Proposed Revision of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste."

DATES: Written comments must be submitted on or before August 12, 1993. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Jorge Luna-Camara, Energy Information Administration Survey Manager, EI–523, U.S. Department of Energy, Washington, DC 20585, (202) 254–5664.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Jorge Luna-Camara at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. This program will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, technology, and related economic and statistical information relevant to the adequacy of energy resources to meet the Nation's economic and social needs in the near and longer term future.

The NWPA–830R A–G data are entered into the Department of Energy's accounting records. The data from electric utilities concerns payment of their contribution to the Nuclear Waste Fund, and contains specific data on disposal of nuclear waste.

II. Current Actions

In keeping with its mandated responsibilities, EIA proposes to extend for three years the information collection aspects of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste." The proposed changes to the NWPA–830G, Annex A to Appendix G, "Standard Remittance Advice for Payment of Fees," are summarized below:

(1) A line to allow utilities (when applicable) to deduct pump storage losses has been added;

(2) A line to allow the utilities to report the source of the information being reported (i.e., Form EIA 861, Form EIA 412, Form REA 12, and FERC Form 1) has been added; and the instructions have been clarified.

Changes to NWPA–830C, Appendix C "Delivery Commitment Schedule," are as follows:

(1) Section 1, Line 1.1—The "Name of Purchaser" was added, moving the DCS Identification Number to Line 1.2.

(2) Section 2:

(a) Line 2.2—"Shipping Lot Number" was deleted;

(b) Line 2.4—"Proposed Delivery Date" was replaced with Proposed Delivery Year;

(c) Line 2.5—"DOE Assigned Delivery Commitment Date" was deleted;

(d) Line 2.7—"Metric Tons Uranium was deleted (Discharged);

(3) Section 4—"Notification of DOE Approval" was replaced with Notification of DOE Action;

(4) Line 4.1—"Approved by DOE" was replaced with Approved, Disapproved.

III. Request for Comments

Prospective respondents and other interested parties should comment on

VOL 58 ISS 132 JL 13 1993 UMI

the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 40 hours per respondent on NWPA–830–G and NWPA–830–A; and 5 hours of reporting burden on NWPA–830–C. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

E. What is the estimated cost of completing this form(s), including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the NWPA–830R A–G.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980 (Public Law 96–511), which amended chapter 35 of title 44 United States Code (44 U.S.C. 3506(a)).

Issued in Washington, DC, July 8, 1993.

Yvonne M. Bishop,

Director, Statistical Standards.

[FR Doc. 93–16573 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–739–000, et al.]

Entergy Services, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 6, 1993.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER93–739–000]

Take notice that on June 29, 1993, Entergy Services, Inc. (Entergy Services), on behalf of Louisiana Power & Light Company (LP&L), filed the Transmission Agreement between LP&L and Southwestern Electric Power Company (SWEPCO) (the "Agreement"). Entergy Services states that the purpose of the Agreement is to provide for the transmission and distribution of power and energy purchased by SWEPCO from Cajun Electric Power Cooperative, Inc. to the former delivery points of Bossier Rural Electric Membership Corporation (BREMCO), the assets of which are being acquired by SWEPCO. Entergy Services requests that the Agreement be made effective on July 1, 1993, the date that SWEPCO is to acquire BREMCO's assets.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Canal Electric Co.

[Docket No. ER93–745–000]

Take notice that on June 30, 1993, Canal Electric Company (Canal) filed four documents under section 205 of the Federal Power Act: (1) An Amendment to the Capacity Acquisition Agreement (Agreement) between itself and Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), which amends the terms of the Agreement (FERC Rate Schedule No. 21) with respect to the procurement of bulk electric power. Under the terms of the proposed Capacity Acquisition and Disposition Agreement (as the Agreement, which Agreement as amended was also filed, is to be hereinafter known), Canal may continue to procure bulk electric power at the request of and for resale to Commonwealth and/or Cambridge, but may also sell power owned or otherwise held by Commonwealth and Cambridge at the request of Commonwealth and/or Cambridge; (2) a Capacity Disposition Commitment between itself and Commonwealth, which implements the terms of the Capacity Acquisition and Disposition Agreement with respect to the assignment by Commonwealth to Canal of a portion of Commonwealth's entitlement in Canal Unit No. 2. Canal will sell a portion of Commonwealth's entitlement to the output of Canal Unit No. 2 to Green Mountain Power Corporation (GMP) over the period September 1, 1993 through September 1, 1998. This entitlement is referred to herein as the "GMP Quota;" (3) a Power Contract between itself and Commonwealth, which provides that Canal will credit all revenues from the sale of the GMP Quota to Commonwealth; and (4) a Power Sale Agreement between itself and GMP with respect to the sale of the GMP Quota.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER93–746–000]

Take notice that on June 30, 1993, Public Service Company of Oklahoma (PSO) tendered for filing a Transmission Service Agreement (Agreement), dated April 14, 1993, between PSO and Southwestern Public Service Company (SPS). Under the Agreement, PSO will provide transmission service for power and energy that SPS will sell to The Empire District Electric Company (EDE).

A copy of the filing has been sent to SPS, EDE and the Oklahoma Corporation Commission.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Co.

[Docket No. ER93–747–000]

Take notice that on June 30, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Letter Agreement Between Bonneville Power Administration and The Montana Power Company. Montana requests that the Commission accept the Agreement for

filing, to be effective on September 1, 1993.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER93–748–000]

Take notice that on June 30, 1993, Southwestern Electric Power Company (SWEPCO), by its counsel, submitted for filing Amendment No. 2 to SWEPCO's Electric System Interconnection Agreement with Cajun Electric Power Cooperative, Inc. (SWEPCO FERC Rate Schedule No. 100). SWEPCO submitted corrections to the filing on June 30, 1993.

SWEPCO requests an effective date of the later of July 1, 1993, or the date on which SWEPCO completes its acquisition of the electric utility assets of Bossier Rural Electric Membership Cooperative, Inc., a Cajun member. Accordingly, SWEPCO requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Cajun, the Louisiana Public Service Commission, and copies of the transmittal letter only have been sent to other SWEPCO wholesale customers to advise them of the requested waiver of notice requirements.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER93–750–000]

Take notice that on July 1, 1993, The United Illuminating Company (UI) filed a Modification of Wheeling Service Agreement to modify the Wheeling Service Agreement dated as of October 19, 1987, by and between UI and McCallum Enterprises I Limited Partnership. UI requests that the Modification be made effective as of the Closing of Title of two parcels of land in Derby, Connecticut.

Copies of the filing have been sent to the affected customer and to the Connecticut Department of Public Utility Control.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Co.

[Docket No. ER93–749–000]

Take notice that Southwestern Public Service Company (Southwestern) on June 30, 1993, tendered for filing two proposed supplements to its rate schedule for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The first proposed supplement provides for the assignment by Cap Rock to Southwestern of Cap Rock's rights and obligations under its lease agreement with John Hancock Mutual Life Insurance Company. Southwestern has agreed to grant to Cap Rock the right to use the facilities and pay a dedicated facilities charge based on the lease payments. The second supplement relates to the lease by Cap Rock of certain land properties to Southwestern and the Sub-lease of these properties back to Cap Rock. Both of these supplements assist Cap Rock with procuring future financing for the construction of additional facilities on Cap Rock's system.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER93–751–000]

Take notice that PacifiCorp, on July 1, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Letter Agreement dated May 20, 1993 among Western Area Power Administration (Western), the United States Bureau of Reclamation (Reclamation) and PacifiCorp.

The contract provides for the installation of facilities by Reclamation, Western and PacifiCorp in connection with the conversion of PacifiCorp's 46 kilovolt Midway-Hale transmission line to 138 kilovolts.

PacifiCorp requests an effective date of sixty days from the date of the Commission's receipt of its filing.

Copies of this filing were supplied to Western, Reclamation, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16566 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

Meeting

July 7, 1993.

Take notice that the Commission staff will meet with representatives of the General Agreement on Parallel Paths (GAPP) on Thursday, July 15, 1993 at 2 p.m. in the Commission meeting room, room 9306, 825 N. Capitol Street, NE., Washington, DC 20426. GAPP is a study group of the Interregional Transmission Coordination Forum. The GAPP representatives will describe GAPP's technical approach in addressing certain control and equity problems in the use of the bulk transmission system. Interested parties may attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16565 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–523–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

July 6, 1993.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP93–523–000]

Take notice that on June 29, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–523–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add the existing Clay Basin delivery point in Daggett County, Utah and the existing Plymouth delivery point in Benton County, Washington to its Rate Schedule ODL–1 Service Agreement with Washington Natural Gas Company (Washington Natural), without any reallocation of maximum daily delivery obligations to these delivery points, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

VOL 58 ISS 132 JL 13 1993 UMI

Northwest states that Washington Natural has requested the addition of the Clay Basin and Plymouth delivery points to its ODL/TF service agreements so it can use those agreements to have supplies delivered for storage for its account. Northwest further states that the total volumes presently authorized to be delivered to Washington Natural would not change as a result of the proposed delivery point additions.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP93–522–000]

Take notice that on June 29, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–522–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point for Mississippi Valley Gas Company (Mississippi) in Tunica County, Mississippi, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that the new delivery point would enable Mississippi to render natural gas service to a new commercial development to be located on the Mississippi River near Tunica.

Texas Gas states further that the proposed maximum annual quantity of natural gas to be delivered at the proposed new delivery point would be 1,752,000 MMBtu, with a proposed maximum daily quantity of 4,800 MMBtu.

It is said that the addition of the new delivery point would not result in an increase in Mississippi's current daily contract demand nor detriment to Texas Gas's other customers.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP93–527–000]

Take notice that on June 30, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–527–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add the existing Stanfield, Oregon interconnection between Northwest and Pacific Gas Transmission Company (PGT) pipeline as a new delivery point for service under existing Rate Schedule SGS–I Service agreements with the Water Power (Water Power) and Cascade Natural Gas Corporation (Cascade) and reallocate the existing maximum daily delivery obligations for such service from off-PGT delivery points to the new Stanfield delivery point pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP93–528–000]

Take notice that on June 30, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP93–528–000 pursuant to the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Maricopa County, Arizona, for firm deliveries of natural gas transported for Southwest Gas Corporation (Southwest) under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

El Paso proposes to construct and operate a delivery point to provide a firm transportation service for Southwest's residential and commercial customers in the Club West area of Maricopa County, Arizona. El Paso would deliver a maximum of 4,008 Mcf of natural gas per day for Southwest's account at the Club West delivery point. El Paso states that Southwest would reimburse El Paso for the estimated $82,500 construction costs for the proposed delivery point. El Paso also states that its tariff does not prohibit the addition of delivery points.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16567 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–7–48–000]

ANR Pipeline Co.; Tariff Filing

July 7, 1993.

Take notice that on July 1, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective August 1, 1993:

First Revised Volume No. 1

Second Revised Sheet No. 5

First Revised Volume No. 1–A

First Revised Sheet No. 7

ANR states that the purpose of the instant filing is to comply with the annual redetermination of the levels of ANR's "Reduction for Transporter's Use (%)", as required by ANR's currently effective Tariff, and article XI of ANR's Interim Settlement at Docket No. RP89–161, et al. (ANR Pipeline Company 60 FERC (CCH) ¶ 61,145 (1992)). ANR further states that the redetermined fuel use and lost-and-unaccounted for gas percentages shown on ANR's fuel matrix are based upon ANR's most recent three (3) calendar years experience of compressor fuel usage, and most recent four (4) calendar years experience of lost-and-unaccounted for gas.

ANR states that copies of the filing have been served on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16500 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–149–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that ANR Pipeline Company (ANR), on July 1, 1993 tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1 and 1–A and Original Volume Nos. 2 and 3 the tariff sheets listed on appendix A to the filing. ANR has requested that the Commission accept the tendered tariff sheets to become effective August 1, 1993.

ANR states that the referenced tariff sheets are being submitted pursuant to § 2.104 of the Commission's Regulations to implement partial recovery of $0.5 million of additional buyout buydown costs, part by a fixed monthly charge applicable to ANR's sales customers and part by a volumetric buyout buydown surcharge of $0.0001 per dth applicable to all throughput. In particular, this filing is being made pursuant to Article II of the Stipulation and Agreement filed by ANR on February 12, 1991 in Docket Nos. RP91–33–000 and RP91–35–0000, as approved by the Commission on March 1, 1991. ANR states that it intends to commence billing of the proposed fixed monthly charges and volumetric surcharge in September, 1993 for August, 1993 business.

ANR states that all of its Volume Nos. 1, 1–A, 2 and 3 customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16500 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–126–000]

Birchwood Power Partners, L.P., Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 7, 1993.

On June 29, 1993, Birchwood Power Partners, L.P. of 100 Ashford Center North, Suite 400, Atlanta, Georgia 30338 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility which will be located approximately ten miles east of Fredericksburg, in King George County, Virginia will consist of a pulverized coal-fired steam generator, and an extraction/condensing steam-turbine generator. Steam from the facility will be used by Dominion Growers, Incorporated for heating and cooling a greenhouse complex. The primary energy source will be bituminous coal. The maximum net electric power production of the facility will be 237 MW. The facility is scheduled for commercial operation on November 29, 1996.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16484 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–152–000]

Carnegie Natural Gas Co.; Request for Waiver of Annual PGA Filing Requirements

July 7, 1993.

Take notice that on July 2, 1993, Carnegie Natural Gas Company (Carnegie) filed a request for waiver of the requirements under sections 154.304 and 154.305 of the Commission's regulations, 18 CFR 154.304 and 154.305 (1992), and section 23 of the General Terms and Conditions of Carnegie's FERC Gas Tariff, which require Carnegie to make a 1993 annual purchased gas adjustment (PGA) filing.

Carnegie states that waiver of the Annual PGA filing requirements is justified under the prevailing regulatory environment and the particular circumstances on Carnegie's system, citing its impending restructuring of services under Order No. 636 and its projected lack of firm sales until such restructuring. Carnegie further states that it will provide workpapers detailing its Account No. 191 activity, from May 1, 1992 until the effective date of its restructuring, when it files its limited section 4 application to direct bill its Account No. 191 balance after it becomes restructured and terminates its PGA.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16485 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88-207-010 and RP89-116-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on June 30, 1993, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with proposed effective date of August 1, 1993:

Thirty-Second Revised Sheet No. 26.1
Thirty-Second Revised Sheet No. 26A.1
Thirtieth Revised Sheet No. 26C
Twenty-Eighth Revised Sheet No. 26D

Columbia states that the amortization period over which it was authorized to collect its Order 500 volumetric surcharge expires July 31, 1993. Accordingly, the instant filing removes the current surcharge from Columbia's rates, effective August 1, 1993.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16488 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-3-005]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on June 29, 1993, Columbia Gas Transmission Corporation (Columbia Gas), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1993:

Second Revised Sheet No. 54
Second Revised Sheet No. 74

Columbia Gas states that this filing is being made to amend applicable tariff sheets in its existing tariff in compliance with 18 CFR 250.16(d)(2) to reflect a change in its marketing affiliate within the meaning of 18 CFR 250.16(b)(1)(i) and 18 CFR 161.2. Columbia Gas states that Columbia Energy Services Corporation will replace Columbia Gas Development Corporation as its marketing affiliate within the meaning of those regulations. Columbia Gas is requesting a waiver of the 30-day notice requirement pursuant to 18 CFR 154.51.

Columbia Gas states that copies of its filing has been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16489 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-6-21-000 and TM93-10-21-000]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 1, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1993:

Thirty-ninth Revised Sheet No. 26
Thirty-third Revised Sheet No. 26.1
Thirty-seventh Revised Sheet No. 26A
Thirty-third Revised Sheet No. 26A.1
Twenty-eighth Revised Sheet No. 26B
Twenty-seventh Revised Sheet No. 26B.1
Thirty-first Revised Sheet No. 26C
Twenty-first Revised Sheet No. 26C.1
Twenty-ninth Revised Sheet No. 26D
Thirty-fifth Revised Sheet No. 163

Columbia states the sales rates set forth on Thirty-third Revised Sheet No. 26.1 reflect an overall increase of 3.4¢ per Dth in the commodity rate and an overall increase of $.215 per Dth in the total demand rate when compared with the total CDS rates filed in Columbia's June 30, 1993 filing at Docket No. RP88-207 et al. Columbia also states that the transportation rates set forth on Twenty-first Revised Sheet No. 26C.1 and Twenty-ninth Revised Sheet No. 26D reflect an increase of .15¢ per Dth in the Fuel Charge component.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16495 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-4-009]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on June 29, 1993, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1993:

Fourth Revised Sheet No. 84
Fourth Revised Sheet No. 125
Third Revised Sheet No. 160
Fourth Revised Sheet No. 189

Columbia Gulf states that this filing is being made to amend applicable tariff sheets in its existing tariff in compliance with 18 CFR 250.16(d)(2) to reflect a change in its marketing affiliate within the meaning of 18 CFR 250.16(b)(1)(i) and 18 CFR 161.2. Columbia Gulf states that Columbia Energy Services

Corporation will replace Columbia Gas Development Corporation as its marketing affiliate within the meaning of those regulations. Columbia Gulf is requesting a waiver of the 30-day notice requirement pursuant to 18 CFR 154.51.

Columbia Gulf states that copies of its filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16490 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–8–23–000 and TM93–3–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Eastern Shore Natural Gas Company (ESNG) on July 1, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1993.

ESNG states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and Sections 21, 23 and 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.1184 per dt in the Commodity Charge and no change in the Demand Charge, as measured against ESNG's Compliance Filing in Doc. No. 92–227–000, as filed on June 25, 1993 and proposed to be effective on July 1, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16486 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–15–000]

Mid Louisiana Gas Co.; Compliance Filing

July 7, 1993.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 2, 1993, tendered for filing as part of its FERC Gas Tariff, First Revision Volume No. 1, the following tariff sheet with a proposed effective date of September 1, 1993:

Ninety-Eighth Revision Sheet No. 3a

Mid Louisiana states that the purpose of the filing of the Tariff Sheet is to project a current cost of gas for the quarterly period beginning September 1, 1993, in compliance with the Commission's Regulations issued in Order Nos. 483 and 493–A. Mid Louisiana also states that Ninety-Eighth Revision Sheet No. 3a is to reflect a decrease of $0.6699 in Mid Louisiana's current cost of gas, exclusive of surcharge. Additionally, Mid Louisiana is reflecting a new surcharge rate for the annual period beginning September 1, 1993.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16499 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–150–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Northern Natural Gas Company (Northern), on July 1, 1993, tendered for filing as part of its FERC Gas Tariff Fourth Revised Volume No. 1, the following tariff sheet with a proposed effective date of August 1, 1993: First Revised Sheet No. 261.

Northern states that the filing establishes a mechanism to direct bill or refund, as appropriate, any balance existing in Northern's deferred ANGTS account upon termination of Northern's current ANGTS Rate Adjustment mechanism. Therefore, Northern has filed First Revised Sheet No. 261 to a establish direct bill/refund provision effective August 1, 1993.

Northern states that copies of the filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.44 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16482 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

VOL 58 ISS 132 JL 13 1993 UMI

[Docket No. TA93-1-86-003 and TQ93-5-86-000]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

July 7, 1993.

Take notice that on July 1, 1993, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act a proposed change in rates applicable to service rendered under Rate Schedule PL-1 in accordance with Paragraph 21 of its FERC Gas Tariff, Second Revised Volume No. 1.

PGT states that a copy of this filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16493 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[FERC No. JD93-07805T]

Railroad Commission of Texas, Austin Chalk Tight Formation Determination; Informal Conference

July 8, 1993.

Take notice that an informal conference will be convened in the above-referenced proceeding on July 28, 1993, at 10 a.m. The conference will be held in room 3400-C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Janet Ardinger at (202) 208-0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16564 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-151-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Tariff

July 7, 1993.

Take notice that on July 1, 1993, Tennessee Gas Pipeline Company (Tennessee) filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Tennessee's implementation of Order No. 636.

Tennessee stated that the tariff sheets which provide for the recovery of GSR Costs and which describe the mechanism pursuant to which those costs are to be recovered were submitted to the Commission in Tennessee's restructuring proceeding, Docket No. RS92-23-005 *et. al.* Tennessee states that the sole purpose of the filing in this docket is to set forth the GSR Costs and the related rates that will be charged by Tennessee pursuant to Order No. 636 for the quarter commencing August 1, 1993. The GSR Costs sought to be recovered include costs associated with the reformation or termination of certain supply contracts as well as the costs associated with continuing to perform under the Great Plains Associates contract and certain Canadian supply contracts.

Tennessee requested an effective date of August 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Tennessee stated that copies of this tariff filing were posted in conformance with section 154.16 of the Commission's Regulations and in conformity therewith were mailed to all affected customers of Tennessee and interested state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16483 Filed 7-12-93; 8:45 am]Bureau of Land Management

BILLING CODE 6717-01-M

[Docket No. RP93-147-000]

Tennessee Gas Pipeline Co.; Filing To Implement Direct Billing

July 7, 1993.

Take notice that on July 1, 1993, Tennessee Gas Pipeline Company (Tennessee) filed a limited rate adjustment to direct bill the balance in its Account 191 to remaining sales customers over the 12 months following implementation of Tennessee's restructured tariff in Docket No. RS92-23. The amounts to be billed to current sales customers following implementation are set forth in the following tariff sheet, which will be part of Tennessee's Fifth Revised Volume No. 1:

Original Sheet Nos. 31-34

Tennessee states that the tariff sheets which provide for the mechanism pursuant to which those costs are to be recovered were submitted to the Commission in Docket No. RS92-23-005 et al. Tennessee states that the purpose of the filing in this docket is to set forth the lump sum amounts and related monthly payments that will be charged by Tennessee pursuant to Article XIX for the annual period commencing August 1, 1993. Tennessee states that pursuant to this provision the amounts to be billed will be adjusted after the six month period following implementation.

Tennessee requests an effective date of August 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16502 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–148–000]

Tennessee Gas Pipeline Co.; Tariff Adjustment Filing

July 7, 1993.

Take notice that on July 1, 1993, Tennessee Gas Pipeline Company (Tennessee) filed a limited application to track transportation costs paid to other pipelines (Account No. 858 Costs) following implementation of Tennessee's restructured tariff in Docket No. RS92–23. The adjustment, which is requested to become effective on August 1, 1993, is reflected in Original Sheet No. 30, which is filed to be part of Tennessee's restructured tariff, Fifth Revised Volume No. 1, upon its implementation in Docket No. RS92–23.

Tennessee states that the tariff sheets which provide for the mechanism pursuant to which those costs are to be recovered were submitted to the Commission in Docket No. RS92–23. Tennessee states that the purpose of the filing in this docket is to set forth the 858 Costs and the related rates that will be charged by Tennessee pursuant to these provisions (Article XXIV of Fifth Revised Volume No. 1) for the annual period commencing August 1, 1993.

Tennessee has requested an effective date of August 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulator Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16492 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–6–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1993 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is August 1, 1993.

Texas Eastern states that these revised tariff sheets are filed pursuant to section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers. Texas Eastern states that these revised tariff sheets are being filed to reflect changes in its projected expenditures for electric power for the twelve month period beginning August 1, 1993.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current Rate Schedule FT–1 and IT–1 shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16496 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–6–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on July 1, 1993, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposed effective date of August 1, 1993:

Fourth Revised Seventy-third Revised Sheet No. 10
Fourth Revised Seventy-second Revised Sheet No. 10A
Fourth Revised Fifty-fourth Revised Sheet No. 11
Fourth Revised Forty-fourth Revised Sheet No. 11A
Fourth Revised Forty-third Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective August 1, 1993. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of ($.8611) per MMBtu from the rates set forth in the Out-of-Cycle PGA filed April 29, 1993 (Docket No. TQ93–5–18). Texas Gas also states that no changes in the demand or SGN standby rates are proposed in the instant filing.

Texas Gas states that copies of the filing were served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16497 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93-6-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on July 1, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, the revised tariff sheets contained in Appendix A to the filing.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to the Transportation Cost Adjustment provisions contained in section 32 of its FERC Gas Tariff Original Volume No. 1 and section 27 of its FERC Gas Tariff First Revised Volume No. 2-A, and are proposed to be effective August 1, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas' jurisdictional sales customers, all parties on the Commission's official restricted service list in the consolidated proceedings, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16491 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

Transcontinental Gas Pipe Line Corp.; Proposed Changes to FERC Gas Tariff

[Docket No. TM93-17-29-000]

July 7, 1993.

Take notice that on June 30, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sixth Revised Sheet No. 20, with a proposed effective date of June 1, 1993.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2. TGPL states that the tracking filing is being made pursuant to section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

TGPL states that in Appendix A of the filing is the explanation of the rate changes and details regarding the computation of the revised S-2 rates.

TGPL states that copies of TGPL's filing are being mailed to each of its S-2 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such petitions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16494 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Williams Natural Gas Company (WNG) on July 1, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to with proposed effective date of August 1, 1993:

Third Revised Fifteenth Revised Sheet No. 6
Third Revised Sixteenth Revised Sheet No. 6A
Third Revised Seventeenth Revised Sheet No. 9

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes to decrease its rates effective August 1, 1993 to reflect a decrease of $.1051 in the Cumulative Adjustment.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16498 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[FERC No. JD92-06705T]

Wyoming Oil and Gas Conservation Commission, Dakota Tight Formation Determination; Informal Conference

July 8, 1993.

Take notice that an informal conference will be convened in the above-referenced proceeding on July 16, 1993, at 9 a.m. The conference will be held in room 3400-C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

For further information, contact Janet Ardinger at (202) 208-0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16563 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Announcement of Public Scoping Meetings for the Proposed 500-kV Navajo Transmission Line Project—Arizona, New Mexico, and Nevada

AGENCY: Western Area Power Administration, DOE.

ACTION: Announcement of public meetings.

SUMMARY: Western Area Power Administration (Western) published a notice of intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (FR) on May 26, 1993, 58 FR 30162. That NOI also announced a series of public scoping

meetings regarding a proposal to construct a 500-kV alternating current transmission line known as the Navajo Transmission Project (NTP). Subsequently, Western published the postponement of the public scoping meetings in the FR on June 11, 1993, 58 FR 32666. This notice is intended to establish the rescheduled public EIS scoping meetings for the NTP. Western intends for the scoping period for the NTP EIS to remain open 2 weeks following the last scoping meeting listed below.

DATES: Western's public information and scoping meetings will include: notification of the proposed action to the public and Federal, State, tribal, and local agencies; identification by the public of issues to be considered in the EIS; and the solicitation of assistance from the public to identify reasonable alternative transmission line routes and substation sites. In addition, the public will have an opportunity to ask questions regarding the proposed project. Western and Dine' Power Authority, the Navajo Nation tribal enterprise with responsibility for this project, will conduct 11 public scoping meetings throughout the study area. Maps and other information on preliminary alternatives conceived for this project will be available at these meetings. All of the public meetings will be informal and will begin at 7 p.m. The locations and dates for these meetings are:

Location	Date
Boulder City, Nevada, Super 8 Motel, 704 Nevada Highway.	August 2.
Kingman, Arizona, Holiday Inn, Cactus Room, 3100 East Andy Devine.	August 3.
Flagstaff, Arizona, Council Chambers, City Hall, 211 West Aspen.	August 4.
Dilkon, Arizona, Dilkon Chapter House.	August 5.
Page, Arizona, Holiday Inn, 287 North Lake Powell Blvd.	August 9.
Tuba City, Arizona, Tuba City Chapter House.	August 10.
Kykotsmovi, Arizona, Hopi Civic Center.	August 12.
Shiprock, New Mexico, Shiprock Chapter House.	August 16.
Kayenta, Arizona, Kayenta Chapter House.	August 17.
Farmington, New Mexico, Civic Center, 200 West Arrington.	August 18.
Window Rock, Arizona, Civic Center.	August 19

Press releases announcing the meeting times and dates will be sent to newspapers in the areas where the meetings will be held. Letters providing notification of the meetings will be sent to all those on the mailing list detailed below. Written comments on the scope of the EIS for the proposed NTP should be received by Western no later than September 3, 1993. Comments on the project will be accepted throughout the National Environmental Policy Act (NEPA) process.

FOR FURTHER INFORMATION CONTACT: Western will maintain a mailing list of interested parties and persons who wish to be kept informed of the progress of the EIS. If you are interested in receiving future information or wish to submit written comments, please call or write: Michael G. Skougard, Environmental Specialist, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

For general information on DOE's NEPA review procedures or status of a NEPA review, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

Issued at Golden, Colorado, July 2, 1993.

William H. Clagett

Administrator, Western Area Power Administration.

[FR Doc. 93–16569 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–P

Parker-Davis Project Proposed Firm Power Rate and Firm and Nonfirm Transmission Service Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of reopening of comment period on the proposed Parker-Davis Project (P–DP) firm power rate and firm and nonfirm transmission rate adjustments.

SUMMARY: Western Area Power Administration (Western) is announcing a second consultation and comment period on the P–DP rate adjustments for firm power and firm and nonfirm transmission service. This rate action was originally announced in the **Federal Register** on May 8, 1992, at 57 FR 19904.

The comment and consultation period of the ratemaking process ended September 28, 1992. Since the comment and consultation period ended, the Power Repayment Study (PRS) has been revised. The revised PRS has been updated with more current data from Western's and the Bureau of Reclamation's (Reclamation) fiscal year (FY) 1992 Financial Statements and the Engineering Ten Year Construction and Replacement Plan (Ten Year Plan) dated July 1992. Further, Western is experiencing abnormal deficiencies in P–DP generation for FY 1993. The flooding conditions along the Colorado River in southwestern Arizona are creating these abnormal generation deficiencies. These conditions have resulted in a significantly greater purchased power expense for P–DP than was originally projected. Western incorporated these increased purchased power costs into the revised PRS to ensure that the rates generate adequate revenues to meet the P–DP's current and future year expenses.

Because of the increase in purchased power expense, Western is reopening the comment period on the Proposed Rates for firm power and firm and nonfirm transmission service. This action is taken to give the P–DP customers and interested parties an opportunity to comment on the revised PRS.

The Proposed Rates for firm power and firm and nonfirm transmission service were initially proposed as a single-step rate process. However, in response to customer comments, Western is proposing a two-step rate process. Step one of the Proposed Rates for firm power and firm and nonfirm transmission service will become effective October 1, 1993. Step two of the Proposed Rates for firm power and firm and nonfirm transmission service will become effective October 1, 1995.

Step one of the Proposed Rates for firm power consists of an energy rate of 5.80 mills/kilowatthour (mills/kWh) and a capacity rate of $2.54/kilowattmonth (kW/month) for a composite rate of 11.61 mills/kWh. Step one of the Proposed Rates for transmission service consists of a firm transmission service rate of $11.17/kW/year ($0.93/kW/month), a nonfirm transmission service rate of 2.12 mills/kWh, and a transmission service rate for Salt Lake City Area Integrated Projects (SLCA/IP) of $5.58/kW/season ($0.93/kW/month).

Step two of the Proposed Rates for firm power consists of an energy rate of 5.98 mills/kWh and a capacity rate of $2.62/kW/month for a composite rate of 11.96 mills/kWh. Step two of the Proposed Rates for transmission service consists of a firm transmission service rate of $14.23/kW/year ($1.19/kW/month), a nonfirm transmission service rate of 2.71 mills/kWh, and a transmission service rate for SLCA/IP of $7.12/kW/season ($1.19/kW/month).

The existing P–DP rates for firm power consist of an energy rate of 4.52 mills/kWh and capacity rate of $1.98/kW/month for a composite rate of 9.03 mills/kWh. The existing rates for

VOL
58
ISS
132
JL
13
1993
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transmission service consist of a firm transmission service rate of $8.20/kW/year ($0.68/kW/month), a nonfirm transmission service rate of 1.50 mills/kWh, and the transmission service for SLCA/IP rate of $4.10/kW/season ($0.68/kW/month).

The following table compares the P-DP Existing Rates with the Proposed Rates:

COMPARISON OF EXISTING AND STEP ONE PROPOSED RATES

	Existing rates as of FY 1990	Proposed rates effective 10/1/1993[1]	Percent change (%)
Firm Power Rate Schedule	PD–F3	PD–F4	
Composite (mills/kWh)	9.03	11.61	29
Energy (mills/kWh)	4.52	5.80	28
Capacity ($/kW/month)	$1.98	$2.54	28
Firm Transmission Service Rate Schedule	PD–FT3	PD–FT4	
Firm Transmission Service ($/kW/year)	$8.20	$11.17	36
Nonfirm Transmission Service Rate Schedule	PD–NFT3	PD–NFT4	
Nonfirm Transmission Service (mills/kWh)	1.50	2.12	41
Transmission Service for SLCA/IP Rate Schedule	PD–FCT3	PD–NFT4	
Transmission Service for SLCA/IP ($/kW/season)	$4.10	$5.58	36

[1] Step one of the Proposed Rates will be effective from October 1, 1993, through September 30, 1995.

COMPARISON OF EXISTING AND STEP TWO PROPOSED RATES

	Existing rates as of FY 1990	Proposed rates effective 10/1/1995	Percent change (%)
Firm Power Rate Schedule	PD–F3	PD–F4	
Composite (mills/kWh)	9.03	11.96	32
Energy (mills/kWh)	4.52	5.98	32
Capacity ($/kW/month)	$1.98	$2.62	32
Firm Transmission Service Rate Schedule	PD–FT3	PD–FT4	
Firm Transmission Service ($/kW/year)	$8.20	$14.23	74
Nonfirm Transmission Service Rate Schedule	PD–NFT3	PD–NFT4	
Nonfirm Transmission Service (mills/kWh)	1.50	2.71	81
Transmission Service For SLCA/IP Rate Schedule	PD–FCT3	PD–NFT4	
Transmission Service for SLCA/IP ($/kW/season)	$4.10	$7.12	74

[1] Step two of the Proposed Rates will be effective from October 1, 1995, through September 30, 1998.

PROCEDURES: An addendum to the brochure dated May 1992 has been distributed to the P–DP customers and other interested parties prior to publication of this notice. This addendum addresses the changes made to the revised PRS that was used in the development of the new Proposed Rates, as compared to the rates presented in the brochure dated May 1992. The revised PRS contains data from Western's and Reclamation's FY 1992 Financial Statements, FY 1993 Congressional Budget data, and the Ten Year Plan dated July 1992. Additionally, the revised PRS contains actual and projected FY 1993 purchased power expense, as compared to the original PRS which contained projections from the FY 1993 Congressional Budget. Customers and interested parties are invited to comment on the additional purchased power expense, and how it is incorporated into the revised PRS. Comments already submitted will be given full consideration in this second comment period and do not need to be resubmitted.

Following the close of the consultation and comment period, Western will consider any changes as a result of public comments. Western will recommend the results of the revised PRS as the final Proposed Rates to the Assistant Secretary for Energy Efficiency and Renewable Energy to be placed into effect on an interim basis prior to submission to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

DATES: The consultation and comment period began on June 29, 1993, with the distribution of the Addendum to the P–DP customers and will end on August 2, 1993. Western will explain changes, including the cost incurred from purchased power and how it effects the Proposed Rates for firm power and firm and nonfirm transmission service, at a public information forum. The public information forum will be held at the Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona, beginning at 9 a.m. on July 14, 1993.

Western will receive oral and written comments at a public comment forum at the Phoenix Area Office beginning at 1 p.m. on July 14, 1993. Both forums will be transcribed by a court reporter. All questions raised at the public comment forum will be answered at least 15 days before the end of the consultation and comment period. Written comments should be received by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: Written comments should be sent to: Mr. Thomas A. Hine, Area Manager, Western Area Power Administration, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005–6457.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Eiler, Assistant Area Manager for Power Marketing, Western Area Power Administration, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2650.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P–DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Reclamation Act of 1902 (43 U.S.C. 372) *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act 1939 (43 U.S.C. 485h(c)).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of the Department of Energy delegated: (1) The authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy for the Department of Energy (this has been reauthorized to the Assistant Secretary for Energy Efficiency and Renewable Energy), and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

The procedures for public participation in the rate adjustments for firm power and firm and nonfirm transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates for firm power and firm and nonfirm transmission service are and will be made available for inspection and copying at the Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona, 85005.

Issued in Golden, Colorado, July 1, 1993.

William H. Clagett,

Administrator, Western Area Power Administration.

[FR Doc. 93–16568 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4678–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 12, 1993.

FOR FURTHER INFORMATION OR A COPY OF THE ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Part B Permit Application, Permit Modifications, and Special Permits (ICR No. 1573.03; OMB No. 2050–0009). This is a renewal of a currently approved ICR.

Abstract: This ICR is a comprehensive presentation of the information collection activities for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting applications for a Part B permit or permit modification, as provided in 40 CFR parts 264 and 270, and details the requirements for: demonstrations and exemptions from permit requirements, the Part B permit application, and permit modifications and special permits.

Applicants must respond to a variety of general reporting and recordkeeping requirements, including record retention, notice of changes, notice of health threat, etc. EPA will use this information to: (1) Issue permits, (2) substantiate information that has been submitted in the permit, (3) assure that facilities are in compliance with the conditions of their permits, and (4) identify instances where permits need to be revised to accommodate new situations.

Burden Statement: The public reporting and recordkeeping burden for this collection is estimated to average 183 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste TSDFs.

Estimated Number of Respondents: 982.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 179,861 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types (ICR No. 1572.02; OMB No. 2050–0050). This is a renewal of a currently approved ICR.

Abstract: This ICR is a comprehensive presentation of the information collection activities related to specific unit requirements and special waste processes and types, as provided in 40 CFR parts 264, 265, and 266, for owners/operators of facilities that treat, store, or dispose of hazardous wastes in tank systems, surface impoundments, waste piles, land treatment, landfills, incinerators, thermal treatment units, chemical, physical and biological treatment units, unit process vents, miscellaneous units, and specific hazardous waste recovery/recycling facilities.

Owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) must collect, record, and in some cases report to EPA. Activities include: demonstrations for exemptions and variances, system assessments and certifications, leak tests and inspections, repair certifications, design and operating requirements, waste management plans, certifications of closure, monitoring and inspection data, and reporting releases and information pertinent to releases. Recordkeeping requirements include maintaining records on the types of wastes treated, stored, or disposed; operating methods; location, design, and construction of facilities; contingency plans; and maintenance of facilities.

EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

Burden Statement: The public reporting burden for this collection is estimated to vary from 8 to 234 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste treatment, storage and disposal facilities.

Estimated Number of Respondents: 4,236.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 514,306 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: General Hazardous Waste Facility Standards (ICR No. 1571.03; OMB No. 2050–0120). This is a renewal of a currently approved collection.

Abstract: This ICR is a comprehensive presentation of the information collection activities for hazardous waste treatment, storage, and disposal facilities (TSDFs), as provided in 40 CFR parts 264 and 265. Owners or operators of hazardous waste facilities must collect, record, and in some cases report data to EPA. Activities include: developing and implementing a written waste analysis plan for wastes received; recording facility inspections; documenting compliance with required precautions to prevent reactions for ignitable, reactive or incompatible wastes; maintaining a written operating record with information on general facility operating practices; submitting copies of records of waste disposal locations and quantities; preparing and maintaining contingency plans; submitting emergency reports whenever an imminent or actual emergency situation occurs; and developing and maintaining closure and post-closure plans, amending plans when appropriate and submitting to EPA closure certifications and post-closure notices. Owners or operators are also required to establish financial assurance mechanisms for closure, post-closure care, and liability for third-party bodily injury or property damage; to provide initial cost estimates and subsequent updates of those estimates for closure and post-closure care; and to provide EPA with evidence of the established financial mechanisms.

Recordkeeping requirements for owners or operators of hazardous waste facilities include record maintenance of all hazardous wastes handled; copies of waste disposal locations and quantities; operating methods; techniques and practices for treatment, storage, or disposal of hazardous waste; contingency plans; financial requirements; personnel training documents; and location, design, and construction of facilities.

Burden Statement: The public reporting burden for this collection is estimated to average 73 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden is 18 hours per recordkeeper.

Respondents: Owners and operators of TSDFs.

Estimated Number of Respondents: 4,443.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 404,850 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: RCRA Hazardous Waste Permit Application and Modification, Part A (ICR No. 262.06; OMB No. 2050–0034). This is a renewal of a currently approved collection.

Abstract: This ICR discusses the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting Part A permit applications or Part A permit modifications as required by section 3005 of the Resource Conservation and Recovery Act (RCRA). The requirements for submitting and modifying a Part A permit application are codified at 40 CFR part 270.

The RCRA permit application asks for the characteristics and conditions of the site and of the hazardous waste handled. The information requested includes general facility information (name, mailing address, location), a description of the hazardous waste activity, a topographic map, and a brief description of the nature of business. The application must be revised if certain changes are made to a facility.

EPA uses the information in the Part A permit application for a variety of purposes, to include: identifying the person(s) legally responsible for hazardous waste activity, determining which facilities require permits under more than one program, assessing potential for the facility to pollute nearby ground and surface waters, and defining the specific wastes a facility is legally allowed to handle for different purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste treatment, storage, and disposal facilities.

Estimated Number of Respondents: 825.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,942 hours.

Frequency of Collection: One-time per permit application.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: Notification of Hazardous Waste Activity (ICR No. 261.10; OMB No. 2050–0028). This is a renewal of a currently approved collection.

Abstract: Any person generating, transporting, and/or operating a facility

for storage, treatment, or disposal of hazardous waste must file a notification form with EPA (or an authorized State). The information requested includes the location and general description of hazardous waste activity. EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 3.1 hours per response and includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of facilities that generate, transport, or handle hazardous waste.

Estimated Number of Respondents: 35,000.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 108,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 1, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–16556 Filed 7–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4678–6]

Workshop on Exposure Factors Handbook

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA's) Risk Assessment Forum to develop recommendations for potential revisions and additions to EPA's 1990 *Exposure Factors Handbook* (Handbook) (EPA/600/8–89/043).

DATES: The workshop will begin on Wednesday, July 21, 1993, at 8:30 a.m. and end on Thursday, July 22, 1993, at 5 p.m. Member of the public may attend as observers.

ADDRESSES: The meeting will be held at the Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at 617/674–7374 or contact Mara Evans, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02173, Tel: 617/674–7316 by Friday, July 16, 1993. Space is limited.

FOR FURTHER INFORMATION CONTACT:

Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (RD–672), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260–6743.

SUPPLEMENTARY INFORMATION: The revised *Exposure Factors Handbook* is intended to serve as a support document to EPA's Exposure Assessment Guidelines (57 FR 22888; May 29, 1992) by providing data on factors that may be needed to calculate human exposure to toxic chemicals. The Guidelines were developed to promote consistency across exposure assessment activities carried out by various EPA offices. The Handbook provides a common data base that all Agency programs can use to derive values for exposure assessment factors.

This workshop will focus on developing recommendations on improving the 1990 *Exposure Factors Handbook*, and will seek consensus on recommendations for potential revisions and additions, including identification of new exposure factors and data sources.

To obtain a single copy of the 1990 Handbook, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: 513/569–7562. Please provide you name, mailing address, and EPA document number EPA/600/8–89/043.

Dated: July 7, 1993.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–16545 Filed 7–12–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–80016; FRL–4053–5]

TSCA Section 8(e); Notice of Clarification and Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of clarification; solicitation of public comment.

SUMMARY: This Notice solicits public comment on certain refinements to EPA's policy concerning the mandatory reporting of information under section 8(e), the "substantial risk" information reporting provision of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.* Specifically, comments are sought on EPA's section 8(e) policy refinements concerning mandatory reporting of information on the release of chemical substances to, and the detection of chemical substances in, environmental media. Comments are also sought on specific refinements made to EPA's policy concerning the reporting deadline for written "substantial risk" information and the circumstances under which certain information need not be reported to EPA under section 8(e) of TSCA. Finally, this notice reaffirms the Agency's position concerning claims of confidentiality for information contained in a notice of substantial risk under section 8(e).

DATES: Written comments on the reporting guidance set forth in this Notice must be submitted in triplicate and received by EPA no later than September 13, 1993.

ADDRESSES: All comments must be transmitted in triplicate to: TSCA Document Receipt Office (TS–790), TSCA Section 8(e) Public Docket (Docket No. OPPTS–80016), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

TSCA section 8(e) states, "Any person who manufactures, [imports,] processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment

VOL 58 ISS 132 JL 13 1993 UMI

shall immediately inform the [EPA] Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information" [15 U.S.C. 2607(e)]. The broad scope and nature of TSCA section 8(e) makes it one of the most important health and safety data reporting provisions under TSCA. The statutory language of section 8(e) and the section 8(e) interpretive documents issued to date require the exercise of a certain degree of judgment in determining the section 8(e) reportability of information.

The section 8(e) reporting requirements became effective on January 1, 1977, the effective date of TSCA. Although section 8(e) is self-implementing, EPA issued a proposed policy statement on September 9, 1977 (42 FR 45362), and sought public comment with regard to the Agency's interpretation and implementation of section 8(e). Following receipt and consideration of numerous public comments, on March 16, 1978 (43 FR 11110), EPA issued a final TSCA section 8(e) policy statement ("Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk," hereinafter cited as the "1978 Policy Statement"). The 1978 Policy Statement describes the types of information that EPA considers reportable under section 8(e) and describes the procedures for reporting such information to EPA. On May 29, 1987 (52 FR 20083), EPA amended the 1978 Policy Statement to reflect a change in the address to which written section 8(e) notices must be transmitted. In June 1991, the Agency issued a TSCA Section 8(e) Reporting Guide, which is available from the source listed under **FOR FURTHER INFORMATION CONTACT** in this document.

II. TSCA Section 8(e) CAP

On February 1, 1991 (56 FR 4128), the Agency announced a one-time voluntary TSCA Section 8(e) Compliance Audit Program ("CAP"). The CAP is designed primarily to: (1) Achieve EPA's goal of obtaining any outstanding section 8(e) information, and (2) encourage companies to voluntarily audit their files for section 8(e)-reportable data. The TSCA Section 8(e) CAP incorporates stipulated monetary penalties and an overall monetary penalty ceiling.

In reviewing existing section 8(e) guidance as the result of questions raised by companies considering participating in the Section 8(e) CAP, EPA determined that Parts V(b)(1) and V(c) of the 1978 Policy Statement needed some refinement. On June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending the applicability of Parts V(b)(1) and V(c) of EPA's 1978 Policy Statement which outlined the reportability of data on "widespread and previously unsuspected distribution in environmental media" and "emergency incidents of environmental contamination," respectively. The regulated community was informed that EPA would modify the section 8(e) policy to provide greater specificity regarding the types of environmental release, environmental detection, and environmental contamination information that should be submitted under section 8(e). In the interim, the regulated community was directed by EPA to focus on the statutory language of section 8(e) as the standard by which to determine the reportability of such information for purposes of the Section 8(e) CAP as well as ongoing compliance with section 8(e).

On September 30, 1991 (56 FR 49478), EPA announced an extension of the section 8(e) CAP reporting deadline for information relating to the release of chemicals to and the detection of chemicals in environmental media until such time as the Agency develops final refined section 8(e) reporting guidance on this point. This Notice addresses only the reportability of information concerning non-emergency situations on "widespread and previously unsuspected distribution in environmental media." The Agency has determined that any refined and/or amended guidance concerning the reportability of information on "emergency incidents of environmental contamination" (EIECs) under section 8(e) should be developed as part of the Agency's over-all policy concerning Federal chemical emergency/accident prevention, reporting, response, and/or remediation. EPA is deferring publication of any refined and/or amended guidance concerning the section 8(e) reportability of information on EIECs until issues associated with chemical emergency reporting policy are more fully defined and evaluated. The regulated community is again directed to focus on the statutory language of section 8(e) as the standard by which to determine the reportability of information on EIECs until that time.

EPA is in the process of resolving enforcement and compliance issues concerning reporting of section 8(e) "environmental" information under "Phase 2" of the CAP, and under section 8(e) more generally. After EPA considers the comments received in response to this notice, the Agency will issue in the **Federal Register** final refined guidance for reporting information concerning non-emergency situations regarding environmental contamination. The notice will include discussion of compliance and enforcement issues associated with the refined guidance.

III. Section 8(e) Policy Refinement

As section 8(e) is interpreted in Parts V(b)(1) and V(c) of the 1978 Policy Statement, EPA requires the reporting of certain substantial risk information concerning the release of chemical substances to, and the detection of chemical substances in, any environmental media. In order to enhance TSCA section 8(e) implementation, EPA is herein proposing refinements to the guidance presented in Part V(b)(1) of the 1978 Policy Statement. EPA is offering all interested parties the opportunity to submit written comments relating to the specific types of chemical release and detection information that should be reported under section 8(e) of TSCA.

Additionally, since EPA issued its 1978 Policy Statement, there have been numerous Federal laws passed and/or amended, and a large number of Federal regulations promulgated that are designed to gather chemical-related information, including information relating to the release of chemicals to and the detection of chemicals in the environment. Moreover, there may be other circumstances under which information may be considered known to the Administrator under TSCA section 8(e); several are listed in Part VII of the 1978 Policy Statement and other circumstances are identified herein. Therefore, comments are also being solicited on the circumstances under which EPA should consider itself to be adequately informed about substantial risk information, thereby falling outside of the mandatory reporting requirements of section 8(e).

Also, concerning Part IV of the 1978 Policy Statement, EPA intends to change the current 15–working day reporting deadline for the submission of written reports containing substantial risk information to 30 calendar days. Note that this slightly longer reporting deadline would apply only to written reports; oral reports regarding emergency incidents of environmental contamination will continue to be required to be made immediately (i.e., "as soon as [one obtains] knowledge of the incident," see Part IV of the 1978 Policy Statement). EPA believes the change from 15 working days to 30 calendar days would significantly relieve the burden on persons subject to section 8(e) reporting without substantially affecting EPA's ability to appropriately evaluate and respond in a

timely manner to the reported information.

With regard to follow-up reporting to oral reports concerning EIECs, EPA intends to eliminate the requirement in Part IV of the 1978 Policy Statement that a written report describing simply that an EIEC has occurred (i.e., the EIEC event itself) be submitted to the Agency. EPA believes that oral notification made to an appropriate Agency contact, as listed in Part IX of the 1978 Policy Statement, is generally sufficient notification for purposes of TSCA section 8(e). However, if health or environmental effects as described in Parts V(a) and V(b) of the 1978 Policy Statement are observed in conjunction with or subsequent to the release or detection, and the released or detected chemical substance or mixture is strongly implicated as being the cause of those effects, a written report would need to be submitted to EPA within 30 calendar days (the current requirement is 15–working days; see the preceding paragraph describing the intended reporting deadline change).

Finally, EPA is correcting the address and certain 24–hour emergency telephone numbers under Part IX of the 1978 Policy Statement, which describes particular reporting requirements.

A. Widespread/Previously Unsuspected Distribution

Part V(b)(1) of the 1978 Policy Statement explains that "[w]idespread and previously unsuspected distribution in environmental media, as indicated in studies (excluding materials contained within appropriate disposal facilities)" must be reported under section 8(e). Since 1978, EPA has received numerous written section 8(e) submissions alerting the Agency to the fact that a chemical known or suspected to be capable of causing serious health and/or environmental effects has been detected in significant amounts in environmental media (e.g., soil, surface waters, groundwater, air, biota) as well as in products or process streams. In such cases, EPA believes that the discovery of significant human and/or environmental exposure, when combined with the knowledge that the chemical or mixture is known or suspected to be capable of causing serious adverse health effects (e.g., cancer, birth defects, neurotoxicity) or serious adverse environmental effects (e.g., significant nontrivial toxicity in aquatic species), is clearly reportable under section 8(e) of TSCA. It is the exposure element of risk that is unknown to the Administrator in these cases, as opposed to the hazard element.

EPA believes, however, that because the overall scope of Part V(b)(1) may be unclear, this portion of the 1978 Policy Statement has been generally of limited use to the regulated community for determining when the detection of a chemical substance or mixture in environmental media must be reported under section 8(e) of TSCA. For example, while the introduction to Part V states that a "'substantial risk of injury to health or the environment' is a risk of considerable concern because of (a) the seriousness of the effect... and (b) the fact or probability of its occurrence," Part V(b)(1) does not mention the need to consider the substance's potential for harm to either human health or the environment; thus, the existing guidance could lead to over-reporting. Further, the title of Part V(b) ("Environmental effects") may be somewhat misleading in that Part V(b)(1) is intended to specifically address *non-emergency* reporting of information pertaining to environmental contamination (i.e., situations which do not require *immediate* action, but nevertheless reasonably support the conclusion of a substantial risk). Therefore, EPA is changing the title of Part V(b) to "Non-Emergency Situations of Chemical Contamination Involving Humans and/or the Environment, and Environmental Effects."

With regard to non-emergency environmental contamination information, EPA interprets section 8(e) to require reporting of information that provides evidence of widespread environmental distribution of a chemical substance or mixture, and which because of the extent, pattern, and amount of the contamination seriously threatens or may seriously threaten: (1) Humans with cancer, birth defects, mutation, death or serious or prolonged incapacitation (e.g., neurotoxicological effects, reproductive/developmental effects), or (2) non-human organisms with large-scale or ecologically significant population destruction. Thus, the mere presence of a chemical substance in an environmental media, absent some other relevant information as noted above, would not trigger reporting under section 8(e). Similarly, EPA believes that information concerning the detection of chemical substances properly contained within appropriate disposal facilities is not reportable under section 8(e).

The decision-making process for section 8(e) reporting of non-emergency situations involving environmental contamination and/or detection should include consideration of the toxicity of the chemical substance(s) involved. The greater or more serious the known or suspected toxicity of the detected chemical substance or mixture, the less heavily one should weigh the amount, extent, and pattern of the contamination by that chemical or mixture in determining whether to report the situation under section 8(e) of TSCA. Conversely, the greater the amount, extent, and pattern of the contamination, the less heavily one should weigh the known or suspected toxicity of the chemical(s).

EPA considered establishing chemical-specific quantities and/or concentrations to be used by members of the regulated community as benchmarks for determining TSCA section 8(e) reportability of non-emergency situations depending on the toxicity of the chemical(s) involved. EPA has presently rejected this approach because there is such a wide variety of possible exposure scenarios associated with a non-emergency chemical release or detection that no predetermined quantity or concentration of a chemical could accurately delineate whether or not a release or detection of that amount or concentration would reasonably support a conclusion of substantial risk of injury to health or the environment. A given quantity or concentration of a substance under one set of circumstances could pose a radically different risk than it would under other circumstances. Rather, EPA is providing general guidelines for persons to use for determining the reportability of non-emergency situations under TSCA section 8(e).

Under various authorities administered by EPA, the Agency has established benchmark amounts/concentrations for a limited number of chemical substances within TSCA jurisdiction. For example, under the Safe Drinking Water Act, EPA has established Maximum Contaminant Levels (MCLs) for certain chemicals. Under TSCA section 8(e), on the other hand, "substantial risk" reporting is affected by a consideration of the hazard(s) associated with the chemical substance, and the nature, pattern, and extent of the release. Therefore, EPA believes that under some circumstances, information concerning a non-emergency chemical release or detection in an amount less than the chemical's MCL could "reasonably support the conclusion of substantial risk," thus requiring reporting under TSCA section 8(e).

However, it has been suggested to EPA by persons subject to section 8(e) that information on releases of chemicals in amounts less than their

VOL 58 ISS 132 JL 13 1993 UMI

MCLs, or other objective reporting standards if developed by EPA, should never be considered for reporting under section 8(e) because EPA has already established an objective threshold. As indicated above, EPA has at this time rejected this approach. Comment is specifically solicited on the subject of section 8(e) reporting of releases or detections of chemicals in amounts or concentrations below values established by EPA under other environmental protection authorities.

It should be noted that Part V(b)(1) of the 1978 Policy Statement pertains specifically and solely to the fact that a non-emergency situation involving the release or detection of a chemical substance or mixture has been discovered. In other words, information regarding a non-emergency chemical release or detection event, in and of itself, regardless of whether effects were observed associated with that particular release or detection, may be reportable under Part V(b)(1) of the 1978 Policy Statement. If health or environmental effects as described under Part V (i.e., Part V introduction, Part V(a), and Part V(b)) of the 1978 Policy Statement are observed in conjunction with or subsequent to the non-emergency release or detection, and the released or detected chemical substance or mixture is strongly implicated as being the cause of those effects, a written report must be submitted to the Agency within 30 calendar days, regardless of the quantity or concentration of the substance involved; this written reporting requirement remains unchanged (with the exception of the change in the reporting deadline from 15 working days to 30 calendar days for written information discussed above in this Unit).

The term "widespread" contamination in the context of a non-emergency situation would include, for example, presence in a product that is distributed commercially, multiple (e.g., 3 or more) reports of contamination (even in a single environmental medium) involving different sites inside and/or outside the boundaries of a facility, or presence in more than one environmental medium (e.g., discovery of a chemical in both soil and groundwater). For instance, a situation involving a toxic chemical contamination that has or could spread beyond the boundaries of a plant site via groundwater, surface water, and/or air is of greater concern than a situation involving similar soil contamination in which, because of the soil type or other circumstances, there is little or no likelihood that the chemical will migrate. There are also non-emergency situations in which a significant chemical contamination is discovered inside physical structures within the plant site boundaries, which, when combined with other pertinent information (e.g., potential for exposure, toxicity of the chemical), can trigger section 8(e) reporting; examples include but are not limited to: (1) The detection of significant amounts of a toxic chemical substance in workplace air and/or on surfaces within a facility in which the chemical is typically handled in a closed system, and (2) the detection of significant levels of a toxic by-product not already generally known to be associated with a given chemical process, or known to be associated with the chemical process but found at levels significantly above those previously believed to be associated with that process.

B. Information That Need Not Be Reported

Part VII of the 1978 Policy Statement lists the circumstances under which information need not be reported to EPA pursuant to section 8(e). Specifically, Part VII of the 1978 Policy Statement indicates that information need not be reported to the Agency under section 8(e) of TSCA if it:

(a) Has been published by EPA in reports; (b) Has been submitted in writing to EPA pursuant to a mandatory reporting requirement under TSCA or any other authority administered by EPA (including the Federal Insecticide, Fungicide and Rodenticide Act, the Clean Air Act, the Federal Water Pollution Control Act, the Marine Protection, Research and Sanctuaries Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act), provided that the information (1) Encompasses that required by Part IX(c) through (f); and (2) is from now on submitted within the time constraints set forth in Part IV and identified as a section 8(e) notice in accordance with Part IX(b); (c) Has been published in the scientific literature and referenced by the following abstract services: (1) Agricola, (2) Biological Abstracts, (3) Chemical Abstracts, (4) Dissertation Abstracts, (5) Index Medicus, (6) National Technical Information Service; (d) Is corroborative of well-established adverse effects already documented in the scientific literature and referenced as described in (c) above, unless such information concerns emergency incidents of environmental contamination as described in Part V(c); or (e) Is contained in a notification of spills under section 311(b)(5) of the Federal Water Pollution Control Act.

Since 1978, there have been numerous Federal laws passed and/or amended and a large number of Federal regulations promulgated that are designed to gather chemical-related information. In recognition of the increased mandatory reporting of information under various laws administered, delegated, or authorized by EPA, EPA intends to revise paragraph (b) above so that a section 8(e) obligation is satisfied if emergencyinformation is reported immediately (i.e, as soon as the subject person has knowledge of the incident) and non-emergency information is reported within 30 calendar days on a mandatory basis to:

(1) EPA, under any Federal statute administered by EPA (including, but not limited to, the Toxic Substances Control Act; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Safe Drinking Water Act; the Marine Protection, Research and Sanctuaries Act; the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Pollution Prevention Act; the Emergency Planning and Community Right-to-Know Act (EPCRA));

(2) A State, under any Federal statute administered by EPA and delegated to that State (e.g., National Pollutant Discharge Elimination System (NPDES) permit requirements) (see example 1 below); or

(3) A State, under an EPA-authorized State program, which has been established pursuant to a Federal statute administered by EPA (e.g., an EPA-authorized State Resource Conservation and Recovery Act (RCRA) program).

The reporting exemptions under Part VII(b) do not pertain to information reported solely to a State or locality under a State or local law or a program not delegated or authorized by EPA, such as information reported solely to State and local emergency response committees under EPCRA. EPA believes that EPA approval and/or oversight of delegated and authorized programs provides a nexus to the EPA Administrator which is lacking under programs not authorized by EPA or delegated by the Agency to States.

EPA considered adopting the position that a section 8(e) reporting obligation would be considered satisfied if the information was reported within the specific time frame applicable to the federal authority or program cited in paragraphs (1), (2), and (3) above to which the submitter was subject. In view of the fact that the statutory language of TSCA section 8(e) requires that substantial risk information be reported "immediately," the Agency rejected this position because the time frames for mandatory reporting under the numerous authorities and programs cited above vary greatly and in some cases can exceed 6 months. Therefore, EPA at this time intends no change in its position that for EIECs, the obligation

to report under section 8(e) is satisfied if the mandatory reporting takes place immediately (i.e, as soon as the subject person has knowledge of the incident) under a Federal statute administered or delegated by EPA, or under a provision of an EPA-authorized State program. For non-emergency information, the obligation to report under section 8(e) of TSCA would be satisfied if the information is reported on a mandatory basis within 30 calendar days. This 30 calendar-day reporting period is a change from the current 15 working-day reporting period; it follows from the change discussed earlier in this Unit regarding the reporting deadline under Part IV of the 1978 Policy Statement for any written report of substantial risk information submitted under section 8(e).

Information that is not required to be reported under one of the above authorities, even if provided along with information required to be reported under that authority, remains subject to reporting under section 8(e) of TSCA.

Since issuing the 1978 Policy Statement, EPA has determined that there are certain circumstances not addressed in the 1978 Policy Statement in which information need not be reported under section 8(e). EPA typically has adequate access to such information, and EPA believes that reporting under the circumstances would result in an undue burden to the regulated community and an information review/processing burden to EPA which would outweigh any potential public benefit that might be obtained by requiring reporting of such information under section 8(e). Accordingly, EPA intends to change Part VII of the 1978 Policy Statement to indicate that information need not be reported under section 8(e) of TSCA if the information is obtained solely from one of the following sources:

1. An official publication or official report published or made available to the general public by EPA or another Federal agency (see example 2 below).

2. A scientific publication to which an EPA Headquarters library subscribes (see example 3 below) or that is referenced in a database, including one which is computerized, to which an EPA Headquarters library subscribes.

3. A data base, including one which is computerized, to which an EPA Headquarters library subscribes (see example 4 below).

4. A major written news publication (i.e., newspaper, news magazine, trade press) with national circulation in the U.S.

5. A radio or television news report broadcast nationally in the U.S. (see example 5 below).

6. A national public scientific conference or meeting held within the U.S., provided that the information is captured accurately by way of a meeting transcript, abstract, or other such record, and is cited in a bibliographic/abstract computerized data base, publication, or report of the type cited in paragraphs 1, 2, 3, 4, or 5 above within 30 days of obtaining such information (see example 6 below).

Regarding paragraphs 2 and 3 above, general information concerning the data bases and publications to which the EPA Headquarters libraries subscribe will be available from the source listed under FOR FURTHER INFORMATION CONTACT in this document. Specifically regarding paragraphs 4 and 5 above, EPA anticipates that information will be obtained from news publications with less than national circulation, or radio or television news reports broadcast only on a local, State, or regional level. In such cases, the information must be reported under section 8(e) of TSCA unless the subject person has actual knowledge that EPA has been adequately informed of such information through that or another source.

EPA maintains its position under Part VII(c) of the 1978 Policy Statement that information need not be reported under section 8(e) of TSCA if the information corroborates well established, serious adverse effects that are already documented. The term "corroborates," in the context of this particular reporting exclusion, means that the information essentially duplicates and/or confirms an existing and well-documented understanding of a serious adverse effect of a particular chemical substance or mixture. EPA has correctly received, and expects to continue to receive, substantial risk reports that show adverse effects of a more serious degree or of a different kind than are already established. In other words, the Agency expects subject persons to immediately consider reporting information on serious toxic effects (including but not limited to cancer, developmental, reproductive toxicity, or neurotoxicity) if, for example: such effects are substantially more serious in terms of the severity of the effects or the number of animals affected; occur within a significantly shorter time frame following exposure; occur via a different route of exposure; occur at a significantly lower dose or concentration; or occur in a different species, strain, or sex. Examples 7 through 10 below serve to illustrate the distinctions created by this particular reporting exclusion.

The following examples illustrate certain of the types of factors that persons should consider in determining the applicability of the exclusions described above:

Example 1. While filing a mandatory report with the State pursuant to its NPDES permit, Company A also notifies the State in writing that a recently conducted clinical study showed that a statistically or biologically significant number of male factory workers exposed to the effluent are sterile. Despite the fact that the company notifies the State, such reporting is not mandatory under the NPDES program and the company must consider the need to submit a timely written report to EPA under section 8(e) of TSCA.

Example 2. Company A receives a public copy of an official report from the U.S. Department of Housing and Urban Development (HUD). In reading the report, the company learns that one of the chemicals the company distributes in commerce has been strongly implicated as being the cause of chromosomal damage in humans. Company A determines that the information contained in the report is of the type that would be required for submission to EPA. However, Company A correctly decides that it need not report the information under section 8(e). Per Part VII(a)(1) of the section 8(e) Policy Statement as refined herein, because the information was obtained from an "official publication ... made available to the general public by ... another Federal agency" it would not be reportable under section 8(e).

Example 3. Company A conducts a 9–day inhalation study of Chemical X in rats and finds that the chemical causes paralysis. Company A decides that these toxicological findings on one of its imported chemicals should be published in the open scientific literature and sends a draft manuscript to a scientific journal to which an EPA Headquarters library subscribes. Upon publication, Company B, who is also an importer of Chemical X, reads the article pertaining to the 9–day inhalation study of Chemical X and determines correctly that although the neurotoxicologic findings in rats are of the type required for submission to EPA under TSCA section 8(e), no section 8(e) notice from Company B is required. As the result of its chemical screening activities, EPA discovers the published article concerning Company A's 9–day study. After investigating further, EPA determines that Company A should have reported their findings under section 8(e) of TSCA immediately upon

VOL
58
ISS
132
JL
13
1993
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obtaining the information; although the study was ultimately published, Company A did not obtain the information from a scientific journal.

Example 4. Company A processes chemical X and has no toxicological information on the chemical. As Company A is searching a large commercial computerized data base to which EPA subscribes for available toxicological information on chemical X, it discovers an abstract that states that Chemical X produced blindness in rats following oral administration. Although this toxicologic effect is clearly of the type required for submission under section 8(e) of TSCA, Company A decides correctly that formal section 8(e) filing of the obtained toxicological information is not needed because the computerized data base from which the information was obtained is one to which an EPA Headquarters library subscribes.

Example 5. The Director of Toxicology from Company A is at home watching the national nightly news on the television. During the broadcast, she learns that a very large release of Chemical X just occurred at a chemical manufacturing site in a nearby State. Despite the fact that she knows that her company is also a major manufacturer of Chemical X, no report under TSCA section 8(e) is required because the information was obtained from a news report broadcast nationally.

Example 6. During a national public scientific meeting presentation on Chemical X showing that Chemical X caused a significant level of birth defects in rats, the Director of Toxicology for Company A learns from the speaker that the oral administration of Chemical Y (an intermediate in a manufacturing process at Company A) also caused a significant level of birth defects in rats. In checking the content of the printed presentation abstract, which was distributed publicly by the meeting sponsors prior to the meeting and has been cited in a computerized data base to which an EPA Headquarters library subscribes, the Director discovers that the printed abstract accurately and adequately describes only the toxicologic findings for Chemical X and not for Chemical Y. Under these circumstances, Company A decides correctly to report the findings for Chemical Y to EPA under section 8(e) of TSCA.

Example 7. Company A manufactures chemical X and tests the chemical in a chronic feeding study in mice. It is already well established and well documented publicly that chemical X can cause a significant number of malignant skin tumors in mice as the result of chronic dermal application. In the chronic feeding study, the company finds that chemical X causes a significant number of benign and malignant pancreatic tumors. Considering that the findings from the chronic feeding study differ in a major way from the already available information from the chronic dermal application study, the pancreatic cancer findings must immediately be considered for reporting to EPA under section 8(e) of TSCA.

Example 8. Company A manufactures chemical X and tests the chemical in a chronic skin-painting study in rats. It is already well-documented publicly that chemical X can cause malignant skin tumors at the application site in mice as the result of chronic dermal application. The company finds that chemical X causes a significant number of malignant skin tumors at the site of application in rats. In view of the fact that it is not wellknown or well-established that chemical X can cause cancer in rats following dermal application, Company A must immediately consider the need to report its findings under section 8(e).

Example 9. During the conduct of a 28–day dermal application study in rats, Company A finds that exposure to one of its products, Chemical X, results in hind-limb paralysis. By way of an article published previously in a scientific journal to which an EPA Headquarter library subscribes, the company is also aware that acute oral exposure to Chemical X results in frank neurotoxicologic effects in rats. Considering the fact that the route of exposure in Company A's study was different than the one used in the published study, Company A must immediately consider the need to report its findings to EPA under section 8(e) of TSCA.

Example 10. During the conduct of a chronic dermal application study in rats, Company A finds that exposure to Chemical X results in a significant number of animals with malignant bone tumors after only 12 to 18 months of exposure. By way of a formally published abstract contained in a data base to which an EPA Headquarters library subscribes, the company is also aware that the same type of tumors had been found in rats exposed dermally to the same doses of Chemical X but only after two years of dermal exposure. Considering the fact that in Company A's study, the time to onset of the bone tumors differs significantly from that cited in the previously conducted study, Company A should immediately consider the need to submit the 12 to 18 month findings under section 8(e) of TSCA.

IV. Confidentiality Claims

EPA considers information contained in a notice of substantial risk under TSCA section 8(e) to be health and safety information generally covered by the term "health and safety study," as defined at TSCA section 3(6). Under TSCA section 14(b), such information can be withheld from the public as confidential if it "discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture [discloses] the portion of the mixture comprised by any of the chemical substances in that mixture."

TSCA section 3(6) defines a "health and safety study" to mean "any study of any effect of a chemical substance or mixture on health or the environment or on both, including the underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act."

In the legislative history of the Toxic Substances Control Act, the Conference Committee stated that "[i]t is intended that the term (health and safety studies) be interpreted broadly. Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a chemical substance or mixture on health and the environment is also included. *Any data that bears on the effects of a chemical substance on health or the environment would be included.*" H.R. Rep. No. 94–1679, 94th Cong., 2nd Sess. 58 (1976) (Conference Report) (emphasis added). EPA believes that TSCA section 8(e) information, such as information or underlying data from designed controlled studies or reports concerning undesigned uncontrolled circumstances, is information that "bears on the effects of a chemical substance on health or the environment." Likewise, incident information, exposure studies, and their underlying data are considered to be information relating to the effects of a chemical substance or mixture on health and/or the environment.

Therefore, to the extent that information contained in a section 8(e) substantial risk report falls within the meaning of the term "health and safety study" under TSCA, it is subject to the same non-disclosure restrictions afforded TSCA "Confidential Business Information" (TSCA CBI), as provided by TSCA section 14(b) and its interpreting regulations.

EPA considers chemical identity to be part of, or underlying data to, a health and safety study. See, for example, 40 CFR 716.3 and 40 CFR 720.3(k). As such, chemical identity will be afforded CBI protection by the Agency and therefore protected from public disclosure only under the circumstances provided under TSCA section 14 and the interpreting regulations.

In September 1990, EPA initiated a CBI review program to ensure that CBI claims are made in conformance with TSCA section 14. To date, EPA has challenged numerous CBI claims contained in section 8(e) notices and other filings, and in most cases the filing has been amended by the data submitter. EPA urges persons submitting data under TSCA section 8(e) to observe the limitations imposed on CBI claims by section 14 and the applicable regulations at 40 CFR part 2, subpart B, in order to save both Agency and submitter resources.

V. Refined Policy Text

For the reasons set forth in this notice, EPA is soliciting comment on refinements to the 1978 Policy Statement, which would be amended to read as follows:

Statement of Interpretation of, and Enforcement Policy Concerning, Section 8(e) of the Toxic Substances Control Act

1. In Part II, by revising the note at the end of the Part to read as follows:

Note. — Irrespective of a business organization's decision to establish and publicize procedures described above, it is responsible for becoming cognizant of any "substantial risk" information obtained by its officers and employees, and for ensuring that such information is reported to EPA within 30 calendar days.

2. In Part IV, by revising the first paragraph to read as follows:

Requirement that a Person "Immediately Inform" the Administrator.

With the exception of certain information on emergency incidents of environmental contamination [see Part V(c)], a person has "immediately informed" the Administrator if information is received by EPA not later than the 30th calendar day after the date the person obtained such information. Supplementary information generated after a section 8(e) notification has been filed should be submitted in writing within 30 calendar days after the date such supplementary information is obtained. Reports must be made as required under Part IX. For emergency incidents of environmental contamination, a person must report the incident by telephone to the appropriate contact as directed in Part IX as soon as the person has knowledge of the incident. The report should contain as much of the information required by Part IX as is possible.

3. In Part V, by revising paragraph (b)(1) and adding the phrase "Environmental effects." to the beginning of each paragraph in (b)(2) through (b)(5) to read as follows:

(a) * * *

(b) *Non-Emergency Situations of Chemical Contamination Involving Humans and/or the Environment, and Environmental Effects* —(1) Non-emergency situations of chemical contamination involving humans and/or the environment. Information that pertains to widespread chemical contamination that is not an "emergency" situation under Part V(c) below, but which because of the extent, pattern and/or amount of the contamination seriously threatens or may seriously threaten (i) humans with cancer, birth defects, mutation, death, or serious or prolonged incapacitation (e.g., serious neurotoxicological effects, reproductive/developmental effects), or (ii) non-human organisms with large-scale or ecologically significant population destruction, is subject to reporting. The mere presence of a chemical substance in an environmental media, absent some other relevant information as noted above, would not trigger reporting under section 8(e). The known or suspected toxicity of the detected chemical substance(s) should be considered in conjunction with the extent, pattern, and amount of the contamination in determining whether to report such non-emergency information. The greater or more serious the toxicity of the subject chemical or mixture, the less heavily one should weigh the amount, extent, and/or pattern of the contamination. Conversely, the greater the amount, extent, and/or pattern of the contamination, the less heavily one should weigh the toxicity of the chemical(s) in determining the section 8(e)-reportability of that release or detection. Information concerning the detection of chemical substances contained within appropriate disposal facilities should not be reported under this Part.

(2) Environmental effects. * * *
(3) Environmental effects. * * *
(4) Environmental effects. * * *
(5) Environmental effects. * * *

* * * * *

4. By revising Part VII to read as follows:

VII. *Information Which Need Not Be Reported*

"Substantial risk" information need not be reported if it:

(a) Is obtained from one of the following sources:

1. An official publication or official report published or made available to the general public by EPA or another Federal agency.

2. A scientific publication to which an EPA Headquarters library subscribes or that is referenced in a data base, including one which is computerized, to which an EPA Headquarters library subscribes.

3. A data base, including one which is computerized, to which an EPA Headquarters library subscribes.

Note: Specifically regarding paragraphs (2) and (3) above, general information concerning the data bases and publications to which the EPA Headquarters libraries subscribe is available from the Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

4. A major written news publication (i.e., newspaper, news magazine, trade press) with national circulation in the U.S.

5. A radio or television news report broadcast nationally in the U.S.

Note: Specifically regarding paragraphs (4) and (5) above, EPA anticipates that information will be obtained from news publications with less than national circulation, or radio or television news reports broadcast only on a local, State, or regional level. In such cases, the information must be reported under section 8(e) of TSCA unless the subject person has actual knowledge that EPA has been adequately informed of such information through that or another source.

6. A national public scientific conference or meeting held within the U.S., provided that the information is captured accurately by way of a meeting transcript, abstract, or other such record, and has been cited in a bibliographic/abstract computerized data base, publication, or report of the type cited in paragraphs (1), (2), (3), (4), or (5) above within 30 days of obtaining such information.

(b) Corroborates (i.e., substantially duplicates or confirms) in terms of, for example, route of exposure, dose, species, strain, sex, time to onset, and severity, a well-recognized/well-established serious adverse effect for the subject chemical(s), unless such information concerns effects observed in association with emergency incidents of environmental contamination as described in Part V(c).

(c) Is information that is reported to EPA within 30 calendar days for non-

emergency information, or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information, pursuant to a mandatory reporting requirement of any statutory authority that is administered by EPA (including, but not limited to, the Toxic Substances Control Act; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act, the Pollution Prevention Act; the Emergency Planning and Community Right-to-Know Act).

(d) Is information that is reported to a State within 30 calendar days for non-emergency information, or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information, pursuant to a mandatory reporting requirement under any Federal statute administered by EPA and delegated to that State (e.g., National Pollutant Discharge Elimination System (NPDES) permit requirements), or

(e) Is information that is reported to a State within 30 calendar days for non-emergency information, or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information, pursuant to a mandatory reporting provision of an EPA-authorized State program established under a Federal statute administered by EPA.

5. By revising Part IX to read as follows:

IX. *Reporting Requirements*

Notices shall be delivered to the TSCA Document Receipt Office (TS-790), (Attn: Section 8(e) Coordinator), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

A notice should:

(a) Be sent by certified mail, or in any other way permitting verification of its receipt by the Agency,

(b) State that it is being submitted in accordance with section 8(e),

(c) Contain the job title, name, address, telephone number, and signature of the person reporting and the name and address of the manufacturing, processing, or distribution establishment with which the person is associated,

(d) Identify the chemical substance or mixture (including, if known, the CAS Registry Number),

(e) Summarize the adverse effects or risk being reported, describing the nature and the extent of the effects or risk involved, and

(f) Contain the specific source of the information together with a summary and the source of any available supporting technical data.

For emergency incidents of environmental contamination (see Part V(c)), a person shall report the incident to the Administrator by telephone as soon as he/she has knowledge of the incident (see below for appropriate telephone contacts). The report should contain as much of the information required by instructions (c) through (f) above as possible. Twenty-four hour emergency telephone numbers are:

Region I (Maine, Rhode Island, Connecticut, Vermont, Massachusetts, New Hampshire), (617) 223-7265.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), (201) 548-8730.

Region III (Pennsylvania, West Virginia, Virginia, Maryland, Delaware, District of Columbia), (215) 597-9898.

Region IV (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida), (404) 347-4062.

Region V (Wisconsin, Illinois, Indiana, Michigan, Ohio, Minnesota), (312) 353-2318.

Region VI (New Mexico, Texas, Oklahoma, Arkansas, Louisiana), (214) 655-2222.

Region VII (Nebraska, Iowa, Missouri, Kansas), (913) 236-3778.

Region VIII (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota), (303) 293-1788.

Region IX (California, Nevada, Arizona, Hawaii, Guam), (415) 744-2000.

Region X (Washington, Oregon, Idaho, Alaska), (206) 442-1263.

VI. Conclusion

EPA will consider public comments submitted in response to this Notice and will publish in the **Federal Register** refined guidance pertaining to the types of non-emergency chemical release and detection information that must be reported under section 8(e), the time frames for reporting section 8(e) information, and the types of information that need not be reported under section 8(e). Comments are also sought on any change in public reporting burden which would result from the revisions and clarifications to the 1978 Policy Statement as described herein. The refinements contained in this Notice will not be effective until after EPA issues them in final form.

EPA intends to publish the refined TSCA section 8(e) reporting policy in the Code of Federal Regulations.

Dated: July 2, 1993.

Victor J. Kimm,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-16547 Filed 7-12-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications For Consolidated Hearing

1. The Commission has before it the following applications for a renewal of license for television station (WHSG(TV) and a new commercial television station.

Applicant, city, and state	File No.	MM Docket No.
A. Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network, Monroe, GA.	BRCT-911129KR	93-156
B. Glendale Broadcasting Company, Monroe, GA.	BPCT-920228KE	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Section 73.610—B
FAA—B
Comparative—A & B
Ultimate—A & B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Down Town Copy Center,

1919 M Street, NW., room 246, Washington, DC 20037. Telephone no. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 93–16578 Filed 7–12–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Intercounty Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 6, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Intercounty Bancshares, Inc., Wilmington, Ohio; to acquire The Williamsburg Building and Loan Company, Williamsburg, Ohio, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and to merge it with its wholly-owned subsidiary, The National Bank and Trust Company, Wilmington, Ohio.

2. Whitaker Bank Corporation of Kentucky, Lexington, Kentucky, and Whitaker Bancorp, Inc., Lexington, Kentucky; to acquire Whitaker Management Company, Lexington, Kentucky, and thereby engage in providing data processing and data transmission services to other pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by July 22, 1993.

Board of Governors of the Federal Reserve System, July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16519 Filed 7-12-93; 8:45 am]

BILLING CODE 6210-01-F

Internationale Nederlanden Group N.V.; Notice of Application to Engage de novo in Permissible Nonbanking Activities; Correction

This notice amends a previous notice (FR Doc. 93-8446) published at page 19107 of the issue for Monday, April 12, 1993.

Under the Federal Reserve Bank of New York heading, the entry for Internationale Nederlanden Group N.V. is amended to include the following activities:

In addition, Internationale Nederlanden Group N.V. also proposes to engage in underwriting and dealing in obligations of the United States, general obligations of States and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this application must be received by July 27, 1993.

Board of Governors of the Federal Reserve System, July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16520 Filed 7-12-93; 8:45 am]

BILLING CODE 6210-01-F

Kentucky Bancshares Incorporated, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 6, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Kentucky Bancshares Incorporated, Russell, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Kentucky Bank & Trust of Greenup County, Russell, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fortress Bancshares, Inc., Hartland, Wisconsin; to acquire 100 percent of the voting shares of Klossner Bancorporation, Inc., Houston, Minnesota, and thereby indirectly acquire Houston Security Bank, Houston, Minnesota.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. MNB Bancshares, Inc., Malvern, Arkansas; to acquire 100 percent of the voting shares of First Sheridan Bancshares, Inc., Sheridan, Arkansas, and thereby indirectly acquire First National Bank of Sheridan, Sheridan, Arkansas.

VOL
58
ISS
132
JL
13
1993
UMI

Board of Governors of the Federal Reserve System, July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16521 Filed 7-12-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Technical Advisory Committee for Diabetes Translation and Community Control Programs: Change of Location

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 36690—dated July 8, 1993.

SUMMARY: Notice is given that the meeting location for the Technical Advisory Committee for Diabetes Translation and Community Control Programs has changed. The meeting times, dates, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL LOCATION: Embassy Suites Hotel-Atlanta Airport, 4700 Southport Road, College Park, Georgia 30349. (Exit 18 Riverdale Road off I–85)

NEW LOCATION: Atlanta Airport Hilton Hotel-Hapeville, 1031 Virginia Avenue, Atlanta, Georgia 30354. (Exit 19 Virginia Avenue off I–85)

CONTACT PERSON FOR MORE INFORMATION: Fredrick G. Murphy, Program Analyst, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, (K–10), Atlanta, Georgia 30341–3724, telephone 404/488–5005.

Dated: July 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–16643 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–18–M

Symposium on Efforts To Prevent Injury and Disease in Agricultural Workers: Meeting.

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Symposium on Efforts to Prevent Injury and Disease in Agricultural Workers.

Time and Dates: 9 a.m.–6 p.m., August 25, 1993; 8:30 a.m.–5:30 p.m., August 26, 1993; 8:30 a.m.–11:30 a.m., August 27, 1993.

Place: Hyatt Regency Lexington, Regency Ballroom East, 400 West Vine Street, Lexington, Kentucky 40507.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to review efforts by NIOSH and its grantees in the prevention of injury and disease among agricultural workers and their families. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Timothy W. Groza, NIOSH, CDC, 1600 Clifton Road NE., Mailstop D–26, Atlanta, Georgia 30333, telephone 404/639–3341.

Dated: July 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16512 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–19–M

Occupational Traumatic Injury Surveillance of Farmers (TISF) Project: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Occupational Traumatic Injury Surveillance of Farmers (TISF) Project.

Time and Date: 9 a.m.–12 noon, August 19, 1993.

Place: Prete Building, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to review the protocol for a proposed NIOSH study, "Occupational Traumatic Injury Surveillance of Farmers (TISF) Project." Individual viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: John R. Myers, M.S.F., NIOSH, CDC, 3040 University Avenue, Mailstop 1174, Morgantown, West Virginia 26505, telephone 304/284–5704.

Dated: July 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16511 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–19–M

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meetings.

Name: CDC ACPHI Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification).

Time: 8 a.m.–5 p.m.

Dates: July 30–31, 1993.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Time: 8 a.m.–5 p.m.

Dates: September 13–14, 1993.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to discuss policies and issues related to HIV-antibody counseling, testing, referral, and partner notification programs and services. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: July 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16513 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Supplemental Funds Awarded for the Summer of Service Program in Philadelphia

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of supplemental grants made for a demonstration program in the Philadelphia metropolitan area.

SUMMARY: The Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC) and Bureau of Health Professions (BHPr), announces that fiscal year 1993 funds were awarded to programs in the Philadelphia metropolitan area to enhance their involvement in the Summer of Service (SOS) initiative. Although these funds were already awarded, HRSA is publishing this notice to inform the general public of this activity. Awards had to be made as soon as possible for the SOS objective to be achieved, since the SOS program is for a limited period of time—June 26 through August 21, 1993. Therefore, these grant applications were subject to the provisions of Part 119 of the PHS

Grants Administration Manual (GAM), "Applications for Projects with Time Constraints."

In conjunction with the Commission on National and Community Service, sponsor of the SOS initiative, HRSA has made available funding to enhance immunization activities of Bureau-funded programs that are included as a part of the SOS initiative. The SOS program will engage approximately 1,500 young people in serving the educational, health, public safety and environmental needs of children at-risk in urban and rural locations across the country this summer. The programs include innovative partnerships of municipalities, universities, community organizations, youth corps programs, health care facilities, and environmental organizations.

HRSA was invited by the Commission on National and Community Service to participate by enhancing the current activities of programs located in the 11 cities that received SOS funding. Of the 11, five cities incorporated a strong health component that included immunization activities. Of the five, Philadelphia was the only city in which BPHC-funded programs and BHPr-funded institutions played an integral role. For this reason, competition was limited to BPHC-funded programs located in the Philadelphia metropolitan area.

This limitation allows for the adequate development and analysis of a model national service program that, if successful, can be implemented in other cities. Both the Public Health Service (PHS) staff and grantees in Philadelphia actively participated in the planning and coordination of the SOS initiative, giving them unique background for the implementation and evaluation of this demonstration effort.

SUPPLEMENTARY INFORMATION:

Eligible Entities: Entities located in the Philadelphia metropolitan area and funded under sections 330, 340, and 340A of the PHS Act were eligible to apply for these grants.

Availability of Funds: A total of $200,000 was awarded to six Community Health Centers (funded under section 330 of the PHS Act) and one Public Housing Primary Care program (funded under section 340A of the PHS Act) in the Philadelphia area.

General Use of Grant Funds: Programs may use the Summer of Service grant dollars to:

- Hire and train students (ages ranging from 16–25) who act as outreach workers, health educators and spokespersons of health services in the community, with particular emphasis on immunization services; introduce students to health careers and hands-on career experience which focusses on the improvement of the health status of the community; utilize nursing and other health professions students to assist in administering immunizations; provide additional activities such as data entry and follow up of patients. Emphasis will be placed on hiring students from the community in which the program is located.
- Assist in the participation of program and supervisory staff in SOS training activities, including payment of salaries of staff who are associated with the training and/or supervision of the student workers, including compensation for activity beyond 100 percent effort, such as working weekends or evening hours.
- Develop or purchase print or audio-visual educational and training materials directed toward educating the community on immunizations and training student workers on immunizations, outreach techniques, and computer data entry. The use of such material will be for students exercises only and will not be used for public use without obtaining the appropriate Department clearances.
- Develop any other innovative programming the program proposes that will allow the students to be more effective in their roles in dealing with the community.

FOR FURTHER INFORMATION CONTACT: For information regarding the service component of SOS activities, contact Ms. Kelly Morton, Office of the Director, BPHC, Parklawn Building, room 7–05, 5600 Fishers Lane, Rockville, Maryland 20857 or by phone at (301) 443–2380. For information regarding the health professions training component of SOS activities contact Ms. Caroline Lewis, Office of Program Development, BHPR, Parklawn Building, room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857 or by phone at (301) 443–1530. For information on the coordination of activities within Philadelphia, contact the SOS Program Director, Patricia Gerrity, Associate Professor, La Salle University School of Nursing, Box 808, Philadelphia, Pennsylvania 19141 or by phone (215) 951–1430.

OTHER GRANT INFORMATION: It has been determined that the State of Pennsylvania does not participate in intergovernmental review of programs under Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs.

All grants awarded under this notice are subject to the Public Health System Reporting Requirements, and approved by the Office of Management and Budget (OMB) #0937–0195. Under these requirements, the community-based nongovernmental applicants were instructed to prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental applicants who are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies.

The OMB Catalog of Federal Domestic Assistance number for each program is: Community Health Center program, 93.224; Health Care for the Homeless program, 93.151; Public Housing Primary Care program, 93.927; Educational Assistance to Individuals from Disadvantaged Backgrounds, 93.822; Nursing Educational Opportunities for Individuals from Disadvantaged Backgrounds, 93.178.

Dated: July 2, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–16476 Filed 7–12–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–4320–02–24 1A]

Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Department of the Interior through the Bureau of Land Management (BLM) gives notice of its intent to develop an environmental impact statement (EIS) pursuant to section 102(2)(e) of the National Environmental Policy Act of 1969. This EIS will analyze the effects of rangeland management reform, including proposed rulemaking. Comments and

VOL
58
ISS
132
JL
13
1993
UMI

suggestions are invited on the scope of the analysis. This notice also invites participation of affected Federal, State, and local agencies, as well as affected Indian tribes and other interested persons.

DATES: Written comments on the scope of the EIS will be accepted until July 23, 1993. Comments received after this date may not be considered in developing the EIS.

ADDRESSES: Scoping comments should be sent to: Bureau of Land Management, Division of Rangeland Resources (220), 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Dave Darby at (202) 208–4790; facsimile (202) 219–0902.

SUPPLEMENTARY INFORMATION: The last major revisions to 43 CFR part 4100, including the establishment of the current fee formula in regulations, occurred in 1988. Since then, new information on range practices and conditions has been generated by various studies, and General Accounting Office audits. These studies led to the following reports: Report of the Secretaries of Agriculture and the Interior, Grazing Fee Review and Evaluation Update of the 1986 Final Report; Grazing Fee Review and Evaluation Final Report, 1979–1985; and 1966 Western Livestock Grazing Survey. Many of the changes to be proposed address the findings of these studies.

The BLM administers approximately 165,000,000 acres of public lands, primarily in the western United States, for livestock grazing. There are more than 20,000 operators grazing livestock on these public lands. The Department intends to initiate a proposal for rangeland reform, including specific regulatory language. These proposed changes may constitute a major Federal action significantly affecting the quality of the natural and human environment. Possible alternatives to be considered are no action, different fee formulas, and various rangeland management and livestock grazing administration practices.

The Forest Service, U.S. Department of Agriculture, will be a cooperating agency in the preparation of this EIS in accordance with Council on Environmental Quality regulations (40 CFR 1501.6 and 1508.5) for the purpose of making an agency decision related to the establishment of a formula for calculating grazing fees.

This EIS will address several areas of rangeland management reform, including, but not limited to: The Federal grazing fee, subleasing, unauthorized use (trespass), affected interest, suspended and extended non-use, placing decisions in full-force and effect, debarment, issuing grazing preference and permits, prohibited acts, permit or lease tenure, grazing advisory boards, range improvement ownership, establishment of an ecosystem framework for rangeland management, and establishment of National Standards and Guidelines for Grazing.

The Secretary of the Interior during June 1993 conducted public meetings in the West to obtain public views on the grazing program. Although they were not part of the formal scoping process, the Bureau of Land Management will consider the views expressed in these meetings. These meetings were held in the following locations:

April 30, 1993: Bozeman, Montana
May 1, 1993: Reno, Nevada
May 5, 1993: Grand Junction, Colorado
May 6, 1993: Albuquerque, New Mexico
July 9, 1993: Flagstaff, Arizona

Carson W. Pope,

Acting Director, Bureau of Land Management.

[FR Doc. 93–16575 Filed 7–12–93; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Reestablishment of the Royalty Management Advisory Committee

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of reestablishment.

SUMMARY: The Secretary of the Interior (Secretary) is reestablishing the Royalty Management Advisory Committee (RMAC) Charter, which expired February 25, 1993. The new Charter will terminate in 2 years. This reestablishment is required to allow RMAC to comment on the development of new royalty management policies and procedures. This Notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and this reestablishment action has been reviewed and concurred with by the Administrator of the General Services Administration.

FOR FURTHER INFORMATION CONTACT: Jim Shaw, Minerals Management Service, Associate Director for Royalty Management, Denver Office, Denver Federal Center, Building 85, P.O. Box 25165, Denver, CO, 80225, telephone number (303) 231–3058.

SUPPLEMENTARY INFORMATION: The RMAC was initially chartered in August 1985 and subsequently rechartered twice with the last Charter expiring on February 25, 1993. It is a viable mechanism for the Department of the Interior to solicit the viewpoints of organizations most affected by Royalty-related policies. The RMAC, as representatives of MMS constituencies, provides advice and recommendations on proposed changes for improvement of the Royalty Management Program that have been and are of continuing interest to States, Indian tribes, Indian allottees, and industry. The RMAC consists of members representing the diversified interests of these groups. The Department has no other capabilities to meet these objectives through other organizations or committees.

Certification: I hereby certify that the Royalty Management Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by numerous legislative requirements, most recently by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*). Significant and continuing statutory requirements can also be found in the Allotted Lands Indian Leasing Act of May 11, 1938 (25 U.S.C. 396 *et seq.*), the Tribal Lands Leasing Act of May 11, 1938 (25 U.S.C. 396a *et seq.*), the Minerals Lands Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Submerged Lands Act of 1953 (43 U.S.C. 1301 *et seq.*), the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331 *et seq.*) as amended in 1978 (43 U.S.C. 1801 *et seq.*), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711).

Dated: July 6, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–16526 Filed 7–12–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub. #351X)]

Exemption and Interim Trail Use or Abandonment; Burlington Northern Railroad Co.; In St. Cloud, Stearns County, MN

Decided: July 7, 1993.

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 2.86-mile line of railroad between milepost 59.50 and milepost 62.45 in St. Cloud, Stearns County, MN.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead

traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

On May 17 and May 20, 1993, prior to the filing of the notice of exemption, the City of St. Cloud, MN, filed a statement indicating its willingness to assume financial responsibility for interim trail use and rail banking of the line pursuant to the National Trails System Act (Trails Act), 16 U.S.C. 1247(2), and the Commission's implementing regulations at 49 CFR 1152.29. By letter filed on June 3, 1993, BN responded that it was amendable to issuing a notice of interim trails use once the notice of exemption is filed.

While a request for interim trail use need not be filed until 10 days after the date of the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) are applicable and all of the criteria for imposing interim trail use/rail banking have been met. Accordingly, in light of BN's willingness to enter into negotiations, an NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, BN may fully abandon the line. See 49 CFR 1152.29(d)(1).

The City of St. Cloud's filing of a trail use request does not preclude other parties from filing interim trail use requests within 10 days after the publication of the notice of this exemption in the **Federal Register**. *See* § 1152.29(a). Any other political subdivision, state or qualified private entity interested in acquiring or using the involved right-of-way for interim trail use/rail banking may file an appropriate request by July 23, 1993. BN is directed to respond to all such requests. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The City of St. Cloud alternatively requests the imposition of a 180-day public use condition precluding BN from disposing of the real estate to any entity other than a public user. Moreover, it requests that BN retain for 180 days from the effective date of the abandonment all structures (e.g., bridges, trestles, tunnels) on the right-of-way that are necessary for future recreational trail use, unless the real estate is sold or transferred to a public user.

A request for a public use condition must conform with 49 CFR 1152.28(a)(2) and, as specified there, it must set forth: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the time period. Because the potential trail user has met these criteria, a 180-day public use condition will also be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 12, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 23, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 2, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Esq., Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 16, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, BN may discontinue service, cancel tariffs for this line on not less than 10 days' notice to the Commission, and salvage track and related material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. The abandonment of the above-described line is subject to the condition that BN leave intact the right-of-way, including all bridges, trestles, culverts, tunnels, and other similar structures (but not track or track materials), for a period of 180 days from the effective date of this exemption, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify BN against any potential liability) and the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service.

5. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

VOL 58 ISS 132 JL 13 1993 UMI

6. If an agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reach by the 180th day, BN may fully abandon the line.

7. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective August 12, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16527 Filed 7–12–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–343 (Sub-No. 2X)]

Wisconsin Department of Transportation—Abandonment Exemption—In Winnebago County, WI

[Docket No. AB–383 (Sub-No. 1X)]

Wisconsin & Southern Railroad Co.—Discontinuance Exemption—In Winnebago County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by the Wisconsin Department of Transportation and the discontinuance of service by Wisconsin & Southern Railroad Co. of 2.1 miles of the Oshkosh Subdivision rail line extending between mileposts 185.6 and 187.7 in Oshkosh, Winnebago County, WI, subject to environmental and standard labor protective conditions. The transactions are also exempted from the offer of financial assistance and public use procedures of 49 U.S.C. 10905 and 10906, respectively.

DATES: This exemption will be effective on July 13, 1993. Petitions to reopen must be filed by August 7, 1993.

ADDRESSES: Send pleadings referring to Docket Nos. AB–343 (Sub-No. 2X) and AB–383 (Sub-No. 1X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5271.)

Decided: June 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16528 Filed 7–12–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Notice of Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Pub. L. 92–463. Pursuant to section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Wednesday, July 28, 1993 from 10 to 4:30 p.m. Conference Room N–3437 A–D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows: Five or six presentations of workplace committees and other forms of participation drawn from:

- Large and small enterprises;
- Manufacturing and service industries; and
- Workplaces under collective agreements and workplaces with no collective agreements.

PUBLIC PARTICIPATION: The Commission will be in session from 10 a.m. to 12 noon when it will recess for lunch and will return at 1 p.m. Seating will be available to the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2318, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C–2318, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148.

Signed at Washington, DC, this 7th day of July 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–16548 Filed 7–12–93; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Notice of Meeting

SUMMARY: Pursuant to title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of Establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place Thursday July 29, 1993. The purpose of the Commission is to, among other things, focus greater attention to the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into the practices, policies and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to such positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of women and minorities to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Thursday, July 29, 1993, from 9–12 Noon and 1:30 p.m. to 4 p.m. in Room C–5310, Seminar Room 1B, of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

(1) Remarks by Secretary of Labor Reich;

(b) Brief remarks from Commissioners;

(c) Discussion of Commission workplan;

(d) Criteria for Frances Perkins-Elizabeth Hanford Dole Award; and

(e) Ancillary considerations attendant to carrying out Commission activities.

(f) Public comments—time permitting.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-serve basis—seats will be reserved for the media. Disabled individuals should contact the Commission no later than July 20 to request accommodation for their disability. Individuals or organizations wishing to submit written statements should send ten (10) copies to Ms. Joyce Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210. Written statements must be received on or before July 26, 1993, to be included in the record of the meeting. Any member of the public who wishes to speak at this meeting should indicate, in advance, the nature of the intended presentation. The amount of time for each presentation will be limited to no more than five minutes.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, S–2233, Washington, DC 20210, telephone number (202) 219–7342.

Signed at Washington, DC, this 7th day of July, 1993.

Robert Reich,

Secretary of Labor.

[FR Doc. 93–16549 Filed 7–12–93; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

ETL Testing Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the ETL Testing Laboratories, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

ETL Testing Laboratories, Inc. (ETL), previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 8411, 2/28/89), and was so recognized (see 54 FR 37845, 9/13/89).

ETL subsequently applied for an expansion of its initial recognition as a Nationally Recognized Testing Laboratory. After the procedural requirements outlined in 29 CFR 1910.7, Appendix A were fulfilled, ETL's recognition was expanded to include 29 additional test standards (product categories) (See 54 FR 37845, 9/13/89; 55 FR 51971, 12/18/90; as corrected 56 FR 2953, 1/25/91).

ETL submitted a second request to further expand its recognition as a Nationally Recognized Testing Laboratory pursuant to 29 CFR 1910.7. This request was reviewed by the Agency and a notice of the request for expansion and request for comments was published in the **Federal Register** on November 18, 1992 (57 FR 54422; see Exhibit 19).

There were two responses to this **Federal Register** notice of application and preliminary finding. Both respondents supported the expansion of ETL's recognition as an NRTL. (See Exhibits 20–1 and 20–2.)

It is OSHA's determination that ETL Testing Laboratories, Inc. has demonstrated that it can adequately test and certify products under the requested test standards.

Notice is hereby given that ETL's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–1–89), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

The addresses of the laboratories covered by this recognition are: ETL Testing Laboratories, Inc., Cortland Safety Division, Industrial Park, Cortland, New York 13045, ETL Testing Laboratories, Inc., 5855–P Oakbrook Parkway, Norcross, Georgia 30093, ETL Testing Laboratories, Inc., West Coast Division, 660 Forbes Boulevard, South San Francisco, California 94080.

Final Decision and Order

Based upon the facts found as part of the ETL Testing Laboratories, Inc. original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application(s), documentation submitted by the applicant (see Exhibits 18 A and 18 B), comments submitted by the public, and the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request (see Exhibit 18 C), OSHA finds that ETL Testing Laboratories, Inc. has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the ETL Testing Laboratories, Inc. recognition is hereby expanded to include the 62 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 62 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

ETL has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 96—Lightning Protection Components
ANSI/UL 198B—Class H Fuses
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuses for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Uses
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Refrigerant Containing Components and Accessories, Nonelectrical

ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 353—Limit Controls
ANSI/UL 372 [1]—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 719—Nonmetallic Sheathes Cables
ANSI/UL 781 [2]—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
UL 810—Capacitors
ANSI/UL 859—Personal Grooming Applicances
ANSI/UL 877 [2]—Circuit Breakers and Circuit-Breaker Enclosures for Use in Hazardous (Classified) Locations
ANSI/UL 886 [2]—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 900—Test Performance of Air-Filter Units
ANSI/UL 963—Surveillance Cameras
UL 1022—Line Isolated Monitors
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1277—Electrical Power and Control Tray Cables with Optional Optical-Fiber Members
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1446—Systems of Insulating Materials—General
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry-Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
UL 1594—Sewing and Cutting Machines
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1778—Uninterruptible Power Supply Equipment
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1917—Solid-State Fan Speed Controls
UL 1995—Heating and Cooling Equipment
ANSI/IEEE C37.20.1—Metal-Enclosed Low Voltage Power Circuit Breaker Switchgear
ANSI/IEEE C37.20.2—Metal-Clad and Station-Type Cubicle Switchgear
ANSI/IEEE C37.20.3—Metal-Enclosed Interrupter Switchgear
ANSI/ISA S12.12 [2]—Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations

[1] Testing and certification is limited to equipment designed for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

[2] Testing and certification is limited to Class I locations.

Note: The use of ANSI/UL 913—"Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous Locations", for which ETL has previously received recognition for the testing and certification of products, is hereby also limited to Class I, Division I locations.

ETL Testing Laboratories, Inc. must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to ETL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ETL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ETL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ETL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ETL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ETL will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on July 13, 1993, and will be valid for a period of five years from the date of the original recognition, September 13, 1989, until September 13, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington DC, this 6th day of July, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16550-1 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-2-91]

GTE TestMark Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Request for additional comments on the GTE TestMark Laboratories' application for recognition as a nationally recognized testing laboratory.

SUMMARY: This notice re-opens the record for additional comments concerning whether GTE TestMark Laboratories can meet the independence requirement for recognition as a nationally recognized testing laboratory (NRTL) under 29 CFR 1910.7.

DATES: Additional comments must be submitted by August 12, 1993.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Henry Woodcock, Acting Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

A Notice of Application for the recognition of GTE TestMark Laboratories (TML) for recognition as a nationally recognized testing laboratory (NRTL) and Preliminary Finding was published in the **Federal Register**, July 8, 1992 (57 FR 30235). The American Council of Independent Laboratories, Inc. (ACIL), raised several issues concerning the independence of GTE TestMark and opposed the Laboratory's application for recognition (Exhibit 4–1). OSHA is requesting additional comments on the independence issue before determining whether GTE TestMark Laboratories is eligible for recognition as an NRTL.

II. Issues Raised by Comments

ACIL raised several issues concerning GTE TestMark Laboratories' application for recognition as an NRTL. Most of ACIL's concerns were investigated and answered by TML. However, the Agency believes that the independence issue raises novel questions of regulatory interpretation and policy. The Agency has decided that it would be beneficial to solicit additional public comment on whether GTE TestMark Laboratories can meet the independence requirement in 29 CFR 1910.7. The full texts of both the ACIL comment letter (Exhibit 4–1), and the TML response, are reproduced as Appendix A below.

A. Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturers, vendors and users of equipment or materials being tested. This independence requirement is necessary to assure the integrity of the testing activities.

In its application for recognition as an NRTL, TML stated:

> GTE Service Corporation is not actively engaged in the manufacture of equipment of the type contemplated for testing under this application. While GTE affiliates are engaged in manufacturing, TML will not test their products for the purpose of listing. TML is not owned or controlled by a manufacturer of equipment * * * Security of employment for lab employees is not under the influence or control of manufacturers or suppliers (Ex. 2.A.).

ACIL questioned TML's independence status and suggested three reasons why GTE TestMark Laboratories had failed to meet the independence criteria set forth in 29 CFR 1910.7(b)(3).

First, ACIL claimed that TML was not completely independent of employers subject to the tested equipment requirements because its parent, GTE Telephone Operations, is a user of the tested equipment. TML's application for NRTL recognition states that "GTE TestMark Laboratories is owned by the GTE Service Corporation and is part of the GTE Telephone Operations, which provides telecommunications services in many States and two foreign countries." According to ACIL, GTE Telephone Operations is TML's immediate parent and as a service provider it procures and uses telecommunications equipment. Therefore, TML cannot be an NRTL because its parent, GTE Telephone Operations, is subject to the requirements as a user of tested equipment. ACIL expressed concern that if NRTL status is granted, TML would be testing equipment used by its parent or a competitor that provides similar service. According to ACIL, this could present a potential conflict of interests.

Second, ACIL argued that TML is not completely independent of any manufacturer of equipment or materials being tested because TML stated in its application that it has affiliates that are engaged in manufacturing. TML's application for NRTL recognition states "While GTE affiliates are engaged in manufacturing, TML will not test their products for the purpose of listing." According to ACIL, a relationship described as "affiliates" does not constitute complete independence. Moreover, ACIL expressed concern that although testing may not be done for GTE, cases may arise when TML could be testing a product with parts from GTE or one of GTE's subsidiaries, suppliers or customers. It is ACIL's opinion that the complexity of product manufacturing contributes to the likelihood that TML will be placed in a compromising position of testing a GTE or GTE-related part. Therefore, according to ACIL, TML's disclaimer that it will not test the affiliates products cannot be guaranteed.

Third, ACIL expressed concern about TML's testing of non-GTE manufacturer's products. According to ACIL, the "affiliation" of TML with GTE compromises TML's ability to fully scrutinize another manufacturer's products or leaves margin for bias.

OSHA has considered ACIL's comments and believes they may have merit. In addition to the issues raised by ACIL, the Agency is concerned about the organizational structure of GTE Service Corporation and GTE TestMark Laboratories. The organizations appear to have "interlocking" corporate officers and this too many constitute a potential conflict of interest and be contrary to the independence requirement in 29 CFR 1910.7. The Agency is concerned that in some cases such an arrangement may compromise the ability of the laboratory to produce test results which are objective and unbiased and might adversely impact the independence of GTE TestMark Laboratories.

OSHA believes that further consideration is necessary at this point and is inviting the public to submit additional comments or information concerning the degree of independence of the applicant and whether it is independent within the meaning and spirit of 29 CFR 1910.7.

III. Requests for Comments and Information

In light of the above discussion OSHA solicits additional comments on GTE TestMark Laboratories' application for recognition as an NRTL. The Agency is particularly interested in receiving comments regarding whether GTE TestMark Laboratories can meet the requirement for independence required under 29 CFR 1910.7. OSHA also specifically requests comments on the following questions:

(1) What conditions are required for a laboratory to be considered independent from manufacturers, suppliers, vendors, and users of the products it tests? What criteria should be used to determine independence within the meaning of 29 CFR 1910.7?

(2) Can a laboratory be considered independent if its parent organization manufactures products of a type which it is accredited to test and certify even where the laboratory agrees not to certify any products from the parent organization or its affiliates?

(3) Does the act of certifying products that are manufactured by an affiliated or parent organization's potential competitor mean that the laboratory cannot be considered independent?

Copies of the TML application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–91), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Authority and Signature

This document was prepared under the direction of David C. Ziegler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

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Signed at Washington, DC this 6th day of July , 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16551 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-1-88]

MET Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of request for expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the application of MET Laboratories, Inc. (formerly MET Electrical Testing Company, Inc./Laboratory Division), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is August 12, 1993.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that MET Laboratories, Inc. (formerly MET Electrical Testing Company, Inc./Laboratory Division) which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and which was so recognized (see 54 FR 21136, 5/16/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Expansion of Recognition

MET Laboratories, Inc. (MET), submitted an application for expansion of its current recognition (Ex. 13), to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

UL 763—Motor-Operated Commercial Food Preparing Machines

ANSI/UL 859—Personal Grooming Appliances

ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays

The NRTL Recognition Program staff made an in-depth study of the details of MET's original recognition and application and determined that MET had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closely related to MET's current areas of recognition.

Preliminary Finding

Based upon a review of the details of MET's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to certify products using the three aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to MET's recognition without the necessity for an additional on-site review.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of MET Laboratories, Inc., as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than August 12, 1993, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL-1-88), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.D. Department of Labor, at the above address.

Signed at Washington, DC, this 6th day of July, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16552 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-3-90]

Southwest Research Institute

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the application of the Southwest Research Institute for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Southwest Research Institute (SwRI), which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: Southwest Research Institute, 6620 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

Background

The Southwest Research Institute is a non-profit organization which was established in 1947 and devoted to industrial research. The Department of Fire Technology in the Chemistry and Chemical Engineering Division has been engaged in various aspects of fire technology for over 35 years, including the testing and certification of various products that are the subject of this recognition. Laboratory-scale apparatus, designed to meet up to 40 test specifications, are housed in 11;100 square feet of laboratory space within the 23,200 square feet of floor space of the Department's facilities on the west campus of the Institute.

The Department of Fire Technology has been recognized by the Council of American Building Officials (CABO) National Evaluation Service as a third-party quality assurance and inspection

agency. The SwRI staff has also participated with numerous organizations and committees addressing a variety of aspects of fire technology.

The Southwest Research Institute applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in May 1990. Additional data was submitted as requested. An on-site evaluation was conducted on February 6th and 7th, 1991, and the results discussed with the applicant who responded [Ex. 3A(2)] with appropriate corrective actions and clarifications to recommendations made as a result of the survey [Ex. 3A(1)] accomplished prior to the preparation of the final report. This final on-site review report (Ex. 3A) consisting of the on-site evaluation of SwRI's testing facilities and administrative and technical practices, and the corrective actions taken by SwRI in response to these evaluations, and the OSHA staff recommendation, were subsequently forwarded to the Acting Assistant Secretary for a preliminary finding on the application. A notice of SwRI's application together with a positive preliminary finding were published in the **Federal Register** on July 8, 1992 (57 FR 30237–30239). There were no responses to this **Federal Register** notice of the SwRI application and preliminary finding (Docket No. NRTL–3–90).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that SwRI does have testing equipment and facilities appropriate for the areas of recognition it seeks. The laboratory has more than 200 pieces of test equipment available to perform the testing required by the standard. If equipment is not available, it may be obtained from other departments.

SwRI's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks. The Fire Technology Department owns ten buildings on a 5-acre site. The total acreage of Southwest Research is approximately 765 with more than 1.5 million square feet of laboratory space. The Fire Technology Department has a total floor space of 23,200 square feet of which some 11,000 square feet of space has been allocated for product testing and evaluation.

Environmental conditions in the laboratory are controlled by a central heating, air conditioning, and ventilation system designed for the type of testing performed in the laboratory. Environmental chambers are used to control and monitor environmental conditions for specific product testing. Although the laboratory has no security alarm system, the main entrance to the Department is monitored during normal working hours by a receptionist. Visitors are required to identify themselves and are issued a visitor's tag. Access and egress to SwRI grounds is controlled by security personnel at a main guard building and grounds are patrolled during and after working hours.

The applicant employs some 32 people at the laboratory site, of whom 21 are currently involved in testing and evaluation to the product standards listed. Key personnel include eight technicians, and 10 engineers and supervisors.

OSHA has determined that the Southwest Research Institute has appropriate written test procedures, and calibration and quality control programs to enable it to adequately perform appropriate testing.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system. Southwest Research Institute meets these criteria.

SwRI's application as well as the on-site review report indicate that SwRI does maintain effective procedures for producing creditable findings and reports that are objective. The laboratory maintains a system for identifying product samples submitted for testing to ensure that there is no confusion regarding the identity of the samples. Samples checked are marked and logged in on a permanent record.

The Fire Technology Department has a number of standard operating procedures (SOPs) and a Quality Assurance Manual (QA Manual) in place, to be used by SwRI personnel in evaluating products for a standard or standards. These SOPs are developed through use of the guidelines in the QA Manual. The Project Manager is responsible for preparing, in writing, the SOP to be followed, which are to be followed by all laboratory personnel. This SOP is reviewed by the Safety Officer, the Section Manager, the Director of the Department of Fire Technology, and the Vice President of the Chemistry and Chemical Engineering Division. An internal audit group is responsible for the review of SOPs, records, and correspondence.

Product samples submitted for testing are logged in by technicians on a general material receipt form. The project number is marked on each sample and the sample is logged in by project number, client, address, date, weight and measurements. Deviations from the test specified in the standards are evaluated by the test engineer and test manager and are documented in the final report. Tests are conducted in compliance with the specified test standards. The test technician examines the sample in accordance with the dimensional limits of the standard and checks that the samples are undamaged.

The Project Manager, Department Director and Vice President are responsible for developing, reviewing and approving the standard test procedures. The test procedures are reviewed, as needed, by laboratory management. The laboratory performs all product testing in-house and does not subcontract any of the testing specified in the standards.

Test data sheets have been developed for most of the testing performed at the laboratory. A test data sheet which was reviewed (selected as representative of department standards) was found to reference the standard used, client name, project number, test date, test material ID, test data and results, and signatures of the individuals conducting the test. Test data sheets have been developed for all testing performed by the laboratory under the NRTL program.

Where applicable, a final report on the program describing the methods used and the results achieved is provided by the Department. This formal report includes the following:

The title and number of the standard used to evaluate the product, laboratory report number and the manufacturer's name and address;

An introductory section describing the product as it was evaluated; and

A test procedure, test results and observations during and after test sections.

The Project Manager authors the test report which is reviewed for technical content and accuracy by the appropriate

Section Manager and the Director of the Department of Fire Technology. The final report contains at least two signatures: the Vice President and/or Department Director and Project Manager.

Copies of the report are given to the client and to the Project Manager and are maintained in both the Department and Record Files.

Where disagreements occur between the client and the laboratory relating to evaluations, inspections, and/or testing, the client may, without prejudice, submit his views to the appropriate SwRI manager for discussion. Any further disagreement will be brought before the senior staff of the Department of Fire Technology for review and discussion. If necessary, these discussions will include the client's input and participation. If a resolution of differences cannot be obtained, either party shall have the right to cancel the certification program.

In the event that a third party (i.e., not the SwRI client) questions an SwRI test report for procedure or results, the matter will be referred to the Manager of Certification and Product Services, Fire Technology Department, for his review and direct response to the third party inquiry. This response will be reviewed both for accuracy and content by the Director of this Department.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. SwRI has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

The laboratory requires the client to sign an "Application for Follow-up Services and Listing" Agreement, and complete a "Quality Assurance Manual Information Form" for use during the initial inspection of the manufacturing site. Once there is agreement on the QA Manual and the product has passed the appropriate tests, the client then must sign a second contract entitled Follow-Up and Listing Service Agreement before being permitted to use the SwRI Label on his product. The initial plant inspection is conducted to review the manufacturer's quality control program and to determine his ability to conduct the production line tests required by the standard.

Unannounced follow-up inspections of the manufacturing site are conducted at least quarterly. The inspections may be as frequent as deemed necessary by the Manager of Certification and Product Services. Qualified personnel conduct and report inspection activities to ensure that products continue to be manufactured in accordance with the drawings and specifications referenced in the final reports. The inspection consists of a visual check of the manufacturing techniques previously outlined in the Manual.

The inspector, upon discovery of a discrepancy affecting the quality of the product, immediately notifies the manufacturer and recommends immediate corrective action to be taken. The discrepancy is documented on the Inspection Form and the Department of Fire Technology is notified. The use of the laboratory's listing mark is suspended until corrective action is taken to resolve the discrepancy.

At the present time, the Department of Fire Technology has no listed products subject to field audits. However, the department reserves the right to make a field audit.

The printing and distribution of SwRI's listing label is controlled by the Department of Fire Technology. Depending upon the product, labels may be roll printed on the material or serialized and affixed after manufacture. It is the manufacturer's responsibility to maintain sufficient inventory labels to satisfy manufacturing requirements and account for all labels.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

OSHA believes, based upon an examination of the application with particular reference to the statements in Exhibit 2A, section 1.7, pages 3 and 4, and the Affidavit in appendix A, opposite page 15, as well as with discussions with SwRI executives, that the Southwest Research Institute is independent within the meaning of § 910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI UL test standards for which SwRI has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the Southwest Research Institute has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Southwest Research Institute is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

SwRI has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ASTM E 152—Standard Methods of Fire Tests of Door Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 155—Tests of Fire Resistance of Vault and File Room Doors
ANSI/UL 555—Fire Damping and Ceiling Dampers
UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
UL 1887—Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics

The Southwest Research Institute must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to SwRI's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If SwRI has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

SwRI shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, SwRI agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

SwRI shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

SwRI will continue to meet the requirements for recognition in all areas where it has been recognized; and

SwRI will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on July 13, 1993, and will be valid for a period of five years from that date, until July 13, 1998, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 6th day of July 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16553 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902.

On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah State Plan and the adoption of subpart E to part 1952 containing the decision. Utah was granted final approval on section 18(e) of the Act on July 16, 1985. By law (section 63–46a–16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and "shall be received in all the courts, and by all the judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *" The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act (Chapter 46a, Title 63, Utah annotated, 1953) which became effective on April 29, 1985. On May 6, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the **Federal Register**. The plan supplement was published in the **Federal Register** (53 FR 43688) on October 28, 1988. The supplement provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

Following the publication date, the agency shall allow at least 30 days for public comment on the rule. During the public comment period the agency may hold a hearing on the rule. Except as provided in statutes 63–46a–6 and 63–46a–7, a proposed rule becomes effective on any date specified by the agency which is no fewer than 30 nor more than 90 days after the publication date. The agency shall provide written notification of the rule's effective date to the office. Notice of the effective date shall be published in the next issue of the bulletin.

OSHA regulations (29 CFR 1953.22 and 29 CFR 1953.23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days of emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval. The State submitted statements along with copies of the Utah State Digest, to verify the adoption by reference of a standard for the Code of Federal Regulations. The adoption by reference standards actions occurred as follows: (1) The Industrial Commission of Utah, Occupational Safety and Health Division, adopted by reference on January 1, 1993, the Federal Standard, Occupational Exposure to 4,4'Methylenedianiline (MDA), Final Rule of 29 CFR parts 1910 and 1926 as published in 57 FR 35630. The effective date of the State Rule was February 1, 1993; (2) The Industrial Commission of Utah, Occupational Safety and Health Division, adopted by reference on February 15, 1993, Federal Standard, Permit-required Confined Spaces, for General Industry Final Rule as published in 29 CFR part 1910 in 58 FR 4462. The effective date of the State Rule was March 31, 1993.

Decision

The statement of incorporation of the aforementioned Federal Standard by reference has been printed in the Utah Administrative Code. The code contains the statement of the incorporation of Federal Standards by reference as

VOL
58
ISS
132
JL
13
1993
UMI

compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference from 29 CFR part 1910 and 29 CFR part 1926 are identical to Federal Standards with no differences and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director, Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective July 13, 1993.

(Sec. 18, Public law 91–596, 84 Stat. 1608 [29 U.S.C. 667]). Signed at Denver, Colorado this 23rd day of June, 1993.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 93–16554 Filed 7–12–93; 8:45 am]

BILLING CODE 4510–26–M

Wyoming State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of subpart BB to part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

(1) Advisory Committee coordination;

(2) Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings;

(3) Adoption by the Wyoming Health and Safety Commission;

(4) Review and approval by the Governor;

(5) Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 29 CFR 1953.23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

By letter dated April 1, 1993 from Stephan R. Foster, OSHA Program Manager, Wyoming Department of Employment, Division of Employment Affairs-OSHA, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following Federal OSHA General Industry Standards, 29 CFR 1910.1030 Occupational Exposure to Bloodborne Pathogens Final Rule, 56 FR 64004, 12/6/91; 29 CFR 1910.109 Explosives and Blasting Agents, Sec. K; 29 CFR 1910.119 Process Safety Management of Highly Hazardous Chemicals Final Rule, amended by 57 FR 6356, 2/24/92; and 29 CFR 1910.119 Corrections amended by 57 FR 7847, 3/4/92.

The above adoptions of Federal Standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations (General), as required by Wyoming Statute 1977, Section 27–11–105 (a) (viii).

State Standards for 29 CFR 1910, Occupational Exposure to Bloodborne Pathogens; Final Rule was adopted by the Health and Safety Commission of Wyoming on February 28, 1992 (effective 4/1/92); State Standards for 29 CFR 1910.109, Explosives and Blasting Agents, Section K and 29 CFR 1910.119, Process Safety Management, Corrections were adopted by the Health and Safety Commission of Wyoming on May 15, 1992 (effective 7/7/92).

Decision

The above State Standards have been reviewed and compared with the relevent Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18 (c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are substantially identical. OSHA therefore approves these Standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

Location of Supplement for Inspection and Copying.

A copy of the Standards Supplements, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80924; the Department of Employment, Division of Employment Affairs-OSHA, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective July 13, 1993.

(Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Denver, Colorado this 23rd day of June, 1993.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 93–16555 Filed 7–12–93; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-7]

Computer Program Rental by Libraries: Report of the Register of Copyrights on the Effects of 17 U.S.C. 109(b)(2).

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is preparing a report for Congress on the extent to which the Computer Software Rental Amendments Act of 1990 has achieved its intended purpose with respect to lending by nonprofit libraries. This Act permits lending of a computer program for nonprofit purposes by a nonprofit library, if each copy lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with regulations prescribed by the Register of Copyrights. The Act also requires the Office to report to Congress by December 1, 1993, on whether 17 U.S.C. 109(b)(2) has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. This report shall also advise Congress as to any information or recommendations that the Register considers necessary to carry out Congress's intent.

The Office seeks public comments on and information about lending of computer programs for nonprofit purposes by nonprofit libraries, for the purpose of evaluating how the nonprofit lending provision is working. The Office invites comment from all interested parties including software proprietors, librarians, and library patrons.

EFFECTIVE DATE: Comments should be received on or before October 12, 1993.

ADDRESSES: Interested persons should submit ten copies of their written comments as follows: If sent by mail: Dorothy Schrader, General Counsel, United States Copyright Office, Library of Congress, Department 17, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, room 407, First Street and Independence Avenue, SE., Washington, DC 20559.

FOR ADDITIONAL INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 109 of the Copyright Act contains an important limitation on the exclusive rights of copyright owners; this limitation is known as the first-sale doctrine. Under this doctrine, the owner of a lawfully made copy of a work, or any person authorized by such owner, is entitled without authority of the copyright owner to sell or otherwise dispose of the possession of that copy.

On December 1, 1990, President Bush signed into law, Pub. L. 101-650, 104 Stat. 5059 containing the "Computer Software Rental Amendments Act." Section 109(b)(1)(A) of that Act prevents the commercial rental, lease, or lending of computer programs without the authorization of the copyright owner. Congress enacted this limitation on the first sale doctrine because it recognized that the commercial lending of computer software could encourage unauthorized copying and deprive copyright owners of a return on their investment. [1]

Congress had already amended the first sale doctrine in 1984 to give owners of copyright in sound recordings control over commercial rental of phonorecords by prohibiting the commercial rental of these works without the authorization of the copyright owner. In 1988, the Record Rental Amendment Act was renewed, with expiration set for October 1, 1997.

The Computer Software Rental Amendments Act does not accord a rental right with respect to computer programs embodied in a machine or product (such as automobiles or calculators) that cannot be copied during the ordinary operation or use of the machine or product; or computer programs embodied in video games. 17 U.S.C. 109(b)(1)(B). The Act also provides that the transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes. 17 U.S.C. 109(b)(1)(A).

Congress also did not wish to prohibit the nonprofit lending of computer programs by nonprofit libraries and nonprofit educational institutions. These institutions serve a valuable public purpose by making computer software available to students and others who would not otherwise have access to it. At the same time, Congress recognized that library patrons could engage in the same type of unauthorized copying that occurs in a commercial context. [2] The Computer Software Rental Amendments Act therefore permits nonprofit lending of computer programs by nonprofit libraries, if each copy lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with regulations prescribed by the Register. 17 U.S.C. 109(b)(2)(A).

The regulations governing warning of copyright for software lending by nonprofit libraries are contained in 37 CFR 201.24. Under that section, the "Warning of Copyright for Software Rental" to be affixed to the packaging containing the computer program lent by the nonprofit library shall consist of a verbatim reproduction of the following notice:

> **Notice: Warning of Copyright Restrictions**
> The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.
>
> Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States Code, may be liable for copyright infringement.
>
> This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.

This warning shall be affixed to the packaging that contains the copy of the computer program which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program. The notice shall be printed in such a manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program. *See* 37 CFR 201.24 (1992).

[1] H. Rep. No. 735, 101st Cong., 2d Sess. 8 (1990).

[2] *Id.*

VOL
58
ISS
132
JL
13
1993
UMI

2. Reporting Requirement

Section 109(b)(2)(B) of title 17, United States Code, established under the Computer Software Rental Amendments Act, requires the Register of Copyrights, not later than three years from the date of enactment, and such times thereafter as the Register considers appropriate, to submit to Congress a report stating whether the library lending provisions of the Act have served their intended purpose of maintaining the integrity of the copyright system, while still providing nonprofit libraries the capacity to fulfill their function. The report shall also advise the Congress as to any information or recommendations that the Register considers necessary to carry out the purposes of the subsection.

The report is due on December 1, 1993, that is, not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990.

In order to assist the Copyright Office in preparing this report, public comment on the subject of nonprofit lending of computer programs is invited. The Office is interested in surveying the practices of libraries with regard to computer software. We also seek advisory comments on whether and how the purposes of section 109(b)(2) could be better carried out.

3. Specific Questions

The Copyright Office is interested in receiving comments about any issues relevant to section 109(b)(2) which concern copyright owners, librarians, and library patrons. Of particular interest are the following questions.

(1) If you are a nonprofit library or educational institution, do you feel you are meeting the needs of your patrons with regard to computer software? Does section 109(b)(2)(A) facilitate or impede fulfillment of your function as a nonprofit library or educational institution?

(2) How often do you lend copies of computer programs to other nonprofit libraries, or nonprofit educational institutions? How often do you lend computer programs to staff or users of your own institution?

(3) Do the regulations in 37 CFR 201.24 pertaining to warning of copyright for software rental represent an onerous burden?

(4) Do you have reason to believe that unauthorized copying, adaptation, redistribution, public performance or display of computer programs is occurring as a result of the nonprofit lending permitted by section 109(b)?

(5) Do you feel the section 109(b) exemption for nonprofit libraries and educational institutions is harmful to the interests of copyright owners? Has there been any change in authors' income as a result of nonprofit lending of software?

(6) Are you aware of any evidence that unauthorized copying, adaptation, redistribution, public performance or display results from nonprofit lending of computer software?

(7) Do you feel that new legislation is needed either to clarify existing legislation or to rectify any imbalance between the rights of owners and the needs of users? If so, please specify as precisely as possible what provisions such legislation should contain.

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in room 401, James Madison Memorial Building, Library of Congress, First Street and Independence Avenue, SE., Washington, DC

Dated: July 6, 1993.

Ralph Oman,

Register of Copyrights.

[FR Doc. 93-16481 Filed 7-12-93; 8:45 am]

BILLING CODE 1410-07-F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on these collections.

DATES: Comments should be submitted by August 12, 1993.

ADDRESSES: Copies of the Proposed information collections and supporting documentation can be obtained from the Policy and Program Analysis Division (NAA), room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408. Telephone requests may be made to (202) 501-5110.

Written comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (202) 501-5110.

The following proposed information collections have been submitted to OMB:

1. National Historical Publications and Records Commission Grant Program Application

Description: The information collection is a narrative grant application prepared by nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state recognized Native American tribes or groups, and individuals to apply for National Historical Publications and Records Program (NHPRC) support of projects in documentary editing and historical records preservation and planning.

Purpose: The information is used to determine eligibility of the applicant and evaluate the suitability of the proposed project for support.

Frequency of response: On occasion; annually if applying for continued support of a project for which a previous NHPRC grant has been received.

Number of respondents: 190.

Reporting hours per response: 54.

Annual reporting burden hours: 10,260.

2. Application for Host Institutions of Archival Administration Fellowship

Description: The information collection is a narrative application submitted by public and private institutions applying to the National Historical Publications and Records Commission (NHPRC) for grant funds to host one of the two archival administration fellowships funded each year by the NHPRC.

Purpose: The application is used to determine host institutions for the fellowship program.

Frequency of response: One-time.

Number of respondents: 9.

Reporting hours per response: 17.

Annual reporting burden hours: 153.

3. Application for Archival Administration Fellowship

Description: This application is completed by individuals with at least 2 years professional archival experience who wish to apply for a 9- to 12-month fellowship in archival administration

sponsored by the National Historical Publications and Records Administration.

Purpose: The information is used to verify applicant eligibility for the fellowship and to award fellowships to the best qualified applicants.

Frequency of response: One-time.
Number of respondents: 15.
Reporting hours per response: 8.
Annual reporting burden hours: 120.

4. Application for Historical Documentary Editing Fellowship

Description: The application is completed by individuals holding a Ph.D. or who have completed all requirements for the degree except the dissertation who wish to apply for a 10-month fellowship in historical documentary editing with a documentary publication project supported by the National Historical Publications and Records Commission.

Purpose: The information is used to verify applicant eligibility for the fellowship and to award fellowships to the best qualified applicants.

Frequency of response: One-time.
Number of respondents: 14.
Reporting hours per response: 8.
Annual reporting burden hours: 112.

5. Application for Attendance at the Institute for the Editing of Historical Documents

Description: The application is completed by individuals who wish to attend a 2-week institute cosponsored by the National Historical Publications and Records Commission (NHPRC) that provides specialized training in documentary editing activities.

Purpose: The information is used by the NHPRC staff to evaluate applicants' qualifications and to select individuals to attend the institute.

Frequency of response: One-time.
Number of respondents: 25.
Reporting hours per response: 2
Annual reporting burden hours: 50.

Dated: July 2, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–16522 Filed 7–12–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 12, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506 (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506 (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Learning through Design Teacher Survey Project
Frequency of Collection: One-time
Respondents: Individual elementary and secondary school teachers
Use: Voluntary survey elicits relevant information from elementary and secondary school teachers who are using design activities to develop creative problem-solving, critical thinking and other skills in their students. The results will help the Design Arts Program assess the impact of design as an educational tool.
Estimated Number of Respondents: 500
Average Burden Hours Per Response: .75
Total Estimated Burden: 375

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 93–16504 Filed 7–12–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix J, to Niagara Mohawk Power Corporation (the licensee) for Nine Mile Point Nuclear Station, Unit 2 (NMP–2), located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated May 28, 1993, the licensee requested a schedular exemption pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, Appendix J, Section III.B, relating to certain Type B tests. Specifically, the licensee requested temporary relief from the requirement to perform Type B tests at intervals of not greater than 24 months for the expansion bellows on four Traversing Incore Probe (TIP) containment penetrations (2NMT*Z31A,C,D, and E). A one-time only delay, until the end of the 1993 refueling outage (RF03) (currently scheduled to begin on October 1, 1993) was requested for the performance of these leak tests. The licensee's request was necessitated to avoid a plant shutdown solely to perform the required leak tests.

The Need for the Proposed Action

The bellows on the TIP penetrations are required by Appendix J of 10 CFR part 50 and by NMP–2 Technical Specification (TS) 4.6.1.2.d. to be Type B tested at intervals no greater than every two years. The TIP penetrations are listed in the NMP–2 Updated Safety Analysis Report (USAR) Table 6.2–56 with Note 34 applicable. Note 34 states, "The metal bellows at the end of the TIP system drywell penetration flanges will be included in Type A testing. The flanges themselves and the midspan flange in 2NMT*Z31B will be subject to Type B testing." On April 23, 1993, the licensee determined that the bellows in the subject penetrations were not in compliance with the requirement of TS 4.6.1.2.d. and 10 CFR part 50, Appendix J, in that these bellows had been Type A tested rather than the required Type B tested. Type B testing of these bellows requires access to the bellows. Access to the bellows requires the reactor be shut down and the drywell to be deinerted

from its nitrogen atmosphere. The schedular exemption is required to permit the licensee to continue to operate NMP–2 until its next scheduled shutdown, the 1993 refueling outage which is presently scheduled to begin on October 1, 1993, rather than to be required to shut down NMP–2 solely to perform the required Type B leak tests.

Environmental Impacts of the Proposed Action

The proposed schedular exemption would allow the licensee to continue to operate NMP–2 until the end of the 1993 refueling outage. The NMP–2 1993 refueling outage is currently scheduled to begin October 1, 1993. The four subject penetrations would be Type B tested during the 1993 refueling outage.

Note 34 was added to USAR Table 6.2–56 by the licensee via Licensing Document Change Notice (LDCN) #1458 dated November 29, 1984, however, no justification or backup data could be located to substantiate the addition of Note 34. When LDCN #1458 was issued in 1984, the licensee had no method for testing these bellows. The Final Safety Analysis Report was subsequently interpreted to imply that a Type A test was acceptable for testing these bellows. This noncompliance (Type A testing versus Type B testing) has existed since issuance of the facility operating license on October 31, 1986.

The maximum allowable overall containment leakage rate is limited by TS 3.6.1.2. to 1.1 weight percent of containment air per day at the peak accident pressure of 39.75 psig. The most recent Type A test performed in January 1991 measured the overall containment leakage to be 0.305 percent per day. This value includes the TIP penetrations as well as the other Type B and Type C leakage paths. The combined Type B and Type C leakage was 0.211 percent per day. The unaccounted leakage of 0.094 percent per day is attributed to the containment liner, TIP penetrations, etc. Therefore, even if all the unaccountable leakage was associated with the TIP penetrations, the combined leakage of TIP penetrations and that measured from the other Type B and Type C penetrations would still be less than the allowable leakage of 0.6 L_a or 0.66 percent per day. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed schedular exemption.

With regard to potential nonradiological impacts, the proposed schedular exemption only involves Type B testing of TIP penetrations. The proposed schedular exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed schedular exemption.

Alternative to the Proposed Action

As one alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. This alternative would also result in an unwarranted shutdown of the plant.

As a second alternative to the proposed action, the NRC staff considered requiring performance of the subject Type B tests during the plant's first cold shut down of sufficient duration. The environmental impacts of this alternative are similar to the proposed action.

Alternative Use of Resources

The actions associated with the granting of the proposed schedular exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2," dated May 1985 (NUREG–1085).

Agencies and Persons Contacted

The NRC staff reviewed the licensee's submittal that supports the proposed schedular exemption discussed above. The NRC staff consulted with the State of New York regarding the environmental impact of the proposed schedular exemption. The State of New York had no comments regarding this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed schedular exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see the licensee's application for the schedular exemption dated May 28, 1993. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 6th day of July 1993.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16559 Filed 7–12–93; 8:45 am]

BILLING CODE 7590–01–M

Radiological Criteria for Decommissioning of NRC–Licensed Facilities; Availability of the Enhanced Participatory Rulemaking Electronic Bulletin Board and 800 Number

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of the enhanced participatory rulemaking electronic bulletin board and 800 number.

SUMMARY: On April 16, 1993, the Office of Nuclear Regulatory Research (RES) opened an electronic bulletin board system (BBS) in an effort to increase public access to the Enhanced Participatory Rulemaking process being employed to develop radiological criteria for decommissioning. An electronic bulletin board was suggested by participants at a number of the workshops conducted in support of this rulemaking as an additional mechanism for making information publicly available, more accessible, and providing another means for interested individuals and groups to provide comments to the staff. The BBS offers an additional way of contacting the NRC, provides current information about the status of the decommissioning rulemaking, and also provides an electronic method for members of the public to comment on the rulemaking. Background information on the rulemaking and summaries of the public workshops are available for download or on-line viewing. Callers using the BBS can easily register their comments in a reserved area on the BBS. The comments are then sent to the docket within 1 business day of receipt. The comments are also directly transferred to a database that will be used by the staff for comment categorization and analysis.

The staff expects this bulletin board system to be an important part of the open communication that is the hallmark of the Enhanced Participatory Rulemaking effort.

FOR FURTHER INFORMATION CONTACT: Christine Daily, Mail Stop NLS/139, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492–3999; FAX (301) 492–3866.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has set up an electronic bulletin board to provide information and accept public comments about the Enhanced Participatory Rulemaking process. This bulletin board provides updated information about ongoing events, access to related files of information, and allows anyone to provide comments on the rulemaking directly to the NRC.

To connect to the bulletin board, you need an MS-DOS personal computer (if using a Macintosh computer, when asked if you want color menus, please say no), a modem, and a communications software package. Set your parity to none, data bits to 8, and stop bits to 1 (N,8,1). Use your communications software to dial (800) 880–6091. Set your terminal emulation to ANSI or VT–100. You should be able to use any communications software that allows the N,8,1 setting.

After you have connected to the bulletin board, you will be asked to enter your name and select a password. You will be given some information about the board and then be asked a series of questions about your address and phone number. These questions will only be asked the first time you call and will allow the NRC to formally docket (record) any comments you may wish to send concerning the rulemaking.

Following the initial questionnaire, you will be asked if you would like to view the newsletter. This newsletter will be used to provide updated information and any other recent news that may be of interest. Next you will be shown the main menu, where you will have a choice of going to the message section or the files section. The message section is a place to leave short comments or questions for the NRC staff. The file section contains a group of background documents about the rulemaking that can be downloaded to your computer or read on-line. You can also upload a file in this section containing your comments on the rulemaking. These comments will be sent to the docket, usually within 1 business day. All of the menus give you the option of leaving the bulletin board by selecting (G) for good-bye.

If you have any questions about the bulletin board or the rulemaking, please leave a message addressed to the NRC staff in the message section of the bulletin board. This section works like e-mail and will be reviewed at least once each day by the NRC staff.

Dated at Rockville, Maryland, this 30th day of June 1993.

For the U.S. Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications.

[FR Doc. 93–16558 Filed 7–12–93; 8:45 am]

BILLING CODE 7590–01–M

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts. The MOU provides the basis for mutually agreeable procedures whereby the Commonwealth of Massachusetts may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Massachusetts. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective May 21, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

Agreement Pertaining to the Emergency Response Data System Between the Commonwealth of Massachusetts and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts, acting through Massachusetts Emergency Management Agency, enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Massachusetts recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Massachusetts fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Massachusetts Emergency Management Agency ("MEMA"), an agency created by Chapter 639 of the Acts of 1950, as amended.

III. Scope

A. This Agreement defines the way in which NRC and Massachusetts will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in and adjacent to the Commonwealth of Massachusetts, specifically Pilgrim Station, Seabrook Station, and Vermont Yankee.

B. It is understood by the NRC and the Commonwealth of Massachusetts that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the Commonwealth of Massachusetts, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the Commonwealth of Massachusetts on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the Commonwealth of Massachusetts authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the Commonwealth of Massachusetts during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the Commonwealth of Massachusetts. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Massachusetts's General Responsibilities

A. Massachusetts, acting through MEMA, will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Massachusetts will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Massachusetts agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC and/or the utility provided technical liaison personnel.

VI. Implementation

Massachusetts and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Massachusetts, through MEMA, and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and MEMA agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Massachusetts will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Massachusetts General Laws Chapter 66A, Fair Information Practices, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to MEMA by the NRC. MEMA may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, MEMA will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed Director of the Massachusetts Emergency Management Agency. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and MEMA staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and MEMA will work together to resolve these differences.

B. Resolution of differences between MEMA and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: January 6, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: May 21, 1993.

For The Commonwealth of Massachusetts.

A. David Rodham,

Director, Massachusetts Emergency Management Agency.

[FR Doc. 93–16560 Filed 7–12–93; 8:45 am]

BILLING CODE 7590-05-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–19565; 812–8350]

Bayfield Low Income Housing Limited Partnership, et al.; Application

July 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bayfield Low Income Housing Limited Partnership (the "Partnership") and Megan Asset Management, Inc. (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATIONS: Applicants seek an order exempting the Partnership from all provisions of the Act, retroactive to July 1, 1990, the date of the formation of the Partnership. The Partnership owns limited partnership interests in partnerships that engage in the development, ownership, and operation of housing for low and moderate income persons, thereby operating as a "two-tier" limited partnership.

FILING DATE: The application was filed on April 13, 1993, and amended on June 10, 1993 and July 6, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 2, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 20 Carpenters Brook Road, Greenwich, Connecticut 06831–1210.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Partnership was formed under Delaware law as of July 1, 1990, pursuant to a joint plan of reorganization of 52 debtors (the "Debtor Investor Partnerships") that was confirmed under Chapter 11 ("Chapter 11") of Title 11 of the United States Code (the "Bankruptcy Code"). The Partnership operates as a "two-tier" real estate limited partnership, *i.e.*, the Partnership owns limited partnership interests in other limited partnerships ("Operating Partnerships") that in turn engage in the development, rehabilitation, ownership, and operation of apartment complexes providing housing for low and moderate income persons (the "Projects").

2. The Partnership's objectives are to preserve and protect the Partnership's capital, provide limited cash distributions from operations, and provide capital appreciation to the extent of any increases in the value of the Projects. The Partnership also is designed to provide current tax benefits to limited partners of the Partnership ("the Limited Partners") in the form of tax credits under section 42 of the Internal Revenue Code ("Tax Credits"), which, subject to certain limitations, may be applied against their federal income tax liability.

3. During the period from September 1987 through December 1988, each of the Debtor Investor Partnerships was formed to, and did, acquire limited partnership interests in Operating Partnerships. In most instances, each Debtor Investor Partnership owned between 95 and 99 percent of the partnership interests in its respective Operating Partnerships; in all instances the Debtor Investor Partnerships owned at least a majority interest in the Operating Partnerships. None of the Debtor Investor Partnerships had more than 50 limited partners, all of whom acquired their limited partnership interests in private offerings exempt from registration under the Securities Act of 1933. Section 3(c)(1) of the Act excludes from the definition of "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and that does not make or propose to make a public offering of its securities. Accordingly, none of the Debtor Investor Partnerships was an investment company.

4. Following their formation, certain of the Debtor Investor Partnerships failed to make prescribed capital contributions to Operating Partnerships of which they were limited partners. Subsequently, First American Holdings, Inc. ("First American"), the general partner of each of the Debtor Investor Partnerships, became insolvent. To protect their interests in the Operating Partnerships, the Debtor Investor Partnerships were placed under the protection of Chapter 11.

5. On July 13, 1990, the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") entered an order confirming a joint plan of reorganization (the "Plan") of the Debtor Investor Partnerships. The Plan provided, in part, for the creation of the Partnership as a master limited partnership, into which all of the assets of the Debtor Investor Partnerships were "rolled up."

6. There are currently approximately 1,840 Limited Partners. Accordingly, the Partnership is no longer excluded from the definition of "investment company" pursuant to section 3(c)(1). The former general partner of the Partnership inadvertently failed to apply for exemption under the Act at the time of the formation of the Partnership, as none of the parties to the bankruptcy understood that the Act might be applicable to the Partnership.

7. In consideration of their contribution of assets to the Partnership, each of the Debtor Investor Partnerships received an allocable portion of the limited partnership interests in the Partnership. These Partnership interests then were distributed to the limited partners of each Debtor Investor Partnership. The Partnership's limited partnership interests are registered under section 12(g) of the Securities Exchange Act of 1934 (the "1934 Act"). The Partnership files periodic reports with the SEC pursuant to section 13 of the 1934 Act.

8. Pursuant to the Plan, Megan Management Company, Inc. (the "Independent Manager") was engaged by the Partnership to provide management and administrative services, which were previously the responsibility of First American. The Independent Manager was selected pursuant to a search, evaluation, and competitive bidding process carried out by a special committee formed in the bankruptcy. Following a dispute between First American, on the one hand, and the Independent Manager and Partnership, on the other, First American was replaced as general partner by the General Partner, a company under common control with the Independent Manager. The division of powers and responsibilities between a general partner and an independent

VOL 58 ISS 132 JL 13 1993 UMI

manager is no longer meaningful following the resignation of First American, its replacement by the General Partner, and the subsequent assumption of the rights and obligations of the Independent Manager by the General Partner. The General Partner, however, continues to receive separate compensation in the respective capacities of general partner and independent manager of the Partnership.

9. In addition to certain incentive compensation, the Independent Manager is entitled to receive $436,000 annually for each of the years 1993 and 1994, and $149,500 annually for each of the years 1995 through 1998. Commencing with calendar year 1999, the Independent Manager's base fee of $149,500 will be reduced by $750 for each Operating Partnership in which the Partnership no longer owns a limited partnership interest.

10. Subsequent to the confirmation of the Plan, the Partnership acquired minority limited partnership interests in seven investor partnerships that own limited partnership interests in partnerships owning low to moderate income housing eligible for Tax Credits (the "Investor Partnerships"). The Investor Partnerships, which were purchased for approximately $287,470, were acquired in order to replace Tax Credits lost to the Partnership through the insolvency or loss of investments in certain Operating Partnerships. Unlike investments in newly-formed Operating Partnerships, investments in these partnerships will generate Tax Credits over approximately the same period as the Partnership's interests in the Operating Partnerships. At the time of filing of the application, the Investor Partnerships accounted for approximately 1.5% of the Partnership's total assets. Applicants regard the purchase of such interests as incidental to the Partnership's business of maintaining its interests in the Projects. The Partnership has agreed, however, as a condition to the grant of the requested relief, that it will not make any future purchases of interests in Investor Partnerships. Any further investments by the Partnership in low and moderate income housing will be made only through the direct ownership of limited partnership interests in Operating Partnerships.

11. The Partnership continues to collect capital contributions due it pursuant to promissory notes originally executed by limited partners of the Debtor Limited Partnerships in connection with the purchase of their interests therein (the "Investor Notes"), and to make its required capital contributions to the Operating Partnerships and payments to its creditors in accordance with the applicable provisions of the Plan. The Partnership's principal source of funds to meet its obligations and make distributions to its Limited Partners is the proceeds of the Investor Notes.

12. Pursuant to the Plan, the Debtor Investor Partnerships' indebtedness to four banks (the "Secured Lenders") was consolidated into four loans to the Partnership (the "Secured Loans"), which were secured by four separate pools of Investor Notes. As of June 1, 1993, approximately $3.5 million in principal amount was outstanding under the Secured Loans, and the Investor Notes securing the Secured Loans had a remaining aggregate principal balance of more than three times the amount of the Secured Loans.

13. The Plan provides that after the payment or application of all monies due to the Secured Lenders in each payment period, the balance shall be paid over to the Partnership and disbursed in accordance with the Plan. Two of the Secured Lenders have become insolvent and have been placed under the control of the Federal Deposit Insurance Corporation. As a result, and because the overcollateralization of the Secured Loans reduces the Secured Lenders' incentive to pursue delinquencies, such institutions have not aggressively pursued collection of delinquent Investor Notes since such takeover, and have failed to implement settlements which would have resulted in collection of amounts due under defaulted Investor Notes. Such failure properly to administer and collect the Investor Notes is detrimental to the Partnership, as the proceeds of such Investor Notes not utilized to repay the Secured Loans are the Partnership's principal source of funds to satisfy its obligations under the Plan. Applicants believe that collections will continue to lag and delinquencies increase under the Investor Notes so long as they are held by these institutions.

14. The General Partner is currently seeking to refinance the Secured Loans on terms that will allow the General Partner to administer and vigorously attempt to collect the Investor Notes. In order to preserve the priority of the security interest securing the Secured Loans, the proposed refinancing must take the form of the purchase of the existing obligations of the Partnership to the respective Secured Lenders, which were incurred in connection with the confirmation of the Plan in July 1990.

15. The Partnership has received commitments from two underwriters to conduct a "best-efforts" offering of interest in such loans. The offering will be a private offering made only to financial institutions that are also accredited investors. Thus, even if the interests in commercial loans such as the Secured Loans are deemed to be securities, the offering of such securities would be exempt from registration under the Securities Act of 1933. In addition, such interests will be sold to fewer than 100 beneficial owners, calculated in accordance with section 3(c)(1) of the Act. Accordingly, applicants believe that the issuer of such securities would be exempt from registration as an investment company under the Act pursuant to section 3(c)(1).

16. Once purchased, the Secured Loans will be held by a trustee pursuant to an indenture between the Partnership and the trustee. The indenture will provide that any transfer of interests in the loans shall be made in compliance with, or pursuant to an exemption from, the Act and the Securities Act of 1933. Pursuant to the indenture, the General Partner will have the right to take over the administration of the Investor Notes. Applicants do not seek, and have not obtained, any assurance from the SEC or its staff regarding the status of the proposed refinancing under the Act or any other statute.

17. Pursuant to the Plan, all funds held by the Partnership are subject to section 345 of the Bankruptcy Code, which requires that such funds either be held in federally-insured deposits or investments or collateralized by U.S. Government securities or a special surety bond.

18. Although the Partnership's direct control over the management of each Project is limited, the Partnership's ownership of all or nearly all of the limited partnership interests in the Operating Partnerships is, in an economic sense, tantamount to direct ownership of the Projects themselves. The interests in the Operating Partnerships have no value other than the value of the Projects. No Operating Partnership generates substantial income or expense other than as a direct result of the ownership and operation of its Projects.

19. The Partnership is managed and controlled by the General Partner. The Limited Partners, consistent with their limited liability status, are not entitled to participate in the control of the Partnership's business. A majority in interest of the Limited Partners, however, have the right to amend the partnership agreement (subject to certain limitations), dissolve the Partnership, remove the General Partner "for cause", and elect a replacement

general partner. Each Limited Partner also is entitled to review all books and records of the Partnership and will receive certain reports from the Partnership regarding the business and affairs of the Partnership. In addition, by order of the Bankruptcy Court, the Equity Security Holders Committee (the "Investors Committee"), a committee originally formed during the bankruptcy proceedings to represent the class comprised of the limited partners of the Debtor Investor Partnerships, was given an ongoing oversight role in connection with the deferral of payments contemplated by the Plan to be made to the Limited Partners, and the use thereof to pay for certain costs and expenses for the administration and operation of the Partnership.

Applicants' Legal Conclusions

1. Applicants seek an exemption under section 6(c) exempting the Partnership from all provisions of the Act and rules thereunder, retroactive to July 1, 1990. Section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The exemption of the Partnership from all provisions of the Act is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. Further, the limited partnership form insulates each limited partner from personal liability, limits his financial risk to the amount he has invested in the program, and permits the pass-through to the limited partner, on his individual tax return, of his proportionate shares of the income, Tax Credits, and losses from the investment.

3. The Partnership operates in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release No. 8456"). The release lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (a) "interests in the issuer should be sold only, to persons for whom investment in limited profit, essentially tax-shelter, investments would not be unsuitable"; and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company."

4. Suitability standards were imposed on the sale of the original limited partnership interests in the Debtor Investor Partnerships. While such suitability standards varied according to applicable state securities laws, limited partnership interests were sold only to investors who, at minimum, had an annual gross income of at least approximately $35,000 and a net worth (exclusive of home, furnishings and automobiles) of at least $75,000. Limited partnership interests in the Partnership may be transferred only to investors who meet these investor suitability standards, and such transfers are in any event subject to the consent of the General Partner in its sole discretion. Applicants believe that such suitability standards are consistent with the requirements in Release No. 8456 and are consistent with the guidelines of those states which prescribe suitability standards.

5. All current compensation agreements between the Partnership and the General Partner are disclosed in Form 10K, filed under the 1934 Act. The General Partner believes that all such compensation is no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. While the General Partner's compensation as general partner consists only of an interest in the Partnership's profits and losses (including tax credits and other tax items), which applicants believe to be within the guidelines set forth in the Statement of Policy of the North American Securities Administrators Association, Inc. with respect to real estate programs in the form of limited partnership (the "NASAA Guidelines"), compensation received by the General Partner in its capacity as Independent Manager currently exceeds the levels specified in the NASAA Guidelines for "Program Management Fees." However, the Independent Manager's role, and such compensation, arose in connection with services mandated by the Plan and are not directly comparable to typical management services or Program Management. In addition, such compensation was negotiated at arms' length and under the supervision of the Bankruptcy Court. Commencing in 1995, the Management Agreement provides for a reduction in the Independent Manager's fee to a level which applicants believe to be within the limits for Program Management Fees set forth in the NASAA Guidelines.

6. The organizational documents of the Partnership were subject to the scrutiny of the Bankruptcy Court through the confirmation process. Applicants assert that the requirements of confirmation are designed to provide assurance of the same considerations of fair dealing as are promoted by the Act and required by Release 8456. Applicants believe that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership's governing instruments, the oversight of the Bankruptcy Court and the Investors Committee, and pertinent governmental regulations imposed by various federal, state, and local agencies provide protection to investors in the Partnership comparable to the provided by the Act.

7. Applicants assert that the partnership would have qualified for exemption under section 6(c) of the Act had an application therefor been made at the time of formation of the Partnership. the Partnership's failure to apply for an exemption at the time of its formation was attributable primarily to the focus of its management and counsel of the bankruptcy and related lack of resources to consider issues not directly related thereto. The Partnership has at all time since its formation been primarily engaged in the ownership of housing projects for low and middle income persons. Particularly in view of the illiquid nature of the limited partnership interests in the Partnership and of its investments in the Operating Partnerships, applicants assert that the delay in applying for such exemption has had no adverse effect on the Partnership's Limited Partners and that the purposes of the Act were not compromised by such delay.

8. The lack of any public market or any significant number of transfers of limited partnership interests in the Partnership assures that any risks of ownership of interests in the Partnership have been almost entirely confined to those individuals who originally purchased interests in the Debtor Investor Partnerships and who were not entitled to the protections of the Act in connection with such purchase. The provisions of the partnership agreement of the Partnership restricting transferability of limited partnership interests as described above make it very likely that this will continue to be the case.

9. Applicants believe that the Partnership and its Limited Partners will be prejudiced if the SEC does not grant retroactive relief. The failure of the

SEC to grant retroactive relief will be subject to disclosure in the Partnership's offering documents, and the resulting uncertainty could effect both the marketability of the proposed interests in the Secured Loans and the interest rate payable by the Partnership (and indirectly its Limited Partners) with respect to such interest. Such uncertainty could have particular impact in this case, since in order to preserve the priority of the first security interest securing the Secured Loans, the interests to be offered consist of interests in obligations of the Partnership entered into in July 1990 in connection with the confirmation of the Plan. If retroactive relief is not granted, the enforceability of those obligations might be called into question, notwithstanding that they were entered into pursuant to the Plan, by reason of section 47(b) of the Act, which provides that a contract made or involving performance in violation of the Act and the rules or regulations thereunder is unenforceable, absent certain findings by a court. Such uncertainty also could have the further negative impact on the Partnership and its Limited Partners of reducing the options available to the Partnership to make other changes in its contractual arrangements which might have the effect of reducing expenses or increasing its returns.

10. The bankruptcy of the Debtor Investor Partnerships and subsequent formation of the Partnership pursuant to the Plan, which resulted in the distribution of limited partnership interests in the Partnership to more than 100 investors, had the effect of exchanging interests in individual, insolvent Operating Partnerships previously held by them, for a proportionate interest in all of the Operating Partnerships, based on an allocation formula contained in the Plan thereby spreading the risks of investment by the Limited Partners among a broad pool of Projects furnishing low to moderate income housing. The Plan also made possible the continued solvency of most of the Operating Partnerships. Applicants believe such exchange was, if anything, in furtherance of the purposes of the Act.

11. The Partnership's failure to file for an exemption at the time of its formation was inadvertent, and attributable in large part to a lack of resources. Applicants respectfully submit that such lack of resources should not operate to the detriment of the Partnership and its Limited Partners, particularly in view of the factors enumerated above which minimize any potential damage from failure to apply for exemption in a timely fashion.

12. On the basis of the foregoing, applicants assert that retroactive relief requested would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief shall be subject to the following condition:

The Partnership shall not make any future purchases of interests in Investor Partnerships. Any further investments by the Partnership in low and moderate income housing shall be made only through the direct ownership of limited partnership interests in Operating Partnerships.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-16561 Filed 7-12-93; 8:45 am]

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VOL 58 ISS 132 JL 13 1993 UMI

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Sunshine Act Meetings

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 15, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common carrier.	TITLE: Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act (CC Docket No. 93–22, RM–7990). SUMMARY: The Commission will consider adoption of a *Report and Order* amending the rules governing pay-per-call services to conform with the requirements of the Telephone Disclosure and Dispute Resolution Act.
2	Office of Engineering and Technology.	TITLE: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92–9, RMs–7981 and 8004). SUMMARY: The Commission will consider adoption of a *Second Report and Order* concerning a reallocation and rechannelization of five bands above 3 GHz.
3	Office of Engineering and Technology.	TITLE: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92–9, RMs–7981 and 8004). SUMMARY: The Commission will consider adoption of a *Third Report and Order and Memorandum Opinion and Order* addressing the regulatory framework for the implementation of emerging technologies in the 2 GHz band.
4	Private radio.	TITLE: Amendment of Part 97 of the Commission's Rules to Relax the Restrictions on the Scope of Permissible Communications in the Amateur Service (PR Docket No. 92–136, RMs–7894, 7895 and 7896). SUMMARY: The Commission will consider adoption of a *Report and Order* concerning whether to relax the restrictions on the communications that may be transmitted by amateur stations.
5	Mass media	TITLE: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation. SUMMARY: The Commission will consider adoption of a *Notice of Proposed Rulemaking* proposing requirements to govern cost-of-service showings by cable operators.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–16642 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 16, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16648 Filed 7–9–93; 11:25 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 19, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–16692 Filed 7–9–93; 2:10 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, July 20, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6108 Special Investigation Report: Commercial Space Launch Incident—Launch Procedure Anomaly, Orbital Sciences Corporation, Pegasus/SCD–1, 80 Nautical Miles East of Cape Canaveral, Florida, February 9, 1993.

VOL
58
ISS
132
JL
13
1993
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5699A Railroad Accident/Incident Summary Report: Derailment of Amtrak Train 87, Silver Meteor, While on CSX Transportation Track, Palatka, Florida, December 17, 1991.

6099 Recommendations to the Federal Aviation Administration, the American Association of Airport Executives, and the Airports Association Council International-North America to Urge Airport Operators to Inspect Aircraft Operating Areas for Soil Erosion Near Pipelines.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: July 9, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–16661 Filed 7–9–93; 1:10 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 12, 19, 26, and August 2, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 12

Wednesday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) a. Georgia Power Company—Partial Director's Decision Under 10 C.F.R. § 2.206 (Tentative) (Contact: Steve Burns, 301–504–2184)

Week of July 19—Tentative

Tuesday, July 20

10:00 a.m.
Briefing on Options for Addressing Shutdown and Low Power Risk Issues (Public meeting) (Contact: Ashok Thadani, 301–504–2884)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

2:00 p.m.
Briefing on Overview of NRC Research Program (Public meeting) (Contact: George Sege, 301–492–3904)

Week of July 26—Tentative

Thursday, July 29

10:00 a.m.
Briefing on Options for Changes to Regulation of Nuclear Medicine (Public meeting) (Contact: Darrel Nash, 301–504–3610)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of August 2—Tentative

Monday, August 2

2:00 p.m.
Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues (Public meeting) (Contact: Leonard Soffer, 301–492–3916)

Tuesday, August 3

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 9, 1993.

William M. Hill,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–16696 Filed 7–9–93; 2:32 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
July 13, 1993

Part II

Department of Defense

Department of the Army

32 CFR Part 501

Emergency Employment of Army and Other Resources; Proposed Rule

VOL 58 ISS 132 JL 13 1993 UMI

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 501

Emergency Employment of Army and Other Resources

AGENCY: Office of the Army Deputy Chief of Staff for Operations and Plans, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army announces a revision of 32 CFR Part 501, Employment of Troops in Aid of Civil Authorities, in order to bring it in line with changes to Army Regulation 500–50, Civil Disturbances. When published as a final rule it will replace the information currently contained in 32 CFR part 501.

DATES: Comments must be submitted in writing not later than August 12, 1993.

ADDRESSES: Comments should be sent to: Office of the Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODS/LTC Marksteiner, Pentagon, Washington, DC 20310–0400

FOR FURTHER INFORMATION CONTACT: LTC Marksteiner, (703) 697–4331.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 501

Armed forces, Civil disorders, Intergovernmental relations, Law enforcement, Military law.

It is proposed to revise part 501 to read as follows:

PART 501—CIVIL DISTURBANCES

Sec.

501.1 Basic policies.
501.2 Emergency.
501.3 Command authority.
501.4 Martial law.
501.5 Protection of Federal property.
501.6 End of commitment.

Authority: U.S.C. 331, 332, 333 3013.

§ 501.1 Basic policies.

(a) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State are the primary responsibility of State and local civil authorities. Generally, Federal Armed Forces are committed after State and local civil authorities have utilized all of their own forces and are unable to control the situation, or when the situation is beyond the capabilities of State or local civil authorities, or when State and local civil authorities will not take appropriate action. Commitment of Federal Armed Forces will take place only—

(1) Under the provisions of this part, and

(2) When the Secretary of the Army, pursuant to the orders and policies of the Secretary of Defense and the President, has generally or specifically so ordered, except in cases of emergency. See § 501.2.

(b) The Secretary of the Army has been designated as the Executive Agent for the Department of Defense in all matters pertaining to the planning for, and employment of military resources in the event of civil disturbances. The Department of the Army is responsible for coordinating the functions of all the Military Services in this activity for the Executive Agent. The Secretary of the other Military Services are responsible for providing such assistance as may be requested by the Executive Agent.

(c) Formal requests by a State for the assistance of Federal Armed Forces must originate with the legislature of the State concerned, or with the Governor if the legislature cannot be convened, and should be made to the President. The Attorney General of the United States has been designated by the President to receive and coordinate preliminary requests from the States for Federal military assistance. Should such an application, either formal or preliminary, be presented to a local commander, that commander will request the person making the application to transmit his/her request to the Attorney General.

(d) No employment orders will be issued by the Department of the Army until the President directs the Secretary of Defense to take the necessary action. In practice this direction to the Secretary of Defense follows issuance of the proclamation required by law demanding that the insurgents cease and desist from acts of violence and disperse and retire peaceable forthwith. See 10 U.S.C. 334. This requirement does not preclude the alerting of forces and, if necessary, the repositioning of forces by the Executive Agent. However, repositioning of more than a batallion-sized unit will be undertaken only with the informal approval of the President.

(e) Units and members of the Army Reserve on active duty may be employed in civil disturbance operations in the same manner as active forces. Units and members of the Army Reserve may be ordered to active duty for this purpose by the President as provided by law. Members of the Army Reserve, with their consent, may be ordered to active duty for civil disturbance operations under the provisions of 10 U.S.C. 672(d).

(f) Persons not normally subject to military law taken into custody by the military forces incident to the use of Armed Forces, as contemplated by this part, will be turned over, as soon as possible, to the civil authorities.

§ 501.2 Emergency.

(a) In cases of sudden and unexpected invasion or civil disturbance, including civil disturbances incident to earthquake, fire, flood, or other public calamity endangering life or Federal property or disrupting Federal functions or the normal processes of Government, or other equivalent emergency so imminent as to make it dangerous to await instructions from the Department of the Army requested through the speediest means of communications available, an officer of the active Army in command of troops may take such action, before the receipt of instructions, as the circumstances of the case reasonably justify. However, in view of the availability of rapid communications capabilities, it is unlikely that action under this authority would be justified without prior Department of the Army approval while communications facilities are operating. Such action, without prior authorization, of necessity may be prompt and vigorous, but should be designed for the preservation of law and order and the protection of life and property until such time as instructions from higher authority have been received, rather than as an assumption of functions normally performed by the civil authorities.

(b) Emergency fire fighting assistance may be provided pursuant to agreements with local authorities; emergency explosive ordnance disposal service may be provided in accordance with paragraph 18, Army Regulation 75–15, Responsibilities and Procedures for Explosive Ordnance Disposal. Army Regulation 75–15 is available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161.

§ 501.3 Command authority.

(a) In the enforcement of the laws, Federal Armed Forces are employed as a part of the military power of the United States and act under the orders

of the President as Commander in Chief. When commitment of Federal Armed Forces has taken place, the duly designated military commander at the objective area will act to the extent necessary to accomplish his mission. In the accomplishment of his mission, reasonable necessity is the measure of his/her authority, subject of course, to instructions he/she may receive from his/her superiors.

(b) Federal Armed Forces committed in aid of the civil authorities will be under the command of, and directly responsible to, their military and civilian superiors through the Department of the Army chain of command. They will not be placed under the command of an officer of the State defense Forces or of the National Guard not in the Federal service, or of any local or State civil official; any lawful or unauthorized act on the part of such troops would not be excusable on the ground that it was the result of an order received from any such officer or official. As directed by the Army Chief of Staff, service will be provided in accordance with paragraph 3–2, Army Regulation 75–15.

§ 501.4 Martial law.

It is unlikely that situations requiring the commitment of Federal Armed Forces will necessitate the declaration of martial law. When Federal Armed Forces are committed in the event of civil disturbances, their proper role is to support, not supplant, civil authority. Martial law depends for its justification upon public necessity. Necessity gives rise to its creation; necessity justifies its exercise; and necessity limits its duration. The extent of the military force used and the actual measures taken, consequently, will depend upon the actual threat to order and public safety which exists at the time. In most instances the decision to impose martial law is made by the President, who normally announces his decision by a proclamation, which usually contains his instructions concerning its exercise and any limitations thereon.

§ 501.5 Protection of Federal property.

The right of the United States to protect Federal property or functions by intervention with Federal Armed Forces is an accepted principle of our Government. This form of intervention is warranted only where the need for protection exists and the local civil authorities cannot or will not give adequate protection. This right is exercised by executive authority and extends to all Federal property and functions.

§ 501.6 End of commitment.

The use of Federal Armed Forces for civil disturbance operations should end as soon as the necessity therefor ceases and the normal civil processes can be restored. Determination of the end of the necessity will be made by the Department of the Army after coordination with the Department of Justice.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16185 Filed 7–12–93; 8:45 am]

BILLING CODE 3710–08–M3

VOL
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ISS
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1993
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federal register

Tuesday
July 13, 1993

Part III

Department of Defense

Department of the Army

32 CFR Part 552

Improper Associations of Personnel on Ft. Jackson, SC; Proposed Rule

VOL 58 ISS 132 JL 13 1993 UMI

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Improper Associations of Personnel on the Installation of Ft. Jackson, SC

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: This action establishes 32 CFR Part 552, Subpart K, Improper Associations of Personnel and authenticates Fort Jackson Regulation 600–5. This subpart contains the association procedures between permanent party soldiers or civilian employees and soldiers-in-training, receptees or holdovers on the installation of Fort Jackson, South Carolina.

DATES: Written comments must be submitted not later than August 12, 1993.

ADDRESSES: Comments should be sent to: U.S. Army Training Center and Fort Jackson, Office of the Staff Judge Advocate, Fort Jackson, SC 29207–5000.

FOR FURTHER INFORMATION CONTACT: CPT Thomas M. Gagne, Trial Counsel, (803) 734–6811.

SUPPLEMENTARY INFORMATION: This subpart applies to all permanent party soldiers, civilian employees, soldiers-in-training, receptees and holdovers, as defined herein, on or off Fort Jackson. Any violation of this part by a permanent party soldier, except for a violation of § 552.136, provides a basis for punitive action under the Uniform Code of Military Justice against the violating permanent party soldier. Any violation of this subpart by a civilian employee, except for a violation of § 552.136, provides a basis to impose disciplinary procedures contained in applicable Fort Jackson, Training and Doctrine Command, Army or Department of Defense directives and regulations against the violating civilian employee. Violation of this subpart by a soldier-in-training, receptee or holdover does not provide a basis for punitive action under the Uniform Code of Military Justice against the violating soldier-in-training, receptee or holdover.

Executive Order 12291

This proposed rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 552, Subpart K

Military personnel, Government employees, Fraternization.

PART 552—[AMENDED]

Accordingly, 32 CFR part 552, subpart K is added to read as follows:

Subpart K—Improper Association of Personnel—Ft. Jackson

Sec.

552.131 Purpose.
552.132 Scope.
552.133 Definitions.
552.134 Improper associations prohibited.
552.135 Reporting procedures.
552.136 Dissemination.
552.137 Responsibilities.
552.138 Management Information Requirements (MIR).

Authority: 10 U.S.C. Ch. 47.

Subpart K—Improper Association of Personnel—Ft. Jackson

§ 552.131 Purpose.

This subpart prohibits improper associations between permanent party soldiers or civilian employees and soldiers-in-training, receptees or holdovers. Improper association is harmful to mission accomplishment. The goal of this subpart is to establish and maintain the training environment necessary to develop pride, motivation, military skills, discipline and confidence in soldiers-in-training, receptees and holdovers.

§ 552.132 Scope.

This subpart applies to all permanent party soldiers, civilian employees, soldiers-in-training, receptees and holdovers, as defined herein, on or off Fort Jackson. Any violation of this part by a permanent party soldier, except for a violation of § 552.136, provides a basis for punitive action under the Uniform Code of Military Justice against the violating permanent party soldier. Any violation of this subpart by a civilian employee, except for a violation of § 552.136, provides a basis to impose disciplinary procedures contained in applicable Fort Jackson, Training and Doctrine Command, Army or Department of Defense directives and regulations against the violating civilian employee. Violation of this subpart by a soldier-in-training, receptee or holdover does not provide a basis for punitive action under the Uniform Code of Military Justice against the violating soldier-in-training, receptee or holdover.

§ 552.133 Definitions.

(a) *Improper association.* Any actual or attempted personal relationship, association, contact or socializing between any permanent party soldier or civilian employee and any soldier-in-training, receptee or holdover, on or off Fort Jackson, that is not required to accomplish the training mission. This includes, but is not limited to the following actual or attempted personal relationships, associations, contacts, or socializing between any permanent party soldier or civilian employee and any soldier-in-training, receptee or holdover:

(1) Gambling or wagering.

(2) Touching of a sexual nature, handholding, embracing, caressing, dating or any other meeting that is not official in nature, kissing, engaging in sexual intercourse, sexual fondling or sodomy.

(3) Using sexually explicit, suggestive, or obscene language or gestures.

(4) Accepting or providing gifts or favors.

(5) Loaning or borrowing money.

(6) Drinking or providing alcoholic beverages.

(7) Dancing.

(8) A permanent party soldier or civilian employee permitting or inviting any soldier-in-training, receptee, or holdover to enter into or ride in a privately-owned vehicle that is owned, operated, maintained, or occupied by a permanent party soldier or civilian employee; a soldier-in-training, receptee or holdover entering into or riding in a privately-owned vehicle that is owned, operated, maintained, or occupied by a permanent party soldier or civilian employee. These prohibitions shall not preclude transportation of soldiers-in-training, receptees or holdovers in cases of medical or other emergencies when military transportation is not available, or in specific cases when authorized by a company commander or superior commander.

(9) A permanent party soldier or civilian employee entering any living quarters or latrines designed for soldiers-in-training, receptees or holdovers of the opposite sex, unless required by official duties, or in the performance of police or fire-fighting duties, or in the case of an emergency; soldiers-in-training, receptees or holdovers inviting any permanent party soldier or civilian employee to enter any living quarters or latrines designed for soldiers-in-training, receptees or holdovers of the opposite sex, unless required by official duties, or in the performance of police or fire-fighting duties, or in the case of an emergency.

(10) A permanent party soldier or a civilian employee permitting or inviting any soldier-in-training, receptee, or holdover to enter into any living quarters, on or off Fort Jackson, that are assigned to, occupied, rented, owned, or maintained by a permanent party soldier or a civilian employee, unless required by official duties, or in the case of an emergency; a soldier-in-training, receptee or holdover entering into any living quarters, on or off Fort Jackson, that are assigned to, occupied, rented, owned, or maintained by a permanent party soldier or a civilian employee, unless required by official duties, or in the case of an emergency.

(11) Attendance by a permanent party soldier or civilian employee at a party or social gathering at which a soldier-in-training, receptee or holdover is present, unless such party or social gathering is sponsored by a military unit on Fort Jackson and permanent party soldiers or civilian employees, as well as soldiers-in-training, receptees, or holdovers have been invited by the military unit sponsoring the party or social gathering.

(b) *Permanent party soldier.* (1) Any soldier, other than a soldier-in-training, receptee or holdover, as defined in paragraphs (d), (e), and (f) of this section.

(i) Assigned or attached to any military organization at Fort Jackson or

(ii) Performing duty at Fort Jackson, including National Guard and Reserve soldiers on active duty or active duty for training.

(2) Soldiers who have completed accession processing into active duty at Fort Jackson from a Reserve/National Guard status, and who have previously completed basic training and a Military Occupational Specialty (MOS)-producing school, and who are being retained in the 120th Adjutant General (AG) Battalion (Reception) awaiting receipt of a security clearance prior to attending an additional MOS-producing school which requires a security clearance.

(3) Prior service soldiers assigned to the 120th AG Battalion (Reception) who are pending port call instructions for an overseas assignment.

(4) Soldiers in the grade of E–4 and above in the 4th Training Brigade who are attending reclassification training.

(5) Soldiers assigned or attached to any military organization at any installation who are performing temporary duty (TDY) at Fort Jackson.

(6) Soldiers at Fort Jackson for mobilization, demobilization, or Estimated Time of Separation (ETS) processing.

(7) Holdovers who have been designated by bridage commanders, in writing, as permanent party soldiers.

(c) *Civilian employee.* All non-military, i.e., civilian persons employed by, working at, assigned to or attached to any organization or activity at Fort Jackson, including, but not limited to, personnel who are temporary or permanent overhires, part-time employees, seasonal (summer hire) workers, employees of non-appropriated fund instrumentalities, contractors, and employees of contractors.

(d) *Receptee.* All Active Army, Army National Guard, and Army Reserve personnel processing through the 120th AG Battalion (Reception), for entry into Basic Combat Training (BCT) or Advanced Individual Training (AIT), except those 4th Brigade personnel, E–4 and above, described in paragraph (b)(3) of this section.

(e) *Soldier-in-training.* All Active Army, Army National Guard, and Army Reserve personnel assigned or attached to Fort Jackson for the purpose of attending BCT or AIT.

(f) *Holdover.* Any graduate of BCT or AIT who has not departed Fort Jackson for administrative reasons, any nongraduate of BCT or AIT who is in remedial training after course/cycle graduation, or any soldier who is removed from BCT or AIT for administrative reasons; provided, however, that brigade commanders may designate, in writing, a holdover as a permanent party soldier, in which case such holdover is considered a permanent party soldier as described in paragraph (b)(6) of this section.

§ 552.134 Improper associations prohibited.

Improper associations between any permanent party soldier or civilian employee and any soldier-in-training, receptee, or holdover is prohibited.

§ 552.135 Reporting procedures.

All suspected violations of this subpart will be reported to the unit commander, or directors/heads of staff agencies of personnel involved, or to the Military Policy.

§ 552.136 Dissemination.

Personnel will be informed of the provisions of this subpart as follows:

(a) Permanent party soldiers—within five working days of assignment or attachment to Fort Jackson and again semi-annually during the months of March and September. Those permanent party soldiers at Fort Jackson for mobilization/demobilization or ETS processing will be informed within one working day of reporting to Fort Jackson. Personnel present at Fort Jackson for TDY will be informed within one working day of reporting to Fort Jackson.

(b) Civilian employees—within five working days of assignment or attachment to Fort Jackson and again semi-annually during the months of March and September.

(c) Soldiers-in-training—prior to beginning each new training cycle.

(d) Receptees—during processing at the TAG Battalion (Reception).

(e) Holdovers—upon graduation or upon release or removal from training.

§ 552.137 Responsibilities.

Major subordinate commanders and directors/heads of staff agencies will establish procedures to ensure compliance with this subpart.

§ 552.138 Management information Requirements (MIR).

This proposed rule does not require an MIR.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16186 Filed 7–12–93; 8:45 am]

BILLING CODE 3710–08–M

VOL
58
ISS
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13
1993
UMI

federal register

Tuesday
July 13, 1993

Part IV

Environmental Protection Agency

40 CFR Part 63
Hazardous Air Pollution: Proposed Regulations Governing Equivalent Emission Limitations by Permit

VOL
58
ISS
132
13
1993
JL
UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–4575–9]

Hazardous Air Pollution: Proposed Regulations Governing Equivalent Emission Limitations by Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement section 112(j) of the Clean Air Act (Act), as amended. The proposed rule establishes requirements and procedures for the owners or operators of a major source of hazardous air pollutant(s) (HAPs) to follow in order to comply with section 112(j). The proposed rule also contains guidance for reviewing agencies in implementing section 112(j), to maintain consistency in these reviews. After the effective date of a title V permit program in a State (but not before May 15, 1994), each owner or operator of a major source in a source category for which the EPA was scheduled to, but failed to promulgate a maximum achievable control technology (MACT) standard would be required to submit an application for a permit, permit revision, or permit renewal containing case-by-case MACT emission limits that are at least as stringent as the Federal MACT standard would have been.

DATES: *Comments.* Comments must be received on or before August 27, 1993.

Public Hearing. If anyone contacts the EPA requesting a public hearing by July 27, 1993, a public hearing will be held on August 11, 1993, beginning at 10 a.m. Persons interested in attending the hearing should call Theresa Adkins at (919) 541–5645 to ensure that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by July 27, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention Docket Number A–93–32 (see Docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA's Environmental Research Center auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Theresa Adkins, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5645.

Docket. Docket No. A–93–32, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Kaufman, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541–0102.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Proposed Rule
II. Background Discussion
  A. Clean Air Act Amendments Section 112
  B. Clean Air Act Amendments Provisions for Equivalent Emission Limitation by Permit
  C. Implementation Principles
III. Summary and Rationale for §§ 63.50 Through 63.57 of the Proposed Rule
  A. Section 63.50—Applicability
  B. Section 63.51—Definitions
  C. Section 63.52—Requirements for Existing Sources
  D. Section 63.53—Application Content for a Case-by-Case MACT Determination
  E. Section 63.54—Preconstruction Requirements for New Sources
  F. Section 63.55—Permit Requirements for New Sources
  G. Section 63.56—Maximum Achievable Control Technology (MACT) Determinations for Sources Subject to Case-by-Case Determination of Equivalent Emission Limitations
  H. Section 63.57—Requirements for Case-by-Case Determination of Equivalent Emission Limitations After Promulgation of a Subsequent MACT Standard
IV. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act
  A. Section 112(g) Requirements for Constructed, Reconstructed, and Modified Major Sources; and Subsequent Standards under Section 112(d) or Section 112(h).
  B. Section 112(l) Delegation Process
  C. Section 112(i)(5) Early Reductions Program
V. Administrative Requirements
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

The purpose of this notice is to provide the public with the opportunity to comment on the proposed rule implementing the requirements of section 112(j) of the Act. This preamble is organized to serve readers needing (1) an overview of the proposed requirements of the section 112(j) program, and (2) a detailed discussion of the alternatives considered in developing the proposed requirements.

The first section provides an overview of the requirements of the regulations being proposed today.

The second section provides background information on section 112(j) in the context of the 1990 amendments to the Act.

The third section provides a detailed discussion of the requirements of the proposed rule and the rationale for these requirements, including other regulatory options that were considered.

The fourth section of this preamble discusses the relationship of the proposed requirements of section 112(j) of the Act with other requirements of the Act under other subsections of section 112.

The fifth section of this preamble demonstrates that the proposed rulemaking is consistent with a number of federal administrative requirements.

This preamble makes use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority implementing the section 112(j) program. The reader should assume that use of the word "State" also applies, as defined in section 302(d) of the Act, to the District of Columbia and territories of the United States, and may also include reference to a local air pollution control agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the section 112(j) program. In some cases, the term "reviewing agency" is used and can refer to both State agencies and to local agencies (when the local agency directly makes the determinations or assists the State in making the determinations). The term "reviewing agency" may also apply to the EPA, where the EPA is responsible for the program.

The proposed rule and preamble make a number of references to three regulations which have not yet been proposed. The first is subpart A to 40 CFR part 63. This subpart would provide general provisions that would apply to all subparts of part 63, including the proposed rule. The EPA expects these general provisions to be promulgated before today's proposed rule is promulgated. The second is the rule governing constructed, reconstructed, or modified major sources, which EPA intends to propose in additional sections of subpart B to 40 CFR part 63. The third is the federal

operating permits program which EPA intends to promulgate as 40 CFR part 71. Today's proposed rule and this preamble refer to "Part 70 or Part 71" permits. At this time, only 40 CFR part 70 has been promulgated, but it is expected that part 71 will be promulgated before the promulgation date of today's proposed rule.

I. Summary of Proposed Rule

The rule proposed today would implement the requirements of section 112(j) of the Clean Air Act, as amended in 1990. Section 112(j) establishes requirements for regulation of major sources of hazardous air pollutants in the event that EPA lags more than 18 months behind schedule in issuing a control technology standard for an industry.

Section 112 requires EPA to set maximum achievable control technology (MACT) standards for all categories of major sources of hazardous air pollutants by November 15, 2000. EPA is required to issue a schedule for regulating all source categories within two, four, seven, or ten years of enactment. The Agency on September 24, 1992 proposed the draft source category schedule for standards in the **Federal Register**.

Section 112(j) would be triggered if EPA has failed to promulgate a MACT standard for a source category 18 months after the deadline listed in the final schedule. Under the proposed rule, the owner or operator of each major source with emission units in that category would have to apply for a case-by-case (facility-specific) determination of maximum achievable control technology. Section 112(j) requirements apply in a state beginning on the effective date of a permit program established under title V of the Act, but not before May 15, 1994.

Case-by-case MACT determinations would be made by the permitting authority. This generally would be the state air pollution control agency, but in some circumstances could be EPA or a local air pollution control agency.

Once a source category becomes subject to 112(j), the proposed rule would require MACT for all emission units in that source category that are:

- Part of an existing major source
- Part of a new major source
- New emission units added to a major source

An emission unit would be considered "new" if construction or reconstruction commenced after the section 112(e) deadline. The section 112(e) deadline is the scheduled date for issuing a national MACT standard applicable to those emission units.

The proposed rule would require owners or operators of new and existing sources covered by 112(j) to apply for case-by-case determination of MACT emissions limitations by the permitting authority. Section 63.53 specifies the required contents of these applications.

Permitting authorities would determine MACT emission limitations for emission units based on principles established in § 63.56 and a more detailed guidance document titled "Draft Guidelines for MACT Determinations," which the EPA is making available today for comment. (The Draft Guidelines are also available through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or at (703) 487–4650. The NTIS document number is PB93–183283). Comments on the Draft Guidelines should be submitted together with comments on today's rule. The Draft Guidelines contain procedures for evaluating whether a control technology is consistent with the minimum requirements established in section 112(d) of the Act. Because section 112(j)(5) requires that case-by-case MACT determinations be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)," EPA believes that consideration of the Guidelines is a crucial component of the 112(j) case-by-case MACT determination process.

Permits for new and existing sources subject to section 112(j) would have to contain the elements listed in § 63.54(c). (Today's proposal includes requirements for the substantive terms of permits and the content of permit applications because the operating permits rules do not include similar requirements).

Existing major sources would be required to comply with their MACT emissions limitations by the date set by the permitting authority, which can be no more than three years after permit issuance. New sources would have to comply with their MACT limits at permit issuance.

Under other federal or state regulations, many new sources covered by section 112(j) will be required to obtain approval of the design of their hazardous air pollutant control equipment prior to construction. Preconstruction approval will be mandatory for: (1) New sources that are subject to forthcoming regulations implementing section 112(g) of the Act, and (2) new sources in states that require operating permit issuance or revision prior to construction.

For new sources not required to undergo preconstruction review, states may elect to provide a preconstruction MACT determination process containing elements set out in § 63.54. Procedures for incorporating such emission limitations subsequently into operating permits are described in § 63.55. Another voluntary option for these sources is to obtain an operating permit or permit revision prior to construction, so long as the State's part 70 operation permit program provides for that option.

Finally § 63.57 of today's proposal establishes requirements for complying with a 112(d) standard that is promulgated subsequent to a case-by-case MACT determination under 112(j).

The term "emission unit" in the proposed rule corresponds to the term "source" in section 112 of the statute. EPA has chosen to use "emission unit" rather than "source" to avoid creating any misperception that the section 112(j) rule could somehow constrain the Agency's flexibility to define source in other rulemakings under section 112, including national MACT standards for each source category to be issued under subsection (d) or (h).

II. Background Discussion

A. Clean Air Act Amendments. Section 112

The Clean Air Act amendments of 1990 (Public Law 101–549) contain major changes to section 112 of the Act pertaining to the control of hazardous air pollutant (HAP) emissions. Section 112(b) includes a HAP list that is composed of 189 chemicals, including 172 specific chemicals and 17 compound classes. Section 112(c) requires publication of a list of source categories and subcategories of major sources emitting these HAPs, and of area sources warranting regulation. Section 112(d) requires promulgation of emission standards for each listed source category or subcategory according to a schedule set forth in section 112(e).

B. Clean Air Act Amendments. Provisions for Equivalent Emission Limitation by Permit

1. General Requirements of Section 112(j)

The amendments to section 112 include new section 112(j). This section is entitled "Equivalent Emission Limitation by Permit." Subsection 112(j)(2) of the Act provides that section 112(j) applies if EPA misses a deadline for promulgation of a standard under 112(d) established in the "source category schedule for standards":

VOL 58 ISS 132 JL 13 1993 UMI

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit program under title V), the owner or operator of any major source in such category or subcategory shall submit a permit application.

The owner or operator of a major source subject to the provisions of section 112(j) is required under subsection 112(j)(3) to submit a complete permit application 18 months after the missed promulgation deadline:

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit.

Subsection 112(j)(3) also requires that EPA must establish requirements for permit applications, including content and criteria for the reviewing agency to determine completeness. In addition, subsection 112(j)(3) provides that if the reviewing agency deems the application incomplete, or disapproves the application, then the applicant has up to six months to revise and resubmit the application.

Subsection 112(j)(5) establishes a requirement for case-by-case MACT determinations:

The permit shall be issued pursuant to title V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d).

Subsection 112(j)(5) also establishes compliance dates:

No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

If the applicable criteria for voluntary early reductions, established under section 112(i)(5), are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emission reductions are achieved by the missed promulgation date.

In the event that EPA promulgates a given MACT standard for the applicable source category before the permit application is approved, the permit must reflect this standard, not the case-by-case MACT determination, and the source shall be required to comply by the date provided under subsection (i). In this case, the owner or operator of an existing source has no more than 3 years to comply, and the owner or operator of a new source must comply immediately upon issuance of the permit. However, under section 112(i)(2) any new source that commenced construction or reconstruction between proposal and promulgation of the MACT standard may elect to comply with the proposed standard for three years in lieu of the promulgated MACT standard, if the promulgated MACT standard is more stringent than the proposal.

In the event that EPA promulgates a given MACT standard after the permit containing case-by-case emission limits is issued, section 112(j)(6) allows a longer compliance period:

If the Administrator promulgates a standard under subsection (d) * * * after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

2. Definition of Emission Unit and Applicability of New Source MACT

MACT determinations must be made on a wide variety of emitting equipment at major sources in different source categories. Today's proposed rule defines "emission unit" in a way designed to allow States broad flexibility in designing case-by-case MACT emission limitations. This flexibility is essential because of the variety of source categories, diverse in size and complexity, which may be subject to 112(j). A narrower definition of "emission unit" would make it difficult for States to tailor MACT determinations to the equipment specific to a particular source category.

One approach the EPA considered, but rejected, would be to require new source MACT only on those emission units that are in and of themselves "major" at a major source—i.e. those emission units at a major source which themselves emit at least 10 tons per year or more of a single HAP, or 25 tons per year or more of a combination of HAPs.

Prior to a missed promulgation deadline, through section 112(g) the statute clearly requires new source MACT only on constructed or reconstructed major sources. Any other equipment added to an existing major source would be a modification (unless specifically exempted from regulation by 112(g)), and would be subject to existing source MACT levels of control. However, the language of section 112(j) is somewhat different from that of 112(g). Section 112(j) does not specify that new source MACT is only applicable to new major sources.

The EPA believes that the standards developed through section 112(j) must anticipate and reflect the likely requirements of section 112(d) and 112(h). The basis for the applicability of new source MACT selected is the section 112(j)(5) requirement that case-by-case MACT standards must be:

"emission limitations for the hazardous air pollutants * * * emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)."

As discussed in section I.C. (below) of this preamble, it is the judgement of EPA that 112(j) case-by-case MACT standards must require new source MACT to be applied to those same sources to which a standard promulgated under section 112(d) would apply new source MACT. Therefore, it is necessary to determine what entity is considered a new source under section 112(d) for the purpose of implementing MACT standards.

Section 112(a) provides that "new source" shall mean a "stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Section 112(a)(3) gives "stationary source" the same meaning as under section 111(a), i.e. any new "building, structure, facility, or installation"; thus the term stationary source clearly includes both major and area sources under section 112(a)(3). Section 112(d) requires MACT standards to be set for "sources," and "sources" can be both major and area. Once there is a 112(d) standard in place, any new source will be required to meet new source MACT emission limits, as defined by the standard.

If, however, the language of section 112(g) is interpreted as dispositive as to whether new or existing source MACT must be applied to any given increase in emissions, new sources within the definition in 112(a)(4) would escape having to comply with new source MACT under section 112(j). But if a MACT standard establishes a definition of source that would apply to a unit smaller than a "major source," this result would conflict with the requirement for section 112(j) case-by-

case MACT determinations to be "equivalent to the limitation that would apply to such source * * *." Yet under this reading, although major sources adding new non-major sources could avoid new source MACT on those new sources, if MACT is then set under 112(d) for area sources in that category, any new area source would have to meet new source MACT. This would be an anomlous result. Therefore EPA today proposes requiring new source MACT on all constructed or reconstructed emission units.

The EPA today requests comment on the desirability of requiring or not requiring new source MACT on all new emission units, and also specifically requests comment on the question of whether new source MACT should be required only on those emission units that are in and of themselves "major" at a major source.

3. Subsequent Changes to a Major Source

The EPA believes that section 112(j) emission limitations apply to subsequent changes made at major sources already complying with case-by-case MACT limitations under 112(j), where EPA has not promulgated a final standard for the source category under section 112(d). The EPA intends to require, in subpart A of this part (§ 63.5(b)(6)), that subsequent changes to a major source already complying with a section 112(d) or (h) standard shall comply with established MACT emission limitations for the source to which changes are made. Therefore requiring subsequent changes to sources already meeting case-by-case MACT emission limitations under section 112(j) would satisfy the 112(j)(5) statutory requirement that case-by-case MACT determinations under 112(j) be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)."

The EPA requests comment on this approach, as well as on the alternative approach of treating 112(j) as a one time permitting requirement applicable 18 months after EPA fails to set a relevant MACT standard, and therefore requiring subsequent changes at major sources with 112(j) permits to comply only with section 112(g).

C. Implementation Principles

In designing guidance for case-by-case MACT determinations, the EPA's thinking is guided primarily by the need for 112(j) standards to be substantively equivalent to 112(d) MACT standards. Subsection 112(j)(5) requires that a case-by-case MACT determination be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)," and subsection 112(j)(6) requires eventual compliance with subsequently promulgated 112(d) standards. Consistency in standard-setting will smooth a major source's eventual transition from compliance with 112(j) to compliance with 112(d), making implementation of toxics control easier on both States and industry.

The EPA's other major goal in establishing 112(j) requirements is to achieve and maintain consistency across section 112 programs. The EPA intends for administrative and operational requirements under 112(j) to be consistent with the requirements of section 112(g) rules for construction, reconstruction, and modification of major sources (to be proposed as §§ 63.40 through 63.48 of this subpart) and with the general provisions for section 112 (established in subpart A of this part). Section IV. A. of this preamble discusses likely overlapping requirements and major substantive differences across these programs.

III. Summary and Rationale for §§ 63.50 Through 63.57 of the Proposed Rule

This section of the preamble is a detailed discussion of the provisions of the proposed rule. This discussion outlines the rationale for the decisions that were made, and describes other options that were considered.

A. Section 63.50: Applicability

1. Section 63.50(a). Applicability

Paragraph 63.50(a) of the proposed rule indicates that the intent of the rule is to implement section 112(j) of the Act. This paragraph indicates that 112(j) applies to the owner or operator of a major source of HAPs after the "effective date of a title V program" in each State, but not before May 15, 1994.

(a) Effective date of title V. The meaning of "effective date of a title V program" is indicated in the final regulations for implementation of title V of the Act. Under these regulations, States are required to submit a permit program for review by the EPA on or before November 15, 1993. The EPA is required to approve or disapprove the permit program within one year after receiving the submittal. The EPA's program approval date is termed the "effective date."

The effective date of title V permit programs is defined in section 502(h) of the Act, which says "The effective date of a permit program, or partial or interim program, approved under * * * [title V] * * * shall be the date of promulgation." This definition is incorporated into the operating permit regulations as 40 CFR 70.4(g).

This language refers to two types of title V programs: one type where the EPA "approves" the title V program under 40 CFR part 70 and another type where the EPA "promulgates" a program under 40 CFR part 71. Programs "approved" by the EPA under part 70 will be developed by the State or local area and submitted to the EPA for approval. The language in section 502(h) of the Act makes these programs immediately effective upon EPA approval. Programs "promulgated" by the EPA under part 71 are anticipated to be rare, and they occur only where a State failed to submit a program, submitted a program that EPA could not approve, or has failed to adequately administer an approved program. For example, the EPA is required by section 502(d)(3) of the Act to promulgate and administer a title V program if, by November 1995, the EPA has not approved the State program. The language in section 112(j), because it refers to the effective date of a title V program in any State (and not by any State), means that the program will apply to both the EPA "approved" and "promulgated" programs.

The title V regulations provide for approval of "interim" and "partial" programs in certain limited circumstances. The EPA believes that, because partial programs must ensure compliance with "all requirements established under section 112 applicable to 'major sources' and 'new sources'," and interim programs must "substantially meet the requirements of [title V]," an interim or partial program would trigger the requirements of section 112(j).

(b) Major source. Section 112(j) applies only to an owner or operator of a major source. Section 112(a)(1) of the Clean Air Act defines major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The determination of whether a source is major is based on the source's "potential to emit". A source's potential to emit is based on its capacity to emit hazardous air pollutants considering federally enforceable limits on that capacity. If a source's potential to emit is equal to or greater than 10 tons/yr of

VOL 58 ISS 132 JL 13 1993 UMI

a single HAP, or 25 tons/yr of any combination of HAPs, the source is a major source. The EPA is currently developing a rule to define a source's potential to emit for section 112 standards. This rule will also provide ways for an owner or operator of a source to establish voluntary, federally-enforceable restrictions to limit the source's potential to emit below the major source threshold. If a source limits its potential to emit to below the major source threshold it will not be subject to the provisions of section 112(j) as long as the source maintains its emission status.

The EPA specifically requests comment on how area sources that increase their emissions enough to become major sources after the 112(j) effective date should be treated under 112(j). The EPA is considering treating these sources as existing major sources as of the date that they achieve that major source emissions threshold, but treating any new source within the major source as a new source for the purposes of section 112(j).

4. Section 63.50(b). Relationship to State and Local Requirements

Many State and local regulatory agencies maintain regulatory programs that involve toxic air pollutant reviews for stationary sources. This paragraph clarifies that the requirements of section 112(j) do not pre-empt any requirements of these programs that are at least as stringent as the proposed rule.

5. Section 63.50(c). Retention of State Permit Program Approval

Some States may not currently have specific legislative or administrative authority sufficient to establish the regulations required by section 112(j). Paragraph 63.50(c) requires that States obtain such statutory authority as a condition of retaining their part 70 permit program approval.

B. Section 63.51: Definitions

1. Terms Defined in the General Provisions

A number of terms used in the proposed rule will be defined for all of 40 CFR part 63 by the General Provisions, to be contained in subpart A of this part. The terms which will be defined in the General Provisions include:

Administrator
Effective date
Hazardous air pollutant
Major source
Permit program
Potential to emit
Relevant standard

Today's rule contains a definition of "potential to emit" that is the same as the definition in part 70. The EPA is currently developing a definition of "potential to emit" to be included in subpart A of this part. The EPA intends that if subpart A of this part is promulgated before today's rule is promulgated, the definition included in subpart A will be included in the final rule implementing section 112(j) of the Act. The EPA requests comment on the definition of "potential to emit" for the purposes of this rule.

2. Terms Related to Maximum Achievable Control Technology

Definitions for the following terms related to levels of control technology are included in § 63.51 of the proposed rule:

Maximum Achievable Control Technology
Control Technology
Maximum Achievable Control Technology (MACT) Floor
Maximum Achievable Control Technology (MACT) Emission Limitation for Existing Sources
Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources

The basis for all of these definitions is statutory language contained in section 112(d) of the Act. The term "maximum achievable control technology" appears only in section 112(g) of the Act, and does not appear elsewhere in section 112. There is, however, considerable legislative history indicating that this term refers to the level of control required by section 112(d) emission standards. This term was used in this context in the House Bill, H.R. 3030. For purposes of the definitions in the proposed rule, the EPA assumes that "maximum achievable control technology" is a reference to the "maximum degree of reduction in emissions" language contained in section 112(d)(3). The minimum control technology requirements of section 112(d), often referred to as the "MACT floor" are cited a number of times in the proposed rule. To avoid repeating these requirements each time, the regulation includes a definition of "MACT floor."

3. Terms Affecting the Extent of Coverage by Maximum Achievable Control Technology

The following terms are used to describe equipment subject to a MACT determination:

Emission point
Emission unit
New source

An "emission point," in this regulation, is defined narrowly to refer to any individual point of release to the atmosphere. However, an individual MACT determination will often be made at once for a number of emission points. The term "emission unit" is used to refer to the collection of all emission points considered when a MACT determination is made.

The term "new source" refers to an emission unit for which construction or reconstruction is commenced after the section 112(e) scheduled deadline for a relevant standard, or after proposal of a relevant standard under section 112(d) of the Act, whichever comes first. "New source" is defined in Clean Air Act section 112(a)(4) as follows:

"* * * a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source."

Section 112(j) requires States to establish case-by-case MACT limitations where EPA has failed to promulgate a relevant standard, and there may be instances where a 112(j) MACT limitation is required for a source category for which a standard has not yet been proposed under section 112(d). Since 112(j)(5) refers explicitly to case-by-case standards for new sources, the EPA has determined that the Act did not intend that the EPA's failure to propose a standard implies that no sources in that source category, no matter what the date of construction, could ever be considered "new." The EPA has therefore selected the 112(e) scheduled deadline as the date, under a 112(j) case-by-case MACT determination, most closely equivalent to the 112(d) proposal date for the purposes of defining "new source," because had EPA met the schedule in setting a standard under 112(d) the proposal could not have been any later than the date in the schedule. The EPA requests comment on this determination of what sources should apply new source MACT under 112(j).

4. Federally Enforceable

The Subpart A General Provisions will include a definition of "federally enforceable" which lists the types of limitations and conditions that are considered federally enforceable. The EPA believes that, for purposes of Subpart B requirements, this definition should contain additional language to ensure that the case-by-case determinations are practically enforceable. A more detailed discussion of EPA's rationale for this determination is contained in section III.E. of this

preamble. Section 63.51 includes a definition of "federally enforceable" that incorporates these concepts. The EPA requests comment on this definition.

C. Section 63.52: Requirements for Existing Sources

Section 63.52 of the proposed rule requires that case-by-case MACT determinations for existing sources be made through the title V permit process. The overall process for case-by-case MACT determinations for existing sources is shown in Figure 1. The owner or operator of an existing major source must submit a permit application containing case-by-case MACT demonstrations for all emission units in a source category not later than 18 months after the missed promulgation date for that source category. The State must then review and approve or disapprove the permit in accordance with the procedures and principles set out in part 70 and in § 63.55 of this proposal, and, EPA suggests, in accordance with the procedures and principles set out in the case-by-case guidance. Section 63.52(c)(1) of the proposal implements the requirement in section 112(j)(4) of the Act that if a source's permit application is incomplete or disapproved by the permitting authority, the source has up to six months to resubmit and meet the requirements of the permitting authority.

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VOL 58 ISS 132 JL 13 1993 UMI

CASE-BY-CASE MACT DETERMINATION PROCESS FOR EXISTING SOURCES

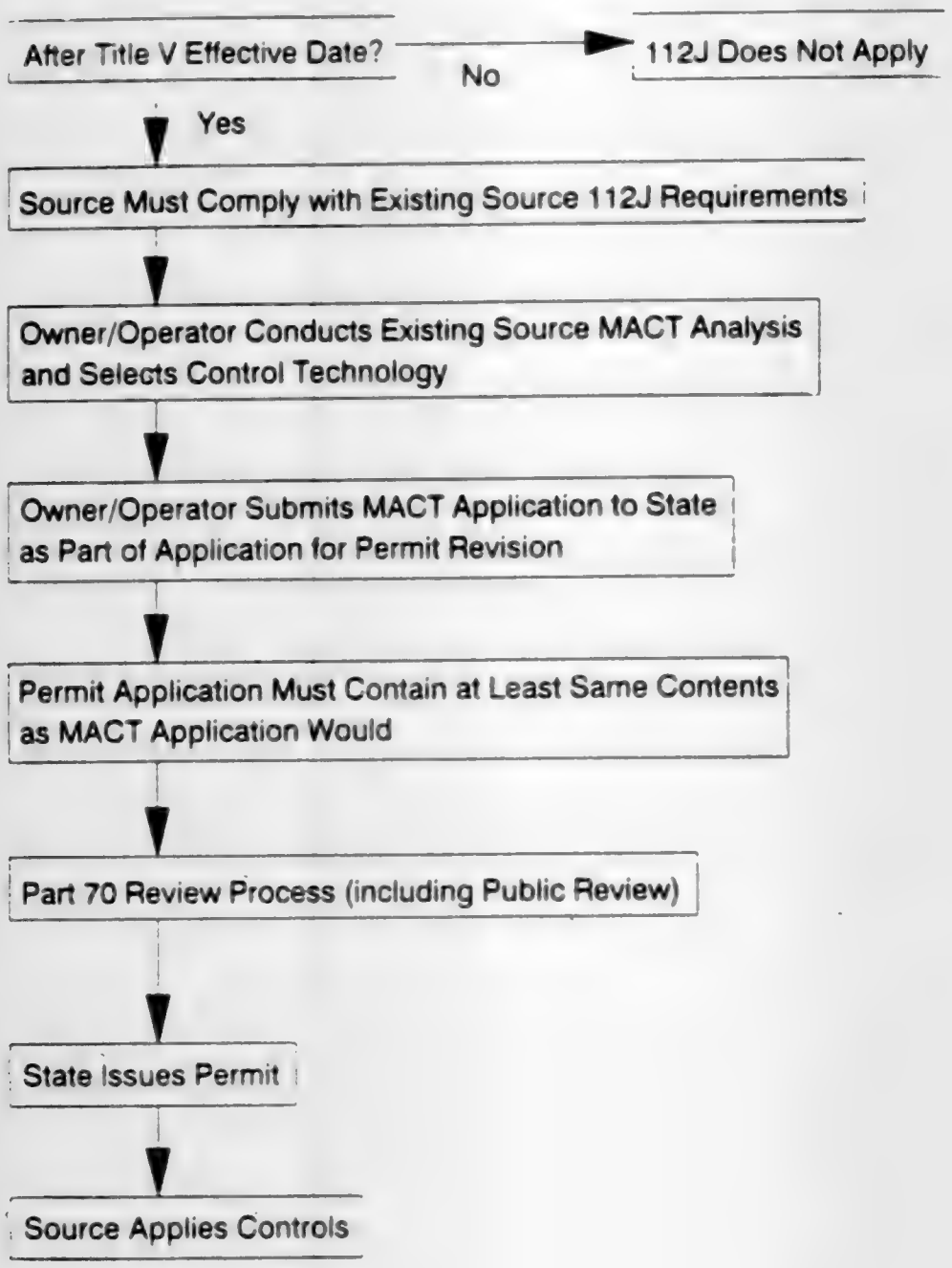

Figure 1

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For existing sources, the permitting authority at its discretion may require compliance as expeditiously as practicable, but within no more than three years from permit issuance. In addition the permitting authority may allow an extra year, on a case by case basis, where necessary to the installation of controls. The EPA believes that this approach is consistent with section 112(j)(5) which requires that MACT standards must ensure compliance ". . . immediately for new sources and, as expeditiously as practicable, but not later than the date three years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i)."

D. Section 63.53: Application Content for a Case-by-Case MACT Determination

Section 63.53 of the proposed rule describes the information the owner or operator is required to provide with an application for a MACT determination. These information requirements are designed to identify the emission units to be controlled and to demonstrate that the selected control technology for those units is consistent with or exceeds the requirements of the statute. Further information on the uses of this information are described in the Draft Guidelines for MACT Determinations.

E. Section 63.54: Preconstruction Procedures for New Sources

Section 112(j), when read together with title V, presents certain ambiguities which must be resolved in this rulemaking. Section 112(j) requires case-by-case determinations of MACT for new as well as existing sources. Section 112(j)(5) directs that case-by-case MACT is to be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)." The timing for application to new sources of any standard promulgated under section 112(d) is in turn articulated in section 112(i)(1), which prohibits the construction of a new major source or reconstruction of an existing major source except where there has been a determination that the construction or reconstruction will meet the MACT standard.

However, the timing of this determination for new sources under section 112(j) is different than the timing required by the statute for section 112(d) standards. Section 112(j) requires that the permit containing the case-by-case determination of MACT be "reviewed and approved or disapproved according to the provisions of section 505" (section 112(j)(4)) and issued "pursuant to title V" (section 112(j)(5)). This conflicts with a requirement for preconstruction review for new sources subject to only section 112(j), because title V does not give EPA discretion to require applications for sources newly subject to the title earlier than 12 months after commencing operation. (Section 503(c)). Because the part 70 permit must be issued within 18 months of the application, it could be up to 30 months after operation before section 112(j) requirements would be incorporated into the title V permit.

As noted above, the EPA believes that sources subject to case-by-case MACT determinations should undergo preconstruction review. While in some cases States may require review under the part 70 program to occur in the preconstruction phase, the Act does not authorize EPA to mandate this result. It follows that, while title V is sufficiently comprehensive to handle the section 112(j) review process for existing sources, it is not broad enough in its mandatory coverage to implement section 112(j) for new sources. However, EPA believes that the preconstruction review requirements of section 112(g) will be applicable to many new sources subject to 112(j). For example, construction of all new major sources, and all new sources constructed as part of a modification of an existing major source, would require preconstruction review under section 112(g). States also have the option of establishing an accelerated voluntary administrative process for preconstruction review of new sources subject to section 112(j), to cover those sources not subject to the requirements of 112(g). EPA is strongly recommending to States that they provide these procedures.

As an alternative to relying on the preconstruction review procedures of section 112(g) for new major sources, EPA considered relying on the language of section 112(i)(1) to require preconstruction review of new sources under 112(j). However, section 112(i)(1) requires preconstruction review only for new major sources and therefore adds nothing to the preconstruction review requirement applicable under 112(g). EPA solicits comment on its decision to rely on the preconstruction review requirements of 112(g) in this proposal.

Section 63.54 of today's proposed rule describes an optional preconstruction review process for new sources not required to undergo preconstruction review under 112(g). States need not provide this additional preconstruction review opportunity. Moreover, since the preconstruction review process set forth in § 63.54 is optional, States may provide for a different process. However, an alternative process for making these determinations would not necessarily yield federally enforceable conditions. The procedures set forth in § 63.54 contain the elements EPA believes to be necessary for a federally enforceable preconstruction MACT determination. The EPA solicits comment on these minimum procedures, and in particular whether different criteria are appropriate.

As discussed below, States may further enhance this process to allow for incorporation of the MACT determination by administrative amendment.

The EPA believes that section 112(j) alone does not provide the authority to impose federally enforceable restrictions that could implement case-by-case MACT determinations. The EPA solicits comment on whether States should have the option of submitting, for approval under section 112(l), programs establishing administrative review processes that would allow the imposition of federally enforceable MACT determinations. The EPA proposed a rule under section 112(l) of the Act on May 19, 1993 (58 FR 29296). This proposal set forth the criteria for approval of state programs to implement the requirements of section 112. This proposal did not specifically address approval of state programs establishing federally enforceable preconstruction review processes for section 112(j). However, such programs could be approved under section 112(l) without difficulty wherever they could be shown to be at least as stringent as section 112(j) requirements.

The majority of new sources subject to 112(j) will be subject to section 112(g) preconstruction review requirements prior to filing their permit applications under part 70. The overall process for MACT determinations contained in § 63.54 of the proposed rule is shown in Figure 2. For those sources not subject to preconstruction review under 112(g), the optional review process begins with a MACT analysis by the owner and operator. This MACT analysis should be consistent with the Guidelines for MACT Determinations (hereafter referred to as the Guidelines), including general principles described in § 63.56(b). The owner or operator provides an application for a MACT determination to the reviewing agency (generally a State or local agency to whom authority for implementation of the program has been delegated). Requirements for the contents of this application are outlined in the Guidelines and in § 63.53. This application for a MACT determination

is then evaluated by the reviewing agency according to procedures described in § 63.54(b). If approved, the reviewing agency will issue a Notice of MACT Approval containing certain basic elements described in § 63.54(c). Provisions dealing with compliance with the requirements of the Notice of Approval are described in §§ 63.54 (d) through (h).

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VOL 58 ISS 132 JL 13 1993 UMI

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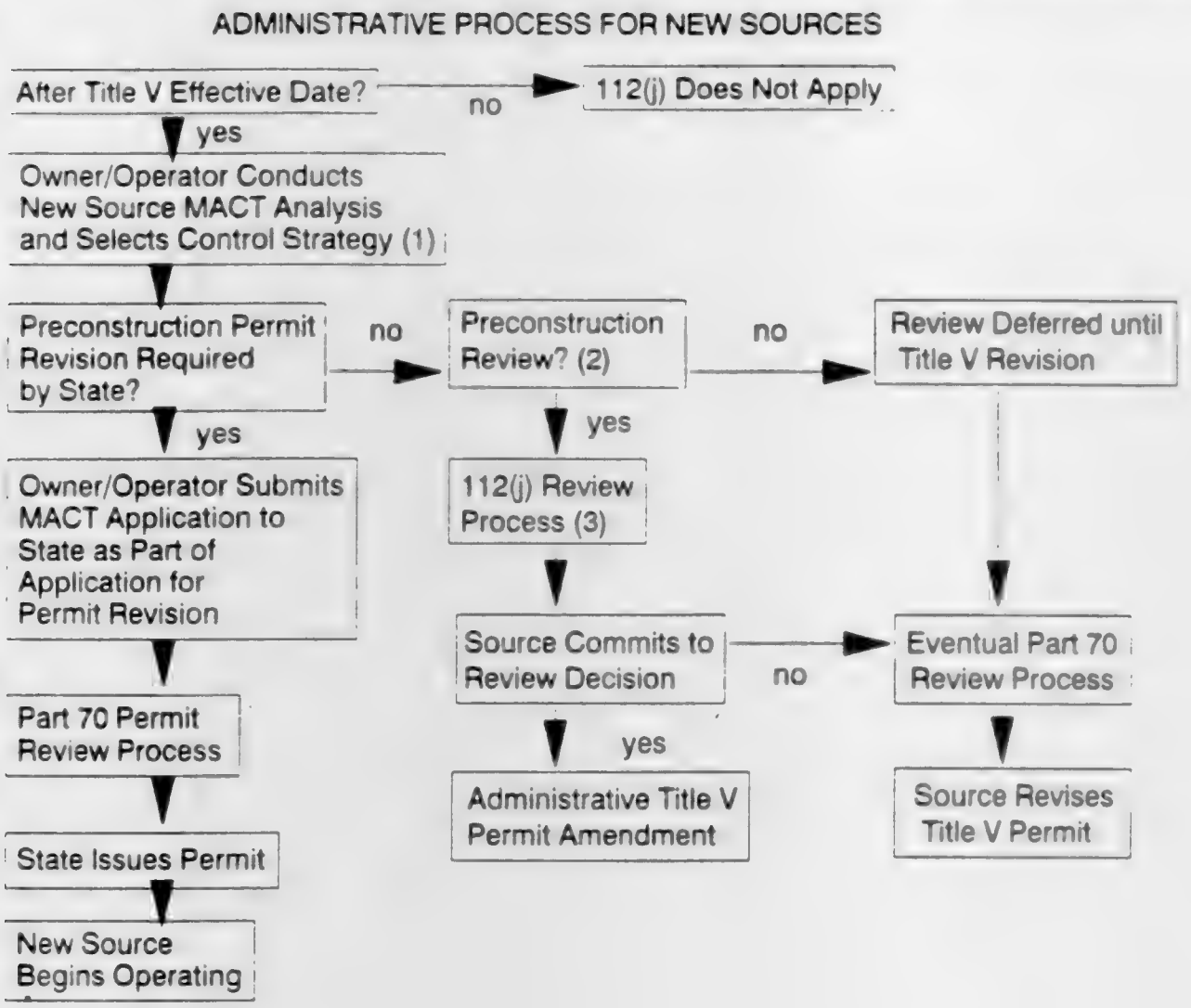

(1) Control Strategy Must Be Adopted Irrespective of Review Status

(2) Preconstruction Review May be Required under 112(g) for Some Sources or May Occur at the Applicant's Request

(3) 112(j) Review Process Detailed in Figure 2a

Figure 2

112(J) REVIEW PROCESS FOR NEW SOURCES

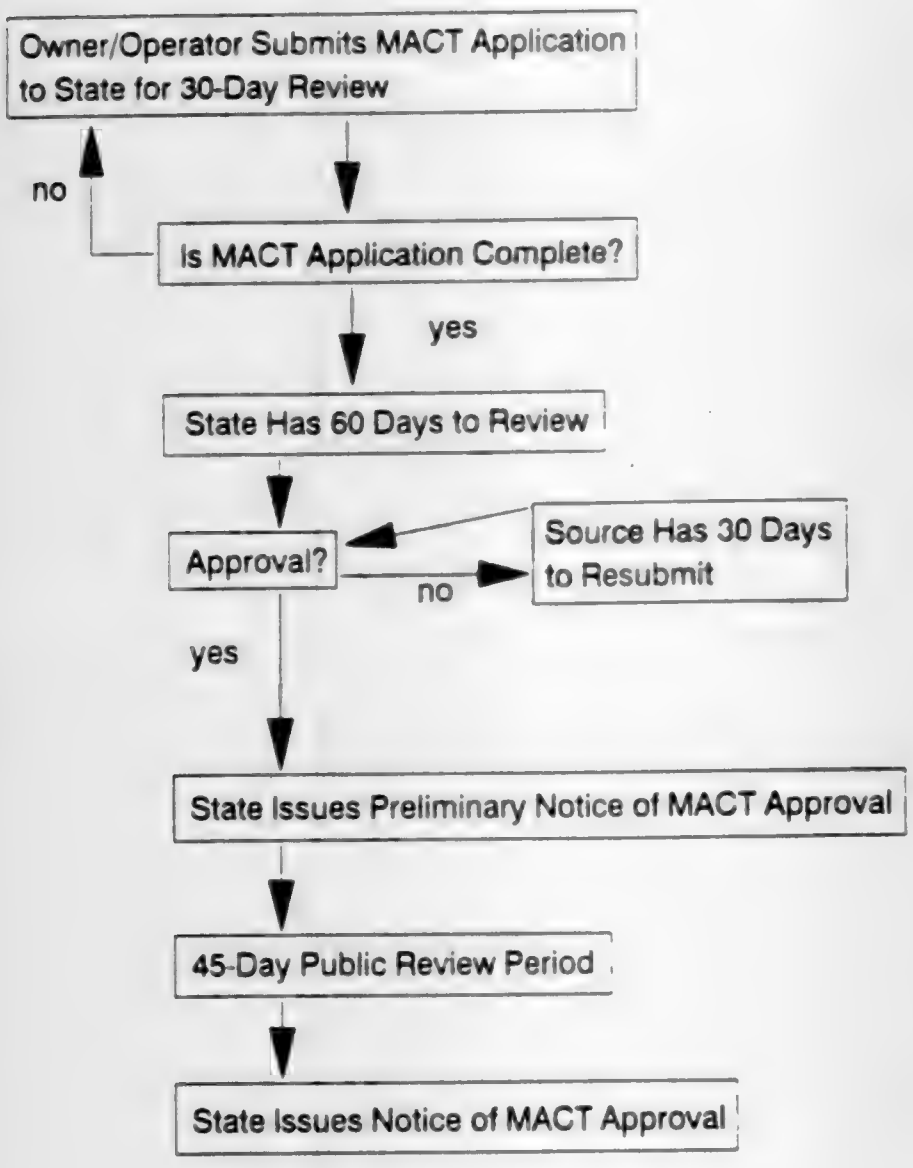

Figure 2a

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The EPA believes that there are substantial implementation advantages to preconstruction review for sources subject to 112(j). Preconstruction review provides sources with the benefit of the State's control determination prior to construction. This minimizes the possibility that initial control technology installed by a source in anticipation of a 112(j) new source MACT determination will need to be replaced in order to comply with the eventual requirements of 112(j) as well as the subsequent 112(d) MACT determination. The EPA's past experience in enforcing air quality regulations suggests strongly that it would be very difficult to require substantial changes in the design of equipment once it is in place. Therefore the EPA strongly urges States to establish a preconstruction review process for sources subject to the requirements of 112(j). The EPA today requests comment on the implementation consequences for 112(j) and 112(d) when preconstruction review is not required.

Another benefit of preconstruction review is that a State can also require compliance earlier than permit issuance. If, under State law (through section 112(l) delegation), a State wishes to enforce case-by-case MACT at startup for new sources, then preconstruction review is the avenue for enforcement of such a requirement. The EPA today specifically requests comment on the likely consequences of the lack of such an enforcement mechanism at the federal level.

The EPA is, however, sensitive to the concern that preconstruction review should not lead to unreasonable delays. For sources not covered by 112(g) preconstruction requirements, § 63.54 contains streamlined administrative procedures which should ensure that the preconstruction review is done quickly.

The process outlined in § 63.54 begins with a 30-day completeness determination. Once a complete application is received, approval or an intent to disapprove the application is required. If an intent to disapprove is issued, the owner or operator is given the opportunity to provide further information.

Section 63.54(b) establishes an administrative process for reviewing a request by an owner or operator for a MACT determination. If the determination is to be federally enforceable, the proposed decision to either approve or disapprove the application is then subject to public review. Today's proposed rule would provide for public review through issuance of a notice containing all the relevant background information about the application and 45 days for the public to comment on whether the application should or should not be granted. In order to expedite approval of noncontroversial case-by-case MACT determinations the proposed rule would allow such determinations to be made final following the close of the comment period if no adverse comments have been received. If adverse comments are received a final notice must be published either approving or disapproving the application and addressing the comments.

Today's proposal requiring public review prior to approval of case-by-case MACT determinations is consistent with current EPA practice in other Clean Air Act programs where federal enforceability is required. For example, 40 CFR 51.161 requires a 30 day public comment period for review of an agency's proposed approval or disapproval of a minor new source permit. Similarly, in a 1989 rulemaking EPA enumerated five criteria that must be met before a State-issued operating permit can become federally enforceable. One of those criteria is that the permit must be subject to public review before issuance. This criterion was described in the notice as being consistent with the EPA's current practice for construction permits codified at 40 CFR 51.161. (See 54 FR 27283, June 28, 1989).

Thus, the Agency's current practice is to require public review of decisions required to be federally enforceable. As stated by the Supreme Court in *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Automobile Insurance Co. et al,* 463 U.S. 27, 43 (1983), "an agency changing its course * * * is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." In this case there is an established practice of requiring public review as a prerequisite to federal enforceability. EPA proposes to follow that practice in this case unless a more compelling reason is identified for either changing that practice or deviating from it in this specific case.

As discussed above, the EPA is proposing to require public review as a prerequisite to federal enforceability of case-by-case MACT determinations. Comment is specifically requested concerning whether public review should be a prerequisite to federal enforceability of case-by-case MACT determinations, and if it should not, what justification there would be for deviating from established practice.

In § 63.51 of the regulation, EPA has established a definition for federally enforceable for application to section 112(j) MACT determinations. This definition is based on the five criteria for federal enforceability established in 40 CFR parts 51 and 52 (54 FR 27274). Part of the criteria for conferring federal enforceability to a State or locally established emission limitation requires the emission limitation to undergo some public scrutiny and be kept in standardized files in EPA's Regional Offices. In addition, the emission limitation must be enforceable as a legal and practical matter.

In *United States* v. *Louisiana-Pacific Corporation* (682 F. Supp. 1122 (D. Colo. Oct. 30, 1987) and 682 Supp. 1141 (d. Colo. March 22, 1988),) the court ruled that permit conditions that contained blanket emission limits (i.e. tons/yr) were not enforceable as a practicable matter because such restrictions "* * * would be virtually impossible to verify or enforce." In order to be federally enforceable, operational or production limitations including limitations on quantities of raw material consumed, fuel combusted, hours of operation, or conditions which specify that the source must install and maintain controls that reduce emission to a specified emission rate or level, must be imposed on the source in addition to a blanket emission limitation. These operation and production limitations should be based on the shortest practicable time period, generally not to exceed one month. EPA has taken the position that requirements for a monthly limit prevents the enforcing agency from having to wait for long periods of time to establish a continuing violation before initiating enforcement action.

To ensure federal enforceability, the owner or operator must at a minimum be subject to monitoring, recordkeeping and reporting requirements sufficient to document the source's compliance with proper maintenance and operational requirements. Because major sources obtaining MACT determinations will incorporate such determinations into a title V permit, the regulations that are the subject of this preamble have included a requirement that the monitoring, recordkeeping, and reporting requirements required for a case-by-case MACT determination be consistent with the compliance requirements contained in part 70. Part 70 requires monitoring, recordkeeping and reporting sufficient to demonstrate compliance with the emission standard—as well as compliance with maintenance and operational requirements.

VOL
58
ISS
132
JL
13
1993
UMI

EPA believes that consideration of the part 70 compliance requirements within the MACT determination process will be much more efficient for both the source and the reviewing agency. If the public review process for the MACT determination is substantially equivalent to that which will be required for a title V permit (under part 70 or part 71), the source would not need to undergo another public review of the compliance requirements to assure that the requirements are sufficient for the purposes of issuing the title V permit. In addition, consideration of these requirements will prevent a source from having to retrofit monitoring equipment in order to obtain a title V permit. States may also enhance the preconstruction process by the addition of a formal 45-day review period and notice to affected States, consistent with 40 CFR 70.8.

In addition to part 70 compliance requirements, additional requirements may need to be considered at the time of the MACT determination. Section 114 of the Act directs EPA to require enhanced monitoring and compliance certifications for all major sources. For the same reasons stated for considering the part 70 compliance requirements, the EPA believes that these section 114 enhanced monitoring and compliance principles should also be considered at the time of the MACT determination, and enforced at start-up.

The end result of the administrative review process for new sources is a determination set forth in a document that is termed a "Notice of MACT Approval." Requirements for this Notice are provided in paragraph 63.54(c) of the proposed rule. This Notice is required to contain the emission limitations, notification, operating and maintenance, performance testing, reporting, recordkeeping, compliance dates, and any other requirements needed to ensure that the case-by-case MACT emission limitation will be met.

The Notice of MACT Approval serves to provide the obvious mechanism for federal enforceability of these conditions in the interval between initial operation of the new source and the time the conditions are added to the part 70 or part 71 permit.

The EPA recognizes that there are cases for which sources would prefer to minimize delays in the process, particularly for operations which change relatively frequently, and where the owner or operator is willing to control emissions from those changes with technologies that could be recognized as best available controls. The EPA requests comment on further procedures to achieve this goal.

The EPA is especially interested in exploring suggestions that the general permit procedures, outlined in 40 CFR 70.6(d), be available for such situations. The general permit may have application for section 112(j) determinations where the permitting authority is able to make a presumptive determination of MACT for a given type of source. The general permit would have to set forth the controls required by part 70. Once the general permit is issued, application of the MACT determination at a particular source would involve merely a determination that the source falls within the source category covered by the general permit.

As discussed in the preamble to the operating permit regulation, general permits may be issued to cover discrete emissions units at permitted facilities. 57 FR, at 32279. While a general permit cannot be used to modify the terms of an existing title V permit, it may be issued to cover a change at an existing plant, such as addition of a new MACT-emitting unit, that would otherwise be eligible to apply for a new individual permit. In that case, the requirements of the general permit could be incorporated into the permit for the facility at renewal.

The EPA solicits comment on the approach to preconstruction review described above. EPA specifically solicits comment on whether 112(j) can be interpreted to require mandatory preconstruction review for all new sources.

F. Section 63.55: Incorporation of Requirements for New Sources Into the Operating Permit

Section 63.55 describes the relationship of the MACT review process for new sources to the operating program requirements pursuant to title V of the Act amendments. The requirements for title V permits, contained in 40 CFR part 70, were published on July 21, 1992 (57 FR 32250). For existing sources, the approach to establishing an administrative process for determinations under section 112(j) of the Act is to rely on the title V review process as the mechanism for establishing MACT requirements. For new sources, however, the EPA believes that reliance on the title V permit process may not be sufficient. First, the title V requirements clearly do not require a new "greenfield" plant to apply for an operating permit until 1 year after the plant begins operation. Because the title V permit must be issued within 18 months of the application, it could be up to 30 months after commencement of operation before section 112(j) requirements would be incorporated into the permit. Second, the title V requirements do not ensure that a MACT determination will be conducted before construction. While in some cases States with title V programs may require preconstruction reviews as part of the operating permit process, this will not always be the case.

Therefore, while for existing sources the title V permit process is sufficiently comprehensive to handle section 112(j) reviews, the EPA believes, based upon the above considerations, that when the title V process does not occur until after construction has begun, new sources should be subject to preconstruction review. All new major sources and new sources constructed as part of a modification of an existing major source will likely be subject to preconstruction review under section 112(g), and the proposed rule provides a mechanism, optional with the State, for providing a preconstruction review process yielding a federally enforceable determination of MACT.

Regardless of the timing for incorporation of 112(j) new source determinations into the operating permit, there are certain requirements that apply. The title V permit must be revised or issued according to procedures set forth in §§ 70.7 and 70.8. In addition, the permit must incorporate compliance provisions of § 70.6. If, during the EPA's review of the section 112(j) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.

These requirements are obviously satisfied either when part 70 requires revision to an existing title V permit prior to construction, or when the permitting authority otherwise requires incorporation of conditions into a title V permit as a step in the section 112(j) new source case-by-case MACT determination process. However, even where there is no formal incorporation of conditions into a title V permit prior to operation, subsequent additional title V review may effectively be avoided if the State's section 112(g) or optional 112(j) process is "enhanced" to include the important title V procedures, thereby allowing for later incorporation into the title V permit by administrative amendment.

Section 70.7(d) of the operating permits rule defines an "administrative amendment" to include a revision that "[i]ncorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural

requirements substantially equivalent to those contained in §§ 70.7 and 70.8 of this Part * * * and compliance requirements substantially equivalent to those contained in § 70.6 of this part." This process of "enhancement" of preconstruction procedures was discussed in the preamble to the operating permits rule in the context of existing State new source review programs (see 57 FR, at 32289), but was not discussed in relation to section 112(j) because the procedures associated with section 112(j) determinations had not then been articulated. However, the language of § 70.7(d)(v) would allow for use of administrative amendments for an enhanced preconstruction review process, and the EPA believes such use is clearly within the intent of that provision.

Enhancement of the preconstruction review process may be partial only, incorporating some elements of the required part 70 review or compliance provisions in the preconstruction review process itself, with the remaining elements occurring during the title V process. For instance public review of the MACT determination that meets the requirements of § 70.7(h) need not be repeated at the time of incorporation into the title V permit. However, for the administrative amendment procedures to be available for determinations that have been through an enhanced process, the public, EPA and affected States must have had the opportunity to review all aspects of the MACT determination, including any compliance provisions required under § 70.6. Thus, public review during the preconstruction review process would not suffice for purposes of title V if the process did not specify the application of compliance provisions substantially equivalent to those in § 70.6, including monitoring, reporting, recordkeeping, and compliance certification.

G. Section 63.56. MACT Determinations

As discussed previously, §§ 63.52 and 63.54 require MACT determinations, after the effective date of a title V permit program in a State, for all HAP-emitting equipment that is located at a major source and is in a source category for which the Agency has failed to promulgate a maximum achievable control technology (MACT) standard under sections 112(d) or 112(h) of the Clean Air Act within 18 months after the date listed in the source category schedule for standards. This section of the preamble discusses the EPA's proposed procedures for making these MACT determinations. These procedures include technical review procedures needed to establish a MACT emission limitation and a corresponding MACT control technology. In the proposed rule, the overall process for MACT determinations is outlined in § 63.56. In addition to the proposed rule, EPA is making available today a draft document entitled Draft Guidelines for MACT Determinations under 112(j) (EPA–450/3–92–007). This document will contain more details on both technical and administrative procedures.

The primary emphasis in the MACT guidelines is on the procedures for case-by-case MACT determinations when no applicable MACT standard has been proposed by the EPA. The procedures for determinations after MACT standards have been proposed are more straightforward.

Section 63.56 reviews a number of general principles that would govern MACT determinations under the proposed rule. In general, the purpose of a case-by-case MACT determination is to develop technology-based limitations for HAP emissions that the Administrator (or a permitting agency to whom authority has been delegated) approves as equivalent to the emission limitations required for the source category if promulgated MACT standards were in effect under section 112(d) or section 112(h) of the Act.

The EPA believes that if a MACT standard has been proposed, but not yet promulgated, this proposed standard is the best estimator of the Agency's final action, and therefore should be considered in establishing a case-by-case MACT emission limitation, and followed unless the State can adequately support an alternative. Accordingly, paragraph 63.56(a)(1) requires that in the absence of a supportable alternative, the selected control technology should be consistent with any such proposed standard. Of course, where improved information has become available since MACT proposal, such information should be considered.

When no MACT standard has been proposed, the proposed rule requires, for a determination by the reviewing agency, that the technology selected by the owner or operator is consistent with the overall requirements described in section 112(d) of the Act.

Section 112(d)(3) of the Act describes the general considerations for a MACT determination. A MACT level of control is "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory * * *." This paragraph of the Act continues to describe a number of items that might be considered in designing MACT standards such as material substitutions, enclosure of processes, capture and control of emissions, design and work practice standards, and operational standards. In the proposed rule, this list of items is included in the definition of "control technology" in § 63.51 of the proposed rule.

Section 112(d) also imposes certain minimum requirements on the determination of "maximum achievable control technology." Collectively, these minimum requirements are defined in the proposed rule as the "MACT floor."

For new sources, the MACT floor for a case-by-case MACT determination, consistent with section 112(d), is the level of control that is achieved in practice by the best controlled similar source. The EPA believes that the legislative history of section 112 suggests that the "best controlled similar source" could be located outside of the United States. The definition of MACT floor for new source MACT is therefore not restricted to sources in the United States, but could instead be based on a technology known to be used in practice on a similar source located anywhere.

For existing sources, the MACT floor for the case-by-case determination, consistent with section 112(d) of the Act, is an emission limitation equal to the average emission limitation achieved by the best performing 12 percent of existing sources in the category for categories or subcategories with 30 or more sources, or the average emission limitation achieved by the best 5 sources for categories with fewer than 30 sources. The MACT floor for existing sources also takes into account sources achieving the "lowest achievable emission rate" as defined for the criteria pollutant new source review program under section 171 of the Act, and excludes them from the floor calculation. The EPA interprets the "best performing 12 percent" to mean the best performing 12 percent of sources in the United States, because all sources in each category are in the United States. The phrase "in the United States" is added to the existing source MACT floor definition in order to clarify that territories and possessions of the United States are included.

The EPA believes that when information is available to define a MACT floor, the case-by-case MACT determination must take that information into account. The EPA

currently maintains a number of databases that can be used as a resource for information on available control technologies, or to obtain data to calculate the MACT floor. These databases include the National Air Toxics Information Clearinghouse (NATICH), the Best Available Control Technology/Lowest Achievable Emission Rate (BACT/LAER) Clearinghouse, and the Aerometric Information Retrieval System (AIRS)/ AIRS Facility Subsystem (AFS).

The EPA requests comment on the general principle that a "sufficient effort" be made to determine the MACT floor.

The EPA believes that in most cases where 112(j) requirements are triggered, the EPA will have collected a substantial amount of information on the source category. When it appears that the 112(j) requirements will take effect, the EPA intends to make available any such information it has collected. For example, the data collection may be readily available in EPA-proposed Background Information Document (BID) for which a MACT floor has been determined. The EPA believes that for such cases it would be reasonable to expect that such a BID would be taken into consideration in establishing a case-by-case MACT emission limitation.

In other cases, the EPA may have collected a great deal of information on the industry but a BID will not be available at the time of the 112(j) trigger date. The EPA anticipates sharing its information with interested parties. The EPA believes that it is reasonable to expect that a dialogue can be established with affected industries and States to review this information for purposes of establishing a case-by-case MACT emission limitation.

In other cases, the EPA may have collected only qualitative information on the types of control measures in existence for a source category. Such information would often be a good starting point for evaluating control options; in addition, such qualitative information may sometimes indicate which measures have been taken by the best performing 12% of the industry.

The EPA expects that, in rare cases, if any, the Agency will have collected little or no information about a source category that would be useful for the purposes of implementing section 112(j).

When a MACT floor can be determined, the proposed rule requires that the control technology selected by the owner or operator achieve an equal or greater level of control than that MACT floor. The owner or operator should consider, in determining whether to request approval of a control technology achieving a level of control greater than the floor, the cost, non-air quality health and environmental impacts and energy requirements of achieving that level of control. (See section 112(d)(2) of the Act)

When a MACT floor cannot be determined, the proposed rule requires a maximum degree of reduction in emissions with consideration to the cost, non-air quality health and environmental impacts and energy requirements. The MACT Guidelines discuss methods for establishing a case-by-case MACT emission limitation under these circumstances. These methods are patterned after similar guidelines for best available control technology (BACT) determinations under criteria pollutant permitting programs.

A significant issue for this rulemaking is how to avoid placing unmanageable information-gathering burdens on sources and permitting authorities—while still ensuring that emissions limitations under 112(j) are equivalent in stringency to MACT standards that the EPA would have issued. The EPA specifically requests comment on how to better define the "available information" that, at a minimum, an owner or operator must use to document a MACT floor finding and to select a MACT candidate. EPA also requests comment on the definition of "available information" that, at a minimum, a permitting authority must consider in determining emission limitations for new and existing sources under this rule.

Section 63.56(c) establishes the requirement that the permitting authority submit summary information pertinent to the MACT application to an EPA-established national database. The EPA requests comment today on whether approval or disapproval of a MACT application can be tied to submission of such data to the national database.

H. Section 63.57: Requirements After Promulgation of a Subsequent Standard Under 112(d)

Section 63.57 of the proposed rule sets out requirements for incorporating subsequent standards into an operating permit after the owner or operator has submitted a permit application for a 112(j) case-by-case MACT determination, or after a case-by-case MACT determination has been made under section 112(j). Section 63.57 implements the specific requirements of subsection 112(j)(6) of the Act.

Section 63.57 provides, as required in the Act, that if the EPA promulgates a 112(d) standard for a source category before approval of a 112(j) permit application for a source in that source category, then the permit must reflect the 112(d) standard. New sources must comply upon startup with the 112(d) rule except that, if the MACT standard is more stringent than the proposal, source commencing construction or reconstruction between proposal and promulgation may comply with the proposal for 3 years, then meet the final MACT standard.

If EPA promulgates a 112(d) standard after issuance of a 112(j) permit for a source in the relevant source category, then the permit must be revised upon renewal to reflect the 112(d) standard. However, the compliance period must be no longer than a total of eight years from the initial 112(j) compliance date, or the 112(d) promulgation date, whichever is earlier.

Paragraph 63.57(c) clarifies a State's responsibilities when a case-by-case MACT standard is more stringent than a subsequent 112(d) standard, and a permit containing that case-by-case standard has been issued. In that instance, the State is not required to revise the permit to reflect the less stringent 112(d) standard, but may presume that the more stringent case-by-case determination satisfies the requirements of both 112(j) and 112(d). The EPA believes that nothing in section 112 of the Clean Air Act requires pre-emption of these more stringent State standards.

IV. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act

A. 112j, 112g and 112d: Overlapping Requirements

States and sources implementing the requirements of section 112 of the Clean Air Act need to understand the potentially complex relationships among several interlocking provisions. The EPA is currently contemplating different interpretations of the relationship among the requirements of section 112 (d), (g) and (j).

Internal Consistency

As discussed in section II.C. of this preamble, EPA's primary goal is to create as seamless a web as possible between case-by-case MACT determinations under 112(j) and implementation of subsequent 112(d) standards for those same source categories. In addition, the Agency desires to rationalize the 112(j) provisions with the 112(g) provisions

requiring case-by-case MACT determinations for constructed, reconstructed, and modified major sources. While under the Act some of the specific substantive requirements of section 112(g) differ under the Act from the substantive requirements of 112(j) and 112(d), the EPA intends to ensure the greatest possible operational consistency among section 112 (d), (g), and (j) provisions.

One fundamental principle guiding the design of all three programs is that substantive control requirements under 112(g) hold only until the requirements of a 112(j) or 112(d) standard become effective. In other words, after the effective date of a 112(j) case-by-case MACT determination or a 112(d) MACT standard, the control requirements of section 112(j) or section 112(d) supersede the control requirements of section 112(g).

The EPA considered an alternative approach, i.e. the finding that 112(g) governs all changes and additions of new emission units at existing sources whether or not a 112(d) or (j) standard exists. The EPA rejected this approach for reasons enumerated below. Nevertheless the EPA requests comment on both approaches.

One reason for rejecting the approach that 112(g) control extends to sources covered by 112(d) or 112(j) standards is that it leads to the conclusion that many new sources within the section 112(a)(4) definition of new source would forever escape having to apply a new source MACT level of control. Such an interpretation is in conflict with the requirements of section 112(d).

Section 112(a)(4) defines a new source as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Thus, once a standard has been set under section 112(d), any new source will be subject to new source MACT. Moreover, under section 112(a), a "stationary source" can be "major" (112(a)(1)) or "area" (112(a)(2)). The MACT standard will define the portion of a facility that is considered a "source" for the purposes of the particular standard.

Section 112(g) applies to construction, reconstruction, or modification of major sources, and in many cases will have an effect on sources earlier than section 112(d) or (j) standards. However, section 112(g) only requires new source MACT on new major sources, and considers any other new emission unit to be a modification of an existing major source. As a "modification," such a new emission unit will be required to apply for existing source case-by-case MACT determination under 112(g). Therefore if 112(g) were to constrain the application of a subsequent 112(j) or 112(d) standard, many new emission units under the 112(a)(4) definition of "new source" would never be required to comply with new source MACT.

In addition, under 112(g) a new emission unit might not even be required to meet an existing source MACT level of control. Section 112(g) allows for modifications to either: (1) Comply with a case-by-case "existing source" MACT determination under 112(g); (2) offset emissions increases in lieu of applying 112(g) existing source MACT requirements; or (3) if its emissions were below 112(g) de minimis levels, not be subject to any control requirements at all. The EPA believes that 112(g) thus provides major sources with a great deal of needed flexibility before 112(d) or (j) standards are set; but that once those standards are in place the Act intends that these sources must comply with the specific requirements of those standards.

Finally, the interpretation that 112(g) governs the addition of new equipment at major sources to which 112(d) or (j) standards already apply has some anomalous implications. One example would be a new emission unit whose emissions are below 112(g) de minimis levels for a particular hazardous air pollutant. If that emission unit were added to a major source, it would be exempt from the requirements of 112(g), but would be required to apply new source MACT control under 112(j). However, if that emission unit were not below 112(g) de minimis levels, it would be required to comply with 112(g). If 112(g) requirements limit the application of 112(j), then the source would be required to apply existing source MACT. In this instance, a smaller emission unit would be required to control more stringently than a larger emission unit.

Another example of anomalies resulting from this reading of the statute would be a 112(d) standard that sets new source MACT for new area sources in a source category. Under this reading, major sources adding new sources could avoid new source MACT, but any new area source would have to meet new source MACT. Again, a smaller unit would be required to control more stringently than a larger emission unit.

Therefore EPA believes that the substantive control requirements of 112(g) are pre-empted by the requirements of a relevant 112(j) or 112(d) standard.

Administrative Consistency

Voluntary administrative procedures for new sources under 112(j), as outlined in § 63.53 of the proposed rule, are intended to be analogous to administrative requirements to be set out for modified, constructed, and reconstructed sources under section 112(g) of the CAA, which will be proposed in §§ 63.40 through 63.48 of this subpart.

Figure 3 illustrates the link between the voluntary section 112(j) preconstruction review process and section 112(g) administrative requirements. Although the EPA believes that section 112(j) does not provide authority for preconstruction review of all new sources, the EPA strongly believes, as a matter of policy, that the administrative process for new major sources or existing sources adding new equipment should be the same regardless of whether the 112(j) effective date has passed.

Before the 112(j) effective date, such sources will be required to make a case-by-case MACT determination under 112(g). After the 112(j) effective date, these sources will be required to make a case-by-case MACT determination under 112(j). In cases where 112(g) and 112(j) substantive control requirements differ, the more stringent 112(j) controls will in effect apply. However, these sources will only be subject to preconstruction review under 112(g). Sources applying for preconstruction approval under 112(g), but who will be subject to 112(j) new source MACT, need to know this before they construct, in order to install the right equipment.

In addition there will be sources, such as some new emission units added to an existing major source, that may not be covered by 112(g), but who will be required to install new source MACT under 112(j). For example, an owner/operator may intend to make an offset showing that would avoid a case-by-case MACT determination under 112(g). Or a new unit's emissions may fall below a 112(g) de minimis level for a specific pollutant. In both of these cases, the owner/operator will need to know in advance of a missed promulgation date that they will be required to install new source MACT under 112(j). Without a preconstruction review process, there is no way to ensure that new sources not covered by 112(g) will know whether they are complying with 112(j) requirements until up to one year after they have already commenced construction.

Therefore, anyone planning to construct a new major source, or any existing major source planning to install

a new emission unit after a scheduled promulgation date for a source category, is strongly encouraged to undergo preconstruction review under 112(j), in order to provide some certainty as to required new source controls prior to construction.

The EPA specifically requests comment on the desired relationships between the 112(g) and 112(j) administrative processes in regard to preconstruction review, and on the policy implications of a voluntary preconstruction review process.

B. Section 112(l) Delegation Process

Under section 112(l) of the Act, States have the option of developing and submitting to the Administrator a program for implementing the requirements of section 112, including section 112(j). The EPA proposed rules for the implementation of section 112(l) on May 19, 1993 (58 FR 29296). This rule proposed to add §§ 63.90 through 63.96 to 40 CFR part 63.

The EPA proposes that the delegation process provided under section 112(l) be used to smooth the transition to State implementation of section 112(j) in a way that minimizes disruption of existing State and local toxic air pollutant permit programs. The EPA proposes that the section 112(l) process be used for States wishing to preserve existing requirements, or add new requirements, in combination with the requirements and suggested actions of this proposed rule, into an overall program that meets the requirements of the Act.

C. Section 112(i)(5) Early Reductions Program

Section 112(i)(5) of the Act allows EPA to grant a source a six year compliance extension from a section 112(d) MACT standard if the source achieves "early reductions" of its emissions. An early reduction is defined as a 90% reduction in a source's hazardous air pollutant emissions (95% reduction in a source's particulate emissions) before the applicable MACT standard is proposed. The source's commitment to achieve early reductions is federally enforceable, must be included in the title V permit, and must be submitted to EPA before the relevant 112(d) standard for that source category is proposed. (Sources subject to MACT standards scheduled for promulgation in November 1992 must submit an enforceable commitment to 90% reductions to EPA by December 1, 1993. By December 1, 1994, the source must achieve the federally enforceable emission reduction). These commitments to reduce emissions early become classified as alternative emission limitations throughout the six year extension period. Alternative emission limitations are the "applicable emission requirements" for the early reduction source.

Paragraph 63.52(e) provides that an alternative emission limitation established for the purpose of early reduction credit can be included as a case-by-case MACT limit in the permit, so long as the reduction was achieved by the date established in the source category schedule for standards. This requirement is established pursuant to the specific provisions of 112(j)(5).

V. Administrative Requirements

A. Executive Order 12291

An impact analysis was prepared for the proposed regulation. The impact analysis was prepared even though the proposed regulation is not expected to meet the "major rule" requirement as defined in Executive Order 12291. The regulation is not expected to have an annual effect on the economy of $100 million or more; it is not expected to cause significant adverse effects on competition. The objective of the impact analysis is to evaluate, to the extent possible, the costs and benefits associated with the proposed regulation.

The impacts (cost and emission reduction) of the section 112(j) program are assumed to begin in either 1994 or 1996 and increase as additional source categories are subject to the program.

The absence of valuation and sufficient exposure-response information precludes a full quantitative benefits analysis. Therefore, EPA evaluated the minimum benefits that would justify general program directions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

This regulation does not affect a significant number of small businesses, small governmental jurisdictions, or small institutions. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities.

C. Paperwork Reduction Act

The information collection requirements in this proposal have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1648.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have an average annual public reporting burden of approximately 200 hours per respondent. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

VOL 58 ISS 132 JL 13 1993 UMI

Dated: June 30, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding a new subpart B, consisting of §§ 63.40–63.57 to read as follows:

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j)

Sec.

63.40–63.49 [Reserved]
63.50 Applicability.
63.51 Definitions.
63.52 Requirements for existing sources.
63.53 Application content for case-by-case MACT determinations.
63.54 Preconstruction review procedures for new sources.
63.55 Incorporation of requirements for new sources into the operating permit.
63.56 Maximum achievable control technology (MACT) determinations for sources subject to case-by-case determination of equivalent emission limitations.
63.57 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act sections 112(g) and 112(j)

§§ 63.40–63.49 [Reserved]

§ 63.50 Applicability.

(a) *General applicability.*[1] The requirements of §§ 63.50 through 63.57 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of §§ 63.50 through 63.57 apply in each State beginning on the effective date of an approved title V permit program in such State, but not before May 15, 1994. These requirements apply to the owner or operator of a major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the Administrator has failed to promulgate an emission standard under this part by the section 112(j) deadline.

(b) *Relationship to State and local requirements.* Nothing in §§ 63.50 through 63.57 shall prevent a State or local regulatory agency from imposing more stringent requirements than those contained in these subsections.

(c) *Retention of State permit program approval.* In order to retain State permit program approval, a State must, by the section 112(j) deadline for a source category, obtain sufficient legal authority to make case-by-case MACT determinations, to incorporate those determinations into a 40 CFR part 70 permit, and to incorporate and enforce other requirements of section 112(j).

§ 63.51 Definitions.

Terms used in §§ 63.50 through 63.57 of this subpart that are not defined below have the meaning given to them in the Act, in subpart A[2] of this part, or in 40 CFR part 70.

Control technology means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures which:

(1) Reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture, and treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Emission point means any part or activity of a major source that emits or has the potential to emit any hazardous air pollutant.

Emission unit means the emission point or collection of emission points, within a major source, which the permitting authority determines is the appropriate entity for making a MACT determination under section 112(j). An emission unit can be defined (by the permitting authority) as any of the following:

(1) An emitting point that can be individually controlled, e.g. a boiler or a spray booth.

(2) The smallest grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(3) Any grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(4) A grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.

(5) A grouping of emission points that, when collected together, comprise a building, structure, facility, or installation.

Existing major source means a major source, construction or reconstruction of which is commenced before EPA proposed a standard under 112 (d) or (h), or if no proposal was published, then before the section 112(e) promulgation deadline.

Federally enforceable, when applied to emission limitations and conditions, means that they are enforceable by the Administrator, including those requirements established by State or Local agencies that have received approval to impose such limitations through an approved part 70 permit program or through section 112(l) of the Act. Requirements developed pursuant to part 60 and part 61 of this chapter and requirements within any applicable State Implementation Plan are also federally enforceable. To be federally enforceable, the limits and conditions must undergo public review and be reported to the EPA. Emission limits that are federally enforceable include limits on the allowable capacity of the equipment; requirements for the installation, operation and maintenance of pollution control technologies; limits on hours of operation; and restrictions on amounts of materials combusted, stored, or produced. Any federally enforceable limitations or conditions must be practically enforceable and ensure adequate testing, monitoring, and recordkeeping to demonstrate compliance with the limitations and conditions. Therefore, general limitations such as yearly limits (e.g. tons per year) are not sufficient for federal enforceability. The use of hourly, daily, weekly, or monthly rolling averages is acceptable.

Maximum achievable control technology (MACT) emission limitation for existing sources means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and

[1] The requirements of §§ 63.50 through 63.57 implement section 112(j) of the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549).

[2] EPA intends to propose subpart A of part 63.

VOL
58
ISS
132
JL
13
1993
UMI

any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. This limitation shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) emission limitation for new sources means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies.

Maximum Achievable Control Technology (MACT) floor means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing 5 sources in the United States (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for a category or subcategory of stationary sources with fewer than 30 sources;

(2) For new sources, the emission limitation achieved in practice by the best controlled similar source.

New major source means a major source for which construction or reconstruction is commenced after the section 112(e) promulgation deadline, or after proposal of a relevant standard under section 112(d) or 112(h) of the Clean Air Act (as amended in 1990), whichever comes first.

New source means an emission unit for which construction or reconstruction is commenced after the section 112(e) deadline, or after proposal of a relevant standard under section 112(d) of the Clean Air Act (as amended in 1990), whichever comes first.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part. The applicable date for categories of major sources is contained in subpart C of this part.

Similar source means an emission unit that serves a like function and/or is structurally similar in design and capacity to an emission unit.

United States means the United States, its possessions and territories.

§ 63.52 Requirements for existing sources.

(a) If the Administrator fails to promulgate an emission standard under this part on or before an applicable the section 112(e) deadline, the owner or operator of an existing major source that includes one or more stationary sources in such category or subcategory, that does not already have a permit requiring compliance with a limit that would meet the requirements of section 112(j) of the Act, shall submit an application for a 40 CFR part 70 or 40 CFR part 71[3] permit or application for a significant permit modification, whichever is applicable, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71. The owner or operator of a major source that already has a 40 CFR part 70 or 40 CFR part 71 permit requiring compliance with a limit that would meet the requirements of section 112(j) of the Act, shall submit an application for an administrative permit amendment, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71.

(b) *Submittal of permit application.* The application for a 40 CFR part 70 or 40 CFR part 71 permit, significant permit modification, or administrative amendment by an owner or operator of an existing major source shall be submitted to the permitting authority not later than the section 112(j) deadline. The application shall contain the information required by § 63.53.

(c) *Permit review.* (1) Permit applications submitted under this paragraph will be reviewed and approved or disapproved according to the provisions of 40 CFR part 70 or 40 CFR part 71, whichever is applicable, and any other regulations approved under Title V in the State in which the source is located. In the event that the State disapproves a permit application submitted under this paragraph or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the State not later than 180 days after being notified that the application was disapproved or is incomplete.

(2) If the owner or operator has submitted a timely and complete application for a 40 CFR part 70 or 40 CFR part 71 permit or significant modification required by this paragraph, any failure to have this permit will not be a violation of the requirements of this paragraph, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(d) The permit shall contain information consistent with the requirements of § 63.54(c).

(e) *Emission limitation.* The permit issued shall contain an equivalent emission limitation (or limitations) (as further defined in § 63.56(a)), for that category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in Subpart D of this part are met, the permit may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the date in Subpart C of this part.

(f) *Compliance date.* The owner or operator of an existing major source subject to the requirements of this paragraph shall comply with the emission limitation(s) established in the source's 40 CFR part 70 or 40 CFR part

[3] 40 CFR part 71 has not yet been promulgated. This citation assumes that 40 CFR part 71 will be issued final before this proposed rule is issued as a final rule.

71 permit. In no case will such compliance date exceed 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B), and unless otherwise specified in § 63.55, or in subpart D of this part.

(g) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this subpart.

§ 63.53 Application content for case-by-case MACT determinations.

(a) An application for a MACT determination shall specify a MACT candidate selected by the owner or operator that, if properly operated and maintained, would achieve a MACT emission limitation.

(b) The application for a MACT determination shall contain the following information:

(1) The name and address (physical location) of the major source;

(2) A brief description of the major source, its source category or categories, a description of the emission unit(s) requiring a MACT determination pursuant to other requirements in this Subpart, and a description of whether the emission unit(s) require new source MACT or existing source MACT based on the definitions established in § 63.51;

(3) For a new source, the expected date of commencement of construction;

(4) For a new source, the expected date of completion of construction;

(5) For a new source, the anticipated date of startup of operation;

(6) The hazardous air pollutants emitted by each emission unit, and the emission rate for each hazardous air pollutant, stated in terms that would be considered federally enforceable as defined in § 63.51.

(7) Any existing federally enforceable emission limitations applicable to the source.

(8) The uncontrolled emissions for the source(s) in tons/yr or production unit in tons/yr (potential to emit in an uncontrolled state);

(9) Controlled emissions for the covered emission unit(s) in tons/yr or production unit in tons/yr (potential to emit in a controlled state);

(10) The MACT floor and supporting calculations for cases where the MACT floor must be computed on a case-by-case basis.

(11) Recommended emission limitations for the source(s), and supporting information, consistent with § 63.54(c).

(12) The selected MACT candidate to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency, and any other information deemed appropriate by the permitting authority;

(13) Supporting documentation including identification of alternative control technologies considered to meet the emission limitation, and analysis of non-air quality health and environmental impacts or energy requirements for the selected MACT candidate;

(14) Parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the standard over the applicable reporting period.

(15) Any other information required pursuant to subpart A of this part.

§ 63.54 Preconstruction review procedures for new sources.

(a) *Review process for new sources.* (1) If the permitting authority requires an owner or operator to obtain or revise a 40 CFR part 70 permit before construction of the new source, or when the owner or operator chooses to obtain or revise a 40 CFR part 70 permit before construction, the owner or operator shall follow the administrative procedures established in part 70 of this chapter before construction of the new source.

(2) If an owner or operator is not required to obtain or revise a 40 CFR part 70 permit before construction of the new source (and has not elected to do so), but the new source is covered by the preconstruction review requirements of section 112(g), then the owner or operator shall comply with those requirements. If the new source is not covered by 112(g), the State, in its discretion, may provide a Notice of MACT Approval in accordance with the procedures set forth in paragraphs (b) through (h) of this section, before construction of the new source.

(3) Regardless of the preconstruction review process, the MACT determination shall be consistent with the principles established in § 63.56, and the Notice of MACT Approval or the permit, whichever is applicable, shall include the documentation required by § 63.53.

(b) *Optional administrative procedures for preconstruction review for new sources.* The permitting authority may provide for preconstruction review of section 112(j) MACT determinations upon approval by EPA of a program that is submitted pursuant to the requirements established under section 112(l) of the Act, and that provides for review procedures and compliance requirements no less stringent than those set forth in paragraphs (b) through (h) of this section.

(1) The permitting authority will notify the owner or operator in writing, within 30 days from the date the Notice of MACT Approval application is first received, as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The permitting authority will approve an applicant's proposed MACT, or the permitting authority will notify the owner or operator in writing of its intention to disapprove a MACT candidate, within 60 calendar days after the receipt of a complete application. The 60-day period will begin on the calendar day that the owner or operator is notified in writing that the application is complete.

(3) The owner or operator may present, in writing, within 60 calendar days after notification of the permitting authority's intent to disapprove a MACT candidate, additional information, considerations, or amendments to the application before the permitting authority's issuance of a final disapproval.

(4) The permitting authority will approve or issue a final disapproval of the application no later than 30 days from the date additional information is received from the owner or operator.

(5) A final determination to disapprove any application will be in writing and will specify the grounds on which the disapproval is based.

(6) Approval of an applicant's proposed MACT will be set forth in the Notice of MACT Approval as described in paragraph (c) of this section.

(c) *Notice of MACT Approval.* (1) The Notice of MACT Approval will contain an emission standard or emission limitation to control the emissions of hazardous air pollutants. The MACT emission limitation will be determined by the permitting authority and will be based on the degree of emission reductions that can be achieved, if the control technologies or work practices are installed, maintained, and operated properly. Such emission limitation will be established consistent with the principles contained in § 63.56.

(2) The Notice of MACT Approval will specify any notification, operation and maintenance, performance testing,

monitoring, reporting and recordkeeping requirements. The Notice of MACT Approval shall include the following information:

(i) In addition to the MACT emission limitation required by paragraph (d)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with the requirements of 40 CFR 70.6(a) and 40 CFR 70.6(c).

(iii) In accordance with section 114(a)(3) of the Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance during the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this Subpart.

(iv) A statement requiring the owner or operator to comply with all applicable requirements contained in subpart A of this part;

(v) A compliance date(s) by which the owner or operator shall be in compliance with the MACT emission limitation, and all other applicable terms and conditions of the notice.

(3) All provisions contained in the Notice of MACT approval are federally enforceable upon the effective date stated in such notice.

(d) *Opportunity for public comment on Notice of MACT Approval.* The permitting authority will provide opportunity for public comment on the draft Notice of MACT Approval prior to issuance, including, at a minimum,

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's tentative determination;

(2) A 45-day period for submittal of public comment; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (d)(1) of this section.

(e) *EPA notification.* The State or local agency, when authority for the MACT determination has been conferred to that State or local agency by the Administrator, shall send copies of the draft notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which the new source would be located.

(f) *Effective date.* The effective date of a MACT determination for new sources under this paragraph shall be the date a Notice of MACT Approval is issued to the owner or operator of a new source.

(g) *Compliance date.* New sources shall comply with case-by-case MACT upon permit issuance.

(h) *Compliance with MACT determinations.* An owner or operator of a major source that is subject to a MACT determination shall comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements contained in 40 CFR part 70.

§ 63.55 Incorporation of requirements for new sources into the operating permit.

(a) The owner or operator of a new source in a source category or subcategory subject to these subsections, that does not already have a permit requiring compliance with a limit meeting the requirements of section 112(j) of the Act (as in effect on the date of permit application) shall submit an application for a 40 CFR part 70 or 40 CFR part 71 permit or application for a significant permit modification, whichever is applicable, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71. The owner or operator of a source that already has a permit requiring compliance with a limit meeting the requirements of section 112(j) of the Act, shall submit an application for an administrative permit amendment, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71, and not later than the date 30 days after the date construction or reconstruction is commenced.

(b) *Permit review.* (1) Permit applications submitted under this paragraph will be reviewed and approved or disapproved according to the provisions of 40 CFR part 70 or 40 CFR part 71, whichever is applicable, and any regulations approved under title V in the State in which the source is located. In the event that the State disapproves a permit application submitted under this paragraph or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the State not later than 180 days after being notified that the application was disapproved or is incomplete.

(2) If the owner or operator has submitted a timely and complete application for a 40 CFR part 70 or 40 CFR part 71 permit or significant modification required by this paragraph, any failure to have a permit will not be a violation of the requirements of this paragraph, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(c) The permit shall contain information consistent with the requirements of § 63.54(c).

(d) *Emission limitation.* The permit issued shall contain an equivalent emission limitation (or limitations) for that category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the permit may contain an alternative emission limitation. For the purposes of the preceding sentence, the early reduction required by section 112(i)(5)(A) of the Act shall be achieved not later than the date on which the relevant section 112(d) standard should have been promulgated according to the date in subpart C of this part.

(e) *Compliance date.* The owner or operator of a new source subject to the requirements of this paragraph shall comply with the emission limitation(s) established in the source's 40 CFR part 70 or 40 CFR part 71 permit immediately upon permit issuance.

§ 63.56 Maximum achievable control technology (MACT) determinations for sources subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for sources subject to case-by-case determination of equivalent emission limitations.* The owner or operator of a major source subject to this subpart shall submit a permit application or application for a MACT determination, whichever is applicable, containing emission limitations at least as stringent as those that would have applied had the relevant emission standard been promulgated according to the schedule established in subpart C of this part for the source category or subcategory of which the source is a member.

(1) When a relevant emission standard has been proposed pursuant to section 112(d) or section 112(h) of the Act, then the control technology selected by the owner or operator for the MACT candidate shall be capable of achieving all emission limitations and requirements of the proposed standard, unless the application contains information adequately supporting an alternative.

(2) When the Administrator has not proposed a relevant emission standard

pursuant to section 112 (d) or (h), but the Administrator (or the State) has adopted guidance or collected and distributed information establishing a MACT floor for a source category or subcategory for which an emission standard has not been promulgated according to the schedule established in subpart C of this part, then the emission limitations established in the 40 CFR part 70 or 40 CFR part 71 permit application of a major source in such source category or subcategory must be at least as stringent as those established in said guidance or distributed information, unless the application contains information adequately supporting an alternative.

(3) If a relevant emission standard has not yet been proposed pursuant to section 112(d) or section 112(h) of the Act, then the owner or operator shall document a MACT floor finding based on all available information, unless the selected MACT candidate achieves the best achievable level of control, and:

(i) If the MACT floor can be determined, then the control technology selected by the owner or operator for the MACT candidate shall obtain the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non-air quality health and environmental impacts, and energy requirements, and shall achieve an emissions limitation at least as stringent as the MACT floor.

(ii) If the MACT floor cannot be determined, then the owner or operator shall select a control technology that will achieve a maximum reduction in emissions of hazardous air pollutants considering costs, non-air quality health and environmental impacts, and energy requirements;

(iii) The owner or operator shall select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(b) *Requirements for permitting authorities.* (1) After receiving a permit application or an application for a MACT determination, whichever is applicable, the permitting authority will review the application and other information available to the permitting authority and shall establish hazardous air pollutant emissions limitations at least equivalent in stringency to the limitation that would apply to such emission unit if an emission standard had been issued in a timely manner under subsection 112(d) of the Act.

(2) The permitting authority will establish these emissions limitations consistent with the following requirements and principles (which are further clarified in the "Draft Guidelines for MACT Determinations"[4]):

(i) For each major source subject to section 112(j), equivalent emissions limitations will be established for all emission units within a source category or subcategory for which the section 112(j) deadline has passed.

(ii) An equivalent emission limitation for an existing source will reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory for which the section 112(j) deadline has passed. This limitation will not be less stringent than the MACT floor, and will be based on available information.

(iii) An equivalent emissions limitation for a new source will not be less stringent than the emission limitation achieved in practice by the best controlled similar source, and must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. The limitation shall be based on available information.

(iv) Nothing in subpart B of this part will prevent a state or local permitting authority from establishing an emission limitation more stringent than required by federal regulations.

(c) *Reporting to National Data Base.* Within 60 days of the issuance of a Notice of MACT Approval under § 63.53(c) of the subpart, or issuance of a 40 CFR part 70 permit, whichever is earlier, any State, to whom authority for implementation of this subpart has been delegated by the Administrator, shall provide a copy of the Notice of MACT Approval to the Administrator, and shall provide a summary of information pertinent to the MACT application in a standard format outlined in the "Guidelines for MACT Determinations."

§ 63.57 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

(a) If the Administrator promulgates an emission standard that is applicable to one or more emission units within a major source before the date a permit application under this paragraph is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under § 63.55, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112(d) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority shall revise the permit upon its next renewal to reflect the promulgated standard. The permitting authority will establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, if the Administrator promulgates an emission standard that is applicable to a source after the date a permit application is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is at least as stringent as that required by the promulgated standard.

[4] EPA is releasing for comment the "Draft Guidelines for MACT Determinations" available from the National Technical Information Service (NTIS) Document Number PB93–183283; 5285 Port Royal Rd., Springfield, VA 22161; NTIS telephone 703–487–4650.

[FR Doc. 93–16140 Filed 7–12–93; 8:45 am]
BILLING CODE 6560–50–P

VOL
58
ISS
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federal register

Tuesday
July 13, 1993

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Preservation of Multifamily Low Income Housing and Funding Proposal for Intermediaries for Administering Preservation Technical Assistance Grants, et al.; Interim Rule and Notice

VOL
58
ISS
132
JL
13
1993
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 236, 241, and 248

[Docket No. R–93–1655; FR 3384–I–01]

RIN 2502–AF83

Preservation of Multifamily Low Income Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements sections 304, 305, 306, 307, 308(b), 309, 312, 313 (a) and (b)(1), 316 (a) and (b), and 331 of the Housing and Community Development Act of 1992. In brief, these amendments permit public entities to become mortgagors of projects with mortgages insured under section 236 of the National Housing Act; authorize the Department to insure equity and acquisition loans for a term of 40 years and combine rehabilitation loans with equity or acquisition loans; protect proprietary information submitted by owners as part of their plans of action; require regulations setting forth the Department's procedures and criteria for approving plans of action to prepay or terminate; ensure that owners receive an 8 percent annual authorized return during the rent phase-in period; ensure that priority purchasers receive incentives sufficient to meet project oversight costs and receive an 8 percent annual authorized return on any actual cash investment and reimbursement for all reasonable transaction expenses; allow resident councils purchasing under a resident homeownership program to assume the federally-assisted mortgage; require low-income affordability restrictions to be maintained on all units not sold to residents; eliminate the requirement that limited equity cooperatives transfer ownership to residents in a timely manner; establish a technical assistance program for priority purchasers; impose LIHPRHA (the preservation program enacted in 1990) notification requirements on ELIHPA (the preservation program enacted in 1987) owners; and ensure that owners under ELIHPA are not refused incentives based on the date they filed a plan of action.

DATES: Effective date: The provisions of this rule are effective July 13, 1993.

Section 241.1060 applies on July 13, 1993 to projects being processed under subpart B of part 248 and also applies on August 12, 1993 to projects being processed under subpart C of part 248.

Comment due date: September 13, 1993.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Standard Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Telephone, voice, (202) 708–2300; TDD, (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Information collection requirements contained in this rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington, DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Subtitle A of title III of the Housing and Community Development Act of 1992 (Pub. L. 102–550 (106 Stat. 3672), approved October 28, 1992) ("title III") amends certain provisions of section 236(j) of the National Housing Act, regarding the provision of Federal mortgage insurance for multifamily projects, section 241(f) of the National Housing Act (12 U.S.C. 1715z–6), concerning supplementary financing of insured mortgages, and subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act, the Low Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625; 12 U.S.C. 4101 *et seq.*) ("LIHPRHA"), the successor to title II of the Housing and Community Development Act of 1987, the Emergency Low Income Housing Preservation Act of 1987 (Pub. L. 100–242; 12 U.S.C. 1715*l* note) ("ELIHPA"), governing the preservation of privately-owned multifamily low income housing. The history of the preservation programs is set forth in an interim rule implementing LIHPRHA which was published on April 8, 1992 at 57 FR 11992, (the "April 1992 interim rule") and will not be repeated here.

This interim rule implements certain provisions of title III by amending parts 236, 241 and 248 of the Department's regulations, as addressed in the following discussion. Other provisions of title III were implemented by interim rules published on December 3, 1992 at 57 FR 57312 and January 15, 1993 at 58 FR 4870. One remaining provision of title III, section 316(c), concerning insuring equity and acquisition loans under shared-risk agreements with State housing finance agencies, has not yet been implemented.

It should be noted that the following discussion uses "LIHPRHA" when addressing statutory changes that affect title II of the Housing and Community Development Act of 1987, as amended by LIHPRHA, and uses "ELIHPA" when discussing changes which affect title II of the Housing and Community Development Act of 1987, as in effect on November 27, 1990, the day before enactment of LIHPRHA.

Part 236—Mortgage Insurance and Interest Reduction Payment for Rental Projects

Section 236.10 (Eligible Mortgagors)

Section 331 of title III amends section 236(j)(4)(A) of the National Housing Act to permit public entities to be mortgagors of mortgages insured under section 236 of the National Housing Act. Prior to this amendment, section 236(j)(4) of the National Housing Act authorized a mortgage to be insured under the Section 236 program only if the mortgage was executed by a "private mortgagor eligible under subsection (d)(3) or (e) of section 221 [of the National Housing Act]." Section 236(b) of the National Housing Act contained a similar provision, excluding public mortgagors under the section 236 State-financed "non-insured" program. In section 203(a)(1) of the HUD Reform Act of 1989, Congress amended section 236(b) of the National Housing Act to permit public mortgagors of State-financed section 236 projects, however, Congress did not make a comparable amendment to section 236(j)(4)(A). This oversight is now corrected by section 331 of title III.

Section 236.10 of title 24 of the Code of Federal Regulations, which governs eligible mortgagors under the section 236-insured program, is amended in this

rule by removing the existing language in paragraph (e) and adding the language contained in § 221.510(b), which lists the eligible public mortgagors for the section 221 program. The § 221.510(b) language is used in § 236.10 because section 236(j)(4)(A) states that eligible mortgagors under the section 236-insured program are those which are eligible under section 221(d)(3) and (e) of the National Housing Act. Section 221.510(b) implements the eligibility requirements of section 221(d)(3) and (e) of the National Housing Act.

Section 236.60 (Excess Rental Charges)

Section 236.60 of the Department's regulations addresses excess rental charges under the section 236 program. Due to an error in publishing a revision to § 236.60, on September 21, 1990 at 55 FR 38958, part of the provision was inadvertently removed from the Code of Federal Regulations. This rule restates the correct text of § 236.60. This amendment is a correction and is not part of the implementation of the Housing and Community Development Act of 1992.

Section 236.901 (Audit)

Because of the inclusion of public entities as eligible mortgagors under the section 236-insured program, § 236.901 is amended to require State and local governments that are mortgagors of mortgages insured or held by the Commissioner under section 236 of the National Housing Act to be subject to the Department's audit requirements, set forth in part 44 of title 24 of the CFR.

Part 241—Supplementary Financing for Insured Project Mortgages

Subpart E—Insurance for Equity and Acquisition Loans—Eligibility Requirements

Section 241.1060 (Maturity)

Section 316(a) of title III amends section 241(f)(5) of the National Housing Act, by adding new subparagraphs (A) (i) and (ii) which establish terms of up to 40 years for equity loans and not less than 40 years for acquisition loans that are insured pursuant to an approved plan of action under LIHPRHA. Section 316 of title III amends section 241(f) of the National Housing Act, as that section was amended by LIHPRHA. However, section 316 does not amend section 241(f) as it existed prior to amendment by LIHPRHA. In accordance with section 604(c) of LIHPRHA, section 241(f), as it existed immediately before enactment of LIHPRHA (i.e., on November 27, 1990), is the statute under which equity loans are insured for projects under ELIHPA. Because section 316(a) does not amend section 241(f) as it was in effect on November 27, 1990, section 316(a) has no impact on equity loans for projects under ELIHPA. Equity loans under ELIHPA may, in accordance with section 241(f)(2)(B) as in effect on November 27, 1990, "have a maturity and provisions for amortization satisfactory to the Secretary."

The Department stated this interpretation of the applicability of section 241(f) to ELIHPA projects in the preamble to the proposed rule to implement LIHPRHA at 56 FR 20281–20282, published on May 2, 1991 (the "May 1991 proposed rule"), as follows:

> [O]wners whose plans of action are processed under [ELIHPA] will be subject to section 241(f) as it existed under [ELIHPA], while owners whose plans of action are processed under [LIHPRHA] will be subject to section 241(f) as amended by [LIHPRHA]. Although section 602(a) [of LIHPRHA] amends section 241(f) and, under section 605 [of LIHPRHA], is effective upon enactment of [LIHPRHA] i.e., on November 28, 1990), it is the Department's view that the provisions of section 241(f) as they existed prior to their amendment remain in effect for owners who are or will be seeking approval of plans of action under [ELIHPA] and subpart C of part 248. The Department takes this position because section 241(f) was originally enacted by section 231 of [ELIHPA], which is subpart B of title II of [ELIHPA] and is thus part of the "Emergency Low Income Housing Preservation Act of 1987," * * * and * * * under 604 (a) and (b) of [LIHPRHA] owners retain their right to proceed under [ELIHPA] and subpart C.

Based on this interpretation, the Department has continued to permit equity loans under ELIHPA of up to 90 percent of the projected net operating income of the project (see section 241(f)(2)(A) of the National Housing Act as in effect on November 27, 1990 and 24 CFR 241.1065). Equity loans under LIHPRHA are limited to the lesser of 70 percent of extension preservation equity or an amount supportable by the project on the basis of an 8 percent return on the extension preservation equity, subject to normal debt service requirements (see section 241(f)(2)(B)(i) of the National Housing Act as of November 28, 1990 and 24 CFR 241.1067).

Before enactment of the Housing and Community Development Act of 1992, section 241(f), both as in effect before November 28, 1990 and as amended by LIHPRHA, authorized the Department to use its discretion in establishing loan terms for equity and acquisition loans which are insured by HUD. The Department, in initially implementing ELIHPA, permitted equity loans with up to 40-year terms. However, after analyzing the relevant data, the Department determined that a 20-year equity loan maturity would be sufficient to ensure that owners received the annual authorized return on their investment and the shorter loan terms would also protect the FHA insurance fund from losses due to mortgage insurance claims. Based on this analysis, the Department, in the May 1991 proposed rule, published at 56 FR 20262, proposed that loan terms for equity loans (for both ELIHPA and LIHPRHA owners), and the newly authorized acquisition loans (for LIHPRHA owners), would be for 20 years or the remaining term of the first insured mortgage, whichever is longer.

In response to this proposal, the Department received 86 public comments objecting to the 20-year loan term and requesting a return to the 40-year term. The Department received no comments in favor of the 20-year-loan term. The bases for the objections are set out in the preamble to the April 1992 interim rule at 57 FR 12032. In the April 1992 interim rule, the Department maintained its position that equity and acquisition loans would be insured for 20 years or the remaining term of the first insured mortgage, whichever is longer. The Department received two comments on the April 1992 interim rule concerning loan terms and both commenters objected to the 20-year term and suggested that the Department return to its original policy of insuring loans for 40 years.

In addition to the public comments received by the Department, the legislative history to the Housing and Community Development Act of 1992 indicates Congress' opposition to the shorter loan term. In a summary of the Housing and Community Development Act of 1992 presented on the Senate Floor, Senator Cranston stated that,

> The conferees are disturbed that owners were induced to file [ELIHPA] notices of intent and proceed with plans of action based on HUD's practice of providing a 40-year loan, only to have HUD change the rules in April 1992. The foreshortening of the 241(f) loan term is jeopardizing pending sales of [ELIHPA] projects to nonprofits and public agencies, and undermining the legitimate expectations of owners who are willing to extend affordability restrictions in exchange for incentives. The clear intent of the conferees is to require 40-year section 241(f) loans for projects proceeding under ELIHPA. 138 Cong. Rec. S17909 (October 8, 1992), (statement of Sen. Cranston).

Because of the foregoing legislative history and the overwhelming number of comments received by the Department in favor of the 40-year loan

VOL 58 ISS 132 JL 13 1993 UMI

term, the Department has decided to administratively change its policy and apply the longer loan term to all equity loans under ELIHPA, as well as to increase the equity loan terms under LIHPRHA in accordance with section 316(a) of title III. Therefore, this rule amends § 241.1060 to provide for equity loan terms of up to 40 years under both ELIHPA and LIHPRHA.

Section 241.1060 is also amended to allow 40-year loan terms for acquisition loans under LIHPRHA. (Acquisition loans were authorized under section 602(a) of LIHPRHA but were not authorized under ELIHPA, and this rule does not add acquisition loans as an incentive under ELIHPA.) While section 316(a) permits the Department to use its discretion and insure acquisition loans for longer than 40 years, HUD's practice has always been to insure loans for no more than 40 years. A longer term would pose a greater risk to the FHA insurance fund and would have little impact on a mortgagor. Extending the loan term beyond 40 years would result in lower debt service payments, but this impact is de minimis after the fortieth year. Because of this, the Department will insure acquisition loans for a term equal to 40 years.

The revised § 241.1060 is an interim rule which is effective immediately upon publication for LIHPRHA owners and 30 days after publication for ELIHPA owners. Because the public had the opportunity to comment on the 20-year loan term in both the May 1991 proposed rule and the April 1992 interim rule; and HUD received 88 public comments opposed to the 20-year loan term and in favor of a 40-year term and no comments in support of the 20-year term, the Department believes it is unnecessary, in accordance with 24 CFR 10.2, to publish another proposed rule for notice and comment prior to implementing a regulatory change permitting 40-year terms for equity loans under ELIHPA. Therefore, the revised § 241.1060 is published as an interim rule. For owners receiving equity or acquisition loans as an incentive under LIHPRHA, the rule change is effective on the date of publication, in accordance with section 332 of title III. For owners receiving equity loans as an incentive under ELIHPA, the rule change is effective thirty days after the date of publication, in accordance with 24 CFR 10.2.

Section 241.1067 (Maximum Loan Amount—Loans Insured in Connection With a Plan of Action Under Subpart B of Part 248 of This Chapter)

Section 316(a) of title III amends section 241(f)(2)(B)(i) and (3)(B) of the National Housing Act to require that rehabilitation costs be included in the amount of the maximum equity and acquisition loans insured under section 241(f). Section 316(a) also deletes section 241(f)(6) of the National Housing Act which left to the Secretary's discretion combining equity and acquisition loans insured under section 241(f) with rehabilitation loans insured under section 241(a). The preamble to the April 1992 interim rule, at 57 FR 12031, addressed the Department's intention to consider combining rehabilitation and equity or acquisitions loans in order to facilitate processing of these loans.

The Senate Committee on Banking, Housing, and Urban Affairs (the "Committee"), in a report concerning S. 3031, one of the bills from which title III was derived, indicates that the Committee altered the position originally taken by the conferees in drafting LIHPRHA, where the conferees expected that combining the loans could be done effectively. The Committee concludes in the Senate Report that there is no "mechanism for combining the underwriting of rehabilitation and equity or acquisition loans under the section 241 program." Sen. Rpt. No. 332, 102d Cong., 2d Sess., at 68, 69 (the "Senate Report"). The Committee also states that S. 3031, which contains language identical to section 316(a) (1) and (2) of title III, "would enable loans insured under section 241(f) of the National Housing Act to cover the amount of rehabilitation costs required by the preservation plan of action and related charges."

The Senate Report indicates that the Committee does not intend for HUD to combine section 241(a) rehabilitation loans with section 241(f) equity and acquisition loans, as was formerly contemplated by section 241(f)(6). Rather, the Committee intends that rehabilitation costs and related charges be included as part of the 241(f) loan. This amendment authorizes the Department to insure 241(f) equity and acquisition loans in amounts sufficient to cover 100 percent of the costs to rehabilitate the project plus all related charges. Prior to this amendment, an owner or purchaser could obtain a section 241(a) loans in addition to a 241(f) equity or acquisition loan, but the 241(a) loan would cover only 90 percent of the value of improvements, additions and equipment and the owner or purchaser would be required to finance 10 percent of the rehabilitation costs itself.

While owners may now receive a 241(f) loan to cover all of the rehabilitation costs, they will also be required to escrow a larger amount of the loan proceeds. Section 316(a) amends section 241(f)(2)(B)(i) to add rehabilitation costs and related charges to an equity loan, however, section 316 does not amend section 241(f)(2)(B)(ii) which requires that "10 percent of the loan amount" be escrowed for a 5-year period. There is no legislative history indicating whether or not Congress intended to leave section 241(f)(2)(B)(ii) unamended, but, because section 241(f)(2)(B)(ii) immediately follows the amended section 241(f)(2)(B)(i), this implies that Congress did not merely overlook this provision, but intended to require a larger escrow deposit, possibly as a concession for permitting a larger loan amount.

In the absence of any legislative history to the contrary, the Department has not amended § 241.1069(a) which requires that 10 percent of total equity loan amount be placed in escrow for 5 years. Owners of LIHPRHA projects receiving equity loans under § 241.1067, as amended, will be required to escrow 10 percent of the entire loan amount, including rehabilitation costs and related charges. The Department specifically requests comments from the public on this interpretation.

Increasing the maximum equity and acquisition loan amounts also affects the calculation of preservation rents under § 248.121. Paragraph (c) of § 248.121 includes in the calculation of extension preservation rent, an owner's annual authorized return and debt service on any rehabilitation loan. Paragraph (d) of § 248.121 includes as part of transfer preservation rent, debt service on an acquisition loan and debt service on any rehabilitation loan. Because preservation rents must be calculated early in the preservation process, prior to the calculation of actual loan amounts, the Department must estimate certain factors in determining debt service. In calculating the debt service on a rehabilitation loan, the Department assumes, in accordance with section 241(a) of the National Housing Act, that the loan amount would cover 90 percent of the rehabilitation. However, because section 316(a) of title III requires that equity and acquisition loans include 100 percent of the rehabilitation costs and related charges, this affects the Department's estimates of preservation rent.

When the owner is retaining the property, it has the choice of receiving its authorized return on an annual basis, or receiving all or a portion of the return in an equity loan. If an owner chooses an equity loan, 100 percent of the rehabilitation costs will be included in the loan amount and the owner would

not need a section 241(a) rehabilitation loan. If an owner does not request an equity loan, it may cover 90 percent of the costs of rehabilitation through a 241(a) loan. However, at the time preservation rents are determined, HUD will not know which route an owner will choose. For this reason, when calculating the extension preservation rent, the Department will assume that the rehabilitation loan will cover 90 percent of the value of improvements, additions and equipment. It is important to note that in setting actual tenant rents at the time the plan of action is approved, the Department will include debt service payments on rehabilitation costs whether they are included as part of the Section 241(f) equity loan or in a separate Section 241(a) rehabilitation loan.

As a result of the statutory amendments, where the property is to be transferred, a purchaser will receive a section 241(f) acquisition loan which will include rehabilitation costs, making it unnecessary for the purchaser to obtain a section 241(a) rehabilitation loan. Therefore, when determining the transfer preservation rent, the Department will calculate the debt service on a rehabilitation loan which is assumed to cover 100 percent of the rehabilitation costs plus related charges.

Section 316(a)(3)(A) also amends section 241(f) of the National Housing Act by adding as part of the new subparagraph (A)(i) the requirement that equity loans have "amortization provisions which will, to the extent practicable, support the loan amount authorized * * *." Paragraph (a)(ii) of § 241.1067 of the April 1992 interim rule is amended by this rule to conform to this requirement.

Section 241(f)(5)(B) of the National Housing Act, as amended by section 316(a)(3)(B) of title III, provides that equity and acquisition loans should bear interest at a rate agreed upon by the mortgagor and mortgagee and be secured in such manner as the Secretary may require. No revisions to part 241 are needed to implement this amendment. Section 241.1070 already permits borrowers and lenders to determine interest rates for equity and acquisition loans. The Secretary was authorized under section 241(f) of the National Housing Act, both before and after its amendment by LIHPRHA, to use his discretion as to loan security, and § 241.1045 requires the lender to use security instrument forms approved by the Commissioner.

Section 241.1068 (Renegotiation of an Equity Loan)

Section 316(b) of title III amends section 241(f) of the National Housing Act by adding a new paragraph (10) directing the Department to renegotiate and modify the terms of an equity loan, at an owner's request, if "the loan was made" within 30 days before enactment of the Housing and Community Development Act of 1992 or within 90 days after such date and the loan was made pursuant to an ELIHPA plan of action "and accepted by the Secretary for processing in December 1991." A new § 241.1068 has been added to the Department's regulations to implement this provision.

The language of section 316(b) is ambiguous in certain respects and there is no legislative history indicating Congressional intent behind this provision. Therefore, the Department has used its discretion in interpreting this provision. The statutory language states that HUD should renegotiate the terms of a loan depending on when "the loan was made." The plain meaning of the phrase "the loan was made" seems to refer to the loan closing. Hence, § 241.1068 provides for renegotiation of equity loans for which a loan closing occurred between September 28, 1992 and January 26, 1993.

Under section 316(b) of title III, in order for an equity loan to be renegotiated, the loan must also be "made pursuant to a plan of action under the provisions of [ELIHPA] and accepted by the Secretary for processing in December 1991." This language does not clearly indicate whether it is the loan application or the plan of action which must have been accepted for processing in December 1991. If it is assumed that this language refers to the loan application, this would indicate a period of at least nine months between submission of the application and the issuance of a commitment. Because commitments are generally issued in a much shorter time period, the Department has assumed in this rule that this statutory language requires that the plan of action, and not the loan application, must have been submitted in December 1991.

As long as the owner meets the requirements of § 241.1068, and the owner and the lender agree to change the terms of the loan and the change is in compliance with the Department's regulations and statutory authority, the Department will approve a refinancing or modify the commitment for mortgage insurance. However, under section 241(f) the Department insures loans made by private lenders, but the Department is not a party to the loan agreement and has no right to require renegotiation of any loan terms. Therefore, if the lender refuses to change the loan maturity, the Department will not modify its commitment or approve any refinancing.

Pursuant to section 316(b) of title III, the Department will approve a refinancing or modify the mortgage insurance commitment where such refinancing or modification involves a change in loan term, interest rate, or debt service payments, as long as the debt service does not exceed the limits established in § 241.1065 and the loan amount does not exceed ninety percent of the owner's equity, as determined in the approved plan of action.

Part 248—Preservation of Multifamily Low Income Housing

Subpart A—General

Section 248.5 (Election To Proceed Under Subpart B or Subpart C of This Part)

This rule revises §§ 248.211, 248.213 and 248.217 to require owners electing under § 248.5 to proceed under subpart C to comply with the notice requirements of subpart B; revises § 248.5 to require HUD to provide sufficient assistance to nonprofit organizations purchasing projects for which an election was made, to meet "project oversight costs;" and revises § 248.5 to ensure that owners who elected subpart C are not denied incentives because of the date they filed a plan of action.

Section 313(a) of title III amends section 604(a) of LIHPRHA to require owners who elect to proceed under ELIHPA, to comply with sections 212(b), 217(a)(2) and 217(c) of LIHPRHA. These provisions require owners to notify tenants, State and local governments, and the mortgagee of its submission to HUD of a notice of intent, plan of action, and any revisions to a plan of action. Sections 248.211, 248.213 and 248.217 have been amended to apply the LIHPRHA notification requirements to owners who elected to proceed under ELIHPA. HUD includes in the class of owners who "elected" to proceed under ELIHPA not only those owners who filed a notice of election to proceed under § 248.5, but all owners who continued processing under ELIHPA after the enactment of LIHPRHA.

Section 313(b)(1)(A) requires HUD to provide incentives sufficient to meet project oversight costs to nonprofit purchasers who purchase projects for which an election has been made under

VOL 58 ISS 132 JL 13 1993 UMI

section 604 of LIHPRHA to proceed under ELIHPA. A new paragraph (e), which restates the statutory language, is added to § 248.5 by this rule. A definition of "project oversight costs" is also added to § 248.201 of subpart C of this part, which is cross-referenced in § 248.5(e). That definition is discussed in the preamble section concerning § 248.201. Sections 248.101, 248.145 and 248.157 are also amended to incorporate project oversight costs as a cost for which incentives may be provided under subpart B for priority purchasers.

In a summary of the Housing and Community Development Act of 1992 presented on the Senate Floor, Senator Cranston stated that "the conferees expect the Secretary to adjust project rents and increase the section 8 assistance provided to [priority] purchasers—amending the approved plan of action, if necessary—in order to cover project oversight expenses, and to adopt this practice with respect to future nonprofit purchases under the transitional rule." 138 *Cong. Rec.* S17909 (October 8, 1992), (statement of Sen. Cranston). This legislative history implies that HUD should provide additional incentives for project oversight costs to owners who are already receiving incentives under an approved plan of action. HUD will do so upon the owner's request. Section 313(b)(1) of title III amends Section 604(c) of LIHPRHA by adding subsection (1)(b), which prohibits the Secretary from refusing to offer incentives to owners filing plans of action under the Emergency Low-Income Housing Act of 1987 based solely on when the owner filed the plan of action. The subsection further applies this provision to any owner who filed a Notice of Intent under section 222 of ELIHPA before October 15, 1991.

The Department, to its knowledge has never refused to offer incentive to any owner who has filed a plan of action, regardless of the date of filing, under ELIHPA. The legislative history with respect to this provision offers only one clarification as to its intent. The House Committee report references the Department's change in policy for offering increased distributions based on revalued equity on July 16, 1991. July 16, 1991 is the effective date of a Notice of Redelegation of Authority to Regional Administrators to approve plans of action, published on July 23, 1991 at 56 FR 33763. July 16, 1991 is also the date that the administrative guidance for reviewing and approving plans of action under ELIHPA, HUD Notice H91–29, "Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990" ("Notice H91–29"), became effective.

Until Notice H91–29 was made effective, the Department followed a policy of allowing so-called "unlimited distributions," access to all surplus cash, to any owner requesting increased distributions based on revaluated equity. Since incentives authorized under section 224 of ELIHPA also included access to residual receipts, an owner could request both incentives in the plan of action, with the effect of having an increased distribution and full access to residual receipts. A sensible alternative was to allow unlimited distributions which would have the same effect. (A corresponding policy was to allow annual rent increases for units receiving Section 8 Loan Management Set-Aside assistance with the Annual Adjustment Factor, and to allow rent increases for units not receiving such Section 8 assistance by an administrative formula.) Further since the administrative rent limitations imposed on plans of action under ELIHPA might not yield to any owner a return on equity reflecting a project's full, revalued equity, allowing "unlimited" distributions was viewed by the Department as a correction to a design defect in the authorizing legislation, which was in turn "corrected" by LIHPRHA.

The policy of allowing "unlimited distributions" was found to be unworkable when applied to section 236 projects, because it rendered the collection of income in excess of the basic rent, required by section 236(g) of the National Housing Act, impossible. This is the case because the calculation of basic rent requires a fixed distribution for limited distribution mortgagors. Despite the many changes that ELIHPA made to both the nature and operation of a section 236 project, it had not repealed section 236(g) and the requirement to collect excess income. In fact, section 219 of LIHPRHA reinforces Congressional intent for the Department to collect excess income from section 236 projects with approved plans of action under that statute. Although section 219 of LIHPRHA has no legal bearing on the literal construction of ELIHPA, the Department finds it instructive with respect to Congressional intent regarding section 236 projects under the general heading of preservation.

Thus, the Department with the publication of Notice H91–29 reverted to a policy of negotiating distributions, generally reflecting net cash at the end of the statutory rent phase-in period, and corrected what was generally held as an administrative error. Further, rent increases would henceforth be governed by the budgeted method, common now to virtually all projects insured under sections 221(d)(3) and 236 of the National Housing Act. Although only a few Section 236 projects had plans of action approved with surplus cash distributions, the Department did not seek to renegotiate the plans of action after the adoption of the new policy, choosing not to penalize owners, who had negotiated plans of action in good faith, for the Department's administrative error.

Section 313(b)(1) makes it clear that the Congress wishes the Department to return to its policy of surplus cash distributions for plans of action approved under ELIHPA. It is also clear that the Congress intends that HUD continue to collect excess income from section 236 projects. Therefore, section 221(d)(3) mortgagors may retain all rental collections over and above normal operating costs and debt service as distributable, subject to the surplus cash computation. Section 236 projects may do likewise, subject to the collection of excess income and the surplus cash computation. In order to determine the amount of excess income to be collected, the Department must establish a basic rent.

The basic rent will be set in the following manner: (1) Units assisted by Section 8 loan management set-aside will have a basic rent of the lesser of the Section 8 existing fair market rent or the rent for comparable unassisted units; (2) low income units not assisted by Section 8 loan management set-aside will have a basic rent set at 30 percent of one twelfth of 75 percent of the area median income (or 125 percent of the national median income, if less) adjusted for unit size; (3) moderate income units will have a basic rent set at 30 percent of one twelfth of 90 percent of the area median income (or 125 percent of the national median income, if less) adjusted for unit size. Section 236 market rents will be established in accordance with current procedures. Owners will be required to remit monthly rental income collected in excess of the aggregate basic rent, not to exceed the amount of the monthly interest reduction payments.

Rent increases for units assisted by section 8 will be adjusted by the Annual Adjustment Factor. Rent increases for units not assisted by Section 8 will be adjusted by adjustments to the "factored rents" set forth in Notice H91–29 or when tenant incomes are recertified, depending on which method the owner chooses for determining tenant rents for units not assisted by Section 8 loan

management set-aside at plan of action approval. Owners may at their option apply for and receive a limited distribution under ELIHPA. For owners choosing this option, rent increases will be governed by the budget method.

There is no requirement in section 313(b) of title III nor is there any indication in the legislative history that Congress intended that this provision retroactively apply to any owner who has had a plan of action approved under the conditions set forth in Notice H91–29. Therefore, the Department will not reconsider plans of action which have received final approval in accordance with § 248.218.

Any Section 236 project which has received a surplus cash distribution as an incentive will have section 236 basic and market rents calculated in accordance with the above methodology effective with the first approved increase in project rents after the effective date of this rule. However, the collection of excess income foregone due to the Department's administrative error will not be required.

Subpart B—Prepayment and Plans of Action Under the 1990 Act

Section 248.101 (Definitions)

Section 248.101 is revised by this rule to add definitions of "project oversight costs" and "proprietary information." Sections 307, 308(b) and 313(b) of title III require HUD to provide sufficient incentives to priority purchasers of eligible low income housing under LIHPRHA, and to nonprofit purchasers of projects for which an election was made under ELIHPA, to meet "project oversight costs." The definition of "project oversight costs" recognizes that some priority purchasers may not have the experience and expertise needed to own and operate low income housing and may want to hire a third party to provide assistance, education and training for the board and members of the priority or nonprofit purchaser. The Department may provide incentives to cover costs incurred by priority purchasers hiring third parties to assist the priority purchasers' board of directors in making ownership and management decisions. Because the board of directors must make all ownership decisions, project oversight costs must be directly related to educating and supporting the board in its decisionmaking. It is intended that third parties will provide project oversight to facilitate the functions of the board of directors, rather than to usurp the board's responsibilities. Since project oversight is intended to provide education and training to priority purchasers which may not have the experience necessary to own and operate low income multifamily housing, the Department expects that as priority purchasers gain this experience, project oversight costs will diminish and eventually be eliminated. The Department is considering limiting project oversight costs to the first five years of operation after plan of action approval and specifically requests comments regarding whether a five-year limitation is reasonable.

Section 304 of title III amends section 217(a)(2) and (c) of LIHPRHA to require owners and the Department to make available to the tenants and the chief executive officer of the appropriate State or local government in the jurisdiction where the housing is located copies of all documentation supporting the plan of action and revisions to the plan of action, except for any documentation which HUD deems to be proprietary information. To implement section 304 of title III, this rule adds a definition of the term "proprietary information" to § 248.101 and amends the notice provisions of § 248.135 (c) and (f). The amendments to § 248.135 (c) and (f) are addressed in the following discussion of that section.

In his discussion on the Senate Floor, Senator Cranston indicated that tenants should have access to "all information submitted that is relevant to the preservation process, with a narrow exception. Only proprietary information is privileged. The privilege extends only to information which is equivalent to trade secrets, confidential financial information, such as partnership audits, personal financial information about partners in the ownership entity, or project tenants * * * in the case of documents that include both proprietary and nonprivileged information, it is the intent of the conferees that the documents be released, with the proprietary information redacted." 138 Cong. Rec. S17909 (October 8, 1992) (statement of Sen. Cranston). The Department has taken into consideration this statement in formulating its definition.

Section 248.135 (Plans of Action)

As discussed in the previous section, section 304 of title III amends section 217(a)(2) and (c) of LIHPRHA to require an owner and the Department to make available, upon request, to the tenants and the chief executive officer of the appropriate State or local government in the jurisdiction where the housing is located copies of all documentation supporting the plan of action and revisions to the plan of action, except for any documentation which HUD deems to be proprietary information.

Section 248.135(c) currently requires the owner to provide copies of its plan of action to the tenant representative and the officer of State or local government to whom the owner submitted a copy of its notice of intent. The owner is also required to post, in all occupied buildings, a summary of the plan of action which includes a statement that the tenants may obtain a copy of the plan of action from the tenant representative, the local HUD office or the owner. As noted in the preamble to the April 1992 interim rule, at 57 FR 12010, a plan of action is a complete, self-contained document, having all the information necessary for the Department to make the determinations required under LIHPRHA. All supporting documentation is included in, and is a part of, the plan of action itself and is available to the tenants and the State and local government under § 248.153(c). However, because of the direction in section 304 of title III, and in the event that there is some supporting documentation that is not included in the plan of action, this rule amends paragraphs (c) and (f) of § 248.135 in order to permit tenants and the State or local governments to request copies of the supporting documentation. In addition, § 248.101 is amended, as noted in the preceding discussion, to add a definition of "proprietary information."

Section 248.141 (Criteria for Approval of a Plan of Action Involving Prepayment and Voluntary Termination)

Section 305 of title III amends section 218 of LIHPRHA to require HUD to issue written findings based on an analysis of the evidence it relies on in approving a plan of action to terminate the low income affordability restrictions on eligible low income housing. Section 305 also directs the Department to publish, in a regulation, a procedure for determining whether the conditions needed to approve a plan of action to terminate the low income affordability restrictions exist and the type of evidence the Department will rely on in making its determination. This rule revises § 248.141 to include the Department's current policies and procedures, as set forth in HUD Handbook 4350.6, "Processing Plans of Action Under the Low Income Housing Preservation and Resident Homeownership Act of 1990" for approving plans of action under this section.

VOL 58 ISS 132 JL 13 1993 UMI

Section 248.145 (Criteria for Approval of a Plan of Action Involving Incentives)

Section 307(a) purports to amend section 220(d)(2) of LIHPRHA by adding the parenthetical language to the following provision: "[s]ubject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approval plans of action, provide assistance sufficient to enable qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 226) to * * *" acquire the project, pay debt service on the federally assisted mortgage and the rehabilitation loan, meet project operating expenses and establish adequate reserves, receive an 8 percent return on actual cash investment, reimbursement for transaction expenses incurred by priority purchasers and training for resident councils under a resident homeownership program. This provision establishes the level of assistance the Department is authorized to provide to qualified purchasers under LIHPRHA.

The effect of section 307(a) would be to make section 220(d)(2) inapplicable to resident councils submitting a resident homeownership plan. However, because there is no other provision in LIHPRHA which indicates the level of incentives a resident council with a resident homeownership plan should receive, this amendment seems to be incorrect. Section 219(a) sets forth the amount of incentives which can be provided to an owner who retains the project and section 220(d)(2) does the same for purchasers where the owner decides to sell the project. If section 220(d)(2) is not applicable to resident councils with a homeownership plan, they would be the only entities which are not covered by a statutory provision defining the amount of incentives they may receive. This interpretation seems contrary to the entire preservation scheme which is intended to provide owners with a specific return on their investment while preserving the low income housing.

The position that Congress did not intend to amend section 220(d)(2) by adding the quoted parenthetical language is also supported by the fact paragraph (G) was not deleted from section 220(d)(2). Section 220(d)(2)(G) provides that the Department may award sufficient incentives to a resident council with an approved homeownership plan to cover, inter alia, the costs incurred to train the resident council and to provide homeownership training for the tenants. It would be unreasonable to make section 220(d)(2) inapplicable to resident councils with a homeownership plan and yet have a paragraph in that section which deals solely with those entities.

Rather than amending section 220(d)(2), the Department believes that section 307(a) is intended to amend section 220(d)(1) of LIHPRHA. If the quoted parenthetical language were added to section 220(d)(1), it would read as follows: "[I]f the qualified purchase is a resident council, the Secretary may not approve a plan of action for assistance under this section unless the council's proposed resident homeownership program meets the requirements under section 226. For all other qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 226), the Secretary may not approve the plan unless the Secretary finds that the criteria for approval under section 222 have been satisfied." Section 222 states that incentives cannot be provided unless binding commitments have been made to preserve the property as low income housing, to protect current tenants from displacement, to regulate rent increases for current and future tenants, and to ensure that the property is maintained in accordance with housing quality standards.

In implementing section 222, the Department, in § 248.145, inadvertently excluded from the criteria for approval under section 222 all resident councils, instead of just those resident councils under the resident homeownership program. It is likely that section 307(a) was intended to correct the Department's mistake in § 248.145. Section 248.145(a) is amended to apply to all resident councils, except those under the resident homeownership program.

While HUD interprets section 307(a) as intending to amend section 220(d)(1), section 307(a) could have been meant to amend section 221(d)(2) of LIHPRHA. Section 221(d)(2) authorizes the Department to provide grants to qualified purchasers to assist in the completion of sales and transfers under the mandatory sale procedures. It is possible that the language of section 307(a) was intended to exclude resident councils purchasing under a resident homeownership plan from receiving grants under section 221(d)(2). This position could be supported by section 226(a) of LIHPRHA which states that a resident homeownership plan should be developed by "[t]enants seeking to purchase eligible low income housing in accordance with section 220 * * *;" implying that resident homeownership is only an option under the voluntary sale provisions of section 220 and not the mandatory sale provisions of section 221. The Department requests comments which may clarify this matter.

Section 308(b) of title III amends section 222(a)(2)(G)(i) of LIHPRHA which governs future rent increases for tenants residing in projects with approved plans of action. Prior to this amendment, section 222(a)(2)(G)(i) stated that future rent adjustments generally would be made based on an annual adjustment factor applied to the portion of rent attributable to project operating expenses and by making changes in the owner's annual authorized return. Where there were extraordinary expenses which were not covered by the annual adjustment factor or the owner's return, an owner could appeal to HUD for an additional rent increase. Section 308(b) amends this provision by deleting all references to the annual authorized return and by adding the requirement that, when the owner is a priority purchaser, the annual adjustment factor be applied to the portion of rent attributable to project oversight costs, as well as that portion attributable to operating expenses. A definition of the term "project oversight costs" is also added to § 248.101.

Section 248.153 (Incentives To Extend Low Income Use)

Section 306 of title III amends section 219(a) of LIHPRHA to require the Department to provide incentives which would be sufficient to permit an owner to receive its annual authorized return "for each year after approval of the plan of action." Section 248.153(a)(1) is amended accordingly.

Section 306 also amends section 219(a) of LIHPRHA to permit HUD to provide the following incentives, in the following order of preference, to ensure that an owner receives its annual rate of return during the tenant rent phase-in period: (1) permitting owner access to residual receipts accounts; (2) deferring remittance of excess rent payments; and (3) increasing rents, as permitted under an existing Section 8 contract. To implement this provision, the Department adds a new paragraph (c) to § 248.153 stating that, if necessary to enable an owner to receive its annual authorized return during the tenant rent phase-in period required by § 248.145(a)(6), HUD shall permit the owner to withdraw funds from the residual receipts accounts. If this is inadequate, and the project is insured or assisted under section 236 of the National Housing Act, the owner may

defer remittance of excess income. If both of these incentives fail to permit an owner to obtain the annual authorized return, the Department will then temporarily increase Section 8 rents, as permitted under the existing Section 8 contract.

Seciton 248.153(b)(1) currently permits an owner to have access to the project's residual receipts accounts, "as necessary to enable the owner to realize the annual authorized return." Therefore, an owner will already receive this incentive during the rent phase-in period. Because the owner and the Department will be unable to ascertain in the first 12 months after approval of a plan of action whether the incentives awarded under the plan of action are sufficient to enable the owner to obtain its annual authorized return, the additional remedies permitted under the revised § 248.153(c) will be unavailable until one year after plan of action approval. If an owner can document, through an audit, that it is not receiving its annual authorized return, these remedies may be made available to the owner during the first year after plan of action approval. Otherwise, at the end of the first year, if it has been determined that an owner has not obtained its annual authorized return, an owner of a section 236 insured or assisted project will be permitted to defer remittance of excess rent payments, and an owner of a project, other than one insured or assisted under section 236, will receive an increase in rents, to the extent permitted by an existing section 8 contract. At the end of the second year of the rent phase-in period, if it is determined that an owner of a section 236 insured or assisted project still has not received the total annual authorized return, rents will be temporarily increased during the phase-in period to the extent permitted by an existing section 8 contract.

Section 248.157 (Voluntary Sale of Housing Not in Excess of the Federal Cost Limit)

Sections 307(b) through (d) of title III amend section 220(d)(2) of LIHPRHA to make available additional incentives for priority purchasers. Section 307(e) amends section 220(d)(3) of LIHPRHA to permit selling owners to retain a project's residual receipts account without a corresponding decrease in the sales price.

Section 307(b) authorizes HUD to provide sufficient incentives to meet project oversight costs where the owner is a priority purchaser. Section 220(d)(2)(D) previously permitted incentives at a level which would cover project operating expenses and establish adequate reserves, but did not include project oversight costs. Section 248.157(m)(4) is amended to include this cost. As previously noted, § 248.101 contains a definition of "project oversight costs" which sets forth the types of costs which can be covered by incentives.

Section 307(c) permits qualified purchasers to receive an 8 percent annual return on any cash investment, other than assistance provided under LIHPRHA, to acquire or rehabilitate the project. Prior to this amendment, section 220(d)(2)(E) allowed qualified purchasers to receive an adequate return on any actual cash investment to acquire the project. The Secretary was authorized to use his discretion to determine what would be considered an "adequate return." The current section 248.157(m)(5) restates the statutory language of section 220(d)(2)(E), but the preamble to the April 1992 interim rule expanded upon this by stating, at 57 FR 12021, that HUD would "build into the rent stream a return on any actual cash investment by the purchaser and debt service on any gap financing. The extra income must be allocated towards debt service payments on the non-federal loan, or if the return exceeds the debt service on the loan, then the surplus cash must be deposited in the residual receipts account * * *." In the Senate Report, on page 70, the Committee took issue with the fact that priority purchasers would have to return any surplus cash not needed for debt service to the residual receipts account, rather than retain it for their own purposes. In order to comply with statutory intent, § 248.157(m)(5) is revised to permit an 8 percent return for any actual cash investment made by priority purchasers to rehabilitate, as well as to acquire, eligible low income housing. The Department has also amended its administrative requirement that all surplus cash not needed for debt service be returned to the residual receipts account. Instead, priority purchasers will be permitted access to funds in the residual receipts account which are not needed for project purposes. As is the case with for-profit owners, HUD-approval will be required before funds may be withdrawn by priority purchasers from the residual receipts account.

Section 307(d) authorizes HUD to reimburse priority purchasers for "all reasonable transaction expenses associated with acquisition, loan closing and implementation of an approved plan of action." Section 220(d)(2)(F) originally allowed priority purchasers "an adequate reimbursement for transaction expenses relating to acquisition of the housing, subject to approval by the Secretary." Section 307(d) enlarges the scope of the term "transaction expenses" to permit reimbursement of expenses incurred in loan closing and implementation of an approved plan of action, as well as those expenses incurred in acquiring the property. Section 248.157(m)(6) is revised to restate the language of section 307(d). The Department specifically requests comments concerning the types of expenses which may be incurred by priority purchasers in implementing an approved plan of action. The Department will consider any comments it receives on this point in order to expand on this provision in the administrative guidance it is currently formulating.

In the current § 248.157(m)(6), the Department, using its discretion to implement section 220(d)(2)(F), placed a cap on the reimbursement of transaction expenses at 5 percent of the project's transfer preservation equity, made reimbursement subject to HUD's approval and required that the reimbursement be "in accordance with standards applicable to insured loan transactions under this chapter." The Senate Report indicates, on page 71, that the Committee objected to both the 5 percent cap and the requirement that the reimbursement be in accordance with other loan transactions. "HUD's regulations arbitrarily limit the reimbursement of transaction expenses in two ways: first, by setting a cap of 5 percent of preservation equity; and second, by conditioning reimbursement on 'standards applicable to insured loan transactions under this chapter.' These limits are contrary to the legislative intent that the reimbursement be 'adequate' for all reasonable expenses. The limits are also contrary to industry practice, because transaction expenses do not correlate with the value of [sic] size of the property acquired." Because of this amendment and the Committee' objections, § 248.157(m)(6) is amended to remove the 5 percent cap and the requirement that reimbursement be comparable to other loan transactions.

Section 307(e) amends section 220(d)(3)(A) which provided that where a selling owner retained any residual receipts from the project upon sale, the sale price would be decreased by the amount of the residual receipts being retained. As noted in the preamble to the proposed rule to implement LIHPRHA, at 56 FR 20277, published on May 2, 1991, the Department took the position that section 220(d)(3)(A), as enacted, "would deprive an owner of a portion of the project's value" because the project's preservation value does not

take into consideration the amount of the project's escrow accounts, including residual receipts. Section 307(e) corrects section 220(d)(3)(A) by eliminating the requirement that residual receipts retained by the owner be deducted from the sale price. Section 248.157(n) is revised to implement this amendment.

Section 248.173 (Resident Homeownership Program

Section 309 of title III amends section 226 of LIHPRHA, which governs the resident homownership program, to prohibit the Department from requiring prepayment of the mortgage as a condition of approving a resident homeownership plan of action; to require low income use restrictions to remain on all rental units; and to take away the Department's discretion to determine whether a purchase under the resident homeownership program involves an assumption of the mortgage and whether the purchasing entity intends to own the housing on a permanent basis.

Section 248.173(s) prohibits resident councils from assuming the federally-assisted mortgage under a resident homeownership program where fee simple ownership of the project's units are being transferred to the tenants. However, § 248.175, which permits resident councils to purchase and operate a project as a limited equity cooperative under a resident homeownership plan, does not prohibit mortgage assumptions. The Department revises paragraph (s) of § 248.173 to clarify that a resident council may choose to assume the federally-assisted mortgage or prepay the mortgage in connection with a resident homeownership plan. If the resident council chooses to assume the mortgage, the project must be sold to a limited equity cooperative pursuant to § 248.175 and the project must be operated as a limited equity cooperative.

The Department limits mortgage assumptions to limited equity cooperatives because where there is to be a mortgage assumption, the only workable form of resident homeownership is as a cooperative where shares in the project are transferred to the tenants, rather than fee simple ownership of the units. Section 226(b)(5)(A)(iii) requires homeowners, whether purchasing a share in the project, or the actual unit, to execute a promissory note payable to the Secretary. It would be infeasible where fee simple ownership of units is transferred, to require promissory notes for each unit, as well as to have a mortgage outstanding on the entire project.

Where the federally assisted mortgage is assumed by a resident council, the regulatory agreement on the project would remain in place and all current and prospective homeowners would be required to comply with low income restrictions. Paragraph (b)(10) of section 226 of LIHPRHA requires as a condition of assuming the mortgage, that the low income restrictions on the project remain in place for the remaining useful life of the project. However, section 226(b)(3) of LIHPRHA requires that only initial homeowners meet the low income restrictions established by HUD. (Note that the Department, in § 248.173(g), requires initial owners to fall within the same type of income profile imposed on projects which are transferred under § 248.157.) Subsequent owners are not subject, either by statute or by regulation, to meet income requirements. This implies that Congress contemplated that resident councils could choose to assume the federally assisted mortgage and continue the low income use restrictions for the project's remaining useful life or could pay off the mortgage and eliminate the low income use restrictions once all initial homeowners have sold their units to subsequent owners. The revised § 248.173(s) provides resident councils with these two options.

In order to ensure that low income use restrictions continue to be applied to all rental units for the period during which they remain as rental units, paragraph (g) of § 248.173 is revised to require as a condition of approval of a resident homeownership program, that all tenants residing in rental units be subject to the protections of § 248.145 (a)(5), (a)(6), (a)(7), and (a)(9), which restrict rent levels, and that the rental units be available to new tenants in the proportions of very low, low and moderate income tenants, as required under § 248.145(a)(8).

Section 248.175 (Resident Homeownership Program—Limited Equity Cooperative)

Section 309 of title III also amends section 226(b)(8) of LIHPRHA to add the phrase "Except in the case of limited equity cooperatives, * * *" before "resident councils shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable." It is unclear whether this amendment is intended to delete all time requirements for transfer of ownership shares from a limited equity cooperative to the tenants, such as the 4-year requirement imposed in § 248.175(b), or whether this is a technical change to omit limited equity cooperatives from the requirement that "ownership of the property" be transferred in a timely manner because individual owners in a cooperative do not obtain ownership of the property, but a share in the entire project.

Paragraph (b) of § 248.175, which governs resident homeownership by limited equity cooperatives, is revised to delete the cross-reference to § 248.173(o), which requires that ownership be transferred to the tenants in a timely manner. The Department specifically requests comments on this revision.

Subpart C—Prepayment and Plans of Action Under the Emergency Low Income Preservation Act of 1987

Section 248.201 (Definitions)

As noted in the discussion of § 248.5, section 313(b)(1)(A) of title III requires the Department to provide sufficient incentives to nonprofit purchasers to meet "project oversight costs." Section 248.201 of the Department's regulations is amended by this rule to add the definition of the term "project oversight costs." The definition in § 248.201 is identical to the definition adopted in § 248.101, except that the term "nonprofit purchaser" is substituted for the term "priority purchaser," since ELIHPA does not create a category for priority purchasers. The definition of "project oversight costs" is addressed in the preceding discussion of § 248.101.

Section 248.211 (Notice of Intent To Prepay)

Section 248.211(b) of the Department's regulations is amended in order to extend the notice requirements of section 313(a) of title III to cover those who elected to proceed under ELIHPA. The preceding discussion concerning § 248.5 addresses the reasoning behind this revision. Section 248.211(b) currently requires an owner to submit a copy of its notice of intent to the governor in the State where the project is located or with the appropriate State or local government agency for the jurisdiction in which the project is located and to each tenant in the project, as well as to post a copy of the notice of intent in each occupied building of the project. The Department revises § 248.211(b) by including language from § 248.105(c), requiring, for owners who made an election, that the notice of intent be submitted to the chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State

or local law to receive such information and to the mortgagee.

Section 248.213 (Plan of Action)

The Department amends § 248.213(b) of its regulations to require owners who made an election to proceed under ELIHPA to notify the State and local governments and the tenants of the submission. The rationale behind this amendment is addressed in the preceding section concerning § 248.5. This revision incorporates in § 248.213(b), language similar to that in § 248.135(c) in order to create a uniform standard for notifying affected tenants and State and local governments under both preservation programs.

While ELIHPA does not create a mechanism for identifying tenant representatives, the LIHPRHA requirement that the tenant representative be given a copy of the plan of action is retained in case there is a tenant representative who is known to the owner. Although section 304 of title III does not extend the ban on releasing proprietary information to ELIHPA, the Department proposes to do so in this rule. There is no basis for permitting certain tenants and State and local governments to receive proprietary information and not others simply because of the preservation program chosen by the owner.

Section 248.217 (Revisions to Plan of Action)

The Department also amends § 248.217, which governs revisions to plans of action submitted under ELIHPA, to require that all revisions, and supporting information, except for proprietary information, be provided to the tenants and State and local governments. The reasons for this change are discussed in the preceding section concerning § 248.5. The language revising § 248.217 is derived from the language of § 248.135(f), as amended.

Subpart E—Technical Assistance and Capacity Building

Section 312 of title III amends LIHPRHA by adding new sections 251 through 257 which establish a technical assistance and capacity building program for providing grants to resident groups, resident councils and community-based nonprofit housing developers. This program is codified in a new subpart E which is added to part 248. Subpart E restates the provisions of sections 251 through 257. More specific information will be provided in a Notice of Fund Availability (the "1993 NOFA") which is currently being drafted by the Department. The Department intends to award technical assistance grants on a noncompetitive, rolling basis.

As enacted, LIHPRHA did not provide the Department with authority to provide funds prior to plan of action approval to priority purchasers to assist them in organizing and training. Pursuant to section 220(d) of LIHPRHA, funds could only be provided retroactively under an approved plan of action to reimburse priority purchasers for transaction expenses related to acquisition and resident councils for training expenses incurred in connection with a resident homeownership plan. However, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992 set aside funds "for tenant and community-based nonprofit education, training and capacity building * * *." On September 3, 1992 at 57 FR 40570, the Department published a Notice of Fund Availability (the "1992 NOFA") announcing technical assistance and planning grants which would be awarded to certain priority purchasers in accordance with the standards established in the 1992 NOFA.

The Department is currently accepting applications on a rolling basis under the 1992 NOFA. In a statement on the Senate Floor, Senator Cranston remarked that "[t]he conferees expect HUD to proceed expeditiously with the [1992] NOFA and receive and approve grant applications on the 30 day schedule provided, while moving forward with the implementation of the new technical assistance program. The Department may run the programs concurrently or sequentially, but must take steps to assure that no funding gap occurs between the temporary technical assistance grant program and the permanent program established by this title." Cong. Rec. S17910 (October 8, 1992) (statement of Sen. Cranston). HUD intends to continue to accept applications under the 1992 NOFA until the funding set aside under the 1992 appropriations Act runs out. Applications for funding will be reviewed in accordance with the standards and criteria established in the 1992 NOFA and not based on the technical assistance and capacity building program set forth in subpart E. The Department intends to administer grants under the 1992 NOFA and the 1993 NOFA simultaneously.

Potential grant recipients should be aware of the substantive differences between the technical assistance program set forth in the 1992 NOFA and the program established in subpart E. Under the 1992 NOFA, funds are provided directly by HUD and are available in three separate phases; for start-up funding, for an expression of interest and development of a purchase offer, and for preparation of a plan of action. Successful applicants may receive up to $25,000 for phase I activities, $50,000 for phase II activities and $50,000 for phase III activities. Those eligible for the assistance are resident groups, resident councils, community groups, and community-based nonprofit organizations.

Pursuant to subpart E, grants are administered by intermediaries selected by HUD. Resident organizations and community-based nonprofit housing developers may apply for two types of grants: Resident capacity building and/or predevelopment. Funding for each grant may not exceed $30,000 and $200,000, respectively. In addition, State and local government agencies, nonprofit intermediaries, and experienced resident councils and community-based nonprofit organizations, may apply for grants to conduct community outreach, training programs, organization activities, and any other activities HUD deems appropriate under the preservation program.

Miscellaneous Matters

The Housing and Community Development Act of 1992 contains two additional provisions, pertaining to section 8 certificates and vouchers and flexible subsidy assistance, which also affect the preservation program. Section 141 of the Housing and Community Development Act of 1992 amends sections 8(c)(4) and 8(o)(3)(A) of the United States Housing Act of 1937 to make eligible for section 8 certificates and vouchers, tenants who have been displaced, under section 223 of LIHPRHA, as a result of a mortgage prepayment or termination of a mortgage insurance contract and nonpurchasing families residing in a project under a resident homeownership plan, pursuant to section 226 of LIHPRHA. Since their enactment, sections 223(a) and 226(b)(6)(B) of LIHPRHA provided that displaced tenants and nonpurchasing families are eligible for section 8 certificates and vouchers. However, section 8 was not amended to include these tenants and families as eligible certificate and voucher recipients. Section 141 corrects this oversight. No amendment is needed to part 248 in order to implement this provision.

Section 405(d) of the Housing and Community Development Act of 1992 amends section 201 of the Housing and Community Development Amendments

of 1978 by adding a provision stating that "[p]rojects receiving assistance under this section are not eligible for prepayment incentives under [ELIHPA] or [LIHPRHA]. Projects receiving financial assistance under such Acts are not eligible for assistance under this section." Section 405(b) of the Housing and Community Development Act of 1992 repeals section 201(k)(4) of the Housing and Community Development Amendments of 1978 and establishes new selection criteria for awarding flexible subsidy capital improvement loans, including giving priority to projects with HUD-insured mortgages over projects with HUD-held mortgages and those noninsured projects which are assisted by State agencies. Section 201(k)(4) had created a priority for projects receiving incentives under ELIHPR and LIHPRHA, but this amendment eliminates preservation projects from the list of selection criteria. On their face, these amendments would seem to preclude ELIHPA and LIHPRHA projects from receiving flexible subsidy assistance, and vice versa.

However, Congress did not amend section 224(b)(6) of ELIHPA or section 219(b)(4) of LIHPRHA which list flexible subsidy capital improvement loans as a permissible incentive. Nor did Congress repeal sections 201(m)(1) and (m)(2) of the Housing and Community Development Amendments of 1978, which discuss rental payments for ELIHPA and LIHPRHA projects receiving flexible subsidy assistance. In addition, Congress enacted section 318 of title III, requiring the Department to present a report to Congress detailing the cost of providing preservation incentives to owners of projects deemed ineligible for incentives because the owners entered into agreements to maintain the projects' low income use in exchange for flexible subsidy assistance. This report is required because Congress "is concerned that many of these projects may not be preserved, even with flexible subsidy, for lack of necessary additional funding * * * the report [should] include any recommendation which the Committee can consider for ways to make these projects eligible for the preservation program * * *" House Rpt. No. 760, 102d Cong., 2d Sess., at 117 (the "House Report"). The failure of Congress to eliminate capital improvement loans as an incentive, or to delete all flexible subsidy provisions pertaining to ELIHPA and LIHPRHA projects, and the fact that Congress is requesting a report to attempt to make projects with flexible subsidy eligible for incentives, seem to imply that Congress intended to continue to permit capital improvement loans as an incentive.

While owners proceeding under ELIHPA or LIHPRHA may finance rehabilitation with a loan insured under section 241 of the National Housing Act, a capital improvement loan is preferred by nonprofit purchasers because nonprofit mortgagors are not subject to the owner contribution requirements imposed on for-profit mortgagors, the interest rate on capital improvement loans is lower than for section 241 loans, and capital improvement loans are paid back from surplus cash. The amendment to section 241(f) made by section 316(a) of title III eliminates the need for a rehabilitation loan under LIHPRHA because rehabilitation costs will now be included in the section 241(f) equity and acquisition loans. However, capital improvement loans would be beneficial for nonprofit purchasers under ELIHPA whose only other choice is to finance improvements with a section 241(a) loan.

In light of the foregoing, the Department will allow nonprofit purchasers to obtain a flexible subsidy capital improvement loan as an incentive under ELIHPA. Because nonprofit purchasers requesting capital improvement loans in their plans of action will not be "receiving financial assistance" under ELIHPA or LIHPRHA at the time they are determined eligible for flexible subsidy, this position will not violate section 405(d) of the Housing and Community Development Act of 1992.

The Department intends to issue a Notice of Fund Availability for capital improvement loans which will announce funding for HUD-insured projects which are being sold to nonprofit purchasers pursuant to approved plans of action under ELIHPA. These projects will have to conform to the new selection criteria established in section 201(n)(1) and will be awarded assistance as their applications are received. Nonprofit purchasers of projects which do not have mortgages insured by HUD will also be eligible to apply for a capital improvements loan, but because of the statutory preference granted to projects with HUD-insured mortgages in section 201(n)(2), these projects will not be awarded funding until the end of the funding year.

Findings and Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this rule will have a significant impact on the formation, maintenance and general well-being of the family. Achievement of homeownership by low income families under the regulation can be expected to support family values, by helping families to achieve security and independence, by enabling them to live in decent, safe and sanitary housing, and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

E. Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601), HUD

VOL 58 ISS 132 JL 13 1993 UMI

certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it carries out statutorily-mandated limitations on prepayment of the affected mortgages. Any economic impact is a direct consequence of the statute and is not separately imposed by this rule.

F. Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington, DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

TABULATION OF ANNUAL REPORTING BURDEN:

Description of information collection and applicable program reference	Number of respondents	Number of responses per response	Total annual responses	Hours per response	=	Total hours
A. Resident capacity grant application 1992 statute: Section 248	221.00	1	221.00	5.00		105.00
B. Predevelopment grant application 1992 statute: Section 248	77.00	1	77.00	10.00		770.00
C. Other purpose grants 1992 statute: Section 248	50.00	1	50.00	10.00		500.00
D. Application by intermediaries 1992 statute: Section 248	50.00	1	50.00	16.00		800.00
E. Voucher submission:						
1. Resident capacity grantees: 248	221.00	10	2,210.00	0.10		221.00
2. Predevelopment grantees: 248	77.00	15	1,155.00	0.10		115.50
3. Intermediary grantees: 248	50	7	348.00	0.50		174.00
F. Reporting:						
1. Resident capacity grantees: 248	221.00	2	442.00	1.00		442.00
2. Predevelopment grantees: 248	77.00	2	154.00	1.00		154.00
3. Other purpose grantees: 248	50	2	100.00	1.00		100.00
4. Intermediary grantees: 248	50	4	200.00	3.00		600.00
G. Title II NOI to mortgages	200	1	200.00	0.1		20.00
H. Title II plan of action to tenant rep and state or local government	200	1	200.00	0.2		40.00
Total						5,041.50

G. Regulatory Agenda

This rule was listed as item 1473 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24416) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.137 (Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families).

List of Subjects

24 CFR part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends chapter II of title 24 of the Code of Federal regulations as follows:

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

1. The authority for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b–1715z–1; 42 U.S.C. 3535(d).

2. In § 236.10, paragraph (e) is revised to read as follows:

§ 236.10 Eligible mortgagors.

* * * * *

(e) *Public mortgagors.* The public mortgagor shall be a Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a State or of a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to section 8 of such Act) and which is acceptable to the Commissioner. Such a mortgagor shall be regulated or supervised as to rents, charges and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this part.

3. Section 236.60 is revised to read as follows:

§ 236.60 Excess rental charges.

Except as agreed to by the Commissioner pursuant to a plan of action approved under part 248 of this chapter or in connection with an adjustment of contract rents under section 8 (c)(10) of the United States Housing Act of 1937, the mortgagor shall agree to pay monthly to the Commissioner the total of all rental charges collected in excess of the Basic Rent in accordance with instructions prescribed by the Commissioner.

4. Section 236.901 is revised to read as follows:

§ 236.901 Audit.

Where a State or local government receives interest reduction payments under section 236(b) of the National Housing Act or is the mortgagor of a mortgage insured or held by the Commissioner under this part, it shall

conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

5. The authority for part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6; 42 U.S.C. 3535(d).

6. Section 241.1060 is revised to read as follows:

§ 241.1060 Maturity.

(a) Equity loans shall have a term not to exceed 40 years; and

(b) Acquisition loans shall have a term of 40 years.

7. Section 241.1067 is revised to read as follows:

§ 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248 of this chapter.

(a) The amount of the equity loan shall not exceed:

(1) The amount of rehabilitation costs as determined under an approved plan of action and related charges; plus

(2) The lesser of 70 percent of the extension preservation equity of the project; or

(3) The amount the Commissioner determines can be supported by the project on the basis of an 8 percent return on extension preservation equity, assuming normal debt service coverage. To the extent practicable, equity loans shall have amortization provisions which will support the maximum loan amount authorized under this section.

(b) The amount of the acquisition loan shall not exceed:

(1) The amount of rehabilitation costs as determined under an approved plan of action and related charges; plus

(2) Ninety-five percent of the transfer preservation equity of the project; and

(3) If the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing, and implementation of the plan of action, subject to the approval of the Commissioner.

8. A new § 241.1068 is added to read as follows:

§ 241.1068 Renegotiation of an equity loan.

The Commissioner shall renegotiate and modify the terms of an equity loan insured under this subpart at the request of the owner of the project for which a loan closing occurred if—

(a) The loan closing occurred between September 28, 1992 and January 26, 1993;

(b) The loan was made pursuant to a plan of action submitted under subpart C of part 248 of this chapter; and

(c) The plan of action was accepted by the Commissioner for processing in December 1991.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

9. The authority for part 248 continues to read as follows:

Authority: 12 U.S.C. 1715l note; 12 U.S.C. 4101, *et seq.*; 42 U.S.C. 3535(d).

10. In § 248.5, paragraph (d) is redesignated as paragraph (f) and new paragraphs (d) and (e) are added to read as follows:

§ 248.5 Election to proceed under subpart B or subpart C of this part.

* * * * *

(d) For an owner who has elected under paragraph (c) of this section to proceed under subpart C of this part, the Commissioner shall provide sufficient assistance to enable a nonprofit organization that has purchased, or will purchase, eligible low income housing to meet project oversight costs, as that term is defined in § 248.201.

(e) The Commissioner shall not refuse to offer incentives under § 248.231 to any owner who filed a notice of intent under § 248.211 before October 15, 1991, based solely on the date of filing of the plan action.

* * * * *

11. In § 248.101, the following definitions are added in alphabetical order to read as follows:

§ 248.101 Definitions.

* * * * *

Project oversight costs. Reasonable expenses incurred by a priority purchaser in carrying out its ongoing ownership responsibilities under an approved plan of action. Project oversight costs must be directly related to educating the priority purchaser's board of directors or otherwise supporting the board in its decision making. Project oversight costs may include staff, overhead, or third-party contract costs for:

(1) Ensuring adequate and responsible participation by the board of directors and the membership of the priority purchaser in ownership decisions, including ensuring resident input in these decisions;

(2) Facilitating long-range planning by the board of directors to ensure the physical, financial and social viability of the project for the entire time the project is maintained as low income housing; and

(3) Assisting the ownership in complying with regulatory, use, loan and grant agreements.

Proprietary information. That information which cannot be released to the public because it consists of trade secrets, confidential financial information, audits, personal financial information about partners in the ownership entity, or income data on project tenants. Where proprietary information cannot be separated from the rest of a document, the entire document shall be deemed "proprietary information" and shall not be releasable to the public. Where proprietary information can be reasonably segregated from the rest of the document, the proprietary information shall be deleted and the remainder of the document shall be releasable to the public.

* * * * *

12. Section 248.135 is amended by revising the last sentence of paragraph (c) and adding a new sentence to the end of that paragraph and by revising the last sentence of paragraph (f) to read as follows:

§ 248.135 Plans of action.

* * * * *

(c) * * * The Commissioner shall submit a copy of the plan of action to the chief executive officer of the appropriate agency of such State or local government which shall review the plan of action and advise the tenants of the project of any programs that are available to assist the tenants in carrying out the purposes of this subpart. The summary of the plan of action posted by the owner and the copies of the plan of action submitted to the tenant representative, the officer of State or local government to whom the owner submitted a notice of intent under § 248.105(c) and the chief executive officer of the appropriate State or local government, shall all state that, upon request, the tenants and the State or local government, may obtain from the owner or from the local HUD field office a copy of all documentation supporting the plan of action except for that documentation deemed "proprietary information" under § 248.101.

* * * * *

(f) * * * The owner shall submit any revision to the Commissioner, and provide a copy of the revision and all documentation supporting the revision except for that documentation deemed "proprietary information" under § 248.101, to the parties, and in the manner, specified in paragraph (c) of this section.

* * * * *

13. In § 248.141, paragraph (b) is redesignated as paragraph (e) and new paragraphs (b), (c), and (d) are added as follows:

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

* * * * *

(b) For purposes of approving a plan of action under this section, the Commissioner shall find that the requirements of paragraph (a)(1) of this section have been met if the owner agrees to execute a use agreement which provides that rents for all tenants residing at the project at the time of plan of action approval will not exceed the limit established in paragraph (a)(1)(i) of this section and that no tenant residing in the project at the time of plan of action approval will be involuntarily displaced without good cause.

(c) For purposes of approving a plan of action under this section, the Commissioner shall find that the requirements of paragraph (a)(2) of this section have been met if the project is located in a housing market area which has been determined to have an adequate supply of decent, safe and sanitary rental housing; and it has been determined, based on the specific characteristics of the project, that the prepayment would not materially affect the housing opportunities of low and very-low income families.

(1) For purposes of this section, a "housing market area" is defined as an area where rental housing units of similar characteristics are in relative competition with each other. If a project is in a non-metropolitan area, the housing market area is the county in which the project is located. If the project is located in a metropolitan area the housing market area is the primary metropolitan statistical area (PMSA), or in the case of very large metropolitan areas, the housing market area may be a portion of the PMSA.

(2) For purposes of this section, a housing market area may be determined to have an adequate supply of decent, safe, and sanitary rental housing if the housing market area has a soft rental market. A soft rental market is a housing market area in which the supply of vacant available rental housing significantly exceeds the demand. A soft rental market exists if:

(i) There is currently a surplus of rental housing such that the current excess supply of vacant available housing, plus units currently under construction, is expected to exceed demand for at lest the next 24 months; or

(ii) Within the next 12 months, based on the housing production (units currently under construction or with firm planning commitments), in combination with the current supply of available vacant units, supply is expected to exceed demand for at least 24 months.

(3) In order to determine whether the housing market area ha a soft rental market, the Commissioner shall consider data from the 1990 Decennial Census and the most recent available local data concerning changes in population, households, employment, the housing inventory, residential construction activity, and the current and anticipated supply/demand conditions within the overall rental market, as well as the occupancy and vacancy situation in assisted housing projects in the area, including information on waiting lists and the experience of certificate and voucher holders in finding units.

(4) A determination must also be made on whether the prepayment would materially affect the housing opportunities of low and very-low income families in the area, based on the specific characteristics of the project including unit sizes, the type of tenants, e.g., elderly, handicapped, large families, minorities, the location of the project with respect to its proximity to employment opportunities; and the availability of other assisted housing within the immediate area. The prepayment would be determined to materially affect housing opportunities if:

(i) The project is needed to assist in preserving low income housing in a neighborhood which is being revitalized;

(ii) The project represents a rare source or the only source of low-and moderate-income rental housing in the immediate area;

(iii) There is a shortage of the particular type of rental housing provided by the project such as units suitable for the disabled, single room occupancy, or units for large families;

(iv) The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of low and very-low income families to find housing near employment opportunities; or

(v) The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of minorities in the community within which the housing is located.

(d) Once the Commissioner has compiled the necessary data and conducted the analysis under paragraph (c) of this section the Commissioner shall issue a written finding to the owner stating whether the plan of action to terminate the low income affordability restrictions is approved or disapproved. The written finding shall contain a specific determination of whether the market area is a soft rental market and prepayment would materially affect housing opportunities. The written finding shall include:

(1) A statement as to whether the owner has agreed to execute a use agreement to protect current tenants, in accordance with paragraph (b) of this section;

(2) A description of the geographic boundaries of the housing market area in which the project is located;

(3) An analysis of current and anticipated supply/demand conditions in both the overall rental market and the assisted housing inventory; and

(4) A discussion of whether the prepayment would materially affect the housing opportunities, given the specific characteristics of the project.

* * * * *

14. In § 248.145, the introductory text of paragraph (a) and paragraph (a)(9)(i) are revised to read as follows:

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) *Approval.* The Commissioner may approve a plan of action for extension of the low income affordability restrictions on an eligible low income housing project or for transfer of the housing to a qualified purchaser, other than a resident council acquiring the project under a resident homeownership plan, only upon a finding that—

* * * * *

(9) * * *

(i) Made by applying an annual factor, to be determined by the Commissioner, to the portion of rent attributable to operating expenses for the project, and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs, as that term is defined in § 248.101; and

* * * * *

15. Section 248.153 is amended by revising paragraph (a)(1), redesignating the existing paragraphs (d) and (e) as (e) and (f), respectively, and adding a new paragraph (d), to read as follows:

§ 248.153 Incentives to extend low income use.

(a) * * *

(1) Receive the annual authorized return for the project as determined under § 248.121 for each year after the approval of the plan of action;

* * * * *

(d) *Rent phase-in period.* To the extent necessary to ensure that owners

receive the annual authorized return during the tenant rent phase-in period established in § 248.145(a)(6), the Commissioner shall permit owners to receive the following additional incentives:

(1) Access to residual receipts accounts;

(2) Deferred remittance of excess rent payments; and

(3) Increases in rents, as permitted under an existing Section 8 contract.

These incentives shall be provided to owners in the order listed. An owner will not be eligible to receive these additional incentives unless it can demonstrate that it is not receiving the annual authorized return. Once an owner has adequately demonstrated that it is not receiving the annual authorized return, the Commissioner will provide the owner with each incentive in turn during the rent phase-in period, until it has been determined that the owner is receiving the annual authorized return.

* * * * *

16. In § 248.157, paragraphs (m)(4), (m)(5), (m)(6), and (n) are revised, to read as follows:

§ 248.157 Voluntary sale of housing not in excess of Federal cost limit.

* * * * *

(m) * * *

(4) Meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(5) Receive a distribution equal to an 8 percent annual return on any actual cash investment made to acquire or rehabilitate the project;

(6) In the case of an priority purchaser, receive reimbursement for all reasonable transaction expenses associated with the acquisition, loan closing and implementation of an approved plan of action; and

* * * * *

(n) *Incentives.* The Commissioner may provide assistance for all qualified purchasers under this subpart in the form of one or more of the incentives authorized under § 248.153. The incentives provided by the Commissioner to any qualified purchaser may include an acquisition loan under subpart E of part 241 of this chapter.

* * * * *

17. In § 248.173, paragraphs (e)(2)(i) through (e)(2)(vi) are redesignated (e)(2)(ii) through (e)(2)(vii), respectively; new paragraphs (e)(2)(i) and (g)(5) are added; and paragraph (s) is revised, to read as follows:

§ 248.173 Resident homeownership program.

* * * * *

(e) * * *

(2) * * *

(i) The debt service on the federally-assisted mortgage(s) covering the project, when such mortgage is assumed by the resident council;

* * * * *

(g) * * *

(5) All units which remain as rental units, from the date of approval of the resident homeownership program, until they are purchased by an initial owner under the resident homeownership program, shall be maintained in accordance with § 248.145 (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9).

* * * * *

(s) *Assumption of the federally assisted mortgage(s).* In connection with a resident homeownership plan, the resident council may assume a mortgage insured, held or assisted by the Commissioner under part 236 of this chapter or under part 221 of this chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter or may choose to pay off the mortgage. If the resident council decides to assume the mortgage, the project must be sold pursuant to § 248.175 and the project must be operated as a limited equity cooperative.

18. In § 248.175, paragraph (b) is revised to read as follows:

§ 248.175 Resident homeownership program—limited equity cooperative.

* * * * *

(b) The purchase of a project by a limited equity cooperative and the operation of the project by the limited equity cooperative shall be carried out in accordance with the provisions of § 248.173 (a), (b), (c), (d), (except that paragraph (d)(1)(i) of this section shall include a statement of the amount and type of incentives requested, rather than only the amount of grant funds requested), (e), (g)(3), (i) (except paragraphs (i)(1) and (3)), (m) and (n).

* * * * *

19. In § 248.201, a new definition is added in alphabetical order to read as follows:

§ 248.201 Definitions.

* * * * *

Project oversight costs. Reasonable expenses incurred by a nonprofit purchaser in carrying out its ongoing ownership responsibilities under an approved plan of action. Project oversight costs must be directly related to educating the nonprofit purchaser's board of directors or otherwise supporting the board in its decision making. Project oversight costs may include staff, overhead, or third-party contract costs for:

(1) Ensuring adequate and responsible participation by the board of directors and the membership of the nonprofit purchaser in ownership decisions, including ensuring resident input in these decisions;

(2) Facilitating long-range planning by the board of directors to ensure the physical, financial and social viability of the project for the entire time the project is maintained as low income housing; and

(3) Assisting the ownership in complying with regulatory, use, loan and grant agreements.

* * * * *

20. In § 248.211, paragraph (b) is revised to read as follows:

§ 248.211 Notice of intent to prepay.

* * * * *

(b) An owner simultaneously shall file the notice of intent with:

(1) The chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State or local law to receive such information;

(2) Each tenant in the project; and

(3) The mortgagee.

In addition, the owner shall post a copy of the notice of intent in each occupied building in the project.

* * * * *

21. In § 248.213, paragraph (a) is amended by adding to the end of the paragraph the following text to read as follows:

§ 248.213 Plan of action.

(a) * * * An owner shall submit the plan of action to the Commissioner in such form and manner as the Commissioner shall prescribe. The owner shall notify the tenants of the plan of action by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available from the tenant representatives, whose names, addresses and telephone numbers are indicated on the summary, the local HUD field office, and the on-site office for the project, or if one is not available, in the location where rents are collected, for inspection and copying, at a reasonable cost, during normal business hours. Simultaneously with the submission to the Commissioner, the owner shall submit the plan of action to that officer of State or local government to whom the owner

submitted a notice of intent under § 248.211(b). The summary of the plan of action posted by the owner and the copies of the plan of action submitted to the tenant representative and the officer of State or local government shall all state that, upon request, the tenants and the State or local government, may obtain from the owner or from the local HUD field office a copy of all documentation supporting the plan of action except for that documentation deemed "proprietary information" under § 248.101.

* * * * *

22. Section 248.217 is revised to read as follows:

§ 248.217 Revisions to plan of action.

The owner may from time to time revise the plan of action before its approval as may be necessary to obtain the commissioner's approval thereof. An owner shall submit any revision to the Commissioner, and provide a copy of the revision and all documentation supporting the revision except for that documentation deemed "proprietary information" under § 248.101, to the parties, and in the manner, specified in § 248.213(a).

PART 248—[AMENDED]

23. In part 248, a new subpart E is added to read as follows:

Subpart E—Technical Assistance and Capacity Building

Sec.
248.401 Purposes.
248.405 Grants for building resident capacity and funding predevelopment costs.
248.410 Grants for other purposes.
248.415 Delivery of assistance through intermediaries.
248.420 Definitions.

Subpart E—Technical Assistance and Capacity Building

§ 248.401 Purposes.

The purposes of this subpart are:

(a) To promote the ability of residents of eligible low income housing to participate meaningfully in the preservation process established by this part and affect decisions about the future of their housing;

(b) To promote the ability of community-based nonprofit organizations and resident councils to acquire, rehabilitate, and competently own and manage eligible housing as rental or cooperative housing for low and moderate income people; and

(c) To assist the Commissioner in discharging the obligation under § 248.157(b) to notify potential qualified purchasers of the availability of projects for sale and to otherwise facilitate the coordination and oversight of the preservation program established under this part.

§ 248.405 Grants for building resident capacity and funding predevelopment costs.

(a) *General.* Assistance made available under this subpart shall be used for direct assistance grants to resident organizations and community-based nonprofit housing developers and resident councils to assist the acquisition of specific projects (including payment of reasonable administrative expense to participating intermediaries.) Assistance made available under subpart E of this part will be distributed on a noncompetitive basis. HUD will publish a Notice in the **Federal Register** announcing the availability of assistance, as well as the application requirements and procedures and selection criteria that HUD will use in making the assistance available.

(b) *Allocation.* Thirty percent of the assistance made available under this subpart shall be used for resident capacity grants in accordance with paragraph (d) of this section. The remainder shall be used for predevelopment grants in connection with specific projects in accordance with paragraph (e) of this section.

(c) *Limitation on grant amounts.* A resident capacity grant under paragraph (d) of this section may not exceed $30,000 per project and a grant under paragraph (e) of this section for predevelopment costs may not exceed $200,000 per project, exclusive of any fees paid to a participating intermediary by the Commissioner for administering grants under this subpart.

(d) *Resident Capacity grants.* (1) *Use.* Resident capacity grants under paragraph (d) of this section shall be available to eligible applicants to cover expenses for resident outreach, incorporation of a resident organization or council, conducting democratic elections, training, leadership development, legal and other technical assistance to the board of directors, staff and members of the resident organization or council.

(2) *Eligible housing.* Grants under this paragraph (d) of this section may be provided with respect to eligible low income housing for which the owner has filed a notice of intent under subpart B or subpart C of this part.

(e) *Predevelopment grants.* (1) *Use.* Predevelopment grants under paragraph (e) of this section shall be made available to community-based nonprofit housing developers and resident councils to cover the cost of organizing a purchasing entity and pursuing an acquisition, including third party costs for training, development consulting, legal, appraisal, accounting, environmental, architectural and engineering, application fees, and sponsor's staff and overhead costs.

(2) *Eligible housing.* These grants may only be made available with respect to any eligible low income housing project for which the owner has filed a notice of intent to transfer the housing to a qualified purchaser in accordance with § 248.105 or § 248.211, or has filed a notice of intent and entered into a binding agreement to sell the housing to a resident organization or nonprofit organization.

(3) *Phase-in of grant payments.* Grant payments under paragraph (e) of this section shall be made in phases, based on performance benchmarks established by the Commissioner in consultation with intermediaries selected under § 248.415.

(f) *Grant applications.* Grant applications for assistance under paragraphs (d) and (e) of this section shall be received monthly on a rolling basis and approved or rejected on at least a quarterly basis by intermediaries selected under § 248.415(b).

(g) *Appeal.* If an application for assistance under paragraphs (d) or (e) of this section is denied, the applicant shall have the right to appeal the denial to the Commissioner and receive a binding determination within 30 days of the appeal.

§ 248.410 Grants for other purposes.

The Commissioner may provide grants under this subpart E:

(a) To resident-controlled or community-based nonprofit organizations with experience in resident education and organizing for the purpose of conducting community, city or countywide outreach and training programs to identify and organize residents of eligible low income housing; and

(b) To State and local government agencies and nonprofit intermediaries for the purpose of carrying out such activities as the Commissioner deems appropriate to further the purposes of this part.

§ 248.415 Delivery of assistance through intermediaries.

(a) *General.* The Commissioner shall approve and disburse assistance under § 248.405 and § 248.410 through eligible intermediaries selected by the Commissioner under paragraph (b) of this section. If the Commissioner does not receive an acceptable proposal from

an intermediary offering to administer assistance under this section in a given State, the Commissioner shall administer the program in such State directly.

(b) *Selection of eligible intermediaries.* (1) *In General.* The Commission shall invite applications from and shall select eligible intermediaries to administer assistance under subpart E of this part through Notices of Funding Availability published in the **Federal Register**. The process shall include provision for a reasonable administrative fee.

(2) *Priority.* With respect to all forms of grants available under § 248.405, the criteria for selecting eligible intermediaries shall give priority to applications from eligible intermediaries with demonstrated expertise under subpart B or subpart C of this part.

(3) *Criteria.* The criteria developed under this section shall:

(i) Not assign any preference or priority to applications from eligible intermediaries based on their previous participation in administering or receiving Federal grants or loans (but may exclude applicants who have failed to perform under prior contracts of a similar nature);

(ii) Require an applicant to prepare a proposal that demonstrates adequate staffing, qualifications, prior experience, and a plan for participation; and

(iii) Permit an applicant to serve as the administrator of assistance made available under § 248.405(d) and (e), based on the applicant's suitability and interest.

(4) *Geographic coverage.* The Commissioner may select more than one State or regional intermediary for a single State or region. The number of intermediaries chosen for each State or region may be based on the number of eligible low income housing projects in the State or region, provided there is no duplication of geographic coverage by intermediaries in the administration of the direct assistance grant program.

(5) *National nonprofit intermediaries.* National nonprofit intermediaries shall be selected to administer the assistance made available under § 248.405 only with respect to State or regions for which no other eligible intermediary, acceptable to the Commissioner, has submitted a proposal to participate.

(6) *Preference.* With respect to assistance made available under § 248.410, preference shall be given to eligible regional, State and local intermediaries, over national nonprofit organizations.

(c) *Conflicts of interest.* Eligible intermediaries selected under paragraph (b) of this section to disburse assistance under § 248.405 shall certify that they will serve only as delegated program administrators, charged with the resposibility for reviewing and approving grant applications on behalf of the Commissioner. Selected intermediaries shall:

(1) Establish appropriate procedures for grant administration and fiscal management, pursuant to standards established by the Commissioner; and

(2) Receive a reasonable administrative fee, except that they may not provide other services to grant recipients with respect to projects that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved.

§ 248.420 Definitions.

Community-based nonprofit housing developer means a nonprofit community development corporation that:

(1) Has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) Has been in existence for at least two years prior to the date of the grant application;

(3) Has a record of service to low and moderate income people in the community in which the project is located;

(4) Is organized at the neighborhood, city, county, or multi-county level; and

(5) In the case of a corporation acquiring eligible low income housing under subpart B of this part, agrees to form a purchaser entity that conforms to the definition of a community-based nonprofit organization under such subpart and agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested.

Eligible intermediaries. For purposes of this subpart, the term "eligible intermediary" means a State, regional, or national nonprofit organization (including a quasi-public organization) or a State or local housing agency that:

(1) Has as a central purpose the preservation of existing affordable housing and the prevention of displacement;

(2) Does not receive direct Federal appropriations for operating support;

(3) In the case of a national nonprofit organization, has been in existence for at least five years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(4) In the case of a regional or State nonprofit organization, has been in existence for at least three years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or is otherwise a tax-exempt entity;

(5) Has a record of service to low income individuals or community-based nonprofit housing development in multiple communities and, with respect to intermediaries administering assistance under § 248.405, has experience with the allocation or administration of grant or loan funds; and

(6) Meets standards of fiscal responsibility established by the Commissioner.

Dated: June 30, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–16472 Filed 7–12–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3637; FR–3473–N–01]

Funding Proposal for Intermediaries for Administering Preservation Technical Assistance Grants, Outreach and Training Grants, and Other Preservation Activity Grants

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice soliciting comments on funding proposal.

SUMMARY: This notice solicits comments on a funding mechanism that will subsequently be issued for effect for the Department's Preservation program. The Department is taking this unusual step of inviting comments on a funding methodology because of the complexity of the program and the use of intermediaries as a funding conduit. In addition, the Department is publishing today a rule addressing new statutory requirements for the program, which were considered in developing this methodology. Based on comments received on this notice, the Department expects to issue the actual Notice of Funding Availability (NOFA) later this summer. Only at that time should applicants complete and submit applications for the funding as announced in that NOFA.

The following items summarize the program as it is proposed for funding in this document:

- The program is intended to promote the ability of residents of eligible low-income housing to participate meaningfully in the preservation process established by the Emergency Low Income Housing Preservation Act of 1989 (ELIHPA) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), and to promote the ability of community-based nonprofit housing developers (CBDs) and resident councils (RCs) to acquire, rehabilitate, and own and manage competently eligible housing as rental or homeownership property for low- and moderate-income residents.
- The funding component of the program, as would be established in the NOFA to be issued later, would assist the Secretary in discharging his obligation to notify qualified purchasers of the availability of properties for sale, and would otherwise facilitate the coordination and oversight of the Preservation program.
- As is done in this document, the subsequent NOFA would describe the direct grants that would be made available through intermediaries; however, the Department would not solicit for applications for those direct grants through the NOFA.
- Remaining funds from the Preservation Technical Assistance NOFA published September 3, 1992, would also be made available through the intermediaries under the provisions of the NOFA.
- Funds would be made available to and through eligible intermediaries through a competitive selection process. Local, State, regional, and national intermediaries may apply to administer direct assistance grants. Eligible intermediaries would also be permitted to apply to administer Other Preservation Grants, which would fall into two categories: First, Outreach and Training Grants (to conduct community, city- or county-wide outreach to identify, organize, and deliver training to residents of eligible low-income housing); second, Preservation Activities Grants (to perform activities that further the preservation program in the intermediary's jurisdiction).
- Intermediaries administering grants would receive processing fees, which will be funded from the available grant funds. Dollar amounts would be made available by State, utilizing the Department's estimate of Preservation activity.
- In the body of the NOFA would be information concerning eligible intermediary applicants, the funding available by State, HUD's processing of the intermediary applications, grant applicants eligible for direct assistance, as well as the selection criteria with the intermediary applicants and direct assistance grant applicants.
- Direct assistance applicants should be aware that the determination of which regulatory requirements apply to an acquisition would depend on the preservation program under which the owner has filed a Notice of Intent. Thus applicants must comply with 24 CFR part 248 and with either ELIHPA or LIHPRHA, as appropriate. (Applicants should note that an Interim Rule revising 24 CFR part 248 as published in the **Federal Register** on April 8, 1992 (57 FR 11992).) Subsequent revisions to 24 CFR part 248 were published on December 3, 1992 (57 FR 57312), and on January 15, 1993 (58 FR 4870), with additional published elsewhere in this issue of the **Federal Register** to reflect new requirements of the Housing and Community Development Act of 1992.

DATES: Comment due date: August 27, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comment are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300. (Except for the TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department is publishing the following text solely for the purpose of permitting interested persons to comment on the methodology proposed for distributing the funds available for the indicated activities. The Department is taking this unusual step of inviting comments on a funding methodology because of the complexity of the program and the use of intermediaries as a funding conduit. In addition, the Department expects to publish a rule soon addressing new statutory requirements for the program, which were considered in developing this methodology.

Potential Applicants Should not Complete or Submit Applications Based on This Notice. A Notice of Funding Availability (NOFA) will be prepared later this summer, after considering comments submitted in response to this notice. Potential applicants should wait until final procedures are announced in the subsequent NOFA before devoting resources to the application process.

I. Text of Document on Which Comments Are Invited (Do Not Submit Applications)

A. Authority and Background

The funding that will be made available under a subsequent NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) in order to provide

VOL 58 ISS 132 JL 13 1993 UMI

assistance to resident groups and CBDs involved in projects proceeding under the provisions of the Emergency Low-Income Housing Preservation Act of 1987 (Pub. L. 100–242, section 201 of the Housing and Community Development Act of 1987, approved Feb. 5, 1988) (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA).

The origins of LIHPRHA are in ELIHPA. The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. In addition, section 226 of LIHPRHA establishes the Resident Homeownership Program, under which tenants may become homeowners of eligible low income housing. The Department's regulations implementing these statutory provisions were published as an Interim Rule amending 24 CFR part 248 (57 FR 11992, April 8, 1992), and were revised on December 3, 1992 (57 FR 57312) and January 15, 1993 (58 FR 4870). Additional revisions addressing new requirements of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act) are included in a rule published elsewhere in today's **Federal Register**. All references in this NOFA to §§ 248.1 through 248.183 would be to those sections as set out in the subsequent revisions.

(Most requirements under this NOFA were imposed by title III of the Housing and Community Development Act of 1992 and included in the revision to 24 CFR part 248, published elsewhere in today's **Federal Register**.)

B. Request for Applications

Eligible intermediaries would be invited to apply to administer funds under the provisions of this NOFA. Selected intermediaries would be required to announce the availability of direct grant funds and administer those grant programs as described in Sections II and III below.

C. Allocation of Amounts

The purpose of the subsequent NOFA would be to make available $25 million in funds to and through intermediaries for eligible resident and community organizations and for other eligible applicants to perform outreach, training, and other preservation activities. The dollar amounts will be made available on a State-by-State basis for each grant category (categories are listed in parts 1 and 2 of this paragraph). Available amounts are listed at the end of this NOFA. The Department will rate regional and State intermediary applications together. If no intermediary applicant applies to administer grants in a particular State, the Department may select a national nonprofit organization to perform those activities in that State.

A successful intermediary applying to administer grants for FY 1993 funds will also be responsible for administering grant funds made available through FY 1994 appropriations, if any. The 1992 Act authorized up to $25 million in additional funds for this purpose for FY 1994. In addition, the Preservation Technical Assistance Grant program that is currently being administered by the Department will be terminated at intermediary selection, and additional unreserved funds from that NOFA will be made available through the intermediaries. The intermediaries will receive a start-up fee appropriate to the scope of activities proposed and the number of States for which it will administer grant activities, and will receive an additional fee of up to two percent of the money allocated for the jurisdiction overseen. The start-up fee will be proposed by the intermediary in its response to the NOFA and will be negotiated between the Department and the intermediary. Total fees are based on the intermediary performing the following activities: announcing the availability of grant funds; producing and distributing application kits; accepting, reviewing and approving grant applications; executing grant agreements; disbursing grant funds; monitoring the grantees' activities under the grant award; and maintaining documentation of grant activities for the Department's monitoring of the intermediary.

1. Direct Assistance Grants

The two forms of direct assistance grants that will be made available through intermediaries are Resident Capacity Grants and Predevelopment Grants. These are described in Sections II.A. and II.C. below. Of the $25 million available from FY 1993 appropriations, $22.5 million would be made available for these grants. Of that amount, $6.75 million would be available for Resident Capacity Grants, and $15.75 million would be available for Predevelopment Grants. Of any additional funds made available under this program, 90 percent will be set aside for Direct Assistance Grants, and, of that, 30 percent will be set aside for Resident Capacity Grants and 70 percent for Predevelopment Grants. The dollar amounts available directly to the resident and community organizations shall be limited to $30,000 for Resident Capacity Grants and $200,000 for Predevelopment Grants. The Predevelopment grants will be funded in at least two phases; the performance benchmarks for these phases will be negotiated between the Department and selected intermediaries prior to direct assistance application submission.

2. Other Purpose Grants

The two forms of Other Purpose Grants that will be made available through intermediaries are Outreach and Training Grants and Preservation Activities Grants. Of the $25 million available from FY 1993 appropriations, $2.5 million is being made available for these grants. Of any additional funds made available under this program, 10 percent will be set aside for Other Purpose Grants. Outreach and Training Grants will be available for resident-controlled or community-based nonprofit organizations with experience in resident education and organizing, to identify and organize residents of eligible low-income housing. Preservation Activities Grants will be made available to State and local government agencies and nonprofit intermediaries for the purpose of carrying out activities that further the preservation program in their jurisdiction. Other Purpose Grant funds will be made available by the intermediary on a competitive basis as funds become available.

C. Eligibility

1. Tasks

Intermediaries may apply for any and all parts of the intermediary tasks described in this NOFA. The three distinct tasks are:

- Administering resident capacity grants;
- Administering predevelopment grants;
- Administering other purpose grants.

Through its application, an intermediary must describe the specific jurisdiction in which it proposes to perform such tasks. States may be subdivided for purposes of the NOFA activities based on the number of eligible low-income housing projects in the State, provided there is no duplication of geographic coverage for any administrative task. Specific intermediary tasks will include the following:

- Advertising fund availability for the jurisdiction overseen.
- Producing and distributing grant application kits (a sample kit will be provided by the Department).
- Accepting grant applications.
- Reviewing and approving grant applications.
- Vouchering for funds through the Department.
- Disbursing grant funds.
- Monitoring activities under the grant, including compliance under the grant agreement.
- Reporting to the Department at least quarterly on the status of applications and grants.
- Maintaining grant documentation for HUD monitoring and/or audits.

2. Eligible Intermediaries

(a) General definition. An eligible intermediary applicant is a State, regional, or national nonprofit of quasi-public organization, or a State or local housing agency that has as a central purpose of its organization the preservation of low-income housing and the prevention of displacement of low and moderate income residents. An eligible intermediary must not receive direct Federal appropriations for operating support. All intermediaries must have a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities and meet the standards of fiscal responsibilities established in OMB Circular A–110 and A–122 or, if a State or local agency, 24 CFR 85. In addition, intermediaries must have experience with the allocation or administration of grant or loan funds.

(b) Applicant categories. (i) *A national nonprofit applicant* must also have been in existence for at least five years and be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986.

(ii) *A regional or State nonprofit applicant* must also have been in existence for at least three years and be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or be otherwise a tax-exempt entity.

(iii) *A State or local agency.*

3. Ineligible Intermediary Activities

Examples of activities that are not eligible to be funded to intermediary grantees include:

- Activities not directly related to the tasks listed in Section I.C(1) of this NOFA;
- Activities funded through the grants the intermediary is administering;
- Entertainment, including associated costs such as food and beverages;
- Payments of fees for lobbying services;
- Activities funded from other sources; and
- Activities completed prior to the date funding is approved under this NOFA.

D. Selection Criteria

1. Threshold

Intermediary grantees must meet minimum criteria described in Section I.C(2), above. If, in its review, the Department determines that the applicant does not meet the threshold criteria, the application will be rejected. If the application does meet the threshold criteria, then the Department will select grantees through a rating and ranking competition described in Section I.D(2), below.

2. Preferences and Factors for Award

The intermediary applications would be rated and ranked on a point system with the maximum point score of 100. The Department would first rate and rank all State, local, and regional applications submitted. The Department will then rate and rank all national intermediary applications to select an intermediary for States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate. If no national intermediary applies to perform NOFA activities, the Department will administer direct assistance grant funds for all areas without an acceptable intermediary. The points will be allocated based on the categories below:

(a) *Preservation experience.* (25 points) The Secretary shall give priority to applications from eligible intermediaries with demonstrated expertise or experience with ELIHPA and LIHPRHA.

(b) *Range of activities.* (25 points) Preference points will be given to intermediaries proposing to do all tasks described in this NOFA: administering Resident Capacity Grants; administering Predevelopment Grants; and administering Other Purpose Grants. Preference will also be given to organizations applying to administer both the Resident Capacity Grants and the Predevelopment Grants over an intermediary applying to administer just one of those grant programs. The Department will consider joint venture applications as long as one eligible intermediary is identified in the application as the primary applicant.

(c) *Direct experience.* (25 points) Preference will be given to intermediaries who have direct experience performing the tasks for which they have applied. This would include administration of grants to resident organizations, administration of grants to nonprofit organizations and/or State or local agencies, and monitoring of nonprofit grantees.

(d) *Organizational capacity.* (25 points) Priority will be given to an applicant that submits evidence that the organization can implement the proposed activities in the most efficient manner, based on demonstrated organizational capacity and staff expertise.

II. Direct Assistance Applications

A. Definitions

(1) General Definition

An eligible applicant must inform residents of all occupied units that they are applying for a grant. An eligible applicant is one of the following entities that complies with the following applicable criteria:

(a) Resident group. For an applicant to be considered a resident group the following must be submitted:

(i) Evidence that adult residents of the greater of 5% of the occupied units or 10 units of the subject property are members;

(ii) A copy of a notice announcing an organizational meeting to discuss resident participation in decisions affecting the project;

(iii) A copy of the agenda of the organizational meeting referred to in item (ii) of this paragraph; and

(iv) A list of attendees of the organizational meeting referred to in item (ii) of this paragraph.

(b) Resident Council. For an applicant to be considered an RC, it must meet the definition of "resident council" as set out in § 248.101.

(c) Community Based Nonprofit Housing Developer. For an applicant to be considered a CBD it must submit evidence that it:

VOL 58 ISS 132 JL 13 1993 UMI

(i) Is classified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Has been in existence for at least 2 years prior to the date of grant application;

(iii) Has a record of service to low- and moderate-income people in the community in which the project is located;

(iv) Is organized at the neighborhood, city, county, or a multi-county level;

(v) In the case of an organization seeking to acquire eligible housing under LIHPRHA, agrees to form a purchasing entity that conforms to the definition of a community-based non-profit organization (CBO) in 24 CFR 248.101;

(vi) Agrees to use its best efforts to secure majority tenant consent if the organization seeks to acquire the project for which grant assistance is requested; and

(vii) Certifies that its organization does not violate the regulatory definition of a Related Party as set forth in 24 CFR 248.101, and that no individual with a conflict of interest with the owner entity will receive grant funds.

(2) Resident Capacity Grant Applicants

Resident Capacity applicants must meet the criteria listed in Section II.A(1) of this NOFA. In addition, these grants may be made only with respect to eligible low-income housing, as defined in 24 CFR 248.101, for which the owner has filed a Notice of Intent under ELIHPA or an Initial Notice of Intent under LIHPRHA.

(3) Predevelopment Grant Applicants

Predevelopment Grant applicants must be RCs or CBDs meeting the criteria listed in Section II.A.(1) of this NOFA. These grants may be made only with respect to eligible low-income housing projects for which the owner has filed an initial or second Notice of Intent to transfer the housing to a qualified purchaser under LIHPRHA, or has filed any Notice of Intent under LIHPRHA or ELIHPA and the owner has entered into a binding agreement to sell the housing to the applicant organization. In addition, these grants may be made only to organizations seeking to purchase the property with a majority of resident support for the purchase.

B. Ineligible Direct Assistance Applicants

(1) Entities that have applications pending for funds under any of the HOPE 2 grants are not eligible to apply for funding under this NOFA (because the owner would have already elected to proceed under the distinct requirements applicable to HOPE 2 grants, and is precluded from concurrently filing the prerequisite Notice of Intent under LIHPRHA or ELIHPA). An entity that had been selected for HOPE 2 funding is ineligible to apply for a grant under this NOFA until notified by the administering HUD Field Office that the HOPE grant has been terminated due to the owner's filing of a Notice of Intent under ELIHPA or LIHPRHA.

(2) Entities that have been awarded grants under the Preservation NOFA issued September 3, 1992 (57 FR 40570), entitled Technical Assistance Grants for Resident Groups, Community Groups, and Community-Based Nonprofit Organizations and Resident Councils, may not receive funds made available with respect to any projects for which those grants were funded under this NOFA for technical assistance until all funds awarded to the grantee under the 1992 NOFA have been expended. The total grant award from the September 3, 1992 NOFA and this NOFA may not exceed the funding limits of this NOFA.

C. Eligible Direct Assistance Grant Activities

(1) Resident Capacity Grants

Resident Capacity Grants may be used to cover expenses for the following activities:

- Resident outreach;
- Legal services to incorporate the resident organization or RC, establish a board or directors, write by-laws, or establish non-profit status;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110 or A–122;
- Conducting resident meetings and democratic elections;
- Training residents and developing resident leadership;
- Other technical assistance related to developing the capacity of the residents of the organization to meaningfully participate in decisions related to the project.

(2) Predevelopment Grants

Predevelopment Grants may be used to cover consultant costs, and grantee staff and overhead costs related to the following activities:

- Legal services to organize a purchasing entity;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110 or A–122;
- Preparing bona fide offers including contracts and other documents to purchase the property;
- Training residents, resident council staff and board members in skills related to the operation and management of the project;
- Developing and negotiating management contracts, related contract monitoring, and management procedures;
- Engineering studies, such as site, water, and soil analysis, mechanical inspections; and estimations of the cost of rehabilitation and of meeting local building and zoning codes, in anticipation of purchasing a property, as necessary to supplement the capital needs assessment developed by HUD (see the Final Guidelines for Determining Appraisals of Preservation Value Under LIHPRHA, 57 FR 19970 (May 8, 1992));
- Securing financing and preparation of mortgage documents, transfer documents, and other documentation incident to closing a purchase offer;
- Preparing market studies and management plans; and
- Other activities related to promoting the ability of eligible applicants to acquire, rehabilitate and competently own and manage eligible housing.

D. Ineligible Grant Activities

Examples of activities that are not eligible to be funded to direct assistance applicants include:

- Earnest money deposits as part of a purchase offer made under 24 CFR 248.157, 248.161, 248.173, and 248.175;
- Purchase of land or buildings or any improvements to land or buildings;
- Activities not directly related to the eligible activities listed in Section II.C of this NOFA;
- Entertainment, including associated costs such as food and beverages;
- Payments of fees for lobbying services;
- Activities funded from other sources;
- Activities completed prior to the date funding is approved under this NOFA;
- Activities completed subsequent to approval of a Plan of Action; and
- Activities performed by the administering intermediary.

E. Timeframes

Direct assistance applications will be made to the intermediaries on an ongoing basis and, if acceptable, must be approved no later than 30 days after a complete application is received by the intermediary. If the application is found to be technically complete (i.e., there are no missing exhibits), but substantively deficient (i.e., an exhibit does not adequately meet the

application requirements), the intermediary shall return the application with a deficiency letter and allow 14 days for resubmission of deficient exhibits. The intermediary will have an additional 30 days to review and approve an application, following receipt of application revisions.

F. Direct Assistance Grant Selection Criteria

(1) Resident Capacity Grants

(a) All Resident Capacity Grant applicants will receive an application kit, which will be produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Intermediaries must review and approve or reject applications for Resident Capacity Grants based on the threshold criteria listed in paragraph (1)(b), below. Applications will be accepted on an ongoing basis and all acceptable applications will be approved unless there are no funds available for Resident Capacity Grants.

(b) Threshold requirements. The following are threshold requirements for resident capacity grants:

(i) The applicant meets the eligible applicant criteria listed in Sections II.A (1) and (2) of this NOFA.

(ii) The applicant is applying for eligible activities listed in Section II.C(1) of this NOFA.

(iii) The plan for promoting the ability of residents to meaningfully participate in the preservation process is reasonable and feasible.

(iv) The budget submitted with the application reflects reasonable costs directly associated with the grant activities.

(v) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

(2) Predevelopment Grants

(a) All Predevelopment Grant applicants will receive an application kit which will have been produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Intermediaries must review and approve or reject applications for Predevelopment Grants based on the threshold criteria listed in paragraph (2)(b), below. Applications will be accepted on an ongoing basis and all acceptable applications will be approved unless there are no funds available for Predevelopment Grants.

(b) Threshold requirements. The following are threshold requirements for predevelopment grants:

(i) The applicant meets the eligible applicant criteria listed in Sections II.A. (1) and (3) of this NOFA;

(ii) The applicant is applying for eligible activities listed in Section II.C(2) of this NOFA;

(iii) The plan for promoting and achieving a resident supported purchase of the property must be reasonable and feasible, and in conformance with the appropriate program regulations and guidelines;

(iv) The budget submitted with the application reflects reasonable costs directly associated with the grant activities that would result in the development of a feasible purchase; and

(v) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

(3) Competing Grant Applications

If more than one approvable direct assistance grant application is received for the same project, the grant shall be awarded to the applicant with the most resident support. In addition, if there is an indication that a majority of the residents oppose the applicant's selection, that application shall be denied.

(4) Appeals

If an application for either a Resident Capacity Grant or a Predevelopment Grant is denied, the applicant will have the right to appeal that denial to the Department. The appeal must be made within 30 days of application rejection, and the Department will make a binding determination within 30 days of the appeal.

III. Other Purpose Grant Applications

A. General

Other Purpose Grants are meant to fund activities by nonprofits and State and local agencies which will further the Preservation process. All Other Purpose Grant applications, including Outreach and Training applications and Preservation Activity Grant applications, will be reviewed together and selected on a competitive basis by the administering intermediary. These grants will be made available out of the total amount of Other Purpose Grant funds allocated for an intermediary's jurisdiction. Grants will be selected based on eligibility thresholds, applicant capacity and jurisdictional needs as described below.

B. Eligible Applicants for Resident Outreach and Training

An organization applying to do resident outreach and training must demonstrate that it is a nonprofit organization, has experience in resident education and organizing, and that it is either resident controlled with a majority of the board consisting of residents of subsidized housing or that it is community-based with a majority of its activities taking place at the community level.

C. Eligible Activities for Outreach and Training Grants

Outreach and Training Grants are available for the following activities:

- Identifying residents and resident groups in preservation projects that are eligible and could be made available for sale.
- Performing outreach to residents and resident groups in preservation projects that are eligible and could be made available for sale.
- Delivering project-based, community-, city-, or county-wide training programs on ELIHPA, LIHPRHA, and resident participation and purchase, including homeownership.

D. Eligible Applicants for Preservation Activity Grants

An organization applying for Preservation Activity Grant funds must be an eligible intermediary as defined in Section I.C(2) of this NOFA. However, that applicant must not be the same intermediary as the intermediary selected to administer grant funds in that jurisdiction.

E. Eligible Activities for Preservation Activity Grants

Preservation Activity Grants will be available to any eligible applicant for purposes of streamlining the Preservation process, educating parties outside of the Department on the Preservation process, or otherwise furthering the Preservation program established in ELIHPA and LIHPRHA. Administering intermediaries may award Preservation Activity Grants for the following types of activities:

- Educating outside parties including but not limited to appraisers, financial institution officials, state and local government officials, community groups, and owner entities on the preservation process;
- Pilot programs that assist HUD field staff to expedite the Preservation process or otherwise conserve staff resources;
- Establishment of Preservation clearinghouses as a resource to resident

VOL 58 ISS 132 JL 13 1993 UMI

organizations, community groups and potential Project purchasers;

• Other model initiatives which further the intent of ELIHPA and/or LIHPRHA.

F. Ineligible Activities for Other Purpose Grants

Examples of activities that are not eligible to be funded for Other Purpose Grant applicants include:

• Purchase of land or buildings or any improvements to land or buildings;

• Entertainment, including associated costs such as food and beverages;

• Payments of fees for lobbying services;

• Activities funded from other sources;

• Activities already being performed outside the scope of this NOFA;

• Activities completed prior to the date funding is approved under this NOFA; and

• Activities performed by the administering intermediary.

G. Timeframes

Other Purpose Grants will be awarded by the administering intermediaries on a competitive basis each time funds become available for this purpose. After the advertising of funding availability, the intermediary will accept applications until a specified closing date. The closing date for the first group of applications must be no less than 90 days from the time the administering intermediary is accepted. Applications will be reviewed, rated and ranked by the intermediary, and grants must be awarded no later than 45 days after the closing date of the competition. If the application is found to be deficient in a non-substantive manner, the intermediary will contact the applicant within 15 days of the closing date of the competition and the applicant will have 15 days to submit additional information. Non-substantive deficiencies are those which are not integral to the application's review, such as a certification.

H. Other Purpose Grant Selection Criteria

(1) General

All Other Purpose Grant applicants will receive an application kit, which will be produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Applications must be received by the administering intermediary by close of business on the last day of the competition, as advertised by the intermediary. Intermediaries will perform a threshold review of the application to check for completeness and contact the applicant to correct any non-substantive deficiencies as defined in Section III.G, above.

(2) Factors for Award

Once the intermediary determines that the applicant is eligible for the type of grant applied for, as specified in Sections III.B and III.D, above and is applying for eligible activities as specified in Sections III.C and III.E, above, the intermediary will rate and rank the applications giving preferences based on the categories below:

(a) Preservation experience. The intermediary shall give priority to applicants with demonstrated expertise or experience with ELIHPA and LIHPRHA.

(b) Direct experience. Preference will be given to applicants who have direct experience performing the tasks for which they have applied. For Outreach and Training grants this would include tenant organizing and conducting educational workshops. For Preservation Activity grants this could include training or other activities directly related to the type of activity proposed in the grant application.

(c) Organizational capacity. Priority will be given to an applicant that submits evidence that the organization can implement the proposed activities in an efficient manner, based on demonstrated organizational capacity and staff expertise.

(d) Jurisdictional needs. This criteria will be based on a determination made by the intermediary and approved by the Department to address specific unmet needs of the jurisdiction overseen by the administering intermediary. In making a determination of jurisdictional needs, prior to the application period, the intermediary and the Department will assess current preservation activities and problems in the jurisdiction. This assessment will include availability of Department-sponsored or other training for residents and other groups, the capacity of local HUD field offices, and other preservation resources available to interested parties outside of the Department.

IV. Intermediary Application Process

A. Obtaining Intermediary Applications

(This information will be specified in the NOFA, to be published after comments on this notice document are received and analyzed.)

B. Submitting Applications

(Information on submitting applications will be included in the NOFA, when it is published for effect.)

C. Submission Requirements

An intermediary applicant would be required to provide the following:

(1) A completed application, including the following, as applicable:

(a) OMB Standard form 424;

(b) Summary of proposed activities and jurisdiction;

(c) Information about the applicant, including its history, its staff and qualifications, and its experience;

(d) Summary of plan to advertise grant availability, review applications, disburse funds, and monitor activities under the grant;

(e) Evidence of tax-exempt status, if applicable;

(f) Certification that the intermediary will not receive payment, directly or indirectly, from the proceeds of the grants they have approved;

(g) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(h) Other disclosures, certifications, and assurances (including Drug-Free Workplace certification), as required under the law and this NOFA; and

(i) Other information and materials as may be described in the application kit.

D. Intermediary Selection Process

The selection process for intermediaries would consist of a threshold screening to determine whether the application meets the technical requirements for application submission contained in this NOFA and the application kit. If the application meets the technical requirements, it will be reviewed and ranked by the Preservation Division in Headquarters according to the selection criteria in Section I.D of this NOFA. Within 60 days from the application deadline, the Preservation Division would notify an intermediary applicant of its selection or rejection. Applicants will be required to sign a grant agreement. If no intermediary is selected for a particular state, the HUD field offices will directly administer the grants.

E. Corrections to Deficient Applications

If an intermediary application is found to be deficient in a nonsubstantive manner, the Department will inform the applicant of such deficiency within 15 days after the

application deadline and the applicant will have seven days to submit revisions to its application. Non-substantive deficiencies are those which are not integral to the application's review, such as a certification. If an application is substantively deficient at the time of application deadline, the application will be rejected.

F. Application Selection Timeframe

The Department will complete its review and selection process within 60 days of the application deadline date. Once intermediary grants are awarded and grant agreements are executed, intermediaries administering direct assistance grants will have 30 days to make available those grants to eligible direct assistance applicants listed in Section II.A of this NOFA. Applications from direct assistance applicants will be accepted on a rolling basis by the intermediaries administering the grants. Intermediaries selected to administer Other Purpose Grants must make application kits available within 45 days of intermediary selection and allow up to 60 days for Other Purpose Grant applicants to submit proposals.

G. Intermediary Information

Eligible Direct Assistance applicants and other interested parties could request information regarding the administering intermediary in a specific State or region after [date to be specified when NOFA is published for effect] through the Preservation Division at HUD, whose address is listed above.

IV. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, this notice merely invites comments on the process the Department proposes to use to select intermediaries that will administer direct assistance grants to eligible recipients. The grants to eligible recipients would be for technical assistance activities related to the preservation of low-income housing.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs relate to family concerns.

Section 103 HUD Reform Act

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, would apply to the funding competition announced in a subsequent NOFA to be based on this notice. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under the provisions of this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Dated: June 30, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix:

The allocation of funds by State will be determined according to the level of activity in that State as of the closing date by which interested persons must submit applications to be Intermediaries. If additional grant funds are made available, the State allocations will be revised according to the activity levels at the time the new funding is made available. The total funds available will be divided according to the number of active Notices of Intent plus the number of Plans of Action submitted for the State. The following is a list of activity level by State as of April 30, 1993:

Alabama: 3
Alaska: 2
Arizona: 2
Arkansas: 8
California: 149
Colorado: 5
Connecticut: 5
Delaware: 0
District of Columbia: 1
Florida: 3
Georgia: 6
Hawaii: 6
Idaho: 17
Illinois: 12
Indiana: 31
Iowa: 10
Kansas: 0
Kentucky: 5
Louisiana: 6
Maine: 1
Maryland: 16
Massachusetts: 35
Michigan: 12
Minnesota: 9
Mississippi: 10
Missouri: 4
Montana: 7
Nebraska: 9
Nevada: 2
New Hampshire: 4
New Jersey: 11
New Mexico: 0
New York: 12
North Carolina: 7
North Dakota: 3
Ohio: 2
Oklahoma: 0
Oregon: 37
Pennsylvania: 8
Puerto Rico: 6
Rhode Island: 8
South Carolina: 2
South Dakota: 2
Tennessee: 8
Texas: 21
Utah: 3
Vermont: 1
Virginia: 7
Virgin Islands: 1
Washington: 41
West Virginia: 3
Wisconsin: 38
Wyoming: 2

[FR Doc. 93–16069 Filed 7–12–93; 8:45 am]
BILLING CODE 4210–27–M

VOL 58 ISS 132 JL 13 1993 UMI

Federal Register

Tuesday
July 13, 1993

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Proposed Rule

VOL 58 ISS 132 JL 13 1993 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1993–94 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The comment period for proposed early-season frameworks will end on July 22, 1993; and for late-season proposals on September 1, 1993. A public hearing on late-season regulations will be held on August 5, 1993, starting at 9 a.m.

ADDRESSES: The August 5 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on these proposals and notice of intention to participate in the late-season hearing should be sent in writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1993

On April 9, 1993, the Service published for public comment in the **Federal Register** (58 FR 19008) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 1, 1993, the Service published for public comment a second document (58 FR 31244) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 24, 1993, a public hearing was held in Washington, DC, as announced in the April 9 and June 1 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1993–94 season. All pertinent comments received through June 24, 1993, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. Final regulatory frameworks for early seasons are scheduled for publication in the **Federal Register** on or about August 16, 1993.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the April 9 **Federal Register**. The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Presentations at Public Hearing

Service employees presented reports on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information.

Dr. David Caithamer, Waterfowl Specialist, reported briefly on habitat conditions observed during the May breeding waterfowl survey. In Prairie Canada and the northcentral U.S., there were an estimated 4.1 million ponds. This was not statistically different than the 3.6 million estimated for 1992 or the long-term average of 4.6 million. Pond numbers in the northcentral U.S. increased 117 percent from last year; most of these gains occurred in the eastern Dakotas. Conservation easements continued to provide excellent nesting cover in some regions. Conditions were highly variable in Prairie Canada where pond numbers were slightly lower than last year and 33 percent lower than the long-term average. Estimates of pond numbers in each of the provinces were not statistically different from last year, but there were small increases in southern Alberta and small decreases in southern Saskatchewan and southern Manitoba. Agricultural impacts on upland and wetland habitats were severe in many regions of Prairie Canada.

In Alaska, the Yukon Territory, and the Northwest Territories spring phenology was earlier than normal as temperatures averaged 2–8 degrees Celsius above normal during April and May. Water levels in northern Saskatchewan, northern Alberta, northern Manitoba, and western Ontario were mostly lower than normal but beaver ponds provided excellent waterfowl habitat. In eastern Canada and the northeastern U.S., many areas received abnormally high amounts of precipitation during spring, but phenology was delayed due to cool temperatures. Wetland numbers appeared normal or higher than normal throughout Iowa, Nebraska, southern Minnesota, and southern Wisconsin. In California, ample winter and spring precipitation ended a prolonged drought.

In 1992, the May survey indicated 4.3 million blue-winged teal. This year's preliminary blue-winged teal population estimate is 3.2 million. This represents a 26 percent decline from last year and is 23 percent below the long-term average. However, independent surveys in several States indicated increased numbers of teal this year and that the May survey may have occurred before all teal had arrived on the survey area.

Mr. Ashley Straw, Woodcock Specialist, reported on the 1993 status of American woodcock. The report included harvest information gathered since 1963 and breeding population information (Singing-ground Survey) collected since 1968. Age-ratio information from harvested woodcock indicated that the 1992 recruitment index (ratio of immatures to adult females) was well below the long-term average for the Eastern Region (-17.6 percent) and somewhat lower than the long-term average for the Central Region (-11.1 percent). The 1992 recruitment indices were 1.4 immatures per adult female in the Eastern Region and 1.6 in the Central Region. Analysis of Singing-ground Survey data indicated no regional changes in the number of singing males between 1992 and 1993. However, there were significant long-term (1968–93) declines of 1.8 percent per year in the Eastern Region and 0.9

percent per year in the Central Region. Recent (1985–93) trends were also negative (-1.5 percent and -1.7 percent per year for the Eastern and Central Regions, respectively). During the past 9 years, breeding population indices of woodcock declined significantly in Connecticut, Maine, New Jersey, West Virginia, Ontario, and Wisconsin. Conversely, the index for Indiana increased significantly over this time period.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the mourning dove population in 1993. The report summarized call-count information gathered over the past 28 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 28-year period. Between 1992 and 1993, the average number of doves heard per route declined significantly in the Central Management Unit, but did not change significantly in the Eastern and Western Units. No significant trend was found in doves heard in the Eastern or Central Units for either the 10 or 28-year time frames. In the Western Unit, no trend was evident over the most recent 10 years, but there has been a significant decline over 28 years. Trends for doves seen at the unit level over the 10 and 28-year periods generally agreed with doves heard.

Mr. Dolton also presented the status of white-winged and white-tipped doves in Texas. In 1993, call-count surveys indicated about 441,000 birds were nesting in the Lower Rio Grande Valley (Valley) in Cameron, Willacy, Hidalgo, and Starr Counties. This represented a 20 percent increase from 1992, but is still 12 percent below the 30-year average of 501,000 birds. In upper south Texas, approximately 480,000 whitewings were nesting throughout a 17-county area in 1993. This is a 17 percent increase from last year. The whitewing population increase in upper southern and central Texas may reflect a redistribution of Valley birds. In western Texas where a relatively small population of whitewings is found, an estimated 21,000 birds were reported in 1993, a 25 percent decrease from 1992. Estimates of white-tipped doves in the Valley in 1993 remained essentially unchanged from 1992. An average of 1.12 whitetips was heard per stop in 1993. This is only 12 percent below the 1.27 whitetips per stop recorded in the peak year of 1986.

Mr. Dolton then reported on the status of western whitewing doves in Arizona. Dove populations declined rapidly in the 1970's due of loss of nesting habitat from agricultural and reclamation projects, a change from grain to cotton farming practices, and overharvest. However, populations stabilized at a lower level during the 1980's and call-count indices indicate a moderate increase during the past 7 years. The 1993 call-count index increased 5.8 percent from 1992. As a result of lower population size and restrictive regulations, harvest has declined from about 700,000 in the 1960's to about 400,000 in the 1970's and has remained relatively constant between 100,000 and 200,000 during the past 12 years. A western white-winged dove management plan was developed by the Western Migratory Shore and Upland Game Bird Technical Committee during 1992 and is expected to be adopted by the Pacific Flyway Council in July 1993.

Mr. Roy Tomlinson, Western Dove and Pigeon Specialist, presented population and harvest information for the band-tailed pigeon. Band-tailed pigeons are managed as two separate and distinct populations: the Coastal Population (Washington, Oregon, Nevada, and California) and the Interior Population (Arizona, Utah, Colorado, and New Mexico). The Breeding Bird Survey (BBS) indicates that the Coastal population experienced an annual decline of 3.8 percent between 1968 and 1992. Counts conducted annually at mineral springs in Oregon during late August suggest that bandtails had two precipitous declines (in 1973 and again in 1985). Since 1985, these counts indicate that the population gradually has been increasing, but it remains at a lower level than during the 1970's. A call-count survey conducted annually in Washington during late June and early July indicates a downward trend of 7.8 percent per year during 1975-1992. Although the Coastal population has declined over the long-term, two indirect estimates suggest that the Coastal population numbered somewhere between 2.4 and 3.1 million birds in 1992.

The 1992 Coastal bandtail harvest is estimated to have been below 10,000 birds. A wing-collection survey in 1992 of Oregon and California hunters yielded recruitment information; the percentage young was 26 percent for Oregon bandtails and 38 percent for California birds.

Individual States in the Four-corners area do not conduct population surveys because of logistical problems. BBS data indicate a non-decreasing population throughout the breeding range of the Interior Population. The total hunting harvest for the four States in 1992 was 2,078. A wing-collection survey for birds in these States is being developed for 1993.

Mr. David Sharp, Central Flyway Representative, reported on the status and harvest of sandhill crane populations. The Mid-Continent Population appears to have stabilized following dramatic increases in the early 1980's. The preliminary Central Platte River Valley spring estimate for 1993, uncorrected for visibility, was about 251,000. This uncorrected index is similar (-3 percent) to the previous year's index of 257,700 but 39 percent below the 412,490 recorded in 1990. The photo-corrected 3–year average for the 1990–92 period was 386,433, which is within the established population objective range of 343,000–465,000. All Central Flyway States, except Kansas and Nebraska, elected to allow crane hunting in portions of their respective States in 1992–93; about 17,127 permits were issued and approximately 5,246 permittees hunted one or more times. Compared to the previous year's seasons, the number of permittees decreased about 6 percent and active hunters decreased 10 percent. An estimated 12,391 cranes were harvested in 1992–93, a 5 percent decrease from the 13,074 harvested in 1991–92. Mid-continent cranes are also hunted in Alaska, Canada, and Mexico; data for these areas are not yet available, but the combined harvest should not exceed 11,600 during the 1992–93 seasons. The total North American sport harvest was estimated to be near 25,000, which is similar to harvests recorded in the most recent decade.

Annual appraisals of the Rocky Mountain Population, which stages in the San Luis Valley of Colorado in March, suggest that the population has been relatively stable since 1984. The 1992 index of 20,014 cranes was within established objective levels of 18,000–22,000. The annual population index decreased to 16,457 in 1993, probably due in part to poor survey conditions. Limited special seasons were held during 1992 in portions of Arizona, Montana, New Mexico, and Wyoming, resulting in harvests estimated at 386 cranes, a decrease of 19 percent from the 1991 harvest estimate of 475 cranes. Population estimates and harvest for this population were within guidelines established in the Cooperative Flyway Management Plan.

Comments Received at Public Hearing

Three oral statements were presented at the public hearing on proposed early-season regulations. These comments are summarized below.

Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, commented on past cooperative efforts of States, flyways, and the Service and urged continuation of these efforts. He

reiterated the Council's recommendations to extend North Dakota's sandhill crane zone, allow 14 additional days to the Central Flyway sandhill crane season, modify Texas's mourning dove bag limit to include 6 white-winged doves in the aggregate bag limit in four Lower Rio Grande Counties, and adopt Texas's request for zones and splits for mourning dove hunting. He supported allowing 1/2-hour before sunrise shooting hours for blue-winged teal without further evaluation, citing information from law enforcement officials and field studies that there was negligible impact on non-target species last year. He stated that the Council supported requests for teal seasons in Iowa and Michigan, early Canada goose seasons in the Mississippi and Atlantic Flyways, and continuation of the band-tailed pigeon hunting season in the Pacific Flyway. He supported a ban on "F" shot for waterfowl hunting and recommended that time should be allowed for shot-shell industry, retailers, and hunters to adjust to new restrictions.

Susan Hagood, representing the Humane Society of the U.S., expressed concern about the continuation of season on species, such as the mottled duck, tundra swan, and sea ducks, for which there is little biological information. She suggested that the Service did not have adequate information to allow presunrise hunting during special seasons. States that hunt wood ducks and blue-winged teal should be collecting and reporting information on status of breeding populations. She commended the Service for proposing to bring the Pacific Flyway's 25 coot-moorhen limit in line with the lower limits allowed in other flyways, but believed that even those limits are excessive and encourage "target shooting." She opposed any hunting of doves in September because nesting is still occurring. She advocated closing the season on any species for which there was a declining trend and supported expanding the ban on toxic shot to include all migratory birds.

Charles E. Kelly, representing Alabama Department of Conservation and Natural Resources said that the Service should allow shooting hours which begin 1/2-hour before sunrise for September teal seasons. Also, representing the Southeastern Association of Fish and Wildlife Agencies, he complimented the Service regarding dove management. He said the hunting of mourning doves in September has been well studied, that these studies have shown no impact on the populations, and the record was sufficient such that the issue should not be revisited each year. He reported that the Association had submitted a recommendation regarding baiting regulations as they pertain to doves, and encouraged the Service to include the States as partners in the review of regulations, which will foster more cooperative participation in migratory bird management.

Written Comments Received

The preliminary proposed rulemaking, which appeared in the April 9 **Federal Register**, opened the public comment period for early-season migratory game bird hunting regulations. As of June 24, 1993, the Service had received 14 comments; 9 of these specifically addressed early-season issues. These early-season comments are summarized below and numbered in the order used in the April 9 **Federal Register**. Only the numbered items pertaining to early seasons for which written comments were received are included. The Service received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is also assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

1. Ducks.

i. Teal Seasons.

In the April 9 **Federal Register**, the Service reiterated that, consistent with the strategy for the use of shooting hours developed by the Service in 1990, shooting hours will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. States will be allowed to continue presunrise shooting hours during their September seasons under the condition that they conduct studies or provide information that demonstrates a negligible impact on nontarget duck species during the one-half hour prior to sunrise. The Service proposes to continue this requirement.

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that an experimental 9-day September teal season be conducted for 3 years in Michigan. Limitations would be placed on both the number of areas open to hunting and hunter numbers.

The Committee also recommended that a 9-day season be held in the Southern Duck Zone in Iowa. Granting a teal hunting season in Iowa will allow similar hunting opportunity as in Illinois and Missouri.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the shooting hours remain one-half hour before sunrise to sunset.

Written Comments: The Louisiana Department of Wildlife and Fisheries summarized the results of their recent shooting-hour study and strongly supported uniform presunrise shooting hours for all migratory bird hunting, including teal seasons during September.

The Wisconsin Department of Natural Resources supported the return to sunrise shooting hours for September teal seasons, unless States can demonstrate that the impact of presunrise shooting hours on nontarget species is negligible. They objected to the inequality in duck-hunting opportunity in September and requested that the Service offer production States some compensation in lieu of September teal seasons. They expressed concern about the use of triggering levels for regulatory decisions and about the level of harvest on blue-winged teal south of the U.S. border.

ii. Wood Duck/Teal Seasons.

A cooperative Wood Duck Initiative undertaken by the Service and the Atlantic and Mississippi Flyway Councils in 1991 is designed to improve banding programs and evaluate techniques for obtaining estimates of breeding population size and production. The Service does not propose to discontinue or expand September wood duck seasons, at least until the first phase of this initiative has been completed.

The Service has published a strategy concerning shooting hours which states that during species-specific duck seasons shooting hours will begin at sunrise, unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. The Service has recently received information from Kentucky and Tennessee regarding the effect of presunrise shooting hours; this information was deemed sufficient to demonstrate a negligible impact of presunrise shooting hours on nontarget duck species during seasons directed at both teal and wood ducks. Florida had previously provided sufficient information to allow presunrise shooting in that State. Therefore, Florida, Kentucky, and Tennessee will

be allowed to continue presunrise shooting hours during their September seasons without further evaluation.

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that shooting hours for these seasons in Kentucky and Tennessee be the same as those for regular seasons, one-half hour before sunrise to sunset.

3. Sea Ducks.

In the August 21, 1992, and April 9, 1993, **Federal Registers**, the Service expressed concern about the status of sea ducks and the potential impact that increased hunting activity could have on these species. The Service stated that additional data and a management plan are needed to guide future management efforts for these species. In 1992, the Service asked that the Flyway Councils make substantial progress to address these concerns prior to the 1993–94 regulations-development cycle. In April 1993, the Service requested that the Atlantic and Pacific Flyway Councils review the status of sea ducks before recommending frameworks for 1993–94 hunting seasons, and reiterated that, without more complete information on population status and harvest, the Service may be forced to restrict these special seasons. The Service herein proposes to restrict the 7-bird sea duck limit to include no more than 4 scoters.

Council Recommendations: The Atlantic Flyway Council recommended that the bag limit for sea ducks remain at 7, with a species-group restriction of 4 scoters, within the 107-day season during 1993.

4. Canada Geese.

The Service herein proposes to modify the criteria governing special Canada goose seasons. In the Atlantic and Mississippi Flyways, seasons are currently limited to 10 consecutive days. The Service proposes to drop this requirement. The Service notes that the criteria currently state that these seasons will generally be held between September 1 and September 10. Although these guideline dates contain sufficient flexibility to allow seasons after September 10, proposals for such seasons will be assessed on an area-by-area basis. The Service also notes that, for such seasons occurring after September 10, the provision will be continued which specifies that gathering of population information must begin at least 2 years prior to the requested season, and further emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria.

Council Recommendations: The Atlantic Flyway Council made the following recommendations pertaining to the special Canada goose seasons:

In Maryland, initiate a 3-year experimental season in the 24 counties west of Chesapeake Bay with framework dates of September 1–15.

In Massachusetts, extend the framework closing date for the season to September 15.

In New Jersey, initiate a 3-year experimental season in the northern portion of the State with framework dates of September 1–19.

In New York, expand the area open to goose hunting in the western portion of the State, initiate a new 3-year experimental season in the southeastern portion of the State, and extend the framework dates for the season in both areas to September 1–17.

In Virginia, initiate a 3-year experimental season with framework dates of September 1–15.

In North Carolina, amend the experimental season to allow a season length of 15 consecutive days with framework dates of September 1–30, during 1993-95.

In Pennsylvania, amend the experimental season in the southeastern zone to include the Counties of Berks, Chester, and Delaware; and extend the framework dates in the southeastern zone to September 1–15.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to the special Canada goose seasons:

In Minnesota, a new 3-year experimental season in an expanded Southwest Goose Zone, an expansion of the Fergus-Falls/Alexandria Zone with continued monitoring of hunter numbers and harvest, operational status for the Southwest-Border-Zone season and the Fergus Falls/Alexandria-Zone season, and allow the 10-day seasons in all zones to begin on the first Saturday in September.

In Ohio, a new 3-year experimental 10-day season in 31 southwest counties.

In Wisconsin, operational status for the Southeast Subzone.

The Committee further recommended that annual monitoring of hunter numbers in experimental-season zones no longer be required after the criteria have been met and the seasons have become operational.

The Pacific Flyway Council made the following recommendations pertaining to special Canada goose seasons:

That operational status be given to the special season in Oregon and Washington; and that permits no longer be required, seasons be increased from 10 to 12 days, daily bag limits be increased from 2 to 3, and that States be allowed independent seasons.

That the Washington hunt area be enlarged to include the area along the Columbia River from the Astoria/Megler Bridge on State Highway 101 to the end of the North Jetty near Fort Camby.

That an experimental season be adopted in northwestern Oregon with season dates of September 1 through September 12 and a bag limit of 2. A mandatory State permit would be required.

Written Comments: The States of Maryland, New York, and Virginia requested approval of the Council recommendations pertaining to special Canada goose seasons in their respective States.

The Wisconsin Department of Natural Resources urged the Service to reconsider the criteria recently established for early and late special Canada goose seasons. They continue to believe that these criteria are inappropriate and too exacting. They further urged the Service to drop its requirement that States annually monitor harvest and hunter participation after the experimental period has been successfully completed.

9. Sandhill Cranes.

Council Recommendations: The Central Flyway Council recommended that the sandhill crane hunting area in North Dakota be extended eastward to include the entire State. The eastern portion of North Dakota was previously closed to protect greater sandhill cranes. Hunting zones, season dates, and bag limit restrictions have all been used to limit harvest of greater sandhill cranes in North Dakota. Measurements on harvested sandhill cranes are routinely taken throughout the hunting season to identify areas of distribution and harvest of greater sandhill cranes. North Dakota plans to continue these actions in the future. Cranes have recently shifted their migrational pattern and larger numbers of cranes are using the eastern portion of the State. North Dakota sportsmen have requested an opportunity to take advantage of this shift in crane migration. In addition, complaints of crane depredation of row crops in areas east of Highway 281 have been reported.

The Central Flyway Council recommended that season lengths for mid-continent sandhill cranes be increased by 14 days in the Central Flyway. Increasing the season length to

VOL
58
ISS
132
JL
13
1993
UMI

include the time when depredations on winter wheat occur may curtail the damage to these crops. The Council believes allowing additional hunting days will not harm the population and would increase hunting opportunity.

Written Comments: The Texas Parks and Wildlife Department requested a minor administrative change in the open area to reflect the recent completion of Interstate Highway 35 between Austin and the Texas-Oklahoma State line.

11. Moorhens and Gallinules.

In the April 9 **Federal Register**, the Service proposed to establish frameworks for common moorhens in the Pacific Flyway that are consistent with those established in other flyways. This proposal was made out of concern that for moorhens data are not available to suggest that additional opportunity beyond that offered to other flyways is warranted for moorhens in the Pacific Flyway. If this change were adopted, the season frameworks for moorhens in the Pacific Flyway would be the same as the frameworks offered to the other three flyways. Because the frameworks for moorhens in the Pacific Flyway are linked to the coot and duck frameworks, these proposed framework changes will be addressed as a late-season issue.

15. Band-tailed Pigeons.

In the April 9 **Federal Register**, the Service expressed its concern about the long-term decline of the Coastal Population of band-tailed pigeons, requested that States submit all available population-status and harvest information for Service review by June 1, and indicated that it would carefully evaluate all this data by June 15 to determine whether a hunting-season closure is warranted. In addition, the Service indicated that the status of the Interior Population of band-tailed pigeons is also not well understood. The Service herein proposes that all States having band-tailed pigeon hunting seasons require band-tailed pigeon hunters to obtain mandatory State permits (or participate in the nationwide Migratory Bird Harvest Information Program) to provide a sampling frame for obtaining more precise estimates of band-tailed pigeon harvest. Those States not participating in the Harvest Information Program would be required to conduct a harvest survey and provide the results to the Service by June 1.

Written Comments: The California Department of Fish and Game and the Oregon Department of Fish and Wildlife requested continuation of the open season. They believed that the long-term status of the population is dependent primarily upon habitat conditions and that the last 20 years of population indices have not changed sufficiently to warrant further restrictions in harvest. They provided a joint assessment of population information, harvest and hunter-activity information, and suspected causes for the long-term decline, and a summary of ongoing efforts in the two States. They stated that the current hunting season allows for the efficient collection of biological information about reproduction and, potentially, the prevalence and effect of disease. They believe complete cessation of hunting is not likely to result in substantial gains in this population given the low levels of harvest under current regulations.

16. Mourning Doves.

The Service notes that States in the Eastern and Central Management Units have the option to select seasons in each of two zones and that seasons in the southern zones of Texas, Louisiana, Mississippi, Alabama, and Georgia may commence no earlier than September 20. The Service herein proposes to extend that requirement to Florida as well.

Council Recommendations: The Central Flyway Council recommended that Texas be allowed to split the mourning dove season into three segments in its central and southern zones on an experimental basis; however, Texas would continue to utilize 3 zones. These additional season segments would permit greater flexibility in establishing dove-hunting seasons consistent with anticipated migration patterns and population levels and would also allow additional "opening days" to be established for Texas sportsmen.

Written Comments: The Florida Game and Freshwater Fish Commission has requested that they be able to avail themselves of the zoning option and establish two zones as described in a later portion of this document. The Alabama Division of Game and Fish requested that Barbour County be moved from the northern to the southern zone.

17. White-winged and White-tipped Doves.

Council Recommendations: The Central Flyway Council recommended that the number of white-winged doves allowed in the 12-bird aggregate bag limit during the mourning dove season be increased from 2 to 6 in the Texas Counties of Cameron, Hidalgo, Starr, and Willacy.

18. Alaska.

Council Recommendations: The Pacific Flyway Council recommended that a new experimental tundra swan season be established in Game Management Unit 18 (Yukon-Kuskokwim Delta). The framework dates would be September 1 - October 31. A maximum of 500 permits would be issued, and hunters would be allowed more than 1 permit per season, issued 1 at a time upon filing a harvest report.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—

Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultations under section 7 are considered public documents and are available for inspection in the Division of Endangered Species (Room 432) and the Office of Migratory Bird Management (Room 634), Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the April 9 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis (RFA), prepared as part of the FRIA concluded that this rule would have significant effects on small entities. Information contained in that document stated that while the Service believes that its rules for migratory bird hunting are "major," and impact "small entities," particularly small businesses, it has been unable to locate information of the kind needed to complete its analysis on small entities. The FRIA and the RFA document the relationships between hunting regulations, and hunter numbers and hunter days, both of which have major economic implications. The Service concluded that the adoption of other regulatory options would have little impact upon hunter expenditures at the national-economy or small-entity levels. Unless migratory bird hunting regulations are established, the national economy stands to lose at least $1 billion annually. Most of this loss would be borne by small entities.

It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the above **Federal Register** reference, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary authors of this proposed rulemaking are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1993–94 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1916), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: July 7, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

Proposed Regulations Frameworks for 1993–94 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1993, and March 10, 1994.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the August 21, 1992, **Federal Register** (at 57 FR 38212) are contained in a later portion of this document.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

2. In Cameron, Hidalgo, Starr, and Willacy Counties, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-winged doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1-15 and November 1 - January 15. In Arizona, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Band-tailed Pigeons

Pacific Coast States: California, Oregon, Washington, and Nevada.

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States: Arizona, Colorado, New Mexico, and Utah.

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into two segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species. Possession limits are twice the daily bag limit.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1 and January 31. States in the Central and Mississippi

Flyways may select hunting seasons between September 1 and January 31.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1 and February 28. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in his possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31,

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and not to exceed 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck-season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: From sunrise to sunset daily.

Special September Teal/Wood Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Tennessee and Kentucky: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Special Early Canada Goose Seasons

Atlantic Flyway

Hunting Seasons: Experimental Canada goose seasons may be selected by Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Virginia. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except that the closing date is September 15 in Maryland, Massachusetts, New Jersey, New York, Virginia and southeastern Pennsylvania, and September 30 in North Carolina.

Daily bag limits: Not to exceed 5 Canada geese.

Mississippi Flyway

Hunting Seasons: Canada goose seasons of up to 10 consecutive days may be selected by Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The seasons in the following States and portions of States are experimental: Indiana; Missouri; Ohio; in Michigan, that portion of the Upper Peninsula previously open to the hunting of Canada geese in early September and that portion of the Lower

VOL 58 ISS 132 JL 13 1993 UMI

Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties and all counties north thereof; in Minnesota, the Fergus Falls/Alexandria and Southwest Canada Goose Zones. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except in Missouri, where the outside dates are October 1 and October 15, and Minnesota, where the closing date is September 16.

Daily Bag Limits: Not to exceed 5 Canada geese.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. Not to exceed 4 days during September 1–15.
2. Hunting will be by State permit.
3. Not more than 200 permits may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Oregon, in the Lower Columbia River Zone, may select a season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1-12.
2. The daily bag limit is 3 Canada geese.

Oregon, in the Northwest Zone, may select a season on Canada geese subject to the following conditions:

1. The season will be experimental.
2. The season length is 12 days during September 1–12.
3. Each permittee may take no more than 2 Canada geese per day.

Washington may select a season on Canada geese, subject to the following conditions, in the Lower Columbia River Zone:

1. The season length is 12 days during September 1–12.
2. The daily bag limit is 3 Canada geese.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits: Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may include no more than 2 pintails daily and 6 in possession, and 2 canvasbacks daily and 6 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra swans—An open seasons for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued in GMU 22, authorizing each permittee to take 1 tundra swan per season.
2. No more than 500 permits may be issued during the experimental season in GMU 18. No more than 1 tundra swan may be taken per permit.
3. The seasons must be concurrent with other migratory bird seasons.
4. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves and scaly-naped pigeons in the aggregate, no more than 5 of which may be scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 3.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 6.

Closures: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks:

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 3 ducks.

Closures: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Except for the following descriptions, the Service does not propose any changes to those zone, area, and unit descriptions published in the August 21, 1992, Federal Register (at 57 FR 38212). The Service will publish descriptions of all early-season areas, units, and zones in the early-season final frameworks.

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone: Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone: Remainder of the State.

Florida

Northwest Zone: The counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. Highway 27 and east of State Road 155), Jefferson (south of U.S. Highway 27, west of State Road 59 and north of U.S. Highway 98), and Wakulla (except that portion south of U.S. Highway 98 and east of the St. Marks River).

South Zone: Remainder of State.

Special September Goose Seasons:

Atlantic Flyway

Maryland

Open Area: Counties of Garret, Allegany, Washington, Frederick, Carroll, Harford, Baltimore, Howard, Montgomery, Prince Georges, Anne Arundel, Calvert, Charles, and St. Mary's.

New Jersey

Open Area: That portion of New Jersey within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary line to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

New York

Northern Area: All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Western Area: Counties of Erie, Cattaraugus, Chautauqua, Niagara, Orleans, and Genesee, and portions of Wyoming, Livingston, Allegany and Steuben Counties.

Southeastern Area: All of Rockland, Westchester, Orange, Putnam, Dutchess, Columbia, and Rensselaer Counties, and portions of Sullivan, Delaware, Ulster, Greene, Albany, Schenectady, Saratoga, Warren, and Washington Counties.

Pennsylvania

Northwestern Early-Season Goose Area—Counties of Butler, Crawford, Erie, and Mercer.

Southeastern Early-Season Goose Area—Counties of Berks, Bucks, Chester, Delaware, Lehigh, and Montgomery.

Virginia

Open Area: Counties of Albemarle, Caroline, Charles City, Culpeper, Fairfax, Fauquier, Fluvanna, Goochland, Greene, Hanover, Henrico, James City, Loudoun, Louisa, Madison, New Kent, Orange, Prince William, Rappahannock, Spotsylvania, Stafford, and York.

Mississippi Flyway

Minnesota

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver

County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Fergus Falls/Alexandria Canada Goose Zone—All or portions of Becker, Clay, Douglas, Grant, Otter Tail, Pope, Stevens, Travers, and Wilkin Counties.

Southwest Canada Goose Zone—All of Blue Earth, Cottonwood, Faribault, Jackson, Lincoln, Lyon, Lesueur, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County south of State Highway 14, that portion of Meeker County south of State Highway 12, and that portion of Renville County east of State Highway 4.

Ohio

Northeast Zone—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Southwest Zone—Allen, Auglaize, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Greene, Hamilton, Hancock, Hardin, Licking, Logan, Madison, Marion, Mercer, Miami, Morrow, Montgomery, Preble, Pickaway, Putnum, Ross, Shelby, Union, and Warren Counties.

Pacific Flyway

Oregon

Lower Columbia River Zone—Those portions of Clatsop, Columbia, and Multnomah Counties within the following boundary: Beginning at Portland, Oregon, at the south end of the Interstate 5 bridge; south on I-5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.

Northwest Oregon Zone—All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties; except for the Lower Columbia River Zone.

Washington

Lower Columbia River Zone—Beginning at the Washington-Oregon border on the I-5 bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Sandhill Cranes:

Central Flyway

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; Interstate Highway 35 to the Texas-Oklahoma border.

[FR Doc. 93–16691 Filed 7-12-93; 8:45 am]
BILLING CODE 4310-55-F

VOL 58 ISS 132 JL 13 1993 UMI

Federal Register

Tuesday
July 13, 1993

Part VII

Department of Agriculture

Forest Service

Fee Schedule for Communication Uses; Notice

VOL 58 ISS 132 JL 13 1993 UMI

DEPARTMENT OF AGRICULTURE

Forest Service

Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for public comment.

SUMMARY: The Forest Service proposes to adopt a revised fee schedule for annual rental charges for certain communications uses authorized on National Forest System lands. This proposed schedule would supplement fee schedules for communications uses adopted by Forest Service Regions in 1989 and modified in 1992. The proposed schedule would complete the agency's efforts to establish annual rental fees for all communications uses in Forest Service Regions 1–6 and to establish fees that reflect fair market value, as required by Title V of the Federal Land Policy and Management Act of 1976. Public comment is invited.

DATES: Comments must be received in writing by October 12, 1993.

ADDRESSES: Send written comments to the Director, Lands Staff (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Lands Staff, room 4, South, Auditor's Building, 205 14th Street SW., Washington, DC. Those wishing to inspect comments are encouraged to call ahead (202 205–1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Anderson, Lands Staff, Room 4, South, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Background on Communications Site Fees

Pursuant to statutory and regulatory authority, the Forest Service authorizes use of National Forest System lands for a variety of public, commercial, and private activities. There are over 72,000 authorizations in effect on these Federal lands. Included in this total are about 6,000 authorizations for communications uses, generally found at high elevation locations and involving the construction of a building and tower with antennae or the placement of one or more antennae placed atop a building owned by another permittee. The agency recognizes 13 types of communications uses; these generally correspond to types of communications licenses issued by the Federal Communications Commission, and are grouped into 3 categories, as follows:

Category of use	Type of use
A. Commercial:	1. Radio broadcast. 2. Television broadcast. 3. Broadcast translator. 4. Cable and subscription television. 5. Mobile radio: commercial communications. 6. Cellular telephone.
B. Industrial:	1. Common carrier microwave relay. 2. Industrial microwave relay. 3. Mobile radio: internal communications. 4. Natural resource/environmental monitoring. 5. Passive reflector.
C. Personal:	1. Amateur radio. 2. Personal/private "receive only."

Since 1983, the Forest Service has sought to bring annual rental fees for communications uses authorized to use National Forest System lands to fair market value. Section 504(g) of the Federal Land Policy and Management Act of 1976 states "The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way * * *"

Further, the Independent Offices Appropriations Act of 1952 requires the Federal Government to receive fees for the use of Federal lands and authorizes heads of agencies to charge fees for services or benefits provided by the agency that are fair and based on fair market value and cost to the Government. Office of Management and Budget Circular A–25 implements and further defines the 1952 Act and directs agencies to establish user fees based on sound business management practices.

Until 1983, Forest Service fees for communications uses were 0.2 percent of the permittee's investment plus 5 percent of the rental fees received by a permittee from sub-tenants of the same facility. An administrative appeal decision in 1983 concluded that this fee formula did not yield fair market value. Consequently, in 1985, the Forest Service, by notice in the **Federal Register** (50 FR 40574), adopted national policy on administration of communications sites, including direction to its field officers to use current market data to determine rental fees. These fees were to be determined on a regional basis by one of three methods: Fee schedules, individual site appraisals, or competitive bids. The Regional Foresters chose to use fee schedules. Surveys of lease transactions in the private market were completed in 1986. Those surveys provided the necessary information on fair market value and were the basis for development and promulgation of proposed regional fee schedules. Final schedules were adopted by the Regional Foresters through publication in the **Federal Register** from 1987–1989. These schedules applied to communications sites serving mostly rural areas. The notices explained that fees for sites serving urban areas—Los Angeles, for example—would be determined by on-site appraisals, because the higher values attached to these sites were not typical of the transactions forming the basis of the fee schedules. (See 54 FR 35031, August 23, 1989, for an example of these regional fee schedules.)

Because the agency's pre-1985 fee policy for communications sites had no provision for updating fees, most permittees' fees had remained unchanged for as long as 20 years. Consequently, when the new fees were placed in effect, these permittees faced significant fee increases. This led to widespread permittee complaint to the agency and Congress. In response, in the fiscal year 1990 appropriations act for the agency, Congress adopted an administrative provision preventing the agency from raising fees for existing communications uses over the amount in effect on January 1, 1989. Congress also directed the agency to review the regional fee schedules, giving particular emphasis on how the schedules affected rural communities in the western U.S., and report its findings to the House and Senate Appropriations Committees.

The congressional action did not prohibit the agency from establishing fees at fair market value for communications uses occupying new facilities after January 1, 1989. Under existing statutory and regulatory authority, the agency has proceeded to require those obtaining permits after January 1, 1989, and occupying new facilities to pay annual rental fees based on fair market value.

To provide the factual basis for the congressionally mandated report, appraisers of the Forest Service and Bureau of Land Management conducted intensive appraisals of 12 individual communications uses located throughout the western U.S. Over 100 owners or lessees of private communications sites were contacted to gain information on lease fees and terms. The report submitted to the Appropriations Committees in April

1991 recommended several changes to the previously adopted regional schedules. These recommendations were incorporated as modifications to the 1989 fee schedules through regional notices sent to communications site permittees in 1992.

Congress, however, felt that the agency's fee determination process was flawed and that its permittees had not had a sufficient opportunity to participate in the analysis and report. Consequently, the prohibition on fee increases for uses authorized prior to 1989 was continued and was extended to include communications sites on lands administered by the Bureau of Land Management. The fiscal year 1991 appropriations act provision did allow both agencies to increase their fees for existing uses up to 15 percent over those fees in effect on January 1, 1989.

In September 1991, the Forest Service contracted with a private, independent appraiser to appraise all communications uses at 12 National Forest mountain top sites throughout the western U.S. that served urban areas. This appraiser, following uniform appraisal practices, examined private leases on lands similar to those administered by the agency and serving urban populations in Albuquerque, Tucson, Flagstaff, Boise, Missoula, San Diego, and the Los Angeles Basin. The appraisals were completed and accepted by the agency in March 1993.

The appraised values for these sites confirmed the influence of population on communications site rental value. For example, the appraiser concluded that the annual value for television broadcast transmitters in the Los Angeles area was $75,000, while comparable leases on sites serving low population areas in the Interior West were in the $5,000 range. Rental fees for commercial mobile radio ranged from a high of $60,000 in the Los Angeles Basin to a low of $2,500 in some areas of the Interior West.

The agency notified each permittee occupying one of the 12 sites by registered letter of the appraisal and invited the permittees to provide any communications site lease information and any concerns about the agency's fees determninations practices. Over 2,000 letters were sent; 106 responses were received. Following completion of the appraisal, the agency scheduled public meetings at the 12 locations to allow permittees and others to review the results with the appraiser. Permittees raised concern over the values resulting from these appraisals, many of whom assumed that the values translated directly to rental fees. In fact, the appraised values constitute advice to Forest Service officials charged with the responsibility of establishing fees. These officials consider a wide range of factors affecting fair market value and do not limit a fee decision to only appraisal results.

While the on-site appraisals were underway, Congress, through the fiscal year 1992 appropriations act, continued the limitation on fee increases for uses authorized prior to 1989. In this legislation, Congress also directed the Secretaries of Agriculture and of the Interior to establish an advisory committee comprised of representatives of the broadcast industry (radio and television) to advise the Secretaries of Agriculture and of the Interior on appropriate methods of determining fees for radio and television broadcast uses on National Forest System and public lands.

The Radio and Television Broadcast Use Fee Advisory Committee was established on June 18, 1992. It submitted its report to the Secretaries on December 11, 1992. The 11-member committees recommended the use of fee schedules over individual site appraisals based on cost efficiency and ease of administration. It also developed and proposed actual fee schedules for radio and television broadcast uses. The committee considered fee schedules prepared by the agencies and developed from comparable private lease transactions, including appraisal information from the 12 communications sites described above. However, the committee was concerned that these fee schedules would impose fees on broadcasters that were too substantial. It elected instead to adopt fee schedules developed from information obtained from several sources, including informal surveys by its members. The committee first developed estimated rental fees for television broadcast uses, stratified into population categories using the broadcast industry's "Area of Dominant Influence" (ADI) market rankings. Estimated fees for radio broadcast uses were then set at 70 percent of the television use fee and stratified by population using the "Metro Survey Area" (MSA) population market rankings for radio. The estimated rental fees for both television and radio use were then reduced by 30 percent, an amount identified by the committee as a composite adjustment to account for such factors as public service by the permittee, differences in rights granted by private and public leases, and additional costs and administrative burdens imposed by the requirements of the agencies. In recommending this schedule, the committee acknowledged that its recommended television and radio fee schedules did not represent fair market value.

The Advisory Committee made additional recommendations on implementation of the fee schedules and administration of authorizations. It suggested that permittees who sublease space to other communications facilities should pay 25 percent of their gross rental income to the Government in addition to the annual fee. A companion recommendation would require the agencies to adopt a "footprint" lease in which only the owners of the building would have an authorization and the tenants would not be issued authorizations by the agencies as is the current practice. It recommended that the base rental fee be indexed to the Consumer Price Index-Urban (CPI–U) with annual indexed fee increases of at least 3 percent but no more than 5 percent. Finally, it recommended that fee increases of more than $1,000 to individual permittees be phased-in over a 2 year period and the entire fee schedule be re-evaluated after a period of no more than 10 years.

The Acting Secretary of Agriculture, in transmitting the Advisory Committee report to Congress, endorsed the committee's recommendations on fee implementation and administration, but rejected the proposed fee schedule on the basis that it did not represent fair market value, as required by law. The Acting Secretary praised the work of the committee in providing insights into the characteristics of the radio and television broadcasting industry but stated that the committee-recommended fees would deprive the Government and taxpayers of legitimate revenues totalling millions of dollars each year.

Proposed Fee Schedule

In response to the Secretary's concern, as well as to address the need to develop fee schedules for all categories of communications uses, the Forest Service and the Bureau of Land Management continued their efforts to develop market-based fee schedules. The agencies continued to assemble data from many segments of the communications industry, resulting in a data base incorporating over 1,500 private lease transactions. The cellular telephone industry, which had not been included in earlier fee schedules, provided current lease information that enabled the agencies to develop schedules for this type of use. The commercial mobile radio segment of the communications industry also volunteered substantial private lease information from certain markets.

VOL
58
ISS
132
JL
13
1993
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Based on the quantity and quality of its private lease information, and cognizant of the cost efficiencies and reduced impacts on agency staff obtained by using fee schedules over on-site appraisals, the Forest Service has decided to use fee schedules for most communications uses. Thus, it proposes to abandon its earlier policy of using fee schedules only for sites serving rural areas and using on-site appraisals for sites serving urban areas.

The agency believes that the statutory requirement for fair market value for use of communications sites on Federal lands can be obtained from an analysis of the actions of private property owners that are operating in the competitive marketplace. The Forest Service and the Bureau of Land Management, using information gained from the Advisory Committee, hundreds of discussions with industry representatives and private lessors, commercial communications site managers, State and local government representatives, appraisers and over 1,500 confirmed private lease transactions, have developed fee schedules for the 4 categories of communications use not previously included in Forest Service fee schedules. These categories are: (1) FM radio broadcast, (2) television broadcast, (3) mobile radio commercial, and (4) cellular telephone. In every case, the fees indicated in the schedule are within the range indicated by the private lease transactions. The fee schedule is shown in Table I which is set out at the end of this notice.

Explanation of Table 1

The proposed fee schedule in Table 1 reflects information provided by the Advisory Committee, industry representatives, lessees and lessors, appraisers, State and local agencies, commercial site managers, and over 1,500 private communication site transactions. The market data was separated according to the category of communications use. Within each category, the individual transaction was reviewed to identify the ground rent portion of the fees (that is, the amount of the fee directly attributable to use of the land, excluding amounts for utilities, roads or other benefits provided by the lessor).

Industry representatives helped define the parameters for the groupings within each schedule. In the case of television broadcast, the Advisory Committee recommended the strata be based on the Area of Dominant Influence (ADI), a market ranking system developed by the Arbitron Company that ranks 210 television markets in the U.S. according to the number of television households they contain. For radio broadcast, the Advisory Committee suggested the use of Arbitron Company's Metro Survey Area ranking of 261 U.S. radio markets. Areas not included in the television and radio market survey listings were included in the lowest fee strata. The agencies found that about 50 percent of the U.S. radio markets are not included in the Metro Survey Area rankings. For commercial mobile radio use, population (based on U.S. Census reports) was used to define the size of area served by the facility. Cellular telephone use was based on whether the facility was located within or outside a Standard Metropolitan Statistical Area, as defined by the U.S. Department of Commerce. The suggested parameters for each of the 4 uses were validated with the market data in the agency's market analysis to ensure there was an appropriate correlation.

In establishing fees for each strata, the agencies stayed within the range of private lease information. Since each strata represented a substantial market share, fees were established based on the lower range of information found in each strata.

Table 1 also addresses the issue of subtenants in lessees communications facilities. Again, the agencies looked to the market for guidance. In the case of radio and television broadcast facilities, a range of percentages were found, averaging about 25 percent. That number was consistent with the Advisory Committee's recommendation that the Government collect 25 percent of tenant revenues. This is believed consistent with the practice in the private market and is proposed to be adopted by the agencies.

In the other categories of use, the agencies were also guided by private market practice. For example, in most markets, the rentals for commercial mobile radio facilities are a flat fee. However, newer private leases in the largest markets indicate an increasing number of transactions where the lessor shares in the revenues in lieu of a flat fee. The proposed commercial mobile radio fee schedule reflects this information.

Additional Fee Schedule Considerations

The Forest Service considered several other factors associated with the adoption of a fee schedule which would be incorporated into the authorization of a communications site. Such factors include those revealed in the market analysis and those recommended by the Advisory Committee. Thus, upon adoption of the fee schedule the agency also proposes to adopt the following terms and conditions as part of the permit for communications site uses:

1. Annual Indexing

The rental fees shown in Table 1 would be subject to an annual index to ensure the fee is kept current with fair market value. The agency has found that use of an index is common practice in the private lease market. Accordingly, it proposes to use the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI–U) as an annual index for communications site fees. To yield a CPI–U multiplier that would be used to annually update the communications site fee schedule, the CPI–U for July of the current year would be divided by the CPI–U for July of the previous year.

2. Footprint Lease

The fee schedule indicates that a permittee owning a communications facility whose authorizations allows the leasing of space in that facility to other communications facilities would be required to pay 25 percent of the gross rental receipts to the Government in addition to the annual rental fee. If implemented, the agency would no longer require separate authorizations for tenants in a permittee-owned building. Instead, the agency would issue a "footprint lease" to the building owner who would be designated as a "facility manager." Use of the footprint lease would improve the efficiency of the agency's administration of these multi-user facilities and result in considerable cost-savings. Further, this practice is commonly found in leases on private communications sites.

Holders of these leases would be required to submit a certified list to the agency identifying tenants, fees received, and gross revenue. The lease would contain a "best efforts" clause assuring that rents are market-based and correctly reported to the agency. This would be necessary to ensure that there is no attempt at avoiding the proper fair market value fee.

3. Fee Schedule Phase-In

The agency recognizes that implementation of the proposed fee schedule could significantly raise fees for some permittees. Thus, it proposes to phase-in the fee schedule as follows: If the fee increase is $1,000 or more, the fee would be phased-in over a 5 year period at $1,000 per year or 20 percent of the total increase per year, whichever is greater. The full fee, as indicated in the fee schedule, plus additional annual amounts through indexing, would be reached in the fifth year. For example,

for a current fee of $1,000 that increases to a new fee of $5,000, the first year fee would be $2,000, the second year would be $3,000, continuing until the new fee plus annual indexing is in place. For a current fee of $1,000 that increases to $11,000, the first year fee would be $3,000 ($1,000 plus 20 percent of $10,000), the second year fee would be $5,000, the third year fee $7,000, the fourth year fee $9,000, and the fifth year fee $11,000, plus annual indexing.

The phase-in of the fee schedule is being proposed as a sound business management practice. The agency recognizes that the phase-in will result in reduced receipts to the Treasury in the initial years of the revised fee schedule implementation. However, the agency believes that the magnitude of some fee increases under the proposed fee schedule, due in part to the length of time the fee schedule has been under development and debate, and to its decision to change the method of determining fair market value to obtain more accurate fees, could impose an economic burden on some permittees with an associated risk of adverse impact on their business. The phase-in is proposed to minimize that risk.

4. Reevaluation of the Fee Schedule

The agency proposes to reevaluate the fee schedule in ten years or less to ensure communications site fees remain at fair market value. Thus, each permittee's annual rental fee established as a result of this schedule would be reviewed.

Fee Schedule Implementation

Adoption of this fee schedule and associated policies will require Forest Service Region's 1 through 6, generally encompassing National Forest System land west of the one-hundredth meridian, to modify their existing fee schedules to incorporate Table 1. Upon adoption of a final fee schedule, the agency will direct the Regional Foresters to make appropriate revisions to those schedules and to give notice of those changes in the **Federal Register**. The agency anticipates adoption and implementation of a final fee schedule for the 4 communications uses described in this notice by January 1, 1994.

Since the private market analysis completed by the Forest Service and the Bureau of Land Management focused primarily on communications uses in the western States, this proposed fee schedule is not intended to guide fees in Regions 8 and 9, encompassing the 33 eastern States. Instead, the Forest Service will validate the fee schedule's applicability to communications sites in those States, collect additional market data as necessary, and make any necessary supplements to the Table 1 fee schedule to incorporate communications sites in the eastern U.S. The agency expects to implement the fee schedule in the eastern States by January 1, 1995.

Summary

The Forest Service is proposing the fee schedule in Table 1 as a supplement to the existing 6 western regional fee schedules adopted in 1989 and modified in 1992. The agency believes that the proposed fee schedule meets the statutory and regulatory requirements to obtain fair market value fees from authorized commercial and private communications uses on National Forest System lands and that its adoption would be in the public interest.

The agency's regional offices would make appropriate modifications to existing fee schedules adopted in 1989, which are incorporated as regional supplements to title 2700, Special Uses Management of the Forest Service Manual. If this fee schedule is adopted, it would place most communications uses on National Forest System lands in Regions 1 through 6 under a fee schedule. The fee schedule would be validated for use in Regions 8 and 9 in the coming year and necessary modifications to accommodate communications sites in the eastern U.S. would be made. Exceptions to use of the fee schedule would be allowed in certain situations. For example, a bid procedure may be used where a communications site is the focus of competition between like facilities. Sites with truly unique characteristics, such as the Aspen-Vail area of Colorado, also may require use of on-site appraisals.

It is the agency's intention that its fee schedule be fully consistent with that of the Bureau of Land Management. The Forest Service understands that the Bureau plans to adopt fee schedules for all communications uses applicable to lands under its jurisdiction and will incorporate the fee schedules into its overall communications site fee policy in a separate **Federal Register** notice.

Comments received on this proposed policy will be considered in the adoption of the final policy, notice of which will be published in the **Federal Register**.

Environmental Impact

This proposed policy would establish a fee schedule to guide the administrative process of calculating annual fees to be charged holders of authorizations for communications uses on National Forest System lands. The schedule would apply to Forest Service Regions 1 through 6 and would be incorporated into existing regional fee schedules for communications uses. Upon adoption of a final fee schedule, individual authorization holders would be notified of the changes in their annual fees.

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." The agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burdens on the Public

This policy will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this rule.

This action will bring annual rental fees charged holders of authorizations for communications sites on National Forest System lands, which have been held to an artificially low amount for many years, to fair market value as required by statute and administrative direction.

The fees which would be placed in effect by this proposed policy would remove the special benefit of low rental charges enjoyed by communications site authorization holders on the Federal land over those who lease land from private landowners. The increased

revenues resulting from this fee schedule will result in increased payments to States and counties in which the National Forest System lands containing the authorized facilities are located under current statutory authorities (16 U.S.C. 500).

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed policy and fee schedule is limited to that segment of the communications industry operating on National Forest System lands. There are approximately 6,000 communications site permits in effect on these Federal lands. Available records do not indicate the number of such permits held by small entities. Further, the statutory and administrative requirements to obtain fair market value for authorized uses of National Forest System lands do not provide a basis for charging lower fees to small entities. The phase-in of annual fees proposed in this notice will allow small entities to adjust the new fees over a period of time and thus minimize the risk of adverse impact on some businesses because of the magnitude of the increase in some fees.

In order to provide adequate time for public review and comment and consideration of those comments in the adoption of a final fee policy and schedule prior to the next annual fee filing, there was not sufficient time to permit review and clearance under E.O. 12291 and Federal regulations. The final policy will be submitted for review under E.O. 12291.

Dated: July 1, 1993.

George M. Leonard,

Associate Chief.

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TABLE 1.
PROPOSED FEE SCHEDULE FOR SELECTED COMMUNICATIONS SITE USES
NATIONAL FOREST SYSTEM LANDS

Type Of Communications Use	Basis of Rental Fee and Rental Fee Strata	Examples of Urban Areas Served-- Communications Sites on NFS Lands	Proposed Annual Fee

VOL 58 ISS 132 JL 13 1993 UMI

TABLE 1.
PROPOSED FEE SCHEDULE FOR SELECTED COMMUNICATIONS SITE USES
NATIONAL FOREST SYSTEM LANDS

Type Of Communications Use	Basis of Rental Fee and Rental Fee Strata	Proposed Annual Fee	Examples of Urban Areas Served--Communications Sites on NFS Lands
Television Broadcast	Televison Households Served in Television Markets Ranked by Area of Dominant Influence 1/		
	-750,000 households and more	$45,000 (Plus 25	Los Angeles, San Diego
	-200,000-749,999	$19,000 Percent	Albuquerque, Las Vegas, Fresno, Tucson
	-120,000-199,999	$ 6,000 From	Reno, Eugene, Boise, Bakersfield
	-50,000-119,999	$ 4,500 Space	Idaho Falls-Pocatello, Missoula
	-49,999 and less and non-ADI areas	$ 3,000 Rental Income)	Twin Falls, Flagstaff
FM Radio Broadcast	Number of Persons Aged 12 or Older In Radio Markets Ranked by Metro Survey Area 2/		
	-1,000,000 persons and more	$34,000 (Plus 25	Los Angeles, San Diego, Riverside-San Bernardino
	-400,000-999,999	$14,000 Percent	Las Vegas, Tucson, Albuquerque, Bakersfield
	-200,000-399,999	$ 5,500 From	Reno, Boise,
	-75,000-199,999	$ 4,000 Space	Santa Fe, Medford-Ashland
	-74,999 and less and non-MSA areas	$ 2,100 Rental Income)	Montrose, Craig-Forsyth, Dillon
Commercial Mobile Radio	Number of Persons Within Area Served 3/		
	500,000 persons and more	($12,000) 4/	Los Angeles, Oxnard-Ventura, San Diego Phoenix, Las Vegas, Bakersfield
	250,000-499,999	$ 7,500	Albuquerque, Salem, Reno,
	150,000-249,999	$ 5,000	Boise
	60,000-149,999	$ 2,500	Medford, Santa Fe
	59,999 and less	$ 1,200	Pocatello, Idaho Falls
Cellular Telephone	Within an SMSA: 5/	$ 7,500	Los Angeles
	Outside an SMSA:		
	-Urban or developed area	$ 5,000	Kalispell, MT, Glenwood Springs, CO
	-Rural or undeveloped area	$ 2,500	Transportation corridors

1/ Area of Dominant Influence (ADI) market rankings from Arbitron Company data for 1991-1992 reported in Broadcasting & Cable Market Place, 1992, compiled by R.R. Bowker, A Reed Reference Publishing Company, New Providence, NJ
2/ Metro Survey Area radio market rankings from Arbitron Company Fall 1991 market definitions reported in Broadcasting & Cable Market Place, 1992, compiled by R.R. Bowker, A Reed Reference Publishing Company, New Providence, NJ
3/ Based on U.S. Census Bureau estimates of population for the areas served by the facility.
4/ $12,000 or 25% of space rental, whichever is greater.
5/ SMSA: Standard Metropolitan Statistical Area

[FR Doc. 93-16694 Filed 7-12-93; 8:45 am]
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VOL
58
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132
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35357–35840...
35841–36116...
36117–36300...
36301–36588...
36589–36852...
36853–37412...
37413–37630...
37631–37846...

Reader Aids

Federal Register

Vol. 58, No. 132

Tuesday, July 13, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12
37631–37846.....13

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587
Administrative Orders:
Presidential Determinations:
93–28 of June 25, 1993.....37631
93–29 of June 29, 1993.....35357
Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
246.....37633
301.....36589, 36590, 36591
400.....36592
723.....36853, 36857
906.....37635
981.....37638
987.....37638
1097.....34359
1098.....35361
1099.....34362
1108.....36859
1464.....36857, 36861
1435.....36120
1755.....36252

8 CFR

245.....35832

9 CFR

78.....36593
91.....37639
92.....37641, 37642
94.....36593, 36594
98.....37642
Proposed Rules:
78.....37665
85.....37666
91.....37667
94.....36624
95.....37669
98.....36625
113.....37670

10 CFR

Proposed Rules:
60.....36902

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36863, 36865
71.....36596
72.....36298
108.....36802
Proposed Rules:
Ch. I.....36626
1.....36738
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

16 CFR

1145.....37554
1210.....37557
Proposed Rules:
244.....35414
412.....35907

17 CFR

1.....37644

239.....35367
240.....36866, 37413, 37655
249.....35367

Proposed Rules:
240.....37445

18 CFR

Proposed Rules:
35.....36172
284.....37447
341.....37671
342.....37671
343.....37671
344.....37671
345.....37671
347.....37671
352.....37671
360.....37671
361.....37671
375.....35415, 37671

19 CFR

148.....35862

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
510.....36134
520.....36134

Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
236.....37802
241.....37802
248.....37802
572.....36518, 36546

Proposed Rules:
16.....37598
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877

Proposed Rules:
4.....35908
5.....35908, 36516

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371

Proposed Rules:
36.....37052

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

202.....37420
206.....37420
920.....36135
938.....36139

Proposed Rules:
916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

Proposed Rules:
501.....37770
552.....37774

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357, 36597, 36868
334.....37606

Proposed Rules:
117.....36629

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
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460.....36869
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464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

Proposed Rules:
692.....36110

36 CFR

51.....36598

Proposed Rules:
1191.....37052

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426, 37658
82.....36516
85.....36871
131.....36141
180.....36358, 36359
185.....36358
228.....35884
414.....36872

Proposed Rules:
Ch. I.....37450
52.....36905, 37450, 37453
63.....37778
81.....36908, 37453
88.....35420
180.....36366
186.....36366
261.....36367
372.....36180
300.....37693

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

45 CFR

Proposed Rules:
1602.....36910

46 CFR

170.....36601

Proposed Rules:
15.....36914
171.....36374

47 CFR

1.....36142
2.....
15.....
34.....
35.....
43.....
61.....
64.....
65.....
69.....
73.....354
76.....
90.....

Proposed Rule
Ch. I.....
73.....354
36374, 363

48 CFR

904.....

2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431
76.....36604
90.....36362

Proposed Rules:
Ch. I.....36630
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455, 37696

48 CFR

904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363

Proposed Rules:
917.....36918
1823.....37697
1852.....37697

49 CFR

218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894

Proposed Rules:
37.....37052
171.....36920, 37612
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
543.....35422

50 CFR

17.....35887, 37432
85.....36619
285.....36154
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897, 37660
675.....35897, 37660

Proposed Rules:
17.....36184, 36379, 36387, 36924, 37699
20.....37828
24.....36925
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1993

VOL
58
ISS
1
3
2
JL
13
1993
UMI

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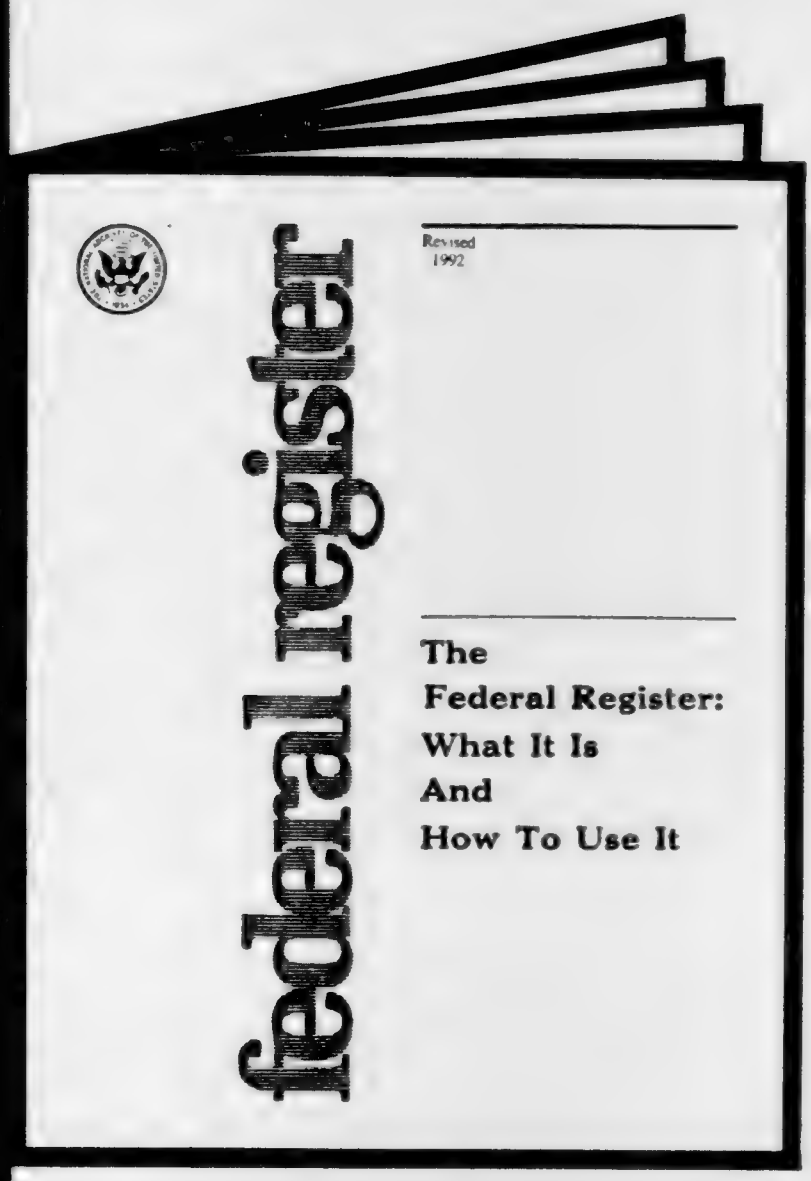

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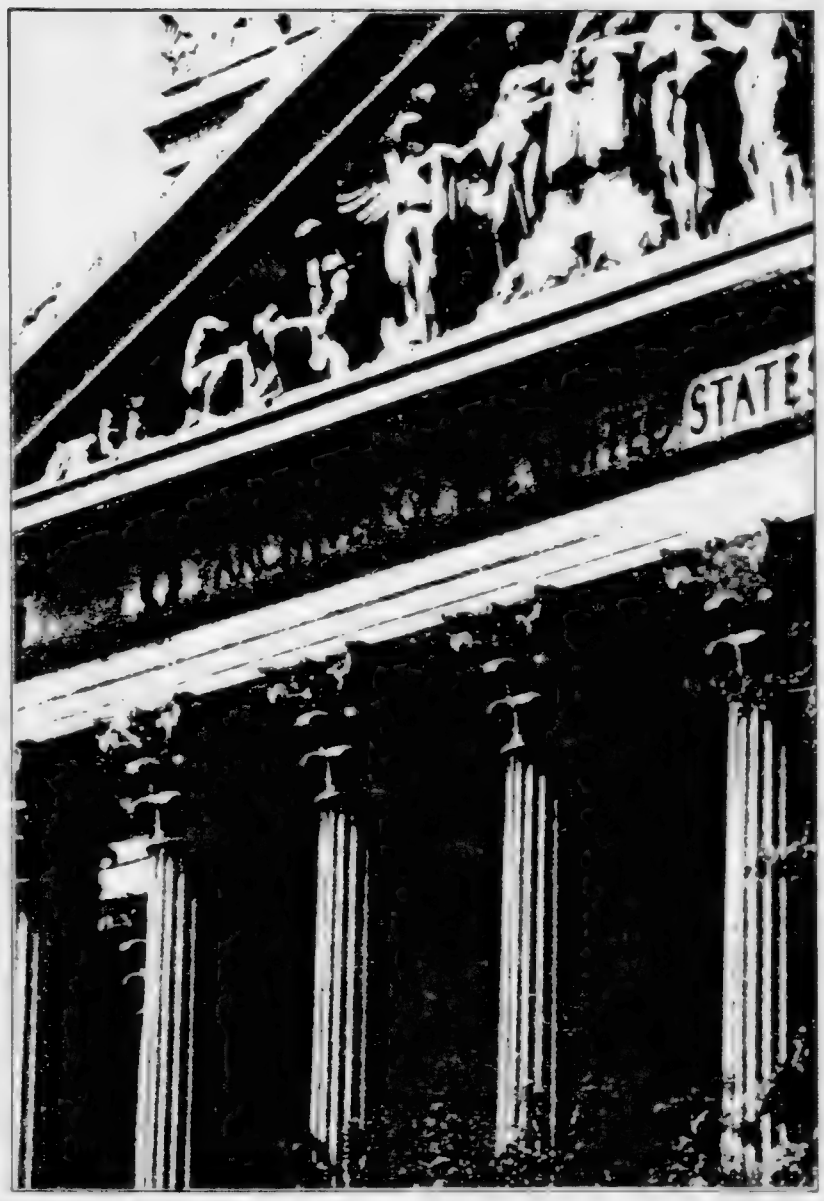

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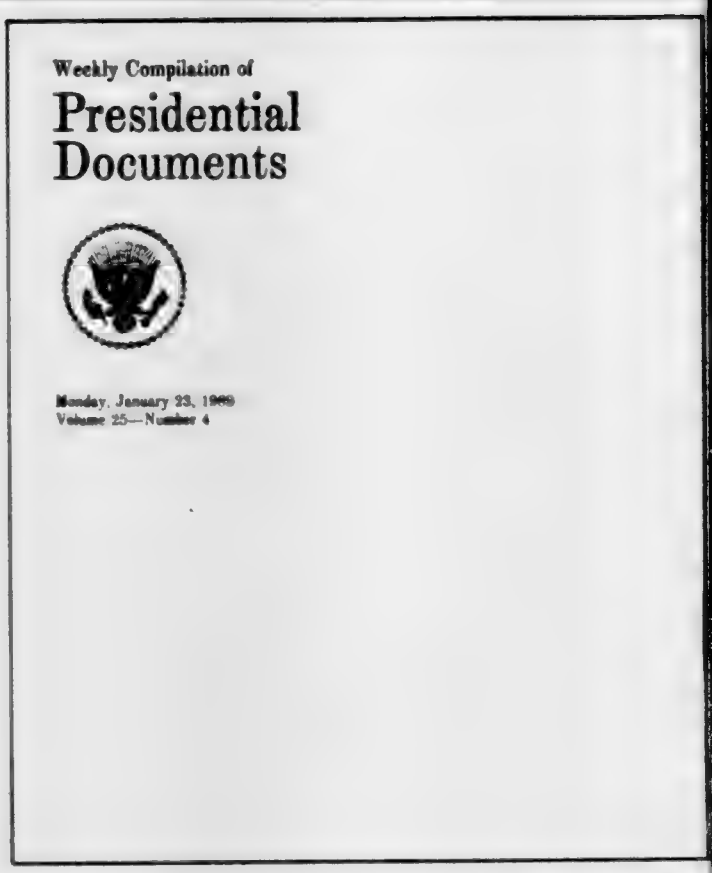
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VOL
58
ISS
1
3
2
JL
13
1993
UMI

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VOL
58
ISS
1
3
3
JL
14
1993
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VOL
58
ISS
133
JL
14
1993
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7-14-93
Vol. 58
Pages 37

7–14–93
Vol. 58 No. 133
Pages 37847–38044

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VOL
58
ISS
133
JUL
14
1993
UMI

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Cont

ACTION
NOTICES
Agency in
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Agricultu
PROPOSED
Eggs, pou
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Agricultu
See Agric
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See Feder
See Food
See Fores
NOTICES
Agency in
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Animal an
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NOTICES
Environm
Genetic
Sugar

Army Dep
See Engin

Arts and
See Natio

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NOTICES
Revised bi

Centers fo
NOTICES
Grants an
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Early

Commerc
See Foreig
See Intern
See Natio

Commissi
NOTICES
Agency in
revie

Commodit
PROPOSED
Loan and
Price su
Shorn
3

Contents

Federal Register

Vol. 58, No. 133

Wednesday, July 14, 1993

ACTION
NOTICES
Agency information collection activities under OMB review, 37903

Agricultural Marketing Service
PROPOSED RULES
Eggs, poultry and rabbit products; inspection and grading:
Fees and charges increase, 37872

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Federal Crop Insurance Corporation
See Food and Nutrition Service
See Forest Service
NOTICES
Agency information collection activities under OMB review, 37903

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Harry S Truman Animal Import Center (HSRAIC), 37878
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Sugar beet plants, 37903

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bonneville Power Administration
NOTICES
Revised billing credit policy, 37918

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Breast and cervical cancer—
Early detection program, 37954

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission on National and Community Service
NOTICES
Agency information collection activities under OMB review, 37917

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Price support levels—
Shorn wool, wool on unshorn lambs, and mohair, 37876

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 37990

Customs Service
RULES
Merchandise entry:
Wool and hair examination, 37853
PROPOSED RULES
Trademarks, trade names, copyrights, mask works, and patents:
Semiconductor chip products, protection enforcement; and patent surveys; withdrawn, 37884
NOTICES
Customhouse broker license cancellation, suspension etc.:
Arain, Laurel B., 37988

Defense Department
See Engineers Corps
RULES
Acquisition regulations:
Authority citation revision, 37868

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 37970
Ryan, Paul R., M.D., 37970

Education Department
PROPOSED RULES
Postsecondary education:
Jacob K. Javits Fellowship program, 37890
NOTICES
Agency information collection activities under OMB review, 37917
Grants and cooperative agreements; availability, etc..
State postsecondary review program, 37917

Energy Department
See Bonneville Power Administration
See Energy Information Administration
See Federal Energy Regulatory Commission
RULES
Acquisition regulations:
Research opportunity announcement; solicitation procedures, 37868

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 37924

Engineers Corps
PROPOSED RULES
Danger zones and restricted areas:
Back River, VA, 37889

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Benomyl, etc., 37862

Printed on recycled paper containing 100% post consumer waste

Fluoride compounds
Correction, 37867
Vinyl acetate-allyl acetate-monomethyl maleate copolymer, etc., 37861
PROPOSED RULES
Hazardous waste:
Hazardous Waste Manifest Regulatory Negotiation Committee; renewal
Correction, 37991
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fensulfothion, 37893
NOTICES
Pesticide registration, cancellation, etc.:
Sporicidin Cold Sterilizing Solution, 37931

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 37990

Federal Aviation Administration
PROPOSED RULES
Airworthiness standards:
Commuter category airplanes; occupant protection standards, 38028

Federal Communications Commission
RULES
Practice and procedures:
Overseas communications facilities between or among U.S. carriers; conveyances of capital interests; petition for reconsideration, 37867
PROPOSED RULES
Common carrier services:
Tariffs—
Price cap regulation, local exchange carriers; return sharing and lower formula adjustment rate, 37894

Federal Crop Insurance Corporation
PROPOSED RULES
Administrative regulations:
Fraud, misrepresentation, false claims, etc.; sanctions, 37874

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Westmoreland-LG&E Partners, 37925
Hydroelectric applications, 37925
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
California Oil & Gas, 37929
Texas Railroad Commission, 37930
Senior Executive Service:
Performance Review Board; membership, 37930
Applications, hearings, determinations, etc.:
Arkla Energy Resources Co., 37930
Kentucky West Virginia Gas Co., 37930
Panhandle Eastern Pipe Line Co., 37930

Federal Highway Administration
PROPOSED RULES
Motor carrier safety regulations:
Intermodal transportation, 37895
Motor carrier safety standards:
Parts and accesories necessary for safe operation—
Warning devices for stopped vehicles, 37900
NOTICES
Grants and cooperative agreements; availability, etc.:
Work zone labor injury evaluation study, 37986

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Meridian Bancorp, Inc., et al., 37932
National Bank of Commerce of El Dorado Employee Stock Ownership Plan et al., 37932
State Financial Services Corp., 37933

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 37933
Prohibited trade practices:
Consol, Inc., 37940
Cooper Industries, Inc., 37939
Imperial Chemical Industries PLC et al., 37944
Lomas Mortgage U.S.A., Inc., 37951

Federal Transit Administration
NOTICES
Transfer of federally assisted land or facility:
Lane Transit District, OR, 37987
Massachusetts Bay Transportation Authority, MA, 37987

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Serianthes nelsonii, 37963
Endangered and threatened species permit applications, 37963

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Fujisawa USA, Inc., 37855
Food additives:
Adjuvants, production aids, and sanitizers—
Phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-tert-butylphenyl)ester, 37854
NOTICES
Human drugs:
New drug applications—
Lilly Research Laboratories et al.; approval withdrawn, 37960
Pioneer Pharmaceuticals, Inc.; approval withdrawn, 37960

Food and Nutrition Service
RULES
Child nutrition programs:
Child and adult care food program—
Adult meal pattern, 37847

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Arizona, 37907
Indiana, 37908

Forest Service
NOTICES
Environmental statements; availability, etc.:
Routt National Forest, CO, 37904

VOL 58 ISS 133 JL 14 1993 UMI

Meetings:
Grand Island Advisory Commission, 37907

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
PROPOSED RULES
Medicare:
Physician fee schedule; revisions to payment policies, 37977

Housing and Urban Development Department
PROPOSED RULES
Mortgage and loan insurance programs:
Tiered pricing, 37885

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; availability, etc.:
International Bridge of the Americas, El Paso, TX, and Ciudad Juarez, Chihuahua, Mexico; replacement agreement, 37965

International Trade Administration
NOTICES
Antidumping:
Compact ductile iron waterworks fittings and accesories from China, 37908
Fresh and chilled Atlantic salmon from Norway, 37912

International Trade Commission
NOTICES
Import investigations:
Effects of antidumping and countervailing duty orders and suspension agreements, 37966
Professional electric cutting and sanding/grinding tools from Japan, 37967

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 37968

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Acme Solvents Reclaiming, Inc., et al., 37968
Smith, Stanley, et al., 37969
Senior Executive Service:
Performance Review Boards; membership, 37969

Land Management Bureau
NOTICES
Disclaimer of interest applications:
Alaska, 37961
Environmental statements; availability, etc.:
Burley District; Southwest intertie project, 37961
Opening of public lands:
Alaska, 37961
Realty actions; sales, leases, etc.:
Wyoming, 37962

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 37971

National Institutes of Health
NOTICES
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 37961

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 37870, 37871

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big and Little Darby Creeks, OH, 37964
National Register of Historic Places:
Pending nominations, 37965

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Alternating current power, loss; withdrawn, 37884
NOTICES
Environmental statements; availability, etc.:
Power Authority of State of New York, 37972
Applications, hearings, determinations, etc.:
Maine Yankee Atomic Power Co., 37972
Pacific Gas & Electric Co., 37974
South Carolina Electric & Gas Co. et al., 37975
Texas Utilities Electric Co., 37976

Pension Benefit Guaranty Corporation
RULES
Single employer plans:
Miscellaneous amendments
Correction, 37991

Physician Payment Review Commission
NOTICES
Meetings, 37977

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 37980
Boston Stock Exchange Clearing Corp., 37982
Intermarket Clearing Corp., 37983
Municipal Securities Rulemaking Board, 37984

VOL
58
ISS
133
JL
14
1993
UMI

Philadelphia Depository Trust Co., 37977
Philadelphia Stock Exchange, Inc., 37978
Stock Clearing Corp. of Philadelphia, 37979
Applications, hearings, determinations, etc.:
Public utility holding company filings, 37985

Sentencing Commission, United States
See United States Sentencing Commission

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration

Treasury Department
See Customs Service
NOTICES
Agency information collection activities under OMB review, 37988

United States Sentencing Commission
NOTICES
Sentencing guidelines and priority areas for study, 37988

Veterans Affairs Department
RULES
Evidence requirements, 37856
Incompetency determinations, 37856
Loan guaranty:
Guaranteed manufactured home loans, home and condominium loans, and home improvement loans—Veterans' Home Loan Program Improvements and Property Rehabilitation Act; compliance, 37857

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 37994

Part III
Department of Education, 38022

Part IV
Department of Transportation, Federal Aviation Administration, 38028

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PA

A cumulat
Reader Ai

7 CFR
226.....
Proposed
55.....
56.....
59.....
70.....
400.....
1468.....
9 CFR
Proposed
92.....
10 CFR
Proposed
50.....
14 CFR
Proposed
23.....
19 CFR
151.....
Proposed
12.....
24.....
133.....
178.....
21 CFR
178.....
510.....
24 CFR
Proposed
202.....
29 CFR
2606.....
2622.....
2623.....
33 CFR
Proposed
334.....
34 CFR
Proposed
650.....
38 CFR
3 (2 docu
36.....
40 CFR
180.....
185.....
186.....
Proposed
1.....
180.....
42 CFR
Proposed
405.....
414.....
47 CFR
1.....
Proposed
61.....
48 CFR
2.....
935.....
49 CFR
Proposed
390.....
392.....
393.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
226.....37847
Proposed Rules:
55.....37872
56.....37872
59.....37872
70.....37872
400.....37874
1468.....37876

9 CFR
Proposed Rules:
92.....37878

10 CFR
Proposed Rules:
50.....37884

14 CFR
Proposed Rules:
23.....38028

19 CFR
151.....37853
Proposed Rules:
12.....37884
24.....37884
133.....37884
178.....37884

21 CFR
178.....37854
510.....37855

24 CFR
Proposed Rules:
202.....37885

29 CFR
2606.....37991
2622.....37991
2623.....37991

33 CFR
Proposed Rules:
334.....37889

34 CFR
Proposed Rules:
650.....37890

38 CFR
3 (2 documents).....37856
36.....37857

40 CFR
180.....37861
185.....37862
186.....37867
Proposed Rules:
1.....37991
180.....37893

42 CFR
Proposed Rules:
405.....37994
414.....37994

47 CFR
1.....37867
Proposed Rules:
61.....37894

48 CFR
2.....37868
935.....37868

49 CFR
Proposed Rules:
390.....37895
392.....37900
393.....37900

50 CFR
672 (2 documents).....37870, 37871

VOL
58
ISS
133
JL
14
1993
UMI

Rules

This section
contains re
applicability
are keyed t
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The Code o
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SUMMARY:
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Rules and Regulations

Federal Register
Vol. 58, No. 133
Wednesday, July 14, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Adult Meal Pattern for the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the meal pattern proposed by the Department on August 27, 1990 (55 FR 34935) for individuals participating in adult day care centers in the Child and Adult Care Food Program (CACFP). In doing so, it establishes for the first time a meal pattern developed to meet the specific needs of those individuals.

DATES: This rule is effective August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, room 607, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2556.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 by the Assistant Secretary for Food and Consumer Services and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultations with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget under clearance 0584–0055.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**DATES**" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR part 3015.

Background

On August 27, 1990, the Department published a proposed rule in the **Federal Register** (55 FR 34935) to provide for a meal pattern developed specifically to meet the needs of adults attending adult day care centers participating in CACFP. As stated in the preamble to that rule, the proposed meal pattern is intended to replace one which was published in an interim rule on December 28, 1988 at 53 FR 52584 and which essentially adapted to adults the existing Program meal pattern for children 12 years of age and older. Adaptation of that pattern permitted implementation of Program eligibility for adult day care centers in a more timely manner. The 60-day comment period for this proposal ended on October 26, 1990.

For the information of the reader, the following is a restatement of the basis upon which the proposed meal pattern was developed, as well as a discussion of the comments received.

Review of Nutritional Need

Various resources and criteria were used in the development of the final full day pattern for the adult day care component of the CACFP. These included the 1989 Recommended Dietary Allowances (RDA) for adults 51+ years of age, the 1977–78 U.S. Department of Agriculture (USDA) National Food Consumption Survey (NFCS), a 1985–86 survey conducted by the National Institute of Adult Day Care (NIAD) of the National Council on Aging, and the 1990 Edition of the Dietary Guidelines for Americans. These resources provided the best information available to develop a pattern to meet the nutritional requirements of participants in adult day care centers. Since data on the relationship between elderly nutrient requirements, elderly health status, and the aging process is limited, further amendments to the pattern may be necessary as future information becomes available.

Because adult day care centers had not previously participated in the CACFP and actual data on food served and consumed in adult day care centers was unavailable, results from the 1977–78 NFCS were used to estimate the typical eating practices of the elderly. The type and frequency of foods consumed from each of the four meal components traditionally used as a framework for all child nutrituion meal patterns (meat/meat alternate, bread/bread alternate, fruit/vegetable, and fluid milk) were analyzed, and composites of estimated nutrient and caloric contributions of each component were developed. Meal components were combined into appropriate breakfast,

lunch, supper and snack patterns based on their nutient contributions and on the typical eating habits of the elderly. The meals and snacks were then combined into a full day's pattern which meets approximately 100 percent of the RDA for 51+ year old adults.

The estimated caloric level of the proposed full day adult pattern was 1934 kilocalories. The 1989 Recommended Energy Allowance for individuals 51+ years of age ranges from 1900 to 2300 kilocalories and assumes a light-to-moderate level of activity. In general, caloric needs of the elderly decrease with age. Lean body mass decreases and body fat content increases, causing a decrease in the basal metabolic rate (BMR). Activity levels also tend to decrease with age—less energy expenditure requires less caloric intake. An important consideration in implementing elderly nutrition programs is meeting the nutrient requirements while staying within lowered caloric needs. The results of the 1985–86 NIAD survey indicate that the participants in the National Council on Aging, Nutrition Program for the Elderly are relatively sedentary and predominantly female. It is anticipated that participants in the adult component of the Child and Adult Care Food Program will come from a similar population group. Therefore, the calorie level of the proposed pattern was determined to be appropriate for the majority of the participants. In addition, implementation of offer versus serve, discussed below, was thought to provide calorie range flexibility for those participants whose calorie needs may be less than the proposed level.

In addition to the foregoing, section 105(b)(3) of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted on November 10, 1989, amended section 17(o) of the National School Lunch Act (42 U.S.C. 1766(o)) to require that lunches served by each adult day care center receiving CACFP reimbursement provide, on the average, approximately one-third of the daily RDA. This meal pattern has been developed to meet that requirement.

Overview of Comments Received

During the 60-day comment period on the proposed rule, the Department received 78 comments. The majority of these comments (31) were from adult day care centers and sponsors. Twenty-seven (27) comments were received from State and local government agencies. Another 14 comments were received from concerned citizens (comprised of individuals with backgrounds in nutrition/home economics). Four (4) comments were received from social service agencies and two (2) from food industry groups. Most of the comments responded to specific components of the proposed rule and did not address support or non-support for the overall proposal.

Nutritional Adequacy

Several comments concerned the nutritional adequacy of the meal pattern when compared to the RDAs. The proposed meal pattern was based on the 1989 RDA and places emphasis on the U.S. Department of Agriculture/ Department of Health and Human Services publication, Dietary Guidelines for Americans. The meal pattern, calculated using the types and frequency of foods consumed by the elderly in the 1977–78 NFCS, meets more than 100 percent of the RDA for all nutrients, with the exception of vitamin E and zinc. For vitamin E and zinc, the meal pattern meets 77 and 86 percent of the RDA, respectively. A major source of vitamin E in the diets of Americans is fats and oils. The meal pattern assumed modest amounts of fats and oils. Vitamin E is not considered to be a problem, since deficiencies occur only in two classes of subjects: (1) Premature, very low birthweight infants and (2) patients who do not absorb fat normally (Recommended Dietary Allowances, 10th Edition, Food and Nutrition Board, National Research Council, 1989). Additional quantities of fats and oils would be required in the meal pattern to achieve a level of vitamin E which meets the RDA. The amount of fat provided by the meal pattern is based on information provided in the Dietary Guidelines for Americans, and increases are not considered to be beneficial. The meal pattern is also slightly below the RDA for zinc, a nutrient which tends to be consumed in lower than recommended levels for the population as a whole. However, levels of zinc in the meal pattern are higher than reported intakes in the general population.

The meal pattern is based on a full day's intake including a morning meal, a midday meal, an evening meal, and two supplements (snacks). Reimbursement is allowed for up to three (3) meal services a day—that is, two (2) meals and one (1) snack, or one (1) meal and two (2) snacks per day for each participant. The lunch meal is required to meet, on the average, approximately one-third of the RDA as mandated in section 105(b)(3) of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989. Again, this goal is met with the exception of vitamin E and zinc.

While Dietary Guidelines for Americans recommends choosing a diet low in fat, saturated fat, and cholesterol, and using salt and sodium in moderation, some items from this group are included for palatability. The proposed meal pattern assumed a modest amount of fat and sugar—one (1) teaspoon each for breakfast and two (2) teaspoons fat and one (1) teaspoon sugar for lunch and supper. Additional sources of sugar may be that which is added to food at the table or foods which contain sugar. Additional fat is contributed by salad dressings, spreads, and cooking oils.

Uniformity With Other Feeding Programs

Eight (8) comments expressed a need for consistency in the meal requirements between the CACFP and the Nutrition Program for the Elderly. The Nutrition Program for the Elderly was established by the Older Americans Act of 1965 (42 U.S.C. 3030e et seq.) (most recently amended by Public Law 102–375; signed on October 2, 1992) and is administered through the Department of Health and Human Services, Administration on Aging. Nutritional requirements for the Nutrition Program for the Elderly are limited to a statement that each meal provide a minimum of one-third of the daily Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council. Thus, no standard meal pattern is required. States establish their own guidelines for meal patterns. For example, some States require that a 3-ounce portion of meat be served at lunch. Other State programs include meal components such as soup and dessert.

Establishment of the adult meal pattern in the CACFP is consistent with the practice in place for more than forty years of using meal patterns in the Child Nutrition Programs. The Department designed the proposed pattern so that it includes meals and snacks for a full day and is consistent with nationally recognized guidelines, including the 1989 RDAs and the Dietary Guidelines for Americans. Therefore, the Department believes that the proposed meal pattern is a better vehicle, both from a nutritional and administrative standpoint, for ensuring that meals served under the CACFP meet the nutritional needs of Program beneficiaries.

Contribution of Milk to the Meal Pattern

Eleven (11) comments recommended the inclusion of milk in the supper meal

pattern. The proposed meal pattern includes milk at breakfast and lunch, and milk as a possibility at both supplemental meals. The basis of offering milk at breakfast is the popularity of cereal with milk as breakfast menu items. Milk is included in the lunch meal pattern in order to meet the requirement of one-third of the RDA for calcium. It is included in both supplemental meal patterns because milk is a popular accompaniment to crackers and other supplemental meal components. Even without including milk in the supper meal pattern, there is a possibility of four (4) milk servings per day. The total meal pattern, based on three servings of milk per day, provides 161 percent of the RDA for calcium. Given the limited number of calories in the total day's meal pattern, if milk were required at the supper meal in addition to breakfast, lunch and snacks, there would be a potential imbalance of milk nutrients.

Accordingly, this final rule retains milk as a component of all meals, except supper.

Servings of Breads/Cereals and Vegetables/Fruits

Eleven (11) commenters objected to the increased number of bread servings in the proposed pattern. Their concerns are that the number of servings would be excessive for this age group and would increase the cost of preplated meals. The bread/bread alternate servings found in the meal pattern are consistent with the Dietary Guidelines for Americans, contributing both dietary fiber and complex carbohydrates. Moreover, these foods are generally low in fat and, therefore, their inclusion in the meal pattern also serves to limit the caloric contribution of fat. Since the proposed regulation requires that a serving of bread or bread alternate be made from whole-grain or enriched meal or flour, this dietary component also provides essential micronutrients to the diet.

Accordingly, the final meal pattern makes no changes to the number of bread servings found in the proposal.

Seven (7) commenters addressed the portion size and number of servings of vegetables and fruits in the meal pattern. Three provided general comments in support of the vegetable/fruit requirement, while four objected to the increase in serving size from the requirement found in the proposed rule when compared to the interim pattern. In this regard, the proposed patterns are also consistent with the Dietary Guidelines for Americans. These foods serve as an important part of a varied diet, providing dietary fiber, complex carbohydrates, vitamins and other nutrients that promote good health. In addition, fruits and vegetables are generally low in fat, and the portion size and number of servings of these foods in the meal pattern serves to limit the caloric contribution of fat.

Accordingly, this final rule contains the same portion size and number of servings of fruits and vegetables found in the proposal.

Caloric Needs

Seven (7) commenters maintained that the estimated caloric level of the full day adult meal pattern (1934 kilocalories) is excessive for the intended population. These comments recommended alternative caloric intakes, ranging from 1500 to 1900 kilocalories per day. The estimated caloric level of the proposed full day pattern is based on the 1989 Recommended Energy Allowances for individuals 51+ years of age at 1900 and 2300 kilocalories per day, for females and males, respectively. The proposed caloric level of 1934 kilocalories per day, therefore, is at the lower range for male requirements, and approximately equals the recommended level for average female requirements. The implementation of the offer versus serve provision will provide adequate caloric flexibility for participants whose caloric need may be less than the proposed level.

Offer Versus Serve

Fifty-four (54) commenters addressed the "offer versus serve" (OVS) provision contained in the proposed rule in § 226.20(p). 23 commenters supported the provision, stressing that adults have established eating habits and should be allowed to choose what they eat. Several commenters went on to state that allowing participants choices helps to foster a sense of independence. Two commenters supported the provision with conditions—one supported it only if the participants were allowed to substitute an equal number of foods for those declined and the one favored it since it potentially limits food waste, but was against it since they felt that the staff should be aware of food preferences before it was offered.

Twenty-nine commenters opposed the proposal. In most cases, these commenters have misinterpreted the provision's intent, or misunderstood all or parts of the provision. OVS is proposed as a provision to be implemented at the discretion of the day care center. It is not required that any center implement the provision.

One commenter stated that they were against the provision without explanation. Seventeen comments conveyed a concern that, due to debilitating neurological disorders, participants may not be capable of selecting foods which constitute a balanced diet or a diet containing adequate amounts of calcium rich foods.

One commenter felt that participants may not get enough food at home and may need all the foods provided in the pattern. These are legitimate concerns. Again, however, it is not required that a center implement OVS or that the participants refuse food items if OVS is available. Centers need not implement OVS if center officials feel that their clients are not capable of selecting food and individuals need not refuse food items even if OVS is available.

Six commenters stated that the provision would be too costly for the centers to pay for food which would not be consumed. The concept of OVS is that, through time, centers be able to reduce the amount of food which they purchase by observing their clients' food preferences. OVS should save money and prevent waste, not increase cost or waste.

Four commenters stated that, for centers which use preplated food delivery systems, implementation of OVS would be irrelevant and would not decrease costs, since a preplated delivery system does not allow the option of declining or taking a small portion of any one or two of the required food items. Again, OVS is an option provided to the center. Centers which use preplated meals need not implement the provision. In addition, centers that use a preplate system may offer any item (such as a carton of fluid milk or individually wrapped bread, rolls or crackers) which is not part of the preplated unit for OVS.

The offer versus serve provision has been used successfully in school feeding programs since its implementation under Public Law 94–105, enacted October 7, 1975. It is a provision under which participating centers must offer all required servings of the food components set forth in the adult meal pattern, but participants may decline a certain number of servings. The intent of OVS implementation is to reduce plate waste by allowing participants to choose only those foods they wish to consume.

In spite of the concerns of those who oppose OVS, the Department believes that, on balance, it is in the best interest of the Program, as well as participating centers and individuals, to make it available in the adult day care portion of the CACFP. We believe that opposition to OVS is based, in general, on the misunderstanding that OVS—

VOL
58
ISS
133
JL
14
1993
UMI

both the provision itself and the refusal of food items—will be required for all program participants. Once it is understood that the provision is an option for each individual center, and that participants are not, by any means, required to refuse food items, the objections to OVS became invalid. With regard to specific concerns cited above, centers should make every effort to provide well-balanced meals by surveying and observing food preferences and, where necessary, offer assistance in meal component selection.

Accordingly, this final rule retains the OVS provision as proposed.

USDA Food Grouping System

Some comments and questions addressed the USDA Food Grouping/Crediting System. They pointed out that other recognized food grouping systems such as the one established by the American Diabetic Association in conjunction with the American Dietetic Association categorize foods according to different criteria.

All of the feeding programs administered by the Department of Agriculture which use meal patterns follow the same system of meal pattern food grouping. The Child Nutrition Labeling Program is based on USDA crediting. Products labelled under this program are used throughout USDA feeding programs. Many providers of adult day care meals also supply meals to schools and child care centers. To avoid confusion, simplify recordkeeping, and streamline procurement, it is important that each of these programs follow the same food grouping/crediting system. The basis for this system is the use of conventional foods served in traditional meals.

Accordingly, the Department is making no change to the food grouping/crediting provisions in this final rule.

Essential Nutrients

Some comments recommended that foods containing certain nutrients (iron and vitamins A and C) be required in the meal pattern a minimum number of times per week. While the Department agrees that these nutrients are important dietary requirements, the full day adult meal pattern is intended to include an appropriate variety of foods that will provide all of the vitamins, minerals, amino acids, and fatty acids that are essential for good health. The proposed regulation establishes an estimated caloric level and requires a variety of foods in order to assure that the total diet supplies all of the required nutrients. However, it is not the intention of the Department to unnecessarily limit the flexibility of program providers in their menu planning activities.

Need for Further Research

Three (3) commenters called for research on the caloric needs of specific age groups in the over 51 year age range. Some commenters also maintained that differences in the nutritional needs of the elderly should be addressed. The Department agrees that information on the dietary needs of the elderly is limited and incomplete. Although nutrition research is beyond the scope of the Food and Nutrition Service, we support the concept of increased research in this area. As research findings become available, changes in the adult meal pattern will be proposed where warranted.

Meal Substitutions

Several commenters suggested that the Department should provide additional reimbursement for special meals or liquid supplements. They point out that these special meals frequently cost considerably more than traditional meals. Program regulations at 7 CFR 226.20(h) allow for food substitutions for medical or other special dietary needs when supported by a statement from a recognized medical authority. Program policy found in FNS Instruction 783–2 (Rev. 1) requires that the special dietary needs of handicapped individuals be met by institutions participating in the CACFP. However, Program reimbursement rates are set forth in law and amounts cannot be changed at the discretion of the Department.

Summary

The proposed adult meal pattern, published in the **Federal Register** on August 27, 1990, at 55 FR 34935–34939, is adopted as a final rule without change.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766)

2. In § 226.20:

a. Paragraph (a) is amended by removing the words "A serving of", "a serving of", "an equivalent serving of" and "an equivalent quantity of" wherever they appear.

b. Paragraph (a)(2) is amended by removing the words "Both lunch and supper" from the introductory text and adding the word "Lunch" in its place.

c. Paragraph (a)(3) is redesignated as paragraph (a)(4) and a new paragraph (a)(3) is added.

d. Newly redesignated paragraph (a)(4)(iii) is amended by removing the word "Juice" from the second sentence and adding the words "For children, juice" in its place.

e. The table in paragraph (c)(1) is amended by removing footnotes 6 and 7 and by revising the adult participants column of the meal pattern table.

f. The center heading to paragraph (c)(2) is amended by removing the words "OR SUPPER".

g. The introductory text of paragraph (c)(2) is amended by removing the words "or supper", and the table is amended by removing footnotes 9 and 10 and by revising the adult participants column.

h. Paragraph (c)(3) is redesignated as paragraph (c)(4) and a new paragraph (c)(3) is added.

i. The introductory text of newly redesignated paragraph (c)(4) is amended by removing the reference "paragraph (a)(3)" and adding the reference "paragraph (a)(4)" in its place and by removing the word "Juice" and adding the words "For children, juice" in its place; the table is amended by removing footnotes 8 and 9 and by revising the adult participants column.

j. Paragraph (p) is revised.

The addition and revisions specified above read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(3) Supper shall contain the food components and servings listed for lunch in § 226.20(a)(2), except that, for adult participants in adult day care centers, it does not require a serving of fluid milk.

* * * * *

(c) * * *

(1) * * *

BREAKFAST

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12 [1]	Adult participants
MILK				
Milk, fluid	• • •	• • •	• • •	1 cup.[2]
VEGETABLE AND FRUITS				
Vegetable(s) and/or fruits	• • •	• • •	• • •	½ cup.
or				
Full-strength vegetable or fruit juice or an equivalent of any combination of vegetable(s), fruit(s) and juice.	• • •	• • •	• • •	½ cup.
BREAD AND BREAD ALTERNATES [3]				
Bread	• • •	• • •	• • •	2 slices (servings).
or				
Combread, biscuits, rolls, muffins, etc [4]	• • •	• • •	• • •	2 servings.
or				
Cold dry cereal [5]	• • •	• • •	• • •	1½ cups or 2 oz.
or				
Cooked cereal	• • •	• • •	• • •	1 cup.
or				
Cooked pasta or noodle product	• • •	• • •	• • •	1 cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	• • •	• • •	• • •	1 cup.

* * * * *

(2) * * *

LUNCH

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12 [1]	Adult participants
MILK				
Milk, fluid	• • •	• • •	• • •	1 cup.[2]
VEGETABLE AND FRUITS [3]				
Vegetable(s) and/or fruits	• • •	• • •	• • •	1 cup total.
BREAD AND BREAD ALTERNATE [4]				
Bread	• • •	• • •	• • •	2 slices (servings).
or				
Combread, biscuits, rolls, muffins, etc [5]	• • •	• • •	• • •	2 servings.
or				
Cooked pasta or noodle products	• • •	• • •	• • •	1 cup.
or				
Cooked cereal or grains or an equivalent quantity of any combination of bread/bread alternate.	• • •	• • •	• • •	1 cup.
MEAT AND MEAT ALTERNATE				
Lean meat or poultry or fish [6]	• • •	• • •	• • •	2 oz.
or				
Cheese	• • •	• • •	• • •	2 oz.
or				
Eggs	• • •	• • •	• • •	1 egg.
or				
Cooked dry beans or peas	• • •	• • •	• • •	½ cup.
or				
Peanut butter or soynut butter or other nut or seed butters	• • •	• • •	• • •	4 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds [7]	• • •	• • •	• • •	1 oz=50 percent.
or				
An equivalent quantity of any combination of the above meat/meat alternate.				

* * * * *

(3) The minimum amounts of food components to be served as supper as set forth in paragraph (a)(3) of this section are as follows:

SUPPER

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12[1]	Adult participants
MILK				
Milk, fluid	½ cup[2]	¾ cup	1 cup	None.
VEGETABLES AND FRUITS[3]				
Vegetable(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total	1 cup total.
BREAD AND BREAD ALTERNATES[4]				
Bread	½ slice	½ slice	1 slice	2 slices (servings).
or				
Cornbread, biscuits, rolls, muffins, etc[5]	½ serving	½ serving	1 serving	2 servings.
or				
Cooked cereal or grains or an equivalent quantity of any combination of bread/bread alternates.	¼ cup	¼ cup	½ cup	1 cup.
MEAT AND MEAT ALTERNATES				
Lean meat or poultry or fish[6]	1 oz	1 ½ oz	2 oz	2 oz.
or				
Cheese	1 oz	1 ½ oz	2 oz	2 oz.
or				
Eggs	1 egg	1 egg	1 egg	1 egg.
or				
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup.
or				
Peanut butter or soynut butter or other nut or seed butters.	2 tbsp	3 tbsp	4 tbsp	4 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds[7]	½ oz=50 percent.[8]	¾ oz=50 percent.[8]	1 oz=50 percent.[8]	1 oz=50 percent.[8]
or				
An equivalent quantity of any combination of the above meat/meat alternates.				

* * * * *

(4) * * *

SUPPLEMENTAL FOOD

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12[1]	Adult participants
MILK				
Milk, fluid	* * *	* * *	* * *	1 cup.[2]
VEGETABLES AND/OR FRUITS				
Vegetable(s) and/or fruit(s)	* * *	* * *	* * *	½ cup.
or				
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	* * *	* * *	* * *	½ cup.
BREAD AND BREAD ALTERNATES[(3)]				
Bread	* * *	* * *	* * *	1 slice (serving).
or				
Cornbread, biscuits, rolls, muffins, etc[(4)]	* * *	* * *	* * *	1 serving.
or				
Cold dry cereal[(5)]	* * *	* * *	* * *	¾ cup or 1 oz.
or				
Cooked cereal	* * *	* * *	* * *	½ cup.
or				
Cooked pasta or noodle product	* * *	* * *	* * *	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	* * *	* * *	* * *	½ cup.
MEAT AND MEAT ALTERNATIVES				
Lean meat or poultry or fish[(6)]	* * *	* * *	* * *	1 oz.
or				
Cheese	* * *	* * *	* * *	1 oz.
or				
Eggs	* * *	* * *	* * *	1 egg.
or				
Cooked dry beans or peas	* * *	* * *	* * *	¼ cup.

SUPPLEMENTAL FOOD—Continued

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12[1]	Adult participants
or				
Peanut butter or soynut butter or other nut or seed butters.	• • •	• • •	• • •	2 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds[7]	• • •	• • •	• • •	1 oz.
or				
Yogurt, plain or sweetened and flavored	• • •	• • •	• • •	4 oz or ½ cup.
or				
An equivalent quantity of any combination of the above meat/meat alternates.				

* * * * *

(p) *Offer versus serve.* (1) Each adult day care center shall *offer* its adult participants all of the required food servings as set forth in paragraph (c)(1), (c)(2) and (c)(3) of this section. However, at the discretion of the adult day care center, adult participants may be permitted to *decline*:

(i) *One of the four* food items (one serving of milk, one serving of vegetable and/or fruit, and two servings of bread or bread alternate) required at breakfast;

(ii) *Two of the six* food items (one serving of milk, two servings of vegetable and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at lunch;

(iii) *Two of the five* food items (two servings of vegetables and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at supper.

(2) The price of a reimbursable meal shall not be affected if an adult participant declines a food item.

Dated: July 2, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 93–16591 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 151

[T.D. 93–52]

Examination of Wool and Hair

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without change proposed amendments to the Customs Regulations to remove references to estimation of clean yield of wool or hair by non-laboratory method and to eliminate Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair. The amendments conform the regulations to current Customs procedures which no longer include informally estimating the clean yield of wool or hair and notifying the importer of that estimate. Determination of the clean yield of wool or hair will thus be made on a case-by-case basis only through analysis performed in a Customs or commercial laboratory.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Ira Reese, Office of Laboratories and Scientific Services (202–927–1060).

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1992, Customs published a notice in the **Federal Register** (57 FR 37917) proposing to amend various sections within subpart E of part 151, Customs Regulations (19 CFR part 151), which covers examination and testing procedures applicable to imported wool and hair for tariff purposes. The proposed amendments were intended specifically to ensure that the regulations reflect current requirements and procedures regarding the determination of clean yield: If a clean yield content report is needed for Customs purposes, Customs samples and analyses the crude wool for clean yield content in a Customs laboratory specializing in wool analysis and, when a Laboratory Report is issued on Customs Form 6415, a copy thereof is sent by Customs to the importer of record. The specific amendments proposed in the notice involved (1) removal of § 151.72 which provides for estimation of clean yield by non-laboratory method and specifies use of Customs Form 6451 as the means for notification to the importer, and (2) conforming changes to other sections of the regulations involving removal of all references: To Customs Form 6451; § 151.72; an examination or estimation procedure (which in the regulatory texts has reference only to a non-laboratory procedure); and importer notification of the results of an examination or estimation procedure. As a consequence of the proposed amendments, the present regulatory provisions regarding laboratory sampling and analysis (which also provide for analysis by a commercial laboratory under certain circumstances) would become the sole means under the regulations for determination of clean yield content.

One comment was received from the public in response to the notice. This commenter supported the proposed amendments and further suggested that the Customs Commercial Laboratory Program should be expanded to include accreditation for wool testing so as to eliminate the need for retesting. Customs does not believe that any action should be taken in response to this comment because (1) the comment is outside the scope of the proposed amendments, and (2) based on the relatively small number of wool analyses performed each year in Customs laboratories and based on the absence of any requests for retesting of wool samples over the last several years, the accreditation of commercial laboratories to perform wool testing is neither necessary nor appropriate.

Based on the above, Customs believes that the proposed amendments should be adopted as a final rule without change.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), it is certified that the regulations amendments will not have a significant economic impact on a substantial number of small entities. The amendments merely conform the regulations to present administrative practice and thus will not result in any increased economic impact. Accordingly, these amendments are not subject to the regulatory analysis or

VOL
58
ISS
133
JL
14
1993
UMI

other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 151

Customs duties and inspection, Imports, Examination, sampling and testing, Wool.

Amendments to the Regulations

Accordingly, part 151, Customs Regulations (19 CFR part 151), is amended as set forth below:

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. * * * Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. * * *

* * * * *

2. Section 151.64 is revised to read as follows:

§ 151.64 Extra copy of entry summary.

One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean kilogram shall be filed in addition to the copies otherwise required.

3. Section 151.70, first sentence, is amended by removing at the end the words ", in which case the clean yield of the wool or hair in such sampling unit shall be estimated as provided for in § 151.72".

4. Section 151.71 is amended by revising paragraphs (a) and (b) to read as follows:

§ 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory.* The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of each general sample as established by the test, or a statement of the reason for not testing a general sample, shall be forwarded to the district director.

(b) *Notification to importer.* Where samples of wool or hair have been tested in a Customs laboratory and the district director has received a copy of the Laboratory Report, Customs Form 6415, the district director shall promptly provide notice of the test results by mailing a copy of that report to the importer.

* * * * *

5. Section 151.72 is removed.

6. Section 151.73 is amended by removing from paragraph (a) the words "or a reestimation of clean yield made in accordance with § 151.72(c),".

7. Section 151.73 is further amended by removing from paragraph (b) the words "or reexamination".

8. Section 151.75 is amended by removing the words "and examinations".

George J. Weise,

Commissioner of Customs.

Approved: June 25, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–16662 Filed 7–13–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0328]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester as an antioxidant for use in olefin polymers intended for food-contact use. This action is in response to a petition filed by General Electric Co. (formerly Borg-Warner Chemicals, Inc.).

DATES: Effective July 14, 1993; written objections and requests for a hearing by August 13, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 22, 1986 (51 FR 30128), FDA announced that a food additive petition (FAP 6B3944) had been filed by Borg-Warner Chemicals, Inc., Washington, WV 26181. The petition proposed that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester as an antioxidant for use in olefin polymers intended for food-contact use.

Since the notice published, this division of Borg-Warner Chemicals, Inc., was purchased by the General Electric Co., Parkersburg Center, Fifth and Avery Sts., Parkersburg, WV 26102.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that § 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 13, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing

is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 is revised to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry "Phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl)ester" by numerically adding new entry "3." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl)ester (CAS Reg. No. 26741-53-7).	For use only: * * * 3. At levels not to exceed 0.05 percent by weight in olefin polymers complying with § 177.1520(c) of this chapter, item 3.1, that contain more than 50 weight percent of polymer units derived from ethylene and whose density is less than 0.94 gram per cubic centimeter. The average thickness of such polymers intended for use in contact with food types V and VII–A described in Table 1 of § 176.170(c) of this chapter shall not exceed 80 micrometers (0.003 inch).
* * *	* * *

Dated: July 1, 1993.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–16595 Filed 7–13–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Lyphomed, Division of Fujisawa USA, Inc., to Fujisawa USA, Inc.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Judy M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8737.

SUPPLEMENTARY INFORMATION: Lyphomed, Division of Fujisawa USA, Inc., Deerfield, IL 60015–2548, has informed FDA of a change of sponsor name from Lyphomed, Division of Fujisawa USA, Inc., to Fujisawa USA, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Lyphomed, Division of Fujisawa USA, Inc." and by alphabetically adding a new entry for "Fujisawa USA, Inc., Deerfield, IL 60015–2548.....000469"; and in the table in paragraph (c)(2) in the entry for "000469" by removing the sponsor name "Lyphomed, Division of Fujisawa USA, Inc." and adding in its place "Fujisawa USA, Inc."

Dated: July 7, 1993.

Richard E. Geyer,

Deputy Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 93–16594 Filed 7–13–93; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG30

Determinations of Incompetency

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulation concerning determinations of incompetency and competency. This change brings consistency into the language of the regulation and ensures that long-standing VA policy is accurately stated. The effect of this action will be consistent application of the regulation in rating decisions involving the issue of incompetency.

EFFECTIVE DATE: The effective date is August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: The definition of a mentally incompetent person for VA purposes is one who, because of injury or disease, lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation (38 CFR 3.353(a)). This definition represents long-standing VA policy. An inconsistency exists in the language of § 3.353(d), however, which requires a presumption in favor of competency in situations where doubt arises as to whether a beneficiary is capable of *administering his or her funds* (emphasis added). This provision assumes a less comprehensive definition of incompetency.

Section 3.353(d) was designed to avoid appointing a fiduciary except in a situation where it is clearly in a beneficiary's best interest to do so because of mental incompetency. Where doubt arises regarding incompetency, the doubt is to be resolved in the beneficiary's favor. Since ratings of incompetency are based on the definition in § 3.353(a) and can result in appointment of a fiduciary, to limit consideration under § 3.353(d) only to the administration of funds creates internal inconsistency within the regulation and could lead to discrepancies in its application in individual cases. The regulatory history, in fact, shows that the language of § 3.353(d) predates the definition of § 3.353(a) and was never amended to conform with it. We, therefore, are amending § 3.353(d) to add a provision regarding a beneficiary's mental capacity to contract or to manage his or her own affairs, to change "administering" funds to "disbursement" of funds, and to add the phrase "without limitation" to the provision concerning disbursement of funds.

These changes will bring paragraph (d) into conformity with paragraph (a) and will assist VA rating boards in making consistent determinations when the issue of incompetency arises. We also are amending § 3.353(d) to clarify that by "doubt" whether a beneficiary is competent we mean "reasonable doubt." This change accords with VA's doctrine of reasonable doubt as defined in § 3.102 and represents in any event the intent of § 3.353(d) in this regard. Since these amendments to § 3.353 simply ensure internal consistency within the regulation as well as consistency with established VA policy, publication as a proposed rule is not necessary.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3:

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 20, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.353, paragraph (d) is revised to read as follows:

§ 3.353 Determinations of incompetency and competency.

* * * * *

(d) *Presumption in favor of competency.* Where reasonable doubt arises regarding a beneficiary's mental capacity to contract or to manage his or her own affairs, including the disbursement of funds without limitation, such doubt will be resolved in favor of competency (see § 3.102 on reasonable doubt).

* * * * *

§ 3.353 [Amended]

3. Following § 3.353 an authority citation is added to read as follows:

(Authority: 38 U.S.C. 501(a))

[FR Doc. 93–16596 Filed 7–13–93; 8:45 am]

BILLING CODE 8320–01–Z

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38 CFR Part 3

RIN 2900–AF88

Evidence Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations regarding the evidence requirements to establish military service and dependency. This amendment is necessary to expedite payment of benefits in certain instances. The intended effect of this amendment is to improve the efficiency and timeliness of claims processing.

EFFECTIVE DATE: These amendments are effective July 14, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.203(c) and 3.205(a)(1) in the **Federal Register** of October 23, 1992 (57 FR 48350–52). Interested persons were invited to submit written comments, suggestions or objections on or before November 23, 1992. As no comments were received, the proposed amendments are adopted with a minor technical addition to clarify that the uncertified marriage certificate supporting the certified statement of the deceased veteran must be part of the VA record on the date of the veteran's death.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.105 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 25, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.203, paragraph (c) is amended by adding a new second sentence to read as follows:

§ 3.203 Service records as evidence of service and character of discharge.

* * * * *

(c) *Verification from service department.* * * * However, payment of nonservice-connected burial benefits may be authorized, if otherwise in order, based upon evidence of service with VA relied upon to authorize payment of compensation or pension during the veteran's lifetime, provided that there is no evidence which would serve to create doubt as to the correctness of that service evidence.* * *

3. In § 3.205, paragraphs (a) introductory text and (a)(1) are revised to read as follows:

§ 3.205 Marriage.

(a) *Proof of marriage.* Marriage is established by one of the following types of evidence:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or one authorized to act for such officer bearing the seal of such officer, or otherwise properly identified, or a certified copy of the church record of marriage. However, payment of death benefits to a surviving spouse may be authorized, if otherwise in order, based upon an uncertified copy of the public record of marriage which was part of the VA record on the date of the veteran's death, and which substantiates the veteran's certified statement that VA relied upon to establish the claimant as the spouse for compensation or pension payments which the veteran was entitled to receive at the time of his or her death, provided that there is no evidence which would serve to create doubt as to the correctness of that copy.

* * * * *

[FR Doc. 93–16599 Filed 7–13–93; 8:45 am]

BILLING CODE 8320–01–21–M

38 CFR Part 36

RIN 2900–AC85

Loan Guaranty: Loans to Purchase Manufactured Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its manufactured home loan guaranty regulations (4200 series) to comply with certain provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, as amended by the Veterans' Benefits Amendments of 1989, and the Omnibus Budget Reconciliation Act of 1990. These amendments will change the manufactured home loan program to comply with these laws. Additional changes are being made concerning computation and filing of claims, required insurance coverage, invoicing practices, volume rebates, items which may be included in the loan amount, automatic underwriting authority and definition of terms. The amendments will have the effect of updating the VA manufactured home loan program to reflect current industry practices.

EFFECTIVE DATE: These regulations are effective August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: VA is incorporating into its manufactured home loan regulations several changes to comply with provisions of Public Law 100–198, The Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, as amended by Public Law 100–253, The Veterans' Home Loan Program Amendments of 1988, and Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990. Additional regulatory changes are also being made as a result of an extensive review of the VA manufactured home loan program.

Major changes which VA hereby incorporates into the manufactured home loan guaranty regulations by these amendments are: (1) An increase in the maximum amount of entitlement from $27,500 to $36,000; (2) a change in the percentage of the loan that may be guaranteed; (3) a downpayment requirement; (4) revision of the occupancy requirements; (5) revision of the requirements for refinancing loans on manufactured homes; and (6) a new

optional procedure for filing claims upon receipt of VA's resale price estimate. All of the above changes implement statutory revisions and have been accomplished administratively. Additional changes affecting insurance coverage, invoicing practices, volume rebates, the computation and filing of claims, and items which may be included in the loan, are being made as a result of an extensive review of the VA manufactured home loan program.

On October 16, 1992, VA published in the **Federal Register** (57 FR 47433) proposed regulations on the VA manufactured home loan guaranty program. No comments were received to the proposed regulations. Accordingly, the regulations are adopted as originally proposed.

The Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601–612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

These regulations have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Paperwork Reduction Act

Section 36.4204 of this regulatory amendment contains information collection requirements. Public reporting burden for this collection of information is estimated to be one-half hour per response with a total of 50 hours (100 respondents annually). This information collection requirement was approved by the Office of Management and Budget under OMB control number 2900–0534.

Catalog of Federal Domestic Assistance Program Number 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: March 19, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 is revised to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501, 3712.

2. In § 36.4202, remove the definition of *Manufacturer's invoice cost* and add, in its place, a definition of *Manufacturer's invoice and add the definition Wholesale (base) price list* to read as follows:

§ 36.4202 Definitions.

* * * * *

Manufacturer's invoice. A document, issued by a manufacturer and provided with a manufactured home to a retail dealer, acceptable in form and content to the Secretary which indicates the wholesale (base) price at the factory of the manufactured home model or series including any furnishings, equipment and accessories installed by the manufacturer, net of all rebates to the dealer. The following certification or a reasonable facsimile thereof, signed by an authorized representative of the manufacturer, must appear on the invoice:

"The undersigned certifies that the manufacturer's invoice price shown on this invoice reflects the dealer's cost at point of manufacture, exclusive of any and all freight or transportation charges, net of any and all discounts, bonuses, refunds, rebates (including volume rebates), prizes or anything of value which will inure to the benefit of the dealer at the time of purchase or at any future date."

* * * * *

Wholesale (base) price list. The price list(s) as periodically amended, published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) price at the factory for specific models or series of manufactured homes, itemized options, itemized furniture, and specialty items offered for sale to such dealers during a specified period of time. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date, as required to be disclosed in the manufacturer's invoice. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication to be available to VA and other Federal agencies upon request.

3. Section 36.4204 is amended by removing the period at the end of paragraph (a)(7) and adding new text; by redesignating paragraphs (b), (c) and (e) as paragraphs (d), (e) and (g), respectively; by removing the words "will not" in the first sentence of newly designated paragraph (g) and adding, in their place, the word "cannot"; and by adding new paragraphs (b), (c) and (f); to read as follows:

§ 36.4204 Loan purposes, maximum loan amounts and terms.

(a) * * *

(7) * * * provided the amount of the loan to refinance does not exceed an amount equal to 95 percent of the reasonable value of the manufactured home securing the loan, as determined by the Secretary.

(b) In the case of a loan to purchase a new manufactured home unit only, the loan amount shall not exceed the lesser of an amount equal to 95 percent of the purchase price of the property securing the loan or the amount computed in paragraph (c), of this section, provided the total loan amount does not exceed 145 percent of the manufacturer's invoice.

(c) For all manufactured home loans, the maximum loan amount is as follows:

(1) In the case of a loan to purchase a new manufactured home unit only, the loan amount is to be computed as the sum of:

(i) One hundred twenty-five (125) percent of the figure produced by this computation:

Subtract from the manufacturer's invoice cost the manufacturer's invoice cost of any components (furnishings, accessories, equipment) removed from the unit by the dealer. To the remainder add the dealer's cost for any components added by such dealer. The sum so obtained shall be the figure to be multiplied by the specified percentage; and

(ii) One hundred (100) percent of the actual amount of fees and charges permitted in § 36.4232.

(2) A loan to purchase a lot upon which a manufactured home owned by the veteran will be placed is limited to

the reasonable value of a developed lot or the reasonable value plus such amount determined by the Secretary to be appropriate to cover the cost of necessary site preparation for an undeveloped lot.

(3) The maximum loan amount for a used manufactured home may not exceed the reasonable value as established by the Secretary, plus:

(i) Actual fees or charges for required recordation of documents;

(ii) The amount of any documentary stamp taxes levied on the transactions;

(iii) The amount of State and local taxes levied on the transactions; and

(iv) The premium for customary physical damage insurance and vendor's single interest coverage on the manufactured home for an initial policy term not to exceed one year.

(4) In the case of an interest rate reduction refinancing loan (38 U.S.C. 3712(a)(1)(F)) the maximum loan may not exceed the sum of:

(i) The balance of the VA loan being refinanced;

(ii) Closing costs as authorized by § 36.4232 or § 36.4254, as appropriate; and

(iii) Allowable discounts, provided that:

(A) The loan application is submitted to the Secretary for prior approval;

(B) The amount of discount is disclosed to the Secretary and the veteran prior to the issuance of the certificate of commitment by the Secretary. This certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment has been issued without the approval of the Secretary;

(C) The discount has been determined by the Secretary to be reasonable in amount; and

(5) For a loan to refinance a purchase money lien on a manufactured home and to purchase a lot (38 U.S.C. 3712(a)(1)(G)) on which the manufactured home is or will be placed:

(i) The loan must be secured by the same manufactured home which must be owned and occupied by the veteran as the veteran's home; and

(ii) The amount of the loan may not exceed an amount equal to the sum of:

(A) The purchase price of the lot, not to exceed the reasonable value thereof, as authorized by § 36.4252;

(B) The amount determined by the Secretary to be appropriate to cover the cost of necessary preparation of the lot;

(C) The balance of the loan being refinanced; and

(D) Closing costs, as authorized by § 36.4232 or § 36.4254, as appropriate, and a reasonable discount with respect to that portion of the loan used to refinance the existing purchase money lien.

(iii) Allowable discounts may be charged to the veteran on the portion of the loan used to refinance the existing purchase money lien provided:

(A) The loan application is submitted to the Secretary for prior approval;

(B) The amount of discount to be paid on the unit portion of the loan is disclosed to the Secretary and the veteran prior to the issuance of the certificate of commitment by the Secretary. The certificate of commitment shall specify the discount to be paid by the veteran on the unit portion of the loan, and this discount may not be increased once the commitment has been issued without the approval of the Secretary; and

(C) The discount on the unit portion of the loan has been determined by the Secretary to be reasonable in amount.

(6) All powers of the Secretary under paragraphs (c) (4) and (5) of this section, except the authority to revise the discount after the commitment is issued, are hereby delegated to those officials designated by § 36.4221(b). The power of the Secretary to approve an increase in the discount on the unit portion of the loan after the commitment is issued is delegated to those officials designated by § 36.4220(a).

* * * * *

(f) An itemized list of all items included in the manufactured home loan as enumerated in § 36.4232 shall be provided to both the purchaser and the Secretary. At the time of loan origination an independent fee inspection shall be conducted to assure that all items included in the loan amount are accounted for and in place. A similar inspection will be conducted in the event of repossession immediately prior to repossession. The costs of the fee inspections may be included in the loan amount or the claim amount and charged to the borrower pursuant to the provisions of § 36.4232 (a) and (b).

[Information collection requirements contained in § 36.4204(f) were approved by the Office of Management and Budget under OMB control number 2900–0516]

§ 36.4205 [Amended]

4. Section 36.4205 is amended by removing the words "fifty (50)" in the first sentence of paragraph (a) and adding, in their place, the words "forty (40)"; by removing the dollar amount "$27,500" in the first sentence of paragraphs (b)(1), (b)(2) and (b)(3) and adding, in its place, the dollar amount "$36,000"; and by removing the word "unmarried" in the first sentence of paragraph (f)(1) and adding, in its place, the word "unremarried".

5. In § 36.4206, the first sentence of paragraph (d)(1) is revised to read as follows:

§ 36.4206 Underwriting standards, occupancy, and non-discrimination requirements.

* * * * *

(d) * * *

(1) The veteran certifies, in such form as the Secretary shall prescribe, that he or she will personally occupy the property as his or her home or, if the veteran is on active duty status as a member of the Armed Forces and is for that reason unable to occupy the property, the veteran's spouse must certify that he or she will personally occupy the property as his or her home.

* * *

* * * * *

6. Section 36.4206 is further amended by removing the word "mobile" in the second sentence of paragraph (d)(1) and adding, in its place, the word "manufactured"; by adding a comma and the words "handicap, familial status," after the word "sex" in paragraph (d)(2)(i); and by removing the words "sex, religion," in paragraph (d)(2)(ii) and adding, in their place, the words "religion, sex, handicap, familial status,".

§ 36.4209 [Amended]

7. In § 36.4209, paragraph (b)(2) is amended by removing the semicolon at the end of the paragraph and adding, in its place, a comma and the words "including the itemized list required by § 36.4204(f);".

8. Section 36.4222 is revised to read as follows:

§ 36.4222 Hazard insurance.

(a) The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against risks or hazards to which it may be subjected to the extent customary in the locality. The costs of such required insurance coverage may be paid for by the veteran. Only the costs for one year may be included in the loan amount.

(1) Flood insurance will be required, including coverage of the contents to the extent such contents are security for the loan, for all loans if the security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which the sale of flood insurance is available under the National Flood

Insurance Program. The amount of flood insurance required will be equal to the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Program, whichever is less.

(2) Broad Lender's Protection Insurance or its equivalent is required to protect against loss for any items missing from the manufactured home at time of repossession and to cover repossession expenses including, but not limited to, breakdown and transport charges, permit and export fees, and an amount, limited by the Secretary, of unpaid park rent.

(b) All monies under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance.

9. In § 36.4223, paragraphs (a)(1) and (2) are revised to read as follows:

36.4223 Interest rate reduction refinancing loan.

(a) * * *

(1) The loan application must be submitted to the Secretary for prior approval unless the veteran is not charged a discount, in which case the loan application may be processed on the automatic basis;

(2) The loan must be secured by the same real property and/or personal property as the loan being refinanced and the veteran must own the manufactured home and/or manufactured home lot securing the loan; and

(i) Presently occupy or have previously occupied the manufactured home, a manufactured home on the lot securing the loan, or the manufactured home and the lot securing the loan as his or her home and must certify in such form as the Secretary shall prescribe that the veteran presently or has previously so occupied the manufactured home or a manufactured home on the lot; or

(ii) When a veteran is on Active Duty status as a member of the Armed Forces and is unable to occupy the manufactured home or a manufactured home on the lot securing the loan as a home because of such status, the veteran's spouse must occupy or must have previously occupied the manufactured home or a manufactured home on the lot as the spouse's home and must certify such occupancy in such form as the Secretary shall prescribe.

* * * * *

§ 36.4224 [Amended]

10. In § 36.4224, paragraph (b), last sentence, remove the words "fifty (50)" and add, in their place the words "forty (40)".

11. In § 36.4232, paragraphs (a)(2) through (a)(5) are redesignated as paragraphs (a) (3), (4), (5), and (7), respectively; in newly designated paragraph (a)(5), remove the words "five (5) years" and add, in their place, the words "one (1) year"; new paragraphs (a)(2) and (a)(6) are added; additional text reading "provided the total loan amount does not exceed 145 percent of the manufacturer's invoice" is added at the end of paragraph (b) before the period; paragraph (d)(1) is revised; and paragraph (e)(5) is removed to read as follows:

§ 36.4232 Allowable fees and charges; manufactured home unit.

(a) * * *

(2) The costs of independent fee inspections for itemized items included in the manufactured home loan, as required by § 36.4204(f).

* * * * * *

(6) The premium for insurance against loss for items missing at time of repossession and for repossession expenses, unless State law prohibits charging borrowers for this coverage, in which case the lender is required to pay for the coverage without reimbursement from the veteran, and

* * * * *

(d) * * *

(1) The actual cost of transportation or freight;

* * * * *

§§ 36.4234 and 36.4235 [Amended]

12. In §§ 36.4234 and 36.4235, remove the word "mobile" and add, in its place, the word "manufactured" in the following places:

(a) Section 36.4234(a);

(b) Section 36.4234(a)(1), both places;

(c) Section 36.4234 (b) and (c); and

(d) Section 36.4235(a), two places.

§ 36.4253 [Amended]

13. In § 36.4253(b)(9), remove the word "creed" and add, in its place, the words "religion, sex, handicap, familial status".

14. In § 36.4253(c)(2), remove the words "racial and creed" in the paragraph heading and add, in their place, the words "equal opportunity" and remove the word "creed" in the text and add, in its place, the words "religion, sex, handicap, familial status,".

15. Section 36.4276 is amended by adding paragraph (c) to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(c) In claims filed under § 36.4283(f)(4) of this part, the following costs and expenditures actually incurred and paid may be included in the computation of the indebtedness:

(1) Property preservation or repair costs incurred prior to the date of the liquidation appraisal, to the extent that they contributed to the minimum selling price of the property as determined by the Secretary, and subject to the limitation that they do not exceed the actual cost incurred by the holder, and,

(2) Costs of loan termination, including, but not limited to:

(i) The reasonable and customary expense of transporting the home to the site where it will be repaired and/or resold;

(ii) The cost of the liquidation appraisal;

(iii) A reasonable amount for legal services actually performed and trustee fees, not to exceed a total of $700;

(iv) Court costs in a foreclosure or other judicial proceeding involving the security;

(v) Any other expenses reasonably necessary for repossession of the security or other termination of the loan; and,

(vi) Any other expense or fee that is approved in advance by the Secretary.

16. Section 36.4283 is amended by adding paragraph (f)(4) and revising paragraph (g), introductory text, to read as follows:

§ 36.4283 Foreclosure or repossession.

* * * * *

(f) * * *

(4) If the holder has not resold the property, it may elect to submit its claim under Loan Guaranty within 60 days of the date of the Secretary's written advice of the minimum selling price.

(i) For purposes of computation of a claim submitted pursuant to this paragraph, and subject to the limitation that the maximum amount of claim payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date the holder acquired the security. Further:

(A) The minimum selling price determined by the Secretary and provided to the holder shall be credited to the indebtedness as proceeds of sale; or

(B) If no minimum selling price is provided then the current reasonable value of the property as determined by the Secretary and provided to the holder shall be credited to the indebtedness as proceeds of sale; and

The amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(ii) Allowable post-acquisition expenditures or costs paid by the holder which may be included in the accounting with the Secretary are limited to those specified in § 36.4276(c).

* * * * *

(g) If at the end of 6 months from the date of acquisition the holder has been unable to resell the property and no claim has been filed pursuant to paragraph (f)(4) of this section, a claim may be submitted under the guaranty and the Secretary will pay to the holder upon submission of such claim:

* * * * *

17. Section 36.4284 is amended by adding paragraph (e) to read as follows:

§ 36.4284 Computation of guaranty claims.

* * * * *

(e) Appropriate computation of the guaranty, proceeds of liquidation, and allowable costs for claims filed under § 36.4283(f)(4) are specified in § 36.4276(c).

[FR Doc. 93–16598 Filed 7–13–93; 8:45 am]
BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300283A; FRL–4632–1]

RIN 2070–AB78

Vinyl Acetate-Allyl Acetate-Monomethyl Maleate Copolymer and Vinyl Acetate-Vinyl Alcohol-Disodium Itaconate Copolymer; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing exemptions from the requirement of a tolerance for residues of vinyl acetate-allyl acetate-monomethyl maleate copolymer and vinyl acetate-vinyl alcohol-disodium itaconate copolymer when used as inert ingredients (components of water-soluble film) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Mitsui Plastics, Inc.

EFFECTIVE DATE: This regulation becomes effective on July 14, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300283A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1993 (58 FR 27973), EPA issued a proposed rule announcing that Mitsui Plastics, Inc., 11 Martin Ave., White Plains, NY 10606, had submitted pesticide petitions, PP 2E4153 and PP 3E4178, to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing exemptions from the requirement of a tolerance for residues of vinyl acetate-allyl acetate-monomethyl maleate copolymer (PP 2E4153) and vinyl acetate-vinyl alcohol-disodium itaconate copolymer (PP 3E4178) when used as inert ingredients (components of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The scientific data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, these ingredients are useful and tolerances are not necessary to protect the public health. Therefore, EPA is establishing the exemptions from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

VOL 58 ISS 133 14 1993 JL UMI

2. Section 180.1001(d) table is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Vinyl acetate-allyl acetate-monomethyl maleate copolymer (minimum average molecular weight 20,000).		Component on water-soluble film.
Vinyl acetate-vinyl alcohol-disodium itaconate copolymer (minimum average molecular weight 50,290).		Component of water-soluble film.
* * * * * * *		

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[FR Doc. 93-16653 Filed 7-13-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 185

[OPP-260053; FRL-4627-6]

RIN 2070-AB78

Revocation of Food Additive Regulations for Benomyl, Mancozeb, Phosmet, and Trifluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain food additive regulations for four pesticides which were included in a 1989 petition. The U.S. Court of Appeals, Ninth Circuit, has set aside the Agency's original order denying the petition for revocation of the food additive regulations at issue in this revised Order; accordingly, EPA is granting the petition request to revoke these food additive regulations.

EFFECTIVE DATE: This regulation becomes effective August 30, 1993.

ADDRESSES: Written objections and/or requests for a hearing, identified by the document control number, OPP-260053, may be submitted by August 13, 1993 to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa Engstrom, Special Review Branch (H7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460; Office location and telephone number: 3rd Floor, Westfield Building, 2800 Jefferson Davis Highway, Arlington, VA, Telephone: (703) 308-8031.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this revised Order, EPA is implementing a decision by the U.S. Court of Appeals, Ninth Circuit, *Les* v. *Reilly*, 968 F. 2d 985 (9th Cir. 1992), cert. denied, 113 S. Ct. 1361 (1993), which set aside a previous EPA Order denying a petition to revoke the following food additive regulations: trifluralin (spearmint oil and peppermint oil), benomyl (raisins and processed tomato products), phosmet (cottonseed oil), and mancozeb (raisins and bran of wheat). The petition asserted that these food additive regulations violated the Delaney Clause in section 409 of the Federal Food, Drug, and Cosmetic Act. EPA declined to revoke several of these food additive regulations based on EPA's view that the Delaney Clause is subject to a *de minimis* exception and that the risks posed by dietary exposure to the pesticide residues at issue are trivial. This Order implements the Ninth Circuit decision in *Les* v. *Reilly* by granting the original petition request and revokes the section 409 food additive regulations for the subject pesticide uses.

II. Statutory Framework

The Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of maximum permissible levels of pesticides in foods, which are referred to as "tolerances" (21 U.S.C. 346(a), 348). Without such a tolerance or an exemption from a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not legally be moved in interstate commerce (21 U.S.C. 342). Monitoring and enforcement of pesticide residues are carried out by the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). Under section 408 of the FFDCA, tolerances or exemptions from tolerances are established for pesticide residues in raw agricultural commodities. In setting these tolerances, EPA must make a finding that the promulgation of the tolerance regulation would "protect the public health" by considering, among other things: the necessity for the production of an adequate, wholesome, and economical food supply; additional ways in which the consumer may be affected by the pesticide; and the usefulness of the pesticide for which a tolerance is being sought. (21 U.S.C. 346a(b)).

Under current EPA policy, a food additive regulation is needed if the concentration of the pesticide residue in a processed food, when ready to eat, may be greater than the tolerance prescribed for the raw agricultural commodity from which the processed food is derived, or if the processed food is treated or comes into contact with a pesticide, such as in treated storage facilities. If the pesticide residue level is at or below the section 408 tolerance for the raw food which is being processed, the "flow-through" provision of FFDCA section 402 provides that the section 408 tolerance covers the pesticide residues in both the raw and resulting processed commodities.

Before a food additive regulation may be established, section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include: (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 also contains the Delaney clause, which specifically provides that, "no additive shall be deemed safe if it has been found to induce cancer when ingested by man or animal." (21 U.S.C. 348(c)(5)). Before a

pesticide may be sold or distributed, it must be registered under the Federal Fungicide, Insecticide and Rodenticide Act (FIFRA). To qualify for registration, a pesticide must, among other things, perform its intended function without causing "unreasonable adverse effects on the environment." (7 U.S.C. 136a(c)(5)). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide." (7 U.S.C. 136(bb)).

III. Background of Proceedings

This action was initiated May 25, 1989, by a petition filed by the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals (herinafter referred to as "California petition") requesting that EPA revoke the following food additive regulations: trifluralin (spearmint and peppermint oils), benomyl (raisins and processed tomato products), phosmet (cottonseed oil), mancozeb (raisins and brans of barley, oats, rye, and wheat), dicofol (dried tea), DDVP (dried figs and packaged and bagged nonperishable processed foods) and chlordimeform (dried prunes). The petitioners argued that these food additive regulations should be revoked consistent with the Delaney Clause in section 409 of the FFDCA because the seven pesticides to which the regulations apply had been found by EPA to be animal carcinogens.

On June 30, 1989, EPA published the California petition in the Federal Register seeking comments on the action proposed by the petitioners (54 FR 27700, June 30, 1989). EPA received numerous comments on the petitioners' proposal, including several comments addressing whether the referenced pesticides induced cancer within the meaning of the Delaney Clause.

EPA responded to the petition on April 18, 1990 (55 FR 17560, April 25, 1990). EPA agreed with the petitioners that the seven pesticides were "animal carcinogens" within the meaning of the Delaney Clause (55 FR 17566) and rejected comments to the contrary by several commenters (55 FR 17570, 17572-73). EPA also agreed to revoke those food additive regulations for which there were no longer any registered pesticide uses or if cancellation of the registrations was expected (chlordimeform on dried prunes; DDVP on dried figs; mancozeb on brans of oats, barley, and rye; and phosmet on cottonseed oil). EPA declined, however, to revoke the remaining food additive regulations based on determinations that: (1) the pesticide residues permitted by the regulation posed *de minimis* risk and EPA's policy under the Delaney Clause provided an exception for pesticides posing a *de minimis* risk; (2) there was insufficient information to determine whether the food additive regulation posed a *de minimis* risk and EPA believed that data to be submitted in the future would show that the risk from the food additive regulation was *de minimis*; or (3) action under FFDCA was appropriately withheld pending completion of an ongoing FIFRA proceeding (e.g., an ongoing Special Review).

On May 22, 1990, the petitioners filed objections to EPA's response. The petitioners' central objection was that EPA had incorrectly interpreted section 409 by reading a *de minimis* exception into the Delaney Clause. Petitioners also contended that an ongoing review of a pesticide under FIFRA did not provide grounds for refusing to rule on their petition.

On February 25, 1991, EPA responded to the petitioners' objections (56 FR 7750, Feb. 25, 1991) by: (1) denying the petition for trifluralin, benomyl, mancozeb and phosmet; and (2) stating that revocations for DDVP on bagged and packaged processed foods and dicofol would be forthcoming. EPA noted that a proposed revocation for mancozeb on the brans of oats, barley, and rye had been issued (see 55 FR 20416, May 16, 1990). For phosmet, EPA noted that it could only make a tentative classification of the carcinogenicity, but that a new registrant would be supporting the registration by supplying the data needed to resolve the classification.

On May 11, 1991, the petitioners challenged EPA's final Order by filing suit in the U.S. Court of Appeals for the Ninth Circuit. Specifically, the petitioners contested EPA's Order regarding trifluralin on spearmint and peppermint oils, benomyl on raisins and processed tomato products, phosmet on cottonseed oil, and mancozeb on raisins and bran of wheat. After that suit was filed, EPA reversed the proposal to revoke the food additive regulations for mancozeb on the brans of barley, oats, and rye based on the Special Review determination that the dietary risk associated with these uses was *de minimis*.

On July 8, 1992, the Ninth Circuit court rejected EPA's interpretation of the Delaney Clause as subject to a *de minimis* exception and set aside EPA's final Order. The court ruled that food additive regulations are barred for any pesticides that is an animal or human carcinogen regardless of the level of risk. Although EPA did not seek further appeal of *Les* v. *Reilly*, the National Agricultural Chemicals Association (NACA) filed a writ of certiorari with the Supreme Court. On February 22, 1993, the Court declined to review the case, and the Ninth Circuit's decision became effective on March 19, 1993.

IV. The "Induce Cancer" Standard

As a result of *Les* v. *Reilly*, the single issue involved in ruling anew on the California petition is whether, under the Delaney Clause, trifluralin, benomyl, phosmet, and mancozeb have been "found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." 21 U.S.C. 348(c)(3)(A). If EPA finds these pesticides are animal carcinogens within the meaning of the Delaney Clause, the food additive regulations must be revoked. In its initial Order responding to the petition, EPA concluded that, in fact, these pesticides are animal carcinogens (55 FR 17566).

In construing the "induce cancer" standard as to animals, EPA follows a weight-of-the-evidence approach which is guided, where appropriate, by the principles in EPA's Cancer Assessment Guidelines. With regard to animal carcinogenicity, EPA, in general, agrees with FDA's explanation of the term "induce cancer": The carcinogenicity of a substance in animals is established when administration in adequately designed and conducted studies results in an increase in the incidence of one or more types of malignant (or, where appropriate, a combination of benign and malignant) neoplasms in treated animals compared to untreated animals maintained under identical conditions except for exposure to the test compound. Determination that the incidence of neoplasms increases as the result of exposure to the test compound requires a full biological, pathological, and statistical evaluation. Statistics assist in evaluating the biological conclusion, but a biological conclusion is not determined by the statistical results. (52 FR 49577, Dec. 31, 1987). As discussed below, each of these pesticides qualifies as an animal carcinogen under this test.

Mancozeb

A major contaminant, metabolite and breakdown product of mancozeb, ethylene thiourea (ETU), has been shown in a 2-year bioassay in mice to cause statistically significant increases in combined hepatocellular liver adenomas/carcinomas in both sexes at two doses as well as significant positive

VOL 58 ISS 133 JL 14 1993 UMI

(increasing) trends in tumors. (Ref. 1) EPA believes that summing of adenomas and carcinomas is appropriate for this type of tumor, but notes that the study also showed that hepatocellular liver carcinomas alone were significantly increased at both doses in females and at the high dose in males. Positive trends for both sexes for liver carcinomas were significant. The results of this study show that ETU, and hence mancozeb, induce cancer in animals. In its weight-of-the-evidence evaluation, EPA considered other studies in rats and mice involving ETU which resulted in findings of statistically significant incidence of tumors (Ref. 2), other statistically significant tumor responses in the mouse study described above, cancer studies in the rat and mouse involving mancozeb (Ref. 3), mutagenicity data (Ref. 4), and structure activity information (Ref. 5). Much of this information supports EPA's conclusion that results of the mouse study are significant and, to the extent any of the information does not confirm the results of the mouse study, none of that information is of such weight that it affects EPA's determination that the increased incidence of adenomas and carcinomas in mice was the result of exposure to the test compound.

Benomyl

Benomyl has been shown to cause in mice (Charles River CD-1) a statistically significant incidence of malignant and combined malignant and benign liver tumors. (Ref. 1). In the case of MBC, a major metabolite of benomyl, results in two bioassays involving two strains of mice (Charles River CD-1 and SPF Swiss) showed similar results. (Ref. 2). EPA believes summing of the malignant and benign tumors is appropriate for the type of tumor involved, but notes that the studies also showed significant incidence of malignant tumors alone. These study results show that benomyl induces cancer in animals. In its weight-of-the-evidence determination, EPA considered 2-year bioassays in a different strain of mice (HOE NMRKf) and rats which were negative for carcinogenic effects (Ref. 3), mutagenicity studies (Ref. 4), and structure activity comparisons (Ref. 5). Some of this information was consistent with the results seen in the studies involving the Charles River CD-1 and SPF Swiss mice; none of the information, including the negative cancer studies, is of such weight that it affects EPA's determination that the increased incidence of malignant neoplasms in the Charles River CD-1 and SPF Swiss mice was the result of exposure to the test compound.

Phosmet

Phosmet has been shown to cause a statistically significant increase of adenomas and combined adenomas and carcinomas in the liver of male mice at the highest dose tested. (Ref. 1). The adenomas occurred with a reduced latency and exceeded National Toxicology Program (NTP) historical control incidences, but did not progress to carcinomas. EPA believes that summing of adenomas and carcinomas is appropriate for this type of tumor. This same study showed statistically significant positive dose-related trends for liver adenomas and carcinomas in female mice. The tumors in females did not occur with a reduced latency, and were not significantly elevated at the highest dose; however, the carcinomas (but not the adenomas) did exceed the NTP historical incidence for carcinomas. These study results show that phosmet induces cancer in animals.

In its weight-of-the-evidence determination, EPA considered a 2-year bioassay in rats which was negative as to carcinogenicity (Ref. 2), mutagenicity data (Ref. 3), and structure activity information (Ref. 4). None of the information, including the negative cancer study, is of such weight that it affects EPA's determination that the increased incidence of combined adenomas and carcinomas in male mice was the result of exposure to the test compound.

Trifluralin

Trifluralin has been shown to produce a statistically increased incidence of malignant neoplasms of the renal pelvis in male rats (Fisher 344). (Ref. 1). These study results show that trifluralin induces cancer in animals. In its weight-of-the-evidence determination, EPA considered other tumor data in Fisher 344 rats, negative cancer studies in the mouse and Sprague-Dawley and Osbourne-Mendel rat (Ref. 2), mutagenicity data (Ref. 3), and structure activity information (Ref. 4). Some of this information is consistent with the results seen in the study involving the Fisher 344 rat; none of the information, including the negative cancer studies, is of such weight that it affects EPA's determination that the increased incidence of malignant neoplasms in the Fisher 344 rat was the result of exposure to the test compound.

V. Revocation of Food Additive Regulations

Accordingly, consistent with the Court's decision in *Les* v. *Reilly*, this Order grants the California petition and revokes the food additive regulations presented as follows: (1) Benomyl (40 CFR 185.350) for Raisins at 50 ppm and processed tomato products at 50 ppm; (2) mancozeb (40 CFR 185.6300) for raisins at 28 ppm and bran of wheat at 20 ppm; (3) phosmet (40 CFR 185.3950) for cottonseed oil at 0.2 ppm; (4) trifluralin (40 CFR 185.5900) for spearmint oil at 2 ppm and peppermint oil at 12 ppm. In submissions related to today's action, E.I. du Pont de Nemours & Co. and the ETU Task Force have petitioned the EPA to revoke the food additive regulations for benomyl on processed tomato products and raisins and for mancozeb on raisins and the brans of wheat, barley, oats and rye. With the exception of benomyl food additive regulation on raisins, both petitioners assert that these food additive regulations are not needed because the residues do not concentrate during the processing steps involved. As to benomyl on raisins, du Pont asserts that raisins should be classified as a raw agricultural commodity or, alternatively, that a label prohibition for benomyl use on grapes grown for raisins would be feasible.

Although today's action renders the petitioners' requests moot for the benomyl food additive regulations and for the mancozeb food additive regulations for raisins and bran of wheat, the data may be important in future decisions on the mancozeb and benomyl tolerances on the raw commodities from which these processed foods are derived. In a February 5, 1993 **Federal Register** notice, EPA requested comments on a broad range of issues related to regulating pesticide residues in raw and processed foods. One of the main issues discussed in that notice is whether revisions should be made to EPA's "coordination policy," under which the Agency will not grant a section 408 tolerance for pesticide residues in a raw commodity when data show that a food additive regulation is needed for the resulting processed food and that such a food additive regulation would be prohibited by the Delaney Clause. EPA also intends to issue guidance and request comments on classification of foods into raw agricultural commodities and processed goods. Depending on EPA's final position on the policy issues described in the February 5, 1993 notice, the information in these petitions, which are in EPA review, may be used to determine that these pesticide tolerances must be revoked.

EPA has already considered the processing data for mancozenb on grapes and agrees with petitioners that the food additive regulation on raisins is not required under current policy since

the residues on raisins derived from mancozeb-treated grapes are no higher than in treated grapes. Thus, EPA's current policy would not dictate that the section 408 tolerance for mancozeb on grapes should be revoked. Additionally, all registrants of the technical products for trifluralin have requested that EPA delete the peppermint and spearmint uses from their trifluralin registrations.

VI. Procedural Matters

A. Filing of Objections and Requests for Hearings

Any person adversely affected by this Order may file written objections to the Order, and may include with any such objection a written request for an evidentiary hearing on the objection. Such objections must be submitted to the Hearing Clerk on or before August 13, 1993. Regulations applicable to objections and requests for hearings are set out at 40 CFR parts 178 and 179. Those regulations require, among other things, that objections specify with particularity the provisions of the Order objected to, the basis for the objections, and the relief sought. Additional requirements as to the form and manner of the submission of objections are set out at 40 CFR 178.25. The Administrator will respond as set forth in 40 CFR 178.30, 178.35 and/or 178.37 to objections that are not accompanied by a request for evidentiary hearing. A person may include with any objection a written request for an evidentiary hearing on the objection. A hearing request must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. Additional requirements as to the form and manner of submission of requests for an evidentiary hearing are set out at 40 CFR 178.27. Under 40 CFR 178.32(c), the Administrator, where appropriate, will make rulings on any issues raised by an objection if such issues must be resolved prior to determining whether a request for an evidentiary hearing should be granted. The Administrator will respond to requests for evidentiary hearings as set forth in 40 CFR 178.30, 178.32, 178.35, 178.37, and/or 179.20. Under 40 CFR 178.32(b), a request for an evidentiary hearing on an objection will be granted if the objection and request have been properly submitted and if the Administrator determines that the material submitted show: (1) There is a genuine and substantial issue of fact for resolution at a hearing; (2) there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor; and (3) resolution of one or more of the factual issues in the manner sought by the person requesting the hearing would be adequate to justify the action requested. Any person wishing to comment on any objections or requests for a hearing may submit such comments to the Hearing Clerk on or before August 30, 1993.

B. Effective Date and Stays of Effective Date

This Order shall become effective August 30, 1993. A person filing objections to this Order may submit with the objections a petition to stay the effective date of this Order. Such stay petitions must be submitted to the Hearing Clerk on or before August 13, 1993. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this Order and the specific food additive regulation as to which the stay is sought, the length of time for which thestay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. If a petition for a stay is submitted, EPA will automatically stay the effective date of the Order as to the particular regulation for which the stay is sought for such time as is required to review the stay petition. In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) the petitioner's case is not frivolous and is being pursued in good faith; (3) the petitioner has demonstrated sound public policy grounds supporting the stay; and (4) the delay resulting from the stay is not outweighed by public health or other public interests. Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice. If a stay petition is submitted, EPA will publish a notice of receipt in the **Federal Register**, stating that the effective date of this Order is stayed as to the regulation to which the stay is requested pending EPA consideration of the stay request. Any affected person may submit comments on a stay request to the Hearing Clerk on or before the date 15 days after date of publication in the **Federal Register** of the notice of receipt of a stay request. Any decision lifting the stay will be published in the **Federal Register**.

VII. Other Regulatory Requirements

A. Executive Order 12291

This Order has been reviewed under the requirements of Section 3 of Executive Order 12291 (46 FR 13193, February 19, 1981). The Agency has determined that this rule is not a "major rule" within the meaning of that term as defined in section 1 of Executive Order 12291. The Agency expects that this Order will have an approximate aggregate annual effect on the U.S. economy that may approach $21 million for the four pesticides subject to this Order: phosmet, benomyl, mancozeb, and trifluralin. If growers substitute alternative pesticides for the entire commodity acreage of which the affected processed foods products are a part (e.g., all grape acres currently treated with pesticides subject to this Order), aggregate impacts are estimated at approximately $21 million. However, if growers substitute only for those acres of crops grown specifically for the processed food products subject to this Order (e.g., only those grape acres grown for raisins and currently treated with pesticides subject to this Order), aggregate impacts are estimated at approximately $10 million. Further, impacts may be significantly less than $10 million to the extent that revocation of the section 409 food additive regulations pursuant to this Order does not affect grower pesticide use practices. Of the forecasted impacts, the Agency projects that impacts on grape growers in California may approach $13 million of these impacts in the aggregate. If grape growers substitute alternative pesticides for the entire grape acreage currently treated with benomyl or mancozeb, the aggregate impacts are estimated at approximately $13 million and are less than one percent of the total crop value for grapes. However, if grape growers substitute alternative pesticides for only those grape acres grown for raisins and currently treated with benomyl and mancozeb, the aggregate impacts are estimated at approximately $5 million and are less than 1 percent of the total crop value for raisins. Further, impacts may be significantly less than $5 million to the extent that revocation of the food additive regulations pursuant to this rule do not affect grape grower pesticide use practices. Given the projected range of impacts, the Agency has determined that this Order will not give rise to a major increase in costs of prices of any of the affected processed food products for consumers, growers, Federal, State, or local government agencies, or geographic regions. Further, the Agency has determined that there should be no

VOL 58 ISS 133 JL 14 1993 UMI

adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. As to imported commodities, EPA expects no significant impact as a result of revoking these food additive regulations. EPA has no evidence of significant usage of trifluralin, phosmet, benomyl, or mancozeb on affected imported food and feed commodities. Since there are no significant impacts expected on imported commodities, there should be no significant impact on prices, producers, consumers, and international trade.

B. Regulatory Flexibility Act

This Order has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.). The EPA has determined that this Order will not have a significant economic impact on a substantial number of small businesses, small governments or small organization given the impacts forecasted pursuant to the analysis conducted under section 3 of Executive Order 12291 as set forth above.

To the extent there is any impact, this rule primarily affects those farms that use pesticides subject to this rule and that are involved in the production of grapes, cotton, mint, tomatoes, or wheat. Based on conventional classifications of size for U.S. businesses, nearly all U.S. farms would be classified as small businesses. At worst, grape farms are expected to bear a slightly greater burden than those farms involved in the production of the other affected crops. The Agency has concluded that given the possible overestimate of the impact and the relatively small impact from the greatest estimate of possible impact that there will not be a significant economic impact on the small businesses affected by this Order. Even if the Agency determined that significant economic impacts would occur with respect to small businesses, there is no available alternative course of action to mitigate such impacts because this Order has been developed and implemented pursuant to an Order of the U.S. Court of Appeals for the Ninth Circuit. Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This order does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

VIII. References for Mancozeb, Benomyl, Phosmet, and Trifluralin

All references cited in section IV. of this document are available for viewing in the Office of Pesticide Program's Public Docket under control number 260053C. The docket is located in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, telephone: 703-305-5805. The docket is open from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. Copies of the references without an associated Master Record Identification (MRID) number are available to any person. Disclosure of the references identified by an MRID number are subject to the limitations imposed by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Copies of the references also are available by writing to: Freedom of Information Office (A-101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Disclosure of the references under the Freedom of Information Act are subject to the same limitations as outlined above.

References

Mancozeb

1. NTP Technical Report (No. 388) on the Perinatal Toxicity and Carcinogenicity Studies of Ethylene Thiourea in F/344 Rats and B6C3F1 Mice (Feed Studies) 1989. NIH Publication 90-2843.

2. Inness, J.R.M. et al., (1969). "Bioassay of Pesticides and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note'" *J. of the Nat. Cancer Inst.*, 42:1101. Ulland, B.M., et al., (1972) ; "Thyroid Cancer in Rats from Ethylene Thiourea Intake." *J. of the Nat. Cancer Inst.*, 49:583-84; Graham, S.L., K.J. Davis, W.H. Hansen and C.H. Graham (1975), "Effects of Prolonged ETU Ingestion on the Thyroid of the Rat," *Food Cosmet. Toxicology*, 13:493-99.

3. Combined Chronic Toxicity/ Oncogenicity Study with Mancozeb: Two-Year Feeding Study in Rats, Performed at du Pont's Haskell Laboratories, Newark, DE, Project #7859-001/Report No. 259-89, dated September 13, 1990, 2342 p.; EPA MRID # 41903601. "Oncogenicity Study — Mancozeb: 18 Month Dietary Oncogenicity Study in Mice," performed for the registrant by Tegeris Laboratories, Inc., Temple Hills, MD, Study No. 85051; Final Report dated June 4, 1991, 3207 p.; EPA MRID # 41981801.

4. See Memorandum, Hauswirth to Jacoby, "Peer Review of Ethylenethiourea" (Dec. 2, 1986); Memorandum, Mauer and Rinde to Lewis, "Carcinogenicity Peer Review of Mancozeb" (Nov. 19, 1992).

5. See Memorandum, Hauswirth to Jacoby, "Peer Review of Ethylenethiourea".(Dec. 2, 1986).

Benomyl

1. Wiechman, B.E.; Dilworth, T.; et al. "Long-Term Feeding Study with Methyl 1-(Butylcarbamoyl)-2-Benzimidazole-Carbamate, (INT 1991, Benomyl, Benlate) in Mice." (Unpublished study, Report No. 20-82 by Haskell Laboratory for E.I. du Pont De Nemours Co., Inc., Wilmington, DE; dated January 26, 1982), 1429 p., EPA MRID # 00096514.

2. Wood, C.K.; Schneider, P.W.; Trochimowicz, H.J. "Long-Term Feeding Study with 2-Benzimidazole-Carbamic Acid, Methyl Ester (MBC, INE-965) in Mice." (Unpublished study, Report No. 70-82 by Haskell Laboratory for E.I. du Pont De Nemours Co., Inc., Wilmington, DE; dated January 26, 1982), 890 p., EPA MRID # 00154676. Beems, R.: Til, H.; Vander Heijden C. (1976) "Carcinogenicity Study with Carbendazim (99% MBC) in Mice" - Summary Report No. R4936 of The Central Institute for Nutrition and Food Research, 67 p., EPA MRID # 00153420.

3. Schultz; Donaubauer (1982) (1984) Repeat-Dose (24 Months) Feeding Study for Determination of the Carcinogenic Effect of HOE 17411 OFAT204 (Carbendazim or MBC) in Mice: Report No. 643-82: of Document No. A24407. Translation from German of unpublished study prepared by Hoechst Akiengesellschaft, Parma Research Toxicology, 3848 p., EPA MRID # 00154679. Sherman, H. (1969) "Long-Term Feeding Study in Rats with 1-Butyl-Carbamyl-2-Benzimidaazolecarbamic Acid, Methyl Ester INT 1991; Benlate(R); Benomyl: Haskell Laboratory Report No. 232-69. (Unpublished study received September 14, 1969 under 352-354; submitted by E.I. du Pont de Nemours Co., Inc., Wilmington, DE; CDL:050427-Q, 184 p., EPA MRID # 00097284.

4. See Memorandum, from Quest to Jacoby, "Peer Review of Benomyl and MBC" (March 31, 1986).

Phosmet

1. Katz, A.C.; Sprague, G.L.; Frank, D.W.; Turnier, J.C.; Zwicker, G.M.; and Freudenthal, R.I. (1984) T-10719 Two-Year Dietary Oncogenicity Study in Mice with Imidan Technical-Final Report. (Unpublished study, Report No. T-10719 produced by Stauffer Chemical Co., Richmond, CA, Received August

30, 1984, 1071 p., EPA MRID # 00141659.

2. Lobdell, B.J.; Johnson, C.D. (1966) Imidan; Safety Evaluation by Two-Year Feeding Studies in the Rat and the Dog. (Unpublished study, including letter dates Jul 21, 1966 from C.D. Johnson to A.B. Lindquist, received Sept. 10, 1966 under 7F0523; prepared by Woolard Research Corp., submitted by Stauffer Chemical Co., Richmond CA; CDL:090622-B, 181 p., EPA MRID # 00076436.

3. See Memorandum, from Quest to LaRocca, "Peer Review of Phosmet (Imidan)" (Oct. 26, 1986).

Trifluralin

1. Emerson, J.L.; Pierce, E.C.; McGrath, J.P.; et al. (1980), "The Chronic Toxicity of Compound 36352 (Trifluralin) Given as a Component of the Diet to Fisher 244 Rats for Two Years: Studies R-87 and R-97." Unpublished study received Sept 18, 1980 under 1471-35; submitted by Elanco Products Co., Division of Eli Lilly and Co., Indianapolis, IN; CDL 243289-A, 243290), 882 p., EPA MRID # 00044337.

2. Emerson , J.L., Owen, N.V., McGrath, J.D., et al., (1980), The Chronic Toxicology of Compound 36352 (Trifluralin) Given as a Component of the Diet to the B6C3F1 Mouse for 24 Months: Studies M-9067 and M-9077. (Unpublished study received Sept 18, 1980 under 1471-35; submitted by Elanco Products Co., Division of Eli Lilly and Co., Indianapolis, IN; CDL 243292; 243293, 1079 p., EPA MRID # 00044338. Emerson, J.L. and R.C. Anderson (1966), "Metabolism of Trifluralin in the Rat and Dog," *Tox. and Appl. Pharm.*, 9(1):84-97. National Cancer Institute (1978) Bioassay of Trifluralin for Possible Carcinogenicity, NCI Carcinogenesis Technical Report Series No. 34. Suter, P. (1986) Oncogenicity Study with Trifluralin Active Ingredient Technical (HOE 38474 0 H AT20) in Mice; Project No. 008853. Unpublished study prepared by Research Consulting Co. AG. 6478 p., EPA MRID # 00158935.

3. See Memorandum, from Jaeger to Addressees, "Peer Review of Trifluralin" (April 11, 1986).

List of Subjects in 40 CFR Part 185

Administrative practice and procedure, Food additives, Pesticides and pests, Reporting and recordkeeping requiremenents

Dated: July 3, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C 348.

§ 185.350 [Removed]

2. By removing § 185.350 *Benomyl.*

§ 185.3950 [Removed]

3. By removing § 185.3950 *N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog.*

§ 185.5900 [Removed]

4. By removing § 185.5900 *Trifluralin.*

§ 185.6300 [Amended]

5. By amending § 185.6300 *Zinc ion and maneb coordination product* in the list at the end of the section by removing the first entry for raisins and by removing the words ", and wheat" in the second entry for bran.

[FR Doc. 93–16426 Filed 7–13–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 186

[PP 9F3739 and FAP 1H5604/R1190; FRL–4579–1]

RIN 2070–AB78

Pesticide Tolerance and Animal Feed Additive Regulation for Fluoride Compounds; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error that appeared in a regulation regarding fluorine compounds in processed potato waste.

EFFECTIVE DATE: This correction is effective July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Forrest, Product Manager (PM 14), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6600.

SUPPLEMENTARY INFORMATION: In FR Doc. 93–10578, appearing in the **Federal Register** of May 5, 1993, the following correction is made at page 26689 in the third column: In the table entry to § 186.3375 *Fluorine compounds* correct "Potato waste, process (wet or dry)" to read "Potato waste, processed (wet or dry)."

Dated: June 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–16546 Filed 7–13–93; 8:45 a.m.]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 87–45; FCC 93–285]

Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Oversees Communications Facilities Between or Among U.S. Carriers, Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This action denies a petition for reconsideration and affirms the Commission's decision to change the way conveyances of capital interests in overseas facilities between or among U.S. carriers are priced. This action also eliminates the provision that facilities conveyed before their ready-for-service date would continue to be priced at net-book cost. In the Report and Order, the Commission replaced the net-book cost standard with market-based prices set by negotiations between the buyer and seller. The new pricing policy applies to all transactions which are completed after the effective date of the Report and Order. The intended effect of the action is to give the original owners/investors of these facilities the opportunity to receive fair compensation for incurring the risk of building the facilities. Also, this action is necessary to promote increased competition in the overseas facilities market by encouraging construction of new facilities.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Suzan Balk Friedman, Attorney/Advisor, International Policy Division, Common Carrier Bureau (202) 632–7265.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 87–45, adopted June 1, 1993, and released June 22, 1993.

VOL 58 ISS 133 JL 14 1993 UMI

The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Order on Reconsideration

1. On July 22, 1992, the Commission issued a Report and Order in CC Docket No. 87–45 which concluded that the net-book cost standard should be replaced with market-based pricing. The Commission determined that the net-book cost standard no longer promoted the efficient functioning of the international facilities market in an increasingly competitive environment. In addition, the Commission found that the standard is inappropriate for carriers whose rates are now set by price caps rather than rate of return regulation. The new pricing policy was effective for all conveyances which took place after the effective date of the order. 57 FR 33,275 (July 28, 1992), correction, 57 FR 43,406 (September 21, 1992).

2. In the reconsideration order, the Commission affirmed its decision to replace the net-book cost standard with negotiated, market-based prices. The Commission found that during the time between its NPRM and Report and Order, the Commission has not taken any actions which might supersede or undermine the purpose of the proposed rule. In addition, the Commission found the sufficient competition exists in the Caribbean region for the provision of overseas facilities and therefore, that region should not be exempt from the new pricing policy. Finally, the Commission clarified that the date a valid contract is consummated for the conveyance of facilities determines which pricing approach applies to the transaction. In the Report and Order, the Commission stated that conveyances made before a facility's ready for service date would be prices at the net-book cost standard, but on reconsideration, it eliminated the ready-for-service date as a criterion for determining prices. The Commission determined that facility owners would have too much incentive to delay transferring facilities until after the ready-for-service date in order to receive the higher, market-based price.

Final Regulatory Flexibility Analysis

3. This order on reconsideration does not change the Final Regulatory Flexibility Analysis contained in the Report and Order.

4. Accordingly, it is ordered that the petition for reconsideration filed by Virgin Island Tele-Com, Inc. is denied.

5. It is Further ordered that the Report and Order in CC Docket No. 87–45 is modified as provided in paras. 9 and 10 of the Report and Order, effective 30 days after publication of this order on reconsideration in the **Federal Register**.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–16640 Filed 7–13–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement (DFARS); revision of authority citation

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is revising the authority citations for 48 CFR Chapter 2 to update the authority for issuance of the Defense FAR Supplement. In addition, the DAR Council is adding the new authority citation to Appendix G as it was inadvertently omitted.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Claudia Naugle at (703) 697–7266.

List of Subjects for 48 CFR Chapter 2

Government procurement.

Accordingly, under the authority of 41 U.S.C. 421 et seq., the Defense FAR Supplement authority citation for 48 CFR parts 201 through 253 and appendices A through F of Chapter 2 is revised and a new authority citation for appendix G is added to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 93–16655 Filed 7–13–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

48 CFR Part 935

Acquisition Regulation; Research Opportunity Announcements

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: DOE today adopts a final rule which amends the Department of Energy Acquisition Regulation (DEAR) to change certain internal DOE procedures applicable to its Research Opportunity Announcement (ROA) solicitation mechanism. These changes are aimed at streamlining various aspects of the solicitation, evaluation, and award processes for both the DOE offices administering an ROA process and offerors submitting proposals in response to an ROA. This final rule is issued subsequent to a Notice of Proposed Rulemaking (NOPR) published in the **Federal Register** (56 FR 56621) on November 6, 1991.

EFFECTIVE DATE: This final rule will be effective on August 13, 1993.

FOR FURTHER INFORMATION CONTACT:

Edward Simpson, Office of Policy (PR–121), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, Washington, DC 20585, (202) 586–8246

Mary Ann Masterson, Office of the Assistant General Counsel for Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526

SUPPLEMENTARY INFORMATION:

I. Section by Section Analysis.
II. Public Comments.
III. Procedural Requirements.
A. Regulatory Review.
B. Review Under Executive Order 12778.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.
E. Review Under Executive Order 12612.
F. National Environmental Policy Act.

I. Section by Section Analysis

On August 15, 1990, DOE published a final rule in the **Federal Register** (55 FR 33311) which amended the DEAR by, among other things, adding a new subpart 935.016 to provide specific regulatory coverage on the use of ROAs. ROAs are DOE's designation for its broad agency announcement solicitations. That final rule supplemented the Federal Acquisition Regulation (FAR) coverage of broad agency announcements and implemented DOE's policies and procedures regarding the solicitation, evaluation, and selection of basic and applied research proposals by DOE using the ROA solicitation mechanism.

The final rule published today amends subpart 935.016 by changing internal DOE procedures concerning the use of ROAs. These changes are intended to improve the ROA process by clarifying certain existing regulatory language, and by providing the DOE program office using the ROA

solicitation greater control and flexibility over its activities. A summary of the significant changes is provided below.

Item I. Subsection 935.016–4(d) is being eliminated because the requirements that evaluation plans are developed prior to release of the solicitation and that such plans correspond to the evaluation criteria are wellfounded in Government acquisition policies and existing FAR coverage.

Item II. Subsection 935.016–4(g) is being amended to delete the reference to the Contracting Officer. The coverage relating to the synopsis of broad agency announcements at FAR 35.016(c) and of general synopsis requirements for solicitations at FAR 5.101 is applicable.

Item III. Subsection 935.016–5(a) is being changed to remove the requirement that proposal information be segregated into three discrete sections of the proposal.

Item IV. Subsection 935.016–5(b) is being changed to add a separate evaluation element for business organization to which the offeror must respond, if the offeror represents an educational or other nonprofit organization. This change is added to simplify the proposal information requirement on those educational and nonprofit organizations. The change is effected through the addition of a new paragraph (6) to the subsection. For-profit and not-for-profit organizations will continue to provide the information required by subsection 935.016–5(b)(5).

Item V. Subsection 935.016–5(c) is being changed to allow for the initial submission of cost information from an offeror in the form of either a cost proposal or a Standard Form (SF) 1411. This change recognizes an alternative to the submission of an SF–1411 as part of the initial proposal. The regulatory requirement for submission of an SF–1411 will still be satisfied at the time the awarding contracting office notifies the offeror of its selection (see 935.016–9(c)), if it has not been previously provided.

Item VI. Subsection 935.016–6(a) is being revised by adding language to clarify that program offices administering the ROA process may use the resources of the cognizant Contracting Office for receiving proposals.

Item VII. Subsection 935.016–6(c) is being changed to eliminate the reference to FAR 15.412, regarding late proposals, to improve the clarity and understanding of the language.

Item VIII. Subsection 935.016–7(a) is being revised to recognize that it is sufficient for the cognizant program office to oversee the ROA administration process and ensure that the duties set out in the subsection are performed in a satisfactory manner, consistent with the regulation.

Item IX. Subsection 935.016–7(d)(5) is being revised to clarify that both individual reviewers and review groups are permitted under 10 CFR 600.16(d), and are acceptable for purposes of satisfying the requirements for scientific and/or peer reviewers under the ROA process.

Item X. Subsection 935.016–7(f) is being changed to delete the first sentence of the subsection. The requirement of FAR 35.016(d) applies.

Item XI. Subsection 935.016–7(i) is being revised to delete paragraph (3). That an offeror must be able to submit a proposal that is responsive to the solicitation is already required by the FAR.

Item XII. Subsection 935.016–7(j) is being changed to require that only the significant findings of the scientific and peer reviewers be included in the consolidated written report concerning a proposal.

Item XIII. Subsection 935.016–8(c)(4) is being changed to recognize that the Contracting Officer may authorize the incurrence of pre-contract costs by an offeror.

II. Public Comments

Interested persons were invited to participate in the rulemaking process by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in the NOPR published in the **Federal Register** (56 FR 56621) on November 6, 1991. Based on that November 6, 1991, publication date, the public comment period closed on December 6, 1991, a period of thirty-one (31) days. During that public comment period, no public comments were received by DOE.

III. Procedural Requirements

A. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this final rule to the Director for appropriate review. The Director has completed his review.

B. Review Under Executive Order 12778

Section 2 of the Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's final rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This final rule merely changes existing policies and procedures internal to DOE governing the use of DOE's ROAs. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

VOL 58 ISS 133 JL 14 1993 UMI

F. National Environmental Policy Act (NEPA).

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under NEPA of 1969 (42 U.S.C. 4321 *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the DOE Guidelines (40 CFR Part 1021). Therefore, this final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 935

Government contracts, Government procurement.

Issued in Washington, DC on July 1, 1993.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

The regulations in 48 CFR Part 935 are amended as set forth below:

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for part 935 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Section 935.016–4 is amended by removing the existing paragraph (d); by redesignating paragraphs (e) through (g) as paragraphs (d) through (f), respectively; and, by revising the newly redesignated paragraph (f) to read as follows:

935.016–4 Issuance of Research Opportunity Announcements.

* * * * *

(f) The full text of the ROA will be published in the **Federal Register** and its availability announced in the "Commerce Business Daily" in accordance with FAR 35.016(c). Information concerning the availability of the ROA may also be published in scientific, technical, or engineering publications. The full text of any amendments to the ROA shall be published in the **Federal Register** and concurrently announced in the "Commerce Business Daily."

3. Section 935.016–5 is amended by: revising the second sentence of the introductory paragraph; removing the words "Section I:," "Section II:," and "Section III:" from paragraphs (a) introductory test, (b) introductory text, and (c) introductory text, respectively; revising paragraph (a)(3); revising paragraph (b)(5); adding a new paragraph (b)(6); and, revising paragraph (c)(1) to read as follows:

935.016–5 Content of proposal submissions.

* * * Each proposal will contain, at a minimum, the following information:

(a) * * *

(3) The date of submission of the proposal and the offer acceptance period, if so conditioned;

* * * * *

(b) * * *

(5) Where the offeror is either a for-profit or a not-for-profit organization, a description of the structure and lines of authority (both technical and administrative) of the offeror's organization and the relation thereto to the proposed research effort.

(6) Where the offeror is either an educational institution or other nonprofit organization, the identification of key technical and business personnel responsible for the preparation and approval of the proposal as well as the proposed research effort.

* * * * *

(c) * * *

(1) A cost proposal or a fully executed Standard Form (SF) 1411;

* * * * *

4. Section 935.016–6 is amended by adding a sentence to the end of paragraph (a); and, by revising paragraph (c) to read as follows:

935.016–6 Receipt and handling of proposals and late proposal submissions.

(a) * * * The cognizant DOE program office, in any event, may elect to have proposals received by the cognizant contracting activity.

* * * * *

(c) Proposals received for evaluation subsequent to the close of the proposal submission period will not be considered under the ROA. However, a proposal may be considered under a succeeding ROA provided that the proposal falls within the scope of such ROA, and that the offeror affirms, in writing, that it desires its proposal evaluated under the succeeding ROA.

* * * * *

5. Section 935.016–7 is amended by revising paragraphs (a)(1), (a)(2), and (a)(4); by revising the second sentence in the undesignated paragraph following paragraph (d)(5); by removing the first sentence of paragraph (f); by removing the word "and" at the end of paragraph (i)(2) and replacing the semicolon with a period; by removing paragraph (i)(3); and by revising the first sentence in paragraph (j) to read as follows:

935.016–7 Evaluation of proposals.

(a) * * *

(1) Serve as the primary point of contact on matters concerning the ROA;

(2) Ensure that evaluations are based directly on the evaluation criteria set forth in the ROA;

* * * * *

(4) Oversee or perform the process for selection of scientific or peer reviewers and the evaluations of proposals;

* * * * *

(d) * * *

(5) * * * In instances where the cognizant program office has established a procedure for the review of financial assistance applications using a published merit review system (see 10 CFR 600.16(d)), the types of reviewers and review groups allowed by 10 CFR 600.16(d) may be used for the purposes of satisfying the requirements for scientific and/or peer review under this subpart, subject to any other requirements stated herein.

* * * * *

(j) For each proposal, a consolidated written report shall be prepared and shall include the significant findings of all reviewers. * * *

6. Section 935.016–8 is amended by revising paragraph (c)(4) and removing the undesignated paragraph immediately following it to read as follows:

935.016–8 Selection of proposals.

* * * * *

(c) * * *

(4) That the offeror shall not begin performance of the effort, or any part thereof, until such time as a contract has been awarded, or unless otherwise authorized by the contracting officer. Notices to unsuccessful offerors should provide the general basis for elimination of that offeror's proposal from further competition.

* * * * *

[FR Doc. 93–16156 Filed 7–13–93; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 921107–3069; I.D. 070893B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for northern rockfish in the Central Regulatory area, statistical areas 62 and 63, in the Gulf of Alaska (GOA). This action is necessary to prevent

exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Central Regulatory area was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 4,720 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), established, in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for northern rockfish of 4,220 mt., with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory area, effective from 12 noon, A.l.t., July 9, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation of Management, National Marine Fisheries Service.

[FR Doc. 93–16638 Filed 7–9–93; 11:02 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 921107–3068; I.D. 070993A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 11, 1993, through 12 noon, A.l.t., October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 61 is 5,613 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 third quarterly allowance of pollock TAC in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 5,113 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 61, effective from 12 noon, A.l.t., July 11, 1993, through 12 noon, A.l.t., October 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16639 Filed 7–9–93; 11:02 am]

BILLING CODE 3510-22-M

VOL
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Proposed Rules

Federal Register
Vol. 58, No. 133
Wednesday, July 14, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

[Docket No. PY-93-003]

RIN 0581-AA72

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and overtime, holiday, and appeal services under mandatory egg products inspection. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Send written comments, in duplicate, to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. PY-93-003.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202-720-3271.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein. It (i) will have an annual effect on the economy of less than $100 million; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

The information collection requirements that appear in the sections to be amended by the proposed rule have been previously approved by the Office of Management and Budget and assigned OMB Control Numbers under the Paperwork Reduction Act of 1980 as follows: § 56.52(a)(4)—No. 0581-0128; § 59.126 and § 59.128(a)—No. 0581-0113; and § 70.77(a)(4)—No. 0581-0127.

Background and Proposed Changes

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection and voluntary egg, poultry, and rabbit grading. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of overtime, holiday, and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. Grading and inspection fees were last increased effective November 1, 1992.

Operating costs are increasing. Federal employees' salaries increased by 3.7 percent in January 1993. Also, the cost of life insurance, health benefits, and Medicare increased by about 5 percent, Federal employee retirement fringe costs increased 7 percent, and salaries and fringe benefits of federally licensed State employees increased by about 6 percent. Additionally, for the first time, the costs of standardization activities and Office of the General Counsel assistance were added to the costs of providing grading and inspection services.

Resident fees would be increased about 6 percent. Resident fees cover Federal and State salaries, fringe benefits, relief, and other service-related costs.

Administrative service charges apply to the costs of supervision and other overhead and administrative costs and are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1992, these unit rates were established at $0.030 per case of shell eggs and $0.00025 per pound of poultry, with a minimum of $175 and maximum of $1,750 per monthly billing period for each official plant. The charges per case of shell eggs and pound of poultry would be increased to $0.034 and $0.00029, respectively, with a monthly minimum charge of $200 and a maximum of $2,000.

The hourly rate for nonresident voluntary grading and inspection service would be increased from $30.12 to $31.44. The hourly rate for such services performed on Saturdays, Sundays, or holidays would be increased from $30.52 to $32.88. The hourly rate for voluntary appeal gradings or inspections would be increased from $25.44 to $26.64. The hourly rates for mandatory egg products inspection services would be increased from $22.72 to $23.80 for overtime inspection and from $16.04 to $16.24 for holiday inspection. The hourly rate would also increase from $25.44 to

$26.64 for certain mandatory appeal inspections.

Administrative charges for resident voluntary rabbit grading, resident voluntary egg products inspection, and nonresident voluntary continuous poultry and egg grading will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per monthly billing period for these programs would be increased from $175 to $200 per official plant.

List of Subjects

7 CFR Parts 55 and 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that title 7, Code of Federal Regulations, parts 55, 56, 59, and 70 be amended as follows.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $31.44 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $32.88 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of $26.64 for time spent performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

3. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $200 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

4. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

5. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $31.44 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $32.88 per hour. Information on legal holidays is available from the Supervisor.

6. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $26.64 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

7. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.034, except that the minimum charge per billing period shall be $200 and the maximum charge shall be $2,000. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $200 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

9. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

10. Section 59.126 is revised to read as follows:

§ 59.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of $23.80 to cover the cost thereof.

VOL 58 ISS 133 JL 14 1993 UMI

11. Section 59.128 is amended by revising paragraph (a) to read as follows:

§ 59.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service therefor at an hourly rate of $16.24 to cover the cost thereof.

* * * * *

12. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $26.64, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

13. The authority citation for part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

14. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $31.44 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $32.88 per hour. Information on legal holidays is available from the Supervisor.

15. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $26.64 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

16. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $200 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

17. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) *For poultry grading:* An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00029, except that the minimum charge per billing period shall be $200 and the maximum charge shall be $2,000. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) *For rabbit grading:* An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $200 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: July 6, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16614 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–02–P

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Sanctions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to issue a new subpart R in its General Administrative Regulations. The intent of this subpart is to: (1) Expand the range of sanctions available to address fraud, misrepresentation, false claims, and other violations of contracts for insurance and contracts and agreements to provide insurance services; and (2) prescribe the terms and conditions under which persons and other entities may be suspended or debarred from contracting with FCIC (currently contained in 7 CFR part 400, subpart E). This rule also serves to combine the current provisions governing suspension and debarment procedures with other forms of sanctions available to FCIC.

COMMENT DATE: Written comments on this proposed rule must be submitted not later than August 13, 1993 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Mari Dunleavy, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1997.

Kathleen Connelly, Acting Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant

adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Acting Manager certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons, nor will it have a significant economic effect on a substantial number of small entities. This action imposes no additional burden to the insured farmer. Further, this action requires of the reinsured company or sales and service contractor what is considered normal in the ordinary conduct of business. This proposed rule does not require any action on the part of any individual or entity in compliance with the program provisions. This action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 1, subpart H must be exhausted before judicial action may be brought for actions taken under proceedings for the imposition of civil penalties or under the Program Fraud Civil Remedies sections of these regulations.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

The proposed subpart R adds civil penalties provisions under the Federal Crop Insurance Act, as an additional sanction, and incorporates provisions for implementing departmental regulations for Debarment and Suspension and the Program Fraud Civil Remedies Act.

FCIC has established a system of sanctions to prevent waste, fraud, and abuse within its programs and insurance delivery systems, and to ensure maximum compliance with the terms and purposes of its issuances. The proposed new subpart R establishes the sanctions system and prescribes the manner of procedures under which the sanctions system will operate.

FCIC intends to remove and reserve 7 CFR part 400, subpart E concurrent with the publication of the final rule implementing 7 CFR part 400, subpart R.

All written comment received pursuant to this notice will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington DC.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Sanctions.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to issue a new Subpart R—Sanctions to 7 CFR part 400, General Administrative Regulations, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart R—Sanctions

Sec.

400.451 General.
400.452 Definitions.
400.453 [Reserved]
400.454 Civil penalties.
400.455 Government-wide debarment and suspension (procurement).
400.456 Government-wide debarment and suspension (nonprocurement).
400.457 Program fraud civil remedies.
400.458
[illegible]
400.499 [Reserved.]
400.500 OMB control numbers.

Authority: 7 U.S.C. 1506, 1516.

§ 400.451 General.

(a) The Federal Crop Insurance Corporation (FCIC) has implemented a system of sanctions to prevent waste, fraud, and abuse within its programs and insurance delivery systems. Such sanctions include civil penalties and disqualification from the crop insurance program under the Federal Crop Insurance Act, 7 U.S.C. 1506(m); government-wide debarment and suspension; and civil penalties and assessments under the Program Fraud Civil Remedies, Act, 31 U.S.C. 3801–3812.

(b) The provisions of this subpart apply to all contracts and agreements to which FCIC is a party unless otherwise specifically provided for in this subpart, including those in which FCIC provides administrative expense reimbursement, premium subsidy, or reinsurance benefits.

(c) The provisions of this subpart are in addition to any other sanctions specifically provided in applicable contracts and agreements.

(d) The regulations are applicable to any act or omission by any affected party after the effective date of this part.

§ 400.452 Definitions.

For purposes of this subpart, a person means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

§ 400.453 [Reserved]

§ 400.454 Civil penalties.

(a) Any person who willfully and intentionally provides any false or inaccurate information to FCIC or to any insurer reinsured by the FCIC with respect to an insurance plan or policy may be subject to a civil fine of up to $10,000 for each violation and disqualification from the crop insurance program for a period not to exceed 10 years.

(b) FCIC may take the payment of a civil penalty under this section a prior condition for the issuance, renewal, restoration, or continuing validity of any crop insurance policy or other approval.

(c) FCIC may compromise, modify, settle, collect, or remit with or without conditions, any civil penalty which is subject to imposition or which has been

VOL 58 ISS 133 JL 14 1993 UMI

imposed under this section whenever it considers it to be appropriate or advisable.

(d) If a director, officer, or agent of a corporation provides false or inaccurate information, they may be separately subject to the fine specified in paragraph (a) of this section without regard to any penalties to which the corporation may be subject.

(e) The liability of any person for any penalty under this subpart or any related charges arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other statute or provision of law.

(f) Proceedings under this § 400.454 will be in accordance with subpart H of 7 CFR part 1, "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes," by which the Manager, FCIC, shall initiate proceedings by filing a complaint with the Hearing Clerk, United States Department of Agriculture.

§ 400.455 Government Wide Debarment and Suspension (Procurement).

(a) This section prescribes the terms and conditions under which persons or business entities may be debarred or suspended by FCIC from contracting with the Federal Government.

(b) This section incorporates 48 CFR 9.4 and 409.4 which shall be applicable to all FCIC debarment and suspension proceedings undertaken pursuant to the Federal Acquisition Regulations, except that the authority to debar or suspend is reserved to the Manager, FCIC, or the Manager's designee.

(c) Any individual or entity suspended or debarred under the provisions of 48 CFR 9.4 will not be eligible to contract with FCIC or be employed by or contract with any insurance company that sells or adjusts FCIC's crop insurance contracts or which company's crop insurance contracts are reinsured by FCIC. FCIC may waive this provision if it is satisfied that the insurance company has taken sufficient action to insure that the suspended or debarred entity or individual will not be involved, in any way, with FCIC or FCIC reinsured crop insurance contracts.

§ 400.456 Government Wide Debarment and Suspension (Nonprocurement).

(a) This section prescribes the terms and conditions under which individuals or entities may be debarred or suspended by FCIC from participation in Federal assistance and benefits under Federal programs and activities.

(b) This section incorporates 7 CFR part 3017 which shall be applicable to all FCIC debarment and suspension proceedings other than those undertaken pursuant to the Federal Acquisition Regulations.

(c) Proceedings under this section are not applicable to determinations of eligibility under the provisions of the crop insurance contracts or determinations to be made under 7 CFR 400.454.

(d) The Manager, FCIC, shall be the debarring and suspending official for all debarment or suspension proceedings undertaken by FCIC under the provisions of 7 CFR part 3017.

§ 400.457 Program fraud civil remedies.

(a) This section incorporates the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812, which provides for civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents.

(b) Proceedings under this section 400.457 will be in accordance with subpart K of 7 CFR Part 1, "Implementation of the Program Fraud Civil Remedies Act of 1986."

(c) The Director, Appeals and Litigation Staff, or the Director's designee, is authorized to serve as Agency Fraud Claims Officer for the purpose of implementing this section.

§ 400.458 to 400.499 [Reserved]

§ 400.500 OMB Control Numbers

Office of Management and Budget (OMB) control numbers are contained in subpart H of this part 400.

Done in Washington, DC, on July 8, 1993.

Robert Fenton,

Assistant Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–16610 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–08–M

Commodity Credit Corporation

7 CFR Part 1468

RIN 0560–AC65

Support Prices for Shorn Wool, Wool on Unshorn Lambs, and Mohair for the 1993 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The National Wool Act, as amended (Wool Act), requires the Secretary of Agriculture to support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. It has been determined that the prices of shorn wool, wool on unshorn lambs, and mohair will be supported for the 1991 to 1995 marketing years by means of payments to producers. This proposed rule would amend the regulations to set forth the price support levels for shorn wool, wool on unshorn lambs, and mohair for the 1993 marketing year.

DATES: Comments must be received on or before August 13, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3090–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Fibers and Rice Analysis Division, ASCS, USDA, room 3756–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been designated as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: National Wool Act Payments—10.059.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Information Collection Requirements

The amendments to 7 CFR part 1468 set forth in this proposed rule will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

Section 703(a) of the Wool Act provides that the prices of wool and mohair to producers shall be supported by means of loans, purchases, payments, or other operations. It has been determined that the prices of shorn wool, wool on unshorn lambs, and mohair will be supported for the 1991 to 1995 marketing years by means of payments to producers.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1991 through 1995 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (i) The average of the parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Based on current reported parity indices, the calculation for the 1993 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1989–1991:

1989 ..	1220
1990 ..	1265
1991 ..	1299
3784 divided by 3	1261.3
(2) Average parity index, 1958–1960	297.3
(3) Ratio of 1261.3 to 297.3	4.2425
(4) 4.2425 x 62 cents/lb. (1965 support price)	$2.6304
(5) 77.5% x $2.6304	$2.0386
(6) $2.0386 rounded to nearest cent	$2.04

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, which is determined to maintain normal marketing practices for pulled wool, and which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported. In order to provide such support on pulled wool, CCC has determined that it will continue to provide such support through means of payments on wool on unshorn lambs.

The Wool Act provides that, to the extent practicable, support price levels for wool and mohair shall be established and announced sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following methods for calculating the support prices for wool on unshorn lambs and for mohair for the 1993 marketing year are being proposed.

A. *Support Price—Wool on Unshorn Lambs.* The support price for wool on unshorn lambs for the 1993 marketing year cannot be determined until the 1993 national average market price for shorn wool is calculated. This will occur by April 1994. It is proposed that the method for calculating the support price for wool on unshorn lambs shall be as follows: Once the national average market price for shorn wool is determined, the support price for wool on unshorn lambs will be determined by taking 80 percent of the difference between the 1993 support price for shorn wool and the 1993 national average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). Historically, this formula has provided equitable support for wool on unshorn lambs relative to shorn wool and has helped to maintain normal marketing practices for pulled wool.

B. *Support Price—Mohair.* It is proposed that the support price for mohair for the 1993 marketing year shall be determined based on the October 1992 parity prices for mohair and shorn wool. The following percentages of parity at which shorn wool is supported are being considered in the final computation of the mohair support price: 85, 100 and 115 percent.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the proposed program support levels announced in this rule may be recalculated to comply with this Act.

Accordingly, comments are requested with respect to the price support calculation methods for wool on unshorn lambs and mohair. The final determination will be set forth at 7 CFR part 1468.

List of Subjects in 7 CFR Part 1468

Assistance grant programs—Agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool.

Accordingly, it is proposed that 7 CFR part 1468 be amended as follows:

PART 1468—WOOL AND MOHAIR

1. The authority citation for 7 CFR part 1468 continues to read as follows:

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

2. Section 1468.4 is amended by revising paragraph (b) to read as follows:

Sec. 1468.4 Eligibility for payments.

* * * * *

(b) (1) The shorn wool support price for the 1991 through 1995 marketing years shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of:

(i) The average of the parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to

(ii) The average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent. The shorn wool support price wool shall be as follows:

VOL 58 ISS 133 JL 14 1993 UMI

(A) 1991—$1.88 per pound.
(B) 1992—$1.97 per pound.
(C) 1993—$2.04 per pound.

(2) The payment rate for wool on unshorn lambs for the 1991 through 1995 marketing years shall be 80 percent of the difference between the national average price received by producers for shorn wool during a specified marketing year and the shorn wool support price multiplied by 5 (the average grease wool yield per hundredweight of live, unshorn lambs marketed). The payment rate for wool on unshorn lambs shall be as follows:

(i) 1991—$5.32 per hundredweight.
(ii) 1992—$4.92 per hundredweight.
(iii) 1993—an amount equal to 80 percent of the difference between the national average price received by producers for shorn wool for the 1993 marketing year and the 1993 shorn wool support price, multiplied by 5.

(3) The mohair support price for the 1991 through 1995 marketing years shall be established at such level, in relationship to the support price for shorn wool, which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. The mohair support price shall be set within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported, as determined and announced by CCC. The support price for mohair shall be as follows:

(i) 1991—$4.448 per pound.
(ii) 1992—$4.613 per pound.
(iii) 1993—an amount within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported, as determined and announced by CCC.

* * * * *

Signed at Washington, DC on July 1, 1993

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–16612 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket 91–165–1]

RIN 0579–AA56

Harry S Truman Animal Import Center (HSTAIC); Exclusive Use

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing use of the Harry S Truman Animal Import Center (HSTAIC): (1) To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; (2) to change the application and lottery dates; (3) to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; (4) to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to the Animal and Plant Health Inspection Service; and (5) to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. If these changes are adopted, they would first apply to the lottery to be held in 1994 for importations during calendar year 1995, then to all subsequent lotteries. These changes appear to be necessary to discourage frivolous applications, to help ensure that there is adequate time to assemble necessary information prior to each lottery, and to minimize financial losses incurred by the Animal and Plant Health Inspection Service.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91–165–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Staff Veterinarian, Import Export Animals Staff, VS, APHIS, room 767, Federal Building, USDA, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, subparts D and E, govern the importation of animals into the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida. Under the current regulations, the Animal and Plant Health Inspection Service (APHIS) holds an annual lottery to allocate space in HSTAIC for each calendar year. To participate in the lottery, prospective importers must submit an application for each importation. Applications must be accompanied by a letter of credit for $50,000.

Animals in an importation may belong to different persons. However, APHIS deals exclusively with the importer in whose name the application is submitted. That individual is solely responsible for all costs (except capital expenditures at HSTAIC) incurred in qualifying the animal for importation through HSTAIC, and that individual must sign a "cooperative-service agreement" with APHIS before the importation can proceed. The individual has 30 days from receipt of the cooperative-service agreement to sign and return it; otherwise, the space at HSTAIC is offered to the next person on the lottery list. If HSTAIC is not in use by another importer when the cooperative-service agreement is sent out, APHIS bears the cost of preparing and maintaining HSTAIC in readiness for the next importation during this 30-day period.

All procedures and requirements relating to HSTAIC can be found in §§ 92.430 (for ruminants) and 92.522 (for swine) (referred to below as the regulations).

Application and Lottery Dates

Sections 92.430 and 92.522 provide that, to participate in the lottery, an importer must apply during the first 2 weeks of September of the year prior to the year in which he or she wishes to use the facility. For example, if an importer wished to import animals during 1993, he or she had to apply between September 1–14, 1992, for exclusive use. The regulations also state that the lottery to allocate space at HSTAIC will be held during the first week of October of the same year the applications are received. Therefore, using the same example, for applications received in September 1992, a lottery was held the first week of October 1992.

We are proposing to amend the regulations to require that importers apply during the first two weeks of October of the year prior to the prospective importation. We are also proposing to amend the regulations to provide that the lottery be held during the first week of December of the year the applications are received.

This change would allow APHIS additional time to estimate, for each applicant, the cost of their intended importation. It is important that the

estimate be accurate. Each applicant uses it as the basis for deciding whether to participate in the lottery.

Deposit Prior to Lottery

The regulations (see §§ 92.430(b)(1)(ii) and 92.522(b)(1)(ii)) currently require that applicants deposit, in the form of an irrevocable letter of credit, $50,000 at the time they apply. We are proposing to amend the regulations to require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, to be received by APHIS prior to the lottery.

It appears, based on experience, that our current regulations make it disproportionately difficult for small importers to apply, as compared to large importers, and encourage multiple applications from large importers. This decreases opportunities for small importers to use HSTAIC.

Large importers, because of their stronger credit and deposit relationship with banks, can obtain multiple letters of credit more easily than can small importers. Some can obtain letters of credit without putting down any money of their own. Others must pay a fee, but it is often less than that paid by small businesses and the "per letter" cost drops if they obtain more than one letter of credit. This situation encourages large importers to submit multiple applications to use HSTAIC. On the other hand, small importers must often pay more for letters of credit, and are less able to obtain multiple letters of credit. Small businesses usually must put up their own money when applying to use HSTAIC. This situation discourages small importers from submitting multiple applications to use HSTAIC.

We propose to require a deposit in the form of a certified check or money order, payable in U.S. funds, for each application. We believe such a deposit would discourage multiple and frivolous applications. This would help make the HSTAIC lottery fairer by putting all applicants on a similar footing. The deposit would have to be received by APHIS at least 7 calendar days prior to the date of the lottery, or the applicant would not be allowed to participate. Requiring submission 7 days prior to the date of the lottery would provide us with the administrative time necessary to verify that all payments are negotiable and to register all qualified applicants in the lottery.

30-Day Decision Period; Amount of Deposit

As the regulations are now written, APHIS must prepare and maintain HSTAIC in readiness for an importation during the 30-day period the lottery "winner" has to sign a cooperative-service agreement, provided HSTAIC is not in use by another importer when the cooperative agreement is sent out. The regulations do not currently require the importer who has received the cooperative-service agreement to pay for the preparation and maintenance of HSTAIC during this period.

Unfortunately, some applicants are economically motivated to delay use of HSTAIC. For example, an applicant who owns animals already in this country, may, in order to increase their value, try to prevent similar animals from being imported. In addition, as explained above, because many applicants pay little or nothing for the letter of credit accompanying each application, and, because APHIS does not charge for maintaining HSTAIC during the decision period, there are no disincentives to delays.

For each application an entity submits, that entity effectively receives one opportunity to use HSTAIC. The following situation can occur: In the lottery, an entity that has submitted multiple applications receives the first and second opportunities to use HSTAIC. APHIS sends the entity a cooperative-service agreement. The entity waits the full 30 days, then decides *not* to use the facility. APHIS sends a cooperative-service agreement to the next applicant in line. Of course, that applicant is the same entity. Therefore, that entity receives a second 30-day period in which to decide whether to accept the agreement. Until the entity decides, HSTAIC cannot be used or offered to anyone else to use. Depending on how many applications are received, the order established by the lottery, and when and how each applicant responds when offered an opportunity to use the facility, HSTAIC can remain unused for many months. Other applicants, who may be willing and able to proceed, can be delayed or prevented from using HSTAIC. In addition, APHIS must continue to maintain the facility in readiness for an importation.

This is unfair to other applicants and costly for APHIS. Therefore, to ensure that APHIS is reimbursed for the cost of preparing and maintaining HSTAIC, we are proposing that the lottery "winners" pay for preparing and maintaining HSTAIC while it is reserved for their use.

It costs approximately $32,000 to maintain HSTAIC for one month in readiness for an importation. We are therefore proposing a deposit in the form of a certified check or money order, payable in U.S. funds, for that amount. We would draw on the deposit starting from the day the applicant received the cooperative-service agreement,[1] and would continue drawing on it either until we received a signed agreement from the applicant or until the applicant provided written notification to us that he or she did not intend to sign the agreement, up to a maximum of 30 days. We are requiring written notification to ensure that there is no misunderstanding as to the desire to decline. If an applicant took the full 30 days to decide, the full $32,000 would be used. If the applicant took less time, a *pro rata* share of the deposit would be used.

Because we are concerned that an applicant who is economically motivated to delay use of HSTAIC would attempt to manipulate the system by avoiding delivery of the cooperative-service agreement, we would consider the cooperative-service agreement to be "delivered" when one of the following occurs: (1) The applicant signs the U.S. Postal Service domestic return receipt; (2) the applicant refuses delivery of the cooperative-service agreement by the U.S. Postal Service; or (3) the cooperative-service agreement is returned to APHIS as either unclaimed or undeliverable.

If the applicant rejected the agreement prior to the close of the 30-day period, any unused portion of the deposit would be returned to him or her. If the applicant accepted the agreement prior to the close of the 30-day period, any unused portion of the deposit would be applied to future costs of the importation.[2]

To minimize "downtime" at HSTAIC, we expect that in most cases we would send a cooperative-service agreement to the next applicant on the lottery list while an importer still has animals in HSTAIC. In such cases, we would not draw on the deposit during any part of the 30-day period that HSTAIC was being made available to another importer.

Once an applicant returned a completed cooperative-service agreement to us, we would not charge the applicant for the maintenance of HSTAIC until arrival of his or her animals. The regulations in §§ 92.404

[1] We are made aware of the date the applicant receives the cooperative service agreement by return receipt.

[2] If an applicant did not respond—neither signing nor rejecting the agreement—the applicant's entire deposit would be used to pay to maintain HSTAIC for the 30-day decision period. At the end of that time, the applicant's opportunity to use HSTAIC would be forfeited and APHIS would automatically offer HSTAIC to the next applicant.

VOL 58 ISS 133 JL 14 1993 UMI

and 92.505 require that the animals intended for importation be held in isolation in the country of origin for at least 60 days prior to their exportation from that country. Because this is a delay out of the applicant's control, we would not charge for holding HSTAIC ready during that time.

We believe these proposed amendments would create a more equitable system of charging for periods that HSTAIC must be held ready for an applicant, and streamline the system for distributing space at HSTAIC. This would allow HSTAIC to be used more efficiently and more frequently. Recently, HSTAIC has been used for just one importation a year. If these changes are implemented, we anticipate two importations per year through HSTAIC.

Priority Importations

Under the current regulations, agencies of the United States may, under certain circumstances, be given priority over other importers (see §§ 92.430(b)(6) and 92.522(b)(6)) and do not need to participate in the HSTAIC lottery. This priority for U.S. government agencies would be retained in the regulations.

Other importers, who must participate in the lottery, are listed in order of preference in the regulations (see §§ 92.430(b)(3)(i) and 92.522(b)(3)(i)). Four categories are listed: (1) Importers of cattle, sheep, goats, and swine which are required to be imported through HSTAIC; (2) importers of llamas, alpacas, water buffalo, camels, deer, or other ruminants which are required to be imported through HSTAIC; (3) importers of cattle, sheep, goats, and swine that are not required to be quarantined in HSTAIC prior to entry into the United States; and (4) importers of llamas, alpacas, water buffalo, camels, or deer or other ruminants which are not required to be quarantined in HSTAIC prior to entry into the United States.

We are proposing to amend these provisions to remove this "priority" system for the lottery. (As noted above, U.S. government agencies do not need to enter the lottery and would still have priority over other importers.) We established the priority system to give preference to cattle, sheep, goats, and swine that could not be imported into the United States if not through HSTAIC. Our rationale was that it appeared to be the intent of Congress in establishing HSTAIC to provide for the importation of such animals. We intended to give preference first to animals that could not be imported through the United States if not through HSTAIC, then to animals that could otherwise be imported through the United States.

However, our experience conducting the lottery has indicated to us that this "tiering" is not accomplishing what we intended. It appears that certain parties that have submitted applications for animals in the first "tier" have had no intention of importing such animals through HSTAIC. The intent of some of these parties seems to have been to secure first-tier preference to delay the opportunity for importations by other parties. Therefore, to make the lottery system more equitable, and to eliminate unnecessary administrative complexity, we are proposing to provide for just one pool of applicants for the HSTAIC lottery.

Disqualification Due to Outstanding Debts

We are also proposing to amend the regulations to state that we will not accept an application to use HSTAIC from, nor enter into a HSTAIC cooperative-service agreement with, any person who has outstanding debts to APHIS. Additionally, any person who has outstanding debts to APHIS would be removed from the priority list being used for the year in question. We would consider an outstanding debt to be any debt that has not been paid by the date specified in APHIS's original notification to the person. We believe this change would provide an incentive to importers who wish to use HSTAIC to resolve their outstanding debts to APHIS.

Cooperative-Service Agreements

The regulations include sample "cooperative-service agreements" (see §§ 92.430(d) and 92.522(d)). We propose to amend these agreements to incorporate our proposed amendments.

Clarification

Current §§ 92.430(b)(3)(ii) and 92.522(b)(3)(ii) state, among other things, that the priority list established by the lottery will remain effective from January 1 through December 31 of the next calendar year. We are proposing to add language to this provision (redesignated as §§ 92.430(b)(3) and 92.522(b)(3), respectively, in this proposed rule) to clarify that which year's list is used to offer exclusive use of HSTAIC is governed by the date we offer exclusive use, not by the date the applicant's animals are scheduled to arrive at HSTAIC.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In the past we have received approximately 230 applications to use HSTAIC during a particular calendar year. However, many of these applications were duplicative. Therefore, if the provisions in this proposed rule were to become effective, we expect that number would drop significantly. Although we cannot determine precisely how many importers might submit applications, based on past experience we believe only approximately 5 percent would be small entities.

We expect that our proposal to require a deposit of approximately $32,000 in the form of a certified check or money order with each application would reduce the number of multiple applications by large importers and discourage applications from importers who are not sure whether they would use the reserved space. This could have the ultimate effect of increasing the possibility that small entities would use HSTAIC.

The current regulations require that importers deposit a letter of credit for $50,000. Requiring a deposit in the form of a certified check or money order would have an impact on potential importers, in that earnings would be foregone on the deposit while it was held by APHIS. Under the proposed rule, the deposit would have to be "received by APHIS at least 7 calendar days prior to the date of the lottery." Prospective importers could minimize the time their money was on deposit by submitting their deposit as close to this deadline as possible. We have calculated that, based on a rate of return of from 5–7 percent, the interest foregone on a deposit would be approximately $4.10 to $6.15 per day. The minimum amount of time applicants would forego interest would be for the week before the lottery and for at least one week following the lottery until notification of the lottery results. Therefore, all applicants would forego

approximately $61.60 to $86.10 in interest. This compares with an average cost to import an animal through HSTAIC of $3,747.

Of the parties that will submit applications for importations through HSTAIC in 1995, most of whom will probably not be small entities, we expect that only approximately five will be picked high enough in the lottery to provide them a reasonable chance of bringing animals through HSTAIC. If these applicants choose to stay on the lottery list, they would lose interest for each day they remain on the list until their deposit is applied toward an importation, or until they choose to remove their name from the list. How long they remain on the list would be their decision, and we are unable to calculate at this time the interest they would forego.

Changing application and lottery dates would impose no financial burden upon prospective importers. The current regulations require that importers wishing to import in the next calendar year submit their application during the first 2 weeks of September for the lottery held in the first week of October of the current calendar year. Shifting these dates to October and December, respectively, would likely shorten the waiting period between application and actual import dates.

Requiring the lottery winner to pay the costs of maintaining HSTAIC for periods when it is maintained in readiness for that importer, and not available to other importers, would shift the burden of operating costs from APHIS, and ultimately the taxpayer, to importers using the HSTAIC. According to the current regulations, a lottery winner has 30 days to either accept or reject the cooperative-service agreement regarding the importation of animals. During that time, the facility is reserved, and APHIS prepares and maintains it in readiness for that importer's animals. Charging the importer for this time, on a daily basis, would increase the importer's costs by approximately $1,067 per day, up to a maximum of $32,000. This compares with an average total cost for an importation through HSTAIC of $857,000. The length of time that would expire before the cooperative-service agreement was accepted or rejected would be up to the lottery winner.

Under the proposed rule, APHIS would not accept applications from, or enter into HSTAIC cooperative-service agreements with, entities with outstanding debts to APHIS. If a prospective applicant had not paid outstanding debts, they would not be allowed to use HSTAIC. However, this provision would not necessarily impose a financial burden on prospective applicants because the decision whether to pay off debts would be entirely the prospective applicant's.

We are also proposing to eliminate the practice of giving certain types of animals, and animals from certain locations, priority in the lottery. This amendment, which would simplify the drawing for the lottery, would not affect a substantial number of importers. In the past we have received approximately 230 applications to use HSTAIC during a particular year. As stated above, we expect fewer applicants if the provisions of this proposed rule take effect. Of the total number of applicants, only two to three would actually be able to use HSTAIC in any given year. Additionally, as we stated above, we expect the great majority of applicants would be other than small entities, so the chances are small that each of the two or three importers using HSTAIC would be small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, 135, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.430 [Amended]

2. Section 92.430 would be amended as follows:

a. Paragraph (a) would be amended by adding two new sentences, immediately after the current first sentence to read as follows:

(a) * * * Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list. * * *

* * * * *

b. Paragraph (a) would be amended by adding two new sentences immediately after the current fourth sentence to read as follows:

(a) * * * The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, and HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the agreement by the U.S. Postal Service, or the agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable. * * *

* * * * *

c. Paragraph (b)(1)(ii) would be revised to read as set forth below.

d. Paragraph (b)(2)(i) would be amended by removing "October" both times it appears, and by adding

VOL 58 ISS 133 JL 14 1993 UMI

"December" in its place; and by removing "September" where it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 12 would be amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) would be amended by removing at the end of the paragraph "accompany each application." and adding "be received by APHIS at least 7 calendar days prior to the date of the lottery." in its place.

g. Paragraph (b)(3)(i) would be removed.

h. Paragraph (b)(3)(ii) would be redesignated as paragraph (b)(3) and would be revised to read as set forth below.

i. Paragraph (b)(4) would be amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences, and adding "October" in its place.

j. Paragraph (b)(5) would be amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence would be amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 13 would be amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences would be revised to read as set forth below, and the fifth sentence would be removed.

n. In paragraph (c)(1), the second sentence would be amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence would be amended by adding "expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 would be revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 would be removed, and paragraphs 4 through 13 would be redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence would be amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 would be amended by removing "$50,000 deposit, if such a deposit was required." and adding "$32,000 deposit by certified check or money order, payable in U.S. funds." in its place.

The revised text would read as follows:

§ 92.430 Importation of ruminants through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) *Deposits to accompany applications.* Each applicant for the importation of animals specified in paragraph (b)(3)(i) of this section must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day that HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, and ending either with the day that APHIS receives the signed agreement or the day the applicant notifies APHIS in writing that he or she does not intend to sign the agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the agreement by the U.S. Postal Service, or the agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b)(1) and (2) of this section, and whose deposits have reached APHIS at least 7 calendar days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check or money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less, where appropriate, any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

* * * * *

§ 92.522 [Amended]

3. Section 92.522 would be amended as follows:

a. Paragraph (a) would be amended by adding two new sentences immediately after the current first sentence to read as follows:

(a) * * * Applications for the HSTAIC lottery will not be accepted

from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list. * * *

* * * * *

b. Paragraph (a) would be amended by adding two new sentences immediately after the current fourth sentence to read as follows:

(a) * * * The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, and HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the agreement by the U.S. Postal Service, or the agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * *

* * * * *

c. Paragraph (b)(1)(ii) would be revised to read as set forth below.

d. Paragraph (b)(2)(i) would be amended by removing "October" both times it appears and adding "December" in their place; and by removing "September" both times it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 11 would be amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) would be amended by removing at the end of the paragraph "accompany each application." and adding "be received by APHIS at least 7 calendar days prior to the date of the lottery." in its place.

g. Paragraph (b)(3)(i) would be removed.

h. Paragraph (b)(3)(ii) would be redesignated as paragraph (b)(3) and would be revised to read as set forth below.

i. Paragraph (b)(4) would be amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences and adding "October" in its place.

j. Paragraph (b)(5) would be amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence would be amended by removing ", in lieu of an irrevocable letter of credit," and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds," in its place.

l. In paragraph (b)(6), footnote 12 would be amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences would be revised to read as set forth below, and the fifth sentence would be deleted.

n. In paragraph (c)(1), the second sentence would be amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence would be amended by adding "expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 would be revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 would be removed and paragraphs 4 through 13 would be redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4 would be amended in the first sentence by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 would be amended by removing "$50,000 deposit, if such a deposit was required." and adding "$32,000 deposit by certified check or money order, payable in U.S. funds." in its place.

The revised text would read as follows:

§ 92.522 Importation of swine through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) *Deposits to accompany applications.* Each applicant for the importation of animals specified in paragraph (b)(3)(i) of this section must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the HSTAIC application, and ending either with the day that APHIS receives a signed agreement from the applicant or the day the applicant notifies APHIS in writing that he or she does not intend to sign the agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the agreement by the U.S. Postal Service, or the agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered, and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b)(1) and (2) of this section), and whose deposits have reached APHIS at least 7 days prior to the date of the lottery, will be drawn during the December lottery.

* * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check, a money order, or an irrevocable letter of credit (the letter of

VOL 58 ISS 133 JL 14 1993 UMI

credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less, where appropriate, any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

* * * * *

Done in Washington, DC, this 23rd day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15276 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE06

Loss of All Alternating Current Power; Withdrawal of Proposed Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a notice of proposed rulemaking entitled "Loss of Alternating Current Power" that was published in the **Federal Register** on April 21, 1992. The proposed rule would have required licensees to test and monitor emergency diesel generators against specified criteria.

FOR FURTHER INFORMATION CONTACT: W. Minners, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3900.

SUPPLEMENTARY INFORMATION: On April 21, 1992 (57 FR 14514), the Nuclear Regulatory Commission proposed an amendment to 10 CFR 50.63. The proposed rule would have required that the reliability of all emergency diesel generators be monitored by testing at least monthly. The proposed rule specified criteria for reporting emergency diesel generator (EDG) performance and corrective action to the NRC based on the failure criteria in the proposed text of 10 CFR 50.63 (a)(3). The comment period expired on July 6, 1992, but comments were received as late as August 4, 1992. In all, comments were received from 29 respondents.

Twenty-seven repondents composed of Nuclear Management and Resources Council (NUMARC), licensees, Nuclear Utility Backfitting and Reform Group (NUBARG) and EDG Owners Groups opposed the proposed rule amendment for a variety of reasons. The Ohio Citizens for Responsible Energy and the State of New Jersey supported issuance of the rule.

The NRC staff evaluated comments received and submitted a recommendation to the Commission that the proposed rule amendment be withdrawn (SECY–93–044). In place of the proposed rule, the NRC staff recommended that guidance for monitoring EDG performance against target levels selected for the station blackout coping analyses be incorporated into the Regulatory Guide and the guidance being developed by NUMARC for implementation of the Maintenance Rule (10 CFR 50.65).

Since promulgation of the station blackout rule (10 CFR 50.63) in 1988, the industry has made real progress in improving the reliability of EDGs to start and run upon demand, and the current industry-wide average reliability, in excess of 98 percent, is quite satisfactory. In balancing the recognition of these efforts and the high level of actual diesel generator reliability against the clear need to maintain such performance, the Commission believes a rule is not needed and therefore withdraws the proposed rule.

Nevertheless, the Commission considers it imperative that this action not be misinterpreted as a signal that past efforts and vigilance can now be relaxed or possibly disbanded. Hence, both the staff and industry should continue an aggressive program of maintenance as well as root cause analysis that will continue to offer assurance that emergency diesel generator reliability will be maintained at a satisfactory level in the future.

The withdrawal of this proposed rule does not preclude the Commission from issuing a similar proposed rule in the future.

Dated at Rockville, Maryland, this 8th day of July 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–16677 Filed 7–13–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 24, 133, and 178

RIN 1515–AA81

Enforcement of Protection of Semiconductor Chip Products; Patent Surveys; Withdrawal

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws the proposed amendments to the Customs Regulations, which would have enabled persons seeking protection from infringing semiconductor chip products (mask works) to obtain the assistance of Customs in preventing pirated chips from being imported into the United States. The mask work owner's remedy against infringing imports in these circumstances will continue to be the right to seek an injunction against importation from a district court or an exclusion order from the U.S. International Trade Commission (USITC).

EFFECTIVE DATE: The withdrawal is effective on July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Timothy P. Trainer, Intellectual Property Rights Branch (202–482–6960).

SUPPLEMENTARY INFORMATION:

Background

The Semiconductor Chip Protection Act of 1984, as amended, 17 U.S.C. 901–914, (the Act) provides for protection of mask works that are fixed in semiconductor chip products. A mask work is defined as a series of related images, however fixed or encoded, that represent the three-dimensional patterns in the layers of a semiconductor chip. It is fixed in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration.

The owner of a registered mask work has the exclusive right, under 17 U.S.C

905, to reproduce it and to import and distribute a semiconductor chip product in which the mask work is embodied.

Under 17 U.S.C. 910(c), the Secretary of the Treasury was empowered to issue regulations for the protection of the rights of mask work owners with respect to infringing importations. Under the Act, these regulations may require, as a condition of the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding, importation of the articles;

(2) Furnish proof that the mask work involved is protected under 17 U.S.C. 905 and that importation of the articles would infringe the rights of the mask work owner; and/or

(3) Post a surety bond for any injury that might result if the detention or exclusion proves to be unjustified.

In a final rule document published in the **Federal Register** on October 21, 1987 (52 FR 39217), Customs considered all three of the options for the protection of the mask work owner's rights, and decided to proceed under option (1). Section 12.39 of the Customs Regulations (19 CFR 12.39) was duly amended to add a new paragraph (d), requiring that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the USITC excluding, importation of the articles. Exclusion orders issued by the USITC would be enforceable under § 12.39(b), Customs Regulations (19 CFR 12.39(b)).

However, on October 4, 1989, Customs published in the **Federal Register** (54 FR 40882), a notice of proposed rulemaking soliciting public comment on proposed amendments to the Customs Regulations, which, in principal part, would have enabled the owner of rights in a mask work to obtain the assistance of Customs in preventing pirated chips from being imported into the United States. This remedy would have been in addition to the mask work owner's option to request Customs to enforce an order from a court or the USITC. Furthermore, under the proposed rulemaking, Customs would have been empowered to seize articles on its own initiative which in its view were clearly infringing the exclusive rights of the owner of a protected mask work.

Discussion of Comments

Ten comments were received in response to the notice of proposed rulemaking. Several commenters strenuously objected to the proposed amendments, and none of the comments favored seizures by Customs on its own initiative. The commenters generally questioned how a district director of Customs would determine the existence of a clearly infringing article, and further asserted that Customs lacked the essential expertise to make such determinations on its own. A number of these commenters were also concerned that ex parte seizures by Customs would pose a serious risk of economic injury resulting from the detention of shipments while Customs investigated whether mask work infringement in fact existed.

In addition, the commenters generally were opposed to the proposed procedures to be followed when the district director suspected that importations of infringing mask works were taking place. Some commenters believed that the proposal violated both the General Agreement on Tariffs and Trade as well as the U.S.-Canada Free Trade Agreement because it would unduly burden and restrict imports. Specifically, it was stated that a mask work owner under the proposal could disrupt imports for a long period and with little risk. Similarly, some commenters thought the proposal did not meet due process requirements.

Moreover, since the passage of the Act in 1984, Customs is aware of only one case brought thereunder involving protection of mask works and that case was against a domestic producer.

It is believed that the comments submitted point out persuasive reasons militating against adoption of the proposal, and that, on balance, the current regulations appear to be sufficient to reasonably ensure enforcement of the Act, while meeting the overall concerns of the trade.

Withdrawal of Proposal

In view of the foregoing, and after consideration of the comments received and further review of the matter, Customs has determined to withdraw the notice of proposed rulemaking published in the **Federal Register** on October 4, 1989 (54 FR 40882).

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: June 25, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–16663 Filed 7–13–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 202

[Docket No. R–93–1636; FR–3021–P–01]

RIN 2502–AF29

Tiered Pricing

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 330(a) of the Cranston-Gonzalez National Affordable Housing Act which added a new section 203(t) to the National Housing Act. This section prohibits a variation in mortgage charge rates that exceeds two percent for FHA insured mortgages made by a mortgagee on dwellings located within an area. The purpose of the rule is to eliminate a mortgagee's discriminatory pricing of FHA insured mortgages in a particular area that would either discourage home purchases or place an unfair burden of costs on the borrower.

DATES: Comment due date: September 13, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Communications should refer to the above Docket Number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 708–2700; TDD telephone number (202)

VOL
58
ISS
133
JL
14
1993
UMI

708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 330(a) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), amended section 203 of the National Housing Act (NHA) to add a new subsection (t). Section 330(a) is entitled "Limitation on Tiered Pricing Practices." The new provision restricts "tiered pricing" of single family FHA-insured mortgages. "Tiered Pricing" occurs when a mortgagee varies its charges for the same type of mortgage in the same area, usually based on the amount (principal) of the loan.

Under section 203(t) of the NHA, no mortgagee may make or hold FHA insured mortgages if the customary lending practices of such mortgagee, as determined by HUD, provide for variations of more than two percentage points in the mortgage charge rate based on interest rate, level of discount points, loan origination fees, or any other amount charged to a mortgagor with respect to a mortgage made by such mortgagee within a designated area.

As part of the tiered pricing provision, section 203(t) is designed to ensure that HUD will examine the performance of FHA approved mortgagees in meeting the lending needs of the community in which they do business, with respect to residential lending (including neighborhoods of predominately low or moderate-income or minority families). The section is concerned with lending practices that may unfairly allow for minimum loan limits and fees being charged that are often higher for smaller loans than for larger loans, and which may disadvantage FHA homebuyers who are predominately of low or moderate-income or who are minorities.

In defining the maximum allowable variation, HUD assumes that section 203(t) prohibits the mortgagee from exceeding or varying by more than two percentage points the mortgage charge rate for any given loans within the same market conditions and similar interest rates. Thus, one example of a set of loans grouped for comparison would be all the section 203(b) loans offered on a given day or other time period, given the same market conditions and interest rates. Section 203(k) loans would be compared in a similar manner. A comparison of loans would indicate whether a particular set of loans with similar interest rates would exceed the permitted two percentage point variation in mortgage charges.

While the Department believes that this rule will provide a clear public benefit, it acknowledges that arguments can be made that the simple test for the two percentage point variation would not account for all questionable statistical variations and the true discriminatory practices that may go undetected. While there may be other tests which can measure the two percentage point variation, it is also true that HUD must create some standard that would be easily understood for a variety of groups, e.g., the loan officer, HUD Field Office personnel, etc., and also be consistent with the congressional statute. In developing the final rule, HUD will analyze public comments and all other available data to assure the effectiveness and efficiency of the final rule.

II. Proposed Rule

1. Programs Covered

Section 203(t) only applies directly to mortgages insured under programs authorized by section 203 of the NHA, such as the section 203(b) or section 203(k) programs. The proposed rule would expand the restriction of section 203(t) to all FHA single family mortgage insurance programs, although not all programs will be compared together for purposes of determining the variation between mortgage charge rates. Because the proposed rule would affect the lending practices under many programs, it would amend the mortgagee approval regulations at 24 CFR part 202 (Approval of Mortgagees) instead of amending the specific program regulations for individual programs.

2. Customary Lending Practices

Paragraph (a) of a proposed new § 202.20 would describe what the Department would consider as part of customary lending practices in connection with implementing the tiered pricing rule. Although it is generally understood what is meant by customary lending practices within the industry, for purposes of implementation of this regulation, HUD wishes to clarify the following:

(1) In cases where a loan correspondent is in violation of the tiered pricing restrictions, HUD would hold the sponsor of the correspondent and the loan correspondent both responsible for the correspondent's actions and consider the loan correspondent's mortgages as part of the sponsor's customary lending practices. By holding both sponsor and correspondent accountable, HUD will most effectively regulate those directly responsible for tiered pricing. If a mortgagee has arranged prior to closing to fund and purchase a mortgage closed by another mortgagee, HUD will consider the mortgage as part of the customary lending practices of both mortgagees, even when they do not have a formal relationship as loan correspondent and sponsor.

(2) HUD will study both closed FHA insured loans and rejected applications for insured loans to determine whether tiered pricing occurred, which would result in precluding low or moderate-income or minority mortgage applicants from purchasing a home. Conventional and VA mortgages will not be considered.

(3) HUD will study any practices by the mortgagee that will ultimately affect the cost to the borrower. In addition to HUD's review of the costs and fees passed to the potential mortgagor, the Department will review any practices that pass costs and charges to the seller, which would ultimately affect the price and the potential mortgagor's ability to afford the mortgage; and,

(4) HUD will consider any practices by the mortgagee that increase the costs incurred by the mortgagor to be a part of customary lending practices, subject to review by the statute and this regulation.

For mortgages with identical interest rates, paragraph (a) of proposed § 202.20 would allow for a variation up to two percentage points in the mortgage charge rate for only those fees imposed, and costs incurred by the lender during the loan process. The lender would be required to fully document the justification for the variation in mortgage charges. There would be no variations allowed except for those that would be noted in paragraph (a) of § 202.20.

3. Designated Geographic Areas

Paragraph (b) of proposed § 202.20 would extend the definition of "area" as set forth in section 203(b)(2) of the NHA in order to fully implement the intentions of section 203(t). In defining the "area," section 203(b)(2) of the NHA is cited in section 203(t) as the basis for determining the designated geographic areas. In applying section 203(b)(2), however, the geographic standard provided is applicable only to those areas categorized as high cost areas. For purposes of measuring "tiered pricing," the designated high cost areas would be inapplicable in those areas not designated high cost, which would most likely be rural.

In those rural or non-high cost areas, a different standard, other than that established in section 203(b)(2), would be necessary. In those locations outside

a high cost area determined by HUD under the NHA, the geographic area would be limited to the jurisdiction of the local HUD Field Office.

4. Mortgage Charges

Paragraph (c) of proposed § 202.20 would define mortgage charges as any charge controlled or imposed at the discretion of the mortgagee. Some obvious mortgage charges include interest rate, discount points and loan origination fees. However, HUD would not restrict itself to the review of those three items. The department would review any charges that could have been manipulated or under the control of the mortgagee.

5. Interest Rate

Paragraph (d) of proposed § 202.20 would require the mortgagee to offer every marketing package available, which would include all interest rate and discount point combinations, for the mortgagor's selection. A mortgagee may not direct mortgage applicants to any specific interest rate category on the basis of loan size.

6. Mortgage Charge Rate; Determining Excess Variations

The mortgage charge rate would be described in paragraph (e) of § 202.20. Paragraph (f) of § 202.20 would describe how HUD would determine if a mortgagee's charges violated the tiered pricing two percentage point variation. HUD will use the mortgage charge rate (MCR) as the computational basis for determining whether tiered pricing occurred in a given area. HUD will always consider loan origination points and discount points allocated to a mortgagor's loan package at a particular interest rate. HUD will also review other charges or fees for which typically the mortgagee exercises discretionary control regarding the cost passed to the mortgagor.

In all circumstances, HUD's review, beyond the specific rates and points previously mentioned, would be conducted to determine whether the mortgagee has violated the rule or used lending practices to circumvent the intent of the statute and rule. Beyond the review of points charged, HUD would require inspection of the records of the mortgagee regarding other charges imposed by the lender, which may indicate fees based mainly on the amount (principal) of the loan; this inspection would include any documents processed in the ordinary course of business.

Because all mortgage loans would be grouped by similar loan types, including similar interest rates, and loan origination charges would be assumed to be at the highest permissible level in all cases, the actual test for the two percentage point variation will depend on the discount points offered to the mortgagor if there are not other mortgage charges. HUD regards excessive variation in points as the most likely source of illegal tiered pricing. A review of the mortgagee's records could include other factors, in order to make a final determination regarding the mortgagee's compliance with the statute and regulations.

Other factors in the review include: (1) Flat fees, defined as standard fees unilaterally charged to all mortgage applications, which are not applied in a discriminatory fashion to include discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap; and, (2) percentage fees which do not vary by (i) loan amount and (ii) the percentage charged by the mortgagee at any point in time for the same loans. While these flat fees and percentages are not expected to be an important cause of illegal tiered pricing, they should not be applied in a manner that lends to variation in mortgage charge rates that exceed the allowable two percentage point variation.

7. Mortgage Types

Paragraph (g) of § 202.20 would discuss the mortgage types that would be categorized into distinct groups for tiered pricing analysis. Given similar characteristics, including risks, mortgages would be grouped according to type and interest rate. For example, fixed rate mortgages, graduated payment mortgages, and adjustable rate mortgages would be separated because of the distinct risk characteristics of each type.

In addition to types of interest rate calculations, mortgages would also be grouped according to their granting authority under the National Housing Act. For example, all mortgages insured pursuant to section 203(b) of the NHA would be analyzed according to interest rate and method of calculation. The Department has determined that condominiums insured pursuant to section 234(c) of the NHA would also be included in the section 203(b) group. Although Mortgagee Letter 91–8 required section 223(e) mortgages (Housing in older declining urban areas) to be considered as a separate risk, the Department has determined that mortgages insured under section 223(e) of the NHA will also be included in the section 203(b) type mortgages for purposes of tiered pricing analysis.

Other distinct groups would include Home Equity Conversion Mortgages under section 255 of the NHA and Rehabilitation Home Mortgages insured under section 203(k) of the NHA. The Department is particularly interested in comments from the mortgage industry on other types of mortgages that may need special consideration according to peculiar risks uncommon with sections 203(b), 234(c), 223(e), 203(k) and 255 of the National Housing Act.

8. Recordkeeping

Paragraph (h) of proposed § 202.20 would discuss recordkeeping requirements of the mortgagee. In order to determine whether the two percentage point variation test has been violated, HUD would require the mortgagee to maintain records on all pricing information. In addition, mortgagees would be expected to maintain a file for each mortgage application, regardless of final status, e.g., application through settlement or rejection, for a minimum of two years. HUD would need these records to assess the variation.

This recordkeeping and record maintenance requirement does not entail a new information collection requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The information necessary for HUD to make an assessment is already being collected under OMB control numbers 2502–0265 and 2502–0059.

III. Implementation of Section 539(a) of the National Housing Act

Section 330(b) of the National Affordable Housing Act (Public Law 101–625) adds a new section 539(a) to the National Housing Act (NHA) that requires, among other things, that the Secretary establish a procedure whereby any person may file a request for a determination on whether a mortgagee is in compliance with the new section 203(t) as well as certain other provisions of the NHA that prohibit minimum loan amounts for insured mortgages. The Secretary must also establish a procedure to inform each requestor of the disposition of its request for determination of any request referred to the Mortgagee Review Board for action.

On July 22, 1991, HUD published, at 56 FR 33455, a notice setting forth the procedure for filing a request for determination of compliance of section 203(t). It stated that the address to be used when submitting a request is the Department of Housing and Urban Development, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., room 9146, Washington, DC 20410. The Notice

VOL 58 ISS 133 JL 14 1993 UMI

further stated that each request must include the name and address of the mortgagee involved. In addition, a requestor must include a complete explanation of the circumstances and the mortgagee's practices to the extent shown, including any documented evidence, such as advertisements, HUD–1 Settlement Statements, sales contracts, or other relevant documentation that would expedite the Department's review and determination.

Since publication in July, 1991, the Department has not received any requests for a determination of compliance under this procedure.

Although section 330(b) of the National Affordable Housing Act requires that the July 22, 1991 **Federal Register** notice be followed by a final regulation, the Department believes that promulgation of a permanent regulation would be premature until, with the benefit of public comment, a final rule is published implementing section 203(t) of the NHA. HUD expects the final version of this rule to incorporate the contents of the July 22, 1991 **Federal Register** notice but specifically invites public comment on its current procedure in light of the section 203(t) implementing provisions proposed in this rule.

IV. Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

1. Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers are: 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, and 14.133.

2. Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would impose no mandatory requirements; it would merely ensure that FHA mortgagees would not discriminate against FHA mortgagors with low principal loans.

3. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have "federalism implications" within the meaning of the Order. The rule does not alter existing relationships between the Department, State and local governments and the private sector.

4. Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions so of this proposed rule do not have the potential significant impact on family formation, maintenance, and general well-being within the meaning of the Order. The "tiered pricing" rule serves primarily as a tool for prohibiting discrimination against mortgagors who apply for low-principal loans.

5. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332) the Finding of No Significant Impact is available for public inspection and copying through Friday, 7:30 a.m. until 6 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

6. Regulatory Agenda

This proposed rule was listed as sequence number 1424 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24405) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 202 would be amended to read as follows:

PART 202—APPROVAL OF LENDERS AND MORTGAGEES

1. The authority citation for 24 CFR part 202 would be revised to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. Part 202, subpart B, would be amended by adding a new § 202.20 to read as follows:

§ 202.20 Tiered pricing.

(a) *Customary lending practice.* The customary lending practices of a mortgages for its FHA insured single family mortgages shall not provide for a variation in mortgage charge rates that exceeds two percentage points for a mortgage type. The two percentage point restriction shall apply for insured mortgages of the same loan type with identical interest rates made by the mortgagee on dwellings located within an area. Any variations in the mortgage charge rate up to two percentage points must be based on actual variations in fees or cost to the mortgagee to make the loan. Fees or costs must be fully documented for each specific loan.

(b) *Geographic area.* For purposes of this section, an area is:

(1) A geographic area used by HUD to determine mortgage amounts under § 203.18b of this chapter; or

(2) The geographic areas served by a HUD field office excluding any area included in paragraph (b)(1) of this section.

(c) *Mortgage charges.* Mortgage charges include any charges under the control of the mortgagee and not collected for the benefit of third parties, including, but not limited to discount points, and loan origination fees.

(d) *Interest rate.* Whenever a mortgagee offers a particular interest rate for a mortgage type, it may not restrict the availability of the rate on the basis of the principal amount of the mortgage. A mortgagee may not direct mortgage applicants to any specific interest rate category on the basis of loan size.

(e) *Mortgage charge rate.* The mortgage charge rate is defined as the amount of mortgage charges for an FHA insured mortgage expressed as a percentage of the initial principal amount of the mortgage.

(f) *Determining excess variations.* The amount of variation in mortgage charge rates for a mortgage type is determined by comparing all mortgage charge rates offered by the mortgagee for the mortgage type for a designated day or other time period, including mortgage charge rates for all actual mortgage applications.

(g) *Mortgage type.* A mortgage type, for purposes of paragraphs (a) and (f) of this section, will include those groups of mortgages that are closely parallel in important risk characteristics. The Secretary may develop standards and definitions, regarding risk characteristics for purposes of tiered pricing analysis under this section.

(h) *Recordkeeping.* Mortgagees are required to maintain records on pricing information, satisfactory to the Secretary, that would allow for reasonable inspection by HUD for a period of at least two years. Additionally, mortgagees are required to maintain racial, ethnic, and gender data required under the regulations implementing the Home Mortgage Disclosure Act.

Dated: June 15, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–16647 Filed 7–13–93; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Restricted Area, North and Southwest Branch, Back River, Hampton, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers proposes to establish a naval restricted area in the waters of the Back River, a tributary of the Chesapeake Bay. The proposed restricted area is located offshore of the Langley Air Force Base. The restricted area is needed to protect Government property and personnel and prevent unauthorized entry by the public into the area. All vessels will be prohibited from entering the restricted area without permission from the Commanding Officer of the Langley Air Force Base.

DATES: Written comments must be submitted on or before August 13, 1993.

ADDRESSES: HQUSACE, Attn: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Henderson at (804) 441–7652 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Langley Air Force Base, Langley, Virginia, has requested that the Corps establish a restricted area in the waters of the Back River pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (33 U.S.C. 1) and section XIX of the Army Appropriations Act of 1919 (33 U.S.C. 3). The restricted area will extend out from the shoreline of the Langley Air Force Base approximately 35 yards. The restricted area is needed to provide security for the Air Force Base by preventing entry via the waterfront to all vessels except those contracted by or utilized by the State of Virginia to work in the oyster grounds located within the restricted area and city, State and Federal law enforcement vessels. Vessels working the oyster grounds will be required to notify Langley Air Force Base Security Office personnel in person or by telephone prior to entering the area and may be required to register with the base commander on an annual basis.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12291 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small governmental jurisdictions). These regulations, if approved, may have a minimal impact on individuals and/or small businesses engaged in work associated with oyster ground leases in the area. However, these regulations will not prohibit their entry into area, but will require them to contact the base commander so that any vessels entering the restricted area are identified by base security personnel. There will be no fees or charges imposed by the base commander for registration or entry into the area. This will not result in any increase in costs to those oyster planting/harvesting concerns. Accordingly, the preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps proposes to amend Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add a new § 334.275 to read as follows:

§ 334.275 North and Southwest Branch, Back River, Hamption, U.S. Air Force Base, Langley, VA; restricted area.

(a) The area. Beginning at a point on the island at the entrance to Tide Mills Creek in the Southwest Branch of the Back River at latitude 37°06′50″ N, longitude 076°22′00″ W, thence along the shore of Langley Air Force Base, 35 yards of the ordinary mean high water (MHW) mark, to a point in the Northwest Branch of the Back River at latitude 37°06′40″ N, longitude 076°22′55″ W.

(b) The regulations. (1) No persons or vessels, recreational or commercial may enter this restricted area without the permission of the Commanding Officer, Langley Air Force Base.

(2) The Commanding Officer shall not prevent persons from fulfilling their legal obligation to the Commonwealth of Virginia with regard to oyster planting ground leases that lie within the restricted area. The Commanding Officer may, at his/her discretion, require those persons and vessels working those leases to register with the Langley Air Force Base security officer on an annual basis. Failure to comply with this request may result in denial to access the oyster grounds until such time as the request has been complied with.

(3) Persons or vessels contracted with or utilized by the Commonwealth of Virginia to work the oyster grounds shall give verbal notification to the base security office prior to entering the restricted area.

(4) City, State and Federal law enforcement vessels may enter the restricted area at any time they deem necessary for the enforcement of their respective laws.

(c) Enforcement. The regulations in this section shall be enforced by the Commanding Officer of the Langley Air Force Base and such agencies as he/she may designate.

Dated: July 7, 1993.

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–16632 Filed 7–13–93; 8:45 am]

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VOL
58
ISS
133
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DEPARTMENT OF EDUCATION

34 CFR Part 650

RIN 1840–AB93

Jacob K. Javits Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Jacob K. Javits Fellowship Program. These amendments are needed to implement recently enacted changes in the Higher Education Amendments of 1992. The proposed regulations would increase the amount of stipends paid to individuals awarded fellowships, beginning with individuals who receive their first stipend in academic year 1993–1994; would increase the amount of payments made to institutions of higher education for each individual awarded a fellowship, beginning with awards made for the academic year 1993–1994; would implement the prohibition on the award of a fellowship for study at a school or department of divinity; and would implement the special rule governing the Secretary's withdrawal of a fellowship. Additionally, the proposed regulations would revise definitions and add technical and clarifying changes to the current regulations. This program supports National Education Goal 5 which calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

DATES: Comments must be received on or before August 13, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Jane Wrenn, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC. 20202–5251.

FOR FURTHER INFORMATION CONTACT: Jane Wrenn. Telephone: (202) 708–9403. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement part C of title IX of the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992.

The Secretary is proposing to revise existing regulations to conform to the applicable statutory changes and to make other changes to improve the administration and management of the program.

Stipends § 650.42. The proposed regulations incorporate the statutory increase in the stipend paid to a fellow who is initially awarded a fellowship for the academic year 1993–1994, or any succeeding academic year. The stipend amount is to be paid at a level of support equal to that provided by the National Science Foundation graduate fellowships, or the fellow's demonstrated level of financial need, whichever is less. The proposed regulations clarify that the fellow's financial need is to be calculated under part F of title IV of the Higher Education Act of 1965, as amended, in accordance with the statutory provision requiring that the fellow's demonstrated level of need be calculated in accordance with measures of need approved by the Secretary.

Institutional payment § 650.41. The proposed regulations provide for the statutory increase in the amount of the institutional payment to an institution of higher education in which a fellow is enrolled. The proposed regulations would add new definitions clarifying statutory and regulatory terms. The proposed regulations also govern the situation in which the institution charges and collects from a fellow tuition and other expenses required as part of the fellow's instructional program. In those situations, the Secretary will deduct an equal sum from the institutional payment. This administrative change reflects the statutory provision governing this situation.

Interruptions of study § 650.35. The proposed regulations provide that a fellow may interrupt study, for up to a 12-month period, for the purpose of work or travel, or independent study that is supportive of the fellow's academic program and approved by the institution. The proposed regulations also clarify that the fellow may continue to receive payments during an interruption of study for travel or independent study if that travel or independent study is supportive of the fellow's academic program, and that the institution will receive a pro rata payment during this period.

Withdrawal of an offer of a fellowship § 650.32. The proposed regulations provide procedures governing the situation where the Secretary notifies an individual of a fellowship award and subsequently determines that this notification was made based on erroneous information. The proposed regulations, in accordance with the statute, require that, in this situation, the Secretary award the fellowship unless the Secretary makes a determination that an applicant submitted fraudulent information on the application.

Individuals eligible for fellowships § 650.2. The proposed regulations incorporate the statutory requirement that only United States citizens are eligible to receive fellowships for doctoral study leading to an academic career.

Distribution and return of funds § 650.43. The proposed regulations clarify the procedures governing the institution's disbursement and return of grant funds to reflect statutory changes and to improve the administration and management of the program.

Duration of a fellowship § 650.33. The proposed regulations clarify the duration of a fellowship, and include a limitation on the fellowship period for the dissertation stage of the fellow's study. Dissertation support is limited to 24 months because the Secretary believes it is a reasonable length of time in which to complete one, and given the current employment environment of the country, the Secretary believes this limitation will discourage graduate students from dragging out the writing of the dissertation over a four-year period in order to continue to receive a stipend payment.

Miscellaneous. The proposed regulations modify some definitions, add new definitions, and provide for technical and clarifying changes to the regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of entities. The entities that would be affected by these regulations are institutions of higher education (IHEs) receiving Federal funds under this program. The regulations would impose only the minimal requirements necessary to ensure the proper expenditure of program funds. The regulations would not impose excessive regulatory burden and would not have a significant economic impact on the entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork

Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3022, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education, Fellowships, Grant program, Reporting and recordkeeping.

Dated: July 6, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.170—Jacob K. Javits Fellowship Program.)

The Secretary proposes to amend part 650 of title 34 of the Code of Federal Regulations as follows:

1. The title of part 650 is revised to read as follows:

PART 650—JACOB K. JAVITS FELLOWSHIP PROGRAM

2. The authority citation for Part 650 is revised to read as follows:

Authority: 20 U.S.C. 1134, 1134h—1134k–l, unless otherwise noted.

3. Section 650.1 is amended by removing the word "Fellows" in the heading and paragraph (a) and adding, in its place, the word "Fellowship".

4. Section 650.2 is revised to read as follows:

§ 650.2 Who is eligible to receive a fellowship?

An individual is eligible to receive a fellowship if the individual—

(a) Is enrolled at an institution of higher education, other than a school or department of divinity, in the program of study leading to a doctoral degree in the academic field for which the fellowship is awarded;

(b) Meets the eligibility requirements established by the Fellowship Board;

(c) Is not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337); and

(d)(1) Is pursuing a doctoral degree that will not lead to an academic career and is—

(i) A national of the United States;

(ii) In the United States for other than a temporary purpose and intends to become a permanent resident; or

(iii) A permanent resident of the Trust Territory of the Pacific Islands; or

(2) Is pursuing a doctoral degree that will lead to an academic career and is a citizen of the United States.

(Authority: 20 U.S.C. 1134, 1134h—1134k–l)

5. Section 650.3 is amended by revising the heading and paragraph (b) to read as follows:

§ 650.3 What regulations apply to the Jacob K. Javits Fellowship Program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs), except for the following:

(i) Subpart C (How to Apply for a Grant);

(ii) Subpart D (How Grants Are Made); and

(iii) Sections 75.580 through 75.592 of subpart E.

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 82 (New Restrictions on Lobbying).

(5) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(6) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

6. Section 650.4 is amended by revising the heading, removing the definition of *Act*, adding new definitions of *Academic year*, *Department*, *Financial need*, *HEA*, *Institution*, *Institutional payment*, *Knows or has reason to know*, and *School or department of divinity*, in alphabetical order, and revising the definitions of *Institution of higher education* and *Satisfactory progress* to read as follows:

§ 650.4 What definitions apply to the Jacob K. Javits Fellowship Program?

* * * * *

Academic year means the 12-month period beginning with the fall instructional term of the institution of higher education.

Department means any program, unit or any other administrative subdivision of an institution of higher education that—

(1) Directly administers or supervises post-baccalaureate instruction in a specific discipline; and

(2) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

* * * * *

Financial need means the fellow's financial need as determined under part F of title IV of the HEA, for the period of the fellow's enrollment in the approved academic field of study for which the fellowship was awarded.

HEA means the Higher Education Act of 1965, as amended.

Institution means an institution of higher education.

Institution of higher education means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Institutional payment means the amount paid by the Secretary to the institution of higher education in which the fellow is enrolled to be applied against the tuition and fees required of the fellow by the institution as part of the fellow's instructional program.

Knows or has reason to know means that a person with respect to a statement—

(1) Has actual knowledge that the statement is false or fictitious;

(2) Acts in deliberate ignorance of the truth or falsity of the statement; or

(3) Acts in reckless disregard of the truth or falsity of the statement.

Satisfactory progress means that the fellow meets or exceeds the institution's criteria and standards established for all doctoral students' continued status as applicants for the doctoral degree in the academic field of study for which the fellowship was awarded.

School or department of divinity means an institution, or a department of an institution, whose program is specifically for the education of

VOL 58 ISS 133 JL 14 1993 UMI

students to prepare them to become ministers of religion or to enter into some other religious vocation, or to prepare them to teach theological subjects.

* * * * *

7. In § 650.5 paragraph (b) is amended by removing "allowance paid" and adding, in its place, "payment made" and by removing "of $6000" and adding, in its place, "as described in § 650.41".

8. Section 650.30 is amended by adding ", other than a school or department of divinity," after the words "institution of higher education".

9. Sections 650.31 through 650.35 are redesignated as §§ 650.33 through 650.37, respectively.

10. A new section 650.31 is added to subpart D to read as follows:

§ 650.31 How does an individual accept a fellowship?

(a) An individual notified by the Secretary of selection as a fellow shall inform the Secretary of the individual's acceptance in the manner and time prescribed by the Secretary in the notification.

(b) If an individual fails to comply with the provisions of paragraph (a) of this section, the Secretary treats the individual's failure to comply as a refusal of the fellowship.

(Authority: 20 U.S.C. 1134h)

11. A new § 650.32 is added to subpart D to read as follows:

§ 650.32 How does the Secretary withdraw an offer of a fellowship?

(a) The Secretary withdraws an offer of a fellowship to an individual only if the Secretary determines that the individual submitted fraudulent information on the application.

(b) The Secretary considers the application to contain fraudulent information if the application contains a statement that—

(1) The applicant knows or has reason to know—

(i) Asserts a material fact that is false or fictitious; or

(ii) Is false or fictitious because it omits a material fact that the person making the statement has a duty to include in the statement; and

(2) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(Authority: 20 U.S.C. 1134j)

12. The redesignated § 650.33 is revised to read as follows:

§ 650.33 What is the duration of a fellowship?

(a) An individual may receive a fellowship for a doctoral degree program of study for a total of 48 months or the time required for receiving the doctoral degree, whichever is less.

(b)(1) Within the 48-month period described in paragraph (a) of this section, the individual may receive a fellowship for no more than 24 months for dissertation work, without the prior approval of the Secretary.

(2) A fellow may apply to the Secretary for an additional period of fellowship support for dissertation work. The fellow's application must include—

(i) The specific facts detailing the reasons why the additional period of dissertation work support is necessary;

(ii) A certification by the institution that it is aware of the fellow's application and that the fellow has attained satisfactory progress in the fellow's academic studies; and

(iii) A recommendation from the institution that the additional period of fellowship support for dissertation work is necessary.

(c) A fellow who maintains satisfactory progress in the program of study for which the fellowship was awarded may have the fellowship renewed annually for the total length of time described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1134h, 1134k)

13. The redesignated § 650.35 is revised to read as follows:

§ 650.35 May fellowship tenure be interrupted?

(a) An institution of higher education may allow a fellow to interrupt study for a period not to exceed 12 months, but only if the interruption of study is—

(1) For the purpose of work, travel, or independent study, if the independent study is away from the institution and supportive of the fellow's academic program; and

(2) Approved by the institution of higher education.

(b) A fellow may continue to receive payments during the period of interruption only if the fellow's interruption of study is for the purpose of travel or independent study that is supportive of the fellow's academic program.

(c) A fellow may not receive payments during the period of interruption if the fellow's interruption of study is for the purpose of travel that is not supportive of the fellow's academic program, or work, whether supportive of the fellow's academic program or not.

(d) The Secretary makes a pro rata institutional payment to the institution of higher education in which the fellow is enrolled during the period the fellow receives payments as described in paragraph (b) of this section.

(Authority: 20 U.S.C. 1134h)

14. Section 650.41 is amended by revising the heading and paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 650.41 How are institutional payments to be administered?

(a) With respect to the awards made for the academic year 1993–1994, the Secretary makes a payment of $9,000 to the institution of higher education for each individual awarded a fellowship for pursuing a course of study at the institution. The Secretary adjusts the amount of the institutional payment annually thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

(b) If the institution of higher education charges and collects amounts from a fellow for tuition or other expenses required by the institution as part of the fellow's instructional program, the Secretary deducts that amount from the institutional payment.

* * * * *

15. Section 650.42 is revised to read as follows:

§ 650.42 How are stipends to be administered?

(a) The institution annually shall calculate the amount of a fellow's financial need and in the same manner as that in which the institution calculates its students' financial need under part F of title IV of the HEA.

(b) For a fellowship initially awarded for an academic year prior to the academic year 1993–1994, the institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded for the academic year 1993–1994 or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that the amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need.

(Authority: 20 U.S.C. 1134j)

16. Section 650.43 is revised to read as follows:

§ 650.43 How are disbursement and return of grant award funds made?

(a) An institution shall disburse a stipend to a fellow no less frequently than once per academic term. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at such time and in such manner as the Secretary may require.

(b) If a fellow withdraws from an institution before completion of an academic term, the institution shall refund to the Secretary a prorated portion of the institutional payment that it received with respect to that fellow. The institution shall return those funds to the Secretary at such time and in such manner as the Secretary may require.

(c) A fellow who withdraws from an institution before completion of an academic term for which the fellow received a stipend installment shall return a prorated portion of the stipend installment to the institution at such time and in such manner as the Secretary may require.

(Authority: 20 U.S.C. 1134j)

[FR Doc. 93–16623 Filed 7–13–93; 8:45 am]
BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300289; FRL–4590–7]

RIN 2070–AC18

Fensulfothion; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke tolerances for residues of the insecticide/nematicide fensulfothion (*O,O*-diethyl *O*-[*p*-(methylsulfinyl)phenyl]-phosphorothioate) in or on various agricultural commodities. EPA is initiating this action because all registered uses of fensulfothion on these commodities have been cancelled. Therefore, there is no need for maintaining the tolerances. Ample time has elapsed for treated items to clear the marketplace as these uses have been cancelled for 4 years or more.

DATES: Written comments, identified by the document control number [OPP-300289], must be received on or before August 13, 1993.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Brian Steinwand, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32G5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone: 703-308-8174.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide/nematicide fensulfothion, *O,O*-diethyl *O*-[*p*-(methylsulfinyl)-phenyl]phosphorothioate in or on the commodities listed in 40 CFR 180.234. These commodities are bananas; beets, sugar; beets, sugar tops; cattle, fat; cattle, meat byproducts (mbyp); cattle, meat; corn, fodder; corn, forage; corn, grain; corn, fresh (including sweet with husks removed) (K-CWHR); corn, sweet, fodder; corn, sweet, forage; cottonseed; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; onions, dry; peanuts; peanuts, hulls; pineapples; pineapples, forage; plantains; potatoes; rutabaga, roots; sheep, fat; sheep, mbyp; sheep, meat; sorghum, fodder; sorghum, forage; sorghum, grain; soybeans; soybeans, forage; sugarcane; sweet potatoes; tomatoes.

As of October 18, 1988, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide/nematicide fensulfothion were cancelled. Because fensulfothion is no longer registered in the U.S. for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.234 for residues of fensulfothion.

Since the registrations for fensulfothion products were cancelled more than 4 years ago, existing stocks of those products should be depleted. Provisions for sale and/or distribution of existing stocks by the registrant ended on October 18, 1989. Therefore, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the cannels of trade. Further, because fensulfothion is not a persistent chemical, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains fensulfothion may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300289]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1132, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy

VOL 58 ISS 133 JL 14 1993 UMI

of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for use of fensulfothion in the production of food commodities were canceled more than 4 years ago, it is anticipated that little or no economic impact would occur at any level of business enterprises if the related tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Mangement and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(m)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.234 [Removed]

2. Section 180.234 *O,O-Diethyl O-[p-(methylsulfinyl)phenyl]-phosphorothioate; tolerances for residues* is removed.

[FR Doc. 93-16427 Filed 7-13-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93-179; FCC 93-325]

Price Cap Regulation of Local Exchange Carriers—Rate of Return Sharing and Lower Formula Adjustment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission's price cap regulations for local exchange carriers (LECs) permits adjustments to the price cap rate limits based on the LEC's rate of return in the preceding year. These include one-time adjustments both for sharing relatively high returns and for raising relatively low returns. In cases where a LEC's price cap had been adjusted in one year, some LECs have sought to "add-back" the amount of the adjustment into the rate of return used to compute such adjustments in the following year. Other LECs have used the rate of return without the add-back adjustment. The proposed rule would eliminate this inconsistency and clarify that the LECs should include the add-back adjustment. The Notice also seeks comment on a related issue concerning the computation of the amount to be added back.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

DATES: Comments shall be filed on or before August 2, 1993; Reply comments shall be filed no later than September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Tariff Division, Common Carrier Bureau, (202) 632-6387.

SUPPLEMENTARY INFORMATION: On June 18, 1993, the Commission adopted a Notice of Proposed Rulemaking (NPRM), proposing an adjustment in local exchange carrier's (LECs) price cap indexes. The Commission states that under the price cap plan, a LEC's interstate rate of return in one year can be the basis for the adjustments to that carrier's price cap indexes in the following year. This rate of return "backstop" is intended to tailor the plan to the circumstances of individual LECs, while assuring that customers share in productivity gains. LEC price cap rates took effect on January 1, 1991, and the first application of this sharing and lower adjustment mechanism occurred in the annual 1992 access tariff filings, which were filed in April 1992 and took effect on July 1, 1992. An issue has arisen in the annual 1993 access tariff filings as to how such sharing and lower adjustments to the price cap indexes should be reflected in the rate of return used to determine sharing and lower formula adjustments in the following year. Some price cap LECs have proposed that the rate of return used to compute this year's "backstop" adjustments should include the effects of last year's backstop adjustment. This approach would reduce sharing amounts this year for LECs who were subject to sharing last year. However, under rate of return regulation the Commission required LECs to "add-back" an adjustment for rate of return-based refunds from prior periods. "Add-back" would also increase the lower end adjustment, and thus permit higher rates, for LECs who received that adjustment last year.

Based upon the Commission's review of this issue, it tentatively concludes that the add-back adjustment should continue to be part of the rate of return calculations of LECs subject to price cap, preceding their calculations for purposes of the backstop sharing and lower formula adjustments. The Commission proposes specific rule language to implement this tentative conclusion. The Commission also requests comments on this tentative conclusion and other mechanisms to deal with the issues.

This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No. 93-179 [FCC 93-325], adopted June 18, 1993 and released July 6, 1993. The full text of the item is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. The complete text of this NPRM may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Regulatory Flexibility Act

We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Local exchange carriers subject to price cap regulation, who would be affected by the proposed rule amendments, generally are large corporations or affiliates of such corporations. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 6503(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in CFR Part 61

Communications common carriers; Telephone.

Amendment to the Code of Federal Regulations

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3(e) is revised to read as follows:

§ 61.3 Definitions.

* * * * *

(e) *Base Period.* The 12 month period ending six months prior to the effective date of annual price cap tariffs. Base year or base period earnings shall not include amounts associated with exogenous adjustments to the PCI for the sharing or lower formula adjustment mechanisms.

* * * * *

Federal Communications Commission.

La Vera F. Marshall,

Acting Secretary.

[FR Doc. 93–16641 Filed 7–13–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC–93–17]

RIN 2125–AD14

Federal Motor Carrier Safety Regulations; General; Intermodal Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking action is being initiated to implement the requirements of the Intermodal Safe Container Transportation Act of 1992 (the Act). Motor carriers would be prohibited from accepting a loaded intermodal container or trailer having a gross cargo weight of more than 10,000 pounds prior to receiving written certification of the gross cargo weight and a reasonable description of the contents of the container or trailer. It is the intent of this regulation to reduce the number of overweight vehicles illegally operating on the highway by requiring shippers and others to give motor carriers accurate information about the nature and weight of the cargo.

DATES: Comments should be received no later than September 13, 1993.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Standards, (202) 366–5763, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1992, the President signed the Intermodal Safe Container Transportation Act of 1992 (Pub. L. 102–548, 106 Stat. 3646). The Act requires the Secretary to issue implementing regulations.

The use of intermodal containers and trailers has increased significantly over the past 30 years. Almost every intermodal container and trailer travels over the highway at least once during shipment, and with the proper information, motor carriers can transport intermodal containers and trailers more safely while minimizing highway wear. Intermodal operations can be difficult, however, if motor carriers do not know the weight of the container or trailer and shippers are not familiar with vehicle weight laws in different States. Intermodal containers and trailers which are not overweight for rail or water transportation may be overweight for highway transportation. The Act is intended to reduce the number of overweight vehicles illegally operating on the highway by requiring shippers and others to give motor carriers accurate information about the nature and weight of the cargo.

The FHWA proposes to amend part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart C, Intermodal Transportation. Most of the proposed regulations would simply codify the statutory requirements. The regulations would require persons tendering a loaded container or trailer to an initial carrier to provide a written certification of the gross cargo weight and a reasonable description of contents. The certification must be passed on to each subsequent carrier in the intermodal chain. In order to permit effective enforcement of this Act, a subject discussed later in this preamble, the persons tendering intermodal containers and trailers involving motor carriers, and each motor carrier transporting an intermodal container or trailer, would be required to maintain a copy of the certification for a one-year period. Motor carriers would be prohibited from accepting for transportation loaded intermodal containers and trailers without the certification. The proposed rule would also prohibit the coercion of motor carriers to transport intermodal containers or trailers without certifications or with weights that the motor carrier believes would make the combination vehicle illegally overweight under applicable State law.

The proposed regulations are in no way intended to lessen the

VOL 58 ISS 133 JL 14 1993 UMI

responsibility of motor carriers for compliance with weight laws. The objective of these regulations is to reduce the number of overweight motor vehicles transporting intermodal containers or trailers by improving communication between shippers and carriers. Overweight vehicles on the nation's highways, whether engaged in intermodal or conventional over-the-road transportation, reduce the design life of pavements and bridges and may pose more immediate threats to safety. Even small increases in truck axle loads can produce exponential increases in the rate of highway pavement deterioration. Overweight containers and trailers can decrease a vehicle's braking capacity, increase stress on its structural components, and degrade its handling characteristics.

A Federal Highway Administration study, entitled "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways" (March 20, 1989), indicated that, based on the sample considered in the analysis, potentially one-third of maritime containers moving through U.S. ports in international trade at the time of the study were carrying cargoes at weights that could have caused the vehicles transporting them to violate vehicle weight laws. The study also found that the percentage of overweight outbound containers may be higher than that of inbound containers. A copy of the PIERS study has been placed in the docket for public examination.

Currently, virtually all States hold motor carriers solely responsible for operating overweight vehicles. The only exception is Minnesota, where the shipper may also be liable for overweight penalties in appropriate cases. Motor carriers are usually at the beginning or end of the intermodal transportation chain and have little or no control over the loading of the containers or trailers. A motor carrier may suspect an intermodal container or trailer is too heavy for the equipment or illegal under State law, but because its actual weight is unknown, the motor carrier has no reasonable grounds for refusing to transport it.

The Congress decided that the person who loads and subsequently tenders an intermodal container or trailer is responsible for its cargo weight and, thus, should be required to provide that information and a reasonable description of its content. Motor carriers are already familiar with the tare weights of containers and trailers, and this information will enable them to better estimate the axle weights and gross weight of a given vehicle combination. If the combination would exceed State weight limits, the carrier may not be coerced to transport it.

Motor carriers cannot make an informed decision when the information in the certification is incorrect. The Act provides two new enforcement options for that situation. First, if a State discovers that a vehicle combination which includes an intermodal container or trailer subject to the Act is illegally overweight because the certification understates the actual weight of the cargo, the State and its political subdivisions are authorized (but not required) to assess fines or penalties against the shipper rather than the motor carrier and to impound the containers or trailers until the shipper or beneficial owner of the cargo has paid the fines (49 U.S.C. 508(f)).[1] Second, if the State requires the motor carrier to pay the overweight fine rather than the shipper or beneficial owner, the Act gives the carrier a lien on the contents of the container or trailer equal to the amount of the fine. The carrier may not sell the contents to satisfy this debt until the shipper has had a reasonable opportunity to decide who is responsible for actually paying the motor carrier's fine. The lien provisions do not apply to, nor may a State impound, a container or trailer loaded with perishable agricultural commodities (49 U.S.C. 508(g)). It should be noted, however, that if the cargo weight listed in the certification is accurate and the motor carrier nonetheless agrees to transport a loaded container or trailer that might reasonably be expected to cause axle or gross weight violations, the carrier is solely responsible for any penalties that may be assessed.

The FHWA does not believe that regulations are needed to implement this provision, since the Federal courts have vast experience in dealing with liens. However, for informational purposes, we are proposing to reprint the lien section of the Act (49 U.S.C. 508(g)) as appendix H to subchapter B, along with the statutory definition of a "beneficial owner."

Enforcement Considerations

The FHWA and the States will incorporate enforcement of the proposed regulations into existing program activities. The FHWA and the States emphasize the importance of voluntary compliance by the industry, as information on the new requirements will be included in ongoing technical assistance and public information initiatives.

In situations of critical or chronic noncompliance, the Act authorizes the Secretary of Transportation to impose civil penalties of $500 for each day an offense continues, not to exceed $2,500 for all offenses related to a single recordkeeping violation. The Act provides for civil penalties as high as $10,000 for non-recordkeeping violations. Likewise, as noted earlier, the FHWA and the States may assess fines or penalties against the shipper, particularly in instances involving failure to provide a certification or providing a false certification. If the motor carrier pays a fine for a shipper violation, the Act enables the carrier to place a lien on the contents of the container or trailer equal to the amount of the fine.

Roadside enforcement of the overweight container requirements is an eligible activity under the Motor Carrier Safety Assistance Program (MCSAP). States conduct approximately 1.6 million driver-vehicle safety inspections annually. The FHWA intends to require MCSAP states to adopt laws or regulations compatible with section 390.56 that would prohibit motor carriers from transporting a loaded intermodal container or trailer without having a copy of the certification. Roadside enforcement activities will include checks for certifications and compliance with the State weight limitations. Penalties will be applied for violations discovered during each inspection, at a level determined by each State. The FHWA will work closely with the States, through the Commercial Motor Vehicle Safety Alliance, to promote uniform fines and penalties.

The FHWA and the States maintain information on the results of roadside inspections though an automated information system known as SAFETYNET. The FHWA and the States will be able to use these data to identify chronic violators. Through on-site reviews of information available from a motor carrier, the FHWA would pursue other chronic violators in the intermodal transportation chain. The FHWA also would follow-up on possible violators based on complaints it receives about entities in the chain who allegedly coerce individuals to take "overweight" shipments, falsify certifications, or do not provide certifications.

To help maximize industry's voluntary compliance with these regulations, comments are solicited regarding how best to communicate the new requirements to domestic and

[1] The language of the Act makes it clear that State enforcement is optional, and the FHWA therefore will not require a State to undertake the enforcement program described in section 508(f).

foreign shippers, carriers, and other affected parties. Comments and suggestions are requested regarding whether or not the proposed rule adequately addresses the role and responsibilities of the non-motor carriers, terminal operators, port operators, etc. with regard to implementation of this Act. Additional comments are sought concerning the related responsibilities which fall upon State enforcement agencies.

Section-by-Section Analysis

Section 390.52 Definitions

With a few exceptions discussed below, the proposed definitions simply codify the definitions included in the Act.

The term *applicable State law* is used only in the coercion provision of the Act and the proposed regulations. The definition proposed here would treat as coercion an attempt to force a motor carrier to transport a loaded container or trailer that would violate the weight laws of any State through which the motor carrier intended to transport it. However, if each State issued a permit for the overweight container or trailer, coercion could not occur since the motor carrier could make the weight of the combination legal by paying a nominal permit fee.

The definition of *coerce* or *attempt to coerce* within the proposed regulations was derived from the coercion statutes in the States of New Jersey and New York. The definition would cover cases where the motor carrier is threatened with retaliation or a long-term boycott for refusing to transport an illegally overweight container or trailer, or one without the certification. The definition does not address the threat of physical harm because physical threats are already crimes under State law.

The definition of *container* within the proposed regulations references the definition of *freight container* by the International Standards Organization (ISO). The current ISO definition of *freight container* is an article of transport equipment:

(a) Of a permanent character and accordingly strong enough to be suitable for repeated use;

(b) Specially designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(c) Fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another;

(d) So designed as to be easy to fill and empty; and

(e) Having an internal volume of one cubic meter (35.3 cubic feet) or more.

The purpose of a *reasonable description* is to provide the motor carrier with specific information which identifies the contents of a container or trailer. A *reasonable description* will alert persons in the intermodal chain to the possible presence of hazardous materials and to a possible error in the certified cargo weight by the identification of a commodity that has historically rendered transport vehicles overweight. A reasonable description would be very useful to a motor carrier regarding the selection of appropriate equipment to transport the container or trailer within weight limitations. Commenters are requested to provide specific suggestions on what information about the contents would be sufficient for alerting people in the intermodal chain about a possible error in the weight certification without being so specific to encourage theft or pilferage.

Section 390.54 Notification and Certification

This section follows the statutory provision with one exception. Concerns have been raised regarding intermodal containers and trailers being delayed at ports and other intermodal terminals due to the lack of certifications. Since the Act specifically prohibits motor carriers from transporting intermodal containers and trailers without first receiving the required certification, the FHWA believes that electronic transmission of the certification will minimize any delay. The proposed regulations would allow the person tendering the loaded container or trailer to provide both the notification and certification to the initial carrier by an electronic transmission (e.g., facsimile), provided the initial carrier forwards the certification to the subsequent carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouseman, or terminal operator, as required by § 390.58, in a readily available form (a hard copy format) to the motor carrier(s) to whom the container or trailer is presented, as well as roadside enforcement officers. The Secretary has the authority to establish exemptions to these regulations that are in the public interest and consistent with the purposes of this Act. The authorization of electronic transmissions is within this authority. The FHWA requests comments on the workability of this proposal and on any problems it might cause.

These notification and certification requirements do not apply to a carrier who transfers a loaded container or trailer to a subsequent carrier in the course of intermodal transportation, unless the carrier is also the person tendering the loaded container or trailer to the initial carrier.

Notwithstanding the limited language of the statute, the FHWA requests comments regarding whether information about the tare weight of the container, trailer, or chassis would assist motor carriers to comply with State weight laws. For example, would the certification be more useful if it included the gross loaded container or trailer weight rather than, or in addition to, actual gross cargo weight of the contents of the container or trailer? The FHWA requests comments regarding the merits of this method and its relative level of difficulty for shippers and others.

Section 390.56 Duty of Motor Carrier

The requirement that the certification accompany the container or trailer during transportation by a motor carrier would facilitate roadside enforcement of the proposed regulations. Commenters should consider if electronic transmission of the certification would make compliance with this requirement difficult or impossible in certain instances. With the growing use of electronic data interchange and emerging technologies associated with the Intelligent Vehicle Highway Systems (IVHS), identification of the container or trailer with the weight and additional information may minimize the need for hard copy certifications to accompany the shipment.

Section 390.58 Forwarding and Retention of Certification

The proposed rule would establish recordkeeping requirements for persons tendering, and each motor carrier transporting, a loaded container or trailer. Although recordkeeping requirements are not included in the Act, this provision would not significantly increase the paperwork burden upon shippers or motor carriers, since the actual gross cargo weight and reasonable description could easily be incorporated into other shipping documents (e.g., bills of lading). Retention of these records will facilitate effective enforcement of the proposed regulations.

Section 390.60 Coercion

The exception in paragraph (c) for carriers during the transfer of loaded containers or trailers to other carriers was specified in the Act (49 U.S.C. 508(e)). It does not include persons or entities which do not meet the definition of a carrier. The exemption does not apply when the carrier is the

VOL 58 ISS 133 JL 14 1993 UMI

person tendering the loaded container to the initial carrier.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this rulemaking is not major within the meaning of Executive Order 12291. This rulemaking is considered to be a significant regulation under Department of Transportation regulatory policies and procedures because it affects other modal administrations of the Department and because of substantial public interest. The proposed regulations would require all modal carriers to forward certifications from persons tendering loaded intermodal containers and trailers to subsequent carriers, but would promulgate a record retention requirement only on persons tendering the containers or trailers and their motor carriers. The FHWA anticipates that the economic impact of this rulemaking will be minimal since the certification could easily be incorporated into documents required by other Federal agencies. For these reasons, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this proposed rule on small entities such as local governments and businesses. The FHWA believes that this rulemaking would not have a significant impact on a substantial number of small entities because the certification could be easily incorporated into existing shipping documents. The Act provided that certifications would only be required for shipments having an actual gross cargo weight of more than 10,000 pounds. The effect on small businesses is proportionate to the number of shipments of intermodal containers and trailers. The FHWA intends to further evaluate the economic consequences of this proposal on small entities in light of the comments received in response to this notice.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Intermodal Safe Container Transportation Act authorizes the Secretary to initiate a proceeding to issue regulations to implement the provisions of the Act. The proposed regulations recognize the role of State governments in implementing the enforcement provisions of the Act including the authorization of legislation to enable a State to assess fines and penalties and impound containers and trailers. Therefore, the FHWA has determined that a Federalism assessment is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under OMB No. (NEW); *Administration:* Federal Highway Administration; *Title:* Federal Motor Carrier Safety Regulations; General; Intermodal Transportation; *Need for Information:* Reduce the number of overweight motor vehicles transporting intermodal containers and trailers; *Proposed Use of Information:* Information about the nature and weight of the cargo will better enable motor carriers to comply with vehicle weight laws; *Frequency:* 8,000,000 shipments of intermodal containers and trailers per year; *Burden Estimate:* 133,333 hours; Respondents: Persons presenting a loaded container or trailer for intermodal transportation; *Form(s):* None; *Average Burden Hours Per Respondent:* One minute per shipment. There is no significant administrative burden to the motor carrier industry because the same or similar shipping documents are generally maintained for similar time periods under other Federal and State requirements. *For further information contact:* The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the FHWA. It is requested that comments sent to OMB also be sent to the FHWA rulemaking docket for this proposed action.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Reporting and recordkeeping requirements.

Issued on: July 7, 1993.

Rodney E. Slater,

Administrator.

For the reasons set out in the preamble, 49 CFR part 390 is proposed to be amended as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 501, 508, 3102 and 3104; 49 CFR 1.48.

§ 390.3 [Amended]

2. Section 390.3 is amended by redesignating paragraphs (b) through (f) to read as (c) through (g), respectively, and by adding a new paragraph (b) to read as follows:

§ 390.3 General applicability.

* * * * *

(b) The rules in subpart C of this part are applicable to persons tendering loaded intermodal containers or trailers having an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds and to carriers used to transport such containers or trailers.

* * * * *

Subpart C—[Added]

3. Part 390 is amended by adding subpart C to read as follows:

Subpart C—Intermodal Transportation

Sec.
390.50 Applicability.
390.52 Definitions.
390.54 Notification and certification.

Sec.
390.56 Duty of motor carrier
390.58 Forwarding and retention of certification.
390.60 Coercion.

Subpart C—Intermodal Transportation

§ 390.50 Applicability.

The provisions of this subpart apply to any person tendering loaded containers or trailers, for intermodal transportation which may involve a motor carrier, having an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds and to carriers used to transport such containers or trailers. This subpart also applies to any person who coerces or attempts to coerce a motor carrier to transport a loaded container or trailer in violation of this subpart.

§ 390.52 Definitions.

In this subpart:

Applicable state law means the vehicle weight laws, including overweight operating permit regulations, of each State in which intermodal transportation occurs or where an act of coercion allegedly occurs.

Carrier means:

(1) A motor carrier, water carrier, and rail carrier (as such terms are defined in 49 U.S.C. 10102), and

(2) An ocean common carrier (as such term is defined in 46 U.S.C. App. 1702), providing transportation of property in commerce.

Coerce or *attempt to coerce* means a threat to cause substantial harm to the business or financial condition of a carrier or person participating in intermodal transportation which is designed to induce that carrier or person to transport a loaded container or trailer in violation of the provisions of § 390.56 or 390.60.

Container has the meaning given the term freight container by the International Organization for Standardization in Series 1, Freight Containers, 3rd Edition (reference number IS0668–1979(E)), including successive revisions thereto, and similar containers that are used in providing transportation in interstate commerce.

Initial carrier means the first carrier transporting in intermodal transportation a loaded container or trailer with an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds.

Intermodal transportation means successive carriage of a loaded container or trailer from an origin point to a destination point by more than one type of carrier in interstate or foreign commerce. Such term shall include carriage by more than one mode of transportation in interstate or foreign commerce both under a single bill of lading and under separate bills of lading.

Reasonable description means a representative statement that accurately characterizes the cargo transported. A reasonable description characterizes all commodities that constitute more than 20 percent of the total cargo weight for purposes related to this subpart. The terms *general freight, miscellaneous freight, freight all kinds*, and similar generic descriptions are not considered reasonable descriptions for purposes related to this subpart, unless no single commodity constitutes more than 20 percent of the total cargo weight. Hazardous material shipping paper requirements (49 CFR part 172, subpart C) are not affected by this definition, and must be shown as specified.

Tender a loaded container or trailer means to present a loaded container or trailer to an initial carrier for intermodal transportation. The person who assumes legal responsibility for the loading of the contents into the container or trailer is considered to be the person who tendered the loaded container or trailer including the consolidation of multiple shipments.

§ 390.54 Notification and certification.

(a) Before any person tenders any container or trailer having an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds, such person shall give the initial carrier written notification of the cargo weight and a reasonable description of the contents of the container or trailer. The notification may be transmitted electronically.

(b) At or before the time any person tenders any container or trailer having an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds, such person shall provide a written certification to the initial carrier.

(1) This certification may be transmitted electronically, provided that the certification can be reproduced in a tangible form, including signature.

(2) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouseman, and terminal operator shall not be considered to be tendering a loaded container unless the person assumes legal responsibility for the loading of the contents into the container or trailer.

(c) The certification shall appear on the first page of the shipping document corresponding to the container or trailer or on a separate document that directly relates to the shipping document corresponding to the container or trailer.

(d) The certification shall include:

(1) The actual gross cargo weight of the contents of the container or trailer, including packing material and pallets;

(2) A reasonable description of the contents;

(3) The signature of the person or representative tendering the container or trailer;

(4) The name of the person tendering the container or trailer; and

(5) The date.

(e) No person shall provide false or erroneous information in a certification.

§ 390.56 Duty of motor carrier.

(a) No motor carrier shall provide transportation of a loaded intermodal container or trailer having an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds prior to receiving the certification required by this subpart.

(b) The certification shall accompany the intermodal container or trailer during transportation by a motor carrier.

§ 390.58 Forwarding and retention of certification.

(a) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouseman, or terminal operator that receives the certification required by this subpart in the course of intermodal transportation shall forward the certification to a subsequent carrier transporting the container or trailer.

(b) The forwarding of the certification under paragraph (a) of this section by any persons listed there does not constitute a verification or affirmation of the accuracy or completeness of the certification.

(c) Any person who tenders a loaded intermodal container or trailer, which may involve a motor carrier, and each motor carrier providing intermodal transportation of a loaded container or trailer shall maintain a copy of the certification for a period of one year from the date of the transportation. Certifications may be maintained electronically if the certification can be reproduced in a tangible form including signature.

§ 390.60 Coercion.

(a) No person may coerce or attempt to coerce a person to transport a loaded container or trailer subject to this subpart without the certification required by § 390.54.

(b) No person, knowing that the weight of the loaded container or trailer or the weight of the tractor-trailer combination carrying the container or trailer in intermodal transportation is in

excess of that permitted by applicable State law, shall coerce or attempt to coerce a motor carrier—

(1) To transport the container or trailer; or

(2) To operate the tractor-trailer combination; in violation of such law.

(c) Exception. This section does not apply to a carrier during the transfer of a loaded container or trailer to another carrier in the course of intermodal transportation. This exception does not apply if the carrier is also the person tendering the loaded container or trailer.

[FR Doc. 93–16615 Filed 7–13–93; 8:45 am]

BILLING CODE 4910–22–P

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49 CFR Parts 392 and 393

[FHWA Docket No. MC–93–19]

RIN 2125–AD17

Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to amend the requirements for warning devices for stopped vehicles to allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles, unless the vehicle is transporting certain hazardous materials or is powered by compressed natural gas. It is the intent of this rulemaking to give equal priority to fusees and flares with regard to use as emergency warning devices. This action is required by section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

DATES: Comments must be received on or before September 13, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–19, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (the Act) (Pub. L. 102–240, 105 Stat. 1914, 1993), signed by the President on December 18, 1991, requires that "Section 393.95 of title 49 of the Code of Federal Regulations shall be applied so that fusees and flares are given equal priority with regard to use as reflecting signs." Currently § 393.95(f)(2)(i) requires that vehicles equipped with warning devices on and after January 1, 1974, have three bidirectional reflective triangles that conform to Federal Motor Vehicle Safety Standard No. 125 (49 CFR 571.125). Section 393.95(f)(2)(ii) allows the use of fusees, liquid-burning emergency flares, and red electric lanterns in addition to, but not in lieu of, bidirectional reflective triangles. Performance standards for fusees are provided in § 393.95(j). However, performance standards are not currently specified for liquid-burning flares.

Although fusees and liquid-burning flares are allowed in addition to the bidirectional reflective triangles, certain restrictions on their use are imposed, depending on the cargo being transported or the fuel system used to power the vehicle. Section 393.95(g) prohibits flame producing warning devices on vehicles transporting explosives, Class A or Class B; any cargo tank motor vehicle used for the transportation of flammable liquids or flammable compressed gas whether loaded or empty; or any motor vehicle using compressed gas as a motor fuel. This prohibition is intended to reduce the inherent risk of fire and/or explosion if these hazardous materials were exposed to flame.

Discussion of Proposal

The FHWA is proposing to amend § 393.95 to allow all commercial motor vehicles to be equipped with fusees and liquid-burning flares in lieu of bidirectional emergency reflective triangles, except motor vehicles transporting explosives (Class A or Class B), cargo tank motor vehicles used for flammable liquids or flammable compressed gas (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. This prohibition remains necessary to minimize the risk of explosion or catastrophic fire involving cargoes and fuels of these types. The FHWA believes the retention of this provision is consistent with congressional intent.

The FHWA is also proposing to amend § 392.22(b) which sets forth requirements for the placement and use of warning devices for stopped vehicles. This amendment is necessary because the current paragraph does not allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles.

Fusees and liquid-burning flares do not burn indefinitely. The FHWA does not believe that the safety benefits derived from the use of warning devices would be served by the use of fusees and liquid-burning flares if those devices were to burn out prior to the movement of the disabled or stopped vehicle. The FHWA proposes that vehicles be equipped with either (1) three bidirectional emergency reflective triangles or (2) six fusees or liquid-burning flares, each capable of burning for 30 minutes. The FHWA believes that six fusees or liquid-burning flares would be sufficient to provide warning in the vast majority of incidents involving stalled vehicles. The FHWA requests comments on the minimum number of fusees or liquid-burning flares which should be required on vehicles which are not equipped with triangles, the minimum burning time for each fusee, and whether or not a mixture of fusees, liquid-burning flares, and bidirectional reflective triangles should be allowed.

The FHWA is proposing to amend § 392.22(b)(2)(i) *Fusees*, to require the motor carrier to ensure that fusees or liquid-burning flares are in use for the entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway. In addition, the FHWA proposes that § 392.22(b)(2)(ii) be amended to allow motor carriers to use fusees or liquid-burning flares in lieu of emergency triangles when their vehicles are stopped during daylight hours in a business or residential district. Section 392.22(b)(2)(ii) would require that if fusees or liquid-burning flares are used, there must be at least one lighted fusee or flare at each of the prescribed locations, as long as the vehicle is stopped. The driver of the vehicle would be required to extinguish and remove each burning fusee or liquid-burning flare before the stopped vehicle is moved.

With regard to performance standards for fusees and liquid-burning flares, the FHWA proposes to amend § 393.95(j) to require that these devices be capable of burning for at least 30 minutes, and meet the standards of the Underwriters Laboratories, Inc., Highway Emergency

Signals (UL 912). As stated in UL 912, the Underwriters Laboratories standards are "based upon sound engineering principles, research, and records of tests and field experience, and an appreciation of the problems of manufacture, installation, and use derived from consultation with and information obtained from manufacturers, users, inspection authorities, and others having specialized experience." The FHWA believes that such a standard is appropriate for incorporation by reference into § 393.95. Currently, § 393.95(j) references the standards of the Bureau of Explosives, Association of American Railroads. The FHWA believes that the UL standard is preferable because it provides comprehensive performance standards for both fusees and liquid-burning flares and is more familiar to the motoring public.

The FHWA proposes to create a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51. After review of the comments to this rulemaking, and a determination that the incorporation by reference is necessary for the final rule, the FHWA would submit UL 912 to the Director of the Federal Register for approval in accordance with 5 U.S.C. 522(a) and 1 CFR 51. Upon approval of the Director of the Federal Register, the FHWA would incorporate UL 912 in § 393.95, and include information on the availability of the document in § 393.7(b).

The FHWA recognizes that some motor carriers may wish to supplement the required warning devices (reflective triangles or fusees and flares) with other warning devices such as electric lanterns. The FHWA intends to allow the use of these other types of warning devices in addition to, but not in lieu of, the required warning devices. Therefore, the FHWA is proposing to add § 393.95(f)(2)(iii) to clearly indicate this intent, provided those supplemental warning devices do not decrease the effectiveness of the required warning devices.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This proposal would amend the requirements for warning devices for stopped vehicles. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This proposal, if adopted, would allow motor carriers the option to use fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The proposal would not increase the cost of complying with the requirements for emergency warning devices on commercial motor vehicles. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. With a few exceptions, this proposal, if adopted, would allow motor carriers the option to use fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The proposal would not increase the cost of complying with the requirements for emergency warning devices on commercial motor vehicles. Based on the evaluation of this proposal, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 393

Highway safety, Highways and roads, Motor carriers, and Motor vehicle safety.

Issued on: July 7, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, by amending parts 392 and 393 as set forth below:

PART 392—DRIVING OF MOTOR VEHICLES

1. The authority citation for part 392 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. Paragraphs (b)(1) introductory text, (b)(2)(i) and (ii) of § 392.22 are revised to read as follows:

§ 392.22 Emergency signals, stopped vehicles.

* * * * *

(b) *Placement of warning devices—*

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a vehicle is stopped on the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall as soon as possible, but in any event within 10 minutes, place the warning devices with which his vehicle is equipped in conformance with the requirements of § 393.95 of this subchapter, either three emergency reflective triangles, three electric emergency lanterns, three liquid-burning emergency flares, three fusees, or three red emergency reflectors in the following manner:

(i) * * *

(ii) * * *

(iii) * * *

(2) *Special Rules*—(i) Fusees and liquid-burning flares. The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long

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as the vehicle is stopped. Before the stopped vehicle is moved, the driver shall extinguish and remove each burning fusee or liquid-burning flare.

(ii) *Daylight hours.* Except as provided in paragraph (b)(2)(iii) of this section, during the period lighted lamps are not required, three emergency triangles, or three lighted fusees or liquid-burning emergency flares shall be placed as specified in paragraph (b)(1) of this section or two red flags as specified in paragraphs (b)(1)(ii) and (iii) of this section and within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning emergency flares in lieu of emergency triangles or red flags, the driver must insure that at least one fusee or liquid-burning emergency flare remains lighted at each of the prescribed locations as long as the vehicle is stopped or parked. Before leaving the site where the vehicle was parked or stopped, the driver shall extinguish and remove each burning fusee or flare.

* * * * *

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATIONS

3. The authority citation for part 393 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

4. A new section 393.7 is added to subpart A of part 393 to read as follows:

§ 393.7 Matter incorporated by reference.

(a) *Incorporation.* Part 393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2)–(9) Reserved.

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW., Washington, DC 20590 in Room 2200. These document are also available for inspection and copying as provided in 49 CFR part 7, appendix D; and

(ii) The Office of the Federal Register in Washington, DC.

5. Section 393.95 is amended by revising paragraphs (f)(2) and (j) to read as follows:

§ 393.95 Emergency equipment on all power units.

* * * * *

(f) * * *

(2) *Vehicles equipped with warning devices on and after January 1, 1974.* (i) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, § 571.125 of this title; or

(ii) At least 6 fusees or liquid-burning flares. The vehicle must have as many additional fusees or liquid-burning flares as are necessary to satisfy the requirements of § 392.22.

(iii) Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) * * *

(h) * * *

(i) * * *

(j) *Requirements for fusees and liquid-burning flares.* Each fusee or liquid-burning flare shall be capable of burning for 30 minutes, and shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals. (See § 393.7(b) for information on the availability of this document.) Each fusee or liquid-burning flare shall be marked with the UL symbol.

* * * * *

[FR Doc. 93–16617 Filed 7–13–93; 8:45 am]

BILLING CODE 4910–22–P

Notic

This section contains doc proposed rul public. Notic committee m rulings, dele petitions and statements o examples of section.

ACTION

Informatio the Office for Review

AGENCY: A Volunteer

ACTION: Inf submitted and Budge

SUMMARY: submitted the Paperw Chapter 35 44 U.S.C. 3 submission ACTION C

DATES: OM comments Send comm

ADDRESSES

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SUPPLEMEN

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Responses:

Notices

Federal Register
Vol. 58, No. 133
Wednesday, July 14, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Correction Submitted to the Office of Management and Budget for Review

AGENCY: ACTION, the Federal Domestic Volunteer Agency.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.A. Chapter 35). This entry is not subject to 44 U.S.C. 3504 (h). Copies of the submission may be obtained from the ACTION Clearance Officer.

DATES: OMB and Action will consider comments received by August 13, 1993. Send comments to both:

ADDRESSES:

Willard L. Hoing, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525.

Steve Semenuk, Desk Officer for ACTION, Office of Management & Budget, 3002 New Executive Ofc. Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title and No. of Form: Project Grant Application, Form A–424–SCS

Need and Use: To assure that grantees meet program requirements; USE: the information provided is considered by ACTION with regard to initial and renewal funding.

Type of Request: Extension of the expiration date of currently approved collection without any change in the substance or in the method of collection.

Respondent's Obligation to Reply: Required for initial/renewal benefits.

Descriptions of Respondents: Public agencies and private non-profit organizations.

Frequency of Collection: Annually

Estimated Number of Annual Responses: 288

Estimated Average Burden Hours per Response: For new applicants —20 hours; for renewal applicants—10 hours).

Regulatory authority: 45 U.S.C. 4950, *et seq.*

Dated: July 6, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–16611 Filed 7–13–93; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 9, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Forest Service, Visitor Permit and Registration Card, FS 2300–30; FS 2300–32, On occasion, Individuals or households; 315,000 responses; 15,750 hours, John Twiss (202) 205–1422.

• Foreign Agricultural Service, Readership Survey, Annually, Individuals or households; farms; businesses or other for-profit; Small businesses or organizations; 2,000 responses; 340 hours, Geraldine Schumacher (202) 720–7115.

New Collection

• Food and Nutrition Service, Authorized Food Retailer Characteristics Study, One time data collection, Businesses or other for-profit; non-profit institutions; small businesses or organizations; 2,500 responses; 2,425 hours, Ken Offerman (703) 305–2115.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 93–16651 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 93–060–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

The environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–090–01	Hoechst-Roussel Agri-Vet Company	06–14–93	Sugar beet plants genetically engineered to express tolerance to the herbicide glufosinate.	North Dakota.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 8th day of July 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–16652 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Revision of the Land and Resource Management Plan for the Routt National Forest, Routt County, Moffat County, Jackson County, Garfield County, Rio Blanco County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an Environmental Impact Statement for the revision of the Routt National Forest Land and Resource Management Plan (Forest Plan). According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10-year cycle. The existing Routt Forest Plan was approved on November 15, 1983.

The Routt National Forest intends to reexamine the primary decisions made in the Forest Plan by addressing the issues identified as revision topics. The Revision Topics are those areas of the Forest Plan, identified through monitoring, evaluation, and public involvement, where a potential need for change was identified. The Revision Topics are:

Wilderness/Roadless Areas

Recreation Opportunities/Resolution of Travel Conflicts

Timber Management/Allowable Sale Quantity

Biodiversity

Wild and Scenic River Eligibility

The primary decisions made in the Forest Plan are:

Forestwide Multiple-use Goals and Objectives, 36 CFR 219.11(b)

Forestwide Management Requirements, 36 CFR 219.27

Management Area Direction, 36 CFR 219.11(c)

Lands Suited or not Suited for Activities, 36 CFR 219.14, 219.16,

Monitoring and Evaluation, 36 CFR 219.11(d)

OTHER RECOMMENDATIONS TO CONGRESS: The Forest Service continues to invite comments and suggestions from Federal, State, and local agencies, Native American tribes, individuals and organizations on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. Public meetings to discuss alternatives are scheduled as follows:

Location	Date	Time
Craig, Colorado.	August 16, 1993.	3 p.m. and 6 p.m.
Yampa, Colorado.	August 17, 1993.	3 p.m. and 6 p.m.
Walden, Colorado.	August 18, 1993.	3 p.m. and 6 p.m.
Kremmling, Colorado.	August 19, 1993.	3 p.m. and 6 p.m.
Steamboat Springs, Colorado.	August 20, 1993.	3 p.m. and 6 p.m.

The purpose of these meetings is to discuss and define the range of alternatives to be considered in the Environmental Impact Statement. Forest Service officials will describe and explain the preliminary alternatives the agency has identified and the process of environmental analysis and disclosure to be followed. Written comments are

encouraged. Additional meetings with individuals or groups may be arranged by contacting Lee R. Kramer, Interdisciplinary Team Leader, 303–879–1722.

DATE: Comments concerning the scope of the analysis should be received in writing by August 25, 1993.

ADDRESSES: Send written comments to Jerry E. Schmidt, Forest Supervisor, Routt National Forest, 29587 West US 40, Steamboat Springs, Colorado 80487.

FOR FURTHER INFORMATION CONTACT: Lee R. Kramer, Forest Plan Interdisciplinary Team Leader, 303–879–1722.

SUPPLEMENTARY INFORMATION: The Revision Topics were identified through a process of examining the Forest Plan and determining what items may need to be changed. This process included a number of public meetings designed to get public input. Newsletters, seminars, and meetings with local government officials and interest groups have also aided in identifying the Revision Topics. Comments were divided into the categories of:

Revision Topics
Amendment Topics
Implementation Topics
Topics Outside the Scope of a Forest Plan Revision

The alternative shown below are preliminary and continue to be developed. New alternatives may be created as a result of public involvement. Some of the preliminary alternatives may not be analyzed in detail.

Alternative A (No Action)

Theme—The theme for this alternative is to continue the management area allocations, activities, and management direction of the current Forest Plan.

How Revision Topics are Affected

—Wilderness/Roadless—About 21% of the Forest is managed as either wilderness, proposed wilderness, or roadless. Davis Peak and Service Creek FPAs continue to be recommended for wilderness designation.

—Recreation Opportunities/Resolution of Travel Conflicts—Semi-primitive recreation opportunities are emphasized. About 42% of the Forest provides non-motorized recreation opportunities while the remainder of the Forest (58%) offers motorized recreation opportunities.

—Timber—The ASQ was 360 MMBF for the first decade. Based on actual timber offered figures during the 9 years of plan implementation, the No Action ASQ is 250 MMBF. About 20% of the Forest has an emphasis on wood fiber production.

—Biodiversity—Management of ecosystems is not well addressed.

—Wild and Scenic Rivers—No additional eligible Wild and Scenic River candidates are identified (Portions of the Elk and Encampment Rivers, totalling 54.5 miles, continue to be recommended for Wild and Scenic River designation and have been given interim protection).

Alternative B

Theme—The theme for this alternative is to modify current direction to put more emphasis on natural disturbance agents, such as fire, insects and disease, to modify vegetation composition and structure to resemble the range of conditions found before European-Americans began to alter the landscape.

How Revision Topics are Affected

—Wilderness/Roadless—The roadless character of all inventoried roadless areas would be maintained by prohibiting timber harvest and motorized use. About 60% of the Forest would be managed as either wilderness or roadless. Wilderness recommendation options 1 through 4 are available. (Wilderness option descriptions follow alternative descriptions)

—Recreation Opportunities/Resolution of Travel Conflicts—Non-motorized recreation opportunities would be emphasized on most or the Forest. Arterial and collector roads would generally be closed to public motorized use or managed at low maintenance levels to discourage high levels of use.

—Timber—The planned timber harvest level (ASQ) would be greatly reduced (compared to alternative A) due to the fewer acres available and the lower intensity of management.

—Biodiversity—Reliance on natural disturbances to shape the composition and structure of vegetation involves a high degree of unpredictability, uncertainty and risk. Not all of the Forest can be managed in this fashion due to legal and social obligations i.e. fire control near private land developments. The lack of management control of the process and the high degree of uncertainty regarding the timing and location of natural disturbances make the identification of environmental consequences difficult.

—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Alternative C

Theme—The theme for this alternative is to modify current direction to utilize management actions such as timber harvest and prescribed burning to produce goods and services and modify vegetation composition and structure to resemble the range of conditions found before European-Americans began to alter the landscape.

How Revision Topics are Affected

—Wilderness/Roadless—Inventoried roadless areas, having enough suitable timberlands to potentially offer economically viable timber sales, could be entered for timber harvest while other roadless areas would be managed primarily with natural disturbances and prescribed fire. Wilderness recommendation options 1 through 3 are available.

—Recreation Opportunities/Resolutions of Travel Conflicts—There would be a mix of open and closed roads with a continued emphasis on semi-primitive motorized and non-motorized recreation opportunities.

—Timber—Timber rotation ages would be longer and the harvest units larger to better duplicate the timing, location and size of natural disturbances.

—Biodiversity—Using management actions to shape the composition and structure of vegetation has more predictable consequences than does using natural disturbances because the timing and location of management actions is controlled. Not all of the Forest could be managed in this fashion due to legal and social obligations i.e. large timber harvest units visible from sensitive viewing points.

—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Alternative D

Theme—The theme of this alternative is to modify current direction to ensure the stability of the local wood fiber industry, contribute towards national wood fiber demands and offer increased motorized recreation opportunities.

How Revision Topics are Affected

—Wilderness/Roadless—Inventoried roadless areas would be entered for timber harvest and other resource activities as necessary to meet the current timber demand level of 33.75 MMBF annually. Roads constructed into these areas would be built to a low standard and would be closed to

VOL
58
ISS
133
JL
14
1993
UMI

public motorized use. Wilderness recommendation options 1 and 3 are available.
—Recreation Opportunities/Resolution of Travel Conflicts—Roads outside of existing roadless areas would generally be open to motorized travel with restrictions only as necessary to protect sensitive resources. About 60% of the Forest would provide for non-motorized recreation opportunities while the remainder would provide motorized recreation opportunities.
—Timber—Existing Standards, Guidelines, and Management Area Allocations would be modified to ensure that an ASQ of 337.5 MMBF, for the decade, could be sustained.
—Biodiversity—Management actions, such as timber harvest, needed to achieve objectives, will be designed to mimic natural disturbances as much as possible.
—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Alternative E

Theme—The theme for this alternative is to modify current direction to utilize management actions such as timber harvest and prescribed burning to produce goods and services and modify vegetation composition and structure to resemble the range of conditions found before European-Americans began to alter the landscape. This is the same as Alternative C with the exception that timber management actions must result in an above-cost timber sale program.

How Revision Topics Are Affected

—Wilderness/Roadless—Roadless areas, not recommended for wilderness and having suitable timberlands, could be entered for timber harvest if road construction and timber harvest would result in an above cost timber program. Other roadless areas would be managed primarily with natural disturbances and prescribed fire. Wilderness recommendation options 1 through 3 are available.
—Recreation Opportunities/Resolution of Travel Conflicts—There would be a mix of open and closed roads with a continued emphasis on semi-primitive motorized and non-motorized recreation opportunities.
—Timber—Timber rotation ages would be longer and the harvest units larger to better duplicate the frequency and size of natural disturbances. Timber harvest levels would depend upon revenues, costs and our ability to sustain an above cost timber sale program.
—Biodiversity—Using management actions to shape the composition and structure of vegetation has more predictable consequences than does using natural disturbances because the timing and location of management actions is controlled. Not all of the Forest could be managed in this fashion due to legal and social obligations i.e. large timber harvest units visible from sensitive viewing points. The need for increased financial efficiency could limit the management actions available i.e. vegetation treatment with salvage sales. If low timber values limit human intervention, opportunities to modify vegetation composition and structure would be decreased.
—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Alternative F

Theme—The theme of this alternative is to modify current direction to concentrate intensive management activities such as timber harvest and recreation development in areas where they have historically occurred. Areas with little or no sign of past intensive management activities will remain in that condition.

How Revision Topics are Affected

—Wilderness/Roadless—Inventoried roadless areas, which represent areas with little or no sign of past intensive management activities, would be managed to maintain their roadless condition by prohibiting timber harvest and road construction. Roaded areas, which tend to have a history of human activity, would be intensively managed for multiple uses and roads would tend to remain open to public motorized travel. Wilderness recommendation options 1 through 4 are available.
—Recreation Opportunities/Resolution of Travel Conflicts—This alternative would provide a mix of motorized and non-motorized recreational opportunities with the motorized opportunities occurring mostly in areas associated with intensive management.
—Timber—Overall timber harvest levels might be only slightly lower (than Alternative A) but would be more concentrated.
—Biodiversity—Roaded areas would be managed to feature a range of habitat conditions with a tendency towards young and vigorous forest vegetation. Unroaded areas would be managed to feature older vegetation.
—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Alternative G

Theme—The theme of this alternative is to modify current direction to produce goods and services and modify vegetation composition and structure at three different levels of intensity in separate areas of the Forest.

Level 1—Natural disturbances, with a minimum of management activity, will occur on capable and available inventoried roadless areas.

Level 2—Natural disturbances will be mimicked through low intensity activity on the inventoried roadless areas not found capable or available.

Level 3—Natural processes will be modified to meet a variety of demands through high intensity activity on all remaining Forest lands.

How Revision Topics are Affected

—Wilderness/Roadless—Inventoried roadless areas found capable and available as wilderness would be managed with minimum human intervention by prohibiting timber harvest and road construction. Inventoried roadless areas found not capable or available as wilderness would be managed with some human intervention by featuring low intensity timber harvest and other resource activities to mimic natural disturbances. Roaded areas would be intensively managed for multiple uses with a high level of human intervention. Wilderness recommendation options 1 through 4 are available.
—Recreation Opportunities/Resolution of Travel Conflicts—This alternative would provide a mix of motorized and non-motorized recreational opportunities.
—Timber—Overall timber harvest levels would be lower (than Alternative A).
—Biodiversity—Areas with high human intervention would feature a range of habitat conditions with a tendency towards young and vigorous forest vegetation. Areas with little human intervention would be managed to feature older vegetation.
—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Alternative H

Theme—The theme of this alternative is to modify current direction to facilitate high levels of development, resource utilization and motorized recreation.

How Revision Topics are Affected

—Wilderness Roadless—Roadless areas would be entered for timber harvest and other resource activities. Roads would generally be open to motorized travel with restrictions only as necessary to protect sensitive resources. Only wilderness recommendation option 1 is available.
—Recreation Opportunities/Resolution of Travel Conflicts—Most of the Forest, outside designated wilderness, would feature motorized recreation opportunities.
—Timber—More (than alternative A) Forest land would have an emphasis on wood fiber production.
—Biodiversity—There would be a wide range of habitat conditions across the Forest with an emphasis towards developing vigorous and healthy vegetation.
—Wild and Scenic Rivers—All eligible Wild and Scenic River candidates would be given interim protection.

Wilderness Options

Once a decision has been made on the amount of roadless area to be maintained as roadless, the decision maker then has the option of recommending all or part of the roadless area for wilderness designation provided that it was found capable and available for wilderness. Tentative wilderness options are shown below.

Option 1—Forest Service recommends no additional wilderness.

Option 2—Forest Service recommends * * * (small amount, maybe one area and/or several additions to existing wilderness areas)

Option 3—Forest Service recommends * * * (higher acreage, some of the areas found capable and available)

Option 4—Forest Service recommends * * * (Maximum wilderness where we recommend all of the areas found capable and available)

The responsible official for approving the Forest Plan revision is Elizabeth Estill, Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225. The Forest Supervisor, Routt National Forest, is delegated responsibility for preparing the Environmental Impact Statement.

The Draft Environmental Impact Statement and proposed Revised Forest Plan should be available for public review in January 1994. After a minimum comment period of 90 Days, the Final Environmental Impact Statement and Revised Forest Plan should be completed by November 1994.

The 90 day public comment period on the Draft Environmental Impact Statement will commence on the day the Environmental Protection Agency publishes a "Notice of Availability" in the **Federal Register**.

It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). Please note that comments you make on the Draft Environmental Impact Statement will be regarded as public information.

In addition, Federal court decisions have established that reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

Dated: July 7, 1993.

Elizabeth Estill,

Regional Forester.

[FR Doc. 93–16627 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–11–M

Grand Island Advisory Commission Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on July 26, 1993 at 8 a.m. at the Comfort Inn on M–28 East in Munsing, Michigan. An agenda for the one day meeting will consist of an update on the Draft Environmental Impact Statement from the Planning Team, a discussion by Dr. Cantrill on concensus building and a discussion of the feasibility study by the feasibility committee.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Direct questions about this meeting to Dennis Jones, Public Service Team leader, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829. (906) 786–4062.

July 7, 1993.

Donald E. Howlett,

Acting Forest Supervisor.

[FR Doc. 93–16583 Filed 7–13–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 647]

Expansion of Foreign-Trade Zone 75 Phoenix, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Phoenix, Arizona, grantee of Foreign-Trade Zone No. 75, for authority to expand and relocate its general-purpose zone in Phoenix, Arizona, within the Phoenix Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on June 22, 1992 (Docket 19–92, 57 FR 29277, 7/1/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 2nd day of July, 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–16687 Filed 7–13–93; 8:45 am]

BILLING CODE 3510–DS–P

VOL
58
ISS
133
JL
14
1993
UMI

[Order No. 648]

Expansion of Foreign-Trade Zone 177 Evansville, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Indiana Port Commission, grantee of Foreign-Trade Zone No. 177, for authority to expand its general-purpose zone in Evansville, Indiana, within the Evansville Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on June 29, 1992 (Docket 21–92, 57 FR 30464, 7/9/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including section 400.28.

Signed Washington, DC, this 2nd day of July, 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–16688 Filed 7–13–93; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–570–820]

Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–4929.

Final Determination

The Department of Commerce (the Department) determines that certain compact ductile iron waterworks (CDIW) fittings and accessories thereof from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) and that critical circumstances exist. The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The products covered by this investigation are (1) certain compact ductile iron waterworks fittings of 3 to 16 inches nominal diameter regardless of shape, including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement line, and whether or not covered with bitumen or similar substance, conforming to AWWA/ANSI specification C153/A21.53, and rated for water working pressure of 350 PSI; and (2) certain CDIW fittings accessories which typically consist of a standard ductile iron gland, a styrene butadiene rubber (SBR) gasket, the requisite number of Cor-Ten steel or ductile iron T-head bolts, and hexagonal nuts, for fittings in sizes 3 to 16 inches, conforming to American Water Works Association/American National Standards Institute (AWWA/ANSI) specification C111/A21.11, and rated for water working pressure of 350 PSI. Gaskets, bolts and nuts are only included if they are imported as an accessory pack with a gland. However, glands imported separately are included in the scope of investigation.

The types of CDIW fittings covered by this investigation are compact ductile iron mechanical joint waterworks fittings and compact ductile iron push-on joint waterworks fittings, both of which are used for the same applications. CDIW fittings are used to join water main pressure pipes, valves, or hydrants in straight lines, and change, divert, divide, or direct the flow of raw and/or treated water in piping systems. CDIW fittings attach to the pipe, valve, or hydrant at a joint and are used principally for municipal water distribution systems.

CDIW fittings accessories are used to join mechanical joint CDIW fittings to pipes. The accessories ensure the completeness of the seal between the CDIW fitting and pipe. Mechanical joint fittings must be used with CDIW accessories. Push-on fittings do not require CDIW accessories other than a SBR gasket.

CDIW fittings with nominal diameters greater than 16 inches, and the accessories used with CDIW fittings with nominal diameters greater than 16 inches, are specifically excluded from the scope of the investigation. Nonmalleable cast iron fittings (also called gray iron fittings) and full-bodied ductile fittings are also specifically excluded from the scope of this investigation. Nonmalleable cast iron fittings have little ductility and are generally rated only 150 to 250 PSI. Full-bodied ductile fittings have a longer body design than a compact fitting because in the compact design the straight section of the body is omitted to provide a more compact and less heavy fitting without reducing strength or flow characteristics. In addition, the full-bodied ductile fittings are thicker walled than the compact fittings. Full-bodied fittings are made of either gray iron or ductile iron, in sizes of 3 to 48 inches, conform to AWWA/ANSI specification C110/C21.10, and are rated to a maximum of only 250 PSI. In addition, compact ductile iron flanged fittings are excluded from the scope of this investigation, as they have significantly different characteristics and uses than CDIW fittings.

CDIW fittings are classifiable under subheading 7307.19.30.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Standard ductile iron glands are classifiable under HTSUS subheading 7325.99.10.00, styrene butadiene rubber gaskets are classifiable under HTSUS subheading 4016.93.00.90, T-Head bolts of steel or ductile iron are classifiable under HTSUS subheading 7318.15.20.90, and hexagonal nuts are classifiable under HTSUS subheading 7318.16.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Case History

Since our affirmative preliminary determination of critical circumstances, on April 28, 1993 (58 FR 26960, May 6, 1993), the following events have occurred.

We verified the responses of China National Metal Products Import and Export Corporation (CMP), Song Zhuang Foundry, Bin He Foundry, and Sigma Corporation in the United States and the PRC from April 6, 1993 through April 8, 1993 and April 23, 1993 through May 3, 1993, respectively. Petitioners and respondent filed case briefs on June 3, 1993 and rebuttal briefs on June 8, 1993.

A public hearing was held on June 10, 1993.

Separate Rates

As noted in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), we have followed a policy of issuing separate rates in non-market economy investigations where respondents can demonstrate both a de jure and de facto absence of central government control with respect to exports. Evidence supporting, though not requiring, a finding of de jure absence of central control would include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies. Evidence supporting a finding of de facto absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

In previous investigations and administrative reviews in which the separate rates test has been applied, the Department has not distinguished exporters on the basis of ownership. That is, state ownership did not preclude an exporter from receiving a separate rate. We now have reconsidered this policy and have determined that it is not appropriate to assign separate rates to state-owned enterprises. We have determined that an entity cannot be completely free of central government control with respect to exports if it is owned by the central government, regardless of whether the indicia set forth in *Sparklers* have been met. State ownership provides the central government the opportunity to manipulate prices whether or not it has taken advantage of that opportunity during the period of investigation. Thus, in all future investigations and administrative reviews, the Department will not consider requests for separate rates from state-owned enterprises.

In the instant investigation, CMP is 100 percent owned by CMMC, a state-owned trading company, which is 100 percent owned by the Ministry of Foreign Trade and Economic Cooperation. Accordingly, given that the PRC is a non-market economy (NME), that the subject merchandise is not produced by a market-oriented industry, and CMP is a wholly-owned subsidiary of CMMC, it is not entitled to a separate rate. Furthermore, petitioners' and respondent's additional arguments relating to the separate rates issue are now rendered moot due to the Department's reconsideration of the separate rates policy.

Best Information Available

Since respondent CMP is ineligible for a separate rate due to its ownership status, and we did not receive an adequate consolidated questionnaire response from the PRC government on behalf of all PRC producers and exporters, we are using best information available (BIA) to calculate the margin for all exporters from the PRC. As BIA, we are using the information supplied by the petitioners which was accepted for purposes of initiation.

Class or Kind of Merchandise

In its preliminary determination, the Department determined that fittings, glands, and accessory packs imported with glands constituted one class or kind of merchandise. At that time, the Department agreed to collect further information from petitioners and respondent in order to evaluate respondent's request that glands be classified as a separate class or kind of merchandise. Using respondent's January 27, 1993 submission, comments submitted prior to verification and respondent's and petitioners' case briefs, we conducted a *Diversified Products* analysis to determine if respondent's request for a finding of two separate classes or kinds of merchandise is valid. Based on our analysis the Department finds that CDIW fittings and glands constitute one class or kind of merchandise.

Physical Characteristics

Because fittings and glands are both made of ductile iron, they consequently are produced by similar manufacturing processes in similar production facilities. The Department presumes that a product which possesses the physical characteristics described in the scope of the investigation will be covered. Although there may be slight differences in the physical characteristics of fittings and glands, the differences claimed by respondent are not great enough to place the two products into different classes or kinds of merchandise. Mere lack of resemblance is not determinative of class or kind.

Ultimate Use

Customers purchase fittings and glands with the same intended use-to assemble these products, or use them in conjunction with a pre-existing waterworks system and, thereby, change the direction of water flow and/or carry water through the system. Customers who purchase mechanical joint fittings are aware of the need to secure these fittings with a gland or similar retaining product.

Expectations of the Ultimate Purchasers

The Department notes that when customers purchase mechanical joint fittings, they fully expect to use the requisite number of glands to hold the fittings in place. Although interchangeability may be an appropriate factor in cases involving variations of the same product, *i.e.*, antifriction bearings, it is not necessarily so in a case involving products which comprise a system. CDIW fittings and glands are integral parts of waterworks systems, and when taken as a whole, interchangeability is not a requirement among each product within this system in order to classify the products of this system as one class or kind of merchandise.

Channels of Trade

The Department notes that distributors sell not only fittings and glands but also all other waterworks products that are needed in a municipal water system. Respondent's December 16, 1992 Class or Kind Response, Exhibit 4, outlines identical channels of distribution for both fittings and glands for use in the waterworks industry. Respondent's argument that glands sold to the gas industry flow through a different channel of trade is not a compelling argument for determining that glands constitute a separate class or kind of merchandise. The fact that glands flow through an additional channel of trade does not negate the fact that the channels of trade are identical with regard to the waterworks industry.

Fair Value Comparisons

To determine whether sales of CDIW fittings and accessories thereof from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on IM–146 import statistics from January through April 1992, of subject merchandise, as contained in the petition. No adjustments were made to petitioners' calculation using the IM–146 statistics.

Foreign Market Value

We based FMV on the methodology contained in the petition. Petitioners contend that the FMV of PRC-produced

VOL 58 ISS 133 JL 14 1993 UMI

imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns NME countries. The PRC is presumed to be an NME within the meaning of section 771(18)(c) of the Act, and the Department has treated it as such in previous investigations (*see, Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the PRC*, 57 FR 29705 (July 6, 1992)). In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production (valued in a market economy country).

Petitioners calculated FMV on the basis of the valuation of the factors of production. In valuing the factors of production, petitioners used India as a surrogate country.

Petitioners used one of the petitioner's factors for raw material inputs, energy, and labor for constructed value (CV). The raw material, energy and labor factors for producing certain CDIW fittings and accessories thereof are based on one petitioner's actual experience through December 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by one of the petitioners.

In accordance with the hierarchy for preferred input values as set forth in the notice of *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China (PRC)*, 57 FR 21058 (May 18, 1992) (Comment 4), petitioners first used publicly available published information (PI) from India to value the factors of production before resorting to unclassified information contained in U.S. government cables or to their own costs of production. Petitioners based the value of raw material costs for fluorite, limestone, silicon, and copper scrap on PI from India. Petitioners based the value of raw material costs for pig iron, coke, and ferrosilicon on cable information from the U.S. consulate in India.

Petitioners based raw material costs for ferrosilicon magnesium, cement lining, and bituminous coating on one of the petitioner's costs as of December 1991. Petitioners based the natural gas value on PI from India, labor and electricity values on cable information from the U.S. consulate in India, and the oxygen value on one of petitioner's costs of production.

Pursuant to section 773(c) of the Act, petitioners added to CV the statutory minima of ten percent for general expenses and eight percent for profit, and a percentage of the cost of manufacture for packing expenses.

Critical Circumstances

On March 31, 1993, petitioners alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 733(e)(1) of the Act provides that the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and,

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding requisite (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding requisite (A)(ii) above, we normally consider margins of 25 percent or more for purchase price comparisons and 15 percent or more for exporter's sales price comparisons as sufficient to impute knowledge of dumping. Since the final estimated dumping margin for all exporters of CDIW fittings and accessories from the PRC is in excess of 25 percent, we can impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act.

For purposes of determining whether there have been massive imports over a relatively short period of time, the Department did not consider the company-specific data submitted by respondent on April 16, 1993, because it has not demonstrated that it qualifies for a separate rate. The Department lacked monthly, country-wide shipment data, due to the PRC Government's failure to provide an adequate consolidated questionnaire response on behalf of all PRC producers and exporters. As a result, the Department was forced to assume, as BIA, that there have been massive imports over a relatively short period of time. Accordingly, we find that critical circumstances do exist in this investigation.

Verification

As provided in section 776(b) of the Act, we verified information provided by CMP by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Petitioners argue that the Department's policy of calculating separate rates for individual exporters in PRC investigations is bad policy because it is inconsistent with the determination that the subject merchandise is not produced by a market-oriented industry and with the Department's separate rate policy in market economy investigations. Petitioners also maintain that it is not necessary for the Department to consider the de facto absence of central government control where respondents have failed to establish a de jure absence of central government control and that furthermore the mere existence of legislative enactments does not establish an absence of de jure control.

Petitioners also claim that the Department's precedent in other NME investigations does not require the Department to calculate a separate rate for CMP in this investigation. Petitioners believe that the determinations cited by respondent may be distinguished and that the Department's separate rate policy is evolving. Finally, petitioners argue that even if the Department chooses to disregard petitioners' arguments concerning the problems with its separate rate policy in MNE investigations, based on the record evidence, CMP does not qualify for a separate rate because it has not conclusively demonstrated both a de jure and de facto absence of central government control. Accordingly, CMP must be assigned a BIA rate, according to petitioners.

Respondent argues that the Department should calculate separate rates for CMP's sales of fittings and glands on a factory specific basis because it fulfills all relevant de facto and de jure criteria of the test established in the Sparklers case. Respondent claims that petitioners disregard the Department's established standard and that the relationship between CMMC and CMP is irrelevant. Respondent also states that it is not related to any other exporters or producers of the subject merchandise. Moreover, respondent maintains that all prior Department determinations support its request for separate rates and that separate rates would fulfill the policy objective identified by petitioners. Finally, respondent contends that the preliminary

determination in this case applied the wrong legal standard to unsupported factual conclusions.

DOC Response

Please see "Separate Rates" section above.

Comment 2

Petitioners state that if the Department determines that CMP is entitled to a separate rate, certain adjustments must be made to FMV. First, petitioners believe that the Department should adjust the factor for direct materials to account for the delay between production and recording of sales. Petitioners further believe that the Department should correct for an understatement of the factor for electricity at the Song Zhuang Foundry. Finally, petitioners argue that the Department should accept its factory overhead information.

Respondent argues that the Department should not use a lag period to calculate Bin He's material inputs because the verifiers' formula is speculative and using the lag is inconsistent with the Department's repudiation of lag periods in recent cases. Respondent also argues that the Department should use its public information to value factory overhead because it is the only reliable information on the record. Respondent claims its information is based on actual costs, rather than estimates, whereas petitioners' information is untimely, relies on information for products totally unlike the subject merchandise, and is based on unpublished information from a private source. Finally, respondent believes that if the Department uses petitioners' overhead figures, they should be adjusted according to information submitted by the Indian foundries.

DOC Response

These issues are moot because the Department did not use respondent's data.

Comment 3

Respondent argues that the Department should divide CDIW fittings and standard glands into two distinct classes or kinds of merchandise, according to the *Diversified Products* criteria, and terminate the case on glands because the petition contains no evidence of sales at less than fair value. Respondent states that fittings and glands have very different physical characteristics, are made of different materials, have different ANSI/AWWA standards, have different weights and sizes and require completely different manufacturing processes and skill levels. Respondent contends that fittings and glands have different uses and serve completely different functions: The function of the fittings is to change the direction of water flow, whereas glands are used to hold mechanical joint fittings in place. Respondent also states that the expectations of the ultimate user in buying fittings and glands are entirely different with regard to function and quality. Respondent notes that CDIW fittings and glands move in very different channels of trade and their methods of distribution differ. Furthermore, respondent cites the cost difference between fittings and glands. Respondent purports to fulfill all of the *Diversified Products* criteria.

Petitioners contend that all glands that may be used with CDIW fittings should be included within the scope of the petition because CDIW fittings and glands share the same physical characteristics, ultimate use, customer expectations, and channels of trade. Petitioners also believe that if the Department determines there is more than one class or kind of merchandise, it should provide petitioners with an opportunity to supplement their petition.

DOC Response

Please see "Class or Kind of Merchandise" section above.

Comment 4

Petitioners argue that the Department should include sales of Sigma's unrelated master wholesaler in its margin calculation. Petitioners contend that the sales account for a significant percentage of U.S. sales and there is no information on the record to indicate what effect these sales will have on the dumping margin.

Respondent argues that the exclusion of these sales would reduce the complexity of the investigation without affecting the outcome and that this exclusion would be consistent with the Department's regulations and prior practice.

DOC Response

This issue is moot because the Department did not use respondent's data.

Comment 5

Respondent argues that the Department's refusal to consider CMP's critical circumstances data, which was solicited by the Department, was based on an erroneous assumption that CMP was not entitled to a separate rate. Respondent states that CMP's exports to the United States decreased during any reference period that is used. Respondent also notes that petitioners' import data is not representative of imports of the subject merchandise because the tariff numbers are basket categories which include numerous items other than CDIW fittings. Finally, respondent asserts that the Department improperly inputed knowledge of dumping to Sigma based on a margin derived from BIA.

Petitioners believe that the Department's affirmative preliminary critical circumstances determination is in accordance with law and fact.

DOC Response

This issue is moot because respondent is not eligible for a separate rate. See our discussion in the "Separate Rates" section above.

Comment 6

Respondent argues that gland packing does not constitute further manufacturing.

DOC Response

This issue is moot because we did not use respondent's data.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CDIW fittings and accessories thereof from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after November 20, 1992, which is 90 days prior to the date of the publication of our affirmative preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent-
All Manufacturers/Producers/Exporters.	127.38

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

VOL
58
ISS
133
JL
14
1993
UMI

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: July 6, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16686 Filed 7–13–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 2, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. The review covers one exporter, Skaarfish A/S, and the period October 3, 1990, through March 31, 1992. Bases on our analysis of the comments received, we determine the dumping margin for Skaarfish A/S to be 5.01 percent.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Timothy Volker, or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4106, 482–6120, or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 1993, the Department of Commerce (the Department) published the preliminary results (58 FR 17380) of its administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (April 12, 1991, 56 FR 14920). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Cost of Production and Foreign Market Value

We calculated the cost of production (COP) of salmon sold by Skaarfish based on the sum of the following: (1) The simple average of farmers' costs of cultivation (COC) (which included the cost of materials, fabrication, wellboat services, general expenses of the farmer, Fisheoppdretternes Salsgag (FOS) and Norske Fiskeoppdretternes Forening (NFF) fees); (2) Skaarfish's processing expenses; and (3) Skaarfish's general expenses. The total COP was calculated on a Norwegian kroner, per kilogram (NOK/kg) basis. To calculate the amount of general expenses incurred by Skaarfish, we applied a cost-based percentage of total general expenses, adjusted for verification changes, for salmon sold on or after October 3, 1990. In all cases, for salmon sold on or after October 3, 1990, we applied a freezing fee (see our response to Comment 10).

In these final results, we have corrected a clerical error in our calculation of below-cost sales. In addition, based on the comments presented by both respondent and petitioner and after further consideration and review, we have revised certain costs. As a result of the changes, the number of third country sales found to be made at or below the COP is now less than 90 percent. Accordingly, foreign market value (FMV) for our final results is based on above-cost third country sales, not constructed value as in our preliminary results.

FMV was calculated based on c.i.f., duty paid prices to unrelated purchasers in France. Deductions were made, where appropriate, for foreign inland freight in France, inland/marine insurance, third market credit, Norwegian export duties, brokerage and handling, inland freight in Norway, third country import duties and third country warranties. Because all U.S. sales were purchase price transactions, we made circumstance of sale adjustments, where appropriate, for differences in credit, commissions and warranty expenses.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the respondent, Skaarfish A/S, we held a public hearing on May 17, 1993. We received timely comments from both the respondent and the petitioner, the Coalition for Fair Atlantic Salmon Trade (FAST).

Comment 1: Skaarfish contends that the Department improperly relied upon a single average COC factor for the entire period of review (POR) in its COP calculations, thereby incorrectly including costs of production incurred after the date of sale. Skaarfish wants the Department to calculate separate COC factors for 1990 and 1991, as the Department did in its preliminary results for processing costs, to ensure that all costs applied to the sale of salmon during the POR were costs incurred prior to the date of sale, as required by 19 CFR 353.50. Petitioner contends that the statute does not require the Department to calculate constructed value (CV) by only using costs that have been incurred prior to exportation. Petitioner contends that such an interpretation would render the statute meaningless, that the Department has never interpreted the statute in the manner argued by Skaarfish, that Skaarfish cites no statutory or case precedent to support its proposal, and that Skaarfish's proposal would violate its own reading of the statute that a separate CV is required for each sale.

Department's Position: We agree that a single COC should not be used for the entire 18-month POR. Prior to issuing questionnaires to the salmon farmers, we determined that the majority of sales during the POR were comprised of salmon harvested from sales of the 1989

and 1990 generations. Accordingly, we required farmers to report the COC for those two generations. In our preliminary results, however, we calculated a single COC covering the entire POR based on a simple average of the farmers' reported costs.

Petitioner is correct to point out that we are not required by section 773 (e)(1)(A) of the Tariff Act to calculate a separate COC based solely on costs incurred prior to exportation for every piece of merchandise exported to the United States. However, because no 1990-generation salmon were harvested until 1991, averaging the COC for 1990-generation salmon with 1989-generation salmon could lead to distortions in determining whether 1990-third country sales were made at prices below cost. Moreover, given the fluctuations of farmers' costs during the POR, the ease with which different generations' COC can be segregated, and the fact that we have calculated separate 1990 and 1991 processing costs for respondent Skaarfish, we believe that it is reasonable to use separate 1990 and 1991 COCs.

Accordingly, for our final results, we have calculated separate COCs for the 1989 and 1990 generations of salmon. We have applied the 1989-generation's COC to all sales occurring in 1990 and have applied the 1990-generation's COC to all sales occurring thereafter. We note that, although there were some sales of 1989-generation salmon during 1991, the majority of sales occurring in 1991 were from the 1990-generation of salmon, and, therefore, application of the 1990 COC to those few sales of 1989-generation salmon is reasonable.

Comment 2: Skaarfish contends that the Department should not use a simple average farmers' COC but rather a weighted average COC based on the total quantity supplied by each farmer to Skaarfish, Skaarfish argues that, by itself, weighting the sample selection does not guarantee a representative COC.

Petitioner contents that calculating a weighted average COC for the farms by the volume each sold to Skaarfish would render the sample results unrepresentative because the double weighting would give significantly more influence to those farms that sold relatively more salmon.

Department's position: We agree with the petitioner. We ensured the representativeness of the sample by weighting the original selection of farms based on the quantity of salmon sold to Skaarfish during the POR. We used a simple average in the final calculation because we had accounted for the weighting factor, volume sold to Skaarfish, when selecting the farms in our sample.

Comment 3: Skaarfish contends the Department should rely upon Skaarfish's wellboat costs rather than upon salmon farmer wellboat costs in calculating the COC. Skaarfish contends that the wellboat costs it reported are the actual costs it incurred for wellboat transportation, while those wellboat charges reported by farmers reflect charges for specific shipments and do not represent costs incurred in the normal course of business.

Petitioner contends that the Department appropriately used the salmon farmers' wellboat costs in its analysis.

Department's position: We agree, in part, with petitioner. In our preliminary results, we included farmers' wellboat costs in the COC because we verified that farmers, in some instances, paid for wellboat charges on sales to Skaarfish. We did not include any Skaarfish wellboat costs in the COP.

In its January 12, 1993, supplemental questionnaire response, Skaarfish claimed that the fish farmers generally incurred and paid all wellboat costs associated with delivering salmon to Skaarfish's processing facility. However, in the fish farmers' January 12, 1993, supplemental questionnaire responses and Skaarfish's May 7, 1993, case brief, respondents contended that Skaarfish routinely incurred wellboat charges and that such charges, rather than farmers' wellboat charges, should be used in calculating COP.

Based on the information on the record, as well as our findings at verification, we have determined that the wellboat charges were paid by both farmers and Skaarfish during the POR. In order to fully capture all wellboat charges, wellboat charges incurred by both the farmers and Skaarfish should be included in COP. Accordingly, for these final results, we have included the farmers' reported per-unit wellboat charges in the COC and have added Skaarfish's wellboat charges as a component of COP.

Comment 4: Skaarfish contends that the Department doubled-counted its commission expenses in the COP calculation by including the commission expense in both the "Direct Selling Expense" account as well as the "G&A" account.

Department's position: For these final results, no commission expenses have been included in our COP calculations (see our response to Comment 5).

Comment 5: Skaarfish contends that the Department should not deduct freight to and in France, EC Duty, brokerage, handling, insurance, export taxes, and warranty expenses from the French price in determining whether its third country sales were made at prices below COP. Skaarfish contends that these costs are included in the Department's COP factor and therefore must remain in the French price for comparison purposes.

Department's position: We agree in part. To determine whether sales have been made at less than cost, we usually compare the ex-factory home market price to the COP of the product (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al.; Final Results of Antidumping Administrative Review, 56 FR 31732, July 11, 1991). Therefore, we have compared the net third country price to the adjusted third-country COP.

Comment 6: Skaarfish contends that, although the Department adjusted FMV for a warranty expense incurred on U.S. sales, the Department did not make a circumstance of sale adjustment to CV to account for home market warranty expenses, and requests the Department to do so in its final results. Alternatively, Skaarfish requests that no warranty expense adjustment be made to FMV or United States price (USP) because the expenses reported for U.S. sales are not actual warranty expenses. Rather Skaarfish characterizes these expenses as a customs penalty for failure to produce required entry documentation in a timely manner.

Department's position: In its August 17, 1992, questionnaire response, Skaarfish reported warranty expenses related to sales in the United States. At verification, Skaarfish explained that the reported warranty expenses were expenses incurred to pay a penalty to the U.S. Customs Service. We verified that Skaarfish's reported warranty expenses were not warranty expenses, but rather were a customs penalty. In accordance with section 772(d)(2)(A) of the Tariff Act, we have subtracted this expense from the USP. In addition, review of Skaarfish's response indicates that an adjustment to third country price for warranty expenses is appropriate.

Comment 7: Skaarfish contends that the box and pallet handling expenses which the Department added only to the U.S. packing expense figure which were applicable to sales in both the United States and France. Skaarfish contends that these charges do not reflect actual packing expenses, but rather marking and labeling expenses associated with work performed by outside contractors. Skaarfish asserts that, should the Department determine that these charges should be included in the USP,

the same rationale would require that they also be applied to French sales and, therefore, reflected in the comparison calculations.

Department's position: We disagree with Skaarfish. We discovered at verification that Skaarfish incurred additional box and pallet handling expenses on all U.S. sales that are specifically for air freight packing and handling. Because all of Skaarfish's sales to France are shipped by truck, Skaarfish did not incur the additional expense on its French sales. Therefore, we have not similarly adjusted the packing figure for those third country sales.

Comment 8: Skaarfish contends that the Department should use the farmers' reported Norske Fiskeoppdretternes Salgslag/Norwegian Fish Farmer Organization (FOS/NFF) fees in its COP and COC calculations rather than apply a flat 1.75% of invoice value.

Petitioner contends that the Department correctly applied a flat 1.75% to COP and COC for such fees.

Department's position: We agree with petitioner. As part of the verification process we determined that all salmon farmers were required to sell their salmon through the FOS and pay a mandatory 1.5% administrative fee. In addition, farms that were members of the NFF were required to pay a fee to 0.25% of the invoice value of their sales.

All verified farms were members of the NFF and, thus, were required to pay the 0.25% fee on all fish farm sales. In response to our question that each farm identify all applicable organization membership fees, all unverified farms except farm 2 responded that, "(f)or fees to F.O.S. and NFF actual cost(s) have been used." Because the unverified farms did not clearly demonstrate whether they were members of the NFF, we have applied the standard 0.25% of invoice value to each farm's COC except farm 2. In addition, we have applied the 1.5% FOS fee to all farms.

Comment 9: Petitioner contends that Skaarfish failed to report an administrative fee to the FOS equal to 1.5% of sales value. This fee was based on the invoice value of all salmon purchased from farmers by Skaarfish through November 13, 1991.

Skaarfish argues that its own FOS fees should not be included in the COP because they relate to the acquisition price paid by Skaarfish to the fish farmer which the Department has deemed irrelevant to its COP analysis.

Department's position: We agree with petitioner. In deriving COP, we believe it is appropriate to include the costs incurred by both the fish farmers and Skaarfish in producing the subject merchandise. Therefore, the Department has included the exporter's 1.5% fee in the COP calculations.

Comment 10: Skaarfish contends that the Department should not apply a flat FOS freezing fee against sales of fresh and chilled Atlantic salmon because frozen salmon is not within the scope of the order. Alternatively, if the Department finds that a freezing fee should be applied, the Department should use the farmers' reported freezing fees which are allocated across sales of all salmon sold during the POR and reported on a per kilogram basis.

The petitioner contends that the Department correctly included the FOS freezing fee in the farms' COCs.

Department's position: During our verification, we determined that the FOS freezing fee was required to be paid on all sales of superior and ordinary fresh salmon. Each farm was to pay the freezing fee as a flat amount per kilogram. Accordingly, we consider the freezing fees to be a general expense and have included them in the cost of producing fresh salmon.

The FOS required payment of a freezing fee based on the amount of superior and ordinary grade salmon the farmer sold. Only superior and ordinary grade salmon were exported to the United States. Notwithstanding the above, the freezing fees that the farmers reported were calculated by dividing the total amount of fees paid by the total quantity of all salmon sold in all markets. Thus, the reported fees were understated because they allocated the fee across all salmon sales, including production grade salmon which is not exported. The Department correctly made its calculation by adding the adjusted fees to the farmer's COC.

Comment 11: Both Skaarfish and the petitioner contend that the Department should correct clerical errors found in the sales-below cost calculations, where multiplication was inadvertently used in place of addition and an incorrect freezing fee was used for a certain time period.

Department's position: We agree and we have corrected these clerical errors.

Comment 12: Petitioner argues that the Department incorrectly applied 19 CFR 353.36(a)(2) which states that "the Secretary will apply the results of the verification of the sample to all producers and resellers included in the investigation or review." Petitioner contends that the Department should apply the results of the verified farms to the unverified farms by means of increasing or decreasing the unverified farms' COC by the average percentage change of the COCs of the verified farms. Petitioner contends that the Department should not use the methodology used in the preliminary results whereby a reporting error of a specific cost in a verified farm's response was applied to an unverified farm.

In addition, petitioner contends that the Department should reexamine the methodology used to arrive at the COCs of both unverified farm 9, which the Department used as the basis of BIA, as well as farm 2. Should the Department use the same methodology for calculating COCs as it used in the preliminary results, it should apply the results of the verification by rejecting the COCs of two unverified farms with the lowest COCs and use BIA in place of those COCs.

Respondent contends that the Department correctly applied the results of verification to the unverified farms.

Department's position: The provision cited by petitioner is inappropriate to this situation. The Department did not sample farms for purposes of verification, rather, in this review, and as is done in other reviews, we chose to verify a limited number of responses. Those responses not verified were accepted; however, we made adjustments to the unverified farms based on information gathered during the on-site verifications of six farms regarding industry wide fees and costs, such as unreported FOS losses (see our response to Comment 12).

Although we used BIA for two of the six verified farms, there is no reasonable basis to assume that BIA should be used for two of the six unverified farms. Similarly, we cannot assume that the unverified farms' COCs would increase by the same percentage as the verified farms' COCs increased after we made adjustments arising from verification.

Comment 13: Petitioner claims that Skaarfish should have reported some sales as exporter's sales price (ESP) sales rather than purchase price (PP) sales because petitioner contends that the sales are to a customer who is a related party. Petitioner claims that Skaarfish should have provided the proper price information on sales to its first unrelated U.S. customer. As a result, the Department should use BIA for those so-called PP sales.

Skaarfish contends that the sales in question were to an unrelated party and were correctly reported as PP sales.

Department's position: We agree with Skaarfish. There is no information on the record to demonstrate that these sales were not PP sales. The record indicates that the sales were to an unrelated company. Thus, Skaarfish reported the sales in question correctly.

Comment 14: Petitioner contends that the money invested by a silent partner in farm 6 is an interest-free loan and that the Department should increase the interest expense of farm 6 accordingly.

Skaarfish contends that the silent partner's contribution to farm 6 is an equity infusion of capital, not an interest-bearing loan.

Department's position: We agree with Skaarfish. During our verification of farm 6 we determined that the money invested by the so-called "silent partner" was an equity capital infusion whereby the silent partner was given ownership in the farm as well as a proportionate share of the farm's profits and losses. In contrast to the treatment of debt capital, under generally accepted accounting principles, there is no interest expense associated with equity capital. We note that this farm's treatment of the equity infusion is consistent with the farm's audited financial statements as well.

Comment 15: Petitioner contends that commissions paid by farm 6 to a related company should be included in the COC for the farm because they appear to be reimbursements. Skaarfish argues that the payments were merely intra-company transfers of funds which are appropriately excluded from the farm's COC.

Department's position: We agree with petitioner. Although these commissions were inadvertently omitted from farm 6's COC in our preliminary results, we verified that the commissions in question were paid as commissions and recorded in the general ledger of farm 6. Accordingly, in order to capture the farm's actual COC, we have included such commissions in its COC.

Comment 16: Petitioner contends that the accelerated depreciation as reported by farms 4 and 8 should be included in their COC calculations. Skaarfish argues that because accelerated depreciation is used only for tax purposes, it is not an expense nor does it measure the reduction in value of an asset and, therefore, should not be a factor in these farms' COCs.

Department's position: We agree with Skaarfish. The tax-related accelerated depreciation does not appear to be a current cost but an appropriation to an account that reflects the difference between the ordinary depreciation and that used by the company for tax purposes. Because the historical value of the assets and the ordinary depreciation calculated on this historical value were not affected by the tax-related depreciation in this case, we did not include the tax-related depreciation in COP.

Comment 17: Petitioner contends that, if farm 7 did have processing costs, those processing costs, rather than the processing costs of Skaarfish, should be used to calculate COP. Skaarfish contends that it purchased all salmon from farm 7 *ex cage*, paying all wellboat and processing costs. Accordingly, the Department should use Skaarfish's cost of processing, not the farm's cost, in its COP calculations.

Department's position: We agree with Skaarfish. We verified the *ex cage* sale terms between Skaarfish and farm 7. The processing costs we found in the farm's ledger are for those salmon sold to other exporters. Because it is our policy to use the actual costs of production of the subject merchandise whenever possible we have not included the wellboat and processing costs of farm 7 in Skaarfish's COP.

Comment 18: Skaarfish contends that losses related to the FOS bankruptcy were extraordinary events and should not be included in the COC for those farmers who experienced such losses. Petitioner contends that the Department properly included FOS losses in the COC because the farmers did not consider these to be extraordinary losses and there is no evidence to expect similar losses in the future.

Department's position: We agree with petitioner. Upon the bankruptcy of the FOS in November 1991, many farms were unable to collect outstanding remittances due from the FOS. Without exception, these losses were treated in the farms' audited income statements as operating losses, not extraordinary items. Accordingly, we have included them as a component of the COC.

Comment 19: Skaarfish contends that the Department should allocate depreciation, interest, and utilities expenses on the same square meter basis that was used in the less-than-fair-value (LTFV) investigation, rather than basing such expenses on packing and labor expense ratios. Skaarfish submits that these expenses are costs related to investments, not costs related to use of the labor force.

Petitioner contends that the Department correctly adjusted the depreciation, interest, and utilities costs reported by Skaarfish. Petitioner contends that allocations based on area do not account for differences in equipment or level of investment in the production departments.

Department's position: We disagree with Skaarfish. While allocating depreciation, interest, and utilities on a square meter basis was done in the LTFV investigation, we are using a verified ratio based on packing and labor ratios for this review because this ratio better reflects the true depreciation, interest, and utility expenses of Skaarfish. Basing the allocation of depreciation, interest, and utilities expenses on a square meter basis neglects the level of financial investment required for the various production activities.

Comment 20: Skaarfish contends that the Department should reconsider its use of BIA in the calculation of the farmers' COC because of the unique circumstances in this review. Skaarfish believes that the Department's use of BIA penalizes Skaarfish, who fully cooperated with the Department, for actions of unrelated companies outside Skaarfish's control. Skaarfish contends that the Department cannot apply BIA to independent companies that had no COC data or which failed verification. The Department should therefore drop these farms from its sample as was done during the LTFV investigation.

Petitioner contends that the Department correctly applied BIA to the unique circumstances of this review.

Department's position: We used BIA for the COC for six of the 16 farms in our sample: the four farms which did not submit questionnaire responses, one farm that failed verification, and one farm that failed to submit its costs on a consolidated basis. We chose as BIA the highest calculated COC of the responding farms and applied that COC to each of the BIA farms.

Under section 776(c) of the Tariff Act, we have the authority to use BIA "whenever a party or any other person refuses or is unable to produce information requested". Thus, we can use BIA not only when a party "refuses", but also when a party is "unable" to provide information.

The elimination of non-responding farms from the sample, as Skaarfish advocates, would reward non-responding firms and could encourage non-compliance in future reviews. Moreover, it would impair the integrity of the sample because it would detract from the randomness of the results.

Comment 21: Skaarfish contends that if the Department determines that BIA is appropriate, the Department should use the average COC as BIA in order to distinguish between cooperative and uncooperative respondents. Petitioner contends that the Department correctly chose a reasonably adverse BIA rate to encourage compliance in future reviews.

Department's position: We agree with petitioner. Using a BIA based on an average of farmers' COCs, as suggested by Skaarfish, would in effect be rewarding non-compliance.

Comment 22: Skaarfish contends that, because the subject merchandise is a

VOL
58
ISS
133
JL
14
1993
UMI

highly perishable product, the Department should apply the 50/90/10 test rather than the 10/90/10 test to determine whether Skaarfish made below-cost sales in substantial quantities. Skaarfish contends that farmers lack the ability to control output and time of sale, thus; they cannot control the selling price of the salmon.

Petitioner contends that the Department correctly applied the 10/90/10 test because the subject merchandise is not a highly perishable product as defined by the Department in *Certain Fresh Winter Vegetables from Mexico* (45 FR 20512) (*Vegetables*). Petitioner points out that, unlike *Vegetables*, the respondents in this case can control the time of sale of the subject merchandise. In addition, the subject merchandise is alive and not deteriorating at the time of the sales transaction.

Department's position: We agree with petitioner. Under the 10/90/10 test, we do not disregard sales if less than 10 percent are below cost, we disregard only the below-cost sales if between 10 and 90 percent are below cost, and we disregard all sales if more than 90 percent are below cost. In past cases, the Department has used the 50/90/10 test in cases involving highly perishable agricultural products. Under a 50/90/10 test, the Department would not disregard any below-cost sales unless more than 50 percent of sales were below cost.

We believe that fresh and chilled Atlantic salmon is not a perishable product. As we found in the original LTFV investigation, farmers have the ability to control the time of sale of their output without materially affecting the quality of the merchandise. It is not atypical for farmers to delay sales for an extended period of time until they receive a favorable price quote. Moreover, exporters have the ability to coordinate future salmon purchases with farmers to coincide with demand and processing capabilities.

Comment 23: Skaarfish contends that the Department should rely on Skaarfish's acquisition costs of purchasing salmon for purposes of calculating COP rather than salmon farmers' COCs. Skaarfish contends that, since it is purchasing salmon in a market economy, the Department is imposing on Skaarfish a cost system unknown to and uncontrollable by Skaarfish.

Skaarfish further contends that it, not the salmon farmers, "produces" the subject merchandise because live salmon is not covered by the duty order. Skaarfish contends that it transforms live salmon purchased from fish farmers into merchandise which is subject to the antidumping duty order. Therefore, the cost of producing live salmon cannot be used to determine the COC and, therefore, the COP.

Petitioner contends that the Department must use the farmers' COCs since Skaarfish failed to submit acquisition prices on the record and because the Department's approach is consistent with U.S. antidumping law.

Department's Position: We consider the live salmon produced by the fish farmers and sold to the exporters such as Skaarfish to be the same merchandise as is covered by the antidumping duty order, but merely an earlier stage of production. In this sense, therefore, it is not an input but rather is the identical merchandise before it has been made ready for sale and shipment.

As was found in the LTFV investigation, Skaarfish continues merely to process a portion of its fish farm-sourced live salmon by gutting, cleaning, and packaging it. (In some cases Skaarfish purchases and resells salmon that is already gutted and cleaned by the fish farmers.) There is not a transformation of merchandise outside the scope of the order to merchandise within the scope of the order as suggested by Skaarfish. Instead, Skaarfish is acting primarily as a reseller by merely preparing the merchandise for trans-Atlantic shipment (see memo from Roland L. MacDonald to Joseph A. Spetrini, December 8, 1992).

Final Results of Review

As a result of comments received and programming errors corrected, we have revised our preliminary results. The margin for Skaarfish A/S for the period October 3, 1990, through March 31, 1992, is 5.01 percent. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions concerning Skaarfish directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for Skaarfish will be 5.01 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. In accord with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, the cash deposit rate for all other manufacturers or exporters will be 23.80 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 2, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16685 Filed 7–13–93; 8:45 am]

BILLING CODE 3510–DS–M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Filing of First Year Data Collection Forms for National and Community Service Problems

AGENCY: Commission on National and Community Service.

ACTION: Notice.

SUMMARY: The Commission on National and Community Service (CNCS) has sent to the Office of Management and Budget (OMB) a request for expedited

clearance, by August 6, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by July 29, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Patricia P. Thomson, The Commission on National and Community Service, National Press Building, Suite 452, 529 14th Street, NW., Washington, DC 20045; (202–724–0600).

FOR FURTHER INFORMATION CONTACT: Ms. Patricia P. Thomson, The Commission on National and Community Service, National Press Building, Suite 452, 529 14th Street, NW., Washington, DC 20045; (202–724–0600).

SUPPLEMENTARY INFORMATION: The Commission on National and Community Service requests the review of a new collection of information. This entry is issued by the Commission on National and Community Service and contains the following information: (1) The title of the forms; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504 (h).

Title: First Year Data Collection Form.

Frequency of Collection: One time.

Respondents: CNCS grantee and subgrantee program directors.

Use: To collect primarily descriptive data on last year's operations (through June 30, 1993). Forms will collect aggregate data which will be used to document accomplishments during the first year of Commission funding.

Estimated Number of Respondents: 3288.

Average Burden Hours per Response: 0.5.

Total Estimated Burden: 1644 hours.

Terry Russell,

General Counsel, Commission on National and Community Service.

[FR Doc. 93–16690 Filed 7–13–93; 8:45 am]

BILLING CODE 6820–BA–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 13, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) the affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 7, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Number and Type of Personnel (in Full-Time Equivalency of Assignment) Employed and Contracted and Additional Personnel Needed to Provide Early Intervention Services to Infants and Toddlers and Their Families.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 58. Burden Hours: 3,596.

Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.

Abstract: This collection instrument will provide instructions and forms for states to report the number of personnel employed and to provide early intervention services. The information will be used for monitoring and implementing Federal programs and reporting to Congress.

[FR Doc. 93–16621 Filed 7–13–93; 8:45 am]

BILLING CODE 4000–01P–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 13, 1993.

ADDRESSES: Written comments should be addressed to the office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

VOL
58
ISS
133
JL
14
1993
UMI

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Dated: July 7, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Program Setting Where Early Intervention Services are Provided to Infants and Toddlers with Disabilities and Their Families.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 58. Burden Hours: 928.

Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.

Abstract: This package provides instructions and forms for States to report the program setting where infants and toddlers with disabilities receive services. These date serve as the basis for monitoring, implementing Federal programs and reporting to Congress.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (New Grant Awards, and Continuations).

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations.

Reporting Burden: Responses: 2,275. Burden Hours: 27,150.

Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.

Abstract: The comprehensive application is for competitive awards with a two-stage application process: preliminary and final. Continuations are non-competitive grants for those currently receiving comprehensive program awards with satisfactory progress.

[FR Doc. 93–16622 Filed 7–13–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Revised Billing Credit Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Final Action on Revised Billing Credit Policy. BPA File No.: BCR–12

I. Background

BPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 et seq., to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839 (c) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839b(1). The Northwest Power Act requires BPA to grant power bill credits or the equivalent to BPA's customers for electric power resources that reduce the Administrator's obligation to acquire electric power resources. 16 U.S.C. 839(h).

II. Billing Credits and the Revised Policy

The Billing Credit Policy (Policy) interprets the billing credit provisions in the Northwest Power Act. Resources eligible for billing credits include conservation, generation and savings from retail rate designs which induce installation of conservation measures and end use renewable resources. Billing credits encourage BPA customers to conserve or generate power that offsets loads BPA would otherwise serve. BPA grants customers the credit for energy saved or generated. The credit is based on the costs BPA would have otherwise incurred, less the wholesale power rate for the customer developing the resource.

The Policy has been revised to streamline the billing credit process and encourage customer development of resources. The previous policy was developed in 1984 and tested in 1990. BPA initiated a review of the test in April 1992 with informal internal and external discussions on the lessons learned from the test of the policy, focusing on how billing credits will be administered in the future. Based on that review, BPA opened the policy for revision and developed a Draft Revised Policy for public comment. The Draft was issued September 28, 1992, and open for public comment through November 17, 1992. The Revised Policy that follows incorporates the public comment and represents a final action on the date of publication.

III. Final Billing Credits Policy

Section 1: Policies and Purposes

(a) Policies

BPA's policy objectives are to use the authority to grant billing credits to assure that:

(1) Customers are compensated as provided in the Northwest Power Act for actions taken which reduce BPA's obligation to acquire resources that otherwise would be needed to meet contractual obligations to serve customers' loads, thereby removing the disincentive for taking such actions inherent in BPA's average cost wholesale firm electric power rates;

(2) Billing credit resources are dedicated to serve the customer's firm load, thereby reducing BPA's firm power requirement under the customer's Power Sales Contract with BPA;

(3) As a result of granting billing credits to any customer, the rates to other customers will be no greater than they otherwise would have been if BPA had been obligated to acquire other resources to serve customers' loads in lieu of granting such billing credits;

(4) Billing credit resource sponsors will be able to exercise their initiative in determining what resources, if any, they will choose to develop, and in determining the disposition of the benefits of receiving billing credits;

(5) Billing credits are administered in a manner consistent with BPA's conservation and other resource acquisition programs; and

(6) The granting of a billing credit is not inconsistent with the regional plan, the fish and wildlife program, or BPA's obligations when granting a billing credit to give due consideration to:

(i) Environmental quality;

(ii) System compatibility; and

(iii) The protection, mitigation, and enhancement of fish and wildlife.

(b) Purposes

The purposes of this policy are to:

(1) Prescribe customer and resource eligibility criteria for billing credits;

(2) Prescribe a procedure whereby customers may apply for billing credits;

(3) Provide a procedure by which BPA will evaluate applications for billing credits and determine the amount of billing credits to be granted;

(4) Prescribe general conditions governing the granting and administration of billing credits; and

(5) Encourage timely applications for billing credits so as to facilitate planning and reduce uncertainties.

Section 2: Definitions

(a) "Acquire" means to purchase all or a portion of the output or capability of a resource but, in the case of BPA, does not include ownership of any generating facility.

(b) "Administrator" means the Administrator of the Bonneville Power Administration and will be referred to within this policy as "BPA"

(c) "Administrator's obligation to acquire resources" means BPA's obligation to acquire firm resources pursuant to section 6(a) of the Northwest Power Act.

(d) "Alternative cost" means the estimated unit cost of resources that BPA otherwise would acquire in lieu of granting billing credits unless otherwise established by contract. Alternative cost is the basis for a billing credit for a conservation activity and is the upper limit on the amount of a billing credit for a non-conservation resource.

(e) "Applicable rate" means BPA's wholesale firm power rate applicable to the customer.

(f) "Billing credit" means an adjustment to a customer's electric power bill or an equivalent cash payment that combined with applicable rate savings, provides such customer an amount equal to BPA's alternative cost for a conservation activity, or an amount equal to the lesser of BPA's alternative cost or the net cost for a non-conservation resource

(g) "Billing credit contract" means a written contract between BPA and the customer receiving a billing credit setting forth the terms and conditions under which BPA will grant the billing credit.

(h) "Billing credit resource" means a resource potentially eligible for a billing credit or for which a billing credit has been granted. Such term includes conservation activities, renewable resources, multipurpose projects, and other resources, including retail rate structures that induce conservation or installation of consumer-owned renewable resources.

(i) "BPA" means the Bonneville Power Administration.

(j) "Capability" means the ability of a resource to produce or save capacity and energy.

(k) "Capacity" means (1) the maximum electric power that can be produced by a generating resource at specified times under specified conditions; or (2) the maximum electric power that can be saved by a conservation resource at specified times under specified conditions. Capacity is expressed in units of either kilowatts or saved kilowatts.

(l) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(m) "Conservation activity" means the construction, installation, or operation of a facility or measure for the purpose of achieving conservation. Enacting legislation, including building codes, in and of itself, does not constitute a conservation activity.

(n) "Consumer" means any end user of electric power.

(o) "Contract demand" means the maximum capacity which a DSI is entitled to purchase from BPA as specified in Exhibit C of its power sales contract.

(p) "Cost-effectiveness" as defined in 16 U.S.C. 839a(4)(A). For purposes of this policy "system cost" is the alternative resource cost, and its associated environmental costs.

(q) "Customer" means anyone who contracts for the purchase of power from BPA pursuant to the Northwest Power Act.

(r) "Direct-service industrial customer" (DSI) means an industrial customer that contracts for the purchase of power from BPA for direct consumption.

(s) "Displacement" means BPA's right, upon notice to the customer, to have the Billing Credit resource taken out of service for specified periods of time in accordance with the Billing Credit contract.

(t) "Electric power" means electric peaking capacity, or electric energy, or both.

(u) "Entity acting on behalf of such customer" means any entity that develops a billing credit resource for a customer pursuant to a contract between the entity and the customer.

(v) "Environmental costs" are not quantifiable economic values of damages to the ecosystem, as determined by BPA, not paid for directly by the customer or its retail customer. These costs are external to the pricing system.

(w) "Firm electric power" means electric power continuously available except when restricted, suspended, interrupted, interfered with, or curtailed as a result of the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service sections of the General Contract Provisions Exhibit of the customer's power sales contract.

(x) "Firm resource" means the firm capability of a resource that produces or saves firm electric power and is dedicated to serve the customer's firm load under the power sales contract.

(y) "Firm resource exhibit" means the firm resource exhibit attached to the customer's power sales contract which shows firm non-conservation resources which are dedicated to serve the customer's firm load.

(z) "Fish and wildlife program" means that fish and wildlife program adopted by the Regional Council pursuant to section 4(h) of the Northwest Power Act.

(aa) "Fixed costs" mean that portion of net costs or of alternative costs that does not vary with the quantity of electric power saved or produced.

(bb) "Independently undertaken" conservation activity means that portion of a conservation activity which is not (1) offered; planned and budgeted; made operative; funded or otherwise directly assisted by BPA; (2) implemented in order to avoid a surcharge for failure to adopt model conservation standards, as provided by section 4(f) of the

VOL 58 ISS 133 JL 14 1993 UMI

Northwest Power Act; or (3) a conservation activity specifically rejected by BPA due to adverse environmental effects, unless the sponsor can demonstrate that such effects have been mitigated to an extent acceptable by BPA, or that such effects are not associated with the sponsor's activity.

(cc) "Indian tribe" means any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.

(dd) "Load" means the amount of electric power required to meet demand.

(ee) "Major resource" means any resource that has a planned capability greater than 50 average megawatts. Such term does not include any resource acquired pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act

(ff) "Model conservation standards" mean those standards promulgated by the Regional Council and included in its plan as provided for by section 4(e)(3) of the Northwest Power Act

(gg) "Multipurpose project" means any project that is designed to serve a purpose other than power generation and which also produces electric power.

(hh) "Net costs" mean the costs actually incurred by the customer to develop, operate, and maintain a billing credit resource in accordance with prudent business practices. The term includes reasonable financing costs, costs of interconnection and wheeling to the customer's system, compensation for risk, and resource acquisition costs incurred by the customer including those mandated by Federal, but not State, law establishing minimum prices for utility acquisition of resources. Net costs do not include direct governmental financial assistance Net costs do not include the portion of resource acquisition costs mandated by State laws which exceed the acquisition cost that would reasonably have resulted from an arm's-length negotiation between the resource owner and the customer acquiring the resource from another appropriate party to which such cost is paid. Net costs are used to calculate billing credits for non-conservation resources. Net Costs are expressed on a unit cost basis compatible with BPA's rates for firm electric power.

(ii) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96–501.

(jj) "Operating year" means the period from August 1 to July 31 or as otherwise determined by BPA.

(kk) "Pacific Northwest," "region," or "regional" means (1) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and (2) any contiguous areas, not in excess of 75 air miles from the area referred to in (1) above, which are a part of the service area of a rural electric cooperative customer served by BPA on the effective date of the Northwest Power Act, which has a distribution system from which it serves both within and without such region

(ll) "Political subdivision served by a customer" means any governmental unit which purchases electric power from a customer including, but not limited to, States, State agencies, cities, counties, municipalities, special-purpose districts, and Indian tribes, but not including Federal agencies.

(mm) "Power sales contract" is the contract that establishes the terms and conditions of BPA's power sales.

(nn) "Rate" means any method of recovering the costs of providing service to BPA's customers through sales of electric power and related services.

(oo) "Regional Council" means the Pacific Northwest Electric Power and Conservation Planning Council established pursuant to section 4 of the Northwest Power Act

(pp) "Regional plan" means the Pacific Northwest Electric Power and Conservation Plan including any amendments thereto, adopted pursuant to the Northwest Power Act

(qq) "Renewable resource" means a resource which uses solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(rr) "Reserves" means the electric power needed to provide service to customers or consumers in the event of generation or transmission system outages, adverse stream flows, delays in the completion of new resources, or other factors which may restrict generating capability or increase loads Reserves normally are provided from additional resources acquired for that purpose; or from contractual rights to interrupt, curtail, or otherwise withdraw portions of the electric power supplied to customers.

(ss) "Resource" means (1) the actual or planned electric power capability of generating facilities; or (2) the actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from conservation.

(tt) "Small resource" means a resource other than conservation with a planned capability of 30 average megawatts or less.

(uu) "Unit cost" means the cost of a unit of power, such as a kilowatt of capacity or a kilowatt-hour of energy

(vv) "Variable cost" means that portion of net costs or alternative costs that varies with the quantity of electric power saved or produced.

(ww) "Voluntarily implemented retail rate structure" means a retail rate structure or that portion of a retail rate structure that is adopted by a customer for reasons other than to (1) satisfy Federal or State statutory mandates; (2) comply with an order initiated by a State regulatory authority, or (3) reflect the cost effects of rate design concepts included in BPA's wholesale rates

Section 3: Qualifying Applicants

(a) A public body or cooperative entitled to preference and priority under the Bonneville Project Act of 1937 that has a firm requirements power sales contract pursuant to section 5(b) of the Northwest Power Act

(b) A direct-service industrial customer that has an industrial firm power sales contract pursuant to section 5(d) of the Northwest Power Act

(c) An investor-owned utility that has a firm requirements power sales contract pursuant to section 5(b) of the Northwest Power Act

(d) A Federal agency that has a firm requirements power sales contract pursuant to section 5(b) of the Northwest Power Act

Section 4: Qualifying Conservation Activities

BPA may execute a contract to grant a billing credit to a customer for a conservation activity only when it:

(a) Is demonstrated to be:

(1) A conservation activity,

(2) Undertaken after December 5, 1980;

(3) Independently undertaken or continued by such customer or an entity acting on behalf of such customer, and

(b) Reduces the customer's net requirement for supply of firm electric power or reserves under its power sales contract with BPA

Section 5: Qualifying Resource Other Than Conservation

(a) BPA may execute a contract to grant a billing credit to a customer for a resource other than conservation only when it:

(1) Is demonstrated to be:

(i) A resource other than conservation,

(ii) Constructed, completed, or acquired after December 5, 1980 by either:

(A) Such customer;

(B) An entity acting on behalf of such customer; or

(C) A political subdivision served by such customer;

(iii) Not inconsistent with the fish and wildlife program;

(iv) Not inconsistent with the regional plan;

(2) Reduces the customer's net requirement for supply of firm electric power or reserves under its power sales contract with BPA. The reduction must be demonstrated by an acceptable verification/evaluation method.

(b) Before signing a billing credit contract BPA shall give due consideration to:

(1) Environmental quality;

(2) Compatibility with the planning and operation of the regional power system; and

(3) The protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish.

(c) BPA may not grant a billing credit to a customer for a non-conservation resource that is not cost-effective.

(d) If resources have the same cost, BPA may not execute a contract to grant a billing credit for a particular non-conservation resource in lieu of executing a contract to grant a billing credit for a resource given a higher priority in The Northwest Power Act.

Section 6: Qualifying Retail Rate Structures

(a) BPA may execute a contract to grant a billing credit to a customer for a retail rate structure only when it:

(1) Is demonstrated to be:

(i) A retail rate structure;

(ii) Voluntarily implemented;

(iii) After December 5, 1980;

(iv) By such customer; and

(2) Induces either:

(i) Conservation; or

(ii) Installation of consumer-owned renewable resources.

(b) BPA shall treat induced conservation as though it resulted from a conservation activity undertaken by the customer, and shall treat induced installation of a consumer-owned renewable resource as a customer-owned renewable resource.

Section 7: General Conditions Governing Granting and Administering Billing Credits

(a) Prerequisites for Granting Billing Credits: Actual Reduction in Net Requirements and Reduced Obligation to Acquire Resources.

BPA may not grant a billing credit for any billing credit resource until:

(1) The customer is placing firm requirements on BPA under its power sales contract and the billing credit resource actually reduces the customer's net requirement for supply of firm electric power or reserves from BPA;

(2) BPA has determined that the billing credit resource will reduce BPA's obligation to acquire resources during a substantial portion of the period for which the billing credit resource is offered to BPA; and

(3) In the case of a DSI, the customer may be required to reduce its contract demand under its power sales contract by the amount stipulated in the billing credits contract over the period the billing credit is to be granted.

(b) Compliance with Environmental Laws

BPA may not sign a billing credit contract until BPA has determined that the billing credit resource has satisfied the requirements of Federal, State or other applicable environmental laws.

(c) Duration of a Billing Credit

A customer may offer a billing credit resource for a billing credit for any period ranging from 10 years up to the estimated useful life of the billing credit resource unless BPA species other parameters.

(d) Termination of a Billing Credit Contract or Withdrawal of a Portion of a Billing Credit Resource

(1) The following actions by a customer will lead to a termination charge:

(i) Customer provides notice to terminate as negotiated in billing credit contract;

(ii) Customer withdraws all of a non-conservation billing credit resource from the firm resource exhibit per the notice requirements under the power sales contract. If the customer withdraws a portion of the resource the termination charge will only apply to that portion and the contract will remain in effect for the remaining amount of the billing credit resource;

(iii) Customer fails to take actions to cure environmental noncompliance or provide replacement power as negotiated in the billing credit contract; or

(iv) Customer terminates its power sales contract or fails to execute a successor power sales contract.

(2) If BPA determines that a resource was terminated due to circumstances beyond the control of the customer then the termination charge will not be required.

(3) BPA may terminate the Billing Credit Contract by providing notice as negotiated in that contract.

(4) Termination Charge

The termination charge to be paid by a customer for withdrawal of all or a portion of the billing credit resource will be the cumulative difference, including accumulated interest thereon, between the billing credits actually granted and the amount that would have been granted had the billing credit resource initially been made available for the period up to termination or withdrawal.

(e) BPA's right to request refinancing of Billing Credit Resources

The granting of a billing credit will oblige sponsors to manage the billing credit resource in a prudent and business-like manner. As such sponsors will be required to refinance a billing credit resource when it can be done so in an economically advantageous manner. BPA reserves the right to adjust the alternative cost if the billing credit is based on alternative cost or the net cost if the billing credit is based on net cost, to account for the benefits of refinancing as long as:

(1) The billing credit resource has already been refinanced or can be refinanced. The alternative or net cost will not be reduced until the refinancing occurs or the customer fails to make a good faith effort;

(2) The expected value of the refinancing savings is equal to or greater than 5 percent of the refinanced principal; and

(3) The decrease in the alternative or net cost does not reduce the billing credit by more than the actual benefits the customer receives from refinancing, and reflects the cost of refinancing incurred by the customer.

(f) Special Arrangements for Small Non-conservation Resource

BPA may deem net cost to be equal to alternative cost for small resources. BPA will not deem billing credit resources at full alternative cost if their environmental costs are higher than those of the alternative resource.

Section 8: Methodology for Determining Alternative Cost

(a) As conditions warrant (usually this will be no more often than six months

VOL 58 ISS 133 JL 14 1993 UMI

and will be no less often than every two years), BPA shall prepare and publish a forecast of costs for resource acquisitions which could be deferred as a result of granting billing credits. The alternative cost will be published as a real levelized cost with examples of related nominal cost streams. The environmental costs associated with the alternative resource will also be published at this time. Prior to publication, BPA shall prepare a preliminary determination and solicit public comment thereon.

(b) The billing credit will be based on the alternative cost at the time the proposal is evaluated for the calendar year when the billing credit resource meets the conditions of Section 7(a)(1) of this policy.

(c) The actual rate impact of the deferrable alternative resource(s) will be used in determining the alternative cost.

(d) Upon agreement nominal billing credit streams can be reshaped as long as the real levelized resource cost is no higher than the levelized cost BPA would have paid if the resource costs were not reshaped.

(e) BPA shall classify alternative cost into a capacity and energy component, and shall further disaggregate such capacity and energy components to account for other resource characteristics, including, but not limited to, service life, location, and seasonality.

(f) BPA's alternative cost shall also include an adjustment to account for the value of displacement. BPA may base the adjustment on published criteria or negotiate an adjustment on a case by case basis. Whether BPA has a right to displace a billing credit resource will be by agreement between BPA and the billing credit applicant.

Section 9: Methodology for Calculating Billing Credits

(a) Billing Credits Based on Alternative Cost

Billing credits based on alternative costs are calculated by taking the difference between the alternative cost for the resource and the applicable rate, and multiplying the difference by the amount that the resource reduces the customer's net requirement for firm electric power or reserves from BPA.

(1) The billing credit will be subtracted from the customer's bill if the alternative cost is greater than the applicable rate.

(2) The billing credit will be added to the customer's bill if the alternative cost is lower than the applicable rate.

(b) Billing Credits Based on Net Cost

(1) If net cost is greater than or equal to the alternative cost then the billing credit is calculated using alternative cost as described in section 9(a)(2).

(2) If net cost is less than the alternative cost, the billing credit is calculated by taking the difference between the net cost and the applicable rate, and multiplying the difference by the amount by which the resource actually reduces the customer's net requirement for supply of firm electric power or reserves from BPA. BPA will consider nonfirm revenues during development of net cost.

(i) The billing credit will be subtracted from the customer's bill if net cost is greater than the applicable rate.

(ii) The billing credit will be deemed zero if the applicable rate is greater than the net cost of the billing credit resource, but less than the alternative cost.

(iii) The billing credit will be added to the customer's power bill whenever the applicable rate is greater than the alternative cost for the resource. The billing credit added to the power bill shall be the difference between the alternative cost for the resource and the applicable rate, multiplied by the amount by which the resource actually reduces the customer's net requirement for supply of firm electric power or reserves from BPA.

(c) Residential Exchange

If the customer has executed a Residential Purchase and Sale Agreement (RPSA) with BPA pursuant to section 5(c) of the Northwest Power Act in addition to the power sales contract and its RPSA is neither terminated nor suspended, the billing credit may be adjusted to account for the effect of the RPSA. Any adjustment to billing credit payments will be made on a case-by-case basis.

(d) Locking the Applicable Rate

BPA will allow customers to lock in a forecast of the applicable rate for up to 10 year intervals. The locked rate stream BPA offers will account for any additional risk to the rate base. If the lock expires and the contract-life exceeds 10 years, customers will choose between the actual applicable rate or a new locked rate stream calculated by BPA.

Section 10: Application Procedure

(a) General Requirements

(1) BPA will consider granting a billing credit only upon receipt of a written application submitted in accordance with this policy. Customers are encouraged to consult with BPA's Area and District Offices early in the planning process to facilitate preparation and review of their applications. BPA will exchange planning and operating information with eligible customers.

(2) The customer shall carry the burden of proving that the appropriate criteria necessary to receive a billing credit have been satisfied.

(3)(i) A customer applying for a billing credit must submit such information as will permit BPA to determine:

(A) whether to grant a billing credit; and

(B) the amount and duration of the billing credit.

(ii) While the information required from a customer varies with the type and size of the billing credit resource as well as other factors, the customer must include at least the following information in its application:

(A) a technical description of the resource, including such information as the type of resource, principal features, engineering characteristics, size, and location;

(B) the amount of energy and capacity which the resource will produce or save, the time periods in which such production or savings will occur, and the geographic points or locations at which the output or savings will be used or delivered to serve the customer's load;

(C) the amount by which the resource is expected to reduce the customer's net requirement for supply of firm electric power or reserves from BPA and the time periods in which such reduction will occur;

(D) significant dates, such as the start and completion of construction or installation, commercial operation, and the dates between which the customer expects to reduce BPA's obligation to acquire resources;

(E) a description of the assumptions and methodologies the customer used in preparing information contained in the application;

(F) the status of any required licenses or permits, including copies of licenses or permits that have been granted;

(G) a description of the environmental effects the billing credit resource may have; mitigating measures, if any, to be taken; and the status of any environmental reviews, permits, or other actions which may be required;

(H) a description of the impacts, if any, which the billing credit resource may have on fish and wildlife; any consultations concerning fish and wildlife impacts with Federal and State fish and wildlife agencies, and the

region's Indian tribes, including recommendations from such consultations, if any; the mitigating measures, if any, to be taken; and the opportunities, if any, which may be present for enhancing fish and wildlife;

(I) for a billing credit based on a resource developed by a political subdivision served by the customer making the application, evidence that the customer and the political subdivision have mutually resolved how and to what extent the customer will pass through the billing credit benefits to the political subdivision; and

(J) such other information as may be either requested by BPA or required by this policy.

(4) A customer must submit an original and two copies of its application together with a transmittal letter addressed to BPA.

(5) The application must contain a statement, signed by a duly authorized representative of the customer, certifying the accuracy of the information contained therein.

(b) Specific Requirements: Resources Other Than Conservation

If applicable, the applicant must submit an explanation of the financing, cost estimating, accounting, or other methodology used in estimating or determining net costs, including the amount and the rationale for the cost of capital, risk premium, or return on investment.

(c) Specific Requirements: Retail Rate Structures

The customer shall demonstrate that its methodology for quantifying the reduction in net requirements for firm electric power or reserves attributable to its retail rate structure distinguishes among the load reductions resulting from conservation and consumer-owned renewable resources, and other causes.

Section 11: BPA's Decision Making Process

(a) Review of Application

(1) BPA shall review each billing credit application to determine whether the application contains the information BPA needs:

(i) To make a decision consistent with the requirements of this policy;

(ii) To evaluate potential environmental impacts, and consistency with applicable Federal, regional, State, and local environmental plans, policies, and controls; and

(iii) To satisfy BPA's obligation to give due consideration to the protection, mitigation and enhancement of fish and wildlife.

(2) BPA may return applications which contain information insufficient to process the billing credit application. In such instances, BPA shall briefly explain in a letter to the applicant why the application is inadequate, describe any missing information, and provide an opportunity to submit an amended application.

(b) Environmental Considerations

Projects must demonstrate consistency with applicable:

(1) Federal, State, and local land use plans, policies, and controls;

(2) Federal and State fish and wildlife plans and programs;

(3) Federal, State and local pollution control standards; and

(4) Other applicable environmental processes and standards.

(c) Integration of the Billing Credit Resource With the Regional Power System

BPA shall appraise the capability of the billing credit resource in relation to BPA's resource acquisition program to determine with respect to each billing credit resource:

(1) The dates between which the billing resource will reduce BPA's obligation to acquire resources; and

(2) The amount by which the billing credit resource reduces the customer's net requirement for supply of firm electric power or reserves from BPA.

(d) Decision on Applications

BPA shall, within a reasonable time of completing the analysis of the application either:

(1) Conditionally approve the billing credit; or

(2) Deny the application by letter, stating the reasons for rejecting the application.

(e) Billing Credit Contract Provisions

BPA shall include in all billing credit contracts such terms as will be appropriate and necessary to insure compliance with this policy, including but not limited to:

(1) That the customer will operate a non-conservation billing credit resource in a manner compatible with the planning and operation of the region's power system and the customer's power sales contract;

(2) That the billing credit resource will be constructed, scheduled, completed, and operated in a timely fashion;

(3) That the customer shall provide equivalent electric power or reserves to assure that it will be able to reduce its net requirement for firm electric power or reserves from BPA by the amounts and for the time periods stipulated in the billing credits contract in the event the billing credit resource is not operative due to reasons other than an uncontrollable force;

(4) That if the billing credit is based on actual net cost BPA has the right to approve all costs of, and proposals for, major modifications in construction, scheduling, operations, or financing. The amount of oversight must be reasonable in light of the risks to BPA,

(5) That by agreement BPA may reschedule a billing credit resource under construction; and

(6) That the Customer will pay costs, if any, of wheeling electric power from the billing credit resource to the Customer's system, including costs of wheeling over the Federal system.

(f) Procedures for Billing Credit Resources

(1) Once BPA and the applicant have negotiated a proposed billing credit contract, BPA shall, prior to signing the billing credit contract, publish notice of the proposed billing credit contract in the **Federal Register** and provide a copy of such notice to the Regional Council, the governor of each State in which the billing credit resource would be constructed or implemented or which would be affected by the billing credit resource, BPA's customers, Federal and State fish and wildlife agencies and Indian tribes affected by the billing credit resource, affected local governments, and other interested parties including local governments.

(2) BPA shall include in such notice the methodology BPA proposes to use in determining the amount of the proposed billing credit, and the availability of the draft administrative record.

(3) Anyone wishing to comment to BPA on the proposed billing credit contract must do so in writing within 30 days of the date of the notice.

(i) BPA's staff shall evaluate any comments that are submitted and make a recommendation.

(ii) BPA shall include any comments and recommendations as part of the administrative record.

(4) After the 30-day comment period, BPA may:

(i) Sign the billing credit contract;

(ii) Renegotiate the proposed billing credit contract as BPA deems appropriate; or

(iii) Deny the billing credit application.

(5) If the billing credit resource is a major resource, section 6(c) of the Northwest Power Act applies

VOL 58 ISS 133 JL 14 1993 UMI

Section 12: Administering Approved Billing Credit Contracts

(a) Payment

BPA shall grant a billing credit (including retroactive payment, if any) by adjusting the customer's monthly power bill or through a cash payment. The billing credit may be subtracted from or added to the customer's power bill. When it is subtracted from the bill, BPA may, as an alternative to reducing the bill, pay the credit by check or other appropriate instrument.

(b) Administrator's Periodic Review and Audit

(1) BPA may audit, inspect, or otherwise review any aspect of the construction or operation of any resource for which BPA grants or intends to grant a billing credit as BPA deems appropriate to carry out BPA's responsibilities under the Northwest Power Act consistent with sound business practices.

(2) Customers receiving billing credits shall make available to BPA such information as BPA may request in conducting such audit, inspection, or other review.

(3) BPA may conduct, upon reasonable notice, such on site inspections of a billing credit resource as BPA may deem necessary to verify the accuracy of any information provided by the customer or to otherwise perform BPA's duties.

Section 13: Reconsideration of BPA Decisions

(a) Right to Request Reconsideration

Any customer or other entity who believes that it has been adversely affected by a final decision of BPA related to billing credits may request that BPA reconsider the decision. Requests must be submitted to BPA in writing within 30 days of receipt of notice of such decision.

(b) BPA's Response

BPA shall respond in writing within a reasonable time stating the decision and the reasons for that decision.

Section 14: Records and Access to Information

(a) Customers supplying proprietary information that is intended by the customer to be disclosed in confidence to BPA must specifically identify such information, and BPA shall maintain the confidentiality of such proprietary information to the extent permitted by law.

(b) Customers must maintain such records as will permit BPA to exercise prudent oversight including audit, inspection, or other review of any aspect of the construction and operation of a billing credit resource as BPA determines may be appropriate.

(c) Customers must comply with the requirements of the Privacy Act, Public Law 93–579, 88 Stat. 1896.

(d) BPA and BPA's customers shall make all records relating to billing credits available to any entity who may wish to inspect or copy such records only in accordance with the requirements of the Trade Secrets Act, 18 U.S.C. 1905, the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, Public Law 93–579, 88 Stat. 1896.

Responsible Official: Paul Norman, Billing Credit Project Manager, is the official responsible for BPA's Revised Billing Credit Policy.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Record of Decision for the Final Billing Credit Policy, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503–230–3478 in Portland, or toll-free 800–622–4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, Federal Building, room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, room 112, U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–3279

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee, District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98807, 509–662–4377

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, suite 400, Seattle, Washington 98109 206–553–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 508–522–6226.

Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, room 450, Boise, Idaho 83702, 208–334–9137

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Issued in Portland, Oregon, on January 13 1993

Randall W. Hardy,

Administrator.

Editorial note. This document was received at the Office of the Federal Register on July 9, 1993

[FR Doc. 93–16682 Filed 7–13–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public L. 96–511, 44 U.S.C. 3501 *et seq.*) The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 13, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–14, 182, 782A, 782B, 782C, 821, 856, 863, 877, and 878.
3. 1905–0174.
4. Petroleum Marketing Program.
5. Revision.
6. Weekly (EIA–878); Semi-monthly (EIA–877, October through March); Monthly (EIA–14, 182, 782A/B/C, EIA–856; Annually (EIA–821); Triennially (EIA–863).
7. Mandatory.
8. Businesses or other for profit; State or local governments.
9. 16,553 respondents.
10. 5,854 responses.
11. 1.65 hours per response.
12. 159,928 hours.
13. The Petroleum Marketing Program surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors, and importers.

Statutory Information: Sec. 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1).

Issued in Washington, DC, July 9, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–16679 Filed 7–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF92–180–002]

Westmoreland-LG&E Partners; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 8, 1993.

On June 28, 1993, Westmoreland-LG&E Partners (Roanoke Valley II) c/o Westmoreland Energy, Inc., 300 Preston Avenue, Charlottesville, Virginia 22902, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Weldon Township, near Roanoke Rapids, North Carolina. On July 7, 1992, in Docket No. QF92–180–000, the applicant filed for Commission certification. The Commission subsequently certified the facility as a qualifying facility in *Westmoreland-LG&E Partners (Roanoke Valley II)*, 60 FERC ¶62,215 (1992). The instant request for recertification reflects the potential steam use by the Patch Rubber Company in the manufacturing of plastics and rubber products, a slight increase in the maximum net electric power production capacity from 44 MW to 45.1 MW, and a credit support arrangement on behalf of one of the Applicant's partners.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rule of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16609 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 4017–041, et al.]

Hydroelectric Applications [Pittsburgh Water and Sewer Authority, et al.]

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application*: Surrender of License.

b. *Project No.*: 4017–041.

c. *Date Filed*: June 8, 1993.

d. *Applicant*: Pittsburgh Water and Sewer Authority.

e. *Name of Project*: Allegheny River Lock & Dam #2.

f. *Location*: U.S. Army Corps of Engineers' Allegheny River Lock & Dam #2, Allegheny River, Allegheny County, PA.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Pittsburgh Water and Sewer Authority, Glenn M. Cannon, Allegheny Building, Suite 1010, 429 Forbes Avenue, Pittsburgh, PA 15219–1604, (412) 255–8949.

i. *FERC Contact*: Etta Foster, (202) 219–2679.

j. *Comment Date*: August 16, 1993.

k. *Description of Proposed Action*: The Licensee proposes to surrender its license for the above referenced unconstructed project for financial reasons.

l. *This notice also consists of the following standard paragraphs*: B & C1 and D2.

2 a. *Type of Application*: Amendment of License.

b. *Project No.*: 8632–013.

c. *Date Filed*: May 25, 1993.

d. *Applicant*: City of Kankakee, Illinois.

e. *Name of Project*: Kankakee Project.

f. *Location*: The project is located in Kankakee County, Illinois, on the Kankakee River.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C 791(a)–825(r).

h. *Applicant Contact*: George M. Waldow, P.E., Consultant for City of Kankakee, 5775 Wayzata Boulevard, Suite 610, Minneapolis, MN 55416, (612) 546–3669.

i. *FERC Contact*: Michelle Laabs, (202) 219–3274.

j. *Comment Date*: August 16, 1993.

k. *Description of Amendment*: The City of Kankakee, Illinois, requests approval of an as-built exhibit G–1. The exhibit shows the as-built location of the transmission line. The license authorizes a 2.1 mile long, underground transmission line. As built, the project consists of 1.5 miles of underground transmission line and 0.9 mile of overhead transmission line.

l. *This notice also consists of the following standard paragraphs*: B, C1, and D2.

3 a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 11405–000.

c. *Date Filed*: April 15, 1993.

d. *Applicant*: Hydrogroup, Inc.

e. *Name of Project*: Butte Market Lake Canal Project.

f. *Location*: On Butte Market Lake Canal, near the town of Roberts, in Jefferson County, Idaho. T5N, R37E; T5N, R38E.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. George L. Smith, Hydrogroup, Inc., P.O. Box 51016, Idaho Falls, Idaho 83405, (208) 529–8115.

i. *FERC Contact*: Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date*: August 23, 1993.

k. *Description of Project*: The proposed project would consist of: (1) An existing diversion on the Snake River; (2) Butte Market Lake Canal Company's existing 10-mile-long Butte Market Lake Canal; (3) a concrete headgate installed in the canal; (4) a 72-inch-diameter, 80-foot-long penstock; (5) a powerhouse containing one generating unit with an installed capacity of 650 kW; (6) a tailrace returning water into the Snake River; (7) a 3,000-foot-long transmission line interconnecting with an existing Utah Power Company transmission line; and (8) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $25,000.

l. *This notice also consists of the following standard paragraphs*: A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11419–000.

c. *Date Filed:* June 1, 1993.

d. *Applicant:* Abert Rim Hydroelectric Associates.

e. *Name of Project:* Abert Rim Hydroelectric Pumped Storage Project.

f. *Location:* Partially within the Abert Rim Wilderness Study Area, and partially on lands administered by the Bureau of Land Management, approximately 31 miles north of the town of Lakeview, in Lake County, Oregon. T28S, R20E; T28S; R21E; T29S, R21E; T30S, R21E; T31S, R22E; T32S, R22E; T33S, R22E; T34S, R22E; T35S, R21E; and T35S, R22E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Abert Rim Hydroelectric Associates, Mr. Patrick E. Slattery, 20 Briargate Place, Greenville, South Carolina 29615, (803) 271–8112.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* September 2, 1993.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) An 300-foot-high dam forming an 830-acre upper reservoir on Rabbit Creek; (2) two 36-foot-diameter, 1,575-foot-long concrete power shafts connecting the upper reservoir with an underground powerhouse; (3) the powerhouse containing 8 generating units with a total installed capacity of 2,000 MW; (4) two 36-foot-diameter, 8,800-foot-long power tunnels connecting the powerhouse with a lower reservoir; (5) the state of Oregon's existing 20-foot-high Chewaucan dam (to be modified) and 2,660-acre Lake Abert to be used as the lower reservoir; (6) a 2,000-acre waterfowl refuge; (7) a 43-mile-long, 500-kV transmission line interconnecting with an existing Pacific Power & Light Company transmission line; (8) a 3.5-mile-long, 500-kV transmission line interconnecting with an existing Bonneville Power Administration transmission line; (9) a converter station; and (10) appurtenant facilities.

The applicant proposes to use only the southern portion of Lake Abert as a lower reservoir by constructing two 30-foot-high dikes, one 12,500 feet long and the other 19,000 feet long.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $2,000,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Expansion of Existing Marina.

b. *Project No.:* 618–051.

c. *Date Filed:* June 21, 1993.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Dam Project.

f. *Location:* Elmore County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Sec. 791(a)–825(r).

h. *Applicant Contact:* Mr. R.M. Akridge, Manager, Hydro Licensing, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 250–1000.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* August 23, 1993.

k. *Description of Project:* Alabama Power Company, licensee for the Jordan Dam Project, has requested that the Commission approve expansion of the existing Jordan Marina. The expansion would consist of 16 new wet slips, 4 new fishing piers, and one new docking pier. In addition, Jordan Marina proposes to install 28 new campsites and a sewage holding pond.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

6 a. *Type of Application:* Non-Project Use of Project Lands.

b. *Project No.:* 2232–295.

c. *Date Filed:* May 25, 1993.

d. *Applicant:* Duke Power Company

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* Lookout Shoals Lake, Iredell County, NC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Sec. 791(a)–825(r).

h. *Applicant Contact:* Carol P. Mack, Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8104.

i. *FERC Contact:* John K. Hannula, (202) 219–1040.

j. *Comment Date:* August 23, 1993.

k. *Description of Project:* Duke Power Company requested Commission authorization to grant an easement on 0.23 acre of land on Lookout Shoals Lake to the City of Statesville, NC, for a raw water intake facility. The water will be pumped through a 30-inch transmission main to the existing water treatment plant located about 13 miles away in the City of Statesville. The facility will be used for an additional source of drinking water for the city.

l. *This notice also consists of the following standard paragraphs:* B, C1, D2.

7 a. *Type of Application:* Exemption of Small Conduit Hydroelectric Facility.

b. *Project No.:* 11403–000.

c. *Date Filed:* April 5, 1993.

d. *Applicant:* City of Buffalo, Wyoming.

e. *Name of Project:* Small Conduit Hydroelectric Facility.

f. *Location:* On an existing water delivery pipeline near the City of Buffalo, Johnson County, Wyoming.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth Gross, Administrative Assistant, City of Buffalo, Wyoming, 46 North Main, Buffalo, Wyoming 82834, (307) 684–5566.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Deadline Date:* See Paragraph D4. (August 31, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D4.

l. *Brief Description of Project:* The proposed project consists an 18-foot-square powerhouse containing a turbine

with an installed capacity of 245 kilowatts (project excludes the existing conduit on which the powerhouse is proposed).

m. *Purpose of Project:* Power will be used by the City.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D4.

o. *Available locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction with the applicant contact list above.

8 a. *Type of Action:* Notice of Availability of Bald Eagle Study Results and Requests for Comments.

b. *Project Number:* 233–023.

c. *License Issued:* February 26, 1981.

d. *Licensee:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3, 4, and 5 Project.

f. *Location:* Shasta County, California.

g. *Licensee Contact:* Mr. Shan Bhattacharya, P.O. Box 770000, P10A, San Francisco, CA 94177, (415) 973–5310.

h. *FERC Contact:* John A. Schnagl, (202) 219–2661.

i. *Comment Date:* August 16, 1993.

j. *Reply Comments:* September 15, 1993.

k. *Notice of Availability:* On April 2, 1993, Pacific Gas and Electric Company (PG&E) filed and supplemented on May 26, 1993, a report on bald eagle populations, fish populations, and water quality for the Pit 3, 4, & 5 Project. Based on the results of the report, PG&E proposes to maintain the existing 150 cubic feet per second minimum flow in the Pit River below the Pit 3 Dam.

Copies of the report were sent to all parties. Additional copies are available for review at the Commission's public reference room at 941 North Capitol Street, Washington, DC.

The order requiring the study and setting minimum flows at the Pit 3 site is pending rehearing before the Commission. In order to allow any new information to be considered by the Commission, we are opening the comment period to all entities to file new or modified comments or recommendations for the minimum flow and study plan, based on the study results and any new information that has become available since filing their original comments. Any new or modified comments or recommendations for flows in the Pit 3 River reach should be filed with the Commission by August 16, 1993. If you do not wish to modify comments or recommendations previously filed with the Commission, no additional filing is required.

Once any additional comments or recommendations are filed, with appropriate service to all parties, we will allow until September 15, 1993, for the parties to submit reply comments to the Commission.

l. *Filings and Service of Responsive Documents*—All responsive filings must be filed by providing the original and 8 copies to The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The filing should indicate the project name and number and be labeled "Comments", "Recommendations", or "Reply Comments". Copies of any filing should be served with all parties in this proceeding. Proof of service shall accompany any filing with the Commission.

9 a. *Type of Application:* New Major License.

b. *Project Nos.:* 2406–002 & 2465–003.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* Duke Power Company.

e. *Name of Projects:* Saluda & Hollidays Bridge.

f. *Location:* On the Saluda River in Anderson, Greenville, & Pickens County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Albert V. Carr, Jr., Duke Power Company, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8125.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Deadline Date:* See paragraph D10 and item (k).

k. *Status of Environmental Analysis:* These applications have been accepted for filing and are ready for environmental analysis at this time—see attached standard paragraph D10. Comments, recommendations, terms and conditions, or prescriptions pertaining to fishery population study are not being solicited because the applicant has not yet filed the study; however, they should be filed within 30 days from the date the applicant files this study with the Commission following its consultation with the South Carolina Wildlife and Marine Resources Department and the U.S. Fish and Wildlife Service.

(Note: The applicant is required to provide a copy of the study to all entities consulted under § 16.8 of the regulations and to all parties on the service list).

l. *Description of Projects:*

(A) Saluda Project: The project as proposed for licensing consists of: (1) a 55-foot-high, 460-foot-long concrete dam impounding a 556-acre reservoir; (2) a powerhouse containing four turbine generator units with a total rated capacity of 2.4 MW; and (3) other appurtenant structures. The average annual generation is 5.46 GWh.

(B) Hollidays Bridge Project: The project as proposed for licensing consists of: (1) a 35-foot-high, 644-foot-long concrete dam impounding a 466-acre reservoir; (2) a 950-foot-long intake canal; (3) a powerhouse containing four turbine generator units with a total rated capacity of 3.5 MW; (4) a 3.5-mile-long, 22-kV transmission line; and (5) other appurtenant structures. The average annual generation is 11.87 GWh.

m. *Purpose of Projects:* Power generated from the project is used primarily to help meet peak load demands of customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Applications:* A copy of the applications, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

10 a. *Type of Application:* Approval of Plan to Construct Two Day-Use Areas.

b. *Project No.:* 2833–032.

c. *Date Filed:* June 18, 1993.

d. *Applicant:* Public Utility District No. 1 of Lewis County.

e. *Name of Project:* Cowlitz Falls.

f. *Location:* Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary Halich, Public Utility District No. 1 of Lewis County, P.O. Box 330, Chehalis, WA 98532, (206) 748–9261.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* August 20, 1993.

k. *Description of Project:* The licensee for FERC Project No. 2833 requests approval to amend its recreation plan and build two day-use parks, one near Packwood, WA on land administered by Washington State Department of Natural

Resources and one near Randle, WA on projects lands. Each area would consist of a picnic shelter, an athletic field, a parking lot and restrooms.

1. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11421–000.

c. *Date Filed:* June 21, 1993.

d. *Applicant:* Madrid Hydropower Associates.

e. *Name of Project:* Madrid Water Power Project.

f. *Location:* On the Grasse River, Madrid Township, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rodney F. Coffey, 5165 Wagon Trails End, Syracuse, New York 13215–1578, (315) 488–8716.

i. *FERC Contact:* Mary Golato, (202) 219–2804.

j. *Comment Date:* September 6, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam 13 feet high and 420 feet long; (2) and existing reservoir with a storage capacity of 120 acres and a mean sea elevation of 446.0 feet mean sea level; (3) a proposed powerhouse containing two turbine-generator units at a total rated capacity of 750 kilowatts; (4) a proposed 300-foot-long, 13.2-kilovolt transmission line; and (5) appurtenant facilities. The total average annual generation will be 3,400,000 kilowatthours. The cost of the studies is $60,000. The owner of the dam is Town of Madrid.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such and application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include and unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the

filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to:

The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 31, 1993 for Project No. 11403–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 15, 1993 for Project No. 11403–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 7, 1993 for Project No. 2406–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 20, 1993 for Project No. 2406–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: July 8, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16602 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–11765T California–4]

California; NGPA Determination by Jurisdictional Agency Designating Tight Formations

July 8, 1993.

Take notice that on July 1, 1993, the California Division of Oil and Gas (California) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Belridge Diatomite Formation, underlying certain properties in the Lost Hills Field, Kern County, California, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The areas of application, containing approximately 366.8 acres in Township 27 South, Range 21 East, are described as follows:

Lost Hills "A"—E/2 of NW/4 of NE/4 and W/2 of W/2 of NE/4 of NE/4 of Section 5, containing 30 acres.

Lost Hills "G"—South 16.8 acres of the N/2 of NW/4 of SE/4 and NW/4 of NE/4 of SE/4 of Section 9.

Lost Hills "K"—S/2 of S/2 of Section 21, containing 160 acres.

Lost Hills "L"—N/2 of N/2 of Section 20, containing 160 acres.

The notice of determination also contains California's findings that the referenced portions of the Belridge Diatomite Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

VOL 58 ISS 133 JL 14 1993 UMI

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16608 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–12144T Texas–144]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 8, 1993.

Take notice that on June 22, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, Black Forest Creek Field, underlying a portion of Smith County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 6 and consists of approximately 3,680 acres in all or portions of the following surveys:

Survey	Abstract No.
George A. Bass	A–66
James H. McClure	A–659
William McAdams	A–688
Thomas H. Prater	A–783
Benjamin Kuykendall	A–532
Isaac Mathews	A–703
Joseph Del	A–298
S.A. & M.G. R.R. Co	A–964
Joseph Shields	A–887
Lewis Jones	A–501

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16607 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

Establishment of Performance Review Board

July 8, 1993.

Section 4314(c) of title 5, United States Code requires that notices of appointment of Performance Review Board members be published in the **Federal Register**. The following persons have been appointed to serve on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

Christie L. McGue, Susan Tomasky, Rebecca F. Schaffer.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16603 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–535–000]

Arkla Energy Resources Company; Request Under Blanket Authorization

July 8, 1993.

Take notice that on July 6, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP93–535–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate a delivery tap under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, AER proposes to construct and operate a 4-inch tap and meter station in Sequoyah County, Oklahoma to deliver up to 10,000 Mcf of natural gas per day to Arkansas Oklahoma Gas Corporation (AOG). AER states that it would transport the natural gas for AOG pursuant to part 284 of the Commission's Regulations. AER further states that AOG would reimburse AER for the cost of the facilities and that AOG would use the natural gas to supplement its supplies to the city of Fort Smith, Arkansas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16606 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–18–004]

Kentucky West Virginia Gas Company; Tariff Filing

July 8, 1993.

Take notice that on June 30, 1993, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing Third Revised Volume No. 1 of its FERC Gas Tariff in the above-captioned proceeding.

Kentucky West states that the filing is made to comply with the requirements of the Commission's June 18, 1993 "Order On Compliance Filing and Denying Rehearing" in Docket Nos. RS92–18–002 and RS92–18–003.

Any party wishing to file comments on Kentucky West's June 30, 1993 filing should file such comments on or before July 15, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16604 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–262–022; RP88–262–027]

Panhandle Eastern Pipe Line Company; Reports of Refunds

July 8, 1993.

Take notice that on November 16, 1992, in Docket No. RP88–262–022, in accordance with the requirements of Commission Opinion Nos. 369 and 369–A, Panhandle Eastern Pipe Line Company (Panhandle) submitted for filing its refund report setting forth principal refund amounts for the period April 1, 1989 through March 31, 1992 for Panhandle's jurisdictional customers arising from the rate requirements of Opinion No. 369, 57 FERC ¶ 61,264, and Opinion No. 369–A, 59 FERC ¶ 61,244,

along with associated interest calculated to November 16, 1992, the date of this report.

Panhandle states that interest will continue to accumulate until payment is made, after approval of the report. As detailed in the report, Panhandle will provide for refunds of approximately $57 million, including interest, to its customers. Panhandle further asserts that in accordance with the settlement of Panhandle's take-or-pay cost recovery proceedings, $35 million is to be retained from the sales customers' demand and commodity refund amounts and $7.6 million is to be retained from the non-sales customers' commodity refunds, although, Panhandle maintains, that settlement would have permitted $12 million of the refunds to non-sales customers to be retained.

Take further notice that on April 15, 1993, in Docket No. RP88–262–027, Panhandle filed a revised refund report with the Federal Energy Regulatory Commission (Commission) in accordance with the Commission's March 16, 1993 order in Docket No. RP88–262–024 and its December 23, 1992 order in Docket No. RP88–262–021. Panhandle states that the report reflects the recalculation of refunds associated with what the Commission characterized as "Double-Billing of demand costs on converted volumes". Panhandle previously reported these refunds in a refund report filed in Docket No. RP88–262–000, *et al.* on November 16, 1992 [1] and supplemented on February 8, 1993.

In addition, Panhandle requests that the Commission direct its Staff to convene a technical conference to discuss this report and to resolve any controversies associated with it.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16605 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

[1] This refund report is different than the "refund plan" also filed on November 16, 1992, in Docket No. RP88–262–022, as described above in this notice.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66178; FRL–4633–1]

Sporicidin Cold Sterilizing Solution; Voluntary Cancellation Request; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces that Sporicidin Company (also doing business as Sporicidin International) has voluntarily requested that EPA cancel the registration of Sporicidin Cold Sterilizing Solution (EPA Reg. No. 8383–5) and that EPA has granted this request. The cancellation became effective on June 16, 1993. The registrant must arrange for the recall of all existing stocks and must dispose of all existing stocks except for quantities which the registrant may distribute for testing or retain for archival purposes. No sale, or other distribution or use of existing stocks is allowed.

DATES: The cancellation order became effective June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8034.

SUPPLEMENTARY INFORMATION: This Notice is issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. It announces the Agency's decision on a request for cancellation of the registration of Sporicidin Cold Sterilizing Solution (EPA Reg. No. 8383–5).

I. Request for Voluntary Cancellation

Sporicidin Cold Sterilizing Solution (Sporicidin) was registered as a pesticide for antimicrobial uses in 1976. The registrant was Sporicidin Company, of Rockville, Maryland, also known as Sporicidin International of Rockville, Maryland. Sporicidin Cold Sterilizing Solution was a glutaraldehyde-based chemical germicide registered for use as a sterilant, tuberculocide, bactericide, and virucide, among other things. Use sites included hospitals; medical and veterinary clinics; nursing homes and ambulances to sterilize or disinfect medical instruments; equipment and fiberoptics used in endoscopy, surgery, anesthesiology, and respiratory therapy

On December 13, 1991, EPA initiated enforcement action against Sporicidin Company. These actions included issuance of a Stop Sale, Use, or Removal Order (SSURO) to the registrant and product distributors affecting the Sporicidin product and filing of a civil complaint alleging misbranding, among other things. These actions were primarily based on the results of EPA tests which showed that the product was not efficacious as a sterilant as claimed on the product label. The Agency was prepared to initiate cancellation proceedings against the product registration.

As part of the settlement of the civil administrative action, Sporicidin Company agreed to request voluntary cancellation of the registration of Sporicidin. In a letter dated June 11, 1993, Sporicidin Company requested immediate voluntary cancellation and waived any requirement for **Federal Register** notice of the request prior to the cancellation becoming effective.

II. Existing Stocks Determination

This product is subject to a SSURO that was part of the enforcement action described above. No sale, distribution, or use of existing stocks is allowed except in accordance with the SSURO issued on December 13, 1991, and its subsequent amendments. If EPA determines that it is appropriate at some point to vacate the SSURO, the terms and conditions on existing stocks in this notice and Cancellation Order will continue in effect.

For purposes of this Order, existing stocks are defined as those stocks of Sporicidin product which are in the U.S. and were packaged, labeled, and released for shipment or sale prior to June 11, 1993, the date of receipt of the cancellation request, or which were otherwise in the custody and control of Sporicidin Company as of that date.

EPA advises persons holding stocks of the product to immediately discontinue selling, distributing, or using the product.

Sporicidin Company was requested to recall Sporicidin from the market on December 13, 1991. Any quantities remaining in channels of trade should be returned to Sporicidin Company. Persons holding any quantity of Sporicidin should contact Sporicidin Company or its distributors to arrange

VOL 58 ISS 133 JL 14 1993 UMI

for the return of the product. Sporicidin Company may retain a quantity of product for laboratory testing or archival purposes. Sporicidin Company may distribute the product for purposes of laboratory testing or disposal only. No sale, or other distribution or use of existing stocks is allowed.

III. EPA's Decision on the Request for Voluntary Cancellation and Cancellation Order

On June 16, 1993, EPA granted Sporicidin Company's request that the registration of its product Sporicidin Cold Sterilizing Solution (EPA Reg. No. 8383–5) be voluntarily canceled. Concurrently, EPA is issuing a Cancellation Order for Sporicidin. This Notice contains the terms and conditions of the Cancellation Order for Sporicidin. Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment before granting the request unless either the registrant requests a waiver of the notice or the Administrator determines that the continued use of the pesticide would pose unreasonable adverse effects on the environment. Sporicidin Company requested immediate voluntary cancellation and waived any Notice prior to the cancellation becoming effective. Accordingly, this Cancellation Order became effective on June 16, 1993. Therefore, as of June 16, 1993, no person may distribute, sell, or use this product, except as described below. No sale, distribution, or use of any existing stocks is permitted, except that Sporicidin Company may retain a quantity of its product for testing or archival purposes. Sporicidin Company may distribute the product for purposes of testing and disposal only. Any sale, distribution, or other disposition of existing stocks that is not consistent with the terms of this Order will be considered a violation of FIFRA section 12(a)(2)(K) and/or section 12(a)(1)(A), as appropriate.

Dated: June 29, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–16654 Filed 7–13–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Meridian Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 6, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Meridian Bancorp, Inc., Reading, Pennsylvania; to merge with First Bath Corp., Bath, Pennsylvania, and thereby indirectly acquire First National Bank of Bath, Bath, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First City Bancorp, Inc., Murfreesboro, Tennessee; to acquire 100 percent of the voting shares of Citizens Bank, Smithville, Tennessee.

2. PCM Acquisition Group, Inc., Deerfield, Florida; to become a bank holding company by acquiring 82 percent of the voting shares of Florida First International Bank, Hollywood, Florida.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri, and CBI Security Corp., Kansas City, Missouri; to acquire 100 percent of the voting shares of Lawrence County Bancshares, Inc., Aurora, Missouri, and thereby indirectly acquire Lawrence County Bank, Aurora, Missouri.

2. Jefferson County Bancshares, Inc., Daykin, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Jefferson County Bank, Daykin, Nebraska.

3. Myers Bancshares, Inc., Alva, Oklahoma; to become a bank holding company by acquiring 96 percent of the voting shares of Central National Bank, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, July 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16634 Filed 7-13-93; 8:45 am]

BILLING CODE 6210-01-F

National Bank of Commerce of El Dorado Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Bank of Commerce of El Dorado Employee Stock Ownership Plan, El Dorado, Arkansas; to acquire an additional 0.42 percent of the voting shares of NBC Bank Corp., El Dorado, Arkansas, for a total of 10.08 percent, and thereby indirectly acquire National Bank of Commerce of El Dorado, El Dorado, Arkansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Evan H. Katz Dynasty Trust, Lissy B. Katz Dynasty Trust, and Lenny C. Katz Dynasty Trust, all of Houston, Texas, to each acquire 9.70 percent of the voting shares of First Community Bancshares, Inc., Killeen, Texas, and thereby indirectly acquire Fort Hood National Bank, Fort Hood, Texas, and The First National Bank, Killeen, Texas.

Board of Governors of the Federal Reserve System, July 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16635 Filed 7-13-93; 8:45 am]

BILLING CODE 6210-01-F

State Financial Services Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. State Financial Services Corporation, Hales Corners, Wisconsin; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16636 Filed 7-13-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 06–21–93 AND 07–02–93

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Nestle S.A., Mr. Cyrus Tang, Curatek Pharmaceuticals, L.P	93–1114	06/21/93
Mrs. L. Bettencourt, Mr. Cyrus Tang, Curatek Pharmaceuticals, L.P	93–1115	06/21/93
Aztar Corporation, Ambassador Real Estate Investors, L.P., Ambassador General Partnership	93–1170	06/21/93
Cross Timbers Oil Company, Atlantic Richfield Company, Atlantic Richfield Company	93–1171	06/21/93
Equitable Resources, Inc., American Exploration Company, Hershey Oil Corporation	93–1183	06/21/93
Fremont Group, Inc., Sears, Roebuck and Co., Coldwell Banker Residential Holding Company	93–1185	06/21/93
Vintage Petroleum, Inc., E.I. du Pont de Nemours and Company, Conoco Inc	93–1187	06/21/93
Motorola, Inc., Millicom International Cellular S.A., Millicom Mexico Corp	93–1188	06/21/93
Kidd, Kamm Equity Partners, L.P., Corning Incorporated, Dow Corning Wright Corporation	93–1200	06/21/93
Kidd, Kamm Equity Partners, L.P., The Dow Chemical Company, Dow Corning Wright Corporation	93–1202	06/21/93
The TCW Group, Inc., Edisto Resource Corporation, Edisto Resource Corporation	93–1203	06/21/93
Barold Corporation, Tremont Corporation, NEWCO	93–1204	06/21/93
TransTechnology Corporation, TRW Inc., TRW Inc	93–1205	06/21/93
Odyssey Partners, L.P., Avatar Holdings, Inc., Avatar Holdings, Inc	93–1207	06/21/93
PepsiCo, Inc., Southern Tier Pizza Hut, Inc., Southern Tier Pizza Hut, Inc	93–1212	06/21/93
Robert M. Bass, Robert M. Bass, KOVR TV, Inc	93–1214	06/21/93
Estate of Peter Sharp, Avatar Holdings Inc., Avatar Holdings Inc	93–1217	06/21/93
The Society of the New York Hospital, Richard and Cynthia Zirinsky, Gracie Square Hospital, Inc	93–1125	06/22/93
Daniel K. Frierson, c/o Dixie Yarns, Inc., Masland Carpets, Inc., Masland Carpets, Inc	93–1135	06/23/93
State Street Boston Corporation, Citicorp, Citibank, N.A	93–1157	06/23/93
Parfinance, Armco Inc., Armco Inc. (Miami Industries Division)	93–1175	06/23/93
MTD Products Inc., Shiloh Industries, Inc., Shiloh Industries, Inc	93–1126	06/24/93
James C. Fanello, Shiloh Industries, Inc., Shiloh Industries, Inc	93–1127	06/24/93
Dominick C. Fanello, Shiloh Industries, Inc., Shiloh Industries, Inc	93–1128	06/24/93
Wickland Corporation, Brian Mock, Mock Resources, Inc	93–1166	06/25/93
Principal Mutual Life Insurance Company, United HealthCare Corporation, United HealthCare of Iowa, Inc	93–1179	[illegible]
Theodore Ammon, Treasure Chest Advertising Company, Inc., Treasure Chest Advertising Company, Inc	93–1191	06/25/93

VOL
58
ISS
133
JL
14
1993
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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 06–21–93 AND 07–02–93—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ricardo J. Cisneros, Pueblo International, Inc., Pueblo International, Inc	93–1192	06/25/93
Scesaplana Settlement, Pueblo International, Inc., Pueblo International, Inc	93–1193	06/25/93
The Rouse Company, Carlyle Real Estate Limited Partnership-XVI, Owings Mills Limited Partnership	93–1210	06/25/93
The Rouse Company, Carlyle Real Estate Limited Partnership-XV, Owings Mills Limited Partnership	93–1211	06/25/93
English China Clays plc, Merck & Co., Inc., Calgon Water Management Business	93–1216	06/25/93
Bell Atlantic Corporation, The Chronicle Publishing Company, The Chronicle Publishing Company	93–1219	06/25/93
Union Air Transport Inc., VIAG AG, Union Air Transport GmBh & Co. OHG	93–1222	06/25/93
Union Air Transport Inc., Bayernwerk AG, Union Air Transport GmbH & Co. OHG	93–1223	06/25/93
Apache Corporation, Gary L. Hall, Hall-Houston Oil Company	93–1226	06/25/93
Murray T. Holland, General Motors Corporation, GDS Business of Electronic Data Systems Corporation	93–1234	06/25/93
Peter J. Canni, Merrill Lynch & Co., Inc., Champion Energy Corporation	93–1238	06/25/93
Welsh, Carson, Anderson & Stowe V, L.P., OccuSystems, Inc., OccuSystems, Inc	93–1124	06/26/93
WMX Technologies, Inc., Matrix Engineering, Inc., Matrix Engineering, Inc	93–1176	06/28/93
Key Tronic Corporation, Honeywell Inc., Honeywell Inc.'s Keyboard Division	93–1177	06/28/93
Oji Paper Co., Ltd., Kanzaki Paper Mfg. Co., Ltd., Kanzaki Paper Mfg. Co., Ltd	93–1197	06/28/93
Fiserv, Inc., TCW Special Placements Fund II, Data Line Service Company, Inc	93–1209	06/28/93
James G. Leprino, Associated Milk Producers, Inc., Associated Milk Producers, Inc	93–1184	06/29/93
E.I. Du Pont de Nemours and Company, Occidental Petroleum Corporation, Island Creek Coal, Inc	93–0970	06/30/93
Scitex Corporation Ltd., Eastman Kodak Company, Dayton Operations, Inc	93–1180	06/30/93
PepsiCo, Inc., Chevys, Inc., Chevys, Inc	93–1198	06/30/93
Alexander & Baldwin, Inc., First Chicago Corporation, First Chicago Leasing Corporation	93–1235	06/30/93
Land Free II Investment Limited, Astrum International Corp. (Debtor-in-Possession), Astrum International Corp. (Debtor-in-Possession)	93–1208	07/01/93
Lumbermens Mutual Casualty Company, Kemper Corporation, Kemper Reinsurance Company and National Loss Control	93–1227	07/01/93
RWE Aktiengesellschaft, Occidental Petroleum Corporation, Occidental Petroleum Corporation	93–0973	07/02/93
La Quinta Inns, Inc., The Prudential Insurance Company of America, L.Q. Joint Venture #800; La Quinta Associates	93–1228	07/02/93
Centerbank, Beneficial Corporation, Beneficial Mortgage Corporation	93–1231	07/02/93
La Quinta Inns, Inc., La Quinta Inns, Inc., L.Q. Joint Venture #800 and La Quinta Associates	93–1241	07/02/93
Yorkshire Food Group PLC, Del Monte Foods Company, Dried Fruit Business of Del Monte Corporation	93–1244	07/02/93
The Trustees of the University of Pennsylvania, Annenberg Research Institute, Annenberg Research Institute	93–1252	07/02/93
Carmike Cinemas, Inc., Westwynn Theatres, Inc., Westwynn Theatres, Inc	93–1264	07/02/93
Floyd C. Wilson and Carol Wilson, The Prudential Insurance Company of America, Hugoton Energy, P.L.P, Hugoton Energy, P II, L.P	93–1270	07/02/93
Odyssey Partners, L.P., Floyd C. Wilson and Carol Wilson, Hugoton Energy Corporation	93–1271	07/02/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–16656 Filed 7–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 931 0092]

Consol, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, the Pennsylvania-based provider of coal export terminal services to acquire Island Creek Coal, Inc., but it would require the respondent to divest the Curtis Bay Company and to obtain, for the next 10 years, prior Commission-approval before making any similar acquisitions. In addition, if the divestiture is not accomplished in the specified time-frame, the respondent would agree to a Commission-appointed trustee to complete the transaction.

DATES: Comments must be received on or before September 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: M. Howard Morse, FTC/H–394, Washington, DC 20580. (202) 326–2949.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Consol, Inc. ("Consol") (a corporate joint venture between E.I. duPont de Nemours, a United States corporation and RWE Aktiengesellshaft, a foreign corporation) of the stock of Island Creek Coal, Inc., a subsidiary of Occidental Petroleum Corporation ("OPC"), a corporation, and it now appearing that Consol, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an Agreement Containing Consent Order ("Agreement") to divest certain assets,

to cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between Consol, Inc. (wholly and equally owned by E.I. duPont de Nemours and RWE Aktiengesellshaft) its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent Consol is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1800 Washington Road, Pittsburgh, PA 15241.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review of otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its Complaint corresponding in form and substance to the draft of Complaint here attached and its decision containing the following Order to divest and cease and desist, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Agreement or the Order may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Consol understands that once the Order has been issued, Consol will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed respondent further understands that is may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

A. "Consol" means Consol, Inc. (a wholly and equally owned joint venture between E.I. duPont de Nemours and RWE Aktiengesellshaft), Consol, Inc.'s joint venture parents, its predecessors, successors and assigns, divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Consol controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "OPC" means Occidental Petroleum Corporation, its predecessors, successors and assigns, divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that OPC controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "Curtis Bay" means the Curtis Bay Company or all assets of the Curtis Bay Company, including, but not limited to, the Bayside Coal Pier and all assets used in the maintenance or operation of the Bayside Coal Pier located in the Port of Baltimore, Maryland.

D. "Acquisition" means the acquisition by Consol from OPC of the Stock of Island Creek Coal, Inc., a subsidiary of OPC.

F. "Commission" means the Federal Trade Commission.

G. "Export Coal Terminal Services" means the receiving of coal by rail, its storage, blending, and loading on vessels for shipment to a foreign country.

II

It is ordered that Consol shall comply with all the terms of the Hold Separate Agreement executed on June 25, 1993, and attached hereto as Appendix A and made a part of this Order. The Hold Separate Agreement shall continue in effect until such time as Consol or the trustee has accomplished the divestiture required by Paragraphs IV and V of this Order or until such time as the Hold Separate Agreement provides.

III

It is further ordered that, pending divestiture of Curtis Bay, Consol shall take such action as is necessary to maintain the viability and marketability of Curtis Bay and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of Curtis Bay, except in the ordinary course of business that does not affect the viability and marketability of Curtis Bay, ordinary wear and tear excepted.

IV

It is further ordered that within twelve (12) months after the date of this Order becomes final Consol shall divest, absolutely and in good faith, Curtis Bay. The divestiture shall be made only in a manner that receives the prior approval of the Commission and only to an acquirer that receives the prior approval of the Commission. The purpose of the divestiture is to maintain Curtis Bay as an independent competitor in the coal export terminal services business and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. The divestiture shall also be consistent with covenants in applicable Revenue Bonds requiring that the facility be used as "docks, wharves or storage facilities" and in the Safe Harbor Leases requiring that the equipment covered by those leases not be removed from the facility and be maintained in operable condition, including the provision of any certifications or reports required by the Internal Revenue Code.

V

It is further ordered that:

A. If Consol has not fully complied, absolutely and in good faith, with Paragraph IV of this Order within the

time period provided in such Paragraph, Consol shall consent to the appointment by the Commission of a trustee to divest Curtis Bay. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Consol shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Consol to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.A. or this Order, Consol shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of Consol, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Consol has not opposed the selection of a proposed trustee within fifteen (15) days after notice by the Commission's staff to Consol of the identity of the proposed trustee, Consol shall be deemed to have consented to the selection of the proposed trustee.

(2) Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest Curtis Bay, and to make any further arrangements that may be reasonably necessary to maintain the viability and competitiveness of the business.

(3) The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V.B.8. to accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that the divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or in the case of a court-appointed trustee, by the court. Provided, however, the Commission may only extend the trustee's divestiture period one (1) time for such reasonable time as the trustee may request, not to exceed one (1) additional year.

(4) The trustee shall have full and complete access to the personnel, books, records, and facilities related to Curtis Bay, or to any other relevant information, as the trustee may request. Consol shall develop such financial or other information as such trustee may request and shall cooperate with any request of the trustee. Consol shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in the granting of divestiture caused by Consol shall extend the time for divestiture under Paragraph V.B.(3) in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(5) Subject to Consol's absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in Paragraph IV of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture. The divestiture shall be made in the manner set out in Paragraph IV of this Order, provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Consol from among those approved by the Commission.

(6) The trustee shall serve, without bond or other security, at the cost and expense of Consol, on such reasonable and customary terms and conditions as the Commission or, in the case of a court-appointed trustee, the court may set. The trustee shall have authority to employ, at the cost and expense of Consol, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Consol and the trustee's power shall be terminated. The trustee's compensation shall be based in significant part on a commission arrangement contingent on the trustee's divesting Curtis Bay.

(7) Consol shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

(8) Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Consol shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

(9) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.

(10) The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

(11) The trustee shall have no obligation or authority to operate or maintain Curtis Bay.

(12) The trustee shall report in writing to Consol and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Consol has fully complied with the provisions of Paragraph IV of this Order, Consol shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Consol shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Consol also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VII

It is further ordered that for a period of ten (10) years from the date on which this Order becomes final, Consol shall not, without the prior approval of the Commission, directly or indirectly,

VOL 58 ISS 133 JL 14 1993 UMI

through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or noncorporate, presently engaged in, within the past two years engaged in, or in the process of attempting to engage in providing export coal terminal services in the Port of Baltimore, Maryland or within 50 miles of the Port of Baltimore, Maryland.

B. Acquire any assets used for, or previously used for (and still suitable for use for) the providing of coal export terminal services from any concern, corporate or non-corporate, presently engaged in, within the past two years engaged in, or in the process of attempting to engage in providing export coal terminal services in the Port of Baltimore, Maryland or within 50 miles of the Port of Baltimore, except in the ordinary course of business.

C. On the anniversary of the date on which this Order becomes final, and on every anniversary thereafter for the following nine (9) years, Consol shall file with the Commission a verified written report of its compliance with this Paragraph of this Order.

VIII

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Consol, Consol shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Consol relating to any matters contained in this Order; and

B. Upon five (5) days notice to Consol, and without restraint or interference from Consol, to interview officers or employees of Consol, who may have counsel present, regarding such matters.

IX

It is further ordered that Consol shall notify the Commission at least thirty (30) days prior to any change in Consol such as dissolution, assignment, or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Consol, Inc. (Consol), a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1800 Washington Road, Pittsburgh, PA 15241 and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, Consol intends to purchase 100% of the voting securities of Island Creek Coal, Inc. (Island Creek) a subsidiary of Occidental Petroleum Corporation (hereinafter the "Acquisition"); and

Whereas, Consol and Island Creek both own and operate coal export terminals in the Port of Baltimore, Maryland; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* with respect to the coal export terminals owned by Island Creek and Consol during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of Island Creek's Curtis Bay Company ("Curtis Bay") as described in Paragraph I of the Consent Order and the Commission's right to seek to restore Curtis Bay as a viable competitor in the coal export terminal services business; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve Curtis Bay as a viable independent business pending its divestiture as a viable and ongoing enterprise,

(ii) Remedy any anticompetitive effects of the Acquisition, and

(iii) Preserve Curtis Bay as an ongoing, viable entity engaged in the coal export terminal services business in the event that divestiture is not achieved; and

Whereas, Consol entering into this Agreement shall in no way be construed as an admission by Consol that the Acquisition is illegal; and

Whereas, Consol understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has determined that it has reason to believe the acquisition may substantially lessen competition, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Consol with respect to effects of the Acquisition on coal export terminal services in the Port of Baltimore, Maryland, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestiture is not accomplished, to seek divestiture of Curtis Bay pursuant to the Consent Agreement, and other relief, as follows:

1. Consol agrees to execute and be bound by the attached Consent Order.

2. Consol agrees that from the date this Agreement is accepted until the first of the dates listed in subparagraphs 2.a–2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the **Federal Register** of the Consent Order, unless by that date the Commission has finally accepted such Order; or

c. The day after the divestiture required by the Consent Order have been completed.

3. Consol will hold Curtis Bay, as it is presently constituted, separate and apart on the following terms and conditions:

a. Curtis Bay shall be held separate and apart and shall be operated independently of Consol (meaning here and hereinafter, Consol excluding Curtis Bay and excluding all personnel connected with Curtis Bay on behalf of

VOL 58 ISS 133 JL 14 1993 UMI

Island Creek as of the date this Agreement was signed) except to the extent that Consol must exercise direction and control over Curtis Bay to assure compliance with this Agreement or the Consent Order.

b. Consol shall not exercise direction or control over, or influence directly or indirectly, Curtis Bay; provided, however, that Consol may exercise only such direction and control over Curtis Bay as is necessary to assure compliance with this Agreement or the Consent Order.

c. Consol shall maintain the viability and marketability of Curtis Bay and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single Consol director, officer, employee, or agent serving on the "New Board" (as defined in subparagraph 3.i), Consol shall not permit any director, officer, employee, or agent of Consol to also be a director, officer or employee of Curtis Bay.

e. Except as required by law or as reported by the auditor (provided for in subparagraph 3.f) and except to the extent that necessary information is exchanged in the course of defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestiture), and except to the extent that certain designated individuals on Consol's accounting staff may provide accounting services to Curtis Bay (at no cost to Curtis Bay), Consol shall not receive or have access to, or the use, any of Curtis Bay's "material confidential information" not in the public domain, except as such information would be available to Consol in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Consol, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. Consol may retain an independent auditor to monitor the operation of Curtis Bay. Said auditor may report to Consol on all aspects of the operation of Curtis Bay other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

g. Consol shall not change the composition of the management of Curtis Bay except that the non-Consol (as Consol is defined in subparagraph 3.a hereof) directors or members serving on the New Board (as defined in subparagraph 3.i hereof) shall have the power to remove employees for cause.

h. All material transactions out of the ordinary course of business and not precluded by subparagraphs (3.a–3.g hereof, shall be subject to a majority vote of the New Board (as defined in subparagraph 3.i hereof). The Curtis Bay management shall prepare capital and operating budgets each six (6) months, which shall be subject to approval of a majority of the New Board (as defined in subparagraph 3.i hereof).

i. Consol shall elect a new three-person board of directors of Curtis Bay ("New Board") once it obtains title to Curtis Bay. Consol may elect the directors to the New Board provided, however, that no director of the New Board shall have had prior responsibility for, or knowledge of confidential information regarding, Consol's coal export terminal services business, and no more than one Consol director, officer, employee, or agent shall be a director of the New Board ("Consol director"). Except as permitted by this Agreement, no Consol director, so long as he or she serves as a director, shall receive, in his or her capacity as a director of the New Board, material confidential information and shall not disclose any such information received under this Agreement to Consol or use it to obtain any advantage for Consol. Such Consol director shall participate in matters which come before the New Board only for the limited purpose of considering a capital investment or other transactions exceeding $500,000 and carrying out Consol's responsibilities under this Agreement or the Consent Order. Except as permitted by this Agreement, such Director shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Consol and Curtis Bay were separate and independent entities. Meetings of the New Board during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

j. Any Consol employee who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestiture required by the Consent Order have been completed.

k. All earnings and profits of Curtis Bay shall be retained separately in or on behalf of Curtis Bay. If necessary, Consol shall provide Curtis Bay with sufficient working capital to operate at the current rate of operation.

l. Should the Federal Trade Commission seek in any proceeding to compel Consol (meaning here and hereinafter Consol including Curtis Bay) to divest itself of Curtis Bay or to compel Consol to divest any assets or businesses of Curtis Bay that it may hold, or to seek any other injunctive or equitable relief, Consol shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Consol also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Consol made to its principal office, Consol shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Consol and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Consol relating to compliance with this Agreement;

b. Upon five (5) days notice to Consol, and without restraint or interference from it, to interview officers or employees of Consol, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (Commission) has accepted subject to final approved, an Agreement Containing Consent Order from Consol, Inc. (Consol).

The proposed Consent Order (Order) has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement's or make final the Agreement proposed Order.

The Commission's investigation of this matter concerned Consol's proposed acquisition of 100% of the voting securities of Island Creek Coal, Inc. (Island Creek), a subsidiary of Occidental Petroleum Corporation. Both Consol and Island Creek own and operate coal exporting terminals in the Port of Baltimore, Maryland, and are direct and substantial competitors with respect to coal exporting terminal services.

The Commission has reason to believe that Consol's acquisition of Island Creek would substantially lessen competition in Baltimore's coal export terminal services market. This market consists of receiving coal on rail cars, unloading those rail cars, storing coal, blending of coals, and loading of coal onto deep draft seagoing vessels for shipment to foreign countries. The proposed acquisition would be in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and section 5 of the FTC Act, as amended, 15 U.S.C. 45. The proposed Order, if issued by the Commission, would settle the Complaint that alleges anticompetitive effects in Baltimore's coal export terminal services market.

Under the proposed Order, Consol would have twelve (12) months from the date the proposed Order becomes final to divest the Curtis Bay Company (Curtis Bay), which operates Island Creeks's coal exporting terminal services business. The divestiture would be made only to an acquirer that receives the prior approval of the Commission. If Consol failed to divest Curtis Bay to be approved acquirer within twelve (12) months after the date the proposed Order becomes final, Consol would consent to the Commission's appointment of a trustee to complete the divestiture. Pending completion of the divestiture required under the proposed Order, Consol would be required to maintain the viability and marketability of Curtis Bay.

Under the terms of the proposed Order, Consol would be required to comply with all the terms of a Hold Separate Agreement executed by Consol and the Commission, which would require Consol to hold Curtis Bay, as it is presently constituted, separate and apart from Consol. Consol would not be permitted to influence or exercise any direction or control over Curtis Bay. Consol would be required to elect a new three-person board of directors of Curtis Bay to oversee the present management of the company.

The proposed Order would also prohibit Consol, for a period of ten (10) years from the date the proposed Order becomes final, from acquiring, without the prior approval of the Commission, any interest in any concern engaged in export coal terminal services within the Port of Baltimore or within 50 miles of the Port of Baltimore.

It is anticipated that the proposed Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–16657 Filed 7–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 931 0086]

Cooper Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Texas-based producer of low-voltage industrial fuses to license certain technology to manufacture the fuses and to divest the necessary tooling, equipment, and machinery to the Commission-approved licensee. The consent agreement would prohibit the respondent from acquiring, without prior Commission approval, any interest in any firm with more than $3.5 million in annual U.S. sales of the fuses, and would require the company to notify the Commission and specified period before acquiring any firm selling less than that amount of fuses.

DATES: Comments must be received on or before September 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/H–394, Washington, DC 20580. (202) 326–2949.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Cooper (U.K.) Limited, an indirect wholly-owned subsidiary of Cooper Industries, Inc. ("proposed respondent"), of the voting securities of the Fusegear Group of BTR plc, including Brush Fuses, Inc. and Hawker Fusegear Limited, and it now appearing that proposed respondent is willing to enter into an Agreement Containing Consent Order ("Agreement") to divest certain assets, to make available through license certain technology and know-how, to cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. Proposed respondent Cooper Industries, Inc. is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its principal executive offices located at 1001 Fannin, suite 4000, Houston, Texas 77002.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondent, in

VOL 58 ISS 133 JL 14 1993 UMI

which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission, the Commission may, without further notice to proposed respondent, (1) issue a Complaint corresponding in form and substance to the draft of Complaint here attached and its decision containing the following Order to license certain technology, to divest certain assets, and to cease and desist, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Cooper" or "Respondent" means Cooper Industries, Inc., its directors, officers, employees, agents and representatives, its predecessors, successors, assigns, divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Cooper Industries, Inc. controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "BTR" means BTR plc, its directors, officers, employees, agents and representatives, its predecessors, successors, assigns, divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that BTR plc controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "Brush" means Brush Fuses Inc., its directors, officers, employees, agents and representatives, its predecessors, successors, assigns, subsidiaries, divisions, and any other corporations, partnerships, joint ventures, companies and affiliates that Brush Fuses Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. "Fusegear Group of BTR" means Brush Fuses Inc., Connectron Inc., and Hawker Fusegear Limited.

E. "Acquisition" means the acquisition by Cooper from BTR of the voting securities of the Fusegear Group of BTR.

F. "Low Voltage Industrial Fuses" means U.L. listed and recognized protective devices that protect circuits of 600 volts or less, that open by the melting of a current sensitive element during specified overcurrent conditions, manufactured by or for Brush during the past three (3) years and which consist of the following fuses: RK5 time delay, RK1 time delay, L fast acting, L time delay, RK1 fast acting, J fast acting, K5 fast acting, H non delay, T fast acting, cc fast acting, midget time delay, midget fast acting, cable limiters, lift truck fuses and welder limiters. Low Voltage Industrial Fuses do not include fuses that are used to protect semiconductors from excess current.

G. "Relevant Product" means U.L. listed and recognized protective devices that protect circuits of 600 volts or less, that open by the melting of a current sensitive element during specified overcurrent conditions, and which consist of the following fuses: RK5 time delay, RK1 time delay, L time delay, L fast acting, RK1 fast acting, J fast acting, k5 fast acting, H non delay, T fast acting, cc fast acting, midget time delay, midget fast acting, cable limiters, lift truck fuses and welder limiters. The term "Relevant Product" does not include fuses that are used to protect semiconductors from excess current.

H. "Commission" means the Federal Trade Commission.

I. "U.L." means Underwriters Laboratories, Inc.

J. "Brush Assets" means:

1. All Brush tooling, dies, and molds used prior to the Acquisition to manufacture Low Voltage Industrial Fuses;

2. All Brush machinery and equipment used prior to the Acquisition to manufacture Low Voltage Industrial Fuses;

3. Existing lists of customers (including, but not limited to, distributors and original equipment manufacturers) that purchased Low Voltage Industrial Fuses from Brush. To the extent possible, such lists should include customers' names, contact persons, addresses, and telephone numbers; and

4. All current Brush promotional materials and selling aids for Low Voltage Industrial Fuses, except that Cooper may delete from such materials any name, trademark or other identification pertaining to any company in the Fusegear Group of BTR plc including but not limited to BTR, Hawker Siddeley, Hawker Fusegear Limited, Hawker, Connectron, Brush Fuses, Inc., Brush or other words similar thereto.

K. "Brush's Low Voltage Industrial Fuse Technology and Know-how" means all information, technology and documentation owned or controlled by Brush, and in existence prior to the Acquisition, used in the design and manufacture of Low Voltage Industrial Fuses sold by Brush in the United States within the last three (3) years, including, but not limited to:

1. All drawings and blueprints used in the manufacture of Low Voltage Industrial Fuses (whether in hard copy or computer readable formats) and any other information and documentation necessary to manufacture tooling and equipment used to manufacture Low Voltage Industrial Fuses (including all blueprints and drawings for Low Voltage Industrial Fuses, tooling and equipment);

2. All U.L. documentation relating to all Low Voltage Industrial Fuses, including, but not limited to, (a) all documentation relating to U.L. applications, test procedures and instructions used to obtain and maintain U.L. recognition, listing, approval, or classification for each Low Voltage Industrial Fuse, and (b) all documentation relating to the design, production, assembly methods,

processes and systems used for all Low Voltage Industrial Fuses that have received U.L. recognition, listing approval, or classification;

3. Brush's right to access from U.L. and to use any and all information in the custody of U.L. related to the recognition, listing, approval, or classification of Low Voltage Industrial Fuses;

4. All bills of materials, routings for assembly, production and product documentation and descriptions, specifications, patents, trade secrets, and all documentation and information relating to the design, production, assembly methods, processes and systems used to manufacture Low Voltage Industrial Fuses;

5. All other information and documentation relating to the design and manufacture of Low Voltage Industrial Fuses.

L. "License" means a perpetual license, without any obligation to pay royalties, at no minimum price, of the right to obtain and use Brush's Low Voltage Industrial Fuses Technology and Know-how to manufacture any and all types of Low Voltage Industrial Fuses that have been manufactured by or for Brush and sold in the United States within the last three years. Nothing in this definition shall preclude Cooper from seeking payment for the license, consistent with its absolute obligation to grant a license pursuant to Paragraph III of the Order.

II

It is further ordered that within twelve (12) months after the date on which this Order becomes final, Cooper shall divest, absolutely and in good faith, the Brush Assets to the licensee to whom the License is granted pursuant to Paragraph III of this Order and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint and to assist the licensee to manufacture, distribute and sell a full line of the Relevant Product. Cooper may incorporate tooling, machinery and equipment contained in the Brush Assets into its manufacturing operations, *provided,* however, that if Cooper elects to incorporate any such tooling, equipment and machinery into its manufacturing operations, Cooper shall divest comparable tooling, machinery and equipment in order to discharge its obligations under this Paragraph. In the event that the licensee approved under Paragraph III chooses not to acquire the Brush Assets, or acquire any part thereof, Cooper shall not be required to divest such assets. Nothing in this Order shall require Cooper to provide the licensee with any right to use or display in any fashion any name, tradename or trademark, of any company within the Fusegear Group of BTR plc including BTR, Hawker Siddeley, Hawker Fusegear Ltd., Hawker, Connectron, Brush Fuses, Inc. or Brush or any word similar thereto.

III

It is further ordered that:

A. Within twelve (12) months after the date on which this Order becomes final, Respondent shall grant a License. Respondent shall grant the License only to a licensee that receives the prior approval of the Commission and only pursuant to a licensing agreement that receives the prior approval of the Commission. The purpose of the License is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint and to enable the Licensee to manufacture, distribute and sell a full line of the Relevant Product.

B. For a period not to exceed twelve (12) months from the date on which the licensee is approved by the Commission, Cooper shall make available to the licensee, at no cost to the licensee, qualified Brush or Cooper personnel (including, but not limited to, former Brush personnel employed by or under contract to Cooper), assistance, cooperation, and technical support as the licensee reasonably needs, in order (1) to obtain U.L. recognitions, listings, approvals, or classifications (including all necessary transfers of U.L. recognitions, listings, approvals, and classifications) for Low Voltage Industrial Fuses and (2) to manufacture the licensed Low Voltage Industrial Fuses.

IV

It is further ordered that, pending divestiture of the Brush Assets and pending granting the License, Cooper shall take such action as is necessary to maintain the Brush Assets in good repair and to preserve Brush's Low Voltage Industrial Fuse Technology and Know-how and shall not cause or permit any destruction, removal, wasting, deterioration or impairment of those assets, except for ordinary wear and tear in the ordinary course of business.

V

It is further ordered that, for purposes of protecting interim competition pending the introduction of Low Voltage Industrial Fuses manufactured by the licensee under the License pursuant to Paragraph III of this Order, including the licensee's receipt of all the necessary U.L. recognitions, listings, approvals, and classifications required to manufacture and sell Low Voltage Industrial Fuses, Respondent shall, for a period of twelve (12) months after the License is granted pursuant to Paragraph III of this Order, offer the licensed Low Voltage Industrial Fuses to the licensee at Brush's most favorable distributor price available at the time of the Acquisition, including all Brush program pricing and benefits available at the time of the Acquisition. *Provided,* however, that Respondent shall not be obligated to supply the licensee in excess of one hundred fifty percent (150%) of Brush's sales of said product in 1992. In the event that Cooper closes Brush's Nogales, Mexico manufacturing facility and Brush fuses are no longer available, Cooper shall provide the licensee with comparable Cooper Relevant Product. If the licensee, exercising reasonable efforts, fails to secure the necessary U.L. recognitions, listings, approvals, or classifications in order to manufacture and sell the licensed Low Voltage Industrial Fuses within twelve (12) months after the date on which the licensee is approved by the Commission, the requirements of this Paragraph shall be extended for up to an additional six (6) months pending the licensee's receipt of such listings, approvals, recognitions and classifications.

VI

A. If Cooper has not fully complied, absolutely and in good faith, with Paragraphs II and III and of this Order within the time period provided in such Paragraphs, Cooper shall consent to the appointment by the Commission of a trustee to grant the License and divest the Brush Assets. In the event the Commission of the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Cooper shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other available relief, including a court-appointed trustee, for any failure by Cooper to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VI.A. of this Order, Cooper shall consent to the following terms and

VOL
58
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133
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conditions regarding the trustee's powers, duties, authority, and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of Cooper, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in divestitures and licensing. If Cooper has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Cooper of the identity of any proposed trustee, Cooper shall be deemed to have consented to the selection of the proposed trustee.

(2) Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to grant the License and divest the Brush Assets, and to make any further arrangements that may be reasonably necessary to maintain the pertinent assets in good repair and to preserve the Brush Low Voltage Industrial Fuse Technology and Know-how.

(3) The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.B.(8) to grant the License and accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of licensing and divestiture or believes that the granting of the License and the divestiture can be accomplished within a reasonable time, the licensing and divestiture periods may be extended by the Commission or, in the case of a court-appointed trustee, by the court.

(4) The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Brush Assets, or to any other relevant information, as the trustee may reasonably request. Cooper shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Cooper shall take no action to interfere with or impede the trustee's granting of the License or accomplishment of the divestiture. Any delays in the granting of the License or divestiture caused by Cooper shall extend the time for licensing and divestiture under Paragraph VI.B.(3) in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(5) Subject to Cooper's absolute and unconditional obligation to divest at no minimum price, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the License and divestiture. The License shall be granted and the divestiture made in the manner and to the licensee as set out in Paragraphs II and III of this Order.

(6) The trustee shall serve, without bond or other security, at the cost and expense of Cooper, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Cooper, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the License and divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Cooper and the trustee's power shall be terminated. The trustee's compensation shall be based in significant part on a commission arrangement contingent on the trustee granting the License and divesting the Brush Assets.

(7) Cooper shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

(8) Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Cooper shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the License and divestiture required by this Order.

(9) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VI.A. of this Order.

(10) The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to grant the License and accomplish the divestiture required by this Order.

(11) The trustee shall have no obligation or authority to operate or maintain the Brush Assets.

(12) The trustee shall report in writing to Cooper and to the Commission every sixty (60) days concerning the trustee's efforts to grant the License and accomplish divestiture.

VII

It is further ordered that:

A. Within thirty (30) days after the date on which this Order becomes final, Cooper shall send a copy of this Order to all current Brush customers who have purchased $1000.00 or more of Low Voltage Industrial Fuses directly from Brush within the last twelve (12) months.

B. Within sixty (60) days after the date on which this Order becomes final and every sixty (60) days thereafter until Cooper has fully complied with the provisions of Paragraphs II, III, IV, V, and VI and the above customer notification requirements of this Order, Cooper shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Cooper shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for the License and divestiture of the Brush Assets, including the identities of all parties contacted. Cooper also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the License and divestiture.

VIII

It is further ordered that for a period of ten (10) years from the date this Order becomes final, Cooper shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, which manufactures (either directly or indirectly), and sells the Relevant Product (other than sales to subsidiaries or divisions of the concern) in or into the United States, with sales of three and a half (3.5) million dollars or more of such products in each of the three (3) years preceding the acquisition; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the manufacture and sale in or into the United States of the Relevant Product from any concern, corporate or non-corporate, with sales of three and a

half (3.5) million dollars or more of such products in each of the three (3) years preceding the acquisition, except in the ordinary course of business.

On the anniversary of the date on which this Order becomes final, and on every anniversary thereafter for the following nine (9) years, Cooper shall file with the Commission a verified written report of its compliance with this Paragraph VIII of the Order.

IX

It is further ordered that for a period of ten (10) years from the date this Order becomes final, Cooper shall not, without providing advance written notification to the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, which manufactures (either directly or indirectly) and sells (other than sales to subsidiaries or divisions of the concern) Relevant Product, in or into the United States, with sales of less than three and a half (3.5) million dollars of such products in any of the three (3) years preceding the acquisition; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) manufacture and sale in or into the United States of Relevant Product from any concern, corporate or non-corporate, with sales of less than three and a half (3.5) million dollars of such products in any of the three (3) years preceding the acquisition, except in the ordinary course of business.

Said notification shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations as amended. Cooper shall provide to the Federal Trade Commission, at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and supplemental information either in Cooper's possession or reasonably available to Cooper. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Cooper and of the firm Cooper desires to acquire who negotiated the acquisition. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information and documents, Cooper shall not consummate the acquisition until twenty (20) days after submitting such additional information and documents. Early termination of the waiting periods in this Paragraph may be requested and where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18A). On the anniversary of the date on which this Order becomes final, and on every anniversary thereafter for the following nine (9) years, Cooper shall file with the Commission a verified written report of its compliance with this Paragraph IX of the Order.

X

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Cooper, Cooper shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Cooper relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Cooper, and without restraint or interference from Cooper, to interview officers or employees of Cooper, who may have counsel present, regarding such matters.

XI

It is further ordered that Cooper shall notify the Commission at least thirty (30) days prior to any change in Cooper such as dissolution, assignment, or sale resulting in the emergence of a successor, the creation or dissolution of domestic subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (Commission) has accepted, subject to final approval, an Agreement Containing Consent Order from Cooper Industries, Inc. (Cooper).

The proposed Consent Order (Order) has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Commission's investigation of this matter concerned the proposed acquisition by Cooper Industries, Inc. of the voting securities of the Fusegear Group of BTR plc, including Brush Fuses, Inc. (Brush) and Hawker Fusegear Limited. Cooper and BTR are direct and substantial competitors in the manufacture and sale of low voltage industrial fuses in the United States.

The Commission has reason to believe that Cooper's acquisition of BTR's Fusegear Group would substantially lessen competition in the low voltage industrial fuse market, which consists of manufacturing low voltage industrial fuses and selling them in the United States, in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The proposed Order, if issued by the Commission, would settle the Complaint that alleges anticompetitive effects in the United States low voltage industrial fuse market.

Under the terms of the proposed Order, Cooper shall grant to a Commission-approved licensee the right to obtain and use low voltage industrial fuse technology and know-how used by or for Brush to manufacture low voltage industrial fuses sold in the United States. Cooper must issue the license at no minimum price and without any obligation to pay royalties. Additionally, Cooper must transfer information to the licensee relating to Underwriters Laboratories (U.L.) approval for each licensed low voltage industrial fuse. Cooper must also give the licensee access to Brush personnel for 12 months to assist the licensee in the manufacture of the licensed low voltage industrial fuses.

The proposed Order also requires Cooper to divest Brush's tooling, equipment, and machinery, as well as customer lists and promotional materials, to the Commission-approved licensee. Cooper is not required to divest any Brush tooling, equipment, machinery or assets that the licensee chooses not to acquire.

Cooper is also required to offer low voltage industrial fuses to the licensee, at favorable prices, during the period between the granting of the license and the licensee's introduction to the market of the low voltage industrial fuses it manufactures pursuant to the license. This provision of the proposed Order is designed to remedy the loss of interim competition that may result between the time of the proposed acquisition and the introduction of the licensee's own low voltage industrial fuses.

Cooper would have twelve (12) months from the date the proposed Order becomes final to grant a license to a Commission-approved licensee and to

accomplish the divestiture required under the Order. If Cooper does not fully comply with those requirements within twelve (12) months, Cooper consents to the Commission's appointment of a trustee to complete the divestiture and grant the license pursuant to the proposed Order. Pending completion of the ordered licensure and divestiture of Brush assets, Cooper would be required to maintain the viability and marketability of the assets to be divested and the technology and know-how to be licensed.

In addition, the proposed Order requires Cooper to send to Brush customers copies of the Order which would notify them that a new supplier of Brush products will be entering the low voltage industrial fuse market.

The proposed Order would also prohibit Cooper, for a period of ten (10) years from the date the proposed Order becomes final, from acquiring, without the prior approval of the Commission, any interest in any concern engaged in the manufacture of low voltage industrial fuses for sale in the United States with sales of $3.5 million or more. The proposed Order also provides for notice and filing in the form specified in the Hart-Scott-Rodino Act for acquisitions of firms with low voltage industrial fuse sales of less than $3.5 million.

It is anticipated that the proposed Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify their terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–16658 Filed 7–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 921 0099]

Imperial Chemical Industries PLC, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, the respondents to proceed with the proposed acquisition of certain DuPont assets, but it would require the respondents to divest a predetermined acrylic-plastic manufacturing capacity by selling one of their U.S. plants to a Commission-approved purchaser. In addition, if the divestiture is not accomplished in the specified time-frame, the respondents would agree to a Commission-appointed trustee to complete the transaction.

DATES: Comments must be received on or before September 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Imperial Chemical Industries PLC, a corporation; ICI Americas Inc., a corporation; and ICI Acrylics Inc., a corporation. File No. 921–0099.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of assets by Imperial Chemical Industries PLC, ICI Americas Inc., ICI Acrylics Inc. (collectively "ICI") from E.I. du Pont de Nemours and Company (hereinafter "Du Pont"), which acquisition is more fully described at paragraph I.(A) below, and it now appearing that ICI is wiling to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts.

It is hereby agreed by and between ICI, by its duly authorized officers, and its attorney, and counsel for the Commission that:

1. Proposed respondent Imperial Chemical Industries PLC is a public limited company organized, existing and doing business under and by virtue of the laws of The United Kingdom, with its principal office and place of business at 9 Millbank, London, England.

2. Proposed respondent ICI Americas Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Concord Pike and New Murphy Road, Wilmington, Delaware.

3. Proposed respondent ICI Acrylics Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at 10091 Manchester Road, St. Louis, Missouri.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease

and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

9. If this agreement is accepted by the Commission, the Commission shall not seek a temporary restraining order, preliminary injunction, or permanent injunction with respect to the Acquisition, provided, however, that nothing contained in this agreement shall bar the Commission from further investigation of the Acquisition or from issuing an administrative complaint concerning the acquisition by ICI of Du Pont's MMA properties, businesses and other assets or from seeking judicial relief to enforce the Order, from seeking judicial relief to enforce the Agreement to Hold Separate, from seeking judicial relief to enforce any order arising from any administrative proceeding, or, in the event that the Commission determines to withdraw its acceptance of the Consent Order, from seeking judicial relief to extend the Agreement to Hold Separate.

10. Proposed respondents have each read the draft of complaint and Order contemplated hereby. Proposed respondents each understand that once the Order has become final, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents each further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

(A) "Acquisition" means the Letter of Intent entered into on April 23, 1992, by which ICI agreed to acquire and Du Pont agreed to convey certain rights and interests in, and title to, certain of the properties, businesses and other assets of Du Pont.

(B) "ICI" means Imperial Chemical Industries PLC, ICI Americas Inc., and ICI Acrylics Inc., all of their predecessors, all subsidiaries, divisions, groups and affiliates (including the Properties to Be Divested as hereinafter defined) controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(C) "Control" means control as defined in 16 CFR 801.1(b).

(D) "Du Pont" means E.I. du Pont de Nemours and Company, all of its predecessors, all subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(E) "Properties to Be Divested" means all Assets and Businesses at any one of the following facilities in the United States, provided that, at the time of divestiture, the facility shall have PMMA manufacturing capacity of no less than 30 million pounds per annum and acrylic sheet manufacturing capacity of no less than 12 million pounds per annum:

1. ICI's Memphis, Tennessee, PMMA and acrylic sheet manufacturing facility;

2. ICI's Olive Branch, Mississippi, PMMA and acrylic sheet manufacturing facility; or

3. ICI's Compton, California, PMMA manufacturing facility (excluding, at ICI's option, those tangible and intangible assets currently used by ICI in the research and development of its acrylic plastics products and not required by the acquirer to compete in the manufacture and sale of PMMA and acrylic sheet) together with the Compton Expansion.

(F) "Compton Expansion" means such improvements, additions and expansions to ICI's Compton, California manufacturing facility as shall accomplish all of the following:

1. Increase to no less than 30 million pounds per annum the facility's capacity for the production of PMMA;

2. Add to the facility capacity of no less than 12 million pounds per annum to extrude acrylic sheet by installation of one or more Reifenhauser extruders hereofore located at ICI's Memphis facility or by installation of comparable extruders that would render the acquirer competitive in the sale of 48-inch by 96-inch acrylic sheet to industrial distributors; and

3. Provide sufficient feedstock storage, PMMA storage, acrylic sheet warehouse space and related facilities, as appropriate to enable the Compton plant to operate efficiently at sustained levels of output no less than the above stated capacities.

(G) "Assets and Businesses" include but are not limited to all assets, properties, businesses and goodwill, tangible and intangible, utilized in the production, distribution or sale of acrylic plastic and acrylic sheet, including, without limitation, the following:

1. All plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, rights to software, trademarks, patents, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. Raw material and finished product inventories and goods in process;

4. All right, title and interest in and to real property, together with appurtenances, licenses and permits;

5. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (to the extent assignable) (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All separately maintained, as well as relevant portions of not separately maintained books, records and files; and

8. All items of prepaid expense.

(H) "Commission" means the Federal Trade Commission.

(I) "Rohm and Haas" means Rohm and Haas Company, all of its predecessors, all subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(J) "CYRO" means CYRO Industries, all of its predecessors, all subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of

their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(K) "Polymer Technology" means Polymer Technology, Inc. all of its predecessors, all subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(L) "MMA" means methyl methacrylate.

(M) "PMMA" means polymethyl methacrylate, a homopolymer of MMA or a copolymer containing more than 50% by weight MMA as a constituent monomer. PMMA does not include acrylic resin for use in the manufacture of latex coatings or acrylic coatings.

(N) "Acrylic sheet" means sheet or plate containing more than 50% by weight MMA as produced by cell casting, continuous casting, extrusion, or continuous manufacturing.

(O) "Acrylic plastic" means PMMA or acrylic sheet produced by a continuous-casting manufacturing process.

(P) "MMA Entrant" means any person other than ICI, Rohm and Haas or CYRO who has commenced construction of a facility for the manufacture of MMA in North America.

(Q) "Capacity" means actual operating capacity, calculated on the basis of a 7-day, 24-hour operation allowing for normal outages for maintenance and repair.

(R) "Viability and Competitiveness" of the Properties to Be Divested means that such properties are capable of operating independently of ICI at an annual output of at least 30 million pounds of acrylic plastic and at least 12 million pounds of acrylic sheet and are capable of functioning independently and competitively in the acrylic plastic business and the acrylic sheet business.

II.

It is ordered that:

(A) Within fifteen (15) months of the date of this Order becomes final, ICI shall divest, absolutely and in good faith, the Properties to Be Divested to an acquirer that intends to operate the facilities at or near capacity and shall also divest such additional ancillary Assets and Businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Properties to Be Divested. Provided, however, that if ICI elects to divest the Paragraph I. (E)3. Properties to Be Divested, ICI shall, prior to such divestiture, have either i) completed the Compton Expansion, or ii) made such progress toward the completion of the Compton Expansion that the Commission determines that the expansion will be completed without undue delay, in which case the contract between ICI and the acquirer shall contain a provision to that effect.

(B) ICI shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as ICI has divested all the Properties to Be Divested or until such other time as the Agreement to Hold Separate provides.

(C) ICI shall divest the Properties to Be Divested only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. ICI shall demonstrate the Viability and Competitiveness of the Properties to Be Divested in its application for approval of a proposed divestiture. The purpose of the divestiture of the Properties to Be Divested is (1) to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of acrylic plastic and acrylic sheet at or near capacity, and (2) to remedy any lessening of competition in the acrylic plastic market resulting from the Acquisition as alleged in the Commission's complaint.

(D) ICI shall take such action as is necessary to maintain the Viability and Competitiveness and the marketability of the Properties to Be Divested and shall not cause or permit the destruction, removal or impairment of the Properties to Be Divested except i) in the ordinary course of business ii) for ordinary wear and tear, and iii) to the extent necessary a) to implement ICI's plans already in place to move certain acrylic sheet assets from its Memphis facility to its Olive Branch facility, or b) to move from its Compton facility to another one of its facilities the tangible and intangible assets currently used by ICI in the research and development of its acrylic plastic products.

III.

It is further ordered that, for a period of eighteen (18) months following the divestiture of the Properties to Be Divested, ICI shall provide to the acquirer as requested by the acquirer, at no cost to the acquirer, such rights to technology, know-how, and technical assistance regarding PMMA and acrylic sheet process and applications technology as may be necessary for the acquirer of the Properties to Be Divested to utilize the Properties to Be Divested and to ensure the continuation of the assets as ongoing, viable businesses capable of operating at or near capacity. Provided, however, ICI may, pursuant to its divestiture agreement with the acquirer, require that the acquirer reimburse ICI at a reasonable hourly rate, not to exceed ICI's actual hourly expense for employment of such personnel, for consultation and instruction provided by ICI personnel to the acquirer.

IV.

It is further ordered that, for a period of ten (10) years from the date of the divestiture required by this Order, ICI shall, at the request of the acquirer of the Properties to Be Divested, contract with such acquirer to supply MMA to the acquirer, in such quantities as the acquirer may request for use in the Properties to Be Divested, subject only to the capacity constraints of ICI's MMA production facilities in the United States and preexisting contractual obligations to third parties. The price, terms, and conditions at which ICI shall supply MMA to such acquirer of the Properties to Be Divested shall be no less favorable to the acquirer than the price, terms, and conditions at which ICI supplies MMA to any other person engaged in the manufacture of acrylic plastics or acrylic sheet in the United States, including its territories and possessions.

V.

It is further ordered that, notwithstanding any provision to the contrary, in any contract between ICI and the acquirer of the Properties to Be Divested, for a period commencing four (4) years after the date of the divestiture required by this Order, and continuing for six (6) years, ICI shall permit the acquirer, without penalty or forfeiture of any kind, to purchase or otherwise receive any or all of its MMA requirements in the United States, including its territories and possessions, from any MMA Entrant; and, to the extent of any such purchases or receipts of MMA by the acquirer, ICI shall relieve the acquirer of any contractual obligation to purchase such quantities of MMA from ICI.

VI.

It is further ordered that ICI shall relinquish its right to require that Polymer Technology obtain ICI's consent before granting any license for use in the United States, including its territories and possessions, of the Project Technology, as defined in the agreement between Polymer Technology and K–S–H, Inc. dated October 5, 1979.

VII.

It is further ordered that:

(A) If ICI has not divested, absolutely and in good faith and with the Commission's approval, the Properties to Be Divested within fifteen (15) months of the date this Order becomes final, ICI shall consent to the appointment by the Commission of a trustee to divest the Properties to Be Divested and also to divest such additional ancillary Assets and Businesses and to effect such arrangements that are necessary to assure the Viability and Competitiveness of the Properties to Be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. 45(*1*), or any other statute enforced by the Commission, ICI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ICI to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph VII.(A) of this order, ICI shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of ICI, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest any of the Properties to Be Divested and to divest such additional ancillary Assets and Businesses of ICI and to effect the additional obligations set out in Paragraph II.(A) of this Order. The trustee shall additionally have the authority to divest such additional assets of ICI in the United States as the trustee and the Commission determine is necessary to assure the Viability and Competitiveness of the Properties to Be Divested and to comply with the purpose of the Order as stated in Paragraph II.(C).

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission. Provided, however, the Commission may only extend the divestiture period two (2) times.

4. Subject to an appropriate confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to all of the Properties to Be Divested, or any other relevant information, as the trustee may reasonably request. ICI shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. ICI shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by ICI shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to ICI's absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in Paragraph II.(C) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture of the Properties to Be Divested. The divestiture shall be made in the manner set out in Paragraph II, provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by ICI from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of ICI, on such reasonable and customary terms and conditions as the Commission or a court may set. Subject to the consent of ICI, which consent shall not be unreasonably withheld, the trustee shall have authority to employ, at the cost and expense of ICI, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ICI and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to Be Divested.

7. Except in the case of reckless disregard of his or her duties or intentional wrongdoing, ICI shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, ICI shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VII.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to Be Divested.

12. The trustee shall report to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

VIII.

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until ICI has fully complied with the provisions of Paragraphs II and III of this Order, ICI shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with those provisions, including the Agreement to Hold Separate. ICI shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of the Properties to Be Divested as specified in Paragraph II of this Order, including the identity of all parties contacted. ICI also shall include in its compliance reports

copies of all written communications to and from such parties, all internal memoranda, reports and recommendations concerning divestiture.

IX.

It is further ordered that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, ICI shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise:

(A) Assets located in the United States, including its territories and possessions, used for or previously used for (and still suitable for use for) the production of acrylic plastic or acrylic sheet;

(B) More than one percent of the total outstanding stock or share capital of, or any other interest in, any entity (other than an entity included within ICI under Paragraph I.(B) of this Order as of the date the Agreement Containing Consent Order was signed) that owns or operates assets located in the United States, including its territories and possessions, engaged in the production of acrylic plastic or acrylic sheet.

Provided, however, these prohibitions shall not relate to the construction of new facilities, the acquisition of new equipment, or the acquisition of used equipment for less than two million dollars from a single party in a six-month period.

X.

It is further ordered that, one year from the date this Order becomes final and annually for nine years thereafter, ICI shall file with the Commission a verified written report of its compliance with this Order.

XI.

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to ICI, made to its principal office, ICI shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ICI, relating to any matters contained in this Order; and

(B) Upon ten (10) days notice to ICI, and without restraint or interference from ICI, to interview officers or employees of ICI, who may have counsel present, regarding such matters.

XII.

It is further ordered that ICI shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries, or any other change that may affect compliance obligations arising out of the Order.

Appendix I

In the matter of Imperial Chemical Industries PLC, a corporation; ICI Americas Inc., a corporation; and ICI Acrylics Inc., a corporation. File No. 921–0099.

Agreement To Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Imperial Chemical Industries PLC, a corporation organized and existing under the laws of The United Kingdom, with its principal office and place of business located at 9 Millbank, London, SW1P 3JF, England, ICI Americas Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at Concord Pike and New Murphy Road, Wilmington, Delaware 19897, ICI Acrylics Inc., a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located at 10091 Manchester Road, St. Louis, Missouri 63122 (collectively "ICI"), and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on April 23, 1992, ICI entered into an Asset Purchase Agreement providing for the acquisition (hereinafter the "Acquisition") of certain properties, businesses and other assets (hereinafter "the Acquired Assets") of E.I. du Pont de Nemours and Company ("Du Pont") including the continuous cast sheet facility at Memphis (the "Memphis Cast Sheet Facility"); and

Whereas, Du Pont manufactures and sells methyl methacrylate ("MMA") and acrylic sheet; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission will place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Acquired Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I of the Consent Order and the Commission's right to seek a viable competitor to ICI; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve the Acquired Assets as a viable business, independent of ICI, pending final acceptance or withdrawal of acceptance of the Consent Order by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules,

(ii) Preserve the Memphis Cast Sheet Facility as a viable business, independent of ICI, engaged in the manufacture and sale of acrylic plastic pending the divestiture of the Properties to Be Divested as viable and ongoing enterprises, and

(iii) Remedy anticompetitive effects of the Acquisition in the acrylic plastic market; and

Whereas, ICI entering into this Agreement shall in no way be construed as an admission by ICI that the Acquisition is illegal; and

Whereas, ICI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has determined that it has reason to believe the Acquisition may substantially lessen competition in the market for acrylic plastic and in consideration of the Commission's

agreement that, unless the Commission determines to reject the Consent Order, it will not seek a temporary restraining order, preliminary injunction, or permanent injunction with respect to the Acquisition, except that the Commission may further investigate the Acquisition and may issue an administrative complaint concerning the acquisition by ICI of Du Pont's MMA properties, businesses and other assets, and except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestitures are not accomplished, to seek divestiture of the Properties to Be Divested, and other relief, as follows:

1. ICI agrees to execute and be bound by the attached Consent Order.

2. ICI agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph 4 of this Agreement with respect to the Acquired Assets:

a. Ten days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or

b. The day after the Commission accepts as final the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules.

3. ICI agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a or 3.b, it will comply with the provisions of Paragraph 4 of this Agreement with respect to the Memphis Cast Sheet Facility:

a. Ten days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Order has been completed.

4. ICI will hold the Acquired Assets or the Memphis Cast Sheet Facility, as applicable pursuant to Paragraphs 2 and 3, as they are presently constituted (hereafter the "Held-Separate Assets") separate and apart on the following terms and conditions:

a. The Held-Separate Assets shall be held separate and apart and shall be operated independently of ICI (meaning here and hereinafter, ICI excluding the Held-Separate Assets and excluding all personnel connected with the Held-Separate Assets as of the date this Agreement was signed) except to the extent that ICI must exercise direction and control over the Held-Separate Assets to assure compliance with this Agreement or the Consent Order.

b. ICI shall not exercise direction or control over, or influence directly or indirectly, the Held-Separate Assets; provided, however, that ICI may exercise only such direction and control over the Held-Separate Assets as is necessary to assure compliance with this Agreement or with the Consent Order.

c. ICI shall not cause or permit any destruction, removal, wasting, deterioration or impairment of the Held-Separate Assets, except for ordinary wear and tear. ICI shall also maintain the viability and marketability of the Held-Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Except for the single ICI director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 4.i), ICI shall not permit any director, officer, employee, or agent of ICI to also be a director, officer or employee of the Held-Separate Assets. In the event any members of the existing management of the Held-Separate Assets should choose not to accept employment with the Acquired Assets or with the Memphis Cast Sheet Facility, respectively, or retire or otherwise leave their management positions, the non-ICI (as ICI is defined in subparagraph 4.a hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 4.i hereof) shall have the power to replace such members of management.

e. Except as required by law or as reported by the auditor (provided for in subparagraph 4.f) and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of assets, ICI shall not receive or have access to, or the use of, any "material confidential information" of the Held-Separate Assets, as applicable, not in the public domain, except as such information would be available to ICI in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to ICI from sources other than Du Pont or the Held-Separate Assets, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets). Provided, however, that ICI may assign ICI personnel to perform the accounting and tax functions for the Held-Separate Assets provided that such ICI personnel shall enter into confidentiality agreements in accordance with the provisions of Paragraph 4.j hereof and provided further that those ICI personnel working with sales and credit information shall not be involved in ICI's PMMA or acrylic sheet business, as defined in Paragraph I. of the Consent Order for the period that ICI must comply with Paragraph 4 hereof. Provided further that the New Board or Management Committee (as defined in subparagraph 4.i hereof) may designate and contract with ICI, excluding ICI Acrylics Inc. and excluding further ICI Americas Inc., as a non-exclusive sales agent for sales by the Held-Separate Assets outside the United States, provided that all ICI personnel with access to material confidential information of the Held-Separate Assets in connection with such contract or agency shall, prior to gaining such access, enter into confidentiality agreements in accordance with the provisions of Paragraph 4.j hereof.

f. ICI may retain an independent auditor to monitor the operation of the Held-Separate Assets. Said auditor may report to ICI on all aspects of the operation of the acquired assets other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

g. ICI shall not change the composition of the management of the Held-Separate Assets except that the non-ICI (as ICI is defined in subparagraph 4.a hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 4.i hereof) shall have the power to remove any employee for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 4.a through 4.g hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 4.i hereof).

i. ICI shall either (1) separately incorporate the Held-Separate Assets and adopt new Articles of Incorporation and By-laws for each that are not inconsistent with other provisions of this Agreement of (2) establish a separate business venture with articles

of agreement covering the conduct of the Held-Separate Assets, in accordance with this Agreement. ICI shall also elect a new three-person board of directors of the Held-Separate Assets ("New Board") or Management Committee of the Held-Separate Assets ("Management Committee") once it obtains title to the Held-Separate Assets. ICI may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall consist of at least two non-ICI directors, officers, or employees and no more than one ICI (but not ICI Acrylic, Inc.) director, officer, employee, or agent, provided, however, that such ICI director, officer, employee, or agent shall enter into a confidentiality agreement in accordance with the provisions of Paragraph 4.j hereof and shall not be a person involved in ICI's PMMA or acrylic sheet business, as defined in Paragraph I. of the Consent Order. Such director or Management Committee member who is also an ICI director, officer, employee, or agent shall participate in matters that come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding $500,000 and carrying out ICI's and the Held-Separate Assets' responsibilities under this Agreement or under the Consent Order. Except as permitted by this Agreement, such Director or Management Committee member shall not participate in any matter or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if ICI and the Held-Separate Assets were separate and independent entities. Meeting of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

j. Any ICI director, officer, employee, or agent who obtains or may obtain confidential information under this Agreement shall enter a confidentially agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

k. All earnings and profits of the Held-Separate Assets shall be retained separately in the Held-Separate Assets, and separate financial and operating records shall be prepared for the Memphis Cast Sheet Facility and for the remainder of the Acquired Assets, respectively. If necessary, ICI shall provide the Held-Separate Assets with sufficient working capital to operate at current rates of operation.

l. Should the Federal Trade Commission seek in any proceeding to compel ICI (meaning here and hereinafter ICI including the Held-Separate Assets) to divest itself of the Acquired Assets or to compel ICI to divest any assets or businesses of the Acquired Assets that it may hold, or to seek any other injunctive or equitable relief, ICI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. ICI also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to ICI made to its principal office, ICI shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of ICI and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of ICI or the Held-Separate Assets relating to compliance with this Agreement;

b. Upon ten (10) days notice to ICI, and without restraint or interference from it, to interview officers or employees of ICI or the Held-Separate Assets, who may have counsel present, regarding any such matters.

6. This agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted, for public comment, from Imperial Chemical Industries, PLC, ICI Americas Inc. and ICI Acrylics Inc. (collectively "ICI"), an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by ICI of certain acrylic plastic assets from E.I. du Pont de Nemours & Co. ("Du Pont"). ICI and Du Pont are producers of acrylic plastic. Acrylic plastics are used in a large variety of end-products, such as glazing materials, retail displays, outdoor signs, sanitaryware and lighting fixtures. ICI and Du Pont each manufacture and sell acrylic plastic in the United States. ICI also manufactures acrylic plastic in Europe.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lesson competition in the acrylic plastic market in the United States. The Commission has reason to believe that the acquisition would have an anticompetitive effect in the United States market for acrylic plastic and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of acrylic plastic manufacturing capacity of no less than 30 million pounds, and acrylic sheet manufacturing capacity of no less than 12 million pounds. ICI may achieve this by divesting either its Memphis, Tennessee plant or its Olive Branch, Mississippi plant, or by expanding and divesting its Compton, California plant. If ICI chooses to divest the Compton plant, it must make the requisite plant expansion before divesting or must have made sufficient progress toward completion of the expansion to satisfy the Commission that the expansions will be completed. The purpose of the divestiture is to ensure continuation of the plants as ongoing, viable businesses engaged in the manufacture and sale of acrylic plastic and acrylic sheet at or near capacity and to remedy any lessening of competition in the acrylic plastic market resulting from the acquisition.

The assets and businesses to be divested include plant equipment, customer lists, patents and trademarks, trade secrets, and other technology and know-how. In addition, the order would require that, for 18 months after divestiture, ICI shall provide the acquirer, at the acquirer's request, technology rights, know-how, and technical assistance regarding acrylic plastic and acrylic sheet process and applications technology as may be necessary for the acquirer of the assets to compete effectively in the market.

The order would also require ICI, for a period of ten years, to supply to the acquirer such quantities of methyl methacrylate as the acquirer may

request for use in the divested plant, at a price no higher than the lowest price any similarly situated purchaser in the United States pays. After four years, the purchaser of the assets would be free, notwithstanding existing purchase obligations to ICI, to purchase MMA from any firm entering into production of MMA in the United States.

The order would require that ICI agree that Polymer Technology, Inc. ("PTI") need not obtain ICI's consent in order to license, for use in the United States, certain PTI technology that can be used for the manufacture of acrylic plastic. The purpose of this provision is to remove certain potential obstacles to entry into the acrylic plastic market.

Under the terms of the order, ICI must complete the required divestitures within fifteen months of the date the order becomes final. If ICI fails to complete the required divestitures within the fifteen-month period, ICI shall consent to the appointment of a trustee, who would have eighteen additional months to divest the assets and businesses, and would have the right to divest any ancillary assets and businesses necessary to assure that the divested assets are available and competitive in the acrylic plastic market. Any proposed divestiture pursuant to the order must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. The hold separate agreement executed as part of the consent requires ICI, until such time as the proposed order is made final, to hold separate and preserve all of the assets and businesses acquired by ICI from Du Pont, and from that point until all of the required divestitures have been effected either by ICI or by the trustee, to hold separate the Memphis continuous-cast sheet manufacturing plant that ICI has agreed to acquire from Du Pont.

For a period of ten years from its effective date, the order would also prohibit ICI from acquiring, without prior Commission approval, assets or substantial interest in any company engaged in the manufacturer of acrylic plastic or acrylic sheet.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–16659 Filed 7–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 872 3210]

Lomas Mortgage U.S.A., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Texas mortgage lender from misrepresenting the terms or the nature of lock-in agreements on loans it offers consumers in the future, and would require the respondent to pay $300,000 in consumer redress to the Commission.

DATES: Comments must be received on or before September 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Arthur Levin, FTC/S–4429, Washington, DC 20580. (202) 326–3040.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Lomas Mortgage U.S.A., Inc. ("Lomas Mortgage"), a corporation, and it now appearing that Lomas Mortgage, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between Lomas Mortgage, by its duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Lomas Mortgage (formerly "The Lomas & Nettleton Company") is a corporation organized, existing and doing business by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1600 Viceroy, in the City of Dallas, State of Texas.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 504 *et seq.*

This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts alleged in the attached draft Complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of 2.32 of the Commission's Rules, the Commission may, without further notice to proposed respondent:

(a) Issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding; and

VOL 58 ISS 133 JL 14 1993 UMI

(b) Make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

For purposes of this Order, the term "mortgage loan" shall mean a Federal Housing Authority ("FHA") consumer mortgage loan or conventional consumer mortgage loan.

For purposes of this Order the term "lock-in" shall mean any agreement, however designated, with an applicant for a mortgage loan, to hold for any specified period of time a certain interest rate and/or a certain number of discount points while the loan application is being processed, whether or not the agreement is subject to additional conditions, provided, however, that this term shall not include such agreements if made within ten (10) days of the scheduled closing on the loan.

I

It it ordered that respondent Lomas Mortgage U.S.A., Inc. ("Respondent"), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of any mortgage loan in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, shall cease and desist from representing orally or in writing to any mortgage applicant, directly or by implication, that any interest rate and/or number of points on a mortgage loan are subject to a lock-in, unless that interest rate and number of points are not subject to change during the period specified in the lock-in, except as provided under Section II.

II

A. *It is further ordered* that whenever the interest rate and/or number of points quoted to a mortgage loan applicant who has informed Respondent of the decision to lock-in are subject to change during the lock-in period, Respondent, its successors and assigns shall clearly and conspicuously disclose in writing at the time the applicant applies for the commitment or lock-in that the interest rate and/or number of points quoted are subject to change during the lock-in period and shall also clearly and conspicuously disclose, in writing, the conditions under which the interest rate and/or number of points are subject to change, and shall require the applicant or applicant's agent to sign Respondent's copy of the disclosure of said conditions. Said disclosure shall be contained on the front page of any form that contains or describes the terms of the lock-in agreement, shall be in bold face type at least as large as any other type used on the form, and shall be separated from the rest of the text so that it can be readily noticed.

B. *Provided, however,* that Respondent will not be in violation of this Order if, in the case of an application for an FHA mortgage loan with the interest rate and/or number of points, as well as other terms, conditioned upon no change occurring in the maximum rate of interest to be charged on a Veterans Administration guaranteed mortgage loan, the written disclosure states:

> Your FHA mortgage loan interest rate and/or number of points may change and are NOT "LOCKED IN" to the extent that if the Veterans Administration changes the maximum interest rate that can be charged on VA loans, [lender], at its option, may change the interest rates and/or number of points being offered you.

In the event that an FHA loan is conditioned upon no changes occurring in an index rate other than the Veteran's Administration guaranteed mortgage loan rate, the written disclosure shall refer to the applicable index rate instead of the Veteran's Administration rate.

In the case of an application for a conventional mortgage loan with the interest rate and/or number of points, as well as other terms, conditioned upon no change occurring in the maximum rate of interest to be charged on a Veterans Administration guaranteed mortgage loan, the written disclosure shall state:

> Your conventional mortgage loan interest rate and/or number of points may change and are NOT "LOCKED IN" to the extent that if the Veteran's Administration changes the maximum interest rate that can be charged on VA loans, [lender], at its option, may change the interest rates and/or number of points being offered you.

In the event that a conventional loan is conditioned upon no changes occurring in an index rate other than the Veterans Administration guaranteed mortgage loan rate, the written disclosure shall refer to the applicable index rate instead of the Veteran's Administration rate.

III

It is further ordered that whenever Respondent, its successors and assigns agree to a "lock-in" on an FHA or conventional mortgage loan and the subject loan closes during the period specified in the loan application, the loan shall be provided upon the terms stated in the application, unless the disclosures provided in Section II of this Order have been made, and a change in the maximum interest rate charged by the Veteran's Administration, or any other applicable index rate, occurs prior to closing. This paragraph shall not be construed to impair the Respondent's right to deny an application based on the failure of the applicant to meet Respondent's credit granting criteria or the failure of any applicant or other parties to provide information or services reasonably necessary for the loan to be approved or closed within the period specified in the applicant's lock-in.

IV

It is further ordered that, Respondent shall deliver, on or before the tenth day following the date this consent agreement is accepted by the Commission and placed on the public record, to the Federal Trade Commission, 6th and Pennsylvania Aves., NW., Washington, DC 20580, a cashier's or certified check for $300,000, made payable to the Federal Trade Commission, to be placed into an interest-bearing escrow account designated by the Commission, in the name and under the control of the Commission's designated agent.

In the event of any default on any obligation to make any payment under this Order, interest on the unpaid amount shall accrue, from the date of default to the date of payment, as provided by 28 U.S.C. 1961(a).

V

It is further ordered that the Commission may apply any or all funds received from Respondent pursuant to this Order, and any interest received thereon, to a consumer redress program for consumers who applied to Respondent for FHA loan financing, from February 1 to May 1, 1987, and whose commitments or lock-ins were terminated by Respondent in April or May 1987 on the basis of a purported right to terminate contained in Respondent's loan application materials, and who did not close a loan with Respondent or who closed a loan with Respondent at terms less favorable than in the lock-in agreement between Respondent and the consumer.

Any funds as shall be required to administer a program of consumer redress as described in Section V of this Order shall be taken from the sum provided by Respondent in Section IV above. Any funds not distributed by the Commission as redress or extended to administer the consumer redress program shall be paid to the United States Treasury.

The maximum award under this redress program shall be an equal share of the amount set out in Section IV., (less expenses to administer the program), not to exceed $1,000.00 per applicant or group of joint applicants who made a single loan application. The Commission shall, consistent with the provisions otherwise set out herein, have full discretion to: (1) Review and approve the procedures used to identify those consumers who meet the criteria for redress; (2) determine the application of the criteria for participation in any redress program and identify those consumers entitled to relief in any redress program implemented pursuant to this Order; (3) determine the manner and timing of the sending to consumers of the forms attached hereto as Exhibits A–C, and (4) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations of its choice and to pay the fees, salaries and expenses incurred thereby from the payments made by Respondent pursuant to Section IV of this Order. On a bi–weekly basis, the Commission or its designated agent shall provide to Lomas Mortgage a copy of each claim form (Exhibit B) received from consumers requesting redress under the terms of this Order. Respondent shall have the right to contest the validity of any claim submitted pursuant to the redress program and to provide information concerning the invalidity of the claim within thirty (30) days of receiving such claim form. The Commission shall decide the validity of any such claim based on the information and evidence provided and shall withhold payment of any challenged claim pending determination of its validity by the Commission. Upon payment of redress to any applicant, the Commission or its designated agent shall deliver to Lomas Mortgage the release (Exhibit C) signed by that applicant in connection with the redress program.

The following applicants shall not be eligible for any award under this redress program:

1. Any applicant who does not submit a signed claim form and release within ninety (90) days of receipt of said form and release;

2. Any applicant who has filed a claim pursuant to redress programs administered by the states of Pennsylvania and Texas;

3. Any applicant who has been involved in completed litigation with Respondent concerning the termination of its loan commitments in April 1987;

4. Any applicant who otherwise has previously executed settlement agreements or a release with Respondent in connection with the termination of its loan commitments in April 1987;

5. Any applicant who has, by refinancing, renegotiation, or otherwise, in the period April 15 through October 15, 1987, achieved or obtained an FHA, VA, or conventional mortgage loan with the equivalent of the combination of interest rate and points that were locked in with Respondent as of April 13, 1987.

VI

It is further ordered that, within sixty (60) days following the date of service of this Order, Lomas Mortgage shall provide the Commission with a list of the name and last known address of each FHA loan applicant and co-applicant who had a pending loan application with a lock-in feature as of April 13, 1987, and a separate list of all customers whom Respondent believes fit under the five criteria for ineligibility set out above in Section V. Respondent shall derive the list of FHA loan applicants from computerized loan applications records for loan applications which closed; and from loan records maintained by Respondent and which it can locate for loan applications which did not close. In compiling this list of FHA loan applicants for loans which did not close, Respondent shall make a good faith attempt to locate, in its file storage facilities in Dallas and anywhere else such files are stored, the application files for those applicants and shall provide the last known address and social security number of both the applicant and co-applicant contained in such application files and the address for which a loan was sought.

Within thirty (30) days of being provided such list, the Commission shall cause to be sent a notice by certified mail to the provided address for FHA loan applicants with a lock-in feature pending as of April 13, 1987. This notice shall consist of the forms attached hereto as Exhibits A–C. All notifications shall contain on the envelope the words "PLEASE FORWARD."

VII

It is further ordered that, for a period of ten (10) years from service of this Order, Respondent, its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission up-to-date copies of all mortgage forms in use at any of its offices.

VIII

It is further ordered that Respondent shall distribute a copy of this Order to all present and future loan officers and management officials having supervisory responsibilities for administration, sales, advertising or policy with respect to the subject matter of this Order in each of its subsidiaries and operating divisions dealing with mortgage origination, and shall secure from each such individual a signed statement acknowledging receipt of this Order.

IX

It is further ordered that Respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Respondent which may affect compliance obligations arising out of the Order.

X

It is further ordered that Respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this Order.

XI

It is further ordered that Respondent shall, within sixty (60) days after the date of service of this Order, file with

VOL
58
ISS
133
JL
14
1993
UMI

the Commission a report, in writing, signed by the Respondent and setting forth in detail the manner and form of its compliance with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Lomas Mortgage U.S.A., Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

A lock-in is a promise by a mortgage lender to hold for a specified period of time, in this case 60 days, a certain interest rate and/or number of discount points. The lock-ins offered by respondent to applicants for Federal Housing Administration ("FHA") loans were conditional, *i.e.*, subject to change during the lock-in period, since the terms were conditioned upon changes in the rates charged for Veterans Administration ("VA") loans.

The complaint alleges that respondent engaged in several practices that misled consumers into believing that the lock-ins it offered on ("FHA loans") were unconditional. The complaint also alleges that respondent did not lock-in the mortgage interest rate or number or discount points. Some of respondent's loan officers made false representations that the lock-ins were unconditional, while others were not aware of the conditional nature of respondent's lock-ins. Key clauses in the lending forms used by respondent referred to Veteran's Administration ("VA") loans and did not adequately inform customers that the conditional terms applied to FHA loans. By these actions, respondent engaged in deceptive acts or practices, in violation of section 5(a) of the Federal Trade Commission Act. As a result, many of respondent's customers had their loans cancelled and were unable to obtain mortgages at the interest rate or points promised in the lock-in.

The proposed order prohibits respondent from misrepresenting orally or in writing the terms of a lock-in that it offers to mortgage applicants. The proposed order also requires that the respondent provide a written disclosure to mortgage applicants if the interest rate or number of points promised in a lock-in are subject to change during the lock-in period and the conditions under which they are subject to change. The proposed order also requires that respondent provide a loan upon the terms and conditions promised in a lock-in if the loan closes during the period specified in the loan application.

The proposd order also requires that respondent provide consumer redress, in an amount not to exceed $1,000 per consumer, to each of its customers who had pending FHA loan applications with a lock-in feature in the spring of 1987 and whose loans were cancelled by respondent. The proposed order further requires that respondent conduct a search of its loan files and computer records to obtain the names and addresses of loan applicants eligible to participate in the redress program and to provide a list of such persons to the Commission. The proposed order also requires that respondent pay the costs and expenses to administer the redress program.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–16660 Filed 7–13–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 321]

1993 National Breast and Cervical Cancer Early Detection Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1993 for new competing cooperative agreements to initiate state-based comprehensive breast and cervical cancer early detection programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of the early detection of breast and cervical cancer. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by sections 1501, 1507 and 1509 (42 U.S.C. 300k, 300n–3, and 300n–5) of the Public Health Service Act, as amended by Pub. L. 101–354, the Breast and Cervical Cancer Mortality Prevention Act of 1990.

Eligible Applicants

Assistance will be provided only to the official health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Excluded are the states of:

A. Maryland, Missouri, Nebraska, and North Carolina, which were funded in January 1992 under Program Announcement 121 entitled Early Detection and Control of Breast and Cervical Cancer.

B. California, Michigan, New Mexico, and Texas, which were funded in July 1991 under Program Announcement 121 entitled Early Detection and Control of Breast and Cervical Cancer.

C. Colorado, Minnesota, South Carolina, and West Virginia, which were funded in July 1991 under Program Announcement 122 entitled Early Detection and Control of Breast and Cervical Cancer.

States currently receiving CDC funds under Program Announcement 221 entitled Breast and Cervical Cancer Core Capacity are eligible to apply for funding under this announcement. However, if funded under this announcement, funding under Program Announcement 221 will cease at the end of the current 12-month budget period since the activities performed under 221 are duplicated under this announcement. If not funded under this announcement, funding will continue as stated in the award dated September 30, 1992.

Availability of Funds

Approximately $18,000,000 is available in FY 1993 to fund approximately six states. It is expected that the average award will be $2,500,000 ranging from $2,000,000 to $3,000,000. It is expected that the awards will begin on or about September 24, 1993, and will be made for 12-month budget periods within a project period of up to 5 years. Funding estimates outlined above may vary and are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress, an acceptable application, and the availability of funds

At the request of the applicant, Federal personnel may be assigned to a

project in lieu of a portion of the financial assistance.

Purpose

The purpose of these awards is to establish a comprehensive public health approach to reduce breast and cervical cancer morbidity and mortality through screening, follow-up and referral, public education, professional education, quality assurance, surveillance and evaluation, coalition-building and cancer plan development, and to pay for the screening of women who are unable to afford these services. Special attention must be given to ensure the participation of women who are low-income, uninsured, underinsured, racial minorities, Native American, and coordinated with the Health Resources and Services Administration (HRSA) primary care centers and Title X Family Planning organizations.

Program Requirements

A. General Requirements:

In accordance with Public Law 101–354, an award may not be made unless the state involved agrees that:

1. Not less than 60 percent of cooperative agreement funds will be expended for screening, appropriate referral for medical treatment, and, to the extent practicable, the provision of appropriate follow-up services. The remaining 40 percent will be expended to support public education, professional education, quality assurance, surveillance, and program evaluation. Section 1503(a)(1) and (4).

2. The screening, follow-up and referral services are initiated by the end of first budget year with the remaining activities of a comprehensive breast and cervical cancer early detection program (public education, professional education, quality assurance, surveillance and program evaluation) fully operational by the end of the second budget year. Section 1503(a)(1) and (3).

3. Cooperative agreement funds will not be expended to provide inpatient hospital or treatment services. Section 1504(g). Treatment is defined as any service recommended by a clinician, including medical and surgical intervention provided in the management of a diagnosed condition.

4. Not more than 10 percent of funds will be expended annually for administrative expenses. These administrative expenses are in lieu of and replace indirect costs. Section 1504(f).

5. Matching funds are required from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. Section 1502.

6. If a new, or improved, and superior screening procedure becomes widely available and is recommended for use, this superior procedure shall be utilized in the program instead of the procedures described in 1503(a)(2). Section 1503(b).

7. The state will establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the state under this announcement. Section 1504(h)(1).

8. Upon request, the state will provide records maintained for fiscal control and the accounting of funds to the Secretary or the comptroller of the United States for purposes of auditing the expenditures of the cooperative agreement received under this announcement. Section 1504(h)(2).

9. An award may not be made unless the state Medicaid program or plan provides coverage for:

a. In the case of breast cancer, a clinical breast examination and screening mammography.

b. In the case of cervical cancer, both a pelvic examination and Pap smear screening. Section 1502, as amended by Public Law 102–531.

10. Additional requirements of Public Law 101–354 are contained in the Recipient Activities section of this announcement.

In conducting activities to achieve the purpose of this program the recipient shall be responsible for the activities under B., below, and CDC shall be responsible for conducting activities under C., below:

B. Recipient Activities

1. Establish a system for screening women for breast and cervical cancer as a preventive health measure. Section 1501(a)(1).

The intent of this program announcement is to increase the utilization of screening services for breast and cervical cancer among all groups of women in the state, with special efforts to reach those who are age 50 years and older, low-income, uninsured, underinsured, racial and ethnic minorities, and Native Americans.

a. Ensure that screening procedures are available for both breast and cervical cancer and provided to women participating in the program, including a clinical breast exam, mammography, pelvic exam, and Pap smear. Section 1503(a)(2)(A) and (B).

Screening services should be made available according to the following guidelines:

(1) Only women age 40 years and older will be eligible for screening mammography tests; however, priority for services should be given to those age 50 and older because of the proven efficacy of screening among these women. At least 75 percent of women screened should be age 50 years and older.

(2) Screening will include a clinical breast examination and mammography according to the following guidelines:

(i) Breast Clinical Examination: Annually for all women.

(ii) Mammography: Every 2 years for women age 40–49 years. Every year for women age 50 years and older.

(3) All women who are, or who have been sexually active, or who have reached age 18 years, should have a pelvic examination and a Pap smear test annually.

(4) After a woman has had three or more consecutive normal annual examinations, the Pap smear test may be performed less frequently at the discretion of her personal physician or professional health care provider.

(5) For diagnostic services following an abnormal screening result, cooperative agreement funds may be expended for the following services by using the same eligibility criteria required for screening:

(i) Cervical Cancer—repeat Pap smear, colposcopy and colposcopy-directed biopsy.

(ii) Breast Cancer—repeat screening mammogram, diagnostic mammogram, fine needle aspiration, and office visits for clinical breast examination and evaluation.

b. Provide priority for screening, follow-up, and referral services to women who are low-income and underserved. Section 1504(a).

An award may not be made under this announcement unless the state involved agrees to give priority to the provision of screening, follow-up, and referral services to women who are underserved and low income.

c. Establish breast and cervical cancer screening services statewide. Section 1504(c)(1).

Funds may not be awarded under this announcement, unless the state involved agrees that services and activities will be made available throughout the state, including availability to members of any Indian tribe or tribal organization (as such terms are defined in Section 4 of the Indian Self-Determination and Education Assistance Act).

CDC may waive the above requirement if it is determined that compliance by the state would result in an inefficient allocation of resources

VOL 58 ISS 133 JL 14 1993 UMI

with respect to carrying out a comprehensive breast and cervical cancer early detection program as described in section 1501(a). Section 1504(c)(1).

d. Provide allowances for items and services reimbursed under other programs. Section 1504(d). Funds may not be awarded under this announcement unless the state involved agrees that funds will not be expended to make payment for any item or service that will be paid or can reasonably be expected to be paid by:

(1) Any state compensation program, insurance policy, or Federal or state health benefits program.

(2) An entity that provides health services on a prepaid basis.

e. Establish a schedule of fees/charges for services. Section 1504(b).

Funds may not be awarded under this announcement, unless the state involved agrees that if charges are to be imposed for the provision of services or program activities, the fees/charges for allowable screening and follow-up services will be:

(1) Made according to a schedule of fees that is made available to the public. Section 1504(b)(1).

(2) Adjusted to reflect the income of the woman screened. Section 1504(b)(2).

(3) Totally waived for any woman with an income of less than 100 percent of the official poverty line as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981. Section 1504(b)(3).

Additionally, the schedule of fees/charges should not exceed the maximum allowable charges established by the Medicare Program administered by the Health Care Financing Administration (HCFA). Fees/charges for services covered by Medicare may vary by location, thus, states should determine the appropriate reimbursement rates for their areas and use them as the maximum allowance. Fee/charge schedules should be developed in accordance with guidelines described in the interim final rule (42 CFR parts 405 and 534) of the **Federal Register**, 55 FR 53510, December 31, 1990, which implements Section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which provides limited coverage for screening mammography services. (To order a copy of the **Federal Register**, see the section Where To Obtain Additional Information.)

2. Provide appropriate referrals for medical treatment of women screened in the program and ensure, to the extent practicable, the provision of appropriate follow-up services. Section 1501(a)(2).

A system for the follow-up and referral of women whose screening test results are abnormal or suspicious is an essential component of any comprehensive breast and cervical cancer early detection program.

a. Establish a system for the appropriate follow-up and referral of women with abnormal or suspicious screening tests.

Referral systems should include the regular updating of information on local resources available in the community to which health care providers can refer women for additional diagnostic and treatment services. Clients needing treatment services should be counseled about their eligibility for public-supported third party payment and reimbursement programs.

b. Develop and implement a tracking system for women screened in the breast and cervical cancer early detection program. Section 1501(a)(6).

Tracking the women screened is essential to ensure that those who have abnormal results receive appropriate and timely follow-up for repeat screening diagnostic procedures and treatment. Tracking also includes reminders and outreach to women with normal results to return for regular screening. A useful tracking system is one that can be effectively integrated into the state's health care delivery system for the breast and cervical cancer early detection program. The tracking system should be capable of documenting the outcome of individual screening tests, provide information on needed follow-up, and assure confidentiality. Additionally, the capability of monitoring the tracking system's timeliness, accuracy, and practical usefulness is important.

To meet the intent of Public Law 101–354 in ensuring the appropriate follow-up of women with abnormal screening results, the state's tracking system must include information on screening location (e.g., state, county, city), demographic characteristics (e.g., race, date of birth), and, screening procedures and results (e.g., mammography, Pap smear) for all women in the program. For women identified with abnormal screening results, additional information on diagnostic procedures and diagnoses (e.g., colposcopy), and treatment (e.g., date initiated) must be included.

In collaboration with CDC, the currently funded comprehensive screening states have compiled a list of some of the information necessary to ensure the appropriate follow-up of women. This list is available for the use of states awarded new funding under this announcement.

3. Develop and disseminate public information and education programs for the early detection and control of breast and cervical cancer. Section 1501(a)(3).

Public information and education includes the systematic design and sustained delivery of clear and consistent health messages, especially to older women, using a variety of creative methods that contribute to the early detection of breast and cervical cancer. Successful public education programs are those that increase the knowledge, attitudes, and practices of the targeted population related to breast and cervical cancer screening.

4. Improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer. Section 1501(a)(4).

Health care providers and allied health professionals (including, but not limited to, nurse practitioners, physician's assistants, registered nurses, radiologists, mammography technicians,) play a central and key role in assuring that women are screened at appropriate intervals, screening tests are performed optimally, and that women with abnormal test results receive timely and appropriate diagnostic follow-up and treatment. A health care provider education program effectively transmits information on the efficacy and appropriate use of screening procedures, influences professional practices including the improved performance of screening procedures, improves quality of test interpretations, and promotes the timely diagnostic and treatment follow-up for abnormal results.

5. Establish mechanisms through which the state can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures. Section 1501(a)(5).

Cooperative agreement funds may not be awarded under section 1501, Public Law 101–354, unless the state involved agrees to assure the implementation of quality assurance procedures for mammography and cytological screening for breast and cervical cancer. Section 1503(c) and (d).

a. Develop and implement a quality assurance system for breast cancer screening.

The mammography services provided to women screened in the program must be conducted in accordance with the following guidelines issued by the Secretary of Health and Human Services. Section 1503(e):

(1) Facilities shall follow the rules for Medicare coverage of screening mammography as promulgated by the HCFA.

(2) Mammography units shall be accredited by the American College of Radiology or must have applied for accreditation for the unit(s) that will be used for screening or diagnostic mammography. The Mammography Quality Standards Act of 1992 requires similar accreditation for all mammography units in the United States by October 1994. (42 U.S.C. 263b).

(3) Facilities shall undergo an annual performance evaluation by a medical physicist who is board certified by the American Board of Radiology or who meets the criteria of the American College of Radiology for a medical physicist in mammography. The mammography facility must also undergo an annual compliance inspection by an individual from the State Radiation Control Program.

(4) Facilities shall use the American College of Radiology Breast Imaging Reporting System for reporting the interpretation of mammographic examinations.

(5) A report of the results of a mammography performed on a woman screened in the program shall be placed in her permanent medical records that are maintained by her health service provider.

b. Develop and implement a quality assurance system for cervical cancer screening.

The laboratory services provided to women in the program as part of cytological screening must be conducted in accordance with the following guidelines issued by the Secretary of Health and Human Services. Section 1503(e):

(1) Facilities shall meet the standards and regulations promulgated by the HCFA implementing the Clinical Laboratory Improvement Amendments (CLIA) of 1988. (42 U.S.C. 263a).

(2) All cytological screening is required to be done on the premises of a qualified laboratory.

(3) A report of the results of cervical cancer screening performed on a woman through this program shall be placed in her permanent medical records that are maintained by her health service provider.

6. Evaluate activities conducted under Recipient Activities 1 through 5, above, through appropriate surveillance or program-monitoring activities. Section 1501(a)(6).

Measuring the impact of program activities on the screening behavior of women, and on morbidity and mortality, is important for the identification of effective intervention strategies for the early detection of breast and cervical cancer. Equally important is process evaluation or the assessment of factors that contributed to the successful or unsuccessful establishment and implementation of a comprehensive program and specific program activities.

a. Implement a surveillance system to monitor and evaluate program activities.

Monitoring the distribution and determinants of breast and cervical cancer incidence and mortality is necessary to effectively evaluate a comprehensive early detection program. To do this, a surveillance system should:

(1) Collect statewide, population-based information on the demographics, incidence, staging at diagnosis, and mortality from breast and cervical cancer.

(2) Identify segments of the population at higher risk for disease and for the failure to be screened.

(3) Identify factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services.

(4) Monitor the number and characteristics of women screened in the program and the outcome of screening by analyzing data from the state's tracking system.

(5) Monitor screening resources, including the number of available mammography facilities, cytology laboratories, and providers of cytology screening.

b. Develop and implement an evaluation plan for each program component.

The design of each program component should ensure that there can be meaningful process and outcome evaluation. The evaluation plan should assess the implementation and effectiveness of each program component including:

(1) Screening,
(2) Follow-up and referral,
(3) Public education,
(4) Professional education,
(5) Quality assurance, and
(6) Surveillance and program evaluation.

At a minimum, the evaluation plan should identify what program activities will be evaluated, the process and outcome indicators to be measured, how they will be measured, the proposed time lines, and resources needed. Specific evaluation activities should include but not be limited to:

(1) An inventory of specific services provided with cooperative agreement funds.

(2) A description of who and how many women received services, including demographic information such as age, race, and ethnicity.

(3) An assessment of the referral system including the number of women referred for diagnostic and treatment services, number who received services, and the capacity of the system in identifying resources in the community and assisting women to access available services.

(4) An assessment of the availability and accessibility of breast and cervical cancer screening services and an estimation of the extent of unmet needs, particularly for women who are age 50 years and older, medically underserved, low-income, racial and ethnic minorities, and/or Native Americans.

(5) An assessment of the planning, development, implementation, and accomplishment of program activities (e.g. goals, objectives, timelines, recruiting, hiring, and retaining staff, training staff, establishing and maintaining contracts with provider agencies, and assuring the quality of contractor performance).

(6) An assessment of changes in participant and provider knowledge, attitudes, behaviors, and practices with respect to screening for breast and cervical cancer.

7. Ensure the coordination of services and program activities with other similar programs and establish a broad-based coalition to advise and support the program. Section 1504(e).

Coordination with other similar programs maximizes the availability of services and program activities, promotes consistency in screening procedures and educational messages, and reduces duplication. An award may not be made under this program announcement unless the state agrees that the services and activities provided in this program are coordinated with other Federal, state, and local breast and cervical cancer programs. Section 1504(e).

Linkages should be established with Federally-funded programs such as the Health Resources and Service Administration (HRSA) primary care centers and community health centers, Title X Family Planning programs, State Offices for Aging and Minority Health, the Indian Health Service (IHS), especially in states with Native American populations, community-based organizations, and appropriate state and local agencies.

Additionally, the success of a comprehensive breast and cervical cancer early detection program is improved by broad-based support in the community and active public and

private sector involvement. Coalition members bring valuable knowledge, skills, expertise, and financial resources to the program as well as provide access to populations of women who need to be screened. Effective coalitions are diverse, include active minority participation, and have well-defined objectives, roles, responsibilities, and strong leadership.

Linkages and active collaboration are strongly encouraged with public and private sector organizations such as the American Cancer Society (ACS), Young Women's Christian Association (YWCA), and the American Association of Retired Persons (AARP), and survivors of breast and cervical cancer, local women's groups, community leaders, and other agencies and businesses in the community that provide health care and related support services to women.

Interagency agreements to collaborate on joint breast and cervical cancer early detection activities are encouraged, especially with the divisions of ACS located in states. The evaluation of coalition activities to ensure the effective participation of members is encouraged.

8. Develop and implement a breast and cervical cancer control plan.

The success of a comprehensive breast and cervical cancer early detection program is increased by the existence of a well-thought-out, integrated, and realistic plan to address these disease conditions among all women, especially those who are low income, uninsured, underinsured, racial and ethnic minorities, and Native Americans. A comprehensive breast and cervical cancer early detection program should be guided by such a plan, developed with coalition involvement, and include an ongoing assessment of disease burden, unmet needs, barriers to screening, measurable objectives, proposed implementation strategies, target dates for their achievement, and the identification of responsible individuals, organizational units, or agencies.

C. CDC Activities:

1. Convene a meeting of the funded states for information sharing, problem solving, and training at least annually.

2. Provide funded states with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the comprehensive program as described under Recipient Activities above. Consultation and technical assistance is defined as advice in the: (a) Interpretation of current scientific literature related to the early detection of breast and cervical cancer; (b) practical application of Public Law 101–354 and nationally-recognized clinical and quality assurance guidelines for the assessment and diagnosis of breast and cervical cancer including the establishment and maintenance of a comprehensive screening program; (c) design and implementation of public education, professional education, coalition building, and cancer plan development activities; (d) evaluation of each program component (process and outcome) through the analysis and interpretation of surveillance and other relevant data; and (e) overall program management including compliance with cooperative agreement requirements. Section 1507(a).

3. Conduct site visits to assess program progress and mutually resolve problems, as needed.

4. Provide consultation for effective program management.

5. At the request of the applicant, assign Federal personnel to a project in lieu of a portion of the financial assistance. Section 1507(b).

Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Background and Need

The extent of the disease burden and the need among the targeted population as measured by: (1) The state's breast and cervical cancer age-adjusted mortality rates averaged over 5 years, and ranking nationally; (2) the incidence rates of these conditions; (3) the number of women in the state, including minority and Native American women, especially those who are low income, uninsured, or underinsured; and (4) existing access and barriers to early detection services, (e.g., social, cultural, financial, geographic). (20 points—5 points for each subpart)

B. Operational Plan

The feasibility and appropriateness of the Operational Plan to provide: (1) Screening services for breast and cervical cancer (15 points); (2) follow-up and referral for medical treatment for women with malignant and premalignant conditions, and tracking system (15 points); (3) public education (5 points); (4) professional education (5 points); (5) a quality assurance system (10 points); and (6) a surveillance system and evaluation strategies (10 points). (60 points allocated as noted above)

C. Coalition and Community Involvement

The extent to which the applicant proposes to coordinate activities with other Federal, state and local cancer programs, community-based organizations, other appropriate agencies, and private providers as evidenced by letters of support and proposed coalition development and coalition participation in program planning. (5 points)

D. Breast and Cervical Cancer Control Plan

The feasibility and appropriateness of the applicant's current breast and cervical cancer control plan or their proposal to develop such a plan with coalition input and the commitment to use it for program development and management. (5 points)

E. Capability

The extent to which the applicant appears likely to succeed in implementing the proposed activities as measured by: (1) Relevant past experiences; (2) feasible program objectives; (3) a realistic timetable for program implementation; (4) a sound management structure; and (5) the qualifications of management and technical staff, including the appropriateness of their proposed roles and responsibilities or job descriptions. (10 points—2 for each subpart noted above)

F. Budget and Justification

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement. (Not weighted)

Funding Priorities

Priority will be given to states with greater disease burden from breast and cervical cancer and an existing infrastructure to fully support a comprehensive screening program.

Recipient Financial Participation

The following Recipient Financial Participation requirements are specified by Section 1502:

A. Requirement for Matching Funds

The Secretary may not make a grant under section 1501 unless the state involved agrees, with respect to the costs to be incurred by the state in carrying out the purpose described in such section, to make available non-Federal contributions toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be

made directly or through donations from public or private entities.

B. Determination of Amount of Non-Federal Contribution

Non-Federal contributions required may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

C. Maintenance of Effort

In making a determination of the amount of non-Federal contributions for purposes of the matching funds requirement, the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the state involved toward the purpose described in section 1501 for the 2-year period preceding the first fiscal year for which the state is applying to receive a cooperative agreement under such section.

D. Relevant Non-Federal Contributions for Medicaid

In making a determination of the amount of non-Federal contributions for purposes of meeting the matching funds requirement, the Secretary shall, subject to conditions outlined in the above two paragraphs, include any non-Federal amounts expended pursuant to Title XIX of the Social Security Act by the state involved toward the purpose described in paragraphs (1) and (2) of section 1501(a).

Matching funds may not include:

A. The payment for treatment services or the donation of treatment services (see note below);

B. Services assisted or subsidized by the Federal Government; or

C. The indirect or overhead costs of an organization.

Note: Treatment is defined as any service recommended by a clinician including medical and surgical intervention provided in the management of a diagnosed condition.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This order sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to expected announcements of cooperative agreement funds and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application due date. The granting agency does not guarantee to "accommodate or explain" the state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before July 15, 1993.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the stated deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.(a) or 1.(b), above, are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Faye L. Wong, M.P.H., R.D., Chief, Program Operations Section, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–57, Atlanta, Georgia 30341–3724, telephone (404) 488–4880, and FAX (404) 488–4727.

Please refer to Program Announcement Number 321 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Applicants will find a copy of the interim final rule (42 CFR parts 405 and 534) of the **Federal Register**, 55 FR 53510, December 31, 1990, included in the application kit.

Dated: July 8, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16626 Filed 7–13–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93N–0240]

Lilly Research Laboratories, Et Al.; Withdrawal of Approval of 15 Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 15 abbreviated antibiotic drug applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA no.	Drug	Applicant
60–093	Duracillin (penicillin G procaine).	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
60–641	Rondomycin® (methacycline HCl) Capsules, 150 and 300 milligrams (mg).	Wallace Laboratories, 301B College Road East, Princeton, NJ 08540.
60–686	Bacitracin Ointment.	Lilly Research Laboratories.
60–918	Bacitracin Topical Ointment USP, 500 units per gram (g).	Biocraft Laboratories, Inc., 18–01 River Rd., P. O. Box 948, Fair Lawn, NJ 07410.
62–101	Bacitracin Ointment, 500 units per g.	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
62–134	Cephalexin Monohydrate.	CIPAN, c/o Louie F. Turner & Associates, P. O. Box 331044, Fort Worth, TX 76163.
62–167	Bacitracin Zinc-Neomycin-Polymyxin Ophthalmic Ointment Sterile.	Pharmaderm, Division of Altana Inc., 60 Baylis Rd., Melville, NY 11747.
62–434	Doxycycline Hyclate Capsules, USP, 50 mg.	Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977.
62–442	Doxycycline Hyclate Capsules, USP, 100 mg.	Do.
62–489	Barstatin 100 Powder® (nystatin, USP).	Barlan Pharmacal Co., Inc., 3 Spielman Rd., Fairfield, NJ 07006.
62–518	Nystatin Oral Suspension, USP.	Pharmaderm.
62–530	Gentamicin Sulfate Cream, USP, 0.1%.	Pharmaderm.
62-565	Ampicillin Faspak®.	Lilly Research Laboratories.
62–596	Nystatin-Triamcinolone Acetonide Cream, USP.	Pharmaderm.
62–808	Cephradine	CIPAN.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective August 13, 1993.

Dated: June 29, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–16592 Filed 7–13–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0242]

Pioneer Pharmaceuticals, Inc.; Withdrawal of Five Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five abbreviated new drug applications (ANDA's) held by Pioneer Pharmaceuticals, Inc., 209 40th St., Irvington, NJ 07111 (Pioneer). FDA is withdrawing these applications, at the request of Pioneer, because of questions raised about the reliability of data and information submitted to FDA in support of the applications. Pioneer waived its opportunity for hearing.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Diane Sullivan, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies concerning data used to support approval of the following ANDA's held by Pioneer:

ANDA 88–585, Dicyclomine Hydrochloride Tablets, 20 milligrams (mg);

ANDA 88–949, Folic Acid Tablets, 1 mg;

ANDA 89–082, Methocarbamol Tablets, 750 mg;

ANDA 89–361, Dicyclomine Hydrochloride Capsules, 10 mg; and

ANDA 89–948, Chlorzoxazone Tablets, 500 mg.

FDA identified discrepancies in data submitted to obtain approval of the applications listed above which have raised questions about the reliability of the data. Subsequently, in a letter dated May 13, 1993, Pioneer requested withdrawal of these ANDA's.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective July 14, 1993.

Distribution of drug products in interstate commerce without an approved application is unlawful.

Dated: July 3, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–16593 Filed 7–13–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a correction in the meeting of the National Digestive Diseases Advisory Board on July 26–27, 1993, which was published in the Federal Register on June 30, 1993, (58 FR 35023).

The address of the conference was incorrectly published as being held at the Capitol Gateway Marriott, Crystal City, Virginia. The correct address is the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

Dated: July 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16736 Filed 7–13–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–03–4230–1; AA–76740–P]

Recordable Disclaimer of Interest

AGENCY: Anchorage District Office, Bureau of Land Management.

ACTION: Notice; Recordable disclaimer of interest.

SUMMARY: The City/Borough of Juneau, Alaska has made application for a recordable disclaimer of interest pursuant to section 315 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1745) and the regulations in 43 CFR part 1864.

The requested action will serve to remove a cloud on the title affecting the lands described below. Title to these lands are vested in the City and Borough of Juneau; however, a possible right, title, or interest of the Secretary of the Interior based on a Deed recorded August 30, 1926, appears on a title report for these lands. BLM records show no ownership interest was ever acquired by the U.S. The purpose of this notice is to allow any person or agency asserting a claim to these lands or having a bona fide objection to the proposed transaction to file their objections with the BLM Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

Legal Description: Lot 7, Block A, Townsite of Juneau, Juneau Recording District, First Judicial District, State of Alaska, containing less than .02 acre.

DATES: Comments on this notice must be received on or before October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Lloyd, Anchorage District Office (907) 267–1254.

Dated: July 2, 1993.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 93–16637 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–JA–M

[ID–020–5101–10–XDBJ]

Availability of Final Southwest Intertie Project Environmental Impact Statement and Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Southwest Intertie Project Final Environmental Impact Statement and Proposed Plan Amendment (FEIS/PPA).

SUMMARY: Idaho Power Company, Boise, Idaho, has made an application for a 200-foot-wide right-of-way for the construction, operation, and maintenance for two segments of the proposed Southwest Intertie Project (SWIP) 500–kv transmission line. The Midpoint to Dry Lake segment of the line would run from Idaho Power Company's Midpoint substation near Shoshone, Idaho, to a proposed substation in Dry Lake Valley northeast of Las Vegas, Nevada. The Ely to Delta Segment would run from a proposed substation west of Ely, Nevada, in the Robinson Summit area to a proposed substation near Delta, Utah. The Ely to Delta segment of line would be built and operated by the Los Angeles Department of Water and Power and would be part of the Utah-Nevada transmission line project (UNTP). Idaho Power Company would build and operate the Midpoint to Dry Lake segment of the line. The purpose of this transmission line would be for the seasonal interchange of electrical power between the northwest and southwest parts of the United States.

A Draft Environmental Impact Statement and Draft Plan Amendment (DEIS/DPA) was prepared and distributed to the Public in June of 1992. In response to public comment, the DEIS/DPA was revised and additional information added. The Final Environmental Impact Statement (FEIS) identifies resource values and analyzes the environmental impacts to those resources that would be expected from the construction, operation, and maintenance of the SWIP. The Proposed Plan Amendment (PPA) identifies where the agency-preferred alternative would be outside a designated Bureau of Land Management (BLM) utility corridor.

DATES: In accordance with 43 CFR 1610.5–2 "any person who participated in this planning process and may be adversely affected" may protest in writing. Protests must be postmarked no later than August 17, 1993. Protests regarding the Proposed Plan Amendment must be sent to the Director, Bureau of Land Management (760), at the address listed below. Any Protest to the Proposed Plan Amendment must contain (1) Name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue(s) being protested; (3) a statement of the part(s) of the plan being protested; (4) a copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and (5) a concise statement explaining why the proposed plan is believed to be wrong.

ADDRESSES: Comments on the FEIS/PPA should be addressed to: District Manager, Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318. All comments received on the FEIS/PPA will be considered in the preparation of the BLM Record of Decision. Protests should be sent to: Director, Bureau of Land Management (760), Department of the Interior, 1848 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Karl Simonson, Southwest Intertie Project Manager, Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83317. Phone: (208) 678–5514.

Delmar D. Vail,

State Director.

[FR Doc. 93–16628 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–GG–M

[AK–932–4210–06–P; AA–74[illegible]]

Termination of Temporary Segregative Effect and Opening of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

VOL 58 ISS 133 JL 14 1993 UMI

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect of a proposed withdrawal requested by the U.S. Department of Agriculture, Forest Service, for the Seward Highway Reconstruction Project.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 56 FR 40908, August 16, 1991, which segregated the land described therein for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System lands. The 2-year segregation expires August 16, 1993. The withdrawal application will continue to be processed unless it is canceled or denied. The lands are described as follows:

Seward Meridian

Chugach National Forest

A corridor 300 feet each side of centerline of the proposed highway located within:

T. 7 N., R. 1 E., unsurveyed,
Sec. 6, NW¼NE¼.
T. 8 N., R. 1 E., unsurveyed,
Sec. 31, SW¼.
T. 7 N., R. 1 W., unsurveyed,
Sec. 4, E½W½.
T. 8 N., R. 1 W., unsurveyed,
Sec. 25, SW¼, SW¼SE¼;
Sec. 28, W½;
Sec. 33, E½W½;
Sec. 36, NE¼.

The areas described aggregate approximately 407.3 acres.

At 9 a.m. Alaska Daylight Time, on August 17, 1993, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized.

Dated: July 6, 1993.

Sue A. Wolf,

Chief, Branch of Lands.

[FR Doc. 93–16582 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–JA–P

[WY–060–4210–05; WYW106593]

Realty Action; Direct Sale of Public Lands, and Modified Competitive Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Direct Sale of Public Lands, and Modified Competitive Sale of Public Lands in Campbell County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any amount received for less than fair market value will be rejected. The BLM may accept or reject any and all bids, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

Parcel A

T. 44 N., R. 72 W.
Sec. 14, lot 4;
Sec. 15, lot 1.
T. 45 N., R. 72 W.
Sec. 20, E½SE¼;
Sec. 33, S½SW¼.

Containing 239.08 acres more or less

Parcel B

T. 45 N., R. 73 W.
Sec. 21, NW¼SW¼.

Containing 40.00 acres more or less

The above land aggregates 279.08 acres, more or less in Campbell County.

FOR FURTHER INFORMATION CONTACT: Dave Pomerinke, Area Manager, Buffalo Resource Area, BLM, 189 Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: This sale is consistent with BLM policies and the Buffalo Resource Area Resource Management Plan. The purpose of this proposed action is to dispose of small isolated tracts of land which have been determined to be difficult and uneconomic to manage. The planning document, environmental assessment and the fair market value addressing the proposed sale will be available for review at the BLM, Buffalo Resource Area.

Parcel A will be offered by direct sale to the adjoining landowner. The adjoining landowner will be required to submit proof of adjoining land ownership before a bid can be accepted.

Parcel B will be offered to the adjoining landowners by the modified competitive sale method. The adjoining landowners will be required to submit proof of adjoining landownership before a bid can be accepted.

The publication of this Notice segregates the 279.08 acres of public land described in the above sale from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. Any subsequent application shall not be accepted, shall not be considered as filed, and shall be returned to the applicant if the notice segregates the land from the use applied for in the application. The segregative effect of this notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation notice is published, whichever comes first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Buffalo Resource Area Office by 4:00 p.m., August 25, 1993, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, Parcel A or Parcel B (WYW106593), Sale held August 25, 1993."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid.

Additional sealed bids will be submitted to resolve all ties.

5. If either of the parcels fail to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Buffalo Resource Area Office by 4:00 p.m. on the fourth Wednesday of each month beginning September 22, 1993. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcels change, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights to include the following: Parcel A: Rights-of-ways; WYW90169-road, WYW69271-powerline, Oil and gas leases: WYW82868, WYW84895, WYW98897. Parcel B: Oil and gas lease: WYW82880. Specific patent reservations for both parcels include:

1. A reservation to the United States for a right-of-way for ditches and canals in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM, Buffalo Resource Area Office.

For a period of forty-five (45) days, from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments for all lands identified in this Notice to the Bureau of Land Management, District Manager, Casper, 1701 East E. Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: July 1, 1993.

Mike Karbs,

District Manager.

[FR Doc. 93–16584 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–780565

Applicant: Jeffrey Wells, El Cajon, CA

The applicant requests a permit to survey and monitor the status of the Least bell's vireo (*Vireo bellii pusillus*) in southern California to enhance the propagation and survival of the species.

PRT–780567

Applicant: Joel Weintraub, Dana Point, CA

The applicant requests a permit to determine the presence or absence of the Least bell's vireo (*Vireo bellii pusillus*) using recorded bird calls in southern California.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432c, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority: 4401 North Fairfax Drive, room 432c, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 9, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–16625 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–55–M

Draft Recovery Plan for *Serianthes nelsonii* for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Serianthes nelsonii*. This endangered tree species occurs on Guam and the island of Rota, in the Commonwealth of the Northern Mariana Islands.

DATES: Comments on the draft recovery plan must be received on or before September 13, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., Honolulu, Hawaii 96850 (phone 808–541–2749). Copies of the draft plan will also be available for inspection, by appointment, during normal business hours at the Service's Honolulu address, the Guam Department of Agriculture, Guam Aquatic and Wildlife Resources Division, Dairy Farm Road, Mangilao, Guam (phone 671–734–3944); and Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife, Department of Natural Resources, Lower Base, Tanapag, Saipan (phone 670–322–9729). Written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor, at the above Honolulu, Hawaii, address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Honolulu, Hawaii, address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the

VOL
58
ISS
133
JL
14
1993
UMI

recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Serianthes nelsonii*. The areas of emphasis for recovery actions for this species are the Ritidian Point area on Guam and several steep hillsides and cliffs in the southern and western portions of Rota in the Commonwealth of the Northern Mariana Islands. Recovery efforts will focus on securing and managing habitat to remove threats caused by ungulates, inspect predators, fire, typhoons and development and the establishment of additional subpopulations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 6, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 93–16629 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Availability of a Draft Wild and Scenic River Evaluation and Environmental Assessment of Big and Little Darby Creeks in Ohio for Review and Comment

AGENCY: National Park Service, DOI.

ACTION: Notice of document availability

SUMMARY: The National Park Service announces the availability for public review of a draft Wild and Scenic River Evaluation and Environmental Assessment of Big and Little Darby Creeks in Ohio. The report evaluates an application by the Governor of the State of Ohio to have three segments of the Darby Creeks designated as wild and scenic rivers pursuant to section 2(a)(ii) of the Wild and Scenic Rivers Act. The Service solicits review and comment from the public on this draft Evaluation.

DATES: Comments on the draft report must be received on or before August 30, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft report can obtain a copy from the Division of Natural Areas and Preserves, Ohio Department of Natural Resources, Building F–1 Fountain Square, Columbus, Ohio 43224 (telephone: 614–265–6465), also from the Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102–2571 (telephone: 402–221–3481). The report will also be available for public inspection, by appointment, during normal business hours at the above addresses and also at the following public libraries.

West Jefferson Public Library, 270 Lilly Chapel Road, West Jefferson, OH 43162, 614/879–8448
London Public Library, 20 E. First Street, London, OH 43140, 614/852–9543
Plain City Public Library, 305 W. Main, Plain City, OH 43064, 614/873–4912
Pickaway County Public Library, 165 Main Street, Circleville, OH 43113, 614/477–1644
Marysville Public Library, 231 S. Court Street, Marysville, OH 43040, 513/642–1876
Upper Arlington Public Library, 2800 Tremont Road, Upper Arlington, OH 43221, 614/486–9621
Prairie Township Branch, 4740 W. Broad Street, Columbus, OH 43228, 614/878–1301
Grove City Library, 3359 Park Street, Grove City, OH 43123, 614/875–6716
Hilliard Branch, 5657 Scioto-Darby Road, Hilliard, OH 43026, 614/645–2140
Dublin Branch, 75 N. High Street, Dublin, OH 43017, 614/645–2170
Columbus-Main Branch, 96 S. Grant Avenue, Columbus, OH 43215
Grandview Heights Library, 1685 W. First Avenue, Grandview, OH 43212

Comments on the report should be addressed to Angela M. Tornes, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102–2571 (telephone: 402–221–3481).

FOR FURTHER INFORMATION CONTACT: Angela M. Tornes (See **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Section 2(a)(ii) of the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271) allows for the Secretary of the Interior to designate rivers into the Federal System upon application of the Governor of the State through which the river flows and pursuant to an act of the State legislature. Rivers so designated are granted the same protection from Federal projects that might harm the river's natural and recreational values as rivers designated through an Act of Congress. Rivers designated under section 2(a)(ii) must be managed at no additional expense to the Federal Government.

The act requires that notice and an opportunity for agency review and comment be provided prior to administrative action. The Service will consider all information presented during a comment period prior to approval of the application by the Secretary of the Interior.

The document submitted for review is the draft Big and Little Darby Creeks, Ohio Wild and Scenic River Evaluation and Environmental Assessment.

The Darby Creeks are located in central Ohio west of Columbus. The three segments of the river being considered are:

Upper Darby Creek—32.1 miles, from the Champaign-Union County line (River Mile 71.8) downstream to the Conrail railroad trestle (River Mile 39.7), which is 0.9 miles upstream of US 40.

Lower Darby Creek—34.1 miles, from the confluence with Little Darby Creek near Georgesville to the Scioto River.

Little Darby Creek—19.7 miles, from Lafayette-Plain City Road Bridge (River Mile 20.5) to 0.8 miles upstream from the confluence with Big Darby Creek.

The draft report considers the application for designation from the perspectives of (1) eligibility, (2) resource protection and (3) environmental impact. The eligibility evaluation determines whether the river possesses the requisite outstanding natural, cultural, or recreational values as required by the act. The resource protection evaluation determines whether the river and associated resource values will be adequately protected under the proposed management strategy. The environmental impact evaluation considers the effects of two alternatives—designation and no designation—on a range of natural resource, cultural resource, and socioeconomic values.

Under the proposed management strategy, river protection will be accomplished through implementation of the Big and Little Darby Creek Ohio State Scenic River Plan and Environmental Assessment (February, 1992) which was prepared by the Ohio Department of Natural Resources.

The draft report presents the National Park Service's preliminary finding that the application meets all of the requirements for designation.

This draft report is being submitted for agency review. After consideration of comments received during the review period, the report will be submitted to the Secretary of the Interior for final action.

Agency and Public Comments Solicited

The Service solicits written comments on the draft report described. All comments received by the date specified above will be considered prior to approval of the application to designate this river as a wild and scenic river.

Authority

The authority for this action is section 2(a)(ii) of the Wild and Scenic Rivers Act, 16 U.S.C. 1271.

Dated: June 29, 1993.

Herbert S. Cables,

Acting Director, National Park Service.

[FR Doc. 93–16589 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 3, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 29, 1993.

Beth L. Savage,

Acting Chief of Registration, National Register.

Alaska

Matanuska-Susitna Borough-Census Area

Tangle Lakes Archeological District (Boundary Decrease), Address Restricted, Glennallen vicinity, 93000713

Florida

Volusia County

Blodgett, Delos A., House, 404 Ridgewood Ave., Daytona Beach, 93000724

Donnelly, Bartholomew J., House, 801 N. Peninsula Dr., Daytona Beach, 93000726

Hawaii

Kauai County

Wilcox, Albert Spencer, Beach House, Weke Rd., Hanalei, 93000725

Michigan

Eaton County

Eaton County Courthouse Complex (Boundary Increase), 100 W. Lawrence, 120 N. Bostwick, Charlotte, 93000712

Missouri

Newton County

Neosho Commercial Historic District (Neosho MPS), Along sections of Main, Spring, Washington and Wood Sts., Neosho, 93000722

Pennsylvania

Chester County

Okehocking Historic District, Roughly bounded by West Chester Pike, Plumsock Rd., Goshen Rd. and Garrett Mill Rd., Willistown Township, Media vicinity, 93000719

Dauphin County

Dauphin County Bridge No. 27, Deibler's Dam Rd. (Mahantango Creek Rd.) across Mahantango Cr., Mifflin and Lower Mahanoy Townships, Pillow vicinity, 93000720

Dauphin County Courthouse, Jct. of Front and Market Sts., Harrisburg, 93000723

Fayette County

Brownsville Commercial Historic District, 105–128 Brownsville Ave. and 1–145 Market, 101–200 High, 2–6 Water, 100 Charles, 1 Seneca and 108 Bank Sts., Brownsville, 93000716

Brownsville Northside Historic District, Roughly bounded by Front St., Broadway, Shaffner Rd. and Baltimore St., Brownsville, 93000717

Fulton County

McConnellsburg Historic District, Roughly, Lincoln Way from First St. to Fifth Ave. and Second St. from Spruce St. to Maple St., McConnellsburg, 93000727

Pike County

D & M Canal Co. Office (Upper Delaware Valley, New York and Pennsylvania, MPS), Scenic Dr., NW side, Lackawaxen Township, Lackawaxen, 93000715

Mill Rift Hall (Upper Delaware Valley, New York and Pennsylvania, MPS), Bluestone Blvd., Westfall Township, Mill Rift, 93000714

Washington County

Longwell, David, House, 711 N. Main St., Monongahela City, 93000718

Vermont

Franklin County

Kendall, Dr. B. J., Company, 228 W. Main St., Enosburg, 93000721

[FR Doc. 93–16590 Filed 7–13–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: U.S. Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental assessment and finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that the Final Environmental Assessment and Final Finding of No Significant Impact to enter into an international agreement between the United States and Mexico through a Minute of the International Boundary and Water Commission, United States and Mexico (IBWC) to replace the international Bridge of the Americas at El Paso, Texas—Ciudad Juarez, Chihuahua, are available. A Notice of Finding of No Significant Impact was published in the **Federal Register** on December 20, 1991 (56 FR 66083–66084) and provided a thirty (30) day review and comment period before making the finding final.

ADDRESSES: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone 915/534–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

An international agreement between the United States and Mexico is proposed through a Minute of the International Boundary and Water Commission, United States and Mexico (IBWC), to replace the international Bridge of the Americas at El Paso, Texas—Ciudad Juarez, Chihuahua, in as early a manner as possible, in essentially the same place and configuration with the construction of separate parallel commercial traffic structures. Financing and construction would be consistent with the existing bridge under the term existing in international treaties and agreements in force, especially noting that the bridge would be toll-free, but the commercial users would finance the commercial structures. The urgency is due to the structurally deficient condition of the existing bridge.

Alternatives Considered

Five alternatives were considered:

1. IBWC Rehabilitation of Existing Bridge—The existing bridge would be strengthened by replacing the existing concrete slab, strengthening the piers, and making miscellaneous repairs. While this alternative had merit early in 1991, the present structural condition of the bridge is such that it would not be

VOL 58 ISS 133 JL 14 1993 UMI

prudent to give further consideration to this alternative.

2. IBWC Replacement of Existing Bridge—A new Bridge of the Americas (BOTA) would be constructed in approximately the same place, size, and configuration as the existing bridge. Improvements to vehicle lane widths, commercial lanes and ingress and egress would be undertaken. The bridge would not involve large scale modifications to inspection facilities and associated roadways. Replacement would be in application at the 1963 Chamizal Convention, such that the bridge would continue to be toll-free. The United States and Mexican Governments would equally share in the cost of the part of the bridge that spans the Rio Grande levee to levee, approximately 40 percent of the bridge's length, and the U.S. Government would pay for the cost of replacing the elevated section (the remaining 60 percent of the bridge) that facilitates access to the existing facilities. The U.S. Section has budget authority to seek appropriations for a replacement bridge and request annual operation and maintenance funding, but Mexican Government financing arrangements for a toll-free bridge remain uncertain. This was not considered as the preferred alternative.

3. IBWC Replacement of Existing Bridge with Commercial Structures—This is essentially Alternative 2 with the parallel construction of commercial traffic structures. The commercial sector would cover the costs of construction, operation, and maintaining the commercial structure. This alternative is acceptable to the U.S. Congress for appropriation purposes, and to Mexico and would permit as fast as possible replacement of the bridge, an important factor due to its condition. This alternative is considered as the preferred alternative.

4. Non-IBWC Replacement of Existing Bridge—The IBWC would make arrangements for agencies or entities in each country, other than the IBWC, to assume the responsibility for replacing the existing bridge in the configuration, location, and size that such agencies or entities may determine. Tolls, which are contrary to the provisions of the Chamizal Convention, would be necessary to recover the cost of financing a replacement bridge.

Tolls would work an economic hardship upon individuals that for years traveled freely back and forth to work and shop in either country. Authorization to construct a replacement bridge in this manner would take considerable time as it would involve a need to arrange financing in both countries and additional lengthy and uncertain bilateral understandings. The structural deficiency of the bridge requires as rapid replacement as possible, and thus this alternative was not preferred.

5. No Action Alternative—This would be a status quo arrangement which is not acceptable. The safety of millions of people who use this bridge would be in continued peril. Without remedial action, the distressed condition of the 24-year old BOTA will continue to deteriorate due to questionable construction materials and the constant and heavy traffic. These factors, among others, precluded giving this alternative further consideration.

Finding of the Final Environmental Assessment

The Final Environmental Assessment finds that the preferred alternative does not constitute a major federal action which would cause a significant local, regional, or national impact on the environment since it:

(a) Removes the danger to life and property on or under this bridge which a structurally deficient bridge subject to further deterioration represents.

(b) Provides a structurally sound bridge that would serve the commercial and non-commercial needs of an international community.

(c) Effects common to construction alternatives would be short-term. Fugitive dust and equipment emissions would be minimized through implementation of standardized construction practices.

(d) There would not be a significant impact to air quality and all local, state, and federal air quality regulations would be followed.

(e) There would not be any impacts to surface water, nor would the construction alternatives impact upon the capabilities of the international Rio Grande Rectification Project to carry flood flows should the need arise during construction.

(f) Construction related impacts on traffic would be short lived.

(g) A replacement bridge would permit continued use of existing and additional inspection facilities now under construction, which include commercial inspection docks capable of handling more than four times the present loaded trucks presently inspected in the El Paso area.

(h) The United States and Mexico would be complying with pertinent provisions of the 1963 Chamizal Convention, including that the bridge would continue to be toll-free and that the cost of the part of the bridge that spans the Rio Grande levee to levee be equally shared by the two countries. Both governments would also apply their "user pays" principles to the commercial structures.

(i) A replacement bridge would be constructed in as timely as possible manner.

(j) Would not affect fish and wildlife, including endangered and threatened species in the immediate area of the proposed project.

(k) Would not affect cultural resources listed on or determined to be eligible for listing on the National Register of Historic Places.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: June 29, 1993.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 93-16601 Filed 7-13-93; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-344]

The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a letter dated June 9, 1993, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332-344, The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The Commission was requested to submit its report by June 30, 1995.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn on (202) 205-3251, Office of Operations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION: As requested by the USTR, the Commission will investigate the economic effects of such orders and suspension agreements, and the economic effects of the dumping and subsidy practices that such orders and agreements address.

The investigation will include a comprehensive empirical analysis of the economic condition of U.S. domestic industries impacted by unfairly traded

imports both before and after relief was granted. This analysis will include relevant industry information on employment, wages, production, prices, investment, trade and other factors internal and external to the industry, including but not limited to the relevant unfair foreign trade practices affecting the general health and competitiveness of such industries.

As requested by the USTR, the Commission will seek to structure its empirical analysis to answer the following questions:

1. What would the U.S. position (with respect to such factors as employment, production, and prices) have been in a proximate period prior to the provision of relief, if the unfair foreign subsidy or dumping practices had not been in effect? What was the U.S. position, in fact, this period? What was the effect of the unfair practice?

2. What was the effect of the remedy provided? How closely did the remedy move the U.S. position to what it would have been had the foreign unfair practices not occurred in the first place? If the remedy did not fully restore the U.S. position to what it would have been, why did a gap remain?

Also as requested by the USTR, the Commission will seek to answer these and any related questions to cover the parties and factors listed below:

1. Petitioning Industries

Employment, wage, income, production, price, trade and competitiveness effects (including trade effects in country markets other than the United States and country of origin of the product subject to the order or suspension agreement).

2. Upstream Industries

Employment, wage, income, production, price, trade and competitiveness effects for U.S. industries supplying components and other inputs into the petitioning industries' production or production of the subsidized or dumped product (including any trade effects in country markets other than the United States and country of origin of the product subject to the order or suspension agreement).

3. Downstream Industries and Consumers

Employment, wage, income, production, price, trade and competitiveness effects for consumers of the petitioning industries output, encompassing industries consuming intermediate products as well as consumers of final products (including any trade effects for downstream consuming industries of components or other intermediate products in country markets other than the United States and country of origin of the product subject to the order or suspension agreement).

The USTR noted that the process of relief from unfair trade practices entails real costs to firms, to individual workers, and to taxpayers. As requested by the USTR, the Commission will seek to provide with the empirical analysis outlined above, quantitative and other estimates of the labor and other domestic adjustment costs involved.

Also as requested by the USTR, the Commission will seek to provide an assessment of the economy-wide net economic welfare effects of unfair trade practices and the remedies provided.

In addition, as requested, the Commission will seek to provide in its report appropriate time series data for the affected industries for a period some time before the imposition of the order or suspension agreement. The Commission, to the extent possible, will seek to collect data similar to that collected in a normal title VII investigation. The Commission will evaluate a representative sample of orders and agreements. In constructing a sample, the Commission will take into account potential conflicts that might arise from any remedy that is currently before an appellate body or may result from currently pending proceedings, and the limitations imposed by statutory restrictions on the use in any other proceedings of business proprietary information obtained in Title VII investigations.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. A deadline for written submissions will be announced at a later date.

PUBLIC HEARING: A public hearing will be scheduled at a time and place to be announced.

Hearing impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on (202) 205–2648.

Issued: July 8, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16693 Filed 7–13–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–571 (Final)]

Professional Electric Cutting and Sanding/Grinding Tools From Japan

Determinations

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of professional electric cutting tools, provided for in subheadings 8508.20.00, 8508.80.00, 8461.50.00, and 8465.91.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in the subject investigation, the Commission also determines, pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of professional electric sanding/grinding tools, provided for in subheadings 8508.20.00 and 8508.80.00 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV.

Background

The Commission instituted this investigation effective January 4, 1993, following a preliminary determination by the Department of Commerce that imports of professional electric cutting and sanding/grinding tools from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

VOL 58 ISS 133 JL 14 1993 UMI

institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 3, 1993 (58 FR 6975). The hearing was held in Washington, DC, on May 21, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 1993. The views of the Commission are contained in USITC Publication 2658 (July 1993), entitled "Professional Electric Cutting and Sanding/Grinding Tools from Japan: Investigation No. 731-TA-571 (Final)."

Issued: July 7, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-16684 Filed 7-13-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 465X)]

CSX Transportation, Inc.—Abandonment And Discontinuance of Trackage Rights Exemption—In Fayette County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments and Discontinuances to abandon approximately 3.36 miles of rail line between milepost CAU-0.0 at White Oak Junction, WV, and milepost CAU-3.36 at Carlisle, WV, and to discontinue trackage rights over approximately 9.09 miles of rail line owned by Norfolk Southern between: (1) Valuation station 177+38=valuation station 0+00 at Carlisle and valuation station 354+40 at Lochgelly; (2) valuation station 0+00 at Carlisle and valuation station 36+60 at Oakwood; (3) valuation station 0+00 at Oak Hill and valuation station 63+48 at Oak Hill Junction; and (4) valuation station 0+00 at Parral and valuation station 26+10 at Summerlee, all in Fayette County, WV.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 13, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 26, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 3, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 19, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 93-16633 Filed 7-13-93; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Settlement and Stipulation Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Settlement and Stipulation in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, Case No. 89 C 7748, was lodged on July 1, 1993, with the United States District Court for the Northern District of Illinois.

The proposed Settlement and Stipulation resolves claims of the United States against defendant James B. Day & Co. in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, brought under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Acme Solvents Reclaiming hazardous waste site ("Acme Site") in Winnebago County, Illinois. Under the terms of the Settlement and Stipulation, James B. Day & Co. ("Day") and the United States agree that the United States' claim against Day will be allowed as an unsecured claim in the amount of $110,000 in the bankruptcy proceeding filed by Day, *In re: James B. Day & Co.*, Bankruptcy No. 92 B 17845 (Bankr. N.D. Ill.).

The Department of Justice will receive, for a period of August 13, 1993,

comments relating to the proposed Settlement and Stipulation. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, DOJ Ref. #90–11–2–177.

The proposed Settlement and Stipulation may be examined at the Office of the United States Attorney, 219 S. Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Settlement and Stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–16585 Filed 7–13–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging Of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, Case No. 89 C 7748, was lodged on July 1, 1993, with the United States District Court for the Northern District of Illinois.

The proposed partial consent decree resolves claims of the United States against third party defendant Coatings and Chemicals Corporation in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, brought under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Acme Solvents Reclaiming hazardous waste site ("Acme Site") in Winnebago County, Illinois. Under the terms of the decree, Coatings and Chemicals Corporation ("Coatings") will pay the United States $39,387.36 in settlement of the United States' past costs claims against Coatings.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, DOJ Ref. #90–11–2–177.

The proposed partial consent decree may be examined at the Office of the United States Attorney, 219 S. Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–16587 Filed 7–13–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 1, 1993, a proposed consent decree in *United States* v. *Stanley Smith, et al.*, was lodged with the United States District Court for the District of Wyoming, Civil Action No. 91–CV–0186–B. The decree pertains to the Torrington Hide and Metal Site and the Smith Residence Site, both of which are located in Goshen County, near Torrington, Wyoming.

The proposed consent decree requires the Settling Defendants and Third Party Defendants to pay the United States all past response costs less $100,000.00, and was entered into in conjunction with an Administrative Order on Consent requiring Settling Defendants to perform the remainder of the removal at the Sites, using, in part, a Trust Fund established by the Third Party Defendants.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stanley Smith, et al.* (D. Wy,.) and DOJ Ref. No. 90–7–1–596. The proposed consent decree may be examined at the office of the United States Attorney, District of Wyoming, J.C. O'Mahoney Federal Building, room 4002, 2120 Capitol Avenue, Cheyenne, WY 82001, or at the office of the Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202. A copy of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202) 624–0892 A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $20.50 (25 cents per page reproduction costs) payable to "Consent Decree Library".

John C. Cruden,

Chief,

Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 93–16586 Filed 7–13–93; 8:45 am]

BILLING CODE 4410–01–M

Membership of the Department of Justice's 1993 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1993 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs are to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Paul A. Krumsiek, Acting Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 514–6788

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

[FR Doc. 93–16588 Filed 7–13–93; 8:45 am]

BILLING CODE 4410–01–M

VOL 58 ISS 133 JL 14 1993 UMI

1993 Performance Review Board Members

Antitrust Division

Russell W. Pittman, Chief, Competition Policy Section.
Richard L. Rosen, Chief, Communications and Finance Section.
Charles S. Stark, Chief, Foreign Commerce Section.

Civil Division

Robert L. Bombaugh, Director, Office of Immigration Litigation.
Michael F. Hertz, Branch Director, Commercial Litigation Branch.
Sandra P. Spooner, Deputy Director, Commercial Litigation Branch.

Civil Rights Division

Gerald W. Jones, Counsel to the Assistant Attorney General.
Linda Davis, Chief, Criminal Section.
Paul Hancock, Chief, Housing and Civil Enforcement Section.

Community Relations Service

Jeffrey Weiss, Acting Director.

Criminal Division

Mary C. Spearing, Chief, General Litigation and Legal Advice Section.
Patty M. Stemler, Chief, Appellate Section.
Frederick D. Hess, Director, Office of Enforcement Operations.

Environment And Natural Resources Division

Bruce Gelber, Deputy Chief, Environmental Enforcement Section.
Letitia Grishaw, Chief, Environmental Defense Section.
James Kilbourne, Chief, Wildlife and Marine Resources Section.

Justice Management Division

Frank A. Guglielmo, Director, Computer Service Staff.
Linda A. Cinciotta, Director, Office of Attorney Personnel Management.
Warren Oser, Senior Policy Advisor.

Executive Office for Immigration Review

Jack E. Perkins, Chief Administrative Hearing Officer.

Tax Division

Edward J. Snyder, Chief, Civil Trial Section.
E. Ralph Pierce, Chief, Criminal Enforcement Section.
Donald J. Gavin, Special Litigation Counsel.

Bureau of Prisons

Thomas R. Kane, Assistant Director, Information, Policy and Public Affairs Division.
George E. Killinger, Senior Deputy Assistant Director, Industries, Education and Vocational Training Division.
James A. Meko, Senior Deputy Assistant Director, Correctional Programs Division.
William J. Patrick, Senior Deputy Assistant Director, Administration Division.

Executive Office for U.S. Attorneys

Richard L. DeHaan, Counsel, Office of Legal Education's Relocation Project.

Executive Office for U.S. Trustees

Jeffrey M. Miller, Associate Director.

Immigration and Naturalization Service

Joan C. Higgins, Assistant Commissioner for Detention and Deportation.
John R. Schroeder, Director of Field Support.
James B. Turnage, Jr., District Director, San Diego, CA.
Alfred H. Giugni, District Director, El Paso, TX.

Office of Justice Programs

Benjamin H. Renshaw, Deputy Director, Bureau of Justice Statistics.

U.S. Marshals Service

Kristine M. Marcy, Associate Director for Operation Support.

[FR Doc. 93–16588 Filed 7–13–93; 8:45 am]
BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 20, 1993, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 13, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 2, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–16646 Filed 7–13–93; 8:45 am]
BILLING CODE 4410–09–M

[Docket No. 93–27]

Paul R. Ryan, M.D.; Revocation of Registration

On December 21, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued Orders to Show Cause to Paul R. Ryan, M.D., at Spring Point Loop, P.O. Box 305, Deer Harbor, Washington and 75 5595 Palani Road, Kona Kohala Medical Associates, Kailua-Kona, Hawaii 96740. The Orders to Show Cause proposed to revoke Dr. Ryan's DEA Certificate of Registration, AR7691048, issued to him at his address in Hawaii, and to deny his request for modification of his registration to

change the registered address to the State of Washington. The proposed action was predicated on Dr. Ryan's lack of authorization to handle controlled substances in the States of Hawaii and Washington.

By letter dated January 23, 1993, Respondent requested a hearing on the issues raised by the Orders to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On January 29, 1993, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, Government counsel filed a motion for summary disposition on February 19, 1993.

The administrative law judge then provided Respondent an opportunity to respond to the Government's motion. Respondent failed to file such a response. On April 6, 1993, Judge Bittner issued her opinion and recommended decision, recommending that Respondent's request for a modification of his registration be denied and that his DEA Certificate of Registration be revoked. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on May 10, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter.

The Administrator finds that on August 29, 1991, Respondent's controlled substance registration was suspended by the Narcotics Enforcement Division of the Hawaii Department of Public Safety. As a result, Respondent is not currently authorized to handle controlled substances in the State of Hawaii.

The Administrator further finds that by letter dated February 4, 1992, Respondent notified DEA that he had moved to Deer Harbor, Washington and requested a change of his registered address. DEA Investigators contacted the Washington Medical Board and learned that Respondent was not licensed to practice medicine in that state. Consequently, he does not possess state authority to handle controlled substances in the State of Washington.

The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, 52 FR 47770 (1987); and cases cited therein.

Since there is no dispute about Respondent's lack of authority to handle controlled substances in the States of Hawaii or Washington, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, or when the facts are agreed upon, a plenary, adversarial administrative proceeding with the full panoply of due process rights is not obligatory. *See Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworks, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

Having considerd the facts and circumstances in this matter, the Administrator concludes that Respondent's request for modification of his DEA registration should be denied due to his lack of authorization to handle controlled substances in the State of Washington. The Administrator further concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Hawaii. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR7691048, previously issued to Paul R. Ryan, M.D., be, and it hereby is, revoked. The Administrator further orders that all pending applications for the renewal of such registration or requests for the modification of such registration, be, and they hereby are, denied. This order is effective August 13, 1993.

Dated: July 7, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16645 Filed 7–13–93; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before August 13, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Reinstatements

Title: NEH Division of Education Programs—Application Instructions and Forms.

Form Number: Not applicable.

Frequency of Collection: Collections occur annually or semiannually, according to individual program application deadline.

Respondents: Colleges, universities, nonprofit organizations.

Use: Application for funding.

Estimated Number of Respondents: 489.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 10 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 4,890 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–16680 Filed 7–13–93; 8:45 am]

BILLING CODE 7536–01–M

VOL 58 ISS 133 JL 14 1993 UMI

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License DPR–59 issued to Power Authority of the State of New York (PASNY, the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Technical Specifications to (1) establish a single nominal Safety/Relief Valve (SRV) setpoint of 1110 psig, (2) increase the SRV setpoint tolerance to 3%, (3) establish a SRV Limiting Safety System Setting of 1195 psig, (4) provide an allowance for two SRVs to be inoperable during continuous power operation, and (5) make several administrative changes to the Technical Specifications associated with SRV performance.

The proposed action is in accordance with the licensee's application for amendment dated December 20, 1989, as supplemented by letters dated January 16, 1990, January 3, 1992, January 30, 1992, May 5, 1992, and May 26, 1993.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are required to (1) reduce the number of forced outages due to the unnecessary restriction on plant operation based on very conservative SRV performance limits, (2) reduce the quantity of spare SRV top-works that must be maintained in storage, (3) lessen the number of valve refurbishments, (4) minimize the number of valves requiring confirmatory testing, and (5) reduce the quantity of reportable events.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would (1) establish a single nominal SRV setpoint of 1110 psig, (2) increase the SRV setpoint tolerance to 3%, (3) establish a SRV Limiting Safety System Setting of 1195 psig, and (4) provide an allowance for two SRVs to be inoperable during continuous power operation. The Commission has determined that the changes would not have a significant safety impact on vessel overpressure margin, Emergency Core Cooling System/Loss-of-Coolant Accident performance, High Pressure Coolant Injection/Reactor Core Isolation Cooling operability, simmer margin or downward setpoint drift. Further, the changes to the SRV performance requirements would not increase the probability or consequence of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the Technical Specifications involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 15, 1990 (55 FR 20228). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. It has been determined that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal operation.

Agencies and Persons Contacted

The staff consulted with the State of New York regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the action, see (1) the application for amendment dated December 20, 1989, as supplemented by letters dated January 16, 1990, January 3, 1992, January 30, 1992, May 5, 1992, and May 26, 1993. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 7th day of July 1993.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16676 Filed 7–13–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensee) for operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

The proposed amendment would delete the five-page list of safety-related shock suppressors (snubbers) from Technical Specification (TS) 3.20, while providing an additional Applicability statement. The additional Applicability statement clearly defines the safety-related scope of the snubber program controlled by the TS. In addition, snubber surveillance testing and recordkeeping requirements are changed to reflect the safety-related scope of the snubber program.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the list of safety-related snubbers from TS 3.20, while more clearly defining the safety-related scope of the licensee's snubber program controlled by the TS. No changes are proposed for snubber operability or surveillance requirements.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would permit the licensee to add, delete, relocate or modify snubbers, without requiring a license amendment. Such additions, deletions, relocations or modifications would be controlled by 10 CFR 50.59, Changes, tests and experiments. The proposed change is in accordance with the guidance found in Generic Letter (GL) 84–13, Technical Specifications for Snubbers, and GL 91–08, Removal of Component Lists from Technical Specifications.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

Current requirements for surveillance testing safety-related snubbers to demonstrate operability remain unchanged. The proposed change more clearly defines the safety-related scope of the licensee's snubber surveillance program, while moving the list of safety-related snubbers to a plant procedure that is subject to TS 5.8, Programs and Procedures.

Based on this review, it appears that the three standards of 10 CFR 50.92 (c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 13, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene will be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient

information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Walter R. Butler: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 7, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 8th day of July 1993.

For the Nuclear Regulatory Commission.

E.H. Trottier,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16683 Filed 7–13–93; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Board

[Docket Nos. 50–275–OLA–2, 50–323–OLA–2; ASLBP No. 92–669–03–OLA–02]

July 8, 1993.

Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Facility Operating Licenses No. DPR–80 and DPR–82

Memorandum and Order (Notice of Prehearing Conference and Evidentiary Hearing)

This proceeding concerns the proposed extensions of the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, to recover or recapture the period of construction of the reactors. Notice is hereby given that, consistent with Pacific Gas and Electric Company's (PG&E's) Motion for Schedule Change, dated June 21, 1993, the evidentiary hearing in this proceeding will commence on Tuesday, August 17, 1993, at the Community Room, San Luis Obispo City-County Library, 995 Palm St., San Luis Obispo, California 93401. The hearing will commence immediately following a prehearing conference pursuant to 10 CFR 2.752 that will commence at 9:30 a.m. at that location. The hearing will continue, to the extent necessary, on August 18–21, 1993, at that same location, beginning at 9:00 a.m. each day. (The sessions will adjourn at approximately 5 p.m. daily, except that the session on Saturday, August 21, 1993 will adjourn at 11:30 a.m.)

Sessions will continue, to the extent necessary, on August 23–27, 1993, beginning at 9 a.m. each day, at the City Hall Council Chambers, 990 Palm Street, San Luis Obispo, California 93401. Those sessions will adjourn at approximately 5 p.m. daily.

As provided by 10 CFR 2.743, direct testimony of the parties must be filed (mailed) by Monday, August 2, 1993. The referenced prehearing conference, which will immediately precede the evidentiary hearing, will consider such matters as stipulations as to the genuineness and authenticity of documents and to any particular matters of fact upon which the parties may agree, the potential need or desirability of cross-examination plans (as provided by 10 CFR 2.743(b)(2)), steps to expedite the presentation of evidence, and such other matters as may aid in the orderly disposition of the proceeding.

Notice is also hereby given that, in accordance with 10 CFR 2.715(a), the Licensing Board will hear oral limited appearance statements on Wednesday, August 18, 1993, from 7 p.m. to 10 p.m. (or such lesser time as is necessary to accommodate speakers who are present). Such statements will be heard at the Main Hall, Veterans Building, 801 Grand Avenue, San Luis Obispo, California 93401.

Any person not a party to the proceeding will be permitted to make such a statement, setting forth his or her position on the issues. The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) These statements do not constitute testimony or evidence but may assist the Licensing Board and parties in defining the scope of the various issues in the proceeding.

Requests to make oral statements may be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of each such request should also be submitted to the Chairman of this Licensing Board, ASLBP, EWW–439, Washington, DC 20555.

Documents relating to this proceeding are on file at the Local Public Document Room, located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San

Luis Obispo, California 93407, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., NW., Washington, DC 20037.

Dated: July 8, 1993.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 93–16678 Filed 7–13–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–395]

South Carolina Electric & Gas Company and South Carolina Public Service Authority; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 50–395 issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would decrease the minimum allowable secondary side pressure at which surveillance testing of the steam driven emergency main feedwater pump is performed from 900 psig to 865 psig.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment changes the test conditions for which Surveillance Requirement 4.7.1.2.a.2 is performed and proposes no other significant change to the subject surveillance. Testing the turbine-driven emergency feedwater pump at a steam pressure below 900 psig does not adversely affect either the availability or the functional performance of the emergency feedwater system. At the proposed reduced steam pressure, the emergency feedwater pump remains capable of developing sufficient brake horsepower to develop full operating conditions. As such, the proposed testing adequately demonstrates the functional performance of the turbine-driven emergency feedwater pump.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revised testing does not affect the emergency feedwater system initiation, system response time, or system functional performance. The proposed amendment changes the manner in which the turbine-driven emergency feedwater pump will be tested and does not involve physical changes to the emergency feedwater system. As such, new or different accidents are not created.

(3) The proposed amendment does not involve a significant reduction in the margin of safety.

The functional performance of the emergency feedwater system functional performance is not changed as a result of the revised testing. As such current margins of safety are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 13, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set

VOL 58 ISS 133 JL 14 1993 UMI

forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa, Project Director, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29118, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will be not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 25, 1993, as modified June 16, 1993, and June 30, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 7th day of July 1993.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Acting Project Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation

[FR Doc. 93–16675 Filed 7–13–93; 8:45 am]

BILLING CODE 7590–01–M

Texas Utilities Electric Co.; Issuance of Amendments To Facility Operating Licenses

[Docket Nos. 50–445 and 50–446

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 17 and 3 to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company, which revised the Technical Specifications for operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The amendments are effective as of the date of issuance.

The amendments revised Technical Specifications Section 5.3.1 to allow an increase in the maximum allowable fuel enrichment from 3.5 percent to 4.3 percent enriched fuel.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 20, 1993 (58 FR 21323). No request for a hearing or petition for leave to intervene was filed following this action.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 16, 1992, as supplemented by letter dated March 17, 1993, (2) Amendment Nos. 17 and 3 to License Nos. NPF–87 and NPF–89, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V/

Dated at Rockville, Maryland, this 7th day of July 1993.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16674 Filed 7–13–93; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Tuesday, July 27 and Wednesday, July 28, 1993 at the Washington Marriott, 1221 22nd Street NW., Washington, DC in the Dupont Ballroom. The meetings are expected to begin at 9:00 a.m. each day. The topics the Commission will discuss are: State roles and capabilities in implementing health system reform, roles and functions of health alliances, risk adjustment, meeting the needs of underserved populations under system reform, technology diffusion, and data requirements for system reform.

ADDRESSES: The Commission is located at 2120 L Street, NW in suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant at 202/653–7220.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Wednesday, July 21, 1993 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93–16620 Filed 7–13–93; 8:45 am]

BILLING CODE 8820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32588; File No. SR–PHILADEP–92–04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Order Approving Proposed Rule Change Relating to Definition of Signature Guarantee

July 7, 1993.

On December 22, 1992, the Philadelphia Depository Trust Company ("PHILADEP") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] PHILADEP amended the filing to correct citations contained in the original filing, to revise the language of its Rule 1 describing an acceptable signature guarantee, and to provide additional information regarding the purpose of certain amendments.[2] On May 6, 1993, notice of the proposed rule change was published in the Federal Register to solicit comments from interested persons.[3] No comments were received. As discussed below, the Commission is granting approval of the proposal.

I. Description

The proposed rule change amends the definition of "signature guarantee" so that a medallion imprint or stamp evidencing participation or membership in a "signature guarantee program" as defined by Rule 17Ad–15 under the Act[4] will constitute a signature guarantee acceptable to PHILADEP. Such "signature guarantee programs" are being offered by entities unaffiliated with PHILADEP or its parent corporation, the Philadelphia Stock Exchange, Inc. ("PHLX").[5] Prior to the amendment, PHILADEP accepted signature guarantees of members of programs of the Stock Clearing Corporation of Philadelphia, the New York Stock Exchange, other clearing agencies registered under the Act or banks acceptable to transfer agents acting on behalf of issuers of securities. Under these programs, transfer agents typically would be furnished with specimen signature cards of authorized personnel of program participants.

In addition, the proposed rule change adds language, based on the Uniform Commercial Code Section 8–312, stating that a signature guarantee is a warranty of the genuineness of the signature, the appropriateness of the endorser, and the legal capacity of the endorser.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and to remove impediments and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In enacting Section 17A of the Act, Congress found that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.[7]

By accepting signature guarantees from programs consistent with Rule 17Ad–15, PHILADEP will streamline the signature guarantee process by eliminating the need for the current cumbersome signature card system. Consequently, the Commission believes that the proposal is consistent with Section 17A(b)(3)(F) of the Act in that it will remove an impediment to the transfer of record ownership and thus promote the prompt and accurate clearance and settlement of securities transactions.

Section 17A(d)(5) of the Act[8] requires that a registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or to facilitate the equitable

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Murray Ross, Secretary, PHILADEP, to Christine Sibille, Attorney, Commission (January 26, 1993); and Letter from Murray Ross, Secretary, PHILADEP, to Christine Sibille, Attorney, Commission (February 9, 1993).

[3] Securities Exchange Act Release No. 32230 (April 27, 1993), 58 FR 27028.

[4] 17 CFR 240.17Ad–15(g)(3) (1992).

[5] Neither PHILADEP nor PHLX plans to offer or administer a "signature guarantee program."

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. § 78q–1(a)(1)(A) (1988).

[8] 15 U.S.C. § 78q–1(d)(5) (Supp. 1993).

VOL
58
ISS
133
JL
14
1993
UMI

treatment of financial institutions which issue such guarantees. The Commission believes that PHILADEP's amendment to its definition of "signature guarantee" to include, as an acceptable "signature guarantee," a medallion imprint or stamp evidencing membership or participation in a signature guarantee program as defined in Rule 17Ad–15 under the Act is consistent with section 17A(d)(5) of the Act and Rule 17Ad–15, which implements that section.

The Commission also believes that the addition of language consistent with Uniform Commercial Code Section 8–312 fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The New York Stock Exchange has adopted similar language in its Rule 210, and The Midwest Stock Exchange is considering adding a corresponding provision to its rules.[9] The adoption of uniform language promotes cooperation in the clearance and settlement of securities transactions consistent with the requirements of section 17A(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHILADEP–92–04) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16670 Filed 7–13–93; 8:45 am]

BILLING CODE 8010–01–M

[9] Conversation between Murray Ross, Secretary, PHILADEP, and Christine Sibille, Staff Attorney, Division of Market Regulation, Commission (January 12, 1993).

[Release No. 34–32590; File No. SR–PHLX–92–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Requirement That Members Become Participants in a "Signature Guarantee Program"

July 7, 1993.

On December 21, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Subsequently, PHLX amended the filing to eliminate two additional sections deemed obsolete, to correct citations contained in the original filing, to provide a description of the existing signature guarantee program and to provide additional information regarding the purpose of certain amendments.[2] On May 6, 1993, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[3] No comments were received. As discussed below, the Commission is granting approval of the proposal.

I. Description

The proposed rule change eliminates PHLX's signature guarantee program and enables PHLX to convert its Rules respecting signatures effecting assignments, powers of substitutions, signature guarantees, and other certifications and guarantees incident to the transfer, payment, exchange, purchase or delivery of certificates representing securities (including, but not limited to, erasure guarantees, one-and-the-same guarantees and situs certifications) to require members and member organizations to use a medallion imprint or stamp which signifies their participation in a "signature guarantee program" (a "Rule 17Ad–15 Signature Guarantee Program")[4] as defined by Rule 17Ad–15 adopted under the Act.[5]

In order to facilitate compliance with transfer agents' requirements for verification of signatures on guarantees made by member organizations, PHLX and its subsidiary, the Stock Clearing Corporation of Philadelphia ("SCCP"), jointly administered a signature guarantee program for their members. PHLX and SCCP members could subscribe to the joint PHLX/SCCP signature guarantee program, in an arrangement under which PHLX and SCCP provided sample signatures to transfer agents of certain authorized officers and/or employees under powers of attorney filed with PHLX and SCCP under PHLX Rules 327 and 340 and guaranteed the signature to any assignment or power of substitution executed by such authorized persons. SCCP maintained an extensive file of sample authorized signatures provided by participating organizations and made these samples available to transfer agents.

In light of the recently adopted Rule 17 Ad–15,[6] PHLX has decided to eliminate its signature guarantee program. It should be noted that PHLX's signature guarantee program was not documented in PHLX's rules. The references to the former signature guarantee program were contained in Rule 1 of the SCCP Rules and Rule 1 of the Philadelphia Depository Trust Company ("Philadep") Rules.[7]

Incidental to the foregoing, the rule change also restates certain PHLX rules relating to guarantees, transfers and deliveries of securities. Specifically, PHLX Rules 327, 338 and 339 have been amended to require members to use a medallion or stamp of a Rule 17Ad–15 Signature Guarantee Program to guarantee signatures, and to define a signature guarantee acceptable to PHLX as a medallion or stamp of a Rule 17Ad–15 Signature Guarantee Program. PHLX Rules 325, 328, 329, 330 and 331 have been amended to add cross reference to the PHLX rules defining an acceptable signature guarantee or to substitute language regarding the use of a medallion or stamp of a Rule 17Ad–15 Signature Guarantee Program. In addition, the proposal eliminates certain unnecessary or obsolete rules[8] and, where necessary in the interests of uniformity in the industry, amends certain PHLX rules in this area to conform to the corresponding rules of the New York Stock Exchange ("NYSE").[9]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Murray Ross, Secretary, Philadelphia Stock Exchange, to Christine Sibille, Attorney, Commission (January 26, 1993); Letter from Murray Ross, Secretary, Philadelphia Stock Exchange, to Christine Sibille, Attorney, Commission (February 9, 1993).

[3] Securities Exchange Act Release No. 32228 (April 27, 1993), 58 FR 27029.

[4] PHLX does not plan to offer or administer a Rule 17Ad–15 Signature Guarantee Program.

[5] 17 CFR 240.17Ad–15(g)(3) (1992).

[6] Rule 17Ad–15 empowers transfer agents to establish guidelines for acceptable signature guarantee programs as contemplated by that Rule. Non-participants in such a signature guarantee program risk rejection of transfers.

[7] The Commission is simultaneously herewith approving rule changes filed by both organizations eliminating these provisions. See Securities Exchange Act Release No. 32230 (April 27, 1993), 58 FR 27028 (Philadep, Notice of proposed rule change); Securities Exchange Act Release No. 32229 (April 27, 1993), 58 FR 27031 (SCCP, Notice of proposed rule change).

[8] PHLX Rules 334 through 336 and corollary forms 9 and 10, which are designed to require a married woman to obtain the consent of her husband to the transfer of her property, are being deleted as obsolete.

[9] PHLX Rule 326 is being amended, consistent with NYSE Rule 201, to permit an assignment or power of substitution to be executed by a domestic executor, trustee or guardian, without additional documentation. PHLX Rule 340 is being amended, consistent with NYSE Rule 210 and the Uniform Commercial Code Section 8–312, to define the warranties provided by a signature guarantee.

II. Discussion

Section 6(b)(15) of the Act [10] requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to foster coordination among persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, and to remove impediments and perfect the mechanism of a free and open market. In enacting section 17A of the Act, Congress found that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and person facilitating transactions by and acting on behalf of investors.[11]

By eliminating its signature guarantee program, PHLX will streamline the signature guarantee process. In place of the cumbersome signature card system, PHLX will require participation in a Rule 17Ad–15 Signature Guarantee Program. Consequently, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act in that it will remove an impediment to the transfer of record ownership and thus promote coordination among persons engaged in the clearance and settlement of securities transactions, and removal of impediments to a free and open market.

Section 17A(d)(5) of the Act [12] requires that a registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or to facilitate the equitable treatment of financial institutions which issue such guarantees. The Commission believes that PHLX's adoption of a definition of "signature guarantee" to include, as an acceptable guarantee," a medallion imprint or stamp evidencing membership or participation in a signature guarantee program as defined in Rule 17Ad–15 under the Act is consistent with section 17A(d)(5) of the Act and Rule 17Ad–15, which implements that section.

The Commission also believes that the elimination of unnecessary and obsolete rules and the addition of language consistent with other self-regulatory organization rules fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and the removal of impediments to and perfection of the mechanism of a free and open market consistent with the requirements of section 6(b)(5) under the Act.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHLX–92–39) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16671 Filed 7–13–93; 8:45 am]

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[10] 15 U.S.C. 78d(b)(5) (1981).

[11] 15 U.S.C. 78q–1(a)(1)(A) (1988).

[12] 15 U.S.C. 78q–1(d)(5) (Supp. 1993).

[Release No. 34–32589; File No. SR–SCCP–92–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Change Relating to Definition of Signature Guarantee

July 7, 1993.

On December 28, 1992, the Stock Clearing Corporation of Philadelphia ("SCCP") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] SCCP amended the filing to correct citations contained in the original filing, to provide a description of its current signature guarantee program and to provide additional information regarding the purpose of certain amendments.[2] On May 6, 1993, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[3] No comments were received. As discussed below, the Commission is granting approval of the proposal.

I. Description

The proposed rule change eliminates SCCP's existing signature guarantee program and amends the definition of "signature guarantee" so that a medallion imprint or stamp evidencing participation in a "signature guarantee program" as defined by Rule 17Ad–15 under the Act [4] will constitute a signature guarantee acceptable to SCCP. Such "signature guarantee programs" are being offered by entities unaffiliated with SCCP or its parent corporation, the Philadelphia Stock Exchange, Inc. ("PHLX").[5]

In order to facilitate compliance with transfer agents' requirements for verification of signatures on guarantees made by member organizations, SCCP and PHLX jointly administered a signature guarantee program for their members. PHLX and SCCP members could subscribe to the joint PHLX/SCCP signature guarantee program, in an arrangement in which PHLX and SCCP provided sample signatures to transfer agents of certain authorized officers and/or employees under powers of attorney filed with PHLX and SCCP under PHLX Rules 327 and 340 and guaranteed the signature to any assignment or power of substitution executed by such authorized persons. SCCP maintained an extensive file of sample authorized signatures provided by participating organizations and made these samples available to transfer agents.

In light of the recently adopted Rule 17Ad–15 under the Act,[6] SCCP has decided to eliminate its existing signature guarantee program, and accept as signature guarantees a medallion or imprint evidencing participation in a signature guarantee program as defined in Rule 17Ad–15 under the Act. In addition, the proposed rule change adds language, based on the Uniform Commercial Code Section 8–312, stating that a signature guarantee is a warranty of the genuineness of the signature, the appropriateness of the endorser, and the legal capacity of the endorser.

II. Discussion

Section 17A(b)(3)(F) of the Act [7] requires that the rules of a clearing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Murray Ross, Secretary, SCCP, to Christine Sibille, Attorney, Commission (January 26, 1993); Letter from Murray Ross, Secretary, SCCP, to Christine Sibille, Attorney, Commission (February 9, 1993).

[3] Securities Exchange Act Release No. 32229 (April 27, 1993), 58 FR 27031.

[4] 17 CFR 240.17Ad–15(g)(3) (1992).

[5] Neither SCCP nor PHLX plan to offer or administer a "signature guarantee program."

[6] Rule 17Ad–15 empowers transfer agents to establish guidelines for acceptable "signature guarantee programs" as contemplated by Rule 17Ad–15. Non-participants in such a "signature guarantee program" risk rejection of transfers.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

VOL 58 ISS 133 JL 14 1993 UMI

agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and to remove impediments and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In enacting section 17A of the Act, Congress found that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and person facilitating transactions by and acting on behalf of investors.[8]

By eliminating its signature guarantee program, SCCP will streamline the signature guarantee process. The cumbersome signature card system will be replaced by a signature guarantee program as described in Rule 17Ad–15 under the Act. Consequently, the Commission believes that the proposal is consistent with section 17A(b)(3)(F) of the Act in that it will remove an impediment to the transfer of record ownership and thus promote the prompt and accurate clearance and settlement of securities transactions.

Section 17A(d)(5) of the Act[9] requires that a registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or to facilitate the equitable treatment of financial institutions which issue such guarantees. The Commission believes that SCCP's amendment to its definition of "signature guarantee" to include, as an acceptable "signature guarantee," a medallion imprint or stamp evidencing membership or participation in a signature guarantee program as defined in Rule 17Ad–15 under the Act is consistent with section 17A(d)(5) of the Act and Rule 17Ad–15, which implements that section.

The Commission also believes that the addition of language consistent with Uniform Commercial Code Section 8–312 fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The New York Stock Exchange has adopted similar language in its Rule 210, and The Midwest Stock Exchange is considering adding a corresponding provision to its rules.[10] The adoption of uniform language promotes cooperation in the clearance and settlement of securities transactions consistent with the requirements of section 17A(b)(3)(F).

[8] 15 U.S.C. 78q–1(a)(1)(A) (1988).

[9] 15 U.S.C. 78q–1(d)(5) (Supp. 1993).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–92–03) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16672 Filed 7–13–93; 8:45 am]

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[Release No. 34–32604; File No. SR–Amex–92–11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc. Amending the Minor Rule Violation Fine System Under Rule 590 and Minor Rule Violation Enforcement and Reporting Plan

July 8, 1993.

Pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 22, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 16, 1993 the Amex submitted to the Commission Amendment No. 1 to the proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] Conversation between Murray Roes, Secretary, SCCP, and Christine Sibille, Staff Attorney, Division of Market Regulation, Commission (January 12, 1993).

[1] 15 U.S.C. 78s(b)(1) and (d)(1) (1988).

[2] See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Commission, dated February 12, 1993. Amendment No. 1 authorizes the Exchange's Minor Floor Violation Disciplinary Committee the authority to fine floor members for certain minor floor violations.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its minor rule violation fine system contained in Amex Rule 590 to give the Exchange's Minor Floor Violation Disciplinary Committee the authority to fine floor members for certain minor rule violations. The following is the text of the proposed rule change: (Brackets indicate deletions; italics indicate proposed new language);

Minor Rule Violation Fine Systems

Part 1

General Rule Violations

Rule 590. (a) Notwithstanding Article V, Section 1(b) of the Constitution, [the Exchange may] *a fine not to exceed $5,000 may be imposed,* subject to the requirements set forth herein, [impose a fine, not to exceed $5,000] on any member, member organization, approved person or employee of a member or member organization, with respect to [any] *those* rule violations listed below in Paragraphs (g) *and (h)* of Part 1 of this Rule. *The Exchange's Enforcement Department is authorized to impose fines for those rule violations listed in Paragraph (g) and the Exchange's Minor Floor Violation Disciplinary Committee is authorized to impose fines for those listed in Paragraph (h).*

(b) In any action taken [by the Exchange] pursuant to Part 1 of this Rule, any person against whom a fine is imposed shall be served as provided in Article V, Section 1(b) of the Constitution with a written statement, signed by an authorized officer of the Exchange's Enforcement Department *in the case of those rule violations listed in Paragraph (g) or by an authorized member of the Exchange's Minor Floor Violation Disciplinary Committee in the case of those rule violations listed in Paragraph (h),* setting forth: (i) the rule or rules alleged to have been violated, (ii) the act or omission constituting each such violation, (iii) the fine imposed for each violation, and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided below, such date to be not less than 20 days after the date of service of the written statement.

(c) No change

(d) Any person against whom a fine is imposed pursuant to Part 1 of this Rule may contest the [Exchange's] determination by filing with the Secretary of the Exchange not later than the date by which such determination

must be contested, a written response meeting the requirements of an "Answer" as provided in Article V, Section 1(b) of the Constitution, at which point the matter shall become subject to the provisions of Article V, Section 1(b), In any such formal disciplinary proceeding, if the Disciplinary Panel determines that the person charged is guilty of the rule violation(s) alleged, the Panel shall be free to impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and rules.

(e) The maximum fine authorized under Part 1 of this Rule (i.e., for violations subsequent to a second offense as set forth in Paragraphs (g) *and (h)*), may be imposed for a first or second offense if warranted under the circumstances [in the view of the Exchange's Enforcement Department].

(f) The Exchange shall issue an information circular to the membership from time to time listing the Exchange Constitution and rule provisions (listed below in Paragraphs (g) *and (h)*) as to which [the Exchange may impose] fines *can be imposed* as provided in Part 1 of this Rule. Such list shall indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such rule.

(g) The following is a list of the rule violations and applicable fines that may be imposed by the [Exchange] *Exchange's Enforcement Department* pursuant to Part 1 of this Rule.

1. Violation of short sale rule. (Rule 7)
2. Violation of registered trader stabilization requirements. (Rules 111(b), 111(e), 114.02 and 114.03)
3. Violation of position limit rules. (Rules 904 and 904C)
4. Violation of exercise limit rules. (Rules 905 and 905C)
5. Violation of option exercise rule. (Rule 980)
6. Failure to submit books and records, to furnish information, or to appear and testify within the time period required by the Exchange. (Article V, Section (4) (h), (j) and (k) and Rule 31)
7. Failure to submit audit trail data or failure to submit accurate audit trail data (Article V, Section (4) (h), (j) and (k) and Rule 31)
8. Violation of record-keeping requirements. (Rules 153 and 180)
9. Violation of reporting rules. (Rules 111, 114.06, 341.09, 342(f), 906 and 906C)
10. *Violation of principal/agent prohibition. (Rules 111(c) and 950(c))*
11. *Failure to follow proper procedure when establishing a long term investment account. (Rule 170, Commentary .07)*
12. *Failure to properly mark or identify and represent upstairs orders as required under Exchange rules.*

Fine amount	Individual	Member organization
1st Offense	$500	$1,000
2nd Offense[3] ...	$1,000	$2,500
Subsequent Offense	$2,500	$5,000

[3] For the purposes of paragraphs (g) and (h), second and subsequent offenses are counted during a rolling 12 month period.

(h) The following is a list of the rule violations and applicable fines that may be imposed by the Exchange's Minor Floor Violation Disciplinary Committee pursuant to Part 1 of this Rule.

1. *Violation of registered option trader zone requirement. (Rule 958, Commentary .03, and Exchange policy)*
2. *Failure to comply with the SEC firm quote rule and honoring 10-up market for customer option orders. (SEC Rule 11Ac1-1 and Rule 958A)*
3. *Failure to quote options markets within the maximum quote spread differentials. (Rules 958 (c) and 950 (n))*
4. *Failure to comply with option solicitation procedures. (Rule 950 (d), Commentary .03)*
5. *Violation of Off-Floor trading prohibition. (Rule 958 (g))*
6. *Failure to comply with Exchange's Auto-Ex policy.*
7. *Failure to properly mark or identify and represent Floor orders as required under Exchange rules.*
8. *Violation of the Exchange's delayed opening policy.*

Fine Amount	Individual	Member Organization
1st Offense	$500	$1,000
2nd Offense	$1,000	$2,500
Subsequent Offense	$2,500	$5,000

. . . COMMENTARY

.01 No change.

.02 No change.

.03 Any person that contests a fine imposed under Rule 590 will be required to pay a $100 fee to contest such fine, which will be reimbursed if the Disciplinary Panel finds the person not guilty of the alleged rule violation.

.04 If a fine imposed by the Exchange's Minor Floor Violation Disciplinary Committee under Paragraph (h) of Part 1 of this Rule is contested, the Exchange Disciplinary Panel hearing the matter in accordance with the provisions of Article V, Section 1(b) of the Constitution shall be composed of three members of the Minor Floor Violation Disciplinary Committee, none of whom shall have participated in the decision to impose the fine.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Currently, the Exchange's Committee on Specialist and Registered Trader Performance ("Performance Committee") is delegated authority by the Board of Governors ("Board") to review specialist and registered trader performance and to take certain actions in an effort to improve inadequate performance. Among the actions it can take are the following: Sending admonitory letters; prohibiting specialist units from applying for allocations for specified periods of time; recommending to the Allocations Committee that securities be reallocated; and referring the matter to the Exchange's Enforcement Department for further action. With respect to certain minor floor violations that it reviews, the Performance Committee does not have an adequate way to deal effectively with the problem of recurring violations. Where there have been prior violations, an admonitory letter is generally viewed as inadequate, while the Performance Committee's other remedies are often seen as too severe to impose in the case of minor rule violations. The Exchange has created a new Committee composed of Floor members, the Minor Floor Violation Disciplinary Committee ("Disciplinary Committee"), giving it the authority to review these minor floor violations and fine floor members under the Exchange's minor rule violation fine system (Rule 590). Giving fining authority to this new Disciplinary Committee will allow the Exchange to

VOL 58 ISS 133 JL 14 1993 UMI

maintain the non-disciplinary nature of the Performance Committee.

Currently under Part 1 of Rule 590, the Exchange's Enforcement Department is authorized, after a matter has been referred to it, to impose fines ranging from $500 to $2,500 against individuals and from $1,000 to $5,000 against member firms, for a series of substantive minor rule violations listed in the rule.[4] The member or member organization may plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel.[5]

Under the new proposal, certain minor floor violations will be added to Part 1 of Rule 590, with the Disciplinary Committee being authorized to impose a fine under the rule with respect to those particular violations.[6] The same due process procedures will apply, with the member or member organization being able to plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel. The Disciplinary Panel will be composed of three members of the Disciplinary Committee, none of whom will have participated in the initial decision to impose the fine.[7] To discourage frivolous hearing requests, a $100 fee will be charged to contest a fine, which will be reimbursed if the Panel finds the person not guilty of the alleged rule violation.[8] The fines imposed by the Disciplinary Committee under this proposal, like all fines imposed under Rule 590, will be reported as disciplinary actions to the Commission as required by Commission Rule 19d–1.[9]

The Amex believes that the Rule 590 fine system has worked well in practice, providing for convenient and quick resolution of minor rule violations. The Amex believes that allowing the Disciplinary Committee to impose fines under Rule 590 will provide it with a very meaningful deterrent to deal more efficiently with these minor floor violations. The proposed list of minor floor violations for which the Disciplinary Committee will have fining authority is set forth in proposed paragraph (h) of Rule 590. The current list of rule violations for which the Enforcement Department has fining authority under paragraph (g), Rule 590, is also being expanded with the addition of three new violations.[10]

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act is general and furthers the objections of Section 6(b)(6) in particular in that it is intended to assure that Exchange members and member firms are appropriately disciplined for rule violations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–11 and should be submitted by August 4, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16666 Filed 7–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32595; File No. 24–BSECC–92–01]

Self-Regulatory Organizations; The Boston Stock Exchange Clearing Corp.; Order Approving Proposed Rule Change Relating to the Rescission of Its Signature Guarantee Program

July 7, 1993.

On December 22, 1992, The Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] concerning the elimination of its Signature Guarantee Program ("Program"). On March 18, 1993, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. For the reasons discussed below, the

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[4] Part of Rule 590 provides for a fine system for floor decorum violations; Part 3 authorizes fines for the late filing of reports required to be submitted to the Exchange.

[5] See Amex Constitution, Article V, Section 1(b) and Amex Rule 590(c) and (d).

[6] In addition to imposing fines, the Disciplinary Committee will also have the authority to send admonitory letters and refer matters to the Enforcement Department for further action.

[7] See proposed Amex Rule 590, Commentary .04.

[8] See proposed Amex Rule 590, Commentary .03

[9] A self-regulatory organization ("SRO") is required, pursuant to Rule 19d–1(c)(1), to file promptly with the Commission any final disciplinary action taken by the SRO. However, Rule 19d–1(c)(2) establishes that minor rule plan determinations, imposing fines not exceeding $2,500, are not deemed final, thereby permitting the SRO to report the action to the Commission on a quarterly, as opposed to immediate, basis.

[10] The Exchange has also requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 minor rule violation enforcement and reporting plan to include the amendments contained in this proposal. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, Commission, dated April 21, 1992. The Commission approved Amex Rule 590 in Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4–260) and the Amex's minor rule violation enforcement and reporting plan in Securities Exchange Act Release No. 27543 (December 15, 1989), 54 FR 53223 (December 27, 1989) (File No. SR–Amex–89–06), relieving the Amex of the current reporting requirements imposed under Section 19(d)(1) of the Act. The Commission notes that Rule 590 fines in excess of $2,500 are not considered assessed pursuant to the Plan and, accordingly, must be reported on an immediate basis to the Commission under Section 19(d)(1) of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 31985 (March 11, 1993), 58 FR 14602.

Commission is approving the proposed rule change.

I. Description of the Proposal

The purpose of the proposed rule change is to eliminate the BSECC Program. In order to facilitate compliance with transfer agents' requirements for verification of signature guarantees by Boston Stock Exchange ("BSE") and BSECC member organizations, BSECC administered a signature card program. BSECC's Program had been open to any BSE broker-dealer or specialist member, as well as members of BSECC. Under its Program, BSECC furnished issuers and transfer agents specimen signature cards of authorized personnel of Program participants and guaranteed the signatures of such authorized personnel.

On January 6, 1992, the Commission adopted Rule 17Ad–15 under the Act,[3] which allows transfer agents to reject signature guarantees from eligible guarantor institutions that do not participate in a "signature guarantee program" as defined in rule 13Ad–15. In light of new Commission Rule 17Ad–15 under the Act,[4] BSECC is eliminating its Program. In addition, BSECC does not plan to offer or administer a "signature guarantee program" as defined in Rule 17Ad–15 under the Act.[5]

II. Discussion

The Commission believes that BSECC's proposed rule change is consistent with section 17A of the Act and, specifically, with Sections 17A(b)(3)(A) and (F).[6] Those sections require a clearing agency to be organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

By eliminating its Program, BSECC will greatly streamline the signature guarantee process by eliminating the need for the cumbersome signature card system. Consequently, the Commission believes that the proposal is consistent with section 17A(b)(3)(F) of the Act[7] in that it will remove an impediment to the transfer of record ownership and thus promote the prompt and accurate clearance and settlement of securities transactions and will help to assure the safeguarding of securities and funds which are in BSECC's custody or control or for which it is responsible. The Commission further believes that the proposed rule change is consistent with section 17Ad–5 of the Act[8] and Rule 17Ad–15 which implements that section.

III. Conclusions

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SE–BSECC–92–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16667 Filed 7–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32593; File No. SR–ICC–93–01]

Self-Regulatory Organization; The Intermarket Clearing Corp.; Order Approving a Proposed Rule Change Relating to Scheduling of Board Meetings

July 7, 1993.

On May 11, 1993, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–ICC–93–01) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to allow ICC's Board of Directors ("Board") greater flexibility in scheduling regular Board meetings. Notice of the proposal was published in the **Federal Register** on June 7, 1993.[2] No comment letters were received. This order approves ICC's proposal

I. Description

ICC's current By-Laws require the Board of Directors to hold regular meetings on a monthly basis. The By-Laws further require that unless the Board by resolution provides otherwise with respect to a particular meeting, regular meetings in even-numbered months are to be held at ICC's offices in Chicago, Illinois, and regular meetings in odd-numbered months are to be held at ICC's offices in New York, New York.

ICC has found that it is difficult to convene all of the Directors on a monthly basis. Moreover, it is costly and time consuming for ICC to prepare for and hold such frequent meetings of the Board. ICC has determined that the Board can fulfill its duties of managing the business and affairs of ICC with less frequent meetings. Accordingly, the proposed By-Law change eliminates the monthly meeting requirement and allows the Board to schedule regular meetings at such times as the Board shall provide by resolution.[3]

The proposed By-Law change also allows for more flexibility with respect to the site of the Board's regular meetings. The practice of alternating between New York and Chicago was originally adopted in order to make it more convenient for the Member Directors who resided in New York to attend meetings. However, ICC's Member Directors now reside in all parts of the country. Accordingly, ICC believes that the Board should have the authority to select an appropriate site for each meeting. The proposed By-Law change grants that authority by allowing the Board to meet at such places as it shall provide by resolution.[4]

II. Discussion

Section 19(b)(2)(A) of the Act[5] requires that the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder. Section 17A(b)(3)(A) of the Act[6] requires that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to comply with the provisions of section 17A of the Act and the rules and regulations thereunder. The Commission believes that because the proposed rule change will enable ICC to schedule regular Board meetings at times and places as needed to conduct the business affairs of ICC, it should enable ICC to function more efficiently without diminishing its ability to perform its statutory

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[3] Securities Exchange Act Release No. 30146 (January 6, 1992), 57 FR 1082.

[4] 17 CFR 240.17Ad–15 (1992).

[5] *Id.*

[6] 15 U.S.C. 78q–1(b)(3)(A) and (F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(d)(5).

[9] 17 CFR 200.30–3(a)(12)(1992)

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 32389 (May 28, 1993), 58 FR 31986.

[3] ICC plans to hold regular Board meetings every other month. Telephone conversation between James C. Yong, Vice President and Assistant Secretary, ICC, and Peter R. Geraghty, Attorney, Division of Market Regulation, Commission (May 17, 1993).

[4] All Board meetings are expected to be held in Chicago except for one meeting each year to be held in Washington, DC, and one meeting each year to be held at a site to be determined. *Id.*

[5] 15 U.S.C. 78s(b)(2)(A).

[6] 15 U.S.C. 78q–1(b)(3)(A).

VOL 58 ISS 133 JL 14 1993 UMI

obligations as a registered clearing agency under section 17A of the Act.

III. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ICC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16668 Filed 7–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32594; File No. SR–MSRB–93–3]

Self-Regulatory Organizations; The Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Relating to Settlement Dates for When, As, and If Issued Transactions

July 7, 1993

On March 23, 1993, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–93–03) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The filing proposes to amend MSRB Rule G–12(b)(ii)(C) to require managing underwriters for nearly all new issues of municipal securities to provide a registered clearing agency offering automated comparison services for municipal securities transactions with the settlement dates of new issues as soon as they are known and thereafter to inform immediately the registered clearing agency of any changes in such settlement dates. Notice of the proposal was published in the **Federal Register** on June 7, 1993.[2] No comment letters were received. This order approves the MSRB's proposal.

I. Description

MSRB Rule G–12(b) establishes uniform settlement dates for transactions in municipal securities. For when, as, and if issued (collectively referred to as "when-issued") transactions, Rule G–12(b)(ii)(C) currently requires the managing underwriter in a new issue of municipal securities that are to be compared through the automated comparison facilities of a registered clearing agency to provide the registered clearing agency with not less than six business days notice of the settlement date of the issue.[3] Furthermore, in such transactions the settlement date can not be less than five business days after the notice of the settlement date is provided to the registered clearing agency. The proposed rule change amends Rule G–12(b)(ii)(C) to require the managing underwriter in a new issue of municipal securities that are to be compared through the automated comparison facilities of a registered clearing agency to provide the registered clearing agency with notice of the settlement date for the issue as soon as it is known and thereafter to provide the registered clearing agency with immediate notice of any changes in the settlement date.

The amendment to Rule G–12(b)(ii)(C) is critical to the success of the National Securities Clearing Corporation's ("NSCC") redesigned municipal transaction comparison system, which is known as the Fixed Income Transaction System ("FITS").[4] FITS is designed to improve the initial comparison rate for when-issued transactions, which currently is less than fifty percent.[5] The Board believes one reason for the low comparison rate in when-issued transactions is that the two parties to a when-issued transaction sometimes submit the transaction for comparison in different formats. For example, one party may submit the transaction using a dollar price or yield format ("when-issued format") while the contraside may submit the transaction using a settlement date and final monies format. NSCC's current municipal securities comparison system requires that all transactions executed more than five business days prior to the settlement date for a new issue be submitted using a when-issued format while all transactions executed thereafter be submitted using a final monies format.

NSCC's current system cannot compare a submission in a when-issued format with a submission in a final monies format because NSCC does not always know the settlement date during the when-issued period. FITS has the ability to compare when-issued trade information even when one side of the transaction submits the information in a when-issued format and the other side submits the information using a final monies format. This ability should improve the when-issued comparison rate.

For FITS to operate successfully, it is critical that NSCC be advised of the settlement date as soon as possible. FITS needs the settlement date in order to compute final monies for those transactions submitted in a when-issued format. By computing final monies, FITS is able to make comparisons of submissions in when-issued format with submissions in final monies format. In addition, amended Rule G–12(b)(ii)(C) requires the managing underwriter to inform immediately NSCC of any changes in the settlement date if changes occur subsequent to the initial notification. This will allow FITS time to recompute final monies for comparison and settlement purposes.

II. Discussion

Section 15B(b)(2)(C)[6] of the Act requires that the Board propose and adopt rules that are designed to foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. The amendment to Rule G–12(b)(ii)(C) is an independent but vital component of FITS and is ultimately necessary for the success of the system and for an improved rate of comparison for when-issued transactions.[7] By requiring that NSCC be

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[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 32390 (May 28, 1993), 58 FR 31987.

[3] MSRB Rule G–12(f)(i) currently requires, with two limited exceptions, that transactions in municipal securities be submitted to a registered clearing agency for automated trade comparison. One exception is for transactions involving a security ineligible for comparison in an automated system (e.g., those transactions involving a security without an assigned CUSIP number). The other exception involves transactions where at least one party to the transaction is neither a direct nor an indirect member of a registered clearing agency offering an automated comparison system. The MSRB has recently filed a proposed rule change with the Commission to amend Rule G–12(f)(i) to require that all interdealer transactions in municipal securities that are eligible for automated comparison be submitted for comparison in an automated comparison system. A dealer engaging in interdealer transactions, therefore, will be required to have access to an automated comparison system either through direct membership in a registered clearing agency or through an agent who is a member of a registered clearing agency. Securities Exchange Act Release No. 32262 (May 4, 1993), 58 FR 27757 (File No. SR–MSRB–93–06) (notice of filing of proposed rule change).

[4] Securities Exchange Act Release No. 31960 (March 8, 1993), 58 FR 13656 (File No. SR–NSCC–93–2) (notice of filing of proposed rule change to implement FITS).

[5] Although the rate of successful comparisons in the initial comparison cycle of NSCC's current system is relatively high for regular way transactions (78.7 percent as of February 1993), the initial comparison rate for when-issued transactions is much lower (40.5% as of February 1993).

[6] 15B U.S.C. 78o–4(b)(2)(C).

[7] Earlier trade comparison has been identified as a prerequisite to shortening the settlement cycle in the United States clearance and settlement system. The proposed rule change, in conjunction with NSCC's FITS, should significantly improve the comparison rate for when-issued transactions in municipal securities and should facilitate moving from a five business day settlement cycle to a three

provided with timely notice of a new issue's settlement date and any changes thereto, the proposed rule change supports the operation of FITS. Without the amendment, NSCC probably will not receive settlement date information in time to compare transactions where the parties submit trade information in different formats. The amendment to Rule G–12(b)(ii)(C) satisfies the Board's obligation under section 15B of the Act to foster cooperation and coordination with persons engaged in clearing and settling municipal securities transactions.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 15B of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–MSRB–93–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16669 Filed 7–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25847]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 7, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 29, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Edison Co., et al. (70–7865)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachsuetts 02107, an electric public-utility subsidiary company of Eastern Edison, have filed a post-effective amendment to their declaration under sections 6(a), 7, 12(c) and (d) of the Act and rules 42 and 43 thereunder.

By order dated September 19, 1991 (HCAR No. 25379), the Commission authorized Eastern Edison to acquire and retire up to an aggregate amount of $50 million of any combination of classes or series of its outstanding long-term debt or preferred stock, from time to time through December 31, 1993.

Eastern Edison now proposes to acquire and retire, in one or more transactions, up to an aggregate amount of $100 million of any combination of classes or series of its outstanding long-term debt or preferred stock, from time to time through December 31, 1995. Eastern Edison may repurchase its outstanding securities by: (i) Purchases on the open market; (ii) purchases in privately negotiated transactions; (iii) acquisitions pursuant to cash tender offers to the then current holders of certain of Eastern Edison's securities; and (iv) in the case of outstanding preferred stock, pursuant to the sinking fund and optional redemption provisions included in the terms of such preferred stock. Depending upon the timing of such transactions, Eastern Edison could pay a premium over par value or pay less than par value to acquire such securities. Any premiums paid for such open market purchases will be equal to the difference between the par value of the security purchased and the market price of the security at the time of purchase. However, if the securities are acquired by means of tender offers or privately negotiated transactions, Eastern Edison may offer to acquire specified amounts of a particular class or series or an entire class or series of such securities at a premium necessary to entice the holders to tender such securities.

Eastern Edison proposes to finance such acquisitions through one or any combination of the following methods: (i) Available cash; (ii) existing bank lines of credit for short-term borrowings; (iii) the proceeds from new issuances of long-term debt securities; (iv) the proceeds from the issuance of New Preferred Stock (as defined below); and/or (v) the proceeds from the redemption by Montaup of its common stock or debentures held by Eastern Edison. Eastern Edison expects that funds for the repayment of its short-term borrowings will be provided by internally generated cash or by sales of long-term securities.

Montaup proposes to acquire and retire up to an aggregate amount of $50 million of its outstanding common stock from Eastern Edison from time to time through December 31, 1995, for the purchase price of $100 (par value) per share. Montaup currently has outstanding 763,500 shares of common stock, par value $100, all of which is owned by Eastern Edison. Montaup proposes to finance such acquisitions through the use of available cash and existing bank lines of credit for short-term borrowings. Montaup expects that funds for the repayment of its short-term borrowings will be provided by internally generated cash.

Eastern Edison also intends to issue a new class or classes of preferred stock in an amount not in excess of $40 million ("New Preferred Stock") under rule 52. The terms of the New Preferred Stock may include sinking fund provisions and/or optional redemption provisions depending on market conditions at the time of issuance. Eastern Edison proposes to amend and restate its Articles of Organization to include such provisions in the terms of the New Preferred Stock. As sole holder of all issued and outstanding shares of the common stock of Eastern Edison, the directors of Eastern Utilities Associates, a Massachusetts voluntary association, will execute a written consent to so amend and restate Eastern Edison's Articles of Organization. No further shareholder solicitation or proxy will be required.

Eastern Edison also intends to acquire or redeem the New Preferred Stock after issuance until maturity in accordance with such terms. Such acquisitions or

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business day settlement cycle. See Securities and Exchange Commission Release Nos. 33–6976, 34–31904, IC–19282 (March 1, 1993), 58 FR 11806 (File No. S7–5–93) (notice of proposed rulemaking and request for comments on proposed Exchange Act Rule 15c6–1 which will establish three business days instead of five business days as the standard settlement time for broker-dealer transactions).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

redemptions may occur through: (i) Purchases on the open market; (ii) purchases in privately negotiated transactions; or (iii) acquisitions pursuant to cash tender offers to the then current holders of the New Preferred Stock, in order to fulfill the requirements of such terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16673 Filed 7–13–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration Grant for Work Zone Labor Injury Evaluation Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement of Grant for Work Zone Labor Injury Evaluation Study.

SUMMARY: The FHWA announces the opportunity for the submission of grant applications from organizations within the joint labor-management trust fund community for a study entitled "Work Zone Labor Injury Evaluation." The objective of the study is to develop a comprehensive understanding of the magnitude of work-related injuries and fatalities among construction laborers employed on highway projects.

DATES: Applications must be received on or before August 13, 1993.

ADDRESSES: Applications must be submitted to the Office of Contracts and Procurement (HCP–31), Federal Highway Administration, room 4410, 400 Seventh Street, SW., Washington, DC 20590, Attention: Jodi Condes. All applications must reference Solicitation No. DTFH61–93–X–00024.

FOR FURTHER INFORMATION CONTACT: Jodi Condes, Office of Contracts and Procurement, at (202) 366–6991, or Vivian Philbin, Office of Chief Counsel, at (202) 366–1393. Office hours are 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The FHWA announces that it will accept applications for a grant in the amount of $1,000,000 for a study of injuries and fatalities among construction workers employed on highway projects. The purpose of this study is to develop a comprehensive understanding of the magnitude of work-related injuries and fatalities among construction laborers on highway projects, the causes of such injuries and fatalities, and applied intervention mechanisms to reduce such injuries and fatalities. The Congress has indicated that funds appropriated for the Department of Transportation be used for such a study. *See* H.R. Conf. Rep. No. 924, 102d Cong., 2d Sess. at 34 (1992); *see also* H.R. Rep. No. 639, 102d Cong., 2d Sess., at 86 (1992); S. Rep. No. 351, 102d Cong., 2d Sess., at 97 (1992).

The FHWA intends to award this grant to a joint labor-management trust fund with the ability to demonstrate: (1) Experience in conducting occupational injury and fatality research programs; (2) knowledge of the existing State and national surveillance systems that track traffic-related occupational injuries and fatalities occurring in street and highway work zones; and (3) access to street and highway construction laborers.

Application Procedure

Organizations applying for this grant should submit one original and five copies of their application package to: Office of Contracts and Procurement (HCP–31), Federal Highway Administration, 400 Seventh Street, SW., room 4410, Washington, DC. 20590, Attention: Jodi Condes. Only complete application packages received on or before 30 calendar days after the publication date of this notice will be considered. All applicants will be notified of FHWA decisions on proposals.

Application Contents

The application package shall be submitted with OMB Standard Form 424 (Rev. 2–88, including 424A and 424B), complete with required information and certified assurances included. Applicants may request copies of these Forms by sending a written request by mail or facsimile to the attention of Jodi Condes at the above address (FAX No. (202) 366–3705). While the Form 424A deals with budget information and Form 424B identifies budget categories, the available space does not permit a level of detail sufficient for meaningful evaluation of proposed costs. Applicants shall therefore include a supplemental sheet that presents a fully detailed breakdown of the proposed direct, indirect, and administrative costs, as well as any costs that the applicant may propose to contribute in support of this effort.

In addition, the application package shall include a research project statement addressing the following:

1. A technical discussion of the research to be conducted, including (a) a statement of research objective or hypothesis, (b) a description of the proposed research method and procedures, (c) a plan for data collection and analysis and for the submission of quarterly and final reports, and (d) a discussion of preliminary intervention mechanisms that may be considered in the study;
2. A schedule for the conduct of the research;
3. A staffing plan, including the qualifications and experience of personnel proposed to conduct the research;
4. A listing of known data sources available to supply the required research data on work zone injuries and fatalities for construction workers employed on highway projects;
5. A summary of previous studies and findings in this area;
6. Examples of applicant's information processing and report capabilities; and
7. Identification of any other resources or facilities required to conduct the work.

Application Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. Grant proposals will be rated in accordance with the following technical evaluation criteria, listed in descending order of importance (except that 1 and 2 are equal in importance):

1. Adequacy of technical discussion and schedule to collect and analyze work zone injury data;
2. Qualifications and experience of the technical staff to conduct the research;
3. Demonstrated knowledge of data sources and previous studies which can be used as the data base for the research; and
4. Preliminary intervention mechanisms that may be considered to reduce worker injuries and fatalities.

Terms and Conditions of the Award

1. The grantee shall produce a research paper suitable for publication in a national journal. Ten copies of each study research paper shall be provided to the FHWA prior to the oral presentation.
2. Upon invitation, the paper will be presented orally by the Principal

Investigator at the Turner Fairbanks Highway Research Center in McLean, Virginia, or at the annual meeting of the Transportation Research Board held each January in Washington, DC. The date and location of the oral presentation will be coordinated between the grantee and FHWA.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on July 7, 1993.

Rodney E. Slater,

Administrator.

[FR Doc. 93–16616 Filed 7–13–93; 8:45am]

BILLING CODE 4910–22–P

Federal Transit Administration

Transfer of Federally Assisted Land or Facility; Lane Transit District, Eugene, OR

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Act, as amended (FT Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that Lane Transit District, Eugene, Oregon, intends to transfer its old maintenance facility at Garfield and West 8th Streets. The facility has been abandoned and declared surplus.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA, Region 10 office, of its interest, by August 13, 1993.

ADDRESSES: Interested parties should notify the Regional Office by writing FTA Region 10, 915 Second Avenue, room 3142, Seattle, Washington 98174–1002.

FOR FURTHER INFORMATION CONTACT: Shelly Brown, Regional Counsel, at (206) 220–7954, or Frank Kelly, Office of Grants Management, at (202) 366–1647.

SUPPLEMENTARY INFORMATION:

Background

Section 12(k) of the FT Act, as amended, provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Administrator may authorize the transfer of such assets to any public body to be used for any public purpose with no further obligation to the Federal Government.

Section 12(k)(2) Determinations

The provision also provides that before the FTA may authorize such a transfer for a non-transit use, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the FT Act for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of section 12(k)(2)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in section 12(k)(2)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property, located at Garfield and West 8th Streets in Eugene, Oregon, consists of two parcels, 1.3 acres and 2.7 acres, bisected by a public street, and six buildings ranging in age from 15 to 25 years, which were used for bus repair and administrative offices.

Issued on: July 8, 1993.

Terry L. Ebersole,

Regional Administrator.

[FR Doc. 93–16618 Filed 7–13–93; 8:45 am]

BILLING CODE 4910–57–M

Transfer of Federally Assisted Land or Facility; Massachusetts Bay Transportation Authority, Cambridge, MA

AGENCY: Federal Transit Administration (DOT).

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Act, as amended (FT Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Massachusetts Bay Transportation Authority (MBTA) intends to transfer 14,500 square feet of land at 1713 Massachusetts Avenue in the City of Cambridge, Massachusetts.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Region 1 Office of its interest by August 13, 1993.

ADDRESSES: Interested parties should notify the Regional Office by writing Federal Transit Administration, 55 Broadway, Cambridge, Massachusetts 02142.

FOR FURTHER INFORMATION CONTACT: Richard N. Cole, Office of Program Oversight, Region 1, at 617/494–2395 or Frank Kelly, Office of Grants Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

Section 12(k) of the FT Act, as amended, provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purpose for which they were acquired, the Administrator may authorize the transfer of such assets to any public body to be used for any public purpose with no further obligation to the Federal Government.

Section 12(k)(2) Determinations

The provisions also provides that before the FTA may authorize such a transfer for a non-transit use, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the FT Act for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of section 12(k)(2)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements in section 12(k)(2)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

Approximately 14,500 square feet of land located at 1713 Massachusetts Avenue, Cambridge, Massachusetts, with frontage on Massachusetts Avenue and Garfield Street. The MBTA will retain a surface and subsurface easement for the vent shaft that occupies a portion of the property. The vent shaft is surrounded by a 25 foot wide "no build" restriction.

Issued on: July 8, 1993.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 93–16619 Filed 7–13–93; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 7, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0163.
Form Number: None.
Type of Review: Extension.
Title: Country of Origin Marking Requirements for Containers or Holders.
Description: Holders or containers imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of the importation into Customs territory.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 250
Estimated Burden Hours Per Respondent: 25 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 41 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–16649 Filed 7–13–93; 8:45 am]

BILLING CODE 4820–02–P

Customs Service

[T.D. 93–53]

Revocation of Customs Broker License; Laurel B. Arain

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on July 6, 1993, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and § 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the license (11178) issued to Laurel B. Arain in the New York Customs District to conduct Customs business.

Dated: July 9, 1993.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 93–16664 Filed 7–13–93; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of priority areas for Commission study. Request for public comment.

SUMMARY: As part of its continuing analysis of the operation of the sentencing guidelines, the Commission previously has established working groups that are currently studying a number of topical areas. The Commission now solicits comment on additional issues for possible study as detailed below. This comment is in preparation for the Commission's 1994 amendment cycle which culminates in the submission of proposed guideline amendments to Congress not later than May 1, 1994. While the Commission welcomes comment on any aspect of guideline application, or on any other matter within the Commission's authority, it suggests that interested persons focus their comments and recommendations on these identified areas.

DATES: Public comment should be received as soon as practicable but not later than August 31, 1993, so that it can be considered by the Commission in shaping its work during the 1994 amendment cycle.

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, D.C. 20002–8002. Attn: Public Information Specialist.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the U.S. Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise promulgated guidelines periodically and authorizes it to submit guideline amendments to the Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, by this announcement the Commission begins the amendment cycle by soliciting formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an early opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches. In late 1993 or early 1994,

VOL 58 ISS 133 JL 14 1993 UMI

early 1994, the Commission will publish in the **Federal Register** a formal notice of proposed amendments and amendment issues and will invite comment on those proposals.

The Commission has previously established working groups currently engaged in studying the following topical areas: (1) Computer fraud offenses; (2) public corruption offenses; (3) substantial assistance (*i.e.*, departures below the guideline range and/or post-sentence reductions based on defendants' substantial assistance in the investigation of other crimes); (4) food and drug offenses; (5) penalties for crack offenses (focusing on the mandatory minimum penalties that equate crack cocaine to a quantity of powder cocaine 100 times as great); (6) departures, generally (comprehensively examining bases for departure from the guidelines other than substantial assistance); and (7) environmental offenses involving organizations.

In addition to these areas of continuing study, the Commission has preliminarily identified and solicits input on the following areas of focus in the 1993–94 amendment cycle: (1) Guidelines for drug offenses; (2) geriatric offenders in the federal system; (3) general review of the guidelines' approach to assessing the relative seriousness of an offender's prior criminal record; (4) the career offender guidelines (examining the interaction of the Chapter Four criminal history rules and the career offender provision to ensure that appropriate individuals are receiving enhanced penalties); (5) multiple count grouping rules; (6) strategies for addressing prison population concerns consistent with the need for maintaining rational, effective sentencing policies; (7) selective incapacitation issues; (8) guideline simplification; and (9) sentencing procedures. Study of some of these topics, if definitively identified by the Commission as priorities, necessarily may extend into the 1994–95 amendment cycle because of competing demands on limited staff resources and the scope of the issues to be examined.

As in past amendment cycles, the Commission intends to use interdisciplinary staff working groups consisting of representatives from its legal, research, and training/technical assistance units to address some of the designated priority issues. These Commission staff working groups, in turn, will draw upon the expertise of other individuals and groups in the criminal justice system to aid their work. Their objectives will be to examine topical areas comprehensively and to report to the Commission any needs for training emphasis, additional research, legislative initiatives, guideline amendments, or other action as appropriate.

The Commission welcomes comment about the aforementioned identified issues as well as any other aspect of guideline application or about the implementation of the Sentencing Reform Act.

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 93–16644 Filed 7–13–93; 8:45 am]

BILLING CODE 2210–40–P

VOL 58 ISS 133 JL 14 1993 UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 133
Wednesday, July 14, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 14, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

FY 95 Budget

The staff will brief the Commission on issues related to the Commission's budget for fiscal year 1995.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: July 7, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–16740 Filed 7–9–93; 4:27 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, July 15, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: July 7, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–16741 Filed 7–9–93; 4:27 pm]

BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held at the offices of the Farm Credit Administration in McLean, Virginia, immediately following its 10:00 a.m. special meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

Open Session

A. Reports

1. Farm Credit System Building Association Quarterly Report

B. New Business

1. Other

a. FCA Board Approval of the Independent Accountant.

b. Preliminary 1994 Farm Credit System Building Association Budget Estimate.

Dated: July 10, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–16828 Filed 7–12–93; 2:16 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 15, 1993, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. Collateral Evaluation

C. New Business

1. Regulations

a. Lending Limits (Loan Policies and Operations) (Final).

b. Termination of Large Associations and Banks (Organization) (Resolicitation).

c. Standards of Conduct (Personnel Administration) (Proposed).

2. Other

a. Policy Statement on Scope of Examination.

Closed Session*

A. New Business

1. Enforcement Actions

Dated: July 12, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–16829 Filed 7–12–93; 2:16 pm]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8), (9), and (10).

Corrections

Federal Register

Vol. 58, No. 133

Wednesday, July 14, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[4653-8]

Renewal of the Hazardous Waste Manifest Regulatory Negotiation Committee

Correction

FR Doc. 93-12370 was published on page 30049 in the issue of Tuesday, May 25, 1993. This document was a renewal of the Hazardous Waste Regulatory Negotiation Committee. It was published in the Notices section of the **Federal Register**, It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2622, and 2623

[RIN 1212-AA40]

Miscellaneous Amendments

Correction

In rule document 93-15431 beginning on page 35377 in the issue of Thursday, July 1, 1993 make the following corrections:

§ 2606.1 [Corrected]

1. On page 35383, in the third column, in § 2606.1(b)(3)(i), in the third line, "and" should read "or".

2. On page 38384, in the first column, in § 2606.1(b)(9), in the third line, "or section section" should read "or section".

§ 2622.2 [Corrected]

3. On page 35387, in the third column, in the second paragraph, in the fourth line from the bottom, "collection" should read "controlled".

§ 2622.6 [Corrected]

4. On page 35389, in the second column, in § 2622.6(a), in the first line, "contribution" should read "contributing".

5. On the same page, in the third column, in § 2622.6(c), in the fourth line from the bottom, "remove" should read "removed".

§ 2623.5 [Corrected]

6. On page 35392, in amendatory instruction 75., "(3)" should read "(e)".

7. On the same page, in the third column, in the fourth full paragraph, in the fifth line, "($2,353.27x0.49)" should read "($2,352.27x0.49)".

BILLING CODE 1505-01-D

VOL
58

ISS
1
3
3

JL
14

1993

UMI

federal register

Wednesday
July 14, 1993

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 414

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule

VOL 58 ISS 133 JUL 14 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 414

[BPD–770–P]

RIN 0938–AG22

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses changes to the refinement process used to establish physician work relative value units and payment for specific physician services and supplies. Since we established the physician fee schedule on January 1, 1992, our experience indicates that some of our policies may need to be reconsidered. This proposed rule solicits public comments on specific proposed policy changes.

DATES: We will consider written comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 13, 1993.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–770–P, Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) transmission. In commenting, please refer to file code BPD–770–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify Stock Number 069–001–00057–2 and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 512–2250. The cost for each paper copy is $4.50. In addition, the **Federal Register** document may be viewed and photocopied at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. You can obtain the location of the Federal Depository Libraries near you by calling the U.S. Government Printing Office at (202) 512–1109.

FOR FURTHER INFORMATION CONTACT: For further information with respect to the ordering of copies of this document, contact the U.S. Government Printing Office according to the above information. For further information concerning the content of this notice, contact Anita Heygster of the Health Care Financing Administration, (410) 966–5714.

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this proposed rule, we are providing the following table of contents:

Table of Contents

I. Background
- A. Legislative History
- B. Recent **Federal Register** Publications

II. Specific Proposals for CY 1994
- A. Physician Work Relative Value Units (RVUs)
  - 1. Refinement Process
  - 2. Transplant Surgeries
- B. Radiation Physics Services
- C. Anesthesia Services Furnished by Non-Anesthesiologists
- D. Applying the Site-of-Service Payment Differential
  - 1. Office or Other Outpatient Consultations and Confirmatory Consultations
  - 2. Nursing Facility (NF) and Hospital Inpatient Settings
  - 3. Ambulatory Surgical Center (ASC) Services
- E. Supplies Other than Drugs
  - 1. Urological Procedures
  - 2. Unna Boots
- F. Payment Area (Locality) and Corresponding Geographic Practice Cost Index (GPCI) Changes
- G. Evaluation and Management Services
  - 1. Prolonged Evaluation and Management Services (CPT Modifier -21)
  - 2. Ventilator Management on the Same Day as an Evaluation and Management Service
- H. Payment for Standby Surgical Team
- I. Clinical Laboratory Interpretation Services
- J. Payment for Selected Multiple Echocardiography Procedures
- K. Purchase of Surgical Pathology Technical Component (TC) Services
- L. CPT Codes for Occupational Therapy
- M. RVUs for Services Not Covered by Medicare

III. Issues for Possible Change after CY 1994
- A. Severity Adjustment/Unusual Circumstances
- B. Global Surgery
  - 1. Payment for a Visit on the Day of a Minor Procedure
  - 2. Split Global Care (CPT Modifiers -54 and -55)
  - 3. Itinerant Surgeon Billings
- C. Physical Medicine Services
- D. Payment for Physician Case Management Services

IV. Changes to the Regulations

V. Collection of Information Requirements

VI. Response to Comments

VII. Regulatory Impact Analysis
- A. Executive Order 12291 and Regulatory Flexibility Act
- B. Rural Hospital Impact Statement

In addition, because of the many agencies and terms to which we refer by acronym in this proposed rule, we are listing those acronyms and their corresponding terms in alphabetical order below:

AMA—American Medical Association
APTA—American Physical Therapy Association
ASC—Ambulatory surgical center
CAP—College of American Pathologists
CF—Conversion factor
CFR—Code of Federal Regulations
CMD—Carrier medical director
CPT—Current Procedural Terminology, 4th Edition (copyrighted by the American Medical Association)
CY—Calendar year
GPCI—Geographic practice cost index
HCFA—Health Care Financing Administration
HCPCS—HCFA Common Procedure Coding System
HHS—Department of Health and Human Services
MSA—Metropolitan statistical area
MVPS—Medicare volume performance standards
NF—Nursing facility
OBRA—Omnibus Budget Reconciliation Act
OMB—Office of Management and Budget
OT—Occupational therapist
PC—Professional component
PT—Physical therapist
RFA—Regulatory Flexibility Act
RUC—[AMA Specialty Society] Relative [Value] Update Committee
RVU—Relative value unit
TC—Technical component

I. Background

A. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). The Social Security Amendments

of 1965 created two insurance programs: Medicare Part A (Hospital Insurance) and Medicare Part B (Supplementary Medical Insurance). These statutory provisions established the principles of reasonable charge payment for physicians' services. Under the reasonable charge system for physician services, which remained in effect until January 1, 1992, Medicare payments for physicians' services were based on the historical charges of physicians. This led to large payment variations among types of services, physician specialties, and geographic areas.

In the Omnibus Budget Reconciliation Act of 1989 (OBRA '89, Public Law 101–239), enacted on December 19, 1989, the Congress included a physician payment reform package. Section 6102 of OBRA '89 amended title XVIII of the Act by adding a new section 1848, "Payment for Physicians' Services." This section contains three major elements: (1) A fee schedule for the payment of physicians' services; (2) a Medicare volume performance standard (MVPS) for the rates of increase in Medicare expenditures for physicians' services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Omnibus Budget Reconciliation Act of 1990 (OBRA '90, Public Law 101–508), enacted on November 5, 1990, contained several modifications and clarifications to the OBRA '89 provisions that established the physician fee schedule.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in relative value units (RVUs) due to changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to preserve budget neutrality.

B. Recent Federal Register Publications

We published a final rule on November 25, 1991, (56 FR 59502) to implement section 6102 of OBRA '89, which added section 1848 to the Act. Section 1848 sets forth provisions governing Medicare payment for physicians' services. It established a fee schedule for physicians' services effective January 1, 1992. We published a correction notice to the November 1991 final rule on September 15, 1992 (57 FR 42491) to redesignate the fee schedule regulations from part 415, subpart A, to part 414, subpart A, and to reserve part 415, subpart A, for future use. Also, that document corrected technical errors.

In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA) Current Procedure Terminology (CPT) through an "interim RVU" process every year. Our first update to the RVUs was published on November 25, 1992 as a final notice with a 60-day comment period (57 FR 55914). A detailed description of the purpose of that notice and comment period appears in section II.A.1. of this preamble. A correction notice for this final notice was published on June 7, 1993 (58 FR 31964). It corrected technical errors in codes.

II. Specific Proposals for CY 1994

After a full year of experience with the physician fee schedule, we realize that some policies may need to be reconsidered. We are reviewing our decisions on certain issues and are soliciting public comments. For some of these policy issues we have no specific proposals and wish to consider comments before revising the current policies.

The policies discussed in this proposed rule would affect the number of RVUs on which payment for the services in question would be based. Therefore, these changes would be subject to the $20 million limitation on annual adjustments.

After we review the comments and determine the policies we will implement, we will estimate the costs and savings of these policies and add those costs and savings to the estimated costs associated with any other changes in RVUs for 1994, including RVU changes necessitated by the 1994 CPT coding changes. We will then determine whether all the RVU changes in total would cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if the RVU adjustments had not been made.

A. Physician Work Relative Value Units (RVUs)

1. Refinement Process

The November 1992 final notice announced the final RVUs for Medicare payment for existing procedure codes under the physician fee schedule and interim RVUs for new and revised codes. The RVUs contained in the notice apply to physician services furnished beginning January 1, 1993. We announced that we would accept comments on interim RVUs for new or revised codes and for codes previously designated as carrier-priced codes. We announced that we considered the RVUs for the remaining codes to be final and not subject to public comment.

In this section, we summarize the refinements to the work RVUs that have occurred since publication of the November 1991 final rule on the Medicare physician fee schedule and our proposed plans for refining the work RVUs for the 1994 fee schedule.

a. *Work RVU refinements for the 1993 fee schedule.* Although the RVUs in the November 1991 rule were used to calculate 1992 payment amounts, we considered them to be "initial." Since that final rule implemented a major reform for payment to physicians and because the initial RVUs were a significant part of that reform, we accepted comments on the RVUs for a period of 120 days. We received approximately 7,500 comments on approximately 1,000 codes from 70 specialty societies, beneficiary advocacy groups, organizations representing private insurers, and private individuals.

Following a systematic compilation of the comments, we convened panels of physicians to assist us in the review of those comments. We convened 24 panels that consisted of 127 physicians and practitioners nominated by 42 specialty societies. In addition, 33 carrier medical directors (CMDs) participated in the initial round of meetings.

After we excluded public comments that did not provide sufficient information concerning the clinical aspects of the work, we submitted comments on approximately 800 codes for evaluation by these panels. The panels discussed the work involved in each procedure under review in comparison to the work associated with other services on the fee schedule. Panelists were encouraged to make comparisons to "reference services" whose work RVUs had not been challenged in the comment process. We had assembled a set of reference services and asked specialty societies to compare clinical aspects of the work of services they believed were incorrectly valued to the work of one or more of the reference services. The intent of this process was to capture each participant's independent judgment based on the discussion and his or her clinical experience. Following each discussion, participants rated the work for the procedure. Ratings were individual and confidential, and there was no attempt to achieve consensus among the panel members.

The ratings were then analyzed based on a presumption that the final rule RVUs were correct. To overcome this

VOL 58 ISS 133 JL 14 1993 UMI

presumption, the inaccuracy of the final rule RVU had to be apparent to the broad range of physicians participating in each panel. Ratings of work were analyzed for consistency among the four groups represented on each panel (clinicians representing the specialty most identified with the service in question, physicians in related specialties, primary care physicians, and CMDs). In general terms, we used statistical tests to determine whether there was enough agreement among the four groups of the panel and whether the agreed-upon RVU was significantly different from the final rule RVU.

We did not modify a final rule RVU unless there was clear consensus for a change. If there was consensus for change, but the four groups did not agree on the new RVU, we eliminated the outlier group and looked for agreement among the three remaining groups as the basis for a new RVU.

Our decision to convene multi-specialty panels of physicians and to apply the statistical tests described above was based on our need to balance the interests of those who commented on the work RVUs against the budgetary and redistributive effects that would have occurred if we had accepted extensive increases in work RVUs across a broad range of services. On the one hand, we believed that many of the commenters correctly identified services and procedures whose work RVUs were not properly valued when compared with other services and procedures on the fee schedule. On the other hand, we were concerned that acceptance of all comments would seriously undermine the original purpose of the fee schedule, which was to base payments on the relative resource of physicians' services as determined by objective measures of physician work.

b. *Establishment of interim work RVUs for new and revised codes.* In the November 1991 final rule for the fee schedule, we set forth an interim RVU process, based on recommendations received from the AMA Specialty Society Relative Value Update Committee (RUC), that allows us to quickly implement national RVUs for new and revised codes.

The RUC was formed in November 1991 and grew out of a series of discussions between the AMA and the major national medical specialty societies. The RUC is comprised of 26 members; 22 are representatives of major specialty societies. The remaining members represent the AMA, the American Osteopathic Association, and the CPT Editorial Panel. The work of the RUC is supported by an advisory committee made up of representatives of all 85 specialty societies in the AMA House of Delegates.

The RUC submitted recommended work RVUs for approximately 250 new or revised codes that were published in the 1993 CPT. The RUC used a small group survey method to produce work RVUs that were voted on by the RUC, with a two-thirds vote required for acceptance.

The recommendations of the RUC were submitted to HCFA in July 1992 and were reviewed by panels of CMDs and HCFA staff. These panels were asked to review the recommended work RVUs by comparing them to the HCFA reference set or other comparable services on the fee schedule for which work RVUs had been established previously, or both of these criteria. For approximately 70 percent of the codes, the recommendations were accepted or increased and for approximately 30 percent, the RVUs proposed by RUC were decreased.

c. *Proposed refinement of work RVUs for services furnished in 1994.* Timely comments received on the interim RVUs published in the November 1992 final notice will be taken into account in developing final RVUs to be announced in a **Federal Register** notice in the fall of 1993, to become effective January 1, 1994. We plan to review the comments with the assistance of the CMDs and outside specialists. The results of their deliberations and our decisions on their recommendations will be discussed fully in the fall notice.

The major aspect of refining work RVUs for 1994 will be related to the assignment of interim RVUs for all new and revised CPT codes. We expect to receive final recommendations on work RVUs for all new and revised codes for 1994 from the RUC in early July 1993.

We are aware that entire sections of the CPT are being revised and that there are proposals to split a large number of individual codes into two or more codes to reflect the work of the different services currently described by a single code. For example, CPT code 43610 "Excision, local, of ulcer or tumor of stomach" has been split into two codes; one to report the excision of benign tumors and another to report the excision of malignant tumors. The basis of splitting the code is an assertion that the work of excising a benign tumor is less than the work of excising a malignant tumor. That assertion will be considered by the RUC and recommendations regarding the work RVUs will be forwarded to us.

We have three major concerns regarding the scope and absolute number of codes that are under consideration for addition, deletion, or revision by the CPT Editorial Panel. Our first concern relates to the process for developing recommended RVUs for codes that are split. This concern was expressed in the November 1992 final notice under our discussion of the RUC recommendations for vaginal hysterectomy codes. For the 1993 CPT, the CPT Editorial Panel had revised the existing CPT code 58260 (vaginal hysterectomy, with or without removal of tubes, with or without removal of ovaries) and added a new code. Revised CPT code 58260 now reads "vaginal hysterectomy" and new CPT code 58262 reads "vaginal hysterectomy, with removal of tubes and/or ovaries."

Essentially, the previous CPT code 58260 was split into two parts, one that does not involve the removal of tubes or ovaries and the other that does. For CPT code 58260, the RUC recommended no change in RVUs because it believed that the CPT revision did not alter the work of the service. For CPT code 58262, the RUC recommended work RVUs of 14.50.

We did not accept those recommendations primarily because we disagreed with the RUC's conclusion that the CPT revision did not alter the work of the service. CPT code 58260 previously was used to report vaginal hysterectomies with removal of tubes and ovaries as well as vaginal hysterectomies without the removal of tubes and ovaries. In essence, it was a code that was used to describe two different services, one of which was more difficult than the other. We decided that the work involved in the code for a vaginal hysterectomy without removal of tubes or ovaries should be reduced because the code now described a service that requires less work on average than the previously used code. Therefore, we reduced the work RVUs for CPT code 58260 from 12.74 to 12.00. To determine new work RVUs for CPT code 58262, we added the difference between the existing work RVUs for CPT code 58260 (12.74) and the recommended RUC work RVUs for CPT code 58262 (14.50) to the work RVUs for the revised CPT code 58260 (the sum of 1.76 and 12.00 equals 13.76 work RVUs for CPT code 58262). We intend to apply this same logic to our review of any split codes for the 1994 CPT and hope that the RUC will take this into consideration as it reviews the new and revised codes.

Our second concern relates to our statutory responsibility to adjust RVUs to take into account changes in medical practice, coding changes, new data on RVU components, or the addition of new procedures and to assure that the adjustments are budget neutral. When an existing code is split into two or

more codes, we have little, if any, information on the likely utilization of the new codes. Further, up until now the RUC has not routinely provided us projected utilizations of new or revised codes. This poses a substantial problem for us since, without projected utilizations, we cannot be certain of the impact that the recommended RVUs we receive from RUC on split codes will have on program outlays.

The following hypothetical example illustrates our concern. Suppose the RUC recommends that the work RVUs for the new code for excising a malignant tumor should be 15.00 RVUs, and that the work RVUs for the revised code for excising a benign tumor should be 10.00 RVUs. Both of these services were reported with the same CPT code in 1993 with a work RVU of 10.35.

The current code is reported approximately 3,000 times per year to Medicare. Therefore, there are approximately 31,050 RVUs in the system attributable to this service (3,000 services times 10.35 RVUs per service). If, under the new codes, excisions of malignant lesions are reported 2,000 times and the excision of benign lesions are reported 1,000 times, the total RVUs reported will be 40,000; that is, 2,000 services times 15.00 RVUs plus 1,000 services times 10.00 RVUs equals 40,000 RVUs. This is 8,950 RVUs more than under the old codes (40,000 minus 31,050).

In general, we do not believe the process for establishing RVUs for split or revised codes should change the overall RVUs for the existing code. Thus, where possible, we intend to maintain budget neutrality for revised or split codes within a specific code group. If we do not have a good basis for projecting utilization, we would maintain the existing RVU for each of the split codes and would use actual utilization to adjust the RVU in a subsequent year. However, if the RUC or a specialty society can provide us credible data regarding the probable utilization of the new codes, we will consider establishing new RVUs for the new or split codes in the year they are established. Using the data in the above hypothetical example, if we have reliable estimates showing that the codes would be used in the proportions shown and if we had accepted the RVU estimate that the malignant lesion removal was 1.50 times as much work as the excision of a benign lesion, we would consider establishing the RVUs for the new and revised codes at 11.64 and 7.76, respectively (31050 divided by ((2000)(1.50) and (1000)(1)) equals 7.76; (7.76)(1.50) equals 11.64). We would consider adjusting these RVUs in a subsequent year after we review actual utilization data.

Our third concern relates to the absolute number of potential new codes. It appears that many specialty societies have submitted or will be submitting extensive proposed revisions to the CPT. We believe it is appropriate for the CPT Editorial Panel to develop new codes to recognize new procedures and services. However, few of the proposals we have reviewed represent new procedures or services. To date, most of the proposals represent attempts to better define procedures and services for which codes already exist in the CPT. Virtually all of these requests relate to surgical procedures or diagnostic tests. We have not been convinced that the current CPT, which has undergone annual revisions for more than 20 years, requires widespread wholesale revisions; especially when changes to these codes by the CPT Editorial Panel present the specialty societies with what may appear to be an opportunity to revalue work RVUs through a process outside of our usual notice and comment rulemaking process. We plan to carefully review every RUC recommendation and to reject any recommendations that propose increased RVUs for services whose code descriptors have undergone changes that we consider to be editorial in nature. Our efforts to ensure budget neutrality despite code-splitting have already been described as well as our willingness to delay changes in RVU values until we have enough utilization data to reasonably ensure budget neutrality. In addition, RVUs implemented on an interim final basis, such as those for new and revised codes, are subject to revision based on our evaluation of comments.

Finally, we intend to approach refinement of work RVUs for the 1994 fee schedule with an unchanged commitment to fulfill two of the original intents of the fee schedule, which were to base payments on the relative resource of physicians' services as determined by objective measures of physician work and to redistribute payments in a manner that would provide more equitable payment for primary care services.

2. Transplant Surgeries

The physician fee schedule presently contains no RVUs for the following transplant CPT codes:

CPT code	Description	Status
33935 ...	Heart-Lung Transplant	C
33945 ...	Heart Transplant	C
47135 ...	Liver Transplant	C
50320 ...	Remove Kidney, Live Donor.	E

Status code "C" means a service is paid under the fee schedule, but is individually priced by Medicare carriers. Status code "E" means a service is excluded from the fee schedule by regulation and is paid under another Medicare payment methodology, such as the prior reasonable charge system or, to a hospital, under the reasonable cost system.

We stated, in the November 1991 final rule (56 FR 59534) on the fee schedule, that while we had Harvard RVUs for some transplant surgeries, we were not confident of their validity. Rather than publish RVUs for these services for 1992 that had never been submitted for comment before the final rule, we stated that we would allow carriers to price these services on an individual basis, but that we planned to establish fee schedule RVUs for these services in the future.

We have further examined the Harvard RVUs, and our CMDs suggested RVUs for these transplant services. The work RVUs for CPT codes 33935, 33945, and 47135 were examined by the panels of physicians nominated by specialty societies that met in the summer of 1992 to examine the comments on the RVUs in the November 1991 final rule and establish RVUs for 1993. The proposed work RVUs listed below for these procedures are those of the panels, which included transplant surgeons.

In addition to the above mentioned "C" codes, we are also proposing RVUs for CPT code 50320 (Kidney removal). Our medical advisors recommend using the Harvard work RVU of 15.85 for this code. CPT code 50320 is covered under section 1881 of the Act and is currently paid under the reasonable charge system. We believe that it is similar to other physician services that were previously paid on a reasonable charge basis before the enactment of the fee schedule and that it should also have a RVU established under the fee schedule. As authorized by section 1881(d) of the Act and implementing regulations at § 410.163, this service is not subject to any coinsurance or deductible. Thus, while we propose paying for CPT code 50320 using the RVU in the fee schedule, it would be covered and paid under the special rules in section 1881 of the Act and § 410.163.

PROPOSED RVUs FOR CERTAIN TRANSPLANT CODES[1]

Code	Work RVUs	Practice expense RVUs	Malpractice expense RVUs	Total RVUs	Harvard work RVUs
33935	48.60	35.34	6.90	90.84	52.06
33945	43.74	56.38	11.32	121.44	37.71
47135	61.20	55.82	8.89	125.91	49.06
50320	15.85	11.25	1.10	28.20	15.85

[1] These RVUs are on the same scale as those in the 1993 fee schedule.

Consistent with section 1848(c)(2)(C) of the Act, the practice expense and malpractice RVUs were computed by applying historical practice cost percentages to a base allowed charge for the service, as was done for all fee schedule services for which we had adequate charge data. For CPT codes 33945 and 47135, we multiplied the 1991 average allowed charge by the historical practice expense percentage that was determined as a weighted average of the practice expense shares for the specialties performing the service as reflected in the Medicare charge data.

We did not have sufficient charge data for CPT codes 33935 and 50320 because of the low frequency of services. In these cases, we imputed the practice expense and malpractice RVUs from the work RVUs. We used the percentages used in establishing the 1992 fee schedule for the specialty most likely to furnish the service: thoracic surgery (53.5 for work, 38.9 for practice expenses, and 7.6 for malpractice) for CPT code 33945 and urology (56.2 for work, 39.9 for practice expenses, and 3.9 for malpractice) for CPT code 47135. For example, for CPT code 33935, we determined the total RVUs, 90.84, by dividing the work RVUs of 48.60, by 0.535. We then multiplied the total RVUs by 0.389 to obtain the practice expense RVUs of 35.34, and by 0.076 to obtain the malpractice RVUs of 6.90. This methodology was used in establishing practice expense and malpractice RVUs for low volume services in both the 1992 and 1993 fee schedules.

B. Radiation Physics Services

Since October 1, 1983, our national policy is that physicists' services are nonphysician services payable by intermediaries as hospital services if furnished to hospital inpatients. We have stated this policy in the regulations defining physicians' services furnished in hospitals (§ 405.550(b)) and in the "rebundling" rule that accompanied the implementation of the prospective payment system (§ 411.15(m)(1)). ("Rebundling" requires nonphysician services furnished by an outside supplier to a hospital inpatient to be covered as part of the hospital service. Thus, separate payment for services furnished by an outside supplier are excluded under the law, and a single uniform payment is made to the hospital). Subsequent legislation, the Omnibus Budget Reconciliation Act of 1986 (OBRA '86, Public Law 99–509, enacted on October 21, 1986), applies "rebundling" to hospital outpatient services.

Carrier payment policies for these codes varied widely under the reasonable charge payment system, because we had not addressed the matter of whether individual physics codes had a professional component (PC) and a technical component (TC) before the implementation of the radiologist fee schedule in 1989. Elements of physics services may be performed by one or more of the following individuals: a radiation oncologist, a treatment planning assistant, a radiation physicist, a dosimetrist, a simulation technologist, a mold room technologist, or a therapy technologist. Under the interim policy clarification we issued to carriers on September 1, 1989, shortly after the implementation of the radiologist fee schedule, carriers pay for the PC of a physics service if a physician performed the service. If the PC was performed in a hospital by someone other than a physician, it is payable through intermediary payment mechanisms. This policy led to inconsistent policies among carriers and resulted in overpayment proceedings.

We realize that there are substantial questions about the nature of physician and physicist activities in the delivery of services. Therefore, we issued an interim policy to carriers on May 29, 1992, based on the recommendations of the CMDs, requiring carriers to recognize PC billing and assume that the radiologist participated in furnishing the services, for example, in reviewing and validating the physicist's calculations. By presuming physician involvement in every physics service, this interim policy essentially supersedes another Medicare policy that services furnished in the hospital setting must ordinarily require performance by a physician to be paid by carriers.

We are concerned about the interim policy that presumes the physician is sufficiently involved with each physics service, including those furnished in the hospital setting, to justify carrier payment as a physician's service for an individual patient. We believe that this policy is inconsistent with our general rule on conditions for payment of services furnished to hospital patients. However, we also believe that requiring carriers to determine whether a physician or a nonphysician performed the service is a difficult task.

We have met with representatives of various groups including radiation oncologists, radiation physicists, and representatives of centers that furnish radiation oncology services in order to gain insights into the ways these services are delivered. Specifically, we have attempted to clarify the exact nature of the services represented by the PC of radiation physics codes.

As a result of these discussions and our experience with this issue over the years, we have concluded that the physician work associated with the physics codes is treatment planning activity, which is impossible to separate from other elements of treatment planning. Therefore, we are proposing to bundle the 1994 PC RVUs for the radiation physics CPT codes 77300, 77305, 77310, 77315, 77321, 77326 through 77328, and 77331 through 77334 into CPT codes 77261 through 77263 (therapeutic radiology treatment planning; simple, intermediate, and complex, respectively). We are proposing that these augmented payments for treatment planning would represent the total payment for the physician's PC services associated with the physics CPT codes during the course of therapy prescribed by the treatment planning code. Our proposed, budget-neutral methodology for bundling the

RVUs into the treatment planning codes is discussed below.

In the March 2, 1989, interim rule for implementing the fee schedule for radiologists' services (54 FR 8998), we took similar action by replacing payments for daily radiation treatment management with payments for weekly treatment management. Daily physician management services are no longer recognized for Medicare payment because of the difficulty in obtaining documentation showing that physician's services were actually furnished daily to a patient. This change permitted physicians to be paid for their management services in connection with radiation therapy on a weekly basis even though the physician did not personally examine the patient during every treatment session.

We propose that all radiation physics CPT codes in the 77300 series would be recognized by Medicare as TC-only and would represent the services of nonphysician personnel and equipment associated with the procedure codes. There would be no physician fee schedule bundling of the TC-only physics codes for services furnished in freestanding settings, and payment would be made based on the frequency with which the service is furnished in freestanding settings to beneficiaries who are not hospital inpatients.

While the cost limit provision for hospital outpatient radiology services and other diagnostic procedures (§ 413.122) is outside the scope of this proposed rule, the provisions could have some effect if this proposal is adopted. That payment methodology uses global amounts payable under the physician fee schedule in determining payments to hospitals for radiology services, including radiation physics services. The TC-only amounts for the physics codes would be handled in the computation in the same way as is currently the case with TC-only radiation treatment delivery codes.

Our proposal would bundle the PC RVUs for all the physics codes into the treatment planning codes without regard to whether teletherapy or brachytherapy is the treatment modality selected. Using the 1991 Part B Medicare Annual Data file (renamed the National Claims History File), we have determined that simple treatment planning CPT code 77261 represented 14 percent of the treatment planning services allowed, intermediate treatment planning CPT code 77262 represented 19 percent of the treatment planning services allowed, and complex treatment planning code 77263 represented 67 percent of the treatment planning services allowed. We then computed 1991 total PC RVUs by multiplying 1991 frequencies for each of the 12 physics CPT codes listed above by the 1993 PC RVUs for each code. (The PC portion of global billings was used in this calculation.) The total RVUs were then allocated to the 3 treatment planning codes based on the 14/19/67 percent relationship. Under this proposal, the 1994 RVUs for these codes would be revised as follows (subject to any refinement adjustment that affects the RVUs generally):

- The RVUs for CPT code 77261—Simple treatment planning would be increased from 2.16 to 4.79.
- The RVUs for CPT code 77262—Intermediate treatment planning would be increased from 3.26 to 7.23.
- The RVUs for CPT code 77263—Complex treatment planning would be increased from 4.85 to 10.75.

C. Anesthesia Services Furnished by Non-Anesthesiologists

Under the physician fee schedule, we do not allow separate payment for an anesthesia service that a surgeon may perform in addition to and concurrent with a surgical procedure. Payment for the anesthesia service is made through the allowance for the global surgical service. We have, however, allowed a psychiatrist who furnishes electroshock therapy and the associated anesthesia service to be paid separately for the anesthesia service. The separate payment is based only on the base unit of the anesthesia service. No payment is recognized for time units. Time units are not allowed because payment for the electroshock therapy compensates the psychiatrist for the time associated with the procedure.

The policy of allowing separate payment, although only a reduced payment, to the psychiatrist is not consistent with our basic policy of not recognizing separate payment for anesthesia furnished by a surgeon who is also performing surgery. Therefore, we propose to eliminate separate payment for the base unit component of the anesthesia service if the psychiatrist furnishes the anesthesia service associated with the electroshock therapy service. Instead, we would bundle the payment for the anesthesia service into the payment for the electroshock therapy service. This service is designated under CPT code 90870. If it is furnished by a psychiatrist, we would determine the current payments allowed for this service and make an adjustment to the work, practice expense, and malpractice RVUs for CPT code 90870 so that payments remain budget neutral.

The proposed methodology for increasing the work, practice expense, and malpractice RVUs for CPT code 90870 to include separate payments previously allowed to psychiatrists for CPT code 00104 (Anesthesia for Electroconvulsive Shock Therapy) follows:

- Determine the aggregate allowed amounts and allowed services for CPT code 90870.
- Determine the aggregate allowed amounts for CPT code 00104 when it is furnished by psychiatrists.
- Divide the aggregate allowed payment for these two CPT codes by the product of the sum of the national conversion factor (CF) (for medical services) and the aggregate allowed services for CPT code 90870. (The CF is a multiplier that transforms RVUs into payment amounts. The CF is a single national value that applies to all services paid under the fee schedule, except that different CFs for surgical and nonsurgical services may eventually result from differential updates under the MVPS.) This computation would result in the increased total RVUs for CPT code 90870.
- The additional RVUs would be apportioned to the work, practice expense, and malpractice RVUs currently assigned to CPT code 90870 based on the current RVU shares.

D. Applying the Site-of-Service Payment Differential

We reduce practice expense RVUs by 50 percent if services that are routinely furnished in physicians' offices are performed in the outpatient department of hospitals. For services performed in physician offices more than 50 percent of the time, we base the practice expense RVUs on charge data from the office setting only. We assume that office charge data accurately reflect physician practice expenses in the office setting. Therefore, for office-based services, the practice expense RVUs reflect office practice costs. Because physicians do not incur certain expenses in the hospital outpatient department (that is, expenses of nonphysician personnel, equipment, and supplies), we reduce physician payments to reflect lower practice costs in that setting. We developed the site-of-service payment differential under the authority of section 1848(c)(4) of the Act, which permits the Secretary the authority to establish "ancillary policies" necessary to implement section 1848. Under § 414.32, carriers are required to reduce the practice expense RVUs by 50 percent if physician services of the type routinely performed in physicians' offices are furnished in hospital outpatient settings. Section 414.32 states that we

VOL 58 ISS 133 JL 14 1993 UMI

establish the list of services subject to the site-of-service differential.

1. Office or Other Outpatient Consultations and Confirmatory Consultations

We currently do not apply the site-of-service differential to procedure codes 99241 through 99245 (Office and Other Outpatient Consultations) performed in the hospital outpatient department. Before 1992, the procedure coding system did not distinguish between consultations based on site of service. However, separate procedure codes were developed for office, outpatient, and inpatient consultations furnished beginning January 1, 1992. The practice expense RVUs for office and outpatient consultations were based on charge data from the office and the hospital outpatient department. Although physicians' offices are the predominant place for office and outpatient consultations, these services are not currently subject to the site-of-service differential. Because office and outpatient consultations are routinely furnished in physician offices, we believe that Medicare payment should appropriately reflect lower physician practice expense when these consultations are performed in the hospital outpatient department.

Confirmatory consultations are also routinely furnished in physicians' offices but are not now subject to the site-of-service differential. The practice expense RVUs for confirmatory consultations are based on charge data from all settings.

We propose to apply the site-of-service differential to office and confirmatory consultations and revise the practice expense RVUs based on office charge data only. Payment for office and confirmatory consultations performed in the hospital outpatient department would appropriately reflect that physicians are incurring fewer practice expenses in this setting. Our policy for payment for office and confirmatory consultations would be consistent with payment for all other procedures that are routinely performed in physicians' offices. If office or outpatient consultations and confirmatory consultations had been subject to the outpatient limit in 1992, we estimate that payment for approximately 506,000 services would have been reduced and that Medicare payments for consultations would have been approximately $8 million less.

2. Nursing Facility (NF) and Hospital Inpatient Settings

Currently, payment for services that are routinely furnished in physicians' offices is reduced in hospital outpatient settings (including the emergency room) but not other facility settings (that is, hospital inpatient settings and NFs). Because the payment is not reduced in hospital inpatient and NF settings, the payment to the physician does not appropriately reflect that physicians incur fewer expenses when providing what are usually office-based services in these settings.

The same rationale for applying a site-of-service differential in the hospital outpatient department is appropriate for other facility settings. That is, physicians incur fewer expenses when furnishing services usually office-based in inpatient hospital and NF settings.

We propose to extend application of the site-of-service differential to inpatient and NF settings. Our policy on payment by site of service would be consistent across all facility settings. There is no logical reason why payment for the practice expense portion of the physician fee should be higher in an inpatient hospital setting or a NF than in the hospital outpatient department.

Physicians' offices are the predominant place for all services subject to the site-of-service differential. With a few exceptions, most of the services that would be affected by expanded application of the site-of-service differential are rarely performed in hospital inpatient or NF settings; therefore, the extension would affect relatively few services. NF visits would be unaffected by this policy change because NF visits are not provided in physicians' offices. Some services, such as surgical cleansing and clipping of nails, would be affected more frequently by expansion of the site-of-service payment differential because they are often performed in NF settings.

We estimate that application of the site-of-service differential would have affected approximately 3.6 million allowed services and $24.4 million allowed charges if this policy had been applied in CY 1992.

3. Ambulatory Surgical Center (ASC) Services

We do not apply the site-of-service differential to services routinely furnished in a physician's office that are currently included on the list of covered ambulatory surgical center (ASC) services. There are eight covered ASC services that we believe should be deleted from the list of ASC covered services and subject to the site-of-service differential. The following eight services will be included in a proposed notice that we are developing to announce changes to the ASC list. If these services are not removed from the ASC list, the site-of-service differential will not apply.

11424—Removal of Skin Lesion
11604—Removal of Skin Lesion
13101—Repair of Wound or Lesion
13132—Repair of Wound or Lesion
52000—Cystoscopy
66762—Revision of Iris
67105—Repair, Detached Retina
67208—Treatment of Retinal Lesion

Currently, the practice expense RVUs for these services reflect office practice expenses but payment is not reduced in facility settings. Payment for practice expenses does not appropriately reflect that physician practice expenses are less if these services are performed in a facility setting.

The practice expense RVUs for these procedures are based on office charge data. These procedures were initially subject to the site-of-service differential under the physician fee schedule. However, because they were also covered ASC list procedures, we removed them from the list of services subject to the site-of-service differential.

If we remove these services from the ASC list, we propose applying the site-of-service payment differential to the above listed procedure codes. Payment for these services in facility settings would appropriately reflect that physicians are incurring fewer practice expenses in these settings. Our policy regarding these procedures would be consistent with that for all other procedures that are routinely performed in a physician's office.

E. Supplies Other Than Drugs

Before 1992, some carriers paid separately for supplies used by physicians in furnishing services while other carriers did not. Because the physician fee schedule is based on national RVUs for services, we implemented a national policy with regard to supplies that, for the most part, does not allow separate payment for supplies incident to a physician's service. Payment for these supplies is bundled into the payment for the physician's service. In implementing the physician fee schedule, we reviewed the charge data on which we based the practice expense RVUs; we found very few separate billings for medical supplies under national codes. Thus, we concluded that the historical charges and, therefore, the practice expense component for most services already included the cost of medical supplies.

However, for services furnished on or after January 1, 1992, we pay an add-on amount for supplies for a limited number of procedures if those procedures are performed in the physician's office. To qualify for the

supply add-on, a procedure must meet the following criteria:

- The procedure can be safely performed in the office setting.
- The procedure is not routinely performed in an office setting. We consider a procedure to be routinely performed in an office setting if our data show that it is performed in the office 50 percent or more of the time.
- The procedure requires specialized supplies that are not used routinely and are generally disposable.

For procedures furnished in CY 1992 that met these criteria, we paid an additional amount for supplies based on a practice expense RVU of 1.00. For services performed in CY 1993, the practice expense RVU has been reduced to 0.97 due to an adjustment for budget neutrality described in the November 1992 final notice (57 FR 55970) on the physician fee schedule for CY 1993. We pay for these supplies under HCFA Common Procedure Coding System (HCPCS) code A4550, surgical tray.

Supplies for splints and casts are separately payable under section 1861(s)(5) of the Act and are not included in the definition of services covered by the fee schedule; therefore, the policy regarding supplies does not apply to treatment for fractures and dislocations. In addition, the policy was not applied to procedures with historical charges for fewer than 1,000 allowed services or if the physician's office was reported as the site of service less than 5 percent of the time because the data were insufficient for us to analyze. We also stated in the November 1991 final rule (56 FR 59523) that we would further consider the issue of separate payment for supplies.

At present, we pay the supply add-on for approximately 50 procedures based on the above criteria. We believe that our general policy of not allowing separate payment for supplies is appropriate for the vast majority of services performed in physicians' offices, and we will continue to apply that policy. However, based on discussions with CMDs, specialty societies and individual physicians, and a review of prior carrier policies, we believe there are supplies associated with a few procedures not on the current list for which, as a matter of equity, physicians should receive additional payment. We are also concerned that the lack of additional payment for these supplies could result in physicians performing these services in the more expensive hospital outpatient departments rather than in their offices. For some of these procedures, we are proposing to allow separate payment under HCPCS code A4550 in accordance with our current policy. For two procedures, we believe an increase in practice expense RVUs is more appropriate.

1. Urological Procedures

There are no urological procedures on the list of services for which we currently allow separate payment for supplies. Supplies for cystoscopies and catheter insertions are among the items paid for separately by some carriers before 1992.

We are proposing to allow separate payment for a surgical tray under HCPCS code A4550 for those cystoscopy procedures that are currently furnished in a physician's office between 5 and 50 percent of the time. Consistent with our current supply policy, the additional payment to physicians would be allowed only if the cystoscopy were performed in a physician's office. In performing the procedure in the office, we believe the physician incurs additional costs that are not incurred by the physician in performing the procedure in the hospital or ASC. The procedures that meet our criteria fall in the CPT code range 52005 through 52317. We are not proposing to add CPT code 52000, a procedure routinely performed in the office, to the list of services for which the surgical tray may be paid separately.

With respect to catheters, our current rules allow for separate payment if the catheterization is for a permanent obstruction. Some catheters are in place for only a week or two and, thus, would not be considered permanent. While we do not believe we should pay for simple, inexpensive tubes used for diagnostic catheterization in the office, we are proposing to pay for catheters used by physicians in the treatment of temporary obstructions.

Because we estimate the cost of the supply to be approximately $15, we do not believe the current supply add-on is appropriate. Therefore, we are proposing to establish a new alpha-numeric procedure code to be reported in lieu of CPT code 53670 for insertion of a temporary in-dwelling catheter. The work RVUs for the alpha-numeric code would be the same as those for 53670. However, we are proposing to add .50 RVUs to the practice expense RVUs for 53670 to reflect the cost of the supply when the new code is reported with an office site-of-service. We would also add the new code to the list of services subject to the site-of-service differential and subtract the additional .50 RVUs before reducing the practice expense RVUs by 50 percent when the service is performed in a setting for which the differential is applied.

2. Unna Boots

CPT Code 29580 is used to report the application of an Unna boot, a paste application employed in a manner similar to a cast for the treatment of ulcers. Unna boots are commonly applied in the office and, therefore, do not meet our usual criterion for additional payment. However, since many carriers paid separately for Unna boots before 1992, the historical charges for CPT code 29580 do not include the cost of the supply. Our data indicate that the usual price for an Unna boot is approximately $15, whereas the practice expense RVUs for CPT code 29580 are only .31, which is equivalent to $9.90.

We are proposing to add .50 RVUs to the practice expense when CPT code 29580 is performed in an office setting to reflect the cost of the Unna boot. As with the insertion of a temporary in-dwelling catheter, the additional .50 RVUs would not apply to procedures performed in a facility setting.

While we are preserving our general policy of not allowing additional payment for supplies, we believe it is reasonable to allow additional payment for the items described above. We also believe it is reasonable to depart from our usual policy and method of paying for supplies under HCPCS code A4550 for Unna boot application and insertion of temporary catheters since the price of the supply is less than the payment amount for A4550 and discrete codes exist for reporting a service that always requires the particular supply item. Adding to the practice expense RVUs is consistent with our policy of bundling payment for supplies incident to a physician's service into the payment for the service. We would include the additional outlays for these supplies in any budget-neutrality calculations for 1994. We estimate the additional expenditures from the above proposals to be approximately $9 million in CY 1994.

F. Payment Area (Locality) and Corresponding Geographic Practice Cost Index (GPCI) Changes

From the inception of Medicare in 1965 until 1992, Medicare payments for physicians' services were made under the reasonable charge system. Under the reasonable charge system, Medicare payment localities for physicians' services were set by local Medicare carriers based on their knowledge of local physician charging patterns. In general, localities tended to be geographic or political subdivisions such as States, counties, or cities, or designations such as urban and rural. Most of the localities changed little

VOL 58 ISS 133 JL 14 1993 UMI

between 1965 and 1992. There were about 240 localities, including 16 States with statewide localities, under the reasonable charge system.

Section 1848 of the Act replaced the reasonable charge system with the physician fee schedule effective January 1, 1992. Section 1848(j)(2) defines a physician fee schedule payment area as the locality existing under the reasonable charge system. Section 1848 did not, however, delete section 1842 of the Act, which gives the Secretary the authority to set localities. We believe the Congress enacted section 1848(j)(2) to allow us to retain existing localities to facilitate changing to the physician fee schedule, but not to preclude us from making locality changes if we so desired.

In the June 1991 proposed rule for the physician fee schedule (56 FR 25832), we acknowledged the lack of consistency among localities and the significant demographic and economic changes that had occurred since localities were originally established. We also stated that we planned no large-scale locality changes until we evaluated the various studies on localities being done within HCFA and by outside groups such as the Physician Payment Review Commission. We stated that until we decide on ultimate large-scale changes, the only locality changes we would consider would be requests for converting individual States with multiple localities to a single statewide locality if "* * * overwhelming support from the physician community for the changes can be demonstrated." This position was repeated in the November 1991 final rule on the physician fee schedule (56 FR 59514). This willingness to consider applications from physicians in a State for conversion to a statewide locality, if overwhelming support on the part of winning and losing physicians has been demonstrated, reflects our belief that statewide localities generally are preferable to the present Medicare localities because they simplify program administration and encourage physicians to practice in rural areas by reducing urban/rural payment differentials. We received inquiries from a number of State medical societies concerning conversions to a statewide payment area. We explained to these States that these conversions involve taking a weighted average of the existing locality GPCIs to form a new statewide GPCI. This means that there will be "losing" (usually urban) areas, as well as "winning" (usually rural) areas within a State if a conversion is made. We further informed these States that a simple resolution passed by the State medical society is not sufficient proof of overwhelming support among both rural and urban physicians for the change. To assist States in deciding whether to convert to a statewide payment area, we published an informational list of projected statewide GPCIs in the June 1991 proposed rule (56 FR 25972).

In most cases, the States have been unable to generate the support of the losing physicians for the change. However, three States—Minnesota, Nebraska, and Oklahoma—were converted to statewide localities in 1992. (These conversions were announced in the November 1991 final rule (56 FR 59514).) No statewide areas were created in 1993. There are currently 232 payment areas under the physician fee schedule: 19 States with single payment areas; the District of Columbia (with surrounding Maryland and Virginia suburbs), Puerto Rico, and the Virgin Islands are 3 more single payment areas; and 31 States with a total of 210 payment areas.

Under the law, payments vary among physician fee schedule areas only to the extent that resource costs vary as measured by the GPCI. The GPCI is an index developed to measure resource cost differences among areas in the three components of the physician fee schedule—physician work, practice expenses, and malpractice expenses. (A detailed explanation of the GPCIs can be found in the June 1991 proposed rule (56 FR 25815). The current GPCIs can be found in Addendum C of the November 1991 final rule (56 FR 59785)).

The GPCIs were originally developed based on Metropolitan Statistical Area (MSA)/County data. Indices were created for each MSA and for all of the remaining non-MSA areas of each State. For the physician fee schedule, if Medicare payment areas diverged from MSA boundaries or encompassed several MSAs, the MSA/county indices were converted to payment area indices by general population weights. Likewise, the State GPCIs were created by weighting the MSA/non-MSA GPCIs by population. The GPCIs for all 1992 physician fee schedule payment areas—including the new GPCIs for the 1992 statewide areas of Minnesota, Oklahoma, and Nebraska—were used in computing the nationally budget-neutral CF for 1992 of $31.001.

The physician fee schedule is budget-neutral on a national basis. If a State with multiple payment areas converts to a statewide payment area using population-weighted State GPCIs after the physician fee schedule became effective, the change may not be budget neutral within the State. Since area expenditure weights were used in mapping MSAs/counties to payment areas, the change will be budget neutral within the State only if the population is apportioned among the existing payment areas in relatively the same proportions as payments under the fully implemented physician fee schedule (that is, excluding the effects of the transition). If the population is not so apportioned, the conversion may result either in an increase or decrease in payments from what would have been paid had the conversion not been made.

Generally, urban areas within a State have higher GPCIs than rural areas. Urban areas also tend to be importers of beneficiaries in that Medicare beneficiaries frequently travel to urban areas to receive services, usually higher-cost surgical and procedural services, not readily available in rural areas. Thus, urban areas generally furnish a larger proportion of services (expenditures) than their proportion of beneficiaries within the State. Therefore, if a State converts from multiple localities to a single payment area under the physician fee schedule and a new State GPCI is computed based on population weights, the new GPCI may not be budget neutral within the State. Thus, all of the payments lost by the urban areas within a State may not be redistributed to rural areas within the same State, resulting in unintended savings to the program.

There is no statutory requirement that the physician fee schedule be budget neutral within a State. However, we believe that neither the program nor the physicians within a State should be advantaged or disadvantaged if the physicians within the State decide to petition for a statewide payment area and the change is made. Therefore, we calculated the following new State GPCIs for the 31 States that contain multiple payment areas. These GPCIs were calculated using area fee schedule RVUs rather than population weights and will be budget neutral within a State if the State converts to a single payment area. We are providing these GPCIs so States that might consider requesting a change to a statewide payment area can compare them to the existing multiple payment area GPCIs in the State. These GPCIs are informational only and have no effect under existing physician fee schedule payment areas. Any of these new GPCIs would become effective only if the State meets our criteria and changes to a statewide payment area.

RVU-BASED STATE GEOGRAPHIC PRACTICE COST INDICES FOR STATES PRESENTLY CONTAINING MULTIPLE PAYMENT AREAS

State	Work	Practice Expense	Malpractice
Alabama	0.975	0.885	0.824
Arizona	0.997	0.998	1.255
California	1.036	1.148	1.370
Connecticut	1.014	1.088	1.101
Florida	0.987	0.952	1.253
Georgia	0.966	0.932	0.752
Idaho	0.966	0.931	0.889
Illinois	1.019	1.049	1.466
Indiana	0.990	0.935	0.534
Iowa	0.975	0.918	0.666
Kansas	0.958	0.907	1.134
Kenturky	0.979	0.902	0.667
Louisiana	0.987	0.941	0.930
Maine	0.949	0.938	0.716
Maryland*	1.023	1.033	0.904
Massachusetts	1.001	1.115	0.855
Michigan	1.037	1.036	1.483
Mississippi	0.963	0.874	0.650
Missouri	0.976	0.934	1.274
Nevada	1.027	1.099	1.144
New Jersey	1.034	1.099	1.153
New York	1.039	1.140	1.535
North Carolina	0.968	0.902	0.378
Ohio	0.993	0.951	0.920
Oregon	0.980	1.008	0.951
Pennsylvania	1.000	0.984	1.315
Texas	0.981	0.922	0.529
Virginia*	0.977	0.939	0.562
Washington	1.009	1.010	1.064
West Virginia	0.973	0.913	0.688
Wisconsin	0.988	0.954	0.762

*The Maryland and Virginia State GPCIs shown separately do not include the parts of Maryland and Virginia included in the District of Columbia physician fee schedule area. The District of Columbia physician fee schedule payment area includes Washington DC; Prince Georges and Montgomery Counties in Maryland; and Fairfax and Arlington Counties and the City of Alexandria in Virginia.

These GPCIs were created by weighting the existing area GPCIs by the full physician fee schedule RVUs in each payment area. Full physician fee schedule RVUs were used rather than 1992 actual dollar payment amounts because the dollar amounts would include transition payment differences, which reflect remnants of the prior reasonable charge system and which will disappear when the physician fee schedule is fully effective in 1996.

These new budget-neutral RVU-weighted State GPCIs are generally slightly higher than the State GPCIs published in Addendum C of the November 1991 final rule (56 FR 59785) because the areas with the higher GPCIs within the State as mentioned earlier, import beneficiaries and, thus, furnish services (RVUs) in a greater proportion than their resident population. Thus, compared to the previous population-weighted State GPCIs, the losing (urban) areas would generally experience slightly less of a decrease in payments, and the winning (rural) areas would generally experience slightly more of an increase in payments under a change to a statewide locality. Differences observed in the Maryland and Virginia GPCI values from those published in the June 1991 proposed rule are primarily attributable to the fact that the values in the rule included the Maryland and Virginia suburbs currently in the District of Columbia physician fee schedule area, not to differences in weighting.

Future conversions to statewide localities would be made using the new budget-neutral State GPCIs in the above table (subject to any future comprehensive GPCI revisions as discussed below). We calculated these GPCIs to assure that the same amount of payments would be made within a State after the conversion as would have been paid if the conversion to a statewide payment area were not made. If we did not use these new State GPCIs, not only might we be generally disadvantaging the physicians within the State, we might experience unintended budget savings. There is no need to recalculate the GPCIs for States that were already statewide localities when the physician fee schedule began in 1992, because these existing GPCIs were used when we computed the 1992 budget-neutral CF.

While we received preliminary inquiries from a number of States concerning converting to a statewide payment area, only six States submitted formal petitions that contained information concerning the level of support for the change among physicians in both winning and losing areas. Of these six, only Ohio and North Carolina demonstrated sufficient support from losing areas to support the change. Therefore, we propose to convert Ohio and North Carolina to statewide payment areas effective on January 1, 1994, using the new RVU-weighted State GPCIs.

As previously mentioned, existing Medicare localities were not established on any consistent basis. No reliable national data to construct the GPCIs were widely and consistently available on a Medicare locality basis. Data were, however, available on an MSA/county basis. In discussing the mapping of the data from an MSA to a locality basis, various weighting methods were considered. Census population weights were selected as being the most reliable and widely and consistently available data. Medicare payments were not used because (1) being charge-based, they would have reflected the unjustified payment differences that existed at that time among localities that the physician fee schedule was designed to correct, and (2) we did not have the capability of identifying payment data within a locality attributable to each distinct part of the locality that crossed MSA lines.

As stated above, section 1842 of the Act gives the Secretary the authority to set payment localities, and we plan to review the existing payment locality structure for possible future changes in 1996. In the meantime, we will continue to consider statewide localities for those State in which physicians express a desire for a change. We believe that statewide localities are generally preferable to the present Medicare localities because they simplify administration and encourage physicians to practice in rural areas. An issue to consider is how we can assure that the views of all physicians in an area are solicited and not just the views of physicians who are members of the State medical societies. We will, of course, announce any proposed changes in the criteria for establishing localities or proposed changes to payment areas as part of the rulemaking process for the physician fee schedule.

G. Evaluation and Management Services

1. Prolonged Evaluation and Management Services (CPT Modifier -21)

Medicare does not recognize CPT modifier -21, prolonged evaluation and management services. Physicians believe we should make additional payment for CPT modifier -21 to recognize when evaluation and management services are primarily for counseling and coordination of care that exceeds the duration of the highest level visit or consultation code available.

We are sympathetic to permitting physicians to bill this modifier and furnish supporting documentation if time is the basis for selecting the level of the code and if the physician spends significantly more than the time in the highest level of visit or consultation code furnishing covered evaluation and management services to a patient. We recognize that some high level visits or consultations for counseling and coordination of care may take significantly more than the time anticipated by the code's definition and believe that the physician should be compensated for this work.

We propose to permit billing of the CPT -21 modifier with documentation for the following CPT codes. These codes are for the highest level of each of the following visit categories of evaluation and management services:

99205 Office or other outpatient visit for a new patient
99215 Office or other outpatient visit for an established patient
99223 Initial hospital care
99233 Subsequent hospital care
99245 Office consultation for a new or established patient
99255 Initial inpatient consultation for a new or established patient
99263 Follow-up inpatient consultation for an established patient
99303 Comprehensive nursing facility assessment
99313 Subsequent nursing facility care

Carriers would make payment on a "by report" basis if they determine that the additional time was necessary and that additional payment is appropriate. We would require the physician to furnish documentation of the services furnished including the duration of face-to-face time or floor time in the case of inpatient hospital visits. We are defining services that take significantly more time than indicated in the above codes as those in which the time in the code is exceeded by 30 minutes or more. Therefore, we propose that after the time of the evaluation and management service has exceeded the time in one of the specified codes by 30 minutes or more and the carrier has determined from review of the records that the services were appropriate, the carrier would pay 1.00 RVU for each additional 15-minute increment of time past the time specified in the code plus 30 minutes. For example, if the physician bills CPT code 99215 (typical time of 40 minutes) with the CPT modifier -21 for a visit of 85 minutes and the carrier determines that the extended duration of the visit was appropriate, the carrier would pay 1.00 additional RVU for the visit (for 1 increment of 15 minutes after the time of the visit had passed 70 (40+30) minutes).

We propose to establish 30 minutes after the duration of the evaluation and management service as the threshold for eligibility for additional payment because it generally represents approximately 2 standard deviations above the mean duration of evaluation and management services. In addition, we propose a payment of 1.00 RVU because 1.00 RVU represents approximately 15 minutes of physician work including practice and malpractice expense in evaluation and management services. It is approximately the level of a level three established patient office visit.

2. Ventilator Management on the Same Day as an Evaluation and Management Service

Under the physician fee schedule, ventilation management (CPT codes 94656, 94657, 94660, and 94662) is considered to be a global service and is assigned a 0-day global period. Therefore, payment is not made for a visit to the same physician on the same day that he or she bills ventilation management, unless the visit is a significant service, separately identifiable from ventilation management. In contrast, ventilation management CPT codes 94656 and 94657 are bundled into critical care services, CPT codes 99291 and 99292.

We believe that when a physician manages a ventilator dependent patient, other aspects of the patient's care are inextricably intertwined with the management of the ventilation and that the evaluation and management services furnished must be considered in their entirety when the selection of the code is made. The assignment of a global period of 0 days to the ventilation management codes merely provided us with an easy vehicle for automating that policy.

However, the application of the global surgery policy to this nonsurgical service has resulted in considerable confusion among physicians and carriers regarding when billing for both a subsequent hospital visit and ventilation management are justified. As a result of that confusion, we propose to bundle ventilation management codes 94656, 94657, 94660, and 94662 into visits, and, therefore, to make our payment for them consistent with our payment for critical care under the current CPT definition of critical care.

We propose to accomplish this change by designating ventilation management codes as "bundled" services with a "B" status in the Medicare physician fee schedule data base (the file on which our carriers base payment) and by distributing the RVUs for these services across all subsequent hospital visit codes. We propose to bundle the RVUs for ventilation management into subsequent hospital care codes because virtually all (97 percent) of these services are furnished to hospital inpatients.

We recognize that there are rare circumstances in which a physician who is doing ventilation management also furnishes a visit that is a significant, separately identifiable service from ventilation management. In these unusual circumstances, the physician has been justified in billing the visit with a CPT modifier -25 to acquire payment for both codes. Under our proposed policy, in these unusual cases, when the physician selects the level of evaluation and management services he or she would also consider the level of medical decisionmaking required by the need for ventilation management, to decide the level of the hospital care code to be used.

We believe that when the work previously billed under two codes is considered in its entirety, the visit code that is selected will result in appropriate payment because the high level of medical decisionmaking for ventilation patients will result in selection of the correct visit or consultation code. Moreover, since the most complex ventilation dependent Medicare beneficiaries are cared for in the inpatient hospital setting (97 percent of billings in 1989), the increased RVUs for subsequent hospital visits should also assist in ensuring appropriate payment. This proposed change would also eliminate the confusion we created when we assigned a global surgical period to an evaluation and management service. It would relieve physicians and carriers of the paperwork burden of the CPT modifier -25 when a ventilator dependent patient requires a visit that is a significant, separately identifiable evaluation and management service from ventilation management. Last, it would eliminate the inconsistency that currently exists in our payment of ventilation management for patients who need subsequent hospital care versus those who need critical care.

H. Payment for Standby Surgical Team

The services of the standby surgical team are not considered covered physician services because no physician service is actually furnished. Recently, some physicians have been billing beneficiaries for their standby or "availability." This billing has been most prevalent by thoracic surgeons who have charged for their availability in the event that a patient undergoing an angioplasty procedure by a cardiologist does not require an emergency bypass procedure. Since the charges are not for a covered physician's service, there is no Medicare limiting charge.

While it may be good medical practice to have a surgical team available in these situations, we continue to believe that this availability is not a covered physician service to an individual patient. Rather, we view the surgeon's availability as a service benefitting all patients receiving that particular service. If any payment is made to a physician for his or her availability, it should be made by the hospital and not by the patient or the Medicare program. Currently, § 405.480(a) limits payment to hospitals for physician availability services furnished for emergency rooms.

We propose to revise § 405.480(a)(2) to include the activities of the standby

surgical team as covered physician availability services. Since these services would be paid directly by the hospital, the physician would no longer be able to bill the beneficiary for these services.

Under § 405.550(d)(3) regarding billing of physician services, if the physician bills the beneficiary, the hospital would be considered to have violated its Medicare provider agreement and could be terminated from the Medicare program. To remain in compliance with its provider agreement, the hospital could reimburse the beneficiary for the amount paid by the beneficiary to the physician or arrange for the physician to reimburse the beneficiary directly.

I. Clinical Laboratory Interpretation Services

The November 1991 physician fee schedule final rule (56 FR 59565) allowed payment for interpretation services furnished by the clinical laboratory physician beginning January 1, 1992. In order for payment to be allowed, the clinical laboratory interpretation service must meet the following conditions:

- Be requested by the patient's attending physician (although a standing order by the hospital is considered an appropriate substitute).
- Result in a written narrative report included in the patient's medical record.
- Require the exercise of medical judgment by the consultant physician.

With the assistance of the CMDs, we identified 15 clinical laboratory tests for which a clinical laboratory interpretation fee could be recognized if furnished by a laboratory physician. These 15 tests follow:

CPT Code	Description
83020	Hemoglobin; electrophoresis
83912	Nucleic acid probe, with electrophoresis with examination and report
84165	Protein, total serum; electrophoretic fractionation and quantitation
84190	Protein; urine; electrophoretic fractionation and quantitation
85390	Fibrinolysins; screening
85576	Platelet; aggregation (in vitro), any agent
86255	Fluorescent antibody; screen
86256	Fluorescent antibody; titer
86320	Immunoelectrophoresis; serum, each specimen
86325	Immunoelectrophoresis; other fluids (e.g. urine) with concentration, each specimen
86327	Immunoelectrophoresis; crossed (2 dimensional assay)
86334	Immunofixation electrophoresis
87164	Dark field examination, any source (e.g. penile, vaginal, oral, skin); includes specimen collection
87207	Smear, primary source, with interpretation; special stain for inclusion bodies or intracellular parasites (e.g. malaria, kala azar, herpes)
89060	Crystal identification by light microscopy with or without polarizing lens analysis, any body fluid (except urine)

When we published this list, we noted that it would be periodically reviewed and revised. The College of American Pathologists (CAP) has identified 10 additional clinical laboratory codes that it recommends we add to the list. The recommendations follow:

CAP'S RECOMMENDED ADDITIONS TO CLINICAL LABORATORY INTERPRETATION LIST

CPT code	Description
80059	Hepatitis panel
83661	LS ratio; quantitative
84181	Protein; Western Blot, with interpretation and report, blood or other body fluid
84182	Protein; Western Blot, with interpretation and report, blood or other body fluid; immunological probe for band identification, each
88371	Protein analysis of tissue by Western Blot, with interpretation and report
88372	Protein analysis of tissue by Western Blot, with interpretation and report; immunological probe for band identification, each
85555	Osmotic fragility, RBC; unincubated
85557	Osmotic fragility, RBC; incubated
85732	Thromboplastin time, partial (PTT); substitution plasma
87177	Ova and Parasites, direct smears, concentration and identification

At the national CMD meeting in March 1993, we asked the CMDs to complete a survey providing their recommendations on the following code changes:

- Whether any of the 10 additional codes should be added to the current list of clinical laboratory interpretation services.
- Whether any of the initial list of 15 codes should be deleted.

A majority of CMDs agree that the following codes should be added to the list: 84181, 84182, 88371, and 88372. These codes would be assigned the same RVUs that are uniformly assigned to all clinical laboratory interpretation services. We are proposing to add these tests to the list and welcome public comment on this proposal. We are not proposing any deletions to the current list.

J. Payment for Selected Multiple Echocardiography Procedures

Medicare currently pays the full physician fee for multiple nonsurgical procedures that are performed on the same day by the same physician or supplier for the same patient, including multiple echocardiography procedures. We believe that for these and many other nonsurgical procedures, there are efficiencies that result when the same physician or supplier performs multiple nonsurgical procedures on the same patient at the same time. We believe that these efficiencies exist both in the PC and the TC of some of these procedures.

One very clear example of this efficiency is when the following echocardiography procedures are furnished on the same day by the same physician or supplier to the same patient:

CPT Code	Description
93307	Echocardiography, real-time with image documentation (2D) with or without M-mode recording; complete
93308	Follow-up or limited study
93320	Doppler echocardiography, pulsed wave and/or continuous wave with spectral display; complete
93321	Follow-up or limited study
93325	Doppler color flow velocity mapping (list separately in addition to the following CPT codes for echocardiography 76825, 76826, 76827, 76828, 93307, 93308, 93320, 93321)

If these services are performed on the same day by the same physician or supplier for the same patient, they can be furnished using a single piece of equipment and can result in a single interpretation and report. There are

VOL 58 ISS 133 JL 14 1993 UMI

obvious efficiencies in supplies, machine operating time, technician time, and physician time if these services are performed or interpreted on the same day by the same physician or supplier.

Specifically, the technician time is greatly reduced by performing the test using a single piece of equipment on a single patient and using a single set of supplies. This contrasts with the need to use multiple pieces of equipment for the same patient and with the situation in which the technician is performing each of the three tests on a different patient, both of which require significantly more technician and machine operating time and multiple sets of supplies. In addition, we believe that the physician's time and work is reduced when the physician reviews a single set of medical records and writes a single report, based upon the results of the test, rather than reviewing records for multiple patients and writing multiple reports.

Therefore, we propose to reduce the payment for the TC and the PC of the above listed CPT codes for the second and subsequent services when more than one of them is furnished on the same day by the same physician or supplier for the same patient. As with the reductions for multiple surgeries, carriers would be required to rank the tests billed by a physician or supplier by the amount of payment made, pay the highest valued CPT code in full (subject to the deductible), and pay 50 percent of the payment amount of the other CPT codes in this group. The ranking and reductions would apply only to the specified CPT codes if they are furnished by a single physician or supplier on the same day for the same patient.

For example, assume that the payment is directly in proportion to the RVUs for the procedures (This is true under the full physician fee schedule, but not necessarily true for a locality in 1994 because of the transition to the physician fee schedule.):

- A physician bills CPT codes 93307, 93320, and 93325; the carrier ranks the three codes by payment amounts and pays 100 percent of the physician fee schedule amount for CPT code 93307 and 50 percent of the physician fee schedule amount each for CPT codes 93320 and 93325.
- A physiological laboratory bills for the TC for CPT codes 93307, 93320, and 93325, and a physician bills for the PC for these same CPT codes; the carrier would pay the physiological laboratory 100 percent of the TC for CPT code 93307 and 50 percent of the TC for CPT codes 93320 and 93325; the carrier would pay the physician 100 percent of the PC for CPT code 93307 and 50 percent of the PC for CPT codes 93320 and 93325.

Although we are proposing multiple nonsurgical procedure reductions only for the CPT codes specified above under the 1994 physician fee schedule, we are carefully reviewing all nonsurgical procedures to determine other sets of codes that may be furnished with significant efficiencies when they are done on the same day by the same physician or supplier for the same patient. Most, but not all, of the additional nonsurgical procedures we are evaluating for reduction are diagnostic tests. We expect to propose any changes for comment in a future **Federal Register** notice.

K. Purchase of Surgical Pathology Technical Component (TC) Services

The purchased diagnostic test provision applies to tests, other than clinical laboratory tests, covered under section 1861(s)(3) of the Act. These tests include x-rays, electroencephalograms, and ultrasound services. Under the purchased test provision, the purchasing physician must identify the supplier from whom he or she purchased the test and the amount the supplier charged the billing physician, net of any discounts. We stated in the November 1991 final rule that we would continue to apply the purchased test provision under the physician fee schedule. Therefore, if a physician bills for a diagnostic test performed by an outside supplier, the fee schedule amount for the purchased services equals the lower of the billing physician's fee schedule or the price he or she paid for the service.

In the preamble to the final rule for the physician fee schedule, we announced that if a pathologist obtained the TC service of a surgical pathology service from another laboratory, the service was not subject to the purchased diagnostic test provisions (56 FR 59565) because it does not constitute a diagnostic test. Upon reconsideration, we have decided this service should be subject to the purchased diagnostic test provisions, and we are proposing that this policy take effect for services furnished beginning January 1, 1994.

L. CPT Codes for Occupational Therapy

Occupational therapy is paid under the Medicare physician fee schedule when it is covered as "independent Occupational Therapy" or as "incident to a physician's service." Currently physicians may bill for occupational therapy that is incident to a physician's service using the CPT physical medicine codes and will be paid on that basis. However, we now require that independent occupational therapy be billed using HCPCS code H5300, except for initial occupational therapy evaluations and periodic re-evaluations, that are billed under temporary HCPCS codes Q0109 and Q0110. We require carriers to convert other services covered as independent occupational therapy to H5300 if they are billed under the CPT code that describes the service. For the 1994 physician fee schedule we would permit OTs to bill their services using the appropriate CPT physical medicine codes. The use of these codes by OTs would ensure compliance with the statute, which requires us to pay OTs in the same manner as we pay physicians for the same services they furnish.

M. RVUs for Services Not Covered by Medicare

Several State Medicaid programs and commercial insurers have expressed interest in developing resource-based fee schedules for physician services. To assist them, we are interested in developing work RVUs for services that are not currently included in the Medicare physician fee schedule but need RVUs assigned for use by Medicaid or other payers. The codes for which we wish to develop work RVUs are currently noncovered, bundled, or carrier-priced under Medicare. Practice and malpractice expense RVUs would be imputed from work RVUs. We have no intention of changing our current payment policy with regard to these services but, rather, wish to develop RVUs for these services to facilitate the adoption of the physician fee schedule by other payers.

The Harvard team has developed preliminary RVUs for approximately 200 codes that are not currently part of the Medicare physician fee schedule. We are interested in receiving comments on these proposed work RVUs found in Addendum A. We are also interested in receiving recommendations for work RVUs for approximately 140 codes for which we have no preliminary RVUs. These codes appear in Addendum B.

While we welcome comments in any format, we have found from past experience that the most useful comments have followed a particular format. We prefer receiving a clinical description of the service in question, and how the work of that service is analogous to one or more suitable reference services. Reference services should be commonly performed services with established work RVUs that are also fairly well understood outside their

specialty. We have included a list of suggested reference services in Addendum C. On this list we have included the following services:

- Services that are commonly performed.
- Services that span the entire spectrum of work RVUs.
- At least three services furnished by each of the major specialties.

If none of these services is suitable, we recommend choosing another service from the physician fee schedule and explaining why it is a better reference procedure.

The clinical analogy for many services can be strengthened by dividing the service into the following three time segments and comparing these segments with the respective segments of the reference services:

- Pre-service work—Work performed before the actual procedure such as review of records, solicitation of informed consent, and preparation of equipment. For surgical procedures with global periods, include estimates of the number, time, and type of visits from the day before surgery until the time the patient enters the operating room. The visit when the decision to operate is made and those visits preceding it should not be included.
- Intra-service work—The actual performance of the procedure. For evaluation and management services, this would be described as "face-to-face" time. For surgical procedures, include the entire time period from when the patient enters the operating room until the patient is discharged from the recovery room.
- Post-service work—Analysis of data collected from the encounter, preparation of a report, and communication of the results. For surgical procedures with global periods, include the number, time, and type of surgeon visits from the time the patient leaves the recovery room until the end of the global period. Also, distinguish inpatient from outpatient visits.

In making these estimations, we encourage detailed clinical information such as data derived from operating logs, operative reports, and medical charts concerning the length of service, the amount of work performed before and after the service, and the length of stay in the hospital. The usefulness of this data is greatly enhanced if it is presented with comparable data for reference services. Also, we encourage evidence of why the data presented are nationally representative of the average work involved in providing the service.

The concept of work involves more than just time, it is the product of time and "intensity". Intensity is best compared by breaking it into the following elements:

- Mental effort and judgment—Compare the service in question with a reference service as to the amount of clinical data that needs to be considered, the fund of knowledge required, the range of possible decisions, the number of factors considered in making a decision, and the complexity of how these factors interact.
- Technical skill and physical effort—One useful measure of skill is the point in training when a resident is expected to be able to perform the procedure. Physical effort can be compared by dividing services into tasks and making direct comparisons of tasks. In making comparisons, it is necessary to show that the differences in physical effort are not reflected accurately by differences in the time involved; if they are, considerations of physical effort amount to double counting.
- Psychological stress—Two kinds of psychological stress are usually associated with physician work. The first is the pressure involved when outcome is heavily dependent on skill and judgment and a mistake has serious consequences. The second relates to unpleasant conditions connected with the work that are not affected by skill or judgment. These circumstances would include situations with high rates of mortality or morbidity regardless of skill or judgment, difficult patients or families, or physician physical discomfort. Of the two forms of stress, only the former is fully accepted as an aspect of work; many consider the latter to be a highly variable function of physician personality.

Intensity often varies significantly in the course of furnishing a service. One common mistake is to "anchor," to treat points of maximum intensity during the service as the basis for comparing services. It is unlikely that the maximum is an accurate reflection of the average intensity of a service: a lengthy procedure that is simple except for a few moments of extreme intensity is probably less work than one of equal length during which a fairly high level of intensity is maintained throughout.

III. Issues for Possible Change After CY 1994

In addition to proposing policy changes for implementation in the near future, this proposed rule is seeking comments and opinions to help us develop guidelines in a number of problem areas. Because these issues are being raised for discussion to help us develop future proposals, we are not recommending that any changes for these issues be included in CY 1994.

In most cases, these issues relate to whether to continue the currently bundled payment for services. We continue to believe that bundling payment for closely related services is the best way to pay for physician services. However, we are interested in comments on these issues that physicians have repeatedly brought to our attention.

A. Severity Adjustment/Unusual Circumstances

Payment under the fee schedule for a given service is generally not affected by the condition of the patient. Variability in case difficulty is assumed to average out, if not over all the times a physician performs a service, then over all the services which that physician performs. The CPT modifiers -22 and -52 are available to denote unusually high or low levels of difficulty, respectively, in performing a service. Additional payment for CPT modifier -22 requires documentation and evaluation on a case-by-case basis.

We have received comments about the lack of a severity adjustment for the services paid under the Medicare physician fee schedule. While physicians can use the CPT modifier -22 to receive additional payment for an unusually difficult case, physicians have claimed that the documentation required and the subjective nature of the case-by-case evaluation discourage them from using the modifier.

Most of the comments about the lack of severity adjustment in fees have come from referral centers with national reputations seeking a higher level of fees for services performed at these centers to compensate for the more severe case mix they claim to have. Studies that compare severity of illness among Medicare patients indicate, however, that these centers also draw large numbers of relatively healthy patients whose high socioeconomic status gives them both the knowledge and the means to travel to referral centers at their own initiative. Similarly, the most desperately ill are often too ill to travel. Therefore, we remain unconvinced that payment at these institutions is inadequate. We believe that, if severity-adjusted payments are made, they should be made on a case-specific basis rather than made to all cases of a specific type of provider.

We recognize that every patient is unique; no payment system can account for all differences. In general, we believe the averaging process fairly compensates most physicians for the range of cases they treat. Moreover, we

VOL 58 ISS 133 JL 14 1993 UMI

are convinced that no payment system can or should try to adjust payment for the unique characteristics of each patient treated. There may be a limited number of physicians who see an atypical mix of patients for whom payment for the average case may not be equitable. As noted above, the CPT modifier -22 is available to adjust for these cases but, because of the perceived paperwork burden of using that modifier, it may not be fully used. As an alternative, we are considering establishing criteria for broadened use of the CPT modifiers -22 and -52 for given procedure codes and recommending uniform RVUs for cases identified by those criteria to be of higher or lower severity.

If certain requirements are met, we would modify our current use of the CPT modifiers -22 and -52 by routinely making higher (or lower) payment and waive both prepayment documentation requirements and manual review. We would make payment uniform; two or three specific work RVUs would be assigned to a code depending on modifier use. Monitoring for appropriate use would depend on statistical analysis of patterns of use and chart audits when unusual patterns are found.

For this system to work, clarity of definition and consistency of use are essential. One physician's subjective assessment of case severity may not match another's. Criteria for use of the modifiers would not be accepted unless they are clear and based upon objective and verifiable information such as age, diagnosis, vital signs, prior procedures, and underlying conditions.

If criteria are established for using severity modifiers with a given code, modifiers could not be used with that code in any other situation; the old system would no longer be in effect for that code. It is, therefore, possible that some cases that would have been approved for additional payment under the old system would fail to qualify for a CPT modifier -22 under the new system. Codes for which we have not established uniform criteria for modifier use would continue to be considered on a case-by-case basis by carriers if physicians use the CPT modifier -22 with documentation.

We are, therefore, inviting physicians and specialty societies to propose adjustments to work RVUs to be used with CPT modifiers -22 and -52 for specific codes, including specific criteria for use of the modifiers so that a physician could readily determine whether a modifier is appropriate in a specific case. The proposals should include estimates of what proportion of services billed with the code would use the modifier(s) and the basis for the estimates.

If we accept a proposal, the work RVUs for the unmodified service (base work RVUs) would be adjusted using the volume estimates so that the volume-weighted average of all services billed under the code would equal the original aggregate work RVU for that code. The result would be two (or three, when both CPT modifiers -22 and -52 are used) severity-specific levels of payment for the service, one higher than the existing fee schedule amount and one lower. If we approve use of only CPT modifier -22 for a code, payment for the unmodified service would be lowered. If we approve use of only CPT modifier -52 for a code, the payment for the unmodified service would increase. If we approve use of both modifiers for a single code, the payment for the unmodified code could be lower or higher than it is now, depending on the work RVUs of the modified services and the assumptions we use regarding their relative volumes.

If we receive and accept any proposals for standardized use of the CPT modifiers -22 and -52 consistent with the model we have outlined here, we will formally announce a change in the **Federal Register** subject to public comments. The earliest these criteria and revised RVUs would become effective would be for services furnished beginning January 1, 1995.

We would closely observe and periodically adjust work RVUs for base and modified services according to actual use so the volume-weighted average would remain equal to the original RVUs. If, use of the CPT modifier -22 were greater than expected, we would reduce the work RVUs for that modifier to counteract any tendency to upcode. If use of the modifier were less than expected, the problem would more likely reflect a simple misestimation of relative volumes, as there is no incentive to downcode; therefore, we would increase the base work RVUs. For the CPT modifier -52, both misestimation and downcoding would be corrected by adjusting the base RVUs.

B. Global Surgery

1. Payment for a Visit on the Day of a Minor Procedure

Under the physician fee schedule, surgical procedures are paid on the basis of a global fee, which includes payment for the routine pre-operative, intra-operative, and post-operative services related to the procedure.

The global surgery policy applies to 1,313 minor surgical procedures to which we have assigned either a 0- or 10-day global period, as well as to the major (90-day global) surgeries. To bill a visit on the same day as the procedure, the visit must be for a significant, separately identifiable evaluation and management service beyond the usual pre- and post-operative work typically furnished on the day of the procedure. The visit must be billed with CPT modifier -25 to indicate that these criteria are met.

Many physicians have asked that we not apply the global surgical policy to minor procedures. They want to routinely bill for a visit furnished on the day of the procedure and be paid for the visit in addition to the procedure without using the modifier. They indicate that for many minor procedures, the visit furnished the day of the procedure always includes complex evaluation services that were not considered in the global RVUs for the procedure (for example, code 99215, Established patient, level 5). Moreover, physicians have complained that the criteria for use of the CPT modifier -25 are not clear and that the lack of clarity creates a paperwork burden in deciding whether they should use the modifier.

While the administrative burden would be reduced for physicians and carriers if we cease to apply the global surgical policy to minor procedures, we have some serious concerns about doing so. If we retain the current RVUs for the global service and simultaneously permit routine billing of a visit, we would overpay physicians for the services they furnish and would raise the total number of RVUs in the system, potentially requiring all RVUs to be adjusted for budget neutrality. Therefore, we would have to reduce the RVUs for the minor procedures to eliminate the RVUs for evaluation and management work that we added to the Harvard research team's RVUs when we apply the global policy to these services.

We are trying to develop guidelines for physicians and carriers to help them determine when a CPT modifier -25 is appropriate. We are requesting public comment regarding what criteria define when an evaluation and management service is a significant, separately identifiable service that is not typically a part of the routine pre- and post-operative care of minor procedures, particularly when the procedure and the evaluation and management service are for the same disease, condition, or set of symptoms. In addition, we are asking for comments regarding alternatives to applying the global fee concept to minor procedures and the adjustment of the RVUs such a change would require. For

the present time, we propose to continue the current policy.

2. Split Global Care (CPT Modifiers -54 and -55)

If a surgeon transfers the post-operative care of a patient to another physician by way of a written agreement, the surgeon bills the surgery under CPT modifier -54 (intra-operative care only) and the receiving physician bills the post-surgery services under CPT modifier -55 (post-operative care only). The carrier splits the post-operative payment between the physicians based on the percentage of days left in the global period after the day the receiving physician furnishes the first post-operative service.

Because the post-operative portion of the payment is split based upon the date of the first service furnished by the receiving physician, the receiving physician may receive more or less payment than is appropriate for the work in the services furnished. Examples:

- If an ophthalmologist transfers post-cataract care to an optometrist on the 45th day (about the time many post-cataract patients are completely recovered and have been "discharged" by the surgeon but are only half way through the global fee period), the optometrist receives half of the post-operative payment for the cataract surgery although the ophthalmologist has already furnished most of the necessary post-operative care.
- If an ophthalmologist transfers post-cataract care to an optometrist who furnishes his or her first service on the 10th day of the global period, the optometrist receives 90 percent of the post-operative payment for the cataract surgery, although the services in the first week after surgery are the most work-intensive and important to recovery.

We split the payment in this situation based upon days in the global fee period because we believed that having a uniform national policy was preferable to carrier discretion and we did not have a better alternative national policy.

Virtually all of the problems and issues of equity and proper billing of split care that have been brought to our attention pertain to post-cataract care split between ophthalmologists and optometrists. The problem is compounded because the scope of practice for optometrists varies by State. Similarly, the extent of post-operative services furnished by optometrists varies. Therefore, we believe that it may be appropriate to retain the current policy for all surgeries except cataract surgeries, for which it obviously causes problems.

To resolve problems with split post-cataract care, we considered giving carriers discretion to establish their own policies for split post-cataract care. However, we continue to believe that we should have a national policy.

We also have considered establishing a specified percentage split for these circumstances. For example, if the care is split in the first 30 days, we might pay the surgeon 80 percent of the post-operative percentage and the receiving physician 20 percent of the post-operative percentage. If care is split after day 30, we might pay the surgeon 95 percent and the receiving physician 5 percent. However, we have no research or data to support these percentages and since payment for cataract surgery has always been made on a global fee basis, we do not have data on the frequency of visits during the post-operative period on which to calculate percentage breakouts.

We also have considered reducing the global fee period for cataract surgery from 90 days to 45 days and simultaneously reducing the RVUs for the surgery to eliminate the payment for the last 45 days of the global period. This would be a reduction of about 1.00 RVU. We have been told that this would eliminate most of the split-care problems for these procedures. It would also reduce the current administrative burden on carriers that occurs with split-care billings for this service.

3. Itinerant Surgeon Billings

The intra-operative RVUs include payment for the pre-operative and post-operative inpatient hospital work as well as the surgery itself. The post-operative RVUs include payment for the outpatient post-operative work. We established the intra-operative RVUs to include inpatient post-operative care because we believed that the surgeon would typically furnish the necessary inpatient hospital care.

We did not anticipate the frequency with which surgery, particularly in rural areas, is performed by a visiting or itinerant surgeon and the frequency with which the pre-operative and all post-operative care is furnished by a primary care physician. Under our current policy, if a primary care physician furnishes the pre-operative and post-operative inpatient care and post-operative outpatient care, the surgeon bills the surgery using only the CPT modifier -54 for intra-operative care. The primary care physician bills for the pre-operative and post-operative inpatient care using the appropriate evaluation and management codes and the post-operative outpatient care using CPT modifier -55. If the surgeon furnishes only the intra-operative work, this split-care policy results in substantially more Medicare payment than would be made if the surgeon furnished all of the global care because the intra-operative RVUs include payment for all post-operative inpatient care.

We have considered a number of options for resolving this problem in a manner equitable to physicians and to the Medicare program.

- We could divide the RVUs into pure pre-operative, intra-operative, and post-operative RVU segments (by breaking apart the intra-operative RVUs) and accept CPT modifier -56 for pre-operative care only (which we do not now accept). It would be difficult, however, to divide the RVUs accurately.
- We could set the surgeon's payment at the difference between the full global fee and the sum of payments made to the primary care physician. This option would permit the primary care physician to control the payment to the surgeon by controlling the number and level of visits the physician billed.
- We could recognize the CPT pre-operative modifier -56 and pay the primary care physician for this care using the pre-operative percent in the data base and establish a percent of the intra-operative RVUs that represents post-operative inpatient care. We would have to create two new modifiers, one for inpatient post-operative care only and one for intra-operative care exclusive of inpatient post-operative care. The intra-operative RVUs would be split between the surgeon and the primary care physician based on the percent we established for post-operative inpatient care.

C. Physical Medicine Services

The law requires that we pay independently practicing physical therapists (PTs) and independently practicing occupational therapists (OTs) the same as we pay physicians for the services they furnish. Services of independent OTs and PTs are "physician services" for purposes of fee schedule payment, as defined in section 1848(j)(3) of the Act.

We have two sets of codes that can be used to bill physical therapy: the CPT codes for individual modalities and services and the HCPCS alpha-numeric codes for physical therapy visits, including treatments and/or modalities. We clarified in instructions that PTs cannot bill physician visit or consultation codes. We created two HCPCS temporary codes for them to use to bill physical therapy evaluations and

VOL 58 ISS 133 JL 14 1993 UMI

re-evaluations (HCPCS codes Q0103 and Q0104).

We have one code for occupational therapy, HCPCS code H5300. We also created two HCPCS codes for occupational therapy initial evaluations and periodic re-evaluations (HCPCS codes Q0109 and Q0110, effective for services furnished after June 27, 1993). We have no uniform instructions for billing or paying other occupational therapy services.

We have had preliminary discussions with the American Physical Therapy Association (APTA) and the American Occupational Therapy Association regarding the coding of physical therapy and occupational therapy services. We have recently received additional information on a coding proposal from the APTA. In addition we have recently become aware that the American Academy of Physical Medicine and Rehabilitation has submitted a request for a revision of the CPT codes for physical medical services. After considering these proposals, we will expand the discussion of the coding of these services to include representatives of other frequent providers of physical medicine services (that is, orthopedic surgeons and family and general practitioners).

Because establishing a single, uniform system for coding physical therapy and occupational therapy services has payment implications for many physicians and nonphysicians, we expect to propose revisions to the physical medicine codes for public comment before we implement them. We do not expect to implement a uniform coding system until January 1, 1995.

D. Payment for Physician Case Management Services

Under the current policy, separate payment is not made for case management services. While the services are covered, they are considered part of the physician work involved in a visit; payment for the visit encompasses payment for the case management services. We continue to believe that most of the tasks associated with case management are of this type and are accounted for in the pre- and post-work of the visit. The longstanding custom of physicians furnishing case management services in connection with visits and as part of a continuing care relationship with a patient represents appropriate medical practice, and we do not wish to change this fundamental relationship. However, we are aware that the treatment of certain complex cases in the home or in NFs has led to situations in which physicians furnish significant medical management services, which are not related to regular visits and which our current policy may not adequately address. We are considering recognizing these special cases. Our intent at this time is to solicit information and suggestions from the public on this issue with the view towards determining if a new policy should be proposed.

The CPT defines case management as "a process in which a physician is responsible for the direct care of a patient, and for coordinating and controlling access to or initiating and/or supervising other health care services needed by the patient." We do not believe the existing CPT codes for physician case management services, which pertain to team conferences and telephone calls, accurately describe the services we believe might warrant separate payment. Therefore, we are considering developing a new HCPCS code to describe the complex medical management of patients with certain high-cost conditions. We would make payment to only those physicians who furnish these services for patients with conditions that routinely require management well beyond what is incident to a visit or another service. Examples of these patients might include those requiring intravenous antibiotic therapy, a ventilator, or parenteral or enteral feeding.

We are not considering specifying the length of time the physician spends furnishing case management services to patients with the specified conditions. Rather, we may consider paying for case management services on a monthly basis. That is, a new code could describe a package of certain specified case management services furnished during a month by the physician identified as the case manager.

We have a number of outstanding questions to resolve before proposing a new policy. We would need to establish rules regarding which physicians could be paid for the coordination of care and how we could identify these attending physicians. In addition, we need to decide how best to assure that these physicians are accountable for the requisite case manager's services (that is, whether to require periodic documentation as to the services furnished). We also need to decide if payment for case management services should be linked to face-to-face contact between the patient and the physician at specified intervals to assure high quality care. In addition, there are immediate and long-term financial implications for separate payment of case management services for Medicare beneficiaries. If we separate case management payment from payment for visits, the beneficiary becomes liable for the coinsurance for a service of which he or she may not be aware or which he or she may not have requested. Therefore, we would need to determine whether to require that those beneficiaries or their representatives must elect to receive case management services before Medicare makes any payment.

If we decide to pay for physician case management services, we would do so in a budget-neutral manner. While separate payment would constitute a new policy that would require us to establish discrete RVUs for case management upon which to base payment, these are not new services since they always have been performed for Medicare beneficiaries and have been considered to be covered, although not separately billable, services. The provision in section 1848(c)(2)(B)(ii) of the Act that the adjustments to the physician fee schedule may not cause the amount of expenditures for physicians' services to differ by more than $20 million would apply. Because we have not determined the scope of services and cases we would include in our definition of case management, we do not have expenditure estimates at this time. However, we expect the increased expenditures to exceed $20 million. Therefore, the RVUs for all services may need to be adjusted downward to account for the separate payment for case management services.

Due to the complexity of this issue as described above, we are not making any specific proposal at this time. Rather, we are soliciting information and recommendations from the public. While we are not limiting the scope of the comments we will consider, we are particularly interested in receiving information relating to the following issues. First, we are seeking recommendations on the types of cases or patient conditions that require complex medical management and for which Medicare should allow separate payment (for example, ventilator-dependent or home IV therapy patients). Second, for the average patient with the conditions we have cited and any others recommended by the commenter, we request comments on the following issues:

- The typical services furnished under the case management umbrella and how we would assure that these services are, in fact, provided (that is, accountability).
- Which physician should be recognized as the case manager for these patients and how Medicare might identify the appropriate physician.

- The frequency with which the average patient may require a face-to-face encounter with the physician.
- Assignment of appropriate work RVUs for these case management services.
- Whether beneficiaries or their representatives should have the opportunity to elect this service and identify the physician and any other issues related to beneficiary liability.

IV. Changes to the Regulations

In § 405.480(a)(2), we would include the services of the standby surgical team as physician availability services.

In § 414.4(b), we would revise the heading to read "Statewide areas," and add North Carolina and Ohio as additional statewide fee schedule areas.

In § 414.32, we would apply the site-of-service payment differential to office or other outpatient consultations and confirmatory consultations, nursing facility and hospital inpatient settings, and six additional services.

In addition to the above changes, we have also made editorial changes that do not affect the substance of the provisions.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Analysis

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

This proposed rule would revise certain payment policies under the physicians' fee schedule that were effective January 1, 1992. After more than a year of experience with the fee schedule, we realize that some policies need to be reconsidered. It is our intention that these proposed policy changes would be budget neutral, resulting in no overall cost or savings to the Medicare program. Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs due to changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. Therefore, if this tolerance is exceeded, we make adjustments to preserve budget neutrality. We are, however, preparing a regulatory impact analysis because the provisions of this proposed rule are expected to have varying effects on the distribution of Medicare physician payments across specialties and across geographic areas. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this proposed rule. However, with few exceptions, we expect that the impact will be limited.

The following discussion describes what we know about the impact of this proposed rule on affected entities and is intended to fulfill the requirements of both E.O. 12291 and the RFA.

1. Transplant Surgeries

The physician fee schedule presently contains no RVUs for heart, heart-lung, and liver transplants. Rather, these services are individually priced by Medicare carriers. We propose to establish RVUs for these services, which would result in greater consistency in Medicare payment for them. Since carrier payments currently vary widely from the proposed allowances, the effect would be mixed. Transplant surgeons in some areas would fare better and others would fare worse under the national values. Under the proposed RVUs for transplant services, payment would generally be reduced as compared with current carrier allowances. We estimate a net savings of about $1 million under the fully implemented fee schedule. Savings in CY 1994 would be considerably less, however, since payment for these services would likely be under the transition rules in most localities as set forth in section 1848(a)(2) of the Act.

2. Radiation Physics Services

Because of the difficulty of determining the degree of physician involvement as opposed to a physicist's role in various aspects of the radiation physics procedure codes, we are proposing to bundle PC RVUs for all procedure codes in the CPT 77300 series into CPT codes 77261 through 77263 for treatment planning. We are proposing that the resulting augmented payments for treatment planning services would represent the only payment for the physician's PC services associated with radiation physics CPT codes during the course of therapy prescribed by the treatment planning codes. Our proposed budget-neutral methodology for bundling the RVUs into the treatment planning codes is discussed in detail in section II.B. of this preamble. This proposed methodology would bundle the 1994 RVUs previously assigned to medical radiation physics codes into the RVUs for simple, intermediate, and complex radiology treatment planning codes. We estimate that the total payments to physicians for treatment planning would be approximately the same as the amount they previously received for treatment planning and physics service codes.

3. Anesthesia Services Furnished by Non-Anesthesiologists

Under the physician fee schedule, we do not allow separate payment for an anesthesia service that a surgeon may perform in addition to and concurrent with a surgical procedure. We have, however, allowed a psychiatrist who furnishes electroshock therapy and the associated anesthesia service to be paid separately for the anesthesia service. This policy of allowing separate payment to the psychiatrist is not consistent with our basic policy of not recognizing separate payment for anesthesia furnished by a surgeon who is also performing surgery.

We propose to eliminate separate payment for the base unit component of

the anesthesia service associated with the electroshock therapy service. Instead, we would bundle the payment for the anesthesia service into the payment for the electroshock therapy service so that payments remain budget neutral. More than 95 percent of anesthesia services associated with electroshock therapy are furnished by anesthesiologists or certified registered nurse anesthetists. Thus, it is relatively uncommon for psychiatrists to furnish both the electroshock therapy and related anesthesia service. According to 1992 data, psychiatrists nationally furnished anesthesia associated with electroshock therapy approximately 3,300 times and allowed amounts for these services approximated $270,000.

Under our proposal, anesthesia payments would be spread over all electroshock therapy services. As a result, psychiatrists who furnish both electroshock therapy and the related anesthesia service would receive smaller payments than they did previously. However, since the expenditures for the anesthesia service by psychiatrists is relatively low, this change should have only a limited impact on psychiatrists collectively. However, it would have a significant impact on psychiatrists who furnish both electroshock therapy and the related anesthesia service.

4. Applying the Site-of-Service Payment Differential

We apply a payment differential to services that are routinely furnished in physicians' offices when they are provided outside of the office. We are proposing to extend the differential to three more situations.

a. *Office or other outpatient consultations and confirmatory consultations.* We propose to apply the outpatient differential to procedure codes 99241 through 99245 (Office or Other Outpatient Consultations) and procedure codes 99271 through 99275 (Confirmatory Consultations) performed in the hospital outpatient department, making our policy consistent with payment for all other procedures that are routinely furnished in physicians' offices. If office or outpatient consultations and confirmatory consultations had been subject to the outpatient limit in 1992, we estimate that payment for approximately 506,000 services would have been reduced and that Medicare payments for consultations would have been approximately $8 million less.

b. *Nursing facility (NF) and hospital inpatient settings.* We propose to apply the site-of-service payment differential to inpatient and NF settings. If the site-of-service payment differential had applied to inpatient and NF settings in CY 1992, we estimate that allowed charges for the designated procedures would have been approximately $24 million less.

c. *Ambulatory surgical center (ASC) services.* We propose to add to the site-of-service list eight procedures currently performed in physicians' offices that are proposed for removal from the list of covered ASC services. Adding these 8 procedures would have reduced payments for approximately 235,000 procedures by an estimated $6.8 million in CY 1992.

5. Supplies Other Than Drugs

The proposed modifications to our current supply policy would affect physicians who perform the following procedures in an office setting: (1) Cystoscopy procedures in the CPT code range 52005 through 52317 that are not routinely provided in a physician's office; (2) insertion of temporary indwelling catheters; and (3) application of Unna boots. Payments per service to these physicians would increase by approximately $30 for the cystoscopies and approximately $15 for the catheters and Unna boots. Beneficiaries would be affected by increases in the amount of their 20 percent coinsurance and, in the case of unassigned claims, balance billing amounts. We estimate the total additional Medicare expenditures to be approximately $9 million, which would be included in the budget-neutrality calculations for CY 1994.

6. Payment Area (Locality) and Corresponding GPCI Changes

We propose to establish statewide payment areas for North Caroline and Ohio. These changes would be accomplished on a budget-neutral basis within the State. However, some modest redistribution in payments would occur within each State. In general, under the proposed change, payments would flow from urban areas, which usually have had higher GPCIs before the change, to rural areas, which usually have had lower GPCIs before the change. We estimate these redistributions to be modest, generally in the range of 1 to 2 percent or less. These estimates represent aggregate effects among areas. The effect on individual physicians would vary depending on factors such as mix and volume of services.

7. Evaluation and Management Services

a. *Prolonged evaluation and management services (CPT Modifier -21).* We propose to permit billing of the CPT -21 modifier with documentation for certain CPT codes. Higher payment would be made to those physicians who furnish high-level visits or consultations that exceed by at least 30 minutes the time anticipated by the code's definition, if the carrier determines from review of the documentation that the services were appropriate and beneficiary copayments would rise if the additional payment is made. Under the proposed criteria, we estimate that the impact of permitting carriers to pay for prolonged evaluation and management services would have been $2.6 million in 1992.

b. *Ventilator Management on the same day as an evaluation and management service.* We propose to bundle payment for ventilation management codes into payment for subsequent hospital visits. We would make this change in a budget-neutral way by redistributing the RVUs for ventilation management to the RVUs assigned for subsequent hospital visits. Since these services are bundled into the hospital visit, physicians would include this factor in determining what level of visit to bill. Based upon 1992 data, we estimate that the impact of bundling ventilation management services into evaluation and management services would mean the redistribution of a total of $53.6 million. The vast majority of this results from the redistribution of RVUs for CPT codes 94656 and 94657. Approximately $11.5 million (from CPT code 94656) would be redistributed, mostly among inpatient consultation codes (virtually all to CPT code 99254) and $41.4 million (from CPT code 94657) would be redistributed, mostly among subsequent hospital care codes. Beneficiary copayment would rise slightly for subsequent hospital care codes but beneficiaries would no longer be liable for the 20 percent copayment for ventilation management services.

8. Payment for Standby Surgical Teams

We have not recognized payments under either Medicare Part A or Part B for the services of standby surgical teams since these services have not been covered. The services for which a standby surgical team are required (for example, angioplasty) are performed in inpatient settings. While we would cover standby services as hospital services beginning January 1, 1994, the program would not experience increased costs. Almost all hospitals that provide these inpatient services are paid for these services under the prospective payment system rates. Medicare beneficiaries would benefit from this provision because they would no longer assume liability for this

service, that is, it would be a covered hospital service.

9. Clinical Laboratory Interpretation Services

We are proposing to expand the list of clinical laboratory interpretation services to include four additional codes. These codes would be assigned the same uniform RVUs that are assigned to all clinical laboratory interpretation services.

CPT codes 84181, 84182, 88371, and 88372 represent new codes that cannot be directly crosswalked to any previous codes. We are unable to estimate precisely the expected volumes for these codes. We believe, however, that the outlays by the Medicare program would be less than $1 million.

10. Payment for Selected Multiple Echocardiography Services

We believe that there are efficiencies that result when the same entity furnishes multiple echocardiography procedures for the same patient at the same time similar to efficiencies that occur in the case of multiple surgical procedures. We propose to reduce payments by 50 percent for the second and subsequent echocardiography procedures if more than one of these procedures is furnished to the same patient on the same day. This change would primarily affect cardiologists. Beneficiary copayments for these services would be reduced as a result of this change.

11. Purchase of Surgical Pathology Technical Component (TC) Services

We propose to add the TC services of a surgical pathology service purchased from another laboratory to those services subject to the purchased diagnostic test provision. This policy would take effect for services furnished beginning January 1, 1994. Therefore, if a pathologist bills for a surgical pathology procedure when the TC is performed by an outside laboratory, the fee schedule amount for the purchased service would equal the lower of the billing pathologist's fee schedule or the amount he or she paid for the service. The data we currently collect does not allow us to estimate the number of times these TC services are purchased from an outside source. Therefore, we cannot estimate the savings associated with this proposal, although we do not believe the savings would be significant.

12. CPT Codes for Occupational Therapy

We require OTs to use HCPCS code H5300 for billing occupational therapy services. Our proposal to permit OTs to bill for their services using the physical medicine codes they furnish (CPT codes in the 97000 series) would eliminate the variation in billing and payment for OT services that now exists. There would be no impact on physicians who bill for occupational therapy when it is "incident to a physician service" since carriers currently permit them to bill using the CPT physical medicine codes. We do not know what the impact of the proposal would be for independent OTs because HCPCS code H5300 is defined as "Occupational Therapy" and we do not know the specific CPT codes OTs would use to bill their services or the volume of services that OTs would bill under the CPT physical medicine codes. However, we believe that the current billing for HCPCS code H5300, Occupational Therapy, would decrease and, therefore, offset, to an undetermined extent, the increase in payment for the physical medicine codes that would be made to independent OTs. In 1992, Medicare had total allowed charges of $1.8 million and total allowed services of 89,000 for HCPCS code H5300.

13. RVUs for Services Not Covered by Medicare

We are proposing to create RVUs for services for which we have not assigned RVUs either because the services are not covered by Medicare or because the services are rarely furnished to Medicare beneficiaries and we have no reliable data for them. We are making this proposal since, increasingly, Medicaid State agencies and private insurers base payment, in whole or in part, on the Medicare physician fee schedule.

We cannot estimate the impact of the creation of these RVUs because we do not know the extent to which they would be used by payers other than Medicare or how these payments would compare to the payments currently made by these payers.

14. Other Issues under Consideration

In addition to proposing policy changes for implementation in the near future, this proposed rule is seeking comments and opinions to help us develop guidelines in a number of problem areas. Because these issues are being raised for discussion to help us develop future proposals, they will have no impact on the 1994 physician fee schedule.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have little direct effect on payments to rural hospitals since this rule would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would make no change in payments to hospitals under Part A. We do not believe the changes we are proposing would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Medicare, Physicians, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as set forth below:

Subpart D—Principles of Reimbursement for Services by Hospital-Based Physicians

1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 1102, 1871, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395xx).

2. In § 405.480, the introductory text of paragraph (a) and paragraphs (a)(1) through (a)(3) are revised to read as follows:

§ 405.480 Payment for services of physicians to providers: General rules.

(a) *Allowable costs.* Except as specified otherwise in § 405.465, or

§ 405.466, or § 413.102 of this chapter, costs that a provider incurs for services of physicians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 405.550(b) regarding fee schedule payment for services of physicians to an individual patient of a provider.

(2) The services include a surgeon's supervision of services of a qualified anesthetist, but do not include physician availability services, except for reasonable availability services furnished for emergency rooms and the services of standby surgical team physicians.

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services.

* * * * *

Subpart F—Services of Physicians in Providers

3. The authority citation for subpart F is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1848, 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395w–4, 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

4. Section 405.550 is amended as set forth below:

a. In paragraphs (a) and (e)(1), remove the reference to "part 415" and add, in its place, the reference to "part 414".

b. Paragraph (c) is revised to read as follows:

§ 405.550 Conditions for payment of charges for physician services to patients in providers: General provisions.

* * * * *

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section but are related to patient care by the provider, the intermediary will pay for those services, if otherwise covered, under the rules in §§ 405.480 and 405.481 on the basis of reasonable cost or the prospective payment system, as appropriate, for physician services to providers.

* * * * *

§ 405.551 [Amended]

5. In § 405.551(a), remove the reference to "part 415" and add, in its place, the reference to "part 414".

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

B. Part 414 is amended as set forth below:

Subpart A—General Provisions

1. The authority citation for part 414, subpart A is revised to read as follows:

Authority: 1102, 1832, 1833, 1834, 1842, 1848, 1861 (b) and (s), 1862, 1866, 1871, and 1881 of the Social Security Act as amended (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395u, 1395w-4, 1395x (b) and (s), 1395y, 1395cc, 1395hh, and 1395rr).

§ 414.2 [Amended]

2. In § 414.2, in the definition of *Physicians' services,* in paragraph (1), remove the words "doctors of chiropracty" and add, in their place, the word "chiropractors".

3. In § 414.4, paragraph (b) is revised to read as follows:

§ 414.4 Fee schedule areas.

* * * * *

(b) *Statewide areas.* HCFA recognizes statewide fee schedule areas for Minnesota, Nebraska, North Carolina, Ohio, and Oklahoma.

* * * * *

4. Section 414.32 is revised to read as follows:

§ 414.32 Determining payments for certain physician services furnished in facility settings.

(a) *Definition.* As used in this section, *facility settings* include the following facilities:

(1) Hospital outpatient departments, including clinics and emergency rooms.

(2) Hospital inpatient departments.

(3) Comprehensive outpatient rehabilitation facilities.

(4) Comprehensive inpatient rehabilitation facilities.

(5) Skilled nursing facilities.

(6) Nursing facilities.

(7) Custodial care facilities.

(8) Inpatient psychiatric facilities.

(b) *General rule.* If physician services of the type routinely furnished in physicians' offices are furnished in facility settings, carriers determine the fee schedule amount for those services by applying the site-of-service differential described in paragraph (e) of this section.

(c) *Services covered by limits.* HCFA establishes a list of services routinely furnished in physicians' offices nationally. Services furnished at least 50 percent of the time in physicians' offices are subject to this limit.

(d) *Services excluded from limits.* The limits established under this section do not apply to the following:

(1) Rural health clinic services.

(2) Surgical services included on the ambulatory surgical center covered list of procedures published under § 416.65(c) of this chapter.

(3) Anesthesiology services and diagnostic and therapeutic radiology services.

(e) *Site-of-service differential on services in a facility setting.* For a service subject to the site-of-service differential in a facility setting, the carrier applies the differential by reducing the practice expense RVUs for a service by 50 percent.

(f) *Application of site-of-service differential.* Payment for physician services of the type described in paragraph (c) of this section that are furnished in a facility setting is the lower of the actual charge or the payment amount determined after applying the differential to the practice expense RVUs as described in paragraph (e) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 14, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 17, 1993.

Donna E. Shalala,

Secretary.

Note: The following Addenda will not be codified in the Code of Federal Regulations.

ADDENDUM A.—CODES WITH PROPOSED WORK RVUS BASED ON HARVARD RESEARCH

HCPCS*	Description	Proposed work RVU
11920	CORRECT SKIN COLOR DEFECTS	1.63
11921	CORRECT SKIN COLOR DEFECTS	1.95
11922	CORRECT SKIN COLOR DEFECTS	0.32

HCPCS*
11950
11951
11952
11954
15775
15776
15824
15825
15826
15828
15829
15850
15876
15877
15878
15879
17380
19396
20802
20804
20805
20806
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20812
20816
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20955
20960
20962
20969
20970
20971
20972
20973
24940
25915
26550
26552
26555
26557
26558
26559
26580
26585
26587
26590
28360
30400
30410
30420
30430
30435
30450
31582
31588
31590
31755
32820
33350
33407
33408

VOL 58 ISS 133 JL 14 1993 UMI

ADDENDUM A.—CODES WITH PROPOSED WORK RVUS BASED ON HARVARD RESEARCH—Continued

HCPCS*	Description	Proposed work RVU
11950	THERAPY FOR CONTOUR DEFECTS	1.08
11951	THERAPY FOR CONTOUR DEFECTS	1.66
11952	THERAPY FOR CONTOUR DEFECTS	2.55
11954	THERAPY FOR CONTOUR DEFECTS	2.83
15775	HAIR TRANSPLANT PUNCH GRAFTS	2.77
15776	HAIR TRANSPLANT PUNCH GRAFTS	3.33
15824	REMOVAL OF FOREHEAD WRINKLES	[illegible]
15825	REMOVAL OF NECK WRINKLES	11.69
15826	REMOVAL OF BROW WRINKLES	7.13
15828	REMOVAL OF FACE WRINKLES	13.06
15829	REMOVAL OF SKIN WRINKLES	14.23
15850	REMOVAL OF SUTURES	0.87
15876	SUCTION ASSISTED LIPECTOMY	2.60
15877	SUCTION ASSISTED LIPECTOMY	2.60
15878	SUCTION ASSISTED LIPECTOMY	2.60
15879	SUCTION ASSISTED LIPECTOMY	2.60
17380	HAIR REMOVAL BY ELECTROLYSIS	1.02
19396	DESIGN CUSTOM BREAST IMPLANT	1.90
20802	REPLANTATION, ARM, COMPLETE	27.83
20804	REPLANTATION, ARM, PARTIAL	25.93
20805	REPLANT FOREARM, COMPLETE	29.47
20806	REPLANTATION, FOREARM, PARTIAL	28.04
20808	REPLANTATION, HAND, COMPLETE	[illegible]
20812	REPLANTATION, HAND, PARTIAL	28.73
20816	REPLANTATION DIGIT, COMPLETE	19.98
20820	REPLANTATION, DIGIT, PARTIAL	18.90
20822	REPLANTATION DIGIT, COMPLETE	18.53
20823	REPLANTATION, DIGIT, PARTIAL	17.94
20824	REPLANTATION THUMB, COMPLETE	20.77
20826	REPLANTATION, THUMB, PARTIAL	20.30
20827	REPLANTATION THUMB, COMPLETE	18.96
20828	REPLANTATION, THUMB, PARTIAL	18.26
20832	REPLANTATION, LEG, COMPLETE	26.95
20834	REPLANTATION, LEG, PARTIAL	21.95
20838	REPLANTATION, FOOT, COMPLETE	26.91
20840	REPLANTATION, FOOT, PARTIAL	22.18
20955	MICROVASCULAR FIBULA GRAFT	21.99
20960	MICROVASCULAR RIB GRAFT	21.14
20962	MICROVASCULAR BONE GRAFT	21.35
20969	BONE-SKIN GRAFT	20.99
20970	BONE-SKIN GRAFT, PELVIS	21.35
20971	BONE-SKIN GRAFT, RIB	[illegible]
20972	BONE-SKIN GRAFT, METATARSAL	20.80
20973	BONE-SKIN GRAFT, GREAT TOE	21.35
24940	REVISION OF UPPER ARM	19.49
25915	AMPUTATION OF FOREARM	14.08
26550	CONSTRUCT THUMB REPLACEMENT	14.65
26552	CONSTRUCT THUMB REPLACEMENT	21.82
26555	POSITIONAL CHANGE OF FINGER	11.71
26557	CONSTRUCT FINGER REPLACEMENT	14.93
26558	ADDED FINGER SURGERY	9.49
26559	ADDED FINGER SURGERY	10.78
26580	REPAIR HAND DEFORMITY	13.10
26585	REPAIR FINGER DEFORMITY	10.13
26587	RECONSTRUCT EXTRA FINGER	7.88
26590	REPAIR FINGER DEFORMITY	10.98
28360	RECONSTRUCT CLEFT FOOT	11.33
30400	RECONSTRUCTION OF NOSE	8.97
30410	RECONSTRUCTION OF NOSE	10.09
30420	RECONSTRUCTION OF NOSE	10.56
30430	REVISION OF NOSE	[illegible]
30435	REVISION OF NOSE	7.76
30450	REVISION OF NOSE	11.48
31582	REVISION OF LARYNX	14.29
31588	REVISION OF LARYNX	12.23
31590	REINNERVATE LARYNX	11.14
31755	REPAIR OF WINDPIPE	7.85
32820	RECONSTRUCT INJURED CHEST	24.53
33350	REPAIR MAJOR BLOOD VESSEL(S)	27.42
33407	REVISION OF AORTIC VALVE	23.95
33408	REVISION OF AORTIC VALVE	21.13

ADDENDUM A.—CODES WITH PROPOSED WORK RVUS BASED ON HARVARD RESEARCH—Continued

HCPCS*	Description	Proposed work RVU
33417	REPAIR OF AORTIC VALVE	23.51
33470	REVISION OF PULMONARY VALVE	17.56
33472	REVISION OF PULMONARY VALVE	20.23
33476	REVISION OF HEART CHAMBER	23.68
33478	REVISION OF HEART CHAMBER	25.61
33575	REVISE CORONARY CIRCULATION	26.83
33647	REPAIR HEART SEPTUM DEFECTS	28.87
33649	REPAIR TRICUSPID DEFECT	38.61
33660	REPAIR OF HEART DEFECTS	31.37
33665	REPAIR OF HEART DEFECTS	33.15
33670	REPAIR OF HEART CHAMBERS	32.98
33681	REPAIR HEART SEPTUM DEFECT	24.44
33684	REPAIR HEART SEPTUM DEFECT	31.46
33688	REPAIR HEART SEPTUM DEFECT	30.87
33690	REINFORCE PULMONARY ARTERY	17.46
33692	REPAIR OF HEART DEFECTS	33.26
33694	REPAIR OF HEART DEFECTS	34.78
33696	REPAIR OF HEART DEFECTS	35.58
33702	REPAIR OF HEART DEFECTS	30.08
33710	REPAIR OF HEART DEFECTS	33.47
33720	REPAIR OF HEART DEFECT	29.41
33730	REPAIR HEART-VEIN DEFECT(S)	25.21
33735	REVISION OF HEART CHAMBER	19.39
33737	REVISION OF HEART CHAMBER	20.28
33738	REVISION OF HEART CHAMBER	12.87
33739	REVISION OF HEART CHAMBER	16.37
33750	MAJOR VESSEL SHUNT	17.99
33755	MAJOR VESSEL SHUNT	19.42
33762	MAJOR VESSEL SHUNT	20.14
33764	MAJOR VESSEL SHUNT & GRAFT	19.57
33766	MAJOR VESSEL SHUNT	20.33
33774	REPAIR GREAT VESSELS DEFECT	29.07
33775	REPAIR GREAT VESSELS DEFECT	31.06
33776	REPAIR GREAT VESSELS DEFECT	31.45
33777	REPAIR GREAT VESSELS DEFECT	29.95
33778	REPAIR GREAT VESSELS DEFECT	27.92
33779	REPAIR GREAT VESSELS DEFECT	32.45
33780	REPAIR GREAT VESSELS DEFECT	32.66
33781	REPAIR GREAT VESSELS DEFECT	32.66
33786	REPAIR ARTERIAL TRUNK	29.26
33788	REVISION OF PULMONARY ARTERY	21.53
33802	REPAIR VESSEL DEFECT	16.05
33803	REPAIR VESSEL DEFECT	17.86
33813	REPAIR SEPTAL DEFECT	19.85
33814	REPAIR SEPTAL DEFECT	23.27
33820	REVISE MAJOR VESSEL	10.47
33822	REVISE MAJOR VESSEL	13.43
33824	REVISE MAJOR VESSEL	15.50
33830	REVISE MAJOR VESSEL	12.86
33840	REMOVE AORTA CONSTRICTION	19.70
33845	REMOVE AORTA CONSTRICTION	22.01
33851	REMOVE AORTA CONSTRICTION	22.11
33852	REPAIR SEPTAL DEFECT	24.31
33855	REPAIR SEPTAL DEFECT	28.24
33960	EXTERNAL CIRCULATION ASSIST	16.61
34501	REPAIR VALVE, FEMORAL VEIN	9.95
34510	TRANSPOSITION OF VEIN VALVE	12.04
34520	CROSS-OVER VEIN GRAFT	12.63
34530	LEG VEIN FUSION	108.73
35161	REPAIR DEFECT OF ARTERY	17.87
35162	REPAIR ARTERY RUPTURE	18.91
35548	ARTERY BYPASS GRAFT	20.62
35549	ARTERY BYPASS GRAFT	22.44
35870	REPAIR VESSEL GRAFT DEFECT	20.85
36415	DRAWING BLOOD	0.17
36468	INJECTION(S); SPIDER VEINS	1.47
36469	INJECTION(S); SPIDER VEINS	1.44
36835	ARTERY TO VEIN SHUNT	6.70
36840	INSERT MANDRIL	4.24
36845	FUSION WITH MANDRIL	5.49
44131	INTESTINAL BYPASS	15.14

HCPCS*
48160
50300
54440
54670
61530
61556
61557
61558
61559
61563
61564
62115
62116
62117
62120
63700
63702
63704
63706
64872
64874
64876
65760
65765
65767
65771
69300
69710
78351
95150
96913
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HCPCS*
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VOL 58 ISS 133 JL 14 1993 UMI

ADDENDUM A.—CODES WITH PROPOSED WORK RVUS BASED ON HARVARD RESEARCH—Continued

HCPCS*	Description	Proposed work RVU
48160	PANCREAS REMOVAL, TRANSPLANT	32.01
50300	REMOVAL OF DONOR KIDNEY	9.91
54440	REPAIR OF PENIS	13.94
54670	REPAIR TESTIS INJURY	8.13
61530	REMOVAL OF BRAIN LESION	43.39
61556	INCISE SKULL/SUTURES	20.07
61557	INCISE SKULL/SUTURES	21.01
61558	EXCISION OF SKULL/SUTURES	24.47
61559	EXCISION OF SKULL/SUTURES	[illegible]
61563	EXCISION OF SKULL TUMOR	23.70
61564	EXCISION OF SKULL TUMOR	29.12
62115	REDUCTION OF SKULL DEFECT	15.94
62116	REDUCTION OF SKULL DEFECT	17.91
62117	REDUCTION OF SKULL DEFECT	20.31
62120	REPAIR SKULL CAVITY LESION	22.89
63700	REPAIR OF SPINAL HERNIATION	12.05
63702	REPAIR OF SPINAL HERNIATION	14.20
63704	REPAIR OF SPINAL HERNIATION	15.84
63706	REPAIR OF SPINAL HERNIATION	18.57
64872	SUBSEQUENT REPAIR OF NERVE	2.04
64874	REPAIR & REVISE NERVE	3.05
64876	REPAIR NERVE; SHORTEN BONE	3.46
65760	REVISION OF CORNEA	13.81
65765	REVISION OF CORNEA	14.22
65767	CORNEAL TISSUE TRANSPLANT	9.14
65771	RADIAL KERATOTOMY	5.27
69300	REVISE EXTERNAL EAR	[illegible]
69710	IMPLANT/REPLACE HEARING AID	13.95
78351	BONE MINERAL CONTENT STUDY	0.34
95150	ANTIGEN THERAPY SERVICES	0.62
96913	PHOTOCHEMOTHERAPY, UV-A OR B	1.56
99381	PREVENTIVE VISIT, NEW, INFANT	0.64
99382	PREVENTIVE VISIT, NEW, 1-4	**0.65
99383	PREVENTIVE VISIT, NEW, 5-11	0.66
99384	PREVENTIVE VISIT, NEW 12-17	0.80
99385	PREVENTIVE VISIT, NEW 18-39	0.95
99386	PREVENTIVE VISIT, 40-64	1.16
99387	PREVENTIVE VISIT, NEW, 65 & OVER	1.60
99391	PREVENTIVE VISIT, EST, INFANT	0.70
99392	PREVENTIVE VISIT, EST, 1-4	**0.69
99393	PREVENTIVE VISIT, EST, 5-11	0.68
99394	PREVENTIVE VISIT, EST, 12-17	0.79
99395	PREVENTIVE VISIT, EST, 18-39	0.87
99396	PREVENTIVE VISIT, EST, 40-64	1.22
99397	PREVENTIVE VISIT, EST, 65 & OVER	1.14
99401	PREVENTIVE COUNSELING, INDIV	0.61
99402	PREVENTIVE COUNSELING, INDIV	0.85
99411	PREVENTIVE COUNSELING, GROUP	0.79
99420	HEALTH RISK ASSESSMENT TEST	0.66

*All numeric CPT HCPCS copyright 1993 American Medical Association.
**HCFA values; none furnished by Harvard.

ADDENDUM B.—CODES WITH NO HARVARD WORK RVUS

HCPCS*	Description
11975	(RE)INSERT CONTRACEPTIVE CAP
11976	REMOVAL OF CONTRACEPTIVE CAP
11977	REMOVAL/REINSERT CONTRA CAP
21079	PREPARE FACE/ORAL PROSTHESIS
21080	PREPARE FACE/ORAL PROSTHESIS
21081	PREPARE FACE/ORAL PROSTHESIS

ADDENDUM B.—CODES WITH NO HARVARD WORK RVUS—Continued

HCPCS*	Description
21082	PREPARE FACE/ORAL PROSTHESIS
21083	PREPARE FACE/ORAL PROSTHESIS
21084	PREPARE FACE/ORAL PROSTHESIS
21085	PREPARE FACE/ORAL PROSTHESIS
21086	PREPARE FACE/ORAL PROSTHESIS
21087	PREPARE FACE/ORAL PROSTHESIS

ADDENDUM B.—CODES WITH NO HARVARD WORK RVUS—Continued

HCPCS*	Description
21088	PREPARE FACE/ORAL PROSTHESIS
21089	PREPARE FACE/ORAL PROSTHESIS
21137	REDUCTION OF FOREHEAD
21138	REDUCTION OF FOREHEAD
21139	REDUCTION OF FOREHEAD
21150	RECONSTRUCT MIDFACE, LEFORT2
21151	RECONSTRUCT MIDFACE, LEFORT2

ADDENDUM B.—CODES WITH NO HARVARD WORK RVUS—Continued

HCPCS*	Description
21154	RECONSTRUCT MIDFACE, LEFORT3
21155	RECONSTRUCT MIDFACE, LEFORT3
21159	RECONSTRUCT MIDFACE, LEFORT3
21160	RECONSTRUCT MIDFACE, LEFORT3
21172	RECONSTRUCT ORBIT/FOREHEAD
21175	RECONSTRUCT ORBIT/FOREHEAD
21179	RECONSTRUCT ENTIRE FOREHEAD
21180	RECONSTRUCT ENTIRE FOREHEAD
21181	CONTOUR CRANIAL BONE LESION
21182	RECONSTRUCT CRANIAL BONE
21183	RECONSTRUCT CRANIAL BONE
21184	RECONSTRUCT CRANIAL BONE
21188	RECONSTRUCTION OF MIDFACE
33930	REMOVAL OF DONOR HEART/LUNG
33940	REMOVAL OF DONOR HEART
35472	REPAIR ARTERIAL BLOCKAGE
36460	TRANSFUSION SERVICE, FETAL
37788	REVASCULARIZATION, PENIS
40840	RECONSTRUCTION OF MOUTH
40842	RECONSTRUCTION OF MOUTH
40843	RECONSTRUCTION OF MOUTH
40844	RECONSTRUCTION OF MOUTH
40845	RECONSTRUCTION OF MOUTH
41820	EXCISION, GUM, EACH QUADRANT
41821	EXCISION OF GUM FLAP
41822	EXCISION OF GUM LESION
41823	EXCISION OF GUM LESION
41828	EXCISION OF GUM LESION
41830	REMOVAL OF GUM TISSUE
41850	TREATMENT OF GUM LESION
41870	GUM GRAFT
41872	REPAIR GUM
41874	REPAIR TOOTH SOCKET
47133	REMOVAL OF DONOR LIVER
53800	URINALYSIS, GLASS TEST
55870	ELECTROEJACULATION
55970	SEX TRANSFORMATION, M TO F
55980	SEX TRANSFORMATION, F TO M
58970	RETRIEVAL OF OOCYTE
58972	FERTILIZATION OF OOCYTE
58974	TRANSFER OF EMBRYO
58976	TRANSFER OF EMBRYO
65125	REVISE OCULAR IMPLANT
76092	MAMMOGRAM, SCREENING
76140	X-RAY CONSULTATION
76350	SPECIAL X-RAY CONTRAST STUDY
78990	PROVIDE RADIOISOTOPE(S)

ADDENDUM B.—CODES WITH NO HARVARD WORK RVUS—Continued

HCPCS*	Description
79900	PROVIDE RADIOISOTOPE(S)
90782	INJECTION (SC)/(IM)
90783	INJECTION (IA)
90784	INJECTION (IV)
90786	INJECTION OF ANTIBIOTIC
90849	SPECIAL FAMILY THERAPY
92015	DETERMINE REFRACTIVE STATE
92310	CONTACT LENS FITTING
92314	PRESCRIPTION OF CONTACT LENS
92340	FITTING OF SPECTACLES
92341	FITTING OF SPECTACLES
92342	FITTING OF SPECTACLES
92370	REPAIR & ADJUST SPECTACLES
92390	SUPPLY OF SPECTACLES
92391	SUPPLY OF CONTACT LENSES
92551	PURE TONE HEARING TEST, AIR
92559	GROUP AUDIOMETRIC TESTING
92560	BEKESY AUDIOMETRY, SCREEN
92590	HEARING AID EXAM, ONE EAR
92591	HEARING AID EXAM, BOTH EARS
92592	HEARING AID CHECK, ONE EAR
92593	HEARING AID CHECK, BOTH EARS
92594	ELECTRO HEARING AID TEST, ONE
92595	ELECTRO HEARING AID TEST, BOTH
93784	AMBULATORY BP MONITORING
93786	AMBULATORY BP RECORDING
93788	AMBULATORY BP ANALYSIS
93790	REVIEW/REPORT BP RECORDING
94642	AEROSOL INHALATION TREATMENT
94772	BREATH RECORDING, INFANT
95120	IMMUNOTHERAPY, ONE ANTIGEN
95125	IMMUNOTHERAPY, MANY ANTIGENS
95130	IMMUNOTHERAPY, INSECT VENOM
95131	IMMUNOTHERAPY, INSECT VENOMS
95132	IMMUNOTHERAPY, INSECT VENOMS
95133	IMMUNOTHERAPY, INSECT VENOMS
95134	IMMUNOTHERAPY, INSECT VENOMS
95135	IMMUNOTHERAPY, ONE ANTIGEN
95140	IMMUNOTHERAPY, MANY ANTIGENS
95145	ANTIGEN THERAPY SERVICES
95146	ANTIGEN THERAPY SERVICES
95147	ANTIGEN THERAPY SERVICES

ADDENDUM B.—CODES WITH NO HARVARD WORK RVUS—Continued

HCPCS*	Description
95148	ANTIGEN THERAPY SERVICES
95149	ANTIGEN THERAPY SERVICES
95155	ANTIGEN THERAPY SERVICES
95170	ANTIGEN THERAPY SERVICES
96545	PROVIDE CHEMOTHERAPY AGENT
97545	WORK HARDENING/CONDITIONING
97546	WORK HARDENING/CONDITIONING
99100	SPECIAL ANESTHESIA SERVICE
99116	ANESTHESIA WITH HYPOTHERMIA
99135	SPECIAL ANESTHESIA PROCEDURE
99140	EMERGENCY ANESTHESIA
99178	DEVELOPMENT EVALUATION TESTS
99295	NEONATAL CRITICAL CARE
99296	NEONATAL CRITICAL CARE
99297	NEONATAL CRITICAL CARE
99403	PREVENTIVE COUNSELING, INDIV
99404	PREVENTIVE COUNSELING, INDIV
99412	PREVENTIVE COUNSELING, GROUP
99431	INITIAL CARE, NORMAL NEWBORN
99432	NEWBORN CARE NOT IN HOSPITAL
99433	NORMAL NEWBORN CARE, HOSPITAL
99440	NEWBORN RESUSCITATION

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ADDENDUM C.—REFERENCE SET

HCPCS*	Description
11200	REMOVAL OF SKIN TAGS
11401	REMOVAL OF SKIN LESION
11446	REMOVAL OF SKIN LESION
11750	REMOVAL OF NAIL BED
13101	REPAIR OF THE WOUND OR LESION
17002	DESTRUCTION OF ADD'L LESIONS
19140	REMOVAL OF BREAST TISSUE
20610	DRAIN/INJECT JOINT/BURSA
22600	NECK SPINE FUSION
26055	INCISE FINGER TENDON SHEATH
27130	TOTAL HIP REPLACEMENT
27235	REPAIR OF THIGH FRACTURE
27244	REPAIR OF THIGH FRACTURE
27447	TOTAL KNEE REPLACEMENT
27590	AMPUTATE LEG AT THIGH
29881	KNEE ARTHROSCOPY/SURGERY
30115	REMOVAL OF NOSE POLYP[S]
31500	INSERT OF EMERGENCY AIRWAY

ADDENDUM

HCPCS*	
31505	D
31575	D
31622	D
31625	B
32000	D
32020	IN
32100	E
33870	T
35081	R
35301	R
35371	R
35656	A
36620	IN
37140	R
37609	T
38300	D
41100	B
43450	D
43832	P
44130	B
44950	A
45110	R
45305	P
46221	L
46936	D
47100	W
48150	P
52000	C
54161	C
55700	B
58120	D
58150	T

VOL 58 ISS 133 JL 14 1993 UMI

ADDENDUM C.—REFERENCE SET—Continued

HCPCS*	Description
31505	DIAGNOSTIC LARYNGOSCOPY
31575	DIAGNOSTIC LARYNGOSCOPY
31622	DIAGNOSTIC BRONCHOSCOPY
31625	BRONCHOSCOPY WITH BIOPSY
32000	DRAINAGE OF CHEST
32020	INSERTION OF CHEST TUBE
32100	EXPLORATION/BIOPSY OF CHEST
33870	TRANSVERSE AORTIC ARCH GRAFT
35081	REPAIR OF DEFECTIVE ARTERY
35301	RECHANNELING OF ARTERY
35371	RECHANNELING OF ARTERY
35656	ARTERY BYPASS GRAFT
36620	INSERTION CATHETER, ARTERY
37140	REVISION OF CIRCULATION
37609	TEMPORAL ARTERY PROCEDURE
38300	DRAINAGE LYMPH NODE LESION
41100	BIOPSY OF TONGUE
43450	DILATE ESOPHAGUS
43832	PLACE GASTROSTOMY TUBE
44130	BOWEL TO BOWEL FUSION
44950	APPENDECTOMY
45110	REMOVAL OF RECTUM
45305	PROCTOSIGMOIDOSCOPY; BIOPSY
46221	LIGATION OF HEMORRHOID [S]
46936	DESTRUCTION OF HEMORRHOIDS
47100	WEDGE BIOPSY OF LIVER
48150	PARTIAL REMOVAL OF PANCREAS
52000	CYSTOSCOPY
54161	CIRCUMCISION
55700	BIOPSY OF PROSTATE
58120	DILATION AND CURETTAGE [D&C]
58150	TOTAL HYSTERECTOMY

ADDENDUM C.—REFERENCE SET—Continued

HCPCS*	Description
58260	VAGINAL HYSTERECTOMY
58720	REMOVAL OF OVARY/TUBE[S]
60220	PARTIAL REMOVAL OF THYROID
60500	EXPLORE PARATHYROID GLANDS
62270	SPINAL FLUID TAP, DIAGNOSTIC
63047	REMOVAL OF SPINAL LAMINA
63750	INSERT SPINAL CANAL CATHETER
64721	CARPAL TUNNEL SURGERY
65285	REPAIR OF EYE WOUND
65730	CORNEAL TRANSPLANT
65855	LASER SURGERY OF EYE
66821	LASERING, SECONDARY CATARACT
67036	REMOVAL OF INNER EYE FLUID
67107	REPAIR DETACHED RETINA
67801	REMOVAL EYELID LESIONS
69433	CREATE EAR DRUM OPENING
69641	REVISE MIDDLE EAR AND MASTOID
70150	X-RAY EXAM OF FACIAL BONES
70450	CAT SCAN OF HEAD OR BRAIN
70470	CONTRAST CAT SCANS OF HEAD
70551	MAGNETIC IMAGE, BRAIN [MRI]
71010	CHEST X-RAY
72020	X-RAY EXAM OF SPINE
73620	X-RAY EXAM OF FOOT
76516	ECHO EXAM OF EYE
76700	ECHO EXAM OF ABDOMEN
77425	WEEKLY RADIATION THERAPY
78306	NUCLEAR SCAN OF SKELETON
78465	NUCLEAR SCAN, HEART MUSCLE
80500	LAB PATHOLOGY CONSULTATION
85060	BLOOD SMEAR INTERPRETATION

ADDENDUM C.—REFERENCE SET—Continued

HCPCS*	Description
88300	TISSUE EXAM BY PATHOLOGIST
88309	TISSUE EXAM BY PATHOLOGIST
90844	PSYCHOTHERAPY, 45–50 MIN
91010	ESOPHAGUS MOTILITY STUDY
92225	SPECIAL EYE EXAM, INITIAL
94010	BREATHING CAPACITY TEST
99201	OFFICE/OUTPATIENT, NEW
99202	OFFICE/OUTPATIENT, NEW
99203	OFFICE/OUTPATIENT, NEW
99204	OFFICE/OUTPATIENT, NEW
99205	OFFICE/OUTPATIENT, NEW
99211	OFFICE/OUTPATIENT, EST.
99212	OFFICE/OUTPATIENT, EST.
99213	OFFICE/OUTPATIENT, EST.
99214	OFFICE/OUTPATIENT, EST.
99215	OFFICE/OUTPATIENT, EST.
99221	INITIAL HOSPITAL CARE
99222	INITIAL HOSPITAL CARE
99223	INITIAL HOSPITAL CARE
99231	SUBSEQUENT HOSPITAL CARE
99232	SUBSEQUENT HOSPITAL CARE
99233	SUBSEQUENT HOSPITAL CARE
99251	INITIAL INPATIENT CONSULT
99252	INITIAL INPATIENT CONSULT
99253	INITIAL INPATIENT CONSULT
99254	INITIAL INPATIENT CONSULT
99255	INITIAL INPATIENT CONSULT
99281	EMERGENCY DEPARTMENT VISIT
99282	EMERGENCY DEPARTMENT VISIT
99285	EMERGENCY DEPARTMENT VISIT

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[FR Doc. 93–16424 Filed 7–13–93; 8:45 am]
BILLING CODE 4120–01–P

VOL
58
ISS
133
JL
14
1993
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federal register

Wednesday
July 14, 1993

Part III

Department of Education

State Postsecondary Review Program; Notice

VOL
58
ISS
133
JL
14
1993
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DEPARTMENT OF EDUCATION

State Postsecondary Review Program

AGENCY: Department of Education.

ACTION: Notice of funding formula and allowable activities for Fiscal Year 1993; and application procedures for Fiscal Year 1993.

SUMMARY: The Secretary establishes a funding formula to implement the State Postsecondary Review Program authorized under title IV, part H, subpart 1 of the Higher Education Act of 1965, as amended (HEA), in fiscal year 1993. The Secretary also establishes allowable activities for fiscal year 1993, and describes the procedures under which a State applies to participate in the State Postsecondary Review Program for that fiscal year.

EFFECTIVE DATE: The funding formula and allowable activities contained in this notice take effect 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John Kolotos or Greg Allen, U.S. Department of Education, 400 Maryland Avenue SW., room 4318, ROB–3, Washington, DC 20202–5346. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

General Overview of the State Postsecondary Review Program

Section 494 of the HEA authorizes the Secretary to enter into an agreement with a State under which a State Postsecondary Review Entity (SPRE) designated by the State conducts or coordinates reviews of institutions of higher education referred to the State by the Secretary. The criteria under which the Secretary refers institutions to a SPRE are contained in section 494C(b) of the HEA. Under its review or coordination, the SPRE determines whether a referred institution satisfies State review standards that the SPRE has developed under section 494C(d) of the HEA. For purposes of this notice, an institution of higher education includes an institution of higher education as defined in 34 CFR 600.4, a proprietary institution of higher education as defined in 34 CFR 600.5, and a postsecondary vocational institution as defined in 34 CFR 600.6.

If the SPRE finds that an institution does not satisfy the State review standards, the SPRE determines whether that institution should continue to participate in the Title IV, HEA programs. (The Title IV, HEA programs are listed in 34 CFR 668.1.) If the SPRE determines that the institution should be allowed to continue to participate in those programs, the SPRE requires that institution to take actions to bring itself into compliance with the State's review standards.

The SPRE must notify the Secretary if an institution that it reviews does not meet the State's review standards and must describe the actions that the SPRE is taking as a result of its findings. If the SPRE determines that an institution should no longer participate in a Title IV, HEA program, it notifies the Secretary of that determination and the Secretary immediately terminates that institution's participation in that program.

To participate in the State Postsecondary Review Program, a State must enter into an agreement with the Secretary under which the State designates the SPRE and describes the organizational structure of the SPRE that is responsible for conducting or coordinating the review of referred institutions. Under section 494A(b)(1) of the HEA, the SPRE must represent all the State entities that exist, or may be created in the future, that are responsible for granting State authorization to provide postsecondary education in that State, and all the State entities that exist, or may be created in the future, that are responsible for ensuring that all institutions in the State remain in compliance with the State standards established under section 494C(d) of the HEA.

In addition, in the agreement, the State must assure the Secretary that the SPRE will (1) review referred institutions on a schedule that coincides with the Secretary's schedule for recertifying whether those institutions meet the regulatory requirements to participate in one or more Title IV, HEA programs, (2) perform the functions required of the SPRE under the State Postsecondary Review Program, and (3) keep records and provide information to the Secretary as may be requested for financial and compliance audits and program reviews.

In the agreement, the State must also describe the relationship between the SPRE and the following three agencies: the State Approving Agency for Veterans Affairs, the State guaranty agency under the Federal Family Education Loan (FFEL) Programs, and the State agency responsible for administering the State Student Incentive Grant (SSIG) Program.

Under the State Postsecondary Review Program, a State is also charged, in consultation with institutions in that State, with establishing and publicizing the availability of procedures for receiving and responding to complaints from students, faculty, and others about institutions. In addition, the State must keep records of those complaints in order to determine their frequency and nature for specific institutions.

To the extent of available appropriations, the Secretary reimburses a State for the costs incurred in carrying out its agreement. However, a State does not have to carry out any activity under the agreement if the State will not be reimbursed for the cost of that activity.

Funding Formula

The sum of $5.3 million is available to initiate the State Postsecondary Review Program for fiscal year 1993. The Secretary allots $20,000 to Guam, $20,000 to the Northern Mariana Islands, $20,000 to the Virgin Islands, $20,000 to the Trust Territory of the Pacific Islands (Palau), and $20,000 to American Samoa. The Secretary allots this amount to these States because only three institutions are located in Guam, and only one institution is located in each of the other jurisdictions.

The Secretary allots the remaining funds so that each remaining State receives the greater of $50,000, or the amount determined under a formula that uses the following two variables: (1) The number of institutions located in a State that are certified to participate in the Title IV, HEA programs, and (2) the amount of Title IV, HEA program funds made available to students enrolled in those institutions during the 1990–91 award year. (This award year is the latest year for which complete data is available.) For purposes of the formula, the Title IV, HEA programs only include the Federal Pell Grant, FFEL, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), and Federal Perkins Loan programs.

The Secretary establishes this formula because the Secretary believes that each State needs at least $50,000 to carry out the allowable activities described below. In addition, a SPRE will eventually be required to review institutions in its State that participate in Title IV, HEA programs. Therefore, the Secretary believes that the relative number of those institutions in a State is an appropriate variable to use in determining a State's allotment of State Postsecondary Review Program funds. Similarly, many of the criteria that the

Secretary uses to refer an institution to a State, and the review of an institution by a SPRE, relate directly or indirectly to the amount of Title IV, HEA program funds that an institution receives. Therefore, the Secretary believes that the relative amount of Title IV, HEA program funds that institutions in a State receive is an equally appropriate variable to use in determining a State's allotment of program funds.

Accordingly, after setting aside $100,000 for Guam, the Northern Mariana Islands, the Virgin Islands, the Trust Territory of the Pacific Islands, and American Samoa, the Secretary uses the following formula for allotting the remaining funds. Under this formula, the Secretary:

(1) Determines the percentage of participating institutions in the State by dividing the number of institutions located in that State that are certified to participate in the Title IV, HEA programs by the total number of institutions that are certified to participate in the Title IV, HEA programs in all States;

(2) Determines the percentage of Title IV, HEA program funds by dividing the total amount of Title IV, HEA program funds that were made available to students who enrolled in that State's participating institutions, or to those students' parents, by the total amount of Title IV, HEA program funds that were made available to students, or to those students' parents, who enrolled in participating institutions in all States, during the latest award year for which information is available;

(3) Averages the two percentages;

(4) Calculates an "initial distribution" by multiplying the average percentage determined in step 3 by $5.2 million;

(5)(a) Determines which States receive less than $50,000 under the initial distribution;

(b) Provides those States with $50,000; and

(c) Calculates the difference between the $50,000 provided to each of those States and those States' initial distribution;

(6)(a) Determines which States receive more than $50,000 under the initial distribution; and

(b) Calculates the difference between each of those States' initial distribution and $50,000;

(7) Calculates a "reduction percentage" by dividing the total amount obtained in step 5(c) by the total amount obtained in step 6(b); and

(8) Reduces the initial distribution of each State in step 6(a) by the product of the amount obtained in step 6(b) and the reduction percentage in step 7.

Under this funding formula, each remaining State's allotment of the $5.2 million is:

State	Title IV, HEA		
	Number of institutions	Program funds	[illegible]
Alabama	112	$269,393,112	$74,079
Alaska	13	13,729,055	50,000
Arizona	101	356,161,161	81,250
Arkansas	85	150,889,926	54,567
California	579	1,647,474,432	412,748
Colorado	111	332,070,410	81,367
Connecticut	115	185,234,159	64,796
Delaware	15	39,688,950	50,000
District of Columbia	25	159,378,701	50,000
Florida	262	728,966,220	175,261
Georgia	167	368,535,438	102,777
Hawaii	22	24,345,337	50,000
Idaho	39	68,620,854	50,000
Illinois	323	768,026,087	198,502
Indiana	151	430,350,149	105,409
Iowa	113	329,125,550	81,617
Kansas	90	226,352,516	62,190
Kentucky	182	225,504,943	90,006
Louisiana	169	396,894,613	106,819
Maine	45	76,561,319	50,000
Maryland	106	201,265,124	64,007
Massachusetts	196	594,202,844	138,910
Michigan	215	586,671,460	143,763
Minnesota	149	555,325,235	119,939
Mississippi	71	207,414,603	54,130
Missouri	224	445,433,589	129,388
Montana	58	73,722,363	50,000
Nebraska	61	158,504,593	50,000
Nevada	27	54,174,802	50,000
New Hampshire	36	79,822,640	50,000
New Jersey	189	264,611,217	93,219
New Mexico	50	99,885,373	50,000
New York	536	1,619,817,093	366,914
North Carolina	159	320,157,254	94,490
North Dakota	35	87,401,113	50,000
Ohio	333	840,510,776	210,316
Oklahoma	127	298,845,815	82,198
Oregon	94	238,014,664	64,816
Pennsylvania	459	1,077,514,719	277,258
Puerto Rico	121	366,813,439	88,610
Rhode Island	30	108,167,570	50,000
South Carolina	84	190,783,690	56,061
South Dakota	35	90,897,762	50,000

State	Title IV, HEA		
	Number of institutions	Program funds	Allotments
Tennessee	169	356,203,199	101,890
Texas	391	1,054,408,125	253,824
Utah	46	159,275,865	50,000
Vermont	32	69,830,495	50,000
Virginia	158	391,548,880	102,833
Washington	111	302,304,653	77,762
West Virginia	78	129,363,750	50,000
Wisconsin	114	381,660,422	88,284
Wyoming	14	40,502,071	50,000
Totals	7,289	18,262,458,230	5,200,000

Fiscal Year 1993 Allowable Activities

The Secretary allots the $5.3 million among the States to enable each SPRE, in consultation with institutions in that State, to develop the State review standards as required in section 494C(d) of the HEA, and to develop procedures for receiving and responding to complaints from students, faculty, and others regarding institutions in the State as required in section 494C(j) of the HEA. In addition, a State may use a portion of its allotment to provide estimates of the costs of coordinating the institutions' and States' information systems with an information system developed by the SPRE.

The Secretary establishes these allowable activities because the SPRE cannot carry out a review of an institution to determine whether the institution is in compliance with State standards developed pursuant to section 494C(d) of the HEA until the State has developed those standards in required consultation with institutions in that State. A State cannot process complaints until it has developed procedures, in required consultation with institutions in the State, to respond to complaints. Moreover, a State cannot determine whether it will be cost-effective to coordinate existing data systems without first determining the costs of coordinating those systems.

Application Procedures

A State that wishes to participate in the State Postsecondary Review Program in fiscal year 1993 must submit to the Secretary a plan that describes the activities that the State proposes to carry out with fiscal year 1993 funds, and a budget for those activities. The State must submit that plan and budget by September 10, 1993, and shall submit that plan and budget to the following address: Virginia G. Re, State Liaison Branch, United States Department of Education, 400 Maryland Avenue SW., room 3036, ROB 3, Washington, DC 20202–5346.

The Secretary approves the State's plan and budget if (1) the proposed activities are allowable activities, (2) the plan provides adequate budget justification for the proposed activities in order to achieve the purposes of the statute, and (3) the budget's approved costs are within the State's allotment. If a State's allotment is less than the State's budget for carrying out its proposed activities, the State must first use its allotment to develop review standards. If a portion of the allotment remains after the State develops those review standards, the State may develop procedures for receiving and responding to complaints from students, faculty, and others regarding institutions in the State. The State may use its allotment to estimate the costs of developing an information system for the SPRE only after it has completed developing its review standards and complaint procedures.

If the Secretary disapproves the State's plan and budget, the Secretary notifies the State of the reasons for that disapproval. The State may request the Secretary to reevaluate that decision by submitting to the Secretary a revised plan and budget that addresses the reasons for the Secretary's disapproval of that plan and budget.

In addition, before it may receive or expend any funds under the State Postsecondary Review Program, the State must enter into the agreement with the Secretary described in section 494A of the HEA. The effective date of a State's agreement is the date on which it is signed by the Secretary. A State must submit its agreement to the Secretary at the address listed above for the submission of its plan and budget for fiscal year 1993 funds.

A State forfeits its right to receive an allotment of fiscal year 1993 funds if: (1) It does not submit its initial plan and budget by September 10, 1993; (2) it does not submit an acceptable plan and budget by October 22, 1993; or (3) it does not submit an acceptable agreement by October 22, 1993. The Secretary will reallot any forfeited allotment to participating States in a manner that best carries out the purposes of the State Postsecondary Review Program.

Allowable Costs

Under the State Postsecondary Review Program, the Secretary reimburses the State for costs incurred by the State in carrying out allowable activities. Allowable reimbursable costs under the State Postsecondary Review Program for fiscal year 1993 are limited to the direct costs incurred in carrying out activities approved by the Secretary, including the direct costs of providing training to State or institutional personnel for responding to complaints from students, faculty, and others regarding institutions in the State. The Secretary does not reimburse the State for indirect costs incurred by the State. Moreover, the Secretary does not reimburse the State for direct costs under an approved plan and budget unless those costs were incurred by the State (1) after the effective date of the State's agreement with the Secretary, and (2) on or before June 30, 1994.

Consequence of the Failure to Enter into an Agreement

Under section 494(c) of the HEA, consequences result if a State fails to enter into an agreement with the Secretary under the State Postsecondary Review Program or fails to carry out properly the requirements contained in the agreement. First, the Secretary does not designate as eligible to participate in any title IV, HEA program the following types of institutions: any institution seeking initial eligibility; any new branch campus, for which an institution seeks an initial designation of eligibility, as defined in 34 CFR part 600; or any eligible institution that has undergone a change in ownership that results in a change in control as determined in 34 CFR part 600. Second, the Secretary

only provides provisional certification to any institution participating in the title IV, HEA programs when that institution is scheduled for recertification. Accordingly, these consequences will apply to institutions in a State if that State fails to submit an acceptable plan or budget for fiscal year 1993 or fails to enter into an agreement with the Secretary, by October 22, 1993.

In addition, under section 494(c) of the HEA, if a State fails to enter into an agreement with the Secretary under the State Postsecondary Review Program, or if it fails to carry out properly the requirements contained in the agreement, the State will be ineligible to receive its allotment under the SSIG Program. However, because the Secretary will have already allotted SSIG Program funds to States in fiscal year 1993 before the deadline for submitting plans and budgets to the Secretary for this program for fiscal year 1993, a State's failure to submit an acceptable plan or budget for fiscal year 1993, or its failure to enter into an agreement by October 22, 1993, will not result in the loss of its allotment of fiscal year 1993 SSIG Program funds.

Finally, the Secretary recognizes that because of the delay in implementing the State Postsecondary Review Program, there may be States that are legally unable to enter into an agreement with the Secretary, or are legally unable to designate a SPRE, because those actions required a change in State law and thus affirmative action by a State legislature. The Secretary further recognizes that for some of these States it may not be possible to have the State legislature act in time for the State to meet the deadlines established in this notice.

Therefore, upon a demonstration by a State that its failure to enter into an agreement under the State Postsecondary Review Program results from the above circumstances, and the State's assurance that it will enter into an agreement with the Secretary under the program for fiscal year 1994 by September 30, 1994, the Secretary does not view the conditions of section 494(c) of the HEA as applying to that State.

Paperwork Reduction Act of 1980

This notice contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these requirements to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(b))

This notice affects States that choose to apply to participate in the State Postsecondary Review Program in fiscal year 1993. Annual public reporting burden for this collection of information is estimated to average 30 hours for each of the 57 States that prepare plans to perform the allowable activities described in this notice, prepare budgets that account for those activities, and submit those plans and budgets to the Secretary for approval.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules and regulations. In order to implement fully the State Postsecondary Review Program in fiscal year 1994 and future years, the Secretary will publish a Notice of Proposed Rulemaking in the **Federal Register**. However, for the following reasons, the Secretary finds that there is good cause under 5 U.S.C. 553(b)(B) to waive public comment on the funding formula and allowable activities contained in this notice for the State Postsecondary Review Program for fiscal year 1993.

The Higher Education Amendments of 1992 (Pub. L. 102–325), that amended the HEA to authorize the State Postsecondary Review Program, were enacted on July 23, 1992. Under section 494B(b) of the HEA, $75 million was authorized to be appropriated for fiscal year 1993 to implement the State Postsecondary Review Program. However, the Department of Education Appropriations Act, (Pub. L. 102–394), enacted on October 6, 1992, did not contain funding for the State Postsecondary Review Program. Instead, the Congress permitted the Department to submit a reprogramming request if the Department believed it was urgent to initiate the State Postsecondary Review Program in fiscal year 1993.

On December 4, 1992, the Department proposed that $20 million in fiscal year 1993 FSEOG, FWS, Federal Perkins Loan, and SSIG Program funds be reprogrammed. However, it was not until April 5, 1993 that the Congress approved the reprogramming of $5.3 million to be allotted to States to perform the activities detailed in this notice.

The purpose of the State Postsecondary Review Program is to increase the accountability of institutions that participate in the Title IV, HEA Programs through expanded State oversight of these institutions. Moreover, the Secretary anticipates that this expanded State oversight will also increase the quality of education and training provided by these institutions. The benefits that will flow from the State Postsecondary Review Program depend on SPRE reviews of referred institutions under State developed educational, financial, and administrative standards. However, SPRE reviews cannot take place until the States develop the standards on which the reviews are based.

In order to have SPRE reviews in fiscal year 1994, those standards must be developed. Under the State Postsecondary Review Program, States are not required to incur any cost unless they will be reimbursed for that cost. Therefore, in order to have reviews of institutions in fiscal year 1994, the Secretary must be able to use fiscal year 1993 funds to pay for the costs of developing the required State standards.

Without establishing the funding formula and allowable activities contained in this notice as final rules, States would not have sufficient time to prepare their plans and budgets, obtain approval of those plans and budgets from the Secretary, and make draws on their Federal allotments in fiscal year 1993 to pay for the costs of carrying out their planned activities. Consequently, States would delay developing their review standards until they could be reimbursed for those activities, thus delaying the conduct of institutional reviews. Therefore, the Secretary concludes it is imperative that Federal funds be made available to States as soon as possible so that States can develop review standards in fiscal year 1993 to be able to conduct reviews of institutions early in fiscal year 1994. Accordingly, the Secretary has determined that there is good cause under 5 U.S.C. 553(b)(B) to waive public comment on the funding formula and allowable activities contained in this notice with regard to the use of fiscal year 1993 funds on the grounds that doing otherwise would be impracticable and contrary to the public interest.

(20 U.S.C. 1099a–1099a–3)

(Catalog of Federal Domestic Assistance No. 84.267, State Postsecondary Review Program)

Dated: July 6, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–16624 Filed 7–13–93; 8:45 am]

BILLING CODE 4000–01–P

VOL
58
ISS
133
JL
14
1993
UMI

federal register

Wednesday
July 14, 1993

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Notice of Proposed Rulemaking

VOL
58
ISS
133
JL
14
1993
UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 27344; Notice No. 93–71]

RIN 2120–AD27

Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes by upgrading the requirements for both seat/restraint systems and for flammability standards for seat cushions used in commuter category airplanes. It also proposes to increase the downward inertia load factor for items of mass within the cabin for all normal, utility, acrobatic, and commuter category airplanes. These amendments are needed to improve the occupant protection provisions for these types of airplanes. These new requirements would result in a level of safety commensurate with that provided by the seat/restraint requirements and the flammability standards for transport category airplanes.

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 27344, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27344. Comments may be inspected in room 916 between 8:30 a.m. and 5 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Assistant Chief Counsel, ACE–7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of Assistant Chief Counsel, weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Standards Office (ACE–112), Aircraft Certification Service, Small Airplane Directorate, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Comments should be accompanied by cost estimates. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27344." The postcard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. The proposals contained in this notice may be changed in light of comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, (APA–200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA proposes to upgrade the cabin safety requirements for airplanes certificated in the normal, utility, acrobatic, and commuter categories of part 23 of the Federal Aviation Regulations (FAR). These proposed rules are a continuation of Federal Aviation Administration (FAA) efforts to improve the occupant protection provisions for airplanes that are type certificated to the requirements of part 23.

Seat/Restraint Requirements

Amendment 23–32 (50 FR 46872, November 13, 1985) added requirements for the installation of a shoulder harness at each seat of normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or fewer, manufactured after December 12, 1986.

Amendment 23–34 (52 FR 18060, January 15, 1987) added airworthiness standards for the type certification of airplanes in a new commuter category. Those rules limited commuter category airplanes to a maximum seating capacity, excluding pilot seats, of 19 or fewer, and maximum certificate takeoff weight of 19,000 pounds or less. The airworthiness standards adopted for the commuter category were based on requirements previously defined in Special Federal Aviation Regulation (SFAR) 41C.

Amendment 23–36 (53 FR 30802, August 15, 1988) added requirements that seat/restraint systems of new design normal, utility, and acrobatic category airplanes comply with specific occupant protection provisions under dynamic test conditions. Those rules were adopted as a result of the publication of Notice No. 86–19 and the FAA analysis of public comments made to the proposals in that notice. At the time Notice No. 86–19 was being developed, the commuter category airworthiness standards had not been promulgated. Therefore, requirements for shoulder harnesses at passenger seats and seat/restraint system dynamic test conditions were not adopted for commuter category airplanes in amendment 23–36.

In a related action, amendment 25–64 (53 FR 17640, May 17, 1988) added requirements that seat/restraint systems for installation in new design transport category airplanes demonstrate specific occupant protection capabilities under prescribed dynamic emergency landing conditions.

Since the airworthiness requirements adopted for commuter category airplanes in amendment 23–34 did not provide upgraded cabin safety requirements for dynamic testing of seats comparable to those recently adopted for normal, utility, and acrobatic category airplanes, but retained the existing certification requirements of SFAR 41C, the FAA established a project to develop improved occupant protection

requirements for commuter category airplanes. In particular, the FAA reviewed the need for dynamic evaluations of seat/restraint systems installed in commuter category airplanes and the need for shoulder harness installations at the passenger seats of those airplanes. This review included an evaluation of the relative size of commuter category airplanes, their general operations, their current required cabin safety provisions, and the level of safety expected by the public.

Generally, commuter category airplanes are intended to operate under part 135 rules to carry passengers for compensation or hire. Also, commuter category airplane designs generally parallel larger twin-engine normal category airplane designs rather than transport category airplane designs used in air carrier operations under part 121 rules. Cabin dimensions for commuter category airplanes, particularly height and width, generally are similar to those of twin-engine normal category airplanes. Most transport category airplanes used in air carrier operations have baggage space below the cabin floor that provides a significant amount of crushable underfloor structure to attenuate peak vertical deceleration levels in the cabin during a crash landing. This is not the case with most commuter category airplanes. An FAA review of the underfloor depth of eleven models of current production airplanes type certificated under SFAR 41 showed that the total underfloor depth varied from 6.3 to 19.0 inches, with an average of about 12 inches. In general, the underfloor structures of those airplanes are not designed to dissipate energy or limit occupant loads during crashes. The design and construction of seats and restraint systems in SFAR 41 airplanes are similar to those of seats and restraint systems used in normal category airplanes. Generally, shoulder harnesses are not available at passenger seats in commuter category airplanes.

During the development of the dynamic test conditions for commuter category airplanes proposed in this notice, the FAA considered the standards now required for dynamic tests of seat/restraint systems in normal, utility, acrobatic, and transport category airplanes. The FAA also reviewed the background and justification of those requirements. The dynamic test conditions and the pass/fail criteria required for seat/restraint systems in normal, utility, and acrobatic category airplanes were proposed originally by the General Aviation Safety Panel (GASP). Those criteria were based on crash data provided by a National Transportation Safety Board (NTSB) Aircraft Accident Report, dated November 23, 1987, data from the FAA Civil Aeromedical Institute (CAMI) Airline Cabin Safety Data Bank Study, and data from full-scale impact tests of normal category airplanes. Those full-scale impact tests were conducted by the National Aeronautics and Space Administration (NASA) as part of a joint FAA/NASA research project.

In this notice, the peak deceleration and time to peak deceleration, for the proposed combined vertical/longitudinal impact condition, were developed by considering a flat-impact crash condition (i.e., the airplane impacts the ground with the airplane longitudinal axis parallel to the ground). That impact condition subjects the seated occupant to a resultant floor pulse that is different from the respective test condition required for seat/restraint systems of normal, utility, or acrobatic category airplanes. The requirements for those small airplanes were developed from recommendations made by the GASP using a typical nose-down crash condition. Information from both NTSB accident data and the NASA full-scale impact test results shows that the flat-impact condition produces higher vertical deceleration rates at the cabin floor than are produced in nose-down impact conditions. In addition, there is a minimal amount of crushable structure available to absorb the impact under flat impact conditions. The amount of crushable structure below the cabin floor is a major factor in determining the amount of energy transmitted to the seat and occupants. Data on several recent accidents of 10-to-19 passenger airplanes operated under part 135 rules indicate that those accidents have occurred at crash conditions approaching those of a flat impact crash. This recent accident data is consistent with the CAMI study, which shows that the majority of commuter category airplane accidents occur at flat-impact conditions. Therefore, the FAA considered it necessary to evaluate the flat-impact crash condition when conducting the analysis leading to the proposals in this notice.

Other airplane performance and design factors were considered during the development of this notice. The FAA evaluated the stall speeds of current production airplanes that are of a design and size similar to airplanes meeting the commuter category rules. Most of those current production airplanes were type certificated to the airworthiness standards of SFAR 41C. The full-flap stall speeds, at airplane maximum takeoff weights, averaged approximately 76 knots for those airplanes. The FAA concluded that those stall speeds generally exceeded the 61-knot stall speed limit for small airplanes that comply with § 23.49, but were similar to stall speeds of larger twin-engine normal category airplanes. The FAA also concluded that the fuselage shell strengths of commuter category airplanes are similar to those of larger normal category twin-engine airplanes.

This proposal includes dynamic test requirements for seat/restraint systems in commuter category airplanes that specify velocity changes similar to those already adopted for dynamic test requirements of seat/restraint systems in normal, utility, and acrobatic category airplanes by considering the similarities in stall speeds and fuselage shell strengths.

Since a shoulder harness is required for each seat/restraint system in current production airplanes that are certificated in either the normal, utility, or acrobatic category, the FAA considered proposing shoulder harness installation requirements for all seats in commuter category airplanes. The FAA concluded that, except for front seats, specific shoulder harness requirements need not be mandated for commuter category airplanes, since compliance with the proposed dynamic test requirements, including the head injury criteria, will eliminate the need for upper torso restraint.

To ensure that adequate occupant protection provisions are provided by the seat/restraint systems in commuter category airplanes, without adding specific requirements for shoulder harness installations, the FAA is proposing that the dynamic tests of commuter category airplane seats be conducted using two rows of seats with each seat occupied by an anthropomorphic test dummy (ATD). In addition to the compliance criteria required for normal, utility, and acrobatic category airplane seat restraint systems, this notice proposes a higher peak deceleration for commuter category airplanes than is presently required by § 23.562(b)(1) and adds limits to the femur loads measured during the dynamic seat tests, making them the same as those limits for transport category airplane seats. Since post-crash evacuation is an essential aspect of cabin safety in commuter category airplanes, this notice also proposes a dynamic test requirement comparable to standards adopted for transport category airplane seats, in which the seat/restraint systems must not yield in a manner that would impede rapid evacuation of the airplane.

VOL
58
ISS
133
JL
14
1993
UMI

The occupant crash protection provided by side-facing seats is a primary concern of the FAA. During the technical analysis leading to this notice, the FAA reviewed the current design techniques for side-facing seat/restraint systems and the occupant protection provided by those configurations. Data on the performance of side-facing seat/restraint systems during crash impact conditions have been documented by CAMI. The data indicate that current side-facing seat designs do not provide the necessary restraint to protect the occupants from serious injury due to impact conditions such as those represented by the dynamic test conditions proposed in this notice. Because side-facing seats, in general, provide very little restraint of an occupant's upper torso, legs, or lower torso, lateral motion may result in serious injury from bending and torsional loading of the occupant's spinal column during relatively minor crash conditions. Developing a side-facing seat/restraint system that provides the occupant protection intended by the dynamic test criteria proposed in this notice has not been shown to be technically or economically feasible at this time. Therefore, this notice proposes rules that would restrict the seat/restraint systems of commuter category airplanes to either forward-facing or aft-facing seat configurations.

A number of current production airplane designs were type certificated to the airworthiness standards of SFAR 41. The anticipated operations of commuter category airplanes are not expected to be significantly different from the operating history of airplanes type certificated to the requirements of SFAR 41. Therefore, the FAA used the operating and accident histories of the SFAR 41 airplanes from NTSB data to establish the occupant protection needs of commuter category airplanes. The CAMI cabin safety research and analyses, which supported the dynamic test requirements applicable to seat/restraint systems of normal category and transport category airplanes, provided technical information regarding current crashworthiness design practices that may be used to assess the performance of commuter category airplane seat/restraint systems. Accident histories, crashworthiness design practices, and an analysis of airframe size effects were used to develop the proposals in this notice. The rules proposed would significantly improve the occupant protection provided by the seat/restraint systems in commuter category airplanes and would enhance the overall safety of those airplanes commensurate with that provided by the recently adopted seat/restraint system requirements for transport category and normal, utility, and acrobatic category airplanes.

As part of the analyses leading to the proposed dynamic test requirements for commuter category airplane seat/restraint systems, the FAA evaluated the need to upgrade other cabin safety regulations in part 23. The FAA concluded that the requirements of § 23.561(b)(3), which concern the static retention strength for items of mass within the cabin, are not compatible with the dynamic loading conditions proposed in this notice, or with the dynamic loading conditions already adopted for seat/restraint systems of normal, utility, or acrobatic category airplanes. During any impact, down-load retention strength may be critical in protecting occupants from serious injury caused by items of mass located in overhead compartments or attached to the overhead structure. Therefore, this notice proposes new downward load factor requirements in § 23.561(b)(3) that would be applicable to items of mass in the cabin of any category of airplane certificated under part 23.

As required by Executive Order 12291, the seat requirements proposed in this notice must be analyzed for the societal costs and benefits that would result from this rulemaking action. GAMA representatives requested a meeting with FAA to discuss the costs and the reasoning for the seat loads in the proposal. The meeting was held on August 18–19, 1988. Although the reasons the FAA provided for the vertical loads in this proposal were accepted at that meeting, a question remained regarding the ability to design a commuter-type seat that would meet this proposed requirement. To resolve this design question, it was agreed that certain seats provided by airframe manufacturers would be tested at CAMI. While the seats originally provided did not meet the proposed requirements, CAMI made minor modifications to one of the seats and it passed the test, thereby demonstrating the practicability of designing seats that can meet this proposed requirement.

A second meeting was held with GAMA on August 22, 1989, to discuss the seat test result. By this testing program, the FAA has been able to demonstrate the feasibility of designing seats that will meet the vertical loads as originally proposed, and no changes were made to this proposal. Records of the August 18–19, 1988, and the August 22, 1989 meetings have been placed in the docket for this project.

Flammability Standards

In addition to proposing occupant protection requirements for dynamic testing of seats, the FAA is proposing new fire safety requirements for passenger seat cushions used in Part 23 commuter category airplanes. These proposed requirements are commensurate with the corresponding requirements for seat cushions used in transport category airplanes.

As a result of regulatory amendment 25–32 (37 FR 3964, February 24, 1972), aircraft seat cushions on transport category aircraft typically are constructed of fire-retardant polyurethane foam and upholstery covering, all of which must presently pass the burn test prescribed in Appendix F of Part 25. In a prolonged full-scale cabin fire condition, however, severe thermal radiation can break down the outer upholstery covering and penetrate into the relatively large fuel mass of the polyurethane foam core. This causes the core to become involved in the fire, spreading flame and producing potentially lethal smoke, combustible gases, and toxic gases. The results of accident investigations and experimental fire tests conducted by the FAA have demonstrated that this involvement of foam cushion material is a dominant factor in the spread of cabin fire. To counter this, fire-retardant performance standards for seat cushions, based on the level of protection that can be achieved by the fire-blocking layer concept, were adopted in amendments 25–59, 29–23, and 121–184.

The fire-blocking layer concept involves the use of a thin layer of highly fire-resistant material, to completely encapsulate and protect the larger mass of foam core seat cushion material from involvement in the cabin fire. This layer of fire-resistant material delays the onset of ignition and retards the involvement of the core in the fire.

The initial phase of the FAA research program for fire-blocking layers consisted of a series of instrument-controlled environment cabin fire tests that confirmed the efficacy and practicality of fire-blocking layers for aircraft seat cushions.

The subsequent phase of the program developed the test for evaluation and certification of cushions, using an adaptation of the type of 2 gallon/hour kerosene burner that is currently in standard use throughout industry as a test for metallic tubing assemblies and components. This test subjects the cushion test specimen to temperature and heat typical of full-scale cabin fire.

Amendments 25–59, 29–23, and 121–184 (49 FR 43188, October 26, 1984) adopted the implementation of detailed procedures of the kerosene burner test developed by the FAA for transport category airplanes. The test subjects seat bottom and seat back cushion specimens to a 2 minute burner flame impingement. The criteria for acceptance are based, in part, on the percentage weight loss of the cushion specimen during the test. While the amendments were based on the performance attained by fire-blocking construction, they do not require that seats cushions be constructed in that way. Rather, they specify objective standards of performance for seat cushions so that, if other or improved means of accomplishing the fire safety objective are developed, they can be used without the need for regulatory amendment. The amendments incorporated the new cushion flammability requirements as additions to the type certification standards for both transport category airplanes and transport category rotorcraft since the flammability requirements for these two categories of aircraft are identical. The amendments also required that, 3 years from the effective date of the final regulation, seat cushions in airplanes type certificated after January 1, 1958, and operated under part 121, meet the new requirements.

Section 23.561

Section 23.561(b)(3) states three orthogonal load factors that define the ultimate static load requirements for the attachment of items of mass in the airplane cabin that could seriously injure occupants during an emergency landing. Those ultimate static load conditions, along with other cabin safety requirements, were added to part 23 by amendment 23–36 to ensure that the attachments of items of mass in the cabin would have adequate retention strength so that they would not pose a hazard to occupants as a result of a minor crash impact. Items of mass are, in general, not located in overhead positions in small airplanes; so, at the time the requirements in § 23.561(b)(3) were adopted, the major concern was to ensure adequate restraint for items of mass that would be located behind the occupants in the cabin. For those items, the forward and side load conditions were considered most critical, so an 18.0 g forward load factor and a 4.5 g sideward load factor were adopted. A 3.0 g upward load factor was also adopted to ensure retention strength from rebound loads.

The adoption of the commuter category airplane airworthiness standards with amendment 23–34 and the technical analysis done to support the dynamic test criteria proposed in this notice for seat/restraint systems of commuter category airplanes have resulted in new concerns for adequate retention of items of mass for downward inertia loads resulting from crash impacts. Since this concern is appropriate for airplanes certificated in all categories, this notice proposes to add a downward inertia load requirement for retention of items of mass in the cabin that pose a hazard to occupants. The intent of the proposed changes to § 23.561(b)(3) is to ensure static retention strength capability that is compatible with the load factors measured during full-scale airframe impact tests. This notice also proposes to modify the introductory text of § 23.561(b)(3) slightly for clarity.

Section 23.562

The present commuter category airplane airworthiness standards provide less occupant protection in an emergency landing than the cabin safety requirements recently adopted for transport category and normal category airplanes. Specific ultimate static inertia load factors related to a minor crash landing are stated in present § 23.561(b)(2). Amendment 23–36 added requirements for dynamic testing of seat/restraint systems in normal, utility, and acrobatic category airplanes. These requirements were stated in a new § 23.562. Dynamic test requirements for seat/restraint systems in commuter category airplanes were not adopted with amendment 23–36 because part 23 did not provide airworthiness requirements for commuter category airplanes when the requirements of § 23.562 where originally proposed.

Since part 23 now provides airworthiness requirements for the type certification of commuter category airplanes, this notice proposes substantial changes to § 23.562 to incorporate regulations for dynamic test evaluations of the seat/restraint systems installed in those airplanes. This notice does not propose any changes to the current dynamic test requirements for seat/restraint systems used in normal, utility, or acrobatic category airplanes.

This proposal would move the compliance criteria of § 23.562(c) to a new paragraph (d) in § 23.562 and move the requirements in § 23.562(d) to a new paragraph (e) in § 23.562. Two additional compliance requirements are proposed for the seat/restraint systems of commuter category airplanes in order to ensure a level of safety that is commensurate with that provided by transport category airplanes. One requirement would limit the axially compressive loads measured in each femur of the ATD to a value of 2,250 pounds. Femur load limits are proposed to ensure occupant protection from injurious compressive loads applied to the upper legs of occupants during the impact conditions prescribed in proposed § 23.562(c). The second new requirement, proposed by this notice, would limit the deflection of the seats, under the dynamic conditions of § 23.562(c), so those seats do not impede rapid evacuation of the airplane by its occupants. Requirements similar to those proposed in this notice were adopted, with amendment 25–64, for dynamic test standards of seats and restraint systems for transport category airplanes.

This proposal would also add a new paragraph § 23.562(c) that would specify the dynamic test conditions for evaluating commuter category airplane seat/restraint systems. The requirements for impact test conditions of proposed § 23.562(c)(1) are significantly different than the predominantly vertical test conditions prescribed in § 23.562(b)(1) for normal, utility, and acrobatic category airplane seats. Analysis of full-scale airframe test data shows that a flat-impact crash results in the most severe dynamic test conditions for a given impact velocity. Data, which are consistent with the CAMI study, indicate that, in accidents of commuter-sized airplanes that complied with SFAR 41 airworthiness standards, the airplanes contacted the ground in a nearly flat-impact crash condition. There were survivors in these accidents, and the fuselage structures maintained a survivable volume in most cases; but, in some cases, the seat/restraint systems did not provide adequate restraint to protect the occupants from serious injuries. The FAA recognizes that the test conditions in proposed § 23.562(c)(1) would be upgraded from those adopted in § 23.562(b)(1). The FAA considers the proposed requirements necessary to ensure a level of cabin safety for commuter category airplanes that is commensurate with that provided by transport category cabin safety standards, which were based on flat-impact crash conditions.

Comments to this notice are invited that address the development of dynamic test parameters that were based on the analysis of assumed flat-impact crash conditions. The comments should include historical data, accident data, analytical studies, or test data, that support the parameter values of proposed § 23.562(c)(1) or other criteria that should be proposed for the substantiation of the level of occupant

VOL 58 ISS 133 JL 14 1993 UMI

protection provided by commuter category airplane seat/restraint systems.

Section 23.785

The FAA is proposing changes to those paragraphs of § 23.785 that state requirements for seat/restraint systems and the cabin area surrounding the seats of commuter category airplanes. These changes are necessary so that § 23.785 refers to the proposed dynamic seat test requirements for commuter category airplanes, when applicable. This notice proposes to add dynamic test requirements for the seat/restraint systems of commuter category airplanes to § 23.562(c).

Proposed § 23.785(c) cites the specific requirements for seat/restraint systems of commuter category airplanes. The proposed requirements would limit the seats in commuter category airplanes to either forward-facing or aft-facing designs. The proposal would require that a seat/restraint system for installation in the front row of a commuter category airplane consist of a seat, safety belt, and shoulder harness. The proposed rule would not specifically require shoulder harnesses for seat/restraint systems for installation at other than the front row of those airplanes, but would require that all seat/restraint systems for use in commuter category airplanes comply with the dynamic test requirements and performance criteria being proposed in § 23.562 (c) and (d).

Paragraph (i) of § 23.785 proposes requirements to protect occupants from serious injury due to impact with surrounding structure, and references the occupant protection provisions, as defined for normal, utility, and acrobatic category airplanes, in § 23.562(b), and as proposed for commuter category airplanes in § 23.562(c).

The intent of these proposed changes is to ensure that the dynamic test requirements for seat/restraint systems of commuter category airplanes are referenced in § 23.785, and to limit seat/restraint systems intended for use in commuter category airplanes to forward-facing or aft-facing configurations. The FAA has carefully considered current design practices for side-facing seats and the occupant protection provisions proposed in this notice and has concluded that the available technical information does not demonstrate that the occupant protection requirements proposed in this notice would ensure that side-facing seat configurations could provide the minimum level of occupant protection necessary for those seat/restraint systems installed in commuter category airplanes.

Appendix F

This revision clarifies the vertical test configuration and adds a test configuration for the horizontal test prescribed by paragraph (e). This configuration had been inadvertently omitted.

Under this proposal, seat cushions would be required to meet the new flammability requirements. The proposed criteria for acceptance are based, in part, on the percentage of weight loss of the cushion during the test. Weight loss is a direct measure of the involvement of the material in the fire and a relevant indication of the merit of the cushion for both fire-blocked and non-fire-blocked construction. The criteria proposed would limit the average weight loss of all specimens test to 10%. From the study of various experimental cushions, a 10% limit would represent a major advance in fire safety. It would allow a variety of commercially available foam and fire-blocking materials to be used would be adequate for design and would be optimal from a standpoint of weight and costs. While the proposal is based on the performance attained by cushions constructed with fire-blocking layers, it would not require that all seat cushions be constructed in that way. Rather, the proposal would set objective standards of performance for seat cushions.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under Administration: FAA; Title: Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Need for Information: The information is needed to check for compliance of seat flammability; Proposed Use of Information: The information collected will be a record of the test results on seat cushion flammability. The tests will be performed by manufacturers of seat cushions and will become a part of the type certification basis for the airplane; Frequency: On occasion; Burden Estimate: 2.5 hours annually; Respondents: Businesses/Manufacturers of aircraft and airplane seats; Forms(s): None; Average Burden Hours Per Response: 30 minutes per response. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not "major" as defined by Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Nevertheless, in accordance with Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits. Those costs and benefits are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Benefits

Seat/Restraint System

The present value of the benefits of the proposed seat/restraint system are estimated to be $1,500 per passenger seat and $3,200 per crew seat. These estimated benefits are based upon a review of the NTSB data on survivable accidents involving commuter type airplanes between 1979 and 1988 in which one or more occupants were either seriously injured or killed. These accidents were severe enough that improved seat/restraint systems could have reduced the number of fatalities and serious injuries.

In the ten-year period covered in the NTSB review, 250 passengers were involved in the 49 survivable commuter airplane accidents considered in this regulatory evaluation. In these accidents, 34 passengers received fatal injuries, 84 passengers received serious injuries, and 132 passengers received minor injuries or no injuries. If these commuter airplanes had been equipped with the improved seat/restraint systems as proposed in this notice, these casualties could have been reduced to 23 fatalities and 31 serious injuries. The reduction in fatalities and serious injuries would increase minor/no injuries to 196.

In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a value of $2.5 million to statistically represent a human fatality avoided. (This is in accordance with guidelines issued by the Office of the Secretary of Transportation). The FAA has also estimated the societal costs for serious injuries ($640,000) and for minor injuries ($2,300).

The estimated benefits for the reduction in passenger casualties can be

calculated by using the above critical values. While the reduction in fatalities and serious injuries is considered a benefit, the increase in minor/no injuries should be deducted from the benefits of these proposed provisions. The net benefit from reduced fatalities and serious injuries as a result of the provision to improve the passenger seat/restraint system is estimated to be approximately $61.3 million between 1979 and 1988. For comparability with other benefits and costs of this proposal, this $61.3 million benefit is converted to a benefit per seat.

In order to convert total benefits into per seat benefits, $61.3 million is first transformed into a benefit estimate per enplanement. There were 222.8 million commuter enplanements between 1979 and 1988. Dividing the estimated benefit for this time period, $61.3 million, by the number of enplanements provides the estimated benefit per enplanement, which is 27.5 cents. The benefits per enplanement can then be converted into annual benefits per passenger seat. The average annual number of enplanements per passenger seat is 847. Thus, the annual benefits per passenger seat are estimated to be $230 (.275×847).

The annual benefits per crew seat is calculated differently than benefits per passenger seat because a crew seat is always occupied on every flight. Thus, there is a greater chance of a crewmember being in a crash and subsequently a greater benefit derived from an improved seat/restraint system. Benefits per crew seat are also more difficult to calculate as directly as those for passenger seats due to data limitations. However, benefits per crew seat can be estimated by dividing the benefits per passenger seat by the average passenger load factor for commuter airplanes. The FAA estimates this load factor to be 46.6 percent and, therefore, the annual benefits per crew seat to be $500 (230/.466).

Assuming each seat/restraint system is used for 15 years, the present value of the above stream of annual benefits can be calculated by discounting each annual benefit by 7 percent for each year in the future. This yields approximately $2,100 per passenger seat and $4,600 per crew seat.

Flammability Standards

In order to estimate the benefits of the proposed flammability standards, the FAA estimated the number of fatalities and serious injuries that could be avoided if there was no post crash fire. One way to arrive at an estimate would be to assume that if the fire could have been avoided, the casualty rate in those accidents with post crash fires would be the same as the rate in accidents where fire did not occur. This, however, may result in an overestimation of the possible reduction in the casualty rates in accidents involving post crash fires. This is because accidents with post crash fire may be more violent than those without fire. Thus, post crash fire accidents, may result in higher casualty rates, even if the fire could be avoided. However, to the extent that casualty rates are higher for survivable accidents (except for the post crash fire), then the potential benefits of the proposed seat/restraint system have been underestimated (assuming the seat/restraint system is effective at reducing the casualty rate in survivable accidents). The FAA is unable to reasonably quantify either the overestimation or the underestimation of these benefits, but it assumes that they offset one another. Thus, the FAA concludes that if the fires could have been prevented, the casualty and injury rates of the 74 passengers involved in commuter airplane crashes with post crash fires between 1979 and 1988 would have been the same as the 176 passengers involved in commuter accidents in which there were no post crash fires. This would mean a reduction of 20 fatalities and 14 serious injuries. Minor/no injuries are assumed to increase by 34 as a result of reduced fatalities and serious injuries and would, therefore, be deducted from the benefits. The total net benefit of the proposed flammability standard is estimated to be $58.9 million. After converting the total net benefit into a net benefit per enplanement (58.9/222.8 millions), multiplying by the annual number of enplanements per seat (847), and discounting at a rate of 7 percent for 15 years, the net discounted benefit per seat of preventing all fatalities and serious injuries is estimated to be $2,000.

Since other factors affect passenger survivability in an aircraft fire, only a portion of these benefits can be attributed to fire-blocking. The FAA has estimated that fire-blocking could be effective in preventing 33 percent of fire fatalities and injuries. Thus, the estimated annual discounted dollar benefits are estimated to be approximately $670 (2,000/3) per seat.

Eliminating Side-Facing Seats

The FAA has determined that current side-facing seat/restraint systems do not provide the necessary restraint to protect the occupants from serious injury. Side-facing seats provide very little restraint of an occupant's upper and lower torso, and legs. Consequently, the sharp lateral motion of an impact may result in serious injury from bending and torsional loading of the occupant's spinal column during relatively minor crash conditions. The benefits from eliminating side-facing airplane seats and replacing them with improved forward-facing or aft-facing seats have not been estimated due to lack of data. However, the present value of the benefits should be greater than the $2,100 estimated for the forward-facing passenger seat/restraint system. This is because side-facing seats are believed to be less safe than forward-facing seats.

Overhead Items of Mass

Items of mass are not now located in overhead positions in general aviation (GA) airplanes. However, in the future there may be items of mass located overhead in larger newly certificated GA airplanes. This provision would prevent any reduction of airplane cabin safety in the event that items of mass are located overhead in newly certificated GA airplanes (be they normal, utility, acrobatic, or commuter airplanes). This provision does not add any quantifiable benefits, but would prevent a reduction in cabin safety if items of mass are ever located overhead in newly certificated airplanes.

This proposed provision is included to ensure that the attachment of items of mass in an overhead position would have adequate retention strength so that they would not pose a hazard to occupants as a result of a survivable crash. In a special study on cabin safety for transport airplanes, the NTSB found that the overhead panels, racks, and passenger-service units failed in 78 percent of the accidents included in the study. Failures of overhead furnishings can cause head injuries and can hamper evacuation of airplanes. A passenger injured by falling items of mass can become confused and slow to react. In the event of a post crash fire, a stunned or unconscious passenger might not be evacuated from the airplane in time to escape serious injury or even death. In the accidents analyzed in the NTSB study, emergency evacuations were often hampered when items stored in the overhead compartments fell into the aisles and against bulkheads adjacent to the exits. Failed overhead furnishings sometimes blocked movement in the cabin by cutting off access to and from aisles and to overwing exits.

Costs

Seat/Restraint System

In this evaluation, it is assumed that for each manufacturer, the design and testing costs of each new seat/restraint

system would be incurred during the first year after the compliance date of the proposed rule. It is also assumed that production would last for 15 years. Furthermore, the FAA assumes that these seat/restraint systems would be installed annually in at least 15 airplanes with 15 seats each; thus, 225 seat/restraint systems would be produced and installed each year. The total cost of a manufacturer developing a new seat/restraint system, which includes design, testing, and certification, is estimated to be $161,200. Annualizing the total development cost over 15 years at a 7 percent rate of interest yields approximately $17,700. This annualized development cost, when divided by 225 seats per year, yields development costs of $80 per seat.

After design, testing, and certification, the new seats would then go into production. The FAA estimates that the increased one-time production cost per seat/restraint system would be $60.

Increased operating costs per seat would be the product of the increased weight of the seat/restraint system over the current system in use, the amount of the extra fuel consumed during the year for each extra pound of weight, and the price per gallon of fuel. Each new seat system is estimated to weight 3 pounds more than a current seat system. The FAA estimates that commuter category airplanes burn 15 gallons of fuel each year for each pound of extra weight. The average price of commuter category airplane fuel purchased from a fixed base operator is estimated at $.70 per gallon. The product of the additional weight, fuel consumption, and price of fuel equals the additional operating cost per seat which is $31. Since the seat/restraint system would be used for 15 years, this stream of annual costs was discounted at 7 percent over the 15-year period. The present value of the annual increased operating costs of the proposed seat/restraint systems is approximately $290.

The sum of the annualized development costs ($80), the increased production costs ($60), and the increased discounted operating costs ($290) for each seat/restraint system totals $430.

Improved Flammability Standards

The present value of the costs of the provision establishing new flammability requirements for commuter category airplanes is estimated to be $240 per seat over the next 15 years. This estimated cost is composed of a one-time additional production cost and recurring increased operating cost.

The one-time additional production cost is $80 per seat. This is the average additional production cost estimated by several manufacturers using a variety of fire-blocking materials.

The increased operating cost was estimated much the same way as the seat/restraint system operating cost. The average additional weight of a seat meeting the required flammability standards is estimated to be 1.7 pounds. Commuter category airplanes burn 15 gallons of fuel each year for every pound of extra weight, thus they would burn 26 additional gallons per year. The estimated price of aviation fuel for commuter category aircraft is $.70 per gallon. The product of the additional weight, fuel consumption, and price of fuel yields an additional annual operating cost per seat of approximately $18. Because the new flame retardant seat would be used for 15 years, this stream of annual costs was discounted at 7 percent over the 15-year period. The present value of the increased operating costs of this seat is $160.

There would not necessarily be any development costs as a result of this provision since a variety of commercially available foam and fire-blocking materials could be used that would be adequate for design from a standpoint of weight and costs. Thus, the total present value cost to meet the flammability standards is approximately $240 ($160 plus $80) per seat.

Eliminating Side-Facing Seats

Eliminating side-facing seats would not impose any additional costs on the development or manufacture of new commuter category airplanes; nor would eliminating side-facing seats impose any additional costs on producing these airplanes. Side-facing seats are regular airplane seats placed sideways in the airplane; thus, repositioning side-facing seats to a forward or aft position would not increase installation or operating costs in newly certificated or newly manufactured airplanes. Therefore, this provision of the proposal would not impose any costs on the manufacturers or operators of these airplanes while in operation.

Overhead Items Of Mass

Currently, items of mass are not located overhead in GA airplanes due to the lack of cabin space. If this continues to be the case, this provision of the proposed rule would not be applicable and would not impose any costs on the manufacturers of newly certificated or newly manufactured airplanes, or on the operators of those airplanes when in operation. This provision would be applicable only under the following conditions:

- A new GA airplane is designed with enough cabin space and accommodations to locate items of mass overhead.
- Items of mass are placed in an overhead position inside that airplane.

If both of the above conditions are met, then costs could be incurred as a result of this proposal. If overhead items of mass are not securely contained to withstand the loads imposed in a survivable crash, the occupants of the airplane would bear the costs in terms of reduced cabin safety. In order to avoid the costs of reduced cabin safety, additional costs of designing, testing, manufacturing, and operating would have to be incurred in order to contain the overhead items of mass to withstand the loads imposed in a survivable crash.

If a manufacturer should decide to position compartments overhead for items of mass, there would be the usual development and manufacturing costs associated with installing the compartments. However, the provision of the proposed rule requiring a minimum retention strength of overhead compartments could impose additional costs on the development and manufacturing of these new airplanes. The additional development costs per airplane design are estimated to be $68,200 for designing and $45,100 for testing. The total then is $113,200 per new airplane design or approximately $12,400 annualized cost over 15 years. If it is assumed that 15 airplanes would be produced each year, then the annual discounted design cost per airplane is $830 (12,400/15). This potential cost is then divided by the number of seats per aircraft (which is assumed to be 15) so that it can be compared to other potential costs of the other provisions of the proposed rule. This makes the annual discounted development cost per seat to be $60 (rounded from $55). The costs of operating these new airplanes would not increase significantly as a result of this provision. Overhead compartments for items of mass could be made more secure by using more rivets. The weight of the extra rivets would be negligible and would impose no weight penalty costs of operating these airplanes.

The manufacturer and the operator would have to decide if the benefits from locating items of mass overhead is worth the extra cost of properly securing them. If it is not worth the extra cost, items could be located in other storage areas, thereby, allowing the manufacturer to avoid the extra cost of complying with this provision.

VOL 58 ISS 133 JUL 14 1993 UMI

Benefit-Cost Comparison

This section of the evaluation presents a benefit-cost comparison, summarizing the total potential costs and benefits of the four proposed provisions that are expected to accrue over the next 15 years.

The total cost estimate of the four provisions would be approximately $660 to $720 per seat. This cost estimate includes $420 for the seat/restraint system, $240 for improved flammability standards, and possibly $60 to secure overhead items of mass.

The total quantitative benefits of the four provisions of the proposed rule is at a minimum approximately $2,800 per seat. This estimate of total benefits includes the following:

- At least $2,100 per seat for the passenger seat/restraint system. This is a minimum value since the benefits of the crew seat/restraint system would be $4,600 per seat.
- Due to the fact of data, the FAA has not been able to quantify benefits of replacing side-facing seats for forward-facing or aft-facing seats. However, the benefits would be at least $2,100 per seat because side-facing seats are considered to be less safe than forward-facing seats or aft-facing seats. Thus, the potential benefits would be at least that of a new seat/restraint system that is placed in a forward-facing or aft-facing position.
- The benefits of establishing improved flammability standards are established to be $680 per seat.
- The FAA has no data to quantitatively evaluate the reduction in cabin safety due to storing items of mass overhead. Nevertheless, the FAA concludes it is justified in maintaining the current level of safety by requiring that overhead items of mass remain secure in the event of a survivable accident.

The FAA concludes that the proposed rule is cost-beneficial (benefits greater than costs) since total benefits exceed the total costs by approximately $2,100 ($2,800 minus $720) per seat.

International Trade Impact Analysis

The proposed provisions in this notice would have little or no impact on U.S. firms doing business in foreign countries or on foreign firms doing business in the United States. In the United States, foreign manufacturers would have to meet these proposed requirements; thus, foreign firms would gain no competitive advantage from the proposed provisions in this notice. In foreign countries, U.S. firms would not be bound by these part 23 requirements. In foreign countries, these proposed provisions could be selectively implemented by U.S. firms on the basis of competitive considerations.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires Federal agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The FAA's criteria for a small airplane manufacturer is one employing fewer than 75 employees. The criteria for "a substantial number of small entities" is one-third of the small firms subject to the proposed rules, but not fewer than 11 firms. A "significant impact" is one having an annual cost of more than $18,160 per manufacturer. A review of domestic general aviation manufacturers indicates that only six firms meet the size threshold of 75 or fewer employees. Therefore, the proposed amendments to 14 CFR Part 23 would not affect a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This document proposes to amend the airworthiness standards for commuter category airplanes by upgrading the requirements for seat/restraint systems and by providing new flammability standards for seat cushions. In addition, it proposes to increase the downward inertia load factor for items of mass within the cabin for all part 23 airplanes. For the reasons discussed above, the FAA has determined that this document (1) involves proposed relations that are not major under the provisions of Executive Order 12291, and (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition the FAA certifies that, under the criteria of the Regulatory Flexibility Act, this proposed rule could not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Signs and symbols.

Issued in Washington, DC on June 24, 1993.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

2. Paragraph (d) is added and reserved and a new paragraph (e) is added to § 23.2 to read as follows:

§ 23.2 Special retroactive requirements.

* * * * *

(e) Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each commuter category airplane, including any such foreign manufactured airplane approved for entry into the United States, manufactured after June 16, 1996, must show compliance with §§ 23.562 and 23.853 of this part.

3. Section 23.561 is amended by revising paragraphs (b)(3) introductory text and (b)(3) (ii) and (iii), and by adding paragraph (b)(3)(iv) to read as follows:

§ 23.561 General.

* * * * *

(b) * * *

(3) Each item of mass within the cabin experiences static inertia loads that act separately relative to the surrounding structure and correspond to the following ultimate load factors—

(i) * * *

(ii) Downward, 18.0 g;

(iii) Forward, 18.0 g; and

(iv) Sideward, 4.5 g.

* * * * *

4. Section 23.562 is amended by revising paragraph (a) introductory text, paragraphs (c) and (d), and by adding a new paragraph (e) to read as follows:

VOL 58 ISS 133 JL 14 1993 UMI

§ 23.562 Emergency land dynamic conditions.

(a) Each seat/restraint system must be designed to protect each occupant during an emergency landing when—

* * * * *

(c) Each seat/restraint system, for crew or passenger occupancy in a commuter category airplane, must successfully complete dynamic tests in accordance with each of the following conditions. The tests of the passenger seat/restraint system must be conducted using two rows of seat/restraint systems with each occupant simulated by an anthropomorphic test dummy (ATD) defined by 49 CFR part 572, subpart B, or an FAA-approved equivalent, with a nominal weight of 170 pounds and seated in the normal upright position. A crew seat/restraint system may be tested in a single configuration.

(1) For the first test, the change in velocity may not be less than 31 feet per second. Each seat/restraint system must be oriented in its nominal position with respect to the airplane and with the horizontal plane of the airplane pitched up 60 degrees, with no yaw, relative to the impact vector. The peak deceleration must occur in not more than 0.03 seconds after impact and must reach a minimum of 32 g.

(2) For the second test, the seat structure must be preloaded as defined in paragraph (c)(3) of this section. The change in velocity may not be less than 42 feet per second. Each seat/restraint system must be oriented in its nominal position with respect to the airplane and with the vertical plane of the airplane yawed 10 degrees, with no pitch, relative to the impact vector in the direction that results in the greater loading of the shoulder harness, where installed. The peak deceleration must occur in not more than 0.05 seconds after impact and must reach a minimum of 26 g.

(3) To account for floor warpage, the floor rails or attachment devices used to attach each seat/restraint system to the airframe structure must be preloaded to misalign, with respect to each other, by at least 10 degrees vertically (i.e., pitch out of parallel), and one of the rails or attachment devices must be preloaded to misalign by 10 degrees in roll prior to conducting the test defined by paragraph (c)(2) of this section.

(d) Compliance with the following requirements must be shown during the dynamic tests conducted in accordance with either paragraph (b) or (c) of this section:

(1) The seat/restraint system must restrain the ATD, although the seat/restraint system components may experience deformation, elongation, displacement, or crushing intended as part of the design.

(2) The attachment between the seat/restraint system and the test fixture must remain intact, although the seat structure may have deformed.

(3) When shoulder harnesses are provided as part of the design, each shoulder harness strap must remain on the ATD's shoulder during the impact.

(4) The safety belt must remain on the ATD's pelvis during the impact.

(5) The results of the dynamic test must show that the occupant is protected from serious head injury.

(i) When contact with adjacent seats, structure, or other items in the cabin can occur, protection must be provided so that impact of the head of each occupant does not exceed a Head Injury Criterion (HIC) of 1,000.

(ii) The value of HIC is defined as—

$$HIC = \left\{ (t_2 - t_1) \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a(t)dt \right]^{2.5} \right\}_{MAX}$$

Where:

t_1 is the initial integration time, expressed in seconds,

t_2 is the final integration time, expressed in seconds,

$(t_2 - t_1)$ is the time duration of the major head impact, expressed in seconds, and

a (t) is the resultant deceleration at the center of gravity of the head form, expressed as a multiple of g (units of gravity).

(iii) Compliance with the HIC limit must be demonstrated by measuring the head impact during the dynamic tests required in either paragraph (b) or paragraph (c) of this section, or by a separate showing of compliance with the HIC using approved test or analysis procedures.

(6) Loads in a single shoulder harness strap may not exceed 1,750 pounds. If dual straps are used for retaining the upper torso, the total strap loads may not exceed 2,000 pounds.

(7) The compression load measured between the pelvis and the lumbar spine of the ATD may not exceed 1,500 pounds.

(8) For commuter category airplanes, where leg injuries may result from contact with seats or other structure during an emergency landing, the axially compressive loads measured in each femur of the ATD may not exceed 2,250 pounds.

(9) For commuter category airplanes, no seat/restraint system may yield in a manner that would impede rapid evacuation of the airplane.

(e) An alternative approach that achieves an equivalent, or greater, level of occupant protection to that required by this section may be used if substantiated on a rational basis.

5. Section 23.785 is amended by revising paragraphs (c) and (i) to read as follows:

§ 23.785 Seats, berths, litters, safety belts, and shoulder harnesses.

* * * * *

(c) Each seat/restraint system in a commuter category airplane must be either forward-facing or aft-facing. Each seat/restraint system intended for installation in the front row of a commuter category airplane must consist of a seat, safety belt, and shoulder harness and must provide the occupant protection provisions required by § 23.562. Each seat/restrain system intended for installation at a position other than the front seats of a commuter category airplane must consist of a seat and safety belt (or a seat, safety belt, and shoulder harness) and must provide the occupant protection required in § 23.562.

* * * * *

(i) The cabin area surrounding each seat, including the structure, interior walls, instrument panel, control wheel, pedals, and seats within striking distance of an occupant's head or torso (with the restraint system fastened) must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces. If energy absorbing designs or devices, such as padding, are used to meet this requirement, they must also comply with the occupant protection provisions of § 23.562, as required by paragraph (b) or (c) of this section.

* * * * *

6. Section 23.853 is amended by removing the words "Appendix F" and

adding in their place the words "Part I of Appendix F" each time they appear in paragraphs (d)(3)(i), (ii), (iv), and (v) and (f), and by adding paragraph (d)(3)(vi) to read as follows:

§ 23.853 Compartment interiors.

* * * * *

(d) * * *

(3) * * *

(vi) Seat cushions, except those of flight crewmember seats, must meet the requirements of both paragraph (d)(3)(ii) of this section and of Part II of Appendix F of this part, or equivalent.

* * * * *

7. Appendix F to part 23 is amended by revising the heading, by removing the first paragraph, by designating the current text as Part I and adding a heading for Part I, by revising the last sentence of paragraph (b) of newly designated Part I, by adding the words "of Part I" before the words "of this Appendix" wherever they appear in paragraphs (c) and (d) of newly designated Part I, and by adding a new Part II to read as follows:

Appendix F to Part 23—Test Procedures

Part I—An Acceptable Test Procedure for Self-Extinguishing Materials for Showing Compliance with § 23.853

* * * * *

(b) * * * When performing the tests prescribed by paragraphs (d) and (e) of part I of this Appendix, the specimen must be mounted in a metal frame so that: (1) In the vertical test prescribed by paragraph (d) of Part I of this appendix, the two long edges and the upper edge are held securely; (2) in the horizontal test prescribed by paragraph (e) of Part I of this appendix, the two long edges and the edge away from the flame are held securely; (3) the exposed area of the specimen is at least 2 inches wide and 12 inches long, unless the actual size used in the airplane is smaller; and (4) the edge to which the burner flame is applied must not consist of the finished or protected edge of the specimen but must be representative of the actual cross section of the material or part installed in the airplane.

* * * * *

Part II—Flammability of Seat Cushions

(a) *Criteria for Acceptance.* Each seat cushion must meet the following criteria:

(1) At least three sets of seat bottom and seat back cushion specimens must be tested.

(2) If the cushion is constructed with a fire-blocking material, the fire-blocking material must completely enclose the cushion foam core material.

(3) Each specimen tested must be fabricated using the principal components (i.e., foam core, flotation material, fire-blocking material, if used, and dress covering) and assembly processes (representative seams and closures) intended for use in the production articles. If a different material combination is used for the back cushion than for the bottom cushion, both material combinations must be tested as complete specimen sets consisting of a back cushion specimen and a bottom cushion specimen. If a cushion, including the outer dress covering, meets the oil burner test requirements of Part II of this appendix, the dress covering of that cushion may be replaced with a similar dress covering, provided the burn length of the replacement covering, as determined by the test specified in § 23.853(d)(3)(ii), does not exceed the corresponding burn length of the original dress covering.

(4) For at least two-thirds of the total number of specimen sets tested, the burn length from the burner must not reach the side of the cushion opposite the burner. The burn length must not exceed 17 inches. Burn length is the perpendicular distance from the inside edge of the seat frame closest to the burner to the farthest evidence of damage to the test specimen from impinging flames. This includes areas that were partially or completely consumed, charred, or embrittled, but does not include areas that were sooted, stained, warped, or discolored, or areas where material shrank or melted away from the heat source.

(5) The average percentage weight loss must not exceed 10 percent. Also, at least two thirds of all specimen sets tested must not exceed 10 percent weight loss. All droppings falling from the cushions and mounting stand are to be discarded before the after-test weight is determined. The percentage weight loss for a specimen set is the weight of the set before testing less the weight of the set after testing expressed as the percentage of the weight before testing.

(b) *Test Conditions.* Vertical air velocity should average 25 feet per minute (fmp) ± 10 fpm at the top of the back of the seat cushion. Horizontal air velocity should be below 10 fpm just above the bottom seat cushion. Air velocities should be measured with the ventilation hood operating and the burner motor off.

(c) *Test Specimens.*

(1) For each test, one set of cushion specimens representing a seat bottom and seat back cushion must be used.

(2) The seat bottom cushion specimen must be 18±⅛ inches (457±3 mm) wide by 20±⅛ inches (508±3 mm) deep by 4±⅛ inches (102±3 mm) thick, exclusive of fabric closures and seam overlap.

(3) The seat back cushion specimen must be 18±⅛ inches (457±3 mm) wide by 25±⅛ inches (635±3 mm) high by 2±⅛ inches (51±3 mm) thick, exclusive of fabric closures and seam overlap.

(4) The specimens must be conditioned at 70±5 °F °21±2 °C) and 55±10% relative humidity for at least 24 hours before testing.

(d) *Test Apparatus.* The arrangement of the test apparatus is shown in Figures 1 through 5 of Part II of this appendix and must include the components described in this section. Minor details of the apparatus may vary, depending on the model burner used.

(1) *Specimen Mounting Stand.* The mounting stand for the test specimens consists of steel angles, as shown in Figure 1 of part II of this appendix. The length of the mounting stand legs is 12±⅛ inches (305±3 mm). The mounting stand must be used for mounting the test specimen seat bottom and seat back, as shown in Figure 2 of Part II of this appendix. The mounting stand should also include a suitable drip pan lined with aluminum foil, dull side up.

(2) *Test Burner.* The burner to be used in testing must—

(i) Be a modified gun type;

(ii) Have an 80-degree spray angle nozzle nominally rated for 2.25 gallons/hour at 100 psi;

(iii) Have a 12-inch (305 mm) burner cone installed at the end of the draft tube, with an opening 6 inches (152 mm) high and 11 inches (280 mm) wide, as shown in Figure 3 of Part II of this appendix; and

(iv) Have a burner fuel pressure regulator that is adjusted to deliver a nominal 2.0 gallon/hour of No. 2 grade kerosene or equivalent required for the test.

Note: Burner models that have been used successfully in testing are the Lennox Model OB–32, Carlin Model 200CRD, and Park Model DPL 3400. FAA published reports pertinent to this type of burner are: (1) Powerplant Engineering Report No. 3A, Standard Fire Test Apparatus and Procedure for Flexible Hose Assemblies, dated March 1978; and (2) Report No. DOT/FAA/RD/76/713, Reevaluation of Burner Characteristics for Fire Resistance Tests, dated January 1977.

(3) *Calorimeter.*

(i) The calorimeter to be used in testing must be a 1–15.0 BTU/ft²-sec. (0–17.0 w/cm²) calorimeter, accurate ±3%, mounted in a 6-inch by 12-inch (152 by 305 mm) by ¾-inch (19 mm) thick calcium silicate insulating board that is attached to a steel angle bracket for placement in the test stand during burner calibration, as shown in Figure 4 of Part II of this appendix.

(ii) Because the insulating board could crumble with service and result in misalignment of the calorimeter, the calorimeter must be monitored and the mounting shimmed, as necessary, to ensure that the calorimeter face is flush with the exposed plane of the insulating board in a plane parallel to the exit of the test burner cone.

(4) *Thermocouples.* The thermocouples to be used for testing must be 1/16 to ⅛ inch metal sheathed, ceramic packed, type K, grounded thermocouples with a nominal 22 to 30 American wire gage (AWG) size conductor.

The thermocouples must be attached to a steel angle bracket to form a thermocouple rake for placement in the test stand during burner calibration, as shown in Figure 5 of Part II of this appendix.

(5) *Apparatus Arrangement.* The test burner must be mounted on a suitable stand to position the exit of the burner cone a distance of 4±⅛ inches (102±3 mm) from one side of the specimen mounting stand. The burner stand should have the capability of allowing the burner to be swung away from the specimen mounting stand during warmup periods.

(6) *Data Recording.* A recording potentiometer or other suitable calibrated instrument with an appropriate range must be used to measure and record the outputs of the calorimeter and the thermocouples.

VOL
58
ISS
133
JL
14
1993
UMI

(7) *Weight Scale.* A weighing device must be used that, with proper procedures, determines the weights of each set of seat cushion specimens before and after the test within 0.02 pound (9 grams). A continuous weighing system is preferred.

(8) *Timing Device.* A stopwatch or other device (calibrated to ±1 second) must be used to measure the time of application of the burner flame and self-extinguishing time or test duration.

(e) *Preparation of Apparatus.* Before calibration, all equipment must be turned on and the burner fuel must be adjusted as specified in paragraph (d)(2) of Part II of this appendix.

(f) *Calibration.* To ensure the proper thermal output of the burner, the following test must be made:

(1) Place the calorimeter on the test stand as shown in Figure 4 of Part II of this appendix at a distance of 4±⅛ inches (102±3 mm) from the exit of the burner cone.

(2) Turn on the burner, allow it to run for 2 minutes for warmup, and adjust the burner air intake damper to produce a reading of 10.5±0.5 BTU/ft^2 sec. (11.9+0.6 w/ cm^2) on the calorimeter to ensure steady state conditions have been achieved. Turn off the burner.

(3) Replace the calorimeter with the thermocouple rake (Fig. 5 of Part II of this appendix).

(4) Turn on the burner and ensure that the thermocouples are reading 1900±100 °F (1038±38 °C) at steady state conditions.

(5) If the calorimeter and thermocouples do not read within range, repeat steps in paragraphs (f)(1) through (f)(4) of Part II of this appendix and adjust the burner air intake damper until the proper readings are obtained. The thermocouple range and the calorimeter should be used frequently to maintain and record calibrated test parameters. Until the specific apparatus has demonstrated consistency, each test should be calibrated. After consistency has been confirmed, several tests may be conducted with the pre-test calibration before and a calibration check after the series.

(g) *Test Procedure.* The flammability of each set of specimens must be tested as follows:

(1) Record the weight of each set of seat bottom and seat back cushion specimens to be tested to the nearest 0.02 pound (9 grams).

(2) Mount the seat bottom and seat back cushion test specimens on the test stand as shown in Figure 2 of Part II of this appendix, securing the seat back cushion specimen to the test stand at the top.

(3) Swing the burner into position and ensure that the distance from the exit of the burner cone to the side of the seat bottom cushion specimen is 4±⅛ inches (102±3 mm).

(4) Swing the burner away from the test position. Turn on the burner and allow it to run for 2 minutes to provide adequate warmup of the burner cone and flame stabilization.

(5) To begin the test, swing the burner into the test position and simultaneously start the timing device.

(6) Expose the seat bottom cushion specimen to the burner flame for 2 minutes and then turn off the burner. Immediately swing the burner away from the test position. Terminate the test 7 minutes after initiating cushion exposure to the flame by use of a gaseous extinguishing agent (i.e., Halon or CO_2).

(7) Determine the weight of the remains of the seat cushion specimen set left on the mounting stand to the nearest 0.02 pound (9 grams), excluding all droppings.

(h) *Test Report.* With respect to all specimen sets tested for a particular seat cushion for which testing of compliance is performed, the following information must be recorded:

(1) An identification and description of the specimens being tested.

(2) The number of specimen sets tested.

(3) The initial weight and residual weight of each set, the calculated percentage weight loss of each set, and the calculated average percentage weight loss for the total number of sets tested.

(4) The burn length for each set tested.

Figures to Part II of Appendix F to Part 23

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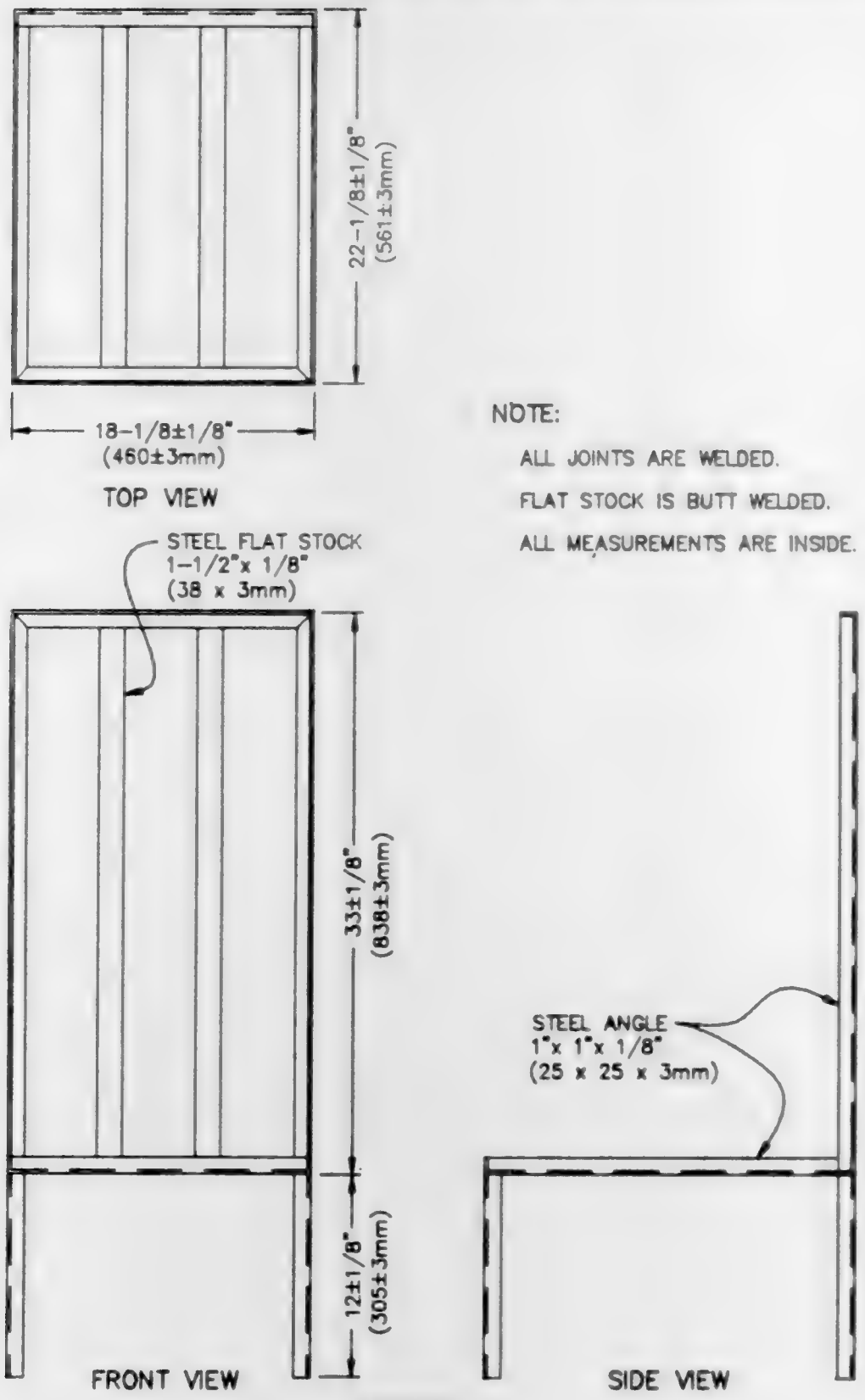

NOTE:

ALL JOINTS ARE WELDED.

FLAT STOCK IS BUTT WELDED.

ALL MEASUREMENTS ARE INSIDE.

FIGURE 1.

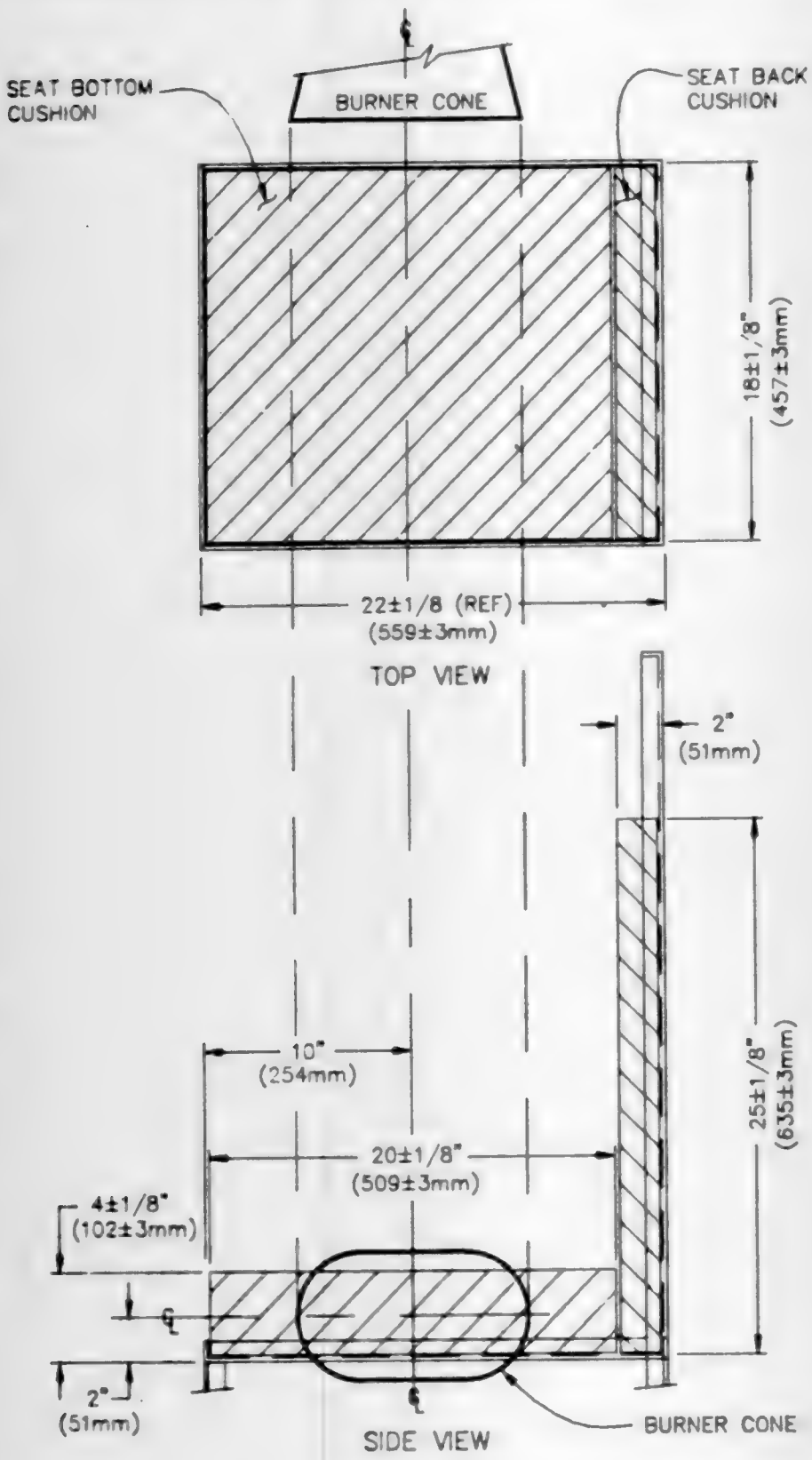

FIGURE 2.

VOL 58 ISS 133 JL 14 1993 UMI

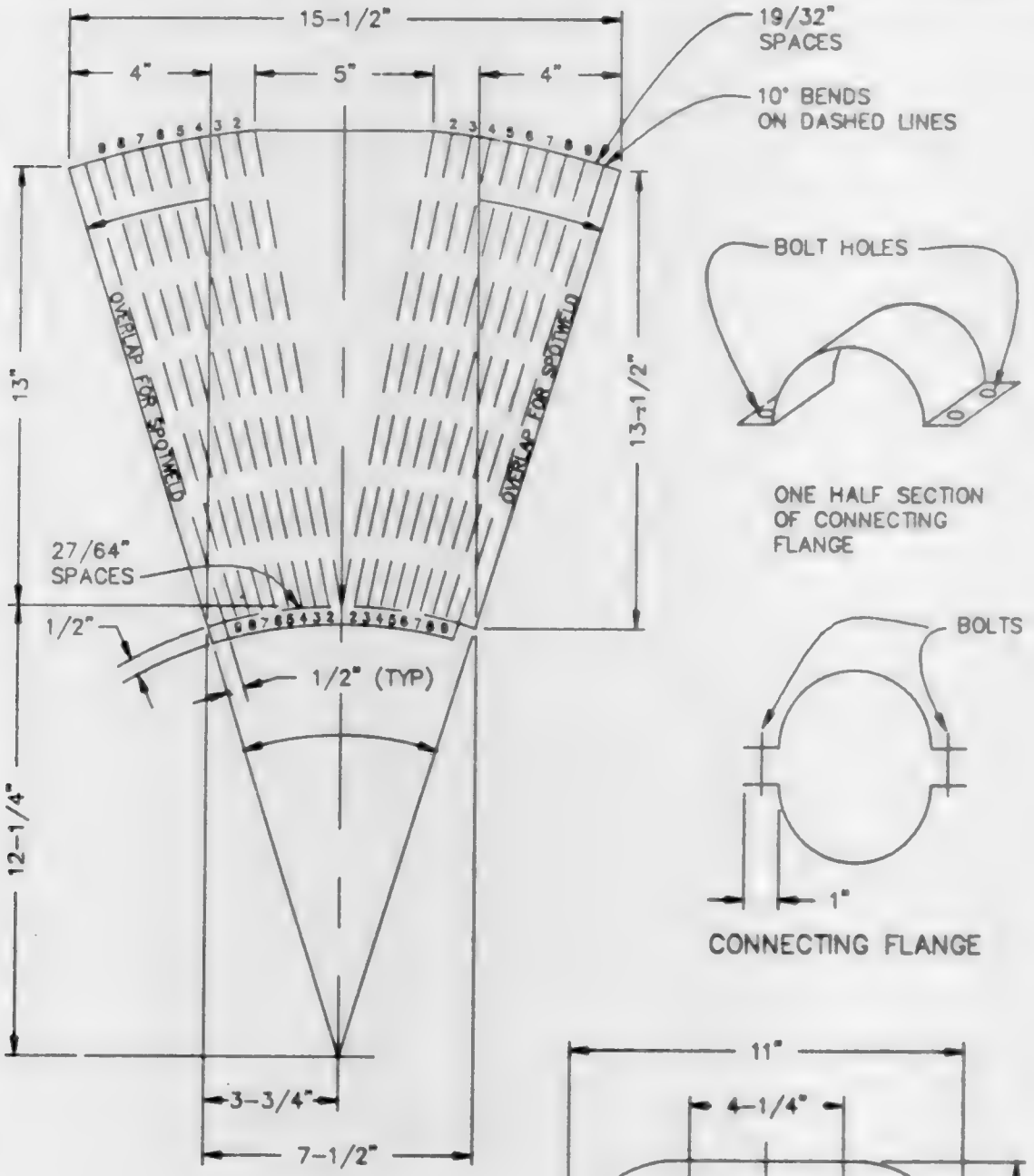

DRAFT TUBE EXTENSION
FOR FAA HOSE TEST BURNER

NOTE:
ONE HALF (1/2) OF TUBE EXTENSION SHOWN. SECOND HALF MATES AT SPOTWELD OVERLAP.

MATERIAL: 0.050 STAINLESS STEEL

ONE HALF SECTION OF CONNECTING FLANGE

CONNECTING FLANGE

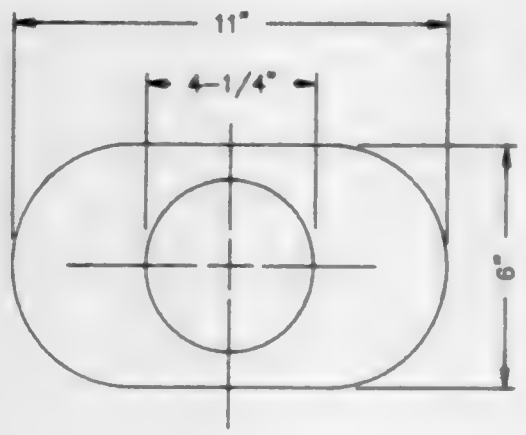

FIGURE 3.

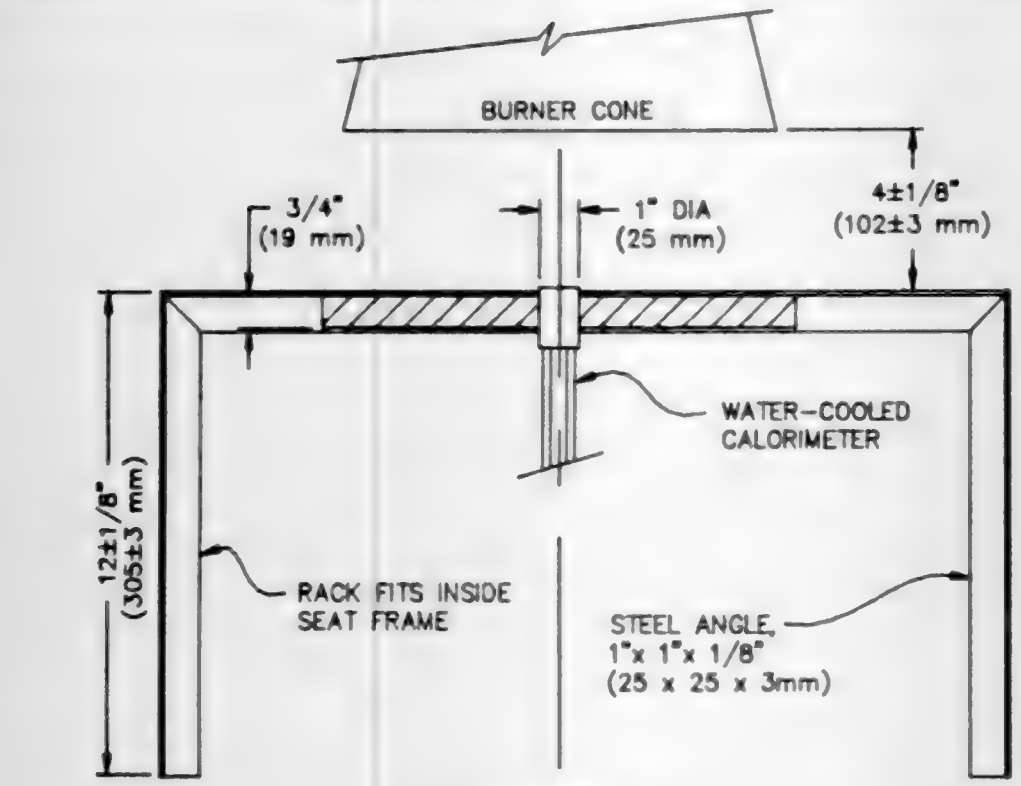

TOP VIEW
CALORIMETER BRACKET

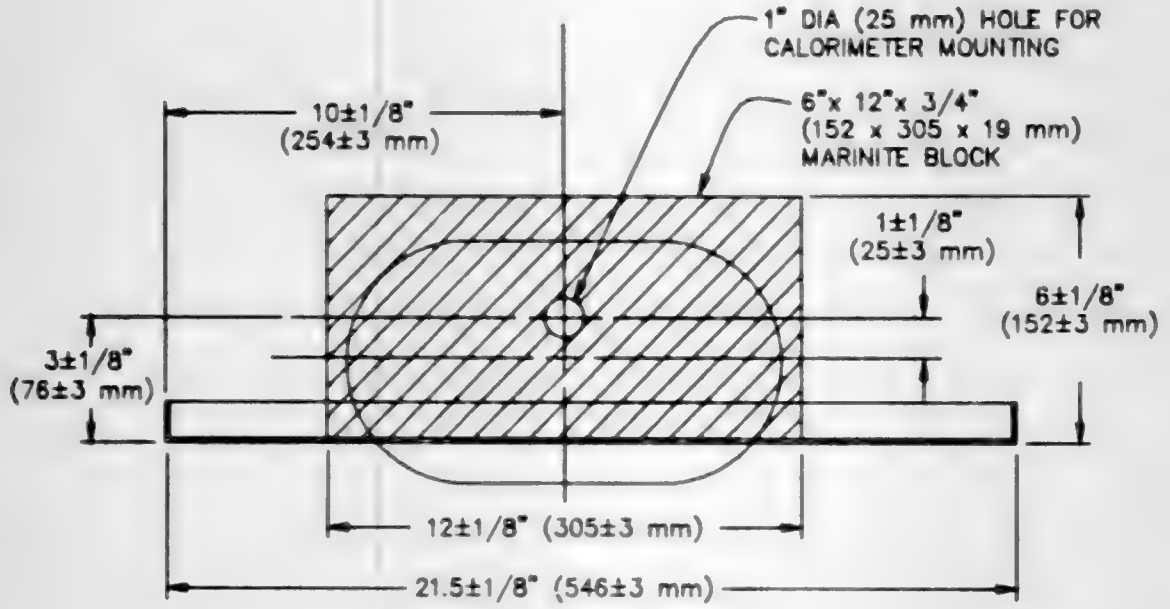

SIDE VIEW

FIGURE 4.

VOL 58 ISS 133 JL 14 1993 UMI

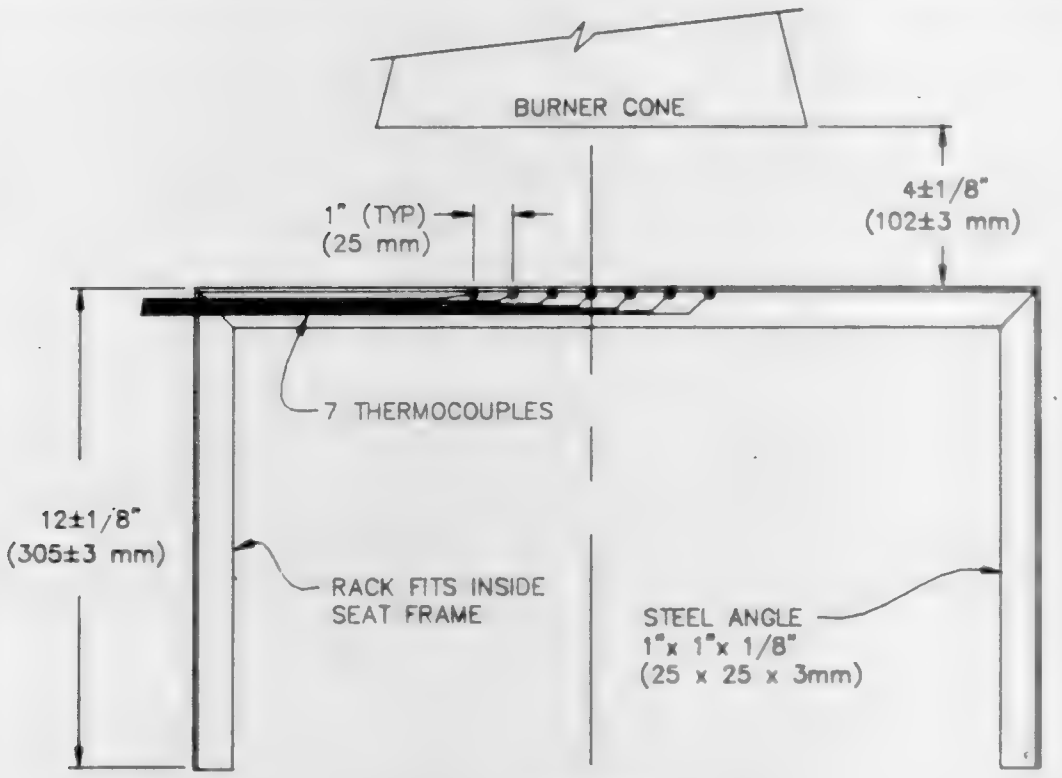

TOP VIEW
THERMOCOUPLE RAKE BRACKET

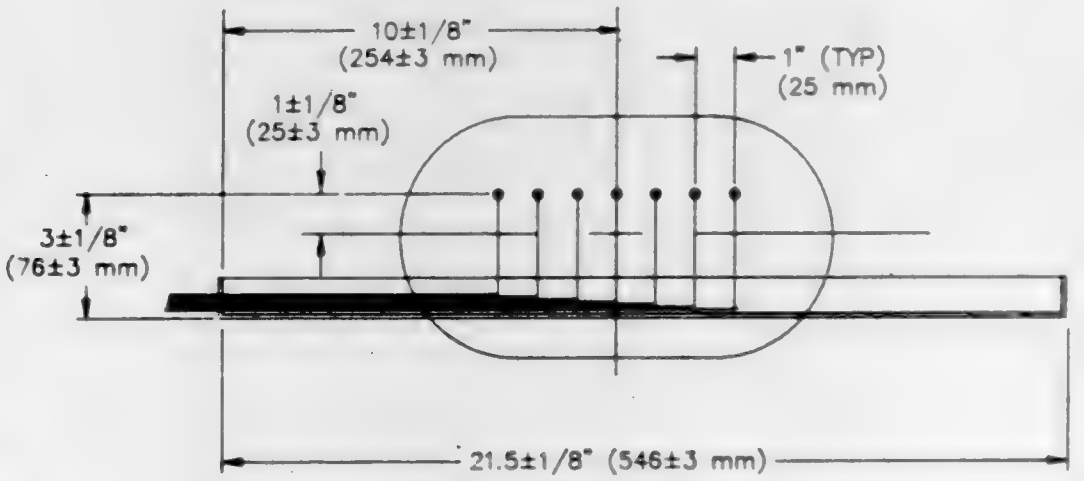

SIDE VIEW

FIGURE 5.

[FR Doc. 93-16665 Filed 7-13-93; 8:45 am]
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VOL
58
ISS
133
JUL
14
1993
UMI

Rea

INFORI

Federal

Index, f
Public
Correcti
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Index, f
Printing

Laws

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The Un

General

Other S

Data bas
Guide t
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Privacy
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FEDERA

35357–35
35841–36
36117–36
36301–36
36589–36
36853–37
37413–37
37631–37
37847–38

Reader Aids

Federal Register

Vol. 58, No. 133

Wednesday, July 14, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12
37631–37846.....13
37847–38044.....14

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587

Administrative Orders:
Presidential Determinations:
93–28 of June 25, 1993.....37631
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
226.....37847
246.....37633
301.....36589, 36590, 36591
400.....36592
723.....36853, 36857
906.....37635
981.....37636
987.....37638
1097.....34359
1098.....35361
1099.....34362
1108.....36859
1464.....36857, 36861
1435.....36120
1755.....36252

Proposed Rules:
55.....37872
56.....37872
59.....37872
70.....37872
400.....37874
1468.....37876

8 CFR

245.....35832

9 CFR

78.....36593
91.....37639
92.....37641, 37642
94.....36593, 36594
98.....37642

Proposed Rules:
78.....37665
85.....37666
91.....37667
92.....37878
94.....36624
95.....37669
98.....36625
113.....37670

10 CFR

Proposed Rules:
50.....37884
60.....36902

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36863, 36865
71.....36596
72.....36298
108.....36802

Proposed Rules:
Ch. I.....36626
1.....36738
23.....38028
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353

VOL 58 ISS 133 JL 14 1993 UMI

790.....36353

16 CFR

1145.....37554
1210.....37557
Proposed Rules:
244.....35414
412.....35907

17 CFR

1.....37644
239.....35367
240.....36866, 37413, 37655
249.....35367
Proposed Rules:
240.....37445

18 CFR

Proposed Rules:
35.....36172
284.....37447
341.....37671
342.....37671
343.....37671
344.....37671
345.....37671
347.....37671
352.....37671
360.....37671
361.....37671
375.....35415, 37671

19 CFR

148.....35862
151.....37853
Proposed Rules:
12.....37884
24.....37884
133.....37884
178.....37884

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
178.....37854
510.....36134, 37855
520.....36134
Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
236.....37802
241.....37802
248.....37802
572.....36518, 36546
Proposed Rules:
16.....37598
202.....37885
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

25 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908, 36516

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371
Proposed Rules:
36.....37052

29 CFR

1400.....35377
1915.....35512
2606.....35377, 37991
2612.....35377
2615.....35377
2616.....35377
2622.....35377, 37991
2623.....35377, 37991

30 CFR

202.....37420
206.....37420
920.....36135
938.....36139
Proposed Rules:
916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867
Proposed Rules:
501.....37770
552.....37774

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357, 36597, 36868
334.....37606, 37889
Proposed Rules:
117.....36629
334.....37889

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869
Proposed Rules:
650.....37890
692.....36110

36 CFR

51.....36598
Proposed Rules:
1191.....37052

38 CFR

3.....37856
36.....37857

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426, 37658
82.....36516
85.....36871
131.....36141
180.....36358, 36359, 37861
185.....36358, 37862
186.....37867
228.....35884
414.....36872
Proposed Rules:
Ch. I.....37450, 37991
52.....36905, 37450, 37453
63.....37778
81.....36908, 37453
88.....35420
180.....
186.....
261.....
372.....
300.....

42 CFR

Proposed Rul
405.....
414.....

43 CFR

Public Land C
6986.....
6988.....

44 CFR

354.....

45 CFR

Proposed Rul
1602.....

46 CFR

170.....
Proposed Rul
15.....
171.....

180.....36366, 37893
186.....36366
261.....36367
372.....36180
300.....37693

42 CFR

Proposed Rules:
405.....37994
414.....37994

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

45 CFR

Proposed Rules:
1602.....36910

46 CFR

170.....36601

Proposed Rules:
15.....36914
171.....36374

47 CFR

1.....36142, 37867
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431
76.....36604
90.....36362

Proposed Rules:
Ch. I.....36630
61.....37894
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455, 37696

48 CFR

2.....37868
935.....37868
904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363

Proposed Rules:
917.....36918
1823.....37697
1852.....37697

49 CFR

218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894

Proposed Rules:
37.....37052
171.....36920, 37612
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
390.....37895
392.....37900
393.....37900
543.....35422

50 CFR

17.....35887, 37432
85.....36619
285.....36154
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897, 37660, 37870, 37871
675.....35897, 37660

Proposed Rules:
17.....36184, 36379, 36387, 36924, 37699
20.....37828
24.....36925
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 8, 1993

VOL
58
ISS
133
JL
14
1993
UMI

Public Laws

103d Congress, 1st Session, 1993

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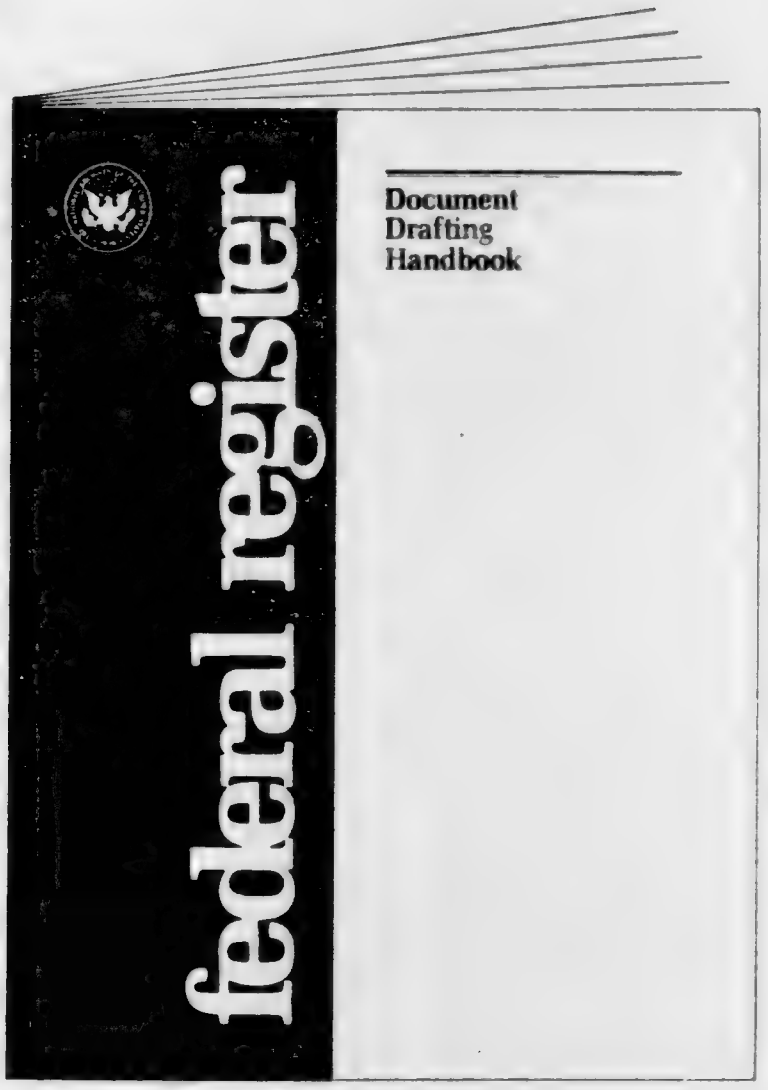

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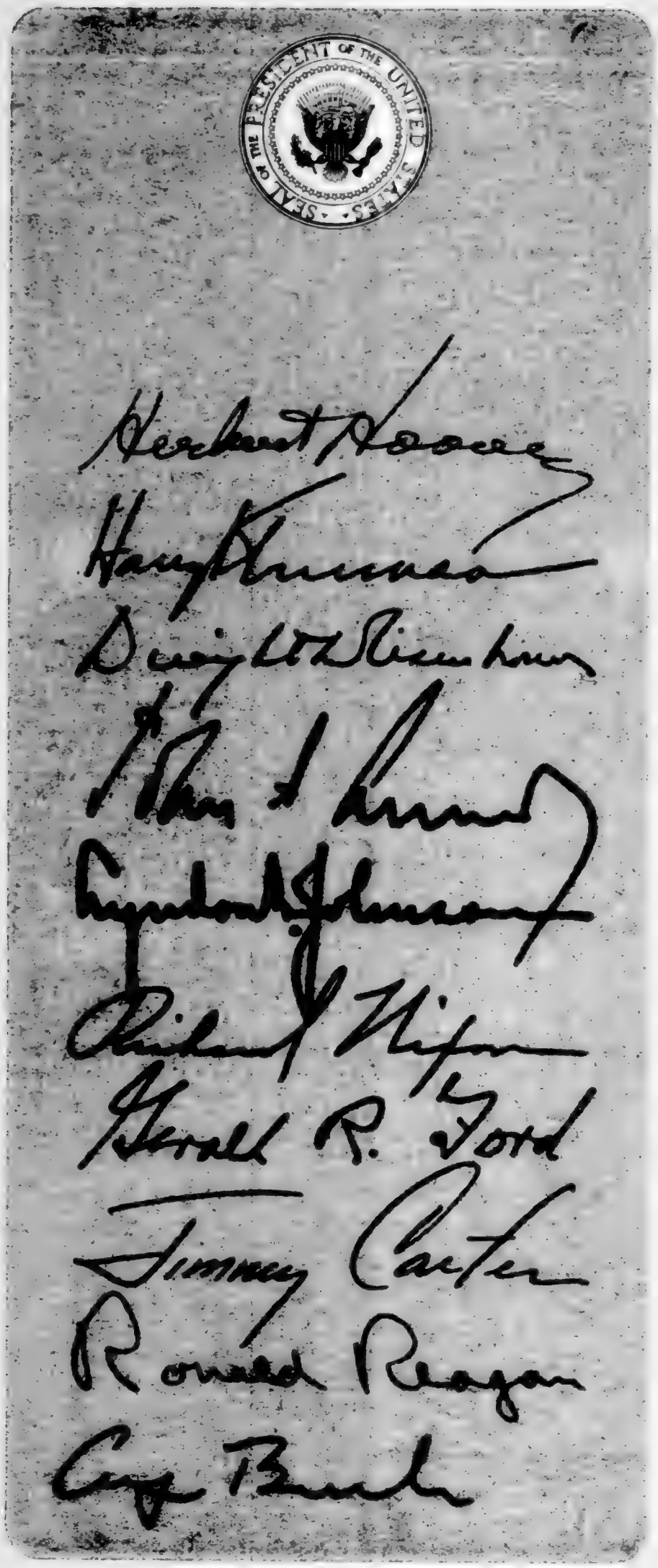

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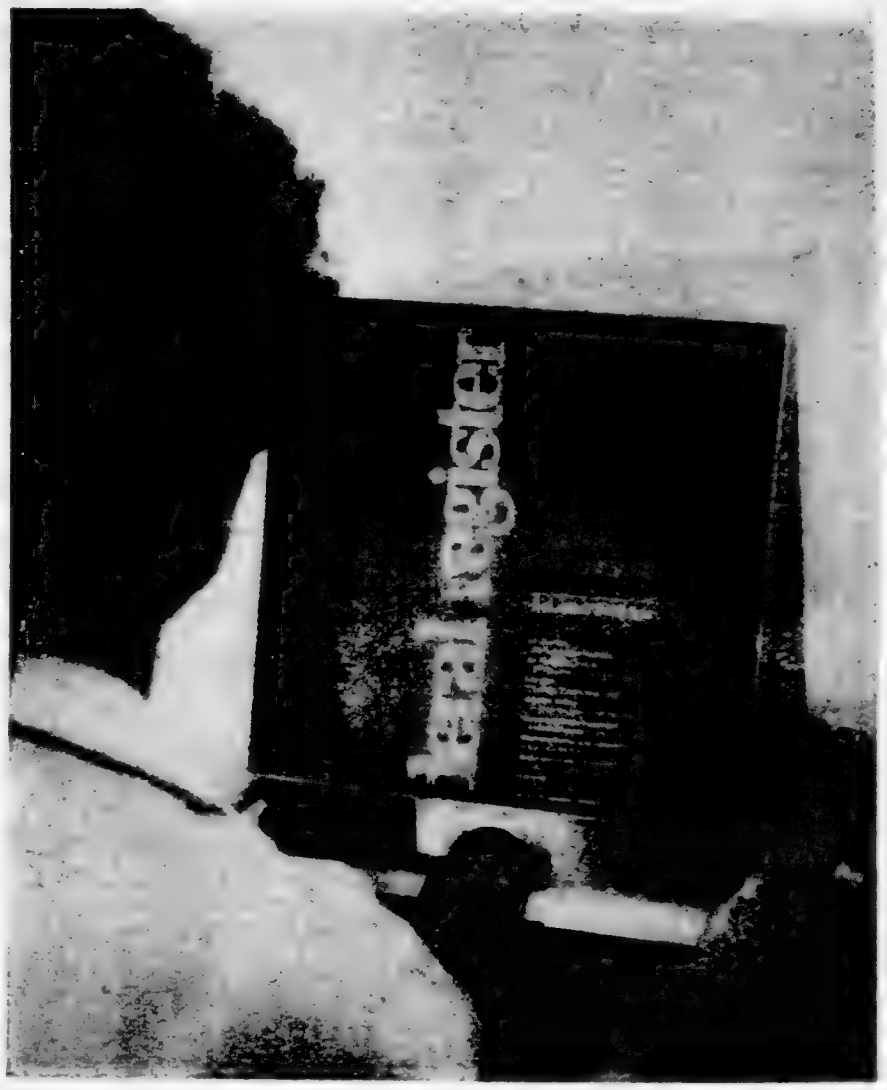

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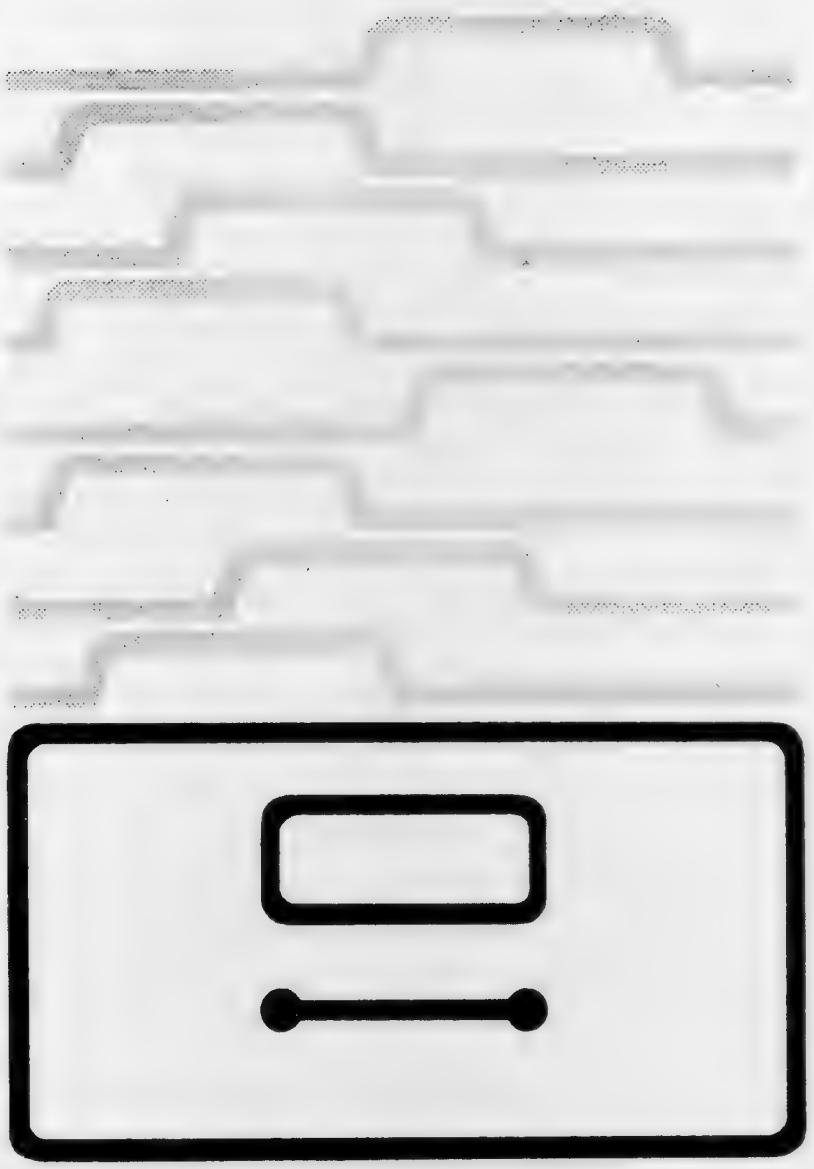

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ISS
134
JL
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Cont

Agricultur
Servic
See Forest
NOTICES
Import qu
Meat im

Antitrust
NOTICES
National c
National
Inc.

Architectu
Board
RULES
Americans
Accessib
Autom

Army Dep
NOTICES
Military tr
Procedu
carri
Security
381
Patent lice
exclus
Self heat

Children a
NOTICES
Grants and
Discretio

Coast Gua
RULES
Drawbridge
Massach
Ports and v
Kings Ba
Regattas an
Barnegat
Blackbea
Cock Isla
Greater J
Hampton
Night in
PROPOSED R
Anchorage
Florida,
Drawbridge
Michigan
NOTICES
Committees
Coastal z
National
Meetings:
Johns Isl
Wate

Contents

Federal Register

Vol. 58, No. 134

Thursday, July 15, 1993

Agriculture Department
Service
See Forest Service
NOTICES
Import quotas and fees:
Meat import limitations; quarterly estimates, 38114

Antitrust Division
NOTICES
National cooperative research notifications:
National Information Technology Center of Maryland, Inc., 38140

Architectural and Transportation Barriers Compliance Board
RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Automated teller and fare vending machines, 38204

Army Department
NOTICES
Military traffic management:
Procedures governing disqualification and nonuse of carriers of DOD traffic, 38258
Security seals for transportation of sensitive DOD cargo, 38121
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Self heating individual meal module, etc., 38121

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary programs, 38232

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 38056
Ports and waterways safety:
Kings Bay, GA; regulated navigation area, 38056
Regattas and marine parades:
Barnegat Bay Classic, 38053
Blackbeard Pirate Jamboree, 38054
Cock Island Race, 38054
Greater Jacksonville Kingfish Tournament, 38055
Hampton Bay Days Festival, 38053
Night in Venice Boat Parade, 38053
PROPOSED RULES
Anchorage regulations:
Florida, 38100, 38101
Drawbridge operations:
Michigan, 38102
NOTICES
Committees; establishment, renewal, termination, etc.:
Coastal zone area committees, 38156
National Boating Safety Advisory Council, 38158
Meetings:
Johns Island, Charlesfon County, SC; Atlantic Intracoastal Waterway (AIWW); hearing, 38159

Commerce Department
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Customs Service
RULES
Designated public international organizations; list changes
Correction, 38167

Defense Department
See Army Department
RULES
Vocational rehabilitation and education:
Veterans education—
Disenrollment from post-Vietnam era veterans' educational assistance program, 38057
NOTICES
Agency information collection activities under OMB review, 38119
Committees; establishment, renewal, termination, etc.:
Strategic Environmental Research and Development Program Scientific Advisory Board, 38120
Meetings:
Defense Intelligence Agency Scientific Advisory Board, 38120
Militarily critical technologies list; availability, 38120

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 38121

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Louisiana, 38058
Oklahoma, 38060
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; etc.:
New York, 38108

Executive Office of the President
See Management and Budget Office

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Loan policies and operations—
Borrower rights notices for distressed loans; content, 38091

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama et al., 38087
Missouri, 38088

Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Video sports programming migration from broadcast to subscription television; Section 26 implementation, 38088
PROPOSED RULES
Radio stations; table of assignments:
Idaho, 38111
NOTICES
Agency information collection activities under OMB review, 38125

Federal Election Commission
NOTICES
Meetings; Sunshine Act; 38166

Federal Emergency Management Agency
RULES
Flood elevation determinations:
California et al., 38084
NOTICES
Disaster and emergency areas:
Minnesota, 38126
Wisconsin, 38126

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Panther Creek Partners, 38121
Tampa Electric Co. et al., 38122
Preliminary permits surrender:
Cowlitz Basin 3 Limited Partnership, 38123
Applications, hearings, determinations, etc.:
Florida Municipal Power Authority et al., 38123
K N Energy, Inc., 38124
Tennessee Gas Pipeline Co., 38124
Texas Gas Transmission Corp., 38124

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Baldwin County, AL, 38159

Federal Maritime Commission
NOTICES
Agreements filed, etc., 38126
Freight forwarder licenses:
Central Florida Freight Forwarders, Inc., et al., 38127
Sea Cargo International, Inc., 38127

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
George Mason Bankshares, Inc., 38127
OBANKCORP, Inc., 38128

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
National Automobile & Casualty Insurance Co., 38163

Fish and Wildlife Service
PROPOSED RULES
Endangered Species Convention:
Appendices and amendments, 38112
NOTICES
Endangered and threatened species:
Recovery plans—
Schiedea adamantis, 38133
Environmental statements; availability, etc.:
Tijuana Slough National Wildlife Refuge, CA, 38134
Yellowstone National Park and central Idaho; reintroduction of gray wolves, 38134

Food and Drug Administration
NOTICES
Food additive petitions:
CdF Chimie SA, 38128
Food for human consumption:
Food Chemicals Codex, 4th Edition; monograph changes, 38129
Human drugs:
Nitroglycerin transdermal system; drug efficacy study implementation; final evaluation, 38129
Meetings:
Compressed medical gas industry workshops, 38132

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Minor ingredients listing in other than descending order of predominance, 38046
PROPOSED RULES
Meat and poultry inspection:
Bird amenability determination, 38090

Forest Service
NOTICES
Appeal exemptions; timber sales:
Nez Perce National Forest, ID, 38114
Grants and cooperative agreements; availability, etc.:
Recycled fibers enzymatic deinking, 38115

General Services Administration
NOTICES
Meetings:
African Burial Ground Steering Committee, 38128

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
Health maintenance organizations (HMOs); technical amendments, 38062
PROPOSED RULES
Medicare:
Health maintenance organizations; organizational structure and services, 38170

Immigration and Naturalization Service
RULES
Immigration:
Guam visa waiver program; Taiwan, 38045
Ports of entry for aliens arriving by aircraft, 38045

NOTICES
Environmental statements; availability, etc.:
Defense Department Joint Task Force Six operations, 38140

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Commission
NOTICES
Import investigations:
Special quality carbon and alloy hot-rolled steel bars and semifinished products from Brazil, 38138
Sputtered carbon coated computer disks and products containing same, including disk drives, 38138

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Burlington Northern Railroad Co. et al., 38139
Meetings; Sunshine Act, 38166
Railroad operation, acquisition, construction; etc.:
New Hampshire Central Railroad, Inc., 38139
Railroad services abandonment:
Burlington Northern Railroad Co., 38139

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Union Tank Car Co., 38140

Land Management Bureau
RULES
Minerals management:
Rental fees, mining claim recordation, and assessment work, 38186
Public land orders:
Alaska, 38083
NOTICES
Closure of public lands:
Nevada, 38134
Environmental statements; availability, etc.:
Bedell Flat pipelines rights-of-way, NV, 38135
Meetings:
Carson City District Grazing Advisory Board, 38135
Casper District Grazing Advisory Board, 38135
Rawlins District Advisory Council, 38136
Realty actions; sales, leases, etc.:
Arizona, 38136
Nevada, 38136, 38137
Withdrawal and reservation of lands:
California, 38137
Oregon; correction, 38138

Management and Budget Office
NOTICES
User charges (Circular A–25), 38142

Minority Business Development Agency
NOTICES
Business development center program applications:
Alaska et al., 38115

National Highway Traffic Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Traffic safety for young adults at job training sites, 38160

National Institutes of Health
NOTICES
Meetings:
National Institute of General Medical Sciences, 38132
National Institute on Deafness and Other Communication Disorders, 38132

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish
Correction, 38167
National estuarine research reserve system program regulations, 38214
NOTICES
Committees; establishment, renewal, termination, etc.:
Modernization Transition Committee, 38117
Environmental statements; availability, etc.:
Electromagnetic radiation effects, 38117
Fishery conservation and management:
Pacific halibut, etc.; correction, 38167
Meetings:
Florida Keys National Marine Sanctuary Advisory Council, 38118
Permits:
Marine mammals, 38118
Whaling Commission, International:
Catch limit algorithm; independent scientific peer review, 38118

National Science Foundation
NOTICES
Meetings:
Biological Sciences Advisory Committee, 38141
Ocean Sciences Review Panel, 38141
Undergraduate Education Special Emphasis Panel, 38141

Office of Management and Budget
See Management and Budget Office

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 38052
Withdrawal liability; notice and collection; interest rates, 38051
Single-employer plans:
Late premium payments and employer liability underpayments and overpayments; interest rates, 38049
Valuation of plan benefits—
Interest rates and factors, 38050
NOTICES
Negotiated rulemaking use; policy development, 38146

Public Health Service
See Food and Drug Administration
See National Institutes of Health

VOL
58
ISS
134
JL
15
1993
UMI

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Intrastate shippers and carriers; regulations compliance Correction, 38111

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
Research and development companies; safe harbor exclusion from investment company status, 38095
Securities:
Brokers and dealers, reporting requirements; employment of optical storage technology, 38092
NOTICES
Agency information collection activities under OMB review, 38147
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 38148
Chicago Board Options Exchange, Inc., 38149
National Association of Securities Dealers, Inc., 38150
Philadelphia Stock Exchange, Inc., 38153
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 38154
Cincinnati Stock Exchange, Inc., 38154
Midwest Stock Exchange, Inc., 38154
Philadelphia Stock Exchange, Inc., 38154

Small Business Administration
NOTICES
Disaster loan areas:
Louisiana et al., 38155
Interest rates; quarterly determinations, 38156

Transportation Department
See Coast Guard
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Automated teller and fare vending machines, 38204

Treasury Department
See Customs Service
See Fiscal Service
NOTICES
Agency information collection activities under OMB review, 38163

United States Information Agency
NOTICES
Meetings:
Cuba Broadcasting Advisory Board, 38164
Public Diplomacy, U.S. Advisory Commission, 38164

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Disenrollment from post-Vietnam era veterans' educational assistance program, 38058
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Procedural due process and appellate rights, 38103, 38104, 38106
Vocational rehabilitation and education:
Veterans education—
Programs standardization, 38106
NOTICES
Privacy Act:
Systems of records, 38164

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 38170

Part III
Department of the Interior, Bureau of Land Management, 38186

Part IV
Architectural and Transportation Barriers Compliance Board, 38204

Part V
Department of Commerce, National Oceanic and Atmospheric Administration, 38214

Part VI
Department of Health and Human Services, Administration for Children and Families, 38232

Part VII
Department of Defense, Department of the Army, 38258

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Reader Aid
8 CFR
100
212
9 CFR
317
381
Proposed Ru
381
12 CFR
Proposed Ru
614
15 CFR
921
17 CFR
Proposed Ru
240
270
19 CFR
148
29 CFR
2610
2619
2622
2644
2676
33 CFR
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165
Proposed Ru
110 (2 docu
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36 CFR
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Proposed Ru
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40 CFR
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Proposed Ru
52
81
42 CFR
417
Proposed Ru
417
43 CFR
3730
3820
3830
3850
Public Land C
6989
44 CFR
67
47 CFR
73 (2 docum
76
Proposed Rul
73
49 CFR
37

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

8 CFR
100.....38045
212.....38045

9 CFR
317.....38046
381.....38046

Proposed Rules:
381.....38090

12 CFR

Proposed Rules:
614.....38091

15 CFR
921.....38214

17 CFR

Proposed Rules:
240.....38092
270.....38095

19 CFR
148.....38167

29 CFR
2610.....38049
2619.....38050
2622.....38049
2644.....38051
2676.....38052

33 CFR
100 (6 documents).....38053, 38054, 38055
117.....38056
165.....38056

Proposed Rules:
110 (2 documents).....38100, 38101
117.....38102

36 CFR
1191.....38204

38 CFR
21.....38057

Proposed Rules:
3 (3 documents).....38103, 38104, 38106
21.....38106

40 CFR
52 (2 documents).....38058, 38060

Proposed Rules:
52.....38108
81.....38108

42 CFR
417.....38062

Proposed Rules:
417.....38170

43 CFR
3730.....38186
3820.....38186
3830.....38186
3850.....38186

Public Land Orders:
6989.....38083

44 CFR
67.....38083

47 CFR
73 (2 documents).....38087, 38088
76.....38088

Proposed Rules:
73.....38111

49 CFR
37.....38204

Proposed Rules:
171.....38111

50 CFR
611.....38167
672.....38167

Proposed Rules:
23.....38112

VOL
58
ISS
134
JL
15
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Rule

This sectio
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[INS No: 13

RIN 1115–A

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AGENCY: I
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ACTION: Fi

SUMMARY:
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Rules and Regulations

Federal Register
Vol. 58, No. 134
Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No: 1393–92]

RIN 1115–AD19

Ports of Entry for Aliens Arriving by Aircraft

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule corrects the names of the airports located in Brownsville and McAllen, Texas. The changes update 8 CFR 100,4 to reflect current airport listings. The rule is necessary to inform the public traveling by aircraft of designated ports of entry.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., room 2207, Washington, DC 20536, telephone (202) 514–0747.

SUPPLEMENTARY INFORMATION: The names of the airports located in Brownsville and McAllen, Texas, have changed and are corrected by this rule.

The Service's implementation of this rule as a final rule, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(A)–(B) and (d)(3). The reason and the necessity for immediate implementation of this final rule is that the changes made are administrative in nature and do not affect existing practices. A notice and comment period for a proposed rule would have been impracticable and unnecessary.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations will be amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. In § 100.4(c)(3), District No. 40, is revised to read as follows:

§ 100.4 Field Service.

* * * * *

(c) * * *

(3) * * *

District No. 40—Harlingen, Texas.

Brownsville, TX, Brownsville/South Padre Island International Airport

McAllen, TX, McAllen Miller International Airport

* * * * *

Dated: April 28, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–16785 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 212

[INS No. 1398–92]

Guam Visa Waiver Program; Taiwan

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule temporarily adds Taiwan to the list of countries that meet the eligibility criteria for the Guam Visa Waiver Program, implemented under the Omnibus Territories Act of 1986. This rule facilitates the travel of citizens of Taiwan to visit Guam under certain conditions. It enables citizens of Taiwan who begin their travel in Taiwan and who are in possession of Taiwanese National Identity Cards, in addition to valid Taiwanese passports, to visit Guam as nonimmigrant visitors for up to fifteen days for business or pleasure without first obtaining nonimmigrant visitor visas at American consulates abroad. The inclusion of Taiwan in the Guam Visa Waiver Program will be evaluated after six months and a determination will be made whether to make Taiwan's inclusion in the program permanent.

DATES: This rule is effective July 15, 1993 through July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald J. Hays, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone number: (202) 514–3996.

SUPPLEMENTARY INFORMATION: Under section 212(l)(1) of the Immigration and Nationality Act, certain visitors from designated countries may visit Guam for up to fifteen days without having to obtain nonimmigrant visitor visas from American consulates outside the United States.

First implemented on October 1, 1988, this program resulted in the arrival of thousands of nonimmigrant visitors from Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, the Republic of Korea, Singapore, the Solomon Islands, the United Kingdom (including citizens of the colony of Hong Kong), Vanuatu and Western Samoa, visiting Guam under the conditions mentioned above. In addition to the geographic proximity to Guam, these countries met the other three criteria for selection, including posing no threat to the welfare, safety, or security of the United States, its territories or commonwealths.

Since Taiwan's inclusion in the program is subject to potential abuse by non-Taiwanese attempting to enter the United States illegally, only citizens of Taiwan in possession of Taiwanese National Identity Cards in addition to valid Taiwanese passports who begin their travel in Taiwan on direct non-stop flights to Guam are included in the Guam Visa Waiver Program. Taiwan will be included in the Guam Visa Waiver Program for one year. After the first six months, the Immigration and Naturalization Service (the Service) will evaluate Taiwan's inclusion in the

program to determine whether the inclusion should be made permanent.

The Service's implementation of this rule as an interim rule is based upon the "good cause" exception found at 5 U.S.C. 553 (b)(3) and (d)(3). The reasons and the necessity are as follows: this rule relieves a restriction and is beneficial to both the traveling public and United States' businesses. This rule will also allow the Service to monitor and evaluate the program in relation to Taiwan's entry to ensure that abuse by non-Taiwanese trying to enter the United States illegally does not occur.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedures, Aliens, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

§ 212.1 [Amended].

2. Effective July 15, 1993 through July 15, 1994, § 212.1, paragraph (e)(3) is amended by adding the phrase "Taiwan (limited to citizens in possession of Taiwanese National Identity Cards in addition to valid Taiwanese passports who begin their travel in Taiwan and who travel on direct non-stop flights from Taiwan to Guam)," immediately after the phrase "Solomon Islands,".

Dated: May 12, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

Dated: May 28, 1993.

David L. Hobbs,

Acting Assistant Secretary of State for Consular Affairs, Department of State.

Dated: May 20, 1993.

Leslie M. Turner,

Assistant Secretary for Territorial and International Affairs, Department of the Interior.

[FR Doc. 93-16714 Filed 7-14-93; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91-019F]

RIN 0583-AB37

Listing of Minor Ingredients in Other Than Descending Order of Predominance

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to allow product ingredients present at individual levels of 2 percent or less by weight to be listed in the ingredients statement in other than descending order of predominance. The final rule will allow manufacturers to adjust ingredients in a formulation present at 2 percent or less without resubmitting the labeling for new approval each time such an adjustment is made. This rule is in response to a petition submitted by the National Food Processors Association (NFPA).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2590.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) for imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR 335 and Part 381, Subpart W, must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The rule will make it optional for manufacturers of meat and poultry products containing ingredients at levels of 2 percent or less by weight to list such ingredients in the ingredients statement in other than descending order of predominance. Current regulations require all ingredients of meat and poultry products to be listed in the order of predominance (9 CFR 317.2(f) and 381.118(a)). Manufacturers opting to list their ingredients in other than descending order of predominance will have to revise their product labels to include a quantifying phrase at the end of the ingredients statement and submit the revised labels to FSIS for approval. This would entail a one-time expense of approximately $1000 in labeling costs for each product. All meat and poultry products, except single-ingredient products, would qualify for this type of labeling. All small entities producing products other than single-ingredient products will be affected by this rule if they choose to label their products in this manner. Once initial approval has been given by FSIS on the revised labels, manufacturers will be allowed to adjust ingredients in a formulation present at 2 percent or less without resubmitting the labeling for new approval each time such adjustment is made. As a result, such manufacturers will save $1000 every time such an adjustment is made in the formulation. These savings, accruing to affected establishments after the initial formulation change for each product, will greatly exceed any initial costs. In addition, the number of labels received by the Agency will be reduced, to some extent, redirecting Agency resources to more significant label reviews.

Background

National Food Processors Association Petition

FSIS was petitioned by the National Food Processors Association (NFPA), Washington, DC, to allow ingredients present in a product at levels of 2 percent or less by weight to be listed in other than descending order of predominance. (A copy of the petition is available for review in the FSIS Hearing Clerk's office.) The petitioner contended that the amendment to the Federal meat and poultry products inspection regulations would reduce the number of label changes currently required of industry, would ease the backlog of labels to be reviewed by the Food Labeling Division (FLD) when minor formulation changes are made. The requested regulation change is consistent with the Food and Drug Administration's (FDA) regulation at 21 CFR 101.4(a)(2).

Current Statutory and Regulatory Requirements

Sections 1(n)(7) of the Federal Meat Inspection Act (21 U.S.C. 601(n)(7)) provides that any carcass, part thereof, meat or meat food product is misbranded "if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 7 of this Act unless (A) it conforms to such definitions and standards, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavorings, and coloring) present in such foods." Section 1(n)(9) (21 U.S.C. 601(n)(9)) further provides that any carcass, part thereof, meat or meat food product is misbranded "if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; * * *" Section 4(h) (7) and (9), respectively, of the Poultry Products Inspection Act (21 U.S.C. 453(h) (7) and (9)) contain similar provisions for any poultry product.

Furthermore, the Federal meat and poultry products inspection regulations specify that ingredients in the ingredients statement must be listed in their order of predominance. Section 317.2(f)(1) of the Federal meat inspection regulations (9 CFR 317.2(f)(1)) provides that the list of ingredients shall show the common or usual names of the ingredients arranged in the descending order of predominance, with a few minor exceptions. Section 381.118(a) of the poultry products inspection regulations (9 CFR 381.118(a)) provides that the label shall show a statement of the ingredients in the poultry product if the product is fabricated from two or more ingredients, and that such ingredients shall be listed by their common or usual names in the order of their descending proportions.

The FDA regulation at 21 CFR 101.4(a)(1) provides that ingredients shall be listed by their common or usual name in descending order of predominance by weight. However, 21 CFR 101.4(a)(2) allows ingredients present in amounts of 2 percent or less by weight to be listed in other than descending order of predominance at the end of the ingredients statement.

The listing of such ingredients must be preceded by an appropriate quantifying statement, e.g., "Contains _____percent or less of _____," or "Less than _____percent of _____." The blank percentage within the quantifying statement shall be filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying phrase applies may be present in an amount greater than the stated threshold.

Proposed Rule

After reviewing the petitioner's request, FSIS determined that allowing ingredients present in a product at individual levels of 2 percent or less by weight to be listed in other than descending order of predominance would be in accordance with the provisions of the FMIA and PPIA and would not cause the product to be misbranded because the presence of all ingredients would still be identified in the ingredients statement. Therefore, on July 20, 1992, FSIS proposed to allow product ingredients present at individual levels of 2 percent or less by weight to be listed in other than descending order of predominance at the end of the ingredients statement (57 FR 31972). The listing of such ingredients by their common or usual names would have to be preceded by a quantifying statement such as "Contains _____percent or less of _____," or "Less than _____percent of _____." The percentage of the ingredient(s) would be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold.

The provisions as stated above would apply to ingredients statements consisting of composite listing of ingredients or component listing of ingredients. When the component listing is used, the quantifying statement may appear at the end of each component's list of ingredients rather than at the end of the ingredients statement.

FSIS also proposed that establishments continue to comply with sections 318.7(c)(4) and 381.147(f)(4) of the regulations (9 CFR 318.7(c)(4) and 381.147(f)(4)) which list substances that are acceptable for use in the preparation of meat and poultry products. In addition, any adjustment in formulation of a standardized product would also be

required to comply with limits and conditions of use prescribed in 9 CFR part 319 or part 381, subpart P. Establishments would be required to notify the inspector-in-charge of any formulation changes, even though the label would not be submitted for approval.

Discussion of Comments

FSIS received 23 comments in response to the proposed rule. Fourteen comments were received from food processors, six from trade associations, one from a food consultant, one from a State Health Department official, and one from a meat and poultry wholesaler. All of the commenters supported the basic concept of the proposed rule because they believe that it will (1) Provide harmony between FDA regulations and FSIS regulations for ingredients that are present in amounts of 2 percent or less, (2) reduce industry's costs because of fewer label changes, (3) provide industry with more flexibility, and (4) be more informative to consumers. However, several commenters did raise issues related to modifying or eliminating the quantifying statement, resubmitting label transmittals, and providing formulation changes to inspectors. The issues raised by the commenters and the Agency's response to each issue are as follows:

1. Quantifying Statement

Four commenters suggested that FSIS consider allowing threshold levels higher than 2 percent. They suggested threshold levels of 3.5 percent, 5 percent, and 4–6 percent.

Although the suggested threshold levels may have some merit, FSIS notes that the majority of the commenters believe that the 2 percent threshold level provides a satisfactory balance between providing useful information to the consumer and the need to make minor formulation changes without additional approval. Also, FSIS believes that since FDA has promulgated similar regulations, it is important to maintain uniformity for all foods.

Three commenters suggested not requiring a quantifying statement for the labeling of minor ingredients because of space considerations. Two other commenters suggested that the quantifying statement be optional rather than mandatory, because all ingredients in the product would be declared on the label for the consumer regardless of the presence of a quantifying statement.

FSIS believes a quantifying statement provides valuable information about the presence of minor ingredients. The Agency believes that it is important to alert the consumer about the amount of the minor ingredients if the order of predominance of these ingredients is not maintained.

Two commenters suggested rewording the quantifying statement because they believe that the statement is inaccurate and misleading to consumers. Another commenter suggested using an asterisk in the ingredients statement, in place of the quantifying statement, to indicate that certain ingredients are present in amounts of 2 percent or less. Those ingredients present in amounts of 2 percent or less would be listed on an alternate panel rather than in the ingredients statement.

The proposed quantifying statements are only examples of acceptable statements. FSIS believes that the wording of the quantifying statement may vary and that various phrases can be used that provide the necessary information to the consumer. However, the Agency does not believe that the use of an asterisk in the manner suggested is desirable. Ingredients statements are usually displayed on an information panel, which is defined as the first usable panel to the right of the principal display panel. To allow the use of an asterisk directing the consumer to another panel would cause the consumer to search unnecessarily for the information.

One commenter suggested that FSIS harmonize its requirements with those of FDA by adding the phrase "or, if desired" after "2 percent" to the statement in the proposed rule that identifies the threshold levels; i.e., "The blank percentage within the quantifying statement shall be filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate."

FSIS believes that its requirement to allow product ingredients present at individual levels of 2 percent or less by weight to be listed in the ingredients statement in other than descending order of predominance should harmonize with FDA's requirement. However, in this particular statement, the Agency does not believe that the "or, if desired," phrase is needed because the proposed statement makes it clear that the blank percentage can be filled in with either 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, whichever is appropriate.

2. Resubmitting Label Transmittals

One commenter pointed out that the proposal did not address the issue of resubmitting label transmittals (application forms) for minor formulation adjustments.

Manufacturers will be required to submit for initial approval product labeling, along with label transmittal forms, that illustrate the quantifying statements they wish to use. Once initial approval has been given, manufacturers may adjust ingredients in a formulation present at 2 percent or less without resubmitting the product labeling and label transmittal form for new approval each time such adjustment is made.

3. Providing Formulation Changes To Inspectors

Three commenters questioned the need to provide to the inspector-in-charge any adjustments to the product formulation when the level of all affected ingredients remains at or below 2 percent.

FSIS inspection personnel are responsible for assuring that an approved label is properly used and that the conditions of the approval are followed. Moreover, inspection personnel monitor product formulation to ensure that the amount of ingredients used comply with the regulations. In this regard, it is important that inspection personnel are apprised of all formulation changes to accurately assure that product is safe and not adulterated.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 is amended by adding a new paragraph (f)(1)(vi) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f)(1) * * *

(vi)(A) Product ingredients which are present in individual amounts of 2 percent or less by weight may be listed in the ingredients statement in other than descending order of predominance: *Provided,* That such ingredients are

listed by their common or usual names at the end of the ingredients statement and preceded by a quantifying statement, such as "Contains _____ percent of _____," "Less than _____percent of _____." The percentage of the ingredient(s) shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold. Such a quantifying statement may also be utilized when an ingredients statement contains a listing of ingredients by individual components. Each component listing may utilize the required quantifying statement at the end of each component ingredients listing.

(B) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with § 318.7(c)(4) and part 319 of this subchapter, and does not exceed the amount shown in the qualifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

4. Section 381.118(a) is revised to read as follows:

§ 381.118 Ingredients statement.

(a)(1) The label shall show a statement of the ingredients in the poultry product if the product is fabricated from two or more ingredients. Such ingredients shall be listed by their common or usual names in the order of their descending proportions, except as prescribed in paragraph (a)(2) of this section.

(2)(i).Product ingredients which are present in individual amounts of 2 percent or less by weight may be listed in the ingredients statement in other than descending order of predominance: *Provided,* That such ingredients are listed by their common or usual names at the end of the ingredients statement and preceded by a quantifying statement, such as "Contains _____ percent or less of _____," or "Less than _____percent of _____." The percentage of the ingredient(s) shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold. Such a quantifying statement may also be utilized when an ingredients statement contains a listing of ingredients by individual components. Each component listing may utilize the required quantifying statement at the end of each component ingredients listing.

(ii) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with § 381.147(f)(4) and subpart P of this part, and does not exceed the amount shown in the quantifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

Done at Washington, DC, on: July 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16783 Filed 7–14–93; 8:45 am]

BILLING CODE 3410-DM-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning July 1, 1993. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in May 1993 through July 1993. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning July 1, 1993, the interest charged on the underpayment of taxes will be at a rate of 7 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the July 1, 1993, through September 30, 1993, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month

VOL 58 ISS 134 JL 15 1993 UMI

for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in May of 1993 through July of 1993.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, (1988 and Supp. I 1989), as amended by sec. 12021, Public Law 101–508, 104 Stat. 1388, 1388–573.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
.	.	.
July 1, 1993	September 30, 1993.	7

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in May of 1993 through July of 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
.	.
May 1993	5.48
June 1993	5.54
July 1993	5.45

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Public Law 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning July 1, 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
.	.	.
July 1, 1993	September 30, 1993.	7

Issued in Washington, DC, this 8th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16824 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning August 1, 1993. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after August 1, 1993, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's

("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since April 1, 1993. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after August 1, 1993, which set reflects a decrease of ¼ percent in the immediate interest rate from 5 percent to 4¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after August 1, 1993, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 105 of appendix B is revised and Rate Set 106 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
• • •	•		•	•			•	
105	4–1–93	8–1–93	5.00	1.0425	1.0400	1.0400	7	8
106	8–1–93		4.75	1.0400	1.0400	1.0400	7	8

Issued in Washington, DC, on this 8th day of July, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16825 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1993, to September 30, 1993.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability

VOL
58
ISS
134
JL
15
1993
UMI

payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 6 percent, which will be effective from July 1, 1993, through September 30, 1993. This rate represents no change from the rate in effect for the second quarter of 1993. This rate is based on the prime rate in effect on June 15, 1993.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of Chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table therein a new entry as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
.	.	.	.
7/01/93	9/30/93	6/15/93	6

Issued in Washington, DC on this 8th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16823 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the table the rate series for August 1993.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of August 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_t
August 1993	.055	.05375	.0525	.05125	.05	.0475	.0475	.0475	.0475	.0475	.045	.045	.045	.045	.045	.04

Issued at Washington, DC, on this 8th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16822 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–93–035]

Special Local Regulations for Marine Events; Hampton Bay Days Festival; Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.508 for the Hampton Bay Days Festival. The event will be held on the Hampton River. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: The regulations are effective from 7 a.m., September 10, 1993 until 7 p.m., September 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204 or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Hampton Bay Days, Inc. submitted an application to hold the Hampton Bay Days Festival on September 10, 11, and 12, 1993. The marine portion of the festival will consist of a parade of boats, water ski shows, and various type boat races. There will also be a fireworks display launched from within the regulated area. The regulations in 33 CFR 100.508 govern the activities of the Hampton Bay Days Festival held on the Hampton River in and around downtown Hampton, Virginia. Implementation of 33 CFR 100.508 also implements as special anchorage areas the spectator anchorages designated in that section for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30 (33 U.S.C. 2030(g)). Since these regulations were specifically established to enhance the safety of the participants in and spectators of the marine portions of the Hampton Bay Days Festival the regulations are hereby implemented.

Dated: June 23, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–16700 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–93–036]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 21, 1993 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations are effective from 9:30 a.m. to 5 p.m., August 21, 1993. If inclement weather causes the event to be postponed, the regulations will be effective from 9:30 a.m. to 5 p.m., August 22, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Cape May (609) 884–6981.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C. A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboard Racing Association, Toms River, New Jersey, submitted an application to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately forty to fifty powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Since these regulations were specifically established to enhance the safety of the participants in and spectators of the Barnegat Bay Classic, the regulations are hereby implemented. Waterborne traffic should not be severely disputed at any given time, because closure of the Intracoastal Waterway is not anticipated.

Dated: 23 June 1993.

W. T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–16702 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–93–034]

Special Local Regulations for Marine Events; Night In Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

VOL 58 ISS 134 JL 15 1993 UMI

SUMMARY: This document put into effect the permanent regulations, 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event to be held on July 17, 1993 in the Ship Channel and on the Great Egg Waterway, Ocean City, New Jersey. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations are effective from 4:30 p.m. to 11:45 p.m., July 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Cape May (609) 884–6981.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade. The event will consist of approximately 125 vessels less than 65 feet in length. The parade will start at Ship Channel Buoy (4 LLNR 1160), cruise down the channel through Great Egg Waterway to Daybeacon 28 (LLNR 33865), and return to Great Egg Waterway Buoy 2 (LLNR 33800). Since these regulations were specifically established to enhance the safety of the participants in and spectators of the Night in Venice Boat Parade, the regulations are hereby implemented. Commercial traffic should not be severely disrupted at any given time, since commercial vessels will be permitted to transit the regulated area as the parade progresses.

Dated: June 23, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–16706 Filed 7–14–93; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05–93–040]

Special Local Regulations for Marine Events; The Start of the Cock Island Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.501 for the start of the Cock Island Race from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 17, 1993. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

EFFECTIVE DATE: The regulations are effective from 8:30 a.m. to 5 p.m., on July 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8568.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Ports Events, Inc., of Portsmouth, Virginia, submitted an application to hold the Cock Island Race. The race will consist of over 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into several classes. Each class will start at ten minute intervals from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 17, 1993, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: June 28, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–16706 Filed 7–14–93; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05–93–041]

Special Local Regulations for Marine Events; Blackbeard Pirate Jamboree; Town Point, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.501 for the Blackbeard Pirate Jamboree to be held on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations are effective from 11 a.m. to 3 p.m. and 8:30 p.m. to 10:30 p.m., July 31, 1993.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application to hold the Blackbeard Pirate Jamboree on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The event will consist of a parade of sail followed by an orchestrated water drama with cannon fire between two vessels. Since many spectator vessels are expected to be in the area to watch the jamboree, the regulations in 33 CFR 100.501 are being implemented for the safety of life and property. The waterway will not be

closed for an extended period, therefore commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this document authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: June 28, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–16709 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 07–92–008]

Special Local Regulations; St. Johns River, Intracoastal Waterway—Pablo Creek, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Greater Jacksonville Kingfish Tournament. Approximately 1,000 fishing vessels and pleasure craft, varying in size from 15 feet to 60 feet, are expected to participate in the tournament. The event will be held on the St. Johns River and on Pablo Creek, Florida, annually, the second or third week in July, on Thursday, Friday and Saturday. In the past, the Coast Guard established temporary special local regulations to protect the safety of life on the navigable waters during the effective times. However, due to the size and nature of the event, the Coast Guard now feels that a permanent description of the event and establishment of permanent regulations in the Code of Federal Regulations (CFR) would better serve the boating public by creating a permanent reference. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: LCDR J.E. Tunstall, Group Commander, Coast Guard Group Mayport, Florida, at (904) 247–7301.

SUPPLEMENTARY INFORMATION: On March 2, 1992, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (57 FR 7348). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of these regulations are QM1 Kuykendall, Marine Event Petty Officer, Coast Guard Group Mayport, and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received. The final rule is unchanged from the proposed rule, except that the CFR section number originally assigned to the NPRM was incorrect and has been changed from § 100.35–07008, in the NPRM, to § 100.710, in this final rule.

Economic Assessment and Certification

This final rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule is so minimal that a full regulatory evaluation is unnecessary. This event is not expected to affect commercial activities on the St. Johns River or Pablo Creek.

Since the impact of this final rule is minimal, the Coat Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this final rule has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 110.710 is added to read as follows:

§ 100.710 Annual Greater Jacksonville Kingfish Tournament

(a) *Regulated area.* A regulated area is established for the waters of the St. Johns River lying between an eastern boundary formed by St. Johns River Lighted Buoy 7 (LLNR 6665) position 30–23–56 N, 081–23–04 W, and Lighted Buoy 8 (LLNR 6670) position 30–24–03 N, 081–23–01 W, and a western boundary formed by Mile Point Lighted Buoy 24 (LLNR 6805) position 30–22–58 N, 081–27–21 W, and Pablo Creek Daybeacon 2 (LLNR 32605) position 30–22–52 N, 081–27–21 W, with the northern and southern boundaries formed by the banks of the St. Johns River. Then, from the western boundary on the St. Johns River, the regulated area continues south on the waters of Pablo Creek to the Atlantic Beach Bridge, Jacksonville, Florida.

(b) *Special local regulations.* A No Wake Zone is established on the waters of the St. Johns River lying between the eastern boundary formed by St. Johns River Lighted Buoy 7 and Lighted Buoy 8, and the western boundary formed by Mile Point Lighted Buoy 24 and Pablo Creek Daybeacon 2, with the northern and southern boundaries formed by the banks of the St. Johns River. A Minimum Wake Zone is established from the boundary formed by mile Point Lighted Buoy 24 and Pablo Creek Daybeacon 2, south on Pablo Creek to the Atlantic Boulevard Bridge.

(c) *Effective date.* The Commander, Seventh Coast Guard District, will publish a notice in the **Federal Register** and in the Seventh Coast Guard District Local Notices to Mariners that announces times and dates that this section will go into effect.

VOL 58 ISS 134 JL 15 1993 UMI

Dated: June 22, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–16710 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–93–036]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard is providing notice that the town of Dartmouth, Massachusetts, has been granted permission to temporarily deviate for sixty (60) days from the regulations governing the Padanaram Bridge over the Apponagansett River at mile 1.0 in Dartmouth, Massachusetts. The deviation permits scheduled openings on the hour from July 1, 1993, through August 29, 1993, rather than on the hour and the half hour. This temporary deviation is being implemented to evaluate the effects of changes requested by the town of Dartmouth, Massachusetts, on vehicular traffic and marine traffic.

DATES: The deviation is effective for 60 days from July 1, 1993 through August 29, 1993. Comments on the deviation must be received on or before October 29, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, room 628 at the John Foster Williams Building, 408 Atlantic Avenue, Boston, Massachusetts. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing the Padanaram Bridge over the Apponagansett River by submitting written data, or arguments for or against this deviation. Persons submitting comments should include their name, address, identify this rulemaking (CGD–01–93–036) and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period and determine whether to revise or eliminate the 60 day deviation. If it appears appropriate to the propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will again request comments during an additional comment period announced by a later notice in the **Federal Register**. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under "ADDRESSES".

Background and Purpose

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9′ above mean high water (MHW) and 12′ above low water (MLW).

The Town of Dartmouth has requested a change from the present operating regulations in 33 CFR 117.587 which allow the Padanaram Bridge to open on the hour and half hour. The town selectmen feel that the vehicular traffic resulting from the bridge opening every 30 minutes, is causing village commence to suffer. The selectmen also consider the 30 minute opening schedule a serious risk to public safety because emergency vehicles can not travel to and from South Dartmouth during the traffic delays created when the bridge opens every half hour. The town of Dartmouth requested that the bridge be required to open only on the hour for a test period of 60 days to evaluate the effects on vehicular and marine traffic. The temporary deviation will retain the provisions of paragraph (a)(1) for the bridge to open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Notice

Notice is hearby given that:

(1) The Coast Guard has granted the Town of Dartmouth, Massachusetts, a temporary deviation from the operating requirements listed at 33 CFR 117.587 paragraph (b)(1) governing the Padanaram Bridge over the Apponagansett River.

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of evaluating possible changes to the permanent regulations. Under this temporary deviation, the Padanaram Bridge operated by the Town of Dartmouth shall open on signal from July 1, 1993 through August 29, 1993 from 5 a.m. to 9 p.m. daily, only on the hour.

(3) The period of deviation is effective July 1, 1993 to August 29, 1993.

Dated: June 22, 1993.

Kent H. Williams,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93–16703 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD7 92–41]

RIN 2115–AE42

Regulated Navigation Area: Kings Bay, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a restricted navigation area to minimize the effect of passing vessels, wakes on U.S. Navy ships moored at the King's Bay Naval Submarine Base Magnetic Silencing Facility, Floating Dry Dock and Tender Refit Moors. At the U.S. Navy's request, the Coast Guard established a regulated navigation area in 1984 to minimize the effects of wakes on the drydock ARDM 1 OAKRIDGE. Since then, the construction of the Magnetic Silencing Facility and the related activities associated with it have increased the size of the regulated navigation area which is necessary to protect workers. The rule extends by approximately 700 yards the southern boundary of the bare steerageway regulated navigation area in the vicinity of the entrance to King's Bay, Georgia.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. Gray, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536–5621.

SUPPLEMENTARY INFORMATION: On July 16, 1992, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (57 FR 31472). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project Officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant

J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received regarding this regulation.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The extension of the existing bare-steerageway zone by an additional 700 yards, as proposed by this regulation, will have little economic impact other than lengthening vessel transit time through the area by a short period.

Since the impact of this final rule is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.b.2.1. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation as an administrative action under the Coast Guard's statutory authority to esteblish and regulate Restricted Navigational Areas. This action clearly has no environmental impact. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is revised as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.730 is revised to read as follows:

§ 165.730 King's Bay, Georgia—Regulated navigation area.

Vessels transiting in the water bounded by the line connecting the following points must travel no faster than needed for steerageway:

Latitude	*Longitude*
30°48'00.0" N	081°29'24.0" W
30°48'19.5" N	081°29'17.0" W
30°47'35.0" N	081°30'16.5" W

and thence to the point of beginning

Dated: July 9, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–16712 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF52

Veterans Education; Disenrollment From the Post-Vietnam Era Veterans' Educational Assistance Program Following Election To Receive Other Benefits

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 requires VA (Department of Veterans Affairs) to make payments to certain military officers and former officers who were commissioned in 1977 and 1978. The law provides that if any of these officers or former officers participated in VEAP (Post-Vietnam Era Veterans' Educational Assistance Program), they must disenroll from that program before receiving those benefits. The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the Montgomery GI Bill—Active Duty. One of these permits certain involuntarily separated veterans who ordinarily would be eligible for benefits under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) to elect to receive benefits under the Montgomery GI Bill—Active Duty instead. These regulations will acquaint the public with the way in which VA will administer these provisions of law.

EFFECTIVE DATE: The amendment to § 21.5058, like the provision of law it implements, is retroactively effective on November 5, 1990. The amendment to § 21.5064, like the provision of law it implements, is retroactively effective on August 15, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 41451 and 41452 of the **Federal Register** of September 10, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement provisions of Public Law 101–366, and Public Law 101–510 which deal with people with potential eligibility for VEAP who elect to receive either the officer adjustment benefit or the Montgomery GI Bill—Active Duty. Interested people were given 33 days to submit comments, suggestions or objections. VA and the Department of Defense received no comments, suggestions or objections. Accordingly, the departments are making the proposed amended regulations final.

Section 207 of the Department of Veterans Affairs Nurse Pay Act of 1990 (Pub. L. 101–366) provides that VA make a benefit payment to certain officers and former officers who elect by January 1, 1992, to receive payments. This officer adjustment benefit is to be the equivalent of what they would have received under the Vietnam Era GI Bill had they been eligible for benefits under that program minus what they received under VEAP. The law provides that VEAP participants must disenroll from VEAP in order to get this benefit.

Section 561 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) contains provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. Under these provisions some involuntarily discharged veterans may elect to receive benefits under the Montgomery GI Bill—Active Duty rather than VEAP. Such an election is irrevocable. Even if a veteran should subsequently return to active duty, he or she could not reenroll in VEAP. The amendments to these regulations are designed to implement these sections of these acts.

VOL
58
ISS
134
JL
15
1993
UMI

Although these amended regulations generally follow the statutes which they are designed to implement, the statutes do give the implementing departments some freedom in some places. The factors considered in determining the policies contained in the amended regulations were discussed in the **Federal Register** of September 10, 1992.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 dealing with those who are involuntarily separated, like the provision of law it implements, retroactively effective on November 5, 1990. VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 as well as all other regulations dealing with the officer adjustment benefit, like the provision of law it implements, retroactively effective on August 15, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number of the program affected by this proposal is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: June 16, 1993.

Nicolai Timenes, Jr.,

Principal Director (Military Manpower & Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.5058, paragraph (b) and its authority citation are revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) A person who has disenrolled in order to receive educational assistance allowance under 38 U.S.C., chapter 34 may not disenrolled if he or she has negotiated a check under that chapter for pursuit of a program of education. A person who has disenrolled in order to receive an officer adjustment benefit payable under § 21.4703 of this part may not reenroll if he or she has negotiated a check representing benefits payable under that section. A person who has disemrolled in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045(b), may not reenroll. Any other person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(Authority: 38 U.S.C. 3008A, 3202(1), 3222, Pub. L. 101–366, sec. 207; Pub. L. 98–223, Pub. L. 101–510) (Aug. 5, 1990) (Nov. 5, 1990)

3. In § 21.5064, paragraphs (b)(1) and (b)(2)(i) and the authority citation for paragraph (b)(2) are revised and an authority citation is added for paragraph (b)(1) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) * * *

(1) If a individual voluntarily disenrolls from the program before discharge or release from active duty, the time limit for providing the serviceperson with a refund will be determined as follows.

(i) If a serviceperson decides to disenroll in order to receive an officer adjustment benefit payable under § 21.4703, VA will refund the unused contributions not later than 60 days after receiving the serviceperson's valid election for the benefit.

(ii) In other cases VA will refund the money on—

(A) The date of the participant's discharge or release from active duty; or

(B) Within 60 days of the receipt of notice by VA of the individual's discharge or disenrollment; or

(C) Any earlier date in an instance of hardship or for other good reasons.

(Authority: 38 U.S.C. 3223, 3232, Pub. L. 101–366, sec. 207) (Aug. 15, 1990)

(2) * * *

(i) If a veteran disenrolls by electing to receive an officer adjustment benefit payable under § 21.4703 rather than receiving educational assistance under 38 U.S.C., chapter 32, VA shall refund his or her contributions not later than 60 days after receiving a valid election for the officer adjustment benefit.

* * * * *

(Authority: 38 U.S.C. 3202, 3223, 3232, Pub. L. 101–366, sec. 207)

* * * * *

[FR Doc. 93–16728 Filed 7–14–93; 8:45 am]

BILLING CODE 6320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–6–1–5632; FRL–4675–1]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Revision to the State Implementation Plan; Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP) to include revisions to Louisiana Administrative Code (LAC), Title 33, Part III, Chapter 15, entitled Emission Standards for Sulfur Dioxide. These revisions correct

enforceability deficiencies and strengthen the provisions of Chapter 15.

EFFECTIVE DATE: This action will become effective on September 13, 1993 unless notice is received by August 16, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. EPA, Region 6, provided a list of deficiencies in Chapter 15 to the State of Louisiana by cover letter dated March 13, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Chapter 15 for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, as well as the EPA, Region 6, March 13, 1991, letter are included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards (NAAQS); (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) Director's discretion issues; and (7) Stack Height issues.

The State of Louisiana filed revisions to Chapter 15 in the Louisiana Register on April 20, 1992, in order to correct enforceability deficiencies. The revisions, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Louisiana held a public hearing on February 27, 1992, to entertain public comment on proposed revisions to Chapter 15 addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed in the Louisiana Register on April 20, 1992. The SIP revision was submitted by the Governor to the EPA by cover letter dated August 5, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). A letter dated September 29, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in this action, the EPA is approving this Louisiana SIP submittal to correct SO_2 enforceability deficiencies.

2. Review of Revisions to Chapter 15

The State of Louisiana revised Chapter 15 in order to correct SO_2 enforceability deficiencies. These revisions supersede the latest version of Chapter 15 which was adopted by the Louisiana Department of Environmental Quality on December 20, 1987. Please reference 54 FR 9783 (March 8, 1989). For a detailed explanation of each change to Chapter 15 being approved today, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

The revisions to Chapter 15 strengthen the provisions. Language has been added to Chapter 15 to protect the three-hour SO_2 NAAQS, and to clearly distinguish between certain new and existing sources. Compliance determination methods were clarified, including the involvement of the EPA in the approval of equivalent test methods. Language was also added to Chapter 15 to include the EPA in the review and approval of any variances or exceptions to certain Chapter 15 provisions. Continuous emissions monitoring provisions (including performance specifications, quality assurance procedures and 40 CFR part 51, appendix P requirements), and recordkeeping and reporting requirements were also added to the regulation.

Final Action

The EPA is approving a revision to the Louisiana SIP to include revisions to LAC, Title 33, Part III, Chapter 15, entitled Emission Standards for Sulfur Dioxide. These revisions correct enforceability deficiencies and strengthen the provisions of Chapter 15. The revisions were filed in the Louisiana Register on April 20, 1992, and were submitted by the Governor to the EPA by cover letter dated August 5, 1992.

The EPA has reviewed these revisions to the Louisiana SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 13, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent

VOL 58 ISS 134 JL 15 1993 UMI

notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 13, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The Authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(59) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(59) A revision to the Louisiana State Implementation Plan (SIP) to include revisions to LAC, Title 33, "Environmental Quality," Part III. Air, Chapter 15. Emission Standards for Sulfur Dioxide, effective April 20, 1992, and submitted by the Governor by cover letter dated August 5, 1992.

(i) Incorporation by reference.

(A) Revisions to LAC, Title 33, "Environmental Quality," Part III. Air, Chapter 15. Emission Standards for Sulfur Dioxide, Section 1501, "Degradation of Existing Emission Quality Restricted;" Section 1503, "Emission Limitations;" Table 4, "Emissions—Methods of Contaminant Measurement;" Section 1505, "Variances;" Section 1507, "Exceptions;" Section 1509, "Reduced Sulfur Compounds (New and Existing Sources);" Section 1511, "Continuous Emissions Monitoring;" and Section 1513, "Recordkeeping and Reporting," effective April 20, 1992.

[FR Doc. 93–16364 Filed 7–14–93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[OK–10–1–5798; FRL–4676–8]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Revision to the State Implementation Plan; Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Oklahoma State Implementation Plan (SIP) to include revisions to Oklahoma Title 310, Chapter 200, Subchapter 31, entitled Control of Emissions of Sulfur Compounds. These revisions correct enforceability deficiencies and strengthen the provisions of Subchapter 31.

EFFECTIVE DATE: This action will become effective on September 13, 1993 unless notice is received by August 16, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Oklahoma Air Quality Service, 1000 NE., 10th, Oklahoma City, Oklahoma 73117.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. The EPA Region 6 provided a list of deficiencies in Subchapter 31 (formerly Regulation 3.4) to the State of Oklahoma by cover letter dated March 13, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Subchapter 31 for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, as well as the EPA Region 6 March 13, 1991, letter is included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards; (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) Director's discretion issues; and (7) Stack Height issues.

The State of Oklahoma filed revisions to Subchapter 31 in the Oklahoma Register on April 9, 1993, in order to correct enforceability deficiencies. The revisions, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (CAA) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended at 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Oklahoma held a public hearing on March 10, 1992, to entertain public comment on proposed revisions to Subchapter 31 addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed in the Oklahoma Register on June 29, 1992, as an emergency rule. The emergency rule became a permanent rule effective June 1, 1993. The SIP revision was submitted by the Governor to the EPA by cover letter dated December 10, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated February 12, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in this action, the EPA is approving this Oklahoma SIP submittal to correct SO_2 enforceability deficiencies. The EPA is also approving this Oklahoma SIP submittal as a recodification of former Regulation 3.4.

2. Review of Revisions to Subchapter 31

The State of Oklahoma revised Subchapter 31 in order to correct SO_2 enforceability deficiencies. For a detailed explanation of each change to Subchapter 31 being approved in this action, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

The revisions to Subchapter 31 strengthen the provisions. Continuous emissions monitoring provisions (including 40 CFR part 51, appendix P requirements, and 40 CFR part 60, appendix B requirements), and recordkeeping and reporting requirements were added to the regulation for certain sulfuric acid plants, fuel-burning equipment, nonferrous smelters and paper pulp mills. In addition, ambient air standards, compliance test provisions (the EPA approved test procedures and the EPA approved dispersion models) and compliance dates were clarified, and clear definitions were added regarding total reduced sulfur operations.

Final Action

The EPA is approving a revision to the Oklahoma SIP to include revisions to Oklahoma Title 310, Chapter 200, Subchapter 31, entitled Control of Emission of Sulfur Compounds. These revisions correct enforceability deficiencies and strengthen the provisions of Subchapter 31. The revisions were submitted by the Governor to the EPA by cover letter dated December 10, 1992.

The EPA has reviewed these revisions to the Oklahoma SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 13, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 13, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

VOL
58
ISS
134
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entities with jurisdiction over populations of less than 50,000

The SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co v. U.S EPA*, 427 U.S. 246 256–66 (S Ct 1976), 42 U S C. 7410(a)(2)

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13 1993 Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19 1989 (54 FR 2214–2225) On January 6 1989 the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years The EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA s request

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference Reporting and recordkeeping requirements, Sulfur dioxide

Note: Incorporation by reference of the SIP for the State of Oklahoma was approved by the Director of the Federal Register on July 1 1982

Dated: June 30, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows

PART 52—[AMENDED]

1 The authority citation for part 52 continues to read as follows.

Authority: 42 U S.C. 7401–7671q.

Subpart LL—Oklahoma

2 Section 52.1920 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1920 Identification of Plan.

* * * * *

(c) * * *

(43) A revision to the Oklahoma SIP to include revisions to Oklahoma Title 310 Chapter 200 Subchapter 31, entitled Control of Emissions of Sulfur Compounds.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Title 310 Chapter 200, Subchapter 31 entitled Control of Emissions of Sulfur Compounds, Part 1 "General Provisions," Section 310.200–31–2, "Definitions," Section 310:200–31–3 "Performance testing," Part 3 "Existing Equipment Standards," Section 310 200–31–12, "Sulfur oxides," Section 310 200–31–13 "Sulfuric acid mist;" Section 310:200–31–14, "Hydrogen sulfide," Section 310 200–31–15 "Total reduced sulfur;" Part 5 "New Equipment Standards," Section 310.200–31–25 "Sulfur oxides," and Section 310.200–31–26 "Hydrogen sulfide," as adopted by the Oklahoma State Board of Health on March 24, 1993 and effective June 1, 1993

[FR Doc. 93–16365 Filed 7 14–93 8.45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–015–FC]

Medicare Program, Health Maintenance Organizations: Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period

SUMMARY: This rule amends the HCFA regulations that pertain to prepaid health care to provide for uniform use of certain terms throughout part 417, simplify, clarify, and update content that pertains to the furnishing of health care services by, and the organization and operation of, Federally qualified health maintenance organizations (HMOs); and redesignate certain sections, correct internal crossreferences, and make minor conforming changes to ensure internal consistency.

These are technical and editorial changes intended not to change the substance of the rules but rather to make it easier to find particular content and to better ensure uniform understanding of the regulations.

The purpose of redesignations is to free section numbers in areas where it is necessary to insert new provisions (in logical order) to reflect changes in the Public Health Service Act.

DATES: Effective Date: These regulations are effective on July 15 1993

Comment Date Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p m on September 13 1993

ADDRESSES: Mail written comments (four copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention OCC–015–FC, P O Box 26676 Baltimore, MD 21207

If you prefer, you may deliver your comments to one of the following addresses.

Room 309–G Hubert H Humphrey Building, 200 Independence Avenue, SW , Washington, DC, or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore Maryland

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission In commenting, please refer to file code OCC–015–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department s offices at 200 Independence Avenue SW , Washington DC, on Monday through Friday of each week from 8:30 a.m to 5 p.m (phone: (202) 690–7890)

FOR FURTHER INFORMATION CONTACT: Maureen Miller, (202) 619–0129

SUPPLEMENTARY INFORMATION:

A. Background

The regulations in part 417, which pertain to health maintenance organizations (HMOs), competitive medical plans (CMPs) and health care prepayment plans (HCPPs) are based

partly on the Social Security Act (the Act) and partly on the Public Health Service Act (the PHS Act). They have not been revised to reflect certain changes made in those statutes since the rules were published.

The technical and editorial changes made by this rule are part of a project to simplify, clarify, and update the whole of part 417. The first step in that project was a final rule identified as OCC–022–F, and published in the **Federal Register** on October 17, 1991, at 56 FR 51984.

OCC–022–F—

- Removed outdated content;
- Redesignated certain portions of part 417 to free section numbers needed so that new rules can be incorporated in logical order; and
- Designated the remaining text under new subpart headings to make it easier to refer to particular program aspects. Subpart and section references in this rule are based on the changes made by OCC–022–F.

B. Scope of This Rule

This rule—

- Through nomenclature and definition changes, establishes certain terms to be used uniformly throughout part 417 with the aim of precluding confusion, making clear that responsibility for the prepaid health care programs has been delegated to HCFA, and ensuring use of the most precise terms available.
- Amends § 417.106 to transfer from other sections content that is pertinent to the furnishing of services rather than to the administrative aspects of HMO functions, and to provide descriptive headings for paragraphs and paragraph subdivisions, to serve as signposts for the reader.
- Redesignates the content of § 417.107 as §§ 417.120, 417.122, 417.124, and 417.126 under a new Subpart C—Qualified Health Maintenance Organizations: Organization and Operation.
- Redesignates §§ 417.108 and 417.109 as §§ 417.168 and 417.169, under subpart F, which pertains to the continued regulation of federally qualified HMOs. As a result of these redesignations and others made by OCC–022–F, §§ 417.107 through 417.119 are freed for new rules required by changes in the statutes that govern prepaid health care services or may be required by future changes in those statutes.

This rule also corrects internal cross-references as required by the redesignation of §§ 417.110–417.137 as §§ 417.910–417.937, accomplished by OCC–022–F, of October 17, 1991.

C. Clarification and Updating

On the basis of past experience, we have determined that it is easier to find particular rules or provisions and to understand the regulations if we—

1. Use more sections so that each section deals with a particular subject or program aspect than can be adequately identified by a heading listed in the table of contents.
2. Break down long columns of text to—

a. List and designate (with numbers or letters) the several conditions or requirements; and

b. Use more paragraphs and subdivisions of paragraphs with headings.

3. Follow logical organization.
4. Are precise in our use of language, for example, define frequently used terms and never use different words to mean the same thing or the same word to mean different things.
5. Use the active voice and always specify who does what.
6. Limit the number of designation levels within each section. Two levels—(a)(1)—is ideal; four levels—(a)(1)(i)(A)—is the acceptable maximum. The greater the number of designation levels, the harder it is (in the unindented format of the **Federal Register** text) to determine which portions are subordinate to which other portions of the rules. The italicized (1) and (i) (which represent levels (5) and (6)) are almost impossible to distinguish from the nonitalicized (1) and (i) that identify levels 2 and 3.

The changes needed to update the rules include—

1. The removal of outdated content and terms.
2. Correction of references to—

a. Sections of the law that have been repealed and sections of the rules that have been moved or redesignated;

b. Organizations that have changed their names; and

c. Sources of information or benefits that have changed their addresses.

3. Using the terms that are currently used in HCFA regulations, such as "must" rather than "shall"; "HCFA" rather than "the Secretary" for authorities and responsibilities that have been delegated; and "that" rather than "which" when the term is used to limit or define.

D. Provisions of the Regulation

1. Redesignation of § 417.107

This rule redesignates the content of § 417.107 under four sections as shown in the following table:

§ 417.120 Fiscally sound operation and assumption of financial risk.
§ 417.122 Protection of enrollees.
§ 417.124 Administration and management.
§ 417.126 Recordkeeping and reporting requirements.

In redesignated § 417.124, we have made three changes that require explanation.

a. We have revised paragraph (e) to make clear that all HMOs (including those that do not ordinarily offer individual enrollment) must offer individual enrollment to any enrollee who—

- Leaves an enrolled group; or
- Ceases being eligible for enrollment as a dependent because of his or her age or the death or divorce of the subscriber.

This clarification is for the benefit of HMOs which interpreted that the provision does not apply to them because they do not ordinarily offer individual enrollment. The revised language is consistent with the preamble discussion of the original provision, which was then designated as paragraph (g) of § 110.108 of the PHS regulations (before transfer of the HMO rules to the HCFA regulations by a final rule published on September 7, 1987, at 52 FR 36746).

Section 110.108(g) was first proposed in an NPRM published on September 11, 1978, at 43 FR 40383. The final rule was published on July 18, 1979, at 44 FR 42069. The preamble to the final rule does not indicate that there were any comments on the provision. However, item 29 (page 42063) stated:

"29. The language of § 110.108(g), which refers to the conversion of membership, is retained. The Secretary notes that, even if the HMO as a general practice does not offer individual membership, it must arrange for a member of a group who so chooses, to remain as an HMO member when leaving the group. However, an HMO is allowed to establish a rate differential for individual members under its community rating system."

b. We have removed the content of paragraph (f) because the requirement that at least one third of the members of the policymaking body of a private HMO or the advisory board of a public HMO be enrollees, previously contained in section 1301(c)(5) of the PHS Act, was repealed by section 5(b) of the HMO Amendments of 1988 (Pub. L. 100–517).

c. Section 417.124(h), Certification of institutional providers, differs from the previous § 417.107(i) that it redesignates and revises. The revised section specifies the four kinds of certificates that HCFA may issue under recently revised regulations that govern licensing of laboratories.[1] Laboratories were required to register under the Clinical

[1] A fifth type of certificate, for physicians who do microscopy tests, will be added when it is established by final rule.

Laboratory Improvement Amendments Act (CLIA) by September 1, 1992. Although HCFA continues to pay Medicare claims, any such payments to unregistered laboratories may be subject to recoupment. Laboratories that file claims after September 1 1992, are being notified of the need to register if they have not already done so.

In redesignated § 417.126(b), we have changed from 180 days to 120 days (after the end of the fiscal year) the period during which an HMO must submit certain reports. This change conforms the rule to administrative practice that has been in effect for several years. Under the Health Maintenance Organization National Data Reporting Requirements (NDRR) (Form HCFA–906), annual reports must be submitted within 120 days of the end of the fiscal year. This requirement has been in effect since 1986 (the effective date of the current form), without objection by the HMOs subject to the deadline

2. Revision of § 417 436 Rules for Enrollees

This rule revises § 417 436 to restore content that was unintentionally removed by a final rule identified as BPD–718–IFC, and published in the **Federal Register** on March 6, 1992, at 57 FR 8194

3 General Approach in Presenting the Rules

Each of the sections that required changes is presented in one of the three portions of the rules text, so that readers and users can, by looking in one place, determine all the changes made in a particular section. The first portion of the rules (referred to as the "Body") presents those sections of part 417 that could be updated and clarified only through changes that go beyond correction of cross-references and changes in terminology. The second portion of the rules (identified as "Technical Amendments") presents the changes made in those sections that required technical and editorial changes in addition to the basic nomenclature changes. The final portion specifies the nomenclature changes for those sections that are not included in the "Body" or under "Technical Amendments".

This final portion gives specific locations for nomenclature changes except—

- Change from "Public Health Service Act" to "PHS Act"—which is made uniformly throughout part 417, and
- Change from "the Secretary" to "HCFA"—which is made uniformly throughout part 417, except in subpart V.

This exception means that a section that had only one or both of these nomenclature changes does not appear in the rules text However, for sections presented under "Technical Amendments", all nomenclature changes are also shown, and for sections included in the "Body", both technical amendments and nomenclature changes are shown.

For the convenience of the reader, the revised table of contents of part 417 is set forth below, with marginal notations to indicate in which portion of the rules each section is covered:

"Nomen"—indicates a section that required only nomenclature changes and is therefore covered in the final portion of the rules text.

"Tech."—indicates that the section required technical amendments as well as nomenclature changes and is presented in the middle portion of the rules.

"Body" identifies the section as one requiring changes that go beyond technical amendments and nomenclature changes and is therefore presented in the first portion of the rules.

"No change" refers to sections that are not covered at all in the rules, including sections that had only the nomenclature changes excepted above.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

Subpart A—General Provisions

Sec.
Body 417.1 Definitions.
Nomen 417 2 Basis and scope.

Subpart B—Qualified Health Maintenance Organizations: Services

Tech. 417.101 Health benefits plan: Basic health services.
Nomen 417.102 Health benefits plan: Supplemental health services.
Nomen 417 103 Providers of basic and supplemental health services.
Nomen 417.104 Payment for basic health services.
Nomen 417.105 Payment for supplemental health services.
Body 417.106 Quality assurance program; availability, accessibility, and continuity of basic and supplemental health services.

Subpart C—Qualified Health Maintenance Organizations: Organization and Operation

Body 417.120 Fiscally sound operation and assumption of financial risk.
Body 417.122 Protection of enrollees.
Body 417.124 Administration and management.
Body 417.126 Recordkeeping and reporting requirements.

Subpart D—Application for Federal Qualification

Body 417 140 Applicability
Body 417.141 Definitions.
Body 417 142 Requirements for qualification.
Tech. 417 143 Application requirements.
Tech. 417.144 Evaluation and determination of qualification.

Subpart E—Inclusion of Qualified Health Maintenance Organizations in Employee Health Benefits Plans

Tech. 417 150 Definitions.
Tech. 417.151 Applicability
Tech. 417.152 Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response.
Tech. 417.153 Offer of HMO option to employees.
Tech. 417 154 HMOs that must be included in a health benefits plan.
Tech. 417 155 How the HMO option is to be included in the health benefits plan.
Nomen 417.156 When the HMO is to be offered to employees.
Tech. 417.157 Contributions for HMO option.
Nomen 417 158 Payroll deductions.
Tech. 417.159 Relationship of section 1310 of the PHS Act to the National Labor Relations Act, and the Railway Labor Act.

Subpart F—Continued Health Maintenance

Body 417.160 Purpose and applicability
Body 417 161 Compliance with assurances.
Body 417 162 Reporting requirements.
Tech. 417 163 Enforcement procedures.
Tech. 417 164 Effect of revocation of qualification for purposes of section 1310 of the PHS Act.
Tech. 417.165 Reapplication for qualification.
Nomen 417 166 Waiver of assurances.
Body 417.168 Special requirements: Titles XVIII and XIX of the Social Security Act.
Body 417.169 Special requirements: Federal employee health benefits program.

Subpart G—[Reserved]

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—Qualifying Conditions for Medicare Contracts

Tech. 417 400 Basis and scope.
Body 417 401 Definitions.
Body 417 402 Effective date of initial regulations.
Tech. 417 404 Introduction.
Tech. 417 406 Application and determination.
Tech. 417 407 Definitions of HMO and CMP.
Tech. 417 408 Contract application process.
Tech. 417 410 Qualifying conditions: General.
Nomen 417 412 Qualifying condition: Administration and management.
Nomen 417 413 Qualifying condition: Operating experience and enrollment.

Tech. 417.414 Qualifying condition: Range of services.
Nomen 417.416 Qualifying condition: Furnishing of services.
Body 417.418 Qualifying condition: Quality assurance program.

Subpart K—Enrollment, Entitlement, and Disenrollment Under Medicare Contract

Tech. 417.420 Basic rules on enrollment and entitlement.
Tech. 417.422 Eligibility to enroll in an HMO or CMP.
Tech. 417.424 Denial of enrollment.
Tech. 417.426 Open enrollment requirements.
Nomen 417.428 Marketing activities.
Nomen 417.430 Application procedures.
Nomen 417.432 Conversion of enrollment.
Nomen 417.434 Reenrollment.
Body 417.436 Rules for enrollees.
Tech. 417.440 Entitlement to health care services from an HMO or CMP.
Nomen 417.442 Risk HMOs and CMPs: Conditions for provision of additional benefits.
Body 417.444 Special rules for certain enrollees of risk HMOs and CMPs.
Tech. 417.448 Restriction on payments for services received by Medicare enrollees of risk HMOs or CMPs.
Tech. 417.450 Effective date of coverage.
Tech. 417.452 Liability of Medicare enrollees.
Nomen 417.454 Charges to Medicare enrollees.
Tech. 417.456 Refunds to Medicare enrollees.
Nomen 417.458 Recoupment of uncollected deductible and coinsurance amounts.
Body 417.460 Disenrollment of beneficiaries and termination of payments to an HMO or CMP.

Subpart L—Medicare Contract Requirements

Tech. 417.470 Basis and scope.
Tech. 417.472 Basic contract requirements.
Nomen 417.474 Effective date and term of contract.
No change 417.476 Waived conditions.
Tech. 417.478 Requirements of other laws and regulations.
Nomen 417.480 Maintenance of records: Reasonable cost HMOs and CMPs.
Nomen 417.481 Maintenance of records: Risk HMOs and CMPs.
Nomen 417.482 Access to facilities and records.
Nomen 417.484 Requirement applicable to related entities.
Nomen 417.486 Disclosure of information and confidentiality.
Nomen 417.488 Written notice of termination.
Nomen 417.490 Renewal of contract.
Tech. 417.492 Nonrenewal of contract.
Tech. 417.494 Modification or termination of contract.

Subpart M—Change of Ownership and Leasing of Facilities: Effect on Medicare Contract

Tech. 417.520 General provisions.
Nomen 417.521 What constitutes change of ownership.
Tech. 417.522 Novation agreement requirements.
Tech. 417.523 Effect of leasing of an HMO's or CMP's facilities.

Subpart N—Medicare Payment to HMOs and CMPs: General Rules

Nomen 417.524 Payment to HMOs and CMPs: General.
Tech. 417.526 Payment for covered services.
Tech. 417.528 Payment for covered services: Medicare not primary payer.

Subpart O—Medicare Payment: Cost Basis

Tech. 417.530 Basis and scope.
Nomen 417.531 Hospice care services.
Nomen 417.532 General considerations.
Nomen 417.533 Part B carrier responsibilities.
Nomen 417.534 Allowable costs.
Tech. 417.536 Provider cost reimbursement principles applicable to HMOs and CMPs.
Nomen 417.536 Enrollment and marketing costs.
Nomen 417.540 Enrollment data costs.
No change 417.542 Reinsurance costs.
Nomen 417.544 Physicians' services furnished directly by the HMO or CMP.
Nomen 417.546 Physicians' services and other Part B supplier services furnished under arrangements.
Tech. 417.548 Provider services through arrangements.
Tech. 417.550 Special Medicare program requirements.
Nomen 417.552 Cost apportionment: General provisions.
Nomen 417.554 Apportionment: Provider services furnished directly by the HMO or CMP.
Nomen 417.556 Apportionment: Provider services furnished by the HMO or CMP through arrangements with others.
Nomen 417.558 Emergency and urgently needed services, and out-of-area services for which the HMO or CMP assumes financial responsibility: Sources of payment.
Nomen 417.560 Apportionment: Part B physician and supplier services.
Nomen 417.562 Weighting of direct services furnished by physicians and other practitioners.
Nomen 417.564 Apportionment and allocation of administrative and general costs.
Nomen 417.566 Other methods of allocation and apportionment.
Nomen 417.568 Adequate financial records, statistical data, and cost finding.
Nomen 417.570 Interim per capita payments.
Nomen 417.572 Budget and enrollment forecast and interim reports.
Nomen 417.574 Interim settlement.
Nomen 417.576 Final settlement.

Subpart P—Medicare Payment: Risk Basis

Tech. 417.580 Basis and scope.
Tech. 417.582 Definitions applicable to risk reimbursement.
Nomen 417.584 Payment to HMOs and CMPs with risk contracts.
Nomen 417.585 Exception for hospice care services.
Nomen 417.586 HMO or CMP option: Payment to hospitals and SNFs.
Nomen 417.588 Computation of adjusted average per capita cost (AAPCC).
Body 417.590 Computation of the average of the per capita rates of payment.
Tech. 417.592 Determination of required additional benefits.
Tech. 417.594 Computation of ACR.
Nomen 417.596 Establishment of a benefit stabilization fund.
Body 417.597 Withdrawal from a benefit stabilization fund.
Tech. 417.598 Annual enrollment reconciliation.

Subpart Q—Beneficiary Appeals

Tech. 417.600 Scope.
Tech. 417.602 Definitions applicable to beneficiary appeals.
Tech. 417.604 General provisions.
Body 417.606 Initial determinations.
Nomen 417.608 Notice of adverse initial determination.
Nomen 417.610 Parties to the initial determination.
No change 417.612 Effect of initial determination.
No change 417.614 Right to reconsideration.
Nomen 417.616 Request for reconsideration.
Nomen 417.618 Opportunity to submit evidence.
Nomen 417.620 Responsibility for reconsideration.
Nomen 417.622 Reconsidered determination.
No change 417.624 Notice of reconsidered determination.
No change 417.626 Effect of reconsidered determination.
No change 417.628 Hearings: General.
No change 417.630 Right to a hearing.
Nomen 417.632 Request for hearing.
Nomen 417.634 Appeals Council review.
Nomen 417.636 Court review.
Nomen 417.638 Reopening determinations and decisions.

Subpart R—Medicare Contract Appeals

Tech. 417.640 Determinations subject to appeal.
Tech. 417.642 Administrative actions that are not initial determinations.
Nomen 417.644 Notice of initial determination.
No change 417.646 Effect of initial determination.
No change 417.648 Right to request reconsideration.
No change 417.650 Request for reconsideration.
No change 417.652 Opportunity to submit evidence.
No change 417.654 Reconsidered determination.

Nomen 417.656 Notice of reconsidered determination.
No change 417.658 Effect of reconsidered determination.
Nomen 417.660 Right to a hearing.
Nomen 417.662 Request for hearing.
Nomen 417.664 Postponement of effective date of initial determination.
No change 417.666 Designation of hearing officer.
No change 417.668 Disqualification of hearing officer.
Tech. 417.670 Time and place of hearing.
Nomen 417.672 Appointment of representatives.
No change 417.674 Authority of representatives.
No change 417.676 Conduct of hearing.
No change 417.678 Evidence.
No change 417.680 Witnesses.
No change 417.682 Discovery.
No change 417.684 Prehearing.
No change 417.686 Record of hearing.
No change 417.688 Authority of hearing officer.
No change 417.690 Notice and effect of hearing decision.
No change 417.692 Reopening of initial or reconsidered determination or decision of a hearing officer.
No change 417.694 Effect of revised determination.

Subpart S—[Reserved]

Subpart T—[Reserved]

Subpart U—Health Care Prepayment Plans

Tech. 417.800 Reimbursement of health care prepayment plans; definitions and basic rule.
Tech. 417.801 Agreements between HCFA and health care prepayment plans.
Tech. 417.802 Allowable costs.
No change 417.804 Cost apportionment.
Tech. 417.806 Financial records, statistical data, and cost finding.
No change 417.808 Interim per capita payments.
Tech. 417.810 Final settlement.

Subpart V—Administration of Outstanding Loans and Loan Guarantees

Body 417.910 Scope and applicability.
Body 417.911 Definitions.
Tech. 417.912 Requirements for applications.
Tech. 417.913 Standards and procedures for review and comment by the appropriate health systems agency or State health planning and development agency.
No change 417.914 Additional conditions.
Nomen 417.915 Confidentiality requirements.
No change 417.916 Purposes for which grant funds may be used.
Tech. 417.917 Effect of a grantee's failure to become or to remain a qualified HMO.
Tech. 417.918 Obligation of the Federal Government to continue support for an approved project.
Nomen 417.919 Effect of a grantee's change from non-profit to for-profit status.
Body 417.920 Planning and initial development.
Tech. 417.921 Eligible applicants.
Tech. 417.922 Project elements for planning.
Tech. 417.923 Project elements for initial development.
Tech. 417.924 Funding duration and limitation.
Tech. 417.925 Evaluation and award: Planning and initial development.
Tech. 417.926 Loan guarantee provisions.
Body 417.930 Initial costs of operation.
Tech. 417.931 Definitions.
Tech. 417.932 Eligible applicants and projects: Initial costs of operation.
Tech. 417.933 Project elements for initial costs of operation.
Nomen 417.934 Reserve requirement.
Tech. 417.935 Evaluation and award: Initial costs of operation.
Tech. 417.936 Funding duration limitation.
Tech. 417.937 Loan provisions.

Waiver of Proposed Rulemaking

Most of the changes made by this rule are technical and editorial in nature, and aim to simplify, clarify, and update subparts B and C of part 417 of the HMO regulations, without substantive change. The removal of the requirement that ⅓ of the members of the policymaking or advisory body be HMO enrollees simply conforms to the statutory repeal of the requirement. The change in the deadline for submitting reports is substantive, but as noted above, all affected parties had notice of, and have acquiesced in, the 120-day deadline for at least 6 years.

Accordingly, we find that notice and opportunity for public comment are unnecessary and that there is good cause to waive proposed rulemaking procedures.

However, as previously indicated, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance, or who objects to the change in the reporting deadline. Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rule that will have an economic impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required because it is obvious that this rule will have no discernible economic effect.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant impact on a substantial number of small entities or on the operation of a substantial number of small rural hospitals.

Paperwork Reduction Act

Sections 417.120, 417.122, 417.124, and 417.126 contain information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The reporting and recordkeeping requirements include such things as general reporting and disclosure requirements, financial and marketing plans, and reporting under specified statutes. These requirements, which have been in effect for several years, currently are approved under OMB number 0938–0472.

We estimate that the financial plan requirement involves about 200 respondents and each requires about 8 hours to develop the plan. For "full and fair disclosure", which relates to marketing, all Federally qualified HMOs (about 350) are involved, and the time required is also 8 hours per respondent. General reporting and disclosure is required of all 350 HMOs, but can be accomplished in about 6 hours. Reporting under ERISA also involves all HMOs but requires only about 1 hour per respondent. For reports on significant business transactions, we estimate that there will be only 50 respondents who can prepare their reports in 1 hour.

If you comment on these information collection requirements, please send a copy of your comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron Eydt, Desk Officer for HCFA.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMO), Medicare.

Derivation Table for 42 CFR Part 417, Subparts B and C

New section	Old section
Subpart B	
417.106(a)	417.107(h)
417.106(c)(3)	417.107(l)
417.106(d)	417.107(k)
Subpart C	
417.120	417.107 (a)(1) (i)–(iii), (v) & (vi) and (b)
417.122	417.107 (a)(1)(iv) and (a)(3)
417.124	417.107 (a)(2), (c)–(e), and (g)–(i)
417.126	417.107(j)–(m)

42 CFR part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); secs. 1301 through 1318 of the Public Health Service Act (42 U.S.C. 300e through 300e–17) unless otherwise noted.

B. Subpart A is amended as follows:

Subpart A—General Provisions

1. Section 417.1 is amended to revise the introductory text; remove the definitions of *HCFA* and *Member;* insert, in alphabetical order, a definition of *Enrollee;* and revise the definitions of *Community rating system, Health maintenance organization, Individual practice association, Medical group, Medically underserved population, Policymaking body, Qualified HMO, Service area, Staff of the HMO, Subscriber,* and *Unusual or infrequently used health services* to read as follows:

§ 417.1 Definitions.

As used in this part, unless the context indicates otherwise—

* * * * *

Community rating system means a system of fixing rates of payments for health services that meets the requirements of § 417.104(a)(3).

* * * * *

Enrollee means an individual for whom an HMO, CMP, or HCPP assumes the responsibility, under a contract or agreement, for the furnishing of health care services on a prepaid basis.

* * * * *

Health maintenance organization (HMO) means a legal entity that provides or arranges for the provision of basic and supplemental health services to its enrollees in the manner prescribed by, is organized and operated in the manner prescribed by, and otherwise meets the requirements of, section 1301 of the PHS Act and the regulations in subparts B and C of this part, and §§ 417.168 and 417.169.

* * * * *

Individual practice association (IPA) means a partnership, association, corporation, or other legal entity that delivers or arranges for the delivery of health services and which has entered into written services arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written services arrangement must provide:

(1) That these health professionals will provide their professional services in accordance with a compensation arrangement established by the entity; and

(2) To the extent feasible, for the sharing by these health professionals of health (including medical) and other records, equipment, and professional, technical, and administrative staff.

Medical group means a partnership, association, corporation, or other group:

(1) That is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which:

(i) After the end of the 48 month period beginning after the month in which the HMO for which the group provides health services becomes a qualified HMO, as their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to enrollees of an HMO;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(iii) Share health (including medical) records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Establish an arrangement whereby an enrollee's enrollment status is not known to the health professional who provides health services to the enrollee.

* * * * *

Medically underserved population means the population of an urban or rural area as described in Sec. 417.912(d).

* * * * *

Policymaking body of an HMO means a board of directors, governing body, or other body of individuals that has the authority to establish policy for the HMO.

Qualified HMO means an HMO found by HCFA to be qualified within the meaning of section 1310 of the PHS Act and subpart D of this part.

* * * * *

Service area means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions, found by HCFA to be the area within which the HMO provides or arranges for basic and supplemental health services that are available and accessible to its enrollees as required by section 1301(b)(4) of the PHS Act.

* * * * *

Staff of the HMO means health professionals who are employees of the HMO and who—

(1) Provide services to HMO enrollees at an HMO facility subject to the staff policies and operational procedures of the HMO;

(2) Engage in the coordinated practice of their profession and provide to enrollees of the HMO the health services that the HMO has contracted to provide;

(3) Share medical and other records, equipment, and professional, technical, and administrative staff of the HMO; and

(4) Provide their professional services in accordance with a compensation arrangement, other than fee-for-service, established by the HMO. This arrangement may include, but is not limited to, fee-for-time, retainer or salary.

Subscriber means an enrollee who has entered into a contractual relationship with the HMO or who is responsible for making payments for basic health services (and contracted for supplemental health services) to the HMO or on whose behalf these payments are made.

* * * * *

Unusual or infrequently used health services means:

VOL 58 ISS 134 JL 15 1993 UMI

(1) Those health services that are projected to involve fewer than 1 percent of the encounters per year for the entire HMO enrollment, or,

(2) Those health services the provision of which, given the enrollment projection of the HMO and generally accepted staffing patterns, is projected will require less than 0.25 full time equivalent health professionals.

C. Subpart B is amended as follows:

1. The heading of subpart B is revised to read as follows:

Subpart B—Qualified Health Maintenance Organizations: Services

2. Section 417.106 is revised to read as follows:

§ 417.106 Quality assurance program; Availability, accessibility, and continuity of basic and supplemental health services.

(a) *Quality assurance program.* Each HMO or CMP must have an ongoing quality assurance program for its health services that meets the following conditions:

(1) Stresses health outcomes to the extent consistent with the state of the art.

(2) Provides review by physicians and other health professionals of the process followed in the provision of health services.

(3) Uses systematic data collection of performance and patient results, provides interpretation of these data to its practitioners, and institutes needed change.

(4) Includes written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services that ought to have been furnished have not been provided.

(b) *Availability and accessibility of health care services.* Basic health services and those supplemental health services for which enrollees have contracted must be provided or arranged for by the HMO in accordance with the following rules:

(1) Except as provided in paragraph (b)(2) of this section, the services must be available to each enrollee within the HMO's service area.

(2) *Exception.* If the HMO's service area is located wholly within a nonmetropolitan area, the HMO may make available outside its service area any basic health service that is not a primary care or emergency care service, if the number of providers of that basic health service who will provide the service to the HMO's enrollees is insufficient to meet the demand. As used in this paragraph, primary care includes general practice, family practice, general internal medicine, general pediatrics, and general obstetrics and gynecology. An HMO that provides the services covered by these fields through at least a general or family practitioner, or a pediatrician and a general internist, is considered to be providing primary care.

(3) The services must be available and accessible with reasonable promptness to each of the HMO's enrollees as ensured through—

(i) Staffing patterns within generally accepted norms for meeting the projected enrollment needs; and

(ii) Geographic location, hours of operation, and arrangements for after-hours services. (Medically necessary emergency services must be available 24 hours a day, 7 days a week.)

(c) Continuity of care. The HMO must ensure continuity or care through arrangements that include but are not limited to the following:

(1) Use of a health professional who is primarily responsible for coordinating the enrollee's overall health care.

(2) A system of health and medical records that accumulates pertinent information about the enrollee's health care and makes it available to appropriate professionals.

(3) Arrangements made directly or through the HMO's providers to ensure that the HMO or the health professional who coordinates the enrollee's overall health care is kept informed about the services that the referral resources furnish to the enrollee.

(d) *Confidentiality of health records.* Each HMO must establish adequate procedures to ensure the confidentiality of the health and medical records of its enrollees.

§ 417.107 [Reserved].

3. Section 417.107 is removed and reserved.

§§ 417.108 and 417.109 [Redesignated as §§ 417.168 and 417.169]

4. Sections 417.108 and 417.109 are redesignated under subpart F as §§ 417.168 and 417.169, respectively.

D. A new subpart C, containing §§ 417.120, 417.122, 417.124, and 417.126 is added to read as follows.

Subpart C—Qualified Health Maintenance Organizations: Organization and Operation

Sec.

417.120 Fiscally sound operation and assumption of financial risk.
417.122 Protection of enrollees.
417.124 Administration and management.
417.126 Recordkeeping and reporting requirements.

Subpart C—Qualified Health Maintenance Organizations: Organization and Operation

§ 417.120 Fiscally sound operation and assumption of financial risk.

(a) *Fiscally sound operation—(1) General requirements.* Each HMO must have a fiscally sound operation, as demonstrated by the following:

(i) Total assets greater than total unsubordinated liabilities. In evaluating assets and liabilities, loan funds awarded or guaranteed under section 1306 of the Public Health Service Act are not included as liabilities.

(ii) Sufficient cash flow and adequate liquidity to meet obligations as they become due.

(iii) A net operating surplus, or a financial plan that meets the requirements of paragraph (a)(2) of this section.

(iv) An insolvency protection plan that meets the requirements of § 417.122(b) for protection of enrollees.

(v) A fidelity bond or bonds, procured and maintained by the HMO, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the HMO.

(vi) Insurance policies or other arrangements, secured and maintained by the HMO and approved by HCFA to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks.

(2) *Financial plan requirement.* (i) If an HMO has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year or does not have positive net worth, the HMO must submit a financial plan satisfactory to HCFA to achieve net operating surplus within available fiscal resources.

(ii) This plan must include—

(A) A detailed marketing plan;

(B) Statements of revenue and expense on an accrual basis;

(C) Sources and uses of funds statements; and

(D) Balance sheets.

(b) *Assumption of financial risk.* Each HMO must assume full financial risk on a prospective basis for the provision of basic health services, except that it may obtain insurance or make other arrangements as follows:

(1) For the cost of providing to any enrollee basic health services with an aggregate value of more than $5,000 in any year.

(2) For the cost of basic health services obtained by its enrollees from sources other than the HMO because medical necessity required that they be furnished before they could be secured through the HMO.

(3) For not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year.

(4) For physicians or other health professionals, health care institutions, or any other combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for their furnishing of basic health services to the HMO's enrollees.

§ 417.122 Protection of enrollees.

(a) *Liability protection.* (1) Each HMO must adopt and maintain arrangements satisfactory to HCFA to protect its enrollees from incurring liability for payment of any fees that are the legal obligation of the HMO. These arrangements may include any of the following:

(i) Contractual arrangements that prohibit health care providers used by the enrollees from holding any enrollee liable for payment of any fees that are the legal obligation of the HMO.

(ii) Insurance, acceptable to HCFA.

(iii) Financial reserves, acceptable to HCFA, that are held for the HMO and restricted for use only in the event of insolvency.

(iv) Any other arrangements acceptable to HCFA.

(2) The requirements of this paragraph do not apply to an HMO if HCFA determines that State law protects the HMO enrollees from liability for payment of any fees that are the legal obligation of the HMO.

(b) *Protection against loss of benefits if the HMO becomes insolvent.* The insolvency protection plan required under § 417.120(a) must provide for continuation of benefits as follows:

(1) For all enrollees, for the duration of the contract period for which payment has been made.

(2) For enrollees who are in an inpatient facility on the date of insolvency, until they are discharged from the facility.

§ 417.124 Administration and management.

(a) *General requirements.* Each HMO must have administrative and managerial arrangements satisfactory to HCFA, as demonstrated by at least the following:

(1) A policymaking body that exercises oversight and control over the HMO's policies and personnel to ensure that management actions are in the best interest of the HMO and its enrollees.

(2) Personnel and systems sufficient for the HMO to organize, plan, control and evaluate the financial, marketing, health services, quality assurance program, administrative and management aspects of the HMO.

(3) At a minimum, management by an executive whose appointment and removal are under the control of the HMO's policymaking body.

(b) *Full and fair disclosure*—(1) *Basic rule.* Each HMO must prepare a written description of the following:

(i) Benefits (including limitations and exclusions).

(ii) Coverage (including a statement of conditions on eligibility for benefits).

(iii) Procedures to be followed in obtaining benefits and a description of circumstances under which benefits may be denied.

(iv) Rates.

(v) Grievance procedures.

(vi) Service area.

(vii) Participating providers.

(viii) Financial condition including at least the following most recently audited information: Current assets, other assets, total assets; current liabilities, long term liabilities; and net worth.

(2) *Requirements for the description.* (i) The description must be written in a way that can be easily understood by the average person who might enroll in the HMO.

(ii) The description of benefits and coverage may be in general terms if reference is made to a detailed statement of benefits and coverage that is available without cost to any person who enrolls in the HMO or to whom the opportunity for enrollment is offered.

(iii) The HMO must provide the description to any enrollee or person who is eligible to elect the HMO option and who requests the material from the HMO or the administrator of a health benefits plan. For purposes of this requirement, "administrator" (of a health benefits plan) has the meaning it is given in the Employment Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1002(16)(A).

(iv) If the HMO provides health services through individual practice associations (IPAs), the HMO must specify the number of member physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

(v) If the HMO provides health services other than through IPAs, the HMO must specify, for each ambulatory care facility, the facility's address, days and hours of operation, and the number of physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

(c) *Broadly representative enrollment.* (1) Each HMO must offer enrollment to persons who are broadly representative of the various age, social, and income groups within its service area.

(2) If an HMO has a medically underserved population located in its service area, not more than 75 percent of its enrollees may be from the medically underserved population unless the area in which that population resides is a rural area.

(d) *Health status and enrollment.* (1) The HMO may not, on the basis of health status, health care needs, or age of the individual—

(i) Expel or refuse to reenroll any enrollee; or

(ii) Refuse to enroll individual members of a group.

(2) For purposes of this paragraph, a "group" is composed of individuals who enroll in the HMO under a contract or other arrangement that covers two or more subscribers. Examples of groups are employees who enroll under a contract between their employer and the HMO, or members of an organization that arranges coverage for its membership.

(3) Nothing in this subpart prohibits an HMO from requiring that, as a condition for continued eligibility for enrollment, enrolled dependent children, upon reaching a specified age, convert to individual enrollment, consistent with paragraph (e) of this section.

(e) *Conversion of enrollment.* (1) Each HMO must offer individual enrollment to the following:

(i) Each enrollee (and his or her enrolled dependents) leaving a group.

(ii) Each enrollee who would otherwise cease to be eligible for HMO enrollment because of his or her age, or the death or divorce of an enrollee.

(2) The individual enrollment offered must meet the conditions of subpart B of this part and this subpart C.

(3) The HMO is not required to offer individual enrollment except to the enrollees specified in this paragraph.

(f) [Reserved]

(g) *Grievance procedures.* Each HMO must have and use meaningful procedures for hearing and resolving grievances between the HMO's enrollees and the HMO, including the HMO staff and medical groups and IPAs that furnish services. These procedures must ensure that:

(1) Grievances and complaints are transmitted in a timely manner to appropriate HMO decisionmaking levels

that have authority to take corrective action; and

(2) Appropriate action is taken promptly, including a full investigation if necessary and notification of concerned parties as to the results of the HMO's investigation.

(h) *Certification of institutional providers.* Each HMO must ensure that its affiliated institutional providers meet one of the following conditions:

(1) In the case of hospitals, are either accredited by the Joint Commission on Accreditation of Health Care Organizations, or certified by Medicare.

(2) In the case of laboratories, are either CLIA-exempt, or have in effect a valid certificate of one of the following types, issued by HCFA in accordance with section 353 of the PHS Act and part 493 of this chapter:

(i) Registration certificate.

(ii) Certificate.

(iii) Certificate of waiver.

(iv) Certificate of accreditation.

(3) In the case of other affiliated institutional providers, are certified for participation in Medicare and Medicaid in accordance with part 405, 416, 418, 488, or 491 of this chapter, as appropriate.

§ 417.126 Recordkeeping and reporting requirements.

(a) *General reporting and disclosure requirements.* Each HMO must have an effective procedure to develop, compile, evaluate, and report to HCFA, to its enrollees, and to the general public, at the times and in the manner that HCFA requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the following:

(1) The cost of its operations.

(2) The patterns of utilization of its services.

(3) The availability, accessibility, and acceptability of its services.

(4) To the extent practical, developments in the health status of its enrollees.

(5) Information demonstrating that the HMO has a fiscally sound operation.

(6) Other matters that HCFA may require.

(b) *Significant business transactions.* Each HMO must report to HCFA annually, within 120 days of the end of its fiscal year (unless for good cause shown, HCFA authorizes an extension of time), the following:

(1) A description of significant business transactions (as defined in paragraph (c) of this section) between the HMO and a party in interest.

(2) With respect to those transactions—

(i) A showing that the costs of the transactions listed in paragraph (c) of this section do not exceed the costs that would be incurred if these transactions were with someone who is not a party in interest; or

(ii) If they do exceed, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements.

(3) A combined financial statement for the HMO and a party in interest if either of the following conditions is met:

(i) Thirty-five percent or more of the costs of operation of the HMO go to a party in interest.

(ii) Thirty-five percent or more of the revenue of a party in interest is from the HMO.

(c) *"Significant business transaction" defined.* As used in paragraph (b) of this section—

(1) Business transaction means any of the following kinds of transactions:

(i) Sale, exchange or lease of property.

(ii) Loan of money or extension of credit.

(iii) Goods, services, or facilities furnished for a monetary consideration, including management services, but not including—

(A) Salaries paid to employees for services performed in the normal course of their employment; or

(B) Health services furnished to the HMO's enrollees by hospitals and other providers, and by HMO staff, medical groups, or IPAs, or by any combination of those entities.

(2) *Significant business transaction* means any business transaction or series of transactions of the kind specified in paragraph (c)(1) of this section that, during any fiscal year of the HMO, have a total value that exceeds $25,000 or 5 percent of the HMO's total operating expenses, whichever is less.

(d) *Requirements for combined financial statements.* (1) The combined financial statements required by paragraph (b)(3) of this section must display in separate columns the financial information for the HMO and each of these parties in interest.

(2) Inter-entity transactions must be eliminated in the consolidated column.

(3) These statements must have been examined by an independent auditor in accordance with generally accepted accounting principles, and must include appropriate opinions and notes.

(4) Upon written request from an HMO showing good cause, HCFA may waive the requirement that its combined financial statement include the financial information required in this paragraph (d) with respect to a particular entity.

(e) *Reporting and disclosure under ERISA.* (1) For any employees' health benefits plan that includes an HMO in its offerings, the HMO must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the particular HMO) under the Employee Retirement Income Security Act of 1974 (ERISA).

(2) The HMO must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

E. Subpart D is amended as set forth below:

Subpart D—Application for Federal Qualification

1. Sections 417.140 and 417.141 are revised to read as follows:

§ 417.140 Applicability.

The regulations in this subpart apply to any entity seeking a determination by HCFA, under section 1310(d) of the PHS Act, that it is a qualified health maintenance organization (HMO).

§ 417.141 Definitions.

As used in this subpart—

Operational qualified HMO means an HMO that HCFA has determined provides basic and supplemental health services to all of its enrollees in accordance with subpart B of this part and §§ 417.168 and 417.169, and is organized and operated in accordance with subpart C of this part and §§ 417.168 and 417.169.

Preoperational qualified HMO means an entity that HCFA has determined will, when it becomes operational, be a qualified HMO.

Transitionally qualified HMO means an entity that operates a prepaid health care delivery system and that HCFA has determined meets the requirements of § 417.142(b). A transitionally qualified HMO is considered a "qualified HMO" for the purpose of compliance by an employer with the requirements of section 1310 of the PHS Act and subpart E of this part. Under these requirements, the employer must include the HMO in its health benefits plan so long as the HMO's qualification has not been revoked under section 1312(b) of the PHS Act and § 417.163(d).

2. Section 417.142 is revised to read as follows:

§ 417.142 Requirements for qualification.

On the basis of an application submitted in accordance with this subpart and any additional information and investigation (including site visits) that HCFA may require:

(a) HCFA determines that the applicant is an operational qualified

HMO if HCFA finds that the applicant meets the requirements of subparts B and C of this part and §§ 417.168 and 417.169, and the applicant provides written assurances satisfactory to HCFA, within 30 days of the date of HCFA's determination, that it:

(1) Provides and will provide basic health services (and any contracted for supplemental health services) to its enrollees;

(2) Provides and will provide these services in the manner prescribed by section 1301(b) of the PHS Act and subpart B of this part and §§ 417.168 and 417.169;

(3) Is organized and operated, and will continue to be organized and operated, in the manner prescribed by section 1301(c) of the PHS Act and subpart C of this part and §§ 417.168 and 417.169;

(4) Under arrangements that safeguard the confidentiality of patient information and records, will provide access to HCFA and the Comptroller General or any of their duly authorized representatives for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the entity relating to its operations as an HMO, and to any facilities operated by the entity; and

(5) Will continue to comply with any other assurances that the entity has given to HCFA.

(b) HCFA may determine that an applicant is a transitionally qualified HMO upon finding that it currently is organized and is providing prepaid health services as described in this paragraph and if it provides written assurances satisfactory to HCFA, within 30 days of the date of HCFA's determination, that it will:

(1) With respect to all new group and individual (nongroup) contracts that it enters into after the date of HCFA's determination, provide basic health services (and any contracted for supplemental health services) to enrollees enrolled under these contracts and will provide these services in the manner prescribed by subpart B of this part and §§ 417.168 and 417.169, and with respect to these enrollees will be organized and operated in accordance with subpart C of this part and §§ 417.168 and 417.169.

(2) With respect to its group and individual contracts that are in effect on the date of HCFA's determination and that are renewed or renegotiated during the period approved by HCFA under paragraph (b)(2)(iii) of this section in accordance with the plan so approved:

(i) Provide at least those services specified in the following sections (except that these services may be limited as to time and cost):

§ 417.101(a)(1) (physician services);

§ 417.101(a)(2) (outpatient services and inpatient hospital services) except that inpatient hospital services or outpatient services by a hospital, or both, need not be provided, or paid for by the HMO if the HMO can show that these services are, or insurance for these services is, being provided through arrangements made by entities other than the HMO;

§ 417.101(a)(3) (medically necessary emergency health services); and

§ 100.102(a)(6) (diagnostic laboratory and diagnostic and therapeutic radiologic services);

(ii) Be organized and operated in accordance with subpart C of this part and §§ 417.68 and 417.69, except that—

(A) It need not assume full financial risk for the provision of basic health services as required by § 417.120(b); and

(B) It need not abide by the insurance limitations of § 417.120 (b)(1) and (b)(3);

(iii) Provide that payment for basic health services will be in accordance with § 417.104 except that it need not comply with—

(A) The requirements for a community rating system as set forth in § 417.104(a)(3);

(B) The limitations on copayments as set forth in § 417.104(a)(4); and

(C) The requirement of § 417.105(b) that supplemental health services payments that are fixed on a prepayment basis be fixed under a community rating system;

(iv) Implement a time-phased plan acceptable to HCFA which specifies definite steps for meeting, at the time of renewal of each group or individual contract, but no later than 3 years after the date of HCFA's determination, all the requirements of subparts B and C of this part and §§ 417.168 and 417.169; and

(v) Upon completion of the time-phased plan—

(A) Provide basic and supplemental health services to all of its enrollees;

(B) Provide these services to all of its enrollees in the manner prescribed by subpart B of this part and §§ 417.168 and 417.169; and

(C) Be organized and operate in the manner prescribed by subpart C of this part and §§ 417.168 and 417.169.

(c) HCFA may determine that an applicant is a preoperational qualified HMO if it provides, within 30 days of HCFA's determination, satisfactory assurances that it will become operational within 60 days following that determination and will, when it becomes operational, meet the requirements of subparts B and C of this part and §§ 417.168 and 417.169. Upon notification by the applicant to HCFA that it has become operational, HCFA will, within 30 days of this notification, make a determination whether the applicant is an operational qualified HMO. In the absence of this determination, the organization is not an operational qualified HMO even though it becomes operational.

(d) If HCFA determines that an applicant meets the requirements for qualification and the applicant fails to sign its assurances within 30 days following the date of the determination, then HCFA will notify the applicant in writing that its application is considered withdrawn and that it is not a qualified HMO.

(e) An HMO that has more than one regional component, as described in § 417.104(b)(3)(iii), will be considered qualified for those regional components for which assurances have been signed in accordance with this section.

F. The title of subpart F is revised and subpart F is amended as set forth below:

Subpart F—Continued Regulation of Qualified HMOs

1. Sections 417.160 through 417.162 are revised to read as follows:

§ 417.160 Purpose and applicability.

This subpart applies to any entity that was determined by HCFA to be a qualified health maintenance organization (HMO) under subpart D of this part, or that provided written assurances to HCFA as a condition for receiving financial assistance under subpart V of this part, and sets forth procedures for enforcing the assurances given to HCFA by these entities.

§ 417.161 Compliance with assurances.

Any entity subject to this subpart must comply with the assurances that it provided to HCFA, unless compliance is waived under § 417.166.

§ 417.162 Reporting requirements.

Entities subject to this subpart must submit:

(a) The reports that may be required by HCFA under § 417.126, and

(b) Any additional reports HCFA may reasonably require.

2. Redesignated §§ 417.168 and 417.169 are revised to read as follows:

§ 417.168 Special requirements: titles XVIII and XIX of the Social Security Act.

(a) As provided in section 1307(d) of the PHS Act, an HMO that otherwise complies with section 1301(b) and section 1301(c) of the PHS Act, and with the applicable regulations of subparts B and C of this part and § 417.169, and that has enrollees who are entitled to insurance benefits under title XVIII of

VOL 58 ISS 134 JL 15 1993 UMI

the Act or to medical assistance under a State plan approved under title XIX of the Act, may still be considered to be an HMO if, with respect to its title XVIII and title XIX enrollees, it provides services and is operated as required by title XVIII or title XIX, as appropriate, and by implementing regulations.

(b) Notwithstanding any inconsistent requirements of subparts B and C of this part and § 417.169, an HMO that enters into a contract with HCFA under title XVIII of the Act or with a State under title XIX of the Act must, with respect to its enrollees entitled to insurance benefits or medical assistance under those titles, comply with the applicable title XVIII or title XIX requirements, including deductible and coinsurance requirements, enrollment mix and enrollment practice requirements, in accordance with the provisions of title XVIII or the title XIX State plan of the State with which it is contracting. Copayment options that are not in accordance with a title XIX State plan may not be imposed on title XIX enrollees.

(c) Any grievance procedures authorized under title XVIII or title XIX of the Act are not superseded by the provisions of § 417.124(g).

§ 417.169 Special requirements: Federal employee health benefits program.

An entity that provides health services to a defined population on a prepaid basis and that has enrollees who are enrolled under the health benefits program authorized by Chapter 89 of Title 5, United States Code, may be considered to be an HMO for purposes of receiving assistance under this part if, with respect to its other enrollees, it—

(a) Provides health services in accordance with section 1301(b) of the Act, subpart B of this part, and § 417.168; and

(b) Is organized and operated in the manner prescribed by section 1301(c) of the PHS Act, subpart C of this part, and § 417.168.

G. Subpart J is amended as set forth below:

Subpart J—Qualifying Conditions for Medicare Contracts

§ 417.401 [Amended]

1. In § 417.401 the following changes are made:

a. The following definitions are removed:

Affiliated organization.
Current demonstration project Medicare enrollee.
Current nonrisk Medicare enrollee.
Current risk Medicare enrollee.
Eligible organization.
Enrollee.
Entity with an existing cost contract.
Entity with an existing risksharing contract.
Reasonable cost reimbursement contract.

b. The definition of *Emergency services* is revised to read as follows:

§ 417.401 Definitions.

* * * * *

Emergency services means covered inpatient or outpatient services that—(1) Are furnished by an appropriate source other than the HMO or CMP;

(2) Are needed immediately because of an injury or sudden illness; and

(3) Cannot be delayed for the time required to reach the HMO's or CMP's providers or suppliers (or alternatives authorized by the HMO or CMP) without risk of permanent damage to the patient's health.

These services are considered to be emergency services as long as transfer of the enrollee to the HMO's or CMP's source of health care or designated alternative is precluded because of risk to the enrollee's health or because transfer would be unreasonable, given the distance involved in the transfer and the nature of the medical condition.

* * * * *

c. In the definition of *Existing demonstration project*, the defined term is revised to read *Demonstration project* and the entire definition is placed in appropriate alphabetical order.

d. The definition of *New Medicare enrollee* is revised to read as follows:

§ 417.401 Definitions.

* * * * *

New Medicare enrollee means a Medicare enrollee who—

(1) Enrolls with an HMO or CMP after the date on which the HMO or CMP first enters into a risk contract under subpart L of this part;

(2) Is entitled to both Part A and Part B benefits under Medicare or Part B benefits only at the time of the enrollment; and

(3) Was not enrolled with the HMO or CMP at the time he or she became entitled to benefits under Part A or eligible to enroll in Part B of Medicare.

* * * * *

e. The definition of *New risk contract* is removed and a definition of "Risk contract" is added to read as follows:

§ 417.401 Definitions.

* * * * *

Risk contract means a contract entered into under section 1876(g) of the Act on or after February 1, 1985.

* * * * *

f. The word "organization" in its singular, plural, and possessive forms is revised to read "HMO or CMP", "HMOs or CMPs", and "HMO's or CMP's", respectively, and the term "eligible organization" in its singular, plural, and possessive forms, is revised to read "HMO or CMP", "HMOs or CMPs", and "HMO's or CMP's", respectively, in the following definitions:

Adjusted average per capita cost;
Adjusted community rate;
Arrangement or arrangements;
Benefit stabilization fund;
Geographic area;
Medicare enrollee; and
Urgently needed services.

2. Section 417.402 is revised to read as follows:

§ 417.402 Effective date of initial regulations.

The changes made to section 1876 of the Act by section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 became effective on February 1, 1985, the effective date of the initial implementing regulations.

3. Section 417.418 is revised to read as follows:

§ 417.418 Qualifying condition: Quality assurance program.

(a) *Condition.* The HMO or CMP must make arrangements for a quality assurance program that meets the requirements of this section.

(b) *Standard.* An HMO or CMP must have an ongoing quality assurance program that meets the requirements set forth in § 417.106(a).

H. Subpart K is amended as set forth below:

Subpart K—Enrollment, Entitlement, and Disenrollment Under Medicare Contract

1. Section 417.436 is revised to read as follows:

§ 417.436 Rules for enrollees.

(a) *Maintaining rules.* An HMO or CMP must maintain written rules that deal with, but need not be limited to the following:

(1) All benefits provided under the contract, as described in § 417.440.

(2) How and where to obtain services from or through the HMO or CMP.

(3) The restrictions on coverage for services furnished from sources outside a risk HMO or CMP, other than emergency services and urgently needed services (as defined in § 417.401).

(4) The obligation of the HMO or CMP to assume financial responsibility and provide reasonable reimbursement for emergency services and urgently needed services as required by § 417.414(c).

(5) Any services other than the emergency or urgently needed services that the HMO or CMP chooses to provide as permitted by this part, from sources outside the HMO or CMP. A cost HMO or CMP must disclose that the enrollee may receive services through any Medicare providers and suppliers.

(6) Premium information, including the amount (or if the amount cannot be included, the telephone number of the source from which this information may be obtained) and the procedures for paying premiums and other charges for which enrollees may be liable.

(7) Grievance and appeal procedures.

(8) Disenrollment rights.

(9) The obligation of an enrollee who is leaving the HMO's or CMP's geographic area for more than 90 days to notify the HMO or CMP of the move or extended absence and the HMO's or CMP's policies concerning retention of enrollees who leave the geographic area for more than 90 days, as described in § 417.460(a)(2).

(10) The expiration date of the Medicare contract with HCFA and notice that both HCFA and the HMO or CMP are authorized by law to terminate or refuse to renew the contract, and that termination or nonrenewal of the contract may result in termination of the individual's enrollment in the HMO or CMP.

(11) Advanced directives as specified in paragraph (d) of this section.

(12) Any other matters that HCFA may prescribe.

(b) *Availability of rules.* The HMO or CMP must furnish a copy of the rules to each Medicare enrollee at the time of enrollment and at least annually thereafter.

(c) *Changes in rules.* If an HMO or CMP changes its rules, it must submit the changes to HCFA in accordance with § 417.428(a)(3), and notify its Medicare enrollees of the changes at least 30 days before the effective date of the changes.

(d) *Advance directives.* (1) An HMO or CMP must maintain written policies and procedures concerning advance directives, as defined in § 489.100 of this chapter, with respect to all adult individuals receiving medical care by or through the HMO or CMP and are required to:

(i) Provide written information to those individuals concerning—

(A) Their rights under State law (whether statutory or recognized by the courts of the State) to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives; and

(B) The HMO's or CMP's written policies respecting the implementation of those rights, including a clear and precise statement of limitation if the HMO or CMP cannot implement an advance directive as a matter of conscience;

(ii) Provide the information specified in paragraph (d)(1)(i) of this section to each enrollee at the time of enrollment;

(iii) Document in the individual's medical record whether or not the individual has executed an advance directive;

(iv) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(v) Ensure compliance with requirements of State law (whether statutory or recognized by the courts of the State) regarding advance directives;

(vi) Provide for education of staff concerning its policies and procedures on advance directives; and

(vii) Provide for community education regarding advance directives either directly or in concert with other providers or entities.

(2) The HMO or CMP—

(i) Is not required to provide care that conflicts with an advance directive.

(ii) Is not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider or any agency of the provider to conscientiously object.

2. Section 417.444 is revised to read as follows:

§ 417.444 Special rules for certain enrollees of risk HMOs and CMPs.

(a) *Applicability.* This section applies to any Medicare enrollee of a risk HMO or CMP who meets the following conditions:

(1) On February 1, 1985, was enrolled—

(i) In an HMO or CMP that had in effect a cost contract entered into under section 1876 of the Act in accordance with regulations in effect before February 1, 1985; or

(ii) In an HCPP that was being reimbursed on a reasonable cost basis under section 1833(a)(1)(A) of the Act.

(2) Has continued enrollment in the same entity without interruption or disenrolled after February 1, 1985, and later reenrolled in the same entity.

(b) *Retention of nonrisk status*—(1) A "nonrisk" enrollee is a Medicare beneficiary who meets the conditions of paragraph (a) of this section and is enrolled in an entity that enters into a risk contract as an HMO or CMP. A "nonrisk" enrollee may retain nonrisk status indefinitely unless HCFA determines under paragraph (c)(1) of this section, that the enrollee's status must be changed, or the enrollee requests the change, as provided in paragraph (c)(2) of this section.

(2) A nonrisk enrollee of a risk HMO or CMP is not entitled to additional benefits under § 417.442.

(c) *Conversion to risk status*—(1) *Conversion based on HCFA determination.* If HCFA determines that, for administrative reasons or because there are fewer than 75 current nonrisk Medicare enrollees remaining in the HMO or CMP, all of its nonrisk Medicare enrollees must be covered under the risk provisions of the contract, the conversion process is as follows:

(i) HCFA notifies each affected enrollee of the decision at least 90 days prior to the effective date.

(ii) The nonrisk Medicare enrollees complete and sign forms stating that they understand and accept the new rules and benefits that will be applicable to them.

(iii) The HMO or CMP notifies each affected enrollee, in writing, at least 30 days in advance, of the date upon which his or her coverage under the risk portion of the contract takes effect.

(2) *Conversion based on enrollee's request.* A nonrisk Medicare enrollee requests, using a form identical or similar to the form described in paragraph (c)(1) of this section, that he or she be covered under the risk portion of the contract.

(d) *Notification.* An HMO or CMP converting from a cost contract to a risk contract must, within 60 days of signing the risk contract, inform nonrisk enrollees of their right to remain nonrisk Medicare enrollees or to convert to risk enrollment at any time in accordance with paragraph (c)(2) of this section.

3. Section 417.460 revised to read as follows:

§ 417.460 Disenrollment of beneficiaries and termination of payments to an HMO or CMP.

(a) *Disenrollment of health insurance program beneficiaries.* An HMO or CMP may not, orally or in writing, or by any action or inaction, request or encourage a Medicare enrollee to disenroll, except in the following circumstances:

(1) *Failure to pay premiums*—(i) *Basic rules.* Except as specified in paragraph (a)(1)(iii) of this section, an HMO or CMP may disenroll a Medicare enrollee who fails to pay premiums or other charges imposed by the HMO or CMP for deductible and coinsurance amounts

for which the enrollee is liable, if the HMO or CMP—

(A) Can demonstrate to HCFA that it made reasonable efforts to collect the unpaid amount;

(B) Gives the enrollee written notice of disenrollment, including an explanation of the enrollee's right to a hearing under the HMO's or CMP's grievance procedures; and

(C) Sends the notice of disenrollment to the enrollee before it notifies HCFA.

(ii) *When HCFA's liability ends* (A) HCFA's liability for monthly capitation payments to the HMO or CMP on behalf of the enrollee ends as of the first day of the month following the month in which disenrollment is effective, as shown on HCFA records.

(B) Disenrollment will be effective no earlier than the month immediately after, and no later than the third month after, the month in which HCFA receives the disenrollment notice in acceptable form.

(iii) *Exception.* If a Medicare enrollee of an HMO or CMP fails to pay the separate premium (or the corresponding portion of a single premium) for optional supplemental benefits (that is, a package of benefits that an enrollee is not required to accept) but pays the premium for the deductible and coinsurance amounts, the HMO or CMP may discontinue the optional supplemental benefits but may not disenroll the enrollee.

(2) *Enrollee moves out of the HMO's or CMP's geographic area*—(i) *Basic rule.* Except as provided in paragraph (a)(2)(iv) of this section, an HMO or CMP must disenroll a Medicare enrollee who moves out of its geographic area and does not voluntarily disenroll under paragraph (b) of this section if the HMO or CMP—

(A) Establishes, on the basis of a written statement from the enrollee or other evidence acceptable to HCFA, that the enrollee has permanently moved out of its geographic area; and

(B) Complies with the notice requirements set forth in paragraph (a)(1)(i) of this section.

(ii) *Failure to disenroll does not expand geographic area.* If the HMO or CMP does not disenroll an enrollee who moved out of its geographic area, that area is not automatically expanded to encompass the location of the enrollee's new residence.

(iii) *When HCFA's liability ends* The provisions of paragraph (a)(1)(ii) of this section apply.

(iv) *Exception.* An HMO or CMP may retain a Medicare enrollee who is absent from its geographic area for an extended period, but who remains within the United States as defined in § 400 200 of this chapter if the enrollee agrees. For purposes of this exception, the following provisions apply:

(A) An absence for an extended period means an uninterrupted absence from the HMO's or CMP's geographic area for more than 90 days but less than one year.

(B) The HMO or CMP and the enrollee may mutually agree upon restrictions for obtaining services while the enrollee is absent for an extended period from the HMO's or CMP's geographic area. However, restrictions may not be imposed on the scope of services described in § 471 440.

(C) When the enrollee returns to the HMO's or CMP's geographic area, the restrictions under § 417.448(a), which prohibit Medicare payment for services not provided or arranged for by the HMO or CMP apply again immediately.

(D) HMOs and CMPs that choose to exercise this exception must make the option available to all Medicare enrollees who are absent for an extended period from the HMO's or CMP's geographic area. (However, HMOs and CMPs may limit this option to enrollees who go to a geographic area served by an affiliated HMO or CMP.)

(E) If the enrollee fails to return to the HMO's or CMP's geographic area within 1 year of the date he or she left the geographic area, then the HMO or CMP must disenroll the beneficiary on the first day of the month following the anniversary of the date the enrollee left the geographic area under the provisions of paragraph (a)(2)(i) of this section.

(F) As used in this paragraph "affiliated HMO or CMP" means an HMO or CMP that is under common ownership or control of the HMO or CMP that seeks to retain the absent enrollees, or has in effect an agreement to furnish services to enrollees who are on an extended absence from the geographic area of the HMO or CMP that seeks to retain them

(3) *Failure to convert to risk provisions of contract*—(i) *Disenrollment and notice* A risk HMO or CMP must disenroll a current nonrisk Medicare enrollee if the enrollee refuses to convert to the risk provisions of the HMO's or CMP's contract after HCFA has determined under § 417 444(a)(1) that all of the HMO's or CMP's current nonrisk Medicare enrollees must be converted. The HMO or CMP must notify the enrollee that failure to convert will result in disenrollment. The notice must be sent at least 30 days before the HMO or CMP notifies HCFA of the disenrollment.

(ii) *When HCFA's liability ends.* The provisions of paragraph (a)(1)(ii) of this section apply.

(4) *Enrollee commits fraud or permits abuse of HMO or CMP enrollment card* (i) A Medicare beneficiary may be disenrolled by the HMO or CMP if the beneficiary knowingly provides, on the application form, fraudulent information upon which an HMO or CMP relies and which materially affects his or her eligibility to enroll in the HMO or CMP, or if the beneficiary intentionally permits others to use his or her enrollment card to receive services from the HMO or CMP.

(ii) In either case, the HMO or CMP must give the beneficiary a written notice of termination of enrollment. The notice must be mailed to the enrollee prior to the submission of the disenrollment notice to HCFA. The notice must include an explanation of the enrollee's right to have the disenrollment heard under the grievance procedures established under § 417.436.

(iii) HCFA's liability for monthly capitation payments to the HMO or CMP on behalf of the beneficiary terminates as of the first day of the month in which the termination of enrollment is made effective, as shown on HCFA records. In no event may that month be earlier than the month immediately following, or later than the third month following, the month in which the disenrollment notice is received in acceptable form by HCFA.

(iv) The HMO or CMP must report any disenrollment made under the provisions of this paragraph (a)(4) to the Inspector General of the department.

(5) *Enrollee's entitlement to benefits under the supplementary medical insurance program ends.* (i) HCFA's liability for monthly capitation payments to the HMO or CMP on behalf of the beneficiary ends with the month immediately following the last month of entitlement to benefits under Part B of Medicare. The beneficiary may be continued as an enrollee other than as a Medicare enrollee by the HMO or CMP under its regular plan if the HMO or CMP and the enrollee so choose.

(ii) If an enrollee loses entitlement to benefits under Part A of Medicare but remains entitled to benefits under Part B, the enrollee automatically continues as a Medicare enrollee of the HMO or CMP and is entitled to receive and have payment made for Part B services beginning with the month immediately following the last month of his or her entitlement of Part A benefits.

(6) *Disenrollment for cause*—(i) *When cause may be cited* An HMO or CMP may disenroll a Medicare enrollee for

cause if the enrollee's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continuing enrollment in the HMO or CMP seriously impairs the HMO's or CMP's ability to furnish services to either the particular enrollee or other enrollees.

(ii) *Effort to resolve the problem.* The HMO or CMP must make a serious effort to resolve the problem presented by the enrollee, including the use (or attempted use) of internal grievance procedures.

(iii) *Consideration of extenuating circumstances.* The HMO or CMP must ascertain that the enrollee's behavior is not related to the use of medical services or mental illness.

(iv) *Documentation.* The HMO or CMP must document the problems, efforts, and medical conditions as described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) of this section.

(v) *HCFA review of an HMO's or CMP's proposed disenrollment.* HCFA decides based on a review of the documentation submitted by the HMO or CMP, whether disenrollment requirements have been met. HCFA makes this decision 20 working days of receipt of the documentation material, and notifies the HMO or CMP within 5 working days after making its decision.

(vi) *Effective date of disenrollment.* If HCFA permits an HMO or CMP to disenroll an enrollee for cause, the disenrollment takes effect on the first day of the calendar month after the month in which the HMO or CMP complies with the notice requirements in paragraphs (a)(1)(i)(B) and (a)(1)(i)(C) of this section (other than the right to a hearing as described in paragraph (a)(1)(i)(B) of this section).

(vii) *When HCFA's liability ends.* The provisions of paragraph (a)(1)(ii)(A) of this section apply.

(7) *Death of the enrollee.* HCFA's liability for payments to the HMO or CMP on behalf of a Medicare enrollee who dies ends as of the first day of the month following the month of death.

(b) *Disenrollment by the enrollee.* (1) A Medicare enrollee may disenroll at any time by giving the HMO or CMP a signed, dated request in the form and manner prescribed by the HMO or CMP. The enrollee may request a certain disenrollment date but it may be no earlier than the first day of the month following the month in which the HMO or CMP receives the request. The HMO or CMP must submit a disenrollment notice to HCFA promptly.

(2) An HMO or CMP must provide the enrollee with a copy of the written request for disenrollment. Risk HMOs and CMPs must also provide a written statement explaining that the enrollee remains enrolled in the HMO or CMP until the effective date of the disenrollment, until that date, and is subject to the restrictions of § 417.448(a) which prohibit Medicare payment for services not provided or arranged for by the HMO or CMP.

(3) HCFA's responsibility for payments to the HMO or CMP ends with the close of the month of termination requested by the enrollee.

(4) If the HMO or CMP fails to submit the correct and complete notice required in paragraph (b)(1) of this section on a timely basis, the HMO or CMP must reimburse HCFA for any capitation payments received after the month in which payments would have ceased if the requirement had been met timely.

(c) *Effect of termination or default of contract*—(1) *Termination of contract.* If the contract between HCFA and the HMO or CMP is terminated by mutual consent or by unilateral action of either party, HCFA's liability for payments ends as of the first day of the month after the last month for which the contract is in effect.

(2) *Default of contract.* If the HMO or CMP defaults on the contract before the end of the contract year because of bankruptcy or other reasons, HCFA—

(i) Determines the month in which its liability for payments ends; and

(ii) Notifies the HMO or CMP and all affected Medicare enrollees as soon as practicable.

I. Subpart P is amended as set forth below:

Subpart P—Medicare Payment: Risk Basis

1. Section 417.590 is revised to read as follows:

§ 417.590 Computation of the average of the per capita rates of payment.

(a) *Computation by the HMO or CMP.* As indicated in § 417.584(b), before an HMO's or CMP's contract period begins, HCFA determines a per capita rate of payment for each class of the HMO's or CMP's Medicare enrollees. In order to determine the additional benefits required under § 417.592, weighted averages of those per capita rates must be computed separately for enrollees entitled to Part A and Part B, and for enrollees entitled only to Part B. Except as provided in paragraph (b) of this section, the HMO or CMP must make the computations.

(b) *Computation by HCFA.* If the HMO or CMP claims to have insufficient enrollment experience to make the computations required by paragraph (a) of this section, and HCFA agrees with the claim, HCFA makes the computations, using the best available information, which may include the enrollment experience of other risk HMOs and CMPs.

2. Section 417.597 is revised to read as follows:

§ 417.597 Withdrawal from a benefit stabilization fund.

(a) *Notification to HCFA.* An HMO's or CMP's request to make a withdrawal from its benefit stabilization fund for use during a contract period must be made when the HMO or CMP notifies HCFA of its ACR and the average of its per capita rates of payment for that contract period. In making its request, the HMO or CMP must—

(1) Indicate how it intends to use the withdrawn amounts;

(2) Justify the need for the withdrawal in terms of stabilizing the additional benefits it provides to Medicare enrollees;

(3) Document the HMO's or CMP's experience with fluctuations of revenue requirements relative to the additional benefits it provides to Medicare enrollees; and

(4) Document its experience during the contract period previous to the one for which it requests withdrawal to ensure that the HMO or CMP will not be using the withdrawn amounts to refinance losses suffered during that previous contract period.

(b) *Criteria for HCFA approval.* HCFA approves a request for a withdrawal from a benefit stabilization fund for use during the next contract period only if—

(1) The HMO's or CMP's average of its per capita rates of payment for the next contract period is less than that of the previous contract period;

(2) The HMO's or CMP's ACR for the next contract period is significantly higher than that of the previous contract period; or

(3) The HMO's or CMP's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period and the ACR for the next contract period results in an additional benefits package that is less in total value than that of the previous contract period.

(c) *Basis for denial.* HCFA does not approve a request for a withdrawal from a benefit stabilization fund if the withdrawal would allow the HMO or CMP to—

(1) Offer without charge the supplemental services it provides to its Medicare enrollees under the provisions of § 417.440 (b)(2) or (b)(3); or

(2) Refinance prior contract period losses or to avoid losses in the upcoming contract period.

VOL
58
ISS
134
JL
15
1993
UMI

(d) *Form of payment.* Payment of monies withdrawn from a benefit stabilization fund is made, in equal parts, as an additional amount to the monthly advance payment made to the HMO or CMP under § 417.584 during the period of the contract.

J. Subpart Q is amended as set forth below:

Subpart Q—Beneficiary Appeals

Section 417.606 is revised to read as follows:

§ 417.606 Initial determinations.

(a) *Actions that are initial determinations.* An initial determination is a determination made by an HMO or CMP, or a carrier or intermediary acting for the HMO or CMP, concerning the rights of an enrollee with regard to services payable under Medicare that are furnished by the HMO or CMP. An initial determination is also any determination made with respect to—

(1) Reimbursement for emergency or urgently needed services;

(2) Any other health services furnished by a provider or supplier other than the HMO or CMP that the enrollee believes—

(i) Are covered under Medicare; and

(ii) Should have been furnished, arranged for, or reimbursed by the HMO or CMP.

(3) The HMO's or CMP's refusal to provide services that the enrollee believes it should furnish or arrange for, when the enrollee has not received the services outside the HMO or CMP.

(b) *Actions that are not initial determinations.* The following are not initial determinations for purposes of this subpart:

(1) A determination regarding services that were furnished by the HMO or CMP either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services included in an optional supplemental plan (see § 417.440(b)(2)).

(c) *Relation to grievances.* A determination that is not an initial determination is subject only to a grievance procedure under § 417.436(a)(2).

K. Subpart V is amended as set forth below:

Subpart V—Administration of Outstanding Loans and Loan Guarantees

1. Sections 417.910 and 417.911 are revised to read as follows:

§ 417.910 Scope and applicability.

(a) *Scope.* This subpart sets forth the requirements and procedures for grants, loans, and loan guarantees awarded before October 1986 under sections 1303, 1304, 1305, and 1305A of the PHS Act.

(b) *Applicability.* (1) Sections 417.911 through 417.915 apply, in general, to all three types of financial assistance granted under this subpart.

(2) Sections 417 916 through 417.919 apply only to grants.

(3) Sections 417.920 through 417 926 apply to grants and loan guarantees for planning and initial development projects.

(4) Sections 417.930 through 417.937 apply to loans and loan guarantees for initial costs of operation.

§ 417.911 Definitions.

As used in this subpart—

Any 12-month period means the 12-month period beginning on the first day of any month.

Expansion of services means—(1) The addition of any health service not previously provided by or through the HMO, that requires an increase in the facilities, equipment, or health professionals of the HMO; or

(2) The improvement or upgrading of existing facilities or equipment, or an increase in the number of categories of health professionals, of the HMO so that the HMO could provide directly services that it previously provided through contract or referral or which it could not previously provide with its existing facilities or equipment.

First 60 months of operation or expansion means the 60-month period beginning on the first day of the month during which the HMO first provided services to enrollees, or in the case of significant expansion, first provided services in accordance with its expansion plan.

Health system agency means an entity that has been designated in accordance with section 1515 of the PHS Act; and the term *State health planning and development agency* means an agency that has been designated in accordance with section 1521 of the PHS Act.

Initial costs of operation means any cost incurred in the first 60 months of an operation or expansion that met any of the following requirements:

(1) Under generally accepted accounting principles or under accounting practices prescribed or permitted by State regulatory authority, was not a capital cost.

(2) Was required by State regulatory authority to meet reserves or tangible net equity requirements.

(3) Was for a payment made to reduce balance sheet liabilities existing at the beginning of the 60-month period, but only if—(i) The payment had been approved in writing by the Secretary; and

(ii) The total of these payments did not exceed 20 percent of the amount of the loan.

(4) Was for a small capital expenditure, but only if—(i) The cost had been approved in writing by the Secretary; and

(ii) The total of these costs did not exceed $200,000 in any 12-month period, and $400,000 during the first 60 months of operation or expansion.

Nonprofit as applied to a private entity, means a private agency, institution, or organization, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Significant expansion means—(1) A planned substantial increase in the enrollment of the HMO, that requires an increase in the number of health professionals serving enrollees of the HMO or an expansion of the physical capacity of the HMO's total health facilities; or

(2) A planned expansion of the service area beyond the current service area, that would be made possible by the addition of health service delivery facilities and health professionals to serve enrollees at a new site or sites in areas previously without service sites.

Small capital expenditure means expenditures for—(1) Equipment as defined in 45 CFR 74.132; or

(2) Alterations and renovations required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment, so that it may be more effectively used for its currently designated purpose, or adapted to a changed use.

2. Section 417.920 is revised to read as follows:

§ 417.920 Planning and initial development.

(a) Under section 1304 of the PHS Act, grants and loan guarantees were awarded for projects for planning and initial development of HMOs.

(b) Planning projects included projects for any of the following:

(1) Establishment of an HMO.

(2) Significant expansion of the HMO's enrollment or geographic area.

(c) Initial development projects included projects for any of the following:

(1) Establishment of an HMO.

(2) Significant expansion of the HMO's enrollment or geographic area.

(3) Expansion of the range or amount of services furnished by the HMO.

3. Section 417 930 is revised to read as follows:

§ 417.930 Initial costs of operation.

Under section 1305 of the PHS, loans and loan guarantees were awarded for initial costs of operation of HMOs.

§ 417.931 [Removed]

4. Section 417 931 is removed.

L. Technical Amendments

§ 417.101 [Amended]

1. In § 417.101, the following changes are made:

a. Throughout the section, "shall" is changed to "must" (9 times), "member" and "members" are changed to "enrollee" and "enrollees", respectively (7 times), "Public Health Service Act" is revised to read "PHS Act" (3 times), and, except in paragraphs (a)(1), (a)(2) and (a)(8), "which" is changed to "that" (4 times).

b. In paragraph (a)(7), "a member's" is changed to "an enrollee's".

c. In paragraph (c) "§§ 417.100 through 417.109" is revised to read "§§ 417.101 through 417.106 and §§ 417.168 and 417.169".

d. In paragraph (d)(16), "the Secretary" is changed to "HCFA".

§ 417.143 [Amended]

2. In § 417.143, the following changes are made:

a. In paragraph (b)(2), "Public Health Service Act" is revised to read "PHS Act". "§§ 417.100 through 417.109 and 417.140 through 417.144 of this subpart" is revised to read "subparts B and C of this part, this subpart D, and §§ 417.168 and 417.169 of subpart F".

b. In paragraph (g), "§§ 417.140 through 417.144" is revised to read "this subpart".

§ 417.144 [Amended]

3. In § 417.144, the following changes are made:

a. In paragraph (a), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

b. In paragraphs (a) through (e), "the Secretary" is changed to "HCFA" (11 times).

c. In paragraphs (a), (c), and (d), "§§ 417.140 through 417.144" is revised to read "this subpart".

d. In paragraph (b), "which" is changed to "that", and "the Secretary's" is changed to "HCFA's".

e. In paragraph (d), the phrase "of Health and Human Services" is removed.

f. In paragraph (e), second sentence, "contained" is changed to "obtained".

§ 417.150 [Amended]

4. In § 417.150, the following changes are made:

a. The introductory text is revised to read: "As used in this subpart—".

b. In the definitions of "carrier" and "employer", "which" and "which organization" are changed to "that".

c. In the definition of "employee", "full-" is changed to "full-time".

d. In the definition of "health benefits plan", "of this subpart" is removed.

e. In the definition of "public entity", "Public Health Service" is changed to "PHS".

§ 417.151 [Amended]

5. In § 417.151, the following changes are made:

a. In the introductory text, "§§ 417.150 through 417.159" is revised to read "this subpart".

b. Throughout the section, "which" is changed to "that" (4 times) and "Public Health Service Act" is revised to read "PHS Act".

§ 417.152 [Amended]

6. In § 417.152, the following changes are made:

a. Throughout the section, "which" is changed to "that" (3 times), "shall" is changed to "must" (8 times), "Public Health Service Act" is revised to read "PHS Act", and "the Secretary" is changed to "HCFA".

b. In paragraph (c), "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

c. In paragraph (c)(3), "organization" is changed to "HMO", "members of a medical group(s)" is revised to read "members of medical groups", and "members of an individual practice association(s)" is revised to read "members of individual practice associations".

d. In paragraph (c)(4), "through an individual practice association(s)" is revised to read "through individual practice associations", and "membership" is changed to "enrollment".

e. In paragraph (c)(6), "members" is changed to "enrollees".

§ 417.153 [Amended]

7. In § 417.153, the following changes are made:

a. The term "shall" is changed to "must" (2 times).

b. The term "membership" is changed to "enrollment" (3 times).

c. "§§ 417.150 through 417.159" is revised to read "this subpart" (3 times).

§ 417.154 [Amended]

8. In § 417.154, the following changes are made:

a. In the heading, and throughout the text, "which" is changed to "that" (9 times).

b. In paragraph (a) introductory text, and paragraphs (a)(2), (b) introductory text and (c), "§§ 417.150 through 417.159" is revised to read "this subpart".

c. In paragraphs (a)(1) and (a)(2), "organizations" and "organization" are changed to "HMOs" and "HMO", respectively.

d In paragraph (a)(2), "shall" is changed to "must" (2 times) and "§ 417.100" is changed to "417.1".

e. In paragraph (b), "shall" is changed to "must".

f. In paragraphs (b) introductory text, (b)(2) and (c), "membership" is changed to "enrollment".

§ 417.155 [Amended]

9 In § 417.155, the following changes are made:

a. In paragraph (a), "which" is changed to "that" (2 times); "shall" is changed to "must" the first two times it appears, and to "may" the third time; and "§ 417.107(c) of this subpart" and "§ 417.107(c)" are revised to read "§ 417.124(b)".

b. In paragraph (b), "shall" is changed to "must" (3 times).

c. In paragraph (c), "membership" is changed to "enrollment", "§§ 417.150 through 417.159" is revised to read "this subpart" (twice), "shall" is changed to "must", and "which" is changed to "that".

d. In paragraphs (d) and (e), "shall" is changed to "must" (6 times), "members" is changed to "enrollees" (twice), "membership" is changed to "enrollment", and "which" is changed to "that".

e. In paragraph (g), "shall" is changed to "may".

§ 417.157 [Amended]

10. In § 417.157, the following changes are made:

a. The term "shall" is changed to "must" in paragraphs (a)(1), (a)(3), (b), (e), (f), (g) introductory text, (g)(2), and (h), and to "will" in paragraphs (d) and (g)(1).

b. The term "membership" is changed to "enrollment" in paragraphs (b) and (c).

c. The term "which" is changed to "that" in paragraphs (a)(2), (g)(2), and (h).

d. In paragraph (h), "the Secretary" is changed to "HCFA", "her" is changed to "its", the phrase "to the Secretary" is removed, and "§§ 417.150 through 417.159." is revised to read "this subpart.".

§ 417.159 [Amended]

11. In § 417.159, the following changes are made:

a. In the heading, "Public Health Service" is changed to "PHS", and "as amended" is removed (twice).

b. In the text, "§§ 417.150 through 417.159" is revised to read "this subpart", "membership" is changed to "enrollment", and "shall" is changed to "must".

§ 417.163 [Amended]

12. In § 417.163, the following changes are made:

a. Throughout the section (except the second time it appears in paragraph (d)(2)) "the Secretary" is changed to "HCFA" (26 times), and "his" is changed to "its" (3 times).

b. In paragraph (a), "shall" is changed to "must" and in paragraph (c), "shall" is changed to "will" the first 3 times it appears and to "must" the 4th and 5th times it appears.

c. In paragraph (b), "he" is changed to "it" (4 times), "§§ 417.160 through 417.166" is revised to read "this subpart", and the phrase "to him" is removed.

d. In paragraphs (c), (d)(1) and (d)(2), "which" is changed to "that" (5 times).

e. In paragraph (d), "Public Health Service" is changed to "PHS"; and "shall" is changed to "will" the first 5 times it appears, to "must" the 6th and 7th times it appears, and to "will" the 8th time it appears; "member" and "members" are changed to "enrollee" and "enrollees", respectively (6 times); "him" is changed to "it" (twice); "it" is changed to "the HMO"; and "he" is changed to "HCFA" (twice).

§ 417.164 [Amended]

13. In § 417.164, the following changes are made:

a. In the heading of the section, "Public Health Service" is changed to "PHS".

b. In paragraphs (a) and (b), "§§ 417.150 through 417.159 of this subpart" is revised to read "subpart E of this part" (4 times).

c. In paragraph (c), "§§ 417.120 through 417.126 and 417.130 through 417.137 of this subpart" is revised to read "subpart V of this part", and "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

§ 417.165 [Amended]

14. In § 417.165, "Public Health Service Act" is revised to read "PHS Act", and "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

§ 417.400 [Amended]

15. In paragraph (b), "It also specifies" is revised to read "Subparts N, O, and P set forth".

§ 417.404 [Amended]

16. In § 417.404, "eligible organization" is changed to "HMO" or CMP" (5 times), and "§§ 417.470 through 417.494" is revised to read "subpart L of this part".

§ 417.406 [Amended]

17. In § 417.406, the following changes are made:

a. The heading is revised to read: "Application and determination."

b. The term "eligible organizations" is changed to "HMO" in paragraph (a)(2), and to "HMO or CMP" elsewhere in the section (4 times).

c. In paragraph (a)(3), "Public Health Service Act" is revised to read "PHS Act", and "§§ 417.100 through 417.109" is revised to read "subparts B and C of this part and §§ 417.142, 417.168, and 417.169".

d. In paragraph (b)(2), "§ 417.494(b)(iii)" is changed to read "§ 417.494(b)".

§ 417.407 [Amended]

18. In § 417.407, the following changes are made:

a. The heading is revised to read: *"Definitions of HMO and CMP."*

b. Paragraph (a) is revised to read:

§ 417.407 Definitions of HMO and CMP.

(a) *State law.* To qualify as an HMO or CMP, an entity must be organized under the laws of any State and meet the definition under paragraph (b) or (c) of this section, respectively.

* * * * *

c. In paragraph (b), "Public Health Service (PHS)" is changed to "PHS" and "§§ 417.100 through 417.109" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

d. In paragraph (c), "enrolled members" is changed to "enrollees" (thrice), "member" and "enrolled member" are changed to "enrollee", "§ 417.107(b)" is changed to "417.120(b)", and "§§ 417.107(a)(1)(i) through (iv) and (a)(3)" is revised to read "§§ 417.120(a)(1)(i) through (a)(1)(iv) and 417.122(a)".

§ 417.408 [Amended]

19. In § 417.408, the following changes are made:

a. The term "organization" is changed to "HMO or CMP" (5 times) and "organization's" is changed to "HMO's or CMP's".

b. In paragraph (a), "the Assistant Secretary for Health of the Department" is changed to "HCFA".

c. In paragraphs (b)(2) and (c)(3), "§§ 417.640 through 417.658" is revised to read "subpart R of this part".

§ 417.410 [Amended]

20. In § 417.410, the following changes are made:

a. The terms "organization" and "eligible organization" are changed to "HMO or CMP" (10 times) and "organization's" is changed to "HMO's or CMP's".

b. In paragraph (a), "members" is changed to "Medicare beneficiaries and other individuals and groups".

c. In paragraph (g), "§§ 417.530 through 417.598" is revised to read "subparts O and P of this part".

§ 417.414 [Amended]

21. In § 417.414, the following changes are made:

a. The terms "organization", "organizations" and "organization's" are changed to "HMO or CMP", "HMOs or CMPs", and "HMO's or CMP's", respectively (18 changes).

b. In paragraph (c)(2), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

§ 417.418 [Amended]

21a. In paragraph (b) of § 417.418 "417.107(h)" is changed to "§ 417.106(a)".

§ 417.420 [Amended]

22. In § 417.420, the following changes are made:

a. The term "organization" is changed to "HMO or CMP" (5 times).

b. In paragraph (a), "§§ 417.470 through 417.494" is revised to read "subpart L of this part".

c. In paragraph (c)(2)(ii), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

§ 417.422 [Amended]

23. In § 417.422, the following changes are made:

a. In the heading and in paragraph (a), "organization" and "organizations" are changed to "HMO or CMP" and "HMOs or CMPs", respectively (9 times).

b. In paragraph (a)(3), "this subpart or Subpart B of this part" is revised to read "subpart L of this part".

c. In paragraphs (b) and (c), "eligible organizations" is changed to "an HMO or CMP" (twice).

§ 417.424 [Amended]

24. In § 417.424, the following changes are made:

a. The terms "organization" and "organization's" are changed to "HMO or CMP" and "HMO's and CMP's", respectively (9 times).

b. In paragraph (a)(2), "§§ 417.412 through 417.418 of this part" is revised to read "subpart J of this part".

§ 417.426 [Amended]

25. In § 417.426, the following changes are made:

a. In paragraph (a)(1), "eligible organizations" is changed to "HMOs and CMPs".

b. In paragraphs (a) through (c), "organization" and "organization's" are changed to "HMO and CMP" and "HMO's or CMP's", respectively (6 times).

c. In paragraph (c) introductory text, "new members of" is revised to read "new enrollees under".

§ 417.440 [Amended]

26. In § 417.440, the following changes are made:

a. In the heading and throughout the section, "organization", "organizations" and "organization's" are changed to "HMO or CMP", "HMOs or CMPs", and HMO's or CMP's", respectively.

b. In paragraph (a)(2)(ii), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

c. In paragraphs (b)(1) and (b)(4)(ii), "and supplies" is removed.

d. Paragraph (b)(3) is revised to read:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(b) * * *

(3) *Supplemental services imposed by a risk HMO or CMP.* (i) Subject to HCFA's approval, a risk HMO or CMP may require Medicare enrollees to accept and pay for services in addition to those covered by Medicare. (ii) If the HMO or CMP elects this option, it must impose the requirement on all Medicare enrollees, without regard to health status. (iii) HCFA approves supplemental benefits of this type if HCFA determines that imposition of the requirements will not discourage other Medicare beneficiaries from enrolling in the risk HMO or CMP.

e. In paragraphs (d) introductory text and (e) introductory text, "of this part" is removed.

§ 417.448 [Amended]

27. In § 417.448, the following changes are made:

a. In the heading and throughout the section, the terms "organization", "organizations", and "organization's" are changed to "HMO or CMP", "HMOs or CMPs" and "HMO's or CMP's", respectively.

b. In paragraphs (b)(2) and (b)(3), "Current" is removed, and "nonrisk" is capitalized.

c. In paragraph (c), "the" is inserted immediately after "the organization and" and "membership" is changed to "enrollment".

§ 417.450 [Amended]

28. In § 417.450, the following changes are made:

a. In paragraph (a)(1), "Medicare's liability" is changed to "HCFA's liability".

b. In paragraphs (a), (b), and (c) "organization" is changed to "HMO or CMP" (7 times).

§ 417.452 [Amended]

29. In § 417.452, the following changes are made:

a. Throughout the section, except in paragraph (a)(2), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (13 times).

b. In paragraph (b) introductory text, "or § 417.444(b)" is removed.

c. In paragraph (c), "payor" is changed to "payer".

d. At the end of paragraph (e), "Medicare enrollees in the organization" is revised to read "Medicare enrollee of the HMO or CMP".

§ 417.456 [Amended]

30. In § 417.456, the following changes are made:

a. Throughout the section, "organization" is changed to "HMO or CMP" (11 times).

b. In the definition of *amounts incorrectly collected*, "Medicare" is changed to "HCFA" the third time the word appears.

c. In paragraph (a)(3), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

§ 417.470 [Amended]

31. In § 417.470, the following changes are made:

a. In paragraph (a), "§§ 417.472 through 417.494 implement" is revised to read "This subpart implements", and "organization" is changed to "HMO or CMP".

b. In paragraph (b) introductory text, "Sections 417.472 through 417.494 set forth" is revised to read "This subpart sets forth".

§ 417.472 [Amended]

32. In § 417.472, the following changes are made:

a. Throughout the section, "eligible organization" and "organization" are changed to "HMO or CMP" (6 times).

b. In paragraph (f), "of this part" is removed.

c. In paragraph (g), "the Secretary" is changed to "HCFA", and "he or she" is changed to "it".

§ 417.478 [Amended]

33. In § 417.478, the following changes are made:

a. In the introductory text and in paragraphs (c) and (d), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively.

b. In paragraph (c), "members" is changed to "enrollees".

c. In paragraph (d), "§ 417.107" is changed to "§ 417.126(a)", and the last sentence is removed.

§ 417.492 [Amended]

34. In § 417.492, the following changes are made:

a. Throughout the section, "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (9 times).

b. In paragraph (b)(4), "§§ 417.640 through 417.682" is revised to read "subpart R of this part".

§ 417.494 [Amended]

35. In § 417.494, the following changes are made:

a. The term "organization" and its plural and possessive forms are changed to "HMOs or CMPs", and "HMO's or CMP's", respectively.

b. In paragraph (b)(1)(iv), "subpart" is changed to "part".

c. In paragraph (b)(2), "§§ 417.640 through 417.682" is revised to read "subpart R of this part".

§ 417.520 [Amended]

36. In §§ 417.520, the following changes are made:

a. Throughout the section, "organization" is changed to "HMO or CMP" (6 times).

b. In paragraph (b)(2), "§§ 417.472 through 417.488" is revised to read "subpart L of this part".

§ 417.522 [Amended]

37. In § 417.522, the following changes are made:

a. The terms "organization" and "eligible organization" are changed to "HMO or CMP" (3 times).

b. In paragraph (a)(3)(iii), "this subpart" is changed to "this part".

§ 417.523 [Amended]

38. In § 417.523, the following changes are made:

a. In the heading and throughout the section, "organization" and "eligible organization" are changed to "HMO or CMP" and "organization's" is changed to "HMO's or CMP's".

b. In paragraph (b)(2), "this subpart." is changed to "subpart L of this part.".

c. In paragraph (c), "applicable" is inserted immediately before "requirements" and "§§ 417.410

VOL 58 ISS 134 JL 15 1993 UMI

through 417.418" is revised to read "subpart J of this part.".

§ 417.526 [Amended]

39. In § 417.526, the following changes are made:

a. "Sections 417.530 through 417.576 set forth" is revised to read "Subpart O of this part sets forth".

b. The term "eligible organization" is changed to "HMO or CMP" (twice).

c. "§§ 417.580 through 417.598 describe" is revised to read "Subpart P of this part describes".

§ 417.528 [Amended]

40. In § 417.528, the following changes are made:

a. In the heading and throughout the section, "payor" is changed to "payer" (6 times), and "eligible organization" and "organization" are changed to "HMO or CMP" (7 times).

b. In paragraph (a), "where Medicare is not the primary payor" is revised to read "for which Medicare is not the primary payer".

§ 417.530 [Amended]

41. In § 417.530, the following changes are made:

a. "Sections 417.530 through 417.576 set forth" is revised to read "This subpart sets forth".

b. Throughout the section, "organization" is changed to "HMO or CMP" (3 times).

§ 417.536 [Amended]

42. In § 417.536, the following changes are made:

a. In the heading, "the organizations" is changed to "HMOs and CMPs".

b. In paragraph (a), the phrase "are applicable to the organization's costs when incurred by an organization or by providers of services and other facilities owned or operated by the organization, or related to the organization" is revised to read "are applicable to the costs incurred by an HMO or CMP or by providers and other facilities owned or operated by the HMO or CMP or related to it".

c. Throughout the section, except in the heading to paragraph (k), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (17 times).

d. In paragraph (f)(3), "enrollee or" is revised to read "enrollee of".

e. In paragraph (g), "§ 405.420" is changed to "§ 413.80" and "deductions for revenue" is revised to read "deductions from revenue".

f. In the heading of paragraph (k), "organizations" is changed to "entities".

g. In paragraph (m)(1), "§§ 405.542, 405.544, and 413.170" is revised to read "§§ 413.170".

h. In paragraph (m)(3), "§ 413.110" is revised to read "§§ 405.517 and 410.29".

§ 417.548 [Amended]

43. In § 417.548, the following changes are made:

a. Throughout the section, "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (12 times).

b. In paragraph (a), the phrase "unless, upon the organization's petition to HCFA, the organization can demonstrate" is revised to read "unless the HMO or CMP petitions HCFA and demonstrates".

§ 417.550 [Amended]

44. In § 417.550, the following changes are made:

a. In paragraph (a), "Medicare reimburses" is revised to read "HCFA reimburses".

b. Throughout the section, "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (5 times).

c. In paragraph (d)(2), "membership" is changed to "enrollment".

§ 417.580 [Amended]

45. In § 417.580, the following changes are made:

a. In paragraph (a), "Sections 417.582 through 417.598 implement" is revised to read "This subpart implements".

b. In paragraph (b) introductory text, "Sections 417.582 through 417.598 set forth—" is revised to read "This subpart sets forth—"

c. In paragraphs (a) and (b), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively.

§ 417.582 [Amended]

46. In § 417.582, the following changes are made:

a. The introductory text is revised to read: "As used in this subpart—".

b. The term "organization" is changed to "HMO or CMP" and "organization's" is changed to "HMO's or CMP's".

§ 417.592 [Amended]

47. In § 417.592, the following changes are made:

a. In paragraph (a), the first "organization's" is changed to "HMO's or CMP's", the second "organization's" is changed to "its", and "organization" is changed to "HMO or CMP".

b. Paragraph (b)(1) is revised to read:

§ 417.592 Determination of required additional benefits.

* * * * *

(b) * * *

(1) A reduction in the premium or other charges imposed by the HMO or CMP in the form of deductibles and coinsurance; or.

* * * * *

c. In paragraph (d)(2)(i), "the organization has elected" is changed to "that it has elected".

d. Throughout the rest of the section, "organization" is changed to "HMO or CMP" and "organization's" is changed to "HMO's or CMP's".

§ 417.594 [Amended]

48. In § 417.594, the following changes are made:

a. Throughout the section, "organization" and "eligible organization" are revised to read "HMO or CMP" (26 times), "organization's" is changed to "HMO's or CMP's" (9 times), and "payor" and "payors" are changed to "payer" (2 times) and "payers" respectively.

b. In paragraph (a)(1), "membership" is changed to "enrollment".

c. In paragraph (b)(1)(ii), "purchase membership" is changed to "enroll".

d. In paragraph (c)(2), the "(i)" designation and paragraph (c)(2)(ii) are removed.

§ 417.598 [Amended]

49. In § 417.598, "organization" is changed to "HMO or CMP" (3 times), and "assure" is changed to "ensure".

§ 417.600 [Amended]

50. In § 417.600, "Sections 417.600 through 417.638 establish" is revised to read "This subpart establishes", and "organizations" is changed to "HMOs or CMPs".

§ 417.602 [Amended]

51. In § 417.602, "§§ 417.604 through 417.638" is revised to read "this subpart".

§ 417.604 [Amended]

52. In § 417.604, the following changes are made:

a. The phrase "§§ 417.604 through 417.638" is revised to read "this subpart" (3 times).

b. The term "organization" is changed to "HMO or CMP" (7 times), and "organization's" is changed to "HMO's or CMP's".

c. In paragraph (b)(1), "these sections" is revised to read "this subpart".

§ 417.640 [Amended]

53. In § 417.640, "Sections 417.640 through 417.694 establish" is revised to read "This subpart establishes", and the terms "eligible organization" and "organization" are changed to "HMO or CMP" (8 times).

§ 417.642 [Amended]

54. In § 417.642, "§§ 417.640 through 417.694" is revised to read "this

subpart", and "organization" is changed to "HMO or CMP".

55. In § 417.670, paragraph (c) is revised to read:

§ 417.670 Time and place of hearing.

* * * * *

(c) The hearing officer will give the parties reasonable notice of any change in time or place or of adjournment.

§ 417.800 [Amended]

56. In § 417.800, the following changes are made:

a. In paragraph (b)(1)(iii), "Public Health Service Act" is revised to read "PHS Act".

b. In paragraph (c)(1), the phrase "§§ 417.530 through 417.576" is revised to read "subpart O of this part".

§ 417.801 [Amended]

57. In the § 417.801, the following changes are made:

a. In paragraph (a)(2), "this subpart D" is revised to read "this subpart U".

b. In paragraph (b)(2), the phrase "as defined in § 417.800" is removed.

c. In paragraph (d)(1)(iii), "§§ 417.520 through 417.523" is revised to read "subpart M of this part".

§ 417.802 [Amended]

58. In § 417.802, paragraph (a), "§§ 417.530 through 417.550" is revised to read "subpart O of this part".

§ 417.806 [Amended]

59. In paragraph (a) "will" is removed.

§ 417.810 [Amended]

60. In paragraph (c)(2) "subchapter" is changed to "chapter".

§ 417.912 [Amended]

61. In § 417.912, the following changes are made:

a. Throughout the section, "Public Health Service Act" is revised to read "PHS Act" (8 times), "member" is changed to "enrollee" (once), and "members" and "enrolled members" are changed to "enrollees" (5 times).

b. In paragraph (b)(1), the last two words are corrected to read "an HMO".

c. In paragraph (b)(3), "this subpart" is revised to read "subpart B of this part" (the first time it appears) and "subpart C of this part" (the second time it appears).

d. In paragraph (b)(4), "organization" is changed to "HMO" (two times).

e. In paragraphs (c), (d) introductory text, and (g), "which" is changed to "that".

f. In paragraphs (d) introductory text, (f), (g), and (h), "shall" is changed to "must" (6 times).

g. In paragraph (h), in the second sentence, "of this section" is inserted after "paragraph (e)".

§ 417.913 [Amended]

62. In § 417.913, the following changes are made:

a. Throughout the section, "shall" is changed to "must" (5 times), "which" is changed to "that" (3 times), and "Public Health Service Act" is revised to read "PHS Act" (2 times).

b. In paragraph (b)(2), the phrase "under §§ 417.120 through 417.126, and 417.130 through 417.137 which is consistent" is revised to read "under this subpart, if the application is consistent".

§ 417.917 [Amended]

63. In the introductory text, "§§ 417.140 through 417.154 of this subpart" is revised to read "subpart D of this part".

§ 417.918 [Amended]

64. In paragraph (a), "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926" (2 times).

§ 417.921 [Amended]

65. In § 417.921, the following changes are made:

a. Throughout the section, "which" is changed to "that" (5 times), and "membership" is changed to "enrollment" (2 times).

b. In the introductory text, "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926" (2 times).

c. In paragraph (b), "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

§ 417.922 [Amended]

66. In § 417.922 the following changes are made:

a. Throughout the section, except in paragraphs (f)(1) and (f)(5), "which" is changed to "that" (4 times).

b. In paragraph (f)(1), "shall" is changed to "must" and in paragraphs (f) introductory text and (f)(2) "Public Health Service Act" is revised to read "PHS Act".

c. In paragraphs (f)(5)(iii)(B) and (h)(1), "membership" is changed to "enrollment" (3 times), and in paragraph (h)(3) "members" is changed to "enrollees".

d. In paragraph (g), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169.".

e. In paragraph (h)(4), "§ 417.111(c)" is changed to § 417.911(c).

§ 417.923 [Amended]

67. In § 417.923, the following changes are made:

a. In paragraph (a), "§ 417.122(a), (b), (c), (d), and (e)" is revised to read "paragraphs (a) through (e) of § 417.922".

b. In paragraph (b), "Public Health Service Act" is revised to read "PHS Act", and in paragraph (b)(1), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

c. In paragraphs (d) introductory text and (e), "which" is changed to "that".

d. In paragraph (e), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

e. In paragraphs (f)(1) and (4), "membership" is changed to "enrollment", and in paragraph (f)(4) "§ 417.111" is changed to "§ 417.911".

§ 417.924 [Amended]

68. In § 417.924, the following changes are made:

a. In paragraphs (a)(1) and (b)(1), "Public Health Service Act" is revised to read "PHS Act" (3 times).

b. In paragraph (a)(2), "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926; "which" is changed to "that"; "members", the first time it appears is changed to "enrollees"; "membership" is changed to "enrollment"; and "shall" is changed to "must".

c. In paragraph (a)(3), "shall" is changed to "may" and "§ 417.122" is changed to "§ 417.922".

d. In paragraph (b)(3), "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926" (2 times), "members" is changed to "enrollees" the first time it appears, and "membership" is changed to "enrollment".

e. In paragraph (b)(4), "shall" is changed to "may", "§ 417.123(b)" is changed to "§ 417.923(b)", and "§ 417.123(e)" is changed to "§ 417.923(e)".

§ 417.925 [Amended]

69. In § 417.925, the following changes are made:

a. The section heading is revised to read "Evaluation and award: Planning and initial development.".

b. In paragraph (a) introductory text, "which" is changed to "that", "§ 417.107(c)" is changed to "§ 417.124(b)", "Public Health Service Act" is revised to read "PHS Act", and "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926".

c. In paragraph (a)(1), "§ 417.122 or § 417.123" is revised to read "§ 417.922 or § 417.923".

d. In paragraph (b), "§§ 417.120 through 417.126" is revised to read

"§§ 417 920 through 417.926", "which" is changed to "that", and "members" the first time it appears is changed to "enrollees".

§ 417.926 [Amended]

70. In § 417 926, the following changes are made:

a. In paragraph (a), "§§ 417.120 through 417.126" is revised to read "§§ 417 920 through 417.926".

b. In paragraphs (a) and (c), "shall" is changed to "will", and "which" is changed to "that".

§ 417.931 [Amended]

71. In § 417 931, the following changes are made:

a. In paragraph (a) introductory text, "which" is changed to "that".

b. In paragraph (b), "members" is changed to "enrollees".

§ 417.932 [Amended]

72. In § 417.932, the following changes are made:

a. The section heading is revised to read "Eligible applicants and projects: Initial costs of operation."

b. In paragraph (a), "§§ 417.130 through 417.137" is revised to read "§§ 417 930 through 417 937" (2 times).

c. In paragraph (b), "pursuant to" is changed to "under" (2 times) "§§ 417.110 through 417.119 and §§ 417.130 through 417.137" is revised to read "this subpart", "membership" is changed to "enrollment", and "§ 417.111(c)" is changed to "§ 417.911(c)".

§ 417.933 [Amended]

73. In § 417.933, the section heading is revised to read "Project elements for initial costs of operation.".

§ 417.935 [Amended]

74. In § 417.935, the section heading is revised to read "Evaluation and award: Initial costs of operation", and in the introductory text "Public Health Service Act" is revised to read "PHS Act".

§ 417.936 [Amended]

75. In § 417.936, the following changes are made:

a. Throughout the section, "Public Health Service Act" is revised to read "PHS Act" (6 times).

b. In paragraph (a), "shall" is changed to "may".

c. In paragraph (b), "shall" is changed to "does".

d. In paragraph (c), "§§ 417.130 through 417.137" is revised to read "§§ 417 930 through 417 937", and 'which" is changed to "that".

§ 417.937 [Amended]

76. In § 417 937, the following changes are made:

a. In paragraph (a), "§§ 417.130 through 417.137" is revised to read "§§ 417 930 through 417 937", and "shall" is changed to "will".

b. In paragraph (b), "shall" is changed to "will" (3 times), and "where" is changed to "if".

c. In paragraph (c), "shall" is changed to "will", and the phrase "sufficient to amortize" is revised to read "sufficient in amount to amortize".

M. Nomenclature Changes

1. In the following locations, the terms "member", "members", "member's", and "a member's" are changed to read "enrollee", "enrollees", "enrollee's", and "an enrollee's", respectively:

Sec.
417.102 (a) and (b).
417.103(a)(3)(ii)(C), (c)(2), (e)(1), (e)(2), and (e)(3).
417.104(a)(4) (5 times), (b)(1) (2 times), (b)(2)(i), (b)(4)(ii), and (c)(2).
417.105(a) and (b).
417.478(c).

2. In the following locations, the term "membership" is changed to "enrollment";

Sec.
417.104(a)(4)(ii).
417.158 (2 times).
417.540 heading and (a) and (b).

3. In the following locations, the term "eligible organization", in its singular, plural, and possessive forms, is changed to "HMO or CMP", "HMOs or CMPs" and "HMO's or CMP's", respectively; and the term "organization" in its singular, plural, and possessive forms is changed to "HMO or CMP", "HMOs or CMPs" and "HMO's or CMP's, respectively:

Sec.
417.412(b).
417.413(a), (b) heading, (b)(1), (b)(2), (b)(3), (b)(4) (2 times), (c) (2 times), (d)(1), (d)(2) (5 times), (d)(3) (3 times), (d)(4), (d)(5) (3 times), (d)(6) (4 times), (d)(7) (2 times), (e)(1), and (e)(2) (2 times).
417.416(a)(2 times), (c) (4 times), (d)(1), (d)(2), (e)(1), and (e)(2).
417.428(a) introductory text, (a)(1), (a)(4) (thrice), (b) introductory text, (b)(1), (b)(2) (thrice), (b)(3) (2 times), (b)(5) (2 times), and (c) (2 times).
417 430(a)(1), (a)(2), (b) introductory text, (b)(3), (b)(4)(i), (b)(4)(ii), (b)(6) introductory text (2 times), (b)(6)(i), (b)(6)(ii), (b)(7) and (b)(8)
417 432(a) (2 times), (b), (c), (e) (2 times).
417.434.
417 442 heading, (a) (thrice), (b) introductory text, and (b)(2).
417.454(a) and (b).
417.458 introductory text, (a), (b), and (c).
417.474(b).
417.480 heading, introductory text (2 times), (b)(1), and (b)(7).
417.481 heading and introductory text (2 times).
417.482 introductory text, (b), (c), (e), (f)(1) and (f)(2).
417 484(a) introductory text, (a)(1), (a)(3), and (b).
417 486 introductory text.
417.488 introductory text.
417 490 (2 times).
417.494 paragraphs (a)(1), (a)(2), (a)(3), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) (2 times), (b)(2) (2 times), (b)(3), (b)(4), (c) introductory text (2 times), (c)(1), (c)(2) (3 times), and (c)(3).
417.521(c)(1) (2 times) and (c)(2) (2 times).
417.524 heading, (a) (2 times) and (b) (3 times).
417.531(a), (b) introductory text and (b)(1).
417.532(a)(1), (a)(1)(iii), (a)(2), (a)(3) (2 times), (a)(4) (4 times), (b) heading, (b)(3) (4 times), (c) introductory text (2 times), (c)(2), (e) heading and introductory text, (e)(1), (f) (3 times), (g) (3 times), and (h) (3 times).
417.533 introductory text and (a).
417 534(a) (3 times) and (b).
417.538(a), (b), (c), and (d).
417.544 heading and (a).
417.546(a), (b)(1) (4 times) and (b)(2) (4 times).
417.552(a).
417 554 (3 times).
417.556 heading, (a), (b), (c) (2 times), and (d) (2 times).
417.558 heading, (a), (b) heading, (b)(1), and (b)(2) (2 times).
417.560(a) introductory text (5 times), (b) (3 times), (c) (2 times), (d) introductory text, (d)(1), and (d)(2) (3 times).
417.562(a), (b)(3), (c) introductory text, and (d).
417 564(a) (2 times), (b) introductory text, (b)(1) (2 times) and (b)(2) (2 times).
417.566(b)(1) and (b)(2).
417 568(a)(1) (2 times), (b)(1), (c) (3 times), (d) (3 times), and (e).
417.570(a)(1) (2 times), (b) (2 times), (c) introductory text, (c)(3), and (d).
417.572(a), (b) introductory text, (b)(2), (c)(1), and (c)(2).
417.574(a) (3 times) and (b).
417.576(a) (2 times), (b)(1) (2 times), (b)(2)(i) (2 times), (b)(2)(ii), (b)(3), (c)(1) (2 times), (c)(2) (10 times), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2) (3 times), and (e)(3).
417.584 heading, introductory text (2 times), (a) (2 times), (b)(2) (2 times), and (d) (3 times).
417.585(a), (b) introductory text, (b)(1), and (c).

417.586 section heading, (a), heading, (a)(1), (a)(2) (2 times), (a)(3), (b)(1) (2 times), (c) heading, (c)(1) (2 times), (d) (2 times), (e) introductory text (2 times), (e)(1), and (e)(2).

417.588(b) (2 times), (c)(1) (2 times) (c)(2) (2 times), and (c)(3).

417.596(a) (2 times), (b) (2 times), (c)(1), (c)(2) (3 times), (c)(3) and (d)(2).

417.608(a).

417.610(b)

417.616(a)(1), (c)(1), and (c)(2).

417.618.

417.620(b) introductory text (2 times), (b)(1) (2 times), and (b)(2) (3 times).

417.622(a).

417.632(c) (3 times).

417.634.

417.636(a) (2 times) and (b).

417.638.

417.644 (a), (b)(2) and (c).

417.656(a).

417.660(b) and (c).

417.662 (a).

417.664(a) and (b)(2).

4. Throughout part 417, "Public Health Service Act" is revised to read "PHS Act".

5. Throughout part 417, except in subpart V, "the Secretary" is changed to "HCFA", and the related pronouns are conformed.

6. In the following locations, "shall" is changed to "must":

Sec.

417.102(b) (2 times).

417.103(a)(1), (a)(3) (2 times), (b) introductory text, (d), and (e) introductory text.

417.104(a) introductory text, (b)(1) and (b)(2) (the second time the term appears), (d) and (e) introductory text.

417.105(b), (the first time the term appears).

417.156 introductory text (3 times) and paragraphs (a), (b) (3 times), and (c).

417.158.

417.915(a) (2 times).

417 919(a) and (b).

417.934 (2 times).

7. In the following locations, "shall" is changed to "will":

Sec.

417.104(b)(1) (the first time the term appears), (b)(2), and (b)(4).

417.105(b), (the second time the term appears).

8. In the following locations, "which" is changed to "that":

Sec.

417.102(a).

417.103(a)(1), (a)(3) (2 times).

417.104(a) introductory text, and paragraphs (b)(1) (3 times), (b)(2), (c)(1), and (d).

417.158 (3 times).

417 915(c).

417 919(a) (2 times) and (b).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 2, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–16437 Filed 7–14–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6989

[AK–932–4210–06; AA–51033]

Revocation of Executive Order No. 6546, Dated January 2, 1934; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order as it affects approximately 4.94 acres of public land withdrawn and reserved for the use of the Territory of Alaska for burial purposes. The site is known as the Sitka Pioneer Cemetery. The protection of a withdrawal is no longer needed for this land. The land continues to be subject to the terms and conditions of an overlapping withdrawal and remains closed to all forms of appropriation and disposition, except for location for metalliferous minerals and selection by the State of Alaska.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 6546, dated January 2, 1934, which withdrew public land for use as a burial site at the Sitka Pioneer Cemetery, is hereby revoked as it affects the following described lands:

Copper River Meridian

T. 55 S., R. 63 E.,

Beginning at corner No. 1, from which witness corner to corner No. 2, U S. Survey No. 1804, Alaska, bears S. 42°55′ E., 435.0 ft.; in approximate latitude 57°03′ N., longitude 135°20′ W.; thence from said point of beginning N. 67°35′ E., 263.6 ft. to corner No. 2; thence N. 0°09′ E., 279.9 ft. to corner No. 3; thence N. 59°07′ W., 383.3 ft. to corner No. 4; thence S. 82°10′ W., 324.7 ft. to corner No. 5; thence S. 37°19′ E., 670.0 ft. to corner No. 1, the place of beginning.

The area described contains approximately 4 94 acres.

2. Subject to the terms and conditions of Public Land Order No. 5186, the land described above remains closed to all forms of appropriation under the public land laws, including location and entry under the mining and mineral leasing laws, except for location for metalliferous minerals, 30 U.S.C. Ch. 2 (1988), and selection by the State of Alaska.

3. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act and section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. This selection will be adjudicated in accordance with 43 CFR 2627 and the land will remain closed to metalliferous mining until a further opening order is published.

Dated: July 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–16717 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM)

showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Mission Viejo (city), Orange County (FEMA Document No. 7061)	
Trabuco Creek:	
Approximately 4,200 feet upstream of Viejo Road	*239
Approximately 3,000 feet upstream of unnamed road	*255
Maps are available for review at City Hall, 26522 La Alameda, Suite 190, Mission Viejo, California.	
Orange (city), Orange County (FEMA Docket No. 7061)	
Alameda Storm Channel:	
Approximately 1,500 feet downstream of Hewes Street	None
At Hewes Street	None
At Linda Vista Street	None
At Jamestown Way	None
Approximately 500 feet upstream of Jamestown Way	None
Handy Creek:	
Approximately 1,900 feet downstream of Orange Park Boulevard	*401
Maps are available for review at City Hall, 300 East Chapman Avenue, Orange, California.	
Orange County (unincorporated areas) (FEMA Docket No. 7061)	
Aliso Creek:	
Just downstream of El Toro Road	*614
Approximately 600 feet upstream of El Toro Road	*625
Approximately 1,000 feet downstream of Normandale Road	*670
Just upstream of Normandale Road	*684
Approximately 6,600 feet upstream of Normandale Road	*784
Handy Creek:	
Approximately 1,700 feet downstream of Orange Park Boulevard	*401
Just downstream of Orange Park Boulevard	*431
Just downstream of Meads Avenue	*446
At Amapola Avenue	*472
Approximately 300 feet upstream of Amapola Avenue	*474
San Juan Creek:	
Approximately 1,920 feet downstream of Ortega Highway	*143
Just downstream of Ortega Highway	*160
Approximately 440 feet upstream of Ortega Highway	*171
Serrano Creek:	
Just upstream of Bake Parkway	*363
Just upstream of Trabuco Road	*438
Just upstream of Dimension Drive (channel/overbank)	*652/659
Approximately 370 feet downstream of Access Road (channel/overbank)	*676/680
Approximately 900 feet upstream of Access Road in the north overbank	#2
Approximately 1,300 feet downstream of Lake Forest Drive in the north overbank	#1

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 600 feet upstream of Lake Forest Drive in the north overbank	#2
Approximately 3,100 feet upstream of Lake Forest Drive	*791
Trabuco Creek:	
Approximately 1,000 feet upstream of Unnamed Road	*251
Approximately 3,000 feet upstream of the City of Mission Viejo corporate limits	*275
Approximately 3,050 feet upstream of the City of Mission Viejo corporate limits	None
Approximately 7,750 feet upstream of the City of Mission Viejo corporate limits	None
Maps are available for review at 400 Civic Center Drive, Building 12, Room 314, Santa Ana, California.	
Richmond (city), Contra Costa County (FEMA Docket No. 7063)	
Rheem Creek:	
At the confluence with San Pablo Bay	*6
Just upstream of Southern Pacific Railroad	*17
At Atchison, Topeka and Santa Fe Railroad Bridge	*21
Maps are available for review at the Building Regulations Department, 2600 Barrett Avenue, Richmond, California.	
San Juan Capistrano (city), Orange County (FEMA Docket No. 7061)	
San Juan Creek:	
Just downstream of the Atchison, Topeka and Santa Fe Railroad	*72
Just upstream of San Diego Freeway	*80
Just downstream of the confluence of Horno Creek	*88
Approximately 1,540 feet upstream of La Novia Avenue (streamside/landside of levee)	*112/110
Approximately 7,700 feet upstream of La Novia Avenue	*142
Trabuco Creek:	
Just downstream of the Atchison, Topeka and Santa Fe Railroad	*158
At Camino Capistrano	*189
At Viejo Road	*196
Approximately 4,050 feet upstream of Viejo Road	*238
Maps are available for review at City Hall, 32400 Paseo Adelanto, San Juan Capistrano, California.	
San Pablo (city), Contra Costa County (FEMA Docket No. 7063)	
Rheem Creek:	
Just upstream of Giant Highway	*24
Just upstream of 12th Street	*28
Along Giant Road from Standard Oil Tank to Rheem Creek:	
Rheem Creek Bridge at Giant Road	*26
At Miner Avenue	*28
Maps are available for review at the Building Department, Number One Alvarado Square, San Pablo, California.	
COLORADO	
Arapahoe County (unincorporated areas) (FEMA Docket No. 7061)	
Big Dry Creek:	
Approximately 2,000 feet downstream of East Dry Creek Road	*5,570
Approximately 70 feet upstream of East Dry Creek Road	*5,590
Just upstream of South Colorado Boulevard	*5,612
Approximately 400 feet upstream of South Colorado Boulevard	*5,620
Goldsmith Gulch:	
Approximately 750 feet downstream of East Orchard Road	*5,643
Just upstream of East Orchard Road	*5,670
At East Maplewood Avenue	*5,696
Just downstream of East Arapahoe Road	*5,769
Piney Creek:	
Approximately 650 feet upstream of the confluence with Cherry Creek	*5,627
Just upstream of South Parker Road	*5,643
At South Ouray Street extended	*5,680
Approximately 13,700 feet upstream of South Parker Road	*5,733
Willow Creek downstream of Englewood Dam:	
Just downstream of South Holly Street	*5,538
Just upstream of East Arapahoe Road	*5,542
Approximately 2,260 feet upstream of East Arapahoe Road	*5,555
Willow Creek upstream of Englewood Dam:	
Approximately 250 feet downstream of East Dry Creek Road	*5,603
Approximately 200 feet upstream of East Dry Creek Road	*5,612
Just upstream of South Quebec Street	*5,644
Just upstream of East Mineral Drive	*5,670
Just downstream of County Line Road (State Highway 470)	*5,717
Maps are available for review at the Department of Engineering and Planning, 5434 South Prince Street, Littleton, Colorado.	
Larimer County (unincorporated areas) (FEMA Docket No. 7061)	
Boxelder Creek:	
Approximately 3,600 feet downstream of State Highway 14	*4,916
Just upstream of Vine Drive	*4,963
At County Road 50	*4,984
At County Road 52	*5,018
Just upstream of County Road 54	*5,049
Just upstream of County Road 56	*5,082
Approximately 50 feet downstream of County Road 58	*5,110
Just upstream of County Road 60	*5,148
Approximately 50 feet downstream of County Road 62	*5,180
Approximately 3,200 feet upstream of County Road 64	*5,226
Boxelder Creek Overflow Channel:	
Approximately 1,800 feet downstream of State Highway 14, at the convergence with Boxelder Creek	*4,917
Approximately 1,700 feet upstream of Vine Drive	*4,967
Just downstream of County Road 50	*4,995
At County Road 52	*5,020
Approximately 3,000 feet upstream of County Road 52	*5,033
Boxelder Creek Left Overbank Divided Flow At Indian Creek:	
At the convergence with Boxelder Creek	*5,115
Approximately 3,500 feet upstream of the convergence with Boxelder Creek	*5,130
Approximately 6,000 feet upstream of the convergence with Boxelder Creek	*5,139

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at Larimer County Engineering Department, 218 West Mountain Avenue, Fort Collins, Colorado.	
Larimer County (unincorporated areas) (FEMA Docket No. 7061)	
Cache La Poudre River:	
At Larimer-Weld County Line Road	*4,788
Just upstream of Larimer County Road 32 East	*4,800
At Greeley Canal #2 Diversion Structure	*4,817
Just upstream of Harmony Road	*4,842
At Horsetooth Road	*4,855
Cache La Poudre River—Interstate Highway 25 Divided Flow:	
At the confluence with the Cache La Poudre River	*4,818
At Larimer County Road 36 East	*4,833
Approximately 2,250 feet upstream of Harmony Road, at the divergence from the Cache La Poudre River	*4,850
Maps are available for review at the Larimer County Engineering Department, 218 West Mountain Avenue, Fort Collins, Colorado.	
NEVADA	
Reno (city), Washoe County (FEMA Docket No. 7061)	
Dry Creek/Boynton Slough:	
Just upstream of East McCarran Boulevard	*4,393
Just downstream of Peckham Lane	*4,414
Approximately 1,500 feet downstream of South Virginia Street	*4,452
*Approximately 600 feet upstream of Huffacker Lane	*4,490
At Panorama Drive	*4,513
Maps are available for review at the Community Development Engineering Department, 450 Sinclair Street, Third Floor, Reno, Nevada.	
Washoe County (unincorporated areas) (FEMA Docket No. 7061)	
Dry Creek/Boynton Slought:	
Just upstream of East McCarran Boulevard	*4,393
Approximately 500 feet upstream of South McCarran Boulevard	*4,425
Approximately 350 feet downstream of South Virginia Street	*4,460
Approximately 100 feet upstream of Dieringer Drive	*4,536
Approximately 1,400 feet upstream of Holcomb Lane	*4,649
Truckee River:	
Approximately 1,250 feet upstream of Mustang Ranch Road No. 2	*4,326
Approximately 4,500 feet upstream of Mustang Ranch Road No. 1	*4,340
Approximately 1,800 feet upstream of State Highway 45	*4,361
Maps are available for review at the Washoe County Department of Public Works, 1001 East 9th Street, Reno, Nevada.	
NEW YORK	
Yorktown (town), Westchester County (FEMA Docket No. 7061)	
Shrub Oak Brook:	
Approximately 0.3 mile upstream of Barger Street	*423
Approximately 0.2 mile upstream of U.S. Route 6	*425
Maps available for inspection at the Yorktown Town Hall, 363 Under Hill Avenue, Yorktown Heights, New York.	
NORTH DAKOTA	
Grafton (city), Walsh County (FEMA Docket No. 7063)	
Park River:	
At Field Road extended, approximately 6,660 feet downstream of Burgamott Avenue	*824
At Burgamott Avenue	*824
Just downstream of Hill Avenue extended	*830
Approximately 8,020 feet upstream of Kittson Avenue	*831
Maps are available for review at the Department of Public Works, City of Grafton, 5 East Fourth Street, Rolla, North Dakota.	
OHIO	
Arcanum, Village (Darke County) (FEMA Docket No. 7061)	
Painter Creek:	
At downstream corporate limits	*1,042
Approximately 1,800 feet upstream of upstream corporate limits	*1,049
Maps available for inspection at the Arcanum Village Hall, 104 West South Street, Arcanum, Ohio.	
PENNSYLVANIA	
Bensalem (township), Bucks County (FEMA Docket No. 7057)	
Neshaminy Creek:	
Approximately 600 feet downstream of Hulmeville Road	*30
Approximately 0.5 mile upstream of Hulmeville Road	*35
Maps available for inspection at the Code Enforcement Office, 2400 Byberry Road, Bensalem, Pennsylvania.	
Hulmeville (borough), Bucks County (FEMA Docket No. 7057)	
Neshaminy Creek:	
Approximately 1,100 feet downstream of Hulmeville Road	*29
At Hulmeville corporate limits	*34
Maps available for inspection at the Hulmeville Borough Hall, 517 Lincoln Avenue, Hulmeville, Pennsylvania.	
SOUTH DAKOTA	
Fort Pierre (city), Stanley County (FEMA Docket No. 7061)	
Bad River:	
Approximately 200 feet above mouth	*1,431
At U.S. Highway 83	*1,439
Just downstream of the second crossing of Chicago & Northwestern Railway, from the mouth going upstream	*1,445
Approximately 800 feet upstream of Chicago & Northwestern Railway	*1,447
Maps are available for review at City Hall, City of Fort Pierre, 8 East Second Avenue, Fort Pierre, South Dakota.	
TEXAS	
Wichita Falls, City (Wichita County) (FEMA Docket No. 7055)	
Wichita River:	
Approximately 1.9 miles downstream of River Road	*938
Approximately 1.5 miles upstream of confluence of Plum Creek	*954

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Holliday Creek:	
At the confluence with Wichita River	*939
At upstream corporate limits	*982
Holliday Creek Tributary A:	
At confluence with Holliday Creek	*939
Approximately 150 feet downstream of north access road and Central Freeway	*974
Lake Wichita Tributary:	
Approximately .4 mile upstream of confluence with Lake Wichita	*998
Approximately 600 feet upstream of Briargrove Drive	*1,012
McGrath Creek:	
At the confluence with Holliday Creek	*944
Approximately 100 feet downstream of Hughes Drive	*985
McGrath Creek Tributary A (previously called McGrath Creek Tributary):	
At confluence with McGrath Creek	*969
Approximately 0.19 mile upstream of McNeil Avenue	*996
McGrath Creek Tributary B:	
Confluence with McGrath Creek Tributary A	*973
Approximately 0.15 mile upstream of Garfield Street	*987
East Plum Creek:	
Confluence with Wichita River	*941
Approximately 300 feet upstream of Fort Worth & Denver Railway bridge	*952
Plum Creek:	
Approximately .4 mile upstream of confluence with Wichita River	*952
Approximately 0.27 mile upstream of Central Freeway	*1,024
Brenda Hursh Creek:	
At confluence with Holliday Creek	*941
Approximately 650 feet upstream of Dunbarton Road	*969
Brenda Hursh Channel:	
At the confluence with Brenda Hursh Creek	*956
Approximately 100 feet downstream of Weeks Street	*956
Holliday Creek Old Channel:	
At the confluence with Holliday Creek	*961
Maps available for inspection at the Planning Department, room 401, Wichita Falls City Hall, 1300 7th Street, Wichita Falls, Texas.	
VIRGINIA	
Bristol (city), Independent City (FEMA Docket No. 7063)	
Little Creek:	
Upstream side of State Street	*1,670
0.85 mile upstream of Church Street	*1,727
Maps available for inspection at the Department of Community Development and Planning, 1201 Oakview Avenue, Bristol, Virginia.	
WASHINGTON	
Wenatchee (city), Chelan County (FEMA Docket No. 7061)	
Dry Gulch:	
At the intersection of Oak Street and Splatt Street	*41
500 feet south along Seneca Avenue from its intersection with Crawford Street	*81
Maps are available for review at the City of Wenatchee, Department of Planning and Development, 25 North Worthen, Wenatchee, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 7, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-16768 Filed 7-14-93; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-129; RM-7084, RM-7290, RM-7413]

Radio Broadcasting Services; Columbia and Dothan, AL; Graceville, Santa Rosa Beach and Springfield, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273C3 for Channel 273A at Dothan, Alabama, and modifies the license for Station WESP (FM) accordingly; and allots Channel 221A to Columbia, Alabama, as that community's first local FM service, at the request of Broadcast Associates, Inc., and Columbia Broadcasting Group, respectively. See 55 FR 10789, March 23, 1990. Channel 273C3 can be allotted to Dothan in compliance with the Commission's minimum distance separation requirements with a site restriction 5.9 kilometers (3.7 miles) east in order to avoid a short-spacing to Station WAMI (FM), Channel 272A, Opp, Alabama. The coordinates for Channel 273C3 at Dothan are North Latitude 31-14-40 and West Longitude 85-20-10. Channel 221A can be allotted to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction 6.1 kilometers (3.4 miles) east in order to avoid a short-spacing to Station WLWI (FM), Channel 222C, Montgomery, Alabama. The coordinates for Channel 221A at Columbia are North Latitude 31-17-00 and West Longitude 85-03-00. With this action, this proceeding is terminated.

DATES: Effective August 23, 1993. The window period for filing applications for Columbia, Alabama, will open on August 24, 1993, and close on September 23, 1993.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-129, adopted June 16, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Columbia, Channel 221A, and by removing Channel 273A and adding Channel 273C3 at Dothan.

VOL
58
ISS
134
15
1993
JL
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Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16833 Filed 7-14-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-84; RM-8194]

Radio Broadcasting Services; Asbury, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 278C3 for Channel 278A at Asbury, Missouri, and modifies the construction permit for Station KWXD to specify operation on Channel 278C3 in response to a petition filed by William Bruce Wachter. See 58 FR 16643, March 30, 1993. The coordinates for Channel 278C3 at Asbury are 37-23-44 and 94-40-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commissioner's Report and Order, MM Docket No. 93-84, adopted June 17, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 278A and adding Channel 278C3 at Asbury.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16834 Filed 7-14-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[PP Docket No. 93-21, FCC 93-333]

Implementation of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Interim Report.

SUMMARY: This Interim Report was issued pursuant to section 26 of the Cable Television Consumer Protection and Competition Act of 1992, which requires that the Commission issue an Interim Report to Congress on or before July 1, 1993, regarding the migration of video sports programming from broadcast television to subscription television. The Interim Report summarizes the views of broadcasters, cable companies, sports teams and leagues and other commenters that responded to the Commission's Notice of Inquiry in this proceeding. The Interim Report makes no specific legislative or regulatory recommendations at this time. Such recommendations will be made, if appropriate, in the Commission's Final Report to Congress, which is to be issued on or before July 1, 1994.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Interim Report in PP Docket No. 93-21, adopted June 24, 1993, and released July 1, 1993. The complete text of this Interim Report is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., room 140, Washington, DC 20037.

Synopsis of Interim Report

1. The Interim Report to Congress analyzes the migration of sports programming from broadcast television to subscription services such as basic cable, pay cable and pay-per-view. The Interim Report summarizes data received in response to the Commission's Notice of Inquiry in this proceeding (58 FR 8248 (2/12/93)) and offers tentative findings. The Commission finds in the Interim Report that the majority of parties commenting in this proceeding, including cable programmers and sport entities, believe that sports programming has not migrated from broadcast to cable television. On the other hand, the Commission notes that a few commenters assert that the trend in distribution of sports programming has been away from broadcast television, particularly at the local level. Those commenters submit that this is detrimental to independent broadcast stations as well as members of the public who do not subscribe to cable television.

2. In its Notice of Inquiry in this proceeding, the Commission focussed on changes in the telecasting of four professional and two college sports since 1980—professional football, basketball, baseball and hockey, and college football and basketball. In the Interim Report, the Commission considers each sport in terms of national and local exposure, and in terms of regular season and post-season play. With respect to professional football, the Commission notes that all National Football League (NFL) games are shown on broadcast television, either nationally or regionally, including those that are concurrently shown on cable networks. Accordingly, the Commission tentatively concludes, NFL games have not migrated from broadcast to cable television.

3. With respect to the other professional sports, the Commission notes that a number of regular season National Basketball Association (NBA), Major League Baseball (MLB) and National Hockey League (NHL) games are shown on local cable sports channels. The Commission concludes that it appears that the majority of those games are home games and would therefore not normally be broadcast over-the-air due to sports blackout restrictions, although the record shows some migration of MLB games in local markets. In addition, the Commission notes that most post-season NBA games and all post-season MLB games are shown on broadcast television, but that a number of post-season NHL games are telecast on cable. The Interim Report points out that commenters argue that this is due to hockey's more limited audience appeal as compared with the other sports. The Interim Report also states that the Commission will seek additional information about trends in local markets for professional baseball

and hockey before issuing its Final Report.

4. With respect to college basketball, the Commission notes that all games of the NCAA men's Final Four Tournament, college basketball's premier event, are shown on broadcast television and therefore cannot be said to have migrated to cable. With respect to college football, commenters do not contend that games previously broadcast have migrated to cable television. Rather, they contend that preclusive contracts between telecasters and the various college football conferences limit the number of college football games available for broadcast by local over-the-air stations. Section 26 of the 1992 Cable Act specifically directs the Commission to investigate the existence and prevalence of such preclusive contracts. The Commission states that the record of this proceeding indicates that arrangements between the college football conferences and ABC, ESPN and regional cable sports networks may have a preclusive effect on the televising of games by local broadcast stations. The Interim Report therefore states the Commission's intention to request further information regarding such preclusive contracts at a later date.

5. The Interim Report also summarizes commenters' views regarding the future of sports programming. In general, cable and sports entities contend that broadcast television will continue to play a primary role in the distribution of sports programming. They also submit that new technologies will increase consumer choice, that retransmission consent revenues may enable broadcasters to better negotiate for cable entities for the purchase of sports programming, and that the current sports antitrust exemptions should not be revised.

6. Finally, the Commission states that it will issue a Further Notice of Proposed Rule Making in anticipation of its July 1, 1994, Final Report. In that Further Notice, the Commission expects to seek additional information on league changes and new broadcasting arrangements for the NBA, MLB and the NHL. The Commission will also request further data regarding preclusive contracts, local college football and basketball telecasts, and the cost of subscribing to the various cable sports services.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–16835 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

VOL
58
ISS
134
JL
15
1993
UMI

Proposed Rules

Federal Register
Vol. 58, No. 134
Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 90-001A]

RIN 0583-AB29

Determining the Amenability of Birds to Mandatory Federal Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting comments, information and recommendations on what criteria FSIS should use to determine if birds other than those listed in the poultry products inspection regulations issued under the Poultry Products Inspection Act should be subject to mandatory Federal inspection. This action responds to increased interest in raising birds other than chickens, turkeys, ducks, geese and guineas, and a need for FSIS to determine their amenability to Federal inspection requirements under the Poultry Products Inspection Act.

DATES: Comments must be received on or before: October 13, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to: Ralph E. Stafko at (202) 720–8168. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Ralph E. Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–8168.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this Notice. Written comments should be sent to the Policy Office at the address shown above. Please include docket number 90–001A in your comments. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act should make a request to Mr. Stafko at (202) 720–8168 so that arrangements can be made for such views to be presented. All comments submitted in response to this Notice will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and 1:30 p.m. and 4 p.m., Monday through Friday.

Background

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), defines poultry subject to inspection as "any domesticated bird whether live or dead" (21 U.S.C. 453(e)). The PPIA does not contain a definition of "domesticated bird." The poultry products inspection regulations define poultry to be "any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead" (9 CFR 381.1(b)(40)). While a review of the legislative history of the PPIA does not provide a definition as to what Congress intended "domesticated" to mean, it does clearly indicate that commercially produced gamebirds were not to be covered and subject to mandatory inspection. The legislative history indicates that gamebird breeders were usually small operators, who slaughtered by hand or might require special adjustments in equipment for such slaughter, and that the market was a seasonal one and came at peak processing time. The legislative history indicates that for these and other reasons, Congress chose to exclude them from coverage under the Act.

By comparison, the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), delineates the specified species, i.e., cattle, sheep, swine, goats, horses, mules, and other equines for which inspection is required. These same species are listed in the definition of livestock in 9 CFR 301.2(qq). Under the FMIA, there is no mandate to distinguish between domesticated or wild variants of the listed amenable species.

Products determined to be nonamendable to either the FMIA or PPIA are subject to the Federal Food, Drug and Cosmetic Act (FFDCA) and fall under the jurisdiction of the Food and Drug Administration (FDA). Thus, products of animals (e.g., deer or bear) or birds not currently listed in the regulations (e.g., ostriches, pheasants) are covered by the FFDCA. However, USDA provides voluntary inspection of water buffalo, deer, rabbits, squabs, gamebirds and other nonamenable species, on a fee for service basis, under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).

Previous Species Amenability Determinations

Determinations of amenability of species under the FMIA have raised few problems. The express listing of amenable species has enabled the Agency to make decisions on amenability based on physical observation and biological data. For example, beefalo, which are ⅛ buffalo, ⅞ bovine, and are virtually identical in physical appearance to other bovine, have been found to be amenable to Federal inspection. Cattalo, which are ½ buffalo and ½ bovine, were deemed not amenable because of the cattalo's buffalo-like appearance and behavior.

In 1984, FSIS received inquiries from a foreign government and domestic wild game producers regarding the amenability of wild sheep and wild boar to inspection. After review, both species were determined to be amenable because swine and sheep are expressly listed by the FMIA as requiring inspection. FSIS had adhered to a literal reading of the FMIA in making these determinations. For all determinations under the FMIA, the sole issue is whether the animal is a member of the species listed, regardless of whether it is raised in the wild or on the farm—wild sheep and wild boar raised or not raised in captivity are considered amenable; deer and antelope raised or not raised in the wild are considered nonamenable.

Unfortunately, amenability decisions under the PPIA have been more difficult to reach than those under the FMIA because the amenable species of birds are not specifically listed in the PPIA. Rather, as noted earlier, Congress, when passing the PPIA, indicated only that "poultry" means any domesticated bird, whether live or dead.

Congress did not list the kinds of birds that were considered to be "domesticated," but USDA has defined "poultry," in the poultry products inspection regulations, as being certain

listed birds. This was done in an attempt to reflect the intent of Congress not to cover commercially produced gamebirds. Consequently, unlisted kinds of birds, even if commercially produced, would not be amenable to inspection and listed kinds of birds, even if raised unconventionally, would be considered amenable.

Regarding gamebirds, the legislative history of the PPIA indicates that commercially-produced gamebirds were not covered by the PPIA and subject to mandatory Federal inspection. However, Congress did not define "gamebirds." The Agency has interpreted Congress' use of the word "domesticated" in the PPIA to include only those birds which are traditionally raised in captivity for human consumption, i.e., chickens, turkeys, ducks, geese and guineas. Commercially produced gamebirds, such as pheasant, quail and partridge, have not been considered as subject to inspection, in accordance with the legislative history of the PPIA.

Amenability of Wild Turkeys and Other Poultry

A few years ago, FSIS became aware of an operation which produces "wild turkeys" for slaughter, processing and sale in interstate commerce. FSIS was requested by Toubl Gamebird Farms, Beloit, Wisconsin, (the operation in question), to declare "wild turkeys" nonamenable to mandatory inspection under the PPIA on the grounds that a wild turkey is a gamebird even when raised in captivity, and thus is not a domesticated bird. It was stated that the PPIA only covers "domesticated" birds and, therefore, does not apply to "wild turkeys." Toubl Gamebird Farms submitted information from an individual, who indicated he was an avian specialist, who attested that wild turkeys are genetically different from domesticated turkeys. Similar correspondence from other gamebird farmers and the North American Gamebird Association, Inc., reflects agreement with Toubl Gamebird Farms concerning the nonamenability of wild turkeys which are raised in captivity.[1] After considering this matter, however, FSIS determined that the processed turkeys had to be federally inspected under the PPIA. This determination was based on the view that the turkeys were not commercially produced gamebirds, but were turkeys raised in captivity, and, therefore, they were considered to be "domesticated turkeys" required to be inspected under the PPIA.

In addition to the question of the amenability of wild turkeys, FSIS is currently faced with questions about the amenability of other kinds of birds. FSIS has received inquiries about inspection from producers of ostriches, emus, rheas and mallard ducks. FSIS has made an initial determination that ostriches, emus and rheas are not amenable because, although raised in captivity, they are not poultry, i.e., chickens, turkeys, ducks, geese or guineas, as defined in the regulations. Conversely, in the case of mallard ducks, the Agency has determined that mallard ducks are amenable because they are ducks raised in captivity. A breed of fowl that is becoming increasingly popular in the Western United States is an Asiatic-derived bantam chicken known as "silkie fowl." Silkie fowl resemble the cornish hen breed in weight and size, but their skin, bone, viscera and blood vessels have a bluish-black pigmentation. FSIS has determined that silkie fowl are chickens and, thus, must be inspected.

A variety of birds other than the species listed in the regulations is being produced for food purposes, and the volume of production of those species is expected to increase. FSIS needs to make a determination whether or not those birds are "domesticated birds," and whether or not they are covered by the PPIA. In reviewing this matter, FSIS intends to consider: public health, precedent, legislative history, potential impacts on producers and processors, limited inspection resources, and the adequacy of alternative regulatory approaches that are consistent with the PPIA and the FFDCA.

Need for Objective Criteria

Consistent and predictable amenability determinations of birds have been difficult in the absence of a definition of "domesticated bird" in the PPIA and regulations issued thereunder. The need for such a definition, and for a reassessment of the criteria used for making amenability determinations, is becoming increasingly apparent in light of continuing advancements in genetic engineering, increasing public interest in consumption of birds other than those traditional poultry species, and increasing Agency workloads caused by growing consumption of poultry. Standardized definitions and criteria will promote fairer, more efficient and effective decisionmaking and will provide more consistent precedents and clearer guidance for both program personnel and affected parts of the food industry.

Request for Comments

FSIS is soliciting comments, information and recommendations in the following areas:

- Definitions of "domesticated" and "commercially produced game birds;"
- The criterion(a) FSIS should use in making amenability determinations regarding whether a bird is amendable to the requirements of the PPIA. Currently, under the PPIA, FSIS inspects only certain birds which are raised in captivity for human consumption, i.e., chickens, turkeys, ducks, geese and guineas;
- The kinds and numbers of birds, other than the species currently listed in the PPIA regulations, now being produced for human consumption;
- The kinds of birds, other than the species currently listed in the PPIA regulations, that may be produced for human consumption in the future;
- Any other comments or recommendations on the subject of determining amenability of birds to the PPIA.

The preamble to any proposed regulation would include a discussion of the comments received in response to this notice.

Done at Washington, DC, on July 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 93–16784 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–DM–M

[1] All documents referred to in this paragraph are available from the United States Department of Agriculture, Food Safety and Inspection Service, room 3171 South, 14th and Independence Avenue SW., Washington, DC 20250.

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB46

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) proposes to amend the regulation regarding the content of borrower rights notices for distressed loans. The FCA has learned that the foreclosure language requirement may unnecessarily offend borrowers. Therefore, the proposed regulation will no longer require that Farm Credit System institutions include a reference to foreclosure when notifying borrowers that their distressed loans may be suitable for restructuring.

DATES: Comments must be submitted on or before August 16, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to

VOL
58
ISS
134
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Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, or James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 (Pub. L. 100–233) enacted on January 6, 1988, amended the Farm Credit Act of 1971 (Act) to establish additional borrower rights. Final regulations on borrower rights (12 CFR parts 614, 615, and 618) were published on September 14, 1988, (54 FR 35427) and became effective on October 14, 1988. Section 614.4516 requires that the lender notify a borrower that its loan is or has become a "distressed loan" as defined in the Act, and may be suitable for restructuring. On the determination that a loan is or has become distressed, the present regulation also requires that the lender notify the borrower that the alternative to restructuring may be foreclosure.

The FCA has learned that the foreclosure language requirement may unnecessarily offend borrowers. The foreclosure language was included in § 614.4516 to ensure that borrowers whose loans are distressed will be informed that their loans could be subject to foreclosure unless they take positive action, such as filing an application for restructuring. The FCA now believes that the reference to "foreclosure" should be optional. Borrowers with distressed loans will still receive adequate warning of the possibility of foreclosure, since § 614.4519(a) requires that a qualified lender notify the borrower, not later than 45 days before commencing foreclosure proceedings, that the alternative to restructuring may be foreclosure. The FCA proposes to amend § 614.4516 to allow qualified lenders latitude in the timing of the foreclosure notification.

Comments are sought on § 614.4516.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

2. Section 614.4516 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 614.4516 Restructuring procedures.

(a) *Notice.* When a qualified lender determines that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The qualified lender shall include with such notice:

* * * * *

Dated: July 10, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–16831 Filed 7–14–93; 8:45 am]

BILLING CODE 6705–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32609; File No. S7–21–93]

RIN 3235–AF91

Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments.

SUMMARY: The Commission is proposing for comment, amendments to its broker-dealer record preservation rule that would allow broker-dealers to employ, under certain conditions, optical storage technology to maintain records required to be retained. The Commission also is proposing that this rule be amended to codify a staff interpretation that allows broker-dealers to use microfiche for record-retention purposes.

DATES: The requested written data, views, arguments and/or comments must be received on or before September 13, 1993.

ADDRESSES: People wishing to submit written data, views, arguments and/or comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. All written data, views, arguments and/or comments should refer to File No. S7–21–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, or Julius R. Leiman-Carbia, Special Counsel, Office of Capital Markets and Financial Responsibility, Division of Market Regulation, Securities and Exchange Commission at (202) 272–2904 or –2824.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") requires registered broker-dealers to make, keep, furnish and disseminate reports prescribed by the Commission "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of" the Exchange Act.[1]

Rules 17a–3 and 17a–4 under the Exchange Act[2] specify minimum requirements with respect to the business records which must be made by broker-dealers as well as the periods during which such records and other documents relating to the broker-dealer's business must be preserved. For the most part, records preserved pursuant to these rules must be kept in an easily accessible place for two years.[3] Some records, however, must be preserved for three years[4], others for six

[1] 15 U.S.C. 78q(a)(1).
[2] 17 CFR 240.17a–3 and 240.17a–4.
[3] 17 CFR 240.17a–4(a)(1).
[4] 17 CFR 240.17a–4(b).

years[5] and those that concern the legal existence of the broker-dealer (*e.g.*, partnership articles, minute books, stock certificate books) must be preserved during the life of the broker-dealer and its successors.[6]

Until 1970, paper was the sole medium for the preservation of the records required under Rules 17a–3 and 17a–4. In 1970, Rule 17a–4 was amended to permit records to be immediately produced on microfilm as an original form of record-keeping.[7] This amendment allowed for the use of microfilm provided that the following conditions set forth in paragraph (f) of Rule 17a–4 are met:

1. At all times the broker-dealer has available, for Commission examination of his records, pursuant to Section 17(a) of the Exchange Act, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

2. The broker-dealer arranges the records and their index, and files the films in such a manner as to permit the immediate location of any particular record;

3. The broker-dealer is ready at all times to provide, and immediately provides, any facsimile enlargement which the Commission by its examiners or other representatives may request, and

4. The broker-dealer stores separately from the original one other copy of the microfilm for the time required.[8]

In 1979, the Commission's staff interpreted Rule 17a-4 to include microfiche as well as microfilm for record-keeping purposes, provided that the requirements of Rule 17a–4(f) were satisfied.[9]

B. Technical Aspects

1. Microfiche

Microfiche and microfilm are similar record-keeping media that photographically reduce the size of document images. Like microfilm, microfiche can store computer generated documents. Microfiche stored images, however, appear on a sheet of film, rather than on spooled film as with microfilm.

2. Optical Storage Technology

Optical storage technology allows for digital data recording in a non-rewriteable, non-erasable format, such as write once, read many ("WORM"), which provides a non-alterable, permanent record storage medium. Non-rewriteable optical storage records digital information by employing a laser heat source to burn a pattern on a metallic film on a disk surface that can hold billions of bytes of data ("optical disk"). This disk is removable from the hardware necessary for the optical storage function.

When using optical disk storage in the non-rewriteable format, any record, be it computer generated (such as a computer report) or electronically digitized (such as from paper or micrographics), can be permanently recorded for long term computer based management and access.

II. Proposed Amendments and Discussion

While industry representatives have argued that the use of optical disk technology will represent cost savings for broker-dealers,[10] they concede that the use of any technology employing media other than paper for the preservation of records must be conditioned with safeguards against erasability, and with provisions for the immediate verification of the stored information and for back-up facilities.

These conditions are especially necessary when, as is the case with optical disks, the technology is relatively new and there appears to be no current set industry standard for the development of optical disk technology and for compatibility among the different optical disk systems. In the case of optical disks, additional conditions appear to be necessary to ensure that the documents etched into the disk are indexed and may be downloaded by examiners from either the Commission or the self-regulatory organizations ("SROs") or by third persons available to the examiners.

The proposed amendments require that broker-dealers using optical disk storage systems employ non-rewriteable, non-erasable technology. The use of this technology ensures that the information stored in optical disks can not be modified or removed from the optical disk without detection. As an additional protection, the proposed amendments would require that broker-dealers create duplicate copies of optical disks containing records, serialize original and duplicate optical disks, and time-date the information placed on optical disks.

To ensure full access to records during regular examinations, broker-dealers utilizing optical disk technology will be required to index optical disks and place the index on the optical disks. To facilitate review of the information preserved, broker-dealers also will be required to have downloading capacity so that records kept on optical disks may be promptly downloaded onto an alternate medium such as paper, microfilm or microfiche.

The proposed conditions also are designed to provide access to information preserved in optical disks when the broker-dealer is no longer operational, when the broker-dealer refuses to cooperate with the investigative efforts of the Commission or the SROs, or when the optical disk has not been properly indexed as to its entire contents. Accordingly, broker-dealers would be required to preserve, keep current and surrender upon request the information necessary to download records stored in optical disks.[11] In addition, at least one third party, who has the ability to download information from the broker-dealer's optical disk to another medium, must file representations with the Commission to ensure and facilitate the downloading into an alternate medium of the information kept in the broker-dealer's optical storage system.

Currently, the Commission requires the submission of similar third party representations when the records preserved pursuant to Rules 17a–3 and 17a–4 are prepared or maintained on behalf of the broker-dealer by an outside service bureau, depository, bank or other record-keeping service.[12] Like the representations currently required by the Commission, the proposed representations regarding optical disk storage are intended to ensure cooperation by third parties.

III. Request for Comments

The Commission invites interested persons to submit written data, views, arguments and/or comments on the proposed amendments.

Substantial questions have been raised regarding the adequacy of optical disk technology to preserve handwritten records or records that contain handwritten text. It has been suggested

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[5] 17 CFR 240.17a–4(a) & (c).

[6] 17 CFR 240.17a–4(d).

[7] Securities Exchange Act Rel. No. 8873 (April 30, 1970), 35 FR 7643 (May 16, 1970).

[8] 17 CFR 240.17a–4(f).

[9] Letter to Mr. Robert F. Price, Alex. Brown & Sons, from Nelson S. Kibler, Assistant Director, Division of Market Regulation, Commission (November 3, 1979).

[10] The Securities Industry Association ("SIA") estimates that the cost savings that would result if a broker-dealer were to convert from a paper or microfilm record retention system to optical disk technology run from $250,000 a year for a medium-sized broker-dealer to more than $1.6 million a year for a large firm. Letter from Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, SIA, to Michael Macchiaroli, Assistant Director, Division of Market Regulation, Commission (May 19, 1992).

[11] In the alternative, broker-dealers who use outside service bureaus to preserve records may place in escrow and keep current a copy of the information necessary to access the format (*i.e.*, the logical layout) of the optical disks and to download records stored in optical disks.

[12] 17 CFR 240.17a–4(i).

VOL 58 ISS 134 JL 15 1993 UMI

that from the standpoint of examinations and discovery for judicial and quasi-judicial purposes, optical disk images (as well as microfilm or microfiche images) make very difficult the detection of alterations made to handwritten records and to records containing handwritten text. The Commission, therefore, is concerned about the use of microfilm, microfiche and optical disk technology to preserve these records, and requests comments on the advisability of preserving handwritten records and records containing handwritten text in hard copy.

IV. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 630, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") concerning the proposed amendments. The analysis notes that the objective of the proposed rule amendments is to allow broker-dealers to employ optical disk technology for record retention purposes under 17 CFR 240.17a–4.

The proposed amendments do not alter the regulatory requirement for broker-dealers using currently accepted media for record retention purposes (i.e., microfilm, microfiche or paper). Instead, the proposal expands the record retention media by allowing broker-dealers to utilize optical disk technology to store records required under 17 CFR 240.17a–3 and 240.17a–4. Accordingly, the proposed amendments will not change the impact of current regulatory record preservation requirements on "small business[es]" or "small organization[s]," as those terms are defined in 17 CFR 240.0–10(c), subject to Rule 17a–5.

A copy of the IRFA may be obtained by contacting Julius R. Leiman-Carbia, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, tel: (202) 272–2824.

V. Statutory Analysis

The amendments are proposed pursuant to the authority conferred on the Commission by section 17(a)(1) of the Exchange Act.

List of Subjects in 17 CFR Part 240

Brokers; Reporting and record-keeping requirements; Securities.

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

2. § 240.17a–4 is amended by revising paragraph (f) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

(a) * * *

(f) The records required to be maintained and preserved pursuant to §§ 240.17a–3 and 240.17a–4 may be immediately produced or reproduced on microfilm, microfiche or, by means of optical storage technology, on an optical disk, and be maintained and preserved for the required time in that form.

(1) If such microfilm, microfiche or optical storage substitution for hard copy is made by a member, broker or dealer, it shall:

(i) At all times have available, for examination of its records by the staffs of the Commission and the self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection of microfilm, microfiche or optical storage images and for producing easily readable facsimile enlargements of such images,

(ii) Arrange the records and indexes, and file the films and optical disks in such a manner as to permit the immediate location of any particular record,

(iii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission by its examiners or other representatives may request, and

(iv) Store separately from the original, in an off-site location, a duplicate copy of the microfilm, microfiche or optical disk for the time required.

(2) If optical storage substitution for hard copy is made by a member, broker or dealer, it shall comply with the following requirements in addition to the requirements of paragraph (f)(1) of this section:

(i) The member, broker or dealer must notify its examining authority designated pursuant to section 17(d) of the Act prior to employing optical storage technology for record-retention purposes.

(ii) The member, broker or dealer must preserve the records employing optical storage technology that:

(A) Preserves the records exclusively in a non-rewriteable, non-erasable format;

(B) Verifies automatically the quality and accuracy of the optical storage recording process;

(C) Duplicates in a separate optical disk all information originally preserved and maintained by means of optical storage technology;

(D) Serializes original and duplicate optical disks, and time-dates permanently the information placed on such optical disks, and

(E) Has the capacity to download indexes and records preserved in optical disks into paper, microfilm, microfiche or other medium acceptable under § 240.17a–4(f).

(iii) The member, broker or dealer must organize and index accurately all information contained in every original and duplicate optical disk to ensure prompt access to the records.

(A) At all times, a member, broker or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) Each index must be duplicated and the duplicate copies must be stored in an off-site location, separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(iv) The member, broker or dealer must have in place an audit system providing for accountability regarding all access to records maintained and preserved using optical storage technology and any changes made to every original and duplicate optical disk.

(A) At all times, a member, broker or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) The results of such audit system must be preserved for the time required for the audited records.

(v) The member, broker or dealer must maintain, keep current and surrender promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the broker or dealer is a member all information necessary to download records and indexes stored in optical disks; or place in escrow and keep current a copy of the physical and logical file format of the optical disks, the field format of all different information types written on the optical disks and the source code, together with the appropriate

documentation and all information necessary to download records and indexes.

(vi) For every member, broker or dealer using optical storage technology for record preservation under this section, at least one third party ("the undersigned"), who has the ability to download information from the member's, broker's or dealer's optical disks to another acceptable medium, shall file with the Commission or its designee the following written undertakings:

The undersigned hereby undertakes to promptly furnish to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's staff to download information kept on the broker's or dealer's optical storage system to another medium acceptable to the Commission's staff.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's optical storage system, including, as appropriate, arrangements for the downloading of any record, required to be maintained and preserved by the broker or dealer pursuant to Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff. Such arrangements will provide specifically that in the event of a failure on the part of the broker or dealer to download the record into a readable format, upon being provided with the appropriate optical disks, the undersigned will undertake to do so, as the Commission's staff may request.

* * * * *

Date: July 9, 1993.

By the Commission.

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 93–16810 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Part 270

[Release No. IC–19566, File No. S7–22–93]

RIN 3235–AF69

Certain Research and Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Rule proposal and request for comment.

SUMMARY: The Commission is proposing for public comment rule 3a–8 under the Investment Company Act of 1940. Rule 3a–8 is designed to address the special circumstances of research and development companies. Certain research and development companies maintain large amounts of liquid assets in the form of securities to fund their activities. Rule 3a–8 would provide a safe harbor from investment company status for a company engaged in research and development if it has held itself out and currently holds itself out as being primarily engaged in a noninvestment business, uses its capital to support its research and development activities, and makes investments that, taken as a whole, conserve capital and liquidity until it uses the funds in its primary business. Rule 3a–8 would be a nonexclusive safe harbor.

DATES: Comments must be received on or before October 13, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–22–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: L. Bryce Stovell, Senior Special Counsel, at (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed rule 3a–8 [17 CFR 270.3a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a]. Rule 3a–8 is intended to codify the terms of a Commission order under section 3(b)(2) for ICOS Corporation, a biotechnology company.[1]

Executive Summary

The Commission is proposing rule 3a–8 under the Investment Company Act [15 U.S.C. 80a] as a safe harbor exclusion from investment company status for certain *bona fide* research and development companies ("R&D companies").[2]

To fund their research and development activities during their lengthy product development phase,[3] R&D companies, particularly biotechnology companies,[4] raise large amounts of capital through offerings of their equity securities. They generally invest the proceeds in short-term, high quality debt instruments and use the return on these investments to fund their operations until they can begin product sales.[5]

Under section 3(b)(2), the Commission may declare that a company that invests in securities is, nonetheless, not an investment company if it determines that the company is not engaged primarily in the investment business. The Commission's traditional test for making this determination, however, was developed before the emergence of publicly held companies whose primary activity was research and development. It turns largely on the composition of the applicant's income and assets, *i.e.*, whether a large percentage of the income and assets is derived from investment securities. Thus, when it is applied to R&D companies the test understates their noninvestment business, which produces little or no income or assets during their product development phase. This has caused many of the companies to be concerned about their status under the Investment Company Act.

In the ICOS order, the Commission clarified the application of the primary business test to research and development activities. The

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[1] ICOS Corp., Investment Company Act Release Nos. 19274 (Feb. 18, 1993) (notice) and 19344 (Mar. 16, 1993) (order).

[2] Statement of Financial Accounting Standards No. 2 defines "research" as planned search or critical investigation aimed at discovery of new knowledge with hope that such knowledge will be useful in developing a new product or service or a new process or technique or in bringing about a significant improvement to an existing product or process. "Development" is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. *See* Accounting for Research and Development Costs, Statement of Financial Accounting Standards No. 2 (Fin. Accounting Standards Bd. 1974) at ¶ 8 ("SFAS No. 2"). Research and development expenses generally include costs incurred for materials, equipment, facilities, personnel, intangibles, and indirect costs that are clearly related to research and development activities. *Id.* ¶ 11.

[3] Many R&D companies have a distinct life cycle. During a "start-up" phase, they raise capital and acquire personnel and facilities. During the product development phase, which marks the commencement of operations, they raise additional capital and conduct research and development activities, but have not yet developed marketable products and have no revenues from product sales. During the mature product sales phase, an R&D company begins to realize significant revenues from the sale of products it has developed. *See, e.g.*, ICOS Corp., Inv. Co. Act Rel. 19274, *supra* note 1.

[4] Biotechnology is the application of engineering and technological principles to living organisms or their components to produce new inventions or processes. An important branch of biotechnology is genetic engineering, or recombinant DNA technology. On an industry-wide basis, research and development accounts for 38% of all expenses incurred by U.S. biotechnology companies. *See* Ernst & Young, Biotech 93: Accelerating Commercialization, Seventh Annual Report on the Biotech Industry 39 (1992).

[5] Several cycles of equity offerings and depletions of the resulting investment pools can occur before an R&D company achieves profitable operations, if ever.

Commission is proposing rule 3a–8 to codify its interpretation. The rule would exclude from the definition of investment company any issuers engaged in research and development based upon how they *use* their income and assets, instead of the sources of their income and the composition of their assets. An issuer would be eligible for the safe harbor if it, directly or through a company or companies that it "controls:"[6] (a) has held itself out and currently holds itself out as primarily engaged in a noninvestment business; (b) has, on the basis of financial statements that were prepared in accordance with generally accepted accounting principles ("GAAP"), or other financial data derived therefrom (1) research and development expenses that are a substantial percentage of its total expenses for its four most recent fiscal quarters and that at least equal its investment revenues for that period; and (2) investment-related expenses that do not exceed five percent of its total expenses for its four most recent fiscal quarters;[7] and (c) makes its investments, taken as a whole, to conserve capital and liquidity until it uses the funds in its primary business. As a result, the rule would clarify that R&D companies may invest in securities other than Government securities without becoming subject to the Act.

I. Background

A. The Traditional Criteria for Evaluating Investment Company Status

Section 3 determines when an issuer is an investment company for purposes of the Act. General provisions for determining investment company status are set forth in sections 3(a) and 3(b). Specific exclusions of certain types of issuers, such as private investment companies, banks, and insurance companies, are set forth in section 3(c).

Section 3(a) has two definitions of investment company that may be relevant to R&D companies.[8] Section 3(a)(1) defines an investment company as any issuer that is, holds itself out as, or proposes to be primarily engaged in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines as an investment company any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities and has more than forty percent of the value of its total assets invested in "investment securities."[9] A section 3(a)(3) investment company may avoid being regulated under the Act if it is deemed, under either section 3(b)(2) or section 3(b)(1),[10] to be primarily engaged in a noninvestment business.

To receive an order under section 3(b)(2), an issuer initially must establish that it is engaged in some noninvestment business. If an identifiable noninvestment business exists, the inquiry then shifts to whether that business is "primary." In *Tonapah Mining Co.*,[11] the Commission stated that its determination of an issuer's primary business under section 3(b)(2) would be based on five principal factors: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income. The two most important factors are the sources and composition of the issuer's present income and assets.[12] The *Tonapah* test also has been applied to determine whether an issuer satisfies the primary business standard under section 3(b)(1).[13]

B. Certain R&D Companies

The *Tonapah* test, while well suited for most issuers, does not identify the primary business of R&D companies. For example, biotechnology companies typically have enormous capital requirements and a lengthy product development phase during which they derive no revenues from product sales.[14] Accordingly, they must obtain financing many years before they offer their products for sale and must invest the funds in liquid instruments so funds readily are accessible for use to fund research and development activities. Many of the instruments these companies invest in are investment securities, and therefore are counted towards section 3(a)(3)'s forty percent threshold. Also, research and development expenses, including those associated with the development of "intellectual capital," are not recognized as assets on balance sheets prepared in accordance with GAAP.[15] Development phase R&D companies thus have few assets other than securities, and often may fall within section 3(a)(3)'s definition of investment company.

To avoid section 3(a)(3),[16] some biotechnology companies have limited

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[6] Section 2(a)(9) defines control as the power to exercise a controlling influence over the management or policies of a company. The section also creates a rebuttable presumption that owners of 25% or more of a company's voting securities control the company, and that owners of less than 25% do not. This differs from how control is defined for purposes of applying generally accepted accounting principles ("GAAP"). For GAAP purposes, control generally is equated with having at least majority ownership (50.1%) of an entity. *See* Consolidated Financial Statements, Accounting Research Bulletin No. 51 (American Institute of Certified Public Accountants 1959) at ¶ 2. Unless otherwise stated, "control," when used in this release, refers to the § 2(a)(9) definition.

[7] The release requests comment, among other matters, on whether these revenues and expenses should be calculated on a basis other than GAAP. *See infra* notes 31–33 and accompanying text.

[8] Section 3(a)(2) defines investment company to include companies that issue face-amount certificates of the installment type and is not of concern to R&D companies.

[9] Section 3(a)(3) defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies.

[10] Section 3(b)(2) allows issuers that are investment companies as defined by § 3(a)(3) to apply to the Commission for relief. The Commission will exclude from the definition of investment company any issuer that it determines is engaged primarily in a noninvestment business, notwithstanding its status under § 3(a)(3). Issuers that operate directly, through majority-owned subsidiaries, or through controlled companies that conduct a similar business are eligible for relief under § 3(b)(2). An exclusion pursuant to § 3(b)(1), on the other hand, is "automatic" in that it is determined by the issuer itself. Only issuers that conduct a primarily noninvestment business directly or through wholly-owned subsidiaries may rely on § 3(b)(1). A determination under either § 3(b)(2) or § 3(b)(1) that an issuer primarily is engaged in a noninvestment business also means that it is not an investment company under § 3(a)(1). *See* M.A. Hanna Co., 10 S.E.C. 581 (1941).

[11] Tonapah Mining Co., 26 S.E.C. 426 (1947).

[12] *Id.* at 427, 430–431.

[13] *See* Moses v. Black, Fed. Sec. L. Rep. (CCH) ¶ 97,866 (S.D.N.Y. 1981). Under rule 3a–1, which codified a series of Commission orders under § 3(b)(2), if an issuer that is an investment company for purposes of § 3(a)(3) has no more than 45% of its assets invested in, and derives no more than 45% of its income from, specified securities, it will be considered engaged primarily in a noninvestment business, and, thus, excluded from investment company status under § 3(a)(3). Relying on the exemption provided by rule 3a–2 [17 CFR 270.3a–2] to "transient" investment companies is an alternative to seeking an exclusion under rule 3a–1 or § 3(b)(2). Exemptions under rule 3a–2, however, are conditioned on the applicant having a *bona fide* intent primarily to be engaged in a noninvestment business within one year. Rule 3a–2(a). An issuer may not rely on rule 3a–2 more than once in any three year period. Rule 3a–2(c). *See also* Transient Investment Companies, Investment Company Act Release No. 10943 (Nov. 16, 1979) (proposing rule 3a–2) at text preceding n.8.

[14] A study has estimated that the average research and development cost of bringing a new product to market is approximately $259 million. In addition, new pharmaceutical products generally take 10 to 12 years from conception to approval by the Food and Drug Administration. J. DiMasi, "The Cost of Innovation in the Pharmaceutical Industry," 10 J. of Health Econ. 107 (1991).

[15] *See* SFAS No. 2, *supra* note 2, at ¶ 12. Under GAAP, costs of self-developed intangible assets generally, and research and development expenses for "intellectual assets," in particular, are charged to expense when incurred.

[16] Many provisions of the Act are incompatible with how biotechnology companies conduct their business. Section 18, for example, which places limits on a registered investment company's capital structure, significantly would reduce the ability of

their investments to Government securities, as defined in section 2(a)(16). This strategy, however, has obvious costs.[17] Some biotechnology companies therefore have applied, under section 3(b)(2), for exclusions from investment company status that would clarify their ability to invest in commercial paper, bank certificates of deposit, bank repurchase agreements, and similar instruments.[18]

C. The ICOS Application and Order

ICOS, a development stage biopharmaceutical company, had no drug products approved for commercial use and, as a result, no revenues from product sales. It had, however, raised $90 million in public and private stock offerings that it had invested in short-term Government and commercial debt securities pending the use of the proceeds in its research and development programs and for capital expenditures. As a result, most of ICOS's revenues were derived from securities. On the other hand, a substantial percentage of ICOS's total expenses were for research and development,[19] its research and development expenses exceeded its investment revenues,[20] and its investment-related expenses were insignificant.[21] ICOS's historical development, its public representations of policy, and the activities of its officers and directors also all indicated that it was not engaged primarily in the investment company business.[22] ICOS, thus, applied for an order under section 3(b)(2) declaring it to be engaged primarily in a business other than investing, reinvesting, or trading in securities.

In its order, the Commission noted that ICOS appeared to be excluded from the definition of investment company by section 3(b)(1), and that similarly-situated issuers also would be excluded. Thus, the Commission stated that if a company demonstrates that it is engaged actively in *bona fide* research and development activities, the determination of its primary business should include consideration of how the company uses its income and assets, instead of the sources and composition of its income and assets. This consideration should focus on three factors: (1) Whether the company uses its securities and cash to finance its research and development; (2) whether the company has substantial research and development expenses and insignificant investment-related expenses; and (3) whether the company invests in securities in a manner that is consistent with the preservation of its assets until needed to finance operations. If a company satisfies these factors, the remaining factors of the traditional primary business test, *i.e.*, the company's historical development, its public representations of policy, and the activities of its officers and directors, then should be examined to determine whether the company is engaged primarily in a noninvestment business.[23]

D. The IBA Rule Proposal

The primary business test that the Commission used for ICOS was, in turn, similar to a rule proposal that the Industrial Biotechnology Association filed with the Commission (the "IBA Proposal").[24] The Association requested that the Commission adopt a rule excluding from the definition of investment company any issuer that: (a) Has research and development expenses incurred during the most recent four fiscal quarters that equal or exceed its gross interest [income] for such period; (b) has investment-related expenses for such period not in excess of five percent of its total expenses; (c) has held itself out and currently holds itself out as primarily engaged, directly or through one or more subsidiaries which are at least majority-owned, in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities; (d) has adopted a resolution of its board of directors that establishes investment guidelines relating to diversification, credit ratings, and maturities with the stated purpose of conserving capital and maintaining liquidity until funds are used in its operations; and (e) is not a "regulated investment company" under Subchapter M of the Internal Revenue Code.

II. Proposed Rule 3a–8

In response to the IBA Proposal, the Commission is proposing rule 3a–8 as a nonexclusive safe harbor that essentially would codify the Commission's order to ICOS. In light of section 3(b)(1)'s availability for R&D companies that conduct business directly or through wholly owned subsidiaries, however, the Commission, as a preliminary matter, requests comment on whether rule 3a–8 is necessary. The Commission notes that section 3(b)(1) is not available for R&D companies that engage in a primarily noninvestment business other than either directly or through wholly owned subsidiaries. Joint ventures, for example, which appear to be used often by R&D companies, thus can raise a question as to the availability of an exclusion under section 3(b)(1). Rule 3a–8, in contrast to section 3(b)(1), would exclude from investment company status R&D companies that primarily conduct their business through more complex organizational structures.

Rule 3a–8 would exclude an issuer from being an investment company as defined in sections 3(a)(1) and 3(a)(3) if, directly or through one or more companies which it controls,[25] it satisfies certain conditions regarding how it uses its capital, and if it holds itself out as primarily engaged in a noninvestment business.

A. Use of Capital

1. Research and Development Expenses

Paragraph (b)(1) would require that research and development expenses[26] for an issuer's four most recent fiscal quarters combined be a substantial percentage of its total expenses for such period. The amounts in question would be determined by reference to financial statements prepared in accordance with GAAP or other financial data derived therefrom.[27]

Paragraph (b)(1) leaves "substantial" undefined in order to take into account fluctuations in the composition of the expenses of an eligible issuer over time. If an R&D company's research and development expenses are the majority of its expenses but for nonrecurring

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biotechnology companies to raise capital. The section's restrictions on warrants, options, and other rights also would limit the companies' ability to attract scientific talent.

[17] A recent study that compared a portfolio of Treasury bonds with varying maturities to a portfolio of investment grade corporate bonds of comparable maturities found a 127 basis point portfolio yield differential. *See* The Industrial Biotechnology Association, A Proposal for a New Investment Company Act Rule for Biotechnology and other Research and Development Companies 30 (Nov. 1992) (the "IBA Proposal"). The IBA Proposal will be placed, for public inspection, in File No. S7–22–93.

[18] *See, e.g.*, ICOS Corp., *supra* note 1. *See also* Microsoft Corp., Investment Company Act Release Nos. 16430 (June 10, 1988) (notice) and 16467 (July 5, 1988) (order) (order under § 3(b)(2) to R&D company) and Genentech, Inc. (pub. avail. Sept. 24, 1980) (no-action request was denied due to the difficulty of evaluating, in a no-action context, whether the issuer had a *bona fide* intent to be primarily engaged in a noninvestment business within one year). Exemptive orders for companies treated as transient investment companies also have been granted in this area under § 6(c). *See, e.g.*, NeoRx Corp., Investment Company Act Release Nos. 17466 (May 1, 1990) (notice) and 17511 (May 29, 1990) (order).

[19] ICOS Corp., Inv. Co. Act Rel. 19274, *supra* note 1, at § I, ¶ 12.

[20] *Id.* at § I, ¶ 13.

[21] *Id.* at § I, ¶ 8.

[22] *Id.* at § II, ¶ 9. For a discussion of these factors, see *Tonopah Mining Co.*, *supra* note 11, at 427–431.

[23] *Id.* at § II A–§ II C.

[24] IBA Proposal, *supra* note 17.

[25] *See supra* note 6.

[26] *See supra* note 2.

[27] *See infra* notes 31–33 and accompanying text.

VOL 58 ISS 134 JL 15 1993 UMI

items or unusual fluctuations in recurring items, the research and development expenses certainly would be "substantial" for purposes of paragraph (b)(1). The Commission requests comment on whether paragraph (b)(1) should provide a more objective standard.

Paragraph (b)(1) also would require that research and development expenses equal or exceed investment revenues. Investment "revenues," for purposes of the paragraph, would include all investment returns, including amounts earned from dividends, interest on securities, and profits on securities (net of losses), computed in accordance with GAAP.[28]

The principal effect of paragraph (b)(1), given the circumstances of R&D companies, would be to require that an eligible issuer spend the income from and principal amount of its investments in its research and development business. This is known as an R&D company's "net monthly burn rate." It is the rate at which a company depletes its cash reserves to fund its research and development expenses. If an R&D company does not deplete its invested funds over time, a question would arise as to whether it merely is maintaining the value of its reserves for use in its operations, or running a perpetual investment program.[29]

The Commission recognizes that *bona fide* R&D companies at times experience fluctuations in their research and development expenses and investment revenues. For brief periods, research and development expenses might be less than investment revenues. Consequently, paragraph (b)(1) would permit an R&D company to remain eligible for the safe harbor if its research and development expenses equal or exceed its investment revenues during the four preceding fiscal quarters combined.

2. Insignificant Investment-Related Expenses

Paragraph (b)(2) would require that an eligible issuer devote no more than five percent of its total expenses for its four most recent fiscal quarters combined to investment advisory and management activities, investment research and selection, and supervisory and custodial fees.[30] As proposed, the basis of this computation also would be financial statements prepared in accordance with GAAP or other financial data derived therefrom.

Under paragraph (c), as discussed more fully below, an eligible issuer's investments, taken as a whole, would be made to conserve capital and liquidity pending use of the funds in the issuer's operations. Consequently, its excess funds generally would be invested in instruments presenting limited investment risk. Accordingly, investment advisory, management, research, and similar expenses should be limited.

3. Accounting Treatment Under Paragraph (b)

The introductory text of paragraph (b) provides that the determination of whether an R&D company satisfies the requirements of paragraphs (b)(1) and (b)(2) be made by reference to financial statements prepared in accordance with GAAP or other financial data derived therefrom. Under GAAP, the income and expenses of wholly owned and majority-owned subsidiaries of an eligible issuer are consolidated with the issuer's statement of operations.[31]

An R&D company's investments in nonmajority-owned "investees," which include most joint ventures, are accounted for by the equity method.[32] Statements of operations prepared on the basis of the equity method of accounting, however, reflect, in a single amount, the parent's share of a nonmajority-owned investee's net income, but not the parent's share of its investment revenues, investment-related expenses, or research and development expenses. Thus, the Commission requests comment on whether an R&D company, instead of calculating these amounts in accordance with GAAP, should be allowed or required to combine its pro rata share of the relevant expenses and revenues of one or more of its investees with its own when determining whether it meets the requirements of paragraphs (b)(1) and (b)(2).[33]

4. Invests To Conserve Capital and Liquidity

The final use of capital criterion would be that an issuer's investments in securities, taken as a whole, are made to conserve its capital and liquidity until the funds are used in its primary business or businesses. This essentially is a "purpose" test. It would be satisfied circumstantially on the basis of the overall nature of an issuer's investments. Generally, an issuer would satisfy paragraph (c) if its investment portfolio, viewed overall, presents limited investment risk.

Paragraph (c) of the Commission's proposal would be substantially less restrictive than the investment limitation in the IBA Proposal.[34] The IBA Proposal would require that an issuer's board of directors adopt a written investment policy that establishes guidelines relating to diversification, credit ratings, and maturities with the stated purpose of conserving capital and maintaining liquidity until funds are used in the operations of the issuer. Rule 3a-8 would not require a resolution by the board of directors containing prescribed investment guidelines, which, if required, could operate to disqualify otherwise eligible issuers on purely procedural grounds.

Under rule 3a–8, determinations of whether a portfolio's holding is consistent with the requirement of investing to conserve capital and liquidity would be based on such investments "taken as a whole." Thus,

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[28] The IBA Proposal would require a comparison of the issuer's research and development expenses to its "gross interest." IBA Proposal, *supra* note 17, at 19–20. The use of this term in the IBA Proposal may have been due to the proposal's relatively restrictive investment limitation. As mentioned *infra*, in the discussion of the investment limitation in ¶ (c) of proposed rule 3a-8, the investment portfolio of eligible issuers would not necessarily be limited to debt instruments that would be held to maturity. *See infra* notes 34–38 and accompanying text.

[29] At the request of the Industrial Biotechnology Association, Ernst & Young analysed the most recent annual reports of 151 public biotechnology companies that hold themselves out to be operating enterprises and compared the disclosed interest income to research and development expenses. The results were that 142 of the 151 companies, or 94%, had research and development expenses that were greater than investment income. Of the nine companies that would not have qualified for the safe harbor in proposed rule 3a-8 on the basis of not having research and development expenses at least equal to investment revenues, seven probably were not investment companies since they either had no investment securities or their investment securities were less than 40% of the value of their total assets for purposes of § 3(a)(3). IBA Proposal, *supra* note 17, at 20.

[30] *See* 17 CFR 210.6–07.2(a) (Regulation S-X). Paragraph (b)(2) of proposed rule 3a-8 essentially duplicates ¶ (b) of the IBA Proposal. *See* IBA Proposal, *supra* note 17, at 21. Unless material, these expenses would not be stated separately in operating company financials prepared in accordance with GAAP.

[31] The consolidated statement reflects all income and expenses of these subsidiaries, whether the issuer/parent owns all or just a majority of the outstanding common stock of the subsidiary. The net income attributable to minority ownership of the subsidiaries is also deducted in arriving at consolidated net income on the consolidated income statement.

[32] *See* The Equity Method of Accounting, Accounting Principles Board Opinion No. 18 (American Institute of Certified Public Accountants 1971) ("APB No. 18"). APB No. 18 generally prescribes the equity method of accounting by investors for investments in investees when the investor owns more than 20%, but not more than 50%, of the investee's voting interests.

[33] This method of accounting, generally referred to as the *pro rata* consolidation method, currently is applied in certain industries in lieu of the equity method.

[34] *See* IBA Proposal, *supra* note 17, at 22.

the Commission would not view the acquisition of a limited amount of equity securities of a noncontrolled company, pursuant to a collaborative arrangement or "strategic business relationship," as necessarily placing the issuer outside of paragraph (c), depending upon the facts and circumstances of that investment.[35] In addition, the requirement that an eligible issuer invest to conserve capital and liquidity only would apply to securities an issuer held as investments. Paragraph (d)(2) provides that the securities of companies an issuer controls, as defined in section 2(a)(9),[36] and through which it conducts its research and development business, would be excepted.[37]

The Commission requests comment on paragraph (c). The Commission specifically requests comment on whether the paragraph's requirement, that, with certain exceptions, an eligible issuer's investments, taken as a whole, be made to conserve capital and liquidity, provides sufficient guidance.[38]

B. Conducting Business Through Controlled Companies

The rule's safe harbor would be available to any issuer that conducts business "directly or through one or more companies which it controls." This is broader than section 3(b)(1), which is limited to issuers that are engaged primarily in a noninvestment business "directly or through * * * wholly owned subsidiaries," or the IBA Proposal, which would be limited to R&D companies that conduct their business "directly or through one or more majority-owned subsidiaries."[39]

The Commission requests comment on whether the controlled company concept is an appropriate limit for the rule's scope of availability.[40] Commenters are asked to consider how this concept interacts with other conditions of the proposed safe harbor, particularly paragraph (c), in light of the amount of business R&D companies engage in through joint ventures and similar arrangements, and how capital investments and resulting interests in such arrangements are being structured.

C. Issuer Holds Itself Out as Primarily Engaged in a Noninvestment Business

Finally, paragraph (a) of the proposed rule would require that an issuer have held itself out and currently holds itself out, as primarily engaged in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities. This would ensure that any issuer that holds itself out as being an investment company could not rely on the rule.

III. Cost/Benefit of Proposed Action

The proposed rule would reduce costs for both R&D companies and the Commission. The proposed rule would allow R&D companies to invest their cash reserves in securities that present limited investment risk, thus increasing their number of opportunities for higher investment returns, while allowing them to remain excluded from regulation under the Act. This excluded status would be obtained by meeting the criteria of the proposed rule, which would be self-operating. The Commission also would benefit in that the staff would have to review fewer applications for relief in this area.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 3a–8. The Analysis explains that the proposed rule essentially would codify a new test that, if satisfied, would allow R&D companies to expand their investment programs without becoming subject to the Act. The Analysis also explains that in order to be eligible for the nonexclusive safe harbor the proposal would create, R&D companies, directly or through companies which they control, would be required to have held themselves out and to currently hold themselves out as not primarily engaged in the investment business, spend their investment revenues on their primary business, have substantial research and development expenses and insignificant investment-related expenses, and, other than certain exceptions, make their investments, taken as a whole, to conserve capital and liquidity for use in their operations.

The only significant alternative to the proposal would be to limit R&D companies to reading the precedent of Commission orders under section 3(b)(2) into section 3(b)(1), an existing self-operating statutory exclusion. This section, however, may not be available to all R&D companies. In addition, industry representatives have advised the Commission that a rule would provide greater certainty in this area. The Commission therefore concluded that the proposal would be less burdensome than such alternative and, thus, would minimize any impact upon, or cost to, small businesses.

To obtain a copy of the Initial Regulatory Flexibility Analysis, write to L. Bryce Stovell, at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. Statutory Authority

The Commission is proposing rule 3a–8 pursuant to sections 6(c) and 38(a).

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.3a–8 is added to read as follows:

§ 270.3a–8 Certain research and development companies.

Notwithstanding sections 3(a)(1) or 3(a)(3) of the Act, an issuer will be

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[35] ICOS, for example, had entered into strategic relationships with several companies on research and development projects. *See* Amended and Restated Application by ICOS Corporation for an Order Pursuant to Sections 6(c) and 6(e) of the Investment Company Act of 1940 to the Division of Investment Management, SEC 6–7 (Oct. 26, 1992), File No. 812–7885.

[36] *See supra* note 6.

[37] Paragraph (d)(2)'s proviso for qualifying for its exclusion, *i.e.*, that the securities be issued by the issuer's controlled companies that conduct types of businesses that are similar to the issuer's, is intended to distinguish between an issuer's primarily investment-oriented and noninvestment-oriented activities. *Compare with* American Manufacturing Company, 41 S.E.C. 415 (1963) (determining whether an issuer was primarily engaged in a noninvestment business "through controlled companies conducting similar types of businesses" for purposes of § 3(b)(2)(B)). The securities of controlled companies in other businesses would be subject to ¶ (c) of rule 3a–8.

[38] For example, commenters should consider whether ¶ (c) should include a brighter line of distinction between permissible and impermissible investments. *Cf., e.g.*, rule 2a–7(a)(5) [17 CFR 270.2a–7(a)(5)].

[39] *See* IBA Proposal, *supra* note 17, at 21–22.

[40] In contrast, rule 3a–1 uses the primarily controlled company concept to distinguish securities representing investments in the businesses of underlying operating companies through which an issuer engages in a primarily noninvestment business from mere investments in securities that are subject to the rule's income and assets test. Rule 3a–1(a)(4). *See, e.g.*, Standard Shares, Inc., Investment Company Act Release Nos. 10200 (Apr. 11, 1978) (notice) and 10234 (May 9, 1978) (order). The Commission is concerned, however, that using this concept in rule 3a–8 could restrict the utility of the safe harbor.

VOL 58 ISS 134 JL 15 1993 UMI

deemed not to be an investment company if, directly or through one or more companies which it controls:

(a) It has held itself out, and currently holds itself out, as being primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities;

(b) It has, on the basis of financial statements prepared in accordance with generally accepted accounting principles or other financial data derived therefrom:

(1) A substantial percentage of its total expenses for the most recent four fiscal quarters that are research and development expenses and those expenses equal or exceed its revenues from investing, reinvesting, owning, holding, or trading in securities; and

(2) Expenses for investment advisory and management activities, investment research and selection, and supervisory and custodial fees and expenses for the most recent four fiscal quarters that do not exceed 5 percent of its total expenses; and

(c) Its investments in securities, taken as a whole, are made to conserve its capital and liquidity until funds are used in its primary business or businesses.

(d) For purposes of this section:

(1) "control" shall have the same meaning as in section 2(a)(9) of the Act; and

(2) "investments in securities" shall include all securities owned by the issuer other than securities issued by persons controlled by the issuer that conduct types of businesses that are similar to the issuer's.

Dated: July 9, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16811 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD7–93–038]

Special Anchorage Area: Garrison Bight, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a special anchorage area in Garrison Bight, Key West, Florida. The bay bottom within the proposed special anchorage area is environmentally sensitive and prone to damage by vessel anchors. This regulation is expected to reduce anchor damage to the bay bottom by fostering the use of installed mooring buoys.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Comments should be mailed to the Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Brickell Plaza Federal Building, Miami, FL 33131. Attn: Lieutenant E. Gray.

The comments and other materials referenced in this notice will be available for inspection and copying at room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. Gray, Tel: (305) 536–5621.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD07–93–038) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project officer for the Seventh District Aids to Navigation and Waterways Management Section, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of the Regulation

This proposed regulation establishes a special anchorage area in Garrison Bight, Key West, FL. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110. The regulation is being established to allow vessels to anchor in the area without displaying anchor lights that would otherwise be required.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a "Categorical Exclusion" in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations. A "Categorical Exclusion" is prepared when neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.73c is added to read as follows:

§ 110.73c Garrison Bight, Key West, FL.

The area bounded by a line beginning at latitude 24°34'41.7" N, longitude 81°47'25.7" W; thence east to latitude 24°34'41.7" N, longitude 81°46'58.1" W; thence southwesterly to latitude 24°34'25.5" N, longitude 81°47'09.5" W; thence southwesterly to latitude 24°34'04.5" N, longitude 81°47'15.5" W; thence southwesterly to latitude 24°34'03.9" N, longitude 81°47'19.7" W; thence to the origin.

Note: The administration of permanent moorings within the special anchorage area is exercised by the Director, Port and Transit Authority, City of Key West pursuant to local ordinances. The City of Key West will install suitable navigational aids to mark the limits of the special anchorage area.

Dated: June 18, 1993.

W. P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93-16701 Filed 7-14-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD07-93-035]

Anchorage Ground; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to change the anchorage ground of St. Johns River, Jacksonville, FL in order to disestablish anchorage grounds with poor bottom holding capabilities and to disestablish the portions of anchorage grounds which currently extend into the federal channel. This change will clearly define the anchorage grounds currently in use in the St. Johns River and will delete outdated information contained in the regulation.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Comments should be mailed to the Commanding Officer, U.S. Coast Guard Marine Safety Office, 2831 Talleyrand Ave., Jacksonville, FL. 32206. Attn: Lieutenant Commander William Daughdrill.

The comments and other materials referenced in this notice will be available for inspection and copying at 2831 Talleyrand Ave., Jacksonville, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William Daughdrill, Tel: (904) 232-2648.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 93-35) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project officer for the Seventh District Aids to Navigation and Waterways Management Section, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of the Regulation

This proposed regulation clearly defines the anchorage grounds currently in use in the St. Johns River and eliminates the outdated information now contained in 33 CFR 110.183, the Coast Pilot Volume Four (chapters 2 and 9) and NOAA Chart 11491.

These proposed regulations incorporate current Captain of the Port policies regarding the anchoring of vessels within the Port of Jacksonville. These changes delete anchorages "D", "E" and "F" as they have not been utilized for more than three years because of poor bottom holding capabilities and their location within the main shipping channel, which poses an inherently hazardous condition. All references to current anchorages "A" and "B" have been deleted. These anchorages have long since been incorporated into one large anchorage area (known locally as the "upper anchorage"), anchorage "C". Currently designated anchorage "C" (upper anchorage) will become a newly designated anchorage ground "A" (Alpha) and will limit its use to vessels of 250 feet or less (LOA). A new anchorage ground "B" (Bravo), (locally known as the "lower anchorage"), will be established which would provide anchorage for vessels of a draft of 24 feet or less. Vessels which do not meet the restricting criteria of either of the newly established anchorages ("A" or "B") would require specific permission from the Captain of the Port prior to anchoring within the Port of Jacksonville. These proposed anchorages ("A" and "B") will provide commercial shipping with temporary anchorages for berth shifting and early/late lay berths for vessels requiring particular tide stages to enter or leave the Port of Jacksonville. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed anchorage grounds have been in fact utilized for this purpose for the past three years by the local pilots, vessel operators and other maritime parties for commercial vessels. This change will assure that procedures, as practiced, will be in accordance with the regulation. Since the impact of this is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a "Categorical Exclusion" in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations. A "Categorical Exclusion" is prepared when neither an environmental

VOL 58 ISS 134 JL 15 1993 UMI

assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.183 is revised to read as follows:

§ 110.183 St. Johns River, FL.

(a) *The anchorage grounds.*

(1) *Anchorage A.* (Upper Anchorage) Shoreward of a line located as follows: Beginning at a point on the south shore westerly of the entrance to Miller Creek at latitude 30°18′43.8″ N, longitude 81°38′15″ W; thence north 300 yards to latitude 30°18′52.8″ N, longitude 81°38′15″ W; thence southeast to latitude 30°18′47.6″ N, longitude 81°37′47.6″ W; thence northeast to latitude 30°18′55″ N, longitude 81°37′29″ W; thence northeast to latitude 30°19′06″ N, longitude 81°37′27″ W; thence east to latitude 30°19′6″, longitude 81°37′02″ W; thence south to Empire Point at latitude 30°19′01.2″, longitude 81°37′02″ W.

(2) *Anchorage B.* (Lower Anchorage) Beginning at a point on the eastern shore of the river at 'Floral Bluff' latitude 30°21′00″ N, longitude 81°36′41″ W; thence to latitude 30°20′00″ N, longitude 81°37′03″ W, thence to latitude 30°21′00″ N, longitude 81°37′06″ W; thence to latitude 30°21′50″ N, longitude 81°36′56″ W; thence to a point on shore latitude 30°21′54″ N, longitude 81°36′48″ W.

(b) *The regulations.* (1) Except in cases of emergency or for temporary anchorage as authorized in the following subsections, vessels must have authorization from the Captain of the Port to anchor in the St. Johns River, as depicted on NOAA chart 11491, between the entrance buoy (STJ) and the Main Street Bridge (latitude 30°19′20″ N, longitude 81°39′32″ W).

(2) Anchoring within General Anchorage A is restricted to vessels less than 250 feet in length.

(3) Anchoring within General Anchorage B is restricted to vessels with a draft of 24 feet or less of any length.

(4) General Anchorages A and B are temporary anchorages. Vessels meeting the applicable restrictions of subsection (b)(2) or (b)(3) of this section may anchor for up to 24 hours without a permit from the Captain of the Port. Vessels not meeting the applicable restrictions of subsection (b)(2) or (b)(3) must obtain authorization from the Captain of the Port before anchoring in General Anchorages A or B.

Dated: June 22, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–16707 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 09–93–006]

Drawbridge Operation Regulations; Mainstee River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Michigan Department of Transportation and the city of Mainstee, Michigan, the Coast Guard is considering a change to the operating regulations governing the US–31 highway bridge, mile 1.14, the Maple Street highway bridge, mile 1.1, and the Chessie System Railroad bridge, mile 1.5 across the Mainstee River in Mainstee, Michigan, by extending the periods of time when bridgetenders are not required to be in constant attendance at the bridges. This action should relieve the bridge owners of the burden of having bridgetenders constantly in attendance at the bridges and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993. The Commander Ninth Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD09–92–006) and specific section of this proposal to which each comment applies, and give reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Robert W. Bloom, Jr. at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H. Mieser, Project Manager, and Commander M. Eric Reeves, Project Counsel, Nineth Coast Guard District.

Background and Purpose

Presently, the Maple Street, US–31 highway, and Chessie System Railroad bridges are not required to have bridgetenders in constant attendance at the bridges from January 1 through March 31, and the draws need not open unless notice is given to the bridge owners at least 24 hours in advance of a vessel's time of intended passage through the draws.

The owners of both highway bridges requested that the present period of time when bridgetenders are not required to be in constant attendance at the bridges be extended, allowing for the removal of bridgetenders, from November 1 through April 30. In addition, the owners requested the removal of bridgetenders between the hours of 10 p.m. and 6 a.m., seven days a week, from May 1 through October 31. Both proposals would reduce the burden to the bridge owners of the requirement to have bridgetenders in constant attendance at the bridges during periods of time when there are few, if any,

requests for bridge openings. The few vessels that would require the bridges to open during the unattended periods from May through October 31, between the hours of 10 p.m. and 6 a.m., would be accommodated by giving a two (2) hours advance notice, and, for the unattended period from November 1 through April 30, by giving a 23 hours advance notice.

Discussion of Proposed Amendment

Since 1988, under the authority of 33 CFR 117.45, the Coast Guard has annually authorized the owners of the Maple Street and US-31 Highway bridges to remove bridgetenders for additional periods of time during the winter months. Allowing the removal of bridgetenders to begin on November 1 instead of January 1, and end on April 30 instead of March 31, has not caused any problems or generated any complaints from boaters. Data furnished by the owners of the highway bridges indicate that for the period of time from May 1 through October 31, between the hours of 10 p.m. and 6 a.m., there was an average of 24 requests to have the bridge opened for the passage of a vessel, 19 requests were for commercial vessels and 5 for recreational vessels. In order to cause the least amount of impact on the few vessels that do transit the river between the hours of 10 p.m. and 6 a.m., during the navigation season, the 24 hours advance notice requirement was changed to a two (2) hours advance notice. Requiring vessel operators to give an advance notice to have the bridges open for the additional periods of time should not adversely affect vessel movement.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The additional periods of time when the bridges would be unattended are times when there are few requests to have the bridges opened for the passage of vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since vessels could navigate the Manistee River by giving an advance notice during the periods of time the bridges are unattended, and the impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.637 is revised to read as follows:

§ 117.637 Manistee River.

(a) The draws of the Maple Street bridge, mile 1.1, and US–31 highway bridge, mile 1.4, both at Manistee, shall operate as follows:

(1) From May 1 through October 31 from 6 a.m. to 10 p.m., the bridges shall open on signal. From 10 p.m. to 6 a.m., the bridges need not open unless notice is given at least two hours in advance of a vessel's time of intended passage through the draws.

(2) From November 1 through April 30, the bridges need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draws.

(b) The Chessie System railroad bridge, mile 1.5, at Manistee, shall open on signal from May 1 to October 31. From November 1 to April 30, the bridge need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draw.

Dated: June 22, 1993.

G.A. Pennington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–16699 Filed 7–14–93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF94

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning procedural due process and appellate rights. This proposed amendment is necessary to clearly reflect VA policy concerning the scheduling of claimant hearings. The intended effect of this amendment is to stipulate that a claimant hearing will not normally be scheduled solely for the purpose of receiving argument by a claimant's representative, and that the claimant is expected to be present at the hearing.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993. The amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a m. and 4:30 p.m., Monday through Friday (except holidays), until August 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: It has been the long-standing policy of VA to offer claimants personal hearings as an integral part of the claims adjudication process. Hearings are held so that claimants may introduce into the record, in person, any available evidence which the claimant may consider material and any arguments and contentions which he or she may consider pertinent. They are held only at the request of the claimant, however, since VA does not require that evidence be submitted in person. Any evidence which the claimant presents, whether documentary, testimonial, or any other form, becomes part of the permanent VA record.

In keeping with the purpose of claimant hearings, VA expects that the claimant and witnesses, if any, will be present at the hearing. A hearing will not normally be scheduled solely for the purpose of receiving argument by a claimant's representative, since the adjudication process affords adequate alternative opportunities for the representative to present argument in support of a claim. Although current regulations at 38 CFR 3.103(c)(2) do indicate that the purpose of a hearing is for a claimant to present evidence "in person," they do not clearly state that a claimant hearing will not normally be scheduled solely for the purpose of receiving argument by a claimant's representative. In order to preclude any misunderstanding, we propose to amend § 3.103(c)(2) accordingly.

We propose to make this amendment of § 3.103(c)(2) effective the date of publication of the final rule. The Secretary finds good cause for doing so since this amendment clarifies an existing regulation and does not represent a change in current VA policy.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 11, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(2), remove the first two sentences and add, in their place, the words "The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers material and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses are expected to be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative."

[FR Doc. 93–16729 Filed 7–14–93; 8:45 am]
BILLING CODE 8320–01–U

38 CFR Part 3

RIN 2900–AG28

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning procedural due process and appellate rights. The change will add three exceptions to the general requirement that a pretermination/reduction notice must be sent to a claimant prior to accomplishing an action adversely affecting benefit payments. The intended effects of the proposal are to allow earlier adjudicative response in certain situations and to reduce the amount of potential overpayments.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993. This amendment is proposed to be effective 30 days after date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 3.103(b)(1) of title 38, Code of Federal Regulations, sets forth claimants' rights to notices of VA decisions and governs the contents of those notices. Section 3.103(b)(2) provides that if a VA decision involves an adverse action (discontinuance or reduction of benefit payments), VA generally is required to issue a pretermination/reduction notice providing a beneficiary 60 days within which he or she may offer evidence to show why the adverse action should not be taken. The proposed adverse action must be deferred until expiration of the 60-day notice period.

Section 3.103(b)(3) provides for three specific exceptions to the pretermination/reduction notice

requirement, namely where the action is based on: (1) Certain information provided by beneficiaries about income, net worth, dependency, or marital status; (2) failure to return an eligibility verification report (EVR); or (3) evidence reasonably indicating the death of a beneficiary. The rationale behind these exceptions is to prevent issuance of benefit payments where it is reasonable to conclude that the beneficiary either would not receive them or would not be entitled to them, and that an attempt to give the beneficiary advance notice would be unsuccessful or of little or no value in protecting the beneficiary's rights. Except in certain instances of beneficiary death, contemporaneous notices of these adverse actions are required. In this current rulemaking we are proposing to amend § 3.103(b)(3) to add three exceptions to the general requirement of § 3.103(b)(2): (1) Notice from a beneficiary to VA renouncing benefits, (2) notice from a beneficiary to VA that he or she has reentered active military service, and (3) garnishment orders under the Child Support Enforcement Act.

Renouncement is a written and signed statement from a beneficiary giving up the right to receive VA benefit payments (38 U.S.C. 5306; 38 CFR 3.106). Termination for renouncement is effective the last day of the month in which the renouncement is received (38 CFR 3.500(q)). Inasmuch as renouncement is a right granted by law, we find no good reason to delay action on a claimant's exercise of that right.

Issuing a pretermination notice would serve only to ensure disbursement of payments which the claimant no longer wants and is no longer entitled to receive and would thereby create an overpayment. We believe that in this instance a contemporaneous notice is appropriate and in the best interest of both the claimant and VA.

Active service pay may not be received concurrently with VA compensation or pension (38 U.S.C. 5304(c); 38 CFR 3.700(a)). Termination for receipt of active service pay is effective the day preceding the date of entry onto active duty (38 CFR 3.501(a)). Veterans reentering active service are often aware of the prohibition against concurrent receipt and accordingly notify VA of their change in status. In instances where veterans notify VA specifically of the nature of their service and the date of reentry, we believe that it is proper to terminate benefits as soon as possible and provide contemporaneous notice of our action. However, unless it is clear that notification to VA from a veteran is made with knowledge or notice of the statutory prohibition, a pretermination notice still would be required before VA could take final action. A notice of reentry into active service received from the Service Department rather than from the beneficiary would be considered a third-party notification requiring a pretermination notice under § 3.103(b)(2). Since removal of the requirement to send a pretermination notice in this situation will allow earlier adjudicative action and reduce or eliminate overpayments in many cases, without violating a beneficiary's due process rights, we believe that it is in the best interests of both the beneficiary and VA to do so.

Under section 659(a) of title 42, United States Code, moneys, entitlement to which is based upon remuneration for employment, and which are due from or payable by the United States, including its agencies, subdivisions, or instrumentalities, to any individual, are subject to legal process brought for the enforcement of legal obligations to provide child support or to pay alimony. Under 42 U.S.C. 662(f)(2), the phrase "based upon remuneration for employment" includes compensation paid by VA to a former member of the Armed Forces who has waived a portion of his military retired pay to receive compensation. Thus, the amount of VA compensation received in lieu of military retired pay is subject to garnishment for child support or alimony. VA would not need to provide pretermination/reduction notice before effecting garnishment ordered under the authority of 42 U.S.C. 659(a) because an opportunity for a hearing and presentation of evidence would already have been given by the court issuing the order. Such an opportunity represents adequate protection of the veteran's due process rights. For VA to offer a further opportunity for a hearing and presentation of evidence on whether the garnishment is proper would be redundant and beyond VA's authority.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 28, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is proposed to be amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. Section 3.103(b)(3)(i) is amended by adding the words "to VA" after the word "provided."

3. In § 3.103 delete the word "or" at the end of paragraph (b)(3)(ii); remove the "." at the end of paragraph (b)(3)(iii) and add in its place a ","; and add paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi), and an authority citation to read as follows:

§ 3.103 Procedural due process and appellate rights.

* * * * *

(b) * * *

(3) * * *

(iv) An adverse action is based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see § 3.106 of this part on renouncement),

(v) An adverse action is based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA

VOL
58
ISS
134
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compensation or pension (see § 3.654 of this part regarding active service pay), or

(vi) An adverse action is based upon a garnishment order issued under 42 U.S.C. 659(a).

(Authority: 38 U.S.C. 501(a))

[FR Doc. 93-16731 Filed 7-14-93; 8:45 am]
BILLING CODE 8320-01-U

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38 CFR Part 3

RIN 2900-AG33

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning procedural due process and appellate rights. This proposed amendment is necessary to clarify the number of decision-makers VA will provide to conduct claimant hearings. The intended effect of this amendment is to clarify that the requisite number of decision-makers for the conduct of claimant hearings is one.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993. This amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 24, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: 38 CFR 3.103(c)(1) currently states that VA will furnish personnel who have original determinative authority for the conduct of claimant hearings at Veterans Benefits Administration (VBA) regional offices without specifying any requisite number. Because the regulation does not specify the number, we believe the term "personnel" might reasonably be construed as encompassing one, two, or several persons. Even though it is well established that unless the context indicates otherwise terms which are plural in form may include the singular as well, some might argue that the term "personnel" signifies that VA must furnish more than one person to conduct hearings.

We are proposing to eliminate any possible confusion the current wording may create by amending 38 CFR 3.103(c)(1) to state that VA will provide one or more VA employees who have original determinative authority to conduct claimant hearings. Congress, through enactment of what is now 38 U.S.C. 7102(b), has indicated its consent to single members holding hearings before the Board of Veterans Appeals. There is nothing in the statutes to suggest that Congress intended a different procedure with respect to VBA hearings. We are also proposing to make a conforming amendment to the language of 38 CFR 3.103(c)(2), which refers to the responsibility of VA personnel conducting hearings.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved May 28, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(1), in the third sentence, remove the word "personnel" and insert, in its place, the words "one or more employees"; in the fourth sentence, remove the words "VA personnel" and insert, in their place, the words "one or more VA employees".

3. In § 3.103(c)(2), in the third sentence, remove the word "personnel" and insert, in its place, the words "employee or employees".

[FR Doc. 93-16730 Filed 7-14-93; 8:45 am]
BILLING CODE 8320-01-U

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38 CFR Part 21

RIN 2900-AG03

Veterans Education; Standardization of Programs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: VA (Department of Veterans Affairs) has been reviewing regulations for the purpose of standardizing procedures whenever possible. In the course of the review it was noted that the rules governing time limits provided veterans training under the Montgomery GI Bill—Active Duty is not exactly the same as that provided eligible persons training under the Dependents' Educational Assistance Program with regard to perfecting a claim. Furthermore, rules governing notification which had been provided to those receiving benefits under the now-expired Vietnam Era GI Bill with regard to a loss of a dependent had not been extended to the Montgomery GI Bill—Active Duty beneficiaries in similar circumstances. These proposed regulations remedy this situation by standardizing these rules.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 24, 1993

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Under current regulations an individual seeking to complete a claim under the Montgomery GI Bill—Active Duty can have an extension of the time limit for submitting requested evidence if he or she can show good cause why the deadline could not be met. This is not included in the regulations governing the Dependents' Educational Assistance Program, but VA can see no good reason why it should not be included. Accordingly, this proposal would extend this provision to that program.

On the other hand, the regulations governing the Dependents' Educational Assistance Program provide that the time period for submitting the evidence will not begin until VA notifies an eligible person of the need for submitting it. This is based upon the provisions of § 3.110, title 38, CFR. This provision has never appeared in the regulations governing the Montgomery GI Bill—Active Duty, but VA can see no good reason why it should not. Accordingly, this proposal would extend this provision to the Montgomery GI Bill—Active Duty.

A veteran receiving benefits under the Vietnam Era GI Bill was given procedural protections when VA received notice that he or she had lost a dependent. This is similar to the protection afforded a recipient of disability compensation or disability pension when he or she loses a dependent. Although some veterans receiving educational assistance under the Montgomery GI Bill - Active Duty receive additional benefits for their dependents, and so suffer a reduction in benefits when a dependent is lost, VA had not extended the procedural protections in the Vietnam Era GI Bill to these veterans, nor has the department given them the protection afforded under the disability compensation or disability pension programs. A careful review has led VA to believe that these veterans should be extended this protection. Accordingly, this proposal would provide this procedural protection to these veterans.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposal are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 31, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts C and K are proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 72 Stat. 1114, 1193, as amended (38 U.S.C. 501(a), 3500–3566)

2. Section 21.3032 is amended by adding paragraph (b)(3) to read as follows.

§ 21.3032 Time limits.

* * * * *

(b) *Failure to furnish claim or notice of time limit.* * * *

(3) When a claim is incomplete, time limits within which a claimant or beneficiary is required to complete the claim through submission of evidence, documents or other information may be extended for good cause shown. The time limits within which a claimant or beneficiary must act to challenge an adverse VA decision may be extended for good cause shown. Except as provided in § 19.130 of this chapter when extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrently with or prior to the filing of a request for extension of the time limit, and good cause shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

3 The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525, 38 U.S.C. 501(a) .

4. Section 21.7032 is amended by adding paragraph (d)(3) to read as follows.

§ 21.7032 Time limits.

* * * * *

(d) *Failure to furnish form or notice of time limit.* * * *

(3) VA's failure to furnish an eligible person notice of the time limit within which evidence must be submitted to complete a claim, or notice of the time limit within which to challenge an adverse VA decision, shall extend the time limit for such action in accordance with the provisions of § 3.110 of this chapter.

* * * * *

5. Section 21.7320 and its authority citations are added to read as follows.

§ 21.7320 Procedural protection; reduction following loss of dependent.

(a) *Notice of reduction required when a veteran loses entitlement to additional educational assistance for a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce

an award of educational assistance following the veteran's loss of a dependent unless:

(i) VA has notified the veteran of the adverse action, and

(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(i) VA will not send either an advance or a prereduction notice as stated in paragraph (a)(1) of this section, but

(ii) VA will send notice of the adverse action contemporaneous with the reduction in educational assistance.

(Authority: 38 U.S.C. 5112, 5113)

[FR Doc. 93-16600 Filed 7-14-93; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. NY-7-1-5910; FRL-4679-1]

Approval and Promulgation of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes for Carbon Monoxide, State of New York

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its intent to redesignate Onondaga County in New York State to attainment of the air quality standards for carbon monoxide (CO) and to approve a maintenance plan that will insure that the area remains in attainment.

On November 13, 1992, New York State submitted a maintenance plan and a request to redesignate the Onondaga County CO nonattainment area from nonattainment to attainment. In this action EPA is proposing to approve New York's submittals because they meet the requirements set forth in sections 175A and 107(d)(3)(E) of the Clean Air Act, for maintenance plans and redesignations, respectively. Upon final approval of the maintenance plan, it will become a federally enforceable part of the CO State Implementation Plan for Onondaga County.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: All comments should be addressed to: William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1034A, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 110(a)(1) and 172 of the Clean Air Act, as amended in 1977 (1977 Act), required each area that was designated nonattainment based on a failure to meet the carbon monoxide (CO) national ambient air quality standards (NAAQS) to develop a State Implementation Plan (SIP). These SIPs must have sufficient control measures to attain the standard expeditiously and to maintain the standard. The plans were to provide for attainment by December 31, 1982.

On March 3, 1978 and January 25, 1979 parts of the City of Syracuse, in Onondaga County, New York were designated under section 107 of the 1977 Act as nonattainment with respect to the CO NAAQS. (43 FR 8962 and 44 FR 5119.) In accordance with section 110 of the 1977 Act, New York State submitted a CO SIP for the nonattainment area in 1979. EPA fully approved this SIP as meeting the requirements of section 110 and Part D of the 1977 Act. (See 40 CFR 52.1673, 50 FR 25073.) In its SIP, New York State projected that Onondaga County would attain the CO standard by December 31, 1982. Subsequently, on March 3, 1984, EPA reduced the size of the nonattainment area to the CO hot-spot at the intersection of Almond and East Adams Streets in the City of Syracuse. (49 FR 8439) The hot-spot monitor recorded violations of the standard from 1983 to 1986, and in 1989.

On November 15, 1990, the Clean Air Act (the Act) was amended. (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.) Because the City of Syracuse nonattainment area violated the CO standard in 1989, the Act continued the nonattainment designation of the area and expanded its boundaries to include all of Onondaga County (section 107(d)(1)(C)(i)). Furthermore, it was classified by operation of law as a low moderate CO nonattainment area, which is defined as an area experiencing CO concentrations above the eight-hour standard, but less than 12.7 parts per million (ppm). (See 56 FR 56694 (November 6, 1991), to be codified at 40 CFR 81.333.)

More recently, air quality data collected by the State's air monitoring network indicates that Onondaga County has attained the CO NAAQS. The air quality monitor in downtown Syracuse has not violated the CO standard from 1990 to the present. Therefore, in an effort to comply with the amended Act and to ensure that the standard will continue to be attained, New York submitted a CO maintenance SIP for Onondaga County on November 13, 1992 and requested redesignation of the area to attainment for the CO NAAQS. On January 12, 1993, New York State submitted the report from its public comment period and its response to comments. All four comments supported the redesignation. The comment period was open from November 25 to December 31, 1992 and New York State held a public hearing on December 21, 1992.[1]

[1] For purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when New York submitted a complete redesignation request. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended Act, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines" Memorandum from John Calcagni to Air Programs Division Directors, Regions I-X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. See Memorandum at 3-4. However, since requests for redesignation are not mandatory submittals under the Act, EPA believes that it must change its policy with respect to redesignation submittals to conform to the existing completeness criteria. Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the Agency decides to revise that exception. Therefore, New York State had submitted a complete redesignation request on November 13, 1992. In the November 13 submittal, the State submitted the maintenance plan, thereby including the final element to make the October 30, 1992 request for parallel processing complete under the parallel processing exception to the completeness criteria. On January 12, 1993, New York State submitted evidence that it held a public hearing on the maintenance plan portion of the

II. Evaluation Criteria

Section 107(d)(1)(E) of the Act lists specific requirements that an area must meet in order to be redesignated from nonattainment to attainment. They are:

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of the Act and the area must have met all relevant requirements under section 110 and Part D of the Act;
3. The air quality improvement must be permanent and enforceable; and
4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Section 175A also defines the elements of an approvable maintenance plan. The elements are a base year inventory, a maintenance demonstration for ten years after EPA approves the redesignation request, and contingency measures. The Act requires the state to submit a revised maintenance plan eight years after redesignation. The revised plan must show continued maintenance of the standard for an additional ten years. In the following sections, EPA analyzes New York's submittal with respect to these four redesignation requirements.

III. Review of State Redesignation Submittal

EPA proposes to find that New York's redesignation request for Onondaga County for CO meets the requirements of section 107(d)(3)(E). The following is a brief description of how the State has addressed each of these requirements. A Technical Support Document, on file at the EPA Region II office, contains a more detailed analysis of the submittal.

1. Attainment of the CO NAAQS

New York, in its request for redesignation, used air quality data that show that the CO standard was not violated in 1990 or 1991. These data were collected by New York State in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control and are in the EPA Aerometric Information and Retrieval System (AIRS). These were the data presented by New York State at its public hearing on the redesignation. Since Onondaga County has quality-assured monitoring data showing attainment of the standard over the latest consecutive two-year period, the area has met the first statutory criterion for attainment of the CO NAAQS. In addition, after the State requested redesignation, the State submitted data from 1992 to AIRS. These data are in AIRS and also show no air quality violations.

2. Fully Approved SIP That Meets Applicable Requirements of Section 110 and Part D

2A. New York's 1979 CO SIP

In 1985, EPA fully approved New York's 1979 CO SIP for Onondaga County as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act. The SIP was implemented by New York State and Onondaga County. Emission reductions from the SIP measures, the Federal Motor Vehicle Control Program and traffic flow improvements at the downtown Syracuse hot-spot, are responsible for the attainment of the CO NAAQS.

EPA approved the Onondaga County CO SIP as meeting all 1977 Act requirements. The 1990 Amendments to the Act modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for certain classes of nonattainment areas.

EPA requires that every state requesting redesignation have a SIP that contains all measures that were due under the 1990 Act before the date on which the State submitted its redesignation request. As noted earlier, Onondaga County was classified as a moderate CO nonattainment area with a design value under 12.7 ppm. The first CO SIP requirements for these areas (e.g., oxygenated fuels) were due for submittal on November 15, 1992. New York submitted its redesignation request on November 13, 1992. Therefore, New York does not have to include the 1990 Act control programs into its CO SIP for Onondaga County for the purposes of redesignation.[2] New York required the use of oxygenated fuels during the CO season of 1992–3 pending EPA approval of the redesignation request.

For the purposes of redesignation, to meet the requirement that the SIP contains all applicable requirements under the Act, EPA has reviewed the SIP and it contains all the measures that were due under the Act prior to the time New York submitted this redesignation request and maintenance plan.

2B. Section 110 Requirements

Although section 110 was amended by the 1990 amendments to the Act, the SIP for Onondaga County still meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, see 57 FR 27936 and 23939 (June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). This analysis is contained in the Technical Support Document.

2C. Part D Requirements

Because New York submitted the redesignation request for Onondaga County prior to the time any Part D requirements became applicable, i.e., prior to November 15, 1992, these requirements are not due for purposes of redesignation. EPA does note that the State of New York has an EPA-promulgated prevention of significant deterioration program for sources located in attainment areas. (See 40 CFR 52.1689.) This program will apply to Onondaga County immediately upon redesignation to attainment.

Conformity is a process in which projects that affect transportation are approved on the basis of consistency with SIP provisions. Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision. EPA has not promulgated final conformity regulations. However, New York has committed to develop conformity procedures consistent with the final federal regulations. In the redesignation request, New York commits to submit, if necessary, an appropriate SIP revision according to the schedule set forth in the federal regulations. In addition, the Syracuse Metropolitan Transportation Council (SMTC) has resolved to follow EPA conformity guidelines when EPA releases them. The request also contains examples where SMTC has implemented procedures to insure that projects underway, including the 1992–97 Transportation Improvement Program, conform with the existing SIP.

3 Improvement in Air Quality is Due to Permanent and Enforceable Measures

Under the 1977 Act, EPA approved the New York CO SIP for Onondaga County. At that time and now, EPA is satisfied that the rules in the SIP are enforceable. Therefore, the emission reductions achieved as a result of those rules are enforceable. The SIP measures were:

request and at that time parallel processing was no longer applicable; therefore, EPA determined the submittal to be complete under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

[2] Although these requirements were not due for purposes of EPA's action on the State's redesignation request, these requirements are applicable until such time as EPA takes final action on the Onondaga County redesignation request.

Federal Motor Vehicle Control Program (FMVCP), Traffic flow improvements at the downtown Syracuse hot-spot, and Air monitoring at the worst CO hot-spot.

In its redesignation request, New York shows that the SIP measures were implemented. The EPA-approved MOBILE4.1 model shows that the FMVCP and traffic improvements have decreased CO emissions in the downtown area by 57 percent from 1984 to 1991. The large decrease in emissions shows that the SIP is the reason that the CO SIP has caused attainment of the CO NAAQS. The FMVCP, in particular, continues to produce decreases in CO emissions as new, cleaner cars are bought to replace older cars. This continuing program accounts for much of the emission reductions in recent years that eliminated the violations in Onondaga County.

In the redesignation request and the maintenance plan, NYSDEC and SMTC commit to continue implementing the SIP. New York has continued to monitor at the worst CO hot-spot, where the monitor recorded the violations used to designate Onondaga County as nonattainment under the Act and where it now records the subsequent attainment of the CO standard.

4. Review of Maintenance Plan Submittal

In today's notice, EPA is proposing approval of the State's maintenance plan for Onondaga County because EPA finds that New York's submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, Onondaga County will be able to be redesignated to attainment.

Under section 175A of the Act, a maintenance plan must include an attainment emission inventory, contingency measures and a demonstration of attainment for at least ten years after the area is redesignated.

As for future years, section 175A of the Act requires the State to submit a revised maintenance SIP eight years after EPA takes final action redesignating the area to attainment. If, as EPA anticipates, final action is taken in 1993, the revised maintenance SIP will be due in 2001 and it will provide for maintenance of the CO air quality standard for an additional ten years.

4A. Emissions Inventory

New York submitted comprehensive inventories of CO emissions from point, area, stationary and mobile sources using 1991 as the base year for calculations to demonstrate that the CO standard will be maintained in Onondaga County. Since air monitoring recorded attainment in 1991, 1991 is an acceptable year for the attainment inventory. New York's submittal contains summaries by source category (reproduced in Table 1) and detailed inventory data (contained in the docket).

TABLE 1—ONONDAGA COUNTY CO EMISSIONS

[Tons per day]

	1991	1996	2003
Stationary Point[1]	0	0	0
Stationary Area	31	31	32
Non-road Mobile	38	38	39
On-road Mobile	301	216	134
Total	370	286	205

(Some columns do not total due to independent rounding during unit conversion.)

[1] This category includes only point sources that emit over 100 tons per year of CO. Point sources that emit less than 100 tons per year are included in the Stationary Area source category

Stationary and mobile source inventories were compiled following EPA guidance. Mobile source emission estimates were prepared following the approach recommended by EPA. New York used the Highway Performance Monitor System to estimate vehicle miles traveled and used the MOBILE4.1 emission model for CO emission estimates.

4B. Demonstration of Continued Attainment

SMTC projected CO emissions for Onondaga County, using New York's attainment year inventory, through 2003. EPA anticipates that this will be ten years from the date of the redesignation to attainment, as required by the Act. Table 1 shows that the CO emissions in Onondaga County will decrease throughout the period, so the future emissions estimates do not exceed the attainment year inventory. This shows that the present situation of attainment of the CO standard will be maintained. The decrease in emissions is from the FMVCP and traffic flow improvements at the downtown Syracuse hot-spot. These are programs in the State's 1979 CO SIP and no additional measures are needed to maintain attainment of the air quality standard.

In addition, air modeling for the four CO hot-spots with the greatest potential for violating the CO standard show that concentrations will decrease throughout the period due to the SIP measures. This modeling conforms with EPA guidance and is located in the docket.

4C. Verification of Continued Attainment

As required, the State will track continued attainment during the maintenance period. New York will continue to operate its hot-spot monitor located in downtown Syracuse in accordance with 40 CFR part 58. If the monitor records a concentration above the CO standard, New York will activate its contingency measure.

In addition, New York State will also prepare a revised CO emission inventory every three years. During the revision of the emission inventories, the State will reevaluate the growth factors and other assumptions that were used to develop the attainment and future year inventories.

4D. Contingency Plan

If, despite its best efforts to demonstrate continued compliance with the NAAQS, Onondaga County should exceed the NAAQS, New York has provided ways to detect and eliminate air quality problems. New York State has committed to respond to an exceedance of the CO standard in Onondaga County by implementing a contingency measure, oxygenated fuels, that should eliminate future CO air quality problems. This commitment was included in the redesignation request that was presented for public comment by the State during the comment period ending December 31, 1992.

The downtown Syracuse monitor is the monitor that recorded violations during the 1980s. Two analyses of intersections in Onondaga County, one in the 1980s and a more recent analysis included in the redesignation request, show that the monitor is located at the worst hot-spot in Onondaga County. If this monitor attains the CO standard, it can reasonably be assumed that all of Onondaga County is attaining the CO standard.

If the downtown Syracuse monitor records an exceedance of the CO air quality standard, New York will implement its oxygenated fuels program in the Syracuse Metropolitan Statistical Area as soon as possible, but no later than the beginning of the following CO season. To implement this commitment, the State could use its proposed oxygenated fuels rule, scheduled for adoption this year if it contains a provision to implement the program in the Syracuse Metropolitan Statistical Area if the State monitoring network records an exceedance of the CO standard in Onondaga County. Or the State can adopt an emergency rule to

implement the program (as it did to implement oxygenated fuels during the 1992–3 CO season).

Conclusion

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rule making procedure by submitting written comments to the person and address listed in the **ADDRESSES** section at the beginning of this notice.

Proposed Action

In today's notice EPA proposes to approve the Onondaga County, New York CO maintenance plan because it meets the requirements of section 175A. In addition, EPA is proposing approval of New York's request to redesignate Onondaga County to attainment of the CO standard, subject to final approval of the maintenance plan. EPA is proposing approval because New York has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP or redesignation. Each request for revision to the SIP or redesignation shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities.

5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000 people.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. I certify that the approval of the redesignation request will not affect a substantial number of small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 SIP revisions from the requirements of section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C 7401–7671q.

Dated: June 29, 1993.

William J. Muszynski,

Acting Regional Administrator

[FR Doc. 93–16800 Filed 7–14–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–183, RM–8276]

Radio Broadcasting Services; Sun Valley, Idaho

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sun Valley Fine Arts Broadcasting requesting the allotment of Channel 298C to Sun Valley, Idaho, as that community's third local aural service. Channel 298C can be allotted to Sun Valley in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 298C at Sun Valley are North Latitude 43–41–48 and West Longitude 114–21–00.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW, suite 200, Washington, DC 20006 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–183, adopted June 18, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16836 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket HM–200; Notice No. 93–17]

RIN 2137–AB37

Hazardous Materials in Intrastate Commerce; Correction

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); correction.

VOL
58
ISS
134
JL
15
1993
UMI

SUMMARY: This document makes certain corrections to a notice of proposed rulemaking proposing amendments to the Hazardous Materials Regulations (HMR) to require that all intrastate shippers and carriers comply with the HMR. This action is necessary to clarify that certain oils, that are subject to oil spill response plan requirements, are not governed by the HMR. This action also clarifies the scope of a delay in the applicability of the proposed rule to certain bulk packagings. These amendments are minor editorial changes that will not impose any new requirements on persons subject to the HMR.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, (202) 366–4401, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, RSPA, or Jackie Smith, (202) 366–4488, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (NPRM) was published on July 9, 1993, under Docket HM–200 (58 FR 36920). In the NPRM, RSPA proposes to amend the Hazardous Materials Regulations (HMR) to require that all intrastate shippers and carriers comply with the HMR. This document corrects certain editorial errors in that NPRM.

RSPA inadvertently stated in the preamble that certain oils are regulated as hazardous materials under the HMR, when transported in intrastate commerce. The "oils" identified in the preamble refer to those oils that require spill prevention and response plans as implemented under the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990. This inadvertent reference to oil was based on RSPA's interim final rule issued under Docket HM–214 on February 2, 1993 (58 FR 6864), which incorporated oils as hazardous materials subject to the requirements of the HMR. Shortly before publication of the NPRM under Docket HM–200, RSPA issued an interim final rule under Dockets HM–214 and PC–1 (58 FR 33302) that removed the designation as "hazardous materials" of oils that, before February 2, 1993, had not been so designated. Dockets HM–214 and PC–1 established a new part 130 in title 49 CFR solely for implementation of the FWPCA.

RSPA, however, failed to remove the reference to "oil" in the Docket HM–200 preamble explanation of those materials that are currently subject to the HMR when transported in intrastate commerce. Accordingly, the following editorial corrections in the preamble are made: (1) The words "and oil" are removed in the fifteenth and sixteenth lines of the first paragraph following the heading *ANPRM* in the second column on page 36920; (2) the word "oils" is removed from the ninth line of the first paragraph following the heading *State/Federal Relationship* in the first column on page 36921; (3) the word "and" is inserted between the words "flammable cryogenic liquids" and "marine pollutants" in the third line of the second paragraph under the heading *II. Proposed Rule* in the first column on page 36922; and (4) the words ", and oils" are removed from the fourth line of the second paragraph following the heading *II. Proposed Rule* in the first column on page 36922.

Additionally, in the proposed regulatory text under § 171.1(c), RSPA failed to include "marine pollutants" in the list of materials that are excepted from the proposed delay in application of the requirements to bulk packagings operated in intrastate commerce in a State where the non-specification bulk packaging is specifically authorized and the packaging is in compliance with all applicable State requirements.

In consideration of the foregoing, in Docket HM–200, Notice No. 93–17, published in the **Federal Register** on July 9, 1992 (58 FR 36920), make the following corrections:

§ 171.1 [Corrected]

1. On page 36923, in the third column, as proposed in item 3., in § 171.1(c) introductory text, third line, the words "a marine pollutant," are added following the words "a hazardous waste,".

Issued in Washington, DC on July 9, 1993 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety

[FR Doc. 93–16804 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Convention on International Trade in Endangered Species of Wild Fauna and Flora: Consideration of Amendments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates particular international trade in animal and plant species, which are listed in appendices to this treaty. Any country that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This notice announces plans by the U.S. Fish and Wildlife Service (Service) to consider proposals for submission by the United States to amend Appendices I and II. The Service invites information and comments from the public on animal and plant species that should be considered as candidates for U.S. proposals. Such proposals may concern the addition of species to Appendix I or II, the transfer of species from one appendix to another; or the removal of species from Appendix I or II; or registering operations with Appendix I animal species bred-in-captivity for commercial purposes.

DATES: The Service will consider all information and comments received by September 28, 1993.

ADDRESSES: Comments, information, and questions should be sent to Chief, Office of Scientific Authority; ArlSq room 725, U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703–385–2276. Express and messenger deliveries should be addressed to the U.S. Fish and Wildlife Service; Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Comments and other information received will be available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the above address in Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority (telephone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

This is the first in a series of **Federal Register** notices about proposals to amend CITES Appendices I and II to be considered at the ninth regular biennial meeting of the Conference of the Parties. The purpose of this notice is to solicit information that will help the Service to identify: (1) Species that are candidates for addition, removal, or reclassification in those appendices; (2) Ten-Year Review species for which there is no documented evidence of trade in the species; (3) Nomenclatural issues; and (4) Appendix I animal species having

operations that should be submitted as meeting bred-in-captivity criteria, in accordance with CITES resolution Conf. 8.15.

This request is not limited to species occurring in the United States. Any Party may submit proposals concerning animal and plant species occurring anywhere in the world, although the U.S. proposals submitted for recent meetings of the Conference of the Parties have focused on species native to the United States. The Service strongly encourages the submission of well-developed proposals.

CITES (TIAS 8249) regulates import, export, re-export, and introduction from the sea of certain animal and plant species and specimens of them. The term "species" is defined in CITES Article I as "any species, subspecies, or geographically separate population thereof." Each species for which such trade is controlled is included in one of three appendices. The fundamental principles for including species in the appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so, unless the trade in them is strictly controlled. It also lists other species that must be subject to regulation, in order that the trade in those currently and potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species in trade. Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of the other Parties in controlling the trade. The present notice concerns only Appendices I and II.

For animals in Appendix I or II and plants in Appendix I, any readily recognizable part or derivative thereof is automatically included when the species is listed in the appendix, by the language in CITES. Most parts and derivatives of the plants listed in Appendix II are also included, with certain standard exclusions, by amendments and resolutions at several meetings of the Conference of the Parties. The parts and derivatives usually not included (i.e., not regulated) for Appendix II plants are: Seeds, spores, pollen (including pollinia), tissue cultures, and flasked seedling cultures. Also see 50 CFR 23.23(d) for other exclusions and limitations. Further guidance on criteria for adding, transferring, or deleting species with respect to the appendices is contained in several resolutions available from the Office of Scientific Authority (see the **ADDRESSES** section).

The Parties have adopted a format for proposals to amend Appendix I or II (resolution Conf. 2.17), in order to ensure that certain types of information are provided. The format is as follows:

A. Proposal

B. Proponent (CITES Party country)

C. Supporting Statement

1. Taxonomy

11. Class.
12. Order.
13. Family.
14. Genus, species, or subspecies, including author(s) and year, and checklist or authority being followed to recognize the species.
15. Common name(s), when applicable, including French and Spanish or other common names (if known).
16. Code numbers, when applicable; e.g., International Species Inventory System (ISIS) number.

2. Biological Data

21. Distribution (current and historical).
22. Population (estimates and trends, and other relevant information).
23. Habitat (trends).

3. Trade Data

31. National utilization.
32. Legal international trade.
33. Illegal trade.
34. Potential trade threats.
341. Live specimens.
342. Parts and derivatives.

4. Protection Status

41. National.
42. International.
43. Additional protection needs.

5. Information on Similar Species (Addressing the Issue of Similarity of Appearance Where Appropriate

6. Comment From Countries of Origin (Other Than Proponent)

7. Additional Remarks

8. References (Published Literature and Other Documents)

Future Actions

The next regular meeting of the Conference of the Parties is planned for the United States within the last quarter of 1994. Any proposals to amend Appendix I or II at the next meeting must be submitted by the United States to the CITES Secretariat at least 150 days prior to the meeting. Therefore as part of the consultation process with countries within which the proposed species occurs (in accordance with resolution Conf. 8.21), the Service plans to send any such proposals to those CITES countries for comment at least 60 days prior to sending them to the Secretariat.

The Service plans to publish a **Federal Register** notice in the last quarter of 1993 or early 1994 to announce tentative species proposals for possible submission by the United States, and to invite information and comments on them. A subsequent notice in 1994 will announce the Service's final decisions and those species proposals submitted by the United States to the CITES Secretariat. In future notices, the Service also will address the development of U.S. negotiating positions on the proposals and issues submitted by other Party countries to amend Appendices I and II.

Persons having information and comments on species that might be potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority. Submitted proposals should be in the format for proposals provided above, and well developed.

This notice was prepared by Drs. Henry L. Short and Bruce MacBryde, Office of Scientific Authority, under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: July 6, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–16697 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–55–M

VOL
58
ISS
134
JL
15
1993
UMI

Notices

Federal Register
Vol. 58, No. 134
Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 02.01.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1993 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1993 (58 FR 536), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1993 is 1,144.7 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 is 1,259.1 million pounds.

Done at Washington, DC this 29th day of June, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–16749 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Exemption of Scott Fire Salvage Timber Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber project designed to recover fire-damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In August 1992, the Scott Fire on the Nez Perce National Forest burned about 6,000 acres. In September 1992, the Forest Supervisor proposed a salvage timber sale project to recover dead and damaged sawtimber from within the perimeter of the fire. The Forest Supervisor has determined, through analysis documented in the Scott Fire Timber Salvage Environmental Assessment (EA) and Decision Notice, that good cause exists to expedite these actions: (1) Recover damaged resources, (2) rehabilitate National Forest System lands, and (3) adopt a site-specific Forest Plan amendment.

EFFECTIVE DATE: Effective on July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert F. Abbott, District Ranger; Salmon River Ranger District, Nez Perce National Forest; HC 01, Box 70; White Bird, ID 83554; Telephone 208–839–2211.

SUPPLEMENTARY INFORMATION: The Scott fire burned approximately 6,000 acres in August 1992. About 1,000 acres of this total were within the Gospel-Hump Wilderness. Most of the tree mortality and damage occurred on about 2,700 acres outside the wilderness. The affected areas outside the wilderness are located in Management Areas 12, 16, and 20, which are designated as suitable timberland in the Nez Perce Forest Plan (October 1987).

In September 1992, the Forest Supervisor proposed the salvage of commercial sawtimber on lands located outside the wilderness that were affected by the fire. This proposal was designed to meet the following needs: (1) Capture as much of the economic value as possible; (2) reduce the food source for insects, and reduce or eliminate the potential for live trees to be impacted by the increase in insect populations; (3) reduce potential fuel levels; and (4) manage the area to move as rapidly as possible toward the re-establishment of old-growth habitat components.

An interdisciplinary team was convened, and scoping began in 1992. Eight environmental issues were identified through scoping, and these issues were the basis for the environmental analysis disclosed in the EA. Five alternatives were analyzed including no treatment (no action) and a salvage and rehabilitation proposal (proposed action). Five other alternatives were considered but dismissed from detailed consideration.

The selected alternative would salvage approximately 14.2 MMBF of dead and damaged timber from approximately 1,493 acres. All logging is to be done from existing system roads; however, about ½ mile of temporary road is required and will be obliterated and returned to contour after use. Most of the yarding is to be done with helicopters, although some cable and skyline yarding are also planned.

Achieving the objective of rapid re-establishment of old-growth habitat components requires a site-specific amendment to the Nez Perce Forest Plan. This amendment is permitted by 36 CFR 219.10(f) and Section X of the Forest Plan Record of Decision. The amendment is necessary because the Forest Plan prohibits timber harvest in areas assigned to Management Area 20 (old growth) during the first decade of Forest Plan implementation. Amendment 17 is proposed because the analysis of the Scott Fire Project shows that harvest of some fire-damaged trees in areas assigned to this Management Area can reduce future fire and insect risks to the remaining fire-damaged

trees. Competition between the remaining fire-damaged trees for survival can also be reduced if some harvest is allowed.

The salvage timber project is designed to accomplish these objectives as quickly as possible to minimize the risk of insect infestations, to reduce fuel loading, and to recover merchantable sawtimber before it deteriorates in value and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being carried out. Under this regulation, the following types of decisions may be exempted from administrative appeal:

> Decisions related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from * * * wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Scott Fire Salvage Timber Sale EA and in the Nez Perce Forest Supervisor's Decision Notice, I have determined that good cause exists to exempt the decision to implement this project and the decision to adopt Forest Plan Amendment No. 17 from administrative review. Therefore, upon publication of this notice, the Scott Fire Salvage Timber Sale and Nez Perce Forest Plan Amendment No. 17 will not be subject to review under 36 CFR part 217.

Dated: July 12, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–16870 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–11–M

Enzymatic Deinking of Recycled Fibers; Intent to Form a Consortium

Program Description

Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to form a consortium dedicated to the enzymatic deinking of recycled fibers under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be any Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the proposed research and development is as follows:

(a) Microbial cellulases and xylanases, applied to recycled fibers during high consistency maceration, facilitate removal of toners by subsequent flotation and washing stages. Under optimal conditions, the enzymes are more efficient than conventional deinking chemicals, and they do not create problems in waste water clean up. Initial studies have identified several commercial enzyme preparations that could be competitive with current chemical deinking technology.

(b) Further development could proceed along several lines:

(1) Enzymes could be formulated with appropriate deinking chemicals to obtain synergistic activity;

(2) More effective enzymes could be identified;

(3) The active components of the enzymes could be better defined to improve efficiency and reduce cost of enzyme production;

(4) Process engineering control technologies could be developed that would improve the efficacy of enzyme application; and

(5) Enzyme treatment could be developed that would shorten fiberization times, improve drainage, and enhance strength properties as they facilitate deinking.

(6) Other proposed research topics which may emerge from consultation with consortium members.

(c) We propose to accomplish these objectives by conducting research within an industrial consortium, the consortium members consisting of an enzyme manufacturer, a supplier of deinking chemicals, a process engineering company, and a manufacturer of deinked recycled paper pulp. Information and expertise will be shared in order to develop the most practicable technology in the least amount of time.

(d) Initial studies would focus on identifying critical enzyme performance characteristics and scaling up processing technology to plant trials. The primary objectives of this consortium shall be to develop a fundamental understanding of the mechanisms of enzymatic deinking to enable rapid commercial development.

A meeting of potential industrial partners will be held on August 24, 1993, to discuss the formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. Prior to that meeting, a Proprietary Information Disclosure Agreement (PIDA) will be required to be executed by each organization and/or individual, as applicable, attending the meeting. Copies of the PIDA for execution may be obtained at the address shown below.

Proposals will be invited at the meeting for each of the several lines of further development. They will be due at the time and address shown below. Four panels will be instituted comprised of persons knowledgeable in the field; they will evaluate the proposals for each of the four lines of development (a through d, above) and will recommend the most responsive proposals to the Grants and Agreements Officer shown below.

The Grants and Agreements Officer will negotiate and enter into Cooperative Research and Development Agreements (CRADA)s with the selected proposers. The CRADAs will provide for statements of the mutuality of interest of the parties, the actions to be performed by the parties which contribute to the research and development, and the disposition of intellectual property rights arising from the research. It is anticipated that each CRADA will provide the industrial partner with a right of first refusal to negotiate a nonexclusive, a partially exclusive, or an exclusive license to the technology derived from the research under the CRADA. A copy of a sample CRADA may be obtained by writing to the address below.

Proposals must be received by the close of business September 27, 1993, by the Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398. Any proposals received after that time will be returned unopened to the proposer.

Neither the approval of any proposal nor the execution of any CRADA commits or obligates the United States in any way to provide further support of a project or any portion thereof.

Done at Madison, WI, on July 7, 1993.

John G. Bachhuber,

Grants and Agreements Officer.

[FR Doc. 93–16799 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 930664–3164]

MEGA Center Applications: Los Angeles Metropolitan Statistical Area With Selected Services Throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

VOL
58
ISS
134
JL
15
1993
UMI

Notices

Federal Register
Vol. 58, No. 134
Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 02.01.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1993 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1993 (58 FR 536), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1993 is 1,144.7 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 is 1,259.1 million pounds.

Done at Washington, DC this 29th day of June, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–16749 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Exemption of Scott Fire Salvage Timber Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber project designed to recover fire-damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In August 1992, the Scott Fire on the Nez Perce National Forest burned about 6,000 acres. In September 1992, the Forest Supervisor proposed a salvage timber sale project to recover dead and damaged sawtimber from within the perimeter of the fire. The Forest Supervisor has determined, through analysis documented in the Scott Fire Timber Salvage Environmental Assessment (EA) and Decision Notice, that good cause exists to expedite these actions: (1) Recover damaged resources, (2) rehabilitate National Forest System lands, and (3) adopt a site-specific Forest Plan amendment.

EFFECTIVE DATE: Effective on July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert F. Abbott, District Ranger; Salmon River Ranger District, Nez Perce National Forest; HC 01, Box 70; White Bird, ID 83554; Telephone 208–839–2211.

SUPPLEMENTARY INFORMATION: The Scott fire burned approximately 6,000 acres in August 1992. About 1,000 acres of this total were within the Gospel-Hump Wilderness. Most of the tree mortality and damage occurred on about 2,700 acres outside the wilderness. The affected areas outside the wilderness are located in Management Areas 12, 16, and 20, which are designated as suitable timberland in the Nez Perce Forest Plan (October 1987).

In September 1992, the Forest Supervisor proposed the salvage of commercial sawtimber on lands located outside the wilderness that were affected by the fire. This proposal was designed to meet the following needs: (1) Capture as much of the economic value as possible; (2) reduce the food source for insects, and reduce or eliminate the potential for live trees to be impacted by the increase in insect populations; (3) reduce potential fuel levels; and (4) manage the area to move as rapidly as possible toward the re-establishment of old-growth habitat components.

An interdisciplinary team was convened, and scoping began in 1992. Eight environmental issues were identified through scoping, and these issues were the basis for the environmental analysis disclosed in the EA. Five alternatives were analyzed including no treatment (no action) and a salvage and rehabilitation proposal (proposed action). Five other alternatives were considered but dismissed from detailed consideration.

The selected alternative would salvage approximately 14.2 MMBF of dead and damaged timber from approximately 1,493 acres. All logging is to be done from existing system roads; however, about ½ mile of temporary road is required and will be obliterated and returned to contour after use. Most of the yarding is to be done with helicopters, although some cable and skyline yarding are also planned.

Achieving the objective of rapid re-establishment of old-growth habitat components requires a site-specific amendment to the Nez Perce Forest Plan. This amendment is permitted by 36 CFR 219.10(f) and Section X of the Forest Plan Record of Decision. The amendment is necessary because the Forest Plan prohibits timber harvest in areas assigned to Management Area 20 (old growth) during the first decade of Forest Plan implementation. Amendment 17 is proposed because the analysis of the Scott Fire Project shows that harvest of some fire-damaged trees in areas assigned to this Management Area can reduce future fire and insect risks to the remaining fire-damaged

trees. Competition between the remaining fire-damaged trees for survival can also be reduced if some harvest is allowed.

The salvage timber project is designed to accomplish these objectives as quickly as possible to minimize the risk of insect infestations, to reduce fuel loading, and to recover merchantable sawtimber before it deteriorates in value and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being carried out. Under this regulation, the following types of decisions may be exempted from administrative appeal:

> Decisions related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from * * * wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Scott Fire Salvage Timber Sale EA and in the Nez Perce Forest Supervisor's Decision Notice, I have determined that good cause exists to exempt the decision to implement this project and the decision to adopt Forest Plan Amendment No. 17 from administrative review. Therefore, upon publication of this notice, the Scott Fire Salvage Timber Sale and Nez Perce Forest Plan Amendment No. 17 will not be subject to review under 36 CFR part 217.

Dated: July 12, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–16870 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–11–M

Enzymatic Deinking of Recycled Fibers; Intent to Form a Consortium

Program Description

Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to form a consortium dedicated to the enzymatic deinking of recycled fibers under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be any Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the proposed research and development is as follows:

(a) Microbial cellulases and xylanases, applied to recycled fibers during high consistency maceration, facilitate removal of toners by subsequent flotation and washing stages. Under optimal conditions, the enzymes are more efficient than conventional deinking chemicals, and they do not create problems in waste water clean up. Initial studies have identified several commercial enzyme preparations that could be competitive with current chemical deinking technology.

(b) Further development could proceed along several lines:

(1) Enzymes could be formulated with appropriate deinking chemicals to obtain synergistic activity;

(2) More effective enzymes could be identified;

(3) The active components of the enzymes could be better defined to improve efficiency and reduce cost of enzyme production;

(4) Process engineering control technologies could be developed that would improve the efficacy of enzyme application; and

(5) Enzyme treatment could be developed that would shorten fiberization times, improve drainage, and enhance strength properties as they facilitate deinking.

(6) Other proposed research topics which may emerge from consultation with consortium members.

(c) We propose to accomplish these objectives by conducting research within an industrial consortium, the consortium members consisting of an enzyme manufacturer, a supplier of deinking chemicals, a process engineering company, and a manufacturer of deinked recycled paper pulp. Information and expertise will be shared in order to develop the most practicable technology in the least amount of time.

(d) Initial studies would focus on identifying critical enzyme performance characteristics and scaling up processing technology to plant trials. The primary objectives of this consortium shall be to develop a fundamental understanding of the mechanisms of enzymatic deinking to enable rapid commercial development.

A meeting of potential industrial partners will be held on August 24, 1993, to discuss the formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. Prior to that meeting, a Proprietary Information Disclosure Agreement (PIDA) will be required to be executed by each organization and/or individual, as applicable, attending the meeting. Copies of the PIDA for execution may be obtained at the address shown below.

Proposals will be invited at the meeting for each of the several lines of further development. They will be due at the time and address shown below. Four panels will be instituted comprised of persons knowledgeable in the field; they will evaluate the proposals for each of the four lines of development (a through d, above) and will recommend the most responsive proposals to the Grants and Agreements Officer shown below.

The Grants and Agreements Officer will negotiate and enter into Cooperative Research and Development Agreements (CRADA)s with the selected proposers. The CRADAs will provide for statements of the mutuality of interest of the parties, the actions to be performed by the parties which contribute to the research and development, and the disposition of intellectual property rights arising from the research. It is anticipated that each CRADA will provide the industrial partner with a right of first refusal to negotiate a nonexclusive, a partially exclusive, or an exclusive license to the technology derived from the research under the CRADA. A copy of a sample CRADA may be obtained by writing to the address below.

Proposals must be received by the close of business September 27, 1993, by the Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398. Any proposals received after that time will be returned unopened to the proposer.

Neither the approval of any proposal nor the execution of any CRADA commits or obligates the United States in any way to provide further support of a project or any portion thereof.

Done at Madison, WI, on July 7, 1993.

John G. Bachhuber,

Grants and Agreements Officer.

[FR Doc. 93–16799 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 930664–3164]

MEGA Center Applications: Los Angeles Metropolitan Statistical Area With Selected Services Throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

VOL
58
ISS
134
JL
15
1993
UMI

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Los Angeles Minority Enterprise Growth Assistance (MEGA) Center. The total cost of performance for the first budget period (15 months) from November 1, 1993 to January 1, 1995, is estimated at $3,641,972, contingent upon the availability of Federal funding. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The Los Angeles MEGA Center will provide service in the Los Angeles Metropolitan Statistical Area with selected services throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The purpose of the MEGA Center is to provide integrated business development services to minority entrepreneurs in areas of high unemployment, underemployment or distress, and areas of Los Angeles that the President has declared a disaster as a result of the civil disturbances in Los Angeles. In addition to basic business assistance services, the center will provide specialized assistance in the areas of Franchise Development, Construction Assistance and Bonding, Capital Development, International Trade, Technology Assistance, and Tourism Development. Each one of these specialized business areas are considered functional components, and serve as integral parts of the center. The MEGA Center is, therefore, equipped to meet the more complex business needs of the minority business community. This, in turn, is expected to create growing and more profitable ventures resulting in increased job opportunities.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The Los Angeles MEGA Center shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the Los Angeles MEGA Center may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MEGA Center will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MEGA Center's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 31, 1993. Applications must be postmarked on or before August 31, 1993.

ADDRESSES: MBDA Los Angeles District Office, SFRO, 9660 Flair Drive, suite 455, El Monte, CA 91731, (818) 453–8636.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Officer, telephone (415) 744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-bid conference will be held on July 30, 1993 at 10 a.m. at the MBDA Los Angeles District Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at lease one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty for financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MEGA Center work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in the 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Deberment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirement and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26 § 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, § 605) are subject to 15 CFR part 26, subpart F, "Government Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, § 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: July 12, 1993.

Loretta Young,

Acting Deputy Director, Minority Business Development Agency.

[FR Doc. 93–16809 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Modernization Transition Committee

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of establishment.

SUMMARY: The Department of Commerce announces the establishment of the Modernization Transition Committee on July 8, 1993, in accordance with Public Law 102–567, section 707 (Weather Service Modernization Act (the Act)). The Secretary of Commerce has determined that the Committee is in the public interest in connection with the modernization of the National Weather Service (NWS) and the performance of duties imposed on the Department by law.

FOR FURTHER INFORMATION CONTACT: Senator Raygor, TPO, 1325 East-West Highway # 17228, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: The Act requires NOAA to consult with a 12-member Modernization Transition Committee before publishing the modernization criteria required by section 704 of the Act. These are the criteria for commissioning and decommissioning new weather observation systems and for certifying that closing, consolidating, automating, or relocating a field office of the NWS will not result in any degradation of services.

The Committee will consist of 12 members chosen to assure a balanced representation of interest and viewpoints. The Secretary will appoint seven members from civil defense and public safety organizations, news media, any labor organization certified by the Federal Labor Relations Authority as an exclusive representative of National Weather Service Employees, meteorological experts, and private-sector users of weather information, such as pilots and farmers. Additionally, five members representing agencies and departments of the U.S. Government that are responsible for providing or using weather services, including, but not limited to, the National Weather Service, the Department of Defense, the Federal Aviation Administration, and the Federal Emergency Agency, shall be appointed to the Committee.

This Committee will be renewed July 8, 1995.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 93–16750 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–12–M

Finding of No Significant Impact—WSR–88D and Supplemental Environmental Assessment

AGENCY: NEXRAD Joint System Program Office, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability.

SUMMARY: The NEXRAD Joint System Program Office (JSPO) announces the availability of the Supplemental Environmental Assessment (SEA) of the effects of electromagnetic radiation from the WSR–88D and the Finding of No Significant Impact (FONSI) of that study.

FOR FURTHER INFORMATION CONTACT: NOAA, SP01, 1325 East-West Highway, #15170, Silver Spring, Maryland, 20910, Attn: Mr. David Smiley, Deputy Program Manager.

SUPPLEMENTARY INFORMATION: The WSR–88D Program is being implemented by the JSPO, formed by the U.S. Departments of Commerce, Transportation, and Defense (DOC, DOT, and DOD). The WSR–88D Program consists of the design, siting, construction, and installation of 116 National Weather Service (NWS) radars in the continental United States; 14 Federal Aviation Administration (FAA) radars in Alaska, Hawaii, and the Caribbean; and 22 DoD radars in the continental United States (the FONSI does not apply to WSR–88D units being installed by DoD outside the U.S.).

The SEA updates portions of the environmental analysis included in the Programmatic Environmental Impact Statement (PEIS) published by the NEXRAD JSPO in 1984. The SEA focuses on the potential for electromagnetic radiation from the WSR–88D to result in significant biological effects. In extending the earlier analysis, the SEA used current radar performance specifications and field measurements made at the WSR–88D Operational Support Facility to recalculate and verify the strength of the electromagnetic field created by the radars during operation. The SEA also addressed the potential biological effects from exposure to the electromagnetic field created by power lines serving each radar. Finally, the document reexamined the potential for the creation of hazards to humans

through electromagnetic interference (EMI) with cardiac pacemakers, electroexplosive devices, and fueling operations.

The SEA review of research since 1984 found no scientific evidence that exposure to WSR–88D radio frequency radiation (RFR) will result in adverse biologic impacts.

Similarly, the review found that adverse effects are not expected to result from exposure to WSR–88D power-line fields. Finally, as concluded in 1984, no hazards will be created for operation of cardiac pacemakers, use of electroexplosive devices, or fuel handling. The JSPO concludes that the finding of the 1985 Record of Decision (ROD) remains valid—implementation of the WSR–88D Program will not cause significant adverse impacts on human health or hazards to electromagnetic systems. Construction and operation of the WSR–88D system will not cause significant adverse impacts on the human environment.

All practical means to avoid or minimize environmental effects will be undertaken. In keeping with the recommendation of the 1985 ROD, the JSPO will continue the current practice of preparing environmental assessments for individual WSR–88D sites. Environmental sampling and measurement will be conducted, as necessary, at specific sites to analyze possible impact levels. During the environmental review of specific WSR–88D sites, Federal, State, and local environment and resource protection agencies will be consulted.

Dated: June 29, 1993.

Robert M. Valone,

Director, Systems Program Office.

[FR Doc. 93–16798 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–13–M

Florida Keys National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: July 29 and 30, 1993, from 9 a.m. until adjournment. The meeting location will be at the Hawks Key Resort, Mile Marker 61, Route 1, Duck Key, Florida.

AGENDA:

1. Solicit public comment on Florida Keys National Marine Sanctuary management alternatives.
2. Discussion and vote on recommendation of a preferred alternative.

PUBLIC PARTICIPATION: The meeting will be open to public participation. The first day will be devoted to oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743–2437 or Ben Haskell at (301) 713–3137.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: July 9, 1993.

Frank Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–16754 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P466a).

SUMMARY: On April 20, 1993, notice was published in the **Federal Register** (58 FR 21285) that an application had been filed by Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 01220–3309 for authorization to harass up to 20,000 harbor porpoise (*Phocoena phocoena*) annually during the conduct of underwater acoustic playback experiments, over a three year period, in the inshore and coastal waters of Maine.

Notice is hereby given that on July 9, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), NMFS issued a permit to the above applicant to harass up to 1000 harbor porpoise annually as described above, subject to certain conditions set forth therein.

ADDRESSES: The permit and associated documents are available for review upon written request or by appointment, in the following offices.

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: July 9, 1993.

William Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16756 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Independent Scientific Peer Review of the Catch Limit Algorithm of the International Whaling Commission's Revised Management Procedure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: At its 1992 Annual Meeting, the International Whaling Commission (IWC) adopted a mathematical procedure that could be a basis for calculating catch limits for commercial whaling. This notice seeks nominations of qualified scientists from outside NMFS to participate in an independent scientific peer review of the procedure.

DATES: Nominations should be received by NMFS by August 30, 1993.

ADDRESSES: Nominations for the peer review panel should be sent to Dr. Michael P. Sissenwine, Senior Scientist for Fisheries, National Marine FIsheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steven Swartz (301–713–2239).

SUPPLEMENTARY INFORMATION: At its 1992 Annual Meeting, the Scientific Committee of the IWC unanimously recommended that the Commission adopt a specific Revised Management Procedure (RMP) and its mathematical algorithm for calculating catch quotas for commercial whaling—the "catch limit algorithm" or CLA. The Commission accepted the advice of the Scientific Committee and adopted the RMP in principle. At the same time it affirmed that commercial whaling could not be permitted unless catch limits have been calculated by the Scientific Committee and approved by the Commission, and it set forth a series of additional steps that need to be taken before any catch quotas are calculated.

The RMP was developed to satisfy three criteria established by the IWC: (1) To ensure the highest possible continuing yield, (2) to ensure that a stock does not become depleted by

harvesting, and (3) to ensure stability in the catch quotas. Of these three criteria, the IWC chose to put greatest emphasis on criteria number (2).

The Scientific Committee spent more than 5 years in developing the RMP and its CLA. Several possible procedures were proposed, and each was evaluated with an extensive series of computer simulations. The current management scheme (the New Management Procedure) was also evaluated; it did not perform as well as any of the proposed procedures. In 1991, the Commission selected one procedure as a base for further development, and in 1992, when the Scientific Committee resolved the main difficulties in the practical implementation of the procedure from a scientific point of view, the Commission adopted it in principle. Final documentation of the CLA was completed at the 1993 Annual Meeting of the IWC's Scientific Committee.

On May 5, 1993, the Secretary of Commerce announced the United States' opposition to the resumption of commercial whaling, but said the United States will continue to work within the IWC to perfect the Revised Management Scheme, which includes the RMP and the CLA. As part of the U.S. evaluation of the proposed procedure, NMFS has decided to conduct an independent scientific peer review of the RMP and its CLA before making any final judgment about the efficacy of the procedure. This independent scientific peer review is intended to examine the CLA and the results of simulation trials conducted by the IWC's Scientific Committee to assess the performance and applicability of the RMP as a management tool.

In addition, the review will address the data requirements for an external, fishery-independent monitoring program to assess the performance of the RMP, as was discussed by the IWC at its 1993 Annual Meeting in Kyoto, Japan.

The review will not address any other questions related to commercial whaling or whaling policy, including whether or not commercial whaling should be authorized by the IWC based on CLA-derived catch quotas or any other basis. To be most valuable, the review will be conducted by scientists with demonstrated expertise in quantitative science from outside NMFS.

The review panel is expected to convene for 1 week in Woods Hole, MA, in late October 1993.

By this notice, NMFS is soliciting nominations of scientists to serve on the peer review panel. To qualify, nominees must have demonstrated an exceptional expertise as scientists in one or more of the following areas: Quantitative population dynamics, resource management modeling, and/or applied decision theory. They must also have had no prior involvement in IWC-related issues.

Dated: July 8, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–16801 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act 44 U.S.C. chapter 35).

Title and Applicable Form: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority (TERA) for Increased Retirement Compensation; DD Form 2676

Type of Request: Expedited Submission-Approval Date Requested: 30 days after publication in the **Federal Register**

Average Burden Per Response: 10 minutes

Response Per Respondent: 1

Number of Respondents: 4,800

Annual Burden Hours: 800

Annual Responses: 4,800

Needs and Uses: Public Law 102–484, section 4464 requires the Department of Defense to develop policy and procedures to validate and credit increased retirement compensation for qualifying public and community service employment performed by retired personnel of the Armed Forces under the early retirement program

Affected public: Individuals or households, State or local governments, non-profit institutions, and small businesses or organizations

Frequency: On occasion and annually thereafter

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer, Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce, Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16774 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Health Insurance Claim Form; HCFA–1500; OMB Number 0720–0001

Type of Request: Revision

Number of Respondents: 7,800,000

Responses Per Respondent: 1

Annual Responses: 7,800,000

Average Burden Per Response: 15 minutes

Annual Burden Hours: 1,950,000

Needs and Uses: The information collected by this form is used by OCHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to CHAMPUS beneficiaries. The requested information is used to determines beneficiary eligibility, appropriateness and cost of care, other health insurance liability, and whether services received are benefits. Use of this form continues the OCHAMPUS commitment to use the national standard claim form for reimbursement of services and supplies provided by individual professional providers

Affected Public: Individuals or households, State or local governments, businesses of other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations, and Federal agencies or employees

Frequency: On occasion

Respondents's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Joseph F. Lackey, Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer for DoD, room 3002, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William P. Pearce, Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 93–16773 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Renewal of the Strategic Environmental Research & Development Program Scientific Advisory Board

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Strategic Environmental Research & Development Program Scientific Advisory Board (SERDP SAB) has been renewed by the Department of Defense (DoD). Authorization for the SERDP SAB is contained in Section 2904, Title 10 U.S.C.

The SERDPS SAB will provide advice and recommendations to the Secretary of Defense and the Secretary of Energy, via the SERDP Council, on environmental research and development activities. This will include matters involving technologies, research, projects, programs, activities, and funding considerations where appropriate, within the scope of the SERDP.

The SERDP SAB will continue to be comprised of between six and thirteen members, as specified in Title 10, who are eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health sciences, physics, and social sciences. Due regard will be given to women candidates and other minority groups. Efforts will also be made to ensure that the membership is well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding the SERDP SAB, please contact Dr. Joseph Osterman, telephone: 703–695–9759.

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16776 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency Scientific Advisory Board Meeting

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board Panel on Intelligence Support to OSD Offices has been scheduled as follows:

DATES: 19 July 1993 (0900–1700).

ADDRESSES: Monday, 19 July 1993, The Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340–1328.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328, (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical issues and advise the Director of Policy Support.

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16775 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Militarily Critical Technologies List

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: The 1992 Militarily Critical Technologies List (MCTL) is now available. The 1992 MCTL was prepared by the Under Secretary of Defense for Acquisition as required by the Export Administration Act. The Act directs that the Secretary of Defense shall bear primary responsibility for developing a list of Militarily Critical Technologies.

FOR FURTHER INFORMATION CONTACT: Dr. Joe P. Golden or Mr. Ib A. Berg, Office of the Deputy Under Secretary (International Programs) Telephone: (703) 695–9777 or (703) 614–4777; FAX: (703) 693–0128.

SUPPLEMENTARY INFORMATION: The List was produced by working groups of technical experts from the Government, the Military, Industry and Academia. The experts conducted detailed analyses of each of 15 technologies which DoD assesses to be critical to the development, production and use of military capabilities of significant value to potential adversaries. The 1992 MCTL supersedes the October 1989 MCTL.

The 1992 MCTL has been expanded to identify technologies of importance to the control of the proliferation of weapons of mass destruction and their missile delivery systems. Also new are summary estimates of the general status of foreign capabilities in the MCTL technology areas.

While the MCTL does not replace existing export control lists or other international guidelines, it supports development of export control policy, technology release guidelines, and non-proliferation policy (to include treaty verification). It is the basis for specific proposals for controls to be implemented by CoCom, other multilateral control regimes, or U.S. mechanisms such as the Commerce Control List (CCL) and the U.S. Munitions List.

The MCTL is available to Government agencies and their contractors in paper copy or on diskette from the Defense Technical Information Center (DTIC). Send mail requests to: DTIC, Building 5, Cameron Station, Alexandria, VA 22304–6145; FAX requests to (703) 274–9307; and telephone requests to: (703) 274–7633

The general public can get information on obtaining copies of the MCTL from the National Technical Information Service, Springfield, VA 22161; FAX inquiries (703) 321–8547; and telephone inquiries to (703) 487–4650.

Dated: July 12, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16777 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Security Seals for Transportation of DOD Cargo

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is evaluating all security seals that can be used to secure sensitive Department of Defense (DOD) cargo in-transit. Such shipments include arms, ammunition and explosives (AA&E), hazardous material, and classified material.

DATES: Suggested seals of correspondence must be submitted by September 13, 1993.

ADDRESSES: Submit seals or correspondence to Headquarters, Military Traffic Management Command, ATTN: MTOP-S/Darryl Richardson, 5611 Columbia Pike, Falls Church, VA 22041–5050; telephone (703) 756–2030 or DSN 289–2030.

SUPPLEMENTARY INFORMATION: MTMC invites manufacturers and or designers of security seals to submit their seals for testing to the Military Traffic Management Command. At least ten (10) seal samples are required. Once received, seals will be forwarded to a testing agency. Once the agency has tested the seals, their evaluations/recommendations will be provided to MTMC. Based on these evaluations, MTMC will consider seals for possible inclusion in the MTMC-approved cargo seal listing. This listing is provided to all MTMC-approved commercial carriers and DOD agencies charged with transporting sensitive DOD cargo. MTMC also encourages seal manufacturers and designers to provide recommendations for cargo seal standards.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16795 Filed 7–14–93; 8:45 a.m.]

BILLING CODE 3710–08–M

Patents Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses under the following patents. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issue date
5,220,909	Self Heating Individual Meal Module.	06/22/93
5,205,021	Quick Release Buckle Assembly.	04/27/93
5,169,554	Enzyme Detergent Formulation and Methods of Detoxifying Toxic Organophosphorus Acid Compounds.	12/08/92
5,209,436	Radial Reefing Means for use in Packing and Opening a Parachute Canopy in a Controlled Manner.	05/11/93
5,089,298	Synergistic Effect of Amylopectin-Permethrin in Combination on Textile Fabrics.	02/19/92

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans, Natick Research, Development and Engineering Center, Office of Research and Technology Applications on 508–651–5296 or write to U.S. Army Natick Research, Development and Engineering Center, Kansas Street, STRNC–EML (Robert Rosenkrans), Natick, MA 01760–5014.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16713 Filed 7–14–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency concerning Peaceful Application of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: S-IAEA-165, for the sale of 57.481 grams of uranium, containing 53.527 grams of the isotope uranium-235 (93.12 percent enrichment) and 5.003 grams of uranium, containing 0.991 grams of the isotope uranium-235 (19.81 percent enrichment) to the International Atomic Energy Agency, Siebersdorf, Austria, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 12, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–16827 Filed 7–14–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF87–59–007]

Panther Creek Partners; Amendment to Filing

July 9, 1993.

On July 7, 1993, Panther Creek Partners tendered for filing a supplement to its filing in this docket.

The supplement primarily pertains to the technical aspects of its waste-fueled small power production facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by July 28, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16746 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

VOL
58
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134
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[Docket Nos. ER93-743-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 8, 1993.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER93-743-000]

Take notice that on June 29, 1993, Tampa Electric Company (Tampa Electric) filed a notice of cancellation of the Letter of Commitment between Tampa Electric and Oglethorpe Power Corporation (Oglethorpe) under interchange Service Schedule G (Back/Reserve Interchange Service).

Tampa Electric states that Oglethorpe has requested termination of the Letter of Commitment effective June 1, 1993. In keeping with Oglethorpe's request, Tampa Electric requests that the cancellation be made effective as of that date.

Copies of the filing have been served on Oglethorpe and the Public Service Commissions of Georgia and Florida.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ER93-766-000]

Take notice that on July 2, 1993, Idaho Power Company (IPC) tendered for filing the Agreement for the Purchase and Supply of Power and Energy between Idaho Power Company and Portland General Electric Company. The Agreement has a term of three years and Idaho Power has requested an effective date for this rate schedule of September 1, 1993.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Metropolitan Edison Co.

[Docket No. ER93-718-000]

Take notice that on June 21, 1993, York Haven Power Company, Reading, Pennsylvania tendered for filing a proposed change in its rate schedule for the sale of power to its parent, Metropolitan Edison Company, from FPC licensed Project No. 1888. This change in rates is proposed to be effective for deliveries of power and energy on or after September 1, 1993 . The proposed changes would decrease revenues from jurisdictional sales and service by $193,197 based on the 12-month period ending August 31, 1993.

York Haven states that under the affected rate schedule, all of the power and energy from Project No. 1888 is sold to Metropolitan Edison on a rate based upon York Haven's cost and expenses in generating and transmitting such power and energy. Under its agreement with Metropolitan Edison, York Haven is entitled to the same return on net investment as was most recently allowed Metropolitan Edison by the Pennsylvania Public Utility Commission. That Commission on January 21, 1993 allowed a rate of return to Metropolitan Edison of 9.59 percent. That Commission's Opinion and Order on Reconsideration, entered April 15, 1993, affirmed a rate of return of 9.59 percent. This filing is submitted to reflect that rate of return. York Haven indicates that its current rate of return is 11.03 percent under its rate schedule. Copies of the filing have been mailed to Metropolitan Edison and Pennsylvania Public Utility Commission.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER93-762-000]

Take notice that on July 2, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Potomac Electric Power Company (PEPCO).

Con Edison states that a copy of this filing has been served by mail upon PEPCO.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER93-516-000]

Take notice that PacifiCorp, on June 30, 1993, tendered for filing, in accordance with 18 CFR 35.13(a)(2) of the Commission's Rules and Regulations an amendment to its March 30, 1993 filing of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 3 ("Tariff").

PacifiCorp respectfully requests pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that this filing be accepted for filing effective on June 1, 1993. This date being sixty (60) days from the filing date of PacifiCorp's March 30, 1993 letter.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corp.

[Docket No. ER93-754-000]

Take notice that on July 1, 1993, Wisconsin Public Service Corporation (WPS) tendered for filing two letters supplementing its Partial Requirements and Pattern Service Agreement with Consolidated Water Power Company (CWPCo). These letters relate to CWPCo's firm demand nominations for the period June 1, 1993 through December 31, 1996.

The Company states that it has served copies of this filing on CWPCo and the Public Service Commission of Wisconsin.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corp.

[Docket No. ER93-755-000]

Take notice that on July 2, 1993, Wisconsin Public Service Corporation (WPS) tendered for filing an executed Transmission Service Agreement between WPS and Manitowoc Public Utilities. The Agreement provides for transmission service under the T-1 Transmission Tariff, FERC Original Volume No. 4.

WPS asks that the agreement become effective sixty days after filing.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Potomac Electric Power Co.

[Docket No. ER93-691-000]

Take notice that on June 17, 1993, Potomac Electric Power Company (PEPCO) tendered for filing an amendment to its original filing filed in this docket on June 2, 1993.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Co.

[Docket No. ER93-753-000]

Take notice that on July 1, 1993, Consumers Power Company (Consumers) tendered for filing changes to its Electric Service Tariff, Second Revised Volume No. 1 (Rate WR) and various interconnection and operating agreements (Consumers Power FPC Nos. 22, 23 and 41 and FERC Nos. 45, 50, 55 and 67). The changes are in large part a matter of updating those schedules and Rate WR to reflect changes in customers and to add an attachment to FERC No.67. No changes in rates are being proposed.

A copy of the filing was served upon the Michigan Public Service Commission, the Public Utility Commission of Ohio and Indiana Utility

Regulatory Commission, as well as on all affected customers.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corp.

[Docket No. ER93–760–000]

Take notice that on July 2, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 165, an agreement between Niagara Mohawk and the New York State Electric & Gas Corporation.

Rate Schedule No. 165 provides for the wheeling of certain loads by Niagara Mohawk to NYSEG. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1993. In support thereof, Niagara Mohawk states that NYSEG has consented to this proposed effective date.

Copies of this filing were served upon the following: the Public Service Commission of the State of New York and the New York State Electric & Gas Corporation.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. The Potomac Edison Co.

[Docket No. ER93–765–000]

Take notice that on July 2, 1993, The Potomac Edison Company tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume No. 3. The proposed changes would increase revenues from jurisdictional sales and service by $1,499,742 based on the twelve-month period ending December 31, 1993. The proposed effective date for the increased rates is September 15, 1993.

The changes proposed are for the purpose of recovering increased costs incurred by the Company and to update and clarify language in the existing Tariff.

Copies of the filing were served upon the jurisdictional Customers, Maryland Public Service Commission, Pennsylvania Public Utility Commission, Public Utilities Commission of Ohio, West Virginia Public Service Commission, and Virginia State Corporation Commission.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER93–767–000]

Take notice that on July 2, 1993, Public Service Company of New Mexico (PNM) tendered for filing the following documents:

1. Assignment and Assumption Agreement, between Century Power Corporation (Century) and Southern California Public Power Authority (SCPPA);

2. Consent and Acceptance of Voting Rights, between Century and SCPPA; and

3. Letter, acknowledgement and Agreement, and Acknowledgement, among SCPPA, Tucson Electric Power Company and PNM.

PNM submits this filing as an information filing, but if the Commission treats the filing otherwise, requests an effective date of July 1, 1993, the date of Century's conveyance of an interest in the San Juan Generating Station to SCPPA.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Co.

[Docket No. ER93–764–000]

Take notice that on July 2, 1993, Northeast Utilities Service Company (NUSCO), on behalf of its operating subsidiaries, The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), tendered for filing, pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, its borderline sales tariffs and associated service agreements. These tariffs govern sales by the between CL&P and WMECO and their neighboring utility, Massachusetts Electric Company, for resale to individual customers. NUSCO requests that the tariffs and agreements be made effective in accordance with their terms.

NUSCO states that copies of its filing have been provided to each utility affected thereby.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16745 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11184–002 Washington]

Cowlitz Basin 3 Limited Partnership; Surrender of Preliminary Permit

July 9, 1993.

Take notice that Cowlitz Basin 3 Limited Partnership, Permittee for the Coal Creek Project No. 11184, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11184 was issued June 29, 1992, and would have expired May 31, 1995. The project would have been located in Gifford Pinchot National Forest, on Coal and Lost Creeks, in Lewis County, Washington.

The Permittee filed the request on June 10, 1993, and the preliminary permit for Project No. 11184 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16748 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL93–51–000 and TX93–4–000]

Florida Municipal Power Agency v. Florida Power & Light Co.; Filing

July 9, 1993.

Take notice that on July 2, 1993, Florida Municipal Power Agency tendered for filing a complaint and application for an order requiring provision of transmission services and a motion for summary disposition against Florida Power & Light Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

VOL 58 ISS 134 JL 15 1993 UMI

and 18 CFR 385.214). All such motions or protests should be filed on or before August 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before August 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16747 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–533–000]

K N Energy, Inc.; Request Under Blanket Authorization

July 9, 1993.

Take notice that on July 6, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–533–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of gas to end-users on its system under the authorization issued in Docket Nos. CP83–140–000, CP83–141–001 and CP83–141–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to deliver system supply gas to 14 end users located in Kansas, Nebraska and Wyoming. K N estimates that the approximate total peak day and annual volumes to be sold to the end-users will be 1,016 MMcf and 60,787 MMcf, respectively. It is estimated that the cost of the facilities will be $120,450. K N states that customers reimburse it a portion of these costs through the imposition of a connection charge, which varies by state as follows: Kansas—$250, Nebraska—$400 and Wyoming—$400.

K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn, within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16743 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–531–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

July 9, 1993.

Take notice that on July 2, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–531–000 a request pursuant to § 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 11 sales taps used for direct sales under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to abandon the 11 farm taps, which were used for irrigation purposes, and related valve assemblies and appurtenances, by removal, as detailed below.

Customer	Location	Cost of facilities
Herbert-Helms & Company.	Cameron Parish, LA	$1,755
C. Kuntz	Allen Parish, LA	1,667
E. Fontenot	Allen Parish, LA	2,926
G. Godeaux	Jefferson Davis Parish, LA.	3,691
J. Garbarino	Jefferson Davis Parish, LA.	4,223
S. Fontenot	Jefferson Davis Parish, LA.	2,273
W. Angelle	Jefferson Davis Parish, LA.	5,790
M. Augustine.	Jefferson Davis Parish, LA.	3,446
Walker-Louisiana Properties.	Jefferson Davis Parish, LA.	2,551
R. Doucet	Jefferson Davis Parish, LA.	4,188
W. Watkins	Jefferson Davis Parish, LA.	1,697

Tennessee states that the facilities are being abandoned because they have been inactive and are no longer needed. The application includes statements of written consent from the customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16742 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–530–000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

July 9, 1993.

Take notice that on July 1, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–530–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to expand the measurement capacity of an existing delivery point through which it renders natural gas service to Mississippi Valley Gas Company (MVG) in Tunica County, Mississippi, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently renders natural gas service to MVG in Texas Gas's Rate Zone 1 pursuant to a Service Agreement dated November 1, 1991. Texas Gas further states that the existing delivery point is known as the

Robinsonville Meter Station (Robinsonville) and is located near Robinsonville, Mississippi, on Texas Gas's No. 1 and No. 2 18-inch pipelines in Tunica County. Texas Gas says that MVG has requested that Texas Gas upgrade this existing delivery point in order for it to serve a new commercial development, including several casinos, hotels, restaurants and related facilities, to be located on the Mississippi River near Tunica, Mississippi. Natural gas would be used primarily for electric generation and air conditioning, it is stated.

Texas Gas proposes to replace the existing 2-inch positive meter at this existing delivery point with a 4-inch orifice meter run. Texas Gas states that MVG has requested that Texas Gas upgrade the existing meter to be capable of measuring a maximum of 9,600 MMBtu per day, or 3,504,000 annually.

The expansion of this delivery point would not result in an increase in MVG's current daily contract demand. Furthermore, Texas Gas states that service to MVG through this delivery point can be accomplished without detriment to Texas Gas's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16744 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 6, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0515

Title: Section 43.21(d), Miscellaneous Common Carrier and Record Carrier Annual Letter Filing Requirement

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: Annually

Estimated Annual Burden: 23 responses; 1.43 hours average burden per response; 33 hours total annual burden

Needs and Uses: The attached Report and Order, CC Docket No. 92–145, amends part 43 of the Commission's rules to require that record carriers with annual operating revenue over $75 million file an annual letter with the Commission.

The letter must contain information pertaining to the carrier's revenues, expenses, net income, assets, liabilities and owner's equity. See attached income statement and balance sheet for information that each record carrier must file. This annual reporting requirement represents a substantial reduction in the information requirements previously imposed on these carriers. The Commission issued a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 92–145 soliciting public comment to eliminate parts 34 and 35 and the related Annual Reports Form O & R. The Commission tentatively concluded that the accounting rules and annual reports were of limited value. The NPRM also sought comment to amend part 43 to require radiotelegraph, wire-telegraph, and ocean-cable carriers (record carriers) with annual revenues of $100 million to file a letter each year with the Commission specifying its operating revenues and the net book value of its communications plant. The Commission adopts its proposals to eliminate parts 34 and 35 and the Annual Report Forms O & R in the attached Report and Order. The Commission also adopted its proposal to amend § 43.21, but with modifications. As stated above, record carriers with annual revenues over $75 million, rather than $100 million, are required to file an annual letter with the Commission. The letter must contain more detailed financial information than originally proposed. See Appendix B of the attached Report and Order for the one-page income statement and balance sheet that encompasses the information necessary for our regulatory oversight. Record carriers with annual revenues over $75 million are required to file an annual letter which includes the information on the attached income and balance sheet. The annual reporting requirement will continue to allow the Commission to track operating results of the record carriers. Lowering the revenue requirement threshold to $75 million insures that we receive information from the major record carriers.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–16726 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted To Office Of Management And Budget For Review

July 9, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0400

Title: Tariff Review Plan

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: Annually

Estimated Annual Burden: 46 responses; 40 hours average burden per response; 1,840 hours total annual burden

Needs and Uses: The Communications Act of 1934, as amended, and 47

VOL 58 ISS 134 JL 15 1993 UMI

U.S.C. sections 201, 202, 203, 204, and 205 require that common carriers establish just and reasonable charges, practices and regulations for the services they provide.

The schedules containing those charges, practices and regulations must be filed with the FCC which is required to determine whether such schedules are just, reasonable, and not unduly discriminatory. The Commission is also granted broad authority to require the submission of data showing the value of the property used to provide these services. FCC has adopted specific rules for the calculations of rates charged by local telephone companies and paid by local customers or long distance telephone companies who access local facilities to provide interstate services (47 CFR part 69). Local telephone companies are required to update these rates yearly and biennially to reflect FCC requirements and changes in costs and demand, and to provide the cost support for these changes required by FCC rules. To aid its review of the required annual revisions of the local telephone companies' interstate access tariffs, the Commission has developed the Tariff Review Plan (TRP). The TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. Sixteen of the largest Tier 1 companies file pursuant to price cap regulation under section 61.43. Thirty companies under rate of return regulation file pursuant to section 61.38 or 61.39. One Tier 1 company files under section 61.38, although this company has the option to file pursuant to section 61.43. This year, we significantly reduced the size of the Tier 1 TRP for rate of return companies and thus the reporting burden for this company. The 29 other rate of return companies are small Tier 2 companies filing a shortened TRP. In total, 46 companies file a TRP. An additional 29 companies file pursuant to section 61.39. Local telephone companies filing pursuant to 47 CFR 61.39 are not required to submit cost support at the time of filing. If the information were not filed the FCC would not be able to carry out its responsibilities as required by the Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–16837 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Renville, Yellow Medicine, Sibley, Watonwan, Blue Earth, and Nicollet counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–16765 Filed 7–14–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 2, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, tornadoes, and flooding on June 7, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Philip N. Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Calumet, Clark, Eau Claire, Green Lake, Jackson, Marquette, and Trampeauleau Counties for Public and Individual Assistance.

Columbia, Dunn, Fond du Lac, Outagamie, Portage, Sauk, Waupaca, Waushara, Winnebago, and Wood Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–16764 Filed 7–14–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed, Manchester Terminal Corp./Southern Stevedoring Co., Inc. Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200108–001.

Title: Manchester Terminal Corporation/Southern Stevedoring Co., Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation ("MTC")

Southern Stevedoring Co., Inc. ("SSC")

Synopsis: The proposed amendment permits SSC to load, unload, handle and render other related services pertaining to cargo and containers moving through MTC's facilities. It also extends the term of the Agreement for one year.

Agreement No.: 224–200229–001.

Title: Manchester Terminal Corporation/Scott Marine Services, Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation ("MTC")

Scott Marine Services, Inc. ("Scott Marine")

Synopsis: The proposed amendment permits Scott Marine to load, unload, handle and render other related services pertaining to cargo and containers moving through MTC's facilities. It also extends the term of the Agreement for one year.

Agreement No.: 224–200742–001.

Title: Manchester Terminal Corporation/Gulf Stream Marine, Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation ("MTC")

Gulf Stream Marine, Inc. ("Gulf Stream")

Synopsis: The proposed amendment permits Gulf Stream to load, unload, handle and render other related services pertaining to cargo and containers moving through MTC's facilities. It also extends the term of the Agreement for one year.

Dated: July 9, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16695 Filed 7–14–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Central Florida Freight Forwarders, Inc., 1731 Itchepackesassa Dr., Lakeland FL 33809, Officers: Richard K. Greene, President/Director/Stockholder, Jo Ellen Greene, Vice President/Director/Stockholder.

A.G.W. International, P.O. Box 1555, 1085 S. Highway 80, Benson, AR 85602, Alex G. Weimer, Sole Proprietor.

Frimpex International Company, 477 Peninsula Blvd. Cedarhurst, NY 11516, Santiago T. Parks, Sole Proprietor.

AXO Chemical, Inc., P.O. Box 55973, Miami, FL 33255, Officers: Enrique Garcia, President, Gullermo R. Fernandez, Vice President, Guillermo Fernandez-Quirch, Treasurer.

Express Shipping International, 700 Park Avenue, #4D, Baltimore, MD 21201, Joseph M. Issa, Sole Proprietor.

Matrix Express, Inc. 154–09 146th Avenue, #302, Jamaica, NY 11434, Officers: Andrew Wu, President/Director, Jeff Wang, Director, Patrick Chung, Secretary.

Customized Brokers, 10204 S.W. 115th Court, Miami, FL 33176, Patricia Compress, Sole Proprietor.

Dated: July 12, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–16779 Filed 7–14–93; 8:45 am]

BILLING CODE 6730–01–M

Reinstatement

By notice published in the Federal Register on Friday, May 14, 1993 (58 FR 28571–2) Sea Cargo International, Inc.'s ("Sea Cargo") ocean freight forwarder license (No. 2206–R) was suspended in accordance with 46 CFR 510.16(a)(6) because of its failure to file an anti-rebate certification with the Commission on or before December 31, 1992. Sea Cargo has now corrected this deficiency and filed a anti-rebate certification for calendar years 1993–1994 as required by the Commission's rules at 46 CFR 582.1(a) and 582.3(b). Therefore, the suspension of Sea Cargo's license is lifted and its license reinstated effective May 19, 1993, the day it submitted the required anti-rebate certification.

Dated: July 8, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–16778 Filed 7–14–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

George Mason Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. George Mason Bankshares, Inc., Fairfax, Virginia; to engage *de novo* in issuing letters of credit for customers of The George Mason Bank, Fairfax, Virginia, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16751 Filed 7-14-93; 8:45 am]

BILLING CODE 6210-01-F

OBANKCORP, INC.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 9, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. OBANKCORP, INC., Geraldine, Montana; to become a bank holding company by acquiring 98.2 percent of the voting shares of Geraldine State Bank, Geraldine, Montana.

Board of Governors of the Federal Reserve System, July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16752 Filed 7-14-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Steering Committee for the African Burial Ground, New York, NY; Meeting

Notice is hereby given that the Steering Committee for the African Burial Ground, New York, NY (Steering Committee) has revised its schedule of regular meetings for 1993 to include (1) weekly meetings through August 2, 1993, and (2) monthly meetings commencing with September, 1993 on the last Monday of each month. Meetings are now scheduled on the following dates:

July 12, July 19, July 26, August 2, September 27, October 25, November 29, and December 27, 1993.

All meetings will be held in the 2nd floor archives of the Schomburg Center for Research in Black Culture, New York, Public Library, 515 Malcolm X Boulevard (at 135th Street), New York, NY and will begin at 6 p.m. Meetings may be continued to the following day(s), if necessary, and shall be so announced during the meeting. Seating may be limited. Please call (212) 264–0456 prior to each meeting to confirm the date, time, and location of the meeting.

At the meetings the Steering Committee will consider matters properly coming before it under its charter and its rules and regulations. At the July and August meetings the Steering Committee will additionally consider the adoption of recommendations to be submitted to the Administrator of General Services relating to the memorialization plan for the African Burial Ground in New York City to be submitted by the Administrator to Congress by August 6, 1993, as provided in Section 16 of Public Law 102–393.

All meetings will be open to the public. Members of the public at large, as may be recognized by the Chairman of the Steering Committee, will be permitted to speak at the meetings at designated times as provided in the resolutions and rules of the Steering Committee. Written comments by any person respecting any aspect of the Steering Committee's mission and other Questions regarding the Steering Committee's meetings may be directed to: Chairman Howard Dodson, Chief, Schomburg Center for Research in Black Culture, New York Public Library, 515 Malcolm X Boulevard, New York, NY 10037–1801, Tel: (212) 491–2200.

Copies of such written comments may be sent to Robert W. Martin, Acting Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278.

Less than 15 days published notice in the **Federal Register** is being given for the meetings of July 19 and August 2 because the Steering Committee requires these additional meetings to complete its mission of considering and adopting the above described recommendations for submission to the Administrator of General Services prior to the Administrator submitting the above described plan to Congress by August 6, 1993.

Dated: July 7, 1993.

Robert W. Martin,

Acting Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278.

[FR Doc. 93–16715 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F–0393]

CdF Chimie SA.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 7B4034) proposing that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or *n*-butyl acrylate for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 1988 (53 FR 288), FDA announced that a food additive petition (FAP 7B4034) had been filed by CdF Chimie SA., Tour Aurore, Cedex 5

92080, Paris la Defense, France. The petition proposed that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or *n*-butyl acrylate for food-contact applications. CdF Chimie SA. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 7, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–16763 Filed 7–14–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0183]

Revisions to the Food Chemicals Codex Policy on Lead and Heavy Metals Specifications; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment to support implementation of the revised Food Chemicals Codex policy on lead and heavy metals specifications that was approved by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex. This revised policy is intended to be published in the fourth edition of the Food Chemicals Codex. FDA is also giving notice that the Committee is soliciting suggestions for lower limits for lead and heavy metals in food ingredient monographs.

DATES: Comments and information by September 13, 1993. The NAS/IOM Committee on Food Chemicals Codex advises that comments and information not received by this date cannot be considered for the fourth edition but will be considered for a later edition or supplement.

ADDRESSES: Submit written comments and information to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580, or Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9537.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to NAS/IOM to support the preparation of the Food Chemicals Codex, a compilation of specification monographs for substances used as food ingredients. In the **Federal Register** of November 22, 1991 (56 FR 58910), FDA announced that the NAS/IOM Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the fourth supplement to the Food Chemicals Codex, third edition that is scheduled to be published in late 1993. The public was invited to comment and make suggestions for consideration.

FDA now gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting, from all interested parties, comments and data to support implementation of the following revised policy for establishing lower specifications for lead and heavy metals:

The Committee on Food Chemicals Codex (FCC) recognizes the desirability of lowering lead exposure, especially in the case of infants and children. Overall exposure to lead is a public health concern. Whereas diet is not the largest source of lead exposure, it is a significant one. While ingestion of FCC substances does not represent the major source of dietary lead, it is desirable to lower the lead limits for all FCC substances, particularly for those substances consumed in high amounts. Therefore, the Committee's policy is to reduce lead limits (as well as the heavy metals limit because of their interrelated nature) to the lowest extent feasible for FCC substances, especially given that more recent evidence shows deleterious neurobehavioral effects occurring in children exposed to lead at levels below those previously considered acceptable.

In setting heavy metals and lead limits, the Committee considers the amount of a food chemical consumed, the feasibility of manufacturing a product within these limits, and the availability of analytical methods to ensure compliance. The constraints of good manufacturing practice and the availability of reliable analytical methods are often limiting factors in setting lower lead and heavy metals limits.

The Committee regards as one of its goals the assurance of the safety of properly used food chemicals. This means that FCC specifications will respond to advances in knowledge about new manufacturing methods, analytical techniques, or toxicology and safety issues.

This revised policy will be published in the planned fourth edition of the Food Chemicals Codex that is scheduled for publication in early 1996.

In addition, FDA gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting suggested lower limits for lead and heavy metals (this includes silver, arsenic, bismuth, cadmium, copper, mercury, lead, antimony, and tin) in food ingredient monographs. In responding, the Committee invites industry and other interested persons to provide: (1) Manufacturing and production data that can be used in setting lower lead and heavy metals limits, and (2) information on appropriate analytical methodologies for quantifying these trace element contaminants in specific food chemicals.

Information received in response to this notice will be used by the NAS/IOM Committee on Food Chemicals Codex when considering new specifications for lead and heavy metals and in reaching its conclusions regarding implementation of the revised policy. The public will be given ample opportunity to comment on any suggested changes in Food Chemicals Codex monographs.

FDA emphasizes that it will continue to publish any proposals to adopt new Food Chemicals Codex monographs or monograph revisions for currently regulated substances in the **Federal Register**. The public will be given ample opportunity to comment on any suggested changes in FDA specifications.

Two copies of written comments are to be submitted to NAS at the address listed above. Comments can be submitted electronically to the Food Chemicals Codex bulletin board, 202–334–1738, as well. Each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment, submitted either electronically or in writing, to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, to be placed under docket number 93N–0183 for public review.

Dated: July 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–16698 Filed 7–14–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 77N–0240; DESI 1786]

Nitroglycerin Transdermal System; Drug Efficacy Study Implementation; Revocation of Exemption; Final Evaluation and Announcement of Marketing Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

VOL 58 ISS 134 JL 15 1993 UMI

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption for single-entity coronary vasodilator drug products containing nitroglycerin in a transdermal delivery system. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA also announces the conditions for marketing these products for the indication for which they are now regarded as effective.

DATES: The revocation of exemption is effective July 15, 1993; bioavailability supplements to conditionally approved new drug applications (NDA's) are due on or before July 15, 1994; bioequivalence supplements to conditionally approved abbreviated new drug applications (ANDA's) are due on or before July 15, 1994; other supplements to all conditionally approved applications are due on or before September 13, 1993.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 1786 and directed to the attention of the appropriate office named below.

Supplements to conditionally approved NDA's (identify with NDA number): Division of Cardio-Renal Drug Products (HFD–110), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to conditionally approved ANDA's (identify with ANDA number): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, Metropark North No. 2, 7500 Standish Pl., Rockville, MD 20855.

Section 505(b)(2) applications (before designation of a listed drug) and ANDA's (after designation of a listed drug) (identify submission type): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, Metropark North No. 2, 7500 Standish Pl., Rockville, MD 20855.

Requests for information on conducting bioavailability tests for conditionally approved NDA's: Division of Cardio-Renal Drug Products (HFD–110), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for information on conducting bioequivalence tests for conditionally approved ANDA's, section 505(b)(2) applications, or new ANDA's: Division of Bioequivalence (HFD–650), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855.

Requests for the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION:

I. Background

Under the agency's Drug Efficacy Study Implementation (DESI) program, the National Academy of Sciences/National Research Council (NAS/NRC) evaluated the effectiveness of certain coronary vasodilators, including nitroglycerin sustained-release tablets. Based on NAS/NRC's recommendations, FDA classified most of the coronary vasodilators, including nitroglycerin sustained-release tablets, as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks. This classification was announced in the **Federal Register** of February 25, 1972 (37 FR 4001).

In a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), as amended July 11, 1973 (38 FR 18477), August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), FDA temporarily exempted the single-entity coronary vasodilators covered by the DESI program, including nitroglycerin sustained-release tablets, from the time limits established for completing the program (Paragraph XIV, Category I exemption). FDA granted this exemption to allow manufacturers additional time to study the effectiveness and bioavailability of their products. FDA also added additional dosage forms of nitroglycerin to the Drug Efficacy Study and the Paragraph XIV, Category I exemption because of the need to study the effectiveness and bioavailability of these products.

The exemption notices established conditions for marketing the single-entity coronary vasodilators pending FDA's conclusions about the products. FDA required that manufacturers conduct both bioavailability and clinical effectiveness studies. In addition, FDA required that all single-entity coronary vasodilator drug products covered by the DESI review that were marketed without approved NDA's, or that entered the market during the exemption period, be the subject of conditionally approved ANDA's. These ANDA's were given the same status as the "deemed approved" NDA's under review in the DESI program, i.e., safe but not proven effective.

Under the provisions of the exemption notices, the sponsors of the nitroglycerin transdermal system drug products listed below submitted ANDA's and received conditional approval for marketing because of the similarity of the products to other exempt nitroglycerin ointment products. During the exemption, several sponsors of nitroglycerin transdermal products submitted data from clinical effectiveness trials.

The Director, Center for Drug Evaluation and Research, has considered the results from the clinical effectiveness trials submitted for the transdermal delivery system of nitroglycerin as well as other available information and has determined that this form of nitroglycerin is effective for the prophylaxis of angina pectoris. Accordingly, the Director hereby revokes the temporary Paragraph XIV, Category I exemption for nitroglycerin transdermal system and announces the conditions for approval and marketing of the drug. No other forms of nitroglycerin remain exempt under the Paragraph XIV, Category I exemption.

II. Conditionally Approved Products

The following applications have been conditionally approved under the terms of the exemption notices. The conditionally approved NDA's listed below were converted from conditionally approved ANDA's because the products covered by the applications were used in studies that support the determination that nitroglycerin transdermal is effective when used according to the labeling conditions described below.

A. Conditionally Approved NDA's

1. NDA 20–144; Transderm-Nitro, release rate 0.1 milligram (mg) of nitroglycerin per hour (h); Summit Pharmaceutical Co., Division of Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901 (Summit) (formerly held by Alza Corp., 950 Page Mill Rd., Palo Alto, CA 94304).

Transderm-Nitro, release rate 0.2 mg of nitroglycerin per h; Summit.

Transderm-Nitro, release rate 0.4 mg of nitroglycerin per h; Summit.

Transderm-Nitro, release rate 0.6 mg of nitroglycerin per h; Summit.

2. NDA 20–145; Nitro-Dur, release rate 0.1 mg of nitroglycerin per h; Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033 (Schering).

Nitro-Dur, release rate 0.2 mg of nitroglycerin per h; Schering.

Nitro-Dur, release rate 0.3 mg of nitroglycerin per h; Schering.
Nitro-Dur, release rate 0.4 mg of nitroglycerin per h; Schering.
Nitro-Dur, release rate 0.6 mg of nitroglycerin per h; Schering.
3. NDA 20–146; Nitrodisc, release rate 0.2 mg of nitroglycerin per h; G. D. Searle and Co., 4901 Searle Pkwy., Skokie, IL 60077 (Searle).
Nitrodisc, release rate 0.3 mg of nitroglycerin per h; Searle.
Nitrodisc, release rate 0.4 mg of nitroglycerin per h; Searle.

B. Conditionally Approved ANDA's

1. ANDA 88–727; Deponit, release rate 0.2 mg of nitroglycerin per h; Schwarz Pharma Kremers Urban Co., 5600 West County Line Rd., Mequon, WI 53092 (Schwarz) (formerly held by Wyeth Laboratories, Inc., P.O. Box 8297, Philadelphia, PA 19101).
2. ANDA 88–782; Nitroglycerin Transdermal System (NTS), release rate 0.2 mg of nitroglycerin per h; Hercon Pharmaceutical Co., Inc., P. O. Box 786, York, PA 17405 (Hercon).
3. ANDA 88–783; NTS, release rate 0.6 mg of nitroglycerin per h; Hercon.
4. ANDA 89–022; Deponit, release rate 0.4 mg of nitroglycerin per h; Schwarz.
5. ANDA 89–516; NTS release rate 0.4 mg of nitroglycerin per h; Hercon.
6. ANDA 89–771; Minitran, release rate 0.1 mg of nitroglycerin per h; 3M Pharmaceuticals, Bldg. 270–3A–01, 3M Center, St. Paul, MN 55144 (3M).
7. ANDA 89–772; Minitran, release rate 0.2 mg of nitroglycerin per h; 3M.
8. ANDA 89–773; Minitran, release rate 0.4 mg of nitroglycerin per h; 3M.
9. ANDA 89–774; Minitran, release rate 0.6 mg of nitroglycerin per h; 3M.

III. New Drug Status

A drug product that contains nitroglycerin in a transdermal delivery system form is regarded as a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and an approved application under section 505 of the act (21 U.S.C. 355) is required for marketing it.

In addition to the products specifically named above, this notice applies to any product that is not the subject of an approved application and is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

IV. Conditions for Approval and Marketing

FDA is prepared to approve section 505(b)(2) applications (prior to designation of a reference listed drug), ANDA's (after designation of a referenced listed drug), and supplements to conditionally approved ANDA's and conditionally approved NDA's under the conditions described in this notice.

A. Form of Drug

The drug is in transdermal delivery system form suitable for topical administration.

B. Labeling Conditions

1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."
2. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows: "Transdermal nitroglycerin is indicated for the prevention of angina pectoris due to coronary artery disease. The onset of action of transdermal nitroglycerin is not sufficiently rapid for this product to be useful in aborting an acute attack."

C. Marketing Status

1. Conditionally Approved NDA's

Marketing of a drug product that is now the subject of a conditionally approved NDA may be continued provided that, on or before September 13, 1993, the holder of the application has submitted: (i) Revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted; and (ii) a supplement to provide updating information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). Revised labeling in accordance with the labeling conditions described above shall be put into use on or before September 13, 1993. In addition, to permit full approval of the application on the basis of effectiveness, as well as safety, the holder of a conditionally approved NDA is required to supplement its application, on or before July 15, 1994 to provide acceptable in vitro dissolution tests and in vivo bioavailability studies on the drug product. For information on conducting an acceptable in vivo bioavailability study, an applicant should contact the Division of Cardio-Renal Drug Products (address above).

2. Conditionally Approved ANDA's

Marketing of a drug product that is now the subject of a conditionally approved ANDA may be continued provided that, on or before September 13, 1993, the holder of the application has submitted: (i) Revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted; and (ii) a supplement to provide updating information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). Revised labeling in accordance with the labeling conditions described above shall be put into use on or before September 13, 1993. In addition, to permit full approval of the application on the basis of effectiveness, as well as safety, the holder of a conditionally approved ANDA is required to supplement its application, on or before July 15, 1994, to provide acceptable in vitro dissolution and acceptable information demonstrating the in vivo bioequivalence of its drug product to the drug product designated by FDA as the reference drug. For information on conducting an adequate in vivo bioequivalence study, the designated reference drug, and in vitro dissolution methodology, an applicant should contact the Division of Bioequivalence (address above).

3. New Applications

Approval of an application under section 505 of the act must be obtained before marketing nitroglycerin transdermal products. An applicant seeking approval of a nitroglycerin transdermal product before a product listed in this notice is approved on the basis of effectiveness should submit a section 505(b)(2) application to the Office of Generic Drugs. The application must contain the information specified in section 505(b)(2) of the act (21 U.S.C. 355(b)(2)). The proposed labeling must meet the labeling conditions specified in this notice. To satisfy the full reports of investigations requirement under section 505(b)(1)(A) of the act, the applicant may refer to the agency's conclusions announced in this notice and must demonstrate that the proposed product is bioequivalent to the drug

product designated by the agency as the reference drug. For information on conducting an adequate in vivo bioequivalence study, in vitro dissolution, and the designated reference drug, an applicant should contact the Division of Bioequivalence (address above).

Once FDA designates a reference listed drug, an applicant seeking approval of a nitroglycerin transdermal product must submit an ANDA that meets the requirements of section 505(j) of the act and 21 CFR 314.94.

Marketing a nitroglycerin transdermal product prior to approval of an application will subject the product, and those persons who caused the product to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under the authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: July 5, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–16762 Filed 7–14–93; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Workshops for the Compressed Medical Gas Industry; Notice of Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA), Pacific Region Small Business Assistance Program, the Center for Drug Evaluation and Research, and the Office of Small Business, Scientific and Trade Affairs are sponsoring three public workshops on FDA requirements that apply to the compressed medical gas industry. These workshops are designed to assist the industry in complying with regulations for manufacturing and repacking medical gases.

DATES: The public workshops will be held on August 30, 1993; September 1, 1993; and September 3, 1993, 8:30 a.m. to 4 p.m.

ADDRESSES: The public workshops will be held at the following locations:
August 30, 1993: Sheraton Los Angeles Airport Hotel, 6101 West Century Blvd., Los Angeles, CA.
September 1, 1993: Hyatt Regency San Francisco Airport, 1333 Bayshore Hwy., Burlingame, CA.
September 3, 1993: Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Mark Roh, Pacific Region Small Business Assistance Program, Food and Drug Administration, Federal Office Bldg., rm. 526, 50 United Nations Plaza, San Francisco, CA 94102, 415–556–2263 or FAX 415–556–2822.

Those persons interested in attending this meeting should FAX their registration to 415–556–2822, including name, firm name, address, and telephone number. There is no registration fee for these workshops, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the industry shows that a high percentage of medical gas firms are unaware of applicable regulations and guidelines or are not in compliance with applicable requirements. These workshops are designed to assist the medical gas industry and are free of charge to attendees.

Dated: July 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–16761 Filed 7–15–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on September 29-October 1, 1993, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in room 3C05, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on September 29 from 2 pm until 3 pm for the discussion of policy issues. The meeting of the full Council will be open to the public on September 30 form 8:30 am until recess for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 1 from 8:30 am to approximately 9:30 am for a report on extramural programs of the Division of Communication Sciences and Disorders.

In accordance with the provisions set forth in sec. 553b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on September 29 will be closed to the public from 3 pm to adjournment. The meeting of the full Council will be closed to the public on October 1 from approximately 9:30 am until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtain from Dr. John C. Dalton, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400B, Bethesda, Maryland 20892, 301–496–8693. A summary of the meetings and rosters of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Dalton at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: July 6, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16738 Filed 7–14–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 13

and 14, 1993, Building 31, Conference Rooms 6 and 8, Bethesda, Maryland.

This meeting will be open to the public on September 13, Conference Room 6, from 8:30 a.m. to 1 p.m. for opening remarks; the report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 13 from 1 p.m. to 5:30 p.m., and on September 14, from 8:30 a.m. until adjournment, for the review, discussions, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, telephone 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 938, Bethesda, Maryland 20892, telephone: 301–594–7751 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: July 6, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16737 Filed 7–14–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Schiedea adamantis for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Schiedea adamantis*. This endangered plant species occurs on the Diamond Head Crater in Honolulu, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before September 13, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Pacific Island Ecological Services Field Office, U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749). Written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor, at the above Honolulu, Hawaii address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Honolulu, Hawaii, address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Schiedea adamantis*. One population of this species, estimated at 244 plants in 1990, presently exists. This population is located in one of the few relatively undisturbed areas of the Diamond Head Crater in Honolulu, Hawaii. Historic range and limiting factors are unclear because the population was not discovered until 1955. However, limiting factors most likely include disturbance and loss of habitat, and invasion by alien plants. Current known threats include fire, competition from alien plants, and disturbance by users of a nearby hiking trail. Another possible threat is a lack of genetic diversity caused by increased levels of selfing due to loss of native pollinators. Because only one population of this species is currently in existence, its extinction is threatened by a single catastrophic event.

Recovery efforts will focus on protection of the population from current threats, propagation of plants to augment this population, and establishment of at least two more populations of the species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 9, 1993.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fisn and Wildlife Service.

[FR Doc. 93–16757 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–55–M

VOL 58 ISS 134 JL 15 1993 UMI

Record of Decision for the Tijuana Estuary Tidal Restoration Program, Tijuana Slough National Wildlife Refuge, Tijuana River National Estuarine Research Reserve, San Diego County, CA

AGENCY: U.S. Department of the Interior, Fish and Wildlife Service and California State Coastal Conservancy (Lead Agencies).

ACTION: Notice of decision and notice of availability of record of decision.

SUMMARY: This Notice makes available the Record Of Decision (ROD) that has been developed by the U.S. Fish and Wildlife Service (Service) and the California State Coastal Conservancy (Conservancy) in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and Council on Environmental Quality regulations (40 CFR 1505.2). The purpose of this ROD is to document the decision of the Service and Conservancy (the Agencies) for selection of an alternative for implementing the Tijuana Estuary Tidal Restoration Program (Program). Alternatives have been fully described and evaluated in the September 1992, Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for this Program.

Based on review of the alternatives and their environmental consequences described in the Final EIS/EIR for the Program, the decision of the Agencies is to implement the Preferred Alternative. The Preferred Alternative is the Tidal Restoration Program consisting of the Model Project and the 495-Acre Project combined. The selected alternative is determined to be the environmentally preferred alternative.

Timing of implementation of specific components of the Program will occur based on appropriation of funding, and the availability of personnel and other resources. The Program is designed to maximize the protection of the Tijuana Estuary by establishing a range of mechanisms for recognizing, analyzing and responding to changing conditions. The ROD and appendices summarize the project background and key issues, and provide details of the plan phases.

Public Input

The Service and the Conservancy have provided a full and open public involvement process associated with the development of the Tijuana Estuary Tidal Restoration Program EIS/EIR. The full text of comments and responses is printed in the Final EIS/EIR document.

ADDRESSES: To obtain a copy of the Record of Decision, or for further information on this project, please contact: Ms. Mari Hoffmann-Nelson, U.S. Fish and Wildlife Service, P.O. Box 335, Imperial Beach, California 91933, Telephone: (619) 575–1290.

Approval

Based on the Final Environmental Impact Statement, public comment on the EIS, and other relevant factors, I approve the decision to implement the Tidal Restoration Program, Tijuana Slough National Wildlife Refuge/ Tijuana River National Estuarine Research Reserve. This document meets the requirements for agency decisionmaking as provided by 40 CFR part 1505.

Dated: July 6, 1993.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–16792 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–55–M

[DES 93–26]

Availability of Draft Environmental Impact Statement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft Environmental Impact Statement (EIS) for the proposed reintroduction of gray wolves to Yellowstone National Park and central Idaho.

DATES: Comments will be accepted until October 15, 1993.

ADDRESSES: Comments would be sent to U.S. Fish and Wildlife Service, Yellowstone National Park and Central Idaho, Gray Wolf EIS, Post Office Box 8017, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, U.S. Fish and Wildlife Service, Yellowstone National Park and Central Idaho, Gray Wolf EIS, Post Office Box 8017, Helena, Montana 59601, (406) 449–5225.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the draft EIS may be obtained by contacting the above address. Copies of the summary draft EIS are also available.

Copies are also available for inspection at all Public and High School Libraries in the States of Montana, Idaho, and Wyoming. They are also available in all Public Libraries in Seattle, Washington; Denver, Colorado; Salt Lake City, Utah; and Washington, DC.

Public Hearings are scheduled as listed below:

Date	Location
August 25, 1993.	Bozeman, Montana, Missoula, Montana, Dillon, Montana.
August 31, 1993.	Coeur D'Alene, Idaho, Lewiston, Idaho, Idaho Falls, Idaho.
September 1, 1993.	Jackson Hole, Wyoming, Riverton, Wyoming, Cody, Wyoming.
September 27, 1993.	Cheyenne, Wyoming, Boise, Idaho, Helena, Montana.
September 28, 1993.	Salt Lake City, Utah, Seattle, Washington, Denver, Colorado,
September 30, 1993.	Washington, D.C.

The exact time and location of these hearings will be published in a future notice.

Dated: July 9, 1993.

Jonathan Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93–16739 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–030–4333–04]

Temporary Closure of Certain Public Lands in the Carson City District for Management of the 1993 Running of the V.O.R.R.A. "Fallon 250" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain public lands in Churchill County, Nevada, on and adjacent to the 1993 "Fallon 250" race course on July 31, 1993. Access will be limited to race officials, entrants, law enforcement and emergency personnel, BLM personnel monitoring the event, licensed permittee(s) and right-of-way grantees.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1993 "Fallon 250" OHV Race.

EFFECTIVE DATE: July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Terry Knight, Outdoor Recreation Planner, Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: Certain public lands in the Carson City District, Churchill County, Nevada, will be temporarily closed to public access on July 31, 1993, to protect persons,

property, and public land resources on and adjacent to the 1993 "Fallon 250" OHV race, permit number NV–3414–3–15. Specific restrictions and closure information are as follows:

1. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1993 "Fallon 250" OHV race course. These lands are within T.17N., R.30E.; T.17N., R.31E.; T.16N., R.30E.; T.16N., R.31E.; T.16N., R.32E.; T.15N., R.31 ½E.; T.15N., R.32E.; and T.15N., R.33E., M.D.M. A map of the race course may be obtained from Terry Knight at the contact address. The event permittee is required to mark and monitor the race course during this closure period.

2. From 9 a.m. to 11:59 p.m., Saturday, July 31, 1993, the race course and those public lands 300 feet to either side of the course are closed to the public, except for designated check points and spectator areas.

3. Areas from which spectators may view the event are confined to the start/finish area in NE¼ SE¼ Section 9 and NW¼ SW¼ Section 10, T.16N., R. 32E., M.D.M., and check points 1, 2, 3 and 4, identified on the map of the race course. All public spectator vehicles operating within these designated areas shall maintain a maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to race officials, law enforcement and emergency personnel, or BLM personnel monitoring the event.

Authority for closure of public lands is found in 43 CFR part 8341, 43 CFR part 8364 and 43 CFR part 8372. Any person who fails to comply with this closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: June 30, 1993.

Daniel L. Jacquot,

Acting District Manager.

[FR Doc. 93–16718 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–5101–10–XFKL; N–51606]

Extension of Public Comment Period for the Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Public comment period extension.

SUMMARY: The Bureau of Land Management (BLM) has extended the public comment period for the Draft Environmental Impact Statement (EIS) on the Bedell Flat pipelines rights-of-way. The EIS analyzes the impacts of a proposal by Washoe County, Nevada, for pipeline rights-of-way across public land to accommodate a portion of the facilities needed for Washoe County's project to transport water from eastern Honey Lake Valley, Nevada, through Bedell Flat to Lemmon Valley, Nevada.

DATES: The comment period has been extended from July 23, 1993, to September 22, 1993.

ADDRESSES: Please address written comments to: James M. Phillips, Lahontan Area Manager, Bureau of Land Management, 1535 Hot Springs Rd., Suite 300, Carson City, NV, 89706–0638.

FOR FURTHER INFORMATION CONTACT: David Loomis, EIS Project Manager, at the above address or telephone (702) 885–6149.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS are available for review at public libraries in Washoe County, Nevada and Lassen County, California; the Nevada State Library in Carson City; and the libraries of the University of Nevada, Reno; the University of Nevada, Las Vegas; and Lassen Community College in Susanville, California. A limited number of copies are available from the Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada, 89706–0638; phone (702) 885–6100. Public reading copies are available for review at the following BLM locations.

Nevada State Office, 850 Harvard Way, Reno, Nevada 89520
California State office, 2800 Cottage Way, room E–2841, Sacramento, California 95825
Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706
Susanville District Office, 705 Hall Street, Susanville, California 96130
Eagle Lake Resource Area, 471–850 Johnstonville Drive, Susanville, California 96130

Dated: July 8, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–16758 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–03–4320–2]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Grazing Advisory Board.

SUMMARY: The Carson City District Grazing Advisory Board will conduct a range field tour on August 19, 1993. Board members will meet at the Carson City District Office located at 1535 Hot Springs Road, suite 300, Carson City, Nevada, at 9 a.m., on the 19th. The tour is open to the public. All members of the public must provide their own transportation and lunch. The primary topics will be the Carson City Rangeland Success Story and the evaluation and proposed Winnemucca Ranch Multiple-Use Decision. Members of the public wishing to take part in this tour should notify the Carson City District Office no later than August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Gianola, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, phone: (703) 885–6140.

Dated this 30th day of June, 1993.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 93–16719 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[WY–060–93–4320–01]

Casper District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Casper District Grazing Advisory Board.

SUMMARY: The Casper District Grazing Advisory Board will meet at 8 a.m. on August 10, 1993. The meeting will convene at the Casper District Office, 1701 East "E" Street, Casper, Wyoming

The agenda will consist of a progress report on range improvement projects. The public comment portion is scheduled for 8:45 a.m., or shortly after. Interested persons may appear and comment or submit written statements for board consideration.

DATES: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: To request summary minutes or time on the agenda, contact: Kate Padilla, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601, (307) 261–7500.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public.

Summary minutes of the board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

VOL 58 ISS 134 JL 15 1993 UMI

Dated: July 9, 1993.

Mike Karbe,

District Manager.

[FR Doc. 93–16759 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–030–03–4333–01]

Rowlins District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Rawlins District Advisory Council.

SUMMARY: This notice sets forth the schedule and proposed agenda of the meeting and field tour of the Rawlins District Advisory Council.

DATES: August 18, 1993, 9 a.m. to 5 p.m.

ADDRESSES: Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Mary Apple, Public Affairs Specialist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324–7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at the Virginian Hotel, Medicine Bow, Wyoming and will proceed to a tour of Shirley Mountain. The agenda of the meeting will include:

1. Introduction and opening remarks.
2. Review of last Council meeting.
3. Public comment period.
4. Tour of Shirley Mountain, discussion of Shirley Mountain Management Plan and other district issues.

The meeting and tour are open to the public. Anyone interested in attending the meeting or making an oral presentation should notify the District Manager by August 2, 1993. Written statements may also be filed for the Council's consideration. Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: July 6, 1993.

Alan Pierson,

District Manager.

[FR Doc. 93–16720 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–22–M

[AZ–020–4210–04; AZA–27950]

Public Land Disposal, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: All or part of the following described sections containing federal lands are being considered for disposal by sale or exchange pursuant to sections 203 and 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 3N., R. 5 W.,
Sec. 14, NE¼, E½SE¼,
Sec. 22 (All),
Sec. 23, S½,
Sec. 25, (All),
Sec. 26, W½,
Sec. 27, (All),
Sec. 34, W½,
Sec. 35, W½.
Comprising 3,440 acres, more or less.

Final determination on disposal will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1(b) and 2711.1–2(d), publication of this notice will segregate the affected public lands for appropriation under the public land laws, including the mining laws, subject to valid existing rights but not the mineral leasing laws or from sale or exchange pursuant to the Federal Land Policy and Management Act of 1976.

In addition, the lands will continue to be unavailable for livestock grazing pursuant to the grazing regulations at 43 CFR 4100.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: July 7, 1993.

G.L. Cheniae,

District Manager.

[FR Doc. 93–16791 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–32–M

[NV–030–03–4210–05; NVN 56124]

Realty Action; Lease of Public Land in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Initiation of a 45 day public comment period on the proposed classification of public land for recreation and public purposes.

SUMMARY: Pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), a 45 day public comment period is initiated on the following land proposed to be classified as suitable for lease and sale to Douglas County for a model airplane flying field:

Mt. Diablo Meridian, Nevada

T. 12 N., R. 21 E.
Sec. 18, S½S½NE¼NW¼.
Containing 10.00 acres.

SUPPLEMENTARY INFORMATION: The public land is located four miles southeast of Gardnerville at the Douglas County fairgrounds. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Those rights for telephone line purposes granted to the Continental Telephone Company of California by Permit No. NVN 43319.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: Interested parties may submit comments on or before August 30, 1993.

ADDRESSES: Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: July 1, 1993.

S. atWater Weiss,

Acting Walker Resource Area Manager.

[FR Doc. 93–16721 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–52051]

Realty Action: Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in the vicinity of Glendale, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Pubic Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Nevada Department of Transportation proposes to use the land for a maintenance station with equipment and storage area.

Mount Diablo Meridian, Nevada

T. 14 S., R. 67 E.,
Sec. 32: S½SE¼SE¼NW¼,
SE¼SW¼SE¼NW¼,
N½NE¼NE¼SW¼,
NE¼NW¼NE¼SW¼.

Containing 15.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease, when issued, will be subject to the provisions of the Recreation and Pubic Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for an federal highway which have been granted to the Nevada Department of Transportation by Permit No. NEV–052889 under the Act of August 27, 1958.

2. Those rights for an interstate highway which have been granted to the Nevada Department of Transportation by Permit No. CC–018310 under the Act of September 14, 1934.

3. Those rights for an interstate highway which have been granted to the Nevada Department of Transportation by Permit No. CC–020826 and CC–020836 under the Act of January 28, 1941.

4. Those rights for an interstate highway which have been granted to the Nevada Department of Transportation by Permit No. CC–020886 under the Act of October 15, 1940.

5. Those rights for a material site which have been granted to the Nevada Department of Transportation by Permit No. N–051854 Under the Act of August 28, 1958.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: July 2, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–16722 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[CA–940–4210–06; CACA–30123]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,042.04 acres of public and non-Federal lands in Lassen County to protect the Ash Valley Research Natural Area/Area of Critical Environmental Concern. The notice closes the public lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments should be received by October 13, 1993.

ADDRESSES: Comments should be sent to State Director, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: John Beck, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On May 25, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 37N., R. 11 E.,
Sec. 5, lots 1, 2, 4, S½NE¼, SW¼NW¼, SW¼, and W½SE¼;
Sec. 8, W½NE¼, N½NW¼, and S½;
Sec. 9, NE¼SW¼, S½SW¼, and SE¼.
T. 38N., R. 11 E.,
Sec. 32, SW¼SW¼, and SE¼SE¼.

The area described contains 1,321.51 acres in Lassen County.

The petition was also approved allowing the Bureau of Land Management to file an application to withdraw the following described Federal minerals (private surface) from the mining laws. In the event the following private lands return to Federal ownership, the surface estate would also become subject to the withdrawal.

Mount Diablo Meridian

T. 37N., R. 11 E.,
Sec. 4, SW¼NW¼;
Sec. 5, E½SE¼;
Sec. 8, E½NE¼;
Sec. 9, NW¼NW¼, S½NW¼, and NW¼SW¼.

The areas described aggregate 360 acres in Lassen County.

The petition was also approved allowing the Bureau of Land Management to file an application to withdraw the following described non-Federal lands (private surface and private minerals). In the event the non Federal lands (private surface and private minerals) return to Federal ownership, the lands would become subject to the withdrawal.

T. 37N., R. 11 E.,
Sec. 4, W½SW¼;
Sec. 5, lot 3 and SE¼NW¼;
Sec. 8, S½NW¼;
Sec. 9, NE¼NW¼.
T. 38 N., R. 11 E.,

Sec. 32, SE¼SW¼ and SW¼SE¼.

The areas described aggregate 360.53 acres in Lassen County.

The purpose of the proposed withdrawal is to protect and preserve the rare and sensitive plants and other unique resource values of the Ash Valley Research Natural Area/Area of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connections with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

Dated: July 2, 1993.

Dianna L. Storey,

Acting Chief, Lands Section.

[FR Doc. 93–16723 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–40–M

[OR–943–4210–06; GP3–297; ORE–016183]

Proposed Continuation of Withdrawal; Oregon; Correction

The land description in FR Doc. 93–7550, published on page 17280, in the issue of Thursday, April 1, 1993, is hereby corrected as follows:

On page 17280, under Darby Creek recreation site reads "Sec. 15", and is corrected to read "Sec. 35".

Dated: July 2, 1993.

Champ C. Vaughan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–16724 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–572 (Final)]

Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Semifinished Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of certain special quality carbon and alloy hot-rolled steel bars and semifinished products, provided for in subheadings 7207.11.00, 7207.12.00, 7207.19.00, 7207.20.00, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00, 7224.10.00, 7224.90.00, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 11, 1993, following a preliminary determination by the Department of Commerce that imports of certain special quality carbon and alloy hot-rolled steel bars and semifinished products from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 3, 1993 (58 FR 6976). The hearing was held in Washington, DC, on June 2, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Issued: July 12, 1993.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 93–16805 Filed 7–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Seagate Technology, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on July 9, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be

directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: July 9, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16806 Filed 7–4–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–6 (Sub-No. 250X) Burlington Northern RR. Co.—Abandonment Exemption—in Okanogan County, WA. EA available July 9, 1993.

AB–55 (Sub-No. 409X), CSX Transportation, Inc.—Abandonment Exemption—in Richmond County, NC. EA available July 9, 1993.

Comments on the following assessment are due 30 days after the date of availability;

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16771 Filed 7–14–93; 8:45am]

BILLING CODE 7035–01–M

[Finance Docket No. 32309]

New Hampshire Central Railroad, Inc. Modified Rail Certificate

On June 3, 1993, the New Hampshire Central Railroad, Inc. (NHCR) filed a notice for a modified rail certificate of public convenience and necessity to operate 22.96 miles or rail line between milepost 00.00 (MP MEC–131.75) at North Stratford, NH and milepost 22.96 (MP MEC–154.71) at Beecher Falls, VT.

The line of rail is owned by the State of New Hampshire (State).[1] NHCR has entered into a 5-year agreement with the State to commence operations over that portion of the line between milepost 00.00 (MP MEC–131.75) at North Stratford, NH and milepost 09.25 (MP MEC–141.00) at Columbia Bridge, NH, a distance of 9.25 miles. NHCR was to commence operations on or about June 1, 1993. Should traffic warrant, a supplemental agreement will be entered into by the parties for operations by NHCR over that portion of the rail line between milepost 09.25 (MP MEC–141.00) at Columbia Bridge, NH and milepost 22.96 (MP–MEC–154.71) at Beecher Falls, VT.

The line of railroad has been operated by the North Stratford Railroad Corporation (NSRC) pursuant to a certificate and decision, in Finance Docket No. 28553, North Stratford Railroad Corporation—Operation—At North Stratford, New Hampshire, and Beecher Falls, VT (not printed), served October 17, 1978. NSRC apparently ceased most operations in the Spring of 1989 because of a diversion of traffic to motor carriers by its principal customer, Ethan Allen Furniture Co., and because of an embargo on the line. Our records show that NSRC has never sought Commission approval to discontinue operations, Consequently NSRC retains its common carrier obligation to provide freight service.[2]

This decision results in both NSRC and NHCR being authorized to operate the line. However, we are not concerned that two carriers are "authorized" to operate the line, given that there is no evidence of record indicating that future operations will be conducted by more than one carrier at a time. Cf. Finance Docket No. 32162, Indiana Hi-Rail Corp.—Lease and Operation Exemption—Norfolk and Western Railway (not printed), served March 31, 1993, and Finance Docket No. 32049, *et al.*, Cheatham County Rail Authority "Application and Petition" for Adverse Discontinuance (not printed), served August 31, 1992.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: July 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16770 Filed 7–14–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The involved line of railroad is a portion of the Maine Central Railroad Company line approved for abandonment in Docket No. AB–83, Maine Central Railroad Company—Abandonment Between Carroll, New Hampshire, and Canaan, Vermont, in Coos County, New Hampshire, and Essex County, Vermont (not printed), served June 16, 1976. A certificate of abandonment, subject to the sale of the involved line to the State of New Hampshire, was served January 27, 1977.

[2] If NSRC has discontinued its operations and wants to be relieved from its common carrier obligation, it must file an appropriate application for discontinuance under 49 U.S.C. 10903 and 10904 or seek an exemption.

[Docket No. AB–6; Sub-No. 347X]

Burlington Northern Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—In Greene, Sumter, Choctaw, Washington, and Mobile Counties, Al

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Burlington Northern Railroad Company of a 123.40-mile rail line between milepost 728.0, at or near York, and milepost 851.40, at or near Bucks, in Sumter, Choctaw, Washington, and Mobile Counties, AL, and the discontinuance of its trackage rights over 27.32 miles of Norfolk Southern line between milepost 240.90, at or near Boligee, and milepost 268.22, at or near York, in Greene and Sumter Counties, AL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 14, 1993. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by July 25, 1993, petitions to stay must be filed by July 30, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 4, 1993, and petitions to reopen must be filed by August 9, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 347X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

and (2) Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: July 6, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-16772 Filed 7-14-93, 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Union Tank Car Co.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029 (July 17, 1973), notice is hereby given that on July 6, 1993, a proposed Consent Decree in *United States of America* v. *Union Tank Car Company*, Civil Action No. CV91-2100, was lodged with the United States District Court for the Western District of Louisiana.

In 1991, a Complaint in this action was filed by the United States of America against Union Tank Car Company under sections 301 and 309(a) of the Clean Water Act, 33 U.S C. 1311 and 1319(a), in connection with Union Tank Car's discharge of pollutants into navigable waters of the United States at its facility located near Ville Platte, Louisiana.

The proposed Consent Decree entered between the United States and Union Tank Car provides for payment of a civil penalty in the amount of $350,000 to the United States. The Consent Decree also requires the defendant to construct a wastewater treatment plant on its facility and to finance a sewer connection between its facility and the City of Ville Platte Publicly Owned Treatment Works, for disposal of the defendant's sanitary and industrial wastewater generated at its facility.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Union Tank Car Company*, DOJ Ref. No. 90-5-1-1-3211.

The proposed Consent Decree may be examined at the office of the United States Attorney General, Western District of Louisiana, FNB Tower, 600 Jefferson Street, suite 1000, Lafayette, Louisiana 70501-7502, the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division

[FR Doc. 93-16725 Filed 7-14-93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—National Information Technology Center of Maryland, Inc.

Notice is hereby given that, on June 8, 1993, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S C. 4301 *et seq.* ("the Act"), the National Information Technology Center of Maryland, Inc., ("NITC"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become members of NITC: Ballard, Spahr, Andrews & Ingersoll, Washington, DC; Blue Cross and Blue Shield of Rhode Island, Providence, RI; Bryan Cave, Washington, DC, Dayton T. Brown, Inc., Bohemia, NY; Khafre Systems International, Inc., Silver Spring, MD; Landmark Systems Corporation, Vienna, VA; Man Made Systems, Ellicott City, MD; Martin Marietta Laboratories of the Martin Marietta Corporation, Baltimore, MD; OAO Corporation, Greenbelt, MD; The World Bank, Washington, DC, U.S. West, Inc., Advanced Technology Division, Boulder, CO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NITC intends to file additional written notification disclosing all changes in membership.

On September 12, 1991, NITC, then known as the Maryland Information Technologies Center, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 22, 1991, (56 FR 54,586).

The last notification was filed with the Department on March 10, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act of April 22, 1993, (58 FR 21,598).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-16789 Filed 7-14-93; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS No. 1626-93]

Intent to Prepare a Draft Programmatic Environmental Impact Statement for Operations of Joint Task Force Six

AGENCY: The Immigration and Naturalization Service, Justice. Joint Task Force Six (JTF-6), Environmental Protection Agency.

ACTION: Notice of intent.

SUMMARY: This Notice is to announce the preparation of a Draft Programmatic Environmental Impact Statement (PEIS) for the anticipated activities and effects of Department of Defense Joint Task Force Six (JTF-6) in support of the Immigration and Naturalization Service (INS). Anticipated activities might include: reconnaissance operations, building and renovation of roads and radio towers along the United States southwest land border.

DATES: To be considered in the Draft PEIS, written comments and suggestions should be received not later than August 30, 1993.

ADDRESSES: To be included on the current mailing list or to forward written comments, please write to the following address: U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-PL-RE (Eric Verwers), P.O. Box 17300, Fort Worth, Texas 76102-0300

FOR FURTHER INFORMATION CONTACT: Eric Verwers, Environmental Resource Specialist, U.S. Army Corps of Engineers, P.O. Box 17300, 819 Taylor Street, Forth Worth, TX 76102–0300, telephone (817) 334–3246.

SUPPLEMENTARY INFORMATION:

Background

Since the late 1800's, the Immigration and Naturalization Service (INS) has been responsible for the protection of the Nation's borders from smuggling and unlawful entry of illegal aliens into the United States. This task has primarily been accomplished by the Border Patrol. Because of the increase in drug smuggling operations, the Border Patrol has been designated the primary law enforcement agency responsible for narcotics interdiction between all of the United States land ports of entry.

JTF–6 was activated November 13, 1989, at Fort Bliss, Texas by the Secretary of Defense in accordance with the President's National Drug Control Strategy. The thrust of this program is the use of Department of Defense training resources in the support of agencies responsible for the fight against illegal drugs.

The mission of JTF–6 is to plan and coordinate military operations and training along the United States southwest land border in support of counterdrug activities by Federal, State, and local law enforcement agencies, as requested through Operation Alliance and approved by the Secretary of Defense or a designated representative. The actions performed by JTF–6 personnel are quite diverse, ranging from reconnaissance operations to the building and renovation of roads and radio towers.

Alternative: No Action.

Scope: The PEIS will provide a general assessment of the expected impacts from the various types of JTF–6 activities, including possible cumulative impacts. The PEIS will develop procedures that will identify the need for documentation in accordance with the National Environmental Policy Act (NEPA) of 1969, Public Law 91–190, as amended, for other specific activities as they occur.

The INS and other Federal, state, and local law enforcement agencies will be able to develop supplemental PEISs or incorporate the PEIS to a site specific Environmental Assessment, as allowed by NEPA, for activities or locations not specifically addressed in the PEIS. Approximately 75% of the JTF–6 actions that require environmental assessment are for the INS.

Invitation to Participate/Scoping Process Comments received as a result of this notice will be used to assist INS in identifying impacts to the quality of the human environment. Scoping meetings will be held along the United States-Mexico Border to identify alternatives and significant issues related to the proposed action. Times and dates will be published in local newspapers and made available to current mailing lists. Individuals or organizations may participate in the scoping process by providing written comments or by attending the scoping meetings.

Dated: July 8, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–16786 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors of the Developmental Mechanisms Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors of the Developmental Mechanisms Program; Division of Integrative Biology and Neuroscience.

Date and Time August 4–6, 1993; 8:30 a.m.–5 p.m. each day.

Place. Room 1243, NSF, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr Bruce Umminger, Division Director, Division of Integrative Biology and Neuroscience, Room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7905.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda. To provide oversight review of the Departmental Mechanisms Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16807 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Ocean Sciences Review Panel.

Date and Time: August 3–4, 1993, 9 a.m.

Place. St. James Hotel, 950 24th St., NW, Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Paul Dauphin, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7837.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda To review and evaluate Ocean Drilling proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16808 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting

Name Special Emphasis Panel in Undergraduate Education.

Date And Time August 17, 1993; 7.30 a.m. to 9 p.m.; August 18, 1993; 8:30 a.m. to 5 p.m.; August 19, 1993; 8:30 a.m. to 5 p.m.; August 20, 1993, 8.30 a.m. to 5 p.m.

Place The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type Of Meeting: Closed.

Contact Person. Dr Terry Woodin, Program Director; National Science Foundation; 1800 G Street, NW., room 1210; Washington, DC; Telephone: (202) 357–7051

Purpose Of Meeting. To provide advice and recommendations concerning propose' submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the

Collaboratives for Excellence in Teacher Preparation program.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16830 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Circular A–25, "User Charges"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Revision of Circular No. A–25, "User Charges"

SUMMARY: Circular No. A–25 establishes guidelines for Federal agencies to assess fees for Government services and for the sale or use of Government property or resources.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah Saunders, Budget Analysis Branch, Room 6025, New Executive Office Building, Office of Management and Budget, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The authority for charging user fees is provided by Title V of the Independent Office Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. 9701. Circular No. A–25 was last issued in 1959. This revision is consistent with the authority provided in Title V of the IOAA, as interpreted by the courts, and is not intended to expand this authority. Rather the revision seeks only to clarify Federal policy in light of thirty years of experience and to update the procedures by which agencies are to institute charges.

With the printing of this Circular in final form, the Office of Management and Budget (OMB) expects agencies to develop regulations and/or legislation, as appropriate, implementing its guidance in setting new user fees or revising existing fees.

Changes Adopted in the Final Revision

This document makes the following changes and revisions to Circular A–25, last published in September 1959:

1. Charges should be set based on market conditions for products and services provided by business-type activities while charges for all other government services or products should be based on full-cost recovery. Section 6a(2)(b), which provides for market prices for business-type activities, is based on section 3b of the 1959 Circular, which provided for market prices for the sale or lease of federally owned resources or property. Such pricing was upheld in *Yosemite Park and Curry Co. v. United States,* 686 F.2d 925, 932–35 (Ct. Cl. 1982).

2. Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to reflect changes in costs to the Government or changes in market prices of the property, resource or service provided.

3. As has always been the case, user charges should be assessed when a service provides special benefits to an identifiable recipient beyond those that accrue to the general public. *Compare* section 6a(1), (4) of the revised Circular *with* Section 3a(1)–(2) of the 1959 Circular. This revision to the Circular adds language—in section 6a(3)—to make explicit several principles that have been inherent in this general test. For example, the update makes clear that, when the general public also receives "incidental" benefits, the user charge should recover full cost rather than a prorated amount. Section 6a(3) is discussed further below (see Comments Received).

4. The number of specified exceptions Federal agencies can grant to the general guidelines is reduced. However, agencies may recommend additional exceptions subject to OMB approval.

5. This revision encourages agency review of specific statutory authority, in addition to the generic Independent Offices Appropriations Act, to determine whether the authority for implementation of any desired fee exists.

6. A new section is included on developing legislation when legal impediments to user charges exist. This section also includes a discussion of the conditions under which the appropriate legislative proposal would be an excise tax rather than a user charge.

8. Agencies are directed to review charges biennially and update them as necessary.

Comments Received

Notice of the proposed revision was published for comment in the **Federal Register** on January 21, 1992 (57 FR 2293). Comments from concerned parties were due by February 15, 1992. OMB received 15 comments from Federal agencies, interest groups and private industry.

1. Several commenters objected to proposed section 6a(3). They contended that it departs from the test in the 1959 Circular for when user charges should be assessed (section 3a(1)–(2)). They also contended that it sets forth an inappropriate standard under which a user charge would be assessed for a service that not only provides a special benefit to identifiable recipients but also provides incidental benefits to the general public.

Contrary to the commenters' objections, section 6a(3) does not depart from the traditional test in the Circular for when user charges should be assessed, and it does not establish an inappropriate standard for assessing user charges. Rather, as explained below, section 6a(3) states explicitly principles that have been inherent in the Circular, been applied by agencies over the years in assessing user charges, and been upheld by the courts when those user charges were challenged. Accordingly, we have adopted section 6a(3) in this revision to the Circular.

Foremost among the principles stated in section 6a(3) is that agencies shall assess a user charge for services that provide special benefits to an identifiable recipient even when those services also provide incidental benefits to the general public. This principle proceeds from the general test for when user charges should be assessed, which had been in section 3a(1)–(2) of the 1959 Circular and is now in section 6a(1), (4). Under this test, a charge will be assessed when a service provides special benefits to an identifiable recipient beyond those that accrue to the general public, but will not be assessed when the identification of the specific beneficiary is obscure and the service can be considered primarily as benefitting broadly the general public. This test was upheld by the Supreme Court in *FPC* v. *New England Power Co.,* 415 U.S. 345, 349–51 (1974) (citing Circular No. A–25).

Applying this test, agencies over the years have assessed numerous user charges for services that not only provide special benefits to identifiable recipients, but also provide incidental benefits to the public. This is evident from the number of court cases in which a party challenged a user charge and in so doing advanced the argument offered by the commenters, namely, that—as one court characterized the challengers' argument—"the *public* interest in these activities is so strong that it is unfair to assess any of their cost against any private party." *Electronic Industries Ass'n* v. *FCC,* 554 F.2d 1109, 1113 (D.C. Cir. 1976). As the courts have recognized, if this argument were valid,

it "would mean that *no* federal agency could assess any fees, since all public agencies are constituted in the public interest." *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223, 229 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980).

Since such a result would be plainly inconsistent with Congress' authorization of user charges in the IOAA and other statutes, the courts have consistently rejected the argument. See *Ayuda, Inc.* v. *Attorney General*, 848 F.2d 1297, 1300 (D.C. Cir. 1988) ("Such fees may be assessed even when the service redounds in part to the benefit of the public as a whole."); *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370, 376 (10th Cir.), *cert. denied*, 479 U.S. 823 (1986) ("where an agency performs a service from which a regulated entity derives a 'special benefit,' it may charge a fee, even though the public also benefits"); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 227–29; *Electronic Industries Ass'n* v. *FCC*, 554 F.2d at 1114 n.12, 1115–16; *National Cable Television Ass'n, Inc.* v. *FCC*, 554 F.2d 1094, 1103 (D.C. Cir. 1976).

Section 6a(3) also states the related principle that, for a service that provides incidental benefits to the public, the agency should not pro-rate the user charge by allocating any part of it to the public, but instead should charge those identifiable recipients who receive the special benefit the full cost of rendering the service. This principle follows from the direction in section 3a(1) of the 1959 Circular that "a charge should be imposed to recover the full cost to the Federal Government of rendering that service."

This principle of full-cost recovery is essential to achieving the aim of user charge statutes such as the IOAA. As one court explained, requiring an allocation of costs "would saddle agencies with the impossible task of sorting out public from private benefits, with the likely result that most agency fees would be reduced to mere tokens." *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230. Accordingly, the courts have upheld user charges implementing the Circular's principle of full-cost recovery. *See Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d 722, 732 (D.C. Cir. 1985) ("If the asserted public benefits are the necessary consequence of the agency's provision of the relevant private benefits, then the public benefits are not independent, and the agency would therefore not need to allocate any costs to the public."); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230 ("the NRC may recover the *full cost* of providing a service to an identifiable beneficiary, regardless of the incidental public benefits flowing from the provision of that service"); *Electronics Industries Ass'n* v. *FCC*, 554 F.2d at 1115 ("the Commission is not prohibited from charging an applicant or grantee the full cost of services rendered to an applicant which also result in some incidental public benefits"). In cases where, under section 6a(2)(b), the charge would be the market price, rather than the cost of rendering the service, the full market price is charged.

Finally, section 6a(3) states a third principle that has been inherent in the Circular and has been upheld by the courts. If a service provides the public a benefit that is *independent from*—rather than *incidental to*—the special benefit that the service provides an identifiable recipient, then the cost to the Federal Government of providing that independent public benefit is not included in the user charge. *See Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d at 729–30; *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230; *Electronics Industries Ass'n* v. *FCC*, 554 F.2d at 1115.

In addition to objecting to section 6a(3) on general grounds, commenters also objected to the specific examples found in that provision of activities for which a user charge would be appropriate. Those examples were of processing a new drug application and inspecting farm products (the latter example was also used in the proposed section 6a(1)(b)). The commenters contended that these activities, in particular, should not be subject to user charges. To support their position, the commenters offered factual and legal arguments that were specifically addressed to each of those activities.

As the preamble to the proposal noted, examples were included in the Circular to clarify its intent and scope. 57 FR at 2294. However, given the comments we have received concerning those two particular examples, and since the agencies themselves are in the best position to apply the Circular's principles to the specific factual situations presented by their various activities, we have omitted those two examples from the revision of the Circular. We emphasize, however, that this omission does not express any view, one way or the other, as to whether a user charge should be assessed for those activities. Rather, as will be the case with any activity not specifically mentioned as an example in the Circular, the pertinent agencies will assess these activities on an individual basis and, in so doing, will apply the Circular's general principles and be guided by the extensive case law concerning user charges that has developed since the Circular was issued in 1959. We have also decided not to include in the text of the Circular other examples to illustrate the principles in section 6a(3). Instead, agencies seeking examples of how those principles are applied in practice can look to the court cases discussed above, in which the courts applied those principles to specific user charges. In addition, when questions arise as to the appropriateness of assessing a user charge for a particular activity, agencies may consult with OMB.

2. All the Federal agencies submitted comments suggesting the Circular conform with the Chief Financial Officers Act of 1990 (Pub. L. 101–576), which requires an agency CFO to biennially review fees, royalties, rents and other charges. The circular has been so revised to require biennial review of user charges by the CFO.

3. More detailed direction in estimating fringe benefit costs was requested. The Circular now directs each agency to estimate retirement costs as specified in Circular No. A–11 (Preparation and Submission of Budget Estimates).

4. The stated timing of collections for user charges in legislative proposals was questioned. The belief is that requiring collection of fees prior to or simultaneously with the provision of service is inconsistent with standard business practice. This requirement is included to conform to basic appropriations law which precludes fee collections other than prior to or simultaneously with provision of service unless appropriations and authority are provided in advance to allow reimbursable services.

5. It was suggested that agency heads or their designee be permitted to make user charge exceptions for activities with estimated annual collections under $10 million. Further, it was suggested, for such exceptions agency heads or their designee should be permitted to extend the exception. OMB will continue to review all user charge exceptions and extensions. OMB has reviewed exceptions and extensions, and has the mechanisms in place to continue to do so.

A suggestion was also made that the exception extension period be lengthened from four years to six years, to allow more time where legislative action is required. OMB believes the current four year extension period is sufficiently long to provide for any legislative action.

6. Certain comments contained specific questions regarding

VOL
58
ISS
134
JL
15
1993
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interpretation of the Circular. The question was raised whether OMB intends the provisions of Circular A–25 be applied to "special benefits" provided to other Federal establishments. Circular A–25 is intended to apply to the provision of Government goods and services to the public, not other Federal establishments.

One commenter asked if, in the section where charging user fees based on market price is discussed, the example of leasing space in federally owned buildings was intended to restrict possible interpretations of services rendered. Market price should be charged in all circumstances in which the Government is not acting in its capacity as sovereign. The example used is just that, an example of a situation in which the Government, not acting in its capacity as sovereign, is providing a service under business-type conditions.

Again regarding market pricing, the question was asked whether a user fee should be assessed if the market price is less than full cost. The Circular states when the Government provides goods or services under business-type conditions, market price should be charged. When the Government, acting in its capacity as sovereign, provides a good or service, the user charge should be sufficient to cover the full cost to the Federal Government to provide the good or service. Exceptions may be granted for agencies to charge fees below market price or full cost. These exceptions will be granted by OMB on a case by case basis.

To the Heads of Executive Departments and Establishments

Subject. User Charges

1. *Purpose.* The Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. It provides information on the scope and types of activities subject to user charges and on the basis upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and the disposition of collections.

2. *Rescission.* This rescinds Office of Management and Budget Circular No. A–25, dated September 23, 1959, and Transmittal Memoranda 1 and 2.

3 *Authority.* Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701); 31 U.S.C. 1111; and Executive Orders No. 8248 and No. 11,541

4. *Coverage.*

a. The provisions of this Circular cover all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The Circular does not apply to the activities of the legislative and judicial branches of Government, or to mixed-ownership Government corporations, as defined in 31 U.S.C. 9701.

b. The provisions of the Circular shall be applied by agencies in their assessment of user charges under the IOAA. In addition, this Circular provides guidance to agencies regarding their assessment of user charges under other statutes. This guidance is intended to be applied only to the extent permitted by law. Thus, where a statute prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited), the statute shall take precedence over the Circular. In such cases (e.g., sale or disposal under Federal surplus property statutes; or fringe benefits for military personnel and civilian employees), the guidance provided by the Circular would apply to the extent that it is not inconsistent with the statute. The same analysis would apply with regard to executive orders that address user charges.

c. In any case where an Office of Management and Budget circular provides guidance concerning a specific user charge area, the guidance of that circular shall be deemed to meet the requirements of this Circular. Examples of such guidance include the following: OMB Circular No. A–45, concerning charges for rental quarters; OMB Circular No. A–130, concerning management of Federal information resources; and OMB Circular No. A–97, concerning provision of specialized technical services to State and Local governments.

5 *Objectives.* It is the objective of the United States Government to:

a. Ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;

b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits, and

c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

6. *General policy.* A user charge, as described below, will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. When the imposition of user charges is prohibited or restricted by existing law, agencies will review activities periodically and recommend legislative changes when appropriate. section 7 gives guidance on drafting legislation to implement user charges.

a. *Special benefits.*

(1) Determining when special benefits exist. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or

(c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

(2) Determining the amount of user charges to assess.

(a) Except as provided in section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign

(b) Except as provided in section 6c, user charges will be based on market prices (as defined in section 6d) when the Government, not acting in its capacity as sovereign, is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user charges need not be limited to the recovery of full cost and may yield net revenues.

(c) User charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are

provided in advance to allow reimbursable services.

(d) Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government or changes in market prices of the good, resource, or service provided (as defined in section 6d).

(3) In cases where the Government is supplying services, goods, or resources that provide a special benefit to an identifiable recipient and that also provide a benefit to the general public, charges should be set in accordance with paragraph (2) of section 6a. Therefore, when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.

(4) No charge should be made for a service when the identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public.

b. *Charges to the direct recipient.* Charges will be made to the direct recipient of the special benefit even though all or part of the special benefits may then be passed to others.

c. *Exceptions.*

(1) Agency heads or their designee may make exceptions to the general policy if the provision of a free service is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(2) Agency heads or their designee may recommend to the Office of Management and Budget that exceptions to the general policy be made when:

(a) The cost of collecting the fees would represent an unduly large part of the fee for the activity; or

(b) Any other condition exists that, in the opinion of the agency head or his designee, justifies an exception.

(3) All exceptions shall be for a period of no more than four years unless renewed by the agency heads or their designee for exceptions granted under section 6c(1) or the Office of Management and Budget for exceptions granted under section 6c(2) after a review to determine whether conditions warrant their continuation.

(4) Requests for exceptions and extensions under paragraphs (2) and (3) of section 6c shall be submitted to the Director of the Office of Management and Budget.

d. *Determining full cost and market price.*

(1) "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

(2) "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.

(a) When a substantial competitive demand exists for a good, resource, or service, its market price will be determined using commercial practices, for example:

(i) By competitive bidding; or

(ii) By reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

(b) In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for goods, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the good, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas).

7. *Implementation.*

a. The general policy is that user charges will be instituted through the promulgation of regulations.

b. When there are statutory prohibitions or limitations on charges, legislation to permit charges to be established should be proposed. In general, legislation should seek to remove restraints on user charges and permit their establishment under the guidelines provided in this Circular. When passage of this general authority seems unlikely, more restrictive authority should be sought. The level of charges proposed should be based on the guidelines in section 6. When necessary, legislation should:

(1) Define in general terms the services for which charges will be assessed and the pricing mechanism that will be used;

(2) Specify fees will be collected in advance of, or simultaneously with, the provision of service unless appropriations and authority are provided in advance to allow reimbursable services;

(3) Specify where collections will be credited (see section 9). Legislative proposals should not normally specify precise charges. The user charge schedule should be set by regulation. This will allow administrative updating of fees to reflect changing costs and market values. Where it is not considered feasible to collect charges at a level specified in section 6, charges should be set as close to that level as is practical.

c. Excise taxes are another means of charging specific beneficiaries for the Government services they receive. New user charges should not be proposed in cases where an excise tax currently finances the Government services that benefit specific individuals. Agencies may consider proposing a new excise tax when it would be significantly cheaper to administer than fees, and the burden of the excise tax would rest almost entirely on the user population (e.g., gasoline tax to finance highway construction). Excise taxes cannot be imposed through administrative action but rather require legislation. Legislation should meet the same criteria as in section 7b; however, it is necessary to state explicitly the rate of

the tax. Agency review of these taxes must be performed periodically and new legislation should be proposed, as appropriate, to update the tax based on changes in cost. Any excise tax proposals must be approved by the Assistant Secretary for Tax Policy at the Department of the Treasury.

d. When developing options to institute user charges administratively, agencies should review all sources of statutory authority in addition to the Independent Offices Appropriations Act that may authorize implementation of such charges.

e. In proposing new charges or modifications to existing ones, managers of other programs that provide special benefits to the same or similar user populations should be consulted. Joint legislative proposals should be made, and joint collection efforts designed to ease the burden on the users should be used, whenever possible.

f. Every effort should be made to keep the costs of collection to a minimum. The principles embodied in Circular No. A–76 (Performance of Commercial Activities) should be considered in designing the collection effort.

g. Legislative proposals must be submitted to the Office of Management and Budget in accordance with the requirements of Circular No. A–19. To ensure the proper placement of user fee initiatives in the budget account structure, agencies are encouraged to discuss proposals with OMB at an early stage of development.

8. *Agency responsibility.* Agencies are responsible for the initiation and adoption of user charge schedules consistent with the policies in this Circular. Each agency will:

a. Identify the services and activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply the principles specified in section 6 in determining full cost or market price, as appropriate;

d. Apply the guidance in section 7 either to institute charges through the promulgation of regulations or submit legislation as appropriate;

e. Review the user charges for agency programs biennially, to include: (1) Assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values; and (2) a review of all other agency programs to determine whether fees should be assessed for Government services or the user of Government goods or services. Agencies should discuss the results of the biennial review of user fees and any resultant proposals in the Chief Financial Officers Annual Report required by the Chief Financial Officers Act of 1990;

f. Ensure that the requirements of OMB Circular No. A–123 (Internal Control Systems) and appropriate audit standards are applied to collection;

g. Maintain readily accessible records of:

(1) The services or activities covered by this Circular;

(2) The extent of special benefits provided;

(3) The exceptions to the general policy of this Circular;

(4) The information used to establish charges and the specific method(s) used to determine them; and

(5) The collections from each user charge imposed.

(6) Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules and provide data on user charges to OMB in accordance with the requirements in Circular No. A–11.

9. *Disposition of collections.* a. Unless a statute provides otherwise, user charge collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302.

b. Legislative proposals to permit the collections to be retained by the agency may be appropriate in certain circumstances. Proposals should meet the guidelines in section 7b.

Proposals that allow agency retention of collections may be appropriate when a fee is levied in order to finance a service that is intended to be provided on a substantially self-sustaining basis and thus is dependent upon adequate collections.

(1) Generally, the authority to use fees credited to an agency's appropriations should be subject to limits set in annual appropriations language. However, it may be appropriate to request exemption from annual appropriations control, if provision of the service is dependent on demand that is irregular or unpredictable (e.g., a fee to reimburse an agency for the cost of overtime pay of inspectors for services performed after regular duty hours).

(2) As a normal rule, legislative proposals that permit fees to be credited to accounts should also be consistent with the full-cost recovery guidelines contained in this Circular. Any fees in excess of full-cost recovery and any increase in fees to recover the portion of retirement costs which recoups all (funded or unfunded) accrual costs not covered by employee contributions should be credited to the general fund of the Treasury as miscellaneous receipts.

10. *New activities.* Whenever agencies prepare legislative proposals for new or expanded Federal activities that would provide special benefits, the policies and criteria set forth in this Circular will apply.

11. *Inquiries.* For information concerning this Circular, consult the Office of Management and Budget examiner responsible for the agency's budget estimates.

Leon E. Panetta,

Director, Office of Management and Budget.

[FR Doc. 93–16753 Filed 7–14–93; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Use of Negotiated Rulemaking

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Request for comments.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is considering developing a policy on the use of negotiated rulemaking. The Negotiated Rulemaking Act establishes a framework for the conduct of negotiated rulemaking, and it encourages Federal agencies to use negotiated rulemaking to enhance their informal rulemaking process. The PBGC is seeking comments at this time in order to involve the affected public at the outset of policy development.

DATES: Comments must be submitted on or before September 13, 1993.

ADDRESSES: Send comments to Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, 2020 K Street NW., Code 35300, Washington, DC 20006–1860. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, at the address given above, or telephone 202–778–8817 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is considering developing a policy on negotiated rulemaking, the framework for which is established in the Negotiated Rulemaking Act (5 U.S.C. 561–570). "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee (5 U.S.C. 562(6)). In negotiated

rulemaking, a Federal agency establishes a committee to represent all the interests that will be significantly affected by a rule, including the Federal government. The negotiated rulemaking committee seeks to develop a consensus on a rule before it is formally proposed by the agency. An impartial person generally acts as facilitator for the committee.

Use of negotiated rulemaking is within an agency's discretion and participation in the negotiated rulemaking process is voluntary. The committee establishes its own rules of operation. Decisions are made by consensus, which generally requires the unanimous concurrence of the interests represented, including the agency. Negotiated rulemaking committees must be established and operated in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), except as otherwise provided by the Negotiated Rulemaking Act. If a consensus is reached on a proposed rule, the committee provides the agency with a report that contains that proposed rule. If a consensus on a proposed rule is not reached, the committee may issue a report specifying any areas in which it reached a consensus and any other information, recommendations, or materials that the committee considers appropriate.

For negotiated rulemaking to be successful, there must be a limited number of identifiable interests that will be significantly affected by the rule, and representatives of those interests must be willing to negotiate in good faith to try to reach a consensus on the proposed rule. In addition, the issues involved must be such that there is a reasonable likelihood that a consensus can be reached in a fixed time period, and the agency must be willing to commit the resources necessary for the committee to operate. The initial resource demands may be substantially higher than in traditional rulemaking, as the agency must commit not only to additional expenditures such as facilitator costs, space and administrative support, and possible payment of expenses of committee members as provided for in the Negotiated Rulemaking Act, but also to making all agency personnel who are involved in the rulemaking available and fully committed to a compressed schedule for development of the proposed rule.

However, in enacting the Negotiated Rulemaking Act, the Congress found that negotiated rulemaking can have significant advantages over adversarial rulemaking and that it can increase the acceptability and improve the substance of the rules that are developed. Agencies that pioneered the use of negotiated rulemaking found the process extremely beneficial, particularly in developing rules that might otherwise have been challenged in court.

The PBGC's rules may have a major effect on persons and organizations affected by its regulations when certain events occur, such as the termination of a single-employer plan or the withdrawal of an employer from a multiemployer plan. However, these events generally occur infrequently with respect to a particular plan or plan sponsor, and plan practitioners, who may deal with PBGC on a frequent basis, may not contemplate their occurrence when a rule is proposed or issued. Most of the PBGC's rules have a limited impact on day-to-day operations of members of the regulated community. Thus, PBGC rules are rarely litigated.

Nevertheless, even if a rule is not likely to be litigated, negotiated rulemaking may improve communication between the PBGC and affected interests, providing the PBGC with better information and a mechanism to gain a better understanding of the practical consequences of available regulatory alternatives. In the longer run, this process can result in better, more acceptable regulations, reduced administrative burden, and improved relationships with those persons and organizations affected by PBGC regulations. For these reasons, the PBGC invites comments on whether the potential advantages of using negotiated rulemaking, in particular instances, would justify the public and private resources necessary for the negotiated rulemaking process to be viable.

The PBGC requests comments from interested persons on how it might use negotiated rulemaking. In particular, the PBGC requests comments on specific areas of PBGC regulation or criteria for identifying such areas in which the negotiated rulemaking process could be beneficial, considering the commitment of resources that would be required of both the PBGC and the interests affected by the rule.

Issued at Washington, DC this 7th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16821 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

Rules and Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 275–5407

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension:

Rule 11Ab2–1 and Form SIP; File No. 270–23

Rule 15Bc3–1 and Form MSDW; File No. 270–93

Rule 17a–3; File No. 270–27

Revision:

Rule 17a–11; File No. 270–94

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval the following rules and forms:

Rule 11Ab2–1 (17 CFR 240.11Ab2–1) and Form SIP (17 CFR 249.1001) outline the requirements for filing an application to register with the Commission as an exclusive processor of securities information. One respondent incurs 440 annual burden hours complying with this rule.

Rule 15Bc3–1 (17 CFR 240.15Bc3–1) and Form MSDW (17 CFR 249.110) is used to provide notice of withdrawal of registration as a bank municipal securities dealer. A total of 20 respondents incur a cumulative total of ten annual burden hours to comply with the rule.

Rule 17a–13 [17 CFR 240.17a–13] was adopted in 1971 to ensure that brokers and dealers possess or control securities as indicated on their records, or know the location of those securities which they are to receive or deliver. The rule further provides that any short difference must be reported in the broker's or dealer's records. It is anticipated that approximately 5,000 brokers or dealers will spend a total of 500,000 hours complying with Rule 17a–13.

Rule 17a–11 [17 CFR 240.17a–11] provides the Commission and the self-regulators with an "early warning" mechanism to detect firms starting to experience financial or operational difficulties. The information furnished by such firms is then used to effect appropriate action to remedy the situation and prevent future problems. It is anticipated that approximately 650 brokers of dealers will spend a total of 650 hours complying with Rule 17a–11.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Numbers 3235–0043, 3235–0087, 3235–0035 and 3235–0085), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16812 Filed 7–14–93; 8:45 am]

BILLING CODE 8015-01-M

[Release No. 34–32502; File No. SR–AMEX–93–04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Proposal to List for Trading Physical Delivery Quarterly Index Expiration Options on the Major Market Index

July 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 21, 1993, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the AMEX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX has submitted a proposal to list for trading physical delivery index options on the Major Market Index ("XMI") that will expire on the first business day of the month following each calendar quarter and which will require settlement by delivery of 100 shares of stock of each of the component securities ("physical delivery quarterly index options"). The text of the proposed rule change is available at the Office of the Secretary, the AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the AMEX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

When standardized index options began trading in 1983, they incorporated many of the same contract specifications of exchange-traded equity options, including expirations occurring on the Saturday following the third Friday of the expiration month. One significant difference, however, between these two kinds of options is that, upon exercise, index options settle in cash as opposed to delivery of underlying stock.

Over the years, while institutional investors have expanded their use of exchange-traded index options they also use the over-the-counter market where options can be customized with expirations at calendar-end valuations of their portfolios. Further, according to the Exchange, some of these investors prefer physical delivery options (*i.e.*, options that require upon exercise the delivery and/or receipt of stock) as opposed to cash settled options.

In order to meet the increasing needs of such institutional investors, the Exchange proposes to introduce standardized option contracts on the XMI. These contracts will trade until the last business day of the calendar quarter and feature exercise settlement that will require the delivery of 100 shares of each of the XMI's 20 component stocks. The AMEX believes that having the ability to offer physical delivery options on the XMI will give investors with portfolios that match the index components an opportunity to rebalance positions in a more efficient manner in order to remain fully invested in such securities.

The XMI is a price-weighted index[1] which has served as the basis of index options trading at the Exchange since 1983. The index has 20 component stocks and the index value is computed and disseminated every 15 seconds during each trading day. The Exchange will adopt a new trading symbol for physical delivery quarterly index options in order to clearly differentiate them from regular XMI index option contracts. Further, in view of the fact that the proposed contracts will require the physical delivery of 100 shares of each of the component stocks, and in order to avoid the distribution of cash in lieu of fractional shares, the index value underlying these options will be calculated solely by adding the prices of the component stocks without the application of any index divisor. Since the current index divisor used for "regular" XMI options is approximately 3, the index value for physical delivery XMI contracts will be about three times greater than the index value of regular XMI options. In accordance with usual index maintenance procedures, appropriate adjustments will be made, for example, to increase or decrease the number of shares for any component security in the index portfolio due to splits, special dividends, etc.

Contract terms for the proposed new options will feature European-style exercise.[2] The Exchange plans to initially list up to eight quarterly expirations, specifically, contracts where the last day of trading would be March 31, June 30, September 30, and December 31, (assuming all such dates are business days). Expiration would take place on the first business day following the end of the calendar quarter. Position limits for physical delivery quarterly index expiration options will be subject to the same position limits set forth in Rule 904C and would not be aggregated, for position limit purposes, with other option contracts on the XMI.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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[1] The calculation of a price-weighted index involves taking the summation of the prices of the stocks in the index. In contrast, the calculation of a capitalization-weighted index involved taking the summation of the product of the price of each stock in the index and shares outstanding for each issue.

[2] A European-style option can be exercised only during a specified period before the option expires.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to File No. SR–AMEX–93–04 and should be submitted by August 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93–16732 Filed 7–14–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32607; File No. SR–CBOE–93–23]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Fees Imposed for Delayed Submission of Trade Data

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE submitted one amendment to this proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules relating to fees imposed by the Exchange for delayed submission of trade information. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The purpose of Amendment No. 1 was to refile the proposed rule change pursuant to section 19(b)(2) of the Act instead of section 19(b)(3)(A) as originally proposed. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Richard L. Zack, Branch Chief, Division of Market Regulation, Commission, dated May 25, 1993.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify and amplify several administrative provisions concerning one of the exceptions contained in Exchange Rule 2.30, which imposes fees upon members for delayed submission of trade data ("Trade Match Rule" or "Rule"). The Trade Match Rule provides that no fee shall be imposed against a clearing member or market-maker where the clearing member was prevented from submitting trade data in a timely manner due to extenuating circumstances beyond the clearing member's control. The Rule enumerates examples of non-extenuating circumstances, which heretofore has included the breakdown of a clearing member's computer.

The Exchange has now concluded that it may be appropriate under certain circumstances to waive the fees where a delayed submission is caused by the breakdown of a clearing member's computer system, provided that the clearing member was not responsible for the breakdown. Accordingly, the Exchange proposes to amend the Rule to delete such system malfunctions from the examples of non-extenuating circumstances and to include them among the examples of extenuating circumstances that may result in a fee waiver.

In addition, the proposed rule change establishes a process by which members may challenge a fee, based on a claim of extenuating circumstances. The Clearing Procedures Committee will review all fee challenges involving fees in the amount of $500 or more. Fee challenges involving fees totaling less than $500 will be reviewed by Exchange staff in the Market Operations Department of the Exchange's Trading Operations Division. The determinations of the Clearing Procedures Committee and the staff of the Exchange are appealable under Part A of Chapter XIX of the CBOE Rules. The proposed amendment further clarifies that no appeal of a fee imposed under the Rule may be made unless the member has first either requested verification of the fee or challenged the fee.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular by providing for the equitable allocation of reasonable fees among members of the Exchange and fostering cooperation and coordination

with persons engaging in clearing, and processing information with respect to, transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-23 and should be submitted by August 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-16813 Filed 7-14-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32605; File No. SR-NASD-93-32]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Part II, Section 3(a) of Schedule D to the NASD By-Laws

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 2, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

SCHEDULE D TO THE NASD BY-LAWS

PART II

* * * * *

Sec. 3.

Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria

(a) The Association may, in accordance with Article IX of the NASD's Code of Procedure, *deny inclusion or* apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if:

(1) An issuer files for protection under any provision of the federal bankruptcy laws;

(2) An issuer's independent accountants issue a disclaimer opinion on financial statements required to be certified; [or]

(3) Any officer, director, controlling shareholder, or other person in a position to influence management decisions has been:

(i) Barred or suspended from participating in the securities industry by the SEC or any self-regulatory organization;

(ii) Permanently enjoined by order, judgment, or decree of any court of competent jurisdiction from participating in the securities industry, or from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; or

(iii) Convicted of any felony involving the purchase or sale of any security arising out of such person's participation in the securities or commodities industry; or

[(3)] *(4)* The Association deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Clarification of NASD Authority to Deny Inclusion of Particular Issuers in the Nasdaq System

Part II, Section 3(a) of Schedule D to the NASD By-Laws ("Schedule D") provides the NASD, under certain circumstances, with authority to apply additional or more stringent criteria for the initial or continued inclusion of particular securities or to suspend or terminate the inclusion of a security otherwise qualified for inclusion in the Nasdaq System.[2] The NASD has for

[2] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Nasdaq System includes both the Nasdaq SmallCap Market and the Nasdaq National Market System ("Nasdaq NMS"). The requirements that would qualify a security for inclusion in the Nasdaq SmallCap Market are contained in Part II of Schedule D. For the Nasdaq NMS, the qualification requirements are contained in both Parts II and III of Schedule D.

many years interpreted Part II, Section 3(a) as providing the Association with the authority to "deny inclusion" of a security in the Nasdaq System. Authority to deny inclusion is inherent in Section 3(a), otherwise the NASD would be required to include a security in the Nasdaq System in order to terminate the security's inclusion, which procedure was never the intent of the Association.

The NASD has determined that its authority to deny inclusion of particular securities in the Nasdaq System should be expressly stated in Part II, Section 3(a). The rule change would, therefore, amend Part II, Section 3(a) to Schedule D to provide that the NASD has authority to "deny inclusion" in the Nasdaq System of particular securities if an issuer files for protection under any provision of the federal bankruptcy law;[3] an issuer's independent accounts issue a disclaimer opinion on financial statements required to be certified;[4] or the Association deems that denial of inclusion is necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.[5]

Clarification of NASD Authority to Deny Inclusion in the Nasdaq System of Securities of Issuers That Are Managed, Controlled or Influenced by Persons With Histories of Securities or Commodities Violations

In recent years, the NASD has received an increasing number of applications for inclusion in the Nasdaq System by companies in which an officer, director, controlling shareholder, or other person in a position to influence management decisions has previously been the subject of a significant sanction for violations of state or federal securities laws, self-regulatory organizations ("SRO") rules and regulations, or the subject of a felony conviction in connection with the purchase or sale of a security or commodity contract. The NASD's case-by-case review of such issuer applications has resulted in denials of certain applications pursuant to the authority granted under Part II, Subsection 3(a)(3) of Schedule D[6] where the NASD formed a reasonable belief that enumerated persons connected with the issuer were predisposed to engage in further violative conduct contrary to interests of the investigating public. In such cases, the NASD's rationale has been that the history of prior violative conduct raises concerns regarding the continuing potential for conduct in connection with the operation of the company or the market for its securities that would be considered fraudulent and manipulative, contrary to just and equitable principles of trade, or otherwise raise investor protection concerns.

The NASD is concerned regarding the increase of applications for inclusion in the Nasdaq System by issuers that are managed, controlled or influenced by persons with a history of significant securities or commodities violations. The NASD believes such applications reflect a pattern of activity in the securities markets in which persons with a history of securities or commodities violations seek to continue their violative conduct in the securities markets through the management, control or influence of a publicly-held company. More recently, the NASD has considered that the same concerns arise if such persons obtain a position of management, control or influence of an issuer already included in the Nasdaq System.

The NASD's concern regarding situations where a person with a history of securities or commodities law violations manages, controls or influences a Nasdaq issuer is heightened by the fact that inclusion of the securities of such issuers in the Nasdaq System would exempt the transactions in these securities from SEC rules adopted to prevent certain fraud and abuses in the penny stock market. In August 1989, the SEC adopted Rule 15c2–6 to address sales practice abuses in low priced over-the-counter ("OTC") securities[7] which, in general, prohibits a broker-dealer from selling to or effecting the purchase of a "designated security" by any person, unless the broker-dealer has approved the purchaser's account for such transactions and received from the purchaser a written agreement to the transaction. On April 10, 1992, the SEC adopted the Penny Disclosure Stock Rules[8] in response to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990[9] which Rules, in general, require that broker/dealers: (1) Furnish to a customer a risk disclosure document; (2) disclose the current bid and ask quotations and the commissions; and (3) provide monthly updates on the value of the securities. Among other exemptions, the SEC excluded from the scope of Rule 15c2–6 and the Penny Stock Disclosure Rules all issuers authorized or approved for authorization in the Nasdaq System. The NASD believes that continued vigilance is required to ensure that inclusion on the Nasdaq System is not used as a vehicle to avoid compliance with these Rules.

The NASD believes that, as stated in the Matter of Tassaway, Inc.,[10] prospective investors in the securities of a Nasdaq company are entitled to assume that securities in the Nasdaq System meet the System's standards. Among those standards is the requirement that, as set forth under Section 3(a)(3) to Part II of Schedule D, the NASD does not have a basis to exclude the securities in order to: prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; or protect investors and the public interest.

In light of the NASD's concerns, the NASD believes that Part II, Section 3(a) should be amended. The NASD proposes to add a new Subsection 3(a)(3) to Part II of Schedule D to provide the NASD authority, on a case-by-case basis, to either deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of a particular security, or to suspend or terminate the inclusion of an otherwise qualified security if any officer, director, controlling shareholder, or other person in a position to influence management decisions of the issuer has been: (i) Barred or suspended from participating in the securities industry by the SEC or any self-regulatory organization; (ii) permanently enjoined by order, judgment or decree of any court of competent jurisdiction from participating in the securities industry, or from engaging in or continuing any conduct or practice in connection with

[3] See, NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Sec. 3(a)(1).

[4] See, NASD Manual, Schedule to the By-Laws, Schedule D, Part II, Sec. 3(a)(2).

[5] See, NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Sec. 3(a)(3).

[6] The NASD notes that the SEC has affirmed that the NASD has broad discretion to deny an issuer's request that its securities be included in the Nasdaq System. In In the matter of Tassaway, Inc., Securities Exchange Act Release No. 11291 (March 13, 1975), 8 SEC Doc. 427, the SEC stated its review function of the NASD's action with respect to the Nasdaq System is very narrow and solely that of seeing whether the specific grounds on which such action is based exist in fact and are in accord with the applicable rules of the association. The SEC also stated that while exclusion from the Nasdaq System may hurt existing investors, the primary emphasis must be placed on the interest of prospective investors and that this latter group is entitled to assume that the securities in the Nasdaq System meet the system's standards.

[7] Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468 (August 28, 1989).

[8] The Penny Stock Disclosure Rules consist of seven Rules: Rule 3a51–1 and Rules 15g–1 to 15g–6. See, Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 16004 (April 28, 1992).

[9] Public Law 101–429, 104 Stat. 931 (1990).

[10] See, *supra* note 7.

the purchase or sale of any security; or (iii) convicted of any felony involving the purchase or sale of any security arising out of such person's participation in the securities or commodities industry.

The proposed rule change is a clarification of the NASD's current practice of utilizing its authority under Subsection 3(a)(3) to deny or to apply additional or more stringent criteria for the initial or continued inclusion of a security or to suspend or terminate the inclusion of an otherwise qualified security if the NASD deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest [11] in instances where persons with a history of significant securities-related violations are involved in the management, control or influence of a Nasdaq issuer or potential Nasdaq issuer. As amended, Subsection 3(a)(3) would be renumbered Subsection 3(a)(4).

The rule change would provide important guidance to the NASD review process, and would alert issuers seeking inclusion in the Nasdaq System, as well as current Nasdaq issuers, that the NASD will consider the issuer's connection with a person with a history of significant securities or commodities violations in determining whether to grant initial or continued inclusion to the security, and that the security may be subject to additional criteria as a condition for initial and continued inclusion in the Nasdaq System.[12]

[11] The proposed rule change to adopt new Subsection 3(a)(3) clarifies the NASD's current practice of utilizing its authority under the current Subsection 3(a)(3) and does not replace the language of this current provision that would be renumbered as Subsection 3(a)(4). The proposed rule change to adopt new Subsection 3(a)(3), therefore, would not preclude the NASD from relying on authority pursuant to Subsection 3(a)(4) in appropriate cases.

[12] In comparison, the American Stock Exchange ("Amex") states that the approval of an application for the listing of securities is a matter solely within its discretion. The reputation of company's management is a factor. See, Amex Company Guide, Section 101. Reputation of management also is a factor for continued trading. See, Amex Company Guide, Section 1001. The Amex will normally consider removing a security from the list if the company or its management engage in operations which, in the opinion of the Amex, are contrary to the public interest. See, Amex Company Guide, Section 1003(e)(iii).

In comparison, the New York Stock Exchange ("NYSE") provides a number of general factors which it takes into consideration prior to listing a security. See, NYSE Listed Company Manual, Section 102.01. In considering the delisting of a company, the NYSE states that it is not limited to the criteria it sets forth and, therefore, it may make a determination on an individual basis, considering all pertinent facts and even through a security meets or fails to meet enumerated criteria. See, NYSE Listed Company Manual, Section 802.00.

The authority granted to the NASD under Section 3(a) is discretionary in nature and the proposed rule change would allow the Association to continue to utilize its discretion in applying the standards of Section 3(a) on a case-by-case basis.

The NASD believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. The rule change clarifies that the NASD may deny inclusion of a security in the Nasdaq System pursuant to Part II, Section 3(a) of Schedule D to the NASD By-Laws. The rule change also clarifies the NASD's authority to deny inclusion or apply additional criteria for initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if the issuer of such security is managed, controlled or influenced by persons with histories of significant securities or commodities violations. The rule change addresses the NASD's concern regarding the increase of applications by issuers for inclusion in the Nasdaq System where a person with a history of significant securities or commodities law violations is in a position to manage, control or influence the issuer, and the related NASD concern that inclusion of such securities in the Nasdaq System would exempt the transactions in these securities from SEC rules adopted to prevent certain fraudulent sales practices and abuses in the penny stock market. The proposed rule change is a clarification of the NASD's current practice of utilizing its authority under Section 3(a)(3) of Part II to Schedule D. The authority granted to the NASD under Section 3(a) is discretionary in nature and the proposed rule change would allow the Association to continue to utilize its discretion in applying the standards of Section 3(a) on a case-by-case basis. The proposed rule change would provide important guidance to the NASD review process, and would alert issuers seeking inclusion in the Nasdaq System, as well as current Nasdaq issuers, that the NASD will consider the issuer's connection with a person with a history of significant securities or commodities violations in determining whether to grant initial or continued inclusion of the security, and that the security may be subject to additional criteria as a condition for initial and continued inclusion in the Nasdaq System.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–93–32 and should be submitted by August 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-16814 Filed 7-14-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32606; File No. SR-PHLX-93-17]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Activities of Clerks on the Trading Floor July 9, 1993

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4 of the Act, proposes to adopt Floor Procedure Advice ("Advice") F-23, Clerks in the Crowd, to prohibit clerks from quoting markets and standing in trading crowds on the Exchange floor.[1] This advice would specifically exempt specialist clerks from these prohibitions as long as such clerks are supervised by a specialist and request quotations in order to update disseminated markets. The prohibition extends to any person without membership trading privileges.[2] The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The PHLX proposes to adopt Advice F-23 to prohibit clerks from a sustained presence in the trading crowd in order to maintain order and preserve space in active trading crowds for floor traders. This Advice would also prevent clerks from improperly performing membership functions.

Currently, PHLX Rule 104 prohibits Exchange members from executing trades with non-members. In addition, Exchange by-laws state that membership in the Exchange confers upon the holder the privileges and obligations of active membership.[3] Based on these rules, the PHLX is proposing to adopt Advice F-23 to establish that the Exchange's minor rule violation plan includes these prohibitions against trading by non-members. Although Advice F-23 applies its prohibitions to non-member clerks, it also defines clerks to include members whose membership privileges have been suspended or terminated as well as other members without trading privileges.

The PHLX notes that Advice F-23 is applicable to only the equity options floor, and thus, the PHLX proposes to add the notion "O" after Advice F-23. In addition, the PHLX proposes to apply the new fines on a three-year cycle, such that repeat violations during the same three-year period would result in escalating fines.[4]

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by maintaining order on the trading floor and penalizing impermissible activity by nonmembers, which should preserve the integrity of the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR-PHLX-93-17 and should be submitted by August 5, 1993.

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[13] 17 CFR 200.30-3(a)(12) (1992).

[1] Proposed Advice F-23 is intended to be incorporated into the Exchange's minor rule violation enforcement and reporting plan, administered pursuant to PHLX Rule 970.

[2] See Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Bradley S. Ritter, Attorney, Division of Market Regulation, Commission, dated June 24, 1993.

[3] See PHLX By-Law Article XII, Section 12-1.

[4] Under the rolling three-year cycle, if there is no violation of Advice F-23 for three years, the next violation would be treated as a first occurrence. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second occurrence would be treated as a third occurrence, even though more than three years may have elapsed since the first occurrence.

VOL 58 ISS 134 JL 15 1993 UMI

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-16815 Filed 7-14-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Calton, Inc.
Common Stock, $.01 Par Value (File No. 7-10900)
Hemlo Gold Mines, Inc.
Common Stock, No Par Value (File No. 7-10901)
Reinsurance Group of America, Inc.
Common Stock, $.01 Par Value (File No. 7-10902)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-16816 Filed 7-14-93; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Sociedad Anonima YPF
American Depositary Shares (rep. Class D Shrs. Par Value PS. 1) (File No. 7-10903)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-16817 Filed 7-14-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Southern California Water Company
Common Stock, $5.00 Par Value (File No. 7-10904)
Grupo Simec, S.A. DE C.V.
American Depositary Shares (each ADS represents 20 shares of Series B Common Stock) Par Value (File No. 7-10905)
LTV Corporation
Common Stock, $.50 Par Value (File No. 7-10906)
LTV Corporation
Series A Warrants (File No. 7-10907)
Carr Gottstein Foods Company
Common Stock, $.01 Par Value (File No. 7-10908)
Emerging Markets Income Fund II Inc.
Common Stock, $.001 Par Value (File No. 7-10909)
Ek Chor China Motorcycle Co. Ltd.
Common Stock, $.10 Par Value (File No. 7-10910)
Libbey, Inc.
Common Stock, $.01 Par Value (File No. 7-10911)
MMI Companies
Common Stock, $.10 Par Value (File No. 7-10912)
Milwaukee Land Company
Common Stock, $.30 Par Value (File No. 7-10913)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7-10914)
Sithe Energies, Inc.
Common Stock, $.01 Par Value (File No. 7-10915)
YPF Sociedad Anonima
(Rep. Class D Shares) American Dep. Shares Par Value PS. 1 (File No. 7-10916)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-16818 Filed 7-14-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations, Applications for Unlisted Trading Privileges, Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Factory Stores of America, Inc.
Common Shares, $.01 Par Value (File No. 7–10917)
Southern California Water Company
Common Stock, $5.00 Par Value (File No. 7–10918
Fleet Financial Group, Inc.
2.345 Preferred Stock (File No. 7–10919)
Fleet Financial Group, Inc.
2.53 Preferred Stock (File No. 7–10920)
Kaiser Aluminum Corporation
$.65 Depositary Shares Mandatory Conversion Premium Dividend Preferred Stock, $.05 Par Value (File No. 7–10921)
Pulitzer Publishing Co.
Common Stock, $.01 Par Value (File No. 7–10922)
Anucho, Inc.
Common Stock, $.01 Par Value (File No. 7–10923)
MascoTech, Inc.
Common Stock, $1.00 Par Value (File No. 7–10924)
Hecla Mining Corporation
Preferred B (File No. 7–10925)
Capsure Holdings Corporation
Common Stock, $.05 Par Value (File No. 7–10926)
Corporation Bancaria De Espana S.A.
American Depositary Shares, Nominal Value 500 Spanish Pesetas (File No. 7–10927)
Thornburg Mortgage Asset Corporation
Common Stock, $.01 Par Value (File No. 7–10928)
Maderas Y Sinteticos Sociedad Anonima Masisa
American Depositary Shares (each representing 30 shares of Common Stock) (File No. 7–10929)
Emerging Markets Income Fund II, Inc.
Common Stock, $.001 Par Value (File No. 7–10930)
Chase Manhattan Corporation
Warrants Expiring June 30, 1996 (File No. 7–10931)
Yankee Energy System, Inc.
Common Stock, $5 Par Value (File No. 7–10932)
Freeport McMoran Cooper & Gold, Inc.
Depositary Shares Re. Step up Conv. Pfd Stock (File No. 7–10933)
MascoTech, Inc.
Conv. Pfd Stock Dividend Enhanced Conv. Stock, $1.00 Par Value (File No. 7–10934)
LTV Corporation
Warrants, Expiring 1988 (File No. 7–10935)
Capital Realty Investors Tax Exempt Fund Ltd. Partnership
Series I Common Stock (File No. 7–10936)
Capital Realty Investors Tax Exempt Fund Ltd. Partnership
Series II Common Stock (File No. 7–10937)
Capital Realty Investors Tax Exempt Fund Ltd. Partnership
Series III Common Stock (File No. 7–10938)
Banco Bilbao Vizcaya International Gibraltar Limited
American Depositary Shares, Series C Each Rep. One Non Cum Guaranteed Pfd Stock (File No. 7–10939)
Wheeling Pittsburgh Corporation
Series A Conv. Pfd Stock, $.10 Par Value (File No. 7–10940)
Ek Chor China Motorcycle Co. Ltd.
Common Stock, $.01 Par Value (File No. 7–10941)
Chile Fund, Inc.
Rights (File No. 7–10942)
Marine Harvest Investment, Inc.
Common Stock, $.01 Par Value (File No. 7–10943)
MGM Grand, Inc.
Common Stock, $.01 Par Value (File No. 7–10944)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7–10945)
Carr Gottstein Foods Co.
Common Stock, $.01 Par Value (File No. 7–10946)
Grupo Radio Centro S.A. DE C.V.
American Depositary Shares, Each Representing Five Non Redeemable Ordinary Participation Certificates (File No. 7–10947)
YPF Sociedad Anonima
American Depositary Shares, $1 Par Value (File No. 7–10948)
Sithe Energies, Inc.
Common Stock, $.01 Par Value (File No. 7–10949)
MMI Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–10950)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16819 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2657]

Louisiana (and Contiguous Counties in Texas and Arkansas); Declaration of Disaster Loan Area

Caddo Parish and the contiguous parishes of Bossier, De Soto, and Red River in the State of Louisiana; Cass, Harrison, Marion, and Panola Counties in Texas, and Lafayette and Miller Counties in Arkansas constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 21 through June 27, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 30, 1993 and for economic injury until the close of business on April 1, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265706 for Louisiana; 265806 for Texas; and 265906 for Arkansas. For economic injury the numbers are 792600 for Louisiana; 792700 for Texas; and 792800 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

VOL 58 ISS 134 JL 15 1993 UMI

Dated: July 1, 1993.

Erskine B. Bowles,

Administrator

[FR Doc. 93–16794 Filed 7–14–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rate

AGENCY: Small Business Administration.

ACTION: Notice of interest rate.

SUMMARY: Pursuant to 13 CFR 108.503–8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503–4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–16793 Filed 7–14–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91–010]

Establishment of Area Committees for the Coastal Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is announcing the establishment of Area Committees for the coastal zone of the United States. The Area Committees prepare Area Contingency Plans (ACPs) for the response to discharges of oil or hazardous substances into the waters of the United States in order to minimize the harm to the environment in the most cost-efficient manner.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: CDR R. G. Pond, Chief, Preparedness and Training Branch (G–MEP–4), (202) 267–6860, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Ms. Pamela Pelcovits, Project Manager, Oil Pollution Act (OPA) 90 Staff.

Background

The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) was enacted, in part, to improve the prevention of and response to discharges of oil and hazardous substances by vessels and facilities. In addition, OPA 90 creates a liability and compensation plan upon the occurrence of a discharge.

The Coast Guard published a notice of intent (56 FR 33481), on July 22, 1991, to notify the public of the intended boundaries for the coastal zone Area Committees. These boundaries were published in a notice on April 24, 1992 (57 FR 15201). Additional information on the boundaries is provided later in this notice.

On January 16, 1992, the Coast Guard published a notice in the Federal Register (57 FR 1933) entitled "Appointment of Area Committee Members and Designation of Area Committee Responsibilities." The notice described the responsibilities of Area Committees in the coastal zones of the United States and provide guidance for establishing and appointing members to the Area Committees. The Coast Guard received thirty-one letters commenting on the notice. A public hearing was not requested, and none was held.

Area Committees Under OPA 90

Section 4202(a) and OPA 90 amends section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321 *et seq.*) by requiring that the President designate Area Committees and appoint members from qualified personnel of Federal, State, and local agencies. Section 4202(a) also requires each Area Committee, under the direction of the Federal On-Scene Coordinator (OSC), to: (1) Prepare an ACP; (2) work with State and local officials to enhance contingency planning and assure preplanning of joint response efforts, including mechanical recovery, dispersal, shoreline cleanup, and the protection and rehabilitation of sensitive areas, fisheries, and wildlife; and (3) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

The authority to implement the Area Committee Program was delegated by the President to the Secretary of Transportation under Executive Order 12777 (56 FR 54757, October 22, 1991). The Secretary delegated the authority to the Commandant of the Coast Guard (57 FR 8581, March 11, 1992). The Commandant further delegated the authority to the Chief of the Office of the Marine Safety, Security and Environmental Protection by internal directive, dated March 19, 1992.

Coordinated preplanning is crucial to the successful resolution of crisis management situations. To ensure maximum participation and a unified response under the National Response System (NRS), OPA 90 requires that Area Committees conduct oil and hazardous substance spill response planning for each designated area.

The Area Committees replaced the Emergency Task Forces previously required under section 311(c)(2)(C) of the FWPCA and the Multi-Agency Local Response Teams (MALRTs) that existed in several major ports.

The Area Committees are designed to enhance the local response structure by providing a cohesive planning body consisting of Federal, State, and local government representatives. The purpose of the Area Committees is to ensure that all facets of the community are involved in a cooperative effort of planning for an oil or hazardous substance spill response.

Discussion of Comments

The Coast Guard received a total of thirty-one comments on the January 16, 1992, notice. Nine comments supported the proposal to allow the OSC to appoint members to the Area Committee. One comment stated that the Coast Guard District Commander, instead of the OSC, should appoint members based on the recommendation of the OSC. The comment added that such a review process would allow a party the opportunity to appeal an OSC's decision.

The Coast Guard has determined that it is more appropriate for OSCs to appoint members because of their familiarity with each Area. In the past, the Coast Guard OSCs have worked closely with agencies to appoint members to the Emergency Task Forces and MALRTs, and this process has worked well.

Twenty-one comments supported limiting the Area Committee size and restricting membership to those from Federal, State, and local agencies. However, ten comments stated that size and membership requirements would limit the expertise available to develop the ACP and, consequently, hinder successful response planning. Section 311(j)(4) of the FWPCA (33 U.S.C. 1321 (j)(4)), as amended by section 4202(a) of OPA 90, specifically limits the composition of Area Committees to qualified personnel of Federal, State and local agencies.

In the January 1992 Federal Register notice, the Coast Guard suggested the use of subcommittees, chaired by Area Committee members, to expand involvement beyond the appointed membership. This approach would broaden the expertise of the appointed membership and allow greater

participation in the planning process. Similar subcommittees have proven successful at the National Response Team level of the NRS. The Coast Guard encourages Area Committees to establish subcommittees composed of volunteers with expertise in response planning from government agencies, industry, academia, ecological associations, and the public.

Several of the comments suggested ways to utilize and expand the subcommittees, but none offered an alternative to the proposal. Five comments stated that subcommittees should be required. While the Coast Guard supports the use of subcommittees, the flexibility of those bodies would be frustrated by mandatory use. The Coast Guard does not require a specific type or number of subcommittees; instead, the needs of the particular Area Committee will drive the decision to form subcommittees.

Five comments objected to the appointment of Coast Guard members as both the chair and vice-chair of the Area Committee. The Coast Guard agrees with the comment that the vice-chair for the Area Committee should be appointed from the other members of the Area Committee. Specific policy concerning the selection of the Area Committee vice-chair is described later in this notice.

Five comments discussed the specific State and local agencies that the OSC should consider for potential membership. As described later in this notice, the OSCs have discretion in allowing multiple State or local agencies to be members of the Area Committee, according to guidelines also described below.

Six comments discussed the Coast Guard's proposal to restrict the Area Committees to planning functions. Since the planning duties of the Area Committees were specified in OPA 90, this notice is limited to describing the necessary action to implement those functions. Additional taskings, if appropriate, will be addressed in the future.

Some of the individual agencies represented on an Area Committee will be involved during a spill response. The notification and response strategy sections of the ACP will describe the responsibilities, duties, and strategies of those agencies during a response. During a spill, the OSC may convene a meeting of the Area Committee upon the OSC's discretion.

The Coast Guard agrees with the ten commenters who favored expanded methods to solicit input from the public and industry. The guidelines for OSC coordination with all entities participating in the Area Committee planning process have been expanded.

Area Committee Final Policy

I. Committee Members

The COTP, as the OSC, chairs the coastal zone Area Committee. The vice-chair should be a representative from an agency other than the Coast Guard with a major role in spill response for the area. If necessary, the OSC may establish multiple vice-chairs. The Scientific Support Coordinator, the National Strike Force, and the District Response Advisory Team are also available to assist the Area Committee as consultants upon request.

To implement section 311(j)(4) of FWPCA, as amended by section 4202 of OPA 90, the OSC appoints Area Committee members from appropriate Federal, State, and local agencies. Federal agency members of the Area Committee are selected from the fifteen agencies that make up the National Response Team (NRT), in consultation with the Regional Response Team (RRT). Not all NRT members need to be represented on each Area Committee.

Under the NCP, each State governor should designate for each designated Area in the State, a State agency as a single point of contact for pollution preparedness and response and as the primary State representative on the Area Committee. Other State agencies may be considered for membership by the OSC, particularly if they are nominated by the primary State agency. In addition, representatives of local agencies may be appointed, if the agencies are responsible for coordinating environmental issues and emergency responses in the coastal zone.

Whenever possible, agencies having similar or related interests should agree to be represented by a single Area Committee member. Agencies that represent predominantly local interests or only have a minimal interest in the coastal area should channel their concerns through a member of the Area Committee.

To obtain the maximum input from the Area Committee membership, members of the Area Committee should be capable of, and responsible for, making decisions regarding their agency's policies. However, the Area Committee is encouraged to seek advice from other sources.

Area Committees may establish subcommittees at the OSC's direction. These subcommittees may address issues such as: communication systems, sensitive environmental areas, response strategies (mechanical, chemical, or biological), recovered waste storage and disposal, exercise participation, navigation safety, and fish and wildlife rescue. Subcommittees will be chaired by an Area Committee member.

Area Committees do not constitute a formal Federal Advisory Committee, and each agency is responsible for funding its own participation in Area Committee proceedings.

II. Responsibilities

The Area Committee's main purpose is to plan for a coordinated response in the event of a discharge of oil or hazardous substance within the geographic boundaries of the designated Area. The OSC will direct and assist the Area Committee in the development of an ACP that meets the requirements established by the FWPCA, as amended by OPA 90.

The Area Committee should act as the focal point to solicit comments and advice on the concerns of the public and industry in the coastal area. The Coast Guard's position is that these sources should include a broad spectrum of interests, including: Facility owners and operators, shipping companies, cleanup contractors, emergency response officials, marine pilots associations, academia, environmental groups, specialists, consultants, response organizations, and concerned citizens. The Area Committee members then incorporate the information into the ACP to ensure that the ACP addresses all the relevant environmental, social, ecological, and economic concerns of the port area.

The Area Committee coordinates and cooperates with Federal, State, and local officials to enhance contingency planning with all appropriate non-member agencies and groups in the designated Area. The following are some of the factors that must be considered by the Area Committee when planning joint response actions: Appropriate procedures for mechanical recovery; use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule; shoreline impact evaluation and cleanup; protection of sensitive economic and environmental areas; and protection, rescue, and rehabilitation of fisheries and wildlife. The Area Committee must address all of these actions in advance to ensure there is no delay in responding to a spill.

The Area Committee does not replace the RRT or assume its responsibilities to make policy decisions regarding the use of dispersants, bioremediation, in-situ burning, or disposal. Generally, policy decisions are made by the RRT, and the

VOL 58 ISS 134 JL 15 1993 UMI

Area Committee must work with the OSC in implementing RRT policies that would have an impact on response preparedness and planning in the Area.

While the Area Committee has no formal role during an actual response, the OSC and some Area Committee members will have an active role through their positions with Federal, state, or local government agencies during the response. In most cases it is expected that the Area Committee will not meet during a spill, but the vice-chair or another member of the Area Committee will be designated as the Point-of-Contact for the Area Committee during a response. The Point-of-Contact will coordinate information flow, advice, and response input from those Area Committee members not specifically involved in the response effort to the OSC. This procedure allows the Area Committee members' concerns or advice to reach the OSC during a response, without overwhelming the OSC with information. The Area Committee may meet during a response at the discretion of the OSC. In developing the ACP, the Area Committee follows the format and guidelines provided by the Coast Guard in Commandant Notice 16471, dated September 30, 1992, or its successor documents.

The following is the list of coastal zone Area Committees that are established. The boundaries published in the **Federal Register** (57 FR 15201, April 24, 1992) have been adjusted, in some cases, based on the needs of various Area Committees. The geographic boundaries of each Area Committee will be maintained as part of the corresponding area and regional contingency plans. In addition, the boundaries for a particular Area Committee may be obtained from the Marine Safety Division of the appropriate district office as listed here.

First Coast Guard District

First District (m)—(617) 223–8447

Portland Area Committee
Boston Area Committee
Providence Area Committee
Long Island Sound Area Committee
New York Area Committee

Second Coast Guard District

Second District (m)—(314) 539–2655

There will be no separate Area Committees established by the Coast Guard in the Second Coast Guard District. The Environmental Protection Agency (EPA) is directing the establishment of committees, but the Coast Guard intends to actively participate in the inland Area Committees. The EPA will be promulgating its appointment of Area Committees in a separate notice.

Fifth Coast Guard District

Fifth District (m)—(804) 398–6637

Virginia Coastal Area Committee
Northeast North Carolina Coastal Area Committee
Southeastern North Carolina Coastal Area Committee
Maryland Coastal Area Committee
Phildelphia Coastal Area Committee

Seventh Coast Guard District

Seventh District (m)—(305) 536–5651

Savannah Area Committee
Charleston Area Committee
Jacksonville Area Committee
Tampa Area Committee
South Florida Area Committee
Caribbean Area Committee

Eighth Coast Guard District

Eighth District (m)—(504) 589–6271

Florida Panhandle Area Committee
Mobile Area Committee
New Orleans Area Committee
Morgan City Area Committee
Port Arthur Area Committee
Houston/Galveston Area Committee
Corpus Christi Area Committee

Ninth Coast Guard District

Ninth District (m)—(216) 522–3994

Duluth-Superior Area Committee
Milwaukee Area Committee
Chicago Area Committee
Grand Haven Area Committee
Sault Ste. Marie Area Committee
Detroit Area Committee
Cleveland Area Committee
Western Lake Erie Area Committee
Buffalo Area Committee

Eleventh Coast Guard District

Eleventh District (m)—(310) 980–4300, ext. 358

North Coast Area Committee
San Francisco Bay Area Committee
Central Coast Area Committee
Santa Barbara/Ventura Area Committee
Los Angeles/Long Beach Harbor Area Committee
Orange County Area Committee
San Diego Area Committee

Thirteenth Coast Guard District

Thirteenth District (m)—(206) 553–1711

Puget Sound Area Committee
Portland Area Committee

Fourteenth Coast Guard District

Fourteenth District (m)—(808) 541–2114

Hawaii/American Samoa Area Committee
Guam Area Committee
Palau Area Committee
Commonwealth of the Northern Marianas Islands Area Committee

Seventeenth Coast Guard District

Seventeenth District (m)—(907) 463–2205

Western Alaska Area Committee
Prince William Sound Area Committee
Southeast Alaska Area Committee

Dated: July 9, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–16704 Filed 7–14–93; 8:45 am]
BILLING CODE 4910–14–M

[CGD 92–046]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Two (2) representatives of State officials responsible for State boating safety programs; two (2) representatives of recreational boat and associated equipment manufacturers; and three (3) representatives of national recreational boating organizations and from the general public. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings

of the Council, members are provided travel expenses and per diem.

DATES: Completed application forms should be received no later than September 14, 1993.

ADDRESSES: Requests for application forms, as well as the completed application forms, should be sent to Commandant (G–NAB), U.S. Coast Guard Headquarters, Washington, DC 20593–0001; telephone: (202) 267–1077.

FOR FURTHER INFORMATION CONTACT: Mr. A.J. Marmo, Executive Director, National Boating Safety Advisory Council (G–NAB), room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; (202) 267–1077.

Dated: July 6, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–16765 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

[CG 07–93–058]

Johns Island, Charleston County, SC; Public Hearing

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant, United States Coast Guard, has authorized a public hearing to be held by the Commander, Seventh Coast Guard District, on Johns Island, Charleston County, South Carolina. The purpose of the hearing is to give the bridge owner, waterway users, and other interested parties the opportunity to present data, views and comments orally or in writing concerning what alterations are needed to the John Limehouse Bridge to provide the vertical and horizontal clearances necessary to provide reasonably free and unobstructed passage for waterborne traffic on this reach of the Atlantic Intracoastal Waterway (AIWW).

DATES: The hearing will be held on Thursday, August 5, 1993 commencing at 7 p.m.

ADDRESSES: The hearing will be held at St. Johns High School located at 1518 Main Road, Johns Island, Charleston County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Pruitt, Bridge Management Specialist, Seventh Coast Guard District, 909 Se. First Avenue, Miami, Florida 33131–3050, (305) 536–4103.

SUPPLEMENTARY INFORMATION: Under section 22 of Public Law 102–241, of the Coast Guard Authorization Act of December 19, 1991, the United States Congress declared the John F. Limehouse Memorial Bridge to be an obstruction to navigation.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed bridge project, and announce the procedures to be followed at the hearing. Speakers are encouraged to provide written copies of their oral comments to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or mail them to the Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 Se 1st Avenue, Miami, Florida 33131–3050. Written comments will be received through September 6, 1993. Each comment about the clearances proposed for the Limehouse Bridge to meet the needs of waterway users on the AIWW should include the name and address of the person or organization submitting the comment and state the reasons for the suggested alterations. A transcript of the hearing, as well as written comments received outside of the hearing, will be available for public review at the office of the Seventh Coast Guard District approximately 30 days after the hearing. Transcripts of the hearing will be made available for purchase upon request to the court recording service at the conclusion of the hearing. All comments received, whether in writing or presented orally at the public hearing, will be fully considered before final agency action is taken.

(33 U.S.C. 513; 33 CFR 116.20)

Dated: June 23, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–16711 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Baldwin County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Baldwin County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370. Mr. G. M. Roberts, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project MAOA–0200(6). The proposal is to construct a multi-lane, limited access facility from Alabama State Route 182 near Orange Beach north to Baldwin County Road 95, including a bridge across Wolf Bay. Project length is approximately 7.5 miles. The new highway will function as a hurricane evacuation route for Orange Beach and surrounding communities.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action alternative.

Early coordination has been initiated with Federal, State, and local environmental agencies and officials. Public involvement meetings were held on November 16 and 17, 1992, at Orange Beach and Elsanor, respectively.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program.)

Issued on: July 5, 1993.

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 93–16787 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Baldwin County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Baldwin County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway

Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370, or Mr. G.M. Roberts, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project STPAA–0216(104). The proposal is to upgrade Alabama State Route 225 from a two-lane to a multi-lane facility from U.S. 31 to Interstate 65. Project length is approximately 20 miles.

Alternatives under consideration include: (1) Upgrading the existing facility, (2) alternate route locations, (3) a no action alternative, and (4) postponing the action alternative.

A Scoping Meeting for the project was held in the Bay Minette City Auditorium, 123 Courthouse Square, Bay Minette, Alabama at 2 p.m., Central Standard Time on October 20, 1992.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: July 5, 1993.

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 93–16788 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement to Support a Highway Traffic Safety Project; Traffic Safety for Young Adults at Job Training Sites

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Announcement of a discretionary cooperative agreement to support a national traffic safety project.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a FY 1993 discretionary cooperative agreement to support the agency's goal of reaching at least 75 percent safety belt usage by 1996. To help meet this goal, the agency plans to sponsor orientation sessions in four or five States, for officials of job training programs, on the benefits to students of traffic safety activities. Officials will be provided with information to help increase their understanding of the cost of motor vehicle crashes, in lives, injuries, and property damage. The officials administer programs that serve young adults, workers receiving economic dislocation assistance, Native Americans, migrant and seasonal farmworkers, veterans, Job Corps students, students in special demonstration projects for rural and urban young adults, and others.

DATES: Applications must be received at the office designated below on or before August 16, 1993.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attention: Belinda Leatley, 400 7th Street SW, room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–93–Y–05386. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Belinda Leatley, Office of Contracts and Procurement, at (202) 366–9566. Programmatic questions should be directed to Ms. Susan Gorcowski, Chief, National Organizations Division (NTS–11), NHTSA, room 5118, 400 7th Street, SW, Washington, DC 20590, (202)–366–2712.

SUPPLEMENTARY INFORMATION:

Background

The National Highway Traffic Safety Administration (NHTSA) designs strategies to reduce motor vehicle-related fatalities and injuries. One approach includes the development of awareness and educational materials for public and private sector organizations on the benefits of using occupant restraints and child safety seats in motor vehicles. NHTSA also promotes the passage and enforcement of laws requiring the use of these devices.

Occupant protection systems have proven to be effective at reducing fatalities and serious injuries. In 1990, a survey in 19 U.S. cities indicated a 49 percent belt use rate and an 84 percent child safety seat use rate. During 1990, safety belts saved about 4,800 lives and child restraints saved 222 lives. Had the use of safety belts and child restraints been universal during 1990, an additional 10,000 adult and 250 child lives could have been saved.

In early 1991, NHTSA initiated the National "70% by '92" Campaign, modeled after successful programs in Canada and limited demonstrations in the United States. One component, Operation Buckle Down (OBD), encouraged top level law enforcement personnel to integrate high levels of occupant protection enforcement into their regular operations. In another component, State and local police promoted public awareness of safety belt and child passenger safety laws for the several weeks surrounding summer holidays. These holiday enforcement activities included press conferences and news events which underscored the importance of using occupant protection systems. In less than two years, seat belt use rates increased to an all time high of 62 percent, the greatest single increase since the majority of seat belt use laws were passed.

A significant portion of the public does not perceive the failure to use seat belts to be as critical as other "high priority" societal problems, such as rising health costs, economic decline, and crime. Similarly, many public officials may not recognize the civic benefits of belt use in reducing medical and rehabilitation costs. Successful traffic safety programs have shown that without the support of State/local leaders, it is difficult to get relevant policies and programs enacted, implemented or enforced. As successful as the "70% by 92" campaign was, only 2,000 police jurisdictions—out of approximately 20,000—participated. This number could be dramatically increased if State/local officials understood the cost implications of traffic crashes on their budgets. The estimated $137 billion that traffic crashes cost society annually translates into significant expenditures by State/local governments for: liability claims and coverage; social and emergency medical services; health care programs; and welfare and income support. Increasing the national belt use rate to at least 75 percent by 1996 would reduce national fatalities by 1,850 each year. An additional annual reduction of 1,850 fatalities could be achieved by reducing alcohol involvement in crashes from 46 to 43 percent.

Objectives

To promote the benefits of traffic safety programs and the consequences of driving while under the influence of

alcohol or drugs by including traffic safety subjects in job training courses. Anticipated outcomes for students in job training programs are: (1) An increase in the awareness of the importance of traffic safety programs on- and off-the-job; (2) an increase in the use of safety belts, child safety seats and other occupant protection devices; and (3) a reduction in the incidence of driving while under the influence of alcohol or drugs.

Traffic Safety for Young Adults at Five Job Training Sites

NHTSA has developed a curriculum package for job training programs titled *Play It Safe: Traffic Safety for Job Training Programs.* This document was designed to serve populations enrolled in job training projects for young adults, workers receiving economic dislocation assistance, Native Americans, migrant and seasonal farmworkers, veterans, Job Corps students, students in special demonstration projects for rural and urban young adults, and others. The curriculum is directed at those 15 to 24 years of age enrolled in job training projects, an age group over-represented in highway fatalities and injuries. The curriculum is also designed to introduce traffic safety concepts to students, although the program's primary goals may be improvements in reading, writing, math and vocational skills. The recipient of this award will work with officials of job training projects in five States to promote the inclusion of traffic safety in job training courses.

Play It Safe includes an instructor/administrator section and five modules: Buckle Up, Drive Sober/Drive Safe, Drive Within the Speed Limit, Use Child Safety Seats, and Develop Safe Habits. Since the modules cover various subjects on traffic safety, the reading and math components introduce students to topics that will make them aware of motor vehicle safety in the workplace.

Specific Tasks

The recipient shall, at a minimum, perform the following tasks:

1. Develop a program to conduct the orientations in five States identified as having an interest in performing the work of this cooperative agreement award. The orientations shall include a presentation of the curriculum *Play It Safe: Traffic Safety for Job Training Programs,* a NHTSA document. The program shall include a plan to: (i) allow orientation participants to critique the curriculum *Play It Safe;* (ii) assess the results of the orientations; and (iii) assess how the materials were used by job training projects in five States.

2. Produce awareness and educational materials for the orientations on the benefits of using safety belts, not driving while under the influence of alcohol or drugs, etc. These items can include videos, handouts, worksheets, overheads, and other materials. Attendees at the orientations can include, but are not limited to, staff of the Department of Labor's job training program, officials of State departments of education, officials of the Service Delivery Areas of respective States, and supervisory and/or teachers of local job training programs.

3. Through agreements established with five organizational State/local chapters/affiliates (in five different States), arrange for the conduct of the orientations. As a facet of this task, the recipient shall obtain statements from each chapter/affiliate that include (i) a project plan to track and assess orientations in each State; (ii) a budget plan estimating costs for labor, materials, etc., including proposed cost-sharing; (iii) a staffing plan, including résumés; and (iv) documentation that the project plan has been coordinated with the Governor's Highway Safety Office.

4. Schedule and conduct meetings in five State/local chapter/affiliate locations selected to conduct the orientations and prepare a special report on these meetings. Revise materials on the results of these meetings.

5. Attend a national conference to enhance the recipient's awareness of current traffic safety technology and programs.

6. Support a project exhibit at the Lifesavers conference. This three-day conference is usually held in the Spring. It is sponsored by highway safety associations, the National Transportation Safety Board, and NHTSA, and attracts about 1,300 highway safety professionals each year. The time and location of the next conference has not been selected.

7. Prepare and submit quarterly and final performance reports in a format to be determined after award. The final performance report shall at a minimum include a description of the project, an evaluation of the results/conclusions, and recommendations.

Milestones/Deliverables

A final list of milestones/required deliverables will be developed to coincide with the accepted application prior to award. For planning purposes, NHTSA anticipates that the milestones/required deliverables will include the following:

Deliverables	Date
1. Enter into agreements with affiliates in five States	2 months after award.
2. Develop educational and awareness materials	2 months after award.
3. Convene orientations meetings in five States	3–9 months after award.
4. Submit special report on the five orientation meetings	10 months after award.
5. Revise materials based on results of the orientations	11 months after award.
6. Submit periodic performance reports	Quarterly.
7. Submit final performance report	12 months after award.

NHTSA Involvement

NHTSA, Office of Occupant Protection (OOP), will be involved in all activities undertaken as part of this cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement, and coordinate activities between the organization and OOP.

2. Work with the organization to identify chapter/affiliates located in five States with which agreements will be established to arrange for the conduct of orientation sessions on traffic safety program activities for job training programs.

3. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

4. Provide liaison with other government/private agencies as appropriate.

Period of Support

The period of support for this cooperative agreement is twelve (12) months, the anticipated funding level is $50,000, and the number of anticipated

VOL
58
ISS
134
JL
15
1993
UMI

awards is one (1) Federal funds should be viewed as seed money to assist organizations in the development of ongoing traffic safety initiatives. Monies allocated to this cooperative agreement are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial and in-kind resources to the support of this project.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

1. Be a national non-profit organization;

2. Have an established membership structure with State/local chapters or affiliates; and

3. Have a membership consisting exclusively, or in large part, of local elected or appointed officials.

Application Procedures

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), Attn: Belinda Leatley, 400 7th Street SW, room 5301, Washington, DC 20590. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–93–Y–05386. Only complete applications, received on or before Thursday, August 19, 1992, will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (revised 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. Anticipated funding support to be made available to State/local chapters/affiliates should be indicated. Separate breakdowns of NHTSA-funded costs and applicant-funded costs shall be provided.

2. Applications shall include a program narrative statement that addresses the following:

a. *Identifies:* (i) The organizational membership and purposes; (ii) the past and present organizational experience in similar or related projects involving traffic safety; (iii) the organizational communication mechanisms, such as national/State conventions, monthly/annual training or policy meetings; and (iv) the relationship of the national organization to State/local elected or appointed government policy/decision-making officials and the importance of that relationship to this project.

b. *States the principal objectives of the project, as well as anticipated results and benefits.* Supporting documentation from concerned interests other than the applicant can be used. Any relevant data should be included or footnoted.

c. *Approach:* (1) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. The plan will include, but not be limited to: (i) the rationale to be used to identify and select the five State/local chapters/affiliates to participate in this project; (ii) the methods to be used to assess and address the needs of State/local job training officials in the development of the education and awareness materials; and (iii) the strategy to be used to determine the means of conveying complex cost/data information to State/local job training officials which effectively promotes understanding and a proactive response. Includes the reasons for taking this approach as opposed to other approaches.

(2) Provides quantitative projections, if possible, of the accomplishments to be achieved or lists the planned schedule of activities in chronological order.

(3) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

(4) Lists each organization, corporation, consultant, or other individual who will work on the project, along with a short description of the nature of their effort or contribution, and relevant experience.

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is eligible to participate and that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from those who are eligible will then be evaluated by an Evaluation Committee. The applications will be evaluated based upon the following factors which are listed in descending order of importance:

1. What the applicant proposes to accomplish and the potential of the proposed project to make a significant contribution to local and national efforts to achieve increased safety belt use, proper child safety seat use, awareness of automatic crash protection systems, driving while not under the influence of alcohol or drugs, and reductions in the costs of motor vehicle crashes.

2. The soundness and feasibility of the proposed approach and the extent to which the applicant's proposed project addresses the needs of State/local government officials.

3. How the organization will provide the administrative capability and staff expertise required to successfully complete the proposed project.

4. The proposed coordination with and use of other available organizational resources, including other sources of financial support.

5. The past and present organizational experience in the performance of similar projects and the effectiveness of organizational communications mechanisms.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 20—Department of Transportation New Restrictions on Lobbying, if applicable, and 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement awarded as a result of this notice, the agreement shall be subject to the general administrative requirements of OMB Circular A–110, the cost principles of OMB Circular A–122, and the requirements of 49 CFR part 20, if applicable, and 49 CFR part 29.

Issued on July 9, 1993.

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 93–16820 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 9, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8453–OL
Type of Review: New collection
Title: U.S. Individual Income Tax Declaration for On-Line Service Electronic Filing
Description: The form will be used to secure taxpayer signatures and declarations in conjunction with the Electronic Filing program. This form, together with the electronic transmission, comprise the taxpayer's return.
Respondents: Individuals or households
Estimated Number of Respondents: 10,000
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 2,500 hours

OMB Number: 1545–0351
Form Number: IRS Forms 3975 and 3975–A
Type of Review: Revision
Title: Tax Practitioner Annual Mailing List Application and Order Blank (3975) Electronic Filer Annual Mailing Application and Order Blank (3975–A)
Description: Form 3975 and Form 3975–A allow a tax practitioner and an electronic filer a systematic way to remain on the mailing file (TPMF) and to order copies of tax materials.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 400,000
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 2,500 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–16802 Filed 7–14–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 9, 1993.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0172
Form Number: IRS Form 4562
Type of Review: Resubmission
Title: Depreciation and Amortization (Including Information on Listed Property)
Description: Taxpayers use Form 4562 to: (1) Claim a deduction for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).
Respondents: Individuals or households, farms, businesses or other for-profit, non-profit institutions, small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 6,500,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—35 hours, 17 minutes
Learning about the law or the form—3 hours, 35 minutes
Preparing and sending the form to the IRS—4 hours, 35 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 280,427,500 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–16803 Filed 7–14–93; 8:45 am]
BILLING CODE 4830–01–P

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 25]

Surety Companies Acceptable on Federal Bonds Suspension of Authority; National Automobile and Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to National Automobile and Casualty Insurance Company, of Pasadena, California, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby suspended, effective today. The suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29382, July 1, 1992. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with National Automobile and Casualty Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6850.

Dated: June 30, 1993.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 93–16755 Filed 7–14–93; 8:45 am]
BILLING CODE 4810–35–M

VOL 58 ISS 134 JL 15 1993 UMI

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on July 15, 1993, in the third floor conference room of the Donohoe building located at 400 6th Street, SW., Washington, DC. Below is the intended agenda.

Agenda

Thursday, July 15, 1993

Part one—Closed to the Public

10:30 a.m.

1. Approval of the Minutes
2. Technical Matters

Part two—Open to Public

11:30 a.m.

3. BoB and the Broadcasting Reorganization
4. Update on Radio Martí
5. Update on TV Martí
6. OCB Office of Program Evaluation/ Focus Group Results
7. Public Testimony

Items one and two, which will be discussed from 10:30 a.m. to 11:30 a.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Kelly Comeau, Executive Secretary to the Advisory Board, as access to the building is controlled. Ms. Comeau can be reached at (202) 401–7312.

Dated: July 12, 1993.

Joseph Duffey,

Director.

[FR Doc. 93–16877 Filed 7–14–93; 8:45 am]

BILLING CODE 8230–01–M

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on July 15 in room 600, 301 4th Street, SW., Washington DC from 9 a.m.–10 a.m. and from 11 a.m.–12 p.m.

The Commission will meet with Mr. Stanley Silverman, USIA Comptroller, to discuss the Agency's budget and with Mr. Kent Obee, Director, Office of Near East and South Asia Affairs, USIA to discuss public diplomacy efforts in the region.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: July 12, 1993.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 93–16826 Filed 7–14–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems Notice; Change Other Than Routine Use Statements

Notice is hereby given that the Department of Veterans Affairs is revising the paragraph pertaining to categories of individuals in the system, in the system of records entitled: Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuances," 1991 Compilation, Volume II, pages 967–971 as amended at 57 FR 12374 (4–9–92), and 57 FR 44007 (9–23–92). As a result of Public Law 102–484, the Service Members Occupational Conversion and Training Act of 1992, claimants will begin job training programs and interested employers will be applying for approval of their programs under that Act. Category number 19 is being added to notify the public that records are maintained in this system on such individuals.

The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires agencies to inform the public of any changes to their system of records. However, since this change does not alter the uses of the information in the system of records, public comment is not required. This change is effective July 1, 1993.

Approved July 6, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation Records—VA," appearing at page 16354 of the **Federal Register** of April 22, 1991, the system notice is amended as follows:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system.

1. Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11.
2. Veterans who have applied for nonservice-connected disability under 38 U.S.C. chapter 23.
3. Veterans entitled to burial benefits under 38 U.S.C. chapter 15.
4. Surviving spouses and children who have claimed pension based on service-connected death of a veteran under 38 U.S.C. chapter 15.
5. Surviving spouses and children who have claimed pension based on service-connected death of a veteran under 38 U.S.C. chapter 11.
6. Surviving spouses and children who have claimed dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. chapter 13.
7. Parents who have applied for death compensation based on service-connected death of a veteran under 38 U.S.C. chapter 11.
8. Parents who have applied for dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. chapter 13.
9. Veterans who have applied for VA educational benefits under 38 U.S.C. chapters 31, 32, and 34.
10. Spouses, surviving spouses and children of veterans who have applied for VA educational benefits under 38 U.S.C. chapter 35.
11. Service members who have applied for educational benefits under 38 U.S.C. chapters 34 and 35.
12. Service members who have contributed money from their military pay to the Post-Vietnam Era Veterans Education Account under 38 U.S.C. chapter 32.
13. Individuals who have applied for title 38 benefits but who do not meet the requirements under 38 U.S.C. to receive such benefits.
14. Veterans, service members, spouses, surviving spouses and dependent children who have applied for benefits under the Educational Assistance Test program under sections 901 and 903 of Public Law 96–342.
15. Veterans who apply for training and employers who apply for approval

of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77.

16. Veterans, service members and eligible reservists who apply for benefits under 38 U.S.C. chapter 30.

17. Eligible members of the Selected Reserve who apply for benefits under 10 U.S.C. chapter 106.

18. Any VA employee who generates or finalizes adjudicative actions using the TARGET computer processing.

19. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484.

[FR Doc. 93–16760 Filed 7–14–93; 8:45 am]

BILLING CODE 8320–01–M

VOL
58
ISS
134
JL
15
1993
UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 134
Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 20, 1993 at 10:00 a.m..

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 22, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993-07:
Robert D. Van Bocklin on behalf of Pacific Power & Light Company Employee PAC.
Advisory Opinion 1993-08
James H. London on behalf of Congressman John J. Duncan, Jr.
Advisory Opinion 1993-10:
Delia Castillo De Colorado.
Proposed Final Rule on Amendments to the Multicandidate Committee Rules, with Explanation and Justification, and Accompanying Forms.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 93-16983 Filed 7-13-93 3:33 pm]
BILLING CODE 6715-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, July 20, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: FY 1995 Budget.

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93-16935 Filed 7-13-93; 2:22 pm]
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Foreign Fis
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Correction

In rule do
on page 337
June 21, 199
corrections:

1. On pag
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should read

Corrections

Federal Register

Vol. 58, No. 134

Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 921107-3149; I.D. 052693B]

Foreign Fishing; Groundfish of the Gulf of Alaska

Correction

In rule document 93-14544 beginning on page 33778 in the issue of Monday, June 21, 1993, make the following corrections:

1. On page 33779, in the 1st column, in the 25th line from the bottom, "in" should read "on".

2. On the same page, in the second column, in the first full paragraph, in the fifth line, "CFR 672.20(c0(1)(ii)(B);" should read "CFR 672.20(c)(1)(ii)(B);".

3. On the same page, in the same column, under the heading *3. Closures to Directed Fishing for POP*, in the sixth line, "March 1993," should read "March 31, 1993,".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 921231-2331; I.D. #102092B]

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Alaska Crab Fisheries

Correction

In notice document 93-14545 beginning on page 33798 in the issue of Monday, June 21, 1993, make the following correction:

On page 33798, in the second column, under FOR FURTHER INFORMATION CONTACT:, in the third line, "907-217-2809," should read "907-271-2809,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. 93-45]

Changes to Customs List of Designated Public International Organizations

Correction

In rule document 93-15489 beginning on page 35862 in the issue of Friday, July 2, 1993, make the following correction:

§ 148.87 [Corrected]

On page 35864, in § 148.87(b), in the last column of the table, in the next to last entry, "Mar. 9, 1988." should read "Mar. 8, 1988."

BILLING CODE 1505-01-D

VOL
58
ISS
134
JL
15
1993
UMI

federal register

Thursday
July 15, 1993

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 417

Health Maintenance Organizations: Organizational Structure and Services; Proposed Rule

VOL 58 ISS 134 JUL 15 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–019–P]

RIN 0938–AE25

Health Maintenance Organizations: Organizational Structure and Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations governing requirements for health maintenance organizations that are Federally qualified (FQHMOs) to incorporate changes made by the Health Maintenance Organization Amendments of 1988 pertaining to the definition of an FQHMO, requirements for providing physician services as basic health services, and requirements for fiscal soundness and insolvency protection. We would modify the definition of an FQHMO to allow it to organize under various organizational structures. We also would allow an FQHMO to offer a self-referral option that would permit its enrollees to go out of the plan to receive physician services that are basic health services, and to charge copayments and deductibles for self-referred physician services. Finally, we would allow an FQHMO to guarantee its fiscal soundness and provide insolvency protection for its enrollees by using the resources of an organization by which it is owned or controlled.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 13, 1993.

ADDRESSES: Mail comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–019–P, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments (an original and 3 copies) to either of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–019–P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maureen Miller, (202) 619–0129.

SUPPLEMENTARY INFORMATION:

I. General Background

A health maintenance organization (HMO) is an entity that provides or arranges for the delivery of specified medical services to enrollees in exchange for a premium paid on a periodic basis. Most individuals and families are enrolled in HMOs based on their affiliation with public or private entities, such as employers. Premiums are established annually through contracts between HMOs and these entities. Individuals who become enrollees of the HMO through a particular entity are known as a "group" of enrollees.

There are three basic types of HMOs through which health care services are provided: (1) The staff model, whereby the HMO delivers services through staff physicians who are employed by the HMO and who practice collectively in one or more settings; (2) the group practice model, whereby the HMO contracts for the provision of health services with a multi-specialty medical group that is a partnership or corporation of licensed health professionals who primarily practice as a group, and have substantial responsibility for providing services to the HMO; and (3) the individual practice association (IPA) model, whereby the HMO contracts with either individual physicians or with a partnership, corporation or association of medical professionals who enter into contractual arrangements with individual practitioners to provide health services to HMO enrollees from their individual offices. Mixed-model HMOs combine the features of more than one model type.

While all HMOs must be licensed by the State in which they do business, they may also seek to obtain Federal qualification status. Federal qualification is a voluntary program authorized under title XIII of the Public Health Service Act (the HMO Act). Federal qualification for an HMO means that, in addition to meeting all State licensure requirements, the HMO also meets certain Federal requirements pertaining to benefits, payment, availability and accessibility of services, fiscal soundness, quality assurance, and the organization and operation of the HMO. From the standpoint of an HMO, the primary importance of Federal qualification relates to its ability to market its services. This is due, in part, to the fact that section 1310 of the HMO Act sets forth conditions under which employers that have more than 25 employees and that offer health benefit plans to their employees must offer an HMO in addition to other non-HMO options. To be eligible to take advantage of section 1310 of the HMO Act, the HMO must be Federally qualified and have an approved service area in which 25 or more of the employees reside. This provision, known as the "dual choice mandate" of the HMO Act, offers employees the opportunity to choose between traditional indemnity insurance plans and an HMO. Under the Health Maintenance Organization Amendments of 1988 (Pub. L. 100–517), enacted on October 24, 1988, the "dual choice mandate" will become voluntary in 1995.

An HMO may obtain Federal qualification status by complying with the requirements specified in the HMO Act. Among other things, section 1301(a) of the HMO Act defines the type of entity that is eligible to become Federally qualified; section 1301(b)(1) specifies charges that an HMO may impose on enrollees in addition to premiums; section 1301(b)(3)(A) contains requirements for the provision of physician services that are provided as basic health services; and section 1301(c)(1)(A) sets forth requirements regarding fiscal soundness of the HMO and insolvency protection for the HMO's enrollees. If the Secretary of HHS, through HCFA, determines that the HMO meets all the relevant requirements specified in the HMO Act relating to such elements as health benefits, fiscal soundness, marketing practices, and quality assurance mechanisms, the Secretary certifies that the entity is a Federally-qualified HMO. (As used in the statute and regulations, "health maintenance organization" or "HMO" is a term of art meaning a prepaid health care organization that is Federally-qualified under title XIII of the HMO Act. However, other

organizations are referred to colloquially as "HMOs," or meet State law definitions of the term. Therefore, in order to avoid confusion, for purposes of this preamble only, we will use the term "HMO" in the generic sense, and "FQHMO" to refer to Federally-qualified HMOs.)

Public Law 100–517 amended the previously cited sections of the HMO Act pertaining to the definition of an FQHMO, requirements for providing physician services as basic health services, and requirements for fiscal soundness and insolvency protection. These provisions of Public Law 100–517 modify long-standing, outdated requirements and give FQHMOs increased flexibility to organize, market and manage their services. As a result, HMOs that are Federally qualified may be more responsive to industry trends and competition. Each of these amendments and our resulting proposed changes to the regulations are addressed individually in the following discussions.

We realize that some FQHMOs have, or are in the process of, changing their organizational structure or implementing a self-referral option as a result of this new flexibility. If there are aspects of an FQHMO's changes that do not meet our requirements when final regulations are issued, we will work with these organizations over time to assist them in achieving compliance. Until policies are finalized, we suggest that FQHMOs consult with us on remaining in compliance with current regulations while implementing these provisions of the 1988 amendments.

II. Reorganization of the Regulations

On October 17, 1991, we published a final rule in the **Federal Register** (56 FR 51984) which amended 42 CFR part 417 of the HCFA rules. Specifically, this final rule—

- Removed certain subpart headings, undesignated centered headings, and all obsolete provisions;
- Redesignated several sections to make room for adding new rules in logical order; and
- Designated the remaining content under 15 new subpart headings.

The publication of the October 17 final rule constituted the first step in a HCFA project to simplify, clarify, and update the regulations on prepaid health care. In keeping with the overall goal of this project, this notice of proposed rulemaking (NPRM) proposes to redesignate and reorganize certain sections in part 417. Specifically, we propose to make the following major changes to § 417.107:

- Redesignate § 417.107 as § 417.120.
- Remove existing paragraph (f).
- Redesignate paragraphs (b) through (e) and (g) through (m) as paragraphs (f) through (p), respectively.
- Add a new paragraph (e) that addresses an FQHMO's use of a guarantor to meet fiscal soundness requirements.
- Reorganize and redesignate the material in paragraph (a) as paragraphs (a) through (d).

We also propose to add a new § 417.107 to include a new self referral option for FQHMOs.

The section and subpart references in this NPRM are based on the changes made by the October 17 final rule. In addition, some of the preamble discussion makes reference to the proposed regulatory redesignations outlined above.

III. FQHMO Organizational Structures

A. Program Description

Section 1301(a) of the HMO Act contains the requirements for the organizational structure of an FQHMO. Prior to the enactment of Public Law 100–517, an FQHMO was required to be organized as a separate "legal entity" that met specific requirements, including that it provided all its enrollees with a prescribed package of health benefits, known as basic health services. (Basic health services are defined in section 1302(1) of the HMO Act and 42 CFR 417.101 of our regulations.) If the HMO desired to offer other health benefit packages that did not meet the requirements for basic health services, it was required to establish a separate legal entity through which to offer the other packages. Likewise, the separate legal entity requirement precluded a corporation or other legal entity from offering an FQHMO in addition to its non-qualified business health plans or "products."

B. Legislative Changes

Section 2 of Public Law 100–517 amended section 1301(a) of the HMO Act by redefining an FQHMO as a "public or private entity that is organized under the laws of any State" instead of a "legal entity." In Congressional reports that accompanied the legislation, the House and Senate committees indicated that FQHMOs and insurance companies could compete more effectively if allowed to offer a range of health benefit packages or products. (See Rept. No. 304, 100th Cong., 2nd Sess. 5 (1988), and H.R. Rept. No. 417, 100th Cong., 1st Sess. 6 (1987).) The reports indicate that these entities should be able to offer such options without the burden of establishing a separate corporation for each health benefit package or product.

While the legislative history of the statutory amendments indicates that Congress intended to provide entities more flexibility to operate an FQHMO in conjunction with other health benefit products without being separately incorporated, the legislation made only a narrow change in the definition of an FQHMO. It left most of the specific requirements in title XIII of the HMO Act unchanged. This indicates that Congress also wanted to preserve all of the protections afforded by the statute to FQHMO enrollees. Therefore, while we are proposing to provide FQHMOs with the increased organizational flexibility we believe was intended by the statutory changes, we have also included provisions designed to assure that FQHMOs continue to comply with all title XIII requirements for Federal qualification.

C. Proposed Changes to the Regulations

The amendments made by Public Law 100–517 concerning the organizational structures of FQHMOs will affect several areas of our regulations. This is due, in part, to the fact that although FQHMOs will be allowed to organize under various organizational structures, our regulations must ensure that the FQHMOs continue to meet all Federal qualification requirements specified in section 1301 of the HMO Act and 42 CFR part 417, regardless of how the FQHMO is organized.

If an FQHMO is organized as a component of a legal entity, rather than as a separate legal entity, a number of legal and enforcement issues arise. These issues include: (1) Keeping the FQHMO distinct from the entity's other components; (2) determining the responsibilities of the legal entity and the FQHMO in meeting financial and other requirements for Federal qualification; and (3) assuring that the financial status of other components of a legal entity does not have an adverse impact on the enrollees of the FQHMO.

To conform our regulations to the amendments made by Public Law 100–517, while addressing the legal and enforcement issues raised by the amendments we propose to—

- Modify the definition of an FQHMO and make other technical changes in order to incorporate the additional organizational structures now permissible;
- Add requirements that would distinguish the FQHMO that is a component of a legal entity from other health benefit packages that the legal entity may offer;

VOL
58
ISS
134
JL
15
1993
UMI

• Add clarifications delineating the responsibilities of the legal entity and the FQHMO that is a component of a legal entity for meeting the financial requirements of the FQHMO component (for example, fiscal soundness, insolvency protection, and disclosure requirements); and

• Add provisions that will require the FQHMO to have authority to contract with providers and subscribers when the FQHMO is a component of a legal entity.

Definition of an FQHMO—We propose to revise 42 CFR 417.1 to redefine the term "HMO" to include the FQHMO that is a separate legal entity as traditionally permitted, the FQHMO that is a component of a legal entity, and the FQHMO that is a legal entity with organizational components that offer other health benefit packages. In addition, where appropriate, we propose to modify references to the FQHMO to include legal entities that have an FQHMO component. We are also proposing to delete the existing provision in § 417.101(e) that prohibits FQHMOs from offering non-Federally-qualified health benefits packages.

Unless otherwise specified, any reference in the proposed regulations to an "HMO or legal entity of which the HMO is a component" means that the HMO is responsible in the first instance for meeting the requirement. However, if, as a practical or legal matter, it is impossible for the HMO to do so when it is a component of a legal entity, then the legal entity will be held responsible. It is not otherwise discretionary with the HMO whether it or the legal entity will meet any given requirement.

Distinguishing the FQHMO Product—In part, the FQHMO can be distinguished from non-Federally-qualified HMOs by a particular set of operational characteristics, including a clearly defined delivery system that ensures care is available and accessible in a specific service area, separate marketing materials, community rated premiums, profit and loss statements, and plan-specific operational data. Because the statutory amendments allow an FQHMO to be a component of a legal entity, we are proposing to add additional requirements to § 417.107 (redesignated as proposed § 417.120), which deals with the organization and operation of an FQHMO. These requirements are needed to distinguish the FQHMO from non-Federally-qualified components of the legal entity that may offer health benefits. These proposed requirements allow us to recognize the new organizational structures for FQHMOs while assuring compliance with all other requirements for Federal qualification.

Specifically, we propose to—

• Add a new § 417.120(q), which requires that if the FQHMO offers or is part of a legal entity that offers other health benefit plans, the FQHMO must—

• Be a distinct component that is clearly differentiated from the other health benefit plans;

• Have processes and records in place that allow the entity to separately identify the enrollees of the FQHMO at all times; and

• Have a distinct name that differentiates it from other health benefit packages offered by the legal entity in the FQHMO service area.

We believe these additional requirements are necessary to maintain the integrity of the Federal qualification program, to ensure that FQHMOs are in compliance with statutory and regulatory requirements, and to enable Federal regulators to monitor and enforce program requirements. For example, we are proposing that the enrollment of the FQHMO must be separately identifiable because the statute requires the FQHMO to provide basic and supplemental health services to "its enrollees." Further, these enrollees are assured of certain protections that the entity might not extend to enrollees in other health benefit packages. If the legal entity does not separate the enrollees of its qualified and non-qualified health benefits components—by its own choice or as a result of State law—then the organizational structure is legally impermissible for Federal qualification.

The distinct name requirement is intended to differentiate the benefits offered by the FQHMO from other health benefit packages or products offered by the entity in the service area. The distinct name also will promote consumer and employer recognition of the FQHMO as a discrete component. It will help eliminate consumer and employer confusion between the benefits offered by the component that is Federally qualified and the other benefit packages offered by the legal entity. In addition, it will aid employers to determine which entities or components of entities will enable them to comply with section 1310 of the HMO Act, which requires certain employers to offer Federally-qualified HMOs under an employer-sponsored health benefits plan.

In seeking clarity for the consumer and the employer, we do not propose prohibiting the use of the name of the legal entity in the FQHMO's name, or use of the FQHMO's name in the name of the non-qualified component. In fact, use of the legal entity's name may help the consumer to differentiate among FQHMOs, and between FQHMOs and other health benefit packages being offered in the service area marketplace by various companies.

Meeting Financial Requirements—We believe the current regulations at § 417.107(a)(1)(i) through (iii) (redesignated as proposed § 417.120(a)(1) through (3)) generally are adequate for demonstrating the fiscal soundness of organizations that offer an FQHMO line of business and FQHMOs that diversify and offer non-qualified health benefits packages. These regulations currently require that each FQHMO have a fiscally sound operation as demonstrated by (1) total assets being greater than total unsubordinated liabilities; (2) sufficient cash flow and adequate liquidity to meet obligations as they become due; and (3) a net operating surplus.

Under this rule, we are not changing the nature of these fiscal soundness requirements, but rather we are specifying the entities that are responsible in situations where the FQHMO is not a separate legal entity. Where a legal entity operates an FQHMO as one component of its business, we propose to require that the legal entity, rather than the FQHMO, meet the financial requirements specified in proposed redesignated § 417.120(a)(1) through (3) for the FQHMO. An FQHMO that develops and operates non-qualified health benefit packages will be treated as a legal entity with an FQHMO component. By permitting the legal entity to meet the financial requirements for Federal qualification, while leaving responsibility for the programmatic requirements to the FQHMO component, the proposed rules are consistent with the statutory language and legislative history of Public Law 100–517.

We must look to the legal entity for meeting the fiscal soundness requirements in this situation because the financial viability of the FQHMO is sustained by the financial health of the legal entity. Overall, it is the assets, profits, and net operating surplus of the legal entity that ensures the FQHMO's ability to continue operation. Therefore, we are interested in the fiscal soundness of the legal entity. In general, we propose to require the same financial reporting as specified in current regulations, except that the information will be about the legal entity. The only additional reporting requirement we anticipate is a profit and loss statement for the FQHMO component. We would

request this information under the existing reporting authority in redesignated § 417.120(m), but on an annual basis rather than quarterly.

For FQHMOs that are organized as a legal entity and then develop non-qualified benefit packages, the new requirements will apply. That is, the legal entity that incudes both the FQHMO and its other business must meet the fiscal soundness requirements. We anticipate requiring an annual profit and loss statement of the FQHMO business in addition to the financial reports routinely submitted by the legal entity.

We propose to require that, if the legal entity that operates an FQHMO component has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year, or does not have a positive net worth, it must submit a business plan satisfactory to HCFA. The plan must include a statement of projected revenues and expenses for the operations of the legal entity and must demonstrate the legal entity's ability to achieve net operating surpluses. Where an HMO component is applying for Federal qualification, we propose to require profit and loss statements on the applicant HMO in addition to the legal entity. We believe these requirements are necessary to assure the Secretary that the FQHMO is financially sound, even though the FQHMO may have been determined to have adequate cash flow. The financial performance of either the legal entity or the FQHMO component may be an indicator of emerging quality of care problems in the Federally-qualified health plan.

The FQHMO that is itself a legal entity, or the legal entity of which the FQHMO is a component, must comply not only with the fiscal soundness requirements but also with the following requirements of the HMO Act:

- Have adequate provision against the risk of insolvency; and
- Comply with financial disclosure requirements included in section 1318 of the HMO Act.

Where a legal entity operates an FQHMO component, the legal entity will be required to meet the current requirements in § 417.107(a)(3) (redesignated as proposed § 417.120(c)) concerning protection of enrollees. If the FQHMO is separately incorporated, as required in some States, there is no problem anticipated. That is because if a separately incorporated FQHMO became insolvent, only one set of enrollees has claims. However, we are concerned that, under the newly permissible organizational structures, the FQHMO may not be able to protect its enrollees in the event of insolvency if it is not separately incorporated. If the legal entity offers other health benefit packages, or operates unrelated businesses, there is no guarantee, under existing regulations, that the enrollees of the FQHMO will be given special protection or priority. For example, bankruptcy court does not distinguish among the financial obligations of unrelated businesses.

Because section 1301(c) of the HMO Act currently requires that special protections for enrollees of FQHMOs must be secured, we are proposing to revise proposed redesignated § 417.120(c) to impose a more stringent insolvency protection requirement when the FQHMO is a separate line of business and is not separately incorporated. Under the new requirement the legal entity will be required to establish a special reserve for FQHMO expenses not covered under other insolvency protection arrangements.

We have also clarified existing regulations to state that trust agreements requiring approval of State officials are acceptable arrangements for uncovered liabilities. Such trust agreements have been accepted by HCFA in the past and we believe that our regulations should clarify this position.

Additional Obligations of the FQHMO—The various organizational structures that will now be available to FQHMOs make it necessary to clarify certain obligations of the FQHMO, particularly when the FQHMO is a component of a legal entity. One such obligation concerns contracting responsibility for purposes of provider and subscriber contracts in the situation where a legal entity both operates an FQHMO component and offers other non-qualified health benefits as well. We have clarified, through a proposed revision to § 417.107(a)(2) (redesignated as proposed § 417.120(d)(3)), that if the FQHMO is not itself a legal entity, it must be managed by an executive who has the authority to bind the legal entity in contracts. The effect of this new requirement is that the obligation to fulfill the terms of the contract will be with the FQHMO, even though the legal entity is accountable if the FQHMO fails to perform.

Specifically, there must be at least one official of the FQHMO component who has the delegated authority to bind the legal entity with respect to the following existing requirements and actions:

- Assumption of full financial risk on a prospective basis;
- Arrangements for health care services that are necessary to meet the requirements of title XIII of the HMO Act as they pertain to the benefits package and the delivery system;
- Establishment of subscriber contracts; and
- Arrangements to protect enrollees in the event of insolvency.

D. Additional Proposed Changes to the Regulations

In addition to the above changes, we are also proposing the following conforming changes:

- We propose to modify § 417.107(c) (redesignated as proposed § 417.120(g)), full and fair disclosure, to assure that, where applicable, all interested parties, including current or prospective enrollees of the FQHMO, are aware that the FQHMO (1) offers non-qualified health benefits packages through a separate component, or (2) is a component of a legal entity and that other health benefit packages are offered by the legal entity. This is a mechanism for assuring that there is no confusion regarding which health benefit package is offered by the FQHMO.
- We propose to revise § 417.107(j) (redesignated as proposed § 417.120(m)), which contains the reporting and disclosure requirements for FQHMOs, to correct a long-standing typographical error and to conform the regulations to program operations practice. We propose to require that reports be submitted within 120 days of the end of the fiscal year, not 180 days, to be consistent with operational procedures currently used in the program.
- We propose to modify § 417.143 to reflect that a component of a legal entity may now apply for qualification.
- We propose to modify § 417.152 to reflect the new organizational structures permitted the FQHMO. We believe that an FQHMO that is a component of a legal entity should inform employers of the nature of the legal entity of which it is a component at the time that the dual choice mandate is submitted.

IV. Offering a Self-Referral Option and Charging Copayments and Deductibles for Self-Referred Services

A. Program Description

Section 1301(b) of the HMO Act requires an FQHMO to provide all basic health services to its enrollees for a single premium. (Our regulations at 42 CFR part 417 allow the FQHMO to provide or arrange for the provision of such services.) We interpret this provision to require that an FQHMO must provide all services through a network of contracted or "affiliated" physicians and providers, except as

VOL 58 ISS 134 JL 15 1993 UMI

otherwise provided in the statute or regulations.

Prior to 1988, section 1301(b)(3)(A) specified that all physician services that are basic health services had to be provided through one or a combination of acceptable FQHMO models: The staff model, the group model, individual practice associations (IPAs), or direct service contracts with individual physicians. Some exceptions, such as for emergency care, allow for the use of unaffiliated or non-plan physicians.

Additionally, FQHMOs must comply with certain restrictions in charging their enrollees any payments in addition to premiums. Section 1301(b)(1) of the HMO Act permits FQHMOs to charge nominal supplemental payments for specific basic health services, but under current regulations these payments have been limited to copayments only (including coinsurance). Deductibles were not permitted.

B. Legislative Changes

Section 3 of Public Law 100–517 changed the requirement that all physician services be provided by FQHMO physicians. The law now permits FQHMOs to offer a benefit option that makes the FQHMO financially responsible for a limited amount of non-emergency medical care obtained outside of the FQHMO's normal health delivery system. Specifically, the statute revised section 1301(b)(1) of the HMO Act to allow FQHMOs to permit enrollees to obtain basic physician health services from physicians who are not on the staff or under contract with the HMO. In the regulations, we refer to this as a "self-referral option."

The self-referral option is a relatively new benefit option offered by HMOs and other prepaid health care systems. The option allows enrollees of prepaid health plans to decide, at the point of needing a service, whether to see their plan physician or go outside of the plan's usual network of affiliated providers. Generally, an enrollee electing this option has to meet higher cost-sharing requirements for this privilege. HMOs usually design the benefit option in conjunction with specific needs of employer groups. That is, the HMO may design different self-referral options for different group contracts. The option sometimes is also referred to as a "point-of-service" or "out-of-plan" option.

The self-referral option grew out of dissatisfaction with the "lock-in" requirement, a fundamental principle for most HMOs, that guarantees payment for services only if enrollees use affiliated providers for covered services. Consumers frequently are hesitant to join an HMO or FQHMO because they do not want to relinquish their freedom to choose physicians. As a result, employers looking for alternative, cost-saving methods for providing health care find their employees unwilling to shift into HMOs, and many HMOs find the lock-in feature to be a barrier to increasing their enrollments.

Some forms of prepaid health care systems, such as Preferred Provider Organizations (PPOs), have been able to rapidly increase their share of employer contracts and new enrollees by offering extensive physician networks and self-referral options. The self-referral option has proven to be successful at increasing such health plans' market share, even though there are higher cost-sharing requirements associated with out-of-network services. The success of this option has led many non-Federally qualified HMOs to offer a self-referral option. However, because the self-referral option is an indemnity-type product and puts the definition of an HMO into question, many States do not allow HMOs to offer this benefit option. In States where HMOs are not permitted to offer the self-referral option, HMOs use "wrap-around" insurance policies for self-referrals, that is, the HMO contracts with an insurance company to provide payment for certain out-of-plan services. In recognition of these trends among entities with which HMOs compete, Public Law 100–517 permits FQHMOs to offer a self-referral option.

The addition of a self-referral option allows FQHMOs to enroll consumers who might be attracted to prepaid health plans except for limited provider choice. This option offers consumers the freedom, under some circumstances, to choose a physician from the fee-for-service sector instead of the FQHMO's panel of physician providers, and have the services covered under the plan.

Section 4 of Public Law 100–517 amended section 1301(b)(3)(A) of the HMO Act to permit the FQHMO to provide up to 10 percent of the physician services necessary for the provision of the basic health service benefits through unaffiliated physicians. The 10 percent limitation reflects Congressional concern that offering an indemnity-type product would alter the essential character of prepaid HMOs.

Public Law 100–517 also contained an amendment that modified the supplemental payments an FQHMO may charge enrollees. The amendments permit FQHMOs to charge reasonable deductibles for physician services obtained on a self-referral basis outside of the FQHMO's affiliated physician network. As stated earlier, Federal regulations have permitted FQHMOs to charge copayments (including coinsurance), but not deductibles, for basic health services. Under the amendments made by Public Law 100–517, FQHMOs may charge deductibles as well as copayments for the self-referred services.

The amendments made by Public Law 100–517 also set forth conforming changes to section 1310(b) of the HMO Act, which outlines requirements for employers to offer an FQHMO health plan(s) to employees, to permit FQHMOs offered by employers to include a self-referral option in their benefit packages.

C. Proposed Changes to the Regulations

To implement the statutory amendments made by section 3 of Public Law 100–517, we propose to add a self-referral option in new proposed § 417.107 to specify under what conditions and limitations an FQHMO may allow its enrollees to go out of the plan to receive physician services that are basic health services. The proposed regulations clarify that the services must be provided by a physician or other health professional (for example, nurse practitioner or physician assistant) that State law allows to provide the particular medical services. The proposed regulations also clarify that the FQHMO has the flexibility to design this option to support its own interests and the interests of its group contracts. This flexibility includes the types of services that may be obtained on self-referral as well as cost-sharing amounts. In addition, FQHMOs may establish policies and procedures to administer the option.

As mentioned earlier in this preamble, the statute added a restriction that limits the FQHMO's use of the self-referral option so that it may not be used for more than 10 percent of the FQHMO's physician services that are basic health services. We propose that compliance with the 10 percent limit be determined based on the ratio of total expenses for the self-referral option (physician services) to the FQHMO's total expenditures for basic physician services for a calendar year. For purposes of the 10 percent limit, total expenses for the self-referral option and for basic physician services include expenses paid, expenses incurred and reported but not yet paid, and estimates of incurred expenses not yet reported.

We are proposing that FQHMOs offering this option be required to report quarterly or at designated intervals. We considered requiring monthly reporting during the first year to assure that both

the FQHMO and HCFA could identify any problems with the 10 percent limit. However, we believe this frequency of reporting may be too burdensome. We seek public comments on this nonselected reporting option.

If these reports indicate that the FQHMO has exceeded the 10 percent limit on total physician expenses, we propose to require that the FQHMO initiate a corrective action plan. As part of the corrective action plan, the FQHMO must cease marketing the self-referral product. The corrective action could include redesigning the option (that is, services covered), reassessing the groups eligible for the option in the next contract year, and increasing copayments and deductibles. We may require some action immediately, and some over a longer interval, for example, at contract renewals.

If we are not satisfied with the FQHMO's response, we may revoke approval of the self-referral option. FQHMOs would be permitted to continue administering the option for affected subscriber contracts through the end of existing contract periods, but then must cease offering the self-referral option. We are proposing to require that marketing of the option be discontinued when approval is revoked. An FQHMO that fails to comply with these requirements to cease offering the option would be considered out of compliance with assurances given to the Secretary.

We also propose to permit FQHMOs to allow enrollees to use unaffiliated providers (those not under contract or other agreement with the HMO) for obtaining other, non-physician basic health services, including inpatient care, if it results from seeing an unaffiliated physician on a self-referral basis. However, this would only be allowed if the FQHMO precertifies the services. The FQHMO would review all requests for inpatient hospital and other non-physician basic health services from unaffiliated providers and would determine whether to cover (that is, accept fiscal responsibility for) these services. Under these conditions, we believe that these services may be considered "arranged for" under § 417.103(a).

We have not specified procedures for preauthorizing these basic health services, but instead propose to allow FQHMOs the flexibility to administer this extension of the self-referral option. Under this approach, we propose to permit thresholds for automatic approval of out-of-plan (non-emergency) basic health services. For example, an FQHMO may establish a policy to automatically approve out-of-plan services costing less than $1,000 if such services are ordered by a physician seen on a self-referral basis.

This added flexibility should allow FQHMOs to compete more effectively with PPOs and HMOs with "wrap-around" self-referral options. State regulators and industry representatives advised us that no market exists for self-referral options limited to physician services only. Therefore, we propose that FQHMOs be permitted to allow enrollees to obtain non-emergency inpatient and other basic (non-physician) health services from unaffiliated providers if the service is preauthorized by the FQHMO.

This opportunity to receive an entire episode of care outside of an FQHMO, however, adds to our existing concerns surrounding self-referral—lack of reliable predictors for utilization and expenses, limited influence over enrollee decisions, and potential impact on the financial stability of the FQHMO. To address these concerns, we propose to require prior approval by HCFA before an FQHMO can implement a self-referral option, and establish requirements at proposed § 417.107(c) that permit us to assess the FQHMO's ability to offer the self-referral option in order to determine whether to give prior approval for implementation.

In addition, the proposed regulations require FQHMOs to meet special financial requirements for net worth and insolvency protection which we believe reasonably balance our concerns, as noted above, with the need to permit FQHMOs to remain competitive in local markets. First, the proposed regulations set forth a requirement that FQHMOs offering this option must maintain a net worth equal to three months of expenses for the self-referral option. This requirement addresses our concern that offering this option should only strengthen the FQHMO, not compromise its fiscal soundness. We considered requiring a restricted reserve, but opted instead to set a minimal standard for the financial position that an FQHMO must have to bear the added risk of out-of-plan services.

This net worth requirement differs from the reserve requirement established by the National Association of Insurance Commissioners and the National Association of HMO Regulators in guidelines for HMO point-of-services products. We believe that net worth requirement proposed in the regulations is adequate for FQHMOs because of the limited risk associated with the self-referral option as authorized by Congress in the 1988 amendments. That is, the self-referral option is restricted to physician services (out-of-plan hospital and other basic health services must be preauthorized) and limited to 10 percent of the FQHMO's physician services that are basic health services. Further, the added risk should be balanced by the benefits of increased market share if appropriately implemented.

With regard to the plan for handling insolvency, we propose that the FQHMO have arrangements in place to cover four months of expenses for self-referred services. These arrangements will cover one month preceding and three months after the date of insolvency for claims filed under the self-referral option. This extended period of time is necessary because of the lag in receiving claims for out-of-plan services. While claims for self-referred services may be filed beyond this time, we believe this requirement to be reasonable for the FQHMO and its enrollees.

We also propose to add a new paragraph (a)(5) to § 417.104, Payment for basic health services, to incorporate the FQHMO's authority to charge deductibles for physician services obtained under the self-referral option. In addition, this new provision will allow FQHMOs to establish separate copayments and coinsurance amounts for non-emergency basic health services, including inpatient services, obtained from unaffiliated physicians and providers as a result of self-referral. These copayments and coinsurance amounts will not be subject to limitations established in § 417.104(a)(4), including the catastrophic limit that protects individual enrollees from paying more than 200 percent of their annual premium that would apply if they had chosen an option with no copayments.

We believe that such copayments, coinsurance amounts, and deductibles for out-of-network care will not serve as a barrier to obtaining services. All basic health service may still be obtained within the FQHMO's network, and the self-referral option is simply an additional way to obtain the same services. Further, in that copayments, coinsurance amounts, and deductibles serve as a major mechanism in controlling utilization of the self-referral option, the proposed regulations offer the FQHMO flexibility to establish these amounts. FQHMOs may choose to set these cost-sharing amounts at levels that differ substantially from amounts for in-network services as a method to control risk (e.g. the plan may impose a 25 percent coinsurance requirement for certain out-of-plan services).

It should be noted that the FQHMO must continue to meet the requirements

of the HMO Act as it pertains to the self-referral option. For example, FQHMOs are required to offer a process to hear and resolve grievances between the FQHMO and its enrollees (§ 417.107(g)). This process, by definition, includes claims payment disputes for services received under a self-referral option. Also, expenses for preauthorized, out-of-plan basic health services (that result from a physician self-referral) must be included in the FQHMO's plan for handling insolvency. As discussed earlier in this preamble, these basic health services are considered "arranged for" by the FQHMO and, therefore, must be treated like other services furnished or arranged for by the FQHMO.

We believe that the pre-approval process, net worth requirement, added insolvency protection, and monitoring activities set forth in this proposed regulation allow HCFA to meet its responsibilities in administering the requirements of title XIII of the Act while avoiding onerous government intervention. However, there may be other reasonable approaches to these requirements, such as an alternative to ensure that FQHMOs offering a self-referral option are fiscally sound and capable of assuming this new risk without hazarding insolvency. We invite public comments on the adequacy and appropriateness of our approach. We also invite commenters to share information on the risk borne by FQHMOs in offering a self-referral option.

D. Additional Proposed Changes to the Regulations

In addition to the above changes, we propose to make conforming changes to § 417.103 (Providers of basic and supplemental health services), proposed redesignated § 417.120 (Organization and operation), and § 417.152 (Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response) to V. include a reference to the self-referral option.

V. FQHMO Fiscal Soundness

A. Program Description

Among other requirements to be Federally qualified, an HMO must have a fiscally sound operation and adequate provisions against the risk of insolvency.

Fiscally sound operation—Under this requirement, an FQHMO must demonstrate that it has total assets greater than total unsubordinated liabilities (Public Health Service section 1305 loan funds are excluded as a liability), sufficient cash flow and adequate liquidity to meet current obligations, and a net operating surplus or a financial plan. If the FQHMO cannot demonstrate a net operating surplus, it must submit to us a financial plan for achieving a net operating surplus within available fiscal resources. Adequate provision against the risk of insolvency—There are two requirements that FQHMOs must meet for insolvency protection. First, FQHMOs must have a plan or an arrangement that, in the event of insolvency, continues benefits for the duration of the contract period for which a premium was paid and, for those enrollees being treated on an inpatient basis on the date of insolvency, until discharge. Second, FQHMOs must have arrangements that protect enrollees from incurring liability for payment of any fees that are the legal obligation of the FQHMO. The FQHMO may use insolvency insurance, provider contracts, restricted financial reserves, guarantees and other arrangements acceptable to the Secretary to protect its enrollees.

It has been permissible, even prior to the enactment of Public Law 100–517, for an FQHMO to use a guarantee from a parent organization to meet insolvency protection requirements. This policy interpretation of 42 CFR 417.107(a)(3)(i)(D) (redesignated as proposed § 417.120(d)) was implemented by a Program Information Letter, 86–02, issued by the Public Health Services' Office of Health Maintenance Organizations. It was further clarified by HCFA's Office of Prepaid Health Care through a Program Information Letter, 88–01, published in February 1988. At that time, however, we did not believe we had the authority to use a similar standard in applying the fiscal soundness requirements. Thus, FQHMOs have had to meet these requirements on their own.

B. Legislative Changes

With the enactment of Public Law 100–517, the Congress recognized that some FQHMOs are owned or controlled by major corporations with sizeable assets, and that consideration should be given to recognize the availability of such assets if an FQHMO is unable to meet the fiscal soundness requirements. Section 5 of Public Law 100–517 amended section 1301(c) of the HMO Act by directing the Secretary to issue regulations under which the resources of an organization that owns or controls an FQHMO may be considered in meeting the requirements of section 1301(c)(1)(A). The legislation retains the Federal qualification requirements that an HMO demonstrate fiscal soundness and adequate enrollee protections in the event of insolvency. However, when an HMO does not meet one or the other of these requirements during the qualifying process or at any time after receiving Federal qualification, an organization that owns or controls the HMO may now use its resources to guarantee its fiscal soundness and to protect enrollees in the event of insolvency.

C. Proposed Changes to the Regulations

In order to implement the amendments made by section 5 of Public Law 100–517, we propose to add a new paragraph (e) to § 417.107 (redesignated as proposed § 417.120) that outlines the conditions and requirements for using a guarantor to meet the requirements for fiscal soundness and/or the risk of insolvency. As previously stated, the legislative intent of the statutory amendments was to provide more flexibility to the HMO industry. The proposed regulatory changes in proposed redesignated § 417.120(e) provide that flexibility while establishing conditions under which we can ensure that the parent organization is financially able to support the guarantee.

We propose a definition of "guarantor" that establishes that the guaranteeing organization must own the majority of voting equity in or directly control (for example, through the governing body) an HMO or the legal entity of which the HMO is a component. We believe that in using the term "owns," Congress intended that a guarantor be a majority owner or have majority control of the board of directors of the FQHMO, or the legal entity. We invite comments from the public on both our interpretation of the amendment and the applicability of the definition to organizational structures.

We also propose criteria for qualifying and serving as a guarantor that we believe are consistent with the intent of the statute. That is, the eligibility criteria for guarantors are intended to maintain standards for the HMO industry, which in turn strengthen public trust and enhance the growth of the HMO industry. At the same time, to the extent the statute affords HCFA the necessary discretion, we propose to implement the statute in a manner that recognizes corporate trends and acceptable business practices.

We believe that we have selected an approach for screening guarantors that recognizes the strong financial position of parent companies without abrogating statutory requirements for sound fiscal operations and enrollee protection. We have exercised caution in using parental

guarantees because we must now monitor not only the financial viability of the FQHMO, but that of the parent organization. In addition, because FQHMOs are no longer restricted to being separate legal entities, we may have to monitor the financial stability of a legal entity that has a component FQHMO, as well as the legal entity's parent organization. Further, the legislative history to the statutory amendments indicates congressional intent that only large entities with strong financial standing be able to act as guarantors for FQHMOs.

The proposed regulations at proposed redesignated § 417.120(e) establish when a guarantee may be used and describe the application process, including requirements pertaining to the written application and the guarantee instrument. The proposed regulations also address situations when a parent may wish to guarantee more than one FQHMO that it owns or controls, or to guarantee an FQHMO for both fiscal soundness and protection of enrollees in the event of insolvency.

As mandated by the statute, we propose to require as a condition for consideration of resources that the parent organization provide satisfactory assurances that it will assume the financial obligations of the FQHMO. Because Public Law 100–517 removed the requirement that the FQHMO be a legal entity, these proposed regulations also incorporate the new organizational structures open to FQHMOs (outlined earlier in this preamble) and the use of a parental guarantee. For example, a large corporation may apply to serve as a guarantor for a legal entity with an FQHMO component. In this case, the guarantor would have to agree to accept the financial obligations of the entire legal entity, not just the FQHMO.

VI. Response to Public Comment

Because of the large volume of public comments that we usually receive on notices of proposed rulemaking, we cannot acknowledge or respond to them individually. However, we will address all public comments received on this document in the preamble to the document in which these proposed regulations are issued in final form.

VII. Collection of Information Requirements

Proposed regulations at §§ 417.107(d), 417.120(b), 417.120(e), 417.120(q), and 417.152(c) contain information collection requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980. Specifically, §§ 417.107(d)(3), (4), (6), and (7) and 417.152(c)(13) contain information collections for those FQHMOs that choose to offer a self-referral option. Sections 417.120(b), 417.120(e) (3), (7), and (8), 417.120(q), and 417.152(c)(7) contain information collections for those FQHMOs that choose to restructure as a component of a legal entity and for those entities that apply to be guarantors. We estimate the additional reporting burden for those FQHMOs that choose to offer a self-referral option to be one hour per report; the additional reporting burden for FQHMOs that are part of a legal entity to be one-half hour per report; and the additional reporting burden for legal entities applying to be guarantors to be one-half hour per report. Organizations and individuals desiring to submit comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing these burdens, should address their comments to the individual listed in the **ADDRESSES** section of this preamble.

VIII. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of RFA, we treat all HMOs as small entities.

Section 1102(b) of the HMO Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. The provisions of this regulation apply only to HMOs. We have determined, and the Secretary certifies, that this proposed rule would not affect a significant number of small rural hospitals and, therefore, have not prepared a rural impact statement.

These proposed rules would amend the regulations governing requirements for FQHMOs by implementing certain changes made by Public Law 100–517. The changes broaden the definition of an HMO, allow an FQHMO to offer a self-referral option and charge deductibles for self-referral services, and allow an FQHMO to use parental resources to meet fiscal soundness and insolvency protection requirements.

Although these proposed rules mainly conform our regulations to the statutory changes made by Public Law 100–517, they include additional clauses that interpret or elaborate statutory changes. While we cannot separate out the effects of our regulatory proposals from the statute, this is arguably a major rule, and one which will significantly affect a substantial number of HMOs. Accordingly, we have prepared the following analysis which, together with the remainder of the preamble, constitutes a Regulatory Impact Analysis and a Regulatory Flexibility Analysis.

- The statute and regulations together open up significant new opportunities for managed care, both through elimination of organizational restrictions and through the creation of the self-referral option. They are intended to broaden opportunities for entities wishing to operate FQHMOs, and to minimize confusion, costliness, and inefficiency in the operation of FQHMOs while preserving the protections for FQHMO enrollees in the event of insolvency of the legal entity.
- The 1988 Amendments and these proposed regulations usher in a new era for HMOs. We believe we have proposed regulations that give FQHMOs substantial freedom to operate new, non-qualified coordinated care products, and to offer self-referral options. These proposed regulations should open new markets for coordinated care, such as small employer groups and employer groups that are hesitant to move from free choice of providers directly to a closed panel of providers. Through judicious decision, FQHMOs should be able to minimize their risks, even in offering a self-referral option, to achieve significant enrollment growth and market share.
- On average, an FQHMO achieves savings of approximately 15 percent of cost compared to costs under indemnity plans. Average annual health care spending in the American economy is approximately $4,000 per family. We estimate that there are more than 35 million Americans enrolled in

FQHMOs, or approximately 15 percent of the population. While this percentage is increasing, the rate of increase has slowed in recent years. If the flexibility afforded by these regulations were to accelerate by only one year, resulting in the switching of an additional 1 percent of families from fee-for-service arrangements into FQHMOs, expected savings to the economy would be about $100 million per year. Self-referral is such an innovative system of health care delivery that we have no basis on which to estimate how many plans will adopt it, let alone estimate its likely marketplace effects over time. However, it appears to us that a shift of 1 percent in market share is a conservative estimate of likely effects. Substantial evidence exists that many families do not switch to HMOs in order to retain trusted physicians or the ability to select a future physician unconstrained by the HMO's panel. If such families comprise 5 or 10 percent or more of the total market share, the effects of this rule could be much larger.

- One alternative provision we considered was to require the legal entity to be a health and welfare organization or other type of organization regulated by the State. This was based on an interpretation of the Congressional reports that health insurers are the only types of organizations which Congress wanted to operate FQHMOs as lines of business. However, because Congress did not address this limitation in the statute, we believe it is preferable to be flexible and allow different types of organizations the opportunity to operate FQHMOs.

We also considered increasing the performance criteria which would be used to test the fiscal soundness of the legal entity. We recommended that the indications for fiscal soundness be the same for FQHMOs which are legal entities and for legal entities which operate an FQHMO as a component of the organization. The purpose of increasing the requirements would have been to safeguard against the possibility of future insolvency. However, our decision not to recommend increased requirements was based on the fact that selection of additional tests for fiscal soundness would have been arbitrary since the size and complexity of organizations selecting the option of organizing the FQHMO as a component is unknown and would not have been effective in achieving the desired objective. Each component of the fiscal soundness requirement is discussed below:

- *Net worth.* We considered requiring an FQHMO to have a minimum net worth in addition to requiring that assets be greater than unsubordinated liabilities. We concluded that this requirement could be unduly burdensome for smaller organizations and could impair future viability by tying up capital necessary for on-going operations. Furthermore, FQHMOs currently are allowed to offer a multitude of other products outside their service area and no additional financial requirements are imposed when they do so. Therefore, it was not reasonable to impose special financial requirements on a legal entity just because it chooses to operate a non-qualified health benefits plan within the FQHMO service area.
- *Sufficient cash flow.* We considered increasing the requirements from "sufficient cash flow and adequate liquidity" to "positive working capital." We chose to retain the existing requirement and not adopt the more stringent positive working capital requirement for the same reasons we chose to retain the same net worth requirement. We believe that changing the existing requirement would not result in more effective safeguards to the viability of the FQHMO and would have created more burdens on the industry without a commensurate benefit to the government. Furthermore, the positive working capital requirement would have been unenforceable since the normal ebb and flow of business affairs cannot be monitored on a daily basis. Therefore, by retaining "sufficient cash flow," we are recognizing that the legal entity must be able to maintain its accounts payable at a level that assures reasonably prompt payment of bills.
- *Cumulative net operating surplus.* We considered requiring that net worth be restricted if the legal entity or its predecessor entity (that is, the FQHMO) could not meet the existing requirement that it have a cumulative net operating surplus for the period covering the three most recent fiscal years and a net operating surplus during the most recent fiscal year. Under the existing regulations, if this test is not met the organization is required to submit a financial plan satisfactory to the Secretary to achieve net operating surplus within the available fiscal resources.

We chose to retain the existing requirements because we concluded that restricting net worth would be unduly burdensome and would not substantially increase the likelihood that the organization would remain fiscally sound. Instead, by continuing to require a financial plan for the FQHMO component that can be monitored on an on-going basis, HCFA can closely evaluate the progress of the organization in strengthening its financial position. We believe this is sufficient.

However, we do intend to increase, at the discretion of the Secretary, the reporting requirements for legal entities operating FQHMOs as a component which do not meet the operating surplus test. In this regard, we intend to reserve for ourselves the option of requiring more frequent reporting, a more specific corrective action plan or other evidence which can assure the Secretary that the organization will be able to maintain on-going operations. These increased requirements can be imposed on a case by case basis through the compliance monitoring process and might, if appropriate, include a requirement that net worth be restricted to provide HCFA with greater assurances that the organization will remain viable.

We have also added a requirement that the FQHMO component be viable. Thus, if the FQHMO component by itself does not have an adequate history of operating surpluses, we will have the authority to request a financial plan. In this way, we can safeguard the interests of the FQHMO enrollees by on-going monitoring of the FQHMO operations. If financial performance deteriorates, we may have concerns about the quality of care provided by the FQHMO. By adding this requirement, we will be able to request corrective action on the part of the FQHMO component specifically.

Thirdly, we considered allowing net worth together with a history of producing net income to substitute for "other arrangements" as described by § 417.107(a)(3)(i)(D) as a way of demonstrating compliance with the insolvency provisions of the law. Contrary to the decision to utilize the same test for fiscal soundness for both a legal entity and a component of a legal entity, we are proposing to place more stringent requirements for insolvency protection in cases where the FQHMO is a component of a legal entity or where the FQHMO offers other health benefits plans outside the qualified service area. In these cases, we are proposing to not allow net worth and a history of producing net income to substitute for restricted reserves because we are not convinced that this will provide adequate protection of FQHMO enrollees in the event of insolvency of the legal entity.

The new option available for an organizational structure creates a potential for more complex and diverse organizations to be able to operate FQHMOs. A costly downturn in one or more of the businesses of the legal entity could occur quite rapidly. In the event of insolvency, the enrollees, creditors and vendors of all the businesses of the

legal entity will make claim to the assets of the legal entity. Thus, rather than allowing net worth and a history of operating surplus to substitute for reserves, we believe the most effective way to protect enrollees is by requiring that the FQHMO or the legal entity as appropriate establish a restricted reserve which can be used only for the explicit purpose of protecting the enrollees of the FQHMO in the event of insolvency. The restricted reserve would have to be held through a Trust Agreement with a bank or some other arrangement satisfactory to the Secretary. Under such an arrangement funds are deposited into the account for use only upon arrival of a specific third party, such as the State Insurance Commissioner or the Secretary, in the event of insolvency or bankruptcy of the legal entity. In this way, we hope to deter the courts from allowing other "injured parties" to have access to these reserves prior to settling the claims of the FQHMO enrollees.

Finally, we considered changing the current practice of allowing FQHMOs to offer other health benefits plans outside their service area to require that these organizations establish a legal entity which would operate the FQHMO and the other health benefits plans as separate lines of business. Under this option, each of these lines of business and products offered by the FQHMO would operate under different names. Upon analysis of the statute and the legislative history of the 1988 Amendments, we concluded that the Congress did not intend to change the status quo for existing FQHMOs, but rather to broaden opportunities. The change described above would have created limitations on the practices of FQHMOs that have been allowed for many years. Therefore, we further concluded that the restrictions imposed on organizations by title XIII only apply to activities within a specified service area.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO).

Part 417 of Chapter IV of title 42 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); section 9312(c) of Public Law 99–509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

2. Section 417.1 is amended by revising the definition of *health maintenance organization* and adding, in alphabetical order, a definition of *self-referral option*, to read as follows:

§ 417.1 Definitions.

* * * * *

Health maintenance organization (HMO) means a public or private legal entity or a distinct component of such a legal entity that—

(1) Is organized under the laws of any State for the purpose of providing or arranging for the provision of basic and supplemental health services; and

(2) Meets the requirements of section 1301 of the PHS Act and the regulations in subparts B and C of this part and §§ 417.168 and 417.169.

* * * * *

Self-referral option means the option that an HMO may offer its enrollees permitting them to obtain certain specified basic health services (which are not emergency services) from sources other than the HMO, in accordance with the rules set forth in § 417.107.

* * * * *

§ 417.101 [Amended]

3. In § 417.101, paragraph (e) is removed.

4. In § 417.103, paragraph (c) is revised to read as follows:

§ 417.103 Providers of basic and supplemental health services.

* * * * *

(c) Paragraph (a) of this section does not apply to the provision of the services of a physician if any of the following conditions is met:

(1) The HMO determines that the services are unusual or infrequently used services.

(2) Because of an emergency, it was medically necessary to provide the services to the enrollee other than as required by paragraph (a) of this section.

(3) The services are provided as part of the inpatient hospital services by employees or staff of a hospital, or provided by staff of other entities such as community mental health centers, home health agencies, visiting nurses' associations, independent laboratories, or family planning agencies.

(4) The services are provided under the self-referral option described in § 417.107.

* * * * *

5. In § 417.104, paragraph (a) is revised to read as follows:

§ 417.104 Payment for basic health services.

(a) *Basic health services payment.* Each HMO must provide or arrange for the provision of basic health services for a basic health services payment that is subject to the following requirements and options:

(1) The payment must be paid on a periodic basis without regard to the dates these services are provided.

(2) The payment must be fixed without regard to the frequency, extent, or kind of basic health services actually furnished.

(3) Except as provided in paragraph (c) of this section, the payment must be fixed under a community rating system, as described in paragraph (b) of this section.

(4) The payment may be supplemented by nominal copayments that may be required for the provision of specific basic health services. Each HMO may establish one or more copayment options calculated on the basis of a community rating system.

(i) Except as provided in § 417.107, an HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to an enrollee, nor in the aggregate more than 20 percent of the total cost of providing all basic health services.

(ii) To ensure that copayments are not a barrier to the utilization of health services or to enrollment in the HMO, there is also a limit on copayments for any calendar year. An HMO may not impose on any subscriber (or enrollee covered by the subscriber's contract with the HMO), copayment charges that exceed 200 percent of the total annual premium that the subscriber (or enrollee) would pay if enrolled under an option with no copayments. This limitation applies only if the subscriber (or enrollee) demonstrates that copayments equal to 200 percent of total premiums have been paid in that calendar year.

(5) If an HMO permits basic health services to be obtained through the self-referral option described in § 417.107, the basic health services payment may be supplemented for these services as follows:

(i) By a reasonable deductible when the service is a physician service.

(ii) By a separate system of copayments that apply only to services obtained through the self-referral option. These copayments are not subject to the limitations set forth in paragraph (a)(4)(ii) of this section.

* * * * *

6. A new § 417.107 is added to read as follows:

§ 417.107 Self-referral option.

(a) *General rule.* An HMO may make available to its enrollees a self-referral option under which they may obtain—

(1) Basic health services that are physician services (as specified in § 417.101(a)(1)), from physicians or other health professionals who are not employed by, under contract or other arrangement with, or otherwise affiliated with the HMO; and

(2) Other basic health services from providers not affiliated with the HMO if—

(i) The services are obtained on the basis of referral by a physician described in paragraph (a)(1) of this section; and

(ii) The HMO preauthorizes the service.

(b) *Scope of self-referral option.* If an HMO makes available to its enrollees a self-referral option, the HMO:

(1) May establish the scope of the self-referral option, including the particular types of services that may be obtained on a self-referral basis, the enrollees to whom it offers the self-referral option, and the copayments and deductibles charged. However, if the HMO offers the option to a particular group, the copayments and deductibles established for the group must apply to all enrollees of the group.

(2) Must establish a plan, including limits and restrictions, for authorizing the provision of basic health services other than physicians' services by unaffiliated providers and health professionals if those services are prescribed by a physician seen on a self-referral basis.

(c) *Approval of self-referral option*—(1) HCFA must approve in advance the establishment or modification of a self-referral option.

(2) To secure HCFA's initial and continuing approval of a self-referral option, the HMO must demonstrate to HCFA's satisfaction that it meets all the requirements of paragraph (d) of this section.

(d) *Requirements for approval.* The HMO must demonstrate that it continues to comply with all requirements for Federal qualification, including that all the basic health services are available and accessible through affiliated providers and health professionals and that, under the self-referral plan, the HMO meets the following requirements:

(1) Limits physician services obtained through self-referral so that expenses for those services are no more than ten percent of the HMO's total expenses for basic health services that are non-emergency physician services.

(2) Maintains incentives for enrollees to use services as provided or arranged for by the HMO.

(3) Maintains systems for planning, organizing, administering, and monitoring the self-referral option as a means of ensuring compliance with all requirements for Federal qualification (as set forth in subparts B and C of this part).

(4) Maintains a specific system for recording and evaluating the HMO's experience with the self-referral option in order to document continued compliance with the ten percent limit in paragraph (d)(1) of this section. The system must include information on expenses and utilization based on actuarially-certified estimates and experience as it becomes available.

(5) Processes and pays claims resulting from the option.

(6) Provides enrollees with a full and understandable explanation of the self-referral option. This information must include the following:

(i) Services covered.

(ii) Limitations or restrictions on services.

(iii) Eligibility requirements.

(iv) Procedures for obtaining services.

(v) Enrollee responsibilities.

(vi) Payment policies.

(vii) Enrollee cost-sharing requirements (including non-covered expenses).

(viii) The inability of the HMO to ensure the quality of these services.

(ix) Impact on continuity of care.

(7) Provides reports to HCFA as follows:

(i) *Content.* The reported information must include expenses paid, incurred and reported expenses not yet paid, and estimates of incurred but not yet reported claims.

(ii) *Frequency.* The reports must be submitted to HCFA on a quarterly basis or at lesser intervals if specified by HCFA.

(8) For the purposes of § 417.120, maintains an adjusted net worth that is equal to three months of expenses (based on actuarially-certified estimates adjusted for experience) for providing the self-referral option. For purposes of the self-referral option, adjusted net worth means net worth excluding land, buildings, equipment, guarantees, intangibles and restricted reserves.

(9) Has in place arrangements to cover at least four months of expenses for the self-referral option if the HMO becomes insolvent.

(10) Ensures that all physician services are furnished by a licensed physician or by another health professional authorized under State law to provide those services.

(e) *Enforcement*—(1) If, at any time, the HMO's ratio of total expenses for self-referred physician services to total expenses for all physician services exceeds ten percent, the HMO must—

(i) Submit a corrective action plan to HCFA;

(ii) Initiate corrective action that is approved by HCFA; and

(iii) Cease marketing the self-referral option.

(2) If HCFA is not satisfied with the HMO's corrective actions, HCFA may revoke approval of the HMO's self-referral option. When approval is revoked, the HMO must cease marketing and offering the option. The HMO may continue to administer the option for contract agreements in effect at the time approval is revoked, but only until the time period covered by such agreements expires.

7. In § 417.120, paragraph (a) is revised to read as follows:

§ 417.120 Fiscally sound operation and assumption of financial risk.

(a) *Fiscally sound operation*—(1) *General requirements.* Each HMO or legal entity of which the HMO is a component must have a fiscally sound operation, as demonstrated by the following:

(i) Total assets greater than total unsubordinated liabilities. In evaluating assets and liabilities, loan funds awarded or guaranteed under section 1305 of the PHS Act are not included as liabilities.

(ii) Sufficient cash flow and adequate liquidity to meet obligations as they become due.

(iii) A net operating surplus, or a financial plan that meets the requirements of paragraph (a)(2) of this section.

(iv) An insolvency protection plan that meets the requirements of § 417.122(b) for protection of enrollees.

(v) A fidelity bond or bonds, procured and maintained by the HMO or the legal entity, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the HMO or the legal entity.

(vi) Insurance policies or other arrangements, secured and maintained by the HMO or the legal entity and approved by HCFA to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks.

(2) *Financial plan requirement*—(i) If an HMO that is a legal entity, or a legal

entity of which an HMO is a component, has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year or does not have a positive net worth, the HMO or legal entity must submit a financial plan. The financial plan must be satisfactory to HCFA and must describe projected operations of the HMO or legal entity that will enable it to achieve net operating surplus within available fiscal resources.

(ii) This plan must include:

(A) A detailed marketing plan;

(B) Statements of the legal entity's revenues and expenses on an accrual basis, including a projection of revenues and expenses for the HMO if the HMO is a component of a legal entity or if the HMO offers other benefit packages in the service area;

(C) Sources and uses of funds statements; and

(D) Balance sheets.

* * * * *

8. In § 417.122, paragraph (a) is revised to read as follows:

§ 417.122 Protection of enrollees.

(a) *Liability protection*—(1) Each HMO or legal entity of which the HMO is a component must adopt and maintain arrangements satisfactory to HCFA to protect the HMO's enrollees from incurring liability for payment of any fees that are the legal obligation of the HMO or the legal entity. These arrangements may include any of the following:

(i) Contractual arrangements that prohibit the HMO's health care providers used by the enrollees from holding any enrollee liable for payment of any fees that are the legal obligation of the HMO or the legal entity of which the HMO is a component.

(ii) Insurance, acceptable to HCFA.

(iii) Financial reserves for uncovered liabilities that are acceptable to HCFA, are restricted for use only in the event of insolvency or bankruptcy, and are held for the explicit purpose of protecting the HMO's enrollees from liability for payment of any fees that are the legal obligation of the HMO or of the legal entity of which the HMO is a component. Arrangements that are acceptable to HCFA are trust agreements that include a provision which requires the approval of the State insurance commissioner or other State official with like authority before reimbursement can be made from the reserve. For purposes of this paragraph, "uncovered liabilities" are defined as any health care service cost for which an enrollee may be held liable in the event of the HMO's or legal entity's insolvency or bankruptcy.

(iv) Any other arrangements acceptable to HCFA. If the HMO is a legal entity, and operates no other businesses, a history of sufficient net worth together with a history of operating surplus might be considered satisfactory. However, if the HMO is a component of a legal entity or operates other health benefits plans (inside or outside of its service area), the uncovered liabilities of the HMO must be protected through the use of financial reserves, as described in paragraph (a)(1)(iii) of this section.

(2) The requirements of this paragraph do not apply to an HMO or the legal entity of which the HMO is a component if HCFA determines that State law protects the HMO enrollees from liability for payment of any fees that are the legal obligation of the HMO or of the legal entity of which the HMO is a component.

* * * * *

9. A new § 417.123 is added to read as follows:

§ 417.123 Use of a guarantor.

(a) *Definition. Guarantor* means an organization that has been approved by HCFA, in response to a request made under paragraph (e)(3) of this section, as meeting the requirements of paragraph (e)(4) of this section.

(b) *Basis for use of a guarantor.* If at the time of qualification or at any time after the HMO has been Federally qualified, the HMO or the legal entity of which the HMO is a component does not meet the requirements of §§ 417.120 and 417.122, the HMO or the legal entity may apply to HCFA to have the resources of a guarantor considered for the purpose of meeting these requirements.

(c) *Request for use of guarantor.* The HMO or the legal entity of which the HMO is a component must apply to HCFA in writing to use the financial resources of a guarantor and specify whether the guarantee will be for fiscal soundness or insolvency protection or both. The HMO or the legal entity of which the HMO is a component must submit documentation that the guarantor meets the requirements specified in paragraph (d) of this section. In addition, the HMO or the legal entity must submit the guarantor's independently audited financial statements for the two most recent fiscal years and the guarantor's year-to-date financial statement, including balance sheet, profit and loss statement, and cash flow statement.

(d) *Requirements the organization must meet.* In order for the HMO or the legal entity of which the HMO is a component to use an organization as a guarantor, that organization must meet the following requirements:

(1) Be a legal entity authorized to conduct business within a State of the United States.

(2) Own the majority of voting equity in or directly control the HMO or the legal entity of which the HMO is a component.

(3) Not be under Federal or State bankruptcy or rehabilitation proceedings.

(4) Have a net worth, not including land, buildings, equipment, other guarantees, intangibles and restricted reserves, equal to the greatest of the following:

(i) $5 million; or

(ii) Three months of total operating expenses for the specific HMO that it will guarantee; or

(iii) A net worth in an amount needed to bring the HMO's net worth to a positive figure and that assures that the HMO or the legal entity of which the HMO is a component has sufficient cash flow and adequate liquidity to meet current obligations.

For purposes of insolvency protection only, the guarantor must only meet the greater of paragraph (i) or (ii) of this section.

(5) If the guarantor is regulated by a State insurance commissioner or other State official with like authority, it must meet the net worth requirements of paragraph (d)(4) of this section, with all guarantees and all investments in and loans to organizations covered by guarantees excluded from its assets.

(6) If the guarantor is not regulated by a State insurance commissioner or other State official with like authority, it must meet the net worth requirements of paragraph (d)(4) of this section with all investments in and loans to organizations covered by a guarantee and to related parties (subsidiaries and affiliates) excluded from its assets.

(e) *Multiple-entity guarantees.* If an organization wishes to guarantee more than one HMO or legal entity with an HMO component that it owns or controls, the guarantor must meet the requirements of this section for each HMO or legal entity covered by a guarantee and any other conditions established by HCFA.

(f) *Dual-purpose guarantees.* If an organization wishes to guarantee an HMO or a legal entity with an HMO component for both fiscal soundness and insolvency protection (that is, continuation of benefits in the event of insolvency and protection of enrollees against liabilities), the organization must provide the insolvency protection

through a funded reserve account with a third party restricted for this purpose.

(g) *Guarantee document.* If the request to guarantee an HMO is approved, the HMO or the legal entity must submit to HCFA a written guarantee document signed by the guarantor. The guarantee document must—

(1) State what fiscal soundness requirements are covered by the guarantee;

(2) Establish that the guarantor will assume, on a timely basis, the financial liabilities of the HMO or the legal entity of which the HMO is a component in the event that the HMO or the legal entity is unable to meet its obligations; and

(3) Meet other conditions as established by HCFA.

(h) *Reporting.* The HMO or the legal entity of which the HMO is a component must submit quarterly reports and annual audited financial statements on its own organization and the guarantor. These reports must be submitted in the manner and form requested by HCFA.

(i) *Modification and termination.* The guarantee cannot be modified or terminated unless the HMO—

(1) Requests HCFA's approval at least 90 days before the proposed effective date of the modification or termination; and

(2) Demonstrates to HCFA's satisfaction that the modification or termination will not result in insolvency of the HMO, or failure by the HMO or the legal entity to have total assets greater than total unsubordinated liabilities.

(j) *Nullity of the guarantor agreement.* If at any time the guarantor ceases to meet the requirements of paragraph (d)(4) of this section, the agreement with HCFA is immediately null and void, and the HMO or the legal entity must meet the requirements of §§ 417.120, 417.122, and 417.124(a).

10. In § 417.124, paragraphs (a) and (b) are revised to read as follows:

§ 417.124 Administration and management.

(a) *General requirements.* Each HMO must have administrative and managerial arrangements satisfactory to HCFA, as demonstrated by at least the following:

(1) The HMO, or the legal entity of which the HMO is a component, must have a policymaking body that exercises oversight and control over the HMO's policies and personnel to ensure that management actions are in the best interest of the HMO and its enrollees.

(2) The HMO must have personnel and systems sufficient for the HMO to organize, plan, control and evaluate the financial, marketing, health services, quality assurance program, administrative and management aspects of the HMO.

(3) The HMO must be managed by an executive who has the authority to bind the legal entity in contracts. If the HMO is itself a legal entity, the appointment and removal of the executive must be under the control of the policymaking body. If the HMO is a component of a legal entity, the policymaking body of the legal entity must be a party to the appointment and removal of the executive.

(b) *Full and fair disclosure*—(1) *Basic rule.* Each HMO must prepare a written description of the following:

(i) Benefits (including limitations and exclusions).

(ii) Coverage (including a statement of conditions on eligibility for benefits).

(iii) Procedures to be followed in obtaining benefits and a description of circumstances under which benefits may be denied.

(iv) Rates.

(v) Grievance procedures.

(vi) Service area.

(vii) Participating providers.

(viii) Financial condition including at least the following most recently audited information on the HMO or the legal entity of which the HMO is a component: Current assets, other assets, total assets; current liabilities, long term liabilities; and net worth.

(ix) Organizational relationships, to the extent specified by HCFA (including, but not limited to, a description of other businesses operated by the HMO or the legal entity of which the HMO is a component, the names of other health benefits plans offered, and the geographic areas they serve).

(2) *Requirements for the description*—(i) The description must be written in a way that can be easily understood by the average person who might enroll in the HMO.

(ii) The description of benefits and coverage may be in general terms if reference is made to a detailed statement of benefits and coverage that is available without cost to any person who enrolls in the HMO or to whom the opportunity for enrollment is offered.

(iii) The HMO must provide the description to any enrollee or person who is eligible to elect the HMO option and who requests the material from the HMO or the administrator of a health benefits plan. For purposes of this requirement, "administrator" (of a health benefits plan) has the meaning it is given in the Employment Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1002(16)(A).

(iv) If the HMO provides health services through individual practice associations (IPAs), the HMO must specify the number of member physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

(v) If the HMO provides health services other than through IPAs, the HMO must specify, for each ambulatory care facility, the facility's address, days and hours of operation, and the number of physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

* * * * *

11. Section 417.126 is revised to read as follows:

§ 417.126 Recordkeeping and reporting requirements.

(a) *General reporting and disclosure requirements.* Each HMO must have an effective procedure to develop, compile, evaluate, and report to HCFA, to its enrollees, and to the general public, at the times and in the manner that HCFA requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the following:

(1) The revenues and expenses of its operations.

(2) The patterns of utilization of its services.

(3) The availability, accessibility, and acceptability of its services.

(4) To the extent practical, developments in the health status of its enrollees.

(5) Information demonstrating that the HMO has a fiscally sound operation. If the HMO is a component of a legal entity, the legal entity and the HMO component must meet this requirement as directed by HCFA.

(6) Other matters that HCFA may require.

(b) *Significant business transactions.* Each HMO or, as directed by HCFA, the legal entity of which the HMO is a component, must report to HCFA annually, within 120 days of the end of its fiscal year (unless for good cause shown, HCFA authorizes an extension of time), the following:

(1) A description of significant business transactions (as defined in paragraph (c) of this section) between the HMO that is a legal entity and a party in interest, or between a legal entity and a party in interest if the transaction involves or affects the HMO component.

(2) With respect to those transactions—

(i) A showing that the costs of the transactions listed in paragraph (c) of this section do not exceed the costs that would be incurred if these transactions were with someone who is not a party in interest; or

(ii) If they do exceed, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements.

(3) A combined financial statement for the HMO or, as directed by HCFA, the legal entity of which the HMO is a component, and a party in interest if either of the following conditions is met:

(i) Thirty-five percent or more of the costs of operation of the HMO go to a party in interest.

(ii) Thirty-five percent or more of the revenue of a party in interest is from the HMO.

(c) *"Significant business transaction" defined.* As used in paragraph (b) of this section—

(1) *Business transaction* means any of the following kinds of transactions:

(i) Sale, exchange or lease of property.

(ii) Loan of money or extension of credit.

(iii) Goods, services, or facilities furnished for a monetary consideration, including management services, but not including—

(A) Salaries paid to employees for services performed in the normal course of their employment; or

(B) Health services furnished to the HMO's enrollees by hospitals and other providers, and by HMO staff, medical groups, or IPAs, or by any combination of those entities.

(2) *Significant business transaction* means any business transaction or series of transactions of the kind specified in paragraph (c)(1) of this section that, during any fiscal year of the HMO or the legal entity of which the HMO is a component, have a total value that exceeds $25,000 or 5 percent of the HMO's total operating expenses, whichever is less.

(d) *Requirements for combined financial statements*—(1) The combined financial statements required by paragraph (b)(3) of this section must display in separate columns the financial information for the HMO and each of these parties in interest.

(2) Inter-entity transactions must be eliminated in the consolidated column.

(3) These statements must have been examined by an independent auditor in accordance with generally accepted accounting principles, and must include appropriate opinions and notes.

(4) Upon written request from an HMO or legal entity of which the HMO is a component showing good cause, HCFA may waive the requirement that its combined financial statement include the financial information required in this paragraph (d) with respect to a particular entity.

(e) *Reporting and disclosure under ERISA*—(1) For any employees' health benefits plan that includes an HMO in its offerings, the HMO or legal entity of which the HMO is a component must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the particular HMO) under the Employee Retirement Income Security Act of 1974 (ERISA).

(2) The HMO or legal entity of which the HMO is a component must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

(f) *Differentiation of components.* If the HMO offers, or is part of a legal entity that offers, another health benefits plan, as defined in § 417.150, the HMO must—

(1) Be a distinct component that is clearly differentiated from other health benefit plans;

(2) Have processes and records in place that allow the entity to separately identify the enrollees of the Federally-qualified HMO at all times; and

(3) Have a distinct name.

12. Section 417.143 is amended by revising paragraph (a) to read as follows:

§ 417.143 Application requirements.

(a) *General requirements.* This section sets forth application requirements for legal entities or components of legal entities that seek Federal qualification as HMOs; HMOs that seek expansion of their service areas; and HMOs that seek qualification of their regional components as HMOs.

* * * * *

13. Section 417.152 is amended by revising paragraph (c) to read as follows:

§ 417.152 Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response.

* * * * *

(c) *Required information.* The request must include the following information:

(1) Documented evidence that HCFA has determined that the HMO is a qualified HMO in accordance with section 1310(d) of the PHS Act and subpart D of this part.

(2) A description of the HMO's service area or proposed service area and the dates basic and supplemental health services will be provided in the area or areas.

(3) Documentation of whether the health professionals who provide basic health services are—

(i) Members of the staff of the HMO;

(ii) Members of individual practice associations;

(iii) Health professionals who have contracted with the HMO for the provision of these services; or

(iv) Any combination of the above.

(4) If the HMO provides health services through individual practice associations, a listing of member physicians by name, specialty, and whether they are accepting new patients from the HMO's enrollment. This listing must be current within 90 days of the date of the request for inclusion.

(5) If the HMO provides health services other than through individual practice associations, each ambulatory care facility's address, days and hours of operation, a statement as to whether it is accepting new patients from the HMO's enrollment, and the names and specialties of the facility's providers of basic and supplemental health services. This information must be current within 90 days of the date of the request for inclusion.

(6) A listing of the hospitals where HMO enrollees will be provided basic and supplemental health services.

(7) The name of the HMO or the legal entity of which the HMO is a component, and the following information:

(i) The name of the legal entity and whether for profit or non-profit, public or private, sole proprietorship, partnership, or stock or non-stock corporation.

(ii) The owners of the legal entity.

(iii) The members of the policymaking body of the legal entity.

(iv) The principal managing officer of the HMO.

(v) The names of other health benefit plans offered by the legal entity to employers in the same service area as the Federally-qualified HMO.

(8) A statement of the HMO's capacity to accept new enrollees and the likelihood of any future limitations on enrollment.

(9) The most recently audited annual financial statements of the HMO or the legal entity of which the HMO is a component.

(10) Proposed implementing agreements between the HMO and the employer, public entity, or designee for the HMO offering.

(11) Sample copies of solicitation brochures and enrollment literature that will be used in the offer of the HMO alternative to employees.

(12) A statement of the HMO's current rates, including any copayments, for basic (and uniformly included supplemental) health services and the dates these rates became effective. If

current rates are not available, state the HMO's estimated rates for these services.

(13) A description of any self-referral option that the HMO makes available to its enrollees, and specify any current deductibles and copayments for basic health services obtained through self-referral, imposed in accordance with § 417.104(a)(5), and the date these rates became effective. If current rates are not available, state the HMO's estimated rates.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 22, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15607 Filed 7–14–93; 8:45 am]

BILLING CODE 4120–01–M

VOL 58 ISS 134 JL 15 1993 UMI

federal register

Thursday
July 15, 1993

Part III

Department of the Interior

Bureau of Land Management

43 CFR Parts 3730 et al.
Rental Fees, Mining Claim Recordation, and Assessment Work; Rule

VOL
58
ISS
134
JL
15
1993
UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, and 3850

[WO-660-4191-02-24 1A; Circular No. 2648]

RIN 1004-AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (the Act) that requires an annual rental fee of $100 for each mining claim and site located and held under the General Mining Law of 1872 for fiscal years 1993 and 1994. The final rule establishes the procedures for paying and administering the required annual rental fee, puts into regulation the statute's mandatory payment deadlines and its mandatory provision that failure to pay the rental fee on time constitutes abandonment of the claim or site, amends the recording and assessment work regulations to conform to the requirements of the Act, and establishes procedures by which small miners may obtain an exemption. The final rule also makes minor technical amendments to existing regulatory provisions to clarify procedures and further to implement the Federal Land Policy and Management Act of 1976, as amended (FLPMA).

EFFECTIVE DATE: July 15, 1993.

ADDRESSES: Any suggestions or inquiries should be sent to: Director (660), Mail Stop 501, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (702) 785-6576, or Frank Bruno (202) 653-5182.

SUPPLEMENTARY INFORMATION: A proposed rule amending certain sections of the regulations at 43 CFR 3730, 3820, 3860, and 3850 was published in the **Federal Register** on March 5, 1993 (58 FR 12878). There were 240 comments received concerning the proposal: 153 from individuals, 1 petition with 18 signatures, 52 from mining businesses, 19 from associations, 6 from offices of Federal agencies, 1 from State government, 8 from attorneys, and 1 from members of Congress. These comments were from all regions of the United States, but the majority originated from the public lands States west of the Mississippi River.

The Department of the Interior, in accordance with 5 U.S.C. 553(d), for good cause finds that it would not be in the public interest to delay the effective date until 30 days after publication. The mining industry needs as much time as possible to prepare to comply with the rule, and the Bureau of Land Management State Offices will not be able to accept filings and payments, or to assist the public in other ways, until the rule is effective.

The comments addressed all aspects of the proposed rule. They were all given careful consideration and are addressed in this preamble, either as general comments or specific comments dealing with particular provisions of the proposed rule. Descriptions of the comments and discussion of their consideration are grouped into either the general comments or specific comments sections below. Many comments criticized the Act requiring the rule and the rule itself. Since the requirements of the Act cannot be amended by this rule, the function of which is to implement the Act, these criticisms are not addressed here except where there may be sufficient confusion concerning the explicit requirements of the Act.

General Comments

Many comments stated that most small miners will not be able to afford the fee or that the fee would have a depressing effect on the mining industry and western economies generally. The rule cannot be amended based on these possible economic effects of the fee, because it has been required by Act of Congress. However, there is discussion later in this preamble concerning whether this rule is a major rule, a determination based primarily on its economic effect.

Many comments also stated that the rule would cause many claims to be abandoned. This may be true; in part, the law and the regulations will have the effect of encouraging the abandonment of frivolous claims that may interfere with multiple use of the public lands.

Several comments supported the fee and some called for consideration of larger fees, more stringent small miner qualifications, or different treatment for lode, placer, and mill site claims. This rule cannot incorporate requirements that go beyond the statutory language.

Two comments said that the proposed rule was confusing. Every effort has been made to make the rule understandable. Field office personnel of the BLM will be prepared to assist the public in complying with the new requirements.

Several comments said that the fee was a burden because only a few months will be left for all of the mining operators to make decisions and act before the fee is due. While it is true that the final rule is being put into place about two months before the fee is due, the general intent of the law and its deadlines have been known since last October. On October 16, 1993, BLM published a notice (57 FR 54102) that the Act had been passed and that the rental fees would go into effect and be payable on or before August 31, 1993. Miners were actually and constructively notified of the law and should be prepared to meet the processing requirements outlined in this final rule.

Several comments asked about the effect of this rule on State law. State law requirements are still required to be followed. Claimants should consult with the States for these requirements. One comment suggested that a provision be inserted to relieve miners from complying with State law. The States will determine what effect, if any, the Act has on their laws.

One comment said that mention of the fees required for oil shale claims under the Energy Policy Act would be confusing under this rule. The fee requirements of the Energy Act must be mentioned, however, because they supersede the requirements of this rule and this must be made clear.

One comment said that the rule should address what will take place in 1995 and beyond. The rule has been written to explain what is required under the new legislation, making clear that the rental fee payment requirement will not apply beyond September 30, 1994, absent further legislation.

Two comments said that the fee does nothing to combat nuisance mining claims because no one would hold a claim if there was no intent to mine, and the fee does not require that work be done on a claim. One comment addressed BLM's statement that the effect of the fee would be to reduce unnecessary surface disturbance and implied that a significant amount of exploration work done in frivolous. Some individuals hold mining claims on Federal lands that are not being diligently developed, but those who are seriously performing exploration work were not meant to be considered in this group. While it is true that the fee does not specifically require diligence, it does impose a cost on the claimant and thus is a disincentive to hold claims that are not being diligently worked. There is also an obvious benefit to the

taxpayer in that the fee is paid to the government.

One comment said the rule was unconstitutional because mining claims recorded prior to the date of the Act are legal contracts and subject only to laws in effect prior to the date of claim location. The comment also stated that the rule is required to be based on law passed by Congress. The rule is based on the Department of the Interior Appropriations Act for 1993, passed by Congress and signed into law on October 5, 1992, which contained the language requiring the fee. In addition, as found in *Last Chance Mining Co.* v. *United States*, 12 Cl. Ct. 551, 555–556 (Cl. Ct. 1987), *aff'd* 846 F.2d 77 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 823 (1988), the statutes and regulations involving the general mining law "do not purport, even by implication, to constitute an offer * * *, it is certainly not an offer to contract." Therefore, the location of a mining claim does not establish a contract and is not subject to contractual legal theory.

Several comments rejected the finding in the preamble that this was not a major rule because it would not have an annual effect on the economy of $100 million or more. They stated that economic multiplier effects would increase the effect beyond $100 million, and that small miners are the principal explorers in the industry and would drop claims for financial, not technical, reasons and eventually would become virtually extinct. The comments referred to a survey of Alaska miners by the Alaska Miners Association, which concluded that more than half of all active Federal claims will be abandoned and that there will be a 50 to 75 percent reduction in exploration expenditures as a result of the fee. We disagree that the effect to the economy will be more than $100 million. The best estimate of the number of active claims on Federal land on the date of the Act is about 900,000. If imposition of the fee results in a 25% drop in claims, 225,000 claims would be dropped. The vast majority of these claims will have had little or no activity on them because claims with good prospects or production would more likely be maintained. Therefore, the economic effect of the loss of these valueless or minimal value claims being dropped will be de minimus. In addition, it is estimated that 380,000 claims may not be subject to the rental fee due to the small miner exemption. This leaves approximately 295,000 claims for which the annual fee would be paid, totaling $29.5 million per year (about $60 million in the first year because both annual payments are due by August 31, 1993, but closer to $5 million in the second year because fees will only be paid on new locations during that year), and well below the $100 million threshold. (It is estimated that the number of new claims located will be approximately one half of those located annually before enactment of the Act, or 40,000.) Small companies with good claim prospects would not be significantly dissuaded from pursuing these claims. In short, only claimants holding claims upon which little or no activity is taking place should find the fee economically prohibitive. Therefore, the fee requirement will not be enough to affect the economy beyond the $100 million level. Admittedly, it is difficult to make such projections, and it is likely that any projection will be proven to be somewhat over- or under-estimated in the end. Also, it is important to note that a certain amount of fluctuation above and below the $100 million annual economic impact figure is allowed for the purposes of determining whether a rule is major. Finally, it should be added that the basic provisions of this rule would be required to be promulgated regardless of any conjectural finding that the rule is major, because these provisions are required by Act of Congress.

One comment disagreed with the statement in the preamble that the rule did not constitute a taking. The comment stated that it constituted a taking because it unexpectedly required a payment of substantial fees. The fee is not expected to cause a taking because payment of the fee will not foreclose all reasonable possibility of the development of a valuable mining deposit, particularly since it in many cases replaces assessment work of equal value.

Several comments urged that existing claims be grandfathered and not be subject to the fee, but this is not possible since the Act specifically provides that "each unpatented mining claim" is subject to the fee. The Act does not generally except existing claims.

One comment said that the fee is unneeded because existing laws are not being enforced and other measures could be taken for the government to achieve the same results and effects as the fee. No other options can be considered in this rule, because the fee is statutorily required, and the rule must therefore be promulgated to implement the fee.

Two comments did not deal specifically with the issues of the rule.

Four comments called for a public hearing regarding the issues of this rule. Administrative hearings for this purpose were not scheduled because the basic fee and exemptions have already been determined by Congress, and are not practicable because it is imperative that the rule be finalized as soon as possible because of the approaching payment deadline.

One comment asked whether a notice of intent to hold could be filed in lieu of paying the rental fee. The answer is no; the only expressly stated exemption from paying the rental fee for claims on public domain lands applies to small miners. Also, a prerequisite for receiving the small miner exemption under the statute is that exploration or production work if performed on 10 or fewer claims, while the purpose of a notice of intent to hold is to allow claimants to maintain claims without developing them.

One comment suggested that a separate arrangement be created for prospectors that would continue to encourage prospecting. This is not possible because the statutory basis for the rule does not contemplate such an arrangement.

Two comments questioned what a claimant is renting when paying the rental fee. The purpose of the provision in the Act is to require miners to pay for utilizing Federal land for mining or mine development activities before it is patented.

One comment asked whether placer mining claims are exempt from the rule. They are not. The Act explicitly covers "each unpatented mining claim, mill or tunnel site."

Two comments questioned the statement in the preamble that a notice of intention to hold that is required under FLPMA would still be required. This statement in the proposed rule preamble was in error. The rental fee requirement can be satisfied by either paying the rental fee or filing the certification of exemption. If, under the Mining Law, assessment work is not required, FLPMA still requires a notice of intention to hold, regardless of rental payments. However, BLM has decided to accept the fee in lieu of a Notice of Intent to Hold, so the Notice is not required in addition to the fee payment. Language has been added to the rule at §§ 3833.0–5(t), 3833.1-5(g), and 3833.1-7(c) to make this clear.

One comment wanted clarification on whether filing notices of intention to hold mill and tunnel sites was still required and whether the tunnel site diligence provision of 30 U.S.C. 27 was affected. The filing of notices on these sites is not required for those who pay the fee and the cited diligence provision is not affected by this rule.

One comment asked whether the rule can address access issues, but this is not

the purpose of the rule, and it does not affect access issues.

Two comments asked where the statute calls for claims to be voided for non-compliance. The statute does not use the word "void" but it specifically states that failure to pay the fee conclusively constitutes abandonment of the mining claim. In such cases BLM routinely issues a decision to void the claim.

One comment states that the rule should address situations where an insufficient amount of money is submitted to cover the claims desired to be held. This will be handled in a similar way to existing BLM manual policy procedures in that the filing will not be totally rejected and fees that are sufficient to cover a percentage of listed claims will be credited to hold those claims and the others will be rejected. Filings that are submitted without fees will not be accepted and will be returned to the claimant/owner without further action. Section 3833.1–3 has been amended to provide for this process.

One comment recommended a sliding scale that would raise the fee per claim for claimants who hold larger claim blocks. This is not possible because the statutory language requires one $100 fee per claim.

One comment stated that, instead of the fee, the assessment work requirement should be increased to $1,000 per year. This is not possible because the statutory language does not allow it, nor does any other provision in the Mining Law.

A comment disputed the proposed rule's preamble, which stated that only speculative and marginal claims would be dropped. The comment cited figures provided by mining companies that indicate a large percentage of active claims in the correspondent's State will be dropped and that many of these would be legitimate, rather than "nuisance" claims. A legitimate mining claim could be defined as one that may have some marginal prospects in the distant future. It is true that some of these may be dropped, but it is still likely that most claims that are considered valuable by those who hold them, for either present or future development, will be held despite the rental fee. Those that are dropped may be relocated by the same or new claimants at a later date, perhaps as soon as 1994, unless the lands are withdrawn from mineral entry, so that no resources will be lost to the nation.

43 CFR 3730.0–1

This new section was added pursuant to a comment. It explains the purpose of Public Law 359 and the regulatory framework for it.

43 CFR 3730.0-3

This new section was added pursuant to a comment. It outlines the proper authority for subpart 3730.

43 CFR 3734.1

This section was amended pursuant to a comment in order to explain more succinctly the interrelationship among Public Law 359, which governed mining in powersite withdrawals, the Interior Department and Related Agencies Appropriations Act of 1993, and FLPMA, which superseded the requirements of Public Law 359.

43 CFR 3821.0–3

This new section was added for purposes of clarification in order to relate the subpart to the proper statutory authorities.

43 CFR 3821.2

This section was amended pursuant to a comment. The language is an improvement over the proposed rule language. It also adds that after October 21, 1976, the 90-day recording time frame for new locations under FLPMA superseded the previous 60-day period under 62 Stat. 162, the Act to reopen the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands to exploration, location, entry, and disposition under the general mining laws (O and C Act).

43 CFR 3821.3

This section was amended to add that the $100 fee is also in lieu of a notice of intent to hold.

43 CFR 3833.0–3

The term "non-exempt" was added to paragraph (e) of this section to make it clear that the voiding of claims for failure to pay the fee does not apply to those claims that are exempt because of the small miner exemption.

One comment said that 43 U.S.C. 1212 should be removed from the list of authorities. This section of the United States Code makes it a crime to file false or fictitious documents with the Secretary, and is necessary for the enforcement of the regulations.

43 CFR 3833.0–5

The word "State" was added to paragraph (g) to make it clear that the proper BLM office is the relevant State Office. The word "State" was also added to paragraphs (p) and (t). Paragraph (t) was also amended to make it clear that those who pay the fee are not required to file the Notice of Intent to Hold. The definition in paragraph (v) was reworded to cite the specific instances in which fees are non-refundable. A new paragraph (w) was added to define "age to discretion," the term that was used in the statute and also in this rule.

One comment suggested making it clear that the December 30, 1992, FLPMA filing and the rental fee filing mentioned in paragraph (o) of this section can be filed at the same time, which would save administrative work. This is not possible since the deadline for the FLPMA filing is already in the past. Paragraph (o) was reworded to make it clear that small miners who qualify for the exemption will still be required to make FLPMA filings.

Several comments objected to the proposed change from 20 to 15 days for receipt of documents sent by mail in paragraph (m) of the proposed rule, citing future postal service cuts that may result in delays in delivery. There is no current evidence that future mail service will degenerate. However, BLM will monitor the situation to identify any problems reconciling this regulation with the realities of mail service.

One comment said that the filing years defined in paragraph (o) should be the same, in order to simplify the procedures, but that is not possible because the dates are statutorily set.

Two comments questioned whether the definition of "amended location" in paragraph (p) of this section preempts State law regarding the conveyance of unpatented mining claims. It does not. State law still applies for State filing purposes. This definition is amended to make it clear that transfers of interest submitted to BLM to update BLM records, are required to be submitted in accordance with section 3833.3 only.

43 CFR 3833.1–2

A new section was added as a cross-reference to sections 3741.1 and 3821.2 for claims and sites located on Public Law 359 and O and C Act lands respectively.

43 CFR 3833.1–3

This section has been reworded to clarify the processing of partial payments.

One comment stated that this section does not specify the point at which failure to submit the required rental constitutes abandonment of the claim. This is stated in section 3833.0–3(e).

43 CFR 3833.1–4

One comment asked if there was a service charge for filing for the small miner exemption. As outlined in this section, the answer is no. One comment

stated that the waiver of the $5 service charge for those who pay the fee is not appropriate. This service charge was imposed as a fee to cover administrative costs for the processing of annual filings under FLPMA. Those who pay the $100 rental fee will not be causing the BLM to incur such FLPMA filing processing costs. Additionally, Congress specifically authorized BLM to spend up to $5 million annually, to be taken from rental fee receipts, to run the rental fee program, so the rental fee will partially defray BLM's administrative costs in the same way that the $5 does for FLPMA filings. On the other hand, a claimant who qualifies as a small miner and files for an exemption is still required to complete the annual assessment work and file evidence thereof, together with a service charge of $5 per claim, on or before December 30 of each year.

The word "non-refundable" has been added to paragraph (a) to make this charge consistent with other service charges which are also non-refundable. Paragraph (b) was amended to add that rental fees are also in lieu of notices of intent to hold and that certified exemption statements are not required to be accompanied by a service fee. Paragraph (e) was added to detail how credit card payments may be made. Paragraph (f) was added to outline how declining deposit accounts may be used for payment of fees.

43 CFR 3833.1–5

Paragraphs (a) has been reworded to explain more clearly the rental fees that are due and their deadlines. Paragraph (e) has been added in response to a number of comments. It explains that it is possible for a qualified small miner to claim the exemption for one year, but elect to pay the fee in another year. Paragraph (f) has been added to make clear the final date for filing the required annual $550 rental fee for oil shale claims. Paragraph (g) has been added to make it clear that payment of the rental fee releases the claimant from having to file a notice of intention to hold.

One comment stated that the rental fee for the second year should be sufficient to hold the claim through September 30, 1994, the expiration date of the Act, rather than September 1, 1994. In fact, the effect of that second payment is to hold the claim through the end of the assessment year ending September 1, 1994.

One comment stated that there is a duplication between the fee due upon location of a new claim in the first assessment year and the fee due on August 31, 1993, for the second assessment year. There is no duplication because a fee paid for location in the first year holds the claim until September 1, 1993, at which point the second payment holds the claim for the second assessment year. The first payment upon location is not prorated if the location occurs mid-year.

One comment stated that if a claimant locates a claim in the second assessment year there should be no fee required because such a fee cannot be "in lieu" of assessment work. This is not correct because the statute expressly states that new locations are subject to the $100 fee at the time of recordation. There is no reference in the "new location" provision of the statute to the fee being in lieu of assessment work.

One comment said that the second fee payment should not be due until the end of the second year. The August 31, 1993, due date cannot be changed in this rule, because it is a statutory deadline.

One comment stated that there was no reason to address proration in the rule. It is considered necessary because proration will not be allowed.

One comment asked whether a claimant who pays the fee and later decides to drop the claims can get a prorated refund. This section specifically provides that there can be no proration of rental fees for partial years. When the rental fee is paid, its purpose is to hold the claim for the appropriate assessment year. The law does not provide for pro rata refunds. Fee payment demonstrates an intent to hold the claims for that year.

Three comments objected to the "double payment" on August 31, 1993, for assessment years 1993 and 1994. This is not a double payment in the sense that one would pay twice for the same year; it is a requirement for two payments, one for each of two separate years, but with the same deadline for the payments. The payment requirements and deadlines are set by an Act of Congress, and may not be amended in this rule.

Two comments asked whether the fee was a one-time payment or whether assessment work would also be required by the BLM. This section explains that the fee is required for only two years and the fee requirement will expire on September 30, 1994, and that the fee replaces assessment work, unless the assessment work was performed during the period between September 1 and October 5, 1992, in which case the first year's rental fee is an additional payment. Development or exploration work toward developing a claim and producing ore is not prohibited by the rule, and presumably assessment work done during the five weeks before enactment of the Act furthered development or production.

One comment argued that claimants should be able to apply rental fees paid in assessment years 1993 and 1994 to years after 1994 if the claimant has already completed assessment work in one or both of those years. This is not possible because the statute clearly states that for the effective period of the Act, a claimant either pays the rental or, in some cases, files assessment for those years. The fact that work may have been done on a claim for which a rental fee is paid is of no consequence under the Act. The rental fee requirement expires on September 30, 1994. However, several bills are pending in Congress that could change and/or extend these requirements.

One comment interpreted the proposed rule to say that miners who pay the rental fee would not have to file a plan of operations. This is not true. Nothing in this rule changes the plan of operations requirements.

Two comments stated that the $100 fee should be refundable. The fee will be non-refundable except under certain conditions outlined in section 3833.0–5. Essentially, if a claimant pays the fee and receives the benefit expected from the government (in this case that the claim is held for the period covered by the fee) then the fee is non-refundable. The government cannot be responsible for factors beyond its control, such as if for some reason during the assessment year the claimant no longer finds it advantageous to hold the claim. Additionally, refunds would cause an excessive paperwork burden. The decision to pay the fee and hold a claim for the assessment year is one that the claimant must make without relying on the government to expend scarce resources to compensate the claimant for any business planning adjustments that he or she may have made during the year. However, if the claimant does not receive the benefit expected at the time of fee payment (an example would be that the fee is erroneously paid on a claim that is actually null and void at the time of payment, so that there is no claim to pay a fee on), then a refund would be in order.

Two comments said that the fee should not apply to mill sites or that the fee should be reduced for mill sites, but neither is possible because of the statutory language, which states plainly that the fee does apply to mill sites.

One comment, apparently misunderstanding the proposed rule, said that those who pay the fee for the assessment year ending on September 1, 1994, should not also have to file the

VOL 58 ISS 134 JL 15 1993 UMI

FLPMA assessment filing due on December 30, 1994. The proposed rule in fact provided that only those exempted from the fee by qualifying as a small miner will be required to file annual assessment proofs by December 30, 1994. No change is needed in the final rule for the suggestion in the comment to be implemented.

One comment suggested that the word "year" in the Act should be interpreted as ending on August 31, 1993, rather than September 1, which is the beginning and ending date of the two assessment years. The Act does not define the word "year." The August 31 date is clearly just the payment deadline in the same way that December 30 is the deadline for FLPMA filings. Therefore, it was decided that the definition of "year" that would be most consistent with past practice would be the assessment year.

43 CFR 3833.1–6

Language has been added to paragraph (a)(1) to make it clear that a claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise qualifies for the small miner exemption, is not precluded from paying the rental fee in addition to filing for a small miner exemption. Such a payment would ensure that the claims will not be declared void should the small miner status be denied for a particular claimant. Paragraph (a)(5) has been reworded for clarity, and adds new language to include special use permits for locatable minerals on national forest lands and equivalent State or local permits on non-Federal surface lands as permissible documents for the purpose of qualifying for the small miner exemption. Paragraph (b) was reworded to bring it into agreement with current judicial interpretations and to make reference to other permits being qualifying.

One comment said it was unfair that activity using non-mechanized means did not qualify the claimant for the small miner exemption. This was done because the statute requires that the claims be under a plan or notice, which is not required for most non-mechanized activity.

One commenter asked whether a prospecting club is an "individual" in order to qualify for the small miner exemption. The answer is yes if the claims are located in the name of the club.

The club could be eligible if it holds 10 claims or fewer and meets the remaining requirements for exemption. The members of the club could not each claim a small miner exemption unless claims are each held by one person individually, independently of the club.

One comment asked whether a valid plan of operations is required for operations where no significant disturbance takes place. A plan of operations is required for surface disturbance amounting to 5 acres or more. Operations with only negligible disturbance qualify as casual use under 43 CFR part 3809. One must be under a valid plan or notice in order to qualify for the small miner exemption and if no significant disturbance is taking place, it is not likely that the claimant would be required to file a plan.

One comment stated that no reference should be made to lode and placer claims and that "such" operation should be used rather than "the" operations because the suggested language would conform more precisely with the statute. The language in the proposed rule remains unchanged because it is not in conflict with the statute.

One comment said that paragraph (b) of this section is an unjustified expansion of the statute. It is not considered unjustified because, as with the rest of the rule, it implements in detail what is believed to be the best interpretation of what Congress intended when it passed the Act. The exploration guidelines included are considered to be accepted and routine industry exploration activities.

One comment asked whether assessment work can still be conducted on a percentage of a block of claims to benefit the entire block. The answer is yes, the rule does not change this.

One comment objected to the small miner exemption saying that the average small placer miner could not likely fulfill the work requirement on 10 claims in a lifetime. The comment suggested an alternative fee scheme. The 10-claim exemption and $100 fee is explicit in the statutory language and cannot be changed by regulation.

One comment stated that paragraph (a)(3) of this section appears to violate Constitutional and statutory guarantees against discrimination against women because it limits the rights of a married woman to hold a mining claim. This is a misreading of this provision because it is no way limits a woman's right to hold a mining claim. It treats a married couple as one entity for the purpose of qualifying for the same miner exemption. Both the married woman and man can locate and hold as many mining claims as they wish, but if they want to qualify for the small miner exemption they may hold no more than 10 claims as a family.

The limitation for the purposes of the exemption applies equally to the man as to the woman. It is similar to the limitation put on partnerships, corporations, and others discussed elsewhere in this rule. Finally, the limitation in this provision exists primarily because it is required by the Act.

One comment suggested adding a requirement regarding the evidence needed to certify exploration work by limiting money expended, in order to reduce excess surface disturbance. Surface disturbance is already limited to less than 10 acres, and this suggestion would institute a further restriction that would be impossible to police and is not specifically provided for in the statute.

One comment expressed concern that paragraph (a)(6) of this section could apply to old disturbance not related to the current operation. However, the Act specifies that the surface disturbance is to be " * * * from such mining or exploration operation," which is "under a valid notice or plan of operation." The language of this paragraph likewise specifies that the disturbance is that "* * * caused by the mining or exploration operation."

One comment stated that paragraph (a)(4) excludes any person who owns stock in a mining corporation which holds claims from qualifying personally and separately from the small miners exemption. This is not true because the legal corporation and the individual are separate entities under this section and are separately eligible for the small miner exemption.

Attesting to the ambiguity of the statutory language for the rental fee requirement, many comments were received addressing the two alternative approaches included in the proposed rule as to whether claimants who report that they have done assessment work between September 1 and October 5, 1992, should be excused from paying the rental for the first year.

Four comments supported Alternative One, which required payment from all except those who qualify as small miners, regardless of whether assessment work had been performed during the time in question. One comment came from the Chairman and the Ranking Minority Members of the Appropriations Subcommittee on Interior and Related Affairs of the U.S. House of Representatives. Their comment stated that it was not the intent of Congress to allow an exemption as outlined in Alternative Two, and that Alternative One reflects the will of Congress. They said that such an exemption was included in the House-passed bill, but was struck by the

Senate and not restored in the House-Senate conference. They further said that conferees discussed the deletion and decided that to allow such an exemption would seriously affect the amount of revenue to be generated by the rental fee. The other comments said that work is often not done but assesament work proofs are filed anyway. They said that Alternative Two would further encourage fraudulent reporting of assessment work, and that an adequate monitoring system does not exist. It may be true that fraud exists to some unknown extent. There is no adequate agency system to monitor the reported completion of assessment work for the period between September 1 and October 5, 1992. Because of this practical enforcement concern, the clarification of intent from the Appropriations Subcommittee on Interior and Related Affairs, and the reasoning set forth below, the Department has concluded that claimants who report having completed assessment work between September 1 and October 5, 1992, should be required to pay the rental fee for assessment year 1993. Although the comments from the Appropriations Subcommittee are not binding, the Department finds the reasoning of the comment to be persuasive, authoritative, and in correlation with the arguments made in support of Alternative One in the proposed rule.

In addition to the Congressional comment and the practical enforcement problems entailed in allowing the exemption, the following arguments also favor this alternative. First, the Act of October 5, 1992, does not contain an exemption provision for these claimants. Though earlier versions of the bill contained one, it was removed before enactment. Second, the language of the Act states that the rental fee is in lieu of assessment work "for the assessment year ending at noon on September 1, 1993." 106 Stat. 1378. The assessment year referred to began on September 1, 1992. Therefore, the rental fee requirement is in lieu of assessment work that was conducted or will be conducted during the period beginning on September 1, 1992, and ending on September 1, 1993. Third, the fee is in lieu of filings required by FLPMA that could not be filed for the assessment year beginning on September 1, 1992, until the period running from January 1, 1993, to December 30, 1993. As a result, it was impossible for any claimants to file the FLPMA filing before the enactment of the Act. No claimants, therefore, could have fully completed both requirements that the rental fee is intended to replace during the period between the beginning of the assessment year and enactment of the Act. Fourth, despite the portion of the assessment year that elapsed before the effective date of the Act, the rental fee requirement is prospective in nature because the fee is not due until the future date of August 31, 1993. Although the fee is a new, additional requirement for some claimants, it is nevertheless due prospectively. Last, the legislative history of the statute only shows an express congressional intent to allow an exemption from the rental fee requirement for qualified small miners. 135 Cong. Rec. S15849 (daily ed. September 30, 1992) and 135 Cong. Rec. S15970 (daily ed. October 1, 1992).

Many comments supported Alternative Two. The reasons included the rationale outlined in the proposed rule in addition to arguments of fairness. One comment attached a letter of December 7, 1992, to the Director of BLM from 6 members of Congress, which stated that they believe it was congressional intent to allow the exemption outlined in Alternative Two. Because the previously mentioned letter from the Appropriations Subcommittee was from the leadership of the House subcommittee with jurisdiction, and because the position urged by the December 7, 1992, letter was rejected by the House-Senate Conference Committee before final enactment of the appropriations bill, the Subcommittee letter was accorded more deference.

Several comments asked questions of interpretation if Alternative Two were chosen. Since Alternative One is promulgated in this final rule, these questions are moot, and no discussion is needed of them in this final rule.

Three comments stated that the situation where a small miner takes the exemption in the first assessment year and pays the fee for the second assessment year needed to be clarified. This would be perfectly permissible since the payment of the fee or the filing of assessment work is optional for qualified small miners. A qualified claimant could also pay for the first year and take the exemption for the second year.

One comment said that no one will be able to qualify for the small miner exemption. This section outlines clearly the qualifications for this exemption, and while the precise numbers of qualified miners is not known, it is clear that there are many who will meet the requirements.

Three comments asked whether the 10-claim exemption is State-wide or nation-wide. The exemption applies nation-wide and can include claims in more than one State as long as the number of claims totals 10 or fewer. In accordance with paragraph (a)(2) of this section, the exemption applies to claims on Federal lands in the United States.

Two comments asked whether partnerships were considered a "person" toward qualifying for the 10-claim exemption. Yes. One partnership can qualify for one exemption for up to 10 claims. This means that, for example, a two-person partnership can qualify for 10 claims, not 20 claims because they are two persons. One comment asserted that it was not the intent of Congress to allow partners only one 10-claim exemption. Congress was not clear regarding its intent for the definition of "claimant" under the exemption language of the statute. However, in tax law and business law, partnerships and other business associations are considered single entities.

One comment questioned the definition of the word "notice" in connection with the small miner exemption. The word "notice" as used in this section refers to a mining operation of 5 acres or less for which a claimant can give "notice" of mining activities in accordance with 43 CFR 3809.1–3, rather than file a Plan of Operations.

One comment asked whether miners whose mining activity is not at the plan or notice level can be eligible for the small miner exemption. The answer is no because, as stipulated in this section and the Act, the activity must be at plan or notice level as defined by the surface managing agency.

Two comments urged that claim blocks in different regions should each be allowed a 10-claim exemption, and one comment said that claimants holding more than 10 claims should be able to exempt 10 of them. One comment referred to a Congressional Budget Office (CBO) report as evidence that this was the intent of Congress. This suggestion is not adopted in the final rule, because the statute, as well as other evidence of Congressional intent, allows a claimant to hold no more than 10 claims in total to obtain an exemption. An analysis by the CBO, which is not a policy making office, is not dispositive of Congressional intent.

One comment stated that it was discriminatory for Congress to have required no less than $1,500 in gross revenues per claimant to qualify for the small miner exemption because in some cases small operations would be hampered by State requirements and market economics and fall under the minimum floor to qualify for the exemption. This is beyond the purview of this rule because the $1,500 floor has

VOL 58 ISS 134 JL 15 1993 UMI

been required by Congress in the legislation.

One comment objected to the idea that a claimant's child beyond the age of discretion could alone qualify for the 10-claim small miner exemption, but that a husband or wife of a claimant who is also not a minor could not separately qualify for the 10-claim exemption. This language was expressly contained in the statute and therefore cannot be diverged from in the rule.

One comment stated that the small miner exemption was erroneously aimed at miners who were not serious, and ignored small companies who may locate 200 or more claims in order to explore prudently. No change in the small miner exemption may be made by regulation. Congress has defined the parameters of the exemption by statute. The same comment stated that the definition of small miner should be determined by small miners and junior companies, but this is not possible because the definition has already been established by Congress. Two other comments stated that small miners should be those with 20 or 30 claims or less, which also cannot be accommodated because of the statutory language.

One comment stated that in cases where a claimant overstakes the same ground with both a lode and a placer claim, that only the placer claim should be subject to the fee. The statute makes no such distinction in types of claims or their vicinity on the ground, and specifically requires only that no more than 10 claims may be possessed in order to qualify for the small miner exemption.

Several comments expressed concern about the effect on recreational miners. Some questioned whether a claimant, such as a "recreational" miner or any other, whose activities are not extensive enough to cross the surface management agency's threshold for a notice or plan level operation, would be excluded from the small miner exemption, and if so would this not increase unnecessary degradation of the land. Most stated that recreational miners or mining clubs should be exempted from the fee. The language of the Act specifically requires a claimant to be operating under a plan or a notice in order to qualify for the small miner exemption. It is unlikely that unnecessary disturbance will occur because of the additional requirements for production levels or exploration activity coupled with the authority cited in section 3833.0–3 of the rule, which includes the section of the U.S. Code that makes it a crime to file false or fictitious documents with the Secretary of the Interior. In addition, the surface disturbance is to be conducted pursuant to a valid notice or plan of operation that is subject to the "unnecessary and undue degradation" standard found in FLPMA. The basic requirements for a showing of production or exploration is required in the statute and cannot be excused for recreational miners. There were several comments that stated that recreational miners could not afford the fee, but the fee is required by statute if the small miner exemption requirements are not met. Additionally, all operations, regardless of how an individual claimant classifies his or her own operation, will be evaluated under the standards of this section, which are founded on the statute.

One comment asked whether the claimant who locates in the 1993 assessment year may qualify for the small miner exemption for the 1994 assessment year. The answer is yes. The statute requires that all new locators pay the fee for new claims regardless of how many claims they hold, but these claimants are free to file for the small miner exemption for the second year if they qualify.

One comment stated that the small miner exemption should apply to those who lease 10 or fewer claims. This is not possible because the statute specifically cites the word "claimants," and not lessees, when referring to the small miner exemption. The claimant is the party who owns the claim.

Several comments charged that this section discriminates against marriage and/or legitimate children because spouses and underage children cannot separately claim the small miner exemption within a family. The primary reason for this part of the rule is that the statute specifically requires it.

One comment rejected the idea that a small miner is one who holds 10 or fewer claims. The statutory language specifically defines a small miner in this way, and the rule is bound by the statutory language.

One comment urged that BLM institute a monitoring system to track the full economic impact of the fee. BLM will track the effects on mining claim retention and possibly other parameters.

One comment asked whether it is possible that a plan of operations that has been submitted but not approved can satisfy the requirement for a small miner exemption. The answer is no because the statutory language specifically refers to "valid" plans of operations. A plan that has not been approved cannot be considered valid.

One comment said that the word "corporation" should be removed from the section that deals with entities who qualify for the small miner exemption. The entities listed in the rule, including corporations, have always been regarded as "claimants" under the Mining Law. The clear intent of the Act was to exempt all claimants, including corporations, holding 10 claims or fewer. However, there is nothing in the law or this rule to prevent arm's length stockholders of a corporation—stockholders without control—that possess mining claims from locating their own claims and qualifying as small miners, regardless of the number of claims held by the corporation.

One comment stated that the requirement calling for a minimum gross revenue of $1500 was arbitrary. Two comments said that the August 31, 1993, date also was arbitrary. These requirements were specifically called for in the statute, which the rule is required to reflect.

Two comments stated that operators on private land with Federal minerals cannot comply with the requirement to have a plan of operations or a notice since on these types of lands neither is required. This problem has been addressed in an amendment of section 3833.1–6, which allows submission of a State or local permit in lieu of the Federal Plan of Operations or Notice. There is no evidence in the legislative history that Congress had any intention of singling out these types of claims and making it impossible for them to qualify for an exemption. The revised language of this paragraph is believed to be in accordance with Congressional intent.

Four comments urged that the small miner exemption be expanded to cover more than 10 claims, but this is not possible because the statute provides that 10 claims is the limit.

One comment urged that 10 inactive claims be allowed to be added to the 10-claim exemption, that mill sites be exempt, and that a bond should be the sole requirement for the exemption. None of these comments could be accepted, because they are contrary to specific statutory language.

One comment asked how association placers are counted toward the small miner exemption. Each owner of an association placer counts that claim toward the exemption claim limit. For example, if 8 claimants own a 160-acre association placer, then each claimant would count that claim for purposes of calculating individual holdings for small miner limitations. They would not each claim ⅛ of a claim.

One comment asked whether the $1500 in gross revenues is required to be produced from each claim or from the group of claims in the exemption. The answer is that a minimum of $1500

is required to be produced from the 10 or fewer claims as a group. This amount does not have to be produced from each claim.

One comment asked whether claims that are only being explored must be under a notice or a plan. The answer is yes because that is a statutory requirement.

One comment asked how this section affects 30 family members where no one member has more than one claim. Each "family" member can claim the exemption except as outlined in paragraph (a)(3). For instance, a husband and wife and children under the age of discretion are considered a group who would only be eligible for one 10-claim exemption, but, for example, two brothers over the age of discretion who are not partners could each exempt up to 10 claims for a total of 20.

One comment asked whether it is possible for claimant to pay the rental on two claims and take the exemption on eight. Because the language of the Act only allows for a choice between either paying the fee or doing the assessment work and meeting the filing requirements "* * * on such ten or fewer claims," a claimant may not pay the fee for a portion of his or her ten or fewer claims and take the exemption on the remaining portion. However, a claimant is not precluded from paying the rental fee for claims that have also been included on a small miner exemption form.

43 CFR 3833.1–7

Paragraph (b)(1) was amended to add the word "State" to clarify the proper office for filing. For clarity, paragraph (c) was amended by the addition of the ending date for claiming an exemption for the 1993 assessment year, and again the word "State" was added. Paragraph (c) also includes added language to specify that filing of the certified statement satisfies the requirement to file a notice of intent to hold for qualifying claims located within the period specified. Paragraph (d)(1) was amended to add the other types of permits acceptable to qualify for the exemption. Paragraph (d)(3) was amended to make it clear that multiple certifications for different claim blocks may be filed as long as the total number of claims does not exceed 10. Paragraph (d)(4) was amended to make it clear that the production requirements are not for each claim, but for the claims in total. The words "in detail" for the exploration declaration were removed, because a simple statement of work should suffice.

Paragraph (d)(6) was also amended to reference other allowable permits. A new paragraph (d)(7) was added to require all owners of a mining claim to sign the certified exemption statements. This is to ensure that the 10 claim limitation per claimant will be strictly followed. A new paragraph (d)(8) adds a requirement for a notarized statement intended further to bind the claimants legally to the statement that the claimants sign. Paragraph (e) was amended to add a 30-day payment period after a deferment expires to provide a more equitable process. The word "sites" was removed from this paragraph since sites are not subject to assessment work. Paragraph (e)(1) was amended to add the word "State." Paragraph (e)(1)(i) was amended to change the date from September 30, 1994, to September 1, 1994, which is the end of the 1994 assessment year. Paragraph (f) was revised to make it clear that when the mineral entry is allowed, a refund of previously paid fees is not possible. Paragraph (g) was taken from section 3852.1 and placed here. The phrase "notice of taking" has been changed to "declaration of taking" pursuant to comments received from the National Park Service (NPS).

One comment stated that deferments from the fee should not be allowed because deferments are granted for reasons such as denial of access, so that no assessment would take place. Since the fee is in lieu of assessment work, the comment argued that deferment from paying the fee is not appropriate. However, during debate on the Senate floor on the Act, it was stated and not disputed that claimants who cannot perform assessment work because of legal impediments should not have to pay a fee. This statement may be taken as evidence of congressional intent on this issue. In addition, claims for which assessment work has been deferred are given an exemption from the rental fee. The rental fee is not deferred. Rather, the deferred assessment work will be required upon cessation of the deferment pursuant to 43 CFR subpart 3852. The comment is not adopted in the final rule.

One comment said that the rule should provide that the surface disturbance requirement be measured as of August 31, 1993. This is not possible because it would allow no time for the claimant to submit a certification that same day. Rather, regardless of whether the claimant makes the certification early or on August 31, the certification should state that surface disturbance did not exceed 10 acres on the date of the certification by the claimant, and that surface disturbance would not exceed 10 acres at any time during the period for which the certification is made.

One comment said that failure to provide the evidence required by this section should be a curable defect. This is a curable defect as specified in section 3833.4(b).

One comment requested clarification concerning the proper agency to receive certifications under the rule. The proper agency is the BLM, as outlined in this section.

One comment asked why under paragraph (d)(5)(ii) of this section the claimant would have to make the declaration by August 31, 1993, that assessment work will be done in the following assessment year. This is because the statute requires qualified small miners who choose to do the assessment work to "certify the performance of such assessment work to the Secretary by August 31, 1993." Because the certification date occurs before the assessment work will be done for the assessment year ending September 1, 1994, the claimant is certifying that the assessment work will be done in the coming year. If the claimant determines that no assessment work will be performed in the second assessment year, then the claimant must make this determination and submit the fee by August 31, 1993.

One comment said that the term "first half of the mineral entry final certificate" has no legal significance. Paragraph (f) and section 3851.5 have been amended to make it clear that rental payment is not necessary for claims that are subjects of patent applications when the authorized officer has allowed mineral entry pursuant to 30 U.S.C. 29 and part 3860. The term "first half of the mineral entry final certificate" is no longer referred to in the final rule.

One comment questioned whether a person who is part of a corporation, association, or partnership that qualifies for a 10-claim exemption can also qualify for an additional small miner exemption under his or her own name. The answer is yes if the person is a non-controlling shareholder of a corporation. But if the person is a named partner or a named member of the association that holds 10 mining claims, that person cannot file for an additional 10 claim exemption. The reason is that a corporation exists as a legal entity on its own while a partnership or association is a group of individual co-owners. In these co-ownership arrangements, the interest will not be calculated in fractions such as for one-half ownership in a claim in order to qualify for the small miner exemption. One-half ownership in a claim will count as one

claim for the purposes of qualifying for the small miner exemption.

One comment cited various interpretations of the 10 acre disturbance standard. The 10 acres applies to the claimant's entire mining operations. The 10 acres or less surface disturbance is related to the mining activity or exemption work being conducted pursuant to a valid notice or plan of operation. Any falsification under these or any other requirements of this rule is subject to penalty under 18 U.S.C. 1001.

One comment asked whether a claimant is required to apply for the small miner exemption at the same time for both 1993 and 1994. The answer is no. August 31, 1993, is the deadline for filing, but not the only day for filing, for both years for claims located on or before October 5, 1992. One certification could precede the other as long as they are both filed by August 31.

One comment asked if there are special forms to fill out for the small miner exemption. The answer is yes and they are explained in this section of the regulations.

Two comments asked whether a claimant will have a chance to pay the fee if turned down for a small miner exemption after August 31, 1993. The statute requires, for all active claims at the time of enactment, either payment of the rental fee or submission of a certification for the small miner exemption by August 31, 1993. If the claimant is found not to qualify for the exemption, there is no provision in the statute for payment after that date. If there is any doubt as to qualification, it will be advisable for the claimant either to submit the certification early enough for any defects to be cured before August 31, 1993, or to pay the rental fee.

One comment said that the rule does not precisely conform to the language of the Act pertaining to abandonment of a mining claim, because it refers to a "declaration" of abandonment while the Act does not mention a "declaration." The declaration of abandonment will simply be formal notice by the government that abandonment has taken place by the date specified in the law. A similar declaration has been used over the years for claims that are abandoned for failure to make proper filings under FLPMA, even though no "declaration" language appears in that law.

One comment questioned whether a joint-ownership claim could be declared abandoned and void for failing to pay the fee when a deferment of assessment work has been denied. The answer is yes because the failure to pay would apply to all the owners on record, including cases of single owner claims.

One comment said that exploration or production reporting should be done on the calendar year, as with Federal taxes, rather than the assessment year. The assessment year system was chosen because mining work is done based on assessment years under the Mining Law.

One comment suggested that a certification form be created to help claimants in their filings. Such a form is being created.

43 CFR 3833.2–1

The NPS requested that they be notified concerning the status of fee payments for claims on NPS lands, as they are notified of FLPMA filings. In response to this comment, paragraph (e) has been amended to direct BLM to report the status of all claims on NPS lands to NPS.

43 CFR 3833.2–3

Paragraph (e) was added to make it clear that payment of the rental fee for claims located and recorded on or after September 1, 1994, and on or before September 30, 1994, will serve as a notice of intention to hold for the purpose of holding the claim for assessment year 1995. No further FLPMA filing will be required for such claims by the December 30, 1995, filing deadline.

One comment stated that this section was unnecessary because it restates existing law. The new addition does not restate existing law, but rather explains the effect of the new statute on existing law.

43 CFR 3833.4

Paragraph (a)(1)(i) was reworked for clarity and includes new language that makes it clear that failure of a qualified small miner to make required assessment work filings results in abandonment of the claim. Paragraph (a)(2) was amended to make it clear that failure to file the certification as specified is likewise an abandonment. One comment pointed out that a December 2, 1988, final rule (53 FR 48876) apparently inadvertently removed language that provided that failure to provide the complete information required under section 3833.2–4 (a) and (b) is a curable defect. Section 3833.4(b) has been amended to correct this omission. This amendment does not negate the responsibility of the claim holder to make timely FLPMA filings.

One comment stated that paragraph (b) amounted to an abandonment of interest by BLM in verifying that the small miner exemption is justified. This paragraph merely provides for a 30-day period for a claimant to complete a timely but unintentionally insufficient filing. Such a failure to provide complete information for the certification filing for the small miner exemption within this 30-day period will reinstate the claimant's obligation to pay the rental fee. Failure to pay the rental fee on time constitutes abandonment. For all other requisite filings, a failure to provide the missing information within this time period will constitute abandonment for failure to make a complete annual filing as required by FLPMA.

One comment stated that when mistakes are found in rental fee documents by BLM that could cause an inadequate amount of fees to be submitted, BLM should allow claimants to correct the deficiency within 30 days after a notice of such a mistake is sent by BLM of the mistake allowing 30 days to comply. If a small miner certification filing is submitted by the August 31, 1993, deadline, and errors are found in the submission, the authorized officer will allow a grace period of 30 days after receipt of notification from BLM. However, there is no grace period after August 31, 1993, for payment of rental fees for claims existing on the date of the Act or located during the first assessment year.

43 CFR 3833.5

Paragraph (d) has been amended to require BLM to look only to official recordation files for ownership information when serving process in contest proceedings. This puts the burden on the owners to keep BLM informed of ownership changes as provided in section 3833.3.

43 CFR 3850.0–9

Three comments challenged the finding that it takes the public eight minutes per response to comply with assessment work. The public reporting burden estimate described in paragraph (b) of this section does not refer to the time it takes a claim holder to complete assessment. The time estimate refers to the time it may take the public to file for a deferment as described in section 3852.2. The information collection was approved by the Office of Management and Budget and comments should be forwarded to the Information Collection Officer at the address indicated.

43 CFR 3851.1

One comment asked whether assessment work on one claim could also apply to contiguous claims if the work benefits all claims. Yes, and in addition, this final rule makes no

change in how assessment work is accomplished for those claimants who qualify as small miners and are required to file an annual assessment affidavit.

One comment asked whether claimants will be required to do assessment work in States that require it as well as pay the fee. The answer is yes for those States that require assessment work. The claimant should check with the State for the requirements of State law.

A comment suggested that the regulatory language stating that claims on which work is done as a group are required to be contiguous should be changed because recent court decisions held that such group work claims need not be contiguous. See *Powell* v. *Atlas Corp.*, 615 P.2d 1225, 1228 (Utah 1980). Paragraph (c) has been amended to remove reference to "contiguous" claims and instead insert the phase "covers the same mineral deposit."

43 CFR 3851.3

Paragraph (b) was amended to make it clear that failure to perform assessment work causes the mineral estate to revert to the public domain and remain open to location, absent a mineral withdrawal. Paragraph (c) was amended to make it clear that the $550 oil shale fee is an annual fee.

43 CFR 3851.5

Paragraph (a) was added to include a reference to the rental fee for completeness. Paragraph (b) was amended to make reference to mill sites and the payment of the rental fee, and to clarify when the rental fee is payable if the final certificate is canceled. The section has also been amended to make clear when mineral entry is allowed in cases where patent is applied for.

43 CFR 3852.1

Paragraph (b) was transferred to 3833.1–7(g) and amended to refer to exemption from the rental fee requirement. A comment requested a clarification of the phrase "* * * or the claimant has otherwise been denied access to his mining claims or sites * * *". The comment also requested a further clarification of what proof would be required to document a taking or access exemption. Denial of access means that BLM, in consultation with NPS, has determined as reasonable the claimant's assertion that he has been denied the ability to operate on his claims. This would include situations where the NPS has permanently denied authorization to the claimant to exercise rights to the mining claim. Concerning the forms of exemption proofs that would be acceptable, these would include copies of declarations of takings, or NPS letters that state the denial of access, or any other judicial or administrative order. A declaration by the claimant alone will not be acceptable. When a claim holder has been denied access to his/her mining claims by the NPS, the claim holder is not required first to obtain a deferment of assessment work from BLM pursuant to 43 CFR part 3852 in order to be exempt from the rental fee requirement.

The principal author of this final rule is Roger A. Haskins, Division of Mineral Resources, Nevada State Office, with assistance from Frank Bruno, Division of Solid Minerals, and from the Division of Legislation and Regulatory Management, BLM, Washington Office, and the Office of the Solicitor, Department of the Interior.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, chapter 2, appendix 1, item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is likely that some percentage of mining claims will be abandoned because of the rental fee requirement, but it is very difficult to identify a number. The $100 rental fee would be paid on top of expenditures for mining activity. A large company with the capacity to pay the fee may be reluctant to do so if it holds many speculative claims. Deciding factors would be the marginal nature of the operations and the speculative value of the claims. Because it is currently easy to hold a mining claim for speculative purposes, we may see claims in this category abandoned, since it will no longer be as attractive to hold them. Most claims with good production or exploration prospects would likely be held. Dropping the others should produce little negative economic effect. It is likely that the rental fee will result in a lower level of exploration activity, but it is not likely that this will have a significant economic effect, because the fee is nominal for a claim with good exploration prospects.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility (Act (5 U.S.C. 601 *et seq.*). The fee may represent an economic consideration for a small, marginal operation that does not quality for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The rule will have no effect on private property rights.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR parts 3730, 3820, 3833 and 3850 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0114, 1004–0104, and 1004–0110, and subsequently consolidated in 1004–0114, with minor revisions.

Public reporting for this collection of information is estimated to average 8 minutes (0.125 hours) per response, including time for gathering and maintaining the data needed, and reviewing and completing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of

Information Resources Management, BLM (783), 1849 C Street NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1004–0114, 1004–0104, or 1004–0110), Washington, DC 20503.

List of Subjects

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3830

Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79); the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776); sections 441 and 2478 of the Revised Statutes, as amended, (43 U.S.C. 1457 and 1201); sections 2319, 2322, and 2324 of the Revised Statutes, as amended (30 U.S.C. 22, 26, and 28–28e), and section 310 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740); parts 3730, 3820 and 3850, Groups 3700 and 3800, Subchapter C, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: June 25, 1993.

John D. Leshy,

Solicitor.

PART 3730—PUBLIC LAW 359; MINING IN POWER SITE WITHDRAWALS: GENERAL

1. The authority citation for part 3730 is added to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 106 Stat. 1374, 1378–1379.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

2. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 ("Act") is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(a) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress; or

(b) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit which has not been renewed more than once.

3. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authority for the regulations in this part is the Act of August 11, 1955 (69 Stat. 681, 30 U.S.C. 621–625), section 314 of the Act of October 21, 1976 (90 Stat. 2769, 43 U.S.C. 1744), and Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–1379).

4. Section 3730.0–9 is added to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will be used to allow the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. The information collected will be used to make this determination. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (Pub. L. 84–359, 30 U.S.C. 621–625), section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

Subpart 3734—Location and Assessment Work

5. Section 3734.1 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file a notice or certificate of location or notice of transfer of interest with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the rental fees required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379). The document shall be marked by the owner that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as prescribed by § 3833.5(c) of this title.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work or pay an annual rental fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or Notice of Intent to Hold, pursuant to subpart 3833 of this title.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

6. The authority citation for part 3820 is added to read as follows:

Authority: 62 Stat. 162; 48 U.S.C. 364a–364c; 16 U.S.C. 482a; 25 U.S.C. 461–479; 16 U.S.C. 251–255; 16 U.S.C. 447; 49 Stat. 1817; 16 U.S.C. 450z; 50 Stat. 1827; 16 U.S.C. 460y; 42 U.S.C. 4332; 30 U.S.C. 22 *et seq.*

Subpart 3821—O and C Lands

7. Section 3821.0–3 is added to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162), section 314 of the Act of October 21, 1976 (90 Stat. 2769), and Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–1379).

8. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file a notice or certificate of location or notice of transfer of interest with the proper State Office of the BLM pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and pay the rental fees required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379). The document shall be marked by the owner as being filed under the Act of April 8, 1948 (62 Stat. 162).

9. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located upon O and C lands shall perform and record proof of annual assessment work, or pay an annual rental fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

PART 3830—LOCATION OF MINING CLAIMS

10. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22, secs. 2319 and 2478 R.S., as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907; 43 U.S.C. 1734, 1740, 1744, and 1782; 106 Stat. 1374, 1378–1379.

11. Subpart 3833 is amended by removing the note at the beginning of the subpart and by revising the subpart heading to read as follows:

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

12. Section 3833.0–1 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, by adding in newly designated paragraph (e), immediately following the word "Act" the parenthetical acronym "(FLPMA)", and adding a new paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual rental fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

* * * * *

13. Section 3833.0–3 is amended by adding after "43 U.S.C. 2" in paragraph (b) the citations; ", 43 U.S.C. 1212, and 43 U.S.C. 1457," by revising paragraph (a); and by adding paragraphs (e) and (f) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of FLPMA (43 U.S.C. 1744) require the recordation of the notice or certificate of location of unpatented mining claims, mill sites, and tunnel sites, and the filing of affidavits of assessment work performed, notices of intent to hold, or detailed reports for each unpatented mining claim, mill site, and tunnel site, in the proper BLM office within specified time periods. Section 314(c) of FLPMA provides that a failure to record the required documents within the time limits imposed by the statute constitutes a conclusive abandonment of the mining claim, mill site, or tunnel site, which shall be void.

* * * * *

(e) The Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379), requires an annual rental fee of $100 to be paid to the proper office of the Bureau of Land Management for each non-exempt mining claim, mill site, or tunnel site located or held under section 314(b) of FLPMA for the assessment years ending in 1993 and 1994. With certain exceptions, this rental fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a)(1) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of October 5, 1992, constitutes a statutory abandonment of the non-exempt mining claim, mill site, or tunnel site, which shall thereupon be void. Provisions relating to rental fee and exceptions are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law, including the Act of October 5, 1992. This requirement supersedes the fee requirements of the Act of October 5, 1992, insofar as they relate to oil shale claims.

14. Section 3833.0–5 is amended by revising paragraphs (a), (g), (m), and (o), adding two sentences to the end of the concluding text of paragraph (p), and adding paragraphs (t), (u), (v), and (w) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(a) *FLPMA* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701) *et seq.).*

* * * * *

(g) *Proper BLM office* means the Bureau of Land Management State Office listed in § 1821.2–1(d) of this title, and, in Alaska, the Fairbanks BLM Office, having jurisdiction over the area in which the claims or sites are located.

* * * * *

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For the purposes of complying with § 3833.2, a filing is timely if the required affidavit of assessment work or notice of intent to hold is received within the time period prescribed by law, or if mailed to the proper BLM office, is in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law and received by the proper BLM office within 15 calendar days subsequent to such period. This 15 day period does not apply to filings made pursuant to §§ 3833.1–2, 3833.1–5, or 3833.1–7. (See § 1821.2–2(e) of this title if the last day falls on a day the office is closed).

* * * * *

(o) *Filing year* means the time period during which documents and fees are required to be provided to the proper BLM office. The time periods set forth in each statue are as follows:

(1) Except for filing by a small miner qualifying for an exemption under § 3833.1–7(d), filings under FLPMA that would have been due on or before December 30, 1993, and December 30, 1994, are waived effective January 1, 1993, and so long thereafter as the Act of October 5, 1992, is in effect. The annual filing for each claim or site required for the assessment year ending on September 1, 1992, shall be filed with the proper BLM office on or before December 30, 1992.

(2) Filings under the Act of October 5, 1992, shall be made by August 31, 1993, except for new claims located after August 31, 1993.

(p) * * *

* * * An amendment to a notice or certificate of location shall not be used to effect a transfer of ownership of interest or to add owners. Such transfers or additions shall only be filed with the proper State Office of the BLM pursuant to § 3833.3.

* * * * *

(t) *Rental fee* means the fee required by the Act of October 5, 1992 (Public Law 102–381, 106 Stat. 1374, 1378–1379), which is paid to hold a mining claim, mill site, or tunnel site. The rental fee is in lieu of the requirements

VOL 58 ISS 134 JL 15 1993 UMI

for performing assessment work under 30 U.S.C. 28–28e and for filing an annual affidavit of labor or Notice of Intent to Hold with the proper State Office of the Bureau of Land Management under section 314 (a) and (c) of FLPMA and § 3833.2. Under certain conditions, a small miner may be exempt from the rental fee requirement, or a claimant may be granted a deferment of assessment work pursuant to subpart 3852 of this title. The rental fee requirements will expire on September 30, 1994. The rental fee requirements and exceptions are governed by §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(u) *Small miner* means a claimant/owner of a mining claim(s), that meets the requirements of §§ 3833.1–6 and 3833.1–7.

(v) *Nonrefundable* means non-returnable as follows:

(1) Service charges are not returnable after the document received has been docketed and/or serialized.

(2) Rental fees are not returnable unless the mining claim or site has been determined, as of the date the fees were paid, to be null and void *ab initio* or abandoned and void by operation of law.

(w) *Age of discretion* means that age at which, pursuant to State law, an individual is legally entitled to manage his or her own affairs, and to enjoy civic rights.

15. Section 3833.0–9 is added to read:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to allow BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites are being held by their owner(s) under applicable Federal statute. A response is required to obtain a benefit in accordance with section 314 of FLPMA, as amended, and the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St. NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

§ 3833.1 [Amended]

16. Section 3833.1–1 is amended by replacing the term "the Act" wherever it appears in paragraph (a) with the acronym "FLPMA".

§ 3833.1–2 [Amended]

17. Section 3833.1–2(a) is amended by adding a new sentence at the end of the paragraph to read as follows:

(a) * * * (See § 3734.1(a) of this title for mining claims and sites filed under Pub. L. 84–359 (69 Stat. 681) and § 3821.2 of this title for mining claims and sites filed on O and C lands).

* * * * *

18. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges and rental fees; form of remittance.

(a) All service charges and rental fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior-Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management.

(b)(1) Filings submitted pursuant to § 3833.1–2 that are not accompanied by full payment of the rental fees required by § 3833.1–5 will be processed pursuant to paragraph (b)(3) of this section. Filings for which the required rental fee is deficient after application of paragraph (b)(3) of this section by the authorized officer will be rejected.

(2) Filings submitted pursuant to §§ 3833.2, 3833.3, or 3833.1–7, and amended locations filed under § 3833.0–5(p), that are not accompanied by the full payment of service charges set forth in § 3833.1–4 shall be curable. Such filings shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner.

(3) If a claimant fails to submit the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer, the authorized officer will apply the service charges and rental fees received to existing recorded filings in ascending numerical order of serialization. Existing filings to which no service charge or rental fee could be applied because of the insufficiency of the funds paid to the authorized officer will be held for rejection in the same manner as service charges pursuant to paragraph (b)(2) of this section.

(4) Beginning on October 6, 1992, notices of location for new mining claims or sites that are filed with insufficient charges and rental fees will not be accepted and will be returned to the claimant/owner without further action.

19. Section 3833.1–4 is revised to read as follows:

§ 3833.1–4 Service charges.

(a) Each notice or certificate of location of a mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a non-refundable service charge of $10.00.

(b) Annual filings submitted pursuant to § 3833.2 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site. A service charge is not required to accompany the rental fee submitted in lieu of assessment work or Notice of Intent to Hold as required by § 3833.1–5 or the certified statement of exemption required to be filed by § 3833.1–7.

(c) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(d) Each transfer of interest document filed pursuant to § 3833.3 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

(e) The claimant/owner may authorize the BLM to charge payment of service charges and rental fees to his credit card under § 3833.1–3(a), by transmission of a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization telephonically if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(f) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges and rental fees. The authorized officer may deduct the necessary service charges and rental fees from such account at the direction of the claimant/owner.

20. Section 3833.1–5 is added to read as follows:

§ 3833.1–5 Rental fees.

Except as provided in §§ 3833.0–3(f) and 3833.1–6, each claimant shall pay a nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. Claimants who completed assessment work during the period from September 1, 1992, through October 4, 1992, shall pay the rental fee for the year ending September 1, 1993. The assessment years specified in the Act of October 5, 1992, begin on September 1, 1992, and September 1, 1993. The $100 rental fee requirement does not apply to oil shale claims. Instead, oil shale claim holders shall pay an annual $550 fee for each oil shale claim as described in section 2511 of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776).

(a) *Mining claim or site located on or after October 5, 1992, and on or before September 30, 1994.* The $100.00 nonrefundable rental fee, for the assessment year in which the mining claim or site was located, shall be paid for each mining claim, mill site, or tunnel site at the time of recording of the mining claim, mill site, or tunnel site pursuant to section 314(b) of FLPMA and § 3833.1–2 in addition to the service charge required by § 3833.1–4(a).

(1) For all mining claims, mill sites, or tunnel sites located on or before August 31, 1993, and for which the notice of location is filed in a timely manner pursuant to section 314(b) of FLPMA before August 31, 1993, the $100 rental fee for the assessment year beginning on September 1, 1993, shall be paid on or before August 31, 1993. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the rental fee is being paid. The list shall state the assessment year to which the payment applies.

(2) For all mining claims, mill sites, or tunnel sites located within the assessment year beginning September 1, 1992, and for which the notice of location is filed in a timely manner in the proper BLM Office pursuant to section 314(b) of FLPMA and § 3833.1–2 after August 31, 1993, the $100 rental fee for the assessment year beginning September 1, 1993, shall be paid at the time of filing in addition to the requirements of paragraph (a) of this section and the service charge required by § 3833.1–4(a).

(3) For all mining claims, mill sites, or tunnel sites located and recorded on or after September 1, 1993, the $100 rental fee for the assessment year beginning on September 1, 1993, shall be paid at the time of recording in addition to the service charge required by § 3833.1–4(a).

(4) If the mining claim, mill site, or tunnel site is located during the period beginning at noon on September 1, 1994, and ending on September 30, 1994, and is recorded in a timely manner pursuant to section 314(b) of FLPMA and § 3833.1–2, and the date of timely recording is on or after October 1, 1994, the rental fee is required at the time of recording.

(b) *Mining claim or site located on or before October 5, 1992.* A nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of $200. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the rental fee is being paid. The list shall state the assessment years to which the payment applies.

(c) There will be no proration of rental fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under certain conditions described in §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental fee.

(e) A small miner may elect to file for an exemption in one of the two years covered by the law and pay the rental fee for the other year.

(f) The owner of an oil shale claim shall pay the required $550 rental fee to the proper BLM office on or before December 31, 1993, and each December 31st thereafter.

(g) The payment of the required rental fee for a mining claim, mill site, or tunnel site satisfies the requirement to file a notice of intent to hold pursuant to § 3833.2.

21. Section 3833.1–6 is added to read as follows:

§ 3833.1–6 Rental fee exemption qualifications.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the rental fee. Assessment work shall be of the nature described in paragraph (b) of this section.

(a) In order to qualify for an exemption from the rental fee requirements, a small miner shall meet all the following conditions:

(1) The claimant shall hold 10 or fewer mining claims, mill sites, and tunnel sites, on Federal lands in the United States. For purposes of determining the small miner exemption, oil shale claims will not be counted toward the 10-claim limitation for the small miner exemption to the $100 rental fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the rental fee in addition to filing for a small miner exemption.

(2) Mining claims held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted toward the 10-claim limit.

(3) Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation shall be counted toward the 10-claim limit for claimants that have an interest in these entities.

(4) The mining claims shall be under:

(i) One or more Notices or approved Plans of Operations pursuant to subparts 3802 or 3809 of this title; or

(ii) A Plan of Operations issued under parts 9 and 228 of Title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

(iii) A special use permit issued by a Federal agency for the mining or removal of locatable minerals; or

(iv) A State or local authority mining or reclamation permit if the surface estate of the mining claim is not in Federal ownership.

(5) The mining claims shall collectively have less than 10 acres of unreclaimed surface disturbance remaining that is caused by mining or exploration operations covered by the Notice(s) or approved Plan(s) of Operation, special use permit, or State or local mining or reclamation permit since January 1, 1981.

(6) The mining claims shall collectively either be producing or shall be under active exploration, as follows:

(i) The claimant shall be producing from the 10 or fewer collective mining claims no less than $1,500.000 and no more than $800,000.00 in gross revenues per year; or

(ii) The claimant shall be actively and diligently performing exploration work on the 10 or fewer claims to disclose, expose, or otherwise make known possible valuable mineralization.

(b) To qualify for the exploration exemption, the work shall be of a physical nature performed on or for the

benefit of the claims, and of a nature that would require a notice or plan of operations and lead to the development of the mineral property for mining purposes. Examples of qualifying exploration work include, but are not limited to, drilling, excavations, sampling (geochemical or bulk), road construction for development of the property, and ground geophysical work that requires a plan of operations, a notice, or a permit as specified in paragraph (a)(4) of this section.

22. Section 3833.1–7 is added to read as follows:

§ 3833.1–7 Filing requirements for rental fee exemptions.

(a) The affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper State Office of the BLM pursuant to § 3833.2 and meet the requirements of § 3833.2–4.

(b) For mining claims located on or before October 5, 1992, to claim the small miner's exemption, the following requirements shall be met.

(1) *For the assessment year beginning September 1, 1992.* The affidavit of assessment work for the period of September 1, 1992, through September 1, 1993, shall be filed on or before December 30, 1993, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(2) *For the assessment year beginning September 1, 1993.* The affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(c) For mining claims located on or before October 6, 1992, and before September 1, 1993, to claim the small miner's exemption for the year beginning September 1, 1993, the affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section. For exempt mining claims located on or after October 6, 1992, and on or before December 31, 1992, the filing of the certified statement in paragraph (d) of this section shall satisfy the requirements for filing or notice of intent to hold pursuant to § 3833.2–5.

(d) The small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner's exemption is claimed (for the year ending September 1, 1993, the assessment affidavit required by FLPMA continues to be due on December 30, 1993; and for the year ending September 1, 1994, the assessment filing is due on December 30, 1994), certified to under penalty of 18 U.S.C. 1001. The certified statement shall contain:

(1) The serial number(s) or other designation(s) assigned by the Federal land management agency to the Notice(s), Plan(s) of Operations, special use permits, or the number(s) assigned by the State or local agency issuing mining or reclamation permits covering the mining claim or claims for which the exemption is sought.

(2) The claim names and BLM serial numbers assigned to the mining claims held by the small miner.

(3) A declaration that the exemption for the given assessment year that has been or is being claimed by the claimant, claimant's spouse, or children of claimant under the age of discretion, or the association of locators, or the partnership of locators, or the corporation, for the given assessment year does not exceed 10 claims in total.

(4) A declaration that specifies the gross dollar revenues from the mineral commodities produced from the beginning of the assessment year by commodity, that were produced from the claimant's claims in total, which are by law required to be 10 or fewer in number, or describes the level of exploration being performed to disclose, expose, or otherwise make known possible valuable mineralization.

(i) For the assessment year ending September 1, 1993, the gross dollar revenues shall be calculated for the period beginning on September 1, 1991, and ending on September 1, 1992.

(ii) For the assessment year ending September 1, 1994, the gross dollar revenues shall be calculated for the period beginning on September 1, 1992, and ending on September 1, 1993.

(5) A declaration that specifies that the assessment work requirements have been or will be completed as follows:

(i) For the assessment year ending September 1, 1993, the declaration shall state that the assessment work was completed in that year.

(ii) For the assessment year ending September 1, 1994, the declaration shall state that the assessment work will be completed in that year.

(6) A declaration that the mining claims collectively have less than a total of 10 acres of unreclaimed surface disturbance remaining that is caused by the mining or exploration operation covered by the Notice(s) or approved Plan(s) of Operations, special use permit, or State or local mining or reclamation permit.

(7) All the owners of the mining claim(s) for which an exemption is claimed shall sign the certified statement.

(8) The certified statement shall be notarized.

(e) Mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28(b)–(e) and subpart 3852 of this title are exempt from the payment of the rental fee for the assessment period(s) during which the deferment is granted. The rental fee will be required to be paid by August 31, 1993, if the deferment expires on or before that date. The rental fee will be required to be paid within 30 days after the date the deferment expires if the expiration occurs on or after September 1, 1993, and on or before September 1, 1994. The claimant shall file evidence of a valid deferment on or before August 31, 1993, with the proper BLM office in the assessment year for which the deferment has been granted. The evidence shall include a list of mining claim names and serial numbers for which the deferment exemption is sought. Deferment exemptions are governed by the following conditions:

(1) If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31, 1993, for the assessment year beginning on September 1, 1992, the rental fee need not be paid on the claims listed in the petition of deferment until the authorized officer has acted upon the petition.

(2) If the petition is granted, the claims are exempt from the rental fees for that assessment year. At the expiration of the deferment, if it occurs after September 1, 1994, all deferred assessment work shall be done as provided in § 3852.5 of this title.

(3) If the petition for deferment is denied by the authorized officer, the rental fees that were due on August 31, 1993, must be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the rental fees owed shall cause the claims contained

within the petition to be declared abandoned and void.

(f) Mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed by the authorized officer pursuant to 30 U.S.C. 29 and § 3862.4–6 and 3862.5 of this title, are exempt from the payment of the rental fee for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title; however, no refund of previously deposited rental fees will be made to the mineral patent applicant.

(g) under the following circumstances, an exemption may be obtained from the payment of the rental fee for mining claims and sites located upon National Park System lands:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906) or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites on National Park Service lands.

(2) The claimant shall provide proof of the above conditions for exemption, filed as a certified statement, by August 31, 1993, with the proper BLM office.

23. Section 3833.2–1 is amended by adding in paragraph (a) after the date "1977," the phrase "except as provided under the Act of October 5, 1992," and by revising paragraph (e) to read as follows:

§ 3833.2–1 National Park System lands.

* * * * *

(e) The authorized officer will forward copies of annual filings on, and will periodically provide the status of, mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

§ 3833.2–2 [Amended]

24. Section 3833.2–2 is amended by adding in the introductory paragraph after the word "System" the phrase, "except as provided in §§ 3833.1–5 through 3833.1–7,".

25. Section 3833.2–3 is amended by revising the section heading and adding new paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of October 5, 1992.

* * * * *

(d) The Act of October 5, 1992, will not affect the requirements to do assessment work in the assessment year beginning on September 1, 1994, and ending on September 1, 1995, or to make annual filings on or before December 30, 1995, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1994, and on or before September 30, 1994, and for which the required $100 rental fee was paid at the time of recording pursuant to section 314(b) of FLPMA and § 3833.1–2, payment of the rental fee satisfies the requirements of § 3833.2 for the 1995 year.

26. Section 3833.3 is amended by adding paragraph (a)(3) to read as follows:

§ 3833.3 Notice of transfer of interest.

(a) * * *

(3) A copy of the legal instrument or document that operates under State law to transfer the interest in the claim being sold, assigned, or otherwise transferred.

* * * * *

27. Section 3833.4 is amended by revising the section heading, paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 3833.4 Failure to file or pay rental fee.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1992, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void. The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1995, and within the time periods prescribed therein after that date, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void. For mining claims located on or after September 1, 1994, and on or before September 30, 1994, and for which the required rental fee was paid at the time of recording, the failure to make annual fillings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1996, and within the time prescribed therein after that date, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(i) Failure to file the affidavit of assessment work required by § 3833.1–7 (a), (b), and (c) in a timely manner, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(ii) Except for the filings required on or before December 30, 1992, effective October 5, 1992, the requirements of §§ 3833.2–1 through 3833.2–5 are modified by the requirements of the Act of October 5, 1992, and the Energy Policy Act, and administrated through §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(2) Failure to file the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or to pay the rental fee required by § 3833.1–5, or file the documents required by § 3833.1–7 (a), (b), or (c) within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(b) Unintentional failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7 (d) and (e), 3833.2–4 (a), 3833.2–4(b), 3833.2–5(c), and 3833.3, when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. * * *

* * * * *

28. Section 3833.5 is amended by revising paragraph (b) and the first and last sentences of paragraphs (d) to read as follows:

§ 3833.5 Effect of recording and filing.

* * * * *

(b) Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the other requirements of Groups 3700 and 3800 of this title, and with laws and regulations issued by any State or other authority relating to locating, recording, and maintenance of mining claims, mill sites, and tunnel sites located, held, and maintained upon the public lands of the United States.

* * * * *

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 and filed a notice of transfer of interest pursuant to § 3833.3 shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified and served by certified mail sent to their last address of record. * * * The provisions of this subpart shall not be applicable to procedures for public notice required under part 3860 of this title with respect to mineral patent applications.

* * * * *

PART 3850—ASSESSMENT WORK

29. The authority citation for part 3850 is revised to read as follows:

VOL
58
ISS
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Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28(e); and 106 Stat. 1374, 1378–1379.

30. Section 3850.0–1 is added to read as follows:

§ 3850.0–1 Purpose.

The purpose of this part is to recite the requirements of the General Mining Law of 1872, as amended, for the performance of assessment work; to identify the methods provided by statute for qualifying assessment work; to provide for the deferment or suspension of assessment work under certain conditions; and to advise the claimant of the consequences of failing to perform the work.

31. Section 3850.0–9 is added to read as follows:

§ 3850.0–9 Information collection.

(a) The collections of information contained in part 3850 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0104 and subsequently consolidated with 1004–0114. The information will be used to allow the BLM to process petitions for the deferment of assessment work, determine if the assessment work required by statute (30 U.S.C. 28–28(e)) was indeed performed, and to determine the ownership of a mining claim or site in cases of delinquency of co-owners under 30 U.S.C. 28. A response is required to obtain a benefit in accordance with Section 2324 of the Revised Statutes, as amended (30 U.S.C. 28–28(e)) and 43 CFR part 3850.

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

Subpart 3851—Assessment Work: General

32. Section 3851.1 is revised to read as follows.

§ 3851.1 Assessment work requirements.

(a) The assessment year begins at 12 o'clock noon on September 1st and ends at 12 o'clock noon on the following September 1st.

(b) All lode and placer mining claimants shall have performed, or caused to have been performed, not less than $100 of labor or improvements upon each lode or placer claim held by the claimant for each assessment year following the assessment year of the lode or placer claim's location.

(c) Where a group of lode or placer claims are held in common, and cover the same mineral deposit, the assessment work may be performed on one or several claims of the group, as long as the aggregate expenditure totals not less than $100 per claim, and the work performed or improvements made will benefit the development of the claim block as a whole.

§ 3851.1–1 [Removed]

33. Section 3851.1–1 is removed.

34. Section 3851.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(b) Except as provided in § 3851.5 and subpart 3852, failure to perform the assessment work required under § 3851.1 causes the interest of the claimant(s) in the minerals subject to the mining laws to revert back to the public domain.

(c) The Act of October 5, 1992, with certain exceptions for small miners, temporarily suspends and supersedes the requirements to perform assessment work under § 3851.1, and requires the payment of a $100 rental fee per mining claim or site in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The rental fee requirements and exemptions from payment of the rental fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

35. Section 3851.4 is amended by revising the section heading and the first sentence of the section to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work or to the payment of rental fees.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor, where required, paid the rental fee required under § 3833.1–5 of this title, or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. * * *

36. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work is not required after the date that the mineral entry has been allowed by the authorized officer pursuant to 30 U.S.C. 29 and § 3862.5 of this title.

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work is no longer required, and assessment work is not required in any assessment year thereafter if a mineral patent issues. If the mineral entry is canceled by the authorized officer, either in whole or in part, on or before September 30, 1994, assessment work by qualified small miners is required in order to maintain the claim, and the rental fees shall be paid by claimants who do not qualify as small miners. After September 30, 1994, assessment work by all claimants is required, except for those who locate between September 1, 1994, and September 30, 1994, who are not required to file an assessment affidavit in 1995.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of rental fees, beginning in the assessment year next following the assessment year that the mineral entry was canceled.

[FR Doc. 93–16689 Filed 7–14–93; 8:45 am]
BILLING CODE 4310–84–M

Federal Register

Thursday
July 15, 1993

Part IV

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Department of Transportation

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines and Fare Vending Machines; Joint Final Rule

VOL 58 ISS 134 JL 15 1993 UMI

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 92-1]

RIN 3014-AA14

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 48463; Notice 92-22]

RIN 2105-AB97

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines and Fare Vending Machines

AGENCIES: Architectural and Transportation Barriers Compliance Board and Department of Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) and the Department of Transportation are issuing a final rule amending the reach range requirement for automated teller machines and fare vending machines under the Americans With Disabilities Act Accessibility Guidelines (ADAAG). The rule sets out the reach ranges for controls when a person using a wheelchair can make a forward approach only, a parallel approach only, or both a forward and parallel approach to a machine. The rule includes a table of reach depths and maximum heights for the placement of controls where the controls are recessed or the installation of a surround in front of the machine results in a reach depth of more than 10 inches to any control from a parallel approach.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 (voice) or (202) 272-5449 (TDD).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone (202) 366-9306 (voice) or (202) 755-7687 (TDD).

The telephone numbers listed above are not toll-free numbers.

This document is available in alternate formats (cassette tape, braille, large print, or computer disc) from the Access Board upon request.

SUPPLEMENTARY INFORMATION:

Background

Under the Americans with Disabilities Act of 1990 (ADA), the Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered buildings and facilities covered by the Act.[1] The Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. See 36 CFR part 1191, appendix. The Department of Justice and the Department of Transportation adopted ADAAG as the accessibility standards for newly constructed and altered buildings in regulations implementing certain titles of the ADA. See 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

As originally adopted, ADAAG requires that accessible automated teller machines (ATMs) provide "both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers."[2] See ADAAG 4.34.3. The provision was intended primarily to address the fact that the controls on ATMs are typically recessed or set back into the wall or the unit for privacy and security purposes. The installation of fixtures called "surrounds" in front of ATMs, which contain writing counters and bins for envelopes and waste paper, create a further obstruction that increases the reach depth to the controls.

In February 1992, two leading ATM manufacturers, NCR Corporation and InterBold, filed a petition for rulemaking with the Access Board claiming that their new ATMs cannot comply with "both a forward and side reach" and requested that ADAAG be amended to permit "either a forward or side reach." The American Bankers Association joined in the petition and raised questions regarding the effect that both a forward and side reach requirement would have on other user groups, especially persons with vision impairments, persons who have difficulty bending or stooping, and elderly persons.

The Access Board requested public comments on the matter and held a public hearing in May 1992. See 57 FR 19472 (May 6, 1992). An ATM surround manufacturer, Companion Systems, recommended that ADAAG include a table of reach depths and maximum heights for controls based on a straight line interpolation connecting the points between the maximum side reach with and without an obstruction from a parallel approach to address the increased reach depth resulting from recessed controls and the installation of surrounds in front of ATMs. In September 1992, the Access Board issued a notice of proposed rulemaking (NPRM) to amend the reach range requirement for ATMs by including such a table in ADAAG in place of requiring "both a forward and side reach" to the controls. See 57 FR 41006 (September 8, 1992).

The Department of Transportation issued a NPRM in November 1992 to amend its ADA regulations in several respects, including conforming the standards for transportation facilities to incorporate the proposed amendment to the reach range requirement for ATMs. See 57 FR 54210 (November 17, 1992). The amendment is relevant to transportation facilities because fare vending machines are required to comply with the same requirements as ATMs. See ADAAG 10.3.1(7).

The Department of Justice also issued a NPRM in April 1993 to amend its regulations on nondiscrimination on the basis of disability by public accommodations and in commercial facilities covered by title III of ADA (28 CFR part 36) to incorporate the proposed amendment to the reach range requirement for ATMs. See 58 FR 17558 (April 5, 1993). The Department of

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] The dimensions for a forward and side reach for wheelchair users are contained in ADAAG 4.2.5 and 4.2.6 and are taken from the "American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People" (ANSI A117.1-1980). The maximum forward reach permitted is 48 inches above the floor. See ADAAG 4.2.5 and Figure 5(a). If the forward reach is over an obstruction, clear floor space must be provided under the obstruction that equals or exceeds the reach depth for a maximum of 25 inches; and if the reach depth is between 20 inches and 25 inches, the maximum forward reach permitted is 44 inches above the floor. See ADAAG 4.2.5 and Figure 5(b). The maximum side reach permitted is 54 inches above the floor for a maximum reach depth of 10 inches. See ADAAG 4.2.6 and Figure 6(b). If the side reach is over an obstruction, the maximum side reach permitted is 46 inches. See ADAAG 4.2.6 and Figure 6(c).

Justice will issue a separate final rule notice in the Federal Register regarding the amendment of its regulations.

Summary of Rule and Comments

The Access Board and the Department of Transportation are adopting as a final rule the proposed amendment to the reach range requirement for ATMs and fare vending machines.[3] The technical provisions in ADAAG 4.34 are reorganized to more clearly set out the clear floor space and reach range requirements. The scoping provisions in ADAAG 4.1.3 (20) for buildings and facilities in general, and in ADAAG 10.3.1 (7) for transportation facilities in particular, are also revised to correctly reference the reorganized technical provisions in ADAAG 4.34.

ADAAG 4.34.1 provides that each ATM required to be accessible by the scoping provision in ADAAG 4.1.3 (20) must be on an accessible route and comply with the other requirements in ADAAG 4.34.2 through 4.34.5. ADAAG 10.3.1 (7) provides for fare vending machines in transportation facilities also to be on an accessible route and to comply with ADAAG 4.34.2 through 4.34.5.

ADAAG 4.34.2 requires that ATMs be located so that clear floor space complying with ADAAG 4.2.4 (i.e., 30 inches by 48 inches minimum with one full unobstructed side adjoining or overlapping an accessible route) is provided to allow a wheelchair user to make a forward approach, a parallel approach, or both to the machine.[4] Since ATMs are usually located in the lobby of buildings or installed through the exterior wall of buildings, there is generally adequate clear floor space for a wheelchair user to make a forward or parallel approach.

ADAAG 4.34.3 sets out the reach ranges for the various controls used to operate an ATM, including card readers, keypads, video display screen function keys, deposit slots, cash and receipt dispensers, and statement printers. ADAAG 4.34.3 (1) provides that if only a forward approach is possible (e.g., ATM located in narrow alcove), the operable parts of all the controls must be placed within the forward reach range specified in ADAAG 4.2.5 (i.e., 48 inches maximum height for a reach depth up to 20 inches and 44 inches maximum height for a reach depth between 20 inches and 25 inches; and clear floor space provided under the ATM that equals or exceeds the reach depth for a maximum of 25 inches).

ADAAG 4.34.3 (2)(a) and (b) specify the reach ranges if only a parallel approach is possible (e.g., ATM located in narrow corridor). Where the reach depth to the operable parts of all controls is not more than 10 inches, the maximum height for the placement of controls is 54 inches. Where the reach depth to the operable parts of any control is more than 10 inches, the table of reach depths and maximum heights in ADAAG 4.34.3 (2)(b) is to be used. Generally, for each additional inch of reach depth beyond 10 inches, the height of the controls would be lowered one-half inch below the 54 inch maximum height, with the controls being lowered an additional one-half inch at reach depths greater than 13 inches and 20 inches due to rounding-off numbers.

ADAAG 4.34.3 (3) provides that if both types of approaches are possible, the operable parts of all controls must be placed within at least one of the reach ranges in ADAAG 4.34.3 (1) or (2). Thus, if there is adequate clear floor space for a wheelchair user to make a forward or parallel approach, at a minimum the controls must be reachable from at least one of the approaches.

ADAAG 4.34.3 (4) requires that where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided must comply with the applicable reach ranges.

ADAAG 4.34.3 also contains an exception for ATMs which are equipped with an alternate control that can perform that same function in a substantially equivalent manner. Under the exception, only one of the controls needed to perform the function is required to comply with the reach range requirement. If the controls are identified by tactile markings, such markings must be provided at both controls so that the markings can be read by persons with vision impairments from a standing or sitting position.

ADAAG 4.34.4 regarding the operation of controls and ADAAG 4.34.5 regarding equipment for persons with vision impairments are unchanged from existing ADAAG. Only the section numbers have been changed as a result of the amendments discussed above.

NCR Corporation, InterBold, and the banking industry supported the proposed amendment to the reach range requirement.[5] The amendment will allow banks to choose among available ATM models and surround designs and, based upon their combined reach depth, install the ATM and surround so that the controls are placed at the appropriate height. The amendment also provides flexibility for banks when relocating older ATMs to lower traffic areas and will ensure that the market for used ATMs remains available.

Organizations representing individuals with disabilities expressed concern that the forward and side reach range requirements do not accommodate all wheelchair users and recommended that the Board conduct additional research in this area. For a summary of earlier research, see 57 FR 41012 (September 8, 1992). Some recommended that ADAAG not be amended until additional research is conducted. Others noted that additional research is also needed on equipment for persons with vision impairments, mounting heights for video display screens and related issues, and recommended that ATM manufacturers not be required to redesign their products to meet one requirement and then have to redesign their products again to meet another set of requirements. Rather, they recommended that accessibility requirements for ATMs be imposed on the industry as a "package" so that any required changes can be incorporated in a single redesign. Congress has expressed similar concern and has recommended that "when considering accessibility requirements for automated teller machines (ATMs) under the ADA, to take into account the fact that these sophisticated electronic systems are more difficult to modify and design than other vending machines because of their reliance on computers and their special security considerations." H. Rept. 102–918, at 34.

The Little People of America also commented on the amendment. According to the Little People of America, there are over 1.5 million Americans who are short statured. Their adult height ranges from 2 feet 6 inches to 4 feet 10 inches. For many of these individuals, the controls on ATMs are completely out of their reach. The Little People of America recommended that ADAAG not be amended without

[3] The Department of Transportation will be issuing a separate notice in the Federal Register regarding the final action taken on the other amendments proposed to its ADA regulations in November 1992.

[4] For a parallel approach, the clear floor space is positioned with the longer dimension (48 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4(c). For a forward approach, the clear floor space is positioned with the shorter dimension (30 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4 (b). The various approaches are illustrated in the NPRM at 57 FR 41011, Figure 2 (September 8, 1992).

[5] The American Bankers Association, Independent Bankers Association of America, Savings and Community Bankers of America, Credit Union National Association, California Bankers Association, and about a dozen banks submitted comments in support of the amendments.

conducting additional research on making ATMs accessible to persons who are short statured. About 700 members and friends of the Little People of America sent letters reiterating these points.

The Access Board recognizes that any reach range requirement must take into account the needs of various user groups, including persons who use wheelchairs, persons who have difficulty bending or stooping, persons who are short statured, and persons with vision impairments who may read tactile markings identifying equipment controls. One way to accommodate these various groups is to require two of each type of equipment to be provided at each location, with one placed at a higher height and one placed at a lower height. Such a requirement would be very costly to implement for ATMs. Another way to accommodate these various groups is to provide technological alternatives for operating equipment that can be used by persons who are not accommodated by established reach ranges. NCR Corporation and InterBold reported that they are investigating several technological alternatives for operating ATMs, including remote devices, voice activation devices, and contactless cards.

In addition to reach ranges for controls, the Access Board requested comment on the viewing height and angle for video display screens. The NPRM noted that the American National Standards Institute (ANSI) A117 Committee and California have established or proposed accessibility provisions for video display screens. All the ATM manufacturers objected to the ANSI provision because it would require the screen to be positioned almost horizontally to be viewable from a standing position which would be difficult for a wheelchair user to read. The ATM manufacturers preferred the California provision because it addresses both viewing height and angle. InterBold stated that its ATMs comply with the California provision.

The ANSI A117 Committee has recently established a task force on ATMs to further examine a variety of issues related to making the machines readily accessible to and usable by persons with various disabilities. The Access Board is a member of the task force. The task force includes representatives from organizations of persons with mobility impairments and vision impairments, ATM manufacturers, and banks. The Little People of America have also been invited to participate in the task force. The task force will be investigating such issues as access for person with vision impairments, reach ranges, viewing height and angle of video display screens, and technological alternatives for addressing these issues.

The Access Board also plans to sponsor research in fiscal year 1994 on clear floor space, maneuvering clearances, and reach ranges for persons using power wheelchairs and three wheeled scooters. See the Access Board's notice on ADA research priorities for fiscal years 1993 and 1994 published in the **Federal Register** on July 9, 1993 (58 FR 37058). Persons using power wheelchairs are more likely to have a restricted reach range due to limited upper body mobility. The research project will also include a literature review on reach ranges focusing on the population that was tested in earlier studies and the extent to which those studies examined the manipulation of controls at different heights and reach depths. Based on the results of the literature review, the Access Board may sponsor additional research on reach ranges.

In light of the further work being done by the ATM task force sponsored by the ANSI A117 Committee and the additional research planned for fiscal year 1994, the Access Board does not intend to propose any additional requirements for ATMs at this time.

The Department of Transportation received several comments on the application of the proposed amended reach range requirement for ATMs to fare vending machines. Nine commenters supported the proposed amendment as applied to fare vending machines. Five commenters said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a separate provision, at least with respect to some specifications. One commenter said that, if the reach range requirement is amended, existing models of fare vending machines which it had installed should be grandfathered so that retrofit was not necessary. Several comments recommended that additional provisions such as a voice synthesizer system was needed on fare vending machines for persons with vision impairments.

The Access Board and the Department of Transportation believe that the proposed amended reach range requirement for ATMs is reasonable for fare vending machines as well. The operations which consumers must perform on ATMs and fare vending machines are similar enough that the same requirements should apply to both machines. Those commenters who said that the two types of machines should have different requirements did not provide sufficient information on which to base separate specifications. The Department of Transportation would apply the current "grandfathering" provisions in its ADA regulations (49 CFR 37.9) to fare vending machines that meet the existing ADAAG requirements in the same way as that section applies to other features of transportation facilities. As for provisions for persons with vision impairments, ADAAG 10.3.1(7) already requires compliance with ADAAG 4.34.5 which specifies that all instructions and information needed to use the machine must be accessible to and usable by persons with vision impairments. Specifying a voice synthesizer system for fare vending machines does not seem necessary and, in any event, is beyond the scope of the NPRM.

Regulatory Analyses and Notices

The Access Board and the Department of Transportation have independently determined that this final rule is not a major rule under Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is a significant rule under the Department of Transportation's Regulatory Policies and Procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board and the Department of Transportation hereby independently certify that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The Access Board and the Department of Transportation have also independently determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

Text of Final Common Rule

Appendix A to this part is amended by revising paragraph (20) in section 4.1.3, by revising sections 4.34 and 4.34.1 through 4.34.4, by adding section 4.34.5, and by revising paragraph (7) in section 10.3.1. Pages 10, 58, and 69 of appendix A are republished with the revisions included and page 58A of appendix A is added to read as follows:

BILLING CODE 8150-01-P; 8810-02-P

4.1.3 Accessible Buildings: New Construction

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie the aters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more machines are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

VOL 58 ISS 134 JL 15 1993 UMI

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. *Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.*

4.34 Automated Teller Machines.

4.34.1 General. *Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.*

4.34.2 Clear Floor Space. *The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.*

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		Maximum Height	
In	Mm	In	Mm
10	255	54	1370
11	280	53½	1360
12	305	53	1345
13	330	52½	1335
14	355	51½	1310
15	380	51	1295
16	405	50½	1285
17	430	50	1270
18	455	49½	1255
19	485	49	1245
20	510	48½	1230
21	535	47½	1205
22	560	47	1195
23	585	46½	1180
24	610	46	1170

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. *Controls for user activation shall comply with 4.27.4.*

4.35 Dressing and Fitting Rooms

4.34.5 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

4.35.3 Doors. *All doors to accessible dressing rooms shall be in compliance with section 4.13.*

4.35.4 Bench. *Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.*

4.35.5 Mirror. *Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

VOL
58
ISS
134
JL
15
1993
UMI

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between the rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

BILLING CODE 8150-01-C; 4910-62-C

Adoption of Joint Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12204).

Appendix to Part 1191 [Redesignated as Appendix A]

2. The appendix to part 1191 is redesignated as appendix A to part 1191 and the heading is revised to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

Appendix A [Amended]

3. Appendix A to part 1191 is amended as set forth at the end of the common preamble.

Authorized by vote of the Access Board on November 18, 1992.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

Appendix A [Amended]

2. Appendix A to part 37 is amended as set forth at the end of the common preamble.

Dated: June 30, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–16735 Filed 7–14–93; 8:45 am]

BILLING CODE 8150–01–P; 4910–62–P

VOL
58
ISS
1
3
4
JL
15
1993
UMI

federal register

Thursday
July 15, 1993

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921
National Estuarine Research Reserve System Program Regulations; Final Rule

VOL
58
ISS
134
JL
15
1993
UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 910927-3012]

RIN 0648-AB68

National Estuarine Research Reserve System Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the existing interim-final rule for selecting, designating, operating, and funding National Estuarine Research Reserves to bring them into accord with requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (the Amendments). In addition, it adopts some of the revisions suggested by comments received on the interim-final rule dated July 23, 1990, and incorporates comments received on the proposed rule published on July 17, 1992 (57 FR 31926).

FOR FURTHER INFORMATION CONTACT: June Cradick at (301) 713-3132.

DATES: Effective July 14, 1993.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued pursuant to the authority of section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461 (the Act). The National Estuarine Reserve Research System (the System) has been operating under interim-final regulations published July 23, 1990 (55 FR 29940).

II. Availability of Comments

All comments received in response to the notice of proposed rulemaking for this rule (57 FR 31926, July 17, 1992) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8 a.m. to 4:30 p.m.) in room 12520, 1305 East-West Highway, Silver Spring, Maryland 20910.

III. Regulatory Issues

A. General Background

On July 23, 1990 (55 FR 29940) NOAA published interim-final regulations for continued implementation of the National Estuarine Reserve Research System Program pursuant to section 315 of the Act, 16 U.S.C. 1461. Written comments were accepted until September 21, 1990. On November 5, 1990, Public Law No. 101-508 was passed reauthorizing the Program. Several changes to the regulations are required as a result of the 1990 reauthorization. In addition, for the reasons stated below, some of the revisions suggested by the comments received on the interim-final rule have been adopted. A summary of the significant proposed changes to the interim-final regulations is presented below. On July 17, 1992, NOAA published a proposed rule incorporating revisions required by the Amendments and revisions suggested by public comments received on the interim-final rule. Two public comments on the proposed rule were received during the review period which ended on August 31, 1992. The public's comments and NOAA's response are set forth in Section VI, Summary of Public Comments and Responses.

B. Final Rule

These regulations establish the Program's mission and goals and revise the existing procedures for selecting, designating and operating National Estuarine Research Reserves.

1. Changing the Name of the Program

The name of the Program was changed from the National Estuarine Reserve Research System to the National Estuarine Research Reserve System by the Amendments. The revisions to the regulations revise the Program name accordingly when it appears in the regulations.

2. Revision of Match Requirements

The Amendments effectively reduce from 50% to 30% state, and where applicable, private party match requirements for the following financial assistance award types: Operations, research, monitoring, facility construction and education/interpretation. They also provide for 100% Federal support for educational-interpretive activities that benefit the entire System. Match requirements for site selection and land acquisition remain at 50%. The revisions make the regulations conform.

3. Definitions

The revisions add a definition for the term "state agency".

4. Increase in Acquisition Support

The Amendments increase the maximum amount of Federal financial assistance that can be awarded for the acquisition of land and waters, or interests therein, for any one National Estuarine Research Reserve from $4,000,000 to $5,000,000. The revisions make the regulations conform.

5. Change in Development Support

The regulations allow costs associated with the development of research, monitoring and education programs to be included as supplemental development costs and eliminate the ceiling of $1,500,000 on financial assistance which can be provided for development assistance directly associated with facility construction.

6. Simplification of Operational Support

The regulations reduce state and Federal paperwork burdens by combining support for routine monitoring and education activities with the annual non-competitive operations and management awards. Competitive awards for special monitoring, research and education projects continue as a separate activity.

7. Clarification of Site Selection

The regulations clarify the process to be followed by a coastal state which proposes to reactivate an inactive site previously approved by NOAA for development as an estuarine sanctuary or National Estuarine Research Reserve.

8. Resource Manipulation

The regulations recognize the possibility that in Reserve buffer areas long-term uses may have existed prior to designation which should be allowed to continue.

9. Performance Evaluation

The Amendments emphasize the importance of public participation in the performance evaluation process. They also establish interim sanctions, including partial or full withdrawal of financial assistance, and establish a process for instituting such sanctions. The revisions make the regulations conform.

IV. Summary of Comments on the Proposed Regulations and NOAA's Responses

NOAA received two comments on the proposed rule. A summary of those comments and NOAA's response appears below.

Comment: There is a need to recognize that manipulative uses occur within the core area of Reserves. Further, traditional uses is a more appropriate term to describe sport fishing and hunting, rather than manipulative uses.

Response: NOAA is aware that manipulative uses occur within core

areas of certain Reserves. However, given the purposes of the Program, NOAA believes that some of these activities are inappropriate to be carried out in core areas. In response to the commenters' concerns regarding the use of the term "manipulative uses", the regulations have been clarified to better explain the meaning of that term.

V. Other Actions Associated With the Rulemaking

[A] Classification Under Executive Order 12291. NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

These rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the Coastal Zone Act Reauthorization Amendments of 1990. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

[B] Regulatory Flexibility Act Analysis. A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for identifying and designating National Estuarine Research Reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses. Accordingly, when these regulations were proposed, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these regulations, if adopted, would not have a significant economic impact on a substantial number of small entities.

[C] Paperwork Reduction Act of 1980. This rule contains collection of information requirements subject to Public Law 96–511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648–0121). Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Richard Roberts, room 724, Department of Commerce, 6010 Executive Blvd., Rockville, Maryland 20852, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. ATTN: Desk Officer for NOAA.

[D] Executive Order 12612. This rule does not contain policies which have sufficient Federalism implications to warrant preparation of a Federalism Assessment pursuant to Executive Order 12612. However, the provisions of the rule setting forth what a state must do or agree to do in order to qualify for the various types of Federal assistance available under the rule has been reviewed to ensure that the rule grants the states the maximum administrative discretion possible in the administration of the National Estuarine Research Reserve System policies embodied in the qualification requirements. In formulating those policies, the NOAA worked with affected states to develop their own policies with respect to the use of National Estuarine Research Reserves. To the maximum extent possible consistent with the NOAA's responsibility to ensure that the objectives of the National Estuarine Research Reserve System provisions of the Coastal Zone Management Act are achieved, the rule refrains from establishing uniform national standards. Extensive consultations with state officials and organizations have been held regarding the financial assistance qualifications imposed. Details regarding awards of financial assistance have been discussed above under the heading "REVISION OF THE PROCEDURES FOR SELECTING, DESIGNATING AND OPERATING NATIONAL ESTUARINE RESEARCH RESERVES" and are not repeated here.

[E] National Environmental Policy Act. NOAA has concluded that publication of this final rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental impact statements, Grants programs, Natural resources, Reporting and recordkeeping requirements, Research. (Federal Domestic Assistance Catalog Number 11.420, National Estuarine Research Reserve Research System).

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: June 17, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out in the preamble 15 CFR part 921 is revised to read as follows:

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

Subpart A—General

§ 921.1 Mission, goals and general provisions.
§ 921.2 Definitions.
§ 921.3 National Estuarine Research Reserve System biogeographic classification scheme and estuarine typologies.
§ 921.4 Relationship to other provisions of the Coastal Zone Management Act and the Marine Protection, Research and Sanctuaries Act.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.
§ 921.11 Site selection and feasibility.
§ 921.12 Post site selection.
§ 921.13 Management plan and environmental impact statement development.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

§ 921.20 General.
§ 921.21 Initial acquisition and development awards.

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.
§ 921.31 Supplemental acquisition and development awards.
§ 921.32 Operation and management: Implementation of the management plan.
§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.
§ 921.41 Withdrawal of designation.

VOL 58 ISS 134 JL 15 1993 UMI

Subpart F—Special Research Projects

§ 921.50 General.
§ 921.51 Estuarine research guidelines.
§ 921.52 Promotion and coordination of estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.
§ 921.81 Allowable costs.
§ 921.82 Amendments to financial assistance awards.

Appendix I to Part 921—Biogeographic Classification Scheme

Appendix II to Part 921—Typology of National Estuarine Research Reserves

Authority: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. National Estuarine Research Reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more Reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each Reserve's overall purpose as provided in the management plan (see § 921.13) and consistent with paragraphs (a) and (b) of this section. Use levels are set by the state where the Reserve is located and analyzed in the management plan. The Reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a Reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the Reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on Reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a Reserve, such that the activities themselves or their resulting short- and long-term consequences compromise the representative character and integrity of a Reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as: (1) A restoration activity consistent with paragraph (e) of this section; or (2) an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (*e.g.*, threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term pre-existing use (*i.e.*, has occurred prior to designation) occurring in a buffer area. If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term pre-existing use in a buffer area, then these activities shall be specified in the Reserve management plan in accordance with § 921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the Reserve.

(e) Under the Act an area may be designated as an estuarine Reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (*e.g.*, hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as National Estuarine Research Reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a Reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve management plan. Historical research may be necessary to determine the "natural" representative state of an estuarine area (*i.e.*, an estuarine ecosystem minimally affected by human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning Reserves (see subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a Reserve. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility

construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the Reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects with the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the Reserve management plan. Federal lands already in protected status may not comprise a majority of the key land and water areas of a Reserve (see § 921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one Reserve are made available to others in the System. The network will enable Reserves to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

§ 921.2 Definitions.

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(b) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management or delegee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a National Estuarine Research Reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the Reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the Reserve, enforce rules applicable to the Reserve, or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms "coastal state" and "State agency" shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters (see 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as National Estuarine Sanctuaries or Reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a National Estuarine Research Reserve.

§ 921.3 National Estuarine Research Reserve System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in appendix I, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a National Estuarine Research Reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the Reserve is consistent with the state's approved coastal management program. The state must concur with or object to the certification. It is recommended that the lead state agency for Reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed National Estuarine Research Reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values.

VOL
58
ISS
134
JL
15
1993
UMI

National Marine Sanctuaries and Estuarine Research Reserves may not overlap, but may be adjacent.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under § 921.11 and § 921.12 is subject to the total $5 million for which each Reserve is eligible for land acquisition. In the case of a biogeographic region (see appendix I) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Each separate National Estuarine Research Reserve is eligible for the full complement of funding. Financial assistance application procedures are specified in subpart I.

(b) In developing a Reserve program, a state may choose to develop a multiple-site Reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site Reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site Reserve. Multiple-site Reserves are treated as one Reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site Reserve shall be evaluated both separately under § 921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site Reserve at the time of the initial site selection, or at any point in the development or operation of the Reserve. If the state decides to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33(b). However, a state may not propose to add one or more sites to an already designated Reserve if the operation and management of such Reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in § 921.51. In addition, Federal funds for the acquisition of a multiple-site Reserve remain limited to $5,000,000 (see § 921.20). The funding for operation of a multiple-site Reserve is limited to the maximum allowed for any one Reserve per year (see § 921.32(c)) and preacquisition funds are limited to $100,000 per Reserve.

§ 921.11 Site selection and feasibility.

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart I, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish Reserves in biogeographic regions or subregions or incorporating types that are not represented in the system. (see the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the Reserve. Generally, Reserve boundaries will encompass two areas: Key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the Reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the Reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular Reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the Reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential National Estuarine Research Reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for Reserve status (such as key land and water areas). Such lands generally will be included within a Reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA

approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential National Estuarine Research Reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the **Federal Register**.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site Reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principals (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in § 921.3 and set forth in appendices I and II;

(2) A description of the proposed site(s) and its (their) major resources, including location, proposed boundaries, and adjacent land uses. Maps are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the state is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an Estuarine Sanctuary or Reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§ 921.11a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in § 921.11(c) through (e).

§ 921.12 Post site selection.

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in Reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the Reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA under the terms of § 921.11.

§ 921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to § 921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the Reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7)(i) An acquisition plan identifying the ecologically key land and water areas of the Reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for Reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed Reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—ecquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the Reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the Reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(A) Determine, with appropriate justification, the minimum level of control(s) required [*e.g.*, management agreement, regulation, less-than-fee simple property interest (*e.g.*, conservation easement), fee simple property acquisition, or a combination of these approaches]. This does not preclude the future necessity of increasing the level of state control;

(B) Identify the level of existing state control(s);

(C) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i)(A) of this section;

(D) Examine all reasonable alternatives for attaining the level of

VOL 58 ISS 134 JL 15 1993 UMI

control identified in paragraph (a)(7)(i)(C) of this section, and perform a cost analysis of each; and

(E) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(i)(D) of this section.

(ii) An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions of the Reserve buffer in which long-term pre-existing (prior to designation) manipulation for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer; and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the National Estuarine Research Reserve, and expressing a long-term commitment by the state to maintain and manage the Reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the National Estuarine Research Reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to Reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the National Estuarine Research Reserve is consistent to the maximum extent practicable with that program. See § 921.4(b) and § 921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a National Estuarine Research Reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the **Federal Register** by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After Reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with § 921.31. In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one National Estuarine Research Reserve may not exceed an amount equal to 50 per cent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the Reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, hiring a Reserve manager and other staff as necessary and for other management-related

activities. Application procedures are specified in subpart I.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the Reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the Reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the Reserve, or if the designation of the Reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-then-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to § 921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the public meeting. The state shall be responsible for having a similar notice published in the local newspaper(s).

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Esturaine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed Reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a Reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (*i.e.*, with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B.

(b) NOAA will determine whether the designation of a National Estuarine Research Reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to § 307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See § 921.4(b). The results of this consistency determination will be published in the **Federal Register** when the notice of designation is published. See § 921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the **Federal Register**. The state shall be responsible

VOL
58
ISS
134
JL
15
1993
UMI

for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests (*e.g.*, conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also § 921.13(a)(7); § 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

§ 921.31 Supplemental acquisition and development awards.

After National Estuarine Research Reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a National Estuarine Research Reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 per centum of the cost of the lands, waters, and interests therein or $5,000,000, whichever amount is less. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I. Land acquisition must follow the procedures specified in § 921.13(a)(7), § 921.21(e) and (f) and § 921.81.

§ 921.32 Operation and management: implementation of the management plan.

(a) After the Reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the Reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the Reserve.

(b) State operation and management of the Reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve program (see § 921.1).

(c) Federal funds are available for the operation and management of the Reserve. Federal funds provided pursuant to this section may not exceed 70% of the total cost of operating and managing the Reserve for any one year. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate Reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per Reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

(a) Changes in the boundary of a Reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the Reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a Reserve involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the **Federal Register** of any proposed changes in Reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of § 921.4(b) and § 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the **Federal Register**. The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section § 921.13 and shall include an administrative framework for the multiple-site Reserve and a description of the complementary research and educational programs within the Reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site Reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site Reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a Reserve at least every five years, or more often if necessary. Management plan revisions are subject to (a) above.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the **Federal Register**. If necessary NOAA will revise the designation document (findings) for the site.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.

(a) The Sanctuaries and Reserve Division shall conduct, in accordance with section 312 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of Reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and surveillance and enforcement. Indicators of inadequate implementation could include: No Reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the Reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the Reserve site and resources from offsite impacts.

(7) Inadequate implementation of Reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with Reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the Reserve are adhered to, or evidence that Reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the Reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the Reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the Reserve, or failure to initiate timely updates of the MOU when necessary.

§ 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

Subpart F—Special Research Projects

§ 921.50 General.

(a) To stimulate high quality research within designated National Estuarine Research Reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated Reserves with approved final management plans. Although research may be conducted within the immediate watershed of the Reserve, the majority of research activities of any single research project funded under this subpart may be conducted within Reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific Reserves; however, research projects that would benefit more than one Reserve in the National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register**. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(a)(4) ("allowable costs").

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under § 921.32. Monitoring funds are used to support three major phases of a

monitoring program: (1) Studies necessary to collect data for a comprehensive site description/characterization; (2) development of a site profile; and (3) formulation and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for Reserve management or a qualified public or private person or entity. However, if the applicant is other than the managing entity of a Reserve that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the Reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in § 921.51. Portions of the project may occur within the immediate watershed of the Reserve beyond the site boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under § 921.32. Special interpretive and educational awards may be awarded under this subpart to only those designated Reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a Reserve, that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire National Estuarine Research Reserve System may receive Federal assistance of up to 100% of project costs.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the System appears on an annual basis in the **Federal Register**. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Sanctuaries and Reserves Division Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B (predesignation), subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction activities.

§ 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistant agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A-110. Copies of Circular A-110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) *Site selection and post site selection awards.* Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and development awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the Reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal

Government as that necessary for the protection and management of the National Estuarine Research Reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal land Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a National Estuarine Research Reserve. The value of match for these state lands will be calculated by determining the value of the benefits foregone by the state, in the use of the land, as a result of new restrictions that may be imposed by Reserve designation. The appraisal of the benefits foregone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the National Estuarine Research Reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) *Operation and management awards.* Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) *Research, monitoring, education and interpretive awards.* Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

§ 921.82 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

Appendix I to Part 921—Biogeographic Classification Scheme

Acadian

1. Northern of Maine (Eastport to the Sheepscot River.)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod.)

Virginian

3. Southern New England (Cape Cod to Sandy Hook.)
4. Middle Atlantic (Sandy Hook to Cape Hatteras.)
5. Chesapeake Bay.

Carolinian

6. North Carolinas (Cape Hatteras to Santee River.)
7. South Atlantic (Santee River to St. John's River.)
8. East Florida (St. John's River to Cape Canaveral.)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south.)
10. West Florida (Ft. Jefferson to Cedar Key.)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay.)
12. Mississippi Delta (Mobile Bay to Galveston.)
13. Western Gulf (Galveston to Mexican border.)

Californian

14. Southern California (Mexican border to Point Conception.)
15. Central California (Point Conception to Cape Mendocino.)
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River.)
18. Washington Coast (Columbia River to Vancouver Island.)
19. Puget Sound.

Great Lakes

20. Lake Superior (including St. Mary's River.)
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair.)
22. Lake Erie (including Detroit River and Niagara Falls.)
23. Lake Ontario (including St. Lawrence River.)

Fjord

24. Southern Alaska (Prince of Wales Island to Cook Inlet.)
25. Aleutian Island (Cook Inlet Bristol Bay.)

Sub-Arctic

26. Northern Alaska (Bristol Bay to Damarcation Point.)

Insular

27. Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

BILLING CODE 3510-08-M

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58
ISS
134
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BILLING CODE 3510-08-C

Appendix II to Part 921—Typology of National Estuarine Research Reserves

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Shorelands

A. Maritime Forest-Woodland. That have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern coniferous forest biome: This is an area of predominantly evergreens such as the sitka spruce (Picea), grand fir (Abies), and white cedar (Thuja), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist temperate (Mesothermal) coniferous forest biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate deciduous forest biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved evergreen subtropical forest biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarine, strangler fig, gumbo limbo, and palms.

B. Coast shrublands. This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems and a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern areas: Characterized by Hudsonia, various erinaceous species, and thickets of Myricu, prunus, and Rosa.

2. Southeast areas: Floral dominants include Myrica, Baccharis, and Iles.

3. Western areas: Adenostoma, arcotyphylos, and eucalyptus are the dominant floral species.

C. Coastal grasslands. This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (5 to 8 feet tall), such as Spartina, and trees such as willow (Salix sp.), cherry (Prunus sp.), and cottonwood (Pupulus deltoides.) This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: Elymus;
2. Northeast/West: Ammophia;
3. Southeast Gulf: Uniola; and
4. Mid-Atlantic/Gulf: Spartina patens.

D. Coastal tundra. This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as Empetrum nigrum and Betula nana, the lichens Cetraria and Cladonia, and herbaceous plants such as Potentilla tridentata and Rubus chamaemorus. Common species on the coastal beach ridges of the high arctic desert include Bryas intergrifolia and Saxifrage oppositifolia. This area can be divided into two main subdivisions:

1. Low tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal cliffs. This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. Coastal marshes. These are wetland areas dominated by grasses (Poecea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serve important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal swamps. These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal mangroves. This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by a variety of salt-tolerant trees, such as the red mangrove (Rhizophora mangle), black mangrove (Avicennia Nitida), and the white mangrove (Laguncularia racemosa.) It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal beaches. This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (Emerita), amphipods (Gammeridae), ghost crabs (Ocypode), and bivalve mollusks such as the coquina (Donax) and surf clams (Spisula and Mactra.)

E. Intertidal mud and sand flats. These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamintous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell Donax, the scallop Pecten, tellin shells Tellina, the heart urchin Echinocardium, the lug worm Arenicola, sand dollar Dendraster, and the sea pansy Renilla. In mud, faunal dominants adapted to low oxygen levels include the terebellid Amphitrite, the boring clam Playdon, the deep sea scallop Placopecten, the Quahog Mercenaria, the echiurid worm Urechis, the mud snail Nassarius, and the sea cucumber Thyone.

F. Intertidal algal beds. These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern latitude rocky shores: It is in this region that the community structure is best developed. The dominant algal species include Chondrus at the low tide level, Fucus and Ascophylium at the mid-tidal level, and Laminaria and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and subtropical latitudes: The intertidal in this region is very reduced and contains numerous calcareous algae such as Porolithon and Lithothamnion, as well and green algae with calcareous particles such as Halimeda, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal hardbottoms. This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as keep, may also be found.

B. Subtidal softbottoms. Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal plants. This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass Zostera marina predominates. In the South Atlantic and Gulf coast areas, Thalassia and Diplanthera predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group I—Geologic

A. Basin type. Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area making them chief stabilizers of the ocean shorefront.

2. Sheltered coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters-abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal river: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched coastal wetlands: Unique to Pacific islands, this wetland type found above sea level in volcanic crater remnants forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. **Example:** Aunu's Island, American Samoa.

8. Anchialine systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna which exhibit a high degree of endemicity, include the mollusks Thecsoxus neglectus and Tcariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin structure. Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume river discharge is small. But many fjords have restricted tidal ranges at their mouths due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800m to 1200m while sill depths usually range from 40m to 150m.

3. Bar-bounded estuary: These result from the development of an offshore barrier such as a beach strand, a line of barrier islands, reef formations a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars of barrier islands broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent seal level rises.

4. Tectonic estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock often with a large inflow of freshwater.

5. Volcanic estuary: These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic orgin.

C. Inlet type. Inlets in various forms are an integral part of the estuarine environment as they regulate to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea.

1. Unrestricted: An estuary with a wide unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the subtrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom composition. The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud: At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. Circulation. Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: Nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides. This is the most important ecological factor in an estuary as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of the cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater. According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land being high hills and sloping into valleys.

Group III—Chemical

A. Salinity. This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand-ppt.)

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime: This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid: Waters with a pH of less than 5.5.

2. Circumneutral: A condition where the pH ranges from 5.5 to 7 4.

3 Alkaline: Waters with a pH greater than 7.4.

[FR Doc. 93–14753 Filed 7–14–93; 8:45 am]
BILLING CODE 3510–08–M

VOL
58
ISS
1
3
4
JL
15
1993
UMI

federal register

Thursday
July 15, 1993

Part VI

Department of Health and Human Services

Administration for Children and Families

Adoption Opportunities, Crisis Nurseries/ Respite Care and Child Welfare Training, Grant Program Announcement; Notice

VOL
58
ISS
134
JL
15
1993
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Discretionary Grant Program Announcement for Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training

AGENCY: Administration on Children, Youth and Families [ACYF], Administration for Children and Families [ACF], Department of Health and Human Services [DHHS].

ACTION: Announcement of the availability of financial assistance and request for applications to carry out demonstration and training projects under programs in the Children's Bureau, Administration on Children, Youth and Families.

SUMMARY: The Administration on Children, Youth and Families (ACYF) announces the availability of fiscal year 1993 funds for competing new discretionary grants in the following program areas: Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training. Funding for ACYF grants and cooperative agreements under this announcement is authorized by legislation governing each program area.

This announcement contains all of the necessary application material to apply for these grants and cooperative agreements.

DATES: The closing date for the receipt of all applications under this announcement is August 30, 1993.

ADDRESSES: Application receipt point: Department of Health and Human Services Administration for Children and Families, Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 2000 Independence Avenue, SW., Washington, DC 20201, Attn: _____(Reference announcement number and priority area.).

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Children's Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: (202) 205–8618.

SUPPLEMENTARY INFORMATION: For the past 11 years, ACYF has published most of its priority areas for funding as part of the ACF Coordinated Discretionary Funds Program announcements. This year, program announcements will be issued separately by each ACF agency.

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence, with particular emphasis on children who have special needs. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children and preschool children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

The priority areas for three ACYF programs are included in this announcement: Adoption Opportunities, Child Welfare Services Training and Temporary Child Care and Crisis Nurseries. The priority areas identified in this announcement are derived from legislative mandates as well as Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to ACYF's attention by several means including consultation with advocates, policymakers, and practitioners in the field.

The priorities seek to focus attention on and to encourage demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

This program announcement consists of three parts. Part I provides information on the goals of the Children's Bureau (CB), the ACYF office which is requesting applications, and its statutory authorities for awarding grants.

Part II describes the review process and the programmatic priorities under which applications are being solicited.

Part III provides information and instructions for the development and submission of applications.

Part I—Introduction

A. Goals of ACYF's Children's Bureau

Within ACYF, the Children's Bureau's Division of Child Welfare plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services Program, the Child Welfare Research, Demonstration and Training Program, the Adoption Opportunities Program, the Temporary Child Care and Crisis Nurseries Program, and the Abandoned Infants Assistance Program.

The Bureau's programs are designed to promote the welfare of all children, including disabled, homeless, dependent or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children and the unnecessary separation of children from their families.

B. Statutory Authorities Covered Under This Announcement

- The Adoption Opportunities Program provides financial support for demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs. Authorization: The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Title II, Section 203, Public Law 95–266; and the Child Abuse Prevention, Adoption and Family Services Act of 1988, Title II, Section 201, Public Law 100–294, Public Law 102–295, 42 U.S.C. 5113 et seq. CFDA: 93.652.
- The Temporary Child Care for Children With Disabilities and Crisis Nurseries Program provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Authorization: Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, 42 U.S.C. 5117a, 5117b, 5117c. CFDA: 93.656.
- The Child Welfare Services Training Program provides discretionary grants to accredited public or other nonprofit institutions of higher learning to develop and improve educational and training programs to assist child welfare agencies to upgrade skills and qualifications of staff. Authorization: Section 426(a)(1)(C) of the Social Security Act, as amended, 42 U.S.C. 626(a)(1)(C). CFDA: 93.648.

Part II—Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among

priority areas depending on statutory provisions, it is critical that the "Eligible Applicants" section under each specific priority area be read carefully.

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The Other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all of the priority areas.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status with its grant application. The non-profit agency can accomplish this either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). ACYF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the evaluation criteria listed in Section C, Evaluation Criteria, to review and score the applications. The results of this review are a primary factor in making funding decisions.

ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACYF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: minority populations; a substantial innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services, substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviews will determine the strengths and weaknesses of each proposal in terms of the evaluation criteria listed below, provided comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

Applications under all priority areas will be evaluated against the following criteria.

1. Objective and Need for Assistance (20 Points)

The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and include and/or references relevant data. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (20 Points)

The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

3. Approach (35 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking the proposed approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; provides for projections of the accomplishments to be achieved; and lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The extent to which the application identifies each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities each will undertake and the nature of their effort or contribution.

4. Staff Background and Organization's Experience (25 Points)

The extent to which the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the

VOL
58
ISS
134
JL
15
1993
UMI

experience of the organization demonstrate the applicant's ability to effectively and efficiently administer the project. The extent to which the application describes the relationship between the proposed project and other relevant work planned, anticipated or underway by the applicant.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or other State models are noted, where applicable. Some priority areas specify individuals to contact for more information.

Minimum Requirements for Project Design: This section presents the basis set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items in the applicant's proposal is important since they will be used by the reviewers in evaluating the proposal against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, should also be addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded. The term budget period refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term project period refers to the total time a project is approved for support, including any extensions.

Matching Requirement: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required. Applicants are encouraged to meet their match requirements through cash contributions. Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. Therefore, a project requesting $50,000 in Federal funds must include a match of at least $16,666 (25 percent of the total project cost).

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund in the priority area. *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. An applicant should ensure the availability of any amount proposed as match prior to including it in the budget. The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACF will disallow any unmatched Federal funds.

For priority areas advertising multi-year projects, awards, on a competitive basis, will be for a one-year budget period, although project periods may be longer. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination made that continued funding would be in the best interest of the Government.

E. Available Funds

ACYF intends to award new grants and cooperative agreements resulting from this announcement during the fourth quarter of fiscal year 1993 and, possibly, during the first and second quarters of fiscal year 1994, subject to the availability of funding.

F. List of Priority Areas

1.01—Developing Collaborative Efforts Between Foster Care and Adoption Staff to Improve Child Welfare Services
1.02—National Resource Center for Special Needs Adoption
1.03—Leadership Development: Adoptive Parent Groups
1.04—Increase Adoptive Placements of Minority Children
1.05—Adoptive Placement of Foster Children
1.06—Post-Legal Adoption Services
1.07—Professional Education for Public Child Welfare Practitioners
1.08A—Temporary Child Care for Children with Disabilities and Chronically Ill Children, and
1.08B—Crisis Nurseries

G. Priority Areas

1.01 Developing Collaborative Efforts Between Foster Care and Adoption Staff to Improve Child Welfare Services.

Eligible Applicants: Public State agencies. Only one agency per Federal Region will be awarded a grant.

Purpose: To establish and improve collaboration and develop linkages between public child welfare agency foster care and adoption staff in order to improve practices related to one or more of the issues addressed in the background section. The State that receives funding within its Region will be designated as the lead State. That State will assume responsibility for bringing together foster care and adoption staff in participating States within its Region to address effective intervention approaches to deal with placement issues.

Background: It is the policy of all States to encourage adoption opportunities for children with special needs who are without permanent families and who could benefit from adoption. In most agencies, children enter the child welfare system through protective services units which determine whether the child is dependent, neglected or abandoned. Generally, children are placed temporarily in substitute care pending an assessment of the child's needs and the family situation. When children are in substitute care, agencies must develop a case plan for each child and conduct periodic case reviews and dispositional hearings to monitor progress under the plan and to evaluate its appropriateness for attaining a permanent home.

There are a number of issues which may be directly related to a lack of coordination and collaboration among public child welfare agencies. ACYF has identified three issues which should be addressed under this priority area. One of the issues to be addressed is the

child's first foster care placement, which may ultimately become a permanent placement. Over 60 percent of adopted special needs children have been adopted by their foster parents. Therefore, workers must carefully consider this factor when selecting initial foster care placements. Consideration must be given to whether the best interests of the child would be served if the foster care placement becomes a permanent home. With respect to this issue particular attention must be given to a number of critical matters, including race, ethnicity and culture. This is especially true for special needs children who may be older and aware of their cultural histories, their siblings and their extended families.

Recently, foster parents have resorted to the courts when children are removed from their foster homes for adoptive placement in other homes that the agency has determined are more in the child's best interest. These cases generate considerable publicity and are very damaging to the children, who may be moved to yet another foster family home until the court determines where the child is to permanently reside. The child welfare system must take more responsibility for the consequences of placement decisions; therefore, better planning must ensure that both initial and permanent placements for these children are timely and appropriate.

A second issue to be addressed involves adoptive children who require residential placements. These placements should be considered as interim placements in the hopes that the child will eventually return to the adoptive family. However, staff in residential facilities do not have access to training on adoption issues as they relate to the child and the adoptive family. Consequently, staff may fail to work with families toward the reunification of the child with the family. The residential facilities are usually private agencies and are accustomed to providing services to children who have been abused and neglected. Coordination needs to be effected among child welfare agencies and residential facilities to achieve comprehensive services for these children.

The third issue to be addressed is the organizational separation, in many State agencies, of foster care and adoption staff. Such structural separation tends to hinder communication, case planning and case management for children who move from foster care status to adoption status.

ACYF seeks proposals from States for projects which will improve collaboration among foster care and adoption services staff within the participating States in a Region. These three-year grants will culminate in the development and implementation of models of coordinated services to foster and adoptive children designed and tested in each Region.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Focus on addressing one or more of the issues addressed in the background section.
- Provide letters of support for the project from a minimum of three States in the Region (which includes the State submitting the application) that would participate in the project.
- Describe the existing organization of foster care/adoption services in States within the Region and the need to develop and implement a new approach for these two functions to work together more effectively.
- Identify and describe existing barriers to coordination in practice and policy in the States that would participate in the project.
- Provide assurances that a key representative who can speak for the project would attend an annual three-day Adoption Opportunities grantees meeting in Washington, D.C.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.

Federal Share of Project Cost: The Federal share per project will be up to $75,000 per year.

Project Duration: The length of the project must not exceed 36 months.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. A project requesting $75,000 per year in Federal funds must include a match of at least $25,000 per year (25 percent of the total yearly project cost of $100,000). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects: It is anticipated that 10 projects will be funded, one in each Department of Health and Human Services Region.

The Regions, and the States included in them, are as follows:

Regions	States
I	Vermont, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island.
II	New York, New Jersey, Virgin Islands, Puerto Rico.
III	Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.
IV	Alabama, Florida, Georgia, South Carolina, Kentucky, Mississippi, North Carolina, Tennessee.
V	Illinois, Michigan, Ohio, Wisconsin, Minnesota, Indiana.
VI	Texas, Arkansas, Louisiana, New Mexico, Oklahoma.
VII	Missouri, Iowa, Nebraska, Kansas.
VIII	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX	California, Arizona, Nevada, Hawaii.
X	Washington, Alaska, Oregon, Idaho.

CFDA: 93.652 Adoption Opportunities Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.02 National Resource Center for Special Needs Adoption

Eligible Applicants: Any State, local, public or private non-profit agency or organization, including accredited colleges and universities, may submit applications under this announcement.

Purpose: To provide assistance to State and local, public and private child welfare and adoption agencies for the development, expansion, strengthening and improvement of the quality and effectiveness of adoption services to children and families through the (1) dissemination of materials, including curricula, guidelines and training materials; (2) development and dissemination of models of effective practices and programs; (3) provision of technical assistance to States selected by the Children's Bureau; and (4) participation in program reviews and other Children's Bureau reviews.

This grant will be awarded as a Cooperative Agreement.

Background Information: Adoption is a critical service in achieving permanent homes for children with special needs who are in the public child welfare system. In the past decade, the Adoption Opportunities Program has, through grants and contracts, developed extensive resources, training materials and program models to address barriers to the adoption of these children.

Several national programs have been funded to assist agencies in improving services to children with special needs,

VOL 58 ISS 134 JL 15 1993 UMI

to adoptive families and to families who wish to adopt. The current National Resource Center for Special Needs Adoption (NRC), funded from 1985 to September 1993, provides training, technical assistance and consultation to improve adoption services for children with special needs. The National Adoption Information Clearinghouse, operating under a contract funded from September 1990 until September 1993, provides information to the public on all aspects of infant adoption and on the adoption of children with special needs. That contract will be competed again in FY 1993. And, the National Adoption Center, funded from 1982 to 1993, operates a national adoption telecommunications network which allows States, adoption exchanges and agencies, parent groups and national organizations to communicate with one another about adoption concerns and to register special needs children and prospective families.

These national programs, as well as demonstration grants that have been Federally supported, have successfully assisted States in placing greater numbers of children with adoptive families and, in some cases, have effected changes and improvements in statewide adoption systems. However, six program areas have been identified in the adoption legislation (Pub. L. 102–295, the Child Abuse Prevention and Treatment Act of 1992) as requiring additional attention; these (1) include minority children placements, (2) post-legal adoption services, (3) the placement of foster care children legally free for adoption, (4) national adoption recruitment, (5) the development of interdisciplinary approaches to meet the needs of children who are waiting for adoption and the needs of adoptive families and the (6) training of minority leaders. Most of the concerns addressed in the legislation are included in this announcement.

Minimum Requirements for Project Design: The National Resource Center for Special Needs Adoption should provide child welfare and adoption agencies with broader access to methods and techniques for expanding and improving special needs adoption services. Applicants must describe how they plan to undertake a project that has the capability to assist these agencies by conducting the following activities:

- The development of increased intrastate cooperation among relevant public and private sector agencies. This should include networking and cooperation with agencies providing mental health and developmental disabilities services to children and services for HIV positive, AIDS infected and drug affected children;
- The development of techniques for the early identification and follow-up of children for whom adoptive placement is the plan;
- The dissemination of models for increasing the rate of adoptive placements of children with special needs who are legally free for adoption, particularly older children;
- The provision of technical assistance, consultation and training for adoption providers on recruitment, preparation and post-legal adoption services for adoptive families, with a focus on minority families and infants abandoned by their parents; and,
- The development of interdisciplinary approaches to serving children awaiting adoption, families who wish to adopt, and adoptive families.

In order to compete successfully under this priority area, the applicant must also:

(1) Provide assurances that at least one key person from the project would attend the annual Adoption Opportunities Grantees meeting in Washington, DC; and,

(2) Document that the project would be staffed and implemented within 90 days of the notification of the grant award.

(3) Agree to enter into a cooperative agreement which will require the grantee to submit to the Children's Bureau for review and approval: workplans, lists of topics to be covered in technical assistance resources, syntheses, summaries and literature reviews; topics, times and places for conferences; topics for any collection of original data; and draft reports, conference agendas and other materials prior to their finalization and dissemination by the grantee.

The grantee shall also cooperate, to the extent that its budget will allow, with the Children's Bureau in meetings, briefings, or other forums to disseminate knowledge gained from its work with adoption providers.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Cost: The maximum Federal share is not to exceed $400,000 per 12-month budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $400,000 per year in Federal funds must include a match of at least $133,333 per year (25 percent of the total yearly project cost).

Anticipated Number of Projects to be funded: It is anticipated that one project will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.03 Leadership Development: Adoptive Parent Groups

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies or exchanges.

Purpose: To develop and support strong leaders for parent groups to enable them to be effective in providing support to and advocacy for families who adopt children with special needs.

Background: Through the years adoptive parents have aggressively promoted the adoption of children with special needs. As consumers of adoption services, these parents bring to the adoption field a special perspective both on the children to be served and on the agencies that serve them. They have been effective advocates for children and have challenged the term unadoptable by demonstrating that children with special needs can be placed with families of their own. Often the members of parent groups have come together out of a common need to help each other more effectively access the child welfare system for the purpose of adoption. Having experienced common problems, the members of parent groups may share information and insight and provide empathy and support for one another through regularly scheduled social and educational activities.

There are presently over 425,000 children in foster care in the United States and the numbers are growing. Thirty-seven thousand of these children have special needs and are waiting to be adopted. Over half of these waiting children are of minority heritage. Strong parent groups can play an important role promoting the adoption of these children through such activities as information and referral services, recruitment and orientation for prospective adoptive parents and work with social service agencies to support families following placement and legalization. ACYF recognizes the need to support the development of strong, effective leaders in order to support the establishment of new adoptive parent groups, strengthen existing groups and

advocate for the creation of needed services.

Minimum Requirements: In order to compete successfully under this priority area, the applicant should:

- Document with letters of commitment that the applicant has the capability to work with local or State adoptive parent groups.
- Describe the process that would be used to identify and select parents in the adoption community for leadership development and the number of leaders that will be developed.
- Describe the process and training curriculum (or training design) that would be used to train parent leaders; and describe the specific skills that would be developed.
- Describe how the applicant would reach out to the minority adoption community to assure its participation in the leadership development program.
- Describe how the applicant would provide technical assistance and support to group leaders, reinforcing the newly developed leadership skills, in building new parent groups or strengthening existing groups.
- Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities grantees' meeting in Washington, D.C.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $75,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $75,000 per year in Federal funds must include a match of at least $25,000 per year (25 percent of the total yearly project cost of $100,000).

Anticipated Number of Projects To Be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.04 Increase Adoptive Placements of Minority Children

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies, and incorporated adoptive parent groups and community-based organizations with experience in working with minority populations. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop programs designed to increase the adoptive placement of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families and adoptive placements for minority children.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 102–295, places an emphasis upon the recruitment of minority families and authorizes funds for demonstration projects for the recruitment of families to adopt waiting minority children.

It is estimated that approximately half of the 30,000 children currently free for adoption and awaiting placement are minority children. Some of these children are older, have disabilities and may wait long periods of time before they are placed with adoptive families.

A Child Welfare League of America study entitled "The State of Adoption in America" reports four major issues cited by public agencies as being critical impediments to timely adoptive placement: lack of minority parents for waiting minority children; lack of agency staff and funds; lack of parents willing to adopt children with special needs; and delays in the termination of parental rights. ACYF is aware that there must be a continuous focus on the adoption of minority children and has funded a number of programs designed to specifically recruit minority families and to place minority children. Unfortunately, however, only a few of these programs have continued beyond Federal funding.

During recent years States have developed and used a variety of new strategies to recruit prospective adoptive families for children with special needs. Among the most successful models were:

- One Church, One Child (which developed a partnership between the Black church and the State social service agency for recruiting families for Black children); and
- Friends of Black Children (the State social service agency for recruiting families for Black children).

Each of these models required very active community participation in recruitment and often in family preparation. These recruitment models were particularly successful in the recruitment of Black families and the placement of Black children. States that adopted these models reported a significant increase in the number of families who responded to media and other presentations on adoption.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and describe existing barriers to minority adoption in the locale where the project would be implemented; the number of families that would be recruited; and the number of children that would be placed.
- Describe the innovative methods that would be employed to recruit and prepare minority families (including single applicants) in a timely manner in order to retain recruited families.
- Provide assurances that the program would not require payment of fees by families for the adoption process.
- Describe how training in cultural sensitivity would be provided to all relevant staff to increase their effectiveness in serving minority children and families.
- Provide for a third party evaluation which would assess the project's effectiveness in achieving the desired objectives and would test its ability to provide services to prospective adoptive families through the completion of the adoption.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide evidence of licensure.
- Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.
- Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is

not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 per year in Federal funds must include a match of at least $33,333 per year (25 percent of the total yearly project cost of $133,333).

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.05 Adoptive Placement of Foster Children

Eligible Applicants: Eligibility is limited to State social service agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop programs which will assist States in their efforts to increase the placement of foster children legally free for adoption according to a pre-established plan and goals for improvement.

Background Information: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, authorizes the funding of grants to States to improve adoption services for the placement of special needs children legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Exchange's Network; and to develop a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs and to increase the placement of children residing in those States. More than half of the States have received grants to improve adoption services; however, only a small number have been able to sustain these efforts because of limited funds, staffing problems and the fact that adoption services are not viewed as a priority by many States.

Increasingly, children entering foster care have more complex problems which require more intensive services than in the past. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into adoptive placement in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are achieved when permanent plans are made and carried out very early in the placement; when there are sufficient trained and experienced staff; and when there are available resources and administrative commitment to adoption and to coordinated community-based efforts.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placement.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application (the rate of placement is the number of children placed divided by the number of children waiting for adoption).
- Describe the methods to be employed to increase the rate of placement of foster care children into adoption and the goals for improvement to be achieved during the period of the grant.
- Describe how the proposed improvements, if successful, would be continued beyond the period of Federal support.
- Propose and describe an evaluation component which would focus on the innovations used to improve the placement of children who are legally free for adoption and which would address the successes and failures of the initiative. The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Statistics should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures used in implementing the project. This information should be used to assess placement rates and the success or failure of the innovative. program methodologies used.
- Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 per year in Federal funds must include a match of at least $33,333 per year (25 percent of the total yearly project cost of $133,333).

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.06 Post-Legal Adoption Services

Eligible Applicants: States, local government entities, and public or private nonprofit licensed child welfare or adoption agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants

VOL 58 ISS 134 JL 15 1993 UMI

under this priority area will not be precluded from receiving a grant.

Purpose: To develop or replicate projects which will strengthen the provision of post-legal adoption services for families who have adopted children with special needs. The services provided shall supplement, not supplant, services supported by any other funds available to the applicant for the same general services.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 102–295, authorizes funds for increased post-legal adoption services. Recognition of special issues in adoption in the past decade has led adoption professionals to reconsider the concept that agency services to adoptive families end with the legal consummation of the adoption. Historically, once the adoption was legally consummated, the newly-formed family was to be considered the same as any other family. There is now acknowledgement that adoption is a life-long process and that service providers need to understand the unique interpersonal dynamics of adoption in order to provide effective post-legal adoption services (those provided after the legalization of the adoption) to families who seek assistance.

During the past four years, ACYF has funded 54 projects to provide post-legal adoption services for families who have adopted children with special needs. These projects are located in Alaska, Alabama, California, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, and Washington. In addition, a Post-Legal Adoption Consortium was established with awards to the following States: Arizona, Virginia, Illinois, Michigan, Wisconsin and Washington. The Consortium is designed to assist States to develop and institutionalize post-legal adoption services, to review successful post-legal adoption practices, projects and laws, and to make post-legal adoption a core service of the agency. Information on these projects can be obtained from the National Adoption Information Clearinghouse.

Funds awarded under this priority area in FY 1993 will support the incorporation of post-legal adoption services in the agency's programs, the expansion of the post-legal adoption services in communities where such services already exist and the development of such services in communities where they not yet exist. Support will also be provided for the development of additional models of service delivery.

Services funded under this priority area shall be provided to families who have adopted children with special needs. Other variants of post-legal adoption services, such as searches for adult adoptees and services to teen mothers who choose adoption for their children, may also be included.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Propose to provide services such as respite care; individual, group and/or family counseling; case management; training of mental health professionals and staff of public agencies and of private, nonprofit child welfare and adoption agencies licensed by the State to provide adoption services; and assistance to adoptive parents, adopted children and siblings of adopted children.
- Describe the models that would be developed or replicated and the services that would be provided.
- Describe the existing post-legal adoption services, if any; the need for expanded or new services; and plans for the development, implementation, and institutionalization of enhanced and new services.
- Describe how the proposed project would build upon the existing literature and knowledge base related the post-legal adoption services.
- Provide specific written commitments from collaborating or cooperating agencies, if any.
- Document and describe how the project would be an ongoing part of the agency's or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities grantees meetings in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 per year in Federal funds must include a match of at least $33,333 per year (25 percent of the total yearly project cost of $133,333).

Anticipated Number of Projects to be Funded: It is anticipated that seven projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.07 Professional Education for Public Child Welfare Practitioners

Eligible Applicants: Institutions of higher education with accredited social work programs or other bachelor or graduate level programs leading to a degree relevant to work in child welfare. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area or the Interdisciplinary Training Programs for Child Welfare priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop and/or strengthen the training of public child welfare staff through the provision of critical information and the development of skills which impact on the problems confronting public child welfare agency clients and through the provision of specific competency-based child welfare training. Trainees will be enrolled as bachelor or graduate level students at schools with accredited social work programs or other bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Background Information: Because of the increasingly complex nature of the problems affecting vulnerable children and their families, the public child welfare services delivery system is hard pressed to hire and retain staff with the needed competencies. Recent university training programs for social work have been weak in two major areas: First, many curricula have included few child welfare courses. This limits the value of these graduates to child welfare agencies in terms of being able to meet the complex needs of the client populations served by these agencies. Second, opportunities for students to obtain traineeships in public child welfare agencies are very limited and

often are unappealing, in part because of the limited number of professional agency staff to supervise these students. This reduces the value of the preparation students receive for any subsequent employment in these agencies. It also reduces the likelihood that they will seek employment in public agencies.

Competency-based child welfare training is training to learn the specific knowledge and skills necessary to provide child welfare services in a public child welfare agency. Competency-based training emphasizes the practical realities which public child welfare workers confront in their day-to-day work. Staff need to know how to deal with the multiple problems of clients affected by poverty, to encourage and assist clients to be responsible parents, to reunify families, to cope with the results of drug use and to deal with complex court procedures.

Minimum Requirements for Project Design: In order to complete successfully under this priority area, the applicant should:

- Describe who the students would be (bachelor and/or graduate level); how many are expected to be trained over the life of the project; the criteria for the selection of students; how the students would be recruited; and the strategy which would be used to insure that students work in public child welfare after graduation.
- Describe the curriculum, including course titles, that would be utilized. Indicate which are child welfare courses.
- Describe the strategies that would be used to place students in public child welfare agencies as part of their training. Specify the type of supervision which would be provided, including the professional qualifications of the supervisory staff.
- Describe the strategies which would be used to recruit trainees, with a particular emphasis on racial and ethnic minorities.
- Include a plan for evaluation which, at a minimum, includes measures of effectiveness of the training and a follow-up of students to determine their subsequent employment in public child welfare agencies.
- Describe the final report and/or other products, such as curricula or training modules, that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.
- Describe plans for offering traineeships with the grant funds and the criteria to be used in awarding traineeships. A minimum of two-thirds of the funds shall be used for traineeships.
- Provide assurances that at least one key staff person from the university and one key staff person from the public child welfare agency would jointly attend a one-day annual meeting in the HHS Regional Office shortly after the award of the grant as well as a two- to three-day annual grantee meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 per 12-month budget period. A traineeship may not exceed $7,500 per student, per budget year.

Matching or Cost Sharing Requirement: No matching funds are required for the portion of the budget which pays for traineeships. Grantees must provide at least 25 percent of the total cost of grant activities other than traineeships. The total approved cost of these activities is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $75,000 in Federal funds for non-traineeship activities (based on an award of $25,000 per budget period) must include a match of at least $25,000 (25 percent of the total cost for these activities). Because this is a training grant, indirect costs for these training projects shall not exceed 8 percent.

Anticipated Number of Projects To Be Funded: It is anticipated that nine projects will be funded.

CFDA: 93.648 Child Welfare Services Training Grants: Section 426 of the Social Security Act, as amended.

1.08A Temporary Child Care for Children With Disabilities and Chronically Ill Children, and 1.08B Crisis Nurseries

Eligible Applicants: State agencies designated by the Governor of the State to carry out programs funded under the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended (42 U.S.C. 5117a and 5117b). Other State agencies carrying out similar programs are ineligible.

States, including those currently receiving financial assistance under these programs, may apply under one or both priority areas described below. A separate application, however, must be submitted under each priority area. Applications must clearly indicate whether they are being submitted under 1.08A, Temporary Child Care for Children With Disabilities and Chronically Ill Children, or 1.08B, Crisis Nurseries.

Purpose: To support States in their efforts to assist private and public agencies in developing two types of services:

- In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses, including children with AIDS or AIDS-related conditions (priority area 1.08A); and
- Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (priority area 1.08B).
- Special attention should be paid in both priority areas to the needs of drug-affected infants.

Background Information: The Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986 (the Act) authorizes grants to States to assist public and private agencies in developing temporary child care or respite care services for children with disabilities and crisis nurseries for children who are abused or neglected, at risk of abuse and neglect, or in families receiving protective services. These programs are intended to maintain and support the family unit and strengthen the parent-child bond. Programs were funded under this Act in fiscal years 1988, 1989, 1990 and 1991. Additional funding was appropriated in FY 1990 for the support of temporary child care and crisis nurseries programs which place special emphasis on serving drug affected children and families. Also, in FY 1992, ACYF funded, through a limited competition, final continuation grants for projects originally funded in FY 1990.

42 U.S.C. Section 5117a: Temporary Child Care for Children With Disabilities and Chronically Ill Children (Priority Area 1.08A)

The purpose of establishing a temporary child care program (also known as respite care) for children with disabilities or who are chronically or terminally ill is to alleviate social, economic, and financial stress among the families of such children. Such care provides the families or primary caregivers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The Act authorizes temporary child care programs for children with disabilities and requires applicants seeking temporary child care funds to

define disabilities using the definition in the Individuals with Disabilities Education Act:

> * * * The term children with disabilities means children—(A)(i) with mental retardation, hearing impairments including deafness, speech or language impairment, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who by reason thereof.
>
> (ii) Need special education and related services.
>
> (B) The term children with disabilities for children aged 3 to 5, inclusive, may at a State's discretion, include children—
>
> (i) Experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
>
> (ii) Who, by reason thereof; need special education and related services * * * (Pub. L. 102–119).

The following components may be included in temporary child care or respite care projects:

- 24-hour services;
- Access to primary medical services;
- Referral to counseling/therapy services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

42 U.S.C. 5117b: Crisis Nurseries (Priority Area 1.08B)

A crisis nursery is defined in section 42 U.S.C. section 5117c(d) to mean a center providing temporary emergency services and care for children. Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or abuse in the home are increased.

The programs offer parents the option of time out as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver nonpunitive, nonthreatening services as a resource to caregivers of at-risk children; and (3) utilize existing community-based services to further diminish the potential for the maltreatment of children in families experiencing crisis. Services funded under 42 U.S.C. section 5117b must be provided without fee and may be provided for a maximum of 30 days in any year.

Crisis nurseries must also provide referral to support services.

The following components may be included in crisis nursery programs:

- 24-hour services;
- Referral to counseling/therapy services, including out-of-home placement (when appropriate);
- Access to primary medical services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

Minimum Requirements for Project Design: In order to successfully compete under one or both of these priority areas, the applicant should:

- Provide a letter addressed to the Commissioner, Administration on Children, Youth and Families and signed by the Governor, which certifies that the State agency applying for funding is the State agency designated to carry out programs funded under 42 U.S.C. 5117a and 5117b, Temporary Child Care for Children With Disabilities and Crisis Nurseries Act.
- Provide documentation of the State's commitment to develop a State plan for coordination among agencies carrying out programs and activities provided by the State pursuant to a temporary child care grant under 42 U.S.C. 5117a. (Section 5117c(a)(1)(A)(v))
- Describe collaborative efforts with programs funded through the Child Care and Development Block Grant.
- Describe the proposed State program to assist private and public agencies or organizations in providing in-home or out-of-home temporary, nonmedical care to children with disabilities and children with chronic or terminal illnesses, including drug-related conditions and children with AIDS or AIDS-related conditions, or crisis nurseries for abused and neglected children.

(1) If the State has previously received an award under this statute, describe the types of services provided and the geographical sites served utilizing these funds.

(2) If the funds being requested would be used to enhance services previously or currently supported under this statute, substantial detailed documentation must be provided such as the existence of waiting lists or an increase in the population of the geographical area.

(3) If the funds being requested would be used to expand services to geographical sites not previously or currently supported under this statute, describe the process that was used or will be used to select the sites. Particularly encouraged are sites which would serve homeless families, families living in public housing projects or American Indian communities and/or other minority families.

- Describe the services to be provided, the agencies and organizations that would provide the services and the criteria that would be employed in the selection of children and families for participation in the project. (42 U.S.C. 5117c(a)(1)(A)(i))
- Describe State plans for the submission of an annual report to the Secretary evaluating the programs that are funded, including information on costs, number of participants, impact on family stability, incidence of child abuse and neglect and such other information as the Secretary may require. Describe fully how this requirement would be met and specifically describe how the data required to provide this evaluation and information would be collected. (42 U.S.C. 5117c(C))
- Describe a plan for dissemination of the results of the programs and projects funded under the Act. (42 U.S.C. 5117c(a)(1)(A)(iii))
- Discuss plans for continuation of the program after the federally funded project period has ended.
- Provide assurances and adequate budget funds to support at least one key person from the State agency and one key person from each service provider site receiving funds from the grant to attend an annual 2–3 day conference in Washington, DC.
- Provide assurances that travel to these conferences will not be subject to any limitations on travel which may be imposed by the State on its employees.
- Provide the following assurances as required by statute:

(1) That not more than 5 percent of the funds made available under each section of the Act would be used for State administrative costs.

(2) That projects funded by the State would be of sufficient size, scope and quality to achieve the objectives of the program.

(3) That, in the distribution of funds under the Temporary Child Care, program, the State would give priority consideration to agencies and organizations which have experience in working with disabled, terminally ill, and chronically ill children and their families and which serve communities which demonstrate the greatest need for such services.

(4) That, in the distribution of funds under the Crisis Nurseries program, the State would give priority consideration to agencies and organizations with experience in working with abused or

VOL 58 ISS 134 JL 15 1993 UMI

neglected children and their families; in working with children at high risk of abuse and neglect and their families; and in serving communities which demonstrate the greatest need for such services.

(5) That Federal funds made available under these programs would be used to supplement and, to the extent practicable, increase the amount of State and local funds available for these purposes, and in no case supplant such State or local funds.

(6) That the State would use the definition of children with disabilities found in Public Law 102–119, the Individuals with Disabilities Education Act, in implementing programs under the Temporary Child Care program.

(7) That all agencies and organizations funded under the Temporary Child Care program would provide child care only on a sliding fee scale with hourly and daily rates.

(8) That the services provided under the Crisis Nurseries program would be provided without fee and for a maximum of 30 days in any year.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $600,000 in Federal funds must include a match of at least $200,000 (25 percent of the total project cost of $800,000).

Anticipated Number of Projects to be Funded: It is anticipated that approximately 24 projects, 12 under each priority area, 1.08A and 1.08B, will be funded.

CDFA: 93.656 Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, Title II, Public Law 102–295, 42 U.S.C. 5117a, 5117b, 5117c.

Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in part II.

A. Required Notification of the State Single Point of Contact

The Adoption Opportunities Program and the Temporary Child Care for Children with Disabilities and Crisis Nurseries Program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except, Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established State Single Point of Contact (SPOCs). Applicants from these 14 jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

A list of the Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

B. Deadline for Submission of Applications

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at: Department of Health and Human Services Administration for Children and Families Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

2. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc, or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. *SF 424 Page 1, Application Cover Sheet*

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. Type of Submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received by State—State use only (if applicable).

Item 4. Date Received by Federal Agency--Leave blank.

Item 5. Applicant Information—Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Item 15. Estimated Funding Levels—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part II, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes.—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 1993.

Item 16b. Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Catagories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal

VOL 58 ISS 134 JL 15 1993 UMI

funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period if the proposed project period is 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, equipment is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, Other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

(Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements., When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total

indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b) from (a). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR, Part 74.51 and 45 CFR Part 92.3, as property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. Columns (d) and (e) would be used in the case of a 60 month project.

Section F—Other Budget Information.

Direc Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. *Project Summary Description*

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the projects, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. *Program Narrative Statement*

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part II.

The narrative should provide information concerning how the application meets the evaluation criteria (see section C, part II), using the following headings:

(a) *Objectives and Need for Assistance*;

(b) *Results and Benefits Expected*;

(c) *Approach*; and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in section C of part II, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed materials along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. *Organizational Capability Statement*

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part II, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying; and
—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACYF by telephone at (202) 690–7016.

Dated: July 8, 1993.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

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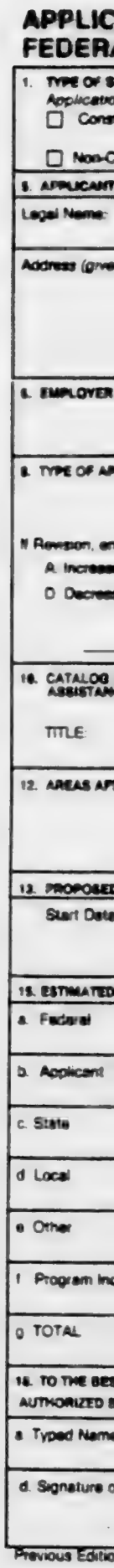
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APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

VOL 58 ISS 134 JL 15 1993 UMI

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

UMI
1993
JL 15
ISS 134
VOL 58

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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INSTRUCT

General Inst

This form can be made programs. In any existing guidelines w budgeted an shown for d within the p grantor agen separately s other progra a breakdown A, B, C, and estimates fo applying for Federal auth funding per Sections A, budget for th year) and Se for Federal a budget perio contain a br categories sh

Section A. B

Lines 1–4, applications grant progra Catalog num functional o Line 1 under title and the

For applic program req multiple fun name of each line in Colu number in C pertaining to of the progra function or a program titl the respective Column (b).

For applic programs wh require a bre prepare a sep requiring the should be us provide adeq data require sheet is used the summary

Lines 1–4, *new applicat* (b). enter in C blank. For ea appropriate s support the p period (usua

For contin submit these funding perio agency. Ente estimated am remain unob funding perio agency instru Otherwise, le in Columns (needed for th amount(s) in of amounts in

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)—*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the Duly Authorized Representative of the Applicant I Certify That the Applicant

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

VOL 58 ISS 134 JL 15 1993 UMI

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C., 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TITLE

APPLICANT ORGANIZATION

DATE SUBMITTED

State Single Points of Contact

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Ms. Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Ms. Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

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Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

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Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development,

Office of the Governor, State Capitol—Room 406 Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Mr. Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Mr. Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ms. Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, ATTN: Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, ATTN: Ms. Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Mr. Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Ms. Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: Mr. John B. Walker, Clearinghouse Coordinator, Telephone (702) 687–4420

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, ATTN: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

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New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

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Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

Mr. William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Mr. Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Mr. Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Ms. Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: Mr. William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Telephone (608) 266–0267.

Wyoming

Ms. Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands [illegible]

VOL 58 ISS 134 JL 15 1993 UMI

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

[FR Doc. 93–16630 Filed 7–14–93; 8:45 am]

BILLING CODE 4184–01–C

federal register

Thursday
July 15, 1993

Part VII

Department of Defense

Department of the Army

Description of Procedures Governing Disqualification and Nonuse of Carriers of DOD Traffic; Notices

VOL 58 ISS 134 JL 15 1993 UMI

DEPARTMENT OF DEFENSE

Department of the Army

Description of Procedures Governing Disqualification and Nonuse of Carriers of DOD Traffic

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of revised procedures.

SUMMARY: This submission incorporates revisions to MTMC Regulation No. 15–1, C1, 12 December 1984, Procedure for Disqualifying and Placing Carriers in Nonuse.

EFFECTIVE DATE: Written comments must be received on or before August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Robbie Randolph or Mr. Cullen Hutchinson, Headquarters, Military Traffic Management Command, Assistant Deputy Chief of Staff for Operations-Quality, ATTN: MTOE–QE, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1292.

SUPPLEMENTARY INFORMATION: This notice if given for the purpose of informing of revisions to MTMC Regulation No. 1 5–1 which prescribes MTMC procedures governing disqualification or nonuse of carriers, agents, company/corporate officers or affiliates contracting with MTMC for transportation of DOD sponsored freight, personal property or passengers and providing the opportunity for public comment. Pursuant to the authority of section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, 41 U.S.C. 4 18b, MTMC has determined that, because of urgent and compelling circumstances, the proposed revised regulation will be implemented on a temporary basis pending final approval.

Proposed Regulation

Department of the Army, Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050

MTMC Regulation 15–1, C2

Procedure for Disqualifying and Placing Carriers in Nonuse

Supplementation of this regulation is prohibited. Comments and suggested improvements may be submitted to HQMTMC (ADCSOPS–Quality) on DA Form 2028. (Recommended Changes to Publications and Blank Forms)

	Paragraph
Purpose	1
Authority	2
Definitions	3
General	4
Causes and Conditions for Disqualification or Nonuse	5
Disqualification and Nonuse Procedures	6
Review Boards	7
Carrier Notification of Disqualification Determination	8
Period of Disqualification	9
Appeal of Determination	10
Notice to DOD and Other Government Agencies	11
Referral to Other Agencies	12

This regulation supersedes MTMCR 15–1, C1, 12 December 1984.

1. Purpose

This regulation prescribes Military Traffic Management Command (MTMC) procedures governing disqualification or nonuse of carriers, agents, company/corporate officers or affiliates contracting with MTMC for transportation of Department of Defense (DOD) sponsored freight, personal property or passengers. These procedures will be followed when HQMTMC decides to take action to disqualify or place a carrier in nonuse, or when MTMC Area Commanders, or designated MTMC representatives, act to disqualify or place a carrier in nonuse or recommend to an area commander or HQMTMC that such action be taken.

2. Authority

The provisions of this regulation are based on the authority contained in 5 USC 301 and 10 USC 2311 as they relate to the handling of DOD transportation requirements by qualified carriers and DOD Directives 5158.4, 4500.9, 4500.34, DOD Regulation 4500.34–R, and United States Transportation Command Regulation 75–1. The military and public contracts exceptions of section 553(a)(1)(2) of 5 USC apply to this regulation. This regulation is separate and distinct from the authority of installation Commanders and Installation Transportation Officers (ITO) to place carriers in a nonuse status pursuant to the Defense Traffic Management Regulation, DTMR, AR 55–355, and the Personal Property Traffic Management Regulation, PPTMR, DOD 4500.34–R. Pursuant to DOD Directive 4500.9, it is the policy of DOD to obtain transportation services from responsive, responsible, commercial carriers providing satisfactory service to meet the needs of the DOD which include optimum responsiveness, efficiency, and economy at the overall best value to the Government. The procedures contained herein are designed to ensure that the Government's best interests are served and that this policy is achieved.

3. Definitions

a. Disqualification is the act, as a result of a Carrier Review Board (CRB), of excluding a carrier from participating in transporting DOD freight, personal property, or passengers because of unsatisfactory service. Disqualification may be for specific services or routes or for all services or routes. It will normally not exceed a maximum period of 2 years. MTMC Area commanders' authority to disqualify is limited to a 180-day period.

b. A CRB is a proceeding which affords carriers an opportunity to present information and rebut information, resulting in a decision based on the administrative record.

c. Nonuse, as used in this regulation, is the act of excluding a carrier from participating in the DOD freight, personal property, or passenger transportation programs for reasons such as those found in paragraph 5.b. which indicate operational or administrative deficiencies or violations pertaining to requirements necessary to participate in DOD transportation programs (e.g., issues involving safety, security, ethics, regulatory and statutory compliance, etc.), as opposed to specific incidences of unsatisfactory performance. The period of nonuse will last until the carrier furnishes evidence that the conditions causing the nonuse status have been remedied or removed.

d. Temporary non-use means placing a carrier in immediate nonuse pending a decision by a CRB convened in accordance with this regulation. Temporary non-use shall terminate with the decision of the review board which will normally be held within 30 days after the carrier was placed in a temporary non-use status.

e. Affiliate. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, nonuse, suspension, debarment, or proposed debarment of a carrier which has the same or similar management, ownership, or principal employees as the carrier that was disqualified, placed in nonuse, suspended, debarred or proposed for debarment.

f. Carrier, as used in this regulation, means any individual or legal entity offering or providing transportation services to DOD/MTMC, directly or indirectly. All references in this regulation to "carrier" shall be given broad application and shall automatically include transportation companies, agents, freight forwarders, holding companies, company/corporate officers, individuals and affiliates.

4. General

The following paragraphs explain MTMC procedures for excluding carriers from participating in the transportation of DOD shipments or passengers under negotiated agreements, tariffs, tenders of service, Government transportation requests, rate and service proposals, commercial or Government bills of lading, and similar arrangements. To ensure that the Government receives full and free competition benefits from carriers, disqualification or nonuse will not apply for longer than necessary to protect the interests of the Government. MTMC may continue to honor Government bills of lading, Government transportation requests, contracts, or similar transportation arrangements that are in existence at the time the carrier was disqualified, or placed in nonuse, unless a review board determines otherwise. Disqualification or nonuse may include a prohibition against bidding, during the disqualification or nonuse period, on services to be performed subsequent to the disqualification or nonuse period.

5. Causes and Conditions for Disqualification or Nonuse

The causes and conditions for disqualifying or placing a carrier in nonuse are listed below:

a. Disqualification. Disqualification action, as a result of a CRB, may be taken for a record of failure to perform or unsatisfactory performance according to the terms of negotiated agreements, tariffs, tenders of services, commercial or Government bills of lading, contracts or other similar arrangements. Examples of such failures or violations include, but are not limited to, the following:

(1) Failure to meet ordered packing/pickup dates for freight/personal property shipments; failure to meet scheduled departure/arrival times for passenger movements; failure to accept freight/personal property shipments.

(2) Exceeding established time-in-transit standards.

(3) Failure to meet required delivery dates on Government or commercial bills of lading.

(4) Mishandling of freight/personal property shipments; e.g., damaged or missing transportation seals, improper loading, blocking, packing, or bracing, or failure to adequately protect a DOD shipment.

(5) Loss or damage.

(6) Improper routing.

(7) Failure to furnish proper or adequate equipment (e.g., seat space, supplies, meals, etc.) or facilities.

(8) Retention of employees who in the performance of DOD related duties: (a) Use intemperate, vulgar or abusive language; (b) exhibit evidence of drug or alcohol use; or (c) engage in other offensive conduct.

(9) Failure to pay just debts so as to subject Government passengers to delay and shipments to possible frustration, seizure, or detention.

(10) Failure to settle claims promptly.

(11) Affiliation with a carrier which has been or is being disqualified, placed in nonuse, suspended, debarred or proposed for debarment under any appropriate authority, when action is determined to be necessary to protect the interests of the Government.

b. Nonuse. Nonuse action may be taken for operational or administrative deficiencies or violations pertaining to requirements necessary to participate in DOD transportation programs as opposed to specific incidences of unsatisfactory performance. Examples of such failures or violations include, but are not limited to, the following:

(1) Use of equipment, facilities, or personnel that fail to meet safety standards required by the proper Government agency or DOD.

(2) Failure to maintain required insurance coverage.

(3) Failure to provide required administrative documents.

(4) Expiration of, or failure to timely acquire, carrier exemption, permits, or authorities from federal, state or local authorities.

(5) Inclusion in a list issued by the Comptroller General (as provided in part 5, section 56(b) of the regulation issued by the Secretary of Labor under the authority of Reorganization Plan 14 of 1950), and found by the Secretary of Labor to be an aggravated or willful violation of the prevailing wage or overtime pay provisions of the regulations or statutes which apply.

(6) A finding by the Director, Office of Federal Contract Compliance, Department of Labor, of noncompliance with the equal employment opportunity clause provisions.

(7) Suspension, debarment or proposed for debarment by any federal agency under the authority of FAR 9.4, DFAR 209.4 or inclusion in a listing issued by the Comptroller General entitled "List of Parties Excluded from Federal Procurement or Nonprocurement Programs".

(8) Lack of financial responsibility.

(9) Violations of Federal Statutes/Executive Orders such as Interstate Commerce Act, Shipping Act, Federal Aviation Act, Elkins Act, Buy American Act, and Equal Employment Opportunity Executive Order 11246, as amended or federal/state anti-trust statutes.

(10) Failure to comply with Department of Transportation, Interstate Commerce Commission, Federal Aviation Administration, State and local governments (if applicable), Department of Defense, or any other regulatory agency regulations.

(11) An indictment, conviction, or civil judgment for commission of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract or subcontract.

(12) An indictment or conviction under the Organized Crime Control Act of 1970, or an indictment, conviction, or civil judgment for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects the responsibility of the carrier.

(13) Any other cause or condition of a serious or compelling nature (e.g., suspension, debarment or proposed for debarment from contracting with the executive branch of the Government under the provisions of FAR 9.4) affecting the present responsibility of a carrier of Government property or passengers.

6. Disqualification and Nonuse Procedures

a. Disqualification. On receipt of a recommendation by a transportation officer, port commander, MTMC representative, service headquarters representative or a Federal agency, the Assistant Deputy Chief of Staff for Operations (ADCSOPS) for Quality, HQMTMC, area command representative, or designee involved will review the facts and/or recommendation to determine if a CRB should be convened to consider if any action is necessary to protect the Government. If it is determined that a board should be convened they will, with the concurrence of the Staff Judge Advocate, promptly notify the carrier of such determination. A carrier will not be disqualified without a board hearing.

VOL 58 ISS 134 JL 15 1993 UMI

Prior to convening a CRB, the carrier must be provided the following:

(1) Notice of CRB. MTMC will forward to the carrier a notice of a CRB hearing, along with a copy of this regulation, by certified mail, express air carrier, or similar means with receipt verification. The notice will state:

(a) That disqualification is being considered.

(b) The date and time the review board will convene.

(c) The reason disqualification is being considered.

(d) That the carrier will have 10 calendar days from the date the notice letter is received in which to respond by telephone or in writing to the proposed disqualification (for good cause, the notice may specify a lesser period in which to respond), request additional time, if necessary, for presenting information, notify the MTMC officials concerned of a desire to present information to the CRB in person or by telephone conference, and submit six copies of all the information they want the board to consider.

(e) That failure to respond to a board notice letter will result in automatic disqualification.

(f) If applicable, the notice may also state that the carrier must provide information identifying all affiliates.

(g) The conditions of any previously imposed or pending nonuse (paragraph 6.b. below).

(2) Any cause or condition supporting disqualification which comes to the attention of the board after notice and scheduling of a review board may be joined with the pending review board if (a) the carrier is provided written notification of the additional allegations and (b) the carrier is provided a minimum of 10 days to respond to the additional allegations prior to the commencement of the review board.

b. Nonuse. On receipt of information as to existing conditions described in paragraph 5.b., MTMC may, by written notice citing the reasons therefore and referring to this regulation, place the carrier in question in a nonuse status until (1) corrective action by the carrier has been taken, (2) evidence of such action has been submitted to the authority responsible for placing the carrier in nonuse, and (3) notice has been sent to the carrier that the nonuse status has been vacated. A CRB is not required, but may be convened if requested by the carrier or deemed necessary by MTMC, for any nonuse cause or condition discussed in paragraph 5.b. Any nonuse status shall be effective immediately.

c. Temporary non-use. Consideration will be given to placing a carrier in temporary non-use once a decision has been made to hold a CRB pursuant to paragraph 6.a. above, but shall be reserved for those instances where the circumstances indicate that immediate action is necessary to protect the Government's interest. If a board is convened by a carrier's 30th day of temporary non-use, but is continued to a further date, temporary non-use shall be extended through the completion of the board and may exceed 30 days.

7. Review Boards

a. The following CRB is established with HQMTMC to consider, investigate, and determine whether disqualification action is warranted against a carrier:

(1) Voting Members:

(a) Assistant Deputy Chief of Staff for Operations (ADCSOPS) for Quality, Primary, Deputy ADCSOPS for Quality, Alternate, Chairperson.

(b) Deputy ADCSOPS for Transportation Services, Primary, ADCSOPS for Transportation Services, Alternate.

(c) Deputy ADCSOPS for Operations, Primary, ADCSOPS for Operations, Alternate.

(d) Chief of Evaluation Division, ADCSOPS for Quality or Alternate.

(e) Deputy ADCSOPS for Safety and Security, Primary, ADCSOPS for Safety and Security, Alternate, on boards involving safety and/or security issues. Chief of Negotiations Division, ADCSOPS for Transportation Services, Primary, Deputy Chief of Negotiations, ADCSOPS for Transportation Services, Alternate, on all other boards.

(2) Advisory members (non-voting):

(a) Representative of the Staff Judge Advocate.

(b) Representative of the ADCSOPS for Safety and Security.

(c) Principal Assistant Responsible for Contracting (PARC) or alternate, as applicable.

(d) Mode/vendor expert/action officer.

(e) Additional advisory members may be added to the board as deemed necessary by the Chairperson.

b. The following CRB is established within MTMC area commands to consider, investigate, and determine whether disqualification action is warranted against a carrier:

(Area command CRBs will be similar in composition and structure to the HQMTMC CRB outlined above).

c. Board Meetings and Records. The board will meet at the call of, and at a place designated by, the Board Chairperson. The board secretary/recorder will be provided by the Evaluation Division, ADCSOPS for Quality, and will be responsible for recording the minutes of board hearings and keeping necessary records. Records may be summarized (non-verbatim) and should be maintained in an 8½ × 11 loose leaf binder in chronological order with an alphabetical case index at the front. These case summaries will be maintained for 3 years by each activity holding boards and will be available to the public under the provisions of existing Freedom of Information Act (FOIA) regulations. Cases which are determined by the Staff Judge Advocate to establish a significant precedent will be permanently retained.

(1) Verbatim Records. A verbatim record of the review board hearing may be taken at MTMC's discretion and expense. However, it is not MTMC's normal business practice to record board proceedings or to transcribe those board proceedings which are recorded. If a verbatim record is taken it will be maintained in the appropriate case file. A copy of the verbatim record shall be provided to the carrier upon request. A verbatim record of the review board hearing may be taken at the carrier's expense by carrier provided personnel. Carrier shall notify MTMC of its intent to take a verbatim record of the hearing not less than 72 hours prior to the convening of the review board. Requests for the verbatim record by someone who is not a party to the hearing shall be processed in accordance with the FOIA.

(2) Access. CRBs consistently consider detailed information regarding a carrier's business operations and business relationship with MTMC. Board hearings shall therefore be closed to persons not present as either (1) a representative of MTMC or the military service/agency affected; (2) a representative of the carrier; (3) a witness in the hearing; or (4) a person present with the consent of the carrier.

d. Board Determination.

(1) If the carrier presents data within the prescribed 10-calendar-day period (or approved extension), the determination of whether to disqualify the carrier will be made at the conclusion of the board proceedings, unless the evidence presented requires further investigation, in which case the carrier will be informed of when to expect a determination.

(2) If, within the 10-calendar-day period specified in the initial notice of a CRB, or any extension, the carrier neither disputes the information nor requests additional time to present new information, a determination on whether to disqualify the carrier may be made on the next working day after the last day of the 10-calendar-day period, including any extension thereof, and will be made based upon the information held by the board at that

time. Such failure to respond to a board notice may result in automatic disqualification of the carrier.

(3) The existence of a cause of condition for nonuse or disqualification does not necessarily require the placement of the carrier in a nonuse or disqualified status. The board may consider the following factors prior to making a determination:

(a) Existing investigative reports (e.g., police, safety, Defense Investigative Service, or Criminal Investigation Command). Discrepancies involving classified shipments will be investigated through the Office of Safety, Security and Intelligence in coordination with the cognizant Director, Defense Contract Management Command.

(b) Carrier's written and oral presentation to the board, to include whether the carrier has fully investigated the circumstances surrounding the case for nonuse or a carrier review board and if so, made the results of its investigation available to the board.

(c) Carrier's past performance.

(d) Special services provided by the carrier which may be unavailable elsewhere.

(e) Corrective action taken by the carrier to preclude similar incidents from recurring, to include whether the carrier has taken appropriate disciplinary action against the individuals responsible for the activity which resulted in placing the carrier in nonuse or convening a CRB.

(f) Carrier's responsiveness to the command investigation.

(g) Whether the carrier has instituted, or agreed to institute, new or revised review and control procedures, if warranted.

(h) Whether the carrier has had adequate time to eliminate the circumstances within the carrier's organization that led to the cause for nonuse action or convening a CRB.

(i) The financial condition of the carrier and the economic impact of nonuse or disqualification on its future.

(j) Whether the carrier's management recognizes and understands the seriousness of the misconduct giving rise to the cause for nonuse action or convening a CRB and has implemented programs to prevent recurrence.

(k) Whether the carrier has implemented, or agreed to implement, remedial measures including any identified by the board.

(l) Whether the carrier has paid or agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has agreed to make full restitution.

(m) Whether the carrier brought the activity cited for nonuse or a CRB to the attention of the appropriate Government agency in a timely manner.

(n) Whether the carrier had effective standards of conduct and internal control systems in place at the time of the activity which constituted cause for nonuse or convening a CRB or has adopted such procedures since Government investigation of the activity which constituted cause for nonuse or a CRB.

(o) Whether the carrier, as a corrective measure, has agreed to make restitution to or reimburse the Government for performance failures.

(4) The board, when imposing disqualification, will determine the time frame involved on case-by-case basis (area commands not to exceed 180 calendar days). Any board determination shall be by majority vote.

(5) At the time the board determines a period of disqualification, they may suspend for a stated period of time, the execution of all or any part of the period of disqualification. The period of suspension should not be unreasonably long and should not extend beyond the period of disqualification. The purpose of suspending the execution of the period of disqualification is to give the carrier a probationary period within which to demonstrate that cited differences have been corrected and the carrier is fit, willing, and able to transport DOD passengers and shipments. Additional instances of failure to perform or unsatisfactory service provide the basis for vacating the suspension of the disqualification without further hearing. Upon vacation, the entire period of a suspended disqualification will become effective. Such incidents also give rise to a new basis for an additional board proceeding which could lead to additional disqualification action. A period of suspended disqualification, unless sooner vacated, will automatically expire at 2400 hours on the last day of the stated period of time for the period of suspension.

(6) Upon making a determination, the area command board will immediately notify the area command chief of staff who will, in turn, notify the Deputy Chief of Staff for Operations (DCSOPS), HQMTMC. The HQMTMC board chairperson will, upon a board determination, notify the DCSOPS who will, in turn, notify the Commander. The area command will, when requested, forward all documentation used in reviewing a controversial case to the ADCSOPS for Quality at HQMTMC.

(7) In accordance with DOD Regulation 4500.34–R, AR 55–355, or under the following conditions, the area commands will forward all information and/or recommendations pertaining to a carrier's service to the Commander, MTMC, prior to initiating any action:

(a) When it appears that a disqualification period exceeding 180 days may be warranted.

(b) When it appears that nationwide disqualification of the carrier may be in order.

(c) Other instances as deemed necessary by the cognizant area commander.

(8) The Chairperson of the board will ensure that the carrier shall verify previously requested information and provide any additionally requested information sufficient for the board to determine the name, address and relationship of all carrier affiliates and individuals with whom the carrier has developed a business relationship for the purpose of providing transportation services for DOD shipments. This information shall include the previous 24 months and be current up to the date of the scheduled CRB. The board will consider the need to protect DOD interests when determining whether to initiate action against known affiliates or individuals.

(9) A board hearing may be cancelled by the board chairperson if receipt of information negating the necessity to convene a board is received during the 10 calendar-day period specified in the notice letter.

8. Carrier Notification of Disqualification Determination

MTMC will notify the carrier by certified mail, express air carrier, or similar means with receipt verification, of the CRB decision. The notice will specify the reasons for, as well as the period of, disqualification.

9. Period of Disqualification

A period of disqualification will begin on the date specified by the board and will end automatically at 2400 hours on the last day of the period, unless the carrier is sooner reinstated or the disqualification was suspended and then vacated in which case it will end at 2400 hours on the last day of a period beginning on the day the suspension is vacated and continuing for the original number of days of the period of disqualification. Generally, a disqualification period should not exceed 2 years.

10. Appeal of Determination

a. A carrier placed in a disqualification status will be afforded

VOL
58
ISS
134
JL
15
1993
UMI

an opportunity to appeal an area command board disqualification to the appropriate area commander or a HQMTMC board disqualification to the DCSOPS, Military Traffic Management Command, Nassif Building, room 602, 5611 Columbia Pike, Falls Church, Virginia 22041–5050. A carrier may appeal only to the authority designated as the appellate authority for the case and shall submit its appeal in writing. The disqualification status will become effective when specified by the board and will not be stayed pending appeal unless for good cause as determined by the board. An appeal, if any, must be submitted within 15 working days after receipt of the CRB decision. A carrier may, within the 15 day period, request additional time to appeal. If the carrier appeals a disqualification which has been stayed and it is denied, the effective date of disqualification will be the day of the appeal denial.

b. The appeal will fully document the reasons for requesting relief which may include, but are not limited to, the submission of new material, the reversal of a conviction, or a bona fide change of management. The disqualification period may be terminated, suspended or reduced, upon presentation of proper evidence that the causes and conditions resulting in the initial disqualification have been eliminated or corrected. Upon receipt of a written appeal, the appropriate area commander or the DCSOPS will determine whether the appeal should be granted or denied. Such determination will be considered administratively final. The carrier will be notified of this decision by certified mail, express air carrier, or similar means with receipt verification.

11. Notice to DOD and Other Government Agencies

The board chairperson will notify DOD shippers and other Government agencies of any determination to disqualify or place a carrier in nonuse status.

12. Referral to Other Agencies

When one or more of the causes for debarment or suspension action specified in FAR Subpart 9.4 are present, the Office of the Staff Judge Advocate, HQMTMC, will coordinate with the Procurement Fraud Division, Office of The Judge Advocate General, for consideration of Government-wide debarment or suspension action. In such cases, nonuse action may be taken by the HQMTMC board chairperson for a period not to exceed 30 days, pending initiation of debarment proceedings or imposition of a suspension. Once debarment proceedings have been initiated or a suspension imposed, the board chairperson will place the carrier in nonuse.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

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Laws
Public Laws U
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Data base and
Guide to Reco
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Privacy Act C
Public Laws U
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a list of Clinto

FEDERAL RI

35357–35840...
35841–36116...
36117–36300...
36301–36588...
36589–36852...
36853–37412...
37413–37630...
37631–37846...
37847–38044...
38045–38262...

Reader Aids

Federal Register

Vol. 58, No. 134

Thursday, July 15, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12
37631–37846.....13
37847–38044.....14
38045–38262.....15

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587

Administrative Orders:
Presidential Determinations:
93–28 of June 25, 1993.....37631
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
226.....37847
246.....37633
301.....36589, 36590, 36591
400.....36592
723.....36853, 36857
906.....37635
981.....37636
987.....37638
1097.....34359
1098.....35361
1099.....34362
1108.....36859
1464.....36857, 36861
1435.....36120
1755.....36252

Proposed Rules:
55.....37872
56.....37872
59.....37872
70.....37872
400.....37874
1468.....37876

8 CFR

100.....38045
212.....38045
245.....35832

9 CFR

78.....36593
91.....37639
92.....37641, 37642
94.....36593, 36594
98.....37642
317.....38046
381.....38046

Proposed Rules:
78.....37665
85.....37666
91.....37667
92.....37878
94.....36624
95.....37669
98.....36625
113.....37670
381.....38090

10 CFR

Proposed Rules:
50.....37884
60.....36902

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

Proposed Rules:
614.....38091

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36863, 36865
71.....36596
72.....36298
108.....36802

Proposed Rules:
Ch. I.....36626
1.....36738
23.....38028
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

VOL 58 ISS 134 JL 15 1993 UMI

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353
921.....38214

16 CFR

1145.....37554
1210.....37557

Proposed Rules:

244.....35414
412.....35907

17 CFR

1.....37644
239.....35367
240.....36866, 37413, 37655
249.....35367

Proposed Rules:

240.....37445, 38092
270.....38095

18 CFR

Proposed Rules:

35.....36172
284.....37447
341.....37671
342.....37671
343.....37671
344.....37671
345.....37671
347.....37671
352.....37671
360.....37671
361.....37671
375.....35415, 37671

19 CFR

148.....35862, 38167
151.....37853

Proposed Rules:

12.....37884
24.....37884
133.....37884
178.....37884

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
178.....37854
510.....36134, 37855
520.....36134

Proposed Rules:

870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
236.....37802
241.....37802
248.....37802
572.....36518, 36546

Proposed Rules:

16.....37598
202.....37885
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:

31.....35419

27 CFR

9.....35865, 35877

Proposed Rules:

4.....35908
5.....35908, 36516

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371

Proposed Rules:

36.....37052

29 CFR

1400.....35377
1915.....35512
2606.....35377, 37991
2610.....38049
2612.....35377
2615.....35377
2616.....35377
2619.....38050
2622.....35377, 37991, 38049
2623.....35377, 37991
2644.....38051
2676.....38052

30 CFR

202.....37420
206.....37420
920.....36135
938.....36139

Proposed Rules:

916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

Proposed Rules:

501.....37770
552.....37774

33 CFR

100.....36355, 36052, 38054, 38055
110.....36356
117.....36357, 38056
164.....36141
165.....36357, 36597, 36868, 38056
334.....37606, 37889

Proposed Rules:

110.....38100, 38101
117.....36629, 38102
334.....37889

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

Proposed Rules:

650.....37890
692.....36110

36 CFR

51.....36598

Proposed Rules:

1191.....37052, 38204

38 CFR

3.....37856
21.....38057
36.....37857

Proposed Rules:

3.....38104, 38106
21.....38106

39 CFR

233.....

40 CFR

52.....
37423, 3742

82.....
85.....
131.....
180.....363
185.....
186.....
228.....
414.....

Proposed Rules:

Ch. I.....
52.....
374

63.....
81.....369
88.....
180.....
186.....
261.....
372.....
300.....

42 CFR

Proposed Rules:

405.....
414.....
417.....

Proposed Rules:

417.....

43 CFR

3730.....

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426, 37658, 38058, 38060
82.....36516
85.....36871
131.....36141
180.....36358, 36359, 37861
185.....36358, 37862
186.....37867
228.....35884
414.....36872

Proposed Rules:

Ch. I.....37450, 37991
52.....36905, 37450, 37453, 38108
53.....37778
81.....36908, 37453, 38108
88.....35420
180.....36366, 37893
186.....36366
261.....36367
372.....36180
300.....37693

42 CFR

Proposed Rules:

405.....37994
414.....37994
417.....38062

Proposed Rules:

417.....38170

43 CFR

3730.....38186
3820.....38186
3830.....38186
3850.....38186

Public Land Orders:

6986.....35408
6988.....35409
6989.....38083

44 CFR

67.....38083
354.....35770

45 CFR

Proposed Rules:

1602.....36910

46 CFR

170.....36601

Proposed Rules:

15.....36914
171.....36374

47 CFR

1.....36142, 37867
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431, 38087, 38088
76.....36604, 38088
90.....36362

Proposed Rules:

Ch. I.....36630
61.....37894
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455, 37696, 38111

48 CFR

2.....37868
935.....37868
904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363

Proposed Rules:

917.....36918
1823.....37697
1852.....37697

49 CFR

37.....38204
218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894

Proposed Rules:

37.....37052
171.....36920, 37612, 38111
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
390.....37895
392.....37900
393.....37900
543.....35422

50 CFR

17.....35887, 37432
85.....36619
285.....36154
611.....38167
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897, 37660, 37870, 37871, 38167
675.....35897, 37660

Proposed Rules:

17.....36184, 36379, 36387, 36924, 37699
20.....37828
23.....38112
24.....36925
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1993

VOL
58
ISS
1
3
4
JL
15
1993
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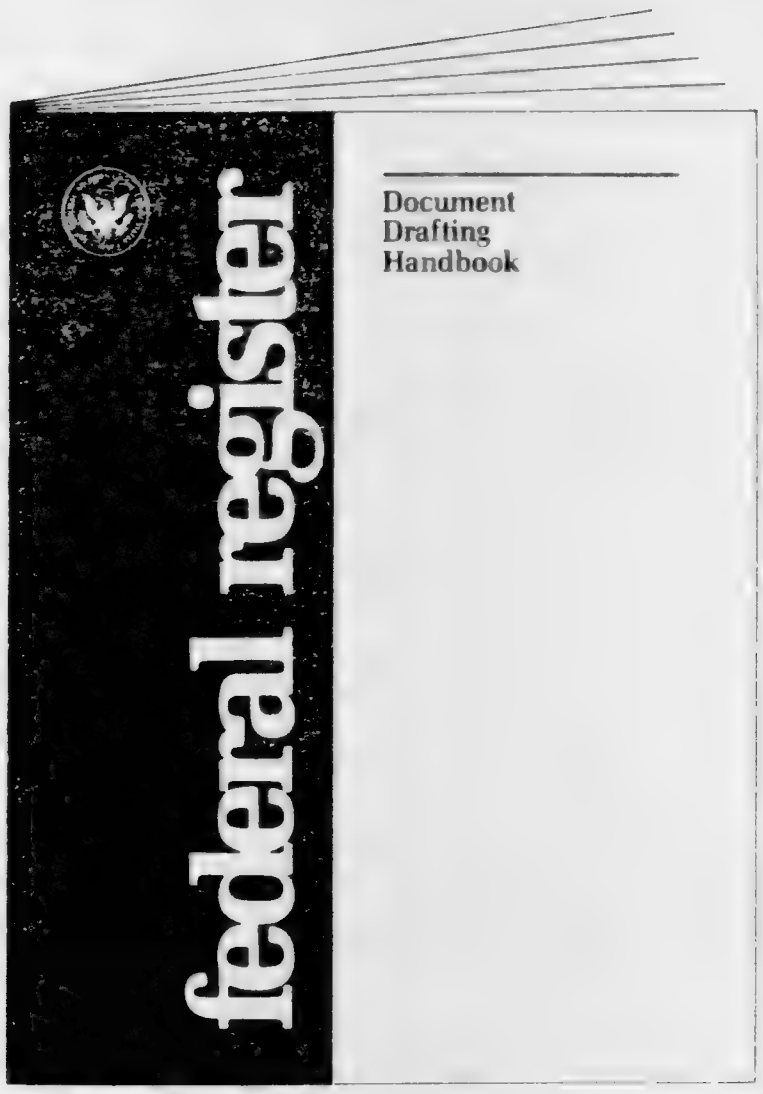

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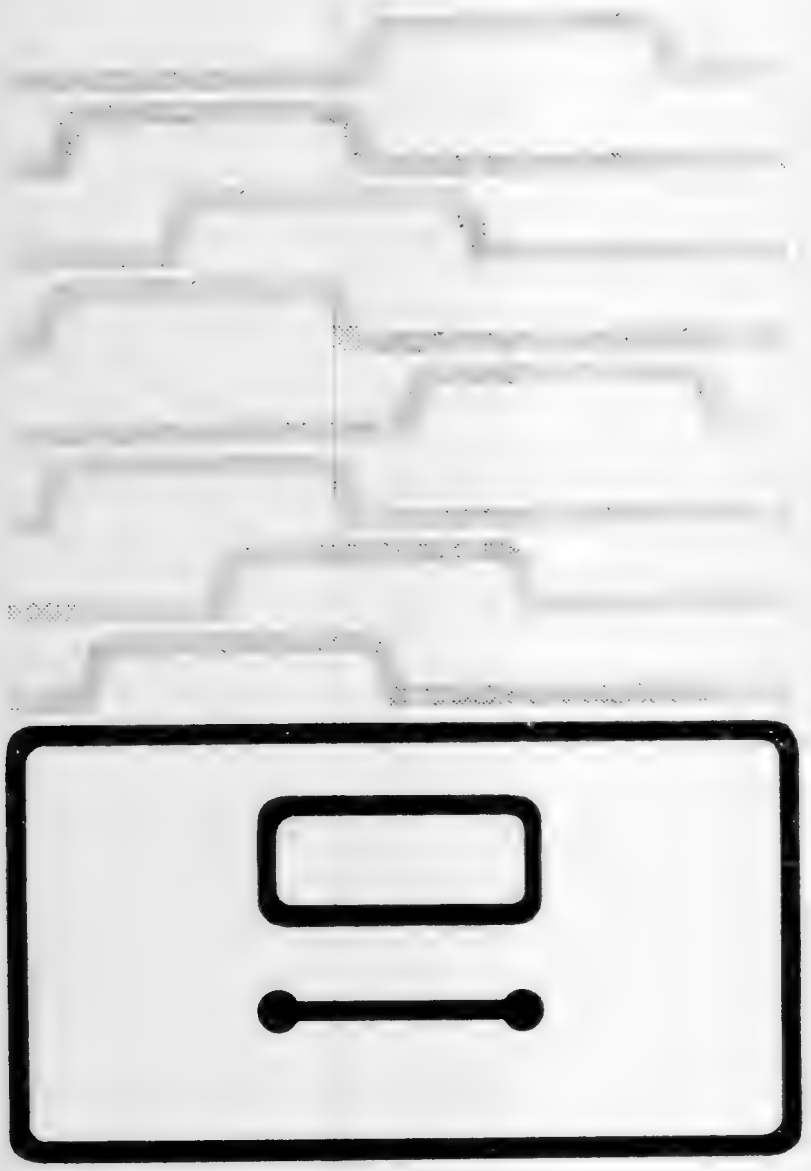

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58
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135
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7-16-93
Vol. 58
Pages 38

7-16-93
Vol. 58 No. 135
Pages 38263-38508

federal register

Friday
July 16, 1993

VOL
58
ISS
135
JL
16
1993
UMI

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Aging Adm
NOTICES
Grants and
Discretio

Agriculture
RULES
Celery grov
Lemons gro
Marketing
Pecan pron
Potatoes (I
Idaho an

Agriculture
See Agricul
See Animal
See Commo
See Forest
See Nationa

Animal and
RULES
Exportation
produc
Ports des
Baudet
Overtime se
Phytosani
Plant-relate
Postentry
PROPOSED R
Exportation
product
Cooked m
and-
Garbage t
poult
Gelatin, 3
NOTICES
Genetically
environ
Meetings:
Veterinary
and u
Veterinary b
establis

Blind or Se
People
See Commit
Severely

Centers for
NOTICES
Grant and co
Pan Amer

Contents

Federal Register
Vol. 58, No. 135
Friday, July 16, 1993

Administration on Aging

Aging Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary funds program, 38409

Agricultural Marketing Service
RULES
Celery grown in Florida, 38276, 38277
Lemons grown in California and Arizona, 38271
Marketing orders; expenses and rates of assessment, 38272
Pecan promotion and research plan, 38278
Potatoes (Irish) grown in—
Idaho and Oregon, 38274

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service
See National Agricultural Statistics Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ports designation—
Baudette, MN, 38282
Overtime services relating to imports and exports:
Phytosanitary certificates issuance; State fees, 38269
Plant-related quarantine, foreign:
Postentry quarantine of plants, 38263
PROPOSED RULES
Exportation and importation of animals and animal products:
Cooked meat from countries where rinderpest or foot-and-mouth disease exists, 38316
Garbage that can introduce diseases or pests of livestock, poultry, or plants, 38308
Gelatin, 38314
NOTICES
Genetically engineered organisms for release into environment; permit applications, 38354
Meetings:
Veterinary biological products; manufacture, distribution, and use, 38354
Veterinary biological products; production and establishment licenses, 38355

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
Pan American Health Organization, 38428

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 38409
Grants and cooperative agreements; availability, etc.:
Community Services Office training and technical assistance program, 38410

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 38462

Coast Guard
RULES
Ports and waterways safety:
Upper Mississippi River Basin; safety zone, 38302
Regattas and marine parades:
Augusta Southern Nationals Drag Boat Races, 38299
Beaufort Water Festival, 38298
Big Sioux Rubber Duck Race, 38299
New Jersey Offshore Powerboat Race, 38301
Oakmont Yacht Club Regatta, 38300
NOTICES
Meetings:
Oil pollution response training; workshop, 38450

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
NOTICES
Agency information collection activities under OMB review, 38360

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 38362, 38363

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Grains and similarly handled commodities—
Oilseed prevailing world price calculations, 38311
NOTICES
Sugar and crystalline fructose marketing allotments, 38355

Comptroller of the Currency
PROPOSED RULES
Community development corporation and project investments, 38474

Defense Department
See Defense Logistics Agency

Defense Logistics Agency
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 38364

VOL 58 ISS 135 JL 16 1993 UMI

Economic Analysis Bureau
RULES
International services surveys:
Foreign direct investments in U.S.—
BE-605; transactions of U.S. banking affiliate with foreign parent; quarterly survey, 38289
PROPOSED RULES
International services surveys:
Foreign direct investments in U.S.—
BE-15(LF); long form filing exemption level; annual survey, 38324

Education Department
PROPOSED RULES
Postsecondary education:
Cooperative education program, 38504, 38506
Special education and rehabilitative services:
State vocational rehabilitation services program, 38482
NOTICES
Grants and cooperative agreements; availability, etc.:
Cooperative education program, 38504, 38506

Employment and Training Administration
NOTICES
Adjustment assistance:
ABB Power T&D Co., Inc., et al., 38441
Crucible Specialty Metals Corp., 38442
General Electric Aerospace Electronic Systems, 38443
PS Industries, Inc., et al., 38443
Rogue Valley Printed Circuits, Inc., 38444

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 38440

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Acquisition regulations:
Organizational conflicts of interest regulations; alterations, 38340
NOTICES
Civilian Radioactive Waste Management Office; alternative program strategy; task force report availability, 38364
Grant and cooperative agreement awards:
Superkinetic, Inc., 38365
Thane-Coat, Inc., 38365
United States Association for Renewable Energy and Energy Efficiency Development, 38365
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Sacramento Power, Inc., 38366

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
New Jersey, 38326
Air quality planning purposes; designation of areas:
California, 38331
NOTICES
Clean Air Act:
Acid rain provisions—
Five-year acid rain permits to 38 utility plants, 38370
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 38375
Weekly receipts, 38376
Superfund; response and remedial actions, proposed settlements, etc.:
BFI-Rockingham Landfill Site, VT, 38376
Toxic and hazardous substances control:
Interagency Testing Committee—
Report, 38490

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 38462

Federal Aviation Administration
RULES
Airworthiness directives:
Fokker, 38283
Jetstream, 38285
Restricted areas, 38287
Standard instrument approach procedures, 38288
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 38321
Restricted areas, 38323
VOR Federal airways, 38322
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 38451
Passenger facility charges; applications, etc.:
Huntsville-Madison County Airport Authority, AL, et al., 38451

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 38377

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 38462

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arkansas et al., 38305
California et al., 38303
PROPOSED RULES
Flood elevation determinations:
Maine et al., 38333

Federal Energy Regulatory Commission
RULES
Disclosure of documents and information obtained in staff audits; policy statement, 38290
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Tucson Electric Power Co. et al., 38366
Environmental statements; availability, etc.:
Minnesota Power & Light et al., 38367
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 38368
Applications, hearings, determinations, etc.:
Cincinnati Gas & Electric Co. et al., 38368
Pacific Gas Transmission Co., 38369
Panhandle Gathering Co., 38369
Questar Pipeline Co., 38369

Williams Natural Gas Co., 38370

Federal Highway Administration
RULES
Engineering and traffic operations:
Highway design standards—
Roadside barriers and safety appurtenances; Federal-aid projects, 38293

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 38462

Federal Transit Administration
NOTICES
Transfer of federally assisted land or facility:
Niagara Frontier Transportation Authority, NY, 38458

Food and Drug Administration
NOTICES
Food additive petitions:
Calgene, Inc., 38429
Medical devices; premarket approval:
Rotablator Rotational Angioplasty System, 38430

Forest Service
NOTICES
Environmental statements; availability, etc.:
Mt. Baker-Snoqualmie National Forest, WA, 38358

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Public Health Service
NOTICES
Federal claims; interest rate on overdue debts, 38408

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special projects of national significance—
Adolescents with HIV/AIDS or at high risk for infection; health and support services, 38430

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 38434
HOPE homeownership program—
Multifamily units program (HOPE 2), 38466

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Asylum and withholding of deportation procedures; convictions for aggravated felonies, 38312

Interior Department
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Silicon carbide from China, 38361
Silicon metal from Argentina, 38361

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 38437
Rail carriers:
Declaratory order petitions—
Hanson Natural Resources Co., 38438
Railroad operation, acquisition, construction, etc.:
Alabama Great Southern Railroad Co., 38437
Nebraska Central Railroad Co., 38438

Justice Department
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Employment Standards Administration
RULES
Administrative Law Judges Office proceedings; settlement judges appointment, 38498
NOTICES
Agency information collection activities under OMB review, 38438
Committees; establishment, renewal, termination, etc.:
Employee Welfare and Pension Benefit Plans Advisory Council, 38440

Land Management Bureau
NOTICES
Alaska Native claims selection:
Unalakleet Native Corp., 38434
Coal leases, exploration licenses, etc.:
Colorado, 38434
Opening of public lands:
New Mexico, 38435
Realty actions; sales, leases, etc.:
Arizona, 38435
California, 38435
Survey plat filings:
Colorado, 38436

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

National Aeronautics and Space Administration
NOTICES
Meetings:
Aerospace Medicine Advisory Committee, 38444

National Agricultural Statistics Service
NOTICES
Wool procedures monthly estimates; discontinuance, 38359

National Commission on Judicial Discipline and Removal
NOTICES
Meetings, 38444

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 38462

VOL
58
ISS
135
JL
16
1993
UMI

National Commission To Ensure Strong Competitive Airline Industry
NOTICES
Policy statement deadline, 38444

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Brake hoses; oil resistance requirements; exclusion, 38346

National Park Service
NOTICES
Environmental statements; availability, etc.:
Jewel Cave National Monument, SD, 38436
Wind Cave National Park, SD, 38437

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
Periodic reports to Congress, 38445
Meetings; Sunshine Act, 38463
Petitions; Director's decisions:
Arizona Public Service Co. et al., 38445
Houston Lighting & Power Co., 38446
Applications, hearings, determinations, etc.:
Chevron U.S.A., Inc., et al., 38446
Union Electric Co., 38448
Virginia Electric & Power Co., 38449

Personnel Management Office
RULES
Prevailing rate systems, 38263

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 38433
Scientific misconduct findings; policies and procedures, 38409

Reclamation Bureau
NOTICES
Meetings:
Trinity River Basin Fish and Wildlife Task Force, 38436

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 38458, 38460

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 38449

Statistical Reporting Service
See National Agricultural Statistics Service

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Comptroller of the Currency

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 38466

Part III
Department of the Treasury, Comptroller of the Currency, 38474

Part IV
Department of Education, 38482

Part V
Environmental Protection Agency, 38490

Part VI
Department of Labor, 38498

Part VII
Department of Education, 38504

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PA
A cumula
Reader A
5 CFR
532.....
7 CFR
319.....
354.....
910.....
922.....
923.....
924.....
945.....
967 (2 do
1211.....
Proposed
330.....
1421.....
8 CFR
Proposed
208.....
236.....
242.....
9 CFR
92.....
Proposed
94 (3 docu
12 CFR
Proposed
7.....
24.....
14 CFR
39 (2 docu
73 (2 docu
97.....
Proposed
39.....
71.....
73.....
15 CFR
806.....
Proposed
806.....
18 CFR
2.....
23 CFR
625.....
29 CFR
18.....
33 CFR
100 (5 doc
165.....
34 CFR
Proposed
361.....
631.....
632.....
633.....
634.....
635.....
40 CFR
Proposed
52.....
81.....
44 CFR
65 (2 docu
Proposed
67.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532.....38263

7 CFR
319.....38263
354.....38269
910.....38271
922.....38272
923.....38272
924.....38272
945.....38274
967 (2 documents).....38276, 38277
1211.....38278

Proposed Rules:
330.....38308
1421.....38311

8 CFR

Proposed Rules:
208.....38312
236.....38312
242.....38312

9 CFR
92.....38282

Proposed Rules:
94 (3 documents).....38308, 38314, 38316

12 CFR

Proposed Rules:
7.....38574
24.....38574

14 CFR
39 (2 documents).....38283, 38285
73 (2 documents).....38287
97.....38288

Proposed Rules:
39.....38321
71.....38322
73.....38323

15 CFR
806.....38289

Proposed Rules:
806.....38324

18 CFR
2.....38290

23 CFR
625.....38293

29 CFR
18.....38498

33 CFR
100 (5 documents).....38298, 38299, 38300, 38301
165.....38302

34 CFR

Proposed Rules:
361.....38482
631.....38504
632.....38504
633.....38504
634.....38504
635.....38504

40 CFR

Proposed Rules:
52.....38326
81.....38331

44 CFR
65 (2 documents).....38303, 38305

Proposed Rules:
67.....38333

48 CFR

Proposed Rules:
909.....38340
952.....38340
970.....38340

49 CFR

Proposed Rules:
571.....38346

UMI

VOL
58

ISS
135

JL
16

1993

UMI

Rule

This sectio
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The Code
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SUMMARY:
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Rules and Regulations

Federal Register
Vol. 58, No. 135
Friday, July 16, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF27

Prevailing Rate Systems; Definition of Former Horry, SC, Wage Area to Other Nonappropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Horry, South Carolina, Nonappropriated Fund (NAF) Wage Area. The Horry wage area was composed of Horry County, South Carolina (survey area), and New Hanover County, North Carolina (area of application). The regulation redefines Horry County, South Carolina, to the Charleston, South Carolina, wage area as an area of application and redefines New Hanover County, North Carolina, to the Onslow, North Carolina, wage area as an area of application. Because of downsizing associated with a scheduled base closure, the Horry County, South Carolina, survey area did not have the required minimum of 26 NAF wage employees, and no local activity within the Horry wage area had the capability to conduct a wage survey.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts (202) 606–2848.

SUPPLEMENTARY INFORMATION: On December 29, 1992, OPM published an interim rule (57 FR 61770) to abolish the Horry, South Carolina, wage area and define it to the proper FWS wage areas for NAF pay-setting purposes. The Department of Defense had notified OPM that the host activity for the Horry wage area, Myrtle Beach Air Force Base (AFB), was scheduled to close on March 31, 1993. Downsizing was underway, and most NAF activities were scheduled to close by the end of December 1992. Myrtle Beach AFB did not have the capability to conduct the Horry, South Carolina, full-scale wage survey that was required to begin in January 1993 in accordance with appendix B to subpart B, part 532 of title 5, Code of Federal Regulations.

In addition, Horry County, South Carolina, no longer met the regulatory criteria for an established nonappropriated fund wage area under 5 CFR 532.219. Myrtle Beach AFB and Fort Fisher were the only installations with NAF employment in the Horry wage area. As of March 31, 1993, Myrtle Beach AFB was closed and Fort Fisher, located in New Hanover County, North Carolina, did not employ the minimum of 26 employees required to establish an NAF wage area. Thus, both Horry and New Hanover Counties required redefinition as areas of application to existing wage areas for pay-setting purposes.

Under the interim regulations, Horry County, South Carolina, was redefined as an area of application to the Charleston, South Carolina, wage area, and New Hanover County, North Carolina, was redefined as an area of application to the Onslow, North Carolina, wage area effective on March 31, 1993.

In addition, the interim regulations included a technical amendment to correct an oversight in appendix B to subpart B of part 532 by deleting the listing for the former Imperial, California, wage area in conformance with the previous abolishment of that wage area in appendix D to subpart B.

Since the Horry, South Carolina, wage area is correctly abolished and defined as an area of application to the proper NAF wage areas under the regulatory criteria for establishing and combining wage areas and no comments were received, the interim rule is being adopted as a final rule without any changes.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM adopts its interim regulation amending 5 CFR part 532 published on December 29, 1992, at 57 FR 61770 as final without change.

[FR Doc. 93–16868 Filed 7–15–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91–033–2]

Postentry Quarantine of Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations that require postentry quarantine for certain imported plants by adding requirements limiting such imports to articles destined for States that have signed an agreement with the Animal and Plant Health Inspection Service. In the agreement, States agree to inspect and monitor postentry quarantine sites, and to monitor and enforce importer compliance with postentry quarantine requirements. This action is necessary to standardize the involvement of States in postentry quarantine activities, and to allow States to accurately estimate the resources they need to devote to postentry quarantine activities.

We are also adding a requirement that the importer of an article required to be grown in postentry quarantine may not propagate the article, allow its propagation, or move it off the premises without written permission of an inspector. This action is necessary to ensure that plants grown in postentry quarantine do not present a significant risk of spreading plant pests.

EFFECTIVE DATE: Final rule effective July 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Port Operations, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Department to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of exotic plant pests.

Regulations promulgated under these authorities include, among others, 7 CFR 319.37 through 319.37–14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as the subpart). The subpart governs the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with imported articles such as cut flowers, or fruits and vegetables intended for consumption.

Section 319.37–7 of the subpart allows certain articles to be imported into the United States only if, among other requirements, they are grown under special postentry quarantine conditions for a period after importation. The period of quarantine ranges from 6 months to 2 years, depending on the genus of the article. During that period, the articles are kept separate from domestic plants, are subject to inspection by inspectors, and must meet other conditions necessary to prevent the dissemination of plant diseases or other plant pests.

The postentry quarantine provision is designed for importing regulated articles for which there is a slight, but existing risk of infection with certain plant diseases in the place of origin. Since many of the regulated articles listed in § 319.37–7 are shipped in a dormant or leafless state, diseases would not be readily revealed by inspection at the time of importation. The postentry quarantine growing period allows manifestation of these diseases.

Regulated articles are grown under postentry quarantine in many States nationwide. Historically, State governments have cooperated with the Animal and Plant Health Inspection Service (APHIS) by assigning State inspectors to inspect, approve, and monitor postentry quarantine sites. The basic requirements for growing an imported regulated article under postentry quarantine are contained in the regulations, which detailed requirements recorded in a written agreement between APHIS and the importer of the article.

In a proposed rule published in the **Federal Register** on September 8, 1992 (Docket No. 91–033–1, 57 FR 40872–40877), we proposed changes to § 319.37–7 to clarify the role of the States in postentry quarantine and to establish a procedure to sign written agreements between APHIS and the States detailing Federal and State responsibilities and authorities regarding postentry quarantine sites. The proposed rule solicited comments on these changes, to be received on or before November 9, 1992. We received seven comments prior to this closing date. All the comments expressed support for the proposed regulations, but several also requested changes to the proposed regulations or to the operating methods of the postentry quarantine program. These comments are discussed below.

Comments and Responses

Comment: Proposed § 319.37–7(c)(2)(iii) deals with State responsibility to inspect growing sites and plants grown at them, and to report back to APHIS regarding grower compliance with the regulations. In the section of the preamble of the proposed rule discussing this requirement, a footnote noted that "In accordance with laws of individual States, services provided by State inspectors may be subject to charges imposed by the State." The final rule should move this footnote regarding State fees into the regulatory text which will be codified in the Code of Federal Regulations, to alert growers that their postentry quarantine growing activities may be subject to fees imposed by States for services by their inspectors.

Response: We agree, and have added the following statement to the end of § 319.37–7(c)(1) of the final rule: "In accordance with the laws of individual States, inspection and other postentry quarantine services provided by a State may be subject to charges imposed by the State."

Comment: The text should more clearly state that either State or Federal inspectors may enforce provisions of the regulations, and that growers are obliged to comply with enforcement activities from either source. To accomplish this, the text could more clearly recognize State enforcement authority; or the postentry quarantine growing agreement signed by APHIS and the grower in accordance with § 319.37–7(d) could also be signed by a State official, which would make the grower pledge compliance to both the Federal and State governments.

Response: We agree that the text could more clearly cite State authority to enforce provisions of the regulations. We are making changes in four paragraphs to improve this area.

In § 319.37–7(a)(3), where Plant Protection and Quarantine determines whether a postentry quarantine agreement with a State "fulfills the applicable requirements to monitor the postentry quarantine," we are changing the text to read "monitor and enforce the postentry quarantine."

In § 319.37–7(c)(2)(i), where the State agrees "to inspect sites and plants growing in postentry quarantine and to monitor compliance with postentry quarantine growing," we are changing the text to read "monitory and enforce compliance * * *".

In § 319.37–7(c)(2)(iii), where the State agrees to provide services of inspectors to "monitor compliance with the requirements of this section," we are changing the text to read "monitor and enforce the requirements of this section."

In § 319.37–7(d), which describes the postentry quarantine growing agreement as a document signed by the grower "whereby the signer agrees to comply with the following conditions," we are changing the text to read "whereby the signer certifies to APHIS and to the State in which the articles are grown that he or she will comply with the following conditions * * *".

In addition, although the current and proposed regulations are silent on this matter, State officials have traditionally signed postentry quarantine growing agreements under the current program, and will continue to do so if the proposed regulations are adopted. We agree that having State officials sign postentry quarantine growing agreements may facilitate their enforcement. Therefore, we are making State signature explicit by adding the following sentence to § 319.37–7(d): "On each postentry quarantine growing agreement, APHIS shall also obtain the signature of the State Plant Regulatory Official for the State in which regulated articles covered by the agreement will be grown."

Comment: The States should be given additional operational guidance concerning coordination of State and Federal efforts, when and how to use APHIS forms to report growing site inspection results and violations, how to resolve apparent violations of the regulations, and related matters. APHIS should also consider developing model

State regulations addressing State inspection and enforcement activities for postentry quarantine, and developing training programs for State inspectors enforcing postentry quarantine requirements.

Response: Section 319.37–7(c)(3)(ii) states that upon request of a State, APHIS will provide training, technical advice, and pest identification services to State officials involved in providing postentry quarantine services. These comments concern such educational and training activities that relate to postentry quarantine cooperation between APHIS and States, but the nature of such activities for individual States is outside the scope of this rulemaking. APHIS intends to work with individual States to provide guidance, technical assistance, and training for postentry quarantine activities, including assistance in developing State regulations. No change to the regulations is necessary for these activities to occur. State officials who wish to discuss their particular needs for technical assistance or training are invited to contact Port Operations, Plant Protection and Quarantine, APHIS.

Comment: APHIS should clarify that the number of plants imported, and the number of plants grown at a site, cannot exceed the amount in the approved postentry quarantine agreement without additional review and approval by the State in which the plants are grown.

Response: The regulations already state that regulated articles must be grown in accordance with a postentry quarantine agreement which specifies "the kind, *number*, and origin of plants to be imported" (§ 319.37–7(d)) and that the grower may "propagate, or allow propagation of the article or increase therefrom or parts thereof only with the written permission of an inspector and only to the extent prescribed by an inspector" (§ 319.37–7(d)(1)). This provision allows an inspector (APHIS or State) to limit the number of plants imported or grown. Before an APHIS inspector would modify the number of plants grown at a site, APHIS would consult with the State concerning the State's ability to provide necessary services.

We are making a change to the language of proposed § 319.37–7(f)(2), which addresses actions by an inspector who detects a violation at a growing site, to specifically recognize that an inspector may take action upon discovering that articles in excess of the approved number are being grown at the site. The proposed language reads that an inspector may issue an emergency action notification to a grower if the inspector determines articles at the site "present a risk of introducing plant pests into the United States, or are being grown contrary to the provisions of this section * * *". We are changing this to read that an inspector may issue an emergency action notification to a grower if the inspector determines articles at the site are "being grown contrary to the provisions of this section, including in numbers greater than the number approved by the postentry quarantine growing agreement, or in a manner that otherwise presents a risk of introducing plant pests into the United States * * *".

Although the regulations allow APHIS and State inspectors to enforce limits on the number of plants imported and grown in accordance with the regulations, practical enforcement of the number of plants imported and shipped to each growing site remains difficult, because of the difficulty of coordinating activities at multiple ports of arrival over extended periods. Current APHIS management information systems are adequate to ensure that no articles subject to postentry quarantine will be allowed importation unless a permit has been issued for them, but because the same permit may be used to import several shipments of regulated articles, at different times and different ports, our systems cannot ensure that the total number of articles imported does not exceed the number specified in the postentry quarantine growing agreement signed by the importer for the articles. We are attempting to improve exchange of information between personnel who issue and enforce permits, port operations personnel, and personnel who develop and enforce postentry quarantine growing agreements, to help enforce numerical limits on imports before articles enter the United States.

We have considered two alternatives to prevent the importation of more regulated articles than are allowed by a postentry quarantine growing agreement. The first alternative is to issue a "one-time" permit for importation of articles subject to postentry quarantine; i.e., a permit that can be used to import only one shipment. Such a permit could include the number of articles authorized under the postentry quarantine growing agreement, and port inspectors could ensure that no more than the approved number of articles are in the shipment. The second alternative we considered was to allow shippers to import multiple shipments under a single permit, but to require that all shipments under a given permit must be imported through the same port of arrival. This would make it easier for inspectors at the port to keep a "running total" of how many articles subject to postentry quarantine have been imported under a permit, and to take action if the running total exceeds the number allowed by the relevant postentry quarantine growing agreement.

At the present time, both of these alternatives have been rejected. The one-time permit approach would multiply the paperwork burden on importers, who would have to obtain a new permit for each shipment. Many importers hold several permits for importing articles subject to postentry quarantine, and import 10 or more shipments per year under each permit. For each one-time permit request, the importer would have to spend approximately 15 minutes completing the application form, then wait up to several weeks for the permit to be granted. This results in direct paperwork costs to the importer, and may also result in losses due to foregone business opportunities. For example, an importer may wish to buy articles that are available at an advantageous price, but refrains from buying them until a permit is obtained. During the time needed to obtain the permit, the articles may be sold to another buyer or their price may increase.

Additionally, the one-time permit approach multiplies work in the APHIS office that issues the permits. This increased workload would likely result in slower service in issuing all permits, exacerbating the loss of business opportunities that can occur while importers wait for permits.

The single-port alternative was rejected because it would greatly disrupt the current shipping practices of importers of plant articles, with adverse economic effects. Many importers ship regulated articles to any of several ports, and make last-minute decisions on which port to use based on the availability and cost of shipping alternatives at the time the articles are acquired. Often, regulated articles are "batched" with other goods to make up a large enough shipment to ship cost-effectively, and the regulated articles are shipped to whatever port the other articles have as their destination. Requiring regulated articles to be shipped to only one port specified in the permit would force importers to sacrifice these savings.

Since we have rejected both the one-time permit and the single-port approaches, we have sought other ways to ensure that no more than the number of articles specified in a postentry quarantine agreement are imported and grown. Because of the difficulty of coordinating activities at multiple ports

VOL
58
ISS
135
JL
16
1993
UMI

of arrival, enforcement of numerical limits at the ports is imperfect. Consequently, feedback from States regarding the number of regulated articles actually being grown at sites is therefore very important. Paragraph (c)(3)(iii) of § 319.37–7 states that APHIS will notify State officials when articles destined for postentry quarantine growing in their State arrive in the United States. APHIS inspectors at ports give such notice to States after determining from information in the permit that a shipment of articles subject to postentry quarantine is destined for a particular State. This notice gives States an opportunity to prevent growing of regulated articles at a growing site if the site is already growing the maximum number of articles specified in a postentry quarantine growing agreement.

Comment: Proposed § 319.37–7(c)(4) states that "when a postentry quarantine agreement is terminated by either the State Plant Regulatory Official or the Administrator, APHIS and the affected State shall continue to provide postentry quarantine services in accordance with the postentry quarantine agreement, until the time the plant material is eligible to be released from quarantine, for all postentry quarantine material that arrives in the State prior to the effective date of termination." However, if a State drops out of the postentry quarantine program, the State may not have funds to continue providing services for growing sites already in the State.

Response: When APHIS and a State sign a postentry quarantine agreement, both parties have a responsibility to provide the services called for in the agreement. A primary purpose of the agreement is to provide both the State and APHIS with reasonable confidence that the other party will carry out the responsibilities it has agreed to, and will find the resources to meet those responsibilities. We recognize that both State and Federal budgets are subject to change, and agency resources may diminish unexpectedly, but we do not believe it would be in the best interest of the postentry quarantine program to allow a State to cancel its participation in the program and immediately abandon responsibility for shipments that are already either growing in postentry quarantine in the State or en route to the State. If a State agency faces a funding crisis that affects its ability to participate in postentry quarantine, we will attempt to work with the State to find ways to minimize the cost of providing inspector services to postentry quarantine growing sites in the State, such as increasing participation by Federal inspectors when their resources are available. However, one purpose of the postentry quarantine regulations is to distribute the resource requirements for the program between APHIS and involved States, and we cannot promise to substitute Federal resources for State resources.

Comment: The docket does not address the transition period between the effective date of the rule and when the States can put into effect the regulatory controls they must apply in accordance with proposed § 319.37–7(c)(2)(i). It will take time for States to establish such regulatory controls.

Response: APHIS recognizes that State governments will require time to enact State laws or regulations to effect the regulatory controls necessary for State participation in the postentry quarantine program described in our regulations. We have established the effective date of this rule approximately 1 year in the future, to allow time for such enactment. Over the course of the next year, we will work with States as necessary to prepare for implementation of the new program.

Because we are delaying the effective date of this rule, we have time to develop and sign State postentry quarantine agreements in accordance with § 319.37–7(c) prior to that effective date. Therefore, it will be practical to actually list in the regulations the names of States that have signed such agreements. We are adding a new paragraph (c)91)(i) to list such States. That space is reserved by this final rule, and the names of States that have signed State postentry quarantine growing agreements will be added to that paragraph shortly before the effective date of this final rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

This final rule will define responsibilities of APHIS and the States in carrying out postentry quarantine operations in accordance with 7 CFR 319.37–7. Defining these responsibilities will standardize the involvement of States in postentry quarantine activities, and allow States to accurately estimate the resources they need to devote to postentry quarantine activities.

Under this final rule, States will monitor and inspect postentry quarantine sites; monitor and enforce importer compliance with postentry quarantine requirements on behalf of APHIS; inspect plants for evidence of exotic pests (at least once each year for plants required to be grown in quarantine for 2 years, and at least once for plants required to be grown in quarantine for less than 2 years); report to PPQ any increase from plants under postentry quarantine and any evidence of exotic plant pests found at postentry quarantine sites, and recommend to PPQ safeguards or mitigation measures to control the pests.

Increased economic costs to society are expected to be negligible as a result of this change. We have consulted plant protection services of the States that are currently cooperating in the postentry quarantine program, and they have indicated that they do not expect the changes to substantially increase or decrease the amount of postentry material grown in their States, or to significantly increase or decrease the demands for services from their inspectors. States have been largely responsible for the administrative costs of enforcement since the postentry program was first initiated. State inspectors have traditionally inspected postentry quarantine sites, and monitored compliance with Federal postentry regulations. Historically, State inspectors have also reported to PPQ any evidence of exotic plant pests, and propagation or increases in the number of plants contained in postentry quarantine areas.

Approximately 130 new sites are authorized for postentry quarantine in an average year, and approximately the same number of site authorizations expire each year. We do not expect the changes in this final rule to result in significant changes to these numbers.

Under the final rule, APHIS will have the authority to limit entry of materials requiring postentry quarantine based on availability of APHIS and State resources to enforce the requirements of the regulations. It is not expected that this authority will be used frequently to deny shipments entry; however, some importers will likely be unable to import some materials due to this provision. Based on past experience with availability of APHIS and State resources needed to enforce postentry

quarantine, we believe this provision could result in denying on the order of five import requests a year. The amount of economic impact in each case would depend on the per unit value and number of plants that would be denied entry due to limited APHIS and State resources. In view of this estimate, we do not consider that this provision would have a significant economic impact on a substantial number of small entities involved in postentry quarantine growing.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, Subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) Has no retroactive effect; and (3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14, is revised to read as follows:

Authority: 7 U.S.C. 150dd–150ff, 154, 155, 157, 159, 160, 162, 164a, and 450; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.37–1 [Amended]

2. In § 319.37–1, the following definition is added in alphabetical order:

* * * * *

State Plant Regulatory Official. The official authorized by the State to sign agreements with Federal agencies involving operations of the State plant protection agency.

* * * * *

3. Section 319.37–7 is amended as follows:

a. Paragraph (a), but not the table of restricted articles, is revised.

b. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e).

c. A new paragraph (c) is added.

d. In newly-designated paragraph (d), the introductory text and paragraphs (d)(1) and (d)(6) are revised.

e. A new paragraph (f) is added.

f. A new paragraph (g) is added.

As amended, § 319.37–7 reads as follows:

§ 319.37–7 Postentry quarantine.

(a) The following restricted articles, from the designated countries and localities, and any increase therefrom must be grown under postentry quarantine conditions specified in paragraphs (c) and (d) of this section, and may be imported or offered for importation into the United States only:

(1) If destined for a State that has completed a State postentry quarantine agreement in accordance with paragraph (c) of this section;

(2) If a postentry quarantine growing agreement has been completed and submitted to Plant Protection and Quarantine in accordance with paragraph (d) of this section. The agreement must be signed by the person (the importer) applying for a written permit for importation of the article in accordance with § 319.37–3; and,

(3) If Plant Protection and Quarantine has determined that the completed postentry quarantine growing agreement fulfills the applicable requirements of this section and that services by State inspectors are available to monitor and enforce the postentry quarantine:

* * * * *

(c) *State Postentry quarantine agreement.* (1) Articles required to undergo postentry quarantine in accordance with this section may only be imported if destined for postentry quarantine growing in a State which has entered into a written agreement with the Animal and Plant Health Inspection Service, signed by the Administrator or his or her designee and by the State Plant Regulatory Official. In accordance with the laws of individual States, inspection and other postentry quarantine services provided by a State may be subject to charges imposed by the State.

(i) The following States have entered into a postentry quarantine agreement in accordance with this paragraph:

[Reserved]

(2) In any such written agreement, the State shall agree to:

(i) Establish State regulations and requirements prior to the effective date of the agreement and enforce such regulations and requirements necessary to inspect sites and plants growing in postentry quarantine and to monitor and enforce compliance with postentry quarantine growing in accordance with this section;

(ii) Review pending permit applications for articles to be grown under postentry quarantine conditions in the State, upon request of Plant Protection and Quarantine, and report to the Postentry Quarantine Unit of Plant Protection and Quarantine whether the State would be able to provide inspection and monitoring services for the proposed postentry quarantine;

(iii) Provide the services of State inspectors to: inspect sites to be used for postentry quarantine; report to the Postentry Quarantine Unit of Plant Protection and Quarantine whether the site is of adequate size to contain the number of plants proposed for importation, including potential increase if increase is allowed; inspect plants for evidence of exotic pests at least once during the first year and once during the second year for plants required to be grown in postentry quarantine for 2 years, and at least once for plants required to be grown in quarantine for less than 2 years; and monitor and enforce compliance with the requirements of this section during the use of the sites for postentry quarantine;

(iv) Report to the Postentry Quarantine Unit of Plant Protection and Quarantine any evidence of plant pests that are now know to exist in the United States and that are found at a postentry quarantine site by State inspectors; recommend to Plant Protection and Quarantine safeguards or mitigation measures to control the pests; and supervise the application of safeguards or mitigation measures approved by Plant Protection and Quarantine; and

(v) Report to the Postentry Quarantine Unit of Plant Protection and Quarantine any propagation or increase in the number of plants that occurs during postentry quarantine.

(3) In any such written agreement, the Administrator shall agree to:

VOL 58 ISS 135 JL 16 1993 UMI

(i) Seek State review of permit applications for postentry quarantine material in that State, and issue permits only after determining that State services are available to monitor the postentry quarantine;

(ii) Upon request of the State, provide training, technical advice, and pest identification services to State officials involved in providing postentry quarantine services in accordance with this section;

(iii) Notify State officials, in writing and within ten days of the arrival, when plant material destined for postentry quarantine in their State arrives in the United States, and notify State officials in writing when materials in postentry quarantine may be released from quarantine in their State.

(4) *Termination of State postentry quarantine agreement.* A State postentry quarantine may be terminated by either the Administrator or the State Plant Regulatory Official by giving written notice of termination to the other party. The effective date of the termination will be 60 days after the date of actual receipt of notice, with regard to future importation to that State of articles requiring postentry quarantine in accordance with this section. When a postentry quarantine agreement is terminated by either the State Plant Regulatory Official or the Administrator, APHIS and the affected State shall continue to provide postentry quarantine services in accordance with the postentry quarantine agreement, until the time the plant material is eligible to be released from quarantine, for all postentry quarantine material already in the State, and for all postentry quarantine material that arrives in the State prior to the effective date of termination.

(d) *Postentry quarantine growing agreements.* Any restricted article required to be grown under postentry quarantine conditions, as well as any increase therefrom, shall be grown in accordance with a postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37–3 for importation of the article and submitted to Plant Protection and Quarantine. On each postentry quarantine growing agreement, APHIS shall also obtain the signature of the State Plant Regulatory Official for the State in which regulated articles covered by the agreement will be grown. The postentry quarantine growing agreement shall specify the kind, number, and origin of plants to be imported, and shall certify to APHIS and to the State in which the articles are grown that the signer of the agreement will comply with the following conditions for the period of time specified below:

(1) To grow such article or increase therefrom only on specified premises owned, rented, or otherwise in possession of the importer, within a space of dimensions designated by an inspector, and to move, propagate, or allow propagation of the article or increase therefrom or parts thereof only with the written permission of an inspector and only to the extent prescribed by the inspector;

* * * * *

(6) To notify an inspector, orally or in writing, within 30 days of the time the importer or the person in charge of the growing site finds any abnormality of the article, or the article dies or is killed by the importer, the person in charge of the growing site, or any other person; to retain the abnormal or dead article for at least 60 days following that date of notification; and to give the abnormal or dead article to an inspector upon request;

* * * * *

(f) *Inspector-ordered disposal, movement, or safeguarding of restricted articles; costs and charges, civil and criminal liabilities.*

(1) *Growing at unauthorized sites.* If an inspector determines that any article subject to the postentry quarantine growing requirements of this section, or any increase therefrom, is being grown at an unauthorized site, the inspector may file an emergency action notification (PPQ form 523) with the owner of the article or the person who owns or is in possession of the site on which the article is being grown. The person named in the form 523 must, within the time specified in form 523, sign a postentry quarantine growing agreement, destroy, ship to a point outside the United States, move to an authorized postentry quarantine site, and/or apply treatments or other safeguards to the article, the increase therefrom, or any portion of the article or the increase therefrom, as prescribed by an inspector to prevent the introduction of plant pests into the United States. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(2) *Growing at authorized sites.* If an inspector determines that any article, or any increase therefrom, grown at a site specified in an authorized postentry quarantine growing agreement is being grown contrary to the provisions of this section, including in numbers greater than the number approved by the postentry quarantine growing agreement, or in a manner that otherwise presents a risk of introducing plant pests into the United States, the inspector shall issue an emergency action notification (PPQ form 523) to the person who signed the postentry quarantine growing agreement. That person shall be responsible for carrying out all actions specified in the emergency action notification. The emergency action notification may extend the time for which the articles and the increase therefrom must be grown under the postentry quarantine conditions specified in the authorized postentry quarantine growing agreement, or may require that the person named in the notification must destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article, the increase therefrom, or any portion of the article or the increase therefrom, within the time specified in the emergency action notification. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(3) *Costs and charges.* All costs pursuant to any action ordered by an inspector in accordance with this section shall be borne by the person who signed the postentry quarantine agreement covering the site where the articles were grown, or if no such agreement was signed, by the owner of the articles at the growing site.

(4) *Civil and criminal liabilities.* Any person who moves an article subject to postentry quarantine growing requirements from the site specified for that article in an authorized postentry quarantine growing agreement, or who otherwise handles such an article contrary to the requirements of this section, shall be subject to such civil penalties and such criminal liabilities as are provided by 18 U.S.C. § 1001, 7 U.S.C. §§ 150gg and 163, or other applicable Federal statutes.

(g) *State.* As used in this section, "State" means each of the 50 States of the United States, the District of Columbia, Guam, Northern Mariana

Islands, Puerto Rico, The Virgin Islands of the United States, and all other territories and possessions of the United States.

Done in Washington, DC, this 12th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16903 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 354

[Docket No. 92–157–2]

User Fees—Calculation of Fees Charged by States for Issuance of Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning user fees for export certification of plants and plant products by providing an alternative method of calculating the fees States may charge when States issue Federal phytosanitary certificates. The regulations provide guidelines for States to calculate a "cost-per-certificate" fee. Some States have brought it to our attention that they would prefer to calculate fees on a "cost-per-hour" basis. We have determined that a "cost-per-hour" fee is also an appropriate way of charging for the issuance of phytosanitary certificates. We are therefore adding guidelines for States to calculate a "cost-per-hour" fee for the issuance of Federal phytosanitary certificates.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8646.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 354 (referred to below as the regulations), among other things, impose user fees for the issuance of phytosanitary certificates for the export of plants and plant products. Phytosanitary certificates are issued in accordance with 7 U.S.C. 147a and regulations in 7 CFR part 353, and they certify agricultural products as being free from plant pests, according to the phytosanitary requirements of the foreign countries to which the plants or plant products may be exported or to the freedom from exposure to plant pests while in transit through the United States. These certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.

In some States certain State employees are designated to issue Federal phytosanitary certificates. Designated State employees issue approximately 47 percent of all phytosanitary certificates issued in the United States for the export of plants and plant products. As provided in the regulations in 7 CFR part 354, when an Animal and Plant Health Inspection Service (APHIS) employee conducts the inspection and signs the phytosanitary certificate, the user is required to pay the applicable APHIS user fee. However, if a designated State employee conducts the inspection and signs the phytosanitary certificate, we do not charge the APHIS user fee because APHIS is not providing any service to the user. The State, if it wishes, may charge a State fee to cover the cost of providing its services.

The regulations include guidelines which the State must follow in order to establish such fees. These guidelines require States to calculate a "cost-per-certificate" fee for the issuance of phytosanitary certificates, and are the same guidelines used in the calculation of APHIS fees.

It has come to our attention that certain States prefer to use a different method of calculating fees than the "cost-per-certificate" method provided in the regulations. In some cases, States were charging a "cost-per-hour" fee prior to the implementation of the "cost-per-certificate" regulations described above, and it would be helpful for them to be able to continue to do so. APHIS believes that the "cost-per-hour" calculation is appropriate for the establishment of user fees.

Therefore, on January 5, 1993, we published a document in the **Federal Register** (58 FR 260–262, Docket No. 92–157–1) that proposed to add guidelines for States to calculate a "cost-per-hour" fee for the issuance of Federal phytosanitary certificates. We also proposed to make a nonsubstantive editorial change in § 354.4, paragraph (a)(3), by redesignating footnote 2 and the reference to it as footnote 1. We solicited comments concerning our proposal for a 60-day comment period ending March 8, 1993. We received 3 comments by that date. They were from the agricultural departments of two States and one county. One of the commenters was wholly in favor of the proposal. The other two comments are discussed below.

One of the commenters was in favor of the proposal, if the proposal would allow States to establish the "cost-per-hour" method of calculating fees by county, and if each county's agricultural commissioner, under the State's authority, could be responsible for the local administration of the fee-setting method (including the development of a fee schedule), performing inspections, and providing Federal phytosanitary certificates.

Because some States, especially large ones, have vast regional differences, it makes sense that they would establish their fees regionally. Furthermore, since, in most States, counties are administratively independent from each other and from the State, it also makes sense to establish fees by county. We believe that allowing counties to establish their own fees, in accordance with APHIS' regulations, may result in a truer average of fees, and would help to accurately reflect the cost of the services rendered in that county. Accordingly, we have reviewed the proposed rule and have determined that, as written, it will allow States to establish the "cost-per-hour" fees by county.

Another commenter was in favor of the option of charging for services on a "cost-per-hour" basis, but was concerned with the guidelines we proposed for establishing the fee. The commenter stated that "Transportation costs need to be segregated from other costs. Counties need the flexibility to charge for their services using a cost-per-hour rate plus a per-mile charge."

Segregating the travel costs from the cost-per-hour average, and then charging a per-mile fee would be a valid way of calculating fees for the issuance of Federal phytosanitary certificates. However, we do not agree with the commenter's assertion that travel costs cannot be averaged into the "cost-per-hour" without "unfairly affecting a significant number of users." Under our proposal, when calculating a "cost-per-hour" fee for a phytosanitary certificate, the State would average in delivery hours, which include travel time. The charge to a person for a phytosanitary certificate would depend on the amount of time required to issue that specific phytosanitary certificate, including the time an inspector takes to travel to and from the inspection site. This would account for differences in travel time to various inspection sites. Therefore, our proposed "cost-per-hour" method would accomplish the same thing as a per-mile charge. There could be some discrepancy between the two methods in the actual fee charged to an exporter, but we do not believe that the difference

would be significant enough to warrant adding provisions for a per-mile charge to the regulations. Additionally, we believe that the proposed "cost-per-hour" fee would allow each county in a State to recover the full value of the services they perform. For these reasons, we are making no changes to the proposal based on this comment.

Therefore, based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides guidelines for the establishment of fees on a "cost-per-hour" basis for States which wish to charge a fee for issuance of Federal phytosanitary certificates. As explained above, the regulations already allow States to charge user fees for the issuance of Federal phytosanitary certificates on a "cost-per-certificate" basis.

APHIS estimates that only approximately five States will opt to use the "cost-per-hour" fee. In these States, the fees collected from each exporter may differ from the present fee collected, depending on the scenario. For example, the time taken by an inspector to issue a block of phytosanitary certificates is not significantly longer than the time taken by an inspector to issue a single phytosanitary certificate. Therefore, the cost-per-hour fee for the exporter receiving a block of phytosanitary certificates would be less than the fee on a cost-per-certificate basis. As another example, it might happen that an inspector would have to travel a considerable distance to inspect a shipment and issue a single phytosanitary certificate. The cost-per-hour fee for this service would be greater than the cost-per-hour fee for a shipment located closer to the inspector's workplace. According to these scenarios, the fee charged may be lower in some instances and may be higher in other instances.

However, APHIS does not believe that calculation on a "cost-per-hour" basis will significantly change the total fees collected by each State, because the same delivery, support, and administrative factors will be used to calculate the fee. In the end, we estimate that the total fees collected annually will be approximately the same.

Most small entities that currently pay user fees to States for the issuance of Federal phytosanitary certificates are exporters of non-commercial and low value shipments, and will not likely be affected by this proposed rule. Issuing a phytosanitary certificate for a commercial shipment generally requires inspectors to travel to the inspection site. It also generally requires them to inspect larger shipments, which takes more time. Because exporters of non-commercial and low value shipments usually bring their items to the office to be inspected, they are not charged for any travel time. Also, their shipments usually take less time to inspect than a commercial shipment. Therefore, their fees will remain lower than the fees charged for inspection of commercial shipments, to reflect the amount of services they receive.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 354.3, paragraph (g)(4) is revised to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(g) * * *

(4) Any State which wishes to charge a fee for services it provides to issue certificates must establish fees in accordance with one of the following guidelines:

(i) *Calculation of a "cost-per-certificate" fee.* The State must:

(A) Estimate the annual number of certificates to be issued;

(B) Determine the total cost of issuing certificates by adding together delivery,[2] support,[3] and administrative[4] costs; and

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee. The State may round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing; or

(ii) *Calculation of a "cost-per-hour" fee.* The State must:

(A) Estimate the annual number of hours taken to issue certificates by

[2] Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and user fee costs associated with maintaining field offices. Delivery hours are similar hours taken by inspectors, including travel time, inspection time, and time taken to complete paperwork.

[3] Support costs are costs at supervisory levels which are similar to delivery costs, and user fee costs such as training, automated data processing, public affairs, enforcement, legal services, communications, postage, budget and accounting services, and payroll, purchasing, billing, and collecting services. Support hours are similar hours taken at supervisory levels, as well as hours taken in training, automated data processing, enforcement, legal services, communication, budgeting and accounting, payroll purchasing, billing, and collecting.

[4] Administrative costs are costs incurred as a direct result of collecting and monitoring Federal phytosanitary certificates. Administrative hours are hours taken as a direct result of collecting and monitoring Federal phytosanitary certificates.

adding together delivery [2], support [3], and administrative [4] hours;

(B) Determine the total cost of issuing certificates by adding together delivery, support, and administrative costs; and

(C) Divide the cost of issuing certificates by the estimated number of hours taken to issue certificates to obtain a "cost-per-hour" fee. The State may round the "cost-per-hour" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

* * * * *

§ 354.4 [Amended]

3. In § 354.4, paragraph (a)(3), footnote 2 and the reference to it are redesignated as footnote 5.

Done in Washington, DC, this 12th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16907 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV93–910–1IFR]

Expenses and Assessment Rate for Marketing Orders Covering Fresh Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Lemon Administrative Committee (Committee) under M.O. No. 910 for the 1993–94 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by August 16, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax # (202) 720–5698.

Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee Hopper, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5906; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 910 (7 CFR part 910) regulating the handling of fresh lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, lemons grown in California and Arizona are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable lemons handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons regulated under the marketing order each season and approximately 2,000 lemon producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The California-Arizona lemon marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable lemons handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California-Arizona lemons. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Lemon Administrative Committee met on June 2, 1993, and unanimously recommended total

VOL 58 ISS 135 JL 16 1993 UMI

expenses for the 1993–94 fiscal year of $905,000 and an assessment rate of $0.045 per carton. In comparison, the 1992–93 fiscal year expense amount was $875,000, which is $30,000 less than the $905,000 recommended for this fiscal year and the assessment rate has remained unchanged.

Assessment income for the 1993–94 fiscal year is expected to amount to $821,500 based upon estimated fresh domestic shipments of 18,250,000 cartons of lemons. This, along with the anticipated $16,750 in interest income and a withdrawal from the Committee's authorized reserve fund, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the fiscal year are within the maximum permitted by the order for one fiscal year's expenses. Also, the Committee unanimously recommended that any excess revenue received for the 1993–94 fiscal year will be credited back to handler accounts.

Major expense categories for the 1993–94 fiscal year include $260,900 for field and compliance expenses, $500,100 for administrative and office expenses, and $120,000 for Committee member expenses. Comparable 1992–93 budgeted expenses are $253,100, $479,900, and $118,000, respectively.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal year for the Committee begins August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable lemons handled during the fiscal year;

(3) Handlers are aware of this action which was recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 910.231 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 910.231 Expenses and assessment rate.

Expenses of $905,000 by the Lemon Administrative Committee are authorized and an assessment rate of $0.045 per carton on assessable lemons is established for the fiscal year ending July 31, 1994. Any excess revenue received for the 1993–94 fiscal year will be credited back to handler accounts.

Dated: July 12, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16853 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 922, 923, and 924

[Docket No. FV93–922–1IFR]

1993–94 Fiscal Year Expenditures and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes assessment rates for the 1993–94 fiscal year for marketing orders covering apricots and sweet cherries grown in designated counties in Washington, and fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the committees established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer the programs are derived from assessments on handlers.

DATES: Effective beginning April 1, 1993, through March 31, 1994. Comments must be received by August 16, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; or by faxogram at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–8139; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreements and Marketing Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in Washington and in Umatilla County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive

Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, apricots and sweet cherries grown in designated counties in Washington, and fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable apricots, sweet cherries, and fresh prunes handled during the 1993–94 fiscal year, beginning April 1, 1993, through March 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under their respective marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by each marketing order committee and submitted to the Department for approval. The members of the committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because the rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The 1993–94 budgeted expenditures and assessment rates for these marketing orders are higher than those for 1992–93. The largest increases in expenditures are reflected in research, travel, salaries, and office equipment purchases. The higher assessment rates reflect the absorption of some of the administrative costs of the suspended marketing order covering peaches grown in designated counties in Washington. Previously, some administrative costs under these marketing orders (e.g. salaries, rent, and postage) were also shared with the committee administering the Washington peach marketing order.

The Washington Apricot Marketing Committee (WAMC) met on May 18, 1993, and recommended 1993–94 expenditures of $12,386, and an assessment rate of $2.50 per ton of apricots shipped under Marketing Order No. 922. In comparison, 1992–93 budgeted expenditures were $8,691 and the assessment rate was $2.00 per ton. The rate increase would cover an estimated 30-percent increase in expenses to cover joint administrative expenses no longer paid by the suspended peach marketing order. Shipments of apricots are estimated at 4,700 tons, about the same as in the previous season.

The Washington Cherry Marketing Committee (WCMC) met on May 11, 1993, and recommended 1993–94 expenditures of $139,313 and an assessment rate of $3.00 per ton of sweet cherries shipped under Marketing Order No. 923. In comparison, 1992–93 budgeted expenditures were $114,469 and the assessment rate was $2.00 per ton. The rate increase would cover an estimated 12-percent increase in estimated expenses to cover joint administrative expenses no longer paid by the suspended peach marketing order. It would also cover an estimated 10-percent increase in estimated expenses for market development expenditures. Shipments of cherries for 1993 are estimated at 50,000 tons in comparison to actual shipments of about 44,814 tons last year.

The Washington-Oregon Fresh Prune Marketing Committee (WOFPMC) met on June 8, 1993, and recommended 1993–94 expenditures of $26,802 and an assessment rate of $3.00 per ton of fresh prunes shipped under Marketing Order No. 924. In comparison, 1992–93 budgeted expenditures were $18,275 and the assessment rate was $2.00 per ton. The rate increase would cover an estimated 45-percent increase in expenses to cover joint administrative expenses no longer paid by the suspended peach marketing order. Shipments of prunes for 1993 are estimated at 7,800 tons in comparison to actual shipments of about 7,000 tons last year.

Each stone fruit committee has adequate reserves to fund any expenditures in excess of income for 1993–94. Reserves for each of the stone fruit committees are within the amounts permitted under each of the marketing orders.

The expenditures are for administration of these marketing orders, except for fresh prune research and sweet cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing committees share office expenses, based on an agreement among the committees.

VOL 58 ISS 135 JL 16 1993 UMI

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including information and recommendations submitted by the committees' and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis;

(2) The 1993–94 fiscal year for the committees began April 1, 1993, and the marketing orders require that the rate of assessment for the fiscal year apply to all assessable apricots, sweet cherries, and fresh prunes handled during the fiscal year;

(3) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 922.232 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 922.232 Expenses and assessment rate.

Expenses of $12,386 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $2.50 per ton is established for the fiscal year ending March 31, 1994. Any unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 923.233 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 923.233 Expenses and assessment rate.

Expenses of $139,313 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $3.00 per ton is established for the fiscal year ending March 31, 1994. Any unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

4. A new § 924.233 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 924.233 Expenses and assessment rate.

Expenses of $26,802 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1994. Any unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

Dated: July 12, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16855 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 945

[Docket No. FV93–945–2IFR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $98,942 and establishes an assessment rate of $0.0026 per hundredweight of potatoes under Marketing Order No. 945 for the 1993–94 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by August 16, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone number 503–326–2724; or Martha Sue Clark, Marketing order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non–major" rule.

This interim final rule has been reviewed under Executive order 12778, civil Justice Reform. Under the provisions of the marketing order now in effect, Idaho-Eastern Oregon potatoes are subject to assessments. Funds to administer the Idaho-Eastern Oregon potato marketing order are derived form such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1993–94 fiscal period, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,200 producers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 66 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 8, 1993, and unanimously recommended a 1993–94 budget of $98,942, $10,407 more than the previous year. Increases include $2,607 for salaries, $1,000 for manager's travel, $300 for meetings and miscellaneous, $400 for Federal payroll taxes, and $6,000 for reserve/auto purchase.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 31,000,000 hundredweight, will yield $80,600 in assessment income. This, along with $18,342 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period, estimated at about $50,000, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal period begins on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during the fiscal period;

(3) Handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 945.246 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 945.246 Expenses and assessment rate.

Expenses of $98,942 by the Idaho-Eastern Oregon Potato Committee are

VOL 58 ISS 135 JL 16 1993 UMI

authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: July 12, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16857 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 967

[Docket No. FV–93–967–21FR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action establishes the quantity of Florida celery which handlers may ship to fresh markets during the 1993–94 marketing season at 6,712,910 crates or 100 percent of producers' base quantities. This interim final rule is intended to lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: This action is effective July 16, 1993. Comments which are received by August 16, 1993 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews or Mark Slupek, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–0464 or (202) 205–2830, respectively, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action establishes the quantity of Florida celery (at 6,712,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1993–94 marketing season which covers the period August 1, 1993 through July 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of celery in the production area and an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 9, 1993, and unanimously recommended a marketable quantity of 6,712,910 crates of fresh celery for the 1993–94 marketing season beginning August 1, 1993. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1993–94 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1992–93 total base quantities was made available to new producers and for increases for existing producers. The deadline for requesting changes in base quantities was May 1, 1993. An application for additional base quantity of 100,000 crates was received from one producer. During the 1992–93 season, transfers of allotment to this producer of 100,000 crates from two other producers was approved by the committee. Therefore, the committee approved this application for additional base quantity.

The interim final rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1993–94 marketing season to 6,712,910 crates. This marketable quantity is slightly more than the 1992–93 marketable quantity, and is more than the average number of crates marketed fresh during the 1987–88 through 1991–

92 seasons. It is expected that such quantity will be more than actual shipments for the 1993–94 season. Thus, the 6,712,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the interim final rule should lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product.

On the basis on the foregoing, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input;

(2) It is desirable to have this action in place as soon as possible because celery planting begins in July and the beginning of the 1993–94 crop year is August 1, 1993; and

(3) This rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new § 967.328 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 967.328 Handling regulation, marketable quantity, and uniform percentage for the 1993–94 season beginning August 1, 1993.

(a) The marketable quantity established under § 967.36(a) is 6,712,910 crates of celery.

(b) As provided in section 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for new producers and increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 12, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16858 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 967

[Docket No. FV93–967–1IFR]

Celery Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 967 for the 1993–94 fiscal year. Authorization of this budget enables the Florida Celery Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by August 16, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR part 967), regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida celery is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable celery handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling

VOL 58 ISS 135 JL 16 1993 UMI

on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of Florida celery under this marketing order, and approximately seven handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida celery producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal year was prepared by the Florida Celery Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Florida celery. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida celery. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 9, 1993, and unanimously recommended a 1993–94 budget of $90,000, $60,000 less than the previous year. Major expense categories are $25,000 for administrative fees, $2,000 for Committee personnel travel, $1,200 for audit, and $60,000 for promotion, merchandising, and public relations. Decreases are $50,000 for administrative fees, $3,000 for Committeemen travel, $5,000 for promotion, merchandising, and public relations, and $2,000 for the contingency reserve for which no funding was recommended.

The Committee also unanimously recommended an assessment rate of $0.02 per crate, $0.01 less than last season. This rate, when applied to anticipated shipments of 4,500,000 crates, will yield $90,000 in assessment income. Funds in the Committee's authorized reserve as of July 31, 1992, estimated at $27,853, were within the maximum permitted by the order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal year begins on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Florida celery handled during the fiscal year;

(3) Handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 967.228 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 967.228 Expenses and assessment rate.

Expenses of $90,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of assessable celery is established for the fiscal year ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: July 12, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16854 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1211

[FV–93–701]

RIN 0581–AA50

Procedures for the Conduct of Referenda in Connection With the Pecan Promotion and Research Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Pecan Promotion and Research Plan (Plan) is effective under the Pecan Promotion and Research Act of 1990 (Act). The Act specifies that not later than 24 months after the effective date of the Plan, the Secretary of Agriculture shall conduct a referendum to determine if growers, grower-shellers, and importers favor continuation, termination, or suspension of the Plan. This interim final rule specifies procedures for the conduct of the initial and subsequent referenda to continue, terminate, or suspend the Plan. To continue the Plan must be approved by a majority of the growers, grower-shellers, and importers voting in the referendum.

DATES: Effective July 16, 1993. Comments which are received by

August 2, 1993, will be considered prior to the issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular working hours. All comments should reference the docket number FV–93–701 and the date and page number of this issue of the **Federal Register**.

Comments concerning the information collection requirements contained in this interim final rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Arthur Pease, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456, telephone (202) 720–6930.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Pecan Promotion and Research Plan (7 CFR part 1211) (Plan). The Plan is effective pursuant to the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001 *et seq.*), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order No. 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1913 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan, a provision of the Plan or an obligation imposed in connection with the Plan is not in accordance with law; and requesting a modification of the Plan or exemption from the Plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person resides or carries on business has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after the date of entry of a ruling by the Secretary.

The Act authorizes the development of nationally coordinated programs of market promotion, research, industry information, and consumer information designed to improve the position of pecans in the marketplace. The Act further requires that a referendum be held within 24 months after the effective date of the Plan to determine if growers, grower-shellers, and importers favor continuation, termination, or suspension of the Plan. Since the Plan became effective on May 1, 1992, the initial referendum must be conducted by May 1, 1994. However, the industry has requested that the initial referendum be conducted in 1993 before the fall pecan harvest begins.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The most recent available census of agricultural producers/growers indicates that over 21,000 farms in the United States reported having pecan trees. All pecan growers are subject to the provisions under the Plan and a majority are classified as small businesses. Growers engaged in the production and sale of pecans are subject to being assessed under the Plan. Small agricultural producers/growers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include pecan handlers, shellers, grower-shellers, and importers, have been defined as those having annual receipts of less than $3,500,000. Also, there are approximately 2,000 pecan handlers, 115 shellers, and 25 importers who will be subject to the provisions of the Plan, the majority of whom are also classified as small entities.

This rule establishes procedures for the conduct of the initial referendum and subsequent referenda to continue, terminate, or suspend the Plan. The procedures will permit all eligible growers, grower-shellers, and importers of pecans to vote. The provisions of this rule include sections on definitions, voter registration, challenges, voting, instructions for referendum agents and subagents, ballots, the referendum report, and the confidentiality of information. Participation in any referendum will be voluntary. A grower or grower-sheller who chooses to vote in any referendum will be required to register in person at the appropriate local office of the Agricultural Stabilization and Conservation Service (ASCS). Importers who choose to vote will register at their local ASCS office or by mailing their registration to the AMS prior to the voting period. Voting shall be by mail ballot to AMS.

After the initial referendum, referenda may be conducted by the Secretary at any time, or at the request of the Pecan Marketing Board or a group of growers, grower-shellers, and importers comprising 10 percent or more of the total number of growers, grower-shellers, and importers.

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0581–0093.

It is estimated that approximately 21,000 farms in the United States produce pecans and all of these growers and grower-shellers, and approximately 25 pecan importers, will be eligible to vote in the initial referendum. It will take an average of one minute for each grower, grower-sheller, or importer to complete the registration form and five minutes to complete the referendum ballot.

Comments concerning the information collection requirements contained in this interim final rule should be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, D.C. 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

The Administrator of the AMS has determined that this interim final rule would not have a significant economic impact on a substantial number of small entities.

It is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective

VOL 58 ISS 135 JL 16 1993 UMI

date of this action until 30 days after publication in the Federal Register because:

(1) It is necessary that procedural rules for conducting referenda be in place so that a referendum on continuing the Plan may be conducted prior to the 1993–94 pecan harvest season;

(2) A 15-day comment period is provided;

(3) This action enables pecan growers, grower-shellers, and importers to determine if they want the Plan to continue; and

(4) The pecan industry is anticipating this action.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 7, part 1211 is amended as follows:

PART 1211—[AMENDED]

1. The authority citation for 7 CFR Part 1211 continues to read as follows:

Authority: 7 U.S.C. 6001 *et seq.*

2. A new subpart D is added to read as follows:

Subpart D—Procedure for the Conduct of Referenda in Connection With the Pecan Promotion and Research Plan

Sec.

1211.300 Supervision of referenda.
1211.301 General.
1211.302 Definitions.
1211.303 Advance registration.
1211.304 Challenges.
1211.305 Voting.
1211.306 Instructions.
1211.307 Subagents.
1211.308 Ballots.
1211.309 Referendum report.
1211.310 Confidential information.

Subpart D—Procedure for the Conduct of Referenda in Connection With the Pecan Promotion and Research Plan

§ 1211.300 Supervision of referenda.

The Administrator of the Agricultural Marketing Service shall be responsible for conducting referenda under this subpart.

§ 1211.301 General.

(a) An initial referendum to determine whether eligible growers, grower-shellers, and importers favor continuation, termination, or suspension of the Pecan Promotion and Research Plan (Plan) shall be conducted in accordance with this subpart.

(b) The Plan shall continue only if the Secretary determines that continuation of the Plan is favored by a majority of those eligible growers, grower-shellers, and importers voting in the referendum.

(c) The Agricultural Stabilization and Conservation Service shall assist in the conduct of the referendum.

(d) Subsequent referenda to continue, terminate or suspend the Plan shall be conducted in accordance with this subpart.

§ 1211.302 Definitions.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Pecan Promotion and Research Plan.

(a) *Agricultural Marketing Service*, also referred to as AMS, means the Agricultural Marketing Service of the Department.

(b) *Agricultural Stabilization and Conservation Service*, also referred to as ASCS, means the Agricultural Stabilization and Conservation Service of the Department.

(c) *Referendum agent* or *subagent* means the individual or individuals designated by the Secretary to conduct a referendum.

(d) *Referendum subagent* or *subagent* means any individual appointed by the agent to assist in carrying out the functions connected with conducting the referendum including ASCS County Executive Directors in pecan producing counties.

(e) *Representative period* means the period designated by the Secretary pursuant to § 1916 of the Act.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, pecan production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, or

(2) So-called "joint ventures" wherein one or more parties to the production or importation of pecans, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the growing, growing-shelling or importation of pecans and the authority to transfer title of the pecans so produced or imported.

(g) *Eligible grower* means any person defined in the Plan as a grower who during the representative period was engaged in the production of pecans.

(h) *Eligible grower-sheller* means any person defined in the Plan as a grower-sheller who during the representative period engaged in the production and shelling of pecans.

(i) *Eligible importer* means any person defined in the Plan as an importer who during the representative period was engaged in the importation of pecans. Importation occurs when pecans originating outside the United States are entered or withdrawn from the Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced pecans immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of pecans from the Customs Service when such pecans are entered or withdrawn for consumption in the United States.

§ 1211.303 Advance registration.

(a) A grower or grower-sheller who chooses to vote in any referendum shall register in person by completing the information required on the Registration Sheet and signing the Registration Sheet prior to the voting period at the appropriate local ASCS office.

(b) Importers may register in person at their local ASCS office or by mailing a request to vote to the AMS referendum agent in Washington, DC.

(c) An officer or employee of an eligible corporate grower, eligible grower-sheller, or eligible importer; a duly authorized partner of a partnership; or an administrator, executor, or trustee of an eligible growing, growing-shelling, or importing estate may register on behalf of such eligible grower, eligible grower-sheller, eligible importer, or estate. Any individual so registering shall provide documentation that such individual is an officer or employee of the eligible grower, grower-sheller, or importer or an administrator, executor, or trustee of an eligible growing, growing-shelling, or importing estate and that such individual has the authority to take such action.

(d) Each eligible voter registering at a local ASCS office will be given a ballot to return to the referendum agent. Each importer who registers by mail will receive a ballot by return mail from the AMS.

§ 1211.304 Challenges.

(a) After the designated registration period, each of the local ASCS subagents will make a duplicate copy of each Registration Sheet and display that copy in a prominent location for public

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viewing in the local ASCS office. ASCS subagents will send the original Registration Sheets to AMS in Washington, DC. AMS will display in a prominent location for public viewing the list of importers registered to vote.

(b) A person's eligibility to vote may be challenged by any person. A challenge of a person's eligibility to vote may be made in person and in writing no later than the last day of the voting period at the local ASCS office where the registrant registered, or for importers by mail to the AMS in Washington, DC postmarked no later than the last day of the voting period.

(c) The ASCS subagent at each local ASCS office shall notify any person challenged of the challenge as soon as possible but not later than three business days after the voting period ends. Persons challenged by mail or in person at the AMS office in Washington, DC shall be notified of such challenge by the referendum agent or subagent no later than three business days after the voting period ends or, with respect to mail challenges, no later than three days after the challenge is received.

(d) Any person who registers to vote and is subsequently challenged may appeal such challenge to the ASCS subagent at the local ASCS office or with respect to importers who registered with AMS by mail such appeal shall be made to the AMS referendum agent in Washington, DC.

(1) Appeals must be made within three working days after the date of notification.

(2) Appellants will be granted a hearing date and expeditiously notified of that date and time. Such persons may be required to present evidence of sales or purchases of pecans such as tax returns, sales documents, purchase documents, or other similar documents to prove that they were eligible growers, grower-shellers, or importers during the representative period.

(e) The ASCS subagent at the local ASCS office where the appellant registered shall make a determination regarding all appeals registered and the voting eligibility of growers, grower-shellers, or importers who registered at that local ASCS office. The referendum subagent's determination on an appeal is final. After making such a determination the ASCS subagent shall report the results to the AMS referendum agent. The voting eligibility of those persons challenged by mail or in person to the AMS referendum agent shall be determined by the referendum agent.

(f) Appeals to challenges that cannot be resolved by the ASCS subagents at the local ASCS offices shall be sent to the AMS referendum agent in Washington, DC, for resolution.

§ 1211.305 Voting.

(a) A grower, grower-sheller, or importer who votes in any referendum conducted pursuant to this subpart shall vote by mail ballot to AMS.

(b) Each person who is an eligible grower, grower-sheller, or importer, as defined in this subpart at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each grower or grower-sheller in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce or produce and shell pecans, in which more than one of the parties is a grower or grower-sheller, shall be permitted to register separately and entitled to cast separate ballots in the referendum.

(c) Proxy voting is not authorized, but an officer or employee of an eligible corporate grower, grower-sheller, or importer, or an administrator, executor, or trustee of an eligible growing, growing-shelling, or importing estate may cast a ballot on behalf of such grower, grower-sheller, importer, or estate. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible grower, eligible grower-sheller, or eligible importer or an administrator, executor, or trustee of an eligible growing, growing-shelling, or importing estate and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

§ 1211.306 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the AMS Administrator. The AMS Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. The referendum agent shall:

(a) Determine the representative period, the registration period, and the voting period for the referendum.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(2) The total volume of pecans grown or grown and shelled by the voting grower or grower-sheller during the representative period.

(3) The total volume of pecans imported by the voting importer during the representative period, and

(4) In a joint venture, the names of the parties and each party's share of ownership.

(c) Give at least 30 days advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, methods of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Make available to eligible growers, grower-shellers, and importers the instructions on advance registration, voting, and appropriate ballot and certification forms.

(e) Cause all of the material specified in paragraph (d) of this section to be provided to the appropriate ASCS offices or in the case of importers mailed to each eligible importer whose name and address is known to the referendum agent.

(f) At the end of the voting period obtain from the local ASCS offices, all Registration Sheets displayed in those offices along with a list of the registrants challenged who were deemed to be ineligible to vote and the reason for their ineligibility.

(g) At the conclusion of the referendum, canvass the ballots, obtain a list of all challenged registrants deemed to be ineligible voters by the local ASCS offices, tabulate the results, and, except as otherwise directed, report the outcome to the AMS Administrator in accordance with § 1211.309 of this subpart.

§ 1211.307 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform, in accordance with the requirements herein set forth, any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

(a) The ASCS County Executive Directors shall be the ASCS subagents charged with registering eligible growers, grower-shellers, and importers who appear in person to register at the local ASCS office and will be

responsible for distributing ballots and return envelopes for ballots to registrants.

(b) The ASCS County Executive Directors will also be responsible for notifying, by telephone and in writing, challenged registrants who registered at their ASCS offices, and for making a determination of the challenged registrants' eligibility to vote.

§ 1211.308 Ballots.

(a) The AMS referendum agent and subagents shall accept all ballots cast by eligible voters who have registered in advance.

(b) If the AMS referendum agent or subagent deem that a ballot should be challenged for any reason, the agent or subagent shall indicate the following on the ballot:

(1) The reason for the challenge;

(2) Who challenged the ballot;

(3) The results of any investigations made with respect thereto and the disposition thereof; and

(4) The agent or subagent's signature affirming the statement.

(c) Ballots determined to be invalid under this subpart shall not be counted.

§ 1211.309 Referendum report.

Except as otherwise directed, the AMS referendum agent shall prepare a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1211.310 Confidential information.

All ballots cast and the contents thereof, whether or not relating to the identity of any person who voted or the manner in which any person voted, and all information furnished to, compiled by, or in possession of the referendum agent or subagents except for the Registration Sheets shall be treated as confidential.

Dated: July 12, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–16856 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 92–167–2]

Limited Ports; Baudette, MN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations by adding Baudette, MN, to the list of limited ports of entry for ruminants and swine and ruminant and swine products (such as test specimens of ruminants and swine) that do not appear to require restraint and holding inspection facilities. We have determined that inspection facilities and Animal and Plant Health Inspection Service personnel are available to provide inspection service for this location. This action will provide importers with an alternative port through which to import certain ruminants and swine and ruminant and swine products.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT:

Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations), among other things, list ports that have inspection or quarantine facilities for ruminants and ruminant products and for swine and swine products offered for entry into the United States. Section 92.403(e) designates limited ports for the importation of ruminants and ruminant products (such as ruminant test specimens) that do not appear to require restraint and holding inspection facilities. Section 92.503(e) designates limited ports having inspection facilities for the entry of swine and swine products (such as swine test specimens) that do not appear to require restraint and holding inspection facilities.

On January 14, 1993, we published in the **Federal Register** (58 FR 4361–4362, Docket No. 92–167–1), a proposal to amend §§ 92.403(e) and 92.503(e) of the regulations by adding Baudette, MN, as a limited port for certain ruminants and swine and ruminant and swine products.

We solicited comments concerning our proposal for a 60-day comment period ending March 15, 1993. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that the addition of Baudette, MN, to the list of limited ports for the importation of ruminants and swine and ruminant and swine products will not cause a substantial change in the number of these animals or products entering the United States or in the number of persons importing them.

This rule will affect those importers who wish to use the new port. We believe that most of these entities would be considered small entities, but we do not know how many of them will opt to use a new limited port. Minnesota already has a limited port for the entry of ruminants and ruminant products and swine and swine products. The addition of a limited port of Baudette will provide importers with an alternate and, in some cases, a more conveniently located limited port, thereby making importations easier. We do not anticipate that there will be a significant economic impact on any small entities as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has not retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51 and 371.2(d).

§ 92.403 [Amended]

2. Paragraph (e) of § 92.403 is amended by adding "Baudette and" immediately before "Minneapolis".

§ 92.503 [Amended]

3. Paragraph (e) of § 92.503 is amended by adding "Baudette and" immediately before "Minneapolis".

Done in Washington, DC, this 12th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16906 Filed 7–15–93; 8:45 am]

BILLING CODE 3410-34-P-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–93–AD; Amendment 39–8626; AD 93–14–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This action requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to impose an operational limitation of the flight director (FD) and non-redundant autopilot during an instrument landing system (ILS) approach. This action also provides for an optional terminating action, which, if accomplished, would eliminate the need for the required AFM limitation. This amendment is prompted by a reported error in the heading reference computation on the automatic flight control and augmentation system (AFCAS) during go-around. The actions specified in this AD are intended to prevent erroneous lateral guidance from the AFCAS when a go-around is initiated below 100 feet, during a FD or non-redundant autopilot approach.

DATES: Effective August 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 2, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, during certification flight testing of the latest version of the automatic flight control and augmentation system (AFCAS) software on a Model F28 Mark 0100 series airplane, an error was discovered in the heading reference computation during go-around. This error is also present in all previous AFCAS software versions installed on Model F28 Mark 0100 series airplanes. When an instrument landing system (ILS) approach is made using the flight director (FD) or non-redundant autopilot (only one autopilot channel engaged), with "glide slope/localizer" (GS/LOC) annunciated on the flight mode annunciator (FMA) on the primary flight display, the defective heading reference target computation uses a crab angle value resulting from a previous time when the AFCAS was in the redundant mode. This condition, if not corrected, could result in erroneous lateral guidance from the AFCAS, when a go-around is initiated below 100 feet, during a FD or non-redundant autopilot approach.

The RLD has issued Netherlands Airworthiness Directive BLA 93–062 (A), dated April 23, 1993, which requires revising the Limitations section of the Airplane Flight Manual (AFM) to impose an operational limitation of the FD and non-redundant autopilot during an ILS approach. This BLA also provides for an optional terminating action, which, if accomplished, would eliminate the need for the required airplane AFM limitation. The optional terminating action entails installation of the improved AFCAS software, version V13S, in the flight control computers (FCC).

Fokker has issued Service Bulletin SBF100–22–037, dated May 31, 1993, that describes procedures for installation of the improved AFCAS software (version V13S) in the FCC's. This improved software was installed during production on airplanes having serial numbers 11464 and subsequent. The RLD has not classified this service bulletin as mandatory.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent erroneous lateral guidance from the AFCAS, when a go-around is initiated below 100 feet, during a FD or non-redundant autopilot approach. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to impose an operational limitation of the FD and

non-redundant autopilot during an ILS approach.

This action also provides for the installation of improved AFCAS software (version V13S) in the FCC's as an optional terminating action for the required airplane AFM limitation. If accomplished, this installation is required to be performed in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–93–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–14–02 Fokker: Amendment 39–8626. Docket 93–NM–93–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11463, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous lateral guidance from the automatic flight control and augmentation system (AFCAS) when a go-around is initiated below 100 feet, during a flight director (FD) or non-redundant autopilot approach, accomplish the following:

(a) Within 14 days after the effective date of this AD, amend section 2.08.01, AFCAS LIMITATIONS, subsection Instrument Landing System (ILS) APPROACH, of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This may be accomplished by inserting a copy of this AD in the AFM.

(1) Change Minimum Decision Height:

"Weather Limitations: CAT II
—FMA: GS/LOC
—Minimum Decision Height (DH): 150 feet
—Runway Visual Range (RVR): 400 meters/1,200 feet

Note 1: AT III (LAND 2 and LAND 3) weather limitations remain unchanged."

Change Minimum Use Height with GS/LOC annunciated.

"Minimum use height:
—If the surface wind exceeds 40 knots: 150 feet
—If not:—With GS/LOC annunciated: 150 feet
—With LAND 2 or LAND 3 annunciated: 0 feet"

(3) Add the following limitation under ILS APPROACH: "USE OF FLIGHT DIRECTOR DURING ILS APPROACH. When GS/LOC is annunciated on FMA, both FD's may not be used below 150 feet and must be switched OFF passing 150 feet."

(b) Installation of improved AFCAS software, version V13S, in the flight control computers (FCC) in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993, constitutes terminating action for the requirements of paragraph (a) of this AD. After this installation has been accomplished, the AFM limitations required by paragraph (a) may be removed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation shall be done in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 2, 1993.

Issued in Renton, Washington, on July 8, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–16875 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–94–AD; Amendment 39–8625; AD 93–14–01]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires: A one-time measurement of certain gaps at the lower section of the main baggage bay door; repetitive inspections to detect damage and/or adhesion failure of certain seals in that area; repair of damaged and/or disbonded seals; and submission of inspection reports. This action would also require installation of a certain repair; when accomplished, this repair would terminate the need for repetitive inspections. This amendment is prompted by a report that the lower center section of the pressure seal on the main baggage bay door was forced out of the gap between the door and the door sill, resulting in rapid loss of cabin pressure. The actions specified in this AD are intended to prevent rapid loss of cabin pressure during flight.

DATES: Effective August 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that the lower center section of the pressure seal on the main baggage bay door was forced out of the gap between the door and the door sill on a Model 4101 airplane, resulting in rapid loss of cabin pressure. The cause of this occurrence has been attributed to damaged door seals and disbonding of the rubber door seals away from the door. During manufacture, the door seals may not have been properly bonded to the door. Improper bonding of the door seals can lead to failure of the seals, which could ultimately result in rapid loss of cabin pressure.

Jetstream Aircraft, Limited, has issued Series 4100 Alert Service Bulletin J41–A52–016, dated May 18, 1993, that describes procedures for (1) a one-time measurement of certain gaps at the lower section of the main baggage bay door; (2) repetitive inspections (both detailed visual inspections and inspections by feel) to detect damage and/or adhesion failure of the pressure seal and the back-up seal at the lower section of the main baggage bay door; (3) repair of damaged and/or disbonded seals; and (4) submission of inspection reports. The CAA classified this service bulletin as mandatory.

Jetstream Aircraft, Limited, has also issued Jetstream Aircraft Limited Drawing 141R0370, Issue 3, dated May 27, 1993, that describes procedures for installation of Repair Scheme J41R0370. When accomplished, this repair would terminate the need for repetitive inspections. The CAA has not classified this repair scheme as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent rapid loss of cabin pressure during flight. This AD requires (1) a one-time measurement of certain gaps at the lower section of the main baggage bay door; (2) repetitive inspections (both detailed visual inspections and inspections by feel) to detect damage and/or adhesion failure of the pressure seal and the back-up seal at the lower section of the main baggage bay door; (3) repair of damaged and/or disbonded seals; and (4) submission of inspection reports. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires installation of Jetstream Aircraft, Limited, Repair Scheme J41R0370 in accordance with Jetstream Aircraft Limited Drawing 141R0370, Issue 3, dated May 27, 1993. When accomplished, this repair scheme would terminate the need for repetitive inspections. Incorporation of this repair scheme would prevent rapid loss of cabin pressure during flight. The terminating action is required to be accomplished in accordance with the repair drawing described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

VOL 58 ISS 135 JL 16 1993 UMI

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–94–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–14–01 Jetstream Aircraft, Limited: Amendment 39–8625. Docket 93–NM–94–AD.

Applicability: Model 4101 airplanes on which Modification JM41204 or Repair Scheme J41R0370 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid loss of cabin pressure during flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD at the lower section of the main baggage bay door in accordance with Jetstream Series 4100 Alert Service Bulletin J41–A52–016, dated May 18, 1993.

(1) Measure gap "A", forward and aft of the center line, and record the maximum measurement; measure gap "B", forward and aft of the center line, to determine the location of the maximum gap, and record the maximum measurement and its location; and measure the thickness of the back-up seal at the location of the maximum measurement for gap "B", and record the thickness in accordance with the service bulletin.

(2) Perform a detailed visual inspection and an inspection by feel to detect damage and/or adhesion failure of the pressure seal and the back-up seal, and prior to further flight, repair any damaged and/or disbonded seal in accordance with the service bulletin. Repeat this inspection thereafter after the last flight of the airplane each day.

(b) Within 10 days after measuring the gaps or finding damage and/or disbonding to the seals, submit a report of any inspection findings, to Jetstream Aircraft, Limited, in accordance with Jetstream Series 4100 Alert Service Bulletin J41–A52–016, dated May 18, 1993. Report gap measurements, and damage and/or disbonding to the seals, to: Customer Support Manager, Jetstream Aircraft Ltd., Prestwick, England; fax 011–44–292–671620. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Within 60 days after the effective date of this AD, install Jetstream Aircraft, Limited, Repair Scheme J41R0370 in accordance with Jetstream Aircraft Limited Drawing 141R0370, Issue 3, dated May 27, 1993. Installation of Jetstream Aircraft, Limited, Repair Scheme J41R0370, constitutes terminating action for the repetitive inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The measurements, inspections, repairs of damaged and/or disbonded seals, recording and reporting requirements shall be done in accordance with Jetstream Series 4100 Alert Service Bulletin J41–A52–016, dated May 18, 1993. The repair scheme shall be done in accordance with Jetstream Aircraft Limited Drawing 141R0370, Issue 3, dated May 27, 1993, which contains the following list of effective pages:

Sheet No.	Revision level shown on page	Date shown on page
1, 5–6	3	May 27, 1993
2–4	1	May 14, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 2, 1993.

Issued in Renton, Washington, on July 8, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–16876 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 73

[Airspace Docket No. 93-ASW-38]

Revocation of Restricted Area R-3806, England AFB, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R-3806, England Air Force Base (AFB), LA, which is no longer required due to the closure of England AFB, LA. This airspace will be redesignated, under separate action, as part of the Warrior Military Operations Area (MOA) complex at Fort Polk, LA.

EFFECTIVE DATE: 0901 u.t.c., September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes Restricted Area R-3806, England AFB, LA. As a result of the closure of England AFB, the Department of the Air Force has reviewed their operational requirements and submitted a proposal to disestablish the area. A separate action will redesignate this restricted airspace as part of the Warrior MOA complex and return the airspace to public use during the times when the MOA is not active. This action returns formerly restricted airspace to public use; therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because they would only delay the return of the airspace to unrestrictive use without offering any meaningful right or benefit to any segment of the public. Section 73.38 of part 73, which contains the airspace description for R-3806, of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action disestablishes restricted airspace. The airspace will be redesignated and the environmental aspects of this designation as part of the Warrior MOA will be addressed in a separate action. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.38 [Amended]

2. Section 73.38 is amended as follows:

* * * * *

R-3806 England AFB, LA [Removed]

* * * * *

Issued in Washington, DC on June 29, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-16914 Filed 7-15-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 93-ASO-5]

Amend Restricted Area R-2938, Horseshoe Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the using agency for R-2938, Horseshoe Beach, FL, from the U.S. Customs Service to the U.S. Air Force, Southeast Air Defense Sector. This action is necessary because management responsibility for restricted areas associated with the Tethered Aerostat Radar Systems Program was recently transferred from the Customs Service and U.S. Coast Guard to the U.S. Air Force. In addition, this action redescribes the designated boundaries of R-2938 in terms that more clearly indicate the intended size of the area.

EFFECTIVE DATE: 0901 u.t.c., September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9361.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the name of the using agency and redescribes the boundaries for R-2938, Horseshoe Beach, FL. The name of the using agency is changed from the U.S. Customs Service to the U.S. Air Force, Southeast Air Defense Sector. This amendment is required because management responsibility for Restricted Area R-2938 was transferred from the U.S. Customs Service to the U.S. Air Force. In addition, the boundaries of R-2938 are redescribed to clarify that the intended and approved size of the restricted airspace is a circular area with a 3-nautical mile diameter. On April 1, 1993, the FAA amended part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R-2938 in the vicinity of Horseshoe Beach, FL (58 FR 6884). Due to an administrative error, the test of that amendment described the area as encompassing a 3-nautical mile radius of geographical lat. 29°30'00" N., long. 83°16'16" W. This resulted in the area being incorrectly depicted on some aeronautical charts as a 6-nautical mile diameter circle vice the intended 3-nautical mile diameter area as requested by the proponent. This amendment changes the wording of the boundary description to read "That airspace within a circular area with a 1.5-nautical mile radius centered at lat. 29°30'00" W." This amendment is administrative only and will not change the activities conducted within, or the approved dimensions and time of designation of R-2938. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Section 73.29 of

part 73, which contains the airspace description for R–2938, of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993. The coordinates for this airspace docket are based on North American Datum 83.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is an administrative change and does not affect either the activities currently conducted within R–2938, or the established dimensions and time of designation of the area. Therefore, the FAA concludes that it will not significantly affect the qualify of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.29 [Amended]

2. The designation for "R–2938 Horseshoe Beach, FL" in § 73.29 is amended by removing the words "United States Customs Service," for the using agency and inserting, in their place, the words "U.S. Air Force, Southeast Air Defense Sector/DO, Tyndall AFB, FL;" and further amended by removing the words "That airspace within a 3-nautical mile circle, centered at lat. 29°30'00" N., long. 83°16'16" W.," for the boundaries and inserting, in their place, the words "That airspace within a circular area with a 1.5-nautical mile radius centered at lat. 29°30'00" N., long. 83°16'16" W."

Issued in Washington, DC, on June 30, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–16913 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27352; Amdt. No. 1553]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedure Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances

which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on July 2, 1993.

Thomas C. Accardi

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV; SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective September 16, 1993

Cold Bay, AK, Cold Bay, ILS RWY 14, Amdt. 14
Stuttgart, AR, Stuttgart Muni, NDB RWY 18, Amdt 9
Farmington, NM, Four Corners Regional, VOR/DME RWY 7, Amdt. 3
Farmington, NM, Four Corners Regional, VOR/RWY 25, Amdt. 8
Farmington, NM, Four Corners Regional, ILS RWY 25, Amdt. 6

Effective August 19, 1993

Bakersfield, CA, Bakersfield Municipal, VOR/DME RWY 34, Orig.
Chester, CT, Chester, VOR-A, Amdt. 3
Chester, CT, Chester, VOR/DME RNAV RWY 17, Amdt. 2
Chester, CT, Chester, VOR/DME RNAV RWY 35, Amdt. 1
Hartford, CT, Hartford-Brainard, VOR-A, Amdt. 9
Hartford, CT, Hartford-Brainard, LDA RWY 2, Amdt. 1
Hartford, CT, Hartford-Brainard, NDB RWY 2, Amdt. 2
Fort Pierce, FL, St. Lucie County Intl, VOR/DME RWY 14, Amdt. 7
Fort Pierce, FL, St. Lucie County Intl, NDB RWY 9, Amdt. 1
Gainesville, FL, Gainesville Regional, LOC BC RWY 10, Amdt. 7
Mount Sterling, KY, Mount Sterling-Montgomery County, NDB RWY 3, Orig.
Mount Sterling, KY, Mount Sterling-Montgomery County, NDB RWY 21, Orig.
Monmouth, IL, Monmouth Muni, VOR-A, Amdt. 4
Marquette, MI, Marquette County, VOR Rwy 8, Amdt. 2
Marquette, MI, Marquette County, VOR RWY 26, Amdt. 2
Marquette, MI, Marquette County, LOC BC RWY 26, Amdt. 8
Marquette, MI, Marquette County, ILS RWY 8, Amdt. 9
Pickens, SC, Pickens County, NDB RWY 5, Amdt. 4B, CANCELLED
Pickens, SC, Pickens County, NDB RWY 5, Orig.
Lexington, TN, Franklin-Wilkins, VOR RWY 33, Amdt. 9

Effective July 22, 1993

Worthington, NM, Worthington Muni, NDB RWY 29, Orig.
Worthington, NM, Worthington Muni, ILS RWY 29, Orig.
Las Cruces, NM, Las Cruces International, NDB-A, Amdt. 3, CANCELLED
Las Cruces, NM, Las Cruces International, NDB RWY 30, Orig.
Las Cruces, NM, Las Cruces International, ILS RWY 30, Orig.
Dallas, TX, Addison, LOC RWY 33, Amdt. 2, CANCELLED
Dallas, TX, Addison, ILS RWY 33, Orig.

Effective June 30, 1993

Greenville, SC, Donaldson Center, ILS RWY 4, Amdt. 3

[FR Doc. 93–16912 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

15 CFR Part 806

Bureau of Economic Analysis

[Docket No. 930220–3110]

RIN 0691–AA20

Direct Investment Surveys; Change in Reporting Requirements for Foreign-Owned U.S. Banks in Quarterly Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations to revise the requirements for reporting by foreign-owned U.S. banks in the Bureau of Economic Analysis' quarterly survey of foreign direct investment in the United States. Under the new rule, all U.S. nonbanking affiliates of foreign direct investors will continue to report on revised Form BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent. Both incorporated and unincorporated affiliates engaged in banking will report on new Form BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent, which is tailored specifically for reporting by banking affiliates. Form BE–606B, which was previously used for reporting by unincorporated banking affiliates, is discontinued. Because all banking affiliates will report on the same form and because the new bank form has been tailored specifically to banks,

VOL 58 ISS 135 JL 16 1993 UMI

reporting by these entities should be eased and clarified.

EFFECTIVE DATE: This rule will be effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: In the March 8, 1993 **Federal Register**, Volume 58, No. 43, 58 FR 12912, the Bureau of Economic Analysis (BEA) published a notice of proposed rulemaking that would bring reporting by U.S. banking affiliates on the quarterly survey into conformity with their reporting on the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The two forms for the quarterly survey affected by these changes—the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent and the BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent—are part of BEA's regular data collection program for foreign direct investment in the United States. The quarterly survey is mandatory under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108, as amended).

The quarterly survey is a sample survey covering only larger U.S. affiliates—those with assets, sales, or net income that exceed $20 million. The sample data reported in this survey will be linked to data from the BE–12 benchmark survey in order to derive universe estimates by quarter for benchmark and nonbenchmark years. The BE–12 is BEA's quinquennial census of foreign direct investment in the United States; it collects annual data and is intended to cover the universe of U.S. affiliates.

Because the BE–605 Bank form has questions and definitions that are targeted specifically at banks, it should reduce the need for follow-up contact with reporters. It will also help avoid duplication in data on permanent invested capital reported to BEA and data on other banking claims and liabilities reported to the Treasury Department on Treasury International Capital report forms. This change will not affect the public reporting burden for the quarterly survey.

The new rule will be effective with the BE–605 and BE–605 Bank reports covering the third quarter of 1993, which are due 30 days after the close of that quarter.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by OMB (OMB No. 0608–0009).

Public reporting burden for this collection of information is estimated to be one hour per response (form). The burden on a U.S. affiliate will vary, however, depending on the number of foreign parents the U.S. affiliate has. The estimated burden of one hour includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, may be sent to the Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, Washington, DC 20503.

Executive Order 12291

BEA has determined that this final rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report in the survey because their assets, sales, and net income are each equal to or less than the $20 million exemption level below which reporting is not required. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements.

Dated: May 3, 1993.

J. Steve Landefeld,

Deputy Director.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. 806.15(h)(1) is amended by deleting "Except an Unincorporated Bank" and inserting in its place "Except a U.S. Banking Affiliate".

3. 806.15(h)(2) is amended by deleting "BE–606B" and inserting in its place "BE–605 Bank", and by deleting "U.S. Banking Branch or Agency" and inserting in its place "U.S. Banking Affiliate".

[FR Doc. 93–16838 Filed 7–15–93; 8:45 am]
BILLING CODE 3510–EA–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. FA88–62–002]

Wisconsin Electric Power Co.; Order on Request for Clarification and Amending Policy Statement Concerning Disclosure of Documents and Information Obtained in Staff Audits; Policy Statement

Issued July 12, 1993.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Final rule; order amending policy statement concerning disclosure of documents and information obtained in staff audits.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations which authorize disclosure of information in cases scheduled for formal hearing

under the Natural Gas Act, the Federal Power Act, and the Interstate Commerce Act as it applies to the regulation of oil pipelines, if the information is relevant to the case. Because of the differences between the statutes governing the regulation of natural gas companies and public utilities and those governing oil pipelines, the Commission is deleting references to oil pipelines.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Kasha Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 208–2165.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Commission's Public Reference Room, room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect form may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

On April 23, 1993, the Association of Oil Pipe Lines (Association) requested clarification of the Commission's order issued in this proceeding on December 28, 1992.[1]

The Order amended the Commission's regulations which authorized disclosure of information in cases under the Natural Gas Act scheduled for formal hearing if the information is relevant to the case. The Order extended the provisions of the regulations to Commission proceedings under the Federal Power Act and under the Interstate Commerce Act (ICA) as it applies to the regulation of oil pipelines, and codified the provisions of the regulations in 18 CFR 2.1b.[2] The Commission found that authorization of the release of information specified in a prior policy statement for natural gas proceedings and the underlying rationale are equally applicable in other Commission proceedings. In particular, the Order provided that all relevant information acquired by the Commission staff, including relevant workpapers pursuant to a staff investigation, may be used in proceedings that are set for formal hearing under the Natural Gas Act, Federal Power Act, or ICA as it applies to the regulation of oil pipelines.[3]

While the Association does not challenge the Commission's determination to authorize staff to use in a hearing information obtained during the course of an audit or investigation, it argues that the Order fails to explain that such use in a hearing should not constitute a license for unrestricted public disclosure, and that the Order also fails to recognize that, in appropriate circumstances, disclosure should be constrained by a protective order.

In this regard, the Association argues that the oil pipeline industry is far more competitive than the industries subject to regulation under the Natural Gas Act and Federal Power Act, and that oil pipeline common carriers must be especially vigilant in protecting proprietary and commercially-sensitive information from public disclosure. The Association adds that ICA section 15 (13)—which has no counterpart in the Natural Gas Act or Federal Power Act—forbids oil pipeline common carriers from disclosing certain information to, or permitting certain information to be acquired by, and person other than the shipper or consignee.[4] The Association states that the new § 2.1b eliminates an important protection that would ensure that confidential, proprietary, or sensitive information obtained during an audit or investigation is not disclosed so as to cause competitive harm. The Association also claims that disclosure of information under the terms of the revised § 2.1b could subject an oil pipeline to criminal liability under ICA section 15(14) if the oil pipeline was determined thereby to have violated section 15(13).[5]

The Association adds that oil pipelines typically seek protective orders in litigated cases under Rule 410

[1] Wisconsin Electric Power Company, Order Denying Interlocutory Appeal and Amending Policy Statement Concerning Disclosure of Documents and Information Obtained in Staff Audits, 58 FR 489 (January 6, 1993); III FERC Statutes & Regulations ¶ 30,959 (December 28, 1992).

[2] Section 2.1b, as revised, provides that, pursuant to the Commission's authority under the Natural Gas Act, particularly subsection (b) of section 8 thereof, under the Federal Power Act, particularly subsection (b) of section 301 thereof, and under the Interstate Commerce Act as it applies to regulation of oil pipelines, particularly subsection (7)(f) of section 20 thereof, upon request by a party to the proceedings, or as required in conjunction with the presentation of a Commission staff case or staff's cross-examination of any other presentation therein, all relevant information acquired by Commission staff, including workpapers pursuant to any staff investigation conducted under sections 8, 10, or 14 of the Natural Gas Act, sections 301, 304 or 307 of the Federal Power Act, and sections 12 and 20 of the Interstate Commerce Act as it applies to regulation of oil pipelines shall, without further order of the Commission, be free from the restraints of said subsection (b) of section 8 of the Natural Gas Act, subsection (b) of section 301 of the Federal Power Act, and subsection (7)(f) of section 20 of the Interstate Commerce Act as it applies to regulation of oil pipelines regarding the divulgence of information, with respect to any matter hereafter set for formal hearing.

[3] III FERC Statutes & Regulations at 30,745–46.

[4] Section 15(13) of the ICA provides that it shall be unlawful for any common carrier subject to the provisions of this chapter, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; *provided*, that nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States * * * in the exercise of his powers * * *.

Congress recodified the Interstate Commerce Act as 49 U.S.C. 10101 *et seq.* In 1978, Act of October 17, 1978 Public Law 95–473, 92 Stat. 1337 (1978). However, the recodification excluded from the general repeal of prior statutes those laws that vested functions in the Interstate Commerce Commission related to the transportation of oil by pipeline and those functions and authority that were transferred to the Commission by sections 306 and 402(b) of the Department of Energy Organization Act. *Id.* § 4(c), 92 Stat. at 1470. The prior statutes therefore still govern the Commission's authority over oil pipelines.

[5] Section 15(14) of the ICA provides that any person, corporation, or association violating any of the provisions of paragraph 13 of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty or not more than $1,000.

The Association notes that, while ICA section 15(13) requires carriers to disclose information to the Commission staff during, for example, audits, ICA section 15(13) is arguably broad enough to require a carrier to take affirmative steps to prevent third parties from acquiring the information supplied to staff (or at a minimum to seek the shipper's consent prior to such disclosures). The Association adds, in this respect, that ICA section 20(7)(f) prohibits Commission staff from disclosing information obtained during the examination or inspection of reports, records, and accounts of carriers except upon order of the Commission or a court. According to the Association, until issuance of the order, section 20(7)(f) served as an adequate procedural safeguard against the unrestricted public disclosure of sensitive shipper data.

VOL 58 ISS 135 JL 16 1993 UMI

of the Commission's Rules of Practice and Procedure[6] to prevent disclosure of sensitive material.[7]

However, the Association is concerned that the Order appears to eliminate the procedural protections afforded oil pipeline common carriers and shippers under Rule 410 (and also ICA section 20(7)(f)), and creates a dilemma for the carriers. The Association states that, under the revised § 2.1b, proprietary or confidential information may become public if staff places the material into evidence without notice or warning, or if a third party litigant directs discovery requests to staff, rather than to a carrier. The Association adds that revised § 2.1b permits use of the information from an audit "with respect to any matter set for formal hearing," which could include proceedings in which an audited pipeline is not even a party.

To address these problems, the Association requests that the Commission clarify revised § 2.1b as follows:

First, by recognizing the interests of oil pipelines in maintaining the confidentiality of certain data in either of two ways: (a) Requiring Commission staff to obtain appropriate protective orders under Rule 410; or (b) further amending 18 CFR 2.1b to exclude from the regulation information described in section 15(13) of the ICA.

Second, by requiring staff to notify the oil pipeline of its intent to use and/or produce audit or investigatory information during the course of a formal hearing and which information it intends to use, at least 5 days prior to use and/or disclosure. This, according to the Association will ensure that the oil pipeline that provided such information to staff is afforded a reasonable opportunity to seek a protective order pursuant to Rule 410.

Third, by clarifying that an oil pipeline cannot be found to be in violation of ICA section 15(13) by virtue of staff's disclosure of confidential information obtained by audit or investigation.

Absent these revisions, the Association argues the only other alternative available to the carrier would be to request confidential treatment of audit or investigatory information at the time it is furnished to staff.[8] However, the Association claims that this approach applies only to information that a person is compelled to produce, so that a carrier would have to cause staff to seek a subpoena for audit information—a cumbersome and potentially time-consuming process.

Discussion

The Commission has reconsidered the revisions made to § 2.1b in the December 28 Order in light the Association's concerns. The Commission believes that further revision to § 2.1b is warranted because of the peculiar differences between the statutes governing oil pipelines and those governing natural gas companies and public utilities.[9] In addition, existing procedures apparently have been adequate in allowing disclosure and use of information while also protecting confidential and sensitive information.[10] Therefore, the Commission will delete the references to oil pipelines in § 2.1b. Should any problems arise in the future regarding the disclosure or use of such information in connection with proceedings set for formal hearing, they can be addressed at that time. Thus, the Commission will amend § 2.1b, as set forth below. The revised statement of policy is effective July 12, 1993.

The Commission orders:

Section 2.1b is revised to eliminate reference to oil pipelines, as discussed in the body of this order.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending part 2, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825r, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Section 2.1b is revised to read as follows:

§ 2.1b Availability in contested cases of information acquired by staff investigation.

Pursuant to the Commission's authority under the Natural Gas Act, particularly subsection (b) of section 8 thereof, and under the Federal Power Act, particularly subsection (b) of section 301 thereof, upon request by a party to the proceedings, or as required in conjunction with the presentation of a Commission staff case of staff's cross-examination of any other presentation therein, all relevant information acquired by Commission staff, including workpapers pursuant to any staff investigation conducted under sections 8, 10, or 14 of the Natural Gas Act, and sections 301, 304 or 307 of the Federal Power Act, shall, without further order of the Commission, be free from the restraints of said subsection (b) of section 8 of the Natural Gas Act, and subsection (b) of section 301 of the Federal Power Act, regarding the divulgence of information, with respect to any matter hereafter set for formal hearing.

[FR Doc. 93–16881 Filed 7–15–93; 8:45 am]

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[6] 18 CFR 385.410 (1992). Rule 410 provides that the presiding officer may limit discovery or restrict public disclosure to, among other things, preserve a privilege of a participant, person or government agency (Rule 410(c)(3)), and as a means to make otherwise confidential matters available to the participants and yet prevent public disclosure (Rule 410(c)(6)).

[7] The Association cites as an example, Williams Pipe Line Company, 51 FERC ¶ 63,024 at 65,110 (1990), in which the chief judge issued an order compelling disclosure of information, reasoning that the disclosure in the absence of such an order might be deemed to constitute a violation of ICA Section 15(13). His order also directed that the disclosure should be made contingent upon, and subject to, a protective order.

Under that protective order, a 10-day waiting period was established so the carrier could notify affected shippers of the nature of the information required to be disclosed and the terms of the protective order, so that affected shippers could exercise whatever remedies they may have.

[8] See 18 CFR 1b.20, which provides that any person compelled to produce documents in an investigation may claim that the information is exempt from mandatory public disclosure, and that person shall then provide a document, and a second copy of the document with the alleged confidential information deleted, and indicate on the original document its request for confidential treatment (and a statement specifying its justification for confidential treatment).

Under this approach, the Commission retains the right to make the determination regarding claims of confidentiality. Notice of a decision to deny a claim, and an opportunity to respond, is to be given to the person claiming confidentiality no less than five days before public disclosure.

[9] For example, ICA sections 15(13) and 15(14) regarding disclosure of shipper information involve only oil pipelines and not natural gas companies or public utilities.

[10] *See, e.g.*, Williams Pipe Line Company, *supra* note 7, in which disclosure of shipper information was made subject to a protective order.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 92–8, Notice No. 3]

RIN 2125–AC84

Design Standards for Highways; Requirements for Roadside Barriers and Safety Appurtenances

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the guides and references section of design standards for highways by listing, for guidance in determining the acceptability of roadside barriers and other safety appurtenances for use on National Highway System (NHS) projects, the National Cooperative Highway Research Program (NCHRP) Report 350, "Recommended Procedures for the Safety Performance Evaluation of Highway Features," 1993. The objective of the amendment is to provide an enhanced level of crashworthy performance in roadside barriers and other safety appurtenances to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Hatton, Jr., Office of Engineering (202) 366–1329, or Mr. Wilbert Baccus, Office of the Chief Counsel (202) 366–0780. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1073 of Public Law 102–240, 105 Stat. 1914, The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), enacted December 18, 1991, states that the Secretary of Transportation shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in National Cooperative Highway Research Program Report 230, "Recommended Procedures for the Safety Performance Evaluation of Highway Appurtenances," relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

The section further states that, not later than 1 year after the date of enactment of this Act, the Secretary shall complete the rulemaking proceeding and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.

Currently, in 23 CFR part 625, the FHWA recognizes guidance on the design and use of traffic barriers and other safety appurtenances found in the American Association of State Highway and Transportation Officials (AASHTO) publications, "A Policy on Geometric Design of Highways and Streets," "Standard Specifications for Highway Bridges," "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals," "Roadside Design Guide," and "Guide Specifications for Bridge Railings." None of these documents expressly addresses performance with the vehicles cited in the ISTEA except the "Guide Specifications for Bridge Railings," which does recommend testing bridge railings with a pickup truck (and larger and smaller vehicles).

The National Cooperative Highway Research Program (NCHRP) Report 230, which has been given tacit recognition by the FHWA, does not include guidance for testing or evaluating traffic barriers or other safety appurtenances (features) with the vehicles cited in the ISTEA. However, under an NCHRP project a replacement for Report 230 has been developed. The replacement, NCHRP Report 350, "Recommended Procedures for the Safety Performance Evaluation of Highway Features," 1993, addresses testing and evaluating appurtenances with pickup trucks and with smaller and larger vehicles. The FHWA believes that following the testing and evaluation guidance contained in NCHRP Report 350, along with appropriate roadside features selection procedures, will result in highway design and upgrade practices that will safely accommodate the vehicles cited in the ISTEA. The information and practices considered in reaching this conclusion are recorded in the notice of proposed rulemaking (NPRM) that appeared at 58 FR 6914 on February 3, 1993, and in the comments received in response to the NPRM along with the FHWA responses to those comments presented below.

Summary of NPRM Comments Received and FHWA Responses

A total of eight respondents commented on the NPRM. Five of the respondents represent state departments of transportation (state representatives), one represents a highway safety advocacy organization (safety advocate), one represents a highway safety hardware manufacturer (manufacturer), and one is a civil engineering professor and accident investigation team coordinator from a Canadian university (professor). The comments received fall into four categories:

1. Appropriateness of adoption of NCHRP Report 350;
2. Specific details in Report 350 test procedures;
3. Effects of Report 350 on existing practices; and
4. Acceptability of specific traffic barriers.

Only one respondent, a state representative, expressed explicit opposition to adoption of Report 350. He opposed adoption because the guidance in Report 350 for testing bridge railings differs from that found in the AASHTO's "Guide Specifications for Bridge Railings." On the other hand, two state representatives, the manufacturer, and the advocate expressed support for the adoption of Report 350. The remaining respondents, two state representatives and the professor, appeared to accept adoption of Report 350, but were desirous of having their views considered in its application.

The manufacturer suggested that test procedures in Report 350 for truck-mounted attenuators (TMAs) unnecessarily increase the difficulty of meeting the acceptance criteria in the report. The manufacturer, one state representative, and the professor expressed reservations on the choice of a ¾-ton pickup truck as a standard test vehicle. And the professor had objections to the sharp pass-fail demarcations in the acceptance criteria. He also suggested that, in the light of current video recording equipment, using film to record crash tests, as is recommended in Report 350, is anachronistic. The FHWA's reactions to these comments will be discussed further below. In sum, the FHWA does not consider the comments to have sufficient merit to cause it to not adopt the full report.

In administering its policies upon which application of Report 350 might impinge, the FHWA expects to favorably

address the state representatives' concerns over the potential impact of Report 350 on highway agency practices. The manner in which the FHWA plans to accomplish this is discussed below.

The advocate, in comments to the advance notice of proposed rulemaking that appeared at 57 FR 4941 on February 11, 1992, suggested that the FHWA should prohibit the use of certain types of roadside hardware. The FHWA responded in the NPRM to those comments, taking issue with the advocate's positions. Now, the advocate has restated some of his earlier positions. The FHWA continues to disagree with the advocate. The FHWA's reasons for this continued disagreement are set forth below.

Detailed Responses to Comments Received on NPRM

In the following responses, comments from each of the state representatives are identified by indicating the source as from representative no. 1, representative no. 2, etc., with the number representing the order in which comments were received. The responses are grouped according to the four categories cited in the summary of comments given above.

Before going into the comments and the FHWA responses, the FHWA offers the following general observation. The testing procedures in Report 350, as well as its predecessors, are intended to represent very high-demand conditions relative to the anticipated range of service demands. Therefore, an existing or special-use feature failing to meet Report 350 acceptance criteria under the test conditions prescribed for a given test level might have a very wide range of service conditions under which it could be expected to serve quite acceptably. Thus, one should not infer that failure to meet Report 350 acceptance criteria means that a feature is totally without merit. This point will be of particular significance when judging the need for replacing or upgrading features previously considered acceptable. It may also be significant when, because of costs or site conditions, one is faced with doing nothing to enhance safety or doing something less than meets the established acceptance criteria. This is not intended to suggest that the FHWA will be highly receptive to deviations from the guidance in Report 350. The comment is offered merely to indicate that the FHWA recognizes that the service performance between passing and failing features may not be as great as might be inferred from results of the prescribed tests and, at times, there will be a need to apply professional judgment regarding the retention, upgrading, or selection of a feature at a specific site.

Comments and Responses on Appropriateness of Adoption of NCHRP Report 350

Those commenting in support of adoption of Report 350 (representatives no. 1 and no. 3, the manufacturer, and the advocate) did not all cover the same points but there was considerable overlap in what they offered. Representative no. 3, an engineer with over 23 years experience in crash testing highway features, having authored or coauthored over 50 research reports on crash tests, served on the NCHRP panel that oversaw the writing of Report 350. His comments, which follow, seem to capture the sum of the positive comments received.

I strongly agree that the National Cooperative Highway Research Program (NCHRP) Report 350 should be incorporated into the ["]Guides and References" section of 23 CFR part 625 for guidance on the acceptability of roadside barriers and other safety appurtenances for use on federal-aid projects.

NCHRP Report 350 is a needed update of NCHRP Report 230 published in 1981, which was itself carefully written. NCHRP Report 350 was written by Hayes Ross and his colleagues at the Texas Transportation Institute and by Jarvis Michie, a consultant, perhaps the foremost experts in the field of roadside safety in the world today. The writing of the report was overseen by an NCHRP technical panel, which included several experts in the field. In addition, the second draft of the report was reviewed by close to 100 persons in the field of roadside safety[,] including virtually all persons engaged in crash testing, and representatives from state DOT's, FHWA, academia, private industry and foreign countries. The final document is as close to a consensus report as is practically feasible, and appears to have wide general support.

I also support the FHWA position to consider the new standard test vehicle, a ¾-ton pickup truck, as a representative vehicle for the various "light trucks" listed in [the] ISTEA that must be accommodated by roadside features. That is a reasonable approach. If research that is underway now shows later that additional tests for specific vehicles are needed, those can be added at a later date. They should only be added if crash test research shows the necessity for them.

NCHRP Report 350 incorporates some important improvements over NCHRP Report 230. It describes in detail up to six test levels for various roadside safety features with test conditions that vary vehicle speed, approach [angle], weight and size (configuration). The standard test vehicles chosen provide a better representation of the vehicle population than those in NCHRP Report 230. Therefore, NCHRP Report 350 now includes standard crash tests that cover possible impact conditions for all types of roadways[,] including low speed, lightly used local roads to busy freeways with dense populations of heavy trucks where "stop everything" barriers are needed. NCHRP Report 350 also includes several types of roadside safety features that were barely mentioned in NCHRP Report 230.

I would like to support the use of the S.I. metric system of units in NCHRP Report 350. The sooner we make the conversion from English to metric units, the better, even though there may be some minor temporary inconvenience. This change will put us in harmony with virtually every other country in the world and should be a boon to technical communication, at least in the field of roadside safety features.

Finally, I concur with the FHWA response to comments. NCHRP Report 350 should be adopted and implemented at the earliest possible time.

Representative no. 4 cites, as reasons for not adopting Report 350, the differences between the test procedures in Report 350 and those in the AASHTO "Guide Specifications for Bridge Railings," work currently underway under NCHRP Project 22–8 evaluating those guide specifications, and work under NCHRP Project 12–33, as a part of the development of a new bridge design specification, producing a new bridge railing design specification. He indicates his agency's position will remain the same "until the parties involved in these projects can establish consistent crash test criteria." The FHWA recognizes the inconsistencies cited by representative no. 4 and will be working with the appropriate parties in an attempt to eliminate them. The developers of Report 350 knowingly created the inconsistencies that exist, believing that the test matrix in Report 350 was the most appropriate one to recommend. The FHWA believes the guidance in the guide specification and Report 350 are both acceptable and not so far apart that they cannot be used in parallel until they are reconciled. Thus, the FHWA does not see these existing or potential inconsistencies as bases for deferring adoption of Report 350. This issue of application of Report 350 in the presence of the guide specifications will be discussed further below.

Comments and Responses on Specific Details in Report 350 Test Procedures

In various ways the respondents questioned the choice of a 3/4-ton pickup truck as a test vehicle. Representative no.2 wrote:

This rule proposes that "—testing under NCHRP Report 350 guidelines will require testing with automobiles, thus ensuring safe performance for a wide range of vehicle types." This statement is misleading since the only automobile tests included are with

very small cars of 820 kg (1800 lb) or less." The majority of most medium and large cars on the road today are 1360 kg (3000 lb) to 1590 kg (3500 lb). This points out the need for a reasonable test to represent most cars on the road today and for many years to come. Placing a strength bias on all roadside barriers to restrain 3/4-ton pickup trucks is not appropriate because it will result in excessive barrier strengths.

The manufacturer observed:

> The 3/4 ton pick-up truck represents a much smaller percentage of pick-up trucks than the 1/2 ton pick-up truck and has a higher center of mass and bumper. However, it is understood that the suitability of the specific vehicle chosen will be reviewed in NCHRP Project Number 22–11.

While not directly questioning the 3/4-ton pickup truck as a test vehicle, the professor does suggest, "[t]he test vehicle should represent the population of vehicles in the state/country where the barrier is being placed."

The FHWA finds the reasons given by the authors of Report 350 for the choice of the 3/4-ton pickup truck are logical and acceptable. The FHWA will be concerned if the vehicles selected for testing show a significant variation in physical characteristics (bumper heights and configurations, locations of centers of mass, wheel and suspension designs, etc.). Should tolerances on such vehicle characteristics given in Report 350 prove to be inappropriate, the FHWA will seek to have them revised or issue its own guidance, if necessary. Using the 3/4-ton pickup truck as a test vehicle along with a small car to qualify traffic barriers may result in an extension in the range of vehicles contained by new qualified barriers beyond that contained by typical barriers currently available. The FHWA, however, is not certain this will be the outcome. Nevertheless, if it is, since the light trucks the 3/4-ton pickup truck is intended to represent are a relatively large portion of the vehicle fleet, this would seem appropriate and in line with the directions given by the Congress. Finally, with regard to the professor's suggestion that the test vehicles should represent the population of vehicles in the locality where the tested features are to be used, the FHWA is in basic agreement. It believes, however, that properly chosen test vehicles can serve as surrogates for rather wide ranges of other vehicles. It also believes the test vehicles recommended in Report 350, when coupled with the multiple test levels approach the report also recommends, will properly address needs throughout the United States.

Representative no. 1 suggests that the 2000 kg vehicle, which represents a large percentage of automobiles and pick-up trucks, should be represented in the testing for work zone and other areas. This suggestion was included in a general suggestion that a development and testing program be undertaken to ensure that there is a full array of features meeting the requirements of Report 350 available, which will be addressed later. The reason for addressing the suggestion to test certain features with the 2000-kg vehicle (pickup truck) here is that it appears to question the logic of the testing procedures. It is true that the test procedures in Report 350 only call for testing support structures, work zone traffic control devices, and breakaway utility poles with a small car. On the other hand, it calls for testing work zone barriers (longitudinal barriers and crash cushions) and TMAs with a pickup truck. The reason the authors of Report 350 only recommended testing certain features with small cars was their belief, based on research findings with small and large cars, that for those features the small car test would be the most severe. Currently the FHWA has no evidence upon which to challenge the authors' judgment on this issue. Should field experience or small car test results ever suggest otherwise, it will act to have the testing and evaluation procedures revised.

For TMAs, Report 350 recommends that "[f]or tests with the 700C or 820C vehicles [small cars], the supporting truck should be placed against a rigid barrier to prevent any forward movement." The manufacturer suggests this requirement will fail some existing TMAs qualified for 70-km/h impacts (test 2–50) and will result in making the attainment of a qualified, practical 100-km/h TMA (test 3–50) very unlikely, the problem being that without the support vehicle's roll-ahead (actually, skid-ahead) the length requirement for a passing TMA becomes unacceptable. After investigating the manufacturer's claims, and noting that there are currently no 100-km/h TMAs that will meet Report 350 guidelines, the FHWA has concluded that the 70-km/h requirements for TMAs (tests 2–50, –51, –52, and –53) in Report 350 should be accepted as written but that those for 100-km/h TMAs (tests 3–50, –51, –52, and –53) should be revised. The revision the FHWA will accept, until the state-of-the-art should indicate otherwise, is that a TMA that qualifies under a 100-km/h small car test where the support vehicle only has its brakes set and is in second gear (test 3–50, as modified here) will be considered acceptable if all other Report 350 requirements are met and if it passes the prescribed 70-km/h small car test (test 2–50).

The manufacturer expressed doubts that TMAs can be made to pass the off-center head-on and off-center angle tests (tests 2–52 and 2–53 and 3–52 and 3–53) shown in Report 350. Since these tests are described as optional in Report 350, until the state-of-the-art should indicate otherwise, the FHWA will not consider it essential that the acceptance criteria be met under these tests. Nevertheless, it will recommend that the tests be run in a qualification series for reference and comparison purposes.

Two of the evaluation criteria in the "Safety Evaluation Guidelines" table in Report 350 (page 55) read as follows:

> L. The occupant impact velocity in the longitudinal direction should not exceed 12 m/s and the occupant ridedown acceleration in the longitudinal direction should not exceed 20 g's.
>
> N. Vehicle trajectory behind the test article is acceptable.

The draft of Report 350 available when the NPRM was issued showed criterion "L" applicable to 50-, 70-, and 100-km/h, 20-degree pickup truck tests where the vehicle is centered on the mid-length of a nonredirective crash cushion. Neither the authors nor the Report 350 oversight panel intended for criterion "L" to apply to these tests. The published version of Report 350 no longer shows criterion "L" applicable to these tests and, where the draft did not show criterion "N" applicable to these tests, the published version does. The manufacturer raised issues based on wording in the draft report. The FHWA concurs in the published version of the report and believes the changes eliminate the related concerns of the manufacturer.

Comments and Responses on Effects of Report 350 on Existing Practices

With the one minor exception discussed above regarding whether the Report 350 guidelines adequately cover full-size automobiles, none of the respondents suggested the guidelines might have an adverse effect on safety. To the contrary, from the comments of nearly all of the respondents one can infer that they expect adoption of Report 350 will have a positive effect on the quality of acceptable highway features, particularly traffic barriers. On the other hand, four of the five state representatives indicated some concern over potential applications of the report guidelines. Comments by representative no. 1 seem to capture most of the concerns expressed by the other representatives. After commenting positively on Report 350, and

VOL 58 ISS 135 16 1993 JL UMI

specifically applauding its multiple test levels approach, he went on to say:

> Our primary areas of concern, in addition to the safety of the traveling public, are (a) Economic impacts and costs of new systems, (b) uniform national application of procedures, and (c) tort liability aspects. NCHRP Project 22–9, "Improved Procedures for Cost Effectiveness Analysis of Roadside Safety Features[,]" must definitely address these concerns in order to assist the states in a uniform, affordable, and logical implementation.

Voiced a little differently, representatives nos. 2, 4 (as previously mentioned), and 5 expressed concerns about the effects testing and acceptance procedures in Report 350 might have on the acceptability of existing barriers. In addition, representative no. 2 requested clarification of statements in the NPRM regarding application of Report 350.

In response to these expressions of concern and requests for clarification, the FHWA offers that it wants the transition to the application of the Report 350 guidelines to cause as little disruption as possible, consistent with defensible safety objectives. Report 350 does depart in some significant ways from the testing guidelines in Report 230 and the AASHTO "Guide Specifications for Bridge Railings." On the other hand, its authors were well aware of the existence of those guides and made an effort to approximately integrate the longitudinal barrier testing guidance from both into the Report 350 guidance. The pickup truck test of Report 350's test level 3 is an approximation of the high-speed, large-car test of Report 230. And test levels 2, 4, and 5 of Report 350 are intended to be approximate matches for the testing requirements for performance levels 1, 2, and 3, respectively, in the guide specifications. While the FHWA considers it important to immediately start testing proposed new designs for features or for retrofits for existing features according to the new guidelines, it recognizes that there is likely to be work underway at the time of the adoption of this rule. For this reason it intends, for nine months following adoption of this rule, to consider for acceptability proposed new or new retrofit designs qualified under test procedures and evaluation criteria acceptable immediately prior to adoption of this rule. Also, because of the similarities between the Report 230 and guide-specification guidance and that in Report 350, the FHWA intends, for five years after adoption of this rule, to accept, for use on NHS projects, features previously qualified under the guidance in those earlier documents. In the intervening period the FHWA, in cooperation with the states and the NCHRP, expects to advance the state-of-the-art in the evaluation and selection of traffic barriers to the point where one can, possibly with input needed from crash tests, analytically compare the merits of leaving a barrier in place, upgrading it, or replacing it or compare the merits of alternative designs for use under specified conditions. While, after five years, the FHWA fully intends, where applicable, for new and reconstruction NHS projects to incorporate only those features found acceptable under the guidelines in Report 350, it also recognizes that Report 350, itself, may be obsolete or there may be safety or economic justification for a different course of action. Thus, the FHWA wants to assure all that during the scheduled transition period it will continually reassess its position. It is, however, highly unlikely that five-year old, or greater, investments in the development of features will, of themselves, be very influential in the outcome of its reassessments. On the other hand, it is probable that bridge railings found acceptable under the "Guide Specifications for Bridge Railings" will be judged as meeting Report 350 requirements for those test levels that are approximately equivalent to those in the guide specifications. This may not be true for Report 230 qualified barriers because of the center of mass of the 2000P (pickup truck) test vehicle. The need for retesting currently acceptable roadside safety features to evaluate their ability to accommodate vehicles identified in the ISTEA will be assessed through activities underway or planned by the NCHRP and the FHWA. It is anticipated that the determination of the need for testing and any needed testing can be completed within the five-year transition period.

Representative no. 2, after offering arguments against using a ¾-ton pickup truck and observing that the center of mass of the pickup is significantly higher than that of the typical automobile, commented, "[t]he construction and testing of taller barriers for all roadways regardless of traffic volume will have a significant fiscal impact." In a similar vein, representative no. 5 commented, "it is important that special consideration be given to low-volume, local highways where relatively low vehicle-miles of travel greatly reduce the chance of accidents." The FHWA's views on whether the ¾-ton pickup truck is an appropriate test vehicle have already been discussed. At this point, the FHWA merely observes that pickup trucks are a significant portion of the traffic on rural low-volume roads. The goal of matching cost-effective barrier performance capacity to service conditions cannot be met by test procedures alone. There must be a related selection procedure. While reasonable people could have come up with different tests and different test levels than those in Report 350, it goes further than any guidance offered previously to encourage the development of traffic barriers to meet site-specific needs. The development of a complementary selection procedure, which is expected within a few years, should allay the concerns of those responsible for low-volume roads.

The test speeds for test levels 1 and 2 are below the speed limits or operating speeds on many highways where barriers meeting these test level requirements might be appropriate. The FHWA does not see this as a problem. A test run at a given speed and angle is a surrogate for many other speed and angle combinations. Thus, barriers meeting the requirements of test levels 1 and 2 will, albeit at lower impact angles or with lighter-weight vehicles, have the capacity to perform satisfactorily under higher speed impacts. It will simply require that the selection procedures take into account site conditions and the performance limits of candidate barriers to determine if the lower test level barriers are appropriate for a site, not a matching of test speeds with highway speeds, which, historically, has never been demanded.

To those who suggested an urgent need for a crash test program to meet the five-year target for full implementation of Report 350 requirements, the FHWA believes that there will be only a few instances where there will be a need to develop new features or to run a complete series of Report 350 tests to requalify an existing feature. It expects, as previously indicated, that on-going and scheduled research will reveal any such needs within the next few years and it will take such measures as needed to ensure that they are met.

Comments and Responses on Acceptability of Specific Traffic Barriers

The advocate rejected FHWA's NPRM response to his recommendations that certain roadside hardware not be accepted by FHWA, which he offered in response to the advance notice of proposed rulemakeing that appeared at 57 FR 4941 on February 11, 1992. He went on to offer evidence in support of his contention that a type of w-beam guardrail used in Texas and that cable

guardrail should be banned by the FHWA.

He said that the Texas guardrail had not passed testing under NCHRP Report 230 guidelines and cited personal observations of "posts snapped off at the soil line or * * * uprooted" in two accidents where he inferred the impact speeds were well below 50 mph. The Texas guardrail, with a 6-foot 3-inch post spacing, has met Report 230 guidelines in crash tests. The evidence of the broken and uprooted posts is not unusual in crashes involving w-beam guardrails.

Two important bits of information not supplied by the advocate were the consequences to the vehicle occupants in the crashes or the impact angles, which could have been quite high since the crashes were described as occurring on interchange ramps. Since the advocate reported the types of vehicles involved, the FHWA must assume the injuries to the occupants were not noteworthy or he would have also reported on those. Thus, the FHWA does not see a basis at this time for rejecting the Texas version of the w-beam guardrail.

A report presented at the 1993 Annual Meeting of the Transportation Research Board on problems in maintaining cable tension in cable guardrails was cited by the advocate in support of his assertion of the unacceptability of cable guardrails. The initial tensions in the cables of a cable guardrail are of the order of 1000 to 1800 pounds. The breaking strengths of these same cables are in the order of a minimum of 25,000 pounds. Thus, because it is the change in force in the cables that is related to its performance, the pre-crash tensions in the cables of a cable guardrail are unlikely to greatly influence its ultimate capacity or its deflection, unless they allow the cables to sag to the point where they do not properly interface with an impacting vehicle, which could cause a vehicle to override the barrier. Such a barrier condition would be readily observable and very likely to be corrected. While the FHWA recognizes that cable guardrails have some unique maintenance requirements, it does not believe they justify the FHWA's rejection of the modern crash-test proven versions.

Implementation

At this time the FHWA does not believe there is sufficient knowledge or adequate procedures upon which to base a prescription for practices related to the use of traffic barriers or other safety features to accommodate the range of vehicles on our highways. It does believe the guidance contained in NCHRP Report 350 represents a major step toward attainment of that goal. Therefore, it is issuing this rule to incorporate NCHRP Report 350 in the guides and references section of 23 CFR part 625. The FHWA will, with adoption of this rule, immediately accept for consideration of acceptability any new or newly modified highway safety features that have been tested and evaluated according to the guidance in Report 350. The FHWA will, however, for nine months, continue to accept for consideration of acceptability those newly proposed features or retrofits that have been tested and evaluated in accordance with guidance acceptable immediately prior to adoption of this rule. After the nine months, the FHWA expects that all requests for consideration of the acceptability of newly proposed or newly modified highway safety features will be for features that have been tested and evaluated in accordance with the guidance in NCHRP Report 350, except for those features that, in the FHWA's view, have been subjected to more demanding requirements or have been subjected to testing and evaluation procedures designed to evaluate the suitability of a feature to meet a specific or special need.

One exception to the Report 350 guidelines the FHWA will find acceptable is a modification of test 3–50 for TMAs. Until state-of-the-art developments indicate that practical and economical TMAs can meet the full requirements of test 3–50, the FHWA will accept test level 3 TMAs qualified under a 100-km/h small car test where the support vehicle only has its brakes set and is in second gear (test 3–50, as modified here), provided all other Report 350 requirements are met and if they pass the prescribed 70-km/h small car test (test 2–50). In addition, for comparative purposes, the FHWA recommends, for all TMAs, that the optional tests 2–52 and 2–53 or 3–52 and 3–53, as appropriate, be run and reported even though TMAs may be accepted without passing these tests.

Also, contingent upon the results of ongoing research and service performance information available at the time, the FHWA anticipates that approximately five years after adoption of this rule that all new installations of traffic barriers and other roadside safety features on NHS projects will be only those that have been judged to meet the testing and evaluation criteria in Report 350. At the same time, the FHWA anticipates that the suitability of all traffic barriers and other roadside safety features will be determined through an evaluation and selection procedure that considers the needs of all classes of vehicles and is acceptable to the FHWA. In the interim, the FHWA will work with the state highway agencies and the NCHRP to develop a model evaluation and selection procedure. It will also be vigilant for findings and new developments in the area of roadside safety features and, when warranted, will encourage their immediate application.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being taken by the FHWA in this document amends requirements for traffic barriers and other safety appurtenances installed on the National Highway System. The FHWA has determined that, since this action basically will adopt crash test and evaluation guidance that approximately matches current practice, it does not constitute a major rule under Executive Order 12291. For the same reason, the FHWA does not consider this to be a significant regulation under the regulatory policies and procedures of the Department of Transportation. The potential economic impact of this rulemaking will be so minimal that no further evaluation is needed. Therefore, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this action on small entities and certifies this action will not have a significant economic impact on a substantial number of small entities. The guidance in NCHRP Report 350 is essentially a codification of current practice. The FHWA believes that application of that guidance will have only minor, if any, economic impact on a very few small entities developing or marketing roadside hardware.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive

UMI
VOL 58 ISS 135 JL 16 1993
UMI

Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has determined that this action will not, for the purpose of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads.

Issued on: July 9, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 625 as set forth below.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for part 625 is revised to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; Sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; 49 CFR 1.48(b) and (n).

§ 625.5 [Amended]

2. In § 625.5, paragraph (a) (13) is added to read as follows:

§ 625.5 Guides and references.

* * * * *

(a) * * *

(13) National Cooperative Highway Research Program Report 350, Recommended Procedures for the Safety Performance Evaluation of Highway Features, TRB 1993. [5]

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[FR Doc. 93–16859 Filed 7–15–93; 8:45 am]

BILLING CODE 4910-22-P

Coast Guard

33 CFR Part 100

[CGD 07–93–074]

Special Local Regulations; City of Beaufort, SC

AGENCY: Cost Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Beaufort Water Festival. The event will be held from 8 a.m. e.d.t. (Eastern Daylight Time) to 6 p.m. e.d.t. on July 17 and 18, 1993, and July 24 and 25, 1993, on the Beaufort River at Beaufort, South Carolina. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 7:30 a.m. e.d.t. to 7 p.m. e.d.t. on July 17 and 18, 1993, and July 24 and 25, 1993.

FOR FURTHER INFORMATION CONTACT: CDR A.A. SARRA, Coast Guard Group Charleston, at (803) 724–7600.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until June 2, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG J. M. SICARD, Assistant Operations Officer, Coast Guard Group Charleston, project officer and LT J. M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

There will be raft races, sailboat regattas, aerial shows, power boat races and a parade of ships throughout the effective dates. Approximately 100 to 150 spectator craft are expected. The events will take place on that portion of the Beaufort River at Beaufort, SC between the Ladies Island Bridge and Spanish Point (Latitude 32 degrees, 24 minutes, 25 seconds North). These regulations are required to provide for the safety of life on the navigable waters during the Beaufort Water Festival.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with South Carolina Wildlife and Marine Resources, the U.S. Fish and Wilc'life Service, the National Marine Fisheries Service, and the Army Corps of Engineers regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0774 is added to read as follows:

§ 100.35–T0774 City of Beaufort, SC

(a) *Regulated area.* A regulated area is established on that portion of the Beaufort River at Beaufort, SC between Ladies Island Bridge and Spanish Point (Latitude 32 degrees, 24 minutes, 25 seconds North). The regulated area encompasses the width of the Beaufort River between these two boundaries.

(b) *Special local regulations.* Entry into the regulated area is prohibited to all nonparticipants. After termination of the Water Festival events each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operation.

(c) *Effective dates.* These regulations become effective from 7:30 a.m. e.d.t. to 7 p.m. e.d.t. on July 17 and 18, 1993 and July 24 and 25, 1993.

Dated: June 21, 1993.

W. F. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–16950 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–93–072]

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Augusta Southern Nationals Drag Boat Races. This event will be held from 7 a.m. e.d.t. (Eastern Daylight Time) to 6 p.m. e.d.t. on July 16, 17, and 18, 1993 with July 19, 1993 as a rain date, on the Savannah River at Augusta, Georgia. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 7 a.m. e.d.t. to 6 p.m. e.d.t. on July 16, 17, and 18, 1993, and, in the event of inclement weather, July 19, 1993.

FOR FURTHER INFORMATION CONTACT: CDR A.A. SARRA, Coast Guard Group Charleston, at (803) 724–7619.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until June 3, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG J. M. Sicard, Assistant Operations Officer, Coast Guard Group Charleston, project officer, and LT J. M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

There will be one hundred and forty 16 to 18 foot drag boats racing two vessels per heat on an American Drag Boat Association sanctioned quarter mile long course. The event will take place on that portion of the Savannah River at Augusta, GA between U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. The drag boats will be competing at high speeds and at close range on the prescribed course, creating an extra hazard in the navigable waters.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the Georgia Department of Natural Resources, the Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of threatened species.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0772 is added to read as follows:

§ 100.35–T0772 City of Augusta, GA.

(a) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, GA between U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. The regulated area encompasses the width of the Savannah River between these two points. Floating buoys will be placed in the river to delineate the race course.

(b) *Special local regulations.* Entry into the regulated area is prohibited to nonparticipating vessels. After termination of the Augusta Southern Nationals Drag Boat Races, all vessels may resume normal operation.

(c) *Effective dates.* These regulations become effective from 7 a.m. e.d.t. to 5 p.m. e.d.t. on July 16, 17, and 18, 1993, with July 19, 1993 as a rain date.

Dated: June 21, 1993.

W.F. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 93–16949 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD02–93–020]

Special Local Regulations; Big Sioux Rubber Duck Race, Big Sioux City, IA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Big Sioux Rubber Duck Race. This event will be held on the Big Sioux River from mile 2.0 to mile 3.0, from 2 p.m. to 6 p.m. on July 24, 1993. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 2 p.m. local time on July 24, 1993, and terminate at 6 p.m. local time on July 24, 1993.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The information to complete this event was not received until June 18, 1993 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Ensign D. R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and Commander Walt Brawand, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

The Big Sioux Rubber Duck Race is an event that sends 2,000–3,000 rubber

VOL 58 ISS 135 JL 16 1993 UMI

ducks down the river in order to raise money for the Marian Health Center located in Big Sioux City, IA. The Big Sioux Rubber Duck Race is being held on July 24, 1993, from 2 p.m. until 6 p.m. local time. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during portions of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures. The impact of this regulation is expected to be minimal because of its short duration, so that a full regulatory analysis is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0220 is added, to read as follows:

§ 100.35–T0220 Big Sioux rubber duck race, Big Sioux City, IA

(a) *Regulated area.* Big Sioux River from mile 2.0 to mile 3.0.

(b) *Special local regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(5) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations become effective on July 24, 1993, at 2 p.m. local time and will terminate at 6 p.m. on July 24, 1993.

Dated: July 2, 1993.

F.M. Chliszczyk,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 93–16951 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD202–93–016]

Special Local Regulations; Oakmont Yacht Club Regatta, Oakmont, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Oakmont Yacht Club Regatta. This event will be held on the Allegheny River from mile 12.0 to mile 12.5, from 9 a.m. to 6 p.m. daily from July 30, 1993, through August 1, 1993. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective daily at 9 a.m. local time from July 30, 1993 to August 1, 1993, and terminate at 6 p.m. local time each day.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The information concerning this event was not received until June 2, 1993 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and Commander Walt Brawand, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

The Oakmont Yacht Club Regatta is a community festival consisting of a water ski show, boat parade, fishing contest, power boat racing, and jet ski races. The Oakmont Yacht Club Regatta is being held from July 30, 1993 through August 1, 1993, daily from 9 a.m. until 6 p.m. local time. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during portions of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures. The impact of this regulation is expected to be minimal because of its short duration, so that a full regulatory analysis is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.45 and 33 CFR 100.35.

2. A temporary § 100.35–T02016 is added, to read as follows:

§ 100.35–T02016 Oakmont Yacht Club Regatta, Oakmont, PA.

(a) *Regulated Area.* Allegheny River from mile 12.0 to mile 12.5.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(5) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations become effective on July 30, 1993 and will terminate on August 1, 1993. The regulations will be effective from 9 a.m. to 6 p.m. local time each day.

Dated: July 2, 1993.

F.M. Chliszczyk,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 93–16953 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD01–93–008]

Special Local Regulation; New Jersey Offshore Powerboat Race, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special local regulations for the New Jersey Offshore Powerboat Race. The race will be held on Saturday, July 17, 1993, in the waters of the Atlantic Ocean between Spring Lake and Seaside Park, New Jersey. Portions of Manasquan Inlet will be included in the regulated area to allow better control of vessel traffic in the vicinity of the race course. This regulation is needed to protect the boating public from the hazards associated with high speed power boat racing in confined waters.

DATES: These regulations are effective July 16, 1993. The regulations in § 100.505 will be implemented on Saturday, July 17, 1993 from 9 a.m., to 6 p.m. with a rain date of July 18, 1993. The regulation will be implemented annually thereafter as published in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT E. G. Westerberg, Project Manager, First Coast Guard District, and LCDR J. D. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On April 27, 1993 the Coast Guard published a notice of proposed rulemaking entitled New Jersey Offshore Powerboat Race, Manasquan, NJ in the **Federal Register** (58 FR 25588). No comments were received. A public hearing was not requested and one was not held. The Commander, First Coast Guard District has decided to publish the final rule as proposed.

Background and Purpose

Two Special Local Regulations currently exist to regulate the New Jersey Offshore Powerboat Race, 33 CFR 100.109 is hereby deleted. This regulation revises the permanent regulation, 33 CFR 100.505 and establishes the 1993 temporary regulated area in the Atlantic Ocean and Manasquan Inlet for this event known as the "New Jersey Offshore Power Boat Race." The event includes powerboats competing on a triangular course at speeds approaching 100 m.p.h. Due to the inherent dangers of a race of this type, vessel traffic will be temporarily restricted to promote safe navigation.

The sponsor, New Jersey Offshore Powerboat Racing Association, conducted this event along the New Jersey coast in 1992. This year's race will follow a similarly marked course as in the previous year. However, the regulated area will be extended to include Manasquan Inlet. The regulation provides specific guidance to control vessel movement during the limited duration of the race.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard believes the economic impact of this proposal to be minimal and that a Regulatory Evaluation is unnecessary due to the limited duration of the race, the extensive advisories that have been and will be made, and the fact that the event is taking place on a Saturday, which is normally a light volume day for commercial marine traffic.

Small Entities

The Coast Guard has determined the economic impact of this event on small or independently owned businesses will be minimal due to the limited duration of the regulation. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not

VOL 58 ISS 135 JL 16 1993 UMI

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this regulation is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For reasons set out in the preamble, the Coast Guard is revising 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.505 is revised to read as follows:

§ 100.505 New Jersey Offshore Power Boat Race, Spring Lake and Seaside Heights, NJ

(a) *Regulated area.* The regulated area includes:

(1) The coastal Atlantic waters between the Towns of Spring Lake and Seaside Heights, with a Northern boundary of an east to west line at latitude 40–10–00 North, a Southerly boundary of an east to west line at latitude 39–55–00 North, an Easterly boundary of a line drawn parallel to, and one and one-half (1½) miles seaward from the New Jersey coast between the north and south boundaries of the regulated area, and a Western boundary of the New Jersey shoreline between the north and south boundaries of the regulated area.

(2) The Manasquan River: From the New Jersey Transit Railroad Bridge to the mouth of the Manasquan Inlet.

(b) *Special local regulations.*

(1) Commander, U.S. Coast Guard Group Sandy Hook reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and those vessels authorized by the New Jersey Offshore Powerboat Racing Association. The Commanding Officer, Coast Guard Group Sandy Hook or designee may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) Vessels exiting the Manasquan Inlet must proceed in a northerly direction only: Navigation in any other direction is prohibited. Coast Guard patrol vessels will be present to direct exiting vessels to proceed north within one-quarter (¼) mile of the shore until clear of the regulated area in the vicinity of Spring Lake, NJ.

(ii) Spectator vessels. The spectator fleet will remain northeast of the northern edge of the race course adjacent to Manasquan Inlet. The sponsor shall provide a readily identifiable means to mark the spectator area. Vessels will not be allowed to observe the race from any other location within the regulated area.

(3) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period of regulation.

(4) Race participants must remain on the course when racing. Any participating vessel straying from the race course must reduce speed and return to the course at headway speed. Only disabled race boats will be allowed to enter the spectator area. If a contestant enters the spectator area for any other reason, they will be automatically disqualified and the race may be terminated.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) In the event of an emergency or as directed by the Coast Guard patrol commander, the sponsor shall immediately cease racing activities. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

(c) *Effective period.* This regulation will be effective from 9 a.m. through 6 p.m. on July 17, 1993 and annually thereafter as published in the **Federal Register**. In case of inclement weather, this regulation will be effective from 9 a.m. through 6 p.m. on July 18, 1993.

3. Section 100.109 is removed.

Dated: June 28, 1993.

Kent H. Williams,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93–16952 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COPT St. Louis Regulation 93–026]

Safety Zone Regulations; Upper Mississippi River Basin

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the Upper Mississippi River, the Missouri River, the Monongahela River, the Illinois River, and the Meramec River. These regulations are needed to control vessel traffic in the regulated areas to prevent further wake damage to levees and property along the rivers. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on June 7, 1993 and will terminate on August 15, 1993.

FOR FURTHER INFORMATION CONTACT: LCDR Ron Branch, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LCDR Ron Branch, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Mississippi River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for 105 days. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. Although the water levels in the river had fallen below flood stage during late June 1993, the levees have not had the opportunity to dry out before the recent rainfall over the midwest pushed the rivers back above the flood stage. As a result, some levees in the area have failed and the Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if they are subjected to the wake damage from passing vessels.

The present flood conditions also present a hazard to navigation in that the area's rivers are filled with a mass of trees and other debris which have been washed from the river banks and the inundated lowlands, once visible obstructions to navigation are now submerged, river currents are not following normal patterns, and insufficient clearances exist for vessels to pass under certain bridges. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

Given expected rainfall patterns, the rivers are not expected to crest until on or after July 13, 1993. The Army Corps of Engineers anticipates that the Mississippi River will crest at 43 feet—this is 23 feet above flood stage and may establish a record for flood waters in the area—and that it may take another four weeks for the waters to recede to normal levels.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0253 is added, to read as follows:

§ 165.T0253 Safety zone: Upper Mississippi River Basin.

(a) *Location.* The following areas are established as safety zones:

(1) Upper Mississippi River between miles 179.0 and 181.5,

(2) Upper Mississippi River between miles 200.8 and 636,

(3) Missouri River between miles 0.0 and 367,

(4) Missouri River between miles 371 and 535,

(5) Illinois River between miles 0.0 and 168,

(6) Illinois River between miles 178.8 and 181.5,

(7) Meramac River between miles 0.0 and 21.0.

(b) *Effective dates.* This regulation becomes effective on July 7, 1993 and will terminate on August 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply with the following exceptions:

(1) Except for tow boats, entry into the Upper Mississippi River between miles 179.0 and 181.5 is not prohibited; however, all vessels entering the zone must proceed at the minimum safe speed to minimize wake damage.

(2) Entry into the Illinois River between miles 178.8 and 181.5 is not prohibited; however, all vessels entering the zone must proceed at the minimum safe speed to minimize wake damage.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by these safety zones by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 7, 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–16948 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

VOL 58 ISS 135 JL 16 1993 UMI

gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Riverside, (FEMA Docket No. 7069).	Unincorporated areas ..	Jan. 22, 1993, Jan. 29, 1993, Riverside Press Enterprise.	The Honorable Patricia Larson, Chairperson, Riverside County Board of Supervisors, P.O. Box 1359, Riverside, California 92502–1359.	Mar. 10, 1993	060245
California: Tulare, (FEMA Docket No. 7065).	City of Visalia	Mar. 19, 1993, Mar. 26, 1993, Visalia Times Delta.	The Honorable Peter Carey, Mayor, City of Visalia, 707 West Acequia Street, Visalia, California 93291.	Mar. 1, 1993	060409
Colorado: Boulder, (FEMA Docket No. 7052).	City of Longmont	Mar. 3, 1993, Mar. 10, 1993, Longmont Daily Times.	The Honorable Fred Wilson, Mayor, City of Longmont, Civic Center Complex, 408 Third Avenue, Longmont, Colorado 80501.	Feb. 19, 1993	080027

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hawaii: Honolulu, (FEMA Docket No. 7065).	City and County of Honolulu.	Mar. 18, 1993, Mar. 25, 1993, Honolulu Advertiser.	The Honorable Frank F. Fasi, Mayor, City and County of Honolulu, City Hall, 530 South King Street, Honolulu, Hawaii 96813.	Feb. 19, 1993	150001
Illinois: Lake, (FEMA Docket No. 7062).	Village of Lake Barrington.	Feb. 18, 1993, Feb. 25, 1993, Barrington Courier-Review.	Ms. Nancy Smith, President of the Village of Lake Barrington, Lake County, 23555N Old Barrington Road, Barrington, Illinois 60010.	June 10, 1993	170372 D
Illinois: McLean, (FEMA Docket No. 7060).	Town of Normal	Feb. 18, 1993, Feb. 25, 1993, The Normalite.	The Honorable Paul Harmon, Mayor of the Town of Normal, McLean County, 100 East Phoenix Avenue, Normal, Illinois 61761.	Dec. 29, 1992	170502 B
Minnesota: Anoka, (FEMA Docket No. 7062).	City of Columbia Heights.	Feb. 23, 1993, Mar. 2, 1993, Columbia Heights Focus.	The Honorable Donald Murzyn, Jr., Mayor of the City of Columbia Heights, Anoka County, 590 40th Avenue, NE, Columbia Heights, Minnesota 55421–3878.	Feb. 16, 1993	270010
Tennessee: Shelby, (FEMA Docket No. 7062).	City of Memphis	Feb. 12, 1993, Feb. 19, 1993, The Commercial Appeal.	The Honorable W.W. Herenton, Mayor of the City of Memphis, Shelby County, 125 North Mid-America Mall, Memphis, Tennessee 38103.	Feb. 5, 1993	470177 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 7, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–16766 Filed 7–15–93; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

[Docket No. FEMA–7072]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either

VOL 58 ISS 135 JL 16 1993 UMI

adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Benton	City of Rogers	June 3, 1993, June 10, 1993, Northwest Arkansas Morning News.	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72265.	May 19, 1993	050013
California: Sacramento	Unincorporated areas	June 23, 1993, June 30, 1993, Sacramento Bee.	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 301, Sacramento, California 95814.	June 8, 1993	060262
Florida: Pinellas	City of Tarpon Springs	July 7, 1993, July 14, 1993, Sun Coast News.	The Honorable Anita Protos, Mayor of the City of Tarpon Springs, Pinellas County, P.O. Box 5004, Tarpon Springs, Florida 34688–5004.	June 22, 1993	120259 B
Illinois: Cook	Village of Palos Park	June 3, 1993, June 10, 1993, Daily Southtown Economist.	The Honorable Rosemary S. Kaptur, Mayor of the Village of Palos Park, 8901 W. 123rd Street, Palos Park, Illinois 60464.	May 21, 1993	170144 B
Ohio: Franklin and Fairfield.	City of Columbus	June 22, 1993, June 29, 1993, The Columbus Dispatch.	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	June 17, 1993	390170 B
Oklahoma: Cleveland	City of Norman	June 29, 1993, July 6, 1993, The Norman Transcript.	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman, Oklahoma 73070.	June 8, 1993	400046

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oregon: Douglas	City of Roseburg	June 23, 1993, June 30, 1993, The News-Review.	The Honorable Jerl Kimmel, Mayor, City of Roseburg, 900 SE. Douglas Avenue, Roseburg, Oregon 97470.	June 8, 1993	410067
Texas: El Paso	City of El Paso	June 16, 1993, June 23, 1993, El Paso Sun Times.	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	May 12, 1993	480214
Texas: Tarrant	City of Arlington	June 3, 1993, June 10, 1993, Fort Worth Star Telegram.	The Honorable Richard Greene, Mayor, City of Arlington, 101 West Abram Street, P.O. Box 231, Arlington, Texas 76004–0231.	May 20, 1993	485454
Texas: Tarrant	City of North Richland Hills.	June 10, 1993, June 17, 1993, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Rickland Hills, P.O. Box 820609, North Richland Hills, Texas 76183.	May 18, 1993	480607

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 7, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc 93–16769 Filed 7–15–93; 8:45 am]

BILLING CODE 6718–03–M

VOL
58
ISS
135
JL
16
1993
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Proposed Rules

Federal Register
Vol. 58, No. 135
Friday, July 16, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

9 CFR Part 94

[Docket No. 91-017-1]

Garbage

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that apply to garbage that can introduce diseases or pests of livestock, poultry, or plants. The proposed provisions would require persons to enter into compliance agreements with the Animal and Plant Health Inspection Service before they handle or dispose of certain regulated garbage on or removed from a means of conveyance which has been in any port outside the continental United States and Canada within the previous 2-year period, or has been to or from any U.S. territory, possession, or Hawaii within the previous 1-year period. This change would enhance our ability to enforce the regulations and would, therefore, assist the effort to prevent the dissemination of plant pests and livestock and poultry diseases into or within the United States.

DATES: Consideration will be given only to comments received on or before September 14, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-017-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald B. Caffey, Assistant to the Deputy Administrator, PPQ, APHIS, USDA, room 628, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7633.

SUPPLEMENTARY INFORMATION:

Background

Our regulations concerning garbage are contained in 7 CFR 330.400 and 9 CFR 94.5 (referred to below as "the regulations"). The regulations in 7 CFR 330.400 are intended to prevent the dissemination of plant pests and diseases. The regulations in 9 CFR 94.5 are intended to prevent the introduction of animal diseases.

Garbage is defined in § 330.400(b) and § 94.5(a) as all waste material that is derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance. Garbage also means meals and other food available for consumption by passengers and crew on an aircraft but not consumed.

Garbage regulated because of movements outside the United States or Canada ("regulated garbage") is defined in § 330.400(c) and § 94.5(b) as garbage that is on or removed from a means of conveyance * * * if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are two exceptions to this provision, as described in § 330.400(c)(1) and § 330.400(c)(2) and § 94.5(b)(1) and § 94.5(b)(2).

Garbage regulated because of certain movements to or from Hawaii, territories, or possessions ("regulated garbage") is defined in § 330.400(d) and § 94.5(c) as garbage that is on or removed from a means of conveyance * * * if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are two exceptions, as described in § 330.400(d)(1) and (d)(2) and § 94.5(c)(1) and (c)(2).

Also, regulated garbage is defined in § 330.400(e) and § 94.5(d) as garbage that is commingled with regulated garbage.

Compliance and Disposal

In accordance with § 330.400(f)(2) and § 94.5(e)(2), regulated garbage is subject to general surveillance for compliance with the regulations by Animal and Plant Health Inspection Service (APHIS) inspectors and to disposal measures established to prevent the dissemination of plant pests and livestock or poultry diseases.

In accordance with § 330.400(g)(1) and § 94.5(f)(1), regulated garbage must be contained in tight, leak-proof, covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. Also, such regulated garbage may not be unloaded from the means of conveyance in the United States unless the regulated garbage is removed in tight, leak-proof receptacles under the direction of an APHIS inspector to an approved facility for incineration, sterilization, or grinding into an approved sewage system, under supervision by an inspector, or the regulated garbage is removed for other handling in a manner and under such supervision as may, upon request in specific cases, be approved by the Administrator of APHIS as complying with the applicable laws for environmental protection and as adequate to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases.

As defined in 7 CFR 330.400(i)(4) and 9 CFR 94.5(h)(5), an approved facility means a facility approved by the Administrator of APHIS, upon his determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate

Government official as currently complying with the applicable laws for environmental protection. As defined in 7 CFR 330.400(i)(3) and 9 CFR 94.5(h)(4), an approved sewage system means a sewage system approved by the Administrator of APHIS, upon his determination that it is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons or other stationary waters, and otherwise is adequate to prevent the introduction of plant pests and livestock or poultry diseases, and that it is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Compliance Agreements

We are proposing to add the requirement to the regulations that a person wishing to handle or dispose of regulated garbage must first enter into a written compliance agreement with APHIS, stating that it agrees to comply with the regulations in 7 CFR 330.400 and 9 CFR 94.5 and the conditions contained in the agreement. A person handling or disposing of regulated garbage would need to have the compliance agreement in order to perform this work. If we found that the person was in violation of any of the regulations in 7 CFR 330.400 or 9 CFR 94.5 or the conditions contained in the agreement, we would take action to cancel the compliance agreement. Without the compliance agreement, the person could only remove regulated garbage from a means of conveyance under the direction of an APHIS inspector or dispose of regulated garbage at an approved facility under the supervision of an APHIS inspector. The compliance agreement would provide an incentive to comply with the regulations, thus strengthening our ability to enforce them.

We are proposing to add a definition of person to 9 CFR 94.5(h)(4) for consistency with the definition of person in 7 CFR 330.100. Person would mean any individual, corporation, company, association, firm, partnership, society, or joint stock company.

We are also proposing that any compliance agreement may be cancelled in writing by the Administrator whenever it is found that the person who has entered into the compliance agreement has failed to comply with the regulations in 7 CFR 330.400 or 9 CFR 94.5 or the conditions contained in the agreement. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

APHIS believes that requiring use of compliance agreements would strengthen our ability to enforce the regulations, and would, therefore, assist the effort to prevent the dissemination of plant pests and livestock and poultry diseases into or within the United States.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposal would not require persons to change their current practices. Almost all persons who handle and dispose of regulated garbage have been operating under compliance agreements. This proposed rule would *require* the use of these agreements. The only cases where persons not currently under such agreements handle or dispose of regulated garbage are short-term situations employing persons not in the business of garbage disposal, where the person removes the garbage under the direction of an APHIS inspector or disposes of the garbage at an approved facility under the supervision of an APHIS inspector.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) administrative proceedings will not be required before persons may file suit in court challenging this rule. However, administrative remedies must be exhausted before persons may file suit in court challenging a decision to cancel a compliance agreement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0054 for 7 CFR 330.400. Additional requirements for information collection and recordkeeping will be submitted to OMB for 9 CFR 94.5.

List of Subjects

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 330 and 9 CFR part 94 would be amended as follows:

Title 7—[Amended]

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd-150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31

VOL 58 ISS 135 JL 16 1993 UMI

U S C. 9701, 42 U S C. 4331, 4332; 7 CFR 2.17, 2 51, and 371.2(c).

§ 330.400 [Amended]

2 Section 330 400 would be amended by adding a new paragraph (j) to read as follows:

§ 330.400 Regulation of Certain Garbage.

* * * * *

(j) *Compliance Agreement and Cancellation*

(1) Any person engaged in the business of handling or disposing of regulated garbage must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS) Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(2) A person who enters into a compliance agreement, and employees or agents of that person, shall comply with the following conditions and any supplemental conditions which shall be listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with the provisions of 7 CFR 330 400;

(ii) Allow APHIS inspectors access to all records maintained by the person regarding handling or disposal of regulated garbage, and to all areas where handling or disposal of regulated garbage occurs;

(iii) Remove regulated garbage from a means of conveyance only in tight, leak-proof receptacles;

(iv) Move the receptacles of regulated garbage only to a facility approved in accordance with § 330 400(g)(2), and

(v) At the facility, dispose of the regulated garbage only through incineration, sterilization, grinding into a sewage system approved in accordance with § 330 400(g)(2), or in any other manner approved by the Administrator and described in the compliance agreement.

(3) Approval for a compliance agreement may be denied at any time if the Administrator determines that the requirements set forth in this subpart are not met, after notice of, and the reasons for, the proposed denial of the approval, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the compliance agreement applicant.

(4) Any compliance agreement may be cancelled in writing by the Administrator whenever it is found that the person who has entered into the compliance agreement has failed to comply with this subpart. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(5) Where a compliance agreement is denied or cancelled, regulated garbage may continue to be unloaded from a means of conveyance and disposed of at an approved facility in accordance with § 330 400(g)(1).

3 The Office of Management and Budget control number information appearing at the end of current § 330.400(i)(5) would be moved to the end of new § 330.400(j)(5) and revised to read as follows:

(Approved by the Office of Management and Budget under control number 0579–0054.)

Title 9—[Amended]

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

4. The authority citation for part 94 would continue to read as follows:

Authority: 7 U S.C. 147a, 150ee, 161, 162, 450; 19 U S.C. 1306; 21 U S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.5 [Amended]

5. In § 94.5, paragraph (h)(10) would be added, to read as follows:

§ 94.5 Regulation of certain garbage.

* * * * *

(h) * * *

(10) *Person* means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

6. In § 94.5, paragraph (i) would be added immediately following new paragraph (h)(10) and preceding the OMB control number to read as follows.

§ 94.5 Regulation of certain garbage.

* * * * *

(i) *Compliance agreement and cancellation*

(1) Any person engaged in the business of handling or disposing of regulated garbage must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(2) A person who enters into a compliance agreement, and employees or agents of that person, shall comply with the following conditions and any supplemental conditions which shall be listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with the provisions of 9 CFR 94.5:

(ii) Allow APHIS inspectors access to all records maintained by the person regarding handling or disposal of regulated garbage, and to all areas where handling or disposal of regulated garbage occurs;

(iii) Remove regulated garbage from a means of conveyance only in tight, leak-proof receptacles;

(iv) Move the receptacles of regulated garbage only to a facility approved in accordance with § 94.5(f)(2); and

(v) At the facility, dispose of the regulated garbage only through incineration, sterilization, grinding into a sewage system approved in accordance with § 94.5(f)(2), or in any other manner approved by the Administrator and described in the compliance agreement.

(3) Approval for a compliance agreement may be denied at any time if the Administrator determines that the requirements set forth in this section are not met, after notice of, and the reasons for, the proposed denial of the approval, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the compliance agreement applicant.

(4) Any compliance agreement may be cancelled in writing by the Administrator whenever it is found that the person who has entered into the compliance agreement has failed to comply with this section. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving

written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(5) Where a compliance agreement is denied or cancelled, regulated garbage may continue to be unloaded from a means of conveyance and disposed of at an approved facility in accordance with § 94 5(f)(1).

Done in Washington, DC, this 12th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16902 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD32

Oilseed Prevailing World Price Calculations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations which set forth the methods for calculating the prevailing world prices for oilseeds. Section 205(d) of the Agricultural Act of 1949, as amended (the 1949 Act), requires the Secretary of Agriculture (Secretary) to prescribe a method for calculating the prevailing world price for soybeans and minor oilseeds—sunflower seed, canola, rapeseed, safflower, flaxseed, and mustard seed—and a mechanism by which the Secretary shall announce periodically the prevailing world market price for each oilseed (adjusted for U.S. quality and location). These actions are necessary because the method as currently prescribed requires the use of data that are not readily available.

DATES: Comments must be received on or before August 16, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to the Director, Oilseeds Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, room 3739–S, Washington, DC 20013–2415. Comments received may be inspected between 9 a.m. and 4:30 p.m. Monday through Friday, except holidays, in room 3746, South Agriculture Building, USDA, 14th and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Director, Oilseeds Analysis Division, ASCS, USDA, P.O. Box 2415, room 3746–S, Washington, DC 20013–2415 or call 202–720–7923.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor." It has been determined that this proposed rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10 051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U S.C. chapter 35.

Public Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Statutory Background

In accordance with section 205(d)(1) of the 1949 Act, the Secretary may permit a producer to repay a nonrecourse loan at a level that is the lesser of the loan level for the crop or the prevailing world market price for the applicable oilseed, adjusted for U.S quality and location (i.e., the adjusted world price or AWP), as determined by the Secretary; or at such other level not in excess of the loan level for that crop that the Secretary determines will:

(1) Minimize potential loan forfeitures;

(2) Minimize the accumulation of oilseed stocks by the Federal Government;

(3) Minimize the cost incurred by the Federal Government in storing oilseeds, and

(4) Allow oilseeds produced in the U S. to be marketed freely and competitively, both domestically and internationally.

In accordance with section 205(d)(2) of the 1949 Act, the Secretary shall prescribe a formula to define the AWP and a mechanism by which the Secretary shall periodically announce the AWP

Prevailing World Price, Adjusted to U.S. Quality and Location (AWP)

In accordance with section 205(d)(2) of the 1949 Act, it is proposed that the AWP for soybeans be established and announced, to the extent practicable, weekly based upon current market prices for soybeans at major U.S. markets, as determined by CCC. It is also proposed that the AWP for each minor oilseed be established and announced, to the extent practicable, weekly based upon current prices at major U.S. markets for each minor oilseed, as determined by CCC.

This amendment to the regulation governing the establishment of world prices for oilseeds is necessary because timely and consistent market information and data for foreign markets are not readily available to calculate world prices according to previously published regulations. The proposed amendment will permit the calculation of a price reflective of world market conditions with readily available data in a timely manner. In addition, the proposed change will enable publication of world prices for minor oilseeds more frequently and simplify the existing regulations.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is proposed to be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:02

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1444c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.25 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1421.25 Market price repayments.

* * * * *

(b) For the 1991 through 1995 crops of oilseeds:

(1) A producer may repay a loan that is the lesser of:

(i) The loan level and charges, plus interest determined for such crop; or

(ii) The prevailing world market price for the applicable oilseed, adjusted for U.S. quality and location (i.e., the adjusted world price or AWP), as determined by the Secretary.

(2) CCC may, in lieu of the repayment level determined in accordance with paragraph (b)(1) of this section, allow producers to repay a loan at such other level not in excess of the loan level for that crop that the Secretary determines will minimize potential forfeitures, minimize the accumulation of oilseed stocks by the Federal Government, minimize the cost incurred by the Federal Government in storing oilseeds and allow oilseeds produced in the U.S. to be marketed freely and competitively, both domestically and internationally.

(c) In accordance with paragraph (b)(1)(ii) of this section, adjusted world prices (AWP) will be calculated as follows:

(1) The AWP for soybeans will be established, to the extent practicable, weekly based upon current market prices for soybeans at major U.S. markets, as determined by CCC.

(2) The AWP for each minor oilseed will be established, to the extent practicable, weekly based upon current market prices for each minor oilseed at major U.S. markets, as determined by CCC.

* * * * *

Signed on July 11, 1993, at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–16925 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 208, 236, and 242

[INS No. 1412–92; AG Order No. 1761–93]

RIN 1115–AC66

Asylum and Withholding of Deportation Procedures; Convictions for Aggravated Felonies

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 515 of the Immigration Act of 1990, which provides that an alien who has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Immigration and Nationality Act (Act), is ineligible for asylum and shall be considered to have been convicted of a particularly serious crime for purposes of withholding of deportation. Section 515 applies to applications filed on or after November 29, 1990. This proposed rule will eliminate certain delays currently involved in the asylum process when dealing with aggravated felons by streamlining the deportation procedures that apply with respect to such persons.

DATES: Written comments must be submitted on or before August 16. 1993

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 2001D, Washington, DC 20536. Please include INS number 1412–92 on your correspondence to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Asylum Division, Office of Refugees, Asylum, and Parole, Immigration and Naturalization Service, 425 I Street NW., ULLICO 3rd floor, Washington, DC 20536, telephone (202) 633–4389.

SUPPLEMENTARY INFORMATION: These proposed regulations set forth the procedures to be followed when an alien who has been convicted of an aggravated felony submits an application for asylum or withholding of deportation with the Immigration and Naturalization Service (Service) or with the Office of the Immigration Judge on or after November 29, 1990. They are intended to relieve the Service and the Office of the Immigration Judge from existing procedural requirements when confronted with an alien who is statutorily ineligible for asylum. This rule is intended to eliminate protracted delays currently involved in the asylum process when dealing with aggravated felons.

Background

Congress has expressed its intent that aliens convicted of serious crimes be removed from the United States and has furthered that intent by eliminating asylum for aliens convicted of aggravated felonies and by classifying aggravated felonies as "particularly serious crimes" for purposes of relief under section 243(f) of the Act.

Statutory Authority

The statutory authority for these changes is found in section 515 of the Immigration Act of 1990, Public Law 101–649, November 29, 1990 (IMMACT 90).

In accordance with 5 U.S.C. 605(b), the Attorney General of the United States certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this

rule have Federalism implications warranting the preparation of Federalism Assessment in accordance with E.O. 12612. The Attorney General has reviewed this rule in light of section 2(c) of E.O. 12778 and finds that the rule meets the applicable standards provided in section 2(b) of the order.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Asylum, Crime, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Asylum, Crime, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens, Asylum, Crime, Detention, Deportation.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

1. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252; 8 CFR part 2.

2. Section 208.1 is amended by adding the following sentence to the end of paragraph (a) to read as follows:

§ 208.1 General.

(a) * * * The provisions of this part relating to a person convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, shall apply to applications for asylum or withholding of deportation that are filed on or after November 29, 1990.

* * * * *

3. Section 208.4 is amended by adding two sentences to the end of paragraph (a) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) * * * If an alien has been convicted of an aggravated felony, the asylum office shall not forward a copy of such alien's application for asylum or withholding of deportation to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) for comments. Where an application for asylum or withholding of deportation by such alien has, nevertheless, been forwarded to the BHRHA, the asylum officer shall not defer adjudication of the application pending receipt of the BHRHA's response.

* * * * *

4. Section 208.7 is amended by revising paragraph (a) and the introductory text for paragraph (b), and by adding a new paragraph (b)(3) to read as follows:

§ 208.7 Interim employment authorization.

(a) Except in the case of an applicant who has been convicted of an aggravated felony, the asylum officer to whom an initial application for employment authorization (Form I–765) accompanying an application for asylum or withholding of deportation is referred shall authorize employment for a period not to exceed one year to aliens who are not in detention and whose applications for asylum or withholding of deportation the asylum officer determines are not frivolous. "Frivolous" is defined as manifestly unfounded or abusive. An applicant who has been convicted of an aggravated felony shall not be granted employment authorization.

(b) Subject to paragraph (b)(3) of this section, employment authorization shall be renewable, in increments not to exceed one year, for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for final adjudication of any administrative or judicial review.

* * * * *

(3) If an application for asylum filed on or after November 29, 1990, is denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii) because the applicant has been convicted of an aggravated felony, any employment authorization previously issued under § 208.7(a) shall automatically terminate as of the date of denial.

* * * * *

5. Section 208.9 is amended by revising the first sentence of paragraph (a), and by adding a new paragraph (g) to read as follows:

§ 208.9 Interview and procedure.

(a) Except as provided in paragraph (g) of this section, an interview shall be conducted by an asylum officer for each application for asylum or withholding of deportation within the jurisdiction of that officer, either at the time of application or at a later date to be determined in consultation with the applicant. * * *

* * * * *

(g) If the applicant for asylum or withholding of deportation is determined by the asylum officer to have been convicted of an aggravated felony and the initial application was filed on or after November 29, 1990, no interview under paragraph (a) of this section is required, and the application shall be denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii). If, after commencing the interview, the asylum officer determines that the applicant has been convicted of an aggravated felony, the interview shall be terminated and the application denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii).

6. Section 208.14 is amended by removing the word "or" at the end of paragraph (c)(2), by removing the "." at the end of paragraph (c)(3) and adding in its place "; or", and by adding a new paragraph (c)(4) to read as follows:

§ 208.14 Approval or denial of application.

* * * * *

(c) * * *

(4) The alien has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act.

7. Section 208.16 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 208.16 Entitlement to withholding of deportation.

* * * * * .

(c) * * *

(2) * * *

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States. An alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime. An alien who has been convicted of an aggravated felony shall also be considered to constitute a danger to the community of the United States.

* * * * *

8. Section 208.17 is revised to read as follows:

§ 208.17 Decision.

The decision of an asylum officer to grant or deny asylum or withholding of deportation shall be communicated in writing to the applicant, the district director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant sought admission to the United States, the Assistant Commissioner for Refugees, Asylum,

VOL 58 ISS 135 JL 16 1993 UMI

and Parole, and the Director of the Asylum Policy and Review Unit of the Department of Justice. An adverse decision will state why asylum or withholding of deportation was denied. The decision will also contain an assessment of the applicant's credibility unless the application was denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii).

9. Section 208.21 is amended by revising the introductory text of paragraph (a) by removing the word "or" at the end of paragraph (a)(2), by removing the "." at the end of paragraph (a)(3) and adding in its place "; or", and by adding a new paragraph (a)(4) to read as follows:

§ 208.21 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, or child, as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act, may also be granted asylum if accompanying or following to join the principal alien who was granted asylum, unless it is determined that:

* * * * *

(4) The spouse or child has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act.

* * * * *

PART 236—EXCLUSION OF ALIENS

10. The authority citation for part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1225, 1226, and 1255.

11. Section 236.3 is amended by revising paragraphs (a)(1) and (a)(2), by adding a new paragraph (a)(3), and by revising paragraph (b) to read as follows:

§ 236.3 Applications for asylum or withholding of deportation.

(a) * * *

(1) Advise the alien that, except as provided in paragraph (a)(3) of this section, he or she may apply for asylum in the United States or withholding of deportation to that other country;

(2) Make available the appropriate application forms; and (3) Advise the alien that if the immigration judge finds that he or she has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, he or she is ineligible for asylum in the United States, and is ineligible for withholding of deportation under section 243(h) of the Act on the basis of having been convicted of a particularly serious crime.

(b) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.4(c) of this chapter.

(1) Except as provided in paragraph (b)(2) of this section, upon receipt of the application, the Office of the Immigration Judge shall forward a copy to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State for comments, and shall calendar the case for hearing, which shall be deferred pending receipt of the Department of State's comments. The reply, if any, from the Department of State, unless classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), shall be given both to the applicant and to the Trial Attorney representing the government.

(2) In the case of an application filed on or after November 29, 1990, if the immigration judge finds that an alien has been convicted of an aggravated felony, the immigration judge shall not forward a copy of such alien's application for asylum or withholding of deportation to the BHRHA for comments. Where an application for asylum or withholding of deportation by such an alien has, nevertheless, been forwarded to the BHRHA, the immigration judge shall not defer the exclusion proceeding pending receipt of the BHRHA's repsonse.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

12. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252; 8 CFR part 2.

13. Section 242.17 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii), by adding a new paragraph (c)(2)(iii), and by revising paragraph (c)(3) to read as follows:

§ 242.17 Ancillary matters, applications.

* * * * *

(c) * * *

(2) * * *

(i) Advise the alien that, except as provided in paragraph (c)(2)(iii) of this section, he or she may apply for asylum in the United States or withholding of deportation to those countries;

(ii) Make available the appropriate application forms; and

(iii) Advise the alien that if the immigration judge finds that he or she has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, he or she is ineligible for asylum in the United States, and is ineligible for withholding of deportation under section 243(h) of the Act on the basis of having been convicted of a particularly serious crime.

(3) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.4(c) of this chapter.

(i) Except as provided in paragraph (c)(3)(ii) of this section, upon receipt of the application, the Office of the Immigration Judge shall forward a copy to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State for comments.

(ii) In the case of an application filed on or after November 29, 1990, if the immigration judge finds that an alien has been convicted of an aggravated felony, the immigration judge shall not forward a copy of such alien's application for asylum or withholding of deportation to the BHRHA for comments. Where an application for asylum or withholding of deportation by such an alien has, nevertheless, been forwarded to the BHRHA, the immigration judge shall not defer the deportation proceeding pending receipt of the BHRHA's response.

* * * * *

Dated: July 7, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–16790 Filed 7–15–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–136–1]

Importation of Gelatin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of gelatin by requiring all shipments of gelatin derived from horses or swine, or from ruminants that have not been in any country where bovine spongiform encephalopathy (BSE) exists, to be accompanied by an official certificate. This change is needed to help inspectors at the port of entry distinguish this gelatin, which does not pose a risk of spreading BSE, from gelatin derived from ruminants that have been in a country where BSE exists, which poses a risk of spreading BSE and must be accompanied by an

import permit. The effect of this change would be to eliminate avoidable delays at the port of entry.

DATES: Consideration will be given only to comments received on or before August 16, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–136–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") contain, among other things, restrictions on the importation of certain animals and animal products in order to prevent the introduction of certain animal diseases into the United States. Section 94.18 of the regulations concerns the importation of meat and edible products derived from ruminants that have been in countries where bovine spongiform encephalopathy (BSE), a neurological disease of bovine animals and other ruminants, exists.

The major means of BSE's spread appear to be through ruminant feed containing meat and other products derived from ruminants infected with BSE and through the use of veterinary biologic products containing byproducts from ruminants infected with BSE. One product that may be used in ruminant feed—and thus has the potential to spread BSE—is gelatin derived from the hides and bones of ruminants that have been in any country where BSE exists.

Section 94.18(c) of the regulations prohibits the importation into the United States of gelatin derived from ruminants that have been in any country where BSE exists, unless certain specified conditions are met. Paragraph (c)(2) of § 94.18 requires any person importing gelatin derived from ruminants that have been in any country where BSE exists to obtain a "United States Veterinary Permit for the Importation and Transportation of Controlled Materials and Organisms and Vectors" by filing a permit application on VS form 16–3. The permit allows the Animal and Plant Health Inspection Service (APHIS) to confirm that the gelatin is to be used in a manner that will not result in the gelatin coming in contact with ruminants in the United States.

Conversely, gelatin derived from ruminants that have not been in any country where BSE exists does not pose any threat of introducing the disease and may be imported into the United States without restrictions, as is the case with gelatin derived from horses or swine. However, because of the disease threat posed by gelatin derived from ruminants that have been in a country where BSE exists, APHIS inspectors at the port of entry must hold any shipment of gelatin that arrives in the United States without an import permit when the gelatin's origin cannot be conclusively determined from the documentation accompanying the shipment. Once the inspector confirms that the gelatin was derived from horses or swine, or from ruminants that have not been in any country where BSE exists, the shipment can be released.

In order to prevent such delays in the future, we are proposing to require all shipments of gelatin derived from horses or swine, or from ruminants that have not been in any country where BSE exists, to be accompanied at the time of importation into the United States by an official certificate issued by a veterinarian employed by the national government of the gelatin's country of origin. We would require that the certificate state the species of animal from which the gelatin is derived and, if the gelatin is derived from ruminants, certify that the gelatin is derived from ruminants that have not been in any country where BSE exists.

If the proposed requirement is adopted, at the time of importation into the United States, all shipments of gelatin derived from horses or swine would have to be accompanied by an official certificate, and all shipments of gelatin derived from ruminants would have to be accompanied by either an official certificate or an import permit, depending on whether the gelatin is derived from ruminants that have been in a country where BSE exists. An APHIS inspector would then be able to determine immediately whether or not the gelatin could be imported into the United States without restrictions, thus eliminating delays at the port of entry.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that the provisions of this proposed rule, if adopted, would have little or no economic impact on importers of gelatin. Currently, there are no import restrictions on gelatin derived from horses or swine, or from ruminants that have not been in any country where BSE exists. This proposed rule would require gelatin derived from horses or swine, or from ruminants that have not been in any country where BSE exists, to be accompanied by an official certificate when imported into the United States. The certificate, which would be issued by a veterinarian employed by the national government of the country of origin, would have to state the species of animal from which the gelatin is derived and, if the gelatin is derived from ruminants, certify that the gelatin is derived from ruminants that have not been in any country where BSE exists.

The certificate requirement is not expected to significantly increase costs for U.S. importers of gelatin. The exporter of the gelatin would have to obtain the required certificate through the national government of the country of origin prior to shipping the gelatin to the United States. We do not know how many of those governments would charge a fee for providing the certificate, but it is unlikely that any fee would be high enough to significantly change the cost of the gelatin should the exporter choose to pass the cost of the certificate on to the gelatin's importer in the United States. The certificate requirement is also not expected to result in any significant savings for the U.S. importer as the result of the elimination of the costs that may currently be incurred by importers during the period that the gelatin is held at the port of entry while its origin is

established. We anticipate that the primary impact of the certificate requirement would be to expedite the handling of gelatin by APHIS inspectors at the port of entry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. A new § 94.19 would be added to read as follows:

§ 94.19 Gelatin derived from horses or swine, or from ruminants that have not been in any country where bovine spongiform encephalopathy exists.

Gelatin derived from horses or swine, or from ruminants that have not been in any country listed in § 94.18(a) of this part, must be accompanied at the time of importation into the United States by an official certificate issued by a veterinarian employed by the national government of the country of origin. The official certificate must state the species of animal from which the gelatin is derived and, if the gelatin is derived from ruminants, certify that the gelatin is not derived from ruminants that have been in any country listed in § 94.18(a).

Done in Washington, DC, this 12th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16905 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 92–007–1]

Cooked Meat from Countries Where Rinderpest or Foot-and-Mouth Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations concerning cooked meat intended for importation into the United States from countries where rinderpest or foot-and-mouth disease exists. The regulations would require that this meat meet a new standard for "thoroughly cooked," and would specify conditions for the cooking process. Further, the regulations would establish standards for meat processing establishments in those countries, and would require that cooked meat come only from establishments that meet these standards. This action would ensure that the meat intended for importation into the United States from a country where rinderpest or foot-and-mouth disease exists has been cooked sufficiently to inactivate any rinderpest or foot-and-mouth disease virus and prevent the introduction of either disease into the United States.

DATES: Consideration will be given only to comments received on or before September 14, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–007–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, VS, APHIS, USDA, room 756–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed to prevent the introduction into the United States of certain diseases of livestock and poultry. Section 94.4 (referred to below as the regulations) restricts the importation into the United States of cured and cooked meat from countries where rinderpest or foot-and-mouth disease (FMD) exists, in order to prevent the introduction of those diseases into the United States. Cured and cooked meats that meet the conditions stipulated in the regulations are eligible for entry into the United States.

The regulations currently require, among other things, that cooked meat from ruminants or swine originating in any country where rinderpest or FMD exists be "thoroughly cooked," that is, "heated so that the flesh and juices have lost all red or pink color." This definition of "thoroughly cooked" was based on the so-called pink juice test being a reliable indicator of whether meat has been cooked thoroughly enough to inactivate any rinderpest or FMD virus.

We now know that the pink juice test, long believed to indicate the inactivation of the rinderpest or FMD virus in all cooked meats, reliably reflects inactivation of these viruses only in cubes, slices, and anatomical cuts of meat (cuts taken from skeletal muscle tissue) that meet certain size specifications.

In ground meat and in certain cubes, slices, and anatomical cuts of meat, the viruses remains viable even when the

juice has no pink or red hues; consequently, for these meats, "passing" the pink juice test proves nothing about the disease status of these meats. We therefore propose to redefine "thoroughly cooked" in terms of the desired result: "Heated sufficiently to inactivate any pathogen that may be present, as indicated by the required TID [temperature indicator device] or pink juice test." We are proposing that meats for which the pink juice is invalid be considered thoroughly cooked when they have been cooked in a specified way, for a specified period, at a specified temperature believed to be capable of inactivating any rinderpest or FMD virus present. Except for certain cubes, slices, and anatomical cuts of meat (for which the pink juice test remains valid, and would continue to be an option, as provided in proposed § 94.4(b)), we propose to require use of a TID, a device inserted into meat before cooking, to ensure that the meat reaches the specified temperature. The validity of any precalibrated TID holds for all cooked meat covered by the regulations, including ground meat.

Further, in response to requests for information from importers who show mounting interest in importing cooked meat from countries where rinderpest or FMD exists, and seek guidance on new product development, and from the agriculture ministries in Uruguay and Argentina interested in cooperating with those persons, we propose to set forth standards for meat processing establishments. These standards would ensure that meat has been handled at all stages of the cooking process to prevent contamination, so that cooked meat from these establishments would present no risk of introducing rinderpest or FMD into the United States.

All of the proposed changes to the regulations are discussed below.

Meat Processing; the Cooking Process

Recently completed studies [1] show that cooking in an oven will inactivate the rinderpest or FMD virus in ground meat, if a combination of precisely defined conditions are met. Those conditions, specified in proposed § 94.4(b)(4), include the shape and size of the meat product, and the oven configuration and cooking procedures used during the processing. The ground meat must be shaped into patties; patties must be no larger than 5 inches in diameter and 1 inch thick; each patty must weigh no more than 115 grams; and fat content must not exceed 30 percent. The ground meat patties must be broiled at 210 °C for at least 133 seconds, then cooked in moist heat (steam heat) in a continuous, belt-fed oven for not less than 20 minutes, to yield an internal exit temperature of at least 99.7 °C.

To ensure that minimum internal exit temperatures are achieved during the moist cooking, certain patties must function as temperature monitor patties. At the beginning of each processing run, before the belt starts moving, temperature monitor patties must be positioned on previously identified cold spots (defined in the following paragraph) along the oven belt. Each monitor patty must contain a TID. If each TID registers a temperature of at least 99.7 °C upon exit, the cooking process has been able to inactivate any traces of the rinderpest or FMD virus, and the ground meat meets our definition of thoroughly cooked.

"Cold spot" is a term used repeatedly in the proposed regulations. It refers to that area in a container (such as a cooking tube or an oven belt) that is last to reach the required temperature. The cold spot (or, on an oven belt, series of cold spots) for each container is experimentally determined before the cooking process begins; once identified, the cold spot for that container remains constant, and may be considered "predetermined."

Proposed § 94.4(b)(5) sets forth processing requirements for ground meat and certain cubes, slices, and anatomical cuts of meat cooked in flexible plastic. With increasing frequency, this cooking method is replacing the time-consuming method of cooking, under retort conditions, in cans, and importers have asked us to specify the processing conditions known to inactivate the rinderpest or FMD virus when meat is cooked in flexible plastic.

Recent studies indicate that these viruses cannot withstand cooking in flexible plastic under specified conditions of weight, cooking tube size, processing method, temperature, and time. For cubes of meat, when at least 50 percent of the cubes are at least 3.8 cubic centimeters after cooking; for slices, when at least 50 percent of the slices are at least 3.8 centimeters wide and measure at least 3.8 centimeters in one of the other two dimensions after cooking; and for anatomical cuts and ground meat, regardless of size, the specified conditions are as follows: The meat product must have a starting temperature of 25 °C or below, as measured by a precalibrated thermocouple, and weigh no more than 5 kilograms and no less than 2.5 kilograms when it is loaded into a cooking tube. Loaded with meat, the tube must be sealed, and the sealed tube cooked in boiling water or in a steam-fed oven for at least 1.75 hours. The meat must have upon exit an internal temperature of no less than 79.4 °C, as measured by a TID, or, if the pink juice test is being performed, as indicated by brown juice expressed from a meat sample taken from the cold spot of the tube.

In addition to these general requirements, which are set forth in the introductory text and paragraphs (b)(5)(i), (ii), and (iii) of proposed § 94.4(b), special requirements apply when most cubes or slices in the cooking tube are below the minimum specified size, if the pink juice test is to be performed.

Proposed § 94.4(b)(5)(i) specifies that if at least 50 percent of the meat cubes in the cooking tube are smaller than 3.8 cubic centimeters, an indicator piece of mass sufficient for a pink juice test to be performed (at least 3.8 cubic centimeters after cooking) must be placed at the cold spot. Proposed § 94.4(b)(5)(ii) specifies that if more than 50 percent of the meat slices are less than 3.8 centimeters wide with a minimum of 3.8 centimeters in either remaining dimension after cooking, an indicator piece of mass sufficient for a pink juice test to be performed (at least 3.8 centimeters wide with a minimum of 3.8 centimeters in either remaining dimension after cooking) must be placed at the cold spot of the tube. Proposed § 94.4(b)(5)(iii) specifies that any piece of meat removed from an anatomical cut after cooking, to be used for the pink juice test, must be of the same size as an indicator cube or slice, and must be removed from the center of the cut, farthest from all exterior points.

Meat Processing Establishment: Criteria for Approval

Because sanitary conditions are necessary to prevent meat from becoming contaminated or recontaminated with rinderpest or FMD at any point in the meat-cooking process, proposed § 94.4(c) requires that a meat processing establishment in a country where rinderpest or FMD exists be approved by the Administrator before

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[1] For information on the studies referred to in this document, see:

1. Vermeulen, P., Huertas, S.M., Urrestarazu, V., Baltar, J., and Brum, J.J. Organoleptic Qualities and Foot-and-Mouth Disease Virus Stability in Beef Patties Processed by Broiler/Continuous Belt Oven Cooking. Journal of Food Protection. (forthcoming).

2. Blackwell, J.H., Nolan, E.J., and Rickansrud, D.A. Total Caloric Input of a Thermal Process as an Index of Lethality for Foot-and-Mouth Disease Virus. Journal of Food Science. 53:185–190. (1988).

3. Blackwell, J.H. and Rickansrud, D.A. Ingredient Effects on the Thermal Inactivation of Foot-and-Mouth Disease Virus in Formulated, Comminuted Meat Products. Journal of Food Science. 54:1479–1484 (1989).

shipment of cooked meat from that establishment to the United States would be allowed. The building and processing standards essential to prevent rinderpest or FMD from being spread within a meat processing establishment are set forth in proposed § 94.4(c)(2), which is discussed below. To enable the Animal and Plant Health Inspection Service (APHIS) to verify the meat processing establishment's continuing compliance with our regulations, we would require that the operator of the establishment enter into a cooperative service agreement with us, stating that all cooked meat processed for importation into the United States will be processed in accordance with our requirements; that a full-time, salaried meat inspection official of the National Government of the exporting country will supervise and later certify that the meat has been processed and examined in accordance with the regulations; and that APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records.

To ensure that the meat processing establishment meets our requirements, proposed § 94.4(c)(2) states that an APHIS representative must conduct an on-site evaluation of the facility before the Administrator's approval can be granted. Once approval has been granted, APHIS representatives would, periodically, conduct on-site inspections, to ensure that all conditions continue to be met. Proposed § 94.4(c)(1)(iv) states that the operator of the establishment must enter into a trust fund agreement with APHIS and be current in paying all costs for an APHIS representative to conduct the required inspections. These costs would include travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). Before the APHIS representative's site inspection, the operator of the processing establishment would be required to deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS representative, including the expenses just stated. As funds from that amount were obligated, a bill for costs incurred based on official accounting records would be issued, to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills would have to be paid within 14 days of receipt.

Requiring payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection services in meat processing establishments.

Proposed § 94.4(c)(1)(i) would require that the operator of the establishment provide APHIS with documentation verifying compliance with the processing requirements set forth in proposed § 94.4(b), along with blueprints of the facilities where the meat is processed and packaged. If the establishment appears equipped to meet our requirements, and the necessary agreements have been signed and the necessary funds deposited (see proposed § 94.4(c)(1)(iii) and (iv)), proposed § 94.4(c)(2) provides that an APHIS representative would conduct an on-site inspection to verify the following:

- The facilities used for processing cooked meat in the meat processing establishment are separate from the facilities used for processing raw meat (precooking, boning, preparation, and curing), with only the terminal end of the oven through which the meat product is delivered at the end of the cooking cycle connecting them; and there is at all times a positive air flow from the cooked to the raw product side. This ensures that the meat product will not be contaminated by airborne sources;
- The cooking equipment has the capacity to cook all meat pieces in accordance with proposed § 94.4(b)(4) or (b)(5). This cooking process removes from the meat all possible reservoirs in which the rinderpest or FMD virus could remain viable during the cooking process;
- Workers who process cooked meat are at all times kept separate from workers who process raw meat, and have, for their exclusive use, a separate entrance, dining areas, toilets, lavatories with cold and hot water, soap disinfectants, paper towels, and baskets for disposal, and changing rooms stocked with the clean clothing and rubber boots into which they must change upon entering the establishment. Workers who process cooked meat and all other persons entering the establishment (except workers who process raw meat, whose entrance into the cooking facilities is prohibited) must wash their hands and change into the clean clothing and boots provided in the changing area before entering the cooking facilities, and must leave this clothing for laundering and disinfecting before exiting from the establishment, regardless of the brevity of the time spent inside or away from the establishment. By separating workers who process cooked meat from workers who process raw meat, we believe that proper sanitation is maintained, precluding the possibility of postprocessing contamination. This requirement is critical to the integrity of the process, because any contaminant introduced into the meat product after the cooking begins would escape detection.

For traceback purposes, we propose to require that original records identifying the source slaughtering facility and date of entry into the processing establishment, and original certification and TID records, be kept for all cooked meat by the full-time salaried meat inspection official of the National Government assigned to the establishment, and be retained for 2 years. These records are necessary to ensure that all prescribed procedures are followed, and that the establishment routinely complies with all APHIS requirements.

Miscellaneous

- Complementing the proposed regulatory changes, discussed above, would be several essentially editorial changes, including the following:
- Definitions of the terms "cold spot," "indicator piece," and "temperature indicator device," which are discussed above, would be added to the list of definitions in § 94.0.
- In § 94.1, two typographical errors would be corrected and an outdated reference to the Panama Canal Zone would be removed.
- The introductory text of paragraph (b) of § 94.4 would be rewritten for editorial purposes only. Its substance would not change.
- In § 94.4, paragraph (b)(2) would state that cooked meat must meet all applicable requirements of the Federal Meat Inspection Act and of the regulations of the Food Safety and Inspection Service, U.S. Department of Agriculture. This cross-reference would introduce no new requirements, but would provide interested persons with useful information.
- In a nonsubstantive editorial change, current footnote 1 of § 94.4 would be replaced by proposed new paragraph (b)(3) in § 94.4, which would restate that heat-sterilized meat in a hermetically sealed container ("canned product") is exempt from the requirements in § 94.4. For consistency with the terminology used elsewhere in this chapter, we would refer to the heat-sterilized meat in a hermetically sealed container as "canned product," as defined in 9 CFR § 318.300(d). Because meat sterilized by heat in a hermetically sealed container has been rendered free of the microorganisms capable of spreading rinderpest or FMD, it

continues to be exempt from the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since most of the meat processing establishments expressing interest in exporting cooked ground meat already have the capacity to meet U.S. requirements, the proposed regulations would be unlikely to increase the cost burden on foreign exporters or, indirectly, on U.S. importers. The only additional costs that the operators of the meat processing establishments would incur would be those covering the expenses for an APHIS representative to inspect the establishment at approximately 2-year intervals. Approximately $4,000 is the amount expected to cover the cost of one inspection by an APHIS veterinarian, including travel, salary, subsistence, administrative overhead, and other incidental expenses. Compared to the potential value of exports and new business, the effect of this additional cost is minimal.

In recent years, moderate amounts of processed meat, particularly various cuts of cooked beef, have been imported into the United States from countries where rinderpest or FMD exists. Various cuts of cooked beef have been particularly popular. For example, approximately 45 million pounds of cooked beef were imported in 1990 from three countries (Argentina, Brazil, and Uruguay). In comparison, approximately 621 million pounds of cooked beef and 631 million pounds of cooked ground meat were produced in the United States.

At present, because of the inapplicability of the pink juice test to certain meat products, there are no commercial importations into the United States of cooked ground meat from countries where rinderpest or FMD exists. However, several importers have advised us of their interest in importing cooked ground beef if safeguards exist to ensure the meat can be imported safely, without risk of rinderpest- or FMD-contamination. This would be possible under the proposed regulations. Of the interested importers, one would be considered a small entity. This importer anticipates a steady but small volume of shipments of cooked ground beef from countries where rinderpest or FMD exists.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.0, the following definitions would be added, in alphabetical order, and the definition of *Thoroughly cooked* would be revised, to read as follows:

§ 94.0 Definitions.

* * * * *

Cold spot. The area in a flexible plastic cooking tube or other type of container loaded with meat product, or the areas at various points along the belt in an oven chamber, slowest to reach the required temperature during the cooking process. The cold spot(s) for each container is experimentally determined before the cooking process begins, and once identified, remains constant.

* * * * *

Indicator piece. A cube or slice of meat to be used for the pink juice test, required to meet minimum size specifications.

* * * * *

Temperature indicator device (TID). A precalibrated temperature-measuring instrument containing a chemical compound activated at a specific temperature (the melting point of the chemical compound) identical to the processing temperature that must be reached by the meat being cooked.

Thoroughly cooked. Heated sufficiently to inactivate any pathogen that may be present, as indicated by the required TID or pink juice test.

* * * * *

§ 94.1 [AMENDED]

3. In § 94.1, paragraph (c)(1) would be amended by removing "maat" and adding "meat" in its place.

§ 94.4 [AMENDED]

4. In § 94.4, footnote 1 would be removed; paragraphs (b) introductory text, (b)(1) and (b)(2) would be revised; paragraph (b)(3) would be redesignated as paragraph (b)(7); footnotes 2 and 3 would be redesignated as footnotes 1 and 2; paragraph (b)(4) would be

VOL 58 ISS 135 JL 16 1993 UMI

revised; and paragraphs (b)(5), (b)(6) and (c) would be added, to read as follows:

§ 94.4 Cured or cooked meat from countries where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) The importation of cooked meat from ruminants or swine originating in any country where rinderpest or foot-and-mouth disease exists, as designated in § 94.1, is prohibited, except as provided in this section.

(1) The cooked meat must be boneless and must be thoroughly cooked.

(2) The cooked meat must have been prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 610 *et seq.*) and the regulations in 9 CFR 327.2; must meet all other applicable requirements of the Federal Meat Inspection Act and regulations thereunder (9 CFR chapter III); and must have been approved by the Administrator in accordance with paragraph (c) of this section.

(3) Canned product (canned meat), as defined in § 318.300(d) of this chapter, is exempt from the requirements in this section.

(4) *Ground meat cooked in an oven.* Ground meat must be shaped into patties no larger than 5 inches in diameter and 1-inch thick. Each patty must weigh no more than 115 grams, with fat content no greater than 30 percent. These patties must be broiled at 210 °C for at least 133 seconds, then cooked in moist heat (steam heat) in a continuous, belt-fed oven for not less than 20 minutes, to yield an internal exit temperature of at least 99.7 °C, as measured by temperature indicator devices (TID's) placed in temperature monitor patties positioned, before the belt starts moving through the oven, on each of the predetermined cold spots along the oven belt. TID's must be used at the beginning of each processing run (once per batch).

(5) *Meat cooked in plastic.* The ground meat, cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) must have a starting temperature of 25 °C or below, as measured by a precalibrated thermocouple; must weigh no more than 5 kilograms and no less than 2.5 kilograms; and must be loaded and sealed into a flexible nylon cooking tube. The meat must be cooked in boiling water or in a steam-fed oven to reach a minimum internal temperature of 79.4 °C at the cold spot after cooking for at least 1.75 hours. Thoroughness of cooking must be determined by the TID registering at least 79.4 °C at the cold spot, or by the pink juice test, as follows:

(i) *Cubes of meat.* At least 50 percent of meat pieces per tube must be 3.8 cubic centimeters or larger after cooking or, if more than 50 percent of meat pieces per tube are smaller than 3.8 cubic centimeters after cooking and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 cubic centimeters or larger after cooking) must have been placed at the cold spot of the tube.

(ii) *Slices of meat.* At least 50 percent of the slices of meat must be a minimum of 3.8 centimeters wide, and measure a minimum of 3.8 centimeters in either remaining dimension after cooking or, if more than 50 percent of meat pieces are smaller than 3.8 centimeters wide, and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 cubic centimeters or larger after cooking) must be placed at the cold spot of the tube.

(iii) *Anatomical cuts of meat.* An indicator piece removed from an anatomical cut of meat after cooking must be removed from the center of the cut, farthest from all exterior points and, if a cube, be a minimum of 3.8 cubic centimeters and, if a slice, be a minimum of 3.8 centimeters in two dimensions, for performance of the pink juice test.

(6) The cooked meat must be accompanied by a certificate issued by an official of the national government of the country of origin, who is authorized to issue the foreign meat inspection certificate required by § 317.4 of this title, stating that such meat has been prepared in accordance with paragraphs (b)(1) through (b)(5) of this section. Upon arrival of the cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

* * * * *

(c) *Meat processing establishment; standards.* (1) Before the Administrator will approve a meat processing establishment for export shipment of cooked meat to the United States, the Administrator must determine:

(i) That the meat processing establishment has furnished APHIS with a description of the process used to inactivate rinderpest or FMD virus that may be present in meat intended for export to the United States, and with blueprints of the facilities where this meat is cooked and packaged;

(ii) That an APHIS representative has inspected the establishment and found that it meets the standards set forth in paragraph (c)(2) of this section;

(iii) That the operator of the establishment has signed a cooperative service agreement with APHIS, stating: (A) That all cooked meat processed for importation into the United States will be processed in accordance with the requirements of this part; (B) That a full-time, salaried meat inspection official of the National Government of the exporting country will supervise the processing (including certification of the cold spot) and examination of the product, and certify that it has been processed in accordance with this section; and (C) That APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records; and

(iv) That the operator of the establishment has entered into a trust fund agreement with APHIS and is current in paying all costs for an APHIS representative to inspect the establishment for initial evaluation, and periodically thereafter, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, before the APHIS representative's site inspection, the operator of the processing establishment must deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS representative, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued, to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(2) *Establishment.* An APHIS representative will conduct an on-site evaluation, and subsequent inspections, as provided in § 94.4(c)(1), if the following conditions are met:

(i) The facilities used for processing cooked meat in the meat processing establishment are separate from the facilities used for processing raw meat (precooking, boning, preparation, and curing), with only the terminal end of the oven through which the meat product is delivered at the end of the cooking cycle connecting them; and there is at all times a positive air flow from the cooked to the raw product side;

(ii) The cooking equipment has the capacity to cook all meat pieces in accordance with § 94.4(b)(4) or (b)(5);

(iii) Workers who process cooked meat are at all times kept separate from workers who process raw meat, and

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Done in Wa
July 1993.

Eugene Brans
Assistant Sec
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DEPARTME

Federal Avia

14 CFR Part

[Docket No. 9

Airworthines
Douglas Mo
Airplanes

AGENCY: Fed
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ACTION: Noti
(NPRM).

SUMMARY: Th
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have, for their exclusive use: A separate entrance, dining area, toilets, lavatories with cold and hot water, soap, disinfectants, paper towels, clothes hampers and waste baskets for disposal, and changing rooms stocked with the clean clothing and rubber boots into which all persons must change upon entering the establishment. Workers and all other persons entering the establishment must wash their hands and change into the clean clothing and boots provided in the changing rooms before entering the cooking facilities, and must leave this clothing for laundering and disinfecting before exiting from the establishment, regardless of the amount of time spent inside or away from the establishment;

(iv) Original records identifying the slaughtering facility from which the meat was obtained and the date the meat entered the meat processing establishment, and original certification and TID records, must be kept for all cooked meat by the full-time salaried meat inspection official of the National Government of the exporting country assigned to the establishment, and must be retained for 2 years.

Done in Washington, DC, this 12th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16904 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–67–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require replacing the anti-skid control unit for the center landing gear. This proposal is prompted by three reports of failure of the center landing gear drag link during autobrake landings. The actions specified by the proposed AD are intended to prevent failure of the center gear drag link, which could result in extensive damage to the fuselage structure.

DATES: Comments must be received by September 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kevin Kuniyoshi, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5337; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–67–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

There have been three reports of center landing gear drag link failures during autobrake landings on McDonnell Douglas Model MD–11 series airplanes. In each occurrence, the failed drag link allowed the center landing gear to swing aft and strike the fuselage, resulting in extensive damage. Subsequent analysis conducted by the manufacturer and the supplier of the anti-skid control unit indicated that these failures were caused by a landing gear and brake system instability. The instability was attributed to a combination of factors, including autobrake application of brake pressure prior to nose gear touchdown. This condition, if not corrected, could lead to failure of the center gear drag link, which could cause extensive damage to the fuselage structure.

The FAA has reviewed and approved McDonnell Douglas MD–11 Service Bulletin 32–30, dated March 3, 1993, that describes procedures for replacing the anti-skid control unit for the center landing gear. Such replacement will allow use of the autobrake by minimizing the possibility of center gear drag link failure by preventing brake pressure application prior to nose gear touchdown.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacing the anti-skid control unit for the center landing gear. The action would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 86 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer to the operator at no cost. Based on these figures, the total cost impact of the

proposed AD on U.S. operators is estimated to be $1,760, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 93–NM–67–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 32–30, dated March 3, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential failure of the center gear drag link, which could cause extensive damage to the fuselage structure, accomplish the following:

(a) Within 9 months after the effective date of this AD, replace the anti-skid control unit, part number 6005304–1, with a new anti-skid control unit, part number 6005304–2, in accordance with McDonnell Douglas MD–11 Service Bulletin 32–30, dated March 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 1993.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–16852 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AWP–10]

Proposed Alteration of VOR Federal Airway V–363; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter VOR Federal Airway V–363 by removing a segment of the airway from the Mission Bay, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Krauz intersection. This segment is not usable because of the restrictions on the Mission Bay VORTAC and because the Santa Ana, CA, Very High Frequency Omnidirectional Range (VOR) was decommissioned in 1990. A Notice to Airmen (NOTAM) has been in effect since 1990 indicating that this segment is unusable. Removing this segment would allow this NOTAM to be cancelled and would eliminate chart clutter.

DATES: Comments must be received on or before September 3, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 93–AWP–10, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 710 to remove a segment of V–363 from the Mission Bay, CA, VORTAC to the Krauz intersection. This segment is not usable because of the restrictions on the Mission Bay VORTAC and because the Santa Ana, Ca, VOR was decommissioned in 1990. A NOTAM has been in effect since 1990 indicating that this segment is unusable. Removing this segment would allow this NOTAM to be canceled and would eliminate chart clutter. Domestic VOR Federal airways are published in Section 71.123 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–363 [Revised]

From INT Pomona, CA, 179°T(164°M) and Seal Beach, CA, 135°T(120°M) radials; to Pomona.

* * * * *

Issued in Washington, DC, on July 6, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–16909 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 92–AWP–15]

Proposed Alteration and Subdivision of Restricted Area R–2510; EL Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would subdivide Restricted Area R–2510, El Centro, CA, into two separate areas designated as R–2510A and R–2510B. This subdivision would facilitate the release of portions of the existing restricted area for public access when military activities permit and return a portion of the airspace to public use.

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 92–AWP–15, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3178.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons

VOL 58 ISS 135 JL 16 1993 UMI

interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to alter the existing restricted area R–2510, El Centro, CA, by subdividing it into two separate areas designated as R–2510A and R–2510B. R–2510A would extend from the surface to 15,000 feet mean sea level (MSL) and would reflect the current routine utilization of R–2510. R–2510B would extend from 15,000 feet MSL to FL 400 and would be activated by a Notice to Airmen (NOTAM) on weekends. R–2510B would have a lower altitude ceiling (FL 400) than R–2510 (FL 500). The lateral boundaries for R–2510A and R–2510B would remain encompassed with the existing boundaries for R–2510. Airspace would be released to the flying public for an additional hour each day in R–2510A by shortening the time of designation from "0600–2300 local time daily; other times by NOTAM at least 24 hours in advance" to "0700–2300 local time daily; other times by NOTAM at least 2 hours in advance." For R–2510B, airspace above 15,000 feet MSL would be released to the flying public an additional 87 hours per week by changing the time of designation to "by NOTAM 0700–2300 local time weekends when activated at least 2 hours in advance". This proposed rule would change the time of designation from "by NOTAM at least 24 hours in advance" to "at least 2 hours in advance" and would allow for more efficient real-time coordination of the airspace between the Los Angeles Air Route Traffic Control Center and the using agency at the Marine Corps Air Station, Yuma, AZ. This real-time coordination of airspace creates an advantageous environment for nonparticipating aircraft wishing to transit the restricted areas. The coordinates for this airspace docket are based on North American Datum 83. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule"under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Pat 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

2. § 73.25 is amended as follows:

R–2510 El Centro, CA [Remove]

R–2510A El Centro, CA [New]

Boundaries: Beginning at lat. 32°59′35″ N., long. 115°43′33″ W.; to lat. 32°55′35″ N., long. 115°40′18″ W.; to lat. 32°54′04″ N., long. 115°40′18″ W.; thence counterclockwise along a 4.3-mile radius circle centered at lat. 32°49′45″ N., long. 115°40′18″ W.; to lat. 32°50′05″ N., long. 115°45′23″ W.; to lat. 32°50′05″ N., long. 115°55′03″ W.; to lat. 32°55′50″ N., long. 115°55′03″ W.; to lat. 33°01′20″ N., long. 116°02′18″ W.; to lat. 33°06′35″ N., long. 115°56′53″ W.; to lat. 33°06′35″ N., long. 115°51′15″ W.; to the point of beginning.

Designated altitudes: Surface to 15,000 feet MSL.

Time of designation: 0700–2300 local time daily; other times by NOTAM at least 2 hours in advance.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: U.S. Marine Corps, Commanding Officer, Marine Corps Air Station, Yuma, AZ.

R–2510B El Centro, CA [New]

Boundaries: Beginning at lat. 32°55′35″ N., long. 115°40′18″ W.; to lat. 32°55′50″ N., long. 115°55′03″ W.; to lat. 33°01′20″ N., long. 116°02′18″ W.; to lat. 33°06′35″ N., long. 115°56′53″ W.; to lat. 33°06′35″ N., long. 115°51′15″ W.; to lat. 32°59′35″ N., long. 115°43′33″ W.; to the point of beginning.

Designated altitudes: 15,000 feet MSL to FL 400.

Time of designation: By NOTAM 0700–2300 local time weekends, when activated at least 2 hours in advance.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: U.S. Marine Corps, Commanding Officer, Marine Corps Air Station, Yuma, AZ.

Issued in Washington, DC, on July 7, 1993

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–16910 Filed 7–15–93; 8:45 am]

BILLING CODE 7910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 930507–3107]

RIN 0691–AA20

Direct Investment Surveys; Raising the Exemption Level of the BE–15(LF) Long Form of the Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth a proposed rule to amend regulations by raising the exemption level for filing the long form of the BE–15, Annual Survey of Foreign Direct Investment in the United States. The survey is a mandatory survey conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the authority of the International Investment and Trade in Services Survey Act.

Under this proposed rule, the exemption level for filing the long form—Form BE–15(LF)—would be raised from $20 million to $50 million. Thus, foreign-owned firms with assets, sales, and net income between $20 million and $50 million that previously had to file the long form will now file the more abbreviated short form (Form BE–15(SF)). The survey's overall exemption level below which no reporting is required will remain at $10 million.

This change will not reduce the number of respondents required to report in the survey, but it will reduce significantly the reporting burden on the estimated 1,600 U.S. affiliates in the $20 million to $50 million range.

DATES: Comments on the proposed rule will receive consideration if submitted in writing on or before August 30, 1993.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of

Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005, or, after July 18, to room 7006, 1441 L Street, NW., Washington, DC 20005. Comments received will be available for public inspection in room 1008, Tower Building, or, after July 18, in room 7006, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: The BE–15, Annual Survey of Foreign Direct Investment in the United States, is part of BEA's regular data collection program for foreign direct investment in the United States. The survey is mandatory and is conducted under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108, as amended). It obtains annual data on the financial structure and overall operations of nonbank U.S. affiliates of foreign companies. The data are needed to measure, monitor changes in, assess the impact of, and make informed policy decisions on foreign direct investment in the United States.

The proposed changes will bring reporting by nonbank U.S. affiliates on the annual survey into closer conformity with their reporting on the 1992 BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The BE–12 is BEA's quinquennial census of foreign direct investment in the United States; it collects data that are intended to cover the universe of U.S. affiliates. The BE–15 annual survey is a sample survey covering only larger nonbank U.S. affiliates—those with assets, sales, or net income that exceed $10 million. The sample data reported in this survey will be linked to data from the BE–12 benchmark survey in order to derive annual universe estimates of financial and operating data for non-benchmark years.

The exemption level for a given survey is the level of a U.S. affiliate's assets, sales, or net income below which reporting is not required. (A U.S. affiliate is a U.S. business enterprise in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest of an unincorporated business enterprise.)

Under this proposed rule, the overall exemption level for the annual survey will not change. However, the exemption level for filing the long form will be raised from $20 million to $50 million—the level used in the BE–12 benchmark survey for determining whether a U.S. affiliate must file a long form (BE–12(LF)) or a short form (BE–12(SF)). As a result of this proposed change, approximately 1,600 reporters will file on the short form rather than on the long form, significantly reducing their burden and the processing burden on BEA.

The final rule, when published, will be effective with the BE–15 annual survey covering a U.S. affiliate's 1993 fiscal year. The 1993 forms will be mailed out in March 1994 and will be due May 31, 1994. The last BE–15 survey conducted covered the year 1991. (It should be noted that a BE–15 annual survey is not conducted in a year, such as 1992, when a BE–12 benchmark survey is conducted.)

A copy of the proposed survey forms may be obtained from: Chief, Direct Investment in the United States Branch, International Investment Division, BE–50(IN), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0547.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

Public reporting burden for this collection of information is estimated to vary from 1 to 4 hours per short form response and from 4 to 550 hours per long form response, with an overall average of 17 hours for both the short and long forms. This includes time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, may be sent to the Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, Washington, DC 20503.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report in the survey because their assets, sales, and net income are each equal to or less than the $10 million exemption level below which reporting is not required. Furthermore, by raising the exemption level for reporting on the long form, this rulemaking will ease the burden on firms between $20 million and $50 million that previously reported on the long form but will now report on the more abbreviated short form. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Foreign investment in the United States, Statistical data, Reporting requirements.

Dated: May 3, 1993.

J. Steve Landefeld,

Deputy Director.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. Section 806.15(i) is amended by deleting "exceeds $20,000,000 (positive

VOL 58 ISS 135 JL 16 1993 UMI

or negative); a short form, Form BE–15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds $10,000,000 but no one item exceeds $20,000,000 (positive or negative)." and inserting in its place "exceeds $50,000,000 (positive or negative); a short form, Form BE–15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds $10,000,000 but no one item exceeds $50,000,000 (positive or negative)."

[FR Doc. 93–16839 Filed 7–15–93; 8:45 a.m.]
BILLING CODE 3510–EA–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 119, NJ–9–1–5520; FRL–4679–8]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes approval of three requests from New Jersey to revise its State Implementation Plan related to the control of volatile organic compounds from stationary sources. EPA proposes to find that the State has met four commitments made in its 1983 ozone SIP. These include the adoption of provisions regulating automobile refinishing, further industrial controls, and the application of reasonably available control technology to small surface coating and industrial sources. New Jersey also regulates all the Group III Control Techniques Guidelines source categories required by the Clean Air Act.

This proposed rule specifically concerns revisions to the following State regulations: Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds"; Subchapter 8 "Permits and Certificates, Hearings, and Confidentiality"; Subchapter 17 "Control and Prohibition of Air Pollution by Toxic Substances"; Subchapter 23 "Prevention of Air Pollution by Architectural Coatings and Consumer Products"; Subchapter 25 "Control and Prohibition of Air Pollution from Vehicular Fuels"; and Subchapter 3 "Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations."

DATES: Comments must be submitted on or before August 16, 1993.

ADDRESSES: All comments should be addressed to:

William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034, New York, New York 10278

New Jersey Department of Environmental Protection and Energy, Office of Energy, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

I. Background

In a revision to the New Jersey State Implementation Plan (SIP) for ozone, which was approved by the Environmental Protection Agency (EPA) on November 9, 1983 (48 FR 51472), the State committed to adopt a number of measures to control the emissions of volatile organic compounds (VOCs) into the ambient air. Among these were controls on source categories covered by EPA's Control Techniques Guidelines (CTGs), controls on larger sources not covered by a CTG, and other measures considered as "extraordinary." Due in part to New Jersey's failure to meet all of its commitments, in a May 26, 1988 letter EPA informed the Governor of New Jersey that the New Jersey SIP was substantially inadequate to attain the national ambient air quality standards for ozone and carbon monoxide. In a follow-up letter of June 14, 1988 to the New Jersey Department of Environment Protection (now named New Jersey Department of Environment Protection and Energy (NJDEPE)) EPA identified the basis for its finding of SIP inadequacy and described the specific regulatory deficiencies needing correction. These deficiencies included regulations New Jersey committed to adopt, but did not, and regulations adopted by New Jersey which were incomplete or defective (collectively, these are referred to as "RACT[1] fix-up" deficiencies).

Subsequently, the Clean Air Act Amendments of 1990 were enacted on November 15, 1990.[2] Under section 182(a)(2)(A) of the Act, areas designated nonattainment before enactment of the 1990 Amendments and which were classified as marginal or above as of enactment are required to meet a RACT fix-up requirement. Such areas were required by May 15, 1991 to adopt RACT controls, as they were required to under pre-amended section 172(b) and as that requirement was interpreted in pre-amendment guidance.[3]

Since all of New Jersey is classified from marginal to severe nonattainment,[4] the entire State is subject to the RACT fix-up requirement and the May 15, 1991 deadline. In a January 30, 1991 letter to NJDEPE, EPA identified the specific deficiencies and missing regulations which the Act required to be corrected by May 15, 1991.

State Submittals

In order to fulfill its SIP commitments, the requirements of the May 26, 1988 SIP call, and the requirements of the Clean Air Act, NJDEPE made three SIP revision submittals to EPA: on March 31, 1987, December 7, 1989 and March 13, 1992. All three submissions contained adopted revisions to Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Compounds," of Chapter 27, Title 7 of the New Jersey Administrative Code. The March 13, 1992 submittal also included Subchapter 8, "Permits and Certificates, Hearings, and Confidentiality;" Subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances;" Subchapter 23, "Prevention of Air Pollution by Architectural Coatings and Consumer Products;" Subchapter 25, "Control and Prohibition of Air Pollution from Vehicular Fuels;" and Subchapter 3, "Air Test Method 3: Sampling and Analytic Procedures for

[1] RACT=Reasonably Available Control Technology.

[2] Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

[3] Among other things, the pre-amendment guidance consists of: the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Techniques Guidelines (CTGs).

[4] New Jersey retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. (56 FR 56694)

the Determination of Volatile Organic Compounds from Source Operations."

Although the first two submittals predated the 1990 Amendments, because the State still must meet certain earlier requirements, EPA is reviewing these two submittals as well as the third to determine whether the RACT fix-up requirement is met.

EPA determined that the March 13, 1992 submittal was complete on April 20, 1992. Because this was before the April 22, 1993 deadline for application of sanctions under section 179(a), the need for sanctions was removed. Further, final approval of this SIP revision will also remove the requirement for a federal implementation plan to be adopted.

Subject of this Proposed Rulemaking

This notice will discuss and propose action on some of the changes that have occurred in Subchapter 16 between the version currently approved in New Jersey's SIP (effective March 1, 1982) and the March 13, 1992 version. Because EPA has already approved two control measures contained in Subchapter 16, Stage II gasoline vapor control program (56 FR 12450, March 26, 1991) and Barge and Tanker loading control program (57 FR 53440, November 10, 1992), these will not be discussed in this notice.

In summary, New Jersey's SIP revision submittals address the following categories of emission sources and regulatory changes:

Gasoline stations (tighter Stage I requirements);
External floating roof tanks;
Major and minor non-CTG sources (previously unregulated):
- Fabric printing operations,
- Wood furniture surface coating,
- Leather surface coating,
- Glass surface coating,
- Tablet coating, and
- Urethane surface coating;

Graphic arts emission limit form changes;
Leaks from natural gas/gasoline processing plants;
Leaks from synthetic organic chemical and polymer manufacturing plants;
Polymer resin manufacture (PPP);
Air oxidation at synthetic organic chemical manufacturing industry (SOCMI);
Large petroleum dry cleaners; and
Miscellaneous changes to various Sections.

The State was required to adopt regulations for all CTG source categories for which EPA published a CTG document. The revisions to Subchapter 16 address all of the Group III CTGs. Therefore, because earlier revisions addressed Group I and II CTG sources, all source categories for which EPA has published a CTG are now addressed.

An additional requirement was for states to adopt RACT control levels for non-CTG sources that had potential emissions of greater than 100 tons per year. For these non-CTG source categories, it was necessary for New Jersey to determine the appropriate degree of control representing RACT. This involved an evaluation of the source category, available control techniques, other applicable regulations and comments from the affected industry. New Jersey historically has not made a distinction between large and small sources, except to exempt certain small sources in certain cases. Therefore, Subchapter 16 regulates all facilities containing these non-CTG source categories.

The State also made changes to various other Sections of Subchapter 16 affecting different source categories. These involved changing the format of emission limitations, tightening emission limitations and making various administrative changes.

II. Findings—Subchapter 16

A. 16.1 Definitions.

The expression "volatile organic substances (VOS)" was changed to "volatile organic compound (VOC)" and the definition was changed to reflect EPA's definition of VOC (See February 3, 1992, 57 FR 3941). Instead of using vapor pressure limits as a means of defining VOC, it now is defined as an organic compound which participates in atmospheric photochemical reactions. The new definition conforms with EPA's except that New Jersey has chosen not to exempt certain compounds from the definition of VOC that EPA identified as negligibly photochemically reactive. These compounds are: ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); and certain perfluorocarbon compounds. EPA acknowledges New Jersey's ability to adopt regulations that are more stringent than federal guidelines. However, for purposes of the SIP, EPA will not allow reductions from these compounds to be credited towards attainment of the national ambient air quality standard for ozone and, therefore, will exclude them from any SIP related determinations. It should be noted that New Jersey is considering exempting these compounds and may change the definition.

Other definitions have been revised or added which are consistent with EPA's policy and guidance. EPA is proposing to find Section 16.1 approvable.

B. 16.2 Storage of Volatile Organic Compounds

Section 16.2 previously regulated external floating roof tanks with capacities of 40,000 gallons or greater. The control requirements have now been extended to such tanks with capacities of 20,000 gallons or greater that store VOCs with a vapor pressure of 1.0 pounds per square inch absolute or greater. This applicability is more inclusive than EPA's guidance.

In addition, a recordkeeping provision covering all the sources regulated by Section 16.2 was added to ensure that adequate data is maintained to determine whether a source is in compliance with the applicable requirements. EPA is proposing to find the above changes to Section 16.2 approvable.

C. 16.3 Transfer Operations

Section 16.3 regulates the transfer of gasoline in the distribution system (Stage I vapor controls). These requirements were previously approved. However, during the implementation and enforcement of these requirements, problems arose which could reduce their effectiveness. NJDEPE has made the following revisions.

1. Submerged fill pipe

Section 16.3 previously allowed the use of portable submerged fill pipes. Due to the difficulty of insuring that such portable pipes would be used, Section 16.3(a) now requires that all submerged fill pipes be permanently affixed.

2. Gasoline delivery trucks

As a result of an oversight, the original regulation did not require the collection of gasoline vapors contained in the delivery truck should the vehicle's next load be something other than gasoline. Section 16.3 has been

extended to require that vapor laden vehicles can only be filled if the vapor inside is collected. In addition, other amendments now require delivery trucks to be repaired in fifteen days if found not to be vapor tight, and they must now carry proof of inspection.

3. Gasoline loading facilities

Section 16.3 has been revised to remove an exemption from controls for gasoline bulk plants which loaded 4,000 gallons per day or less of gasoline. This expands the applicability and will result in additional VOC reductions.

4. Gasoline Transfer

While Section 16.3 contained the requirement that a vapor recovery system must reduce emissions by no less than 90 percent, it was unclear under what conditions this requirement should be demonstrated. A vapor recovery system must now be tested under conditions typical for the ozone season.

5. Minor changes

A recordkeeping provision was added to ensure that adequate data is maintained to determine whether a source is in compliance with the applicable requirements. Various minor changes in Section 16.3 have been made which are consistent with EPA's policy and guidance.

EPA is proposing to find all of these changes to Section 16.3 approvable.

D. 16.4 - Open Top Tanks and Surface Cleaners

Section 16.4 regulates the use of open top tanks and surface cleaners. This primarily deals with degreasing operations. NJDEPE has clarified the control efficiency required of unheated conveyorized surface cleaners and conveyorized vapor surface cleaners. In addition, two new control requirements have been added. Heated open top tanks with flushing wands are now required to minimize the formation of VOC droplets or mist. Heated conveyorized surface cleaners operated at a temperature lower than the boiling point of the contained VOC are required to be equipped with vapor control systems capable of reducing emissions by 85 percent by volume.

These revisions are consistent with EPA's guidance and EPA is proposing to approve them.

E. 16.5 Surface Coating and Graphic Arts Operations

1. Major and Minor Non-CTG Sources

a. Fabric printing operations. Section 16.5 (f)(3) and Table 3D regulate fabric printing, a non-CTG category. Emission limits included under graphic arts for this source category include either a pounds of VOC per gallon (lbs VOC/gal) emission limitation or a 70% collection/90% destruction requirement. EPA is proposing to accept New Jersey's determination that these emission limits represent RACT and is proposing to approve them.

b. Wood furniture surface coating. Section 16.5(h) and Table 3E regulate the surface coating of wood furniture such as kitchen cabinets, household and office furniture, a non-CTG source category. Table 3E specifies the maximum allowable VOC content per volume of coating minus water for the following coatings:

Type of operation	VOC emission limit (pounds per gallon)
Semitransparent stains	6.8
Wash coats	6.1
Opaque stains	4.7
Sealers	5.6
Pigmented coatings	5.0
Clear topcoats	5.6

In addition, Section 16.5(h) requires the use of certain coating application equipment. For facilities emitting less than 50 tons of VOC per year, each coating must be applied using airless, air-assisted airless, or heated airless spray techniques. Other application methods can be used if they are demonstrated to achieve at least 40 percent transfer efficiency. For facilities emitting 50 tons of VOC per year or greater, each coating must be applied using airless, air-assisted airless, heated airless, electrostatic spray techniques or flat line processes. Other application methods can be used if they are demonstrated to achieve at least 65 percent transfer efficiency.

EPA is required by the Clean Air Act to develop a CTG for wood furniture manufacturing by November 15, 1993. New Jersey has committed to reviewing the CTG upon its issuance and revising these requirements as appropriate. EPA is proposing to accept New Jersey's determination that these emission limits represent RACT and is proposing to approve them.

c. Leather surface coating. Section 16.5, Table 3B regulates the application of any surface coating formulation to a leather substrate, a non-CTG source category. Table 3B specifies a maximum allowable emissions per volume of coating minus water of 5.8 pounds of VOC per gallon. EPA is proposing to accept New Jersey's determination that this emission limit represents RACT and is proposing to approve it.

d. Glass surface coating. Section 16.5 and Table 3B. address glass bulb coating operations, a non-CTG source category. Section 16.5 and Table 3B, Group II, contains an emission limitation of 3.0 pounds of VOC per gallon coating minus water. EPA is proposing to accept New Jersey's determination that this emission limit represents RACT and is proposing to approve it.

e. Tablet coating. Section 16.5, Table 3B addresses tablet coating operations, a non-CTG category that has been specifically excluded from other CTG categories, such as the manufacture of synthesized pharmaceutical products and other coating operations. Table 3B specifies a maximum allowable emissions per volume of coating minus water of 5.5 pounds of VOC per gallon. This is the same limit used by other states that regulate this source category. EPA is proposing to accept New Jersey's determination that this emission limit represent RACT and is proposing to approve it.

f. Urethane coating and printing. Urethane coating and printing was previously not regulated by a CTG. NJDEPE revised Section 16.5 to include an emission limitation of 3.8 pounds of VOC per gallon of coating minus water for urethane coating and printing. EPA is proposing to accept New Jersey's determination that this emission limit represents RACT and is proposing to approve it.

g. Motor vehicle refinishing. Section 16.5, Table 3A contains limits for automobile refinishing operations, a non-CTG category. Table 3A specifies a maximum allowable emissions of 6.0 pounds of VOC per gallon minus water for base coat, 4.4 pounds of VOC per gallon minus water for clear coat, and 5.0 pounds of VOC per gallon minus water for all other coatings. These limits are in the same range as other state regulations for this source category. EPA is proposing to accept New Jersey's determination that these emission limits represent RACT and is proposing to approve them.

2. Coating Rate Exclusion in Section 16.5

The 1983 New Jersey SIP contained a commitment to lower the coating rate exclusions contained in Section 16.5. Specifically, the commitment involved halving the exclusion rates for industrial surface coating operations. Section 16.5 has now been revised to include these lower exclusion rates. EPA is proposing to approve these lower exclusion rates and find that New Jersey fulfilled its commitment.

3. Graphic Arts—Changes in Emission Limit Form

Section 16.5 has been modified to specify an emission limit of 2.9 lbs VOC/gal of ink minus water as applied for graphic arts operations instead of specifying a volume percent nonvolatiles emission limit. Section 16.5(f) still retains collection/destruction efficiency standards should a source choose to use add-on controls. The new emission limit in Section 16.5, Table 3D applies to all graphic arts operations. This limit is consistent with EPA guidance and EPA is proposing to approve it.

4. Emission Calculations

Section 16.5 has been modified to contain specific equations and procedures for determining compliance with the applicable emission standards for the various control options a source could select. This includes situations where add-on controls may be used to meet "state of the art" requirements and where sources average emissions from different coatings. All calculations are done on a "solids-as-applied" basis. These equations are consistent with EPA policy and guidance. EPA is proposing to approve these compliance procedures.

5. Mathematical Combination "Bubble" Provisions

Section 16.5(a) previously contained generic provisions allowing for the mathematical combination of VOC emissions or "bubble" provisions. These provisions were not consistent with EPA's Emission Trading Policy (51 FR 43814, December 4, 1986) because New Jersey had not attained the national ambient air quality standard for ozone by December 31, 1987 and its SIP was found to be substantially inadequate. New Jersey decided to eliminate these bubble provisions as a control option. This addresses EPA's concerns and EPA proposes to approve this change.

6. Recordkeeping for Source Operations

Section 16.5 has been revised to expand the requirements for sources subject to the control requirements of Section 16.5 to maintain records necessary to determine compliance. These provisions are consistent with EPA policy and guidance. EPA is proposing to approve them.

7. Capture Efficiency Test Methods

One of the deficiencies that was identified in EPA's 1988 SIP call letter was the lack of test methods for measuring capture efficiency. NJDEPE did not include specific test methods in its submittals. However, general procedures exist which permit NJDEPE to specify capture efficiency test methods when needed to determine compliance. Subchapter 16 now requires such test methods to be approved by NJDEPE and EPA. Since EPA is still resolving certain issues with respect to the capture efficiency test methods, EPA is not at this point identifying lack of specific methods as grounds for a regulation's disapproval or the imposition of sanctions. However, EPA notes that the capture efficiency test method is a required part of this rule; the Agency will take further action on any future State submittal or failure of the State to submit a capture efficiency test method.

F. 16.6 Source Operations Other Than Storage Tanks, Transfers, Open Top Tanks, Surface Coaters and Graphic Arts

1. Group III CTGs

a. Leaks from natural gas/gasoline processing plants. Section 16.6(g) addresses the CTG "Control of Volatile Organic Compound Leaks from Natural Gas/Gasoline Processing Plants." It applies the same controls to the same facilities and emission points as recommended in the CTG. Emission limits, testing, repair and recordkeeping requirements are consistent with the CTG. EPA is proposing to approve this Section.

b. Leaks from synthetic organic chemical & polymer manufacturing plants. Section 16.6(h) addresses the CTG "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment." Appendix I contains the same chemicals and polymers recommended to be controlled by the CTG. It applies to facilities with 1,100 tons per year or greater of production. Emission limits, testing, repair and recordkeeping requirements are consistent with the CTG. EPA is proposing to approve Section 16.6(h).

c. Polymer resin manufacture (PPP). Section 16.6 applies to process type emission sources and has been part of the New Jersey SIP since the late 1970's. As such, it generically regulates the sources identified in the CTG "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins." It does this by specifying emission limitations based upon the concentration and vapor pressure of the VOCs in the exhaust stream. Furthermore, New Jersey requires as part of its permit regulation that new sources apply "state of the art" controls.

NJDEPE submitted an equivalency demonstration which compared the emission limitations recommended by the CTG and required by Section 16.6 and Subchapter 8 in order to show that its requirements were equivalent to or within five percent of the CTG specification. EPA policy permits this equivalency (see footnote 3, Blue Book). Combined, these two regulations result in equivalent or greater emission reductions than what is recommended by the CTG. Therefore, New Jersey's regulations are adequate in requiring RACT for this CTG category and New Jersey does not have to adopt separate provisions for this source category.

d. Air oxidation processes in synthetic organic chemical manufacturing industry (SOCMI). In the same manner, New Jersey regulates sources subject to the CTG "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry." NJDEPE submitted an equivalency demonstration which compared the emission limitations recommended by the CTG and required by Section 16.6 and Subchapter 8 in order to show that its requirements were equivalent to or within five percent of the CTG specification. The first finding was that sources covered by the CTG do not currently exist in New Jersey, therefore, there is no need for a regulation. The second finding was that these two regulations would result in equivalent or greater emission reductions than those resulting from a regulation developed from the CTG. Therefore, New Jersey's regulations are adequate in requiring RACT for this CTG category and New Jersey does not have to adopt separate provisions for this source category.

2. Other Changes

a. Mathematical combination "bubble" provisions. Section 16.6(c)(4) and (5) previously contained generic provisions allowing for the mathematical combination of VOC emissions or "bubble" provisions. These provisions were not consistent with EPA's Emission Trading Policy (51 FR 43814, December 4, 1986) because New Jersey had not attained the national ambient air quality standard for ozone by December 31, 1987 and its SIP was found to be substantially inadequate. New Jersey decided to eliminate these bubble provisions as a control option. This addresses EPA's concerns and EPA proposes to approve this change.

b. Emission rate exclusions in Section 16.6. The 1983 New Jersey SIP contained a commitment to lower the emission rate exclusions contained in

VOL
58
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Section 16.6. Specifically, the commitment involved halving the exclusion rates for industrial process type operations regulated by Section 16.6. Section 16.6 has now been revised to include these lower exclusion rates. EPA is proposing to approve these lower exclusion rates and find that New Jersey fulfilled its commitment.

c. Recordkeeping for source operations. Section 16.6(m) has been added to address the requirement for sources subject to the control requirements of 16.6(a) to maintain records necessary to determine compliance. These provisions are consistent with EPA policy and guidance. EPA is proposing to approve them.

G. 16.7 Cutback and Emulsified Asphalts

No substantive changes were made to this Section.

H. 16.8 Petroleum Solvent Dry Cleaning Operations

Section 16.8 addresses the CTG "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners." The applicability is more inclusive than what is recommended in the CTG. Controls on the dryer are required for all sources whose annual solvent consumption exceeds 15,000 gallons. In addition, all filtration systems and fugitive emissions are regulated. Emission limitations, recordkeeping and test procedures are consistent with the CTG. Section 16.8 is consistent with the CTG and EPA is proposing to approve it.

I. 16.9 Emission Information, Recordkeeping and Testing

Section 16.9 has been revised to expand requirements to maintain records, to make records available to State and EPA personnel, and to include a procedure by which a source can request an alternate recordkeeping procedure. Specification of approved test methods and compliance periods have also been clarified. These provisions are consistent with EPA policy and guidance and EPA is proposing to approve them.

J. 16.10 Variances

Section 16.10 contains the provisions which allow the State to grant variances from the requirements of Subchapter 16. This Section was revised to make clear that all variances are conditioned upon a source meeting requirements specified in the variance and upon EPA approval of the variance as a SIP revision. Therefore, variances adopted by the State pursuant to Section 16.10 become applicable only if approved by EPA as a source specific SIP revision. EPA proposes to approve this Section.

K. 16.11 Applicability

Old Section 16.11, Permit to Construct and Certificate to Operate, has been eliminated because the requirements are contained in other Subchapters. In addition, New Jersey eliminated the provision which permitted temporary discontinuance of control equipment during the winter months. EPA proposes to approve these changes.

New Section 16.11 now contains the provisions previously contained in Section 16.12. These provisions have not been substantively revised. Therefore, EPA is proposing to approve new Section 16.11, based on its approval of these provisions in 48 FR 51480, November 9, 1983.

L. 16.12 Exceptions

The exceptions were previously identified in Section 16.13, but no substantive changes were made to this Section. EPA is proposing to approve this Section based on its approval of these provisions in 48 FR 51480, November 9, 1983.

M. General

In revising Subchapter 16, NJDEPE deleted the final compliance dates applicable to some Group II CTG source categories. This was done because the dates by which these sources were to come into compliance had passed and all sources are required to be in compliance. However, EPA requires the specification of an enforceable final compliance date should EPA be required to take federal enforcement action. Therefore, EPA intends to use the final compliance dates which were originally contained in Subchapter 16 and approved by EPA if federal enforcement action is necessary.

III. Findings—Revisions to Other Regulations

Subchapter 8, "Permits and Certificates, Hearings, and Confidentiality;" Subchapter 23, "Prevention of Air Pollution by Architectural Coatings and Consumer Products;" Subchapter 25, "Control and Prohibition of Air Pollution from Vehicular Fuels;" and Subchapter 3, "Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations," were revised to maintain consistency with the changes made to Subchapter 16. The revisions to these regulations primarily involved incorporating revised terms and their definitions. Other changes were of an administrative nature. EPA is proposing to approve these regulations.

Subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances," was incorporated into the SIP in order to control emissions from perchloroethylene dry cleaners. On October 26, 1992 (57 FR 48490) EPA proposed to change the definition of VOC to treat perchloroethylene as a negligibly reactive compound. If this is approved, it would eliminate the need to control perchloroethylene for purposes of attaining the standard for ozone. The changes to Subchapter 17 are approvable; however, if EPA promulgates the perchloroethylene change, then there would be no immediate need to retain Subchapter 17 as part of the New Jersey SIP.

IV. Conclusion

EPA has evaluated all the revisions for consistency with its provisions, EPA regulations and EPA policy. Although two of New Jersey's submittals preceded the date of enactment of the 1990 Amendments to the Clean Air Act, these submittals serve to fulfill part of the "RACT fix-up" requirements of section 182(a)(2)(A) of the amended Act for the nonattainment areas. EPA is proposing approval of Subchapters 8, 16, 17, 23, 25 and Air Test Methods 3. These revisions have resulted in clearer, more enforceable regulations that strengthen the SIP. EPA also is proposing to find that the State corrected all regulatory deficiencies that were identified in the May 26, 1988 SIP call letter and the January 30, 1991 letter to the NJDEPE Commissioner and which were required to be corrected pursuant to the section 182(a)(2)(A).

EPA is also proposing to find that the State has fulfilled its commitment in the SIP to adopt provisions regulating four control measures: automobile refinishing, further industrial controls, and RACT for small surface coating and industrial sources. The State has also regulated all the Group III CTG source categories.

In its submittals the NJDEPE included estimates of the VOC reductions which are anticipated from its revisions to subchapter 16. These are 40 metric tons per day in the New Jersey portion of the New York City Metropolitan Area control region and 51 metric tons per day statewide. This compares with the 69 and 81 metric tons per day, respectively, that the 1983 SIP estimated for these measures. These emission reductions reflect the most recent data available and are viewed as more

accurate than those contained in the 1983 SIP.

While many of the changes are anticipated to provide additional emission reductions by providing clearer provisions that will foster greater compliance, it is not possible to quantify them. EPA is proposing to accept these emission reductions as meeting the commitment included in the 1983 SIP for these control measures. Neither the attainment demonstration nor other aspects of the SIP were revised by this action. EPA, therefore, is only addressing the adequacy of Subchapter 16 in meeting the commitments made in the 1983 SIP and the ability of these revisions to fulfill EPA requirements, such as enforceability. EPA is not making a finding concerning the overall approvability of the complete SIP at this time, only the addition of the new control requirements.

Nothing in this proposed rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals do not create any new requirements but simply approve requirements that are already State law. SIP approvals, therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the state actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This proposed rule has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years (54 FR 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 6, 1993.

Herbert Barrack,

Acting Regional Administrator.

[FR Doc. 93–16892 Filed 7–15–93; 8:45 am]

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40 CFR Part 81

[CA–44–1–5804; FRL–4680–2]

Designation of Areas for Air Quality Planning Purposes; California

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: Pursuant to the section of the Clean Air Act (Act) as amended November 15, 1990, concerning the redesignation of air quality control regions, the Environmental Protection Agency (EPA) is authorized to redesignate areas (or portions thereof) as nonattainment for the PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) national ambient air quality standards (NAAQS). Additionally, under this section of the Act, the Governor of any state (or his/her designee) may, on the Governor's own motion, submit to EPA a revised designation of any area or portion of an area in a state. EPA, in turn, must approve or deny such redesignation.

In this action, EPA is proposing to approve the California Air Resources Board's (CARB) (the Governor's designee) recommendation regarding the PM–10 designation for the Mono Basin portion of Mono County, California. EPA is proposing to revise the PM–10 designation for this area from "unclassifiable" to "nonattainment." The redesignation is based upon recorded violations of the PM–10 NAAQS which occurred on or after January 1, 1989. A more detailed discussion regarding the Mono Basin portion of Mono County is provided in the following sections.

DATES: All written comments should be submitted to Wallace Woo, EPA Region IX, at the address indicated below by August 16, 1993.

ADDRESSES: Written comments should be addressed to:

Wallace Woo, Chief, Plans Development Section, Air Planning Branch (A–2–2), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

United States Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Stephanie Valentine, Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, 94105, (415) 744–1178.

SUPPLEMENTARY INFORMATION:

I. PM–10 Background

On July 1, 1987, EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called "PM–10" that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("μ"). At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating on PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672). EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM–10 NAAQS and requiring substantial SIP adjustments were placed in Group I; (2) areas that might well have been attaining the PM–10 NAAQS and whose existing SIP's most likely needed less adjustment were placed in Group II; (3) areas with a strong likelihood of attaining the PM–10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682).

Pursuant to sections 107(d)(4)(B) and 188(a) of the Act, areas previously identified as Group I, as well as Group II and Group III areas which had monitored violations of the PM–10 NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Amendments, designated as moderate nonattainment areas for PM–10. All other areas of the country with no violations of the PM–10 NAAQS

prior to January 1, 1989, including Mono Basin, were designated as unclassifiable for PM–10 by operation of law upon enactment of the 1990 Amendments. Section 107(d)(4)(B)(iii) of the Act. Formal codification in 40 CFR part 81 of those areas designated nonattainment and unclassifiable for PM–10 by operation of law upon enactment was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694). See also 57 FR 56762 (November 30, 1992).

II. California's Request To Redesignate Mono Basin

EPA is authorized to redesignate areas (or portions thereof) as nonattainment for PM–10 pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate. EPA must promulgate the redesignation that EPA deems necessary and appropriate, consistent with section 107(d)(3)(C) of the Act. In addition, Section 107(d)(3)(D) provides that a Governor of a state (or his/her designee) may, on his or her own initiative, submit to EPA a revised designation of an area within the state. EPA must approve or deny the redesignation.

In a letter to EPA, dated August 1, 1991, the California Air Resources Board (CARB), the Governor's designee, recommended that EPA redesignate the Mono Basin portion of Mono County as nonattainment for the 24-hour PM–10 NAAQS. EPA has reviewed the State's submittal and is proposing to approve redesignation of the Mono Basin as nonattainment for PM–10. Section 107(d)(1)(A) of the Act sets out definitions of nonattainment, attainment, and unclassifiable status. These definitions provide the applicable legal standard for designations or redesignations to the relevant attainment status. A nonattainment area is defined as any area that does not meet, or that significantly contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant [see Section 107(d)(1)(A)(i)[1]]. Thus, in determining appropriate boundaries for the nonattainment areas proposed today, EPA has considered not only areas where violations of the PM–10 NAAQS have been monitored, but nearby areas which significantly contribute to such violations. An unclassifiable area is defined as any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant [see section 107(d)(1)(A)(iii)].

The following information specifies the complete boundaries and associated designation status that EPA is proposing for the Mono Basin. The designated area is California: Mono County, Hydrologic Unit 1809010, and the designation type is nonattainment. The "designated area" and the "designation type" indicates how EPA is proposing to amend the pertinent portions of 40 CFR part 81.

III. Today's Action for Mono Basin, California

By operation of law, upon enactment of the 1990 Amendments to the Act, Mono Basin was designated unclassifiable [see section 107(d)(4)(B)(iii) of the Act; 56 FR 56694 & 57 FR 56762]. EPA is authorized to redesignate these unclassifiable areas as nonattainment for PM–10 pursuant to section 107(d)(3) of the Act on the basis of air quality data, planning and control consideration, or any other air quality related considerations that the Administrator deems appropriate [see also section 107(d)(1)(A)(i)]. Under section 107(d)(3)(D) of the Clean Air Act, the Governor of any state (or his/her designee) may, on the Governor's own motion, submit to EPA a revised designation of any area or portion of an area in the State. In a letter to EPA, dated August 1, 1991, the California Air Resources Board (CARB), the Governor's designee, recommended that the EPA designate the Mono Basin portion of Mono County as nonattainment for the 24-hour PM–10 NAAQS.

In its letter, CARB referenced a May 23, 1991 letter to EPA from the Great Basin Unified Air Pollution Control District ("the District") apprising EPA that the District had measured a fourth exceedance of the federal 24-hour PM–10 NAAQS in three years of air sampling in the Mono Basin. As indicated in the correspondence from the District, the four exceedances of the PM–10 NAAQS were measured at the Warm Springs site. These exceedances of the 150 $\mu g/m^3$ 24-hour PM–10 NAAQS [40 CFR 50.6(a)] were measured on May 16, 1988 (404 $\mu g/m^3$); May 23, 1990 (157 $\mu g/m^3$); May 8, 1991 (389 $\mu g/m^3$); and May 16, 1991 (218 $\mu g/m^3$). In its August 1, 1991 letter, CARB also informed EPA that it had evaluated the District's PM–10 sampling procedures and found that the District followed all applicable guidelines and that the sampler was operating properly. Accordingly, EPA is today proposing to revise the designation for Mono Basin, Hydrologic Unit 1809010, from unclassifiable to nonattainment for PM–10.

To clarify, the Warm Springs site is an episodic monitoring site that does not sample according to a systematic sampling schedule. Instead, the Warm Springs site only samples during periods of high pollution. Generally if PM–10 sampling is scheduled less frequently than everyday (i.e. one sample every 6 days), EPA would require the adjustment of the first observed exceedance to account for incomplete sampling. But, at an episodic sampling site, the chance of an exceedance is different for scheduled and unscheduled days. Therefore, an adjustment for incomplete sampling is inappropriate.

According to 40 CFR Part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past three calendar years. In general, four exceedances measured in 3 sampling years cause a site to be in violation of the PM–10 NAAQS. The Warm Springs monitoring site measured four exceedances of the PM–10 NAAQS in 1988, 1990, and 1991 (the monitor did not operate during 1989 for reasons unrelated to air quality). These exceedances cause the Warm Springs site to be in violation and are the basis for the redesignation.

This action is further supported by District information showing several additional exceedances at both the Warm Springs and Simis Ranch sites in the Mono Basin. In a letter dated December 7, 1992, the District informed EPA, Region IX, of two additional exceedances at the Warm Springs site and two exceedances at the Simis Ranch site. The exceedances at the Warm Springs were measured on June 12, 1992 (362 $\mu g/m^3$) and December 2, 1992 (265 $\mu g/m^3$). The exceedances at the Simis Ranch were measured on April 12, 1992 (493 $\mu g/m^3$) and December 2, 1992 (225 $\mu g/m^3$).

IV. Significance of Today's Action

If in taking final action on this notice, EPA ultimately redesignates Mono Basin to nonattainment for PM–10, Mono Basin will by operation of law initially be classified as moderate [see section 188(a) of the Act]. The EPA must

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

then reclassify Mono Basin to serious if EPA determines that the area cannot practically attain the PM–10 standards for moderate areas by the applicable attainment date. EPA must complete such reclassifications within 18 months after the required date for the State's submission of the moderate area SIP requirements. In addition to meeting the requirements applicable to moderate nonattainment areas, areas reclassified as serious must implement more stringent control requirements.

For areas redesignated nonattainment for PM–10 and, by operation of law, classified as moderate, States must submit PM–10 SIP's to EPA within 18 months after promulgation of the nonattainment redesignation meeting the applicable requirements of Part D, Title I of the Act [see, e.g., sections 172(c) and 189 of the Act]. In addition to meeting the general nonattainment area plan requirements identified in section 172(c) of the Act, the moderate area SIP must specifically include:

(A) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than the end of the sixth calendar year after the areas' designation as nonattainment; or (ii) a demonstration that attainment by such date is impracticable [see section 189(a)(1)(B)].

(B) Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM–10 shall be implemented no later than 4 years after designation [see section 189(a)(1)(C)].

(C) A new source review permit program, meeting the requirements of Part D of the Act, for the construction and operation of new and modified major stationary sources of PM–10 [see section 189(a)(1)(A)].

(D) Quantitative milestones to be achieved every 3 years until the area is redesignated attainment and which demonstrate "reasonable further progress" towards attainment [see section 189(c)].

(E) Control requirements for PM–10 precursors. The control requirements applicable to major stationary sources of PM–10 (e.g., reasonably available control technology and nonattainment new source review control requirements) also must apply to major stationary sources of PM–10 precursors unless EPA determines that sources of precursors do not contribute significantly to PM–10 levels which exceed the NAAQS in the area [see section 189(e)].

EPA has issued detailed guidance on the statutory requirements applicable to moderate PM–10 nonattainment areas. See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

If EPA ultimately redesignates the Mono Basin area in California as nonattainment in taking final action on this notice, EPA will establish a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act. Section 172(b) provides that such date shall not be later than 3 years from the date of the nonattainment designation. EPA believes that 18 months provides a reasonable amount of time for the development of contingency measures. Thus, if EPA finalizes a nonattainment designation for this area, EPA will very likely establish a schedule requiring the submittal of contingency measures with the other Part D requirements described above—within 18 months from such designation.

V. Request for Public Comments

The EPA is, by this notice, proposing that the PM–10 designation for Mono Basin, California be revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified above by August 16, 1993.

VI. Miscellaneous

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, EPA must prepare for proposed rules subject to notice-and-comment rulemaking an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities. The requirement of preparing such analysis is inapplicable, however, if the Administrator certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities [see 5 U.S.C. 605(b)]. The redesignation proposed for Mono Basin will not impact or impose any significant requirements on a substantial number of small entities. Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the state must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time the state submits these regulations. Accordingly, I hereby certify that the action proposed today will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 actions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 81

Air pollution control, Intergovernmental relations, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: July 7, 1993.

John Wise,

Acting Regional Administrator.

[FR Doc. 93–16894 Filed 7–15–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7071]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

VOL 58 ISS 135 JL 16 1993 UMI

Depth in feet above ground. * Elevation in feet (NGVD)
Location
Source of flooding
City/town/county
State

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maine	Farmingdale (town), Kennebec County ...	Kennebec River	Approximately 1,000 feet downstream of confluence of Unnamed Brook No. 3.	*29	*25
			At confluence of Meadow Brook	*31	*28
Maps available for inspection at the Farmingdale Town Office, 175 Main Street, Farmingdale, Maine.					
Send comments to Mr. Robert St. Pierre, Code Enforcement Officer for the Town of Farmingdale, Kennebec County, 175 Main Street, Farmingdale, Maine 04344.					
Maine	Mercer (town), Somerset County	North Pond	Entire shoreline within community	None	*256
Maps available for inspection at the Tax Records Room, Mercer Town Office, Mercer, Maine.					
Send comments to Mr. Dennis Culley, First Selectman for the Town of Mercer, Somerset County, Mercer Town Office, Mercer, Maine 04957.					
Maine	Randolph (town), Kennebec County	Kennebec River	Approximately 0.8 miles downstream of Randolph-Gardiner bridge.	*28	*24
			Approximately 0.9 mile upstream of Randolph-Gardiner bridge.	*30	*26
		Togus Stream	At confluence with Kennebec River	*28	*24
			Approximately 0.9 mile upstream of confluence with Kennebec River.	*30	*29
Maps available for inspection at the Town Office, 116 Water Street, Randolph, Maine.					
Send comments to Mr. Wayne Libby, Code Enforcement Officer for the Town of Randolph, Kennebec County, 116 Water Street, Randolph, Maine 04346.					
Minnesota	Ada (city), Norman County	Judicial Ditch No. 51	Approximately 1,000 feet downstream of State Highway 9.	*899	*896
			At upstream side of North 9th Street East	*903	*902
		Marsh River (Upper Reach).	At downstream corporate limits	*899	*897
			At upstream corporate limits	*906	*902
Maps available for inspection at the City Hall, 404 West Main Street, Ada, Minnesota.					
Send comments to the Honorable Donald Visser, Mayor of the City of Ada, Norman County, P.O. Box 32, Ada, Minnesota 56510.					
Minnesota	Norman County (unincorporated areas)	Marsh River (Upper Reach).	At County State Aid Highway 8	None	*883
			At divergence from Wild Rice River	None	*916
		Judicial Ditch No. 51	At confluence with Marsh River	None	*896
			At divergence from Wild Rice River	None	*927
		Marsh River (Lower Reach).	At confluence with Red River of the North	None	*860
			Downstream side of U.S. Highway 75	None	*862
		Red River of the North	At downstream county boundary	None	*858
			At downstream side of County Road 119	None	*864
		Wild Rice River	Approximately 2.0 miles upstream of County State Aid Highway 25.	*871	*870
			Approximately 1,100 feet upstream of County State Aid Highway 24.	None	*927
Maps available for inspection at the County Courthouse, 16 East 3rd Avenue North, Ada, Minnesota.					
Send comments to Mr. Herbert Mauntson, Chairman of the Norman County Board of Commissioners, P.O. Box 266, Ada, Minnesota 56510.					
Minnesota	Shelly (city) Norman County	Marsh River (Lower Reach)	Approximately 100 feet downstream of U.S. Highway 75	None	*862

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 50 feet upstream of Burlington Northern Railroad.	None	*862

Maps available for inspection at the City Hall, McKinley Avenue, Shelly, Minnesota.

Send comments to the Honorable Marvin Sandbek, Mayor of the City of Shelly, Norman County, P.O. Box 97, Shelly, Minnesota 56581.

New Jersey	New Providence (borough) Union County	Passaic River	At downstream corporate limits	*206	*208
			Approximately 20 feet downstream of Central Avenue.	*212	*211
		Salt Brook	Approximately 250 feet downstream of Springfield Avenue.	*212	*211
			Approximately 40 feet downstream of CONRAIL.	None	*259
		West Branch Salt Brook	At confluence with Salt Brook	*212	*213
			Approximately 320 feet upstream of Morris Avenue.	None	*233

Maps available for inspection at the Engineering Department, Municipal Building, Second Floor, 360 Elkwood Avenue, New Providence, New Jersey.

Send comments to the Honorable Harold Weideli, Jr., Mayor of the Borough of New Providence, Union County, Municipal Building, 360 Elkwood Avenue, New Providence, New Jersey 07974.

New Jersey	Rochelle Park (township), Bergen County	Saddle River	At Essex Street	*40	*39
			At upstream corporate limits	*43	*44
		Sprout Brook	At confluence with Saddle River	*42	*43
			At Plaza Way	*42	*43

Maps available for inspection at the Clerk's Office, 405 Rochelle Avenue, Rochelle Park, New Jersey.

Send comments to Mr. Joseph Manzella, Township of Rochelle Park Administrator, Bergen County, 405 Rochelle Avenue, Rochelle Park, New Jersey 07662.

New Jersey	Saddle Brook (township), Bergen County	Saddle River	Approximately 70 feet upstream of Outwater Lane.	*36	*37
			At upstream corporate limits	*43	*44
		Coalberg Brook	At confluence with Saddle River	*42	*43
			Approximately 90 feet downstream of Interstate Route 80.	*42	*43

Maps available for inspection at the Building Department, 540 Saddle Road, Saddle Brook, New Jersey.

Send comments to The Honorable Raymond C. Santalucia, Mayor of the Township of Saddle Brook, Bergen County, 93 Market Street, Saddle Brook, New Jersey 07622.

New Mexico	Village of Ruidoso, Lincoln County	Turkey Spring Canyon	Corporate limit	None	*6,534
			Approximately 1,300 feet upstream of corporate limit.	None	*6,573
		Musketball Creek	At the confluence with Cedar Creek	None	*7,146
			Approximately 1,400 feet upstream of the confluence with Cedar Creek.	None	*7,214
		Rio Ruidoso	Approximately 3,250 feet upstream of Cherokee Bill Canyon.	*6,472	*6,471
			Approximately 3,400 feet upstream of Cherokee Bill Canyon.	*6,475	*6,477
			Approximately 3,650 feet upstream of Cherokee Bill Canyon.	*6,480	*6,480
			Approximately 350 feet downstream of the confluence of Cherokee Bill Canyon.	*6,432	*6,432
			At the confluence of Cherokee Bill Canyon.	*6,434	*6,436
			Just upstream of unnamed road (approximately 500 feet upstream of Cherokee	*6,439	*6,448

UMI
JUL 16 1993
ISSN 1 3 5
VOL 58

			Approximately 3,650 feet upstream of Cherokee Bill Canyon.	*6,480	*6,480
			Approximately 350 feet downstream of the confluence of Cherokee Bill Canyon.	*6,432	*6,432
			At the confluence of Cherokee Bill Canyon.	*6,434	*6,436
			Just upstream of unnamed road (approximately 500 feet upstream of Cherokee Bill Canyon).	*6,439	*6,448
			Approximately 1,500 feet upstream of Cherokee Bill Canyon.	*6,448	*6,452
			Approximately 2,500 feet upstream of Cherokee Bill Canyon.	*6,461	*6,467
		South Fork Cedar Creek ..	460 feet downstream of the confluence with Musketball Creek.	None	*7,128
			At the confluence with Musketball Creek .	None	*7,146
			At the confluence with North Fork Cedar Creek.	None	*7,157
			Just upstream of unnamed road (approximately 450 feet upstream of the confluence with North Fork Cedar Creek).	None	*7,170
			Just upstream of unnamed road (approximately 1,500 feet upstream of the confluence with North Fork Cedar Creek).	None	*7,216
		Cedar Creek	Approximately 4,850 feet upstream of Inns Brook Road.	None	*6,948
			Just upstream of unnamed road (approximately 6,550 feet upstream of Inns Brook Road).	None	*6,986
			340 feet upstream of unnamed road	None	*6,995
			3,500 feet upstream of unnamed road	None	*7,085
			3,660 feet upstream of unnamed road	None	*7,091
			4,360 feet upstream of unnamed road	None	*7,118
			4,860 feet upstream of unnamed road	None	*7,128
		North Fork Cedar Creek ...	At the confluence with South Fork Cedar Creek.	None	*7,157
			390 feet upstream of the confluence with South Fork Cedar Creek.	None	*7,176
			760 feet upstream of the confluence with South Fork Cedar Creek.	None	*7,178
			2,325 feet upstream of the confluence with South Fork Cedar Creek.	None	*7,236
			Approximately 3,800 feet upstream of the confluence with South Fork Cedar Creek.	None	*7,298
		Carrizo Creek	510 feet upstream of Lower Tomahawk Trail.	*6,602	*6,602
			770 feet upstream of Lower Tomahawk Trail.	*6,604	*6,606
			Just upstream of Upper Tomahawk Trail .	*6,626	*6,627
			At the confluence with Grindstone Canyon.	None	*6,633
			700 feet upstream of the confluence with Grindstone Canyon.	None	*6,646
			Just upstream of Carrizo Creek Road	None	*6,699
			Just upstream of the footbridge	None	*6,706

Maps are available for review at Village Hall, 313 Creekmeadows Drive, Ruidoso, New Mexico.
Send comments to The Honorable Victor Alonso, Mayor, P.O. Drawer 69, Ruidoso, New Mexico 88345.

New York	Baxter (vil), Jefferson County	Black River	Approximately 0.6 mile downstream of State Route 180	None	*250

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.4 mile upstream of Dexter Hydroelectric Dams.	None	*266
Maps available for inspection at the Dexter Village Office, Lock Street, Dexter, New York.					
Send comments to the Honorable David J. Grant, Mayor of the Village of Dexter, Jefferson County, P.O. Box 62, Dexter, New York 13634.					
Oregon	Lane County, Unincorporated Areas	Siuslaw River	Approximately 5,800 feet downstream of U.S. Highway 101 (Oregon Coast Highway).	*10	*10
			At Southern Pacific Railroad	*17	*15
			Approximately 300 feet downstream of the confluence with Sweet Creek.	*17	*15
			Approximately 200 feet upstream of the confluence with Slide Gulch.	*29	*26
			At the confluence with Berkshire Creek	None	*32
			At the confluence with Cleveland Creek	None	*71
			Approximately 1,200 feet upstream of the confluence with Lake Creek.	None	*124
		McKenzie River	Approximately 5,800 feet downstream of State Highway 126 (McKenzie Highway).	*555	*555
			Approximately 800 feet upstream of State Highway 126 (McKenzie Highway).	*570	*571
			Approximately 2,100 feet upstream of the convergence of McKenzie River North Channel.	*589	*588
			Approximately 500 feet downstream of the divergence of McKenzie River North Channel.	*594	*596
			Approximately 800 feet upstream of the divergence of McKenzie River North Channel.	*599	*599
		McKenzie River-North Channel.	At the convergence with McKenzie River Main Channel.	*584	*584
			Approximately 2,000 feet upstream of the convergence with McKenzie River Main Channel.	587	*590
			At the divergence from McKenzie River Main Channel.	*596	*597
		Cedar Creek	Approximately 3,300 feet downstream of State Highway 126 (McKenzie Highway).	*544	*544
			At State Highway 126 (McKenzie Highway).	None	*555
		Lost Creek	Approximately 200 feet downstream of Rattlesnake Road (Alignment).	None	*709
			At Lost Creek Road	None	*750
			Approximately 200 feet upstream of Eagles Rest Road.	None	*793
			Approximately 900 feet upstream of the confluence with Gosage Creek.	None	*839
Maps are available for review at the Land Management Division, Lane County Department of Public Works, 125 East Eight Avenue, Eugene, Oregon.					
Send comments to The Honorable Steve Cornacchia, Chairperson, Lane County Board of Commissioners, 125 East Eighth Avenue, Eugene, Oregon 97401.					
Pennsylvania	Valley (township), Montour County	Mahoning Creek	At downstream corporate limits	None	*478

			Approximately 200 feet upstream of Eagles Rest Road.	None	*793
			Approximately 900 feet upstream of the confluence with Gosage Creek.	None	*839

Maps are available for review at the Land Management Division, Lane County Department of Public Works, 125 East Eight Avenue, Eugene, Oregon.

Send comments to The Honorable Steve Cornacchia, Chairperson, Lane County Board of Commissioners, 125 East Eighth Avenue, Eugene, Oregon 97401.

Pennsylvania	Valley (township), Montour County	Mahoning Creek	At downstream corporate limits	None	*478
			Approximately 300 feet upstream of State Route 642.	None	*569
		Mauses Creek	At confluence with Mahoning Creek	None	*480
			Downstream of State Routes 45 and 62	*489	*488

Maps available for inspection at the Township Building, 1305 Continental Boulevard, Valley, Pennsylvania.

Send comments to Mr. Calvin Megargle, Chairman of the Township of Valley Board of Supervisors, Montour County, 1305 Continental Boulevard, Valley, Pennsylvania 17821–9532.

Virginia	Chesterfield County (unincorporated areas).	Proctors Creek	Approximately 600 feet downstream of confluence of Great Branch.	*91	*92
			Approximately 0.31 mile upstream of State Route 145.	*104	*106
		Great Branch	At confluence with Proctors Creek	*92	*94
			At downstream side of State Secondary Route 717.	*104	*105

Maps available for inspection at the Environmental Engineering Office, 333 E. Grace Street, Richmond, Virginia.

Send comments to Mr. Lane Ramsey, Chesterfield County Administrator, P.O. Box 40, Chesterfield, Virginia 23832.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 7, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–16767 Filed 7–15–93; 8:45am]

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UMI
VOL
58
ISS
135
JL
16
1993
UMI

DEPARTMENT OF ENERGY

48 CFR Parts 909, 952 and 970

Acquisition Regulation; Alternation or Organizational Conflicts of Interest Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes to amend the Department of Energy Acquisition Regulation (DEAR) to clarify certain aspects of DOE's organizational conflicts of interest (OCI) regulations.

These clarifications follow from questions and class discussion during a Department-wide OCI training program run throughout DOE over the last year. The changes are intended only to make the OCI regulations more easily understood and, as a result, more easily followed by DOE procurement, program, and legal personnel, DOE contractors, and entities proposing to do work for DOE or its contractors.

DATES: August 16 1993.

ADDRESSES: Comments should be addressed to: Robert M. Webb, Procurement Policy Division (PR–12), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, Procurement Policy Division (PR–12), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8264

Edgar Merson, Office of the Assistant General for Procurement and Finance (GC–34), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–6902

SUPPLEMENTARY INFORMATION: .

I. Background
A. Discussion
B. Section-by-Section Analysis
II. Public Comments
III. Procedural Requirements
A. Regulatory Review
B. Review under Executive Order 12778
C. Review under the Regulatory Flexibility Act
D. Review under the Paperwork Reduction Act
E. Review under Executive Order 12612
F. Review under the National Environmental Policy Act

I. Background

A. Discussion

DOE is one of only two Federal agencies, the other being the Nuclear Regulatory Commission, that have a statutorily based OCI system. DOE's system is founded on section 401 of Public Law 95–39, as that statute applied to the Energy Research, and Development Administration (ERDA) and section 10 of Public Law 95–70, as that statute applied to the Federal Energy Administration (FEA). On October 1, 1977, those two agencies and others were combined to form the Department of Energy.

While the OCI provisions of Public Law 95–39 had been implemented in ERDA by Temporary Regulation 35 (42 FR 32232 (1977)), they were reconciled with the FEA legislation and published as a final rule for application to DOE on January 11, 1979, at 44 FR 2556.

Aside from being reformatted and republished as a part of the DEAR on March 28, 1984 (49 FR 11949), these regulations have remained virtually unchanged since their promulgation in 1979.

DOE instituted a Department-wide training program on the subject of OCI when the rules were originally adopted. During the first quarter of calendar year 1991, a newly designed course was offered throughout DOE. Thus far, approximately 1000 DOE procurement, program, and legal personnel; purchasing personnel of DOE's management and operating contractors; and purchasing personnel of certain other contractors have been trained in this subject.

During the course of the class, questions were raised about certain aspects of the DEAR coverage on the subject. The questions suggested that relatively minor modification of the DEAR OCI regulations would bear a substantial benefit for the DOE personnel and contractors charged with operating the system, as well as the entities proposing as contractors or subcontractors. The changes proposed in this rulemaking, it is hoped, will result in achieving a more effective implementation of the statutorily directed system.

B. Section-by-Section Analysis

Subsection 909.500 is proposed to be changed to reflect more accurately that the advisory and assistance services portion of the organizational conflicts of interest coverage in the Federal Acquisition Regulation (FAR) at FAR subpart 9.5 does not apply to DOE acquisitions, but the coverage in that subpart regarding marketing consultants does.

The definitions of "evaluation services or activities" and "technical consulting and management support services" are proposed to be revised to reflect that work may involve either or both of these types of services and, thereby, be covered by DOE's OCI regulations even where the providing of either of those types of services is not the principal purpose of the contract.

The definition of "organizational conflicts of interest" is proposed to be revised to reflect the fact that the relevant facts upon which the determination of the likelihood of an organizational conflict of interest need only relate to the work to be performed under the prospective contract. The current definition, and other provisions also proposed to be changed, can lead one to the conclusion that, to be a relevant fact subject to disclosure, the past, present, or currently planned interest must not only relate to the proposed work but must also bear on whether, in the mind of the proposer, the proposer may render impartial, technically sound, objective assistance and advice or may gain an unfiar competitive advantage. Under this interpretation many facts, relevant for the purposes of the determination of the DOE contracting officer, may not be disclosed and, therefore, not be taken into account in the determination. The proposed clarification is intended to assure the maximum disclosure and, as a result, the most accurate determination.

Paragraph 909.570–4(a) would be modified to more accurately reflect the Department's concern that OCI is an issue in cases in which the specific support services of the contractor are to play a part in, rather than "lay direct groundwork" for, the Department's future activities, including the addition of "the formulation of departmental policy."

Paragraph 909.507–4(b)(4) would be revised to make clear that the particular concern expressed there is "information proprietary to others." Paragraph 909.570–(b)(7) would be changed to add as an example of an organizational conflict of interest the situation where a potential contractor would be regulated, or is currently planning to provide similar services to an entity that would be regulated, by a departmental regulatory inititive.

Paragraph (a) of subsection 909.570–5 is proposed to be changed to delete "professional services." Such services are not *per se* subject to OCI concerns.

For instance, a procurement for a doctor to lead a medical clinic would be professional services but would not be subject to OCI concerns; however, all support services, including professional services, are subject to the DOE OCI system to the extent that they consist of evaluation services or activities, or technical consulting and management support services. The services provided by attorneys and accountants may at all times be subject to OCI processing. It is the type of work, not the type of firm or individual performing the work, that is the basis for determining whether the requirement is covered by DOE's OCI system.

That same paragraph would also be changed to expand the examples of types of interests that should be disclosed, to clarify relevant interests, and in a new paragraph (b) to require a disclosure at the time of exercise of an option. The renumbered paragraph (c) would be altered to make minor word changes.

Subsection 909.570–6 would be altered to make minor word changes and to make it clear that having a prior contract can give rise to the finding of an organizational conflict of interest on a subsequent requirement, even where the prior contract did not contain a bar provision, such as that in paragraph (b)(1)(i) of the OCI clause at 952.209–72.

Subsection 909.570–7 is proposed to be revised to also delete reference to "professional services" as a separate class of OCI covered support services; however, professional services are subject to OCI processing to the same extent as all other support services, *i.e.*, to the extent that they consist of evaluation services or activities, or technical consulting and management support services.

Subsection 909.570–8 is proposed to be changed to reflect the deletion of the OCI general clause, currently at 952.209–71. The result would be that the OCI clause at 952.209–72 will be prescribed for all contracts subject to OCI.

Subsection 909.570–9 is proposed to be changed to make it clear that the contracting officer's decision is made in light of all relevant facts and to clarify the decision-making threshold or standard. No organizational conflict exists if there is little or no likelihood of an organizational conflict of interest; however, where the contracting officer finds there is more than little or no likelihood of a conflict, then an organizational conflict of interest is determined to exist. This decision-making regime is predicated precisely on paragraph (b) of section 10 of Public Law 95–39.

Subsection 909.570–10 is proposed to be revised to reflect proposed changes to paragraph (c)(1) of the clause at 952.209–72 in that the obligation for post-award notification of OCI interests by the contractor is triggered by a change in relevant facts, not a contractor's determination that changes amounting to an organizational conflict of interest have occurred. The decision as to whether the changes in relevant facts amount to an organizational conflict rests with the contracting officer.

Subsection 909.570–12 is proposed to be changed to make it clear that the proposed subcontracts covered by OCI consist of the provision of services similar to those to be provided under the prime contract. Covered subcontract services consist of evaluation services or activities and technical consulting and management support services. It is also proposed to be changed to reflect the proposed deletion of the clause at 952.209–71.

Subsection 909.570–14 is proposed to be revised to make clearer the examples stated therein. A minor word change is proposed to be made to paragraph (a) of subsection 909.570–15.

The solicitation provision at subsection 952.209–70 is proposed to be revised to more clearly communicate the obligations of proposers with regard to the disclosure of relevant interests for the purposes of organizational conflicts of interest. Paragraph (a) is proposed to be expanded to require disclosure of relevant interests in consonance with the proposed revision to the definition of organizational conflicts of interest discussed earlier. Also, in the same paragraph there is proposed to be a recognition of the right of proposed subcontractors to disclose directly to DOE, to state the conditions under which a chief officer or director would have to disclose personally, and to require an update of the disclosure statement throughout the period from submission of proposals to award, or such time as the proposer is notified that it is no longer under consideration for award.

Paragraph (b) of the solicitation instruction is proposed to be amended to reflect the basis for determining the absence of relevant facts, the situation in which the proposer would submit a representation in lieu of a disclosure statement. A new paragraph (c) is proposed to be added to institutionalize the submission of an SEC Form 10k by all those entities that are required by law or regulation to submit such a form to the Securities and Exchange Commission. This form is used to establish that the proposer has properly disclosed or provided a representation of no relevant facts. It comes under the heading of "information otherwise available" in paragraph (b) of both of the underlying statutes.

It is proposed that the current paragraph (c) will be redesignated as (d) and changed to clarify the determination that DOE will make based upon the disclosure information provided by the proposer and information otherwise available. A minor word change is proposed to be made to the redesignated paragraph (g).

The general organizational conflicts of interest clause at 952.209–71 is proposed to be deleted. The clause does not contain the bar provisions contained in paragraph (b) of the current special clause at 952.209–72. This is an important omission because the special clause is required only in procurements for technical consulting and management support services and is optional for evaluation services or activities. Since a given statement of work can consist of both types of services, the bar provisions may not be contained in contracts in which they are appropriate. We can determine no good reason to use the general clause in lieu of the current special clause.

In consonance with that proposed change, it is proposed to retitle the clause at 952.209–72 as "Organizational Conflicts of Interest," since it will then be the only such clause in the DEAR. Minor clarifying word changes are proposed to be made to paragraphs (b)(2)(i) and (b)(2)(iii).

Paragraph (c)(1) of the clause is proposed to be revised to establish that the contractor is obligated to update its disclosure upon the occurrence of a change in relevant facts, as was discussed above in reference to the proposed change at 909.570–10. Clarifying changes are proposed to be made to paragraphs (c)(2) and (d)(1) of the clause. Paragraph (g) of the clause is proposed to be changed to more clearly state a contractor's obligation to disclose at the time of a meaningful extension of the period of performance, which would include the exercise of options.

II. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "**ADDRESSES**" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW.,

VOL 58 ISS 135 JL 16 1993 UMI

Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. DOE's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

III. Procedural Requirements

A. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This proposed rule would, when adopted as a final rule, have no preemptive effect and will not have any effect on existing Federal laws and would only clarify the existing regulations on this subject. The revised clauses would apply only to contracts which would be awarded after the effective date of the final rule, and, thus, would have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. National Environmental Policy Act

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*, 4331–4335, 4341–4347 (1976)), the Council on Environmental Quality regulations (40 CFR parts 1500–1508) or the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 909, et al.

Government contracts, Government procurement, Contractor qualifications.

Issued in Washington, D.C., on June 29, 1993

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 50 U.S.C 486(c).

Subpart 909.5—Organizational Conflicts of Interest

2. Section 909.500 is amended by adding the following as the second sentence:

§ 909.500 Scope of subpart.

* * * However, the coverage at FAR subpart 9.5 regarding marketing consultants does apply to DOE acquisitions.

§ 909.570–3 [Amended]

3. Section 909.570–3 is amended by revising the definitions for *Evaluation services or activities, Organizational conflicts of interest, and Technical consulting and management support services* to read as follows:

* * * * *

Evaluation services or activities means any work or effort involving the independent study of technology, process, product, or policy.

* * * * *

Organizational conflicts of interest means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that relate to the work to be performed under a Department contract and such interest or interests may reasonably: (1) Diminish an entity's capacity to give impartial, technically sound, objective assistance and advice, or (2) result in an entity's being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

* * * * *

Technical consulting and management support services means any work or effort to provide internal assistance to any program element or other organizational component of the Department in the formulation or administration of its programs, projects, or policies. Such services typically include assistance in the preparation of program plans; evaluation, monitoring, or review of other contractor's activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work; and may involve the contractor's being given access to data confidential to the Department or proprietary to others.

4. Section 909.570–4 is amended by revising the last sentence of paragraph (a) and by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 909.570–4 Criteria for recognizing organizational conflicts of interest.

(a) * * * While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interest, Department personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services, or similar activities that are expected to play a part in the Department's decision on future acquisitions; research, development, and demonstration programs; production activities; the formulation of departmental policy; and regulatory activities.

(b) * * *

(4) Contract performance involving access to information proprietary to third parties which cannot lawfully be used for purposes other than those authorized by the third parties.

* * * * *

(7) Contract performance involving the preparation and furnishing of advice to the Department on a regulatory matter where the contractor would be regulated or is providing, or is currently planning to provide, assistance on the same or similar matter to any organization regulated by the Department.

* * * * *

5. Section 909.570–5 is revised to read as follows:

§ 909.570–5 Disclosure of organizational conflicts of interest.

(a) When submitting solicited and unsolicited proposals for: (1) Evaluation services or activities; (2) technical consulting and management support services; (3) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract, offerors shall be required to identify and disclose information about contracts, investments, and all other interests relating to the work to be performed under the proposed contract or complete the representation in accordance with 909.570–7.

(b) This requirement shall also apply to modifications of contracts of the types noted above that exercise an option or otherwise meaningfully extend the period of performance or add work, of the type noted above, to the contract. Where, however, a disclosure statement of the type required by the Organizational Conflicts of Interest Disclosure or Representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement need be required. Information submitted by offerors pursuant to the disclosure requirement shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes.

(c) When the Government finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no award of a contract or contract modification covered by 909.570–7 shall be made until the organizational conflict of interest has been avoided, except as provided in 909.570–9. An organizational conflict of interest has been avoided when the actions taken to mitigate it result in there being little or no likelihood of an organizational conflict of interest.

6. Section 909.570–6 is revised to read as follows:

909.570–6 Notices and representations: Action required of contracting officers.

The disclosure or representation required by 909.570–7 is designed to alert the contracting officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. Additionally, another type of organizational conflict of interest may exist to the extent that work stemming from (*i.e.*, arising out of or related to) work to be performed under the prospective contract will give rise to a subsequent solicitation with the result that the successful proposer on the current solicitation will be barred by operation of paragraph (b)(1)(i) of the clause at 952.209–72 from proposing on the later solicitation. Accordingly, whenever such potential conflicts are foreseeable by the Government, a special notice also shall be included in the solicitation informing the offerors: (a) That such a potential conflict is foreseen and (b) of any special contract clause or provision designed to avoid or mitigate such conflict that will be included in any resultant contract as required by 909.570–8(a). Such notice shall specify the proposed extent and duration of any special restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. In the event a contractor, having performed on one contract, later seeks work that stems or may be deemed to stem directly from prior performance, such contractor shall not be precluded from proposing on follow-on work unless the prior contract contained an appropriate follow-on restriction; however, this shall not preclude the contracting officer from finding that in light of performance of the prior contract an organizational conflict of interest would or may exist.

7. Section 909.570–7 is revised to read as follows:

909.570–7 Disclosure or representation.

The contracting officer shall include the provision at 952.209–70, Organizational Conflicts of Interest-Disclosure or Representation, in all solicitations, including those for scope modifications, and offerors shall accordingly disclose or represent in

their proposals, including unsolicited proposals for: (a) Evaluation services or activities; (b) technical consulting and management support services; (c) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (d) other contractual situations where special organizational conflicts of interest issues are identified. Section 909.570–15 of this part contains a suggested outline for the disclosure submission.

8. Section 909.570–8 is revised to read as follows:

909.570–8 Contract clauses.

(a) *Special contract clause.* The contracting officer shall include the clause at 952.570–72, Organizational Conflicts of Interest, in all contracts for evaluation services or activities or technical consulting and management support services.

(b) *Specially drafted contract clauses and provisions.* If it is determined from the nature of the proposed contract that a specifically identified, potential organizational conflict of interest may exist, the contracting officer may determine that such conflict can be avoided through the use of an appropriate specially drafted additional contract clause. Examples of the types of clauses which may be employed include, but are not limited to, the following:

(1) Hardware exclusion clauses which prohibit the contractor's acceptance of production contracts following a related design contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and/or certain of its key personnel) to avoid conduct deemed to cause an organizational conflict of interest;

(4) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use; and

(5) Clauses that prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work. If deemed appropriate, the prospective contractor may be given the opportunity to negotiate the terms and conditions of the clause and its application including the extent and time period of any restrictions.

9. Section 909.570–9 is amended by revising the introductory text of paragraph (a) to read as follows and adding the phrase "or other means" after "by an appropriate contract clause" in the first sentence of paragraph (a)(3):

909.570–9 Evaluations, findings, and contract award.

(a) The contracting officer shall evaluate all relevant facts submitted by an offeror pursuant to the requirement of 909.570–6 and such other relevant information as may be available concerning possible organizational conflicts of interest. After evaluation of all such information in accordance with the criteria of 909.570–4, and prior to any award, the contracting officer shall make a finding as to whether a possible organizational conflict of interest may exist with respect to a particular offeror. If the contracting officer determines, in light of all relevant facts, that, with respect to a particular offeror, there is little or no likelihood of an organizational conflict of interest, then no organizational conflict of interest exists. If the contracting officer determines that there is more than little or no likelihood of an organizational conflict of interest, then an organizational conflict of interest exists with regard to that particular offeror. When formal Source Evaluation Board procedures are applicable, the finding shall be made by the Source Selection Official. If the finding indicates that such conflicts exist, then the contracting officer shall:

* * * * *

10. Section 909.570–10 is revised to read as follows:

909.570–10 Action in lieu of termination.

If, after award, changes in relevant facts with respect to the awardee, whether based upon information supplied by the awardee or gathered from other sources, cause the contracting officer to conclude that a possible organizational conflict of interest exists and that it would not be in the best interest of the Government to terminate the contract as provided in the clause at 952.209–72, the contracting officer shall take every reasonable action to avoid or mitigate the effects of the conflict.

11. Section 909.570–12 is revised to read as follows:

909.570–12 Subcontractors and consultants.

The contracting officer shall require offerors and contractors to obtain for the Department a disclosure or representation in accordance with 909.570–7 from subcontractors and consultants who may be performing services similar to the services provided by the prime contractor, *i.e.*, evaluation services or activities or technical consulting and management support services. Such disclosure or representation may be submitted by the subcontractors and consultants directly to the contracting officer, and their disclosure or representation shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes. The contracting officer shall assure that the contract clause at 952.209–72, entitled Organizational Conflicts of Interest, is included in subcontracts or consultant agreements involving performance under the prime contract of work covered by this subpart.

12. Section 909.570–14 is amended by revising paragraphs (b)(4), (b)(5), (b)(7), (b)(8), and (b)(12); by adding the word "not" after "these companies may" in the last sentence of paragraph (b)(6); by replacing "suggests" with "produces" and by replacing "in requests" with "in a request" in the second sentence of paragraph (b)(9); and by adding a comma after "OCI" and removing the word "plants" in the fourth sentence of paragraph (b)(11).

These amendments are set forth to read as follows:

909.570–14 Examples.

* * * * *

(b) * * *

(4) Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. *Guidance.* Normally this would constitute an OCI, and Company A shall not be allowed to compete for supply of a refrigerator based upon the specification it prepared.

(5) Company A designs or develops new electronics equipment under a DOE contract and delivers descriptive specifications as part of the final report. DOE then issues a solicitation for procurement of that electronics equipment including a statement of work that reflects the descriptive specifications. *Guidance.* Normally this would not constitute an OCI, and the company may submit a proposal to supply the electronics equipment.

* * * * *

(7) Prior to acquisition of Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate a DOE function. *Guidance.* Normally this would constitute an OCI, and Company A should be barred from at least the initial ADP hardware acquisition necessary to accommodate the software developed under its development contract.

(8) Company A receives a contract to define the detailed performance characteristics a Government agency will use in the purchase of rocket fuels. The company has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop the fuels. *Guidance.* Normally this would constitute an OCI, and Company A shall not be permitted to bid on the acquisition to develop the fuels.

* * * * *

(12) Firm A, because of its unique technical expertise, has been requested to assist the Department in the evaluation of proposals which will result from a competitive solicitation. Firm A also plans to submit a proposal in response to this same solicitation. *Guidance.* Normally this would constitute a conflict, and Firm A should be precluded from participating in the solicitation. In a particular case, it may be desirable (*e.g.*, when the competitive field is limited) to allow a separate division or affiliate of Firm A to submit a proposal. In such a case, of course, Firm A must obtain a waiver from the Department of Energy contracting officer and would not be permitted to participate in the evaluation of this proposal. Such evaluation would be performed by DOE or another DOE contractor.

909.370–15 [Amended]

13. Section 909.570–15 is amended by adding the phrase "interests and" after "currently planned" the second time that phrase appears in paragraph (a).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

15. Section 952.209–70 is revised to read as follows:

952.209–70 Organizational conflicts of interest-disclosure or representation.

Contracting officers shall insert the following provision in solicitations in accordance with 909.570–7.

Organizational Conflicts of Interest—Disclosure or Representation ( )

(a) It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased due to any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation, or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, 'offeror' means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(1) As required by Public Law 95–39 and Public Law 95–70, the offeror shall provide a statement which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work described in the statement of work of this solicitation. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of affiliates or other divisions or sections of the proposing entity and how that structure or system would avoid or mitigate an organizational conflict of interest.

(2) The proposing entity shall assure that any consultants and subcontractors, identified in its proposal, which will perform work similar to the proposer submit the same information as required by paragraph (1) above, either as part of the proposing entity's proposal, or directly to DOE prior to the time and date set for receipt of proposals, with identification of the solicitation and the offeror's proposal to which it relates.

(3) The proposing entity shall also assure that each of its chief officers or directors, if any, who will be directly involved in the actual performance of the contract, submit such information.

(4) The proposing entity shall promptly provide to the DOE contracting officer information concerning any changes, including additions, in its relevant facts reported under paragraph (a)(1), that occur between the submission of its proposal and the award of the contract or the time that the proposer is notified that it is no longer under consideration for award.

(b) In the absence of any relevant interests referred to above, the offeror or others specified above, shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to the work to be performed.

(c) If the proposing entity has submitted a Securities and Exchange Commission Form 10k to that agency, it shall include a copy of the form and all attachments as part of its business management proposal (or cost proposal if no business management proposal is required).

(d) The contracting officer will review the statement submitted and may require the submission of additional relevant information. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest with respect to the offeror's (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. If such a conflict is found to exist, the Department, at its sole discretion, may: (1) Impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror in face of an organizational conflict after including appropriate conditions mitigating such conflict.

(e) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent, related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(f) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(g) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality, and the offeror shall be required to promptly correct the omission.

16. Section 952.209–71 is removed and reserved.

952.209–71 [Reserved]

17. Section 952.209–72 is amended by revising the section heading to read as set forth below; by revising the introductory text as set forth below; by revising the title of the clause as set forth below; by redesignating paragraphs (b)(2)(i) (a), (b), (c) and (d) as (b)(2)(i) (A), (B), (C) and (D), respectively; by revising paragraphs (b)(2)(iii), (c), and (d)(1) of the clause to read as follows; and paragraph (g) is amended by replacing the word "significantly" with "meaningfully" and by adding the phrase "in accordance with the instructions of the contracting officer" immediately before the period at the end of the paragraph:

952.209–72 Organizational conflicts of interest.

The contracting officer shall include the following clause in all contracts for evaluation or activities, technical consulting and management support services, research and development under the authority of the Federal Energy Administration Act, and other

VOL 58 ISS 135 JL 16 1993 UMI

appropriate situations in accordance with 909.570–8.

Organizational Conflicts of Interests ( )

* * * * *

(b) * * *

(2) * * *

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with subparagraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Disclosure after award.*

(1) The contractor agrees that, if changes, including additions, to the relevant facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts relevant to the performance of this contract and did not disclose such facts to the contracting officer, DOE may terminate this contract for default.

(d) *Subcontracts.*

(1) The contractor shall include this clause, including this paragraph, in contracts of any tier which involve performance of evaluation services or activities, or technical consulting and management support services as those terms are defined at 48 CFR (DEAR) 909.570–3. The terms 'contract,' 'contractor,' and 'contracting officer' shall be appropriately modified to preserve the Governments' rights.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

18. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

970.5204–36 [Amended]

19. Section 970.5204–36 is amended by revising the section heading to read "Preventing conflicts of interest in university research (contracts with universities where DOE has major investments in facilities but does not own or lease the land)" and by revising the title of the clause contained therein to read "Preventing Conflicts of Interest in University of Research ( )."

[FR Doc. 93–16681 Filed 7–15–93; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–43; Notice 02]

RIN 2127–AE56

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding concerning the applicability of the oil resistance testing requirements of Standard 106, *Brake Hoses*, to coiled brake hose assemblies. After considering the public comments on a proposal to exclude those assemblies from the oil resistance testing requirements, the agency has concluded that the proposed change would not be in the interest of vehicle safety.

FOR FURTHER INFORMATION CONTACT: Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5274.

SUPPLEMENTARY INFORMATION: This notice terminates a rulemaking proceeding begun when NHTSA published a notice of proposed rulemaking (NPRM) (57 FR 38654, August 26, 1992) in response to a petition for rulemaking from Philatron International (Philatron). Philatron's petition requested that coiled air brake tubing assemblies be excluded from the oil resistance test requirement (S7.3.4) of Federal Motor Vehicle Safety Standard (FMVSS) 106, "Brake Hoses." ("Hose" and "tubing" are used synonymously in this termination notice. Tubing such as that manufactured by Philatron is considered brake hose under Standard 106; see S4 of the standard for the definition of "brake hose.")

Philatron wishes to use a new type of coiled brake tubing. The tubing industry has traditionally manufactured coiled tubing from virgin polyamide nylon. Philatron's tubing consists of a material other than nylon. The agency stated in the NPRM that the tubing was composed of ethylene vinyl acetate (EVA). EVA is a type of plastic material that had not previously been used for manufacturing brake hoses. Further, several commenters on the NPRM stated that they too believed that Philatron's tubing was made from EVA. Mr. Phillip Ramos, Jr., president of Philatron, declined to publicly disclose the composition of the tubing, although he did not deny that it contains EVA. He said in commenting on the NPRM that the tubing "may or may not" be composed of EVA.

I. Background

A. Oil Resistance Test

The oil resistance test of Standard No. 106 states:

> After immersion in ASTM No. 3 oil for 70 hours at 212°F, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent * * *.

The requirement applies to all of a vehicle's brake hoses, regardless of where the hose is installed on the vehicle. The requirement thus applies to coiled tubing which is used between a tractor and its trailer.

B. Philatron's Determination of Noncompliance

In January 1992, Philatron informed the National Highway Traffic Safety Administration (NHTSA) that it had determined that the brake hose it had been manufacturing did not comply with the oil resistance requirement of S7.3.4. of Standard 106. In a NHTSA compliance test of the Philatron tubing conducted in September 1991, the specimen liquefied during the high temperature oil exposure, and did not re-solidify after cooling. (Final Report No. 106–ETL–92–001–513158, May 13, 1992.)

Under section 151 of the National Traffic and Motor Vehicle Safety Act (VSA), a manufacturer which determines that its equipment fails to comply with an applicable safety standard is required to notify NHTSA of the noncompliance. In addition, unless exempted under section 157 of the VSA, the manufacturer must also notify owners of the equipment about the noncompliance and provide a remedy without charge. Moreover, pursuant to section 108(a)(1)(A) of the VSA, the manufacturer is prohibited from selling equipment that does not comply with the applicable standard.

C. Philatron's Inconsequentiality Petition and Rulemaking Petition

In light of its determination of noncompliance, Philatron submitted two petitions to NHTSA. First, in an effort to avoid the need to conduct a notification and remedy (recall) campaign for the approximately 45,400 noncomplying hoses that it had already manufactured, Philatron filed on January 13, 1992, a petition with

NHTSA requesting a determination that the noncompliance was inconsequential as it relates to motor vehicle safety. Pursuant to section 157 of the VSA (15 U.S.C. 1417), and 49 CFR part 556, a manufacturer of noncomplying vehicles or items of motor vehicle equipment may obtain an exemption from the recall provisions of the Act if NHTSA determines that the noncompliance is "inconsequential as it relates to motor vehicle safety."

Second, on January 27, 1992, Philatron submitted a petition for rulemaking to make it permissible to manufacture and sell its tubing in the future. The company requested that the agency exclude coiled air brake tubing from the oil resistance test requirement. In its petition, Philatron stated that it believes that its tubing has safety advantages over nylon tubing, which it claims is "routinely plagued by kinking, snagging and constriction safety failures." According to Philatron, its tubing is superior to nylon in "durability, flexibility and coil memory." Philatron believes that because of these features, fewer linear feet of its tubing are needed than of nylon tubing for a given installation. The petitioner believes the shorter lengths of tubing lessen the possibility the tubing will become entangled with vehicle parts.

In its petition, Philatron argued that there is no safety need to apply the oil resistance requirement to its tubing. In support of its petition, Philatron said that its tubing is not exposed to any oil or heat source when used on a vehicle. According to Philatron, the vehicle's wet tank and/or air drying system would remove any oil from the air that will be contained in the tubing. Also, the tubing is used between a towing and a towed vehicle, "at a significant distance from any sources of hot or non-heated oil."

Based on these facts and arguments, Philatron requested that NHTSA amend the oil resistance requirement so that it does not apply to coiled brake tubing. Adopting that amendment would permit Philatron to manufacture and sell its currently non-complying tubing in the future.

D. NHTSA's Grant of Inconsequentiality Petition

On June 15, 1992, NHTSA published a notice granting Philatron's inconsequentiality petition (57 FR 26687). Notwithstanding the comments by opponents of the petition, NHTSA was not convinced, based on the evidence before it at that time, that the petitioner's hoses presented a risk of becoming oil soaked and being subjected to high heat.

The granting of the petition exempted Philatron from having to conduct a notification and remedy campaign with respect to the hoses that it manufactured before January 1992. However, since Philatron's brake hoses still do not comply with the oil resistance requirement, section 108(a)(1)(A) of the VSA continues to prohibit Philatron from resuming their manufacture or sale.

E. Notice of Proposed Rulemaking

The agency issued the August 1992 NPRM to address the issue of whether the oil resistance requirement of Standard 106 unnecessarily inhibits innovation in brake hose production. NHTSA proposed to exclude coiled tube assemblies from the oil resistance requirement, but sought to explore whether potential safety problems could arise, directly or indirectly, from the exclusion. The NPRM requested information and data relating to whether:

(1) Coiled tubing is exposed to hot oil and/or high temperatures during normal vehicle operations;

(2) The oil resistance requirement acts as a "surrogate" for other requirements, i.e., whether it indirectly regulates other aspects of brake hose performance, such as abrasion resistance, coil retention and/or heat resistance; and

(3) There is a kinking problem with nylon coiled tubing.

The agency received over 60 comments in response to the NPRM. A number of commenters submitted more than one comment. Approximately 41 comments supported Philatron's petition. The majority of these were Philatron hose dealers, and the rest were truck drivers (11) and private individuals (8). Approximately 13 commenters opposed the petition. These commenters were plastic materials manufacturers, brake hose manufacturers, heavy truck manufacturers, a committee and a subcommittee of the Society of Automotive Engineers, and private citizens.

The majority of the commenters addressed the safety of coiled hoses when exposed to oil and high temperatures. No commenter disputed that hoses exposed to oil and high temperatures are at risk of deforming or experiencing a degradation of performance. However, proponents of the proposal disagreed with opponents concerning the extent to which coiled hoses are exposed to oil and high temperatures.

II. Comments of Proponents

The Philatron dealers stated that coiled hoses are not exposed to oil during normal vehicle operations. However, only two of the dealers provided any reasons for that view. Heavy Duty Marketing said that coiled hoses are not normally installed in the engine compartment, and Pac West Intermountain said that "hot oil" could not originate from anywhere. Virtually all of the dealers commenting on the high temperature exposure issue stated that they believed the coiled hoses would not be installed where they could contact any source of high temperature (e.g., the vehicle's exhaust system). Most of the dealers reported that the Philatron hoses were popular with truck drivers. Finally, they stressed their belief that Philatron's hoses out-performed nylon hoses regarding anti-kinking characteristics and cold weather performance. They did not explain the basis for this belief.

The dealers' report that Philatron hoses are preferred by truck drivers over nylon hoses was supported by the 11 truck drivers who submitted comments. The drivers mainly wrote about their belief that the Philatron hoses seemed less capable of kinking than nylon hoses, and less likely to crack in cold weather. The drivers who commented on the oil exposure of a coiled hose said these hoses were not exposed to oil. Mr. Terry McCrack was the only driver who elaborated: "It is impossible for hot oil to come in contact with coiled hoses unless the engine blows up and somehow spatters the oil on the hose." The drivers did not directly address the temperature exposure of coiled hoses, except for Leon Johnsrud who said the hose "is not subject to hot oil at all * * * since it's illegal to have the hose near heat."

Some of the private individuals who commented in support of Philatron identified themselves as engineers or persons with a technical background. One of these was Phillip M. Ramos, Sr., head of a consulting firm that provides technical and managerial assistance to Philatron, and father of Philatron's founder. Mr. Ramos, Sr. said that he is a member of an SAE committee that is developing a new SAE standard J–2222 for "electrical coiled trailer cable assemblies." Mr. Ramos, Sr. said the coiled electrical cable is used in the same locations as coiled brake hoses. He stated that the SAE committee on J–2222 determined that the ambient temperature for the area in which the electrical cable would be used would be −22 °F to +140 °F. The commenter states that he is also a member of the

VOL 58 ISS 135 JL 16 1993 UMI

SAE committee reviewing SAE J–1067, "Trailer cable," and that this committee decided in its June 1992 meeting that electrical cable is not exposed to oil "so as to present a problem." The commenter said that such a determination does not support the views of persons opposed to the NPRM that coiled brake hoses are significantly exposed to oil during splashing, spilling or refueling.

Philatron also commented on the issue of oil exposure. Philatron iterated its views that "the air brake tubing is not exposed to boiling oil for even one minute much less 70 hours." Philatron said that the brake hose is used at a significant distance from any oil source, and that any quantity of oil that might contact the hose when the vehicle is in motion is cooled by the wind chill factor to below ambient temperatures. Philatron also stated that since the purpose of the hose is "to supply compressed air—not oil—from a towing vehicle to the air brake system of a towed vehicle," the inner surface of the hose would not contact oil.

Any small quantity of oil that may in fact travel with the compressed air through the assembly is captured and removed in the wet tank and/or air drying systems that are commonplace in virtually all trucks * * *. This dryer has a 99.9% oil removal efficiency.

Philatron also stated that coiled hoses are not subjected to excessively high temperatures and submitted measurements it took of temperatures for hose fittings (maximum temperature 115 °F), for the "cab over engine surface" (maximum 145 °F), and for the engine surface during idling (142 °F). The petitioner-commenter said that the temperature of the compressed air passing through the hose is always below ambient temperature because it is cooled as it travels from the compressor and the air reservoirs. Philatron stated that the interior and exterior of coiled hoses would not be exposed to heat and oil under the conditions in the S7.3.4 test procedure (70 hours at 212 °F). The petitioner-commenter believed it was noteworthy that Standard 106 has no specification for elevated temperatures in the requirements for ozone resistance, water absorption and zinc chloride resistance. Philatron also said that the oil resistance requirement was written to indirectly specify the use of nylon to manufacture coiled hoses.

III. Comments of Opponents

Three comments were submitted by companies manufacturing brake hose material, and all were opposed to the NPRM. Elf Atochem North America Inc., a manufacturer of EVA, stated:

[U]nder no circumstances would we specify EVA for an application that would expose it to oil and high temperatures. The risks are just too great! * * * EVA is the wrong material for this application. * * * [It] structurally cannot tolerate the oil and heat that is part and parcel of the trucking business.

Elf Autochem indicated that it compared the oil resistance of "EVA from Philatron coils" with that of "Besno P40 TL (Nylon 11)." The commenter found that the EVA was "totally soluble" after 24 hours exposed to ASTM No. 3 oil at 100 °C (212 °F) and after 29 hours at 90 °C; and was "swollen, cracked" after 48 hours at 65 °C. In contrast, the oil had no effect on the nylon at these test conditions.

Elf Autochem also strongly disagreed with the view that coiled hoses do not contact oil. The commenter said that the air brake compressors often leak hot oil which can travel into the coiled hose, and that oil and other chemicals can spill on the hose during refilling. The commenter submitted photographs of coiled hoses "in use" between the tractor and the trailer, apparently coated with oil. Elf Autochem also stated that coiled hoses are exposed to high temperatures.

Exhaust stacks behind the cab are capable of exposing hoses to extreme high temperature. There's radiant heat from hot asphalt and surrounding metal surfaces of the cab and trailer. Trucks in heavy traffic or at idle can cause heat soak of a coil to exceed the documented maximum temperature of the Philatron EVA based assemblies.

The Furon Company stated that it manufactures a product for beverage hose that has an exterior made of EVA and "that looks very similar to" Philatron's hose. Furon said that the product loses most of its physical properties when exposed to oil. Also, Furon said that, at 140 °F–150 °F, leaks can occur at the couplings because the material softens.

General Electric (GE) Plastics commented that it believes coiled brake tubing is in contact with oil and is exposed to high temperatures, including ambient temperatures near 200 °F. GE did not provide documentation for this assertion. The commenters said that the oil resistance test is the only test that takes into account the temperature capabilities of the tubing polymer, and that if it is eliminated, the temperature performance of the tubing would be unchallenged.

The two brake hose manufacturers that commented on the NPRM were opposed to the proposed elimination of the oil resistance test for coiled tubing. The Furon Company stated that coiled hoses are exposed to oil and grease in use. "This exposure is cumulative in effect and will occur even if airdryers used in the air brake system are new and operating effectively." Furon also said that coiled hoses can be subject to temperatures of 180 °F and above.

Heat generated from exhaust stacks, hot asphalt, refrigeration unit exhaust, as well as reflected heat from surrounding body panels, will easily elevate the surface temperature of an air brake coil assembly well above the EVA brake coils rated temperature of 150 °F. This is even more of a concern if the truck will remain idle for any period of time.

Parker Hannifin objected to the proposed elimination of the oil resistance test for coiled tubing, reiterating some of its concerns about Philatron's tubing that it had previously expressed to the agency and providing new information about other concerns. The information submitted by Parker Hannifin included photographs of vehicles in use, taken at a truck stop, that appear to show the coiled tubing on the vehicles covered with oil (a report discussing these photographs was mentioned in the NPRM), and a Parker Hannifin report titled, "Elevated Temperature Exposure Tests of Philatron Coiled Air Brake Tubing Vs. Parker Parflex Brakecoil," July 21, 1992. This report related to "relaxation tests" conducted by Parker Hannifin, which consisted of side-by-side comparisons of a Philatron hose assembly with a Parker Hannifin (nylon) hose assembly. In the tests, one end of a Philatron assembly and one end of a Parker Hannifin assembly were hung from ceiling hooks while the hoses were subjected for 45 minutes to temperatures of 115 °F, 133 °F and 140 °F. After exposure to 115 °F, the Philatron and Parker Hannifin assemblies are not noticeably different in appearance. After exposure to the 133 °F and 140 °F temperatures, however, the Philatron hoses were more elongated than the nylon hoses. The coils on the Philatron hoses were so "relaxed" at 140 °F that the free end of the assembly rested on the floor of the test oven. The Parker Hannifin nylon hose appeared unaffected.

Parker Hannifin also submitted information from a publication titled "Chemical Resistance Guide for Elastomers," by K.M. Pruett (1988). The purpose of the submission was to show that EVA is rated as having limited chemical resistance to diesel oil at "room temperature" (70 °F) and is "not recommended" for use with oil at 140 °F. The guide states EVA will experience "[s]evere attack, swelling, softening, or dissolved within minutes to years."

Parker Hannifin stated that the resistance of materials to breakdown or

change is a time-temperature relationship. Thus, Parker Hannifin believes that the oil resistance test is an "accelerated" test to determined in a shortened time period the suitability of materials in specific applications for longer time periods.

The SAE Air Brake Tubing and Tube Fitting Subcommittee opposed the proposed amendment to the oil resistance requirement, as did the SAE Fluid Conductors and Connectors Technical Committee. These SAE commenters said that coiled tubing is often exposed to oil both on the inside and the outside of the coils, and that the tubing is subjected to high temperatures. SAE believes that temperatures in excess of 160 °F would certainly be encountered, with temperatures in excess of 180 °F likely. SAE also said that the effect of oil exposure on many materials in cumulative.

Mr. Anil Chudgar, commenting as a private individual, opposed eliminating the oil resistance test, describing the oil-to-heat relationship of the test as follows:

> As truck coil tubing gets exposed to oil, fuels, and grease, it absorbs them and accumulates them until it gets saturated with the petroleum oil-based products (oil, fuels and grease). Then, when this tubing gets exposed to heat, it will have the same effect as the hot oil test.

Mr. Chudgar also stated that the International Standards Organization (ISO/TC22/SC2/WG1) has drafted a discussion paper on new performance requirements for a new WG 7375–2, "Requirements on coiled pipe assemblies for pneumatic braking." The commenter emphasized that the ISO has recognized the importance of the chemical resistance of coiled brake hoses to oil. The paper states: "The inside of the coiled pipe assembly shall be resistant to pressurized air saturated with oil at a temperature up to 80 degrees C" (176 °F). The paper also states that the operating temperature of coiled hoses is between −40 °C and 80 °C.

NHTSA received six comments from manufacturers of heavy trucks. Each of these manufacturers was opposed to eliminating the oil resistance requirement for coiled hoses. They all based their opposition on concerns about the exposure of coiled hoses to oil and high temperatures. Fruehauf Trailer Corporation stated that a coiled hose can be exposed to heat and oil as part of normal truck operations. Volvo GM Heavy Truck Corporation stated that "oil is present" and that coiled hoses are often located behind the engine tunnel where engine operating temperatures are nominally 200 °F.

Navistar International Transportation Corporation believed that heated oil can be present in the tractor-trailer connection hose during vehicle operation. The commenter stated that it has concerns about the durability of hose materials that do not meet the oil resistance requirements of Standard 106. The commenter said that while the temperature specified in the oil resistance requirement is higher than the temperatures experienced in actual operation, the temperature specification "relates to an accelerated test of the material which is indicative of expected longer term life in operation."

Ford believed that adequate investigation and evaluation have not yet been performed to justify abandoning a performance requirement that has apparently served the consumer and industry well. The commenter stated that coiled air brake lines are exposed to heat and oil during their service life.

> At this point we do not have a time/temperature profile of all of the service exposure, but are comfortable that hoses meeting the FMVSS 106 requirements along with our internal criteria perform well in service.

Ford was concerned that removing the oil resistance requirements from FMVSS 106 would allow coiled hoses that cannot meet the oil resistance test to be used in an even more adverse environment than between a towed and a towing vehicle.

PACCAR believed that coiled air brake hose assemblies used between a towed and a towing vehicle are externally exposed to:

> Grease from the fifth wheel, diesel fuel during fueling; engine and air compressor oil from service spills, wear or leakage; caustic soaps and acids; soot from horizontal exhausts; and other environmental contaminants which include salts, ozone and pollutants. If coiled air brake tubing were to be used between the vehicle frame and axle, they could be exposed to wheel-end and axle lubricants, engine oils, coolant, diesel fuel and other road contaminants.

PACCAR also stated that internally, all air brake hoses are exposed to compressor oil to some degree.

> We have seen truck air systems with oil caked on the inside of air valves and air lines throughout the vehicle, including the coiled assemblies. One such truck had been equipped with an air dryer and wet tank. The air compressor rings had failed and the air dryer had become saturated, allowing oil to pass. Once a situation like this is identified, the compressor is repaired and the air lines rinsed, but the residue is still in the air lines.

With regard to temperature exposure, PACCAR stated that testing has shown that back-of-cab temperatures can average 130 °F with ambient temperatures ranging from 79 to 92 °F.

> Back-of-cab temperatures as high as 160 °F can be reached and sustained on long grades. Additionally, exhaust elbow surface temperatures of 400 °F is not uncommon. The coiled air lines are located in the area directly behind the cab and are exposed to the temperatures described. Aerodynamic developments result in higher back-of-cab temperatures. Higher temperatures behind the cab also occur after the truck pulls off the road before the components cool.

Freightliner stated that eliminating the oil resistance requirement "will allow sub-standard materials to be used in an area of the vehicle that has considerable exposure to oil, grease, dirt and high temperatures." Freightliner further indicated that materials used between a towed and a towing vehicle can prematurely deteriorate because they are used in a hostile environment.

> This deterioration can manifest itself in several forms. First, melting from exposure to hot surfaces near exhaust pipes and mufflers can occur. These components are generally located in the same back of cab area as coiled air brake hoses. Exposure to high ambient temperatures in combination with engine hot soak temperatures can result in temperatures exceeding 130 degrees F for relatively long periods.
>
> The use of cleaning solutions, some of which use solvents applied at high pressure and temperatures up to 180 degrees F, is also common. The back of cab area also accumulates grease and oil from the drive train and fifth wheel which are in close proximity to the coiled hoses. Thus, it is common for such hoses to accumulate contaminates on the outer surfaces. Oil is also present in the air brake system. The source is the air-compressor. Consequently the hoses are exposed to oil on the inner surfaces.

On the issue of whether there is a kinking problem with coiled nylon tubing, virtually all of the commenters opposed to the NPRM believed there was no kinking problem. The SAE and Mr. Chudgar believed any kind of "problems" with kinking occur only when assemblies are too short, improperly installed, or abused while in use. Freightliner said that kinking is not currently a problem, but could become one if sub-standard materials are substituted in place of nylon. PACCAR and Volvo GM stated that they have not experienced kinking problems with nylon coiled tubing. Furon stated that none of its nylon coiled assemblies have been returned in the past three years due to a kinking problem.

IV. NHTSA Testing

NHTSA also conducted testing of Philatron hoses. NHTSA's test program consisted of placing a Philatron hose in the same chamber as another

VOL 58 ISS 135 JL 16 1993 UMI

manufacturer's brake hose that had been certified as complying with Standard 106, including the oil resistance requirement of S7.3.4. The two hoses were then exposed to certain environmental conditions for 24-hour period. First, the Philatron hose and the certified hose were exposed to a temperature of 130° F. The hoses were both suspended at one end. After 24 hours, the Philatron hose had sagged down so that the free end was resting on the floor of the test chamber. The certified hose did not show any discernable sagging. The next chamber exposed a Philatron hose and a certified hose to temperatures of 150° F when both were suspended from one end. In this case, the Philatron hose quickly sagged to the floor, long before the 24-hour test period had elasped, while the certified hose did not show any significant sagging over a 24-hour period. A third chamber exposed a Philatron hose and a certified hose to temperatures of 170° F when suspended by one end. These results were similar to the results in the 150° F test, except that the Philatron hose sagged to the floor even more quickly.

NHTSA also conducted side by side testing of Philatron hoses and certified hoses in chambers heated to 130°, 150° and 170°, respectively, except that in these cases the brake hoses were attached at both ends. In the 130 °F test, the Philatron hose sagged slightly after 24 hours at 130°. The certified hose did not show any similar sag at this temperature. In the 150 °F chamber, the certified hose suspended by both ends sagged slightly at the start but then stabilized and did not show any further signs of sagging. By way of comparison, the Philatron hose suspended by both ends in the 150 °F chamber softened considerably and continued to soften, but did not sag excessively. The Philatron hose suspended by both ends in the 170 °F chamber softened so much that the individual coils collapsed together on each other and the surface of the hoses became very tacky. These hoses did not sag excessively. The certified hoses showed very nearly the same results at 170° that they had shown at 150°. That is, there was some initial slight sag, but the hoses stabilized and held their coils without any further sag or softening.

The agency also conducted side by side testing of Philatron hoses and certified hoses at these temperatures in these chambers with an oil mist present. The hoses exhibited substantially the same results as they had shown at the respective temperatures without the oil mist.

V. NHTSA's Decision to Terminate Rulemaking

After considering all available comments, especially the comments on the NPRM, NHTSA has decided to terminate rulemaking on this subject.

While it is the agency's policy to amend rules that inappropriately hinder innovation, it is also our policy to not lightly rescind or narrow the application of an existing safety requirement. NHTSA must carefully justify changing the status quo, particularly in an area which is crucial to safety, such as truck braking systems.

NHTSA does not believe that it would be appropriate to narrow the application of the oil resistance requirement, based on the record in this rulemaking. Philatron's argument that there is no rational basis for applying the oil resistance requirement to coiled air brake hoses is flawed in several key respects. Indeed, there is significant reason for believing that there is a continuing safety need for the oil resistance requirement.

Philatron made three principal arguments for the exclusion of its hoses from the oil resistance requirement: (1) That the hoses would not be exposed to either oil or high temperatures in the real world; (2) that the requirement specifies an inappropriately high test temperature; and (3) that, even if there were oil exposure, its hoses would not experience any problems at the lower temperatures it believed exist in the real world. Based on the record, NHTSA disagrees with each of Philatron's arguments, and reaches contrary conclusions.

A. Coiled Air Brake Hoses Are Exposed to Oil

NHTSA bases this conclusion in part on the comments of the heavy truck manufacturers. Each of the heavy truck manufacturers commenting on the NPRM argued that the exterior of a coiled brake hose is exposed to oil. These commenters are fully familiar with the back-of-cab environment of their vehicles—the environment in which Philatron's brake hoses would be installed—and are especially qualified to comment on the conditions and stresses that coiled hoses are likely to experience. All of these commenters believed that the coiled hoses are coated externally with petroleum products from everyday use on the vehicle, including grease from the fifth wheel and diesel fuel spilled during fueling. The vehicle manufacturers were unanimous in their views that they would not use a coiled hose on their vehicles if the hose did not meet the oil resistance requirement. Unlike many other commenters who have a financial interest in the outcome of this rulemaking, the vehicle manufacturers represent a more objective party, and one that is intimately involved in the safety certification process. As such, the agency gives great weight to their views.

The heavy truck vehicle manufacturers also stated that the interior of coiled hoses is also exposed to oil. These commenters are also intimately familiar with the operating capabilities of their vehicles, and are especially qualified to comment on how equipment on the vehicles functions. These commenters refuted Philatron's argument that a vehicle's "wet tank and/or air drying system" will remove all oil that is contained in the air from the vehicle's compressor. The SAE and PACCAR provided information showing that wet tank and/or air drying systems are not always dependable. Oil can pass through an air dryer and contact the internal surface of the hose if the dryer were saturated, old or broken. Moreover, there are some vehicles that may not have such a filtering system, such as older models or models that have the system installed as optional equipment. Bendix, the first company to manufacture and sell air dryers, introduced the item in 1971. Air dryer systems have had a relatively steady growth in sales since their introduction, and NHTSA estimates that they are present on approximately 80 percent of new trucks. However, in most installations they are ordered as an optional item of equipment. Only one vehicle manufacturer includes an air dryer as standard equipment, and then only on selected vehicle models.

NHTSA also bases its conclusion about exposure to oil on the information from Mr. Chudgar about the ISO's work on brake hoses. Mr. Chudgar pointed out that that international organization is considering a requirement that the inside of a coiled hose should be resistant to pressurized air saturated with oil. This work by the ISO supports the view that the interior of a coiled hose is subject to oil contamination.

NHTSA also bases its conclusion on the information submitted by plastic manufacturers. Elf Atochem submitted information indicating that certain materials, such as EVA, are unsuitable for brake hose applications. Elf Atochem manufacturers EVA, but strongly recommends against its use in a brake hose application. Furon stated that it manufactures a product, similar in appearance to EVA brake hose, that loses most of its physical properties when exposed to oil. Furon found that at 140 °F–150 °F, leaks can occur at hose

couplings because the material softens. The Chemical Resistance Guide for Elastomers specifies that EVA is not recommended for use with oil at elevated temperatures. This information from sources knowledgeable about plastic materials demonstrates that the oil resistance test should be retained for coiled hoses, because oil and some materials, including EVA, simply "don't mix" in a brake hose environment.

Philatron argued that Standard 106's oil resistance test is inappropriate, because there is no safety need to have a limit on volumetric swelling of a brake hose when exposed to oil. NHTSA disagrees. The Chemical Resistance Guide to Polymers indicates that there is a correlation between volumetric swelling and a loss of tensile strength, and that significant swelling generally represents a severe chemical attack of the polymer. In other words, when a polymer swells from absorbing a chemical, the absorbed chemical may function as a solvent of the polymer. The limit on volumetric swelling at the end of the oil resistance test uses ASTM No. 3 oil as a surrogate for other petroleum products and serves to limit the extent to which the brake hose can be chemically attacked by refined petroleum products. The oil resistance requirement ensures that any coiled brake hose used between a towed and a towing vehicle can withstand such exposure, regardless of whether the hose is made from nylon, EVA, or any other material.

NHTSA has evaluated the assertion by Philip Ramos, Sr. (discussed above) that the conclusions of the SAE committee reviewing SAE J–1067, "Trailer cable," demonstrate that coiled brake hoses are not exposed to oil "so as to present a problem." The agency notes that the conclusions differ with those of the SAE Air Brake Tubing and Fitting Subcommittee and the SAE Fluid Conductors and Connectors Technical Committee (discussed above), the SAE groups comprised of persons most knowledgeable about brake hoses.

The conclusions of the SAE committee on J–1067 regarding oil exposure and temperatures are less persuasive than those of the other two SAE groups. The conclusions of the other two SAE groups regarding oil exposure and temperatures are supported by the statements of a number of commenters, including the heavy vehicle manufacturers and the ISO. Further, as just noted, the primary expertise of the members of the SAE committee on J–1067 lies in electrical cables.

The fact that the SAE committee on electrical cables has decided not to issue an oil-resistance requirement for electrical cables does not necessarily mean that the committee has determined that the cables are not exposed to oil. Other factors might have been considered, such as the extent of the safety consequences of hose degradation due to oil. The primary safety consideration for an electric cable is that the cover does not fall off and expose large sections of cable to the potential for shorting. That concern aside, an electric cable cover can crack completely through and still function for years. In contrast, virtually any deficiency in a brake hose can lead to hose failure, such as air leakage or hose rupture.

NHTSA can not conclude from the comments that electrical cables themselves do not have problems with respect to sagging and coil memory. Some electrical cables in service today appear to sag excessively, to the extent they are sometimes wrapped around the air brake hoses to keep them from contacting the truck frame or bed in the area behind the cab.

NHTSA notes also that, regardless of their exposure to external oil sources, electrical cables (unlike brake hoses) are at no risk of exposure to oil internally. Since electrical cables contain only wires, there is never a risk that oil might be carried within them. Thus, even if correct, conclusions about the exposure of electrical cables to external oil sources cannot fully address, much less resolve, the issues concerning coiled brake hoses and oil exposure.

B. Coiled Air Brake Hoses Are Exposed to Temperatures Significantly Higher Than Those of the Ambient Air

NHTSA concludes that Philatron and supporters of its petition are incorrect in suggesting that its hose would be exposed to temperatures of no more than 134 °F. They based their belief on 134 °F being the highest temperature in the brake hose environment since that is the highest air temperature recorded in this country (Death Valley, California, July 10, 1913). That reasoning is flawed in several respects. First, Philatron's reasoning overlooks the fact that an object may be heated to temperatures greater than the air temperature through direct contact with the sun's rays and radiation. Parker Hannifin stated that its tests have shown that back-of-cab temperatures can average significantly higher than ambient temperatures (e.g., back-of-cab temperatures of 130 °F when ambient temperatures are only 79 to 92 °F). The SAE said that the 134 °F temperature to which Philatron referred is air temperature, and does not take into account the direct radiation effect of the sun.

Second, Philatron's argument overlooks the fact that the brake hose environment may be heated by vehicle components to temperatures exceeding the general air temperature. NHTSA agrees with the commenters who believe that coiled hoses can be exposed to back-of-cab temperatures substantially higher than 134 °F. With regard to what those temperatures would be, the vehicle manufacturers estimate the high-end temperatures to be from 130 to 200 °F. The ISO suggests the inside of a coiled hose should be resistant to pressurized air saturated with oil at a temperature up to 176 °F.

In connection with this discussion of operating temperatures, NHTSA notes that it and Parker Hannifin separately conducted elongation tests of Philatron's coiled tubing at temperatures typical of operating temperatures. Each set of tests showed that the tubing elongated excessively in a short period of time. In Parker Hannifin's testing, this problem occurred both at 133 °F, and at 140 °F. In NHTSA's testing, Philatron's coiled tubing elongated excessively at 130 °, 150 ° and 170 °F when only one end of the assembly was attached (one end suspended).

C. The Oil Resistance Requirement is an Accelerated Test and Thus appropriately Specifies a Temperature Higher Than Those in the Real World

Philatron argued that the test conditions for the oil resistance test are more severe than would ever be encountered in actual use and are therefore inappropriate. While Philatron is correct that the oil resistance requirement specifies a temperature at least slightly higher than might occur in actual use, it incorrectly concludes from that fact that the test temperature is inappropriate. As noted by many of the opponents of the NPRM, the oil resistance test was not intended to simulate a profile of anticipated exposure in actual use. The test is an accelerated test, intended to simulate years of use and assess a brake hose's resistance to hot petroleum products over its lifetime. As an accelerated test, it necessarily specifies conditions more stringent than those that would be experienced in actual use.

The oil resistance requirement in Standard 106 originated from a requirement in SAE J1402a that limited the swell of materials used for brake hoses under the same test conditions of the current requirement (immersing the brake hose in a refined petroleum product that is heated to 212 °F, for 70

hours). See, 35 FR 13738, August 28, 1970; as corrected at 35 FR 17055, November 5, 1970. The SAE comment indirectly indicates that the purpose of the oil resistance requirement is to measure the cumulative effect of oil on brake hoses.

NHTSA believes that the use of an accelerated test for oil resistance is appropriate. NHTSA bases this conclusion in part on the long-term nature of the problem the oil resistance requirement addresses. SAE noted in its comment that oil has a "cumulative" effect on brake hose, i.e., once absorbed into the hose material, the oil is retained for the life of the hose. Further, all of the brake hose manufacturers commenting on the NPRM noted the need for an accelerated test to measure a hose's oil resistance. Parker Hannifin provided a succinct explanation:

> Failure of a material to pass a 70 hour 212 °F oil test will translate into failures after a longer period of time at lower temperatures. Oil resistance is a time/temperature phenomena [sic].

Accelerated tests like the oil resistance test are appropriate to simulate, in a laboratory, years of on-road use. Accelerated tests are often the only means by which NHTSA can reasonably and reliably assess the ability of an item of equipment to provide safety benefits long after the item was sold. Accelerated tests are especially important for the FMVSS's, because under section 108(b)(1), only new products must comply with the standards. For compliance purposes, the agency cannot test a product that has been in use to see if the item has "aged well" or is continuing to perform acceptably after a period of time in use. Further, it would not be practicable to require manufacturers to certify that their products passed a test of several years duration. In the case of brake hoses, NHTSA has concluded that the only way it can ensure that a brake hose will be able, over its lifetime, to withstand high temperatures while exposed to oil is to use a short test that simulates years of use.

Given that the Chemical Resistance Guide for Elastomers indicates that EVA is a material that can dissolve "within minutes to years," the use of an accelerated test to show long-term effects of oil and temperature on brake hose is both necessary and desirable. The test enables the agency to conclude that a brake hose that does not fail under the high temperature and other conditions of the oil resistance test during the relatively short period of the test is unlikely to experience problems when exposed for years to the conditions of actual use. The test also provides a necessary margin of safety.

NHTSA notes that accelerated tests are common in the FMVSS's. Standard 106 has an accelerated test in S7.3.12, the zinc chloride resistance requirement. This test is intended to ensure that the brake hose will not corrode when exposed to common road salt. However, the section specifies zinc chloride as the test substance, even though zinc chloride is not used by any State or municipality as road salt. The reason for specifying zinc chloride instead of road salt is that zinc chloride is far more reactive and corrosive than road salt. These attributes allow the evaluator to conclude that a brake hose that does not corrode after being immersed in a zinc chloride solution for a relatively short period of time (200 hours) is unlikely to corrode when exposed to years of road salt residue. Accelerated tests are also found in S7.3.3 (low temperature resistance), and S5.3.3 (whip resistance requirement for hydraulic brake hose).

Other FMVSS's also use accelerated tests. Examples include the corrosion test in S8.4 of Standard 108 (lamp exposed to a salt spray for 240 hours) and the resistance to microorganisms test in S5.1(f) of Standard 209 (seat belt buried in soil for two weeks). In each of these cases, the agency has concluded that the item of equipment will be exposed to conditions in service that could give rise to a particular type of failure, and then devised a test that should reveal in a relatively short time if a particular piece of equipment is susceptible to such a failure.

D. Other Issues

Philatron also argued that the only purpose served by the oil resistance test is to indirectly require the use of nylon. The oil resistance test may have originally had the indirect effect of requiring nylon. However, there are now available materials other than nylon that meet the oil resistance test and the other requirements of Standard 106. In fact, Philatron uses such a material for its "Marathon" air brake hose assemblies. These assemblies, which it is now manufacturing and selling, are made of hose material that appears to meet the oil resistance test.

Further, even if the oil resistance requirement had the effect of indirectly requiring nylon, the requirement would be consistent with the provisions and purposes of the VSA. Under Standard 106, an air brake hose may be manufactured from any material as long as the hose can meet the performance requirements of the standard. The oil resistance test specifies test conditions and performance criteria that ensure that materials that are susceptible to petroleum products cannot be used for brake hoses. If it happens that only hoses made from nylon materials could meet the requirement, such a requirement would still be a "performance standard," consistent with the VSA's requirements for the FMVSS's.

The agency further concludes that the alleged safety problems of kinking or cold weather cracking with nylon coiled tubing have not been demonstrated by the information submitted in response to the NPRM. Supporters and opponents of the proposed exclusion were sharply divided about this issue, but information supportive of a determination of a safety problem was not submitted, and NHTSA is not aware that there is such a problem. If information becomes available showing the possible existence of a significant safety problem, the agency will take appropriate action to address the matter.

E. Different Outcomes of the Inconsequentiality and Rulemaking Proceedings

In view of the differences in the outcomes of the proceedings concerning Philatron's inconsequentiality and rulemaking petitions, NHTSA emphasizes that there were substantial differences in the issues presented by, and the records of, the two proceedings. First, the evidence of a safety problem directly resulting from noncompliance with the oil resistance requirement was substantially greater in this proceeding. The rulemaking record contained more information on safety than the earlier proceeding. Because the proceeding on the inconsequentiality petition might have helped focus attention on rulemaking issues about Philatron's hoses and the oil resistance requirement, the agency received more than three times the number of comments on the rulemaking procedures than on the inconsequentiality petition. The commenters in the rulemaking proceeding were more diverse in their areas of expertise, and many appeared to have no financial interest in the outcome of the regulatory action. In the proceeding on the inconsequentiality petition, the agency received comments primarily from Philatron's competitors and its dealers and distributors. In the rulemaking proceeding, NHTSA received comments from those parties, but also from the Society of Automotive Engineers, manufacturers of heavy trucks (e.g., Ford, Navistar, PACCAR, Freightliner), and manufacturers of brake hose material (e.g., Elf Atochem

and General Electric). These commenters, which opposed the proposed changes, provided safety information that NHTSA evaluated and found persuasive. Also, the agency conducted testing of Philatron hoses for this proceeding because of the implications (discussed below) on the manufacture of all future brake hoses. The testing, discussed in section IV, disclosed potential problems with Philatron hoses concerning coil retention in elevated temperatures.

The second difference is that the inconsequentiality proceeding concerned a comparatively limited number of assemblies (45,400) produced by Philatron in one year (1991) while this proceeding involved the much larger number of hoses that will be manufactured in future years, not only by Philatron but possibly also by other manufacturers. A change to the standard that allowed companies to commence unlimited production of a previously prohibited hose design would substantially magnify any potential risk to the public.

Third, the inconsequentiality proceeding was retrospective, focusing on the safety significance of the failure of brake hoses previously produced by Philatron to comply with the oil resistance requirement. This rulemaking proceeding was, by contrast, prospective, looking at whether all future brake hoses should be excluded from the oil resistance requirement and, if so, whether they should be required to meet new requirements to prevent a degradation of safety.

F. Conclusion

For the reasons set forth above, the agency concludes that coiled air brake hoses are exposed to petroleum products at elevated temperatures while the hoses are in service, and that such exposure could cause the hoses to fail if they were not manufactured to meet the oil resistance requirement of Standard 106. Accordingly, the agency has decided to terminate this rulemaking action.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegations of authority at 49 CFR 1.50.

Issued on: July 13, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–16985 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 58, No. 135
Friday, July 16, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-087-1]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
93-167-01	University of Hawaii, Manoa.	06-16-93	Lettuce plants genetically engineered to express resistance to tomato spotted wilt virus..	Hawaii

Done in Washington, DC, this 12th day of July 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-16901 Filed 7-15-93; 8:45 am]
BILLING CODE 3410-34-P

[Docket No. 93-025-2]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers of veterinary biologics and other interested persons that we are holding the fifth annual public meeting to discuss current regulatory and policy issues related to the manufacture and distribution and use of veterinary biological products.

Place, Dates, and Times of Meeting: The fifth annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, IA, on Tuesday, August 10, 1993, from 8 a.m. to 5 p.m., and Wednesday, August 11, 1993, from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Lorie Lykins; Veterinary Biologics Field Operations; Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; U.S. Department of Agriculture; 223 South Walnut Avenue, Ames, IA 50010; telephone (515) 232-5785; fax (515) 232-7120.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service previously announced that it would be holding the fifth annual public meeting on veterinary biologics in Ames, IA, in August, 1993 (See 58 FR 19234-19235, April 13, 1993). In its notice for the meeting, APHIS requested interested persons to submit topics to be included in the meeting's agenda. Based on the submissions received and other considerations, the agenda for the fifth annual meeting includes, but is not limited to, the following topics:

1. Program updates;
2. Duration of immunity;
3. In vitro testing and recertification of references;
4. Good laboratory practice considerations;
5. Public perception of licensed products;
6. Computer validation related to electronic transfer of information;
7. Endotoxins and their relation to safety;
8. Program operations;
9. New pathogenic strains.
10. Breakout sessions will be held on the following topics: Erysipelothrix bacterin, poultry, biotechnology, and VBFO issues.

A portion of the meeting will be held for open discussion, during which attendees will have the opportunity to

present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromptu or prepared. Persons wishing to make a prepared statement should indicate their intention to do so at the time of registration, by indicating the subject of their remarks and the approximate time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Registration forms, lodging information, and copies of the complete agenda may be obtained from the person listed under "**FOR FURTHER INFORMATION CONTACT.**" Advance registration is required. The deadline for registration is August 2, 1993.

Done in Washington, DC, this 12th day of July 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–16899 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 93–081–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of May 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of May 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under "**FOR FURTHER INFORMATION CONTACT.**"

Done in Washington, DC, this 12th day of July 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–16900 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

Sugar and Crystalline Fructose Marketing Allotments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice affirms the announcement made on June 30, 1993 by the Acting Secretary of Agriculture (hereinafter "the Secretary") that marketing allotments have been established for sugar and crystalline fructose for fiscal year 1993. The overall allotment quantity for sugar is 7.770 million short tons (MST). The beet sugar allotment is 4.1492 MST (53.4 percent), and the cane sugar allotment is 3.6208 MST (46.6 percent). State cane sugar allotments and individual sugar beet and sugarcane processor allocations are provided in this notice. The marketing allotment for crystalline fructose manufactured from corn is 159,757 short tons.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, Deputy Administrator for Policy Analysis, Agricultural Stabilization and Conservation Service, room 3739, South Agriculture Building, U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; or FAX to 202–720–8261; or telephone 202–720–3391.

SUPPLEMENTARY INFORMATION:

Statutory Background

Section 359c(g)(1) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359cc(g)(1)) (the "1938 Act"), provides for the establishment of marketing allotments for sugar for a fiscal year or portion thereof based upon quarterly reestimates of sugar consumption, stocks, production, and imports for the fiscal year. Pursuant to section 359b(A)(2) of the 1938 Act, marketing allotments for sugar must be established if imports of sugar for consumption in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and reexported in refined form or in sugar containing products) will be less than 1,250,000 short tons, raw value. Section 359b(a)(1)(c) provides that the estimate of imports of sugar shall be based on the difference between (i) the sum of the quantity of estimated consumption and reasonable carryover stocks and (ii) the quantity of sugar estimated to be available from domestically produced sugarcane and sugar beets and from carry-in stocks. Section 359b(c) of the 1938 Act provides that for any fiscal year in which sugar marketing allotments are established, the Secretary shall establish allotments for the marketing by manufacturers of crystalline fructose manufactured from corn, at a total level not to exceed the

equivalent of 200,000 tons of sugar, raw value, during the fiscal year.

Section 359c(b) of the 1938 Act provides that the Secretary shall establish the overall allotment quantity of sugar by deducting from the sum of the estimated sugar consumption and reasonable carryover stocks for the fiscal year (1) 1,250,000 short tons, raw value and (2) carry-in stocks of sugar. Pursuant to sections 359c(c) and (d) of the 1938 Act, the Secretary must establish overall beet sugar and cane sugar allotments by using percentage factors established on the basis of past marketings of sugar, processing and refining capacity, and the ability of processors to market the sugar covered under the allotments. Section 359c(f) of the 1938 Act provides that the cane sugar allotment shall be further allotted among the 5 States in the United States in which sugarcane is produced on the basis of past marketings of sugar, processing capacity, and the ability of processors to market the sugar covered under the allotments. Section 359d(a) of the 1938 Act provides for the allocation among processors of the State cane sugar allotments and the beet sugar allotment after such hearing and on such notice as the Secretary by regulation may prescribe, in such manner and in such quantities as to provide a fair, equitable, and efficient distribution of the allocations by taking into consideration processing capacity, past marketings of sugar, and the ability of each processor to market sugar covered by that portion of the allotment allocated. In addition, section 359f(b) provides that whenever a State allotment is established and there are in excess of 250 producers in such State, the Secretary is required to determine, for each such State allotment, whether the production of sugar, in the absence of proportionate shares, will be greater than the quantity needed to enable processors to fill the State's allotment and provide a normal carryover inventory, and, if so, establish proportionate shares for the crop of sugarcane that is harvested during the fiscal year the allotment is in effect.

An interim rule governing the administration of marketing allotments for sugar and crystalline fructose was published in the **Federal Register** on July 6, 1993 (58 FR 36120).

Fourth Quarter Reestimate of Sugar Consumption, Stocks, Production, and Imports for Fiscal Year 1993

Pursuant to section 359b(a)(2) of the 1938 Act, the Secretary has reestimated the quantities of sugar consumption, stocks, production, and imports in the United States (including Puerto Rico) for fiscal year 1993 as follows:

	MST, raw value
Consumption	9.056
Reasonable ending (carry-over) stocks	1.432
Production	7.771
Beginning (carry-in) stocks	1.468
Imports	1.249

The level of ending stocks that is "reasonable" must be determined in light of the purposes of the sugar program and the current sugar market conditions. The Commodity Credit Corporation (CCC) provides price support for domestically produced sugar beets and sugarcane through nonrecourse loans to sugar beet and sugarcane processors in accordance with the provisions of section 206 of the Agricultural Act of 1949, as amended. In addition, section 902(a) of the Food Security Act of 1985 requires that the President "use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 206 of the Agricultural Act of 1949 at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation."

The current situation and outlook for sugar in fiscal year 1993 indicates that the probability of forfeiture of sugar pledged as collateral for price-support loans is high because refined beet sugar prices are about 1 cent per pound below loan redemption levels. Marketing allotments are the only remaining action that can be taken in fiscal year 1993 to attempt to raise market prices to levels which would provide effective price support and avoid costs to the Federal Government. Any level of ending stocks at or above 1.433 MST determined to be "reasonable" would not trigger marketing allotments and would very likely leave market prices depressed at levels that would result in forfeitures of sugar held as collateral under the price-support loan program. A determination of reasonable ending stocks of less than 1.433 MST would trigger marketing allotments, which would have the effect of raising sugar prices by reducing marketings of refined beet sugar in the July-September period. Therefore, a level of ending stocks of 1.432 MST would be reasonable in light of the objectives of the sugar program of assuring an adequate supply of sugar to the U.S. market while avoiding costs to the Federal Government. Accordingly, the quantity of sugar needed to be imported into the United States during the fiscal year in order to achieve a reasonable level of ending stocks would be less than 1.25 million short tons, raw value.

Notice

Pursuant to sections 359c(g)(1)(B) and 359b(c) of the 1938 Act, the Secretary of Agriculture has established allotments for the marketing of sugar and crystalline fructose during fiscal year 1993. In addition, the Secretary has made the following determinations:

1. The fourth quarter reestimate of the quantities of sugar consumption, stocks, production, and imports in the United States (including Puerto Rico) for fiscal year 1993 is as follows:

	MST, raw value
Consumption	9.056
Reasonable ending (carry-over) stocks	1.432
Production	7.771
Beginning (carry-in) stocks	1.468
Imports	1.249

2. The overall allotment quantity for sugar is 7.770 MST.

3. The percentage factors for the beet sugar and raw cane sugar allotments are 53.4 percent and 46.6 percent, respectively. The Secretary established the percentage factors for the beet sugar and cane sugar allotments on the basis of past marketings of sugar (defined as the average of marketings of sugar from the 1985 through 1989 crops, excluding the highest and lowest years), processing and refining capacity (defined as the highest year's production in the preceding 5 crop years), and the ability of processors to market the sugar covered under the allotments (defined as the crop-year production estimate for the fiscal year in which allotments are implemented). In order to make the percentage factors fair, equitable, and efficient, the three criteria were weighted equally. The data used to determine the percentage factors are as follows (in thousands of short tons):

	TST	
	Beet sector	Cane sector
Past marketings	3,430	3,341
Processing capacity	4,012	3,494
Ability to market	4,340	3,431
Average	3,927 (53.4%)	3,422 (46.6%)

4. The beet sugar allotment is 4,149.2 MST.

5. The cane sugar allotment is 3,620.8 MST.

6. The State cane sugar allotments for each of the 5 States in which raw cane sugar is produced are:

	TST
Florida	1,701.8
Louisiana	832.8
Hawaii	879.9
Texas	115.9
Puerto Rico	90.5

7. Proposed marketing allocations for fiscal year 1993 for domestically produced beet sugar and raw cane sugar by U.S. sugar beet processors and sugarcane processors are as follows:

TABLE A.—SUGAR BEET PROCESSORS

	Thousand short tons, raw value equivalent
Amalgamated Sugar Company	800.796
American Crystal Sugar Company	904.526
Delta Sugar Corporation	41.492
Great Lakes Sugar Company	53.940
Holly Sugar Corporation	742.707
Michigan Sugar Company	248.952
Minn-Dak Farmers Cooperative	182.565
Monitor Sugar Company	136.924
Savannah Food Industries (ADSEP Division)	20.746
Southern Minnesota Beet Sugar Cooperative	257.250
Spreckels Sugar Company, Inc	282.146
Western Sugar Company	477.158

TABLE B.—SUGARCANE PROCESSORS

	Thousand short tons, raw value
Florida:	
Atlantic Sugar Association, Inc	127.634
Okeelanta Corporation	304.620
Osceola Farms Company	190.600
Sugar Cane Growers Cooperative of Florida	289.303
Talisman Sugar Corporation	124.230
U.S. Sugar Corporation	665.398
Louisiana:	
Alma Plantation, Ltd	35.810
Breaux Bridge Sugar Cooperative	28.315
Caire & Graugnard	[illegible]
Cajun Sugar Cooperative, Inc	50.801
Caldwell Sugars Cooperative, Inc	34.978
Cora-Texas Mfg. Company, Inc	59.962
Dugas & Leblanc, Ltd	37.476
Evan Hall Sugar Cooperative, Inc	44.971
Glenwood Cooperative, Inc	34.145
Harry Laws & Company, Inc	29.981
Iberia Sugar Cooperative, Inc	38.309
Jeanerette Sugar Company, Inc	41.640
Lafourche Sugars Corporation	45.804
M.A. Patout & Sons, Ltd	86.611
Raceland Sugar, Inc	56.630
St. James Sugar Cooperative, Inc	42.473
St. Martin Sugar Cooperative, Inc	33.312
St. Mary Sugar Cooperative, Inc	39.142
Savoie Industries, Inc	35.810
Sterling Sugars, Inc	48.302
Hawaii:	
Hamakua Sugar Company, Inc	124.940
Hawaiian Commercial & Sugar Co	230.523
Hilo Coast Processing Co. (C. Brewer and Co., Ltd.)	76.548
Ka'u Agribusiness Company, Inc	56.311
Kekaha Sugar Co., Ltd	51.912
Lihue Plantation Company, Ltd	58.951
McBryde Sugar Company, Ltd	43.993
Oahu Sugar Company, Ltd	80.067
Olokele Sugar Company, Ltd	46.633
Pioneer Mill Company, Ltd	44.873
Waialua Sugar Co., Inc	65.110
Texas:	
Rio Grande Valley Sugar Growers, Inc	115.866

VOL 58 ISS 135 JL 16 1993 UMI

TABLE B.—SUGARCANE PROCESSORS—Continued

	Thousand short tons, raw value
Puerto Rico:	
Coloso	28.514
Mercedita	24.441
Plata	17.108
Roig	20.458

6. The overall allotment in fiscal year 1993 for the marketing of crystalline fructose manufactured from corn is 159,757 short tons. Allotments will be established for the two U.S. manufacturers of crystalline fructose, and they will be notified of such allotments by certified mail.

9. There are in excess of 250 sugarcane producers in Louisiana; the production of sugar, in the absence of proportionate shares, has been greater than the quantity needed to enable processors to fill the State's allotment and provide a normal carryover inventory; and, proportionate shares will be established for the crop of sugarcane that was harvested in Louisiana during fiscal year 1993.

Signed at Washington, DC this 13th day of July 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-17052 Filed 7-14-93; 12:37 pm]

BILLING CODE 3410-05-P

Forest Service

Ski Lifts, Inc. Master Plan, Mt. Baker-Snoqualmie National Forest, King and Kittitas Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to upgrade and/or relocate facilities at four ski areas in Snoqualmie Pass, Washington: Snoqualmie Summit, Ski Acres, Hyak and Alpental Ski Areas. The proposal includes expanding the permit area in the Lodge Lake and Rockdale/Frog Lake areas (Approximately 300 acres). Projects proposed in the expansion area include construction of five chairlifts and a limited service building. Portions of these ski areas are on lands administered by the Mt. Baker-Snoqualmie National Forest and are operated under a Special Use Authorization.

DATES: Comments concerning the scope of the analysis should be received in writing by September 15, 1993.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Rudy Edwards, District Ranger, North Bend Ranger District, 42404 SE. North Bend Way, North Bend, WA 98045.

FOR FURTHER INFORMATION CONTACT: Larry Donovan, EIS Team Leader, Supervisor's Office, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue W., Mountlake Terrace WA 98043. Phone (206) 744-3403.

SUPPLEMENTARY INFORMATION: The master plan for Snoqualmie Summit and Ski Acres was completed in 1984, Hyak's was completed in 1983 and Alpental's master plan was revised in 1989. With the recent acquisition of Hyak, Ski Lifts, Inc. now owns all of the ski areas at Snoqualmie Pass. With each area having its own master plan, they have all been managed as separate areas. With the completion of the new master plan, the intent is to have all the areas operate as one unit.

The Ski Lifts, Inc. Master Plan EIS will tier to the Forest Plan EIS's for the Wenatchee and the Mt. Baker-Snoqualmie National Forests, which provides goals and objectives, forest wide standards and guidelines, management area standards and guidelines and management area descriptions that will be utilized for implementing projects on the Forest. If one of the decisions made is to expand the permit boundary, the Forest Plans will be amended.

The Ski Lifts, Inc. permitted area is within the Management Unit for the Alpine Lakes area. The Forest Plans provided for areas within the Management Unit of Alpine Lakes to be managed according to the Record of Decisions, Selected Alternative, Alpine Lakes Area Land Management Plan Final Environmental Impact Statement. The current allocation of the lands permitted to Ski Lifts, Inc. is, Developed Site. The areas proposed for expansion are allocated to Scenic Forest and the Denny Creek Recreational Area.

The Ski Lift, Inc. permit covers 1,864 acres of National Forest land and approximately 1,500 acres of private land. Altogether, the area operates 35 lifts of which 24 are clairlifts and 18 of those are at least partially located on National Forest land. There are also a number of lodges, maintenance facilities and ski school buildings on both National Forest and private land.

Issues currently identified to be addressed in the EIS include the potential effects of proposed projects on: Water quality, biological diversity, backcountry skiing, visual quality, socio-economics, impacts to Denny Creek Recreational Area and threatened and endangered species.

The scope of the proposal includes expanding the permitted area in size by approximately 300 acres in the Lodge Lake and Frog Lake/Rockdale Lake areas. Expansion into these area would involve the development of 5 chairlifts; associated ski run clearing; and limited service building. Besides the expansion proposal, the Ski Lifts, Inc. proposal includes updating and/or relocating of existing facilities consisting of repositioning of numerous chairs at all of the areas; upgrading existing base lodge service facilities; construction of additional customer service buildings; development of multi-season amenities such as mountain bike trails, horseback trail rides, interpretive tours and a water and/or alpine slide; development of huts for cross country skiing; development of a new snowplay area; supplying sewer and water to the Thunderbird Restaurant and reconstruction of some of the road systems at the areas. Implementation could begin in summer 1996 and would continue for approximately 10 years.

The site-specific environmental analysis provided by the Ski Area EIS will assist the Forest Supervisor in determining which improvements are needed to meet the following objectives: Accommodate predicted short and long-term demand for skiing; continue and enhance the supply of high quality recreational opportunities; maintain the viability of the permittee's operation and sustain the resource uses and amenity values which the Puget Sound community and many visitors depend on and enjoy. Alternative development

plans will be carefully examined for their potential impacts on the physical, biological and social environments so their tradeoffs are apparent to the public and Forest Supervisor.

A range of alternatives for the master plan will be considered. One will be Ski Lift, Inc.'s proposal (described above). One alternative will be No Action (Existing Situation). One will be implementation of the Master Plan proposal without expansion into the Lodge Lake and Rockdale Lake/Frog Lake areas, but allow the connection of the Ski Acres and Hyak ski areas. One will be implementation of the Master Plan proposal without any expansion whatsoever. As other issues are identified, there may be other alternatives.

Scoping and public involvement will identify any new issues and the depth of analysis needed for each issue. The Forest Service is seeking information, comments, and assistance from other agencies, organizations or individuals who may be interested in or affected by the proposed project. There will be a scoping meeting held August 18, 1993 at the Mercer Island Community Center at 7 p.m. along with two field trips to the planning area on August 21 and September 11, 1993.

The purpose of the meeting and trips is to describe the project in more detail along with identifying and clarifying issues. Besides these meetings, there may be others scheduled if needed. Contact Larry Donovan (206) 744–3403 for times and locations of these meetings. This input will be used in preparation of the draft EIS. Permits and licenses required to implement the proposed action will or may include the following: Amended Special Use Authorization from the Forest Service; consultation with U.S. Fish and Wildlife Service for compliance with section 7 of the Threatened & Endangered Species Act; review from Washington State Department of Ecology; clearance from the Washington State Historic Preservation Office; and various construction permits from State agencies.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1994. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 60 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in management of the Mt. Baker-Snoqualmie and Wenatchee National Forests participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir.1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled for completion by June, 1995. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Mt. Baker-Snoqualmie Forest Supervisor, is the Responsible Official. The Forest Supervisor will decide which, if any, of the proposed project alternatives will be implemented. The decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: July 7, 1993.

Robert Dunblazier,

Acting Forest Supervisor.

[FR Doc. 93–16922 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service

Discontinuance of the Monthly Prices Producers Receive for Wool

The National Agricultural Statistics Service (NASS) proposes to discontinue monthly estimates of the prices producers receive for wool. Currently, NASS publishes monthly prices for the United States and the largest wool producing States. Publication of marketing year average prices will continue for the United States and 42 States.

The decline in wool production coupled with the reduction in the number of wool buyers has made it increasingly difficult for NASS to provide accurate monthly estimates of wool prices. As an increasing share of wool production is marketed through cooperatives or on consignment through wool pools, accurate monthly information is often lacking until the end of the marketing year. As a result, NASS in recent years has been forced to make substantial revisions in monthly price estimates at the end of the marketing year. Wool program data on incentive payments, available from the Agricultural Stabilization and Conservation Service, provide important check data for estimating accurate marketing year average wool prices.

It is proposed that beginning in January 1994, monthly wool price estimates be discontinued. This program change by NASS would not affect the reporting of wool prices by the Agricultural Marketing Service nor the reporting of marketing year average wool prices by NASS.

Comments on this proposal should be sent to Robert W. Milton, Chief, Economic Statistics Branch, NASS/USDA, room 5912, South Building, Washington, DC 20250; telephone (202) 720–3570 within 30 days of this notice.

Done in Washington, DC, this 13th day of July 1993.

Donald M. Bay,

Acting Administrator.

[FR Doc. 93–16926 Filed 7–15–93; 8:45 am]

BILLING CODE 3410–20–F

VOL 58 ISS 135 JL 16 1993 UMI

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1993 Panel Wave 4.

Form Number(s): SIPP–13400, SIPP–13405(L), SIPP–127/13403, SIPP–127/13404 A–D.

Agency Approval Number: 0607–0759.

Type of Request: Revision of a currently approved collection.

Burden: 63,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) provides information concerning the distribution of income received directly as money or indirectly as in–kind benefits and the effect of tax and transfer programs on this distribution. The survey is molded around a central core of labor force and income questions that are periodically supplemented with additional questions, referred to as topical modules, designed to answer specific needs. The topical modules for the 1993 Panel Wave 4 are the following: 1) Selected Financial Assets, 2) Medical Expenses and Work Disability, and 3) Real Estate, Shelter Costs, Dependent Care, and Vehicles. Also, topical module items have been added in Section 3 of the core: Part D––Stocks and Mutual Fund Shares, Part E—Rental Income, and Part F—Mortgages, Royalties, and Other Financial Investments. Wave 4 interviews will be conducted from February through May 1994.

Affected Public: Individuals or households.

Frequency: Once during the life of the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–16957 Filed 7–15–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 Annual Survey of Manufactures.

Form Number(s): MA–1000(L), MA–1000(S), MA–1000(B).

Agency Approval Number: 0607–0449.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 197,000 hours.

Number of Respondents: 63,000.

Avg Hours Per Response: 3 hours and 7 minutes.

Needs and Uses: The Census Bureau conducts the annual survey of manufactures (ASM) to provide key measures on manufacturing activity during intercensal years. Federal agencies use the ASM's results as benchmarks for their statistical programs, including the Federal Reserve Board's Index of Industrial Production, the Bureau of Economic Analysis estimates of the gross domestic product, and the International Trade Administration's "Industrial Outlook" publication. Within the Census Bureau, the ASM data are used to benchmark and reconcile our monthly and quarterly data on manufacturing production and inventories.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 12, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–16956 Filed 7–15–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Congressional Customers.

Form Number(s): S–628, S–628L.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 45 hours.

Number of Respondents: 540.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Census Bureau will survey the 540 voting and non–voting members of Congress to determine how we can better meet their needs for Census Bureau data. The survey will identify what offices use our data, what offices do not want any census data, and what offices would like a briefing on how to use Census Bureau data.

This information is needed to determine how we can revise and improve the current program the Census Bureau uses to disseminate data to Members of Congress. This information will enable us to provide Members of Congress only the data for which they have a specific need, and will reduce the amount of data currently being sent that is not being used.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93-16955 Filed 7-15-93; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[A-570-824]

Initiation of Antidumping Duty Investigation: Silicon Carbide from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0108 and 482-5288, respectively.

INITIATION OF INVESTIGATION:

The Petition

On June 21, 1993, we received a petition filed in proper form by the Ad Hoc Silicon Carbide Coalition (petitioner). Petitioner filed supplements to the petition on July 6 and July 9, 1993. In accordance with 19 CFR 353.12, petitioner alleges that silicon carbide from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition was filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

Merchandise covered by this investigation is silicon carbide, regardless of grade or form, containing by weight from 20 to 98 percent, inclusive, silicon carbide and with a grain size coarser than size 325F (as set by the American National Standards Institute), and inclusive of split sizes. Silicon carbide covered by this investigation typically contains additional impurities: iron, aluminum, silica, silicon, and carbon as well as calcium and magnesium. Silicon carbide is provided for in subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

United States Price and Foreign Market Value

Petitioner based its estimate of United States Price (USP) on delivered price quotes from a Chinese exporter. Petitioner adjusted the quoted price for ocean freight.

Petitioner calculated foreign market value (FMV) by using factors of production based on the experience of one of the petitioning companies, and supported the use of these factors by stating that the Chinese industry uses essentially the same technology and factor inputs as the U.S. industry. Petitioner furnished values for those factors in India, a country which petitioner states is appropriate as a surrogate for the PRC under the Department's methodology for non-market economies. Petitioner inflated the Indian values using IMF-sourced inflation rates, to take into account input price differences between the time period of the U.S. price quotes and the time period of the supplied factor values.

Dumping margins alleged by petitioner range from 136.00 to 406.00 percent.

Initiation of Investigation

We have examined the petition on silicon carbide from the PRC and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of silicon carbide from the PRC are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by August 5, 1993, whether there is a reasonable indication that imports of silicon carbide from the PRC are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-16958 Filed 7-15-93; 8:45 am]

BILLING CODE 3510-DS-F

[A-357-804]

Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: On June 22, 1993, the United States Court of International Trade (CIT) affirmed the Department of Commerce's redetermination on remand of the final affirmative antidumping determination of silicon metal from Argentina. *American Alloys, Inc.* v. *United States*, Slip Op. 93-114 (CIT June 22, 1993) (*American Alloys*).

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Raphiel Hampton, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0176.

SUPPLEMENTARY INFORMATION:

Background: On January 11, 1993, the United States Court of International Trade (CIT) in *American Alloys, Inc.* v. *United States*, Slip Op. 93-4 (CIT Jan. 11, 1993), remanded the final affirmative antidumping determination of silicon metal from Argentina, 56 FR 37891 (Aug. 9, 1991), to the Department to reconsider the record and measure the tax incidence of qualifying taxes under the Reembolso program. Although the Department does not believe that the Act requires such measurement, it has nonetheless complied with the Court's remand instructions. On May 26, 1993, the Department submitted its redetermination on remand to the CIT.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's

decision in *American Alloys* on June 22, 1993 constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement.

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative determination of silicon metal from Argentina to reflect the higher margins of the Department's redetermination on remand, which were affirmed by the CIT.

Dated: July 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-16959 Filed 7-15-93; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List bakery mix to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 16, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On November 20, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (57 FR 54774) of the proposed addition of this bakery mix to the Procurement List.

Comments were received from one of the current contractors and from three members of Congress. The three Congressmen wrote in support of the proposed addition to the Procurement List and the benefits it would confer on the nonprofit agency which would produce the biscuit bakery mix for the Government. The contractor and the nonprofit agency also appeared before the Committee to express their concerns.

The contractor questioned the capability of the nonprofit agency to produce the mix in accord with the Government's requirements. It noted that there had been problems with mix the nonprofit agency had produced as a commercial supplier to the Government, and contended that the labor operations the nonprofit agency performs on the mix do not qualify it as a bidder on contracts for the mix or as a procurement source under the Committee's program. It also questioned the independence of the nonprofit agency from its material supplier. The contractor claimed that the nonprofit agency's method of procuring material does not meet Government requirements. The contractor also questioned the suitability of setting aside a contract of this magnitude to generate only a small amount of direct labor employment for people with severe disabilities. In addition, the contractor claimed that the addition of the mix to the Procurement List would adversely affect it by depriving it of revenues and the benefit of its research and development expenditures on the mix and by making unusable packaging materials it obtained to use in supplying the mix to the Government. The contractor suggested that the Committee add only a part of the Government requirement for the mix to the Procurement List and permit the procuring agency to buy from commercial producers if the nonprofit agency could not meet Government needs.

The contractor's concerns about the nonprofit agency and the mix it produced have been explored with the Government agency which purchases the mix for use in food assistance programs. The Government agency indicated that the quality problems the contractor cited were caused by a weakness in the Government specification the nonprofit agency was required to follow and, in one instance, by improper storage of the mix by the State agency involved. The specification has been changed to avoid recurrence of the problem.

Because of its view that the problems experienced with the nonprofit agency's mix were the result of specification and handling problems and that the agency is capable of providing the mix, the procuring agency has twice waived opportunities to inspect the nonprofit agency to determine capability. The Committee has based its determination that the nonprofit agency is capable of furnishing the mix on that agency's past performance, as well as the positions of both the procuring agency and cognizant nonprofit agency, whose engineering staff has inspected the facility. However, to allay any concerns about the quality of the mix produced by the nonprofit agency, the Committee will authorize a temporary partial waiver of the requirement to purchase the mix from the nonprofit agency. This approach will permit the procuring activity to purchase some of the mix from commercial contractors until it has been demonstrated that the mix supplied by the nonprofit agency under a revised specification is acceptable to mix consumers, thereby achieving the effect of the proposal offered by the commenting contractor.

The Government agency informed the Committee that it does not agree with the contractor's contention that the nonprofit agency was not qualified to bid on contracts for the bakery mix. The Committee's law and regulations do not require the nonprofit agency to produce the mix itself, as the contractor contended. The production test in the Committee's currently applicable regulations is the extent of labor operations performed by people with severe disabilities, not the nature of the production operations. The Committee considers that the nonprofit agency meets this test. Nonprofit agencies providing commodities and services to the Government under the Committee's program are also required to meet inspection requirements and workplace regulations which are applicable to commercial contractors.

The Committee has reviewed the arrangements between the nonprofit agency and a potential material supplier and has concluded that the former is independent of the latter. The nonprofit agency owns the equipment which it uses to produce the mix on premises leased from the supplier. The nonprofit agency has the capability to obtain material from other suppliers and continue to furnish the mix to the Government. Its method of soliciting offers from other suppliers is in accord with Committee requirements.

The Committee has considered the proposed addition in the context of both the training/employment generation approach adopted by the nonprofit agency and the amount of direct labor associated with providing the bakery mix. The Committee has concluded that the work associated with providing this particular dry food mix is an appropriate means of training and employing persons with severe disabilities. In addition, it believes that the contribution this mix will make to the ability of the nonprofit agency to provide steady work of this type for persons with severe disabilities

warrants its addition to the Procurement List.

The value of the contract for the bakery mix is a very small percentage of the contractor's total sales. Moreover, the contractor is eligible to compete to supply the nonprofit agency with the dry goods associated with this product, and therefore has the potential to continue benefiting financially from Government purchases of the bakery mix. The contractor's Government contracts for the mix did not require it to purchase the excess packaging material it cited in opposing the Committee's action. It presumably purchased the material in expectation of using it in future Government contracts for the mix. Because the contractor is not guaranteed future contracts under the competitive bidding system, the contractor assumed a risk when it purchased excess packaging material and expended funds on research and development of this product. Consequently, the Committee has concluded that addition of the bakery mix to the Procurement List will not have a severe adverse impact on the contractor.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodity, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Bakery Mix, 8920–00–NSH–0001
(Requirements for the U.S. Department of Agriculture)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–16945 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 16, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 9, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notice (58 F.R. 18378) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Painting Service, McClellan Air Force Base, California.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–16946 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 16, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Tool Box, Portable
5140–00–651–7676
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky
Folder, IRS Tax Form
Document No. 6981
Nonprofit Agency: The Clovernook Center Opportunities for the Blind, Cincinnati, Ohio

Military Resale Commodities

Sweatshirt, Private Label
M.R. 630
M.R. 632
Sweatpants, Private Label
M.R. 631
M.R. 633
Sweatshirt, Recruit, USMC
M.R. 640 thru 644
Sweatpants, Recruit, USMC
M.R. 645 thru 649
Nonprofit Agency: Lions Club Industries, Inc., Durham, North Carolina; The Lighthouse for the Blind, Inc., Seattle, Washington

Services

Electronic Image Conversion
Federal Bureau of Investigation
9th & Pennsylvania Avenue, NW.
Washington, DC
Nonprofit Agency: Fairfax Opportunities, Springfield, Virginia
Janitorial/Custodial
U.S. Soldier's and Airmen's Home
3700 North Capitol Street, NW.
Washington, DC
Nonprofit Agency: Davis Memorial Goodwill Industries, Washington, DC

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–16947 Filed 7–15–93; 8:45 am]
BILLING CODE 8820–33–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board (PRB)

AGENCY: Defence Logistics Agency, Department of Defense.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274–6049 or 274–6039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB

Mr. A.C. Ressler, Staff Director, Civilian Personnel
Mr. Robert P. Scott, Deputy, Defense Contract Management Command
Mr. James J. Grady, Jr., Deputy Executive Director, Supply Operations

2nd Level Review

Mr. Karl Kabeiseman, General Counsel
Mr. Richard J. Connelly, Comptroller
Mr. Gary S. Thurber, Executive Director, Contracting

A.C. Ressler,
Executive Director, (Human Resources).
[FR Doc. 93–16874 Filed 7–15–93; 8:45 am]
BILLING CODE 3820–01–M

DEPARTMENT OF ENERGY

Availability of the Report of the Task Force on an Alternative Program Strategy

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy, Office of Civilian Radioactive Waste Management hereby requests the views and comments of interested parties on the Report of the Task Force on an Alternative Program Strategy.

DATES: Comments on the Report are to be submitted no later than August 30, 1993.

ADDRESSES: Comments should be addressed to: Mr. Christopher A. Kouts, Acting Director, Strategic Planning and International Programs, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: For information and to receive a copy of the Report, please contact Christopher Kouts, Office of Civilian Radioactive Waste Management, (202) 586–1252.

SUPPLEMENTARY INFORMATION:

Background

The Task Force on an Alternative Program Strategy for the Office of from:Superintendent of Documents, U.S. Government Printing Office, Washington, Civilian Radioactive Waste Management was established in January 1993, at the direction of the former Department Under Secretary to provide recommendations for redirecting and rescoping the Yucca Mountain Project. The Task Force was charged to evaluate methods of site characterization of Yucca Mountain as a candidate for a spent nuclear fuel and high-level radioactive waste repository, as well as designing and licensing of the site, should it be found suitable as a geologic repository. The evaluation was to include approaches designed to accelerate submittal of a license application to the Nuclear Regulatory Commission, issuance of construction authorization by the Nuclear Regulatory Commission, construction, and initial

operation of a repository, with attention to safety and cost effectiveness. The Task Force was also charged to critique current schedules and suggest legislative and regulatory modifications.

The Task Force Report was completed and submitted to the Department in March 1993. It represents the views of the Task Force, and not necessarily those of the Office of Civilian Radioactive Waste Management or the Department. It is one of many studies the program is considering in preparation for the broad process of external consultation on program strategy that Secretary Hazel R. O'Leary has directed the Office of Civilian Radioactive Waste Management to undertake.

The Office of Civilian Radioactive Waste Management is inviting written comments on the Task Force Report by parties interested in the Civilian Radioactive Waste Management program.

Secretary O'Leary has stated that any alternative strategy that the Office of Civilian Radioactive Waste Management may eventually adopt will be the result of a thorough, formal and public discussion with the program's stakeholders. As a result of that policy decision, all comments on the Report of the Task Force on an Alternative Program Strategy, together with the Report, will be provided for discussion by the participants in the Secretary's external consultative process.

Issued in Washington, DC on July 8, 1993.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93–16937 Filed 7–15–93; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Assistance Award; Superkinetic, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Superkinetic, Inc., to develop and test prototype light-bulbs utilizing the single-crystal whisker filament invented by Dr. John Milewski.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Superkinetic, Inc., would be based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). The patented technology is a new kind of incandescent light-bulb filament consisting of a monocrystalline refractory fiber. The technology should have a significant impact on energy conservation by improving the efficiency and extending the life of incandescent light-bulbs. The proposed project is deemed meritorious based on the general evaluation in accordance with DOE 600.14(d) and represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 18 months. DOE plans to provide funding in the amount of $91,168.00.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on July 2, 1993.

Dated: July 1, 1993.

Mike Kainrath,

Chief, Policy Branch, Contracts Division.

[FR Doc. 93–16939 Filed 7–15–93; 8:45 am]

BILLING CODE 6450–01–M

Award Based on Unsolicited Application; Thane-Coat Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Thane-Coat, Inc. to develop and test a prototype, invented by Mr. Jerry Ford, which sprays protective coatings onto concrete.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Thane-Coat, Inc., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Thane-Coat is a two-part, polyurethane elastomeric material which hardens by chemical reaction and does not require drying. Its most unique feature is the ability to quickly form a gel without the use of solvents. This gel effectively prevents sagging and pinhole formation. The technology should have a significant impact on energy conservation by extending the life of concrete structures. The proposed project is deemed meritorious based on the general evaluation in accordance with DOE 600.14(d) and represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 18 months. DOE plans to provide funding in the amount of $85,850.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on June 18, 1993.

Dated: June 18, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–16938 Filed 7–15–93; 8:45 am]

BILLING CODE 6450–01–M

Intent To Award a Noncompetitive Assistance Action; United States Association for Renewable Energy and Energy Efficiency Development

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: Pursuant to 10 CFR 600.7(B)(2), the Department of Energy, through the Boston Support Office, intends to award a grant to the United States Association for Renewable Energy and Energy Efficiency Development (USAFREED). USAFREED was established by the National Association of State Energy Officials (NASEO) and the Solar Energy Industries Association (SEIA) to provide the framework to attract the non-federal cost-share for joint ventures mandated under Public Law 101–218. The Department of Energy had indicated support for such a mechanism to identify and to fund joint ventures over the past few years. The grant will provide initial funding in the amount of $650,000 for the purpose of developing the investment infrastructure to find and to fund renewable energy and energy efficient commercial partnership projects.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current or planned solicitation.

The initial term of this grant will be twelve (12) months from the date of award for a possible project period of five years from the initial date of award. Possible additional funding in future years will be based on satisfactory

VOL 58 ISS 135 JL 16 1993 UMI

completion of the initial term, and availability of funds.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston Mass, 02114–2021.

Issued in Chicago, Illinois on: July 2, 1993.

Dated: July 1, 1993.

Mike Kainrath,

Chief, Policy Branch, Contracts Division.

[FR Doc. 93–16940 Filed 7–15–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. FE C&E 93–21—Certification Notice—121]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant Pursuant to Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Sacramento Power, Inc. (SPI) has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Sacramento Power, Inc.

Operator: Sacramento Power, Inc.

Location: Sacramento, California.

Plant Configuration: Combined cycle cogeneration.

Capacity: 148.5 megawatts.

Fuel: Natural gas.

Purchasing Utilities: Sacramento Municipal Utility District (SMUD).

Expected In-Service Date: 3rd Quarter, 1994.

Issued in Washington, DC July 12, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–16941 Filed 7–15–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–497–000, et al.]

Tucson Electric Power Co, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 9, 1993.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Company

[Docket No. ER93–497–000]

Take notice that on July 2, 1993, Tucson Electric Power Company (Tucson) tendered for filing certain support and data, in addition to a related Amendment No. 1 to a Wholesale Power Supply Agreement between Tucson and the Navajo Tribal Utility Authority (NTUA). The Agreement established the terms for the sale by Tucson to NTUA of capacity and energy for a six-year period commencing June 1, 1993.

The filing is being made to (i) include Tucson's response to certain cost support and data requests received from the Commission's Staff and (ii) tender an Amendment No. 1 to the Agreement which provides certain clarifications and reflects a change in the method of determining the ceiling rate under certain pricing provisions of the Agreement.

The parties request an effective date of June 1, 1993, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

Public Service Company of Colorado

[Docket No. EC93–17–000]

Take notice that on July 1, 1993, Public Service Company of Colorado (Public Service) filed and application for approval under section 203 of the Federal Power Act for the sale of certain facilities of Public Service to Yampa Valley Electric Association, Inc., and requested that the Commission authorize the application on an expedited basis.

Public Service states that it has submitted the information required by part 33 of the Commission's regulations in support of the application.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER93–756–000]

Take notice that on July 2, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Company.

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change revises the rates for the wheeling to power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1993 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that LILCO has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

And

Long Island Lighting Company, 157 East Old Country Road, Hicksville, NY 11801.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Oklahoma

[Docket No. ER93–768–000]

Take notice that on July 2, 1993, Public Service Company of Oklahoma (PSO) submitted for filing an "Amended Interconnection Agreement Between Public Service Company of Oklahoma and The Empire District Electric Company," dated April 2, 1993. The Amended Agreement provides for various interchange services between the two companies and replaces, in its

entirety, the present interconnection agreement in effect between the two companies.

Copies of the filing were served on The Empire District Electric Company and the Oklahoma Corporation Commission.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER93–752–000]

Take notice that on July 1, 1993, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and KW Control Systems.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Cleveland Electric Illuminating Company

[Docket No. ER93–471–002]

Take notice that on June 28, 1993, Cleveland Electric Illuminating Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER93–761–000]

Take notice that on July 2, 1993, Public Service Company of Colorado tendered for filing an amendment to its FERC Electric Service Rate Schedule, FERC No. 59. Under the proposed amendment Public Service is seeking to increase the level of power and energy sold to WestPlains Energy. This amendment will have no impact on the rates for service under this agreement.

Public Service requests an effective date of September 1, 1993 for the proposed amendment.

Copies of the filing were served upon WestPlains Electric and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER93–759–000]

Take notice that on June 30, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 172, an agreement between Niagara Mohawk and Lockport Energy Associates, L.P. (Lockport).

Rate Schedule No. 172 provides for the wheeling of certain loads by Niagara Mohawk to New York State Electric and Gas Corporation generated by Lockport. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1993. In support thereof, Niagara Mohawk states that Lockport has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

and

CU Energy Lockport G.P. Inc., 5706 Upper Mountain Road, Lockport, NY 14094.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

Wisconsin Public Service Corporation

[Docket No. ER93–755–000]

Take notice that on July 2, 1993, Wisconsin Public Service Corporation (WPS) tendered for filing an executed Transmission Service Agreement between WPS and Manitowoc Public Utilities. The Agreement provides for transmission service under the T–1 Transmission Tariff, FERC Original Volume No. 4.

WPS asks that the agreement become effective sixty days after filing.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

Western Resources, Inc.

[Docket No. EL93–50–000]

Take notice that on June 29, 1993, Western Resources, Inc. (Western Resources) formerly The Kansas Power and Light Company (KPL), and its subsidiary Kansas Gas and Electric Company (KG&E) tendered for filing a petition for declaratory order permitting Western Resources to begin amortization of the premium paid to acquire KG&E by merger of KG&E with a KPL subsidiary in August 1995 rather than in March 1992, the date of the merger; and to amortize the premium over forty years.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16882 Filed 7–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2360; Project No. 2363]

Minnesota Power & Light; Potlatch Corp.; Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

July 12, 1993.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the St. Louis River Hydroelectric Facility, Project No. 2360; and the Cloquet Hydroelectric Facility, Project 2363. The hydropower projects are located northwest of the City of Duluth, Minnesota on the St. Louis, Whiteface and Cloquet rivers.

The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the

Commission in reaching its final licensing decision.

Scoping Meetings

The FERC staff will conduct two scoping meetings. An evening scoping meeting is primarily for public input while a morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The scoping meetings will be held on Thursday, August 19, 1993. The morning meeting, focusing on primarily resource agency concerns, will be held from 9 a.m. to 12 p.m., Duluth Public Library, 520 West Superior Street, Duluth, Minnesota. The second meeting will be from 7 p.m. to 10 p.m., on the campus of the University of Minnesota-Duluth, Montague 80 Lecture Hall, 10 University Drive, Duluth, Minnesota. This meeting focuses primarily on public input.

Prior to the meetings, Scoping Document 1 (SD 1) which identifies resources issues to be addressed in the EIS, will be mailed to the list of interested parties. Copies of SD 1 will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statement for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until September 19, 1993.

All written correspondence should clearly show the following caption on the first page: St. Louis Power Project No. 2360; Cloquet Power Project No. 2363.

All those that are formally recognized by the Commission as intervenors in licensing proceeding are asked to refrain from engaging staff or its contractor in discussions of the merits of the projects outside on any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list.

For further information, please contact John Blair (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16863 Filed 7–15–93; 8:45 am]

BILLING CODE 6717–01–M

[FERC No. JD93–07805T]

Railroad Commission of Texas, Austin Chalk Tight Formation Determination; Amendment Notice of Informal Conference

July 12, 1993.

Take notice that the informal conference in the above-referenced proceeding has been rescheduled to August 5, 1993, at 10 a.m. The conference will be held in room 3400–C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

For further information, contact Janet Ardinger at (202) 208–0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16861 Filed 7–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC93–6–000]

The Cincinnati Gas & Electric Co. and PSI Energy, Inc.; Filing

July 12, 1993.

Take notice that on July 9, 1993 The Cincinnati Gas & Electric Company (CG&E), on behalf of itself and its subsidiaries owning jurisdictional facilities (Union Light, Heat and Power Company and Miami Power Corp.) and PSI Energy, Inc. (together, Applicants) filed, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Regulations an amendment to their Joint Application requesting authorization to merge and reorganize Applicants' utility operations and to dispose of Applicants' jurisdicitonal facilities, filed on December 23, 1992.

Pursuant to an Amended Agreement and Plan of Reorganization, PSI Resources Inc., PSI Energy and CG&E will become subsidiaries of a new corporation, CINergy Corp., and PSI Energy and CG&E will operate as separate utility subsidiaries of CINergy. The subsidiaries of PSI Resources, Inc. will become subsidiaries of CINergy Corp. The merger will be affected through an exchange of stock, with PSI Resources and CG&E shareholders exchanging their shares for shares in CINergy. The subsidiaries of CG&E will remain direct subsidiaries of CG&E.

Copies of the Amended Joint Application have been served on the state utility regulatory commissions in Indiana, Ohio and Kentucky.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16880 Filed 7–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90-109-011]

Pacific Gas Transmission Co.; Compliance Filing

July 12, 1993.

Take notice that on July 6, 1993, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff sheets to be included in its Second Revised Volume No. 1 and Original Volume No. 1-A of its FERC Gas Tariff.

PGT states that the above tariff sheets have been revised to comply in part with the Commission's Opinion No. 381 issued February 3, 1993 to implement that portion of Opinion No. 381 which deals with the compressor fuel use, line loss, and unaccounted for gas reimbursement percentages, and will provide the basis for refunds to Shippers' gas balance accounts which will be made to Shippers for the refund period.

PGT requests a shortened comment period and waiver of the applicable notice requirements so that the revised tariff sheets may be accepted for filing on August 1, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16864 Filed 7-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-506-000]

Panhandle Gathering Co.; Petition for Declaratory Order

July 12, 1993.

Take notice that on June 22, 1993, Panhandle Gathering Company (PGC), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP93-506-000 a petition pursuant to section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for a declaratory order disclaiming Commission jurisdiction over services to be performed by a joint venture with Western Gas Resources, Inc. (WGR), all as more fully set forth in the application on file with the Commission and open to public inspection.

PGC seeks a declaratory order from the Commission finding that:

- Certain facilities, to be acquired from Panhandle Eastern Pipe Line Company (PEPL), would be facilities used for the gathering of natural gas and thereby exempt from Commission jurisdiction pursuant to section 1(b) of the NGA.
- Neither PGC nor the joint venture would be a "natural-gas company" pursuant to section 2(b) of the NGA by virtue of the proposed acquisition, ownership, and operation of such facilities.
- The gathering services that would be performed through the joint venture would be non-jurisdictional and exempt from the Commission's jurisdiction under section 1(b) of the NGA.
- The "PGC-WGR Joint Venture" rates and charges for gathering services would not be subject to the Commission's jurisdiction pursuant to sections 4 and 5 of the NGA.

PGC states that it is a wholly-owned subsidiary of PEPL. PGC describes the facilities as those gathering systems referred to as the Canton/N.E. Seiling System, the Waynoka System, and the Avard System, as well as 19.4 miles of a 24-inch pipeline which would become part of the PGC gathering system. PGC further states that the facilities are the subject of PEPL's application to abandon facilities filed in Docket No. CP93-505-000.[1]

Any persons desiring to be heard or to make any protest with reference to said petition should on or before August 2, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16862 Filed 7-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-431-000]

Questar Pipeline Co.; Application

July 12, 1993.

Take notice that on June 7, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-431-000 an application pursuant to section 7(b) of the Natural Gas Act requesting authority to abandon, by reclassification to a nonjurisdictional gathering designation, specific certificated non-main-line facilities. Questar also petitioned the Commission to issue a declaratory order clarifying that the subsequent operation of the facilities proposed to be reclassified is a nonjurisdictional activity exempt from Commission jurisdiction under section 1(b) of the NGA. Furthermore, Questar, as co-owner of a yet-to-be constructed natural-gas processing plant, the Wyoming Cutthroat Liquid Processing Plant (Cutthroat Plant), petitioned the Commission to declare that (1) the construction and operation of the processing plant and (2) the plant's purchase and delivery of replacement volumes to Questar at the plant tailgate or at various receipt points along Questar's transmission system that are related solely to plant shrinkage and fuel-usage volumes are nonjurisdictional activities exempt from the Commission's jurisdiction under section 1(b) of the NGA. Questar requests the Commission grant by August 1, 1993, or as soon as practicable thereafter, the requested abandonment authorization and declaratory orders, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to offer producers whose natural-gas reserves are located in the Moxa Arch area of southwestern Wyoming, connected to Questar's existing Moxa Arch system, flexible gathering services and, in partnership with ANR Production Company (ANRPC), natural gas processing services that together will provide a competitive alternative to those services offered by other area gatherers and processors.

Questar further proposes to reclassify as gathering, existing non-main-line pipeline facilities, comprising 3.21 miles of 3½-inch, 2.95 miles of 6⅝-inch

[1] A notice of the application filed in Docket No. CP93-505-000 was issued by the Secretary of the Commission on June 25, 1993.

and 41.96 miles of 10¾-inch pipeline, used to gather Moxa Arch area production and that will connect to the Cutthroat Plant. Questar explains that the pipeline facilities proposed to be reclassified were installed under budget and blanket-type certificates issued to Questar, and its predecessors, during the mid 1970's and early 1980's and that the total gross plant investment associated with the facilities proposed to be reclassified is approximately $4.5 million.

Questar states that in order to provide natural-gas processing services in the Moxa Arch area, Questar and ANRPC propose to install the Cutthroat Plant, a 35 MMcf/day cryogenic liquid-processing plant, expandable up to 65 MMcf/day, connecting with the proposed reclassified non-main-line facilities. The Cutthroat Plant, it is explained, will process Moxa Arch area volumes for the removal of liquefiable hydrocarbons and deliver residue gas directly into the transmission system of Questar and, possibly, to the transmission systems of Colorado Interstate Gas Company and Northwest Pipeline Corporation, depending upon producer preference and interest expressed by the interconnecting parties. It is stated that Questar and ANRPC will be at risk for 100% of the Cutthroat project investment and that no plant costs or associated revenues will be assigned to Questar's jurisdictional services.

Any person desiring to be heard or to make any protest with reference to said application should, on or before August 2, 1993, filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16860 Filed 7–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–540–000]

Williams Natural Gas Co.; Request Under Blanket Authorization

July 12, 1993.

Take notice that on July 8, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–540–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to reclaim measuring and appurtenant facilities used to receive transportation gas from Vanguard Pipeline (Vanguard) and Ross-Pope Drilling, Inc. (Ross-Pope), both located in Jefferson County, Kansas, under Williams' blanket authorization issued in Docket No. CP82–479–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that it has been unable to locate Vanguard, Ross-Pope, or their successors, and therefore has no written consent for facilities reclaim, although there has been no production from either well for several years.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16865 Filed 7–15–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4679–6]

Acid Rain Program: Notice of Draft Permits and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Acid Rain permits to 38 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on draft permits must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed at the addresses listed in "Supplementary Information."

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

For plants in New Jersey and New York: Steve Riva, Chief, Permitting and Toxics Support Section, Air Compliance Branch, EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 500, New York, NY 10278;

For plants in West Virginia: Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107;

For plants in Florida, Kentucky and Mississippi: Winston Smith, Director, Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland Ave., NE., Atlanta, GA 30365;

For plants in Indiana, Minnesota and Ohio: David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number,

and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about the draft permits:

For plants in New Jersey and New York, Gerry DeGaetano at (212) 264–6685. Air and Waste Management Division, EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, room 500, New York, NY 10278;

For plants in West Virginia, Kimberly Peck at (215) 597–9839. Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107;

For plants in Florida, Kentucky and Mississippi, Brian Beals at (404) 347–5014. Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland Ave. NE, Atlanta, GA 30365;

For plants in Indiana, Patrick Gimino at (312) 353–8651; for Miami Fort and J M Stuart, Franklin Echevarria at (312 886–9653; for plants in Minnesota and all other plants in Ohio, Allan Batka at (312) 886–9653. Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Permits

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996–1999.

Based in large part on its review of Phase I permit applications submitted to EPA, a petition for reconsideration, and issues raised in litigation challenging the January 11, 1993 Acid Rain Program rules (58 FR 3590), EPA is concerned that the existing rules could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to create a significant number of excess, new allowances in Phase I. An allowance is a limited authorization by EPA to emit up to one ton of sulfur dioxide (SO_2) during or after a specified calendar year. The creation of excess, new allowances would threaten achievement of the SO_2 emission reductions intended to be made under title IV of the Clean Air Act (the Act) and thus would be contrary to the statutory purposes of section 404 (b) and (c) and 408(c)(1)(B) of the Act, which are aimed at facilitating and preserving the intended amount of reductions.

A substitution plan allows a Table A unit (i.e., a unit listed in Table A of section 404 as a unit required to reduce emissions in Phase I) to reassign all or part of its reduction obligation to a non-Table A unit. The substitution provision is intended to provide an alternative means of achieving Phase I reductions, not a mechanism for creating excess, new allowances and avoiding emission reductions. Similarly, the reduced utilization provision is aimed at providing flexibility and ensuring realization of emission reduction goals. Congress recognized that the potential for circumvention of emission limitation requirements exists because in Phase I only a minority of all utility units are subject to such requirements. A Phase I unit could reduce its utilization below baseline and shift load to a non-Phase I unit that can emit in Phase I without allowances. Under the Act, a Phase I unit planning to reduce utilization below baseline by shifting load must submit a reduced utilization plan designating the compensating unit to which the load will be shifted. Each designated substitution or compensating unit becomes a Phase I unit subject to the requirement to hold allowances.

EPA is concerned that the January 11, 1993 rules could be read to allow substitution and reduced utilization plans to be used as an open-ended means of bringing Phase II units into Phase I, thereby creating a large number of excess, new allowances that would not otherwise be available. For each year that a plan is in effect, each substitution or compensating unit under the plan is allocated a number of allowances equal to the unit's baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate. The number of allowances under this formula could greatly exceed the number actually needed by those Phase II units to cover their emissions in Phase I. Prior to the passage of the Act, a number of Phase II units had already reduced their emission rates below the 1985 levels. In addition, some Phase II units are already required, under existing federal or state law, to reduce their emission rates in Phase I below 1985 levels. If all Phase II units that have reduced or are required to reduce emission rates below 1985 levels without title IV of the Act are designated as substitution or compensating units, the potential number of excess, new allowances would be sufficient to threaten achievement of the emission reductions intended by Congress under title IV. Consequently, EPA is planning to propose revision of 40 CFR 72.41, 72.43 and 72.91 of the January 11, 1993 rules, implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. These revisions seem necessary to ensure that the rules, and plans approved under the rules, are consistent with the purposes of title IV. EPA intends to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing rules. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of revision of the rules, EPA proposes to approve for 1995 only those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that are determined to comply with the January 11, 1993 rules. EPA proposes to defer action on those plans and parts of plans for 1996–1999 pending the potential regulatory revisions. In taking this approach, EPA is exercising its authority to "issue a draft permit that incorporates in whole, in part, or with changes or conditions as appropriate," a source's permit application. 40 CFR 72.62(a).

The one-year approval is applicable only to those plans that were submitted before today, July 16, 1993, and that are not revised on or after this date to add units to the plans. Plans submitted, or revised to add units, on or after July 16, 1993 and before issuance of Phase I permits for the units involved must undergo a completeness review under 40 CFR 72.61. EPA's six month period for issuing permits addressing the new or revised plans begins on the date that they are received by EPA, provided that they are determined to be complete under 40 CFR 72.61(a). Where EPA issues such permits before the completion of the rulemaking referred to above, EPA intends to defer action on the plans for 1995–1999. Such plans will be reviewed and acted on in accordance with the rules that result from the rulemaking.

EPA proposes to approve draft permits that specify the sulfur dioxide

emission allowances and compliance plans for the following utility plants:

Region 2

B L England in New Jersey: 8,822 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each year 1995–1999 and 5,543 allowances from the Phase I Extension Reserve under 40 CFR 72.42 (Reserve) in each year 1995–1996 to unit 1; 11,412 Table 1 allowances in each year 1995–1999, and the following Reserve allowances to unit 2: 6,945 in each year 1995–1996 and 3,474 in each year 1997–1999; a Phase I extension plan that requires unit 2 to install qualifying Phase I technology and that designates unit 1 and Conesville unit 1 as transfer units. The designated representative is Henry C. Schwemm, Jr.

Northport in New York: 19,289 Table 1 allowances in each year 1995–1999 to unit 1; 23,476 Table 1 allowances in each year 1995–1999 to unit 2; 25,783 Table 1 allowances in each year 1995–1999 to unit 3; and 5,516 allowances under 40 CFR 72.41 (substitution allowances) in 1995 to unit 4; a conditional substitution plan for 1995 in which units 1, 2 and 3 and Port Jefferson units 3 and 4 designate unit 4 as a substitution unit; and three reduced utilization plans, one each for units 1, 2 and 3 for 1995–1999 that rely on energy conservation and improved unit efficiency measures and that designate a sulfur-free generator. The designated representative is Robert B. Steger.

Port Jefferson in New York: 10,194 Table 1 allowances in each year 1995–1999 to unit 3; and 12,006 Table 1 allowances in each year 1995–1999 to unit 4; a conditional substitution plan for 1995 in which units 3 and 4 and Northport units 1, 2 and 3 designate Northport unit 4 as a substitution unit; and two reduced utilization plans, one each for units 3 and 4 for 1995–1999 that rely on energy conservation and improved unit efficiency measures and that designate a sulfur-free generator. The designated representative is Robert B. Steger.

Region 3

Mount Storm in West Virginia: 42,570 Table 1 allowances in each year 1995–1999 and 6,911 Reserve allowances in 1995–1996 to unit 1; 34,644 Table 1 allowances in each year 1995–1999 and 10,559 Reserve allowances in each year 1995–1996 to unit 2; 41,314 Table 1 allowances in each year 1995–1999, 8,545 Reserve allowances in each year 1995–1996 and 15,275 Reserve allowances in each year 1997–1999 to unit 3; and a Phase I extension plan that requires units 1, 2 and 3 to install qualifying Phase I technology and that designates Crist unit 7 as a transfer unit. The designated representative is John A. Ahladas.

Region 4

Big Bend in Florida: 27,662 Table 1 allowances in each year 1995–1999 to unit BB01; 26,387 Table 1 allowances in each year 1995–1999 to unit BB02; 26,036 Table 1 allowances in each year 1995–1999 to unit BB03; 13 conditional substitution plans for 1995 in which units BB01, BB02 and BB03 designate unit BB04, F J Gannon units GB01, GB02, GB03, GB04, GB05 and GB06, Hookers Point units HB01, HB02, HB03, HB04, HB05 and HB06 as substitution units; the part of three reduced utilization plans for 1995 in which units BB01, BB02, and BB03 each designate BB04 as a compensating unit; and the part of three reduced utilization plans for 1995–1999 that rely on energy conservation and improved unit efficiency measures. The designated representative is A. Spencer Autry.

Crist in Florida: 30,846 Table 1 allowances in each year 1995–1999 and 19,857 Reserve allowances to unit 7; 18,695 Table 1 allowances in each year 1995–1999 to unit 6; and a Phase I extension plan in which unit 7 is a transfer unit for Mount Storm. A Phase I extension plan in which unit 6 is a transfer unit for Petersburg units 1 and 2 is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 6 is eligible to receive 6,570 Reserve allowances in each year 1995–1996. The designated representative is Earl B. Parsons, Jr.

F J Gannon in Florida: 3,132 substitution allowances in 1995 to unit GB01; 4,590 substitution allowances in 1995 to unit GB02; 7,440 substitution allowances in 1995 to unit GB03; 8,020 substitution allowances in 1995 to unit GB04; 10,815 substitution allowances in 1995 to unit GB05; 16,484 substitution allowances in 1995 to unit GB06; and six conditional substitution plans for 1995 in which Big Bend units BB01, BB02 and BB03 designate units GB01, GB02, GB03, GB04, GB05 and GB06 as substitution units. The designated representative is A. Spencer Autry.

Hookers Point in Florida: 27 substitution allowances in 1995 to unit HB01; 34 substitution allowances in 1995 to unit HB02; 101 substitution allowances in 1995 to unit HB03; 160 substitution allowances in 1995 to unit HB04; 137 substitution allowances in 1995 to unit HB05; 220 substitution allowances in 1995 to unit HB06; and six conditional substitution plans for 1995 in which Big Bend units BB01, BB02 and BB03 designate units HB01, HB02, HB03, HB04, HB05 and HB06 as substitution units. The designated representative is A. Spencer Autry.

Big Sandy in Kentucky: 34,371 substitution allowances in 1995 to unit BSU2; and a conditional substitution plan for 1995 in which Conesville unit 3 designates unit BSU2 as a substitution unit. The designated representative is John M. McManus.

Coleman in Kentucky: 10,954 Table 1 allowances in each year 1995–1999 and 9,958 Reserve allowances in each year 1995–1996 to unit C1; 12,502 Table 1 allowances in each year 1995–1999 and 6,861 Reserve allowances in each year 1995–1996 to unit C2; 12,015 Table 1 allowances in each year 1995–1999 and 4,190 Reserve allowances in each year 1995–1996 to unit C3; and a Phase I extension plan in which units C1, C2 and C3 are transfer units for HMP & L Station 2. The designated representative is Gregory F. Black.

Cooper in Kentucky: 7,254 Table 1 allowances in each year 1995–1999 to unit 1; 14,917 Table 1 allowances in each year 1995–1999 to unit 2; and three conditional substitution plans in which units 1 and 2 designate H L Spurlock unit 2 and Dale units 3 and 4 as substitution units, units 1 and 2 designate H L Spurlock unit 2 as a substitution unit, and units 1 and 2 designate Dale units 3 and 4 units as substitution units. The designated representative is Robert E. Hughes, Jr.

Dale in Kentucky: 2,341 substitution allowances in 1995 to unit 3; 1,895 substitution allowances in 1995 to unit 4; and two conditional substitution plans for 1995 in which Cooper units 1 and 2 designate units 3 and 4 as substitution units, and Cooper units 1 and 2 designate units 3 and 4 and H L Spurlock unit 2 as substitution units. The designated representative is Robert E. Hughes, Jr.

East Bend in Kentucky: 17,447 substitution allowances in 1995 to unit 2; a substitution plan for 1995 in which Miami Fort Station unit 7 designates unit 2 as a substitution unit; and a conditional reduced utilization plan for unit 2 that relies on energy conservation measures. The designated representative is Gregory C. Ficke.

H L Spurlock in Kentucky: 22,181 Table 1 allowances in each year 1995–1999 to unit 1; 15,799 substitution allowances in 1995 to unit 2; and three conditional substitution plans in which unit 1 designates unit 2 and Dale units 3 and 4 as substitution units, unit 1 designates unit 2 as a substitution unit, and unit 1 designates Dale units 3 and 4 units as substitution units. The

designated representative is Robert E. Hughes, Jr.

HMP & L Station 2 in Kentucky: 12,989 Table 1 allowances in each year 1995–1999, and the following Reserve allowances to unit H1: 6,544 in each year 1995–1996, 4,898 in 1997, 4,931 in 1998 and 4,911 in 1999; 11,986 Table 1 allowances in each year 1995–1999 and the following Reserve allowances to unit H2: 6,611 in 1995, 7,194 in 1996, 5,067 in 1997, 5,099 in 1998 and 5,073 in 1999; and a Phase I extension plan that requires units H1 and H2 to install qualifying Phase I technology and that designated Coleman units C1, C2 and C3 as transfer units. The designated representative is Gregory F. Black.

R D Green in Kentucky: 5,041 substitution allowances in 1995 to unit G1; and 6,073 substitution allowances in 1995 to unit G2; and a substitution plan for 1995 in which Coleman units C1 and C2 designate units G1 and G2 as substitution units. The designated representative is Gregory F. Black.

Jack Watson in Mississippi: 17,439 Table 1 allowances in each year 1995–1999 to unit 5. A Phase I extension plan, in which units 4 and 5 are transfer units for Petersburg units 1 and 2, is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Jack Watson is eligible to receive the following Reserve allowances in each year 1995–1996: 13,297 to unit 4 and 15,748 to unit 5. The designated representative is Robert G. Dawson.

Region 5

Cayuga in Indiana: 36,581 Table 1 allowances in each year 1995–1999 to unit 1; 37,415 Table 1 allowances in each year 1995–1999 to unit 2; a conditional reduced utilization plan for units 1 and 2 for 1995–1999 that relies on energy conservation and improved unit efficiency measures; and a Phase I extension plan in which units 1 and 2 are transfer units for Gibson unit 4. Cayuga is not allocated allowances because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Cayuga is eligible to receive the following Reserve allowances: 11,050 in each year 1995–1996 to unit 1, 3,164 in 1995 and 4,027 in 1996 to unit 2. The designated representative is Joseph W. Messick, Jr.

Elmer W Stout in Indiana: 4,253 Table 1 allowances in each year 1995–1999 to unit 50; 5,229 Table 1 allowances in each year 1995–1999 to unit 60; and 25,883 Table 1 allowances in each year 1995–1999 to unit 70; and three conditional reduced utilization plans for 1995, one each for units 50, 60 and 70 that designate Petersburg units 3 and 4 and H T Pritchard unit 5 as compensating units. These plans may only be activated if the approved substitution plans for Petersburg units 1 and 2, in which these compensating units are designated as substitution units, are terminated. A Phase I extension plan, in which units 50 and 70 are transfer units for Petersburg units 1 and 2, is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Elmer W Stout is eligible to receive the following Reserve allowances: 570 in each year 1995–1996 to unit 50 and 8,762 in each year 1995–1996 to unit 70. EPA disapproves three substitution plans for 1995 in which units 50, 60 and 70 designate H T Pritchard unit 5 and Petersburg units 3 and 4 as substitution units. The designated representative is Robert A. McKnight.

Gibson in Indiana: 44,288 Table 1 allowances in each year 1995–1999 to unit 1; 44,956 Table 1 allowances in each year 1995–1999 to unit 2; 45,033 Table 1 allowances in each year 1995–1999 the following Reserve allowances to unit 4: 20,432 in 1995, 11,810 in 1996, 15,592 in 1997, 15,784 in 1998, and 15,635 in 1999; a Phase I extension plan that requires Gibson unit 4 to install qualifying Phase I technology and that designates R Gallagher units 1, 2 and 3, Wabash River units 2 and 5, Cayuga units 1 and 2 and Conesville unit 3 as transfer units; and three conditional reduced utilization plans, one each for units 1, 2 and 3 for 1995–1999 that rely on energy conservation and improved unit efficiency measures. The designated representative is Joseph W. Messick, Jr.

H T. Pritchard in Indiana: 6,325 Table 1 allowances in each year 1995–1999 to unit 6; 2,150 allowances in 1995 to unit 5 as a substitution or compensating unit in a plan described below; a substitution plan for 1995 in which Petersburg units 1 and 2 designate unit 5 as a substitution unit; and six conditional reduced utilization plans for 1995, one each for unit 6, Petersburg units 1 and 2, Elmer W Stout units 50, 60 and 70, that designate unit 5 and Petersburg units 3 and 4 as compensating units. These plans may only be activated if the active substitution plans in which the unit 5 and Petersburg 3 and 4 are designated as substitution units are terminated. A Phase I extension plan, in which unit 6 is a transfer unit, is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 6 is eligible to receive 1,115 Reserve allowances in each year 1995–1996. EPA disapproves four substitution plans for 195 in which unit 6 designates unit 5 as a substitution unit, unit 6 designated Petersburg unit 3 as a substitution unit, unit 6 designated Petersburg unit 4 as a substitution unit, and Elmer W Stout units 50, 60 and 70 designate unit 5 as a substitution unit. The designated representative is Robert A. McKnight.

Petersburg in Indiana: 18,011 Table 1 allowances in each year 1995–1999 to unit 1; 35,496 Table 1 allowances in each year 1995–1999 to unit 2; 16,080 allowances in 1995 to unit 3 as a substitution or compensating unit in a plan described below; 15,384 allowances in 1995 to unit 4 as a substitution or compensating unit in a plan described below; three active substitution plans for 1995 for units 1 and 2 which designate unit 3 as a substitution unit, unit 4 as a substitution unit, and H T Pritchard unit 5 as a substitution unit; and six conditional reduced utilization plans for 1995, one each for units 1 and 2, Elmer W Stout units 50, 60 and 70, and H T Pritchard unit 6, that designate units 3 and 4, and H T Pritchard unit 5 as compensating units. These plans may only be activated if the active substitution plans in which units 3 and 4 and H T Pritchard 5 are designated as substitution units are terminated. A Phase I extension plan, in which units 1 and 2 are control units and Elmer W Stout units 50 and 60, H T Pritchard unit 6, Jack Watson units 4 and 5 and Crist unit 6 are transfer units, is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Petersburg is eligible to receive the following Reserve allowances: 8,725 in each year 1995–1996 and 5,852 in each year 1997–1999 to unit 1, and 7,085 in each year 1995–1996 and 12,041 in each year 1997–1999. EPA disapproves four substitution plans for 1995 in which Elmer W Stout units 50, 60 and 70 and H T Pritchard unit 6 designate units 3 and 4 as substitution units. The designated representative is Robert A. Knight.

R Gallagher in Indiana: 7,115 Table 1 allowances in each year 1995–1999 and 6,793 Reserve allowances in each year 1995–1996 to unit 1; 7,980 Table 1 allowances in each year 1995–1999 and 4,664 Reserve allowances in each year 1995–1996 to unit 2; 7,159 Table 1 allowances in each year 1995–1999 and 5,052 Reserve allowances in 1995 to unit 3; 8,386 Table 1 allowances in each year 1995–1999 to unit 4; a conditional reduced utilization plan for units 1, 2, 3, and 4 for 1995–1999 that relies on energy conservation and improved unit

efficiency measures; and a Phase I extension plan in which units 1, 2, 3, and 4 are transfer units for Gibson unit 4. Under this plan, unit 3 is not allocated all of the Reserve allowances for which it is eligible and unit 4 is not allocated any Reserve allowances because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, R Gallagher is eligible to receive the following Reserve allowances: 916 in 1995 and 5,968 in 1996 to unit 3, and 4,126 in 1995–1996 to unit 4. The designated representative is Joseph W. Messick, Jr.

Wabash River in Indiana: 4,385 Table 1 allowances in each year 1995–1999 and the following Reserve allowances to unit 1: 1,173 in each year 1995–1996, 1,117 in 1997, and 994 in each year 1998–1999; 3,135 Table 1 allowances in each year 1995–1999 to unit 2; 4,111 Table 1 allowances in each year 1995–1999 to unit 3; 4,023 Table 1 allowances in each year 1995–1999 to unit 5; 13,462 Table 1 allowances in each year 1995–1999 and 3,900 Reserve allowances in each year 1995–1996 unit 6; five conditional reduced utilization plans, one each for units 1, 2, 3, 5 and 6 for 1995–1999 that rely on energy conservation and improved unit efficiency measures; a Phase I extension plan that requires unit 1 to install qualifying Phase I technology and that designates unit 6 is a transfer unit; and a Phase I extension plan in which Wabash River units 2 and 5 are transfer units for Gibson unit 4. Units 2 and 5 are not allocated allowances because unallocated allowances do not remain in the reserve. If Reserve allowances become available, Wabash River is eligible to receive the following additional Reserve allowances in each year 1995–1996: 2,739 to unit 2 and 815 to unit 5. The designated representative is Joseph W. Messick, Jr.

Allen S King in Minnesota: 31,691 substitution allowances in 1995 to unit 1; and a conditional substitution plan for 1995 in which High Bridge unit 6 designates unit 1 as a substitution unit. The designated representative is Leon R. Eliason.

Black Dog in Minnesota: 505 substitution allowances in 1995 to unit 1; 0 substitution allowances in 1995 to unit 2; 2,121 substitution allowances in 1995 to unit 3; 4,858 substitution allowances in 1995 to unit 4; and four conditional substitution plans for 1995 in which units High Bridge unit 6 designates units 1, 2, 3, and 4 as substitution units. The designated representative is Leon R. Eliason.

High Bridge in Minnesota: 4,158 Table 1 allowances to 1995–1999 to unit 6; 1,771 substitution allowances in 1995 to unit 3; 1,326 substitution allowances in 1995 to unit 4; 2,436 substitution allowances in 1995 to unit 5; and 11 conditional substitution plans in which unit 6 designates the following substitution units (one unit per plan): unit 3, 4, and 5, Riverside unit 8, Sherburne County unit 1 and 2, Black Dog unit 1, 2, 3, and 4, and Allen S King Unit 1. The designated representative is Leon R. Eliason.

Riverside in Minnesota: 8,482 substitution allowances in 1995 to unit 8; and a conditional substitution plan for 1995 in which High Bridge unit 6 designates unit 8 as a substitution unit. The designated representative is Leon R. Eliason.

Sherburne County in Minnesota: 10,420 substitution allowances in 1995 to unit 1; 10,493 substitution allowances in 1995 to unit 2; and two conditional substitution plans for 1995 in which High Bridge unit 6 designates units 1 and 2 as substitution units. The designated representative is Leon R. Eliason.

Cardinal in Ohio: 37,568 Table 1 allowances in each year 1995–1999 and 46,538 Phase I extension Reserve allowances in each year 1995–1996 to unit 1; 42,008 Table 1 allowances in each year 1995–1999 to unit 2; 19,389 substitution allowances in 1995 to unit 3; a Phase I extension plan in which unit 1 is a transfer unit under the Phase I extension plan for Gen J M Gavin units 1 and 2; a conditional substitution plan for 1995 in which unit 1 designates Tidd unit **1 as a substitution unit; and a conditional substitution plan for 1995 in which unit 2 designates unit 3 as a substitution unit. The designated representative is John M. McManus.

Conesville in Ohio: 4,615 Table 1 allowances in each year 1995–1999 and 4,309 Reserve allowances in each year 1995–1996 to unit 1; 5,360 Table 1 allowances in each year 1995–1999 to unit 2; 6,029 Table 1 allowances in each year 1995–1999 and 6,564 Reserve allowances in each year 1995–1996 to unit 3; 53,463 Table 1 allowances in each year 1995–1999 to unit 4; 6,825 substitution allowances in 1995 to unit 5; 7,559 substitution allowances in 1995 to unit 6; a Phase I extension plan in which unit 1 is a transfer unit for B L England unit 2; a Phase I extension plan in which unit 3 is a transfer unit for Gen J M Gavin units 1 and 2; a conditional substitution plan for 1995 in which unit 1 designates unit 5 as a substitution unit; a conditional substitution plan for 1995 in which unit 2 designates unit 6 as a substitution unit; a conditional substitution plan for 1995 in which unit 3 designates Big Sandy unit BSU2 as a substitution unit; and four conditional reduced utilization plans, one for each unit for 1995–1999 that relies on energy conservation measures. The designated representative is John M. McManus.

Gen J M Gavin in Ohio: 86,690 Table 1 allowances in each year 1995–1999, 105,947 Reserve allowances in each year 1995–1996 and 26,482 Reserve allowances in each year 1997–1999 to unit 1; 88,312 Table 1 allowances in each year 1995–1999 and 99,856 Reserve allowances in each year 1995–1996 and 26,758 Reserve allowances in each year 1997–1999 to unit 2; a Phase I extension plan that requires units 1 and 2 to install qualifying Phase I technology and that designates Cardinal units 1 and 2, Muskingum River units 1, 2, 3 and 4, Picway unit 1, and Conesville unit 3 as transfer units; and two conditional reduced utilization plans, one for each unit for 1995–1999, that rely on energy conservation measures. The designated representative is John M. McManus.

J M Stuart in Ohio: 41,189 substitution allowances in 1995 to unit 1; 39,041 substitution allowances in 1995 to unit 2; 38,712 substitution allowances in 1995 to unit 3; 40,925 substitution allowances in 1995 to unit 4; a substitution plan for 1995 in which Conesville unit 4 designates units 1, 2, 3, and 4 as substitution units; and four conditional reduced utilization plans, one for each unit for 1995–1999, that rely on energy conservation measures. The designated representative is Robert E. Buerger.

Miami Fort in Ohio: 417 Table 1 allowances in each year 1995–1999 to unit 5–1; 417 Table 1 allowances in each year 1995–1999 to unit 5–2; 12,475 Table 1 allowances in each year 1995–1999 to unit 6; 42,216 Table 1 allowances in each year 1995–1999 to unit 7; a substitution plan for 1995 in which unit 7 designates East Bend unit 2 as a substitution unit; and four conditional reduced utilization plans, one each for units 5–1, 5–2, 6, and 7 for 1995–1999, that rely on energy conservation measures. The designated representative is Gregory C. Ficke.

Muskingum River in Ohio: 16,312 Table 1 allowances in each year 1995–1999 and 21,689 Reserve allowances in each year 1995–1996 to unit 1; 15,533 Table 1 allowances in each year 1995–1999 and 18,493 Reserve allowances in each year 1995–1996 to unit 2; 15,293 Table 1 allowances in each year 1995–1999 and 20,837 Reserve allowances in each year 1995–1996 to unit 3; 12,914 Table 1 allowances in each year 1995–1999 and 21,239 Reserve allowances in each year 1995–1996 to unit 4; 44,364 Table 1 allowances in each year 1995–

1999 to unit 5; a Phase I extension plan in which unit 1, 2, 3 and 4 are transfer units for Gen J M Gavin units 1 and 2 a conditional reduced utilization plan for 1995–1999 for unit 1 that relies on energy conservation measures and sulfur-free generation; five conditional reduced utilization plans, one for each unit for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is John M. McManus.

Picway in Ohio: 5,404 Table 1 allowances in each year 1995–1999 and 6,563 Phase I Extension Reserve allowances in each year 1995–1996 to unit 9; a substitution plan in 1995 in which unit 9 designates Poston units 1, 2, and 3 as substitution units; and a conditional reduced utilization plan for 1995–1999 for unit 9 that relies on energy conservation measures. The designated representative is John M. McManus.

Poston in Ohio: 3,797 substitution allowances in 1995 to unit 1; 3,542 substitution allowances in 1995 to unit 2; 4,642 substitution allowances in 1995 to unit 3; a substitution plan for 1995 in which units 1, 2, and 3 are designated as substitution units for Picway unit 9; three reduced utilization plans, one for each unit for 1995–1999, that rely on energy conservation measures and sulfur-free generation. The designated representative is John M. McManus.

Tidd in Ohio: 0 allowances in 1995 to unit **1; and a substitution plan for 1995 in which unit **1 is designated as a substitution unit for Cardinal unit 1. The designated representative is John M. McManus.

Addresses

The administrative records for each plan may be viewed during normal operating hours at the following locations:

Region 2

For plants in New Jersey and New York: EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 505, New York, NY 10278, (212) 264–6685.

Region 3

For plants in West Virginia: EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

Region 4

For plants in Florida: (1) EPA Region 4 Library, 345 Courtland Ave. NE, Atlanta GA 30365, (404) 347–4216; (address above); (2) Air Resources Management Division, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, FL 32399–2400; and (3) the additional locations for each plant:

Crist: West Florida Regional Library, 200 W. Gregory St., Pensacola, FL 32501–4878, (904) 435–1763.

Big Bend, F J Gannon and Hookers Point: Air Pollution Control Division, Hillsborough County Environmental Protection Commission, 1410 N. 21 St., Tampa, FL, 33605, (813) 272–5530.

For plants in Kentucky: (1) EPA Region 4 Library, 345 Courtland Ave. NE, Atlanta, GA 30365, (404) 347–4216; (2) Division of Air Quality, Department of Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, KY 40601; and (3) the additional locations for each plant:

Big Sandy: Kentucky Division for Air Quality, 3700 13 St., Ashland, KY 41102, (606) 325–8568.

Coleman: Hancock County Public Library, Court St., P.O. Box 249, Hawesville, KY 42348, (502) 927–6766.

Cooper: Pulaski County Public Library, 107 N. Main, Somerset, KY 42502, (606) 697–8401.

Dale: Clark County Public Library, 109 S. Main, Winchester, KY 40391, (606) 744–5661.

East Bend: Boone County Library, 7425 U.S. Highway 42, Florence, KY 41042, (606) 371–6222.

HMP & L Station 2: Henderson County Public Library, 101 S. Main, Henderson, KY 42420, (502) 826–3712.

R D Green: Webster County Public Library, 101 State Route 132 East, Dixon, KY 42409, (502) 639–9171.

For Jack Watson: (1) EPA Region 4 Library (address above); (2) Air Quality Division, Bureau of Pollution Control, Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, MS 39289–0385, (601) 961–5171; and (3) Gulfport-Harrison County Library, 21 Ave. and 14 St., Gulfport, MS 39501, (601) 863–6411.

Region 5

For plants in Indiana: EPA Region 5, Ralph H. Metcalfe Federal Bldg., Room 1822, 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Minnesota and Ohio: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 17th Floor, 77 West Jackson Blvd., Chicago, IL 60604.

Dated: July 12, 1993.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–16898 Filed 7–15–93; 8:45 am]

BILLING CODE 6560–60–M

[ER–FRL–4622–6]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 28, 1993 through July 2, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–E61067–MS Rating EC2, Porter Creek Recreation and Lake Complex, Development and Construction, COE Section 404 Permit and Land Acquisition, Homochitto National Forest, Bude Ranger District, Franklin County, MS.

Summary: EPA recommended that no reservoir be constructed until sewage treatment problems on Porter Creek are resolved, and that only the smallest sized reservoir necessary to meet the recreation and economic needs of the area be built.

ERP No. D–AFS–K65147–CA Rating EC2, Lowell Hill Area, Nevada City Ranger District and New Brandy City, Downieville Ranger District, Long-Term Soil Productivity Study, Implementation, Tahoe National Forest, Nevada and Sierra Counties, CA

Summary: EAP expressed environmental concerns regarding possible impacts to the California Spotted Owl habitat. EPA requested additional information on owl habitat and the Blodgett Forest site.

ERP No. D–AFS–L65194–ID Rating EC2, Mid-Skull/Upper Bear Timber Sales, Timber Harvest, Road Construction and Reconstruction, Clearwater National Forest, North Fork Ranger District, Skull Creek, Clearwater County, ID.

Summary: EPA expressed environmental concerns were based on potential water quality impacts; the need for a monitoring discussion; and the need for a broader cumulative effects analysis. Additional information is requested to clarify potential harvest impacts on riparian areas and water quality; to outline a monitoring strategy; to expand the air quality discussion; and to expand the cumulative effects analysis.

ERP No. D–FTA–F40332–OH Rating LO1, Dual Hub corridor Improvements, Downtown Cleveland to University Circle, Funding, Cuyahoa County, OH.

Summary: EPA had no objections to the proposed project.

ERP No. D–FTA–K40130–CA Rating EC2, Los Angeles Eastside Corridor Transportation Improvement, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and COE Section 404 Permits, Los Angeles County, CA

Summary: EPA expressed concerns due to potential localized air quality impacts that could occur in the vicinity of transit stations. EPA noted that the draft EIS incorporates several detailed reports by reference without providing sufficient summaries on the reports' contents and requested that the final EIS provide more information on the purpose that each alternative is intended to serve, traffic analyses and consequent air quality impacts.

Dated: July 13, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-16943 Filed 7-15-93; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4622-5]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed July 5, 1993 Through July 9, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930226, DRAFT EIS, BOP, PA, Philadelphia, Metropolitan Detention Center (MDC), Construction and Operation, City of Philadelphia, PA, Due: August 30, 1993, Contact: Patricia K. Sledge (202) 514-6470.

EIS No. 930227, FINAL EIS, COE, SC, Myrtle Beach (Known as the Grand Strand) Shoreline Protection Project, Beach Erosion Protection, Implementation, Horry and Georgetown Counties, SC, Due: August 16, 1993, Contact: Jim Woody (803) 727-4759.

EIS No. 930228, DRAFT EIS, BOP, HI, Honolulu, HI Federal Detention Center (FDC), Construction and Operation, City of Honolulu, Island of Oahu, HI, Due: August 30, 1993, Contact: Patricia K. Sledge (202) 514-6470.

EIS No. 930229, FINAL EIS, FHW, PA, Park Road Corridor Project, West Shore Bypass/US 422/222 and Warren Street Bypass Connection to the Outer Bypass/PA-3055, Funding and Section 404 Permit, Berks County, PA, Due: August 23, 1993, Contact: Manuel A. Marks (717) 782-4422.

EIS No. 930230, FINAL EIS, FHW, MN, MN-Trunk Highway-212 Construction, Cologne to MN-Trunk Highway 5/I-494 in Eden Prairie, Funding and Section 404 Permit, Carver and Hennepin Counties, MN, Due: August 16, 1993, Contact: James P. McCarthy (612) 290-3259.

EIS No. 930231, DRAFT EIS, NPS, SD, Jewel Cave National Monument General Management Plan (GMP), Implementation, Black Hills National Forest, Custer County, SD, Due: September 16, 1993, Contact: Kate Cannon (605) 673-2288.

EIS No. 930232, DRAFT EIS, NPS, SD, Wind Cave National Park General Management Plan (GMP), Implementation, Black Hills, Custer County, SD, Due: September 16, 1993, Contact: Jimmy Taylor (605) 745-4600.

EIS No. 930233, FINAL EIS, BLM, ID, NV UT, Southwest Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new substation site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT, Permit Approvals and COE Section 10 and 404 Permits, several Counties, NV, ID, UT, Due: August 17, 1993, Contact: Karl Simonson (208) 678-5514.

EIS No. 930234, DRAFT EIS, COE, LA, Louisiana Coastal Wetlands Comprehensive Restoration Plan, Implementation and Funding, several Parishes, LA, Due: August 30, 1993, Contact: Richard Boe (504) 862-1505.

EIS No. 930235, DRAFT EIS, SFW, WY, ID, MT, Gray Wolves (Canis Lupus) Reintroduction into the Yellowstone National Park and Central Idaho, Implementation, MT, WY and ID, Due: October 15, 1993, Contact: Ed Bangs (406) 449-5202.

Amended Notices

EIS No. 930168, DRAFT EIS, FHW, NY, NY-9A Reconstruction Project, Battery Place to 59th Street along the western edge of Manhattan, Funding and Approval of Permits, New York County, NY, Due: November 3, 1993, Contact: Harold J. Brown (518) 472-3616. Published FR—05-28-93—Review Period Extended.

Dated: July 13, 1993.

William D. Dickerson,

Office of Federal Activities.

[FR Doc. 93-16944 Filed 7-15-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4678-4]

Notice of Availability of the Administrative Record and Request for Public Comment on a CERCLA Non-Time-Critical Removal Action: BFI-Rockingham Landfill Superfund Site, Rockingham, VT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of the administrative record and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) recently completed an Engineering Evaluation/Cost Analysis (EE/CA) that analyzes alternatives for a CERCLA non-time critical removal action at the BFI-Rockingham Landfill Superfund Site. Based upon the EE/CA, EPA has made a preliminary recommendation of a preferred alternative. EPA invites public comment on the alternatives evaluated in the EE/CA, as well as EPA's preferred alternative.

EPA will hold a 30-day public comment period, from July 13, 1993 to August 11, 1993, to provide an opportunity for the public to participate in the selection of this CERCLA non-time-critical removal action. During the comment period, the public is invited to review the EE/CA report, EPA's preferred alternative, and other documents which comprise the administrative record. These documents are available at the information repositories listed below. The public is also invited to provide oral comments on the EE/CA at the public hearing, or written comments to the EPA Remedial Project Manager (see below). Interested members of the general public may include individuals who live or work near the Site and potentially responsible parties ("PRPs") who shipped or transported waste to the Site for disposal.

DATES: EPA will conduct a Public Meeting on July 12, 1993 to provide information on this proposed action (see below). The public comment period will then run from July 13, 1993 to August 11, 1993. During the comment period, oral comments may be provided at the Public Hearing to be held on August 5, 1993 (see below). Written comments sent to EPA must be postmarked no later than the last of the comment period, August 11, 1993.

ADDRESSES: The public meeting will be held at Rockingham Town Hall, Bellows Falls, VT. The administrative record for this action is available for public review at the Rockingham Free Public Library, 65 Westminster Street, Bellows Falls, Vermont 05101, (802) 463-4207, between the hours of 9-11 a.m., Tuesday and Friday; 1-8 p.m., Monday through Friday; and 1-5 p.m. on Saturday. The administrative record is also available for review at the EPA Superfund Records Center, EPA Region I, 90 Canal Street, Boston, MA 02114, (617) 573-5729, Monday through Friday between the hours of 8:30 a.m.-1 p.m. and 2-5 p.m. Written comments on EPA's proposed action should be addressed to Ed Hathaway, Remedial Project Manager, U.S. Environmental

Protection Agency, JFK Federal Building—HPS CAN1, Boston, Massachusetts 02203–2211.

FOR FURTHER INFORMATION CONTACT: Ed Hathaway, Remedial Project Manager, U.S. Environmental Protection Agency, JFK Federal Building—HPS CAN1, Boston, Massachusetts 02203–2211, (617) 573–5782.02.

SUPPLEMENTARY INFORMATION: Pursuant to section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9604(a) (commonly referred to as "Superfund"), EPA has determined that conditions at the BFI-Rockingham Landfill Superfund Site warrant a non-time-critical removal action. The purpose of the action will be to control the source of contamination and minimize the migration of contaminants from the landfill to groundwater and surface water. In order to reach a final decision on the specific response action to be taken at the Site, EPA initiated an Engineering Evaluation/Cost Analysis (EE/CA) to evaluate various response alternatives.

The EE/CA was performed by Disposal Specialists, Inc. and Browning-Ferris Industries of Vermont, Inc., the owners and operators of the Site, pursuant to an EPA administrative consent order. EPA provided oversight of the EE/CA process, reviewed drafts of the EE/CA Report, and ultimately approved the final EE/CA Report. After considering the information presented in the EE/CA, EPA made a preliminary recommendation of its preferred alternative. To focus the evaluation of alternatives, EPA considered, among other guidance documents, "Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites" (OSWER Directive 9355.3–11, November 1990). EPA's preliminary recommendation for a preferred alternative involves the construction of a multi-layered cap over the landfill and the continued operation and maintenance (post-removal site control) of the leachate collection, slope stabilization, and seepage control systems. This recommendation is discussed in EPA's EE/CA Fact Sheet.

EPA will conduct a public meeting on July 12, 1993 at 7 p.m. to present information on the EE/CA. EPA will then hold a 30-day public comment period, from July 13, 1993 to August 11, 1993, to provide an opportunity for the public to participate in the selection of this CERCLA non-time-critical removal action. During the comment period, the public is invited to review the Administrative Record, which includes the EE/CA, EPA's EE/CA Fact Sheet, and other relevant documents that will form the basis for EPA's final selection of a non-time-critical removal action for the BFI-Rockingham Superfund Site. These documents are available for public review at the Rockingham Free Public Library, 65 Westminster Street, Bellows Falls, Vermont 05101, (802) 463–4207, and at the EPA Superfund Records Center, EPA Region I, 90 Canal Street, Boston, MA 02114, (617) 573–5729. Within the comment period, the public is also invited to provide written comments to the EPA Remedial Project Manager at the address listed above, or to provide oral comments at the public hearing to be held on August 5, 1993 at 7 p.m. The hearing will be transcribed and a copy of the transcript will be available at the information repositories.

Interested members of the general public may include individuals who live or work near the Site, and PRPs who shipped or transported waste to the Site for disposal. For a period of time from the late 1960s through the early 1970s, the Site was owned and operated by Harry K. Shephard, Inc. During that time, Harry K. Shephard transported waste to the Site which was generated by companies and individuals located in Rockingham and surrounding communities.

Dated: June 25, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–16893 Filed 7–15–93; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 13, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

Please note: The Commission has requested expedited review of this item by July 27, 1993, under the provisions of 5 CFR 1320.18.

OMB Number: None

Title: Determination of Maximum Initial Permitted Rates for Regulated Cable Programming Services and Equipment

Form Number: FCC Form 393

Action: New Collection

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 14,200 responses; 40 hours average burden per response; 568,000 hours total annual burden

Needs and Uses: Section 623 of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. On 4/1/93, the Commission adopted a Report and Order in MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation. This Report and Order implements Section 623 of the Cable Act, thus ensuring that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. On 5/19/93, the Commission issued a Public Notice releasing a revised FCC Form 393. The FCC 393 released with the Report and Order contained typographical and other errors. In addition, the Commission had received several requests for clarification about how to complete the form. The form was revised to include these corrections and clarifications. The FCC 393 will be used by cable operators to submit their basic rate schedule to local franchising authorities or the FCC (in situations where the FCC has assumed jurisdiction). It will also be filed with the FCC when responding to a complaint filed with the Commission about cable programming service rates and associated equipment

VOL 58 ISS 135 JL 16 1993 UMI

Federal Communications Commission.

William F. Caton,

Acting Secretary.

FCC 393 Determination of Maximum Initial Permitted Rates For Regulated Cable Programming Services and Equipment

Federal Communications Commission, Washington, D.C. 20554

Approved by OMB, 3060–XXXX, Expires 00/00/00

FCC 393

Table of Contents

General Instructions
Part I: Cover Sheet—Request for Rate Approval
Part II: Basis Tier & Cable Programming Service Charges
Worksheet
Worksheet Instructions
Benchmark Rate Table
Benchmark Rate Table Instructions
Benchmark Calculation Formula
Flow Chart
Part III: Equipment & Installation Charges
Worksheet
Worksheet Instructions
Schedule A—Capital Costs; Installation & Maintenance Equipment
Schedule B—Operating Expenses
Schedule C—Capital Costs; Leased Equipment
Schedule D—Average Installation Charges
Schedules A, B, C, D Instructions
FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission and/or the local franchising authority will use the information to determine if your cable rates are reasonable under the Commission's rate standards. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on this form is not provided, processing may be delayed. Your response is required to implement the Commission's cable rate standards and to provide a response to cable subscriber complaints.

Public reporting burden for this information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD–PIRS, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–XXXX), Washington, DC 20503.

The foregoing notice is required by the Privacy Act of 1974, Public Law 93–579, December 31, 1975, 5 U.S.C. 522a(e)(3) and the Paperwork Reduction Act of 1980, Public Law 96–511, December 11, 1980, 47 U.S.C. 3507.

General Instructions for Completing FCC Form 393 (Determination of Maximum Initial Permitted Rates for Regulated Cable Programming Services and Equipment)

1. Cable operators should use this form to calculate (1) rates for existing basic service or equipment requiring approval by local franchising authorities or the FCC, and (2) rates for cable programming service or equipment that are the subject of a complaint filed with the FCC. This form will determine whether your rates for basic service and cable programming service are reasonable under FCC regulations, 47 CFR 76.1000 *et seq.*

Note: After your initial rate for basic service has been approved by the government, you must submit the RATE INCREASE FORM if you wish to subsequently increase your basic service rates. If the Commission found your cable programming service rates to be unreasonable less than one year ago and you now wish to increase your rates, you must submit the RATE INCREASE FORM to the Commission for its approval before raising your rates. In addition, if there was no such Commission decision and you raise your cable programming service rates while a complaint about those rates is pending, you must inform the FCC of the rate increase and submit a revised version of this form analyzing the new, higher rates under the FCC's rate standards.

2. This form should be filed with the local franchising authority, or with the FCC in situations where the FCC has assumed jurisdiction to regulate rates for basic service and associated equipment, in order to obtain approval of your existing rates for basic service and associated equipment. It should also be filed with the FCC when you are required to respond to a subscriber's complaint regarding your rates for cable programming service and associated equipment. File an original and one copy with the appropriate regulating entity. Filings made with the FCC should be mailed to the following address: Federal Communications Commission, Request for Cable Rate Approval, P.O. Box 18598, Washington, DC 20036.

3. If, after completing these calculations, you determine that your existing service rate is above the maximum permitted rate, and you do now wish to lower your rate to that level, you must submit a detailed cost-of-service showing justifying the higher rate. Equipment rates must be based on actual cost, as determined in the equipment sections, Part III of this form.

4. The basic service tier is the tier which includes the broadcast signals you carry (except for superstations) along with public, educational and government access channels that are required by the local franchising authority to be carried on the basic tier. You may include additional services on this tier. Equipment used to receive the basic service tier includes remotes, converter boxes, home wiring and wiring for additional connections.

5. Cable programming service consists of all video programming distributed over a cable system that is not included in the basic service tier or offered on a per-channel or per-program basis. Equipment associated with cable programming service, if any, consists of equipment used exclusively to receive such services; this equipment must not be used to receive the basic tier.

6. This form consists of three parts. PART I is the Cover Sheet, where you should fill in the information derived from Parts II and Part III. PART II will enable you to determine your maximum permitted rate for the basic service tier or cable programming service, depending on the service for which you are filing. If your rates exceed the permitted levels calculated in this form, you must submit a separate cost-of-service showing or reduce your rates to the permitted level. PART III will enable you to determine your actual costs for equipment used by subscribers to receive regulated programming service. The 1992 Cable Act requires that you charge no more than actual cost for this equipment.

7. PART II contains five worksheets. Worksheet 1 (Calculation of Rates in Effect on Initial Date of Regulation and Benchmark Comparison) allows you to compare your current per-channel rate to the Commission's benchmark. The benchmark is the rate that a cable system with the same number of subscribers, same number of channels, and same number of satellite channels as your system and that is subject to competition would charge. If your current per-channel rate exceeds the benchmark, you must then come into compliance with the benchmark, which is based on rates as of September 30, 1992. You must therefore complete Worksheet 2 (Calculation of Rates in Effect on September 30, 1992 and Benchmark Comparison). This worksheet will require you to reduce your rate to the benchmark or to 90% of your September 30, 1992 per-channel rate, whichever rate is greater. Both Worksheets 1 and 2 allow you to calculate the per-channel rate you can legally charge by a process that weighs the number of channels on each tier and the price for each tier by the number of subscribers to each tier.

8. Worksheet 3, then, deducts equipment revenues per subscriber from the per channel rate derived in Worksheets 1 and 2. The benchmark number does not separately account for profits from equipment, and the 1992 Cable Act prohibits you from charging more than your costs for equipment. Thus, you must adjust your permitted per-channel rate (calculated in Worksheets 1 and 2) by deducting equipment costs and charging for equipment costs separately.

9. If you calculated your rate from Worksheet 2, you must compete Worksheet 4, which will increase the rate you may charge in order to account for inflation.

10. Worksheet 5 must be competed if the number of regulated channels (that is, basic service channels and cable programming service channels) you currently offer is different from the number of channels used to calculate your Baseline Regulated Rate on either Worksheet 1 or Worksheet 2. If the number of regulated channels you now offer is the same as those you entered on

Worksheet 1 or Worksheet 2, you do not need to complete Worksheet 5.

11. You should use Part III of this form to calculate rates for equipment and installation associated with receiving basic cable service or cable programming services. Equipment used to receive a basic tier of service includes (but is not limited to) converter boxes, remote controls, connections for additional television sets, and cable home wiring. Equipment associated with cable programming service is equipment other than that which is used to receive basic cable service. Rates for both basic service and cable programming service equipment and for installations must be based on actual cost and must be unbundled from service rates. In addition, charges for individual items of equipment, as well as charges for installation and additional outlets, must be unbundled one from the other, and charges for different models of the same type of equipment must also be separated.

12. In Part III, you must calculate on Equipment Basket (Worksheet 7) for either basic service or cable programming service equipment, depending on for which service you are filing. Use of this Equipment Basket will enable you to set your equipment rates so that they are based on actual cost, plus a reasonable profit, as mandated by the 1992 Cable Act.

BILLING CODE 6712-01-M

VOL 58 ISS 135 JL 16 1993 UMI

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

FCC 393 - PART I
REQUEST FOR CABLE RATE APPROVAL
COVER SHEET

Community Unit Identification Code	Date	
Name of Cable Operator		
Mailing Address		
City	State	ZIP Code
Point of contact for this form:		
Telephone ( )	Fax Number ( )	

Local Franchising Authority		
Mailing Address		
City	State	ZIP Code

Is this form being filed with respect to:

☐ **basic rate regulation or** ☐ **cable programming service rate regulation**

If this form is being filed in response to a complaint about your cable programming service rates, please attach a copy of the complaint to this cover sheet.

The following sections are to be completed after you have filled out the worksheets in PARTS II and III and calculated your actual and permitted rates.

FOR BASIC SERVICE TIER AND EQUIPMENT

Program Service Rate	
(1) Number of channels on basic service tier:	
(2) Current rate for basic service tier: (do not include any franchise fees)	$
(3) Maximum permitted per channel rate: (from Line 600 on Worksheet 6, Part II)	$
(4) Maximum permitted rate for bsic service tier (exclusive of any franchise fee): (multiply (1) by (3) above)	$

NOTE: If your current rate for the basic service tier (entry 2) exceeds the maximum permitted rate for that tier (entry 4), you must submit a cost-of-service showing or your basic service rate will be reduced to the maximum permitted level shown in entry 4.

Franchise fees have been excluded from this analysis in order to compare your monthly rate for the basic service tier to the maximum permitted level. Whether you itemize them or not, any franchise fees you pay for the basic service tier should be added to your monthly rate as part of the service when billing your subscribers. See 47 C.F.R. Section 76.985.

FCC 393, Part I, Page 2

EQUIPMENT AND INSTALLATION RATES

NOTE: Your equipment and installation rates for the basic service tier must not be included in your program service rate for that tier, but rather must be completely unbundled. In addition, those equipment and installation rates must not exceed your actuall costs, plus a reasonable profit. The method for unbundling your equipment and installation rates from the basic service programming rate (if necessary), and for determining your permitted equipment and installation rates, is prescribed in Part II (unbundling) and Part III (rate-setting) of this form. Enter in the spaces below the rate figures you have calculated in Part III of this form. Your actual basic service equipment and installation charges may not exceed these rates, although they may be lower.

	PERMITTED	ACTUAL
(1) Charges for basic service installations* (from Lines 6 or 7 of Equipment and Installation Worksheet)		
(a) Hourly rate:	$	$
(b) Average installation charges:		
(1) Installation of unwired homes	$	$
(2) Installation of prewired homes	$	$
(3) Installation of additional connection at time of initial installation	$	$
(4) Installation of additional connections requiring separate installation	$	$
(5) Other installations (specify):	$	$
(2) Charge for changing tiers (if any) (from Line 29, 30 or 31 of Equipment and Insallation Worksheet)	$	$
(3) Monthly charge for lease of remote controls (from Line 14 in Equpment and Installation Worksheet)		
Remote control type 1:	$	$
Remote control type 2:	$	$
Remote control type 3:	$	$
(4) Monthly charge for lease of converter boxes (from Line 21 in Equipment and Installation Worksheet)		
Converter box type 1:	$	$
Converter box type 2:	$	$
Converter box type 3:	$	$
(5) Monthly charge for lease of other equipment (from Line 21 in Equipment and Installation Worksheet)		
Cable home wiring:	$	$
Other equipment (specify):	$	$

*** If you have further charges for additional connections beyond those reflected in your installation charge, attach a sheet explaining your calculations and setting forth those additional charges. SEE Note to Equipment and Installation Worksheet Instructions in Part III of this form.**

UMI
VOL 58 ISS 135 JL 16 1993
UMI

FCC 393, Part I, Page 3

FOR CABLE PROGRAMMING SERVICE RATES AND EQUIPMENT

Program Service Rates

Note: If you have more than one cable programming service tier, attach additional sheets with the following information for each tier.

(1) Number of channels on cable programming service tier:	
(2) Current rate for cable programming service tier: (do not include any franchise fees)	$
(3) Maximum permitted per channel rate: (from Line 600 on Worksheet 6, Part II)	$
(4) Maximum permitted rate for cable programming service tier (exclusive of any franchise fees): (multiply (1) by (3) above)	$

NOTE: If your current rate for the cable programming services tier (entry 2) exceeds the maximum permitted rate (entry 4), you must submit a cost-of-service showing or your cable programming service rate will be reduced to the maximum permitted level shwon in entry 4.

Franchise fees have been excluded from this analysis in order to compare your monthly rate for the cable programming service tier to the maximum permitted level. Whether you itemize them or not, any franchise fees you pay for the cable programming service tier should be added to your monthly rate as part of the service charge when billing your subecribers. See 47 C.F.R. Section 76.985.

Equipment and Installation Rates

NOTE: If equipment used for cable programming service is also used to receive the basic tier, then it must be included in basic service equipment. Similarly, if an installation involving cable programming services also involves the basic service tier, it must be included in basic service installations. We anticipate that virtually all equipment and installations will involve the basic service tier and there will thus be no need to complete this part of the cover sheet. However, if you lease equpment and/or provide some installation-related service that involves ONLY your cable programming services, you should complete the following section.

As for basic service, your equipment and installation rates for cable programming service must not be included in your program service rate, but rather must be completely unbundled. In addition, those equipment and installation rates must not exceed your actual costs, plus a reasonable profit. The method for unbundling your equipment and installation rates from cable programming service rates (if necessary), and for determining your permitted equipment and installation rates, is prescribed in Part II (unbundling) and Part III (rate-setting of this form. Enter in the spaces below the rate figures you have calculated in Part III of this form, plus the franchise fees you must pay on each of these charges. Your actual cable programming service equipment and installation charges may not exceed these rates, although they may be lower.

	Permitted	Actual
(1) Charge(s) for cable programming service installations* (from Lines 6 or 7 of Equipment and Installation Worksheet)	$	$
(a) Hourly rate OR	$	$
(b) Average installation charges:		
1. Installation of unwired homes	$	$
2. Installation of prewired homes	$	$
3. Installation of additional connection at time of initial installation	$	$
4. Installation of additional connections requiring separate installation	$	$
5. Other installations (specify)	$	$
(2) Charge for changing tiers (if any) (From Line 29, 30 or 31 of Equipment and Installation Worksheet)	$	$

*If you have further charges for additional connections beyond those reflected in youyr installation charge, attach a sheet explaining your calculations and setting forth these additional charges. SEE Note to Equipment and Installation Worksheet Instructions.

FCC 393, Part I, Page 4

	Permitted	Actual
(3) Monthly charge for lease of remote controls (from Line 14 in Equipment and Installation Worksheet)		
Remote control type 1:	$	$
Remote control type 2:	$	$
Remote control type 3:	$	$
(4) Monthly charge for lease of converter boxes (from Line 21 in Equipment and Installation Worksheet.		
Converter box type 1:	$	$
Converter box type 2:	$	$
Converter box type 3:	$	$
(5) Monthly charge for lease of other equipment (from Line 28 in Equipment and Installation Worksheet)		
Cable home wiring:	$	$
Other equipment (specify):	$	$

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY BFNE AND/OR IMPRISONMENT (U.S. CODE TITLE 18, SECTION 1001), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify that the statements made in this form are true and correct to the best of my knowledge and belief, and are made in good faith.

Name of Cable Operator	Signature
Date	Title

UMI
1993
JL 16
ISS 1 3 5
VOL 5 8

FCC 393, PART II

WORKSHEETS FOR CALCULATING MAXIMUM INITIAL PERMITTED RATE PER CHANNEL FOR BASIC TIER OR CABLE PROGRAMMING SERVICE

Cable Operator Name:	**Community Unit ID (CUID):**
	Date:
Franchise Authority:	**Check One:** ☐ Basic Tier ☐ Cable Programming

Worksheet 1
Calculation of Rates in Effect on Initial Date of Regulation and Benchmark Comparison

Line	Line Description	Instruction	A Basic	B Tier 2	C Tier 3	D Tier 4	E Total
101	Tier Charge (Monthly)	Enter for all tiers offered	$	$	$	$	
102	Tier Channels	Enter for all tiers offered					
103	Tier Subscribers	Enter for all tiers offered					
104	Equipment Revenue (Monthly)	Enter in Basic Column only	$				
105	Charge Factor	(Line 101 x Line 103) + 104A					
106	Channel Factor	Line 102 x Line 103	$	$	$	$	$
107	Charge per Channel	Line 105E / Line 106E					$
108	Franchise Fee Expense (Monthly)	Enter only fees included in Line 101 charges (See Worksheet Instructions)					$
109	Franchise Fee Deduction	Line 108E / Line 106E					$
110	Base Rate per Channel	Line 107E / Line 109E					$
121	Benchmark Channel Rate	Enter from Attachment A, Benchmark Cable Rate Tables					$
122	GNP-PI (Current)	Enter from survey of current business, Table 7.3, Line 5, most recent quarter					$
123	Inflation Factor	(Line 122E / 121.8) - 1 [121.8 = 3rd Quarter 1992 GNP-PI]					$
124	Adjustment Time Period	Enter number of months from 9/30/92 to date of current rate					
125	GNP-PI Time Period	Enter number of months from 9/30/92 to most recent GNP-PI quarter					
126	Time Factor	Line 124E / Line 125E					
127	Inflation Adjustment Factor	(Line 123E x Line 126E) + 1					$
128	Adjusted Benchmark Rate	Line 121E x Line 127E					$

If Line 110E is less than or equal to Line 128E, skip to Worksheet 3 and enter Line 110E on Line 300.
If Line 110E is greater than Line 128E, complete Worksheet 2.

Cable Operator Name:	**Community Unit ID (CUID):**

128	Adjusted Benchmark Rate	Line 121E x Line 127E

If Line 110E is less than or equal to Line 128E, skip to Worksheet 3 and enter Line 110E on Line 300.
If Line 110E is greater than Line 128E, complete Worksheet 2.

FCC 393, Part II, Page 2

Cable Operator Name:	**Community Unit ID (CUID):**
	Date:
Franchise Authority:	**Check One:** ☐ **Basic Tier** ☐ **Cable Programming**

Worksheet 2
Calculation of Rates in Effect on September 30, 1992 and Benchmark Comparison

Line	Line Description	Instruction	A Basic	B Tier 2	C Tier 3	D Tier 4	E Total
201	Tier Charge (Monthly)	Enter for all tiers offered	$	$	$	$	
202	Tier Channels	Enter for all tiers offered					
203	Tier Subscribers	Enter for all tiers offered					
204	Equipment Revenue (Monthly)	Enter in Basic Column only	$				
205	Charge Factor	(Line 201 x Line 203) + 204A					
206	Channel Factor	Line 202 x Line 203					
207	Charge per Channel	Line 205E / Line 206E					$
208	Franchise Fee Expense (Monthly)	Enter only fees included in Line 201 charges (See Worksheet Instructions)					$
209	Franchise Fee Deduction	Line 208E / Line 206E					$
210	Base Rate per Channel	Line 207E / Line 129E					$
220	Benchmark Channel Rate	Enter from Attachment A, Benchmark Cable Rate Tables					$
	If Line 210E is less than or equal to Line 220E, go to Worksheet 3 and enter Line 220E on Line 300. **If Line 210E is greater than Line 220E, go to Line 230.**						
230	**Reduced Base Rate per Channel**	Line 210E x 0.9 (ten percent reduction)					$

Enter greater of Lines 220E and 230E on Worksheet 3, Line 300.

UMI
1993
JL 16
ISS 135
VOL 58

FCC 393, Part II, Page 3

Cable Operator Name:	Community Unit ID (CUID):
	Date:
Franchise Authority:	Check One: ☐ Basic Tier ☐ Cable Programming

Worksheet 3
Removal of Equipment and Installation Costs

Line	Line Description	Instruction	
300	Base Rate per Channel	Enter from Worksheet 1 (Line 110E) or Worksheet 2 (Line 220E or 230E)	$
301	Equipment & installation Cost (Monthly)	Enter from Line 34 of Equipment Workshop (Step G)	$
302	Channel Factor	Enter from Worksheet 1 (Line 106E) or Worksheet 2 (Line 206E)	
303	Cost per Subscriber-Channel	Line 301 / Line 302	$
304	Base Service Rate per Channel	Line 300 - Line 303	$

If Line 300 was entered from Worksheet 1, go to Line 600 and enter Line 304.
If Line 300 was entered from Worksheet 2, go to Worksheet 4.

Worksheet 4
Adjustment for Inflation

Line	Line Description	Instruction	
400	Base Service Rate per Channel	Enter from Line 304	$
401	Inflation Adjustment Factor	Enter from Worksheet 1, Line 127E	
402	Adjusted Base Service Rate per Channel	Line 400 x Line 401	$

Worksheet 5 should be completed if Line 121E is different than Line 220E.
If Line 121E is the same as Line 220E, go to Line 600 and enter Line 402.

Worksheet 5
Adjustment for Changes in Number of Regulated Channels

Line	Line Description	Instruction	
500	Adjusted Base Service Rate per Channel	Enter from Worksheet 4 (Line 402)	$
501	Benchmark Channel Rate (Baseline)	Enter from Worksheet 4 (Line 220E)	$
502	Benchmark Channel Rate (New)	Enter from Worksheet 1 (Line 121E)	$
503	Channel Adjustment Factor	(Line 502 - Line 501) / Line 501	
504	Channel Adjusted Base Ser. Rate per Chan.	Line 500 x (1 + Line 503)	$

If Worksheet 5 was used, enter Line 504 on Line 600.

600	**Maximum Initial Permitted Rate per Channel**	**Enter from Line 304, 402, or 504.**	**$**

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Instructions for Calculating Maximum Initial Permitted Rates for Regulated Services

These instructions are designed to assist you in completing FCC Form 393. Part II of FCC Form 393 is designed to enable you to calculate the rate you may charge for the basic service programming tier and cable programming services. If your current rates are lower than the permitted rates, you may use the worksheets to increase your rates. If service should be reduced, but you do not do so, the rates may be reduced to the maximum permitted level and will be ordered refunded to subscribers.

An overview of the rate setting process you may be required to follow is provided in the Instruction Booklet. Please refer to it for additional information. Attachment A to the Booklet is designed to assist you in following the steps you will take to calculate the maximum permitted rate. Examples of these materials are provided to assist you in completing the worksheets.

All calculations in Worksheets 1 (Parts I and III) should be carried out to three decimal places. Enter the result rounded to the nearest tenth (rounded down, .005 and above rounded up). Enter tier charges in Worksheet 2 (Part II), Service Charges in Worksheet 3, and for Cable Programming Services enter the final external rate (Line 127E) in the Equipment Workshop (Step G) of that Cover Sheet.

Instructions for Worksheet 1

Worksheet 1 is designed to calculate average Basic and Cable Programming currently charged on September 30, services and the inflation factor. Worksheet 1 is also used to calculate Benchmark rates for Basic and Cable current Basic and Cable rates can be compared. Worksheet 1 is used if Channel is deleted. Worksheet 1 is Benchmark rates for Basic and Cable found reasonable, but you wish to reduce the rates. Worksheet 1 is used Rate Per Channel for Basic and Cable Channel Rate in accordance with the rules set forth in Worksheet 1.

Line 101 is the number of channels column, enter the number of channels for your basic service tier. Do not count of cable programming services tier (CPST) to subscribers for which the CPST rate is which the basic service tier rate is include any channels that are offered on a per channel or per program basis. In addition, unused channels on the basic program service tier that are available

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[1] When comparing rates for different systems, it should be noted, you should not compare rates for a single unit involved in a transfer of ownership. Different system interconnections, different channel line-up factors (including additions and deletions), different rates, channel numbers, and different mixes of identical and similar services may be offered in different systems. Accordingly, where relevant, you should explain differences in system data.

Instructions for Worksheets Calculating Maximum Initial Permitted Rates for Regulated Cable Services

These instructions are to be used when completing Worksheets 1 through 5 of Part II of FCC Form 393. Using the worksheets will enable you to compute the maximum rate you may currently charge for regulated programming services under the FCC's rules. If your current rates exceed the maximum permitted rate you calculate on the worksheets, you must submit a cost-of-service showing to support your rates. If you do not do so, you will have your rates reduced to the maximum permitted rate and will be ordered to refund the excess to subscribers as necessary.

An overview of the various calculations you may be making is set forth in the General Instructions for completing this form. In addition, a decision flow chart is attached as Attachment B to this part. This chart is designed to help you visualize the different steps you will be taking to compute your maximum initial permitted rate. Reviewing these materials first will assist you in completing the worksheets.

All calculations on the Worksheets (Parts II and III) should be carried out to at least three decimal points. The results should be rounded to the nearest cent (.004 or less down, .005 or more up) only when the final tier charge result is entered on Line (6) of the Service Charge sections of Part I ("Request for Cable Rate Approval Cover Sheet") and the final equipment charges are entered on the Equipment and Installation Rate sections of that Cover Sheet.

Instructions for Worksheet 1

Worksheet 1 must be used to calculate the average Base Rate Per Channel that you are currently charging for regulated programming services and associated equipment. The Worksheet also must be used to compute the Benchmark Channel Rate with which your current Base Rate Per Channel will be compared. If your current Base Rate Per Channel is equal to or lower than the Benchmark Channel Rate, your rates will be found reasonable and you will not have to reduce them. If, however, your current Base Rate Per Channel exceeds the Benchmark Channel Rate, you will have to reduce your rate in accordance with the calculations set forth in Worksheet 2.

Line 101—Tier Charge. In the relevant column, enter your current monthly charge for your basic service tier and for each tier of cable programming service that you offer to subscribers in the community unit for which the form is being completed.[1] Do not include any premium programming offered on a per channel or per program basis. In addition, use your standard non-discounted program service rates; do not use any bulk or other discounted rates that you may offer to special classes of customers.

Line 102—Tier Channels. In the relevant column, enter the number of channels included in each tier of regulated programming services you offer to subscribers in the community unit. For purposes of completing the worksheets, a "channel" is a unit of cable service identified and selected by a channel number or similar designation. Channels are not excluded from consideration based on their contents and may include, for example, directory and menu channels. Total regulated channels include all channels on the basic service tier and cable programming service tiers. The distribution of several programming services combined on a single channel does not increase the number of channels on the system.

Line 103—Tier Subscribers. In the relevant column, enter the number of subscribers in the community unit who subscribe to each tier indicated.

Line 104—Equipment Revenue Per Month. To calculate your monthly average equipment revenue, take the total revenues you earned over the last fiscal year for the community unit for the following categories of equipment and installation services: (1) Converter box rental; (2) remote control rental; (3) additional outlet fees; (4) installation fees; (5) disconnect fees; (6) reconnect fees; and (7) tier changing fees. Divide that total by 12 to compute your Equipment Revenue Per Month. Enter this figure in Column A of Line 104.

Weighting. In order to determine the average Base Per Channel Rate paid by subscribers to your system, the per channel rate for each tier is weighted according to the number of subscribers to that tier, so that tiers with more subscribers count more in determining the average than tiers with fewer subscribers. This weighting is done by determining a weighted monthly rate per subscriber (the "Charge Factor" calculated in Line 105) and dividing by a weighted number of channels received by each subscriber (the "Channel Factor" calculated in Line 106).

Line 105—Charge Factor. Multiply the monthly Tier Charge in Column A in Line 101 times the number of subscribers for that tier set forth in Column A in Line 103. Add the Equipment Revenue Per Month from Line 104 to this figure and enter the sum in Column A, Line 105.

Next, multiply the monthly Tier Charge in Column B in Line 101 times the number of subscribers in Column B of Line 103. Enter the result in Column B in Line 105—*do not* add the Equipment Revenue Per Month from Line 104. Repeat this calculation for each other Column that you have completed.

Finally, add the figures in Columns A–D in Line 105 together and enter the total in Column E of Line 105.

Line 106—Channel Factor. Multiply the number of channels in Column A in Line 102 times the number of subscribers in Column A in Line 103. Enter the result in Column A of Line 106. Repeat the same calculation for each column in Line 106. Then, add the figures in Columns A–D in Line 106 together and enter the total in Column E of Line 106.

Line 107—Charge per Channel. Divide the total Charge Factor from Column E, Line 105 by the total Channel Factor from Column E, Line 106. Enter the result in Column E of Line 107. You have now completed the weighting process.

Franchise Fees. The calculations in Lines 108 and 109 will enable you to separate out any franchise fees that you include in your subscriber rates. If you charge subscribers separately for franchise fees and do not include those fees in your service rates, you do not need to complete these steps and should enter $0.00 in Lines 108 and 109. If you do include franchise fees in your service rates, complete Lines 108 and 109. For purposes of this calculation, "franchise fees" means fees paid by the cable operator to the local franchising authority which only cable operators, and not owners of other kinds of businesses, are required to pay.

Line 108—Franchise Fee Expense (Monthly). Calculate the franchise fees you pay for regulated tiers of service for the community unit during an average month. Enter that total monthly payment in Column E of Line 108.

Line 109—Franchise Fee Deduction. To calculate the weighted per channel franchise fee, divide the Monthly Franchise Fee Expense from Line 108, Column E by the total Channel Factor from Line 106, Column E. Enter the result in Column E of Line 109.

Line 110—Base Rate Per Channel. Subtract the Franchise Fee Deduction in Line 109 from the Charge Per Channel in Line 107. Enter the result in the box in Line 110. This number is your current Base Rate Per Channel. It is the number that will be compared to your competitive benchmark to determine whether your current rates are reasonable or need to be reduced.

Benchmark Calculation. The next calculation you will perform will give you your competitive benchmark rate. This rate represents the rate that would be charged by a cable system facing competition that has similar characteristics to your own. The three characteristics that will be used in this analysis are: (1) the number of channels on regulated program tiers that you offer; (2) the number of subscribers served by your cable system; and (3) the number of satellite-delivered signals you carry on your regulated program tiers.

Line 121—Benchmark Per Channel Rate. Attachment A contains the benchmark rates per channel for cable systems with different numbers of channels on regulated tiers and different numbers of satellite-delivered signals. There are eight tables of benchmark rates for systems with 50, 100, 250, 500, 750, 1000, 1500 and 10,000 subscribers. Using the table with the number of subscribers closest to the number of subscribers on your system, select the benchmark per channel rate from the table. Enter the selected benchmark per channel rate in Column E of Line 121.

Notes: (1) When using the benchmark tables, use the number of regulated channels and satellite-delivered signals for the *community unit*. However, for the number of subscribers, use the number of subscribers on your *system*. (2) All systems with 10,000 or more subscribers should use the 10,000 subscriber table. Our analysis revealed that there is no measurable difference in the benchmark rates among systems with more

[1] When completing this form, except where noted, you should use data from the community unit involved. However, you may use data for the system instead of the community unit if all relevant factors (including program service and equipment rates, channel line-ups and franchise fees) are identical *and* the local franchising authority (or, where relevant, the FCC) permits you to use such system data.

600 Maximum Initial Permitted Rate per Channel | Enter from Line 304, 402, or 504. If Worksheet 5 was used, enter Line 504 on Line 600. | $

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VOL 58 ISS 135 JL 16 1993 UMI

than 10,000 subscribers. (3) For purposes of using the benchmark tables, a "satellite-delivered signal" is any cable program service or "superstation" delivered on a communications satellite that is not a premium service (pay channel or pay-per-view channel). If a cable system picks up a satellite channel via a microwave or fiber optic feed, the channel remains a satellite channel if it is available by satellite unless it could be picked up directly over-the-air in the cable community. (4) If the total number of channels on regulated tiers and/or the total number of satellite-delivered channels on those tiers for your community unit falls between the channel increments listed in the tables, you must interpolate the correct benchmark per channel rate. Instructions on how to perform these interpolations are attached at the end of the benchmark rate tables. If you do not wish to interpolate the correct benchmark rate, select the lower rate of the two benchmark rates you fall between. Alternatively, you may apply the FCC's benchmark formula to calculate your benchmark rate. The formula is attached to the benchmark tables. If you use the formula, you must use the *actual* number of subscribers to your system, rather than the number of subscribers on the closest benchmark table.

Inflation Adjustment. The benchmark per channel rate that you have just selected was based on cable rates in effect on September 30, 1992. Therefore, to make sure that the benchmark against which you will compare your current rates is not too low, the benchmark per channel rate must be adjusted forward for inflation since September 30, 1992. The calculations in Lines 122 through 128 of Worksheet 1 will enable you to adjust the Benchmark Per Channel Rate in Line 121 for inflation.

Line 122—GNP–PI (Current.) Enter the Gross National Product Price Index (GNP–PI) for the most recent quarter in Column E of Line 122. This number can be found in the "Survey of Current Business," Table 7.3, Line 5 (Most Recent Quarter), which is published monthly by the U.S. Department of Commerce. The number will also be published periodically by the FCC.

Line 123—Inflation Factor. Divide the current GNP–PI from Line 122 by the GNP-PI for the third quarter of 1992, which is 121.8. Subtract 1 from the resulting figure and enter the number in Column E of Line 123.

Line 124—Adjustment Time Period. Enter in Column E of Line 124 the number of whole months from September 30, 1992 to the date you will submit this form.

Line 125—GNP–PI Time Period. Enter in Column E of Line 125 the number of months from September 30, 1992 to the end of the most recent GNP–PI quarter.

Line 126—Time Factor. Divide the number of months in Line 124 by the number of months in Line 125 and enter in Column E of Line 126.

Line 127—Inflation Adjustment Factor. Multiply the Inflation Factor in Line 123 times the Time Factor in Line 126. Add 1 to the resulting figure and enter the number in Column E of Line 127.

Line 128—Adjusted Benchmark Rate. Multiply the Benchmark Channel Rate from Line 121 times the Inflation Adjustment Factor from Line 127. Enter the resulting figure in Column E of Line 128. This is your benchmark channel rate that has been adjusted forward for inflation.

You are now ready to compare your current rate to the benchmark:

If the Base Rate Per Channel in Line 110 is *less than or equal to* the Adjusted Benchmark Rate in Line 128, your current per channel rate is reasonable and you do not need to reduce it. You should now skip to Worksheet 3 and enter the rate from Line 110 in Line 300 of Worksheet 3. This worksheet will enable you to remove your equipment and installation costs from your Base Rate Per Channel. The resulting number will be the maximum rate per channel you can currently charge for regulated programming services.

If the Base Rate Per Channel in Line 110 is *greater than* the Adjusted Benchmark Rate in Line 128, your current per channel rate is unreasonable and must be reduced if you do not wish to submit a cost-of-service showing. To determine what your maximum permitted rate is, you must complete Worksheet 2.

Instructions for Worksheet 2

If your current per channel rate is above the benchmark, you must now examine your per channel rate as of September 30, 1992 and compare it to the benchmark. If your September 30, 1992 rate was also above the benchmark, your maximum permitted rate will be your September 30, 1992 rate, reduced by 10 percent or to the benchmark, whichever reduction is less. If you do not implement this rate reduction, you must submit a cost-of-service showing. If your current rate is above the benchmark but your September 30, 1992 rate was equal to or below the benchmark, your maximum permitted rate will be the benchmark rate, as adjusted for inflation. If you do not reduce your rate to this level, you must submit a cost-of-service showing.

Worksheet 2 will enable you to calculate your Base Per Channel Rate as of September 30, 1992 and then compare that rate to the Benchmark Channel Rate. The calculations will mirror those you performed when computing your current Base Per Channel Rate on Worksheet 1.

Line 201—Tier Charge. In the relevant column, enter your monthly charge as of September 30, 1992 for your basic service tier and for each tier of cable programming service that you offered to subscribers in the community unit on that date. Do not include any premium programming offered on a per channel or per program basis. In addition, use your standard non-discounted program service rates; do not use any bulk or other discounted rates that you may have offered to special classes of customers.

Line 202—Tier Channels. In the relevant column, enter the number of channels included in each tier of regulated programming services you offered to subscribers in the community unit as of September 30, 1992.

Line 203—Tier Subscribers. In the relevant column, enter the number of subscribers in the community unit who subscribed to each tier indicated as of September 30, 1992.

Line 204—Equipment Revenue Per Month. To calculate your monthly average equipment revenue as of September 30, 1992, take the total revenues you earned over the preceding fiscal year for the community unit for the following categories of equipment and installation services: (1) converter box rental; (2) remote control rental: (3) additional outlet fees: (4) installation fees; (5) disconnect fees: (6) reconnect fees; and (7) tier changing fees. Divide that total by 12 to compute your Equipment Revenue Per Month as of September 30, 1992. Enter this figure in Column A of Line 204.

Line 205—Charge Factor. Multiply the monthly Tier Charge in Column A in Line 201 times the number of subscribers for that tier set forth in Column A in Line 203. Add the Equipment Revenue Per Month from Line 204 to this figure and enter the sum in Column A, Line 205.

Next, multiply the monthly Tier Charge in Column B in Line 201 times the number of subscribers in Column B of Line 203. Enter the result in Column B in Line 205—*do not* add the Equipment Revenue Per Month from Line 204. Repeat this calculation for each other Column that you have completed.

Next, add the figures in Columns A–D in Line 205 together and enter the total in Column E of Line 205.

Line 206—Channel Factor. Multiply the number of channels in Column A in Line 202 times the number of subscribers in Column A in Line 203. Enter the result in Column A of Line 206. Repeat the same calculation for each column in Line 206. Then, add the figures in Columns A–D in Line 206 together and enter the total in Column E of Line 206.

Line 207—Charge Per Channel. Divide the total Charge Factor from Column E, Line 205 by the total Channel Factor from Column E, Line 206. Enter the result in Column E of Line 207.

Line 208—Franchise Fee Expense (Monthly). Calculate the (non-itemized) franchise fees you paid for regulated tiers of service for the community unit during an average month for the fiscal year preceding September 30, 1992. Enter that total monthly payment in Column E of Line 208.

Line 209—Franchise Fee Deduction. To calculate the weighted per channel franchise fee, divide the Monthly Franchise Fee Expense from Line 208, Column E by the total Channel Factor from Line 206, Column E. Enter the result in Column E of Line 209.

Line 210—Base Rate Per Channel (September 30, 1992). Subtract the Franchise Fee Deduction in Line 209 from the Charge Per Channel in Line 207. Enter the result in the box in Line 210. This number is your Base Rate Per Channel as of September 30, 1992. It will be compared to your competitive benchmark as of September 30, 1992 as part of computing your current maximum permitted rate.

Line 220—Benchmark Channel Rate (September 30, 1992). To compare your September 30, 1992 Base Per Channel Rate to the benchmark, use the number of regulated channels and satellite-delivered signals for the *community unit*, and the subscribers on your *system*, as of September 30, 1992 to find the appropriate September 30, 1992 Benchmark Channel Rate on the benchmark

tables attached as Attachment A. (*See* instructions for Line 121, above, for further guidance in using benchmark tables.)

You are now ready to compare your September 30, 1992 rate to the September 30, 1992 benchmark:

If your September 30, 1992 Base Rate Per Channel (Line 210E) is less than or equal to the September 30, 1992 Benchmark Channel Rate (Line 220E), your maximum permitted rate will be the September 30, 1992 benchmark rate, adjusted forward for inflation. You may now skip to Worksheet 3 and enter the number in Line 220E on Line 300. Worksheet 3 will enable you to remove your equipment and installation costs from this per channel rate to determine what your maximum permitted program service rate should be.

If your September 30, 1992 Base Rate Per Channel (Line 210) is greater than the September 30, 1992 Benchmark Channel Rate (Line 220), your maximum permitted rate will be your September 30, 1992 Base Rate Per Channel, reduced by 10 percent or to the benchmark, whichever yields the higher rate. To compute this rate, you will need to complete Line 230.

Line 230—Reduced Base Rate Per Channel. Multiply your September 30, 1992 Base Rate Per Channel (Line 210) times 0.9 to reduce that rate by 10 percent; enter the resulting number in the box in Line 230. Then, take the greater of the September 30, 1992 benchmark (Line 220) and the reduced rate per channel you have just computed in Line 230 and enter it in Line 300 on Worksheet 3.

Instructions for Worksheet 3

The per channel rates you have calculated so far have included both programming service rates and rates for equipment and installations. The 1992 Cable Act, however, requires you to unbundle you programming service rates from you equipment and installation rates, as well as to unbundle those rates one from the other. Worksheet 3 is thus designed to separate your equipment and installation costs from your programming service rates. The resulting rate will be per channel rate for programming services alone.

Line 300—Base Rate Per Channel. If you completed Worksheet 1 only, enter your Base Rate Per Channel from Line 110 on Worksheet 1 on Line 300. If you completed both Worksheets 1 and 2, enter the appropriate figure from either Line 220 or Line 230.

Line 301—Equipment and installation Costs (Monthly). In order to complete this line, you must have completed Schedules A, B and C and the Worksheet for Equipment and installation Charges in Part III of this form. Enter Line 34 from Step G of that Equipment Worksheet in Line 301. This figure reflects the costs you incur in an average month for equipment and installations.

Line 302—Channel Factor. If you completed Worksheet 1 only, enter the number from Line 106, Column E. If you completed Worksheet 2, enter the number from Line 206, Column E.

Line 303—Cost per Subscriber-Channel. To determine your equipment/installation costs per subscriber per channel, divide your monthly equipment and installation costs from Line 301 by the channel factor from Line 302. Enter the resulting figure in Line 303.

Line 304—Base Service Rate Per Channel. To unbundle your equipment and installation costs from your base per channel rate, subtract the Costs Per Subscriber Per Channel in Line 303 from the Base Per Channel Rate in Line 300. Enter the resulting figure in Line 304.

If you competed Worksheet 1 only, the rate reflected in Line 304 is your maximum permitted rate per channel for programming services. You should enter this rate in Line 600 and complete Part I of Form 393, "Request for Cable Rate Approval Cover Sheet."

If you completed Worksheets 1 and 2, you will need to adjust the Base Service Rate Per Channel in Line 304 for inflation and therefore must complete Worksheet 4. Moreover, if there have been changes in the number of regulated channels and/or subscribers on your system since September 30, 1992; you will also need to adjust the Base Service Rate Per Channel in Line 304 to reflect these changes. This can be done by completing Worksheet 5 after you finish Worksheet 4.

Instructions for Worksheet 4

Worksheet 4 is to be used to adjust your maximum permitted rate for inflation that has occurred between September 30, 1992 and the date you submit this form. Since you have previously calculated the appropriate inflation adjustment factor in completing Worksheet 1, you will simply need to apply that factor to the Base Service Rate Per Channel calculated in Worksheet 3.

Line 400—Base Service Rate Per Channel. Enter the Base Service Rate Per Channel from Line 304 Worksheet 3.

Line 401—Inflation Adjustment Factor. Enter the Inflation Adjustment Factor you previously calculated from Line 127 of Worksheet 1.

Line 403—Adjusted Base Service Rate Per Channel. Multiply the Base Service Rate Per Channel in Line 400 times the Inflation Adjustment Factor in Line 401. Enter the resulting number in Line 403. This figure is your Base Service Rate Per Channel, as adjusted for inflation.

Adjustments for Changes Since September 30, 1992. If you completed Worksheet 2, the benchmark channel rate you used for those calculations was based on the number of regulated channels, satellite-delivered signals and subscribers to your system as of September 30, 1992. If none of these factors has since changed, you may appropriately use that benchmark and therefore need not complete Worksheet 5. If, however, there has been a change in your system with regard to one or more of these three factors since September 30, 1992, your base rate per channel must be adjusted to reflect the change in the benchmark applicable to your system. Therefore, you will need to adjust your permitted rate to account for these changes. Worksheet 5 should be used to perform these calculations.

Line 500—Adjusted Base Service Rate Per Channel. Enter you Adjusted Base Service Rate Per Channel from Line 402.

Line 501—Benchmark Channel Rate (Baseline). Enter the Benchmark Channel Rate you computed in Line 220 of Worksheet 2.

Line 502—Benchmark Channel Rate (New). Enter the Benchmark Channel Rate you computed in Line 121E of Worksheet 1.

Line 503-Channel Adjustment Factor. Subtract your Baseline Benchmark Channel Rate in Line 501 from your New Benchmark Channel Rate in Line 502. Divide the resulting number by your Baseline Benchmark Channel Rate in Line 501 and enter this figure in Line 503.

Line 504—Channel Adjusted Base Service Rate Per Channel. Take the Channel Adjustment Factor in Line 503 and add 1. Then, multiply the resulting figure times the Adjusted Base Service Rate Per Channel in Line 500. This will give you your Channel Adjusted Base Service Rate Per Channel. Enter this number in Line 600.

Congralutions! You have now completed all calculations necessary to compute your maximum permitted rate per channel under the FCC's rate regulations. The rate for each tier of regulated services you offer will be reasonable under the FCC's rules if it does not exceed the product of this rate per channel times the number of channels on that tier. To make this final calculation, the number you entered on Line 600 should now be entered on Part I of Form 393 ("Request for Cable Rate Approval—Cover Sheet"). Follow the directions on Part I of Form 393 to finish your computations.

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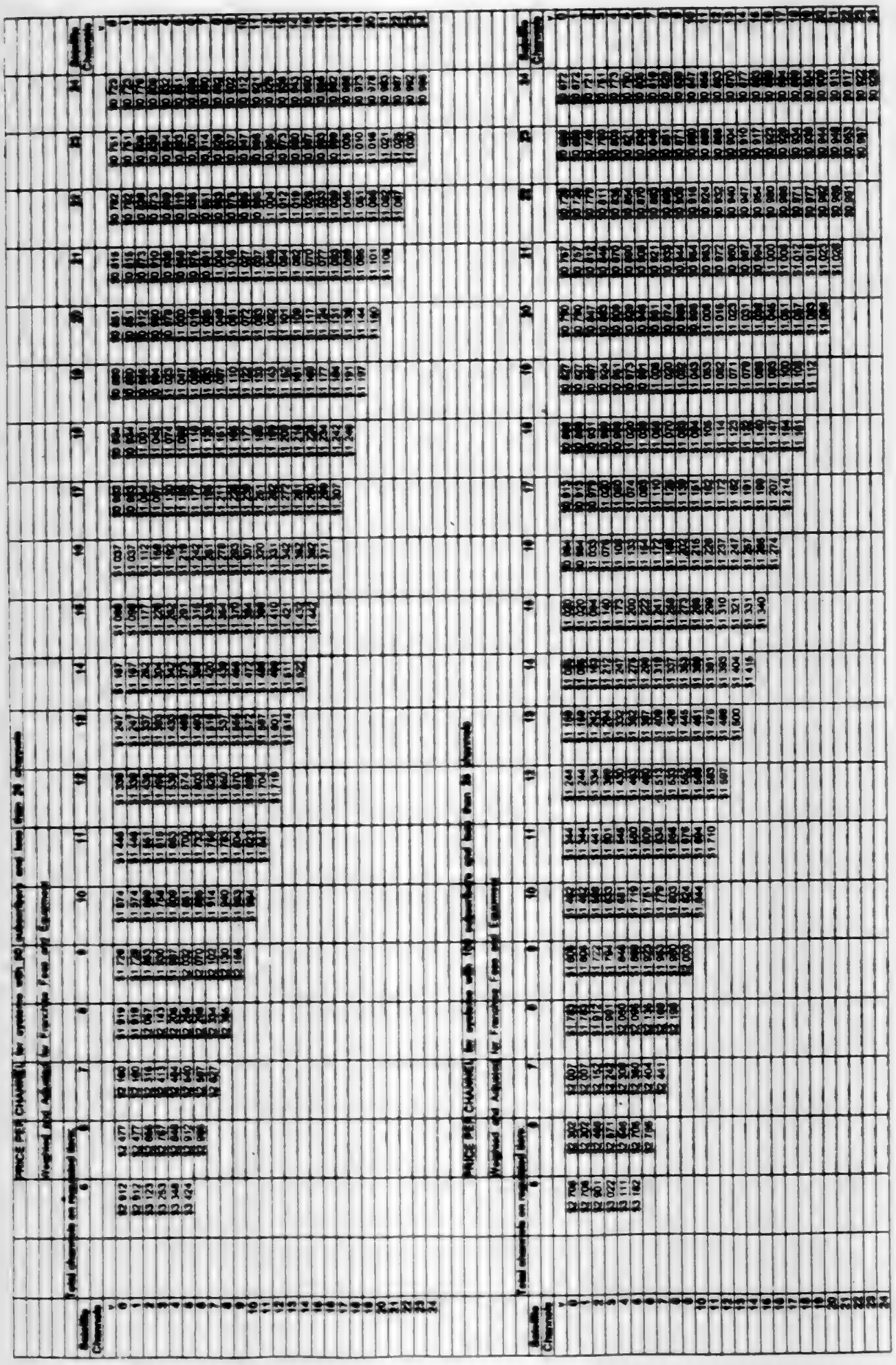

VOL 58 ISS 135 JL 16 1993 UMI

PRICE PER CHANNEL for systems with 50 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers:

Satellite Channels	25	30	35	40	45	50	55
0	$0.698	$0.593	$0.518	$0.460	$0.414	$0.377	$0.346
5	$0.820	$0.698	$0.609	$0.540	$0.487	$0.443	$0.407
10	$0.890	$0.746	$0.652	$0.580	$0.522	$0.475	$0.437
15	$0.916	$0.779	$0.680	$0.604	$0.544	$0.495	$0.455
20	$0.943	$0.802	$0.700	$0.621	$0.560	$0.510	$0.468
25	$0.965	$0.820	$0.715	$0.635	$0.572	$0.521	$0.479
30		$0.836	$0.729	$0.647	$0.583	$0.531	$0.488
35			$0.740	$0.657	$0.592	$0.539	$0.496
40				$0.666	$0.600	$0.547	$0.502
45					$0.607	$0.553	$0.508
50						$0.559	$0.514
55							$0.519

PRICE PER CHANNEL for systems with 100 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers:

Satellite Channels	25	30	35	40	45	50	55
0	$0.648	$0.551	$0.481	$0.427	$0.385	$0.350	$0.322
5	$0.762	$0.648	$0.565	$0.502	$0.452	$0.412	$0.379
10	$0.817	$0.695	$0.606	$0.538	$0.485	$0.442	$0.406
15	$0.851	$0.724	$0.632	$0.561	$0.505	$0.460	$0.423
20	$0.878	$0.745	$0.650	$0.577	$0.520	$0.474	$0.435
25	$0.898	$0.762	$0.665	$0.590	$0.532	$0.484	$0.445
30		$0.778	$0.677	$0.601	$0.542	$0.493	$0.453
35			$0.688	$0.611	$0.550	$0.501	$0.460
40				$0.619	$0.558	$0.508	$0.467
45					$0.564	$0.514	$0.472
50						$0.519	$0.477
55							$0.482

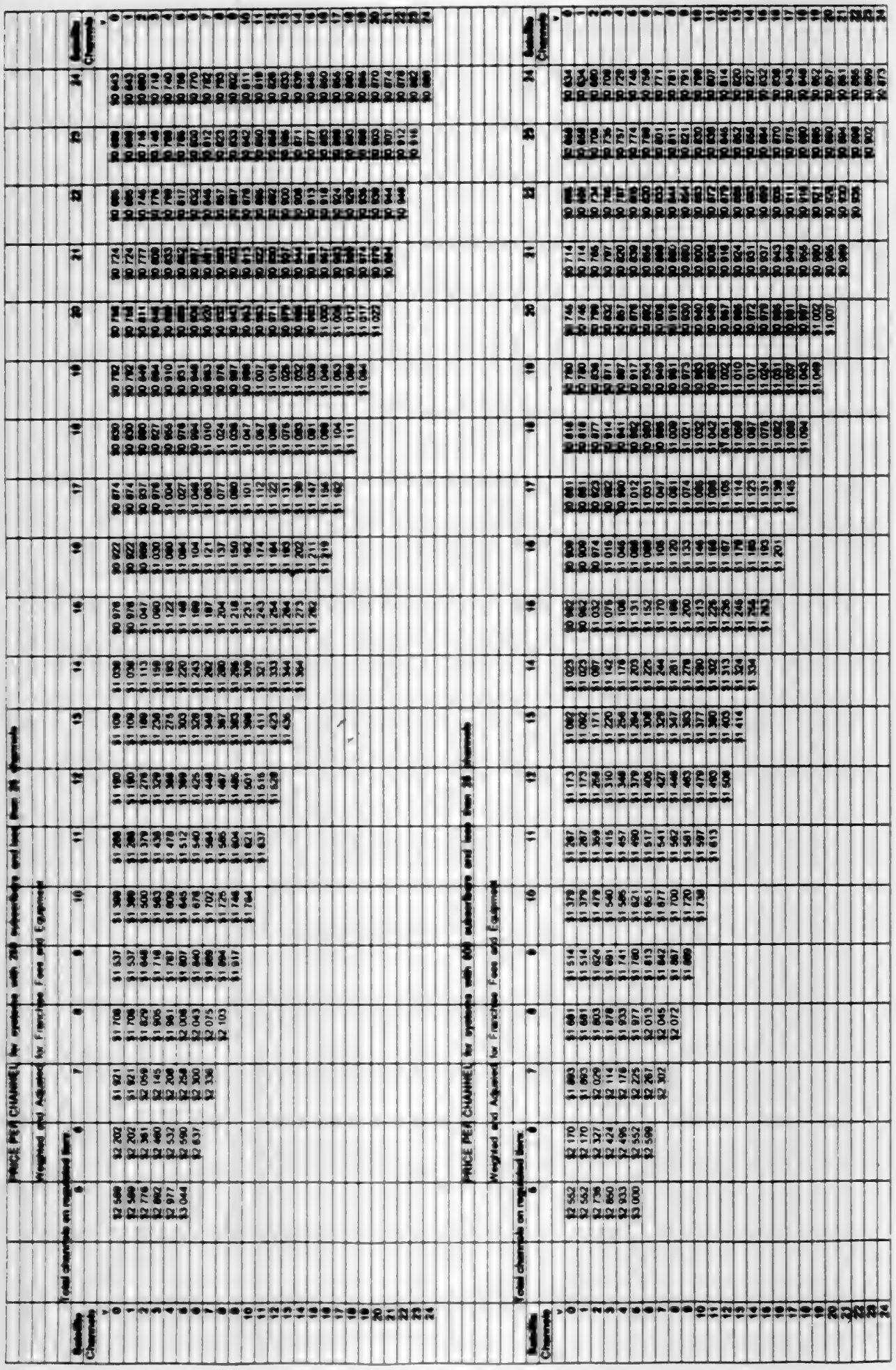

PRICE PER CHANNEL for systems with 250 subscribers and less than 36 channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers	0	7	8	10	11	12	13
0	$2.588	$1.921	$1.700	$1.388	$1.268	$1.180	$1.108
1	$2.588	$2.202	$1.700	$1.388	$1.268	$1.180	$1.108
2	$2.776	$2.361	$1.829	$1.500	$1.379	$1.278	$1.198
3	$2.882	$2.460	$1.906	$1.563	$1.438	$1.329	$1.239
4	$2.977	$2.532	$1.961	$1.607	$1.478	$1.368	$1.275
5	$3.044	$2.590	$2.006	$1.645	$1.512	$1.399	$1.305
6		$2.637	$2.043	$1.676	$1.540	$1.425	$1.328
7			$2.075	$1.702	$1.564	$1.448	$1.347
8			$2.103	$1.725	$1.585	$1.467	$1.367
9				$1.746	$1.604	$1.485	$1.383
10				$1.764	$1.621	$1.501	$1.398
11					$1.637	$1.515	$1.411
12						$1.528	$1.423
13							$1.436
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							

PRICE PER CHANNEL for systems with 600 subscribers and less than 36 channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers	0	7	8	10	11	12	13
0	$2.552	$2.170	$1.883	$1.514	$1.397	$1.173	$1.092
1	$2.552	$2.170	$1.883	$1.514	$1.397	$1.173	$1.092
2	$2.738	$2.327	$2.029	$1.624	$1.479	$1.258	$1.171
3	$2.850	$2.424	$2.114	$1.691	$1.540	$1.310	$1.220
4	$2.933	$2.495	$2.176	$1.741	$1.585	$1.348	$1.256
5	$3.000	$2.552	$2.225	$1.780	$1.621	$1.379	$1.284
6		$2.599	$2.267	$1.813	$1.651	$1.406	$1.308
7			$2.302	$2.045	$1.677	$1.427	$1.329
8			$2.072	$1.842	$1.700	$1.446	$1.347
9				$1.880	$1.720	$1.463	$1.363
10				$1.730	$1.581	$1.376	$1.377
11					$1.597	$1.480	$1.380
12					$1.613	$1.508	$1.403
13						$1.414	$1.417
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							

PRICE PER CHANNEL for systems with 250 subscribers and less than 36 channels or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers:

PRICE PER CHANNEL for systems with 250 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers:

Satellite Channels v	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
0	$0.620	$0.528	$0.460	$0.409	$0.368	$0.335	$0.306	$0.281	$0.260	$0.243	$0.228	$0.216	$0.206	$0.196	$0.187	$0.179
5	$0.729	$0.620	$0.541	$0.481	$0.433	$0.394	$0.362	$0.330	$0.306	$0.286	$0.268	$0.254	$0.243	$0.231	$0.220	$0.210
10	$0.782	$0.665	$0.580	$0.515	$0.464	$0.423	$0.388	$0.354	$0.328	$0.306	$0.287	$0.272	$0.260	$0.247	$0.236	$0.226
15	$0.815	$0.693	$0.604	$0.537	$0.483	$0.440	$0.405	$0.369	$0.342	$0.319	$0.299	$0.283	$0.271	$0.257	$0.245	$0.234
20	$0.838	$0.713	$0.622	$0.552	$0.498	$0.453	$0.416	$0.380	$0.352	$0.328	$0.308	$0.292	$0.279	$0.265	$0.253	$0.241
25	$0.858	$0.729	$0.636	$0.565	$0.509	$0.463	$0.426	$0.389	$0.360	$0.336	$0.315	$0.298	$0.285	$0.271	$0.259	$0.247
30		$0.743	$0.648	$0.575	$0.518	$0.472	$0.434	$0.396	$0.367	$0.342	$0.321	$0.304	$0.290	$0.276	$0.263	$0.252
35			$0.658	$0.584	$0.526	$0.479	$0.441	$0.402	$0.372	$0.347	$0.326	$0.308	$0.294	$0.280	$0.267	$0.255
40				$0.592	$0.534	$0.486	$0.446	$0.407	$0.376	$0.351	$0.329	$0.312	$0.298	$0.283	$0.270	$0.258
45					$0.540	$0.492	$0.452	$0.412	$0.380	$0.354	$0.333	$0.315	$0.301	$0.286	$0.273	$0.261
50						$0.497	$0.457	$0.417	$0.384	$0.358	$0.336	$0.318	$0.303	$0.289	$0.276	$0.263
55							$0.461	$0.421	$0.388	$0.361	$0.339	$0.321	$0.307	$0.292	$0.279	$0.266
60								$0.424	$0.391	$0.364	$0.342	$0.324	$0.309	$0.295	$0.281	$0.269
65									$0.394	$0.367	$0.345	$0.326	$0.312	$0.297	$0.284	$0.272
70										$0.369	$0.347	$0.329	$0.314	$0.299	$0.286	$0.274
75											$0.349	$0.331	$0.316	$0.301	$0.288	$0.276
80												$0.333	$0.318	$0.303	$0.290	$0.277
85													$0.321	$0.305	$0.292	$0.279
90														$0.307	$0.294	$0.281
95															$0.295	$0.282
100																$0.284

PRICE PER CHANNEL for systems with 500 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Total channels on regulated tiers:

Satellite Channels v	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
0	$0.611	$0.520	$0.453	$0.403	$0.363	$0.330	$0.304	$0.281	$0.262	$0.245	$0.231	$0.218	$0.208	$0.198	$0.189	$0.181
5	$0.719	$0.611	$0.533	$0.474	$0.427	$0.388	$0.357	$0.330	$0.308	$0.288	$0.271	$0.256	$0.245	$0.233	$0.223	$0.213
10	$0.771	$0.656	$0.572	$0.508	$0.457	$0.417	$0.383	$0.354	$0.330	$0.309	$0.291	$0.276	$0.263	$0.251	$0.239	$0.228
15	$0.803	$0.683	$0.595	$0.529	$0.476	$0.434	$0.399	$0.369	$0.344	$0.322	$0.303	$0.287	$0.274	$0.261	$0.249	$0.238
20	$0.826	$0.703	$0.613	$0.544	$0.490	$0.447	$0.410	$0.380	$0.354	$0.331	$0.312	$0.295	$0.282	$0.268	$0.256	$0.245
25	$0.845	$0.719	$0.627	$0.557	$0.502	$0.457	$0.420	$0.389	$0.362	$0.339	$0.319	$0.303	$0.289	$0.276	$0.263	$0.252
30		$0.732	$0.638	$0.567	$0.511	$0.465	$0.427	$0.396	$0.369	$0.345	$0.325	$0.308	$0.294	$0.280	$0.267	$0.255
35			$0.648	$0.576	$0.519	$0.472	$0.434	$0.402	$0.374	$0.350	$0.330	$0.312	$0.298	$0.283	$0.270	$0.258
40				$0.584	$0.526	$0.479	$0.440	$0.407	$0.379	$0.355	$0.334	$0.316	$0.301	$0.286	$0.273	$0.261
45					$0.532	$0.485	$0.445	$0.412	$0.384	$0.359	$0.338	$0.319	$0.303	$0.289	$0.276	$0.263
50						$0.490	$0.450	$0.417	$0.388	$0.363	$0.341	$0.322	$0.307	$0.292	$0.279	$0.266
55							$0.454	$0.421	$0.392	$0.366	$0.344	$0.326	$0.310	$0.295	$0.282	$0.269
60								$0.424	$0.394	$0.369	$0.347	$0.328	$0.312	$0.298	$0.284	$0.272
65									$0.396	$0.370	$0.348	$0.329	$0.314	$0.299	$0.286	$0.274
70										$0.372	$0.350	$0.331	$0.316	$0.301	$0.288	$0.276
75											$0.352	$0.333	$0.318	$0.303	$0.290	$0.278
80												$0.335	$0.320	$0.305	$0.292	$0.279
85													$0.322	$0.307	$0.294	$0.281
90														$0.309	$0.296	$0.283
95															$0.297	$0.284
100																$0.286

PRICE PER CHANNEL for systems with 750 subscribers and less than 25 channels

Weighted and Adjusted for Franchise Fees and Equipment

Satellite Channels	Total channels on regulated tiers 0	7	8	10	11	12	13
0	$2.539	$2.160	$1.883	$1.673	$1.507	$1.372	$1.261	$1.167	$1.087
1	$2.539	$2.160	$1.883	$1.673	$1.507	$1.372	$1.261	$1.167	$1.087
2	$2.723	$2.316	$2.019	$1.794	$1.616	$1.471	$1.352	$1.251	$1.166
3	$2.836	$2.412	$2.104	$1.868	$1.683	$1.533	$1.409	$1.304	$1.214
4	$2.910	$2.463	$2.165	$1.923	$1.732	$1.578	$1.450	$1.342	$1.250
5	$2.985	$2.539	$2.214	$1.987	$1.772	$1.613	$1.483	$1.372	$1.278
6		$2.586	$2.255	$2.003	$1.804	$1.643	$1.510	$1.398	$1.302
7			$2.291	$2.036	$1.833	$1.669	$1.534	$1.420	$1.322
8			$2.062	$1.857	$1.672	$1.522	$1.399	$1.296	$1.207
9				$1.712	$1.543	$1.404	$1.290	$1.195	$1.113
10				$1.730	$1.560	$1.420	$1.305	$1.208	$1.125
11					$1.606	$1.462	$1.344	$1.244	$1.159
12						$1.499	$1.378	$1.276	$1.188
13							$1.407	$1.303	$1.213
14								$1.324	$1.233
15									$1.247
16									
17									
18									
19									
20									
21									
22									
23									
24									

PRICE PER CHANNEL for systems with 1,000 subscribers and less than 24 channels

Weighted and Adjusted for Franchise Fees and Equipment

Satellite Channels	Total channels on regulated tiers 0	7	8	10	11	12	13
0	$2.533	$2.154	$1.879	$1.680	$1.503	$1.360	$1.254	$1.164	$1.084
1	$2.533	$2.154	$1.879	$1.680	$1.503	$1.360	$1.254	$1.164	$1.084
2	$2.716	$2.310	$2.015	$1.780	$1.612	$1.458	$1.345	$1.248	$1.163
3	$2.829	$2.406	$2.099	$1.864	$1.679	$1.529	$1.405	$1.300	$1.211
4	$2.912	$2.477	$2.160	$1.919	$1.728	$1.574	$1.446	$1.339	$1.247
5	$2.978	$2.533	$2.209	$1.962	$1.767	$1.609	$1.479	$1.369	$1.275
6		$2.580	$2.250	$1.998	$1.800	$1.639	$1.506	$1.394	$1.298
7			$2.285	$2.030	$1.828	$1.665	$1.530	$1.416	$1.319
8				$2.067	$1.853	$1.687	$1.551	$1.436	$1.337
9					$1.875	$1.709	$1.569	$1.452	$1.353
10						$1.726	$1.585	$1.468	$1.367
11							$1.601	$1.482	$1.380
12								$1.495	$1.392
13									$1.404
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									

PRICE PER CHANNEL for systems with 750 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

PRICE PER CHANNEL for systems with 750 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Satellite Channels	Total channels on regulated tiers: 25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	Satellite Channels
v																	v
0	$0.608	$0.517	$0.451	$0.401	$0.361	$0.329	$0.302	$0.280	$0.260	$0.244	$0.229	$0.217	$0.205	$0.195	$0.186	$0.178	0
5	$0.715	$0.608	$0.531	$0.471	$0.424	$0.387	$0.355	$0.329	$0.306	$0.287	$0.270	$0.255	$0.241	$0.229	$0.219	$0.209	5
10	$0.767	$0.652	$0.569	$0.505	$0.455	$0.414	$0.381	$0.353	$0.328	$0.307	$0.289	$0.273	$0.259	$0.246	$0.234	$0.224	10
15	$0.799	$0.679	$0.593	$0.526	$0.474	$0.432	$0.397	$0.367	$0.342	$0.320	$0.301	$0.284	$0.270	$0.256	$0.244	$0.233	15
20	$0.822	$0.699	$0.610	$0.542	$0.488	$0.444	$0.408	$0.378	$0.352	$0.330	$0.310	$0.293	$0.277	$0.264	$0.251	$0.240	20
25	$0.841	$0.715	$0.624	$0.554	$0.499	$0.454	$0.418	$0.387	$0.360	$0.337	$0.317	$0.299	$0.284	$0.270	$0.257	$0.246	25
30		$0.729	$0.635	$0.564	$0.508	$0.463	$0.425	$0.394	$0.367	$0.343	$0.323	$0.305	$0.289	$0.275	$0.262	$0.250	30
35			$0.645	$0.573	$0.516	$0.470	$0.432	$0.400	$0.372	$0.349	$0.328	$0.310	$0.294	$0.279	$0.266	$0.254	35
40				$0.581	$0.523	$0.476	$0.438	$0.405	$0.377	$0.353	$0.332	$0.314	$0.297	$0.283	$0.270	$0.258	40
45					$0.529	$0.482	$0.443	$0.410	$0.382	$0.356	$0.336	$0.318	$0.301	$0.286	$0.273	$0.261	45
50						$0.487	$0.448	$0.414	$0.386	$0.361	$0.340	$0.321	$0.304	$0.289	$0.276	$0.263	50
55							$0.452	$0.418	$0.390	$0.365	$0.343	$0.324	$0.307	$0.292	$0.278	$0.266	55
60								$0.422	$0.393	$0.368	$0.346	$0.327	$0.310	$0.295	$0.281	$0.268	60
65									$0.396	$0.371	$0.349	$0.330	$0.312	$0.297	$0.283	$0.270	65
70										$0.374	$0.352	$0.332	$0.315	$0.299	$0.285	$0.272	70
75											$0.354	$0.334	$0.317	$0.301	$0.287	$0.274	75
80												$0.337	$0.319	$0.303	$0.289	$0.276	80
85													$0.321	$0.305	$0.291	$0.278	85
90														$0.307	$0.292	$0.279	90
95															$0.294	$0.281	95
100																$0.282	100

PRICE PER CHANNEL for systems with 1,000 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Satellite Channels	Total channels on regulated tiers: 25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	Satellite Channels
v																	v
0	$0.607	$0.516	$0.450	$0.400	$0.360	$0.328	$0.301	$0.279	$0.260	$0.243	$0.229	$0.216	$0.205	$0.195	$0.186	$0.177	0
5	$0.714	$0.607	$0.529	$0.470	$0.423	$0.386	$0.354	$0.328	$0.305	$0.286	$0.269	$0.254	$0.241	$0.229	$0.218	$0.208	5
10	$0.765	$0.651	$0.567	$0.504	$0.454	$0.413	$0.380	$0.352	$0.328	$0.307	$0.288	$0.272	$0.258	$0.245	$0.234	$0.223	10
15	$0.797	$0.678	$0.591	$0.525	$0.473	$0.431	$0.396	$0.366	$0.341	$0.319	$0.300	$0.284	$0.269	$0.256	$0.244	$0.233	15
20	$0.820	$0.698	$0.608	$0.540	$0.487	$0.443	$0.407	$0.377	$0.351	$0.329	$0.309	$0.292	$0.277	$0.263	$0.251	$0.240	20
25	$0.839	$0.714	$0.622	$0.553	$0.498	$0.453	$0.417	$0.386	$0.359	$0.336	$0.316	$0.299	$0.283	$0.269	$0.256	$0.245	25
30		$0.727	$0.634	$0.563	$0.507	$0.462	$0.424	$0.393	$0.366	$0.343	$0.322	$0.304	$0.288	$0.274	$0.261	$0.250	30
35			$0.644	$0.572	$0.515	$0.469	$0.431	$0.399	$0.372	$0.348	$0.327	$0.309	$0.293	$0.278	$0.265	$0.253	35
40				$0.579	$0.522	$0.475	$0.437	$0.404	$0.377	$0.353	$0.332	$0.313	$0.297	$0.282	$0.269	$0.257	40
45					$0.528	$0.481	$0.442	$0.409	$0.381	$0.357	$0.336	$0.317	$0.300	$0.285	$0.272	$0.260	45
50						$0.486	$0.447	$0.413	$0.385	$0.361	$0.339	$0.320	$0.303	$0.288	$0.275	$0.263	50
55							$0.451	$0.417	$0.389	$0.364	$0.342	$0.323	$0.308	$0.291	$0.278	$0.265	55
60								$0.421	$0.392	$0.367	$0.345	$0.326	$0.309	$0.294	$0.280	$0.268	60
65									$0.395	$0.370	$0.348	$0.329	$0.312	$0.296	$0.282	$0.270	65
70										$0.373	$0.351	$0.331	$0.314	$0.298	$0.284	$0.272	70
75											$0.353	$0.334	$0.316	$0.300	$0.286	$0.274	75
80												$0.336	$0.318	$0.302	$0.288	$0.275	80
85													$0.320	$0.304	$0.290	$0.277	85
90														$0.306	$0.292	$0.279	90
95															$0.293	$0.280	95
100																$0.282	100

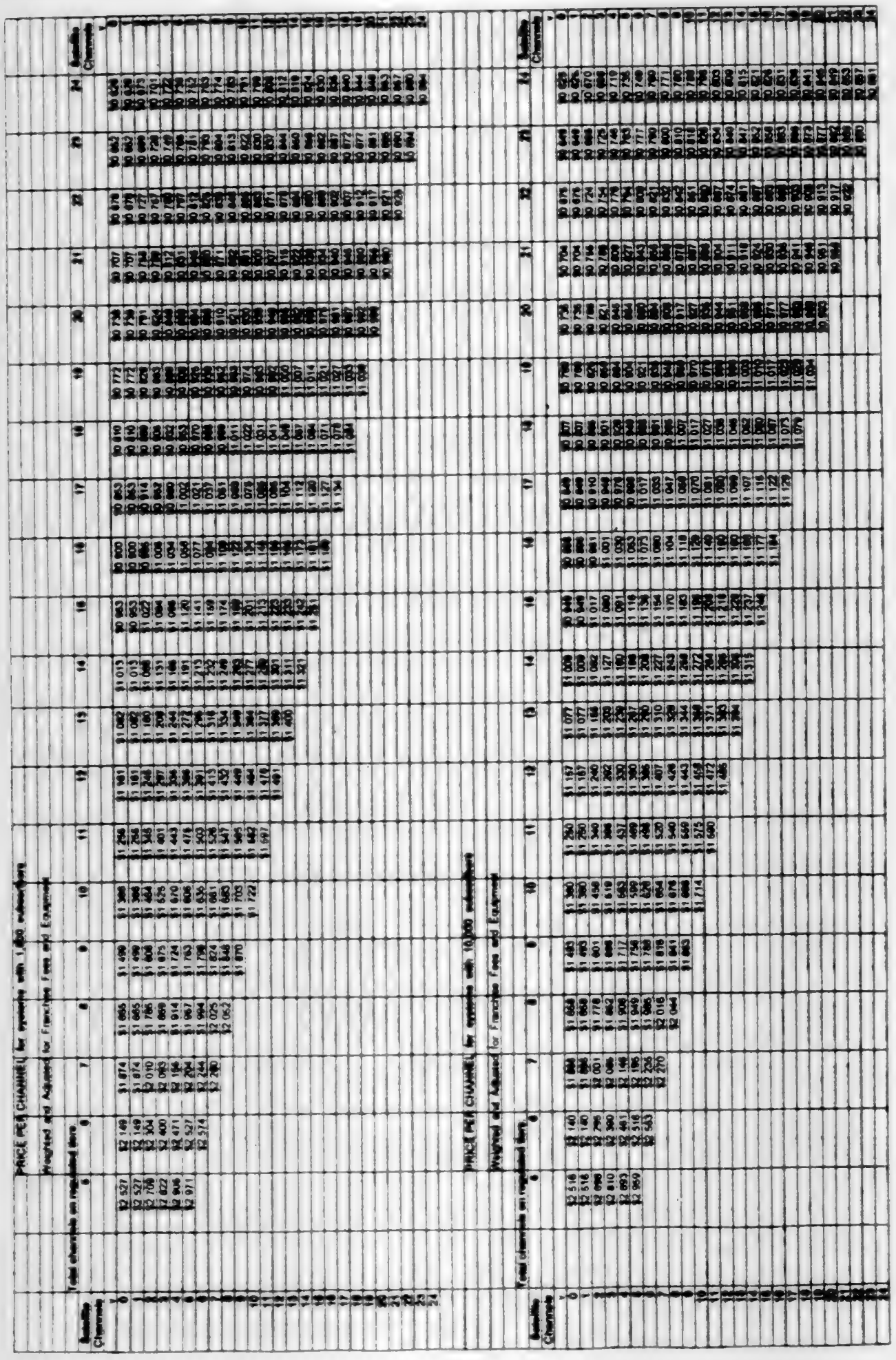
PRICE PER CHANNEL for systems with 1,000 subscribers
Weighted and Adjusted for Franchise Fees and Equipment
Total channels on regulated tiers
Audio Channels
PRICE PER CHANNEL for systems with 10,000 subscribers
Weighted and Adjusted for Franchise Fees and Equipment
Total channels on regulated tiers
Audio Channels

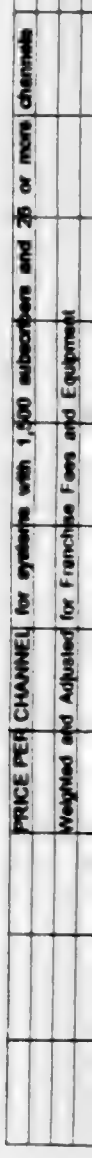
PRICE PER CHANNEL for systems with 1,000 subscribers and 25 or more channels
Weighted and Adjusted for Franchise Fees and Equipment

PRICE PER CHANNEL for systems with 1,500 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Satellite Channels v	Total channels on regulated tiers: 25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
0	$0.605	$0.515	$0.449	$0.399	$0.359	$0.327	$0.301	$0.277	$0.256	$0.242	$0.227	$0.215	$0.203	$0.193	$0.184	$0.176
5	$0.712	$0.605	$0.528	$0.469	$0.422	$0.385	$0.353	$0.326	$0.303	$0.284	$0.267	$0.252	$0.239	$0.227	$0.217	$0.207
10	$0.783	$0.649	$0.566	$0.503	$0.453	$0.412	$0.379	$0.349	$0.325	$0.305	$0.287	$0.271	$0.256	$0.244	$0.232	$0.222
15	$0.795	$0.676	$0.590	$0.524	$0.472	$0.430	$0.395	$0.364	$0.339	$0.317	$0.298	$0.282	$0.267	$0.254	$0.242	$0.231
20	$0.818	$0.696	$0.607	$0.539	$0.486	$0.442	$0.406	$0.375	$0.349	$0.327	$0.307	$0.290	$0.275	$0.261	$0.249	$0.238
25	$0.837	$0.712	$0.621	$0.551	$0.497	$0.452	$0.416	$0.383	$0.357	$0.334	$0.314	$0.297	$0.281	$0.267	$0.255	$0.243
30		$0.725	$0.632	$0.562	$0.506	$0.461	$0.423	$0.390	$0.363	$0.340	$0.320	$0.302	$0.286	$0.272	$0.259	$0.248
35			$0.642	$0.570	$0.514	$0.468	$0.430	$0.396	$0.369	$0.346	$0.325	$0.307	$0.291	$0.276	$0.264	$0.252
40				$0.578	$0.521	$0.474	$0.436	$0.402	$0.374	$0.350	$0.329	$0.311	$0.295	$0.280	$0.267	$0.255
45					$0.527	$0.480	$0.441	$0.406	$0.379	$0.354	$0.333	$0.315	$0.298	$0.284	$0.270	$0.258
50						$0.485	$0.446	$0.411	$0.383	$0.358	$0.337	$0.318	$0.301	$0.287	$0.273	$0.261
55							$0.450	$0.415	$0.386	$0.362	$0.340	$0.321	$0.304	$0.289	$0.276	$0.264
60								$0.420	$0.391	$0.366	$0.343	$0.324	$0.307	$0.292	$0.278	$0.266
65									$0.394	$0.369	$0.346	$0.327	$0.310	$0.294	$0.280	$0.268
70										$0.372	$0.349	$0.329	$0.312	$0.296	$0.283	$0.270
75											$0.351	$0.331	$0.314	$0.299	$0.285	$0.272
80												$0.334	$0.316	$0.300	$0.286	$0.274
85													$0.318	$0.302	$0.288	$0.275
90														$0.304	$0.290	$0.277
95															$0.291	$0.278
100																$0.280

PRICE PER CHANNEL for systems with 10,000 subscribers and 25 or more channels

Weighted and Adjusted for Franchise Fees and Equipment

Satellite Channels v	Total channels on regulated tiers: 25	30	35	40	45	50	55
0	$0.603	$0.513	$0.447	$0.397	$0.358	$0.326	$0.299
5	$0.709	$0.603	$0.526	$0.467	$0.421	$0.383	$0.352
10	$0.780	$0.646	$0.564	$0.501	$0.451	$0.411	$0.377
15	$0.792	$0.673	$0.587	$0.522	$0.470	$0.428	$0.393
20	$0.815	$0.693	$0.604	$0.537	$0.484	$0.440	$0.405
25	$0.833	$0.709	$0.618	$0.549	$0.495	$0.450	$0.414
30		$0.722	$0.630	$0.559	$0.504	$0.459	$0.422
35			$0.639	$0.568	$0.512	$0.466	$0.428
40				$0.576	$0.518	$0.472	$0.434
45					$0.525	$0.478	$0.439
50						$0.483	$0.444
55							$0.448
60							
65							
70							
75							
80							
85							
90							
95							
100							

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Instructions for Identifying the Appropriate Benchmark Rate from the Tables in Attachment A

1. Each table is split between two pages. For example, the table for 50 subscribers has a first page showing the benchmark rate for 5–24 channels and 0–24 satellite channels. The second page for the table with 50 subscribers shows the benchmark rate for 25–100 channels and 0–100 satellite channels. Select the table with the number of subscribers closest to the number of subscribers on your system. Note that all systems with 10,000 or more subscribers will use the tables for systems with 10,000 subscribers.

2. If the total number of channels on the regulated tiers and the total number of satellite channels on those regulated tiers for your community unit equals the channels displayed in the selected table, use the indicated benchmark rate per channels.

3. If either the total number of channels on the regulated tiers or the total number of satellite channels on those regulated tiers for your community unit does not equal the channels displayed in the selected table, you may determine your benchmark rate per channel by using the Commission's formula, or you can perform one of the following calculations.

a. If the total number of satellite channels on the regulated tiers equals the satellite channels (rows), but the total number of channels on the regulated tiers does not equal the total channels (columns), you must do the following calculations:

Go to the row with your number of satellite channels. Go across the row until you reach the rates for the next fewer and next greater total number of channels than on your community unit. Subtract the lower rate per channel from the higher rate per channel. Divide this difference by 5 to obtain the per channel rate increment. For each channel on your community unit that is greater than the number of channels displayed in the table, subtract the incremental per channel rate from the rate per channel in the box with the next fewer number of total channels to obtain the benchmark rate per channel.

For example, consider a community unit with 50 subscribers on the system, 10 satellite channels, and 27 channels in total. For 10 satellite channels and 25 total channels in the benchmark rate per channel (from the table) is $0.880. The benchmark rate per channel for 10 satellite channels and 30 total channels is $0.748 (from the table). The difference between these two benchmark rates is $0.132. The per channel rate increment is $0.026 ($0.132/5=$0.026 per channel). The benchmark rate per channel for this community unit is obtained by subtracting two times $0.026 from $0.880. Thus, the benchmark rate per channel for this community unit is $0.828=($0.880−(2×$0.026)).

b. If the total number of channels on the regulated tiers equals the total channels (columns) but the total number of satellite channels on the regulated tiers does not equal the total satellite channels (rows), you must do the following calculation:

Go to the column with your number of total channels. Go down the column until you reach the rates for the next fewer and next greater total number of satellite channels than on your community unit. Subtract the lower rate per channel from the higher rate per channel. Divide this difference by 5 to obtain the per channel rate increment. For each satellite channel on your community unit that is greater than the number of channels displayed in the table, add the incremental per channel rate to the rate per channel in the box with the next fewer number of total channels to obtain the benchmark rate per channel.

For example, consider a community unit with 50 subscribers on the system, 12 satellite channels, and 30 channels in total. For 10 satellite channels and 30 total channels the benchmark rate per channel (from the table) is $0.748. The benchmark rate per channel for 15 satellite channels and 30 total channels is $0.779 (from the table). The difference between these two benchmark rates is $0.031. The per channel rate increment is $0.0062 ($0.031/5=$0.0062 per channel). The benchmark rate per channel for this community unit is obtained by adding two times $0.0062 to $0.748. Thus, the benchmark rate per channel for this community unit is $0.760=($0.748+(2×$0.0062)).

c. If both the total number of satellite channels and the total number of channels on the regulated tiers fall between the channels on the table, you must do the following calculation:

Go to the two rows of satellite channels that are below and above, respectively, your number of satellite channels. Go across the rows until you reach the rates for the next fewer and next greater total number of channels than on your community unit. Compute rates per channel as per step a. above separately for the exact number of total channels for the two rows of satellite channels. Repeat step b. above using these two new rates per channel for the total number of channels to obtain the benchmark rate per channel.

For example, consider a community unit with 50 subscribers on the system, 12 satellite channels, and 27 channels in total. Perform step a. above for both 10 and 15 satellite channels. For 10 satellite channels and 25 total channels the benchmark rate per channel (from the table) is $0.880. The benchmark rate per channel for 10 satellite channels and 30 total channels is $0.748 (from the table). The difference between these two benchmark rates is $0.132. The per channel rate increment is $0.026 ($0.132/5=$0.026 per channel). Therefore, the 10 satellite and 25 total channel rate of $0.880 is reduced by subtracting two times $0.026 from $0.880 to arrive at $0.828 ($0.880−(2×$0.026)) for a 10 satellite channel, 27 total channel benchmark rate. The same exercise is performed for 15 satellite channels at 25 and 30 total channels to arrive at a 15 satellite channel benchmark at 27 total channels. At 15 satellite and 30 total channels the price per channel is $0.916. At 15 satellite and 30 total channel the price per channel is $0.779. The difference is $0.137 (or $0.137/5=$0.027/channel). So at 27 total channels, the rate for 15 satellite channels is $0.916 minus $0.054 (twice $0.027) or $0.862.

There is now a range of $0.828/channel for 10 satellite channels and 27 total channels and $0.862 for 15 satellite also at 27 total channels. Perform step b. above using these new exact values for 27 total channels. The difference between $0.828/channel and $0.862/channel at 27 total channels is $0.034 (or $0.034/5=$0.007/channel). For 12 satellite channels we add $0.014 (twice $0.007) to $0.828/channel to equal the benchmark rate of $0.842.

Benchmark Formula

The benchmark formula is the following:

LNP=2.3509+7.3452 (RECIPSUB) − 0.8878 (LNCHAN)+0.1006 (LNSAT)

where

LNP=natural logarithm of the benchmark rate per channel;

RECIPSUB=1/number of household subscribing to the cable system;

LNCHAN=natural logarithm of the number of channels in use in all regulated tiers of service;

LNSAT=natural logarithm of the number of satellite-delivered channels in all regulated tiers of service.

To calculate your benchmark per-channel rate, insert the reciprocal of the number of subscribers to your system, the natural logarithm of the number of channels of basic and acable programming service, and the natural logarithm of the number of satellite channels of basic and cable programming service into the equation and take the antilogarithm of the result. Note that you should use the number of channels and satellite channels in the franchise area but the number of subscribers to the whole system.

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Attachment B

DETERMINATION OF MAXIMUM ALLOWABLE BENCHMARK RATE

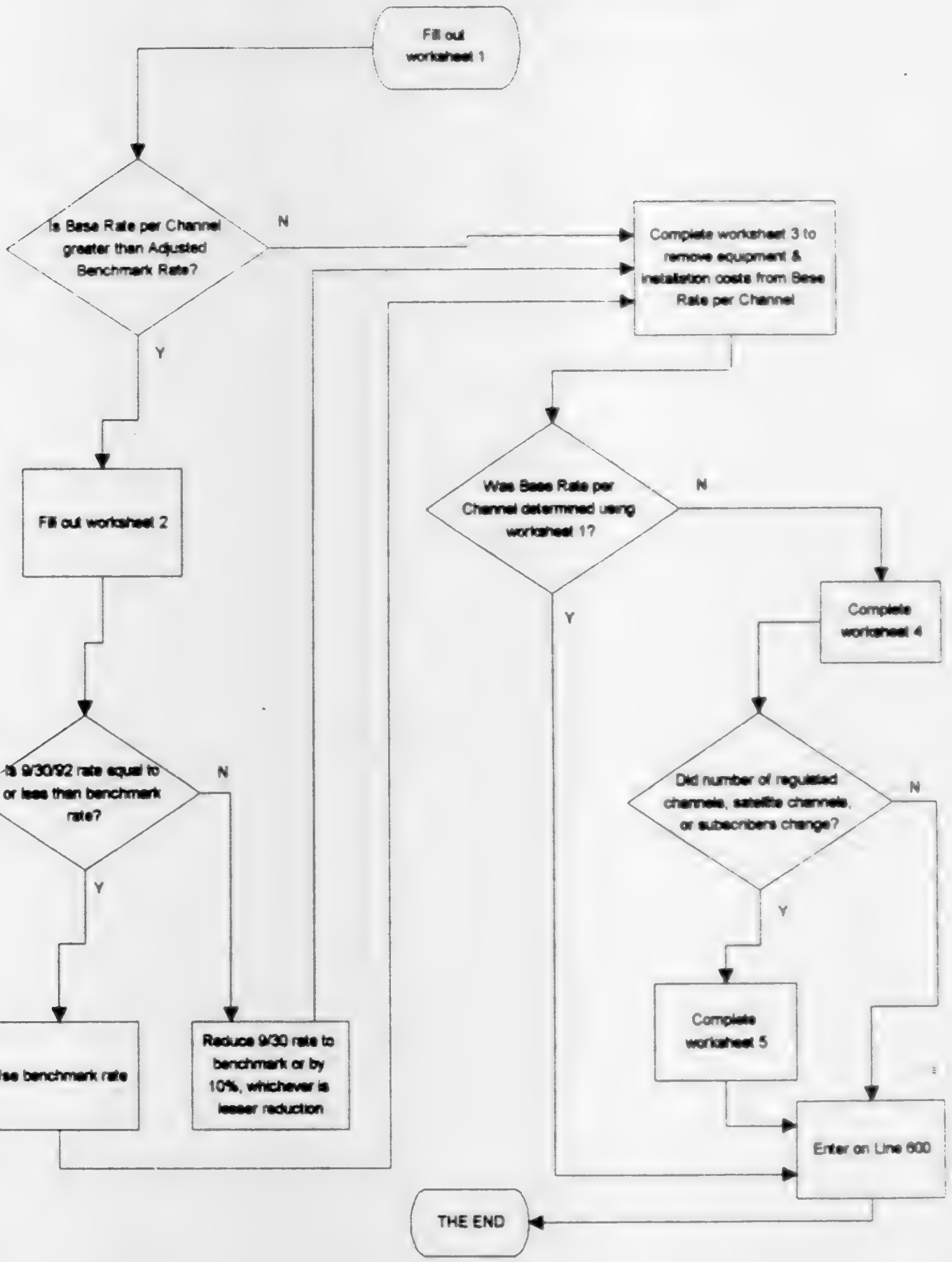

VOL 58 ISS 135 JL 16 1993 UMI

FCC FORM 393 – PART III
WORKSHEET FOR CALCULATING EQUIPMENT AND INSTALLATION CHARGES

Cable Operator Name:	Community Unit ID (CUID):
	Date
Francnise Authority:	Check One: ☐ Basic Tier ☐ Cable Programming

STEP A. Hourly Service Charge

LINE 1. Annual cost of maintenance and installation of cable facilities and services (Exclude purchase cost of customer equipment) (Box 1 of Schedule A + Box 2 of Schedule B)	$
LINE 2. Customer equipment and installation percentage	%
LINE 3. Annual customer equipment maintenance and installation costs, excluding cost of leased equipment (Line 1 x Line 2)	$
LINE 4. Total labor hours for maintenance and installation of customer equipment and service	hrs.
LINE 5. Hourly service charge (HSC) (Line 3 / Line 4)	$ /hr

STEP B. Installation Charge

LINE 6. Uniform HSC for all installations (insert amount from LINE 5)	$
OR	
LINE 7. Average charge for installation type (see Schedule D for average installation charge calculations)	
a. Unwired home installation (Schedule D, Line a.2.)	$
b. Prewired home installation (Schedule D, Line b.2.)	$
c. Additional connection installationa t time of initial installation (Schedule D, Line c.2.)	$
d. Additional connection installation requiring separate installation (Schedule D, Line d.2.)	$
e. Other installations (specify): (Schedule D, Line e.2.)	
Item 1.	$
Item 2.	$
Item 3.	$
Item 4.	$

STEP C. Charges for Leased Remotes (Calculate separately for each significantly different type)

LINE 8. Annual capital costs (Column J of Schedule C)	$
LINE 9. Total maintenance/service hours	hrs.
LINE 10. Total maintenance/service cost (Line 5 x Line 9)	$
LINE 11. Total cost of remote (Line 8 + Line 10)	$
LINE 12. Number of units in service (Column I of Schedule C)	
LINE 13. Unit Cost (Line 11 / Line 12)	$
LINE 14. Rate per month (Line 13 / 12 months)	$ /mo.

FCC 393, Part III, Page 2

STEP D. Charges for Leased Converter Boxes (Calculate separately for each significantly different type)

LINE 15. Annual capital costs (Column J of Schedule C)	$
LINE 16. Total maintenance/service hours	hrs.
LINE 17. Total maintenance/service cost (Line 5 x Line 16)	$
LINE 18. Total cost of converter box (Line 15 + Line 17)	$
LINE 19. Number of units in service (Column I of Schedule C)	
LINE 20. Unit cost (Line 18 / Line 19)	$
LINE 21. Rate per month (Line 20 / Line 12 months)	$ /mo.

STEP E. Charges for Other Leased Equipment

LINE 22. Annual capital costs (Column J of Schedule C)	$
LINE 23. Total maintenance/service hours	hrs.
LINE 24. Total maintenance/service costs (Line 5 x Line 23)	$
LINE 25. Total cost of other equipment item (Line 22 + Line 24)	$
LINE 26. Number of units in service or number or subscribers (Column I of Schedule C)	
LINE 27. Unit Cost (Line 25 / Line 26)	$
LINE 28. Rate per month (Line 27 / 12 months)	$ /mo.

STEP F. Charges for Changing Service Tiers or Equipment

LINE 29. Nominal charge for changing service tiers	OR	$
LINE 30. Uniform HSC for changing service tiers (Insert amount from Line 5)	OR	$
Line 31. Average charge for changing service tiers (Line 5 x Average hours to change tiers)		$

STEP G. Franchise Area Monthly Equipment and Installation Costs for Adjustment of Regulated Service Rates

LINE 32. Annual customer equipment and installation costs (Line 3 + Box 3 of Schedule C)	$
LINE 33. Adjustment of Line 32 to franchise area level: See Instructions. Attach explanation of adjustment method	$
LINE 34. Monthly equipment and installation cost (Line 33 / 12 months). Enter on Worksheet 3, Line 301.	$

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VOL 58 ISS 135 JL 16 1993 UMI

Instructions for Equipment and Installation Charges

These instructions will take you step by step through the calculations needed to determine the maximum rates you may charge for regulated equipment and installation. You should submit this form to the local franchising authority (or, where relevant, the FCC) to calculate charges for equipment and service installation used to receive the basic service tier. Commission rules define this equipment as any customer equipment that is used to receive the basic service tier, even if that equipment is also used to receive other cable programming service tiers or unregulated services. This form will also be used by the Commission in reviewing complaints concerning charges for equipment and installation used to receive cable programming services.[1] Commission rules define equipment and installation used to receive cable programming services as all equipment and installation on a subscriber's premises that is used to receive either: (1) exclusively cable programming services; or (2) both cable programming services and pay per channel or pay per view programming. The information generated in Part III will also be used to remove equipment and installation costs from rates for regulated service.

You should complete this form using financial data from the company's general ledger and subsidiary records maintained in accordance with generally accepted accounting principles (as required in FCC accounting instructions in 47 CFR 76.924). The data may be reported at the level of corporate organization at which the records are kept, but for purposes of calculating service rates the data must be adjusted to the franchise area level.

Step A. Calculate the Hourly Service Charge.

The Hourly Service Charge (HSC) is designed to recover the costs of service installation and maintenance of customer equipment. The HSC will be used as a factor in developing permitted charges for installation and monthly lease of individual pieces of equipment. To calculate the HSC, you will compute your annual capital costs plus expenses for the maintenance of customer equipment and the installation of basic tier service. (The HSC excludes the purchase cost of customer equipment; these costs will be recovered in the charge for the specific categories of equipment in Steps C, D, and E below.) You will divide the total by the total number of person-hours spent in those activities over the past year.

Line 1. Enter the annual capital costs for equipment necessary for the maintenance and installation of cable facilities and cable services, plus operating expenses for maintenance and installation. Line 1 includes maintenance and installation costs for all cable facilities, not only customer equipment, if separate records are not kept for costs for customer equipment maintenance and installation service. You should determine the total annual capital costs and expenses by adding Box 1 of Schedule A (total annual capital costs) and Box 2 of Schedule B (total annual expenses, excluding depreciation). Instructions for completing these schedules are attached to the schedules.

Line 2. Enter the percentage of the costs and expenses entered in line 1 that is used for maintenance of customer equipment and customer installations used to receive the basic service tier only and multi-tier equipment. Please attach an explanation of how you arrived at this percentage.

Line 3. Multiply line 1 by line 2. The result will be your total annual capital costs and expenses incurred for maintenance of customer equipment and service installation used to receive the basic service tier.

Line 4. Calculate the total number of person-hours that were spent on maintenance of customer equipment and service installation in the 12-month period ending at the close of the most recent accounting period. For new equipment, use an estimate. Attach an explanation or study for your calculations.

Line 5. Divide line 3 by line 4. The result is the HSC.

Step B. Calculate the Charge for Installation.

Step B allows an operator to elect whether to use a per hour rate for all installations or to use several average installation charges for different types of installations.

Line 6. If you elect to charge an hourly rate for installations, the rate shall be the HSC. Write the HSC of line 5 in line 6.

Line 7. If you choose to develop average installation charges, the charges shall be determined using Schedule D. Write the charges from Schedule D in lines 7a–7e (add more lines if necessary).

Step C. Calculate the Charge for Leased Remotes.

The rental charge for a remote control unit is designed to recover the costs of providing and maintaining that type of remote control unit leased by a subscriber and includes a reasonable profit. Commission rules require cable operators to calculate charges for each significantly different type of remote control unit. Therefore, you must repeat the calculations in lines 8–14 for each type of remote listed in Schedule C. Attach extra sheets as needed.

Line 8. List the total annual capital costs (depreciation, return on investment, and applicable taxes) of this type of remote. This amount is taken from the appropriate line of Column J on Schedule C (the line number will differ depending on the number of different types of remotes offered by the cable system). Instructions for completing Schedule C are attached to the schedule.

Line 9. List the number of hours you spend per year repairing and servicing this type of remote. Attach an explanation or study for your calculations.

Line 10. Multiply line 9 by the HSC listed in line 5. The result is the total annual cost for repairing and servicing this type of remote.

Line 11. Add line 8 and line 10. The sum is the total annual cost for this type of remote.

Line 12. List the total number of this type or remote that were in service on the last day you closed your books.

Line 13. Divide line 11 by line 12. The result is the annual unit cost of this type of remote.

Line 14. Divide line 13 by the number 12. The result will be the monthly cost of this type of remote. Line 14 will be the maximum monthly lease charge for this type of remote.

Step D. Calculate the Charge for Leased Converter Boxes.

The rental charge for a converter box is designed to recover the costs of providing and maintaining that type of converter box leased by a subscriber and includes a reasonable profit. Commission rules require an operator to calculate charges for each significantly different type of convert box. For example, an addressable converter box and a converter box that acts solely as a tuner would be considered significantly different. Therefore, you must repeat the calculations in lines 15–21 for each type of converter box listed in Schedule C. Attach extra sheets as needed.

Line 15. List the total annual capital costs (depreciation, return on investment, and applicable taxes) of this type of converter box. This amount is taken from the appropriate line of Column J on Schedule C (the line number will differ depending on the number of different types of converter boxes offered by the cable system.

Line 16. List the number of hours you spend per year repairing and servicing this type of converter box. Attach an explanation or study for your calculations.

Line 17. Multiply line 16 by the HSC listed in line 5. The result is the total annual cost for repairing and servicing this type of converter box.

Line 18. Add line 15 and line 17. The sum is the total annual cost for this type of converter box

Line 19. List the total number of this type of converter box that were in service on the last day you closed your books.

Line 20. Divide line 18 by line 19. The result is the annual unit cost of this type of converter box.

Line 21. Divide line 20 by the number 12. The result will be the monthly cost of this type of converter box. Line 21 will be the maximum monthly lease charge for this type of converter box.

Step E. Calculate the Charge for Other Leased Equipment.

The rental charge for other equipment is designed to recover the costs of providing and maintaining the equipment leased by a subscriber and includes a reasonable profit. Other equipment would include, for example, cable home wiring. An operator is permitted, but not required, to calculate charges for each significantly different type of other equipment. An operator choosing to establish charges for different types of other equipment must repeat the calculations in lines 22–28 for each type of other equipment listed in Schedule C. Attach extra sheets as needed.

Line 22. List the total annual capital costs (depreciation, return on investment, and

[1] For simplicity, the remainder of this form will refer to equipment and installation for basic tier service. When calculating charges for equipment and installation related to cable programming services, substitute the appropriate numbers relating to that equipment and installation.

applicable taxes) of other leased equipment. This amount is taken from the appropriate line of Column J on Schedule C (the line number will differ depending on the number of different types of other equipment offered by the cable system).

Line 23. List the number of hours you spend per year repairing and servicing this other equipment. Attach an explanation or study for your calculations.

Line 24.. Multiply line 23 by the HSC listed in line 5. The result is the total annual cost for repairing and servicing other equipment.

Line 25. Add line 22 and line 24. The sum is the total annual cost for other equipment.

Line 26. List either the total number of units for this type of other equipment or the number of subscribers using this equipment, whichever is applicable, that were in service or using this equipment on the last day you closed your books.

Line 27. Divide line 25 by line 26. The result is the annual unit cost of other equipment.

Line 28. Divide the line 27 by the number 12. The result will be the monthly cost of other equipment. Line 28 will be the maximum monthly lease charge for other equipment.

Step F: Calculate the Charge for Changing Service Tiers or Equipment.

Charges for changing service tiers effected solely by coded entry on a computer terminal or by other similarly simple method shall be nominal. Enter your nominal charge in line 29. However, to prevent an uneconomic level of churn, an operator may propose an escalating scale of charges for customers changing service tiers more than two times in one year. If you choose to adopt such increased charges, please attach a list of the charges and an explanation of why these charges are reasonable. This list should also be attached to the cover sheet in Part 1 of this form.

Charges for changes in service tiers or equipment that involve more than the simple methods described above shall be at actual cost. To calculate this charge, you may use one of the two alternatives below.

Line 30. If you elect to charge an hourly rate for changing service tiers, the rate shall be the HSC. Write the HSC of line 5 in line 30.

Line 31. If you choose to develop an average charge for charging service tiers, multiply the HSC by the average time such changes take. Enter the result in line 31.

Step G. Calculate the Franchise Area Monthly Equipment and Installation Costs for Adjustment of Regulated Service Rates.

Equipment and service installation costs must be removed from charges for regulated service. To be consistent with the calculations of permitted rates, these costs must be presented at the franchise area level on a monthly basis.

Line 32. Add maintenance and installation costs for customer equipment from line 3 of Step A to capital costs for customer equipment from Box 3, Schedule C.

Line 33. Adjust line 32 to reflect equipment costs of the franchise area, if your accounting records are kept at a different level of organization. For example, if your accounting records cover franchise areas with similar subscriber equipment profiles, you may use a ratio of the number of subscribers in the franchise area to the total number of subscribers:

line 33 = line 32 × franchise area subscribers/subscribers represented in line 32.

Attach an explanation of the allocation method that you use.

Line 34. Divide line 33 by the number 12. The result will be the monthly equipment and installation cost to be entered on Worksheet 3 in Part II of this form, Line 301.

Notes

1. Charge for Additional Connections.

Section 76.923(h) of the Commission's rules states that an operator shall recover the costs of installation of and equipment used with additional connections through the related equipment and installation charges. Step B calculates installation charges for additional connections, and Steps C, D, and E are used to calculate customer equipment charges, regardless of whether the equipment is used in conjunction with primary or additional connections.

An operator may also recover additional programming costs imposed by a program supplier for service to additional outlets, as well as the costs of any necessary signal boosters located on a customer's premises that are associated with the additional connection. These may be recovered as a separate monthly charge for the additional connections. The charge for any signal boosters shall be calculated separately using the instructions for Step E for other customer equipment. Attach extra calculations to the Equipment and Installation Form and cover sheet as necessary.

BILLING CODE 6712-01-M

SCHEDULE A

CAPITAL COSTS OF SERVICE INSTALLATION & MAINTENANCE OF EQUIPMENT

A Equipment	B Gross Book	C Accumulated Depreciation	D Deferred Taxes	E Net Book B-(C+D)	F Return on Investment	G Taxes		H Current Provision for Depreciation	I TOTAL (add F, G, H)
						Federal Income Tax	State Income Tax		
Vehicles									
Tools									
Maintenance Facility									
Other (specify)									
Other (specify)									
TOTAL									

Box 1

ANNUAL COSTS FOR SERVICE MAINTENANCE (EQUIPMENT)

Annual Expenses	
Salaries & Benefits	
Supplies	
Utilities	
Other Taxes	
Other (Specify)	
Other (Specify)	
TOTAL	

UMI
1993
JUL
16
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1
3
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VOL
5 8

SCHEDULE B

ANNUAL OPERATING EXPENSES FOR SERVICE INSTALLATION & MAINTENANCE OF EQUIPMENT (Excluding Depreciation)

Annual Operating Expenses	
Salaries & Benefits	
Supplies	
Utilities	
Other Taxes	
Other (Specify)	
Other (Specify)	
TOTAL	

Box 2

UMI
1993
JUL 16
ISS 135
VOL 58

SCHEDULE C
CAPITAL COSTS OF LEASED CUSTOMER EQUPMENT

A Equipment	B Gross Book	C Accumulated Depreciation	D Deferred Taxes	E Net Book B-(C+D)	F Return on Investment	G Taxes		H Annual Depreciation Expense Provision on Investment	I Total # of Units in Service	J Total Add F, G, H
						Federal Income Tax	State Income Tax			
Remote 1										
Remote 2										
Converter Box 1										
Converter Box 2										
Other Equipment										
TOTAL										

Box 3

SCHEDULE D
AVERAGE INSTALLATION CHARGES

Cable Operator Name:	**Community Unit ID (CUID):**
	Date:
Franchise Authority:	**Check One:** ☐ **Basic Tier** ☐ **Cable Programming**

a. Unwired Home Installation:	
1. Average Hours per installation (attach explanation)	
2. Unwired Home Installation Charge (Line a1 x HSC)	$
b. Prewired Home Installation:	
1. Average Hours per Installation (attach explanation)	
2. Prewired Home Installation Charge (Line b1 x HSC)	$
c. Additional Connection Installation at Time of Initial Installation:	
1. Average Hours per Additional Connection (attach explanation)	
2. Additional Connection - Initial Installation Charge (Line c1 x HSC)	$
d. Additional Connection Installation after Initial Installation:	
1. Average Hours per Additional Connection (attach explanation)	
2. Additional Connection - Separate Installation Charge (Line d1 x HSC)	$
e. Other Installation (by Item Type): Item 1. (Specify) RELOCATE ADDITIONAL OUTLET	
1. Average Hours per installation (attach explanation)	
2. Item 1 Installation Charge (Line e1 x HSC)	$

Add additional items as needed.

Item 2. (Specify)	
1. Average Hours per installation (attach explanation)	
2. Item 2 Installation Charge (Line e2 x HSC)	$
Item 3. (Specify)	
1. Average Hours per Installation (attach explanation)	
2. Item 3 Installation Charge (Line e3 x HSC)	$

NOTE: For HSC (Hourly Service Charge) use amount from Line 5 of the Equipment and Installation Charges Form.

BILLING CODE 6712-01-C

VOL 58 ISS 135 JL 16 1993 UMI

Instructions for Schedule A Annual Capital Costs Associated With Maintenance and Installation of Cable Facilities and Service

1. Schedule A computes the capital costs for equipment necessary for maintenance and installation of cable facilities and cable service. It does not include the annual capital costs of customer premises equipment such as remotes and converter boxes included in Schedule C. (See instructions below.)

2. Column A lists the types of equipment for which capital cost information is required (including equipment owned and equipment held under capital or financing leases), such as vehicles and tools, and including other equipment used for installation and maintenance, which you may specify on the form. Maintenance facility refers to buildings, tools, and equipment necessary for the repair and maintenance of vehicles and equipment.

3. Column B requires you to state the gross book value for the categories listed in Column A as of the date you last closed your books.

4. Column C requires you to give the accumulated depreciation and amortization for each category of equipment on the gross book values listed in Column B as of the date used for Column B entries.

5. Column D requires you to give the deferred tax balance associated with the plant categories listed in Column A. (Generally, such amounts result from the use of faster depreciation write-offs for tax purposes than for financial reporting purposes.) Entities that do not pay income taxes (*e.g.*, sole-proprietorships, partnerships, and sub chapter S-corporations) may not include an amount in this column.

6. Column E requires you to give the net book values for each category in Column A (Column B minus the sum of Columns C and D).

7. Column F allows for a reasonable return to be calculated by multiplying the investment listed in Column E by a reasonable rate of return. The *Report and Order* states that the Commission will consider up to 11.25% as a not unreasonable rate of return. If you choose a rate of return that is higher than 11.25%, you must attach a justification for your choice.

8. Column G allows for federal and state income taxes payable by the cable entity. To allow for a reasonable after-tax rate of return, it may be based on the grossed-up federal and state tax rates in effect. (The grossed-up rate is calculated as: Tax Rate/ (1—Tax Rate)). Entities that do not pay income taxes (*e.g.*, sole proprietorships, partnerships, and sub chapter S-corporations) may not include an amount in this column.

9. Column H requires you to list the annual depreciation expense for each category of equipment in Column A.

10. Column I requires you to add Columns F, G, and H.

11. Add the totals in Column I and enter in Box 1.

Instructions for Schedule B Annual Operating Expenses Associated With Maintenance and Installation of Cable Facilities and Service, Excluding Depreciation

Schedule B includes all annual operating expenses, excluding depreciation and amortization on capital and financing leases, for installation and maintenance of facilities and service for the 12 months ending as of the date you last closed your books. This schedule requires you to list your operating expenses, including salary and benefits, supplies, utilities, other taxes and any other applicable expenses. Other expenses included must be identified. The total is the sum of all operating expenses for installation and maintenance and should be entered in Box 2.

Instructions for Schedule C Capital Costs of Customer Equipment

1. Schedule C includes the purchase cost of leased customer equipment, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the subscriber.

2. In Column A list all customer equipment for which there is a separate charge, including difference models of remote control units, different types of converter boxes, and other equipment. List separately each type of other equipment for which you plan to develop a separate charge.

3. In Column B give the gross book value of the listed equipment. The gross book value includes the cost of spare customer equipment that the operator keeps on hand for new customers or as replacement for broken equipment.

4. List the accumulated depreciation and amortization in Column C for each equipment category in Column A.

5. Column D requires you to give the deferred tax balance associated with the plant categories listed in Column A. (Generally, such amounts result from the use of faster depreciation write-offs for tax purposes than for financial reporting purposes.) Entities do not pay income taxes (*e.g.*, sole proprietorships, partnerships, and sub chapter S-corporations) may not include an amount in this column.

6. Column E requires you to give the net book values for each category in Column A (Column B minus the sum of Columns C plus D).

7. Column F multiplies a reasonable rate of return by the investment listed in Column E. The *Report and Order* states that the Commission will consider up to 11.25% as a not unreasonable rate of return. If you choose a rate of return that is higher than 11.25%, you must attach a justification for your choice.

8. Column G allows for federal and state income taxes payable by the cable entity. To allow for a reasonable after-tax rate of return, it may be based on the grossed-up federal and state tax rates in effect. (The grossed-up rate is calculated as: Tax Rate/ (1-Tax Rate)). Entities that do not pay income taxes (*e.g.*, sole proprietorships, partnerships, and sub chapter S-corporations) may not include an amount in this column.

9. Column H requires you to list the annual depreciation expense for each category of equipment in Column A.

10. Column I requires you to give the total number of units in service for leased remotes and converter boxes. For other leased equipment, list the total number of units in service or the total number of subscribers using this equipment, whichever is appropriate.

11. Column J requires you to add Columns F, G, and H.

12. Add the totals in Column J and enter in Box 3.

Instructions for Schedule D

Schedule D is used only if you choose to charge averaged rates for service installation. If choosing this option, you must calculate an averaged rate for several types of installations.

Schedule D calculates four separate average charges that the Commission requires for an operator choosing this option. These average charges are for: (a) installations of unwired homes; (b) installations of already wired homes; (c) installations of additional connections at the time of initial installation; and (d) installations of additional connections after initial service installation. An operator may calculate, using the same methodology, average charges for other specific types of installations such as those requiring extra long drops to the home. Add additional lines as needed.

To calculate an average installation charge, multiply the Hourly Service Charge (HSC) by the average number of hours it takes for that type of installation. Attach an explanation or study for how you arrived at the average time for that type of installation.

[FR Doc. 93–16976 Filed 7–15–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅝% for the quarter ended June 30, 1993. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 9, 1993.

George H. Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 93–16924 Filed 7–15–93; 8:45 am]

BILLING CODE 4150–04–M

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that The Public Health Service's Office of Research Integrity (ORI) has issued final findings of scientific misconduct and has implemented administrative actions in the following case:

Torrey Johnson, Tufts University. An inquiry and a subsequent investigation conducted by the University found that Mr. Johnson, a predoctoral graduate student in the Department of Biology, had fabricated research data on the genetic control of spermatogenesis. Mr. Johnson worked on a grant for the National Institute of Child Health and Human Development (RO1 HD 11878). The University investigation concluded that Mr. Johnson's reports that he had extracted, purified, and characterized a transcription factor protein were fabricated. Mr. Johnson's notebooks provided no details on the purification procedures and he was unable to describe to his thesis committee the steps used to purify the protein. The investigation also concluded that it was likely that Mr. Johnson had used commercially-obtained human transcription factor instead of the claimed purified protein for mouse testis. The ORI concurred in the University's findings, and Mr. Johnson has been debarred from receiving Federal grant or contact funds for a three year period beginning May 14, 1993. For two years beyond the debarment period, any research institution which employs Mr. Johnson must provide the Public Health Service (PHS) a plan for the oversight of his scientific activities and certify the accuracy and integrity of information provided in PHS applications or in reports generated under a PHS award. Two abstracts containing fabricated data were withdrawn ("Footprint analysis of the promoters of mouse and rat protamine 2 genes reveals differences in protein binding" *XIth North American Testis Workshop,* and "Protein binding to a conserved promoter element of the male germ cell specific mouse protamine 1 and 2 genes suppresses transcription in vitro in non-expressing tissues" *J. Cell Biology Abstracts,* 115: 48a, 1991).

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301 443–5330.

Dated: June 29, 1993.

Lyle W. Bivens,

Acting Director, Office of Research Integrity

[FR Doc. 93–16923 Filed 7–15–93; 8:45 am]

BILLING CODE 4150–47–M

Administration on Aging

Fiscal Year 1993 Program Announcement; Availability of Funds and Request for Applications: Extension of Deadline for the Submission of Application

AGENCY: Administration on Aging, HHS.

ACTION: Notice that the July 19, 1993 deadline for the submission of grant applications to the Administration on Aging has been extended by one week to midnight, July 26, 1993.

SUMMARY: This notice extends the deadline for the submission of grant applications under the Administration on Aging's Discretionary Funds Program for Fiscal Year 1993 from July 19, 1993 to midnight, July 26, 1993 because of the serious flooding affecting several States located along the upper Mississippi River.

Dated: July 13, 1993.

Fernando Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 93–16936 Filed 7–15–93; 8:45 am]

BILLING CODE 4130–02–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a previously approved Congressionally mandated information collection titled: "The Third National Study of the Incidence of Child Abuse and Neglect" (NIS–3). The second national study was approved in 1986 under OMB Control Number 0980–0176.

ADDRESSES: Copies of the information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: The Third National Study of the Incidence of Child Abuse and Neglect (NIS–3)

OMB No.: (New Request)

Description: With the enactment of the Child Abuse Prevention and Treatment Act of 1974 (Pub. L. 100–294), Congress directed the National Center on Child Abuse and Neglect (NCCAN) of the Administration for Children and Families to "make a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity. The 1974 Congressional mandate was met with completion of the First National Study of the Incidence and Severity of Child Abuse and Neglect (NIS–1). In 1984, the Congress broadened its requirements and instructed NCCAN to "study and investigate the national incidence of child abuse and neglect and make findings about any relationships between non-payment of child support and between various other factors and child abuse and neglect, and the extent to which incidents of child abuse and neglect are increasing in number and severity". This mandate was met with the completion of the Second National Study of the Incidence and Prevalence of Child Abuse and Neglect (NIS–2). In 1988 through the enactment of the Child Abuse Prevention, Adoption, and Family Services Act, Congress mandated NIS–3.

The purposes of NIS–3 are to study the national incidence of child abuse and neglect, including (i) the extent to which incidents of child abuse are increasing or decreasing in number and severity; and (ii) the incidence of substantiated reported child abuse cases that result in civil child protection proceedings or criminal proceedings, including the number of such cases with respect to which court makes a finding that abuse or neglect exists and the disposition of such cases.

VOL 58 ISS 135 JL 16 1993 UMI

NIS–3 study findings will provide NCCAN with the nationally representative data required to formulate recommendations for improving existing Federal and State legislation, policy and programs to prevent and treat child maltreatment.

Annual Number of Respondents: 4,380
Annual Frequency: 1
Average Burden Hours Per Response: 0.24
Total Burden Hours: 4,585

Dated: June 24, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–16847 Filed 7–15–93; 8:45 am]
BILLING CODE 4184–01–M

[Program Announcement No. OCS 93–07]

Request for Applications Under the Office of Community Services' Fiscal Year 1993 Training and Technical Assistance Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for applications under the Office of Community Services' Training and Technical Assistance Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(3) of the Community Services Block Grant Act of 1981 (Title VI of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 9910(a)(3)). This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the types of activities that will be considered for funding. Part C provides details on who is eligible to apply and application prerequisites. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

CLOSING DATE: The closing date for submission of applications is August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, Division of Block Grants, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. You may also call (202) 401–9343.

Part A—Preamble

1. Legislative Authority

Section 681(a)(3) of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to States and public and private nonprofit organizations to provide for training and technical assistance to aid States in carrying out their responsibilities under the CSBG Act.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

"Training" is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, or programs of self-instructional activities.

"Technical assistance" is a problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

"State" means all of the States and the District of Columbia. Except where specifically noted, for purposes of this Program Announcement it also means "Territory."

"Territory" refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

"Local service providers" are the approximately 1,000 local public or private nonprofit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

"Nationwide" refers to the scope of the technical assistance training on data collection project to be undertaken with grant funds. Proposed projects must provide for the implementation of technical assistance, training or data collection for a significant number of States, and the local service providers who administer CSBG funds.

Part B—Purpose

Section 681(a)(3) of the CSBG Act authorizes the Secretary of the Department of Health and Human Services to make grants to States and public agencies and private nonprofit organizations, or to enter into contracts of jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide for training and technical assistance to aid States in carrying out their responsibilities for conducting and administering the CSBG Program.

OCS is soliciting applications which implement these legislative mandates on a national basis and in a comprehensive manner. OCS believes that training and technical assistance needs are best identified at the State and local, not at the Federal level. Therefore, funds will be provided in the form of grants.

Proposed projects under this Program Announcement must focus on one of the following program priorities:

(1) Training and Technical Assistance: The development and implementation of a comprehensive, nationwide training and/or technical assistance program to assist staff of local service providers which receive funding under the CSBG Act, to acquire the skills and knowledge needed to administer and implement programs designed to ameliorate the causes of poverty in the communities. The programs must include the provision of training and/or technical assistance to staff of a significant number of local service providers nationwide, i.e. in each of the Federal Regions, in the most cost effective manner possible. Collaboration with State CSBG coordinators and local service providers will be required in identifying the training and technical assistance needs of staff of local service providers.

(2) Data Collection: The design of a survey instrument, and the collection, analysis, and dissemination of information on FY 1992 CSBG Programs on a nationwide basis through a process that relies on voluntary State cooperation. The information must be comprehensive enough and disseminated in such a format as to enable States and local service providers to improve their planning, management, and delivery of services.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not

sufficient. Any films or visual presentations will be approved for development at the time the proposal is submitted to the Office of Community Services.

See Part F, Section 4, for special instructions on developing a work program.

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants are States, public agencies and private non-profit organizations that can demonstrate familiarity and expertise nationwide with the training and/or technical assistance needs of community action agencies.

2. Available Funds

The amount of funds available for grant awards under this announcement in FY 93 is $218,893. One hundred eighteen thousands dollars ($118,893) is available for training and technical assistance activities. It is anticipated that one grant will be made for T&TA activities and one grant will be made for data collection activities.

3. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. Proposals submitted by applicants whose programs will leverage other non-federal funds and resources, such as cash or third-party in-kind contributions, will be looked upon favorably and will be eligible to receive additional points in the competitive review process. Applicants that do not propose such funds or have failed to generate non-federal funds and resources on prior OCS grants will not receive additional points.

4. Grant Duration

OCS will grant funds for 12-month project and budget periods. The application must clearly demonstrate that the project work plan will achieve measurable results and can be successfully completed within one year.

5. Project Beneficiaries

Projects proposed for funding under the training and technical assistance priority area must result in direct benefits to staff of local service providers in carrying out their responsibilities under the Community Services Block Grant Act.

6. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

Part D—Application Procedures

1. Availability of Forms

Attachments A, B and C contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for use in developing the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF–424, SF–424A, and SF–424B. Instructions for completing the SF–424, SF–424A, and SF–424B are found in Attachments A, B, and C and Part F.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment I provides a checklist to aid applicants in preparing a complete application package for OCS.

2. Application Submission

Refer to the section entitled "Closing Date" at the beginning of this Program Announcement for the last day on which applications may be submitted. Applications may be mailed to: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, OCS–93–07, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, OCS–92–07, Sixth Floor, 901 D Street, SW., Washington, DC 20447.

An application shall be considered as meeting the announced deadline if it is either:

1. Received on or before the deadline date at a place specified in the Program Announcement, or

2. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

The ACF Office of Community Services may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the Office of Community Services does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and four copies should be submitted.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven jurisdictions need take no action regarding E.O. 12372.

Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact

if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new awards. However, because applications are due 30 days from the date of the announcement and grants are to be awarded in September, there is not sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to August 16, 1993. These comments are reviewed as a part of the award process. Failure to notify the SPOC can result in a delay in grant award.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOC's are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 101.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, OCS–93–07, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in Sections 5a and 5b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past 5 years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applicants will receive an acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–9230. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part C. Applicant also must be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in 12 months.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State recipients of CSBG funds and/or local providers of CSBG-funded services and activities.

(4) *Program Focus:* The application must address development and implementation of a nationwide, comprehensive training and/or technical assistance or data collection activities as described in Part B of this announcement.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applicants which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B. (Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(1) *Criterion I: Need for Assistance* (Maximum: 20 points).

(a) The application documents that the project addresses a vital nationwide need related to the purposes of this Program Announcement (Part B) and provides statistics and other data and information in support of its contention (0–10 points).

(b) Provides current supporting documentation or other testimonies from *State* CSBG Directors and *local* service providers or State and Regional organizations of local service providers (0–10 points).

(2) *Criterion II: Work Program* (Maximum: 30 points).

(a) Goals are appropriately related to needs and are specific and measurable (0–10 points).

(b) Activities are comprehensive and nationwide in scope, and adequately described and appropriately related to goals (0–10 points).

(c) Time frames and chronology of key activities are realistic (0–2 points).

(d) The plan for conducting an assessment that will determine the degree to which the stated goals and objectives of the project are achieved is adequate and workable and, where appropriate, the plan for disseminating the information resulting from the project to CSBG grantees, local service providers, and other interested parties is workable and assures that all relevant parties are included in the dissemination (0–8 points).

(3) *Criterion III: Significant and Beneficial Impact* (Maximum 25 points).

(a) Applicant adequately describes how the project will assure long-term program and management improvements for States and/or local providers of CSBG services and activities (0–10 points).

(b) For T&TA applications: The project will impact on a significant number of local service providers (0–10 points).

(c) For data collection applications: The applicant has the ability to collect data from a significant number of States (0–10 points).

(d) The project will leverage or mobilize significant other non-federal resources for the direct benefit of the project (0–5 points).

(4) *Criterion IV: Ability of Applicant to Perform* (Maximum: 20 points).

(a) The application demonstrates that the applicant has experience relevant to the activities that it proposes to undertake (0–10 points).

(b) The applicant's proposed project director and primary staff are well qualified and their professional experiences are relevant to the successful implementation of the proposed project (0–10 points).

(5) *Criterion V: Adequacy of Budget* (Maximum: 5 points).

(a) The resources requested are reasonable and adequate to accomplish the project (0–3 points).

(b) Total costs are reasonable and consistent with anticipated results (0–2 points).

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, should include one original and four additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. "Budget Information—Non-Construction Programs" (SF–424A).

c. A filled out, signed and dated "Assurances—Non-Construction Programs" (SF–424B), Attachment C.

d. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment F.

e. Disclosure of Lobbying Activities, SF–LLL: fill out, sign and date form found at Attachment F, as appropriate.

f. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Need for Assistance
(ii) Work Program
(iii) Significant and Beneficial Impact
(iv) Management History
(v) Staffing and Resources
(vi) Appendices including proof of non-profit status, such as IRS determination; By-Laws; Articles of Incorporation; Certification Regarding Lobbying; resumes, etc.

The original must bear the signature of the authorizing official representing the applicant organization. The total number of pages for the entire application package should not exceed 30 pages, including appendices. Pages should be numbered sequentially throughout. If appendices include photocopied materials, they must be legible. Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder is specifically discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes.Therefore, applications must be submitted on white 8½ × 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

Part F—Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062)

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not Applicable."

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS–ACF/OCS".

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.032".

11. In addition to a brief descriptive title of the project, the following letter designations must be used: "TA"—for training and technical assistance projects; "TD"—for data collection activities.

The title is "Community Services Block Grant Discretionary Awards—Training and Technical Assistance Program."

15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period. 15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and "Non-Federal" will include mobilized funds from all other sources—applicants, State, and other. Federal funds other than those requested from the Training and Technical Assistance Program should be included in "Non-Federal" entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4

Col. (a):
Line 1 Enter "OCS Training and Technical Assistance Program";
Col. (b):
Line 1 Enter "93.032".
Col. (c) and (d): Not Applicable
Col. (e)–(g):
For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.
Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a–Personnel: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property", for purposes of non-governmental entities, means tangible personal property having a useful life of more than two years and an acquisition cost per unit of $500. Non-expendable personal property", for purposes of governmental entities, means tangible personal property having a useful life of more than one year and an acquisition value of $5,000 or more.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant.

The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Line 7—Program Income: Enter the estimated amount of income, if any, expected to be generated from this project. Separately shown expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "Non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—
Col. (a): Enter the project title.
Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.
Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.
Col. (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of Line 8, (b) through (e).

The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period. Submit a separate sheet for each additional quarter or portion thereof, not to exceed 17 months.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances Non-Construction"

All applicants must sign and return the "Assurances" found at Attachment C with their application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below.

a. Need for Assistance
b. Work Program
c. Significant and Beneficial Impact
d. Ability of the Applicants to Perform
e. Staffing and Resources

a. *Need for Assistance.* The application should identify the problem areas in which State recipients of CSBG funds and/or local service providers are seeking assistance and how those needs were identified. Applicants also should provide current supporting documentation or other testimonies from *State* CSBG Directors and *local* service providers or State and Regional organizations of local service providers, as appropriate, regarding need for the proposed project.

b. *Work Program.* The application must contain a detailed and specific work program that is both sound and feasible. Applicants must address how the proposed project will carry out the legislative mandate and the program activities found in Part B. This section of the narrative must include the goals of the project related to the needs, the activities that they propose to carry out to address those goals, the methods by which they will carry out those activities, and the plan for disseminating products resulting from the project, where appropriate. Project activities must be described in a quantitative manner, e.g., number of training days, number of workshops, number of persons to be trained, number of local services providers to be impacted, materials to be developed, etc. The applicant must define the comprehensive nature of the proposed project and the methods which will be used to ensure that it is a nationwide project.

For data collection projects, applicants should, at a minimum, describe the methodology to be used to identify the kind of data to be collected, how the data will be collected, how the applicant will assure that the appropriate data will be collected, a plan for data analysis, the methods by which the data will be disseminated and the audiences, and a plan for conducting an assessment of the usefulness of data collected.

The application must (1) set forth realistic quarterly time targets by which the various work tasks will be completed; (2) include a plan for conducting an assessment of its activities as they relate to the goals and objectives; and (3) include a description of how the applicant will involve other appropriate organizations in the planning or implementation of the project in order to avoid duplication of effort and to leverage additional resources.

c. *Significant and Beneficial Impact.* Each applicant also must indicate how the project will have a significant and beneficial impact. At a minimum the applicant must provide (1) a description of how the project will result in long-term improvements for States and/or local providers of CSBG services and activities, (2) the number of local service providers and/or staff it will impact, and (3) the types and amounts of public and/or private resources it will mobilize and how those resources will directly benefit the project OR a description of the mechanism the applicant will use to collect data, how it can assure collections from a significant number of states, and how many states will be willing to submit data to the applicant.

d. *Ability of Applicants to Perform.* Organizations must detail their competence in the specific program area. Documentation must be provided which addresses (1) accomplishments relevant to the proposed project, and (2) experience relevant to the CSBG program. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance on a nationwide basis. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

e. *Staffing and Resources.* The application must fully describe (e.g. a resume) the experience and skills of the proposed project director and primary staff showing that the individuals are not only well qualified but that their professional capabilities are relevant to the successful implementation of the proposed project.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–128 and A–133.

Grantees will be required to submit quarterly progress and financial reports

(SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–128 and A–133.

Section 1352 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or *nonappropriated* funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Attachment H indicates the regulations which apply to all applicants/grantees under this program.

Dated: July 9, 1993.

Jacqueline G. Lemire,

Acting Director, Office of Community Services.

BILLING CODE 4184–01–M

VOL 58 ISS 135 JL 16 1993 UMI

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (Specify)

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Authorized for Local Reproduction

VOL 58 ISS 135 JL 16 1993 UMI

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372, and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment B

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Attachment B

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

UMI
1993
JL 16
ISS 135
VOL 58

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separated for obligations and outlays within the program period, what shall be the grantor agency share of outlays, and whether separately shown direct and indirect costs or other program splits are acceptable. Where a breakdown by function or activity is required in Sections A, B, C, and D, include budget estimates for all grant programs in which you are applying for assistance and for all applicable Federal authorities, even when funding periods vary. For those programs in Sections A, B, C, and D, shown in lines 1-4, that require budgeting for more than one year, budget for the first year in column (b), and for the remaining years of the project in column (c) as a single amount. When an additional year's budget period is necessary, add lines and extend the budget on a separate sheet. If more than four lines are used to list the items in Sections A, B, C, and D, list the overflow on a separate sheet and enter the total for all items on line 4, or the appropriate line.

Section A, Budget Summary

Lines 1–4, Columns (a) and (b)

For applications for grants under more than four Federal grant programs; or for Federal assistance (grant, loan, or insurance) under a functional or other program not listed in Line 1 under an appropriate Federal grantor title and the amounts and matching shares needed to support the project.

For applications for additional funding for a program requiring the use of more than one multiple funding periods, insert on separate name of each program in Column (a) and line in Column (a) for the respective program number in Column (b). Use additional lines pertaining to the program. When more than one of the program titles, prepare a separate sheet function or activity is involved, specify the program title in Column (a). Group the respective program titles under the Federal Column (b).

For applications pertaining to a single Federal programs which require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one program funds different projects or when two or more grant programs are being combined in an application. For the summary line, enter the total for all items entered on lines 1–4.

Lines 1–4, Column (c)

For new applications, leave blank. *For continuing grant program applications,* submit these amounts on the expected basis of the funding period for each grantor agency. Enter in (a) and (b), and enter estimated amounts of funds which will remain unobligated at the end of the grantor agency fiscal year. Otherwise, leave blank. Enter in columns (c) and (d), when applicable, the amounts needed for the same grant programs listed in (a) and (b), or the appropriate line, to support the project during the remaining funding periods. Enter in column (e) the amounts needed for the same grant programs listed in (a) and (b), or the appropriate line, to support the project during the remaining funding periods.

For continuing grant program applications, submit these amounts on the expected basis of the funding period for each grantor agency. Enter in (a) and (b), and enter estimated amounts of funds which will remain unobligated at the end of the grantor agency fiscal year. Otherwise, leave blank. Enter in columns (c) and (d), when applicable, the amounts needed for the same grant programs listed in (a) and (b), or the appropriate line, to support the project during the remaining funding periods. Enter in column (e) the amounts needed for the same grant programs listed in (a) and (b), or the appropriate line, to support the project during the remaining funding periods.

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amounts of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Line 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C—Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

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3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

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Attachment D

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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Attachmen
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Attachment E—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transactions; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment F—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-M

VOL 58 ISS 135 JL 16 1993 UMI

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OM
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award
3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____	
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known* **Congressional District**, *if known*:	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable* _____
8. **Federal Action Number**, *if known*:	9. **Award Amount**, *if known*: $
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI)*:	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI)*:
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. **Amount of Payment** *(check all that apply)*: $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. **Form of Payment** *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184-01-C

Attachmen
Contact

Arizona
Ms. Janice
Clearing
Fourteen
Telephon

Arkansas
Mr. Joseph
Clearing
Service,
Adminis
Arkansas
1074

California
Glenn Stob
Planning
Sacramen
(916) 323

Colorado
State Single
Clearingh
Governm
520, Den
(303) 866

Connecticu
Under Secr
Review C
Planning
Managem
Hartford,
Telephon

Delaware
Francine Bo
Executive
Building,
Telephon

District of C
Lovetta Dav
Executive
Intergover
District Bu
Avenue N
Telephon

Florida
Karen McFa
Clearingh
Governor,
Budgeting
Florida 32
8114

Georgia
Charles H B
State Clea
Street SW.
Telephone

Hawaii
Mr Harold S
Office of S
Planning a
Office of th
Room 406,
Telephone
8172

Illinois
Tom Berkshi
Office of th
Springfield
(217) 782-

Attachment G—State Single Points of Contact

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, D.C. 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803 Telephone (609) 292–9025

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Bagget, Director, Intergovernmental Relations, N C Department of Administration, 116 W Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Daniel W Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

South Dakota

Susan Comer State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266–0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Territories

Guam

Michael J Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P O. Box 41119 San Juan, Puerto Rico 00940–9985, Telephone (809) 727–444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No 32 & 33 Kongens Gade, Charlotte Amalie, V I. 00802, Telephone (809) 774–0750

Attachment H

The following DHHS regulations apply to all applicants/grantees under the Training and Technical Assistance Program.

Title 45 of the Code of Federal Regulations:

Part 16—Procedures of the Departmental Grant Appeals Board

Part 74—Administration of Grants [non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections

74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension form Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services

Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 86—Nondiscrimination on the basis of sex in the admission of individuals to training programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment I

Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain

1 A completed, signed SF–424, "Application for Federal Assistance" The letter code for the priority areas (TA) or (TD) should be in the lower right-hand corner of the page.
2 A completed "Budget Information Non Construction" (SF–424A);
3 A signed "Assurances-Non-Construction" (SF–424A);
4 A Project Narrative beginning with a Table of Contents that describes the project in the following order:
(a) Need for Assistance
(b) Work Program
(c) Significant and Beneficial Impact
(d) Ability of Applicant to Perform
(e) Staffing and Resources
5. Appendices including proof of non-profit status, Single Points of Contact comments (where applicable), resumes;
6. A signed copy of "Certification Regarding Anti-Lobbying Activities;
7 A completed "Disclosures of Lobbying Activities", if appropriate; and
8. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, two hold punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

[FR Doc. 93–16841 Filed 7–15–93; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[CDC–346]

Announcement of Cooperative Agreement With the Pan American Health Organization

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1993 for a sole source cooperative agreement with the Pan American Health Organization (PAHO) to further develop and establish an environmental epidemiology and surveillance research program for the Latin American and Caribbean countries. Approximately $130,000 will be available in FY 1993 to support this project. It is expected the award will begin on September 30, 1993, for a 12-month budget period within a 3-year project period. Funding estimates may vary and are subject to change Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to assist, collaboratively with PAHO in the establishment of a strengthened environmental health epidemiology and surveillance research program in Latin America and Caribbean countries.

The CDC will collaborate in the development of environmental epidemiology and surveillance programs, provide technical and scientific consultation of these activities, and provide epidemiologic

training/education materials and on-site consultation to PAHO as needed.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended.

Eligible Applicants

Assistance will be provided only to the Pan American Health Organization (PAHO) for this project. No other applications are solicited. The Program Announcement and application kit have been sent to PAHO.

PAHO is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

A. PAHO coordinates international health activities for countries and territories of Latin America. Their access to member states and their public health programs is unique in this region. PAHO has outlined its research needs, goals, and objectives for environmental health in Latin America in the document Health for All by the Year 2000.

B. The Pan American Center for Human Ecology and Health (ECO) of PAHO has the lead in advancing environmental public health in Latin America. PAHO/ECO is the only organization serving Latin America with a focus on the health impact of agricultural and industrial development. To help reach the goal of Health for All by the Year 2000, it is PAHO/ECO's intent to provide epidemiologic and toxicologic risk assessment and support required for the prevention of health risks associated with toxic wastes and their air and water pollution byproducts, food contamination, and other environmental health and occupational hazards and diseases; and to implement the necessary research programs to support the development of strong, continuing environmental health programs.

C. PAHO has long-standing expertise in regional (Latin America and the Caribbean) disease surveillance, application of technology in different settings, development of training methods for health personnel, use of research to clarify and resolve health problems, and integration of different health programs to achieve maximum efficiency and effectiveness.

D. The proposed program is strongly supportive of and directly related to the achievement of PAHO/ECO and CDC/National Center for Environmental Health (NCEH) research and development programs in environmental health epidemiology and surveillance.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 346 and contact Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N E., Mail Stop E–13, Atlanta, Georgia 30305 (404) 842–6796.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Dated: July 9, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC)

[FR Doc. 93–16871 Filed 7–15–93 8.45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93F–0232]

Calgene, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgene, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aminoglycoside 3'-phosphotransferase II as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton plants.

DATES: Written comments on petitioner's environmental assessment by August 16, 1993

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr , Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vincent Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–254–9523

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S C. 348(b)(5))), notice is given that a food additive petition (FAP 3A4364) has been filed by Calgene, Inc., 1920 Fifth St., Davis, CA 95616. The petition proposes to amend the food additive regulations to provide for the safe use of aminoglycoside 3'-phosphotransferase II as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton plants.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501 4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 16, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received

comments may be seen in the office above between 9 a.m and 4 p m. Monday through Friday. FDA will also place on public display any amendments to, or comments on the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an envrionmental impact statement is not required and this petition results in a regulation the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25 40(c).

This petition was originally submitted to the agency as a request for an advisory opinion. In a notice published in the **Federal Register** of May 1, 1991 (56 FR 20004), the agency announced that it had filed the request and, at that time, solicited comments on the environmental assessment submitted with the request. The comments received in response to that announcement, as well as comments received in response to this notice, will be considered in any rulemaking that may result from this petition.

Dated: July 8, 1993.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-16849 Filed 7-15-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93M-0208]

Heart Technology, Inc.; Premarket Approval of the Rotablator® Rotational Angioplasty System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Heart Technology, Inc., Bellevue, WA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Rotablator® Rotational Angioplasty System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 28, 1993, of the approval of the application.

DATES: Petitions for administrative review by August 16, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23 12420 Parklawn Dr , Rockville MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald J St Pierre, Center for Devices and Radiological Health (HFZ-450) Food and Drug Administration, 1390 Piccard Dr , Rockville, MD 20850 301-427-1205

SUPPLEMENTARY INFORMATION: On September 18, 1990 Heart Technology, Inc. Bellevue, WA 98005 submitted to CDRH an application for premarket approval of the Rotablator® Rotational Angioplasty System. The device is a coronary atherectomy catheter. Percutaneous rotational angioplasty with the Rotablator® Rotational Angioplasty System, as a sole therapy or with adjunctive balloon angioplasty, is indicated in patients with coronary artery disease and who meet one of the following selection criteria: (1) Single vessel atherosclerotic coronary artery disease with a stenosis that can be passed with a guide wire; (2) multiple vessel coronary artery disease that in the physician's judgment does not pose undue risk to the patient, (3) certain patients who have had prior percutaneous transluminal coronary angioplasty, or percutaneous transvenous coronary angioplasty, and who have a restenosis of the native vessel, or (4) native vessel atherosclerotic coronary artery disease that is less than 25 millimeters in length.

On June 4, 1991, the Circulatory Systems Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 28, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the the act (21 U S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S C. 360e(g)), for administrative review of CDRH s decision to approve this application A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10 33(b) (21 CFR 10 33(b)) A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 16, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-16884 Filed 7-15-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Special Projects of National Significance

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $1 2 million is available in fiscal year 1993 funds for grants to support innovative programs to advance knowledge and skills in the

delivery of health and support services for adolescents with HIV/AIDS or who are at high risk for infection. These grants are authorized by section 2618 (a) of the Public Health Service Act and the funds are appropriated under Public Law 102–394 The Special Projects of National Significance (SPNS) program is designed to demonstrate and test potentially replicable service delivery models. Therefore, the applicant's plan for conducting an internal evaluation and disseminating the project's findings will be crucial factors in appraising the proposals.

DATES: Grant applications must be received in the Grants Management Office by the close of business July 28, 1993 to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U S. Postal Service will be accepted in lieu of a postmark Private metered postmarks shall not be accepted as proof of timely mailing. Hand delivered applications must be received by 5 pm on July 28, 1993 Applications received after the deadline will be returned. Advance notice of the due date for applications was published June 14, 1993 in 58 FR 32958.

FOR FURTHER INFORMATION CONTACT: Additional technical or program information may be obtained from Mr. George Sonsel, Acting Chief, SPNS Branch, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 11–14, Rockville, MD 20857, (301) 443–9976 Grant applications, guidance materials, and additional information regarding business administrative and fiscal issues related to the awarding of grants under this Notice may be requested from Ms. Glenna Wilcom, Grants Management Officer; Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 13A–38, Rockville, MD 20857, (301) 443–2280 Applicants for grants will use Form PHS 5161–1, approved under OMB Control No. 0937–0189 Completed applications should be sent to the Grants Management Officer.

HEALTHY PEOPLE 2000 OBJECTIVES: The Public Health Services urges applicants to address a specific objective of the *Healthy People 2000* in their work plan Potential applicants may obtain a copy of *Healthy People 2000* (Full Report, Stock No. 017–001–00473–0) or *Healthy People 2000* (Summary Report, Stock No. 017–001–00473–I) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: (202) 783–3238).

SUPPLEMENTARY INFORMATION:

Background and Objectives

Section 2618, subsection (a) of the Public Health Services Act provides for "Special Projects of National Significance". The provision permits the Secretary to allocate up to ten percent of the funds provided for Part B of Title XXVI to award direct grants to public and non-profit private entities to carry out the objectives of the statute.

The primary purpose of the SPNS program is to advance knowledge and skills in the delivery of health and support services to persons with HIV disease. This is accomplished through funding and technical support of projects that demonstrate and evaluate service delivery models which meet the SPNS program objectives and target the Special Project Category described below. The objectives under this subsection are as follows: (1) To assess the effectiveness of different models of care; (2) to support innovative program design; and (3) to promote replication of effective models.

In establishing the previous and current Special Project Categories, consideration was given to the service areas suggested in the statute; the recommendations of the HRSA AIDS Advisory Committee and the National Commission on AIDS, evaluations which have been conducted on HRSA AIDS service programs; the experience of current SPNS grantees; and AIDS service delivery research.

Recent information published by the Centers for Disease Control indicates an 82% increase in the number of persons ages 13–19 counseled and tested for HIV between fiscal years 1991 and 1992, and the most significant rate of increase in diagnosed AIDS cases has occurred among the 20–24 age group It is assumed that due to the natural history of HIV, most of these young people were infected during adolescence. Reports from current SPNS grantees, the Pediatric AIDS Demonstration Project grantees as well as information gathered in key informant interviews show an increase in the number of adolescents seeking antibody testing and treatment for AIDS. This information was reviewed by staff in the Bureau of Health Resources Development and deemed supportive of a focus in the SPNS program on adolescent outreach and treatment services.

Description of Special Project Category for FY 1993

The Special Project Category for FY 1993 targets adolescents at high risk of HIV infection or who are already infected. Applicants can submit a proposal for only *one* of the four sub-categories [a-d] listed below. Proposals will be accepted for projects that:

[a] *Expand and ensure access to health and support services for underserved adolescents with HIV/AIDS or who are at high risk for HIV infection, i e , youth in the custody of the juvenile justice system, substance abusing, pregnant, homosexual and lesbian youth, runaway, homeless, and/or "throwaway" youth, etc , through (1) outreach services, (2) risk reduction counseling, (3) HIV antibody testing, (4) health status screening, and (5) thorough follow-up care*

Projects proposed in Sub-category [a] will propose innovative strategies for early intervention services for both the underserved HIV seropositive and youth at high risk of infection. The overall design will provide for developmentally and culturally appropriate outreach services; HIV antibody testing; risk reduction counseling; health status screening; referrals to case management, primary care, clinical trials, social services, housing, mental health services, substance abuse treatment and other support services; and, follow-up to ensure engagement in continuing care. The design must be *adolescent-specific*, providing services for youth in or outside existing systems of care. Care should be established, whenever possible with adolescent service providers whose services are *reimbursable* through Medicaid and/or other third party insurance carriers. Designs incorporating peer support components are encouraged.

When adolescent-specific programs are locally available existing service providers will be utilized to diminish potential duplication of effort. Referral arrangements established with specific providers must be confirmed through a letter of agreement signed by the two agencies. Agreements to participate in the project s evaluation, particularly the outcome of referrals and follow-up procedures, needs to be incorporated in the letters.

[b] *Provide peer based psychological, social and/or practical support services in a mentor, group or one-on-one format.*

At varying points along the continuum of care—outreach through terminal care—psychosocial support

services may be required by adolescents and their families. Adolescents frequently respond more readily to their peers or to those who have had similar life experiences. Such individuals can serve as effective sources of support and as believable role models. Proposals submitted under Sub-category [b], such as programs utilizing HIV affected adolescents and/or young adults as risk reduction educators; programs employing adolescents and/or young adults as caretakers; or perinatally infected youth serving as mentors on issues surrounding disclosure of HIV status, are some of the innovative types of programs envisioned under this category. Peer counselors must be trained and supervised by qualified professionals such as social workers, psychologists, or psychiatrists.

[c] *Expand the scope and intensity of treatment by integrating mental health services and substance abuse treatment into a primary care system.*

Retaining youth in HIV treatment may be entirely dependent on prompt and accessible adolescent-specific mental health services and substance abuse treatment. The findings of similar demonstration projects for adults indicates patient/client compliance with the treatment plan increases when services are available within the same program. Staff report that members improves and treatment plans are implemented more consistently applied across the various therapies.

Behavioral, adjustment and psychiatric disorders in adolescents, e g , anxiety, depression, dementia, antisocial behavior, pre-existing mental illness, etc. complicate the treatment of HIV disease. In addition, approximately 25% of the reported cases of AIDS among adolescents (Centers for Disease Control, as of December, 1992), are at least partially attributable to injection drug use. These mental health and substance abuse problems can complicate a diagnostic evaluation and, in turn, impede the formation of an effective and comprehensive treatment plan. Mental health and substance abuse treatment services can help the adolescent and his/her family affected by HIV/AIDS to manage and stabilize their behavior, emotional status and cognitive functioning.

The setting in which these services reside is not as significant as mutual involvement in diagnosis, treatment planning and care by the three program entities. Settings could include such facilities as a hospital out-patient clinic, community health or mental health center, adolescent treatment center, drop-in center, shelter, free standing HIV/AIDS clinic, family planning clinic tribal health clinic, etc. SPNS grant funds cannot be utilized to establish the primary care services.

[d] *Meet the full range of physical, psychological, social and spiritual needs for adolescents who are seriously and/or terminally ill as a result of HIV disease as well as providing ongoing support to their families.*

Projects in Sub-category [d] will need to be founded on basic medical and nursing services. Psychological services, to assist in differential diagnosis of psychiatric symptoms and psychotherapeutic support, will also be necessary. Social Services must be secured to strengthen the adolescent's support system, to garner necessary entitlement and legal services, to locate placement or housing and, in the case of adolescents who are also parents, to arrange child care and/or adoptive placement of their children. Providing culturally sensitive spiritual services may require a wide range of resources to match the religious background and/or personal experience of the adolescent. Bereavement counseling should be made available for family members and friends when it is indicated.

Housing and/or placement often presents a serious barrier to receiving the least restrictive and most appropriate level of care. Residential facilities, of the type where many adolescents reside, cannot allow intermittent nursing services because of limitations set by state and local licensing regulations. Where possible, applicants are encouraged to find creative means (e g. waivers) that will allow for the care of youth in residential care when the medical condition does not warrant hospitalization. The results of a comprehensive evaluation of this model of care for adolescents could prove to be a valuable source of information for other jurisdictions.

Review Criteria:

Applications for the SPNS program grant will be reviewed and rated by an objective review committee. Criteria for the technical review of applications will include the following:

Factor 1 (10 points) Adequacy of the justification of need for the proposed program within the community and target population to be served by the project.

Factor 2 (5 points) Comprehensiveness of knowledge of HIV service delivery issues as they relate to the provision of adolescent health and support services as well as to the project's goals and objectives.

Factor 3 (30 points) Feasibility and precision of the project work plan to include (a) a realistic number of project goals; (b) measurable process and outcome objectives for each goal; (c) action steps for meeting the objectives and (c) time lines for determining the project's progress.

Factor 4 (10 points) Capability of the applicant organization for competent fiscal and program management as demonstrated in (a) the consistency between the proposed level of effort being proposed and the budget justification; (b) skill level and time commitment required in the personnel specifications; (c) the level of resources being proposed to conduct a quality evaluation of the project; and (d) appropriate handling of confidential medical, social service, and epidemiological data of clients served.

Factor 5 (15 points) Thoroughness, feasibility and appropriateness of the proposed evaluation of the project and plan for dissemination of the findings.

Factor 6 (15 points) Conformance to the SPNS program guidelines, i.e., the need to study a particular model of care and treatment, the innovative quality of the proposed project, and its potential for replicability.

Factor 7 (15 points) Coordination of the proposed project with existing HIV related activities within the catchment area of the project as evidenced by the applicant's knowledge of HIV/AIDS planning efforts and existing services as well as through letters of agreement accompanying the application

Availability of Funds

Approximately $1.2 million is available in FY 1993 for new projects. It is anticipated that 4–6 new projects, with budgets ranging from $100,000 to $250,000, will be funded during this fiscal year. The budget periods for approved and funded projects will begin 90 days after the date of this Notice. Project periods may be requested for 1 to 3 years. Grants to support projects beyond the first budget year will be contingent upon the availability of funds and satisfactory progress in meeting the project's objectives. Applicants are required to submit in the initial application budgets for each proposed project year.

Eligible Applicants

The statute, in section 2618(a)(1), provides that grants may be awarded to public and non-profit private entities to fund special programs for the care and treatment of individuals with HIV disease. Eligible entities may include, but are not limited to, State, local or tribal health, mental health or substance abuse departments, public or private hospitals. community based service

organizations, institutions of higher education, and national organizations of service providers.

In addition to the above criteria, only experienced adolescent health and support service providers with proven capacity to manage grant funds will be deemed appropriate applicants. Applicant organizations must already provide services to adolescents between the ages of 10 and 24 and be an active participant of a consortium of adolescent service providers if one exists in their community. Although national organizations are eligible entities, they must describe how their proposed project will benefit adolescent service providers and/or youths directly.

Other Grant Information

Allowable Costs. The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR part 74, Subpart Q and 45 CFR part 92 for State, local or tribal governments. The four separate sets of cost principles prescribed for public and private non-profit recipients are: OMB Circular A–87 for State, local or tribal governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Reporting and Other Requirements. A successful applicant under this notice will submit quarterly reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, Subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply. Additionally, grantees will be required to comply with the reporting requirements for tracking performance measures. Grantees will also be expected to cooperate with HRSA, or its contractors, in conducting cross-cutting evaluation studies of the SPNS Program.

Public Health System Reporting Requirements. This program is subject to the Public Health System Reporting Requirements which have been approved by the Office of Management and Budget under No. 937–0195. Under these requirements, any community-based, nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based, nongovernmental organizations within their jurisdictions.

Community-based, nongovernmental applicants are required to submit the following information to the head of the appropriate State and/or local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. A summary of the project (PHSIS), not to exceed one page, which provides.

1 A description of the population to be served.

2. A summary of the services to be provided.

3. A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372 The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, concerning intergovernmental review of Federal Programs, as implemented by 45 CFR 100.13.

Under urgent conditions, the Secretary may waive any provision of this regulation. The Secretary has waived 45 CFR part 100.13 due to the compelling need to get funds to grantees.

The OMB *Catalog of Federal Domestic Assistance* number for the Special Projects of National Significance is 93 928.

Dated: May 27, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–16883 Filed 7–15–93; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 9, 1993

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1 Evaluation of a School-Based Intervention to Reduce Behaviors that Result in HIV/STD Infection (NY, NJ)—New—The purpose of this study is to evaluate a school-based HIV/STD prevention program. Selected schools in the States of New York and New Jersey receiving a multiple component intervention will be compared to schools receiving a knowledge-based curriculum. Respondents: Individuals or households; Number of Respondents: 11,020; Number of Responses per Respondent. 1, Average Burden per Response· .75 hr., Estimated Annual Burden· 8,265 hours.

2. Annual Marriage and Divorce Statistical Report Forms—0920–0211—Annual final counts of marriages and divorces are essential to the National Center for Health Statistics and the Bureau of the Census in evaluating validity of input to other activities, to the Social Security Administration in projecting program plans, and to a wide community of other known users. Respondents: State or local governments; Number of Respondents: 330; Number of Responses per Respondent. 1; Average Burden per Response: .5 hr., Estimated Annual Burden: 165 hours.

3 Monthly Vital Statistics Report Forms—0920–0213—Monthly vital statistics at the State and National level are required by the Bureau of the Census in the preparation of population estimates and projections. They are widely used by the health community in tracking trends and by the public sector for marketing and research purposes. Respondents: State or local governments; Number of Respondents: 164, Number of Responses per Respondent: 12; Average Burden per Response: .1 hr.; Estimated Annual Burden: 197 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated; July 12, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–16850 Filed 7–15–93; 8:45 am]

BILLING CODE 4160–17–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 16, 1993

ADDRESSES: For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 9, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Operations/ Chief of Staff.

[FR Doc. 93-16734 Filed 7-15-93; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau Of Land Management—Alaska

[AK-964-4230-05-P]

Notice for Publication F-14952-B; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Unalakleet Native Corporation for approximately 120.00 acres. The lands involved are in the vicinity of Unalakleet, Alaska and are located within T. 18 S., R. 10 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 16, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

G. Steve Flippen,

Lead Land Law Examiner, Branch of Doyon/ Northwest Adjudication.

[FR Doc. 93-16873 Filed 7-15-93; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Land Management

[CO-920-03-4120-03; COC 53560]

Notice of Coal Lease Offering By Sealed Bid; COC 53560

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 11 a.m., Thursday, August 12, 1993. Sealed bids must be submitted no later than 10 a.m., Thursday, August 12, 1993.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239-3795

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

COAL OFFERED: The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam in the following lands:

Sixth Principal Meridian

T. 5 N., R. 86 W.,
Sec. 31, lots 1, 2, W½NE¼, and E½NW¼.
T. 5 N., R. 87 W.,
Sec. 36, lots 1, 2, W½NE¼, and NW¼

The land described contains 544.08 acres, more or less.

Total recoverable reserves are estimated to be 3,584,000 tons. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received basis is as follows:

Btu—11,213 Btu/lb.
Moisture—9.52%
Sulfur Content—0.44%
Ash Content—9.94%

RENTAL AND ROYALTY: The lease issued as a result of this offering will provide for payment of an annual rental of $3 00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

NOTICE OF AVAILABILITY: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by

mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: July 12, 1993.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 93–16872 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–JB–M

[G–910–G3–0048–4210–05; NMNM 86622]

Farmington District; Realty Action—Termination and Order Providing for Opening of Public Land in San Juan County, New Mexico and Classification of Land for Recreation and Public Purposes Act

AGENCY: Bureau of Land Management, Farmington District, Interior.

ACTION: Notice of realty action. Recreation and public purposes patent of public land in San Juan County, New Mexico.

SUMMARY: On Monday, April 26, 1993, certain lands were classified as being suitable for leasing and later patenting under the Recreation and Public Purposes Act. This is a notice of termination of that classification which was placed on the following land, in the **Federal Register**, Vol. 58, No. 78, Monday, April 26, 1993.

New Mexico Principal Meridian

T. 29 N., R. 14 W.,
Sec. 9, NE¼NE¼.

Containing 40 acres, more or less.

This notice also modifies the notice placed in the **Federal Register**, Vol. 57, No. 139, Monday, July 20, 1992. Information concerning that proposal remains correct except for termination of the original classification stated above and the following information.

The following described public land has been determined suitable for classification for patenting to the City of Farmington under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.) The patent would be issued only for 40 acres within these lands.

New Mexico Principal Meridian

T. 30 N., R. 14 W.,
Sec. 34, SE¼.

Containing 160 acres, more or less.

The land would not be leased prior to being patented to the City of Farmington as stated in the July 20, 1992 notice. The estimated intended time of patent issuance is September 15, 1993.

At 9 a.m. on August 16, 1993, the land classified in the **Federal Register**, Vol. 58, No. 78, Monday, April 26, 1993 shall be open to all forms of appropriation under the public land laws, including the general mining laws subject to valid existing rights, and the requirements of applicable law. All applications received at or prior to 9 a.m. on August 16, 1993 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: July 8, 1993.

Joel Farrell,

Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 93–17009 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–920–03–5410–10–AZFA; AZA 27931]

Arizona: Application for Conveyance of Federally Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application received

SUMMARY: Notice is hereby given that pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), ANAM, Inc., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 12 E.,
Sec. 33, S½S½;
Sec. 34, S½.
T. 7 S., R. 11 E.,
Sec. 25, all.
T. 7 S., R. 13 E.,
Sec. 12, S½ (except 5 acres);
Sec. 13, E½.
T. 7 S., R. 14 E.,
Sec. 17, NE¼, S½NW¼, S½;
Sec. 21, N½NW¼;
Sec. 26, S½NW¼, S½;
Sec. 29, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 30, NE¼NE¼;
Sec. 31, lots 1–4, SE¼SW¼, S½SE¼;
Sec. 32, W½;
Sec. 33, W½, SE¼;
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼.
T. 8 S., R. 13 E.,
Sec. 9, S½;
Sec. 11, E½;
Sec. 12, SW¼NW¼, NW¼SW¼, S½SW¼;
Sec. 13, N½N½;
Sec. 14, SW¼, S½SE¼;
Sec. 15, E½SW¼, W½SE¼;
Sec. 22, all;
Sec. 23, E½NE¼, SW¼NE¼, N½NW¼, SW¼NW¼, S½;
Sec. 25, all;
Sec. 26, N½;
Sec. 27, all.
T. 8 S., R. 14 E.,
Sec. 2, S½;
Sec. 5, lots 1 to 4, S½N½, S½;
Sec. 6, lot 6, NE¼SW¼;
Sec. 7, E½;
Sec. 8, all;
Sec. 11, N½;
Sec. 18, lot 1, NE¼, NE¼NW¼;
Sec. 20, W½;
Sec. 23, S½S½;
Sec. 24, E½, SW¼;
Sec. 26, N½N½;
Sec. 27, NE¼;
Sec. 29, N½NW¼;
Sec. 30, NE¼, N½SE¼

Containing 13,080.82 acres, more or less

FOR FURTHER INFORMATION CONTACT: Dorie Morrison, Branch of Lands Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 650–0518.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining and mineral leasing laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or two years from the date of filing, June 18, 1993, whichever occurs first.

Dated: July 9, 1993.

Mary B. Hyde,

Acting Chief, Branch of Lands Operations.

[FR Doc. 93–16846 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–4210–05; CACA 32544]

Realty Action; Direct Sale of Public Land, Calaveras County, CA

AGENCY: Department of the Interior, Bureau of Land Management.

SUMMARY: The following described public land is being considered for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Mount Diablo Meridian, California

T. 6N., R. 13E.,
Sec. 26: lot 8

Comprising 3.22-acres, more or less

The above tract is a wedge-shaped remnant of public land that is difficult to manage in Federal ownership. The 3.22-acre remnant would be sold to adjacent land owner Fred Ault (or heirs) at fair market value. An additional $50.00 non-returnable mineral conveyance processing fee is required.

The tract would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals.

All necessary clearances including clearances for archeology and for rare plants and animals would be completed prior to any conveyance of title by the U.S. The proposal is consistent with the Bureau's land use plans that support the disposal of small difficult to manage tracts.

The above described land is hereby segregated from settlement, location and entry under the public land laws and the mining laws for a period of 270 days from the date of publication of this notice in the **Federal Register.**

ADDRESSES: On or before August 30, 1993, interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at (916) 985–4474 or at the address above.

D.K. Swickard,

Area Manager.

[FR Doc. 93–16843 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–942–93–4730–12]

Colorado: Filing of Plats of Survey

July 8, 1993.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., July 8, 1993.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of section 6, T. 8 N., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 939, was accepted June 10, 1993.

The plat representing the dependent resurvey of a portion of the Second Standard Parallel North, Range 73 and 74 West, portions of the west boundary and subdivisional lines, the subdivision of certain sections and the metes-and-bounds survey in the SE ¼ of section 33, T. 9 N., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 939, was accepted June 10, 1993.

The plat representing the dependent resurvey of portions of the east boundary and the subdivisional lines, and the subdivision of sections 13 and 14, T. 10 N., R. 90 W., Sixth Principal Meridian, Colorado, Group No. 958, was accepted June 8, 1993.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the north boundary of the Southern Ute Indian Reservation (south boundary of the Ute Ceded Lands), through Townships 34 North, Ranges 12 and 13 West, the south and west boundaries, a portion of the subdivisional lines, and the subdivision of section, T. 34 N., R. 12 W., (South of the Ute Line), New Mexico Principal Meridian, Group No. 965, was accepted June 8, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs and Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 93–16848 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting begins on Thursday, September 16, 1993, at 9 a.m.

ADDRESS: Assemble at the Trinity County Fairground, Hayfork, California.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Bruss, Trinity River Task Force Secretary, Bureau of Reclamation, MP–720, 2800 Cottage Way, Sacramento, CA 95825; telephone (916) 978–4956 or TDD 916–978–4417.

SUPPLEMENTARY INFORMATION: The Task Force will consider the Three-Year Action Plan and Budget. It will also discuss ways to achieve Bioregional Coordination and a status report on the program extension will be provided.

Dated: July 8, 1993.

Donald R. Glaser,

Action Deputy Commissioner.

[FR Doc. 93–16842 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

General Management Plan, Draft Environmental Impact Statement, Jewel Cave National Monument, South Dakota

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan for Jewel Cave National Monument.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Jewel Cave National Monument, South Dakota.

DATES: The DEIS/GMP will remain available for public review through September 16, 1993. If any public meetings are held concerning the DEIS/GMP, they will be announced at a later date.

ADDRESSES: Comments on the DEIS/GMP should be sent to the Superintendent, Jewel Cave National Monument, R.R. 1, Box 60AA, Custer, South Dakota 57730. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Jewel Cave National Monument, Telephone: (605) 673–2288.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes two alternatives to protect resources while providing for visitor use of the monument. Under Alternative A, the no-action alternative, existing programs, development, and trends (including implementation of the draft Resource Management Plan) would continue, but new facilities and interpretation would not be added. In the proposed action (alternative B), emphasis would be on protection of Jewel Cave through understanding and mitigation of the effects on cave resources caused by surface facilities and activities. Visitor safety would be given a high priority; access for visitors with disabilities would be improved; interpretation would be expanded to help visitors better understand the

relationship between surface and subsurface resources; and the National Park Service would pursue cooperative ventures and boundary expansion to protect cave resources.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on cave resources, geology, soils and vegetation, wildlife, water resources, air quality, cultural resources, visitor experience, socioeconomic environment, and management and operations.

FOR FURTHER INFORMATION CONTACT: Superintendent, Jewel Cave National Monument, at the above address and telephone number.

Dated: July 1, 1993.

James T. Reynolds,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–16780 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–70–P

General Management Plan, Draft Environmental Impact Statement, Wind Cave National Park, South Dakota

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan for Wind Cave National Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Wind Cave National Park, South Dakota.

DATES: The DEIS/GMP will remain available for public review through September 16, 1993. If any public meetings are held concerning the DEIS/GMP, they will be announced at a later date.

ADDRESSES: Comments on the DEIS/GMP should be sent to the Superintendent, Wind Cave National Park, Hot Springs, South Dakota 57747. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Wind Cave National Park, Telephone: (605) 745–4600.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes three alternatives to ensure the long-term preservation of the significant resources and provide for public use and enjoyment of the park's many features. The no-action alternative (Alternative A) would continue current management and operations in existing facilities. The proposed plan (Alternative B) would increase visitor services, improve administrative and maintenance facilities, address health and safety issues, and improve employee housing, while mitigating effects of surface facilities and activities on the cave and providing for additional visitor use. There would be no significant change in the current level, type and location of development. Alternative C is similar to the proposed plan, but would also remove the campground, eliminate the concession, remove the sewage lagoons and install a discharging tertiary wastewater treatment plant and remove the bison fence.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on cave geology, soils, and vegetation; wildlife; water resources; air quality; cultural resources; visitor use; socioeconomic effects; and management and operations.

FOR FURTHER INFORMATION CONTACT: Superintendent, Wind Cave National Park, at the above address and telephone number.

Dated: July 1, 1993.

James T. Reynolds,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–16781 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Explosives Technologies International, Inc. (ETI), Wilson Bldg., Suite 202, 3511 Silverside Road, Wilmington, DE 19810–4902
2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:
   (i) Blastrite Services Inc., Incorporated—South Carolina, Incorporated—Georgia, Incorporated—Virginia
   (ii) Beattie Explosives, Inc., Incorporated—Idaho
   (iii) Southern Explosives Corporation, Incorporated—Kentucky
   (iv) Southern Explosives Corporation (OHIO), Incorporated—Ohio
   (v) Explosives Energies Inc., Incorporated—Missouri
   (vi) Golden State Explosives Inc., Incorporated—California
   (vii) Explosives Energies Inc., dbe Arkansas Explosives, Incorporated—Arkansas
   (viii) Explo-Tech Inc., Incorporated—Pennsylvania, Incorporated—Maryland
   (ix) North Star Explosives Inc., Incorporated—Alaska
   (x) ACE Explosives ETU Ltd., Incorporated—Canada

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16919 Filed 7–15–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32320]

The Alabama Great Southern Railroad Co.—Merger Exemption—Louisiana Southern Railway Co. and New Orleans Terminal Co.

Alabama Great Southern Railroad Company (AGS), Louisiana Southern Railroad Company (LSRC), and New Orleans Terminal Company (NOT) have filed a notice of exemption to merge LSRC and NOT into AGS, with AGS as the surviving corporation. The merger is expected to be consummated on or soon after August 1, 1993.

LSRC and NOT are wholly owned subsidiaries of AGS. AGS is a wholly owned subsidiary of Norfolk Southern Railway Company (NSR). NSR is controlled through stock ownership by Norfolk Southern Corporation, a noncarrier holding company.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The purpose of the transaction is to simplify NSR's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping, and reporting functions.

To ensure that all employees who may be affected by the transaction are given the protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on: J. Gary Lane, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

Decided: July 9, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16920 Filed 7–15–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32248]

Hanson Natural Resources Co.—Non-Common Carrier; Status—Petition for a Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Petition for Declaratory Order.

SUMMARY: By decision served April 30, 1993 (58 FR 26985, May 6, 1993), the Commission held this proceeding in abeyance at the request of the Petitioner, Hanson Natural Resources Company (HNRC). By motion filed June 28, 1993, HNRC moved to reinstate this proceeding and to supplement the declaratory order petition filed on February 8, 1993. HNRC states that it consummated certain transactions involving a rail line that serves the Lee Ranch Mine located in McKinley County, NM on June 25, 1993 and that the consummated transactions are similar to the transactions anticipated in HNRC's February 8, 1993 petition, as described in the Commission decision served March 1, 1993 (58 FR 12052, March 2, 1993). HNRC seeks a declaratory order that it has not become and will not become a common carrier by railroad, because of the transactions consummated on June 25, 1993. HNRC asks the Commission to dispense with public comment and decide this matter on the merits because the only party to express interest in the matter has submitted a verified statement that it does not intend to make further submissions in this proceeding.

The request to reinstate the proceeding and to supplement the petition is granted. The motion is denied insofar as it seeks waiver of public comment. Any person seeking a copy of HNRC's motion filed June 28, 1993 may request one from HNRC's representative at the address below.

DATES: Comments must be filed by August 5, 1993.

ADDRESSES: Send an original and 15 copies of comments, referring to Finance Docket No. 32248 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, send one copy to HNRC's representative: C. Michael Loftus, SLOVER & LOFTUS, 1224 Seventeenth St., NW., Washington, DC 20036, (202) 374–7170.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

Decided: July 13, 1993.

By the Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16918 Filed 7–15–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32290]

Nebraska Central Railroad Co.—Lease and Operation Exemption—Union Pacific Railroad Co.

Nebraska Central Railroad Company (Nebraska), a noncarrier, has filed a notice of exemption: (1) To lease and operate approximately 248.44 miles of rail line owned by Union Pacific Railroad Company (UP) in the State of Nebraska; and (2) to acquire incidental trackage rights over approximately 25.32 miles of UP's line in the State of Nebraska. Nebraska will become a class III rail carrier. The exemption became effective June 25, 1993.

The lines involved in the lease transaction consist of: (1) The Albion Branch from milepost 0.10 at Oconee, NE, to milepost 34.6 at Albion, NE; (2) the Cedar Rapids Branch from milepost 0.13 at Genoa, NE, to milepost 44.5 at Spalding, NE; and (3) the Norfolk Branch from milepost 2.5 at Columbus, NE, to milepost 48.6 at Norfolk, NE;[1] (4) the Ord Branch from milepost 0.48 at Grand Island, NE, to milepost 61.3 at Ord, NE; and (5) the Stromsburg Branch from milepost 12.5 at Brainard, NE, to milepost 75.15 at Central City, NE.

The incidental trackage rights that Nebraska will acquire as part of this transaction will be over UP's line: (1) On its mainline between milepost 0.48 (mainline milepost 146.41) at Grand Island, NE, and milepost 75.15 (mainline milepost 124.14) at Central City, NE, for movement of trains; (2) between milepost 0.0 and milepost 2.3 at Columbus, NE, for access to Columbus Yard for interchange; and (3) between milepost 0.48 on the Ord Branch at Grand Island, NE, and milepost 146.25 on UP's mainline at Grand Island, NE, a distance of approximately 0.75 miles. The trackage rights will enable Nebraska to have expanded access to property at Grand Island, NE, which Nebraska is leasing from UP.

This proceeding is related to Finance Docket No. 32289, Rio Grande Pacific Corporation—Continuance in Control Exemption—Wichita, Tillman & Jackson Railway and Nebraska Central Railroad Company, wherein Rio Grande Pacific Corporation has concurrently filed a notice of exemption to continue in control of Nebraska when Nebraska becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be file with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Precup, suite 1107, 1700 K Street, NW., Washington, DC 20006

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 9, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16921 Filed 7–15–93; 8:45 am]

BILLING CODE 7035–01–M

[1] Chicago and North Western Transportation Company will retain trackage rights between these two points originally granted by UP in 1984.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or

reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Business Confidential Data Request Oil and Gas Drilling and Exploration Oilfield Services

1205–0272; ETA 9018

On occasion

Businesses or other for profit; Small businesses or organizations 300 respondents; 45 minutes—2 hours per response; 563 total hours; 1 form

Statutory requirements under the Trade Act of 1974, as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations guide in determining if petitioning workers are eligible to apply for worker adjustment assistance.

Extension

Employment and Training Administration

Disaster Unemployment Assistance (DUA) Handbook Program Operating Forms

1205–0051; ETA 81, 81A, 83, 84

Form #	Respondents	Frequency	Average time per response
ETA 81	11,000	One-time	20 minutes.
ETA 81A	3,800	One-time	15 minutes.
ETA 82	11,000	One-time	15 minutes.
ETA 83	11,000	Varies *	15 minutes.
ETA 84	235	One-time	30 minutes.

2,483 total hours.

*Approximately six times per year.

Public Law 100–707 (sections 410 and 423) provides for benefit assistance to "any individual unemployed as a result of a major disaster." The forms in Chapter III to VII of the DUA Handbook are used by State agencies in connection with the provisions of the benefit assistance, unemployment, compensation claims, and financial management for this program.

Extension

Employment and Training Administration

Petition for Adjustment Assistance/Solicitud De Asistencia Para Adjuste

1205–0192; ETA 8560, 8559 (Spanish)

Individuals or households; Businesses or other for-profit; Small businesses or organizations

On occasion

1,400 respondents; 15 minutes per response; 350 total hours;

1 form

Petition used by American workers applying to the U.S. Department of Labor for eligibility to receive worker trade adjustment assistance in accordance with provisions of the Trade Act of 1974, as amended. The petition initiates action on the part of the Department to determine if workers are eligible.

Extension

Mine Safety and Health Administration

Underground Retorts (30 CFR 57.22401)

1219–0096

On occasion

Businesses or other for-profit; Small businesses or organizations

1 respondent; 160 hours per response; 160 total hours

Prior to ignition of underground retorts, mine operators must submit a written plan containing site-specific safeguards and safety procedures for the underground areas of the mine affected by the retorts. MSHA uses this information to ensure that safe practices are followed and to determine that proper procedures and safeguards are used to protect the safety of all persons in the mine during ignition and operation of a retort.

Extension

Pension and Welfare Benefits Administration

Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974 (ERISA)

1210–0039

Other (5 or 10 year cycle depending on whether a plan is amended in initial 5 years)

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

141,000 responses; 31 hours per response; 4,371,000 total hours

As required by ERISA, this regulation provides plan administrators with the procedures and guidelines necessary to furnish the Department of Labor, plan participants and beneficiaries with Summary Plan Descriptions that clearly explain participants' and beneficiaries' rights and obligations.

Extension

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act (ERISA) Exemption Procedures 75–1, Exemption Procedure Under Section 408(a) of ERISA

1210–0060

On occasion

Businesses or other for-profit; Non-profit institutions; Small businesses or organization

320 respondents; 25 hours per response; 8,000 total hours

The ERISA Exemption Procedures 75–1 provides guidance to affected public regarding the procedures to be followed and the information to be supplied to the Department for prohibited transaction exemption requests filed before September 10, 1990.

Signed at Washington, DC, this 12th day of July 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–16931 Filed 7–15–93; 8:45 am]

BILLING CODE 4510–30–P

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his/her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Sunday, November 14, 1993. The groups or fields represented are as follows: employee organizations, corporate trust, investment management, employers (multiemployer plans), and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perking Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before September 17, 1993. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC this 12th day of July, 1992.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 93–16891 Filed 7–15–93; 8:45 am]

BILLING CODE 4510–29–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled

"General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division; Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume I

Wage Decision No. AL930015

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Marvland
MD930039 (July 16, 1993)
MD930040 (July 16, 1993)
MD930041 (July 16, 1993)
Tennessee
TN930042 (July 16, 1993)
TN930043 (July 16, 1993)
TN930044 (July 16, 1993)

Volume II

Kansas
KS930026 (July 16, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maryland
MD930001 (Feb. 19, 1993)
MD930006 (Feb. 19, 1993)
MD930013 (Feb. 19, 1993)
MD930037 (Feb. 19, 1993)
New Jersey
NJ930002 (Feb. 19, 1993)
NJ930003 (Feb. 19, 1993)
NJ930004 (Feb. 19, 1993)
New York
NY930002 (Feb. 19, 1993)
NY930003 (Feb. 19, 1993)
NY930006 (Feb. 19, 1993)
Tennessee
TN930003 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)
WV930003 (Feb. 19, 1993)

Volume II

Arkansas
AR930001 (Feb. 19, 1993)
Illinois
IL930001 (Feb. 19, 1993)
IL930002 (Feb. 19, 1993)
IL930004 (Feb. 19, 1993)
IL930005 (Feb. 19, 1993)
IL930006 (Feb. 19, 1993)
IL930008 (Feb. 19, 1993)
IL930009 (Feb. 19, 1993)
IL930011 (Feb. 19, 1993)
IL930013 (Feb. 19, 1993)
IL930014 (Feb. 19, 1993)
IL930015 (Feb. 19, 1993)
IL930016 (Feb. 19, 1993)
IL930017 (Feb. 19, 1993)
Kansas
KS930011 (Feb. 19, 1993)
KS930020 (Feb. 19, 1993)
Minnesota
MN930007 (Feb. 19, 1993)
MN930008 (Feb. 19, 1993)
MN930012 (Feb. 19, 1993)
MN930015 (Feb. 19, 1993)
Missouri
MO930001 (Feb. 19, 1993)
MO930006 (Feb. 19, 1993)
MO930011 (Feb. 19, 1993)
MO930013 (Feb. 19, 1993)
MO930015 (Feb. 19, 1993)
Oklahoma
OK930013 (Feb. 19, 1993)
Texas
TX930014 (Feb. 19, 1993)
Wisconsin
WI930005 (Feb. 19, 1993)
WI930008 (Feb. 19, 1993)
WI930010 (Feb. 19, 1993)

Volume III

Arizona
AZ930001 (Feb. 19, 1993)
Idaho
ID930001 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 9th day of July 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–16733 Filed 7–15–93; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 26, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 26, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of June, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ABB Power T&D Co., Inc. (IBEW)	Bloomington, IN	06/28/93	06/17/93	28,808	Capacitors.
AT&T Operator Services (wkrs)	Shreveport, LA	06/28/93	06/15/93	28,809	Telephone Operator Services.
Hubbell-Bell, Inc. (IBEW)	Fogelsville, PA	06/28/93	06/15/93	28,810	Weatherproof Electrical Covers.
Geological Consulting Services (wkrs).	Houston, TX	06/28/93	06/15/93	28,811	Oil Exploration Maps Etc.
Wilkes-Barre Apparel (ILGWU)	Wilkes Barre, PA	06/28/93	06/17/93	28,812	Ladies' Dresses.
Tejas Resources, Inc. (co)	Terrell, TX	06/28/93	06/16/93	28,813	Lead.
Spot-Bilt, Inc. (wkrs)	Bangor, ME	06/28/93	06/28/93	28,814	Athletic shoes.
Sier Bath Deck Gear Co. (wkrs)	North Bergen, NJ	06/28/93	06/13/93	28,815	Gears and Couplings.
Quality Assurance Systems, Inc. (wkrs).	Houston, TX	06/28/93	03/08/93	28,816	Oilfield Tubulars.
Powell Electrical Mfg Co. (PEMCO) (wkrs).	Houston, TX	06/28/93	06/13/93	28,817	Electrical Switching Equipment.
Phoenix Steel Inc. (USWA)	Eau Claire, WI	06/28/93	06/17/93	28,818	Steel for Bridge Mfg.
Philips Lighting (IBEW)	Richmond, KY	06/28/93	06/09/93	28,819	Automotive Lamps.
Mine Safety Appliance (wkrs)	Esmond, RI	06/28/93	06/14/93	28,820	Gas Masks.
Lockhead Fort Worth Co. (wkrs)	Ft. Worth, TX	06/28/93	06/11/93	28,821	Wire Harnesses for Aircraft.
Leslie Fay, Inc. (wkrs)	Laflin, PA	06/28/93	06/16/93	28,822	Ladies Dresses.
Kesu Systems & Service (wkrs)	Midland, TX	06/28/93	06/18/93	28,823	Semiconductor Testing.
Forster Mfg, Inc. (co)	Mattawamkeag, ME.	06/28/93	06/11/93	28,824	Wooden Clothespins, Skewers.
Edel-Brown Co., Inc. (wkrs)	Everett, MA	06/28/93	06/14/93	28,825	Aircraft Engine Parts.
Eagle Knitting Mills (ACTWU)	Waupun, WI	06/28/93	06/17/93	28,826	Ladies' and Children's Sportswear.
The Carborundum Co. (wkrs)	Falconer, NY	06/28/93	06/15/93	28,827	Ceramic Refractories.
Buffalo Forge Company (USWA)	Buffalo, NY	06/28/93	06/09/93	28,828	Centrifugal Fans and Blowers.
Allied Signal (co)	St. Joseph, MI	06/28/93	06/17/93	28,829	Vehicle Brake Parts.
Winters Industries (IAM)	Canton, OH	06/28/93	06/17/93	28,830	Automobile Aluminum Manifolds.
Winters Industries (IAM)	Alliance, OH	06/28/93	06/17/93	28,831	Automobile Aluminum Manifolds.
Chuska Energy Co. (wkrs)	San Antonio, TX	06/28/93	06/10/93	28,832	Oil and Gas.
Chuska Energy Co. (wkrs)	Walnut Creek, CA	06/28/93	06/10/93	28,833	Oil and Gas.
Harken Energy Corp. (wkrs)	Grand Prairie, TX	06/28/93	06/10/93	28,834	Oil and Gas Exploration, Production.
Jockey International (ACTWU)	Kenosha, WI	06/28/93	06/17/93	28,835	Sportswear.
C.A. Reed, Inc. (co)	Williamsport, PA	06/28/93	06/17/93	28,836	Paper Party Goods.

[FR Doc. 93–16934 Filed 7–15–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,112]]

Crucible Specialty Metals Corp., Syracuse, NY; Negative Determination on Remand

By order dated March 19, 1993, the United States Court of International Trade (USCIT) *United Steelworkers of America, and its Locals 1277, 2716 and 2924* v. *Secretary of Labor* (USCIT 92–09–00644) remanded this case to the Department for further investigation.

Plaintiffs claim that (1) the Department's survey was inadequate since it did not include the remaining 30 percent of Crucible Specialty Metals' sales and (2) customer purchases of specialty steel from other domestic firms may have included imported steel. Plaintiffs requested that the customer survey data for specialty steel be disaggregated into a finer definition.

The "contributed importantly" test of the increased import criterion of the Worker Group Eligibility Requirements of the Trade Act is generally demonstrated through a survey of the workers' firm's customers. In order to demonstrate the "contributed importantly" test the Department need not conduct a complete census of all Crucible's customers for the relevant periods but survey customers accounting for a substantial portion of the workers' firm's sales. In the initial investigation, the Department's survey accounted for 65 percent of Crucible's sales for 1991 which the Department believes is ample to make the test.

Plaintiffs also contend that Crucible's customers may have purchased imported stainless steel from other domestic firms who imported stainless steel and relabeled it as domestic. The Department's survey was redesigned to take these indirect imports into account.

Concerning the disaggregation of specialty steel into a finer definition, the Department obtained sales data from the company for stainless steel rods, stainless steel bars, stainless steel wire and tool steel.

Investigation findings on reconsideration show that Crucible's major products in sales for 1991 were stainless steel bar (59 percent) and tool steel (40 percent). Stainless steel rod and wire accounted for less than one percent of total sales for 1991.

The Department's survey of Crucible's major customers accounted for 95

percent of all Crucible's sales in the relevant time periods. The survey showed that most customers did not import or purchase foreign steel from a domestic firm. Only two of the products produced by Crucible had any degree of imports—tool steel and stainless steel bar.

The survey findings showed that one customer purchased all of Crucible's tool steel during the periods relevant to the investigation and that customer did not have increased purchases of imported tool steel while reducing its purchases from Crucible.

With respect to purchases of stainless steel bar in the 1990–1991 period, the survey showed that one customer had a slight increase of imports while reducing its purchases from Crucible. However, this small increase in imports accounted for about two percent of the customer's decline in purchases of stainless steel bar from Crucible and the amount was negligible when comparing it to Crucible Specialty Metals total sales of stainless bar for the same period.

The survey findings for stainless steel bar in the first quarter of 1992 compared to the same period in 1991 show that another customer had a very small increase of imports while reducing its purchases of bar from Crucible Specialty Metals. However, the increase of imported stainless steel bar accounted for less than one percent of Crucible Specialty Metals' sales decline of stainless steel to that customer for the same period.

Other survey findings show that reduced purchases from Crucible were the result of factors unrelated to increased imports.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Crucible Specialty Metals Corporation in Syracuse, New York.

Signed at Washington, DC, this 2nd day of July 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–16933 Filed 7–15–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,877]

General Electric Company Aerospace Electronic Systems a/k/a Martin Marietta, Utica, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 4, 1992, applicable to the workers at General Electric Aerospace Electronic Systems in Utica, New York. The certification notice was published in the **Federal Register** on December 30, 1992 (57 FR 62389).

At the request of the New York State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Martin Marietta purchased the Aerospace Electronics Systems from General Electric in March, 1993 and is a successor-in-interest firm. The same product is being produced at Martin Marietta with the same workforce as employed earlier by General Electric. Martin Marietta is experiencing worker separations in 1993.

Accordingly, the Department is amending the certification to show the correct worker group.

The intent of the Department's certification is to include all workers of the Aerospace Electronic Systems Division of General Electric Company and Martin Marietta in Utica, New York who were adversely affected by increased imports of printed circuit boards.

The amended notice applicable to TA–W–27,877 is hereby issued as follows:

All workers of General Electric Company, Aerospace Electronic Systems also known as Martin Marietta Aerospace Electronic Systems in Utica, New York who were engaged in the production of printed circuit boards and who became totally or partially separated from employment on or after October 26, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–16932 Filed 7–15–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sudivision have decreased absolutely, and

(3) That increases of imports or articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,630; PS Industries, Inc/Jeri Jr. Co., Inc & Affiliates, Wilkes Barre, PA

TA–W–28,611; Columbia Falls Aluminum Co., Columbia Falls, MT

TA–W–28,637; NASCO Sportswear, Gallitzin, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–28,652; Astronautics Corp of America, Hurley, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,492; Crestar Food Products, Inc., Nashville, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,645; Chevron Services Co., Administration, San Francisco, CA

TA–W–28,646; Chevron Services Co., Products, Concord, CA

TA–W–28,647; Chevron Services Co., Purchasing, San Ramon, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,648; Chevron Services Co., Staff, Port Arthur, TX

TA-W-28,649; Chevron Services Co., Finance, Houston, TX
TA-W-28,650; Chevron Corporation Administration, San Francisco, CA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-28,494; The Ben Hogan Co., Fort Worth TX

A certification was issued covering all workers engaged in the production of steel golf club heads separated on or after March 15, 1992.

TA-W-28,596; Lettsworth Oilfield Services, Baton Rouge, LA

A certification was issued covering all workers engaged in the production of exploration and drilling for crude oil and natural gas separated on or after April 19, 1992.

I hereby certify that the aforementioned determinations were issued during the month of June 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 10210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 8, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-16929 Filed 7-15-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,562]

Rogue Valley Printed Circuits, Inc., Medford, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Rogue Valley Printed Circuits, Incorporated, Medford, Oregon. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-28,562; Rogue Valley Printed Circuits, Incorporated
Medford, Oregon (July 6, 1993)

Signed at Washington, DC this 8th day of July, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93-16930 Filed 7-15-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-060]

NASA Advisory Council; Aerospace Medicine Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATES: July 21, 1993, 8:30 a.m. to 5:30 p.m.

ADDRESSES: Capitol Park Suites, Conference Center, 800 Fourth Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Dr. Donald F. Stewart Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-2219.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Wednesday, July 21, 1993, from 2 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 552b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of the Office of Life and Microgravity Sciences and Applications
—Overview of the Space Station Redesign Process
—NASA Life Sciences Budget Update
—Discussion regarding the Final Report of the Vest Committee to the President.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 13, 1993.

Elmer T. Brooks,

Deputy Associate Administrator for Management Systems and Facilities (Agency Programs).

[FR Doc. 93-16942 Filed 7-15-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION TO ENSURE A STRONG COMPETITIVE AIRLINE INDUSTRY

Policy Statement

AGENCY: National Commission to Ensure a Strong Competitive Airline Industry.

ACTION: Policy statement.

SUMMARY: This policy statement establishes the final date of July 23, 1993 for accepting comments from parties interested in the commission's activities. This date is set to provide the commission time to review and consider all relevant comments before writing the final draft of the report to the president.

DATES: Deadline for comments is July 23, 1993.

ADDRESSES: Comments may be submitted to Margretta Kennedy, National Commission To Ensure a Strong Competitive Airline Industry, 633 Indiana Avenue, NW., Suite 400, Washington, DC, 20531.

FOR FURTHER INFORMATION CONTACT: Margretta Kennedy at 202-504-2001.

Gerald L. Baliles,

Chairman.

[FR Doc. 93-17047 Filed 7-14-93; 12:06 pm]

BILLING CODE 4810-43-M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Public Meeting

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on July 23, 1993, in Washington, DC. The first session of the meeting will convene at 9 a.m. and adjourn at approximately 12:30 p.m., and the second session of the meeting will convene at 1:30 p.m. and adjourn at approximately 5 p.m. Both sessions of the meeting will be held in room 2237 of the Rayburn House Office Building at Independence Avenue and South Capitol Street, SE.

AUTHORITY: This public meeting will be the twelfth one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States and the Conference of State Chief Justices. The National Commission, established

by Public Law 101–650 (Title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges.

The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions which it believes to be appropriate. The due date for the Commission's final report is August 1, 1993.

The Commission is not authorized to consider specific complaints against Federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, a good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: Both sessions of the meeting will be open to the public. A portion of either session of the meeting may be held in executive session to consider administrative matters involving privacy interests.

MATTERS TO BE CONSIDERED: This meeting will be the fifth in a series of Commission sessions designed to consider proposed recommendations for legislative or administrative action which may be incorporated into the Commission's final report.

CONTACT PERSONS FOR FURTHER INFORMATION:

Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave., NW., Washington, DC 20037–3202; or call (202) 254–8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

William J. Weller,

Deputy Director.

[FR Doc. 93–16869 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–08–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 16, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1993. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

Three abnormal occurrences involving medical therapy misadministrations at NRC-licensed facilities are discussed in this report and one abnormal occurrence at a nuclear power plant. There are no reports by NRC's Agreement States. The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 16, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 9th day of July 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–16888 Filed 7–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529, and 50–530]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated May 12, 1993, as supplemented May 28, 1993, Thomas J. Saporito, Jr., has requested that the U.S. Nuclear Regulatory Commission (NRC) (1) institute a proceeding pursuant to 10 CFR 2.202 to modify, suspend, or revoke the Palo Verde Nuclear Generating Station operating licenses; (2) initiate actions to immediately shut down the three nuclear reactors at Palo Verde; (3) take escalated enforcement action against the licensee and/or licensee management personnel; (4) take immediate actions to cause an exhaustive survey of licensee employees at the Palo Verde nuclear station to ascertain the scope and breadth of any chilling effect that may exist at the nuclear station and to discover if licensee management actions, if any, were effective in limiting any chilling effect at the nuclear station.

As basis for this relief, the Petitioner asserts that the licensee has violated 10 CFR 50.7, "Employee Protection"; points to the U.S. Department of Labor Recommended Decision and Order of May 10, 1993, finding for Thomas J. Saporito, Jr.; asserts questionable statements by licensee management personnel to the NRC concerning safety systems; alleges the licensee's reputation of leading the nation in whistleblower complaints; points to the Department of Labor discrimination cases involving licensee employees Linda E. Mitchell and Sarah C. Thomas and the resulting issuance by the NRC of a Notice of Violation and Proposed Imposition of Civil Penalties on September 20, 1992, in the amount of $130,000 against the licensee; and asserts continuing discrimination by the licensee against the Petitioner in denying him employment at the Palo Verde Nuclear Generating Station.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Nuclear Reactor Regulation. By letter dated July 9, 1993, the Petitioner's request that the Commission take immediate action has been denied. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room in the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland this 9th day of July 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley, Director,

Office of Nuclear Reactor Regulation.

[FR Doc. 93–16889 Filed 7–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co., South Texas Project, Units 1 and 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition received on May 5, 1993, Mr. Thomas J. Saporito, Jr., requested that the Nuclear Regulatory Commission institute a proceeding pursuant to 10 CFR 2.202 with regard to Houston Lighting & Power Company (licensee), operator of the South Texas Project Electric Generating Station (STP). The Petitioner requests that the NRC (1) institute a show cause proceeding to modify, suspend, or revoke the licensee's NRC licenses authorizing operation of STP; (2) immediately shut down the two reactor cores at STP; and (3) issue civil penalties against the licensee and/or licensee personnel at STP. The Petitioner asserts as bases for these requests that there is no "reasonable assurance" of safe operation of STP because the NRC has referred four cases of discrimination against whistleblowers to the U.S. Department of Justice and is seeking indictments against licensee officials for retaliation; the licensee's actions against workers have instilled a "chilling effect" at STP; the licensee's physical plant nuclear security program is of questionable effectiveness; the NRC Inspector General found that the process used to justify the terminations of three former STP employees was prejudicial to them, and NRC investigators found that management was aware that these workers had made allegations to "Speak Out" and/or NRC officials; licensee officials may be held liable for allegedly misleading the NRC about certain security-related matters; the licensee's failure to reduce a huge maintenance backlog has led to repeated human errors and equipment failures; the licensee maintains an autocratic, vindictive management team at STP, which has further instilled a chilling effect; the licensee has 12 Department of Labor discrimination cases pending regarding alleged retaliatory actions taken at STP; the NRC cannot rely on the licensee to be truthful or candid; a former security supervisor at STP has stated that "nobody wanted to hear that there were any problems"; the NRC Chairman has stated that the NRC has become much more aggressive in pursuit of utilities that retaliate against whistleblowers; the NRC Director of Investigations has said he has no qualms about referring a case of alleged utility wrongdoing to the Department of Justice; the NRC is currently investigating allegations that the licensee has used surveillance devices to spy on employees, and possibly NRC resident inspectors, at STP; and, on March 30, 1993, a license executive was involved in an incident that appears to be a form of intimidation.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director, Office of Nuclear Regulation. By letter dated July 8, 1993, the Petitioner's request that the Commission take immediate action has been denied. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of this Petition is available for inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of July 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16845 Filed 7–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 070–00903 License No. SNM–871 (Terminated on July 14, 1975)]

Confirmatory Order for Remediation of the Pawling, NY Site (Effective Immediately)

In the matter of Chevron U.S.A., Inc., San Francisco, CA 94105 and National Park Service, U.S. Department of the Interior, Harpers Ferry, WV 25425, Pawling Site (including Nuclear Lake near Pawling, New York) Decontamination

I

Chevron U.S.A., Inc. (Chevron), is the successor in interest to the former holder of Special Nuclear Materials License No. SNM–871 (License) originally issued to Nuclear Development Associates (NDA) in 1958 pursuant to 10 CFR parts 50 and 70. The original site owner was also NDA which, after a few years, became United Nuclear Corporation (UNC). After a series of transfers, distribution of assets, renaming and other changes, Chevron is identified as the successor in interest to the last licensee, General Atomic Company. The site itself was sold in 1979 by Harpoon, Inc. (100% owned by UNC) to the United States for use by the National Park Service (NPS) as part of the Appalachian National Scenic Trail system. The NPS is in possession of the site.

II

Licensed nuclear fuels research and development were conducted at the site beginning in 1958. Facilities included laboratories for fabrication and testing of uranium, thorium and plutonium fuels, a hot cell, three research reactors (Docket Nos. 050–0023, 050–00101, and 050–00290), and a sodium test loop. The 1137-acre site is located in a wooded, rural area (near Pawling in Dutchess County, New York, about equidistant between Poughkeepsie, New York, and Danbury, Connecticut), and includes a 50-acre lake ("Nuclear Lake") with a dam, hereinafter referred to as the "Pawling Site".

The licenses were transferred in 1971 to a jointly owned corporation formed by Gulf Oil Corporation and UNC, known as Gulf United Nuclear Fuels Corporation (GUNFC). UNC retained ownership of the site and also was a co-licensee with GUNFC for the remaining two reactors, Docket Nos. 050–00101 and 050–00290. (One reactor license, Docket No. 050–0023, had been terminated and replaced with a new license in June 1961.) Activities at the site were never resumed after December 1972, when a glove box explosion in the plutonium laboratory building resulted in substantial contamination. License renewal was still being actively pursued by GUNFC, however, as late as mid-1973.

As of September 27, 1973, GUNFC became a wholly-owned subsidiary of Gulf Oil and was subsequently renamed Gulf Nuclear Fuel Corporation (GNFC). UNC had no further responsibility to the NRC at this point since GNFC continued as the licensee to be responsible for all

matters of NRC regulatory compliance, i.e., UNC was no longer a licensee, either as a partner or as an owner. UNC continued to own the site and buildings which were leased to GNFC, and later sold to the United States.

On November 19, 1973, the General Atomic Company (GAC), a 50–50 general partnership of Gulf Oil and Scallop Nuclear, Inc. (a subsidiary of Royal Dutch Shell) applied to the U.S. Atomic Energy Commission (AEC) for consent to acquire all the interests of GNFC in a number of licenses, including both the Pawling, NY reactor licenses (R–49 and CX–25) and the special nuclear material license (SNM–871). Consent to the transfer was provided by letter from the AEC to GAC on December 14, 1973 with the understanding that GAC, as the licensee, would assume all the "rights, duties, responsibilities, liabilities, and obligations of the Gulf Oil Corporation."

Upon completion of decommissioning and survey work, GNFC sent a letter and survey report to the AEC dated March 11, 1974 requesting that Pawling, NY be deleted from SNM–871. According to the AEC inspection report dated April 24, 1974, decommissioning of all of the buildings on site had been performed to achieve radioactivity levels specified as acceptable for unrestricted use.

A letter from GNFC to the AEC, dated May 9, 1974, requested that the licensee name be changed to GAC. The letter stated that GNFC would become part of GAC retroactive to January 1, 1974. By letter dated May 23, 1974, License No. SNM–871 was amended to specify GAC as the licensee. Also, on July 19, 1974, a renewed Licensee No. SNM–871 was issued to GAC.

The AEC conducted a closeout survey and inspection of the site during April 1974 (inspection report 70–903/74–01). Following further removal of plutonium-contaminated soil from the Pawling, NY site, License No. SNM–871 was terminated on July 14, 1975. The remaining reactor licenses (Docket Nos. 050–00101 and 050–00290) had been terminated in June 1974.

Subsequently, there was a partial distribution of the assets of GAC to the partners (under which GA Technologies, Inc., wholly-owned by Gulf Oil Corporation, undertook all the NRC licenses of GAC) and GAC was renamed as Valley Pines Associates (VPA) as of November 30, 1982. VPA continued to be owned by Gulf Oil Corporation and Scallop Nuclear, Inc. The names of the partners owning VPA have changed and VPA is now owned by Chevron U.S.A. Inc. (a wholly-owned subsidiary of Chevron Corporation and formerly Gulf Oil Corporation) and Shell Oil Company.

III

On February 23, 1984 Nuclear Energy Services (NES), Inc. of Danbury, Connecticut, conducted a radiological survey of the Pawling site for the site owner, the NPS. During the course of that survey, it was discovered that a small area of the concrete floor, in what was the waste storage building, had fixed beta-gamma radiation levels of 25 to 35 mrem/hr. The NPS notified NRC Region I of this condition by letter dated March 12, 1984. A verification survey was conducted by the NRC on May 22, 1984 in reaction to the above radiation levels. Most of this contamination was removed from the area during sampling on February 25 and 26, 1985 (Report No. 70–903/85–01).

Oak Ridge Associated Universities (ORAU) conducted a radiological survey for the NPS September 18 through 23, 1986. With several exceptions, exposure rates throughout the Pawling Site were in the range of background; however, no site conditions, in ORAU's opinion constitute a hazard to personnel and the environment.The ORAU survey report, issued in July 1988, identified limited areas of residual contamination in what had been the plutonium laboratory and the multiple failure building. ORAU reported the external exposure rate to be 30 microR/hr at a height of 1 meter at the location of peak beta-gamma contamination. Current guidelines stated exposure rates may not exceed background (found to range from 9–11 micro R/hr) by more than 5 micro R/hr.

ORAU found surface plutonium–239/240 (Pu-239/240) contamination in soil in isolated locations outside the buildings ranging up to 91 pCi/g (3.37E–6MBq/g) as compared to a current guideline of 25 pCi/g (9.25E–7MBq/g), and subsurface Cs-137 contamination at two other locations ranging from about 20 to 48 pCi/g (7.4E–7 to 1.78E–6MBq/g) as compared to a current guideline of 15 pCi/g (5.55E–7MBq/g). A sample of sludge from the former plutonium laboratory septic tank had 0.41 pCi/g (1.52E–8MBq/g) of plutonium-238 (Pu-238), 5.95 pCi/g (2.2E–7MBq/g) of Pu-239/240, and 0.71 pCi/g (2.63E–8MBq/g) of Cs-137. A single soil sample from under a downspout at the former shield mock-up building had 15.5 pCi/g (5.74E–7MBq/g) of Cs-137.

Magnetometry and ground-penetrating radar showed 50 to 60 magnetic "anomalies" and "targets" within Nuclear Lake. Subsequent investigation by scuba divers has confirmed that the "anomalies" and "targets" consist of a jeep, an aluminum boat, and natural matter such as rocks and tree stumps not contaminated with radioactive materials. Sediment samples from Nuclear Lake indicate Cs-137 concentrations of up to 9.9 pCi/g and uranium-238 (U–238) concentrations of up to 16.5 pCi/g. The peak Cs-137 concentration occurs near the location of the previous liquid waste discharge point. Water and sediment concentrations downstream from the dam are within the range of background or slightly above. The above findings indicate no further action is required relating to Nuclear Lake.

Chevron and NPS have agreed to remediate the site and to remove the residual radioactive contamination according to a letter Agreement in Principle, dated September 18, 1992, attached hereto and incorporated by reference, a Health & Safety Plan and a Work Plan for remediation of some of the contaminated soil submitted to the NRC by Chevron by letter of December 1, 1992, attached hereto and incorporated by reference, a Cooperative Agreement between Chevron and NPS, dated April 14, 1993 and attached hereto and incorporated by reference (see attachments 1, 2, and 3). The partial remediation plan in the Work Plan has been received and the remediation program described therein has been approved by the NRC staff. A building remediation work plan and a final release survey plan have been submitted for staff review. Comments were provided on April 20, 1993.

The Commission finds that the commitments as set forth in the referenced documents are acceptable and necessary and concludes that, with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health, safety, and interest require that the commitments by NPS and Chevron as set forth in the referenced documents be confirmed by this Order. NPS and Chevron have consented to the issuance of this Order and have voluntarily agreed to participate in remediation without admitting any fact, responsibility, fault or liability in connection with the Pawling site other than stated in this Order. Based on that consent and pursuant to 10 CFR 2.202(d), I have also determined that this Order shall be immediately effective.

IV

Accordingly, pursuant to sections 53, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR 2.202 and 10 CFR parts 30 and 70, *it is hereby ordered,* Effective

immediately, that Chevron and the NPS shall:

1. Within 60 days after approval by the NRC staff of the building decommissioning plan, commence remediation of the Pawling site in accordance with the approved plans for soil and building remediation.

2. Inform the Director, Office of Nuclear Materials Safety and Safeguards, NRC, at least 30 days prior to the estimated completion of the work described in section IV 1., of the date on which the site will be available for a confirmatory survey.

3. Cooperate with the NRC (or its contractor) in NRC's confirmatory survey.

4. Perform such additional remediation as is necessary based upon the confirmatory survey, to comply with the final decommissioning plans.

Upon completion of the confirmatory survey and a determination that the survey demonstrates that the Pawling site has been remediated in conformance with the commitments in the final decommissioning plans as required by section IV 1., the Pawling site will be suitable for and released for unrestricted use in accordance with Commission regulations. In no case will NRC require additional remediation by Chevron in excess of the monetary limit for Chevron in the agreements between Chevron and the NPS ($370,000), unless otherwise agreed to by Chevron and the NPS in accordance with the Cooperative Agreement of April 14, 1993. The NRC staff will provide to Chevron and NPS the confirmatory survey and determination of conformance with the commitments in the final decommissioning plans within 60 days after submission of the final survey report of the NRC. Neither party will be billed for the costs of conducting the confirmatory survey.

Further, in accordance with the Commission's Action Plan for remediation of sites, which applies to the Pawling site, the release for unrestricted use as authorized by the NRC staff will constitute the final action of the Commission with respect to the site.

In accordance with the Action Plan, after release for unrestricted use no further additional remediation of the Pawling site will be required of Chevron, its predecessor or successor companies, or the NPS on account of any new standard or criteria promulgated by the Commission, or for any other cause, except the future discovery of (1) noncompliance with the final decommissioning plans, (2) false information, or (3) with respect to the party in possession of the site, contamination that poses a significant threat to public health and safety.

V

Any person adversely affected by this Confirmatory Order, other than NPS or Chevron, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406, and to NPS, Appalachian National Scenic Trail, c/o Harpers Ferry Center, Harpers Ferry, WV 25425 and Chevron, 1003 W. Cutting Blvd, room 260, Richmond, CA 94804. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered to such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the requirements specified in Section IV about shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Date at Rockville, Maryland this 2nd day of July, 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 93–16887 Filed 7–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 82 to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee), for operation of the Callaway Plant located in Callaway County, Missouri. The amendment is effective as of the date of issuance.

The amendment revised Technical Specification Section 3/4.9.12, Figure 3.9–1 to reflect a maximum initial enrichment of 4.45 w/o U–235 for fuel storage in Region 2 of the Callaway spent fuel pool.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 22, 1992 (57 FR 43756). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 36482).

For further details with respect to this action, see (1) the application for amendment dated June 12, 1992, as clarified by letter dated August 31, 1992, (2) Amendment No. 82 to License No. NPF–30, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment dated June 29, 1993. All of these items are available for public inspection at the Commission's Public Document Room located in the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located in the Callaway Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 8th day of July 1993.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16844 Filed 7–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co. Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 180 to Facility Operating License No. DPR–32 and Amendment No. 180 to Facility Operating License No. DPR–37, issued to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. These amendments are effective as of the date of issuance.

The amendments modified the Technical Specifications to establish operating requirements for the recirculation mode transfer function (RMT) and include the following: (1) Limiting Conditions for Operation, Action Statements, and Surveillance Requirements for the RMT function, (2) deletion of refueling water storage tank maximum volume requirements and clarification of refueling water storage tank water temperature requirements, and (3) administrative changes to provide consistency throughout.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 10, 1992 (57 FR 58522). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 28423).

For further details with respect to the action see (1) the application for amendments dated August 7, 1992, (2) Amendment No. 180 to License No. DPR–32 and Amendment No. 180 to License No. DPR–37, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 9th day of July 1993.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16886 Filed 7–15–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32617; File No. SR–CBOE–93–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc., Amending Common Stock Listing and Maintenance Criteria

July 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 16, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rule relating to its listing and maintenance criteria for common stock. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to make two minor revisions to CBOE's common stock original listing and maintenance criteria in order to conform the text of CBOE's Rules more precisely with the text of the Memorandum of Understanding dated May 1991, between CBOE and the North American Securities Administrators Association, Inc. (the "MOU").[1] The first such revision is to add a new subsection (iii) to rule 31.81 that would require shareholder approval of an issuance of common stock resulting in a change of control, thereby conforming the Rule to the requirements of section II(H)(2) of the MOU.[2]

Second, the proposed change to Rule 31.94(C)(b)(i) corrects a drafting error in CBOE's maintenance criteria for common stock issues by clarifying that such an issue must meet all not just any of the criteria set forth in Rule 31.94(C)(b)(i)(A) through Rule 31.94(C)(b)(i)(C) in order to continue to be listed on CBOE.

The proposed rule change is consistent with section 6 of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by imposing appropriate original listing and maintenance criteria applicable to listed companies on CBOE.

[1] See Securities Exchange Act Release No. 29748 (September 27, 1991), 56 FR 50404 (October 4, 1991) (File No. SR–CBOE–91–30) (immediate effectiveness of MOU between CBOE and North American Securities Administrators Association, Inc.).

[2] Section 11(H)(2) of the MOU provides that each issuer shall require shareholder approval of certain transactions, prior to the issuance of specified securities, when the issuance will result in a change of control of the issuer.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–11 and should be submitted by August 6 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16851 Filed 7–15–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–043]

Oil Pollution Response Training Workshop; Availability of Draft, Voluntary Training Guidelines

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard will conduct a workshop to solicit comments from the public on its draft voluntary training guidelines and to serve as an open forum for discussion of oil pollution response training for personnel involved in operations at deepwater ports, marine transportation-related facilities, and vessel owners or operators. Members of Federal, State, and local agencies, and the public are invited to participate and provide oral or written comment. This notice provides information on how to obtain a copy of the draft training guidelines and announces the date, time, location, and procedures of the workshop.

DATES: The workshop is scheduled for August 27, 1993, in Arlington, Virginia. Individuals interested in making a presentation at the workshop should contact the Coast Guard, as further explained in **SUPPLEMENTARY INFORMATION,** at least 10 days prior to the workshop. Written comments should be submitted by September 1, 1993.

ADDRESSES: To obtain a copy of the draft voluntary guidelines for oil pollution response training, write to COMMANDANT (G–MEP–4), room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, ATTN: LCDR Thomas Tansey. Written comments may be either mailed to the above address or delivered to the moderator at the workshop. The workshop will be held from 9 a.m. to 4 p.m. at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: LCDR Thomas Tansey, Office of Marine Safety, Security and Environmental Protection (G–MEP–4), (202) 267–0746.

SUPPLEMENTARY INFORMATION:

Background Information

The Clean Water Act (33 U.S.C. 1321 *et seq.*), as amended by the Oil Pollution Act of 1990 (Pub. L. 101–380), requires tank vessel and facility response plans to describe the oil pollution response training to be received by persons on a vessel or at a facility. The Coast guard, under the authority delegated by the President of the United States and the Secretary of Transportation, is required to review and approve deepwater port, vessel, and marine transportation-related facility oil spill response plans. These plans are intended to prepare the owner of a vessel or facility to respond to an oil spill.

The Coast Guard published interim final rules to amend 33 CFR parts 150, 154 and 155 on February 5, 1993, (58 FR 7330, 7376) to require vessel and facility response plans to identify the training to be provided to each individual with responsibilities under these plans. Vessel and facility owners or operators also must ensure that all private response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

The Coast guard does not intend to develop specific training requirements for individual vessel and facility training programs. The Coast Guard intends to grant the vessel and facility owners maximum flexibility in choosing the training appropriate for their specific vessel and facility needs. The Coast Guard does intend to consider the effectiveness of training programs as one element of the National Pollution Response Exercise Program.

The Coast Guard has developed draft, voluntary guidelines for oil pollution response training. The Coast Guard will conduct a workshop to solicit comments from the public on the draft voluntary guidelines for oil pollution response training and to serve as an open forum for discussion of national oil pollution response training for personnel involved in operations at deepwater ports, marine transportation-related facilities, and vessel owners or operators. Members of other Federal, State, and local agencies and the public are invited to participate and provide oral or written comment. The voluntary guidelines list training objectives in the form of a job task analysis.

The guidelines can be used as a framework from which detailed lesson plans can be produced. The Coast Guard is not intending to produce or provide detailed lesson plans. The voluntary guidelines may be used by any of the

parties affected by the Oil Pollution Act of 1990 training requirements, including the Coast Guard, in developing their own internal training programs or to assess the applicability of commercially available training sources. They will also serve as a tool for the training community to adapt its curricula to better meet the needs of the maritime community.

It is the Coast Guard's intent to publish the voluntary training guidelines in the form of a Navigation and Vessel Inspection Circular (NVIC) later this year. The NVIC will be made available to the maritime community and all members of the interested public. The Coast Guard does not intend, at this time, to establish specific training requirements.

Workshop Format

The workshop format will consist of presentations by a panel, followed by discussions and a question and answer period. Due to limited time, the Coast Guard will limit the number and duration of panel presentations. The Coast Guard will select panel members to make the presentations in a manner designed to ensure the broadest possible representation of viewpoints. The Coast Guard specifically solicits presentations representative of the following groups:

Federal government
State government
Maritime academies
Environmental organizations
Private training and consulting organizations
Spill removal organizations
Vessel owners and operators
Marine transportation-related facility organizations
Deepwater ports
Oil and hazardous substance handling facilities

Each discussion should be directed towards review of the draft training guidelines and suggestions for improvement. An individual wishing to participate as a panel member and give an oral presentation should submit his or her name, address, organization represented (if any), and provide a summation of the presentation at least 10 days prior to the workshop, to the address listed under **ADDRESSES**. Written comments may be submitted at any time prior to and after the workshop or submitted to the workshop moderator. All comments should be submitted prior to September 1, 1993. The workshops will be conducted in an informal manner. Any changes to the location or date of the scheduled workshop will be announced in the **Federal Register**. If the Coast Guard determines that it is appropriate, additional workshops may be scheduled.

Dated: July 8, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–16954 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on July 28, 1993, at 9 a.m. Arrange for oral presentations by July 21, 1993.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 28, 1993, at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Working Group Reports
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangement by July 21, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpreation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on July 8, 1993.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–16908 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In June 1993, there were 14 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.
Application Type: Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $20,831.051.
Earliest Permissible Charge Effective Date: June 1, 1992.
Duration of Authority to Impose: November 1, 2008.
Class of Air Carriers Not Required to Collect PFC's: Previously approved in March 6, 1992 decision.
Brief Description of Projects Approved to Use PFC Revenue: Runway extension 18L/36R, Aircraft rescue and firefighting (ARFF) vehicle, Terminal public area, Replace terminal boilers.
Decision Date: June 3, 1993.
FOR FURTHER INFORMATION CONTACT: Elton Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Austin, Austin, Texas.
Application Type: Impose and Use PFC Revenue.
PFC Level: $2.00.
Total Approved Net PFC Revenue: $6,189,300.

Earliest Permissible Charge Effective Date: November 1, 1993.
Duration of Authority To Impose: June 1, 1995.
Class of Air Carriers Not Required to Collect PFC's: (1) On-demand air taxi/commercial operators that do not enplane or deplane at the main passenger building and enplane fewer than 500 passengers per year at the airport; and (2) commuters or small certificated air carriers that do not enplane or deplane at the main passenger building and enplane fewer than 500 passengers per year at the airport.
Determination: Approved. The FAA has determined that each proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Projects Approved:
Concourse safety gates and restroom improvements,
Baggage claim and main terminal lighting improvements,
Overlay taxiways J and G, reconstruct taxiways G, H, and P,
Reconstruct intersection of taxiway H and runway 17/35,
Reconstruct taxiway E at cargo ramp,
Overlay taxiways O and E,
Terminal access road overlay,
Pavement evaluation of runway 13R/31L,
Rehabilitate runway 13R/31L,
Terminal apron asphalt rehabilitation,
Taxiways C, H, and L pavement evaluation and rehabilitation,
Lighting regulator design,
Ramp and road rehabilitation,
Wilshire Boulevard access,
Terminal building rehabilitation,
ARFF/FAA emergency alarm system,
Loading bridge rehabilitation,
Airfield sweeper,
Airfield pavement rehabilitation,
Terminal building roof,
Runways 13/31 and 17/35 and taxiways C and D lighting,
Terminal building improvements,
New airfield signs,
Passenger loading bridge replacements,
Terminal chiller modifications,
Terminal access landside revisions (design only),
Airport security improvements.
Brief Description of Project Approved-In-Part to Use PFC: ARFF facility requirements.
Determination: The ARFF facility emergency electric generator is eligible under AIP criteria and was approved. The FAA has determined that the remainder of the project, the ARFF training facility, is not PFC eligible. This project has been reviewed under Airport Improvement Program (AIP) criteria (paragraphs 301b and 500 of FAA Order 5100.38A), which permits projects to be reviewed on a case-by-case basis. The FAA is currently implementing a policy of funding only regional ARFF training facilities. A regional ARFF facility at the Dallas/Fort Worth International Airport, previously designated by the FAA's Southwest Region, is intended to serve the training needs of Robert Mueller Municipal Airport.
Brief Description of Projects Disapproved: Field maintenance equipment building.
Determination: Disapproved. The FAA has determined that this project does not meet the requirements of § 158.15(b); therefore, this project is not PFC eligible. Noise monitoring equipment.
Determination: Disapproved. This project has been reviewed and determined to not be supported by a plan as required under PFC criteria. Also, it has been determined that, due to the limited life of the facility, the project is not eligible under AIP criteria. Accordingly, the FAA has determined that this project does not meet the requirements of section 158.15(b). Therefore, this project is not PFC eligible.
Decision Date: June 4, 1993.
FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.
Public Agency: Clark County Department of Aviation, Las Vegas, Nevada.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $944,028,500.
Earliest Permissible Charge Effective Date: June 1, 1992.
Duration of Authority To Impose: September 1, 2014.
Class of Air Carriers Not Required To Collect PFC's : Air carriers filing FAA Form 1800–31and enplaning 2,500 annual passengers or less at McCarran International Airport.
Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Project Approved To Impose Only: Extend runway 7L/25R.
Brief Description of Project Approved To Impose And Use: National Environmental Policy Act Compliance for runway 7L/25R extension.
Brief Description of Projects Approved To Use PFC Revenue: Flood control,
Land acquisition: Topaz subdivision,
Land acquisition: LDN 70 enterprise,
Land acquisition: LDN 70 Pecos/Sunset.
Decision Date: June 7, 1993.
FOR FURTHER INFORMATION CONTACT: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.
Public Agency: Bishop International Airport Authority, Flint, Michigan.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $32,296,450.
Earliest Permissible Charge Effective Date: September 1, 1993.
Duration of Authority To Impose: September 1, 2030.
Class of Air Carriers Not Required To Collect PFC's: Air taxi and other nonscheduled part 135 carriers.
Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Projects Approved To Use PFC Revenue:
Terminal construction,
East air carrier apron,
Terminal access roadway, phases I and II,
Terminal security system,
Acquisitions in Bristol Road right-of-way.
Decision Date: June 11, 1993.
FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487–7300.
Public Agency: Board of Trustees, Natrona County International Airport, Casper, Wyoming.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $506,144.
Earliest Permissible Charge Effective Date: September 1, 1993.
Duration of Authority To Impose: October 1, 1996.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved To Impose Only:
Airport planning studies,
Land acquisition—runway protection zone,
Access road improvements,
Snow removal equipment,
Security access control system and taxiway signs,
Safety area grading runway 8/26.
Brief Description of Project Disapproved: Americans with Disabilities Act (ADA) compliance.
Determination: Disapproved. The FAA has determined that this project does not meet the requirements of

§ 158.15(a). Therefore, this project is not PFC eligible. The proposed terminal modifications are required under the ADA of 1990, not as part of otherwise eligible terminal reconstruction. In addition, the elevator serves administrative space and is not required to serve the public.

Decision Date: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Don O'Brien, Denver Airports District Office, (303) 286–5549.

Public Agency: County of Eagle, Eagle, Colorado.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $572,609.

Earliest Permissible Charge Effective Date: September 1, 1993.

Duration of Authority To Impose: April 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved To Impose and Use:

Planning studies,
Safety equipment and building,
Acquire land,
Expand air carrier apron,
Grade runway 25 safety area,
Install taxiway guidance signs.

Decision Date: June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 286–5525.

Public Agency: City of San Jose, San Jose, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved PFC Revenue: $16,245,000.

Estimated Charge Effective Date: August 1, 1995.

August 1, 1995, is the estimated charge effective date for this application and is based on the estimated charge expiration date of the application previously approved for collection on June 11, 1992.

Duration of Authority To Impose: May 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved To Impose And Use:

Runup area blast pad,
Taxiway 1 reconstruction—taxiway B to taxiway E,
Taxiway A reconstruction,
West general aviation parking reconstruction,
T-hangar relocation,
Taxiway 2 reconstruction,
Runway 30L reconstruction,
Runway 30R reconstruction,
Westside development,
Terminal A shuttle island modifications,
Taxiway 1 reconstruction—taxiway A to taxiway B,
Interactive training system,
Airport master plan update.

Brief Description of Projects Disapproved: Fuel farm remediation.

Determination: Disapproved. This project is not AIP eligible, and, therefore, not FFC eligible, paragraphs 301b, 596, and Appendix 2 of FAA Order 5100.38A, AIP Handbook. Terminal C asbestos abatement.

Determination: Disapproved. The description provided in the city of San Jose's application describes an asbestos removal stand-alone project which is not associated with any eligible terminal modifications. In addition, the area is not accessible to the public. Based on these findings, it has been determined that this project is not AIP or PFC eligible.

Automated vehicle identification system.

Determination: Disapproved. Based on an analysis of the description and justification contained in the city of San Jose's PFC application, the purpose of the proposed system is to meet airport operational needs. This project does not meet the requirements of § 158.15 and so is not PFC eligible. Earthquake emergency supplies.

Determination: Disapproved. This project does not meet the requirement of section 158.15 and so is not PFC eligible. Digital announcement system.

Determination: Disapproved. This project does not meet the requirements of section 158.15 and so is not PFC eligible.

Decision Date: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Dane County, Madison, Wisconsin.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $6,746,000.

Earliest Permissible Charge Effective Date: September 1, 1993.

Duration of Authority To Impose: March 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: On-demand Part 135 air taxi operators operating aircraft with less than 15 seats at Dane County Regional Airport.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved To Impose And Use: Terminal Building expansion.

Brief Description of Projects Approved To Impose Only:

Terminal roadway construction,
Construct runway 3/21,
West air carrier ramp expansion,
Pavement rehabilitation.

Decision Date: June 22, 1993.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: Campbell County Airport Board, Gillette, Wyoming.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $331,540.

Earliest Permissible Charge Effective Date: September 1, 1993.

Duration of Authority to Impose: September 1, 1999.

Classes of Air Carriers Not Required To Collect PFC's: (1) Air ambulance operators; (2) Part 135 on-demand air taxi operators; and (3) Part 121 nonscheduled operators.

Determination: Approved. The FAA has determined that each proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved To Impose Only:

Terminal building,
Airport layout plan update,
Mandatory airport signs,
Install taxiway lighting system,
Acquire snow removal equipment.

Decision Date: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Don O'Brien, Denver Airports District Office, (303) 286–5549.

Public Agency: Indianapolis Airport Authority, Indianapolis, Indiana.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $117,344,750.

Earliest Permissible Charge Effective Date: September 1, 1993.

Duration Of Authority To Impose: July 1, 2005.

Class Of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description Of Projects Approved To Impose and Use.
Repair of south terminal apron.
Design and engineering for new runway 5L/23R.
Construction of new runway 5L/23R.
Relocation of electrical transmission line.
Relocation of Bridgeport Road.
Construction of ARFF station number 2.
Environmental mitigation for new runway 5L/23R.
Reimbursement for environmental assessment.
Installation of deicing control system.
Installation of part 139 taxiway signs.
Installation of taxiway D–1 centerline lights.
Purchase of airfield safety and snow removal equipment.
Reimbursement for repair of existing runway 5L–23R.
Reimbursement for construction of south commuter apron.
Reimbursement for construction of ARFF training facility.
Land acquisition of noise compatibility under part 150.
Land acquisition for environmental mitigation for new runway 5L/23R.
Installation of terminal card access security system.
Site preparation and purchase of loading bridges.
Renovation of terminal passenger departure gates and hold rooms.
Brief Description Of Project Disapproved: Reimbursement for construction of runway 5R/23L.
Determination: Disapproved. Costs were incurred and all notices to proceed were issued for this project prior to November 5, 1990. The FAA has determined that if a notice to proceed occurred prior to November 5, 1990, the project is not PFC eligible under § 158.3.
Decision Date: June 28, 1993.
FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (312) 694–7335.
Public Agency: City of Chicago, Department of Aviation, Chicago O'Hare International Airport, Chicago, Illinois.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $500,418,285.
Earliest Permissible Charge Effective Date: September 1, 1993.
Duration of Authority To Impose: October 1, 1999.
Class of Air Carriers Not Required To Collect PFC's: Air taxi operators.
Determination: The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description Of Projects Approved To Impose And Use:
Air traffic control tower lighting panel.
Hold pad runway 9R.
Cargo tunnel roadway resurfacing.
Airfield lighting cables replacement.
Trans World Airlines cargo/apron construction.
School sound insulation.
Optional insulation/purchase assurance (75 LDN).
Residential survey.
Rotunda wall rehabilitation.
Badging office renovations.
ARFF station
Heating and refrigeration (H and R) chilled water study implementation.
H and R utility ring tunnel sealing implementation.
H & R utility ring tunnel drainage system evaluation.
Formulation costs.
International terminal.
Brief Description of Projects Approved To Impose Only:
Taxiway 14L/32R rehabilitation.
Runway 9R/27L rehabilitation.
Taxiway-hangar alley rehabilitation.
Terminal apron pavement rehabilitation.
Taxiway north/south rehabilitation.
Hold pad-scenic (new).
Airfield drainage improvements.
Taxiway-inner bridge rehabilitation.
Taxiway 9L/27R rehabilitation.
Taxiway 14R/32L rehabilitation.
Taxiway 4R/22L rehabilitation.
Taxiway 9R/27L rehabilitation.
Roadway-hangar area lighting.
Permanent noise monitoring.
Voluntary acquisition (80 LDN).
Terminal 2 upgrade.
Concourse E/F upgrade.
Concourse G upgrade.
Terminal 3 upgrade.
Terminals 2 and 3 upper level and elevator extension.
ARFF burn pit.
Radio alarm call box.
Perimeter security system.
H and R emergency turbine generators.
H and R domestic hot water converters replacement.
H and R water pressure study implement.
Roadway overlay—lower level.
Roadway—Zemke/Coleman improvements.
Brief Description of Project Disapproved: Noise compliant system.
Determination: This project does not meet the eligibility for AIP funding per FAA Order 5100.38A, paragraph 710 (d) and item number 4 of appendix 2. Accordingly, the FAA has determined that this project does not meet the requirements of § 158.15(b). 800 numbers are an operational expense and, as such, are ineligible for AIP funding. Therefore, this project is not PFC eligible.
Brief Description of Projects Withdrawn:
Taxiway guidance signs.
Airfield emergency power, phase II.
Chicago Transit Authority dedicated cars.
Determination: These projects were withdrawn by the city of Chicago in letter to the FAA dated May 4, 1993, and June 24, 1993.
Decision Date: June 28, 1993.
FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (312) 694–7335.
Public Agency: City of Chicago, Department of Aviation, Chicago Midway Airport, Chicago, Illinois.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $79,920,958.
Earliest Permissible Charge Effective Date: September 1, 1993.
Duration of Authority to Impose: August 1, 2001.
Class of Air Carriers Not Required to Collect PFC's: Air taxi operators.
Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Projects Approved to Impose and Use:
Taxiway edge lights/airfield guidance signs.
Airfield drainage number 6 south triangle.
Replacement service road/northwest corner.
Runway 4L/22R rehabilitation.
Airfield lighting electrical vault upgrade.
Obstruction removal for runway 22L departures.
East ramp hold pad/detention basin.
Runway broom vehicle (sweeper).
Airfield snow/ice removal sanders.
ARFF vehicle.
Runway 22L extension/hold pad construction/bullseye repair.
Runway 13C/31C rehabilitation.
Security access control and detection system.
Blast fence/noise barrier—northeast corner.
Blast fence/noise barrier—east side.
Permanent noise monitoring.
School sound insulation.
Hush house study.
Interior terminal floor tile

replacement,
New public restroom and nurse station,
Ceiling/lighting replacement,
Public restroom renovation,
Terminal pubic address system,
Airport master utility study,
Terminal facia replacement,
Lobby heaters,
Interior terminal signage study,
Interior terminal signage installation,
Property acquisition parcel 54,
Property acquisition parcel 58,
Property acquisition parcel 60,
Demolition—parcel 49.

Brief Description of Projects Approved To Impose Only: Apron replacement at gates,
West ramp service road,
Runway 13L/31R rehabilitation,
Taxiway 13C/31C,
Taxiway 4L/22R,
Blast fence/noise barrier—southwest corner,
Blast fence/noise barrier—northwest corner,
Hush house,
Terminal/concourse emergency power system.

Brief Description of Projects Approved-In-Part To Impose and Use PFC:
Overhead door replacement.
Air handling units replacement.
Fireline loop/terminal sprinkler system.
Terminal/concourse boiler piping cross connect.

Determination: Approved in part. The approved amount represents a portion of the total project costs and has been reduced from the requested amount to account for terminal areas determined to be ineligible under AIP and PFC criteria. Entrance road relocation for runway 22L microwave landing system.

Determination: Approved in part. The approved amount represents a portion of the total project cost and has been reduced from the requested amount to account for the receipt of an AIP grant for the project.

Brief Description of Projects Approved-In-Part For Authority To Impose Only: Airport Maintenance Complex.

Determination: Approved in part. Portions of this facility meet the nominal requirements for AIP and, therefore, PFC eligibility. Allowable costs will be based on a proration of eligible areas necessary to support storage of eligible equipment and materials, as determined by the Chicago Airports District office after review of the final building construction plans and specifications.
Landside pavement replacement.

Determination: Approved in part. The approved amount has been reduced from the requested amount to account for the receipt of a city of Chicago grant for the project.

Brief Description of Projects Disapproved:
Midway noise complaint system,
Midway citizen participation program.

Determination: Disapproved. These projects do not meet the eligibility for AIP funding as per FAA Order 5100.38A, paragraph 710(d) and item number 4 of appendix 2. Terminal elevator for handicap access.

Determination: Disapproved. This project does not meet the eligibility for PFC funding as per FAA Program Guidance Letter 93–3, section 93–3.5. The elevator to the proposed security and administrative office complex to be constructed on the second floor is not required for the movement of passengers or baggage within the terminal. Therefore, the FAA has determined that this project does not meet the requirements of § 158.15(b) and is not PFC eligible. Airport master planning services.

Determination: Disapproved. This project does not meet the eligibility for PFC funding. The cost for the amendment is ineligible because the master plan project was implemented before November 5, 1990. The amendment is not a stand alone project or element; therefore, the amendment date cannot be used to establish the implementation date.

Brief Description of Projects Withdrawn:
Property acquisition, parcel 63,
Property acquisition, parcel 47.

Determination: The city of Chicago requested these projects be withdrawn from the PFC application, by phone, on May 17, 1993.

Decision Date: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (312) 694–7335.

Public Agency: Blaine County Airport Commission, Hailey, Idaho.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $188,000.

Earliest Permissible Charge Effective Date: September 1, 1993.

Duration of Authority to Impose: September 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved To Use PFC Revenue:
Terminal construction,
Runway lighting and signage,
Airport master plan/noise contour maps,
Nondestructive pavement testing.

Decision Date: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra M. Simmons, Seattle Airports District Office, (206) 227–2656.

Public Agency: Toledo-Lucas County Port Authority, Toledo, Ohio.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,750,896.

Earliest Permissible Charge Effective Date: September 1, 1993.

Duration of Authority To Impose: September 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved To Impose and Use: Terminal renovation, phase 1,
Terminal renovation, phase 2,
Airfield Signage, phase 1,
Card access program,
Snow removal equipment building expansion,
Snow removal equipment,
Stabilize shoulder/cargo apron,
Stabilize shoulder/taxiway A–1,
Access road engineering,
Terminal canopy engineering,
Passenger access lift.

Decision Date: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Issued in Washington, DC on July 2, 1993.

Lowell Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Alabama:					
Huntsville Intl—Carl T Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Los Angles International, Los Angeles	03/26/1993	3	360,000,000	06/01/1993	07/01/1998
Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
Ontario International, Ontario	03/26/1993	3	49,000,000	06/01/1993	07/01/1998
Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
San Jose International, San Jose (Impose Application)	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
San Jose International, San Jose (Use Application)	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
San Luis Obispo County—McChesney Fie, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Florida:					
Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
Southwest Florida International, Fort Myers (Impose Application)	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
Southwest Florida International, Fort Myers (Use Application)	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
Georgia:					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield (Impose Application)	03/27/1992	3	562,104	06/01/1992	02/01/1994
Capital, Springfield (Use Application)	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
Iowa:					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Louisiana:					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge (Impose Application)	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Baton Rouge Metropolitan, Ryan Field, Baton Rouge (Use Application)	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional Airport of Emmet C, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Minnesota:					
Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Montana:					
Missoula International, Missoula	06/12/1993	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire:					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	06/01/1995
New York:					
Greater Buffalo International, Buffalo	05/23/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1993
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	06/01/1995
Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	06/01/1995
Clinton County, Plattsburgh	04/30/1992	3	227,830	07/01/1993	01/01/1998
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	06/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
Pennsylvania:					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Altoona-Belair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
Mississippi:					
Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
Great Falls International, Great Falls (Impose Application)	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Great Falls International, Great Falls (Use Application)	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
Pennsylvania:					
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia (Impose Application)	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
Philadelphia International, Philadelphia (Use Application)	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
Tennessee:					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virginia:					
Charlottesville—Albemarle, Charlottesville (Impose Application)	06/11/1992	2	255,559	09/01/1992	11/01/1993
Charlottesville—Albemarle, Charlottesville (Use Application)	12/21/1992	2	255,559	09/01/1992	11/01/1993
Washington:					
Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	07/01/1994
William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
Seattle-Tacoma International, Seattle	06/13/1992	3	28,847,488	11/01/1992	01/01/1994

UMI
VOL
58
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CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
Morgantown Muni—Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
Wyoming:					
Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
Cyril E King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collectioin and actual allowable project costs.

[FR Doc. 93-16915 Filed 7-15-93; 8:45 am]
BILLING CODE 4910-13-M

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Act, as amended (FT Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Niagara Frontier Transportation Authority intends to transfer the Niagara Falls Bus Garage on Buffalo Avenue in Niagara Falls to the New York State Office of Parks, Recreation and Historic Preservation.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA, Region II, of its interest, by August 16, 1993.

ADDRESSES: Interested parties should notify the Regional Office by writing the Federal Transit Administration, 26 Federal Plaza, Suite 2940, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Jim McCullagh, FTA, Region II, 212-264-8162 or Frank Kelly, Office of Grants Management at 202/366-1647.

SUPPLEMENTARY INFORMATION:

Background

Section 12(k) of the FT Act, as amended, provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Administrator may authorize the transfer of such assets to any public body to be used for any public purpose with no further obligation to the Federal Government.

Section 12(k)(2) Determinations

The provision also provides that before the FTA may authorize such a transfer for a non-transit use, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the FT Act for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of section 12(k)(2)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in section 12(k)(2) (A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The subject building was built as a bus terminal in 1976. It has approximately 41,748 square feet of building area overall. 27 buses can be stored inside the facility with 3 bays available for storage and service.

Issued on July 13, 1993.

Letitia A. Thompson,
Acting Regional Administrator.

[FR Doc. 93-16890 Filed 7-15-93; 8:45 am]
BILLING CODE 4910-57-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

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Applicati No.
11042-N
11043-N
11044-N
11045-N
11046-N
11047-N
11048-N
11050-N
11051-N
11053-N
11054-N
11055-N
11056-N
11057-N
11058-N
11059-N

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 16, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If, confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
110042–N	Willow Air Service, Willow, AK	49 CFR 175.310(c)	To authorize the transportation of gasoline, Class 3, in five gallon non-DOT specification polyethylene containers overpacked in plywood boxes for carriage in small passenger carrying aircraft within the state of Alaska. (mode 5)
11043–N	Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR 177.848	To load, transport and store Division 2.3 (Gas) or 6.1 (liquid), Packing Group 1, Zone A material, packed in "lab-pack" drums on the same transport vehicle carrying packagings containing various classes of hazardous materials. (mode 1)
11044–N	Southeastern Fumigants, Inc., Dawson, GA.	49 CFR 173.334	To authorize shipment of 2.2 dichlorovinyl dimethyl phosphate classed as Division 2.3 Zone C in a DOT Specification 4BA240 cylinder with 25 pounds of product. (mode 1)
11045–N	Sandoz Agro, Inc., Beaumont, TX.	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2)
11046–N	Marsulex Inc., North York, Ontario, Canada.	49 CFR 172.102(c)(3)SP B14	To authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in uninsulated MC 331 cargo tanks. (mode 1)
11047–N	Cominco Fertilizers (U.S.) Inc., Spokane, WA.	49 CFR 172.102(c)(3)SP B14	To authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in uninsulated MC331 cargo tanks. (mode 1)
11048–N	R.T. Vanderbilt Company, Inc., Norwalk, CT.	49 CFR 172.102, 173.132(a)(1)(iii).	To authorize the transport of poisonous solids, n.o.s. and dithiocarbamate pesticides, n.o.s., classed as Division 6.1, PIH, Zone C hazard, in UN specification bags and open head steel drums without required markings. (mode 1)
11050–N	Chevron USA Products Co., Inc., San Francisco, CA.	49 CFR 174.67(i)+(j)	To authorize the unloading of tank cars containing asphalt cement, classed as Class 9, without the physical presence of an unloader. (mode 2)
11051–N	Fluoroware Inc., Chaska, MN	49 CFR 173.202, 173.242 and 173.243, Part 173, Subparts B, E and F; 173.158, 173.201.	To authorize the manufacture, mark and sell of non-DOT specification rotationally molded, Teflon PFA inner container enclosed in a polyethylene shell for shipment of Class 3, 8 and Division 5.1. (modes 1, 2, 3)
11053–N	PLM Transportation Equipment Corp., Chicago, IL.	49 CFR 172.102 SPB14	To authorize the transport of methylamine, anhydrous, classed in Division 2.3, in non-insulated 112J340W and 112J400W tank cars. (mode 2)
11054–N	Walker Engineering Company, Sugar Land, TX.	49 CFR 178.36 Subpart C	To authorize the manufacture, mark and sell of non-DOT specification cylinders conforming to 3A specification for use in shipment of various hazardous materials classed in Class 3, Division 2.1 and 2.3 (modes 1, 2, 3, 4)
11055–N	Rollins CHEMPAK, Inc., Wilmington, DE.	49 CFR 173.226, 174.81, 176.83, 177.848.	To authorize the transportation of combination packages of Division 6.1, Packing Group I, Hazard Zone A material to be shipped with other hazardous materials. (modes 1. 2, 3)
11056–N	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.192(c)	To authorize an alternate testing method for DOT-Specification 3A and 3AA cylinders containing more than 150 lbs. of phosgene, classed as Division 6.1. (mode 1)
11057–N	Conax Florida Corporation, St. Petersburg, FL.	49 CFR 173.304	To authorize the manufacture, mark, and sell of welded non-DOT specification nonrefillable stainless steel cylinders conforming to DOT-Specification 39 for use in transporting nitrogen, compressed, classed as Division 2.2. (modes 1, 4)
11058–N	Spex Industries, Inc., Edison, NJ.	49 CFR 173.158(e)	To authorize the transport of nitric acid and hydrochloric acid, Class 8 material, in combination packaging in 4G fiberboard boxes with inside plastic bottles of not over 2.5 liter capacity. (mode 1)
11059–N	U.S. Department of the Interior, Amarillo, TX.	49 CFR 173.31(d)	To provide for acoustic emission testing of DOT-Specification 107A compressed gas cylinder (railroad tank car tubes) for use in transporting helium, classed in Division 2.2. (mode 2)

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11060–N ...	Hockney Pty. Ltd., New South Wales, Australia.	49 CFR 178.340–3	To authorize the shipment of certain Class 3 materials in cargo tanks manufactured to a DOT Specification MC–306 except they are constructed of aluminum alloy 5083–H321 or 5083–H116. (mode 1)
11064–N ...	Exxon Chemical Company, Linden, NJ.	49 CFR 171.8, 172.101, Appendix B.	To authorize certain products (lubricant additives) which contain small amounts of materials which meet the definition of marine pollutants to be shipped without being identified as marine pollutants. (modes 1, 2)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 8, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–16878 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–60–M

Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 2, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
8451–X	Hercules Incorporated, Wilmington, DE (See Footnote 1)	8451
8938–X	Cryogenic Services, Inc., Canton, GA (See Footnote 2)	8938
9052–X	Hoover Group, Inc., Beatrice, NE (See Footnote 3)	9052
9716–X	Comdyne I, Inc., West Liberty, OH (See Footnote 4)	9716
10172–X ...	Hoover Group, Inc., Beatrice, NE (See Footnote 5)	10172
10195–X ...	Catalyst Resources, Inc., Pasadena, TX (See Footnote 6)	10195
10288–X ...	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 7)	10288
10291–X ...	Tankbouw Rootselaar B.V., Holland (See Footnote 8)	10291

(1) To modify exemption to provide for addition shipping containers for use in transporting Class C explosives Division 1.4E.
(2) To modify exemption to provide for addition model DOT Specification 4L cylinders for use in transporting various Division 2.2 material.
(3) To modify exemption to provide for design variations in non-DOT Specification portable tanks for use in transporting hazardous material classed as Class 3, 8 and Division 5.1.
(4) To modify exemption to provide for smaller size FRP–1 type, non-DOT Specification cylinders for use in transporting Division 2.1 and 2.2 material.
(5) To modify exemption to provide for design variations in non-DOT Specification portable tanks for use in transporting hazardous materials classed as Class 3, 8 and Division 5.1.
(6) To modify exemption to provide for flammable gas, solid n.o.s., classed in Division 4.3, increase maximum nitrogen pressure to 35 psig and provide for larger cylinders.
(7) To modify exemption to provide for DOT-Specification 105J300W, 112J340W, 1125340W and 112T340W tank cars for use in transporting Class 3 material.
(8) To modify the exemption to provide for an increase in test pressure to 551 psig for non-DOT Specification IMO Type 5 portable tank and additional commodities classed in Division 2.1 and 2.2.

Application No.	Applicant	Parties to exemption
6691–P	Acetylene Oxygen Company, Harlingen, TX	6691
7549–P	Zeneca, Inc., Wilmington, DE	7549
7963–P	Zeneca, Inc., Wilmington, DE	7963
7987–P	Zeneca, Inc., Wilmington, DE	7987
8451–P	Special Devices, Inc., Newhall, CA	8451
8723–P	Dyno New England, Inc., Middlefield, CT	8723

Application No.	Applicant	Parties to exemption
8791–P	Zeneca, Inc., Wilmington, DE	8791
8915–P	Daido Hoxan Inc., Osaka, Japan	8915
9275–P	David Michael & Co., Inc., Philadelphia, PA	9275
9275–P	Houbigant, Inc., Ridgefield, NJ	9275
9346–P	Allied-Signal, Inc., Hopewell, VA	9346
9416–P	Valent U.S.A. Corporation, Walnut Creek, CA	9416
9607–P	Schafco, Lancaster, PA	9607
9723–P	ENSCI Environmental, Inc., Raleigh, NC	9723
9723–P	Consolidated Waste Industries, Inc., Montclair, CA	9723
9723–P	Special Resource Management, Inc., Butte, MT	9723
10348–P	Teledyne Wah Chang Albany, Albany, OR	10348
10360–P	Zeneca, Inc., Wilmington, DE	10360
10382–P	Zeneca, Inc., Wilmington, DE	10382
10441–P	Consolidated Waste Industries, Inc., Montclair, CA	10441
10469–P	Zeneca, Inc., Wilmington, DE	10469
10645–P	ICI Forests Products, Montreal Quebec, CN	10645
10683–P	Eastpak Corporation, MT. Kisco, NY	10683

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washinton, DC, on July 9, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–16879 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–60–M

VOL 58 ISS 135 JL 16 1993 UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 135
Friday, July 16, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, July 23, 1993.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., room 540, Washington, DC 20425.

STATUS: Open to the Public.

July 23, 1993
I. Approval of Agenda
II. Approval of Minutes of May 21, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Discussion of Los Angeles Hearing
VI. Report from Commissioner Redenbaugh on SAC Member Processes
VII. Appointments for the Arizona, California, Illinois, Maine, Mississippi, North Carolina, North Dakota, South Carolina, and Vermont Advisory Committees
VIII. Equal Employment Rights for Federal Employees
IX. Employment Discrimination and Women in South Dakota: A Legislative Handbook
X. Police Protection of the African American Community in Chicago
XI. Staff Director's Report
- FY 95 Budget Request

XII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: July 13, 1993.

Emma Monroig,

Solicitor.

[FR Doc. 93–17014 Filed 7–14–93; 9:38 am]

BILLING CODE 6335–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 35074, Wednesday, June 30, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, July 13, 1993.

CHANGE IN MEETING:

Closed Session

The closed portion of the meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

This Notice Issued July 13, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–17098 Filed 7–14–93; 3:59 pm]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, July 13, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to pubic observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Dated: July 13, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–17041 Filed 7–14–93; 11:32 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 21, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 14, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–17040 Filed 7–14–93; 11:31 am]

BILLING CODE 6210–01–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

MEETING STATUS: Open.

DATE AND TIME: August 5, 1993, 10:00 a.m. to 3:00 p.m.

PLACE: Northwest Regional Library, 68 West Chelten Avenue, Philadelphia, PA.

NCLIS Committee Meetings
Presentation by Sara Parker, Commissioner of Libraries, State Library of Pennsylvania.

DATE AND TIME: August 6, 1993, 9:00 a.m. to 3:00 p.m.

PLACE: Free Library of Philadelphia, Skyline Room, 1901 Vine Street, Philadelphia, PA.

MATTERS TO BE DISCUSSED:

Acting Chairman's report
Comments, Elliot L. Shelkrot, Director and President, Free Library of Philadelphia
Tour, Special Collections, Free Library of Philadelphia
Approval of draft meeting agenda
Approval of draft minutes, NCLIS meeting, May 18, 1993
Executive Director's report
Update, Children's and Youth Literacy Initiative
Presentation by Charles M. McClure, NCLIS Distinguished Researcher
NCLIS committee reports
Unfinished business
Public comment

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202)–606–9200) no later than one week in advance of the meeting.

Dated: July 12, 1993.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 93–17084 Filed 7–14–93; 2:32 pm]

BILLING CODE 7527–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, July 20, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Tuesday, July 20

10:00 a.m.

Briefing on Options for Addressing Shutdown and Low Power Risk Issues (Public Meeting)

(Contact: Ashok Thadani, 301–504–2884)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:30 p.m.

Briefing on Overview of NRC Research Program (Public Meeting)

(Contact: George Sege, 301–492–3904)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 13, 1993.

William M. Hill,

SECY Tracking Officer,

Office of the Secretary.

[FR Doc. 93–17068 Filed 7–14–93; 8:45 am]

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Friday
July 16, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing

HOPE for Homeownership of Multifamily Units (HOPE 2); Notice of Funding Availability

VOL
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3628; FR-3353-N-01]

HOPE for Homeownership of Multifamily Units (HOPE 2); Notice of Funding Availability for Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $102.2 million in funds for applications for implementation grants under the HOPE for Homeownership of Multifamily Units program (HOPE 2). The NOFA contains information concerning the location for obtaining application packages; the time and place for submitting completed applications; the selection process, including the ranking criteria; and other appropriate information and guidance. The NOFA is issued under the Program Guidelines published on January 14, 1992 (57 FR 1558), and grants awarded under the NOFA will be governed by those Guidelines. It is critical that applicants for HOPE 2 implementation grants read and comply with the requirements of the Program Guidelines, since many of the requirements of the HOPE 2 program are not repeated in this NOFA, and failure to follow the Guidelines will result in applications being rejected by HUD. This NOFA also incorporates changes made by the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved Oct. 28, 1992) and other changes made by the Department as a result of the first funding round.

DATES: Applications must be physically RECEIVED by the Field Office (FO) having jurisdiction over the proposed project on or before 3 p.m. (FO local time) on October 15, 1993. This application deadline is firm as to location, date, and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the Resident Initiatives Specialist (RIS) in the appropriate HUD Field Office listed at the end of this NOFA.

SUPPLEMENTARY INFORMATION:

NOFA Table of Contents

I. Purpose and Substantive Description
- A. Authority
- B. Type of Grant
- C. Allocation
- D. Eligible Applicants
- E. Eligible Property
- F. Changes to Program

II. Application Process
- A. Availability of Technical Assistance to Potential Applicants
- B. Application Packages
- C. Comprehensive Housing Affordability Strategy (CHAS)
- D. Submission of Applications
- E. Application Deadline

III. Selection Process
- A. Eligibility Review
- B. Screening/Corrections to Deficient Applications
- C. Technical Review/Threshold Criteria
- D. Rating Process
- E. Geographic Diversity Requirement
- F. Funding Priorities

IV. Other Matters
- A. Paperwork Reduction Act
- B. Environment
- C. Federalism Executive Order
- D. Family Executive Order
- E. Section 102 of the HUD Reform Act
- F. Section 103 of the HUD Reform Act
- G. Section 112 of the HUD Reform Act
- H. Prohibition Against Lobbying Activities

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by title IV, subtitle B, of the National Affordable Housing Act (42 U.S.C. 12871-12880), which created the HOPE 2 Program.

B. Type of Grant

An applicant may submit an application for an implementation grant for an eligible property. Applicants may request an implementation grant for the purpose of carrying out homeownership programs, in accordance with Section 415 of the guidelines. Grant amounts may not exceed 120 times the current published (monthly) fair market rent for existing housing for that unit size, established by HUD under section 8(c) of the U.S. Housing Act of 1937. Current fair market rents were published in the **Federal Register** on October 1, 1992 (57 FR 45468). More information on fair market rents is available from the HUD Field Office.

Funds for planning grants (mini or full) are not available under this NOFA. At this time, the Department is unsure of future funding for the HOPE 2 program, and does not want to create expectations of future implementation grant funding for planning grant recipients.

C. Allocation

The funds announced by this NOFA include amounts that remain unobligated from funds appropriated by the Department's appropriations act for fiscal year 1992 (Pub. L. 102-139, approved October 28, 1991) and amounts appropriated for fiscal year 1993 (Pub. L. 102-389, approved October 6, 1992). Up to $102.2 million is currently available for the purpose of this NOFA.

D. Eligible Applicants

An eligible applicant is any one of the following entities that may represent the tenants of the housing: A resident management corporation (RMC); a resident council (RC); a cooperative association, but only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program; a public or private nonprofit organization; a public body (including a public housing agency (PHA), Indian housing authority (IHA), or other agency or instrumentality thereof); or a mutual housing association. Two or more eligible applicants may submit a joint application for a single homeownership program.

E. Eligible Property

Eligible property under the HOPE 2 program is a multifamily rental property, containing five or more units, that is (1) owned by HUD; (2) financed by a loan or mortgage held by HUD or insured by HUD, including loans under the Section 312 Rehabilitation Loan program, the Section 202 program, and the FHA Multifamily Mortgage Insurance programs, except properties for which HUD is the mortgagee-in-possession; (3) determined by HUD to have serious physical or financial problems under the terms of an insurance or loan program administered by HUD (in most cases, such properties will also be eligible under (2) above); or (4) owned or held by the Secretary of Agriculture, the Resolution Trust Corporation (RTC), the Federal Deposit Insurance Corporation (FDIC), the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, or a State or local government or an agency or instrumentality thereof, except that PHA- or IHA-owned properties that are assisted under section 5 of the 1937 Act are not eligible property. Eligible property approved under HOPE 2 is not subject to the Low-Income Housing Preservation and Resident Homeownership Act of 1990

("Title VI"), or the requirements of section 203 of the Housing and Community Development Amendments of 1978 applicable to the sale of developments either at foreclosure or after acquisition by HUD. Properties will not be processed simultaneously in the HOPE 2 and Title VI programs.

F. Changes to Program

The following significant changes have been made to the HOPE 2 program or the application process since the 1992 funding round.

1. Section 181 of the Housing and Community Development Act of 1992 amended the definition of "eligible property" to include properties owned or held by an "agency or instrumentality thereof" of a State or local government, and properties and owned or held by other Federal agencies. (See Section I.E. above.)

2. HUD has also amended the definition of eligible property to exclude properties for which HUD is mortgagee-in-possession. This change is based on the potential for legal and procedural complications, since the steps leading to foreclosure on a property for which HUD is MIP can require a substantial length of time and can lead to outcomes other than HUD ownership. Consequently, neither HUD nor the owner can provide a guarantee of availability of the property.

3. Before applications are screened under the procedure described in section 415(c) of the Guidelines, HUD will complete an eligibility review. See Section III.A. of this NOFA for a discussion of that review.

4. The threshold criterion described in section 420(b) of the Guidelines provides that a proposed program may not result in appreciably reducing in the locality the number of affordable multifamily rental housing units that would be available to residents currently residing in the property or to families who would be eligible to reside in the property. "Locality" is defined by HUD as the jurisdictional boundaries of the unit of local government in which the property is located. HUD determines whether an application complies with the criterion based on a determination that no more than 5 percent of the affordable rental housing units in the locality would be converted to homeownership. Section 420(b)(2) of the Guidelines further provides that if the proposed eligible property is in a "market area" that contains such a small number of affordable rental housing units that the applicant believes the number of units in the eligible property may exceed the 5 percent threshold, the applicant may submit whatever documentation it believes appropriate to assist HUD in making the determination. The Department now realizes that this language is unduly restrictive for smaller communities that are part of a larger housing market. Therefore, the term "locality" will be substituted for the term "market area." In cases where an applicant believes the number of units in the eligible property may exceed the 5 percent threshold, the applicant should submit to HUD documentation it believes appropriate and request HUD to make a determination that, based on the locality's situation within a larger market area, the number of affordable rental housing units available to residents currently residing in the property or eligible to reside in the property will not be appreciably reduced.

5. After ranking and selecting applications to assure geographic diversity, as described in Section 425(c) of the Guidelines, priority will be given to applications for mutual housing and for applications from certain counties in South Florida designated under the Presidential Disaster Declaration of August 24, 1992. See Section III.F. of this NOFA for further information.

II. Application Process

A. Availability of Technical Assistance to Potential Applicants

HUD, in conjunction with the National Center for Tenant Ownership (NCTO), Georgetown University Law Center, is sponsoring two types of training sessions for potential applicants interested in responding to this Notice of Funding Availability. A description of these two types of training is provided below. Registration forms can be obtained from the RIS in HUD Field Offices listed in this Notice or by calling NCTO at (202) 371–2416 (leave name, address and telephone number). Interested parties may register for one or both types of training.

(1) Nationally Broadcast Teleconference on August 11, 1993. Registration Deadline: July 30, 1993.

This three and one-half hour session will be broadcast nationally from 1 p.m. to 4:30 p.m. Eastern Standard Time to all 50 states, Puerto Rico, Virgin Islands and the District of Columbia in these cities:

Alabama—Birmingham, Mobile, Montgomery
Alaska—Anchorage
Arizona—Phoenix
Arkansas—Little Rock
California—San Francisco, Sacramento, Los Angeles, San Diego
Colorado—Denver
Connecticut—Hartford, Bridgeport
Delaware—Dover
Florida—Jacksonville, Miami, Tampa
Georgia—Atlanta
Hawaii—Honolulu
Idaho—Boise
Illinois—Chicago, Springfield Evansville
Indiana—Indianapolis
Iowa—Des Moines
Kansas—Kansas City, Wichita
Kentucky—Lexington, Louisville
Louisiana—New Orleans, Shreveport
Maine—Portland
Maryland—Baltimore
Massachusetts—Boston, Worcester
Michigan—Detroit, Lansing, Grand Rapids
Minnesota—Minneapolis/St. Paul
Mississippi—Jackson
Missouri—Kansas City, St. Louis
Montana—Helena
Nebraska—Omaha, Lincoln
Nevada—Las Vegas
New Hampshire—Concord
New Jersey—Newark
New Mexico—Alburquerque
New York—New York City, Albany, Buffalo, Syracuse
North Carolina—Raleigh, Charlotte
North Dakota—Bismarck, Fargo
Ohio—Cleveland, Columbus, Cincinnati
Oklahoma—Tulsa
Oregon—Portland, Eugene
Pennsylvania—Philadephia, Pittsburgh, Harrisburg
Puerto Rico—San Juan
Rhode Island—Providence
South Carolina—Columbia
South Dakota—Pierre
Tennessee—Memphis, Nashville
Texas—Houston, Dallas, San Antonio, Brownsville, Amarillo
Utah—Salt Lake City
Vermont—Burlington
Virginia—Norfolk, Richmond, Roanoke
Virgin Islands—St. Thomas
Washington—Seattle, Spokane
West Virginia—Morgantown, Charleston
Wisconsin—Milwaukee
Wyoming—Casper

The teleconference is intended to assist potential applicants in determining if their project is ready for a HOPE 2 implementation grant. The teleconference will focus on the readiness, eligibility and threshold requirements of the HOPE 2 program and the key issues that will make a project competitive in the ranking of Implementation Grant applications. Participants also will have the opportunity to call in specific questions during the training broadcast.

(2) On-site Regional Workshops in August and September, 1993. Registration deadline: August 13, 1993.

An intensive one and one-half day workshop is being offered at ten sites,

one in each of HUD's regions. This detailed and technical workshop, conducted by NCTO staff, will work through the financial analyses required to complete a HOPE 2 Implementation Grant application and will discuss the key elements of a successful homeownership program. The workshop will emphasize how HOPE 2 grant funds can be utilized to help make multifamily homeownership affordable for low-income persons. Workshops are scheduled in the following cities:

August 24–25

Washington, DC*

August 30–31

New York NY*
Columbus OH*

September 2–3

Boston MA
Seattle WA

September 8–9

Houston TX*
Denver CO

September 13–14

San Francisco CA*
Atlanta GA
Kansas City MO

Workships scheduled at the sites designated with an asterisk (*) will be held regardless of the number of preregistrants. Workshops at the remaining sites will be held only if preregistration at those sites is sufficient. Registrants will be notified personally of any cancellations by August 20 and will be able to select another site of their choice.

Participants at the teleconference broadcast sites and at the on-site workships will be provided with a manual on the HOPE 2 program and a guide to completing the HOPE 2 Implementation Grant application. There is no cost for the materials provided at these sessions. However, registrants will be responsible for paying their own transportation and accommodation costs.

B. Application Packages

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA) and the Resident Initiatives Clearinghouse, P.O. Box 6424, Rockville, MD 20850; telephone 1–800–955–2232. Applications must be completed in the form and manner required by the application package.

C. Comprehensive Housing Affordability Strategy

Applicants that are States or units of general local government: The applicant must have a HUD-approved CHAS for FY 1993 and must submit a certification that the proposed activities are consistent with the HUD-approved CHAS for FY 1993.

Applicants that are not States or units of general local government: The applicant must submit a certification by the jurisdiction or jurisdictions in which the proposed program will be located that the applicant's proposed activities are consistent with the jurisdiction's HUD-approved CHAS for FY 1993. A required certification must be made by the unit of general local government if it is required to have, or has, a complete CHAS, or if it is authorized to use an abbreviated CHAS and is applying for the same program under this NOFA (and therefore has, or will have, an abbreviated CHAS for fiscal year 1993 for that program). Otherwise the certification may be made by the State, or if the program will be located in part in a unit of general local government authorized to use an abbreviated CHAS, by the unit of general local government if it is willing to prepare such a CHAS.

Certain entities (Indian tribes and the Insular Areas of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands) are not required to have a CHAS or to make CHAS certifications. An application by an Indian tribe or other applicant for a program that will be located on a reservation of an Indian tribe does not require a certification by the tribe or State. However, where an Indian tribe or IHA is the applicant for a program that will not be located on a reservation, the requirement for a certification by the jurisdiction or jurisdictions in which the program will be located under the preceding paragraph applies.

All CHAS certifications must be made by the public official responsible for submitting the CHAS certification to HUD, or his or her authorized representative. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The required CHAS must therefore have been submitted more than 60 days before the application submission deadline, since HUD has 60 days to review and approve the CHAS. If an amendment to an approved CHAS is necessary in order for a HOPE application to be consistent with the CHAS, the amendment must be submitted to HUD no later than at the time the application for HOPE funding is submitted. Where the certification of consistency with an abbreviated CHAS is permitted to be submitted after the application submission deadline, as described in the next paragraph, the abbreviated CHAS must nevertheless be submitted by the application submission deadline. Failure to submit the abbreviated CHAS or amendment to the CHAS by the application submission deadline is not a correctable deficiency during application screening.

If a required certification will be made by a unit of general local government with respect to an abbreviated CHAS which has been submitted by the application submission deadline but has not yet been approved by HUD, the deadline will not be applied to the certification of consistency. Instead, the application must include a written statement from an authorized public official responsible for the CHAS that the jurisdiction has submitted an abbreviated CHAS for FY 1993 for HUD approval and that the proposed activities in the application are consistent with it. If HUD approves the CHAS, the required certification of consistency with a HUD-approved CHAS for FY 1993 must be submitted as soon as possible thereafter, but not later than grant approval. The grant will not be awarded unless the abbreviated CHAS is approved and the required certification is made.

D. Submission of Applications

An original and three copies of completed applications must be physically received by the Field Office having jurisdiction over the proposed project by the deadline noted below. Applications should be addressed to the appropriate Field Office, Attention of: Director, Housing Development Division.

A list of HUD's Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place for submission. Failure to submit an application to the correct Field Office by the deadline will result in disqualification of the application.

E. Application Deadline

Applications for implementation grants for the HOPE 2 Program must be physically received in the appropriate HUD Field Office by 3 p.m. (local Field Office time) on October 15, 1993. Applications may also be hand-delivered to the appropriate HUD Field

Office by 3 p.m. on or before the deadline date. Applications sent by facsimile (FAX) will not be accepted.

This application deadline is firm as to location, date, and hour. In the interest of fairness to all competing applicants, only timely applications submitted to the correct Field Office will be considered for funding. HUD will not waive this deadline for any reason. No applications may be accepted prior to 30 calendar days before the deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

III. Selected Process

The selection process for implementation grants under the HOPE 2 program consists of an eligibility review, a technical/threshold review, and for those applications passing the technical/threshold review, rating and ranking under the selection criteria. Field Offices will review and rate the applications, using the criteria described in Section III.D. of this NOFA, with the exception of the "Efficiency" criterion. HUD Headquarters will complete the "Efficiency" rating, rank the applications to assure geographic diversity, and select the applications for funding.

A. Eligibility Review

Each application submitted on or before the deadline will be reviewed to determine whether it was submitted by an eligible applicant for an eligible property and includes the appropriate site control, as required by section 415(b)(6) of the Guidelines and described in the application package. In the case of FHA-insured or HUD-held properties, HUD will determine whether the owner signing the site control document is the owner recognized by HUD. Only applications that meet these requirements (or can pursuant to the deficiency process described below) will be screened. In addition, HUD will identify any property owner that is under suspension or debarment in order to determine whether to seek exception from the Secretary under 24 CFR 24.215 to permit acquisition of the property with HOPE funds. Applications that fail the eligibility review will be rejected and removed from further funding consideration.

B. Screening/Corrections to Deficient Applications

Each application that meets the eligibility requirements described in Section III.A. of this NOFA will be screened to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 17th calendar day after the date of the written notification to the applicant to modify its application. HUD has allowed three additional days beyond the usual 14-day deficiency period to accommodate the Thanksgiving weekend that will fall within the deficiency period during the application processing schedule. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are not internally consistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material.

C. Technical/Threshold Review

Applications that qualify for additional consideration under the screening process will receive a complete technical review, which includes a threshold review in accordance with Section 420 of the Program Guidelines and an environmental review of the properties identified in the applications. (See Section I.F. in this NOFA for a discussion of a modification to the threshold review criterion on a proposed program's impact on affordable multifamily rental housing units.)

D. Rating Process

(1) Applications that pass the technical review will be rated based on the following criteria, which are described more fully in Section 425 of the Guidelines:

(a) Capability of the applicant—up to 15 points.

(b) Quality of the program—up to 25 points.

(c) Local support—up to 10 points.

(d) Resident and homebuyer interest—up to 10 points.

(e) Suitability of the property—up to 20 points.

(f) Minority Business Enterprise/ Women-owned Business Enterprise—up to 5 points.

(g) Feasibility and efficiency—up to 15 points.

(h) Extent of low-income homeownership—deduction of up to 15 points.

(2) HUD shall examine the ratings and, where it determines that applications falling below a certain point total on factors (a), (b), and (e) are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points on those factors for an application to be selected. HUD shall then select applications in accordance with paragraphs E and F of this section.

E. Geographic Diversity Requirement

In order to achieve geographic diversity, as required by sections 422 and 423 of NAHA and the Program Guidelines, HUD initially will fund the highest ranking implementation grant application from each of the 10 HUD Regions.

F. Funding Priorities

After the initial selections are made to satisfy the geographic diversity requirement, the Department will select applications based on the following priorities:

(1) Additional approvable applications for mutual housing, up to $10 million.

(2) The highest ranked approvable applications from each of the counties of Monroe, Collier, Dade, and Broward in the State of Florida, which were designated as Federal Disaster Areas by the Presidential Disaster Declaration of August 24, 1992.

(3) All remaining applications will then be funded in rank order, in accordance with Section 425 of the Guidelines.

IV. Other Matters

A. Paperwork Reduction Act

The information collection requirements contained in this NOFA were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with 24 CFR part 50, which implements section

102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 am and 5:30 pm weekdays in room 10276, Department of HUD, 451 Seventh Street SW., Washington, DC 20410.

C. Federalism Executive Order

The General Counsel, as the Designated Official under Section 8(a) of Executive Order 12612, Federalism, has determined that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

D. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact upon the family is beneficial, no further review under this Order is necessary.

E. Section 102 of the HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish a Federal Register notice of all recipients awarded assistance under this NOFA. (See 24 CFR 12.14(a) and 12.16(b), and the Notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 15, subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Subsidy-layering determinations. 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the Notice published in the Federal Register on January 16, 1992 (57 FR 1942) for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

F. Section 103 of the HUD Reform Act

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulations implementing section 103 are at 24 CFR part 4. In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics at the address or telephone number in paragraph G of this section.

G. Section 112 of the HUD Reform Act

Section 112 of the Housing and Urban Development Reform Act of 1989 (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence this award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented at 24 CFR part 86. Appendix A of the rule contains example of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–3815 TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Prohibition against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power

are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from coverage.

Dated: July 9, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

HUD Field Offices

Alabama

Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209; (205) 731–1617, (TDD) (205) 731–1617.

Alaska

Anchorage Office, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513; (907) 271–4170.

Arizona

Phoenix Office, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.

Arkansas

Little Rock Office, Suite 900, 425 West Capitol Ave., Little Rock, AR 72201; (501) 324–5931, (TDD) (501) 324–5405.

California

Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, CA 90015; (213) 251–7122, (TDD) (213) 251–7038.

San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556–4752, (TDD) (415) 556–8357.

Sacramento Office, 777 12th St., Suite 200, Sacramento, CA 95814; (916) 551–1351, (TDD) (916) 551–5971.

Colorado

Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.

Connecticut

Hartford Office, 330 Main Street, First Floor, Hartford, CT 06106; (203) 240–4523, (TDD) (203) 240–4522.

Delaware

Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2560, (TDD) (215) 597–5564.

District of Columbia

Washington, DC Office, 820 First St., NE, Washington, DC 20002; (202) 275–9206, (TDD) (202) 275–0967.

Florida

Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202); (904) 791–2626, (TDD) (904) 791–1241.

Georgia

Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW, Atlanta, GA 30303; (404) 331–5136, (TDD) 730–2654.

Hawaii

Honolulu Office, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327, (TDD) (808) 551–1356.

Idaho

Portland Office, 520 SW 6th Ave., Portland, OR 97204 (503) 326–2561.

Illinois

Chicago Regional Office, 77 W. Jackson Blvd., 26th Floor, Chicago, IL 60604–3507; (312) 353–5680.

Indiana

Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204; (317) 226–6303.

Iowa

Des Moines Office, Fed. Bldg., 210 Walnut St., Room 239, Des Moines, IA 50309; (515) 284–4512, (TDD) (515) 284–4706.

Kansas

Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 236–2162, (TDD) (913) 236–3972.

Kentucky

Louisville Office, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201; (502) 582–5251, (TDD) (502) 582–5139.

Louisiana

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Maine

Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666–7681, (TDD) (603) 666–7518.

Maryland

Baltimore Office, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202; (301) 962–3047, (TDD) (301) 962–0106.

Massachusetts

Boston Regional Office, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Room 375, Boston, MA 02222; (617) 565–5234, (TDD) (617) 565–5453.

Michigan

Detroit Office, Patrick V. McNamara Fed. Bldg., 477 Michigan Ave., Detroit, MI 48226; (313) 226–7900.

Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505; (616) 456–2100.

Minnesota

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Mississippi

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Missouri

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New Hampshire

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(Downstate)

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North Dakota

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Ohio

Cincinnati Office, Fed. Office Bldg., Room 9002, 550 Main Street, Cincinnati, OH 45202; (513) 684–2884.

Cleveland Office, One Playhouse Sq., 1375 Euclid Ave., Room 420, Cleveland, OH 44114; (216) 522–4058.

Columbus Office, 200 N. High St., Columbus, OH 43215; (614) 469–5737.

Oklahoma

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Pennsylvania

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South Carolina

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Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth TX; 76113; (817) 885–5401, (TDD) (817) 728–5447.

Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098; (713) 653–3274.

San Antonio Office, Washington Sq., 800 Dolorosa, San Antonio, TX 78207; (512) 229–6800, (TDD) (512) 229–6885.

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West Virginia

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Wisconsin

Milwaukee Office, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Milwaukee, WI 53203; (414) 297–3214.

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[FR Doc. 93–16782 Filed 7–15–93; 8:45 am]

BILLING CODE 4210–27–M

VOL 58 ISS 135 JL 16 1993 UMI

federal register

Friday
July 16, 1993

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 7 and 24

Community Development Corporation and Project Investments; Proposed Rule

VOL 58 ISS 135 JL 16 1993 UMI

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 24

[Docket No. 93–12]

Community Development Corporation and Project Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency is (OCC) proposing a rule for national bank investments in community development corporations (CDCs) and community development projects (CD projects) to implement section 6 of the Depository Institutions Disaster Relief Act of 1992. The proposed rule allows national banks, under certain conditions, to increase the amount of their aggregate and single project investments in CDCs and CD projects above current investment limits, with OCC approval. The proposed rule also would change the OCC's approval process and permit national banks to make most CDC and CD project investments without prior OCC approval by providing a brief self-certification of compliance with the rule. The proposed rule is intended to promote economic growth by enabling national banks to increase their equity and special debt investments in CDCs and CD projects for housing and small business development programs, consistent with safe and sound banking practices.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 9th Floor, 250 E Street SW., Washington, DC, 20219, Attention: Docket No. 93–12. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Karen Bellesi, Community Development Specialist, Community Development Division, at (202) 874–4930 or Margaret C. Hesse, Attorney, Bank Operations and Assets Division, at (202) 874–4460, Office of the Comptroller of the Currency, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1992, section 6 of the Depository Institutions Disaster Relief Act of 1992 created 12 U.S.C. 24 (Eleventh), Public Law No. 102–485. This statutory provision clarifies the community development authority of national banks. Community development investments have historically been permitted by the OCC under the provisions of Interpretive Ruling 7.7480, 12 CFR 7.7480, (I.R. 7.7480) based upon the authority granted by 12 U.S.C. 24 (Eighth). This proposed rule would replace I.R. 7.7480. The primary basis for this proposed rule is the new statutory authority in 12 U.S.C. 24 (Eleventh).

Under 12 U.S.C. 24 (Eighth), a national bank may make contributions to community funds, or to charitable, philanthropic or benevolent instrumentalities conducive to public welfare if it is located in a state with laws which do not expressly prohibit state banking institutions from contributing to such funds or instrumentalities.

Originally issued in 1963 and revised in 1971, I.R. 7.7480, based on the authority in 12 U.S.C. 24 (Eighth), permits national banks to carry equity or debt investments in CDCs or CD projects that are clearly not bankable by ordinary standards on their books as other assets, provided the investments are predominantly civic, community, or public in nature. In addition, I.R. 7.7480 limits a bank's investment in an individual investment to no more than 2 percent of its capital and surplus, and the aggregate of all such investments by the bank to 5 percent of its capital and surplus. Banking Circular 185, issued in 1984 and revised in 1990, further describes OCC policies regarding CDC and CD project investments, and includes a recommended process under which banks should seek prior OCC approval. Because national banks until recently had made relatively few CDC and CD project investments, and because such investments often involved real estate development and equity investment activities that were permitted only if they served a public purpose, the OCC, in practice, provided prior written approval for these investments.

Since the 1960s, national banks have submitted CDC and CD project investment proposals for OCC review and approval and the OCC has responded to these requests by providing an opinion letter regarding whether and under what conditions the CDC or CD project investment is consistent with I.R. 7.7480. The new statute does not alter or repeal the Comptroller's interpretations of 12 U.S.C. 24 (Eighth) in effect on the date of enactment of this amendment, including those opinion letters approving past CDC or CD project investments.

The proposed regulation would not apply to charitable contributions to CDCs and CD projects, which should be expensed and are subject to 12 U.S.C. 24 (Eighth) and the deductibility provisions of section 170 of the Internal Revenue Code.

Proposal

The OCC is proposing a regulation, titled Community Development Corporation and Project Investments, as 12 CFR part 24, to implement 12 U.S.C. 24 (Eleventh) and replace I.R. 7.7480. There are three major reasons for this action.

First, the proposed rule would implement the statutory requirements for investment limits. The statute requires the OCC to establish a limit on the amount a national bank may invest in any one CDC or CD project and a limit on the maximum amount a national bank may invest in all CDCs and CD projects. The proposal provides banks, particularly small banks and banks that are not of supervisory concern, with the opportunity to increase significantly the amount of their CDC and CD project investments.

Second, the proposed rule would streamline the OCC's approval process for some banks and some investments, reducing by approximately 80 percent the number of CDC and CD project investments that receive OCC's prior approval. The proposed rule also would establish an expedited 30-day review process for investments requiring approval. The OCC proposes to focus its limited resources on review and approval of investments that are complex and large, and that involve structures or activities not included in a published list of structures and activities previously approved by the OCC for CDC or CD project investments.

Third, the proposed rule would clarify the OCC's standards and definitions for CDC and CD project investments that are primarily designed to promote the public welfare, including the welfare of low- and moderate-income families and communities (by providing housing, jobs and services), under the new statutory requirements. This would increase bank management's understanding of definitions and requirements and improve the ability of banks to meet these standards.

Public Welfare Requirements

Under the proposal, all CDC and CD project investments must comply with all of the requirements of proposed § 24.4. This section provides the OCC's standards for differentiating public

welfare investments from investments undertaken primarily for private purposes. Many CDC and CD project activities, such as real estate development and equity investments, are only permitted for national banks if they are designed primarily to promote the public welfare. Therefore, the OCC is proposing these standards to promote a common understanding of and compliance with 12 U.S.C. 24 (Eleventh).

CDC and CD project investments must: Primarily benefit low- and moderate-income families or small businesses, including minority-owned businesses; address demonstrated community needs, such as the needs of low- or moderate-income communities or governmentally designated redevelopment areas in a community served by the bank (by providing housing, services or jobs); and include significant community involvement from representatives of the affected local community. In addition, a national bank must continue to devote profits and dividends generated by these investments to activities primarily designed to promote the public welfare.

These standards represent the OCC's long-standing policies for CDC and CD project investments, and are also consistent with authorizing legislation for federal community development and small business assistance programs. Housing, jobs, and services for low- and moderate-income families and communities are specifically included in the wording of 12 U.S.C. 24 (Eleventh) describing public welfare. The OCC believes that small businesses, including minority-owned small businesses, are the primary providers of jobs and services for low- and moderate-income communities and families, and that they often face barriers to capital access not faced by large companies. These firms, therefore, should also be among the beneficiaries of economic revitalization programs financed by national bank CDC and CD project investments.

The purpose of the requirement for community involvement in CDCs and CD projects is to ensure that the public welfare is the primary focus of these investments on a continuing basis and that these undertakings are not primarily for the private benefit of bank investors. This requirement also promotes the partnerships between the community, bank, and governmental leaders essential to CDC or CD project success. The dedication of CDC and CD project investment profits to public welfare activities would also ensure that the primary focus on public welfare activities is sustained over the long term.

Investment Limits

Proposed § 24.4(b) would implement the statutory aggregate maximum level for a national bank's CDC and CD project investments under 12 U.S.C. 24 (Eleventh), which is 5 percent of the bank's unimpaired capital and surplus calculated at the time of investment. The OCC may approve exceptions to the aggregate limit on a case-by-case basis, up to a total of 10 percent of a bank's unimpaired capital and surplus. This can be done only upon OCC's finding that the investment does not pose a significant risk to the deposit insurance fund and that the bank is adequately capitalized. Per project investment limits will be established by the OCC on a case-by-case basis, except for investments that are eligible for the simplified self-certification process discussed under § 24.11(a).

Because CDC and CD project investments are not regular bank loans or investments, § 24.4(c) discusses accounting for these investments. Most often, CDC and CD project investments are not material and may be carried on the bank's books as other assets at cost. However, if the CDC or CD project meets the definition of a significant subsidiary, it should generally be consolidated on a line-by-line basis. Also, if the investment is in a partnership, joint venture or unconsolidated subsidiary over which the bank exercises significant influence, the interest should be presented as an interest in a joint venture or associated company and accounted for under the equity method of accounting.

Unlimited Liability Prohibited

The proposed § 24.4(d) repeats the statutory requirement that a national bank may not invest in a CDC or a CD project if the investment would expose the bank to unlimited liability. The statute and § 24.4(d) reiterate an existing legal precedent which has long prohibited national banks from becoming involved in business dealings that expose them to unlimited liability. The restriction against investing in CDCs or CD projects that would expose a bank to unlimited liability is also reflected in § 24.13(b)(4), which discusses investments in real estate limited partnerships.

Board Policies Required

The proposed § 24.4(e) establishes that it is the responsibility of the bank's board of directors to adopt written policies governing CDCs and CD projects. CDC and CD project policies generally address subjects including compliance with regulatory requirements, the evaluation and achievement of CDC and CD project goals, and the management of CDC and CD project investments. The OCC believes that this provision will enhance bank community development efforts and help ensure that investments are primarily designed to promote the public welfare and are consistent with safe and sound banking practices.

Review Requirements for CDC and CD Project Investments

The proposed § 24.11 explains which CDC and CD project investments the bank may make without prior OCC review and which require prior OCC approval. The OCC believes this proposal would significantly streamline OCC's current approval process for CDC and CD project investments to eliminate prior OCC review for approximately 80 percent of CDC and CD project investments.

Investments not covered in § 24.11(b), may be made without prior OCC approval. For these investments, the OCC would require that the bank submit a brief letter, after the investment commitment is made, to certify compliance with OCC's published standards for investments that are not subject to prior review and with 12 U.S.C. 24 (Eleventh). The letter would also provide the per project and aggregate investment amounts, including the applicable percentage of capital and surplus represented by each. This self-certification requirement would enable the OCC to identify efficiently the banks that are making these investments, monitor investment limitations, and plan any examinations necessary to supervise CDC and CD project investments.

OCC prior review and approval is required for any CDC and CD project investment covered in § 24.11(b). Any bank that has supervisory problems and meets the specific criteria in § 24.11(b)(1) must submit CDC and CD project investments for OCC approval. OCC approval is needed because CDC and CD project investments are not regular, bankable investments. They are not readily marketable, and generally have very different conditions or structures and longer terms than bank financing. In addition, many community development activities, such as the redevelopment of distressed area real estate, equity investments, or technical assistance to small businesses, require more management attention and involvement than other regular bank investments of a similar amount.

VOL 58 ISS 135 JL 16 1993 UMI

The OCC believes that CDC and CD project investments can be made successfully by most banks, provided adequate management attention is devoted to oversight. However, when bank management is necessarily focused on resolving supervisory problems, CDC or CD project investments are more likely to adversely affect the safety and soundness of the bank. For these reasons, the OCC would evaluate in advance whether a bank which had supervisory problems, as specified in § 24.11(b)(1), was in a position to undertake a proposed CDC or CD project investment.

For banks with more than $100 million in assets, an investment in one CDC or CD project that exceeded 2 percent of its unimpaired capital and surplus would require OCC approval in advance. The OCC does not wish to establish a single, mandatory investment limit for individual CDC or CD project investments below the 5 percent statutory aggregate limit. However, large investments in individual CDCs or CD projects have not previously been permitted, and the statute requires OCC to establish per project investment limits for a national bank. Therefore, the OCC proposes that it consider and decide in advance any CDC or CD project investment that exceeds 2 percent of a bank's unimpaired capital and surplus on a case-by-case basis. The OCC would approve the project investment amount based on the information in the investment proposal and the bank's condition.

The OCC believes that banks with assets that do not exceed $100 million should not be covered by this requirement that individual investments in CDCs and CD projects over 2 percent be approved in advance. The existing 2 percent per project limit in I.R. 7.7480 has frequently restricted small banks' ability to make even small CDC and CD project investments that would have a positive impact on their communities. Therefore, to facilitate small bank investments, this proposal would permit small banks to make individual investments that are consistent with §§ 24.4, 24.11 and 24.13 up to a 5 percent maximum without prior OCC approval. All national banks, regardless of size, would be required to seek prior OCC approval for investments that would cause their aggregate investments to exceed 5 percent of their unimpaired capital and surplus.

The OCC believes that CDC and CD project investments that would be covered by § 24.11(b)(4) and would require prior OCC approval frequently would involve complex legal, policy and supervisory issues and be more likely to raise issues of liability and public welfare.

For example, the proposed rule provides that, under very limited circumstances, the OCC would consider a bank's proposal to transfer properties held by the bank as "other real estate owned" (OREO) to a CDC or CD project in which it has or will have an ownership interest. Such a transfer of OREO must meet all the OCC's standards for CDC or CD project investments and requirements for legal divestiture. The bank would have to submit any OREO transfer to the OCC for prior approval.

The proposed rule also requires that a bank submit for prior OCC approval any investment that involves organizational structures and activities other than those that are published in § 24.13 of this rule. Section § 24.13 includes a variety of structures and public welfare activities that the OCC has traditionally approved for CDCs and CD projects.

For investments requiring prior OCC approval, a bank would submit a written investment proposal to the Community Development Division in Washington, DC. The bank would be able to proceed with the investment after 30 days, unless otherwise notified by the OCC.

Structures and Activities Eligible for Self-Certification

The proposed § 24.13 provides a list of national bank CDC and CD project organizational structures and activities that are eligible for the self-certification process. Banks could make investments without prior OCC approval provided the conditions in §§ 24.4, 24.11 and 24.13 are met. However, § 24.13 would not preclude investments in other structures and activities which would have to be submitted for prior OCC review and approval. The OCC's Community Development Division in Washington, DC is available to consult with national banks and assist them in determining if OCC review is required. In addition, as the OCC develops experience with structures and activities not included in § 24.13, the OCC will, from time to time, supplement the list by revising this section of the rule.

Examination, Records and Remedial Action

The proposed § 24.21 states that the OCC examines national bank CDC and CD project investments and that a bank must keep records sufficient to demonstrate compliance with this part. In addition, if the OCC finds a violation of law or regulation or determines that the investment is inconsistent with the safe and sound operation of the bank, the OCC will require remedial action.

Request for Comments

The Comptroller of the Currency invites comments on any aspect of this proposal. The OCC is particularly interested in comments from the industry and the public on:

1. Whether the public welfare criteria in § 24.4 are adequate and appropriate.
2. Whether the list of organizational structures and activities in § 24.13 is clear.
3. Whether the proposal to eliminate prior OCC review of investments that meet the criteria in §§ 24.4 and 24.11 and § 24.13 will benefit banks and promote more investments.

The OCC also encourages comments on whether the guidance in these sections is adequate for bank management to determine if prior OCC approval is required for investments.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. All banks, especially small banks, should benefit to some degree if this proposal is adopted as a final rule. This rulemaking will permit larger investments in CDCs and CD projects and also enable investments to be made on an expedited basis. This should improve the long-term health of the participating banks' market areas.

Executive Order 12291

It has been determined that this document is not a "major rule" as defined in E.O. 12291 and a regulatory impact analysis is not required. The proposal imposes only minimal costs and burdens and is necessary to ensure bank safety and soundness. The overall impact of the proposal will not be significant.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information contained in this notice of proposed rulemaking should be sent to the Comptroller of the Currency, Legislative, Regulatory and International Activities Division, 250 E Street SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. The collections

of information in this proposed regulation are in 12 CFR 24.11. This information is needed to promote the safety and soundness of national banks and compliance with law. This information will be used to identify banks making CDC and CD project investments, to plan examination and supervision of the investments, and to conduct prior review of investments most likely to raise legal, policy, or safety and soundness concerns.

The OCC estimates that 300 for-profit institutions will file investment proposals or certifications annually. The average burden will be approximately 1.8 hours per participating bank. Depending on whether the investment requires prior review and approval or only a letter of self-certification, the actual burden per bank is estimated to range from approximately one hour for a letter to five hours for a complete investment proposal. Estimated total annual reporting burden for 12 CFR part 24: 540 burden hours.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, title 12, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 7—[AMENDED]

1. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 7.7480 [Removed]

2. Section 7.7480 is removed.

3. A new part 24 is added to read as follows:

PART 24—COMMUNITY DEVELOPMENT CORPORATION AND PROJECT INVESTMENTS

Sec.

24.1 Authority, purpose, and policy.
24.2 Definitions.
24.4 Community development corporation and community development project investments.
24.11 Community development corporation and community development project investment certification and approval.
24.13 Structures and activities eligible for the certification process.
24.21 Examination, records, and remedial action.

Authority: 12 U.S.C. 24 (Eleventh), 93a, 161, 481 and 1818.

§ 24.1 Authority, purpose and policy.

(a) *Authority.* The requirements contained in this part are authorized under 12 U.S.C. 24 (Eleventh), 93a, 161, 481 and 1818.

(b) *Purpose.* This part implements 12 U.S.C. 24 (Eleventh) and permits national banks to make investments in and loans to community development corporations (CDCs) and community development projects (CD projects), consistent with safe and sound banking practices. It provides the standards that will be used by the Office of the Comptroller of the Currency (OCC) to determine whether an investment is designed primarily to promote the public welfare. It also describes OCC's approval process, which provides for prior OCC approval of specified investments, but which enables the majority of these investments, which meet established conditions, to be made without prior OCC approval.

(c) *Policy.* (1) The OCC encourages each national bank to make efforts, consistent with its capabilities and condition, to address local community development needs, and to promote economic growth. The OCC believes that one effective way for many national banks to address those needs is by making CDC and CD project investments, consistent with the safe and sound operation of the bank.

(2) CDC and CD project investments should supplement bankable lending programs and services offered by the bank in the regular course of business to help meet community credit needs. CDC and CD project investments are not regular bankable loans or investments. Under this part, national banks can undertake community development activities, such as equity investments in real estate, equity and special debt investments in small, new companies, or the renovation of neighborhood commercial or residential properties, that are permitted only if they primarily serve the public welfare.

§ 24.2 Definitions.

(a) *Adequately capitalized.* For purposes of this part, a national bank is adequately capitalized if the bank meets the definitional requirements for "well-capitalized" or "adequately capitalized" in 12 CFR 6.4(b).

(b) *Bankable* means, with reference to lending, a loan made in the ordinary course of business, on a sound basis in conformance with a bank's normal underwriting standards and lending policies; and, with reference to investments, an investment that satisfies securities eligibility standards established for investments by national banks under the provisions of 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(c) *Community development corporation (CDC)* means a corporate entity established by one or more financial institutions or by financial institutions and other investors or members, and operating for the primary purpose of housing development, economic growth and revitalization, small and minority business creation, and other community development initiatives. A CDC operates within a defined neighborhood or area, including, for example, low- and moderate-income areas, and governmentally designated redevelopment areas, cities, towns, counties, or states.

(d) *Community development corporation subsidiary (CDC subsidiary)* means a CDC that is a subsidiary of a national bank and which is majority-owned by that national bank or a CDC which is majority-owned by a national bank and its affiliates.

(e) *Community development project (CD project)* means a specific project in a particular location, such as a neighborhood, town, county, or state, the primary purpose of which is the economic improvement of that area or the provision of housing for low- and moderate-income persons in that area. A CD project investment funds the development or renovation of one or more specified residential or commercial properties in a manner consistent with community and governmental revitalization plans. National bank loans or special debt investments to support community-based development organizations (such as those controlled by community residents, businesses and governments) are also CD project investments.

(f) *Low- and moderate-income areas or communities* means areas where at least 51 percent of the residents are low- and moderate-income persons and families.

(g) *Low- and moderate-income person(s) and families* means individuals and families whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary of the U.S. Department of Housing and Urban Development, with adjustments for smaller and larger families. In conjunction with this term, the area involved shall be determined in the same manner as an area is determined

for purposes of lower-income housing assistance under 42 U.S.C. 1437f.

(h) *Minority-owned small businesses* means small businesses as defined in § 24.2(j) that are majority-owned by members of minority groups or by women.

(i) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that any insurance fund administered by the Federal Deposit Insurance Corporation shall suffer a loss.

(j) *Small businesses* means businesses that are smaller than the maximum size eligibility standards established by the Small Business Administration (SBA) for:

(1) The Small Business Investment Company and Development Company Programs, which are set forth in 13 CFR 121.802(a)(2); or

(2) The SBA section 7(a) loan and guarantee program which are set forth in 13 CFR 121.601.

§ 24.4 Community development corporation and community development project investments.

(a) *Permitted public welfare investments.* Subject to the provisions of § 24.11, a national bank may make an equity or debt investment, including a loan that is not bankable, in a CDC or CD project that is designed primarily to promote the public welfare. The OCC will consider a CDC and CD project investment to be primarily designed to promote the public welfare, if all of the following criteria are met:

(1) The investment primarily benefits low- and moderate-income persons and families or small businesses, including minority-owned small businesses;

(2) The investment addresses one or more demonstrated community development needs in a community served by the bank, including the needs of low- and moderate-income areas or communities, or governmentally designated redevelopment areas (such as by providing housing, services, or jobs);

(3) There is nonbank community involvement in the CDC or CD project, including representatives of the affected governmental, housing, or small business sectors and, for a CDC controlled by one or more national bank, such involvement is evidenced in the composition of the CDC board of directors; and

(4) The profits and dividends received by the bank from the CDC or CD project investment are devoted to activities that primarily promote the public welfare and, in the case of a for-profit CDC controlled by one or more national banks, are reinvested in the CDC during its first three years of operation.

(b) *Investment limits.* A national bank's investments under this part may not exceed 5 percent of its unimpaired capital and surplus, except that the OCC may, on a case-by-case basis, and as described in § 24.11, approve investments not exceeding 10 percent of a bank's unimpaired capital and surplus.

(c) *Accounting for CDC and CD project investments.* The instructions for Consolidated Reports of Condition and Income published by the Federal Financial Institutions Examination Council (FFIEC Instructions) provide guidance for regulatory accounting and reporting for investments in subsidiaries and similar entities. A copy of the FFIEC Instructions may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The following guidance is provided for national bank investments in CDC and CD project investments consistent with the FFIEC Instructions:

(1) Generally, a bank's investments in CDCs and CD projects involve a limited ownership percentage and are not material. As a result, these investments may be recorded as "other assets" at cost.

(2) If the CDC or CD project meets the definition of a significant majority-owned subsidiary in the FFIEC Instructions, it should generally be consolidated on a line-by-line basis.

(3) If the investment is a partnership, joint venture, or unconsolidated subsidiary over which the bank exercises significant influence, the interest should be presented as an investment in a joint venture or associated company and accounted for under the equity method of accounting.

(d) *Limited liability.* A national bank shall not make a CDC or CD project investment if that investment would expose the bank to unlimited liability.

(e) *CDC and CD project policies.* The bank's board of directors shall adopt written policies governing CDC and CD project investments. CDC or CD project policies usually address such matters as regulatory compliance, evaluation and achievement of CDC and CD project goals, and effective CDC or CD project management.

§ 24.11 Community development corporation and community development project investment certification and approval.

(a) *Investments not requiring prior review.* (1) Any investment where prior OCC approval is not required under § 24.11(b) may be made without prior notification to, or approval by, the OCC. However, within 10 days after the investment is made, the national bank shall submit a letter of certification to the Comptroller of the Currency, Community Development Division, Washington, DC 20219.

(2) The letter of certification must indicate that the bank's investment meets the requirements of this part, and is not subject to prior OCC review. The letter of certification must also include:

(i) The name of the CDC or CD project;

(ii) The per project and aggregate investment amounts; and

(iii) The applicable percentage of unimpaired capital and surplus for each.

(b) *Investments requiring prior OCC approval.* A national bank shall submit an investment for any planned CDC or CD project investment to the OCC for prior review, if any of the conditions in paragraphs (b) (1) through (4) of this section exist:

(1) The national bank:

(i) Has a composite rating of 3, 4 or 5 under the Uniform Financial Institutions Rating System; or

(ii) Is covered by an informal or formal enforcement action; or

(iii) Is not adequately capitalized as defined in § 24.2(a);

(2) The national bank has more than $100 million in assets and plans to make one or more investments in a single CDC or CD project that will total an amount that exceeds 2 percent of its unimpaired capital and surplus;

(3) The national bank proposes to make a CDC or CD project investment that would cause its aggregate investments in all CDCs or CD projects to exceed 5 percent of its unimpaired capital and surplus, or proposes subsequent investments over 5 percent; or

(4) The proposed CDC or CD project investment falls in one of the following four categories:

(i) The investment is in a *de novo* CDC subsidiary or is in a CDC controlled by one national bank and its affiliates;

(ii) The investment involves the transfer of properties, carried on the bank's books as "other real estate owned" (OREO), to a CDC in which the bank has or will have an ownership interest (which the OCC will consider only under limited circumstances as stated in § 24.11(e)(iii));

(iii) The investment provides funds for projects in a state outside the state where the bank is located; or

(iv) The investment will be in a structure or support activities other than those that the OCC has included in § 24.13.

(c) *Optional review.* A national bank may request OCC review and approval of investment proposals for investments not covered under § 24.11(b).

(d) *CDC or CD project investment proposals.* (1) A national bank shall submit an investment proposal for any investment covered in § 24.11(b) to the Office of the Comptroller of the Currency, Community Development Division, Washington, DC 20219.

(2) A national bank shall include in its CDC or CD project investment proposal a discussion of:

(i) How the investment meets the requirements of this part;

(ii) The organizational structure and type of investment;

(iii) The planned activities; and

(iv) The per project and aggregate investment amounts, including the applicable percentage of unimpaired capital and surplus.

(e) **OCC approval of investments.** (1) The OCC may consider any information available in its decisions regarding CDC and CD project investment proposals. The OCC generally will consider factors such as:

(i) Whether the proposal meets the requirements of this;

(ii) Whether the investment is consistent with the safe and sound operation of the bank;

(iii) If an OREO transfer is proposed, whether the primary public welfare benefits of the transfer are demonstrated; whether the transfer meets OCC requirements for divestiture; whether all supervisory concerns regarding the transfer are addressed; and whether other factors the OCC may consider relevant are addressed; and

(iv) Whether the investment is consistent with other requirements and policies of the OCC.

(2) Unless otherwise notified by OCC, the bank may make the proposed CDC or CD project investment after 30 days from the date the OCC receives the bank's investment proposal. The OCC will provide written notice to the bank to indicate receipt of the proposal.

(3) The OCC, by notifying the bank, may extend the 30-day period. If so notified, the bank may make the investment only with the written approval of the OCC.

(4) Notwithstanding § 24.11(e)(2), a bank must obtain explicit written approval from the OCC for any CDC or CD project investment that causes a bank's aggregate investments under this part to exceed 5 percent of its unimpaired capital and surplus, and for any subsequent investment in excess of that amount. The OCC will approve investments only for adequately capitalized banks as defined in § 24.2(a) and only those that do not pose a significant risk to the deposit insurance fund as defined in § 24.2(i).

(5) The OCC may impose one or more conditions in connection with its approval of a CDC or CD project investment.

§ 24.13 Structures and activities eligible for the certification process.

(a) Eligible structures and activities. (1) This section describes CDC and CD project organizational structures and activities that are referred to in § 24.11(b)(4)(iv). If consistent with other requirements of §§ 24.4 and 24.11, a bank may make these investments without prior notice to or approval by the OCC.

(2) The OCC will propose revisions to § 24.13, from time to time, to add new CDC and CD project structures and activities to those that are eligible for the certification process of § 24.11(a).

(b) *Eligible structures.* The structures listed in this paragraph (b) are eligible structures for the certification process under § 24.11(a): (1) A for-profit or nonprofit multibank CDC, provided the CDC is not a CDC subsidiary as defined in § 24.2(d);

(2) A CDC, either for-profit or nonprofit, with bank and or nonbank investors, that meets the requirements of this part, established by formal action of a state or a general unit of local government or by governmental agencies delegated that authority by action of the state or local government;

(3) A nonprofit community-based development organization that meets the requirements of § 24.4 (such as those primarily controlled by community residents, businesses and/or governments in the target area); and

(4) A real estate limited partnership operating only in the state where the bank is located that qualifies for the Federal low-income housing tax credit program and is managed by a nonprofit general or co-general partner. Such a real estate limited partnership must be structured to limit the bank's liability to an amount not exceeding the bank's capital investment and any specific contingent liabilities, to avoid bank participation in the control of the business of the partnership, and to reflect steps taken by the bank to strictly limit its activities within the limited partnership, consistent with state law, so that it clearly maintains its limited partner status.

(c) *Eligible activities.* (1) Activities that are eligible for the certification process under § 24.11(a) and that may be undertaken through CDCs or community-based development organizations listed under paragraphs (b)(1) through (b)(3) of this section include:

(i) Acquiring, developing, rehabilitating, managing, and selling or renting housing designed primarily to benefit low- and moderate-income residents of the bank's community, or providing equity or debt financing, including loans, to promote such housing activities, provided the financing is not bankable;

(ii) Providing equity financing, loans, or loan guarantees that are not bankable for small businesses, including minority-owned businesses, to stimulate economic development and job creation in a targeted area;

(iii) Providing technical assistance services, credit counseling, community development research, and program development assistance, for small businesses including minority businesses, low- and moderate-income families and areas, or nonprofit community development corporations to help achieve community development goals;

(iv) Acquiring, developing, rehabilitating, managing, and selling or renting commercial or industrial properties, provided that:

(A) Each property is in a low- or moderate-income or governmentally designated redevelopment area and is primarily occupied by small businesses, including minority-owned small businesses;

(B) Each property is developed in accordance with a governmental plan for revitalization or development; and

(C) The private market is not addressing the development need.

(v) Investing in one or more real estate limited partnerships as a limited partner to support projects that qualify for the Federal low-income housing tax credit program, provided they are located only within one state where the bank is located and are managed by a nonprofit general or co-general partner.

(2) Activities that are eligible under § 24.11(a) for the certification process and may be undertaken by real estate limited partnerships described in paragraph (b)(4) of this section include:

(i) Equity investment in one or more low- and moderate-income housing project(s) qualifying for the Federal low-income housing tax credit, provided the projects are within one state; and

(ii) Equity investment as a limited partner in one or more operating limited partnerships that are managed by nonprofit general or co-general partners and that develop low- and moderate-income housing projects qualifying for the Federal low-income housing tax credit, provided the projects are within one state.

§ 24.21 Examination, records, and remedial action.

(a) *Examination.* National bank CDC or CD project investments are governed by the examination provisions of 12 U.S.C. 481.

(b) *Records.* Every national bank shall maintain in its files information adequate to demonstrate that it is in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC ascertains that a CDC or CD project investment is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to the bank deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

Dated: July 30, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93–16650 Filed 7–15–93; 8:45 am]

BILLING CODE 4810–33–P

VOL 58 ISS 135 JL 16 1993 UMI

federal register

Friday
July 16, 1993

Part IV

Department of Education

34 CFR Part 361
State Vocational Rehabilitation Services Program; Proposed Rule

VOL 58 ISS 135 JL 16 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB13

The State Vocational Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services Program. These proposed regulations are needed to implement section 12(d) of the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments). Section 12(d) of the Act requires that the Secretary promulgate regulations establishing requirements for the implementation of an order of selection for the receipt of vocational rehabilitation services. An order of selection is required under section 101(a)(5)(A) of the Act if a designated State unit (DSU) determines that it is unable to provide services to all eligible individuals who apply for services. If a DSU establishes an order of selection, it must first provide services to individuals with the most severe disabilities before serving other eligible individuals. These proposed regulations are necessary to ensure the proper administration of the program under the modified eligibility criteria enacted in the 1992 Amendments.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Acting Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3220, Mary E. Switzer Building, Washington, DC 20202–2531.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Suzanne Tillman, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202–2735. Telephone: (202) 205–8303. Deaf and hearing impaired individuals may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The State Vocational Rehabilitation Services Program is a State-administered program that provides individualized vocational rehabilitation services to eligible individuals with disabilities. The purpose of the program is to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program for vocational rehabilitation designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities so that they may prepare for and engage in gainful employment.

The program is an important element of the Department's strategy for achieving the National Education Goals. The program addresses Goal 5, that every adult American—including individuals with disabilities—will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The General Accounting Office (GAO) conducted a review, between July 1990 and February 1991, of the implementation of the order of selection requirement. The GAO found that 5 of the 11 States it reviewed that did not establish an order of selection used caseload management techniques, e.g., reducing outreach efforts or instituting waiting lists to limit the number of applicants if resources were not available to serve additional clients. As a result of these findings, the GAO recommended that the Rehabilitation Services Administration (RSA) establish clearer criteria for determining if and when States must use an order of selection. RSA developed sub-regulatory policy and non-binding guidance in early 1992 to address the GAO recommendations and advised the GAO that it would consider rulemaking in this area after the reauthorization in late 1992.

As a result of the 1992 Amendments (Pub. L. 102–569), section 12(d) of the Act now requires that the Secretary issue regulations on the requirements for implementing an order of selection by a DSU. The Secretary interprets this statutory charge as authorizing the Department to issue regulations on (1) the process for determining whether a DSU needs to establish an order of selection; (2) the timing for making this determination; (3) the requirements for establishing and administering an order of selection; and (4) if a DSU determines it can serve all eligible individuals and satisfy all program requirements, the required content of its explanation in the State plan of how it will be able to do so.

These proposed regulations are necessary to ensure the proper administration of the program under the modified eligibility criteria enacted in the 1992 Amendments. Prior to the 1992 Amendments, a DSU was required to make a determination that an individual had a reasonable expectation of benefiting from services. Many individuals with severe disabilities were found not to have a reasonable expectation of benefiting from services and, on this basis, were determined ineligible. The 1992 Amendments provide that an individual with a physical or mental impairment who has a substantial impediment to employment is presumed able to benefit in terms of an employment outcome from vocational rehabilitation services, unless a DSU can demonstrate that the individual is unable to benefit from services. As a result of this change, some individuals with severe disabilities who were previously declared ineligible for services because they were found unable to benefit from services will be determined eligible, provided there is a determination in accordance with section 102(a)(1)(B) of the Act that these individuals require vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment. The Secretary believes that these proposed regulations are necessary to ensure that a DSU carefully considers whether it has adequate fiscal and personnel resources to meet a potential increased demand for services or whether it must establish an order of selection.

Summary of Major Provisions

The following is a summary of the major regulatory changes in these proposed regulations. The summary distinguishes between regulatory provisions that (1) restate statutory language; (2) contain interpretations of statutory text; or (3) provide standards and procedures for the program that are not stated in the statutory text. Commenters are requested to direct their comments to the latter two categories.

Section 361.36(a) General Provisions

• Assurance of Ability to Serve all Eligible Individuals

If a DSU determines that it is able to serve all eligible individuals, it would be required to provide such an assurance in its State plan. The assurance would be supported by an explanation of how, on the basis of the DSU's projected fiscal and personnel resources, it will (1) continue to provide services to all individuals currently receiving services; (2) provide assessment services to all individuals

expected to apply for services in the next fiscal year; (3) provide services to all individuals who are determined to be eligible in the next fiscal year; and (4) meet all program requirements. The explanation would implement section 101(a)(5)(A) of the Act, which requires a DSU to provide an explanation of the methods by which it will provide vocational rehabilitation services to all eligible individuals.

The first part of the explanation would demonstrate that a DSU has adequate fiscal resources to provide services to all eligible individuals and satisfy all program requirements. This explanation would include (1) the actual number of and projected costs of serving, in the next fiscal year, individuals with existing individualized written rehabilitation programs; (2) the projected number of applicants and individuals expected to be determined eligible for services in the next fiscal year and the projected costs of serving these individuals; (3) the projected costs of program administration; (4) comparable data for the current fiscal year of the costs listed previously and an explanation of any projected decreases in these costs; and (5) a demonstration that the DSU's projected revenues for the program are adequate to cover the three types of costs listed previously.

In making its projection of the number of applicants for services in the next fiscal year, the DSU would be required under the proposed regulations to consider, but not limit its consideration to, its assessment of the rehabilitation needs of individuals with severe disabilities within the State; its outreach efforts to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved or underserved by the vocational rehabilitation system; the number of students and other youth who are individuals with disabilities and who need rehabilitation services, including transitioning special education students; and its estimates of individuals with disabilities to be served under interagency cooperative arrangements, particularly individuals receiving services under the Individuals With Disabilities Education Act, the Carl D. Perkins Vocational and Applied Education Act, and the Wagner-O'Day Act.

The populations to be particularly considered in the DSU's projection of the number of applicants in the next fiscal year are identified in the proposed regulations because these populations are given special emphasis in the 1992 Amendments. Section 101(a)(5)(A) of the Act requires a DSU to perform a comprehensive assessment of the rehabilitation needs of individuals with severe disabilities within the State. Section 101(a)(11)(A) of the Act requires interagency cooperation between the DSU and other State, Federal, and local programs to assist individuals with disabilities, particularly individuals receiving services under the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational and Applied Education Act, and the Wagner-O'Day Act. Section 101(a)(15)(D) of the Act requires a DSU to perform outreach efforts to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system. Section 101(a)(24) of the Act requires the State plan to contain plans, policies, and procedures (including entering into a formal interagency cooperative agreement) that are designed to facilitate the transition of special education students into the vocational rehabilitation system. Lastly, section 101(a)(30) of the Act requires a DSU to describe in its State plan the manner in which students who are individuals with disabilities and who are not in special education programs can access and receive vocational rehabilitation services.

The second part of the explanation would demonstrate that the DSU has adequate personnel resources to provide services to all eligible individuals and satisfy all program requirements. This explanation would be based on the comprehensive system of personnel development (CSPD) established by the DSU pursuant to section 101(a)(7) of the Act. The CSPD is updated on an annual basis and requires a DSU to provide in its State plan a description of the procedures and activities it will undertake to ensure an adequate supply of qualified State rehabilitation professionals and paraprofessionals to provide vocational rehabilitation services.

• Order of Selection

If a DSU determines that it is unable to provide services to all eligible individuals, section 101(a)(5) of the Act requires the DSU to include in its State plan the order to be followed in selecting eligible individuals, as well as a justification for the order. This requirement would be implemented in proposed § 361.36(a)(2).

Section 361.36(b) Time for Determining Need for an Order of Selection

A DSU would be required to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection. The Secretary has proposed this requirement to ensure that, if a DSU determines that an order of selection is necessary, it has enough time to prepare for its implementation at the beginning of the fiscal year, or as soon thereafter as possible. Early implementation of the order of selection is necessary to ensure that a DSU does not prematurely exhaust program funds, before the end of the fiscal year, attempting to serve all eligible individuals. The Secretary is particularly interested in ensuring that there be sufficient funds throughout the fiscal year to provide services to individuals with the most severe disabilities.

If the DSU determines that it does not need to establish an order of selection, it shall reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal and personnel resources or an increase in its program costs, indicate that it may no longer be able to meet the provisions of proposed § 361.36(a)(1)(i). If any reevaluation is done, a DSU must consider all of the factors set forth in proposed § 361.36(a)(1)(ii) and must maintain supporting records in accordance with 34 CFR 76.731 for purposes of program monitoring. If a reevaluation shows that the DSU cannot continue to serve all eligible individuals, it must, of course, amend its State plan as required in 34 CFR 76.140 and establish an order of selection.

• Factors That Cannot be Used in Determining Order of Selection of Eligible Individuals

The Secretary proposes that an order of selection not be based on (1) any residency requirement; (2) type of disability; (3) age, sex, race, color, creed, or national origin; (4) source of referral; (5) any type of expected employment outcome; (6) the particular service needs or anticipated cost of services required by an individual; or (7) the income level of an individual or an individual's family. Section 361.31(a) of the current regulations prohibits a DSU from determining eligibility based upon these first three considerations. Section 102(a) of the Act specifies the criteria that must be used to determine eligibility, which do not permit use of the other four considerations. The Secretary believes that factors that cannot be considered in making eligibility determinations should not be allowed to govern the selection of individuals for the provision of services under an order of selection.

—Residency requirement:

Section 101(a)(14) of the Act provides that no eligible individual who is

present in a State may be denied services because of any residency requirement. The current regulations in 34 CFR 361.31(a)(2) prohibit eligibility determinations to be based on the residency of an individual. The Secretary would also prohibit any order of selection policy that is based on the residency of an individual.

—Type of disability:

Section 504 of the Act prohibits discrimination based on disability in any Federal program. The current regulations in 34 CFR 361.31(a)(1) prohibit eligibility determinations to be based solely on type of disability. The Secretary would also prohibit any order of selection policy that selects for services individuals with a particular disabling condition over any other individuals with different disabling conditions.

—Age, sex, race, color, creed, or national origin:

The current regulations in 34 CFR 361.31(a)(1) prohibit eligibility determinations to be based on the sex, race, age, creed, color, or national origin of the individual applying for service. In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in any program receiving Federal financial assistance; Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in any education program receiving Federal financial assistance; and the Age Discrimination Act prohibits discrimination based on age in any program receiving Federal financial assistance. The Secretary would likewise prohibit any order of selection policy that is based on age, sex, race, color, creed, or national origin.

—Source of referral:

Section 102(a)(1) of the Act does not permit a DSU to consider the source of referral in making eligibility determinations. Therefore, the Secretary would prohibit an order of selection policy that would give a service priority to any individual based upon the entity that referred the individual to the DSU for services. For example, an order of selection policy could not be established that would give a blanket priority to all disability beneficiaries referred from the Social Security Administration (SSA), even though many of these referrals might be subsequently determined to be individuals with a severe disability.

—Type of expected employment outcome:

Section 102(a)(1) of the Act does not permit a DSU to consider the expected particular employment outcome of an individual in making eligibility determinations. The Secretary would, similarly, prohibit an order of selection policy that is based on the type of employment outcome sought by an individual. This restriction would prohibit, for example, an order of selection policy that gives priority to individuals with an employment outcome in the competitive labor market over individuals with an employment outcome of homemaking, or individuals with a goal of full-time employment over individuals with a goal of part-time employment.

—Particular service needs of an individual or anticipated cost of services required by an individual:

Section 102(a)(1) of the Act does not permit a DSU to consider the particular service needs or the anticipated cost of services required by an individual in making eligibility determinations. The Secretary would likewise prohibit any order of selection policy from being based on these considerations. This restriction would prohibit an order of selection policy that gives priority to individuals who require short-term services over individuals who require long-term services, such as supported employment services. The restriction would also prohibit a DSU from selecting for priority individuals who require only non-purchased services (i.e., counseling, guidance, and placement) over individuals requiring potentially costly services such as assistive technology devices or personal assistance services.

—Income level of the individual or the individual's family:

Section 102(a)(1) of the Act does not permit a DSU to consider the income level of an individual or the individual's family in making eligibility determinations. The income level of an individual or the individual's family can be a factor only in determining whether an individual is required by a DSU to pay part of the cost of a service (this is a State option permitted under current regulations in 34 CFR 361.47(a))—not whether an individual is eligible for services. The Secretary would also not permit an order of selection policy to be based on income level.

• Priority for Individuals With the Most Severe Disabilities

Section 101(a)(5)(A) of the Act provides that individuals with the most severe disabilities are to be served before other individuals with severe disabilities and individuals with non-severe disabilities. The Secretary has incorporated this requirement into § 361.36(c)(2) of the proposed regulations.

The Secretary has not attempted to define which eligible individuals are individuals with the most severe disabilities. Section 101(a)(5)(A) of the Act confers this responsibility on the States.

The Secretary has determined, however, that any criteria for determining which eligible individuals are individuals with the most severe disabilities must be consistent with the definition of "individual with a severe disability" in section 7(15)(A) of the Act. An "individual with a severe disability" is defined as an individual with a disability (1) who has a severe physical or mental impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of an employment outcome; (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (3) who has one or more physical or mental disabilities, as identified in section 7(15)(A) of the Act, or any other disability or disabilities that cause comparable functional limitation. The Secretary would require that a DSU take these three statutory criteria into account, along with any other criteria established by the DSU, in determining which eligible individuals are individuals with the most severe disabilities. Thus, the Secretary believes that any criteria developed by a DSU must include consideration of the extent (e.g., number or degree) of functional limitations resulting from an individual's physical or mental impairment(s) and the individual's need for multiple VR services over an extended period of time.

In addition, the factors that cannot be used in determining an order of selection in § 361.36(c)(1) also cannot be used in the development of criteria for determining those individuals with the most severe disabilities.

Section 361.36(d) Administrative Requirements

The Secretary proposes that, in administering an order of selection, a DSU shall (1) implement the order of selection on a statewide basis; (2) identify the order of selection as a State-imposed requirement; (3) establish written policies related to the development, establishment, and administration of the order of selection; (4) continue to provide services to any eligible individual who has begun to

receive services prior to the effective date of the order of selection, irrespective of the severity of that individual's disability; and (5) ensure that all of its funding arrangements for providing services are consistent with the order of selection.

—Implement on statewide basis:

Section 101(a)(4) of the Act requires a State plan to be implemented on a statewide basis. In accordance with this requirement, the Secretary would require a DSU to implement its order of selection on a statewide basis. This provision would require that a DSU implement its order of selection policy throughout the State rather than in selected geographic areas.

—Identify as State-imposed requirement:

Section 17 of the Act requires that any State rule or policy relating to the administration or operation of the program shall be identified as a State-imposed requirement. In accordance with this requirement, the Secretary would require a DSU to identify its order of selection policy as a State-imposed requirement.

—Written policies:

The Secretary would require that a DSU establish written policies related to the development, establishment, and administration of its order of selection. These written policies may include a DSU's policies regarding (1) consultation with the State Rehabilitation Advisory Council; (2) staff orientation and training; (3) notification of individuals applying for services; (4) monitoring procedures; (5) caseload management; (6) evaluation of the effectiveness of the order of selection; and (7) any other issues likely to be raised by applicants, eligible individuals, vocational rehabilitation personnel, service providers, and others.

—Continuity of services:

The Secretary would require a DSU to continue to provide services to any eligible individual who has begun to receive services prior to the effective date of the order of selection. This provision would require a DSU to continue to provide services to an individual with non-severe disabilities who began to receive services prior to the effective date of the order of selection, even if the individual would not be among the individuals receiving services after the establishment of an order of selection. The Secretary believes that order of selection pertains only to the selection of eligible individuals to be provided services and should not affect the obligation of a DSU to continue to provide all needed services to individuals already receiving services.

—Third-party funding arrangements:

The Secretary would require a DSU to ensure that its funding arrangements for providing services, such as third-party arrangements—as described in 34 CFR 361.11 and 361.13—and establishment grants, are consistent with the order of selection. These funding arrangements typically allocate resources to provide services to particular groups of individuals with disabilities and are sometimes sources of matching funds for a DSU. The Secretary believes that these service agreements may not override an order of selection established by a DSU. If a DSU finds that any of its funding arrangements are inconsistent with its order of selection, the Secretary would require that it renegotiate these funding arrangements so that they are consistent with the order of selection.

Section 361.36(e) State Rehabilitation Advisory Council

Section 101(a)(36)(A)(ii) of the Act requires that a DSU seek and seriously consider on a regular basis the advice of the State Rehabilitation Advisory Council regarding the development and implementation of policies under the program. Accordingly, the Secretary would require that a DSU consult with and seriously consider the advice of the State Rehabilitation Advisory Council regarding the (1) need to establish an order of selection; (2) content of the particular order of selection; (3) criteria for determining individuals with the most severe disabilities; and (4) administration of the order of selection.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 361.36 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

States are eligible to apply for grants under the program in which these proposed regulations would apply. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3220, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Secretary in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 361

Administrative practice and procedures, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.126—The State Vocational Rehabilitation Services Program)

Dated: July 9, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend Part 361 of Title 34 of the Code of Federal Regulations as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. The authority citation for Part 361 continues to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

2. Section 361.36 is revised to read as follows:

§ 361.36 Ability to serve all eligible individuals; order of selection for services.

(a) *General provisions.* The State plan must contain—

(1)(i) An assurance that the designated State unit is able to provide services to all eligible individuals. The assurance must be supported by an explanation of how, on the basis of the designated State unit's projected fiscal and personnel resources, it will—

(A) Continue to provide services to all individuals currently receiving services;

(B) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(C) Provide services to all individuals who are determined to be eligible in the next fiscal year; and

(D) Meet all program requirements; and

(ii) The explanation in paragraph (a)(1)(i) of this section must include, at a minimum—

(A) The actual number of and projected costs of serving, in the next fiscal year, individuals with existing individualized written rehabilitation programs;

(B) The projected number of applicants for services and individuals determined to be eligible in the next fiscal year and the projected costs of serving these individuals. In making a projection of the number of applicants for services in the next fiscal year, the designated State unit must consider, but not limit its consideration to—

(*1*) Its assessment of the rehabilitation needs of individuals with severe disabilities within the State;

(*2*) Its outreach efforts to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system;

(*3*) The number of students and other youth who are individuals with disabilities and who need rehabilitation services, including transitioning special education students; and

(*4*) Its estimates of the number of individuals with disabilities to be served under interagency cooperative arrangements, particularly individuals receiving services under the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational and Applied Education Act, and the Wagner-O'Day Act;

(C) The projected costs of administering the program, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies;

(D) Comparable data for the current fiscal year of the costs listed in paragraph (a)(1)(ii)(A)–(C) of this section and an explanation of any projected decreases in these costs;

(E) A demonstration that the designated State unit's projected revenues for the program are adequate to cover the costs listed in paragraph (a)(1)(ii)(A)–(C) of this section; and

(F) A demonstration that the designated State unit has sufficient numbers of qualified personnel to provide vocational rehabilitation services consistent with its comprehensive system of personnel development required by section 101(a)(7) of the Act; or

(2) The order to be followed in selecting eligible individuals to be provided services, and a justification of that order of selection, if the designated State unit determines that it is unable to provide the assurance described in paragraph (a)(1)(i) of this section.

(b) *Time for determining need for an order of selection.* (1) The designated State unit shall determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it shall reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to meet the provisions in paragraph (a)(1)(i) of this section.

(c) *Establishing an order of selection.*—(1) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on—

(i) Any residency requirement;

(ii) Type of disability;

(iii) Age, sex, race, color, creed, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The particular service needs of an individual or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual's family.

(2) *Priority for individuals with the most severe disabilities.* The State plan must assure that those individuals with the most severe disabilities are selected for service before other individuals with disabilities. The designated State unit shall establish criteria for determining which individuals, including individuals who are members of the populations identified in paragraph (a)(1)(ii)(B) of this section, are individuals with the most severe disabilities. The criteria must be consistent with the definition of "individuals with severe disabilities" in section 7(15)(A) of the Act and the requirements in paragraph (c)(1) of this section.

(d) *Administrative requirements.* In administering the order of selection, the designated State unit shall—

(1) Implement the order of selection on a statewide basis;

(2) Identify the order of selection as a State-imposed requirement;

(3) Establish written policies related to the development, establishment, and administration of the order of selection;

(4) Continue to provide all needed services to any eligible individual who has begun to receive services prior to the effective date of the order of selection, irrespective of the severity of the individual's disability;

(5) Ensure that its funding arrangements for providing services, including third-party arrangements and establishment grants, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit shall renegotiate these funding arrangements so that they are consistent with the order of selection.

(e) *State Rehabilitation Advisory Council.* The designated State unit shall consult with and seriously consider the advice of the State Rehabilitation Advisory Council regarding the—

(1) Need to establish an order of selection;

(2) Content of the particular order of selection;

(3) Criteria for determining individuals with the most severe disabilities; and

(4) Administration of the order of selection.

(**Authority:** Secs. 7(15)(A); 12(d); 17; 101(a)(4); 101(a)(5)(A); 101(a)(7); 101(a)(11)(A); 101(a)(15)(D); 101(a)(24); 101(a)(30); 101(a)(36)(A)(ii); 107(a)(4)(B); and 504(a) of the Act; 29 U.S.C. 706(15)(A), 711(d), 716, 721(a)(4), 721(a)(5)(A), 721(a)(7), 721(a)(11)(A), 721(a)(15)(D), 721(a)(24), 721(a)(30), 721(a)(36)(A)(ii), 727(a)(4)(B), and 794(a))

[FR Doc. 93–16866 Filed 7–15–93; 8:45 am]

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VOL
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federal register

Friday,
July 16, 1993

Part V

Environmental Protection Agency

Thirty-Second Report of the TSCA Interagency Testing Committee to the Administrator; Notice

VOL 58 ISS 135 JL 16 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-41039; FRL-4630-2]

Thirty-Second Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The TSCA Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Thirty-Second Report to the Administrator of EPA on June 2, 1993. This report is included with this notice. As noted in this Report, the ITC revised the *Priority Testing List* by adding one group of 34 chemicals to the list for priority consideration by the EPA Administrator for promulgation of test rules under section 4(a) of the Act. These chemicals are designated for response within 12 months. Therefore, in response to the ITC's designation, EPA will either initiate rulemaking under section 4(a) of TSCA, enter into a testing consent agreement, or publish a **Federal Register** notice explaining the reasons for not initiating such rulemaking within 12 months. The ITC is also removing four designated chemicals and two recommended chemicals and eight recommended chemical groups added in the Twenty-Eighth Report. The ITC's reasons for removing these chemicals and chemical groups are stated in the Thirty-Second Report. There are no recommended with intent-to-designate chemicals or chemical groups in the Thirty-Second Report. EPA invites interested persons to submit written comments on the Report.

In addition, EPA is soliciting interested parties for participation in or monitoring of a consent agreement process for the chemicals that were designated for dermal absorption testing. EPA is also inviting manufacturers and/or processors of chemical substances who wish to participate in testing negotiations for the chemicals designated for dermal absorption testing to develop and submit testing consent agreement proposals to EPA.

DATES: Written comments on the Thirty-Second ITC Report must be received by August 16, 1993. Written testing proposals must be received by September 14, 1993. Written notice of interest in being designated an "interested party" to the development or monitoring of a consent agreement for the chemicals designated for dermal absorption testing must be received by September 14, 1993. Those submitting written testing proposals will be considered "interested parties" and do not have to submit separate written notice. EPA will contact all "interested parties" and advise them of meeting dates.

ADDRESSES: Send six copies of written submissions to: TSCA Docket Receipts (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET G-102, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-41039; FRL-4630-2). The public record supporting this action, including comments, is available for public inspection in Rm. ET G-102 at the address noted above from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Rm. E-543B, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with the *Priority Testing List* revised according to the Thirty-Second Report, is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII. The *Priority Testing List* is available in Wordperfect and ASCII.

I. Background

TSCA (15 U.S.C. 2601 et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures ("chemicals") in order to develop data relevant to determining whether such chemicals may present unreasonable risks to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months. The most recent revisions to this List are included in the ITC's Thirty-Second Report. The Report was received by the Administrator on June 2, 1993, and is included with this notice. The Report adds 1 group of 34 chemicals to the TSCA section 4(e) *Priority Testing List* and removes 4 designated chemicals and 2 recommended chemicals and 8 chemical groups added in the Twenty-Eighth Report.

II. Written and Oral Comments on Recommendations

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the **Federal Register** adding the substances recommended in the ITC's Thirty-Second Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. That notice will also add the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

III. Status of List

The ITC's Thirty-Second Report notes the addition of one chemical group to the *Priority Testing List* and the removal of 4 designated chemicals and 2 recommended chemicals and 8 chemical groups added in the Twenty-Eighth Report. The current TSCA section 4(e) *Priority Testing List* contains 18 chemicals and 17 chemical groups; 2 chemical groups and 7 chemicals are designated for priority testing consideration.

IV. Testing Consent Agreements

1. *Solicitation of Interested Parties.* EPA's procedures for requiring the testing of chemical substances under section 4 of TSCA at 40 CFR 790.22, includes the adoption of enforceable consent agreements and the promulgation of test rules. EPA has on numerous occasions been approached by chemical companies interested in negotiating consent agreements for testing ITC chemicals or chemical groups. As a result of these requests, EPA is now inviting persons interested in participating in or monitoring

negotiations on the chemicals designated in the Thirty-Second ITC Report to notify EPA in writing. Those who respond to this solicitation by the deadline established in this notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." This solicitation is separate from the solicitation of interested parties made in the Federal Register of May 5, 1993 (58 FR 26898).

2. *Solicitation of testing proposals for consent agreement negotiations.* EPA is also now soliciting testing proposals for a consent agreement to perform dermal absorption testing on the 34 chemical substances designated in the Thirty-Second Report. While this solicitation is separate from the solication of interested parties made for the 24 substances designated in the Thirty-First ITC Report published May 5, 1993 (58 FR 26898), EPA expects that any testing consent agreement adopted for this effort, as well as the testing method referenced, will be substantially similar. Following publication of this notice, manufacturers and/or processors have 60 days to develop and submit testing proposals for any of the chemical substances designated in the Thirty-Second Report that they wish EPA to consider as candidates for consent agreement negotiations.

Federal scientists from a number of the ITC's statutory and liaison organizations including the Consumer Product Safety Commission, Environmental Protection Agency, Food and Drug Administration, National Institute for Occupational Safety and Health, and Occupational Safety and Health Administration, have developed a proposed test protocol that will provide data needed by several U. S. Government Organizations represented on the ITC. This proposed protocol is entitled "Protocol for *in vitro* Percutaneous Absorption Studies" and is available to the public through the TSCA Docket Receipts and the Environmental Assistance Division listed above. This document should be reviewed before submitting any testing proposals in response to this notice.

For additional technical information on this testing protocol contact Dr. John D. Walker, Executive Director, TSCA Interagency Testing Committee, (202) 260–1820.

All testing proposals submitted should describe the testing to be performed and explain any deviations from the test protocol that are necessary to assure the development of reliable percutaneous absorption data.

EPA will review the submissions and select the most promising submissions as candidates for negotiation. Submissions that fully address the ITC's concerns will have a higher chance of success than those that do not fully address all data needs.

3. *Negotiation of testing program and development of a testing consent agreement.* EPA will follow the negotiation procedures under 40 CFR 790.22, and to the extent feasible, the timetable outlined in 40 CFR part 790, Appendix A to subpart B.

In the case of the 34 substances designated for priority testing consideration in the Thirty-Second ITC Report, EPA believes that obtaining testing through the development of consent agreements would be most feasible if interested manufacturers organized a testing consortium. Because of the straightforward and relatively inexpensive nature of the tests for each of the substances (i.e., dermal absorption tests), and the costs to EPA and industry that would be incurred should many consent agreements be pursued, EPA believes that negotiating with an organized group of manufacturers may be the most efficient means to obtain the needed testing.

For additional information about process or negotiations contact Frank Kover, Chief, Chemical Testing and Information Branch, (202) 260–8130.

Authority: 15 U.S.C. 2603.

Dated: July 8, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Thirty-Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

SUMMARY. The TSCA Interagency Testing Committee (ITC) was created under section 4(e) of the Toxic Substances Control Act (TSCA) as an independent advisory committee to establish testing priorities for TSCA-regulable chemical substances and mixtures ("chemicals") for the Administrator of the U.S. Environmental Protection Agency (EPA). The ITC maintains the TSCA Section 4(e) *Priority Testing List* and transmits revisions of the *List* as a Report to the EPA Administrator at least every 6 months for action and publication in the **Federal Register**. This Report presents the ITC's revisions of the *Priority Testing List* resulting from its deliberations during the reporting period November, 1992 through May, 1993.

In this revision, ITC is designating a group of 34 chemicals of regulatory interest to the Occupational Safety and Health Administration (OSHA) for dermal absorption testing and is removing 4 designated chemicals, 2 recommended chemicals and 8 recommended chemical groups added in ITC's 28th Report (56 FR 41217, August 19, 1991). These revisions are summarized in Table 1.

TABLE 1.— REVISIONS TO THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Action	Chemicals or Groups	Date
Designated for dermal absorption testing	34 OSHA Chemicals with Insufficient dermal absorption data.	5/93
Previously Designated Chemicals Removed from the List	*n*-Butanol, Isobutanol, Dimethyl terephthalate, Di(2-ethylhexyl)adipate	5/93

VOL 58 ISS 135 JL 16 1993 UMI

TABLE 1.— REVISIONS TO THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Action	Chemicals or Groups	Date
Previously Recommended Chemicals Removed from the List	Allyl alcohol	5/93
	2,4-Dichlorophenol	
Previously Recommended Chemical Groups Removed from the List	Alkynes	5/93
	Nitroalcohols	
	Phosphoniums	
	Hydrazines	
	Oxiranes	
	Alkoxysilanes	
	Aldehyde hydrates	
	Isothiocyanates	

1.1 *Background.* Since its creation in 1976 under section 4(e) of the Toxic Substances Control Act (Public Law 94–469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.), the TSCA Interagency Testing Committee has submitted 31 semi-annual Reports to the Administrator of the U.S. Environmental Protection Agency to establish testing priorities for TSCA-regulable chemicals. These Reports have been published in the **Federal Register** and are also available from the ITC. In this, its 32nd Report, the ITC is revising its *Priority Testing List* by designating a group of 34 chemicals for dermal absorption testing and by removing 4 designated chemicals, 2 recommended chemicals and 8 recommended chemical groups. A short version of the *Priority Testing List* appears at the end of this Report. The 32nd Report and the complete *Priority Testing List* with all individual chemicals in each group are available upon request from the ITC (address and phone number given at the end of this Report) or the Government Printing Office (202/512–1530) and on the Federal Bulletin Board by modem (202/512–1387).

The ITC meets at least once a month and produces its Reports with the help of staff and technical contract support provided by EPA. ITC membership and support personnel are listed at the end of this Report.

Following receipt of the ITC's Reports, the EPA's Office of Pollution Prevention and Toxics promulgates TSCA section 8(a) and 8(d) rules that require manufacturers, processors and distributors to submit (1) production and exposure data and (2) health and safety studies within 2 months of the rules' effective dates. These submissions are indexed and stored by EPA and reviewed by the ITC. Within 12 months of an ITC designation, the Administrator of EPA must initiate a proceeding under TSCA section 4(a) to implement the ITC's testing recommendations or publish in the **Federal Register** the Administrator's reasons for not initiating action.

1.2 *Actions taken by the ITC in this Report*—1.2.a *Designated chemicals.* Thirty-four OSHA-nominated chemicals for which available dermal toxicity or absorption data are insufficient.

I. Rationale for the Designation

OSHA previously established Permissible Exposure Limits (PELs) for chemical substances and mixtures to limit workers' exposure to industrial chemicals. In general, PELs are based on inhalation of airborne dusts and vapors. In those cases where chemical absorption through the skin could be harmful, the chemicals with PELs are assigned skin notations. OSHA needs quantitative measures of dermal absorption to evaluate potential hazards to workers. OSHA requested that the ITC use its TSCA section 4(e) statutory authority to designate chemicals with PELs for priority testing consideration by the EPA Administrator. In its 31st Report, the ITC designated for dermal absorption testing a group of 24 chemicals for which no dermal toxicity or absorption data could be located in the publicly available literature. In this Report, the ITC is designating a group of 34 chemicals for dermal absorption testing because existing dermal toxicity or absorption data are not sufficient for OSHA's needs (Table 2). *m*-Dinitrobenzene is already on the *Priority Testing List* as a recommendation from the 28th Report and is being designated in this Report for dermal absorption testing.

TABLE 2.— OSHA CHEMICALS DESIGNATED FOR DERMAL ABSORPTION TESTING

CAS No.	Chemical Name
61–82–5	Amitrole
74–96–4	Ethyl bromide
75–15–0	Carbon disulfide
75–25–2	Bromoform
75–34–3	1,1-Dichloroethane
77–78–1	Dimethyl sulfate
79–46–9	2-Nitropropane
80–62–6	Methyl methacrylate
84–66–2	Diethyl phthalate
88–72–2	*o*-Nitrotoluene
89–72–5	*o*-sec-Butylphenol
90–04–0	*o*-Anisidine
95–13–6	Indene
95–49–8	*o*-Chlorotoluene
99–65–0	*m*-Dinitrobenzene
100–00–5	*p*-Nitrochlorobenzene
100–01–6	*p*-Nitroaniline
100–44–7	Benzyl chloride
100–63–0	Phenylhydrazine
106–49–0	*p*-Toluidine
108–44–1	*m*-Toluidine
108–90–7	Chlorobenzene
109–99–9	Tetrahydrofuran
121–14–2	2,4-Dinitrotoluene
122–39–4	Diphenylamine
126–99–8	beta-Chloroprene
150–76–5	*p*-Methoxyphenol
528–29–0	*o*-Dinitrobenzene
540–59–0	1,2-Dichloroethylene
626–17–5	*m*-Phthalodinitrile
768–52–5	N-Isopropylaniline
1300–73–8	Xylidine
6423–43–4	Propylene glycol dinitrate
25013–15–4	Vinyl toluene

II. Supporting Information

In its January 19, 1989 Air Contaminants Rule (54 FR 2332), OSHA stated that:

> The purpose of having the skin designation is to prevent the same toxic effects that the chemical causes through inhalation. The inhalation limit is based on keeping exposure below the limit which will create a significant risk of material impairment of health. If skin absorption is possible, an employee might be below the inhalation limit; however, the additional body burden through skin absorption may create the material impairment which the limit attempts to reduce.

In September 1991, OSHA nominated chemical substances and mixtures with PELs (54 FR 2332) to the ITC to assess the availability of data relevant to dermal absorption and the possibility of

testing under TSCA. A summary of ITC's review of these OSHA chemicals is presented in the following Figure 1:

Figure 1. Summary of ITC Review of OSHA Chemicals.

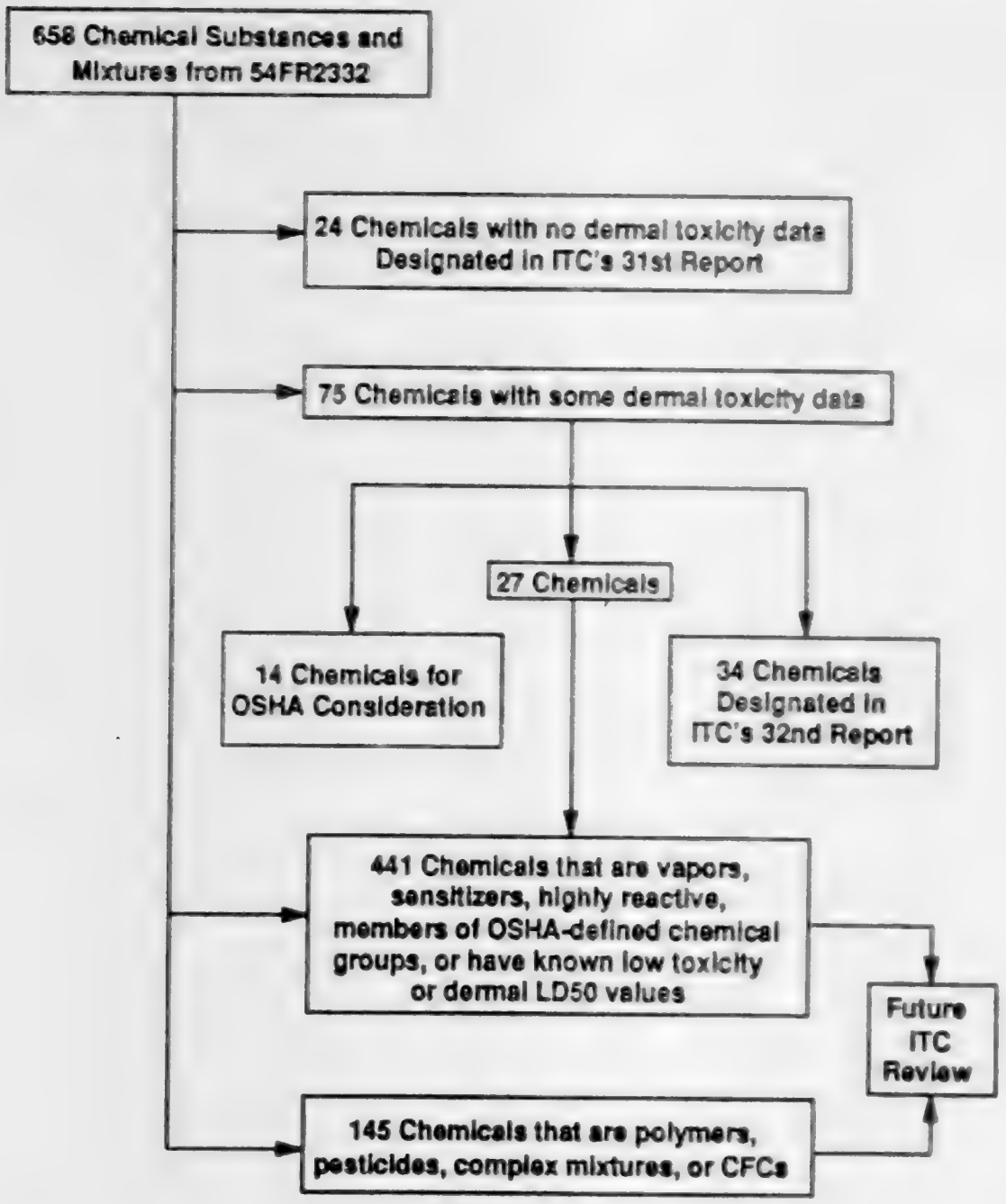

The ITC initiated an evaluation of 658 of these chemicals and set aside for future review 145 chemicals that are polymers, pesticides, complex mixtures, or chlorofluorocarbons (CFCs). For the remaining 513 chemicals, the Registry of Toxic Effects of Chemical Substances (RTECS) was searched forreported dermal LD50 values. Chemicals with rabbit dermal LD50s in RTECS were deferred for future ITC review. Chemicals that are vapors at ambient temperature, highly reactive, known to have low toxicity, or members of OSHA-defined chemical groups were also deferred for future ITC review. RTECS, INDEX MEDICUS, MEDLINE, TOXLINE, TOXLIT, TSCATS and EPA's Existing Chemical Assessment Tracking System were searched to determine if dermal toxicity or absorption data were available for the remaining 99 chemicals. No dermal toxicity or absorption data were located for 24 chemicals. These 24 chemicals were designated for dermal absorption testing in the ITC's 31st Report.

The literature searches located 168 references on dermal toxicity or absorption data for 75 chemicals. The ITC reviewed these references and made a tentative determination that 14 chemicals had sufficient data to estimate the dermal absorption rate. These 14 chemicals were referred to OSHA for further evaluation. The ITC also determined that 27 chemicals had dermal LD50 values or were sensitizers, fast polymerizers, of known low toxicity, or were members of OSHA-defined chemical groups. These 27 were added to the 414 deferred above for future ITC review. The ITC determined that the remaining 34 chemicals had insufficient data to estimate dermal absorption rates and is therefore designating these 34 chemicals for dermal absorption testing in this Report.

2.2 *Removal of Chemicals from the Priority Testing List*

I. Rationale for the Removals

In its 28th Report to the Administrator (56 FR 41212), the ITC designated 6 chemicals and recommended 3 chemicals and 11 chemical groups. The rationale for adding the individual chemicals to the *Priority Testing List* was that the resulting test data could be used to increase the confidence in the Reference Concentrations (RfCs) and Reference Doses (RfDs) for these chemicals in EPA's Integrated Risk Information System (IRIS). Eight of the 11 chemical groups were added to provide EPA with data to develop and improve Quantitative Structure Activity Relationships (QSARs) for predicting biodegradation and aquatic toxicity in the review of new chemicals structurally related to the recommended groups of chemicals.

Last year EPA requested that the ITC review its actions in the 28th Report in light of the possibility of voluntary testing of some of the designated chemicals and the relevance of additional data for QSARs compared to other data needs. The Committee reevaluated the designations and recommendations of the 28th Report and concluded that, while testing of these chemicals and groups would provide useful information to EPA and others, the need for data is greater for chemicals to which workers are exposed and which pose a possible but unknown hazard via skin absorption. In the 31st Report, the ITC designated a substantial number of these chemicals for which there are no dermal toxicity data. Further study of the "OSHA chemicals" reveals that many more have insufficient dermal absorption data. Because earlier entries to the *List* and present designations are competing for scarce resources at EPA and within the ITC, the Committee has reevaluated their relative priorities. The Committee concluded that the previously recommended chemicals are of lower priority than those now being designated.

II. Specific Actions

A. Removal of Four of the Six Chemicals Designated in the 28th Report

In March, 1993, EPA received written confirmation that industry will test 4 of the 6 designated chemicals. Industry has committed to develop dossiers and necessary test data under the Screening Information Data Set (SIDS) program of the Organization for Economic Cooperation and Development (OECD). The SIDS program is a consensus testing regimen developed for screening high production chemicals that is accepted by all OECD member nations. The four chemicals are *n*-butanol, isobutanol, di(2-ethylhexyl)adipate, and dimethyl terephthalate.

The ITC views the voluntary commitments from industry to conduct the SIDS testing as an important first step in filling the existing data gaps of these chemicals. Although not identical to the tests called for by the ITC in its 28th Report, the SIDS testing addresses the general concerns of the Committee and will be useful to EPA for the RfCs and RfDs. Therefore, in this Report, the ITC is removing these four designated chemicals from the *Priority Testing List*. In the event the SIDS information is not developed or is deemed inadequate, the ITC will reconsider designating these chemicals in a future report. The other 2 designated chemicals, acetone and thiophenol, remain on the *List*.

B. Removal of Two Chemicals and Eight Chemical Groups Recommended in the 28th Report

As described above, the 28th Report recommended 3 chemicals (allyl alcohol; 2,4-dichlorophenol; and *m*-dinitrobenzene) to obtain data for the IRIS data base and 8 groups (aldehyde hydrates, alkoxysilanes, alkynes, hydrazines, isothiocyanates, nitroalcohols, oxiranes, and phosphoniums) to develop QSARs. Submission of data on these chemicals would take place after EPA issues section 8(a) and 8(d) rules. EPA requested section 8 information on the chemicals added to the *Priority Testing List* in the 27th Report to determine if the submitted data will be useful to EPA for its IRIS and QSAR activities. Until the requested information is analyzed, EPA questioned if more data are needed for this purpose. Thus, EPA requested the ITC to remove the recommended chemicals and groups in the 28th Report from the *List*.

Member agencies did not identify priority concerns for 2 of the individual chemicals or the groups and, in view of competing priorities, the Committee is removing 2 chemicals and 8 groups from the *List*. The chemicals being removed are allyl alcohol and 2,4-dichlorophenol. Allyl alcohol is listed in Title III of the 1990 Clean Air Act amendments and is under study at EPA for residual risk levels. The National Toxicology Program has completed a carcinogenicity study on 2,4-dichlorophenol and this chemical is also being considered for regulation by EPA's Office of Drinking Water. The following groups are removed: aldehyde hydrates, alkoxysilanes, alkynes, hydrazines, isothiocyanates, nitroalcohols, oxiranes, and phosphoniums.

The ITC plans to continue review of the 8 removed groups on a chemical by chemical basis to assess possible concerns of Member agencies. Although the individual chemicals and groups are no longer on the *Priority Testing List* and EPA will not be issuing requests for information under TSCA section 8, all interested persons are invited to submit unpublished chemical fate or ecological effects data for use in developing or modifying QSARs. Submissions can be made to EPA's Public Docket Office and should bear document control number OPTS-41035. The ITC will use all submitted data in its continuing review.

THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Report	Date	Chemical/Group	Action
22	May 1988	Ethoxylated quaternary ammonium compounds	Recommended
22	May 1988	Imidazolium quaternary ammonium compounds	Recommended

THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Date	Chemical/Group	Action
23	November 1988	Tetrakis(2-chloroethyl)ethylene di-phosphate	Recommended with intent-to-designate
23	November 1988	Tris(1,3-dichloro-2-propyl) phosphate	Recommended with intent-to-designate
23	November 1988	Tris(1-chloro-2-propyl) phosphate	Recommended with intent-to-designate
23	November 1988	Tris(2-chloro-1-propyl) phosphate	Recommended with intent-to-designate
23	November 1988	Tris(2-chloroethyl)- phosphate	Recommended with intent-to-designate
23	November 1988	Butyraldehyde	Recommended
25	November 1989	Brominated flame retardants	Recommended
26	May 1990	Isocyanates	Recommended with intent-to-designate
26	May 1990	Brominated flame retardants	Recommended
26	May 1990	Alkyl phosphates	Recommended
27	November 1990	Acetophenone	Designated
27	November 1990	Phenol	Designated
27	November 1990	*N,N*-Dimethylaniline	Designated
27	November 1990	Ethylacetate	Designated
27	November 1990	2,6-Dimethylphenol	Designated
27	November 1990	Aldehydes	Recommended with intent-to-designate
27	November 1990	2,4-Dinitrophenol	Recommended
27	November 1990	3,4-Dimethylphenol	Recommended
27	November 1990	*N*-phenyl-1-naphthylamine	Recommended
27	November 1990	Sulfones	Recommended
27	November 1990	Substantially produced chemicals in need of sub-chronic toxicity testing	Recommended
28	May 1991	Acetone	Designated
28	May 1991	Thiophenol	Designated
28	May 1991	*m*-Dinitrobenzene	Recommended
28	May 1991	Cyanoacrylates	Recommended
29	November 1991	White phosphorus	Recommended
29	November 1991	Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers	Recommended
30	May 1992	Siloxanes	Recommended
30	May 1992	Chloroalkyl phosphates	Recommended
31	January 1993	OSHA chemicals with no dermal toxicity data	Designated
31	January 1993	Propylene glycol ethers and esters (revised)	Recommended
31	January 1993	Methyl ethylene glycol ethers and esters (revised)	Recommended
32	May 1993	OSHA chemicals with insufficient dermal absorption data	Desigated

TSCA INTERAGENCY TESTING COMMITTEE

Statutory Organizations and Their Representatives.

Council on Environmental Quality	Charles Herrick, Member
Department of Commerce	Willie E. May, Member Edward White, Alternate
Environmental Protection Agency	James B. Willis, Member John S. Leitzke, Alternate
National Cancer Institute	Thomas P. Cameron, Member Richard Adamson, Alternate
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National Institute for Occupational Safety and Health	Robert W. Mason, Member Henryka Nagy, Alternate
National Science Foundation	Carter Kimsey, Member, Chair Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration	Christine Whittaker, Member, Vice Chair Surender Ahir, Alternate

Liaison Organizations and Their Representatives.

Agency for Toxic Substances and Disease Registry	Sharunda Buchanan, Member

TSCA INTERAGENCY TESTING COMMITTEE—Continued

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Department of Agriculture	Donald Derr, Member Cliff Rice, Alternate
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Department of the Interior	Jim Petty, Member Barnett A. Rattner, Alternate
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National Library of Medicine	Vera Hudson, Member
National Toxicology Program	Victor A. Fung, Member
Counsel	Mary Ellen Levine, Office of the General Counsel, EPA
Technical Support Contractor	Syracuse Research Corporation
ITC Staff	John D. Walker, Ph.D., M.P.H., Executive Director Norma S.L. Williams, Executive Assistant TSCA Interagency Testing Committee U.S. EPA/OPPT (TS–792) 401 M St., SW., Washington, D.C. 20460, (202) 260–1825

[FR Doc. 93–16895 Filed 7–15–93; 8:45 am]
BILLING CODE 6560–60–F

VOL 58 ISS 135 JL 16 1993 UMI

Friday
July 16, 1993

Part VI

Department of Labor

Office of the Secretary

29 CFR Part 18

Use of Settlement Judges in Proceedings Before the Office of Administrative Law Judges; Final Rule

VOL 58 ISS 135 JL 16 1993 UMI

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 18

RIN 1290–AA12

Use of Settlement Judges in Proceedings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This final rule permits the appointment of settlement judges in proceedings before the Office of Administrative Law Judges. The procedure uses informal conferences to encourage claim settlement without adjudication. This is a voluntary procedure intended to reduce the costs to parties of filing and defending complaints and to expedite the resolution of complaints pursuant to the Administrative Dispute Resolution Act of 1990; Executive Order No. 12778 (Oct. 23, 1991); and the Department of Labor's Alternative Dispute Resolution Interim Policy.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: John M. Vittone, Deputy Chief Administrative Law Judge, Office of Administrative Law Judges. Telephone: (202) 633–0341.

SUPPLEMENTARY INFORMATION: On January 11, 1993, the Department of Labor published a notice of proposed rulemaking in the **Federal Register** (58 FR 3822–3823) which set forth proposed settlement judge procedures in furtherance of its Alternative Dispute Resolution Interim Policy, 57 FR 7292 (1992). This rule allows use of settlement judges in certain proceedings before the Office of Administrative Law Judges. It is modeled on Recommendation 88–5 of the Administrative Conference of the United States, 1 CFR 305.88–5, and the settlement judge procedures of other agencies. See 18 CFR 385.603 (FERC); 24 CFR 104.620 (HUD); 29 CFR 2200.101 (OSHRC); 47 CFR 1.244 (FCC); 48 CFR 6302.30 (DOT). The procedure supplements rather than supplants settlement techniques traditionally used by administrative law judges. See, e.g., 29 CFR 18.8 (discussion of negotiation, compromise or settlement of prehearing conferences); 29 CFR 18.9 (deferment of hearing for settlement negotiations by the parties).

The regulation permits appointment of a settlement judge by the Chief Administrative Law Judge at the request of the parties or the presiding judge. Any party can veto use of the procedure. The settlement judge will be an active or retired administrative law judge other than the presiding judge. The settlement judge will direct settlement negotiations, assess the relative merits of the case for the parties, and consult with the parties either jointly or individually. The duration of the procedure is limited because it is meant to quicken rather than delay dispute resolution, and because an exigent hearing motivates serious negotiation. The settlement judge is prohibited from discussing any aspect of the case with the presiding judge. Any statements or conduct by the parties or the settlement judge at settlement negotiations are not admissible in later proceedings before the Department.

Settlement judges are not available in Black Lung or Longshore cases. The Benefits Review Board has found that the Black Lung Benefits Act prohibits settlements. See *Gerzarowski* v. *Lehigh Valley Anthracite, Inc.*, 12 BLR 1–62 (1988); *Ladigan* v. *Central Industries, Inc.*, 7 BLR 1–192 (1984). Even without the prohibition, settlement judge procedures are not appropriate where entitlement to be a benefit is an all-or-nothing question, as in Black Lung cases, since a settlement judge could do nothing except convince one party to concede.

Longshore cases are so often settled informally that neither the Department nor the public would benefit from a formal settlement judge procedure. The longshore bar is comfortable with techniques used by the Office of Administrative Law Judges for many years, such as early prehearing exchanges, calendar calls in which settlement possibilities are discussed, and opportunities for discussion immediately prior to a hearing. See Notice of Amendment to Interim ADR Policy, 57 FR 28701, 28702–3 (June 26, 1992). See also Joseph & Gilbert, Breaking the Settlement Ice: The Use of Settlement Judges in Administrative Proceedings, 2 Administrative L.J. 571, 594–595 (1989/1990) (indicating that if large numbers of cases are currently settled without the use of settlement judges, imposing the procedure is not advised).

Written comments regarding the proposed rule were required to be submitted by February 25, 1993. The following comments were received and evaluated.

Comment: In order to create greater flexibility in the settlement judge process, the phrase "jointly and/or" should be substituted for "both jointly and" in proposed paragraph 18.9(e)(1).

Response: This change has been adopted.

Comment: In order to avoid limiting the role of the settlement judge and permit greater flexibility, the language "may include facilitating fair and equitable solutions and providing an assessment of the relative merits of the respective positions of the parties" should be substituted for "is solely to facilitate fair and equitable solutions and to provide an assessment of the relative merits of the respective positions of the parties" in proposed paragraph 18.9(e)(1).

Response: This change has not been adopted. Initially, it is important to keep the role of the settlement judge well defined. The intent of the regulation is to allow the settlement judge to negotiate settlements between the parties in order to avoid litigation. The rule as proposed provides sufficient flexibility for the settlement judge to negotiate such settlements without including this language.

Comment: It was suggested that provisions be made for sanctions against violators of confidentiality provisions.

Response: This change has not been adopted because regulatory provisions already exist for sanctioning administrative law judges, parties, attorneys, or other representatives who fail to act with integrity or in an ethical manner in proceedings before the Office of Administrative Law Judges. Specifically, Part 18 requires all persons appearing in such proceedings to comply with a minimal standard of conduct, and the administrative law judge may exclude any such persons for violations of that standard, see 29 CFR 18.34(g)(3), and may certify certain types of misbehavior to a federal District Court for appropriate remedies, see 29 CFR 18.29(b). In addition, administrative law judges acting as settlement judges are subject to sanctions for violation of their duties in the same degree as if they were acting as the presiding judge. See 5 U.S.C. 7521; 5 CFR 930.214.

Comment: In order to avoid any negative inference that might influence a decision on the merits, it was recommended that when no settlement is reached, the settlement judge should simply advise the presiding judge without elaboration that no settlement was reached.

Response: This change was adopted in part. The final rule has been modified to provide that, should the parties fail to reach a settlement, the parties themselves will report to the presiding judge that no settlement had been reached, without further elaboration. The parties, rather than the settlement

judge, should be responsible for all communications with the presiding judge in order to preclude any contact between the settlement judge and the presiding judge regarding the case.

Comment: One commentator questioned whether there was evidence to support the assumptions that the settlement judge procedure would reduce litigation costs and expedite dispute resolution and suggested that the future of the procedure be contingent on periodic program evaluations to determine the procedure's effectiveness.

Response: There is no direct objective evidence at this time guaranteeing that this procedure will reduce the parties' litigation costs and expedite dispute resolution. Although there is evidence that alternative dispute resolution techniques do generally reduce costs and expedite resolution of disputes, it should be noted that these are only two goals of alternative dispute resolution. Another important objective is to enable the parties to negotiate resolutions that are mutually acceptable, thereby creating greater satisfaction with the process as a whole.

Although this procedure will be monitored to determine its effectiveness, review of the effectiveness of a regulation is a matter of management rather than regulation. Therefore the regulation makes no specific reference to its review.

Comment: A request was made for the estimated costs of implementing the settlement judge procedure and the possibility of the need to appoint new administrative law judges. Would the costs outweigh the benefits?

Response: Presently, there are judges within the Department of Labor's Office of Administrative Law Judges trained in alternative dispute resolution. These judges are capable of satisfying any initial requests for settlement judges. If the requests for settlement judges exceed the office's present capacity, more judges will be trained at a cost undetermined. There are no plans to appoint new administrative law judges to meet settlement judge requests. As there is no objective evidence to predict whether or not the procedure will be successful in decreasing the costs of litigation or expediting the resolution of cases, or even how much use will be made of the procedure, it has not yet been determined whether the costs will outweigh the benefits. However, if successful, the reduced costs in litigation and the earlier resolution of cases should outweigh the costs of implementing and maintaining the settlement judge procedure. Since the appointment of settlement judges is at the discretion of the Chief Administrative Law Judge, if the procedure is not cost effective, it is within that official's power to limit the use of the procedure.

Comment: A commentator raised concerns that the proper role of the administrative law judge will become confused since the primary duty of the settlement judge will be to resolve disputes rather than to interpret law. Although these two roles are not necessarily inconsistent, in cases involving important public policy issues, the settlement judge procedure may not be appropriate. It was suggested that a record be made of at least the factual and legal basis of any agreements reached since administrative law judges are responsible for keeping accurate and complete records of administrative dispute proceedings. This responsibility must be balanced with the confidentiality of the parties.

Response: Since the appointment of a settlement judge is at the discretion of the Chief Administrative Law Judge, requests for settlement judge procedures may be denied where use of a settlement judge does not appear to be appropriate. However, the regulation has been modified to provide that settlement judges may terminate settlement judge proceedings if it becomes apparent that the issues involved are inappropriate for a settlement by means of this procedure.

The maintenance of detailed records for all settlement judge sessions would encumber the process and endanger confidentiality. Since confidentiality is crucial to the integrity of the procedure, such risks to confidentiality could discourage parties' participation in the procedure. Furthermore, as this procedure is entirely voluntary, parties cannot be coerced either to use the settlement judge procedure or to adopt suggestions made by the settlement judge, and may withdraw from the proceedings at any time without prejudice. For these reasons, the desirability of a complete and accurate record of all settlement judge proceedings for review purposes is outweighed by the risks to confidentiality and the danger of formalizing what is intended to be an informal procedure.

Comment: Parties should be allowed to participate in the selection of settlement judges to eliminate factors that may make parties hesitant to use the procedure.

Response: This suggestion has not been adopted. In other forms of alternative dispute resolution such as arbitration, where parties are bound by the decision of the third party, selection of the third party neutral by the parties is desirable. However, this is not true in settlement judge proceedings where the neutral makes no binding decision but merely offers the parties an additional forum for voluntary resolution of their dispute and has no coercive authority. Participation by the parties in the selection of the settlement judge could lead to an additional point of controversy between the parties and could potentially create another layer of bureaucracy. This would defeat the purpose of the procedure to reduce the costs and expedite adjudication of claims.

Comment: There was concern that the settlement judges, who are employees of the Department of Labor, would not be independent in their evaluation of the controversy but would be biased in favor of the agency.

Response: Although administrative law judges are employees of the Department of Labor, they are appointed pursuant to the Administrative Procedure Act which guarantees independence of administrative law judges by protecting their tenure and pay, and prohibits the performance of inconsistent duties. 5 U.S.C. 3105, 3344, 5372, 7521. There is nothing to indicate that settlement judges would be any more disposed to negotiate outcomes that are favorable to the agency than presiding administrative law judges would be disposed to make or recommend final decisions that are favorable to the agency.

Comment: It was suggested that disciplinary proceedings against administrative law judges before the Merit Systems Protection Board be excluded from the definition of "subsequent administrative proceedings" in paragraph (e)(4) of the proposal.

Response: The Department of Labor can only ensure that confidentiality of settlement judge negotiations will be maintained in Department of Labor administrative proceedings. The Merit Systems Protection Board is an independent agency and it is contemplated that the confidentiality provision of the settlement judge rule could not be used as a shield by the judge in a disciplinary proceeding. To make it clear that confidentiality can only be ensured in administrative proceedings before the Department of Labor, paragraph (e)(8) of § 18.9 has been revised.

Comment: There was concern that the procedure would become just another layer of bureaucracy.

Response: The settlement judge procedure was drafted to expedite rather than lengthen the resolution of cases. In order to avoid a prolonged procedure,

VOL 58 ISS 135 JL 16 1993 UMI

provisions were made to limit the duration of the settlement judge procedure and to permit termination of the procedure at any time the settlement judge believes that settlement is unlikely. In addition, discovery is not necessarily suspended during the course of the procedure, unless a suspension is granted by the presiding judge, so that in the event the parties fail to reach a settlement, the case could proceed to a formal hearing without significant delay. It is hoped that this informal proceeding will eliminate delays that are sometimes involved in a formal proceeding.

Comment: In order to evaluate the effectiveness of the procedure, it was suggested that both the Department of Labor and the Office of Personnel Management or the Merit Systems Protection Board should review the actions of Settlement Judges.

Response: Informal review of actions by settlement judges will occur through continued review of settlement programs. A more formal type of review would require management of records and other types of controls which would endanger confidentiality and the integrity of the process and could potentially interfere with the independence of the judges.

Comment: It was suggested that the regulation should provide whether it is applicable to the deportation and exclusion proceedings under the Immigration and Nationality Act of 1952, as amended, which are civil in nature. In addition, it was suggested that the regulation specifically provide for a delegation of authority to undertake settlement negotiations from the chief judge to the individual immigration judges. Finally, it was suggested that the regulation should provide for referral to a settlement judge upon the request of an alien in a deportation or exclusion proceeding without concurrence of the Service.

Response: Since the Department of Labor's Office of Administrative Law Judges does not preside over deportation matters arising under the Immigration and Nationality Act, these comments are not relevant to this regulation.

Comment: One commentator questioned the need for the language contained in paragraph 18.9(e)(1), "A settlement judge is an active or retired administrative law judge who convenes and presides over settlement conferences and negotiations, confers with the parties both jointly and individually, and seeks voluntary resolution of the issues." The settlement judge does not render a formal judgment or decision but merely facilitates fair and equitable solutions and provides an assessment of the relative merits of the respective positions of the parties. To require that the settlement judges be active or retired administrative law judges is inconsistent with the philosophy of alternative dispute resolution. There should be broad discretion in agreeing to the selection of the third party neutral assigned to case. Also, limiting appointment would not provide a broad base of settlement judges and would leave parts of the country without the availability of settlement judges or require extensive travel to conference sites.

Response: The settlement judge rule is only one method of alternative dispute resolution, and nothing in this rule prohibits parties from choosing to use other procedures. The settlement judge rule is being offered as a means of dispute resolution for those cases which have reached the Office of Administrative Law Judges for formal adjudication, presumably because prior settlement attempts using other methods have been unsuccessful. The regulation restricts the class of people allowed to become settlement judges to ensure that settlement judges have the necessary expertise in cases arising before the Office of Administrative Law Judges and as a measure to avoid the costs of hiring outside mediators. Because the settlement judge procedure applies to cases in which other offices of the Department of Labor are parties, participation by employees from these other offices as settlement judges could potentially create a conflict of interest. The Office of Administrative Law Judges is the only office within the Department which has both the institutional independence and the expertise in cases arising before this office to ensure the integrity of the procedure.

Administrative law judges trained in settlement techniques are already available within the Department of Labor's Office of Administrative Law Judges, which has district offices in ten locations throughout the country. Should the need for settlement judges increase, additional judges will be trained. Until that time, judges presently trained in settlement techniques will be assigned to mediate settlements negotiations in cases where the Chief Judge approves the use of the procedure.

The following technical changes were also made to the regulation. In citing provisions of the Administrative Dispute Resolution Act of 1990 in the authority citation, the phrase "5 U.S.C. 581" was corrected to read "5 U.S.C. 571 note". In paragraph 18.9 (e)(2) the word "when" was substituted for the word "where". In paragraph 18(e)(7) the word "when" was substituted for the word "where". In paragraph 18(e)(7)(i) "the settlement judge is scheduled to preside in other proceedings in the same place" was substituted for "a conference may be scheduled in a place and on a day that the settlement judge is scheduled to preside in other proceedings."

Procedural Matters

This is not major rule as defined by Executive Order 12291. The Agency Head has certified that this rule does not have a significant economic impact upon a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 19 CFR Part 18

Administrative practice and procedure.

Accordingly, part 18 of title 29 of the Code of Federal Regulations is amended as follows:

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for part 18 is revised to read:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 Fed. Reg. 7292.

2. Section 18.9 is amended by revising the section heading and adding new paragraph (e) to read as follows:

§ 18.9 Consent order or settlement; settlement judge procedure.

* * * * *

(e) (1) *Settlement judge procedure; purpose.* This paragraph establishes a voluntary process whereby the parties may use a settlement judge to mediate settlement negotiations. A settlement judge is an active or retired administrative law judge who convenes and presides over settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. Unlike a presiding judge, a settlement judge does not render a formal judgment or decision in the case; his or her role is solely to facilitate fair and equitable solutions and to provide an assessment of the relative merits of the respective positions of the parties.

(2) *How initiated.* A settlement judge may be appointed by the Chief Administrative Law Judge upon a request by a party or the presiding

administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when—

(i) A party objects to referral of the matter to a settlement judge;

(ii) Such appointment is inconsistent with a statute, executive order, or regulation;

(iii) The proceeding arises pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., and associated acts such as the District of Columbia Workmen's Compensation Act, 36 DC Code 501 et seq.; or

(iv) The proceeding arises pursuant to Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901 et seq., also known as the Black Lung Benefits Act.

(3) *Selection of settlement judge.* (i) The selection of a settlement judge is at the sole discretion of the Chief Administrative Law Judge, provided that the individual selected—

(A) is an active or retired administrative law judge, and

(B) is not the administrative law judge assigned to hear and decide the case.

(ii) The settlement judge shall not be appointed to hear and decide the case.

(4) *Duration of proceeding.* Unless the Chief Administrative Law Judge directs otherwise, settlement negotiations under this section shall not exceed thirty days from the date of appointment of the settlement judge, except that with the consent of the parties, the settlement judge may request an extension from the Chief Administrative Law Judge. The negotiations will be terminated immediately if a party unambiguously indicates that it no longer wishes to participate, or if in the judgment of the settlement judge, further negotiations would be fruitless or otherwise inappropriate.

(5) *General powers of the settlement judge.* The settlement judge has the power to convene settlement conferences; to require that parties, or representatives of the parties having the authority to settle, participate in conferences; and to impose other reasonable requirements on the parties to expedite an amicable resolution of the case, provided that all such powers shall terminate immediately if negotiations are terminated pursuant to paragraph (e)(4).

(6) *Suspension of discovery.* Requests for suspension of discovery during the settlement negotiations shall be directed to the presiding administrative law judge who shall have sole discretion in granting or denying such requests.

(7) *Settlement conference.* In general the settlement judge should communicate with the parties by telephone conference call. The settlement judge may, however, schedule a personal conference with the parties when:

(i) The settlement judge is scheduled to preside in other proceedings in a place convenient to all parties and representatives involved;

(ii) The offices of the attorneys or other representatives of the parties, and the settlement judge, are in the same metropolitan area; or

(iii) The settlement judge, with the concurrence of the Chief Administrative Law Judge, determines that a personal meeting is necessary for a resolution of substantial issues, and represents a prudent use of resources.

(8) *Confidentiality of settlement discussions.* All discussions between the parties and the settlement judge shall be off-the-record. No evidence regarding statements or conduct in the proceedings under this section is admissible in the instant proceeding or any subsequent administrative proceeding before the Department, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. The settlement judge shall not discuss any aspect of the case with any administrative law judge or other person, nor be subpoenaed or called as a witness in any hearing of the case or any subsequent administrative proceedings before the Department with respect to any statement or conduct during the settlement discussions.

(9) *Contents of consent order or settlement agreement.* Any agreement disposing of all or part of the proceeding shall be written and signed by a parties. Such agreement shall conform to the requirements of paragraph (b) of this section.

(10) *Report of the settlement.* If a settlement is reached, the parties shall report to the presiding judge in writing within seven working days of the termination of negotiations. The report shall include a copy of the settlement agreement and/or proposed consent order. If a settlement is not reached, the parties shall report this to the presiding judge without further elaboration.

(11) *Review of agreement by presiding judge.* A settlement agreement arrived at with the help of a settlement judge shall be treated by the presiding judge as would be any other settlement agreement.

(12) *Non-reviewable decisions.* Decisions concerning whether a settlement judge should be appointed, the selection of a particular settlement judge, or the termination of proceedings under this section, are not subject to review by Department officials.

Signed at Washington, DC this 7 day of July, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–16928 Filed 7–15–93; 8:45 am]

BILLING CODE 4510–23–M

VOL
58
ISS
1
3
5
JL
16
1993
UMI

Federal Register

Friday
July 16, 1993

Part VII

Department of Education

34 CFR Parts 631 et al.
Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training and Resource Center Projects; Proposed Rule and Notice

VOL
58
ISS
135
JL
16
1993
UMI

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634 and 635

RIN 1840-AB68

Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training and Resource Center Projects

AGENCY: Department of Education.

ACTION: Summary of anticipated changes.

SUMMARY: The Secretary publishes a summary of anticipated changes to the notice of proposed rulemaking for the Cooperative Education Program. The regulations are needed to implement changes made by the Higher Education Amendments of 1992.

FOR FURTHER INFORMATION CONTACT: John E. Bonas. Telephone: (202) 708-9407. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On May 19, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 29157). The public comment period for the NPRM ended on June 18, 1993.

It is not the policy of the Department of Education to solicit applications before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993). An application notice for the Cooperative Education Program is published in this issue of **Federal Register**.

Fourteen comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making a number of changes to the regulations proposed in the NPRM. The following is a summary of anticipated changes and the comments prompting these changes.

Summary of Anticipated Changes

Fourteen comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making changes to the proposed regulations. A discussion of these comments and changes to the regulations follows.

Underrepresented Populations—Section 631.5(b)

One commenter suggested that South Asians and Pacific Islanders be included in the definition of "underrepresented populations."

The Secretary does not anticipate making the change suggested by this commenter. The definition of "underrepresented populations" neither includes nor excludes South Asians or Pacific Islanders. The Secretary believes that South Asians and Pacific Islanders could be identified as "underrepresented populations" if authoritative demographic or socioeconomic statistical data indicate their participation in the nation's skilled, technical, or professional work force is less than their proportionate representation in the general population.

Definition of Comprehensive Cooperative Education Program—Sections 631.5(b)(5) and 635.4(b)(6)

Several commenters suggested that a liaison role with secondary schools should not be a mandatory component of the definition of a "comprehensive cooperative education program." These commenters suggested that this function is not necessary for a cooperative education programs to be considered comprehensive.

The Secretary does not anticipate making the change suggested by these commenters. The Secretary believes outreach to new populations is an important purpose of this program. One of the most important ways to fulfill this purpose is to advise secondary school students of the availability and advantages of cooperative education.

Unallowable Activities—Section 631.31(a)(3)

Several commenters suggested revising the unallowable cost provision prohibiting the use of grant funds for admissions activities. Commenters suggested allowing the use of grant funds for outreach activities related to the recruitment of students to an institution's cooperative education program.

Section 631.31(a)(3) of the regulations reflects the Department's traditional prohibition on the use of grant funds for admissions recruitment purposes by college personnel, except where authorized by statute. The Secretary notes, however, that grant funds can be used under § 631.30(h) of the regulations for expenses related to developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary school and undergraduate postsecondary schools.

The Secretary does not anticipate adding a clause to § 631.31(a)(3) to make clear that admission activities that are unrelated to cooperative education are unallowable. These activities are unallowable because they are not allocable to cooperative education projects under Office of Management and Budget Circular A-21 which is made applicable to this program through 34 CFR 74.172.

Funding the Project From Non-Federal Sources—Section 632.10(d)(2)

Several commenters suggested revising the maintenance-of-effort requirement in § 632.10(d)(2) of the regulations to provide, after the project period, that the applicant will fund the project at a level that is not less than the total amount expended for the project during the first year of Federal assistance. This change would make § 632.10(d)(2) consistent with § 632.21(b) and section 803(b)(4) of the statute. The change would also effectively delete the reference "from non-Federal sources," and, thus, permit other Federal sources of funds to be used for cooperative education programs after the project period ends.

The Secretary anticipates making the suggested change to § 632.10(d)(2) of the regulations. The Secretary believes other Federal sources of funds can be used for cooperative education purposes after the end of the project period, if allowed under the statutes and regulations of the other Federal programs which are the source of these funds.

Hiring of Cooperative Education Students for Permanent Positions After Graduation—Section 632.21(a)(3)

Several commenters objected to the language in one of the special consideration factors in § 632.21(a)(3) of the regulations that requires applicants to cite data on their graduates who are hired for permanent positions by employers following completion of the former students' cooperative education experiences. The commenters believe that this provision unfairly penalizes applicants who have not previously operated cooperative education programs, or who have programs that have not developed to the point that employers have hired more than a few, if any, graduates for permanent positions.

The Secretary agrees that the provision imposes an undue burden on applicants that do not have established cooperative education programs with

substantial employer support. The Secretary anticipates modifying the special factor sub-criterion in § 632.21(a)(3) of the regulations by deleting the reference to the number of cooperative education students employers hire for permanent positions after graduation.

Limitations on the Amount of a Grant for a New Project—Section 632.22

Several commenters requested that an institution that is receiving funds currently for a multi-year non-competing continuation (NCC) award continue to be subject to the institutional matching requirements in their original grant, rather than be subject to the more stringent institutional matching requirements in section 803(c)(2) of the HEA. These commenters contend that it would be overly burdensome to subject NCCs to these new matching requirements and may force many institutions to forego continued participation in the program.

The Secretary believes that NCCs are subject to the institutional matching requirements in section 803(c)(2) of the HEA. There is no clause in the 1992 Amendments that exempts NCCs from the new institutional matching requirements enacted in the HEA.

Limitations on the Amount of a Grant for an Existing Project—Section 632.23(b)

Several commenters suggested revising the formula for determining the amount an institution will receive under an existing project grant. The proposed regulations provide that the amount received by an institution from available funds in a fiscal year bears the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions applying for grants. Commenters contend that some institutions applying for grants will not be approved for an award. Therefore, commenters believe the denominator of the award ratio should be revised to include only the number of students in all eligible institutions with approved applications.

The Secretary anticipates revising the formula to reflect the change suggested by these commenters. The denominator of the award ratio will be revised to include the total number of unduplicated students placed in cooperative education during the preceding year by all eligible existing institutions with approved applications.

Awarding of Academic Credit for Work Experience—Section 632.30(c)

Several commenters objected to § 632.30(c) of the regulations which states that academic credit may be awarded at the discretion of the institution. The commenters contend that the statement is misplaced, creates confusion for applicants and field reviewers, and should be relocated under the proposed section on evaluation of student work experience.

The Secretary agrees that the statement on academic credit is misplaced. The Secretary anticipates relocating the statement as a new paragraph under § 632.31 of the regulations.

Determination of Grant Status and Funding Eligibility When Institutions Merge—Section 632.51

Several commenters suggested changing the requirement that the eligibility of a merged institution be based on the formerly separate institution with the least number of years of remaining eligibility. These commenters proposed that the Secretary base the funding eligibility of a merged institution on the remaining eligibility of the formerly separate institution with the largest enrollment. This change would permit a smaller institution to extend its eligibility by merging with a larger institution where the larger institution has a greater number of years of eligibility remaining under the program.

The Secretary does not anticipate making the change suggested by these commenters. The Secretary believes that the five-year limitation for new and existing projects under section 803(c)(1)(A) and (B) of the HEA and § 632.50 of the regulations applies in all circumstances, including where institutions merge. In the case of a merged institution, the five-year limitation is fulfilled by maintaining the requirement proposed in the NPRM.

Eligibility for Participation in a Demonstration Project—Section 633.3

Several commenters recommended that the requirement that an individual be a "student" to participate in a Demonstration project be deleted from the regulations. These commenters contend that not only students should be eligible to participate in Demonstration projects, but also administrators and faculty.

The statute defines cooperative education as providing paid work experiences to students and Demonstration projects as demonstrating the feasibility or value of innovative cooperative education methods. Therefore, the intended participants in Demonstration projects clearly are students. Consequently, the Secretary does not anticipate making any change to this requirement.

Eligibility for Training and Resource Center Grants—Section 635.2

One commenter proposed that combinations of public or private agencies or organizations be included among those eligible for Training and Resource Center project grants.

The Secretary does not anticipate making the change suggested by this commenter. Section 804(b)(1)(B) of the 1992 Amendments states that public or private nonprofit agencies or organizations are eligible for grants. A combination of public or private nonprofit agencies or organizations is not listed as an eligible applicant in the HEA. A public or private nonprofit agency or organization can work with another agency or organization, but only the applying agency or organization is considered an eligible applicant for a Training and Resource project grant.

Applicants should prepare their grant applications based on the provisions in the NPRM, as amended by the changes discussed in the summary of anticipated changes. If the Secretary makes any changes in the regulations that were not discussed in this notice, applicants will be given an opportunity to revise their applications.

Program Authority: 20 U.S.C. 1133–1133c.

Dated: July 14, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–17122 Filed 7–15–93; 9:08 am]

BILLING CODE 4000–01–P

VOL 58 ISS 135 JL 16 1993 UMI

DEPARTMENT OF EDUCATION

[CFDA No: 84.055]

Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training and Resource Center Projects

Notice inviting applications for new awards for fiscal year (FY) 1993.

Purpose of program: The Cooperative Education Program provides grants to institutions of higher education to encourage institutions to offer their students work experiences that will aid these students in their future careers and support them financially while in school. The program is also designed to improve the quality of cooperative education through demonstration, research, and training projects.

The Cooperative Education Program addresses Goal 5 of the National Education Goals, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by enabling institutions to provide students paid work opportunities related to their academic or occupational objectives, thereby strengthening the connection between education and work.

Eligible applicants: There are four types of grants under the Cooperative Education Program: Administration project grants; Demonstration project grants; Research project grants; and Training and Resource Center project grants. Eligibility for all four types of grants is described in the notice of proposed rulemaking (NPRM) for this program published May 19, 1993 in the **Federal Register** (58 FR 29157). Eligibility for a Cooperative Education Administration project grant is described in § 632.3 of the NPRM; eligibility for a Cooperative Education Demonstration project grant is described in § 633.2 of the NPRM; eligibility for a Cooperative Education Research project grant is described in § 634.2 of the NPRM; and eligibility for a Cooperative Education Training and Resource Center project grant is described in § 635.2 of the NPRM.

Deadline for transmittal of applications: August 16, 1993.

Deadline for intergovernmental review: September 15, 1993.

Applications available: July 16, 1993.

Available funds: Of the amount of funds projected to be available for new grant awards, $2,312,111 are anticipated for "Part A" Administration grants, $970,704 for "Part B" Administration grants, $200,000 for Demonstration grants, $196,056 for Research grants, and $200,000 for Training and Resource Center grants.

Estimated range of awards: Administration—"Part A" projects: $25,000–$300,000; Administration—"Part B" projects: $1,000–$75,000; Demonstration projects: $20,000–$150,000; Research projects: $20,000–$150,000; Training & Resource Center projects: $20,000–$150,000.

Estimated average size of awards: Administration—"Part A" projects: $77,070; Administration—"Part B" projects: $14,934; Demonstration projects: $100,000; Research projects: $98,028; Training & Resource Center projects: $100,000.

Estimated number of awards: Administration—"Part A" projects: 30; Administration—"Part B" projects: 65; Demonstration projects: 2; Research projects: 2; Training & Resource Center projects: 2.

Note: The Department is not bound by any estimates in this notice.

Project period: The duration of a grant for a new or an existing Administration project is five annual budget periods. The duration of a Demonstration, Research, and Training and Resource Center project grant is three annual budget periods.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; (b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34; and (c) When published as final regulations the Cooperative Education Program regulations in 34 CFR parts 631 through 635.

Supplementary information: On May 19, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 29157). The public comment period for the NPRM ended on June 18, 1993.

It is not the policy of the Department of Education to solicit applications before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993).

Fourteen comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making a number of changes to the regulations proposed in the NPRM. These changes are discussed in a summary of anticipated changes published in this issue of the **Federal Register**.

Applicants should prepare their grant application based on the provisions in the NPRM, as amended by the changes discussed in the summary of anticipated changes published in this issue of the **Federal Register**. If the Secretary makes any changes in the regulations that were not discussed in the summary of anticipated changes, applicants will be given an opportunity to revise their applications.

Priorities:

Demonstration Projects

Under 34 CFR 75.105(c)(3), and 34 CFR 633.21(a) of the notice of proposed rulemaking, the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1— Model cooperative education projects in the fields of science and mathematics for women and minorities who are underrepresented in those fields.

Absolute Priority 2— Model cooperative education projects specializing in developing technical and professional work force skills for nontraditional students and students from special or underrepresented populations.

Absolute Priority 3— Model cooperative education projects that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions.

Research Projects

Under 34 CFR 75.105(c)(3), and 34 CFR 634.21(a) of the notice of proposed rulemaking, the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1— Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(1) Initial job placement.

(2) Job advancement.

(3) Long-term earnings.

Absolute Priority 2— Assessment of the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

Absolute Priority 3— Assessment of the impact of comprehensive cooperative education projects on—

(1) The institution;

(2) Students at the institution;

(3) Faculty;

(4) Employment opportunities; and

(5) Factors influencing the successes and failures of comprehensive cooperative education projects.

Absolute Priority 4— Identification and assessment of incentives and factors that influence an IHE to continue its cooperative education project successfully after Federal financial assistance has ended.

Training and Resource Center

Under 34 CFR 75.105(c)(2)(ii), and 34 CFR 635.4(b)(5) and 635.21(a) of the notice of proposed rulemaking, the Secretary gives preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Supporting partnerships in which an institution with an existing comprehensive cooperative education program assists one or more institutions to—

(1) Improve their existing cooperative education program; or

(2) Establish, expand, or improve a comprehensive cooperative education program.

For applications or information contact: John E. Bonas. Telephone: (202) 708–9407. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1133–1133c.

Dated: July 14, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–17123 Filed 7–15–93; 9:08 am]

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VOL
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INFORM

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Index, fi
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Index, fi
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FEDERA

35357–35
35841–36
36117–36
36301–36
36589–36
36853–37
37413–37
37631–37
37847–38
38045–38
38263–38

Reader Aids

Federal Register

Vol. 58, No. 135

Friday, July 16, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12
37631–37846.....13
37847–38044.....14
38045–38262.....15
38263–38508.....16

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587
6546 (Revoked by PLO 6989 of July 6).....38083

Administrative Orders:
Presidential Determinations:
93–28 of June 25, 1993.....37631
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
532.....38263
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
226.....37847
246.....37633
301.....36589, 36590, 36591
319.....38263
354.....38269
400.....36592
723.....36853, 36857
906.....37635
910.....38271
922.....38272
923.....38272
924.....38272
945.....38274
967.....38276, 38277
981.....37636
987.....37638
1097.....34359
1098.....35361
1099.....34362
1106.....36859
1211.....38278
1464.....36857, 36861
1435.....38120
1755.....36252

Proposed Rules:
55.....37872
58.....37872
59.....37872
70.....37872
330.....38308
400.....37874
1421.....38311
1468.....37878

8 CFR

100.....38045
212.....38045
245.....35832

Proposed Rules:
208.....38312
236.....38312
242.....38312

9 CFR

78.....36593
91.....37639
92.....37641, 37642, 38262
94.....36593, 36594
98.....37642
317.....38046
381.....38046

Proposed Rules:
78.....37665
85.....37666
91.....37667
92.....37878
94.....36624, 38306, 38314, 38316
95.....37669
98.....36825
113.....37670
381.....38090

10 CFR

Proposed Rules:
50.....37884
60.....36902

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

Proposed Rules:
7.....38574
24.....38574
614.....38091

14 CFR

25.....36345,

36348, 36350, 36352
39 ..... 35860, 36130, 36131, 36863, 36865, 38283, 38285
71 36596
72 36298
73 38287
97 36266
108 36802
Proposed Rules:
Ch. I 36626
1 36736
23 36028
25 ..... 36116, 36736
26 35411
36 ..... 35413, 35899, 35899, 35900, 35902, 35904, 36005, 36427, 36321
71 ..... 36167, 36158, 36426, 36322
73 36023
91 36736
121 ..... 36116, 36736
135 ..... 36116, 36736
1272 36159

15 CFR

776 36353
775 36353
777 36353
785 36353
787 36353
788 36353
799 36353
806 38290
921 38214
Proposed Rules:
806 38324

16 CFR

1145 37554
1210 37557
Proposed Rules:
244 35414
412 35907

17 CFR

1 37644
257 35367
240 ..... 36866, 37413, 37655
249 35367
Proposed Rules:
240 ..... 37445, 38092
270 38095

18 CFR

2 38290
Proposed Rules:
35 36172
284 37447
341 37671
342 37671
343 37671
344 37671
345 37671
347 37671
352 37671
360 37671
361 37671
375 ..... 35415, 37671

19 CFR

148 ..... 35862, 38167
151 37853
Proposed Rules:
12 37864
24 37884
133 37884
178 37884

20 CFR

404 ..... 36006, 36133
416 36059

21 CFR

73 36134
178 37854
510 ..... 36134, 37855
520 36134
Proposed Rules:
870 36290
876 35416

22 CFR

126 35884

23 CFR

625 38293

24 CFR

203 35369
236 37802
241 37802
248 37802
572 ..... 36516, 36546
Proposed Rules:
16 37598
202 37885
207 35724
213 35724
220 35724
221 35724
232 35724
234 35724
241 35724
244 35724
880 35416
881 35416
883 35416
884 35416
886 35416
888 36175
3500 36176

25 CFR

Proposed Rules:
31 35419

27 CFR

9 ..... 35865, 35877
Proposed Rules:
4 35908
5 ..... 35908, 36516

28 CFR

0 35371
5 37417
14 36867
55 35371
Proposed Rules:
36 37052

29 CFR

18 36496
1400 36377
1915 35512
2606 ..... 35377, 37991
2610 38049
2612 35377
2615 35377
2616 35377
2619 38050
2622 ..... 35377, 37991, 38049
2623 ..... 35377, 37991
2644 38051
2676 38052

30 CFR

202 37420
206 37420
920 36135
939 36139
Proposed Rules:
916 37447
934 37449
935 ..... 36177, 36178

31 CFR

203 35395
585 35828

32 CFR

199 35400
706 36867
Proposed Rules:
501 37770
552 37774

33 CFR

100 ..... 36355, 38053, 38054, 38055, 38298, 38299, 38300, 38301
110 36356
117 ..... 36357, 38056
164 36141
165 ..... 36357, 36597, 36868, 38056, 38302
334 ..... 37606, 37889
Proposed Rules:
110 ..... 38100, 38101
117 ..... 36629, 38102
334 37889

34 CFR

12 36869
74 36869
75 36869
76 36869
77 36869
81 36869
86 36869
99 36869
200 36869
201 36869
206 36869
208 36869
212 36869
218 36869
221 36869
222 36869
230 36869
231 36869
236 36869
237 36869
238 36869
263 36869
280 36869
282 36869
300 36869
301 36869
303 36869
305 36869
307 36869
309 36869
315 36869
316 36869
318 36869
319 36869
324 36869
327 36869
356 36869
361 36869
363 36869
376 36869
378 35762
380 36869
400 36869
401 36869
402 36869
403 36869
405 36869
406 36869
407 36869
408 36869
409 36869
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411 36869
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473 36869
474 36869
475 36869
476 36869
477 36869
489 36869
490 36869
491 36869
555 36869
562 36869
581 36869
600 36869
612 36869
617 36869
624 36869
625 36869
626 36869
627 36869
628 36869
630 36869
636 36869
637 36869
639 36869
648 .....
653 .....
654 .....
664 .....
668 .....
671 .....
674 .....
675 .....
676 .....
682 .....
685 .....
690 .....
755 .....
757 .....
758 .....
762 .....
769 .....
770 .....
Proposed Rules:
361 .....
631 .....
632 .....
633 .....
634 .....
635 .....
650 .....
692 .....

36 CFR

51 .....
Proposed Rules:
1191 .....

38 CFR

3 .....
21 .....
36 .....
Proposed Rules:
3 .....
21 .....

39 CFR

233 .....

40 CFR

52 .....
37423, 374
82 .....
85 .....
131 .....

648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

Proposed Rules:
361.....38482
631.....38504
632.....38504
633.....38504
634.....38504
635.....38504
650.....37890
692.....36110

36 CFR

51.....36598

Proposed Rules:
1191.....37052, 38204

38 CFR

3.....37856
21.....38057
36.....37857

Proposed Rules:
3.....38104, 38106
21.....38106

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426,37658, 38058, 38060
82.....36516
85.....36871
131.....36141
180.....36358, 36359, 37861
185.....36358, 37862
186.....37867
228.....35884
414.....36872

Proposed Rules:
Ch. I.....37450, 37991
52.....36905, 37450, 37453, 38108, 38326
63.....37778
81.....36908, 37453, 38108,38331
88.....35420
180.....36366, 37893
186.....36366
261.....36367
300.....37693
372.....36180

42 CFR

Proposed Rules:
405.....37994
414.....37994
417.....38062

Proposed Rules:
417.....38170

43 CFR

3730.....38186
3820.....38186
3830.....38186
3850.....38186

Public Land Orders:
6986.....35408
6988.....35409
6989.....38083

44 CFR

65.....38303, 38305
67.....38083
354.....35770

Proposed Rules:
67.....38333

45 CFR

Proposed Rules:
1602.....36910

46 CFR

170.....36601

Proposed Rules:
15.....36914
171.....36374

47 CFR

1.....36142, 37867
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431, 38087, 38088
76.....36604, 38088
90.....36362

Proposed Rules:
Ch. I.....36630
61.....37894
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455, 37696, 38111

48 CFR

2.....37868
904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
935.....37868
937.....36149
952.....36149, 36363
970.....36149, 36363

Proposed Rules:
909.....38340
917.....36918
952.....38340
970.....38340
1823.....37697
1852.....37697

49 CFR

37.....38204
218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894

Proposed Rules:
37.....37052
171.....36920, 37612, 38111
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
390.....37895
392.....37900
393.....37900
543.....35422
571.....38346

50 CFR

17.....35887, 37432
85.....36619
285.....36154
611.....38167
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897, 37660, 37870, 37871, 38167
675.....35897, 37660

Proposed Rules:
17.....36184, 36379, 36387, 36924, 37699
20.....37828
23.....38112
24.....36925
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1993

VOL
58
ISS
1
3
5
JL
16
1993
UMI

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103d Congress, 1st Session, 1993

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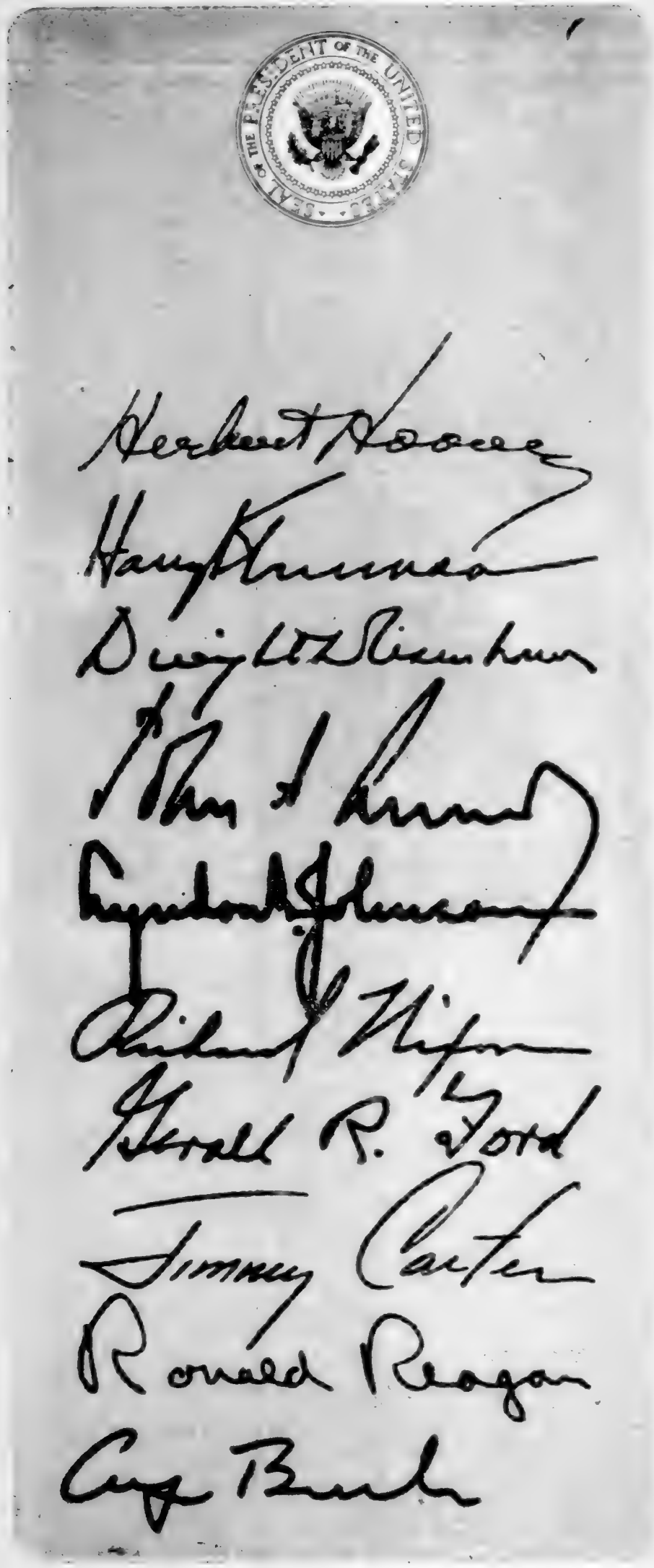

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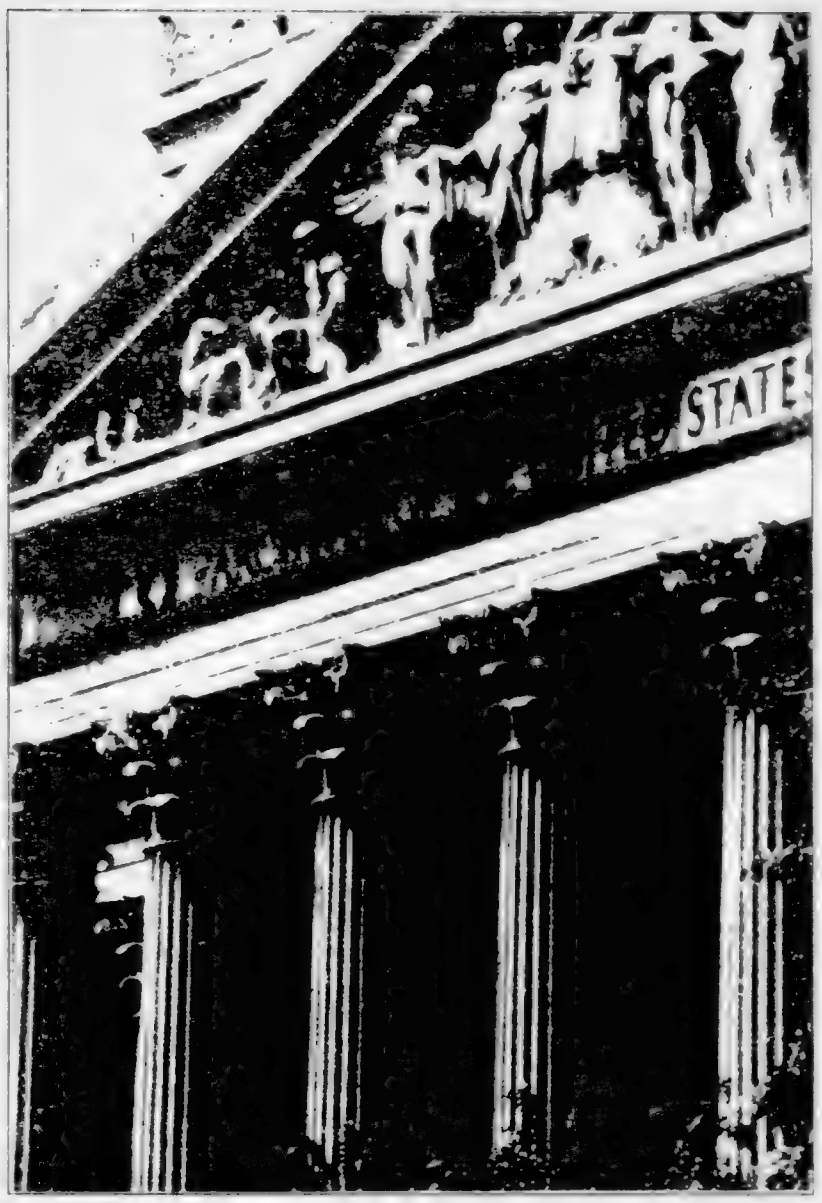

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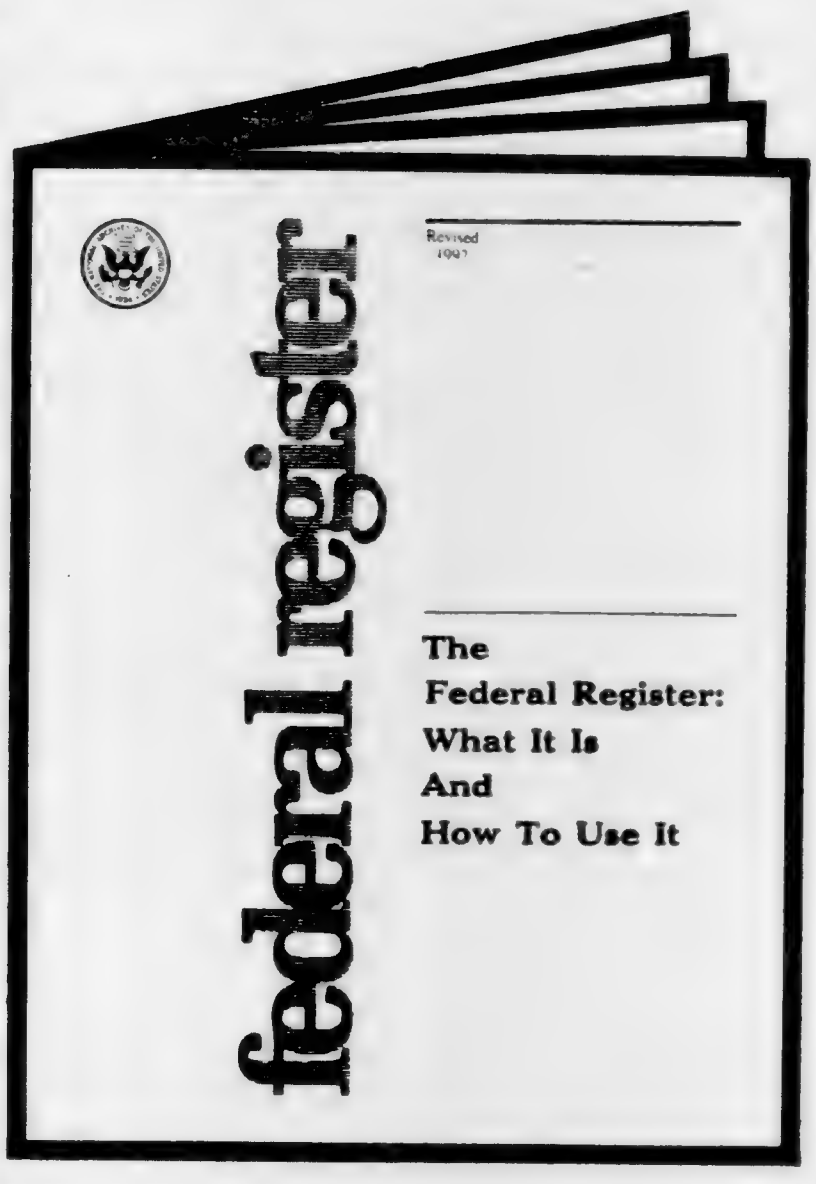

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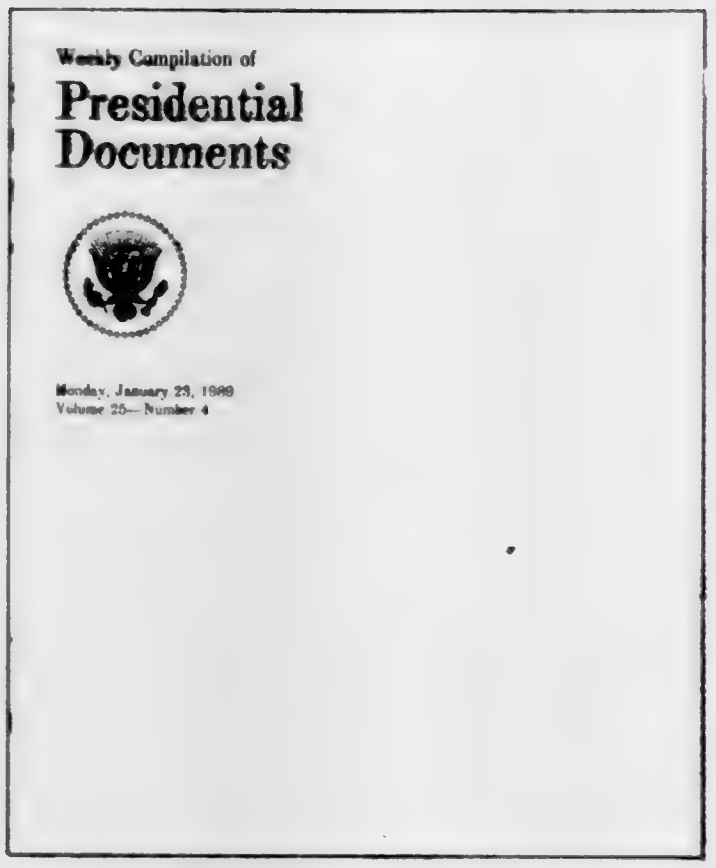

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Vol. 58
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7–19–93
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Pages 38509–38660

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VOL
58
ISS
136
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1993
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Commodity
RULES
Loan and p
Grains an
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Consumer
NOTICES
Meetings; S

Contents

Federal Register

Vol. 58, No. 136

Monday, July 19, 1993

Agricultural Marketing Service
PROPOSED RULES
Egg, poultry, and rabbit products; inspection and grading:
Fees and charges increase
Correction, 38602

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Forest Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Dietary Guidelines Advisory Committee, 38576

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Malt liquor, labeling and advertising—
Alcoholic content labeling, 38543
Identity standards, 38542

American Indian, Alaskan Native and Hawaiian Native Housing, National Commission
See National Commission on American Indian, Alaskan Native and Hawaiian Native Housing

Antitrust Division
NOTICES
National cooperative research notifications:
Bell Communications Research, Inc., 38585
Composite Materials Characterization, Inc., 38585
Reckitt & Colman Household Products Inc., 38586
Witco Corp., 38586

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
State and Territorial Health Officials Association, 38578

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 38576, 38577

Commerce Department
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Loan and purchase programs:
Grains and similarly handled commodities—
Feed grains farmer-owned reserve program, 38509

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 38601

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 38559

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Defense diversification program, 38604

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Federal Fleet Conversion Task Force, 38560
Natural gas exportation and importation:
Brymore Energy Inc., 38566
Iroquois Energy Management, Inc., 38566
Nortech Energy Corp., 38567
Technology development; exhibition, 38561

Environmental Protection Agency
PROPOSED RULES
Superfund program:
Solid waste and hazardous waste recycling; definition—
Meeting, 38546
NOTICES
Clean Air Act:
Citizen suits; proposed settlements; correction, 38602
Hazardous waste:
Municipal solid waste—
Kentucky; correction, 38602
Meetings:
Environmental Statistics Technical Advisory Committee, 38567
Memorandum of understanding:
National lead laboratory accreditation program; requirements; availability, 38656
Pesticide registration, cancellation, etc.:
Milban, 38567
Toxic and hazardous substances control:
Confidential business information and data transfer to contractors, 38567

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Dassault Aviation, 38516
Fokker, 38513
McDonnell Douglas, 38511
Short Brothers, plc, 38510
Airworthiness standards:
Airplanes, small—
Stall speed greater than 61 knots, 38634
Standard instrument approach procedures, 38518
PROPOSED RULES
Airworthiness directives:
Twin Commander Aircraft Corp., 38540

Airworthiness standards:
Transport category airplanes; damage-tolerant structure fatigue requirements, 38642

Federal Communications Commission
RULES
Common carrier services:
Open network architecture access charge subelemnets and dominant carriers rates policy and rules Correction, 38536
Radio broadcasting:
FM channel and class modifications by application, 38534
Rulemaking petitions to amend FM table of allotments and applications for new or modified FM facilities, conflicts; procedural changes, 38536
Radio services, special:
Private land mobile services—
Frequencies in 72-76 MHz band; low-power mobile use; correction, 38537
PROPOSED RULES
Radio services, special:
Private land mobile services—
Automatic vehicle monitoring systems, 38549
Radio stations; table of assignments:
Idaho et al., 38547
Maine, 38547
Missouri, 38548
Television stations; table of assignments:
Colorado, 38548
NOTICES
Common carrier services:
Enhanced services—
Nonstructural safeguards; further cost allocation uniformity; implementation, 38568

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices—
Tight formation gas qualifications for tax credit, 38528
Interstate pipelines—
Sales and transportation services; restructuring, 38524
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Niagara Mohawk Power Corp. et al., 38562
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 38566
Applications, hearings, determinations, etc.:
Hidroelectrica Cerros Colorados S.A., 38564
Montana Power Co., 38565
Montenay Montgomery Limited Partnership, 38565
Northwest Pipeline Corp., 38566
Stingray Pipeline Co., 38565
Texas Gas Transmission Corp., 38565

Federal Maritime Commission
RULES
Practice and procedure:
Alternative dispute resolution, 38648
NOTICES
Agreements filed, etc., 38568
Practice and procedure:
Alternative dispute resolution; policy statement, 38651

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 38568
Telecommunications service priority; national security and emergency preparedness functions, 38569
Applications, hearings, determinations, etc.:
City Holding Co. et al., 38574
Community Banc-Corp. of Sheboygan, Inc., et al., 38574
First National Bank Shares, Ltd., et al., 38575
PHSB Mutual Holding Co. et al., 38575
Switzer Deason, 38576

Federal Transit Administration
NOTICES
Grants; FTA sections 3 and 9 obligations, 38597

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 38549, 38552, 38553

Food and Drug Administration
PROPOSED RULES
Human drugs:
Antiperspirant drug products (OTC), 38541

Forest Service
NOTICES
Environmental statements; availability, etc.:
Salmon National Forest, ID, 38556
Tongass National Forest, AK, 38557

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Dietary Guidelines Advisory Committee, 38576

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 38579

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Healthy start communications campaign, 38581

Housing and Urban Development Department
RULES
Grant programs:
Nehemiah housing opportunity, 38530

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Justice Department
See Antitrust Division

NOTICES
Pollution control; consent judgments:
Elliot Drywall & Asbestos, Inc., 38584
Global, Inc., et al., 38585

Labor Department
See Employment and Training Administration

Land Management Bureau
RULES
Public land orders:
Oregon; correction, 38602
NOTICES
Environmental statements; availability, etc.:
Burley Field, Pinedale Resource Area, WY, 38583
Meetings:
Roswell District Grazing Advisory Board, 38583
Realty actions; sales, leases, etc.:
Arizona, 38583
Survey plat filings:
Utah, 38584

Management and Budget Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 38628

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Lykes Bros. Steamship Co., Ltd., 38600

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 38586

National Commission on American Indian, Alaskan Native and Native Hawaiian Housing
NOTICES
Meetings, 38587

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge/Advancement Advisory Panel, 38587
Humanities Panel, 38588

National Institute for Literacy
NOTICES
Grants and cooperative agreements; availability, etc.:
National Center for Adult Literacy and Learning Disabilities; establishment; correction, 38589

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 38579
Meetings:
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 38580
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Recombinant pseudomonas exotoxin immunoconjugate specifically directed against the Lewis Y antigen, 38580, 38581

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements
Turtle excluder device exemption, 38537
PROPOSED RULES
Endangered and threatened species:
North and South Umpqua River sea-run cutthroat trout, 38554
Northern right whale—
Critical habitat designation, 38553
NOTICES
Grants and cooperative agreements; availability, etc.:
Antarctic marine ecosystem, projects to provide information on; correction, 38558
Permits:
Marine mammals, 38558

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Innovative Weaponry, Inc., 38589

Office of Management and Budget
See Management and Budget Office

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 38601

Presidential Documents
PROCLAMATIONS
Special observances:
Captive Nations Week (Proc. 6580), 38659

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
Indian Health Service, 38582

Securities and Exchange Commission
RULES
Debt collection; salary offset, 38519
NOTICES
Meetings; Sunshine Act, 38601
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 38590
Self-regulatory organizations; unlisted trading privileges:
Chicago Stock Exchange, Inc., 38589
Pacific Stock Exchange, Inc., 38589
Philadelphia Stock Exchange, Inc., 38591
Applications, hearings, determinations, etc.:
Canada Life Insurance Co. of New York et al., 38592
CSS Industries, Inc., 38592

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
United Financial Resources Corp., 38594

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary grant programs; Russian, Eurasian, and East European research and training program, 38594
Munitions export licenses suspension:
Guatemala, 38597

VOL
58
ISS
136
JL
19
1993
UMI

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas, 38532
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 38543
Indiana, 38545

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Maritime Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
NOTICES
Senior Executive Service:
Legal Division Performance Review Board; membership, 38600

Separate Parts In This Issue

Part II
Department of Labor, Employment and Training Administration, 38604

Part III
Office of Management and Budget, 38628

Part IV
Department of Transportation, Federal Aviation Administration, 38634

Part V
Department of Transportation, Federal Aviation Administration, 38642

Part VI
Federal Maritime Commission, 38648

Part VII
Environmental Protection Agency, 38656

Part VIII
The President, 38659

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PART

A cumulative
Reader Aids

3 CFR
Proclamations
6580.....

7 CFR
1421.....
Proposed Rul
55.....
56.....
59.....
70.....

14 CFR
23.....
39 (4 docume
.....3851

97.....
Proposed Rul
25.....
39.....

17 CFR
204.....

18 CFR
2.....
157.....
260.....
271.....
284.....
385.....

21 CFR
Proposed Rul
350.....

24 CFR
280.....

27 CFR
Proposed Rul
7 (2 documer

30 CFR
904.....
Proposed Rul
913.....
914.....

40 CFR
Proposed Rul
Ch. I.....

43 CFR
Public Land O
6983.....

46 CFR
502.....

47 CFR
1.....
61.....
73 (2 docume

90.....
Proposed Rul
73 (4 docume

90.....

50 CFR
227.....
Proposed Rul
17 (3 docume

226.....
227.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6580.....38659

7 CFR
1421.....38509
Proposed Rules:
55.....38602
56.....38602
59.....38602
70.....38602

14 CFR
23.....38634
39 (4 documents).....38510,2338511, 38513, 38516
97.....38518
Proposed Rules:
25.....38642
39.....38540

17 CFR
204.....38519

18 CFR
2.....38524
157.....38524
260.....38524
271.....38528
284.....38524
385.....38524

21 CFR
Proposed Rules:
350.....38541

24 CFR
280.....38530

27 CFR
Proposed Rules:
7 (2 documents).....38542, 38543

30 CFR
904.....38532
Proposed Rules:
913.....38543
914.....38545

40 CFR
Proposed Rules:
Ch. I.....38546

43 CFR
Public Land Orders:
6983.....38602

46 CFR
502.....38648

47 CFR
1.....38534
61.....38536
73 (2 documents).....38534, 38536
90.....38537
Proposed Rules:
73 (4 documents).....38547, 38548
90.....38549

50 CFR
227.....38537
Proposed Rules:
17 (3 documents).....38549, 38552, 38553
226.....38553
227.....38554

VOL
58
ISS
136
JL
19
1993
UMI

Rules

This section
contains regu
applicability
are keyed to
Federal Regi
50 titles purs

The Code of
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7 CFR Part

RIN 0560–A

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ACTION: Fi

SUMMARY:
regulations
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Corporatio
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1949 (the
rule codifi
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Secretary)
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sorghum, a
collateral f

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Rules and Regulations

Federal Register
Vol. 58, No. 136
Monday, July 19, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AC71

Grain and Similarly Handled Commodities; 1992 Feed Grains Farmer-Owned Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the farmer-owned reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949 (the 1949 Act), as amended. The rule codifies the determination made by the Secretary of Agriculture (the Secretary) that a maximum of 900 million bushels of 1992-crop corn, grain sorghum, and barley may be pledged as collateral for FOR loans.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Sronce, Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), room 3742–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "major". A Final Regulatory Impact Analysis has been prepared and is available from the above-named individual.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Grain Reserve Program—10.067.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This rule does not preempt State laws, is not retroactive, and does not require the exhaustion of any administrative appeal remedies.

Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Statutory Background

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program for wheat and feed grains. It provides that the determination of whether or not there will be entry of a crop into the FOR will be announced by December 15 of the year in which the crop of wheat was harvested and, in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested.

Entry into the FOR is triggered based upon prices and stocks-to-use (S/U) ratios. Section 110 of the 1949 Act, paragraphs (2) and (3), provides the following:

(2) *DISCRETIONARY ENTRY*—The Secretary may make extended loans available to producers of wheat or feed grains if either of the following conditions is met:

(A) *Price Condition:* The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to the announcement is less than 120 percent of the current loan rate for wheat or corn, respectively; or

(B) *S/U Condition:* As of the announcement date, the Secretary estimates that the S/U ratio on the last day of the current marketing year will be:

(i) in the case of wheat, more than 37.5 percent; and

(ii) in the case of corn, more than 22.5 percent.

(3) *MANDATORY ENTRY*—The Secretary shall make extended loans available to producers of wheat or feed grains if both of the conditions specified in subparagraphs (A) and (B) of paragraph (2) are met for wheat and feed grains, respectively.

If neither the price nor the S/U condition is met, the Secretary has no authority to make extended loans available to producers of wheat or feed grains.

In accordance with section 110 of the 1949 Act, paragraph (f) provides that if the Secretary makes extended loans available to producers of wheat or feed grains, the Secretary must specify the maximum quantity of wheat or feed grains to be stored under this program that the Secretary determines appropriate to promote the orderly marketing of the commodities. The maximum quantities of wheat may not be established at less than 300 million bushels, nor more than 450 million bushels. The maximum quantities of feed grains may not be established at less than 600 million bushels, nor more than 900 million bushels.

On January 7, the Secretary announced that the estimated corn S/U ratio at the end of the 1992/93 marketing year is 25.2 percent, the 90-day average market price of corn is

VOL
58
ISS
136
JL
19
1993
UMI

$1.99 per bushel, and 120 percent of the 1992 price support rate for corn is $2.06 per bushel. The Secretary was required to allow entry of the 1992-crop of feed grains into the FOR because both entry conditions were met (the S/U was greater than 22.5 percent and the 90-day average market price of corn was less than 120 percent of the 1992 price support rate for corn). The Secretary also announced that the maximum quantity of corn, grain sorghum, and barley to be stored under this program would be 600 million bushels.

On March 15, the Secretary increased the total quantity of corn, grain sorghum and barley to 900 million bushels to alleviate producer concerns that the 600 million bushel limit would have restricted the quantity they wished to place in the FOR.

Oats was not included as an eligible feed grain for FOR entry because the estimated 1992/93 ending stocks of oats, at 100 million bushels, were estimated to be the second lowest level since the mid-1930's. Also, the quantity of oats expected to enter the FOR would be less than 1 million bushels.

This final rule amends 7 CFR part 1421 to set forth these determinations.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. In § 1421.217, paragraph (c) is revised to read as follows:

§ 1421.217 Reserve entry.

* * * * *

(c) No quantity of 1992-crop wheat may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended. The maximum quantity of 1992-crop corn, grain sorghum, and barley that may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended, is 900 million bushels.

Signed at Washington, DC, on July 11, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–17054 Filed 7–16–93; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–176–AD; Amendment 39–8619; AD 93–13–06]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, equipped with certain main landing gear (MLG) actuators, that requires replacement of certain MLG actuators. This amendment is prompted by a report of a malformed radius on the locking segment slots in the piston rod of the MLG actuators. The actions specified by this AD are intended to prevent failure of the MLG actuator to unlock, which would prevent the extension of the MLG.

DATES: Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on March 29, 1993 (58 FR 16507). That action proposed to require replacement of certain main landing gear (MLG) actuators.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule. However, the commenter notes that many of the systems on the airplanes addressed in the proposed rule are similar to the systems on Model SD3–30 series airplanes. The commenter requests that the FAA conduct a review to determine if Model SD3–30 series airplanes should have been subject to the proposal.

The FAA is cognizant that certain design similarities exist between Model SD3–60 and SD3–30 series airplanes. The FAA is currently investigating the possibility of malformed radii on the locking segment slots in the piston rod of the MLG actuators on Model SD3–30 series airplanes and may consider further rulemaking if this unsafe condition is found to be likely to exist or develop on these airplanes.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 6 actuators installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per actuator to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $660, or $110 per actuator.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-13-06 Short Brothers, PLC: Amendment 39-8619. Docket 92-NM-176-AD.

Applicability: Model SD3-60 series airplanes; equipped with main landing gear (MLG) actuator part number (P/N) 104796004, having serial number DRG/4729/86, DRG/4730/86, DRG/5057/86, DRG/5059/86, DRG/5060/86, or DRG/5061/86; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG actuator to unlock, which would prevent the extension of the MLG, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the MLG actuator with a serviceable actuator that is marked "32-69SD" in accordance with Dowty Aerospace Hydraulics-Cheltenham Service Bulletin 32-69SD, Revision 2, dated January 20, 1993.

(b) As of the effective date of this AD, no person shall install on any airplane a MLG actuator P/N 104796004, having serial number DRG/4729/86, DRG/4730/86, DRG/5057/86, DRG/5059/86, DRG/5060/86, or DRG/5061/86, that is not marked "32-69SD."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Dowty Aerospace Hydraulics-Cheltenham Service Bulletin 32-69SD, Revision 2, dated January 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on June 29, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-17077 Filed 7-16-93; 8:45 am]

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14 CFR Part 39

[Docket No. 92-NM-246-AD; Amendment 39-8620; AD 93-13-07]

Airworthiness Directives; McDonnell Douglas Model DC-9 and DC-9-80 Series Airplanes, and Model C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, and Model C-9 (military) airplanes, that requires installing a water drain system in the slant pressure panel. This amendment is prompted by several reports of water runoff from the slant pressure panel which froze on the control assemblies. The actions specified by this AD are intended to prevent freezing of water on the control cables, which could restrict the movement of the cables and result in reduced controllability of the airplane.

DATES: Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Publications-Technical Administrative Support, C1-L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5231; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, and Model C-9 (military) airplanes was published in the **Federal Register** on February 19, 1993 (58 FR 9133). That action proposed to require installing a water drain system in the slant pressure panel.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Several commenters request that the compliance time for installing a water drain system in the slant pressure panel be extended from the proposed 12 months. The commenters suggest several new compliance times ranging from 15 months to 36 months. The commenters note that this additional time would allow sufficient lead time for procurement of required parts and would allow the installation to be accomplished during regularly-scheduled maintenance. The FAA concurs with the commenters' request. Since the issuance of the notice, the manufacturer has advised that there is not an adequate supply of parts so that installation of a water drain system can be accomplished on the U.S. fleet within the proposed compliance time of

VOL 58 ISS 136 JL 19 1993 UMI

12 months. The manufacturer has advised that it estimates that a lead time of 6 months is needed for procurement of required parts. Based on this new data, the FAA has determined that an extension of the compliance time to 24 months is warranted. Extending the compliance time to 24 months will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available. Paragraph (a) of the final rule has been revised to specify a compliance time of 24 months.

One commenter requests that the FAA delay issuance of the rule until McDonnell Douglas DC–9 Service Bulletin 53–179 has been revised to correct the listing of affected airplanes. This commenter states that the effectivity listing of this service bulletin incorrectly lists two airplanes as belonging to its fleet; however, those 2 specific airplanes were never under its ownership. The FAA does not concur with the commenter's request to delay this action for such a reason. The commenter is obligated to ensure that only the airplanes it operates are in compliance with this airworthiness directive. Thus, if the commenter does not own or operate a particular airplane, it has no obligation to modify that airplane, regardless of the effectivity listing of the referenced service bulletin. Therefore, it would serve no purpose to delay this AD action until the referenced service bulletin is revised to correct this detail.

One commenter requests that the AD be delayed until the manufacturer has disseminated information regarding the specific size requirements of a certain hose, part number KL70–133, which is part of the proposed water drain system installation. The commenter states that both McDonnell Douglas DC–9 Service Bulletin 53–179, dated January 18, 1985, and Service Bulletin Change Notification 53–179 CN2, dated May 30, 1985, reference this hose; however, the Service Bulletin does not specify a size requirement for the hose, whereas the Change Notification specifies a definite diameter (⅜ inch) and wall thickness (⅛ inch) for the hose. The commenter is unsure as to the significance of the size callout in the Change Notification, and is concerned that additional corrective action may be needed for those airplanes that have been modified to include the hose in accordance with the original Service Bulletin rather than the Change Notification. (This commenter has modified its fleet in accordance with the Service Bulletin and not the Change Notification.) The FAA does not concur with the commenter's request to delay issuance of this AD for the reason suggested. The final rule references the Change Notification as the appropriate service information for installation of the required water drain system; therefore, if the commenter's system contains a hose that is not of the dimensions called out in the Change Notification, it is possible that the installed hose may not be of an equivalent level of safety and additional action may be necessary. However, the commenter has not provided sufficient data regarding the actual dimensions of the hoses installed on its airplanes; therefore, the FAA is unable to determine whether those hoses installed are equivalent. Under the provisions of paragraph (b) of the final rule, the FAA may approve requests for use of an alternative method of compliance if data were presented to demonstrate that hoses having a different dimension from that called out in the referenced service information will provide an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,109 McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, and Model C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,071 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $680 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,552,950, or $1,450 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–13–07 McDonnell Douglas: Amendment 39–8620. Docket 92–NM–246–AD.

Applicability: Model DC–9–10, -20, -30, -40, and -50 series airplanes, Model DC–9–81 and -82 series airplanes, and Model C–9 (Military) airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 53–179, dated January 18, 1985, as amended by Service Bulletin Change Notification 53–179 CN1, dated February 28, 1985, and Service Bulletin Change Notification 53–179 CN2, dated May 30, 1985; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent freezing of water on the control cables, which could restrict the movement of the cables and result in reduced controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD, install a water drain system in the slant pressure panel in accordance with McDonnell Douglas DC–9 Service Bulletin 53–179, dated January 18, 1985, as amended by Service Bulletin Change Notification 53–179 CN1, dated February 28, 1985, and Service Bulletin Change Notification 53–179 CN2, dated May 30, 1985.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–179, dated January 18, 1985; and Service Bulletin Change Notification 53–179 CN1, dated February 28, 1985, and Service Bulletin Change Notification 53–179 CN2, dated May 30, 1985, for McDonnell Douglas DC–9 Service Bulletin 53–179, dated January 18, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications-Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on June 29, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–17076 Filed 7–16–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91–NM–121–AD; Amendment 39–8617; AD 93–13–04]

Airworthiness Directives; Fokker Model F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracks, and repair or replacement, as necessary, to ensure continued airworthiness. This amendment requires the same inspections, but adds or revises certain significant structural items for which inspection is necessary. This amendment is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89–07–16 R1, Amendment 39–6444 (55 FR 266, January 4, 1990), which is applicable to Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, was published in the **Federal Register** on January 12, 1993 (58 FR 3873). The action proposed to require supplemental structural inspections to detect fatigue cracks, and repair or replacement, as necessary, to ensure continued airworthiness.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the FAA revise paragraph (c) of the proposed rule to state that cracked structure detected during the inspections required by paragraph (a) or (b) of the proposal must be repaired or replaced in accordance with the compliance times specified in the Fokker Structural Integrity Program (SIP) Document, rather than "prior to further flight," as specified in the proposal. The commenter explains that repair or replacement prior to further flight is not always feasible. The commenter states that postponement of certain repairs is provided for in the remarks columns of the SIP Document. The commenter also states that the repair postponement criteria are based on crack propagation rates and critical crack lengths, and are calculated using ultimate load conditions, as required by the FAA and the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands. The commenter concludes that the proposed requirement to repair or replace prior to further flight contradicts the SIP instructions in certain cases.

The FAA does not concur with the commenter's request to revise paragraph (c) of the final rule. The FAA's policy concerning flight with known cracked structure is that any repair or replacement postponement must be evaluated on a case-by-case basis. Under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data is submitted that substantiates that such an adjustment would provide an acceptable level of safety. The criteria for approving such a request in this case are (1) the crack must not be part of multi-site damage, (2) the crack growth must be easily detectable, and (3) established inspection procedures would detect cracked structure at intervals that would permit repairs to be accomplished before the structure's strength falls below ultimate load carrying capability. "**Note 1**" has been added to the final rule to specify that where there are differences between the AD and the SIP Document, the AD prevails.

One commenter requests that the FAA confirm that RLD approval of maintenance actions taken to correct SIP crack findings is equivalent to FAA approval, and that such approval constitutes an acceptable method of compliance with the repair or replacement requirements of the proposed rule. The FAA confirms that operators are not required to request approval of an alternative method of compliance from the FAA if approval to repair cracked structure detected during an inspection required by this AD is obtained from the RLD. "**Note 2**" has been added to the final rule to specify that cracked structure detected during the inspections required by paragraph (a) or (b) of this AD that is repaired or replaced in accordance with data

meeting the certification basis of the airplane and approved by the RLD is equivalent to FAA approval and constitutes an acceptable method of compliance.

One commenter requests that the FAA permit Designated Engineering Representatives (DER) and/or organizations that hold Special Federal Aviation Regulation (SFAR) 36 authorization to approve repairs that would be required by the proposed rule. The commenter bases this request on the fact that paragraph (c) of the proposed rule provides for FAA approval as an option, and that the FAA has made the determination that DER's are authorized to approve repairs of cracked structure detected during inspections required by certain AD's that allowed repair in accordance with an FAA-approved method.

The FAA does not concur with the commenter's request. The FAA does not currently authorize DER's or SFAR 36 holders to approve such repairs. While DER's and SFAR 36-authorized organizations are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is. Further, where repair data does not exist, it is essential that the FAA or RLD have feedback as to the type of repairs being made. Paragraph (c) of the final rule has been revised to clarify that the Manager, Standardization Branch, ANM-113, is the appropriate FAA authority to approve repair or replacement data that would be required by the proposed rule.

One commenter requests that all approvals of alternative methods of compliance issued with regard to AD 89-07-16 R1 be considered valid for the purposes of compliance with the proposed AD. The FAA concurs with the commenter's request that repairs approved as alternative methods of compliance for AD 89-07-16 R1 are valid approvals for compliance with this AD. "Note 3" has been added to the final rule to state this. Additionally, the final rule provides the option to use repair or replacement data approved by the RLD or Manager, Standardization Branch, ANM-113, as a method of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 40 airplanes of U.S. registry will be affected by this AD. Implementation of the inspections, repairs, or replacements specified in the revisions to the SIP document into an operator's maintenance program is estimated to require approximately 605 work hours (including removal, inspection, and installation work hours) per airplane per year, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,331,000, or $33,275 per airplane, for the first year and annually thereafter. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6444 (55 FR 266, January 4, 1990), and by adding a new airworthiness directive (AD), amendment 39-8617, to read as follows:

93-13-04 Fokker: Amendment 39-8617. Docket 91-NM-121-AD. Supersedes AD 89-07-16 R1, Amendment 39-6444.

Applicability: Model F28 Mark 1000, 2000, 3000 and 4000 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural integrity of these airplanes, 20 accomplish the following:

Note 1: This AD references Fokker Structural Integrity Program (SIP) Document 28438, Part I, including revisions up through November 1, 1988; and Fokker SIP Document 28438, Part I, including revisions up through October 15, 1992; for inspection procedures, compliance times, repairs, replacement and reporting requirements. In addition, this AD specifies compliance times different from those included in the SIP Document. Where there are differences between the AD and the SIP Document, the AD prevails.

Note 2: Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD that is repaired or replaced in accordance with data meeting the certification basis of the airplane and approved by the Rijksluchtvaartdienst (RLD) is equivalent to FAA approval and constitutes an acceptable method of compliance.

(a) Within six months after February 5, 1990 (the effective date of Amendment 39-6444, AD 89-07-16 R1), incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in the Fokker Structural Integrity Program (SIP) Document 28438, Part I, including revisions up through November 1, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(b) Within six months after the effective date of this AD, replace the revision of the FAA-approved maintenance program required by paragraph (a) of this AD with the inspections, inspection intervals, repairs, or replacements defined in the Fokker SIP Document 28438, Part I, including revisions up through October 15, 1992; and inspect and repair, or replace, as applicable. The non-destructive inspection techniques

referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced, prior to further flight, in accordance with the instructions in Fokker SIP Document 28438, Part I, including revisions up through November 1, 1988 [for airplanes inspected in accordance with paragraph (a) of this AD]; or Fokker SIP Document 28438, Part I, including revisions up through October 15, 1992 [for airplanes inspected in accordance with paragraph (b) of this AD]; or in accordance with other data meeting the certification basis of the airplane which is approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, or by the RLD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Repairs approved as alternative methods of compliance for AD 89–07–18 R1 constitute valid approvals for compliance with this AD, unless otherwise specified.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, repair, and replacement procedures shall be done in accordance with Fokker Structural Integrity Program (SIP) Document 28438, Part 1, revised up through October 15, 1992, which contains the following list of effective pages:

Item No.	Page No.	Revision level shown on page	Date shown on page
INTRODUCTION			
-	1–27	-	Oct. 15, 1992.
INSPECTIONS			
27–20–01 ..	1	-	Mar. 1, 1982.
27–30–01 ..	1	3	Aug. 31, 1990.
27–40–01 ..	1	2	Aug. 31, 1990.
27–50–01 ..	1	2	Mar. 20, 1986.
27–50–02 ..	1	2	Mar. 20, 1986.
27–50–03 ..	1	2	Mar. 20, 1986.
27–50–04 ..	1	2	Mar. 20, 1986.
27–50–05 ..	1	-	Mar. 1, 1982.
27–50–06 ..	1	-	Mar. 1, 1982.
27–50–07 ..	1	2	Aug. 31, 1990.
27–50–08 ..	1	3	Aug. 31, 1990.
27–50–09 ..	1	3	Aug. 31, 1990.
27–50–10 ..	1	1	Aug. 31, 1990.
27–61–01 ..	1	1	Aug. 31, 1990.
27–61–02 ..	1	2	Oct. 15, 1992.
27–61–03 ..	1	2	Aug. 31, 1990.
27–63–01 ..	1	1	Aug. 31, 1990.
27–63–02 ..	1	-	Mar. 1, 1982.
27–63–03 ..	1	1	Nov. 1, 1988.
27–63–04 ..	1	1	Aug. 31, 1990.
27–63–05 ..	1	1	Nov. 1, 1988.
29–10–01 ..	1	1	Aug. 31, 1990.
32–10–01 ..	1	1	Aug. 31, 1990.
32–10–02 ..	1	1	Aug. 31, 1990.
32–10–03 ..	1	1	Aug. 31, 1990.
32–10–04 ..	1	1	Aug. 31, 1990.
32–10–05 ..	1	3	Oct. 15, 1992.
32–30–01 ..	1	1	Oct. 15, 1992.
32–42–01 ..	1	1	Aug. 31, 1990.
32–42–02 ..	1	1	Aug. 31, 1990.
32–50–01 ..	1	3	Oct. 15, 1992.
52–10–01 ..	1	2	May 1, 1984.
52–10–01 ..	2	-	May 1, 1984.
52–10–02 ..	1	2	Aug. 31, 1990.
52–10–03 ..	1	3	Oct. 15, 1992.
52–10–05 ..	1	-	Oct. 15, 1992.
52–20–01 ..	1	6	Oct. 15, 1992.
52–20–02 ..	1	5	Oct. 15, 1992.
52–30–01 ..	1	2	Aug. 31, 1990.
52–30–02 ..	1	2	Aug. 31, 1990.
52–30–03 ..	1	2	Aug. 31, 1990.
52–30–04 ..	1	2	Aug. 31, 1990.
52–30–05 ..	1	3	Oct. 15, 1992.
52–30–05 ..	2	4	Oct. 15, 1992.
52–30–06 ..	1	2	Oct. 15, 1992.
52–30–07 ..	1	2	Oct. 15, 1992.
52–30–07 ..	2	-	Oct. 15, 1992.
52–30–08 ..	1	1	Aug. 31, 1990.
52–30–09 ..	1	-	Oct. 15, 1992.
52–30–10 ..	1	-	Oct. 15, 1992.
52–30–11 ..	1	-	Oct. 15, 1992.
52–31–01 ..	1	1	Aug. 31, 1990.
52–31–02 ..	1	2	Aug. 31, 1990.
52–40–01 ..	1	4	Oct. 15, 1992.
52–40–02 ..	1	4	Oct. 15, 1992.
53–10–01 ..	1–2	4	Oct. 15, 1992.
53–10–02 ..	1	4	Oct. 15, 1992.
53–10–02 ..	2	3	(Deleted).
53–10–03 ..	1	4	Oct. 15, 1992.
53–10–04 ..	1	3	Oct. 15, 1992.
53–10–05 ..	1–2	4	Oct. 15, 1992.
53–10–06 ..	1	4	Oct. 15, 1992.
53–10–07 ..	1	3	Oct. 15, 1992.
53–10–08 ..	1	5	Oct. 15, 1992.
53–10–08 ..	2–3	2	Oct. 15, 1992.
53–10–09 ..	1	2	Aug. 31, 1990.
53–10–10 ..	1	3	Oct. 15, 1992.
53–10–11 ..	1	3	Oct. 15, 1992.
53–10–12 ..	1	2	Oct. 15, 1992.
53–10–13 ..	1	2	Oct. 15, 1992.
53–10–14 ..	1	4	Oct. 15, 1992.
53–10–18 ..	1	3	Oct. 15, 1992.
53–10–18 ..	2	1	Oct. 15, 1992.
53–10–18 ..	3	-	Oct. 15, 1992.
53–10–19 ..	1	2	Oct. 15, 1992.
53–10–20 ..	1	2	Oct. 15, 1992.
53–10–21 ..	1	2	Oct. 15, 1992.
53–10–22 ..	1	1	Oct. 15, 1992.
53–10–23 ..	1	1	Oct. 15, 1992.
53–10–24 ..	1	-	(Not dated).
53–10–24 ..	2	-	Oct. 15, 1992.
53–10–25 ..	1	-	Oct. 15, 1992.
53–30–01 ..	1	3	Oct. 15, 1992.
53–30–02 ..	1	3	Oct. 15, 1992.
53–30–03 ..	1	4	Oct. 15, 1992.
53–30–05 ..	1–2	3	Oct. 15, 1992.
53–30–06 ..	1–6	3	Oct. 15, 1992.
53–30–06 ..	7–9	-	Oct. 15, 1992.
53–30–07 ..	1	1	Oct. 15, 1992.
53–30–07 ..	2	1	Oct. 15, 1992.
53–30–07 ..	3	1	Oct. 15, 1992.
53–30–08 ..	1	3	Oct. 15, 1992.
53–30–09 ..	1	1	Oct. 15, 1992.
53–30–09 ..	2–8	-	Oct. 15, 1992.
53–40–01 ..	1	2	Oct. 15, 1992.
53–40–02 ..	1	1	Oct. 15, 1992.
53–40–02 ..	2	1	Oct. 15, 1992.
53–40–03 ..	1	2	Aug. 31, 1990.
53–40–04 ..	1	1	Oct. 15, 1992.
53–50–01 ..	1	1	Aug. 31, 1990.
53–50–01 ..	2	2	Aug. 31, 1990.
55–30–01 ..	1	4	Oct. 15, 1992.
55–50–01 ..	1	4	Oct. 15, 1992.
55–50–02 ..	1	4	Oct. 15, 1992.
55–50–04 ..	1	1	Aug. 31, 1990.
55–50–05 ..	1	-	Oct. 15, 1992.
57–10–01 ..	1	3	Oct. 15, 1992.
57–10–01 ..	2	2	Mar. 20, 1986.
57–10–02 ..	1	3	Oct. 15, 1992.
57–10–02 ..	2	2	Mar. 20, 1986.
57–10–03 ..	1	2	Oct. 15, 1992.
57–10–03 ..	2	2	Mar. 20, 1986.
57–10–04 ..	1	1	Aug. 31, 1990.
57–10–05 ..	1	4	Oct. 15, 1992.
57–10–06 ..	1	2	Oct. 15, 1992.
57–10–07 ..	1	1	Oct. 15, 1992.
57–10–07 ..	2	3	Oct. 15, 1992.
57–10–09 ..	1	1	Oct. 15, 1992.
57–10–10 ..	1	-	Oct. 15, 1992.
57–30–01 ..	1–2	1	Oct. 15, 1992.
57–30–02 ..	1	2	Oct. 15, 1992.
57–40–01 ..	4	3	Oct. 15, 1992.
57–40–01 ..	2	1	Aug. 31, 1990.
57–40–01 ..	3	3	Aug. 31, 1990.
57–40–01 ..	4	2	Aug. 31, 1990.
57–40–02 ..	1	4	Oct. 15, 1992.
57–40–03 ..	1	2	Aug. 31, 1990.
57–40–04 ..	1	1	Oct. 15, 1992.
57–40–04 ..	2	2	Mar. 20, 1986.
57–40–05 ..	1	4	Oct. 15, 1992.
57–40–06 ..	1	3	Oct. 15, 1992.
57–40–07 ..	1	3	Oct. 15, 1992.
57–40–08 ..	1	3	Oct. 15, 1992.
57–40–09 ..	1	2	Aug. 31, 1990.
57–40–10 ..	1	1	Aug. 31, 1990.
57–40–11 ..	1	1	Aug. 31, 1990.
57–50–01 ..	1	2	Aug 31, 1990.
57–50–02 ..	1	5	Oct. 15, 1992.
57–50–03 ..	1	3	Oct. 15, 1992.
57–50–04 ..	1	3	Oct. 15, 1992.
57–50–05 ..	1	3	Oct. 15, 1992.
57–50–06 ..	1	3	Oct. 15, 1992.
71–20–01 ..	1	3	Aug. 31, 1990.
72–00–01 ..	1	1	May 1, 1984.

VOL 58 ISS 136 JL 19 1993 UMI

Item No.	Page No.	Revision level shown on page	Date shown on page
ILLUSTRATIONS			
27-20-01 ..	1	-	Mar. 1, 1982.
27-30-01 ..	1	-	Mar. 1, 1982.
27-40-01 ..	1	-	Mar. 1, 1982.
27-50-01 ..	1	1	Aug. 31, 1990.
27-50-01 ..	2	-	Aug. 31, 1990.
27-50-10 ..	1	-	Sept. 25, 1987.
27-61-01 ..	1	-	Mar. 1, 1982.
27-61-03 ..	1	-	Mar. 1, 1982.
27-63-01 ..	1	-	Mar. 1, 1982.
27-63-02 ..	1	-	Mar. 1, 1982.
29-10-01 ..	1	-	Mar. 1, 1982.
32-10-01 ..	1	-	Mar. 1, 1982.
32-10-02 ..	1	-	Mar. 1, 1982.
32-10-03 ..	1	-	Mar. 1, 1982.
32-42-01 ..	1	-	Mar. 1, 1982.
32-50-01 ..	1	-	Mar. 1, 1982.
52-10-01 ..	1	2	Aug. 31, 1990.
52-10-02 ..	1	1	Oct. 15, 1992.
52-10-05 ..	1	-	Oct. 15, 1992.
52-20-01 ..	1	-	Mar. 1, 1982.
52-30-01 ..	1	1	Aug. 31, 1990.
52-30-01 ..	2	-	Aug. 31, 1990.
52-30-05 ..	1	2	Oct. 15, 1992.
52-30-06 ..	1	2	Oct. 15, 1992.
52-30-09 ..	1	-	Oct. 15, 1992.
52-31-01 ..	1	1	Nov. 1, 1982.
52-40-01 ..	1	-	Mar. 1, 1982.
53-10-01 ..	1	1	Aug. 31, 1990.
53-10-01 ..	2	-	Aug. 31, 1990.
53-10-03 ..	1	-	Aug. 31, 1990.
53-10-04 ..	1	1	Oct. 15, 1992.
53-10-05 ..	1	2	Aug. 31, 1990.
53-10-06 ..	1	-	Aug. 31, 1990.
53-10-07 ..	1	1	Oct. 15, 1992.
53-10-08 ..	1	4	Aug. 31, 1990.
53-10-09 ..	1	-	Mar. 1, 1982.
53-10-10 ..	1	1	Aug. 31, 1990.
53-10-11 ..	1	-	Mar. 1, 1982.
53-10-12 ..	1	-	Mar. 1, 1982.
53-10-14 ..	1	2	Oct. 15, 1992.
53-10-18 ..	1	3	Oct. 15, 1992.
53-10-18 ..	2	-	Oct. 15, 1992.
53-10-19 ..	1	-	Sept. 25, 1987.
53-10-20 ..	1	-	Sept. 25, 1987.
53-10-21 ..	1	-	Nov. 1, 1988.
53-10-22 ..	1	-	Aug. 31, 1990.
53-10-23 ..	1	1	Oct. 15, 1992.
53-10-24 ..	1	-	Oct. 15, 1992.
53-10-25 ..	1	-	Oct. 15, 1992.
53-30-01 ..	1	1	Aug. 31, 1990.
53-30-02 ..	1	-	Aug. 31, 1990.
53-30-03 ..	1	2	Aug. 31, 1990.
53-30-05 ..	1	2	Oct. 15, 1992.
53-30-06 ..	1-5	-	Oct. 15, 1992.
53-30-07 ..	1-6	-	Oct. 15, 1992.
53-30-08 ..	1-2	-	Oct. 15, 1992.
53-30-09 ..	1-9	-	Oct. 15, 1992.
53-40-01 ..	1	1	Aug. 31, 1990.
53-40-02 ..	1	2	Oct. 15, 1992.
53-40-03 ..	1	-	Dec. 15, 1983.
53-40-04 ..	1	1	Aug. 31, 1990.
53-50-01 ..	1	-	Mar. 1, 1982.
55-30-01 ..	1	1	Oct. 15, 1992.
55-50-01 ..	1	2	Oct. 15, 1992.
57-10-01 ..	1	2	Oct. 15, 1992.
57-10-02 ..	1	-	Mar. 1, 1982.
57-10-04 ..	1	-	Mar. 1, 1982.
57-10-05 ..	1	1	Aug. 31, 1990.
57-10-06 ..	1	-	Mar. 1, 1982.
57-10-07 ..	1	2	Oct. 15, 1992.
57-10-09 ..	1	-	Aug. 31, 1990.
57-10-10 ..	1	-	Oct. 15, 1992.
57-30-01 ..	1	1	Nov. 1, 1988.
57-30-02 ..	1	1	Aug. 31, 1990.
57-40-01 ..	1	2	Aug. 31, 1990.
57-40-01 ..	2	-	Aug. 31, 1990.
57-40-02 ..	1	1	Aug. 31, 1990.
57-40-03 ..	1	-	Mar. 1, 1982.
57-40-05 ..	1	1	Aug. 31, 1990.
57-40-07 ..	1	1	Aug. 31, 1990.
57-40-09 ..	1	-	Sept. 25, 1987.
57-40-10 ..	1	-	Sept. 25, 1987.
57-40-11 ..	1	-	Sept. 25, 1987.
57-50-01 ..	1	-	Mar. 1, 1982.
57-50-02 ..	1	-	Mar. 1, 1982.
57-50-04 ..	1	-	Mar. 1, 1982.
57-50-06 ..	1	-	Mar. 1, 1982.
71-20-01 ..	1	-	Mar. 1, 1982.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on June 29, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-17075 Filed 7-16-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-167-AD; Amendment 39-8618; AD 93-13-05]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Aviation Model Mystere-Falcon 900 series airplanes, that requires repetitive inspections of the water system until modification of the underfloor heating at frame 25 is accomplished. This amendment is prompted by a report of accidental seepage of water into the heated compartment under the center aisle floor forward of frame 25. The actions specified by this AD are intended to prevent water seepage that could accumulate and freeze in the underfloor zone, resulting in interference with the operation of the engine controls and the flight controls.

DATES: Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Dassault Aviation Model Mystere-Falcon 900 series airplanes was published in the **Federal Register** on October 29, 1992 (57 FR 49036). That action proposed to require repetitive inspections of the water system until modification of the underfloor heating at frame 25 is accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, Falcon Jet Corporation, recommends that paragraph (e) of the proposed rule be revised to specify that modification of the underfloor heating in accordance with Dassault Aviation Service Bulletin F900-115 (F900-30-9), dated May 6, 1992, constitutes terminating action for the inspections proposed in paragraph (a). The FAA concurs. The FAA has determined that the modification adequately ensures that water will not seep into the underfloor zone; therefore, inspection of the water system, as required by paragraph (a), is not necessary once the modification is accomplished. Paragraph (e) of the final rule has been revised accordingly.

Since issuance of the notice, Dassault Aviation has issued Revision 1 to Service Bulletin F900–115 (F900–30–9), dated February 25, 1993, which provides clarification of operations and additional kit information to accomplish the modification for airplanes equipped with a Falcon Jet Corporation type interior. One commenter requests that the FAA revise the proposed rule to include this service bulletin revision. The FAA concurs, and has revised the final rule to reflect the latest revision to the service bulletin as an additional service information source.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 54 airplanes of U.S. registry will be affected by this AD. The FAA has confirmed that, to date, the required actions already have been accomplished on all of the 54 affected airplanes. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operators.

However, should additional affected airplanes be imported and placed on the U.S. register in the future, it will take approximately 36 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD is estimated to be $1,980 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–13–05 Dassault Aviation: Amendment 39–8618. Docket 92–NM–167–AD.

Applicability: All Model Mystere-Falcon 900 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference with the operation of the engine controls and the flight controls, accomplish the following:

(a) Within 50 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes equipped with a Falcon Jet Corporation type interior (a water system pressure accumulator is installed on the left-hand side of frame 25): Perform a complete inspection of the water system in accordance with paragraph 13 of the Supplemental Maintenance Manual, Temporary Revision, dated February 1992; and install a placard, part number FGFB 825 003 760, in a visible location in the aft toilet compartment.

(2) For airplanes equipped with a Dassault Aviation type interior (no water system pressure accumulator is installed at frame 25): Accomplish paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Perform a complete inspection of the water system, in accordance with procedure 38–102 of the Maintenance Manual.

(ii) Reinforce the sealing of the collector under the washbasin, in accordance with Dassault Aviation Service Bulletin F900–113 (F900–38–4), dated March 25, 1992.

(iii) Perform an inspection of heating element 43 HR of pipe item 320, Illustrated Parts Catalog (IPC) 38–30–20, figure 10, in accordance with procedure 30–701 of the Maintenance Manual; and, if a discrepancy is found, replace the heating element within 50 hours time-in-service after performing the inspection required by this paragraph.

(b) Prior to each flight of more than 4 hours time-in-service that occurs after accomplishing the requirements of paragraph (a) of this AD, accomplish the following, as applicable: Inspect the water system, in accordance with the paragraph entitled "Maintenance of Pressurized Central Water System" (page 19), of Revision 4 of the Supplemental Maintenance Manual (for Model Mystere-Falcon 900 series airplanes equipped with a Falcon Jet Corporation type interior); or in accordance with procedure 05–100 (temporary revision No. 59) of the Maintenance Manual (for Model Mystere-Falcon 900 series airplanes equipped with a Dassault Aviation type interior).

(c) Within the next 300 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first, repeat the inspection required by paragraph (a)(1) or (a)(2)(i) of this AD, as applicable. Thereafter, repeat the applicable inspection at intervals not to exceed 300 hours time-in-service or 6 months after the immediately preceding inspection, whichever occurs first.

(d) Within 2 years after the effective date of this AD, modify the underfloor heating at frame 25, in accordance with Dassault Aviation Service Bulletin F900–115 (F900–30–9), dated May 6, 1992, or Revision 1, dated February 25, 1993.

(e) Accomplishment of modification of the underfloor heating in accordance with Dassault Aviation Service Bulletin F900–115 (F900–30–9), dated May 6, 1992, or Revision 1, dated February 25, 1993, constitutes terminating action for the inspections required by paragraphs (a), (b), and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The reinforcement shall be done in accordance with Dassault Aviation Service Bulletin F900–113 (F900–38–4), dated March 25, 1992. The modification shall be done in accordance with Dassault Aviation Service Bulletin F900–115 (F900–30–9), dated May 6, 1992; or Dassault Aviation Service Bulletin F900–115 (F900–30–9), Revision 1, dated February 25, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on June 29, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-17074 Filed 7-16-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 97

[Docket No. 27353; Amdt. No. 1554]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue NW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Approaches, Standard instrument, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 2, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
06/02/93	OK	Henryetta	Henryetta Muni	3/2946	NDB RWY 35 AMDT 2...
06/11/93	WV	Clarksburg	Benedum	3/3477	ILS RWY 21 AMDT 12... This corrects NOTAM in previous TL.
06/16/93	IA	Fort Dodge	Fort Dodge Regional	3/3196	ILS RWY 6 AMDT 6...
06/16/93	VT	Barre-Montpelier	Edward F. Knapp	3/3191	ILS RWY 17 AMDT 4...
06/17/93	TN	Memphis	Memphis Intl	3/3219	ILS RWY 36R AMDT 8A...
06/21/93	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	3/3285	NDB RWY 17 AMDT 4...
06/21/93	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	3/3286	VOR RWY 17 AMDT 10...
06/22/93	CA	San Francisco	San Francisco Intl	3/3328	ILS RWY 28L AMDT 19A...
06/22/93	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	3/3326	VOR/DME RWY 13 AMDT 2...
06/25/93	SC	Hilton Head Island	Hilton Head	3/3411	RNAV RWY 3 AMDT 4...
06/25/93	SC	Hilton Head Island	Hilton Head	3/3412	RNAV RWY 21 AMDT 4...
06/25/93	SC	Hilton Head Island	Hilton Head	3/3413	VOR/DME–A AMDT 9A...
06/29/93	NH	Portsmouth	Pease International/Tradeport	3/3484	VOR OR TACAN RWY 16 AMDT 1...
06/29/93	NH	Rochester	Skyhaven	3/3482	VOR/DME–A ORIG...
07/02/93	MO	St. Louis	Spirit of St. Louis	3/2958	ILS RWY 8R AMDT 12B...

[FR Doc. 93–16911 Filed 7–16–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 204

[Release No. 34–32621]

Debt Collection—Salary Offset

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted Part 204, Rules Relating to Debt Collection, and a new Subpart B—Salary Offset—under part 204 that sets forth the procedures to collect, by salary offset against a current or former Commission employee's current pay account, without his or her consent, debts owed the U.S. Government. The Commission is required by the Debt Collection Act of 1982 to adopt regulations and develop procedures to collect debts owed by Commission employees to the U.S. Government. This regulation will bring the Commission into compliance with federal debt collection requirements.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Darrell Dockery (Branch Chief, Accounting), Glynis Long (Salary Offset Editor), or Henry Hoffman (Assistant Comptroller) at (202) 272–2409, Office of the Comptroller, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Act)[1] provides for improvements in debt collection procedures for debts owed to the U.S. Government by government employees.[2] When it is determined that an employee owes a debt to the United States, the amount of indebtedness may be deducted from the current pay account of the individual at officially established pay intervals. The Act requires the Commission to adopt regulations and develop procedures under which the agency may collect such debts.

The Office of Personnel Management (OPM) requires agencies to submit to OPM their proposed Offset Regulations prior to publication of final regulations or prior to final implementation of the regulations.[3] The Commission's Office of the Comptroller submitted the

[1] 5 U.S.C. 5514.

[2] "Debt" means an amount owed to the United States from sources that include, but are not limited to, erroneous overpayments of benefits, salary, or other allowances; loans insured or guaranteed by the United States; and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures. The regulation does not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States. It also does not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute, such as travel advances (5 U.S.C. 5705) and employee training expenses (5 U.S.C. 4108).

"Employee" means a current employee of the Securities and Exchange Commission, or other agency, including an active duty member or reservist in the U.S. Armed Forces or a former employee (or former active duty member or reservist in the Armed Forces) with a current pay account.

[3] Pursuant to Executive Order 11609, Section 8(1), redesignated Executive Order 12107, and 5 CFR 550.1105.

regulation to OPM and received OPM approval in December, 1991.[4]

The Salary Offset Regulation also provides for coordination for salary offset between the Commission and other agencies when former employees of other agencies currently working for the Commission are indebted to the U.S. Government, or when Commission employees have transferred to other agencies.

The Salary Offset Regulations make clear that an employee's involuntary repayment is not to be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there is statutory or contractual provision to the contrary.

Cost-Benefit Analysis

The Commission believes that the procedures set forth in the Offset Regulation are the most efficient and least burdensome way for the Commission to meet the requirements of the Debt Collection Act of 1982.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this rule relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment.

List of Subjects in 17 CFR Part 204

Claims, Debt collection, Government employees, Wages.

Text of Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended by adding part 204 to read as follows:

PART 204—RULES RELATING TO DEBT COLLECTION

Subpart A—[Reserved]

Subpart B—Salary Offset

Sec.

204.30 Purpose and scope.
204.31 Excluded debts or claims.
204.32 Definitions.
204.33 Pre-offset notice.
204.34 Employee response.
204.35 Petition for pre-offset hearing.
204.36 Granting of a pre-offset hearing.
204.37 Extensions of time.
204.38 Pre-offset hearing.
204.39 Written decision.
204.40 Deductions.
204.41 Non-waiver of rights.
204.42 Refunds.
204.43 Coordinating offset with another federal agency.
204.44 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514.

Subpart A—[Reserved]

Subpart B—Salary Offset

§ 204.30 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset against a federal employee's current pay account without his/her consent under 5 U.S.C. 5514 to satisfy certain debts owed to the Commission. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not preclude an employee from requesting a waiver or questioning the amount or validity of a debt by submitting a claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office.

(c) This Salary Offset plan is for internal use and Government-wide claims collections. 5 CFR 550.1104(a). This regulation implements 5 U.S.C. 5514; 5 CFR part 550, subpart K.

§ 204.31 Excluded debts or claims.

This regulation does not apply to:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1), the Social Security Act (42 U.S.C. 301) or the tariff laws of the United States.

(b) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute, such as travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108.

§ 204.32 Definitions.

The following definitions apply to this regulation:

Chairman means the Chairman of the Securities and Exchange Commission.

Commission means the Securities and Exchange Commission.

Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include but are not necessarily limited to, erroneous payments made to employees such as overpayment of benefits, salary or other allowances; loans when insured or guaranteed by the United States; and other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for federal, state and local income taxes; Social Security taxes, including Medicare taxes; federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld. (See 5 CFR 581.105(b) through (f) for items required by law to be withheld, and therefore excluded from disposable pay for the purposes of this regulation.)

Employee means a current employee of the Securities and Exchange Commission, or other agency, including an active duty member or reservist in the U.S. Armed Forces or a former employee (or former active duty member or Reservist in the Armed Forces) with a current pay account.

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR part 101.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the Chairman's supervision or control, except that nothing in this regulation shall be construed to prohibit the appointment of an administrative law judge.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

Program official means, for the purpose of implementing this offset regulation, the Comptroller or designee.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s), at one or more officially established pay intervals, from the current pay account of an employee, without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 204.33 Pre-offset notice.

A program official must provide an employee with written notice at least 30 calendar days prior to offsetting his/her salary. A program official need not notify an employee of adjustments to pay in connection with the employee's

[4] The Commission first implemented SECR 18–3, Salary Offset, the agency's internal regulation, in March 1992. The Commission was subsequently informed by OPM that the regulations must be published in the CFR.

election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. When required, the written notice must include the following:

(a) The nature, origin and amount of the indebtedness determined by the Commission to be due;

(b) The intention of the Commission to collect the debt through deductions from the employee's current disposable pay account;

(c) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(d) An explanation of the Commission's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(e) The employee's right to inspect and copy Commission records relating to the debt (if copies of such records are not attached), or if the employee or his or her representative cannot personally inspect the records, the right to request and receive a copy of such records. The Commission will respond to a request for inspection and/or copying as soon as practicable;

(f) The opportunity, under terms agreeable to the Commission, to enter into a written agreement to establish a schedule for repayment in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(g) The employee's right to a hearing conducted by an official arranged by the Commission if a petition is filed as prescribed by § 204.35, Petition for pre-offset hearing. Such hearing official will be either an administrative law judge or at the chief administrative law judge's discretion, another hearing official who is also not under the control of the head of the agency;

(h) The method and time period for petitioning for a hearing, including a statement that the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(i) If a hearing is requested, the hearing official will issue a final decision, based on information presented to the hearing official, at the earliest practicable date, but no later than 60 days after the petition for the hearing is filed unless the employee requests and the hearing official, for good cause or in the interests of justice, deems it necessary to extend that time period (5 CFR 550.1104(d)(10));

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; and/or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority.

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) The employee's right to a prompt refund if amounts paid or deducted by salary offset are later waived or found not owed to the United States, unless otherwise provided by law or contract; and

(m) The specific address to which all correspondence shall be directed regarding the debt.

§ 204.34 Employee response.

(a) *Introduction.* An employee must respond to a pre-offset notice, if at all, within 15 calendar days following receipt, in one or more of the ways discussed in § 204.34, Employee response, and § 204.35, Petition for pre-offset hearing. Where applicable, the employee bears the burdens of proof and persuasion.

(b) Responses must be submitted in writing to the program official who signed the pre-offset notice. A timely response will stay the commencement of collection by salary offset, at least until the issuance of a written decision. (See § 204.37, Extensions of time). Failure to submit a timely response will be treated as an admission of indebtedness, and will result in salary offset in accordance with the terms specified in the pre-offset notice.

(c) A response filed after expiration of the 15 day period may be accepted if the employee can show that the delay was due to circumstances beyond his or her control or failure to receive notice of the time limit (unless otherwise aware of it)

(d) *Voluntary repayment agreement.* An employee may request to enter into a voluntary written agreement for repayment of the debt in lieu of offset. It is within the discretion of the program official whether to enter into such an agreement, and if so, upon what terms. Voluntary deductions may exceed 15 percent of the employee's disposable pay. If an agreement is reached, the agreement must be in writing, and must be signed by both the employee and the program official. A signed copy must be sent to the Comptroller's office. The program official shall notify the employee in writing of its decision not to accept the proposed voluntary repayment schedule before making any deductions from the employee's salary.

(e) *Waiver.* Any request for waiver of the debt must be accompanied by evidence that the waiver is authorized by law.

(f) *Reconsideration.* An employee may request reconsideration of the existence or amount of the debt or the offset schedule as reflected in the pre-offset notice. The request must be accompanied by a detailed narrative and supporting documentation as to why the offset decision is erroneous and/or why the offset schedule imposes an undue hardship.

§ 204.35 Petition for pre-offset hearing.

(a) The employee may petition for a pre-offset hearing. The petition must state with specificity why the employee believes the agency's determination is in error.

(b) The petition must fully identify and explain, with reasonable specificity, all the facts, evidence and witnesses, if any, that the employee believes support his or her position. The petition must be signed by the employee.

§ 204.36 Granting of a pre-offset hearing.

(a) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

(1) arrange for a hearing official. If the hearing official is an administrative law judge, he or she shall be designated by the Chief Administrative Law Judge as set forth in 17 CFR 200.310(a)(2); and

(2) provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(b) The hearing official shall notify the employee by personal service, by first class, registered or certified mail, or by a reliable commercial courier or overnight delivery service whether the employee is entitled to an oral or "paper" (i.e., a review on the written record) hearing. (See 4 CFR 102.3(c).) Within 20 calendar days of receipt of this notice the employee shall provide the hearing official with a full description of all relevant facts, documentary evidence, and witnesses which the employee believes support his or her position. The hearing official may extend the time for the employee to respond to the notice for good cause shown.

(c) If an oral hearing is scheduled, the hearing official shall notify the program official and the employee in writing of the date, time and location of the

hearing. The place for the hearing shall be fixed by the hearing official with due regard for the public interest and the convenience and necessity of the parties, the participants, or their representatives.

(d) If the employee is entitled to an oral hearing, but requests to have the hearing based only on the written submissions, the employee must notify the hearing official and the program official at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(e) Failure of the employee to appear at the oral hearing may result in dismissal of the petition and affirmation of the program official's decision.

§ 204.37 Extensions of time.

The hearing official may for good cause or in the interests of justice postpone the commencement of the hearing, adjourn a convened hearing for a reasonable period of time or extend or shorten any other time limits prescribed under this section. This extension is not intended to abridge the 30 day initial notice or extend the 60 day decision requirement other than as provided for in 5 CFR 550.1104(d)(10).

§ 204.38 Pre-offset hearing.

(a) The hearing official shall determine the form and content of hearings granted under this section, pursuant to 4 CFR 102.3(c). All oral hearings shall be on the record. Except as otherwise ordered by the hearing official, hearings shall be recorded or transcribed verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to the discretion and approval of the hearing official, and a transcript thereof shall be made.

(b) Oral hearings are informal in nature. The Commission, represented by an attorney from the Office of General Counsel, and accompanied by a program official and the employee, and/or the employee's representative, orally shall explain their respective positions using relevant documentation. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify where the hearing official determines the testimony to be relevant and not redundant. The Federal Rules of Evidence serve as a guideline, but are not controlling. The employee bears the burdens of proof and persuasion.

(c) The hearing official shall:

(1) Conduct a fair and impartial hearing;

(2) Preside over the course of the hearing, maintain decorum and avoid delay in the disposition of the hearing; and

(3) Issue a decision in accordance with § 204.39, Written decision, on the basis of the oral hearing and the written record.

(d) Oral hearings are normally open to the public. However, the hearing official may close all or any portion of the hearing at either the request of either party or upon the hearing official's initiative when doing so is in the best interest[s] of the employee or the public.

(e) Oral hearings may be conducted by conference call at the request of the employee or at the discretion of the hearing official.

(f) *Pre-offset "paper" hearing.* If a hearing is to be held only upon written submissions, the hearing official shall issue a decision based solely upon the written record.

§ 204.39 Written decision.

(a) *If pre-offset hearing is held.* Within 60 days of the filing of the employee's petition for a pre-offset hearing, the hearing official will issue a written decision setting forth the basis of his/her findings in accordance with 5 CFR 550.1104(g)(3).

(b) If the employee challenges the pre-offset notice under § 204.34, Employee response and/or § 204.35, Petition for pre-offset hearing, without requesting a hearing or a hearing is denied, the program official must notify the employee of his/her final determination in writing before offset can begin. The agency's execution of a voluntary repayment agreement satisfies this requirement.

§ 204.40 Deductions.

(a) When deductions may begin:

(1) If a pre-offset hearing is held, deductions shall be made in accordance with the hearing official's decision.

(2) If parties execute a voluntary repayment agreement, deductions shall be made in accordance with the terms of that agreement.

(3) If the employee requests a waiver or reconsideration or the program official refuses to accept a proposed alternate repayment schedule, deductions shall be made in accordance with the program official's written decision.

(4) If the employee consents to the terms and conditions set forth in the Commission's Pre-offset Notice or fails to respond in timely fashion to the Pre-offset Notice, or waives his/her right to a hearing without otherwise challenging the terms of the Pre-offset Notice, deductions shall be made in accordance with the terms and conditions set forth therein.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before the debt is fully repaid, the remaining indebtedness will be offset pursuant to 31 U.S.C. 3716 and 4 CFR part 101.

(1) To the extent possible, the remaining indebtedness will be liquidated from any final payment due the former employee as of the date of separation (e.g., final salary payment, lump-sum leave, etc.). See § 204.40d(3), Offset deductions from final salary and/or lump-sum leave payment.

(2) Thereafter, the remaining indebtedness will be recovered from later payments of any kind due the former employee from the United States. See 4 CFR 102.13.

(c) *Method of collection and source of deduction.* The method of collecting debts under these regulations shall be by salary offset. Deductions will be made from the employee's current disposable pay account except as provided for in § 204.34b, Employee response.

(d) *Amount and duration of deductions.* Debts must be collected in one lump sum where possible. If the employee demonstrates financial hardship to the Commission's satisfaction or the amount of the debt exceeds 15 percent of the indebted employee's current disposable pay, collection must be made in installments over a period not greater than the anticipated period of active employment, except as provided in Section 34b, Employee Response.

(1) Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay.

(2) The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payment of less than $100 per pay period will be accepted only in the most unusual circumstances.

(3) Offset deductions from final salary and/or lump-sum leave payment. Such an offset deduction may exceed 15 percent of an employee's final salary and/or lump-sum leave payment pursuant to 31 U.S.C. 3716, 64 CG 907.

(e) Interest, penalties and administrative costs on debts under this part will be assessed and/or waived according to the provisions of 4 CFR 102.13.

VOL 58 ISS 136 JL 19 1993 UMI

§ 204.41 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 204.42 Refunds.

(a) The Commission will refund promptly to the appropriate individual amounts offset under this regulation when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The Commission is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 204.43 Coordinating offset with another federal agency.

(a) *Responsibility of the Commission as the Creditor Agency.*

The Commission shall request recovery from the current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, 5 CFR 550.1108 the Commission must:

(1) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued and that the Commission's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the Commission also must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, and if the Commission wishes, the number and the commencing date of the installments (if a date other than the next officially established pay period is required).

(3) Advise the paying agency of the actions taken pursuant to 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency).

(4) Except as otherwise provided in this paragraph (a)(4), the Commission must submit a debt claim containing the information specified in paragraphs (a)(1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(5) If the employee is in the process of separating, the Commission must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(l). Pursuant to 5 CFR 1101, the paying agency must certify the total amount of its collection and notify the creditor agency and employee. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the paying agency has fully complied with the provisions of this section. The Commission must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(6) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Commission may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801) or other similar funds, be administratively offset to collect the debt (See 31 U.S.C. 3716 and 4 CFR Part 101).

(7) When an employee transfers to another paying agency, the Commission shall not repeat the due process procedures described in 5 U.S.C. 5514 and subpart B of this part to resume the collection. The Commission must review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency. The Commission must submit a properly certified claim to the new paying agency before collection can be resumed.

(b) *Responsibility of the Commission as the paying agency. (1) Complete claim.* When the Commission receives a properly certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Commission must notify the employee in writing that the Commission has received a certified debt claim from the creditor agency (including the amount) and the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim.* When the Commission receives an incomplete certification of debt from a creditor agency, the Commission must return the debt claim with notice that procedures under 5 U.S.C. 5514 and subpart B of this part must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Commission and before the Commission collects the debt in full, the employee transfers to another agency, the Commission must certify the total amount collected on the debt. One copy of the certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

(c) *Responsibility of the Program Official.*

(1) The Program Official shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The Program Official shall be responsible for:

(i) Ensuring that each certification of debt sent to a paying agency is consistent with the pre-offset notice (§ 204.33, Pre-offset notice).

(ii) Obtaining hearing officials from other agencies pursuant to § 204.36, Granting of a pre-offset hearing.

(iii) Ensuring that hearings are properly scheduled.

§ 204.44 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Date: July 13, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17056 Filed 7–16–93; 8:45 am]

BILLING CODE 6010–01–P

VOL
58
ISS
136
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1993
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 260, 284, and 385

[Docket No. RM93–16–001]

Revisions to the Regulations Governing Natural Gas Pipelines; Order No. 554

Issued July 13, 1993.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations to eliminate the requirement that natural gas pipeline companies file FERC Form No. 15, "Interstate Pipeline's Annual Report of Gas Supply," and FERC Form No. 16, "Report of Gas Supply and Requirements." The Commission has reassessed its need for the information contained in these forms and concludes that the continued periodic reporting of this data is no longer necessary or appropriate in order for the Commission to carry out its legislative mandate.

EFFECTIVE DATE: This order will become effective July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 219–0122.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

FERC Form No. 15, Interstate Pipeline's Annual Report of Gas Supply, and
FERC Form No. 16, Report of Gas Supply and Requirements

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is removing §§ 157.14(a)(10), 260.7, 260.7a, 260.12, 385.2011(a) (6) and (7), and revising sections 2.61 and 284.262(b) of the Commission's regulations, thereby eliminating the requirement that natural gas pipeline companies file FERC Form No. 15 (FERC–15), "Interstate Pipeline's Annual Report of Gas Supply,"[1] and FERC Form No. 16 (FERC–16), "Report of Gas Supply and Requirements."[2]

II. Reporting Requirements

The Commission estimates the public reporting burden that will be eliminated as a result of this rule to be an average of 609 hours per response for FERC–15, "Interstate Pipeline's Annual Report of Gas Supply," and 80 hours per response for FERC–16 "Report of Gas Supply Requirements." The current annual reporting burdens associated with these information collection requirements are: FERC–15, 41,412 hours, 68 respondents and 68 responses, and; FERC–16, 8,000 hours, 50 respondents and 100 responses. These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Background and Proposal

FERC–15 and FERC–16 require natural gas pipelines to provide gas supply and requirements data which the Commission has heretofore employed to ensure reliable service. In response to the regulatory framework established by Order No. 636,[3] the Commission is undertaking a review of our existing regulations, exploring whether there is a continuing need for the current information collections. The Commission has reassessed its need for the information contained in FERC–15 and FERC–16 and concludes that the continued periodic reporting of this data is no longer necessary or appropriate in order for the Commission to carry out its legislative mandate. Therefore, by this final rule, the Commission is eliminating the requirement that pipelines continue to file FERC–15 and FERC–16.[4]

In addition to the Commission's reconsideration of the utility of the data contained in FERC–15 and FERC–16, several parties have submitted requests for a permanent waiver or the elimination of the FERC–15 and FERC–16 reporting requirements.

Columbia Gas Transmission (Columbia) observes that FERC–16 pertains to two categories of data: (1) A summary of actual supply, requirements, and net deficiency or surplus for the twelve months preceding the report; and (2) a summary of projected supply, requirements, and net deficiency or surplus for the twelve months following the report. Columbia asserts that it will implement its

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[1] Order No. 279, 29 FR 4873 (April 7, 1964), 31 F.P.C. 750 (1964); amended 32 FR 3292 (February 25, 1967), 37 F.P.C. 326 (1967); 35 FR 6960 (May 1, 1970), 43 F.P.C. 563 (1970); 38 FR 6809 (March 18, 1973), 49 F.P.C. 602 (1973); 41 FR 9867 (March 8, 1976), 55 F.P.C. 968 (1976); 46 FR 42261 (August 20, 1981), FERC Stats. and Regs., Preambles 1977–1981 ¶ 30,284 (August 14, 1981); 53 FR 15023 (April 27, 1988), FERC Stats. and Regs., Preambles 1986–1990 ¶ 30,808 (April 5, 1988); 53 FR 30027 (August 10, 1988), FERC Stats. and Regs., Preambles 1986–1990 ¶ 30,826 (August 1, 1988); codified at 18 CFR 260.7 (1992).

[2] Order No. 489, 38 FR 23515 (August 31, 1973), 50 F.P.C. 561 (1973); amended 45 FR 37812 (June 5, 1980), FERC Stats. and Regs., Preambles 1977–1981 ¶ 30,167 (May 30, 1980); 50 FR 49031 (November 29, 1985), FERC Stats. and Regs., Preambles 1982–1985 ¶ 30,672 (November 22, 1985); 53 FR 15023 (April 27, 1988), FERC Stats. and Regs., Preambles 1986–1990 ¶ 30,808 (April 5, 1988); 53 FR 30027 (August 10, 1988), FERC Stats. and Regs., Preambles 1986–1990 ¶ 30,826 (August 1, 1988); codified at 18 CFR 260.12 (1992).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs., Preambles ¶ 30,939 (April 8, 1992); order on reh'q, Order No. 636–A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs., Preambles ¶ 30,950 (August 3, 1992); order on reh'q, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (November 27, 1992).

[4] We note the Commission retains the requirement that pipelines submit FERC Form 16–A, Monitoring (Omnibus) Report, as initiated by the Director of the Office of Pipeline and Producer Regulation under delegation of authority in section 375.307(e)(3) of the Commission's regulations.

restructured services pursuant to Order No. 636 on November 1, 1993, and that it does not anticipate maintaining any merchant function (other than for small customers). Columbia therefore states that subsequent to October 31, 1993, there will be no need to report data related to projected gas supply, requirements, and net deficiency or surplus. Columbia seeks to file that portion of FERC–16 reflecting projected data requests only through October 31, 1993, and requests a waiver or the requirement to file such projected data thereafter.

Transcontinental Gas Pipe Line Corporation (Transco) contends that in the current natural gas market, FERC–16 no longer provides the Commission with either the information that the form was initially designed to supply or with any meaningful information regarding natural gas supply. Transco states that when FERC–16 was promulgated in 1973, compilation of data concerning interstate pipeline companies' supplies and sales requirements could provide a fairly accurate assessment of the interstate market's requirements for natural gas and the industry's ability to meet those requirements. In today's market environment, however, where wholesale interstate sales of gas are no longer sales by interstate pipelines effected through bundled sales and transportation service, the data provided by FERC–16 does not provide a realistic assessment of the market.

Since the FERC–16 data now reflects a comparatively small portion of the natural gas market, Transco argues that the information provided no longer permits the Commission to assess current interstate market requirements and supplies. Transco notes that its reliance on the spot market to balance supply and demand renders the FERC–16 data less effective in projecting deficiencies or surpluses. Transco requests a waiver of the requirement to file FERC–16, proposing that instead of the detailed customer-by-customer analysis now submitted for schedules VI and VIII of FERC–16, pipelines file a summary of information concerning total throughput on their systems and, if requested, summary information concerning storage activity on their systems. Transco contends this change will both reduce its burden of annually generating the FERC–16 submission (estimated to be 1034 hours at a cost of over $42,000 annually) and will provide the Commission with more useful information.

ANR Pipeline Company (ANR) seeks permanent waiver of the FERC–16 reporting requirement on the grounds that, in light of the restructuring of services pursuant to Order No. 636 in ANR's Interim Settlement,[5] the data provided has become highly proprietary and ANR's activities are no longer covered by the regulation except for limited sales purposes. ANR asserts that preparation of FERC–16 constitutes an unnecessary burden on ANR (an estimated 120 to 240 hours to prepare the form) without any corresponding benefit to the Commission or to the public.

ANR states that to the extent that FERC–16 data would relate to its Interim Settlement's Gas Inventory Charge mechanism, the data would be furnished in a reconciliation filing in that proceeding, showing gas purchases and prices related to pre-Order No. 636 sales. Thus, the reporting of historical data for a ten-month period would be duplicative, and an exception to annual periods. Additionally, ANR notes that it is unknown whether small gas customers will elect under ANR's Order No. 636 modified compliance filing to become sales customers or will elect to buy gas from a third party after November 1, 1993. Thus, data on ANR's historical sales, of which future sales will be only a limited portion, will not provide useful trend information or reveal any meaningful information on system supplies and requirements. In view of the above, ANR requests the Commission permanently waive the FERC–16 filing requirement.

National Fuel Gas Supply Corporation (National Fuel) requests a waiver of the requirement to file FERC–15 and FERC–16 on the grounds that following implementation of its restructured services in Docket No. RS92–21–000, National Fuel will no longer be providing a bundled merchant sales service. Furthermore, following the implementation of restructured services on each of National Fuel's upstream pipeline suppliers, National Fuel does not anticipate making any sales of gas other than sales associated with its own production. Therefore, following the unbundling of pipeline services, the information provided by the forms will no longer be necessary.

INGAA filed a petition on behalf of its members arguing that the continued collection of data pursuant to FERC–15 and FERC–16 is obsolete, burdensome, expensive, and unnecessary; therefore, the forms should be deleted from the Commission's reporting requirements. INGAA asserts that the diminished pipeline merchant function has rendered FERC–15 and FERC–16 unnecessary and the information they provide insufficient for the Commission to evaluate the gas supply. In addition, INGAA argues the forms are discriminatory because non-pipeline merchants do not have to file such information. The Interstate Natural Gas Association of America (INGAA) estimates that FERC–15 requires 467 hours to prepare at a cost of $18,503 per filing, for a total of $647,000 per year. INGAA estimates that FERC–16, filed semi-annually, requires 126 hours to prepare at a cost of $4,214, for a total of $295,000 per year. Therefore, in order to make the data collection process more efficient and reduce the cost to interstate pipelines and their customers, INGAA urges the Commission to eliminate the requirement that all interstate pipeline companies file FERC–15 and FERC–16.

A. FERC–15

FERC–15 was designed to furnish the Commission with an annual report of natural gas companies' total gas supply, procurement program, deliverability life, and reserves for each source of supply from which it obtains gas. Prior to adopting FERC–15, the Commission only undertook such an inquiry when a pipeline company sought a certificate of public convenience and necessity. The annual reporting was intended: (1) To enable the Commission to make a continuing review of gas reserves and deliverability; and (2) to permit the Commission to relax its 12-year deliverability life requirement where a pipeline can show an active procurement program, facilities extending into an active production area in which exploration is continuing, and an ongoing ability to meet gas requirements. FERC–15 is filed annually on or before April 1. Currently, companies which have year-end remaining recoverable reserves of 50 billion cubic feet or less of company owned and independent producer contract reserves, or which purchase their entire supply of natural gas from another pipeline company or foreign supplier, need not complete the entire FERC–15.

Section 260.7a of the Commission's regulations[6] provides a separate, alternative filing requirement designed to exempt interstate pipelines that act only as transporters of natural gas for another company from the § 260.7 requirement to submit FERC–15. Pipelines which act as transporters only and do not buy or sell gas—*i.e.*, the

[5] 60 FERC ¶ 61,145 (1992).

[6] Order No. 337, 32 FR 3292 (February 16, 1967), 37 F.P.C. 326 (1967); amended, Order No. 168, 46 FR 43361 (August 20, 1981), 16 FERC ¶ 61,137 (1981)

VOL 58 ISS 136 JL 19 1993 UMI

general operational profile of interstate pipelines after Order No. 636 restructuring—need only report the name and address of each such company for which it transports gas.

B. FERC–16

FERC–16 was prescribed in response to the natural gas supply shortages experienced during the 1972–73 heating season. The Commission considered the recurrence of curtailments to be likely and consequently determined it was necessary to be informed of the actual and anticipated gas supply and requirements status of jurisdictional pipeline companies making sales for resale in interstate commerce. FERC–16 is filed semi-annually, on or before April 30 and September 30, reporting actual and projected data for sales and storage on a customer, month, and state basis, transportation volumes in the aggregate by month, and pipeline supply/requirement balances by month.

IV. Discussion

A. Section 260.7, FERC–15, and Section 260.12, FERC–16

Previously, we found it necessary or appropriate to collect the information contained in FERC–15 and FERC–16 to properly monitor pipelines' gas supply and requirements in order to ensure that interstate pipelines fulfill their merchant function. However, since the two forms were promulgated—FERC–15 in 1964 and FERC–16 in 1973—the natural gas industry has undergone significant evolution, principally in the role of interstate pipelines, which have changed from functioning primarily as merchants of natural gas to providing primarily transportation services to nonpipeline shippers.

For example, in 1984, transportation amounted to 8 percent of the total gas carried to market by pipelines,[7] whereas pipeline transportation recently accounted for approximately 80 percent of total annual interstate pipeline throughout.[8] Following restructuring pursuant to Order No. 636, pipelines will no longer perform a traditional merchant function.[9]

As a result of this fundamental transformation, we have reassessed whether the periodic reports of gas supply and requirements data that FERC–15 and FERC–16 provide continue to be necessary or appropriate to the work of the Commission. We find that such data is no longer relevant or required. Therefore, this final rule will remove sections 260.7 and 260.12 of the Commission's regulations, thereby eliminating the FERC–15 and FERC–16 filing requirements.

B. Section 260.7a

We note that for pipelines providing open access transportation services, the recordkeeping required under part 284 duplicates the information provided under § 260.7a. In view of this redundancy, and for the reasons discussed above, we find that the § 260.7a abbreviated filing no longer provides information required by the Commission in order to fulfill its regulatory function. Therefore, this final rule will remove § 260.7a of the Commission's regulations.

C. Section 2.61

In addition to the above-described changes, this rule will alter those regulations which reference FERC–15 or FERC–16. Section 2.61 of the Commission's regulations contains language promulgated in association with FPC Form No. 15 describing the Commission's policy regarding its deliverability requirement. This language will remain unchanged. However, the introduction to the policy statement will be revised to indicate that pipelines are no longer required to file FERC–15 and that § 260.7 has been removed.

D. Section 157.14(a)(10)

Section 157.14 specifies those exhibits the Commission requires in connection with a section 7 certificate application. Section 157.14(a)(10) calls for "Exhibit H," a report of gas supply and deliverability containing the data in FERC–15. As previously discussed, the Commission has determined that the extensive compilation of information associated with FERC–15 is no longer necessary. However, in order to adequately evaluate certificate applications, we will retain, but modify, the requirement that gas supply data be provided. Rather than request the submission of the FERC–15 data as part of Exhibit H, § 157.14(a)(10) will be revised to read as follows:

Exhibit H—Total gas supply data. A statement by applicant describing:

(i) Those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and

(ii) How those production areas are connected to the proposed construction.

E. Section 284.262(b)

Section 284.262(b) defines the term "projected level of service" as the total projected level of service that a pipeline reports in its FERC–16 filing. This rule will render this reliance on FERC–16 moot. Therefore, § 284.262(b) will be modified to incorporate the "projected level of service" as described in FERC–16. The revised section will read as follows:

Projected level of service means the level of gas volumes projected to be delivered by the company for each customer and additional gas volumes needed by a customer due solely to a weather-induced increase in requirements.

F. Sections 385.2011(a) (6) and (7)

Section 385.2011 of the Commission's Rules of Practice and Procedure describes the procedures for filing on electronic media. Sections 385.2011(a) (6) and (7) provide for the electronic media filing of FERC–15 and FERC–16, respectively. Eliminating the FERC–15 and FERC–16 filing requirements eliminates the subject matter of these sections. Therefore, this final rule will remove §§ 385.2011(a) (6) and (7) of the Commission's Rules of Practice and Procedure.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[10] generally requires a descripuon and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most, if not all, of the companies required to comply with this final rule are interstate natural gas pipelines which do not fall within the RFA's definition of small entity. We note that even if the rule would have a significant effect on a substantial number of small entities, eliminating FERC–15 and FERC–16 is appropriate or necessary for the Commission to carry out its legislative mandate. Pursuant to RFA section 605(b), the Commission hereby certifies that the final rule adopted herein does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no

[7] See 57 FR 13267 (April 16, 1992), III FERC States. & Regs. Preambles ¶ 30,939 at 30,396, note 43 (April 8, 1992), citing INGAA, Issue Analysis: Carriage Through the First Half of 1991 (November 1991), From: Table A–1, Carriage for Distributors, End-Users, and Marketers and Sales Summary.

[8] *Id.*, note 42, citing Energy Information Administration/Natural Gas Monthly (Feb., 1992); DOE/EIA–0130 (92/02), From: Table 15. Natural and Other Gases Produced and Purchased by Major Interstate Natural Gases Pipeline Companies, 1985–1991 (approximately 80 percent transportation); INGAA November 1991 paper, *supra*, Table A–1 (approximately 83 percent). See also INGAA Report No. 92–4, Carriage Through the First Half of 1992 (August 1992) (approximately 87 percent).

[9] Pipelines continue to sell gas, but on an unbundled basis, as a distinct transaction separate from the transportation of gas.

[10] 5 U.S.C. 601–612.

regulatory flexibility analysis is required.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[11] The information collection requirements in this final rule are contained in FERC–15, "Interstate Pipeline's Annual Report of Gas Supply," (1902–0037) and FERC–16, "Report of Gas Supply and Requirements," (1902–0025).

The Commission used the data collected under FERC–15 to make determinations on natural gas reserves, annual production, net revisions, imports, and projected deliverability. The data in FERC–16 was used by the Commission to assess the actual and anticipated supplies available to interstate natural gas pipeline companies and to analyze pipeline expansion, sales, and abandonment applications. By this final rule the Commission is eliminating these reporting requirements in their entirety The Commission no longer considers these data necessary for regulatory purposes in light of Order No. 636.

The Commission is advising OMB that these collections of information are being eliminated. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

VII. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[12] We find that the act of promulgating this rule eliminating FERC–15 and FERC–16 and revising § 260.12 of the Commission's regulations is procedural in nature, affecting information gathering and analysis, and does not represent a major Federal action having a significant effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[13] Further, we conclude that this rule falls within the categorical exemptions provided in the Commission's regulations.[14] Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Administrative Findings and Effective Date

This final rule is a matter of agency organization, procedure, or practice. Since this rule does not itself alter the substantive rights or interests of any interested persons, prior notice and comment are unnecessary under the Administrative Procedure Act (APA).[15]

On April 27, 1993, the Commission issued an order in Docket No. RM93–16–000 extending until July 31, 1993, the time for compliance with the filing requirements of FERC–15 and FERC–16

To assure that pipelines are not again compelled to file the forms eliminated by this order, we find good cause to make this rule effective immediately upon issuance, without the 30 day delay following publication in the Federal Register generally required by the APA.[16]

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural Gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural Gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2, 157, 260, 284, and 385, of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective immediately.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2545; 42 U.S.C. 4321–4361, 7101–7352.

2. In § 2.61, the introductory sentence is revised to read as follows:

§ 2.61 Pipeline companies—natural gas reserves—deliverability life.

Simultaneously with its promulgation of the annual report, FPC Form No. 15, formerly filed by certain pipeline companies with respect to total gas supply and deliverability, the Commission issued the following statement of policy:

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

4. Section 157.14(a)(10) is revised to read as follows:

§ 157.14 Exhibits.

(a) * * *

(10) *Exhibit H—Total gas supply data.* A statement by applicant describing:

(i) Those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and

(ii) How those production areas are connected to the proposed construction.

* * * * *

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

5. The authority citation for part 260 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 260.7 [Removed]

6. Section 260.7 is removed.

§ 260.7a [Removed]

7. Section 260.7a is removed.

§ 260.12 [Removed]

8. Section 260.12 is removed.

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[11] 5 CFR part 1320.14.

[12] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47910 (December 17, 1987), FERC Stats. and Regs. ¶ 30.783 (1987), codified at 18 CFR part 380.

[13] 42 U.S.C. 4332.

[14] 18 CFR 380.4.

[15] 5 U.S.C. 553(b).

[16] 5 U.S.C. 553(b).

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

9. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

10. Section 284.262(b) is revised to read as follows:

§ 284.262 Definitions.

* * * * *

(b) *Projected level of service* means the level of gas volumes to be delivered by the company for each customer and additional gas volumes needed by a customer due solely to a weather-induced increase in requirements.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

11. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 385.201 [Amended]

12. Section 385.2011(a)(6) is removed.

13. Section 385.2011(a)(7) is removed.

[FR Doc. 93–17039 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM91–8–003]

Qualifying Certain Tight Formation Gas for Tax Credit; Order No. 539–C

Issued July 12, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; Order clarifying deadline.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order effective immediately, which clarifies the deadline for applications to jurisdictional agencies for Natural Gas Policy Act (NGPA) well determinations. The order also extends the deadline for notices of NGPA well determinations to be received by the Commission from jurisdictional agencies.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2078.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

ORDER CLARIFYING DEADLINE FOR FILING NGPA APPLICATIONS FOR WELL CATEGORY DETERMINATIONS WITH JURISDICTIONAL AGENCIES

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F Santa, Jr.

I. Introduction

The Commission has received a number of requests to clarify or grant waiver of our December 31, 1992 deadline for the filing of applications for determination under Title I and Section 503 of the Natural Gas Policy Act of 1978 (NGPA), as set forth in Order No. 539, issued April 9, 1992.[1] For the reasons set forth in Order No. 539–A, the Commission will adhere to the December 31, 1992 deadline for producers to file NGPA applications with jurisdictional agencies.[2] However, for the reasons discussed below, the Commission will allow jurisdictional agencies to treat an Application for Permit to Drill (APD), or similar application to authorize a recompletion, that was filed with a jurisdictional agency on or before December 31, 1992, as establishing that an NGPA application was filed with such agency on or before that date.

II. Background

As part of the Revenue Reconciliation Act of 1990[3] the tax credit for nonconventional fuels under Section 29 of the Internal Revenue Code and the deadline for drilling wells to qualify for such credit was extended for two years until December 31, 1992. The tax credit was also reinstated for one nonconventional fuel for which it had previously lapsed—gas from newly drilled wells in tight formations—by revising the tax code so that tight formation gas under Section 107(c)(5) of the NGPA is eligible for the tax credit even if the price for tight formation gas is no longer regulated. Thus, while NGPA Section 107 well category determinations have no price consequence, they are necessary to obtain the Section 29 tax credit.

In Order No. 539, the Commission stated that it would process jurisdictional agency notices of determination as long as the underlying application was filed with the jurisdictional agency on or before December 31, 1992, and the Commission received the jurisdictional agency's notice of determination by June 30, 1993. Order No. 539–A[4] extended the deadline for the Commission to receive well category determinations until September 30, 1993.[5] However, the Commission declined to grant an extension of the December 31, 1992 deadline for filing NGPA applications with jurisdictional agencies. The Commission stated that because the Natural Gas Wellhead Decontrol Act of 1989[6] (Decontrol Act) repealed NGPA section 503 effective January 1, 1993, the Commission's authority was limited to completing the processing of applications pending as of that date, and it had no authority as to applications filed after that date.

The Commission has received several well category determinations from the Railroad Commission of Texas where the well was spudded-in before December 31, 1992, but the NGPA application for determination was not filed with the jurisdictional agency until after December 31, 1992. In addition, the Commission has received a number of requests from producers to permit

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[1] Qualifying Certain Tight Formation gas for Tax Credit, FERC Stats. & Regs., Regulations Preambles ¶ 30,940 (1992).

[2] See 60 FERC ¶ 61,023 (1992).

[3] Public Law No. 101–58, section 11501, 104 Stat. 1388–479 (1990).

[4] 57 FR 31,123 (July 14, 1992), FERC Stats. & Regs., Regulations Preambles ¶ 30,947.

[5] Subsequently, in Order No. 539–B (FERC Stats. & Regs., Regulations Preambles ¶ 30,968), the Commission stated that jurisdictional agencies could file requests for an extension of the deadline to file notices of determination with the Commission, of up to seven months (*i.e.*, to April 30, 1994).

[6] Public Law No. 101–60, 103 Stats. 157 (1989).

waiver of the December 31, 1992 deadline for filing the application with the jurisdictional agency because such agency declined to process the producer's NGPA application, even though the well was spudded before January 1, 1993.[7]

III. Discussion

In Order No. 539 the Commission noted that because of the timing (*i.e.*, that wells had to be spudded-in on or before December 31, 1992, and the corresponding NGPA applications had to be filed with the jurisdictional agencies by that date), "a complete application may not be able to be filed by December 31, 1992." Accordingly, the Commission stated that "the jurisdictional agencies have the discretion to assign a filing date to an application that is substantially complete and specify a date when a complete application must be filed."[8]

In Order No. 539–A, the Commission elaborated that it would permit the jurisdictional agencies to determine when an applicant has satisfied the filing requirements and that the Commission "will not * * * interject itself into the jurisdictional agencies' administrative process of assigning filing dates to well category determinations."[9] Under Order Nos. 539 and 539–A, the Commission provided that the jurisdictional agency may decide what it will accept as a substantially complete filing by December 31, 1992, indicating that such agencies could assign a 1992 filing date to a completed FERC Form No. 121,[10] and require the remainder of the filing to be completed in early 1993.

The Commission has determined from discussions with the jurisdictional agencies, and submissions by them, that there was a significant increase in drilling, completion, and recompletion activity during the latter part of 1992, as producers attempted to meet the December 31, 1992 drilling deadline under Section 29 of the Internal Revenue code, to be able to claim the tax credit. Moreover, in view of the increased drilling activity during this period, one jurisdictional agency (the Railroad Commission of Texas) has allowed the date of the drilling permit to establish that NGPA applications were filed on or before December 31, 1992.[11]

In view of this, the Commission has concluded that the increase in state and federal regulatory work required of producers in connection with their drilling, completing, and recompleting wells, warrants the use of the APD (or similar application for recompletions), to establish that an NGPA application for well category determination was filed with the jurisdictional agency on or before December 31, 1992. This is especially true for small producers with limited staff, whose personnel must perform double duty (since they most often directly oversee the field work *i.e.*, the drilling, completing, and/or recompleting of wells, and then also return to the office and complete and file all of the necessary regulatory documents with the appropriate State and/or Federal agencies). Our action will not have any price consequences, but will permit producers to obtain the tax credit that Congress intended.

Therefore, for wells spudded-in on or before December 31, 1992, and recompletions commenced on or before that date, the Commission will allow jurisdictional agencies to treat an APD (or similar application for a recompletion) that was filed with a jurisdictional agency on or before December 31, 1992, as establishing that an NGPA application for determination was filed with such jurisdictional agency on or before that date.[12] For a well recompletion, the applicant must have filed with the jurisdictional agency, before December 31, 1992, a permit for the specific recompletion for which a determination is sought. We reiterate that in order to qualify the person making an application must also show that the physical drilling of the well must actually have begun on or before December 31, 1992. The change in the filing requirement does not relieve the applicant of the spud-in requirement.

We will also clarify that this order only authorizes the use of the APD (or similar application) to establish that a well category determination application was filed on or before December 31, 1992, and cannot be used to establish that an application for a tight formation area designation was filed with a jurisdictional agency on or before December 31, 1992. Applications for tight formation designation are filed to qualify formations (or portions thereof) within a recommended area. Such area designations rely on findings that apply to the recommended stratigraphic interval within the recommended area, and involve supporting data and filing requirements that are distinctly different from those for individual well qualification. Therefore, filing APDs (or similar applications) to authorize a well (or a recompletion) is not relevant to the formation designation process, and in no way evidences any intent by a producer to request that a formation be designated or that a recommended area be delineated.

One producer, J–W Operating, Inc. (J–W), requests the Commission to allow it to combine the tight formation area designation application with two well category determination applications that were filed in 1992. We will reject J–W's request based on the need for a separate application for the tight formation area designation, as explained in this order.[13] Therefore, the applications for well category determination for J–W's two wells will be returned to the applicant.

Extension of the September 30, 1993 Deadline

In Order No. 539–B, issued April 9, 1993, the Commission granted to certain jurisdictional agencies, based upon their pending workloads, their requests for an extension of the September 30, 1993 deadline for such agencies to submit their notices of their determinations to the Commission, but not beyond April 30, 1994. This order may increase the workload of many other jurisdictional agencies. Accordingly, the Commission is extending the September 30, 1993 deadline by seven months (to April 30,

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[7] In addition, the Bureau of Land Management of the United States Department of the Interior (BLM) has received inquiries from a number of producers regarding the filing of applications after December 31, 1992, and seeks Commission guidance regarding a specific procedure to follow to answer such inquiries.

[8] FERC Statutes & Regulation ¶ 30,940 at n. 41 at 30,488.

[9] FERC Statutes & Regulations ¶ 30,947 at 30,512

[10] FERC Form No. 121 is part of the application for well category determination filed with the jurisdictional agency and is one of the documents submitted to the Commission as part of the jurisdictional agency's notice of determination. It basically identifies the well for which the application is filed, and the category for which a determination is sought.

[11] On May 28, 1993, Texas filed four new tight formation gas well category determinations with the Commission under Section 107(c)(5) of the NGPA. The applicable 45-day period for Commission review expires July 12, 1993. Lewis Petro Properties, Inc. filed the applications with Texas in 1993.

[12] Since all wellhead sales were deregulated and decontrolled on January 1, 1993, the Commission will not accept determinations where the well was spudded or recompletion commenced on or after January 1, 1993.

[13] J–W argues that communications with Texas, to which J–W was not a party, led the prior operator to believe that the area designation could be combined with the applications for the wells, but the record submitted by J–W does not support its position. The record shows that J–W had the opportunity to make the necessary filing for one well. As for the other well, the only argument to support J–W's position is the ignorance of the prior operator and J–W of the Commission's regulations, which have been in effect since 1987 and require a separate tight formation area designation application. The Commission cannot accept this as a basis for either company's failure to comply with the regulations.

1994), to provide all jurisdictional agencies with adequate time to process and submit their notices of determination to the Commission. Thus, specific requests from jurisdictional agencies will no longer be required to extend the deadline.

Effective Date

Since some jurisdictional agencies may be refusing to process applications that meet the standards adopted in this order, and in view of the deadline for submitting notices to the Commission, the Commission believes that failure to make this order effective immediately would be contrary to the public interest. Accordingly, the Commission finds that good cause exists under 5 U.S.C. 553 (b) and (d) to make this order effective upon issuance, applicable to all well category determination applications.

The Commission Orders

(A) The Commission allows jurisdictional agencies to treat an Application for Permit to Drill that was filed on or before December 31, 1992, as establishing that an NGPA application for determination was filed with such jurisdictional agency or before December 31, 1992.

(B) The Commission extends until April 30, 1994, the deadline for the Commission to receive from jurisdictional agencies, NGPA category determinations.

(C) The applications for well determinations filed by J–W Operating, Inc., are returned to the applicant.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17038 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 280

[Docket No. R–93–1674; FR–3293–F–01]

RIN 2502–AF81

Nehemiah Housing Opportunity Grants Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to implement a recent statutory amendment which permits the Department to apply the 25 percent presale requirement to individual phases of a Nehemiah project.

EFFECTIVE DATE: August 18, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2700. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410–0050; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) established the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. On May 22, 1989, HUD published a final rule establishing the requirements for NHOP at 54 FR 22248. This final rule became effective on July 13, 1989, and is codified at 24 CFR part 280.

The current NHOP regulations, at 24 CFR 280.305, do not allow recipients to begin construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to the purchasers who intend to live in the homes and the downpayments required under § 280.320(b) are made. This 25 percent minimum participation requirement was mandated by section 606(c) of the Housing and Community Development Act of 1987, the authorizing statute for NHOP.

After the first few years of NHOP operation, it was found that the minimum participation requirement created problems for the efficient implementation of the program. Some recipients have tremendous difficulty in pre-selling houses to be built or rehabilitated to the full extent of the initial 25 percent requirement. In addition, many potential homeowners cannot afford to have their downpayments held for a long period of time while they wait for the recipients to pre-sell 25 percent of the total project before beginning construction or substantial rehabilitation.

To address these problems, Congress amended section 606(c) of the Housing and Community Development Act of 1987 in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1992, (approved October 28, 1991, Public Law 102–139), (92 App. Act). The 92 App. Act amendment allows the Department to apply the 25 percent presale requirement to individual phases of a Nehemiah project, provided that the phases consist of at least 16 homes and that the unit of local government in which the homes are to be located agrees to the phasing schedule.

The amendment to section 606(c) is being implemented in this final rule by amending 24 CFR 280.305—Minimum participation. While the present requirement in § 280.305 that refers to 25 percent of all homes in a Nehemiah program is still the general rule, this change will permit recipients to request HUD's approval of a phasing plan to begin construction or substantial rehabilitation when 25 percent of the homes in an individual phase of a Nehemiah program have been pre-sold Each phase must contain at least 16 homes, and the phasing plan must be approved by the unit of local government in which the homes are to be located. The other provisions of § 280.305 providing an exception to the 25 percent requirement for the construction and substantial rehabilitation of homes for the purpose of display are not affected by this amendment. The format of § 280.305 is being changed to state, first, the general 25 percent minimum participation rule, and then list the phase and display exceptions as paragraphs (a) and (b), respectively.

This amendment is being implemented as a final rule, effective 30 days after publication. The Department has determined, in accordance with 24 CFR 10.1, that notice and public comment are unnecessary, because the rule is a straightforward implementation of the statutory change to NHOP and its grants or recognizes an exemption, thereby relieving a regulatory burden on program participants.

Other Matters

A. Economic Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

C. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule merely makes certain statutorily required changes that permit recipients under the program to begin construction or substantial rehabilitation of homes under less restrictive conditions. As such, the changes will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government

D. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a potentially significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. The rule amends the Nehemiah Housing Opportunity Grants Program (NHOP) to permit construction or substantial rehabilitation of homes to begin under less restrictive conditions. To the extent that additional homes are made available, there will be some beneficial, although indirect, effect on families.

E. Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule only affects the point at which construction or substantial rehabilitation of homes under NHOP may begin. As such, it makes no change in the number of entities already affected under the rule.

This rule was listed as Item No. 1436 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24407) under Executive Order 12291 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

TABULATION OF REPORTING BURDEN—NEHEMIAH HOUSING OPPORTUNITY PROGRAM

Description of information collection requirement	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual response	Hours per response	Total hours
1. Form HUD–91102: Application submission requirements—not applicable after 9–30–91	(This was the only time that the Form HUD–91102 was filled out)					
2. Affirmative fair housing marketing requirements	§ 280.207(a)(6)	10	1	10	3 minutes	0.5
3. Racial and ethnic data collection requirement	§ 280.207(a)(7)	10	145	1,450	3 minutes	72.5
4. Lead-based paint reporting and recordkeeping requirement.	§ 280.207(e)	2	145	[illegible]	0.50	145
5. Grant agreement	§ 280.303(a)	10	1	10	2.00	20
6. Request for modification of requirement for eligible buyers.	§ 280.315(a)	5	1	5	1.50	7.5
7. Sales contract requirement	§ 280.320(a)	10	145	1,450	0.50	725
8. Request for reimbursement	§ 280.322(b)	10	145	1,450	0.50	725
9. Loan and 2nd mortgage requirement	§ 280.322(a)	10	145	1,450	0.50	725
10. Request for HUD approval of sale or transfer	§ 280.330(b)	10	45	450	1.50	675

VOL 58 ISS 136 JL 19 1993 UMI

TABULATION OF REPORTING BURDEN—NEHEMIAH HOUSING OPPORTUNITY PROGRAM—Continued

Description of information collection requirement	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual response	Hours per response	Total hours
11. Phasing plan	§ 280.305	25	1	1	2.00	50
Total burden hours						3,145

The Catalog of Federal Domestic Assistance Number for the Nehemiah Housing Opportunity Grant Program is 14.179.

List of Subjects in 24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 24, part 280 of the Code of Federal Regulations is amended as set forth below:

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

1. The authority citation for part 280 is revised to read as follows:

Authority: 12 U.S.C. 1715*l* note; 42 U.S.C. 3535(d).

2. Section 280.305 is revised to read as follows:

§ 280.305 Minimum participation.

Except as provided in paragraph (a) or (b) of this section, the recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments required under § 280.320(b) have been made.

(a) Recipients may submit a phasing plan to HUD for approval. The phasing plan may propose that the grantee begin construction or substantial rehabilitation on an individual phase of the program when 25 percent of the homes in the individual phase of the program have been pre-sold. Each phase for which approval is sought must contain at least 16 homes. Each submission must include documentation that the phasing plan has been approved by the unit of local government in which the homes are to be located.

(b) Recipients may construct and substantially rehabilitate homes for the purpose of display to potential homeowners. The maximum number of display homes is limited to five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes, where the program involves less than 60 homes.

Dated: July 9, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 93–17078 Filed 7–16–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas' Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment with one exception and one required amendment.

SUMMARY: OSM is approving a proposed amendment, with one exception and one required amendment, to the Arkansas abandoned mine land reclamation plan (hereinafter referred to as the "Arkansas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Arkansas' Abandoned Mine Reclamation Act of 1990. Arkansas proposed changes to the title 15, chapter 58 of Arkansas Code Annotated (Arkansas Surface Coal Mining and Reclamation Act of 1979) pertaining to the eligibility of project sites for abandoned mined land (AML) fund expenditures. The amendment is intended to incorporate the additional flexibility afforded by SMCRA as amended.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. General background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Arkansas plan can be found in the May 2, 1983 **Federal Register** (48 FR 19710).

II. Submission of Amendment

By letter dated March 31, 1993 (administrative record No. AAML–02), Arkansas submitted, at its own initiative, a proposed amendment to its plan pursuant to SMCRA as amended. Arkansas proposed to amend Arkansas Code Annotated Section 15–58–401 relating to the eligibility of project sites for AML fund expenditures.

OSM announced receipt of the proposed amendment in the April 30, 1993, **Federal Register** (58 FR 26078; administrative record No. AAML–12) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendments. The public comment period closed on June 1, 1993. No substantive comments were received. The public hearing, scheduled for May 17, 1993, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, the Director finds, as discussed below, that Arkansas' March 31, 1993 proposed plan amendment, with one exception, is no less stringent than SMCRA as amended by the Abandoned Mine Reclamation Act of 1990 and is in compliance with the corresponding Federal regulations at 30 CFR 884.13.

At its own initiative, Arkansas proposed to revise Section 15–58–401 of Arkansas Code Annotated that provides for the determination of the eligibility of project sites for AML fund expenditures. By adding Subsections 15–58–401(b), (b)(1), (b)(2) and (c), Arkansas proposed to revise the definition of "lands

eligible" thereby providing funds for reclamation of certain coal mine sites where the mining occurred after August 3, 1977. Proposed Section 15–58–401(b) provides for the use of AML funds for sites disturbed after August 3, 1977, based on the findings of eligibility set forth in subsections (b)(1) and (b)(2). Proposed Subsection 15–58–401(b)(1) would include those sites affected between August 4, 1977, and November 21, 1980 (the effective date of the approved Arkansas regulatory program), for which available funds were insufficient for adequate reclamation. Proposed Subsection 15–58–401(b)(2) would include those sites affected between August 4, 1977, and March 5, 1993 (the effective date of Arkansas's statutory revision), where bond forfeiture funds were insufficient for adequate reclamation. Proposed Subsection 15–58–401(c) requires that in determining sites to reclaim pursuant to paragraph (b), the Director of the Arkansas program shall follow the priorities stated in paragraphs (1) and (2) of Section 15–58–402 and ensure that priority is given to those sites in the immediate vicinity of a residential area or having an adverse economic impact upon a community. Previously, Arkansas' plan provided funds only for reclamation of sites that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law.

Proposed Subsections 15–58–401(b), (b)(1) and (c) are substantively identical to, and therefore no less stringent than subsections 402(g)(2)(B), (B)(i), and (C) of SMCRA, and the Director approves them.

However, proposed Subsection 15–58–401(b)(2) differs substantively from subsection 402(g)(2)(B)(ii) of SMCRA. Subsection 402(g)(4)(B)(ii) of SMCRA requires for eligibility of AML funds the finding that the lands were disturbed by permitting mining operations after August 4, 1977, but before November 4, 1990, where the surety of the operation became insolvent during the same period and funds are not sufficient to provide for adequate reclamation or abatement at the site. Arkansas' proposed Subsection 15–58–401(b)(ii) requires a finding that (1) the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date of enactment of this paragraph; (2) the surety of the operation became insolvent during such period; and (3) funds are not sufficient to provide for adequate reclamation or abatement at the site. The date of enactment of paragraph (b)(2) is March 5, 1993. Therefore, Arkansas' proposed amendment allows a substantially longer time period than does SMCRA during which certain lands may be eligible for AML funds. For this reason, Subsection 15–58–401(b)(2) is less stringent than subsection 402(g)(4)(B)(ii) of SMCRA. The Director (1) does not approve Arkansas' proposed Subsection 15–58–401(b)(2) to the extent that it allows for a time period extending beyond November 4, 1990, during which lands disturbed by a mining operation whose surety became insolvent would be eligible for use of AML funds, and (2) requires that Arkansas submit a proposed revision of subsection 15–58–401(b)(2) of Arkansas Code Annotated to limit the allowed time period to that between August 4, 1977, and November 4, 1990.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment.

No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.14(a)(2) and 884.15(a), the Director solicited comments from the heads of various other Federal agencies with an actual or potential interest in the Arkansas plan.

By letter dated April 13, 1993 (Administrative Record No. AAML–07), the State Historic Preservation Officer responded that it had no comments on the proposed amendment.

By letter dated April 22, 1993 (Administrative Record No. AAML–08), the U.S. Forest Service responded that it had no comments on the proposed amendment.

By letter dated April 23, 1993 (Administrative Record No. AAML–09), the U.S. Bureau of Land Management responded that it had no comments.

By letter dated April 27, 1993 (Administrative Record No. AAML–10), the U.S. Bureau of Mines responded that it had no comments.

By letter dated May 5, 1993 (Administrative Record No. AAML–11), the U.S. Soil Conservation Service responded that it had no comments.

By letter dated May 11, 1993 (Administrative Record No. AAML–13), the U.S. Fish and Wildlife Service responded that it had no comments.

V. Director's Decision

Based on the above finding, the Director approves Arkansas' proposed plan amendment, as submitted on March 31, 1993, with one exception and one required amendment.

The Federal regulations at 30 CFR part 904, codifying decisions concerning the Arkansas plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or disapproval of State abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State abandoned mine land reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.20 is revised to read as follows:

§ 904.20 Approval of Arkansas abandoned mine land reclamation plan.

(a) The Arkansas abandoned mine land reclamation plan, as submitted on July 7, 1982, is approved.

(b) Copies of the approved plan are available at:

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209. Telephone: (501) 562–6533.

Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430.

3. Section 904.25 is added to read as follows:

§ 904.25 Approval of abandoned mine land reclamation plan amendments.

(a) With the exception of subsection 15–58–401(b)(2), to the extent that it allows for a time period extending beyond November 4, 1990, during which lands disturbed by a mining operation whose surety became insolvent would be eligible for use of AML funds, the following sections of the Arkansas Code Annotated, title 15, pertaining to the Arkansas abandoned mine land reclamation plan, as submitted to OSM on March 31, 1993, are approved effective July 19, 1993:

Sections 15–58–401 (b) and (c) of Arkansas Code Annotated—Lands Eligible

(b) Reserved.

4. Section 904.26 is added to read as follows:

§ 904.26 Required Plan Amendments.

Pursuant to 30 CFR 884.15, Arkansas is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a) By October 18, 1993, Arkansas shall submit proposed revisions to subsection 15–58–401(b)(2) of Arkansas Code Annotated to limit the allowed time period to that between August 4, 1977, and November 4, 1990, during which lands disturbed by a mining operation whose surety became insolvent would be eligible for use of AML funds.

(b) Reserved.

[FR Doc. 93–16997 Filed 7–18–93; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 92–159, FCC 93–299]

Radio Broadcasting Services; Permitting FM Channel and Class Modifications by Application

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a one-step processing procedure for certain modifications to existing FM station authorizations. These modifications include upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels. The Commission takes this action on its own motion to expedite the implementation of service improvements.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order MM Docket No. 92–159, adopted June 4, 1993, and released July 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. The Commission, on its own motion, allows FM licensees and permittees to request by application upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels. See 57 FR 36047, August 12, 1992. In this regard, the Commission includes intermediate frequency (IF) channels in its definition of adjacent channel. Prior to this change, an FM licensee or permittee seeking to modify its channel or class of channel was required to request these changes through a two-step process in which the party first filed a petition for rule making. If the petition was acceptable, we initiated a formal notice and comment rule making process requiring the issuance of a Notice of Proposed Rule Making, and, if determined to be in the public interest, a grant by Report and Order. The Commission would then order the licensee or permittee to file a minor change application specifying the substituted channel. At each step, the proposal would undergo a similar engineering analysis. At the application step, the proposal would undergo a more comprehensive engineering analysis, which would subsume the analysis performed at the rulemaking step. The process is now streamlined by eliminating the rulemaking step in circumstances where it largely duplicates the application process, and allowing a licensee or permittee to seek such modifications by application alone. Grant of the application will be followed by an editorial amendment to the FM Table of Allotments to reflect the modification. Using this one-step process for each of these classes of

actions serves the public interest by speeding the implementation of service modifications and eliminating redundant staff processing efforts. Commenters were generally in favor of this approach.

2. We determined that use of this process to achieve station upgrades on the basis of contour protection would be inconsistent with our allotment policy. In order to prevent the allotment of channels that would conflict with our present allotment standards, the Commission is limiting the availability of the new one-step procedure only to those proposals that comply with both its application criteria and its allotment standards. An applicant may apply for a station modification at a site that would not meet allotment standards, so long as the applicant can demonstrate that an available site exists which would comply with allotment standards. The Commission's two-step process generally allows such a result. The Commission also limits this procedure to modifications that require no changes to the Table of Allotments other than a change in the allotment of the station seeking the modification, and excludes non-adjacent channel upgrades. This procedure is mandatory for all who propose these types of actions.

3. Consistent with the cut-off rule adopted in Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 57 FR 36018 (August 12, 1992), pet. for recon. granted in part, FCC 93–339 adopted June 28, 1993, minor change applications filed pursuant to this process are cut-off from subsequently filed petitions for rule making as of the day the application is received at the Commission. Where an application and an earlier or simultaneously filed petition for rule making conflict, the application will be held in abeyance pending the outcome of the rule making. The conflict will be resolved in the context of the rule making proceeding unless the applicant amends its application to remove the conflict. If the application is filed prior to the deadline for filing counterproposals to the petition, the application will be treated as a counterproposal in that proceeding. If the application is filed after that deadline, it will be presumed to represent only the applicant's site preference. The Ashbacker doctrine does not preclude adoption of these changes. Although these changes may restrict the ability of other parties to file counterproposals seeking competing uses of the spectrum that would be precluded by grant of the application, limiting the applicability of this procedure to upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels should provide other parties with the ability to predict with certainty any preclusive effect that a potential modification may have on FM spectrum availability in the area. Therefore, a prospective petitioner would readily be able to predict whether a particular station could seek a modification by application, thereby enabling that prospective petitioner to file a conflicting request in advance of the application.

4. Any changes adopted in this proceeding will apply only to applications filed thirty days after the effective date of the rules as stated herein. Any rulemaking petitions already filed, or on file on the effective date of the new rules, will be processed under existing procedures.

Final Regulatory Flexibility Statement

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules will have a significant impact on a substantial number of small entities because they will expedite the ability of broadcasters to achieve service improvements. The full text of this Final Regulatory Flexibility Statement may be found in Appendix B to the Report and Order.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 1 and 73 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 1.420 is amended by adding Note 1 following paragraph (g) and redesignating the Note following paragraph (h) as Note 2 to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, TV or Air-Ground Table of Allotments.

* * * * *

Note 1: In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See Section 73.203(b) of this chapter.

* * * * *

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303

4. Section 73.203 is amended by revising paragraph (b) and adding a Note to read as follows:

§ 73.203 Availability of channels.

* * * * *

(b) Applications filed on a first come, first served basis may propose a lower or higher class adjacent, intermediate frequency or co-channel. Applications for the modification of an existing FM broadcast station may propose a lower or higher class adjacent, intermediate frequency or co-channel, or an same class adjacent channel. In these cases, the applicant need not file a petition for rule making to amend the Table of Allotments (§ 73.202(b)) to specify the modified channel class.

Note: Changes in channel and/or class by application are limited to modifications on first, second and third adjacent channels, intermediate frequency (IF) channels, and co-channels which require no other changes to the FM Table of Allotments. Applications requesting such modifications must meet either the minimum spacing requirements of § 73.207 at the site specified in the application, without resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in §§ 73.213 through 73.215 or demonstrate by a separate exhibit attached to the application the existence of a suitable allotment site that fully complies with §§ 73.207 and 73.315 without resort to §§ 73.213 through 73.215.

5. Section 73.3573 is amended by revising paragraph (a)(1), redesignating Noted 1 and 2 as Notes 2 and 3 and adding a new Note 1 to read as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of

Allotments (73.202 (b)). Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Applications filed on a first come, first served basis may propose a higher or lower class adjacent, intermediate frequency or co-channel in an application for a new FM broadcast station. A licensee or permittee may seek the higher or lower class adjacent, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of the application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 of this chapter pertaining to major changes.

* * * * *

Note. 1: Applicatiosn to modify the channel and/or class of an FM broadcast station to an adjacent channel, intermediate frequency (IF) channel, or co-channel shall not require any other amendments to the Table of Allotments. Such applications may resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in § 73.215 as long as the applicant shows by separate exhibit attached to the application the existence of an allotment reference site which meets the allotment standards, the minimum spacing requirements of § 73.207 and the city grade coverage requirements of § 73.315. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area which would necessarily present a hazard to air navigation.

* * * * *

[FR Doc. 93–17029 Filed 7–16–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 61

[CC Docket No. 89–79; DA 93–838]

Creation of Access Charge Elements for Open Network Architecture; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations [FCC 93–133, 8 FCC Rcd 2104], which were published Thursday, April 1, 1993 [58 FR 17167]. The regulations related to cost showings required for basic service elements for open network architecture.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Sieradzki, Policy & Program Planning Division, Common Carrier Bureau, (202) 632–1304.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections establish that tariff showings for future basic service elements (BSEs) unbundled from existing services should be the same as the showing for the initial set of unbundled BSEs.

Need for Correction

As published, the final regulations contain an error that inadvertently removed an earlier revision to the same rule.

Correction of Publication

Accordingly, the publication on April 1, 1993 of the final regulations [FCC 93–133, 8 FCC Rcd 2104], which were the subject of FR Doc. 93–7465, is corrected as follows:

§ 61.49 [Corrected]

On page 17167, in the second column, in § 61.49, paragraph (h), the first sentence is corrected to read as follows:

(h) Each tariff filing by a local exchange carrier subject to price cap regulation that introduces a new service or a restructured unbundled basis service element (BSE), as defined in § 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelments for expanded interconnection, as defined in § 69.121 of this chapter, must also be accompanied by:

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–17025 Filed 7–16–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–348, FCC 93–339]

Radio Broadcast Services; Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments

ACTION: Final rule; petition for reconsideration.

SUMMARY: This action grants in part and denies in part a petition for reconsideration in this proceeding regarding the procedures for resolving conflicts between FM applications and rulemaking petitions to amend the FM Table of Allotments. This document modifies § 73.208(a) of the Commission's Rules so that a timely filed counterproposal in an FM allotment proceeding may still be considered even though it has been rendered unacceptable by the filing of a prior conflicting FM application provided that certain requirements are met. This modification is needed to address the concerns of counterproponents in FM allotment proceedings.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, Policy and Rules Division, (202) 632–5414.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 91–348, FCC 93–339, adopted June 28, 1993. The complete text of the Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. The Report and Order in this proceeding adopted a cut-off rule for resolving conflicts between rulemaking petitions to amend the FM Table of Allotments and FM applications. See 57 FR 36018, August 12, 1992. Specifically, the Report and Order amended § 73.208(a) of the Commission's Rules to provide FM applications with cut-off

protection from rulemaking proposals at the same time that they receive such protection from other mutually exclusive applications—that is, FM applications for new stations or major changes filed during a filing window are protected from rulemaking petitions at the close of the filing window. All other FM applications are protected as of the date they are filed with the Commission.

2. The Association of Federal Communications Consulting Engineers (AFCCE) requests that the Commission reconsider the new rule insofar as it provides cut-off protection to various types of FM applications on the dates they are filed. It proposes instead a rule cutting off FM applications from rulemaking petitions 30 days after a publicly released notice of acceptance.

3. The Commission rejected AFCCE's alternative proposal and concluded that giving cut-off protection to FM applications on the dates they are filed does not violate section 307(b) of the Communications. However, the Commission recognized that AFCCE is correct that a counterproposal filed before the counterproposal deadline in an FM allotment proceeding could be rendered unacceptable because a conflicting FM application was filed earlier. To address this concern, the Commission added a note to § 73.208(a) permitting such a counterproposal to be considered in the rulemaking proceeding if it is amended to protect the transmitter site of the previously filed FM application within 15 days after being placed on the Public Notice routinely issued by the staff concerning counterproposals. The counterproponent must also make a showing that, at the time it filed the counterproposal, it did not know, and could not have known by exercising due diligence, of the pendency of the conflicting FM application.

4. Accordingly, *it is ordered*, That the petition for reconsideration filed on behalf of the Association of Federal Communications Consulting Engineers is granted in part and denied in part.

5. *It is further ordered*, That § 73.208(a) of the Commission's Rules is amended as set forth below, effective 30 days after publication of a summary in the **Federal Register.**

6. *It is further ordered*, That the petition for reconsideration filed by Mullaney Engineering, Inc. is dismissed.

7. *It is further ordered*, That MM Docket No. 91–348 is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 73.208 is amended by adding a note at the end of paragraph (a) to read as follows:

§ 73.208 Reference points and distance computations.

(a) * * *

Note: If the filing of a conflicting FM application renders an otherwise timely filed counterproposal unacceptable, the counterproposal may be considered in the rulemaking proceeding if it is amended to protect the site of the previously filed FM application within 15 days after being placed on the Public Notice routinely issued by the staff concerning the filing of counterproposals. No proposals involving communities not already included in the proceeding can be introduced during the reply comment period as a method of resolving conflicts. The counterproponent is required to make a showing that, at the time it filed the counterproposal, it did not know, and could not have known by exercising due diligence, of the pendency of the conflicting FM application.

* * * * *

[FR Doc. 93–17031 Filed 7–16–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 91–295; DA 93–556]

Private Land Mobile Radio Services; Additional 72–76 MHz Frequencies

AGENCY: Federal Communications Commission.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the *Report and Order*, PR Docket No. 91–295, published in the **Federal Register** on December 18, 1992, 57 FR 60132, FR Doc. 92–30727. The *Report and Order* provided additional 72–76 MHz frequencies for low-power mobile use in certain private land mobile radio services. Class of station designation for those frequencies in the frequency tables for the Power, Petroleum, and Business Radio Services are corrected.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provided 20 additional frequencies in the 72–76 MHz frequency band for low-power mobile use on a shared basis in the Business, Manufacturers, Petroleum, Power, and Railroad Radio Services.

Need for Correction

As published, the final regulations contained errors in the frequency tables for the Power, Petroleum, and Business Radio Services and require correction.

Correction of Publication

Accordingly, the publication on December 18, 1992 of the final regulations (PR Docket No. 91–295) which were the subject of FR Doc. 92–30727 is corrected as follows:

1. On page 60133, in the third column, in Section 90.63(c), in the entry for frequency 74.61 MHz in the Power Radio Service Frequency table, the word "do" under class of station(s) is corrected to read "Mobile".

2. On page 60134, in the first column, in Section 90.65(b), in the entry for frequency 74.61 MHz, in the Petroleum Radio Service Frequency table, the word "do" is corrected to read "Mobile".

3. On page 60134, in the second column, in Section 90.75(b), in the entry for frequency 74.61 MHz, in the Business Radio Service Frequency table, the word "do" is corrected to read "Mobile".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–17028 Filed 7–16–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920780–2180; I.D. 071393A]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

VOL
58
ISS
136
JL
19
1993
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ACTION: Turtle excluder device exemption.

SUMMARY: NMFS will continue to allow 30-minute tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina until August 15, 1993. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED use impracticable.

EFFECTIVE DATES: This rule is effective from July 13, 1993 through August 15, 1993.

ADDRESSES: Comments on the collection-of-information requirement in this action should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator (301/713–2319) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

In regulations published May 17, 1993 (58 FR 28793), and June 16, 1993 (58 FR 33219), NMFS allowed limited tow times as an alternative to the requirement to use TEDs by shrimp trawlers in a small area off the coast of North Carolina. This area seasonally exhibits high concentrations of brown algae, *Dictyopteris* spp., and a red alga, *Halymenia* sp. Shrimp live within the algae, which shrimpers harvest. Use of TEDs under these conditions is impractical because they clog or exclude a large portion of the algae. Limiting tow times to 30 minutes allows fishermen to harvest shrimp efficiently and maintains adequate protection for sea turtles that may be nesting in this area. NMFS will continue to monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED use impracticable.

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that immediate action is necessary to conserve sea turtles pursuant to the regulations at 50 CFR 227.72(e)(6). The Assistant Administrator has also determined that incidental takings of sea turtles during shrimp trawling are unauthorized unless these takings are consistent with the supplemental section 7 consultation and revised incidental take statement prepared by NMFS on July 2, 1993.

Recent Events

The North Carolina sea turtle stranding network reported that nine sea turtles stranded in the North Carolina Restricted Area during the exemption period of May 12 through June 11, 1993. Consultation under section 7 of the Endangered Species Act (ESA) was reinitiated on July 2, 1993 for the continuation of this TED exemption, because the strandings of nine sea turtles may represent incidental takings in the restricted area in excess of those authorized for the previous exemption (April 1, 1993). As a condition to continuing the TED exemption in the North Carolina Restricted Area, NMFS will place observers on shrimp trawlers in this area on a weekly basis during the sea turtle nesting season (May 15 through August 15) to monitor any incidental capture of turtles and to monitor environmental conditions. NMFS may impose more stringent conservation measures, including the use of TEDs, if it is determined that turtles are not adequately protected in the restricted area. The incidental take level was increased to a mortality of one Kemp's ridley, green, hawksbill, or leatherback turtle, or ten loggerhead turtles during the nine month exemption period. This increased incidental take level for loggerheads reflects the annual stranding average of 26 loggerheads in this area even when shrimpers are required to use TEDs.

During the most recent exemption period of June 11, 1993 through July 12, 1993, two loggerhead turtles stranded on beaches in the restricted area. NMFS observers reported low algae concentrations and no observed turtle captures by shrimpers in the restricted area during two observed trips on June 22 and July 7, 1993. Observations and anecdotal information indicate that about half of the shrimpers in the restricted area are using TEDs instead of 30-minute tow times because the algae concentration does not clog TEDs. Aerial surveys by the North Carolina Division of Marine Fisheries (NCDMF) report that shrimping effort was high in the exemption area, with 10 to 15 trawlers observed each day in restricted area inshore or nearshore waters during the late afternoon and early morning hours. Only 13 vessels are currently registered to use tow times instead of TEDs in the restricted area; last year a total of 40 vessels registered to use tow times. In 17 hours of enforcement observation between June 11 and July 9, 1993, all monitored vessels either complied with tow-time limitations or used TEDs. NCDMF also reported that gillnet activity is very low in the restricted area, although increased turtle captures in untended gillnets have been observed.

NMFS has determined that the environmental conditions in the restricted area may render TED-use impracticable in the next month. While algae levels have been low this year, NMFS expects that the algae will increase. Therefore, the Assistant Administrator extends the authorization to use restricted tow times previously issued on May 12, 1993 (58 FR 28793, May 17, 1993) and June 11, 1993 (58 FR 33219, June 16, 1993) as an alternative to the requirement to use TEDs in the North Carolina restricted area. Specifically, all shrimp trawlers in the North Carolina restricted area are authorized, as an alternative to the otherwise required use of TEDs, to limit tow times to 30 minutes until August 15, 1993.

This action provides shrimpers in the North Carolina restricted area with immediate relief from having to comply with the TED-use requirement, while comments are being considered on a proposed rule, published at 58 FR 30007 (May 25, 1993), that would amend 50 CFR parts 217 and 227 to provide permanent relief. The tow-time limit and other requirements imposed by this action will provide adequate protection for endangered and threatened sea turtles in the North Carolina restricted area.

Sea Turtle Conservation Measures

The sea turtle conservation measures published at 58 FR 28793 (May 17, 1993) are extended here for another 30 days. The owner or operator of a shrimp trawler trawling in the North Carolina restricted area must register with the Director, Southeast Region, NMFS, by telephoning 813/893–3141. Information required for registering is described in the previous exemptions. Shrimp trawlers in the restricted area must restrict tow times to 30 minutes or less when tow times are used as an alternative to the requirement to use TEDs. Tow times are measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

Classification

The Assistant Administrator has determined that this action is necessary to provide relief from an impractical TED-use requirement, while providing adequate protection for listed sea turtles, and while comments are being considered for the permanent rule that would amend 50 CFR parts 217 and 227 to allow for a permanent tow-time allowance in the North Carolina restricted area. It is anticipated that this action will be extended for one additional 30-day period to allow completion of the permanent rulemaking. This action is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a major rule. Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The environmental assessments prepared for this action are described in the TED exemption published at 58 FR 28793 (May 17, 1993).

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl in the North Carolina restricted area. This collection of information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**).

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to extend this exemption on an immediate basis and that it is impracticable and contrary to the public interest to provide advance notice and opportunity for comment. Failure to implement temporary measures would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Dated: July 13, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–16984 Filed 7–13–93; 4:56 pm]

BILLING CODE 3510-22-M

VOL 58 ISS 136 JL 19 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 136
Monday, July 19, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-59-AD]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 520, 560, 680, 681, 685, 690, 695, and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Twin Commander Aircraft Corporation (Twin Commander) 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes. The proposed action would require inspecting the flap system for cables with broken wires or pulleys with worn cable clips; replacing any damaged parts; and replacing the master pulley with a new part of improved design. The Federal Aviation Administration (FAA) has received reports of cable fatigue, particularly the master pulley cable, on several of the affected airplanes. The actions specified by the proposed AD are intended to prevent flap system failure, which could result in loss of control of the airplane.

DATES: Comments must be received on or before September 29, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-59-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056; Telephone (206) 227-2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-59-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-59-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of flap system cable fatigue, particularly the master pulley cable, on several Twin Commander 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes. The master pulley is located on the left side of the fuselage and is attached to the flap actuator. Investigation of one of the affected airplanes has revealed that the groove of the master pulley is too narrow for the cable, which forces the cable to ride on the sides of the groove instead of the bottom of the groove. This condition accelerates cable fatigue. Further review shows that the master pulley groove dimension is in error throughout the whole fleet.

Review of drawings that affect all pulleys in the cable flap drive system reveals that the only groove dimensions in error are those of the master pulley. However, one slave pulley that was inspected in the field was found to contain incorrect groove width. In addition, two outboard flap pulleys were rubbing on their mounting brackets on the airplane investigated, and the pulley clip that retains the cable was almost completely worn.

Twin Commander has issued Service Bulletin (SB) No. 210, dated February 1, 1991, which specifies procedures for (1) inspecting the flap system for cables with broken wires and pulleys with worn clips; and (2) replacing the flap master pulley with a new part of improved design.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent flap system failure, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Twin Commander 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes of the same type design, the proposed AD would require inspecting the flap system for cables with broken wires and pulleys with worn clips; replacing any damaged parts; and replacing the master pulley with a new part of improved design. The proposed actions would be accomplished in accordance with the service bulletin described above.

The FAA estimates that 1,860 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 25 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Parts cost approximately $600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S.

operators is estimated to be $3,673,500. These figures take into account that none of the affected airplane operators have accomplished the proposed actions.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Twin Commander Aircraft Corporation: Docket No. 92–CE–59–AD.

Applicability: Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680FP, 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, and 720 airplanes (all serial numbers), certificated in any category:

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent flap system failure, which could result in loss of control of the airplane, accomplish the following:

(a) Visually inspect the flap system for cables with broken wires or pulleys with worn cable clips in accordance with the Accomplishment Instructions section of Twin Commander Service Bulletin (SB) No. 210, dated February 1, 1991. Prior to further flight, replace any damaged parts.

(b) Replace the master cable pulley with a new part of improved design in accordance with the Accomplishment Instructions section of Twin Commander SB No. 210, dated February 1, 1991. The applicable master cable pulley part numbers are referenced in Table I of Twin Commander SB No. 210.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21 199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 12, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–17010 Filed 7–16–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 350

[Docket No. 78N–0064]

RIN 0905–AA06

Antiperspirant Drug Products for Over-the-Counter Human Use; Request for Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 20, 1993, the period for submission of comments on two citizen petitions (and a comment that disagreed with one of the petitions) requesting that the rulemaking for over-the-counter (OTC) antiperspirant drug products be reopened to include new information on aluminum compounds used in these products (58 FR 15452, March 23, 1993). FDA is taking this action in response to a request to extend the comment period for an additional 60 days to allow more time to assess references provided subsequent to the submission of one of the citizen petitions.

DATES: Written comments by September 20, 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 23, 1993 (58 FR 15452), FDA announced an opportunity for public comment on two citizen petitions and a response that disagreed with one of the petitions. The petitions and response concerned issues related to the safety of aluminum-containing and aluminum zirconium-containing antiperspirant drug products. The agency requested public comments in an effort to determine whether further study should be required to assess the safety of aluminum antiperspirants before issuing a final rule for OTC antiperspirant drug products. Interested persons were given until July 21, 1993, to submit comments.

VOL 58 ISS 136 JL 19 1993 UMI

On June 7, 1993, the Cosmetic, Toiletry, and Fragrance Association (CTFA), a trade association representing the personal care products industry, requested a 60-day extension of the comment period to allow adequate time to assess one of the citizen petitions. CTFA pointed out that citations for numerous references in the petition (Ref. 1) were not submitted to the Dockets Management Branch until May 7, 1993 (Ref. 2), and that members of the public could not adequately assess and attempt to reply to the petition until that date. Copies of the references were subsequently provided on May 14, 1993 (Ref. 3).

FDA has carefully considered the request and concurs that some reference citations were not available until May 7, 1993. The agency believes that additional time for comment is in the public interest and will allow for more useful comments to be developed. Thus, the agency considers an extension of the comment period for 60 days to be appropriate.

Interested persons may, on or before September 20, 1993, submit to the Dockets Management Branch (address above) written comments regarding these petitions and the comment on one petition. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Citizen Petition CP3, Docket No. 78N–0064, Dockets Management Branch.

(2) Comment LET16, Docket No. 78N–0064, Dockets Management Branch.

(3) Comment SUP2, Docket No. 78N–0064, Dockets Management Branch.

Dated: July 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–16981 Filed 7–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 7

[Notice No. 774; Re: Notice No. 771]

RIN 1512–AA95

Standard of Identity for Malt Liquor (91F–026P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the comment period for Notice No. 771, an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on April 19, 1993. In Notice No. 771, ATF announced it is considering amending regulations issued under the Federal Alcohol Administration Act (FAA Act) to provide a standard of identity for malt liquor. Currently, regulations under the FAA Act do not set forth a standard of identity for malt liquor, or for any other malt beverage product. This advance notice of proposed rulemaking is in response to a petition from a coalition of consumer groups seeking to establish a definite standard of identity for malt liquor.

DATES: Written comments must be received by September 17, 1993.

ADDRESSES: Send written comments to Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; ATTN: Notice No. 771.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone (202)927–8230.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1993, the Bureau of Alcohol, Tobacco and Firearms published Notice No. 771, an advance notice of proposed rulemaking in the **Federal Register** (58 FR 21126). ATF requested the public to comment on specific questions relating to the standards of identity for malt beverages. The questions are as follows:

(1) Should ATF consider establishing a standard of identity for malt liquor? If so, what if any factors relating to production, ingredients, alcoholic content, or other factors should be included in a standard of identity which would differentiate malt liquor from other malt beverages?

(2) Based on trade and consumer understanding of malt liquor, should a standard of identity for malt liquor contain a maximum or a minimum alcohol content?

(3) If ATF were to consider establishing a standard of identity for malt liquor, should it also consider establishing standards of identity for other classes and types of malt beverages in order to differentiate between the several classes and types, including beer, lager beer, ale, porter, stout, and so forth? Should alcoholic content be considered as a factor in any such standards of identity?

(4) Is the term "liquor" in "malt liquor" deceptive or inappropriate? Should ATF allow continued use of the term "malt liquor" for labeling malt beverages, or should ATF propose to eliminate its use in labeling fermented malt beverages?

The comment period for Notice No. 771 was scheduled to close on July 19, 1993. Prior to the end of the comment period ATF received a request for an extension of the comment period. This request was submitted by the National Association of Beverage Importers, Inc. (NABI). Due to the complexity of the issues raised in Notice No. 771, an extension of an additional 60 days was requested.

In consideration of the request, ATF has determined that in addition to the 90 days already allowed, an extension of an additional 60 days is appropriate. Therefore, the comment period for Notice No. 771 will be extended until September 17, 1993.

Drafting Information

The principal author of this document is Angela R. Shanks, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

Authority: This notice is issued under the authority in 27 U.S.C. 205.

Signed: July 12, 1993.

Stephen E. Higgins,

Director.

[FR Doc. 93–17035 Filed 7–16–93; 8:45 am]

BILLING CODE 4810–31–U

27 CFR Part 7

[Notice No. 775; Re: Notice No. 772]

RIN 1512-AB17

Alcoholic Content Labeling for Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the comment period for Notice No. 772, a notice of proposed rulemaking (NPRM) published in the **Federal Register** on April 19, 1993. Notice No. 772 solicits comment on an interim rule permitting the optional statement on a malt beverage label of the alcoholic content. Specifically, that notice requested comments regarding the form of the statement, type size and so forth. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues addressed in the NPRM.

DATES: Written comments must be received on or before September 17, 1993.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; ATTN: Notice No. 772.

FOR FURTHER INFORMATION CONTACT: Charles Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1993, the Bureau of Alcohol, Tobacco and Firearms (ATF) published T.D. ATF-339 in the **Federal Register** (58 FR 21228). This interim rule permits optional statements of alcoholic content on labels of malt beverages. Concurrently, ATF published Notice No. 772, April 19, 1993 (58 FR 21233) which solicits comments on the labeling requirements in that interim rule.

ATF is interested in receiving comments concerning the specific guidelines contained in the interim rule. ATF invites comments addressed to: The manner of stating alcoholic content on malt beverage labels; whether other methods such as a range of alcoholic content, or maximums or minimums should be permitted; the tolerances provided from the stated alcoholic content, the maximum and minimum type size requirements; whether specific restrictions should be imposed on the placement of alcoholic content statements; whether alcoholic content statements should be required to appear in conjunction with mandatory information; whether ATF should consider making the statements of alcoholic content mandatory label information in the future; and whether the number of such statements on a label should be limited by regulation.

The comment period for Notice No. 772 was scheduled to close on July 19, 1993. Prior to the end of the comment period ATF received a request for an extension of the comment period. This request was submitted by the National Association of Beverage Importers, Inc. (NABI). Due to the complexity of the issues raised in Notice No. 772, an extension of an additional 60 days was requested.

In consideration of the request, ATF has determined that an extension of an additional 60 days is appropriate. Therefore, the comment period for Notice No. 772 will be extended until September 17, 1993.

Drafting Information

The principal author of this document is Angela R. Shanks, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

Authority: This notice is issued under the authority in 27 U.S.C. 205.

Signed: July 12, 1993.

Stephen E. Higgins,

Director.

[FR Doc. 93-17036 Filed 7-16-93; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Illinois AMLR Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment was initiated by Illinois and pertains to revisions to the Abandoned Mined Lands and Water Reclamation Act (State Act), 20 ILCS 1920/1.01-3.08 (Formerly Ill. Rev. Stat., 1991, ch. 96 1/2, pars. 8001.01-8003.08), and to revisions to Illinois' regulations at title 62, Illinois Administrative Code (IAC), part 2501.

This document sets forth the times and locations that the Illinois AMLR Plan and proposed amendment to that Plan are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 18, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on August 13, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 3, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois AMLR Plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495

Illinois Abandoned Mined Lands Reclamation Council, 928 South Spring Street, Springfield, Illinois 62704, Telephone: (217) 782-0588

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for

VOL 58 ISS 136 JL 19 1993 UMI

reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Illinois AMLR Plan on June 1, 1982. Information pertinent to the general background of the Illinois AMLR Plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning plan amendments are identified at 30 CFR 913.25.

The Secretary adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated July 2, 1993 (Administrative Record No. IL–600–AML), the Illinois Abandoned Mine Lands Reclamation Council (Council) submitted a proposed amendment to the Illinois AMLR Plan on its own initiative, as provided for by 30 CFR 884.15. Illinois revised section 2.11 of the State Act added new section 2.12 to the State Act, and added new section 2501.37 to the Council's regulations at 62 IAC part 2501.

(1) Section 2.11 Non-Coal Reclamation

The revision to section 2.11 will be enacted through Illinois Senate Bill (SB) 632. SB–632 passed both chambers of the Illinois General Assembly and is awaiting signature by the Illinois Governor. The revision to section 2.11 extends the Council's authority from August 14, 1994, to August 31, 1999, for making non-coal reclamation expenditures.

(2) Section 2.12 Statement of Reclamation

New section 2.12 was enacted, effective September 9, 1991, to provide public notice of reclamation completed by the Council. The full text of this new section reads "Statement of Reclamation. Following reclamation, the Council shall file a Notice of Reclamation in the office of the Recorder in the county in which the reclaimed land lies. The Notice of Reclamation shall identify the land reclaimed, the adverse effects of past mining on the land, and briefly describe the reclamation. The Notice of Reclamation shall serve as perpetual notice to all concerned that the land has been mined and reclaimed, and provide that further information may be obtained by contacting the Council. This Section shall apply to all lands where reclamation is completed after July 1, 1991."

(3) 62 IAC 2501.37 Notice of Reclamation

New section 2501.37 was adopted, effective May 26, 1992, to implement section 2.12 of the State Act. Subsection (a) includes all the language in section 2.12 of the State Act with the exception of the last sentence, subsection (b) specifies the conditions for which Notices of Reclamation shall be filed, and subsections (c) and (d) specify the conditions for which Notices of Reclamation shall not be filed.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14, OSM is now seeking comment on whether the amendment proposed by Illinois satisfies the applicable requirements of 30 CFR 884.14 for the approval of State reclamation plan amendments. If the amendment is deemed adequate, it will become part of the Illinois AMLR Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on August 3, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from section 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent

allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–16996 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of February 23, 1993 (Administrative Record No. IND–1242), and changes published in the Indiana Register on June 1, 1993, Indiana amended a proposed program amendment which was originally submitted on August 8, 1992 (Administrative Record Number IND–1126). The amendment (Program Amendment 92–4) consists of proposed modification to the Indiana Surface Mining Rules concerning coal extraction incidental to extraction of other minerals. The amendment is intended to establish criteria and procedures for use in determining whether an operation qualifies initially, and on a continuing basis, for an exemption from permitting.

This document sets forth the times and locations that the Indiana program, program amendment 92–4, and the changes to the proposed amendment are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on August 3, 1993.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. Copies of the Indiana program, the proposed amendment and changes, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment and changes by contacting OSM's Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, Indiana 46204. Telephone: (317) 226–6166

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, Indiana 46204. Telephone: (317) 232–1547

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the July 26, 1982 **Federal Register** (47 FR 3207). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendment

By letter dated February 23, 1993 (Administrative Record No. IND–1242), Indiana submitted proposed changes to Indiana program amendment 92–4 which was originally submitted on August 8, 1992 (Administrative Record Number IND–1126). Indiana published its final changes to amendment 92–4 in the Indiana Register on June 1, 1993 (vol. 16, no. 9, pp. 2142–2146).

Proposed Program Amendment 92–4 is the same as the August 8, 1992, submittal except for minor wording and notation changes and the following substantive changes:

1. 310 IAC 12–1–6(e) Application Requirements and Procedures

a. New subdivision 6(e)(3) is added as a counterpart to 30 CFR 702.11(e)(3) to provide that if the director of IDNR fails to provide an applicant with the determination as specified in subdivision 6(e)(1) of subsection 6(e), an applicant who has not begun may commence coal extraction pending a determination on the application unless the director of IDNR issues as interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

b. Subsection 6(f) has been revised to correct a citation from "310 IAC 0.5–1–

VOL 58 ISS 136 JL 19 1993 UMI

3(a)" to "310 IAC 0.6–1–4." Also, new subdivision 6(f)(2) is added as a counterpart to 30 CFR 702.11(f)(2) to provide that a petition for administrative review filed under 310 IAC 0.6–1–4 shall not suspend the effect of a determination under subsection 310 IAC 12–1–6(e).

2. 310 IAC 12–1–7 Contents of Application for Exemption

a. The first sentence in this section is being revised to clarify that the list of items included in section 7 is the minimum information needed in the application and that more information may be required.

b. A new clause is added at the end of section 7, subsection 7(17), which emphasizes the public nature of the application and reads as follows: "Information collected under the provisions of this section is subject to the public availability of information as described in 310 IAC 12–3–17."

3. 310 IAC 12–1–9 Conditions of Exemption and Right of Inspection and Entry

a. Subsection 9(1) is being amended to clarify that the specified information necessary to verify the exemption is the minimum information needed and that more information may be required.

b. Subsection 9(3) is being amended to add a reference to 310 IAC 12–1–6(e)(3) (see item 1(a) above) as a counterpart to the Federal reference to 30 CFR 702.11(e)(3) as cited at 30 CFR 702.15(c).

4. 310 IAC 12–1–11 Revocation and Enforcement

Subsection 11(d) is amended to change a citation from "310 IAC 12–0.6–1–3(a)" to read "310 IAC 12–0.6–1–3."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the proposed changes to the amendment proposed by Indiana satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicate under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–16995 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FR–4679–9]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on July 28, 1993 from 9:30 a.m. to 6 p.m., and on July 29, 1993 from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place at the Washington Hilton Hotel at 1919 Connecticut Avenue NW., Washington, DC 20009 (202) 483–3000.

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Marilyn Goode at EPA's Office of Solid Waste at (202) 260–8104.

SUPPLEMENTARY INFORMATION: The Agency has selected sixteen individuals

to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
John Jewett (Solite Corp.)
Robert Wescott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Melinda Taylor (Consultant)
Roy Brower (State of Oregon)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be Jeffery Denit, Acting Director of the Office of Solid Waste, and Andy Bellina from EPA Region II. In addition, any interested member of the public may attend the meeting.

Dated: July 13, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–16897 Filed 7–16–93; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–202, RM–8229]

Radio Broadcasting Services; Lewiston, Idaho and Clarkston, Washington

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lewiston/Clarkston Christian Broadcasters seeking the allotment of Channel 286A to Lewiston, Idaho, as that community's fourth local FM service, and Channel 275A to Clarkston, Washington, as that community's second local FM service. The proposed coordinates for Channel 286A at Lewiston are North Latitude 46–24–42 and West Longitude 117–01–12. The proposed coordinates for Channel 275A at Clarkston are North Latitude 46–24–42 and West Longitude 117–03–06.

DATES: Comments must be filed on or before September 3, 1993, and reply comments on or before September 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–202, adopted June 21, 1993, and released July 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16978 Filed 7–16–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–188, RM–8278]

Radio Broadcasting Services; Westbrook, Maine

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Buckley Broadcasting Corporation of Maine proposing the substitution of Channel 265B1 for Channel 265A at Westbrook, Maine, and modification of the license for Station WYNZ–FM to specify operation on the higher class channel. Canadian concurrence will be requested for this allotment at coordinates 43–42–15 and 70–06–00. We shall propose to modify the license for Station WYNZ–FM in accordance with section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 3, 1993, and reply comments on or before September 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, Fisher Wayland Cooper & Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1170.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 6334–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–188 adopted June 18, 1993, and released July 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16979 Filed 7-16-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-191, RM-8068]

Television Broadcasting Services; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a joint petition for rule making filed on behalf of the University of Southern Colorado, licensee of reserved noncommercial educational Station KTSC (TV), Channel #8, Pueblo, Colorado, and Sangre de Cristo Communications, Inc., licensee of commercial Station KOAA-TV, Channel 5, Pueblo, seeking to exchange their channels of operation and modification of their licenses accordingly. Coordinates used for both proposed Channel #5 and Channel 8 at Pueblo are those of a shared electronics site on Baculite Mesa at coordinates 38-22-25 and 104-33-27.

Petitioners' modification proposal is consistent with the provisions of § 1.420(h) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel #5 or Channel 8 at Pueblo.

DATES: Comments must be filed on or before September 3, 1993, and reply comments on or before September 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Wayne Coy, Jr., Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., suite 600, Washington, DC (counsel for the University of Southern Colorado); and Kevin F. Reed, Esq., Dow, Lohnes and Albertson, 1255 23rd Street, NW., suite 500, Washington, DC 20037 (counsel for Sange de Cristo Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-191, adopted June 21, 1993, and released July 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16977 Filed 7-16-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-186, RM-8258]

Radio Broadcasting Services; Half Way and Ozark, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by Ozark Mountain Broadcasting, Inc. ("OMB") and KYOO Broadcasting Company ("KBC"). OMB requests substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF (FM) to specify operation on Channel 225C2. The coordinates for Channel 225C2 are 36-58-45 and 93-26-38. KBC proposes the substitution of Channel 256A for Channel 226A at Half Way, Missouri, and modification of the construction permit for Station KYOO-FM accordingly. The coordinates for Channel 256A are 37-44-35 and 93-15-00. We shall propose to modify the construction permit for Station KZPF (FM) in accordance with section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 3, 1993, and reply comments on or before September 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: William J. Pennington, III, Post Office Box 2506, Pawleys Island, South Carolina 29585.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-186, adopted June 18, 1993, and released July 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 93–16980 Filed 7–16–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 93–61; DA 93–812]

Regulations for Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extension of time.

SUMMARY: On April 9, 1993, the Commission released a Notice of Proposed Rule Making, FCC 93–141, concerning regulations for automatic vehicle monitoring systems.

In order to provide adequate time for commenters to submit reply comments, this Order extends the deadlines for reply comments.

DATES: Reply comments must be filed on or before July 29, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

Adopted: July 6, 1993.
Released: July 7, 1993.

By the Chief, Land Mobile and Microwave Division:

1. On March 11, 1993, the Commission adopted a Notice of Proposed Rule Making in the above-captioned proceeding.[1] The specified deadlines for comments and reply comments were June 29, 1993 and July 14, 1993, respectively. On June 28, 1993, the Part 15 Coalition requested that we extend the date for filing reply comments to August 15, 1993. In support of their request, the Part 15 Coalition indicates that the 15 days now provided for filing reply comments from the date comments are due is inadequate to acquire the original comments, prepare a response and coordinate a reply with all of the part 15 Coalition members.

2. In addition to the arguments presented by the part 15 Coalition, we note that we received 85 comments in response to the *Notice* approximately 30 of which are substantial comments involving technical issues requiring time consuming evaluation. We therefore agree that the public interest would be served by providing interested parties with some additional time to perform technical analyses and, where possible, develop an industry consensus. In our view, however, a thirty (30) day extension on the reply comment date is excessive, and would cause an unacceptable delay in our regulatory processes.

3. Accordingly, it is ordered, pursuant to Section 0.331 of the Commission's Rules, 47 CFR 0.331, the Motion for Extension of Time filed by the part 15 Coalition is GRANTED to the extent indicated herein and otherwise denied, and that the deadline for filing reply comments in response to the subject *Notice of Proposed Rule Making* is extended to July 29, 1993.

Federal Communications Commission.
Edward R. Jacobs,
Deputy Chief, Land Mobile and Microwave Division, Private Radio Bureau.
[FR Doc. 93–16840 Filed 7–16–93; 8:45 am]
BILLING CODE 6712–01–M

[1] Notice of Proposed Rule Making, PR Docket No. 93–61, 58 FR 21276, April 20, 1993, 8 FCC Rcd 2502 (1993).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Four California Butterflies as Endangered and Continuation of Status Reviews

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a pending petition to add four butterflies to the List of Endangered and Threatened Wildlife. A petition to list four species has been received by the Service. The petition was found to present substantial information for one of the four butterfly species (Laguna Mountains skipper) indicating that the requested action may be warranted. The petition did not provide supporting information on three species of butterflies: Hermes copper butterfly, Thorne's hairstreak butterfly, and Harbison's dun skipper. However, the Service has found that substantial information exists to support a decision that listing may be warranted for these three species based on available information. Therefore, through issuance of this document, the Service is continuing a formal review of the status of all four species.

DATES: The finding announced in this document was made on July 12, 1993. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Gilbert, Carlsbad Field Office, at the above address (619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiates a status review on that species. A status review may also be independently initiated by the Service (16 U.S.C. section 1533 (b)(3)(A)).

On June 4, 1991, the Service received a petition dated May 27, 1991, from David Hogan of the San Diego Biodiversity Project to list the Laguna Mountains skipper (*Pyrgus ruralis lagunae*), Hermes copper butterfly (*Lycaena hermes*), Harbison's dun skipper (*Euphyes vestris harbisoni*), and Thorne's hairstreak butterfly (*Mitoura thornei*) as endangered species. Mr. Hogan's petition to list four butterfly species presented substantial information indicating that listing may be warranted for the Laguna Mountains skipper. This document announces a positive 90-day finding for the Laguna Mountains skipper (*Pyrgus ruralis lagunae*).

Mr. Hogan's petition failed to provide supporting data for three of the four

VOL 58 ISS 136 JL 19 1993 UMI

petitioned taxa: Hermes copper butterfly, Harbison's dun skipper, and Thorne's hairstreak butterfly. The petition stated that additional information on these four species would be forwarded to the Service. No additional information was received. Thus, the petition did not present substantial information indicating that the petitioned action for the Hermes copper butterfly, Harbison's dun skipper, and Thorne's hairstreak butterfly may be warranted. The Service announces a negative 90-day finding for the petition to list these three taxa as endangered. However, the Service currently considers these three butterflies to be category 2 candidates for listing (category 2 candidates are taxa for which information now in possession by the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule).

The Service, therefore, will continue to conduct status reviews on all four butterflies. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned actions are warranted within 1 year of the receipt of a petition that presents substantial information.

In his petition, Mr. Hogan stated that the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) is imperiled by the destruction of this insect's host plant (*Horkelia bolanderi* ssp. *clevelandi*) by overgrazing and trampling within the Cleveland National Forest. Mr. Hogan requested that the Service consider emergency listing procedures for the Laguna Mountains skipper.

Pyrgus ruralis ranges from western Canada south to southern California in montane habitats. The Laguna Mountains skipper (*Pyrgus ruralis lagunae*) (Scott 1981) is a morphologically distinct and geographically isolated subspecies restricted to the Laguna Mountains and Mount Palomar of San Diego County, California (Scott 1981). The nearest *P. ruralis* populations occur several hundred miles to the north in the extreme southern Sierra Nevada Mountains (Brown 1991).

The Laguna Mountains skipper subspecies is restricted to a few open meadows in yellow pine forest between 5,000 and 6,000 feet (1,524 and 1,829 meters), in the vicinity of Mount Laguna and Palomar Mountain (Brown 1991). Six separate populations are believed to have occurred in the 1950s and 1960s (Murphy 1990). The Laguna Mountains skipper is presently only known from two or three locations (Brown 1991). The known distribution of this butterfly near Mount Laguna lies within a 5 mile (8 kilometer (km)) radius. The majority of specimens have been collected from a single location in the Laguna Mountains. The Mount Palomar population is very small; only five specimens have been reported from over the past century, and the most recent records are from 1991 (Brown 1991). Old specimen information indicates that the Laguna Mountains skipper formerly may have occurred in the mountain meadows throughout San Diego County (Wright 1930, Scott 1981). No records for the butterfly are known to occur from other southern California counties (Murphy 1990).

The Laguna Mountains skipper is found in association with open meadows within pine forests (Emmel and Emmel 1973, Murphy 1990). Life history information for this butterfly has not been documented; however, it is believed that the eggs are laid on the leaves of *Horkelia bolanderi* ssp. *clevelandi* and that the larvae feed on the leaves and overwinter on this host plant. Oviposition and rearing have been observed on this plant (Brown 1991). *H. bolanderi* ssp. *clevelandi* is a small herbaceous perennial plant in the rose family (Rosaceae) (Munz 1974). This plant occurs in mesic places in yellow pine forests at 4,000 to 7,500 feet (1,219 to 2,286 meters) from the San Jacinto Mountains to northern Baja California, Mexico. In San Diego County, this plant is recorded as occurring infrequently in moist areas beneath montane coniferous forests from Mount Palomar and the Laguna Mountains (Beauchamp 1986). Additionally, this plant is fairly common in the Sierra de Juarez of northern Baja California, Mexico (Brown 1991).

Prior to a 1983 rediscovery, the Laguna Mountains skipper had not been observed since 1972. This subspecies has become increasingly less common and has rarely been collected over the last 2 decades. Few extant colonies exist, and, based on the collection data, the population numbers are estimated to be small (Brown 1991, Murphy 1990). Because of its restricted range and its continued decline in numbers, the Laguna Mountains skipper is "probably the most sensitive and vulnerable butterfly species in San Diego County" and is believed to be "a strong candidate for immediate inclusion on the endangered species list" (Brown 1991, Murphy 1990).

Overgrazing is thought to be an important threat to the Laguna Mountains skipper (Murphy 1990). Cattle may graze on the host plant and/or trample the plants, eggs, and larvae. All of the locations where the subspecies presently occurs are within actively used grazing allotments. Six separate populations in the Mount Laguna area have been documented, including Big Laguna, Little Laguna, East Laguna, Laguna Lake, Boiling Springs, and Horse Heaven Springs. Currently, only a few meadow localities are known to be occupied. These locations occur within the Cleveland National Forest and encompass approximately 700 acres of meadow habitat within the known range of this species.

The Hermes copper butterfly (*Lycaena hermes*) (Edward, 1870) is known only from western San Diego County and a portion of adjacent northwestern Baja California, Mexico (Brown 1991). Its present known range is quite restricted, extending from approximately 50 miles (80 km) north of the International Border and east 45 miles (72 km) inland from the coast to Guatay and Pine Valley. It occurs south of the border for almost 100 miles (160 km) and has been found 18 miles (29 km) south of Santa Tomas in Baja California Norte, Mexico (Murphy 1990). Documented localities for Hermes copper butterfly are known to exist including El Cajon, Santee, Flynn Springs, Blossom Valley, Tecate, Suncrest, Mission Gorge, Dulzura, Pine Valley, Guatay, and Old Viejas Grade (Brown 1991).

The Hermes copper butterfly occurs throughout the chaparral belt and into the transitional zone at the western edge of the Laguna Mountains (Brown 1991). The species is restricted to southern mixed chaparral and coastal sage scrub communities where its larval host plant, *Rhamnus crocea* (redberry) (Brown 1991), occurs. These habitat types range from near sea level along the coast to about 1,250 feet (381 meters) in elevation at the western edge of the Laguna Mountains. Colonies of Hermes copper butterflies are found in close association with the larval host plant. However, the host plant extends well beyond the range of the Hermes copper butterfly. No explanation for the restricted distribution of this butterfly is presently known.

The colonies of Hermes copper butterflies were considered to be quite stable and numerous in San Diego County in 1963 (Thorne 1963). However, a history of extirpation of colonies has occurred, due to the location of colonies near the expanding City of San Diego. The Hermes copper butterfly has lost a significant portion of its known range; presently it is estimated to occupy less than half of its

former range. Continued development in San Diego County threatens this species (Brown 1991). Additionally, fire plays an integral role in the chaparral and coastal sage scrub communities of southern California. Fire has been documented as eliminating large stands of *Rhamnus crocea*. The largest colony of Hermes copper butterflies was destroyed by fire in 1982 (Murphy 1990). The small degree of flight activity of this butterfly is believed to make natural recolonization a very slow process (Murphy 1990, Brown 1991).

The Hermes copper butterfly has been collected at 35 localities in the United States and 4 localities in Mexico. Colonies are isolated from each other, and adults exhibit limited vagility and are almost always found in the vicinity of the host plant. Thorne (1963) indicated that colonies are stable and seldom vary in size. Brown (Dr. John Brown, Entomologist, San Diego, California, pers. comm., 1992) estimates that few colonies exceed 50 individuals in size. Brown (1991) regards the Hermes copper butterfly to be highly sensitive and vulnerable to extirpation.

Euphyes vestris is a polytypic species that ranges throughout much of the United States, but is highly localized and occurs in isolated and disjunct populations (Brown 1991). Harbison's dun skipper (*Euphyes vestris harbisoni* Brown and McGuire, 1983) is a San Diego and Orange County endemic subspecies that occurs in scattered disjunct colonies (Orsak 1977, Brown and McGuire 1983). It is phenotypically distinct and geographically isolated from all other populations of *E. vestris* (Emmel and Emmel 1973, Brown 1983). It occurs in disjunct colonies throughout western San Diego County extending into the Santa Ana Mountains in Orange County (Orsak 1977). It is not known to occur in Baja California, Mexico (Brown 1991). Its range is restricted in part by the distribution of the larval host plant, *Carex spissa* (San Diego sedge) (Brown 1983).

Typical habitat for this species in southern California consists of riparian oak woodland in a matrix of chamise chaparral or southern mixed chaparral (Brown 1991). Moist conditions must occur to support the larval host plant. *Carex spissa* has a disjunct and limited distribution from San Luis Obispo County, California, into Baja California, Mexico (Munz 1974). Brown (1991) surveyed known locations of the San Diego sedge in 1982. Harbison's dun skipper occurred at nearly all locations where the plant was found in considerable numbers. The butterfly was not located in areas that did not contain *Carex spissa* (Brown 1982). The distribution of Harbison's dun skipper is from Silverado Canyon in southern Orange County south to the International Border in the vicinity of Dulzura, San Diego County, California. Localities include areas of Dulzura, Flinn Springs, Old Viejas Grade, Otay Mountain, the northern slope of Tecate Peak, the Fallbrook area, east of Valley Center, Ramona area, and near San Pasqual (Brown 1991).

The Harbison's dun skipper is an exceptionally rare insect that occurs in small isolated colonies (Brown 1991). The remaining colonies are in areas that appear to be removed from development for the present. However, rapid urban development in inland areas such as Rancho Bernardo, Escondido, and Fallbrook is occurring and poses a future threat to this subspecies. Various human activities modify or disrupt the spring and seep habitat of Harbison's dun skipper and thus reduces habitat quality for the butterfly (Murphy 1990). Habitat loss through development, introduction of pollutants, and competition from invasive non-native plants have resulted in the loss of the host plant and thus Harbison's dun skipper. Additionally, adverse affects on the host plant may occur as a result of drought or scouring floods.

The Thorne's hairstreak butterfly (*Mitoura thornei*) (Brown 1983) is specifically associated with the endemic *Cupressus forbesii* (Tecate cypress) and is only known from the vicinity of Otay Mountain in southwest San Diego County, California. *Cupressus forbesii* occurs on Otay Mountain, Coal Canyon in Orange County, Tecate Peak near Guatay in San Diego County, and several disjunct groves that extend 150 miles (241 km) south into Baja California, Mexico (Griffin and Critchfield 1972). The Thorne's hairstreak butterfly has only been located in the vicinity of Otay Mountain (Brown 1991).

The taxonomic status of this butterfly is the subject of disagreement. It is considered a distinct species by several authors (Brown 1983, Garth and Tilden 1988, Ferris 1989), while others suggest that it be considered a subspecies of *Mitoura grynea* (Scott 1986) or *Mitoura loki* (Shields 1984). Regardless of the outcome of taxonomy discussions, it is recognized as a biologically distinct butterfly that is geographically isolated from its closest relatives (Brown 1991).

The Thorne's hairstreak butterfly's larval host plant, *Cupressus forbesii*, is a fire dependent species. Fire initiates cone opening and seed dispersal. Zedler (1977) found that *Cupressus forbesii* requires approximately 25 years to reach reproductive maturity. Thus, an increase in fire frequency to less than 25 year intervals adversely affects reproduction of both *Cupressus forbesii* and the Thorne's hairstreak butterfly. Fire frequencies are affected by both fire suppression techniques and human-caused fire (e.g., fires that result from gun and rifle target practice, campfires, arson, and carelessness). Fire suppression can result in a build up of fuel materials resulting in large catastrophic, very hot burning fires. Conversely, human-caused fires can result in an increased fire frequency. Based on its limited geographic distribution and its vulnerability to ecological catastrophic events, Brown (1991) included this species as a sensitive and declining butterfly of San Diego County.

The Service has been soliciting information on the status of the Hermes copper butterfly since 1984. In the most recent Animal Notice of Review, published November 21, 1991 (56 FR 58804), the Hermes copper butterfly is included as a category 2 candidate. Category 2 candidates are taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. The Service has been soliciting status information on the Laguna Mountains skipper, Harbison's dun skipper, and Thorne's hairstreak butterfly since the publication of the January 6, 1989, Animal Notice of Review (54 FR 554). These three species are included in the 1991 notice as category 2 candidates.

Based on their remaining localized and restricted ranges, the documented decline in abundance and known locations, and the varied threats to remaining habitat, the Service believes that the information currently available supports the claims presented by the petitioner. As a result, the Service finds that substantial information exists to indicate that listing of the Laguna Mountains skipper, Hermes copper butterfly, Harbison's dun skipper, and Thorne's hairstreak butterfly as endangered may be warranted. The Service will carefully assess any emergency posing a significant risk to the well-being of the Laguna Mountains skipper, as requested by the petitioner.

With the publication of this finding, the Service announces its intention to continue to conduct a formal status review for each of the above species. The Service will consider any additional data, comments, and suggestions from the public, other governmental agencies, the scientific

community, industry, or any other interested party concerning the status of these species.

This finding was prepared by the staff of the Carlsbad Field Office and reviewed by the Portland Regional Office. The finding is based on scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time.

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Author

This document was prepared by Nancy Gilbert, Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: July 12, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–17026 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Finding on a Petition to Change the Status of Any Grizzly Bear Population in the San Juan Mountain Range of Colorado From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Threatened and Endangered Wildlife. The Service finds that the petitioners did not provide substantial information to show that reclassification of the alleged grizzly bear (*Ursus arctos horribilis*) population in the San Juan Mountain range of Colorado is warranted.

DATES: The finding announced in this notice was approved on July 10, 1993. Comments and materials may be submitted until further notice.

ADDRESSES: Questions or comments concerning this finding should be sent to the Colorado State Supervisor, U.S. Fish and Wildlife Service, 730 Simms Street, room 290, Golden, Colorado 80401. The petition, finding, and supporting data are available for public inspection by appointment during normal business hours at the above office.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, State Supervisor, at the above address or telephone (303) 231–5280.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

A petition dated July 11, 1992, was received by the Service from the Sierra Institute and Life Net on July 15, 1992. The petition requests the Service to reclassify the grizzly bear (*Ursus arctos horribilis*) from threatened to endangered in the San Juan Mountain range of southwestern Colorado. This finding responds to the subject petition.

The petitioners indicated the grizzly bears in the San Juan Mountain range are imperiled by their small population size, increasing economic and recreational development, and inadequacy or lack of governmental protection of the grizzly bears and their habitat. The economic and recreational development listed by the petitioners included road construction and use, and land management activities, livestock grazing, mining, land development, and ski resort development.

While the petition referenced a wide variety of reports of sightings of grizzly bears, habitat analysis of the San Juan Mountain range, hair samples analysis, and aerial surveys, the Service maintains that none of these sources contained conclusive biological information indicating that any grizzly bears still exist in the subject area. The Colorado Division of Wildlife and the Service have investigated all the purported grizzly bear incidences which have been reported, including photographs of tracks and sightings. To date, none have constituted persuasive proof of the existence of grizzly bears in Colorado.

The San Juan Mountain range area in Colorado is included in the draft revised Grizzly Bear Recovery Plan as an evaluation area (U.S. Fish and Wildlife Service 1992)—an area that needs to be evaluated to determine its feasibility as

a recovery area. However, the Service cannot honor a request to reclassify an alleged remnant grizzly bear population in the San Juan Mountain range based on inclusive evidence of the presence of grizzly bears. Any grizzly bear population that may exist in the San Juan Mountain range remains listed as threatened and retains protection under the Act.

After a review of the petition, the Service found that the petitioners did not provide any new or substantial evidence that their petitioned action to reclassify the grizzly bear in the San Juan Mountain range from threatened to endangered may be warranted.

References Cited

U.S. Fish and Wildlife Service. 1992. Grizzly Bear Recovery Plan, second review draft. U.S. Fish and Wildlife Service, Missoula, Montana. 200 pp.

Author

This notice was prepared by José Bernardo Garza (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 10, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93–17027 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition To List the California Red-legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to amend the List of Endangered and Threatened Wildlife. After review of all available scientific and commercial information, the Service has determined that, pursuant to the Endangered Species Act of 1973, as amended (Act), listing the California red-legged frog is warranted. Accordingly, the Service will publish promptly a proposed regulation to list this species.

DATES: The finding reported in this document was made on July 13, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Written comments and materials concerning this petition finding may be submitted to the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. The petition, finding, supporting data, and comments received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter C. Sorensen, Sacramento Field Office (see ADDRESSES section) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that a finding be made for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information within 12 months of the date of receipt of the petition. The finding must indicate whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**. If the finding is that the action is warranted, section 4(b)(3) also requires a prompt publication in the **Federal Register** of a proposed regulation to implement such action.

In a petition dated January 15, 1992, which was received by the Service on January 29, 1992, Mr. Dan Holland and Drs. Mark Jennings and Marc Hayes requested that the Service list the California red-legged frog (*Rana aurora draytonii*) as an endangered or threatened species. The petition specified endangered or threatened status by drainages (watersheds) within the range of the species. The petition cited numerous threats to the species, including loss and degradation of wetland and terrestrial habitat, predation by introduced species, harvest, habitat fragmentation, and drought. The Service made an administrative 90-day finding on August 12, 1992, which concluded that the petition contained substantial information indicating that the petitioned action may be warranted. An announcement of this finding was published in the **Federal Register** on October 5, 1992 (57 FR 45761).

The California red-legged frog was included as a category 1 candidate in the November 21, 1991, Animal Notice of Review (56 FR 58804) with a listing priority number of 3. Category 1 candidates are species for which sufficient information is currently available to the Service to support a proposed rule to list them as endangered or threatened. The Service finds that the petitioned action is warranted due to habitat loss and degradation, predation, inadequate regulatory mechanisms, past drought, and recreational activities, which imperil the continued existence of the red-legged frog. Accordingly, the Service will promptly publish a proposed regulation to list the California red-legged frog.

Author

The primary author of this document is Peter C. Sorensen, Sacramento Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 13, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–17050 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–AF06

Designated Critical Habitat; Northern Right Whale

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings on a proposal to designate critical habitat for the Northern Right Whale and extension of the comment period.

SUMMARY: On May 19, 1993 (58 FR 29186), NMFS proposed regulations to designate critical habitat for the northern right whale. The areas proposed for designation are portions of Cape Cod Bay, Stellwagen Bank and waters adjacent to the coasts of Georgia and Florida.

NMFS has scheduled public hearings on the proposal. Anyone wishing to make a presentation at a public hearing should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak a time limit may be imposed.

DATES: A public hearing is scheduled for August 24, 1993, beginning at 2 p.m. until all comments have been heard, at the Canaveral Port Authority, 200 George King Boulevard, Port Canaveral, Florida. Another public hearing is scheduled for August 25, 1993 beginning at 7 p.m. until all comments have been heard, at the Georgia Department of Natural Resources, 1 Conservation Way, Brunswick, Georgia.

The comment period on this proposed action is extended to August 31, 1993, to allow commenters the opportunity to respond to concerns voiced at the public hearings.

ADDRESSES: Send written comments to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ziobro, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (301–713–2322); or

Terry Henwood, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813–893–3366)

Dated: July 13, 1993.

Wiliam W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–16986 Filed 7–16–93; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 227

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition to List North and South Umpqua River Sea-run Cutthroat Trout

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to list North and South Umpqua River sea-run cutthroat trout (*Oncorhynchus clarki clarki*) and to designate critical habitat under the Endangered Species Act of 1973 (ESA). In accordance with section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. Therefore, NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data regarding this action.

DATES: Comments and information must be received by September 17, 1993.

ADDRESSES: Copies of the petition are available from, and comments should be submitted to: Merritt Tuttle, Chief, Environmental and Technical Services Division, NMFS, 911 NE. 11th Avenue, room 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 230–5430 or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–2319.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

Petition Received

On April 1, 1993, the Secretary of Commerce received a petition from the Oregon Natural Resources Council, the Umpqua Valley Audubon Society, and The Wilderness Society to list North and South Umpqua River sea-run cutthroat trout, and to designate critical habitat under the ESA. As required for a petition to list a Pacific salmon stock (May 18, 1992, 57 FR 21056), the petition presents information on and discusses whether the petitioned population qualifies as a "species" under the ESA, in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612). The Assistant Administrator for Fisheries, NOAA, has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted. Under section 4(b)(3)(B) of the ESA, this determination requires that a review of the status of the North and South Umpqua River sea-run cutthroat trout be conducted to determine if the petitioned action is warranted.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the present and historic status of the North and South Umpqua River sea-run cutthroat trout. NMFS is also soliciting information on whether or not this stock qualifies as a "species" under the ESA (November 20, 1991, 56 FR 56612). Copies of the petition are available (see **ADDRESSES**).

It is important to note that, unlike critical habitat designation, the determination to list a species is based solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such a determination (50 CFR 424.11(b)).

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the North and South Umpqua River sea-run cutthroat trout (see also October 15, 1991, 56 FR 51684). Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should also be identified if such areas are essential to the recovery of the species. Essential features should include, but are not limited to (1) space for individual and population growth, and for normal behavior; (2) food, water air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding reproduction, rearing of offspring; and

generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications, and (2) the commenter's name, address, and associated, institution, or business.

Dated: July 7, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 93–16973 Filed 7–16–93: 8:45 am]

BILLING CODE 3510–22–M

VOL 58 ISS 136 JL 19 1993 UMI

Notices

Federal Register
Vol. 58, No. 136
Monday, July 19, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Camp Creek Timber Sale; Salmon National Forest, Lemhi County, Idaho

AGENCY: Forest Service, Agriculture.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, and regenerate new stands of trees in portions of Arnett Creek, Rapps Creek, Jefferson Creek, and Camp Creek. Currently the largest proposal is to harvest timber on approximately 1,250 acres of forested land and to construct approximately 30 miles of road suitable for hauling forest products. Other alternatives will be analyzed that propose harvesting fewer acres of forest and constructing fewer miles of road. It is also possible that additional alternatives which propose greater amounts of harvest area and miles of road construction could be proposed and analyzed. These actions have a proposed implementation date of 1996, and are designed to produce short-term and long-term timber outputs through timber management. The project area is located approximately eighteen air miles northwest of Salmon, Idaho. All of the proposed actions are located within the 12,118 acre Haystack Mountain Roadless Area. This area is now listed as No. 13–507 on the Salmon National Forest.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received by September 2, 1993.

ADDRESSES: Send written comments to Salmon National Forest, P.O. Box 729, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Lynn Bennett, Environmental Coordinator, Salmon National Forest, phone: (208) 756–5132.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Salmon National Forest Plan (approved January 11, 1988), which provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the Desired Future Condition for the area being analyzed. This proposed action is designed to emphasize production of short-term and long-term timber outputs through timber management. The Salmon National Forest Land and Resource Management Plan assigned the potentially affected area a 5B Management Area prescription. For a detailed description of the above Management Area prescriptions, refer to Salmon National Forest Land and Resource Management Plan pages IV–129 through IV–133.

The proposed actions will occur in Management Area 5B. The emphasis for the proposed actions in this area is on producing long term timber outputs through a moderate level of investment in regeneration and thinning.

Because of the controversy surrounding road construction and timber harvesting in a roadless area the Salmon National Forest Supervisor determined that the proposal may have a significant effect on the quality of the human environment and decided to prepare this environmental impact statement. The interdisciplinary team identified the following issues related to the proposed action:

1. Management of vegetation and related activities (e.g. road building and site preparation) could affect the long-term productivity of salmonid habitat in the Napias Creek drainage.

2. Management of vegetation in the Camp Creek Analysis could affect the long-term maintenance of whitebark pine old-growth unique to the analysis area.

3. Management of the vegetation resource could affect the long-term maintenance of biodiversity in the Camp Creek Analysis.

4. Vegetation management in the Camp Creek Analysis may affect long-term maintenance of elk habitat by changing: cover/forage ratios, the amount of juxtaposition of cover blocks available to elk, the vulnerability of bull elk to hunters or habitat use by elk during management activities.

5. Removing dead and dying trees can affect snag-dependent wildlife, including at least eight management indicator and/or sensitive species.

6. Vegetation management in the Camp Creek Analysis Area could affect the long-term maintenance of habitat for Threatened, Endangered or Sensitive Species.

7. The proposed Camp Creek project may after recreation, roadless and scenic attributes and affect wilderness eligibility.

8. The management of existing and new roads after the timber sale is completed may increase or decrease the road miles available for motorized recreation.

9. The affects of past and present management activities and similar actions which may occur in the reasonably foreseeable future, may change cumulative watershed effects resulting from multiple activities.

10. Management activities can affect soil physical properties and long-term soil productivity.

11. The project may contribute to the development of a long-term transportation system.

12. The project should be cost efficient and cost effective in both the short and long-term.

13. The proposed management activities may affect wetlands in the upper parts of Camp Creek and Rapps Creek.

14. Currently, the health and productivity of timber stands in the project area differ from the desired future condition and are threatened by present and potential insect and disease activity.

15. Maintenance of community stability and local customs and culture through the employment and associated economic activity related to the harvesting and processing of timber.

16. Vegetation management (including new roads and creation of openings in the forest canopy) may change livestock distribution in the Camp Creek Analysis Area.

17. Heritage Resources—The project area is encompassed by the Mackinaw Mining District. The proposed actions may affect the cultural resources in the project area.

The Forest Service is seeking information and comments from

Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. Most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this Notice in the **Federal Register**. An open-house meeting will be held in Salmon, Idaho for the purpose of identifying issues. The date, time, and location of these meetings will be published in *The Recorder-Herald* (Salmon, Idaho).

Preparation of the EIS will include the following steps.

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2 and 3 will be completed through the scoping process.

Step 5 will describe a range of alternatives developed in response to the key issues. One of these will be the "No Action" alternative, in which the existing roadless character of the Lemhi Range Roadless Area would be maintained. Other alternatives will be developed based on scoping.

Step 7 will analyze the environmental effect of the each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigaton measures will be disclosed.

The approximate boundary of the area that would be considered for proposed activities is as follows: The northern and western boundaries are Forest Service Road 61. The eastern boundary shall be defined by Forest Service Road 242. The southern boundary shall be Forest Service Road 197 where it joins Forest Service Road 242, then along Forest Service Road 197 to the junction of Forest Service Road 197 and Forest Service Road 300, then along Forest Service Road 300 to the junction of Forest Service Road 61. This area approximates the original boundary of the Haystack Mountain Roadless Area (12,118 acres).

The proposed management activities would be administered by the Cobalt Ranger District of the Salmon National Forest in Lemhi County, Idaho.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process (the next 45 days following publication of this Notice in the **Federal Register** and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in December, 1993. At that time the EPA will publish an availability notice of the Draft EIS in the **Federal Register**. The comment period of the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the availability notice in the **Federal Register**.

The Forest Service believes it is important to alter reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and so that it alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp* v. *NRDC, 435 U.S. 519, 533 (1978)* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)*. Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in final environmental impact statement.

The Salmon National Forest expects to release a draft EIS in December 1993. To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The Salmon National Forest expects to release a final EIS in May 1994. A forty-five day predecisional public comment period will occur prior to a decision by the Forest Supervisor. The Forest Supervisor for the Salmon National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision, also made available in July 1994. An availability notice of the Final Environmental Impact Statement and Record of Decision will be published by the EPA in the **Federal Register**.

Dated: July 7, 1993

John E. Burns,

Forest Supervisor, Salmon National Forest.

[FR Doc. 93–1704 Filed 7–16–93; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement for the South Lindenberg Timber Sale(s), Tongass National Forest, Alaska

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The proposed action is to harvest 55 million board feet of timber and build the associated road system. The existing Tonka log transfer facility would be used. The study area is located southwest of Petersburg, Alaska, on Kupreanof Island. It encompasses approximately 65,000 acres at elevations ranging from sea level to 3,000 feet. The area includes VCU's 437 and 439 and portions of 447 and 448. This includes townships 58, 59, 60 and 61 south, and ranges 77, 78, and 79 east, Copper River Meridian.

DATES: Comments concerning the proposal to harvest timber in the South Lindenberg study area should be received in writing by August 30, 1993. Send requests for further information or written comments to Jim Thompson, Planning Team Leader, USDA Forest

VOL
58
ISS
136
JL
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1993
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Service, P.O. Box 1328, Petersburg, AK, 99833 (907) 772–3871.

SUPPLEMENTARY INFORMATION:

1. Purpose and Scope of the Decision

The purpose of the project is to provide 55 million board feet of timber for harvest according to direction described in the Tongass Land Management Plan.

The nature of the decision to be made is whether to harvest 55 million board feet of timber from the South Lindenberg Study Area, and if so, in which locations and under what conditions. This decision will be made by Abigail R. Kimbell, the Stikine Area Forest Supervisor.

1a. Public Involvement Process

A public scoping letter will be sent to all persons who have indicated an interest in the project by responding to the Stikine Area Project Schedule, or who have otherwise notified the Stikine Area that they are interested in the South Lindenberg Timber Harvest project. Public meetings or other methods may be used to gather additional information from interested persons if necessary.

1b. Alternatives

Alternatives will include the no action alternative, and are likely to include three to five action alternatives, all of which will harvest approximately 55 million board feet of timber. The alternatives will vary according to the size and location of units, for example one alternative may spread harvest units evenly through the study area while another may concentrate the harvest in a portion of the study area. The road systems will vary with each alternative accordingly.

1c. Preliminary Issues

1. Timber Harvest Economics. Will action alternatives within the study area include timber harvest that is profitable and meet economic criteria.
2. Fish. What effects will timber harvest and road construction have on habitat used by trout and salmon?
3. Wildlife. What effects will timber harvest and related activities have on wildlife habitat?
4. Recreation. What effect will the proposed sale or sales in this area have on recreational opportunities?
5. Visual Quality. To what extent will each alternative influence the landscape character of the study area?
6. Subsistence. To what extent will each alternative affect subsistence resources and use within the study area?
7. Biodiversity. How will timber harvesting affect the biodiversity and old growth structure of Kupreanof Island?

2. Expected Time for Completion

A draft Environmental Impact Statement is projected for issuance approximately January 1955. Issuance of the Final Environmental Impact Statement is projected for July 1995.

3. Comments

Interested publics are invited to comment.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553, (1978).*

Also, environmental objections that could be raised add the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the (enter correct time period) comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers must wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for the decision is Abigail R. Kimbell, Stikine Area Forest Supervisor, Petersburg, Alaska.

Written comments and suggestions concerning the analysis and Environmental Impact Statement should be sent to Jim Thompson, ID Team Leader, P.O. Box 1328, Petersburg, AK, 99833, (907) 772–3871.

Dated: July 6, 1993.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 93–16962 Filed 7–16–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 9030518–3118; I.D. 041993A]

Projects To Provide Information on the Antarctic Marine Ecosystem; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance; correction.

SUMMARY: In notice document 93–16355, beginning on page 37465 in the issue of Monday, July 12, 1993, make the following correction:

On page 37466, in the first column, under the **DATES** caption, line 2, the date for receipt of applications for funding should be corrected to read "August 2, 1993" instead of "July 16, 1993".

Dated: July 12, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 93–17006 Filed 7–16–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research Permit No. 860 (P278E).

SUMMARY: On May 7, 1993, notice was published in the **Federal Register** (58 FR 27270) that a request for a scientific research permit to take marine mammals had been submitted by Dr. Brent S. Stewart, Hubbs-Sea World Research Institute, 1700 South Shores Road, San Diego, CA 92109.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 9, 1993, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), NMFS issued the requested permit for the above activities subject to special conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Dated: July 9, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–17012 Filed 7–16–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF EDUCATION

Meetings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meetings.

Dates: August 5–7, 1993.

Time: August 5, 1993—Subject Area Committee #2, 1 p.m.–2 p.m. (open); 2 p.m.–6 p.m. (closed); Achievement Levels Committee, 4 p.m.–6 p.m. (open). August 6, 1993—Executive Committee, 7 a.m.–8:45 a.m. (open); Full Board, 9 a.m.–11 a.m. (open); 11 a.m.–1:30 p.m. (closed). Reporting and Dissemination Committee, 1:30 p.m.–3:30 p.m. (open); Subject Area Committee #1, 1:30 p.m.–1:45 p.m. (open); 1:45 p.m.–3:30 p.m. (closed); Design and Analysis Committee, 1:30 p.m.–3:30 p.m. (open); Full Board, 3:30 p.m.–4:30 p.m. (open); Nominations Committee, 4:30 p.m.–5 p.m. (open). August 7, 1993—Ad Hoc Item Development Policy Committee, 8 a.m.–9 a.m. (open); Full Board, 9 a.m. until adjournment, at approximately 12 noon (open).

Location: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 5, two committees will be in session. The Subject Area Committee #2 will meet in partially closed session. The agenda item for the open session, 1 p.m. until 2 p.m., will be an update on the 1996 NAEP Arts Consensus Project. From 2 p.m. to 6 p.m., the meeting will be closed to the public for the committee to review the NAEP mathematics cognitive items. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The Achievement Levels Committee will meet in open session from 4 p.m. until 6 p.m. The proposed agenda includes a discussion of proposed revisions to the achievement levels policy.

On August 6, the Executive Committee will meet in open session from 7 a.m. until 8:45 a.m. Agenda items for this meeting include discussion of the House Appropriations Committee mark for NAEP for FY 1994 and the out-years; update of NAEP reauthorization; plans for addressing NAEP policy issues; and changes to NAGB by-laws.

Also on August 6, the full Board will convene in partially closed session. From 9 a.m. until 11 a.m. the meeting will be open to the public for review of the agenda, the Executive Director's Report, NAEP Update, and Board discussion of policy issues. From 11 a.m. until 1:30 p.m., the meeting will be closed to the public. Beginning at 11 a.m. until 12:30 p.m., the Board will hear a briefing on the draft report by the National Academy of Education on the evaluation of the 1992 trial state assessment. Premature disclosure of the information contained in this report may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferences. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. From 12:30 p.m. until 1:30 p.m., the Board will hear a briefing on the 1992 Writing Results by Educational Testing Service, the NAEP contractor. The presentation will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

From 1:30 p.m. until 3:30 p.m., there will be open meetings of the Reporting and Dissemination Committee, and the Design and Analysis Committee. At the same time, Subject Area Committee (SAC) #1 will hold a partially closed meeting. The SAC #1 meeting will be open from 1:30 p.m. to 1:45 p.m. for a brief discussion on the NAEP Civics procurement. From 1:45 p.m. to 3:30 p.m., the meeting will be closed to the public to permit the committee to take final action on the cognitive items for Reading, Geography, and U.S. History assessments. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might

VOL
58
ISS
136
JL
19
1993
UMI

significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The full Board will reconvene at 3:30 p.m. until 4:30 p.m. to hear a report from Subject Area Committee #2 and a presentation on criteria for national standards. The August 6 proceedings of the Board will conclude with the Nominations Committee meeting in open session from 4:30 p.m. until 5 p.m., to review the procedures to select candidates for nomination to the Board to replace members whose terms expire in 1994, and to approve the schedule of committee activities over the selection period.

On August 7, from 8 a.m. until 9 a.m., there will be an open meeting of the Ad Hoc Item Development Policy Committee. The agenda for this meeting includes an examination of Board policies related to cognitive item development and review, for the purpose of suggesting possible revisions to the policies.

At 9 a.m., the full Board will reconvene to review Board policies and to hear reports from Subject Area Committee #1, Reporting and Dissemination, Nominations, and Executive Committees. This meeting of the National Assessment Governing Board will be adjourned at approximately 12 noon.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m. A summary of the activities at each closed portion of these meetings, including related matters that are informative to the public, consistent with the policy of title 5 U.S.C. 552b(c), will be available to the public within fourteen days of the partially closed meeting.

Dated: July 14, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–17015 Filed 7–16–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

Federal Fleet Conversion Task Force; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Federal Fleet Conversion Task Force.

Date and Time: Monday, July 19, 1993, 1:30 p.m.–5 p.m., Tuesday, July 20, 1993, 9 a.m.–5 p.m.

Location: Hotel Washington, Ballroom (Lower Lobby), 515 15th Street, NW., Washington, DC 20004.

Contact: Mark Bower, Office of Domestic and International Policy, U.S. Department of Energy, Mail Stop PO–50, Washington, DC 20585, Phone: (202) 586–3891, Fax: (202) 586–4447.

Purpose of the Task Force: Established by Executive Order 12844, the Task Force is charged with the development of recommendations to:

1. Assure that federal agencies exercise leadership in promoting alternative fuels.
2. Focus federal actions to promote market impetus for the development and manufacturing of alternative fueled vehicles.
3. Aid the expansion of the refueling infrastructure necessary to support growing numbers of privately owned alternative fueled vehicles.

In addition, the Task Force will issue a public report within 90 days, setting forth a recommended plan and schedule of implementation and, no later than one year from the date of this order, file a report on the status of the fleet conversion effort.

Agenda

July 19, 1993

1:30 p.m.

Welcome and Introductory Remarks
- Garry Mauro, Task Force Chair, Texas Land Commissioner
- Susan Tierney, Task-Force Vice-Chair, Assistant Secretary, Policy, Planning and Program Evaluation, U.S. Department of Energy

1:45 p.m.–2:00 p.m.

Presentation of Objectives and Desired Work Product for Task Force
- Tom Henderson, Special Assistant to the Task Force Chair

2:00 p.m.–3:30 p.m.

Presentation of Reports and Recommendations of Working Groups by Co-Chairs

3:30 p.m.–3:45 p.m.

Break

3:45 p.m.–4:15 p.m.

Presentation of Data for Prioritizing Geographical Areas for Program Implementation
- Federal Fleet Data
- Air Quality Status
- Refueling Infrastructure
- State and Local Programs

4:15 p.m.–5:00 p.m.

Presentation of Draft Task Force Report

July 20, 1993

9:00 a.m.–9:15 a.m.

Presentation of Regional Alternative Fuel Strategy by Alternative Fuels User Group
- Metropolitan Washington Council of Governments

9:15 a.m.–10:00 a.m.

Determination of Geographical Areas for Program Implementation

10:00 a.m.–10:45 a.m.

Presentation of Framework for Operation of Local Implementation Process

10:45 a.m.–11:00 a.m.

Break

11:00 a.m.–12.00 p.m.

Presentation of Plan for Continuing Task Force Role in Implementation Process

12:00 p.m.–1:00 p.m.

Lunch

1:00 p.m.–2:00 p.m.

Public Comment Period

2:00 p.m.–3:45 p.m.

Discussion and Adoption of Task Force Report

3:45 p.m.–4:00 p.m.

Break

4:00 p.m.–5:00 p.m.

Continue Discussion and Adoption of Task Force Report

5:00 p.m.

Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five calendar days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. These oral presentations will be limited to five minutes. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days prior to the meeting because the Task Force was awaiting finalization of the geographical areas for program implementation, as well as the information and recommendations that were collected and agreed upon by the working groups of the Task Force.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on July 15, 1993.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 93–17254 Filed 7–16–93; 8:45 am]

BILLING CODE 6450–01–M

Technology Development Program

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of Technology Systems Display.

SUMMARY: The Department of Energy (DOE) is announcing a Technology Exhibition at which DOE will display a number of innovative technologies that have been demonstrated for remediation of buried waste sites within the DOE-Complex. These technologies may have potential application to a number of other waste cleanup operations outside the DOE-Complex. The technologies being demonstrated may impact a range of remediation objectives, including characterization, retrieval, and contamination control.

The Technology Exhibition will be held at University Place, Idaho Falls, Idaho, on July 29–30, 1993 to display these technologies. The equipment used in the demonstrations will be on exhibition to the public. The principal investigators responsible for the development of the technologies will also be available to discuss associated issues with the public. The technologies to be displayed at this exhibition are listed below:

Rapid Geophysical Surveyor
Remote Excavation System
Rapid Monitoring Unit
Remote Characterization System
Contamination Control Unit
Natural Polysaccharide Fixants
Retrieval Technology
Overburden Removal Technology

FOR FURTHER INFORMATION CONTACT: For information concerning this announcement, contact Jaffer Mohiuddin, telephone (301) 903–7965. The address is Division of Demonstration, Testing, and Evaluation (EM–55), Office of Technology Development, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874. For registration to the Technology Exhibition, please write to or phone Barbara Henricksen, DOE Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83401, (208) 526–0142.

SUPPLEMENTARY INFORMATION: The Office of Environmental Restoration and Waste Management was created to clean up 45 years of environmental pollution from the design and manufacture of nuclear materials and weapons. Environmental Restoration and Waste Management's programs are responsible for treating and disposing of the currently generated and stored inventory of radioactive and chemically hazardous waste, developing technology to achieve those goals, and implementing a new organizational culture founded on the principles of openness, responsiveness, and accountability.

Technology Development Program: Within the DOE Office of Environmental Restoration and Waste Management, the Office of Technology Development carries out a national program of applied research and development to focus, manage, and accelerate the development and implementation of new and existing technologies to meet specific Environmental Restoration and Waste Management Program requirements. The objective of the Technology Development Program is to respond to Environmental Restoration and Waste Management Program needs by developing and implementing technologies to (1) facilitate compliance with applicable requirements; (2) minimize the generation of wastes; (3) clean up DOE sites at lesser cost than for the currently available technologies; and (4) ensure that the technical work force is developed and retained to meet Environmental Restoration and Waste Management goals. Already, Environmental Restoration and Waste Management technology development activities have included a broad national program to meet this immense challenge of solving DOE problems.

Environmental Restoration and Waste Management invests in technologies with the potential to facilitate timely, cost-effective site cleanup. Environmental Restoration and Waste Management is keenly aware that budget and resource limitations dictate that Environmental Restoration and Waste Management's research and development program be conducted collaboratively with the private sector.

To ensure that technologies applicable in one area are transferred to another, the Technology Development Program has established integrated demonstrations and integrated programs utilizing technology available in the private sector, the academic community, and the national laboratories.

An Integrated Demonstration is a cost-effective mechanism that assembles a group of related technologies to evaluate their performance individually or as a complete system in correcting waste management and environmental problems from waste generation to ultimate disposal. An Integrated Program is a cost-effective mechanism that assembles a group of related technologies to solve a specific aspect of a waste management or environmental problem unique to a site or common to many sites. The Integrated Demonstration consists of technologies for characterization, retrieval, treatment, disposal, and post closure monitoring and encompasses the entire remediation process and represents a "cradle-to-grave" approach. The selection of technology to be incorporated in an Integrated Demonstration is predicated upon the synergies it brings to the technology, compatibility, and other technical factors. For example, selection of a treatment technology may be dependent upon the performance characteristics of the off-gas control system. The selection of a retrieval technology may be dependent upon the performance characteristics of a characterization technology. Although technologies for demonstration are selected on the basis of interdependent synergistic factors, the technology development for each technology is capable of being carried out independently. This facilitates earlier transfer of technology to the user.

Buried Waste Integrated Demonstration: DOE established the Buried Waste Integrated Demonstration program to support research, development, demonstration, testing, and evaluation of emerging technologies that offer promising and cost-effective solutions to the problems associated with the environmental restoration of buried waste sites.

The mission of Buried Waste Integrated Demonstration is to support the development, demonstration and integration of a number of technologies that when integrated effectively and efficiently remediate buried waste throughout the DOE complex. The technologies being developed by Buried Waste Integrated Demonstration program have very high potential for application to remediation problem in the private sector as well. The Buried Waste Integrated Demonstration program will evaluate and validate demonstrated technologies and transfer this information and equipment to support remediation planning and implementation.

The goal of Buried Waste Integrated Demonstration program is to determine the capabilities of emerging remediation technologies in the remediation of buried waste. Technologies will be identified, screened for applicability to the identified needs and requirements, selected for demonstration, and evaluated based on prescribed

UMI
VOL 58 ISS 136 JL 19 1993
UMI

performance objectives, such as implementability, effectiveness, potential schedule reduction, cost savings, and worker safety.

Key technology demonstrations include the Remote Characterization System, Remote Excavation Systems, Contamination Control Unit, Rapid Monitoring Unit, Polysaccharide Soils Fixation System, and the Rapid Geophysical Surveyor.

The Remote Characterization System is a mobile remote-controlled low-signature vehicle. The system uses a global positioning system to deploy a suite of geophysical sensors (e.g., ground penetrating radar and magnetometers). The purpose of this system is to characterize wastes in the soils including drums and other containers.

The Remote Excavation System involves a mobile remote-controlled Small Emplacement Excavator which will remotely excavate and retrieve buried materials. The key development features of this system include the remote control system, operator station, and end-effector teleoperations.

The Contamination Control Unit includes misting, fixative, dust suppressant, and vacuum devices for the control of airborne dust contamination during retrieval operations. This equipment is being assembled in a self-contained mobile trailer for manual operations at a retrieval site.

The Rapid Monitoring Unit consists of a collection of monitoring devices that measure loose surface and airborne contamination at a retrieval site. This system, which is contained in a mobile trailer, includes a large area alpha spectrometer and an U-L-shell X-ray spectrometer, a large area ionization chamber, and alpha continuous air monitors.

The Polysaccharide Soils Fixation System involves the demonstration of a method to control the wind transport of contaminated soil from excavation and clean-up sites. The system uses natural polysaccharide as soil fixation agents.

The Rapid Geophysical Surveyor provides for cheaper, faster, and increased data collection using magnetometers to image the subsurface to locate buried objects and identify pit/trench boundaries.

Technology Transfer Process: Within the DOE Office of Technology Development, the Technology Integration Division was established to ensure opportunities for public-private partnerships, specifically those focusing on the applied development and transfer of innovative environmental management technologies. As it is presently structured, the technology integration program involves private- and public-sector partners (e.g., industry, universities, and other agencies) in the research, development, demonstration, testing and evaluation of innovative environmental management technologies. Collectively, these efforts hasten the adoption of successfully-demonstrated technologies across the DOE weapons manufacturing complex for use in environmental restoration and waste management activities. In addition, they expedite the transfer of technologies to potential industry and government users.

Efforts are already underway to ensure technologies successfully demonstrated within Buried Waste Integrated Demonstration program will be transferred to appropriate users in industry and government. The DOE Enhanced Technology Transfer Program requires that DOE program offices provide fairness of opportunity (i.e., equal access) to private-sector partners that have legitimate interests in securing or commercializing DOE-developed technologies.

Various tools are used to facilitate technology transfer to private-sector partners. Specifically, the Environmental Restoration and Waste Management Technology Integration Program has at its disposal defined contractual mechanisms by which industry could become involved in the Buried Waste Integrated Demonstration program and other research, development, demonstration, testing and evaluation activities sponsored by Environmental Restoration and Waste Management. These include; direct procurement of innovative technologies and research through Program Research and Development Announcements and Research Opportunity Announcements, and cooperative research efforts through Cooperative Research and Development Agreements. Environmental Restoration and Waste Management can also provide assistance to small businesses in areas such as proposal preparation and technology commercialization and business planning. The Environmental Restoration and Waste Management Technology Integration Program also operates a toll-free "1–800" telephone number (1–800–845–2096) to identify potential matches between private-sector representatives (and their technologies) and DOE points of contact, and disseminates information about our R&D programs and associated business and research opportunities.

In the area of technology licensing, the Environmental Restoration and Waste Management program has already been instrumental in placing fourteen licenses for horizontal well technology successfully demonstrated under the auspices of the Volatile Organic Compounds in Non-Arid Soils Integrated Demonstration conducted at Savannah River Site, and intends to offer similar services in conjunction with Buried Waste Integrated Demonstration. Additionally, environmental technology transfer services have been established at Idaho National Engineering Laboratory to aggressively pursue commercial licensing partners for environmental technologies. DOE also makes use of personnel exchanges and user facility arrangements to provide greater access to the skills and expertise resident within laboratories and production plants of the weapons manufacturing complex. Finally, the Environmental Restoration and Waste Management Small Business Technology Integration Program focuses its efforts on providing firms with comprehensive information on Environmental Restoration and Waste Management activities and associated business opportunities. This Program also provides small businesses with special considerations for DOE funding and resources to help them develop, test, apply and commercialize their technologies. In addition, information is provided by means of regional workshops or by contacting the relevant Environmental Restoration and Waste Management program office directly.

Issued in Washington, DC on July 13, 1993.

C. W. Frank,

Acting Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–17066 Filed 7–16–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–758–000, et al.]

Niagara Mohawk Power Corporation, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 12, 1993.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER93–758–000]

Take notice that on July 2, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 141, an agreement between Niagara Mohawk and the

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Central Hudson Gas and Electric Corporation.

Rate Schedule No. 141 provides for the wheeling of certain loads by Niagara Mohawk to CHG&E. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1993. In support thereof, Niagara Mohawk states that CHG&E has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223.

and

Central Hudson Gas & Electric Corp., 284 South Avenue, Poughkeepsie, NY 12601.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–763–000]

Take notice that on July 2, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to sixteen of its Rate Schedules:

Rate schedule	Supplement No.	Person receiving service
55	11	Philadelphia Electric Company (PECO).
56	11	Public Service Electric and Gas Company (Public Service).
57	11	Northeast Utilities (NU).
62	11	Orange & Rockland Utilities, Inc. (O&R).
69	5	NU.
70	5	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L).
71	6	New England Power Co. (NEP).
74	9	PP&L.
75	10	GPU Service Corporation (GPU).
78	14	Power Authority of the State of New York (the Power Authority).
82	7	Baltimore Gas & Electric Company (BG&E).
83	7	Atlantic City Electric Company (Atlantic).
84	7	Connecticut Municipal Electric Energy Cooperative (CMEEC).
88	6	Boston Edison (BE).
95	4	Long Island Lighting Company (LILCO).
103	3	United Illuminating Company (UL).

The Supplements provide for an increase in rate from $2.50 to $2.51 per megawatthour of interruptible transmission of power and energy over Con Edison's transmission facilities, thus increasing annual revenues under the Rate Schedules by a total of $16,980.99.

Con Edison states that copies of this filing have been served by mail upon PECO, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic, CMEEC, BE, LILCO and UL.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Bill D. Helton, Coyt Webb, Robert D. Dickerson, Mary Pullum, J. Avery Rush, Jr.

[Docket Nos. ID 2789–000, ID 2790–000, ID 2791–000, ID 2792–000, ID 2793–000]

Take notice that on May 19, 1993, the above-named Applicants tendered for filing an application to hold the following positions under section 305(b) of the Federal Power Act:

Bill D. Helton

Director & Chairman of the Board—Utility Engineering Corporation
Director; Chairman of the Board and Chief Executive Officer—Southwestern Public Service Company

Coyt Webb

Director—Utility Engineering Corporation
Director; President and Chief Operating Officer—Southwestern Public Service Company

Robert D. Dickerson

Secretary—Utility Engineering Corporation
Secretary and Treasuerer—Southwestern Public Service Company

Mary Pullum

Assistant Secretary—Utility Engineering Corporation
Assistant Secretary—Southwestern Public Service Company

J. Avery Rush, Jr.

Director—Utility Engineering Corporation
Director—Southwestern Public Service Company

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER93–757–000]

Take notice that on July 2, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 176, an agreement between Niagara Mohawk and the Rochester Gas & Electric Corporation.

Rate Schedule No. 176 provides for the wheeling of certain loads by Niagara Mohawk to RG&E. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1993. In support thereof, Niagara Mohawk states that RG&E has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223.

And

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649.

Comment date: July 26, 1993, in accordance with Standard Paragraph E end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER93–770–000]

Take notice that Wisconsin Public Service Corporation (WPSC) on July 5, 1993, tendered for filing Supplement No. 5 to its partial requirements service agreement with Manitowoc Public Utilities (MPU), Manitowoc County, Wisconsin. Supplemental No. 5 provides MPU's contract demand nominations for January 1993-December 1997, under WPSC's W-2 partial requirements tariff and MPU's applicable service agreement.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The Washington Water Power Company

[Docket No. ER93–772–000]

Take notice that on July 7, 1993, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 33.1(a)(2)(ii) a Use of Facilities Agreement (Agreement, WWP Contract No. WP–PS93–4903) and

a Letter Agreement Providing for Early Termination of WWP-Modern Electric Service Agreement (Letter Agreement, WWP Contact No. WP–PS93–49010–03). The Agreement and the Letter Agreement provide for the sale of certain substation facilities by WWP to Modern Electric Company.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Interregional Transmission Coordination Forum

[Docket No. ER93–771–000]

Take notice that on July 6, 1993, the Interregional Transmission Coordination Forum, a voluntary association of utilities, independent power producers and public power entities in the eastern United States for coordination and dispute resolution of transmission issues, submitted for filing under Section 205 of the Federal Power Act its organizational documents (charter, bylaws, dispute resolution process) as amended, superseding the set submitted on June 26, 1992. An effective date of 60 days after submission is requested for the superseding filing.

Comment date: July 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Westmoreland-LG&E Partners (Roanoke Valley I).

[Docket No. QF90–147–003]

On July 2, 1993, Westmoreland-LG&E Partners (Roanoke Valley I) (Applicant), c/o Westmoreland Energy, Inc., 300 Preston Avenue, Charlottesville, Virginia 22902, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commissions's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Weldon Township, near Roanoke Rapids, North Carolina. The Commission previously certified the facility as a qualifying cogeneration facility *Westmoreland-Hadson Partners*, 52 FERC ¶ 62,001 (1990) and recertified the facility as a qualifying cogeneration facility *Westmoreland-Hadson Partners*, 59 FERC ¶ 62,202 (1992). The instant request for recertification is made to reflect a change in the name of the partnership from Westmoreland-Hadson Partners, and to reflect the execution of a credit support arrangement on behalf of one of applicant's partners.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

9. Grayling Generating Station Limited Partnership

[Docket No. QF87–277–004]

On July 6, 1993, Grayling Generating Station Limited Partnership (Applicant), of 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126 submitted for filing an application for recertification of a facility as a qualifying production facility pursuant to § 292.207(b) of the Commissions's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the biomass-fueled small power production facility is located in the Township of Grayling, Crawford County, Michigan. The Commission originally certified the facility as a qualifying small power production facility in Docker Energy International, Inc., 40 FERC ¶ 62,042 (1987). On February 26, 1990, the Commission issued recertification in Decker Energy International, Inc., 50 FERC ¶ 62,117 (1990). On August 23, 1990, in Docket No. QF87–277–002, applicant filed a notice of self-recertification. On April 22, 1992, the Commission issued recertification in Grayling Generating Station Limited Partnership, 59 FERC ¶ 62,068 (1992). The instant recertification is requested to reflect an increase in the maximum net electric power production capacity from 34 MW to 36.16 MW.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17049 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–58–000]

Hidroelectrica Cerros Colorados S.A.; Application for Commission Determination of Exempt Wholesale Generator Status

July 13, 1993.

On July 8, 1993, Hidroelectrica Cerros Colorados S.A. ("HSA"), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

HSA, an Argentine corporation, will be owned in part by Patagonia Holding S.A., an Argentine corporation, which is owned in part by Dominion Generating S.A., also an Argentine corporation. Dominion Generating S.A. is a wholly-owned subsidiary of Dominion Energy, Inc., which is a wholly-owned subsidiary of Dominion Resources, Inc.

HSA will own part and operate all of a 450 MW hydroelectric plant located on the Neuquen River in Neuquen Province, Republic of Argentina, South America. The Facility has a nominal power production capacity of 450 MW. The Facility consists of two 225 MW turbogenerators with associated equipment and five dams.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before July 30, 1993, and must be served on the applicant (c/o Michael W. Maupin, Esq., Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219). Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16991 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–207–000]

Montana Power Co.; Notice of Filing

July 13, 1993.

Take notice that on June 9, 1993, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16988 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–740–000]

Montenay Montgomery Limited Partnership; Notice of Filing

July 13, 1993.

Take notice that Montenay Montgomery Limited Partnership, on July 25, 1993, tendered for filing its FERC Electric Service Tariff No. 2.

Copies of the filing were served upon Montenay Montgomery' jurisdictional customer, Public Service Electric & Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16989 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–534–000]

Stingray Pipeline Co.; Request Under Blanket Authorization

July 13, 1993.

Take notice that on July 6, 1993, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–534–000 a request pursuant to Sections 157.205 and 157.208(b) of the Commission's Regulations under the Natural Gas Act for authorization to acquire, construct, own and operate certain facilities under the blanket certificate issued in Docket No. CP91–1505–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Stingray specifically proposes the following:

(1) To acquire, own and operate dual 10-inch diameter meter facilities and approximately 0.15 miles of 16-inch diameter lateral that will be constructed by Chevron U.S.A. Production Company, A Division of Chevron U.S.A. (Chevron) and Union Oil Company of California (Unocal) on the production platform being constructed by them in Garden Banks Block 191, offshore Louisiana, at an estimated cost of $600,000;

(2) To construct, own and operate approximately 13.25 miles of 16-inch diameter lateral from the Garden Banks 191 platform to Stingray's existing system in West Cameron Block 639, offshore Louisiana, and a 16-inch diameter side tap to tie the new lateral into said existing facilities, at a total estimated cost of $8.5 million; and

(3) To construct, own and operate a 16-inch diameter subsea tap valve on the proposed 16-inch diameter lateral to be available for a future interconnect, at an estimated cost of $200,000.

Stingray indicates that the proposed facilities will allow it to receive and transport up to approximately 130 MMcf of natural gas per day produced by Chevron and Unocal at Garden Banks 191. Stingray further indicates that the total cost of the facilities proposed herein for acquisition and construction is estimated to be approximately $9.3 million.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16992 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–539–000]

Texas Gas Transmission Corp.; Notice of Request Under Blanket Authorization

July 13, 1993.

Take notice that on July 7, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP93–539–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new delivery point for Western Kentucky Gas Company (WKG) in Warren County, Kentucky, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to add the new delivery point on its Franklin 4-inch line in order to render natural gas service to a new asphalt plant which desires natural gas to heat its asphalt for highway construction and repair.

Texas Gas estimates that the natural gas requirements at this delivery point would be a maximum daily quantity of 300 MMBtu, with a maximum annual quantity of 50,000 MMBtu which amounts would not result in an increase in WKG's current daily contract demand, as stated by Texas Gas. Furthermore, Texas Gas states that service through this new delivery point can be accomplished without detriment to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission file pursuant to Rule 214 of the

Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the National Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 93–16990 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–12143T Texas-143]

State of Texas; NGPA Notice Of Determination By Jurisdictional Agency Designating Tight Formation

July 13, 1993.

Take notice that on July 6, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that a portion of the Bend Formation, Broken Bone Conglomerate Field, underlying Cottle County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 8A and is described on the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Bend Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area covers approximately 11,307 Acres and includes all or portions of the following surveys:

Tract 1: 715.35 acres, all of the I.R.R. Co. Survey 2, A–1339 and A–1517
Tract 2: 162 acres, the South 162 acres of section 3, I.R.R. Co. Survey, A–369
Tract 3: 157.8 acres, out of the Northeast corner of the A. Dunman Survey, A–88
Tract 4: 246.7 acres, all of the South 246.7 acres of the I.R.R. Co. Survey 7, A–368
Tract 5: 324.1 acres, all of the South 324.1 acres of the I.R.R. Co. Survey 9, A–366
Tract 6: 324 acres, all of the South 324 acres of the I.L. Pickering Survey 10, A–1219
Tract 7: 179.6 acres, all of the W.Q. Richards Survey, A–1596
Tract 8: 12.65 acres, all of the Z.T. Pelley Survey, A–1592
Tract 9: 349 acres, all of the R.M. Thomson Survey, Blk. K, A–806
Tract 10: 640 acres, all of section 6 of the R.M. Thomson Survey, Blk. K, A–757
Tract 11: 642 acres, all of section 3 of the R.M. Thomson Survey, Blk. K, A–756
Tract 12: 320.5 acres, all of the West 320.5 acres of section 2 of the R.M. Thomson Survey, Blk, K, A–755
Tract 13: 129 acres, out of the East part of section 1 of the A. Forsythe Survey, Blk. L, A–660
Tract 14: 160 acres, all of the Southwest One-fourth of section 13 of the A. Forsythe Survey, Blk. L, A–787
Tract 15: 442.2 acres, all of section 8 of the R.M. Thomson Survey, Blk. K, A–807
Tract 16: 640 acres, all of section 5 of the R.M. Thomson Survey, Blk. K, A–805
Tract 17: 640 acres, all of section 4 of the R.M. Thomson Survey, Blk. K, A–804
Tract 18: 647 acres, all of section 1 of the R.M. Thomson Survey, Blk. K, A–803
Tract 19: 480 acres, all of section 2 of the A. Forsythe Survey, Blk. L, A–654, Save and Except the Southeast One-fourth
Tract 20: 80 acres, all of the North 80 acres of the Northwest One-fourth of section 3 of the A. Forsythe Survey, Blk. L, A–659
Tract 21: 159.75 acres, all of the Northwest One-fourth of section 4, of the AB & M Survey, (J.E. Earp) A/1387
Tract 22: 646.62 acres, all of section 1 of the AB & M Survey, A–17
Tract 23: 640 acres, all of section 4 of the I.G. & N.R.R. Co. Survey, A–147 (A–917, A–919, A–920, A–928, A–929 and A–930)
Tract 24: 664.7 acres, all of section 1 of the B & B Survey, A–53
Tract 25: 523.3 acres, all of the L.L. Pickering Survey 2, A–1404
Tract 26: 572.085 acres, all of the H. & G.N. R.R. Co. Survey 1, A–134
Tract 27: 688.979 acres, all of section 2 of the B & B Survey, A–1224, and
Tract 28: 120 acres, all of the North 120 acres of the Northwest One-fourth of section 3, B & B Survey, A–57.

[FR Doc. 93–16987 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–5–000]

Northwest Pipeline Corporation; Informal Settlement Conference

July 13, 1993

Take notice that an informal settlement conference will be convened in this proceeding on August 11, 1993 at 9 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Kathleen M. Dias (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16993 Filed 7–16–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–61–NG]

Brymore Energy Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Brymore Energy Inc., authorization to import up to 200 billion cubic feet (Bcf) of natural gas from Canada and to export up to 200 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export delivery after August 13, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., July 14, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–17065 Filed 7–16–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–62–NG]

Iroquois Energy Management, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Iroquois Energy Management, Inc., blanket authorization to import from Canada up to 10 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 14, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–17064 Filed 7–16–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–65–NG]

Nortech Energy Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Nortech Energy Corp., blanket authorization to import from Canada up to 40 Bcf of natural gas and to export to Canada up to 40 Bcf of natural gas over a two-year period beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 13, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–17063 Filed 7–16–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4680–4]

Organizational Meeting for the Environmental Statistics Technical Advisory Committee of the U.S. Environmental Protection Agency

The organizational meeting of the U.S. Environmental Protection Agency's Environmental Statistics Technical Advisory Committee (a standing committee of the American Statistical Association) will be held during the annual meeting of the American Statistical Association in San Francisco, CA, August 10, 1993 from 10:30 a.m. to 12:20 p.m. in the Tamalpais Room of the Hilton Hotel.

As this is the first meeting of the committee, the agenda will involve primarily organizational matters. The meeting is open to the public who may make presentations which will be limited to 10 minutes and require the notification of the Designated Federal Official (Dr. C. Richard Cothern, Environmental Statistics and Information Division, Office of Policy, Planning and Evaluation, PM–222B, U.S. Environmental Protection Agency, Washington, DC, 20460, phone 202–260–2734, FAX 202–260–4968) not later than July 27, 1993.

Approved July 8, 1993.

Barry D. Nussbaum,

Acting Director, ESID.

[FR Doc. 93–17057 Filed 7–16–93; 8:45 am]

BILLING CODE 6560–50–M

[FIFRA Docket No. 655 FRL–4630–6]

Pesticide Milban

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of objections and request for hearing.

Notice is hereby given, pursuant to § 164.8 (40 CFR 164.8) of the Rules of Practice Governing Hearings under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, that objections have been filed and a hearing has been requested by a person adversely affected by the Administrator's notice of intent to cancel the registration of the pesticide Milban as published in the **Federal Register** on May 21, 1993, 58 FR 29579.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the docket of this proceeding on file with the Hearing Clerk, United States Environmental Protection Agency, room 3708 (Mail Code A–110), 401 M Street, SW., Washington, DC 20460 (Telephone 202–260–4865).

Dated: July 9, 1993.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 93–17058 Filed 7–16–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–140212; FRL–4631–4]

Access to Confidential Business Information by PRC, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, PRC, Inc. (PRC) of McLean, Virginia, for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under GSA contract number GS11K90BJD050, contractor PRC of 1505 Planning Research Drive, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical support for the CBI Tracking System and the OPPT Image Processing System.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS11K90BJD050 will require access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully the duties specified under the contract. PRC personnel will be given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide PRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

VOL 58 ISS 136 JL 19 1993 UMI

Clearance for access to TSCA CBI under this contract may continue until September 30, 1995.

PRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 1, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–17060 Filed 7–16–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 93–765; AAD 92–42]

Implementation of Further Cost Allocation Uniformity

AGENCY: Federal Communications Commission.

ACTION: Implementation of order.

SUMMARY: The Chief, Common Carrier Bureau adopted an Order which prescribes uniform cost pools and allocators for ten accounts contained in Part 32, Uniform System of Accounts for Telecommunications Common Carriers (USOA). This is part of an effort by the Commission to strengthen its nonstructural safeguards for enhanced services and other nonregulated offerings.

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Debra Weber, Common Carrier Bureau, Accounting and Audits Division, (202)–634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Chief, Common Carrier Bureau's Memorandum Opinion and Order, DA 93–765, adopted June 23, 1993, and released July 1, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the public reference room of the Commission's Accounting and Audits Division, 2000 L Street, NW., room 812, Washington, DC 20554. The full text of this decision may also be purchased from the Commission's contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Paperwork Reduction

Public reporting burden for the collection of information is estimated to average 300 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060–0470), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0470), Washington, DC 20503.

Summary of Memorandum Opinion and Order

1. This Order prescribes cost allocation uniformity practices for local exchange carriers (LECs) who file cost allocation manuals (CAMs). Specifically, this Order adopts definitions which clarify distinctions among apportionment methods; allows carriers to use sub-pools; adopts uniform cost pools and allocators for ten Part 32 accounts as shown in Appendix B of the Order; and requires all LECs that file CAMs to file these changes with the Commission by November 1, 1993, and to implement them by January 1, 1994.

2. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 201–205, 215, 218, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 215, 218, 219, and 220 and § 0.291 of the Commission's rules, 47 CFR 0.291, that the cost allocation uniformity requirements set forth in Appendix B of the Order are adopted, effective January 1, 1994.

Federal Communications Commission.

Kathleen B. Levitz,

Acting Chief, Common Carrier Bureau.

[FR Doc. 93–16832 Filed 7–16–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port Everglades Discovery Cruises, Inc., Service Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200787

Title: Port Everglades/Discovery Cruises, Inc. Service Agreement

Parties: Port Everglades Authority ("Port") Discovery Cruises, Inc. ("DCI")

Synopsis: The proposed Agreement would permit the Port to provide berthing and terminal facilities to DCI. In addition, DCI will pay wharfage and dockage fees to the Port during the three year term of the Agreement.

Agreement No.: 224–200788

Title: Alabama State Docks Department/ Southeast Stevedores, Inc. Cargo and Handling Service Agreement

Parties: Alabama State Docks Department Southeast Stevedores, Inc. ("SSI")

Synopsis: The proposed Agreement would permit SSI to perform freight handling services at the Port of Mobile during the 10 year term of the Agreement.

Dated: July 14, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–17016 Filed 7–16–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 18, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 18, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economic expansion has slowed in recent months. Total nonfarm

[1] Copies of the Minutes of the Federal Open Market Committee Meeting of May 18, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

payroll employment rose only slightly over March and April after registering sizable increases earlier in the year, and the civilian unemployment rate remained at 7.0 percent. Industrial production was little changed in March and April after posting solid gains in previous months. Retail sales increased substantially in April but were about unchanged on balance for the year to date. Housing starts picked up in April. Incoming data on orders and shipments of nondefense capital goods suggests a further brisk advance in outlays for business equipment, while nonresidential construction has remained soft. The nominal U.S. merchandise trade deficit in January-February was slightly below its average level in the fourth quarter. Increases in wages and prices have been appreciably larger this year than in the second half of 1992.

Short-term interest rates have changed little since the Committee meeting on March 23 while bond yields have risen somewhat. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined somewhat on balance over the intermeeting period.

After contracting during the first quarter, M2 was unchanged in April while M3 turned up; both aggregates increased substantially in early May. Total domestic nonfinancial debt expanded somewhat further through March.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2 to 6 percent and 1/2 to 4-1/2 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee expects that developments contributing to unusual velocity increases are likely to persist during the year. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with appreciable growth in the broader monetary aggregates over the second quarter.

By order of the Federal Open Market Committee, July 13, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93–17007 Filed 7–16–93; 8:45 am]

BILLING CODE 6210–01–F

[Docket No. R-0786]

Telecommunications Service Priority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: In November 1988, the Federal Communications Commission (FCC) established the Telecommunications Service Priority (TSP) system to provide a uniform system for assigning priorities for provisioning and restoring telecommunication services that support national security and emergency preparedness (NS/EP). Under the FCC rule, the Board may sponsor TSP assignments to telecommunication services of non-federal government organizations that are critical for supporting NS/EP functions.

Backbone circuits used for the Federal Reserve's Fedwire system, which interconnect the Federal Reserve Banks, have been assigned TSP status. The Board has adopted criteria for providing TSP sponsorship for backbone circuits of eligible private-sector interbank large-value funds or securities transfer systems and access circuits that connect participants to a sponsored large-value payments system. The Board will also sponsor for TSP assignment certain circuits used to support the Federal Reserve Bank of New York's open market and foreign operations, and the Treasury Automated Auction Processing System.

The Board believes that assignment of TSP status to these circuits will help ensure the operations and liquidity of banks and the maintenance and restoration of stable and orderly financial markets, and thus is consistent with NS/EP responsibilities. Applications requesting TSP sponsorship from the Board should be submitted to the address provided below.

EFFECTIVE DATES: July 13, 1993.

ADDRESSES: Applications for TSP sponsorship should be sent to Ms. Louise L. Roseman, Assistant Director, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-2789), or Kenneth D. Buckley, Manager (202/452-3993), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-2077), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. The above individuals can also be contacted to obtain copies of the forms and instructions referenced in this document.

SUPPLEMENTARY INFORMATION:

Background

The Communications Act of 1934 authorizes the Federal Communications Commission (FCC) to assign and approve reasonable priorities for the provision and restoration of common carrier-provided telecommunications services.[1] In November 1988, the FCC adopted rules (Report and Order FCC 88-341) establishing the Telecommunications Service Priority (TSP) system for priority restoration and provision of telecommunications services that support National Security and Emergency Preparedness (NS/EP) functions. Telecommunication services necessary for NS/EP are defined as those that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) that causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States.

The FCC rules establish procedures for the assignment and approval of priority levels. Under these rules, there are two types of Essential priority functions:

(1) Expedited restoration of disrupted telecommunication service; and

(2) Expedited provision of new telecommunication services.

In the event of a telecommunications disruption, carriers are obligated to restore TSP designated circuits according to the ranking of their assigned codes and preempt, if necessary, any other restoration arrangement for non-TSP circuits. The status of a TSP-designated circuit and its preemptive rights over non-TSP circuits are recognized by all regulated telecommunication carriers in the United States. Consequently, a consistent level of priority is provided end-to-end on a TSP designated circuit and the priority is acknowledged with

[1] Under section 706 of the Act, this authority may be superseded, and expanded to non-common carrier telecommunications services, by the emergency war powers of the President of the United States. The Executive Office of the President has developed separate regulations and procedures to cover the exercise of these emergency powers See 47 CFR Ch. II and Executive Order 12656

the same level of urgency by local exchange carriers and inter-exchange carriers. Carriers are required to ensure that any trouble tickets or problem logs specifically identify TSP circuits to ensure priority service is received.

In an event or crisis that requires the provision of new telecommunications services to a TSP participant, such as relocating to or establishing new facilities, telecommunication carriers are required to expedite circuit installation. Both local exchange and inter-exchange carriers prioritize TSP requests for the provision of new service above any requests from non-NS/EP services.

Essential NS/EP telecommunication services must qualify under one of four subcategories:

(A) National security leadership;

(B) National security posture and U.S. population attack warning;

(C) Public health, safety, and maintenance of law and order; and

(D) Public welfare and maintenance of national economic posture.

Essential services are assigned a priority on a scale of 1 to 5 (with 1 as the highest priority) based on the appropriate subcategory. Services in subcategory A qualify for priority levels 1-5; those in subcategory B qualify for priority levels 2 5; those in subcategory C qualify for priority levels 3-5; and services in subcategory D qualify for priority levels 4-5.

The FCC has delegated the administration of the TSP program to the Executive Office of the President. The Executive Office of the President's responsibilities under the TSP program are administered by the National Communications System (NCS), established by Executive Order 12472.[2]

Organizations other than Federal government agencies must apply for TSP assignments through a Federal agency that is willing to sponsor such applications. Pursuant to the FCC rule, the Board may sponsor the minimum number of telecommunication services necessary for the "maintenance of national economic posture" (category D), and, in particular, services that support the "maintenance of national monetary, credit, and financial systems." In its role as a sponsoring Federal organization, the Board would also support the Department of Treasury's specific NS/EP responsibilities, as described in Executive Order 12656, on matters related to the "operation and liquidity of banks" and "maintenance and restoration of stable and orderly markets." These essential telecommunication services may be assigned a TSP priority level of 4 or 5.

TSP is intended to be used only as a "last resort" and, as such, organizations granted TSP status are required to ensure that circuits covered by TSP are afforded the highest level of disaster recovery and contingency capabilities. Organizations requesting TSP sponsorship by the Board will be expected to minimize single points of failure or other vulnerabilities through diverse circuit paths, multiple telecommunication carrier services, and/or redundant switching arrangements. The NCS strongly encourages TSP users to maintain adequate communication diagnostic and monitoring equipment that can differentiate outages due to a circuit disruption from those arising from premise equipment. The sponsored organization must maintain a robust backbone network that can recover quickly from equipment or circuit failures. Disaster recovery capabilities also must be maintained in a high state of readiness. Network management procedures should be able to isolate errors, reroute data, and remotely reconfigure equipment. A depository institution that uses an access circuit(s) with TSP assignment should have a backup circuit or dial backup capabilities. In the Federal Reserve's new Fednet network environment, Fedwire leased-line access circuits will have, at a minimum, dial backup capability and a redundant digital service unit.

Telecommunication services are designated as essential where a disruption of "a few minutes to one day" could seriously affect the continued operations that support an NS/EP function. An outage of up to one day affecting large-value funds or securities transfer services may adversely affect the financial systems, and in particular, the operation and liquidity of banks and/or the stability of financial markets. Backbone circuits used for the Federal Reserve's Fedwire system, which interconnect the Federal Reserve Banks, have been assigned TSP priority level 4. TSP further enhances the resilience and recoverability of the communications infrastructure supporting the Fedwire system and is consistent with the Federal Reserve's efforts to improve the reliability of its automation and communications environment.

The Fedwire funds and securities transfer services are used to facilitate much of the country's economic activity. The average value of Fedwire funds and securities transfers approaches $1.5 trillion per day. Most domestic transactions that rely on the immediate and irrevocable transfer of a large-value payment are processed through the Fedwire system. A substantial level of international economic activity is conducted via the domestic telecommunication services used by the Clearing House Interbank Payments System (CHIPS) and the Society for Worldwide Interbank Financial Telecommunication (SWIFT) system. Interruptions in the ability to make payments via these systems could adversely affect the ability of private enterprises to engage in their business activities, which could in turn affect the ability of their counterparties to conduct business.

In addition, the Fedwire funds transfer system is critical to the ability of participants in the securities, options and futures markets to effect settlement for their trading activity. The Fedwire system is also used by these market participants to fund margin calls. These transactions require the ability to transfer funds in a short time frame (*i.e.*, less than one day, as specified by the NS/EP criteria). In addition, the Fedwire system is critical to depository institutions' ability to manage their reserve positions.

Therefore, the Board believes TSP status is warranted to expedite the provision and restoration of those resources within the telecommunication infrastructure that supports these systems. Assignment of TSP status to circuits used in large-value payment systems will help ensure an orderly and timely resumption of large-dollar funds and securities transfer services in the event of an emergency or disaster. Specifically, the Board believes it would be appropriate to sponsor TSP status for backbone circuits of private-sector interbank large-value funds or securities transfer systems, and certain access circuits that connect participants to a sponsored large-value payments system.

[2] The administrative structure of the NCS consists of the executive agent, (the Secretary of Defense, as designated by the President), the Manager (designated by the executive agent) and the Committee of Principals (representatives from federal departments, agencies, and entities with significant national security or emergency preparedness telecommunications responsibilities). The Federal Reserve System was designated as a "participating independent entity" on the Committee of Principals. The Executive Office of the President has assigned to the NCS Manager the administrative authority delegated to it by the FCC, as well as the authority to administer the TSP program after invocation of the President's war emergency powers. The NCS has issued, with the FCC's approval, a directive (NCS Directive 3-1), a service vendor handbook (NCS Handbook 3-1-2), and a user manual (NCS Manual 3-1-1) to implement its responsibilities (Memorandum Opinion and Order, 4 FCC Rcd 9473 (1989) and 54 FR 50622, December 8, 1989).

TSP Sponsorship Criteria

In December 1992, the Board requested comment on proposed TSP sponsorship criteria for backbone circuits of private-sector interbank large-value payments systems; and certain access circuits that connect participants to the Fedwire funds and book-entry securities transfer system or to a private-sector sponsored payments system. (57 FR 61088, December 23, 1992). The proposed criteria are as follows:

(1) The payments system requesting TSP sponsorship must be critical to the operation and liquidity of banks or to the stability of financial markets;

(2) A payments system seeking TSP sponsorship must clearly delineate the boundaries of its backbone telecommunications network;

(3) Access circuits connecting depository institutions or other participants to a sponsored large-value system may be eligible for sponsorship if they are used to transmit a daily average aggregate value of at least $2 billion of funds and/or securities transfers, or if they meet an alternative criterion acceptable to the Board;

(4) The network backbone circuits and the access circuits for which a payments system seeks TSP sponsorship must be subject to adequate contingency backup arrangements; and

(5) A payments system sponsored by the Board that receives TSP status for essential circuits must provide the Federal Reserve the opportunity to verify continuing TSP eligibility for those circuits.

The Board received twelve comments on the proposed criteria: six from banks or bank holding companies; three from private-sector networks (the New York Clearing House (NYCH), on behalf of CHIPS and the New York Automated Clearing House; SWIFT; and the Participants Trust Company (PTC)); one from another clearing house, and two from Reserve Banks. All of the commenters supported the Board's sponsorship of circuits for TSP status, and generally supported the proposed criteria for sponsorship. Several commenters, however, requested that the Board liberalize its sponsorship criteria. In particular, several commenters questioned the Board's intent not to sponsor circuits used by automated clearing house (ACH) systems and requested that the Board expand its sponsorship to include networks that support the securities, futures, and options markets. In addition, several commenters suggested alternate criteria for determining the eligibility of access circuits (*i.e.*, circuits that connect depository institutions or other participants to the network).

Sponsorship of ACH circuits. The Board's proposed criteria excluded the ACH service from consideration for TSP sponsorship. Commenters generally supported the proposed criterion that would limit TSP sponsorship to circuits used in large-value systems. However, one commenter stated that ACH services should be eligible for TSP sponsorship at this time, while two commenters noted that ACH services may warrant sponsorship in the future. The New York Clearing House recommended that circuits connecting its ACH to the Federal Reserve Bank of New York be eligible for TSP sponsorship.

ACH transfers are value dated and have very small dollar value compared to that of Fedwire or CHIPS transfers. The Board does not believe that the ACH service currently meets the NCS definition of an "essential" telecommunications service where a disruption of a few minutes to one day would have a serious adverse effect on the operation and liquidity of banks or on the stability of the financial markets. Therefore, the final criteria adopted by the Board excludes from consideration the sponsorship of circuits used by ACH systems. Depending on the types and aggregate value of payments made via the ACH in the future, the Board may extend TSP sponsorship to ACH systems as they evolve over time.

Sponsorship of networks that support the securities, futures, and options markets. Two commenters, Chase and PTC, suggested that the Board's criteria for TSP sponsorship be broadened to encompass sponsorship of circuits used by networks that support the securities, futures, and options markets. PTC specifically stated in its comments that it desired TSP sponsorship of its network.

The Securities and Exchange Commission has agreed to consider for TSP sponsorship circuits used by clearing systems operated by SEC-registered clearing agencies (such as networks operated by the Participants Trust Company, the Depository Trust Company, the Government Securities Clearing Corporation, and the National Securities Clearing Corporation), securities exchanges, and other securities industry participants registered with the SEC. The CFTC has agreed to consider for TSP sponsorship circuits used by contract markets or by clearing organizations for contract markets registered under the Commodity Exchange Act (such as the Chicago Board of Trade and the Chicago Mercantile Exchange), and certain other futures and options market participants subject to the jurisdiction of the CFTC. The Board believes that the SEC and the CFTC would be in the best position to delineate the appropriate scope of sponsorship for circuits used to support the markets that they oversee. Therefore, the Board will refer TSP sponsorship requests from such networks to the SEC or to the CFTC, as appropriate.

Eligibility of access circuits for TSP sponsorship. In order to determine which access circuits should be eligible for TSP sponsorship, the Board proposed a criterion that generally limited eligibility to those circuits that transmit a large aggregate value of transfers. If an outage of a day or less affected these circuits, the operations and liquidity of banks or the stability of the financial markets could be adversely affected. In contrast, an outage that affected participants that transmit a relatively smaller aggregate value of transfers would generally not have similar systemic effects.

Specifically, the Board's third proposed criterion stated that access circuits that connect depository institutions or other participants to a sponsored large-value system may be eligible for sponsorship if they are used to transmit a daily average of at least $2 billion in funds and/or securities transfers, or if they meet an alternative criterion acceptable to the Board. To minimize the costs associated with administering the TSP program, all Fedwire computer-interface point-to-point leased-line circuits would be eligible for sponsorship, as well as those Fedline point-to-point leased-line circuits used for Fedwire transfers that the Reserve Banks believe are critical and therefore warrant sponsorship.

Most commenters generally supported this proposed criterion. Two commenters, NYCH and Chase, opposed the criterion as proposed. NYCH recommended that if a sponsored network transfers over $500 billion in funds on a daily average basis, all access circuits to that network should receive TSP sponsorship. Under this alternate criterion, NYCH requested sponsorship of the access circuits used by all 122 CHIPS participants. Chase stated that it was not appropriate to determine eligibility of access circuits based on the dollar value of transfers transmitted over the circuits, and recommended that all access circuits of a sponsored private-sector system (as well as circuits that connect a network participant to the processing location it uses) be eligible for TSP sponsorship.

The Board believes that NYCH's request that the Board sponsor all CHIPS access circuits is reasonable, given the manageable number of circuits

and the very large aggregate value transmitted over the CHIPS network, and therefore is willing to sponsor all CHIPS access circuits. If, however, the number of CHIPS access circuits increases significantly in the future, the eligibility criterion for CHIPS access circuits would need to be reassessed. The Board believes that the proposed general criterion regarding the eligibility of access circuits is flexible in that it permits the use of an alternate criterion proposed by the network, and therefore has adopted it substantially as proposed.[3] The Board has not broadened this criterion to allow for sponsorship of all access circuits used in all sponsored private-sector networks, as TSP status is intended to be limited to the minimum number of circuits necessary to support an NS/EP function.

Final eligibility criteria. The Board has adopted the following TSP sponsorship criteria, which are substantially similar to the proposed criteria, and will consider sponsorship of circuits meeting these criteria for a TSP priority level 4:

(1) The system requesting TSP sponsorship must provide a large-value interbank funds transfer, securities transfer, or payment-related service that requires same-day recovery and must be critical to the operation and liquidity of banks or to the stability of financial markets. Clearing systems operated by SEC-registered clearing agencies, securities exchanges, and other securities industry participants registered with the SEC should request TSP sponsorship from the SEC. Contract markets or clearing organizations for contract markets registered under the Commodity Exchange Act and other futures and options market participants subject to the jurisdiction of the CFTC should request TSP sponsorship from the CFTC.

(2) A system seeking TSP sponsorship must clearly delineate the boundaries of its backbone telecommunications network.

(3) Access circuits connecting depository institutions or other participants to a sponsored large-value system, or the network access circuit to the processing location used by the participant, may be eligible for sponsorship if they are used to transmit a daily average aggregate value of at least $2 billion of funds and/or securities transfers, or if they meet an alternate criterion acceptable to the Board's Director of the Division of Reserve Bank Operations and Payment Systems or his designee.

(4) The network backbone circuits and the access circuits for which a payments system seeks TSP sponsorship must be subject to adequate contingency backup arrangements.

(5) A system sponsored by the Board that receives TSP status for essential circuits must provide the Federal Reserve with the opportunity to verify continuing TSP eligibility for those circuits.

As TSP assignment to switched circuits is limited, both the backbone and access circuits must be leased line circuits. If a leased circuit is a sub-component of a larger circuit, the full circuit may be sponsored for TSP status.

Sponsorship of circuits used for the Open Market Desk, Foreign Exchange Desk, and Treasury Automated Auction Processing System. The Board will also sponsor TSP status for eligible dedicated voice circuits from the Federal Reserve Bank of New York's Open Market Desk to primary dealers and from the Foreign Exchange Desk to foreign exchange counterparties and foreign central banks. In addition, the Board will sponsor leased circuits used to connect the large competitive bidders to the Treasury Automated Auction Processing System. These circuits support operations that are necessary to the stability of the financial markets.

Application for TSP Sponsorship

Federal Reserve Banks and private-sector organizations can apply to the Board for TSP sponsorship to obtain priority restoration of existing circuits. These organizations must use form SF-315, "TSP Request for Service Users", to apply for each TSP code and form SF-316, "TSP Service Order Report", to report the primary service vendor assigned the TSP code. These forms are described and included in the NCS user manual (NCS Manual 3-1-1). Board staff has developed software that can be used by Reserve Banks and other sponsored organizations for submitting SF-315 applications for TSP status electronically. The software reduces the amount of information that must be supplied by the TSP applicant by automatically completing a number of the fields in the SF-315.

The Board can also invoke TSP to provision new telecommunication services on an "as needed" basis as a result of emergencies or disasters warranting extraordinary action. The Board will consider requests from sponsored organizations for TSP provision of new services under the sponsorship criteria it has adopted. The Board has delegated to the Director of the Division of Reserve Bank Operations and Payment Systems or his designee the authority to sponsor TSP assignments or to invoke expedited provision of new telecommunications services to sponsored organizations, pursuant to the Board's criteria. Applications related to telecommunication services that the Board believes warrant TSP status will be forwarded by the Board to the Manager of NCS, who is charged with making TSP assignments.

The Reserve Banks will complete the necessary applications for TSP sponsorship of Fedwire backbone and access circuits. The Fedwire access circuits will be sponsored for TSP status as they are added to the new Fednet network. A private-sector large-value systems will be responsible for completing the applications for TSP sponsorship of its essential network circuits. These applications should be submitted to the Board and should be accompanied by a description of how the backbone and access circuits for which the organization is requesting TSP assignment qualify under each applicable criterion. Applications for TSP sponsorship of network access circuits should be made by the network operator, rather than by individual network participants.

A depository institution that leases a circuit that connects a TSP-sponsored leased Fedwire or other large-value network access circuit with the location it uses to process these transfers would be responsible for completing the application for TSP sponsorship of the additional circuit(s). The depository institution should submit the TSP application, along with a description of how the circuit meets the Board's sponsorship criteria, to the Board. Once a circuit has been assigned TSP status, the depository institution will communicate directly with the Board or NCS on changes to the circuit or TSP status.

Primary dealers, other large competitive bidders at Treasury auctions, and foreign central banks that lease circuits used to connect to the Open Market Desk, the Treasury Automated Auction Processing System, and the Foreign Exchange Desk are responsible for submitting the TSP applications for these circuits. The Federal Reserve Bank of New York (or other appropriate Reserve Bank) will

[3] SWIFT has proposed an alternate criterion for the sponsorship of those access circuits that represent the majority of its volume in the United States. Specifically, SWIFT recommends that only those participants that have leased lines that connect to multiple SWIFT concentration points be eligible for TSP sponsorship. Under this criterion, SWIFT would request TSP assignment for less than 100 of its 500 access circuits in the United States. The Board believes this alternate criterion is reasonable and is willing to sponsor SWIFT access circuits based on the alternate criterion.

assist organizations that lease these circuits in completing the TSP applications. The Federal Reserve Bank of New York will complete the TSP applications for circuits it leases to connect to foreign exchange counterparties.

Reconciliation of TSP Information

NCS requires that telecommunication service providers maintain an accurate inventory of circuits that are assigned TSP status and reconcile this inventory against NCS records annually. Reconciliation is necessary to ensure that the user, service provider, and NCS maintain accurate TSP information in the event that a disaster or emergency requires the restoration of NS/EP telecommunication services. As a sponsoring organization, the Board must maintain accurate records of the assignment and disposition of TSP codes provided to sponsored payment system participants. Consequently, Reserve Banks and other organizations receiving TSP assignments pursuant to the Board's sponsorship will be required to:

(1) Provide the Board with information pertaining to the telecommunication carrier and identifying code for each circuit receiving a TSP assignment;

(2) Notify the Board of any engineering changes affecting TSP assigned circuits; and

(3) Notify the Board of any TSP codes that should be revoked.

The Board may periodically review records pertaining to TSP sponsored circuits and work with the sponsored organization to resolve any identified discrepancies in TSP service information.

Revalidation of TSP Status

NCS also requires that the justification of TSP priority level assignments be revalidated every three years. This revalidation ensures that TSP-assigned circuits continue to be essential to support an NS/EP function. As part of the revalidation process, the Board will assess whether circuits it has sponsored for TSP assignment continue to meet its eligibility criteria.

Confidentiality of TSP Information

The Board believes that information provided to apply for TSP status as well as information included in subsequent TSP reports will be, in most cases, proprietary. Applicants will be required to describe the topology of their payments network and disaster recovery capabilities. Furthermore, private-sector entities will be required to identify telecommunication service providers and the unique circuit identifiers supporting sponsored TSP services. The release of this information could cause competitive harm. Consequently, the Board generally intends to consider TSP information exempt from the Freedom of Information Act under exemption 4 to protect both the interests of commercial entities that submit proprietary information to the government and the interests of the government in receiving continued access to such data (5 U.S.C. 552(b)(4)).

Costs Associated With TSP Status

Telecommunication carrier tariffs. Telecommunications carriers' charges for providing TSP services are filed as tariffs with the FCC or with state regulatory agencies. The tariffs permit carriers to assess a one-time charge and a monthly charge for each circuit assigned a TSP restoration authorization code. In the event of the provision of new service under TSP, carriers can apply a surcharge to the normal installation charges for each telecommunication service ordered. Finally, under the tariff, telecommunication carriers can assess a penalty to TSP customers for reporting an erroneous outage on a TSP circuit that is traced to the customer's premise equipment.

The TSP tariffs are cost-based and are not uniform between states or carriers. Tariffs are charged for Local Access and Transport Area (LATA) and inter-exchange TSP services. A single carrier generally collects TSP charges for all portions of the end-to-end service. TSP restoration assignment involves a one-time "set-up" charge and an ongoing monthly charge. For example, under AT&T's Tariff 11, a one-time charge ranging from $46 to $345 would be assessed for assigning TSP status to the LATA portion of a circuit; an ongoing monthly charge ranging from $.90 to $9.00 would also be assessed, depending on the LATA. TSP restoration charges for inter-exchange circuits are assessed on three network components:

(1) The LATA access at one end of the circuit;

(2) The inter-exchange carrier portion of the circuit; and

(3) The LATA access at the other end of the circuit.

The TSP charges for an inter-exchange circuit would include the LATA charges for each end of the circuit, plus the charges for the inter-exchange portion of the circuit. Under AT&T's Tariff 9, a one-time charge of $235 would be assessed for assigning TSP status to the inter-exchange portion of a circuit; a $9 monthly charge would also be assessed.[4] Under AT&T's Tariff 9 and 11, the TSP surcharge for the emergency provision of a new circuit ranges from $50 to $200 for LATA access portions of the circuit, depending on the LATAs, and $400 for the inter-exchange portion of a circuit. Under the AT&T tariff, the penalty for initiating a service call resulting from an erroneous report of an outage on a TSP circuit is $127.00. US Sprint and MCI have also filed tariffs for TSP services.

Recovery of TSP costs associated with Fedwire circuits. The costs associated with TSP status for computer interface or Fedline leased Fedwire access circuits used for priced services will be recovered through the fees charged to depository institutions that use those circuits.[5] The costs associated with TSP assignments for backbone circuits used for Fedwire are distributed to the services and activities that use these circuits, and, in the case of priced services, are recovered through the fees assessed for that service. The incremental costs associated with TSP status should not have a significant effect on Federal Reserve fees.

TSP costs for circuits not leased by the Federal Reserve. Private-sector organizations that are granted TSP status must bear the cost of all TSP-related charges. The Federal Reserve will not pay for TSP charges for circuits not leased by the Federal Reserve, including circuits leased by private-sector large-value networks, circuits used to connect a sponsored network access circuit to a participant's back-office processing location, and circuits leased by primary dealers, other large competitive bidders at Treasury auctions, and foreign central banks to connect to the Open Market Desk, the Treasury Automated Auction Processing System, or the Foreign Exchange Desk. Moreover, any costs incurred by sponsored private-sector organization for improvements to network facilities

[4] For example, using AT&T's Tariff 11, the cost of TSP restoration priority on an intra-LATA Fedwire access circuit of the Federal Reserve Bank of Philadelphia would include a one-time charge of $45.93 and monthly charges of $1.29. TSP assignment on an inter-LATA Fedwire access circuit from a Delaware depository institution to the Federal Reserve Bank of Philadelphia would include the costs referenced above as well as an additional one-time charge of $45.93 and monthly charges of $1.29 for the Delaware LATA access portion of the circuit and, under AT&T's Tariff 9, an additional $235 one-time charge and monthly charges of $9.00 for the inter-exchange portion of the circuit.

[5] Depository institutions that use their access circuits solely for non-priced services are not assessed electronic connection fees. Consequently, leased Fedwire access circuits used only for non-priced services will not be charged for TSP.

necessary to comply with NCS standards will not be reimbursed by the Federal Reserve.

Analysis of Competitive Effect

The Board does not believe that its sponsorship of telecommunications circuits of private-sector large-value payment systems or certain Fedwire access circuits for TSP status would adversely affect the ability of other service providers to compete effectively with Federal Reserve Banks in providing similar services. The Board's criteria for determining whether it should sponsor the critical backbone and access circuits of a private-sector payments network are consistent with the criteria for determining whether it should sponsor circuits used to provide Federal Reserve payment services.

The Board recognizes that granting TSP status to access circuits of certain depository institutions could provide a slight competitive advantage to those institutions vis-a-vis institutions whose access circuits do not qualify for TSP sponsorship, due to the slightly higher level of reliability and availability they may be able to achieve due to the TSP assignment. To eliminate this competitive advantage, TSP would need to be extended to all depository institution access circuits, or provided to none of these circuits. Neither of these alternatives would be consistent with the objective of protecting only essential NS/EP functions. Given that any circuit subject to TSP status must be subject to other contingency backup arrangements, which would be used in most situations of service outage, the Board does not believe that the marginal competitive advantage that TSP assignment may provide some institutions is significant enough to outweigh the benefits to the payments system of this program.

Paperwork Reduction Act

The Board will use three forms to implement its TSP sponsorship and invocation responsibilities. The forms are entitled "TSP Request for Service Users" (Standard Form 315), "TSP Service Order Report" (Standard Form 316), and "TSP System NSEP Invocation Report" (Standard Form 320). The Board received no comments related to the paperwork burden associated with these forms. Copies of the forms and related instructions are available from the Board upon request at the address above. NCS has assumed administrative responsibility for these forms under the Paperwork Reduction Act.

By order of the Board of Governors of the Federal Reserve System, July 13, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-17037 Filed 7-16-93; 8:45 am]

BILLING CODE 6210-01-F

City Holding Company, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* in providing to non-affiliated financial institutions, under written agreements with renewable one-year terms, data processing services, including item capture, reject re-entry, deposit account updates, loan account updates, statement production, notice production, credit bureau reporting, ACH file processing and loan coupon preparation pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the States of West Virginia, Ohio, Kentucky, and Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Van Buren Bancorporation Employee Stock Ownership Plan, Keosauqua, Iowa; to engage *de novo* in making, servicing or acquiring loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Security Capital Corporation, Batesville, Mississippi; to engage *de novo* in making loans to executive officers and directors of its subsidiary bank pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Panola County and Quitman County, Mississippi.

Board of Governors of the Federal Reserve System, July 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17042 Filed 7-16-93; 8:45 am]

BILLING CODE 6210-01-F

Community Banc-Corp. of Sheboygan, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 12, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Community Banc-Corp of Sheboygan, Inc., Sheboygan, Wisconsin; to acquire G & H Insurance Agency, Sheboygan, Wisconsin, which will become Community Insurance and Financial Services, Inc., Sheboygan, Wisconsin, and thereby engage in selling commercial and personal lines of insurance, and the sale of bonds except bail bonds, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y. These activities will be conducted in the State of Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Farmers State Corporation, Mountain Lake, Minnesota; to acquire United Prairie Insurance Agency, Slayton, Minnesota, and thereby engage in general insurance agency activities in Slayton, Minnesota, a community with a populaton of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. Comments on this application must be received by August 2, 1993.

Board of Governors of the Federal Reserve System, July 13, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17046 Filed 7-16-93; 8:45 am]

BILLING CODE 6210-01-F

First National Bank Shares, Ltd., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National Bank Shares, Ltd., Great Bend, Kansas; to acquire 100 percent of the voting shares of The Home State Building, Inc., Kinsley, Kansas, and thereby indirectly acquire The Home State Bank, Kinsley, Kansas.

In connection with this application, Applicant also proposes to acquire Lewis Insurance Services, Inc., Lewis, Kansas, and Potpourri Insurance, Inc., Kinsley, Kansas, and thereby engage in the sale of general insurance in Lewis and Kinsley, Kansas, towns each with less than 5,000 in population pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Security Corporation, Salt Lake City, Utah; to merge with Continental Bancorporation, Las Vegas, Nevada, and thereby indirectly acquire Continental National Bank, Las Vegas, Nevada.

In connection with this application, Applicant also proposes to acquire Continental Trust Company, Las Vegas, Nevada, and thereby engage in trust company activities pursuant to § 225.25(b)(3); and CNB Services, Inc., Las Vegas, Nevada, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17044 Filed 7-16-93; 8:45 am]

BILLING CODE 6210-01-F

PHSB Mutual Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

VOL 58 ISS 136 JL 19 1993 UMI

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PHSB Mutual Holding Company, Beaver Falls, Pennsylvania; to become a bank holding company by acquiring 52.4 percent of the voting shares of Peoples Home Savings Bank, Beaver Falls, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Farmers Bancorporation, Buhl, Idaho; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers National Bank, Buhl, Idaho.

Board of Governors of the Federal Reserve System, July 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–17043 Filed 7–16–93; 8:45 am]

BILLING CODE 6210–01–F

Switzer Deason; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 9, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Switzer Deason, Bryan, Texas, to acquire 14.7 percent of the voting shares of Caldwell Capital Corporation, Caldwell, Texas, and thereby indirectly acquire First State Bank in Caldwell, Caldwell, Texas.

Board of Governors of the Federal Reserve System, July 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–17045 Filed 7–16–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Invitation for Nominations for the Dietary Guidelines Advisory Committee

AGENCIES: Office of the Assistant Secretary for Health, Department of Health and Human Services, and Food and Consumer Services, U.S. Department of Agriculture.

ACTION: Dietary Guidelines Advisory Committee: Invitation for nominations.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Agriculture (USDA), announce their intention to establish a Dietary Guidelines Advisory Committee pending approval of the charter and invites nominations for the Dietary Guidelines Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Elena T. Carbone, M.S., R.D., Co-executive Secretary from HHS to the Dietary Guidelines Advisory Committee, Office of Disease Prevention and Health Promotion, room 2132 Switzer Building, 330 C Street, SW., Washington, DC 20201, (202) 205–9007; or Alanna J. Moshfegh, M.S., R.D., Co-executive Secretary from USDA to the Dietary Guidelines Advisory Committee, Human Nutrition Information Service, room 366, 6505 Belcrest Road, Hyattsville, Maryland 20782 (301) 436–8457.

SUPPLEMENTARY INFORMATION: The *Dietary Guidelines for Americans* form the basis of Federal food and nutrition education activities. The Guidelines were first published by USDA and HHS in 1980, with revisions in 1985 and 1990. The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445) requires the Secretaries of USDA and HHS to publish the *dietary Guidelines for Americans* at least every five years.

Prospective members of the Dietary Guidelines Advisory Committee should be familiar with current scientific knowledge in the field of nutrition and be recognized experts in their field. Based on their knowledge of current research related to dietary guidance issues, Committee members will determine if revision of the 1990 *Nutrition and Your Health: Dietary Guidelines for Americans* is warranted and will proceed to develop recommendations for these revisions. Copies of the *Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans*, 1990 is available upon request from USDA.

The Departments invite nominations for Committee membership of individuals qualified to carry out the above-mentioned tasks. Nominations should describe and document the nominee's qualifications in the relevant subject areas. Nominations may be submitted either to Elena T. Carbone or Alanna J. Moshfegh at the addresses above up to 60 days after publication of this notice.

Dated: July 9, 1993.

J. Michael McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

Ellen Haas,

Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.

[FR Doc. 93–17055 Filed 7–16–93; 8:45 am]

BILLING CODE 4150–17–M

Administration of Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of new information collection requirements found at section 402(i)(6) of the Social Security Act. This information collection titled: "At-Risk Child Care Annual Report (Form ACF 301) is sponsored by the Office of Family Assistance (OFA) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of this information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested aporoval for information collection should be sent

directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725–17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document:

Title: At-Risk Child Care Annual Report (Form ACF 301).

OMB No.: New Request.

Description: This request for information is required by section 402(i)(6) of the Social Security Act and section 257.50 of the At-Risk Child Care regulations. Part 257 of the regulations pertains to the At-Risk Child Care program which permits States to provide assistance to low-income working families who need child care in order to work and are otherwise at risk of becoming eligible for AFDC. The State agency responsible for administering or supervising the State's IV–A Plan is responsible for administering the At-Risk Child Care program.

Section 257.50 of the regulations requires that beginning with FY 1993, the State IV–A agency shall prepare and submit an annual report to the Secretary of the Department of Health and Human Services. Other information mandated by the statute will be compiled for the Secretary by OFA and submitted to the Congress annually. The information collected by use of this form shall contain the following:

(1) The State's criteria applied in determining eligibility or priority for receiving services; and

(2) The separate amounts of Federal and State expenditures for each subsequent period, in accordance with section 257.64(b)(4) in the At-Risk regulations.

Annual Number of Respondents: 54.

Annual Frequency: 1.

Average Burden Hours Per Response: 3.5.

Total Burden Hours: 189.

Dated: June 21, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–16970 Filed 7–16–93; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for the reauthorization of an information collection titled: "Uniform Reporting Requirements IV–A and IV–F Funded Child Care for Non-Jobs Participants and Tribal JOBS Participants." This information collection is currently approved under OMB Control Number 0970–0115. The request is sponsored by the Office of Family Assistance (OFA) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of this information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for this information collection should be sent directly to: Laura Oliven OMB Desk Officer for ACF OMB Reports Management Branch New Executive Office Building, room 3002 725 17th Street, NW. Washington, DC 20503 (202) 395–7316.

Information on Document

Title: Uniform Reporting Requirement IV–A and IV–F Funded Child Care for Non-Jobs Participants and Tribal Jobs Participants.

OMB No.: 0970–0115.

Description: The Administration for Children and Families uses Form ACF–115 to collect information to meet the IV–A child care uniform reporting requirements under section 606 of the Family Support Act of 1988 and section 5081 of the Omnibus Budget Reconciliation Act of 1990. Form ACF-115 comprises information on children receiving child care assistance paid with IV–A funds for families who are participating in a Tribal Job Opportunities and Basic Skills Training (JOBS) program or in an approved non-JOBS eduction and training program, or are employeed (including At-Risk families and families in transition. Data is collected on the number of families and children served, IV–A program status of families, number of months families receive services, types of child care providers, and IV–A expenditures.

Annual Number of Respondents: 54.

Annual Frequency: 4.

Average Burden Per Responses: 35.

Total Burden Hours: 7,560

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 93–16997 Filed 7–16–93; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for reauthorization to continue use of information collection activities currently approved by OMB. This request is sponsored by the Office of Family Assistance (OFA) of the Administration for Children and Families (ACF).

This information collection is entitled:

ACF–116, Job Opportunities and Basic Skills Training (JOBS) Program Tribal Plan, and

ACF–117, Transmittal and Notice of Approval of Tribal Plan Material.

ADDRESSES: Copies of this information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer of ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: ACF–116, Job Opportunities and Basic Skills Training (JOBS) Program Tribal Plan.

and

Tribal ACF–117, Transmittal and Notice of Approval of Tribal Plan Material.

OMB No.: 0970–0117.

Description: This information collection is authorized by sections 402 and 482 of the Social Security Act and by regulations at 45 CFR 250.94 and 250.97. The ACF–116 is the form currently used by Indian Tribes and Alaska Native organizations administering a Job Opportunities and Basic Skills Training (JOBS) and supportive services program.

The Tribal (refers to both Indian Tribes and Alaska Native organizations) JOBS application is a mandatory statement submitted to the Administration for Children and Families (ACF) by the Tribal grantee responsible for administering the JOBS and supportive services program. The application provides assurances that the program will be administered in conformity with Titles IV–A and IV–F of

the Social Security Act, pertinent Federal regulations, and other applicable instructions or guidelines issued by ACF. The application constitutes the agreement between the Tribe or organization and the Federal government as to how the JOBS and supportive services program will operate within the Tribe or organization. Regulations at 45 CFR 250.97 require Indian Tribes that are operating a JOBS program to file a new application/plan every two years and amendments to the application/plan whenever necessary. The Tribal application will be forwarded to the Administration for Children and Families via the Transmittal and Notice of Approval of Tribal Plan Material (ACF–117). This form will also be used to notify the Tribal grantee of the approval of the JOBS application.

	ACF–116	ACF–117
Annual Number of Respondents:	77	77.
Annual Frequency:	1	1.
Average Burden Hours Per Response:	40	.05.
Total Burden Hours:	3,080	3.85.

Dated: June 24, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–16972 Filed 7–16–93; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[CDC–330]

Announcement of Cooperative Agreement to the Association of State and Territorial Health Officials

Summary

The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1993 for a sole source cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to provide technical and financial assistance to state health department tobacco-use prevention and control programs. This cooperative agreement will provide a continuation of the project for which ASTHO has been funded for the previous three years. Approximately $135,000 is available in FY 1993 to support this program. It is expected that the award will be made on or about September 20, 1993, for a 12-month budget period within a project period of up to 3 years. This funding estimate may vary and is subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this program is to facilitate ASTHO's efforts in serving as a link between the state health officials and the CDC, National Cancer Institute (NCI), and National Heart, Lung, and Blood Institute (NHLBI). This link provides a mechanism for coordination of the Healthy People 2000 objectives for the nation and promotes the coordination of national program goals between the Office on Smoking and Health (OSH), NCI, and NHLBI.

The CDC will: assist in the development and distribution of informational packages and mailings to states; assist in the development of the databases of tobacco-intervention programs and policies; collaborate in the planning and support of workshops, conferences, and other professional gatherings that serve a public health purpose, and provide speakers for meetings that are national in scope; provide analytical expertise and assist in preparation of material for publication that includes information on state tobacco prevention and control activities; and provide technical assistance to ASTHO regarding tobacco control programs and policies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of tobacco. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized by Section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended.

Eligible Applicant

Assistance will be provided only to ASTHO for this project. No other applications are solicited. The Program Announcement and application kit have been sent to ASTHO.

Eligibility is limited to ASTHO since it represents all state and territorial public health officials, including a network of (state) health department tobacco-control representatives identified through these officials. ASTHO was created specifically to represent this group of state agencies to the Federal government and other national organizations and is unique in its role as a liaison between these officials. It has served as a policy development and capacity-building organization in public health matters for many years and has as one of its major objectives the sharing of information between state health departments.

ASTHO has established a unique network of public health professionals in each state and territory who are concerned with tobacco-use prevention and control programs. ASTHO has maintained active involvement in tobacco-related issues through their Tobacco or Health Committee. With assistance from Centers for Disease Control and Prevention/Office on Smoking and Health (CDC/OSH), the National Cancer Institute (NCI), and the National Heart, Lung, and Blood Institute (NHLBI), this committee has (1) developed a network of tobacco-control representatives, (2) conducted regular mailings and communications with state health officials, and (3) coordinated activities between Federal agencies and states.

Executive Order 12372 Review

This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement as cited in PHS Circular 93.01.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 330 and contact Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, GA 30305; (404) 842–6803.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Summary may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone: 202–783–3238).

Dated: July 12, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–17011 Filed 7–16–93; 8:45 am]

BILLING CODE 4160–18–P

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health And Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Surveyor Survey for the Home Health Agency Assessment Evaluation Project; *Form No.:* HCFA–157 *Use:* This project will evaluate the new patient centered, outcome-oriented survey and certification process for home health agencies. This questionnaire, a component of the project, will examine aspects of the survey process, focusing on surveyor decision-making and information sources; *Frequency:* On occasion, one-time only study; *Respondents:* State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 200; *Average Hours Per Response:* .75; *Total Estimated Burden Hours:* 150.

2. *Type of Request:* Extension; *Title of Information Collection:* Survey Report Form (CLIA); *Form No.:* HCFA–1557; *Use:* This survey form is an instrument used by the State agency to record data collected in order to determine compliance with CLIA. This information is needed for laboratory certification and recertification: *Frequency:* bi-annually; *Respondents:* Businesses or other for profit, nonprofit institutions, Small businesses or organizations, State and Local governments, Federal agencies or employees; *Estimated Number of Responses:* 31,200; *Average Hours Per Response:* 0.54; *Total Estimated Burden Hours:* 16,848.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Quarterly Showing Validation Survey; *Form No.:* HCFA–9050; *Use:* Validates State inspection of care reviews, which are conducted at least annually in all intermediate care facilities for a select number of institutions. Reporting entities may be requested to submit list of patients for which the State is currently responsible for care. This is part of the operation to determine that States have an effective utilization control program; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 47; *Average Hours Per Response:* 8; *Total Estimated Burden Hours:* 376.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Quarterly Showing; *Form No.:* HCFA–R–41; *Use:* This form is used by State Medicaid agencies to list the participating health care facilities and the dates the State agencies reviewed the 2 facilities. The lists are required to ensure the existence of an effective utilization (of services) control program, as required by law and regulations, to avoid a penalty.; *Frequency:* Quarterly; *Respondents:* State or local governments; *Estimated Number of Responses:* 45; *Average Hours Per Response:* 16; *Total Estimated Burden Hours:* 9,212.

5. *Type of Request:* New; *Title of Information Collection:* Contractor Financial Reports; *Form Nos.:* HCFA–750A and 750B; *Use:* HCFA needs to secure financial information regarding Medicare benefits from its 84 Medicare contractors for inclusion in its annual financial statement in accordance with the requirements of the Chief Financial Officers Act and for quarterly reporting to the U.S. Treasury on the SF–220 series of financial reports; *Frequency:* Quarterly and annually; *Respondents:* Businesses or other for-profit and nonprofit institutions; *Estimated Number of Responses:* 188; *Average Hours Per Response:* 6; *Total Estimated Burden Hours:* 1,128.

6. *Type of Request:* New; *Title of Information Collection:* Status of Accounts Receivable; *Form Nos.:* HCFA–751A and 751B; *Use:* HCFA needs to secure financial information regarding Medicare benefits from its 84 Medicare contractors for inclusion in its annual financial statement in accordance with the requirements of the Chief Financial Officers Act and for quarterly reporting to the U.S. Treasury on the SF–220 series of financial reports; *Frequency:* Quarterly and annually; *Respondents:* Businesses or other for-profit and nonprofit institutions; *Estimated Number of Responses:* HCFA–751A (188), HCFA–751B (336); *Average Hours per Response:* HCFA–751A (2), HCFA–751B (2); *Total Estimated Burden Hours:* HCFA–751A (376), HCFA–751B (672).

7. *Type of Request:* Reinstatement; *Title of Information Collection:* 42 CFR.138 Determining Liability of Third Parties and Related State Plan Preprint; *Form Nos.:* HCFA-R–107 and SP–2; *Use:* HCFA is requesting reinstatement of the information collection requirements contained in 42 CFR 433.138 and the related State plan preprint. The information is collected from applicants and recipients from State and local agencies for the purpose of determining the legal liability of third parties to pay for services under the Medicaid program. *Frequency:* On occasion; *Respondents:* Individuals or households, State or local governments, Federal agencies or employees; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 171,165.

Additional Information or Comments: Call the Reports Clearance Office on 410–966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: July 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–16982 Filed 7–16–93; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. (and in foreign markets) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 07/679,674, filed April 4, 1991, and entitled "Immortalization of Endothelial Cell Line"—This invention pertains to the immortalization of human endothelial cell lines. Endothelial cells are critical components of wound

healing, inflammation, circulation, and tumor growth metastases and up to this point were difficult to isolate and culture. However, a unique approach has been devised to immortalize endothelial cells which will be of great value for numerous applications throughout the world.

These cells exhibit typical cobblestone morphology when grown in monolayer culture, express von Willebrand's Factor, take up acetylated low density lipoprotein and rapidly form tubes when cultured on matrigel. The cell lines can grow in serum free media, and express cell surface molecules typically associated with endothelial cells and cell adhesion molecules. The cell line is also quite viable having been passaged fifty (50) times with no sign of senescence.

The cell lines provide a ready source of human endothelial cells for commercial research purposes. Some examples may include:

- Studies on the physiologic and pathophysiologic factors that induce endothelial mitosis
- Pharmacological studies as substrates for the screening of various agents
- Toxicity studies for the cosmetic and pharmaceutical industries

The invention claimed in this patient application is available for licensing on a nonexclusive basis for upfront and annual minimum royalty payments. A time limited evaluation agreement is also available.

ADDRESSES: Licensing information and a copy of the U.S. patent application may be obtained by writing to Carol Lavrich at the Office of Technology Transfer, National Institutes of Health, Box OTT, Rockville, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive a copy of the patent application.

Dated: July 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–17070 Filed 7–16–93; 8:45 am]

BILLING CODE 4140–01–M

Behavioral and Neurosciences Special Emphasis Panel; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358.

Date of Meeting: July 28, 1993.

Place of Meeting: Westwood Bldg., rm 319C, NIH, Bethesda, MD (Telephone Conference).

Time of Meeting: 12 noon.

(Catalog of Federal domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–17069 Filed 7–16–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Co-Exclusive License: Recombinant Pseudomonas Exotoxin Immunoconjugate Specifically Directed Against the Lewis Y Antigen

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use co-exclusive license in the United States to practice the invention embodied in U.S. Patent Application Number 06/911,227 (issued on January 9, 1990 as U.S. Patent No. 4,892,827) entitled "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects", to NeoRx Corporation, having a place of business in Seattle, WA; Boehringer Mannheim GMbH, having a place of business in Penxberg, Germany; and to Bristol-Myers Squibb Company, having a place of business in Princeton, NJ. The patent rights in these inventions have been assigned to the United States of America.

The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to the use of the recombinant Pseudomonas exotoxin of this invention in conjunction with antibodies for constructing immunotoxins targeting the Lewis Y antigen.

The present inventions relate to modifications of recombinant Pseudomonas exotoxins with insertion of various targeting molecules specific for a given target site. The modified exotoxins of these inventions may prove to be a valuable cancer therapeutic when fused to various target-specific cell recognition proteins. The modifications result in reduced non-specific cytotoxicity while increasing target specific cytotoxicity.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to be contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: July 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–17071 Filed 7–16–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Co-Exclusive License: Recombinant Pseudomonas Exotoxin Immunoconjugate Specifically Directed Against the Lewis Y Antigen

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use co-exclusive license in the United States to practice the invention embodied in U.S. Patent Application Number 07/596,289 entitled "Antibodies Specific for Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors", to NeoRx Corporation, having a place of business in Seattle, WA and Boehringer Mannheim GMbH, having a place of business in Penxberg, Germany. The patent rights in these inventions have been assigned to the United States of America.

The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to the use of the monoclonal antibodies of the subject invention with the recombinant Pseudomonas exotoxin for targeting the Lewis Y antigen.

The present invention relates to the monoclonal antibodies (MAb) B1, B3, and B5. More specifically, the invention relates to MAb B3 which shows strong reactivity with the Lewis Y antigen on many human solid tumors and has limited reactivity with normal human tissues. MAb B3 reacts strongly with all adenocarcinomas of the colon and 75% of them react strongly and homogeneously. MAb B3 has also shown similar strong reactivity with other gastrointestinal malignancies such as esophageal (80%) and gastric carcinomas (75%); MAb B3 reacts strongly with approximately 70% of adenocarcinomas of the lung and also reacts with about 40% of squamous cell carcinomas of the lung and 25% of large cell carcinomas. MAb B3 reacts heterogeneously with 70% of breast carcinomas and homogeneously with about 65% of adenocarcinomas of the prostate and 100% of transitional cell carcinomas of the bladder. Several important characteristics of MAb B3 make it an ideal candidate for further development for use as an immunotoxin for treatment of cancers: (1) its strong and uniform reactivity with many human solid carcinomas; (2) its limited reactivity with normal tissues; (3) the fact that similar reactivity is found in normal monkey and human tissues (which allow for performance of preclinical toxicology studies with predictive value for a clinical trial); and (4) when coupled to recombinant forms of Pseudomonas exotoxin lacking the cell binding domain, the resulting immunotoxin is capable of killing tumor cells expressing the Lewis Y antigen on their surface, indicating that the antibody/antigen complex is readily internalized.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: July 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–17072 Filed 7–16–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Cosponsorship of the Healthy Start Communications Campaign

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of opportunity for cosponsorship.

SUMMARY: The Health Resources and Services Administration, (HRSA) announces the opportunity for for-profit and non-profit organizations to cosponsor with HRSA the Healthy Start Communications Campaign.

DATES: To receive consideration, requests to participate as a cosponsor must be received by Ms. Charlotte Mehuron, Director, Healthy Start Communications Program. There are no deadlines applicable to this cosponsorship opportunity.

FOR FURTHER INFORMATION CONTACT: Ms. Charlotte Mehuron, Director, Healthy Start Communications Program, HRSA, Public Health Service, Parklawn Building, Room 18A–39, 5600 Fishers Lane, Rockville, Maryland, 20857. (301) 443–0948.

SUPPLEMENTARY INFORMATION:

Background

In 1989, 25 percent of America's pregnant women received no prenatal care in their first trimester. Among African American women, over 40 percent received no first trimester care.[1] Babies born to women receiving no first trimester prenatal care are three times more likely to be born at low birth weight and four times more likely to die than those whose mothers receive first trimester care. Low birth weight, often preventable, is costly, both emotionally and economically. In 1990, the hospital-related costs of caring for all low birth weight infants during the neonatal period totaled more than $2 billion, or $21,000 for each baby.[2] The average cost of a normal delivery is around $2,900.

As part of the Department of Health and Human Services' (DHHS) efforts to reduce infant mortality, DHHS developed the Healthy Start Initiative, a part of which is the Healthy Start Communications Campaign (the Healthy Start Campaign). The Healthy Start Campaign is a federal information program designed to decrease the Nation's alarmingly high rate of infant mortality and morbidity by increasing certain prenatal behaviors that have been shown to maximize an infant's opportunity to have a 'healthy start' in life. DHHS believes that education is the key to assuring healthy behaviors and, therefore, the Healthy Start Campaign is dedicated to the development and dissemination of information formats to enhance the knowledge base and affect the actions of pregnant women.

The goal of the Healthy Start Campaign is to improve the chances of women to have healthy pregnancies, healthy births and healthy babies through early and continuing prenatal, neonatal and infant care along with responsible behaviors. Education/information efforts focusing on the need

[1] National Center for Health Statistics.

[2] AF. Minor, Cost of Maternity Care & Childbirth in the U.S.; 1989 Research Bulletin, HIAA, Dec 1989

VOL 58 ISS 136 JL 19 1993 UMI

for appropriate health care and healthy behaviors, including the avoidance of drugs, alcohol and tobacco, are directed to women of childbearing age, pregnant women, fathers, family members and others in the community who can influence the outcome of pregnancies.

Requirements of Cosponsorship

The Healthy Start Communications Program is seeking a partnership with public and private for-profit and non-profit organizations to develop and distribute information designed to effectively impart the Healthy Start message to target groups, such as women of childbearing age, expectant dads, health care professionals and organizations, government agencies, community organizations, the general public and others. DHHS will reserve the right to determine both the form and the content of the information provided to the target groups. The Healthy Start Communications Program envisions cosponsorship with a wide variety of corporations concerned about women's and young children's issues to assist in the development and dissemination of information. The duties of the cosponsor will include:

(1) Development of an information campaign for the dissemination of Healthy Start messages, and

(2) Implementation of an information campaign for the dissemination of Healthy Start messages, including but not limited to, the printing of brochures or booklets; the production of public service spots or videos; and the production and distribution of other materials, such as posters, flyers, paid advertising, "how to" manuals for health care providers or community organizations, and programs for employees, schools and physician/health groups.

Availability of Funds

There are no Federal funds available to conduct the cosponsored activities for the Healthy Start Campaign. It will be the unilateral responsibility of the cosponsor to bear all costs.

Eligibility for Cosponsorship

To be eligible, an interested party must be: (1) A public or a private non-profit or for-profit organization or corporation and (2) an entity that, by virtue of its nature and purpose, has a legitimate interest in the target groups.

Expressions of Interest

Each request for cosponsorship should be in writing and contain information pertinent to the cosponsorship opportunity.

Evaluation Criteria

The cosponsors will be selected by the Healthy Start Communications Program, HRSA, based on the following evaluation criteria:

(1) The interested party's qualifications and capability to develop and implement materials for the dissemination of the Healthy Start message to the target population, and

(2) The ability of the interested party to arrange for the funding of the development and dissemination of the Healthy Start information materials or message.

Neither this notice nor actions pursuant thereto, creates a property right or right of any kind in any natural or artificial person requesting cosponsorship. DHHS has the unilateral right to refuse to enter into a cosponsorship arrangement with any entity, and the exercise of this right is solely within the discretion of DHHS.

Other Information

Prior to the selection of the cosponsors, the Healthy Start Communications staff will meet separately with those interested parties who best meet the evaluation criteria. In those situations where the Food and Drug Administration regulates the labeling of products manufactured by cosponsors, the inclusion of a Healthy Start logo on such products will be subject to FDA review and may require agency authorization, depending on how and the context in which the logo is to be used. Moreover, other federal agencies may be involved in the cosponsorship process. Furthermore, as a general rule, restrictions will apply to the use of a Healthy Start logo or other indicia, so as to avoid suggestions that DHHS, or any other department or agency of the Federal government, endorses any of the products involved in the Healthy Start Campaign. Once details of the program have been mutually agreed upon, cosponsors will be required to enter into a cosponsorship agreement with the Department of Health and Human Services setting forth the rights and responsibilities of the cosponsor and DHHS, especially the right of DHHS to approve Healthy Start messages.

Dated: July 13, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93-17032 Filed 7-16-93; 8:45 am]

BILLING CODE 4160-15-P

Office of the Assistant Secretary for Health

Public Law 93-638; Indian Self-Determination and Education Assistance Act Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health (ASH) by the Secretary of Health and Human Services on June 30, 1993, I redelegated to the Director, Indian Health Service (IHS), all the authorities vested in me under Public Law 93-638, Indian Self-Determination and Education Assistance Act, as amended.

However, the authority delegated is subject to the following special conditions:

(1) Contracts must continue to be awarded and administered by Contracting Officers appointed pursuant to Federal and Department Regulations until IHS obtains approval from the Deputy Assistant Secretary for Health Management Operations (DASHMO) for an alternative method of awarding and administering the contracts.

(2) The authority to award the self-governance compacts and funding agreements may not be exercised in Fiscal Year 1994 until an implementation plan describing the methodology for administering the program is approved by the DASHMO.

This authority does not include the authority to promulgate regulations under section 107 of the Act, to submit reports to the Congress, establish advisory committees or national commissions, and appoint members to such committees or commissions.

The authorities regarding the self-governance compacts and funding agreements may not be redelegated.

This delegation supersedes the delegation of May 25, 1976, from the ASH to the Administrator, Health Services Administration, for the Indian Self-Determination and Education Assistance Act, Public Law 93-638 as continued in the Reorganization Order of January 4, 1988 (52 FR 47053). Previous redelegations of authority made to officials within the IHS may continue in effect provided they are consistent with this delegation and until they are superseded or canceled by appropriate authority.

In addition, I have affirmed and ratified any actions taken by the Director, IHS, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

This delegation was effective June 30, 1993.

Dated: June 30, 1993.
Anthony L. Itteilag,
Acting Assistant Secretary for Health.
[FR Doc. 93–17030 Filed 7–16–93; 8:45 am]
BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–93–4110–03]

Environmental Impact Statement; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct public scoping and prepare an environmental impact statement.

SUMMARY: The action proposed is to conduct scoping and to prepare an Environmental Impact Statement (EIS) on a proposed oil field enhanced oil recovery project. Enron Oil & Gas Company (Enron) has notified the Bureau of Land Management (BLM) Pinedale Resource Area that the company intends to drill 35 oil wells and subsequently convert approximately 15 of the oil production wells to water injection wells on Enron's oil and gas leases in Sublette County, Wyoming. The proposed wells would be located in portions of Sections 18, 19, 20 and 29 of Township 28 North, Range 113 West, an area of approximately 1,000 acres, within the Big Piney-LaBarge Coordinated Activity Plan (CAP) area (an area of approximately 197,000 acres).

The proposed wells would be drilled on a 20-acre spacing pattern and would be within Enron's existing Burly Field. Enron intends to drill five wells in 1993 to test the suitability of the Mesaverde Formation for primary oil recovery. Should this stage of the project prove successful, then Enron would proceed with drilling the remaining 30 wells through the year 2000. Approximately 15 of the oil production wells would be converted to water injection wells for secondary oil recovery. Secondary oil production would include a waterflood program to enhance oil recovery. If Enron determines the development of the Mesaverde formation is not economically feasible after the first five wells have been drilled, the project would be abandoned and further development of the Mesaverde Formation (beyond the five wells drilled in 1993) would not be pursued.

Construction of pipelines would occur concurrently with well drilling on the same schedule. Although some level of activity would be continuous, peak drilling and construction activities would be planned for the summer and fall.

DATES: A Scoping Notice will be distributed by mail on or about the date of this notice. Response and comments will be accepted for 30 days following the date of this notice. No public meetings are scheduled at this time. The comments and concerns received in response to the scoping will aid the BLM in identifying alternatives and assure all issues are analyzed in the EIS. Should public demand warrant a public meeting, it will be scheduled at a later date.

ADDRESSES: Information and a copy of the Scoping Notice for the proposed enhanced oil recovery project can be obtained by writing or visiting the following offices:

BLM, Wyoming State Office, 2515 Warren Ave., P.O. Box 1828, Cheyenne, Wyoming 82003.
BLM, Rock Springs District Office, Highway 191 North of Rock Springs, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.
BLM, Pinedale Resource Area Office, 432 E. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941.

Scoping comments should be sent to: Bureau of Land Management, Rock Springs District Office, ATTN: Teresa Deakins, P.O. Box 1869, Rock Springs, Wyoming 82901–1869.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Area Manager, Bureau of Land Management, Pinedale Resource Area Office, P.O. Box 768, Pinedale, Wyoming 82941, phone: (307) 367–4358.

SUPPLEMENTARY INFORMATION: The action to be analyzed in the EIS consists of the construction, operation, and maintenance of the following project components: oil and water injection wells, access roads, a central oil tank battery, an oil gathering system to transport the oil from the wellhead to the central tank battery, a pipeline to transport the oil from the central tank battery to an existing oil transportation pipeline (Amoco's), an injection water pipeline distribution system, and an electrical distribution system.

Land and resource management issues and concerns associated with the construction, operation, and maintenance of the enhanced oil recovery project will be analyzed in the environmental impact statement.

Dated: July 8, 1993.
Ray Brubaker,
State Director, Wyoming.
[FR Doc. 93–17023 Filed 7–16–93; 8:45 am]
BILLING CODE 4310–22–M

[NM–060–4320–10–ADVB; 606]

Roswell District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATES: Wednesday, August 18, 1993, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

LOCATION: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 W. 2nd St., Roswell, NM 88201.

SUPPLEMENTARY INFORMATION: The agenda will consist of review and discussion of FY 94 Range Improvement Projects and Holistic Resource Management Proposals. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the District Manager by August 11, 1993. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: July 6, 1993.
Leslie M. Cone,
District Manager.
[FR Doc. 93–17081 Filed 7–16–93; 8:45 am]
BILLING CODE 4310–FB–M

[AZ–040–4210–04]

Realty Action of the Exchange of Public Lands, Pinal County, AZ

AGENCY: Bureau of Land Management (BLM), Safford District, AZ., Interior.

ACTION: Exchange of Public Lands in Pinal County, AZ., Case Number AZA 27942.

SUMMARY: The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of other public land through consolidations of ownership and the acquisition of unique natural resources. The public lands within the following described lands are being considered for disposal via

VOL 58 ISS 136 JL 19 1993 UMI

exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 8 S., R. 11 E.
Sec. 1, 3–9, 14, 15, 17–31, 33, 34, and 35.
T. 9 S., R. 11 E.
Secs. 1, 5–8, 17–21, 23–31, 33, 34, and 35.
T. 10 S., R. 11 E.
Secs. 4–7, 9, 10, 11, 13, 14, 20, 21, 28, 33, and 34.

Comprising 33,775.47 acres.

Final determination on disposal will await completion of an environmental analysis. The proposed exchange is consistent with the Bureau's land use planning objectives. Lands being proposed for exchange would be conveyed from the United States subject to all valid existing rights.

In accordance with the regulations at 43 CFR 2201.(b), publication of this notice shall segregate the affected public lands from appropriation under the public land and mining laws, subject to valid existing rights, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands, publication in the **Federal Register** of a notice of termination of the segregation, or two years from the date of this publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 8, 1993.

William T. Civish,

District Manager.

[FR Doc. 93–17021 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–33–M

[UT–943–4730–04–269Z]

Filing of Plat of Survey

AGENCY: Bureau of Land Management, Utah.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land have been filed in the Utah State Office, Salt Lake City, Utah:

Group	Tp.	Rge.	Meridian	Approved	Type
Supplemental	2 S.	4 E.	SLM	10/21/92	Supplemental.
748	12 S.	5 W.	SLM	10/22/92	Dep. Resurvey.
773	3 S.	21 W.	SLM	10/22/92	Do.
Supplemental	2 S.	22 E.	SLM	03/04/93	Supplemental.
Supplemental	8 S.	5 W.	SLM	03/04/93	Do.
776	33 S.	8 W.	SLM	03/30/93	Dep. Resurvey.
Supplemental	22 S.	19 W.	SLM	04/28/93	Supplemental.
757	19 S.	1 W.	SLM	06/01/93	Dep. Resurvey.
768	23 S.	1 E.	SLM	06/01/93	Do.
736	14 N.	19 W.	SLM	06/14/93	Do.
738	15 N.	19 W.	SLM	06/14/93	Do.
749	9 S.	19 E.	SLM	06/14/93	Do.

G. William Lamb,

Associate State Director.

[FR Doc. 93–17004 Filed 7–16–93; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act and the Toxic Substances Control Act

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on June 10, 1993, a proposed consent decree in *United States* v. *Elliott Drywall and Asbestos, Inc.*, Civil Action No. 93–2237–GTV, was lodged with the United States District Court for the District of Kansas. The complaint filed by the United States sought injunctive relief and civil penalties for violations by defendant Elliott Drywall and Asbestos, Inc. ("Elliott") of (1) the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos, 40 CFR part 61, subpart M, promulgated pursuant to section 112 of the Clean Air Act ("Act"), 42 U.S.C. 7412; and (2) the Asbestos-Containing Materials in Schools Rule, 40 CFR part 763, subpart E and the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.* Elliott's violations arise from four removal operations conducted at public schools located in Kansas and Missouri. Pursuant to the proposed Consent Decree agreed to by the Defendant and EPA, Elliott has agreed to: (1) pay a civil penalty in the amount of $22,000; (2) injunctive relief; and (3) to pay stipulated penalties for violation of the terms of the Consent Decree.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20530, and should refer to *United States* v. *Elliott Drywall and Asbestos, Inc.*, DOJ# 90–5–2–1–1512.

The proposed consent decree may be examined at the offices of the United States Attorney for the District of Kansas, 412 Federal Building, 812 North Seventh Street, Kansas City, Kansas 66101, and at the office of the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 75202 (Attention: Kent Johnson, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–16969 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in United States v. Global Inc., et al., Civil Action No. 92–0386–S–EJL, was lodged with the United States District Court for the District of Idaho on June 18, 1993. This Consent Decree settles an action filed by the United States, pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412, against Global Inc., Jordan-Wilcomb Construction, Inc., and Allied Construction, Inc.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, to recover civil penalties from and obtain injunctive relief against the Defendants for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") promulgated thereunder, during renovation activities that took place at the Global Travel Office Building (formerly the Washington Federal Savings and Loan Building) in Boise, Idaho, during March 1990. In this settlement, the Defendants will pay the United States a civil penalty of $50,000.00. Also, any future renovation and demolition operations conducted at the Defendants' facilities will be subject to the provisions set out in the consent decree, as well as to the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to United States v. Global Inc., et al., DOJ number 90–5–2–1–1661.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Room 328 Federal Building, 550 West Fort Street, Boise, Idaho 83724, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. When requesting a copy of the Consent Decree, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–16968 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on May 25, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and VLSI Technology Inc. ("VLSI") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and VLSI, San Jose, CA. Bellcore and VLSI entered into an agreement effective as of April 7, 1993 to engage in cooperative studies of the application of advanced CMOS VLSI technology to low-power wireless access for Personal Communications Systems (PCS) to better understand the application of this technology for exchange and exchange access services, including prototype fabrication of integrated circuits for the experimental demonstration of such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–16964 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on May 25, 1993, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Telecommunications Laboratories ("TL") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and TL, Taiwan, Republic of China. Bellcore and TL entered into an agreement effective as of March 24, 1993 to engage in cooperative research in the areas of transceiver architectures and high speed timing/carrier recovery techniques for Asymmetric Digital Subscriber Line (ADSL) technologies to understand the applications of such technologies to exchange and exchange access services.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–16965 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Composite Materials Characterization, Inc.

Notice is hereby given that, on June 15, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Composite Materials Characterization, Inc. ("CMC") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CMC has admitted to membership Vought Aircraft Company, Dallas, TX, and has transferred membership from LTV Aerospace and Defense Company to Loral Vought Systems Corporation, Dallas, TX. Additionally, CMC has amended its bylaws to allow the admission of associate members.

No other changes have been made in either the membership or planned activity of CMC. Membership in CMC remains open, and CMC intends to file additional written notification disclosing all changes in membership.

On December 18, 1987, CMC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988 (53 FR 1074).

The last notification was filed with the Department on December 19, 1988. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act of January 13, 1989 (54 FR 1454).

Joseph H. Widmar,

Director of Operations, Antitrust Divisions.

[FR Doc. 93–16966 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Reckitt & Colman—New York 235 Consortium

Notice is hereby given that, on June 17, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Reckitt & Colman Household Products Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes to the New York 235 Consortium ("Consortium"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Reckitt & Colman announced the removal of the following parties from the Consortium: Drackett Company; RocCorp, Inc.; and Zoe Chemical Co., Inc. Five Consortium members have changed their corporate names as follows: CSA Limited, Inc., Houston, TX, to IQ Products Company; Davies-Young Co., Maryland Heights, MO, to Buckeye International Inc.; Diversey Wyandotte Corporation, Wyandotte, MI, to Diversey Corporation; J.L. Prescott Co., South Holland, IL, to Desoto Prescott; and Roussel Environmental Health, Frenchtown, NJ, to Roussel Uclaf Corporation, Montvale, NJ. In addition, Consortium member Epic Industries Inc. has moved its corporate headquarters to Plainfield, NJ, and Consortium member Mason Chemical has moved its corporate headquarters to Arlington Heights, IL.

No other changes have been made in either the membership or planned activity of the venture. Membership in this Consortium remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On May 16, 1991, the New York 235 Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 20, 1991, 56 FR 28416. The last notification was filed with the Department on June 18, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992, 57 FR 29539.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–16967 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fabric Softener Quats Steering Committee and Joint Venture

Notice is hereby given that, on June 23, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice has been filed by Witco Corporation, simultaneously with the Attorney General and the Federal Trade Commission, disclosing a change in the membership of the parties to the Fabric Softner Quats Joint Venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the change consists of the acquisition of Sherex Chemical Co., Inc. by Witco Corporation, Dublin, OH. No other changes have been made in either the membership or planned activities of the venture.

Membership in the venture remains open, and the parties intend to file additional written notification disclosing any changes in membership.

On July 29, 1988, the venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 19, 1988, 53 Fed. Reg. 31772.

The last notification was filed with the Department on June 15, 1992. A notice was published in the **Federal Register** in pursuant to Section 6(b) of the Act on July 9, 1992, 57 FR 30511.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–16963 Filed 7–16–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before September 2, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a

thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of State, Bureau of Legislative Affairs (N1–59–93–37 through 40). Routine and facilitative records of component Bureau offices.

2. Department of Treasury, Internal Revenue Service (N1–58–93–2). Administrative records relating to Collection, Taxpayer Service and the Problem Resolution Program.

3. Department of Treasury, Internal Revenue Service (N1–58–92–3). Administrative records relating to the Problem Resolution Program.

4. Department of Treasury, Office of Thrift Supervision (N1–483–93–2). Daily calendars and appointments books of senior level staff.

5. Department of the Navy, Naval Audit Service (N1–NU–93–1). Routine correspondence relating to management consulting services.

6. Department of the Navy, Bureau of Naval Personnel (N1–NU–93–7). Routine correspondence, Confinement Case Files, and log books maintained by Navy prisons and brigs.

7. Department of the Navy, Bureau of Naval Personnel (N1–NU–93–6). Data files maintained in the Staff Module of Corrections Management Information System (CORMIS).

8. Tennessee Valley Authority (N1–142–93–5). Credit card support documents.

9. Department of State, Executive Secretariat (N1–59–93–36). Reference copies of Emergency Action Plans.

10. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (N1–59–93–33). Routine and facilitative records relating to science and technology affairs.

11. Farm Credit Administration (N1–103–93–1). Examiner Commissioning Tests.

12. Panama Canal Commission, Office to the Secretary (N1–185–93–3). Files on legislation relating to agencies other than the Commission.

13. Office of the Secretary of Defense (N1–330–93–1).

Reference papers, extra copies of reports, and transitory correspondence.

Dated: July 13, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–17082 Filed 7–16–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming meeting of the Commission.

DATES: July 28–30, 1993, 9 a.m. to 5 p.m.

ADDRESSES: The Madison Hotel, 1177—15th Street, NW., Washington, DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275–0045.

SUPPLEMENTARY INFORMATION:

Type of Meeting

Open.

Agenda

Call to Order.

Roll Call.

Chairman's Message.

Final Review of Commission Activities.

Committee Reports.

Commission Strategy Session on:

1. Native American Finance Authority.

2. Programmatic Changes to Indian Housing Programs.

3. Final Recommendations of the Commission.

4. Native Hawaiian Housing Initiative.

Final Review of Supplemental Report.

Final Comments of the Commission.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 93–17019 Filed 7–16–93; 8:45 am]

BILLING CODE 8820–07–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Museum Section) to the National Council on the Arts will be held on August 3–4, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 3, 1993 from 9 a.m. to 10:15 a.m. for introductions.

The remaining portion of this meeting from 10:15 a.m. to 5:30 p.m., on August 3, 1993, and from 9 a.m. to 5:30 p.m. on August 4, 1993, is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 13, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–17005 Filed 7–16–93; 8:45 am]

BILLING CODE 7537–01–M

VOL
58
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136
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Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552(b) of title 5, United States Code.

1. *Date:* August 2, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in African, Asian and Latin American History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

2. *Date:* August 2, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in African, Asian and Latin American History and Studies, submitted to the Division of Fellowship and Seminars, for projects beginning after January, 1994.

3. *Date:* August 3, 1993
Time: 9 a.m. to 5 p.m.
Room: 430
Program: This meeting will review Challenge Grant applications in Research programs, submitted to the Division of Research Programs, for projects beginning after January 4, 1994.

4. *Date:* August 4, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

5. *Date:* August 4, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review Fellowships for University Teachers applications in American History, Studies II; Communication, Media and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

6. *Date:* August 5, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Rhetoric, Communication, Media, Folklore and American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

7. *Date:* August 5, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in American Literature and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

8. *Date:* August 5–6, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 430
Program: This meeting will review applications in Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January, 1994.

9. *Date:* August 6, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

10. *Date:* August 6, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

11. *Date:* August 9, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Sociology, Psychology and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

12. *Date:* August 9, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

13. *Date:* August 16, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Comparative Literature; Germanic, Slavic, Asian Language and Literatures; and Linguistics, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1994.

14. *Date:* August 16, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

15. *Date:* August 17, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Political Science; Law and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

16. *Date:* August 17, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Music, Theater, and Film, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

17. *Date:* August 18, 1993

Time: 8:30 a.m. to 5 p.m.

Room: 315

Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

18. *Date:* August 18, 1993

Time: 8:30 a.m. to 5 p.m.

Room: 415

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Classical and Medieval Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

19. *Date:* August 19, 1993

Time: 8:30 a.m. to 5 p.m.

Room: 415

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Political, Law, and Economics, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93–16961 Filed 7–16–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL INSTITUTE FOR LITERACY

[CFDA NO. 84.257]

Application for New Award for Establishment of the National Center for Adult Literacy and Learning Disabilities for Fiscal Year 1993; Grants Availability; Notice; Correction

In notice document 93–16147, which announced application packages for Establishment of the National Center for Adult Literacy and Learning Disabilities, beginning on page 36782 in the issue of Thursday, July 8, 1993 make the following correction: On page 36783, in the third column, delete the entire section entitled "NIFL Advisory Committee."

Dated: July 13, 1993.

Lilian S. Dorka,

Acting Interim Director, National Institute for Literacy.

[FR Doc. 93–16994 Filed 7–16–93; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Innovative Weaponry, Inc., Albuquerque, NM; Establishment of Atomic Safety and Licensing Board

[Docket No. 030–30266–EA; ASLBP No. 93–679–05–EA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceedings.

Innovative Weaponry, Inc.,
Albuquerque, New Mexico,
Byproduct Material License No. 30–23697–01E, EA 93–067

This Board is being established pursuant to the request by Innovative Weaponry, Inc., the Licensee, for a hearing regarding an Order issued by the Director, Office of Enforcement, dated June 18, 1993, entitled "Order Modifying License (Effective Immediately)" (58 FR 34598–99, June 28, 1993). The order barred distribution and directed recall of certain gunsights identified in a 1993 confirmatory action letter and directed the Licensee to satisfy specified reporting requirements

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 12th day of July 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 93–17062 Filed 7–16–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

July 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Levitz Furniture Incorporated
Common Stock, $.01 Par Value (File No. 7–10964)
U.S. Home Corporation
Class B Warrants (expiring 6/21/98) No Par Value (File No. 7–10965)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 3, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–17001 Filed 7–16–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder

for unlisted trading privileges in the following securities:

Allegheny Ludlum Corp.
Common stock, $.10 Par Value (File No. 7–10957)
Ek Chor China Motorcycle Co., Ltd.
Common stock, $.10 Par Value (File No. 7–10958)
International Business Machines Corp.
Depository Shares (representing ¼ of Series A 7½% Preferred) (File No. 7–10959)
National Steel Corp.
Class B Common stock, $.01 Par Value (File No. 7–10960)
Republic New York Corp.
Common stock, $5.00 Par Value (File No. 7–10961)
Sonat Offshore Drilling, Inc.
Common stock, $.01 Par Value (File No. 7–10962)
YPF Sociedat Anonima
American Depository Receipts (representing Class D Shares) Par Value PS. 1 (File No. 7–10963)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 3, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–17002 Filed 7–16–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; The Options Clearing Corp.; Notice of Filing of a Proposed Rule Change Relating to the Issuance, Clearance, and Settlement of Quarterly Expiration Options Proposed for Trading on the New York Stock Exchange

[Release No. 34–32606; File No. SR–OCC–93–08]

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 14, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–93–08) as described in Items I, II, and III below, which Items have been prepared primarily by OCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will accommodate the issuance, clearance, and settlement of a version of Quarterly Index Expiration Options ("QIX") being proposed for trading on the New York Stock Exchange ("NYSE").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC has included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to accommodate the issuance, clearance, and settlement of a version of QIX being proposed for trading on the NYSE.

1. Background

On November 6, 1992, the Commission approved an OCC rule filing to accommodate the issuance, clearance, and settlement of QIX traded on the Chicago Board Options Exchange ("CBOE") and the American Stock Exchange ("AMEX").[2] QIX are stock index options that have an expiration date different from the expiration date for conventional stock index options. Conventional stock index options expire on the Saturday following the third Friday of the month. In contrast, the QIX currently traded on the CBOE and the AMEX expire on the first business day following the end of a calendar quarter. The currently traded QIX product has an exercise settlement value that is based on the closing value of the corresponding index on the business day prior to expiration.

To accommodate the QIX product currently traded on the AMEX and the CBOE, modifications were made to OCC's By-Laws. First, the definition of "expiration date" for index options in OCC's By-Laws was modified to allow for products with flexible or varying expiration dates.[3] Second, a definition of QIX was added.[4] Finally, certain technical changes were made to OCC rules.

2. Proposed Amendment

On January 13, 1993, the NYSE filed with the Commission a proposed rule change to list a new version of the QIX product.[5] The QIX product proposed by NYSE differs in two ways from the QIX product currently traded on the CBOE and the Amex. First, the proposed QIX will expire on the second business day following the end of each calendar quarter rather than on the first business day. Second, the exercise settlement value for the proposed QIX will be based on the opening value of the corresponding index on the first business day following the end of a calendar quarter rather than on the closing value on the business day prior to expiration.

QIX currently are defined as index option contracts having an expiration date on the first business day of the month following the end of a calendar quarter.[6] Because the QIX product proposed for trading on the NYSE will expire on the second business day following the end of a calendar quarter, this rule proposal will amend the definition of QIX set forth in OCC's By-Laws,[7] to include the expiration dates of both versions of the QIX product.

Secondly, language will be deleted from subsection (a) of section 18 (Certain Delays) of Article VI (Clearance of Exchange Transactions) of OCC's By-Laws to make that Section applicable to QIX and to all options that expire on a business day. Article VI, Section 18(a) provides that if OCC is for any reason unable to make available on an expiration date any Preliminary

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31418 (November 6, 1992), 57 FR 54435 [File No. SR–OCC–92–27] (order approving proposed rule change).

[3] OCC By-Laws, Art. XVII (Index Options), § 1.E(3).

[4] OCC By-Laws, Art. XVII, § 1.Q(1).

[5] Securities Exchange Act Release No. 32048 (March 25, 1993), 58 FR 16895 [File No. SR–NYSE–93–04] (notice of proposed rule change).

[6] *Id.*

[7] *Id.*

Exercise Report or any Final Exercise Report prior to the applicable cut-off times, OCC shall make available the delayed report as soon as practicable thereafter or in its discretion may defer making available the delayed report until the calendar day immediately following such expiration date. The last sentence of section 18(a) provides that subsections (a), (b), and (c) of section 18, which all relate to delayed reports, shall not apply to option contracts expiring on a business day in accordance with Rule 806 (Expiration Date Exercise Procedure for Business Day Expiration). OCC, however, believes that section 18 should be applicable to options expiring on a business day in the event that a computer malfunction or other unforeseeable event prevents OCC from making reports available prior to the applicable cut-off times. Accordingly, OCC proposes to delete the last sentence of Article VI, section 18(a). This change was inadvertently omitted from the earlier rule filings on QIX and Flexible Exchange ("FLEX") options.[8]

The changes made to OCC's Rules to accommodate the QIX product currently traded on the CBOE and the Amex also will accommodate the proposed QIX product. Expiration day processing procedures will be the same for all QIX products. Specifically, holders of QIX may exercise their QIX positions by tendering an exercise notice to OCC in accordance with the time frames established in OCC Rules 801(a) and 806, through Rule 1804(b)(1), or have their QIX positions exercised in accordance with the exercise-by-exception procedure set forth in OCC Rule 1804(b)(2).[9]

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act [10] because it provides for the prompt and accurate clearance and settlement of another version of the QIX product and because it provides for the safeguarding of related securities and funds in OCC's custody or control. OCC believes that the proposed rule change establishes a framework in which existing, reliable OCC systems, rules, and procedures will govern the processing of the new QIX product.

[8] For a discussion of FLEX options, see Securities Exchange Act Release No. 31912 (February 23, 1993), 58 FR 11879 [File No. SR-OCC-92-33] (order approving FLEX option proposal).

[9] For a detailed description of the QIX exercise-by-exception procedure, refer to Securities Exchange Act Release No. 31418, *supra* note 2.

[10] 15 U.S.C. 78q-1 (1988).

B. SRO's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

OCC has not solicited or received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to such period that the SRO consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-93-08 and should be submitted by August 9, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 93-16998 Filed 7-16-93; 8:45 am]

BILLING CODE 8010-01-M

[11] 17 CFR 200.30-3(a)(12) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)91)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Levitz Furniture Incorporated Common Stock, $.01 Par Value (File No. 7-10951)

Merry Land and Investment Company $1.75 Preferred Stock (File No. 7-10952)

Calprop Corporation Common Stock, No Par Value (File No. 7-10953)

Milwaukee Land Company Common Stock, $.30 Par Value (File No. 7-10954)

Elf Overseas Limited 7⅝ Pc Guaranteed Preference Shares Series B (File No. 7-10955)

Storage Equities, Inc. 8.25 Conv. Preferred Stock (File No. 7-10956)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 3, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-17000d 7-16-93; 8:45 am]

BILLING CODE 8010-01-M

VOL 58 ISS 136 JL 19 1993 UMI

Issuer Delisting; Application To Withdraw From Listing and Registration; (CSS Industries, Inc., Common Stock, $.10 Par Value) File No. 1–2661

July 13, 1993.

CSS Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on June 29, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 3, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16999 Filed 7–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19567; 812–8436]

Canada Life Insurance Company of New York, et al.

July 12, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Canada Life Insurance Company of New York ("Canada Life"), Canada Life Insurance Company of New York Variable Annuity Account 2 (the "Variable Account"), and Canada Life of America Financial Services, Inc. ("CLAFS").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act from sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of the Variable Account, which funds individual flexible premium variable deferred annuity contracts.

FILING DATE: The application was filed on June 10, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission, and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on August 6, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o D. Allen Loney, Canada Life Insurance Company of New York, 500 Mamaroneck Avenue, Harrison, New York 10528.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS:

1. Canada Life, a stock life insurance company incorporated under the laws of the State of New York on June 7, 1971, is principally engaged in issuing annuity and life insurance policies in the State of New York. Canada Life is a wholly owned subsidiary of The Canada Life Assurance Company, a Canadian life insurance company.

2. On February 25, 1993, the Variable Account was established by Canada Life as a separate account under the laws of the State of New York to support the individual flexible premium variable deferred annuity contracts (the "Policies"). The Variable Account is a unit investment trust registered under the Act. The assets of the Variable Account will be owned by Canada Life, but will be held separately from the other assets of Canada Life and will not be chargeable with liabilities incurred in any other business operation of Canada Life (except to the extent that assets in the Variable Account exceed the reserves and other liabilities of the Variable Account). The income, capital gains, and capital losses incurred on the assets of the Variable Account will be credited to or charged against the assets of the Variable Account, without regard to the income, capital gains, or capital losses arising out of any other business that Canada Life may conduct. The Variable Account meets the definition of a "separate account" set forth in Rule 0–1(e) under the Act.

3. The Variable Account will invest in shares of one or more of the investment portfolios of Seligman Portfolios, Inc. (the "Fund"), which is registered with the Commission as a diversified, open-end management investment company consisting of several series. The Variable Account will have a number of subaccounts, each of which will invest solely in shares of a specific corresponding series of the Fund.

4. CLAFS will serve as the principal underwriter of the Policies. CLAFS is registered under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

5. The Policies may be purchased on a non-tax qualified basis or they may be purchased and used in connection with qualified retirement plans or individual retirement accounts ("IRAs") that qualify for favorable federal income tax treatment. The Policies currently may be purchased with an initial premium payment of at least $5,000, or $2,000 if a Policy is being purchased and used in connection with an IRA. Under certain circumstances, Canada Life may accept an initial premium payment of less than $2,000 under a Policy being purchased

and used in connection with an IRA. Subsequent premium payments must be at least $1,000. Different premium payment requirements apply if the premium is submitted pursuant to a pre-authorized check agreement. The owner of a Policy ("Policy Owner") can allocate net premiums to one or more subaccounts of the Variable Account, or to Canada Life's general account.

6. The Policy provides for a series of annuity payments beginning on the annuity date. The Policy Owner may select from several payment options, all of which are fixed options that provide for payments out of Canada Life's general account.

7. In the event that Canada Life receives due proof of death of the last surviving annuitant before the annuity date, a death benefit is payable. If Canada Life receives due proof of death during the first seven policy years, the death benefit is the greater of (a) the premiums paid, less any partial withdrawals, contingent deferred sales charges, and any incurred taxes; or (b) the policy value on the date Canada Life receives such due proof. If Canada Life receives due proof of death after the first seven policy years, the death benefit is the greatest of: (a) Item "a" above; or (b) item "b" above; or (c) the policy value at the end of the seven policy year period preceding the date Canada Life receives such due proof, adjusted for any of the following items that occur after such last seven policy year period: (i) Any partial withdrawals, including applicable contingent deferred sales charges; (ii) any incurred taxes; and (iii) any premiums paid.

8. Canada Life will deduct an annual administration fee of $36 each policy year. This fee will be deducted from the policy value at the end of each policy year prior to the annuity date (and upon a full surrender on any date other than a policy anniversary) to compensate Canada Life for administrative services that it provides to Policy Owners. Applicants represent that this fee will be deducted in reliance on Rule 26a–1 under the Act, and will represent reimbursement only for administration costs expected to be incurred over the life of the Policies. The annual administration fee is guaranteed not to increase for the duration of the Policy, and Canada Life neither expects nor intends to make a profit from this fee.

9. Canada Life also will deduct a daily administration fee equal to an effective annual rate of 0.35% of the value of the assets in the Variable Account. This fee will be deducted in reliance on Rule 26a–1 under the Act, and represents reimbursement only for administrative costs expected to be incurred over the life of the Policies. This daily administration fee is guaranteed not to increase for the duration of the Policies, and Canada Life neither expects nor intends to make a profit from this fee.

10. Canada Life does not deduct sales charges at the time premiums are paid. However, within the first seven policy years after a premium has been paid, a contingent deferred sales charge ("CDSC") is imposed on any full surrender or partial withdrawal of policy value attributable to such premium. For purposes of determining whether the CDSC will be imposed and the amount of the charge, premiums are deemed to be withdrawn in the order in which they were received by Canada Life. The maximum CDSC is 6% for withdrawals of premiums that were paid fewer than two years previously, and the applicable percentage declines for premiums that were paid earlier. In addition, at the time of the first partial withdrawal during a policy year, ten percent of premiums that would otherwise be subject to a CDSC upon withdrawal may be withdrawn without imposition of any CDSC, provided that the systematic withdrawal privilege available under the Policy has not been elected.

11. Canada Life does not anticipate that the CDSC will generate sufficient funds to pay the costs of distributing the Policies. If this charge is insufficient to cover the distribution expenses, the deficiency will be met from Canada Life's general account funds, including amounts derived from the charge for mortality and expense risks.

12. No premium tax is currently payable under New York law. Canada Life reserves the right to deduct any premium taxes payable in respect of future premiums in the event New York law should change. Although no charges are currently made for federal, state, or local taxes, Canada Life reserves the right to charge, or provide for, any other taxes levied by any governmental entity.

13. Under Canada Life's current policy, which it reserves the right to change, Canada Life will impose no charge for the first fifteen transfers in each policy year, and will impose a $25 charge for the sixteenth and each subsequent transfer request made by the Policy Owner during a single policy year. Canada Life guarantees that any future transfer policy will provide at least four free transfers under the Policies during each policy year.

14. Canada Life seeks to impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Policies. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, approximately 0.75% is attributable to mortality risks, and approximately 0.50% is attributable to expense risks. Canada Life guarantees that this charge will never increase.

15. The mortality risk borne by Canada Life arises from (a) its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Policy) regardless of how long all annuitants or any individual annuitant may live; and (b) its guarantee to pay the death benefit provided under the Policy. The expense risk assumed by Canada Life is the risk that Canada Life's actual administrative costs will exceed the amounts recovered through the daily and annual administration fees.

16. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Canada Life. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Canada Life. Canada Life currently anticipates making a profit from this charge.

APPLICANT'S LEGAL ANALYSIS:

1. Applicants request an exemption from Sections 26(a)(2) and 27(c)(2) of the Act to the extent any relief is necessary to deduct a mortality and expense risk charge from the assets of the Variable Account. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants submit that Canada Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the Policies made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Canada Life for the risks that (a) annuitants under the Policies will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Policies;

(b) the policy value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administration fees.

3. Canada Life further represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Canada Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Canada Life will maintain at its administrative offices, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Applicants acknowledge that the CDSC may be insufficient to cover all costs relating to the distribution of the Policies. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the CDSC. Canada Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Policy Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Canada Life at its administrative offices and will be made available to the Commission.

5. Canada Life also represents that the Variable Account will invest only in management investment companies which undertake, in the event such companies adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1.

CONCLUSION: Applicants assert that, for the reasons set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) to deduct a mortality and expense risk charge under the Policies meet the standards in section 6(c) of the Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17003 Filed 7–16–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

United Financial Resources Corp.

[License No. 07/07–0067]

Filing of an Application for an Exemption Under Regulation 107.903 Governing Conflicts of Interest

Notice is hereby given that United Financial Resources Corp. (the Licensee), 7401 "F" Street, Omaha, Nebraska 68127, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the U.S. Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1993)) for an exemption from the provisions of the cited Regulations.

Subject to SBA approval, the Licensee proposes to provide funds to an associate, Ames Avenue Corporation d/b/a Phil's Foodway (Ames), 3030 Ames Avenue, Omaha, Nebraska 68111, to be used for working capital.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Mr. Phil Morrison is a director or the Licensee's parent, United-A.G. Cooperative, Inc. (UAG) which owns 100% of the Licensee, and is also an owner of Ames.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transactions to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Omaha, Nebraska.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 13, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–17013 Filed 7–16–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 1830]

Discretionary Grant Programs: Application Notice Establishing Closing Date For Transmittal of Certain Fiscal Year 1994 Applications

The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the nations of Eastern Europe and the new states of the former Soviet Union under the Soviet-Eastern European Research and Training Act of 1983. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this program, called the Russian, Eurasian and East European Research and Training Program, is contained in the Soviet-Eastern European Research and Training Act of 1983. The program was formerly called the Soviet-Eastern European Research and Training Program.

Summary

The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1994 under a program administered by the Department of State.

Organization of Notice:

This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by October 1, 1993.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, Suite 404, Box 19, 1250 23rd Street, NW., Washington, DC 20037–1164.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, Suite 404, 1250 23rd Street, NW., Washington, DC.

The Russian, Eurasian and East European Studies Advisory Committee staff will accept hand-delivered applications between 9 a.m. and 4 p.m. (EDT) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions on the countries of the region.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98–164, title VIII, 97 stat. 1047–50. The countries include Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, the former German Democratic Republic, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and the former Yugoslavia, including Bosnia and Herzegovina, Slovenia, Croatia, Serbia, Montenegro, and Macedonia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the fields of Russian, Eurasian and East European and related studies. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral levels, and must have demonstrated a likely career commitment to the Russian, Eurasian and East European fields.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the nations of Eastern Europe and the new states of the former Soviet Union by proposing:

(1) National programs which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) National programs which offer graduate, post-doctoral and teaching fellowships for advanced training in Russian, Eurasian and East European and related studies, including training in the languages of the region, with such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) National programs which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Russian, Eurasian and East European and related studies; and those which facilitate research collaboration between Government and private specialist in these fields;

(4) National programs which provide advanced training and research on a reciprocal basis in the nations of Eastern Europe and the new states of the former Soviet Union by facilitating access for American specialities to research facilities and resources in those countries;

(5) National programs which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the nations of Eastern Europe and the new states of the former Soviet Union in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—Publications. Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

—Conferences. Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the National peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—Library Activities. Title VIII funds may be used for certain library activities which clearly strengthen research and training in Russian, Eurasian and East European studies and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Title VIII funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging

VOL
58
ISS
136
JL
19
1993
UMI

backlogs or otherwise improving access to research materials, will be considered for funding.

—Language Support. The Advisory Committee encourages attention to the non-Russian languages of the new states of the former Soviet Union and the less commonly taught languages of the East European countries. Support provided for Russian language instruction/study normally will be only for advanced level. All applicants proposing to offer language instruction are encouraged to apply to a national program as described above which has appropriate peer group review mechanisms.

—German Democratic Republic. Funding for research on the former German Democratic Republic is limited to projects selected by national organizations through a competitive process, which address either exclusively the communist experience of the GDR or which extend into the period of reunification, as long as the research relates to the transition experiences of other countries in the region covered by the Russian, Eurasian and East European Research and Training Program.

—Support for Non-Americans. The purpose of the Russian, Eurasian and East European Research and Training Program is to build and sustain U.S. expertise on the region. Therefore, the Advisory Committee has determined that highest priority for support should always go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must be prepared to justify the expenditure.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Russian, Eurasian and East European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area. Title VIII legislation requires and this announcement indicates under Program Information of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged whenever feasible in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funding. Funding may be available at the level of approximately $10 million, but this will not be known until legislative action is complete. In Fiscal Year 1993, the Congress appropriated to the Title VIII program $4.961 million to the State budget and $5.0 million to the Agency for International Development budget.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amounts of anticipated awards.

Applicants who have received a Title VIII grant in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received Title VIII support prior to last year, a summary of those awards should be included.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Procedures for evaluating and selecting applicants to receive awards should be described in detail. Proposals involving language instruction programs should provide for those programs supported in the past year information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices must be included in the application.

Applicants should include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, subpart F; and (2) section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education . . . Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Education Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A detailed program budget indicating direct expenses by program element, indirect costs, and the total amount requested. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested Title VIII grant funds. Other funding sources and amounts, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

All payments will be made to grant recipients through the Department of State by wire transfers.

Technical Review

The Russian, Eurasian and East European Studies Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *Part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Russian, Eurasian and East European fields (30 points); and

(3) Budget presentation and cost effectiveness (30 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, Suite 404, Box 19, 1250 23rd Street, NW., Washington, DC 20037–1164. Telephone: (202) 736–9060 or 736–9059.

Dated: July 7, 1993.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 93–16974 Filed 7–16–93; 8:45 am]

BILLING CODE 4710–32–M

Bureau of Political-Military Affairs

[Public Notice 1831]

Policy on Munitions Export Licenses to Guatemala

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Guatemala are being reviewed on a case-by-case basis in accordance with sections 2, 38, and 42 of the Arms Export Control Act.

EFFECTIVE DATE: Immediate.

FOR FURTHER INFORMATION CONTACT: Dean A. Rogers, Office of Defense Trade Policy, Bureau of Political-Military Affairs, Department of State (202–647–4231).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to review all licenses and approvals authorizing the export or other transfer of defense articles or defense services to Guatemala, including the armed forces of Guatemala, on a case-by-case basis.

The licenses and approvals subject to this policy include manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving Guatemala subject to the Arms Export Control Act.

This action has been taken pursuant to sections 2, 38, and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

Dated: July 8, 1993.

Robert L. Gallucci,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 93–16975 Filed 7–16–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102–338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the Federal Register every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City and County of San Francisco-Public Utilities Commission, San Francisco-Oakland, CA	CA–03–0401–00	$14,357,287	06/28/93
Town of Avon, Avon, Colorado	CO–03–0051–00	1,070,976	06/24/93
Metropolitan Dade Transit Agency, Miami-Hialeah, FL	FL–03–0128–00	1,377,968	06/24/93
Metropolitan Dade Transit Agency, Miami-Hialeah, FL	FL–03–0130–00	3,338,660	06/24/93
Metropolitan Dade Transit Agency, Miami-Hialeah, FL	FL–03–0134–00	11,644,433	06/24/93
Metropolitan Dade Transit Agency, Miami-Hialeah, FL	FL–03–0137–00	80,000	06/25/93
Mass Transit Administration, Maryland	MD–03–0055–01	21,899,796	06/25/93
City of Raleigh, Raleigh, NC	NC–03–0028–00	311,000	06/24/93
New York Metropolitan Transportation Authority, New York, NY-Northeastern NJ	NY–03–0283–00	15,775,788	06/04/93
Nassau County, New York, NY-Northeastern NJ	NY–03–0288–00	7,729,004	06/24/93
Rogue Valley Transit District, Medford, OR	OR–03–0042–00	2,033,949	06/25/93
Tri-County Metropolitan Transportation District of Oregon, Portland-Vancouver, OR-WA	OR–03–0043–01	67,490,000	06/25/93
Area Transportation Authority of North Central Pennsylvania, Pennsylvania	PA–03–0192–02	92,000	06/25/93

SECTION 3 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
Pennsylvania State University, State College, PA	PA–03–0238–00	560,000	06/23/93
City of El Paso-Sun Metro, El Paso, TX-NM	TX–03–0160–00	5,647,200	06/24/93
Fairfax County, Washington, DC-MD-VA	VA–03–0040–02	7,647,648	06/24/93

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Municipality of Anchorage, Anchorage, AK	AK–90–X010–01	$546,400	06/22/93
City of Huntsville, Huntsville, AL	AL–90–X068–01	385,600	06/24/93
City of Montgomery—Montgomery Area Transit System, Montgomery, AL	AL–90–X073–01	156,040	06/24/93
Mobile Transit Authority, Mobile, AL	AL–90–X074–01	20,000	06/24/93
Birmingham—Jefferson County Transit Authority, Birmingham, AL	AL–90–X075–01	642,680	06/24/93
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL–90–X076–00	208,700	06/24/93
City of Phoenix, Phoenix, AZ	AZ–90–X035–00	17,649,374	06/24/93
City of Chico—Chico Area Transit, Chico, CA	CA–90–X452–00	249,500	06/25/93
City of Merced, Merced, CA	CA–90–X515–00	578,917	06/25/93
Monterey County, Seaside-Monterey, CA	CA–90–X518–00	96,000	06/25/93
Sacramento Regional Transit District, Sacramento, CA	CA–90–X523–00	13,650,349	06/28/93
Sonoma County Transit, Santa Rosa, CA	CA–90–X530–00	3,520,000	06/25/93
Southern California Rapid Transit District, Los Angeles, CA	CA–90–X534–00	155,946,331	06/24/93
City of Torrance, Los Angeles, CA	CA–90–X536–00	1,019,583	06/25/93
City of Napa, Napa, CA	CA–90–X550–00	1,521,100	06/25/93
City of Fairfield, Fairfield, CA	CA–90–X553–00	521,218	06/25/93
City of Laguna Beach, Los Angeles, CA	CA–90–X561–00	250,000	06/28/93
City of Commerce, Los Angeles, CA	CA–90–X562–00	3,990,000	06/28/93
City and County of San Francisco—Public Utilities Commission, San Francisco-Oakland, CA.	CA–90–X579–00	12,499,473	06/28/93
Regional Transportation District, Denver, CO	CO–90–X070–00	13,300,701	06/03/93
City of Greeley, Greeley, CO	CO–90–X074–00	461,514	06/24/93
Greater Hartford Transit District, Hartford-Middletown, CT	CT–90–X218–00	500,000	06/28/93
Middletown Transit District, Middletown, CT	CT–90–X224–00	196,519	06/28/93
Delaware Transportation Authority, Delaware	DE–90–X012–00	2,360,314	06/17/93
Escambia County Board of Commissioners, Pensacola, FL	FL–90–X192–02	148,800	06/24/93
Okaloosa County Board of County Commissioners, Fort Walton Beach, FL	FL–90–X203–00	330,904	06/24/93
Metropolitan Dade Transit Agency, Miami-Hialeah, FL	FL–90–X206–01	19,138,732	06/25/93
Hillsborough Area Regional Transit Authority, Tampa-St. Petersburg-Clearwater, FL	FL–90–X208–00	3,079,361	06/23/93
St. Lucie County Metropolitan Planning Organization, Fort Pierce, FL	FL–90–X216–00	327,109	06/24/93
Palm Beach Co Bd of Commissioners—Palm Beach Co Transit Authority, West Palm Bch-Boca Raton-Delray Bch, FL.	FL–90–X218–00	3,540,928	06/24/93
Brevard County Commissioners—Space Coast Area Transit, Melbourne-Palm Bay, FL	FL–90–X219–00	2,061,598	06/24/93
Lakeland Area Mass Transit District, Lakeland, FL	FL–90–X220–00	1,046,925	06/24/93
Pinellas Suncoast Transit Authority, St. Petersburg, FL	FL–90–X224–00	4,455,808	06/24/93
Cobb County Department of Transportation, Atlanta, GA	GA–90–X072–00	5,458,000	06/24/93
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA–90–X073–00	19,613,951	06/24/93
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA–90–X074–00	3,816,000	06/24/93
Gwinnett County Department of Planning and Development, Atlanta, GA	GA–90–X075–00	80,000	06/24/93
Georgia Dept. of Transportation—Office of Intermodal Programs, Georgia	GA–90–X076–00	1,372,784	06/24/93
City of Augusta, Augusta, GA–SC	GA–90–X077–00	959,214	06/25/93
Consolidated Government of Columbus, Columbus, GA–AL	GA–90–X078–00	1,513,553	06/24/93
City of Bettendorf, Davenport-Rock Island-Moline, IA–IL	IA–90–X148–00	152,468	06/17/93
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA–90–X149–00	114,166	06/24/93
Idaho Transportation Department, Idaho Falls, ID	ID–90–X026–00	389,740	06/24/93
City of Pocatello, Pocatello, ID	ID–90–X027–00	297,158	06/25/93
Greater Peoria Mass Transit District, Peoria, IL	IL–90–X220–00	317,520	06/28/93
Topeka Metropolitan Transit Authority, Topeka, KS	KS–90–X057–00	1,077,611	06/23/93
Transit Authority of River City, Louisville, KY–IN	KY–90–X066–01	3,609,520	06/24/93
City of Ashland, Huntington-Ashland, WV–KY–OH	KY–90–X067–00	476,226	06/24/93
City of Henderson Transit, Evansville, IN–KY	KY–90–X070–00	213,000	06/23/93
Transit Authority of Lexington-Fayette Urban County Government, Lexington-Fayette, KY	KY–90–X071–00	1,270,162	06/24/93
City of Owensboro, Owensboro, KY	KY–90–X072–00	325,600	06/24/93
St. Bernard Parish, New Orleans, LA	LA–90–X144–00	223,480	06/22/93
Mass Transit Administration, Washington, DC–VA–MD	MD–90–X049–03	1,370,000	06/17/93
Mass Transit Administration, Baltimore, MD	MD–90–X051–01	947,262	06/17/93
Mass Transit Administration, Maryland	MD–90–X052–00	1,721,222	06/25/93
City of Holland, Holland, MI	MI–90–X166–00	710,595	06/28/93
Ann Arbor Transportation Authority, Ann Arbor, MI	MI–90–X178–00	260,000	06/25/93
Grand Rapids Area Transit Authority, Grand Rapids, MI	MI–90–X187–00	58,000	06/28/93
County of Muskegon System, Muskegon, MI	MI–90–X191–00	554,970	06/28/93

SECTION 9 GRANTS—Continued

Transit property	Grant No	Grant amount	Obligation date
Flint Mass Transportation Authority, Flint, MI	MI–90–X198–00	271,376	06/24/93
Kalamazoo Metro Transit, Kalamazoo, MI	MI–90–X199–00	20,000	06/24/93
Metropolitan Transit Commission, Minneapolis-St. Paul, MN	MN–90–X066–00	3,266,667	06/02/93
Duluth Transit Authority, Duluth, MN–WI	MN–90–X069–00	375,496	06/22/93
City of East Grand Forks, Grand Forks, ND–MN	MN–90–X071–00	83,358	06/25/93
Kansas City Area Transportation Authority, Kansas City, KS–MO	MO–90–X082–00	292,040	06/01/93
East-West Gateway Coordinating Council, St. Louis, IL–MO	MO–90–X91–00	160,000	06/24/93
Great Falls Transit District, Great Falls, MT	MT–90–X035–00	674,545	06/23/93
City of Greenville, NC	NC–90–X152–00	173,625	06/24/93
City of Rocky Mount, Rocky Mount, NC	NC–90–X153–00	144,592	06/24/93
City of Hickory, Hickory, NC	NC–90–X155–00	259,614	06/24/93
City of Winston-Salem, Winston-Salem, NC	NC–90–X156–00	1,307,217	06/24/93
City of Fayetteville, Fayetteville, NC	NC–90–X158–00	1,692,148	06/24/93
Omaha Metro Area Transit, Omaha, NE–IA	NE–90–X034–00	2,257,730	06/23/93
Manchester Transit Authority, Manchester, NH	NH–90–X037–00	587,460	06/28/93
Delaware River Port Authority, Philadelphia, PA–NJ	NJ–90–X038–00	2,234,652	06/17/93
City of Santa Fe, Santa Fe, NM	NM–90–X036–00	314,799	06/22/93
Suffolk County, New York, NY–Northeastern NJ	NY–90–X244–00	3,406,451	06/23/93
New York City Department of Transportation, New York, NY–Northeastern NJ	NY–90–X247–00	8,201,975	06/23/93
Capital District Transportation Authority, Albany-Schenectady-Troy, NY	NY–90–X253–00	8,584,945	06/25/93
Central New York Regional Transportation Authority, Syracuse, NY	NY–90–X254–00	5,859,708	06/23/93
Dutchess County Poughkeepsie, NY	NY–90–X255–00	439,700	06/24/93
Chemung County Transit System, Elmira, NY	NY–90–X258–00	458,767	06/23/93
City of Poughkeepsie, Poughkeepsie, NY	NY–90–X259–00	293,227	06/23/93
Tompkins County, Elmira, NY	NY–90–X260–00	268,700	06/24/93
Nassau County, New York, NY-Northeastern NJ	NY–90–X262–00	3,418,309	06/23/93
Niagara Frontier Transportation Authority, Buffalo-Niagara Falls, NY	NY–90–X263–00	5,902,400	06/23/93
City of Poughkeepsie, Poughkeepsie, NY	NY–90–X266–00	800,000	06/25/93
Laketran, Cleveland, OH	OH–90–X157–00	847,427	06/02/93
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH–90–X181–00	4,800,000	06/28/93
Southwest Ohio Regional Transit Authority, Cincinnati, OH–KY	OH–90–X190–00	757,600	06/22/93
Laketran, Cleveland, OH	OH–90–X191–00	904,950	06/28/93
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK–90–X043–00	3,614,101	06/25/93
Rogue Valley Transit District Medford, OR	OR–90–X045–00	384,655	06/21/93
Centre Area Transportation Authority, State College, PA	PA–90–X249–01	24,000	06/23/93
Mid Mon Valley Transit Authority, Monessen, PA	PA–90–X253–00	636,133	06/23/93
City of Williamsport-Bureau of Transportation, Williamsport, PA	PA–90–X255–00	347,184	06/23/93
Lehigh and Northampton Transportation Authority, Allentown-Bethlehem-Easton, PA–NJ	PA–90–X256–00	3,623,000	06/24/93
Borough of Pottstown, Pottstown, PA	PA–90–X257–00	502,766	06/24/93
Erie Metropolitan Transit Authority, Erie, PA	PA–90–X258–00	1,663,729	06/18/93
Transportation and Motor Buses for Public Use Authority, Altoona, PA	PA–90–X259–00	473,176	06/17/93
Berks Area Reading Transportation Authority, Reading, PA	PA–90–X260–00	1,282,605	06/17/93
Red Rose Transit Authority Lancaster, PA	PA–90–X261–00	1,153,008	06/17/93
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA–90–X262–00	953,688	06/17/93
City of Sharon, Sharon, PA–OH	PA–90–X264–00	199,066	06/23/93
Beaver County Transit Authority, Pittsburgh, PA	PA–90–X265–00	468,592	06/17/93
Puerto Rico Ports Authority-Development Department, San Juan, PR	PR–90–X076–00	2,240,000	06/24/93
Municipality of Vega Baja, Vega Baja-Manati, PR	PR–90–X077–00	230,000	06/24/93
Municipality of Humacao, Humacao, PR	PR–90–X078–00	420,000	06/24/93
Aiken County, Augusta, GA–SC	SC–90–X052–01	3,462	06/24/93
City of Spartanburg, Spartanburg, SC	SC–90–X054–01	119,868	06/24/93
City of Anderson, Anderson, SC	SC–90–X061–00	231,481	06/24/93
Pee Dee Regional Transit Authority, Florence, SC	SC–90–X062–00	238,096	06/24/93
Aiken County, Augusta, GA–SC	SC–90–X063–00	147,502	06/24/93
Santee Wateree Regional Transportation Authority, Sumter, SC	SC–90–X064–00	274,622	06/24/93
City of Bristol, Bristol, TN–VA	TN–90–X108–00	101,000	06/24/93
City of Clarksville, Clarksville, TN–KY	TN–90–X110–00	523,500	06/24/93
City of Johnson City, Johnson City, TN	TN–90–X111–00	524,000	06/24/93
Metropolitan Transit Authority, Nashville, TN	TN–90–X112–00	4,389,190	06/24/93
City of Mesquite, Dallas-Ft. Worth, TX	TX–90–X277–00	249,000	06/28/93
City of Denton, Denton, TX	TX–90–X278–00	389,000	06/25/93
Utah Transit Authority, Salt Lake City, UT	UT–90–X018–00	8,686,005	06/02/93
Greater Roanoke Transit Company, Roanoke, VA	VA–90–X108–00	898,846	06/18/93
City of Charlottesville, Charlottesville, VA	VA–90–X109–00	495,317	06/18/93
City of Petersburg, Petersburg, VA	VA–90–X110–00	216,883	06/18/93
Greater Lynchburg Transit Company, Lynchburg, VA	VA–90–X111–00	840,411	06/18/93
Pierce County Public Transportation Benefit Area Authority, Tacoma, WA	WA–90–X131–00	6,144,809	06/28/93
Snohomish County Public Transportation Benefit Area Corporation Seattle, WA	WA–90–X143–00	5,262,720	06/25/93
Whatcom Transportation Authority, Bellingham, WA	WA–90–X146–00	592,000	06/25/93
Ben Franklin Transit, Richland-Kennewick-Pasco, WA	WA–90–X148–00	53,218	06/25/93
City of Superior, Duluth, MN-WI	WI–90–X182–00	144,876	06/28/93

VOL 58 ISS 136 JL 19 1993 UMI

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
City of Green Bay Transit System, Green Bay, WI	WI-90-X183-00	792,597	06/24/93
City of Racine, Racine, WI	WI-90-X184-00	830,760	06/23/93
Milwaukee County Transit System, Milwaukee, WI	WI-90-X185-00	15,902,262	06/25/93
Kenosha Department of Transportation, Kenosha, WI	WI-90-X186-00	540,839	06/28/93
Mid-Ohio Valley Transit Authority, Parkersburg, WV-OH	WV-90-X054-00	330,017	06/25/93
Tri-State Transit Authority, Huntington-Ashland, WV-KY-OH	WV-90-X055-00	515,985	06/18/93
City of Weirton, Steubenville-Weir, OH-PA-WV	WV-90-X056-00	140,000	06/22/93
Eastern Ohio-Ohio Valley Regional Transportation Authority, Wheeling, WV-OH	WV-90-X057-00	509,444	06/18/93
City of Cheyenne, Cheyenne, WY	WY-90-X013-00	444,358	06/24/93

Issued on: July 13, 1993.

Edward R. Fleischman,

Director, Office of Capital and Formula Assistance.

[FR Doc. 93-17048 Filed 7-16-93; 8:45 am]

BILLING CODE 4910-57-M

Maritime Administration

[Docket No. S-898]

Maritime Subsidy Board; Lykes Bros. Steamship Co. Inc.; Withdrawal of Application

Notice is hereby given that Lykes Bros. Steamship Co., Inc. (Lykes), by letter dated July 1, 1993, has withdrawn its application in Docket No. S-898. The application requested authorization under section 608 of the Merchant Marine Act, 1936, as amended to transfer the Operating-Differential Subsidy Agreement (ODSA) Contract MA/MSB-451 from Lykes to Louisiana Vessel Management, Inc. Publication of this notice closes proceedings in this docket.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

Dated: July 13, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93-17051 Filed 7-16-93; 8:45 am]

BILLING CODE 3525-25-P

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 203]

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Dennis I. Foreman, Deputy General Counsel, who shall serve as Chairperson;

Russell L. Munk, Assistant General Counsel (International Affairs);

Kenneth R. Schmalzbach, Assistant General Counsel (Administrative & General Law);

Robert M. McNamara, Jr., Assistant General Counsel (Enforcement);

Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms; and

Michael T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS;

Deputy General Counsel;

Two Associate Chief Counsel, IRS; and

Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: July 14, 1993.

Jean E. Hanson,

General Counsel.

[FR Doc. 93-17033 Filed 7-16-93; 8:45 am]

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**U.S. CONSUM
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Sunshine Act Meetings

Federal Register
Vol. 58, No. 136
Monday, July 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 21, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

FY 95 Budget

The Commission will consider issues related to the Commission's budget for fiscal year 1995.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, (301) 504–0800.

Dated: July 13, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–17189 Filed 7–15–93; 2:25 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 22, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public

1. Pride in Public Service

The Commission will present the Pride in Public Service Award to July's recipient.

2. Aluminum Ladders Petition CP 93–2

The staff will brief the Commission on petition CP 93–2 from John C. Moghtable requesting that a change be made to the current warning label on portable aluminum ladders.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: July 13, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–17190 Filed 7–15–93; 2:25 p.m.]

BILLING CODE 6355–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 9:30 a.m., July 21, 1993.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1994.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–17114 Filed 7–14–93; 4:44 pm]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

TIME AND DATE: 2:30 p.m., July 21, 1993.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. MC93–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–17115 Filed 7–14–93; 4:44 pm]

BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 19, 1993.

A closed meeting will be held on Monday, July 19, 1993, at 2:00 p.m. An open meeting will be held on Friday, July 23, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, July 19, 1993, at 2:00 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Opinions.

The subject matter of the open meeting scheduled for Friday, July 23, 1993, at 10:00 a.m., will be:

Consideration of whether to adopt rules 53, 54 and 57, under the Public Utility Holding Company Act of 1935. Rule 53 defines a partial safe harbor for registered holding company financing of exempt wholesale generator acquisitions, and rule 54 creates a similar safe harbor for other transactions involving companies in the registered system. Rule 57 prescribes notification (Form U–57) and reporting requirements (Form U–33–S) for foreign utility companies and their associate public-utility companies. The Commission will also consider amendments to Forms U5S and U–3A–2. Further, the Commission will consider whether to publish for comment proposed amendments to rule 87 to require Commission approval for the sale of goods and construction and services rendered, directly or indirectly, both to exempt wholesale generators and foreign utility companies from, and by such entities to, other companies in the registered holding company system. For further information, please contact Karrie McMillan at (202) 504–3387.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2100.

Dated: July 15, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–17214 Filed 7–15–93; 3:56 pm]

BILLING CODE 8010–01–M

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Corrections

Federal Register
Vol. 58, No. 136
Monday, July 19, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

[Docket No. PY-93-003]
RIN 0581-AA72

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

Correction

In proposed rule document 93-16614 beginning on page 37872 in the issue of Wednesday, July 14, 1993, make the following correction:

On page 37872, in the first column, under **DATES:**, in the second line, "August 30, 1993." should read "August 13, 1993."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4673-7]

Proposed Settlement, Clean Air Act Citizen Suit

Correction

In notice document 93-15521 appearing on page 35451 in the issue of Thursday, July 1, 1993, in the second column, in the next-to-last line of the last paragraph, "August 21, 1993." should read "August 2, 1993."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4673-8]

Kentucky: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

Correction

In notice document 93-15519 beginning on page 35454 in the issue of Thursday, July 1, 1993, on page 35455, in the first column, under **EFFECTIVE DATE**, beginning in the third line, "July 9, 1993." should read "July 1, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6983

[OR-943-4210-06; GP3-163; OR-19025, OR-19032]

Partial Revocation of Two Executive Orders Dated July 2, 1910, and Opening of Lands Subject to Section 24 of the Federal Power Act; Oregon

Correction

In rule document 93-14531 beginning on page 33772 in the issue of Monday, June 21, 1993, make the following correction:

On page 33773, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the third paragraph, in the first line, "July 1, 1910," should read "July 2, 1910,".

BILLING CODE 1505-01-D

federal register

Monday
July 19, 1993

Part II

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Defense Diversification Program, Title III National Reserve Grants; Availability of Funds and Application Procedures; Notice

VOL 58 ISS 136 JL 19 1993 UMI

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants for the Defense Diversification Program; Availability of Funds and Application Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Employment and Training Administration of the U.S. Department of Labor is announcing that grant funds are available for a new Defense Diversification Program (DDP), pursuant to section 325A of the Job Training Partnership Act (JTPA). Applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. Grant awards will be made only to the extent that funds remain available.

DATES: The funds available for this program may be obligated by the Secretary of Labor from the date of this announcement through September 30, 1994. Applications will be accepted on an ongoing basis as the need for funds arises at the State and local level. Grant awards will be made in response to the applications received.

ADDRESSES: It is preferred that applications be mailed. Mail or hand deliver applications to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Barbara J. Carroll, Grant Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs, Telephone: (202) 219–5577. (This is not a toll free number). Technical assistance, including a template-based application package which addresses the application requirements described in Part III of this notice, is available from the Office of Worker Retraining Administration, U.S. Department of Labor, room N–5426, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants are encouraged to use this template-based package as the basis for preparing and submitting their application.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds for grants to provide training, adjustment assistance, and employment services for discharged military personnel, terminated defense employees, and displaced employees of defense contractors.

Section 4465(a) of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484; 29 U.S.C. 1662d–1) amends title III of the Job Training Partnership Act by adding a new section 325A which authorizes the Defense Diversification Program (DDP).

As provided for at section 4465(b) of the National Defense Authorization Act (Pub. L. 102–484; 29 U.S.C. 1662d–1, note), the Secretary of Defense has transferred all functions of the Secretary of Defense under the Defense Diversification Program to the Secretary of Labor. Further, $75 million appropriated for the Secretary of Defense to carry out the DDP has been transferred to the Department of Labor for the performance of this function.

The funds and program requirements for the DDP are distinct from the funds and program requirements authorized under the Defense Conversion Act of 1990 which amended title III of the Job Training Partnership Act by adding a new section 325.

The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with section 325A of the Act, and the JTPA regulations at 20 CFR part 631, revised as of December 18, 1992 (57 FR 62004 and 58 FR 31471).

This program announcement consists of four parts. Part I provides the background and basic U.S. Department of Labor (Department or DOL) policies and emphases for discretionary grants under section 325A of the Act. Part II describes the specific program and administrative requirements for the Defense Diversification Program that will apply to all grants awarded under this program. Part III describes the grant application process requirements that must be satisfied in order for an application to be considered for funding. Part IV describes the process and criteria for review and selection of applications for award, and briefly discusses the process for modifying existing grants. There are ten appendices which include copies of required assurances, certifications and definitions of key terms.

The JTPA Title III program is listed in the Catalogue of Federal Domestic Assistance at No. 17–246 "Employment and Training Assistance—Dislocated Workers (JTPA Title III Programs)."

Signed in Washington, DC, on this 9th day of July 1993.

Carolyn M. Golding,

Acting Assistant Secretary for Employment and Training.

Table of Contents

Part I. Background

A. Fund availability.
B. Eligible circumstances and applicants.
C. Policies governing award of grants.
D. Secretary's rights reserved.

Part II. Program Requirements

A. Participant eligibility
B. Allowable activities and services.
C. Needs-related payments
D. Required services.
E. Performance outcomes.
F. Administrative requirements.

Part III. Application Requirements

A. Transmittal letter.
B. Standard Form (SF 424).
C. Assurances and certifications.
D. Synopsis of the project.
E. Project narrative.
F. Implementation plan.
G. Project budget.
H. Coordination and linkages.
I. Financial and management capability.

Part IV. Grant Selection, Award and Modification

A. Selection criteria.
B. Application review process.
C. Approval and award procedure.
D. Retention of portion of grant amount by the Department of Labor.
E. Grant modification process.

Appendices

A. Standard Form (SF 424).
B. Required Programmatic Assurances.
C. Certification Regarding Drug-Free Workplace Requirement.
D. Certification Regarding Debarment, Suspension and other Responsibility Matters, Primary Covered Transactions.
E. Certification Regarding Lobbying.
F. Assurance Regarding Nondiscrimination and Equal Opportunity Requirement.
G. Assurances—Non-Construction Programs (SF 424B).
H. Definitions.
I. Sample Activities related to High Performance Workplace Systems, Employee and Participative Management Systems, and Workforce Participation in the Evaluation, Selection and Implementation of New Production Technologies.
J. List of JTPA Liaisons

Part I. Background

A. Fund Availability

Funds available for the Defense Diversification Program (DDP) total $75 million and shall be awarded pursuant to the requirement contained in the JTPA, its implementing regulations, and these guidelines. These funds are in addition to funds appropriated for the basic title III program, and may be

obligated by the U.S. Department of Labor until September 30, 1994.

B. Eligible Circumstances and Applicants

Services authorized in JTPA section 325A may be provided with DDP national reserve funds where there is a dislocation resulting from reductions in expenditures by the United States for defense, or from closures or realignments of U.S. military facilities.

Grants of DDP national reserve funds may be awarded to States, JTPA title III substate grantees, employers, representatives of employees, labor-management committees and other employer-employee entities which are certified by the State as qualified project operators. Grants may be awarded directly to the eligible grantee or through the State via a subgrant. Applications must be submitted by an eligible entity in accordance with these guidelines.

Note: The capability of each grantee entity to effectively manage grant funds must be verified by the Department to ensure accountability and integrity of public funds. States, which are already subject to the provisions of the Governor-Secretary and JTPA Grant Agreements, do not have to separately demonstrate their management capability. Non-State entities are strongly encouraged to submit applications through the State, as the grant applicant. This will facilitate a more timely award of funds to successful applicants.

C. Policies Governing Award of Grants

1. Available funds shall be awarded by the Secretary of Labor in a manner that efficiently targets resources to areas most in need or most severely impacted, and in a manner which promotes effective use of funds.

2. All projects and activities funded shall be subject to the applicable provisions of JTPA, the appropriate regulations, the requirements contained in these instructions and the Grant Officer's award document(s), and any subsequent grant modification which is authorized.

3. DDP grant funds shall not be considered as an ongoing source of funds for existing dislocated worker services or other projects or activities. As reflected in these guidelines, DDP funds are targeted to specific categories of workers affected by reductions in defense expenditures and by the closures/realignments of military installations.

4. DDP national reserve funds shall only be provided to meet needs consistent with the provisions of section 325A of JTPA. Grants will be primarily awarded, therefore, where substantial numbers of workers, relatively speaking, in a substate area, labor market, region or industry are dislocated as a consequence of a reduction in defense expenditures and base closures/realignments.

5. Only dislocated workers who meet the requirements of 325A(b) of the Act will be eligible for services funded by DDP. The Department of Defense will review each application to determine whether the target population conforms to this provision.

6. No grant funds awarded shall be used to reimburse costs incurred prior to the date authorized by the Grant Officer, except for the cost of required rapid response services, as described in JTPA section 325A(c)(1)(C).

D. Secretary's Rights Reserved

1. The Secretary reserves the right to distribute a portion of DDP national reserve funds in a manner other than that provided by this notice, consistent with the JTPA, and taking into consideration special circumstances and unique needs which may arise. This may include the funding of demonstration projects through a separate competitive grant process.

2. The Secretary also reserves the right to fund individual projects on an incremental basis where the Department determines that such an action would result in the most effective use of available resources.

3. If insufficient applications are received by the Department which are of acceptable quality and which meet the guidelines and selection criteria contained in this notice to exhaust the DDP national reserve account, the Department will take whatever action it deems necessary and appropriate, consistent with the Act and the regulations, to exhaust the funds. Unobligated funds remaining when the Secretary's obligational authority expires will be returned to the Treasury.

Part II. Program Requirements

A. Participant Eligibility

1. CERTAIN MEMBERS OF THE ARMED FORCES.—A member of the Armed Forces shall be eligible for training, adjustment assistance, and employment services under this section if the member—

a. Was on active duty or full-time National Guard duty on September 30, 1990;

b. During the 5-year period beginning on that date—

(i) Is involuntarily separated (as defined in section 1141 of title 10, United States Code) from active duty or full-time National Guard duty; or

(ii) Is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10, United States Code, or the voluntary separation incentive program under section 1175 of that title;

c. Is not entitled to retired or retainer pay incident to that separation; and

d. Applies to a local administrative entity or project operator for such training, adjustment assistance, or employment services before the end of the 180-day period beginning on the date of that separation.

Note: "Retainer pay" and "Incident to that separation" are defined in Appendix H.

2. CERTAIN DEFENSE EMPLOYEES.—

a. IN GENERAL.—Except as provided in subparagraph b, a civilian employee of the Department of Defense or the Department of Energy shall be eligible for training, adjustment assistance, and employment services under this section if the employee—

(i) During the 5-year period beginning on October 1, 1992, is terminated or laid off (or receives a notice of termination or lay off) from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense or the Secretary of Energy, except that, in the case of a notice of termination or lay off, the eligibility of the employee shall not begin until 180 days before the projected date of termination or lay off; and

(ii) Is not entitled to retired or retainer pay incident to that termination or lay off.

b. SPECIAL RULE FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE EMPLOYED AT CERTAIN MILITARY INSTALLATIONS.—

(i) IN GENERAL.—A civilian employee of the Department of Defense employed at a military installation being closed or realigned under laws referred to in clause (ii) of this paragraph shall be eligible for training, adjustment assistance, and employment services under this section beginning on the date on which such employee receives actual notice of termination (including a Certification of Expected Separation), or the date determined by the Secretary of Defense under clause (iii) of this paragraph, whichever occurs earlier.

(ii) CERTAIN DEFENSE LAWS.—The laws referred to in this paragraph are—

(I) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note); and

(II) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526; 10 U.S.C. 2687 note).

VOL 58 ISS 136 JL 19 1993 UMI

(iii) DATE.—The date determined under this clause is the date that is 24 months before the date on which the military installation is to be closed or the realignment of the installation is to be completed, as the case may be.

3. CERTAIN DEFENSE CONTRACTOR EMPLOYEES.—An employee of a private defense contractor shall be eligible for training, adjustment assistance, and employment services under this section if the employee—

a. During the 5-year period beginning on October 1, 1992, is terminated or laid off (or receives a notice of termination or lay off) from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense, except that, in the case of a notice of termination or lay off, the eligibility of the employee shall not begin until 180 days before the projected date of the termination or lay off; and

b. Is not entitled to retired or retainer pay incident to that termination.

B. Allowable Activities and Services

1. READJUSTMENT AND RETRAINING SERVICES. Funds may be used to provide any of the rapid response, basic readjustment and retraining services identified in JTPA sections 314 (b), (c) and (d). Funds provided to DOL by DoD for DDP programs shall not be provided to substitute for activities related to the employer's traditional training responsibility associated with product model changes, the introduction of new products, and general employee upgrading, except as provided below in B.2. Skills Upgrading.

2. SKILLS UPGRADING.

a. Skills upgrading may be provided to—

(i) Individuals who are employed in non-managerial positions, including individuals in such positions who have received notice of termination or lay off, if such upgrading—

(I) Is integral to the conversion of a defense facility and necessary to prevent a closure or mass layoff which would result in the termination or layoff of such individuals; and

(II) Is to replace or update obsolete skills of such individuals with marketable skills; and

(ii) Individuals who have received notice of termination or lay off from non-managerial positions, including individuals who have been terminated from such positions, if such upgrading is to replace or update obsolete skills of such individuals with marketable skills, without which reemployment in a high demand occupation or industry would be unlikely.

Note: "Obsolete skills" is defined in Appendix F.

b. The employer of employees who receive skills-upgrading training with funds under this grant must maintain its expenditures from all other sources for skills-upgrading at or above the average level of such expenditures during the period October 1, 1991 to September 30, 1992. The employer must maintain documentation indicating the level of such expenditures. This documentation will be made available for review upon request of the Grant Officer or its designee.

3. DEVELOPMENT AND INTRODUCTION OF HIGH PERFORMANCE WORKPLACE AND WORKER PARTICIPATION SYSTEMS. Funds may be used for the development and introduction of high performance workplace systems; employee and participative management systems; and workforce participation in the evaluation, selection, and implementation of new production technologies. Any such activities proposed to be funded, in whole or in part, by this grant must meet the following requirements:

a. Each proposed activity must have an objective related to preventing a closure or mass layoff of workers who, if terminated, would be eligible for the DDP program, or to reduce the number of workers who otherwise would be laid off or terminated;

b. Any costs for tuition payments or staff training under this activity to be charged to the grant shall be limited to training of individuals employed in non-managerial positions; and

c. Any planned activities must include a mechanism through which non-managerial employees are involved in planning and oversight of the activities.

Budget template 2 in the Application Requirements section identifies the types of expenses which can be charged to the grant for these activities. Appendix G provides a listing of sample activities in this category. This list is not exhaustive or limiting. The appropriateness of proposed activities in this category will be determined by the Department based on information provided in the application.

4. CONVERSION PLANNING ACTIVITIES. Funds may be used for planning activities related to conversion of existing defense-oriented facilities and business operations to public or non-defense commercial uses. Such activities can include, but are not limited to, feasibility or market studies to identify alternative uses, and development of proposals/business plans to obtain public and/or private development funding.

5. RELOCATION ASSISTANCE.

a. Relation shall be an allowable activity only where a dislocated worker who meets the eligibility criteria under JTPA section 325A(b) cannot reasonably be expected to secure suitable employment in the commuting area in which the dislocated worker resides and has obtained suitable employment affording a reasonable expectation of long-term employment in the area in which the worker wishes to relocate, or has obtained a bona fide offer of such employment, provided that the worker is totally separated from employment at the time relocation commences.

b. The cost of relocation for a dislocated worker under DDP shall not exceed an amount which is equal to the sum of:

(i) 90 percent of the reasonable and necessary expenses incurred in transporting the dislocated worker and the dislocated worker's family, if any, and household effects; plus

(ii) A lump sum payment equivalent to three times such worker's average weekly wage, except that the maximum allowable amount of such payment is $800 per participant, unless a greater amount is justified and approved by the Grant Officer.

Necessary expenses shall be travel expenses for the dislocated worker and the dislocated worker's family and for the transfer of household effects. Reasonable costs for such travel and transfer expenses shall be by the least expensive, most reasonable form of transportation.

c. For any individual who is eligible for student financial assistance under programs for employees of the Department of Defense and veterans, such assistance shall be used to meet the needs of the eligible individual prior to the provision of relocation assistance with funds under this grant program.

6. OUT-OF-AREA JOB SEARCH ASSISTANCE.

a. Out-of-area job search shall be an allowable activity only for the purpose of assisting a dislocated worker to secure a job within the United States. The dislocated worker must meet the eligibility criteria under JTPA section 325A(b), and must have been separated from his/her job. There must also have been a determination that the dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which (s)he resides. Procedures for determining whether a separated dislocated worker cannot reasonably be expected to secure

suitable employment within the commuting area in which the dislocated worker resides must be described in the grant application and be approved by the Grant Officer.

b. The cost of out-of-area job search for a separated dislocated worker under DDP shall be an allowable readjustment cost, but shall not provide for more than 90 percent of the cost of necessary and reasonable out-of-area job search expenses, and may not exceed a total of $800, unless the need for a greater amount is justified and approved by the Grant Officer.

c. These requirements do not apply to regular job search activities and services provided to an eligible participant within the commuting area within which the eligible participant resides.

7. PROHIBITED ACTIVITIES. DDP national reserve funds may not be used for work experience activities or public service employment.

C. Needs-Related Payments

1. APPLICANT RESPONSIBILITY.—An application for funds under DDP must provide for sufficient funds to provide needs-related payments to eligible participants to enable such participants to participate in and complete training or education programs under the grant. In developing a budget, applicants must be aware that the funds available for needs-related payments are limited and that, in projecting use of budget resources, applicants must take into account those persons who will and will not be eligible for needs-related payments. For those individuals determined or expected to be eligible for needs-related payments, sufficient funds must be budgeted to cover any anticipated payments.

2. ELIGIBILITY FOR NEEDS-RELATED PAYMENTS.

a. To qualify for needs-related payments under a DDP grant, the dislocated worker must receive, or be a member of a family that currently receives a total family income that, in relation to family size, does not exceed the lower living income level as published annually in the **Federal Register** by DOL.

Note: "Family Income" is defined in Appendix H.

b. To receive needs-related payments, the eligible participant shall not qualify for or must have ceased to qualify for unemployment compensation. An eligible individual who has ceased to qualify for unemployment compensation must have been enrolled in a training or education program by the end of the thirteenth week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after being informed that a short-term layoff will, in fact, exceed 6 months.

Note: "Enrolled in training or education program" is defined in Appendix H.

c. To receive needs-related payments, an eligible worker must be participating in a training or education program.

d. Needs-related payments shall not be provided to any participant where the program operator determines that the participant is not making satisfactory progress in acquiring relevant skills in the training program, nor to any participant receiving trade readjustment allowances, on-the-job training, out-of-area job search allowances, or relocation allowances under this program or chapter 2 of the title III of the Trade Act of 1974.

3. LEVEL OF NEEDS-RELATED PAYMENT.

a. The weekly level of needs-related payments to an eligible dislocated worker in DDP national reserve programs who satisfies the criteria in paragraphs 2.a.-2.d. above must be equal to the higher of:

(i) The applicable level of unemployment compensation (i.e., the average of the weekly compensation payments made to the dislocated worker during the worker's initial unemployment compensation period); or

(ii) The annual poverty level determined in accordance with criteria published by the Department of Health and Human Services, divided by 52 (to obtain a weekly equivalent).

b. The weekly payment level shall be determined at the time of the participant's enrollment into training, and shall be provided to each eligible participant who satisfies the criteria of paragraphs 2.a-2.d.

c. Every three months from the date of the original determination of eligibility for needs-related payments, the family income for any participant in a training or education program must be redetermined. The redetermination shall be based on the family income for the three-month period using the same criteria that were used in the initial determination process, except that income from needs-related payments are not included. The revised family income will determine that participant's current eligibility for needs-related payments.

Note: "Family income" will be an annualized figure based on actual family income during a six month period. At the time of program application, this period will be the six months immediately preceding application. For subsequent determinations, the period will be the most recent three months plus the preceding three months.

d. An eligible program participant may qualify or requalify for needs-related payments during the period of the training or education program.

e. For any individual who is eligible for student financial assistance under programs for employees of the Department of Defense and under all programs for veterans (including through the Veterans Administration), such assistance must be used to meet the needs of the eligible individual prior to the provision of needs-related payments with funds under this grant program.

D. Required Services

Each application for funds under DDP must include verification that the State Dislocated Worker Unit has provided, or is in the process of providing, the following activities and services:

1. In conjunction with the substate grantee (and where appropriate, representatives from the Department of Defense), has established on-site contact with employers and employee representatives affected by a dislocation or potential dislocation of eligible individuals, preferably not later than 2 business days after notification of such dislocation.

2. Has promoted the formation of a labor-management committee or other employer-employee entity in the case of a facility affected by an employee dislocation or potential dislocation in accordance with JTPA section 314(b)(1)(B), including the provision of technical assistance and, where appropriate, financial assistance to cover the start-up costs of such committee.

3. Has provided, in conjunction with the labor-management committees or other employer-employee entity established pursuant to clause 2., the following services:

a. An initial survey of potential eligible individuals to determine the approximate number of such individuals interested in receiving services under this section;

b. Orientation sessions, counseling services, and early intervention services for eligible individuals and management. Such services may be provided in coordination with representatives from the United States Employment Service, the Interstate Job Bank, the Department of Defense, and the National Occupational Information Coordinating Committee;

c. Initial basic readjustment services in conjunction with such services provided by substate grantees.

These services must be provided as a condition of the grant, and must be provided by, or under the direction of, the State through its Dislocated Worker Unit. A portion of the grant award shall be retained by the Department until verification is made that the services have been provided. This portion shall be used to reimburse the DWU for the cost of providing the services. Reimbursement can only be made for the costs of rapid response and initial basic readjustment services incurred by the State with its reserve funds. This procedure is described in Part IV of these guidelines.

E. Performance Outcomes

The following are the minimum expected performance levels for any project receiving DDP funds:

1. Entered Employment Rate=75.0%
2. Wage Replacement Rate for Entered Employments=90.0%

Note: The "wage replacement rate is defined in Appendix H.

Any project which does not propose, or is determined unlikely to meet these minimum performance levels will not be funded, unless the applicant provides sufficient information in the application to indicate that these performance levels are not feasible in the context of local labor market conditions.

[**Note:** The entered employment rate is for the total project. The Department expects that certain activities (e.g., classroom skills training, on-the-job training) will achieve higher entered employment rates. Applicants should note the requirement in the assurances that on-the-job training contracts contain "hire first" provisions.]

F. Administrative Requirements

1. GENERAL.—In addition to the JTPA regulations and these guidelines, some grantee organizations may be subject to the requirements listed below—

a. State and local governments (except for JTPA State grant recipients that receive DDP funds under the JTPA State Grant Agreement "block grant")—OMB Circular A–87 (Cost Principles) and 29 CFR part 97 (Uniform Administrative Requirements for Grants with State and Local governments) apply.

b. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 41 CFR 29–70 (Administrative Requirements) apply.

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 41 CFR 29–70 (Administrative Requirements) apply.

d. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles) and 41 CFR 29–70 (Administrative Requirements) apply. In addition, the audit requirements at 20 CFR 627.480(c) shall apply to commercial recipients.

2. FINANCIAL MANAGEMENT.

a. Cost limitations under section 315 of JTPA and 20 CFR 631.13 apply to DDP grants except where justification for adjusting these limitations is included in the grant application and approved by the Grant Officer. This limitation applies to the total expenditures for program administration including any funds reserved by the State where it is the applicant but not the project operator.

b. Not more than 20 percent of the grant award, excluding funds expended for needs-related payments, can be used for program administration, conversion planning activities, and activities related to development and introduction of high performance workplace systems, employee and participative management systems, and workforce participation in the evaluation, selection, and implementation of new production technologies. No waivers of this cost limitation will be granted.

c. Costs associated with the establishment of a Labor Management Committee (LMC) are appropriately charged as Rapid Response costs. Ongoing operational costs of the Labor Management Committee during the period of performance of the grant are chargeable to the appropriate cost categories based on the functions performed by the LMC.

d. When a participant is eligible for either partial or full reimbursement of training costs (e.g., Pell grants, employer tuition reimbursement, student financial assistance under programs for employees of the Department of Defense and veterans, etc.) the application must describe the procedures established for the reimbursement and/or crediting of such costs if such costs are initially charged to the DDP national reserve grant.

Note: DDP national reserve funds which have been expended for training prior to certification of Trade Adjustment Assistance (TAA) eligibility need not be reimbursed when TAA funds become available to cover the balance of the training..

e. If an indirect cost rate is applied calculating administrative costs, the basis for the rate and the approving authority must be cited.

f. It is not intended that DDP national reserve projects automatically budget 15 percent of the award amount toward administration. The amount planned to be used for administration and the specific purposes for which it will be used must be specified in the budget. A portion of costs charged to an administrative pool may be allocated to the grant, up to the total amount approved for the grant and consistent with overall expenditures for the grant and with the rules defined in part 627 of the JTPA Regulations for the charging of costs against a cost pool.

3. INFORMATION AND REPORTING REQUIREMENTS.

a. *Records.* By accepting a grant, the grantee agrees that it will maintain and make available to the U.S. Department of Labor, upon request, information on the operation of the project and on project expenditures. Such information must include all financial information consistent with generally accepted accounting principles, participant information sufficient to justify a determination of eligibility and a complete record of assistance received under the DDP project.

b. *Reports.* The grantee shall submit to the Employment and Training Administration an original and two copies of "The Dislocated Worker Special Project Report". ETA Form No. 9038 (OMB No. 1205–0318). In addition to the standard instructions for this report form, the following instructions shall apply to completion of the form for DDP projects:

—Administration costs and the costs incurred for workplace system and conversion planning activities shall be reported under the "Administration" line item;
—In the "Comments" section, enter a breakout of the administration costs only.

G. State Review

1. RESPONSIBILITY. Where the applicant is not the State, the applicant will submit the application to the State JTPA administrative entity for review (see Appendix J: List of State JTPA Liaisons). The State's review shall include a determination of the applicant's ability to satisfactorily undertake the proposed project; that the project design is reflective of, and responsive to, the dislocation circumstances, that the application package is complete in accordance with these guidelines; and that the required rapid response services are being or will be provided by the State DWU. The State's review and determination letter must be included in the application package, subject to the provisions of paragraph 2.

2. TIMING. The State shall have 30 calendar days to review the application. The applicant may submit the application to the Department after the date on which it receives the letter from

the State or upon expiration of the 30 calendar days, whichever occurs first.

Part III. Application Requirements

To be considered for funding, the application must include the information identified in this part. If an applicant plans to operate a project in more than one location, each location shall be listed and separate budgets, implementation schedules and, where appropriate, lists of local demand occupations or skills for retraining shall be provided. In all cases, the applicant must also include a summary budget and implementation schedule for the entire project.

A. Transmittal Letter

A letter requesting DDP funds on behalf of the applicant, signed by the Governor (or his/her authorized JTPA signatory official), or by the applicant's authorized signatory must accompany the application. The letter shall indicate support for the application, and acceptance of full responsibility for effect administrative of the funds requested in the application. If the applicant is not the State, a letter from the State, as described in section II.G. of these guidelines must also be included.

B. Standard Form (SF 424)

Each application must include a completed SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246) with an original signature by the authorized signatory. This form is found in appendix A.

C. Assurances and Certifications

Each application must include the following required assurances and certifications. Applications which do not contain each of the following required elements may be returned to the applicant for correction and/or completion before they are considered for funding.

1. An original signature certification of acceptance of the required assurances. The "Required Programmatic Assurances" are found in appendix b.

2. An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is the State JTPA agency. A suggested form incorporating the required text is found in appendix C..

3. A "Certification Regarding Debarment, Suspension and other Responsibility Matters, Primary Covered Transactions" must be submitted with all applications as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. A suggested form incorporating the required text is found in Appendix D.

4. A "Certification Regarding Lobbying" shall be submitted with each application as required by 29 CFR part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in Appendix E.

5. An assurance of compliance with "Nondiscrimination and Equal Opportunity Requirements of JTPA." A suggested form (State and Non-State version) is found in Appendix F.

6. When the applicant is not the State JTPA entity (i.e., subject to the Governor/Secretary and JTPA Grant Agreements), SF 424B, Assurances—Non-Construction Programs, with an original signature, must be submitted with the application. This assurance form is found in Appendix G.

D. Synopsis of the Project

A short summary of the project providing the following information must be included:

1. The name and address of the project operator, along with the name and telephone number of a contact person for the project operator;

2. Planned beginning and ending dates of the project—

Note: The planned beginning date should be no earlier than 30 days from the date of submittal of the application, to allow time for the application to be reviewed and fundability to be determined.

3. The total amount of DDP national reserve funds requested;

4. The project locations (cities, counties, and States);

5. The name(s) of the company(ies) or facilities from which the affected workers have been dislocated. If workers are being dislocated from a defense contractor, the specific contract and/or subcontract numbers of the projects on which the workers were employed must be included;

6. The date(s) of employment termination and the number of workers affected. If workers are to be terminated in phases, give planned dates and numbers of workers for each actual and planned layoff;

7. The names of the States, counties, and cities in which the affected workers reside;

8. The total number of participants planned;

9. The total number of entered employments planned;

10. The planned entered employment rate;

11. The planned average wage at entered employment;

12. The planned cost per participant; and

13. The planned cost per entered employment.

E. Project Narrative

The narrative portion of the application, excluding attachments, should not exceed thirty (30) double-spaced pages, typewritten on one side of the paper only, and paginated. The narrative must specifically address each of the elements listed below. Use of tables and charts to summarize relevant data and information is strongly encouraged. However, the applicant must provide sufficient narrative interpretations of data summarized in any tables and charts to support the need for the project and the effectiveness of the planned service strategy.

The project narrative shall include:

1. A description of the need for the project. The description must include information that demonstrates that the employment losses are the result of reductions in Department of Defense expenditures. Specific information must be provided regarding the defense expenditure reductions which occurred or will occur, including identification of military bases or facilities which are scheduled for closure or realignment, contracts which have been terminated or reduced, and/or projects which have been canceled. If the dislocations are the result of the cancellation of a subcontract, the description must identify both the subcontract and the prime contract.

If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated should be identified.

2. A description of how the number of affected workers which are planned to participate in the program was determined. The description should use information collected through the worker survey described under the required services in section II.D.3 of these guidelines. The description must include an identification of the total number of affected workers, the number likely to retire, the number likely to be transferred, the number likely to be recalled, and the number with locally transferrable skills who will require limited or no assistance under DDP to find a new job. The description shall identify the workers by position/occupation. If this data is not available at the time of submission of the initial application, the applicant should describe why the data is not yet available. If the application is funded, the applicant will be expected to

VOL 58 ISS 136 JL 19 1993 UMI

provide this information when it is available. Submission of this information will be one of the criteria for determining satisfactory implementation of the project for the purpose of releasing the retained portion of the grant award, as described in section IV.D. of these guidelines.

Where layoffs have occurred more than 4 months prior to the submittal of the application, the application shall include information indicating how the number of affected workers who remain unemployed and in need of services has been determined.

3. A description of existing resources which will be used to provide services to project participants, including:

a. An identification of the State and substate Title III funds and services that have been or will be provided to the affected workers.

b. A description of the nature and duration of any contractual obligation of, or any voluntary arrangements by, the employer(s) or union(s) to provide readjustment and/or training-related services to terminated employees. When applicable, severance pay arrangements shall be described.

c. Coordination with Trade Adjustment Assistance resources provided under the Trade Act.—

(i) Identification of whether an application has been made for Trade Adjustment Assistance (TAA) for some or all of the affected workers. If certification has already been issued, identification of the petition number.

(ii) When some or all of the target group is certified as eligible to receive TAA assistance, including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA (e.g., assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria). In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant funds must be expended for retraining.

(iii) Where a TAA certification has been issued for some or all of the affected workers, the application shall include an estimate of the number of workers to receive TAA-funded training and the cost of such training. The application shall also describe the coordination procedures established to track the project participants receiving TAA-funded training.

4. A local labor market analysis which identifies the occupations which are priority opportunities for training and placement of participants, the sources of information used to identify the target occupations, the rationale for selection of the occupations (e.g., current or projected demand for workers, wage levels, relevance to experience of workers to be served), and the primary skill requirements associated with employment in each occupation. The analysis must also include an identification of the most current information regarding the unemployment rate and the percent of the population in the area with incomes below the poverty level. The analysis must be provided for the local labor market, plus any other job markets in which job placement is an appropriate option for the affected workers.

5. A general assessment of basic skills, career interests, and income needs of the workers who comprise the eligible target group for the proposed project. Where the targeted workers differ according to positions, income levels and/or work experience or job skills, the assessment must identify the basic skills, career interests and income need by category of worker.

6. A description of the service strategies necessary for effective training and job placement of the population to be served.

a. *Intake.* A description of the procedures to recruit participants into the program, including the identification of the primary entities responsible for the outreach and recruitment effort, and of the entity(ies) responsible for ensuring the eligibility of each participant.

b. *Basic readjustment services.* A description of the types of participant assessment and counseling provided and the methods used; and the types of assistance provided to participants in job search skills and job placement.

c. *Retraining services.* A description of the specific types of retraining to be provided. The description must separately identify each type of retraining (i.e., basic skills/GED, English-as-a-Second Language, classroom skill training, on-the-job training, entrepreneurial training), and, for each type, estimates of the average duration and cost per participant.

Note: Funds provided for DDP projects cannot substitute for activities related to the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, and other such changes, except as provided for under paragraphs 7.d. and 7.e. below.]

d. *Supportive services.* A description of specific supportive services to be provided and an identification of the criteria for receipt of each such service.

e. *Needs-related payments.* A description of the basis for developing an estimate of the amount of funds required for needs-related payments to the participants to be served through the project. This description shall specifically identify the assumptions used to develop the estimate regarding factors such as: number of participants to receive classroom skills training; length of training; percent of participants with family incomes below lower living standard, etc.

f. *Relocaton and out-of-area job search assistance.* If relocation and/or out-of-area job search assistance are to be provided, a description of the circumstances that make these appropriate services for the target group.

7. Where appropriate—

a. A preliminary outline of a program to convert the affected defense base or facility;

b. Preliminary plant or military base conversion proposals, and proposals for the effective use or conversion of surplus Federal property;

c. A description of efforts to coordinate the activities and services provided under the grant with the Department of Defense's Office of Economic Adjustment and other relevant agencies;

d. A description of any skills upgrading which includes an identification of the employer(s), the specific positions and number of workers to be included, and a description of the specific skills to be covered in the training;

e. A description of the specific employers/facilities and of the specific objectives and activities to be completed regarding development and introduction of high performance workplace systems, employee and participative management systems, and workforce participation in the evaluation, selection, and implementation of new production technologies. The description should also include an identification of employer and other resources being committed in support of these activities.

These descriptions must include an identification of how DDP funds will be specifically used in support of each applicable activity.

8. A description of the specific actions which have been completed by the State Dislocated Worker Unit regarding the activities and services described in section II.D of these guidelines.

F. Implementation Plan

The application shall include the following implementation information:

1. A description of initial actions to be taken to support timely implementation of program activities upon receipt of

grant funds. Enrollment of participants normally should occur no later than 90 days following the Grant Officer's authorization to incur costs against the funds awarded. If such a time schedule cannot be met or is inappropriate, an explanation of appropriateness of the implementation schedule to the dislocation circumstances must be included.

2. A quarterly implementation schedule showing projected cumulative goals by program year quarter for the following:

a. Total participants;

b. Total terminations; and

c. Total entered employments.

3. End-of-project totals for the following:

a. Total participants for: total project, assessment, job search assistance, basic skills/GED, each occupational area of classroom skills training, OJT, entrepreneurial training, upgrading training, other training;

b. Total terminations;

c. Total entered employments for: total project, received basic readjustment services only, classroom skills training total, OJT, other training;

d. Number of participants receiving relocation assistance; and

e. Number of participants receiving out-of-area job search assistance.

If there are subprojects, a quarterly and end-of-project implementation schedule must be submitted for the total project and for each subproject.

G. Project Budget

1. Costs must be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, Supportive Services and Needs-Related Payments, and Rapid Response as defined in 20 CFR 631.13, and high performance workplace systems and conversion activities, as described in these guidelines. If the applicant desires adjustments or waivers to the cost limitations, as described in section II.F.2. of these guidelines, the application must include an identification of the specific waivers requested and a description of the project-specific factors or circumstances which make such waivers appropriate.

2. The application must include the following budget information:

a. Where DDP national reserve funds will be combined with funds from other sources (e.g., State or substate JTPA funds, employer or union training funds, State formula-allotted funds, State vocational education or economic development funds), a line item breakout of total project costs, identified by funding source (refer to Budget Template 1);

(i) When grant funds are used for skills upgrading, projected expenditures from all other sources for skills upgrading are to be included in the budget. The application must also include an identification of funds expended by each applicable employer for employee skills upgrading during the period October 1, 1991 to September 30, 1992.

(ii) Where grant funds are used for conversion planning activities, the development and introduction of high performance workplace systems, employee and participative management systems, or workforce participation in the evaluation, selection, and implementation of new production technologies, the projected expenditures from all other sources for that activity are to be shown in the budget.

b. A line item breakout of total planned grant costs, by cost category (refer to Budget Template 2).

Note: Where subcontracts for services other than tuition payments and OJT are proposed, a separate Budget Template 2 must be completed for each subcontract whose value is 10% or greater of the total project budget, excluding funds to be expended for needs-related payments.

c. Projected expenditures by cost category for each quarter during the period of the grant for the overall grant and for each sub-project (refer to Budget Template 3).

d. Only expenses related to the provision of the services described in subsection E.8. of this part shall be charged to the "rapid response" category. It is expected that in preparing the application and budget, the applicant will work with the State's Dislocated Worker Unit to develop an estimate of the cost of such services.

3. The following limitations shall apply in budgeting funds to be provided through the national reserve grant:

a. For a "pass-through" grant project, where the State is the applicant but an eligible applicant will be the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant (e.g., reporting activities and project oversight). This cost is to be charged to the Administration cost category in the project budget. A State requesting administrative costs that exceed this amount must provide a justification including the projected person-hours and functions to be performed.

b. Any costs that are subcontracted (excluding tuition-based contracts to training providers and OJT contracts to employers) shall be identified by the name of the contractor and the functions/activities to be performed. Applicants should note that procurements are to be conducted in accordance with the provisions of the JTPA regulations at 20 CFR part 27 (57 FR 62004 and 58 FR 31471).

c. Each equipment purchase or lease with a unit cost of $2500 or more must be specifically listed and justified.

d. No direct costs shall be charged for any activity that is included in the indirect cost line item.

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BUDGET TEMPLATE 1: PROJECT LINE ITEM BUDGET BY SOURCE OF FUNDING

EXPENSE ITEM	SOURCE OF FUNDS					TOTAL
	Requested in this Application	Substate Formula	State Reserve	Other Public	Other Non-Public (attach list of sources & amounts)	
Staff Salaries						
Fringe Benefits						
Staff Travel						
Communications						
Facilities						
Consumable Office Supplies						
Consumable Instructional and Testing Materials						
Equipment						
Tuition Payments						
OJT Reimbursements						
Relocation Assistance						
Out-of-Area Job Search Asst.						
Supportive Services						
Needs-related Payments						
Other*						
TOTAL						

* Attach a description of the types of expenses and services included in this line item.

BUDGET TEMPLATE 2: GRANT LINE ITEM BUDGET

BUDGET TEMPLATE 2: GRANT LINE ITEM BUDGET

EXPENSE ITEM	COST CATEGORY						TOTAL
	Administration	Rapid Response	Basic Readjustment	Retraining	Supportive Svs. & Needs-Related Payments	High Perf. Workplace Systems & Conversion Activities	
Staff Salaries*							
Fringe Benefits**							
Staff Travel . Miles = _____ . Rate = _____ per _____							
Communications							
Facilities - Total . Rent = _____ per _____ . Utilities = _____ . Maintenance/Other = _____							
Consumable Office Supplies							
Consumable Instructional and Testing Materials							
Equipment - Total*** . Purchase = _____ . Lease = _____							

* Attach a listing of all staff positions, and for each the salary and % of time charged to the grant.

** Attach a description of components of fringe benefits, and the % and base which is used to expense fringe benefits.

*** Attach a list of each item, and its cost, with a per unit purchase or lease price ≥ $2500.

BUDGET TEMPLATE 2: GRANT LINE ITEM BUDGET

EXPENSE ITEM	COST CATEGORY						TOTAL
	Administration	Rapid Response	Basic Readjustment	Retraining	Supportive Svs. & Needs-Related Payments	High Perf. Workplace Systems & Conversion Activities	
Tuition Payments							
OJT Reimbursements							
Relocation Assistance							
Out-of-Area Job Search Asst.							
Supportive Services - Total . Child Care = _____ . Transportation = _____ . Other = _____							
Needs-Related Payments							
Other****							
TOTAL							

**** Attach a description of the types of expenses and services included in this line item.

BUDGET TEMPLATE 3: GRANT CUMULATIVE QUARTERLY EXPENDITURES BY COST CATEGORY

BUDGET TEMPLATE 3: GRANT CUMULATIVE QUARTERLY EXPENDITURES BY COST CATEGORY

COST CATEGORY	QUARTER (BEGINNING AND ENDING DATES)					
Total Expenditures						
Administration						
Rapid Response						
Basic Readjustment						
Retraining						
Supportive Services						
Needs-related Payments						
High Performance Workplace Systems and Conversion Activities						

BILLING CODE 4510-30-C

VOL
58
ISS
136
JL
19
1993
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H. Coordination and Linkages

1. GOVERNORS AND SUBSTATE GRANTEES. The application must include letters from the Governor (or his/her designated signatory official for JTPA) and each appropriate JTPA Title III substate grantee indicating that they have been provided an opportunity to review and comment on the application. Each letter should provide a description of funding, services and/or assistance to be provided to the project.

2. PRIVATE INDUSTRY COUNCIL (PIC)/LOCAL ELECTED OFFICIAL (LEO). Each application must provide evidence that the appropriate PICs and LEOs have been given an opportunity for review and comment.

3. LABOR MANAGEMENT COMMITTEE. Each application must describe the consultation with and participation of the labor management committee or other employer-employee entity established pursuant to paragraph II.D.2. in the development of the application and project design.

4. LABOR ORGANIZATIONS. Each application where a substantial number (at least 20%) of the affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Documentation of such consultation is required for each labor organization representing at least 20% of the affected workers.

5. OTHER. Each application must describe how the project will coordinate with other State and local agencies and related programs, including: DoD Readjustment Program, Veterans' programs (including JTPA Title IV–C) available in the area, Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representatives (LVERs), the Unemployment Compensation system, the State Employment Service, the Pell Grant program, and if applicable the Trade Adjustment Assistance program and Defense Conversion Assistance (DCA) grant projects.

I. Financial and management capability. Except where the actual project operator will be the State or JTPA Title III substate grantee, the application must include a description (2 pages or less) of the prospective project operator's financial and management capabilities. The description must include:

1. an organizational and staffing chart indicating how project responsibilities will be assigned and performed;

2. a description of current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs, including size of project(s) and outcomes; and

3. a description of the project operator's capability to ensure the integrity of funds awarded under DDP and to maintain and report required fiscal and participant information.

Part IV. Grant Selection, Award and Modification

A. Selection Criteria

1. OVERALL CONSIDERATIONS. To be considered, the application must demonstrate that the proposed project meets the purpose of and is consistent with the Act and regulations; and provides all the information required by these guidelines. Grant applications will be evaluated and considered for funding where the Department of Defense has concurred that the dislocated workers to be served by the proposed project shall be or were dislocated as a result of reductions in DoD expenditures and/or the closure or realignment of military facilities; and where the application adequately demonstrates that sufficient funds have been budgeted for needs-related payments. These determinations will be based on information submitted by the applicant, as requested in sections III.E.1. and III.E.6.e. of these guidelines.

2. SPECIFIC EVALUATION CRITERIA. The following specific criteria shall apply to the evaluation of responsive applications and to the selection of grantees for DDP national reserve dislocated worker projects:

a. SEVERITY OF NEED. Consideration will be given to the severity of the circumstances and need, as described in the grant application (e.g., the total impact of the dislocation on the area as a result of the reduction in defense expenditures and base closures, the local unemployment rates, the percent of the local populations with incomes below the poverty level, the ratio of eligible individuals in the affected community to the population of such community, the immediacy of the schedule for layoffs of workers).

b. TARGET GROUP. Consideration will be given to the extent to which the project is focused on those affected workers actually requiring retraining services to remain in the labor force, as shown by the analysis of the characteristics of the affected workers and of the available employment opportunities in the local labor market.

c. SERVICES. Consideration will be given to the services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population and the extent to which retraining and related services are linked to job placement in demand occupations in the area. No application will be approved unless it contains assurances that the applicant will use amounts from the grant to provide needs-related payments in accordance with section 325A(i) of the Act.

d. UTILIZATION OF RESOURCES. Consideration will be given to the extent to which the applicant has demonstrated that the project will be integrated with other existing program and community resources.

e. COST EFFECTIVENESS. Consideration will be given to the cost effectiveness of the project (e.g., cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected, including expected wage levels); the level of funding designated for client services as opposed to staff support and administration; and whether sufficient provision has been made for needs-related payments. All proposed costs will be evaluated to determine whether they are necessary, reasonable, and properly allocable to the grant.

f. MANAGEMENT CAPABILITY. Consideration will be given to the project operator's fiscal and program management capabilities to administer the proposed project and the project operator's demonstrated ability to begin program operations expeditiously and implement program activities and services in a timely manner.

g. OTHER CONSIDERATIONS. The Grant Officer will consider the overall effectiveness and efficiency of the proposal itself as compared to other proposals received. The Grant Officer will consider written comments regarding the application submitted by the Governor or other interested parties.

3. PRIORITY. When reviewing applications for grants under DDP, priority will be given to the following:

a. Applications received for projects to be operated by JTPA Title III substate grantees;

b. Applications received from any applicant on behalf of affected employers in a similar defense-related industry or on behalf of a single employer with multiple bases or plants within a State; and

c. Applications demonstrating employer-employee cooperation, including the participation of labor-management committees or other employer-employee entities.

The Department of Labor encourages eligible applicants to make application through the State JTPA Title III grantee entity to facilitate timely funding and implementation of projects.

B. Application Review Process

1. Except where the applicant is a State, the application must be developed in consultation with the State, and, where appropriate, in consultation with the labor management committee or other employer-employee entity at the affected facility; and with representatives from the Department of Defense.

2. Prior to submission of an application to the Secretary, the applicant must submit the application to the State JTPA agency for review (see Appendix J for a list of the JTPA liaisons in each State). The State's review shall include a verification of the descriptive information regarding the financial and management capabilities of the applicant and project operator, and of the adequacy of coordination with related programs and State and local agencies. The State will have a maximum of 30 calendar days to review the application. The applicant may submit the application to the Secretary after the date on which the State completes its review of the application or upon expiration of the 30 calendar days, whichever occurs first. This review by the State will satisfy the requirements for intergovernmental review of Department of Labor programs and activities under 29 CFR subtitle A, part 17.

3. An application will be reviewed and fundability determined based upon the overall responsiveness of the application's content to the submission requirements and to these selection criteria, taking into account the extent to which funds are available. DOL will make a decision regarding the application within 30 calendar days after the date on which the application is received by DOL. DOL will provide written notification to the applicant if the applicant has not satisfied the application requirements described in part III of these guidelines.

4. An application will be rejected for funding under DDP when:

a. The application proposes to assist workers who are not dislocated as a consequence of reductions in DoD expenditures and/or closures or realignments of military facilities;

b. The application is not consistent with statutory and/or regulatory requirements;

c. The application does not meet the standards established by these guidelines; or

d. The information required is not provided in sufficient detail to permit an adequate assessment of the responsiveness of the application.

5. An application may be rejected if other available applications appear to be more effective in achieving the goals of this program, taking into account the extent to which funds are available.

C. Approval and Award Procedure

1. In the case of an award to the State JTPA agency, the Grant Officer will issue an award letter and Notice of Obligation (NOO) pursuant to the JTPA Grant Agreement, "block grant". The State and/or local program may be required to submit additional information to satisfy requirements in these guidelines. In such circumstances, the Department may or may not allow the incurring of costs prior to submission of the additional information depending on the nature and the seriousness of the issues identified. The Grant Officer's approval letter will contain the Department's decision on this issue.

2. Applications not funded pursuant to the Governor-Secretary and JTPA Grant Agreements will be subject to the following grant award procedures:

a. Once a preliminary decision is made by DOL to approve a proposal, the applicant will be instructed to negotiate and resolve any issues identified in the proposal and to develop a revised submission to be incorporated into a grant package to be executed by the Department of Labor. A letter announcing this process will be forwarded to the applicant from the Grant Officer. If the identified issues are not resolved to the satisfaction of the Department of Labor, the application will not be finally approved for funding.

b. A grant document will be prepared in triplicate and forwarded to the applicant for signature. The applicant must sign three originals of the grant document and return them to the Grant Officer for final execution.

c. The Grant Officer will execute the grant documents, and forward one signed original to the applicant. The grant document and the transmittal letter will instruct the grantee as to the date that the grantee may commence to incur costs against the executed grant.

D. Retention of Portion of Grant Amount by the Department of Labor

1. PORTION RELATING TO GENERAL APPLICATION REQUIREMENTS. Subject to paragraph b., DOL will retain 25 percent of the amount of the grant award, to be disbursed within 90 days after the date on which the Secretary determines that the applicant is satisfactorily implementing the plans and strategies described in the approved application. Satisfactory implementation shall be based on the following criteria: all planned contracts and/or subagreements for participant services have been executed, the Project Director and at least 75% of the planned staff positions have been filled, a minimum of 50% of total planned participants have been enrolled, and the information on the profile of affected workers by position/occupation has been submitted. The determination will be based on reports and information submitted by the grantee, as verified by DOL staff.

2. PORTION RELATING TO STATE DISLOCATED WORKER UNIT SERVICES. DOL will retain up to 20 percent of the amount retained under paragraph a., or 5 percent of the total grant award (not to exceed $50,000), for disbursement to the State Dislocated Worker Unit (DWU) within 90 days after the date on which the project operator verifies that such unit has satisfactorily provided the activities and services described in subsection D.1. of part II of these guidelines. The amount disbursed under the preceding sentence will be used to reimburse such DWU for actual expenses incurred in providing such activities and services. The disbursement will be made on the basis of cost documentation submitted by the DWU to the Grant Officer. Disbursements will be made directly to the DWU by the Department of Labor.

E. Grant Modification Process

The Department recognized that circumstances will arise where grant modifications will be necessary, and that those circumstances will be, in some cases, beyond the control of the grantee. Following are guidelines governing the submission and review of grant modification requests.

1. CIRCUMSTANCES REQUIRING A GRANT MODIFICATION REQUEST. Grantees are responsible for monitoring the implementation and progress of these grant projects and for identifying any circumstances that would require a grant modification request. All requests for grant modifications must be accompanied by a synopsis of the proposed changes to the grant and an explanation of the reasons for proposing such a change(s) to the originally approved project plan. There are several valid reasons for grant amendments.

Following are types of reasons, and the information or possible changes required related to each reason:

a. GRANT MODIFICATION REQUESTS REQUIRED DUE TO CHANGES IN CIRCUMSTANCES AFTER THE GRANT AWARD, such as, but not limited to, a delay in layoff or plant closure date, the recall of a number of the project participants, certification of worker eligibility for Trade Adjustment Assistance, or

recruitment difficulty resulting in enrollments significantly below the planned level. These and other circumstances could require an extension of the project end date and a revised implementation schedule.

b. GRANT MODIFICATION REQUESTS REQUIRED DUE TO BUDGET CHANGES. The following budget changes will require a grant amendment request. In each case, an explanation of the circumstances requiring the change, a revised overall grant budget, and a synopsis of the proposed changes (i.e., current vs. proposed levels) must accompany the request. Any other parts of the approved grant impacted by such changes must also be submitted for approval.

—Any proposed increase to the approved budget for Administration;
—A proposed increase or decrease of 15 percent or more in the approved project budget for Retraining;
—In the case of any budget change that would result in a decrease in the Retraining cost category line item below the required 50 percent expenditure rate for retraining, or requiring a change in an expenditure rate previously waived by the Secretary, a grant amendment request must be submitted. If the budget change would result in a retraining expenditure rate below the required 50 percent level, a request for waiver including justification must accompany the amendment request.
—A proposed increase or decrease of 15 percent or more in the approved project budget for Supportive Services and Needs-Related Payments. The resulting increase may not exceed the 25 percent cost limitation for this cost category, unless specifically justified and approved by the Grant Officer.

c. GRANT MODIFICATION REQUESTS REQUIRED DUE TO CHANGES IN PROJECT PARTICIPANT ACTIVITY LEVELS, such as any increase or decrease of more than 15 percent in the total number of participants to be served or in the number of participants to receive retraining services including classroom training, occupational skill training, on-the-job training, entrepreneurial training, remedial education, or other proposed training activity serving more than 10 participants. Requests must include a synopsis of proposed changes in service levels.

d. GRANT MODIFICATION REQUESTS REQUIRED DUE TO A CHANGE IN THE TARGETED DISLOCATED WORKERS TO BE SERVED BY THE GRANT.

e. GRANT MODIFICATION REQUESTS REQUIRED WHEN IT IS PROJECTED THAT DDP GRANT FUNDS WILL REMAIN UNEXPENDED.

2. SUBMISSION OF GRANT MODIFICATION REQUESTS. All grant modification requests must be submitted to the Grant Officer by the authorized signatory citing the number of the Notice of Obligation transmitting the grant funds to the State or, in the case of a grantee who is not subject to the JTPA Governor/Secretary Agreement, the grant number.

3. REVIEW AND APPROVAL OF GRANT MODIFICATION REQUESTS. Requests for grant modifications will be considered in light of the general purposes of the DDP national reserve account, the selection criteria for DDP national reserve projects published by the Employment and Training Administration in the **Federal Register**, and the purposes of the original grant award. Modifications which request significant changes in the target group to be served will be reviewed on the same basis as a new proposal.

The Grant Officer will advise the State or national reserve grantee in writing of any approval or disapproval of the requested grant modifications, generally within 30 days of receipt of the grant modification request.

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VOL 58 ISS 136 JL 19 1993 UMI

APPENDIX A

Standard Form (SF 424)

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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VOL
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

BILLING CODE 4810-30-C

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B—
Assurances

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Appendix C—
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Appendix B—Required Programmatic Assurances

1. The grantee assures that funds provided by this grant will be administered by the grantee in a manner consistent with the JTPA, the JTPA regulations, the requirements contained in the grant application guidelines, and in accordance with the provisions specified in the proposal and amendments approved by the Grant Officer, if any, pursuant to the grant document signed by the Department of Labor Grant Officer transmitting the grant award.

2. The grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information will, at a minimum, be consistent with the activities and cost categories contained in the project application and will be available to the grantor as requested.

3. The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for JTPA Title III activities, and the DDP grant application guidelines.

4. The grantee will commence project operations within 30 days from receipt of the grant award, or if unable to commence operations within 30 days, will notify the Grant Officer of the projected date on which project operations will begin and will provide any requested information explaining the projected implementation date.

5. The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential under-expenditure of funds.

6. The grantee assures that needs-related payments will be made to each project participant who is eligible for such payments, in accordance with these application guidelines.

7. The grantee assures that skills training will only be conducted in occupational or job skill areas in which the demand for workers exceeds the available supply in the labor market(s) in which eligible workers reside or to which they are willing to commute or relocate.

8. The grantee will not fund any OJT contract of less than six weeks duration with funds under this grant.

9. The grantee assures that all OJT contracts supported with funds under this grant will contain a "hire first" provision.

10. The grantee assures that each employer with employees who will be provided skills upgrading through this grant will maintain its expenditures from all other sources for skills upgrading at or above the average level of such expenditures during the period October 1, 1991 to September 30, 1992.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Appendix C—Certification Regarding Drug-Free Workplace Requirements

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1.;

(d) Notifying the employee in the statement required by paragraph 1. that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4.b. from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4.b., with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee must insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

Check [ ] if there are workplaces on file that are not identified here.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Appendix D—Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR part 98, Section 98.510, Participants' Responsibilities.

(BEFORE SIGNING CERTIFICATION, READ ATTACHED INSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any one of more of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Appendix E—Certification Regarding Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Appendix F—Nondiscrimination and Equal Opportunity Requirements of JTPA

29 CFR Part 34

(Non-State Grantees Only)

ASSURANCE

(1) As a condition to the award of financial assistance under JTPA from the Department of Labor, the grant applicant assures, with respect to operation of the JTPA-funded program or activity and all agreements or arrangements to carry out the JTPA-funded program or activity, that it will comply fully with the nondiscrimination and equal opportunity provisions of the Job Training Partnership Act of 1982, as amended (JTPA), including the Nontraditional Employment for Women Act of 1991 (where applicable); title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 34. The United States has the right to seek judicial enforcement of this assurance.

(2) The grant applicant is attaching information pursuant to 29 CFR 34.24(a)(3)(ii) where applicable, including the name of any Federal agency other than the Department of Labor's Directorate of Civil Rights that conducted a civil rights compliance review or complaint investigation during the two preceding years in which the grant applicant was found to be in noncompliance; and shall identify the parties to, the forum of and case numbers pertaining to, any administrative enforcement actions or lawsuits filed against it during the two years prior to its application which allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship or participation in JTPA.

Note:

☐ No findings of noncompliance in the last two years.

☐ See attached information.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Nondiscrimination and Equal Opportunity Requirements of JTPA

29 CFR Part 34

(State Grantees Only)

ASSURANCE

(1) As a condition to the award of financial assistance under JTPA from the Department of Labor, the grant applicant assures, with respect to operation of the JTPA-funded program or activity and all agreements or arrangements to carry out the JTPA-funded program or activity, that it will comply fully with the nondiscrimination and equal opportunity provisions of the Job Training Partnership Act of 1982, as amended (JTPA), including the Nontraditional Employment for Women Act of 1991 (where applicable); title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 34. The United States has the right to seek judicial enforcement of this assurance.

(2) The grant applicant certifies that it has developed and maintains (or will develop by August 14, 1993, and thereafter will maintain) a "Methods of Administration" pursuant to 29 CFR 34.33.

(3) The grant applicant is attaching information pursuant to 29 CFR 34.24(a)(3)(ii) where applicable, including the name of any Federal agency other than the Department of Labor's Directorate of Civil Rights that conducted a civil rights compliance review or complaint investigation during the two preceding years in which the grant applicant was found to be in noncompliance; and shall identify the parties to, the forum of and case numbers pertaining to, any administrative enforcement actions or lawsuits filed against it during the two years prior to its application which allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship or participation in JTPA.

Note:

☐ No findings of noncompliance in the last two years.

☐ See attached information.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Appendix G

SF 424–B

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish and maintain a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish and maintain safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, and/or personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one or more of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color, national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972

(Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C., *et seq.*), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application and/or grant.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in the purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–08 and 7324–28) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a–1 to –7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–33), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401, *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1, *et seq.*).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131, *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801, *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residential structures.

17. Will cause to be performed the required financial and compliance audits in accordance with Single Audit Act of 1984.

18. Will comply with applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official
Title
Applicant Organization
Date Submitted

Appendix H—Definitions

1. "Defense contractor" means a private person or party producing goods or services pursuant to—

► One or more defense contracts which have a total amount of not less than $500,000 entered into with the Department of Defense; or

► One or more subcontracts entered into in connection with a defense contract and which have a total amount not less than $500,000.

2. "Enrolled in a training or education program" means that the worker's application for training has been approved and the training institution has furnished written notice that the worker has been accepted in the approved training program beginning within 30 calendar days.

3. "Family", for purposes of establishing eligibility for needs-related payments, means spouses and dependent children residing in the same domicile.

4. "Family income" means all income actually received from all sources by all members of the family for the six-month period prior to application, annualized. When computing family income, income of a spouse and other family members is counted for the portion of the six-month period, prior to application that the person was actually a member of the family.

► Family income includes:

—Gross wages, including wages from community service employment (CSE), work experience, and on-the-job training (OJT), and salaries (before deductions);
—Net self-employment income (gross receipts minus operating expenses); and
—Other cash income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

► Family income does not include:

—Non-cash income such as food stamps or compensation received in the form of food or housing;
—Imputed value of owner-occupied property, i.e., rental value;
—Public assistance payments;
—Cash payments received pursuant to a State plan approved under titles I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;
—Federal, State, or local unemployment insurance benefits;
—Capital gains and losses;
—One-time unearned income, such as, but not limited to:

> Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

> One-time or fixed-term scholarship or fellowship grants;

> Accident, health, and casualty insurance proceeds;

> Disability and death payments, including fixed-term (but not lifetime) life insurance annuities and death benefits;

> One-time awards and gifts;

> Inheritance, including fixed-term annuities;

> Fixed-term workers' compensation awards;

> Soil bank payments; and

> Agricultural crop stabilization payments;

—Pay or allowances that were previously received by any veteran while serving on active duty in the Armed Forces;
—Educational assistance and compensation payments to veterans and other eligible persons under 38 U.S.C. chapters 11, 13, 31, 34–36;
—Payments received under the Trade Act of 1974;
—Payments received under the Black Lung Benefits Act (30 U.S.C. 901, *et seq.*);
—Any income directly or indirectly derived from, or arising out of, any property and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim; and
—Child support payments.

5. "Labor management committee" has the same meaning as in section 301(b)(1) of the JTPA; and includes a committee established at a military installation to assist members of the Armed Forces who are being separated and civilian employees of the Department of Defense and the Department of Energy who are being terminated.

6. "Obsolete skills", for purposes of establishing eligibility for skills upgrading, means skills or skill levels that would not allow the individual worker to meet current hiring requirements for the occupation in the local labor market, or a labor market to which the individual is willing to relocate. Examples of reasons for "obsolete skills" include: Skills that are based on individual employer requirements and are not transferrable to other workplaces; skills that are military or defense-specific and not transferrable to non-defense applications; skills that are satisfactory in low technology work environments, but are inadequate to meet hiring criteria or for successful job performance in similar occupations within the current local labor market.

7. "Realignments" mean actions taken by the Department of Defense to substantially change the mission of individual military facilities. The facilities which qualify for assistance under this definition are identified by the Secretary of Defense under provisions of the Defense Base Closure and Realignment Act of 1990 and the Defense Authorization Amendments and Base Closure and Realignment Act passed in 1988.

8. "Retainer pay" is the same as retirement pay; it is a term that has been used by some of the Armed Forces to refer to retirement pay.

9. "Retired or retainer pay incident to that separation" means eligible to receive retirement pay benefits. Anyone who is eligible to receive retirement benefits upon separation or termination is not eligible for assistance under DDP.

10. "State", for the purposes of these grant application guidelines, shall mean the 50 States of the United States and the following grant eligible territories and legal jurisdictions: District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Marianas, Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau, as represented by the State JTPA agency under the Governor/Secretary and the JTPA Grant Agreements, "block grant".

11. "Substate area" means that geographic area in a State designated by the Governor pursuant to his/her authority under section 312 of JTPA.

12. "Substate grantee" means that agency or organization selected to administer programs under agreement among the Governor, the local elected official or officials of the applicable substate area, and the private industry council or councils of such area, as provided in section 312 of JTPA.

13. "Wage replacement rate for entered employments" is the number equal to the sum of the wage at placement for all individuals who reported as entered employments divided by the sum of the pre-dislocation wage for all such individuals.

Appendix I—Activities Related to High Performance Workplace Systems, Employee and Participative Management Systems, and Workforce Participation in the Evaluation, Selection and Implementation of New Production Technologies

Sample Activities in DDP Context

- Analyze and restructure ("reengineer") work processes to strip down processes and work procedures to the most essential parts.
- Acquisition and installation of flexible, multi-purpose, usually computer-based equipment.
- Development and installation of self-control performance management procedures.
- Worker participation in designing new work procedures and methods, including evaluation and selection of new technologies and equipment to be used in the workplace.

Development of worker skills in self-control systems and procedures, decision-making, working in team-based environment.

Development of worker competence in using new technologies, including an active role by worker representatives in evaluating and selecting training methodologies and materials.

Appendix J—List of State JTPA Liaisons

Governors/State JTPA Liaisons

May 26, 1993.

Alabama

Governor Jim Folsom, Jr.

Ms. Alice McKinney, Acting Director, Alabama Department of Economic and Community Affairs, Job Training Division, 401 Adams Avenue, P.O. Box 5690, Montgomery, Alabama 36103–5690, Telephone: 205–242–5846, FAX: 205–242–5515

Alaska

Governor Walter J. Hickel

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Arizona

Governor J. Fife Symington

Mr. James B. Griffith, Acting Assistant Director, Division of Employment and Rehabilitation Services, 1789 West Jefferson, P.O. Box 6123, suite 901A, Phoenix, Arizona 85005, Telephone: 602–542–4910, FAX: 602–542–2273

Arkansas

Governor Jim G. Tucker

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California

Governor Pete Wilson

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cc: Chief, Job Training Partnership Division, MIC 69, Employment Development Department, P.O. Box 826880, Sacramento, California 94280–0001

Colorado

Governor Roy Romer

Mr. Leslie S. Franklin, Executive Director, Governor's Job Training Office, suite 500, 720 South Colorado Boulevard, Denver, Colorado 80222, Telephone: 303–758–5020, FAX: 303–758–5578

Connecticut

Governor Lowell P. Weicker, Jr.

Mr. John E. Saunders, Deputy Commissioner, Connecticut State Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, Telephone: 203–566–4280, FAX: 203–566–1520

Delaware

Governor Tom Carper

Mr. Louis A. Masci, Director, Delaware Department of Labor, Division of Employment and Training, University Plaza, P.O. Box 9499, Newark, Delaware 19714–9499, Telephone: 302–368–6810, FAX: 302–368–6995

FLORIDA

Governor Lawton Chiles

Ms. Shirley Gooding, Secretary, Department of Labor and Employment Security, 2012 Capital Circle, Southeast, suite 303, Hartman Building, Tallahassee, Florida 32399–2152, Telephone: 904–922–7021, FAX: 904–488–8930

GEORGIA

Governor Zell Miller

Mr. David B. Poythress, Commissioner, Georgia Department of Labor, Sussex Place, 148 International Boulevard, NE., Room 600, Atlanta, Georgia 30303, Telephone: 404–656–3011, FAX: 404–656–2683

cc: Mr. Andrea Harper, Assistant Commissioner, JTPA Division, Georgia Department of Labor, Sussex Place, 148 International Boulevard, NE., Room 650, Atlanta, Georgia 30303, Telephone: 404–656–7392, FAX: 401–651–9377

HAWAII

Governor John Waihee III

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IDAHO

Governor Cecil D. Andrus

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ILLINOIS

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VOL 58 ISS 136 JL 19 1993 UMI

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INDIANA

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IOWA

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KANSAS

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KENTUCKY

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Louisiana

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Maine

Governor John R. McKernan, Jr.

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Maryland

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Massachusetts

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Massachusetts

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Michigan

Governor John Engler

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Minnesota

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Missouri

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Montana

Governor Marc Racicot

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Nebraska

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Nevada

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New Hampshire

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New Jersey

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New Mexico

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New York

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North Carolina

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North Dakota

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Ohio

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Oklahoma

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Oregon

Governor Barbara Roberts

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Rhode Island

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South Carolina

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Tennessee

Governor Ned R. McWherter

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Texas

Governor Ann W. Richards

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Utah

Governor Mike Leavitt

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Vermont

The Honorable Howard Dean

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Virginia

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Washington

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Wisconsin

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Wyoming

Governor Michael Sullivan

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District of Columbia

Mayor Sharon Pratt Kelly

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Puerto Rico

Governor Pedro J. Rossello'

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Virgin Islands

Governor Alexander A. Farrelly

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American Samoa

Governor A. P. Lutali

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Guam

Governor Joseph Ada

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Northern Marianas

Governor Lorenzo I. Guerrero

Mr. Florida M. Dela Cruz, Executive Director, Marianas JTPA Program, Office of the Governor, Commonwealth of the Northern Mariana Islands, Saipan, MP 96950, Telephone: Call Region IX

Republic of the Marshall Islands

Honorable Amata Kabua, President

Honorable Antonio Eliu, Minister of Social Services, P.O. Box 1138, Majuro, Republic of Marshall Islands 96960, Telephone: Call Region IX

cc: D.C. Representative: Mr. Wilfred Kendall, Director of the Marshall Government, Washington Office, 1901 Pennsylvania Avenue, NW., Washington, DC 20036, Telephone: 202–223–4952

Republic of Palau

Honorable Ngiratkel Etpison

Mr. Keral Mariur, Executive Director, Private Industry Council/SJTCC, P.O. Box 100, Koror, Republic of Palau 96940, Telephone: 513

Representative:

cc: D. C. Acting: Mr. Haruo N. Willter, Palau Liaison Officer, Suite 308, Hall of States, 444 North Capitol Street, NW., Washington, DC 20001, Telephone: 202–624–7793

Federated States of Micronesia

Honorable John R. Halelgam

Mr. Kohne K. Ramon, Acting Director, Office of Administrative Service

Government of the Federated States of Micronesia, P.O. Box 490, Pohnpei, FM 96941, Telephone: 228–Telex 729–6807

cc: D.C. Representative: Mr. Epel Illon, Washington Representative, Federated States of Micronesia, 706 G Street, SE., Washington, DC 20003, Telephone: 202–544–2640

Attn: Mr. Tom Bossanich, Federal Program Contact.

[FR Doc. 93–16927 Filed 7–16–93; 8:45 am]

BILLING CODE 4510–30–M

Federal Register

Monday
July 19, 1993

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report; Notice

VOL 58 ISS 136 JL 19 1993 UMI

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven rescission proposals and 12 deferrals contained in six special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, March 16, April 20, and June 4, 1993.

Rescissions (Attachments A and C)

As of July 1, 1993, seven rescission proposals totaling $356.0 million were pending before Congress. Of the total amount proposed for rescission, $180.0 million had been pending before the Congress for more than 45 days. The funds associated with this proposed rescission were never withheld from obligation. Attachment C shows the status of the FY 1993 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1993, $3,395.9 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1993.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

57 FR 46730, Friday, October 9, 1992
58 FR 3368, Friday, January 8, 1993
58 FR 16324, Thursday, March 25, 1993
58 FR 17298, Thursday, April 1, 1993
58 FR 27192, Thursday, May 6, 1993
58 FR 33164, Tuesday, June 15, 1993

Leon E. Panetta,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1993 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	356.0
Rejected by the Congress.....	---
Pending before the Congress for more than 45 days (Funding never withheld).....	-180.0
Currently before the Congress.....	176.0

ATTACHMENT B

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	4,467.5
Routine Executive releases through July 1, 1993....	-1,171.6
Overturned by the Congress.....	---
Currently before the Congress.....	3,295.9

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ATTACHMENT C
Status of FY 1993 Rescission Proposals – As of July 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
INDEPENDENT AGENCIES:								
Board for International Broadcasting								
Israel relay station	R93–1		180,000	4–20–93	1/			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R93–2	13,000		6–4–93				
Homeownership and opportunity for people everywhere grants	R93–3	100,000		6–4–93				
DEPARTMENT OF JUSTICE								
Legal Activities								
Assets forfeiture fund	R93–4	20,000		6–4–93				
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R93–5	3,100		6–4–93				
Grants–in–aid for airports	R93–6	36,750		6–4–93				
Coast Guard								
Operating expenses	R93–7	3,150		6–4–93				
TOTAL RESCISSIONS		**176,000**	**180,000**		**0**		**0**	

1/ Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1993 Deferrals – As of July 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted	Releases(–): Cumulative	Releases(–): Congres–	Congres–	Cumulative	Amount Deferred
DEPARTMENT OF AGRICULTURE							
Forest Service							
Forest and rangeland research	D93–1	1,000					1,000
State and private forestry	D93–2	1,000					1,000
National forest system	D93–3	1,000					1,000
Wildland fire management	D93–4	1,000					1,000
Reconstruction and construction	D93–5	1,000					1,000
Land acquisition	D93–6	1,000					1,000
Other	D93–7	1,000					1,000
DEPARTMENT OF DEFENSE–MILITARY							
Military Personnel							
Military personnel, Army	D93–8	1,000					1,000
Military personnel, Navy	D93–9	1,000					1,000
Military personnel, Marine Corps	D93–10	1,000					1,000
Military personnel, Air Force	D93–11	1,000					1,000
Reserve personnel, Army	D93–12	1,000					1,000
Reserve personnel, Navy	D93–13	1,000					1,000
Reserve personnel, Marine Corps	D93–14	1,000					1,000
Reserve personnel, Air Force	D93–15	1,000					1,000
National Guard personnel, Army	D93–16	1,000					1,000
National Guard personnel, Air Force	D93–17	1,000					1,000
Operation and Maintenance							
Operation and maintenance, Army	D93–18	1,000					1,000
Operation and maintenance, Navy	D93–19	1,000					1,000
Operation and maintenance, Marine Corps	D93–20	1,000					1,000
Operation and maintenance, Air Force	D93–21	1,000					1,000
Operation and maintenance, Defense–wide	D93–22	1,000					1,000
Operation and maintenance, Army Reserve	D93–23	1,000					1,000
Operation and maintenance, Navy Reserve	D93–24	1,000					1,000
Operation and maintenance, Marine Corps Reserve	D93–25	1,000					1,000
Operation and maintenance, Air Force Reserve	D93–26	1,000					1,000
Operation and maintenance, Army National Guard	D93–27	1,000					1,000
Operation and maintenance, Air National Guard	D93–28	1,000					1,000
Procurement							
Aircraft procurement, Army	D93–29	1,000					1,000
Missile procurement, Army	D93–30	1,000					1,000
Procurement of weapons and tracked combat vehicles, Army	D93–31	1,000					1,000
Procurement of ammunition, Army	D93–32	1,000					1,000
Other procurement, Army	D93–33	1,000					1,000
Aircraft procurement, Navy	D93–34	1,000					1,000
Weapons procurement, Navy	D93–35	1,000					1,000
Procurement of ammunition, Navy and Marine Corps	D93–36	1,000					1,000
Other procurement, Navy	D93–37	1,000					1,000
Procurement, Marine Corps	D93–38	1,000					1,000
Aircraft procurement, Air Force	D93–39	1,000					1,000
Missile procurement, Air Force	D93–40	1,000					1,000
Other procurement, Air Force	D93–41	1,000					1,000
Procurement, Defense–wide	D93–42	1,000					1,000
National Guard and Reserve equipment	D93–43	1,000					1,000
Research, Development, Test and Evaluation							
Research, development, test and evaluation, Army	D93–44	1,000					1,000
Research, development, test and evaluation, Navy	D93–45	1,000					1,000
Research, development, test and evaluation, Air Force	D93–46	1,000					1,000
Research, development, test and evaluation, Defense–wide	D93–47	1,000					1,000
Operational test and evaluation, Defense	D93–48	1,000					1,000
Military Construction							
Military construction, Army	D93–49	1,000					1,000
Military construction, Navy	D93–50	1,000					1,000
Military construction, Air Force	D93–51	1,000					1,000
Military construction, Defense–wide	D93–52	1,000					1,000
Military construction, Army National Guard	D93–53	1,000					1,000
Military construction, Air National Guard	D93–54	1,000					1,000
Military construction, Army Reserve	D93–55	1,000					1,000
Military construction, Navy Reserve	D93–56	1,000					1,000
Military construction, Air Force Reserve	D93–57	1,000					1,000
North Atlantic Treaty Organization Security Investment Program	D93–58	1,000					1,000
Family Housing							
Family housing, Army	D93–59	1,000					1,000
Family housing, Navy and Marine Corps	D93–60	1,000					1,000
Family housing, Air Force	D93–61	1,000					1,000
Family housing, Defense–wide	D93–62	1,000					1,000
Family housing, Army Reserve	D93–63	1,000					1,000
Family housing, Navy Reserve	D93–64	1,000					1,000
Family housing, Air Force Reserve	D93–65	1,000					1,000
Family housing, Army National Guard	D93–66	1,000					1,000
Family housing, Air National Guard	D93–67	1,000					1,000
Homeowners assistance fund	D93–68	1,000					1,000
Other	D93–69	1,000					1,000
DEPARTMENT OF DEFENSE–CIVIL							
Corps of Engineers							
Investigations	D93–70	1,000					1,000
Construction, general	D93–71	1,000					1,000
Flood control, Mississippi River and tributaries	D93–72	1,000					1,000
Operation and maintenance, general	D93–73	1,000					1,000
Regulatory program	D93–74	1,000					1,000
Flood control and coastal emergencies	D93–75	1,000					1,000
General expenses	D93–76	1,000					1,000
Other	D93–77	1,000					1,000
DEPARTMENT OF ENERGY							
Energy Programs							
Energy supply, research and development activities	D93–78	1,000					1,000
Uranium supply and enrichment activities	D93–79	1,000					1,000
Naval petroleum and oil shale reserves	D93–80	1,000					1,000
Strategic petroleum reserve	D93–81	1,000					1,000
Energy conservation	D93–82	1,000					1,000
Economic regulation	D93–83	1,000					1,000
Emergency preparedness	D93–84	1,000					1,000
Energy information administration	D93–85	1,000					1,000
Clean coal technology	D93–86	1,000					1,000
Other energy programs	D93–87	1,000					1,000
Atomic Energy Defense Activities							
Weapons activities	D93–88	1,000					1,000
Defense nuclear waste disposal	D93–89	1,000					1,000
Defense environmental restoration and waste management	D93–90	1,000					1,000
Defense nuclear materials production	D93–91	1,000					1,000
Defense nuclear materials support	D93–92	1,000					1,000
Defense nuclear facilities safety board	D93–93	1,000					1,000
Other defense activities	D93–94	1,000					1,000
Power Marketing Administrations							
Southeastern power administration	D93–95	1,000					1,000
Southwestern power administration	D93–96	1,000					1,000
Western area power administration	D93–97	1,000					1,000
Falcon and Amistad operating and maintenance fund	D93–98	1,000					1,000
Other power marketing administrations	D93–99	1,000					1,000
Federal Energy Regulatory Commission	D93–100	1,000					1,000
DEPARTMENT OF HEALTH AND HUMAN SERVICES							
Public Health Service							
Centers for disease control and prevention	D93–101	1,000					1,000
National institutes of health	D93–102	1,000					1,000
Substance abuse and mental health services	D93–103	1,000					1,000
Agency for health care policy and research	D93–104	1,000					1,000
Health resources and services	D93–105	1,000					1,000
Indian health service	D93–106	1,000					1,000
Other	D93–107	1,000					1,000
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Housing Programs							
Annual contributions for assisted housing	D93–108	1,000					1,000
Housing certificate fund	D93–109	1,000					1,000
Housing for the elderly or handicapped	D93–110	1,000					1,000
Housing for special populations	D93–111	1,000					1,000
Rental housing assistance	D93–112	1,000					1,000
Rental rehabilitation grants	D93–113	1,000					1,000
Flexible subsidy fund	D93–114	1,000					1,000
Housing counseling assistance	D93–115	1,000					1,000
Homeownership and opportunity for people everywhere grants	D93–116	1,000					1,000
Other housing programs	D93–117	1,000					1,000
Community Planning and Development							
Community development grants	D93–118	1,000					1,000
Emergency shelter grants	D93–119	1,000					1,000
Housing opportunities for persons with AIDS	D93–120	1,000					1,000
Urban development action grants	D93–121	1,000					1,000
Rural housing and economic development	D93–122	1,000					1,000
Other community planning and development	D93–123	1,000					1,000
Other	D93–124	1,000					1,000
DEPARTMENT OF THE INTERIOR							
Bureau of Land Management							
Management of lands and resources	D93–125	1,000					1,000
Construction and access	D93–126	1,000					1,000
Payments in lieu of taxes	D93–127	1,000					1,000
Land acquisition	D93–128	1,000					1,000
Other	D93–129	1,000					1,000
Bureau of Mines							
Mines and minerals	D93–130	1,000					1,000
Other	D93–131	1,000					1,000
Fish and Wildlife Service							
Resource management	D93–132	1,000					1,000
Construction	D93–133	1,000					1,000
Land acquisition	D93–134	1,000					1,000
Other	D93–135	1,000					1,000
National Park Service							
Operation of the national park system	D93–136	1,000					1,000
National recreation and preservation	D93–137	1,000					1,000
Historic preservation fund	D93–138	1,000					1,000
Construction	D93–139	1,000					1,000
Land acquisition and state assistance	D93–140	1,000					1,000
Other	D93–141	1,000					1,000
Bureau of Reclamation							
Water and related resources	D93–142	1,000					1,000
Other	D93–143	1,000					1,000
Geological Survey							
Surveys, investigations, and research	D93–144	1,000					1,000
Other	D93–145	1,000					1,000
Minerals Management Service							
Royalty and offshore minerals management	D93–146	1,000					1,000
Other	D93–147	1,000					1,000
Office of Surface Mining Reclamation and Enforcement							
Regulation and technology	D93–148	1,000					1,000
Abandoned mine reclamation fund	D93–149	1,000					1,000
Other	D93–150	1,000					1,000
Bureau of Indian Affairs							
Operation of Indian programs	D93–151	1,000					1,000
Construction	D93–152	1,000					1,000
Indian land and water claim settlements	D93–153	1,000					1,000
Other	D93–154	1,000					1,000
Territorial Affairs							
Administration of territories	D93–155	1,000					1,000
Other	D93–156	1,000					1,000
DEPARTMENT OF JUSTICE							
Federal Prison System							
Salaries and expenses	D93–157	1,000					1,000
Buildings and facilities	D93–158	1,000					1,000
Other	D93–159	1,000					1,000
Legal Activities							
Assets forfeiture fund	D93–160	1,000					1,000
Other	D93–161	1,000					1,000
DEPARTMENT OF LABOR							
Employment and Training Administration							
Training and employment services	D93–162	1,000					1,000
Job Corps	D93–163	1,000					1,000
Other	D93–164	1,000					1,000
Employment Standards Administration							
Salaries and expenses	D93–165	1,000					1,000
Other	D93–166	1,000					1,000
Occupational Safety and Health Administration							
Salaries and expenses	D93–167	1,000					1,000
Other	D93–168	1,000					1,000
Mine Safety and Health Administration							
Salaries and expenses	D93–169	1,000					1,000
Other	D93–170	1,000					1,000
Bureau of Labor Statistics							
Salaries and expenses	D93–171	1,000					1,000
Other	D93–172	1,000					1,000
Departmental Management							
Salaries and expenses	D93–173	1,000					1,000
Other	D93–174	1,000					1,000
DEPARTMENT OF STATE							
Administration of Foreign Affairs							
Salaries and expenses	D93–175	1,000					1,000
Other	D93–176	1,000					1,000
International Organizations and Conferences							
International conferences and contingencies	D93–177	1,000					1,000
International organizations	D93–178	1,000					1,000
Other	D93–179	1,000					1,000
International Commissions							
International boundary and water commission, United States and Mexico	D93–180	1,000					1,000
Other	D93–181	1,000					1,000
DEPARTMENT OF TRANSPORTATION							
Federal Aviation Administration							
Operations	D93–182	1,000					1,000
Grants–in–aid for airports	D93–183	1,000					1,000
Coast Guard							
Operating expenses	D93–184	1,000					1,000
Other	D93–185	1,000					1,000
DEPARTMENT OF THE TREASURY							
Internal Revenue Service							
Processing, assistance and management	D93–186	1,000					1,000
Tax law enforcement	D93–187	1,000					1,000
Information systems	D93–188	1,000					1,000
Other	D93–189	1,000					1,000
Bureau of the Public Debt							
Public debt accounts	D93–190	1,000					1,000
Other	D93–191	1,000					1,000
Financial Management Service							
Payments of the public debt	D93–192	1,000					1,000
Other	D93–193	1,000					1,000
Other	D93–194	1,000					1,000
INDEPENDENT AGENCIES:							
Action	D93–195	1,000					1,000
Appalachian Regional Commission	D93–196	1,000					1,000
Board for International Broadcasting	D93–197	1,000					1,000
Commodity Futures Trading Commission	D93–198	1,000					1,000
Consumer Product Safety Commission	D93–199	1,000					1,000
Environmental Protection Agency	D93–200	1,000					1,000
Equal Employment Opportunity Commission	D93–201	1,000					1,000
Export–Import Bank of the United States	D93–202	1,000					1,000
Federal Communications Commission	D93–203	1,000					1,000
Federal Deposit Insurance Corporation	D93–204	1,000					1,000
Federal Emergency Management Agency	D93–205	1,000					1,000
Federal Maritime Commission	D93–206	1,000					1,000
Federal Trade Commission	D93–207	1,000					1,000
General Services Administration	D93–208	1,000					1,000
Interstate Commerce Commission	D93–209	1,000					1,000
National Aeronautics and Space Administration	D93–210	1,000					1,000
National Archives and Records Administration	D93–211	1,000					1,000
National Credit Union Administration	D93–212	1,000					1,000
National Foundation on the Arts and the Humanities	D93–213	1,000					1,000
National Labor Relations Board	D93–214	1,000					1,000
National Science Foundation	D93–215	1,000					1,000
Nuclear Regulatory Commission	D93–216	1,000					1,000
Office of Personnel Management	D93–217	1,000					1,000
Panama Canal Commission	D93–218	1,000					1,000
Peace Corps	D93–219	1,000					1,000
Pension Benefit Guaranty Corporation	D93–220	1,000					1,000
Railroad Retirement Board	D93–221	1,000					1,000
Resolution Trust Corporation	D93–222	1,000					1,000
Securities and Exchange Commission	D93–223	1,000					1,000
Small Business Administration	D93–224	1,000					1,000
Tennessee Valley Authority	D93–225	1,000					1,000
United States Information Agency	D93–226	1,000					1,000
United States Soldiers' and Airmen's Home	D93–227	1,000					1,000
Veterans Administration	D93–228	1,000					1,000
Other	D93–229	1,000					1,000
TOTAL DEFERRALS							

ATTACHMENT D
Status of FY 1993 Deferrals – As of July 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7–1–93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					
	D93–1A		1,492,774	12–30–92	822,376				1,163,135
Foreign military financing grants	D93–8	1,487,000		12–30–92	89,400				1,397,600
Foreign military financing program	D93–9	149,200		12–30–92	141,946				7,254
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92	5,750				8,000
International disaster assistance, executive	D93–10	63,823		2–26–93	7,068				56,755
Sub–Saharan Africa assistance, executive	D93–11	67,188		2–26–93	14,000				53,188
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92	33,151				331,431
Expenses, brush disposal	D93–4	40,241		10–1–92					
	D93–4A		5,835	12–30–92					
	D93–4B		8	3–16–93					46,084
Timber salvage sales	D93–12	222,994		2–26–93	20,000				202,994
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92	955				1,220

ATTACHMENT D
Status of FY 1993 Deferrals – As of July 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Releases(–): Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7–1–93
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					
	D93–6A		50	4–20–93					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					
	D93–7A		47,761	12–30–92	37,000				20,884
TOTAL, DEFERRALS		2,921,080	1,546,428		1,171,647	0		0	3,295,861

[FR Doc. 93–17008 Filed 7–16–93; 8:45 am]
BILLING CODE 3110–01–C

federal register

Monday
July 19, 1993

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Small Airplanes With Stall Speed Greater Than 61 Knots; Final Rule

VOL 58 ISS 136 JL 19 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23746; Amendment No. 23–44]

RIN 2120–AD48

Airworthiness Standards; Small Airplanes With Stall Speed Greater Than 61 Knots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the stalling speed requirements applicable to single-engine airplanes and to certain multiengine small airplanes of less than 6,000 pounds maximum weight. The rule permits those airplanes to have a stall speed greater than 61 knots, provided they meet certain additional occupant protection standards. These changes are needed to permit the design and type certification of higher performance airplanes with increased cruise speeds and better specific fuel consumption. The amendments are intended to achieve the benefits of certificating higher performance airplanes while affording their occupants the same level of protection in an emergency landing that is presently provided by airplanes with a 61-knot stall speed.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Standards Office (ACE–112), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 91–12, which was published on May 13, 1991, (56 FR 22070). Comments to the NPRM were requested with a closing date of September 10, 1991. All comments received in response to Notice No. 91–12 have been considered in adopting this amendment.

Discussion of Comments

General

Ten commenters submitted responses to Notice No. 91–12. One commenter objects to a statement made by the FAA in the background material of the notice. Five commenters favor the proposal and four commenters oppose the proposal.

One commenter objects to a statement in the background material of the notice and indicates that the FAA erred in stating that airplanes with a V_{S0} less than 61 knots and high wing loading would require complex high lift systems that may result in a reduction of low speed flying qualities and lessen the level of safety of both normal and emergency operations in approach and landing conditions. The commenter adds that complex high lift devices have been around since the late 1920's and many of the devices used at that time maintained excellent control down to and through stall speeds lower than 40 mph. The FAA is aware of these devices and some of the airplanes on which they are installed. The use of these devices may result in a reduction of the low speed flying qualities of the airplane. The pilot of an airplane equipped with a more complex high lift system may choose to land at a higher speed in normal operation to reduce piloting tasks. Another pilot may choose to land at a higher speed in an emergency situation in order to ensure ground impact under controlled conditions. At a higher approach speed, an airplane is less responsive to gusts, and the control of the airplane about all three axes is improved. In short, the handling qualities of an airplane are also dependent on the type and design of the high lift devices, and on the controls employed and the skill required to operate them.

One commenter argues that the current 61-knot stall rule does not account for advancements made in airplane engine reliability. The commenter states that, due to the increased reliability of airplane engines, the 61-knot stall requirement should be deleted. Another commenter indicates that the excellent airplane engine reliability record cannot be improved, and that a change in stall speed is not warranted. The FAA agrees that even though the probability of a powerplant failure may decrease with increased powerplant reliability, the probability of an emergency forced landing condition may remain constant or be minimally affected. As pointed out by the Small Aircraft Stall Speed Study Group, the predominant cause of emergency forced landings is fuel starvation caused by poor management or handling of the fuel system by the pilot. Since increased powerplant reliability has little effect on the number of emergency forced landings, the occupants of airplanes having a stall speed greater than 61 knots must be afforded the benefits of the same structural crashworthiness as those occupants in airplanes having a stall speed of 61 knots.

The commenter mentions that estimates for the cost and weight penalty for staying within the current 61-knot stall requirement using high lift devices should be investigated, as should the cost and weight penalty for providing equivalent occupant protection for airplanes having a stall speed greater than 61 knots. The commenter adds that insurance rates and liability implications should also be investigated for those new airplanes that will have a stall speed greater than 61 knots. The FAA disagrees. This rule will allow the applicant to select the combination of stall speed and occupant protection requirements that will be most cost beneficial and appropriate to the airplane design. Since specific estimates of potential structure and weight penalty costs are design specific, this information is unavailable at this time.

One commenter feels that this amendment and the 61 knot limitation have no relevance to commuter category aircraft and the contemplated value of peak acceleration level (32g) that the commenter believes is being considered for commuter category aircraft. The FAA agrees that this amendment has no relationship with the contemplated commuter category airplane NPRM for seats. The rationale used to provide an alternative to the 61-knot stall speed limitation is based partly on a methodology found in the U.S. Army's Aircraft Crash Survival Design Guide and in the comprehensive FAA/NASA full scale general aviation airplane impact test data base. The alternative to the 61-knot stall speed limitation is also consistent with the two analytical methodologies considered by the Simpson Crashworthiness Subcommittee. They emphasize and address crash and occupant inertia load attenuation.

This amendment adjusts the current combined vertical/longitudinal design standard found in the emergency landing dynamic conditions to require an increase in seat/occupant impact load attenuation that is consistent with the potential increase in impact acceleration level. The impact acceleration levels determined by the methods specified in this amendment are also consistent with the results of the full scale general aviation airplane impact test program.

The maximum acceleration levels found in this amendment are well within the survivability envelope for small airplanes found in the National Transportation Safety Board (NTSB) Phase III, General Aviation Crashworthiness Project Safety Report. The NTSB concludes that "Acceleration levels and velocity changes of 23 to 30g and 50 to 60 feet per second in the

vertical direction are generally survivable but the loads experienced by the occupants must be limited to a lower level to prevent crippling injuries to the back and neck". This amendment is consistent with that conclusion and it should reduce or minimize spinal injuries since the amendment addresses crash and occupant inertia load attenuation.

One commenter suggests that a number of additional risks may be associated with the emergency landing. These risks should be addressed in this amendment and include the following: failure to avoid obstacles (aircraft maneuverability), failure of occupant restraints, failure of structure, failure of the pilot to execute the landing successfully (skill and training), and post impact fire.

Prior to issuing Notice No. 91–12, the FAA studied a recommendation to require additional flight instruction for pilots of single-engine airplanes with a power-off stall speed in the landing configuration of more than 61 knots. The FAA concluded that adequate flight instruction was already included in the normal flight training curriculum, though it did not relate specifically to an increase in stall speed. Pilot skill and training, including the ability to avoid obstacles, are covered adequately by the current flight training requirements.

The commenter does not provide supportive data or specific recommendations regarding failure of occupant restraints. However, occupant restraint and occupant impact load attenuation are addressed adequately by this amendment and by amendment 23–36 on emergency landing conditions (53 FR 30802, Aug. 15, 1988).

The commenter does not cite a rationale or justify a need to address failure of structure. The FAA has no reason to extend this amendment to include enhancements to airframe structure. The airframe structures of all part 23 airplanes, including those that currently exceed the 61-knot stall speed limitation, are similar. There is no evidence to justify amending the airframe structure design standards at this time.

Finally, the JAA mentions their concern over the risks associated with post impact fire. The nature of post crash fires is difficult to define in terms of precisely where the fire starts and how it spreads. Clearly a prerequisite is the spillage of fuel followed by a source of ignition. Studies conducted by the General Aviation Safety Panel (GASP) indicate that existing data fails to identify precisely what advantages would accrue from increasing the crashworthiness of fuel systems in small general aviation airplanes. The purpose of improving the crashworthiness of a fuel system is to prevent considerable spillage in a survivable accident and delay the onset of rapid propagation of post crash fire in order to increase the time available for the pilot and passengers to remove themselves from the airplane. These improvements in crashworthiness may not in all cases prevent a post crash fire. GASP contends that the means for increasing the time available for extrication in a survivable accident by preventing large quantities of fuel spillage near obvious ignition sources needs to be considered for each design individually. It is not practical to develop a universal specification for the design of crash resistant fuel systems that would be applicable to all airplanes. It is for these reasons that this final rule does not specifically address crashworthiness of fuel systems. However, this final rule does require applicants for type certification of designs with a stall speed greater than 61 knots to provide the crashworthiness in terms of airframe and occupant protection equivalent to those airplanes with a stall speed less than 61 knots. The FAA continues to explore ways of dealing with post crash fires and, at this time, is preparing a supplemental notice of proposed rulemaking for crash resistant fuel systems.

Discussion of Comments to Specific Sections of Part 23

Section 23.49. This proposes to amend part 23 of the Federal Aviation Regulations to permit type certification of both single and multiengine airplanes with stall speeds greater than 61 knots, provided they incorporate additional occupant protection provisions to compensate for the increased kinetic energy dissipated during a forced landing. This would be accomplished by amending § 23.49 to require compliance with certain additional occupant protection requirements included in this proposal.

Two comments were received on this proposal.

One commenter refers to the conclusion reached by the Small Aircraft Stall Speed Study Group. The study group found that it was impossible to conclude, based on the accident record, that the retention of the 61-knot stall limitation in part 23 for single-engine airplanes has provided any degree of crash protection to occupants. The commenter believes that this conclusion was made because the data related to airplanes that meet the present airworthiness standards.

The FAA notes that the Crashworthiness Subcommittee of the Small Aircraft Stall Speed Study Group found that "Increasing the stall speed, with no other stipulations, would increase the potential range of ground contact speeds in controlled emergency situations and would, therefore, increase the probability for serious injury." This subcommittee saw no valid reason for maintaining 61 knots or any other specified stall speed in part 23. The subcommittee concluded that if the 61-knot stall limitation is removed, a means should be incorporated to maintain a controlled emergency landing speed range. Since the ultimate concern should be to provide the airplane occupants with a reasonable probability of surviving a controlled crash situation, the subcommittee proposed crashworthiness criteria that would provide the level of safety previously achieved by the 61-knot stall speed limitation. The crashworthiness subcommittee examined two methodologies that address occupant crashworthiness protection. The methodologies used were based on an equivalent safety and occupant survivability approach, and emphasized crash and occupant inertia load attenuation. However, the crashworthiness subcommittee did not pursue either of its approaches to a methodology that addressed occupant impact protection for an airplane that exceeds the 61-knot stall speed limitation. The subcommittee noted that definitive crash dynamic design standards for small airplanes did not exist at that time. Since the publication of the Small Aircraft Stall Speed Study Group report, emergency landing dynamic conditions have been adopted into FAR part 23, by amendment 23–36. This final rule extends the current emergency landing dynamic conditions specified in § 23.562 to small airplanes that exceed the 61-knot stall speed limitation. In provides crashworthiness criteria that addresses crash and occupant loan attenuation.

One commenter indicates that airplanes having lower stalling speeds have lower fatal accident rates and points to recent statistics in the June 1, 1991, and June 15, 1991, edition of "Aviation Consumer," which indicates that the Cessna 172 and the Cessna 206/207 have the lowest fatal accident rate for four and six place single-engine airplanes. The commenter also indicates that there is a higher percentage of fatal emergency landing accidents for light multiengine airplanes compared to single-engine airplanes. This may support the conclusion that airplanes

with higher stalling speeds also have higher fatal accident rates because typical multiengine airplanes usually have a higher stalling speed than typical light single-engine airplanes.

The Small Aircraft Stall Speed Study Group reviewed data consisting of 37,530 reports for the 6-year period from 1976 to 1981, which revealed the following: Emergency forced landings accounted for 14.7 percent of all accidents, representing 16.6 percent of single-engine airplane accidents and 7.2 percent of multiengine airplane accidents. Fatalities resulted from 2.6 percent of controlled emergency forced landings and 17 percent of uncontrolled emergency forced landings. For single-engine airplanes, these values were 2.1 percent and 13.4 percent, respectively, while for multiengine airplanes, these percentages were 8.5 and 34.2 percent, respectively. Therefore, the chances for a fatal emergency forced landing are much higher for a multiengine airplane than for a single-engine airplane. However, a single-engine airplane is twice as likely to have an emergency forced landing as a multiengine airplane. Overall, the percentage of fatal emergency landing accidents where the pilot retained control until the crash was 2.7 percent for single-engine airplanes and 3.5 percent for multiengine airplanes.

One multiengine airplane with the highest stall speed of 76 knots had the lowest survivability ratio (one minus the number of fatalities/number of accidents), of 84 percent. This value matched the survivability ratio of a single-engine airplane whose stall speed was 55 knots. There were two multiengine airplanes that had 100 percent survivability; one had a stall speed of 60 knots, the other had a stall speed of 74 knots. Furthermore, survivability values for multiengine airplanes above 70 knots did not appear different from values for airplanes below 60 knots. Statistical data like these resulted in two conclusions. Survivability of controlled emergency forced landings is not dependent upon landing stall speed and a clear correlation between safety and landing stall speed cannot be found. This proposal is adopted as proposed.

Section 23.67. This proposal would clarify the change made to § 23.67 by amendment 23–42 (56 FR 344, January 3, 1991). The provisions of § 23.67(b)(1) require that all reciprocating engine-powered multiengine airplanes with a stall speed of more than 61 knots meet the one-engine-inoperative climb gradient requirements. A change to § 23.67, paragraphs (b)(1) and (b)(2), is required to clarify that multiengine airplanes of less than 6,000 pounds maximum weight that meet the improved occupant protection requirements prescribed in § 23.562(d) and have a stall speed greater than 61 knots would comply only with the climb gradient determination requirements of § 23.67(b)(2)(i). This proposal does not change the one-engine-inoperative climb requirements.

No comments were received on this proposal and it is adopted as proposed.

Section 23.562. The supporting technical data used in the development of § 23.562 was obtained from small airplanes whose stall speeds were not greater than 61 knots. Airplane occupants were not exposed to increased levels of kinetic impact energy. The increase in kinetic impact energy, above the 61 knot stall speed baseline, is proportional to the square of the stall speed of the airplane in the landing configuration. To compensate for increased energy levels, additional occupant protection requirements beyond those stated in § 23.562 are included in this final rule. The emergency landing dynamic conditions express the impact energy level in terms of an impact velocity. The increased occupant protection requirement in this proposal is obtained by multiplying the ultimate load factors of § 23.561(b) and the peak deceleration of the seat/restraint system test of § 23.562(b)(1) by the square of the ratio of the increased stall speed to the stall speed of 61 knots. The use of the velocity ratio squared to obtain the increased occupant protection requirement is consistent with an analytical methodology found in the U.S. Army's Aircraft Crash Survival Design Guide, USARTL–TR–79–22C, Volume III—Aircraft Structural Crashworthiness, which addresses the conservation of momentum associated with an aircraft impact that has earth plowing.

The FAA is limiting the maximum deceleration for the seat/restraint system dynamic test to 32g, which is the value that the FAA is considering proposing in a separate NPRM being developed for commuter category airplanes. The 32g limitation will be reached at a stall speed (V_{S0}) of 79 knots. At a higher stall speed, this maximum deceleration remains constant at 32g.

In addition, the static upward ultimate load factor for acrobatic category airplanes will be limited to a value of 5.0g. Because of the maneuvers they perform, acrobatic category airplanes are designed to higher maneuvering limit load factors, both positive and negative, than normal and utility category airplanes. The maximum upward value required in this rule for normal and utility category airplanes is 5.0g. Under emergency landing conditions, all categories of small airplanes would experience similar forces; therefore, requiring acrobatic airplane seats to be designed to higher load factors would not be warranted.

A total of five comments were received on this proposal.

One commenter expresses doubt that occupant safety levels can be engineered to remain at current levels and any engineering reports that claim 15g survivability at 70–75 knots are seriously in question. The maximum acceleration found in this amendment is well within the survivability envelope for small airplanes found in the NTSB Phase III, General Aviation Crashworthiness Project Safety Report. The NTSB concluded in its safety report that survival from crashes where longitudinal loads ranged from 30 to 35g, with a velocity change of 60 to 70 feet per second and vertical loads ranging from 25 to 30g, with a velocity change of 50 to 60 feet per second, could be expected. The commenter suggests that the FAA review the NTSB's statistics on rates for light multiengine airplanes after ground impact. The commenter does not indicate what NTSB report is being referenced and what light multiengine rates are being reported. The commenter adds that existing light multiengine airplanes are already marginal performers and that increasing wing loading and speeds for the most critical segments of flight would be counterproductive. The commenter further indicates that high horsepower, high wing loading, and high stall speed, are qualities of low technology and that most airplane manufacturers incorporate advanced aerodynamics to allow slow speeds during approach/takeoff and high performance cruise. The commenter does not clearly define what is meat by marginal performers. Furthermore, the commenter mentions high horsepower, high wing loading, and high stall speed as examples of low technology. Apparently, the commenter does not realize that these parameters are suitable for describing modern transport category airplanes, which are not examples of low technology airplanes.

One commenter indicates that there has not been any improvement in crashworthiness for airplanes weighing less than 6,000 pounds during the last 50 years; therefore, if stall speed requirements are relaxed, more fatalities and injuries to occupants will result because the occupants will absorb the additional energy generated by the

increased speed. This is partially correct. It other conditions are unchanged, an increase in stall speed will probably result in airframes and occupants absorbing more energy on impact. However, with the development and adoption of emergency landing dynamic conditions into § 23.562 of the FAR by amendment 23–36, the current emergency landing dynamic conditions will be extended to those applicants who choose to design new airplanes with a stall speed greater than 61 knots. The extension of the current emergency landing dynamic requirements will provide crashworthiness standards that address load attenuation to the occupant. Furthermore, the results of the study conducted by the Small Aircraft Stall Speed Study Group, which consisted of the analysis of 37,530 accident reports over a 6-year period, failed to show a clear correlation between occupant survivability and landing stall speed. The commenter adds that airplane performance has not changed sufficiently in the last 50 years to warrant the proposed change. The commenter supports this with the commenter's own experience. The commenter then indicates that operator error is still the leading cause of aviation accidents and, since aircraft operators will continue to make mistakes, the existing stall speed requirement should remain, thereby protecting operators from themselves.

The commenter is correct that operator error is the leading cause of accidents. However, operator error and the need for improved pilot training are not airplane certification issues, and are beyond the scope of this rulemaking.

One commenter feels that the FAA was in error to assume that the NTSB data used to develop the emergency landing dynamic conditions for small airplanes was connected to the 61–knot stall speed. The commenter further asserts that most of the data in the NTSB data base were derived from airplanes that crashed under control at speeds in excess of 61 knots. The FAA disagrees. The conclusions found in the NTSB Safety Report "GENERAL AVIATION CRASHWORTHINESS PROJECT: PHASE III—ACCELERATION LOADS AND VELOCITY CHANGES OF SURVIVABLE GENERAL AVIATION ACCIDENTS, NTSB/SR–85/02" are contrary to those comments. In its analyses of airplane accidents, the NTSB relates the airplane impact speeds and respective acceleration levels to the stall speed of the airplanes. All but one of the thirty-nine small airplane accidents analyzed in the report were found to have a stall speed less than 61 knots.

Recent discussions with the NTSB personnel who compiled and analyzed all of the data in the three phase general aviation crashworthiness project also confirmed that, with few exceptions, all of the airplanes included in those studies had stall speeds that did not exceed 61 knots.

One commenter indicates that this amendment would require the means of retention of cabin mass items to be dynamically tested. The commenter also questions the different static ultimate design load factors for cabin mass items found in the emergency landing conditions for part 23 and part 25 airplanes. The FAA does not intend to require dynamic design or test standards for the retention of items of mass within the cabin. The ultimate design load factors for cabin mass items do indeed differ between part 23 and part 25 airplanes. They are representative of the expected emergency landing inertia load factors considering the respective airframe energy absorption characteristics and mass of those different category airplanes. Those differences were recognized and justified when the emergency landing dynamic conditions and respective amendments were adopted. Discussion and justification of those existing regulatory standards are not within the scope of this amendment.

One commenter proposes that the FAA limit the maximum stall speed to 70 knots, limit all the deceleration vectors according to the (stall speed/61 knots) ratio squared, multiply the impact velocity by the factor (V_{so}/61), and amend § 23.787(c) regarding the forward ultimate load factor (9g) for luggage and cargo. This amendment addresses and satisfies the intent of these comments. The amendment increases the occupant impact protection level for those single-engine airplanes and certain multiengine airplanes with a stall speed that exceeds the 61 knot limitation.

The design standards found in this amendment remain within the limits of the small airplane impact survivability envelope. The commenter's proposal, however, could provide design standards that would be outside the small airplane's impact survivability envelope. Furthermore, the applicability and the feasibility of the FAA's increased standard have been demonstrated by both seat dynamic and full scale airplane impact tests.

The commenter provides no rationale to limit the stall speed to 70 knots. This amendment does not limit the stall speed, but it does increase the deceleration vectors, as suggested by the commenter, for the combined vertical/longitudinal emergency landing dynamic impact condition. The new regulation represents the current limit of the impact survivability envelope for small airplanes. This limit has been defined by crash dynamics research and NTSB accident data, and it is consistent with the results of full scale impact tests of small airplanes.

The FAA has not elected to increase the impact velocity, as suggested by the commenter, since the current velocity changes found in the emergency landing dynamic conditions are consistent with the survivability envelopes for small airplanes.

In addition, the commenter provides no justification to increase the inertia load requirements found in § 23.787(c). The commenter's proposal is considered beyond the scope of this amendment. However, the FAA is increasing the static design requirements for items of mass within the cabin, which include luggage and cargo, when the emergency landing dynamic conditions are adopted. Amendment 23–36 should meet the intent of the commenter's proposal. This proposal is adopted as proposed.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this final rule.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the

identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the regulatory flexibility determination required by the Regulatory Flexibility Act (RFA) and an International Trade Impact assessment. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Two comments were received concerning the economic aspects of this rulemaking. These comments were considered and no changes were made to the economic evaluation as a result of the comments. The reader is referred to the "Discussion of Comments" section above for more complete information.

Economic Evaluation

The FAA has determined that significantly more efficient airplanes could be developed by employing the advantages of higher wing loadings if the affected airplanes were not limited to a stall speed of 61 knots. The potential benefits of removing the stall speed limit will vary with the mission of individual airplane designs, but case specific analysis has shown that a 20 percent gain in specific fuel consumption could be achieved. Evidence suggests that these high-wing-loading efficiencies could also be accomplished by incorporating a very high-lift flap system (wide-span trailing edge flaps and leading edge Kruger flaps) and still remain within the 61-knot limit. However, if higher wing loadings were combined with larger and more complex high-lift flap systems in order to meet the 61-knot requirement, there would be accompanying penalties in low speed handling qualities. These penalties would have a detrimental effect on both normal and emergency operations in approach and landing conditions.

In order to retain the current level of airplane occupant protection, this rule requires additional occupant protection for the airplanes that the rule allows to be certificated with stall speeds above 61 knots. Specific estimates of the potential structural and weight penalty costs that could be incurred are design specific and are not available for this evaluation. Three petitions for exemption from the 61-knot stall speed requirement have been granted during the past ten years. None of these exemptions can be used to assist in the estimation of costs that would be incurred to exercise the option afforded by this rule. The concept design for one of the three airplane models was never pursued. The physical structures of the other two airplanes (a fire-fighting tanker and a high performance, fully aerobatic airplane) already substantially met the conditions and limitations necessary for the exemptions prior to their petitions.

The additional crashworthiness and occupant protection of the aerobatic airplane was necessitated by the loads that would be sustained in achieving its high-performance mission. Similarly, the occupant protection and crashworthiness features of the fire tanker were necessary for the airplane's intended high-risk operating environment and by the additional structure required to support and deliver a large volume of liquid.

None of the petitions isolated the costs that would be incurred to meet the conditions attendant to their exemptions. Conversely, one applicant did estimate that the cost necessary to build an airplane with the same design mission without the exemption would be approximately 50 percent higher per unit.

The provisions afforded by the rule are optional and constitute an alternative to the existing requirement. By definition, this alternative, including any associated costs, will be exercised only by those applicants who have determined that it would be in their own best interests to do so. The rule provides the option of selecting the combination of stall speed and occupant protection enhancement that the applicant has determined would be most cost beneficial and best suited for its particular airplane design. Therefore, the FAA finds that the potential benefits of this rule will exceed the expected costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The FAA has determined that this amendment to part 23 will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The provisions of this rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the United States, foreign manufacturers must meet U.S. requirements, and thus they will gain no competitive advantage. In foreign countries, U.S. manufacturers are not bound by part 23 requirements and could, therefore, implement the alternative provision afforded by the rule solely on the basis of competitive considerations.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA is revising the airworthiness standards to permit single-engine and certain multiengine small airplanes of less than 6,000 pounds maximum weight to exceed the present 61-knot stall speed limitation. Airplane designs exceeding this limitation will be required to incorporate additional occupant protection to compensate for the higher kinetic energy that must be dissipated during emergency landings. This retains the current level of airplane occupant protection and permits the design and type certification of higher performance, single-engine airplanes capable of attaining an increase in cruise speeds with better specific fuel consumption. This improvement in performance and operating economics cannot be achieved without substantial increased cost and complexity if these designs are constrained by the present 61-knot stall speed limitation.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.49 is amended by revising paragraph (b) introductory text; by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; and by adding a new paragraph (c) to read as follows:

§ 23.49 Stalling speed.

* * * * *

(b) Except as provided in § 23.49(c), V_{so} at maximum weight may not exceed 61 knots for—

* * * * *

(c) All single-engine airplanes, and those multiengine airplanes of 6,000 pounds or less maximum weight with a V_{so} of more than 61 knots that do not meet the requirements of § 23.67(b)(2)(i), must comply with § 23.562(d).

* * * * *

3. Section 23.67 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 23.67 Climb: One engine inoperative.

* * * * *

(b) * * *

(1) Each airplane of more than 6,000 pounds maximum weight must be able to maintain a steady climb gradient of at least 1.5 percent at a pressure altitude of 5,000 feet at a speed not less than 1.2 V_{S1} and at standard temperature (41°F) with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) For each airplane of 6,000 pounds or less maximum weight, the following apply:

(i) Each airplane that meets the requirements of § 23.562(d), or that has a V_{so} of 61 knots or less, must have its steady climb gradient determined at a pressure altitude of 5,000 feet at a speed of not less than 1.2 V_{S1}, and at standard temperature (41°F), with the airplane in the configuration prescribed in paragraph (a) of this section.

(ii) Except for those airplanes that meet the requirements prescribed in § 23.562(d), each airplane with a V_{so} of more than 61 knots must be able to maintain the steady climb gradient prescribed in paragraph (b)(1) of this section.

* * * * *

4. Section 23.562 is amended by revising the first sentence of the introductory text of paragraph (b), by redesignating paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

§ 23.562 Emergency landing dynamic conditions.

* * * * *

(b) Except for those seat/restraint systems that are required to meet paragraph (d) of this section, each seat/restraint system for crew or passenger occupancy in a normal, utility, or acrobatic category airplane, must successfully complete dynamic tests or be demonstrated by rational analysis supported by dynamic tests, in accordance with each of the following conditions. * * *

* * * * *

(d) For all single-engine airplanes with a V_{so} of more than 61 knots at maximum weight, and those multiengine airplanes of 6,000 pounds or less maximum weight with a V_{so} of more than 61 knots at maximum weight that do not comply with § 23.67(b)(2)(i):

(1) The ultimate load factors of § 23.561(b) must be increased by multiplying the load factors by the square of the ratio of the increased stall speed to 61 knots. The increased ultimate load factors need not exceed the values reached at a V_{so} of 79 knots. The upward ultimate load factor for acrobatic category airplanes need not exceed 5.0g.

(2) The seat/restraint system test required by paragraph (b)(1) of this section must be conducted in accordance with the following criteria:

(i) The change in velocity may not be less than 31 feet per second.

(ii)(A) The peak deceleration (g_p) of 19g and 15g must be increased and multiplied by the square of the ratio of the increased stall speed to 61 knots:

$g_p = 19.0\,(V_{so}/61)^2$ or $g_p = 15.0\,(V_{so}/61)^2$

(B) The peak deceleration need not exceed the value reached at a V_{so} of 79 knots.

(iii) The peak deceleration must occur in not more than time (t_r), which must be computed as follows:

$$t_r = \frac{31}{32.2(g_p)} = \frac{.96}{g_p}$$

where—

g_p=The peak deceleration calculated in accordance with paragraph (d)(2)(ii) of this section

t_r=The rise time (in seconds) to the peak deceleration.

* * * * *

Issued in Washington, DC on July 7, 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–16917 Filed 7–16–93; 8:45 am]

BILLING CODE 4910–13–M

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VOL
58

ISS
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19

1993

UMI

federal register

Monday
July 19, 1993

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Fatigue Evaluation of Structure; Notice of Proposed Rulemaking

VOL
58
ISS
136
JL
19
1993
UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 27358; Notice No. 93–9]

RIN 2120–AD42

Fatigue Evaluation of Structure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the fatigue requirements for damage-tolerant structure on transport category airplanes to require: Full-scale fatigue testing; and inspection thresholds based on a crack growth from likely initial manufacturing defects in the structure. These proposed changes are needed to ensure continued airworthiness of structures designed to the current damage tolerance requirements. The proposals are intended to ensure that should serious fatigue damage occur within the operational life of the airplane, the remaining structure can withstand loads that are likely to occur, without failure, until the damage is detected.

DATES: Comments must be received on or before November 16, 1993.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27358, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 27358. Comments may be inspected in room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM–7), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Rich Yarges, FAA, Airframe and Propulsion Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2143.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in triplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27358." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Prior to 1978, regulations related to the fatigue evaluation of airplane structure allowed a choice between safe-life and fail-safe criteria. Safe-life design criteria require the structure to withstand repeated loads of variable magnitude expected during its service life without developing detectable cracks. This requires full-scale fatigue testing to a predetermined number of lifetimes. Fail-safe design criteria require the structure to be evaluated to assure that catastrophic failure is not probable after fatigue failure or obvious partial failure of a single, principal structural element.

Most primary structure was designed to the fail-safe criteria. The residual strength load levels for structure designed to the fail-safe criteria were 92 percent of the required design load conditions (80 percent multiplied by a 1.15 factor to account for dynamics of the failure). It was acceptable practice to show compliance with the fail-safe requirements by substantiating the structures under static loading conditions with failure or obvious partial failure of single principal structural elements. Although inspections for continued airworthiness were required for the fail-safe structure, there was no specific requirement to determine the inspection periods based on crack growth or remaining life of secondary structure in the event failure in the primary member was not immediately obvious.

In December 1978 the Federal Aviation Administration (FAA) amended the fatigue evaluation requirements for transport category airplanes (§ 25.571, as amended by Amendment 25–45; 43 FR 46238, October 5, 1978) to require damage tolerance evaluation of structure. The damage tolerance evaluation of structure is intended to ensure that, should serious fatigue, corrosion, or accidental damage occur within the operational life of the airplane, the remaining structure can withstand reasonable loads without failure or excessive structural deformation until the damage is detected. Amendment 25–45 was prompted by significant state-of-the-art developments and current industry practice in the area of fatigue and damage tolerance evaluation of transport category airplane structure. The damage tolerance evaluation was deemed necessary to more directly relate the required structural inspection program to the damage-tolerant characteristics of the airplane. A companion advisory circular (AC 25.571–1) was also issued that outlined an acceptable means of compliance. A more recent revision to § 25.571, Amendment 25–54, changed the reporting procedure for documenting the fatigue evaluation requirements, but it did not change the damage tolerance criteria of Amendment 25–45.

Section 25.571, as amended by Amendment 25–45, requires that structure be damage-tolerant, unless it can be established that damage

tolerance is impractical. The residual strength level was increased to 100 percent of limit load, and the 1.15 factor for dynamic failure was removed. The inspection program for continued airworthiness is based on crack propagation and residual strength data. Amendment 25–45 also added a requirement to consider multiple site damage. The criteria for safe-life substantiation of structure was not changed by Amendment 25–45, but the extent of applicability was limited.

Some of the principles of damage tolerance criteria, as defined in Amendment 25–45, have been applied retroactively to the existing fleet of aging transport airplanes. Supplemental Inspection Documents (SID) based on damage tolerance analyses of the principal structural elements have been developed for several models of transport airplanes. These documents were made mandatory by airworthiness directive action.

There have been several incidents of failure in flight-critical structure due to fatigue cracks progressing simultaneously in several locations in the structure, such as along rows of fastener holes in skin panels. The panels failed because the fail-safe residual strength capability, for which the airplane was originally designed, was degraded by the presence of widespread, multiple-site fatigue cracking of less than readily detectable size. This phenomenon of multiple-site cracking due to fatigue damage has been a problem in the past and is expected to continue to be a problem until measures are taken in the design and testing of structure to ensure that widespread, multiple-site cracking will not occur in service during the design lifetime of the airplane.

Discussion

The requirements for damage tolerance evaluation of structures contained in § 25.571 are written in terms of general objectives so as to allow manufacturers latitude in developing methods to demonstrate compliance. Because the requirements are stated in objective terms, manufacturers have experienced difficulty in judging the scope of the evaluation necessary for certification. For instance, the rule requires consideration of damage at multiple sites due to prior fatigue exposure where the design is such that this type of damage can be expected to occur. This is an objective requirement that provides no specific guidance on what is required for showing compliance.

Service experience has shown that widespread multiple site and other types of fatigue damage have occurred in parts of several transport category airplanes before the airplanes reached their design lifetime. Reliance on repeated detailed inspections along for continued airworthiness has not resulted in an acceptable level of safety for these parts. The more widespread the cracking problem becomes, the greater the probability that significant cracks may go undetected. Generally the overall reliability of any inspection program diminishes when time-consuming, detailed procedures required to find many small cracks increase the workload of the inspector. For this reason, it becomes impractical to inspect for safety when the damage becomes widespread. The FAA has therefore concluded that the most appropriate way to ensure continued safety in structure is to reinforce the existing damage tolerance criteria by requiring sufficient testing to demonstrate the absence of widespread multiple site and other types of fatigue cracking within the design life of the airplane. Generally, the FAA considers that, for conventional metal structure, full-scale testing for at least two design lifetimes would normally be sufficient to demonstrate that widespread multiple site cracking will not occur. Such testing would be conducted under simulated flight-by-flight operational loading spectra. Additional fatigue testing may be necessary for unconventional structure or structure made from composite materials. A detailed inspection after the full-scale testing has been completed is necessary to verify the absence of multiple-site fatigue damage. The detailed inspection could include pulling open a number of fastener holes to perform an examination, using an electron microscope, of fracture surfaces in representative areas to determine if any widespread, multiple-site damage is present. It may not be necessary to complete the fatigue testing prior to issuance of the type of certificate, provided the approval is based on a previously approved test plan and sufficient testing to establish that fatigue problems will not arise during the period required for completion of the test. If subsequent testing reveals longer term fatigue problems, they can be addressed by means of airworthiness directives or other means of ensuring continuing airworthiness. The FAA is in the process of revising Advisory Circular 25.571–1A to provide additional guidance on acceptable means of compliance with these proposed requirements.

The current regulations do not prescribe criteria for establishing thresholds for the detailed structural inspection program. In the past, initial inspections were established based on service experience on similar type airplanes; but they did not account for premature failures due to undetected manufacturing defects (rogue flaws). The primary concern in establishing thresholds for inspections is in establishing the threshold early enough to detect cracks before they result in failures. Theoretically, perfect parts that have been fatigue tested for the expected operational life of the airplane, using a conservative loading spectrum and factors, would not fail throughout the operational life of the airplane. Service history, however, shows that parts are not always perfect as installed and do fail prematurely due to initial undetected defects. The FAA therefore concludes that it is necessary to account for undetected manufacturing defects when establishing thresholds for inspections. Initial inspection thresholds should be established based on cracks growing from likely defects developed during manufacture such as machining marks, improper installation of fasteners, etc. This should be substantiated by crack growth analyses and supported by test evidence. Under the fail-safe design philosophy, heavy reliance is placed on the fact that fatigue cracks, including those resulting from rogue flaws, will become obvious before they become critical because of the required redundancy of structural load paths. This practice is not appropriate for structures designed to the current damage tolerance requirements because cracks may not necessarily become obvious before they become critical.

The proposed regulation would require that inspection thresholds be established based on crack growth data. This would prevent cracks that emanate from initial defects incurred during manufacture from reaching unsafe dimensions within the interval established for the inspection threshold.

Three minor changes to § 25.571 are also proposed in this notice. The purposes of these changes are to clarify existing rules for consistency with current interpretations to achieve consistency with the corresponding requirements of Joint Airworthiness Requirements-25 (JAR–25). (JAR–25 has been adopted by a number of European countries as an acceptable basis for type certification of transport category airplanes. It is based on part 25 of the FAR; however, it does differ from part 25 in a number of specific areas.) Because American and European manufacturers are required to meet the

standards of both part 25 and JAR–25 if they are to sell airplanes worldwide, there is an attempt within the international community to harmonize the two documents wherever possible. The following proposed changes have been requested by both the American and European manufacturers.

Section 25.571(b)(1) would be amended to clarify that all speeds up to V_c (design cruising speed) must be investigated. This is only a clarification because § 25.337, which is referenced in § 25.571(b)(1), already requires consideration of speeds up to V_c.

Section 25.571(b)(5)(ii) would be changed to specify a cabin pressure differential of 1.15 times the normal operating differential pressure in lieu of the present factor of 1.1. This change would make the sentence identical to the corresponding JAR rule. Although it would be slightly more stringent than the current FAR rule, both the domestic and foreign manufacturers support the proposed change.

Amendment 25–45 introduced a requirement in § 25.571(e)(1) that the aircraft structure must successfully withstand the impact of a four-pound bird at "likely operational speeds at altitudes up to 8,000 feet." For clarity and consistency with other bird strike standards, this section was amended by Amendment 25–72 to refer to "V_c at sea level." Since the adoption of Amendment 25–72, a manufacturer has attempted to circumvent the intent of the rule by proposing an unrealistically low V_c at sea level. In order to ensure that the intended level of safety will be maintained, § 25.571(e)(1) would be amended further to specify "V_c at sea level or 0.85 V_c at 8,000 feet, whichever is more critical." (In terms of true airspeed, 0.85 V_c at 8,000 feet is approximately equal to V_c at sea level.)

The proposed amendment would apply only to future transport category airplanes for which an application for type certificate is made after the effective date of the amendment. Although no retrofit requirement is proposed in this notice, the FAA is considering separate rulemaking action to require that certain provisions of this proposed rule be made applicable to the current fleet of aging airplanes.

Regulatory Evaluation

The FAA has conducted a draft regulatory evaluation of the proposal to amend the fatigue testing requirements for transport category airplanes to require: (1) Full-scale fatigue testing, and (2) inspection thresholds based on crack growth from likely initial manufacturing defects in an effected airplane structure.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society from the regulatory change outweigh the potential costs it would impose on the industry. The order also requires the preparation of a draft regulatory impact analysis of all "major" proposals, except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual affect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse affect on competition or is highly controversial.

The FAA has determined that this regulatory action is not a "major" action as defined in the executive order, so a full draft regulatory impact analysis identifying and evaluating alternative proposal has not been prepared. A more concise draft regulatory evaluation has been prepared, however, that includes estimates of the economic impact of this regulation. This draft regulatory evaluation is included in the docket and quantifies, to the extent practicable, estimated costs to the private sector, to consumers, and to Federal, State, and local governments, as well as estimated anticipated economic costs.

The reader is referred to the draft regulatory evaluation for the complete detailed analysis. This section contains only a summary of the draft regulatory evaluation. This section also contains only an initial regulatory flexibility determination as required by the Regulatory Flexibility Act of 1980 and a trade impact assessment.

Costs

The proposed regulations would codify the current practices of Part 25 airplane manufactures. At present, transport airplane manufactures are voluntarily subjecting all new model airplanes to the full-scale testing equivalent of two lifetimes under simulated flight-by-flight operational loading spectra. For example, this practice has been or will be followed in the certification of the Boeing Model 757, 767, and 777; the McDonnell Douglas MD–11; and the Airbus A320, A330, and A340. The FAA is not aware of any new model transport airplanes certificated in the last ten years that have not been subjected to this practice. The proposed regulations would ensure the continuation of this practice, clarify the testing and inspection requirements, and establish a uniform minimum standard throughout the industry, both for conducting the fatigue tests and for establishing inspection procedures. Therefore little, if any, incremental costs would be incurred by the industry as a result of the proposed regulations.

Nevertheless, part 25 airplane manufacturers, as a result of the proposed rules, would be denied an option currently available to them and, thus, would no longer be able to avoid the cost of performing the proposed fatigue tests. The costs of the proposed fatigue tests are estimated to average $55 million per certification. These costs consist of $20 million for test equipment and for 400,000 man hours necessary to set up and test the airplane, and about $35 million for an airplane that would be destroyed by the tests. These costs are based on the experience of a manufacturer that recently conducted a full-scale test equivalent to two lifetimes under simulated flight-by-flight operational loading spectra on one of its new model airplanes.

Benefits

The proposed rules are necessary to ensure the continued airworthiness of future airplanes. The intent of the proposed rules is to keep fatigue failures at a minimum in future airplanes and, in instances where a future critical flight structure may suffer a fatigue failure, guarantee that the airplane will continue to fly safely until the failure is detected.

A review of National Transportation Safety Board (NTSB) accident records reveals that during the period between 1974 and 1988, a total of 34 non-engine related fatigue accidents occurred involving 2,754 passengers and crewmembers. Miraculously, only 4 persons were fatally injured and 11 sustained minor injuries. These accidents involved airplanes as large as a Boeing 747 carrying 263 passengers and crewmembers. Therefore, the accidents could have been considerably more catastrophic than they proved to be. In addition, normal inspections of airplanes during maintenance procedures have revealed countless instances of fatigue cracks that, had they gone undetected, could have resulted in catastrophic accidents.

The proposed rules would have to prevent accidents that otherwise would result in 25 fatalities per new model of airplane for the benefits of the proposed rules to outweigh the costs. This assumes a value of $1.5 million per statistical fatality avoided,[1] no non-fatal

[1] In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a value of $1.5 million to represent a statistical human fatality avoided. This is in accordance with guidelines

injuries, and $17.5 million as an expected allowance for loss of the airplane. The FAA believes that the existing accident record, plus the results of many inspections for fatigue cracks, has clearly demonstrated that the proposed rules are necessary to assure the extended airworthiness of future transport category airplanes. The prevention of just one catastrophic accident per new airplane design would produce benefits outweighing the cost of the proposal. Therefore, the agency believes that this action would be cost beneficial.

International Trade Impact Assessment

The proposal is unlikely to have any impact on international trade. U.S. airplane manufacturers are already performing the fatigue tests on their new models of transport category airplane that would be affected by the proposed rules, as are foreign manufacturers of this category of airplane.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Since the Act applies to U.S. entities, only U.S. manufacturers of transport category airplanes would be affected.

In the United States, there are two manufactures that specialize in commercial transport category airplanes, The Boeing Company and McDonnell Douglas Corporation. In addition, there are a number of others that specialize in the manufacture of other transport category airplanes, such as those designed for executive transportation. These are Cessna Aircraft Corporation, Beech Aircraft Corporation, Gulfstream American Corporation and Gates Learjet Corporation.

The FAA size threshold for a determination of a small entity for U.S. airplane manufacturers is 75 employees; any manufacturer with more than 75 employees is not considered to be a small entity. None of the present U.S manufacturers of transport category airplanes can be considered a small entity; therefore, this proposed rule would not have a "significant economic impact on a substantial number of small entities," and no review is required in this regard by the RFA.

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issued by the Office of the Secretary of Transportation dated June 22, 1990.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Because the regulations proposed herein are expected to result only in negligible costs, the FAA has determined that this proposed rule is not major as defined in Executive Order 12291. This proposed rule is considered to be significant, as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), as it involves an issue on which there has been considerable public interest. In addition, since there are no small entities affected by this rulemaking, it is certified, under the criteria of the Regulatory Flexibility Act, that this proposed rule, at promulgation, would not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the initial regulatory evaluation prepared for this proposed rule may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subject in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

2. By amending § 25.571 by revising the introductory text of paragraph (a), and paragraphs (a)(3), (b) introductory text, (b)(1), (b)(5)(ii), and (e)(1) to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

(a) *General.* An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, manufacturing defects, or accidental damage, will be avoided throughout the operational life of the airplane. This evaluation must be conducted in accordance with the provisions of paragraphs (b) and (e) of this section, except as specified in paragraph (c) of this section, for each part of the structure that could contribute to a catastrophic failure (such as wing, empennage, control surfaces and their systems, the fuselage, engine mounting, landing gear, and their related primary attachments). For turbojet powered airplanes, those parts that could contribute to a catastrophic failure must also be evaluated under paragraph (d) of this section. In addition, the following apply:

* * * * *

(3) Based on the evaluations required by this section, inspections or other procedures must be established, as necessary, to prevent catastrophic failure, and must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by § 25.1529. These procedures must include thresholds for inspections that are based on analyses and tests considering the damage tolerance design concept, manufacturing quality, and susceptibility to in-service damage.

(b) *Damage-tolerance (fail-safe) evaluation.* The evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. The determination must be made by analysis supported by test evidence and (if available) service experience. Damage at multiple sites due to prior fatigue exposure must also be included where the design is such that this type of damage is expected to occur. The evaluation must include repeated loads and static analyses supported by full-scale test evidence. Sufficient full-scale testing must be accomplished to ensure that widespread multiple-site damage will not occur within the design lifetime of the airplane. The extent of damage for residual strength evaluation at any time within the operational life must be consistent with the initial detectability and subsequent growth under repeated loads. The residual strength evaluation must show that the remaining structure is able to withstand loads (considered as static ultimate loads) corresponding to the following conditions:

(1) The limit symmetrical maneuvering conditions specified in § 25.337 at all speeds up to V_c and in § 25.345.

* * * * *

(5) * * *

(ii) The maximum value of normal operating differential pressure (including the expected external aerodynamic pressures during 1g level flight) multiplied by a factor of 1.15, omitting other loads.

* * * * *

(e) * * *

(1) Impact with a 4-pound bird when the velocity of the airplane relative to the bird along the airplane's flight path is equal to V_c at sea level or $0.85V_c$ at 8,000 feet, whichever is more critical.

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Issued in Washington, DC, on Wednesday, July 7, 1993.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 93-16916 Filed 7-16-93; 8:45 am]

BILLING CODE 4910-13-M

VOL 58 ISS 136 JL 19 1993 UMI

federal register

Monday
July 19, 1993

Part VI

Federal Maritime Commission

46 CFR Part 502

Rules of Practice and Procedure; Alternative Dispute Resolution; Final Rule; and Policy Statement; Notice

VOL 58 ISS 136 JL 19 1993 UMI

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 93-06]

Rules of Practice and Procedure; Alternative Dispute Resolution

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules to incorporate procedures designed to implement the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act. These amendments will require timely consideration of the use of alternative dispute resolution techniques to resolve disputes without resort to more costly and time-consuming litigation.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 202-523-5725.

SUPPLEMENTARY INFORMATION: Public Law No. 101-552, the Administrative Dispute Resolution Act ("ADRA"), and Public Law No. 101-648, the Negotiated Rulemaking Act ("Reg-Neg"), amend the Administrative Procedure Act ("APA"), 5 U.S.C. 551 et seq., to authorize and encourage administrative agencies to permit the voluntary use of consensual alternative dispute resolution ("ADR") techniques—such as settlement negotiations, negotiated rulemaking, mediation and arbitration—in order to achieve faster and procedurally less expensive results in agency adjudications, rulemakings, contract disputes and other actions.

In enacting the ADRA, Congress indicated that administrative proceedings have become too formal and lengthy, and that alternative procedures may in some instances be more efficient. Because ADR procedures are not appropriate in every case, the ADRA sets forth situations in which the agency shall consider not using such procedures. These include precedent-setting cases, those where a formal record is essential, and those where maintenance of established policies is of special importance so that variation among individual decisions is not increased.

Similarly, in enacting Reg-Neg, Congress was concerned that traditional rulemaking procedures may discourage affected parties from meeting and communicating with each other. As a result, the parties may assume extreme conflicting positions, which can result in costly and time-consuming litigation. Reg-Neg is intended as an alternative process, under which the agency may establish and administer committees under the Federal Advisory Committee Act for the development of consensus positions regarding controversial regulations and policies. Reg-Neg establishes several criteria for the use of negotiated rulemaking.

The ADRA requires agencies to adopt a policy that addresses the use of ADR and case management.[1] The ADRA also amends provisions of the APA, at 5 U.S.C. 556(c), which address the role of agency employees presiding at agency hearings. These amendments to the APA prescribe that such presiding officials may (1) hold conferences for the settlement or simplification of the issues by the use of ADR, (2) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods, and (3) require the attendance at any conference held of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy.

The Commission, by notice of proposed rulemaking published on March 30, 1993 (58 FR 16641) proposed to further implement the ADRA and Reg-Neg by amending the FMC's Rules of Practice and Procedure to implement the above-described amendments to the APA, and generally to encourage the use of ADR at the Commission to the fullest extent compatible with the law and the agency's mission and resources. A comment supporting the proposed amendments was filed by Asia North America Eastbound Rate Agreement. A comment was also filed by Marine Mediation Service Inc. ("MMS") suggesting a modification to the proposed amendment to § 502.91(d).

Upon consideration of the proposed rule and the comments filed in response, the Commission has determined to finalize the rule as proposed with the one change suggested by MMS. The specific rule changes including the MMS suggestion are discussed below.

Scope of Rules

Section 502.1 defines the scope of the rules and indicates that they apply to proceedings under the various shipping statutes administered by the Commission. This section provides that the rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. This requirement applies essentially to all proceedings before the Commission conducted under Part 502. However, in order to emphasize the importance the Commission places on the use of ADR in appropriate circumstances, this rule will now include a reference to the mandatory consideration of the use of ADR in all proceedings.

Negotiated Rulemaking

A new § 502.56 is added indicating that the Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule, if, upon consideration of Reg-Neg Act criteria, use of such a committee is determined by the Commission to be in the public interest.

Orders Initiating Proceedings

Section 502.61 currently requires that orders instituting formal proceedings specify dates for commencement of any hearing and for issuance of the initial and final decisions. The Commission also has had a long-standing policy of including a statement in such orders that oral hearings and cross-examination will be utilized only upon a proper showing that they are necessary for the development of an adequate record. See Informal Statement of Policy, 17 S.R.R. 457 (1977). In order to emphasize this policy of avoiding trial-type hearings, § 502.61 is amended to codify the requirement of inclusion of such a statement in orders initiating proceedings. This policy is further emphasized by adding to the mandatory language a requirement that "prior to the commencement of oral hearings, consideration must be given by the parties and the presiding officer to the use of alternative forms of dispute resolution."

Opportunity for Informal Settlement

Section 502.91 currently provides parties an opportunity to submit facts, argument, and offers of settlement to the presiding officer without prejudice to their rights. This section is amended to further emphasize the availability of ADR procedures and to encourage their use. A specific provision is added regarding use of mediators and settlement judges. At the suggestion of MMS this amendment will now include a provision specifying that the presiding judge may take the initiative to suggest use of mediation or of a settlement judge in a particular case. This should meet the concern expressed by MMS that parties sometimes contemplate or consider mediation, but are reluctant to be the first to suggest it.

[1] The Federal Maritime Commission ("FMC" or "Commission"), by a separate notice is issuing a statement of Commission policy on ADR, in keeping with the requirements of the ADRA that agencies adopt such a policy.

Prehearing Conferences

Section 502.94 currently provides that a presiding officer may direct the parties to a proceeding to attend a prehearing conference to consider various matters designed to expedite the completion of proceedings, including offers of settlement and simplification of the issues. This section will now further require that, at any prehearing conference which is called, consideration be given to whether the use of ADR would be appropriate or useful.

Functions and Powers of Presiding Officers

Section 502.147 presently describes the functions and powers of presiding officers in formal proceedings. This rule is amended to indicate that the presiding officer has authority to inform the parties as to the availability of one or more alternative means of dispute resolution, to encourage use of such methods, and to require consideration of their use at an early stage of the proceeding. As indicated above, the presiding officer has authority to hold conferences for the settlement or simplification of the issues by consent of the parties. This authority to promote settlements is enhanced by inclusion in this section of a reference to the use of ADR and by including specific authority for transmittal of a request of parties for the appointment of a settlement judge or a mediator, as provided by section 502.91. The rule will further allow the presiding officer to require the attendance at any such conference, pursuant to the ADRA, of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy. Finally, the provision which allows the presiding officer to permit submissions of facts, arguments, and offers of settlement will permit the presiding officer, if the parties so request, to issue informal opinions providing tentative evaluations of the evidence submitted.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order, and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that because this rule deals only with agency practice and procedure, it will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small government jurisdictions.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Penalties, Reporting and recordkeeping requirements.

Therefore, notice is hereby given that the Commission is amending part 502 of Title 46 CFR as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a.

2. Section 502.1 is amended by adding a new sentence to the end thereof reading as follows:

§ 502.1 Scope of the rules in this part.

* * * To this end, all persons involved in proceedings conducted under the rules of this part shall be required to consider at an early stage of the proceeding whether resort to alternative dispute resolution techniques would be appropriate or useful.

3. A new § 502.56 is added reading as follows:

§ 502.56 Negotiated rulemaking.

The Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule, if, upon consideration of the criteria of 5 U.S.C. 563, use of such a committee is determined by the Commission to be in the public interest.

4. Section 502.61 is amended by adding a new paragraph (d) reading as follows:

§ 502.61 Proceedings.

* * * * *

(d) All orders instituting a proceeding or noticing the filing of a complaint will contain language requiring that prior to the commencement of oral hearings consideration shall be given by the parties and presiding officer to the use of alternative forms of dispute resolution, and further requiring that hearings shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

5. Section 502.91 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and by adding new paragraphs (a) and (d) reading as follows:

§ 502.91 Opportunity for informal settlement.

(a) Parties are encouraged to make use of all the procedures of this part which are designed to simplify or avoid formal litigation, and to assist the parties in reaching settlements whenever it appears that a particular procedure would be helpful.

(b) * * *

(c) * * *

(d) Any party may request, or the presiding officer may suggest, that a mediator or settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a mediator or settlement judge who is acceptable to all parties. The mediator or settlement judge shall convene and preside over conferences and settlement negotiations and shall report to the Chief Administrative Law Judge, within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling.

6. Section 502.94 is amended by adding a new paragraph (c) reading as follows:

§ 502.94 Prehearing conference.

* * * * *

(c) At any prehearing conference, consideration shall be given to whether the use of alternative means of dispute

VOL
58
ISS
136
JL
19
1993
UMI

resolution would be appropriate or useful for the disposition of the proceeding.

7. Section 502.147, *Functions and powers*, paragraph (a), is amended by revising the language which reads "hold conferences for the settlement or simplification of issues by consent of the parties;" to read "inform the parties as to the availability of one or more alternative means of dispute resolution, encourage use of such methods, and require consideration of their use at an early stage of the proceeding; hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution; transmit the request of parties for the appointment of a mediator or settlement judge, as provided by § 502.91 of this part; require the attendance at any such conference pursuant to 5 U.S.C. 556(c)(8), of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;" and by adding at the end of the phrase "permit submission of facts, arguments, offers of settlement, and proposals of adjustment;" the phrase "and, if the parties so request, issue informal opinions providing tentative evaluations of the evidence submitted;".

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93-17017 Filed 7-16-93; 8:45 am]

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FEDERAL

[Docket No

Alternativ
Statement

AGENCY: F

ACTION: N
Resolution

SUMMARY:
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FEDERAL MARITIME COMMISSION

[Docket No. 93-07]

Alternative Dispute Resolution Policy Statement

AGENCY: Federal Maritime Commission.

ACTION: Notice of Alternative Dispute Resolution ("ADR") Policy.

SUMMARY: The Federal Maritime Commission ("Commission") has developed a statement of policy describing its implementation of the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act. The Commission's policy is designed to encourage the consensual use of ADR mechanisms to resolve disputes, in appropriate circumstances.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Public Law No. 101-552, the Administrative Dispute Resolution Act ("ADRA"), and Public Law No. 101-648, the Negotiated Rulemaking Act ("Reg-Neg"), amend the Administrative Procedure Act, 5 U.S.C. 551 et seq., to authorize and encourage administrative agencies to permit the voluntary use of consensual ADR mechanisms—such as settlement negotiations, negotiated rulemaking, mediation and arbitration—in order to achieve faster and less expensive results in agency adjudications, rulemakings, contract disputes, and other actions. ADR procedures may not be appropriate in every case. Section 5 U.S.C. 572(b) of the ADRA sets forth situations in which the agency shall consider not using ADR, including precedent-setting cases, those where a formal record is essential, and those where maintenance of established policies is of special importance so that variation among individual decisions is not increased.

Reg-Neg is intended as an alternative to the traditional rulemaking process, under which the agency may establish and administer committees under the Federal Advisory Committee Act for the development of consensus positions regarding controversial regulations and policies. Reg-Neg establishes several criteria for the use of negotiated rulemaking, including: (1) There are a limited number of identifiable interests; (2) these can be adequately represented; (3) the parties are willing to negotiate in good faith; (4) the agency has the resources to undertake the process; and (5) the agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

The ADRA specifically requires agencies to adopt a policy that addresses the use of alternative means of dispute resolution and case management. It also requires that a senior agency official be designated as the agency's Dispute Resolution Specialist, and that training be provided for that official and for other employees involved in implementing that agency's ADR policy.

The Secretary of the Commission has been designated as the agency's Dispute Resolution Specialist and is responsible for coordinating the Commission's ADR activities and procedures. Inquiries and suggestions regarding the Commission's ADR functions may be made to the Dispute Resolution Specialist ((202) 523-5725).

The Dispute Resolution Specialist and the Chief Administrative Law Judge have attended training on the theory and practice of ADR. Similar training is being provided to other Commission employees whose responsibilities will call for consideration of the use of ADR.

The Commission on March 30, 1993 (58 FR 16681), published an interim ADR statement of policy. Interested persons were encouraged to comment on this policy statement, and to provide suggestions for other specific uses of ADR at the Commission or other procedures to facilitate the use of ADR. A single comment fully supporting the policy statement was submitted by Asia North America Eastbound Rate Agreement. Accordingly, the Commission has determined to adopt the interim statement of policy as final. An additional section has been added which indicates that the Commission is in the process of developing an agency ADR procedures for use in Equal Employment Opportunity ("EEO") disputes. Section 1614.105(f) of Title 29 CFR encourages the use of ADR processes during the EEO pre-complaint counseling period.

ADR Policy and Procedures

It is the Commission's policy to encourage the use of ADR to the fullest extent compatible with the law and the agency's mission and resources. Commission employees and all other persons involved in disputes before the Commission are required to consider at an early stage whether the use of ADR techniques would be appropriate and useful in a particular matter. Prior to enactment of the ADRA the Commission already had in place several different alternative methods for resolving disputes without resort to formal hearings. In consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service, the Commission has developed additional procedures designed to enhance the use of ADR. The Commission envisions that the application of these procedures could be enlarged even further as experience is gained, and welcomes suggestions from the public in this regard.

The Commission's policy regarding the use of ADR is reflected in the following rules and procedures.

General philosophy. Rule 1 of the Commission's Rules of Practice and Procedure, which defines the scope of the rules, states that all of the Commission's rules "shall be construed to secure the just, speedy and inexpensive determination of every proceeding." 46 CFR § 502.1. This guideline thus applies to all proceedings before the agency conducted under Part 502. In order to emphasize the importance the Commission places on the use of ADR in appropriate circumstances, Rule 1 includes a reference to the mandatory consideration of the use of ADR in all proceedings. ADR concepts also can be promoted by application of Rule 10 which states that the requirements of a particular rule may be waived "to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires." 46 CFR § 502.10.

Time limits for hearings and decisions; avoidance of oral hearings. In orders instituting a formal investigation or noticing the filing of a complaint, the Commission specifies dates for commencement of any hearing, and issuance of the initial decision and final Commission decisions. 46 CFR § 502.61. Further, it is the policy of the Commission to seek to avoid costly and time-consuming litigation by providing in all orders initiating proceedings that:

> prior to the commencement of oral hearings, consideration must be given by the parties and the presiding officer to the use of alternative forms of dispute resolution. Hearings shall include oral testimony and cross-examination, in the discretion of the presiding officer, only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Opportunity for settlements. The Commission encourages settlements of formal proceedings. Interested parties are urged to make use of all the procedures set forth in the Commission's Rules of Practice and Procedure, which are designed to simplify or avoid formal litigation and

VOL 58 ISS 136 JL 19 1993 UMI

to assist the parties in reaching settlements. Parties may submit facts, argument and offers of settlement to the presiding officer without prejudice to their rights. In addition, the rules specifically provide for the consensual use of settlement judges and mediators to assist the parties in achieving a settlement. 46 CFR § 502.91.

Prehearing conferences. Under the Commission's rules, the Commission or a presiding officer may direct the parties to a formal proceeding to attend a prehearing conference, where the following may be considered: offers of settlement; simplification of the issues; use of admissions of fact and documents that will avoid unnecessary proof; limitation on the numbers of witnesses; and consolidation of the examination of witnesses by counsel. 46 CFR § 502.94(a). This rule also provides that, at any prehearing conference, consideration be given to whether the use of ADR would be appropriate or useful. Informal conferences may be called at any time during a proceeding for similar purposes. 46 CFR § 502.94(b).

Functions and powers of presiding officers. Rule 147 of the Commission's rules describes the functions and powers of presiding officers in formal proceedings. This rule provides that the presiding officer has authority to inform the parties as to the availability of one or more alternative means of dispute resolution, to encourage use of such methods, and to require consideration of their use at an early stage of the proceeding. As indicated in paragraph (d) of this section, the presiding officer has authority to hold conferences for the settlement or simplification of the issues by consent of the parties. This authority to promote settlements is further enhanced by the inclusion in this rule of a reference to the use of ADR, and of a provision for transmittal of a request of parties for the appointment of a settlement judge or a mediator, as provided by § 502.91. The rule further allows the presiding officer to require the attendance at any such conference, pursuant to 5 U.S.C. 556(c)(8), of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy. Finally, the presiding officer is permitted, if the parties so request, to issue informal opinions providing tentative evaluations of the evidence submitted. 46 CFR 502.147.

Negotiated rulemaking. The Commission's rules dealing with rulemaking procedures specifically authorize the use of negotiated rulemaking. This rule provides that the Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule, if the Commission, upon consideration of Reg-Neg criteria, determines that use of such a committee would be in the public interest. 46 CFR 502.56.

Informal procedure for adjudication of small claims. The Commission provides an informal procedure for adjudication of claims for $10,000 or less. Similar to binding arbitration, this procedure is conducted by a settlement officer, and consists of a written factual record and argument, and decision. The decision of the settlement officer is not subject to appeal by the parties, but may be reviewed by the Commission on its own motion. 46 CFR 502.301–305.

Shortened procedure. For claims over $10,000, the Commission offers a shortened procedure whereby the parties may consent to have the complaint resolved by an administrative law judge upon a written record without oral hearing. The parties have the right to appeal the initial decision to the Commission. 46 CFR 502.181–187.

Nonadjudicatory investigations. The Commission conducts nonadjudicatory fact-finding investigations to aid it in discharging its responsibilities, and in determining whether formal rulemakings or adjudicatory investigations are necessary. Such investigatory proceedings are usually non-public and voluntary cooperation is encouraged. 46 CFR 502.281–291.

Conciliation service. The Commission provides a conciliation service under the direction of the Dispute Resolution Specialist. This procedure requires the consent of the parties to the particular dispute, and provides for the appointment of a conciliator who prepares a non-binding advisory opinion for the guidance of the parties. 46 CFR 502.401–406.

Civil penalty settlement and compromise procedures. In formal, docketed proceedings, the parties may enter into settlements whereby a civil penalty for statutory violations is agreed to. Such settlement agreements must be approved by the presiding officer and are subject to review by the Commission. As an alternative to formal adjudications, the Commission's Bureau of Hearing Counsel is authorized to conduct compromise negotiations, which may result in an agreement for the payment of a civil penalty without admission of violations of law. 46 CFR 502.601–502.605. This form of dispute resolution has been widely used at the Commission and has successfully resulted in the avoidance of many possible protracted formal adjudications.

Informal inquiries and complaints. The Commission's Office of Informal Inquiries, Complaints and Informal Dockets is available to assist shipping consumers and small businesses in resolving informal complaints, difficulties and misunderstandings with ocean carriers, terminal operators, freight forwarders, port authorities and other persons. Aggrieved persons or entities are encouraged to avail themselves of this assistance prior to or in lieu of initiating formal proceedings. The Office can be contacted at (202) 523–5807.

Use of nonattorneys. Section 9 of the ADRA requires each agency to develop a policy regarding the representation of parties by nonattorneys in ADR proceedings. The Commission's rules permit practice before the agency on behalf of others by qualified nonattorneys who have been admitted to practice before the Commission. 46 CFR 502.27–502.31. Practice before the Commission is defined very broadly to include the rendering of advice and assistance in the presentation of any matter before the Commission, not just ADR proceedings. Persons may also appear on behalf of themselves or on behalf of their employer without having been admitted to practice. 46 CFR 502.27(c). The ADRA also requires that each agency that permits nonattorneys to practice shall ensure that any rules pertaining to disqualification of attorneys also apply, as appropriate, to other persons who provide representation or assistance. The Commission's rule regarding the suspension or disbarment from practice before the Commission, has equal application to attorneys and nonattorneys. 46 CFR 502.30.

Equal Employment Opportunity Disputes. Part 1614 of Title 29 CFR contains regulations of the Equal Employment Opportunity Commission relating to Federal sector equal employment opportunity, including rules regarding agency processing of EEO complaints. Section 1614.105 thereof outlines procedures for pre-complaint processing of EEO grievances. Paragraph (f) of this section specifically encourages the use of ADR processes during the EEO pre-complaint counseling period, with the consent of the aggrieved individual. Under this provision the pre-complaint processing period can be extended up to 90 days, if an established ADR procedure is used.

The Commission's EEO Director in consultation with the Dispute Resolution Specialist is in the process of developing an agency ADR procedure for this purpose. When developed, it will be incorporated into the

Commission's internal guidelines governing processing of EEO complaints.

Contract review. The ADRA requires each agency to review its standard agreements for contracts, grants, and other assistance and to determine whether to amend such agreements to authorize and encourage the use of ADR techniques. This provision has limited application to the Commission in that the agency provides no grants or other assistance. In regard to the few contracts that the Commission utilizes, the agency in the past has included standard Federal Acquisition Regulation ("FAR") procedures regarding resolution of any contract disputes. The ADRA requires that within one year the FAR be amended, as necessary, to carry out the Act. All future Commission contracts will conform to the amended FAR in regard to provisions for the resolution of contract disputes.

Miscellaneous. Either party to a filed service contract may request permission to correct clerical or administrative errors appearing in the contract's essential terms. 46 CFR 581.7(b). The Commission oversees the obligation of carrier conferences to provide for independent neutral body policing if a conference member so requests, to provide for a shipper consultation process, and to establish procedures for promptly and fairly considering shippers' requests and complaints. 46 U.S.C. 1704(b) (4)–(6).

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–17018 Filed 7–16–93; 8:45 am]

BILLING CODE 6730-01-M

VOL
58
ISS
1
3
6
JL
19
1993
UMI

federal register

Monday
July 19, 1993

Part VII

Environmental Protection Agency

National Lead Laboratory Accreditation Program; Notice of Availability of Requirements; Notice

VOL 58 ISS 136 JL 19 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-00138; FRL-4590-8]

National Lead Laboratory Accreditation Program; Notice of Availability of Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the establishment of the Environmental Protection Agency National Lead Laboratory Accreditation Program (NLLAP). EPA is interested in entering into a memoranda of understanding (MOU) with qualified public or private laboratory accrediting organizations who wish to participate in the NLLAP. A model MOU, which includes the accrediting organization requirements and laboratory quality system requirements, is available from EPA. Laboratories accredited by the organizations participating in the NLLAP will be recognized by EPA as being capable of analyzing for lead in paint chips, soil, and/or dust samples.

FOR FURTHER INFORMATION CONTACT: The National Lead Information Center Clearinghouse, 1019 19th St., NW., Suite 401, Washington, DC 20036–5105, Toll free: 1–800–424–LEAD, Fax: (202) 659–1192.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document and the NLLAP MOU model are available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is also available in Postscript, Wordperfect, and ASCII. The NLLAP MOU is available in Wordperfect and ASCII.

Under the Congressional mandate stated in section 405(b) of Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992, EPA is establishing the National Lead Laboratory Accreditation Program (NLLAP). The program is being established to assure the public that analytical laboratories, accredited by laboratory accrediting organizations recognized by EPA as participants in the NLLAP, are capable of analyzing for lead in samples consisting of paint chips, dust, and/or soil matrices. Laboratories accredited for the analysis of lead in samples of paint chips, dust, and/or soil by laboratory accrediting organizations recognized by EPA under the NLLAP will in turn be recognized by EPA under the NLLAP. A list of laboratories recognized under NLLAP will be published by EPA on a periodic basis.

The EPA Office of Pollution Prevention and Toxics is seeking private and public laboratory accrediting organizations who wish to participate in the NLLAP. These laboratory accrediting organizations would be responsible for conducting system audits, inclusive of on-site visits, of laboratories who wish to be recognized by EPA under the NLLAP. EPA will establish an MOU with laboratory accrediting organizations which wish to participate in the NLLAP and meet the program requirements. Requirements for laboratory accrediting organizations who wish to participate are contained in the model MOU for the NLLAP. Included with the requirements for laboratory accreditation organizations are the minimum quality system requirements for laboratories. These requirements are being incorporated in all MOUs between EPA and laboratory accrediting organizations participating in the NLLAP. The model MOU can be obtained from the National Lead Information Center Clearinghouse at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: July 1, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–17059 Filed 7–16–93; 8:45 am]

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Monday
July 19, 1993

Part VIII

The President

Proclamation 6580—Captive Nations Week, 1993

VOL
58
ISS
136
JL
19
1993
UMI

Title 3—

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[FR Doc. 93-17
Filed 7-16-93;
Billing code 31

Federal Register
Vol. 58, No. 136
Monday, July 19, 1993

Presidential Documents

Title 3—

The President

Proclamation 6580 of July 15, 1993

Captive Nations Week, 1993

By the President of the United States of America

A Proclamation

Since 1959, when the Congress designated the third week of July as "Captive Nations Week," Americans have set aside this week to remember those who suffer under the yoke of oppressive governments. Many brave people who sought freedom and liberty brought down these totalitarian regimes, and this week we recognize their sacrifices. But we must also rededicate ourselves to those who are still struggling in regions of the world where human rights and individual liberties are not upheld.

Over two centuries ago our forefathers fought for the cause of freedom and democracy, and these ideals have continued to be embraced by nations around the world. As America declared its independence, our country provided inspiration for all those who did not enjoy the rights that we held to be self-evident. We cannot abandon those we have encouraged. Our efforts in the former Soviet Union and Central and Eastern Europe have been rewarded by a wave of freedom throughout the region. Furthermore, these nations have proven their resolve and commitment to the difficult and frustrating transition to democratic, market-oriented systems that respect individual, social, political, and economic rights.

Yet today not everyone is free. There are still oppressive and authoritarian governments entrenched elsewhere in the world. Others are struggling for freedom and democracy, but need our help. Many nations in Latin America and Africa have been slower to introduce change. Tragically, even those in Europe are still threatened by atrocities fueled by ethnic hatred. For this reason, we must always remember the abuses that captive peoples have endured, continue to promote individual liberties, and call upon the nations of the world to protect human rights.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 11 through July 17, 1993, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities. In doing this, I rededicate America to supporting the cause of human rights, democracy, peace, freedom, justice, and prosperity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-17274
Filed 7-16-93; 11:02 am]
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VOL
58
ISS
136
JL
19
1993
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Federal Reg
Index, findi
Public inspe
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Public Laws
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Other Servic
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Guide to Rec
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Privacy Act
Public Laws
TDD for the

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35357–35840
35841–36116
36117–36300
36301–36588
36589–36852
36853–37412
37413–37630
37631–37846
37847–38044
38045–38262
38263–38508
38509–38660

Reader Aids

Federal Register

Vol. 58, No. 136

Monday, July 19, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12
37631–37846.....13
37847–38044.....14
38045–38262.....15
38263–38508.....16
38509–38660.....19

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587
6546 (Revoked by PLO 6989 of July 6).....38083

Administrative Orders:
Presidential Determinations:
93–28 of June 25, 1993.....37631
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839
6580.....38659

5 CFR

230.....36119
250.....36119
532.....38263
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
226.....37847
246.....37633
301.....36589, 36590, 36591
319.....38263
354.....38269
400.....36592
723.....36853, 36857
906.....37635
910.....38271
922.....38272
923.....38272
924.....38272
945.....38274
967.....38276, 38277
981.....37638
987.....37638
1097.....34359
1098.....35361
1099.....34362
1108.....36859
1211.....38278
1421.....38509
1464.....36857, 36861
1435.....36120
1755.....36252

Proposed Rules:
55.....37872, 38602
56.....37872, 38602
59.....37872, 38602
70.....37872, 38602
330.....38308
400.....37874
1421.....38311
1468.....37876

8 CFR

100.....38045
212.....38045
245.....35832

Proposed Rules:
208.....38312
236.....38312
242.....38312

9 CFR

78.....36593
91.....37639
92.....37641, 37642, 38282
94.....36593, 36594
98.....37642
317.....38046
381.....38046

Proposed Rules:
78.....37665
85.....37666
91.....37667
92.....37878
94.....36624, 38308, 38314, 38316
95.....37669
98.....36625
113.....37670
381.....38090

10 CFR

Proposed Rules:
50.....37884
60.....36902

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

Proposed Rules:
7.....38474
24.....38474
614.....38091

VOL 58 ISS 136 JL 19 1993 UMI

14 CFR

23.....38634
25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36863, 36865, 38283, 38285, 38510, 38511, 38513, 38516
71.....36596
72.....36298
73.....38287
97.....38288, 38518
108.....36802

Proposed Rules:

Ch. I.....36626
1.....36738
23.....38028
25.....36116, 36738, 38642
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627, 38321, 38540
71.....36157, 36158, 36528, 38322
73.....38323
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353
806.....38289
821.....38214

Proposed Rules:

806.....38324

16 CFR

1145.....37554
1210.....37557

Proposed Rules:

244.....35414
412.....35907

17 CFR

1.....37644
204.....38519
239.....35367
240.....36866, 37413, 37655
249.....35367

Proposed Rules:

240.....37445, 38092
270.....38095

18 CFR

2.....38290, 38524
157.....38524
260.....38524
271.....38528
284.....38524
385.....38524

Proposed Rules:

35.....36172
284.....37447
341.....37671
342.....37671
343.....37671
344.....37671
345.....37671
347.....37671
352.....37671
360.....37671
361.....37671
375.....35415, 37671

19 CFR

148.....35862, 38167
151.....37853

Proposed Rules:

12.....37884
24.....37884
133.....37884
178.....37884

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
178.....37854
510.....36134, 37855
520.....36134

Proposed Rules:

350.....38541
870.....36290
876.....35416

22 CFR

126.....35864

23 CFR

625.....38293

24 CFR

203.....35369
236.....37802
241.....37802
248.....37802
280.....38530
572.....36518, 36546

Proposed Rules:

16.....37598
202.....37885
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

25 CFR

Proposed Rules:

31.....35419

27 CFR

9.....35865, 35877

Proposed Rules:

4.....35908
5.....35908, 36516
7.....38542, 38543

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371

Proposed Rules:

36.....37052

29 CFR

18.....38498
1400.....35377
1915.....35512
2606.....35377, 37991
2610.....38049
2612.....35377
2615.....35377
2616.....35377
2619.....38050
2622.....35377, 37991, 38049
2623.....35377, 37991
2644.....38051
2676.....38052

30 CFR

202.....37420
206.....37420
904.....38532
920.....36135
938.....36139

Proposed Rules:

913.....38543
914.....38543
916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

Proposed Rules:

501.....37770
552.....37774

33 CFR

100.....36355, 38053, 38054, 38055, 38298, 38299, 38300, 38301
110.....36356
117.....36357, 38056
164.....36141
165.....36357, 36597, 36868, 38056, 38302
334.....37606, 37889

Proposed Rules:

110.....38100, 38101
117.....36629, 38102
334.....37889

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....
555.....
562.....
581.....
600.....
612.....
617.....
624.....
625.....
626.....
627.....
628.....
630.....
636.....
637.....
639.....
648.....
653.....
654.....
664.....
668.....
671.....
674.....
675.....
676.....
682.....
685.....
690.....
755.....
757.....
758.....
762.....
769.....
770.....

Proposed Rule

361.....
631.....
632.....
633.....
634.....
635.....
650.....
692.....

36 CFR

51.....

Proposed Rule

1191.....

38 CFR

3.....
21.....
36.....

Proposed Rule

3.....
21.....

491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

Proposed Rules:

361.....38482
631.....38504
632.....38504
633.....38504
634.....38504
635.....38504
650.....37890
692.....36110

36 CFR

51.....36598

Proposed Rules:

1191.....37052, 38204

38 CFR

3.....37856
21.....38057
36.....37857

Proposed Rules:

3.....38104, 38106
21.....38106

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426, 37658, 38058, 38060
82.....36516
85.....36871
131.....36141
180.....36358, 36359, 37861
185.....36358, 37862
186.....37867
228.....35884
414.....36872

Proposed Rules:

Ch. I.....37450, 37991, 38546
52.....36905, 37450, 37453, 38108, 38326
63.....37778
81.....36908, 37453, 38108, 38331
88.....35420
180.....36366, 37893
186.....36366
261.....36367
300.....37693
372.....36180

42 CFR

405.....37994
414.....37994
417.....38062

Proposed Rules:

417.....38170

43 CFR

3730.....38186
3820.....38186
3830.....38186
3850.....38186

Public Land Orders:

6983.....38602
6986.....35408
6988.....35409
6989.....38083

44 CFR

65.....38303, 38305
67.....38083
354.....35770

Proposed Rules:

67.....38333

45 CFR

Proposed Rules:

1602.....36910

46 CFR

170.....36601
502.....38648

Proposed Rules:

15.....36914
171.....36374

47 CFR

1.....36142, 37867, 38534
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145, 38536
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431, 38087, 38088, 38534, 38536
76.....36604, 36088
90.....36362, 38537

Proposed Rules:

Ch. I.....36630
61.....37894
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455, 37696, 38111, 38547, 38548
90.....38549

48 CFR

2.....37868
904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
935.....37868
937.....36149
952.....36149, 36363
970.....36149, 36363

Proposed Rules:

909.....38340
917.....36918
952.....38340
970.....38340
1823.....37697
1852.....37697

49 CFR

37.....38204
218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894

Proposed Rules:

37.....37052
171.....36920, 37612, 38111
172.....37612
173.....37612
174.....37612
177.....37612
178.....37612
390.....37895
392.....37900
393.....37900
543.....35422
571.....38346

50 CFR

17.....35887, 37432
227.....36537
85.....36619
285.....36154
611.....38167
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897, 37660, 37870, 37871, 38167
675.....35897, 37660

Proposed Rules:

17.....36184, 36379, 36387, 36924, 37699, 38549, 38552, 38553
20.....37828
23.....38112
24.....36925
226.....38553
227.....38554
642.....38632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1993

VOL
58
ISS
136
JL
19
1993
UMI

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
13	(869–019–00041–1)	28.00	Jan. 1, 1993
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
*400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–017–00065–5)	21.00	Apr. 1, 1992
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
*170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
*300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
*500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
*300–End	(869–019–00076–3)	22.00	Apr. 1, 1993
*23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
*500–699	(869–019–00080–1)	17.00	Apr. 1, 1993
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
*§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
*§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
*§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
*30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
*50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–019–00101–8)	6.00	[4] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts.			
1–199			
200–End			
28			
29 Parts:			
0–99			
100–499			
500–899			
900–1899			
1900–1910 (§§ 1910.999)			
1910 (§§ 1910.1 end)			
1911–1925			
1926			
1927–End			
30 Parts:			
1–199			
200–699			
700–End			
31 Parts:			
0–199			
200–End			
32 Parts:			
1–39, Vol. I			
1–39, Vol. II			
1–39, Vol. III			
1–189			
190–399			
400–629			
630–699			
700–799			
800–End			
33 Parts:			
1–124			
125–199			
200–End			
34 Parts:			
1–299			
300–399			
400–End			
35			
36 Parts:			
1–199			
200–End			
37			
38 Parts:			
0–17			
18–End			
39			
40 Parts:			
1–51			
52			
53–60			
61–80			
81–85			
86–99			
100–149			
150–189			
190–259			
260–299			
300–399			
400–424			
425–699			
700–789			
790–End			
41 Chapters:			
1, 1-1 to 1-10			
1, 1-11 to Appe			

Title	Stock Number	Price	Revision Date
27 Parts.			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[6] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[7] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(669–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
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9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
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1–999	(869–017–00160–1)	22.00	Oct. 1, 1992
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45 Parts:			
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46 Parts:			
1–40	(869–017–00168–6)	17.00	Oct. 1, 1992
41–69	(869–017–00169–4)	16.00	Oct. 1, 1992
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156–165	(869–017–00173–2)	14.00	[8] Oct. 1, 1991
166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
500–End	(869–017–00176–7)	14.00	Oct. 1, 1992
47 Parts:			
0–19	(869–017–00177–5)	22.00	Oct. 1, 1992
20–39	(869–017–00178–3)	22.00	Oct. 1, 1992
40–69	(869–017–00179–1)	12.00	Oct. 1, 1992
70–79	(869–017–00180–5)	21.00	Oct. 1, 1992
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48 Chapters:			
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Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Jan. 1, 1993
Apr. 1, 1993
Apr. 1, 1992
Apr. 1, 1992
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Apr. 1, 1993
Apr. 1, 1993
Apr. 1, 1993
Apr. 1, 1993
Apr. 1, 1993
Apr. 1, 1993
Apr. 1, 1993
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VOL
58
ISS
136
JL
19
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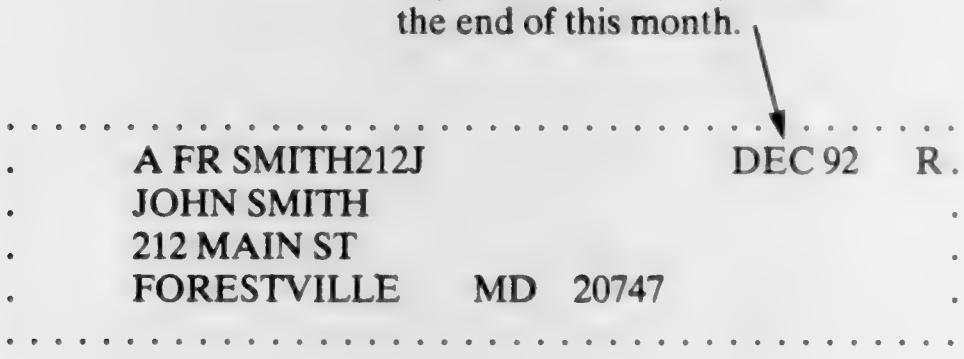

VOL
58
ISS
136
JL
19
1993
UMI

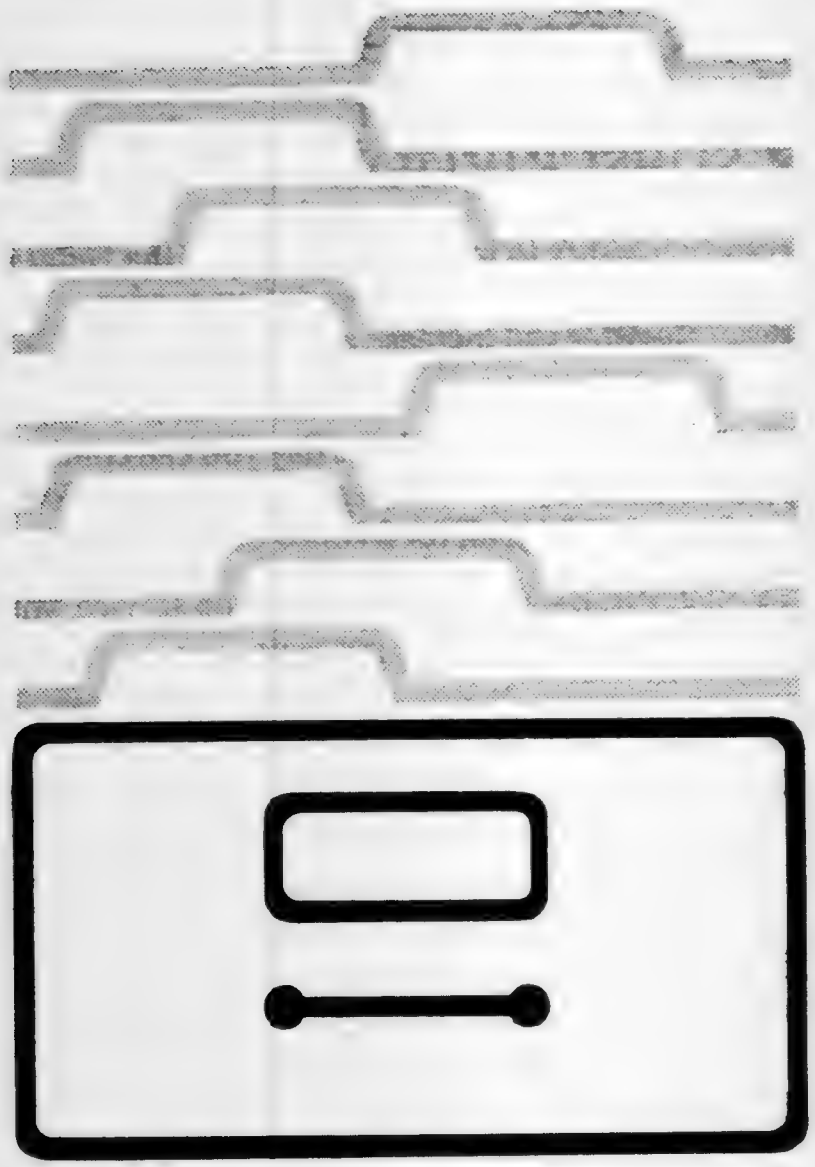

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7-20-93
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7-20-93
Vol. 58 No. 137
Pages 38661-38910

federal register

Tuesday
July 20, 1993

VOL
58
ISS
137
JL
20
1993
UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Cont

Agricultu
See Comm
See Fores
NOTICES
Privacy A
System

Air Force
NOTICES
Environm
Base re
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Census B
NOTICES
Design alt

Children
NOTICES
Grants an
Family
pro

Commerc
See Censu
See Foreig
See Intern
See Natio
See Paten
NOTICES
Agency in
revie

Commodi
RULES
Loan and
Wheat a

Customs
NOTICES
Customho
Jacovin
Wisman
Wood, I

Defense D
See Air F

Educatio
RULES
Postsecon
Historic
hist
387

Employm
NOTICES
Adjustme
Bear Cr
Northru

Energy D
See Feder

Contents

Federal Register

Vol. 58, No. 137

Tuesday, July 20, 1993

Agriculture Department
See Commodity Credit Corporation
See Forest Service
NOTICES
Privacy Act:
System of records, 38738

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Homestead AFB, FL, 38751

Census Bureau
NOTICES
Design alternatives, 2000 Census; assessment criteria, 38742

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family support center and gateway demonstration programs, 38886

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 38742

Commodity Credit Corporation
RULES
Loan and purchase programs:
Wheat and feed grain (1993-1995 crops), 38663

Customs Service
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Jacovina, Joseph, 38809
Wismann, Enrique, 38810
Wood, Niebuhr & Co., 38810

Defense Department
See Air Force Department

Education Department
RULES
Postsecondary education:
Historically black colleges and universities and historically black graduate institutions programs, 38711

Employment and Training Administration
NOTICES
Adjustment assistance:
Bear Creek Operations, Inc., et al., 38786
Northrup Corp., 38787

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental restoration and waste management advisory groups; report to Congress; availability, 38751
Meetings:
National Electric and Magnetic Fields Advisory Committee, 38752
Natural gas exportation and importation:
Sonat Marketing Co., 38756

Environmental Protection Agency
RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 38816
PROPOSED RULES
Air programs:
Stratospheric ozone protection
Reporting and recordkeeping requirements, 38735
NOTICES
Agency information collection activities under OMB review, 38756
Confidential business information and data transfer to contractors, 38758
Hazardous waste:
Municipal solid waste—
South Dakota, 38759
Superfund; response and remedial actions, proposed settlements, etc.:
Pompey Site, NY, 38761
Superfund program:
Capacity assurance planning guidance; availability, 38761

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Bell Helicopter Textron, Inc. Model 230 helicopter, 38702, 38703
PROPOSED RULES
Airworthiness directives:
Beech, 38731
British Aerospace, 38732
Class D airspace, 38734
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Engine type certification handbook, 38804
Passenger facility charges; applications, etc.:
Aspen-Pitkin County Airport/Sardy Field, CO, 38804
Columbus Metropolitan Airport, GA, 38805
Gunnison County Airport, CO, 38806

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Illinois, 38761
Iowa, 38762
Minnesota, 38762
Missouri, 38763
Wisconsin, 38763

VOL
58
ISS
137
JUL
20
1993
UMI

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
BCH Energy, L.P., 38752
Hydroelectric applications, 38753
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Land Management Bureau, 38753
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 38753
American Electric Power Service Corp., 38754
El Paso Natural Gas Co., 38754
Las Vegas Energy Storage Limited Partnership; correction, 38813
Northwest Pipeline Corp.; correction, 38813
Panhandle Eastern Pipe Line Co., 38755
Tennessee Gas Pipeline Co., 38755
United Gas Pipe Line Co., 38755
Young Gas Storage Co., Ltd., 38755

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Clark County, WA, 38806

Federal Reserve System
RULES
Foreign gifts and decorations; CFR correction, 38702
NOTICES
Applications, hearings, determinations, etc.:
Norwest Corp., 38763
Norwest Corp. et al., 38764
Ohlhausen, George M., et al., 38764

Federal Trade Commission
NOTICES
Prohibited trade practices:
Levey, Michael S., et al., 38764

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Coastal California gnatcatcher, 38736
NOTICES
Endangered and threatened species:
Recovery plans—
Northeastern beach tiger beetle, 38782
Puritan tiger beetle, 38781

Food and Drug Administration
RULES
Human drugs:
Drugs for narcotic addiction treatment—
Levo-alpha-acetyl-methadol, 38704
NOTICES
Animal drugs, feeds, and related products:
Export applications—
MOXIDEC (moxidectin) tablets, 38770
Human drugs:
New drug applications—
Guidance document on refusal to file; availability, 38770
Licensed biological products alternatives to lot releases; guidance availability, 38771
Meetings:
Advisory committees, panels, etc., 38773

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Pennsylvania—
Merck & Co., Inc.; pharmaceutical manufacturing facility, 38749

Forest Service
NOTICES
Environmental statements; availability, etc.:
Helena National Forest, MT, 38740

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immune Deficiency Syndrome (AIDS) and human immunodeficiency virus (HIV)—
Dental reimbursement program, 38775
Geriatric medicine and dentistry faculty training projects, 38776
Nursing special projects, 38778

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Rental voucher and certificate programs; correction, 38813

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Industrial nitrocelluose from—
Brazil, 38750

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Delta Southern Railroad Co., 38786

Justice Department
See Parole Commission

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
California Desert District, CA, 38780
Motor vehicle use restrictions:
Colorado, 38781

National Commission on Financial Institution Reform, Recovery, and Enforcement
NOTICES
Meetings, 38796

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands king and tanner crab, 38727
Northern anchovy, 38726
South Atlantic snapper-grouper; correction, 38813
NOTICES
Meetings:
Pacific Fishery Management Council, 38751

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Fort Frederica National Monument, GA, 38783
Meetings:
Federal Subsistence Board; sheep season, 38783
Gates of Arctic National Park Subsistence Resource Commission, 38784
National Register of Historic Places:
Pending nominations, 38784

Nuclear Regulatory Commission
RULES
Duplication fees, 38665
Fee schedules; revision; and U.S. Court of Appeals decision, 38666
NOTICES
Environmental statements; availability, etc.:
Atlas Minerals Corp., 38796
Meetings:
Reactor Safeguards Advisory Committee, 38797, 38798
Meetings; Sunshine Act, 38811
Applications, hearings, determinations, etc.:
Columbus, OH, 38798
Eastern Testing & Inspection, Inc., 38800

Parole Commission
NOTICES
Meetings; Sunshine Act, 38811

Patent and Trademark Office
RULES
Patent cases:
Patent drawing standards, 38719

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
American Express Co. et al., 38787
Society National Bank et al., 38793

Personnel Management Office
RULES
Health benefits, Federal employees:
Inpatient hospital charges and program benefit payments; limitations, 38661

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline Safety Advisory Committees, 38807

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
MBS Clearing Corp.; correction, 38814
Options Clearing Corp., 38800
Philadelphia Stock Exchange, Inc., 38803

Thrift Supervision Office
PROPOSED RULES
Savings associations:
Operations—
Special mention assets, 38730

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration

Treasury Department
See Customs Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 38807, 38808
Committees; establishment, renewal, termination, etc.:
Public Securities Association Borrowing Advisory Committee, 38808

Separate Parts In This Issue

Part II
Environmental Protection Agency, 38816

Part III
Department of Health and Human Services, Administration for Children and Families, 38886

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

VOL
58
ISS
137
JL
20
1993
UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
890.....38661

7 CFR
1421.....38663

10 CFR
9.....38665
170.....38666
171.....38666

12 CFR
264b.....38702

Proposed Rules:
563.....38730

14 CFR
21 (2 documents).....38702, 38703
29 (2 documents).....38702, 38703

Proposed Rules:
39 (2 documents).....38731, 38732
71.....38734

21 CFR
291.....38704

34 CFR
608.....38711
609.....38711

37 CFR
1.....38719

40 CFR
51.....38816
52.....38816
260.....38816
266.....38816

Proposed Rules:
82.....38735

50 CFR
646.....38813
662.....38726
671.....38727

Proposed Rules:
17.....38736

Rules

This section c
contains regu
applicability a
are keyed to
Federal Regu
50 titles pursu

The Code of
the Superinte
new books ar
REGISTER is

OFFICE OF MANAGEM

5 CFR Part

RIN 3206–AE

Federal Em Program; L Hospital Ch Payments

AGENCY: Of Managemen

ACTION: Fin

SUMMARY: T Managemen regulations 7002(f) of th Reconciliat a limit on th Employees (FEHBP) be inpatient ho retired enro regulations that defined individual a circumstanc charges and take effect.

EFFECTIVE D

FOR FURTHE
Abby L. Blo

SUPPLEMENT
27, 1992, O regulations FR 10609) t implement Omnibus B 1990 (OBRA 508, which 1990. Sectio amended th 8904(b) to l benefit payr hospital ser enrolled inc

OPM rece including o

Rules and Regulations

Federal Register
Vol. 58, No. 137
Tuesday, July 20, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AE90

Federal Employees Health Benefits Program; Limitation on Inpatient Hospital Charges and FEHB Program Payments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that implement section 7002(f) of the Omnibus Budget Reconciliation Act of 1990. The law sets a limit on the charges and Federal Employees Health Benefits Program (FEHBP) benefit payments for certain inpatient hospital services received by a retired enrolled individual. These regulations finalize interim regulations that defined a retired enrolled individual and set forth the circumstances under which the limit on charges and FEHBP benefit payments take effect.

EFFECTIVE DATE: July 20, 1993.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On March 27, 1992, OPM issued interim regulations in the **Federal Register** (57 FR 10609) that amended part 890 to implement section 7002(f) of the Omnibus Budget Reconciliation Act of 1990 (OBRA of 1990), Public Law 101–508, which was enacted on November 5, 1990. Section 7002(f) of OBRA of 1990 amended the FEHBP law at 5 U.S.C. 8904(b) to limit the charges and FEHBP benefit payments for certain inpatient hospital services received by retired enrolled individuals.

OPM received six written comments, including one from an FEHBP fee-for-service plan, one from the underwriter for several FEHBP fee-for-service plans, two from individual medical institutions, and two from associations representing medical institutions.

Three of the commenters discussed the determination of the FEHBP payment amount. Under the interim regulation, the FEHBP plan pays the lowest of the diagnostic related group (DRG) equivalent amount, (the DRG equivalent amount is the amount, using information and instructions provided by the Department of Health and Human Services (HHS) and guidelines supplied by OPM, calculated by FEHBP plans to be equivalent to the amount paid by Medicare for inpatient hospital services under its prospective payment system (PPS)), the amount payable under the specific FEHBP plan's benefit structure, or the actual billed charges. Two of the commenters pointed out that under the Medicare Program the DRG amount is paid regardless of whether the actual charges are higher or lower than the DRG amount. The other commenter urged the elimination of the reference to actual billed charges because the FEHBP plan's payment arrangement may already incorporate an actual billed charges limitation.

After the first comment period closed, OPM met informally with various interested parties and discussed some aspects of the interim regulation. Included in the discussion was the option of requiring FEHBP plans always to pay the DRG equivalent amount. On January 15, 1993, OPM issued a 15-day extension of the comment period on the interim regulations (58 FR 4569). The extension of the comment period specifically mentioned the option of requiring FEHBP plans always to pay the DRG equivalent amount. During the extension of the comment period OPM received five written comments, including two from FEHBP fee-for-service plans, two from associations representing medical institutions, and one from a Federal employee. All of the five commenters supported a change in the regulations requiring FEHBP plans to always pay the DRG equivalent amount.

Based on our experience implementing the limitation on inpatient hospital charges and FEHBP payments during 1992, and the comments received during the regulatory process, OPM has decided to amend the interim regulations. These final regulations amend § 890.904 to require the FEHBP plans always to base their payment on the DRG equivalent amount, instead of the lowest of the DRG equivalent amount, the amount payable under the specific FEHBP plan's benefit structure, or the actual billed charges. Section 890.904 is amended to also clarify that the DRG equivalent amounts calculated by the FEHBP plans are not reduced by any Medicare deductible, coinsurance or lifetime limits, and that retired enrolled individuals covered by the limitation are responsible for paying any applicable FEHBP deductible, coinsurance, or copayments on benefit payments made under this subpart.

Continuing with the comments received during the first comment period, four of the commenters discussed the calculation by the FEHBP plans of the DRG equivalent amount. The commenters are concerned about whether the FEHBP plans calculate the DRG equivalent amount correctly and are specifically interested in how the plans make adjustments in the DRG equivalent amount for factors such as indirect medical education, organ acquisition and capital costs.

It is the intention of OPM and the FEHBP plans to calculate the DRG equivalent amount as closely as possible to the amount that would be calculated under the Medicare Program, and we have been working with the Health Care Financing Administration (HCFA) which administers the Medicare program to achieve this result. The FEHBP plans calculate the DRG equivalent payment amount by following instructions provided by HCFA in using the Medicare Grouper, Code Editor and Pricer software in combination with the provider specific data supplied by HCFA. It is OPM's understanding that this method of calculating the DRG equivalent amount accounts for all of the possible adjustments to the DRG amount with the exception of "pass-thru" adjustments. For the beginning of the 1992 coverage year, capital cost data was not available to the FEHBP plans. The FEHBP plans were advised to use "pass-thru" information multiplied by the length of stay to determine an equivalent capital cost adjustment amount. Capital cost information should be available to the FEHBP plans for the

1993 coverage year. HCFA's provider-specific pass-thru data are likewise used for the payment of direct medical education and organ acquisition expenses.

Two commenters discussed the section of the regulation that states that neither OPM nor the FEHBP plans will perform end-of-year settlements with, or make retroactive adjustments as a result of, retroactive changes in the Medicare payment calculation information to hospital providers who have received benefit payments under these regulations.

One commenter had three questions on this issue. The first was whether the prohibition on end-of-year settlements is a transition rule relating to the January 1, 1992, effective date of the limitation on charges and payments. The answer is that the prohibition on end-of-year settlements is not a transition rule. The second question was if the rule is not transitory does it prohibit carriers from making end-of-year settlements with hospitals for reasons other than retroactive changes in the Medicare payment calculation. The answer is that the rule does not prohibit carriers from making end-of-year settlements for reasons other than retroactive changes in the payment calculation, but we are not aware of any other reason under these regulations that would require end-of-year settlements. The third question was whether the prohibition on year-end settlements apply even if the settlements would result in a refund to the FEHBP plan. The answer is that the prohibition on year-end settlements apply even if the settlements would result in a refund to the FEHBP plan.

Another commenter expressed the belief that the law compels OPM and the FEHBP plans to recognize changes in DRG payment rates, including those made retroactively by Congress or HCFA. It is the clear intention of OPM and the FEHBP plans to pay a DRG equivalent amount that is as close as possible to the Medicare payment the provider would receive for the services rendered. This means that the FEHBP plans would attempt to pay a revised DRG equivalent amount on those very rare occasions when legislation retroactively changes the Medicare payment calculation information, to the extent that it is administratively feasible. The FEHBP plans receive the most current provider-specific information available from HCFA. As stated in § 890.907 of the regulations, the hospital provider information is currently being updated on an annual basis. However, OPM and HCFA are working toward increasing the updating cycle to a quarterly basis.

Two commenters stated that these regulations should establish a mechanism for a hospital provider to appeal a payment made by an FEHBP plan if the hospital believes that there has been an error in the determination of the DRG equivalent payment rate. The language in OBRA of 1990 which enacted these limits on inpatient hospital charges and payments did not provide for the establishment of an appeal mechanism. However, FEHBP plans have a clear obligation to work with hospital providers to determine the correct amounts and to make the necessary adjustments.

One commenter recommended that, given the administrative complexity of the DRG payment system, OPM should adopt HCFA's rules regarding the correction of billing and payment errors and the misspecification of DRG's. As in the case of an appeal mechanism, the OBRA of 1990 legislation did not provide for OPM to adopt HCFA's rules. However, FEHBP plans have the clear obligation to work with hospital providers to ensure that the correction of errors in billing and payment and the misspecification of DRG's are handled in the same fashion as disagreements. The plans and hospital providers must work together to correct errors.

One commenter recommended that OPM make available its estimate on the number and characteristics of the FEHBP patient population covered by this regulation, and the impact of this regulation on hospitals. We estimate that there are 305,000 individuals who meet the definition of retired enrolled individual and to whom the limits on inpatient hospital charges and payments apply. However we have no estimates on the characteristics of these individuals or how the implementation of the limits will impact on hospitals.

One commenter felt that OPM should provide guidance on identifying affected enrollees to carriers, should provide technical assistance to carriers and hospitals for tracking and billing for services provided to affected enrollees, and should adopt a consistent data set and reporting and review requirements for billing across FEHBP plans. OPM is aware of the importance of giving the FEHBP plans accurate information on how to implement this regulation. We have provided to the FEHBP plans guidance on identifying affected enrollees and technical assistance for tracking and billing for services provided to affected enrollees, and have adopted a consistent data set and reporting and review requirements for billing across FEHBP plans.

One commenter suggested that to avoid potential misunderstandings among hospitals, FEHBP plans, OPM, the Medicare program and FEHBP enrollees, OPM should establish an office and process to manage requests for clarifications or misunderstandings that may arise about the program and the limits on inpatient hospital charges and FEHBP payments. Long before OBRA of 1990 was enacted, OPM had established offices to administer the FEHBP. These offices have been managing the requests for clarifications that have arisen over the limits specified by OBRA of 1990.

One commenter thought it would be worthwhile if the FEHBP plans or OPM notify enrollees of the limits on inpatient hospital charges and FEHBP payments specified by OBRA of 1990 so that enrollees are aware of what the limits may mean for them. OPM recognized the importance of alerting enrollees to the possible impact of these limitations and took positive steps to inform enrollees. First, the 1991 Open Season Information and Instructions for Annuitants included an explanation of the limits that was prominently placed under the caption "Attention All Enrollees". Second, an explanation of the limits was included in all of the 1992 brochures of the FEHBP's fee-for-service plans.

One commenter stated that the extent to which the revised payment methodology changes FEHBP enrollee cost-sharing should be spelled out. As an example, the commenter asks if the computation of coinsurance changes to 20 percent of the DRG equivalent amount for a plan whose coinsurance is currently set at 20 percent of charges. The answer is yes, the coinsurance remains at 20 percent, but instead of being applied to the hospital charges the coinsurance will be applied to the DRG equivalent amount. The fact that coinsurance will be applied to the DRG equivalent amount will be explained in the FEHBP brochure of the fee-for-service plans, beginning in 1994.

One commenter, an underwriter of several FEHBP plans, stated that they have been processing 30 claims per week which require the calculation of the DRG equivalent amount. The commenter explained that these claims are requiring more work to process than other claims. For example, 50 percent of the bills require phone calls or letters requesting diagnosis and procedures codes, and this extra work is having an adverse impact on the FEHBP plans' claims processing costs.

OPM understands that processing these claims, because of the need to calculate the DRG equivalent amount,

may require more work than the average FEHBP claim. We also believe that since the processing of these claims started only in January of 1992 there is a learning curve involved and in time the plans and hospitals will become more efficient in processing these claims.

Waiver of the 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective immediately because the limitation of inpatient hospital charges and FEHBP payments enacted by Public Law 101–508 addressed in this regulation was effective beginning on January 1, 1992, and equity and fairness for hospitals and administrative simplicity for FEHBP plans are advanced by the amendment in this regulation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the health care coverage of Federal annuitants and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is adopting its interim regulations amending 5 CFR part 890 published on March 27, 1992, (57 FR 10609) as final rules with the following change:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064.

2. Section 890.904 is revised to read as follows:

§ 890.904 Determination of FEHB benefit payment.

The FEHB plan's benefit payment under this subpart is the amount calculated by the FEHB plan, using information and instructions provided by the Department of Health and Human Services (HHS) and guidelines specified by OPM, as equivalent to the Medicare Part A payment under the DRG-based PPS (this is, the amount payable before the Medicare deductible, coinsurance and lifetime limits are applies), reduced by any FEHB plan deductible, coisurance, copayment, or preadmission certification penalty that is the responsibility of the retired enrolled individual.

[FR Doc. 93–17121 Filed 7–19–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD12

1993–95 Wheat and Feed Grain Marketing Loan Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On March 4, 1993, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to marketing loan provisions for the 1993 through 1995 crops of wheat and feed grains. The Omnibus Budget Reconciliation Act of 1990 required implementation of marketing loan provisions for the 1993 through 1995 crops of wheat and feed grains in accordance with the Agricultural Act of 1949 (the 1949 Act), as amended, because the U.S. did not enter into an agricultural agreement in the Uruguay Round of the multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) by June 30, 1992. This final rule amends the regulations to set forth the marketing loan provisions for the 1993 through 1995 crops of wheat and feed grains. These regulations will allow the U.S. wheat and feed grains to remain globally competitive by enabling producers to repay nonrecourse commodity loans when prices fall below the price support rate.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, room 3742–S, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor." It has been determined that this final rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete in domestic or export markets.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of the implementation of each option is available on request from Craig Jagger, Agricultural Economist, Grains Analysis Division, ASCS, USDA, P.O. Box 2415, room 3740–S, Washington, DC 20013–2415 or call 202–720–4418.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are as follows:

Title	Number
Commodity loans and purchases	10.051
Feed grain production stabilization	10.055
Wheat production stabilization	10.058

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact

on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB #0560–0087 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The final rule does not revise or impose any new information collection or recordkeeping requirements from those approved by OMB.

Public Comments

This final rule amends 7 CFR part 1421 to set forth the determinations for implementing marketing loan provisions for the 1993 through 1995 crops of wheat and feed grains. General descriptions of the statutory basis for the determinations in this final rule were set forth at 58 FR 12338 (March 4, 1993).

The public was asked to comment on: (1) Whether marketing loan repayment rates should be established at the alternative repayment rate (ARR) when the world market price, adjusted to U.S. quality and location (i.e., the adjusted world price (AWP)) is less than the loan level, or by some other method; (2) whether the AWP's for wheat and feed grains should be established on a daily basis for each county based upon the previous day's market prices at appropriate U.S. terminal markets, as determined by CCC, adjusted to reflect quality and location (i.e., the same levels at which generic certificates can currently be exchanged for wheat and feed grains commonly referred to as "posted county prices" or (PCP's)), or by some other method; and (3) whether or not to allow producers who are eligible to receive a nonrecourse loan or purchase agreement be permitted to forgo obtaining the loan or purchase agreement in return for loan deficiency payments (LDP's).

A total of 15 respondents commented on the proposed rule for 1993–95 wheat and feed grain marketing loan provisions. Comments were received from 7 producers or producer groups, 3 grain industry organizations, a state and a county Agricultural Stabilization and Conservation (ASC) committee, 1 state Department of Agriculture, and 2 rural advocacy groups.

The following is a summary of the comments received by type of respondent.

TABLE 1.—SUMMARY OF COMMENTS ON MARKETING LOAN PROVISIONS, BY TYPE OF RESPONDENT

Type of respondent	Use PCP's			Use LDP's		
	Yes	No	NC	Yes	No	NC
7 Producers or producer organizations	4	[1]1	2	1	.....	6
3 Grain merchandising firms or assoc	3	.....	.....	2	.....	1
2 ASC committees	2	.....	.....	1	.....	1
2 Farm advocacy groups	.....	.....	2	.....	.....	2
1 State Department of Agriculture	1	.....	.....	.....	.....	1

NC denotes no comment was made or comments were not germane to the issues for which comments were requested.
[1] Requested that the marketing loan repayment rate be set at 70 percent of the basic loan rate.

Marketing Loan Repayment Rate

In accordance with section 107B(a)(4)(C), in the case of wheat, and section 105B(a)(4)(C), in the case of feed grains, of the 1949 Act, it is determined that when the AWP is less than the loan level, a producer may repay a nonrecourse loan at the ARR. For the purposes of this rule, the ARR equals the AWP, and the loan level determined for a crop equals the loan level and charges, plus interest.

AWP's

In accordance with section 107B(a)(4)(C), in the case of wheat, and section 105B(a)(4)(C), in the case of feed grains, of the 1949 Act, it is also determined that AWP's for wheat and feed grains be established on a daily basis for each county based upon the previous day's market prices at appropriate U.S. terminal markets, as determined by CCC, adjusted to reflect quality and location. Thus, the marketing loan repayment rates for the wheat and feed grain marketing loan provisions of the 1949 Act would be set at the same levels at which generic certificates can currently be exchanged for wheat and feed grains (i.e., PCP's).

The CCC has determined that this approach would (1) minimize potential loan forfeitures, (2) minimize the accumulation of wheat and feed grain stocks, (3) minimize the cost incurred by the Federal Government in storing wheat and feed grains, and (4) allow wheat and feed grains produced in the U.S. to be marketed freely and competitively, both domestically and internationally.

Loan Deficiency Payments

In accordance with sections 107B(b) and 105B(b) of the 1949 Act, it is proposed that producers who are eligible to receive a nonrecourse loan or purchase agreement be permitted to forgo obtaining the loan or purchase agreement in return for loan deficiency payments.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1444c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. In § 1421.1, paragraph (c)(1) is revised to read as follows:

§ 1421.1 Applicability.

* * * * *

(c)(1) Price support loans, purchase agreements, and loan deficiency payments shall be available as provided in this part with regard to barley, corn,

grain sorghum, oats, rye, and wheat produced in the U.S.

* * * * *

3. In § 1421.20, paragraph (b) is revised to read as follows:

§ 1421.20 Release of the commodity pledged as collateral for a loan.

* * * * *

(b) CCC may allow a producer to establish a loan repayment rate determined in accordance with § 1421.25 (a)(1)(ii), (b)(2), or (d)(2) on Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, provided the producer complies with all terms and conditions set forth on Form CCC–681–1. If a producer fails to repay a loan within the time period prescribed by CCC in accordance with the terms and conditions of Form CCC–681–1 and the commodity pledged as collateral for such loan has been delivered to a buyer in accordance with Form CCC–681–1, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25 (a)(1)(ii), (b)(2), or (d)(2).

* * * * *

4. In § 1421.25:

A. Paragraph (d) is redesignated as paragraph (f), and revised,

B. Paragraph (e) is removed, and

C. New paragraphs (d) and (e) are added to read as follows:

§ 1421.25 Market price repayments.

* * * * *

(d) For 1993 through 1995 crops of barley, corn, grain sorghum, oats, rye, and wheat, a producer may repay a nonrecourse loan at a level that is the lesser of:

(1) The loan level and charges, plus interest determined for such crop; or

(2) The alternative repayment rate (ARR) for barley, corn, grain sorghum, oats, rye, and wheat.

(e) The ARR for barley, corn, grain sorghum, oats, rye, and wheat will be established individually on a daily basis in each county based upon the previous day's market prices at appropriate U.S. terminal markets, as determined by CCC, adjusted to reflect quality and location.

(f) To the extent practicable, CCC shall determine and announce the repayment levels for each crop of a commodity as follows:

(1) On a weekly basis for rice and oilseeds, except soybeans, and

(2) On a daily basis for barley, corn, grain sorghum, oats, rye, soybeans, and wheat.

Signed on July 11, 1993 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–17117 Filed 7–19–93; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AE79

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendment is necessary to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: July 20, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas E. Smith, Public Document Room Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 202–634–3366.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at 2120 L Street NW. (Lower Level), Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the duplication of records at the PDR have traditionally been accommodated by a duplicating service contractor selected by the NRC. The schedule of duplication charges to the public established in the duplicating service contract is set forth in 10 CFR 9.35 of the Commission's regulations. The NRC has recently awarded a new duplicating service contract. The revised fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the duplication of records at the PDR.

Because this is an amendment dealing with agency practice and procedure, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on July 2, 1993, that the new contract was being awarded and that the new prices would go into effect on July 13, 1993. The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with agency procedures.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0043.

Regulatory Analysis

The Nuclear Regulatory Commission is amending its regulations governing the rates charged for copying records at the NRC Public Document Room due to the signing of a new contract for the copying of records. This rule has no significant impact on health, safety or the environment. There is no substantial cost to licensees, the NRC or other Federal agencies.

Backfit Analysis

The NRC has determined that the Backfit Rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule, because these amendments of regulations do not involve any provisions which would impose backfits as defined in 10 CFR 50.109 (a)(1).

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read in part as follows:

Authority: Sec. 161, 68 Stat, 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

VOL 58 ISS 137 JL 20 1993 UMI

Subpart A also issued under 5 U.S.C. 552 and 31 U.S.C. 9701; Pub. L. 99–570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.35, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), 2120 L Street, NW. (Lower Level), Washington, DC. by the duplicating service contractor are as follows:

(i) Paper to paper reproduction is $0.09 per page up to and including 8½×14 inches. Pages 11×17 inches are $0.20 each. Pages larger than 11×17 inches, including drawings, are $1.00 each.

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Dated at Rockville, Maryland this 14th day of July, 1993.

For the Nuclear Regulatory Commission

Samuel J. Chilk,

Secretary of the Commission

[FR Doc. 93–17181 Filed 7–19–93; 8:45 am]

BILLING CODE 7590–01–P

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10 CFR Parts 170 and 171

RIN 3150–AE49

FY 1991 and 1992 Final Rule Implementing the U.S. Court of Appeals Decision and Revision of Fee Schedules; 100% Fee Recovery, FY 1993

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101–508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1993 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1993 is approximately $518.9 million.

In addition, this rule implements a decision of the U.S. Court of Appeals for the District of Columbia Circuit dated March 16, 1993, that remanded to the NRC portions of the FY 1991 annual fee rule. The remanded portions pertain to: (1) The NRC's decision to exempt from annual fees nonprofit educational institutions, but not other enterprises, on the ground in part that educational institutions are unable to pass through the costs of annual fees to their customers; and (2) the Commission's decision to allocate generic costs associated with low-level waste (LLW) disposal by groups of licensees, rather than by individual licensee. Because the court's decision was also extended to cover the NRC's FY 1992 annual fee rule by subsequent court order, this final rule addresses the FY 1992 rule as well. In this final rule, the NRC has retroactive to FY 1991, revoked the exemption from annual fees for nonprofit educational institutions and has changed its method of allocating the budgeted cost for low-level waste activities. These approaches are consistent with the court's decision.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4301.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to comments.
III. Final action—changes included in final rule.
IV. Section-by-section analysis.
V. Environmental impact: Categorical exclusion.
VI. Paperwork reduction act statement.
VII. Regulatory analysis.
VIII. Regulatory flexibility analysis.
IX. Backfit analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees to NRC applicants and licensees. Public Law 101–576, the Chief Financial Officers Act of 1990 (CFO Act), enacted November 15, 1990, requires that the NRC perform a biennial review of its fees and other charges imposed by the agency and revise those charges to reflect costs incurred in providing those services.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed are generally for the review of applications for the issuance of new licenses or approvals, amendments to or renewal of licenses or approvals, and inspections of licensed activities. Second, annual fees, established at 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published three final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the part 170 professional hourly rate and the materials licensing and inspection fees, as well as the part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and method for determining the 10 CFR part 170 hourly rate and fees, and the 10 CFR part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties; the U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993. The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993. The court case and the NRC's response to the issues remanded by the court are discussed in Section II of this final rule.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license

fees that were previously billed every six months.

The limited change to 10 CFR part 171 adjusted the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower-tier small entity fee of $400 per licensed category was established for small businesses and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), the NRC published a final rule in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992. The basic methodology used in the FY 1992 final rule was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472).

Section 2903(c) of the Energy Policy Act (enacted in October 1992) requires the NRC to undertake a broad review of its annual fee policies under section 6101(c) of OBRA–90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC published for public comment a separate notice in the **Federal Register** on April 19, 1993 (58 FR 21116). The 90-day public comment period for this notice expires on July 19, 1993.

On April 23, 1993 (58 FR 21662), the NRC published the proposed rule for FY 1993 establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1993, less the appropriation received from the NWF. The basic methodology used in the proposed rule was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691). Because of the need to collect annual fees for FY 1993 prior to October 1, 1993, the Commission is promulgating this final rule before it completes the user fee review mandated by the Energy Policy Act. Changes in Commission policy resulting from that review will be incorporated in fee schedules promulgated in future years. The NRC placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman building. Workpapers relating to this final rule will also be placed in the Public Document Room.

II. Responses to Comments

The NRC received more than 500 public comments on the proposed rule. Although the comment period expired on May 24, 1993, the NRC reviewed and evaluated all comments received prior to June 25, 1993. Copies of all comment letters received are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC.

Many of the comments were similar in nature. For evaluation purposes, these comments have been divided into two groups. The first group deals with the remand issues of the U.S. Court of Appeals for the District of Columbia Circuit case decided on March 16, 1993. The second group deals with the remaining comments on the FY 1993 proposed rule. The comments are as follows:

A. Comments Regarding U.S. Court of Appeals for the District of Columbia Circuit Remand Decision—FY 1991—FY 1993 Fee Schedules

1. Taking Account of Licensees' Ability To Pass Through Fee Costs to Customers

Comment. A number of comments were received on the question of setting NRC annual fees in part on the basis of whether the licensee can passthrough the costs of those fees to its customers. The NRC had proposed abandoning consideration of passthrough capability, a factor it previously had used in part to justify its fee exemption for certain nonprofit educational institutions, on the grounds that to evaluate each licensee's passthrough ability was an extremely difficult administrative task that required expertise and information unavailable to the agency.

Many commenters supported the NRC's approach of not setting any license fees on the basis of passthrough, due to the difficulties inherent in its use. One stated that to do otherwise would be cumbersome and subjective, and cause fees to vary in response to changing market conditions. Another commenter noted that if passthrough were used, the exempted fees would almost certainly be paid by power reactors, which have trouble passing on their costs due to fee schedules established by public utility commissions. One commenter stated that if foreign competition created a passthrough problem, Congress and not the NRC was the proper forum in which to seek relief for passthrough considerations.

Another group of commenters disagreed with the NRC's suggested approach, and argued that passthrough should be considered when devising a fee schedule. Many domestic uranium producers told the NRC that their industry cannot passthrough costs to customers due to foreign competition, lower demand and long-term fixed price contracts. Another commenter suggested that nuclear medicine departments should be eligible for exemption from fees due to passthrough considerations. They are often reimbursed for patient care by the Health Care Financing Administration, which does not take NRC fees into account. Commenters also claimed that, contrary to the NRC's stated position, the agency does have the necessary expertise to evaluate licensees' passthrough capacity and must do so under both OBRA–90 and the March 16, 1993, Court of Appeals decision. One commenter stated that the NRC could simply request an affidavit from the licensee explaining how the licensee was unable to passthrough its fee costs.

Response. After carefully considering the comments received on this difficult issue, the Commission has decided to adopt its proposal not to use passthrough as a factor for any licensee when setting that licensee's fee schedule. The Commission recognizes that all licensees dislike paying user fees and that such fees must be taken into account as part of running a business or other enterprise. However, the Commission does not believe it has the expertise or information needed to undertake the subtle and complex inquiry whether in a market economy particular licensees can or cannot easily recapture the costs of annual fees from their customers. As it stated in the proposed rule, the Commission "is not a financial regulatory agency, and does not possess the knowledge or resources necessary to continuously evaluate purely business factors. Such an effort would require the hiring of financial specialists and * * * could (lead to) higher fees charged to licensees to pay for an expanded bureaucracy to determine if * * * licensee(s) can pass on the cost of (their) fees." (58 FR 21662).

Although in the final FY 1991 annual fee rule the Commission stated that passthrough was a factor justifying the exemption of nonprofit educational institutions from fees, the Commission

had no empirical data on which it based its belief that colleges and universities could not pass through fee costs. Rather, it acted primarily on policy grounds, in an effort to aid nuclear-related education for the benefits it provides to the nuclear industry and society as a whole. On further reflection, the Commission now acknowledges that these institutions are not structurally incapable of compensating for increased costs, such as NRC fees, by means of higher tuition (prices) or budget cuts, in the same manner as profit-oriented licensees.

The Commission disagrees with those commenters who claim the NRC must by law set fees at least in part on the basis of passthrough considerations. In its decision, the D.C. Circuit clearly stated that "(t)he statutory language and legislative history (of OBRA–90) do not, in our view, add up to an inexorable mandate to protect classes of licensees with limited ability to pass fees forward." *Allied-Signal* at 5. The court went on to say that "(b)ecause (price) elasticities are typically hard to discover with much confidence, the Commission's refusal to read (OBRA–90) as a rigid mandate to do so is not only understandable but reasonable." *Allied-Signal* at 6–7. The Commission agrees with these observations, which defeat the suggestion that the Commission has a statutory obligation to exempt licensees who cannot pass through their fees to customers.

After full consideration of the passthrough question, the Commission has concluded that it cannot set fees using passthrough considerations with reasonable accuracy and at reasonable cost even for classes of licensees with few members. If the Commission were to attempt such an endeavor, it would require a comprehensive, on-going audit of each licensee's business and the industry of which it was a part. The Commission would have to examine tax returns, financial statements, and other commercial data that some licensees might be reluctant to reveal. The Commission could not simply rely on self-serving affidavits or statements by licensees themselves on passthrough problems, without jeopardizing the integrity of the 100 percent fee recovery system mandated by the Congress. Instead, the Commission would have to verify its licensees' submissions independently.

Even if the Commission could obtain all the necessary information, it does not have the business expertise or the resources to evaluate accurately that information in order to make a passthrough determination. Because this is the case, the Commission will not establish fees or base any exemptions on the alleged inability of a licensee to pass through fee costs to its customers.

This policy applies to all licensees, including those companies with long-term, fixed price contracts. In that regard, the Commission notes that companies who do business using such contracts are continuously liable for changes in the tax codes and other Federal and State regulations that occur subsequent to the commencement of these contracts, like all other enterprises active in the American economy. The Commission believes the current situation is no different. The Commission is sympathetic to licensees' complaints on the passthrough issue, but believes that it has no other choice but to pursue the course of action it has chosen.

2. Fee Exemption for Nonprofit Educational Institutions

Comment. The Commission solicited comments on whether to continue the exemption from fees for nonprofit educational institutions. The Commission had proposed continuing the exemption solely on the grounds that nuclear-related education provides a benefit both to the nuclear industry and society at large. See Final FY 1991 Rule, 56 FR 31477 (1991). Responding to the court's suggestion that educational licensees might be differentiated from profit-oriented or other licensees, the Commission requested in particular comments on whether nuclear education might "yield exceptionally large externalized benefits"—i.e., exceptional benefits that "cannot be captured in tuition or other market prices." *Allied-Signal* at 8. The Commission also "invite(d) public comments on whether to discontinue the educational exemption" entirely. 58 FR 21664 (1993).

Many of the comments received on this issue supported retaining the exemption for nonprofit educational institutions. These commenters, mostly colleges and universities, asserted that they provide a great benefit to society through nuclear-related education, and that they would be hard-pressed to sustain their programs in the face of newly imposed fees. Some claimed that if the exemption were removed, they would be forced to shut down or drastically curtail their nuclear education programs. One commenter suggested that if fees were to be charged, that it be done on a graduated basis, presumably to lessen the burden on certain licensees. Another commenter made the point that fees should not be charged to programs receiving support from the Federal government in other ways. Some commenters urged not only keeping the exemption in place, but expanding it to include museums and other nonprofit institutes. No commenter, however, addressed in any meaningful detail the question whether educational activities yielded "exceptionally large externalized benefits", the distinction emphasized by the court as a possible alternative justification for special generic treatment of educational institutions.

Other commenters instead argued that the generic educational exemption should be abandoned. A nonprofit institute asserted that if it had to pay fees to the NRC, others should as well. It believed that if all nonprofit educational institutions paid "their fair share," the fee burden on those institutions would be lowered. Similarly, a nonprofit hospital called for ending the educational exemption to create a more equitable fee schedule. The commenter also believed that the exemption penalized those nonprofit hospitals that were not covered by the educational exemption competing for scarce research funds and limited numbers of patients. Another commenter, a utility, made the argument that the NRC should only be concerned with guarding the public health and safety, not subsidizing colleges and universities. It too called for an end to the exemption. And a major fuel facility asserted that the NRC had no discretion to exempt colleges and universities from paying fees, and that the exemption should be discontinued.

Response. The Commission finds the choice before it on this issue a difficult one. As a general principle, the Commission favored a fee schedule under which each NRC licensee, including nonprofit educational institutions, pays its fair share of NRC costs in accordance with the mandate of Congress. Under such an approach, the NRC does not have to make difficult normative judgments regarding the relative social value of the benefits provided by the activities of NRC's licensees or equally difficult economic judgments regarding the impact of annual fees on the availability of those benefits. Nevertheless, the Commission recognizes that imposing fees on beneficial activities creates some risk, often very difficult to ascertain quantitatively, of cutting back on benefits. The Commission is reluctant, in particular, to impose fees that could result in diminishing the already dwindling number of university programs devoted to the nuclear sciences. But the Commission is not in a position to analyze with any

VOL 58 ISS 137 JL 20 1993 UMI

confidence the potential burden on educational benefits in comparison with the burdens that fees will impose on the beneficial activities of other licensees.

In the wake of the court's decision, the Commission issued a proposed rule that would continue in place the educational exemption. The Commission now has reluctantly concluded that in view of the court decision and the administrative record developed during the comment period, it cannot justify a generic "educational" exemption for FY 1993. Nor can it adequately rationalize the generic exemption previously allowed in FY 1991 and FY 1992.

Although the Commission had anticipated that colleges and universities benefiting from the exemption would take up the Commission's invitation to discuss and elaborate upon the "exceptionally large externalized benefits" point made by the court, they did not do so. Nor does the Commission have in hand sufficient economic data, analyses, or other support for issuing an across-the-board exemption to nonprofit educational institutions. As a result, the Commission lacks an adequate administrative record on which to base a continued generic exemption of all nonprofit educational institutions.

This is especially true in light of the court decision, which forced the Commission to acknowledge the serious weakness of, and abandon, the passthrough argument formerly made on behalf of these institutions. As the Commission has stated above, that argument was not based on empirical data. Passthrough ability in any event is an unworkable standard for setting annual fees. Without either the passthrough rationale or a persuasive "exceptionally large externalized benefits" rationale, the Commission has no choice but to charge colleges and universities fees appropriate to their status as licensees, just as it charges other classes of licensees who can and do claim that they provide important benefits to society that are worthy of generic fee exemptions.

The Commission acknowledges the seeming paradox in charging fees to a program that receives support from other agencies of the Federal government. However, it believes that it has no choice, given 100 percent recovery requirements and fairness and equity, but to charge all licensees whenever possible. For instance, the NRC levies both annual and user fees on all other NRC licensees including nonprofit, tax-exempt entities such as hospitals, museums, and institutes. Furthermore, the NRC also directly charges annual fees to other Federal agencies such as the Department of Veterans Affairs, the National Institutes of Health and the Department of Defense. Charging annual fees to colleges and universities is consistent with the Commission's preferred approach to fee recovery and Congressional guidance that NRC establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of the charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees.

The Commission was also struck by the comments that attacked the educational exemption and urged its abandonment. Because those arguments were made by organizations such as hospitals, utilities and fuel facilities that presumably benefit from an educated nuclear workforce, the Commission read these comments as an indication that at least some assumed beneficiaries of education do not view it quite so positively as the Commission had believed. This in turn strengthened the Commission's view that the mere observation that education benefits society is not alone enough to support a generic exemption.

The Commission, however, is not unsympathetic to the problems this new course of action is likely to cause many formerly exempt nonprofit educational institutions. Because this is a change in policy, the Commission would like to call to the attention of affected licensees the possibility of paying the annual fee on an installment basis under 10 CFR 15.35(b), subject to agency approval and demonstrated need on the part of the requesting licensee.[1]

The Commission also notes that, like all other licensees, affected nonprofit educational licensees can request individual exemptions, under 10 CFR 171.11(b) or (d) for university research reactors or materials licenses. Some commenters expressed particular concern over the fate of research reactors. Any licensee seeking an individual exemption under the "public interest" standard in § 171.11(b) would be expected, as part of its showing that exceptional treatment is justified, to demonstrate severe financial hardship resulting from the newly imposed annual fees as well as significant "externalized benefits". This could include benefits to other NRC licensees.

[1] Requests to pay fees on an installment basis must be submitted in writing to the NRC, Office of the Controller, Division of Accounting and Finance, Washington, DC 20555. All requests must furnish satisfactory evidence of inability to pay the debt in one lump sum.

The Commission will be examining the general issue of exempting nonprofit educational institutions as part of its Energy Policy Act-mandated review, and may choose following that review to modify further its policy in this area or to recommend Congressional action. For FY 1993, however, formerly exempt nonprofit educational institutions must pay annual fees based on the preexisting fee categories into which they fall.

On a practical note, the Commission has concluded that by eliminating the exemption for past years, it must refund a portion of the surcharge paid by those reactor licensees that would otherwise have been paid by the colleges and universities. The Commission will not (and by law cannot) retroactively collect these fees from the nonprofit educational institutions for FY 1991 and FY 1992. In the near future, the NRC will separately publish final revised FY 1991 and FY 1992 schedules for reactor surcharges resulting from the revocation of this exemption. Requests for refunds should not be filed with the NRC prior to publication of these schedules.

Finally, the Commission recognizes that its action in this rule is limited only to revoking the exemption for nonprofit educational institutions from 10 CFR part 171 annual fees. The decision leaves intact the nonprofit educational exemption contained in 10 CFR part 170 (from IOAA fees). The Commission is not revoking that exemption at this time because it did not seek comments on that approach in this rulemaking. The Commission intends to evaluate that issue, as well as the wisdom of its decision regarding part 171 fees, as part of its Energy Policy Act review. Obviously, after that review, if the Commission continues to believe it is appropriate to charge nonprofit educational institutions part 171 annual fees, there is a substantial likelihood that this approach will be adopted with regard to part 170 IOAA fees as well.

3. Allocation of Low-Level Waste Costs

In FY 1991 and FY 1992, the NRC allocated low-level waste (LLW) costs by the amount of waste disposed per class of licensee, dividing the costs equally within each class. This method of cost allocation was challenged by the petitioners in *Allied-Signal*. In its decision, the court remanded the issue of LLW cost allocation to the Commission. The court stated that the NRC's class-based LLW approach required it to attempt to allocate those costs licensee-by-licensee. An integral part of the court's rationale was that it believed that NRC must have individual licensee data on LLW disposal, and if so there was no reason not to break down

this cost allocation from the class level to the individual level.

In response to the court decision, the NRC in its proposed FY 1993 annual fee rule requested comments on four alternative methods of LLW cost allocation and possible variations of those alternatives. A number of comments were received.

Comment. Comments were received in support of each of the four alternatives for allocating Low-Level Waste (LLW) costs that were included in the proposed rule. Some commenters also recommended variations of the four basic alternatives. The alternatives were:

(1) Assess all licensees that generate LLW a uniform annual fee.

(2) Allocate the LLW budgeted cost based on the amount of LLW disposed of by groups of licensees and assess each licensee in a group the same annual fee as was done in the FY 1991 and FY 1992 rules.

(3) Assess each licensee an annual fee based on the amount of waste generated/disposed by the individual licensee, as was suggested by Allied-Signal and by the court.

(4) Base the LLW Annual Fees on Curies Generated or Disposed of

There was no consensus among the commenters regarding a preferred option. Again, the Commission is faced with a difficult policy decision.

Commenters that supported Alternative 1 (uniform fee) argued primarily that the real benefit of LLW disposal is merely the availability of such services and all generators have an equal need for this availability. In support of this argument, commenters noted that if one class of licensee (e.g., power reactors) did not exist, there would still be the same need for a regulatory framework for future disposal, and the need is independent of the amount of waste being generated today. The cost relationship to the volume of waste disposal, according to these commenters, is a contractual matter best handled between the vendor and customer. That is, the benefit will be reflected in the fees that those licensees will be required to pay to the vendors when disposing of their LLW. Most of the commenters that supported Alternative 1 believed that Alternatives 3 and 4 were not acceptable because of the problems associated with the equitable distribution of the annual fee to all applicable licensees. Commenters noted that the inequities in this approach are that some licensees are storing, either by choice or regulation, their LLW. Some commenters believe that Alternative 2 is not equitable, given the uniform need among all classes of LLW generators for a regulatory framework for future LLW disposal.

Several commenters supported Alternative 2 (uniform fee by groups of licensees) as the best and fairest method among the four alternatives. One commenter stated that this is the best alternative in terms of its fairness to licensees of different sizes and different types of waste, while not being too cumbersome to effectively implement. They indicated that, although not exact by specific licensee, Alternative 2 provides enough information to reasonably provide an equitable method for allocating fees at the present time among those who will derive future benefits from regulatory services associated with low-level waste. Commenters noted that the current volume of LLW disposed of by each class is the best gross indicator of the relative future benefit of LLW disposal sites to licensees. Other commenters preferred Alternative 2 because it is the clearest and most predictable to the waste generator and easiest for the NRC to administer. These commenters also noted that calculating the annual LLW surcharge based on individual licensees' current volume of waste (Alternative 3) would be administratively burdensome and might not bear a close relationship to the amount of waste those licensees will generate in the future.

Several commenters supported Alternative 3, which would base the LLW surcharge on the amount of waste generated or disposed of by each individual licensee. These commenters believe that Alternative 3 should be adopted since the NRC has not provided sufficient reasons to deviate from the individualized approach suggested in the decision by the U.S. Court of Appeals. They state that the other three alternatives are unfair.

One commenter supported Alternative 4 which would base the LLW surcharge on the curies of waste generated. Other commenters, however, indicated that curies generated is not a good indicator of the regulatory benefits of the NRC regulatory program. One commenter suggested a combination of Alternatives 1, 3 and 4 such that the fee assessment for LLW would include a minimum fee for all users with the largest portion of the fee being calculated based on volume generated with an additional assessment for activity (Class B and C waste) which would require stricter long term monitoring at any storage facility.

Response. Based on a careful evaluation of the comments, the Commission concludes that, on balance, a variant of Alternative 1 provides a practical, fair and equitable allocation of the NRC LLW costs to the various NRC licensees. The Commission has concluded that there should be two LLW surcharges—one for large waste generators and another for small waste generators. This conclusion reflects (1) the purpose of NRC activities whose costs are included in the surcharge; (2) existing data on which to base the fees; and (3) the Commission's duty to allocate fee burdens fairly and equitably.

The purpose of FY 1991–FY 1993 LLW waste activities is to implement the Low-Level Radioactive Waste Policy Amendments Act of 1985, and the Atomic Energy Act, which require the NRC to perform certain generic activities. These activities include developing rules, policies and guidance, performing research, and providing advice to and consultation of LLW compacts and Agreement States who will license some of the future LLW disposal sites. The budgeted costs for most of NRC generic activities are generally recovered in annual fees from the class of licensees for whom the activities are used to directly regulate. (For example, reactor research is recovered from reactor licensees, and guidance and rule development for regulation of uranium producers is recovered from uranium recovery licensees.) However, for LLW generic activities, there is no disposal site licensed by the NRC from whom to recover the generic budgeted costs that must be incurred. Since there is no LLW disposal site licensee, these costs must be allocated to other NRC licensees in order to recover 100 percent of the NRC budget as required by OBRA–90. In addition, the LLW costs budgeted by NRC in FY 1991, FY 1992, and FY 1993 are not for the wastes being disposed during these years or prior years, but are devoted to creating the regulatory framework for licensing and regulating future LLW disposal sites.[2] In fact, the sites where LLW was disposed of in FY 1991–1993 are licensed and regulated by Agreement States, not the NRC.

Given the 100 percent budget recovery requirement of OBRA–90, and the fact that there are no NRC LLW licensees from whom to recover FY 1991–1993 budgeted costs for NRC generic activities, the basic question is how should NRC allocate these costs. Congress spoke briefly to this issue in developing OBRA–90 by recognizing that certain expenses cannot be attributed directly either to an

[2] In the FY 1991 rule, the NRC indicated that "once the NRC issues a license to dispose of byproduct LLW, the Commission will reconsider the assessment of generic costs attributable to LLW disposal activities" (56 FR 31487; July 10, 1991).

VOL 58 ISS 137 JL 20 1993 UMI

individual licensee or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge, even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. 1356 Cong Rec. at H12692, 3.

Consistent with the Congressional guidance, the Commission believes that the LLW surcharge should be allocated based on the fundamental concept that all classes of NRC licensees which generate a substantial amount of LLW should be assessed annual fees to cover the agency's generic LLW costs.[3] Each of the alternatives in the proposed rule which were endorsed by various commenters, supports, to varying degrees, this allocation concept and provides various degrees of fairness and equity because of available data and the inherent limitations of the allocation method.

Alternative 4's "curie" approach had little support from the commenters and the Commission believes it is the least preferable alternative since volume is at least as good of an indicator, indeed probably a better indicator, of the benefits of the NRC generic low-level waste activities. In addition, cost allocation by volume is more practical to implement.

Alternatives 3 and 4, reallocating LLW disposal costs on an individual rather than class basis, may appear to some to be fairer than the current system, since each licensee would pay a fee more precisely tied to the amount of waste it currently generates or disposes of. The Commission, however, sees significant problems in an individualized approach, given the data the NRC has for FYs 1991–1993. As indicated by some of the commenters, the NRC has data on the amount of LLW disposed of by individual licensees. However, currently the NRC does not have data on the amount of waste generated for each of the over 1,000 individual licensees that generate LLW.[4] The Commission also believes that it is not practical, and probably not even possible, to determine retroactively the amount of waste generated by each individual licensee for FY 1993 and prior years since the time to capture this data has passed for many licensees.

The Commission has concluded that using available individual waste *disposal* data (Alternative 3) would result in grossly unfair annual fees since some licensees that generate LLW would not pay any fees. This would occur because licensees that generate LLW can dispose of or temporarily store the LLW. Those licensees who temporarily store their waste would not pay an annual fee if individual disposal data are used. Some licensees store their LLW because they are prohibited from disposing of their waste or because they choose not to do so for the near term. Increasingly, for example, licensees (such as those in Michigan) cannot dispose of their waste because of restrictions in the LLW Policy Act.[5] Thus, given the current situation with LLW disposal in the U.S., basing fees on individual disposal data could, in the Commission's view, result in some licensees paying the full generic costs of future LLW licensing, and some paying nothing while all licensees that generate LLW will benefit from the NRC generic LLW activities. In addition to being unfair, using individual disposal data would result in the significant administrative burden of "translating" raw and coded disposal data into usable licensee-by-licensee bills.

Some commenters point out that although the use of disposal data could result in some licensees paying no fees, they would be charged disproportionately high annual fees in the future when they do dispose of their LLW. This is not necessarily true, since many of the ongoing LLW generic activities are not recurring-type activities. For example, once the research, performance assessment, or development of rules and regulatory guides is completed, the staff does not expect to perform that work again in the future. Therefore, if licensees pay in the future they would not be required to pay for these generic regulatory costs.

Alternative 2's class-based approach would eliminate the major negative associated with Alternative 3. That is, each licensee that generates waste would pay an annual fee to recover the NRC costs that are necessary to establish and maintain a regulatory program for LLW disposal. The annual fee would be based on the average amount of waste disposed per licensee in a class. Stated another way, the average LLW disposed per class of licensees would be used as a proxy for generation. Alternative 2, however, has drawbacks for those classes with a relatively small number of licensees, such as the fuel facilities. With a small number of licensees in a class, abnormally high or abnormally low volumes of LLW disposed of by one or two licensees may skew the average so that it would no longer be a good proxy for LLW generation for that class.

As several commenters noted, Alternative 1's flat fee approach is consistent with the purpose of the FY 1991–1993 LLW activities. However, the guidance from the Congress of fairness and equity dictates that the NRC not charge the same fee for those groups of licensees that are likely to generate significantly different amounts of LLW. Because the NRC does not have sufficient data on LLW *generated* to make a refined differentiation by individual licensee or small groups, the Commission believes that fairness and equity can best be accomplished by creating two groups—large generators and small generators and charging each a flat fee. This variant of Alternative 1 would eliminate the problem caused by using groups with a small number of licensees. This variant of Alternative 1 will also result in all LLW-producing licensees paying a fairly determined fee, and avoid the gross inequities of total fee avoidance or disproportionately large fees for smaller licensees that would have resulted under the other alternatives and their variations put forth for comment in the proposed rule.

The large generators are comprised of power reactors and large fuel facilities. Waste generators in this group are each expected to generate more than 1,000 cubic feet of LLW per year. The small generators consist of all other LLW-producing licensees. The amount of the costs allocated to the two groups is estimated based on the historical average amount of waste disposed by the two groups. This reflects an 82 percent/18 percent split between the large and small groups. Within these two groups, each licensee would pay the same LLW fee (surcharge). In FY 1993, that amount is $61,100 for large

[3] Fees for the review of applications for LLW disposal sites that are submitted to NRC will be recovered under 10 CFR part 170 from the specific applicant.

[4] The Commission is evaluating whether it would be beneficial to its LLW and other regulatory programs to obtain individual LLW generation data. If the Commission does acquire such data, then the Commission would evaluate whether such data could form the basis for a revised approach for assessing the LLW surcharge.

[5] The Secretary of Energy stated in his "1991 Annual Report on Low-Level Waste Management Progress" that:

As States continued to work toward providing management and disposal capability for their low-level radioactive waste, they also grappled with the possibility of no longer having access to the low-level radioactive waste disposal facilities now operating in Nevada, South Carolina, and Washington after December 31, 1992. The Act allows those three sites to close at the end of 1992. Should this occur, on January 1, 1993, as much as 90 percent of the volume of the Nation's low-level radioactive waste not disposed by that date could be required to be stored at the point of generation, which would raise numerous heath, safety, financial, and legal issues.

generators and $1,100 for small generators.

On remand from the Court of Appeals, the Commission also adopts this approach for FY 1991 and FY 1992. This will result in refunds for some large and small LLW generators. In the near future, the NRC will separately publish final revised FY 1991 and FY 1992 fee schedules for low-level waste surcharges resulting from changing the method of allocating NRC LLW budgeted generic costs. Requests for refunds should not be filed with the NRC prior to publication of these schedules.

B. Other Comments

1. *Comment.* Many commenters stated that they were concerned about the size of the fee increases, particularly the 10 CFR part 170 inspection fees for well logging, radiography and broad scope medical programs. These commenters indicated that they believe the fees are grossly exorbitant, punitive, and self defeating and that they cannot afford to pay them. A large number of small gauge users commented that because of the fees they are unable to do the testing required to build highways and roads for Federal and State governments and urge a reconsideration of the fee structure. Other commenters stated the increased inspection fees are designed to circumvent the small-entity two-tiered annual fee system in 10 CFR part 171 which allows small entities to either pay an annual fee of $1,800 or $400 depending on the gross annual receipts of the licensee. Several commenters stated that the increase in NRC fees is an inducement for Agreement States to raise their regulatory fees. One commenter suggested that the NRC should also apply the small entity criteria to 10 CFR part 170 fees as well, while another commenter suggested that all small entities be granted an exemption from fees. Several commenters stated that the proposed fees favor major service companies with a large capital base and will destroy small companies.

Response. The NRC discussed the reasons for the 10 CFR part 170 inspection fee increases in the proposed rule indicating that a distribution of the changes to the inspection fees shows that inspection fees would increase by at least 100 percent for 19 percent of the licenses. The NRC pointed out that the largest increases would be for inspections conducted of those licenses authorizing byproduct material for (1) broad scope processing or manufacturing of items for commercial distribution (fee category 3A); (2) broad scope research and development (fee category 3L); and (3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses would have increases of more than 50 percent. The NRC stated that the primary reason for these relatively large increases is that the average number of hours on which inspection fees are based has not been updated since 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional hours used in the current fee schedule for inspections is outdated because during the past years, the NRC's inspection program has changed significantly. In some program areas, for example, the NRC has emphasized that inspections be more thorough and in-depth so as to improve public health and safety. (58 FR 21669–21670).

These inspection fees must be updated consistent with the Chief Financial Officers Act (CFO) requirement that NRC conduct a review, on a biennial basis, of fees and other charges imposed by the Agency for its services and revise those charges to reflect the costs incurred in providing the services. Therefore, the fees established by NRC are not designed to circumvent the small entity annual fees in 10 CFR part 171 but rather are designed to recover the NRC's costs of processing individual applications for licensing actions and conducting individual inspections of licensed programs under 10 CFR part 170. The Commission notes that substantial fee reductions are given each year under 10 CFR part 171 to small entities. For example, a well logger with gross receipts of less than $3.5 million would pay under this final regulation an annual fee of $1,800 rather than $11,420. As the Commission has stated previously, the small entity annual fee reduction is to reduce but not eliminate the impact of the fees (57 FR 32720).

2. *Comment.* Commenters in the fuel facilities class of licensees indicated that a further explanation is needed of the significant increases in their fees. They pointed out that the annual fee for a high enriched facility has increased from $2.3 million in FY 1992 to $3.3 million in FY 1993. Similarly, the annual fee for a low enriched uranium facility increased from $838,250 in FY 1992 to 1,319,000 in FY 1993. The commenters questioned whether or not the increases were due to the increased staff required to provide oversight of the newly formed United States Enrichment Corporation (USEC). One commenter stated that although the United States Enrichment Corporation (USEC) is neither a licensee nor license applicant, significant resources will be expended to certify the gaseous diffusion plants and it appears that no income has been attributed to the effort associated with this on-going certification process for FY 1993.

Response. The NRC believes that it has provided sufficient information concerning the FY 1993 budget to allow effective evaluation and constructive comment concerning the budgeted costs for fuel facility licensees. In Part III, the Section-by-Section Analysis, Table VI of the proposed rule published April 23, 1993 (58 FR 21675), the NRC provided a detailed explanation of the FY 1993 budgeted costs for the fuel facility class of licensees. Table VI of this final rule also shows a listing of the budgeted costs for this class of licensees. The FY 1993 resources are determined by the NRC and approved by the Congress as those necessary to carry out the health and safety activities for this class of licensees. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates, Fiscal Year 1993" (NUREG–1100, Volume 8), which is available to the public. The bases for the NRC resources are thoroughly addressed by the Congress through hearings and written questions and answers. The FY 1993 NRC hearings are documented, for example, in the publication "Energy and Water Development Appropriations for FY 1993—Hearings before a Subcommittee on Appropriations, House of Representatives, One Hundred Second Congress, Second Session, Part 6". The resources resulting from this review and decision process are those necessary for NRC to implement its statutory responsibilities. Questions relating to the NRC budget approval process were also addressed in the final rules published on July 10, 1991 (56 FR 31482) and July 23, 1992 (57 FR 32696). Given the increase in the budget for the fuel facilities class of licensees, it is necessary to increase the fees to recover the cost for these activities in accordance with OBRA–90. Contrary to some commenters suggestions, this increase is not attributable to NRC activities related to USEC. With regard to USEC, the NRC has adjusted its budgeted allocation for this new and unique added responsibility to reflect planned FY 1993 USEC activities and the fact that USEC will be assessed fees. On June 25, 1993, the NRC informed USEC that the NRC will bill USEC under 10 CFR part 170 for all NRC costs incurred on or after July 1, 1993, the formation date of USEC. The fees will be assessed to USEC under fee Category 1.E. of 10 CFR Part 170.31 and will cover those activities associated with

the certification of the existing gaseous diffusion uranium enrichment facilities.

3. *Comment.* Another fuel facility licensee indicated that based on the Court's decision to grant Combustion Engineering an exemption from fees for one of its two low enriched uranium plants located in Hematite, Missouri and Windsor, Connecticut, it too deserves to be considered for an exemption because it is not operationally equivalent to the plants run by the full scope fuel fabricators since it purchases finished fuel pellets from another company and loads them into fuel rods for assembly into fuel elements. Therefore, the commenter requests that the NRC reconsider the implication of the Court's holding with respect to the disproportionate allocation of its costs under 10 CFR 171.11(d), especially as the allocation of these costs adversely impacts the licensee.

Response. The D.C. Circuit Court of Appeals decision of March 16, 1993, directed the NRC to grant an exemption from annual fees to Combustion Engineering (CE) for one of its two low enriched uranium facilities. The NRC had previously denied the exemption request from CE. The Court concluded that "the argument that the "equal fee per license" rule is "unfair and inequitable" is persuasive only on the ground that the rule produced troubling results when applied to Combustion's circumstances." The Court saw no reason for requiring the NRC to attend to that rather rare situation in the rule itself. Thus, consistent with the Court decision and 10 CFR part 171, if licensees feel that based on the circumstances of their particular situation they can make a strong case to the NRC for an exemption from the FY 1993 annual fees then they should do so. The NRC will consider such requests for exemption under the provisions of 10 CFR 171.11(d). In accordance with 10 CFR 171.11(b), such requests for exemption must be filed within 90 days from the effective date of this final rule. The filing of an exemption request does not extend the date on which the bill is payable. Only the timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

4. *Comment.* Some uranium recovery licensees questioned and requested clarification concerning the purpose of the new categories in 10 CFR 170.31 and 171.16(d) (Category 4D) as many mill tailings facilities are already licensed to accept byproduct material for possession and disposal pursuant to NRC's Criteria 2 of 10 CFR part 40, appendix A. These licensees believe that mill tailings facilities should not be assessed the additional fees as these charges are already included and factored into Category 2.A.(2) annual fees. Assessing additional fees for licensees already paying an annual fee under Category 2.A.(2) is double charging according to the commenters. One uranium recovery licensee questioned the revision of Footnotes 1 and 7 to 10 CFR 171.16(d) contending that as presently written there is no ambiguity or question. Other uranium recovery licensees indicated that they needed more information concerning the method used to establish the annual fees because of the wide fluctuations in these fees during the past three fiscal years. Others stated that while the proposed fees for FY 1993 represented a relief from the high fees of the previous two years the proposed rule does not provide a means of reimbursement for overpayment of FY 1993 annual fees that have already been paid to the NRC by the first three quarterly billings.

Response. The NRC explained in the proposed rule its reasons for establishing a new Category 4D in its two fee regulations, 10 CFR parts 170 and 171. The new category will allow the NRC to specifically segregate and identify those licenses which authorize the receipt, possession, and disposal of byproduct material from other persons as defined by section 11.e.(2) of the Atomic Energy Act. This change is based on NRC's recognition of potential increased activity related to the disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license (58 FR 21670).

The costs allocated to the uranium recovery class of licensee are for safety generic and other regulatory activities that are attributable to this class of licensees and that are not recovered by 10 CFR part 170 license and inspection fees. With respect to mill licensees in fee Category 2.A.(2) that authorize both milling operations and the disposal of section 11.e.(2) byproduct material, the same NRC regulations (e.g., 10 CFR part 40), guidance (e.g., Regulatory Guides) and policies are applicable to both the license which authorizes milling and disposal of section 11.e.(2) byproduct material and the license that only authorizes disposal of 11.e.(2) byproduct material. The 10 CFR part 40 generic safety regulations are applied in the same manner to each license in the class independent of the source material activities authorized by the licenses. Therefore, mill licenses subject to the fees in fee Category 2A of 10 CFR 170.31 and fee Category 2.A.(2) of 10 CFR 171.16 will not be assessed fees under fee Category 4D. All other licenses, that authorize the receipt, from other persons, of section 11.e(2) byproduct materials for possession and disposal will be subject to the Category 4D fees including mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities because they are not assessed annual fees under fee Category 14.

Although 10 CFR 171.19(b) specifies that the Commission will adjust the fourth quarter bill to recover the full amount of the revised annual fee, the NRC agrees that this section should be modified to more specifically cover overpayments. Accordingly, in this final rule the Commission has revised 10 CFR 171.19(b) to specifically state NRC's policy for handling those situations where the amounts collected in the first three quarters exceed the amount of the annual fee published in the final rule.

With respect to footnotes 1 and 7 in 10 CFR 171.16, the NRC indicated in the proposed rule that during the past two years many licensees have stated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue was raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material (58 FR 21667–21668). To remove any uncertainty, the NRC is making minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

5. *Comment.* One commenter indicated that the methodology used in the current rule to determine inspection fees (routine and nonroutine) in 10 CFR part 170 should remain the same and that by proposing a uniform fee for both routine and nonroutine inspections, NRC believes they are equivalent. The commenter feels that the burden for inspection fees should be placed on

licensees facing nonroutine inspections and that by creating a uniform fee for both types of inspections the NRC, in turn, burdens those licensees who do not require nonroutine inspections and who are unlikely to in the future. The commenter suggests that NRC create a lower fee schedule for routine inspections and make up the difference with higher fees for nonroutine inspections.

Response. NRC indicated in the proposed rule the reason for combining the current routine and nonroutine inspection fees into a single inspection fee. NRC's review of the inspection information indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most categories there were no nonroutine inspections conducted or a very small number of nonroutine inspections were completed (58 FR 21670). Therefore, the NRC has little or no meaningful current data on which to base a separate nonroutine inspection fee. As a result, the NRC is combining routine and nonroutine inspection fees into a single fee for routine and nonroutine inspections. Fees will continue to be assessed for any nonroutine inspections conducted of licensed programs. Because the inspection fee is based primarily on hours expended to conduct routine inspections, this approach does not burden those licensees that do not require nonroutine inspections.

6. *Comment.* One commenter indicated that the NRC had improperly calculated the costs of the High Level Waste (HLW) program by not including $1.7 million in administrative costs in FY 1993 which were included in the FY 1992 calculations. The commenter contends that utilities would pay these HLW-related costs through the reactor annual fee when they have already paid for these activities through their mill/Kwhr contribution to the NWF; therefore the NRC should correct this inequity by an appropriate reduction in the power reactor surcharge.

Response. All NRC's direct costs related to the disposal of civilian high-level radioactive waste and spent fuel in the Department of Energy's geologic repository are paid for with funds appropriated from the Nuclear Waste Fund. Administrative support costs such as office space, telephones, training, supplies, and computers are not charged to the Nuclear Waste Fund The NRC now budgets administrative support funds centrally in its Nuclear Safety Management and Support program which contains the activities of those offices which annually provide the administrative support. This is done to facilitate a more direct correlation between budget formulation and budget execution. For FY 1993, licensees have not paid for these administrative support activities through their mill/kwhr contribution to the NWF because the costs were not included in appropriations from the NWF.

7. *Comment.* Several commenters indicated that the hourly rate of $132 (a seven percent increase over 1992) is excessive in view of the fact that the increase is approximately twice the rate of inflation. These commenters noted that the rate is considerably higher than the typical industry charge-out rate for direct employees and equals or exceeds the hourly charges for senior consultants at major national consulting organizations. The commenters suggested that NRC begin to control its internal cost by, for example, combining Regional offices, reducing the research program, and reducing the inspection hours by use of Systematic Assessment of Licensee Performance (SALP). This would lower both the hourly rate and the base rate being charged, enabling the industry to reduce its nuclear program costs. Some commenters suggested that the increase in the hourly rate be limited to the increase in the rate of inflation or the Consumer Price Index (CPI) while others indicated that the NRC institute an immediate moratorium freezing fees at or below FY 1992 levels.

Response. The NRC professional hourly rate is established to recover approximately 100 percent of the Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $132 for FY 1993 are discussed in detail in part IV, Section-by-Section Analysis, for § 170.20 of the proposed rule (58 FR 21668) and the same section of this final rule. For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1993 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) which must be recovered through fees assessed for the hours expended by the direct FTEs. The budgeted costs have increased $26.4 million as compared to FY 1992 levels. This increase reflects the amount required by the NRC to effectively accomplish the mission of the agency. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates, Fiscal Year 1993" (NUREG–1100, Volume 8), which is available to the public. Given the increase in the budget, it is necessary to increase the 1993 hourly rate to recover 100 percent of the budget as required by OBRA–90. The NRC is unable to use the CPI or other indices in the development of the NRC hourly rate or the fees to be assessed under 10 CFR parts 170 and 171 because if the hourly rate were increased by only three to four percent over the FY 1992 levels, the NRC could not meet the statutory mandate requirement of OBRA–90 to recover approximately 100 percent of the NRC budget authority through fees.

8. *Comment.* As in FY 1991 and FY 1992, commenters suggested that the NRC fee proposals violate the public trust and demean the intent of Congress. Commenters indicate that the NRC should assess fees based on the amount of throughput of material, the size of the facility, the amount or type of material possessed, the sales generated by the licensed location, the competitive condition of certain markets including the assessment of fees to Agreement States and the effect of fees on domestic and foreign competition. One commenter suggested that because the NRC has authority to allow a State to become an Agreement State, the NRC could also charge a fee to either the Agreement State or to individual firms. Another commenter indicated that the requirement that NRC recover 100 percent of its budget is wrong. It allows budgets to grow more irresponsibly than they usually do because no legislator or executive office needs to face a consequent tax problem. Another commenter suggested that it is imperative for NRC to closely examine what its regulatory program provides and how it can be provided more effectively.

Response. The issue of basing fees on the amount of material possessed, the frequency of use of the material, the size of the facilities, and market competitive positions, were addressed by the NRC in the Regulatory Flexibility Analysis in appendix A to the final rule published July 10, 1991 (56 FR 31511–31513). The Commission did not adopt that approach, and continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee to determine the amount of the annual fee is a fair, equitable, and practical way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993 decision in *Allied Signal*. With respect to Agreement States, since neither the Agreement States themselves nor the firms issued licenses by the Agreement States are

NRC licensees, they cannot be assessed annual fees under OBRA–90.

With respect to the amount of the budget, the requirement for NRC to recover 100 percent of its budget does not exempt the NRC from the normal Government review and decisionmaking process. The NRC must first submit its budget to the Office of Management and Budget. The NRC budget is then sent to Congress for review and approval. The budget process, along with the internal NRC review process, helps ensure that the NRC budget is the minimum necessary to carry out an effective regulatory program.

9. *Comment.* The American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) commented that it had submitted a petition for rulemaking to the NRC to review the FY 1991 methodology so that medical licensees could be treated like nonprofit educational institutions. The commenter believes the NRC is obligated to address the concerns raised in the petition in terms of whether the proposed fee schedule for FY 1993 is consistent with the methodology adopted in FY 1991.

Response. The NRC indicated in its final rule for FY 1992 that it is not obligated to address the concerns raised in the petition of rulemaking filed with the NRC before adopting the final rule establishing fees for FY 1992 (57 FR 32694). This continues to be the case for FY 1993 as well. The NRC had intended to handle the petition within the context of the review and evaluation of the fee program for FY 1993. However, on October 24, 1992, the Energy Policy Act was enacted by the Congress. Section 2903(c) of the Act requires the NRC to review its policy for assessment of annual fees under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. On April 19, 1993, the NRC published a **Federal Register** Notice soliciting public comment on the need, if any, for changes to the existing fee policy and associated laws in order to comply with the requirements of the Energy Policy Act.

The NRC now intends to consider the ACNP/SNM petition as well as a second fee petition received from the American Mining Congress on February 4, 1993, in the context of the overall fee policy review as required by the Energy Policy Act. The NRC believes that this will help ensure that similar issues are treated consistently and that resolution of the petitions prior to the fee policy review would be premature given the Congressional request for future evaluation of the fee policy. The NRC expects the review to be completed by the end of calendar year 1993.

The Commission also notes that some of the medical commenters have asked that they be exempted from fees, just like the Commission has previously done for nonprofit educational institutions. As the Commission has explained earlier, the record before the Commission cannot support the continuation of the nonprofit educational exemption for FY 1993. Similarly, the Commission cannot adopt such an exemption for the medical community.

Differing Views of Commissioners Remick and DePlanque

For the reasons given below, we believe that the exemption for educational institutions, be they reactor licensees or materials licensees, should have been continued for the present on the basis of the approach suggested by the Court, and reconsidered thoroughly in the context of our response to section 2903(c) of the Energy Policy Act of 1992.

First, we do not believe that the notice of proposed rulemaking was adequate. Although the notice invited comments on the Court's "externalized benefits" approach, and on whether the exemption should be continued, the notice argued vigorously for continuing the exemption and therefore did not convey that the agency was, in effect, depending almost entirely on comments from affected licensees to provide a rationale for the exemption in FY 1993. It will be extremely difficult for many educational institutions to adjust this late in their budget cycles to what in many cases will be unexpected and significant fees.

Second, it is not entirely clear how the agency will apply the majority's two-part test for case-by-case exemptions, or what criteria will be used to determine whether a request satisfies the two-part test.

Third, no matter how the two-part test is interpreted and applied, we believe that a generic exemption based on the Court's suggested approach would be preferable to the two-part test for at least three reasons: (1) The Court's suggested approach would cover not only research reactors but also the many important materials licenses held by educational institutions; in contrast, it is not clear to what extent the two-part test can be applied to materials licensees; (2) a generic exemption would avert a situation in which every decision on an exemption request either would cause the U.S. Treasury to lose fee income or could force closure of a facility or termination of licensed activities of wide benefit; and (3) the generic exemption envisioned by the Court would obviate the need for a case-by-case, year-by-year expenditure of resources on a multitude of exemption requests.

In essence, the agency missed an opportunity to consider seriously the classic "externalized benefits" argument suggested by the Court. A general argument like the one the Court invited us to make has a long history, and the "law and economics" scholars on the Court are no doubt familiar with the argument. It is, first, that education, like national defense, the administration of justice, and a few other activities, provides large and indispensable benefits to the whole society, not just to purchasers (in this case students) of the activity, and, second, that the market cannot be expected to supply the necessary amount of education, either because the "buyers" in the education market will not know enough to put the "right" price on education, or because they will not be able to pay that price. Consistent with this argument, education in free-market economies relies to a great extent on extra-market financial support from philanthropy and government.

This general argument would have to be adapted to the specific circumstances of our licensees to justify a generic exemption. It is clear that the argument requires more than a demonstration of hardship, and more than what the Court called the "quite vague" reference to the "externalized benefits" of education. Also, the Court would have required a showing that those benefits were "exceptionally large" and that they could not be "captured in tuition or other market prices." Nevertheless, the agency, and the commenters if given reasonable notice, might have been able to build an administrative record to support a generic exemption based on the argument. The effort the agency has saved by not looking further into the issue may turn out to be a fraction of the effort the agency will expend on responding to requests for case-by-case exemptions and permission to pay in installments.

We fear the ultimate effects the majority's action may have. To take research and training reactors alone, an annual fee of $62,100 may prove to be a very substantial addition to, and possibly an unbearable burden for, the operating budgets of many of these reactors. Similar consequences may befall formerly exempt materials licensees. Consequently, the country may lose the considerable benefits which the nuclear-related activities of educational institutions provide, benefits acknowledged by the agency in the Statement of Considerations accompanying the proposed rule.

III. Final Action—Changes Included in the Final Rule

In addition to implementing the March 16, 1993, court decision, the NRC is also amending its licensing, inspection, and annual fees for FY 1993. OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1993 budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection and annual fees. The CFO Act requires that the NRC review, on a biennial basis, the fees imposed by the agency.

For FY 1993, the NRC's budget authority is $540.0 million, of which

VOL 58 ISS 137 JL 20 1993 UMI

approximately $21.1 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $518.9 million in FY 1993 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. The NRC estimates that approximately $110.1 million will be recovered in FY 1993 from the fees assessed under 10 CFR part 170. The remaining $408.8 million will be recovered through the FY 1993 10 CFR part 171 annual fees.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691), with the following exceptions. The method for calculating the LLW surcharge has been modified and the Commission has changed its policy with respect to the assessment of annual fees for nonprofit educational institutions. Both changes were discussed in Section II of this final rule.

Under this final rule, fees for most licenses will increase because—

(1) NRC's new budget authority has increased resulting in a corresponding increase in the professional hourly rate and, in some cases, the amount of funds budgeted for a particular class of licensee;

(2) The number of licenses in some classes has decreased as compared to FY 1992 due to license termination or consolidation resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR part 170; and

(3) The biennial review of fees and other charges required by the Chief Financial Officers Act.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1993, as stipulated in the Public Law. Therefore, as in FY 1991 and FY 1992, the fees become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the FY 1993 rule.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Six amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the agency-wide professional hourly rate, which is used to determine the part 170 fees, is increased about seven percent from $123 per hour to $132 per hour ($229,912 per direct FTE). The rate is based on the FY 1993 direct FTEs and that portion of the FY 1993 budget that is not recovered through the appropriation from the NWF.

Second, the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are revised to reflect both the increase in the professional hourly rate and the results of the review required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) and to conduct routine and nonroutine inspections for those licensees whose fees are based on the average cost method (flat fees).

The evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions has increased in some categories. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1990 (55 FR 21173; May 23, 1990). Therefore, the fees for these categories must be increased to reflect the costs incurred in completing the licensing actions. For other categories, the revised fees reflect that the average number of professional staff hours per licensing action decreased. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1990. The licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1993 of $132 per hour.

In the materials inspection area, the historical data for the average number of professional staff hours necessary to complete routine and nonroutine inspections shows that inspection hours used to determine the amount of the inspection fees have increased and in many cases significantly, when compared to the hours currently used under 10 CFR part 170. The data for the average number of professional staff hours necessary to conduct routine and nonroutine inspections were last updated in FY 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional staff hours used in the current fee schedule for inspections is outdated. Since 1985, the amount of the inspection fees has been updated based only on the increased professional hourly rate. The increased average professional staff hours reflects the changes in the inspection program that have been made for safety reasons. In some program areas, for example, NRC management guidance in recent years has emphasized that inspections be more thorough, in-depth and of higher quality. The inspection fees are based on the new average professional staff hours necessary to conduct the inspections multiplied by the professional hourly rate for FY 1993 of $132 per hour.

In summary, the NRC is revising both materials licensing and inspection fees assessed under 10 CFR part 170 in order to comply both with guidance in the Conference Committee report on OBRA–90 and with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service.

The review of the inspection information also indicates that over 90 percent of the inspections conducted by NRC are routine inspections. As a result, for most fee categories there were no nonroutine inspections conducted or a very small number of nonroutine inspections were completed. For these reasons, the NRC, for fee purposes, is establishing a single inspection fee rather than separate fees for routine and nonroutine inspections. This inspection fee will be assessed for each routine and nonroutine inspection conducted by the NRC.

Third, a new fee category 4D is added to 10 CFR 170.31 to specifically segregate and identify licenses authorizing the receipt from other persons of byproduct material as defined in section 11.e.(2) of the Atomic Energy Act for possession and disposal. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Fourth, irradiator fee Categories 3F and 3G in 10 CFR 170.31 are broadened to include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Fifth, a new section, 170.8, is added which provides that 10 CFR part 170 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

Sixth, the definition of *materials license* in § 170.3 is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration, or other form of permission issued by the NRC.

B. Amendments to 10 CFR Part 171. Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Seven amendments have been made to 10 CFR part 171. First, §§ 171.15, and 171.16 are amended to revise the annual fees for FY 1993 to recover approximately 100 percent of the FY 1993 budget authority less fees collected under 10 CFR part 170 and funds appropriated from the NWF.

Second, § 171.11 is amended to revise paragraphs (a), (b), and (d). Paragraph (a) is revised to revoke the current exemption from annual fees for nonprofit educational institutions. A detailed discussion of this change in fee policy is found in Section II of this final rule. Other changes to paragraph (a) incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors. Section 2903(a)(4) of the Energy Policy Act, enacted October 24, 1992, amends Section 6101(c) of OBRA–90 to specifically exempt from 10 CFR part 171 annual fees certain Federally owned research reactors if—

(1) The reactor is used primarily for educational training and academic research purposes and;

(2) The design of the research reactor satisfies certain technical specifications set forth in the legislation.

The NRC, in implementing this provision of the Energy Policy Act, intends to limit the exemption in 10 CFR part 171 only to Federally owned research reactors.

Clarifying changes to the exemption provision for materials licensees in §§ 171.11(b) and (d) are also being made.

The NRC is revising § 171.11(b) to not only require that requests for exemption be filed with the NRC within 90 days from the effective date of the final rule but also to require that requests for clarification of or questions relating to annual fee bills must also be filed within 90 days from the date of the invoice.

The NRC is amending § 171.11(d) to clarify that the three factors for exemption for materials licensees should not be read as conjunctive requirements but rather should be read as independent considerations which can support an exemption request.

The NRC also notes that since the final FY 1992 rule was published in July 1992, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1992 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but was unable to respond and take action on all of the requests prior to the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the Commission, for FY 1993, is exempting from the FY 1993 annual fees those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage license prior to October 1, 1992, and were capable of permanently ceasing licensed activities entirely by September 30, 1992.

In addition, because nonprofit educational institutions will be billed for the first time for annual fees, they are being afforded the same opportunity to file requests for termination and avoid the FY 1993 annual fee as other licensees were given when annual fees were first assessed to them in FY 1991. The NRC wishes to emphasize that nonprofit educational institutions who hold licenses, certificates, registrations, and approvals and who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1993, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Nonprofit educational institutions who hold licenses, certificates, registrations and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the NRC for a waiver of the FY 1993 annual fee. All other licensees and approval holders who held a license or approval on October 1, 1992, are subject to the FY 1993 annual fees.

Third, § 171.19 is amended to credit the quarterly partial payments made by certain licensees in FY 1993 toward their total annual fee to be assessed or to make refunds, if necessary.

Fourth, a new category 4D is added to 10 CFR 171.16(d) to specifically segregate and identify licenses authorizing the receipt from other persons of byproduct material as defined in section 11.e.(2) of the Atomic Energy Act for possession and disposal. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Fifth, additional language is added for irradiator fee Categories 3F and 3G in 10 CFR 171.16(d) to clarify that those two fee categories include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Sixth, a new § 171.8 is being added which provides that 10 CFR part 171 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

Seventh, the definition of materials license in § 171.3 is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC.

The NRC notes that the impact of the fees for FY 1993 on small entities has been evaluated in the Regulatory Flexibility Analysis (see appendix A to this final rule). Based on this analysis, the NRC is continuing for FY 1993 a maximum annual fee of $1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The NRC is also continuing for FY 1993 the lower tier small entity annual fee of $400 per licensed category for certain materials licensees, which was established by the NRC in FY 1992 (57 FR 13625; April 17, 1992).

The 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991 and FY 1992 annual fees except for LLW annual fees as discussed in Section II of this final rule. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The amendments to 10 CFR part 171 do not

VOL 58 ISS 137 JL 20 1993 UMI

change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The charges are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692-93.

The NRC notes that many licensees have indicated during the past two years that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC is issuing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

C. FY 1993 Budgeted Costs

The FY 1993 budgeted costs by major activity to be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1993 BUDGET AUTHORITY

Recovery method	Estimated amount (dollars in millions)
Nuclear waste fund	$21.1
Part 170 (license and inspection fees)	110.1
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	323.5
Nonpower Reactors	2.7
Fuel Facilities	13.7
Spent Fuel Storage	.7
Uranium Recovery	.5
Transportation	4.4
Material Users	[1] 38.6
Subtotal part 171	384.1
Costs remaining to be recovered not identified above	24.6
Total	540.0

[1] Includes $5.4 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The $24.6 million identified for those activities which are not identified as either 10 CFR parts 170 or 171 or the NWF in Table I are distributed among the NRC classes of licensees as follows:

$22.1 million to operating power reactors;
$0.8 million to fuel facilities; and
$1.7 million to other materials licensees.

In addition, approximately $5.4 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1993 budget authority in accordance with OBRA-90, the NRC will recover $4.6 million of the $5.4 million from operating power reactors and the remaining $0.8 million from large entities that are not reactor licensees.

This distribution results in an additional charge (surcharge) of approximately $223,000 per operating power reactor; $61,100 for each HEU, LEU, UF_6 and each other fuel facility license; $1,100 for each materials license in a category that generates a significant amount of low level waste; and $120 for other materials licenses. When added to the base annual fee of approximately $3.0 million per reactor, this will result in an annual fee of approximately $3.2 million per operating power reactor. The total fuel facility annual fee will be between approximately $680,000 and $3.1 million. The total annual fee for materials licenses will vary depending on the fee category(ies) assigned to the license.

The additional charges not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of previous Commission policy decisions will be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in Section IV of this final rule.

The NRC notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765, 770 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Pub. L. 101-508 have acknowledged the D.C. Circuit's holding that the Commission was within its legal discretion not to impose fees on all licensees.

IV. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.3 Definitions.

The definition of materials license is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71 and 72. This definition is consistent with the definition of license in Section 551(8) of the Administrative Procedures Act.

Section 170.8 Information collection requirements: OMB approval.

This section, which is being added, provides that 10 CFR part 170 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

Section 170.20 Average cost per professional staff hour.

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1993 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1993 for all fee categories that are based on full cost is $132 per hour, or $229,912 per direct FTE. The rate is based on the FY 1993 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991 and FY 1992. The method is as follows:

1. All direct FTEs are identified in Table II by major program.

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM

Major program	Number of direct FTEs[1]
Reactor Safety & Safeguards Regulation	1,080.0
Reactor Safety Research	117.7
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	334.4
Reactor Special and Independent Reviews, Investigations, and Enforcement	69.0
Nuclear Material Management and Support	18.0
Total direct FTE	[2]1,619.1

[1] FTE (full time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1993, 1,619.1 FTEs of the total 3,296 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,676.9 FTEs are considered overhead and general and administrative.

2. NRC FY 1993 budgeted costs are allocated, in Table III, to the following four major categories:

(a) Salaries and benefits.

(b) Administrative support.

(c) Travel.

(d) Program support.

3. Direct program support, the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691) and excluding direct Program Support funds, the remaining $372.3 million allocated uniformly to the direct FTEs (1,619.1) results in a rate of $229,912 per FTE for FY 1993. The Direct FTE Hourly Rate is $132 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $372.3 million by the number of direct FTEs (1,619.1 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities."

TABLE III.—FY 1993 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$254.1
Administrative support	83.8
Travel	14.1
Total nonprogram support obligations	352.0
Program support	166.9
Total Budget Authority	518.9
Less direct program support and offsetting receipts	146.6
Budget Allocated to Direct FTE	372.3
Professional Hourly Rate	132

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections, and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1993 budgeted costs and to more completely recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1993 rate shown in § 170.20. The NRC is revising the amount of the import and export licensing fees in § 170.21, facility Category K to provide for the increase in the hourly rate from $123 per hour to $132 per hour.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, and August 24, 1992, rules as appropriate. For topical report applications currently on file which are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, including Inspections, and Import and Export Licenses.

The licensing and inspection fees in this section are revised to recover more completely the FY 1993 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, have been adjusted to reflect both the increase in the professional hourly rate from $123 per hour in FY 1992 to $132 per hour in FY 1993 and the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and to conduct inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged nuclear materials licensees and applicants for licensing actions (new licenses, renewals, and amendments) and for inspections. The full cost license/inspection fees (e.g., for reactor and fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing and inspection flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action or inspection for each license category. These average hours are multiplied by the professional hourly rate of $132 per hour for FY 1993. Because the professional hourly rate is updated annually, the biennial review examined only the average number of hours per licensing action and inspection. The review indicates that the NRC needs to modify the average number of hours on which the current licensing and inspection flat fees are based in order to recover the cost of providing the licensing and inspection services. The average number of hours required for licensing actions was last reviewed and modified in 1990 (55 FR 21173; May 23, 1990). Thus the revised hours used to determine the fees for FY 1993 reflect

the changes in the licensing program that have occurred since that time, for example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety. The average number of hours for materials licensing actions (new licenses, renewals and amendments) have not changed significantly for most categories. For new license applications, approximately 60 percent of the materials license population have increases of less than 25 percent, with some having slight decreases. For license renewals, approximately 85 percent have increases of less than 25 percent, with some having decreases; and for amendments, approximately 90 percent have increases of less than 25 percent with some having decreases. Only 2 percent of the materials license population have increases of 100 percent or greater, for example, renewal fees for irradiator licenses (fee Categories 3F and 3G) and licenses authorizing distribution of items containing byproduct material to persons generally licensed under 10 CFR part 31 (fee Category 3J).

For materials inspections, a distribution of the changes to the inspection fees shows that inspection fees increased by at least 100 percent for 19 percent of the licenses. The largest increases are for inspections conducted of those licenses authorizing byproduct material for (1) broad scope processing or manufacturing of items for commercial distribution (fee category 3A); (2) broad scope research and development (fee category 3L); and (3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses have increases of more than 50 percent. The primary reason for these relatively large increases is that the average number of hours on which inspection fees are based has not been updated since 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional hours used in the current fee schedule for inspections is outdated. During the past eight years, the NRC's inspection program has changed significantly. In some program areas, for example, NRC management guidance in recent years has emphasized that, based on historical enforcement actions, inspections be more thorough and in-depth so as to improve public health and safety.

The review of the inspection information also indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most fee categories there were no nonroutine inspections conducted or a very small number of nonroutine inspections were completed. Therefore, the NRC has little or no meaningful current data on which to base a separate nonroutine inspection fee. For these reasons, the NRC, for fee purposes, is combining routine and nonroutine inspection fees into a single fee rather than assess separate fees for routine and nonroutine inspections. This inspection fee will be assessed for each routine and nonroutine inspection conducted by the NRC.

The amounts of the licensing and inspection flat fees were rounded, as in the past, by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The revised fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $132, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Additional language has been added to irradiator fee Categories 3F and 3G in 10 CFR 170.31 to clarify that those two fee categories include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. Although the sources are not removed from their shielding for irradiation purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators, and possession limits of thousands of curies are authorized in the licenses. The design of the facility is important to the safe use of both exposed source irradiators and underwater irradiators, and 10 CFR part 36 applies the same requirements to the underwater irradiators where the source is not exposed for irradiation as to the exposed source irradiators. The average costs of conducting license reviews and performing inspections of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where the source is exposed during irradiation.

Category 4D in 10 CFR 170.31 is added to specifically segregate and identify those licenses authorizing the receipt, from other persons, of byproduct material as defined in section 11.e.(2) of the Atomic Energy Act for possession and disposal. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content This change is based on the NRC's recognition of increased activity related to disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license. Mill licenses subject to the fees in fee Category 2A of 10 CFR 170.31 will not be assessed fees under fee Category 4D. All other licenses that authorize the receipt, from other persons, of section 11.e.(2) byproduct material for possession and disposal will be subject to the Category 4D fees. Mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities and section 11.e.(2) disposal services are subject to the fees of both categories, as applicable.

Part 171

Section 171.3 Definitions.

The definition of materials license is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71 and 72. This definition is consistent with the definition of license in section 551(8) of the Administrative Procedures Act.

Section 171.8 Information collection requirements: OMB approval.

This section, which is being added, provides that 10 CFR part 171 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

Section 171.11 Exemptions.

Paragraph (a) of this section is amended to revoke the current exemption from annual fees for nonprofit educational institutions. The NRC is changing its previous policy decision because of the U.S. Court of Appeals decision on fees and the current administrative record that would comprise the basis for a continued exemption. A detailed discussion of this change in fee policy is found in Section II of this final rule.

A new paragraph is added which incorporates the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors, and paragraphs (b) and (d), the exemption section for materials licensees, have been revised.

Section 2903(a)(4) of the Energy Policy Act amends section 6101(c) of OBRA–90 to specifically exempt from 10 CFR part 171 annual fees certain Federally owned research reactors if—

(1) The reactor is used primarily for educational training and academic research purposes; and

(2) The design of the research reactor satisfies certain technical specifications set forth in the legislation. For purposes of this exemption the term "research reactor" means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

The NRC, in implementing this provision of the Energy Policy Act, is limiting the exemption in 10 CFR part 171 only to Federally owned research reactors.

The NRC, in making this required change, is not changing its exemption policy. As in FY 1991 and FY 1992, the NRC will continue a very high eligibility threshold for granting exemption requests. Therefore, the NRC strongly discourages the filing of exemption requests by licensees who have previously had exemption requests denied unless there are significantly changed circumstances.

Earlier in this notice, the NRC discussed its decision to revoke the current exemption from annual fees for nonprofit educational institutions. Nonprofit educational institutions will be subject to annual fees in FY 1993.

Exemption requests, or any requests to clarify the bill, will not, per se, extend the interest-free period for payment of the bill. Bills are due on the effective date of the final rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges. Any requests for exemption from the annual fees should be addressed to the USNRC, ATTN: Executive Director for Operations, Washington, DC 20555.

The NRC is revising § 171.11(b) to not only require that requests for exemption be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees but also to require that requests for clarification of or questions relating to annual fee bills must also be filed within 90 days from the date of the invoice.

Experience in considering exemption requests under § 171.11 has indicated that § 171.11(d) is ambiguous regarding whether an applicant must fulfill all, or only one, of the three factors listed in the exemption provision in order to be considered for an exemption. The NRC is amending the section to clarify that the three factors should not be read as conjunctive requirements but rather as independent considerations which can support an exemption request.

The NRC notes that section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees, under section 6101(c) of OBRA–90, solicit comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. The NRC published for public comment a separate notice in the **Federal Register** on April 19, 1993 (58 FR 21116–21121). The 90-day public comment period for this notice expires on July 19, 1993.

The NRC also notes that since the FY 1992 final rule was published in July 1992, licensees have continued to file requests for termination with the NRC Other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the NRC is exempting from the FY 1993 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses prior to October 1, 1992, and were capable of permanently ceasing licensed activities entirely by September 30, 1992. In addition, because nonprofit educational institutions will be billed for the first time for annual fees the NRC wishes to emphasize that nonprofit educational institutions who hold licenses, certificates, registrations, and approvals and who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1993, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Nonprofit educational institutions who hold licenses, certificates, registrations, and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the Commission for a waiver of the FY 1993 annual fee. This is being done so that nonprofit educational institutions will be afforded the same opportunity to file for termination and avoid the FY 1993 annual fee as other licensees were given when annual fees were first assessed to them in FY 1991. All other licensees and approval holders who held a license or approval on October 1, 1992, are subject to the FY 1993 annual fees.

Section 171.15 Annual Fee: Reactor operating licenses.

The annual fees in this section are revised to reflect the FY 1993 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1993. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1993 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1993 BUDGET TO POWER REACTORS BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Safety and Safeguards Regulation (RSSR):				
Standard Reactor Designs	$6,663	111.2	$6,363	103.5
Reactor License Renewal	913	14.6	913	14.6
Reactor and Site Licensing	1,015	24.4	995	24.1
Resident Inspections	.....	204.0	.....	204.0
Region-Based Inspections	4,628	245.6	4,628	240.3
Interns (HQ and Regions)	.....	45.0	.....	45.0
Special Inspections	3,157	60.7	3,157	60.7
License Maintenance and Safety Evaluations	8,606	222.3	8,606	222.3
Plant Performance	860	55.1	860	55.1
Human Performance	6,920	61.0	6,470	56.4
Other Safety Reviews and Assistance	988	36.1	658	29.7
RSSR Program Total	.....	.....	32,650	1,055.7
Reactor Safety Research (RSR):				
Standard Reactor Designs	20,200	29.6	20,200	29.6
Reactor Aging & License Renewal	22,993	13.4	21,493	13.3
Plant Performance	2,800	3.0	2,800	3.0
Human Reliability	6,150	7.2	6,150	7.2
Reactor Accident Analysis	22,102	26.0	22,102	26.0
Safety Issue Resolution and Regulatory Improvements	11,590	38.5	11,590	38.5
RSR Program Total	.....	.....	84,335	117.6
Nuclear Material & Low Level (NMLL) NMLL (NMSS):				
Safeguards Licensing and Inspection	440	19.4	.....	.1
Threat & Event Assess./International Safeguards	1,600	12.7	1,275	6.1
Develop & Implement Inspection Activities	[illegible]	2.3	[illegible]	1.3
Uranium Recovery Licensing and Inspection	350	9.7	38	.2
Decommissioning NMLL (RES)	1,200	30.1	200	5.6
Environmental Policy and Decommissioning	1,925	9.0	825	3.8
NMLL Program Total	.....	.....	2,338	17.1
Reactor Special and Independent Reviews, Investigations, and Enforcement:				
Diagnostic Evaluations	350	7.0	350	7.0
Incident Investigations	25	1.0	25	1.0
NRC Incident Response	2,005	24.0	2,005	24.0
Operational Experience Evaluation	5,360	34.0	5,360	34.0
Committee on Review Generic Requirements	.....	2.0	.....	2.0
RSIRIE Program Total	.....	.....	7,740	68.0
Total	.....	.....	127,063	1,258.4
Total Base Fee Amount Allocated to Power Reactors (millions)	.....	.....	.....	[2] 416.4
Less Estimated Part 170 Power Reactor Fees (millions)	.....	.....	.....	92.8
Part 171 Base Fees for Operating Power Reactors (millions)	.....	.....	.....	323.6

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1993 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment.	$2,972,000
2. Beaver Valley 2	....do	2,972,000
3. Braidwood 1	....do	2,972,000
4. Braidwood 2	....do	2,972,000

VOL 58 ISS 137 JL 20 1993 UMI

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
5. Byron 1	....do	2,972,000
6. Bryon 2	....do	2,972,000
7. Callaway 1	....do	2,972,000
8. Comanche Peak 1	....do	2,972,000
9. Diablo Canyon 1	....do	2,969,000
10. Diablo Canyon 2	....do	2,969,000
11. Farley 1	....do	2,972,000
12. Farley 2	....do	2,972,000
13. Ginna	....do	2,972,000
14. Haddam Neck	....do	2,972,000
15. Harris 1	....do	2,972,000
16. Indian Point 2	....do	2,972,000
17. Indian Point 3	....do	2,972,000
18. Kewaunee	....do	2,972,000
19. Millstone 3	....do	2,972,000
20. North Anna 1	....do	2,972,000
21. North Anna 2	....do	2,972,000
22. Point Beach 1	....do	2,972,000
23. Point Beach 2	....do	2,972,000
24. Prairie Island 1	....do	2,972,000
25. Prairie Island 2	....do	2,972,000
26. Robinson 2	....do	2,972,000
27. Salem 1	....do	2,972,000
28. Salem 2	....do	2,972,000
29. San Onofre 1	....do	2,969,000
30. Seabrook 1	....do	2,972,000
31. South Texas 1	....do	2,972,000
32. South Texas 2	....do	2,972,000
33. Summer 1	....do	2,972,000
34. Surry 1	....do	2,972,000
35. Surry 2	....do	2,972,000
36. Trojan	....do	2,969,000
37. Turkey Point 3	....do	2,972,000
38. Turkey Point 4	....do	2,972,000
39. Vogtle 1	....do	2,972,000
40. Vogtle 2	....do	2,972,000
41. Wolf Creek 1	....do	2,972,000
42. Zion 1	....do	2,972,000
43. Zion 2	....do	2,972,000
44.Catawba 1	PWR—Ice Condenser.	2,964,000
45. Catawba 2	....do	2,964,000
46. Cook 1	....do	2,964,000
47. Cook 2	....do	2,964,000
48. McGuire 1	....do	2,964,000
49. McGuire 2	....do	2,964,000
50. Sequoyah 1	....do	2,964,000
51. Sequoyah 2	....do	2,964,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment.	3,013,000
2. Calvert Cliffs 1	....do	3,013,000
3. Calvert Cliffs 2	....do	3,013,000
4. Ft. Calhoun 1	....do	3,013,000
5. Maine Yankee	....do	3,013,000
6. Millstone 2	....do	3,013,000
7 Palisades	....do	3,013,000
8. Palo Verde 1	....do	3,009,000
9. Palo Verde 2	....do	3,009,000
10. Palo Verde 3	....do	3,009,000
11. San Onofre 2	....do	3,009,000
12. San Onofre 3	....do	3,009,000
13. St. Lucie 1	....do	3,013,000
14. St. Lucie 2	....do	3,013,000
15. Waterford 3	....do	3,013,000
Babcock & Wilcox:		
1. Arkansas 1	....do	2,964,000
2. Crystal River 3	....do	2,964,000
3. Davis Besse 1	....do	2,964,000
4. Oconee 1	....do	2,964,000
5. Oconee 2	....do	2,964,000
6. Oconee 3	....do	2,964,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
7. Three Mile Island 1	.....do	2,964,000
General Electric		
1. Browns Ferry 1	Mark I	2,939,000
2. Browns Ferry 2	.....do	2,939,000
3. Browns Ferry 3	.....do	2,939,000
4. Brunswick 1	.....do	2,939,000
5. Brunswick 2	.....do	2,939,000
6. Clinton 1	Mark III	3,031,000
7. Cooper	Mark I	2,939,000
8. Dresden 2	.....do	2,939,000
9. Dresden 3	.....do	2,939,000
10. Duane Arnold	.....do	2,939,000
11. Fermi 2	.....do	2,939,000
12. Fitzpatrick	.....do	2,939,000
13. Grand Gulf 1	Mark III	3,031,000
14. Hatch 1	Mark I	2,939,000
15. Hatch 2	.....do	2,939,000
16. Hope Creek 1	.....do	2,939,000
17. LaSalle 1	Mark II	2,939,000
18. LaSalle 2	.....do	2,939,000
19. Limerick 1	.....do	2,939,000
20. Limerick 2	.....do	2,939,000
21. Millstone 1	Mark I	2,939,000
22. Monticello	.....do	2,939,000
23. Nine Mile Point 1	.....do	2,939,000
24. Nine Mile Point 2	Mark II	2,939,000
25. Oyster Creek	Mark I	2,939,000
26. Peach Bottom 2	.....do	2,939,000
27. Peach Bottom 3	.....do	2,939,000
28. Perry 1	Mark III	3,031,000
29. Pilgrim	Mark I	2,939,000
30. Quad Cities 1	.....do	2,939,000
31. Quad Cities 2	.....do	2,939,000
32. River Bend 1	Mark III	3,031,000
33. Susquehanna 1	Mark II	2,939,000
34. Susquehanna 2	.....do	2,939,000
35. Vermont Yankee	Mark I	2,939,000
36. Washington Nuclear 2	Mark II	2,935,000
Other Reactors:		
1. Big Rock Point	GE Dry Containment.	2,939,000
2. Comanche Peak 2	Westinghouse PWR Dry Containment.	2,972,000
3. Three Mile Island 2	B&W PWR-Dry Containment.	2,964,000

The "Other Reactors" listed in Table V have not been included in the fee base. Historically both Big Rock Point and Three Mile Island 2 have been granted either full or partial exemptions from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1993 annual fees based on a request filed with the NRC in accordance with § 171.11. The NRC, in this final rule, grants a full exemption for Three Mile Island 2 because the authority to operate TMI–2 was revoked in 1979. With respect to Commanche Peak 2, the reactor received an operating license in FY 1993. In accordance with 10 CFR 171.17, Comanche Peak 2 will be billed for a prorated share of the annual fee. The total amount of $2.2 million to be paid by Big Rock Point and Comanche Peak 2 in base annual fees has been subtracted from the total amount assessed operating reactors as a surcharge.

Paragraph (b)(3) is revised to change the fiscal year references from FY 1992 to FY 1993. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1993, which is added to the base annual fee for each operating power reactor shown in Table V. This surcharge recovers those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of OBRA–90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1993 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1993 budgeted costs (millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. Reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	$5.2
b. International cooperative safety program and international safeguards activities; and	8.4

Category of costs	FY 1993 budgeted costs (millions)
c. Low level waste disposal generic activities	6.7
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on Commission policy:	
a. Licensing and inspection activities associated with nonprofit educational institutions; and	1.8
b. Costs not recovered from part 171 for small entities	4.6
Subtotal budgeted costs	26.7
Less amount to be assessed for partial and prorated fees under parts 171	2.2
Total budgeted costs	24.5

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$24.5 \text{ million}}{109.7\ ^{6}} = \$223{,}000 \text{ operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,972,000 and an additional charge of $223,000 for a total annual fee of $3,195,000 for FY 1993.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1993 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1993 annual fee for non-power (test and research) reactors. This includes nonpower reactor licenses issued to nonprofit educational institutions. In FY 1993, $2,669,000 in costs are attributable to those commercial, nonprofit educational, and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $62,100 per operating license. The Energy Policy Act provided for an exemption for certain Federally owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. The NRC has granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center, Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado and the Armed Forces Radiobiological Research Institute, Bethesda, Maryland for its research reactor.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

Paragraph (d) is revised to reflect the FY 1993 budgeted costs for materials licensees, including Government agencies licensed by the NRC. These fees are necessary to recover the FY 1993 generic costs totalling $57.9 million applicable to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1993 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	$,K	FTE
NMLL (Research):				
Radiation Protection/Health Effects	$1,640	5.3	$350	1.1
Environmental Policy and Decommissioning	1,925	9.0	100	.4
NMLL (RES) Program Total				1.5
NMLL (NMSS):				
Fuel Facilities Lic./Inspections	2,500	51.9	1,310	33.2
Event Evaluation		17.2		4.3
Safeguards Licensing/Inspection	440	22.0	440	17.2
Threat and Event Assessment	1,600	14.4	123	1.7
Decommissioning	1,050	24.5	190	5.1

[1] Commanche Peak 2 which was licensed 240 days out of 365 days (0.7 year) in FY 1993 has been included in the calculation. Commanche Peak 2 will be assessed this surcharge

TABLE VI.—ALLOCATION OF NRC FY 1993 BUDGET TO FUEL FACILITY BASE FEES [1]—Continued

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	$,K	FTE
Uranium Recovery (DAM SAFETY)	350	9.7	6	
NMLL (NMSS) Program Total			2,069	61.5
NMLL (MSIRIE):				
Incident Response		3.0		1.0
Total NMLL			2,519	64.0
Total Base Fee Amount Allocated to Fuel Facilities (millions)			[2] 17.2	
Less Part 170 Fuel Facility Fees (millions)				
Part 171 Base Fees for Fuel Facilities (millions)				13.7

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1993 BUDGET TO MATERIAL USERS BASE FEES [1]

	Total		Allocated to materials users	
	Program support $,K	FTE	$,K	FTE
NMLL (RESEARCH):				
Materials Licensee Performance	$550	.4	$550	.4
Materials Regulatory Standards	1,000	12.1	949	11.0
Radiation Protection/Health Effects	1,640	5.3	1,290	4.2
Environmental Policy and Decommissioning	1,925	9.0	1,000	4.8
Total NMLL (RES)			$3,789	20.4
NMLL (NMSS):				
Licensing/Inspection of Materials Users	$2,300	104.1	1,200	104.1
Event Evaluation	---	17.2	———	12.8
Threat and Event Assessment	1,600	12.7	89	---
Decommissioning	1,050	24.5	760	18.4
Low level waste—on site disposal	850	27.0	225	1.9
Total NMLL (NMSS):			$2,274	137.2
NMLL (MSIRIE):				
Analysis and Evaluation of Operational Data	256	8.0	125	5.0
[4]Total NMLL Program			$6,188	162.6
Base Amount Allocated to Materials Users (millions)				[2] $43.6
Less Part 170 Material Users Fees (millions)				$5.0
Part 171 Base Fees for Material Users (millions)				$38.6

[1] Base annual fee includes all costs attributable to the materials class §of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $13.7 million in budgeted costs to the individual fuel facilities is based, as in FY 1991 and FY 1992, primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

Using this approach, the base annual fee for each facility is shown below.

	Annual fee
	Safeguards and safety
High enriched fuel:	
Nuclear Fuel Services	$3,079,000
Babcock and Wilcox	3,079,000
Subtotal	$6,158,000
Low Enriched Fuel:	
Siemens Nuclear Power	$1,137,000
Babcock and Wilcox	1,137,000
General Electric	1,137,000
Westinghouse	1,137,000
Combustion Engineering (Hematite)	1,137,000
Subtotal	$5,685,000
UF_6 conversion:	
Allied Signal Corp	$619,000
Sequoyah Fuels Corp	619,000
Subtotal	$1,238,000

	Annual fee
	Safeguards and safety
Other fuel facilities (5 facilities at $111,000 each)	$555,000
Total	$13,638,000

One of Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, and the April 30, 1993 *per curiam* order which directed the Commission to grant an exemption for one of the facilities. As a result of the Court's decision, the NRC grants an exemption for one of CE's low enriched uranium fuel facilities for FY 1993. The NRC therefore has calculated the FY 1993 annual fees for the low enriched fuel category by dividing its budgeted costs among five licenses rather than six licenses as done previously.

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 50 percent of the $465,000 for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 27 percent of the $465,000 for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 23 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities—$58,000
Class II facilities—$25,400
Other facilities—$21,100

For spent fuel storage licenses, the generic costs of $681,000 have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an Independent Spent Fuel Storage Installation (ISFSI). This results in an annual fee of $136,200.

To equitably and fairly allocate the $38.6 million attributable to the approximately 7,400 [7] diverse material users and registrants, the NRC has continued to base the annual fee on the part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee = (Application Fee + Inspection Fee/Inspection Priority) × Constant + (Unique Category Costs).

The constant is the multiple necessary to recover $38.6 million and is 2.3 for FY 1993. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1993, unique costs of approximately $1.9 million were identified for the medical improvement program which is attributable to medical licensees; about $115,000 in costs were identified as being attributable to radiography licensees; and about $115,000 was identified as being attributable to irradiator licensees. The changes to materials annual fees for FY 1993 varies compared to the FY 1992 annual fees. Some of the annual fees decrease while other annual fees increase. There are three reasons for the changes in the fees compared to FY 1992. First, the FY 1993 budgeted amount attributable to materials licensees is about 12 percent higher than the FY 1992 amount. Second, the number of licensees to be assessed annual fees in FY 1993 has decreased about 4 percent (about 300 licensees) below a comparative number for FY 1992. Third, the changes in the 10 CFR part 170 license application and inspection fees cause a redistribution of the costs on which the annual fees are based, since these Part 170 fees are used as a proxy to determine the annual fees. The materials fees must be established at these levels in order to comply with the mandate of OBRA–90 to recover approximately 100 percent of the NRC's FY 1993 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity on NRC Form 526.

To recover the $4.4 million attributable to the transportation class of licensees, about $1.0 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.4 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $67,400 for users and fabricators and $1,000 for users only.

The amount or range of the FY 1993 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel	$3.1 million.
Part 70—Low enriched fuel	$1.1 million.
Part 40—UF_6 conversion.	$0.6 million.
Part 40—Uranium recovery.	$21,100 to 58,100
Part 30—Byproduct Material.	$690 to $26,800.[1]
Part 71—Transportation of Radioactive Material.	$1,000 to $67,400
Part 72—Independent Storage of Spent Nuclear Fuel.	$136,200

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is $363,600

Irradiator fee categories 3F and 3G in 10 CFR 171.16(d) are being broadened to include underwater irradiators for irradiation of materials when the source is not exposed for irradiation purposes Although the sources are not removed from their shielding for irradiation purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators, and possession limits of thousands of curies are authorized in the licenses. The design of the facility is important to the safe use of both exposed source irradiators and underwater irradiators, and 10 CFR part 36 applies the same requirements to the underwater irradiators where the source is not exposed for irradiation as to the exposed source irradiators

A new Category 4D is added to 10 CFR 171.16(d) to specifically segregate and identify those licenses which authorize the receipt, possession and disposal of byproduct material, as defined by section 11.e.(2) of the Atomic Energy Act, from other persons. This proposed change is based on the NRC's recognition of potential increased activity related to disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license. Mill licenses subject to the fees in fee Category 2.A.(2) of 10 CFR 171.16 will not be assessed fees under fee Category 4D. All other licenses, that authorize the receipt, from other

[7] This includes approximately 600 nonprofit educational institutions licenses which were previously exempted from annual fees

persons, of section 11.e(2) byproduct material for possession and disposal will be subject to the Category 2D fees including mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities since they are not assessed annual fees under fee Category 14.

Paragraph (e) is amended to establish the additional charge which is added to the base annual fees shown in paragraph (d) of this final rule. The alternative selected by the NRC for the allocation of LLW costs is discussed at some length in Section II of this notice. The Commission has modified its approach so as to access the budgeted LLW costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge, however, continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1993, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $9.2 million relating to LLW disposal generic activities from small generators which are comprised of materials licensees except fuel facilities, that dispose of LLW. The percentage distribution for FY 1993 has been refined to delete LLW disposed by Agreement State licensees from the base. The FY 1993 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1993 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licenses, i.e., LLW disposal generic activities	9.2

Of the $9.2 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($7.5 million) are allocated to the 123 large waste generators (reactors and fuel facilities) included in 10 CFR part 171 resulting in an additional charge of $61,100 per facility. Thus, the LLW charge will be $61,100 per HEU, LEU, UF_6 facility and for each of the other 5 fuel facilities. The remaining $1.7 million is allocated to the material licensees in categories that generate low level waste (1,522 licensees) as follows: $1,100 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,100 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $16,400.

Of the $5.4 million not recovered from small entities, $0.8 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $120 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, pays a base annual fee of $3,079,000 and an additional charge of $61,220 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $26,800 and an additional charge of $1,220, for a total annual fee of $28,020 for FY 1993.

The NRC notes that many licensees have indicated during the past two years that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fees will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC is issuing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

Section 171.19 Payment

This section is revised to give credit for those partial payments made by certain licensees in FY 1993 toward their FY 1993 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1993 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, if necessary. As in FY 1992, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

Because nonprofit educational institutions will be required to pay annual fees for the first time, the NRC notes two of its regulations relating to payment. The first regulation is 10 CFR 171.19(a) which indicates that the fee payment shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Bills of $5,000 or more will indicate payment by electronic fund transfer. Payment is due on the effective date of the rule and interest shall accrue from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule. The second regulation relating to payments is 10 CFR 15.35. This regulation provides for payments of debts in installments provided the debtor furnishes satisfactory evidence of inability to pay a debt in one lump sum. In accordance with this regulation, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee

guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). For FYs 1991 through 1995, OBRA–90 requires that approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1993 budget of $540.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees that the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld recently by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, discussed extensively earlier in this final rule.

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1993. The final rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, and approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170, and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 is revised to read as follows:

Authority: 31 U.S.C. 9701; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 902).

§ 170.3 [Amended]

2. In § 170.3, the definition "Materials License" is revised to read as follows:

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71 and 72.

* * * * *

3. A new § 170.8 is added to read as follows:

§ 170.8 Information collection requirements: OMB approval

This part contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1993 budget is $132 per hour.

5. In § 170.21, the introductory paragraph, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$8,600.
Amendment	8,600.
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application—new license	5,300.
Amendment	5,300.
3. Application for export of components requiring foreign government assurances only:	
Application—new license	3,300.
Amendment	3,300.
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—new license	1,300.
Amendment	1,300.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:	
Amendment	130.

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, and August 24, 1992, rules as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, renewal, amendment.	Full cost
Inspections	Full cost
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$570.
Renewal	$670.
Amendment	$360.
Inspections	$660.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$590.
Renewal	$420.
Amendment	$330.
Inspections	$1,100.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	$125,000.
License, renewal, amendment.	Full cost.
Inspections	Full cost.
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, renewal, amendment	Full cost.
Inspections	Full cost.
B. Licenses for possession and use of source material for shielding:	
Application—New license	$220.
Renewal	$160.
Amendment	$260.
Inspections	$550.
C. All other source material licenses:	
Application—New license	$2,500
Renewal	$1,300.
Amendment	$450.
Inspections	$2,500
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,600
Renewal	$1,700
Amendment	$460.
Inspections	$9,700. [5]
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,200
Renewal	$2,200.
Amendment	$600.
Inspections	$3,000. [5]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radio pharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,500
Renewal	$3,000
Amendment	$490
Inspections	$3,300
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,300
Renewal	$540
Amendment	$370
Inspections	$3,000
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$920
Renewal	$750
Amendment	$330.
Inspections	$1,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,300
Renewal	$1,000
Amendment	$330.
Inspections	$1,300
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$5,200
Renewal	$4,700
Amendment	$630.
Inspections	$4,100.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,400.
Renewal	$2,300.
Amendment	$800.
Inspections	$1,100.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,600.
Renewal	$2,600.
Amendment	$1,100.
Inspections	$1,000.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,100.
Renewal	$1,400.
Amendment	$370.
Inspections	$1,800.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,900.
Renewal	$1,400.
Amendment	$260.
Inspections	$1,000.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$2,200.
Amendment	$620.
Inspections	$4,700.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,400.
Renewal	$1,500.
Amendment	$690.
Inspections	$2,200.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,700.
Renewal	$2,000.
Amendment	$670.
Inspections	$2,400.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,800.
Renewal	$2,800.
Amendment	$690.
Inspections	$3,500.[5]
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$570.
Renewal	$670.
Amendment	$360.
Inspections	$1,500.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$3,900.
Renewal	$2,100.
Amendment	$420.
Inspections	$2,300.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$250.
Inspections	$2,800.
D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to the fees in Category 2.A.	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
5. Well logging:	

VOL 58 ISS 137 JL 20 1993 UMI

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,700.
Renewal	$3,900.
Amendment	$550.
Inspections	$3,600.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment.	Full cost.
Inspections	$1,300.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,500.
Renewal	$2,900.
Amendment	$700.
Inspections	$4,500.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,700.
Renewal	$1,200.
Amendment	$550.
Inspections	$2,200.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,600.
Renewal	$3,500.
Amendment	$500.
Inspections	$8,600.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,100
Renewal	$1,400.
Amendment	$500.
Inspections	$2,100.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$660.
Renewal	$700.
Amendment	$480.
Inspections	$1,000.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,700.
Amendment—each device	$1,300.
Inspections	Full cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,800.
Amendment—each device	$660.
Inspections	Full cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each device	$790.
Amendment—each device	$260.
Inspections	Full cost.
D. Safety Evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$400.
Amendment—each source	$130.
Inspections	Full cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment.	Full cost.
Inspections	Full cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$370.
Renewal	$280.
Amendment	$320.
Inspections	Full cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment.	Full cost.
Inspections	Full cost.
12. Special projects:	
Approvals and preapplication/licensing activities.	Full cost.
Inspections	Full cost.
13. A Spent fuel storage cask Certificate of Compliance:	
Approvals	Full cost.
Amendments, revisions, and supplements.	Full cost.
Reapproval	Full cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance.	Full cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter.	Full cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment.	Full cost.
Inspections	Full cost
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b):	
Application—New license	$8,600
Amendment	$8,600
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch only, for example, those actions under 10 CFR 110.41(a)(2)–(8):	
Application—New license	$5,300.
Amendment	$5,300
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application—New license	$3,300
Amendment	$3,300

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—New license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review:	
Amendment	$130.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20:	
Application (each filing of form 241).	$700.
Renewal	N/A.
Amendment	N/A.
Inspections	[6]

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnotes 5 and 6 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, and August 24, 1992, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees as specified in appropriate fee categories in this section.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L.

100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

§ 171.5 [Amended]

8. In § 171.5, the definition "Materials License" is revised to read as follows:

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71 and 72.

* * * * *

9. A new § 171.8 is added as follows:

§ 171.8 Information collection requirements: OMB approval

This part contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3401 *et seq.*).

10. In § 171.11, paragraph (a), (b), and (d) are revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for Federally owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(1) Is licensed by the Nuclear Regulatory Commission under Section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(2) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(i) A circulating loop through the core in which the licensee conducts fuel experiments;

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

(b) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification of or questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.

* * * * *

(d) The Commission may grant a materials licensee an exemption from the annual fee if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs. The following factors must be fulfilled as determined by the Commission for an exemption to be granted:

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees; or

(2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decisions; or

(3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

11. In § 171.15, paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1993 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1993, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1993 surcharge to be added to each operating power reactor is $223,000. This amount is calculated by dividing the total cost for these activities ($24.5 million) by the number of operating power reactors (109.7).

(d) The FY 1993 part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in thousands]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2,964	$223	$3,187	$22,309
Combustion Eng	15	3,013	223	3,236	48,540
GE Mark I	24	2,939	223	3,162	75,888
GE Mark II	8	2,939	223	3,162	25,296
GE Mark III	4	3,031	223	3,254	13,016
Westinghouse	51	2,972	223	3,195	162,945
Totals	109				$347,994

[1] Fees assessed will vary for plants West of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor.....$62,100
Test reactor.....$62,100

* * * * *

12. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1993 as follows:

Small businesses and small not-for-profit organizations (gross annual receipts)	Maximum annual fee per licensed category
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private Practice Physicians (Gross Annual Receipts)	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small Governmental Jurisdictions (Including Publicly Supported Educational Institutions) (Population)	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not state or publicly supported, and have 500 Employees or Less	1,800

* * * * *

(4) The maximum annual fee (base annual fee plus surcharge) a small entity is required to pay for FY 1993 is $1,800 for each category applicable to the license(s).

(d) The FY 1993 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2] [3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities			
High Enriched Fuel			
Babcock and Wilcox	SNM–42	70–27	$3,079,000
Nuclear Fuel Services	SNM–124	70–143	3,079,000
Low Enriched Fuel			
B&W Fuel Company	SNM–1168	70–1201	1,137,000
Combustion Engineering (Hematite)	SNM–33	70–36	1,137,000
General Electric Company	SNM–1097	70–1113	1,137,000
Siemens Nuclear Power	SNM–1227	70–1257	1,137,000
Westinghouse Electric Co.	SNM–1107	70–1151	1,137,000
Surcharge	.....	.....	61,220
A.(2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form.	.....	.....	111,000
Surcharge	.....	.....	61,220
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).	.....	.....	136,200
Surcharge	.....	.....	1,220
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.	.....	.....	1,600
Surcharge	.....	.....	120
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)..	.....	.....	1,900
Surcharge	.....	.....	1,220
E. Licenses for the operation of a uranium enrichment facility.	.....	.....	N/A [11]
2. Source material:			
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.	.....	.....	619,000
Surcharge	.....	.....	61,220
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode			
Class I facilities [4]	.....	.....	58,100
Class II facilities [4]	.....	.....	25,400
Other facilities	.....	.....	21,100
Surcharge	.....	.....	120
B. Licenses which authorize only the possession, use and/or installation of source material for shielding.	.....	.....	000
Surcharge	.....	.....	120
C. All other source material licenses	.....	.....	7,700
Surcharge	.....	.....	1,220
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	.....	.....	17,200
Surcharge	.....	.....	1,220
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	.....	.....	5,100
Surcharge	.....	.....	1,220
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license.	.....	.....	10,600
Surcharge	.....	.....	1,220

VOL 58 ISS 137 JL 20 1993 UMI

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees[1 2 3]
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license.	.....	.....	5,300
Surcharge	.....	.....	120
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	.....	.....	3,500
Surcharge	.....	.....	120
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.	.....	.....	4,500
Surcharge	.....	.....	120
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.	.....	.....	21,900
Surcharge	.....	.....	120
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	.....	.....	6,000
Surcharge	.....	.....	120
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	.....	.....	11,100
Surcharge	.....	.....	120
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	.....	.....	5,900
Surcharge	.....	.....	120
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	.....	.....	5,200
Surcharge	.....	.....	120
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to part 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	.....	.....	13,100
Surcharge	.....	.....	1,220
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution.	.....	.....	4,500
Surcharge	.....	.....	1,220
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D.	.....	.....	5,300
Surcharge	.....	.....	1,220
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license.	.....	.....	17,400
Surcharge	.....	.....	120
P. All other specific byproduct material licenses, except those in Categories 4A through 9D.	.....	.....	2,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2] [3]
Surcharge			120
4. Waste disposal and processing:			
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.			[6] 115,000
Surcharge			1,220
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.			14,300
Surcharge			1,220
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.			6,700
Surcharge			1,220
D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2).			7,700
Surcharge			120
5. Well logging:			
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.			11,300
Surcharge			120
B. Licenses for possession and use of byproduct material for field flooding tracer studies.			13,700
Surcharge			1,220
6. Nuclear laundries:			
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.			13,900
Surcharge			1,220
7. Human use of byproduct, source, or special nuclear material:			
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.			14,600
Surcharge			120
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9].			26,800
Surcharge			1,220
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9].			5,100
Surcharge			120
8. Civil defense:			
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.			1,900
Surcharge			120
9. Device, product, or sealed source safety evaluation:			
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.			8,500
Surcharge			120

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2] [3]
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	.....	.....	4,200
Surcharge	.....	.....	120
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	.....	.....	1,800
Surcharge	.....	.....	120
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	.....	.....	920
Surcharge	.....	.....	120
10. Transportation of radioactive material:			
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers			
Spent Fuel, High-Level Waste, and plutonium air packages	.....	.....	[6] N/A
Other Casks	.....	.....	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs			
Users and Fabricators	.....	.....	67,400
Users	.....	.....	1,000
Surcharge	.....	.....	120
11. Standardized spent fuel facilities	.....	.....	[6] N/A
12. Special Projects	.....	.....	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	.....	.....	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	.....	.....	136,200
Surcharge	.....	.....	120
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72.	.....	.....	[7] N/A
15. Import and Export licenses	.....	.....	[8] N/A
16. Reciprocity	.....	.....	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	.....	.....	363,600
Surcharge	.....	.....	16,520
18. DOE Certificates of Compliance	.....	.....	[10] 1,013,000
Surcharge	.....	.....	120

[1] Amendments based on applications filed after October 1 of each fiscal year that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee for that fiscal year or any portion thereof for the fiscal year filed. The annual fee will be waived where the license is terminated prior to October 1 of each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to October 1 of each fiscal year.

Annual fees will be assessed based on whether a licensee holds a valid license with the NRC which authorizes possession and use of radioactive material. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration or approval held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1994 and 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $61,100 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,100 has been added to fee Categories 1.B, 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $16,400 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $120 has been added to each fee Category, except Categories 1.E, 10.A., 11., 12., 13.A., 14., 15. and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $120 additional charge.

13. In § 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1993 through FY 1995, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. In the event the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1993 through 1995, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 shall be paid once a year as billed by the NRC.

Dated at Rockville, MD, this 9th day of July 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991, the amount collected was approximately $445 million, and for FY 1992, the amount collected was approximately $492.5 million. The amount to be collected in FY 1993 is approximately $518.9.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) and FY 1992, (57 FR 32691; July 23, 1992) based on a careful evaluation of over 500 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991 and FY 1992. The NRC has used the same methodology established in the FY 1991 and FY 1992 rulemakings to establish the fees to be assessed for FY 1993 except for the LLW surcharge. The Commission has changed its policy in one area and will assess annual fees to nonprofit educational institutions.

II. Impact on Small Entities

The comments received on the proposed FY 1991 and FY 1992 fee rule revisions and the small entity certifications received in response to the final FY 1991 and FY 1992 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991 and FY 1992 fee rules.

The commenters on the FY 1991 and FY 1992 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past two years, approximately 2,300 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered

alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) and the FY 1992 rule (57 FR 32691; July 23, 1992). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991 and FY 1992 evaluation of the above alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1993, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1993, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR part 170 with Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees or any adjustments to these fees during the past year do not have a significant impact on them. In issuing this final rule for FY 1993, the NRC concludes that the materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1993 costs ($33.2 million of the total $38.6 million) attributable to them. Therefore, the NRC is continuing, for FY 1993, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, the NRC will continue for FY 1993 the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts established in the final rule dated April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of $400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991 and FY 1992 fee rules in this final rule establishing the FY 1993 fees. Therefore, the analysis and conclusions established in the FY 1991 and FY 1992 rules remain valid for this final rule for FY 1993.

[FR Doc. 93–16885 Filed 7–19–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 264b

Regulations Regarding Foreign Gifts and Decorations

CFR Correction

In title 12 of the Code of Federal Regulations, parts 220 to 299, revised as of January 1, 1993, on page 684, in § 264b.3 some of the text of paragraphs (c) and (d) was inadvertently omitted. As corrected the text of paragraphs (c) and (d) should read as follows:

§ 264b.3 Foreign gifts.

* * * * *

(c) *Tangible gifts of more than minimal value.* A tangible gift of more than minimal value tendered by a foreign government may be accepted when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Such a gift accepted under these circumstances is deemed to have been accepted on behalf of the United States, and, upon acceptance, it shall become the property of the United States. Within 60 days after accepting a gift under these circumstances the member or employee must deposit the gift with the Secretary of the Board.

(d) *Travel or expenses for travel.* Board Members and employees may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and is permitted by the Board. Requests for Board approval of acceptance of such expenses shall be submitted to the Vice Chairman of the Board.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 93–ASW–3; Special Condition 29–ASW–10]

Special Condition: Bell Helicopter Textron Inc. Model 230 Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Bell Helicopter Textron, Inc. Model 230 helicopter. This helicopter will have a novel or unusual design feature associated with the electronic flight instrument system. This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Federal Aviation Administration (FAA), Rotorcraft Directorate, Rotorcraft Standards Staff, Policy Group, Fort Worth, Texas 76193–0112; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Background

King Radio Corporation, Olathe, Kansas, submitted an application on August 14, 1992, for a Supplemental Type Certificate (STC) for installation of an Electronic Flight Instrument System and Flight Management System in a Bell Helicopter Textron, Inc. (BHTI) 230 helicopter. The BHTI Model 230 is a 10-passenger, two-engine, 8,400-pound transport category helicopter.

Type Certification Basis

The certification basis established for the BHTI Model 230 includes: Federal Aviation Regulation (FAR) § 21.29 and part 29 effective February 1, 1965, Amendments 29–1 through 29–9; § 29.997, Amendment 29–10; § 29.1401, Amendment 29–11; §§ 29.25(c), 29.801, 29.865, 29.1555(c), 29.1557(c), Amendment 29–12; § 29.927(b)(2), Amendment 29–17; Instrument Flight Rules (IFR) requirements dated December 15, 1978; FAA Exemption No. 2789, § 29.811(f)(1); FAA Exemption No. 4395, § 29.855(a); selected sections of part 29 up to and including Amendment 29–26 as follows: §§ 29.1, 29.21 thru 29.175, 29.231 thru 29.235, 29.251 thru 29.361, 29.411, 29.471 thru 29.493, 29.501, 29.547 thru 29.549, 29.561 thru 29.603, 29.607 thru 29.609, 29.611 thru 29.629, 29.683, 29.723 thru 29.727, 29.731, 29.735, 29.771 thru 29.775, 29.785, 29.831, 29.855, 29.861 thru 29.863, 29.873 thru 29.917, 29.931, 29.939 thru 29.953, 29.955, 29.961, 29.993 thru 29.997, 29.1011 thru 29.1023, 29.1027 thru 29.1105, 29.1121 thru 29.1123, 29.1141, 29.1143 thru 29.1145, 29.1163 thru 29.1307, 29.1321 thru 29.1322, 29.1327, 29.1331 thru 29.1333, 29.1337, 29.1359 thru 29.1381, 29.1401, 29.1431, 29.1461 thru 29.1505, 29.1517 thru 29.1521, 29.1527, 29.1541 thru 29.1543, 29.1549 thru 29.1551, 29.1555 thru 29.1559, 29.1581 thru 29.1587, appendix B; the noise standards of part 36 and ICAO Annex 16; and Canadian Airworthiness Manual 529: 529.1301–1, 529.1557(c)(3), 529.581, 529.1093(b)(1)(ii).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model 230 helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR, after public notice, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2). In addition to the applicable airworthiness regulations and special condition, the Model 230 must comply with the noise requirements of part 36.

Novel or Unusual Design Feature

The BHTI Model 230 helicopter, at the time of application for the STC, was identified as incorporating electrical, electronic, or a combination of electrical, electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed to the pilot is critical to the continued safe flight and landing of the helicopter while operating in accordance with IFR in instrument meteorological conditions.

If it is determined that this helicopter will incorporate other electrical, electronic, or a combination of electrical, electronic systems that perform critical functions, those systems also will be required to comply with the requirements of this special condition.

Discussion of Comments

Notice of Proposed Special Condition No. SC–93–3–SW was published in the **Federal Register** on January 22, 1993 (58 FR 5669). No comments were received. Therefore, the special condition is adopted as proposed.

Conclusion

This action affects only one unusual or novel design feature on one series of helicopters. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the affected helicopters.

List of Subjects 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Bell Helicopter Textron, Inc. Model 230 helicopter:

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on July 7, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–17165 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 29

[Docket No. 92–ASW–4; Special Condition 29–ASW–9]

Special Condition: Bell Helicopter Textron, Inc. Model 230 Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Bell Helicopter Textron, Inc. Model 230 helicopter. This helicopter will have a novel or unusual design feature associated with the electronic flight instrument system. This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: July 20, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Federal Aviation Administration (FAA), Rotorcraft Directorate, Rotorcraft Standards Staff, Regulations Group,

Forth Worth, Texas 76193–0112; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Background

Heli-Dyne Systems Inc., Hurst, Texas, submitted an application on April 10, 1992, for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System and Flight Management System in a Bell Helicopter Textron, Inc. (BHTI) 230 helicopter. The Model 230 is a 10-passenger, two-engine, 8,400-pound transport category helicopter.

Type Certification Basis

The certification basis established for the BHTI Model 230 includes: Federal Aviation Regulation (FAR) § 21.29 and part 29 effective February 1, 1965, Amendments 29–1 through 29–9; § 29.997, Amendment 29–10; § 29.1401, Amendment 29–11; §§ 29.25(c), 29.801, 29.865, 29.1555(c), 29.1557(c), Amendment 29–12; § 29.927(b)(2), Amendment 29–17; Instrument Flight Rules (IFR) requirements dated December 15, 1978; FAA Exemption No. 2789, § 29.811(f)(1); FAA Exemption No. 4395, § 29.855(a); selected sections of Part 29 up to and including Amendment 29–26 as follows: §§ 29.1, 29.21 thru 29.175, 29.231 thru 29.235, 29.251 thru 29.361, 29.411, 29.471 thru 29.493, 29.501, 29.547 thru 29.549, 29.561 thru 29.603, 29.607 thru 29.609, 29.611 thru 29.629, 29.683, 29.723 thru 29.727, 29.731, 29.735, 29.771 thru 29.775, 29.785, 29.831, 29.855, 29.861 thru 29.863, 29.873 thru 29.917, 29.931, 29.939 thru 29,953, 29.955, 29.961, 29.993 thru 29.997, 29.1011 thru 29.1023, 29.1027 thru 29.1105, 29.1121 thru 29.1123, 29.1141, 29.1143 thru 29.1145, 29.1163 thru 29.1307, 29.1321 thru 29.1322, 29.1327, 29.1331 thru 29.1333, 29.1337, 29.1359 thru 29.1381, 29.1401, 29.1431, 29.1461 thru 29.1505, 29.1517 thru 29.1521, 29.1527, 29.1541 thru 29.1543, 29.1549 thru 29.1551, 29.1555 thru 29.1559, 29.1581 thru 29.1587, Appendix B; the noise standards of part 36 and ICAO Annex 16; and Canadian Airworthiness Manual 529; 529.1301–1, 529.1557(c)(3), 529.581, 529.1093(b)(1)(ii).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model 230 helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR, after public notice, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2). In addition to the applicable airworthiness regulations and special condition, the Model 230 must comply with the noise requirements of part 36.

Novel or Unusual Design Feature

The BHTI Model 230 helicopter, at the time of application, was identified as incorporating electrical, electronic or a combination electrical, electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed to the pilot is critical to the continued safe flight and landing of the helicopter while operating in accordance with IFR in instrument meteorological conditions.

If it is determined that this helicopter will incorporate other electrical, electronic systems or a combination electrical, electronic systems performing critical functions, those systems also will be required to comply with the requirements of this special condition.

Discussion of Comments

Notice of Proposed Special Condition No. SC–92–4–SW was published in the **Federal Register** on October 15, 1992, (57 FR 47295). No comments were received. Therefore, the special condition is adopted as proposed.

Conclusion

This action affects only one unusual or novel design feature on one series of helicopters. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the affected helicopters.

The FAA has determined that good cause exists for making this rule effective in less than 30 day after publication. This special condition affects only a single type design. No comments were received in response to the Notice. Further, the applicant would experience an undue economic penalty due to a delay in the delivery of the affected helicopters if the effectivity of this rule of special effect is delayed. Therefore, this special condition is made effective immediately upon issuance.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Bell Helicopter Textron, Inc. Model 230 helicopter:

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on July 7, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–17167 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 93N–0040]

Levo-ALPHA-Acetyl-Methadol (LAAM) In Maintenance; Revision of Conditions for Use in the Treatment of Narcotic Addiction

AGENCIES: Food and Drug Administration and the National Institute on Drug Abuse, HHS.

ACTION: Interim rule; request for public comment.

SUMMARY: The Food and Drug Administration (FDA), in consultation with the National Institute on Drug Abuse (NIDA), is issuing interim rules revising conditions for the treatment of narcotic addiction to provide standards for the use of Levo-*Alpha*-Acetyl-Methadol (LAAM) in the maintenance treatment of narcotic addicts. This action will allow narcotic treatment

programs to provide an additional drug for use in the maintenance treatment of narcotic addicts. FDA is issuing these regulations as an interim rule with a request for public comment.

DATES: Effective July 20, 1993; written comments by September 20, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas Kuchenberg, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8046.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513) requires the Secretary of Health and Human Services (the Secretary) to determine the appropriate methods of professional practice for the medical treatment of narcotic addiction. In addition, the Narcotic Addict Treatment Act of 1974 (Pub. L. 93–281) amended the Controlled Substances Act (21 U.S.C. 823) to require that practitioners who wish to dispense narcotic drugs to individuals for the maintenance treatment or detoxification treatment of narcotic addiction must be registered annually with the Department of Justice, Drug Enforcement Administration (DEA). Registration depends, in part, upon a determination by the Secretary that the applicant is qualified, under treatment standards established by the Secretary, to provide such treatment. In addition, the applicant must comply with standards established by the Secretary (after consultation with DEA) respecting the quantities of narcotic drugs that may be provided for unsupervised use by individuals in such treatment. Finally, the applicant must comply with standards established by DEA respecting security of stocks of narcotic drugs used for such treatment and maintenance of records on such drugs.

Regulations governing conditions for the use of narcotic drugs in the maintenance and detoxification treatment of narcotic addicts can be found in part 291 (21 CFR part 291). Section 291.505 (commonly referred to as the methadone regulation) is currently applicable to methadone, the only narcotic drug now approved for use in the maintenance and detoxification treatment of narcotic addiction. The methadone regulation delineates the appropriate methods of professional practice for medical treatment of the narcotic addiction of various categories of addicts and provides close controls over the distribution, administration, and dispensing of methadone in treatment programs. Elements of the methadone regulation include general provisions regarding treatment program organizational structure and approval requirements, minimum standards for patient evaluation and admission, minimum medical and rehabilitative support services, and program sanctions.

The methadone regulation has, in general, facilitated the efficient and safe management and rehabilitation of narcotic addicts. The use of methadone has been central to narcotic drug treatment efforts for over two decades and has helped many narcotic addicts decrease the intravenous (IV) use of illegal narcotic drugs and avoid human immunodeficiency virus (HIV) infection, which is known to be transmitted by sharing contaminated hypodermic needles. Although methadone has been widely accepted as the standard narcotic treatment for heroin dependence since its introduction, there have been important changes in the addict population in the last 20 years. These include the periodic introduction and popularity of "new" illegal drugs and the tendency for an increasing number of individuals to simultaneously abuse a number of these substances. These factors have led to a growing need by narcotic treatment professionals for additional treatment options and has stimulated an ongoing search for alternative medications.

II. NIDA'S Medication Development Program

The Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) authorized expanded research to make drugs other than methadone available for treatment of intravenous opiate addiction. This law expanded NIDA's efforts in data collection, treatment evaluation, demonstration projects, and development of new and improved treatment methods, including additional pharmacologic agents to treat drug abuse.

NIDA formed a Drug Development Task Force to solicit support from the pharmaceutical industry, administer grants to investigators, and oversee toxicity tests, clinical trials, and computer-assisted screening of potentially helpful drugs. In fiscal year 1989, NIDA established the Medications Development Program to research and develop new and more effective medications to treat addictive disorders, most notably opiate and cocaine addiction. NIDA also established treatment research units that have a major role in evaluating new medications and conducting the necessary preliminary clinical trials of the drug development process. Promising new drugs are to be guided through final clinical testing and the new drug approval process so as to be marketed for the treatment of drug addiction through agreements reached with the sponsoring pharmaceutical companies. NIDA's role in the development of new drugs is further delineated by the ADAMHA Reorganization Act (Pub. L. 102–321) enacted on July 10, 1992 (ADAMHA means the Alcohol, Drug Abuse, and Mental Health Administration). Section 123 of this legislation gives NIDA's Medications Development Program expanded authority to encourage and promote the development and use of medications to treat drug addiction.

In addition to developing treatment drugs, NIDA plans to use drug abuse research to target drugs that may fulfill certain therapeutic goals. Technological advances and research have led to an expanded understanding of how drugs interact with the brain. Using this understanding, the goal is to develop drug abuse medications that:

(1) Block the effects of abused drugs;

(2) reduce the craving for abused drugs;

(3) moderate or eliminate withdrawal symptoms;

(4) block or reverse the toxic effects of abused drugs; or

(5) prevent relapse in persons who have been detoxified from drugs of abuse. It is therefore important that regulations governing narcotic treatment programs are able to accommodate the potential use of a variety of treatment medications.

NIDA and FDA thus share responsibility for providing a wider range of treatment drugs to programs. NIDA is charged with developing the new medications and FDA with both determining whether such medications are effective and developing standards for their safe use. To encourage cooperation, the ADAMHA Reorganization Act states that the Director of NIDA is to "conduct periodic meetings with the Commissioner of Food and Drugs to discuss measures that may facilitate the approval process of drug abuse treatments."

It is anticipated that the Medications Development Program will expand the number of drug products available for the treatment of drug abuse. Indeed, a number of addiction treatment

medications with potential for clinical use are already in clinical trials. One product to emerge from this process is LAAM, a narcotic drug which has been approved for maintenance treatment of narcotic addiction.

III. Justification for Dispensing with Prior Notice and Opportunity for Public Comment

The Administrative Procedure Act (5 U.S.C. 553) requires agencies to follow certain procedures for informal rulemaking, including publication of proposed rules in the **Federal Register** with an opportunity for public comment. Section 553(b)(B) allows agencies to dispense with prior notice and opportunity for public comment if the agency finds for good cause that use of such procedures is impracticable, unnecessary, or contrary to the public interest.

FDA and NIDA have determined that good cause exists for publication of these rules without prior notice and opportunity for public comment and without a delayed effective date since such procedures are contrary to the public interest and unnecessary. It is in the public interest for LAAM to be available as a maintenance treatment for narcotic addiction simultaneous with its approval rather than for the drug to be unavailable for the period of time it would take the agency to publish proposed and final rules based on the approval. This additional treatment can help to reduce the mortality rate among addicts and the possible spread of HIV and other diseases among addicts and the general population by decreasing IV drug abuse.

Even before the onset of the HIV epidemic, the mortality rates among addicts exceeded that of nonaddicts. A significant factor in this higher mortality is the insanitary conditions which often accompany the administration of illegal drugs. These conditions, particularly the practice of needle sharing, have facilitated the spread of a number of disorders including pneumonia, hepatitis A and B, immunologic abnormalities, and HIV disease. In a January 6, 1993, FDA and Substance Abuse and Mental Health Administration (SAMHSA) regulation providing for interim maintenance treatment, the Secretary made a finding that "the preponderance of scientific research indicates that IV abuse of drugs is, in fact, a primary pathway for HIV disease transmission and as such constitutes a major public health problem" (58 FR 495 at 496). It is important to note that while the addict population is particularly susceptible, these diseases can also be spread to the nonaddict population. Evidence also indicates that participation in a maintenance treatment program reduces IV drug abuse, the potential for disease transmission, and its associated mortality rate. In the interim maintenance rule published in the **Federal Register** of January 6, 1993, the Secretary also found that "the preponderance of scientific research indicates that the medically supervised dispensing of methadone continues to be an effective method of reducing dependence on heroin and other morphine-like drugs" (58 FR 495 at 496). It is, therefore, important to facilitate actions that enable programs to enhance services and more effectively interdict IV drug abuse.

LAAM will provide treatment programs with an additional option for the treatment of addiction and, because of the longer duration of its effects, will provide programs with more flexibility. The longer duration of LAAM may also help alleviate the overcrowding currently causing problems in some programs. A 1992 FDA survey indicates that a number of the areas experiencing a shortage of treatment capacity are also areas experiencing increases in the incidence of HIV disease among IV drug abusers. Congress addressed the problem of inadequate treatment capacity by including a provision in the 1992 ADAMHA Reorganization Act, which authorizes States to permit interim methadone maintenance in areas with a shortage of treatment slots. Because it is recommended that patients be given LAAM three times a week or every other day, as opposed to the daily dosing generally recommended for methadone, use of LAAM may allow programs to increase the number of comprehensive treatment positions.

While LAAM has been approved for the purpose of treating narcotic addicts, it continues to be the subject of ongoing clinical research. This research and testing may lead to a reevaluation of current recommendations for, or restrictions on, the use of the drug by certain categories of patients. Any changes resulting from such ongoing studies or with experience gained through use of LAAM in treatment programs will be incorporated in a final rule.

In addition to the public interest in having LAAM available for treatment use as soon as possible, prior notice and comment procedures and delayed effective date are unnecessary. The rules reflect FDA's approval of a new drug application (NDA) for LAAM, a process not subject to public participation. In addition, the regulations merely add LAAM as an available treatment drug within the existing structure of the current narcotic addiction treatment regulations which were subject to notice and comment rulemaking. The current regulations, published in the **Federal Register** of March 2, 1989 (54 FR 8954), changed many methadone specific terms to narcotic treatment drug general terms in describing general conditions for use of narcotic drugs to treat narcotic addiction. Thus, the current regulations appear to have anticipated the incorporation of additional approved treatment drugs with conforming changes to provisions such as 21 CFR 291.505(b)(2)(v). These rules make further changes from methadone specific terms to narcotic treatment general terms to reflect the approval of LAAM as a maintenance treatment for narcotic addiction.

IV. LAAM Maintenance Treatment

LAAM was developed in 1948 as a synthetic congener of methadone. Originally tested as a narcotic analgesic in Germany, it attracted attention in this country in the 1970's as a potential treatment drug for heroin addiction. In contrast to methadone, the effects of orally administered LAAM do not start until several hours after administration and last an average of 2 to 3 days. As a result, LAAM produces less of an opiate "high" and narcotic sedation than heroin and other morphine-like drugs. There was an initial attempt to examine its potential as an addiction-treatment drug, and a total of 27 separate studies involving approximately 6,000 opiate-dependent patients were conducted with LAAM between 1969 and the early 1980's. Thereafter, the effort to develop LAAM's narcotic treatment potential languished until passage of the 1988 Anti-Drug Abuse Act gave NIDA the economic and legal resources necessary to renew sponsorship of the drug. Because most of the original research was conducted during the first period of LAAM development in the 1970's, updated studies were conducted to verify the recommended labeling for LAAM and to gain further experience with use of the drug in women and patients who are HIV positive. There was also a need to learn more about the drug's effectiveness in the current addict population, a population that has a higher incidence of hepatitis B and other liver diseases and is more prone to multidrug abuse than the population originally studied in the 1970's.

Because of these and other considerations of safety that had to be addressed before approval of an NDA for LAAM, NIDA sponsored a label assessment study of LAAM for use in

maintenance treatment of narcotic addiction. The results of that study indicated LAAM is effective in the long-term treatment of narcotic addiction.

Although a provision permitting interim maintenance under certain conditions was published on January 6, 1993 (58 FR 495), the last extensive revision of the methadone regulation appeared in the **Federal Register** of March 2, 1989 (54 FR 8954). As discussed in the preamble to the March 2, 1989, final rule, these revisions were designed to streamline the regulation and to promote more efficient operation of narcotic treatment programs. Among these changes were revisions that established as general requirements provisions that had previously applied solely to methadone, e.g., methadone treatment program became narcotic treatment program and methadone maintenance treatment became maintenance treatment. These revisions resulted in a framework of program requirements such as minimum standards for patient evaluation and admission, minimum standards for medical and rehabilitative support services, and program sanctions that can be applied to any new drug authorized for use in the treatment of drug abuse.

FDA and NIDA are now authorizing the use of LAAM in the maintenance treatment of narcotic addicts. LAAM is the first of several new narcotic treatment drugs under development that are to be guided, as previously discussed, through final clinical testing and the new drug approval process according to agreements reached with the sponsoring pharmaceutical companies.

In order to provide for the use of LAAM and other narcotic treatment drugs while retaining the current requirements for the use of methadone in a narcotic treatment program, the regulations are restructured to provide: (1) General requirements applicable to all narcotic treatment programs regardless of the drug used in treatment; (2) specific requirements applicable solely to LAAM; and (3) specific requirements applicable solely to methadone. As additional treatment drugs are approved, provisions that are critical to the safe use of a product in a treatment program will be included in the regulation.

V. Description of the Interim Final Rule

Current § 291.501 was promulgated in 1977 and reflected the then-investigational use of methadone in narcotic addict treatment programs and concerns about possible abuses that might arise from such use. Since 1977, widespread experience with methadone maintenance treatment has demonstrated the ability of these programs to help certain drug abusers lead more productive and independent lives. As a result, current § 291.501(a) speaks of a need for further research on what is now a well-understood drug. This interim final rule deletes these and other references particular to methadone in §§ 291.501 and 291.505 and replaces them with a more general statement recognizing that the use of narcotic drugs in maintenance treatment can be an effective part of the management and rehabilitation of selected addicts.

Current § 291.501(a) reflects the earlier, experimental, nature of maintenance treatment and calls for further research. The interim final rule replaces such language with a statement that interested and qualified parties should be allowed to use approved narcotic drugs in the treatment of addiction. It will also require that such drugs have an approved NDA for such use.

Under current § 291.505(b)(2)(v), methadone is the only drug approved for use in treatment programs. In this interim final rule, § 291.505(b)(2)(v) adds LAAM to the list of drugs available for the treatment of narcotic addiction.

Section 291.505(c) details some of the requirements for obtaining approval to operate a treatment program, including necessary program services and applications. The interim final rule changes the title of Form FDA–2632, "Application for Approval of Use of Methadone in a Treatment Program," to "Application for Approval of Use of Narcotic Drugs in a Treatment Program." Similar title changes to forms occur elsewhere in part 291 in order to reflect the potential availability of a variety of treatment drugs.

The minimum standards for admission to a treatment program are found at § 291.505(d). Before admission, program personnel take a history of addiction from the new patient, and current § 291.505(d)(1)(i)(C) requires that this information be recorded before any methadone is administered to the patient. In order to provide for drugs other than methadone, the interim final rule deletes the reference to methadone and requires that the history of addiction be recorded before administration of any narcotic treatment drug.

Current § 291.505(d)(1)(ii) requires that treatment programs ensure that a patient's participation in a treatment program is voluntary, and that all relevant facts regarding use of the treatment drug are clearly and adequately explained to the patient entering the program. The patient must also sign consent form FDA–2635. If the prospective patient is under the age of 18; this consent form is to be signed by a parent, guardian, or responsible adult designated by the State authority. To provide for narcotic drugs other than methadone, the interim final rule changes the title of FDA–2635 from "Consent to Methadone Treatment" to "Consent to Treatment with an Approved Narcotic Drug."

The current regulation exempts certain categories of patients from the general requirements governing admission to treatment programs. Although a number of patient categories are the subject of specialized labeling under 21 CFR 201.57 (e.g., pregnancy, nursing mothers), the unique nature of narcotic treatment drugs has made it necessary to extend additional regulatory protection to certain categories of patients.

Under the existing regulation, pregnant patients with a history of drug addiction may be placed on methadone maintenance and are to be given an opportunity to obtain prenatal care (§ 291.505(d)(1)(iii)(B)(*1*)).

Because LAAM is not approved for use during pregnancy or while nursing, patients who are or become pregnant cannot be started or continued on LAAM except by written order of a physician who determines this to be the best choice of therapy for the patient. Clinics providing treatment with the drug must advise all patients of childbearing potential of the risks of LAAM and make a medical evaluation available to all patients who become pregnant while taking the drug. In addition, the interim final rule, at § 291.505(d)(1)(iii)(B)(*6*), requires that any female patient of childbearing potential be tested for pregnancy before admission to LAAM maintenance treatment and that pregnancy tests be performed monthly thereafter. Where initial urine screens are positive, the program may wish to employ other tests to confirm the pregnancy. In order to ensure the accuracy of such testing, the interim final rule requires that such tests be performed in a laboratory approved under the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) (Pub. L. 100–578) or certified by a State or private accrediting body approved by the Health Care Financing Administration. The purpose of CLIA '88 is to ensure that laboratories provide accurate and reliable test results and that individuals are not adversely affected by substandard laboratory operations and testing procedures.

Another group of patients subject to slightly different admission standards are those who have been previously

VOL 58 ISS 137 JL 20 1993 UMI

treated. Existing § 291.505(d)(1)(iii)(C) states that, within certain circumstances, patients who have been previously treated and later voluntarily detoxified from maintenance treatment may be readmitted without evidence of current addiction. For patients readmitted under these standards, the quantity of take-home medication is subject to the clinical judgment of the admitting program physician and can be no greater than what would have been allowed under previous treatment. Because there is currently no adequate assessment of the risks of allowing take-home for LAAM, § 291.505(k)(1)(iii) provides for no take-home privileges for LAAM. Therefore, § 291.505(d)(1)(iii)(C) is revised to limit take-home medication for previously treated patients to those drugs for which take-home privileges are permitted.

Current § 291.505(d)(1)(iv) authorizes maintenance treatment of adolescent patients under specified circumstances. However, because there are no adequate studies to support the use of LAAM in those younger than 18, the interim final rule adds a new provision (§ 291.505(d)(1)(iv)(B)) that prohibits any person under 18 years of age from entering LAAM maintenance treatment.

Current § 291.505(d)(3)(i) requires patients to be medically evaluated on admission to a treatment program. As part of this evaluation, the regulation mandates a number of laboratory examinations. Because FDA has not approved LAAM for use during pregnancy, the interim final rule revises § 291.505(d)(3)(i) to require an initial pregnancy test for women of childbearing potential seeking admission to LAAM maintenance treatment.

Current § 291.505(d)(4) requires that a treatment program provide a comprehensive range of medical and rehabilitative services to its patients and delineates the general responsibilities of the medical director and program physicians and the use of health care professionals in narcotic treatment programs. For improved organization of related requirements, the interim final rule transfers the provisions of current § 291.505(d)(6)(ii), which addresses the responsibilities of authorized dispensers of narcotic drugs, to new § 291.505(d)(4)(v). Accordingly, current § 291.505(d)(6)(ii) is removed and reserved.

Section 291.505(d)(6) delineates the requirements regarding the use and administration of methadone in a treatment program. The interim final rule revises the heading of the paragraph to make it clear that this paragraph applies solely to the use of methadone in a treatment program.

VI. Narcotic Treatment Regulations

As noted, this interim final rule is intended to further the transformation of current § 291.505 into a regulation that establishes standards for narcotic treatment programs to include all drugs approved for treatment of addiction. Accordingly, this interim final rule redesignates § 291.505(k) as § 291.505(l) and adds new § 291.505(k), which addresses the use of approved narcotic drug products other than methadone in a treatment program.

The agencies believe that certain aspects of the administration of LAAM must be codified to protect patients and, to that end, the interim final rule will add certain provisions under new § 291.505(k)(1). These provisions provide specific dosing requirements for LAAM, prohibit take-home use of the drug, and describe circumstances under which a LAAM patient may be temporarily transferred to methadone.

Subsequent paragraphs under new § 291.505(k) will provide specific requirements for future narcotic drugs approved for the treatment of narcotic addiction. This approach will enable the agencies to promulgate, if necessary, additional requirements for narcotic drug products approved in the future. Additional regulatory requirements will be examined during the NDA review process, and factors that would help determine whether specific regulatory requirements would be needed include the drug product's safety profile, the potential for diversion to illicit use, and other factors. This approach recognizes the importance of the approved product labeling, which results from the rigorous NDA review process, and which facilitates the safe and effective use of new narcotic treatment drug products.

New § 291.505(k)(1)(i) requires that patients be administered LAAM no more frequently than every other day at doses, frequencies, and under conditions of usage described in approved labeling. The usual dosing regimen is thrice weekly. For a patient with an unknown tolerance to opioids, the initial dose of LAAM should not exceed 40 milligrams (mg). Caution in administering an initial dose of LAAM is particularly important because the effects of LAAM are not felt until several hours after administration. Provided there is a demonstrated need, this provision does not preclude additional dosing. For a patient previously stabilized on methadone maintenance, the initial dose will be 1.3 times the daily methadone dose and is not to exceed 120 mg. The interim final rule requires a licensed physician to assume responsibility for the amount of the drug dispensed and to record, date, and sign in each patient's record each change in dosage schedule. Any single dose after the initial dose that is greater than 140 mg must be justified in the patient's record by the administering licensed physician. LAAM, under § 291.505(k)(1)(ii), is to be administered in an oral liquid formulation and to be distinguished from methadone by measures such as contrasting color and taste that ensure that the two medications are easily distinguished. In addition, § 291.505(k)(1)(iii) prohibits take-home doses of LAAM. Any LAAM patient who would be eligible for take-home doses of methadone may be switched to methadone when exceptional circumstances make it impossible for the patient to conform to the applicable LAAM dosing schedule.

Former § 291.505(d)(13) mandated that record systems comply with all Federal and State reporting requirements relevant to methadone. This interim final rule revises § 291.505(d)(13) to require compliance with all Federal and State reporting requirements relevant to the treatment of narcotic addiction.

As noted, the interim final rule changes the methadone specific title of most program forms to one applicable to all narcotic treatment drugs. However, since LAAM is not approved for detoxification, new § 291.505(h)(1) retains the methadone-specific title of Form FDA 2636, "Hospital Request for Methadone Detoxification Treatment."

VII. Environmental Impact

The agencies have determined under 21 CFR 25.24(a)(8) and (a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Economic Impact

FDA and NIDA have examined the economic consequences of this interim final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). There are two provisions in this rule that will impose additional costs on those narcotic treatment programs that choose to use LAAM for treating patients:

First, § 291.505(d)(1)(iii)(B)(6) requires that an initial pregnancy test and analysis shall be performed for each prospective female patient of childbearing potential before admission to LAAM maintenance treatment, and

that monthly pregnancy tests and analyses shall be performed on these female patients. Information obtained from NIDA indicates that this requirement will result in annual costs totaling approximately $820,000. This estimate is based on approximately 34,000 female patients of childbearing age approximately 25 percent of whom will be candidates for LAAM therapy, and approximately $8 for each test analysis, repeated monthly.

Second, NIDA has estimated that the cost of administering LAAM is approximately $2.85 more per patient per week than the cost of administering methadone. Assuming that one-fourth of the approximately 104,000 patients currently enrolled in narcotic treatment programs is administered LAAM (approximately 26,000 patients), the additional cost for the patients who receive LAAM would be approximately $74,000 per week, or $3.8 million per year.

Therefore, the total cost to narcotic treatment programs resulting from this regulation is approximately $4.6 million per year. Importantly, this is the estimated additional cost associated with administering LAAM compared to existing therapy with methadone. Because LAAM can be administered on an every other day, or thrice weekly schedule, the concomitant reduction in clinic attendance will reduce the overall treatment costs to treatment programs that choose to provide LAAM therapy. This anticipated reduction in overall treatment cost should more than offset the estimated additional costs associated with administering LAAM.

Accordingly, the agencies conclude that this rule is not a major rule as defined by Executive Order 12291. For similar reasons, the agencies certify, in accordance with Pub. L. 96–354, that this rule will not have a significant impact on a substantial number of small entities.

IX. Paperwork Reduction Act

This interim final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. However, most of the recordkeeping and reporting requirements that would result from this interim rule have already been approved by OMB through July 31, 1995, under number 0910–0140, "Methadone in Maintenance Detoxification, Joint Revisions of Conditions for Use."

There are two new information collection requirements in this interim rule that were not included in number 0910–0140. There are, as explained below, no measurable burden estimates for these requirements.

1. Section 291.505(k)(1)(i)(C) requires that a licensed physician assume responsibility for the amount of narcotic drug administered or dispensed and shall record, date, and sign or countersign in each patient's record each change in dosage schedule. This provision, which applies to LAAM, contains the same requirements as current § 291.505(d)(6)(ii), which pertains to methadone. These requirements are customary and usual practices within the medical and rehabilitative communities, and require no assessment for respondent burden hours or costs.

2. Section 291.505(l) requires that the sponsor indicate on forms FDA–2632, FDA–2633, FDA–2635, or FDA–2636 which treatment drug is being utilized. These forms are approved by OMB under number 0910–0140. The burden associated with this requirement is negligible.

X. Request for Comments

Interested persons may, on or before September 20, 1993, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 291

Health professions, LAAM, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 291 is amended as follows:

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for 21 CFR part 291 continues to read as follows:

Authority: Secs. 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 371); 21 U.S.C. 823; secs. 301(d), 548, 1976 of the Public Health Service Act (42 U.S.C. 241(d), 290ee–3, 300y–11); 42 U.S.C. 257a.

2. Section 291.501 is revised to read as follows:

§ 291.501 Narcotic drugs in the maintenance treatment of narcotic addicts.

(a) The Food and Drug Administration, the National Institute on Drug Abuse, and the Drug Enforcement Administration, Department of Justice, recognize that the use of narcotic drugs in the prolonged maintenance of narcotic dependence has been shown to be an effective part of a total treatment effort in the management and rehabilitation of selected narcotic addicts. It is also recognized that a number of dangers and possible abuses may arise from such efforts if professional services and controls are inadequately applied.

(b) Therefore, the Commissioner of Food and Drugs, the Director of the National Institute on Drug Abuse, and the Administrator of the Drug Enforcement Administration, Department of Justice, agree that interested professionals, municipalities, and organizations should be allowed to use narcotic drugs in the medical treatment of narcotic addiction within a framework of adequate controls designed to protect the individual patients and the community. Narcotic drugs that are to be used as part of the treatment of narcotic addiction must have an approved new drug application for such use. To facilitate this purpose, the Food and Drug Administration, the National Institute on Drug Abuse, and the Drug Enforcement Administration, Department of Justice, have jointly agreed upon acceptable conditions for the use of narcotic drugs in a treatment program, which are set forth in § 291.505. In addition, such other provisions of the Federal narcotic laws and regulations as are applicable must also be observed.

3. Section 291.505 is amended by revising paragraphs (b)(2)(v), (b)(2)(vi)(D), (c)(4)(i), (c)(4)(ii), the last sentence in paragraph (d)(1)(i)(C), paragraph (d)(1)(ii), the first sentence in paragraph (d)(1)(iii)(B)(*1*) and by removing the word "methadone" in the two places it appears in paragraph (d)(1)(iii)(B)(*1*), by adding new paragraph (d)(1)(iii)(B)(*6*), by revising the second sentence in paragraph (d)(1)(iii)(C), paragraph (d)(1)(iv), by adding a new sentence after the second sentence in paragraph (d)(3)(i), by adding new paragraph (d)(4)(v), by revising the paragraph headings of paragraphs (d)(6) and (d)(6)(i), by removing paragraph (d)(6)(ii) and reserving it, by revising the second sentence in paragraph (d)(13)(i), in paragraph (f)(2)(viii) by removing the phrase "paragraph (k) of this section" and adding in its place "paragraph (l) of this section", by revising paragraph

VOL 58 ISS 137 JL 20 1993 UMI

(h)(1), by redesignating paragraph (k) as paragraph (l) and revising it, and by adding new paragraph (k) to read as follows:

§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

* * * * *

(b) * * *

(2) * * *

(v) *Approved narcotic drugs for use in treatment programs.* The following narcotic drugs have been approved for use in the treatment of narcotic addiction: Methadone and Levo-*Alpha*-Acetyl-Methadol (LAAM).

(vi) * * *

(D) Requests for authorization should be submitted to the address specified in paragraph (l) of this section.

* * * * *

(c) * * *

(4) * * *

(i) Form FDA–2632 "Application for Approval of Use of Narcotic Drugs in a Treatment Program." This form, required by paragraph (l) of this section, shall be completed and signed by the program sponsor and submitted in duplicate to the Food and Drug Administration and the State authority.

(ii) Form FDA–2633 "Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program." This form, required by paragraph (l) of this section, shall be completed and signed by each licensed physician authorized to administer or dispense narcotic drugs and submitted in duplicate to the Food and Drug Administration and the State authority. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed even if they are not responsible for administering or dispensing the drug at the time the application is submitted.

* * * * *

(d)(1) * * * (i) * * *

(C) * * * The program physician shall complete and record the statement before the program administers any narcotic drug to the patient.

(ii) *Voluntary participation, informed consent.* The person responsible for the program shall ensure that: A patient voluntarily chooses to participate in a program; all relevant facts concerning the use of the narcotic drug used by the program are clearly and adequately explained to the patient; all patients, with full knowledge and understanding of its contents, sign the "Consent to Treatment with an Approved Narcotic Drug" Form FDA–2635 (see paragraph (l) of this section); a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) sign for patients under the age of 18 the second part of Form FDA–2635 "Consent to Treatment with an Approved Narcotic Drug."

(iii) * * *

(B) *Pregnant patients.* (*1*) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may return to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a comprehensive maintenance regimen, except as provided in paragraph (d)(1)(iii)(B)(*6*) of this section. * * *

* * * * *

(*6*) Patients who are or become pregnant shall not be started or continued on LAAM, except by the written order of a physician who determines this to be the best choice of therapy for that patient. Clinics providing treatment with LAAM must advise all patients of childbearing potential of the risks of LAAM and make a medical evaluation available to all patients who become pregnant while taking the drug. An initial pregnancy test shall be performed for each prospective female patient of childbearing potential before admission to LAAM comprehensive maintenance treatment and monthly pregnancy tests performed thereafter on such female patients in LAAM comprehensive maintenance treatment. Analysis of such tests shall be performed in a laboratory approved under the Clinical Laboratory Improvement Amendments of 1988 or in a laboratory certified by a State or private accrediting body approved by the Health Care Financing Administration.

(C) * * * For patients meeting these criteria, the quantity of take-home medication, if take-home medication is permitted for the narcotic drug, will be determined in the reasonable clinical judgment of the program physician, but in no case may the quantity of take-home medication be greater than would have been allowed at the time the patient voluntarily terminated previous treatment. * * *

(iv) *Special limitation; treatment of patients under 18 years of age.* (A) A person under 18 years of age is required to have had two documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment, except as provided in paragraph (d)(1)(iv)(B) of this section. A 1-week waiting period is required after such a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. No person under 18 years of age may be admitted to a maintenance treatment program unless a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) completes and signs consent form, Form FDA–2635 "Consent to Treatment with an Approved Narcotic Drug."

(B) A person under 18 years of age shall not be admitted to LAAM maintenance treatment.

* * * * *

(3) * * * (i) * * * A pregnancy test is required for any woman of childbearing potential before she may be administered LAAM as directed in paragraph (d)(1)(iii)(B)(*1*) of this section.

* * *

* * * * *

(4) * * *

(v) *Authorized dispensers of narcotic drugs; responsibility.* A narcotic drug may be administered or dispensed only by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health care professional authorized by Federal and State law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedule.

* * * * *

(6) *Use of methadone in a treatment program; frequency of attendance; quantity of take-home medication; dosage of methadone; initial and stabilization*—(i) *Dosage and responsibility.* * * *

(ii) [Reserved]

* * * * *

(13) * * *

(i) * * * This system is required to comply with all Federal and State reporting requirements relevant to narcotic drugs approved for use in treatment of narcotic addiction. * * *

* * * * *

(h) *Denial or revocation of approval.* (1) Complete or partial denial or revocation of approval of an application

to receive shipments of narcotic drugs (Forms FDA–2632 "Application for Approval of Use of Narcotic Drugs in a Treatment Program" and FDA–2636 "Hospital Request for Methadone Detoxification Treatment") may be proposed to the Commissioner of Food and Drugs by the Director of the Food and Drug Administration's Center for Drug Evaluation and Research, on his or her own initiative or at the request of representatives of the Drug Enforcement Administration, Department of Justice, National Institute of Drug Abuse, the State authority, or any other interested person.

* * * * *

(k) *Use of narcotics other than methadone in a treatment program.* Narcotic drug products other than methadone that have been approved for treatment of narcotic addiction are listed in paragraph (b)(2)(v) of this section. Detailed information on the conditions for use of narcotic drug products other than methadone, with the exception of take-home and dosage form requirements, can be found in the respective approved product labeling. Treatment programs shall review the most recent approved product labeling for up-to-date information on important treatment parameters for each drug. Deviation from doses, frequencies, and conditions of usage described in the approved labeling shall be justified in the patient's record. Treatment programs that dispense narcotics other than methadone shall conform with the requirements set forth under paragraphs (a), (b), (c), (d)(1) through (d)(5), (d)(8) through (d)(14), and (e) through (l) of this section. Specifics regarding take-home and dosage form requirements along with any additional requirements are set forth in this paragraph.

(1) *LAAM*—(i) *Dosage and responsibility for administration.* After a patient's tolerance to LAAM is established, LAAM shall be administered no more frequently than every other day. Dosage of LAAM shall be individualized at doses, frequencies, and under conditions of usage described in approved labeling and as follows:

(A) *New patients.* The persons responsible for the program shall ensure that the initial dose of LAAM to a patient whose tolerance for the drug is unknown does not exceed 40 milligrams.

(B) *Stabilized methadone maintenance patient.* The persons responsible for the program shall ensure that the initial dose of LAAM for a previously stabilized methadone maintenance patient is less than or equal to 1.3 times the patient's daily methadone dose, not to exceed 120 milligrams.

(C) A licensed physician shall assume responsibility for the amount of the narcotic drug administered or dispensed and shall record, date, and sign or countersign in each patient's record each change in dosage schedule.

(D) The administering licensed physician shall ensure that a single dose of LAAM greater than 140 milligrams is justified in the patient's record.

(ii) *Dosage form.* LAAM may be administered in oral form when used in a maintenance treatment program. Hospitalized patients under care for a medical or surgical condition are permitted to receive LAAM in oral form when the attending physician judges it advisable. Although syrup concentrate or other formulations may be distributed to the program, all oral medication is required to be administered in a liquid formulation. Clinics that administer both LAAM and methadone shall take appropriate measures, including contrasting color and taste, to ensure that dosage forms of LAAM and methadone are easily distinguished.

(iii) *Take-home medication.* Take-home doses of LAAM are not permitted. A patient who is eligible for one or more take-home doses of methadone under paragraph (d)(6) of this section and who is unable to conform to the applicable mandatory LAAM dosing schedule because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, or official State holidays, may be temporarily transferred to methadone. Take-home doses of methadone for a patient eligible for a planned temporary discontinuation of treatment with LAAM shall be individualized at doses, frequencies, and under conditions of usage described in the approved labeling and the applicable provisions for take-home methadone medication under paragraph (d)(6) of this section. The maximum number of take-home doses of methadone shall be determined in accordance with the provisions of 21 CFR 291.505(d)(6)(v) and (d)(6)(vi).

(2) [Reserved]

(l) *Program forms.* The program sponsor must ensure that the following forms are completed by the proper program staff and submitted to the appropriate State authority and the Division of Scientific Investigations, Regulatory Management Branch (HFD–342), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855. The sponsor will indicate on the appropriate form which treatment drug is being utilized. Forms are available upon request from the Regulatory Management Branch (HFD–342) at the same address.

FORMS

FDA–2632 Application for Approval of Use of Narcotic Drugs in a Treatment Program.
FDA–2633 Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program.
FDA–2635 Consent to Treatment with an Approved Narcotic Drug.
FDA–2636 Hospital Request for Methadone Detoxification Treatment.

(Approved by the Office of Management and Budget under number 0910–0140.)

Michael R. Taylor,

Deputy Commissioner for Policy.

Dated: April 8, 1993.

Richard A. Millstein,

Acting Director, National Institute on Drug Abuse.

[FR Doc. 93-17134 Filed 7–19–93; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 608 and 609

RIN 1840–AB74

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Strengthening Historically Black Colleges and Universities Program and the Strengthening Historically Black Graduate Institutions Program, each of which is authorized under Title III of the Higher Education Act of 1965, as amended (HEA). The regulations are needed to implement changes made to Title III of the HEA by the Higher Education Amendments of 1992. These programs provide grants to assist eligible institutions in strengthening their physical plants, academic resources, and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elwood L. Bland, U.S. Department of

VOL
58
ISS
137
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Education, 400 Maryland Avenue SW., room 3042, ROB–3, Washington, DC 20202–5336. Telephone: (202) 708–9926. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Strengthening Historically Black Colleges and Universities (HBCU) Program and Strengthening Historically Black Graduate Institutions Program provide grants to assist eligible institutions in strengthening their physical plants, academic resources, and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

These programs address National Education Goal 5, which states that every adult American will possess the knowledge and skills necessary to compete in a global economy and assume the responsibilities of citizenship. The program furthers Goal 5 by assisting institutions in establishing and strengthening their physical plants, academic resources, and student services so that these institutions can provide equal educational opportunities for all adult Americans.

The major statutory change that is being incorporated into both regulations is the requirement that each institution applying for funds submit a comprehensive development plan describing its goals for financial management and academic programs and how the institution intends to achieve those goals. Other statutory changes that apply to both programs include the expansion of the type of allowable activities that may be carried out under a grant.

Other statutory changes that apply only to the HBCU program include the raising of the minimum grant from $350,000 to $500,000, and a change in the formula for allotting funds among eligible institutions. Under the latter change, 25 percent of each year's HBCU appropriation is allotted to eligible institutions based upon the relationship between the percentage of graduates of an eligible institution who, within five years of graduating with baccalaureate degrees, are attending graduate or professional schools and are enrolled in degree programs in disciplines in which Blacks are underrepresented, and the percentage of such graduates in all eligible institutions. The following explains how funds will be allotted to institutions under this latter change using fiscal year 1994 funds as an example.

For fiscal year 1994, October 1, 1993 through September 30, 1994, the relevant school year for attending graduate or professional school and being enrolled in relevant degree programs will be school year 1992–93. Thus, each eligible institution will report the number of its graduates who attended a graduate or professional school during school year 1992–93, enrolled in a degree program in a discipline in which Blacks are underrepresented at that school during that school year, and received a baccalaureate degree during any of the five preceding school years, i.e., school years 1987–88, 1988–89, 1989–90, 1990–91, and 1991–92. The institution will also report the number of its graduates who received a baccalaureate degree during 1987–88, 1988–89, 1989–90, 1990–91, and 1991–92. (In order for a junior or community college to report its graduates in this formula, it must determine which of its graduates obtained a baccalaureate degree at a four-year institution during the school years 1987–88 through 1991–92, and which of those graduates enrolled in the relevant programs in graduate or professional school during school year 1992–93.)

The Secretary divides the first number reported by the institution by the second reported number to obtain a percentage for that institution. The Secretary calculates a percentage for each reporting institution, obtains a sum of all the percentages, and divides each institution's percentage by the sum of the percentages. The Secretary then multiplies that resulting number by 25 percent of the fiscal year 1994 HBCU appropriation to obtain that institution's allotment.

In the Strengthening Historically Black Graduate Institutions Program, the changes include the addition of 11 graduate and professional institutions or programs to the previous five eligible grantee institutions, and a change in the funding of these institutions. In general, the new institutions receive funds under this program only if the annual appropriation for the program exceeds $12 million.

On February 23, 1993, the Secretary published a notice of proposed regulations for this program in the **Federal Register**, (58 FR 11158). There are no differences between the NPRM and these final regulations except for the statutory changes explained above.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations concerning the comprehensive development plan. The Secretary did not receive any comments.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Proposed Rulemaking

In addition to the changes made to 34 CFR parts 608 and 609 that were subject to public comment in a notice of proposed rulemaking, the Secretary has revised the regulations to implement statutory changes made to each program by the Higher Education Amendments of 1992 (Pub. L. 102–325).

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553). However, since these revisions merely incorporate statutory changes into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that

further public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Parts 608 and 609

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: 84.031B Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program)

Dated: July 9, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising parts 608 and 609 to read as follows:

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

Subpart A—General

Sec.

608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?
608.2 What institutions are eligible to receive a grant under the HBCU Program?
608.3 What regulations apply?
608.4 What definitions apply?

Subpart B—What Kind of Projects Does the Secretary Fund?

608.10 What activities may be carried out under a grant?
608.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

608.20 What are the application requirements for a grant under this part?
608.21 What is a comprehensive development plan and what must it contain?

Subpart D—How Does the Secretary Make a Grant?

608.30 What is the procedure for approving and disapproving grant applications?
608.31 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

608.40 What are allowable costs and what are the limitations on allowable costs?
608.41 What are the audit and repayment requirements?
608.42 Under what conditions does the Secretary terminate a grant?

Authority: 20 U.S.C. 1060 through 1063a, 1063c, 1066, 1068, 1069c, 1069d, and 1069f, unless otherwise noted.

Subpart A—General

§ 608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?

The Strengthening Historically Black Colleges and Universities Program, hereafter called the HBCU Program, provides grants to Historically Black Colleges and Universities (HBCUs) to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

(Authority: 20 U.S.C. 1060)

§ 608.2 What institutions are eligible to receive a grant under the HBCU Program?

(a) To be eligible to receive a grant under this part, an institution must—

(1) Satisfy section 322(2) of the Higher Education Act of 1965, as amended (HEA);

(2) Be legally authorized by the State in which it is located—

(i) To be a junior or community college; or

(ii) To provide an educational program for which it awards a bachelor's degree; and

(3) Be accredited or preaccredited by a nationally recognized accrediting agency or association.

(b) The Secretary has determined that the following institutions satisfy section 322(2) of the HEA.

Alabama

Alabama A&M University-Huntsville
Alabama State University—Montgomery
Carver State Technical College—Mobile
Concordia College—Selma
Fredd State Technical College—Tuscaloosa
J.F. Drake State Technical College—Huntsville
S.D. Bishop State Junior College—Mobile
Lawson State College—Birmingham
Miles College—Birmingham
Oakwood College—Huntsville
Selma University—Selma
Stillman College—Tuscaloosa
Talladega University—Talladega
Trenholm State Technical College—Montgomery
Tuskegee University—Tuskegee

Arkansas

Arkansas Baptist College—Little Rock
Philander Smith College—Little Rock
Shorter College—Little Rock
University of Arkansas at Pine Bluff—Pine Bluff

Delaware

Delaware State College—Dover

District of Columbia

Howard University
University of the District of Columbia

Florida

Bethune Cookman College—Daytona Beach
Edward Waters College—Jacksonville
Florida A&M University—Tallahassee
Florida Memorial College—Miami

Georgia

Albany State College—Albany
Atlanta University—Atlanta
Clark College—Atlanta
Fort Valley State College—Fort Valley
Interdenominational Theological Center—Atlanta
Morehouse College—Atlanta
Morris Brown College—Atlanta
Paine College—Augusta
Savannah State College—Savannah
Spelman College—Atlanta

Kentucky

Kentucky State University—Frankfurt

Louisiana

Dillard University—New Orleans
Grambling State University—Grambling
Southern University A&M College—Baton Rouge
Southern University at New Orleans—New Orleans
Southern University at Shreveport—Shreveport
Xavier University of Louisiana—New Orleans

Maryland

Bowie State College—Bowie
Coppin State College—Baltimore
Morgan State University—Baltimore
University of Maryland-Eastern Shore—Princess Anne

Michigan

Lewis College of Business—Detroit

Mississippi

Alcorn State University—Lorman
Coahoma Junior College—Clarksdale
Jackson State University—Jackson
Mary Holmes College—West Point
Mississippi Valley State University—Itta Bena
Prentiss Normal and Industrial Institute—Prentiss
Rust College—Holly Springs
Tougaloo College—Tougaloo
Hinds Junior College (Utica Jr Coll)—Raymond

Missouri

Lincoln University—Jefferson City
Harris-Stowe State College—St. Louis

North Carolina

Barber-Scotia College—Concord
Bennett College—Greensboro
Elizabeth City State University—Elizabeth City
Fayetteville State University—Fayetteville
Johnson C. Smith University—Charlotte
Livingstone College—Salisbury
North Carolina A&T State University—Greensboro
North Carolina Central University—Durham
Saint Augustine's College—Raleigh
Shaw University—Raleigh
Winston-Salem State University—Winston Salem

Ohio

Central State University—Wilberforce
Wilberforce University—Wilberforce

VOL 58 ISS 137 JL 20 1993 UMI

Oklahoma

Langston University—Langston

Pennsylvania

Cheyney State University—Cheyney
Lincoln University—Lincoln

South Carolina

Allen University—Columbia
Benedict College—Columbia
Claflin College—Orangeburg
Clinton Junior College—Rock Hill
Denmark Technical College—Denmark
Morris College—Sumter
South Carolina State College—Orangeburg
Voorhees College—Denmark

Tennessee

Fisk University—Nashville
Knoxville College—Knoxville
Lane College—Jackson
LeMoyne-Owen College—Memphis
Meharry Medical College—Nashville
Morristown College—Morristown
Tennessee State University—Nashville

Texas

Huston-Tillotson College—Austin
Jarvis Christian College—Hawkins
Paul Quinn College—Waco
Prairie View A&M University—Prairie View
Saint Philip's College—San Antonio
Southwestern Christian College—Terrell
Texas College—Tyler
Texas Southern University—Houston
Wiley College—Marshall

U.S. Virgin Islands

College of the Virgin Islands—St. Thomas

Virginia

Hampton University—Hampton
Norfolk State University—Norfolk
Saint Paul's College—Lawrenceville
Virginia State University—Petersburg
Virginia Union University—Richmond

West Virginia

Bluefield State College—Bluefield
West Virginia State College—Institute

(c) If an institution identified in paragraph (b) of this section has merged with another institution, and, as a result of the merger, would not otherwise qualify to receive a grant under this part, that institution may nevertheless qualify to receive a grant under this part if—

(1) The institution would have qualified to receive a grant before the merger; and

(2) The institution was eligible to receive a grant under the Special Needs Program in any fiscal year prior to fiscal year 1986. (The Special Needs Program was authorized under Title III, Part B, of the HEA before 1986.)

(d) For the purpose of paragraph (a)(3) of this section, the Secretary publishes a list in the **Federal Register** of nationally recognized accrediting agencies and associations.

(e) Notwithstanding any other provision of this section, for each fiscal year—

(1) The University of the District of Columbia is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the District of Columbia Self-Government and Governmental Reorganization Act; and

(2) Howard University is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the Act of March 2, 1867, 20 U.S.C. 123.

(Authority: 20 U.S.C. 1061, 1063, and 1063a; House Report 99–861, 99th Cong., 2d Sess. p. 367, September 22, 1986; Senate Report 99–296, 99th Cong., 2d Sess. p. 23, May 12, 1986; Cong. Rec. of June 3, 1986, pp. 6588–6589)

§ 608.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) The following sections of 34 CFR part 75 (Direct Grant Programs): §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.230–75.261, 75.500, 75.510–75.519, 75.524–75.534, 75.580–75.903, and 75.910;

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 608.

(Authority: 20 U.S.C. 1060–1063a, 1063c)

§ 608.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Graduate means a student who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than five consecutive school years.

Junior or community college means an institution of higher education that—

(i) Admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(ii) Does not provide an educational program for which it awards a bachelor's degree or an equivalent degree; and

(iii) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Pell Grant means the grant program authorized by Title IV–A–1 of the Higher Education Act of 1965, as amended.

Preaccredited means a status, also called candidacy status, that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is making reasonable progress toward accreditation.

School year means the period of time from July 1 of one calendar year through June 30 of the subsequent calendar year. (A "school year" is equivalent to an "award year" under the Pell Grant Program.)

(Authority: 20 U.S.C. 1060–1063)

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 608.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this

section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) Support of faculty exchanges, faculty development and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(8) Joint use of facilities, such as laboratories and libraries;

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school in the State that shall include, as part of the program, preparation for teacher certification;

(11) Establishing community outreach programs that will encourage elementary and secondary students to develop the academic skills and the interest to pursue postsecondary education; and

(12) Other activities that it proposes in its application that contribute to carrying out the purpose of this part and are approved by the Secretary as part of the review and acceptance of the application.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities described in paragraph (a)(12) of this section that are not approved by the Secretary;

(3) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(4) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(5) Activities or services that relate to sectarian instruction or religious worship; and

(6) Activities provided by a school or department of divinity. For the purpose of this section, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(c) No award under this part may be used for telecommunications technology equipment, facilities or services, if such equipment, facilities or services are available pursuant to section 396(k) of the Communications Act of 1934.

(Authority: 20 U.S.C. 1062, 1063a, and 1069c)

§ 608.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 608.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds;

(b) A description of how the grant funds will be used so that they will supplement and, to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds;

(c) (1) A comprehensive development plan as described in § 608.21; or

(2) If an applicant has already submitted a comprehensive development plan as described in § 608.21, a description of the progress the applicant has made in carrying out the goals of its plan;

(d) An assurance that the institution will provide the Secretary with an annual report on the activities carried out under the grant;

(e) An assurance that the institution will provide for, and submit to the Secretary, the compliance and financial audit described in § 608.41;

(f) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution;

(g) The number of graduates of the applicant institution during the school year immediately preceding the fiscal year for which grant funds are requested; and

(h) The number of graduates of the applicant institution—

(1) Who, within five years of graduating with baccalaureate degrees, attended graduate or professional schools and enrolled in degree programs in disciplines in which Blacks are underrepresented during the school year immediately preceding the fiscal year for which funds are requested; and

(2) Who graduated with baccalaureate degrees during any one of the five school years immediately preceding the school year described in paragraph (h)(1) of this section.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063, 1063a and 1066(b)(2))

§ 608.21 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan must describe an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Financial management;

(2) Academic programs; and

(b) The comprehensive development plan must include the following:

(1) An assessment of the strengths and weaknesses of the institution's financial management and academic programs.

(2) A delineation of the institution's goals for its financial management and academic programs, based on the outcomes of the assessment described in paragraph (b)(1) of this section.

(3) A listing of measurable objectives designed to assist the institution to reach each goal with accompanying timeframes for achieving the objectives.

(4) A description of methods, processes, and procedures that will be used by the college or university to institutionalize financial management and academic program practices and improvements developed under the proposed funded activities.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063a)

Subpart D—How Does the Secretary Make a Grant?

§ 608.30 What is the procedure for approving and disapproving grant applications?

The Secretary—

(a) Approves any application that satisfies the requirements of § 608.10 and § 608.20; and

(b) Does not disapprove any application, or any modification of an application, without affording the applicant reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1063a)

§ 608.31 How does the Secretary determine the amount of a grant?

(a) Except as provided in paragraph (c) of this section, for each fiscal year, the Secretary determines the amount of a grant under this part by-

(1) Multiplying fifty percent of the amount appropriated for the HBCU Program by the following fraction:

Number of Pell Grant recipients at the applicant institution during the school year immediately preceding that fiscal year.

Number of Pell Grant recipients at all applicant institutions during the school year immediately preceding that fiscal year.

(2) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction:

Number of graduates of the applicant institution during the school year immediately preceding that fiscal year.

Number of graduates of all applicant institutions during the school year immediately preceding that fiscal year.

(3) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction:

The percentage of graduates of an applicant institution who, within five years of graduating with baccalaureate degrees, are in attendance at graduate or professional schools and enrolled in degree programs in disciplines in which Blacks are underrepresented

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The sum of the percentages of those graduates of all applicant institutions.

(4) Adding the amounts obtained in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b)(1) For each fiscal year, the numerator in paragraph (a)(3) of this section is calculated by—

(i) Determining the number of graduates of an applicant institution who, within five years of graduating with baccalaureate degrees, attended graduate or professional schools and enrolled in degree programs in disciplines in which Blacks are underrepresented during the school year immediately preceding that fiscal year; and

(ii) Dividing the number obtained in paragraph (b)(1)(i) of this section by the number of graduates of an applicant institution who graduated with baccalaureate degrees during the five school years immediately preceding the school year described in paragraph (b)(1)(i) of this section.

(2) For purposes of this section, the Secretary—

(i) Considers that Blacks are underrepresented in a professional or academic discipline if the percentage of Blacks in that discipline is less than the percentage of Blacks in the general population of the United States; and

(ii) Notifies applicants of the disciplines in which Blacks are underrepresented through a notice in the **Federal Register**, after consulting with the Commissioner of the Bureau of Labor Statistics.

(c) Notwithstanding the formula in paragraph (a) of this section—

(1) For each fiscal year, each eligible institution with an approved application must receive at least $500,000; and

(2) If the amount appropriated for a fiscal year for the HBCU Program is insufficient to provide $500,000 to each eligible institution with an approved application, each grant is ratably reduced. If additional funds become available for the HBCU Program during a fiscal year, each grant is increased on the same basis as it was decreased until the grant amount reaches $500,000.

(d) The amount of any grant that the Secretary determines will not be required by a grantee for the period for which the grant was made is available for reallotment by the Secretary during that period to other eligible institutions under the formula contained in paragraph (a) of this section.

(Authority: 20 U.S.C. 1063)

Subpart E—What Conditions Must a Grantee Meet?

§ 608.40 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; or

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062 and 1066)

§ 608.41 What are the audit and repayment requirements?

(a) (1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part of a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* 1981 revision, established by the Comptroller General of the United States. This publication is available from the Superintendent of Documents, U.S. Government Printing Office.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Department of Education Inspector General three copies of the audit required in paragraph (a) of this section within six months after completion of the audit.

(c) Any individual or firm conducting an audit described in this section shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

§ 608.42 Under what conditions does the Secretary terminate a grant?

The Secretary terminates any grant under which funds were not expended if an institution loses—

(a) Its accredited status; or

(b) Its legal authority in the State in which it is located—

(1) To be a junior or community college; or

(2) To provide an educational program for which it awards a bachelor's degree.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

Subpart A—General

Sec.

609.1 What is the Strengthening Historically Black Graduate Institutions Program?
609.2 What institutions are eligible to receive a grant under this part?
609.3 What regulations apply?
609.4 What definitions apply?

Subpart B—What Kind of Project Does the Secretary Fund?

609.10 What activities may be carried out under a grant?
609.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

609.20 What are the application requirements for a grant under this part?
609.21 What is a comprehensive development plan and what must it contain?

Subpart D—How Does the Secretary Make a Grant?

609.30 What is the procedure for approving and disapproving grant applications?
609.31 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

609.40 What are the matching requirements?
609.41 What are allowable costs and what are the limitations on allowable costs?
609.42 What are the audit and repayment requirements?
609.43 Under what conditions does the Secretary terminate a grant?

Authority: 20 U.S.C. 1063b and 1063c, unless otherwise noted.

Subpart A—General

§ 609.1 What is the Strengthening Historically Black Graduate Institutions Program?

The Strengthening Historically Black Graduate Institutions Program provides grants to the institutions listed in § 609.2 to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

(Authority: 20 U.S.C. 1060 and 1063b)

§ 609.2 What institutions are eligible to receive a grant under this part?

(a) An institution or an institution's qualified graduate program listed in paragraph (b) of this section is eligible to receive a grant under this part if the Secretary determines that the institution is making a substantial contribution to legal, medical, dental, veterinary or other graduate education opportunities for Black Americans.

(b) The institutions and programs referred to in paragraph (a) of this section are—

(1) Morehouse School of Medicine;
(2) Meharry Medical School;
(3) Charles R. Drew Postgraduate Medical School;
(4) Clark Atlanta University;
(5) Tuskegee Institute School of Veterinary Medicine;
(6) Xavier University School of Pharmacy;
(7) Southern University School of Law;
(8) Texas Southern University School of Law and School of Pharmacy;
(9) Florida A&M University School of Pharmaceutical Sciences;
(10) North Carolina Central University School of Law;
(11) Morgan State University's qualified graduate program;
(12) Hampton University's qualified graduate program;
(13) Alabama A&M's qualified graduate program;
(14) North Carolina A&T State University's qualified graduate program;
(15) University of Maryland Eastern Shore's qualified graduate program; and
(16) Jackson State University's qualified graduate program.

(c) An institution that was awarded a grant prior to October 1, 1992 may continue to receive grant payments, regardless of the eligibility of the graduate institutions described in paragraphs (b)(6) through (16) of this section, until the institution's grant period has expired or September 30, 1993, whichever is later.

(d) No institution of higher education or university system may receive more than one grant under this section in any fiscal year.

(Authority: 20 U.S.C. 1063b(e))

§ 609.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) The following sections of 34 CFR part 75 (Direct Grant Programs): §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.230–75.261, 75.500, 75.510–75.519, 75.524–75.534, 75.580–75.903, and 75.901;

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants))

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 609.

(Authority: 20 U.S.C. 1063b)

§ 609.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project period
Public
Secretary

(b) The following definition applies to a term used in this part:

Qualified graduate program means a graduate or professional program that—

(i) Provides a program of instruction in the physical or natural sciences, engineering, mathematics, or other scientific disciplines in which African Americans are underrepresented;

(ii) Has been accredited or approved by a nationally recognized accrediting agency or association. (The Secretary publishes a list in the **Federal Register** of nationally recognized accrediting agencies and associations.); and

(iii) Has students enrolled in that program when the institution offering the program applies for a grant under this part.

(Authority: 20 U.S.C. 1063b and 1069c)

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 609.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including

purchase or rental of telecommunications technology equipment or services;

(3) Support of faculty exchanges, faculty development and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(8) Joint use of facilities, such as laboratories and libraries;

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school in the State that shall include, as part of such program preparation for teacher certification;

(11) Establishing community outreach programs that will encourage elementary and secondary students to develop the academic skills and the interest to pursue postsecondary education;

(12) Other activities that it proposes in its application that contribute to carrying out the purpose of this part and are approved by the Secretary;

(13) Establishing or improving a development office to strengthen and increase contributions from alumni and the private sector; and

(14) Establishing and maintaining an institutional endowment under 34 CFR part 628 to facilitate financial independence.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities described in paragraph (a)(12) of this section that are not approved by the Secretary;

(3) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(4) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(5) Activities or services that relate to sectarian instruction or religious worship; and

(6) Activities provided by a school or department of divinity. For the purpose of this section, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(c) No award under this part may be used for telecommunications technology equipment, facilities or services, if such equipment, facilities or services are available pursuant to section 396(k) of the Communications Act of 1934.

(Authority: 20 U.S.C. 1062, 1063a, and 1069c)

§ 609.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 609.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds and how those activities will improve graduate educational opportunities for Black and low-income students and lead to greater financial independence for the applicant;

(b) A description of how the applicant is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans;

(c) An assurance from each applicant requesting in excess of $500,000 that 50 percent of the costs of all the activities to be carried out under the grant will come from non-Federal sources;

(d) A description of how the grant funds will be used so that they will supplement, and to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds, for the activities described in § 609.10(a)(1) through § 609.10(a)(14);

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution; and

(f)(1) A comprehensive development plan as described in § 609.21; or

(2) If an applicant has already submitted a comprehensive development plan as described in § 609.21, a description of the progress the applicant has made in carrying out the goals of its plan.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063d and 1066(b)(2))

§ 609.21 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan must describe an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Financial management;

(2) Academic programs; and

(b) The comprehensive development plan must include the following:

(1) An assessment of the strengths and weaknesses of the institution's financial management and academic programs.

(2) A delineation of the institution's goals for its financial management and academic programs, based on the outcomes of the assessment described in paragraph (b)(1) of this section.

(3) A listing of measurable objectives designed to assist the institution to reach each goal with accompanying timeframes for achieving the objectives.

(4) A description of methods, processes and procedures that will be used by the college or university to institutionalize financial management and academic program practices and improvements developed under the proposed funded activities.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063a)

Subpart D—How Does the Secretary Make a Grant?

§ 609.30 What is the procedure for approving and disapproving grant applications?

The Secretary approves any application that satisfies the requirements of § 609.10 and § 609.20.

(Authority: 20 U.S.C. 1063a)

§ 609.31 How does the Secretary determine the amount of a grant?

Of the amount appropriated for any fiscal year—

(a)(1) The first $12,000,000 (or any lesser amount appropriated) shall be available only for the purpose of making grants to institutions or programs described in § 609.2(b)(1) through § 609.2(b)(5);

(2) If the sum of the approved applications does not exceed the amount appropriated, the Secretary awards grants in the amounts requested and approved;

(3) If the sum of the approved requests exceeds the sum appropriated, and Morehouse School of Medicine submits an approved request for at least $3,000,000, and the amount appropriated exceeds $3,000,000, the Secretary awards no less than $3,000,000 to Morehouse School of Medicine and reduces the grants to the institutions described in § 609.2(b)(1) through § 609.2(b)(5) as the Secretary considers appropriate, so that the sum of the approved grants equals the amount appropriated; and

(4) If Morehouse School of Medicine submits an approved request for at least $3,000,000 and the amount appropriated does not exceed $3,000,000, Morehouse School of Medicine receives all the appropriated funds; and

(b)(1) Any amount appropriated in excess of $12,000,000 shall be available for the purpose of making grants, in equal amounts not to exceed $500,000, to institutions or programs described in § 609.2(b)(6) through § 609.2(b)(16); and

(2) If any funds remain, the Secretary makes grants to institutions or programs described in § 609.2(b)(1) through § 609.2(b)(16).

(Authority: 20 U.S.C. 1063b)

Subpart E—What Conditions Must a Grantee Meet?

§ 609.40 What are the matching requirements?

If an institution receives a grant in excess of $500,000, it must spend non-Federal funds to meet the cost of at least 50 percent of the activities approved in its application.

(Authority: 20 U.S.C. 1063b)

§ 609.41 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are reasonably related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* A grantee shall use grant funds so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; and

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062, 1063b, and 1066)

§ 609.42 What are the audit and repayment requirements?

(a) (1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part by a qualified, independent organization or person in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, 1981 revision, established by the Comptroller General of the United States. This publication is available from the Superintendent of Documents, U.S. Government Printing Office.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Department of Education Inspector General three copies of the audit required in paragraph (a) of this section within six months after completion of the audit.

(c) Any individual or firm conducting an audit described in this section shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a)

§ 609.43 Under what conditions does the Secretary terminate a grant?

The Secretary terminates any grant under which funds were not expended if an institution loses—

(a) Its accredited status; or

(b) Its legal authority in the State in which it is located.

(Authority: 20 U.S.C. 1063a)

[FR Doc. 93–17124 Filed 7–19–93; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920775–3145]

RIN 0651–AA44

Changes in Patent Drawing Standards

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice regarding patent drawings to adopt international standards and to eliminate unnecessary requirements. The Office is amending the rules to provide clarification and adopt international standards; to delete the reference to changes by bonded draftsmen since the Office will no longer release drawings from patent applications; and to include the option of submitting black and white photographs in lieu of black ink drawings.

EFFECTIVE DATE: October 1, 1993. These rules will be applicable to all drawings and papers filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Richard A. Bawcombe by telephone at (703) 305–8594, by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231, or by facsimile transmission to his attention at (703) 305–4372.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the **Federal Register** (57 FR 42721) on September 16, 1992, and in the Patent and Trademark Office Official Gazette (1143 Off. Gaz. Pat. Office 13) on October 6, 1992, the Office proposed to amend the rules of practice in patent drawings. Drawings acceptable for patent applications filed outside of the United States are not always acceptable in a patent application filed in the United States. Therefore, the rules relating to drawing requirements are being amended to enable the Office, when appropriate, to accept drawings that are capable of clear reproduction for the printing of any resulting patent. Drawings in compliance with the old § 1.84 will be in compliance with the new § 1.84.

VOL 58 ISS 137 JL 20 1993 UMI

An oral hearing was not conducted. However, six written comments were submitted.

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration and several of the suggested modifications have been adopted. Another modification, since the "Notice of Proposed Rulemaking," is under § 1.84 wherein five sets of drawings were required, but the total has been decreased to three sets due to a reassessment of the need for the additional copies for Office use. The comments and responses are discussed below.

Comment: Three comments were received regarding the proposed changes within § 1.84(b). Three other comments were received regarding the proposed changes to § 1.165. All six comments suggested that the Office continue to accept mounted photographs.

Response: The Office will adopt the suggestion and continue to accept mounted photographs for utility, design, and plant patent applications. The initial reason the Office sought to change the rule was to overcome the problem of mounted photographs becoming detached and separated from the file. The apparent burden to applicants associated with the Office not accepting mounted photographs is the reason the Office will continue to permit mounted photographs provided they are permanently affixed.

Several of the commenters mentioned that they have never had problems with mounted photographs. As commentary on these remarks, it is not the person filing the drawings who would have problems with mounted photographs; it is the Office. And, indeed, the Office has, in the past, experienced problems with mounted photographs coming loose from the paper they are mounted on. When this happens, the photographs can become displaced from the file and lost. This has occurred many times, leading to frustration and wasted effort on the part of many practitioners, as well as on the part of Office personnel. If mounted photographs are to be used, they must be mounted in such a way that they cannot become loose from the bristol board to which they are mounted.

Comment: Two of the comments regarding 1.84(b) also mentioned that the proposed rules would not allow more than one figure on each sheet of drawings where photographs are being used, and sought relief from this proposed change.

Response: Since the office will continue to accept mounted photographs, the Office will also accept sheets of drawings where more than one photograph appears on the drawing sheet provided that all other drawing requirements are met.

Comment: Two of the comments suggested that the Office not require photographs to be on A4 size paper.

Response: The Office will adopt the suggestion. The Office will accept photographs on one of the four paper sizes specified in § 1.84(f), as long as all sheets are the same size.

Comment: Regarding § 1.84(f), one comment suggested that the Office permit use of an additional size of paper, i.e., 21.6 cm. by 27.9 cm. (8½ by 11 inches).

Response: The Office will adopt the suggestion. The adoption of the suggestion to add an additional paper size under § 1.84(f), results in the need for an additional margin size. Therefore, an additional paragraph is added to § 1.84(g) to state that "On 21.6 cm. by 27.9 cm. (8½ by 11 inch) drawing sheets, each sheet must include a top margin of 2.5 cm. (1 inch) and bottom and side margins of .64 cm. (¼ inch) from the edges, thereby leaving a sight precisely 16.9 by 24.3 cm. (6$^{11}/_{16}$ by 9$^{9}/_{16}$ inches)."

Comment: Regarding 1.84 (p)(3), one comment suggested liberalization for drawings which include typewritten subject matter, such as gene or protein sequences that consist predominantly of letters, sometimes with underlining and boxes around them. Other situations cited were graphs and photographs of gels, which often appear in biotechnological inventions, which include typed matter as legends.

Response: The suggestion has not been adopted because letters need to stand at the designated height to maintain legibility when reductions become necessary to accommodate the various photocomposed products.

Comment: Regarding § 1.84(w), one comment mentioned that correction fluid is not permanent and has a tendency to flake and fall from the surface it covers.

Response: Section 1.84(w) permits correction fluid to be used provided the correction fluid is durable and permanent. If correction fluid is used on drawings submitted to the Office, the applicant will be required by the Office to correct the drawings if the correction fluid becomes loose before the patent printing process is completed.

Comment: One comment suggested that § 1.152 was improper in permitting either ink drawings or photographs to be submitted with an application for a design patent, but not both, and in requiring any photographs submitted to show only the design claimed and none of the environment in which it is used. The comment argued that prohibition against using both ink drawings and photographs is inconsistent with 35 U.S.C. 112. Under that section of the statute, a design patent application must disclose the invention "in such full, clear, concise, and exact terms as enable any person skilled in the art . . . to make and use" the invention and "set forth the best mode contemplated by the inventor of carrying out his invention."

Response: Section 1.152 is consistent with 35 U.S.C. 112. The introduction of both photographs and ink drawings in a design application would result in a high probability of inconsistencies between corresponding elements on the ink drawings as compared with the photographs. However, if special circumstances warrant use of both ink drawings and photographs, applicant can file a petition under § 1.183 to permit both in a design application if such drawings do not introduce inconsistencies between the views.

Discussion of Specific Sections Changed or Added

Section 1.17(h) is amended to include a reference to § 1.84 for accepting color drawings or photographs in utility patent applications.

Section 1.19(a)(3) is amended to change the citation of § 1.84(p) to § 1.84(a)(2) in view of the amendments to § 1.84.

Section 1.71(d) is amended to change the citation of § 1.84(o) to § 1.84(o) to § 1.84(s) in view of the amendments to § 1.84.

Section 1.84 is revised as follows:

(a) *Drawings.* This paragraph is added to classify drawings into two categories, i.e., black ink and color, and deletes the limitation that the use of white pigment to cover lines is not normally acceptable. The black ink drawing requirements are amended to allow computer-generated drawings to be accepted subject to the same standards applied to all black ink drawings. Color drawing requirements are moved from § 1.84(p) to § 1.84(a). Color drawings may be acceptable upon the granting of a petition filed under this paragraph explaining why the color drawings are necessary. A petition is required because the special handling necessary for color drawings is time consuming and the Office cannot permit such a special procedure except in extenuating circumstances. Since utility patents are not printed in color, 3 sets of color drawings are necessary for proper distribution within the Office. One color

set will be attached to the Letters Patent for routing to the applicant. The remaining two color sets will be routed to (1) the patent file, and (2) the Office of Publication and Dissemination, Patent and Trademark Copy Sales, for copying purposes when a copy in color of a utility patent containing a color drawing, as provided for in § 1.19(a)(3), is requested.

(b) *Photographs.* This paragraph permits the acceptance of photographs upon granting of an applicant's petition. The Office will accept black and white and color photographs or photomicrographs (not photolithographs or other reproductions of photographs made by using screens) developed on double weight photographic paper or permanently mounted on bristol board, in lieu of ink drawings. The photographs must be of sufficient quality so that all details in the drawing are reproducible in the print patent.

(c) *Identification of drawings.* This paragraph permits an applicant to provide proper identification information on the reverse side of each sheet of drawings. The identification information allows the Office to match drawing sheets with the proper application. The identification information should include the application number, if known, or the title of the invention, inventor's name, docket number (if any), and name and telephone number of the person to call if the drawings cannot be matched to the proper patent application. The Office will not object if identifying information is not present; however, if the drawings become separated, it will be virtually impossible for the Office to match the drawings with the application. This paragraph is restructured from previous § 1.84(1) and revised to state that the preferred placement of the information is on the back side of the drawings sheets.

(d) *Graphic forms in drawings.* This paragraph is added to set standards for chemical and mathematical formulae to align Office standards for formulae, tables, and waveforms with international standards.

(e) *Type of paper.* This paragraph is a revision of previous § 1.84(a) to set forth the requirements for the type of paper to be used for drawings, including the type of paper for photographs.

(f) *Size of paper.* This paragraph clarifies Office requirements set forth in previous § 1.84(b) and permits one additional size of paper, i.e., 21.6 cm. by 27.9 cm. (8½ by 11 inches) for drawings.

(g) *Margins.* This paragraph is restructured from previous § 1.84(b) to indicate how the size of the paper changes the margin requirements. The Office will accept four sizes of paper, however, the sight (i.e., the usable surface) is the same for two of the paper sizes, i.e., 21.6 cm. by 33.1 cm. (8½ by 13 inches), and 21.6 cm. by 35.6 cm. (8½ by 14 inches). The sight is 17.0 cm. by 26.2 cm. for DIN size A4 paper. The sight is 16.9 cm. by 24.3 cm. (6 11/16 by 9 9/16 inches) for the added paper size of 21.6 cm. by 27.9 cm. (8½ by 11 inches).

(h) *Views.* This paragraph is added to reformat previous § 1.84(i) to provide a logical arrangement of the different views provided in the rules, to revise the standards for purposes of clarification, to include the standard for waveforms to show the relative timing, to provide clearer language relative to hatching shown on drawings, to set forth the standard for depicting hatching in sectional views as regularly spaced parallel oblique strokes which precludes use of cross-hatching strokes, and to include requirements pertaining to alternate positions. In addition, both Roman and Arabic numerals are acceptable to designate the section being illustrated.

(i) *Arrangement of views.* This paragraph is relocated from previous § 1.84(j) and revised to incorporate international standards. In addition, this paragraph is changed and broadened to provide for placement of words on drawings. One view is not to be superimposed within the outline of another. The changes expand the possibilities for presenting graphs to conform to standard scientific conventions, while using a format which is compatible with automated patent searching displays. See 1121 Off. Gaz. Pat. Office 54 (Dec. 25, 1990) and 1129 Off. Gaz. Pat. Office 22 (Aug. 13, 1991).

(j) *View for Official Gazette.* This paragraph is relocated from previous § 1.84(k).

(k) *Scale.* This paragraph is relocated from previous § 1.84(e) and § 1.84(i) and revised to indicate that the words "actual size" or "scale ½" on the drawings are not permitted since the meaning is lost in reduction/enlargement. The paragraph provides that elements of the same view must be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the view. As a preferred alternative to a difference in proportion within one view for the purpose of achieving the necessary clarity, a supplementary view may be added giving a larger-scale illustration of an element from the initial review. When a supplementary view is included, it is recommended that the enlarged element shown in the second view be surrounded by a finely drawn or "dot-dash" circle in the first view pinpointing its location, without obscuring the view.

(l) *Character of lines, numbers, and letters.* This paragraph is located from previous § 1.84(c) and revised to indicate that lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have different meanings. In addition, this paragraph is changed and broadened to allow drawings to be made by any process which will give them satisfactory reproduction characteristics.

(m) *Shading.* This paragraph is changed and broadened to expand definitions for shading and deletes the limitation that drawings transmitted to the Office should be sent flat, protected by a sheet of heavy binder's board, or rolled for transmission in a suitable mailing tube. This change provides the individual practitioner with greater discretion on how to set drawings. In addition, this paragraph is relocated from previous § 1.84(d) to separate shading requirements from hatching requirements by stating that shading may be used to indicate the surface or shape of sherical, cylindrical, and economic elements of an object, and that space lines are preferred for shading purposes. Solid black areas are not permitted, except when used to represent bar graphs or color.

(n) *Symbols.* This paragraph is relocated from previous § 1.84(g) to separate symbols requirements from legends requirements and enlarges the number of acceptable symbols. Known devices should be illustrated by symbols which have a universally-recognized meaning, and which are generally accepted in the art, provided no further detail is essential for understanding the subject matter of the claimed invention. Symbols which are not universally recognized may be used if they are not likely to be confused with existing conventional symbols and if they are readily identifiable, subject to approval by the Examiner.

(o) *Legends.* This paragraph is relocated from previous § 1.84(g) to separate legends requirements from symbols requirements and revised to integrate international standards. Where text matter is (1) deemed indispensable for understanding the drawing or (2) may be required by the Examiner, a minimum of words should be used. While such requirement by the Examiner was not contained in the "Notice of Proposed Rulemaking," it was contained in former § 1.84(g). Words should not be used to describe the figure itself, such as "this is a bar

graph." All text legends are subject to approval by the examiner.

(p) *Numbers, letters, and reference characters.* This paragraph is relocated from previous § 1.84(f) and revised to include numbers and letters in the heading formerly designated "reference characters." This section has been reformatted into five subsections and revised to integrate international standards, where possible. Although the Latin alphabet is used in the international standard, the Office takes the view that the English alphabet is more universally acceptable for letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulae. In addition, the characters used must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be so arranged to follow the profile of the object depicted. See 1121 Off. Gaz. Pat. Office 54 (Dec. 25, 1990) and 1129 Off. Gaz. Pat. Office 22 (Aug. 13, 1991).

(q) *Lead lines.* This paragraph is added to integrate international standards, to incorporate brief language which appears in previous § 1.84(f), and to change and expand the definition for lead lines. Lead lines are those lines between the reference characters and the details referred to, and they must be executed in the same way as other lines in the drawing.

(r) *Arrows.* This paragraph is relocated from previous § 1.84(g) and revised to indicate the meaning of the use of arrows, and to show that they may be used at the end of lead lines only if their meaning is clear.

(s) *Copyright or mask work notice.* This paragraph is relocated from previous § 1.84(o).

(t) *Numbering of sheets of drawings.* This paragraph is relocated from previous § 1.84(n) and changed and broadened to allow for the placement of sheet numbers within the sight of the drawing. It is preferable that the sheets be numbered with two Arabic numerals placed on either side of an oblique line, with the first number being the sheet number and the second the total number of sheets of drawings.

(u) *Numbering of views.* This paragraph is relocated from previous § 1.84(i) and, for clarity, is separately identified in this new section. Use of the abbreviation "FIG." must precede all view numbers.

(v) *Security markings.* This paragraph is relocated from previous § 1.84(l) to provide that security markings may be placed on the drawings if they are outside the sight and preferably centered in the top margin.

(w) *Corrections.* This paragraph is added to provide that any corrections made on drawings submitted to the Office must be durable and permanent. The language is revised from previous 1.84(a) which prohibited the use of white pigment to cover lines.

(x) *Holes.* This paragraph is relocated from previous § 1.84(b) to permit two holes to be punched in the top margin of the drawings with their centerlines spaced 7.0 cm. (2¾ inches) apart.

Section 1.88 is removed and reserved since the changes effective January 1, 1991, in § 1.85(b) make the regulation regarding the transfer of drawings unnecessary. Since the Office no longer releases drawings from patent applications, applicants are generally retaining the master copy of the drawings. Accordingly, applicants can easily file a copy of drawings in an application and therefore eliminate the need for the Office to transfer drawings. Any situations which present a hardship to applicants may be accommodated by the filing of a petition under § 1.182 requesting the transfer of the drawings.

Section 1.123 prescribes procedures for amending drawings. With the adoption of new rules for amending drawings effective January 1, 1989, the Office no longer requires the submission of formal drawings upon filing a patent application. See 1097 Off. Gaz. Pat. Office 36 (Dec. 13, 1988). Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for future correction, if necessary.

As a result of adoption of the new rules in 1989 relating to drawings, the Office will no longer release to applicants, bonded drafting companies or others, drawings from patent applications. Effective January 1, 1991, § 1.85(b) prohibits release of drawings from all patent applications. Accordingly, the reference to changes by bonded draftsmen is deleted from § 1.123.

Section 1.152 is revised to provide that photographs and ink drawings must not be combined in one design application. The reason for this requirement is to avoid inconsistencies between the photograph and the drawing, and further eliminate views that may distort the proportionate relationship between the corresponding elements on the drawing and the photograph. All design photographs are limited to the design for the article claimed and are not to include environmental structure. Color drawings and color photographs are not permissible in design patent applications. The submission of color photographs will be accepted for filing date purposes, in design patent applications, contrary to the requirement for black ink drawings. The Applications Processing Division has been authorized to construe the color photographs as informal drawings, rather than to hold the applications incomplete as filed. By so construing color photographs when filed as informal drawings, the Office will accept the applications without requiring applicants to file a petition to obtain the original deposit date as the filing date. During the course of prosecution, the Examiner will require properly executed formal black ink drawings or black and white photographs as a substitute for the originally filed color photographs prior to allowance of the claim. Solid black surface shading is not permitted on a design drawing, except when used to represent color contrast.

Section 1.165 is revised to provide that plant patent drawings must comply with the requirements of § 1.84. The current exception that plant patent drawings do not automatically require view numbers and reference characters is maintained. Two sets of the drawings are needed. One set will be forwarded to the Department of Agriculture and the other set will be routed to the Office of Publication and Dissemination, Patent and Trademark Copy Sales, for copying purposes.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The Acting General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to revise and reformat the drawing standards to adopt international standards, to the extent possible, and to facilitate access to sections through inclusion of pertinent subsection headings, which should be helpful to small entities.

The Office has determined that these rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for

consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because most of the changes reduce procedural burdens. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that these rule changes have no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain a collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which has previously been approved by the Office of Management and Budget under Control No. 0651–0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting, and Record keeping requirement.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, Part 1 of Title 37 of the Code of Federal Regulations is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17(h) is revised to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph.....$130.00

§ 1.47—for filing by other than all the investors or a person not the inventor.

§ 1.48—for correction of inventorship.

§ 1.84—for accepting color drawings or photographs.

§ 1.182—for decision on questions not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.

§ 1.644(e)—for petition in an interference.

§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.

§ 1.666(c)—for later filing of interference settlement agreement.

§§ 5.12, 5.13, & 5.14—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

* * * * *

3. Section 1.19(a)(3) is revised to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) Uncertified copies of patents:

* * * * *

(3) Copy of a utility patent or statutory invention registration containing color drawing (see § 1.84(a)(2))..... $24.00

* * * * *

4. Section 1.71(d) is revised to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

(d) A copyright or mask work notice may be placed in a design or utility patent application adjacent to copyright and mask work material contained therein. The notice may appear at any appropriate portion of the patent application disclosure. For notices in drawings, see § 1.84(s). The content of the notice must be limited to only those elements provided for by law. For example, "©1983 John Doe" (17 U.S.C. 401) and " *M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in paragraph (e) of this section is included at the beginning (preferably as the first paragraph) of the specification.

* * * * *

5. Section 1.84 is revised to read as follows:

§ 1.84 Standards for drawings.

(a) *Drawings.* There are two acceptable categories for presenting drawings in utility patent applications:

(1) *Black ink.* Black and white drawings are normally required. India ink, or its equivalent that secures solid black lines, must be used for drawings, or

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility patent application or the subject matter of a statutory invention registration. The Patent and Trademark Office will accept color drawings in utility patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings; and

(iii) The specification must contain the following language as the first paragraph in that portion of the specification relating to the brief description of the drawing:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

If the language is not in the specification, a proposed amendment to insert the language must accompany the petition.

(b) *Photographs.* (1) Black and white. Photographs are not ordinarily permitted in utility and design patent applications. However, the Office will accept photographs in utility and design patent applications only after granting a petition filed under this paragraph which requests that photographs be accepted. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h); and

(ii) Three (3) sets of photographs. Photographs must either be developed on double weight photographic paper or be permanently mounted on bristol board. The photographs must be sufficient quality so that all details in the drawing are reproducible in the printed patent.

(2) Color. Color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied. See paragraph (a)(2) of this section.

(c) *Identification of drawings.* Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call if the Office is unable to match the drawings to the proper application. This information should be placed on the back of each sheet of drawings a minimum distance of 1.5 cm. (5/8 inch) down from the top of the page.

(d) *Graphic forms in drawings.* Chemical or mathematical formulae,

tables, and waveforms may be submitted as drawings, and are subject to the same requirements as drawings. Each chemical or mathematical formula must be labeled as a separate figure, using brackets when necessary, to show that information is properly integrated. Each group of waveforms must be presented as a single figure, using a common vertical axis with time extending along the horizontal axis. Each individual waveform discussed in the specification must be identified with a separate letter designation adjacent to the vertical axis.

(e) *Type of paper.* Drawings submitted to the Office must be made on paper which is flexible, strong, white, smooth, non-shiny, and durable. All sheets must be free from cracks, creases, and folds. Only one side of the sheet shall be used for the drawing. Each sheet must be reasonably free from erasures and must be free from alterations, overwritings, and interlineations. Photographs must either be developed on double weight photographic paper or be permanently mounted on bristol board. See paragraph (b) of this section for other requirements for photographs.

(f) *Size of paper.* All drawing sheets in an application must be the same size. One of the shorter sides of the sheet is regarded as its top. The size of the sheets on which drawings are made must be:

(1) 21.6 cm. by 35.6 cm. (8½ by 14 inches),
(2) 21.6 cm. by 33.1 cm. (8½ by 13 inches),
(3) 21.6 cm. by 27.9 cm. (8½ by 11 inches), or
(4) 21.0 cm. by 29.7 cm. (DIN size A4).

(g) *Margins.* The sheets must not contain frames around the sight, i.e., the usable surface. The following margins are required:

(1) On 21.6 cm. by 35.6 cm. (8½ by 14 inch) drawing sheets, each sheet must include a top margin of 5.1 cm. (2 inches), and bottom and side margins of .64 cm. (¼ inch) from the edges, thereby leaving a sight no greater than 20.3 cm. by 29.8 cm. (8 by 11¾ inches).

(2) On 21.6 cm. by 33.1 cm. (8½ by 13 inch) drawing sheets, each sheet must include a top margin of 2.5 cm. (1 inch) and bottom and side margins of .64 cm. (¼ inch) from the edges, thereby leaving a sight no greater than 20.3 cm. by 29.8 cm. (8 by 11¾ inches).

(3) On 21.6 cm. by 27.9 cm. (8½ by 11 inch) drawing sheets, each sheet must include a top margin of 2.5 cm. (1 inch) and bottom and side margins of .64 cm. (¼ inch) from the edges, thereby leaving a sight no greater than 16.9 cm. by 24.3 cm. (6 1/16 by 9 9/16 inches).

(4) On 21.0 cm. by 29.7 cm. (DIN size A4) drawing sheets, each sheet must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm., and a bottom margin of 1.0 cm., thereby leaving a sight no greater than 17.0 cm. by 26.2 cm.

(h) *Views.* The drawing must contain as many views as necessary to show the invention. The views may be plan, elevation, section, or perspective views. Detail views of portions of elements, on a larger scale if necessary, may also be used. All views of the drawing must be grouped together and arranged on the sheet(s) without wasting space, preferably in an upright position, clearly separated from one another, and must not be included in the sheets containing the specifications, claims, or abstract. Views must not be connected by projection lines and must not contain center lines. Waveforms of electrical signals may be connected by dashed lines to show the relative timing of the waveforms.

(1) *Exploded views.* Exploded views, with the separated parts embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets.

(2) *Partial views.* When necessary, a view of a large machine or device in its entirety may be broken into partial views on a single sheet, or extended over several sheets if there is no loss in facility of understanding the views. Partial views drawn on separate sheets must always be capable of being linked edge to edge so that no partial view contains parts of another partial view. A smaller scale view should be included showing the whole formed by the partial views and indicating the positions of the parts shown. When a portion of a view is enlarged for magnification purposes, the view and the enlarged view must each be labeled as separate views.

(i) Where views on two or more sheets form, in effect, a single complete view, the views on the several sheets must be so arranged that the complete figure can be assembled without concealing any part of any of the views appearing on the various sheets.

(ii) A very long view may be divided into several parts placed one above the other on a single sheet. However, the relationship between the different parts must be clear and unambiguous.

(3) *Sectional views.* The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Hatching should not impede the clear reading of the reference characters and lead lines. If it is not possible to place reference characters outside the hatched area, the hatching may be broken off wherever reference characters are inserted. Hatching must be at a substantial angle to the surrounding axes or principal lines, preferably 45°. A cross section must be set out and drawn to show all of the materials as they are shown in the view from which the cross section was taken. The parts in cross section must show proper material(s) by hatching with regularly spaced parallel oblique strokes, the space between strokes being chosen on the basis of the total area to be hatched. The various parts of a cross section of the same item should be hatched in the same manner and should accurately and graphically indicate the nature of the material(s) that is illustrated in cross section. The hatching of juxtaposed different elements must be angled in a different way. In the case of large areas, hatching may be confined to an edging drawn around the entire inside of the outline of the area to be hatched. Different types of hatching should have different conventional meanings as regards the nature of a material seen in cross section.

(4) *Alternate position.* A moved position may be shown by a broken line superimposed upon a suitable view if this can be done without crowding; otherwise, a separate view must be used for this purpose.

(5) *Modified forms.* Modified forms of construction must be shown in separate views.

(i) *Arrangement of views.* One view must not be placed upon another or within the outline of another. All views on the same sheet should stand in the same direction and, if possible, stand so that they can be read with the sheet held in an upright position. If views wider than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet, with the appropriate top margin to be used as the heading space, is on the right-hand side. Words must appear in a horizontal, left-to-right fashion when the page is either upright or turned so that the top becomes the right side, except for graphs utilizing standard scientific convention to denote the axis

VOL 58 ISS 137 JL 20 1993 UMI

of abscissas (of X) and the axis of ordinates (of Y).

(j) *View for Official Gazette.* One of the views should be suitable for publication in the *Official Gazette* as the illustration of the invention.

(k) *Scale.* (1) The scale to which a drawing is made must be large enough to show the mechanism without crowding when the drawing is reduced in size to two-thirds in reproduction. Views of portions of the mechanism on a larger scale should be used when necessary to show details clearly. Two or more sheets may be used if one does not give sufficient room. The number of sheets should be kept to a minimum.

(2) When approved by the examiner, the scale of the drawing may be graphically represented. Indications such as "actual size" or "scale ½" on the drawings, are not permitted, since these lose their meaning with reproduction in a different format.

(3) Elements of the same view must be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the view. Instead of showing elements in different proportion, a supplementary view may be added giving a larger-scale illustration of the element of the initial view. The enlarged element shown in the second view should be surrounded by a finely drawn or "dot-dash" circle in the first view indicating its location without obscuring the view.

(l) *Character of lines, numbers, and letters.* All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. The weight of all lines and letters must be heavy enough to permit adequate reproduction. This requirement applies to all lines however fine, to shading, and to lines representing cut surfaces in sectional views. Lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have a different meaning.

(m) *Shading.* The use of shading in views is encouraged if it aids in understanding the invention and if it does not reduce legibility. Shading is used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object. Flat parts may also be lightly shaded. Such shading is preferred in the case of parts shown in perspective, but not for cross sections. See paragraph (h)(3) of this section. Spaced lines for shading are preferred. These lines must be thin, as few in number as practicable, and they must contrast with the rest of the drawings. As a substitute for shading, heavy lines on the shade side of objects can be used except where they superimpose on each other or obscure reference characters. Light should come from the upper left corner at an angle of 45°. Surface delineations should preferably be shown by proper shading. Solid black shading areas are not permitted, except when used to represent bar graphs or color.

(n) *Symbols.* Graphical drawing symbols may be used for conventional elements when appropriate. The elements for which such symbols and labeled representations are used must be adequately identified in the specification. Known devices should be illustrated by symbols which have a universally recognized conventional meaning and are generally accepted in the art. Other symbols which are not universally recognized may be used, subject to approval by the Office, if they are not likely to be confused with existing conventional symbols, and if they are readily identifiable.

(o) *Legends.* Suitable descriptive legends may be used, or may be required by the Examiner, where necessary for understanding of the drawing, subject to approval by the Office. They should contain as few words as possible.

(p) *Numbers, letters, and reference characters.* (1) Reference characters (numerals are preferred), sheet numbers, and view numbers must be plain and legible, and must not be used in association with brackets or inverted commas, or enclosed within outlines, e.g., encircled. They must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be arranged to follow the profile of the object depicted.

(2) The English alphabet must be used for letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas.

(3) Numbers, letters, and reference characters must measure at least .32 cm. (⅛ inch) in height. They should not be placed in the drawing so as to interfere with its comprehension. Therefore, they should not cross or mingle with the lines. They should not be placed upon hatched or shaded surfaces. When necessary, such as indicating a surface or cross section, a reference character may be underlined and a blank space may be left in the hatching or shading where the character occurs so that it appears distinct.

(4) The same part of an invention appearing in more than one view of the drawing must always be designated by the same reference character, and the same reference character must never be used to designate different parts.

(5) Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings.

(q) *Lead lines.* Lead lines are those lines between the reference characters and the details referred to. Such lines may be straight or curved and should be as short as possible. They must originate in the immediate proximity of the reference character and extend to the feature indicated. Lead lines must not cross each other. Lead lines are required for each reference character except for those which indicate the surface or cross section on which they are placed. Such a reference character must be underlined to make it clear that a lead line has not been left out by mistake. Lead lines must be executed in the same way as lines in the drawing. See paragraph (1) of this section.

(r) *Arrows.* Arrows may be used at the ends of the lines, provided that their meaning is clear, as follows:

(1) On a lead line, a freestanding arrow to indicate the entire section towards which it points;

(2) On a lead line, an arrow touching a line to indicate the surface shown by the line looking along the direction of the arrow; or

(3) To show the direction of movement.

(s) *Copyright or Mask Work Notice.* A copyright or mask work notice may appear in the drawing, but must be placed within the sight of the drawing immediately below the figure representing the copyright or mask work material and be limited to letters having a print size of .32 cm. to .64 cm. (1/8 to 1/4 inches) high. The content of the notice must be limited to only those elements provided for by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in § 1.71(e) is included at the beginning (preferably as the first paragraph) of the specification.

(t) *Numbering of sheets of drawings.* The sheets of drawings should be numbered in consecutive Arabic numerals, starting with 1, within the sight as defined in paragraph (g) of this section. These numbers, if present, must be placed in the middle of the top of the sheet, but not in the margin. The

numbers can be placed on the right-hand side if the drawing extends too close to the middle of the top edge of the usable surface. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. The number of each sheet should be shown by two Arabic numerals placed on either side of an oblique line, with the first being the sheet number, and the second being the total number of sheets of drawings, with no other marking.

(u) *Numbering of views.* (1) The different views must be numbered in consecutive Arabic numerals, starting with 1, independent of the numbering of the sheets and, if possible, in the order in which they appear on the drawing sheet(s). Partial views intended to form one complete view, on one or several sheets, must be identified by the same number followed by a capital letter. View numbers must be preceded by the abbreviation "FIG." Where only a single view is used in an application to illustrate the claimed invention, it must not be numbered and the abbreviation "FIG." must not appear.

(2) Numbers and letters identifying the views must be simple and clear and must not be used in association with brackets, circles, or inverted commas. The view numbers must be larger than the numbers used for reference characters.

(v) *Security markings.* Authorized security markings may be placed on the drawings provided they are outside the sight, preferably centered in the top margin.

(w) *Corrections.* Any corrections on drawings submitted to the Office must be durable and permanent.

(x) *Holes.* The drawing sheets may be provided with two holes in the top margin. The holes should be equally spaced from the respective side edges, and their center lines should be spaced 7.0 cm. (2¾ inches) apart. (See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.174 for reissue drawings.)

§ 1.88 [Removed and Reserved]

6. Section 1.88 is removed and reserved.

7. Section 1.123 is revised to read as follows:

§ 1.123 Amendments to the drawing.

No change in the drawing may be made except with permission of the Office. Permissible changes in the construction shown in any drawing may be made only by the submission of a substitute drawing by applicant. A sketch in permanent ink showing proposed changes, to become part of the record, must be filed for approval by the examiner and should be a separate paper.

8. Section 1.152 is revised to read as follows:

§ 1.152 Design drawing.

The design must be represented by a drawing that complies with the requirements of § 1.84, and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented. Solid black surface shading is not permitted except when used to represent color contrast. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials. Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing. Photographs and ink drawings must not be combined in one application. Photographs submitted in lieu of ink drawings in design patent applications must comply with § 1.84(b) and must not disclose environmental structure but must be limited to the design for the article claimed. Color drawings and color photographs are not permitted in design patent applications.

9. Section 1.165 is revised to read as follows:

§ 1.165 Plant drawings.

(a) Plant patent drawings should be artistically and competently executed and must comply with the requirements of § 1.84. View numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings or color photographs must be submitted.

Dated: July 14, 1993.

Michael K. Kirk,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93-17148 Filed 7-19-93; 8:45 am]

BILLING CODE 3510-16-M

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 930769-3169 ID. 061493C]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Preliminary determination of harvest quotas; request for comments.

SUMMARY: NMFS announces the estimated spawning biomass and preliminary determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, California, for the 1993–94 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. The optimum yield is set at 4,900 metric tons (mt), which includes a 4,900-mt nonreduction quota, plus an unspecified amount for use as live bait. There is no reduction quota for the 1993–94 fishing season. Final determination of the harvest quotas will be announced shortly after the comment period closes.

DATES: Comments must be received on or before July 29, 1993.

ADDRESSES: Comments should be addressed to Dr. Gary C. Matlock, Acting Regional Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213. Underlying data and other information relevant to this notice (Southwest Fisheries Science Center Administrative Report LJ–93–4), has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Southwest Regional Director.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Operations, Southwest Region, NMFS, Long Beach, California, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Science Center, the Acting Director of the Southwest Region, NMFS, (Regional Director) has estimated that the 1993–1994 spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 282,000 mt, 136 percent of the 1992–1993 biomass estimate of 208,000 mt. The biomass estimate is derived from a stock synthesis model using spawning biomass estimated by the egg

production method for calendar years 1980 to 1985, an egg production index, fish spotter data, total landings and catch data, and mean January-to-February sea surface temperatures.

The Regional Director has made the following preliminary determinations for the 1993–1994 fishing season by applying the formulas in the FMP and in § 662.20 of the implementing rules.

1. The total U.S. harvest quota for northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait. The total U.S. harvest quota is equivalent to 70 percent of the overall optimum yield (70 percent of 7,000 mt) available for harvest by the United States and Mexico.

2. The total U.S. harvest quota for reduction purposes is zero. No reduction quota is permitted when the spawning biomass is 300,000 mt or less.

3. The U.S. harvest allocation for nonreduction fishing (i.e., fishing or anchovy for use as dead bait and human consumption) is 4,900 mt (as set by the Federal anchovy regulations at § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 4,202 mt. The FMP states that this amount is the maximum level of reduction plus non-reduction processing during the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 4,202 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero mt. The TALFF in the EEZ is based on the U.S. portion of the OY (4,900 mt) minus the DAH (4,202 mt), then minus the amount of the expected harvest in the Mexican fishery zone that is in excess of the amount recognized as Mexico's share under the FMP formula. The expected 1993–1994 harvest in the Mexican fishery zone is 2,324 mt, which is the largest Mexican harvest in the past 3 years. The amount recognized as Mexico's share under the FMP formula is 30 percent of the optimum yield, which is 2,100 mt in 1993–1994. Therefore, 224 mt must be subtracted from the difference between the U.S. OY and the estimated DAH.

TALFF=4,900–4,202– (2,324–2,100)
TALFF=474 mt.

The FMP makes separate allocations to U.S. reduction and non-reduction fisheries and does not provide for a transfer between categories, while the formula for TALFF was devised as if those transfers take place to provide for a full U.S. harvest and optimum yield. Since U.S. vessel operators are interested in having a small reduction fishery even in years when the biomass has been below 300,000 mt, there is an unfulfilled domestic harvest. Establishing a TALFF for this fishery according to the formula in the FMP would violate section 201(d) of the Magnuson Act, which was intended to allow a TALFF only for that portion of the optimum yield that vessels of the U.S. would not be able or willing to harvest.

A summary of the information in which this preliminary determination is based has been provided to the Pacific Fishery Management Council (Council).

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq*

Dated: July 14, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 93–17116 Filed 7–14–93; 4:58 pm]

BILLING CODE 3510–22–M

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50 CFR Part 671

[Docket No. 921105–3174; I.D. 070893A]

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an interim final rule that supersedes State of Alaska (State) regulations that establish Norton Sound as a superexclusive registration area in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) by making State regulations designating any registration area of the EEZ of the BSAI as a superexclusive registration area inapplicable to vessels fishing for red king crab, blue king crab, brown king crab, Tanner crab, and/or snow crab. This action is necessary because the Secretary has determined that designation of superexclusive registration areas is inconsistent with provisions of the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI (FMP). This action is intended to further the goals and objectives of the FMP.

DATES: Effective July 15, 1993. Comments on the interim final rule must be received by NMFS at the address below on or before August 19, 1993.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, (Attn. Lori Gravel), Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, or deliver to the Federal Building Annex, suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska. Individual copies of the environmental assessment (EA) and the Federalism Assessment may also be obtained from this address. Comments on the EA are requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. This FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with Council and Secretarial oversight, defers management of the crab resources in the BSAI to the State. It was approved by the Secretary and implemented on June 2, 1989. At times, regulations implementing the FMP must be amended to respond to problems identified in the BSAI crab fisheries.

Although the FMP defers much of the management of the crab resources in the BSAI to the State, section 9 of the FMP provides a procedure for the interested public to appeal to the Secretary any State fisheries actions alleged to be inconsistent with the FMP, Magnuson Act, or any other applicable Federal laws. First, under the State Administrative Procedure Act, an interested person may petition the Alaska Board of Fisheries (Board) for the adoption or repeal of a regulation. A member of the public who appeals a State crab regulation must first petition the Board through this procedure and must receive an adverse ruling before the Secretary will accept an appeal under section 9 of the FMP. If the Secretary accepts an appeal for review, he may request that the appeal first be reviewed by the Crab Interim Action Committee (CIAC).

The CIAC was established by the Council under section 2 of the FMP to provide oversight and Council review of State regulatory actions that are promulgated by the Board. The CIAC has no authority to grant or reject an appeal. A function of the CIAC is to

comment in writing on appeals to assist the Secretary with his review of new State crab regulations to determine if they are consistent with the FMP, the Magnuson Act, and other Federal laws.

On February 8, 1993, the Board established Norton Sound in the BSAI as a superexclusive registration area for purposes of managing the Norton Sound red king crab fishery. The Alaska Crab Coalition (ACC), which represents crab fishermen who reside mostly in the States of Washington and Oregon, appealed the Board's action under procedures contained in section 9 of the FMP. ACC's appeal is based on its contention that superexclusive areas are not authorized by the FMP, the Magnuson Act, and other Federal and State laws.

The CIAC met June 18, 1993, in Juneau, Alaska. The purpose of the meeting was to review ACC's appeal of the Board's February 8, 1993, action. In reviewing the ACC appeal, the CIAC considered whether superexclusive registration areas are authorized by the FMP. The CIAC heard testimony from NOAA General Counsel, Alaska, the Alaska Attorney General's Office, the Alaska Department of Fish and Game, and the Chairman of the Board. The three members of the CIAC have each submitted written comments to the Secretary.

The Board intended that Norton Sound be managed as a superexclusive area. In this context, if a vessel is registered to fish in a superexclusive area, that vessel cannot fish in any other registration area for the remainder of a registration year. Registration areas are listed as a Category 2 measure among 3 categories of management measures in the FMP. Category 2 measures are frameworked, which means that they can be changed by the State following criteria specified in the FMP. Category 1 measures are fixed in the FMP and can only be changed by an FMP amendment. Category 3 measures can be changed at the discretion of the State, but only after consultation with the Council. "Other" management measures in Category 3 are those not described in the FMP and that may only be implemented if they are consistent with the FMP, the Magnuson Act, and other applicable Federal laws.

Chapter 8.2.8 of the FMP discusses registration areas, as follows:

> King crab registration areas within the management unit are designated as either exclusive or nonexclusive. Vessels can register for any one exclusive area and are not restricted in their choice, but cannot fish in any other exclusive area during the registration year. They can, however, fish any or all other nonexclusive areas.

Chapter 8.2.8 also provides that "the specification of registration area[s], both exclusive and nonexclusive, may be important to the attainment of the economic and social objectives of the FMP," and then specifies six factors that the State must consider when designating an area as "exclusive."

This FMP text at chapter 8.2.8 provides for only two types of registration areas—exclusive and nonexclusive. The FMP describes the term "exclusive" in a manner that plainly does not include the more restrictive term "superexclusive;" that is, a vessel registered for an exclusive area may be used to take crab in any or all nonexclusive areas, while a vessel that is registered for a superexclusive area may not be used to take crab in any other registration area.

The Secretary has reviewed the information provided by the CIAC, including reports prepared by individual CIAC members as well as findings by the Board and other background information. The Secretary concludes that: (1) The designation of registration areas is a management measure comprehensively described in chapter 8.2.8 of the FMP; and (2) the designation of superexclusive registration areas is inconsistent with the FMP. Accordingly, the Secretary by regulation supersedes State regulations designating superexclusive registration areas in the BSAI EEZ by making such regulations inapplicable to vessels fishing for red king crab, blue king crab, brown king crab, Tanner crab, and/or snow crab.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is necessary for the conservation and management of crab fisheries in the EEZ of the BSAI management unit, and that it is consistent with the Magnuson Act and other applicable laws.

The Assistant Administrator also finds that reasons summarized above justifying promulgation of this rule make it contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under 5 U.S.C. 553 (b) and (d) of the Administrative Procedure Act. The red king crab fishery in Norton Sound has commenced. This rule must be made effective immediately to remove the economic burden that the State's regulations have imposed on persons who intend to fish for king crab from their vessels in Norton Sound and in other registration areas in the management unit. Rather than issue a final rule, this rule is being issued as interim final rule to allow the public to comment. Comments on the interim final rule will be accepted for a period of 30 days after the effective date.

This interim final rule is exempt from the normal review procedures of E.O. 12291. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that Order.

Because neither the Administrative Procedure Act nor any other statute requires general notice of proposed rulemaking for this action, the Regulatory Flexibility Act does not require preparation of a regulatory flexibility analysis.

NMFS has determined that this interim final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Alaska Region, NMFS, prepared an EA for this action. The Assistant Administrator found that no significant impact on the human environment would result from implementation of this rule. A copy of the EA may be obtained (see **ADDRESSES**).

NMFS has determined that the management measures implemented under the interim final rule will not adversely affect endangered or threatened species. Therefore, further consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Federalism Implementation Officer of the Department of Commerce certified that this action is consistent with the federalism principles, criteria, and requirements set forth in the sections 2 through 5 of E.O. 12612. A copy of the Federalism Assessment prepared for this action may be obtained upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: July 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is amended by adding part 671 to read as follows:

VOL 58 ISS 137 JL 20 1993 UMI

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

Subpart A—General Provisions

Sec.
671.1 Purpose and scope.
671.2 Definitions.

Subpart B—Management Measures

671.20 Superexclusive registration areas.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 671.1 Purpose and scope.

This part contains Federal regulations necessary to carry out the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (FMP), including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands area in the EEZ that are determined to be inconsistent with the FMP.

§ 671.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bering Sea and Aleutian Islands Area means those waters of the exclusive economic zone off the west coast of Alaska lying south of Point Hope (68°21′ N. latitude), and extending south of the Aleutian Islands for 200 nautical miles west of Scotch Cap Light (164°44′36″ W. longitude).

Superexclusive registration area means any State of Alaska designated registration area within the Bering Sea and Aleutian Islands Area where if a vessel is registered to fish for crab that vessel is prohibited from fishing for crab in any other registration area during that registration year.

Subpart B—Management Measures

§ 671.20 Superexclusive registration areas.

State of Alaska regulations that designate any registration area of the Bering Sea and Aleutian Islands area as a superexclusive registration area do not apply to vessels fishing for red king crab *Paralithodes camtschatica*, blue king crab *P. platypus*, brown (or golden) king crab *Lithodes aequispina*, Tanner crab *Chionoecetes bairdi*, and/or snow crab *C. opilio*.

[FR Doc. 93–17149 Filed 7–15–93; 2:44 pm]
BILLING CODE 3510–22–M

VOL
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Proposed Rules

Federal Register
Vol. 58, No. 137
Tuesday, July 20, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 93–88]

RIN 1550–AA65

Special Mention Assets

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS), is proposing to replace its regulation governing Special Mention assets with guidance on the classification of these assets. This will bring the OTS's policy on Special Mention assets into conformity with the guidance of the other Federal banking regulatory agencies.

DATES: Comments on this proposed rule must be received on or before August 19, 1993.

ADDRESSES: Comments should be sent to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington DC 20552. Attention Docket No. 93–88. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1776 G Street NW., Level 1C.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Program Manager for Credit Risk, Policy, (202) 906–5672; Catherine A. Shepard, Senior Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7275, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS's asset classification regulation, 12 CFR 563.160, directs savings associations to classify, as appropriate, troubled assets (or portions thereof) as "substandard," "doubtful" or "loss."

On January 6, 1988, the former Federal Home Loan Bank Board amended the asset classification regulation to add a "Special Mention" category, though Special Mention assets are not considered adversely classified.[1] The Special Mention designation is intended to identify assets not yet warranting an adverse classification but that nonetheless possess credit deficiencies or potential weaknesses deserving close attention. Special Mention assets are those assets having a potential weakness or financial risk that, if not corrected, could weaken the asset and increase the risk of financial loss in the future.

The OTS's troubled asset classification scheme, unlike those of the other Federal banking regulatory agencies, has been codified in regulation. The other Federal banking agencies have issued guidance to their financial institutions with respect to Special Mention assets and adversely classified assets.

The Interagency Policy Statement on Credit Availability, issued by the four Federal banking and thrift regulatory agencies on March 10, 1993, states that the agencies will issue new guidance to clarify the supervisory treatment of Special Mention assets. In particular, the Policy Statement on Credit Availability indicated that the agencies will clarify that Special Mention assets are not grouped with adversely classified assets.

The OTS is taking this opportunity to more closely align its treatment of Special Mention assets under its classification of assets regulation with the policies of the other Federal banking regulatory agencies. Accordingly, the OTS is today proposing to remove the specific reference to Special Mention assets from that regulation, 12 CFR 563.160(e). The agency will instead issue guidance on this topic that will be made available to all savings associations.

[1] 53 FR 352 (Jan. 6, 1988).

The OTS guidance will adopt the definition of Special Mention assets contained in the June 10, 1993 Interagency Policy Statement on the Supervisory Definition of Special Mention Assets. That Policy Statement contains a definition of Special Mention assets that will be common to all of the Federal banking agencies. Under that definition, a Special Mention asset:

> Has potential weaknesses that deserve management's close attention. If left uncorrected, these potential weaknesses may result in deterioration of the repayment prospects for the asset or in the institution's credit position at some future date. Special Mention assets are not adversely classified and do not expose an institution to sufficient risk to currently warrant adverse classification.

The OTS will also continue to require that savings associations self-monitor and self-designate their Special Mention assets.

The agency is also considering removing the specific descriptions of assets classified as "substandard," "doubtful" and "loss" from the regulatory text at 12 CFR 563.160(b) and providing such descriptions in guidance. This will allow the OTS to conform its policies in this area with those of the other Federal banking agencies more quickly as these issues evolve.

II. Comment Solicitation

Comments are sought on all aspects of the proposed regulation including comments suggesting alternatives to the OTS's removal of Special Mention assets from 12 CFR 563.160, and comments on the elimination of the three types of adversely classified assets from the rule. A 30-day comment period is provided.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), it is certified that this regulation will not have a significant economic impact on a substantial number of small savings associations, small service corporations or other small entities. This proposed regulation simply deletes Special Mention assets from the classification of troubled assets as set forth in 12 CFR 563.160. The OTS proposes to substitute Special Mention guidance for the regulation to bring its asset classification policies into

conformity with those of the other Federal banking regulatory agencies.

Executive Order 12291

It has been determined that this document is not a "major rule" and therefore does not require a regulatory impact analysis. This regulation simply deletes special mention assets from the classification of troubled assets as set forth in 12 CFR 563.160. The OTS proposes to substitute Special Mention guidance for the regulation to bring its asset classification policies into conformity with those of the other Federal banking regulatory agencies.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 563, chapter V, title 12 of the Code of Federal Regulations as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

§ 563.160 [Amended]

2. Section 563.160 is amended by removing and reserving paragraph (e).

Dated: June 3, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–17174 Filed 7–19–93; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–38–AD]

Airworthiness Directives: Beech Aircraft Corp. 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Corporation (Beech) 200 and 300 series airplanes that do not have the fuselage stringers, Numbers (Nos.) 5 through 11, modified on both the left and right hand sides in accordance with certain service information. The proposed action would require repetitively inspecting the fuselage stringers for cracks, and repairing any cracked stringers. Numerous reports of cracked fuselage stringers in the area of the rear pressure bulkhead on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent structural damage to the fuselage caused by cracked stringers in the rear pressure bulkhead area.

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–38–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above. Information relating to Supplemental Type Certificate (STC) SA63CH may be obtained from Priester Aviation Service, Pal-Waukee Municipal Airport, Wheeling, Illinois 60090.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4128; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–38–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of cracks in fuselage stringers Nos. 5 through 11 at the rear pressure bulkhead on certain Beech 200 and 300 series airplanes. This condition, if not detected and corrected, could lead to structural damage to the fuselage.

Beech has issued Service Bulletin 2472, dated June 1993, which specifies procedures for inspecting and repairing fuselage stringers Nos. 5 through 11. Chapter 51–10 or 53–10, as applicable, in the maintenance manual also specifies instructions for installing an external doubler, which is considered a repair for these fuselage stringers. In addition, Priester Aviation Service STC SA63CH details a repair for these fuselage stringers.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent structural damage to the fuselage caused by cracked stringers in the rear pressure bulkhead area.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 200 and 300 series airplanes that do not have fuselage stringers Nos. 5 through 11 modified in accordance with one of the service documents previously referenced, the proposed AD would require repetitively inspecting these fuselage stringers for cracks, and repairing any cracks. The proposed inspection would be accomplished in

VOL 58 ISS 137 JL 20 1993 UMI

accordance with the Accomplishment Instructions section of Beech SB No. 2472, dated June 1993.

The FAA estimates that 2,264 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $124,520. These figures take into account that none of the affected airplane operators have incorporated one of the inspection-terminating modifications.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech Aircraft Corporation: Docket No. 93–CE–38–AD.

Applicability: The model and serial number airplanes presented below, certificated in any category, that do not have all the fuselage stringers Nos. 5 through 11 modified on both the right and left hand sides in accordance with either: (1) Beech Service Bulletin (SB) 2472, dated June 1993; (2) Chapter 51–10 or 53–10, as applicable, of the maintenance manual; or (3) the instructions to Priester Aviation Service Supplemental Type Certificate (STC) SA63CH:

Models	Serial Nos.
200, A200, B200, and A100–1.	BB–2 through BB–1462, BC–1 through BC–75, and BD–1 through BD–30.
200C, A200C, and B200C.	BL–1 through BL–138, BJ–1 through BJ–66, BU–1 through BU–12, and BV–1 through BV–12.
200CT, A200CT, B200CT.	BN–1 through BN–4, BP–1 through BP–71, FC–1, FC–2, FC–3, FG–1, FG–2, and GR–1 through GR–13.
200T and B200T	BT–1 through BT–38.
300	FA–1 through FA–228.
B300	FL–1 through FL–103.
B300C	FM–1 through FM–8 and FN–1.

Compliance: Required upon the accumulation of 3,000 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent structural damage to the fuselage caused by cracked stringers in the rear pressure bulkhead area, accomplish the following:

(a) Inspect fuselage stringers Numbers (Nos.) 5 through 11 on both the left and right hand sides for cracks in accordance with the Accomplishment Instructions section of Beech SB No. 2472, dated June 1993.

(1) If no cracks are found, reinspect at intervals that correspond with the following:

Stringers modified in accordance with one of the three modifications referenced in the applicability section of this AD	Inspection interval
No Stringers Modified	600 hours TIS.
Nos. 8, 9, and 10	1,200 hours TIS.
Nos. 5 through 11	AD no longer applies.

(2) If cracks are found, prior to further flight, modify the cracked fuselage stringer in accordance with the instructions in one of the three modifications specified in the Applicability section of this AD, and reinspect at intervals presented in the chart in paragraph (a)(1) of this AD.

(b) The modifications specified in the Applicability section of this AD may be accomplished at any time as terminating action for the inspection requirement of this AD provided that all fuselage stringers Nos. 5 through 11 are modified.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri. Information relating to STC SA63CH may be obtained from Priester Aviation Service, Palwaukee Municipal Airport, Wheeling, Illinois 60090.

Issued in Kansas City, Missouri, on July 14, 1993.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–17126 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–34–AD]

Airworthiness Directives: British Aerospace, Regional Aircraft Limited, Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace (BAe), Regional Aircraft Limited, Jetstream Model 3201 airplanes. The proposed action would require inspecting and modifying the spigot housing plate at the wing/fuselage forward attachment sliding joint. A fatigue test that revealed a crack to the spigot housing plate on one of the affected airplanes prompted the proposed action. The actions specified

by the proposed AD are intended to prevent structural failure of the wing/fuselage area caused by a cracked spigot housing plate.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft, Limited (JAL), Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 79703; or Jetstream Aircraft, Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; Telephone (703) 406–1161; Facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–34–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain BAe, Regional Aircraft Limited, Jetstream Model 3201 airplanes. The CAA reports that fatigue testing on one of the affected airplanes revealed a crack in the spigot housing plate at the wing/fuselage forward attachment joint. This condition, if not detected and corrected, could result in structural failure of the wing/fuselage area.

JAL has issued Service Bulletin (SB) 57–JA 921144, dated March 4, 1993, which specifies procedures for inspecting and modifying the spigot housing plate. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other BAe, Regional Aircraft Limited, Jetstream Model 3201 airplanes of the same type design, the proposed AD would require inspecting the spigot housing plate for cracks at the wing/fuselage forward attachment sliding joint, immediately modifying if found cracked, and eventually modifying if not found cracked. The proposed actions would be accomplished in accordance with JAL SB 57–JA 921144, dated March 4, 1993.

The FAA estimates that 120 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 40 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts will be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $264,000. These figures take into account that none of the affected airplanes have the proposed modification incorporated.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

British Aerospace, Regional Aircraft Limited: Docket No. 93–CE–34–AD.

Applicability: Jetstream Model 3201 airplanes, serial numbers 790 through 960, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent structural failure of the wing/fuselage area caused by a cracked spigot housing plate, accomplish the following:

(a) Upon the accumulation of 7,200 hours time-in-service (TIS) or within the next 500 hours TIS after the effective date of this AD, whichever occurs later, inspect the spigot housing plate at the wing/fuselage forward attachment sliding joint for cracks in accordance with Part 1 of the Accomplishment Instructions section of Jetstream Aircraft, Limited, (JAL) Service Bulletin (SB) 57–JA 921144, dated March 4, 1993.

(1) If cracks are found, prior to further flight, modify the spigot and spigot housing plate in accordance with either Part 2 or Part 3, as applicable, of the Accomplishment Instructions section of JAL SB 57–JA 921144, dated March 4, 1993.

(2) If no cracks are found, within the next 3,000 hours after the inspection, modify the spigot and spigot housing plate in accordance with either Part 2 or Part 3, as applicable, of the Accomplishment Instructions section of JAL SB 57–JA 921144, dated March 4, 1993.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Jetstream Aircraft, Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft, Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. This document may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 14, 1993.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–17188 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASW–27]

Proposed Establishment of Class D Airspace: Alice, TX; Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Naval Auxiliary Landing Field (NALF) Orange Grove, Alice, TX; NALF Waldron, Corpus Christi, TX; and Naval Outlying Landing Field (NOLF) Cabaniss, Corpus Christi, TX. The United States Navy operates a control tower at each of these locations with an associated airport traffic area (ATA). Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and eliminate those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control towers at NALF Orange Grove, NALF Waldron, and NOLF Cabaniss, would lapse. The intended effect of this proposal is to provide adequate Class D airspace to perpetuate the existing two-way radio communication requirement at these locations.

DATES: Comments must be received on or before August 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–27, Department of Transportation, FAA, Fort Worth, TX 76 193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, FAA, Fort Worth, TX 76 193–0530; telephone: 817–624–5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–27." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, FAA, Fort Worth, TX 76 193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace located at NALF Orange Grove, Alice, TX; NALF Waldron, Corpus Christi, TX; and NOLF Cabaniss, Corpus Christi, TX. The United States Navy operates a control

tower at each of these locations with an associated ATA. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and eliminate those ATA's. As a result, the requirement for two-way radio communication with the control towers at NALF Orange Grove, NALF Waldron, and NOLF Cabaniss, would lapse. The intended effect of this proposal is to provide adequate Class D airspace to perpetuate the existing two-way radio communication requirement at these locations. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. ap. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993 and effective September 16, 1993, is amended as follows:

Para. 5000 General

* * * * *

ASW TX CZ Alice, TX [New]

Orange Grove NALF, TX (lat. 25°54'04"N., long. 98°03'06"W.)
Navy Orange Grove TACAN (lat. 27°53'43"N., long. 98°02'33"W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.7-mile radius of NALF Orange Grove and within 1.0 mile each side of the 129° radial of the Orange Grove TACAN extending from the 4.7-mile radius to 5.2 miles southeast of the airport and within 1.0 mile each side of the 320° radial of the Orange Grove TACAN extending from the 4.7-mile radius to 5.1 miles northwest of the airport.

* * * * *

ASW TX CZ Corpus Christi, TX [New]

Waldron NALF, TX (lat. 27°38'01"N., long. 97°18'47"W.)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 3.5-mile radius of Waldron NALF, excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace and excluding that airspace within the Corpus Christi NAS, TX, Class D airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX CZ Corpus Christi, TX [New]

Cabaniss NOLF, TX (lat. 27°42'01"N., long. 97°26'04"W.)

That airspace extending upward from the surface to but not including 1,200 feet MSL within a 4.4-mile radius of Cabaniss NOLF, excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace, and excluding that airspace within the NALF Waldron Class D airspace, and excluding that airspace west of a line between lat. 27°38'15"N., long. 97°28'40"W. and lat. 27°41'30"N., long. 97°28'40"W. This class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

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Issued in Forth Worth, TX on June 24, 1993.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 93–17166 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4691–4]

Protection of Stratospheric Ozone; Recordkeeping and Reporting Requirements

AGENCY: Environmental Protection Agency.

ACTION: Request for Comments on Recordkeeping and Reporting Requirements.

SUMMARY: Through this document, EPA is requesting public comment on the recordkeeping and periodic reporting requirements on the ozone-depleting substances proposed to be added to the list of class I substances under section 602 of the Clean Air Act as amended. This document also seeks comment on recordkeeping and reporting requirements regarding the recycling, transshipment and destruction of class I and class II substances proposed on March 18, 1993, Protection of Stratospheric Ozone.

DATES: Comments must be submitted on or before August 19, 1993.

ADDRESSES: Comments on this document of information collection requirements should be submitted to the attention of Sandy Farmer and Chris Wolz at the addresses indicated below.

FOR FURTHER INFORMATION CONTACT: Peter Voigt, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, 6205J 401 M Street SW., Washington, DC, 20460, (202) 2133–9185.

SUPPLEMENTARY INFORMATION:

Background:

Notice of proposed rulemaking to accelerate the phaseout of a number of ozone-depleting substances, and to implement amendments, adjustments and decisions of the Montreal protocol was published in the **Federal Register** on March 18, 1993 (58 FR 15014). This notice proposed to add additional chemicals to the class I list of ozone-depleting substances. The substances proposed for addition are methyl bromide and hydrobromofluorocarbons. The proposal includes recordkeeping and periodic reporting requirements for producers, importers, exporters and transformers of such newly listed substances that mirror the requirements applicable to those substances already listed. The proposed regulations also contain recordkeeping and reporting requirements for persons who destroyed, transshipped, and recycled class I and class II substances.

In addition, there are recordkeeping and reporting requirements for persons who sold, imported and transferred class I and class II substances for destruction, recycling and feedstock uses.

The information collection requirements for the proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1432.12) and a copy may be obtained from Sandy Farmer at the Address indicated below.

The public reporting burden for this request of information is estimated to vary from 2 to 15 hours per response with an average of 9 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

The information collection request sent to OMB for review and comment also describes the nature of the information collection, its expected cost and burden, and includes the data collection instruments used for already-listed class I ozone-depleting substances. In addition, the requirements for destroyers, transferrers, recyclers and transshippers are expected to be similar to the already existing information collection and recordkeeping mandates for class I substances.

Office of Air and Radiation

Title: EPA ICR 1432.12; OMB control number 2060–0170.

Abstract: Recordkeeping and reporting requirements for producers, importers, exporters and transformers on the production and consumption of newly controlled ozone-depleting substances and for destroyers, transferrers, and recyclers of class I and class II ozone-depleting substances.

Burden Statement: Public reporting burden for this collection of information is estimated to average 9 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Respondents: Producers, importers, exporters and transformers of methyl bromide and hydrobromofluorocarbons. Recyclers, destroyers, transshippers and transferors of recyclable class I and class II ozone-depleting substances.

Estimated Number of Respondents: 45.

Estimated Total Annual Burden on Respondents: 1940 hours.

Frequency of Collection: Reports on the level of activities on the part of the respondents, i.e. production, imports, etc., are to be submitted quarterly. Trading of production and consumption allowances are to be reported on an ad hoc basis.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and:

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: July 14, 1993.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–17155 Filed 7–19–93; 8:45am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Public Hearings and Availability of an Environmental Assessment and Related Documents on the Proposed Special Rule To Allow Take of the Threatened Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period and public hearings and availability of environmental assessment and related documents on proposed special rule.

SUMMARY: The Fish and Wildlife Service (Service) reopens the public comment period for 45 days, gives notices that three public hearings will be held, and announces the availability of an Environmental Assessment on its proposal to define the conditions under which take of the threatened coastal California gnatcatcher would not be a violation of section 9 of the Endangered Species Act of 1973, as amended. In addition, the Service and the California Department of Fish and Game seek comment on the State of California's Natural Community Conservation Planning (NCCP) draft Conservation Guidelines and draft Process Guidelines. The hearings will allow all interested parties to submit oral or written comments on the proposal.

DATES: Three public hearings will be held, each from 1 to 4 p.m. and from 6 to 8 p.m. Hearings will be held on Monday, August 9, 1993, in San Diego, California; on Wednesday, August 11, 1993, in Irvine, California; and on Thursday, August 13, 1993, in Riverside, California. Comments on the proposed special rule and documents referenced above must be received from all interested parties by September 6, 1993.

ADDRESSES: The hearing on Monday, August 9, 1993, will be held at the San Diego Convention Center, 111 West Harbor Drive, room 7, San Diego, California. The Wednesday, August 11, 1993, hearing will be held at the Irvine Marriott Hotel, 18000 Von Karman, Irvine, California. The Thursday, August 12, 1993, hearing will be held at the Riverside Municipal Auditorium, 3485 7th Street, Riverside, California.

Written comments and materials on the proposed special rule, the Environmental Assessment, and other documents referenced above may be submitted at the hearing or may be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The coastal California gnatcatcher (*Polioptila californica californica*) was listed as a threatened species under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) on March 25, 1993 (58 FR 16742). The implementing regulations for threatened wildlife (50 CFR 17.31) generally incorporated the section 9 prohibitions of endangered wildlife, except when a special rule applies. In the case of the gnatcatcher, the Service found that the prohibitions of endangered species were generally necessary and advisable for conservation of species. However, pursuant to section 4(d) of the Act, and the implementing regulations, the Service proposed a special rule (58 FR 16758) that defines the conditions for land-use activities affiliated with the NCCP program under which take of the

gnatcatcher would not be a violation of section 9.

Under this special rule, the Service would permit take of the gnatcatcher by land-use activities covered by an approved NCCP plan, provided the Service determines that the approved plan meets the issuance criteria of an incidental take permit pursuant to 50 CFR 17.32(b)(2). Moreover, while NCCP plans are being developed, the special rule would permit a limited amount of take of the gnatcatcher within NCCP-enrolled areas that results from activities conducted in accordance with Conservation Guidelines developed by the Scientific Review Panel established under the NCCP process, provided that Service determines the guidelines meet the standards under 50 CFR 17.32(b)(2).

Finalization of the special rule is contingent upon adoption of the Conservation Guidelines for the Coastal Sage Scrub NCCP Program by the California Department of Fish and Game and the Service. The final draft of these Conservation Guidelines and the NCCP Process Guidelines for obtaining interim take authorization are now available for public review. Copies can be obtained from the Carlsbad Field Office (see **ADDRESSES** section).

During the public comment period on the proposed special rule, many requests were received for public hearings. In response to these requests, the Service has scheduled public hearings at the following locations:

Monday, August 9, 1993: San Diego Convention Center, 111 West Harbor Drive, San Diego, California (1 to 4 p.m. and 6 to 8 p.m.). Wednesday, August 11, 1993: Irvine Marriott Hotel, 18000 Von Karman, Irvine, California (1 to 4 p.m. and 6 to 8 p.m.). Thursday, August 12, 1993: Riverside Municipal Auditorium, 3485 7th Street, Riverside, California (1 to 4 p.m. and 6 to 8 p.m.).

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service and California Department of Fish and Game at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes on September 6, 1993.

National Environmental Policy Act

In accordance with the requirements of the National Environmental Policy Act, the Service has prepared an Environmental Assessment on the limited amount of incidental take of the gnatcatcher that would be allowed under the proposed special rule during the time that NCCP plans are being prepared. This document will be available for public review on August 2, 1993. Copies can be obtained from the Carlsbad Field Office (see **ADDRESSES** section). Written comments should be mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes on September 6, 1993.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 14, 1993.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–17125 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 58, No. 137
Tuesday, July 20, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of new Privacy Act system of records.

SUMMARY: Notice is hereby given that the Department of Agriculture (USDA) proposes to establish a new Privacy Act system of records, entitled "USDA/OIRM–1, Telephone Call Detail Records.".

EFFECTIVE DATE: The system of records will be effective, without further notice, on September 20, 1993, unless USDA issues a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Cherie Cozin, Ag Box 7630, Washington, DC 20250–7630; (202) 720–9272.

SUPPLEMENTARY INFORMATION: USDA is proposing to establish a Privacy Act system of records dealing with the telephone call detail records to comply with guidelines of the Office of Management and Budget (OMB). In guidelines on the Call Detail Program, published at 52 FR 12990, April 20, 1987, OMB encouraged Federal agencies to establish systems of records to cover information pertaining to the monitoring of telephone usage to determine the use and/or abuse of Government telephone systems. OMB urged that individual record systems be established, rather than a global system, because of the variation in agency operations and records collection. Since it is anticipated that personally-identifiable records will be generated in the course of monitoring telephone calls under the Call Detail Program, USDA proposes to create the above-captioned records system. A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Senate Committee on Governmental Affairs; the Chairman, House Committee on Government Operations; and to the Acting Administrator, Office of Information and Regulatory Affairs of the Office of Management and Budget on July 1, 1993.

Signed at Washington, DC, on July 1, 1993.

Mike Espy,

Secretary of Agriculture.

USDA/OIRM–1

SYSTEM NAME:

USDA/OIRM–1, Telephone Call Detail Records.

SYSTEM LOCATIONS:

U.S. Department of Agriculture (USDA) and component agency offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agriculture employees and contractor personnel who make telephone calls, and individuals who receive telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of agency telephones; records indicating assignment of telephone numbers to employees; records relating to location of telephones; records relating to unauthorized use of telephones and personnel or administrative actions related to telephone abuse, excluding OIG investigative and audit reports. Telephone calls made to the Department's Office of Inspector General Hotline are excluded from the records maintained in this system pursuant to the provision of 5 U.S.C., appendix 3, section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Pub. L.97–258; 31 U.S.C. 1348(b); and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed as is necessary (1) to members of Congress to respond to written inquiries made by individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in this system indicates a violation of law, whether civil or criminal in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the agency to determine their individual responsibility for telephone calls and to resolve any disputes and facilitate the verification of discrepancies relating to billing, payment, or reconciliation of telephone operational or accountability records; and (7) to a company providing telecommunications consulting or other services to the Government.

DISCLOSURES TO CONSUMER REPORTING AGENCIES: DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies: as defined in the Fair Credit Reporting Act 15 U.S.C. 1681a(f) and the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN A SYSTEM:

Individuals with access to call detail records are responsible for controlling records in their possession in a way that ensures privacy. Storage of such material is also the responsibility of the individual and must be done in a way to prevent unauthorized disclosure. Telephone call detail records shall be maintained by Department personnel for periods approved by the National Archives.

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STORAGE:

Call detail summaries are stored on paper in file folders, on magnetic tape, or on other electronic media.

RETRIEVABILITY:

Records may be retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number, by account code card number, by type or class of service, or by location.

SAFEGUARDS:

Paper records and backup diskettes are located in locked metal filing cabinets in secure rooms; data on personal computers is password protected. Other machine readable records are stored on magnetic tape in safes accessible only to security personnel.

RETENTION AND DISPOSAL:

Records are disposed of as approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESSES:

For employees of:

Agricultural Cooperative Service (ACS): Administrative Officer, USDA, ACS, Room 4011, South Building, Washington, DC 20250;

Agricultural Marketing Service (AMS): Telecommunications Specialist, USDA, AMS, ESS, Communications Section, P.O. Box 96456, Room 3528, South Building, Washington, DC 20090–6456;

Agricultural Research Service (ARS): Administrative Management Office, USDA, ARS, 6303 Ivy Lane, Room 519, Greenbelt, MD 20770–1433;

Agricultural Stabilization and Conservation Service (ASCS): Property Management Office, USDA, ASCS, P.O. Box 2415, Washington, DC 20013;

Animal and Plant Health Inspection Service (APHIS): Director, Administrative Services Division, Room 1761, South Building, 14th & Independence Avenue SW., Washington, DC 20250;

Cooperative State Research Service (CSRS): Chief, Management Services Branch, PMSD, Extension Service, Third Floor Mezzanine, Cotton Annex Building, Washington, DC 20250–0900;

Economic Analysis Staff (EAS): Director, Administrative Services Division, Economics Management Staff, Room 4322, South Building, 14th and Independence Avenue SW., Washington, DC 20250–3500;

Economics Management Staff (EMS): Director, Administrative Services Division, Economics Management Staff, Room 4322, South Building, 14th and Independence Avenue SW., Washington, DC 20250–3500;

Economic Research Service (ERS): Director, Administrative Services Division, Economics Management Staff, Room 4322, South Building, 14th and Independence Avenue SW., Washington, DC 20250–3500;

Extension Service (ES): Chief, Management Services Branch, PMSD, Extension Service, 3rd Floor Mezzanine, Cotton Annex Building, 14th & Independence Ave. SW., Washington, DC 20250–0900;

Farmers Home Administration (FmHA): Chief, General Services Branch, General Services Staff, USDA, FmHA, Room 6864, South Building, Washington, DC 20250;

Federal Crop Insurance Corporation (FCIC): Management Analyst, USDA, FCIC, Room 4613, South Building, Washington, DC 20250;

Federal Grain Inspection Service (FGIS): Director, Compliance Division, USDA, FGIS, P.O. Box 96454, Washington, DC 20090–6454;

Food and Nutrition Service (FNS): Property Utilization Specialist, USDA, FNS, 3101 Park Center Drive, room 910, Park Office Center Building, Alexandria, VA 22302;

Food Safety and Inspection Service (FSIS): Head, Property and Service Operations Sections, PPB, Administrative Services Division, USDA, FSIS, room 2136, South Building, Washington, DC 20250;

Foreign Agricultural Service (FAS): Telecommunications Manager, USDA, FAS, room 0664, South Building, Washington, DC 20250;

Forest Service (FS): Branch Chief, Computer Sciences and Telecommunications Staff, USDA, FS, room 808, Rosslyn Plaza East, 1621 North Kent Street, P.O. Box 96090, Washington, DC 20090–6090 and Field Units nation wide as listed at 36 CFR part 200, subpart A;

Human Nutrition Information Service (HNIS): Chief, Survey Statistics Branch, USDA, HNIS, room 304, Federal Building, Hyattsville, MD 20782;

National Agricultural Library (NAL): Administrative Manager, USDA, NAL, room 201, 10301 Baltimore Blvd., Beltsville, MD 20705–2351;

National Agricultural Statistics Service (NASS): Director, Program Support Staff, USDA, NASS, room 4116, South Building, 12th and Independence Avenue, SW., Washington, DC 20250;

Office of Administrative Law Judges (OALJ): Hearing Clerk, USDA, OALJ, room 1081, South Building, Washington, DC 20250;

Office of Advocacy and Enterprise (OAE): Administrative Officer, USDA, OAE, room 1326, South Building, Washington, DC 20250;

Office of Budget and Program Analysis (OBPA): Administrative Officer, USDA, OBPA, AG Box 4212; Washington, DC 20250;

Office of Energy (OE): Director, Administrative Services Division, Economics Management Staff, room 4322, South Building, 14th and Independence Avenue, SW., Washington, DC 20250–3500;

Office of Finance and Management (OFM): Administrative Officer, USDA, OFM—Headquarters, room 4082, South Building, Washington, DC 20250–9000; and, Chief, Telecommunications Branch, Information Resources Management Division, National Finance Center OFM–USDA, P.O. Box 60,000, New Orleans, LA 70160;

Office of the General Counsel (OGC): Director, Administration and Resource Management, room 2041, South Building, Washington, DC 20250;

Office of Information Resources Management (OIRM): Chief, Management Services Staff, USDA, OIRM, room 1082, South Building, 14th & Independence Ave., SW., Washington, DC 20250;

Office of International Cooperation and Development (OICD): Deputy Assistant Administrator for Administration, USDA, OICD, room 3101, South Building, Washington, DC 20250;

Office of Operation (OO): Management Analyst, USDA, OO, room 1554, South Building, Washington, DC 20250;

Office of Personnel (OP): Resource Coordinator, USDA, OP, AG Box 9602, Washington, DC 0250;

Office of Public Affairs (OPA): FOIA/Privacy Act Officer, USDA, OPA, AG Box 1310, Washington, DC 20250;

Office of the Secretary (SEC): Chief, Executive Service Staff, USDA, AG Box 0150, Washington, DC 20250;

Packers and Stockyards Administration (PSA): Director of Management Services Staff, USDA, PSA, room 3038, South Building, Washington, DC 20250;

Rural Electrification Administration (REA): Management Analyst, USDA, REA, room 0167, South Building, Washington, DC 20250;

Soil Conservation Service (SCS): Deputy Director of Budget Branch, USDA, SCS, room 6229, South Building, Washington, DC 20250;

World Agricultural Outlook Board (WAOB): Director, Administrative Services Division, Economics Management Staff, room 4322, South Building, 14th & Independence Avenue, SW., Washington, DC 20250;–3500.

NOTIFICATION PROCEDURES:

An individual may request information as to whether the system contains records pertaining to him or her from the System Manager, under the appropriate address shown above in System Manager and Address. Requester should provide his or her name pursuant to the inquiry provisions of the Department's rules which appear in 7 CFR part 1, subpart G.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above. The envelope and letter should be marked "PRIVACY ACT REQUEST."

CONTESTING RECORDS PROCEDURES:

Same as Notification Procedures. The Department rules for access, for contesting contents, and appealing initial determination by the individual concerned appear in 7 CFR part 1, subpart G.

RECORD SOURCE CATEGORIES:

Records in this system come primarily from telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–17113 Filed 7–19–93; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Wagner/Atlanta Vegetation Treatment Proposal; Including Timber Harvest, Prescribed Fire and Temporary Road Construction, Helena National Forest, Meagher County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare Environmental Impact Statement.

SUMMARY: The USDA, Forest Service is gathering information and preparing an Environmental Impact Statement (EIS) for a vegetation treatment proposal. This proposal will utilize, prescribed fire on grassland/shrubland vegetation types and a combination of prescribed fire, timber harvest and reforestation within the forested vegetation, construction of needed temporary haul roads, and physical closure of all temporary roads, when no longer needed by this proposal. One and one-half miles of existing roads in the Rubison Creek, Wagner Creek, Beaver Creek, Lambing Camp Gulch, Priest Gulch, Ohio Gulch, Mule Creek and Atlanta Creek drainage areas will also be closed under this proposal. These drainage areas are located approximately 20 air miles northeast of Townsend, Montana.

The Forest Service proposes to treat approximately 7000 acres of grass land/shrubland and forested vegetation through prescribed burning and timber harvest that is based on a 25 year entry cycle. Grassland/shrubland and some forested vegetation would be treated through prescribed burning. Timber would be harvested using such harvest methods as shelterwood with reserves, seedtree with reserves, clearcutting with reserves (Treatments with reserves indicate that some trees will be left on site following the first entry with no intention of removal in subsequent entries.) and commercial thining. About 4.3 miles of reconstructed road and 18.9 miles of temporary road construction is needed to access treatment areas. Following treatment, these roads would be physically closed using such methods as recontouring and obliteration. Also, 1.5 miles of existing system roads within the project area would be closed. The overall long term transportation needs within the project area would be evaluated.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan and is supported by the findings of the Big Belts Integrated Resource Analysis Incorporating Ecosystems Management Principles for sustaining ecological systems. More specifically, the proposal has the following purpose:

1. Treatment of nonforested grassland vegetation through prescribed fire will promote nutrient recycling within the system, and reduce the amount of sagebrush and timber vegetation that has colonized these sites since historic times through suppression of wildfire and past grazing practices. This will help to achieve the desired condition for these areas as identified in the Helena Forest Plan and further refined in the Big Belts Integrated Resource Analysis Incorporating Ecosystems Management Principles.

2. Initiate activities to shift the age class distribution of forested vegetation towards the desired condition for the purposes of maintaining healthy and sustainable forested ecosystems and long-term sustainability of soils productivity, riparian fuction, vegetation and wildlife as described in the Helena Forest Plan and further refined in the Big Belts Integrated Resource Analysis incorporating ecosystem management principles. The existing situation for the 27,200 acre Wagner/Atlanta project area shows that about 70% of the timber stands are 100 to 125 years old and that treatment is necessary to aid in moving the project area towards the historic, more balanced distribution of age classes. Not only are there a large amount of multi-storied timber stands with similar age classes occupying warm, dry aspects, but many of them have much denser forested vegetation then occurred historically. The cool, moist aspects also are occupied by single storied forested vegetation that is denser with similar ages as compared to what was there historically. Treatment will improve long-term forest health by reducing inter-tree stress from over crowding; reducing the forests susceptibility to insect and disease, and minimizing the potential of a large scale, stand replacing fire event from occurring.

3. The analysis of the current situation indicated that one and one-half miles of the present transportation system may need to be closed in order to be compatible with the long-term big game security management goals of this area.

Experience has shown that as we implement the Helena Forest Plan, as would occur in this proposed action, we collect better on-site field information which at times results in Forest Plan amendments. To date, no amendment has been identified or is being proposed relative to this proposal. Further analysis of the proposed action and alternatives to that proposal may result in a decision(s) that include amendments to the Forest Plan.

DATES: Comments concerning the scope of the analysis should be received in writing on or before August 19, 1993.

ADDRESSES: The responsible official is Tom Clifford, Forests Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT 59601. Phone: (406) 449-5201.

FOR FURTHER INFORMATION CONTACT: George Weldon, Townsend District Ranger; or Stephen Wyatt, EIS Co-EIS Team Leader, Helena National Forest, Townsend Ranger District, P.O. Box 29, Townsend, MT 59644. Phone: (406) 266–3425.

SUPPLEMENTARY INFORMATION: The timber sale(s), prescribed burning, temporary road construction and closures of existing roads would occur on National Forest lands in portions of the Rubison Creek, Wagner Creek, Beaver Creek, Campbell Creek, Lambing Camp Gulch, Beaver Dam Gulch, Skiddoo Gulch, Long Gulch, Priest Gulch, Hour Gulch, Benton Gulch, Ohio Gulch, Kentucky Gulch, Thomas Creek, Bridge Gulch, Mule Creek, Pickfoot Creek and Atlanta Creek drainages of

the Townsend Ranger District. Included in the area being analyzed is all or portions of T.12N., R.2E., Section 26 and 36; T.11N., R.2E., Sections 1, 13–15, 23–25 and 26; T.11N., R.3E., Sections 19, 20, 28–35 and 36; T.10N., R.3E., Sections 3–9 and 10; T.10N., R.4E., Sections 31 and 32; T.9N., R.4E., Sections 4–8 and 9, Montana Principle Meridian.

Portions of the treatment units, temporary road construction and road closures are proposed in roadless areas. Approximately 991 acres of prescribed burning, 77 acres of timber harvest and 1 mile temporary road construction are proposed in the Cayuse Mountain Roadless Area (X1615); 1214 acres of prescribed burning, 582 acres of timber harvest, 283 acres of a combination of timber harvest and prescribed burning, and 11.8 miles of temporary road construction and closure of 1 mile of existing road are proposed in the Irish Gulch Roadless Area (1621); and 771 acres of prescribed burning, 894 acres of timber harvest, 6.1 miles of temporary road construction and closure of .5 miles of existing road are proposed in the Camas Creek Roadless Area (1616). These areas have not been proposed for inclusion in the National Wilderness System by the Helena Forest Plan nor have the Cayuse Mountain and Irish Gulch Roadless Areas been included in any of the past legislative wilderness proposals. A portion of the Camas Creek Roadless Area has been included in past legislative wilderness proposals, but none of the proposed treatments are within this area.

The areas of proposed timber harvest are within management areas L–1, M–1, T–1, T–2, T–3, T–5, W–1 and W–2 described in the Helena Forest Plan. Prescribed burning is also proposed within management areas L–1, M–1, T–1, T–3, T–5, W–1 and W–2. In many cases, combinations of timber harvest and prescribed burning are proposed. The Forest Plan direction states that:

L–1 Generally nonforest forage producing areas that forage production is optimized and timber harvest and prescribed fire may be used as tools for this purpose, but not for timber management sake.

M–1 Nonforested and forested lands where timber management and range or wildlife habitat improvements are currently uneconomical or environmentally infeasible.

T–1 Management areas are available and suitable for timber harvest.

T–2 Should be maintained or enhanced for big game winter range for which timber harvest and prescribed fire may be used.

T–3 Should be managed in such a way to maintain and/or enhance habitat characteristics favoring elk and other big game species allowing the use of timber harvest and prescribed fire.

T–5 is timber management ground that increased forage production is favored in which timber harvest and prescribed fire can be used.

W–1 Wildlife (summer and winter range) and old growth potential is optimized in the long run. Timber harvest and prescribed fire can be used only if they can be used as tools to maintain or enhance wildlife habitat values. These areas are generally classified as unsuitable for timber management.

W–2 Important spring, summer and fall habitat for big game, such as elk and deer. Forage for both big game and livestock must be provided. Timber harvest and prescribed fire can be used only to maintain or enhance habitat values.

The decisions to be made, based on this environmental analysis, are:

(1) Whether or not to treat the forested and nonforested vegetation at this time, and if so, how would the treatments be accomplished?

(2) What type of transportation system, if any, will be necessary to accomplish the vegetation management objectives, while considering other resource transportation needs and objectives.

If it is decided to treat the vegetation at this time, activities may begin as early as 1995 and take up to 5–8 years to implement. Proposed treatments and associated temporary road construction need to meet the project objectives.

This EIS will tier to the Helena Forest Plan and Final EIS of April 1986, that provides program goals, objectives and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identifies in the Forest Plan and further refined in the Big Belts Integrated Resource Analysis Incorporating Ecosystems Management Principles.

The Big Belts Integrated Resource Analysis was completed in March 1993. As part of the Belt analysis, a long-term work plan to carry out the direction of the Helena Forest Plan and sustaining the ecological systems was developed. Analysis and collection of site specific data has been on-going.

The Forest Service is seeking information and comments from Federal, State, local agencies and others organizations or individuals who may be interested in or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those that have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

Prescribed harvest treatments in this proposal include even aged management techniques of clearcutting with reserves, seed tree with reserves and shelterwood with reserves as well as prescribed burning nonforested and forested vegetation. Alternatives to this proposal will include the "no action" alternative, in which none of the proposed treatments would be implemented. Other alternatives will examine variations in the amount of timber harvest using even aged and uneven aged harvest methods and variations in the amount of burning. Alternatives to the proposed action will be developed to respond to the purpose and need for the action.

The preliminary issues identified are:

1. What effects will the proposal have on forested and nonforested vegetation?
2. How will recreation and visual resources be affected by the proposal?
3. What effect will the proposal have on the fisheries and wildlife resources?
4. What effect will the proposal have on the Cayuse Mountain, Irish Gulch and Camas Creek Roadless Areas?
5. What effect will the proposal have on riparian management and function?
6. What effect will the proposal have on livestock grazing?
7. What effect will the proposal have on air quality?
8. What are the economic trade-offs of implementing this proposal?

The Forest Service will analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the

analysis. Interested parties may visit with the Forest Service officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments and the Forest Service will conduct public open house/workshops in; Townsend on July 20, 1993 at the Townsend Ranger Station, 415 South Front Street; in White Sulphur Springs on July 21, 1993 at the Kings Hill Ranger Station, 204 W. Folsom; and in Helena, Montana on July 22, 1993 at the Helena National Forest Supervisors Office, 2880 Skyway Drive. All open house/workshops will be held between the hours of 4 and 7 p.m. for the receipt of verbal comments. The dates and locations will be published locally. This period extends for 30 days from the date of publication of this notice. The second review period is during the review of the DEIS in and when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January 1994. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the notice of availability is published in the Federal Register.

At this early stage in the scoping process, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is expected to be filed in June 1994.

Dated: June 29, 1993.

Tom Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 93–17083 Filed 7–19–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1992 Panel Wave 7.

Form Number(s): SIPP–12700, SIPP–12705(L), SIPP–127/13403, SIPP–127/13404 A–D.

Agency Approval Number: 0607–0723.

Type of Request: Revision of a currently approved collection.

Burden: 63,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) provides information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. The survey is molded around a central core of labor force and income questions that are periodically supplemented with additional questions, referred to as topical modules, designed to answer specific needs. The topical modules for the 1992 Panel Wave 7 are the following: (1) Selected Financial Assets, (2) Medical Expenses and Work Disability, and (3) Real Estate, Shelter Costs, Dependent Care, and Vehicles. Also, topical module items have been added in Section 3 of the core: Part D—Stocks and Mutual Fund Shares, Part E—Rental Income, and Part F—Mortgages, Royalties, and Other Financial Investments. Wave 7 interviews will be conducted from February through May 1994.

Affected Public: Individuals or households.

Frequency: Once during the life of the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–17177 Filed 7–19–93; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

[Docket No. 930636–3136]

Final Criteria for Assessing Design Alternatives for the 2000 Census

AGENCY: Bureau of the Census, Commerce.

ACTION: Final notice.

SUMMARY: The purpose of this notice is to inform the public about final criteria for assessing design alternatives for the 2000 census, and to explain changes that were made to the criteria based upon comments the Bureau of the Census received as a result of the March 25, 1993 **Federal Register**, 58 FR 16171, notice containing the proposed criteria.

EFFECTIVE DATE: July 20, 1993.

FOR FURTHER INFORMATION CONTACT: James L. Dinwiddie, Program Manager, Year 2000 Research and Development Staff, Bureau of the Census, telephone 301–763–4265.

SUPPLEMENTARY INFORMATION:

I. Purpose and Background

The decennial census is taken every 10 years. The census provides data for reapportioning seats in the House of

Representatives among the states and establishing districts within each state; it also supplies data about the population of the Nation for a variety of other uses, including allocation of Federal funds.

Features of the final design for taking the 2000 census must be determined by December 1995 to allow for operational planning for, preparatory activities in connection with, and implementation of the design. A major source of information for determining the final design will be a set of field tests of potential features for the final design in the spring of 1995. Those tests will evaluate a number of design features. Features to be tested must be selected by September 1993 to allow for planning, implementation, and evaluation of the tests.

Design features were evaluated and the evaluation was described in a series of design alternative recommendations (DARs). The DARs are available for comment.

This notice contains final criteria for assessing designs. The criteria were initially published in the **Federal Register**, 58 FR 16171, March 25, 1993, and comments were requested. The Census Bureau received and reviewed 146 responses to the **Federal Register** notice, including several received after the deadline. Many of the comments were valuable and directly relevant to helping the Census Bureau refine the criteria for assessing designs.

As a result of the review of the responses, the Census Bureau deleted 2 of the 13 desirable criteria, made one desirable criterion mandatory, and made minor changes to the titles or descriptions of 3 other desirable criteria.

One of the desirable criteria the Census Bureau deleted was the one that specified that methods and procedures should be understandable and credible to the public. Because the Census Bureau will be using an open process for 2000 census design and planning, it believes that the process will ensure that stakeholders will be able to understand the methods and procedures that it uses in 2000.

The second criterion deleted was the one that said that a Federal statistical structure should be in place to support the census. The Census Bureau deleted this criterion because it was confusing and implied activities for which the Census Bureau does not have ultimate responsibility.

The desirable criterion that the Census Bureau made mandatory was the one that says a design should have the ability to reduce the differential undercount. This reflects the high level of comments that the Census Bureau received recommending that this criterion be mandatory and the Census Bureau's commitment to attempting to reducing differential undercount for the 2000 census.

References in the following text to an individual criterion use the numbers in this notice, not the number of the criterion used in the March 25, 1993 notice.

II. Final Mandatory and Desirable Criteria for Assessing Designs. The final criteria, accompanied with a summary of comments, responses, and conclusions are:

Mandatory Criteria

Any design that will be considered for the 2000 census must meet all of the following criteria:

1. Not require a Constitutional Amendment.

Description: It is not feasible to seek a Constitutional amendment between now and the year 2000 to allow the Census Bureau to implement a design.

Summary of Comments: The Census Bureau received one comment on this criterion. This comment recommended that the Census Bureau should not seek a constitutional amendment.

Response: The only comment received was in agreement with the criterion.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

2. Meet data requirements for reapportionment.

Description: Tabulations of persons in each state, for the purpose of apportioning Representatives among the states, must be provided by the design.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. Data for reapportionment/redistricting are critical, with an emphasis on the need for small area data.

2. This criterion should require actual counts rather than sample data.

3. The Census Bureau should provide maps that display all tabulation levels including voting districts.

Response: 1. The Census Bureau agrees with the comments about the importance of these data for reapportionment. The emphasis on small area data is not applicable to this criterion, since small area data are not required for reapportionment.

2. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels is needed. The error at any geographic level is a function of both sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

3. While this is a valuable comment to consider in the overall planning of the census, it is too specific to use in assessing design alternatives.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

3. Provide data defined by law and past practice for state redistricting.

Description: Any selected design must be able to produce tabulations of the population for small geographic areas (that is, blocks) that are required for state redistricting. This does not necessarily preclude the use of sampling to produce these data.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. Data at the small geographic level are necessary for redistricting.

2. Sampling should not be used to produce the data required for redistricting. It is critical that a 100 percent count be used to produce these data.

3. Substitute "reliable estimates" for "counts," and "block groups, enumeration districts, or minor civil divisions" for "blocks."

Response: 1. The comments are compatible with this criterion.

2. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels is needed. The error at any geographic level is a function of both sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

3. The Census Bureau, after further review, changed the word "counts" to

VOL
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"tabulations," but did not change the word "blocks" as it is the more appropriate terminology, since data are available nationally at the block level.

Conclusion: The description of the criterion was modified slightly; otherwise, the criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

4. Provide age and race/ethnic data defined by law to meet the requirements of enforcing the Voting Rights Act.

Description: Any selected design must be able to produce, for small geographic areas usable for state redistricting, tabulations of the population by: age 18+ and the racial/hispanic origin detail provided in the 1990 product for purposes of Public Law 94–171 (data for the redistricting program). This does not necessarily preclude the use of sampling to produce these data.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. Sampling should not be used to provide the data required for the Voting Rights Act. The reference to sampling should be removed.

2. It is critical that information required by all of the Voting Rights Act provisions as well as other Federal mandates also be included in this criterion.

3. Data at small geographic levels are necessary for enforcing the Voting Rights Act.

4. The Census Bureau should examine the use of its terminology for specific minority populations.

Response: 1. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels is needed. The error at any geographic level is a function of both sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

2. The Census Bureau explicitly intends mandatory criterion #3 to refer to age race/ethnic (100 percent) data defined by law to meet the requirements of enforcing voting rights protections guaranteed by Section 5 of the Voting Rights Act. The Census Bureau is in agreement with those comments expressing the importance of these data. This criterion explicitly does not refer to the data required by the voting language assistance provision of the Voting Rights Act. Comments concerning the need for these data as well as data required to support other Federal mandates are not applicable to this criterion. Comments concerning the need for socioeconomic data at small geographic levels are addressed in desirable criterion #2.

3. The comments are compatible with the criterion.

4. While this is a valuable comment to consider in the overall planning of the census, it is too specific to use in assessing design alternatives.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

5. Protect the confidentiality of respondents.

Description: No design is acceptable if it jeopardizes the ability of the Census Bureau to control and protect against release of identifiable individual data.

Summary of Comments: The Census Bureau received one comment on this criterion. The comment stated that this criterion may be in conflict with desirable criterion #10, Provision of opportunities to involve the U.S. Postal Service; state, local, American Indian Tribal and Alaska Native Village governments; national organizations; and other private, nonprofit, and commercial enterprises.

Response: Since the Census Bureau has involved and will continue to involve these organizations without a breach of confidentiality, the Census Bureau does not believe that this comment disagrees with the criterion.

Conclusion. The criterion remains as proposed in the March 25, 1993, **Federal Register** notice.

6. (Previously desirable criterion #1) Ability to reduce the differential undercount.

Description: Each design must be assessed in terms of its potential to reduce the differential levels of coverage of population groups and geographic areas that have historically occurred in the census.

Summary of Comments: All comments received by the Census Bureau strongly support this criterion, and most recommended that this be made a mandatory criterion.

Response: The Census Bureau agreed that this should be a mandatory criterion. The Census Bureau received numerous comments as a result of the March 25, 1993 **Federal Register** notice on this criterion. These comments provided the Census Bureau with cogent reasons for making this criterion mandatory.

Conclusion: The criterion is changed to a mandatory criterion; otherwise it remains as proposed in the March 25, 1993 **Federal Register** notice.

Desirable Criteria

Each design meeting the mandatory criteria will be assessed for the following: 1. (Previously desirable criterion #2) Result in comparative cost effectiveness with respect to other alternatives under consideration in real terms on a per unit basis.

Description: The cost of the census has increased significantly over the last three censuses, and it is important to select a design that considers cost in assessing the quality of the results.

Summary of Comments: 1. The comments received by the Census Bureau on this criterion acknowledge that cost is important. Many comments went on further to say that although cost is important, it should not be a final determinant. Other considerations should include the need for specific data content, quality of data, importance of technical and procedural methods, geographic coverage, and the overall importance of the census to the Nation.

2. Concern was expressed that this criterion could potentially be used to reduce or eliminate housing questions from the decennial census.

3. This criterion is unclear. It is unclear what "in real terms on a per unit basis" means. The relation between cost effectiveness and differential effects needs to be thought out.

Response: 1. The comments are compatible with the criterion.

2. Specific issues about data content are being addressed in the upcoming data content process. This process is dedicated to dealing with nothing but issues of data content. The Census Bureau plans to consult with Federal and non-Federal data users to determine the overall scope and specific content detail for the 2000 census. Between now and the end of 1995, the Census Bureau will continue to consult with a full range of data users, both Federal and non-Federal, on content needs before a decision needs to be made on the final design for the 2000 census.

3. The Census Bureau determined that this criterion is clear. The cost of the census has increased over the last three censuses due to inflation, the increased workload, and declining public responsiveness. If these trends continue the Census Bureau needs to consider cost in assessing the quality of results.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

2. (Previously desirable criterion #3) Provide small area data that the census is uniquely capable of supplying.

Description: The uses of census data require that they be accurate and of uniform quality for various geographic levels. Each design will be assessed for its ability to meet these goals and for the degree to which it collects information that can best be supplied by a census rather than a survey or other sources.

Summary of Comments: The Census Bureau received the following comments:

1. This criterion should be made mandatory.

2. There is a critical need for small area socioeconomic data that are only available from the decennial census.

3. This criterion should not be used to justify eliminating housing content from the 2000 census.

4. To meet the time requirements for reapportionment the Census Bureau may need to simplify the data that are collected and reported.

5. Data for redistricting purposes should not be generated from a sample.

6. The geographic base for the census is critical and attention should be paid to TIGER while planning for the 2000 census is underway.

7. Reduce the number of criteria by combining desirable criteria 2 and 4, and desirable criteria 5 and 6. This would help in the timely selection of the best design for 2000.

8. This criterion is unclear. The criterion suggests an unnecessary dichotomy between a "census" and "other sources."

Response: 1. The Census Bureau decided not to make this a mandatory criterion. The concerns and comments about the need for small area socioeconomic data are being fully addressed in the upcoming data content process. This process is dedicated to dealing with nothing but issues of data content. The Census Bureau plans to consult with Federal and non-Federal data users to determine the overall scope and specific content detail for the 2000 census. Between now and the end of 1995, the Census Bureau will continue to consult with a full range of data users, both Federal and non-Federal, on content needs before a decision needs to be made on the final design for the 2000 census.

2. The title of this criterion was changed to reflect the orientation toward and importance of small area data to the user community. Specific issues of data content are being addressed in the data content process. See the discussion in response 1.

3. Specific issues of data content are being addressed in the data content process. See the discussion in response 1.

4. The Census Bureau does not agree that it will have to simplify the data it collects in order to meet the time requirements for reapportionment. The history of past censuses supports the Census Bureau's position.

5. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels in need. The error at any geographic level is a function of both sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

6. The Census Bureau agrees with this comment. While it is a valuable comment to consider in the overall planning of the census, it is too specific to use in assessing design alternatives.

7. The Census Bureau determined that these criteria need to be described separately. This will provide for the most open and flexible process in evaluating design features.

8. The Census Bureau determined that this criterion is clear. The word "census" is used in reference to the decennial census, which will encompass all methodologies and technologies, as deemed accurate and practical, for collecting data. It is not limited to just the traditional head count, but could, if so determined, include such methodologies as the use of sampling, statistical estimation, administrative records, or surveys for collecting certain data.

Conclusion: The title of the criterion was changed to reflect the importance of small area data to the user community.

3. (Previously desirable criterion #4) Provide a single, best set of census results produced by legal deadlines for reapportionment and redistricting.

Description: The designs under consideration vary in combining direct enumeration and estimation techniques to produce the census results. It is highly desirable to specify a design that has an appropriate combination of these techniques and integrates the results on a time schedule that provides a single set of counts and characteristics by mandated statutory deadlines. Each design must be assessed in terms of the likelihood of meeting these objectives. While the Census Bureau does not necessarily assume that current deadlines will remain unchanged, it expects that a convincing case must be made for proposing the legislative actions that would be required to change them.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. One set of numbers is desirable.

2. Meeting state and Federal legal deadlines for redistricting is critical.

3. There are serious problems in using more than one set of data. However, it would be unfortunate if the Census Bureau were prohibited from producing known significantly improved data because of statutory deadlines.

4. Reduce the number of criteria by combining desirable criteria 2 and 4, and desirable criteria 5 and 6. This would help in the timely selection of the best design for the 2000 census.

Response: 1/2. The comments are compatible with the criterion.

3. The Census Bureau understands the concerns expressed in this comment. The Census Bureau is providing for as open and flexible process as possible in evaluating design features in order to ensure the best census possible.

4. The Census Bureau determined that these criteria need to be described separately. This will provide for the most open and flexible process in evaluating design features.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

4. (Previously desirable criterion #5) Provide an overall high level of coverage.

Description: In addition to reduction of differential coverage, each design must be assessed in terms of the degree to which it ensures the best absolute coverage of the population.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This criterion is important in evaluating the design alternatives.

2. It should be made mandatory.

3. This criterion should be combined with the criterion on differential undercount (mandatory criterion #6).

4. This criterion might be in conflict with the criterion on differential undercount (mandatory criterion #6).

5. Ensure coverage of specific populations such as persons with limited English proficiency.

6. The meaning of this criterion is unclear. Presumably the goal of improving the census should be to reduce inaccuracies across the board.

Speaking hypothetically, however, a new methodology that almost totally eliminates differential undercount, while increasing total undercount only slightly, should not be ruled out automatically.

Response: 1. The comments are compatible with the criterion.

2. The Census Bureau decided not to make this a mandatory criterion. Certain criteria are clearly more critical in assessing the design features of the census than others, and because of their relative importance these criteria become mandatory. In essence they become the "bottom line" for conducting the census. Other criteria are important and the Census Bureau appreciates the comments and acknowledges the concerns about these criteria; but, in the best judgment of the Census Bureau these are not mandatory criteria. In considering whether a criterion should be mandatory or desirable the Census Bureau considered such factors as its importance, whether or not it would be in conflict with a mandatory criterion, and whether or not the Census Bureau could accomplish it.

3. The Census Bureau, after further review, determined that this criterion needs to be described separately from mandatory criterion #6, since new methodologies and technologies may reduce the differential undercount without providing an overall high level of coverage.

4. The Census Bureau understands that this criterion may be in conflict with mandatory criterion #6, since new methodologies and technologies may reduce the differential undercount without providing an overall high level of coverage. That is one of the reasons why the Census Bureau did not make it a mandatory criterion.

5. While this is a valuable comment to consider in the overall planning of the census, it is too specific to use in assessing design alternatives.

6. After further review, the Census Bureau decided that this criterion is clear as it is written. The Census Bureau agrees with the remainder of the comment. Thus, the Census Bureau is maintaining as open and flexible process as possible in order to evaluate as many potential methodologies and technologies as possible. The Census Bureau will attempt to reduce/eliminate the differential undercount as well as provide an overall high level of coverage.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

5. (Previously desirable criterion #6) Increase the primary response rate to the census.

Description: Public cooperation in responding to the census is a key element in controlling the costs while ensuring the quality of the census. Each design will be assessed in terms of the degree to which it facilitates public participation and compliance. Aspects of improving the response rate include the design of the census questionnaire, the number and type of census questions, and the incorporation of a variety of ways the population can receive and respond to the census inquiry.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This is a valuable criterion.

2. The Census Bureau should not ignore the quality of the data.

3. This criterion should be made mandatory.

4. The Census Bureau should not use sampling to derive the basic redistricting counts; do not use sampling if it means the weighting of nonresponse house units by non-response sampling.

5. The Census Bureau should use positive incentives to increase the overall response rate.

6. Reduce the number of criteria by combining desirable criteria 2 and 4, and desirable criteria 5 and 6. This would help in the timely selection of the best design for the 2000 census.

7. This is not an end to itself, but rather a means to an end, and should not be a criterion.

Response: 1/2. The comments are compatible with the criterion.

3. The Census Bureau decided not to make this a mandatory criterion. Certain criteria are clearly more critical in assessing the design features of the census than others, and because of their relative importance these criteria become mandatory. In essence they become the "bottom line" for conducting the census. Other criteria are important and the Census Bureau appreciates the comments and acknowledges the concerns about these criteria; but, in the best judgment of the Census Bureau these are not mandatory criteria. In considering whether a criterion should be mandatory or desirable the Census Bureau considered such factors as its importance, whether or not it would be in conflict with a mandatory criterion, and whether or not the Census Bureau could accomplish it.

4. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels is needed. The error at any geographic level is a function of both sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

5. The Census Bureau agrees that it should examine ways to increase the response rate and this research is ongoing. While this is a valuable comment to use in the overall planning of the census, it is too specific to use in assessing design alternatives.

6. The Census Bureau determined that these criteria need to be described separately. This will provide for the most open and flexible process as possible in evaluating design features.

7. The purpose of the criteria is to provide guidelines for the Census Bureau to use in assessing the design alternatives. These criteria are not absolute requirements for assessing the designs.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

6. (Previously desirable criterion #7) Level of respondent burden.

Description: The level of respondent burden attendant to each design will be assessed. Consideration will be given to such measures of burden as the time needed for the public to supply the information, the number and type of questions, and the number of persons who are designated to supply information.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. Respondent burden needs to be considered in terms of data needs and accuracy, and ease of compliance; for example, ability to read English.

2. This criterion should be deleted.

3. The Census Bureau needs to quantify the criterion.

4. This criterion should be combined with desirable criterion #1.

5. Reduce the number of criteria by combining desirable criteria 2 and 4, and desirable criteria 5 and 6. This would help in the timely selection of the best design for the 2000 census.

6. This criterion appears to be an explanation of intended work rather than a criterion.

7. This is not an end to itself, but rather a means to an end, and should not be a criterion.

Response:

1. The description of this criterion was expanded to include additional factors other than just time needed to supply the information in evaluating response burden.

2. The Census Bureau, after reviewing the comment, determined that this criterion should remain. There is strong support for this criterion from the Office of Management and Budget because of their responsibility to review and reduce the paperwork burden on the American population.

3. This comment would unnecessarily constrain this criterion. However, in evaluating the final design the Census Bureau will quantify the level of respondent burden.

4. The Census Bureau, after reviewing the comment, has determined that this criterion needs to be described separately from desirable criterion #1. The Census Bureau views the cost of the census and response burden as two separate issues. Further, the purpose of the criteria is to provide guidelines for the Census Bureau to use in assessing the design alternatives. These criteria are not absolute requirements for assessing the designs.

5. The Census Bureau determined that these criteria need to be described separately. This will provide for the most open and flexible process in evaluating design features.

6/7. The purpose of the criteria is to provide guidelines for the Census Bureau to use in assessing the design alternatives. These criteria are not absolute requirements for assessing the designs.

Conclusion: The description of this criterion was expanded; otherwise the criterion remains as proposed in the March 25 **Federal Register** notice.

7. (Previously desirable criterion #8) Degree and type of changes needed in Federal or state law.

Description: The Census Bureau will determine, for each design, whether one or more features of the design require changes in existing law. The actions needed to implement such changes, and the viability of doing so, will be evaluated.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This criterion is important in evaluating design alternatives. One commentor went on to say that "Rather than relying solely on the Bureau's assessment of legal requirements, however, we recommend considering other processes for resolving these questions. One possible avenue would be declaratory judgement actions, with the Census Bureau and affected jurisdictions as parties, to obtain binding rulings on legal requirements relating to the census process."

2. It should be made a mandatory criterion.

3. This criterion appeared to be an explanation of intended work rather than a criterion.

4. This criterion does not clarify whether legislative changes will be viewed as insurmountable barriers. If not, this criterion may be unnecessary.

Response: 1. The comments are compatible with the criterion.

2. The Census Bureau decided not to make this a mandatory criterion. Certain criteria are clearly more critical in assessing the design features of the census than others, and because of their relative importance these criteria become mandatory. In essence they become the "bottom line" for conducting the census. Other criteria are important and the Census Bureau appreciates the comments and acknowledges the concerns about these criteria; but, in the best judgment of the Census Bureau these are not mandatory criteria. In considering whether a criterion should be mandatory or desirable the Census Bureau considered such factors as its importance, whether or not it would be in conflict with a mandatory criteria, and whether or not the Census Bureau could accomplish it.

3. The purpose of the criteria is to provide guidelines for the Census Bureau to use in assessing the design alternatives. These criteria are not absolute requirements for assessing the designs.

4. The Census Bureau, after reviewing this comment, determined that the criterion should be retained. The Census Bureau will determine legal changes needed in the selection of the final design.

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

8. (Previously desirable criterion #9) Reliance on new or unproven methods or capabilities.

Description: Several of the designs under consideration are dependent on major changes or improvements in census methodologies and technologies. For example, some of the designs rely on the ability to quickly and accurately identify people who may be enumerated multiple times or appear on multiple administrative records. Other design features require an unprecedented degree of access to administrative records. All the designs, to differing degrees, rely on having a complete and reasonably accurate geographic database linked to a current and comprehensive address control database. These kinds of issues and capabilities are currently undergoing research and development, but will not be fully in place by September 1993 when the Census Bureau must select the design features for the 1995 test. For each design, the Census Bureau will assess the degree to which one or more features rely on methods that are not fully developed, the steps that must be taken to develop the methods, and risk to the design if full development is unsuccessful.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This criterion should be made mandatory.

2. This criterion appears to be an explanation of intended work rather than a criterion.

3. The Census Bureau should not use sampling to derive basic redistricting counts; do not use sampling if it means the weighting of nonresponse housing units by nonresponse sampling.

4. Planning should be flexible.

5. The Census Bureau should develop a model to quantify concepts such as cost and risk.

6. There is no significant difference between this criterion and desirable criterion 9.

7. Desirable criteria 8, 9, and 12 should be combined.

Response: 1. The Census Bureau decided not to make this a mandatory criterion. Certain criteria are clearly more critical in assessing the design features of the census than others, and because of their relative importance these criteria become mandatory. In essence they become the "bottom line" for conducting the census. Other criteria are important and the Census Bureau appreciates the comments and acknowledges the concerns about these criteria; but, in the best judgment of the Census Bureau these are not mandatory criteria. In considering whether a criterion should be mandatory or desirable, the Census Bureau considered such factors as its importance, whether or not it would be in conflict with a mandatory criterion, and whether or not the Census Bureau could accomplish it.

2. The purpose of the criteria is to provide guidelines for the Census Bureau to use in assessing the design alternatives. These criteria are not absolute requirements for assessing the designs.

3. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels is needed. The error at any geographic level is a function of both

sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

4. The Census Bureau is making every attempt to keep this process as open and flexible as possible. The Census Bureau is in agreement with this comment.

5. This comment would unnecessarily constrain the criterion.

6. The Census Bureau, after reviewing this comment, determined that desirable criteria 8 and 9 are significantly different. This criterion addresses individual improvements; the next criterion addresses all as a whole.

7. The Census Bureau, after reviewing this comment, determined that desirable criteria 8, 9, and 12 are significantly different. This criterion addresses individual improvements; the next criterion addresses all as a whole. Desirable criterion #12 was deleted. (See response for desirable criterion #12.)

Conclusion: The criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

9. (Previously desirable criterion #11) Major design features can be tested and developed.

Description: The census is a massive, complex, and expensive undertaking. Stakeholders and the public need assurance in the success of its operational implementation and the resultant quality of its products. The Census Bureau must be able to fully test and develop the logistical, technological, and operational requirements for the chosen design. Each design under consideration will be assessed to determine if, taken together, its components produce the desired result.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This should be a mandatory criterion.

2. The Census Bureau should maintain flexibility in the planning process.

3. This criterion is not significantly different from desirable criterion #9.

4. Desirable criteria 8, 9, and 12 should be combined.

Response: 1. The Census Bureau decided not to make this a mandatory criterion. Certain criteria are clearly more critical in assessing the design features of the census than others, and because of their relative importance these criteria become mandatory. In essence they become the "bottom line" for conducting the census. Other criteria are important and the Census Bureau appreciates the comments and acknowledges the concerns about these criteria; but, in the best judgment of the Census Bureau these are not mandatory criteria. In considering whether a criterion should be mandatory or desirable, the Census Bureau considered such factors as its importance, whether or not it would be in conflict with a mandatory criterion, and whether or not the Census Bureau could accomplish it.

2. The Census Bureau is making every attempt to keep this process as open and flexible as possible. The Census Bureau is in agreement with this comment.

3/4. The Census Bureau, after further review and thought, determined that these are separate criteria. Criterion #8 addresses individual improvements; criterion #9 addresses all as a whole. Desirable criterion #12 was deleted. (See response for desirable criterion #12.)

Conclusion: The Census Bureau made one editorial change to the title, deleting the word "fully;" otherwise, the criterion remains as proposed in the March 25, 1993 **Federal Register** notice.

10. (Previously desirable criterion #12) Provision of opportunities to involve the U.S. Postal Service; state, local, American Indian Tribal, and Alaska Native Village governments; national organizations; and other private, nonprofit, and commercial enterprises.

Description: The involvement of organizations outside the Census Bureau can benefit the planning and conduct of the census by bringing expertise and cooperation into the census-taking process. The Census Bureau will assess the features of each design in terms of their ability to support this external participation.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This criterion should be mandatory.

2. This criterion is important.

3. It should be part of any design alternative.

4. This criterion should be amended to explicitly include the governments of American Indian tribes along with state and local governments as entities to be involved in the census-taking process.

5. This kind of involvement is vitally important; however, it should not be a criterion, but rather an element of any plan.

Response: 1. The Census Bureau decided not to make this a mandatory criterion. Certain criteria are clearly more critical in assessing the design features of the census than others, and because of their relative importance these criteria become mandatory. In essence they become the "bottom line" for conducting the census. Other criteria are important and the Census Bureau appreciates the comments and acknowledges the concerns about these criteria; but, in the best judgment of the Census Bureau these are not mandatory criteria. In considering whether a criterion should be mandatory or desirable the Census Bureau considered such factors as its importance, whether or not it would be in conflict with a mandatory criterion, and whether or not the Census Bureau could accomplish it.

2/3. The comments are compatible with the criterion.

4. After reviewing the comment, the Census Bureau decided to change the wording of this criterion to explicitly include American Indian Tribal and Alaskan Native Village governments.

5. The purpose of the criteria is to provide guidelines for the Census Bureau to use in assessing the design alternatives. These criteria are not absolute requirements for assessing the designs.

Conclusion: The title of this criterion was changed; otherwise it remains as proposed in the March 25, 1993 **Federal Register** notice.

The Following Desirable Criteria Were Deleted

11. (Previously desirable criterion #10) Methods and procedures are understandable and credible to the public.

Description: The American public and various groups with a stake in the census need to have confidence in the methods and procedures employed in the census process. The features of each design will be assessed to determine compliance with this criterion.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. This criterion is ambiguous and not well thought out.

2. It would be difficult to explain to the American public, and it is a media/public relations problem not a criterion.

3. One comment was in support of this criterion.

4. One comment suggested that it should be mandatory.

5. The Census Bureau should not use sampling for redistricting counts.

Response:

1/2. The Census Bureau agrees with these comments and deleted the criterion.

3/4. The Census Bureau decided to delete this criterion for two reasons.

First, the overall process for planning for the decennial census is an open process in which all stakeholders, including the public, examine and provide input. Through this process, the stakeholders should understand the methods and procedures of the census. Second, in addition it is not possible to measure whether the methods and procedures are understandable and credible to the public. Therefore, this criterion should not be necessary.

5. The Census Bureau acknowledges comments concerning the use of sampling. This issue is fundamentally one of equity in drawing voting district boundaries, and thus the assurance of accuracy of data at small geographic levels is needed. The error at any geographic level is a function of both sampling error and nonsampling error. The Census Bureau will evaluate the total error at various geographic levels. The Census Bureau may consider using an estimation process to produce estimates at the block level. Thus, the possible use of counts or count estimates will be determined after further research. To assess different design alternatives, the Census Bureau needs to be as flexible and open as possible at this stage of the process with respect to the issues of sampling.

Conclusion: The criterion was deleted.

12. (Previously desirable criterion #13) Confidence that related aspects of the Federal statistical structure will be in place to support the census.

Description: Some of the designs under consideration require clarification or redefinition of aspects of the Federal statistical system. The ability of this system to perform in areas such as providing access to administrative records, and providing or using data collected in ways that differ from past experience, must be ensured to support some of the designs. The relevance of the criterion to each design will be assessed, and the necessary changes will be documented.

Summary of Comments: The Census Bureau received the following comments on this criterion:

1. The criterion is too vague. (1)
2. It should be combined with desirable criteria 8, 9, and 12. (1)
3. The Census Bureau must ensure the conduct of the census. (1)

Response: 1. The Census Bureau agrees with the comment that the criterion is confusing and too vague, and deleted the criterion.

2. The Census Bureau determined that criteria 8, 9, and 12 are significantly different. The Census Bureau also decided that criterion 12 should be deleted. See response #1.

3. The Census Bureau agrees with this comment. Conclusion: The criterion was deleted.

General Comments: In addition to the comments discussed above, there were other comments and suggestions regarding the overall approach used. While many of these comments are valuable to consider in the overall planning of the census, they are not applicable in assessing design alternatives.

There also were comments and suggestions regarding additional criteria. We considered these comments and determined that we would maintain the criteria developed for and reflected in the proposed March 25 notice and as revised or deleted in this notice. We determined that since the criteria reflected herein are the most appropriate, we should not add further criteria.

The Census Bureau appreciates the time and thought that the respondents have given to reviewing and providing written comments on these criteria.

Dated: July 14, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–17150 Filed 7–19–93; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 29–93]

Foreign-Trade Zone 35—Philadelphia, PA, Application for Subzone, Merck Pharmaceutical Plant, West Point, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck & Co., Inc. (Merck), in West Point, Pennsylvania, adjacent to the Philadelphia Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 1, 1993.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: Patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort. (Applications for subzone status are also being submitted for seven other Merck facilities.)

Merck's West Point plant (387 acres, 4.2 mil. sq. ft., 83 bldgs.) is located at Sunneytown Pike and Broad Street, in the town of West Point, Montgomery County, Pennsylvania, some 15 miles northwest of Philadelphia. The company is currently expanding the plant (609,000 sq. ft.) to include a biological production facility. The West Point site is Merck's largest U.S. research and manufacturing facility, and also the headquarters for its U.S. Human Health Division.

The facility (5,000 employees) is used to produce a wide range of patented prescription and over-the-counter pharmaceutical products. The finished products include "Pepcid" ulcer treatment; "Noroxin" antibiotic; "Sinemet" medication for the treatment of Parkinson's disease, and "Dolobid" anti-inflammatory analgesic. A veterinary product is also produced at the plant. Company officials are considering the production of osteoporosis, glaucoma, and oncology medications at the West Point facility. Currently, foreign-sourced materials account for, on average, 12 percent of the finished product value and include the following specific chemicals: Diflunisal, famotidine, norfloxacin, and levodopa. The company may purchase products from abroad in the following general product categories: gums, starches, waxes, vegetable extracts, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products.

Zone procedures would exempt Merck from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%, most dutiable at 6.3%). The duty rates on foreign-sourced items range from duty-free to 23.5%, with most falling in the 6.9%-13.5% range. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to

VOL
58
ISS
137
JL
20
1993
UMI

investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 20, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (October 4, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Suite 202, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 2, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–17178 Filed 7–19–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–351–804]

Industrial Nitrocellulose From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 10, 1993, the Department of Commerce published the preliminary results of the review of the antidumping duty order on industrial nitrocellulose from Brazil. The review covers one manufacturer/exporter of the merchandise to the United States, and the period July 1, 1991, through June 30, 1992.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results remain unchanged from those presented in the preliminary results

EFFECTIVE DATE: July 20, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pam Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 27537) the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from Brazil (55 FR 28266; July 10, 1990). The Department has now completed the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is industrial nitrocellulose. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this review does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent, and was excluded from the antidumping duty order.

The subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3912.20.00. HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Therefore, we determine that the final margin is 5.81 percent for Companhia Nitro Quimica Brasileira (Nitro Quimica) for the period July 1, 1991, through June 30, 1992.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Nitro Quimica will be 5.81 percent; (2) for the previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, any previous review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. In accord with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, the cash deposit rate for all other manufacturers or exporters will be 61.25 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22.

Dated: July 9, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–17179 Filed 7–19–93; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071493A]

Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) has appointed an Ad Hoc Committee (Committee) representing Pacific whiting fishing and processing interests to develop an allocation proposal for Council consideration. The Committee will hold a 2-day meeting on July 27–28, 1993, to be held in room 440, 2000 S.W. First Avenue, Portland, OR. The meeting will begin on July 27 from 10 a.m. until 5 p.m. and continue on July 28 from 8 a.m. until 1 p.m.

The purpose of this process is to develop an allocation recommendation that will be implemented prior to the opening of the 1994 whiting fishery.

The six-member committee will include one shore-based whiting processor, one factory-trawler, one mothership-processor, one fisher who delivers primarily to shore-based processors, one fisher who delivers primarily to at-sea processors and one at-large groundfish fisher with a history of fishing for both whiting and other west coast groundfish species. The Council has directed the Committee to work towards consensus regarding the framework of an allocation agreement, considering the effects of limited entry, expected whiting abundance, and other important factors. An independent facilitator will help the Committee resolve conflicts and work towards a consensus position. At its September meeting the Council will further refine the proposals and select its preferred alternative. Final Council action is slated for the week of November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–17118 Filed 7–19–93; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for Disposal and Reuse of Homestead AFB, FL

The United States Air Force (Air Force) will prepare an environmental impact statement (EIS) to assess the potential environmental impacts of the disposal and reuse of Homestead Air Force Base (AFB), Florida. Under the 1993 Defense Base Closure and Realignment Commission recommendations, the 482d F–16 Fighter Wing (Air Force Reserves), the 301st Rescue Squadron and the North American Air Defense Alert Activity would remain at Homestead AFB. If these recommendations become law, the Air Force will construct aviation-related facilities to support these organizations in cantonment areas at Homestead AFB. The remainder of base property of Homestead will be closed and made available for disposal and reuse. The EIS will address the disposal of the property to public or private entities and the potential impacts of reuse alternatives.

To provide a forum for the community to make oral comments, a scoping meeting is scheduled for August 17, 1993 in the Homestead AFB area. Notice of the time and location of the meeting will be made available to public officials, the community and the local news media outlets at a later date. The purpose of this meeting is to identify the environmental issues and concerns that should be analyzed to: (1) Support base disposal and reuse, (2) solicit comments on the Proposed Action and (3) solicit potential disposal and reuse alternatives for consideration in developing the Homestead EIS. In soliciting disposal and reuse alternatives, the Air Force will consider all reasonable alternatives offered by any Federal, state or local government agency and any federally-sponsored or private entity or individual with an interest in acquiring available property at Homestead AFB. The resulting environmental impacts will be considered in making disposal decisions which will be documented in the Air Force's Final Disposal Plan for Homestead AFB.

To ensure the Air Force will have sufficient time to consider public comments on environmental issues to be included in the EIS, and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the address listed below at anytime during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the Homestead base disposal and reuse EIS to: Lt Col Gary P. Baumgartel, AFCEE/ESE, 8106 Chennault Road, Brooks AFB, TX 78235–5318, (210) 536–3869.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–17095 Filed 7–19–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Availability of Draft Report to Congress on DOE Advisory Groups for Environmental Restoration and Waste Management

AGENCY: Office of Policy and Program Information, Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of availability of draft report and request for comment.

SUMMARY: The Department of Energy has completed a draft report to Congress on Citizens' Advisory Groups for Environmental Restoration and Waste Management. The report is a response to a requirement in section 3132 of the National Defense Authorization Act for Fiscal Year 1993. The Department will solicit public comments on the Draft Report.

DATES: Comments must be submitted by September 20, 1993.

ADDRESSES: Copies of the Draft Report may be obtained by calling or faxing the number below or writing the following address: Department of Energy, EM–4, rm. 5B031, 1000 Independence Ave. SW., Washington, DC 20585. Comments should be submitted to this address.

FOR FURTHER INFORMATION CONTACT: David W. Waldrop, Acting Director, Office of Policy and Program Information, U.S. Department of Energy, Washington, DC 20545, phone: (202) 586–5944, fax: (202) 586–0293.

SUPPLEMENTARY INFORMATION: The Department of Energy has completed a draft report to Congress on citizens' advisory groups for Environmental Restoration and Waste Management. The report contains a comprehensive look at the background, status, and plans for citizens' advisory groups to address DOE's environmental restoration and waste management issues. It also discusses the Department's broader public participation efforts related to environmental restoration and waste management.

The Report consists of six sections. Section I provides a general

VOL
58
ISS
137
JL
20
1993
UMI

introduction; Section II discusses information related to the effectiveness of existing citizens' advisory groups; Section III discusses the desirability of establishing new citizens' advisory groups and current efforts in this regard; Section IV addresses methods of improving public participation in DOE's environmental restoration and waste management activities; Section V highlights comments and recommendations which have been gathered from a variety of sources; and Section VI summarizes the contents of the Draft Report.

The Department of Energy is actively working with States and the Environmental Protection Agency to establish citizens' advisory groups at five "pilot" sites (Fernald, Idaho, Richland, Rocky Flats, and Savannah River). Section III highlights these ongoing efforts. In its final report, which DOE has agreed to submit by May 15, 1994, DOE will include an update on these groups, and an assessment of the effectiveness of the Department's solicitation and use of stakeholder input in its decisionmaking process.

Issued in Washington, DC this 13th day of July, 1993.

Thomas P. Grumbly,

Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–17171 Filed 7–19–93; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee for National Electric and Magnetic Fields Research and Public Information Dissemination Program; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Thursday, August 5, 1993: 8:30 a.m.–5 p.m. Friday, August 6, 1993: 8:30 a.m.–12:30 p.m.

ADDRESSES: Washington Marriott Hotel, 1221 22nd Street, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Robert Brewer, Director, Utility Systems Division, EE–141, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2828.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Field Advisory Committee will advise the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, national electric and magnetic fields research and public information dissemination program. The Secretary of Energy, pursuant to section 2118 of the Energy Policy Act of 1992, Public Law 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage exposures, and dissemination of information.

Tentative Agenda

Thursday, August 5, 1993

8:30 a.m.—Welcome and opening remarks
9 a.m.—Presentation on committee member responsibilities and conflict of interest provisions
9:30 a.m.—Status report on implementation of Section 2116 of the Energy Policy Act
10 a.m.—Break
10:15 a.m.—Department of Energy presentation on Draft Strategic Plan for the National Electric and Magnetic Fields Research and Communications Program
11 a.m.—Background and status of Department of Energy and National Institute of Environmental Health Sciences electric and magnetic fields research
12 p.m.—Lunch Break
1 p.m.—Presentation of Department of Energy plans for research and communications activities and Advisory Committee questions
2:15 p.m.—Presentation of National Institute of Environmental Health Sciences plans for health effects research and communication and Advisory Committee questions
3:30 p.m.—Break
3:45 p.m.—Open time for public comments
5 p.m.—Adjourn

Friday, August 6, 1993

8:30 a.m.—Election of Advisory Committee chairperson
9 a.m.—Advisory Committee discussion of Department of Energy and National Institute of Environmental Health Sciences program plans
10:30 a.m.—Break
10:45 a.m.—Advisory Committee planning for future meetings and committee procedures
12:30 p.m.—Adjourn

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Robert Brewer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 14, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–17172 Filed 7–19–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF93–130–000]

BCH Energy, L.P.; Application for Commission Certification Of Qualifying Status of a Small Power Production Facility

July 14, 1993.

On July 9, 1993, BCH Energy, L.P., c/o VEDCO Energy Corp. of 11757 Katy Freeway, Suite 940, Houston, Texas 77079, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 15.4 MW refuse derived fuel small power production facility will be located in Bladen County, North Carolina, and will consist of two atmospheric fluid bed combustor-boiler systems and a multi-valve, double extraction/condensing steam turbine generator. The primary energy source will be biomass in the form of processed municipal solid waste. Installation of the facility is expected to commence in the fourth quarter of 1993.

Any persons desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by August 19, 1993 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make

protestants parties to the proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17111 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

Application Filed with the Commission

July 14, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License.

b. *Project No:* 2482–018.

c. *Date Filed:* June 23, 1993.

d. *Applicant:* Niagara Mohawk Power Company.

e. *Name of Project:* Sherman Island Development of the Hudson River Project.

f. *Location:* Hudson River in the Towns of Queensbury/Moreau, Warren/Saratoga Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jacob S. Niziol, Niagara Mohawk Power Company, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428–5556.

i. *FERC Contact:* John Costello, (202) 219–2914.

j. *Comment Date:* August 2, 1993.

k. *Description of Project:* The Niagara Mohawk Power Company, licensee for the Sherman Island Development of the Hudson River Project, requests the Commission's approval to leave in place as a permanent project feature a substantial portion of a cofferdam at the Sherman Island Development. The licensee proposes to leave 6 of the 13 cells in place. The remaining 7 cells would project approximately 7 feet above the normal pond levels. A second alternative being considered requires complete removal of cell Nos. 1 through 5; removal of the upper portions of cell Nos. 6 through 11 to three feet below normal pool levels; and partial removal of cell Nos. 12 and 13 of the extent necessary to not impede water flows.

l. *This notice also consists of the following standard paragraphs: B, C1, and D2.*

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments," "Recommendations for Terms and Conditions," "Protest" or "Motion to Intervene," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17104 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–12545T Colorado–57]

United States Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 14, 1993.

Take notice that on July 12, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Mesaverde Group Formation in the Ignacio Blanco-Mesaverde Field West in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The recommended area encompasses approximately 3,520 acres, of which approximately 640 acres are administered by the Colorado Oil & Gas Conservation Commission, and consists of all or portions of the following acreage:

Township 32 North, Range 10 West

Section 3: E/2

Township 33 North, Range 10 West

Sections 2, 11, and 27: All

Township 32 North, Range 11 West

Sections 10 and 16: All

The notice of determination also contains BLM's findings that the referenced portions of the Mesaverde Group meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission

Lois D. Cashell,

Secretary.

[FR Doc. 93–17107 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–7–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

July 14, 1993.

Take notice that on July 9, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of July 9, 1993:

45th Revised Sheet No. 4

Alabama-Tennessee states that this filing is an out-of-cycle purchased gas adjustment (PGA) filing, the purpose of which is to correlate more accurately Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company (Tennessee). Alabama-Tennessee states that current spot market prices indicate that Tennessee's Transition Gas Inventory Charge (TGIC) sales commodity rates, which are based on a spot index, will decrease unexpectedly and substantially from those projected by Alabama-Tennessee in its quarterly PGA filing that it submitted on May 28, 1993 in Docket No. TQ93–6–1. In addition to the decrease in Tennessee's TGIC

VOL 58 ISS 137 JL 20 1993 UMI

commodity sales rates, Alabama-Tennessee states that its filing reflects its use of the revised demand cost allocation ratio for computing the rates for jurisdictional sales customers that was agreed upon in the joint settlement filed on December 29, 1992 by Alabama-Tennessee and the Tennessee Valley Municipal Gas Association in Docket Nos. TQ92–5–1 et al., which the Commission approved by Letter Order dated February 24, 1993.

In addition to a waiver of § 154.22 of the Commission's Regulations so that its revised tariff sheet can be made effective as of July 9, 1993, Alabama-Tennessee has requested any other waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17105 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–540–000]

American Electric Power Service Corp.; Filing

July 14, 1993.

Take notice that on July 7, 1993, American Electric Power Service Corporation, acting as agent for Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, operating companies of the American Electric Power (AEP) System (collectively "the AEP Companies") submitted for filing as an initial rate schedule, a Revised Transmission Service and Ancillary Control Area Services Tariff, along with certain additional information requested in a letter dated June 4, 1993 by Donald J. Gelinas, Director Division of Applications.

The proposed Tariff provides for the provision of transmission service by the AEP Companies for Eligible Utilities. The basic rate for such transmission service, as revised, is $2980 per megawatt per month. The tariff also makes available Ancillary Control Area Services to Transmission Service users which require such services.

Copies of the filing have been served upon the public service commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia, and the parties to Docket No. ER93–540–000. The AEP Companies request an effective date of September 6, 1993 for the proposed tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17175 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–153–000]

El Paso Natural Gas Co.; Petition for Limited Waiver

July 14, 1993.

Take notice that on July 9, 1993, El Paso Natural Gas Company (El Paso), filed a petition for limited waiver pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and § 385.1101 of the Commission's Rules of Practice and Procedure. El Paso requests a limited waiver of the reporting requirements contained in part 284 of the Commission's Regulations under the NGPA.

El Paso states that with the implementation of its capacity release program, releasing shippers in El Paso's system may, *inter alia*, release firm transportation capacity from various receipt points to various delivery points, on either a permanent or temporary basis, to acquiring shippers. Since part 284 of the Commission's Regulations clearly mandates the reporting of transportation transactions, El Paso anticipates that the reporting capacity release transactions may very dramatically increase the number of transportation reports required to be filed. Further, the ability to have flexible receipt and delivery points may require El Paso to file a significant number of subsequent reports after implementation.

In view of the administrative burden associated with El Paso's preparation and filing of these reports for capacity release transactions and the Commission's related review, El Paso requests waiver of those sections of part 284, subparts B (§ 284.106) and G (§ 284.223(d)), of the Commission's Regulations that require El Paso to file initial, subsequent, or termination reports within thirty (30) days or upon termination of the service associated with the capacity release program on El Paso's system. El Paso states that the requested waiver would apply to all temporary capacity release transactions. El Paso also requests that the waiver also apply to all transportation transactions that involve solely the addition or deletion of receipt and delivery points. El Paso states it will continue to file the initial, subsequent, or termination reports applicable to permanent transportation transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17106 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91-229-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

July 14, 1993.

Take notice that an informal settlement conference will be convened in this proceeding beginning Tuesday, August 3, 1993, at 10 a.m., and continuing through Wednesday, August 4, 1993, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-17108 Filed 7-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-23-006, RP91-203-027 and RP92-132-029 (Consolidated, in part)]

Tennessee Gas Pipeline Co.; Conference

July 14, 1993.

Take notice that on July 27, 1993, beginning at 10 a.m., a conference will be convened in the above-captioned restructuring docket. The conference will be held in Hearing Room Number 1 at the Federal Energy Regulatory Commission, 810 1st St. NE., Washington, DC.

On July 2, 1993, the Commission issued its "Order on Compliance Filing and Granting and Denying Requests for Rehearing" in the above-captioned dockets. That order required the Commission Staff to convene a technical conference within 30 days on the issue of "mandatory balancing agreements." This technical conference is being conducted in response to that directive. Thus, the sole issue which will be addressed at the conference will be Tennessee Gas Pipeline Company's mandatory balancing agreements, as discussed in the July 2, 1993 order.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Sharon Dameron at (202) 208-2017.

Lois D. Cashell,

Secretary.

[FR Doc. 93-17110 Filed 7-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-544-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

July 14, 1993.

Take notice that on July 9, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP93-544-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a two-inch tap and related facilities to enable United to serve Frito Lay, Inc. (Frito Lay) in Fort Bend, Texas, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to install and operate a two-inch tap, two-inch meter station, one-inch regulator station and about 200 feet of pipeline to enable United to serve Frito Lay, at a cost of about $50,326.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-17109 Filed 7-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-541-000]

Young Gas Storage Co., Ltd.; Application

July 14, 1993.

Take notice that on July 8, 1993, Young Gas Storage Company (Young), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in docket No. CP93-541-000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for authorization to develop, construct and operate an underground storage facility and to provide storage services for others, with pregranted abandonment, and for blanket certificates under subpart F of part 157 and subpart G of part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Young states that it is a Limited Partnership consisting of two general partners and one limited partner. The general partners are Young Gas Storage Company and CIG Gas Storage Company, both Delaware corporations. The limited partner is the City of Colorado Springs, a municipal corporation of the State of Colorado.

Young states that it proposes to develop, construct and operate a natural gas storage field in Morgan County, Colorado. Young proposes to construct approximately 10.8 miles of 20-inch pipeline, approximately 4 miles of 4 to 12 inch gathering lines, 37 injection/withdrawal, observation and saltwater disposal wells, an approximate 6,000 horsepower compressor station and appurtenant facilities.

Young estimates that the facilities would cost $44,355,100. Construction would be financed with approximately $13,307,000 in equity contributions and the remainder with short-term bank loans, it is stated. Young further states that the facilities would be financed utilizing a capitalization of 30% equity and 70% long-term debt. Permanent financing would consist of a combination of first mortgage bonds, debentures and/or bank loans, depending on market conditions at the time the bonds are sold, it is stated.

Young further states that the storage field would have a maximum withdrawal capacity of 200,000 Mcf per day with 5,300,000 Mcf of working gas when the field is fully developed.

Young asserts that the storage service would be provided on an open access basis and conform to Order No. 636. Young further asserts that, even though the City of Colorado Springs and Public Service Company of Colorado have signed letters of intent for the entire

capacity associated with the storage field, an open season would be held for the storage capacity.

Young also request blanket certificate authorization under subpart G of part 284 of the Commission's Regulations to provide the storage service and under subpart F of part 157 to construct and operate facilities. Young further requests, pursuant to section 7(b) of the Natural Gas Act, pregranted abandonment authority upon expiration of the storage contracts, in the event the Commission determines that part 284 pregranted abandonment is inappropriate.

Any person desiring to be heard or to make any protests with reference to said application should on or before August 4, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for pregranted abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Young to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17112 Filed 7–19–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–53–NG]

Sonat Marketing Co.; Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Sonat Marketing Company to import up to 100 Bcf of natural gas from Canada over a two-year period beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 14, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–17173 Filed 7–19–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4680–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Certification for Exemption from Monitoring and Notification of Process Changes in Effluent Guidelines (EPA ICR No. 1014.04; OMB Control No. 2040–0033).

Abstract: This ICR is a reinstatement of an expired information collection request for the certification of exemption from monitoring and notification of process changes in effluent guidelines. Under the authority of the Clean Water Act, regulations establishing effluent limitations and standards include provisions for waiving certain monitoring requirements for specific industries. This ICR addresses the activities associated with the preparation and submission of certifications for exemption to EPA, or a delegated authority, by the following industries: Aluminum forming (40 CFR part 467); coil coating (40 CFR part 465); porcelain enameling (40 CFR part 466); pulp and paper (40 CFR parts 430 and 431); pharmaceutical manufacturing (40 CFR part 439); and steam electric generators for certain chlorine discharges (40 CFR part 423). In addition, this ICR addresses a written notification requirement for canmaking facilities (40 CFR 465.03) that must be submitted in the event of certain process changes.

The EPA or delegated authority will use the information from the certification of exemption to make a waiver determination. The EPA or delegated authority will use the notification to ensure industry compliance with effluent regulations.

Burden Statement: Public reporting burden for this collection of information is estimated to average 2 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the certification of exemption or notification. Public recordkeeping is estimated to average 6 hours per recordkeeper including time to process, store and maintain certifications of exemption and notifications.

Respondents: Reporters consist of owners or operators of facilities, as appropriate. Recordkeepers consist of State or other delegated authorities processing certifications of exemption and notifications.

Estimated Number of Respondents: 316 owners/operators; 39 recordkeepers.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Annually, or on occasion of submission of certification of exemption or notification.

Estimated Total Annual Burden on Respondents: 834 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to: Sandy Farmer, U.S.Environmental Protection Agency, Information Policy

Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 13, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–17153 Filed 7–19–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4679–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for the Lime Manufacturing Industry (Subpart HH)–Information Requirements (EPA ICR No. 1167.04; OMB No. 2060–0063). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of rotary lime kilns used in manufacturing lime must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart using a wet scrubber emission control device must install continuous monitoring devices to monitor and record: (1) The pressure loss of the gas stream through the scrubber, and (2) the scrubbing liquid supply pressure to the control device. Other facilities subject to this subpart must either install and operate continuous monitoring systems (CMS) to monitor the opacity of the gases discharged, or they must have a certified observer monitor visible emissions at least once a day. Owners or operators of affected facilities must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must report all periods of excess emissions semiannually. Owners or operators must also report on monitoring system performance semiannually. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 12 hours per response for reporting, and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of rotary lime kilns used in manufacturing lime.

Estimated Number of Respondents: 35.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 3,031 hours.

Frequency of Collection: One-time notifications and reports for new facilities; semiannual reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 13, 1993.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 93–17154 Filed 7–19–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4679–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 404 State Permit Applications and 404 State Program Annual Report (EPA ICR No. 220.05; OMB Control No. 2040–0015).

Abstract: This ICR is an extension of an existing collection for the information collection activities associated with State 404 Permit Applications and State Program Annual Reports. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) permitting authority may, in certain instances, be transferred to a State upon approval by the EPA. In accordance with 40 CFR part 233, States requesting a transfer of permitting authority must provide EPA with information before, and subsequent to, EPA approval. The EPA will use this information to satisfy specific requirements set forth by section 404 of the Clean Water Act.

This ICR, once approved, will continue to require State governments requesting a transfer of permitting authority to complete an application to the EPA consisting of legal documents, correspondence from State Officials, Memoranda of Agreement with the Secretary of the Army and the EPA Regional Administrator, a complete program description, and appropriate State Statutes and regulations. Following the transfer of authority, States must provide EPA with: (1) Pre-notification by permit holders or reporting pursuant to a general permit; (2) an annual report providing statistics and describing the status of the State permit program; and (3) sufficient information for Federal review of individual applications where Federal review is not waived.

Presently one State has received permitting authority, with an estimated four additional States requesting transfer of authority over the next three years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 16.6 hours per

response including time for reviewing regulations, gathering and compiling the data needed, and completing and reviewing the information.

Respondents: State governments and permit holders, as appropriate.

Estimated Number of Respondents: 1,635.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: On occasion of application by State for transfer of permit authority or notification of intent to discharge by a general permit holder; annual submission of State program report.

Estimated Total Annual Burden on Respondents: 27,190 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 13, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–17158 Filed 7–19–93; 8:45 am]

BILLING CODE 6560–50–F

U.S. ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL–4681–2]

Clean Air Act; Contrsctor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following contractor for access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended: Science Applications International Corporation, 206 University Tower, 3101 Petty Road, Durham, North Carolina, contract number 68-D2–0068.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than July 20, 1993.

FOR FURTHER INFORMATION CONTACT: For information contact Deborah M. Elmore, Acting Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5437.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that EPA may provide the above mentioned contractor access to these materials on a need-to-know basis. This contractor will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in source assessment or with a source category survey which may be used in development of standards for a Federal Air Pollution Control Regulation or Control Techniques Guidelines (CTG).

In accordance with 40 CFR 2.305(b), EPA has determined that this contractor requires access to CBI submitted to EPA under sections 114 and 183 of the CAA in order to perform work satisfactorily under the above noted contract. The contractor's personnel will be given access to information submitted under section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The contractor's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All access to CBI under this contract will take place at the contractor's facility.

Clearance for access to CAA CBI under this contract is scheduled to expire on September 30, 1994.

Dated: July 13, 1993.

Robert D. Bruner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–17156 Filed 7–19–93; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4680–9]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) plans to transfer data to its contractor, Radian Corp., and its subcontractors: ICF, Inc.; Versar, Inc.; Science Application International Corp.; Midwest Research Institute; Dynamac Corp.; Westat, Inc.; DPRA, Inc.; Vigyan, Inc.; Energy and Environmental Research Corp.; Kerr and Associates, Inc.; Clayton Environmental Consultants; and Apogee Research, Inc. These data pertain to facility production process and waste management practices, waste characteristics and constituent concentrations, waste volumes, waste management capacity, and the costs of waste management, treatment and disposal. These data have been or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). Some of these data may have been, or may be, claimed as confidential business information.

These firms are providing technical support to EPA in regulatory development for restricting land disposal of hazardous waste; evaluation of waste management practices (including waste minimization techniques); development of technical documents to support rulemaking activities; and development and implementation of technical information transfer programs to support rulemaking and implementation of rules.

DATES: The Transfer of data submitted to EPA will occur no sooner than July 27, 1993.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC (202) 260–3410.

SUPPLEMENTARY INFORMATION:

1. Transfer of Data

The U.S. Environmental Protection Agency is analyzing information in five broad subject areas: (1) Management and methods to treat hazardous waste; (2) capacity to treat, recycle, store, and dispose of hazardous waste; (3) state capacity assurance plans; (4) thermal treatment of hazardous wastes; and (5) waste minimization.

Under EPA Contract No. 68–W3–0001, Radian Corp., and its subcontractors will assist the Waste Management Division of the Office of Solid Waste by providing technical support to EPA in regulatory development for restricting land disposal of hazardous waste; evaluation of waste management practices (including waste minimization techniques); development of technical documents to support rulemaking

activities; and development and implementation of technical information transfer programs to support rulemaking and implementation of rules.

EPA plans to transfer data to its contractor, Radian Corp., and its subcontractors: ICF, Inc.; Versar, Inc.; Science Application International Corp.; Midwest Research Institute; Dynamac Corp.; Westat, Inc.; DPRA, Inc.; Vigyan, Inc.; Energy and Environmental Research Corp.; Kerr and Associates, Inc.; Clayton Environmental Consultants; and Apogee Research, Inc. These data pertain to facility production process and waste management practices; waste characteristics and constituent concentrations, waste volumes, waste management capacity, and the costs of waste management, treatment and disposal.

These data have been or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). Some of the data may have been, or may be, claimed as Confidential Business Information (CBI).

In accordance with 40 CFR 2.305(h) EPA has determined that Radian Corp. and its subcontractors require access to (CBI) submitted to EPA, under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Radian Corp. and its subcontractors will return all such materials to EPA.

Radian Corp., and its subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." EPA will approve the security plans of the contractors to insure that their facilities comply with security procedures outlined in the security manual prior to RCRA CBI being transferred to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: July 7, 1993.

Walter W. Kovalizk,

Acting Assistant Administrator.

[FR Doc. 93–17160 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4681–3]

South Dakota; Adequacy Determination of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of tentative determination on application of the State of South Dakota for full program adequacy determination, public comment period, and public hearing.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of South Dakota applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed South Dakota's MSWLF application and made a tentative determination that all portions of South Dakota's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. The State of South Dakota's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "**DATES**" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "Contacts" section below.

DATES: All comments on the State of South Dakota's application for a determination of adequacy must be received by U.S. EPA by the close of business on September 14, 1993. The public hearing is tentatively scheduled for September 14, 1993, at the Department of Environment and Natural Resources, 523 East Capitol Avenue, Floyd Matthew Training Center, Pierre, South Dakota 57501, at 1 p.m.

ADDRESSES: Copies of the State of South Dakota's application for program adequacy determination are available during normal working days at the following addresses for inspection and copying: from 8 a.m.–5 p.m. at the Department of Environment and Natural Resources, Office of Waste Management, Attn: Dave Templeton, 319 South Coteau, Pierre, South Dakota, 57501; from 8 a.m.–4 p.m. at U.S. EPA, Region VIII Library, 999 18th Street, suite 215, Denver, Colorado 80202–2466. Written comments should be sent to U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2466; Attn: Brian Rimar, mail code (8HWM–WM)

FOR FURTHER INFORMATION CONTACT: Brian Rimar (8HWM-WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, phone (303) 293–1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR

VOL
58
ISS
137
JL
20
1993
UMI

part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of South Dakota

On April 29, 1993, the State of South Dakota submitted an application for adequacy determination. EPA reviewed South Dakota's application and tentatively determined that all portions of South Dakota's subtitle D program will ensure compliance with the revised Federal Criteria.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on September 14, 1993, at the Department of Environment and Natural Resources, 523 East Capitol Avenue, Floyd Matthew Training Center, Pierre, South Dakota 57501, at 1 p.m.

On May 7, 1993, the U.S. Court of Appeals for the District of Columbia Circuit vacated the small landfill exemption for ground-water monitoring. Following this decision, and pending EPA regulatory changes, the Federal Minimum Criteria for ground-water monitoring will apply to all MSWLF units, including small and rural landfills. At a meeting planned for September 16, 1993, the State of South Dakota Board of Minerals and Environment is expected to approve changes to Chapter 74:27:19 of the Administrative Rules of South Dakota. The regulations will become effective on October 18, 1993. If the State takes the necessary actions to bring their ground-water monitoring program into full Federal compliance, EPA is proposing full program approval for the State of South Dakota. If the State of South Dakota does not take the above actions, EPA will not approve their ground-water monitoring requirements, and a partial program approval will be issued.

In order for this approval to extend to "existing or former" Indian reservation lands in the State of South Dakota (Cheyenne River, Crow Creek, Flandreau, Lower Brule, Pine Ridge, Rosebud, Sisseton, Standing Rock, and Yankton Indian Reservations), the State Attorney General's demonstration of authority needed to include a demonstration under Federal Indian law that the State courts have jurisdiction to enforce State law against all MSWLF owner/operators whose activities take place in "Indian Country," as defined in 18 U.S.C. 1151. Such a demonstration should include an analysis of the State's jurisdiction to enforce against both Indian and non-Indian owner/operators, located on both trust and fee lands, and should specify what areas, if any, the State believes to have been removed from reservation status and may not qualify as "Indian Country." The Agency believes that such a demonstration has not yet been made by the State of South Dakota.

EPA's future decision with regard to approval of the South Dakota program for "Indian Country," to include Indian reservation lands, will be governed by the Agency's judgement as to whether the State has demonstrated adequate enforcement authority to justify approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Until EPA approves a State or Tribal MSWLF permitting program for any part of "Indian Country" in South Dakota, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of CFR part 258 will apply to all owner/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for the State of South Dakota's program. EPA will make a final decision on whether or not to approve South Dakota's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291:

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small

entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 13, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–17161 Filed 7–19–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4681–1]

Availability of the Final 1993 Guidance for Capacity Assurance Planning

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 104(c)(9) of CERCLA requires states requesting remedial action funds to provide an assurance to EPA of the availability of hazardous waste treatment or disposal capacity to manage the hazardous wastes expected to be generated within their state over twenty years. The final 1993 Guidance for Capacity Assurance Planning presents a national approach that focuses on sufficient capacity to treat and dispose of the projected demand of hazardous wastes. Interested parties should contact the Agency to receive a copy of the Guidance. The information collection activities for the 1993 Capacity Assurance Planning process have been approved by the Office of Management and Budget (OMB) under OMB Control Number 2050–0099.

ADDRESSES: Comments received on the Draft 1993 Guidance for Capacity Assurance Planning, as well as background information for the Final Guidance are at the RCRA Docket Information Center, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Wash., DC 20460. The docket number is F–92–CAGA-FFFF. The public docket is located at EPA HQ, room M2427 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Public review of the docket materials is by appointment only. Call (202) 260–9327 for appointments. Copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For information on this notice and specific aspects of the guidance, contact Robert Burchard, Office of Solid Waste (OS–321W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8450.

Dated: July 13, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Acting Assistant Administrator.

[FR Doc. 93–17159 Filed 7–19–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4680–7]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601, *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liabilities of four (4) parties for past costs incurred by EPA at the Town of Pompey Superfund Site in Pompey, New York.

DATES: Comments must be provided on or before August 19, 1993.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York, New York 10278 and should refer to: In Re: Town of Pompey Superfund Site, Pompey, New York, U.S. EPA Index No. II CERCLA–122–93–0203.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York, New York 10278, (212) 264–2211, Attention: Sharon E. Kivowitz.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Town of Pompey Superfund Site (the "Site"), Pompey, New York. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The proposed administrative cost recovery agreement would reimburse EPA $246,300.00 for its past response costs at the Site. EPA received the written approval of the U.S. Department of Justice to settle this action.

Administrative Cost Recovery Agreement, Index No. II CERCLA–122–93–0203, which was negotiated pursuant to section 122(h)(1) of CERCLA, provides that the Respondents—Bristol-Myers Squibb Company, Inc., General Electric Company, Pass & Seymour, Inc., and R.E. Dietz, Inc.—generators of hazardous substances sent to the Site, will reimburse EPA for $246,300.00 of EPA's past response costs at the Site. In exchange, and upon payment of the amount agreed upon, EPA agrees that the Respondents shall have resolved any and all civil liability to EPA under section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of EPA's past response costs incurred at or in connection with the Site as of January 31, 1993.

A copy of the proposed administrative cost recovery agreement may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York, New York 10278, Attention: Sharon E. Kivowitz.

Dated: July 1, 1993.

Kathleen C. Callahan,

Acting Regional Administrator.

[FR Doc. 93–17157 Filed 7–6–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by

VOL 58 ISS 137 JL 20 1993 UMI

the President in his declaration of July 9, 1993:

The counties of Madison, Monroe, and St. Clair for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17140 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Program, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: This notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Polk County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17141 Filed 7–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Lyon, Osceola, Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Fayette, Chickasaw, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Wright, Franklin, Butler, Bremer, Dubuque, Delaware, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monona, Crawford, Carroll, Greene, Boone, Story, Marshall, Tama, Benton, Linn, Jones, Cedar, Iowa, Poweshiek, Jasper, Dallas, Guthrie, Audubon, Shelby, Harrison, Pottawattamie, Cass, Adair, Madison, Warren, Marion, Mahaska, Keokuk, Washington, Henry, Jefferson, Monroe, Lucas, Clarke, Union, Adams, Montgomery, Mills, Fremont, Page, Taylor, Ringgold, Decatur, Wayne, Appanoosa, Davis, Van Buren, and Lee Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17145 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

The counties of Washington and Goodhue for Public Assistance. (Already designated for Individual Assistance.)

The counties of Dakota, Houston, and Ramsey for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17138 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: This notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Carver, Chippewa, Faribault, Jackson, LaSueur, Martin, McLeod, and Scott Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17139 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: July 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

The counties of Goodhue and Washington for Individual Assistance.

The counties of Chippewa, Lyon, Le Sueur, Sibley, Nicollet, Brown, Redwood, Carver, Scott, Faribault, Jackson, Martin, McLeod, Renville, Yellow Medicine, Watonwan, Blue Earth, Cottonwood, Lincoln, Murray, Nobles, Pipestone, and Rock for Individual Assistance. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17142 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Louis, St. Louis City, Ste. Genevieve, Stone, Warren, and Worth for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17144 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: July 8, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

The counties of Buffalo, Chippewa, Crawford, Dane, Green, Grant, Iowa, LaCrosse, Lafayette, Lincoln, Marathon, Pepin, Pierce, Price, Rock, Rusk, St. Croix, and Vernon for Individual Assistance.

The counties of Adams and Juneau for Individual Assistance and Public Assistance.

The countries of Columbia, Fond du Lac, Portage, Waushara, and Wood for Public Assistance. (Already designated for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17143 Filed 7–19–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Norwest Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of St. Cloud National Bank & Trust Co., St. Cloud, Minnesota.

In connection with this application, Applicant, through its subsidiary,

Norwest Investment Services, Inc., also proposes to acquire the discount brokerage business of St. Cloud National Bank & Trust Co. pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 14, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17129 Filed 7-19-93; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 13, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of FirstAmerican Bank, National Association, Colorado Springs, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Bancorp, Inc., Denton, Texas; to acquire 100 percent of the voting shares of First National Bank of Grapevine, Grapevine, Texas.

2. First Delaware Bancorp, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First National Bank of Grapevine, Grapevine, Texas.

3. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First National Bank of Grapevine, Grapevine, Texas.

Board of Governors of the Federal Reserve System, July 14, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17130 Filed 7-19-93; 8:45 am]

BILLING CODE 6210-01-F

George M. Ohlhausen, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 9, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. George M. Ohlhausen, to acquire 24.9 percent of the voting shares of Success Bancshares, Inc., Lincolnshire, Illinois, and thereby indirectly acquire Success National Bank, Lincolnshire, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Martinsburg Bancorp Employee Stock Ownership Plan, Martinsburg, Missouri; to retain 12 percent of the voting shares of Martinsburg Bancorp, Inc., Martinsburg, Missouri, and thereby indirectly acquire Martinsburg Bank, Mexico, Missouri.

Board of Governors of the Federal Reserve System, July 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17131 Filed 7-19-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 882 3199]

Michael S. Levey, et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the California-based producers of infomercials from misrepresenting infomercials as independent programming rather than paid advertising and from selling any baldness or impotence product not approved by the Food and Drug Administration; and would require the respondents to have competent and reliable scientific evidence to support any representations about the efficacy or safety of any food, drug or device they sell. In addition, the respondents would be required to pay $275,000 for consumer redress.

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kathryn Nielsen, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of Michael S. Levey, individually and as an officer of Positive Response Marketing, Inc., and Positive Response Marketing, Inc., a corporation, also trading and doing business as Positive Response Television and Positive Response Advertising. File No. 882 3199.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Positive Response Marketing, Inc., a corporation, also trading and doing business as Positive Response Television and Positive Response Advertising, and Michael S. Levey, an individual, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Positive Response Marketing, Inc., a corporation, by its duly authorized officer and its attorney, Michael S. Levey, individually and as an officer of said corporation, and his attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Positive Response Marketing, Inc., is a California corporation with its principal office and place of business at 1861 Topanga Canyon Boulevard, Topanga, California 90290. Positive Response also trades and does business as Positive Response Television and Positive Response Advertising.

2. Proposed respondent Michael S. Levey resides at 1975 Topanga Canyon Boulevard, Topanga, California 90290. He is an officer and shareholder of Positive Response Marketing, Inc.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive: a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated hereby and related material pursuant to § 2.34 of the Commission's Rules, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents of facts, other than the jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any rights they may have to other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order: (1) "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(2) "Material connection" shall mean any relationship between an endorser of any product or service and any individual or other entity advertising, promoting, offering for sale, selling or distributing such product or service, which relationship might materially affect the weight or credibility of the endorsement and which relationship would not reasonably be expected by consumers.

I

It is ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levy, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The 30-minute television advertisement for the EuroTrym Diet Patch described in the complaint and sometimes know as "The Michael Reagan Show."

B. The 30-minute television advertisement for Foliplexx described in the complaint and sometimes known as "Breakthrough '99."

C. The 30-minute television advertisement for Y–Bron described in the complaint and sometimes known as "Let's Talk" or "Let's Talk with Lyle Waggoner."

II

It is further ordered That responden Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the EuroTrym Diet Patch or any other substantially similar weight control or weight reduction product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product prevents feelings of hunger;

(2) Use of such product enables users to lose substantial amounts of weight;

(3) Use of such product enables users to lose weight in a large majority of cases; or

(4) Any competent and reliable test or study establishes that such product promotes weight loss.

For purposes of this Part II a "substantially similar weight control or weight reduction product" shall be defined as any product that is advertised as causing or aiding weight loss through acupressure, acupathy or homeopathy that uses a bandaid or patch to apply a solution to the skin or that purportedly contains as its active ingredient calcarea carbonica.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product prevents or reduces feelings of hunger;

(2) Use of the product enables users to lose substantial amounts of weight;

(3) Use of the product enables users to lose weight in a substantial number of cases; or

(4) Any competent and reliable test or study establishes that use of the product promotes weight loss,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Failing to disclose clearly and prominently in any advertisement for any weight control or weight reduction product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that dieting and/or exercise is required in order to lose weight; provided, however, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the product in question is effective without dieting and/or exercise..

III

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Foliplexx or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product curtails loss of hair;

(2) Use of such product promotes growth of new hair where hair has already been lost;

(3) Use of such product relieves, cures, prevents or reverses baldness;

(4) Such product is an effective remedy for baldness in a large majority of cases; or

(5) Any competent and reliable test or study establishes that such product relieves, cures, prevents or reverses the advance of baldness.

For purposes of this Part III, a "substantially similar product" shall be defined as any product that is advertised as preventing or reversing baldness or hair loss and that purportedly contains as an ingredient one or more of the following: sulfanated muccopolysaccharides, polysorbates, trichopeptides, takanal, kallikrein, alpha-tocopheral, methyl nicotinate, retinyl palmitate, alantoin, or bovine serum albumin.

B. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product prevents or reduces loss of hair;

(2) Use of the product promotes growth of new hair where hair has already been lost;

(3) Use of the product relieves, cures, prevents or reverses baldness;

(4) The product is an effective remedy for baldness in a substantial number of cases; or

(5) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses baldness,

unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distribution any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq., provided that* this subpart shall not limit the requirements of Part III.A and B herein.

IV

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Y-Bron or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product relieves, cures, prevents or reverses impotence;

(2) Use of such product increases sexual drive, ability, desire or libido;

(3) Such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido in a substantial number of cases; or

(4) Any competent and reliable test or study establishes that such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido.

For purposes of this Part IV, a "substantially similar product" shall be defined as any product that is advertised for sale over-the-counter as a sexual stimulant or as a treatment for impotence and that purportedly contains as its active ingredient yohimbine or any derivative thereof.

B. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product relieves, cures, prevents, reverses or is an effective remedy for impotence;

(2) Use of the product increases sexual drive, ability, desire or libido;

(3) The product is an effective remedy for impotence or increases sexual drive, ability, desire or libido at any stated measure of efficacy; or

(4) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses impotence or increases sexual drive, ability, desire or libido,

unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as increasing sexual desire or improving sexual performance, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, *provided that* this subpart shall not limit the requirements of Part IV.A and B herein.

V

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Magic Wand or any other immersion-style kitchen mixer of similar size and construction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

A. The product can crush a whole, fresh pineapple in seconds.

B. Skim milk whipped by the product can be used as mousse-like desserts and cake frosting.

VI

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, in any manner, directly or by implication, regarding the efficacy or safety of any food, drug or device, as those terms are defined in section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; *provided, however,* that any such representation for any food product that is specifically permitted in labeling for such food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated by competent and reliable scientific evidence; *provided further* that any such representation for any over-the-counter drug product that is specifically permitted in labeling for such over-the-counter drug product in Final Regulations establishing conditions under which such product is safe and effective promulgated by the Food and Drug Administration under the Food, Drug and Cosmetic Act, will be deemed to be substantiated by competent and reliable scientific evidence.

B. Making any representation, in any manner, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a representation covered under Subpart VI.A above), unless at the time of making such representation respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VII

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to disclose, clearly and prominently, a material connection, where one exists, between an endorser of any product or service and any respondent or respondents

B. Representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the case.

C. Representing, in any manner, directly or by implication, by words, depictions or symbols, that such product or service has been endorsed by a person, group or organization that is an expert with respect to the endorsement message unless:

(1) The endorser is an existing person, group or organization whose qualifications give it the expertise that the endorser is represented as possessing with respect to the endorsement; and

(2) The endorsement is supported by an objective and valid evaluation or test using procedures generally accepted by experts in that science or profession to yield accurate and reliable results.

VIII

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with any advertisement depicting a demonstration, experiment or test, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement provides, demonstrates or confirms any material quality, feature or merit of any product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

A. The undisclosed use or substitution of a material mock-up or prop.

B. The undisclosed material alteration in a material characteristic of the advertised product or any other material prop or device depicted in the advertisement.

C. The use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product or any other material aspect of the demonstration.

IX

It is further ordered That respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement.

B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial or other advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

X

It is further ordered That respondent Positive Response Marketing, Inc., its successors and assigns, and respondent Michael S. Levey shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Regional Director, Federal Trade Commission, 915 Second Avenue, suite 2806, Seattle, Washington 98174, the sum of two hundred seventy-five thousand dollars ($275,000). Respondents shall make this payment on or before the tenth day following the date of entry of this Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used by the Commission to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron. If the Federal Trade Commission determines, in its sole discretion, that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

XI

It is further ordered That respondent Positive Response Marketing, Inc., shall, for a period of ten (10) years from the date of issuance of this Order, distribute a copy of this Order to each of its operating divisions, to each of respondent's present and future principals and officers, and to every present and future employee, agent and representative who performs discretionary functions in sales or advertising, and shall secure from each such person a signed statement acknowledging receipt of the copy of the Order.

XII

It is further ordered That respondent Michael S. Levey shall, for a period of ten (10) years from the date of issuance this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XIII

It is further ordered That respondent Positive Response Marketing, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation, such as a dissolution, the emergence of a successor corporation, the creation or dissolution of a subsidiary, transfer of the business by assignment to another entity, or any other change in the corporation that may affect compliance obligations under the Order.

XIV

It is further ordered That respondents shall, for five (5) years after the date of the last dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation.

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

C. All advertisements and promotional materials subject to this Order.

XV

It is further ordered That respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Michael S. Levey, an individual, and Positive Response Marketing, Inc., a corporation. The proposed consent order has been placed on the public record of sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns claims made for a weight-loss product, a baldness product, an impotence product and a kitchen mixer. These claims were made

in program-length commercials produced by Levey and Positive Response Marketing. The weight-loss product, the EuroTrym Diet Patch, was advertised on a commercial called "The Michael Reagan Show." The baldness product, Foliplexx, was advertised on a commercial called "Breakthrough '88." The impotence product, Y-Bron, was advertised on "Let's Talk." The kitchen mixer, the Magic Wand, was advertised on "Amazing Discoveries: Magic Wand."

The Commission's complaint in this matter charges respondents with making deceptive representations regarding the efficacy of the EuroTrym Diet Patch, Foliplexx and Y-Bron. According to the complaint, respondents falsely claimed that (1) use of the EuroTrym Diet Patch prevents feelings of hunger, enables users to lose substantial amounts of weight, and enables users to lose weight in a large majority of cases; (2) use of Foliplexx curtails loss of hair, thus relieving or preventing baldness; use of Foliplexx promotes growth of new hair where hair has already been lost, thus curing or reversing the advance of baldness; and Foliplexx is an effective remedy for baldness in a large percentage of cases; and (3) use of Y-Bron relieves, cures, prevents, or reverses impotence; use of Y-Bron increases sexual drive, ability, desire, or libido; and Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido in a substantial percentage of cases. The complaint also alleges that the respondents falsely claimed that they possessed and relied upon a reasonable basis that substantiated these representations.

The complaint also charges the respondents with making deceptive representations regarding the performance of the Magic Wand. According to the complaint, respondents falsely claimed that (1) the Magic Wand can crush a whole, fresh pineapple in seconds and (2) skim milk whipped by the Magic Wand can be used as mousse-like desserts and cake frosting. Further, the complaint charges respondents with using deceptive demonstrations in the program-length commercial for Magic Wand. According to the complaint, respondents falsely claimed that (1) the demonstration of the Magic Wand included an unaltered, whole, fresh pineapple used to make a tropical drink and (2) the demonstration of the Magic Wand included mousse-like desserts and cake frosting made from skim milk whipped by the Magic Wand. The complaint charges that (1) respondents substituted crushed pineapple pulp with a slice of pineapple on top to resemble a whole, fresh pineapple and (2) respondents substituted Cool Whip dairy topping to resemble mousse-like desserts and prepared frosting mix to resemble cake frosting.

In addition, the complaint alleges that respondents falsely represented that the program-length commercials for the four products are independent television programs and not paid commercial advertising.

Further, the complaint alleges that respondents falsely represented that endorsements appearing in the advertisements for the EuroTrym Diet Patch, Foliplexx and Y-Bron reflect the typical or ordinary experiences of consumers, in terms of promoting weight-loss, curing baldness, or relieving impotence, after using the products. In addition, the complaint alleges that respondents falsely represented that these endorsements were obtained from individuals or other entities who, at the time of providing the endorsements, were independent from all of the individuals and entities marketing the products.

The complaint also alleges that in the program-length commercial for the Magic Wand, respondents made deceptive representations regarding an organization called the National Association of Advertising Producers ("NAAP"). The complaint charges respondents with falsely claiming that (1) the NAAP is an existing organization whose qualifications give it the expertise to evaluate commercials for their integrity and excellence and (2) the NAAP is an entity that, at the time of providing its endorsements, was independent from all of the individuals and entities marketing the products.

The consent order contains provisions designed to remedy the advertising violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the order prohibits respondents from disseminating the 30-minute television advertisements known as "The Michael Reagan Show," "Breakthrough '88," and "Let's Talk."

Parts II, III and IV of the order prohibit respondents from making specified representations regarding the efficacy of the EuroTrym Diet Patch, Foliplexx and Y-Bron or any substantially similar products. Part II also prohibits respondents from making specified weight-loss claims for any product unless the representation is true and respondents rely upon competent and reliable scientific evidence that substantiates the representation. Part III prohibits respondents from making specified baldness-relief claims for any product unless the representation is true and respondents rely upon competent and reliable scientific evidence that substantiates the representation. Part IV prohibits respondents from making specified impotence-relief claims for any product unless the representation is true and respondents rely upon competent and reliable scientific evidence that substantiates the representation. Parts III and IV also prohibit respondents from marketing any product represented as promoting hair growth or improving sexual performance unless the product is the subject of a new drug application approved by the Food and Drug Administration.

Part V of the order prohibits respondents from making specified representations regarding the performance of the Magic Wand or any other similar kitchen mixer.

Part VI of the order prohibits respondents from making representations about the efficacy or safety of any food, drug or device without competent and reliable scientific evidence for the representations. Part VI provides that such representations for food products and over-the-counter drug products will be deemed substantiated, as required by the order, if they are specifically permitted in labeling by regulations promulgated by the Food and Drug Administration. Part VI of the order also prohibits respondents from making any representations about the performance, benefits, efficacy or safety of any product or service without a reasonable basis for the representations.

Part VII of the order prohibits respondents from failing to disclose material connections between endorsers of any product or service and any respondent. Part VII also prohibits respondents from misrepresenting that any endorsement of a product or service represents the typical or ordinary experience of members of the public who use the product or service. Part VII also prohibits respondents from representing that an expert has endorsed a product or service unless (1) the expert endorser is an existing person, group or organization and (2) the expert endorsement is supported by an objective and valid evaluation or test.

Part VIII of the order prohibits respondents from misrepresenting that product demonstrations prove any quality, feature or merit of any product. The order prohibits deceptive demonstration techniques, including but not limited to (1) the undisclosed use or substitution of mock-ups or props, (2) undisclosed alterations in characteristics of products or props, and

(3) use of visual perspectives or techniques that misrepresent product characteristics or aspects of demonstrations.

Part IX of the order prohibits respondents from creating, producing, selling or disseminating any advertisement that misrepresents that it is not a paid advertisement. Part IX also requires respondents to include, in any advertisement 15 minutes or longer, a disclosure indicating that the program is a paid advertisement. The order sets out the specific language for the disclosure and the times it must appear.

The order, in Part X, also requires respondents to pay $275,000 in consumer redress.

Parts XI–XV of the order contain provisions relating to compliance with the order.

The purpose of this analysis is to facilitate public comments on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–17136 Filed 7–19–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0239]

Animal Drug Export; MOXIDEC® (Moxidectin) Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Cyanamid Co. has filed an application requesting approval for export to Japan of MOXIDEC® (Moxidectin) Tablets for use as a canine antheimintic.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of nonfood animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review an application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543–0400, has filed an application requesting approval for export to Japan of the animal drug MOXIDEC® (Moxidectin) Tablets. The drug is used for prevention of canine heartworm disease.

The application was received and filed in the Center for Veterinary Medicine on May 28, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 30, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 12, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–17087 Filed 7–19–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0222]

Guidance Documents on Refusal to File New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two guidance documents concerning refusals to file new drug applications (NDA's), product license applications (PLA's), and establishment license applications (ELA's). The first guidance document entitled "New Drug Evaluation Guidance Document: Refusal to File" describes the circumstances under which the Center for Drug Evaluation and Research (CDER) will refuse to file NDA's that are facially deficient under the agency's regulations. The second guidance document entitled "Center for Biologics Evaluation and Research (CBER): Refusal to File (RTF) Guidance for Product License Applications (PLA's) and Establishment License Applications (ELA's)" describes the circumstances under which CBER will not accept a license application for filing. These guidance documents are in use in both CDER and CBER and are meant to promote efficiency, timeliness, and consistency in the agency's reviews of NDA's, PLA's, and ELA's.

DATES: Written comments by September 20, 1993.

ADDRESSES: Submit written requests for single copies of the guidance documents to the Office of Small Business, Scientific and Trade Affairs (HF–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guidance documents and comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Persons needing information on the CDER guidance document should contact: Jane Axelrad, Center for Drug Evaluation and Research (HFD–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2894. Persons needing information on the CBER guidance document should

contact: Michael Beatrice, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–496–3556.

SUPPLEMENTARY INFORMATION: FDA believes that the practice of submitting an incomplete or inadequate application and later "repairing" it during an extended review period is inefficient and that it wastes agency resources. Accepting an application that is obviously in need of extensive modification is unfair to those sponsors who have fulfilled their scientific and legal obligations by submitting a complete and fully analyzed application. An incomplete application, submitted prematurely, may delay review of a more complete application from another sponsor. Moreover, an incomplete or inadequate application that needs several cycles of FDA response and sponsor repair excessively consumes FDA and industry resources. The incomplete or inadequate application generates more "start-up time" as well as extra reviews, letters, and meetings.

FDA's regulations describe certain circumstances in which the agency may refuse to file an application (§§ 314.101 and 601.2 (21 CFR 314.101 and 601.2)). Both CDER and CBER have decided that a more detailed explanation of how they are implementing these regulations can improve substantially the efficiency of their review processes. Because of the differences in the CDER and CBER regulations and programs, separate but similar guidance documents have been developed.

CDER's regulations describe in some detail when CDER will refuse to file an application. Section 314.101(d)(3), states: "The application or abbreviated application is incomplete because it does not on its face contain information required under section 505(b) and section 505(j), or section 507 of the act and § 314.50 or § 314.94." CDER's guidance document clarifies the manner in which FDA is applying § 314.101(d)(3). RTF decisions may also be made under other provisions of § 314.101 (i.e., those provisions included in § 314.101(d)(1), (d)(2), (d)(4) through (d)(9), and (e)), but are not specifically addressed in the guidance document.

CBER's regulations list general categories of information required to be submitted in any establishment or product license application. CBER's guidance document describes how CBER makes threshold determinations that the information submitted to support licensure is sufficiently complete to permit a substantive and meaningful review.

Both guidance documents recognize that although RTF is not a final determination and is often an early opportunity for the sponsor to develop a reviewable and potentially approvable application, it is a significant step that delays, at least for a time, full review of the application. Therefore, it is important that RTF be reserved for applications with defects that make the application plainly inadequate or nonreviewable plainly without major repair, or that make review unreasonably difficult. Both guidance documents indicate that in general the deficiencies leading to RTF should be objective and straightforward, not matters of subtle judgment, and should not be quickly reparable.

FDA has concluded that explaining how it applies its regulations in making RTF decisions will substantially improve the quality of NDA, PLA, and ELA submissions and the efficiency of the new drug evaluation and biological product review processes.

To assess the scientific and procedural quality of RTF decisions, CDER recently announced the formation of a committee to review RTF decisions (58 FR 28983, May 18, 1993). The CDER RTF review committee consists of senior CDER and CBER officials, and FDA's Chief Mediator and Ombudsman. The review committee will examine selected CDER RTF's to assess, among other things: The consistency of RTF practices throughout new drug evaluation offices and divisions, the need for additional guidance on application content and format, and the need to modify CDER's RTF policies. CBER will develop a similar oversight mechanism in which CDER will be represented. The presence of CBER representatives on CDER's review committee and the participation of CDER representatives in CBER's oversight process will help to ensure consistent application of RTF principles throughout the Centers.

Interested persons may, on or before September 20, 1993, submit to the Dockets Management Branch (address above) written comments on the guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–17088 Filed 7–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0202]

Guidance on Alternatives to Lot Release for Licensed Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is describing its current practices governing lot release for licensed biological products. This document describes the information that should be submitted by manufacturers of licensed biological products and the approach that FDA's Center for Biologics Evaluation and Research (CBER) is using when evaluating alternatives to lot release. CBER's decisions in this regard are based on a continued assurance that the safety, purity, and potency of the product will be maintained. This action is being taken in response to requests for guidance on alternatives to lot release. FDA invites comments on this guidance statement.

DATES: Submit written comments by September 20, 1993.

ADDRESSES: Submit written comments and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Submit product license application amendments requesting alternatives to lot release and sample submission requirements to the director of the application division within the office having primary jurisdiction over the product (e.g., Office of Therapeutics, Office of Vaccines, or Office of Blood), Food and Drug Administration, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301-295-9074.

SUPPLEMENTARY INFORMATION: FDA is describing its current procedure for considering requests from manufacturers regarding alternatives to the submission of samples and of protocols that show results of applicable tests (commonly called "lot release") as set forth in 21 CFR 610.2. This notice

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also responds to requests for guidance on what information should be provided when submitting such requests.

Introduction

Under section 351(d) of the Public Health Service Act (42 U.S.C. 262(d)) an establishment may be issued a license to manufacture a biological product only after showing that the establishment and product meet standards designed to ensure that product's continued safety, purity, and potency. Thereafter, a manufacturer of a biological product subject to a license must demonstrate supervision and control of the entire manufacturing process to ensure, among other things, that contaminants are not introduced during production and that there is lot-to-lot consistency in the quality of the licensed product (see 21 CFR part 600 *et seq.*).

Under § 610.2, manufacturers may be required to submit samples from all lots of a licensed biological product together with the protocols showing results of applicable tests when deemed necessary by the Director, CBER. For most biological products, CBER has required the submission of this information both in support of a license application and for continued lot release following product license application approval. In these instances, a manufacturer may not distribute any product until the Director, CBER, issues an official release for the lot.

Guidance and Rationale

Biological products historically have been primarily complex mixtures produced by living organisms. The products have ranged from whole blood for transfusion to allergenic extracts, vaccines, and recombinant therapeutics. Current technology enables industrial scale production of biological products which are more easily characterized using reproducible methodology. In addition, improved analytical techniques are available for characterization of starting materials as well as final products, and efficient methods of purification can reduce levels of process-related impurities to a minimum.

Current technology combined with the experience derived from years of product-specific inspections and testing in CBER laboratories has demonstrated that, for some biological products, alternatives to requiring a CBER release action for every lot provide adequate control to ensure continued safety, purity, and potency (including effectiveness). Therefore, manufacturers meeting the assurances described in this document may submit product license application amendments requesting approval of alternatives to the lot release requirements set forth in their license. Such product license application amendments may be submitted once a manufacturer has documented an acceptable history of lot release and control of the manufacturing facility. The definition of acceptable lot release history will vary according to the product and the complexities of the manufacturing process. CBER considers granting requests for alternatives to lot release only upon demonstration that the alternative approach does not compromise the safety, purity, and potency of the biological product. Specific questions should be addressed to the office with product responsibility prior to submission of an amendment requesting alternatives to lot release.

Among the factors that CBER assesses in determining whether to approve such amendment requests are conformance to licensed manufacturing procedures and the ability of the manufacturer to consistently demonstrate product safety, purity, potency, and stability.

In addition, there should be a history of FDA establishment inspections that have shown compliance with applicable regulations during the period covered. The period considered may vary by product, because the number of lots produced in a given time may vary, as may the extent to which lot release procedures are viewed as important for ongoing assurance of safety and efficacy. CBER recognizes that the need for submission of lot release protocols and/or samples may be greater for some products than others, e.g., products where maintenance of consistent specifications from lot-to-lot is difficult and/or where insufficient correlation is available between measurement of potency and biological activity. The experience reflected in both the number of lots produced and the period of production is important to assess the potential value of the lot release procedures for a particular product or product class.

The following data should be submitted in the form of a product license application amendment covering an adequate period of time and a sufficient number of product lots:

(1) A well-organized table containing a testing summary of all lots manufactured, including lots manufactured in support of licensure. This testing history should include both lots submitted to CBER for release action and lots or batches rejected during in-process, bulk, or final testing at the manufacturing establishment.

(2) A summary of the disposition of the above lots, including the reason a final lot was not submitted to CBER for release or an in-process, or bulk lot or batch was rejected.

(3) A summary listing of all product complaints which include, but are not limited to, presence of labeling errors, decreased potency, contamination, particulate matter, adverse reactions, and defect reports. The actions taken by the manufacturer for each identified production lot or batch should be described.

(4) A listing of any lot(s) which was subject to recall or market corrective action following distribution.

(5) A description of any major process change, including when the process change was implemented and a list of lots manufactured using the new procedure.

After evaluating a license amendment requesting permission to use alternatives to lot release, CBER may determine that routine submission of lot release protocols and samples is not necessary if the submission describes alternatives which provide continued assurance of safety, purity, and potency. CBER may consider whether there is a need for manufacturers to submit samples and protocols at specific intervals (e.g., quarterly) for surveillance purposes. Such lots should be randomly selected in each period, or as instructed by the Director, CBER. Regardless of CBER's determination on submitting lot release protocols and/or samples, the manufacturer is required to maintain sufficient records, retention samples and stability test samples as required by 21 CFR 211.170 and 211.180.

The approach described above is based upon a retrospective analysis of lot release history at CBER, including a comparison of the number of lot failures to the total number of lots tested. Where a major change in manufacturing process or establishment is proposed or has occurred which requires an amendment, CBER may consider reimposing the requirement for submission of lots for release in addition to lots submitted in support of the amendment. Furthermore, if a product surveillance sample is tested and fails a required test or established specification, the product may be subject to recall by the manufacturer and/or the requirement for lot release may be reimposed.

CBER is currently applying the approach set forth in this notice. This notice provides information about, but does not set forth specific requirements for, the submission of a product license amendment requesting permission to use alternatives to lot release. FDA does not intend for this guidance to be comprehensive. All information in this

guidance may not be applicable to all situations.

This notice is intended as guidance to manufacturers of biological products filing product license amendments to request alternatives to lot release. If a manufacturer believes that the factors described in this guidance are inapplicable to a particular product and other factors are appropriate for CBER's consideration, the manufacturer may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that later may be determined to be unacceptable by FDA.

This guidance does not bind the agency and does not create or confer any rights, privileges, or benefits for or upon any person, manufacturer, or organization.

Interested persons may, on or before September 20, 1993 submit to the Dockets Management Branch (address above) written comments and information on this guidance statement. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information should be identified with the docket number found in brackets in the heading of this document. The notice and received information and comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA will consider any comments received in determining whether amendments to the guidance statement are warranted. As warranted, FDA will announce the availability of any revised guidance statement in the **Federal Register**.

Dated: July 14, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–17133 Filed 7–19–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 2 and 3, 1993, 8:30 a.m., Bethesda Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, August 2, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, August 3, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; Wolf Sapirstein or Ramiah Subramanian, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 23, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss one or more premarket approval applications for implantable cardioverter defibrillator devices and an interventional cardiology device.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. August 2 and 3, 1993, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, August 2, 1993, 8 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; open public hearing, August 3, 1993, 8 a.m. to 4 p.m., unless public participation does not last that long; closed committee deliberations, 4 p.m. to 4:30 p.m.; Jeanne L. Rippere, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–295–8186.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 28, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear and discuss orientation presentations on the role of the committee and its plaque subcommittee in the review and evaluation of safety and effectiveness data for over-the-counter (OTC) drug products bearing antiplaque and antiplaque-related claims, such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis." These data were submitted in response to a call-for-data notice published in the **Federal Register** of September 19, 1990 (55 FR 38560). In addition, the committee will hear short presentations on issues that will be discussed at length at the next Panel meeting, tentatively scheduled for December 1 through 3, 1993. These issues include the regulation of dental amalgam and dental product labeling requirements.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information related to OTC drug products for plaque reduction and/or prevention. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Drug Abuse Advisory Committee

Date, time, and place. August 25, 1993, 9 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last

that long; open committee discussion, 10 a.m. to 12 m.; closed committee deliberations, 12 m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443-3741.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 13, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) The information brought forward to the agency by the National Institute on Drug Abuse about the potential toxicity and benefits of Ibogaine®, (an alkaloid that may have therapeutic effects in cases of drug addiction), and (2) about offering advice on how to safely bring this drug into initial studies in man.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA regrets that it is publishing this notice in the **Federal Register** less than 15 days prior to the meeting of the Circulatory System Devices Panel of the Medical Devices Advisory Committee because of time contraints due in part to the holiday.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative

session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-17202 Filed 7-15-93; 4:06 pm]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Program Announcement for HIV/AIDS Dental Reimbursement Program for Fiscal Year 1993

The Health Resources and Services Administration (HRSA), announces its intent to accept proposals for reimbursement of eligible dental schools and postdoctoral dental education programs for the documented, uncompensated costs of oral health care which has been provided to HIV-infected persons during the prior year. This program is authorized under section 776(b) of the Public Health Service Act (the Act), as amended by the Health Professions Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992.

Approximately $5.1 million will be available in FY 1993 for competing awards under this program. An estimated 125 awards will be made. Previous funding experience with this program resulted in awards ranging from $808 to $637,000.

This authority requires the Secretary of Health and Human Services to distribute the available funds among all eligible applicants taking into account the number of patients with HIV disease who have been served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients with HIV disease served and costs incurred by all eligible applicants.

The Secretary will use the following formula to allocate funds among eligible applicants:

$$N = A\left[.8\left(\frac{IU}{TU}\right)+.2\left(\frac{IP}{TP}\right)\right]$$

In this formula, "N" represents the amount to be awarded to a given applicant. "A" represents the amount of funds appropriated to implement section 776(b). "IU" represents the applicant institution's unreimbursed costs. "TU" represents the total unreimbursed costs for all applicants. "IP" represents the number of HIV-infected patients served by the applicant institution. "TP" represents the total number of HIV-infected patients served by all applicants.

Each award will be calculated by multiplying the total appropriation amount times the sum of the weighted proportions of each eligible applicant's unreimbursed costs and number of HIV-infected patients served to the total unreimbursed costs claimed and number of patients served by all eligible applicants, respectively.

The unreimbursed costs portion of this formula is weighted more heavily than the number of patients with HIV disease served, reflecting the thrust of this program to alleviate losses incurred in providing such care.

If patients with HIV disease were served but there are no documented, uncompensated costs, no reimbursement will be awarded. Documentation of submitted information should be maintained since, as with all Federal awards, it is subject to audit.

Purpose

The purpose of this program is to assist schools and academic health science centers in meeting the costs of providing oral health care to patients with HIV disease.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This HIV/AIDS Dental Reimbursement Program is related to priority area 18, HIV Infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238.)

Eligibility

The Secretary is authorized to make this assistance available to public or private nonprofit schools of dentistry and to accredited post-graduate dental training programs that have documented the uncompensated costs of oral health care provided to HIV-infected persons. The Secretary shall not make an award under this authority if doing so would result in any reduction in State funding allotted for such purposes.

Statutory Requirements

Each eligible dental school or program may annually submit a proposal documenting the unreimbursed costs of oral health care provided to HIV-infected patients by that school or hospital during the prior year.

The following definitions and evaluation criteria were established after public comment in FY 1991 dated July 18, 1991 (56 FR 33037) and will be used in FY 1993.

Definitions

"Eligible applicant" means a dental school or any post-doctoral dental education program which has documented uncompensated costs for the provision of oral health care to HIV-infected persons and which has been accredited by the Commission on Dental Accreditation.

"Fee charged" means the institution's normal charge for a particular service before any discount or sliding fee schedule is applied.

"HIV/AIDS patient" means a person who is infected with the human immunodeficiency virus—those patients who self identify as being HIV-infected or who present with signs, symptoms, or medical historical data identified with HIV Infection—e.g. candidiasis (oral, esophageal, pulmonary, etc.), progressive generalized lymphadenopathy, oral hairy leukoplakia, Pneumocystis carinii pneumonia (PCP), recurrent pneumonia, Kaposi's sarcoma (oral and/or disseminated), Pulmonary tuberculosis, invasive cervical cancer and/or other HIV associated fungal, viral, bacterial, and/or neoplastic processes as delineated by the Centers for Disease Control (CDC) in the 1993 revised classification system for HIV infection.

"HIV disease" means infection with the human immunodeficiency virus, and includes any condition arising from such infection.

"Human immunodeficiency virus" means the etiologic agent for acquired immune deficiency syndrome.

"Post-doctoral dental education program" means a program sponsored by a school of dentistry, hospital, or a public or private institution that offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and has been accredited by the Commission on Dental Accreditation.

"Prior year" is the year for which uncompensated costs will be reimbursed, which for this FY 1993

cycle, is defined as July 1, 1991 to June 30, 1992.

"Scope of services" means those oral health and support services (i.e., laboratory services) which have been provided to the patient (and for which a fee was charged).

"Unreimbursed oral health care costs" means the balance remaining after subtracting the total income received from the patients with HIV disease served and/or third party payors or Medicaid, from the total of normal fees charged by the applicant institution for those patients. It refers to the cost of those actual uncompensated oral health services provided through the institution to an HIV-infected person.

Established Evaluation Criteria

The review of proposals will take into consideration compliance with the requirements of section 776(b). In particular, evaluation of proposals will consider:

1. The total number of HIV-infected patients treated through the dental school/program and the percent range of uncompensated costs of their care;
2. Total fees charged for oral health services provided to the HIV-infected patients;
3. The total unreimbursed costs for oral health care provided to HIV-infected patients;
4. The average number of visits for all HIV-infected patients and the average number of visits for all non-HIV infected patients;
5. The percentage of oral health service procedures provided to all HIV-infected persons using the following categories: diagnostic, oral pathology, preventive, restorative, periodontics, prosthodontics, oral surgery, endodontics, and other adjunctive services and a comparative percentage of oral health service procedures for the same number of non-HIV-infected patients;
6. Evidence of efforts to establish working relationships with HIV planning councils and care consortia authorized under Titles I & II of the Ryan White CARE Act (Pub. L. 101–381); and
7. Indication of ongoing provision of oral health care services to persons with HIV infection.

Requests for (1) additional information regarding programmatic, business management, or financial assistance issues or (2) proposal instructions should be directed to: Rosemary E. Duffy, DDS, MPH, Dental Education and Public Health Officer, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

Completed proposals should be forwarded to the HIV/AIDS Dental Reimbursement Program Officer at the above address.

To receive consideration, proposals must meet the deadline of August 19, 1993. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or
(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late proposals not accepted for processing will be returned to the applicant.

The proposal instructions for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number is 0915–0151. The Program, HIV/AIDS Dental Reimbursement, is listed at 93.924 in the Catalog of Federal Domestic Assistance. Proposals submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 25, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–17135 Filed 7–19–93; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement, Proposed Definition, and Proposed Funding Priority and Special Consideration for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Grants for Faculty Training Projects in Geriatric Medicine and Dentistry under the authority of section 777(b), title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed definition and the proposed funding priority and special consideration.

The Administration's budget request for FY 1994 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1991, HRSA reviewed 33 applications for Faculty Training Projects in Geriatric Medicine and Dentistry. Of those applications, 67 percent were approved and 33 percent were disapproved. Sixteen projects, or 48 percent of the applications received, were funded. There was no competitive cycle for FY 1992 or FY 1993.

Purpose

Section 777(b) of the Public Health Service Act authorizes the Secretary to make grants for the purpose of providing support (including residencies, traineeships, and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine, geriatric psychiatry, or geriatric dentistry. We will not fund geriatric residency programs in FY 1994 because there are currently no accredited residency programs in geriatrics and there is no process in place to accredit such programs, nor is there a process for certification in geriatric medicine for residents who have not received a diplomate in internal medicine (IM) or family medicine (FM). If accredited geriatric residency training programs are established in the future or if requirements for the certificate in geriatric medicine are revised to permit IM/FM residents without diplomate status to begin training in geriatric medicine, this provision will be implemented. This program is governed by regulations as set forth in 42 CFR part 57, subpart PP to the extent to which these regulations are not inconsistent with the amended statute. The period of Federal support will not exceed 5 years.

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VOL 58 ISS 137 JL 20 1993 UMI

Eligibility

Entities eligible for grant support include schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs.

Training Options

Section 777(b) requires HRSA to fund the following training options:

a. A one-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathic medicine; and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and

b. A two-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine; and dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience.

Proposed Definition

"Relevant advanced training or experience" is defined as at least one of the following:

(a) Completion of at least a 12 month graduate training program in a health-related discipline, the basic sciences, or education; or

(b) A minimum of 2 years of clinical practice, of which at least twelve months were devoted in part to managing older dental patients in a hospital, long-term care facility, or other setting.

Project Requirements

A project supported under section 777(b) must be conducted in accordance with the following requirements:

a. The project must have a project director who is employed full time by the grantee institution;

b. Projects must have an appropriate administrative and organizational plan, and adequate faculty, physical, and administrative resources for the achievement of stated objectives;

c. Projects must systematically evaluate the training program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met;

d. The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice) or in a department of geriatrics or psychiatry;

e. The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine or geriatric psychiatry and be staffed, or enter into an agreement with an institution staffed, by at least one dentist who is employed in a full- or part-time teaching position and has experience or training in geriatric dentistry;

f. The project must provide fellows with exposure to a diverse population of elderly individuals. The population must include:

1. Elderly in various levels of wellness from fully independent and well, to patients confined to bed with serious illness; and

2. Elderly from a range of socioeconomic, racial and ethnic backgrounds;

g. The project must provide medical and dental training experiences in:

1. An ambulatory care setting;

2. An inpatient service; and

3. An extended care facility.

During the course of the training, each fellow must receive experience in primary care, consultation, and longitudinal care;

h. Fellowship programs must have a curriculum which includes training in clinical geriatrics, teaching skills, administrative skills, and research skills for physicians and dentists;

i. Retraining programs must provide 1 year of full-time training suited to the individual needs of each fellow. To assure that the needs of all fellows can be met, each retraining program must have the resources available to provide clinical, research, administrative, and teacher-training experience; and

j. Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grant support is received.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The extent to which the proposed training program will prepare physicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

2. The degree to which the project plan adequately provides for meeting the project requirements;

3. The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

4. The potential for the applicant to continue the program without Federal support after completion of the approved project period; and

5. The extent to which the project will increase the number of geriatric fellowship and retraining positions available for individuals who want to prepare for academic careers in geriatric medicine, psychiatry and dentistry.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Proposed Funding Priority

A funding priority will be given to applications that demonstrate linkages for the purpose of providing training experiences to educators in the care of minority or low-income elderly. Eligible training sites include Area Health

Education Centers, community and migrant health centers, community mental health centers, Native American clinics, Native Hawaiian clinics, state or local health departments, public health clinics, rural hospitals and clinics, and home health agencies and long-term care facilities that accept Medicaid patients. This priority is consistent with a HRSA strategy to improve the geriatric expertise of health professionals who serve minority and low-income elders at risk of poor health outcomes.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll educators from underserved areas.

Additional Information

Interested persons are invited to comment on the proposed definition and the proposed funding priority and special consideration. The comment period is 30 days. All comments received on or before August 19, 1993, will be considered before the final definition and final funding priority and special consideration are established. Written comments should be addressed to: Neil Sampson, Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Application materials will not be automatically mailed to prospective applicants. Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Brenda Selser, Grants Management Branch (D–31), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: (301) 443–6880; FAX: (301) 443–6343. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Susan M. Klein, Geriatric Initiatives Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: (301) 443–6887; FAX: (301) 443–1164.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is October 12, 1993. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Faculty Training Projects in Geriatric Medicine and Dentistry, is listed at 93.156 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 27, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–17085 Filed 7–19–93; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement for the Second Cycle for Nursing Special Project Grants for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a second cycle in fiscal year (FY) 1993 for Grants for Nursing Special Projects under the authority of section 820, title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. In addition, the Nursing Special Projects grants cycle for FY 1994 is expected to be announced within the next several months.

Approximately $1,200,000 will be available in FY 1993 for this second cycle to support approximately 7 competing awards averaging $175,000 for projects which begin no later than September 30, 1993.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. Data are not yet available for the first cycle in FY 1993. In FY 1992, HRSA reviewed 86 applications for Nursing Special Projects. Of those applications, 42 percent were approved and 58 percent were disapproved. Fifteen projects, or 42 percent of approved applications, were funded. In FY 1991, HRSA reviewed 140 applications for Nursing Special Projects. Of those applications, 34 percent were approved and 66 percent were disapproved. Fourteen projects, or 29 percent of approved applications, were funded.

Purpose

Section 820(a) of the PHS Act authorizes the Secretary to make grants for the purpose of assisting schools in increasing the number of students enrolled.

Section 820(b) of the PHS Act authorizes the Secretary to make grants for the establishment or expansion of nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities.

Section 820(c) of the PHS Act authorizes the Secretary to make grants for the purpose of providing continuing education for nurses serving in medically underserved communities.

Section 820(d) of the PHS Act authorizes the Secretary to make grants for the purpose of providing fellowships to individuals who are employed by nursing facilities or home health agencies as nursing paraprofessionals.

The request for initial support may not exceed five years for applications submitted under sections 820(a) and 820(b). The request for initial support may not exceed three years for applications submitted under sections 820(c) and 820(d).

This program is governed by regulations at 42 CFR part 57, subpart T to the extent to which these regulations are not inconsistent with the amended statute. The purposes, eligibility and statutory funding preferences have been changed by the Nurse Practice Improvement Amendments of 1992.

Reference to the purposes, eligibility and statutory funding preferences in the regulations are superseded by the law. The current purposes, eligibility and statutory funding preference are identified in this notice.

Eligibility

Eligible applicants for projects under section 820(a) include public and nonprofit private schools of nursing with programs of education in professional nursing. To receive support under 820(a) the school must agree to make available non-Federal contributions in an amount that is at least 10 percent of the project costs for the first fiscal year, at least 25 percent of the project costs for the second fiscal year, at least 50 percent of the project costs for the third fiscal year, and at least 75 percent of the project costs for the fourth or fifth fiscal years.

Eligible applicants for projects under section 820(b) include public and nonprofit private schools of nursing. To receive support under 820(b) the program proposed must be operated and staffed by the faculty and students of the school and must be designed to provide at least 25 percent of the students of the school with a structured clinical experience in primary health care.

Eligible applicants for projects under section 820(c) include public and nonprofit private entities.

Eligible applicants for projects under section 820(d) include public and nonprofit private entities that operate accredited programs of education in professional nursing, or State-board approved programs of practical or vocational nursing. To receive support under 820(d), the applicant must agree that, in providing fellowships, preference will be given to eligible individuals who (A) are economically disadvantaged individuals, particularly such individuals who are members of a minority group that is underrepresented among registered nurses; or (B) are employed by a nursing facility that will assist in paying the costs or expenses. The applicant must also agree that the fellowships provided will pay all or part of the costs of (A) the tuition, books, and fees of the program of nursing with respect to which the fellowship is provided; and (B) reasonable living expenses of the individual during the period for which the fellowship is provided.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preferences

In making awards of grants under section 820(a), preference will be given to any qualified school that provides students of the school with clinical training in the provision of primary health care in publicly-funded (A) urban or rural outpatient facilities, home health agencies, or public health agencies; or (B) rural hospitals.

In making awards of grants under section 820(d), preference will be given to any qualified applicant operating an accredited program of education in professional nursing that provides for the rapid transition to status as a professional nurse from status as a nursing paraprofessional.

Established Funding Priorities

The following funding priorities were established in FY 1993 after public comment (58 FR 35020) and the Administration is extending these funding priorities for the second cycle in FY 1993. In determining the order of funding of approved applications a priority will be given to schools that offer generic baccalaureate programs. A priority will also be given to schools that offer both generic baccalaureate nursing programs and RN completion programs. These priorities apply to applications for grants under section 820(a).

A funding priority will be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at-risk of poor health outcomes. This priority applies to applications for grants under sections 820(a), 820(b), and 820(d).

Finally, a funding priority will be given to applications for continuing education programs for nurses from medically underserved areas to increase their knowledge and skills in care of persons who are HIV positive or who have AIDS. This priority applies to applications for grants under section 820(c).

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Grants Management Branch (D10), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: (301) 443–6915; FAX: (301) 443–6343. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mary S. Hill, Chief, Nursing Education and Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and

Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: (301) 443–6193; FAX: (301) 443–8586.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is August 20, 1993. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Nursing Special Project Grants, is listed at 93.359 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: July 14, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–17086 Filed 7–19–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–5101–10–B016,CACA 27497]

Cancellation of Notice of Availability of Final Cajon Pipeline Environmental Impact Statement/Environmental Impact Report

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of notice of availability.

SUMMARY: The Notice of Availability published in the **Federal Register** on July 9, 1993 for the Final Cajon Pipeline Environmental Impact Statement/ Environmental Impact report is hereby cancelled in its entirety. A revised Notice of Availability is being published and will amend the dates for receiving written comments.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District Office, 6221 Box Springs Blvd, Riverside, CA 92507–0714; phone (714) 697–5234.

Dated: July 14, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–17322 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–40–M

[CA–060–5101–10–B016, CACA 27497]

Notice of Availability of Final Cajon Pipeline Environmental Impact Statement/Environmental Impact Report

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management, California Desert District, has prepared a joint Federal/State Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the proposed Cajon Pipeline Project, with the City of Adelanto. This Final EIS/EIR describes and analyzes the proposed Project, project alternatives, and marketing alternatives. This Project, as proposed, will traverse both Federal and private lands in San Bernardino and Los Angeles Counties in southern California.

DATES: Written comments will be accepted until August 16, 1993.

ADDRESS: Written comments should be sent to the District Manager, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507–0714, ATTN: Cajon Pipeline Project.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714; phone (714) 697–5234.

SUPPLEMENTARY INFORMATION: Discoveries in the Santa Barbara Channel off the coast of California along the Outer Continental Shelf (OCS) and on-shore through thermal enhanced oil recovery in the San Joaquin Valley (SJV) have yielded significant new reserves of heavy, high sulphur crude oil. As a result of these discoveries and the desire of producers to transport this heavy crude to the Los Angeles Basin refineries, a heated pipeline system capable of handling this crude in its "neat" state is being considered. Existing pipelines do not have the capacity to handle the anticipated volume. In addition, heavy crude requires the addition of heat to allow it to be efficiently pumped through pipelines, and no heated common carrier pipeline exists today into the Los Angeles Basin.

To connect the producers and refiners, the Cajon Pipeline Company proposes to build a 142-mile-long, 20-inch diameter insulated buried pipeline from 12-Gauge Lake (27 miles west of Barstow), California, to the Los Angeles crude oil terminals in Carson and Long Beach. Crude oil from the Santa Barbara Channel and the San Joaquin Valley would be delivered to 12-Gauge Lake by the existing All American Pipeline. From there it would be conveyed to the Los Angeles Basin by the proposed Cajon Pipeline. The Cajon Pipeline would have a maximum capacity of 180,000 barrels per day (BPD), but would be expected to operate at an average flow of 150,000 BPD. Two pump stations would be needed to move heated crude oil through the Cajon Pipeline. One pump station, together with storage, would be located at 12-Gauge Lake. The other pump station, together with control and maintenance facilities, would be located at Adelanto. The Final EIS/EIR for the proposed Cajon Pipeline Project includes an analysis of the environmental impacts of the proposed pipeline system during construction and operation.

This Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed Cajon Pipeline Project has been prepared in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The Bureau of Land Management's preferred alternative is the Proposed Project, as described in the Final EIS/EIR, and modified by the Sycamore Segment.

During the public review of the Draft EIS/EIR, agencies and the general public expressed concerns regarding revegetation, system safety, location relative to an elementary school and mitigation monitoring. In response to these concerns, the proposed project and mitigation measures which would be imposed have been modified. Besides the changes incorporated into Volume 1 of the Final EIS/EIR, a new section entitled Mitigation Monitoring Program has been included in Volume II to assure compliance if the Cajon Pipeline Project is approved.

Dated: July 14, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–17323 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–070–03–4320–01]

Temporary Travel Restrictions For The Siloam Springs-Dotsero Area

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Order of Area, Road and Trail Use Restrictions.

SUMMARY: This order limits all motorized vehicle use to designated roads and trails year round, including snowmobiles, on certain public lands in the vicinity of Dotsero in the Glenwood Springs Resource Area, Grand Junction District. The existing Off Highway Vehicle (OHV) use "Open" designation on 5,800 acres is modified by this order, issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while a Resource Area-wide travel management plan is developed.

The affected public land, situated in Eagle and Garfield counties, is generally located in T. 7 S., R. 87 W., Sec. 2, 3, 10, 11, 12; it is bounded by Interstate 70 to the south, the Colorado River to the east, Deep Creek and the Coffee Pot Rd. to the north, and the White River National Forest boundary to the west.

EFFECTIVE DATES: The restrictions shall be effective immediately until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: Public use in the affected area is expected to increase after completion of the Glenwood Canyon I–70 rest areas by the Colorado Department of Transportation (DOT) in the summer of 1993, and as public awareness of the Dotsero-Ute trail increases. Current OHV use designations, established in the Glenwood Springs Resource Area Resource Management Plan, 1984 (Rev. 1988), allow motorized vehicle use, and non-motorized mechanical travel, on and off the roads and trails year round. With increased public use, current regulations could lead to establishment of new roads and trails, and uncontrolled motorized and non-motorized vehicle use on the public lands which could result in considerable adverse effects on the area's cultural, vegetation, soil, visual, and wildlife resources. Additionally, the existing trails are narrow, with steep grades and deteriorated conditions which are not safe for general public use by motorized vehicle.

The area contains significant cultural values that are fragile and easily damaged or destroyed through intentional or unintentional actions. Sensitive plant species (Aquilegia barnebii, Penstemon harringtonii) identified in the area could also be damaged by uncontrolled use. The area's steep soils are prone to severe erosion, and uncontrolled travel could exacerbate debris flows onto Interstate 70. The slopes visible from I–70 and the Colorado River road are of scenic importance and highly sensitive, and uncontrolled travel could create scars which would degrade visual qualities. Additionally, the area provides important deer and elk winter range which is as critical habitat, and motorized travel during the winter would cause unnecessary stress on the animals and adversely affect their health.

The area is used for livestock grazing which at times requires motorized vehicle access for maintenance and operation of range facilities, and motorized access is needed to provide for recreational access, for general administration of the public lands, law enforcement and fire suppression.

Given the potential impacts of uncontrolled motorized and mechanized vehicle use and the deteriorated condition of existing trails, a modification of use regulations is necessary to adequately protect resources on public land and ensure public safety while providing for necessary access and travel.

The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information including maps of the restricted area is available in the Resource Area Office and District Office at the addresses shown below.

The Siloam Springs-Dotsero Area described herein will be subject to the following use restrictions:

All motorized vehicle use will be limited to designated roads, trails and areas year round including snowmobiles operating on snow. The roads and trails designated to provide for vehicle use shall include the Coffeepot Road, the Colorado River Road (Eagle County Road #301), Colorado Highway 6, the Dotsero-Ute Trailhead driveway and parking area, the Siloam Springs driveway and parking area, and parking areas along the Coffee Pot Road. Motorized travel on other exiting roads and trails, and off the roads and trails shall be prohibited. Non-motorized mechanized vehicle use shall be allowed on roads and trails whether designated for non-motorized or motorized travel, but non-motorized vehicle travel off the roads and trails shall be prohibited. Persons who are exempt from the restrictions include:

(1) Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities;

(2) BLM employees engaged in official duties;

(3) Persons authorized to operate motorized vehicles within the restricted area.

Penalties: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6/24, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945–2341. Timothy Hartzell, District Manager, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3050.

Timothy Hartzell,

Grand Junction District Manager.

[FR Doc. 93–17128 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Puritan Tiger Beetle for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Puritan tiger beetle (*Cicindela puritana*). This species is found along the Connecticut River in Massachusetts and Connecticut, and in Maryland along the Chesapeake Bay and near the mouth of the Sassafras River. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received September 20, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 1825 Virginia Street, Annapolis, Maryland 21401, telephone 410/269–5448.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs (see **ADDRESSES**).

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SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Puritan Tiger Beetle (*Cicindela puritana*) Recovery Plan. The Puritan tiger beetle historically occurred in 11 known locations along the Connecticut River, and in the Maryland portion of the Chesapeake Bay. Only two small Connecticut River populations remain, one in Massachusetts and one in Connecticut. Six populations with more than 500 adults, along with several smaller populations, are now known in Maryland.

The decline of the Puritan Tiger beetle along the Connecticut River is attributed to inundation and disturbance of shoreline habitat from dam construction, riverbank stabilization, and other human activities. The beetle larvae, in particular, are sensitive to natural and artificial changes to beaches and cliffs, as well as pedestrian and vehicular traffic and water-borne pollution. Populations in the Chesapeake Bay region are threatened by habitat alterations caused by development and shore erosion control projects. Due to its declining status and continuing threats, the species was listed as threatened in August 1990.

The primary objectives of the draft Recovery Plan are to stabilize the long-term status and ensure the viability of the species in the wild, thereby enabling the Puritan tiger beetle's removal from the Federal list of endangered and threatened wildlife and plants. Conditions that must be met to delist the Puritan tiger beetle include establishment of three populations of 500–1000 adult beetles within the former range of the species along the Connecticut River, maintenance of five populations of 500–1000 adults at current sites within the Chesapeake Bay region, data showing that all these populations have been self-maintaining or expanding for at least ten years, permanent habitat protection, and implementation of a long-term management program that is based on an adequate understanding of the species' life history.

These conditions will be achieved through long-term monitoring of known Puritan Tiger beetle populations, further studies of life history parameters and the effects of human activity upon the beetle and its habitat, broad protection (primarily through planning and zoning mechanisms) of occupied and potential reintroduction sites, site-specific management as needed, and the reintroduction and protection of populations at release sites along the Connecticut River.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 6, 1993.

Frank M. DeLuise,

Acting Regional Director

[FR Doc. 93–17022 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–22–M

Availability of a Draft Recovery Plan for the Northeastern Beach Tiger Beetle for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*). This subspecies is found in Massachusetts and along the Chesapeake Bay in Maryland and Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received September 20, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 1825 Virginia Street, Annapolis, Maryland 21401, telephone 410/269–5448.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Northeastern Beach Tier Beetle (*Cicindela dorsalis dorsalis*) Recovery Plan. This tiger beetle historically was abundant on beaches along the Atlantic Coast, from Cape Cod, Massachusetts to central New Jersey and along

Chesapeake Bay beaches in Maryland and Virginia. Only one population remains on the Atlantic Coast, on Martha's Vineyard, Massachusetts. The subspecies occurs at over 50 sites in the Chesapeake Bay region. Approximately 16 of these sites support more than 500 adults, and 10 sites support from 100 to 500 adults.

The northeastern beach tiger beetle is most vulnerable to disturbance in the larval stage, which lasts two years. Larvae live in vertical burrows generally in the beach intertidal zone, where they are particularly sensitive to destruction by high levels of pedestrian traffic, ORVs, and other factors such as beach changes due to coastal development and beach stabilization structures. Although dispersal abilities of adults are good, population recruitment seems to be hampered by a lack of both undisturbed beaches and of populations as a colonizing source.

These threats resulted in a very rapid rate of extirpation of this beetle in its harsher Atlantic Coast environment. The Chesapeake Bay populations could also crash as the pace of shoreline development and beach recreation in the Bay region accelerates. The northeastern beach tiger beetle appears to require large numbers and proximity to necessary source populations in order to ward off stochastic events that could result in such a crash. Because of its population dynamics and continuing threats, the northeastern beach tiger beetle was listed as threatened in August 1990.

The primary objectives of the draft Recovery Plan are to stabilize the long-term status and ensure the viability of the species in the wild, thereby enabling the northeastern beach tiger beetle's removal from the Federal list of endangered and threatened wildlife and plants. Conditions that must be met to delist this tiger beetle include establishment and permanent protection of 12 populations within the former range of the subspecies along the Atlantic Coast (with at least four of these populations consisting of 500–1000 adult beetles), permanent protection of at least 10 populations with a minimum of 500–1000 adults at current sites within the Chesapeake Bay region, protection of sufficient habitat along both the Atlantic Coast and the Chesapeake Bay to allow for population expansion and interchange, an understanding of the beetle's life history sufficient for effective management, and establishment of a monitoring and management program for the subspecies.

These conditions will be achieved through long-term monitoring of northeastern beach tiger beetle populations, further studies into taxonomy (certain genetic differences suggest that the Atlantic Coast and Chesapeake Bay forms might actually be separate taxa) and life history parameters, continued evaluation of human activity and land use impacts on beetle populations, protection of occupied sites and site-specific management as needed, reintroduction and protection of populations at release sites along the Atlantic Coast, and monitoring and management of the reintroduced populations as needed.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 7, 1993.

Frank M. DeLuise,

Acting Regional Director.

[FR Doc. 93–17020 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Boundary Revision

AGENCY: National Park Service, DOI.

ACTION: Notice of boundary revision, Fort Frederica National Monument.

SUMMARY: Section 2 of the Act of May 16, 1958 (72 Stat. 110), authorized a revision of the boundaries of the Fort Frederica National Monument. The Act provides that "the Secretary of the Interior is authorized and directed to acquire by purchase, condemnation or otherwise, subject to the acreage limitation contained in the aforementioned Act, the site known as the Bloody Marsh Battle memorial monument located on Saint Simons Island, Georgia, together with such additional land, including the marshland across the river to the west of Fort Frederica National Monument, or interest in land, as in the judgment of the Secretary of the Interior might be desirable for the protection of such national monument."

Notice is given that the boundary of Fort Frederica National Monument has been revised pursuant to the above Act, to include the land identified in the Land Protection Plan, approved December 18, 1991, and depicted on map number 369–92,001, dated April 29, 1993, prepared by the Land Resources Division of the Washington Office of the National Park Service.

SUPPLEMENTARY INFORMATION: The Land Protection Plan and map are on file and available for inspection in the Land Resources Division, Southeast Regional Office, 75 Spring Street SW, Atlanta, Georgia 30303, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: June 29, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 93–17091 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–70–M

Public Hearing

AGENCY: National Park Service, Interior

ACTION: Public hearing regarding the federal subsistence sheep season in a portion of Unit 23 in the Baird Mountains, Alaska.

SUMMARY: A public hearing is scheduled regarding the federal subsistence sheep season in the Baird Mountain portion of Unit 23. Dependent upon the status of the sheep population, the Federal Subsistence Board may have to exercise its closure authority to conserve healthy and natural populations of sheep in the area. If such a closure becomes necessary, this public meeting will have fulfilled the requirements of 50 CFR 100.19. The purpose of the meeting will be to inform the public of the status of the sheep population and potential proposals to the Federal Subsistence Board for action. Public comment will be accepted.

BACKGROUND: Aerial surveys conducted in the Baird Mountains (that area of Unit 23 south and east of the Noatak River) show a dramatic decline in the sheep population since 1989. In an effort to protect this population and facilitate its recovery, this area has been closed to all hunting of sheep since 1991, through closure actions of the Federal Subsistence Board. Survey results from July 1992 indicate the sharp decline has at least temporarily stopped; however, the population has not significantly grown. A sheep survey by the Alaska Department of Fish and Game and the National Park Service is scheduled for mid-July 1993. These survey results are expected to be

available for discussion at the July 22 meeting. Should the survey, and past biological data, indicate a continuing threat to the conservation of a healthy population of sheep in the Baird Mountains of Unit 23, a proposal will be advanced to the Federal Subsistence Board to once again close federal public lands to sport hunting, under Alaska regulations, and to the subsistence seasons currently scheduled for August 10–September 20, 1993, and October 1–April 30, 1994. The Federal Subsistence Board will make a final determination on any such proposed closure, if advanced.

The National Park Service is hosting this meeting as the principal federal land manager in the area with responsibility for the proper management of Noatak National Preserve and Kobuk Valley National Park.

DATE/LOCATION: The meeting will be held July 26, 1993, at 7 p.m. in the Public Lands Information Center, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Bob Gerhard, National Park Service, PO Box 1029, Kotzebue, Alaska 99752, telephone: (907) 442–3890.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 93–17090 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Meetings

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of summary of minutes.
(4) Review Agenda.
(5) Superintendent's welcome:
  a. Introduction of guests.
  b. Review of SRC function and purpose.
(6) Superintendent's report.
(7) Old Business:
  a. State Lease Sale 57 update.
  b. Resolution 85–05—Hunting Plan Outline.
  c. Review public comments and finalize draft Hunting Plan Recommendations 7 and 8.
  d. Federal Subsistence Program Update.
(8) New business:
  a. Resource Management Plan.
  b. Park Subsistence Program update.
(9) Public and other agency comments.
(10) Set time and place of next SRC meeting.
(11) Adjournment.

DATE: The meeting will be held Tuesday through Thursday, August 10–12, 1993. The meeting will begin at 8:30 a.m. each day and conclude around 5 p.m. (by noon on Thursday).

LOCATION: The meeting will be held at Commack's Lodge in Shungnak, Alaska.

FOR FURTHER INFORMATION CONTACT: Steven P. Martin, Superintendent, PO Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director,

[FR Doc. 93–17089 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 10, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 4, 1993.

Beth Boland,

Acting Chief of Registration, National Register.

ALABAMA

Cleburne County

Morgan, John, House, 321 Ross St., Heflin, 93000762

Jefferson County

Redmont Garden Apartments, 2829 Thornhill Rd., Mountain Brook, 93000761

Marengo County

Cedar Crest (Plantations of the Alabama Canebrake MPS), E. side Marengo Co. Rd. 51, .5 mi. S. of Co. Rd. 54, Faunsdale vicinity, 93000763

ALASKA

Juneau Borough—Census Area

Jualpa Mining Camp, 1001 Basin Rd., Juneau, 93000733

ARIZONA

Maricopa County

Arizona Academy—North Hall and South Hall (Educational Buildings in Phoenix MPS), 1325 N. 14th St., Phoenix, 93000813
Bethlehem Baptist Church (Religious Architecture in Phoenix MPS), 1402 E. Adams St., Phoenix, 93000744
Brophy College Chapel (Religious Architecture in Phoenix MPS), 4701 N. Central Ave., Phoenix, 93000747
Cartwright School (Educational Buildings in Phoenix MPS), 5833 W. Thomas Rd., Phoenix, 93000739
Dunbar School (Educational Buildings in Phoenix MPS), 707 W. Grant, Phoenix, 93000740
First Church of Christ Scientist (Religious Architecture in Phoenix MPS), 924 N. First St., Phoenix, 93000745
First Presbyterian Church (Religious Architecture in Phoenix MPS), 402 W. Monroe St., Phoenix, 93000746
Franklin School (Educational Buildings in Phoenix MPS), 1625 W. McDowell Rd., Phoenix, 93000814
Garfield Methodist Church (Religious Architecture in Phoenix MPS), 1302 E. Roosevelt St., Phoenix, 93000743
Immaculate Heart of Mary (Religious Architecture in Phoenix MPS), 909 E. Washington St., Phoenix, 93000742
Whittier, John G., School (Educational Buildings in Phoenix MPS), 2004 N. 16th St., Phoenix, 93000741

ARKANSAS

Chicot County

Tushek, John, Building, 108 Main St., Lake Village, 93000811

Searcy County

Bryan, Noah, Store (Searcy County MPS), SW corner of Glade and Main Sts., Marshall, 93000760
Daniel, Dr. Sam G., House (Searcy County MPS), N. side of Nome St., one block W. of Courthouse Square, Marshall, 93000759
Farmers Bank Building (Searcy County MPS), Jct. of Main and Walnut Sts., Leslie, 93000753
Fendley, Bud, House (Searcy County MPS), 201 Spring St., Marshall, 93000816
Gates—Helm Farm (Searcy County MPS), Co. Rd. 13, approximately 1 mi. N of jct. with Co. Rd. 250, Snowball vicinity, 93000817
Hatchett, Columbus, House (Searcy County MPS), N. side, jct. of Main and Hazel Sts., Leslie, 93000756
Leslie—Rolen House (Searcy County MPS), Jct. of Cherry and High Sts., Leslie, 93000815
Lynch, Thomas, House (Searcy County MPS), Co. Rd. 52, approximately 2.5 mi. N of Morning Star, Morning Star vicinity, 93000757
Redman, Oscar, Building (Searcy County MPS), 119 E. Main St., Marshall, 93000758

Thomas, Greene, House (Searcy County MPS), W of Co. Rd. 55, 0.25 mi. S of jct. with Co. Rd. 75, Leslie vicinity, 93000755
Treat Commercial Building (Searcy County MPS), Oak St. NW side, between High and 4th Sts., Leslie, 93000752
Treece, Jasper E., Building (Searcy County MPS), W of Co. Rd. 55, approximately 0.5 mi. S of jct. with AR 74, Baker vicinity, 93000754

CONNECTICUT

New London County

Post Hill Historic District, Roughly bounded by Broad, Center, Vauxhall, Berkeley, Fremont and Walker Sts., New London, 93000812

FLORIDA

Hillsborough County

Seminole Heights Residential District, Roughly bounded by Osborne, Florida, Hanna, and Cherokee Aves., Tampa, 93000751

Volusia County

Stevens, Ann, House, 201 E. Kicklighter Rd., Lake Helen, 93000734

HAWAII

Kauai County

Camp Sloggett, SW of HI 550, Kokee vicinity, 93000773
Kilauea Plantation Head Bookkeeper's House (Kilauea Plantation Stone Buildings MPS), 2421 Kolo Rd., Kilauea, 93000774
Kilauea Plantation Head Luna's House (Kilauea Plantation Stone Buildings MPS), 2457 Kolo Rd., Kilauea, 93000775
Kilauea Plantation Manager's House (Kilauea Plantation Stone Buildings MPS), 4591 Kauma Rd., Kilauea, 93000777
Kong Lung Store (Kilauea Plantation Stone Buildings MPS), W. side of Lighthouse Rd., about .5 mi N. of HI 56., Kilauea, 93000776

MICHIGAN

Kent County

Mt. Mercy Academy and Convent, 1425 Bridge St., Grand Rapids, 93000769

Washtenaw County

Goodyear Block, 138 E. Main St., Manchester, 93000770

MISSISSIPPI

Jasper County

Archeological Site No. 22JS572, Address Restricted, Bay Springs vicinity, 93000731
Archeological Site No. 22JS587, Address Restricted, Bay Springs vicinity, 93000732

Leflore County

Murphey Site, Address Restricted. Itta Bena vicinity, 93000730

NEW JERSEY

Camden County

Bennett, Volney G., Lumber Company. 138 Division St. and 845 S. Second St., Camden City, 93000749

Sussex County

Meadowburn Farm, Address Restricted, Vernon vicinity, 93000748

NEW YORK

Erie County

Scheidemantel, George and Gladys, House. 363 Oakmood Ave., East Aurora, 93000778

NORTH CAROLINA

Guilford County

Summit Avenue Historic District (Greensboro MPS), Roughly bounded by Chestnut, East Bessemer, Cypress, Demey, Park, and Percy Sts., Greensboro, 93000768

Lee County

Farrar, Obediah, House (Lee County MPS), Haywood vicinity, 93000728
McIver, John D. Farm (Lee County MPS), 2007 Windmill Dr., Sanford, 93000729

Mecklenburg County

Mayes House, 436 E. Morehead St., Charlotte, 93000735

New Hanover County

Audubon Trolley Station. Jct. of Park Ave. and Audubon Blvd., Wilmington, 93000736

Orange County

Gimghoul Neighborhood Historic District. Roughly bounded by Gimghoul Rd., Ridge Ln., and Gladon Dr., Chapel Hill, 93000807

Rowan County

Knox—Johnstone House 100 Beaumount Farm R., Cleveland, 93000737

SOUTH DAKOTA

Beadle County

Archeological site No. 39BE3 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Holsey vicinity, 93000802

Butte County

Iri State Bakery, 705 State St., Belle Fourche, 93000781

Corson County

Archeological Site No. 39C039 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Mahto vicinity, 93000765

Custer County

Archelogical Site No. 39CU890 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hermosa vicinity, 93000803

Fall River County

Archeological Site No. 39FA806 (Prehistoric Rock Art of South Dakota MPS), Address Restricted.
Hot Springs vicinity, 93000790
Archeological Site No. 39FA1049 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Spring vicinity, 93000791
Archeological Site No. 39FA1201 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity 93000792
Archeological Site No. 39FA678 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93000801
Archeological Site No. 39FA686 (Prehistoric Rock Art of South Dakota MPS), Edgemont vicinity, 93000804
Archeological Site No. 39FA89 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93000806

Harding County

Archeological Site No. 39HN208 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 93000794
Archeological Site No. 39HN17 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 93000805

Hughes County

Karcher Block, 336 S. Pierre St., Pierre, 93000783
Scurr, Kenneth R., House, 121 S. Washington Ave., Pierre, 93000780

Hyde County

Archeological Site No. 39HE331 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Holabird vicinity, 93000793

McCook County

Archeological Site No. 39MK12 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Bridgewater vicinity, 93000796

McPherson County

Archeological Site No. 39MP3 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Long Lake vicinity, 93000795

Meade County

Archeological Site No. 39MD82 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Sturgis vicinity, 93000797
Archeological Site No. 39MD20 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Tilford vicinity, 93000798
Archeological Site No. 39MD81 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Sturgis vicinity, 93000818

Pennington County

Quinn, Michael, House, 728 Sixth St., Rapid City, 93000782

Potter County

Archeological Site No. 39PO205 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Gettysburg vicinity, 93000799
Archeological Site No. 39PO63 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Gettysburg vicinity, 93000800

Sully County

Snyder, L.E., House, Jct. of Cedar and Sixth Sts., Onida, 93000784

TENNESSEE

Cumberland County

Cumberland Mountain School, W. side, Old US 127 N., 2 mi. N. of Crossville, Crossville vicinity, 93000779

TEXAS

Bell County

Kyle Hotel, 111 Main St., Temple, 93000772

Dawson County

Lamesa Farm Workers Community Historic District, Jct. of US 87 and US 180, Los Ybanez, 93000771

WASHINGTON

King County

Allentown Shell Midden, Address Restricted, Tukwila vicinity, 93000738

WISCONSIN

Dane County

Moore Mound Group (Late Woodland Stage MPS), Address Restricted, Dunn, 93000809

Iowa County

Carden Rockshelter (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Brigham, 93000808

Price County

Deadman Slough, Address Restricted, Flambeau vicinity, 93000750

Walworth County

Grace and Pearl Historic District, Roughly bounded by Pearl, Park, Dougall, Grace and Martin Sts., Sharon, 93000810

In order to assist in its preservation, the commenting period for the following property has been shortened to two days.

IOWA

Black Hawk County

Cotton Theater, 103 Main St., Cedar Falls. 93000764.

[FR Doc. 93–17092 Filed 7–19–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Notice

[Docket No. AB–384X]

Delta Southern Railroad Co.—Abandonment Exemption—In Union County, AR, And Union Parish, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Delta Southern Railroad Co. of its 28-mile line of railroad between milepost 525.9 near Huttig, in Union County, AR, and milepost 553.9 at or near Sterlington, in Union Parish, LA, subject to environmental and standard labor protective conditions.

DATES: This exemption will be effective on August 19, 1993, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file on offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 30, 1993, petitions to stay must be filed by August 4, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 9, 1993, and petitions to reopen must be filed by August 16, 1993.

ADDRESSES: Send Pleadings referring to Docket No. AB–384X to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Mary Todd Carpenter, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., Suite 1107, Washington DC 20006.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw (202) 927–5610 [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: July 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons and Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–17151 Filed 7–19–93;8:45am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 30, 1993.

Interest persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 30, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bear Creek, Operations, Inc (Wkrs)	Medford, OR	07/06/93	06/22/93	28,837	Hand Woven Baskets.
Ranno Electro Plating Corp (Wkrs)	Saddle Brook, NJ	07/06/93	06/24/93	28,838	Chrome Plating.
General Dynamics (Wkrs)	Fort Worth, TX	07/06/93	02/08/93	28,839	Sheet Metal Parts.
Mulberry Phosphates, Inc (Wkrs)	Mulberry, FL	07/06/93	06/22/93	28,840	Phosphaste Fertilizer.
Piney Point Phosphate, Inc (Wkrs)	Palmetto, FL 34221	07/06/93	06/22/93	28,841	Phosphaste Fertilizer.
Thomas Cort, Inc. (UFCW)	Philadelphia, PA	07/06/93	06/24/93	28,842	Women's Leather Shoes.
Julie Fashions II (ILGEU)	Tuscarora, PA	07/06/93	06/24/93	28,843	Ladies' Sportswear.
Parsons Industrial Diamond (Wkrs)	West Hartford, CT	07/06/93	06/15/93	28,844	Diamond Products.
Michigan Capsule, Inc (co)	Detroit, MI	07/06/93	06/18/93	28,845	Veterinary Capsules.
Liberty Optical (Wkrs)	Newark, NY	07/06/93	06/21/93	28,846	Frames for Glasses.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
James River Corp (Wkrs)	Sunnyside, WA	07/06/93	06/15/93	28,847	Paperboard Packaging to Process Food.
Aluminum Company of America (Wkrs).	Newburgh, IN	07/06/93	06/23/93	28,848	Aluminum Ingot and Sheets.
Trimac Transportation Services (Wkrs).	Riddle, OR	07/06/93	06/17/93	28,849	Haul Ore (Nickel).
Russ Togs, Inc (ILGWU)	Long Island City, NY	07/06/93	06/22/93	28,850	Ladies' Sportswear.

[FR Doc. 93–17170 Filed 7–19–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28, 158]

Northrup Corp. Norwood, MA; Negative Determination Regarding Application for Reconsideration

By an application dated June 2, 1993, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 4, 1993 and published in the **Federal Register** on May 25, 1993 (58 FR 30071).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the Northrup workers produce gyroscopes for missiles.

The Department's denial was based on the fact the "contributed importantly" test of the Worker Group Requirements of the Trade Act of 1974 were not met for workers producing gyroscopes in the period relevant to the worker petition.

Its claimed that workers in Department 4817 at the Norwood plant lost their jobs because imported components for gyroscopes were supplied to Northrup by one of Northrup's suppliers.

The findings show that only a portion of the microsyns manufactured by the Northrup supplier in question is performed in Mexico while the final assembly is done in Minnesota. This import connection is too remote to provide a basis for a worker group certification. The findings further show that the number of subassemblies from Minnesota has declined in each of the last three years.

Other findings show that worker separations at Northrup were not the result of increased imports but rather the result of reduced government spending on missiles and other non trade factors.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 8th day of July 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–17169 Filed 7–19–93; 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–8896, et al.]

Proposed Exemptions; American Express Co. and Affiliates, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR

32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

American Express Company and Affiliates Located in New York, New York

[Application No. D–8896]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, American Express Company and each of its wholly-owned subsidiaries (collectively, AMEX) shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy Section I(g) of PTE 84–14, as a result of affiliation with E.F. Hutton & Company, Inc. (Hutton) and Shearson Lehman Brothers, Inc. (Shearson), formerly Shearson Lehman Hutton, Inc.

Effective Date: This exemption, if granted, will be effective as of January 13, 1988, the date on which Hutton was acquired by Shearson.

Summary of Facts and Representations

1. Shearson is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings), 100 percent of the issued and outstanding common stock of which is owned by American Express Company.[1] American Express is a publicly-owned company whose stock is traded on the New York Stock Exchange. American Express and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of Hutton, was tendered to SLBP Acquisition Corporation (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson and Shearson purchased the shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

2. On May 2, 1985, Hutton entered a plea of guilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 16, 1982. The applicant represents that as a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

3. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. The applicant represents that Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain circumstances, if more than $10,000 in cash is deposited with a financial institution. The applicant represents that the brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

4. On March 3, 1989, George Inserra, a broker employed by Shearson, pled guilty to charges of securities fraud, soliciting commissions in connection with an employee benefit plan, and filing a false income tax return. On the same date, John Inserra, also employed by Shearson as a broker, pled guilty to securities fraud conspiracy. Further, on May 1, 1989, the Department filed a complaint in the U.S. District Court for the Northern District of New York alleging that Shearson, among others, and its agents, misused assets of three New York Teamsters Funds (the Funds) to benefit themselves and others through a stock parking scheme and indirect fee arrangements with banks, and that Shearson mishandled the Funds' cash balances and manipulated stock purchases. On September 19, 1990, Shearson and the Department executed a settlement agreement (the Settlement) regarding the Department's complaint. Without admitting or denying the Department's allegations, Shearson agreed pursuant to the Settlement to make a payment to the affected Funds.

5. The applicant states that the Inserras had left the employment of Shearson in October 1985, long before the guilty pleas were entered in March 1989. The applicant further represents that although the Securities and Exchange Commission (SEC) instituted proceedings against Shearson as a result of the Inserras' activities, Shearson was not charged with any criminal offenses. Shearson settled the SEC proceedings by accepting a censure by the SEC for failure to exercise reasonable supervision of the Inserras. As part of the settlement with the SEC, Shearson agreed to institute revised policies and procedures recommended by an independent consultant to prevent the kinds of defalcations engaged in by the Inserras. The applicant represents that the independent consultant thoroughly analyzed Shearson's operations and recommended systemic changes designed to preclude the types of unsupervised actions committed by the Inserras.

[1] On March 13, 1993, Shearson entered into an asset purchase agreement with Primerica Corporation (Primerica) and its wholly-owned subsidiary, Smith Barney, providing for the sale to Smith Barney and its designated affiliates of substantially all of the assets of the Shearson Lehman Brothers Division of Shearson and the SLB Asset Management Division of Shearson. Thus, this exemption will not be available with respect to the Shearson Lehman Brothers Division and the SLB Asset Management Division of Shearson. However, the exemption will be available to Lehman Brothers, Inc. and other components of Shearson Holdings which are not part of the Primerica sale.

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6. AMEX represents that although none of the unlawful conduct involved Hutton's investment management activities or any plans covered by the Act, the criminal activities described above could preclude each component of AMEX, as an affiliate of Hutton, from serving as a "qualified professional asset manager" (QPAM) pursuant to sections I(g) and V(d) of PTE 84–14. Similarly, AMEX represents that the guilty pleas of the Inserras could preclude each component of AMEX, as an affiliate of Shearson, from serving as a QPAM, pursuant to sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate[2] thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity. AMEX requests an exemption to enable AMEX components to function as QPAMs despite their failure to satisfy section I(g) of PTE 84–14 due to affiliation with Hutton and Shearson and the pleas entered by Hutton and the Inserras.

7. The proposed exemption is requested on behalf of AMEX wholly-owned subsidiaries that are banks, insurance companies, registered investment advisers, or savings and loan associations which are, or may become, eligible to serve as QPAMs. AMEX components are engaged in providing a variety of travel-related, investment, international banking, information, and investors' diversified financial services, on a global basis. The proposed exemption would also apply to wholly-owned AMEX subsidiaries that are acquired in the future. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84–14.

AMEX represents that the requested exemption is not relevant to most transactions involving the purchase/sale of securities, securities lending, investment in short-term instruments (such as repurchase agreements and bankers' acceptances) and certain residential mortgage pools, since each such transaction is covered by other class exemptions. However, AMEX represents that the requested exemption, to enable access to the exemptive relief afforded by PTE 84–14, is needed for AMEX components to engage in various transactions involving investments in real estate, mortgages, and commodities, between plans over which AMEX components have investment discretion and parties in interest with respect to such plans.

8. AMEX represents that various measures have been taken by Hutton and Shearson, since the Hutton pleas and the Inserra pleas, to ensure that conduct such as that involved in such pleas will not recur. Among the steps taken to prevent such conduct in the future are the following:

(A) Hutton has acted to recompense its depository banks for any harm which may have been caused by the illegal acts involved in the Guilty Plea and the Providence Plea.

(B) Hutton initiated changes in its organizational structure and management practices: Realignment and centralization of financial operations, computerized enhancement of Hutton's headquarters to monitor activity at the branch and regional levels, and instruction of all employees on the procedural revisions.

(C) Hutton adopted recommendations made by former Judge Griffin Bell, U.S. Court of Appeals for the Fifth Circuit,[3] who was retained to conduct an independent inquiry into the cash management practices to which Hutton pled guilty. The changes made pursuant to Judge Bell's recommendation include restructuring of the financing, financial control, operations and general counsel functions, establishment of an independent audit committee with full access to Hutton's chief executive officer and board of directors, and development of a corporate code of ethics, supplemented by educational and monitoring programs, in conjunction with the Ethics Resource Center in Washington, DC.

(D) In late December 1987, following the announcement of Shearson's merger with Hutton Group, Shearson retained outside counsel to investigate and advise with respect to Hutton's compliance with the Bank Secrecy Act. The investigation revealed certain unreported currency transactions at Hutton branch offices prior to Shearson's acquisition of Hutton. AMEX represents that the United States Attorney for the Southern District of New York recently completed its inquiry into possible legal violations at Hutton branch offices and has indicated it will take no further action.

(E) In connection with Shearson's application to the SEC for an exemption from the provisions of section 9(a) of the Investment Company Act of 1940, Shearson agreed to retain independent auditors: (i) To confirm that the Shearson currency reporting procedures are in place in each former Hutton branch office; (ii) to review the currency reporting procedures to determine whether they are reasonably designed to ensure compliance with the Bank Secrecy Act and whether changes are needed to ensure ongoing compliance; and (iii) to report the results of the review to Shearson. AMEX represents that upon completion of the auditor's review, Shearson submitted the report and recommendations to the SEC, together with a report by Shearson setting forth the action proposed for implementation of the recommendations. AMEX states that such proposed action has been taken.

(F) As of February 8, 1988, as part of the consolidation of the Hutton branch offices into the Shearson branch office system, each Hutton branch adopted the same internal procedures for processing currency transactions as those followed by Shearson. AMEX represents that such procedures prevent the kind of irregularities involved in the Providence Plea. AMEX states that as additional safeguards, the Shearson procedures forbid all Shearson employees from taking possession of currency for a customer, escorting a customer to a financial institution to convert currency, and/or advising a customer as to how to "structure" a transaction with a financial institution in order to avoid reporting requirements under the Currency Transaction Reporting Act.

(G) Although the SEC instituted proceedings against Shearson as a result of the Inserras' activities, Shearson was not charged with any criminal offense, and Shearson expeditiously settled the SEC proceedings by accepting a censure by the SEC for failure to reasonably supervise the Inserras and the branch manager overseeing the Inserras. As part of the settlement, Shearson committed to institute revised policies and procedures recommended by an independent consultant and designed to prevent the kinds of defalcations engaged in by the Inserras.

9. AMEX asserts that failure to grant the requested exemption will prohibit employee benefit plans for which AMEX components act as investment managers from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14, and will cause the plans to forego

[2] For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined, in relevant part, as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person . . ." (PTE 84–14 section V(d)). As such, under this definition, American Express and all its subsidiaries (collectively, AMEX) would be considered affiliates of Shearson and Hutton.

[3] Judge Bell has also served as Attorney General of the United States.

attractive investment opportunities. AMEX notes that many of its components would be deprived of their abilities to offer and render the full panoply of specialized investment advisory services demanded by employee benefit plans covered by the Act. AMEX represents that neither of the Hutton pleas involved any of the AMEX components in any way, and thus do not impair the abilities of AMEX components to serve as independent investment managers. AMEX states that the procedures adopted by Hutton and Shearson, discussed above, to prevent in the future the conduct which gave rise to the Hutton pleas, support the inclusion of Shearson, the successor in interest to Hutton, among the AMEX components permitted to function as QPAMs.

With respect to the conduct and pleas of the Inserras, AMEX points out that the Inserras were not employees of Shearson at the time they pled guilty to the charges against them, and Shearson was never charged with any criminal offense in connection with their activities. AMEX represents that the ability of Shearson or any other AMEX component to act as a QPAM has not been affected by the activities of the Inserras, which were neither authorized nor condoned by Shearson or any other AMEX component.

10. In summary the applicant represents that the proposed exemption satisfies the criteria of section 408(a) of the Act for the following reasons: (A) Hutton's criminal activity occurred prior to acquisition by Shearson, and the activities of the Inserras did not involve any criminal charges against Shearson; (B) Both Hutton and Shearson have undertaken substantial reforms and put in place procedures designed to prevent any recurrence of the criminal activity; (C) AMEX components will be able to engage in a broader variety of investment services on behalf of employee benefit plans which demand such services; (D) The ability of AMEX components to act as QPAMs has not been impaired by criminal acts that were neither authorized nor condoned by Shearson or any other AMEX component; and (E) The other conditions of PTE 84–14, combined with the procedures adopted by Hutton and Shearson, afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Heritage Pullman Bank Employees' Profit Sharing Plan (the Plan) Located in Chicago, Illinois

[Application No. D–9276]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale (the Sale) by the Plan of certain notes (collectively, the Notes) to Heritage Pullman Bank (Heritage Pullman), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, fees, or other expenses in connection with the Sale; (3) the Notes are appraised by a qualified, independent appraiser; and (4) the sales price for the Notes is based upon an amount representing the greater of each Note's outstanding principal balance or each Note's fair market value as of the date of the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with total assets of $2,499,651.19 as of November 13, 1992. The Plan is sponsored by Heritage Pullman and, as of November 25, 1992, the Plan had 123 participants.

2. Among the assets of the Plan are two Notes (Note #1 and Note #2). Pursuant to an agreement in 1973, the Notes were transferred from Heritage Pullman into the Heritage Pullman Bank Retirement Plan (the Retirement Plan), a plan in which several independent banks participated. In 1987, the Retirement Plan was terminated, and the Notes became assets of the Plan.

3. James A. and Robbie J. Abbot have been the obligors under Note #1 since its inception on April 12, 1973. Note #1 is secured by a first mortgage on property located at 15016 South Vine Street, Harvey, Illinois. Note #1 had an initial principal amount of $28,000 and a twenty-five (25) year amortization schedule at an interest rate of 7.9 percent per annum. Note #1 has a delinquent payment history and is regularly one month in arrears. As of June 28, 1993, Note #1 had an outstanding principal balance of $10,556.99.

4. George Evans (Evans) has been the obligor under Note #2 since its inception on May 16, 1973. Note #2 is secured by a first mortgage on property located at 11840 South Princeton Avenue, Chicago, Illinois. Note #2 had an initial principal amount of $22,000 and a twenty-five (25) year amortization schedule at an interest rate of 7.9 percent per annum. Payments were made through March 1, 1989, and as of June 28, 1993, Note #2 had an outstanding principal balance of $13,222.33 and outstanding accrued interest in the amount of approximately $4178. Evans is presently involved in Chapter 13 bankruptcy proceedings in the U.S. Bankruptcy Court for the Northern District of Illinois.

5. In order that the Plan can avoid further administrative and legal costs associated with the delinquent and non-performing loans, Heritage Pullman requests an administrative exemption from the Department to purchase the Notes from the Plan.[4] Accordingly, Heritage Pullman proposes to acquire the Notes for a cash amount representing the greater of each Note's outstanding principal balance or each Note's fair market value on the date of the Sale. The Plan will not be required to pay any commissions, fees or other expenses in connection with these transactions.

6. The Notes have been valued by Mr. Donald L. MacNeil, President of Heritage Mortgage Company (Heritage Mortgage). Heritage Mortgage has been a mortgage banker for ten (10) years and has particular expertise relative to the origination and sale of mortgage loans in the greater metropolitan Chicago area. A Fannie Mae seller/servicer,

Heritage Mortgage actively sells loans to a wide variety of secondary market wholesalers. Heritage Mortgage represents that they are unrelated to and independent of Heritage Pullman. In an appraisal report dated March 8, 1993, Mr. MacNeil states that the present market value of each of the Notes would be eighty (80) percent of each Note's outstanding balance resulting in an aggregate amount of $19,023.45.

In an April 22, 1993 letter updating his appraisal report, Mr. MacNeil describes certain factors he considered in determining that the Notes should be

[4] The Department notes that the decisions to acquire and hold the Notes are governed by the fiduciary responsibility requirements of part 4, Subtitle B, title I of ERISA. In this regard, the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the acquisition and holding of the Notes.

discounted twenty (20) percent. They are as follows: The unusually small size of the loans, the fact that the loans are delinquent or in default, and the fact that the properties are located in distressed markets.

On the basis of these factors, Mr. MacNeil again concludes that each of the Notes are worth eighty (80) percent of each Note's outstanding balances. Because the outstanding balance of each of the Notes is greater than Mr. MacNeil's determination of each Note's fair market value, the proposed selling price of the Notes will be the aggregate of the Notes' outstanding balances or $23,779.32.

7. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, fees, or other expenses in connection with the Sale; (c) the Notes have been appraised by a qualified, independent appraiser; and (d) the sales price for the Notes will be based upon an amount representing the greater of each Note's outstanding principal balance or each Note's fair market value as of the date of the Sale.

For Further Information Contact: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

In the Matter of ALLTEL Corporation (ALLTEL), ALLTEL Corporation Pension Plan and Trust (the ALLTEL Pension Plan), ALLTEL Corporation Profit-Sharing Plan and Trust (the ALLTEL Profit-Sharing Plan), Allied Telephone Company Profit-Sharing Plan (the Allied Profit-Sharing Plan), Profit-Sharing Plan for Employees of Systematics, Inc. (the Systematics Profit-Sharing Plan), SLT Communication, Inc. Retirement Plan and Trust (the SLT Retirement Plan; collectively, the Plans)

ALLTEL Corp., et al. Located in Little Rock, AR

[Application Nos. D–9362, D–9363, D–9364, D–9365, D–9366]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed consolidation of certain assets of the Plans into a new master trust sponsored by ALLTEL (the Master Trust) provided that the following conditions are satisfied: (a) The fair market value of the assets of each Plan shall upon completion of the transfer to the Master Trust equal the fair market value of said assets immediately preceding the transfer, (b) other than cash, only assets which are traded on a recognized securities exchange will be subject to the proposed transaction, and (c) the Plans' trustee will not receive any fees or commissions for making the transfers from the individual Plans to the Master Trust.

Summary of Facts and Representations

1. ALLTEL is a Delaware Corporation with its principal corporate offices in Little Rock, Arkansas. ALLTEL and its subsidiaries are engaged in various aspects of the communications business. The Plans are maintained by ALLTEL or a sponsor within the ALLTEL controlled group of corporations. The ALLTEL Pension Plan and the SLT Retirement plan are defined benefit plans. The remaining plans are defined contribution plans.

2. The estimated number of participants in each of the Plans as of February 22, 1993 is:

a. ALLTEL Pension Plan: 8,410
b. ALLTEL Profit-Sharing Plan: 4518
c. Allied Profit-Sharing Plan: 730
d. Systematics Profit-Sharing Plan: 4,508
e. SLT Retirement Plan: 270

3. The approximate aggregate fair market value of the total assets of each of the Plans as of December 31, 1991 is:

a. ALLTEL Pension Plan: $281,573,896
b. ALLTEL Profit-Sharing Plan: $35,132,905
c. Allied Profit-Sharing Plan: $68,501,901
d. Systematics Profit-Sharing Plan: $45,056,924
e. SLT Retirement Plan: $6,500,533

4. NationsBank of Texas, N.A., a national banking association (NationsBank), is the Trustee for all of the Plans and will also serve as Trustee for the Master Trust. ALLTEL proposes that each of the Plans will invest in the Master Trust by transferring assets of the Plans, whether in cash or in kind, directly to the Master Trust and receiving units of participation from the Master Trust that reflect the allocation of each Plan's assets among the Master Trust investment funds.

5. The Master Trust will consist of two or more separate pooled investment funds. One of the funds, consisting primarily of shares of ALLTEL stock, which is listed and traded on the New York and Pacific Stock Exchanges, shall be known as the "ALLTEL Stock Fund". A committee appointed by the Board of Directors of ALLTEL (the Pension Investment Committee) will determine what other investment fund(s) shall be contained within the Master Trust and NationsBank will establish such funds pursuant to the direction of the Pension Investment Committee. Each investment fund will be managed by an investment manager appointed by the Pension Investment Committee. The assets of each Plan forming part of the Master Trust will be invested according to the instructions of the Pension Investment Committee.

NationsBank, acting as trustee, will transfer assets from the individual Plans to the Master Trust only at the direction of the Pension Investment Committee. Other than cash, only assets which are traded on a recognized securities exchange will be subject to transfer to the Master Trust. Assets of an individual Plan which are not transferred to the Master Trust will remain in that Plan. The value of Plan assets, other than cash, transferred under the proposed exemption transaction will be equal to the value of such assets on the recognized securities exchange on which those assets usually trade. The value of the securities transferred will be based on the prices of the securities on the exchange at the close of trading on the last day that the securities are traded on the exchange immediately preceding the transfer to the Master Trust.

6. The value of each Plan's assets will be the same immediately after a transfer made under the proposed exemption transaction as immediately prior to the transfer.

7. The applicant represents that no more than 10% of the fair market value of the assets of either the ALLTEL Pension Plan or the SLT Retirement Plan will consist of holdings of ALLTEL common stock (either directly, or indirectly through the Master Trust).[5]

8. The applicant represents that NationsBank will not receive any fees or commissions for making the transfers from the individual Plans to the Master Trust.

9. The applicant represents that the establishment of the Master Trust will result in a reduction in the aggregate of

[5] With respect to the defined contribution plans, the plan documents for the ALLTEL Profit-Sharing Plan and the Allied Profit-Sharing Plan provide that each Plan may have up to 100% of its assets invested in qualifying employer securities. The Systematics Profit-Sharing Plan specifies that up to 75% of plan assets may be invested in qualifying employer securities.

fees paid by each of the Plans to NationsBank as trustee. In addition, the applicant represents that the existence of the Master Trust will permit more efficient and economical administration of the collective investment of the assets involved.

10. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (1) The fair market value of each Plan's assets will remain unchanged after the transfer of the assets from the individual Plans to the Master Trust; (2) other than cash, only assets which are traded on a recognized securities exchange will be subject to transfer to the Master Trust; (3) the Master Trust allows for efficiencies and economies of scale that will result in greater net investment return for the Plans; and (4) the Master Trust will result in a reduction of fees paid by each of the Plans to NationsBank as Trustee.

For Further Information Contact: Ms. Virginia Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brookpark, OH

[Application No. D–9371]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed series of loans (the Loans) to be made, during a period of five years, from the Plan to Analex (the Employer), the Plan's sponsor and, as such, a party in interest with respect to the Plan; subject to the following conditions:

(1) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The amount of the Plan's assets involved in the Loans does not exceed 15% of the Plan's total assets at any time during the transaction; (3) The Loans will at all times be secured by collateral which is valued at not less than 200% of the aggregate balance of all outstanding Loans from the Plan to the Employer;

(4) Prior to each disbursement under the Loan agreement, an independent, qualified fiduciary must determine on behalf of the Plan that the Loans are in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving each disbursement under the Loan agreement;

(6) The fiduciary will monitor the Loans throughout the exemption to ensure compliance with the terms and conditions of the exemption and the Loans; and

(7) The fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to the exemption.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years from the date the exemption is granted with respect to the making of any Loan. Subsequent to the expiration of the exemption, the Plan may continue to hold any Loans originated during the proposed five year exemption period; provided that none of the Loans have a term exceeding five years.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a salary reduction feature. There were 382 participants as of March 3, 1993. As of December 31, 1992, the Plan's total assets were $8,729,264, with $3,211,057 representing Employer contributions and earnings thereon. The Plan provides for participant direction with respect to employee contributions to the Plan, and provides that an Administrative Committee will direct the investment of Employer contributions.

2. The Employer is a Nevada corporation maintaining its principal place of business in Cleveland, Ohio and operating in Florida, Colorado, Texas, California, Virginia and New Mexico. The Employer provides engineering services to commercial and government entities.

3. The Employer seeks an exemption to permit a series of Loans, over a five year period, from the Plan to the Employer. The Loans would be made solely from the Plan assets which are attributable to Employer contributions. The aggregate balance of all outstanding Loans at any one time will not exceed 15% of the fair market value of the Plan's total assets. Each Loan will provide for 60 equal monthly installments of principal and interest. The interest rate for the Loans will be no less than 2% above the prime rate published in the Wall Street Journal on the date of each Loan with a minimum interest rate of 7%. The interest rate for each Loan is a variable interest rate which will be adjusted on the first day of each quarter by the independent fiduciary for the Plan (see below).

4. The collateral securing each Loan will be a perfected security interest in accounts receivable (the Accounts Receivable) due to the Employer from its customers for engineering services rendered. Duvall & Associates, Inc. (D & A), an accounting firm in Dayton, Ohio, audited the Accounts Receivable on December 31, 1992. D & A represents that it is in the business of providing accounting, auditing, personal and business financial planning and tax and management services and that it provides accounting services to the Employer. D & A determined that the value of due and payable Accounts Receivable, as of December 31, 1992, was $3,159,003. Prior to the first disbursement under the Loan Agreement, another audit of the Accounts Receivable will be performed by D & A and the Accounts Receivable will be reevaluated by D & A on an annual basis.

5. Sorin & Sorin, Inc. (S & S), an independent accounting firm located in Cleveland, Ohio, has agreed to act as an independent fiduciary representing the interests of the Plan. S & S represents that it is qualified to act as an independent fiduciary with respect to the loan transaction and that it understands its responsibility as an ERISA fiduciary. S & S also represents that it has experience in the collection of loans secured by collateral. S & S maintains that it has no pre-existing business relationship with the Employer and that its income derived from the Employer and related parties, including the income derived from serving in the capacity of an independent fiduciary for this transaction, will not exceed 1% of S & S's gross annual income. S & S represents that it does not control, is not controlled by, and is not under common control with the Employer and is not otherwise affiliated with the Employer; and that no shareholder of the Employer has any ownership interest in S & S, nor does any shareholder of the Employer

hold a position as director or a senior management official of S & S.

6. In its capacity as independent fiduciary, S & S has reviewed various documents relating to the Loans and to the financial condition of the Employer. Those documents include, among other things, the Loan agreement and Promissory Note, the schedule of Accounts Receivable, and the audited financial statements of the Employer. In addition, S & S has reviewed the documents establishing the Plan, and the current allocation of the Plan's assets. After review of D & A's evaluation of the Accounts Receivable, S & S represents that it is satisfied that the Accounts Receivable would provide sufficient collateral for the proposed Loans. S & S has determined that the Loans are a prudent investment which will provide for diversification of the Plan's assets. S & S represents that the terms of the Loan agreement are commensurate with the terms that would be required by an independent financial institution on a similar loan and that the rate of interest represents fair market value.

As independent fiduciary, S & S represents that at no time while any Loan is outstanding will the value of the collateral securing the Loan be less than 200% of the aggregate balance of all outstanding Loans from the Plan to the Employer. The independent fiduciary will have the authority to call upon the Employer to pay down the amount of the Loans, or in the alternative, to require the Employer to provide additional collateral to secure any Loan in order to ensure that the 200% requirement will continue to be met throughout the duration of the exemption. Moreover, in the event the Employer defaults on any Loan, the independent fiduciary is empowered to execute and levy on the collateral securing the Loan. The Employer will execute any and all documentation needed to evidence and perfect the Plan's security interest in the collateral securing any Loan and the independent fiduciary will ensure that appropriate documentation is recorded to perfect the Plan's security interest.

7. As independent fiduciary, S & S represents that it will continuously monitor the Loans throughout the transaction to assure that the terms and conditions of the Loans and the exemption are complied with and the Loan payments are made when due. In reviewing compliance with the terms and conditions of the Loans, S & S will review, among other things, the interest rate, the sufficiency of the collateral, the financial condition of the Employer and the total amount of outstanding Loans. Each disbursement under the Loan agreement requires prior approval by S & S as independent fiduciary. S & S will not make disbursements unless it finds them to be appropriate and in the interest of Plan participants and beneficiaries. S & S represents that no term or condition of any Loan will be inconsistent with the terms and conditions described herein.

8. S & S has reviewed the Plan's asset portfolio for 1992 and concluded that the Loans are a prudent investment which will provide further diversification of the Plan's assets.

S & S represents that the Loans by the Plan will provide a better rate of return than the present short term and fixed term income investments that have been generated for the Plan over the last several years and will, therefore, benefit the participants and beneficiaries of the Plan. Furthermore, it is represented that the Plan will not bear any cost with respect to the Loan transaction. S & S maintains that it has reviewed the audited financial statements prepared for the Employer. Based on this review and the financial history of the Employer, S & S has concluded that with respect to the Loans, the Employer should be able to make payments in a timely manner.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Plan's independent fiduciary has reviewed the terms and conditions of the proposed exemption and series of Loans and has determined that the Loans are in the best interest of the Plan's participants and beneficiaries; (b) the independent fiduciary will review and approve each Loan prior to making disbursements; (c) the Loans will at all times be secured by collateral which will be valued at not less than 200% of the aggregate balance of all outstanding Loans from the Plan to the Employer; (d) the aggregate balance of all outstanding Loans will not exceed 15% of the fair market value of the Plan's assets; and (e) the proposed exemption will be of a temporary nature not to exceed five years.

For Further Information Contact: Ms. Virginia Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of July 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–17093 Filed 7–19–93; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 93–43; Exemption Application No. D–9291, et al.]

Grant of Individual Exemptions; The Society National Bank and the Society Corp., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of

VOL
58
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137
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Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Society National Bank and the Society Corporation Located in Cleveland, Ohio

[Prohibited Transaction Exemption 93–43; Exemption Application No. D–9291]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit (the Advances) by the Society Corporation (the Corporation) to the Managed Guaranteed Investment Contract Fund (the Fund), the trustee of which is the Society National Bank, a subsidiary of the Corporation, and in which the investors are employee benefit plans covered by the Act, regarding guaranteed investment contract No. GA–5005 (the GIC) issued to the Fund by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the Funds's potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Fund than those when the Fund could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/ or expenses are paid by the Fund with respect to the Advances or the Repayments;

(C) The Advances are made only in lieu of payments due from Mutual Benefit with respect to the GIC;

(D) The Repayments shall not exceed the total Advances; and

(E) The Repayments shall in no event exceed the amounts actually received by the Fund from Mutual Benefit, any conservator, trustee or other person performing similar functions with respect to Mutual Benefit, and/or any state guaranty fund or other entity, other than the Corporation, acting as surety or insurer with respect to Mutual Benefit.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 30, 1993 at 58 FR 16705.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Spaulding Associates, Inc. (Spaulding), the Bricklayers Local No. 39 Pension Plan (the Pension Plan), the Bricklayers Local No. 39 Health and Welfare Plan (the Health and Welfare Plan) and the Bricklayers Local No. 39 Annuity Plan (the Annuity Plan; collectively, the Plans) Located in Boston, MA

[Prohibited Transaction Exemption 93–44; Exemption Application Nos. D–8801, D–9352, L–9353 and D–9354, respectively]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The past leasing of certain office space in a building (the Building) owned by the Pension Plan to Spaulding, a party in interest with respect to the Pension Plan; and (2) the proposed leasing of new office space in the Building by the Pension Plan to Spaulding.

In addition, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed leasing of office space by the Pension Plan to the Bricklayers Local No. 39 (the Union).

Further, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed leasing of office space in the Building by the Pension Plan to the Health and Welfare Plan and the Annuity Plan.

This exemption is conditioned on the following requirements: (1) The terms of all such leasing arrangements have been, and will remain, at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party; (2) Mr. Norman A. Bergeron, an independent fiduciary who has approved of the leasing arrangements, agrees to monitor all prospective leases on behalf of the Pension Plan as well as the terms and the conditions of the transactions and the exemption at all times; (3) the rental charged by the Pension Plan under each lease is based upon the fair market rental value of the premises as determined by an independent appraiser; (4) the Building is revalued annually by an independent appraiser who has been selected by Mr. Bergeron; (5) if appropriate, Mr. Bergeron makes adjustments to the rentals charged for the office space based upon the annual appraisals of the Building; and (6) within 90 days of the publication in the **Federal Register** of the grant of this notice of proposed exemption, Spaulding and the Union file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of their past leasing arrangements with the Pension Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 14, 1993 at 58 FR 28628.

Effective Date: This exemption is effective as of December 28, 1989 with respect to the leasing arrangement between the Pension Plan and

Spaulding. With respect to all other leasing arrangements, this exemption is effective as of the date of the grant.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

United Mine Workers of America 1974 Benefit Plan and Trust (the Plan) Located in Washington, DC

[Prohibited Transaction Exemption 93–45; Exemption Application No. D–8851]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the past extension of credit (the Loan) to the Plan by the Mellon Bank, N.A. (Mellon Bank), a party in interest with respect to the Plan; provided that all terms of the Loan were at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 1, 1992 at 57 FR 11094.

Effective Date: This exemption is effective as of December 31, 1990.

Written Comments: The Department received twelve written comments and no requests for a hearing. The written comments were requests for clarification and explanation of the Notice of Proposed Exemption, and were submitted by participants and beneficiaries of the Plan. An official of the Department responded to the requests by telephone.

After consideration of the entire record, the Department has determined to grant the proposed exemption.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Old Guard Mutual Insurance Company Profit Sharing and Retirement Savings Plan (the Plan) Located in Lancaster, Pennsylvania

[Prohibited Transaction Application 93–46; Exemption Application No. D–9297]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of certain limited partnership interests (collectively, the Partnership Interests) by the Plan to Old Guard Mutual Insurance Company (the Employer), the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions are satisfied;

(1) The sale will be a one-time cash transaction;

(2) No commissions or fees will be paid by the Plan as a result of the sale; and

(3) The sale price will be the higher of: (a) The original amounts paid by the Plan at the time of acquisition, less cash distributions through the date of the sale to the Plan; or (b) the current fair market value of the Partnership Interests on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1993, at FR 58 28048/28050.

Written Comments: A written comment submitted by the applicant indicated that due to an unforeseen shortage of capital, the Employer may not proceed with the above-referenced transaction in the near future. The ERISA Procedure (55 FR 32836, 32847, August 10, 1990) specifically provides in § 2570.49(a) and (b) that an exemption does not take effect or protect parties in interest from liability with respect to the exemption transaction unless the material facts and representations contained in the application and in any materials and documents submitted in support of the application were true and complete, and that an exemption is effective only * * * under the conditions set forth in the exemption. As a result, the Department notes that if the Employer elects to utilize this exemption, the material facts and representations contained in the application and any materials and documents submitted in support of the application must accurately reflect the terms and conditions of the transaction at the time the sale is consummated. In this regard, the applicant understands that the contemplated transaction, when consummated, may require the filing of a new exemption request with the Department if there have been material changes regarding the proposed transaction or the parties involved.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Stewart Company Defined Benefit Pension Plan and Trust Located in Torrance, CA

[Prohibited Transaction Exemption 93–47; Exemption Application No. D–9290]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of $219,000 by the Stewart Company Defined Benefit Pension Plan & Trust (the Plan) to the Stewart Family Trust (the Trust), a party in interest with respect to the Plan, provided: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (b) an independent fiduciary has determined that the proposed Loan is in the best interests of the Plan and represents that he will monitor the terms and conditions of the Loan and the terms of the exemption throughout its duration; (c) the Loan is secured by a first mortgage on real property having a fair market value not less than 150% of the principal amount of the Loan throughout its duration; (d) the fair market value of the collateral has been determined by a qualified, independent appraiser; (e) the Loan does not exceed 25% of the assets of the Plan for the duration of the Loan; and (f) the principal amount of the Loan does not exceed $219,000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 14, 1993 at 58 FR 28628.

For Further Information Contact: Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

William L. Brice, D.D.S., P.C. Profit Sharing Plan (the Plan) Located in Fort Collins, CO

[Prohibited Transaction Exemption 93–48; Exemption Application No. D–9345]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan for the total cash consideration of $162,000, of certain improved real property (the Property), to William L. Brice, D.D.S. and Charlene D. Brice, the Plan's

trustees as well as disqualified persons with respect to the Plan.[1]

This proposed exemption is conditioned on the following requirements: (1) The sale represents a one-time transaction for cash; (2) the sales price is based upon the appraised value of the Property as determined by a qualified, independent appraiser; and (3) the Plan does not pay any real estate fees or commissions in connection therewith.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 2, 1993 at 58 FR 31429.

For Further Information Contact: Ms Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of July 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–17044 Filed 7–6–93; 8:45 am]

BILLING CODE 4510–29–P

[1] Because Dr. Brice and his wife are the sole participants in the Plan, there is no jurisdiction under title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

NATIONAL COMMISSION ON FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT

Meeting

AGENCY: National Commission on Financial Institution Reform, Recovery and Enforcement.

Time and Date: 9:30 a.m. to 12:00 p.m., Tuesday, July 27, 1993.

Place: Main Lounge, National Press Club, 13th Floor, 529 14th Street NW., Washington, DC 20045.

Status: The meeting will be open to the public.

Matters to be Considered: At the meeting, the Commission shall release its final report to the President and Congress on the origins and causes of the savings and loan crisis and the Commission's recommendations for reform.

Contact Persons for Additional Information: Larry G. Hicks or Linda Johnson on (202) 632–1556.

Larry G. Hicks,

Director of Administration.

[FR Doc. 93–17152 Filed 7–19–93; 8:45 am]

BILLING CODE 6820–PD–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

Atlas Minerals Corp.; Intent to Amend Source License

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA–917 for the Moab Mill to approve a plan for reclamation of the mill's tailings disposal area as supported by a finding of no significant impact regarding the proposed action for Atlas Corporation, Utah.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA–917 to incorporate a revised tailings disposal area reclamation plan for Atlas Corporation's Moab Mill located near Moab, Utah. The accepted plan reclaims the disposal area in place. The proposed action is supported by a Finding of No Significant Impact as concluded in the Environmental Assessment prepared by the Commission.

DATES: The comment period expires August 19, 1993.

ADDRESSES: Copies of the license amendment request and the staff evaluations which are the bases for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Lakewood, Colorado, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules Review and Directives Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado 80225.

Comments may be hand-delivered to room P–223, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado 80225. Telephone: (303) 231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans for nonoperational tailings impoundments as soon as practicable, but in any event not later than September of 1993.

The tailings disposal area for the Moab Mill contains approximately 10.5 million tons of material. Tailings were disposed into an approximately 130-acre diked impoundment constructed to a maximum height of about 110 feet. Moab Wash, an ephemeral channel, is located along the north and east sides of the impoundment and discharges into the Colorado River east of the site. The Colorado River flows along the eastern side of the facility.

The reclamation plan that was prepared in 1981, and approved by NRC in 1982, was based on projected disposal capacity requirements and was designed for an ultimate crest elevation of 4076 feet mean sea level (msl). The maximum crest elevation constructed during mill operations was 4058 feet msl, resulting in the necessity to

redesign the reclamation plan. In accordance with 10 CFR part 40, appendix A, the licensee, Atlas Corporation, submitted a revised reclamation plan by letter dated August 2, 1988. Review of the proposed plan resulted in requests for additional information, reevaluation, and redesign. As a result, Atlas submitted a revised reclamation plan by letter dated June 4, 1992. Review of this document resulted in a request for additional information dated March 5, 1993. Revisions to the June 4, 1992, reclamation plan were submitted by letters dated April 14, and April 23, 1993.

On April 6, 1993, the license submitted an Environmental Report Supplement in support of the proposed revised reclamation plan for the disposal area. This document was submitted as a supplement to the Environmental Report submitted in 1973 by the licensee, NRC's "Final Environmental Statement, Moab Uranium Mill," (NUREG–0453, January 1979), NRC's "Final Generic Environmental Impact Statement on Uranium Milling," (NUREG–0706, September 1980), and Atlas' license renewal application dated 1984. The supplement specifically addresses the expected impacts associated with mill tailings reclamation and evaluates alternatives for mitigating the impacts.

The Environmental Assessment was prepared by the Commission to evaluate the proposed licensing action. It was concluded that the reclamation of the tailings in accordance with the proposed plan would not have a significant impact on the environment. Short-term impacts to the environment will be minimal, while long-term impacts will be reduced to levels determined to be acceptable by promulgation of appendix A to 10 CFR part 40. The bases for the finding of no significant impact (FONSI) are provided in an Environmental Assessment.

Review and independent analyses of the revised reclamation plan for the Moab Mill disposal area have resolved all engineering issues and open items regarding reclamation of the disposal area except as noted, and it is concluded that the proposed design is consistent with current design guidance and applicable portions of 10 CFR part 40, appendix A. The bases for this determination are provided in the Memorandum for Docket File No. 40–3453 dated July 7, 1993. It is proposed to amend Source Material License SUA–917 by deleting License Condition No. 37 (regarding the configuration of the Moab Wash) and by modifying License Condition No. 41 to read as follows:

41. The licensee shall reclaim the tailings disposal area in accordance with Sections 1, 4, 5, 6, and 9 of the June 4, 1992, submittal entitled "Atlas Corporation, Technical Specifications, Uranium Mill and Tailings Disposal Area Reclamation" as revised by the April 14, 1993, submittal, and with the drawings submitted by letter dated April 23, 1993, with the following exceptions:

A. The sandy soil layer of the radon barrier shall be 1 foot over the coarse tailings and 2 feet over the fine tailings. The drawings and specifications must be revised and submitted to reflect this change in the design by October 31, 1993.

B. The fenced restricted area shall include the reconfigured Moab Wash. Drawing 88–067–E66 (April 23, 1993) shall be revised and submitted to reflect this change in the design by October 31, 1993.

C. The licensee shall submit a revised outslope design by October 31, 1993, for review and approval that assumes Moab Wash encroaches upon the embankment.

D. The licensee shall submit an erosion protection design for the Northeast Debris Pit located adjacent to the toe of the reclaimed disposal area by October 31, 1993. That protection shall consider flows from Moab Wash and runoff from the reclaimed outslope during a design basis event.

E. The bulk specific gravity of the rock shall be determined by ASTM C 127.

F. Durability testing of the rock portion of the soil/rock matrix shall be performed at the same frequency as that specified for riprap in Section 9.3.4.1 of the specifications dated April 14, 1993.

A completion report including as-built drawings, verifying that reclamation of the site has been performed according to the approved plan shall be provided within 6 months of the completion of construction. The report shall also include summaries of results of the quality assurance and control testing to demonstrate that approved specifications were met.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 93–17182 Filed 7–19–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on August 4, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 4, 1993–8:30 a.m. until the conclusion of business.

The Subcommittee will discuss NRC staff's response to ACRS comments and recommendations related to certain policy, technical, and licensing issues pertaining to evolutionary and advanced light-water reactor designs. Also, the Subcommittee will discuss the staff positions on certain remaining policy issues for passive plant designs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:45 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

VOL 58 ISS 137 JL 20 1993 UMI

Dated: July 13, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-17183 Filed 7-19-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 4, 1993, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of certain portions that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, August 4, 1993—2 p.m. until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492-4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 13, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-17184 Filed 7-19-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-11722 License No. 34-13103-02 EA 92-132]

City of Columbus, Division of Construction Inspection, Columbus, OH; Order Imposing Civil Monetary Penalty

I

The City of Columbus, Division of Construction Inspection, Columbus, Ohio (Licensee) is the holder of Byproduct License No. 34-13103-02 first issued by the Nuclear Regulatory Commission (NRC or Commission) on June 4, 1981, and renewed in its entirety on March 24, 1992. The license is due to expire on March 31, 1997. The license authorizes the Licensee to use sealed sources of cesium-137 not to exceed 10 millicuries (Troxler Drawing No. A 102112) and sealed sources of americium-241 not to exceed 50 millicuries each (Troxler Drawing No. A-102451) in Troxler Model 3400 Series surface/ moisture density guages in accordance with the conditions specified therein. Licensed material may be stored at the Licensee's facility located at 1800 East 17th Avenue, Columbus, Ohio, or at temporary job sites of the Licensee anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material.

II

An inspection of the Licensee's activities was conducted on July 23 and 25 1991, and the NRC Office of Investigations subsequently conducted an investigation of certain apparently deliberate actions. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee as Enclosure 1 to the NRC's letter dated April 6, 1993. The Notice stated the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice by letter dated May 19, 1993. In its response, the Licensee did not specifically admit or deny the violation and requested a $1,000 remission of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $2,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 13th day of July 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On April 6, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection on July 23 and 25, 1991, and a subsequent investigation concerning the violation conducted by the NRC Office of Investigations. The City of Columbus, through its Chief Environmental and Utilities Attorney, responded to the Notice by letter dated May 19, 1993. In its response, the Licensee did not specifically admit or deny the violation, and requested remission of the civil penalty by $1,000. The NRC's evaluation and conclusions regarding the Licensee's request are as follows:

Restatement of Violation

License Condition No. 14 which was in effect from June 4, 1981, until it was superseded by License Condition No. 19 on December 12, 1990, prohibited the Licensee from removing sealed sources containing licensed material from gauges. License Condition No. 19 which was in effect from December 12, 1990, until the license was renewed in its entirety on March 24, 1992, required that any cleaning, maintenance or repair or gauges that requires removal of the source rod (sealed sources) shall be performed only by the manufacturer or by other persons specifically licensed by the Commission or an Agreement State to perform such services.

Contrary to the above, from approximately 1982 to July 21, 1991, Licensee employees routinely removed source rods in order to clean and maintain the gauges and they were not representative of the manufacturer or were not specifically licensed by the Commission or an Agreement State to perform such services. Specifically, from 1982 to November 1990, one individual removed sources rods at least twice a year to clean the gauges. From at least December 12, 1990, to July 21, 1991, another individual removed the source rods from at least three gauges on a monthly basis to clean and maintain the gauges. A third individual removed the source rod from one moisture density gauge on at least one occasion from December 12, 1990, to July 21, 1991, to clean and maintain the gauge.

Restatement of Licensee's Response to Violation

The Division's first gauge operator and Radiation Safety Officer (RSO) stated that during his initial training classes with Troxler Electronics, he was instructed in the removing and cleaning of the gauge source rod using the lead shield. He was advised of the necessary safety precautions to follow, and was led to believe that the exposure level, once the rod was removed, was minimal and not a safety hazard.

The sole purpose that this RSO and gauge user and successive RSOs and gauge operators gave for continued removal and cleaning of the source was not a deliberate attempt to violate NRC regulations or to intentionally disregard the NRC's authority, but to keep maintenance costs and periods of time without the much needed gauges to a minimum.

Prior to the City's contracting with an outside contractor for cleaning, the Division's only option was to send the gauges back to the manufacturer's headquarters in North Carolina. Services from the City's present contractor were not available locally at that time, and service by the manufacturer itself entailed lost time and expense.

NRC's Evaluation of Licensee's Response

The NRC recognizes that the manufacturer may have demonstrated to Licensee personnel safe methods to clean and maintain a soil moisture density gauge. The NRC acknowledges that the two previous RSOs routinely removed source rods to clean gauges in an attempt to save money for the City of Columbus, and they were not instructed by their supervisors or managers to perform this unauthorized maintenance. Nonetheless, their training and activities did not relieve the Licensee from the condition of the license that prohibited the removal of source rods by other than a specifically authorized individual.

This case is of particular concern because the RSOs, the technical experts in the safe handling of these nuclear gauges with responsibility for ensuring that Licensee employees satisfy the conditions in the license, were the individuals who exposed and removed the source rods. The NRC expects RSOs to be aware of regulatory requirements and follow them, particularly if the requirement is specifically stated in a license condition. Individuals who are specifically authorized to perform maintenance are not only trained in the proper maintenance procedures, but also receive radiation safety training specific to the job. Furthermore, an authorized person is issued specific extremity dosimetry in order to show the radiation exposure to the hands during source rod removal. This specialized training and dosimetry were not available to any of your employees who performed this maintenance. The only dosimetry available to them was a personnel dosimeter (film badge), which is not sufficient for this specific type of work; therefore, it cannot be conclusively shown that the employees did not receive a radiation exposure to the extremities. The NRC acknowledges that no individual's personnel dosimeter showed a significant exposure.

The Licensee points out that such maintenance services were not locally obtainable at the time of the violation and that the devices would have had to be sent to the manufacturer for maintenance at considerable loss of time and expense to the City. However, the City of Columbus had the option of amending its NRC license to allow this maintenance by an employee who had received the necessary radiation safety training and who used proper dosimetry.

As to the willfulness of the violations and the Licensee's request for $1,000 remission of the civil penalty, in sworn, transcribed testimony, two of the previous RSOs stated that they knew the NRC prohibited the removal of the source rods (sealed sources), and in fact discussed that point between themselves. Regardless of their motive to save money for the City of Columbus, these RSOs, the technical experts who are expected to set the example for the safe use of the nuclear gauge to other gauge users, knew the NRC prohibited the removal of source rods by other than specifically authorized personnel, yet performed this unauthorized maintenance practice for many years. The NRC concludes that the violations were willful.

As stated in the NRC's letter, dated April 6, 1993, the civil penalty adjustment factors described in the NRC Enforcement Policy were considered in arriving at the base civil penalty. That letter stated that the civil penalty was increased an additional 200 percent "because your Radiation Safety Officers, whom you specifically designated to ensure compliance with NRC regulatory requirements were involved in willful violations. This increase in the civil penalty emphasizes the unacceptability of involvement of Radiation Safety Officers in willful violations." The Licensee's letter of May 19, 1993, in response to the Notice, does not challenge any or all of the NRC's explanation for arriving at the $2,000 civil penalty.

NRC Conclusion

The NRC staff has concluded that the information provided in the Licensee's response does not provide an adequate basis for mitigation of the civil penalty. The substance of the Licensee's May 19, 1993, response to the Notice centers around an attempt to keep maintenance costs as low as possible for the City. Employees who were specifically charged with handling nuclear gauging devices in a safe manner and were the Licensee's technical experts in the safe use of the devices, purposely ignored a condition of the NRC license. License Conditions are established not only for the safety of the Licensee's employees, but also for the public health and safety. The disregard of NRC regulations and license conditions cannot be tolerated by the NRC and should not be excused by the City of Columbus as a way to save money. The only argument the Licensee makes for a remission of $1,000 of the proposed civil penalty is to save tax money. The NRC's Enforcement Policy in 10 CFR part 2, appendix C, does not provide for remission of a civil penalty on this basis and the staff has determin4ed that remission is not appropriate in this case.

The NRC has concluded that this violation occurred as stated and no adequate basis for either reduction of the severity level or for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed civil penalty in the amount of $2,000 should be imposed.

[FR Doc. 93–17186 Filed 7–19–93; 8 45 am]

BILLING CODE 7590–01–M

VOL 58 ISS 137 JL 20 1993 UMI

[Docket No. 030–05373; License No. 29–09814–01, EA 92–136]

Eastern Testing and Inspection Inc., Thorofare, NJ; Order Modifying Order Imposing Civil Monetary Penalty

I

Eastern Testing and Inspection, Inc. (Licensee) is the holder of Byproduct Material License No. 29–09814–01 issued by the Nuclear Regulatory Commission (NRC or Commission) which authorizes the Licensee to use byproduct materials for use in industrial radiography and replacement of sources in accordance with the conditions specified therein. The license was issued on February 2, 1964, was last renewed on Febuary 20, 1987, and remains active under the timely renewal application submitted on February 3, 1992.

II

As a result of a June 17, and July 7 and 8, 1992, NRC inspection of the Licensee's activities, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of Seven Thousand Five Hundred Dollars was served upon the Licensee by NRC letter dated September 17, 1992. The Licensee responded to the Notice in two letters, dated October 16 and 26, 1992, respectively. In its response, the Licensee did not deny the violations, but requested full mitigation of the civil penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff determined that the violations occurred as stated that the penalty proposed for violation designated in the Notice should be imposed. Accordingly, NRC issued an Order Imposing a Civil Monetary Penalty to the licensee on January 25, 1993.

III

The licensee responded in a letter dated February 17, 1993 and requested a hearing. By letter dated March 17, 1993, the NRC confirmed a telephone conversation between Mr. H.J. Soni, Licensee President, and NRC representative in which the Licensee requested delay in processing of its February 17, 1993 hearing request until after NRC reviewed additional information the Licensee was to submit for consideration. In correspondence dated April 13, 1993, May 10, 1993 and June 15, 1993, the Licensee submitted the additonal information. These letters provided financial information to support the Licensee's assertion concerning its ability to pay, and additional information the Licensee considered relevant to the violations. During a June 22, 1993 telephone conversation between the NRC staff and Messrs. H. Soni, D. Soni, and J. Badiali, EIT, the NRC staff, as provided for in the NRC Enforcement Policy, proposed a $5,000 civil penalty based on the licensee's demonstrated financial difficulty. The Licensee agreed to payment of the $5,000 penalty, with interest, over five years and indicated that it did not want the NRC staff to proceed with the request for hearing. The Licensee signed a Promissory Note on June 29, 1993, for Payment of the Civil Penalty in response to an NRC letter dated June 24, 1993.

Upon review of the facts of this case, including the information submitted in the licensee's April 13, 1993, May 10, 1993, and June 15, 1993, letters, I find that the financial information provided on the Licensee's assertion of adverse financial impact and its ability to pay support a $2,500 reduction of the $7,500 civil penalty imposed in the January 25, 1993 Order. This is consistent with the NRC Enforcement Policy and, therefore, on July 12, 1993, I countersigned and, thereby, accepted the Promissory Note in payment for the Civil Monetary Penalty.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Order Imposing a Civil Monetary Penalty dated January 25, 1993, is modified to change Section IV as follows:

The Licensee pay a civil penalty of $5,000 in accordance with the procedures and payment installments provided in the attached Promissory Note executed by the Licensee's President on June 29, 1993, and countersigned by the Director, Office of Enforcement on July 12, 1993. The Licensee's execution of the Promissory Note, as stated herein, constitutes a waiver of its rights to contest the amount of the civil penalty or the underlying violations on which the civil penalty is based.

Dated at Rockville, Maryland, this 13th day of June 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Officer of Enforcement.

[FR Doc. 93–17187 Filed 7–19–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32630; International Series Release No. 563; File No. SR–OCC–93–15]

Self-Regulatory Organizations; The Options Clearing Corp.; Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Friday Expiration Date for Certain Foreign Currency Option Contracts

July 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 9, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to have Friday instead of Saturday as the expiration date for certain foreign currency option contracts to be listed in the future.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to have the Friday immediately preceding the third Wednesday of the expiration month instead of the Saturday immediately preceding the third Wednesday of the expiration month as the expiration date for certain foreign currency option contracts listed for trading during or after June 1993. For end-of-month option contracts listed for trading during or after July 1993, the expiration

[1] 15 U.S.C. 78s(b)(1) (1988).

date will be the last Friday of the expiration month instead of the last Saturday of the expiration month. On June 11, 1993, the Commission granted accelerated approval through July 16, 1993, of these proposed changes.[2]

OCC is now proposing to make permanent the change in the expiration date of these foreign currency option contracts and to make similar changes to the expiration date of certain cross-rate foreign currency options. OCC is changing the expiration date in certain foreign currency option contracts in order to reduce the overtime costs associated with weekend expiration processing. The proposed change of the expiration date of foreign currency option contracts from Saturday to Friday will be implemented initially for foreign currency option contracts listed for trading during or after June 1993 and for end-of- month foreign currency option contracts listed for trading during or after July 1993. Two exceptions are built into the new expiration date.

First, if the expiration date for a foreign currency option contract falls on a day that the Exchange is not open for business, the expiration date for such option contract will be the preceding day the Exchange is open for business.

Second, certain long term foreign currency option contracts listed before June 1993, most notably the June 1994 and the December 1994 series, have Saturday expirations.

In Article XV, Section 1 of the By-Laws, certain definitions are amended to reflect the proposed change in the expiration date. As described above, the definition of expiration date is amended to reflect that the expiration date for foreign currency option contracts listed before June 1993 and all foreign currency option contracts expiring in June 1994 and December 1994 will continue to be the Saturday immediately preceding the third Wednesday of the expiration month of such option contracts while the expiration date for foreign currency option contracts listed for trading during or after June 1993 will be the Friday immediately preceding the third Wednesday of the expiration month of such option contracts. Similarly, the definition of expiration date is amended to reflect that the expiration date for existing end-of-month option contracts listed for trading before July 1993 will continue to be the Saturday following the last Friday of the expiration month of such option contracts while the expiration date for end-of-month foreign currency option contracts listed for trading during or after July 1993 will be the last Friday of the expiration month of such option contracts.

Language is being added to the definition of expiration date to provide that foreign currency option contracts and end-of-month foreign currency option contracts that otherwise would have an expiration date on a day that the Exchange is not open for business will expire on the preceding day that the Exchange is open for business. Lastly, Article XV, Section 1 has been alphabetized to facilitate the referencing of terms contained in that section.

Paragraph (b) has been added to Rule 1603. Paragraph (a), which contains the current language of Rule 1603, provides that foreign currency option contracts expiring on Saturday generally shall utilize the expiration date exercise procedures set forth in Rule 805. In contrast, new paragraph (b) provides that foreign currency option contracts expiring on Friday generally shall utilize the expiration date exercise procedures set forth in Rule 806. Rule 806(b)(1) establishes timeframes for the issuance of reports by OCC and an operational cut-off time for exercises by clearing members.[3] The current language of Rule 1603 allows OCC's Board of Directors, with thirty days notice to all foreign currency clearing members, to make OCC's exercise-by-exception processing applicable to expiring foreign currency option contracts. This language has been retained in Rule 1603(a) but has been modified to apply only to foreign currency option contracts expiring on Saturday. A parallel provision has been added to Rule 1603(b) with respect to foreign currency option contracts expiring on Friday.

Finally, Rule 1606A has been amended to provide OCC with more flexibility in setting a cut-off time for the submission of delivery versus payment authorizations ("DVP Authorizations"). Currently, DVP Authorizations must be submitted to OCC by 12:00 p.m. Central Time on the date on which any exercise and assignment report is made available. Currently, exercise and assignment reports for foreign currency option contracts are made available on the Sunday following the Saturday expiration date, and accordingly, DVP Authorizations are required to be submitted by the cut-off time on that Sunday. However, with respect to newly listed foreign currency option contracts which will expire on Friday, OCC anticipates that the exercise and assignment report will be made available on the Saturday following the expiration date even though for purposes of processing OCC does not need the DVP Authorization until Sunday.[4] Accordingly, Rule 1606A now provides that DVP Authorizations may be submitted on the date on which any exercise and assignment report is made available or at such other times as OCC shall prescribe.

The purpose of this filing also is to make similar changes to the expiration date of certain cross-rate foreign currency options. Because OCC's clearance and settlement procedures for foreign currency options and cross-rate foreign currency options are the same, OCC believes that it is appropriate to make conforming changes to the expiration date of cross-rate foreign currency options. Specifically, cross-rate foreign currency options listed for trading during or after June 1993 will expire on the Friday instead of the Saturday immediately preceding the third Wednesday of the expiration month. End-of-month cross-rate foreign currency options listed for trading during or after June 1993 will expire on the last Friday of the expiration month rather than on the Saturday following the last Friday.

The change in expiration date for cross-rate foreign currency options requires the same exceptions to which other foreign currency options are subject. As discussed above, if any expiration date for a cross-rate foreign currency option falls on a day that the Exchange is not open for business, the expiration date for such option contract will be the preceding day the Exchange is open for business.

Second, certain long term cross-rate foreign currency option contracts listed before June 1993 (most notably the June 1994 and the December 1994 series) have Saturday expirations. To avoid investor confusion, all cross-rate foreign currency option contracts listed for trading in the future with expiration dates coincident with those existing

[2] Securities Exchange Act Release No. 32458 (June 11, 1993), 58 FR 33848 [File No. SR–OCC–93–09]. The temporary approval order contained in Release No. 34–32458 specifically did not provide for OCC to issue and clear any cross-rate foreign currency options with a Friday expiration date.

[3] At or before 6 p.m. Central Time (7 p.m. Eastern Time) on each business day that is an expiration date for a foreign currency option contract, OCC will make available to clearing members a report listing each expiring foreign currency option contract. A clearing member desiring to exercise foreign currency option contracts must return its exercise instructions to OCC by 8:30 p.m. Central Time (9:30 p.m. Eastern Time). Rule 1603(b)(1).

[4] OCC anticipates it may make systems changes in the future to allow for processing of DVP Authorizations on the Saturday following expiration. If such changes are made, OCC will file with the Commission a proposed rule change under section 19(b) of the Act.

contract months, June 1994 and December 1994, will continue to be listed with a Saturday expiration. Furthermore, OCC will make no changes to existing cross-rate foreign currency option contracts. Such contracts will continue to expire on the Saturday immediately preceding the third Wednesday of the month.

To accommodate the proposed changes to the expiration date of cross-rate foreign currency options, certain modifications to OCC's By-Laws and Rules are being proposed. In Article XX, Section 1 of the By-Laws, certain definitions are being amended. As described above, the definition of expiration date is being amended to reflect that the expiration date for existing cross-rate foreign currency options and cross-rate foreign currency option contracts expiring in June 1994 and December 1994 will continue to be the Saturday immediately preceding the third Wednesday of the expiration month of such option contracts while the expiration date for cross-rate foreign currency options listed for trading during or after June 1993 will be the Friday immediately preceding the third Wednesday of the expiration month of such option contracts. The definition of expiration date is also being amended to reflect that the expiration date for end-of-month cross-rate foreign currency option contracts listed for trading before July 1993 will continue to be the Saturday following the last Friday of the expiration month of such option contracts while end-of-month cross-rate foreign currency option contracts listed for trading during or after July 1993 will be the last Friday of the expiration month of such options contracts. Language is also being added to the definition of expiration date to provide that if the expiration date for a cross-rate foreign currency option is a day that the Exchange is not open for business, the expiration date for such option will be the preceding day that the Exchange is open for business. Finally, Article XX, Section 1 has been alphabetized to facilitate the referencing of terms contained in that section.

Paragraph (b) is being added to Rule 2103. Paragraph (a), which contains the current language of Rule 2103, provides that cross-rate foreign currency option contracts expiring on Saturday generally shall utilize the expiration date exercise procedures set forth in Rule 805. In contrast, new paragraph (b) provides that cross-rate foreign currency options expiring on Friday generally shall utilize the expiration date procedures set forth in Rule 806, which sets forth the expiration date exercise procedures for options that expire on a business day. The current language of Rule 2103 allows OCC's Board of Directors with thirty days notice to all cross-rate foreign currency members to make OCC's exercise-by-exception processing applicable to expiring foreign currency options. This language is being retained in Rule 2103(a) but has been modified to apply only to foreign currency option contracts expiring on Saturday. A parallel provision is being added to new Rule 2103(b) to grant OCC's Board of Directors similar powers with respect to cross-rate foreign currency options expiring on Friday.

Finally, Rule 2107 is being amended to provide OCC with more flexibility in setting a cut-off time for the submission of DVP Authorizations. Currently, DVP Authorizations must be submitted to OCC at or before 12 p.m., Central Time on the date on which any exercise and assignment report is made available. Under the existing Rules, exercise and assignment reports for cross-rate foreign currency options are made available on the Sunday following the expiration date. Accordingly, DVP Authorizations are required to be submitted by the cut-off time on the Sunday following expiration. However, with respect to newly listed cross-rate foreign currency options which will expire on Friday, OCC anticipates that the exercise and assignment report will be made available on the Saturday following the expiration date, even though the DVP Authorization procedures need not take place until Sunday. Accordingly, Rule 2107 is being amended to provide that DVP Authorizations may be submitted on the date on which any exercise and assignment report is made available or at such other times as OCC shall prescribe.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of foreign currency and cross-rate foreign currency option transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes OCC's proposal to have Friday instead of Saturday as the expiration date for foreign currency option contracts listed in the future is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies. In particular, sections 17A(b)(3)(F) of the Act require that a clearing agency be organized and that its rules be designed to protect investors and the public interest.[5] Additionally, section 17A(a)(1) of the Act sets forth Congress finding that ineffective procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[6] Friday expirations will permit OCC to reduce the overtime costs associated with weekend expiration processing and as a result to offer more efficient and less costly service to its clearing members.

OCC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Accelerated approval will permit OCC to coordinate with the PHLX the implementation of the Friday expiration for foreign currency options listed during or after July 1993.[7] The Commission finds good cause for so approving the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] 15 U.S.C. 78q–1(a)(1) (1988).

[7] On June 13, 1993, while acting under the terms of the temporary approval order in Release No. 34–32458, *supra* note 2, OCC issued long term option contracts expiring in June 1995 on the Australian Dollar, British Pound, Canadian Dollar, German Mark, French Franc, Swiss Franc, European Currency Unit, and Japanese Yen. This approval order makes permanent the approval of the expiration date change for these option contracts.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–OCC–93–15 and should be submitted by August 10, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–93–15) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17147 Filed 7–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32623; International Series Release No. 562; File No. SR–PHLX–93–02]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Friday Expirations for Foreign Currency Options.

July 13, 1993.

I. Introduction

On May 19, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to move the expiration of foreign currency options ("FCOs") from Saturday to Friday.[3] Notice and partial acceleration of the proposal appeared in the **Federal Register** on June 17, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of Proposal

Foreign currency options, other than month-end FCOs, presently expire at 11:59 p.m. Eastern Standard Time ("e.s.t.") on the Saturday night preceding the third Wednesday of the expiration month. Month-end FCOs expire at 11:59 p.m. e.s.t. on the Saturday following the last Friday of the expiration month. The proposed amendment would allow both types of FCOs to expire 24 hours earlier each month at 11:59 p.m. e.s.t. on the appropriate Friday of the month.[5]

Unlike the underlying securities markets for equity options which generally trade on an exchange for only a limited number of hours during the trading day, the spot market for currencies underlying FCOs remains open 24 hours a day, seven days a week. Additionally, unlike equity options, there is no Exchange exercise cut-off rule applicable to the expiration of FCOs.[6] As a result, since PHLX's FCO market closes at 2:30 e.s.t. on Friday and the FCOs do not expire until 11:59 p.m. e.s.t. the next day, the writer of the FCO bears the risk of assignment during the 30-plus hour time period. The PHLX believes that the failure of an option writer to close any outstanding FCO positions prior to the close of trading on Expiration Friday leaves the option writer exposed to a significant risk of fluctuations in exchange rates during that time period.

The PHLX believes that many potential investors in FCOs are unwilling to assume the risks associated with the 30-plus hour time period between the close of trading and expiration. The Exchange believes that if this window of exposure is shortened, thereby decreasing the risk of assignment prior to expiration, investor demand for FCOs will increase, thus creating greater liquidity in the FCO market. The PHLX, therefore, proposes to amend Exchange Rule 1000(b)(21) in order to change the expiration date for FCOs so that they expire each month on the relevant Friday at 11:59 p.m. e.s.t. instead of Saturday at that time. One limited exception to the rule is provided. Currently, a June 1994 and December 1994 long-term option is listed solely with a European-style expiration.[7] When those options convert to regular 12-month options in June and December 1993 respectively, a corresponding American-style option contract will be listed.[8] Because the European-style contract was listed with a Saturday expiration, the Exchange believes it is necessary to also list the comparable American-style contracts with a Saturday expiration in order to alleviate investor confusion.

To further avoid possible investor confusion, the Exchange has developed and distributed a calendar showing which expirations will occur on Friday and which will occur on Saturday through December 1994.[9] Additionally, the Exchange's Market Surveillance Department will distribute an informational memorandum each month during expiration week reminding members/participants on which day that month's options contracts will expire, and explaining that newly listed options will have Friday expirations. The informational memorandum will also identify expiration dates for all currently listed FCO contracts. Further, any time a new series is added to an existing option, a memorandum will be distributed notifying the public of the applicable expiration date.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[10] in that the proposal is designed to foster just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, the Commission finds that the proposal will further the protection of investors and the public interest by limiting the exposure of

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The proposed rule change will affect all foreign currency options listed on the PHLX, including cross-rate foreign currency options.

[4] *See* Securities Exchange Act Release No. 32452 (June 11, 1993), 58 FR 33473 ("Exchange Act Release No. 32452"). Partial acceleration of the proposal was granted in order to allow the Exchange to list long-term June 1995 FCOs with Friday expirations to avoid customer confusion because, if the proposal was approved in its entirety, no outstanding FCOs would have Saturday expirations in 1995. The partial approval for the long-term FCOs, combined with the approval herein for all other FCOs, will result in the last Saturday expiration in outstanding FCOs occurring in December 1994, and Friday expirations for all PHLX traded FCOs as of January, 1995.

[5] Currently, the PHLX trades FCOs on eight currencies (Australian dollar, British pound, Canadian dollar, Deutsche mark, French franc, Japanese yen, Swiss franc, and European currency unit) and two cross-rate options (Deutsche mark/Japanese yen, and British pound/Deutsche mark). The PHLX trades options on these foreign currencies that expire both mid-month and end-of-month, in addition to long-term options on these currencies.

[6] Exercise cut-off rules provide a deadline after the close of trading after which options cannot be exercised. *See* PHLX Rule 1042(b) which states that options must be exercised, if at all, no later than 5:30 p.m. e.s.t. on the trading day prior to the expiration date ("Expiration Friday").

[7] European-style options may be exercised only during a specified period immediately prior to the expiration of the option.

[8] American-style options may be exercised by the holder at any time prior to expiration of the option.

[9] See Information Circular: 086–93, from the PHLX Market Surveillance Department to Members, dated May 19, 1993.

[10] 15 U.S.C. 78f(b)(5) (1988).

writers of FCOs to foreign currency fluctuations occurring after the close of PHLX's foreign currency option market but prior to expiration of the FCOs. The Commission believes that current Exchange FCO rules, under which FCO option writers bear the risk of assignment for in excess of 30 hours after the close of the FCO market, may inhibit trading in FCOs and thus could result in decreasing the liquidity of the FCO market. By shortening this exposure by 24 hours, the Commission believes that investors who currently forego certain FCO investments because of the perceived risk of assignment may now decide to enter the FCO market. As a result, the Commission believes that approval of the proposal could result in benefits to the FCO market and to FCO market participants such as increased liquidity.

Furthermore, the Commission notes that the Exchange has represented that it will take certain steps in order to minimize confusion during the transition period in which both Friday- and Saturday-expiring FCOs will be outstanding and trading. The Exchange has represented that it will develop and distribute a calendar showing which expirations will occur on Friday and which will occur on Saturday during this transition period. Additionally, the Exchange has represented that its Market Surveillance Department will distribute an informational memorandum each month during expiration week reminding members/participants on which day that month's options contracts will expire and explaining that the option that will be listed to replace the expiring option will have a Friday expiration. Furthermore, the informational memorandum will also show the expiration date for all outstanding FCO option contracts. Finally, any time a new series is added to an existing option, an additional informational memorandum will be distributed to remind the public which expiration day is applicable. Accordingly, the Commission believes that the potential for undue confusion will be substantially decreased, thus minimizing the Commission's concerns about investor protection.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission has already granted approval for listing, and the Exchange has listed, its June 1995 FCOs with Friday expirations.[11] On Sunday, July 18, 1993, the Exchange will list new series of FCOs which will expire in mid-October, 1993. By accelerating approval of the proposal and thus allowing the Exchange to list these and all subsequent series of FCOs with Friday expirations, the Commission believes that the potential for customer confusion will be reduced during the transition period. Furthermore, by granting accelerated approval, the Exchange will have sufficient time prior to the listing of the October mid-month FCOs to notify its members of the change.[12] As a result, the Commission believes that by granting accelerated approval of the proposal, the Commission's concerns for investor protection during the transition period will be further minimized. Finally, the proposal was published for the full 21 day comment period and no comments were received.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PHLX–93–02) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17146 Filed 7–19–93; 8:45 am]

BILLING CODE 8010–01–M

[11] See Exchange Act Release No. 32452, *supra* [illegible]

[12] The PHLX has represented that it will provide written notice of the change to its members no later than Wednesday, July 14, 1993. Telephone conversation between Michele R. Weisbaum, Associate General Counsel, PHLX, and Bradley S Ritter, Attorney, Division of Market Regulation, Commission, July 12, 1993. *See* Draft Information Circular: 0–93, from PHLX Market Surveillance Department to Members.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1992).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Aircraft Engine Type Certification Handbook

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC), No 33–2B, Aircraft Engine Type Certification Handbook. The AC provides information and guidance concerning an acceptable method, but not the only method, by which compliance with the type certification requirements of aircraft engines, as required by Federal Aviation Regulations (FAR) part 33, may be accomplished.

DATES: Advisory Circular No. 33–2B was issued by the New England Aircraft Certification Service, Engine and Propeller Directorate, on June 30, 1993

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration (FAA), Attn: Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 238–7116, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** (54 FR 21517), May 18, 1989, to announce the availability of, and request comments to, the draft AC. All comments were reviewed and appropriate comments are incorporated in the AC.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 49 U.S.C. App. 1354(a), 1421 and 1423, provides procedures and guidance by which engine manufacturers, engine modifiers, issuance of an engine type certificate, an amended type certificate, or a supplemental type certificate.

Issued in Burlington, Massachusetts, on June 30, 1993.

Jay J. Pardee,

Asst. Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 93–17168 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Aspen-Pitkin County Airport/Sardy Field, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Aspen-Pitkin County Airport/Sardy Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Smith, Director of Aviation, Aspen, Colorado at the following address: Aspen-Pitkin County Airport/Sardy Field, 0233 East Airport Road, Aspen, CO 81611.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Aspen-Pitkin County Airport/Sardy Field under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Davis, (303) 286–5526; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5540 Roslyn, suite 300, Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Aspen-Pitkin County Airport/Sardy Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pitkin County was not substantially complete within the requirements of § 158.29(a)(i)(v) of part 158. The following item was required to complete the application: The FAA required supporting information from Pitkin County to demonstrate that Pitkin County Ordinance No. 90–12, enacted November 27, 1990, is either not subject to or was adopted in compliance with section 9304(e) of Airport Noise and Capacity Act of 1990 (ANCA) and part 161 of the Federal Aviation Regulations (14 CFR part 161).

By letter dated June 30, 1993, Pitkin County declined to provide the supplemental information requested to complete this application. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: December 1, 1993

Proposed charge expiration date: June 30, 1996

Total estimated PFC revenue: $1,533,541.00

Brief description of proposed projects: Relocate State Highway 82; overlay runway 15/33.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial operators operating pursuant to FAR part 135.1, subpart a.3.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540; Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aspen-Pitkin County Airport/Sardy Field.

Issued in Renton, Washington on July 8, 1993.

Jack A. Scott,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–17163 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Columbus Metropolitan Airport, Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Oropeza, Airport Director of the Columbus Airport Commission at the following address: 3250 West Britt David Road, Columbus, Georgia 31909–5399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Airport Commission under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Nelmse, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349, telephone number (404) 994–5306. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 2, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1993

Proposed charge expiration date: January 31, 1997

Total estimated PFC revenue: $1,220,000

Brief Description of proposed project(s):

a. Airfield signage
b. Airfield lighting rehabilitation
c. Standby emergency airfield generator
d. Easement acquisition and approach clearing
e. Taxiway "F" extension
f. Rehabilitate runway 12/30
g. Taxiway "C" reconstruction
h. Terminal building demolition
i. Master plan update
j. Airport security vehicle
k. North general aviation apron rehabilitation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbus Airport Commission.

Issued in Atlanta, Georgia on July 6, 1993.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93–17164 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Gunnison County Airport, Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gunnison County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158.

DATES: Comments must be received on or before August 19, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn, suite 330, Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary R. Tomsic, County Manager, Gunnison, Colorado, at the following address: 711 West Rio Grande Avenue, suite 15, Gunnison, Colorado 81230.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Gunnison County, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gunnison County Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 25, 1993, the FAA determined that the application to impose and use a PFC submitted by Gunnison County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1993

Proposed charge expiration date: February 28, 2000

Total estimated PFC revenue: $989,118.00

Brief description of proposed projects: Expand passenger terminal building; terminal building safety modifications, install taxiway guidance signs, modify airport electric vault; expand air carrier apron; install security access control system; acquire new ARFF vehicle; construct parallel taxiway to end of runway 6; rehabilitate and expand GA apron; relocate buildings; update airport master plan; overlay runway 6/24 and apply porous friction course; acquire snow removal equipment and acquire land.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Gunnison County Airport

Issued in Renton, Washington on July 8, 1993.

Jack A. Scott,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–17162 Filed 7–6–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Clark County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed roadway project in the City of Vancouver, Clark County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, FHWA, 711 Capitol Way, suite 501, Olympia, Washington 98501, Telephone: 206–753–9413 or Gerald Smith, District Administrator—WSDOT, 4200 Main Street, Vancouver, Washington 98668, Telephone: 206–696–6437 or Thayer Rorabaugh, Manager of Transportation, City of Vancouver, 210 East 13th Street, Vancouver, Washington 98660, Telephone: 206–696–8200.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and the City of Vancouver will prepare an environmental impact statement (EIS) on a proposal to extend the Mill Plain Boulevard/15th Street Couplet westward approximately 1.5 miles from its present terminus at Columbia Street in the City of Vancouver to a new terminus at Forth Plain Boulevard. The proposal would involve the construction of approximately 1.5 miles of new 4-lane roadway westward along the present 15th Street, a new bridge crossing of the Burlington Northern rail yard, and a new roadway running northwesterly through the Port of Vancouver from the end of the bridge to intersect Fourth Plain Boulevard near Weigel Street.

Improvements to the roadway are considered necessary to provide adequate access from downtown Vancouver and I–5 to the Port of Vancouver and areas west of the Port. A corridor study was conducted about ten years ago to determine the best way to provide improved access to the Port to accommodate the expected doubling of its employment between 1990 and 2010. After evaluating five main corridor alternatives connection I–5 to the Port, the study determined that the Mill Plain corridor was the best choice because it provides the most direct connection, it reinforces the business relationship between the downtown area and the Port, it better utilizes the existing investment in the I–5/Mill Plain

interchange, and it improves the internal circulation in the Port for vehicles and, potentially, the railroad. For this reason, the only other alternative under consideration is the No-build.

Environmental issues that are expected to be of greatest concern are: historic resources, noise, traffic, air quality, dislocation of residents and businesses, and localized economic and land use impacts.

Letters describing the proposed action and soliciting comments have been sent by the City of Vancouver to appropriate Federal, State and local agencies and to private organizations and citizens. A public involvement program involving the formation of advisory groups and several public meetings is part of the proposed EIS process. Public notice will be given of all such meetings. The draft EIS will be available for public and agency review prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on July 2, 1993.

Lynn A. Porter,

Area Engineer, FHWA, Washington Division

[FR Doc. 93–17132 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration (RSPA)

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Each Committee meeting as well as a joint session of the two Committees will be held in room 8236 of the U.S. Department of Transportation Building, 400 Seventh Street, SW., Washington, DC.

On August 3, 1993, at 8:30 a.m., the TPSSC will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

—Passage of Instrumental Internal Inspection Devices (NPRM issued November 20, 1992; 57 FR 54745)

—Excess Flow Valve Installation on Service Lines (NPRM issued April 21, 1993; 58 FR 21524)

In addition, the agenda will include a presentation by the Gas Research Institute (GRI) on potential GRI/Office of Pipeline Safety (OPS) cofunding research projects.

At 1 p.m., the TPSSC will be joined by members of the THLPSSC for a joint session which will include:

1. RSPA Acting Administrator's Overview
2. Status Reports on Various Pipeline Safety Program Issues (budget, environmental review of the pipeline safety program, OPS work redesign, and regulations in progress)
3. Overview and status of OPS' risk assessment prioritization process, including the Committees role in the process and trial rating of solutions

On August 4, 1993, at 9 a.m., the joint TPSSC–THLPSSC session on risk assessment prioritization will continue. It will be followed by a group discussion on growing data needs/ innovative ways of collecting data. Finally, a group discussion on expanding the Committee's role beyond regulatory review will close out the joint session at 12 noon.

At 1 p.m., the THLPSSC will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

—Passage of Instrumented Internal Inspection Devices (NPRM issued November 20, 1992; 57 FR 54745)

—Transportation of a Hazardous Liquid in Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength (NPRM issued March 3, 1993; 58 FR 12213)

In addition, THLPSSC industry members will give their perspectives on the impact of the environmental requirements in the Pipeline Safety Act of 1992 on the pipeline industry. Finally, OPS staff will provide a briefing on Oil Pollution Act initiatives.

Each meeting will be open to the public, but attendance will be limited to the space available. Please Note That Attendance Will Particularly Be Limited During The Joint Session Of The Two Committees Because Of Space Constraints. Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Rebecca Key, room 2335, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1640, not later than Tuesday, July 27, 1993, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committees before or after any meeting.

Issued in Washington, D.C., on July 14, 1993

Richard L. Beam,

Deputy Associate Administrator.

[FR Doc. 93–17120 Filed 7–19–93; 8.45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 14, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form AA
Type of Review: New collection
Title: Internal Revenue Service (IRS) Applicant/Employee Data Form
Description: The IRS does not have a recruitment tracking system in place. This form will allow the Service to determine where (schools) we are getting our applicants from, their academic background, and correlate that information with their career movement. To properly measure the data, we need to have applicants interested in our positions complete the data form.
Respondents: Individuals or households, Federal agencies or employees

Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Semi-annually, Annually
Estimated Total Reporting Burden: 960 hours
OMB Number: New
Form Number: IRS Form RNO 91819
Type of Review: New Collection
Title: Internal Revenue Service (IRS) Race and National Origin for Applicants/Employees
Description: The Internal Revenue Services does not have a form for the collection of Race and National Origin Identification from applicants. This scanning form on its own and when combined with other IRS tracking forms (i.e., Form AA) will allow the Service to determine its applicant/employee pool, and thereby, enhance its recruitment plan.
Respondents: Individuals or households, Federal agencies or employees
Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: Semi-annually, Annually
Estimated Total Reporting Burden: 300 hours
OMB Number: 1545–0619
Form Number: IRS Form 6765
Type of Review: Revision
Title: Credit for Increasing Research Activities (or for claiming the orphan drug credit)
Description: IRC section 38 allows a credit against income tax (determined under the IRC section 41) for an increase in research activities of a trade or business. Section 28 allows a credit for clinical testing expenses in connection with drugs for certain rare diseases. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 13,500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hours, 51 minutes
Learning about the law or the form—53 minutes
Preparing and sending the form to the IRS—1 hour, 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 146,070 hours
OMB Number: 1545–1004
Form Number: IRS Form 1120–REIT
Type of Review: Revision
Title: U.S. Income Tax Return for Real Estate Investment Trusts
Description: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine the REIT has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/Recordkeeper: 176
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—57 hours, 24 minutes
Learning about the law or the form—18 hours, 21 minutes
Preparing the form—36 hours, 50 minutes
Copying, assembling, and sending the form to the IRS—4 hours, 50 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 20,665 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–17099 Filed 7–19–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 14, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0119
Form Number: IRS Form 1099–R
Type of Review: Extension
Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
Description: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 350,000
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 14,190,000 hours
OMB Number: 1545–1079
Form Number: IRS Form 9041
Type of Review: Revision
Title: Application for Electronic/Magnetic Media Filing of Business and Employee Benefit Plan Returns
Description: Form 9041 will be filed by fiduciaries, partnerships, and plan sponsors/administrators as an application to file their returns electronically or on magnetic media; and by software firms, service bureaus, and electronic transmitters to develop auxiliary services.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Respondent: 18 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden. 900 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–17100 Filed 7–19–93; 8:45 am]
BILLING CODE 4830–01–P

Rechartering of the Treasury Borrowing Committee of the Public Securities Association

AGENCY: Treasury Department, Departmental Offices.

ACTION: Notice of determination of necessity for renewal of the Treasury Borrowing Advisory Committee of the Public Securities Association.

SUMMARY: It is in the public interest to continue the existence of the Treasury Borrowing Advisory Committee of the Public Securities Association.

The Department of the Treasury announces the renewal of the charter for the Treasury Borrowing Advisory Committee of the Public Securities Association in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. I.

The Secretary of the Treasury has determined that the renewal of this committee is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Purpose

The committee provides informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Federal financing and in the management of the public debt.

Scope

The committee considers commercial and financial information relevant to its objectives and consults with and advises the Secretary of the Treasury and Treasury staff with respect to debt management operations, and makes reports and recommendations.

Meetings are closed to the public since all portions of the meeting concern matters that are exempt from disclosure under the provision of subsection 552b(c)(9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

Although Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these recommendations would lead to significant financial speculation in the securities markets. Thus, these meetings also fall within the exception covered by subsection 552(b)(c)(9)(A) of title 5 of the United States Code.

Membership consists of 20–25 members who are experts in Government securities markets, involved in a senior position in debt markets as investor, investment advisor, or as a dealer, in debt securities and are appointed by the Public Securities Association from its association membership. Members must be highly competent, experienced and actively involved in financial markets. Effort is made to get regional representation so that committee views are a reasonable proxy for nationwide views. As far as possible, balance between dealers and investors is sought. From time to time, members are added or deleted to reflect changing responsibilities and to provide for a rotation of membership in areas where more than one qualified candidate may be available.

Statement of Public Interest

It is in the public interest to continue the existence of the Treasury Borrowing Advisory Committee of the Public Securities Association. The Secretary of the Treasury, with the concurrence of the General Services Administration, has also approved renewal of the committee.

Authority for this committee will expire two years from the date the charter is filed with the appropriate Congressional committees, unless prior to the expiration of its charter, the committee is renewed.

The Assistant Secretary (Management) has determined that his document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463) the Department of the Treasury has renewed the charter of the Treasury Borrowing Advisory Committee of the Public Securities Association and approved the following membership:

Daniel A. Ahearn, Partner, Wellington Management Co., 75 State Street, Boston, MA 02109.

Thomas Bennett, partner, Miller Anderson & Sherrerd, One Tower Bridge, West Conshohocken, PA 19428.

Louis Betanzos, Executive Vice President, National Bank of Detroit, 611 Woodward Avenue, Detroit, MI 48226.

Jon S. Corzine, Partner, Goldman, Sachs & Company, 85 Broad Street, New York, NY 10004.

Ralphael de la Gueronniere, Chairman, Discount Corporation of New York, 58 Pine Street, New York, NY 10005.

Kenneth de Regt, Managing Director, Morgan Stanley & Company, 25 Cobot Square, Canary Wharf, London E14 4QA, England.

Richard Kelly, Chairman of the Board, Aubrey G. Lanston & Co., Inc., 1 Chase Manhattan Pl. 53rd Fl., New York, NY 10005.

Mark F. Kessenich, Jr., President, Eastbridge Capital, Inc., 135 East 56th Street, New York, NY 10022.

Bruce R. Lakefield, Managing Director, Lehman Brothers, 200 Vesey Street, 9th Fl., New York, NY 10285.

Robert D. McKnew, Executive Vice President, Bank of America, 555 California Street, 10th Fl., San Francisco, CA 94104.

Gregory C. Menne, Vice President, A.G Edwards & Sons, Inc., One North Jefferson, St. Louis, MO 63103

Daniel T. Napoli, Senior Vice President & Director, Merrill Lynch Capital Markets & Risk Management, World Financial Center, N. Tower, New York, NY 10281.

Richard B. Roberts, Exec. Vice President, Wachovia Bank & Trust Co., NA, P.O. Box 3099, Winston-Salem, NC 27105.

Marcy Recktenwald, Managing Director, BT Securities, Inc., 130 Liberty Street, New York, NY 10006.

Joseph Rosenberg, President, Lawton General Corporation, 667 Madison Avenue, New York, NY 10021–8087

Stephen Thieke, Managing Director, Morgan Guaranty Trust Co., 60 Wall Street, 4th Fl., New York, NY 10260.

Craig M. Wardlaw, Exec. Vice President, NationsBank Corporation, Nationsbank Corporate Center, Charleston, NC 28255–0001.

Patricia Zlotin, Exec. Vice President, Massachusetts Financial Services Co., 500 Boylston Street, Boston, MA 021167.

Dated: July 14, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management)

[FR Doc. 93–17180 Filed 7–19–93; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

[T.D. 93–54]

Surrender of Customs Broker License; Joseph Jacovina

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: General notice.

SUMMARY: Notice is hereby given that on September 4, 1992, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and § 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), accepted the surrender of the license issued to Joseph Jacovina (no. 3294) in the New York Customs Region to conduct Customs business.

VOL 58 ISS 137 JL 20 1993 UMI

Dated: July 13, 1993.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 93–17101 Filed 7–19–93; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 93–56]

Suspension of Individual Customs Broker License No. 6707; Enrique Wismann

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on June 21, 1993, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and § 111.74 of the Customs Regulations, as amended (19 CFR 111.74), suspended the individual broker license no. 6707 issued to Enrique Wismann for a period of 180 days. This action is effective as of June 22, 1993.

Dated: July 13, 1993.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 93–17103 Filed 7–19–93; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 93–55]

Surrender of Customs Broker License; Wood, Niebuhr & Co.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on September 4, 1992, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and § 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), accepted the surrender of the license issued to Wood, Niebuhr & Co. (no. 4814) in the New York Customs Region to conduct Customs business.

DATED: July 13, 1993.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 93–17102 Filed 7–19–93; 8:45 am]

BILLING CODE 4820–02–M

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Sunshine Act Meetings

Federal Register

Vol. 58, No. 137

Tuesday, July 20, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:30 p.m., Tuesday, July 27, 1993.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Controlling the Use of Express Mail.
4. Change of Policy With Respect To Applying The Sentencing Guidelines In Effect At The Time Of The Crime For Transfer Treaty Cases.
5. Establishment of "The Victor M.F. Reyes Memorial Award".
6. Proposal For New Regulation Regarding An Appeal of a Freedom of Information Act (FOIA) Denial To The Chairman.
7. Revision of the Procedure at 2.56–01(h), Regarding The Processing of Police Reports under FOIA.
8. Discussion of Bureau of Prisons and U.S. Probation Service Comprehensive Sanctions Centers.
9 Rating the Offense of Possession of Ammunition by a Convicted Felon.
10. Paroling Policy With Respect To First Degree Murder.
11. Offender Reimbursement For Drug Testing Services.
12. Discussion of The Validity of The Salient Factor As A Risk Predictive Device.
13. Modification of F–3 Supervision Report.

The following matters have been placed on the consent agenda and will be considered at the open meeting only if a Parole Commissioner requests that they be discussed at the meeting.

14. Processing of Institutional Parole Violator Cases Outside the Originating Region.
15. Wording For Partial Forfeiture Of Street Time Orders.
16. Wording On Notices Of Action When Adding The Community Corrections Center (CCC) Aftercare Condition.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 15, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–17333 Filed 7–16–93; 2:30 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Tuesday, July 27, 1993, 9:00 a.m.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed-Meeting.

MATTERS CONSIDERED: The following matters will be considered during the closed portion of the Commission's Business Meeting:

(1) Appeals to the Commission involving nineteen cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

(2) Discussion of Personnel Related Matters.

(3) One application for an exemption submitted under 29 U.S.C. § 504(a).

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: July 15, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–17334 Filed 7–16–93; 2:30 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 19, 26, August 2, and 9, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 19

Tuesday, July 20

10:00 a.m.
Briefing on Options for Addressing Shutdown and Low Power Risk Issues (Public Meeting)
(Contact: Ashok Thadani, 301–504–2884)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:30 p.m.
Briefing on Overview of NRC Research Program (Public Meeting)
(Contact: George Sege, 301–492–3904)

Week of July 26—Tentative

Thursday, July 29

10:00 a.m.
Briefing on Options for Changes to Regulation of Nuclear Medicine (Public Meeting)
(Contact: Darrel Nash, 301–504–3610)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 2—Tentative

Monday, August 2

2:00 p.m.
Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)

Tuesday, August 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 9—Tentative

Wednesday, August 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner de Planque was not present) on July 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Affirmation of "Georgia Power Company—Partial Director's Decision Under 10 C.F.R. § 2.206" be held on July 14, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION:
William Hill, (301) 504–1661.

Dated: July 16, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–17343 Filed 7–16–93; 2:45 pm]

BILLING CODE 7590–01–M

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DEPARTM

National C Administr

50 CFR Pa

[Docket No

RIN 0648-A

Snapper-G Atlantic

Correction

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[Docket No.

Las Vegas Partnershi Determina Generator

Correction

In notice appearing Thursday, column, th set forth ab

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Corrections

Federal Register

Vol. 58, No. 137

Tuesday, July 20, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 930225-3146; I.D. 052493A]

RIN 0648-AE91

Snapper-Grouper Fishery of the South Atlantic

Correction

In rule document 93-15743 beginning on page 36155 in the issue of Tuesday, July 6, 1993, make the following correction:

On page 36155, in the first column, under **SUMMARY:**, beginning in the seventh line, remove "The intent of the fishery management plan without undue burden on fishermen, and to clarify the regulations."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG93-56-000]

Las Vegas Energy Storage Limited Partnership; Application for Determination of Exempt Wholesale Generator Status

Correction

In notice document 93-16045 appearing on page 36680 in the issue of Thursday, July 8, 1993, in the second column, the Docket No. should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP93-525-000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

Correction

In notice document 93-16266 beginning on page 36955 in the issue of Friday, July 9, 1993, on page 36955, in the third column, the Docket No. should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3639; FR-3496-N-01]

NOFA for the Rental Voucher Program and Rental Certificate Program

Correction

SUMMARY: On July 8, 1993 (58 FR 36808), the Department published in the **Federal Register** a Notice of Funding Availability (NOFA) for the Rental Voucher Program and Rental Certificate Program. Because of a printing error, a portion of the notice identifying "Other Allocations" was inadvertently omitted in the published document. Therefore, in order to avoid further confusion, this notice republishes section "*J. Other Allocations*", as it appears under "Section II. Application Process," in its entirety. In addition, the "**DATES:**, **ADDRESSES:**, and **FOR FURTHER INFORMATION CONTACT:**" paragraphs are set forth below for the convenience of the reader.

DATES: Applications for all funding under this NOFA must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., time at the office where the application is submitted) on August 23, 1993.

ADDRESSES: The basic application, Form HUD-52515, may be obtained from, and completed applications are to be submitted to, the appropriate HUD Field Office/Indian Programs Office for the jurisdiction in which the applicant is located (see Section II, Applications Processing, of the NOFA). (Attachment 1 is the Application form.)

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, room 4220, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410–8000, telephone (202) 708-0477. Hearing-or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

Accordingly, notice document 93–16175 beginning on page 36808 in the issue of Thursday, July 8, 1993, is corrected by republishing in its entirety section "*J. Other Allocations*" as it appears under "Section II. Application Process," beginning on page 36812.

J. Other Allocations

In addition to the budget authority for "fair share" rental vouchers and rental certificates, $7.565 billion of additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1993 for rental vouchers and rental certificates for the following purposes:

(1) *Public Housing Demolition and Disposition (Relocation and Replacement Housing).* Headquarters will allocate funds directly to the Field Offices to assist families that are living in public housing projects that are being demolished or disposed of with HUD approval. Relocation and replacement housing assistance will be provided in the form of 5-year rental voucher or rental certificate funding. (Approximately 504 units and $16.7 million in budget authority.)

(2) *Rental Voucher and Rental Certificate Renewals.* Headquarters will allocate funds directly to the Field Offices for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1993. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments). (Approximately 200,978 units and $6.645 billion in budget authority)

(3) *Section 23 Conversions.* Headquarters will allocate rental certificate funds directly to the Field Offices for tenant-based rental assistance to residents of Section 23 leased housing for which leases are expiring. Field Office requests for funding under this category will be

approved on a first-come, first-served basis. Field Offices must include all data necessary to determine the amount of funds required. (Approximately 381 units and $12.4 million in budget authority.)

(4) *Section 8 Amendments.* Headquarters will allocate Rental Certificate Program cost amendments to provide budget authority increases to HA rental certificate programs to support increases in housing assistance payments to maintain the HA's program at the number of units originally approved by HUD. For consistency with above, Headquarters will allocate the funds on an as needed basis based on actual housing costs and tenant contributions. (Approximately $416.5 million in budget authority.)

(5) *HOPE 1, 2, Section 5(h), Section 18 and Urban Revitalization Programs.* Headquarters will allocate funding to provide replacement housing in connection with Section 18, Urban Revitalization, HOPE 1 or Section 5(h) activities; or relocation assistance to families affected by HOPE 1, HOPE 2 and Section 5(h) program activities; or assistance to non-purchasing families affected by HOPE 2 program activities. Field Office/Indian Programs Office requests for rental certificate or rental voucher funding under this category will be approved on a first-come, first-served basis after notification by HUD that a Section 18, Urban Revitalization, HOPE 1, HOPE 2 or Section 5(h) application was approved. Field Offices/Indian Programs Offices should include all data pertinent to determining the eligibility of the request for funding under the appropriate program and the amount of funds required. (Approximately 2,615 units and $85 million in budget authority.)

(6) *HA Portability Fees.* Headquarters will allocate these funds to pay special preliminary fees to HAs under Rental Voucher and Rental Certificate Program portability provisions. The Department issued a HUD Notice PIH 92-14 (PHA), dated April 22, 1992, that describes administrative procedures for requesting the special preliminary fees. These funds will be allocated to the HUD Regional Offices using the housing needs factors developed in accordance with 24 CFR 791.402. (Approximately $4 million in budget authority.)

(7) *HOPE for Elderly Independence—National Competition.* Headquarters will allcoate funding to assist frail elderly persons to live independently. HUD will conduct a national competition for supportive services grants which will be published in a NOFA. HAs selected in the grant competition also will be provided budget authority for rental vouchers. (Approximately 1,500 and $38.3 million in budget authority.)

(8) *Moving to Opportunity Demonstration—National Competition.* Headquarters will allocate funding to assist families with children to move out of areas with high concentrations of persons living in poverty through contracts with nonprofit organizations. Appropriations were provided for rental certificates and rental vouchers to be used in a demonstration involving up to six cities with populations over 400,000, in metropolitan areas over 1,500,000 population. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 1,856 units and $67.7 million in budget authority.)

(9) *Family Unification Demonstration—National Competition.* Headquarters will allocate funding to assist families with children for whom the lack of adequate shelter is a primary factor which would result in the imminent placemnt of the family's child, or children, in out-of-home care or delay in the discharge of the child, or children, to the family from out-of-home care. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 2,244 units and $73 million in budget authority.)

(10) *Homeless Persons with Disabilities.* Headquarters will allocate funding to Field Offices to provide Section 8 rental vouchers, in conjunction with supportive services from other Federal, State, or local sources, to homeless persons with disabilities. The assistance is targeted primarily to homeless persons who are seriously mentally ill, have chronic problems with alcohol and/or drugs, or who have acquired immunodeficiency syndrome (AIDS) and related diseases. (Approximately 5,786 units and $147.7 million in budget authority.)

(11) *Veterans Affairs Supportive Housing—National Competition.* Headquarters will allocate funding under this joint effort between HUD and the Department of Veterans Affairs whereby rental vouchers are provided to assist homeless veterans to obtain rental housing after they have received treatment from a Veterans Affairs (VA medical facility. HUD is conducting a national competition. The criteria will be published in a NOFA. (Approximately 750 unitss and $19.1 million in budget authority.)

(12) *Project Based Assistance—Washington, DC.* Headquarters will allocate funding to provide Section 8 rental certificates based on a Congressional mandate for a multi-cultural tenant empowerment and homeownership project to be located in the District of Columbia. (Approximately 205 units and $20 million in budget authority.)

(13) *Disaster Funding from the Federal Emergency Management Agency.* Headquarters allocated funding from the Federal Emergency Management Agency for rental vouchers to the Department to assist very low-income families who were rendered homeless as a result of Hurricane Andrew and Hurricane Iniki. (Approximately 2,459 units and $32 million in budget authority.)

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32527; File No. SR-MBS-92-04]

Self-Regulatory Organizations, MBS Clearing Corp. Order Approving Proposed Rule Change Relating to the Limitation or Elimination of a Director's Liability In Certain Instances

Correction

In notice document 93-15693 beginning on page 35994 in the issue of Friday, July 2, 1993, on page 35994, in the second column, the Release No. should read as set forth above.

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 20, 1993

Part II

Environmental Protection Agency

40 CFR Part 51, et al.
Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Final Rule

VOL 58 ISS 137 JL 20 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 260 and 266

[AH–FRL–4672–7, Docket No. A–88–04]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The "Guideline on Air Quality Models (Revised)" (hereinafter, the "Guideline"), as modified by supplement A (1987), sets forth air quality models and guidance for estimating ambient air concentrations due to sources of air pollutants. The Guideline is presently incorporated by reference into the prevention of significant deterioration (PSD) regulations under the Clean Air Act. On February 13, 1991, EPA issued a Notice of Proposed Rulemaking (NPR) to further clarify and update the Guideline, as well as to augment the Guideline with several new modeling techniques, and to codify the Guideline for all air quality planning purposes. Today EPA takes final action in order to add new models to the Guideline and improve existing models. In addition, this action amends the CFR to incorporate supplement B as codified text, as well as giving regulatory status to long-standing EPA policy regarding the use of air quality models for other regulatory programs. Therefore, EPA is setting out the Guideline, revised by supplements A and B, as appendix W to 40 CFR part 51. Adoption of these new and refined modeling techniques and associated guidance should significantly improve the technical basis for impact assessment of air pollution sources.

EFFECTIVE DATE: This rule is effective August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; Telephone (919) 541–5562 or C. Thomas Coulter, (919) 541–0832.

ADDRESSES: Docket Statement: All documents relevant to this rule have been placed in Docket No. A–88–04, located in the Central Docket Section, Room M1500 (First Floor, Waterside Mall), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This docket is available for public inspection and copying from 8:30–12 a.m. and 1:30–3:30 p.m., Monday through Friday. A reasonable fee may be charged for copying.

Document Availability: The new modeling techniques are incorporated as supplement B (1993) to the Guideline. Supplement B may be obtained by downloading a text file from the SCRAM (Support Center for Regulatory Air Models) electronic bulletin board system by dialing in on (919) 541–5742. Supplement B may also be obtained upon written request from the Source Receptor Analysis Branch, U.S. Environmental Protection Agency (MD–14), Research Triangle Park, NC 27711. The "Guideline on Air Quality Models (Revised)" (1986), supplement A (1987), and supplement B (1993) are for sale from the U.S. Department of Commerce, Technical Information Service (NTIS), 5825 Port Royal Road, Springfield, VA 22161. These documents are also available for inspection at each of the ten EPA Regional Offices and at the EPA library at 401 M Street SW, Washington, DC.

SUPPLEMENTARY INFORMATION:

Background [1]

The "Guideline on Air Quality Models" (hereinafter, the "Guideline") was originally published in April 1978. The Guideline promotes consistency in the use of modeling as part of the air management process. By setting forth models, techniques and guidance, the Guideline provides model users with a common basis for estimating pollutant concentrations and impacts, assessing control strategies and specifying emission limits. By rulemaking in June 1978 (43 FR 26380), the Guideline was incorporated by reference into the PSD regulations at 40 CFR 51.166(l) and 52.21(l). The Guideline was subsequently revised in 1986 (51 FR 32176), and later updated with the addition of supplement A (53 FR 392).[2] As a matter of EPA policy, the Guideline has also been applied since its inception to SIP revisions for existing sources of air pollutants and to all new source reviews.

Between 1978 and 1988, in order to support the process of developing and revising the Guideline and in accordance with section 320 of the Clean Air Act, the First, Second, Third and Fourth Conferences on Air Quality Modeling were held. These modeling conferences provided EPA with comments on the Guideline and associated revisions, thereby facilitating introduction of improved modeling techniques into the regulatory process.[3]

On February 13, 1991 (*op. cit.*), EPA proposed additional changes to the Guideline referred to as supplement B. Pursuant to this proposal and Clean Air Act Section 320, the Fifth Conference on Air Quality Modeling was held in March 1991. Its purpose was to solicit public comment on new modeling techniques proposed for inclusion in supplement B, and to guide EPA's consideration of any rulemaking needed to further revise the Guideline. The revisions proposed in supplement B included techniques and guidance for situations where specific procedures had not previously been available, and also improved several previously adopted techniques. As discussed at the modeling conference, proposed changes included:

Complex terrain models (CTDMPLUS and CTSCREEN); Mobile source modeling at signalized intersections; Emissions and dispersion modeling system for airports; Modeling techniques for air pathway analyses;
On-site meteorological program guidance;
General screening techniques;
Method for evaluating models;
Alternate models in appendix B;
Supplementary changes; and
Other topics (including deletion of models no longer used).

For additional information of these issues, please refer to 56 FR 5900–5907, February 13, 1991.

Final Action

Today's action updates the Guideline with changes incorporating supplement B, slightly modified in form since proposal. All significant comments have been considered, and whenever they revealed any new information or suggested any alternative solutions, such were considered in EPA's final action. Also, in keeping with the Office of the Federal Register's current policy on compliance with the Federal Register Act (44 U.S.C. 1502 *et seq.*) and the Administrative Procedures Act (5 U.S.C. 551 *et seq.*), as set forth in 1 CFR part 51, EPA is setting out the Guideline,

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[1] In reviewing this preamble, note the distinction between the terms "supplement" and "appendix". Supplements A and B contain the replacement pages to effect Guideline revisions; appendix A to the Guideline is the repository for preferred models, while appendix B is the repository for alternate models justified for use on a case-by-case basis.

[2] On February 21, 1991 the Guideline, as modified by supplement A, was incorporated into the hazardous waste boiler and industrial furnace rules at 40 CFR part 266, subpart H (56 FR 7208). The Guideline was subsequently published as appendix X to part 266 (56 FR 32796); this marked the first time the Guideline had been published for inclusion in the Code of Federal Regulations.

[3] On November 15, 1990, the Clean Air Act Amendments of 1990, Pub. L. 101–549, were enacted. As amended, the Clean Air Act provides continued authority for the air quality modeling conferences and associated revisions to the Guideline.

revised by supplements A and B, as appendix W to 40 CFR part 51. In a complementary action, EPA is hereby removing appendix X to 40 CFR part 266, and changing references to the Guideline in that part to 40 CFR part 51, appendix W. EPA is also updating a reference in § 260.11(a).

As proposed, EPA is adopting CTDMPLUS as a refined technique to be included in appendix A of the Guideline. However, requirements regarding measurement height for collection of meteorological data to run CTDMPLUS are being relaxed from those originally proposed: the maximum height is 100 meters, provided that remote sensing data (e.g., SODAR) up to representative plume height are available on a routine hourly basis. CTSCREEN is being adopted as an acceptable screening technique. The previously used screening model, RTDM, may continue to be used, but the hierarchy in terms of degree of conservatism for complex terrain screening models has been eliminated.

As proposed, a new model, CAL3QHC, is included in the Guideline for estimating carbon monoxide concentrations at signalized intersections. Use of CALINE4 and TEXIN2 may continue in areas where their application has already been established at the time supplement B is promulgated. In response to public comments, the "Guideline for Modeling Carbon Monoxide from Roadway Intersections" has been modified and expanded.

As proposed, EDMS (*E*missions and *D*ispersion *M*odeling *S*ystem) is being included in appendix A of the Guideline for assessing air pollutant concentrations at civilian airports and military bases.

As proposed, DEGADIS (*DEN*se *GA*s *DIS*persion Model) is being included in appendix B of the Guideline. The ISC2 (*I*ndustrial *S*ource *C*omplex) model is not being generally recommended for all air pathway analyses, as originally proposed; it is now being recommended for some specific regulatory programs.

The proposed Solar Radiation/Delta-T (SRDT) method for determining atmospheric stability class is being withdrawn from supplement B (see explanation under "Discussion of Public Comments and Issues").

As proposed, EPA has identified general screening techniques, namely SCREEN and VISCREEN, for preliminary estimates of air quality impact. Minor code changes have been made to SCREEN (renamed "SCREEN2") to ensure reasonable comparability with ISC2 (especially for downwash calculations). To better support VISCREEN, EPA is working with the National Park Service to improve information on background visual ranges and encourage research development of a regional haze model.

As proposed, EPA is including the "Protocol for Determining the Best Performing Model" as the basis for justifying use of an alternative (appendix B) model for a site-specific application.

As proposed, Shoreline Dispersion Model (sea/lake breeze fumigation) and WYNDvalley (valley stagnation) are being included in appendix B of the Guideline. These models, along with MESOPUFF II (long range transport) and PLUVUE II (visibility), which are already in appendix B, are identified as available for application in the unique circumstances to which they apply on a case-by-case basis.

EPA is making several supplementary changes to the Guideline. As proposed, ERTAQ and MPSDM have been deleted from appendix B of the Guideline. EPA has also clarified and updated portions of the Guideline to make it consistent with current regulatory programs that had been established through other Agency activities. As proposed, OCD (*O*ffshore and *C*oastal *D*ispersion Model) in appendix A of the Guideline is being updated. Also as proposed, EKMA and UAM (*U*rban *A*irshed *M*odel), which is also in appendix A, are being updated to include the CB-IV chemical mechanism and guidance.

Finally, supplement B clarifies the appropriate input data for various compliance demonstrations, including that allowable emissions are to be used in PSD NAAQS analyses. Moreover, the Guideline is being codified in the Code of Federal Regulations for projections associated with AQMA analyses (§ 51.46), SIP attainment demonstrations (§ 51.112), analysis of lead concentrations (§ 51.117), regional classification for episode planning (§ 51.150), and preconstruction review of new and modified sources (§ 51.160). As proposed, EPA is not including in the Guideline either a screening technique for point sources of O_3 precursors or recommendations on the use of regional scale models.

Discussion of Public Comments and Issues

All comments presented at the fifth modeling conference and/or submitted to Docket No. A–88–04 are filed in Docket Category IV–D. Also, a verbatim transcript of the conference proceedings is available as Docket Item IV–F–1. EPA has summarized these comments, developed detailed responses, and drawn conclusions on appropriate actions for this Notice of Final Rulemaking in the document "Summary of Public Comments and EPA Responses on the Fifth Conference on Air Quality Modeling: March 1991" (Docket Item V–C–1). In this document, all significant comments have been considered and discussed. Whenever the comments revealed any new information or suggested any alternative solutions, such were considered in EPA's final action.

Major issues raised by the commenters, along with EPA responses, are summarized below. Guidance and editorial changes associated with the resolution of these issues are adopted in the appropriate sections of the Guideline and are promulgated as supplement B (1993) to the "Guideline on Air Quality Models (Revised)" (1986) (Docket Item V–B–1). See the **ADDRESSES** Section of this Notice (above) for general availability.

Although a more detailed summary of the comments and EPA's responses are contained in the aforementioned response-to-comments document (Docket Item V–C–1), the remainder of this preamble section overviews the primary issues encountered by the Agency during the public comment period. This overview also serves to explain the changes to the Guideline from today's action, and the main technical and policy concerns addressed by the Agency. In our view, all of the changes being made reasonably implement the mandates of the Clean Air Act, and are in fact beneficial to both EPA and the regulated community. While modeling by its nature involves approximation based on scientific methodology, and entails utilization of advanced technology as it evolves, EPA believes these changes respond to recent advances in the area so that the Guideline continues to be comprised of the best and most proven of the available models and analytical techniques, as well as reflect reasonable policy choices.

A. Complex Terrain Models

1. Refined Model: CTDMPLUS (Complex Terrain Model PLus Algorithms for Unstable Situations)

There was general support for the proposal to adopt CTDMPLUS as a refined complex terrain model. However, there was a wide variety of comments on various aspects of the model, e.g., evaluation of CTDMPLUS performance, the need for meteorological data collection using a 150 meter tower, concerns with several of the model's preprocessors, averaging times for pollutant concentration

estimates, PC (personal computer) execution time, and the definition of "complex terrain".

EPA does not agree with those comments suggesting that CTDMPLUS has been inadequately evaluated or tested. Indeed, CTDMPLUS is one of the most extensively analyzed and reviewed models ever considered. It is clearly superior in terms of accuracy and utility to other complex terrain models. The Agency does not believe that further evaluation is needed in order to include CTDMPLUS into appendix A of the Guideline.

In so doing, EPA recognizes that data requirements may prove problematical in some circumstances due to the comprehensive nature of the information demanded by the model. Although it would be imprudent to reduce multi-level data requirements for specific parameters as that would significantly compromise the model's accuracy, requirements on measurement location have been relaxed to reflect practical reality. For instance, the maximum height required for tower measurements is 100m, provided that remote sensing data (e.g., SODAR) up to representative plume height are available on a routine hourly basis; this makes the tower height requirement consistent with that already established for RTDM, as a screening technique, in the Guideline. As to those issues related to users learning and applying various preprocessors for CTDMPLUS, they can only be resolved with experience gained through wide application, and EPA encourages consultation with the EPA Regional Offices to discuss appropriate resolution. In addition to seeking assistance from the Regional Offices, users should watch for clarifications to the User's Guide as they are released via SCRAM BBS (Support Center for Regulatory Air Models Bulletin Board System).

For technical and policy reasons, EPA has decided not to make any changes to the handling of averaging times, computer system efficiency, terrain processing modules, or the definition of "complex terrain", although appropriate clarifications have been made to the Guideline to explain limitations and to urge users to confer with the EPA Regional Offices if problems are encountered.

2. Complex Terrain Screening Techniques: CTSCREEN

With regard to CTSCREEN, there was wide support for the proposed adoption of the model as a screening technique. Comments generally related to tabular values for CTSCREEN's operating parameters and the need for adequate technical guidance. Minor typographical errors regarding various model parameters have been corrected. Efforts to ensure the availability of consultation for operating the model will continue through the Regional Offices.

There was also general support for continuing RTDM as an acceptable screening technique, as EPA had proposed. The comments on elimination of a hierarchy in terms of degree of conservatism for complex terrain screening models were somewhat more mixed; the arguments for some structure were ambivalent. However, since all the screening models are conservative, the need for a hierarchy is not clear. Thus, as proposed, the hierarchy of screening models has been eliminated.

3. Intermediate Terrain

There were many comments concerning EPA's proposed clarification of acceptable modeling approaches for receptors in intermediate terrain, i.e., between stack top and plume height. The problems identified by the commenters occur where simplistic complex terrain screening techniques are used. In such circumstances, a more detailed analysis involving comparison of estimates between flat terrain and complex terrain models is necessary.

Given the focus of the comments, it is clear that there is no issue when the newer complex terrain models, i.e., CTSCREEN and CTDMPLUS, are used since these models apply to all terrain above stack height. Recognizing the commenters' concern that the proposed procedure was burdensome, overly complex, lacked formal validation and essentially represented a new technique, EPA is not recommending the approach generally at this time; however, EPA will consider accepting the use of the technique on a case-by-case basis from those who choose to implement the technique.

B. Mobile Source Modeling at Signalized Intersections

1. CAL3QHC

This model is used for estimating carbon monoxide concentrations at signalized intersections. Public comments contend that the Illinois intersection model evaluation study, on which the proposed adoption of CAL3QHC in supplement B was based, was flawed. The comments also contend that the selection of the supplement B intersection model should not be made until further intersection model evaluation is completed, utilizing the more recent New York City data base.

In response to these comments, EPA reevaluated the eight intersection models evaluated with the Illinois data base with the New York City data base. Using the MOBILE4 emissions model, the models were initially evaluated at all six intersection sites in New York City where data were collected. The MOBILE4.1 emissions model, an update to MOBILE4, was then released. The five models performing best using MOBILE4 were then evaluated using MOBILE4.1 at the three intersection sites in New York City with the highest quality data. A statistical scoring scheme was developed to determine the best performing models. The evaluation results showed CAL3QHC, TEXIN2, and CALINE4 to be the best performing models, with none of the three being statistically superior in performance to the others.

EPA points out, however, that TEXIN2 and CALINE4 contain the outdated (mid-1970s) modal emission factors. Since CAL3QHC performed as well as TEXIN2 and CALINE4 and does not contain the obsolete modal emission factors, it is being selected as the recommended intersection model for inclusion in supplement B, as proposed. However, since CALINE4 and TEXIN2 performed as well as CAL3QHC, the use of these models is being allowed for applications where their use has already been established at the time supplement B is promulgated.

2. "Guideline for Modeling CO From Roadway Intersections" (Draft)

Relatively minor public comments were received on receptor placement, ranking criteria for intersections, ambient temperature, persistence factor, hot/cold starts, background levels and wind direction. In response, the "Guideline for Modeling Carbon Monoxide from Roadway Intersections" has been modified, as appropriate, to reflect the commenters' concerns and recommendations.

C. Emissions and Dispersion Modeling System (EDMS)

Since no negative comments were received, EDMS has been identified, as proposed, in the Guideline as a recommended model in appendix A for assessing air pollutant concentrations at civilian airports and military air bases.

D. Modeling Techniques for Air Pathway Analyses

Commenters addressed a variety of topics concerning air toxics. These included applicability of Gaussian models to unconventional or intermittent sources, dense gas models, and model accuracy. In some cases, EPA has planned actions that are responsive to the commenters' concerns. In others,

due to limitations of available data bases or alternative modeling techniques on which to base a different approach, the changes to the Guideline have been implemented as originally proposed. As to these and others, commenters were unable to provide specific improvements.

ISC2 is general enough to apply to a broad category of toxic pollutant releases, which is why the model has been included in appendix A. However, supplement B now indicates that ISC2 has been recommended only for some specific regulatory programs; it is not being generally recommended for all air pathway analyses, as originally proposed.

The algorithms in ISC2 for various source types are continuously being reviewed and improvements released as appropriate. Dense gas models in the public domain have been indicated as available for use, but no one model is being required at this time. Per public comment, SLAB and HGSYSTEM will be proposed for addition to appendix B through a supplemental NPR; DENGADIS (DENse GAs DISpersion Model) is being added to appendix B as proposed in the February 1991 NPR.

Evaluating model accuracy is a continuing concern for EPA. However, there is a lack of suitable data bases to take such evaluations beyond their current extent. Nevertheless, where Gaussian models are applied to conventional source types for risk assessment, there is little basis for concern about overestimates of health risks; these models have consistently demonstrated a tendency to underestimate concentrations for longer averaging times.

E. On-Site Meteorological Program Guidance

Since the close of the public comment period, the evaluation supporting the SRDT method was found to have been based on a flawed implementation of the method (software error) and thus the conclusions of that evaluation are suspect. While public comments were generally supportive of the SRDT method, it unfortunately must be withdrawn from supplement B because of this oversight. Pending results of additional evaluations, the SRDT method may be re-proposed in a future supplemental rulemaking to augment the Guideline. However, as proposed, "On-site Meteorological Program Guidance for Regulatory Modeling Applications" (EPA–450/4–87–013) and a Meteorological Processor for Regulatory Models (MPRM)(EPA–600/3–88–043) are cited as the primary source of supplemental guidance and analysis for collection and use of on-site meteorological data (without reference to the SRDT system).

F. General Screening Techniques

1. SCREEN

EPA proposed to identify "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources" with SCREEN as the recommended screening technique in Guideline Section 4.2. A number of changes to SCREEN were suggested by public commenters. As necessary, a number of these changes have been made, through minor code corrections, to ensure reasonable comparability with ISC2. However, based on careful analyses of other suggested changes (e.g., those involving flares and mixing height), EPA has decided to retain SCREEN largely as proposed so as to keep intact the philosophy of SCREEN as a conservative screening technique. As a result of the minor code corrections, this technique has been renamed "SCREEN2".

2. VISCREEN

EPA proposed to identify "Workbook for Plume Visual Impact Screening and Analysis" with VISCREEN as the recommended screening technique for visibility assessments in Guideline section 7.2.4. Numerous detailed comments were provided on VISCREEN and the associated Workbook. However, after careful review, it is apparent that many of the comments were misdirected, sought a level of detail that is inappropriate for a screening analysis, or requested procedures still being researched. As a result, EPA is not changing its proposal on this point. However, to better support the technique, EPA is working with the National Park Service to provide information on background visual ranges and to encourage research development in regional haze modeling techniques.

G. Method for Evaluating Models

EPA proposed to include the "Protocol for Determining the Best Performing Model" ("Protocol") as an adjunct to "Interim Procedures for Evaluating Air Quality Models" (EPA–450/4–84–023) when a party seeks to justify the use of an alternative model for a site-specific application. Most of the comments offered by the public dealt with the degree of flexibility that EPA will permit in developing case-specific model evaluation protocols. This issue is addressed in the Protocol, which indicates that specific test statistics and performance measures described therein may need to be adapted to coincide with the data bases and objectives established for a particular evaluation study. Therefore, EPA has referenced the Protocol in Guideline Sections 3.2 and 10.1, as proposed.

H. Alternate Models in Appendix B

Unlike appendix A of the Guideline, which is a repository of summaries of refined air quality models that are "preferred" for specific applications, appendix B contains summaries of other refined models that may be considered with a case-specific justification. In the February 1991 NPR, EPA solicited comments on the inclusion of four models in appendix B: SDM (Shoreline Dispersion Model), WYNDvalley, MESOPUFF II, and PLUVUE II.

Public comments concerned the lack of an adequate performance evaluation for MESOPUFF II, although data bases for development and assessment of MESOPUFF II or other long range transport models were not identified. In fact, EPA has evaluated the performance of MESOPUFF II and several other long range transport models using available data bases. Although MESOPUFF II was found to be the best performing model, this evaluation resulted in EPA's decision to not propose the model for listing in appendix A of the Guideline. Furthermore, since public comments identifying concerns with the MESOPUFF II estimates of SO_2 conversion and removal presented no additional justification for changes in the model, the policy of case-by-case application of the model using agreed-upon protocols is continuing.

Regarding other models, no comments specifically related to PLUVUE II were received; comments about the proposed inclusion of SDM and WYNDvalley in appendix B of the Guideline were generally favorable. EPA has added SDM and WYNDvalley to appendix B of the Guideline, as proposed; PLUVUE II is already in appendix B. These three models, along with MESOPUFF II and its application protocol, have been identified, as proposed, as models available for application on a case-by-case basis in the following respective parts of the Guideline: Section 8.2.9, 8.2.10, 7.2.4, and 7.2.6. These models are either unique to the specified application or are at least as accurate as other available models. However, due to limitations of data bases for evaluating the models, no further model development or evaluation is feasible at this time. Nor is more detailed guidance appropriate; case-specific consultation with Regional Offices appears to be the most reasonable approach.

VOL 58 ISS 137 JL 20 1993 UMI

I. Supplementary Changes

1. Regional Office Consultation on VOC/NO_x Point Source Modeling

No negative comments were received on this topic, and the Guideline reflects the changes noted in the NPR.

2. Clarification of Modeling Requirements Applicable to PSD (NO_2)

Commenters expressed a desire for modeling techniques more refined than those proposed to handle annual average concentrations of NO_2 as they relate to PSD compliance demonstrations. However, no practical techniques which deal with the explicit use of UAM (*U*rban *A*irshed *M*odel) or with estimating long-term averages were identified. Therefore, since some procedure is needed to treat NO_2 and long-term averages for PSD, the original proposal, though limited, is being maintained for inclusion in the Guideline.

3. PM–10 Issues

No negative comments were received on the proposal to change references to particulate matter so that "PM–10" replaces "TSP" (Guideline Sections 7.2.2 and 11.2.3). Other Guideline changes suggested by commenters which involve references to receptor models are already addressed in the Guideline in a clear and consistent manner; they require no further changes or additions.

4. Clarification on Emissions Data for PSD NAAQS Analyses

Commenters took exception to the use of allowable emissions in modeling analyses for PSD NAAQS. A variety of alternatives was suggested for changing Table 9–2 as proposed, which ranged from the use of actual emissions to use of techniques for statistically approximating emissions variability. EPA maintains however that, once permitted, sources may operate at their legally allowable levels and that these must be considered in the modeling analyses. Appropriate allowances for modifying emissions to represent annual impacts and to account for background sources have been provided for in Guideline Table 9–1 and the proposed Table 9–2, and have long standing in past practice. EPA is authorized by the Clean Air Act to require the use of allowable emissions. Thus, no change to the proposed guidance is being made.

5. Deletion of ERTAQ and MPSDM From Appendix B

No negative comments were received on the proposal to delete these two models from appendix B as requested by the models' developer. These models have been deleted, as proposed.

6. Updates to OCD

No negative comments were received on this topic. This model has been updated to reflect recent improvements prepared by the Minerals Management Service, as proposed.

7. Updates to UAM and EKMA (OZIPP)

No negative comments were received on the proposal to update EKMA (OZIPP) to include the CB–IV chemical mechanism and guidance. Likewise, with respect to UAM, there were no comments on the use of the CB–IV mechanism; therefore, a version of UAM with that chemical mechanism has been specifically recommended in appendix A of the Guideline. Public comments on the "Guideline for Regulatory Application of the Urban Airshed Model" concerning such topics as data base criteria, grid size, boundary conditions, and UAM performance evaluation have been thoroughly addressed through consultation with the work group that helped in its development. A revised guide on the use of UAM in SIP development has been prepared and released; that guidance has been referenced in the Guideline.

8. Codification of the "Guideline on Air Quality Models"

Several commenters opposed EPA's proposal to codify the Guideline in the Code of Federal Regulations for regulatory purposes in certain programs, in addition to PSD permitting. These commenters claimed that codification would unduly limit flexibility of States and sources to use alternative models, data bases, and procedures for these other SIP applications. As stated in its Introduction, the Guideline describes "air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source reviews * * *", and this has always been EPA policy. Use of the Guideline represents long-standing EPA policy and codification would not, in fact, limit flexibility of States or industry as to models, data bases or attainment demonstrations for SIPs. The Guideline, by its terms, provides the flexibility sought by these commenters, because it allows the use of models other than those set forth in appendix A whenever it is appropriate to do so. EPA believes that the comprehensive use of the Guideline under the other provisions promotes consistency in model usage and is in accordance with the authority granted by Sections 110(a)(2), 165(e), 172, 173, 301(a)(1) and 320 of the 1977 Clean Air Act Amendments (42 U.S.C 7410(a)(2), 7475(e), 7502(a) & (b), 7503, 7601(a)(1) and 7620, respectively). The codification therefore is being implemented as proposed. In order to better facilitate this action, the Guideline, as revised through supplement B, will now be published as appendix W to 40 CFR part 51.[4]

J. Other Topics

1. A Screening Technique for Point Sources of O_3 Precursors

Based on public support, screening techniques for estimating VOC/NO_x point source emission impacts on O_3 have not been included in the Guideline at this time.

2. Usefulness of Regional Scale Models to Regulatory Programs

No public comments on this topic were received. Therefore, as proposed by EPA, recommendations on the use of regional scale models have not been included in the Guideline at this time.

K. Miscellaneous Comments

In addition to the topics described above, substantial comments were received which were not specifically solicited in the February 1991 NPR. These comments pertained to the following: (1) Industrial Source Complex (ISC2) Model; (2) *F*ugitive *D*ust *M*odel (FDM); and (3) general modeling guidance.

1. Industrial Source Complex Model

A wide range of comments were presented on the adequacy of the computational code in general and more specifically on the downwash, area source and deposition algorithms. In response to some of these comments, it should be noted that EPA has completed a program to improve the structure of the code. This enhanced code makes the model much more usable, but does not change the way concentrations are calculated and does not alter the basic downwash, area source and deposition algorithms. In addition, a preprocessor which addresses building orientation in a way consistent with current guidance will be made available, thus relieving some of the computational burden.

Lack of a cavity algorithm in ISC2 to calculate downwash is also of concern to EPA and is a high research priority, but no immediate solution is available.

[4] In a conforming action, EPA is hereby deleting appendix X to 40 CFR 266, subpart H (Hazardous Waste Burned in Boilers and Industrial Furnaces). EPA is also changing reference to the Guideline in part 266 to 40 CFR part 51, appendix W.

Where there is confusion in the Guideline about downwash calculations, clarifications have been made. Other remarks about the downwash calculations reflected confusion on the part of the commenter(s) or a lack of data on which to base a better algorithm. Thus, no further action to change downwash calculations is planned at this time.

EPA shares the commenters' concerns about potential deficiencies in the area source and deposition algorithms and is evaluating these and alternative schemes. If new algorithms are identified for use, they will be proposed for public review and comment before being implemented for regulatory application. Until such a proposal is prepared, the current algorithms in ISC2 should continue to be used, as appropriate.

2. Fugitive Dust Model

There were several strong comments in favor of adopting FDM in appendix A of the Guideline as the recommended model for sources of fugitive dust as it relates to both PM–10 and airborne toxic materials. Nevertheless, there has been insufficient opportunity for public comment on this model. Thus, the model algorithms will be considered in a supplemental NPR.

3. General Modeling Guidance

Highly varied comments and Agency responses on other topics not addressed in the February 1991 NPR are summarized in Section 12 of the "Summary of Public Comments and EPA Responses on the Fifth Conference on Air Quality Modeling: March 1991" (Docket Item V–C–1). The comments deal with a wide range of topics primarily related to management of EPA's modeling guidance. In most cases, the commenters seem to have misunderstood the way in which such guidance is issued and updated by the Agency, or the commenters have made inappropriate recommendations that are not consistent with long-standing EPA policies. As such, with one exception, no action appears appropriate. That exception has to do with determination of PSD impacts in Class I areas; work is underway on this topic and will be subjected to public review and comment when completed.

Administrative Requirements

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis (RIA). The criteria set forth in section 1 of the Order for this determination are: (1) Likelihood to have an annual effect on the economy of $100 million or more; (2) likelihood to cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) likelihood to result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not change the proposal's conclusions regarding E.O. 12291, specifically that the regulation is not "major" because it would result in none of the adverse effects mentioned above. This rule has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291, as required, and their written comments and any EPA responses thereto will be available as Docket Item IV–H–1 (see **ADDRESSES**).

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act on 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires EPA to consider potential impacts of regulations on small business "entities". Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator hereby certifies that the attached final rule will not have a significant impact on a substantial number of such entities. This rule merely updates existing technical requirements for air quality modeling analyses mandated by various Clean Air Act programs (e.g., prevention of significant deterioration, new source review, SIP revisions) and imposes no new regulatory burdens.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 52

Air pollution control, Lead, Nitrogen dioxide, Ozone, Sulfur oxides.

40 CFR Parts 260 and 266

Air pollution control, Hazardous waste.

Dated: June 21, 1993.

Carol M. Browner,

Administrator.

Parts 51, 52, 260 and 266, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7620.

2. Section 51.46 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 51.46 AQMA analysis: Projection of air quality concentrations.

* * * * *

(b) Unless alternative techniques are approved under § 51.63, such concentrations shall be projected using techniques consistent with the requirements in § 51.112(a).

§ 51.63 [Amended]

3. In § 51.63, paragraph (a) is amended by removing "51.46,".

4. In § 51.112, paragraph (a) is amended by removing the second sentence and adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 51.112 Demonstration of adequacy.

(a) * * *

(1) The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in the appendix W of this part ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)). The Guideline and its supplements (EPA Publication No. 450/2–78–027R) are also for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, VA 22161.

(2) Where an air quality model specified in appendix W of this part ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator

must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

* * * * *

§ 51.117 [Amended]

5. In § 51.117, paragraph (c)(1) is amended by adding the phrase ", consistent with requirements contained in § 51.112(a)" immediately after "if desired". Paragraph (c)(2) is amended by adding the phrase ", consistent with requirements contained in § 51.112(a)" immediately after "for demonstration of attainment". Paragraph (c)(3) is amended by adding the phrase ", consistent with requirements contained in § 51.112(a)" immediately after "for the demonstration of attainment".

§ 51.150 [Amended]

6. In § 51.150, paragraph (e) is amended by adding the phrase ", consistent with the requirements contained in § 51.112(a)" immediately after "of this section" in the first sentence, and by removing the second sentence.

7. Section 51.160 is amended by adding paragraphs (f)(1) and (f)(2) to read as follows:

§ 51.160 Legally enforceable procedures.

* * * * *

(f) * * *

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in the appendix W of this part ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)). The Guideline and its supplements (EPA Publication No. 450/2–78–027R) are also for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, VA, 22161.

(2) Where an air quality model specified in the appendix W of this part ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

8. Section 51.166 is amended by revising paragraphs (l)(1) and (l)(2) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in the appendix W of this part ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)). The Guideline and its supplements (EPA Publication No. 450/2–78–027R) are also for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, VA, 22161.

(2) Where an air quality model specified in the Appendix W of this part ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

* * * * *

9. Part 51 is amended by adding appendix W to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models (Revised)

[EPA Document Number EPA–450/2–78–027R]

Preface

Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act, Congress mandated such consistency and encouraged the standardization of model applications. The Guideline on Air Quality Models was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. This guideline provides a common basis for estimating the air quality concentrations used in assessing control strategies and developing emission limits.

The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Four primary on-going activities provide direct input to revisions of this modeling guideline. The first is a series of annual EPA workshops conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity, directed toward the improvement of modeling procedures, is the cooperative agreement that EPA has with the scientific community represented by the American Meteorological Society. This agreement provides scientific assessment of procedures and proposed techniques and sponsors workshops on key technical issues. The third activity is the solicitation and review of new models from the technical and user community. In the March 27, 1980 **Federal Register**, a procedure was outlined for the submittal to EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by EPA, are considered for recognition in this guideline. The fourth activity is the extensive on-going research efforts by EPA and others in air quality and meteorological modeling.

Based primarily on these four activities, this document embodies revisions to the "Guideline on Air Quality Models." Although the text has been revised from the 1978 guide, the present content and topics are similar. As necessary, new sections and topics are included. EPA does not make changes to the guidance on a predetermined schedule, but rather on an as needed basis. EPA believes that revisions to this guideline should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from EPA's Regional Offices.

Table of Contents

List of Tables

1.0 Introduction
2.0 Overview of Model Use
2.1 Suitability of Models
2.2 Classes of Models
2.3 Levels of Sophistication of Models
3.0 Recommended Air Quality Models
3.1 Preferred Modeling Techniques
3.1.1 Discussion
3.1.2 Recommendations
3.2 Use of Alternative Models
3.2.1 Discussion
3.2.2 Recommendations
3.3 Availability of Supplementary Modeling Guidance
3.3.1 The Model Clearinghouse
3.3.2 Regional Meteorologists Workshops
4.0 Simple-Terrain Stationary-Source Models
4.1 Discussion
4.2 Recommendations
4.2.1 Screening Techniques
4.2.2 Refined Analytical Techniques
5.0 Model Use in Complex Terrain
5.1 Discussion
5.2 Recommendations
5.2.1 Screening Techniques

5.2.2 Refined Analytical Techniques
6.0 Models for Ozone, Carbon Monoxide and Nitrogen Dioxide
6.1 Discussion
6.2 Recommendations
6.2.1 Models for Ozone
6.2.2 Models for Carbon Monoxide
6.2.3 Models for Nitrogen Dioxide (Annual Average)
7.0 Other Model Requirements
7.1 Discussion
7.2 Recommendations
7.2.1 Fugitive Dust/Fugitive Emissions
7.2.2 Particulate Matter
7.2.3 Lead
7.2.4 Visibility
7.2.5 Good Engineering Practice Stack Height
7.2.6 Long Range Transport (LRT) (i.e., beyond 50km)
7.2.7 Modeling Guidance for Other Governmental Programs
7.2.8 Air Pathway Analyses (Air Toxics and Hazardous Waste)
8.0 General Modeling Considerations
8.1 Discussion
8.2 Recommendations
8.2.1 Design Concentrations
8.2.2 Critical Receptor Sites
8.2.3 Dispersion Coefficients
8.2.4 Stability Categories
8.2.5 Plume Rise
8.2.6 Chemical Transformation
8.2.7 Gravitational Settling and Deposition
8.2.8 Urban/Rural Classification
8.2.9 Fumigation
8.2.10 Stagnation
8.2.11 Calibration of Models
9.0 Model Input Data
9.1 Source Data
9.1.1 Discussion
9.1.2 Recommendations
9.2 Background Concentrations
9.2.1 Discussion
9.2.2 Recommendations (Isolated Single Source)
9.2.3 Recommendations (Multi-Source Areas)
9.3 Meteorological Input Data
9.3.1 Length of Record of Meteorological Data
9.3.2 National Weather Service Data
9.3.3 Site-Specific Data
9.3.4 Treatment of Calms
10.0 Accuracy and Uncertainty of Models
10.1 Discussion
10.1.1 Overview of Model Uncertainty
10.1.2 Studies of Model Accuracy
10.1.3 Use of Uncertainty in Decision-Making
10.1.4 Evaluation of Models
10.2 Recommendations
11.0 Regulatory Application of Models
11.1 Discussion
11.2 Recommendations
11.2.1 Analysis Requirements
11.2.2 Use of Measured Data in Lieu of Model Estimates
11.2.3 Emission Limits
12.0 References
13.0 Bibliography
14.0 Glossary of Terms
Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models
Appendix B to Appendix W of Part 51—Summaries of Alternative Air Quality Models
Appendix C to Appendix W of Part 51—Example Air Quality Analysis Checklist

LIST OF TABLES

Table No.	Title
4–1	Preferred Models for Selected Applications in Simple Terrain.
5–1a	Neutral/Stable Meteorological Matrix for CTSCREEN.
5–1b	Unstable/Convective Meteorological Matrix for CTSCREEN.
5–2	Preferred Options for the SHORTZ/LONGZ Computer Codes When Used in a Screening Mode.
5–3	Preferred Options for the RTDM Computer Code When Used in a Screening Mode.
9–1	Model Emission Input Data for Point Sources.
9–2	Point Source Model Input Data (Emissions) for PSD NAAQS Compliance Demonstrations.
9–3	Averaging Times for Site-Specific Wind and Turbulence Measurements.

1.0 Introduction

This guideline recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP)[1] revisions for existing sources and to new source reviews,[2] including prevention of significant deterioration (PSD).[3] It is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies and by industry. The guidance is appropriate for use by other Federal agencies and by State agencies with air quality and land management responsibilities. It serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. The guide is not intended to be a compendium of modeling techniques. Rather, it should serve as a basis by which air quality managers, supported by sound scientific judgment, have a common measure of acceptable technical analysis.

Due to limitations in the spatial and temporal coverage of air quality measurements, monitoring data normally are not sufficient as the sole basis for demonstrating the adequacy of emission limits for existing sources. Also, the impacts of new sources that do not yet exist can only be determined through modeling. Thus, models, while uniquely filling one program need, have become a primary analytical tool in most air quality assessments. Air quality measurements though can be used in a complementary manner to dispersion models, with due regard for the strengths and weaknesses of both analysis techniques. Measurements are particularly useful in assessing the accuracy of model estimates. The use of air quality measurements alone however could be preferable, as detailed in a later section of this document, when models are found to be unacceptable and monitoring data with sufficient spatial and temporal coverage are available.

It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling "cookbook." There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgment are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgment of experienced meteorologists and analysts is essential.

The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the States and EPA Regional Offices, by many industries and trade associations, and also by the deliberations of Congress, that consistency in the selection and application of models and data bases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies and specifying emission limits. Such consistency is not, however, promoted at the expense of model and data base accuracy. This guide provides a consistent basis for selection of the most accurate models and data bases for use in air quality assessments.

Recommendations are made in this guide concerning air quality models, data bases, requirements for concentration estimates, the use of measured data in lieu of model estimates, and model evaluation procedures. Models are identified for some specific applications. The guidance provided here should be followed in all air quality analyses relative to State Implementation Plans and in analyses required by EPA, State and local agency air programs. The EPA may approve the use of another technique that can be demonstrated to be more appropriate than those recommended in this guide. This is discussed at greater length in Section 3.0. In all cases, the model applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from this guide should be carefully documented and fully supported.

From time to time situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with the EPA Regional Meteorologists to

ensure consistency in modeling guidance and to promote the use of more accurate air quality models and data bases. The workshops serve to provide further explanations of guideline requirements to the Regional Offices and workshop reports are issued with this clarifying information. In addition, findings from on-going research programs, new model submittals, or results from model evaluations and applications are continuously evaluated. Based on this information changes in the guidance may be indicated.

All changes to this guidance must follow rulemaking requirements since the guideline is codified in Appendix W of part 51. EPA will promulgate proposed and final rules in the **Federal Register** to amend this Appendix. Ample opportunity for public comment will also be provided for each proposed change and public hearings scheduled if requested. Final rule changes will also be made available through the National Technical Information Service (NTIS).

A wide range of topics on modeling and data bases are discussed in the remainder of this guideline. Chapter 2 gives an overview of models and their appropriate use. Chapter 3 provides specific guidance on the use of "preferred" air quality models and on the selection of alternative techniques. Chapters 4 through 7 provide recommendations on modeling techniques for application to simple-terrain stationary source problems, complex terrain problems, and mobile source problems. Specific modeling requirements for selected regulatory issues are also addressed. Chapter 8 discusses issues common to many modeling analyses, including acceptable model components. Chapter 9 makes recommendations for data inputs to models including source, meteorological and background air quality data. Chapter 10 covers the uncertainty in model estimates and how that information can be useful to the regulatory decision-maker. The last chapter summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

Appendix W to 40 CFR part 51 (the "Guideline on Air Quality Models (Revised)") itself contains three appendices: A, B, and C. Thus, when reference is made to "appendix A" in this document, it refers to the appendix A to appendix W to 40 CFR part 51. Appendices B and C are referenced in the same way.

Appendix A contains summaries of refined air quality models that are "preferred" for specific applications; both EPA models and models developed by others are included. Appendix B contains summaries of other refined models that may be considered with a case-specific justification. Appendix C contains a checklist of requirements for an air quality analysis.

2.0 Overview of Model Use

Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their use. Such information is provided in this section.

2.1 Suitability of Models

The extent to which a specific air quality model is suitable for the evaluation of source impact depends upon several factors. These include: (1) The meteorological and topographic complexities of the area; (2) the level of detail and accuracy needed for the analysis; (3) the technical competence of those undertaking such simulation modeling; (4) the resources available; and (5) the detail and accuracy of the data base, i.e., emissions inventory, meteorological data, and air quality data. Appropriate data should be available before any attempt is made to apply a model. A model that requires detailed, precise, input data should not be used when such data are unavailable. However, assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in emissions and meteorological conditions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

Air quality models have been applied with the most accuracy or the least degree of uncertainty to simulations of long term averages in areas with relatively simple topography. Areas subject to major topographic influences experience meteorological complexities that are extremely difficult to simulate. Although models are available for such circumstances, they are frequently site specific and resource intensive. In the absence of a model capable of simulating such complexities, only a preliminary approximation may be feasible until such time as better models and data bases become available.

Models are highly specialized tools. Competent and experienced personnel are an essential prerequisite to the successful application of simulation models. The need for specialists is critical when the more sophisticated models are used or the area being investigated has complicated meteorological or topographic features. A model applied improperly, or with inappropriately chosen data, can lead to serious misjudgments regarding the source impact or the effectiveness of a control strategy.

The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required depend on the nature of the model and its complexity, the detail of the data base, the difficulty of the application, and the amount and level of expertise required. The costs of manpower and computational facilities may also be important factors in the selection and use of a model for a specific analysis. However, it should be recognized that under some sets of physical circumstances and accuracy requirements, no present model may be appropriate. Thus, consideration of these factors should not lead to selection of an inappropriate model.

2.2 Classes of Models

The air quality modeling procedures discussed in this guide can be categorized into four generic classes: Gaussian, numerical, statistical or empirical, and physical. Within these classes, especially Gaussian and numerical models, a large number of individual "computational algorithms" may exist, each with its own specific applications. While each of the algorithms may have the same generic basis, e.g., Gaussian, it is accepted practice to refer to them individually as models. For example, the CRSTER model and the RAM model are commonly referred to as individual models. In fact, they are both variations of a basic Gaussian model. In many cases the only real difference between models within the different classes is the degree of detail considered in the input or output data.

Gaussian models are the most widely used techniques for estimating the impact of nonreactive pollutants. Numerical models may be more appropriate than Gaussian models for area source urban applications that involve reactive pollutants, but they require much more extensive input data bases and resources and therefore are not as widely applied. Statistical or empirical techniques are frequently employed in situations where incomplete scientific understanding of the physical and chemical processes or lack of the required data bases make the use of a Gaussian or numerical model impractical. Various specific models in these three generic types are discussed in this guideline.

Physical modeling, the fourth generic type, involves the use of wind tunnel or other fluid modeling facilities. This class of modeling is a complex process requiring a high level of technical expertise, as well as access to the necessary facilities. Nevertheless, physical modeling may be useful for complex flow situations, such as building, terrain or stack down-wash conditions, plume impact on elevated terrain, diffusion in an urban environment, or diffusion in complex terrain. It is particularly applicable to such situations for a source or group of sources in a geographic area limited to a few square kilometers. If physical modeling is available and its applicability demonstrated, it may be the best technique. A discussion of physical modeling is beyond the scope of this guide. The EPA publication "Guideline for Fluid Modeling of Atmospheric Diffusion,"[4] provides information on fluid modeling applications and the limitations of that method.

2.3 Levels of Sophistication of Models

In addition to the various classes of models, there are two levels of sophistication. The first level consists of general, relatively simple estimation techniques that provide conservative estimates of the air quality impact of a specific source, or source category. These are screening techniques or screening models. The purpose of such techniques is to eliminate the need of further more detailed modeling for those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS)[5] or the allowable prevention of significant deterioration (PSD) concentration increments.[3] If a screening technique indicates that the concentration contributed by the source exceeds the PSD increment or the increment remaining to just meet the NAAQS, then the second level of more sophisticated models should be applied

The second level consists of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result they provide a more refined and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies. These are referred to as refined models.

The use of screening techniques followed by a more refined analysis is always desirable, however there are situations where the screening techniques are practically and technically the only viable option for estimating source impact. In such cases, an attempt should be made to acquire or improve the necessary data bases and to develop appropriate analytical techniques.

3.0 Recommended Air Quality Models

This section recommends refined modeling techniques that are preferred for use in regulatory air quality programs. The status of models developed by EPA, as well as those submitted to EPA for review and possible inclusion in this guidance, is discussed. The section also addresses the selection of models for individual cases and provides recommendations for situations where the preferred models are not applicable. Two additional sources of modeling guidance, the Model Clearinghouse[6] and periodic Regional Meteorologists' workshops, are also briefly discussed here.

In all regulatory analyses, especially if other than preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and are encouraged. Agreement on the data base to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality checklist, such as presented in appendix C, and the preparation of a written protocol help to keep misunderstandings at a minimum.

It should not be construed that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific models is needed to promote consistency in model selection and application.

The 1980 solicitation of new or different models from the technical community[7] and the program whereby these models are evaluated, established a means by which new models are identified, reviewed and made available in the guideline. There is a pressing need for the development of models for a wide range of regulatory applications. Refined models that more realistically simulate the physical and chemical process in the atmosphere and that more reliably estimate pollutant concentrations are required. Thus, the solicitation of models is considered to be continuous.

3.1 Preferred Modeling Techniques

3.1.1 Discussion

EPA has developed approximately 10 models suitable for regulatory application. More than 20 additional models were submitted by private developers for possible inclusion in the guideline. These refined models have all been organized into eight categories of use: rural, urban industrial complex, reactive pollutants, mobile sources, complex terrain, visibility, and long range transport. They are undergoing an intensive evaluation by category. The evaluation exercises[8,9,10] include statistical measures of model performance in comparison with measured air quality data as suggested by the American Meteorological Society[11] and, where possible, peer scientific reviews.[12,13,14]

When a single model is found to perform better than others in a given category, it is recommended for application in that category as a preferred model and listed in Appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in appendix A is selected on the basis of other factors such as past use, public familiarity, cost or resource requirements, and availability. No further evaluation of a preferred model is required if the source follows EPA recommendations specified for the model in this guideline. The models not specifically recommended for use in a particular category are summarized in appendix B. These models should be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in section 3.2.

The solicitation of new refined models which are based on sounder scientific principles and which more reliably estimate pollutant concentrations is considered by EPA to be continuous. Models that are submitted in accordance with the provisions outlined in the **Federal Register** notice of March 1980 (45 FR 20157)[7] will be evaluated as submitted. These requirements are:

1. The model must be computerized and functioning in a common Fortran language suitable for use on a variety of computer systems.

2. The model must be documented in a user's guide which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for currently recommended models, e.g., the Single Source [CRSTER] Model.

3. The model must be accompanied by a complete test data set including input parameters and output results. The test data must be included in the user's guide as well as provided in computer-readable form.

4. The model must be useful to typical users, e.g., State air pollution control agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

5. The model documentation must include a comparison with air quality data or with other well-established analytical techniques.

6. The developer must be willing to make the model available to users at reasonable cost or make it available for public access through the National Technical Information Service; the model cannot be proprietary.

The evaluation process will include a determination of technical merit, in accordance with the above six items including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate data base and to a peer scientific review. Models for wide use (not just an isolated case!) found to perform better, based on an evaluation for the same data bases used to evaluate models in appendix A, will be proposed for inclusion as preferred models in future guideline revisions.

3.1.2 Recommendations

Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user should select a model from that appendix. These models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary of appendix A. Further recommendations for the application of these models to specific source problems are found in subsequent sections of this guideline.

If changes are made to a preferred model without affecting the concentration estimates, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer or those that affect only the format or averaging time of the model results. However, when any changes are made, the Regional Administrator should require a test case example to demonstrate that the concentration estimates are not affected.

A preferred model should be operated with the options listed in appendix A as "Recommendations for Regulatory Use." If other options are exercised, the model is no longer "preferred." Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status as a preferred model. Use of the model must then be justified on a case-by-case basis.

3.2 Use of Alternative Models

3.2.1 Discussion Selection of the best techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this guide cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. An EPA document, "Interim Procedures for Evaluating Air Quality Models",[15,16] has been prepared to assist in developing a consistent approach when justifying the use of other than the preferred modeling techniques recommended in this guide. An alternative to be considered to the performance measures contained in chapter 3 of this document is set forth in another EPA document "Protocol for Determining the Best Performing Model".[17] The procedures in both documents provide a general framework for objective decision-

making on the acceptability of an alternative model for a given regulatory application. The documents contain procedures for conducting both the technical evaluation of the model and the field test or performance evaluation.

This section discusses the use of alternate modeling techniques and defines three situations when alternative models may be used.

3.2.2 Recommendations. Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations below. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and is applicable.

An alternative model should be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model will normally be approved for use: (1) If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model; (2) if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the application than a comparable model in appendix A; and (3) if there is no preferred model for the specific application but a refined model is needed to satisfy regulatory requirements. Any one of these three separate conditions may warrant use of an alternative model. Some known alternative models that are applicable for selected situations are contained in appendix B. However, inclusion there does not infer any unique status relative to other alternative models that are being or will be developed in the future.

Equivalency is established by demonstrating that the maximum or highest, second highest concentrations are within 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is so nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. Two percent was selected as the basis for equivalency since it is a rough approximation of the fraction that PSD Class I increments are of the NAAQS for SO_2, i.e., the difference in concentrations that is judged to be significant. However, notwithstanding this demonstration, use of models that are not equivalent may be used when one of the two other conditions identified below are satisfied.

The procedures and techniques for determining the acceptability of a model for an individual case based on superior performance is contained in the document entitled "Interim Procedures for Evaluating Air Quality Models",[15] and should be followed, as appropriate.* Preparation and implementation of an evaluation protocol which is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

When no appendix A model is applicable to the modeling problem, an alternative refined model may be used provided that:

1. The model can be demonstrated to be applicable to the problem on a theoretical basis, and

2. The data bases which are necessary to perform the analysis are available and adequate, and

3a. Performance evaluations of the model in similar circumstances have shown that the model is not biased toward underestimates, or

3b. After consultation with the EPA Regional Office, a second model is selected as a baseline or reference point for performance and the interim procedures [15]/ protocol [17] are then used to demonstrate that the proposed model performs better than the reference model.

3.3 Availability of Supplementary Modeling Guidance

The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse and also holds periodic workshops with headquarters, Regional Office and State modeling representatives.

3.3.1 The Model Clearinghouse

3.3.1.1 *Discussion.* The Model Clearinghouse is the single EPA focal point for review of air quality simulation models proposed for use in specific regulatory applications. Details concerning the Clearinghouse and its operation are found in the document, "Model Clearinghouse: Operational Plan." [8] Three primary functions of the Clearinghouse are:

(1) Review of decisions proposed by EPA Regional Offices on the use of modeling techniques and data bases.

(2) Periodic visits to Regional Offices to gather information pertinent to regulatory model usage.

(3) Preparation of an annual report summarizing activities of the Clearinghouse including specific determinations made during the course of the year.

3.3.1.2 *Recommendations.* The Regional Administrator may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action. The Clearinghouse may also consider and evaluate the use of modeling techniques submitted in support of any regulatory action. Additional responsibilities are: (1) Review proposed action for consistency with agency policy; (2) determine technical adequacy; and (3) make recommendations concerning the technique or data base.

3.3.2 Regional Meteorologists Workshops

3.3.2.1 *Discussion.* EPA conducts an annual in-house workshop for the purpose of mutual discussion and problem resolution among Regional Office modeling specialists, EPA research modeling experts, EPA Headquarters modeling and regulatory staff and representatives from State modeling programs. A summary of the issues resolved at previous workshops was issued in 1981 as "Regional Workshops on Air Quality Modeling: A Summary Report." [17] That report clarified procedures not specifically defined in the 1978 guideline and was issued to ensure the consistent interpretation of model requirements from Region to Region. Similar workshops for the purpose of clarifying guideline procedures or providing detailed instructions for the use of those procedures are anticipated in the future.

3.3.2.2 *Recommendations.* The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures.

4.0 Simple-Terrain Stationary Source Models

4.1 Discussion

Simple terrain, as used here, is considered to be an area where terrain features are all lower in elevation than the top of the stack of the source(s) in question. The models recommended in this section are generally used in the air quality impact analysis of stationary sources for most criteria pollutants. The averaging time of the concentration estimates produced by these models ranges from 1 hour to an annual average.

Model evaluation exercises have been conducted to determine the "best, most appropriate point source model" for use in simple terrain.[8,12] However, no one model has been found to be clearly superior. Thus, based on past use, public familiarity, and availability CRSTER remains the recommended model for rural, simple terrain, single point source applications. Similar determinations were made for the other refined models that are identified in the following sections.

4.2 Recommendations

4.2.1 Screening Techniques

Point source screening techniques are an acceptable approach to air quality analyses. One such approach is contained in the EPA document "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources." [18] A computerized version of the screening technique, SCREEN2, is available.[19,20]

All screening procedures should be adjusted to the site and problem at hand.

*Another EPA document, "Protocol for Determining the Best Performing Model", [17] contains advanced statistical techniques for determining which model performs better than other competing models. In many cases, this protocol should be considered by users of the "Interim Procedures for Evaluating Air Quality Models" in preference to the material currently in Chapter 3 of that document.

Close attention should be paid to whether the area should be classified urban or rural in accordance with Section 8.2.8. The climatology of the area should be studied to help define the worst-case meteorological conditions. Agreement should be reached between the model user and the reviewing authority on the choice of the screening model for each analysis, and on the input data as well as the ultimate use of the results.

4.2.2 Refined Analytical Techniques

Table 4–1 lists preferred models for selected applications. These preferred models should be used for the sources, land use categories and averaging times indicated in the table. A brief description of each of these models is found in appendix A. Also listed in that appendix are the model input requirements, the standard options that should be selected when running the program and output options.

When modeling for compliance with short term NAAQS and PSD increments is of primary concern, the short term models listed in Table 4-1 may also be used to provide long term concentration estimates. When modeling for sources for which long term standards alone are applicable (e.g., lead), then the long term models should be used.

The conversion from long term to short term concentration averages by any transformation technique is not acceptable in regulatory applications.

TABLE 4–1.—PREFERRED MODELS FOR SELECTED APPLICATIONS IN SIMPLE TERRAIN

	Land Use	Model [1]
Short Term (i.e., 1–24 hours):		
Single Source	Rural	CRSTER
	Urban	RAM
Multiple Source.	Rural	MPTER
	Urban	RAM
Complicated Sources [2].	Rural/Urban	ISCST2
Buoyant Industrial Line Sources.	Rural	BLP
Long Term (i.e., monthly, seasonal or annual):		
Single Source	Rural	CRSTER
	Urban	RAM
Multiple Source.	Rural	MPTER
	Urban	CDM 2.0 or RAM [3]
Complicated Sources [2].	Rural/Urban	ISCLT2

TABLE 4–1.—PREFERRED MODELS FOR SELECTED APPLICATIONS IN SIMPLE TERRAIN—Continued

	Land Use	Model [1]
Buoyant Industrial Line Sources.	Rural	BLP

[1] Several of these models contain options which allow them to be interchanged. For Example, ISCST2 can be substituted for CRSTER and equivalent, if not identical, concentration estimates obtained. Similarly, for a point source application, MPTER with urban option can be substituted for RAM. Where a substitution is convenient to the user and equivalent estimates are assured, it may be made. The models as listed here reflect the applications for which they were originally intended.

[2] Complicated sources are those with special problems such as aerodynamic downwash, particle deposition, volume and area sources, etc.

[3] If only a few sources in an urban area are to be modeled, RAM should be used.

5.0 Model Use in Complex Terrain

5.1 Discussion

For the purpose of this guideline, complex terrain is defined as terrain exceeding the height of the stack being modeled. Complex terrain dispersion models are normally applied to stationary sources of pollutants such as SO_2 and particulates.

A major outcome from the EPA Complex Terrain Model Development project has been the publication of a refined dispersion model (CTDM) suitable for regulatory application to plume impaction assessments in complex terrain.[21] Although CTDM as originally produced was only applicable to those hours characterized as neutral or stable, a computer code for all stability conditions, CTDMPLUS,[19] together with a user's guide,[22] and on-site meteorological and terrain data processors,[23,24] is now available. Moreover, CTSCREEN,[19,25] a version of CTDMPLUS that does not require on-site meteorological data inputs, is also available as a screening technique.

The methods discussed in this section should be considered in two categories: (1) Screening techniques, and (2) the refined dispersion model, CTDMPLUS, discussed below and listed in Appendix A.

Continued improvements in ability to accurately model plume dispersion in complex terrain situations can be expected, e.g., from research on lee side effects due to terrain obstacles. New approaches to improve the ability of models to realistically simulate atmospheric physics, e.g., hybrid models which incorporate an accurate wind field analysis, will ultimately provide more appropriate tools for analyses. Such hybrid modeling techniques are also acceptable for regulatory applications after the appropriate demonstration and evaluation.[15]

5.2 Recommendations

Recommendations in this Section apply primarily to those situations where the impaction of plumes on terrain at elevations equal to or greater than the plume centerline during stable atmospheric conditions are determined to be the problem. If a violation of any NAAQS or the controlling increment is indicated by using any of the preferred screening techniques, then a refined complex terrain model may be used. Phenomena such as fumigation, wind direction shear, lee-side effects, building wake- or terrain-induced downwash, deposition, chemical transformation, variable plume trajectories, and long range transport are not addressed by the recommendations in this section.

Where site-specific data are used for either screening or refined complex terrain models, a data base of at least 1 full-year of meteorological data is preferred. If more data are available, they should be used. Meteorological data used in the analysis should be reviewed for both spatial and temporal representativeness.

Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

When CTSCREEN or CTDMPLUS is used, digitized contour data must be first processed by the CTDM Terrain Processor [23] to provide hill shape parameters in a format suitable for direct input to CTDMPLUS. Then the user supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may "appear to the plume" as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

The user is encouraged to confer with the Regional Office if any unresolvable problems are encountered with any screening or refined analytical procedures, e.g., meteorological data, receptor siting, or terrain contour processing issues.

5.2.1 Screening Techniques

Five preferred screening techniques are currently available to aid in the evaluation of concentrations due to plume impaction during stable conditions: (1) for 24-hour impacts, the Valley Screening Technique [19] as outlined in the Valley Model User's Guide;[26] (2) CTSCREEN,[19] as outlined in the CTSCREEN User's Guide;[25] (3) COMPLEX I;[19] (4) SHORTZ/LONGZ;[19,27] and (5) Rough Terrain Dispersion Model (RTDM)[19,90] in its

prescribed mode described below. As appropriate, any of these screening techniques may be used consistent with the needs, resources, and available data of the user

The Valley Model, COMPLEX I, SHORTZ/LONGZ, and RTDM should be used only to estimate concentrations at receptors whose elevations are greater than or equal to plume height. For receptors at or below stack height, a simple terrain model should be used (see Chapter 4). Receptors between stack height and plume height present a unique problem since none of the above models were designed to handle receptors in this narrow regime, the definition of which will vary hourly as meteorological conditions vary. CTSCREEN may be used to estimate concentrations under all stability conditions at all receptors located "on terrain" above stack top, but has limited applicability in multi-source situations. As a result, the estimation of concentrations at receptors between stack height and plume height should be considered on a case-by-case basis after consultation with the EPA Regional Office; the most appropriate technique may be a function of the actual source(s) and terrain configuration unique to that application. One technique that will generally be acceptable, but is not necessarily preferred for any specific application, involves applying both a complex terrain model (except for the Valley Model) and a simple terrain model. The Valley Model should not be used for any intermediate terrain receptor. For each receptor between stack height and plume height, an hour-by-hour comparison of the concentration estimates from both models is made. The higher of the two modeled concentrations should be chosen to represent the impact at that receptor for that hour, and then used to compute the concentration for the appropriate averaging time(s). For the simple terrain models, terrain may have to be "chopped off" at stack height, since these models are frequently limited to receptors no greater than stack height.

5.2.1.1 *Valley Screening Technique.* The Valley Screening Technique may be used to determine 24-hour averages. This technique uses the Valley Model with the following worst-case assumptions for rural areas: (1) P-G stability "F"; (2) wind speed of 2.5 m/s; and (3) 8 hours of occurrence. For urban areas the stability should be changed to "P-C stability E."

When using the Valley Screening Technique to obtain 24-hour average concentrations the following apply: (1) Multiple sources should be treated individually and the concentrations for each wind direction summed; (2) only one wind direction should be used (see User's Guide,[20] page 2–15) even if individual runs are made for each source; (3) for buoyant sources, the BID option may be used, and the option to use the 2.6 stable plume rise factor should be selected; (4) if plume impaction is likely on any elevated terrain closer to the source than the distance from the source to the final plume rise, then the transitional (or gradual) plume rise option for stable conditions should be selected.

The standard polar receptor grid found in the Valley Model User's Guide may not be sufficiently dense for all analyses if only one geographical scale factor is used. The user should choose an additional set of receptors at appropriate downwind distances whose elevations are equal to plume height minus 10 meters. Alternatively, the user may exercise the "Valley equivalent" option in COMPLEX I or SCREEN2 and note the comments above on the placement of receptors in complex terrain models.

When using the "Valley equivalent" option in COMPLEX I, set the wind profile exponents (PL) to 0.0, respectively, for all six stability classes.

5.2.1.2 *CTSCREEN.* CTSCREEN may be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The model description and user's instructions are contained in the user's guide.[23] The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.[23] A discussion of the model's performance characteristics is provided in a technical paper.[21] CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u), standard deviation of horizontal and vertical wind speeds (σ_v, σ_w), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u_*), Monin-Obukhov length (L), mixing height (z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. Table 5–1 contains the matrix of meteorological variables that is used for each CTSCREEN analysis. There are 96 combinations, including exceptions, for each wind direction for the neutral/stable case, and 108 combinations for the unstable case. The specification of wind direction, however, is handled internally, based on the source and terrain geometry. The matrix was developed from examination of the range of meteorological variables associated with maximum monitored concentrations from the data bases used to evaluate the performance of CTDMPLUS. Although CTSCREEN is designed to address a single source scenario, there are a number of options that can be selected on a case-by-case basis to address multi-source situations. However, the Regional Office should be consulted, and concurrence obtained, on the protocol for modeling multiple sources with CTSCREEN to ensure that the worst case is identified and assessed. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

5.2.1.3 *COMPLEX I.* If the area is rural, COMPLEX I may be used to estimate concentrations for all averaging times. COMPLEX I is a modification of the MPTER model that incorporates the plume impaction algorithm of the Valley Model.[19] It is a multiple-source screening technique that accepts hourly meteorological data as input. The output is the same as the normal MPTER output. When using COMPLEX I the following options should be selected: (1) set terrain adjustment IOPT(1) = 1; (2) set buoyancy induced dispersion IOPT (4) = 1; (3) set IOPT (25) = 1; (4) set the terrain adjustment values to 0.5, 0.5, 0.5 0.5, 0.0, 0.0, (respectively for six stability classes); and (5) set Z MIN = 10.

When using the "Valley equivalent" option (only) in COMPLEX I, set the wind profile exponents (PL) to 0.0, respectively, for all six stability classes. For all other regulatory uses of COMPLEX I, set the wind profile exponents to the values used in the simple terrain models, i.e., 0.07, 0.07, 0.10, 0.15, 0.35, and 0.55, respectively, for rural modeling.

Gradual plume rise should be used to estimate concentrations at nearby elevated receptors, if plume impaction is likely on any elevated terrain closer to the source than the distance from the source to the final plume rise (see Section 8.2.5).

5.2.1.4 *SHORTZ/LONGZ.* If the source is located in an urbanized (Section 8.2.8) complex terrain valley, then the suggested screening technique is SHORTZ for short-term averages or LONGZ for long-term averages. SHORTZ and LONGZ may be used as screening techniques in these complex terrain applications without demonstration and evaluation. Application of these models in other than urbanized valley situations will require the same evaluation and demonstration procedures as are required for all Appendix B models.

Both SHORTZ and LONGZ have a number of options. When using these models as screening techniques for urbanized valley applications, the options listed in Table 5–2 should be selected.

5.2.1.5 *RTDM (Screening Mode).* RTDM with the options specified in Table 5–3 may be used as a screening technique in rural complex terrain situations without demonstration and evaluation.

The RTDM screening technique can provide a more refined concentration estimate if on-site wind speed and direction characteristic of plume dilution and transport are used as input to the model. In complex terrain, these winds can seldom be estimated accurately from the standard surface (10m level) measurements. Therefore, in order to increase confidence in model estimates, EPA recommends that wind data input to RTDM should be based on fixed measurements at stack top height. For stacks greater than 100m, the measurement height may be limited to 100m in height relative to stack base. However, for very tall stacks, see guidance in section 9.3.3.2. This recommendation is broadened to include wind data representative of plume transport height where such data are derived from measurements taken with remote sensing devices such as SODAR. The data from both fixed and remote measurements should meet quality assurance and recovery rate requirements. The user should also be aware that RTDM in the screening mode accepts the input of measured wind speeds at only one height. The default values for the wind speed profile exponents shown in Table 5–3 are used in the model to determine the wind

speed at other heights. RTDM uses wind speed at stack top to calculate the plume rise and the critical dividing streamline height, and the wind speed at plume transport level to calculate dilution. RTDM treats wind direction as constant with height.

RTDM makes use of the "critical dividing streamline" concept and thus treats plume interactions with terrain quite differently from other models such as SHORTZ and COMPLEX I. The plume height relative to the critical dividing streamline determines whether the plume impacts the terrain, or is lifted up and over the terrain. The receptor spacing to identify maximum impact concentrations is quite critical depending on the location of the plume in the vertical. Analysis of the expected plume height relative to the height of the critical dividing streamline should be performed for differing meteorological conditions in order to help develop an appropriate array of receptors. Then it is advisable to model the area twice according to the suggestions in section 5.2.

5.2.1.6 *Restrictions.* For screening analyses using the Valley Screening Technique, COMPLEX I or RTDM, a sector greater than 22½° should not be allowed. Full ground reflection should always be used in the Valley Screening Technique and COMPLEX I.

5.2.2 Refined Analytical Techniques

When the results of the screening analysis demonstrate a possible violation of NAAQS or the controlling PSD increments, a more refined analysis may need to be conducted.

The Complex Terrain Dispersion Model PLus Algorithms for Unstable Situations (CTDMPLUS) is a refined air quality model that is preferred for use in all stability conditions for complex terrain applications. CTDMPLUS is a sequential model that requires five input files: (1) General program specifications; (2) a terrain data file; (3) a receptor file; (4) a surface meteorological data file; and (5) a user created meteorological profile data file. Two optional input files consist of hourly emissions parameters and a file containing upper air data from rawinsonde data files, e.g., a National Climatic Data Center TD–6201 file, unless there are no hours categorized as unstable in the record. The model description and user instructions are contained in Volume 1 of the User's Guide.[22] Separate publications[23,24] describe the terrain preprocessor system and the meteorological preprocessor program. In *Part I* of a technical article[92] is a discussion of the model and its preprocessors; the model's performance characteristics are discussed in *Part II* of the same article.[93] The size of the CTDMPLUS executable file on a personal computer is approximately 360K bytes. The model produces hourly average concentrations of stable pollutants, i.e., chemical transformation or decay of species and settling/deposition are not simulated. To obtain concentration averages corresponding to the NAAQS, e.g., 3- or 24-hour, or annual averages, the user must execute a postprocessor program such as CHAVG.[19] CTDMPLUS is applicable to all receptors on terrain elevations above stack top. However, the model contains no algorithms for simulating building downwash or the mixing or recirculation found in cavity zones in the lee of a hill. The path taken by a plume through an array of hills cannot be simulated. CTDMPLUS does not explicitly simulate calm meteorological periods, and for those situations the user should follow the guidance in Section 9.3.4. The user should follow the recommendations in the User's Guide under General Program Specifications for: (1) Selecting mixed layer heights, (2) setting minimum scalar wind speed to 1 m/s, and (3) scaling wind direction with height. Close coordination with the Regional Office is essential to insure a consistent, technically sound application of this model.

The performance of CTDMPLUS is greatly improved by the use of meteorological data from several levels up to plume height. However, due to the vast range of source-plume-hill geometries possible in complex terrain, detailed requirements for meteorological monitoring in support of refined analyses using CTDMPLUS should be determined on a case-by-case basis. The following general guidance should be considered in the development of a meteorological monitoring protocol for regulatory applications of CTDMPLUS and reviewed in detail by the Regional Office before initiating any monitoring. As appropriate, the On-Site Meteorological Program Guidance document[66] should be consulted for specific guidance on siting requirements for meteorological towers, selection and exposure of sensors, etc. As more experience is gained with the model in a variety of circumstances, more specific guidance may be developed.

Site specific meteorological data are critical to dispersion modeling in complex terrain and, consequently, the meteorological requirements are more demanding than for simple terrain. Generally, three different meteorological files (referred to as surface, profile, and rawin files) are needed to run CTDMPLUS in a regulatory mode.

The surface file is created by the meteorological preprocessor (METPRO)[24] based on on-site measurements or estimates of solar and/or net radiation, cloud cover and ceiling, and the mixed layer height. These data are used in METPRO to calculate the various surface layer scaling parameters (roughness length, friction velocity, and Monin-Obukhov length) which are needed to run the model. All of the user inputs required for the surface file are based either on surface observations or on measurements at or below 10m.

The profile data file is prepared by the user with on-site measurements (from at least three levels) of wind speed; wind direction, turbulence, and potential temperature. These measurements should be obtained up to the representative plume height(s) of interest (i.e., the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (e.g., CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

Locating towers on nearby terrain to obtain stack height or plume height measurements for use in profiles by CTDMPLUS should be avoided unless it can clearly be demonstrated that such measurements would be representative of conditions affecting the plume.

The rawin file is created by a second meteorological preprocessor (READ62)[24] based on NWS (National Weather Service) upper air data. The rawin file is used in CTDMPLUS to calculate vertical potential temperature gradients for use in estimating plume penetration in unstable conditions. The representativeness of the off-site NWS upper air data should be evaluated on a case-by-case basis.

In the absence of an appropriate refined model, screening results may need to be used to determine air quality impact and/or emission limits.

TABLE 5–1a.—NEUTRAL/STABLE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific Values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
σ_v (m/s)	0.3	0.75	.....	.....	.....
σ_w (m/s)	0.08	0.15	0.30	0.75	.....
$\Delta\Theta/\Delta z$ (K/m)	0.01	0.02	0.035	.....	.....
WD (Wind direction optimized internally for each meteorological combination)					

Exceptions:
(1) If U ≤ 2 m/s and $\sigma_v \leq 0.3$ m/s, then include $\sigma_w = 0.04$ m/s.
(2) If $\sigma_w = 0.75$ m/s and U ≥ 3.0 m/s, then $\Delta\Theta/\Delta z$ is limited to ≤ 0.01 K/m.

VOL 58 ISS 137 JL 20 1993 UMI

(3) If $U \geq 4$ m/s, then $\sigma_w \geq 0.15$ m/s.
(4) $\sigma_w \leq \sigma_v$

TABLE 5–1b.—UNSTABLE/CONVECTIVE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific Values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
u_* (m/s)	0.1	0.3	0.5	.....	.....
L (m)	10	−50	−90	..	..
$\Delta\theta/\Delta z$ (K/m) 0.030 (potential temperature gradient above z_i)					
z_i (m)	0.5h	1.0h	1.5h	..	..

Where h = terrain height.

TABLE 5–2.—PREFERRED OPTIONS FOR THE SHORTZ/LONGZ COMPUTER CODES WHEN USED IN A SCREENING MODE

Option	Selection
I Switch 9	If using NWS data, set = 0. If using site-specific data, check with the Regional Office
I Switch 17	Set = 1 (urban option).
GAMMA 1	Use default values (0.6 entrainment coefficient)
GAMMA 2	Always default to "stable".
XRY	Set = 0 (50m rectilinear expansion distance)
NS, VS, FRQ (SHORTZ)	Do not use (applicable only in flat terrain.)
(particle size, etc.)	NUS, VS, FRQ (LONGZ)
ALPHA	Select 0.9.
SIGEPU	(Use Cramer curves (default); if site-specific turbulence data are available, see Regional Office for advice (dispersion parameters) SIGAPU
P (wind profile)	Select default values given in Table 2–2 of User's Instructions; if site-specific data are available, see Regional Office for advice.

TABLE 5–3.—PREFERRED OPTIONS FOR THE RTDM COMPUTER CODE WHEN USED IN A SCREENING MODE

Parameter	Variable	Value	Remarks
PR001–003	SCALE		Scale factors assuming horizontal distance is in kilometers, vertical distance is in feet, and wind speed is in meters per second
PR004	ZWIND1	Wind measurement height	See Section 5.2.1.4.
	ZWIND2	Not used	Height of second anemometer.
	IDILUT	1	Dilution wind speed scaled to plume height.
	ZA	0 (default)	Anemometer-terrain height above stack base
PR005	EXPON	0.09, 0.11, 0.12, 0.14, 0.2, 0.3 (default)	Wind profile exponents.
PR006	ICOEF	3 (default)	Briggs Rural/ASME (1979) dispersion parameters
PR009	IPPP	0 (default)	Partial plume penetration; not used.
PR010	IBUOY	1 (default)	Buoyancy-enhanced dispersion is used.
	ALPHA	3.162 (default)	Buoyancy-enhanced dispersion coefficient.
PR011	IDMX	1 (default)	Unlimited mixing height for stable conditions
PR012	ITRANS	1 (default)	Transitional plume rise is used.
PR 013	TERCOR	6*0.5 (default)	Plume patch correction factors.
PR014	RVPTG	0.02, 0.035 (default)	Vertical potential temperature gradient values for stabilities E and F.
PR015	ITIPD	1	Stack-tip downwash is used.
PR020	ISHEAR	0 (default)	Wind shear; not used
PR022	IREFL	1 (default)	Partial surface reflection is used
PR023	IHORIZ	2 (default)	Sector averaging.
	SECTOR	6*22.5 (default)	Using 22.5° sectors.
PR016 to 019; 021, and 024.	IY, IZ, IRVPTG, IHVPTG; IEPS; IEMIS	0	Hourly values of turbulence, vertical potential temperature gradient, wind speed profile exponents, and stack emissions are not used.

6.0 Models for Ozone, Carbon Monoxide and Nitrogen Dioxide

6.1 Discussion

Models discussed in this section are applicable to pollutants often associated with mobile sources, e.g., ozone (O_3), carbon monoxide (CO) and nitrogen dioxide (NO_2). Where stationary sources of CO and NO_2 are of concern, the reader is referred to sections 4 and 5.

A control agency with jurisdiction over areas with significant ozone problems and which has sufficient resources and data to use a photochemical dispersion model is encouraged to do so. Experience with and evaluations of the Urban Airshed Model show it to be an acceptable, refined approach, and better data bases are becoming available that support the more sophisticated analytical procedures. However, empirical

models (e.g., EKMA) fill the gap between more sophisticated photochemical dispersion models and proportional (rollback) modeling techniques and may be the only applicable procedure if the available data bases are insufficient for refined dispersion modeling.

Models for assessing the impact of carbon monoxide emissions are needed for a number of different purposes, e.g., to evaluate the effects of point sources, congested intersections and highways, as well as the cumulative effect on ambient CO concentrations of all sources of CO in an urban area.[94,95]

Nitrogen oxides are reactive and also an important contribution to the photochemical ozone problem. They are usually of most concern in areas of high ozone concentrations. Unless suitable photochemical dispersion models are used, assumptions regarding the conversion of NO to NO_2 are required when modeling. Site-specific conversion factors may be developed. If site-specific conversion factors are not available or photochemical models are not used, NO_2 modeling should be considered only a screening procedure.

6.2 Recommendations

6.2.1 Models for Ozone

The Urban Airshed Model (UAM)[19,28] is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas. To ensure proper execution of this numerical model, users must satisfy the extensive input data requirements for the model as listed in appendix A and the users guide. Users are also referred to the "Guideline for Regulatory Application of the Urban Airshed Model"[29] for additional data requirements and procedures for operating this model.

The empirical model, City-specific EKMA,[19, 30-33] has limited applicability for urban ozone analyses. Model users should consult the appropriate Regional Office on a case-by-case basis concerning acceptability of this modeling technique.

Appendix B contains some additional models that may be applied on a case-by-case basis for photochemical or reactive pollutant modeling. Other photochemical models, including multi-layered trajectory models, that are available may be used if shown to be appropriate. Most photochemical dispersion models require emission data on individual hydrocarbon species and may require three dimensional meteorological information on an hourly basis. Reasonably sophisticated computer facilities are also often required. Because the input data are not universally available and studies to collect such data are very resource intensive, there are only limited evaluations of those models.

For those cases which involve estimating the impact on ozone concentrations due to stationary sources of VOC and NO_x, whether for permitting or other regulatory cases, the model user should consult the appropriate Regional Office on the acceptability of the modeling technique.

Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.

6.2.2 Models for Carbon Monoxide

For analyzing CO impacts at roadway intersections, users should follow the procedures in the "Guideline for Modeling Carbon Monoxide from Roadway Intersections".[34] The recommended model for such analyses is CAL3QHC.[35] This model combines CALINE3 (already in Appendix A) with a traffic model to calculate delays and queues that occur at signalized intersections. In areas where the use of either TEXIN2 or CALINE4 has previously been established, its use may continue. The capability exists for these intersection models to be used in either a screening or refined mode. The screening approach is described in reference 34; a refined approach may be considered on a case-by-case basis. The latest version of the MOBILE (mobile source emission factor) model should be used for emissions input to intersection models.

For analyses of highways characterized by uninterrupted traffic flows, CALINE3 is recommended, with emissions input from the latest version of the MOBILE model.

The recommended model for urban areawide CO analyses is RAM or Urban Airshed Model (UAM); see appendix A. Information on SIP development and requirements for using these models can be found in references 34, 96, 97 and 98.

Where point sources of CO are of concern, they should be treated using the screening and refined techniques described in Section 4 or 5 of the Guideline.

6.2.3 Models for Nitrogen Dioxide (Annual Average)

A three-tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes:

a. Initial screen: Use an appropriate Gaussian model from appendix A to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

b. 2nd level screen: Apply the Ozone Limiting Method[36] to the annual NO_x estimate obtained in (a) above using a representative average annual ozone concentration. If the result is still greater than the NAAQS, and/or PSD increments, the more refined Ozone Limiting Method in the 3rd level screen should be applied.

c. 3rd level screen: Apply the Ozone Limiting Method separately for each hour of the year or multi-year period. Use representative hourly NO_2 background and ozone levels in the calculations.

In urban areas, a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, i.e., minor point, area and mobile sources of NO_x; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_x is emitted in the form of NO_2 and to use a model from appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by (1) calculating the annual average concentrations of NO_x with an urban model, and (2) converting these estimates to NO_2 concentrations based on a spatially averaged NO_2/NO_x annual ratio determined from an existing air quality monitoring network.

To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources with the preferred model ISCLT2.

In situations where there are sufficient hydrocarbons available to significantly enhance the rate of NO to NO_2 conversion, the assumptions implicit in the Ozone Limiting Procedure may not be appropriate More refined techniques should be considered on a case-by-case basis and agreement with the reviewing authority should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Where it is available site-specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_x problem.

7.0 Other Model Requirements

7.1 Discussion

This section covers those cases where specific techniques have been developed for special regulatory programs. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available. No attempt has been made to provide a comprehensive discussion of each topic since the reference documents were designed to do that. This section will undergo periodic revision as new programs are added and new techniques are developed.

Other Federal agencies have also developed specific modeling approaches for their own regulatory or other requirements. An example of this is the three-volume manual issued by the U.S. Department of Housing and Urban Development, "Air Quality Considerations in Residential Planning."[37] Although such regulatory requirements and manuals may have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the manual or directive.

The need to estimate impacts at distances greater than 50km (the nominal distance to

VOL 58 ISS 137 JL 20 1993 UMI

which EPA considers most Gaussian models applicable) is an important one especially when considering the effects from secondary pollutants. Unfortunately, models submitted to EPA have not as yet undergone sufficient field evaluation to be recommended for general use. Existing data bases from field studies at mesoscale and long range transport distances are limited in detail. This limitation is a result of the expense to perform the field studies required to verify and improve mesoscale and long range transport models. Particularly important and sparse are meteorological data adequate for generating three dimensional wind fields. Application of models to complicated terrain compounds the difficulty. EPA has completed limited evaluation of several long range transport (LRT) models against two sets of field data. The evaluation results are discussed in the document, "Evaluation of Short-Term Long-Range Transport Models."[99,100] For the time being, long range and mesoscale transport models must be evaluated for regulatory use on a case-by-case basis.

There are several regulatory programs for which air pathway analysis procedures and modeling techniques have been developed. For continuous emission releases, ISC2 forms the basis of many analytical techniques. EPA is continuing to evaluate the performance of a number of proprietary and public domain models for intermittent and non-stack emission releases. Until EPA completes its evaluation, it is premature to recommend specific models for air pathway analyses of intermittent and non-stack releases in this guideline.

Regional scale models are used by EPA to develop and evaluate national policy and assist State and local control agencies. Two such models are the Regional Oxidant Model (ROM)[101,102,103] and the Regional Acid Deposition Model (RADM).[104] Due to the level of resources required to apply these models, it is not envisioned that regional scale models will be used directly in most model applications.

7.2 Recommendations

7.2.1 Fugitive Dust/Fugitive Emissions

Fugitive dust usually refers to the dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. Reentrained dust is that which is put into the air by reason of vehicles driving over dirt roads (or dirty roads) and dusty areas. Such sources can be characterized as line, area or volume sources. Emission rates may be based on site-specific data or values from the general literature.

Fugitive emissions are usually defined as emissions that come from an industrial source complex. They include the emissions resulting from the industrial process that are not captured and vented through a stack but may be released from various locations within the complex. Where such fugitive emissions can be properly specified, the ISC model, with consideration of gravitational settling and dry deposition, is the recommended model. In some unique cases a model developed specifically for the situation may be needed.

Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, it is recommended that the proposed procedure be cleared by the appropriate Regional Office for each specific situation before the modeling exercise is begun.

7.2.2 Particulate Matter

The new particulate matter NAAQS, promulgated on July 1, 1987 (52 FR 24634), includes only particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). EPA has also proposed regulations for PSD increments measured as PM–10 in a notice published on October 5, 1989 (54 FR 41218).

Screening techniques like those identified in section 4 are also applicable to PM–10 and to large particles. It is recommended that subjectively determined values for "half-life" or pollutant decay not be used as a surrogate for particle removal. Conservative assumptions which do not allow removal or transformation are suggested for screening. Proportional models (rollback/forward) may not be applied for screening analysis, unless such techniques are used in conjunction with receptor modeling.

Refined models such as those in Section 4 are recommended for PM–10 and large particles. However, where possible, particle size, gas-to-particle formation, and their effect on ambient concentrations may be considered. For urban-wide refined analyses CDM 2.0 or RAM should be used. CRSTER and MPTER are recommended for point sources of small particles. For source-specific analyses of complicated sources, the ISC2 model is preferred. No model recommended for general use at this time accounts for secondary particulate formation or other transformations in a manner suitable for SIP control strategy demonstrations. Where possible, the use of receptor models[38,39,105,106,107] in conjunction with dispersion models is encouraged to more precisely characterize the emissions inventory and to validate source specific impacts calculated by the dispersion model. A SIP development guideline,[108] model reconciliation guidance,[109] and an example model application [109] are available to assist in PM–10 analyses and control strategy development.

Under certain conditions, recommended dispersion models are not available or applicable. In such circumstances, the modeling approach should be approved by the appropriate Regional Office on a case-by-case basis. For example, where there is no recommended air quality model and area sources are a predominant component of PM–10, an attainment demonstration may be based on rollback of the apportionment derived from two reconciled receptor models, if the strategy provides a conservative demonstration of attainment. At this time, analyses involving model calculations for distances beyond 50km and under stagnation conditions should also be justified on a case-by-case basis (see Sections 7.2.6 and 8.2.10).

As an aid to assessing the impact on ambient air quality of particulate matter generated from prescribed burning activities, reference 110 is available.

7.2.3 Lead

The air quality analyses required for lead implementation plans are given in §§ 51.83, 51.84 and 51.85 of 40 CFR part 51. Sections 51.83 and 51.85 require the use of a modified rollback model as a minimum to demonstrate attainment of the lead air quality standard but the use of a dispersion model is the preferred approach. Section 51.83 requires the analysis of an entire urban area if the measured lead concentration in the urbanized area exceeds a quarterly (three month) average of 4.0 $\mu g/m^3$. Section 51.84 requires the use of a dispersion model to demonstrate attainment of the lead air quality standard around specified lead point sources. For other areas reporting a violation of the lead standard, § 51.85 requires an analysis of the area in the vicinity of the monitor reporting the violation. The NAAQS for lead is a quarterly (three month) average, thus requiring the use of modeling techniques that can provide long-term concentration estimates.

The SIP should contain an air quality analysis to determine the maximum quarterly lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. For these applications the ISC model is preferred, since the model can account for deposition of particles and the impact of fugitive emissions. If the source is located in complicated terrain or is subject to unusual climatic conditions, a case-specific review by the appropriate Regional Office may be required.

In modeling the effect of traditional line sources (such as a specific roadway or highway) on lead air quality, dispersion models applied for other pollutants can be used. Dispersion models such as CALINE3 and APRAC–3 have been widely used for modeling carbon monoxide emissions from highways. However, where deposition is of concern, the line source treatment in ISC may be used. Also, where there is a point source in the middle of a substantial road network, the lead concentrations that result from the road network should be treated as background (see Section 9.2); the point source and any nearby major roadways should be modeled separately using the ISC model.

To model an entire major urban area or to model areas without significant sources of lead emissions, as a minimum a proportional (rollback) model may be used for air quality analysis. The rollback philosophy assumes that measured pollutant concentrations are proportional to emissions. However, urban or other dispersion models are encouraged in these circumstances where the use of such models is feasible.

For further information concerning the use of models in the development of lead implementation plans, the documents "Supplementary Guidelines for Lead Implementation Plans,"[40] and "Updated Information on Approval and Promulgation of Lead Implementation Plans,"[41] should be consulted.

7.2.4 Visibility

The visibility regulations as promulgated in December 1980[b] require consideration of

[b] 40 CFR 51.300–307.

the effect of new sources on the visibility values of Federal Class I areas. The state of scientific knowledge concerning identifying, monitoring, modeling, and controlling visibility impairment is contained in an EPA report "Protecting Visibility: An EPA Report to Congress".[42] In 1985, EPA promulgated Federal Implementation Plans (FIPs) for states without approved visibility provisions in their SIPs. A monitoring plan was established as part of the FIPs.[c]

Guidance and a screening model, VISCREEN, is contained in the EPA document "Workbook for Plume Visual Impact Screening and Analysis (Revised)."[43] VISCREEN can be used to calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions. If a more comprehensive analysis is required, any refined model should be selected in consultation with the EPA Regional Office and the appropriate Federal Land Manager who is responsible for determining whether there is an adverse effect by a plume on a Class I area.

PLUVUE II, listed in Appendix B, may be applied on a case-by-case basis when refined plume visibility evaluations are needed. Plume visibility models have been evaluated against several data sets.[44,45]

7.2.5 Good Engineering Practice Stack Height

The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emission limitations by 40 CFR 51.118 and 40 CFR 51.164. The definitions of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those techniques are found in references 46, 47, 48, and 49.

If stacks for new or existing major sources are found to be less than the height defined by EPA's refined formula for determining GEP height,[d] then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. Detailed downwash screening procedures [18] for both the cavity and wake regions should be followed. If more refined concentration estimates are required, the Industrial Source Complex (ISC2) model contains algorithms for building wake calculations and should be used. Fluid modeling can provide a great deal of additional information for evaluating and describing the cavity and wake effects.

7.2.6 Long Range Transport (LRT) (i.e., beyond 50km)

Section 165(e) of the Clean Air Act requires that suspected significant impacts on PSD Class I areas be determined. However, 50km is the useful distance to which most Gaussian models are considered accurate for setting emission limits. Since in many cases PSD analyses may show that Class I areas may be threatened at distances greater than 50km from new sources, some procedure is needed to (1) determine if a significant impact will occur, and (2) identify the model to be used in setting an emission limit if the Class I increments are threatened (models for this purpose should be approved for use on a case-by-case basis as required in section 3.2). This procedure and the models selected for use should be determined in consultation with the EPA Regional Office and the appropriate Federal Land Manager (FLM). While the ultimate decision on whether a Class I area is adversely affected is the responsibility of the permitting authority, the FLM has an affirmative responsibility to protect air quality related values that may be affected.

If LRT is determined to be important, then estimates utilizing an appropriate refined model for receptors at distances greater than 50 km should be obtained. MESOPUFF II, listed in appendix B, may be applied on a case-by-case basis when LRT estimates are needed. Additional information on applying this model is contained in the EPA document "A Modeling Protocol For Applying MESOPUFF II to Long Range Transport Problems".[111]

7.2.7 Modeling Guidance for Other Governmental Programs

When using the models recommended or discussed in this guideline in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate Federal or State agency to ensure the proper application and use of that model. For modeling associated with PSD permit applications that involve a Class I area, the appropriate Federal Land Manager should be consulted on all modeling questions.

The Offshore and Coastal Dispersion (OCD) model [112] was developed by the Minerals Management Service and is recommended for estimating air quality impact from offshore sources on onshore flat terrain areas. The OCD model is not recommended for use in air quality impact assessments for onshore sources. Sources located on or just inland of a shoreline where fumigation is expected should be treated in accordance with section 8.2.9.

The Emissions and Dispersion Modeling System (EDMS) [113] was developed by the Federal Aviation Administration and the United States Air Force and is recommended for air quality assessment of primary pollutant impacts at airports or air bases. Regulatory application of EDMS is intended for estimating the cumulative effect of changes in aircraft operations, point source, and mobile source emissions on pollutant concentrations. It is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are independent of changes in aircraft operations. If changes in other than aircraft operations are associated with analyses, a model recommended in chapter 4, 5, or 6 should be used.

7.2.8 Air Pathway Analyses (Air Toxics and Hazardous Waste)

Modeling is becoming an increasingly important tool for regulatory control agencies to assess the air quality impact of releases of toxics and hazardous waste materials. Appropriate screening techniques [114,115] for calculating ambient concentrations due to various well-defined neutrally buoyant toxic/hazardous pollutant releases are available.

Several regulatory programs within EPA have developed modeling techniques and guidance for conducting air pathway analyses as noted in references 116–129. ISC2 forms the basis of the modeling procedures for air pathway analyses of many of these regulatory programs and, where identified, is appropriate for obtaining refined ambient concentration estimates of neutrally buoyant continuous air toxic releases from traditional sources. Appendix A to this Guideline contains additional models appropriate for obtaining refined estimates of continuous air toxic releases from traditional sources. Appendix B contains models that may be used on a case-by-case basis for obtaining refined estimates of denser-than-air intermittent gaseous releases, e.g., DEGADIS; [130] guidance for the use of such models is also available.[131]

Many air toxics models require input of chemical properties and/or chemical engineering variables in order to appropriately characterize the source emissions prior to dispersion in the atmosphere; reference 132 is one source of helpful data. In addition, EPA has numerous programs to determine emission factors and other estimates of air toxic emissions. The Regional Office should be consulted for guidance on appropriate emission estimating procedures and any uncertainties that may be associated with them.

8.0 General Modeling Considerations

8.1 Discussion

This section contains recommendations concerning a number of different issues not explicitly covered in other sections of this guide. The topics covered here are not specific to any one program or modeling area but are common to nearly all modeling analyses.

8.2 Recommendations

8.2.1 Design Concentrations

8.2.1.1 *Design Concentrations for Criteria Pollutants with Deterministic Standards.* An air quality analysis for SO_2, CO, Pb, and NO_2 is required to determine if the source will (1) cause a violation of the NAAQS, or (2) cause or contribute to air quality deterioration greater than the specified allowable PSD increment. For the former, background concentration (see Section 9.2) should be added to the estimated impact of the source to determine the design concentration. For the latter, the design concentration includes impact from all increment consuming sources.

If the air quality analyses are conducted using the period of meteorological input data recommended in section 9.3.1.2 (e.g., 5 years of NWS data or 1 year of site-specific data), then the design concentration based on the highest, second-highest short term concentration or long term average, whichever is controlling, should be used to determine emission limitations to assess

[c] 40 CFR 51.300–307.

[d] The EPA refined formula height is defined as H + 1.5L (see Reference 46).

compliance with the NAAQS and to determine PSD increments.

When sufficient and representative data exist for less than a 5-year period from a nearby NWS site, or when on-site data have been collected for less than a full continuous year, or when it has been determined that the on-site data may not be temporally representative, then the highest concentration estimate should be considered the design value. This is because the length of the data record may be too short to assure that the conditions producing worst-case estimates have been adequately sampled. The highest value is then a surrogate for the concentration that is not to be exceeded more than once per year (the wording of the deterministic standards). Also, the highest concentration should be used whenever selected worst-case conditions are input to a screening technique. This specifically applies to the use of techniques such as outlined in "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised".[18] Specific guidance for CO may be found in the "Guideline for Modeling Carbon Monoxide from Roadway Intersections".[34]

If the controlling concentration is an annual average value and multiple years of data (on-site or NWS) are used, then the design value is the highest of the annual averages calculated for the individual years. If the controlling concentration is a quarterly average and multiple years are used, then the highest individual quarterly average should be considered the design value.

As long a period of record as possible should be used in making estimates to determine design values and PSD increments. If more than 1 year of site-specific data is available, it should be used.

8.2.1.2 *Design Concentrations for Criteria Pollutants with Expected Exceedance Standards.* Specific instructions for the determination of design concentrations for criteria pollutants with expected exceedance standards, ozone and PM–10, are contained in special guidance documents for the preparation of SIPs for those pollutants.[86 108] For all SIP revisions the user should check with the Regional Office to obtain the most recent guidance documents and policy memoranda concerning the pollutant in question.

8.2.2 Critical Receptor Sites

Receptor sites for refined modeling should be utilized in sufficient detail to estimate the highest concentrations and possible violations of a NAAQS or a PSD increment. In designing a receptor network, the emphasis should be placed on receptor resolution and location, not total number of receptors. The selection of receptor sites should be a case-bycase determination taking into consideration the topography, the climatology, monitor sites, and the results of the initial screening procedure. For large sources (those equivalent to a 500 MW power plant) and where violations of the NAAQS or PSD increment are likely, 360 receptors for a polar coordinate grid system and 400 receptors for a rectangular grid system, where the distance from the source to the farthest receptor is 10km, are usually adequate to identify areas of high concentration. Additional receptors may be needed in the high concentration location if greater resolution is indicated by terrain or source factors.

8.2.3 Dispersion Coefficients

Gaussian models used in most applications should employ dispersion coefficients consistent with those contained in the preferred models in Appendix A. Factors such as averaging time, urban/rural surroundings, and type of source (point vs. line) may dictate the selection of specific coefficients. Generally, coefficients used in appendix A models are identical to, or at least based on, Pasquill-Gifford coefficients[50] in rural areas and McElroy-Pooler[51] coefficients in urban areas.

Research is continuing toward the development of methods to determine dispersion coefficients directly from measured or observed variables.[52 53] No method to date has proved to be widely applicable. Thus, direct measurement, as well as other dispersion coefficients related to distance and stability, may be used in Gaussian modeling only if a demonstration can be made that such parameters are more applicable and accurate for the given situation than are algorithms contained in the preferred models.

Buoyancy-induced dispersion (BID), as identified by Pasquill,[54] is included in the preferred models and should be used where buoyant sources, e.g., those involving fuel combustion, are involved.

8.2.4 Stability Categories

The Pasquill approach to classifying stability is generally required in all preferred models (Appendix A). The Pasquill method, as modified by Turner,[55] was developed for use with commonly observed meteorological data from the National Weather Service and is based on cloud cover, insolation and wind speed.

Procedures to determine Pasquill stability categories from other than NWS data are found in subsection 9.3. Any other method to determine Pasquill stability categories must be justified on a case-by-case basis.

For a given model application where stability categories are the basis for selecting dispersion coefficients, both σ_y and σ_z should be determined from the same stability category. "Split sigmas" in that instance are not recommended.

Sector averaging, which eliminates the σ_y term, is generally acceptable only to determine long term averages, such as seasonal or annual, and when the meteorological input data are statistically summarized as in the STAR summaries. Sector averaging is, however, commonly acceptable in complex terrain screening methods.

8.2.5 Plume Rise

The plume rise methods of Briggs[56 57] are incorporated in the preferred models and are recommended for use in all modeling applications. No provisions in these models are made for fumigation or multistack plume rise enhancement or the handling of such special plumes as flares; these problems should be considered on a case-by-case basis.

Since there is insufficient information to identify and quantify dispersion during the transitional plume rise period, gradual plume rise is not generally recommended for use. There are two exceptions where the use of gradual plume rise is appropriate: (1) In complex terrain screening procedures to determine close-in impacts; (2) when calculating the effects of building wakes. The building wake algorithm in the ISC2 model incorporates and automatically (i.e., internally) exercises the gradual plume rise calculations. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used.

Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs (Hanna, et al.)[57] is the recommended technique for this situation and is found in the point source preferred models.

Where aerodynamic downwash occurs due to the adverse influence of nearby structures, the algorithms included in the ISC2 model[58] should be used.

8.2.6 Chemical Transformation

The chemical transformation of SO_2 emitted from point sources or single industrial plants in rural areas is generally assumed to be relatively unimportant to the estimation of maximum concentrations when travel time is limited to a few hours. However, in urban areas, where synergistic effects among pollutants are of considerable consequence, chemical transformation rates may be of concern. In urban area applications, a half-life of 4 hours[55] may be applied to the analysis of SO_2 emissions. Calculations of transformation coefficients from site-specific studies can be used to define a "half-life" to be used in a Gaussian model with any travel time, or in any application, if appropriate documentation is provided. Such conversion factors for pollutant half-life should not be used with screening analyses.

Complete conversion of NO to NO_2 should be assumed for all travel time when simple screening techniques are used to model point source emissions of nitrogen oxides. If a Gaussian model is used, and data are available on seasonal variations in maximum ozone concentrations, the Ozone Limiting Method[36] is recommended. In refined analyses, case-by case conversion rates based on technical studies appropriate to the site in question may be used. The use of more sophisticated modeling techniques should be justified for individual cases.

Use of models incorporating complex chemical mechanisms should be considered only on a case-by-case basis with proper demonstration of applicability. These are generally regional models not designed for the evaluation of individual sources but used primarily for region-wide evaluations. Visibility models also incorporate chemical transformation mechanisms which are an integral part of the visibility model itself and should be used in visibility assessments.

8.2.7 Gravitational Settling and Deposition

An "infinite half-life" should be used fo estimates of total suspended particulate

concentrations when Gaussian models containing only exponential decay terms for treating settling and deposition are used.

Gravitational settling and deposition may be directly included in a model if either is a significant factor. At least one preferred model (ISC) contains settling and deposition algorithms and is recommended for use when particulate matter sources can be quantified and settling and deposition are problems.

8.2.8 Urban/Rural Classification

The selection of either rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin [59] and briefly described below. These include a land use classification procedure or a population based procedure to determine whether the character of an area is primarily urban or rural.

Land Use Procedure: (1) Classify the land use within the total area, A_o, circumscribed by a 3km radius circle about the source using the meteorological land use typing scheme proposed by Auer [60]; (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o, use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

Population Density Procedure: (1) Compute the average population density, $\bar{p}$ per square kilometer with A_o as defined above; (2) If $\bar{p}$ is greater than 750 people/km^2, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

Of the two methods the land use procedure is considered more definitive. Population density should be used with caution and should not be applied to highly industrialized areas where the population density may be low and thus a rural classification would be indicated, but the area is sufficiently built-up so that the urban land use criteria would be satisfied. In this case, the classification should already be "urban" and urban dispersion parameters should be used.

Sources located in an area defined as urban should be modeled using urban dispersion parameters. Sources located in areas defined as rural should be modeled using the rural dispersion parameters. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban.

8.2.9 Fumigation

Fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground either through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures (see "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources" [18]) that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

Fumigation is also an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The Shoreline Dispersion Model (SDM) listed in Appendix B may be applied on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.[133] Information on the results of EPA's evaluation of this model together with other coastal fumigation models may be found in reference 134. Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the Regional Office.

8.2.10 Stagnation

Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations.

When stagnation periods such as these are found to occur, they should be addressed in the air quality modeling analysis. WYNDvalley, listed in appendix B, may be applied on a case-by-case basis for stagnation periods of 24 hours or longer in valley-type situations. Caution should be exercised when applying the model to elevated point sources. Users should consult with the appropriate Regional Office prior to regulatory application of WYNDvalley.

8.2.11 Calibration of Models

Calibration of long term multi-source models has been a widely used procedure even though the limitations imposed by statistical theory on the reliability of the calibration process for long term estimates are well known.[61] In some cases, where a more accurate model is not available, calibration may be the best alternative for improving the accuracy of the estimated concentrations needed for control strategy evaluations.

Calibration of short term models is not common practice and is subject to much greater error and misunderstanding. There have been attempts by some to compare short term estimates and measurements on an event-by-event basis and then to calibrate a model with results of that comparison. This approach is severely limited by uncertainties in both source and meteorological data and therefore it is difficult to precisely estimate the concentration at an exact location for a specific increment of time. Such uncertainties make calibration of short term models of questionable benefit. Therefore, short term model calibration is unacceptable.

9.0 Model Input Data

Data bases and related procedures for estimating input parameters are an integral part of the modeling procedure. The most appropriate data available should always be selected for use in modeling analyses. Concentrations can vary widely depending on the source data or meteorological data used. Input data are a major source of inconsistencies in any modeling analysis This section attempts to minimize the uncertainty associated with data base selection and use by identifying requirements for data used in modeling. A checklist of input data requirements for modeling analyses is included as appendix C. More specific data requirements and the format required for the individual models are described in detail in the users' guide for each model.

9.1 Source Data

9.1.1 Discussion

Sources of pollutants can be classified as point, line and area/volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles, but they may be lines of roof vents or stacks such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square.

Emission factors are compiled in an EPA publication commonly known as AP–42;[62] an indication of the quality and amount of data on which many of the factors are based is also provided. Other information concerning emissions is available in EPA publications relating to specific source categories. The Regional Office should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

9.1.2 Recommendations

For point source applications the load or operating condition that causes maximum ground-level concentrations should be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the standards or PSD increments, this load* should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. A range of operating conditions

* Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact.

should be considered in screening analyses; the load causing the highest concentration, in addition to the design load, should be included in refined modeling. The following example for a power plant is typical of the kind of data on source characteristics and operating conditions that may be needed. Generally, input data requirements for air quality models necessitate the use of metric units; where English units are common for engineering usage, a conversion to metric is required.

a. Plant layout. The connection scheme between boilers and stacks, and the distance and direction between stacks, building parameters (length, width, height, location and orientation relative to stacks) for plant structures which house boilers, control equipment, and surrounding buildings within a distance of approximately five stack heights.

b. Stack parameters. For all stacks, the stack height and inside diameter (meters), and the temperature (K) and volume flow rate (actual cubic meters per second) or exit gas velocity (meters per second) for operation at 100 percent, 75 percent and 50 percent load.

c. Boiler size. For all boilers, the associated megawatts, 10^6 BTU/hr, and pounds of steam per hour, and the design and/or actual fuel consumption rate for 100 percent load for coal (tons/hour), oil (barrels/hour), and natural gas (thousand cubic feet/hour).

d. Boiler parameters. For all boilers, the percent excess air used, the boiler type (e.g., wet bottom, cyclone, etc.), and the type of firing (e.g., pulverized coal, front firing, etc.)

e. Operating conditions. For all boilers, the type, amount and pollutant contents of fuel, the total hours of boiler operation and the boiler capacity factor during the year, and the percent load for peak conditions.

f. Pollution control equipment parameters For each boiler served and each pollutant affected, the type of emission control equipment, the year of its installation, its design efficiency and mass emission rate, the data of the last test and the tested efficiency, the number of hours of operation during the latest year, and the best engineering estimate of its projected efficiency if used in conjunction with coal combustion; data for any anticipated modifications or additions

g. Data for new boilers or stacks. For all new boilers and stacks under construction and for all planned modifications to existing boilers or stacks, the scheduled date of completion, and the data or best estimates available for items (a) through (f) above following completion of construction or modification.

In stationary point source applications for compliance with short term ambient standards, SIP control strategies should be tested using the emission input shown on Table 9–1. When using a refined model, sources should be modeled sequentially with these loads for every hour of the year. To evaluate SIPs for compliance with quarterly and annual standards, emission input data shown in Table 9–1 should again be used. Emissions from area sources should generally be based on annual average conditions. The source input information in each model user's guide should be carefully consulted and the checklist in Appendix C should also be consulted for other possible emission data that could be helpful. PSD NAAQS compliance demonstrations should follow the emission input data shown in Table 9–2. For purposes of emissions trading, new source review and demonstrations, refer to current EPA policy and guidance to establish input data.

Line source modeling of streets and highways requires data on the width of the roadway and the median strip, the types and amounts of pollutant emissions, the number of lanes, the emissions from each lane and the height of emissions. The location of the ends of the straight roadway segments should be specified by appropriate grid coordinates. Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.

The impact of growth on emissions should be considered in all modeling analyses covering existing sources. Increases in emissions due to planned expansion or planned fuel switches should be identified. Increases in emissions at individual sources that may be associated with a general industrial/commercial/residential expansion in multi-source urban areas should also be treated. For new sources the impact of growth on emissions should generally be considered for the period prior to the start-up date for the source. Such changes in emissions should treat increased area source emissions, changes in existing point source emissions which were not subject to preconstruction review, and emissions due to sources with permits to construct that have not yet started operation.

TABLE 9–1.—MODEL EMISSION INPUT DATA FOR POINT SOURCES [1]

Averaging time	Emission limit (#/MMBtu)[2]	×	Operating level (MMBtu/hr)[2]	×	Operating factor (e.g., hr/yr, hr/day)
Stationary Point Source(s) Subject to SIP Emission Limit(s) Evaluation for Compliance with Ambient Standards (Including Areawide Demonstrations)					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition [4].		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base).[5]
Nearby Background Source(s)—Same input requirements as for stationary point source(s) above.					
Other Background Source(s)—If modeled (see Section 9.2.3), input data requirements are defined below.					
Annual & quarterly ...	Maximum allowable emission limit or federally enforceable permit limit.		Annual level when actually operating, averaged over the most recent 2 years [3].		Actual operating factor averaged over the most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.		Annual level when actually operating, averaged over the most recent 2 years [3].		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base).[5]

[1] The model input data requirements shown on this table apply to stationary source control strategies for STATE IMPLEMENTATION PLANS. For purposes of emissions trading, new source review, or prevention of significant deterioration, other model input criteria may apply. Refer to the policy and guidance for these programs to establish the input data.

[2] Terminology applicable to fuel burning sources; analogous terminology (e.g., #/throughput) may be used for other types of sources.

[3] Unless it is determined that this period is not representative.

[4] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

[5] If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.)

TABLE 9–2.—POINT SOURCE MODEL INPUT DATA (EMISSIONS) FOR PSD NAAQS COMPLIANCE DEMONSTRATIONS

Averaging time	Emission limit (#/MMBtu) [1]	×	Operating level (MMBtu) [1]	×	Operating factor (e.g., hr/yr, hr/day)
			Proposed Major New or Modified Source		
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.		Continuous operation (i.e., 8760 hours).[2]
Short term (≤ 24 hours).	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition [3].		Continuous operation (i.e., all hours of each time period under consideration) (for all hours of the meteorological data base).[2]
			Nearby Background Source(s) [4]		
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over the most recent 2 years.[5 7]
Short term (≤ 24 hours).	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition [3].		Continuous operation (i.e., all hours of each time period under consideration) (for all hours of the meteorological data base).[2]
			Other Background Source(s)[6]		
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Annual level when actually operating, averaged over the most recent 2 years [5].		Actual operating factor averaged over the most recent 2 years.[5 7]
Short term (≤ 24 hours).	Maximum allowable emission limit or federally enforceable permit limit.		Annual level when actually operating, averaged over the most recent 2 years [5].		Continuous operation (i.e., all hours of each time period under consideration) (for all hours of the meteorological data base).[2]

[1] Terminology applicable to fuel burning sources; analogous terminology (e.g., #/throughput) may be used for other types of sources.
[2] If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8:00 a.m. to 4:00 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.
[3] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
[4] Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.
[5] Unless it is determined that this period is not representative.
[6] Generally, the ambient impacts from non-nearby background sources can be represented by air quality data unless adequate data do not exist.
[7] For those permitted sources not yet in operation or that have not established an appropriate factor, continuous operation (i.e., 8760 hours) should be used.

9.2 Background Concentrations

9.2.1 Discussion

Background concentrations are an essential part of the total air quality concentration to be considered in determining source impacts. Background air quality includes pollutant concentrations due to: (1) Natural sources; (2) nearby sources other than the one(s) currently under consideration; and (3) unidentified sources.

Typically, air quality data should be used to establish background concentrations in the vicinity of the source(s) under consideration. The monitoring network used for background determinations should conform to the same quality assurance and other requirements as those networks established for PSD purposes.[63] An appropriate data validation procedure should be applied to the data prior to use.

If the source is not isolated, it may be necessary to use a multi-source model to establish the impact of nearby sources. Background concentrations should be determined for each critical (concentration) averaging time.

9.2.2 Recommendations (Isolated Single Source)

Two options are available to determine the background concentration near isolated sources.

Option One: Use air quality data collected in the vicinity of the source to determine the background concentration for the averaging times of concern.[f] Determine the mean background concentration at each monitor by excluding values when the source in question is impacting the monitor. The mean annual background is the average of the annual concentrations so determined at each monitor. For shorter averaging periods, the meteorological conditions accompanying the concentrations of concern should be identified. Concentrations for meteorological conditions of concern, at monitors not impacted by the source in question, should be averaged for each separate averaging time to determine the average background value. Monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact. One hour concentrations may be added and averaged to determine longer averaging periods.

Option Two: If there are no monitors located in the vicinity of the source, a "regional site" may be used to determine background. A "regional site" is one that is located away from the area of interest but is impacted by similar natural and distant man-made sources.

[f] For purposes of PSD, the location of monitors as well as data quality assurance procedures must satisfy requirements listed in the PSD Monitoring Guidelines.[63]

9.2.3 Recommendations (Multi-Source Areas)

In multi-source areas two components of background should be determined.

Nearby Sources: All sources expected to cause a significant concentration gradient in the vicinity of the source or sources under consideration for emission limit(s) should be explicitly modeled. For evaluation for compliance with the short term and annual ambient standards, the nearby sources should be modeled using the emission input data shown in Table 9–1 or 9–2. The number of such sources is expected to be small except in unusual situations. The nearby source inventory should be determined in consultation with the reviewing authority. It is envisioned that the nearby sources and the sources under consideration will be evaluated together using an appropriate Appendix A model.

The impact of the nearby sources should be examined at locations where interactions between the plume of the point source under consideration and those of nearby sources (plus natural background) can occur. Significant locations include: (1) The area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. These locations may be identified through trial and error analyses.

Other Sources: That portion of the background attributable to all other sources (e.g., natural sources, minor sources and distant major sources) should be determined by the procedures found in section 9.2.2 or by application of a model using Table 9–1 or 9–2

9.3 Meteorological Input Data

The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the data is dependent on: (1) The proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions.

Model input data are normally obtained either from the National Weather Service or as part of an on-site measurement program Local universities, FAA, military stations, industry and pollution control agencies may also be sources of such data. Some recommendations for the use of each type of data are included in this subsection.

9.3.1 Length of Record of Meteorological Data

9.3.1.1 *Discussion.* The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The trend toward statistically based standards suggests a need for all meteorological conditions to be adequately represented in the data set selected for model input. The number of years of record needed to obtain a stable distribution of conditions depends on the variable being measured and has been estimated by Landsberg and Jacobs[54] for various parameters. Although that study indicates in excess of 10 years may be required to achieve stability in the frequency distributions of some meteorological variables, such long periods are not reasonable for model input data. This is due in part to the fact that hourly data in model input format are frequently not available for such periods and that hourly calculations of concentration for long periods are prohibitively expensive. A recent study[55] compared various periods from a 17-year data set to determine the minimum number of years of data needed to approximate the concentrations modeled with a 17-year period of meteorological data from one station. This study indicated that the variability of model estimates due to the meteorological data input was adequately reduced if a 5-year period of record of meteorological input was used.

9.3.1.2 *Recommendations.* Five years of representative meteorological data should be used when estimating concentrations with an air quality model. Consecutive years from the most recent, readily available 5-year period are preferred. The meteorological data may be data collected either onsite or at the nearest National Weather Service (NWS) station. If the source is large, e.g., a 500 MW power plant, the use of 5 years of NWS meteorological data or at least 1 year of site-specific data is required.

If one year or more, up to five years, of sitespecific data is available, these data are preferred for use in air quality analyses. Such data should have been subjected to quality assurance procedures as described in Section 9.3.3.2.

For permitted sources whose emission limitations are based on a specific year of meteorological data that year should be added to any longer period being used (e.g., 5 years of NWS data) when modeling the facility at a later time.

9.3.2 National Weather Service Data

9.3.2.1 *Discussion.* The National Weather Service (NWS) meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables. methods have been developed and successfully used to translate the basic NWS data to the needed model input. Direct measurements of model input parameters have been made for limited model studies and those methods and techniques are becoming more widely applied; however, most model applications still rely heavily on the NWS data.

There are two standard formats of the NWS data for use in air quality models. The short term models use the standard hourly weather observations available from the National Climatic Data Center (NCDC). These observations are then "preprocessed" before they can be used in the models. "STAR" summaries are available from NCDC for long term model use. These are joint frequency distributions of wind speed, direction and P–G stability category. They are used as direct input to models such as the long term version of ISC.[56]

9.3.2.2 *Recommendations.* The preferred short term models listed in appendix A all accept as input the NWS meteorological data preprocessed into model compatible form. Long-term (monthly seasonal or annual) preferred models use NWS "STAR" summaries. Summarized concentration estimates from the short term models may also be used to develop long-term averages; however, concentration estimates based on the two separate input data sets may not necessarily agree.

Although most NWS measurements are made at a standard height of 10 meters, the actual anemometer height should be used as input to the preferred model.

National Weather Service wind directions are reported to the nearest 10 degrees. A specific set of randomly generated numbers has been developed for use with the preferred EPA models and should be used to ensure a lack of bias in wind direction assignments within the models.

Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail to the NWS data.

9.3.3 Site-Specific Data

9.3.3.1 *Discussion.* Spatial or geographical representativeness is best achieved by collection of all of the needed model input data at the actual site of the source(s). Site-specific measured data are therefore preferred as model input, provided appropriate instrumentation and quality assurance procedures are followed and that the data collected are representative (free from undue local or "micro" influences) and compatible with the input requirements of the model to be used. However, direct measurements of all the needed model input parameters may not be possible. This section discusses suggestions for the collection and use of on-site data. Since the methods outlined in this section are still being tested, comparison of the model parameters derived using these site-specific data should be compared at least on a spot-check basis, with parameters derived from more conventional observations.

9.3.3.2 *Recommendations—Site-specific Data Collection.* The document "On-Site Meteorological Program Guidance for Regulatory Modeling Applications"[66] provides recommendations on the collection and use of on-site meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to the limited guidance on these subjects now found in the "Ambient Monitoring Guidelines for Prevention of Significant Deterioration"[63] and the "Quality Assurance Handbook for Air Pollution Measurement

Systems"[87] contains such information for meteorological measurements. As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the parameters to determine Pasquill-Gifford stability categories should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that monitors are located to represent the area of concern and that they are not influenced by very localized effects. Site-specific data for model applications should cover as long a period of measurement as is possible to ensure adequate representation of "worst-case" meteorology. The Regional Office will determine the appropriateness of the measurement locations.

All site-specific data should be reduced to hourly averages. Table 9–3 lists the wind related parameters and the averaging time requirements.

Temperature Measurements. Temperature measurements should be made at standard shelter height (2m) in accordance with the guidance in reference 66.

Wind Measurements. Wind speed and direction should be measured at or near plume height for use in estimating transport and dilution. To approximate this, if a source has a stack below 100m, select the stack top height as the transport wind measurement height. For sources with stacks extending above 100m, a 100m tower is suggested unless the stack top is significantly above 100 meters (200m or more). In cases with stacks 200m or above, the Regional Office should determine the appropriate measurement height on a case-by-case basis. Remote sensing may be a feasible alternative. The dilution wind speed used in determining plume rise and also used in the Gaussian dispersion equation is, by convention, defined as the wind speed at stack top.

Multiple level (typically three or more) measurements of wind temperature and turbulence (wind fluctuation statistics) are required for refined modeling applications in complex terrain. Such measurements should be obtained up to the representative plume height(s) of interest (i.e., the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (e.g., CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

For routine tower and surface measurements, the wind speed should be measured using an anemometer, and the wind direction measured using a horizontal vane. Specifications for wind measuring instruments and systems are contained in the "On-Site Meteorological Program Guidance for Regulatory Modeling Applications".[88]

Stability Categories. The Pasquill-Gifford (P–G) stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling based on criteria outlined by Turner.[50] In the absence of site specific observations of cloud cover and ceiling, alternative procedures using wind fluctuation statistics (i.e., the σ_A and σ_E methods)[66] and Turner's method with off-site cloud cover and ceiling and on-site 10m wind speed are recommended.

The two methods of stability classification which use wind fluctuation statistics, the σ_A and σ_E methods, are described in detail in EPA's "On-Site Meteorological Program Guidance for Regulatory Modeling Applications"[88] (note applicable tables in chapter 6). In the case of the σ_A method it should be noted that wind meander may occasionally bias the determination of σ_A and thus lead to an erroneous determination of the P–G stability category. To minimize wind direction meander contributions, σ_A may be determined for each of four 15-minute periods in an hour. However, 360 samples are needed during each 15-minute period. If the σ_A method is being used for stability determinations in these situations, take the square root of one-quarter of the sum of the square of the four 15 minute σ_A's, as illustrated in the footnote to Table 9–3. While this approach is an acceptable alternative for determining stability, as qualified above, σ_A's calculated in this manner are not likely to be suitable for input to models under development that are designed to accept on-site hourly σ's based on 60-minute periods. For additional information on stability classification using wind fluctuation statistics, see references 68–72.

In summary, when on-site data are being used, P–G stability categories should be estimated based on:

(1) Turner's method[55] using site-specific data which include cloud cover, ceiling height and surface (~10m) wind speeds;

(2) σ_E from site-specific measurements in accordance with guidance;[66]

(3) σ_A from site-specific measurements in accordance with guidance;[66]

(4) Turner's method[55] using site-specific wind speed with cloud cover and ceiling height from a nearby NWS site.

Meteorological Data Processors. The following meteorological preprocessors are recommended by EPA: RAMMET, PCRAMMET, STAR, PCSTAR, MPRM,[195] and METPRO.[24] RAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. The RAMMET format is the standard data input format used in sequential Gaussian models recommended by EPA. PCRAMMET is the PC equivalent of the mainframe version (RAMMET). STAR is the recommended preprocessor for use in applications employing joint frequency distributions (wind direction and wind speed by stability class) based on NWS data. PCSTAR is the PC equivalent of the mainframe version (STAR). MPRM is the recommended preprocessor for use in applications employing on-site meteorological data. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring RAMMET formatted data and STAR formatted data. In addition to on-site data, MPRM provides equivalent processing of NWS data. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. All of the above mentioned data preprocessors are available for downloading from the SCRAM BBS.[19]

TABLE 9–3.—AVERAGING TIMES FOR SITE-SPECIFIC WIND AND TURBULENCE MEASUREMENTS

Parameter	Averaging time
Surface wind speed (for use in stability determinations).	1-hr
Transport direction	1-hr.
Dilution wind speed	1-hr.
Turbulence measurements (σ_E and σ_A) for use in stability determinations.	1-hr [1]

[1] To minimize meander effects in σ_A when wind conditions are light and/or variable, determine the hourly average σ value from four sequential 15-minute σ's according to the following formula:

$$\sigma_{1-hr} = \sqrt{\frac{\sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2}{4}}$$

9.3.4 Treatment of Calms

9.3.4.1 *Discussion.* Treatment of calm or light and variable wind poses a special problem in model applications since Gaussian models assume that concentration is inversely proportional to wind speed Furthermore, concentrations become unrealistically large when wind speeds less than 1 m/s are input to the model. A procedure has been developed for use with NWS data to prevent the occurrence of overly conservative concentration estimates during periods of calms. This procedure acknowledges that a Gaussian plume model does not apply during calm conditions and that our knowledge of plume behavior and wind patterns during these conditions does not, at present, permit the development of a better technique. Therefore, the procedure disregards hours which are identified as calm. The hour is treated as missing and a

convention for handling missing hours is recommended.

Preprocessed meteorological data input to most appendix A EPA models substitute a 1.00 m/s wind speed and the previous direction for the calm hour. The new treatment of calms in those models attempts to identify the original calm cases by checking for a 1.00 m/s wind speed coincident with a wind direction equal to the previous hour's wind direction. Such cases are then treated in a prescribed manner when estimating short term concentrations.

9.3.4.2 *Recommendations.* Hourly concentrations calculated with Gaussian models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Critical concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentration for the period by the number of valid or nonmissing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. A post-processor computer program, CALMPRO[73] has been prepared following these instructions and has been hardwired in the following models: RAM, ISC, MPTER and CRSTER.

The recommendations above apply to the use of calms for short term averages and do not apply to the determination of long term averages using "STAR" data summaries. Calms should continue to be included in the preparation of "STAR" summaries. A treatment for calms and very light winds is built into the software that produces the "STAR" summaries.

Stagnant conditions, including extended periods of calms, often produce high concentrations over wide areas for relatively long averaging periods. The standard short term Gaussian models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis. (See also section 8.2.10)

When used in Gaussian models, measured on-site wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1m/s; the corresponding wind direction should also be input. Observations below the response threshold of the instrument are also set to 1 m/s but the wind direction from the previous hour is used. If the wind speed or direction can not be determined, that hour should be treated as missing and short term averages should then be calculated as above.

10.0 Accuracy and Uncertainty of Models

10.1 Discussion

Increasing reliance has been placed on concentration estimates from models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed source, no practical alternative exists. Therefore, there is an obvious need to know how accurate models really are and how any uncertainty in the estimates affects regulatory decisions. EPA recognizes the need for incorporating such information and has sponsored workshops[11,74] on model accuracy, the possible ways to quantify accuracy, and on considerations in the incorporation of model accuracy and uncertainty in the regulatory process. The Second (EPA) Conference on Air Quality Modeling, August 1982,[75] was devoted to that subject.

10.1.1 Overview of Model Uncertainty

Dispersion models generally attempt to estimate concentrations at specific sites that really represent an ensemble average of numerous repetitions of the same event. The event is characterized by measured or "known" conditions that are input to the models, e.g., wind speed, mixed layer height, surface heat flux, emission characteristics, etc. However, in addition to the known conditions, there are unmeasured or unknown variations in the conditions of this event, e.g., unresolved details of the atmospheric flow such as the turbulent velocity field. These unknown conditions, may vary among repetitions of the event. As a result, deviations in observed concentrations from their ensemble average, and from the concentrations estimated by the model, are likely to occur even though the known conditions are fixed. Even with a perfect model that predicts the correct ensemble average, there are likely to be deviations from the observed concentrations in individual repetitions of the event, due to variations in the unknown conditions. The statistics of these concentration residuals are termed "inherent" uncertainty. Available evidence suggests that this source of uncertainty alone may be responsible for a typical range of variation in concentrations of as much as #50 percent.[76]

Moreover, there is "reducible" uncertainty[77] associated with the model and its input conditions; neither models nor data bases are perfect. Reducible uncertainties are caused by: (1) Uncertainties in the input values of the known conditions—emission characteristics and meteorological data; (2) errors in the measured concentrations which are used to compute the concentration residuals; and (3) inadequate model physics and formulation. The "reducible" uncertainties can be minimized through better (more accurate and more representative) measurements and better model physics.

To use the terminology correctly, reference to model accuracy should be limited to that portion of reducible uncertainty which deals with the physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.[78] The statement of accuracy is based on statistical tests or performance measures such as bias, noise, correlation, etc.[11] However, information that allows a distinction between contributions of the various elements of inherent and reducible uncertainty is only now beginning to emerge. As a result most discussions of the accuracy of models make no quantitative distinction between (1) limitations of the model versus (2) limitations of the data base and of knowledge concerning atmospheric variability. The reader should be aware that statements on model accuracy and uncertainty may imply the need for improvements in model performance that even the "perfect" model could not satisfy.

10.1.2 Studies of Model Accuracy

A number of studies[79,80] have been conducted to examine model accuracy, particularly with respect to the reliability of short-term concentrations required for ambient standard and increment evaluations. The results of these studies are not surprising. Basically, they confirm what leading atmospheric scientists have said for some time: (1) Models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of ± 10 to 40 percent are found to be typical,[81] i.e., certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site, are poorly correlated with actually observed concentrations and are much less reliable.

As noted above, poor correlations between paired concentrations at fixed stations may be due to "reducible" uncertainties in knowledge of the precise plume location and to unquantified inherent uncertainties. For example, Pasquill[82] estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Uncertainty of five to 10 degrees in the measured wind direction, which transports the plume, can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt.

10.1.3 Use of Uncertainty in Decision-Making

The accuracy of model estimates varies with the model used, the type of application, and site-specific characteristics. Thus, it is desirable to quantify the accuracy or uncertainty associated with concentration estimates used in decision-making. Communications between modelers and decision-makers must be fostered and further developed. Communications concerning concentration estimates currently exist in most cases, but the communications dealing with the accuracy of models and its meaning to the decision-maker are limited by the lack of a technical basis for quantifying and directly including uncertainty in decisions. Procedures for quantifying and interpreting uncertainty in the practical application of such concepts are only beginning to evolve, much study is still required.[74,75,77]

In all applications of models an effort is encouraged to identify the reliability of the model estimates for that particular area and to determine the magnitude and sources of error associated with the use of the model. The analyst is responsible for recognizing and quantifying limitations in the accuracy, precision and sensitivity of the procedure. Information that might be useful to the decision-maker in recognizing the seriousness of potential air quality violations includes such model accuracy estimates as accuracy of peak predictions, bias, noise, correlation, frequency distribution, spatial extent of high concentration, etc. Both space/time pairing of estimates and measurements and unpaired comparisons are recommended. Emphasis should be on the highest concentrations and the averaging times of the standards or increments of concern. Where possible, confidence intervals about the statistical values should be provided. However, while such information can be provided by the modeler to the decision-maker, it is unclear how this information should be used to make an air pollution control decision. Given a range of possible outcomes, it is easiest and tends to ensure consistency if the decision-maker confines his judgment to use of the "best estimate" provided by the modeler (i.e., the design concentration estimated by a model recommended in this guideline or an alternate model of known accuracy). This is an indication of the practical limitations imposed by current abilities of the technical community.

To improve the basis for decision-making, EPA has developed and is continuing to study procedures for determining the accuracy of models, quantifying the uncertainty, and expressing confidence levels in decisions that are made concerning emissions controls.[83,84] However, work in this area involves "breaking new ground" with slow and sporadic progress likely. As a result, it may be necessary to continue using the "best estimate" until sufficient technical progress has been made to meaningfully implement such concepts dealing with uncertainty.

10.1.4 Evaluation of Models

A number of actions are being taken to ensure that the best model is used correctly for each regulatory application and that a model is not arbitrarily imposed. First, this guideline clearly recommends the most appropriate model be used in each case. Preferred models, based on a number of factors, are identified for many uses. General guidance on using alternatives to the preferred models is also provided. Second, all the models in eight categories (i.e., rural, urban, industrial complex, reactive pollutants, mobile source, complex terrain, visibility and long range transport) that are candidates for inclusion in this guideline are being subjected to a systematic performance evaluation and a peer scientific review.[85] The same data bases are being used to evaluate all models within each of eight categories. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined as recommended by the AMS Woods Hole Workshop,[11] are being followed. The results of the scientific review are being incorporated in this guideline and will be the basis for future revision.[12, 13] Third, more specific information has been provided for justifying the site specific use of alternative models in the documents "Interim Procedures for Evaluating Air Quality Models",[15] and the "Protocol for Determining the Best Performing Model".[17] Together these documents provide methods that allow a judgment to be made as to what models are most appropriate for a specific application. For the present, performance and the theoretical evaluation of models are being used as an indirect means to quantify one element of uncertainty in air pollution regulatory decisions.

In addition to performance evaluation of models, sensitivity analyses are encouraged since they can provide additional information on the effect of inaccuracies in the data bases and on the uncertainty in model estimates. Sensitivity analyses can aid in determining the effect of inaccuracies of variations or uncertainties in the data bases on the range of likely concentrations. Such information may be used to determine source impact and to evaluate control strategies. Where possible, information from such sensitivity analyses should be made available to the decision-maker with an appropriate interpretation of the effect on the critical concentrations.

10.2 Recommendations

No specific guidance on the consideration of model uncertainty in decision-making is being given at this time. There is incomplete technical information on measures of model uncertainty that are most relevant to the decision-maker. It is not clear how a decisionmaker could use such information, particularly given limitations of the Clean Air Act. As procedures for considering uncertainty develop and become implementable, this guidance will be changed and expanded. For the present, continued use of the "best estimate" is acceptable and is consistent with CAA requirements.

11.0 Regulatory Application of Models

11.1 Discussion

Procedures with respect to the review and analysis of air quality modeling and data analyses in support of SIP revisions, PSD permitting or other regulatory requirements need a certain amount of standardization to ensure consistency in the depth and comprehensiveness of both the review and the analysis itself. This section recommends procedures that permit some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application.

Dispersion model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. Nevertheless, there are instances where the performance of recommended dispersion modeling techniques, by comparison with observed air quality data, may be shown to be less than acceptable. Also, there may be no recommended modeling procedure suitable for the situation. In these instances, emission limitations may be established solely on the basis of observed air quality data as would be applied to a modeling analysis. The same care should be given to the analyses of the air quality data as would be applied to a modeling analysis

The current NAAQS for SO_2 and CO are both stated in terms of a concentration not to be exceeded more than once a year. There is only an annual standard for NO_2 and a quarterly standard for Pb. The PM–10 and ozone standards permit the exceedance of a concentration on an average of not more than once a year; the convention is to average over a 3-year period.[5, 86, 103] This represents a change from a deterministic to a more statistical form of the standard and permits some consideration to be given to unusual circumstances. The NAAQS are subjected to extensive review and possible revision every 5 years.

This section discusses general requirements for concentration estimates and identifies the relationship to emission limits. The following recommendations apply to: (1) Revisions of State Implementation Plans; (2) the review of new sources and the prevention of significant deterioration (PSD); and (3) analyses of the emissions trades ("bubbles").

11.2 *Recommendations*

11.2.1 **Analysis Requirements**

Every effort should be made by the Regional Office to meet with all parties involved in either a SIP revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data. An example of requirements for such an effort is contained in the Air Quality Analysis Checklist included here as Appendix C. This checklist suggests the level of detail required to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at this preapplication meeting. The protocol should be written and agreed upon by the parties concerned, although a formal legal document is not intended. Changes in such a protocol are often required as the data collection and analysis progresses. However, the protocol establishes a common understanding of the requirements.

An air quality analysis should begin with a screening model to determine the potential of the proposed source or control strategy to violate the PSD increment or NAAQS. It is recommended that the screening techniques found in "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources"[18] be used for point source analyses. Screening procedures for area source analysis are discussed in "Applying Atmospheric Simulation Models to Air Quality Maintenance Areas".[87] For mobile source impact assessments the

"Guideline for Modeling Carbon Monoxide from Roadway Intersections" [94] is available.

If the concentration estimates from screening techniques indicate that the PSD increment or NAAQS may be approached or exceeded, then a more refined modeling analysis is appropriate and the model user should select a model according to recommendations in sections 4–8. In some instances, no refined technique may be specified in this guide for the situation. The model user is then encouraged to submit a model developed specifically for the case at hand. If that is not possible, a screening technique may supply the needed results.

Regional Offices should require permit applicants to incorporate the pollutant contributions of all sources into their analysis. Where necessary this may include emissions associated with growth in the area of impact of the new or modified source's impact. PSD air quality assessments should consider the amount of the allowable air quality increment that has already been granted to any other sources. Therefore, the most recent source applicant should model the existing or permitted sources in addition to the one currently under consideration. This would permit the use of newly acquired data or improved modeling techniques if such have become available since the last source was permitted. When remodeling, the worst case used in the previous modeling analysis should be one set of conditions modeled in the new analysis. All sources should be modeled for each set of meteorological conditions selected and for all receptor sites used in the previous applications as well as new sites specific to the new source.

11.2.2 Use of Measured Data in Lieu of Model Estimates

Modeling is the preferred method for determining emission limitations for both new and existing sources. When a preferred model is available, model results alone (including background) are sufficient. Monitoring will normally not be accepted as the sole basis for emission limitation determination in flat terrain areas. In some instances when the modeling technique available is only a screening technique, the addition of air quality data to the analysis may lend credence to model results.

There are circumstances where there is no applicable model, and measured data may need to be used. Examples of such situations are: (1) Complex terrain locations; (2) land/water interface areas; and (3) urban locations with a large fraction of particulate emissions from nontraditional sources. However, only in the case of an existing source should monitoring data alone be a basis for emission limits. In addition, the following items should be considered prior to the acceptance of the measured data:

a. Does a monitoring network exist for the pollutants and averaging times of concern;

b. Has the monitoring network been designed to locate points of maximum concentration;

c. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements;

d. Do the data set and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved;

e. Is at least one full year of valid ambient data available; and

f. Can it be demonstrated through the comparison of monitored data with model results that available models are not applicable?

The number of monitors required is a function of the problem being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and placement of monitors. Decisions can only be made on a case-by-case basis. The Interim Procedures for Evaluating Air Quality Models [15] should be used in establishing criteria for demonstrating that a model is not applicable.

Sources should obtain approval from the Regional Office or reviewing authority for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all concerned parties is highly desirable. The design of the network, the number, type and location of the monitors, the sampling period, averaging time as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

11.2.3 Emission Limits

11.2.3.1 *Design Concentrations.* Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements. The concentration used in specifying emission limits is called the design value or design concentration and is a sum of the concentration contributed by the source and the background concentration.

To determine the averaging time for the design value, the most restrictive National Ambient Air Quality Standard (NAAQS) should be identified by calculating, for each averaging time, the ratio of the applicable NAAQS (S) minus background (B) to the predicted concentration (P) (i.e., (S–B)/P). The averaging time with the lowest ratio identifies the most restrictive standard. If the annual average is the most restrictive, the highest estimated annual average concentration from one or a number of years of data is the design value. When short term standards are most restrictive, it may be necessary to consider a broader range of concentrations than the highest value. For example, for pollutants such as SO_2, the highest, second-highest concentration is the design value. For pollutants with statistically based NAAQS, the design value is found by determining the more restrictive of: (1) The short-term concentration that is not expected to be exceeded more than once per year over the period specified in the standard, or (2) the long-term concentration that is not expected to exceed the long-term NAAQS. Determination of design values for PM–10 is presented in more detail in the "PM–10 SIP Development Guideline".[103]

When the highest, second-highest concentration is used in assessing potential violations of a short term NAAQS, criteria that are identified in "Guideline for Interpretation of Air Quality Standards" [88] should be followed. This guideline specifies that a violation of a short term standard occurs at a site when the standard is exceeded a second time. Thus, emission limits that protect standards for averaging times of 24 hours or less are appropriately based on the highest, second-highest estimated concentration plus a background concentration which can reasonably be assumed to occur with the concentration.

11.2.3.2 *NAAQS Analyses for New or Modified Sources.* For new or modified sources predicted to have a significant ambient impact [63] and to be locatec in areas designated attainment or unclassifiable for the SO_2, Pb, NO_2, or CO NAAQS, the demonstration as to whether the source will cause or contribute to an air quality violation should be based on: (1) The highest estimated annual average concentration determined from annual averages of individual years; or (2) the highest, second-highest estimated concentration for averaging times of 24-hours or less; and (3) the significance of the spatial and temporal contribution to any modeled violation. For Pb, the highest estimated concentration based on an individual calendar quarter averaging period should be used. Background concentrations should be added to the estimated impact of the source. The most restrictive standard should be used in all cases to assess the threat of an air quality violation. For new or modified sources predicted to have a significant ambient impact [63] in areas designated attainment or unclassifiable for the PM–10 NAAQS, the demonstration of whether or not the source will cause or contribute to an air quality violation should be based on sufficient data to show whether: (1) The projected 24-hour average concentrations will exceed the 24-hour NAAQS more than once per year, on average; (2) the expected (i.e., average) annual mean concentration will exceed the annual NAAQS; and (3) the source contributes significantly, in a temporal and spatial sense, to any modeled violation.

11.2.3.3 *PSD Air Quality Increments and Impacts.* The allowable PSD increments for criteria pollutants are established by regulation and cited in 40 CFR 51.166. These maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, except for the annual increment that may not be exceeded. The highest, second-highest increase in estimated concentrations for the short term averages as determined by a model should be less than or equal to the permitted increment. The modeled annual averages should not exceed the increment.

Screening techniques defined in sections 4 and 5 can sometimes be used to estimate short term incremental concentrations for the first new source that triggers the baseline in a given area. However, when multiple increment-consuming sources are involved in the calculation, the use of a refined model with at least 1 year of on-site or 5 years of off-site NWS data is normally required. In such cases, sequential modeling must demonstrate that the allowable increments are not exceeded temporally and spatially, i.e., for all receptors for each time period

throughout the year(s) (time period means the appropriate PSD averaging time, e.g., 3-hour, 24-hour, etc.).

The PSD regulations require an estimation of the SO_2, particulate matter, and NO_2 impact on any Class I area. Normally, Gaussian models should not be applied at distances greater than can be accommodated by the steady state assumptions inherent in such models. The maximum distance for refined Gaussian model application for regulatory purposes is generally considered to be 50km. Beyond the 50km range, screening techniques may be used to determine if more refined modeling is needed. If refined models are needed, long range transport models should be considered in accordance with section 7.2.6. As previously noted in sections 3 and 7, the need to involve the Federal Land Manager in decisions on potential air quality impacts, particularly in relation to PSD Class I areas, cannot be overemphasized.

11.2.3.4 *Emissions Trading Policy (Bubbles).* EPA's final Emissions Trading Policy, commonly referred to as the "bubble policy," was published in the **Federal Register** in 1986.[89] Principles contained in the policy should be used to evaluate ambient impacts of emission trading activities.

Emission increases and decreases within the bubble should result in ambient air quality equivalence. Two levels of analysis are defined for establishing this equivalence. In a Level I analysis the source configuration and setting must meet certain limitations (defined in the policy) that ensure ambient equivalence; no modeling is required. In a Level II analysis a modeling demonstration of ambient equivalence is required but only the sources involved in the emissions trade are modeled. The resulting ambient estimates of net increases/decreases are compared to a set of significance levels to determine if the bubble can be approved. A Level II analysis requires the use of a refined model and the most recent readily available full year of representative meteorological data. Sequential modeling must demonstrate that the significance levels are met temporally and spatially, i.e., for all receptors for each time period throughout the year (time period means the appropriate NAAQS averaging time, e.g., 3-hour, 24-hour, etc.).

For those bubbles that cannot meet the Level I or Level II requirements, the Emissions Trading Policy allows for a Level III analysis. A Level III analysis, from a modeling standpoint, is generally equivalent to the requirements for a standard SIP revision where all sources (and background) are considered and the estimates are compared to the NAAQS as in section 11.2.3.2.

The Emissions Trading Policy allows States to adopt generic regulations for processing bubbles. The modeling procedures recommended in this guideline apply to such generic regulations. However, an added requirement is that the modeling procedures contained in any generic regulation must be replicable such that there is no doubt as to how each individual bubble will be modeled. In general this means that the models, the data bases and the procedures for applying the model must be defined in the regulation. The consequences of the replicability requirement are that bubbles for sources located in complex terrain and certain industrial sources where judgments must be made on source characterization cannot be handled generically.

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[b] Some EPA references, e.g., model user's guides, etc., are periodically revised. Users are referred to the SCRAM BBS [19] to download updates or addenda; see Appendix A of this appendix, "A.0 INTRODUCTION AND AVAILABILITY".

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[1] The documents listed here are major sources of supplemental information on the theory and application of mathematical air quality models

14.0 Glossary of Terms

Air quality: Ambient pollutant concentrations and their temporal and spatial distribution.

Algorithm: A specific mathematical calculation procedure. A model may contain several algorithms.

Background: Ambient pollutant concentrations due to (1) natural sources, (2) nearby sources other than the one(s) currently under consideration; and (3) unidentified sources.

Calibrate: An objective adjustment using measured air quality data (e.g., an adjustment based on least-squares linear regression)

Calm: For purposes of air quality modeling, calm is used to define the situation when the wind is indeterminate with regard to speed or direction.

Complex Terrain: Terrain exceeding the height of the stack being modeled.

Computer Code: A set of statements that comprise a computer program

Evaluate: To appraise the performance and accuracy of a model based on a comparison of concentration estimates with observed air quality data.

Fluid Modeling: Modeling conducted in a wind tunnel or water channel to

quantitatively evaluate the influence of buildings and/or terrain on pollutant concentrations.

Fugitive Dust: Dust discharged to the atmosphere in an unconfined flow stream such as that from unpaved roads, storage piles and heavy construction operations.

Model: A quantitative or mathematical representation or simulation which attempts to describe the characteristics or relationships of physical events.

Preferred Model: A refined model that is recommended for a specific type of regulatory application.

Receptor: A location at which ambient air quality is measured or estimated.

Receptor Models: Procedures that examine an ambient monitor sample of particulate matter and the conditions of its collection to infer the types or relative mix of sources impacting on it during collection.

Refined Model: An analytical technique that provides a detailed treatment of physical and chemical atmospheric processes and requires detailed and precise input data. Specialized estimates are calculated that are useful for evaluating source impact relative to air quality standards and allowable increments. The estimates are more accurate than those obtained from conservative screening techniques.

Rollback: A simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.

Screening Technique: A relatively simple analysis technique to determine if a given source is likely to pose a threat to air quality. Concentration estimates from screening techniques are conservative.

Simple Terrain: An area where terrain features are all lower in elevation than the top of the stack of the source.

Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

Table of Contents

A.0 Introduction and Availability
A.1 Buoyant Line and Point Source Dispersion Model (BLP)
A.2 CALINE3
A.3 Climatological Dispersion Model (CDM 2.0)
A.4 Gaussian-Plume Multiple Source Air Quality Algorithm (RAM)
A.5 Industrial Source Complex Model (ISC2)
A.6 Multiple Point Gaussian Dispersion Algorithm With Terrain Adjustment (MPTER)
A.7 Single Source (CRSTER) MODEL
A.8 Urban Airshed Model (UAM)
A.9 Offshore and Coastal Dispersion Model (OCD)
A.10 Emissions and Dispersion Model System (EDMS)
A.11 Complex Terrain Dispersion Model Plus Algorithms for Unstable situations (CTDMPLUS)
A.REF References

A.0 Introduction and Availability

This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost in 1990, regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. A summary of such comparisons for models contained in this appendix is included in "A Survey of Statistical Measures of Model Performance and Accuracy for Several Air Quality Models," EPA–450/4–83–001. Where possible, several of the models contained herein have been subjected to evaluation exercises, including (1) statistical performance tests recommended by the American Meteorological Society and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

The Availability statement for models in this Appendix that refers to the User's Network for Applied Modeling of Air Pollution (UNAMAP) should be ignored since UNAMAP is no longer operational. However, all models and user's documentation in this appendix are available from: Computer Products, National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

In addition, model codes and selected, abridged user's guides are available from the Support Center for Regulatory Air Models Bulletin Board System [19] (SCRAM BBS), telephone (919) 541–5742. The SCRAM BBS is an electronic bulletin board system designed to be user friendly and accessible from anywhere in the country. Model users with personal computers are encouraged to use the SCRAM BBS to download current model codes and text files.

A.1 Buoyant Line and Point Source Dispersion Model (BLP)

Reference

Schulman, Lloyd L., and Joseph S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide. Document P–7304B. Environmental Research and Technology, Inc., Concord, MA. (NTIS No. PB 81–164642)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract:

BLP is a Gaussian plume dispersion model designed to handle unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary line sources are important.

a. *Recommendations for Regulatory Use*

The BLP model is appropriate for the following applications:

Aluminum reduction plants which contain buoyant, elevated line sources;

Rural areas;

Transport distances less than 50 kilometers;

Simple terrain; and

One hour to one year averaging times.

The following options should be selected for regulatory applications:

Rural (IRU=1) mixing height option;

Default (no selection) for plume rise wind shear (LSHEAR), transitional point source plume rise (LTRANS), vertical potential temperature gradient (DTHTA), vertical wind speed power law profile exponents (PEXP), maximum variation in number of stability classes per hour (IDELS), pollutant decay (DECFAC), the constant in Briggs' stable plume rise equation (CONST2), constant in Briggs' neutral plume rise equation (CONST3), convergence criterion for the line source calculations (CRIT), and maximum iterations allowed for line source calculations (MAXIT); and

Terrain option (TERAN) set equal to 0.0, 0.0, 0.0, 0.0, 0.0, 0.0.

For other applications, BLP can be used if it can be demonstrated to give the same estimates as a recommended model for the same application, and will subsequently be executed in that mode.

BLP can be used on a case-by-case basis with specific options not available in a recommended model if it can be demonstrated, using the criteria in section 3.2, that the model is more appropriate for a specific application.

b. *Input Requirements*

Source data: Point sources require stack location, elevation of stack base, physical stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, and pollutant emission rate. Line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter.

Meteorological data: Hourly surface weather data from punched cards or from the preprocessor program RAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height.

Receptor data: Locations and elevations of receptors, or location and size of receptor grid or request automatically generated receptor grid.

c. *Output*

Printed output (from a separate post-processor program) includes:

Total concentration or, optionally, source contribution analysis; monthly and annual frequency distributions for 1-, 3-, and 24-hour average concentrations; tables of 1-, 3-, and 24-hour average concentrations at each receptor; table of the annual (or length of run) average concentrations at each receptor;

Five highest 1-, 3-, and 24-hour average concentrations at each receptor; and

Fifty highest 1-, 3-, and 24-hour concentrations over the receptor field.

d. *Type of Model*

BLP is a gaussian plume model.

e. *Pollutant Types*

BLP may be used to model primary pollutants. This model does not treat settling and deposition.

f. *Source-Receptor Relationship*

BLP treats up to 50 point sources, 10 parallel line sources, and 100 receptors arbitrarily located.

User-input topographic elevation is applied for each stack and each receptor

g. *Plume Behavior*

BLP uses plume rise formulas of Schulman and Scire (1980).

Vertical potential temperature gradients of 0.02 Kelvin per meter for E stability and 0.035 Kelvin per meter are used for stable plume rise calculations. An option for user input values is included.

Transitional rise is used for line sources.

Option to suppress the use of transitional plume rise for point sources is included.

The building downwash algorithm of Schulman and Scire (1980) is used

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

Wind speeds profile exponents of 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 are used for stability classes A through F, respectively. An option for userdefined values and an option to suppress the use of the wind speed profile feature are included.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness or averaging time.

Six stability classes are used.

k. *Vertical Dispersion*

Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform mixing is assumed beyond that point.

Perfect reflection at the ground is assumed.

l. *Chemical Transformation*

Chemical transformations are treated using linear decay. Decay rate is input by the user.

m. *Physical Removal*

Physical removal is not explicitly treated

n. *Evaluation Studies*

Schulman, L.L., and J.S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide, P–7304B Environmental Research and Technology, Inc., Concord, MA.

Scire, J.S., and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. APCA Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

A.2 CALINE3

Reference

Benson, Paul E. 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, DC. (NTIS No. PB 80–220841)

Availability

The CALINE3 model computer tape is available from NTIS as PB 80–220833. The model is also available from the California Department of Transportation (manual free of charge and approximately $50 for the computer tape). Requests should be directed to: Mr. Marlin Beckwith, Chief, Office of Computer Systems, California Department of Transportation, 1120 N. Street, Sacramento, CA 95814.

Abstract

CALINE3 can be used to estimate the concentrations of nonreactive pollutants from highway traffic. This steady-state Gaussian model can be applied to determine air pollution concentrations at receptor locations downwind of "at-grade," "fill," "bridge," and "cut section" highways located in relatively uncomplicated terrain. The model is applicable for any wind direction, highway orientation, and receptor location. The model has adjustments for averaging time and surface roughness, and can handle up to 20 links and 20 receptors. It also contains an algorithm for deposition and settling velocity so that particulate concentrations can be predicted.

a. *Recommendations for Regulatory Use*

CALINE–3 is appropriate for the following applications:

Highway (line) sources;

Urban or rural areas;

Simple terrain;

Transport distances less than 50 kilometers; and

One-hour to 24-hour averaging times

b. *Input Requirements*

Source data: Up to 20 highway links classed as "at-grade," "fill," "bridge," or "depressed"; coordinates of link end points; traffic volume; emission factor; source height; and mixing zone width.

Meteorological data: Wind speed, wind angle (measured in degrees clockwise from the Y axis), stability class, mixing height, ambient (background to the highway) concentration of pollutant.

Receptor data: Coordinates and height above ground for each receptor. c.

Output

Printed output includes:

Concentration at each receptor for the specified meteorological condition.

d. *Type of Model*

CALINE–3 is a Gaussian plume model

e. *Pollutant Types*

CALINE–3 may be used to model primary pollutants.

f. *Source-Receptor Relationship*

Up to 20 highway links are treated.

CALINE–3 applies user input location and emission rate for each link. User-input receptor locations are applied.

g. *Plume Behavior*

Plume rise is not treated.

h. *Horizontal Winds*

User-input hourly wind speed and direction are applied.

Constant, uniform (steady-state) wind is assumed for an hour.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Six stability classes are used.

Rural dispersion coefficients from Turner (1969) are used, with adjustment for roughness length and averaging time.

Initial traffic-induced dispersion is handled implicitly by plume size parameters.

k. *Vertical Dispersion*

Six stability classes are used.

Empirical dispersion coefficients from Benson (1979) are used including an adjustment for roughness length.

Initial traffic-induced dispersion is handled implicitly by plume size parameters.

Adjustment for averaging time is included.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Optional deposition calculations are included.

n. *Evaluation Studies*

Bemis, G. R. et al., 1977. Air Pollution and Roadway Location, Design, and Operation—Project Overview. FHWA–CA–TL–7080–77–25, Federal Highway Administration, Washington, DC.

Cadle, S. H. et al., 1976. Results of the General Motors Sulfate Dispersion Experiment, GMR–2107. General Motors Research Laboratories, Warren, MI.

Dabberdt, W. F., 1975. Studies of Air Quality on and Near Highways, Project 2761 Stanford Research Institute, Menlo Park, CA.

A.3 Climatological Dispersion Model (CDM 2.0)

References

Irwin, J. S., T. Chico, and J. Catalano, 1985 CDM 2.0-Climatological Dispersion Model—User's Guide. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 86–136546)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is

VOL 58 ISS 137 JL 20 1993 UMI

available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

CDM is a climatological steady-state Gaussian plume model for determining long-term (seasonal or annual) arithmetic average pollutant concentrations at any ground-level receptor in an urban area.

a. *Recommendations for Regulatory Use*

CDM is appropriate for the following applications:

Point and area sources;

Urban areas;

Flat terrain;

Transport distances less than 50 kilometers;

Long term averages over one month to one year or longer.

The following option should be selected for regulatory applications:

Set the regulatory "default option" (NDEF=1) which automatically selects stack tip downwash, final plume rise, buoyancy-induced dispersion (BID), and the appropriate wind profile exponents.

Enter "0" for pollutant half-life for all pollutants except for SO_2 in an urban setting. This entry results in no decay (infinite half-life) being calculated. For SO_2 in an urban setting, the pollutant half-life (in hours) should be set to 4.0.

b. *Input Requirements*

Source data: Location, average emissions rates and heights of emissions for point and area sources. Point source data requirements also include stack gas temperature, stack gas exit velocity, and stack inside diameter for plume rise calculations for point sources.

Meteorological data: Stability wind rose (STAR deck day/night version), average mixing height and wind speed in each stability category, and average air temperature.

Receptor data: Cartesian coordinates of each receptor.

c. *Output*

Printed output includes:

Average concentrations for the period of the stability wind rose data (arithmetic mean only) at each receptor, and

Optional point and area concentration rose for each receptor.

d. *Type of Model*

CDM is a climatological Gaussian plume model.

e. *Pollutant Types*

CDM may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

CDM applies user-specified locations for all point sources and receptors.

Area sources are input as multiples of a user-defined unit area source grid size.

User specified release heights are applied for individual point sources and the area source grid.

Actual separation between each source-receptor pair is used.

The user may select a single height at or above ground level that applies to all receptors.

No terrain differences between source and receptor are treated.

g. *Plume Behavior*

CDM uses Briggs (1969, 1971, 1975) plume rise equations. Optionally a plume rise-wind speed product may be input for each point source.

Stack tip downwash equation from Briggs (1974) is preferred for regulatory use. The Bjorklund and Bowers (1982) equation is also included.

No plume rise is calculated for area sources.

Does not treat fumigation or building downwash.

h. *Horizontal Winds*

Wind data are input as a stability wind rose (joint frequency distribution of 16 wind directions, 6 wind classes, and 5 stability classes).

Wind speed profile exponents for the urban case (EPA, 1980) are used, assuming the anemometer height is at 10.0 meters.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Pollutants are assumed evenly distributed across a 22.5 or 10.0 degree sector.

k. *Vertical Dispersion*

There are seven vertical dispersion parameter schemes, but the following is recommended for regulatory applications:

- Briggs-urban (Gifford, 1976).

Mixing height has no effect until dispersion coefficient equals 0.8 times the mixing height; uniform vertical mixing is assumed beyond that point.

Buoyancy-induced disperion (Pasquill, 1976) is included as an option. Perfect reflection is assumed at the ground.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is not explicitly treated.

n. *Evaluation Studies*

Irwin, J. S., and T. M. Brown, 1985. A Sensitivity Analysis of the Treatment of Area Sources by the Climatological Dispersion Model. *Journal of Air Pollution Control Association*, 35: 359–364.

Londergan, R., D. Minott, D. Wachter and R. Fizz, 1983. Evaluation of Urban Air Quality Simulation Models, EPA Publication No. EPA–450/4–83–020. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Busse, A. D. and J. R. Zimmerman, 1973. User's Guide for the Climatological Dispersion Model—Appendix E. EPA Publication No. EPA/R4–73–024. Office of Research and Development, Research Triangle Park, NC.

Zimmerman, J. R., 1971. Some Preliminary Results of Modeling from the Air Pollution Study of Ankara, Turkey, Proceedings of the Second Meeting of the Expert Panel on Air Pollution Modeling, NATO Committee on the Challenges of Modern Society, Paris, France.

Zimmerman, J. R., 1972. The NATO/CCMS Air Pollution Study of St. Louis, Missouri. Presented at the Third Meeting of the Expert Panel on Air Pollution Modeling, NATO Committee on the Challenges of Modern Society, Paris, France.

A.4 Gaussian-Plume Multiple Source Air Quality Algorithm (RAM)

Reference

Turner, D. B., and J. H. Novak, 1978. User's Guide for RAM. Publication No. EPA–600/8–78–016, Vol. a and b. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB 294791 and PB 294792)

Catalano, J. A., D. B. Turner, and H. Novak, 1987. User's Guide for RAM— Second Edition. U.S. Environmental Protection Agency, Research Triangle Park, NC. (Distributed as part of UNAMAP, Version 6), Documentation.)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

RAM is a steady-state Gaussian plume model for estimating concentrations of relatively stable pollutants, for averaging times from an hour to a day, from point and area sources in a rural or urban setting. Level terrain is assumed. Calculations are performed for each hour.

a. *Recommendations for Regulatory Use*

RAM is appropriate for the following applications:

Point and area sources;

Urban areas;

Flat terrain;

Transport distances less than 50 kilometers; and

One hour to one year averaging times.

The following options should be selected for regulatory applications:

Set the regulatory "default option" to automatically select stack tip downwash, final plume rise, buoyancy-induced dispersion (BID), the new treatment for calms, the appropriate wind profile exponents, and the appropriate value for pollutant half-life.

b. *Input Requirements*

Source data: Point sources require location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter and stack gas temperature. Area sources require location, size, emission rate, and height of emissions.

Meteorological data: Hourly surface weather data from the preprocessor program RAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is also required.

Receptor data: Coordinates of each receptor. Options for automatic placement of receptors near expected concentration maxima, and a gridded receptor array are included.

c. *Output*

Printed output optionally includes:

One to 24-hour and annual average concentrations at each receptor,

Limited individual source contribution list, and

Highest through fifth highest concentrations at each receptor for period, with the highest and high, second-high values flagged.

d. *Type of Model*

RAM is a Gaussian plume model.

e. *Pollutant Types*

RAM may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

RAM applies user-specified locations for all point sources and receptors.

Area sources are input as multiples of a user-defined unit area source grid size.

User specified stack heights are applied for individual point sources.

Up to 3 effective release heights may be specified for the area sources. Area source release heights are assumed to be appropriate for a 5 meter per second wind and to be inversely proportional to wind speed.

Actual separation between each source-receptor pair is used.

All receptors are assumed to be at the same height at or above ground level.

No terrain differences between source and receptor are accounted for.

g. *Plume Behavior*

RAM uses Briggs (1969, 1971, 1975) plume rise equations for final rise.

Stack tip downwash equation from Briggs (1974) is used.

A user supplied fraction of the area source height is treated as the physical height. The remainder is assumed to be plume rise for a 5 meter per second wind speed, and to be inversely proportional to wind speed.

Fumigation and building downwash are not treated.

h. *Horizontal Winds*

Constant, uniform (steady state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

Separate wind speed profile exponents (EPA, 1980) for urban cases are used.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy-induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

k. *Vertical Dispersion*

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy-induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

Perfect reflection is assumed at the ground.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is not explicitly treated.

n. *Evaluation Studies*

Ellis, H., P. Lou, and G. Dalzell, 1980. Comparison Study of Measured and Predicted Concentrations with the RAM Model at Two Power Plants Along Lake Erie, Second Joint Conference on Applications of Air Pollution Meteorology, New Orleans, LA.

Environmental Research and Technology, 1980. SO_2 Monitoring and RAM (Urban) Model Comparison Study in Summit County, Ohio. Document P–3618–152, Environmental Research & Technology, Inc., Concord, MA.

Guldberg, P. H., and C. W. Kern, 1978. A Comparison Validation of the RAM and PTMTP Models for Short-Term Concentrations in Two Urban Areas. *Journal of Air Pollution Control Association*, 28: 907–910.

Hodanbosi, R. R., and L. K. Peters, 1981. Evaluation of RAM Model for Cleveland, Ohio. *Journal of Air Pollution Control Association*, 31: 253–255.

Kennedy, K. H., R. D. Siegel, and M. P. Steinberg, 1981. Case-Specific Evaluation of the RAM Atmospheric Dispersion Model in an Urban Area, 74th Annual Meeting of the American Institute of Chemical Engineers, New Orleans, LA.

Kummier, R. H., B. Cho, G. Roginski, R. Sinha and A. Greenburg, 1979. A Comparative Validation of the RAM and Modified SAI Models for Short-Term SO_2 Concentrations in Detroit. *Journal of Air Pollution Control Association*, 29: 720–723.

Londergan, R. J., N. E. Bowne, D. R. Murray, H. Borenstein, and J. Mangano, 1980. An Evaluation of Short-Term Air Quality Models Using Tracer Study Data, Report No. 4333, American Petroleum Institute, Washington, D.C.

Morgenstern, P., M. J. Geraghty, and A. McKnight, 1979. A Comparative Study of the RAM (Urban) and RAMR (Rural) Models for Short-term SO_2 Concentrations in Metropolitan Indianapolis. 72nd Annual Meeting of the Air Pollution Control Association, Cincinnati, OH.

Ruff, R. E., 1980. Evaluation of the RAM Using the RAPS Data Base, Contract 68–02–2770, SRI International, Menlo Park, CA.

Londergan, R., D. Minott, D. Wackter, and R. Fizz, 1983. Evaluation of Urban Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–020. U.S. Environmental Protection Agency, Research Triangle Park, NC.

A.5 Industrial Source Complex Model (ISC2)

Reference

Environmental Protection Agency, 1992. User's Guide for the Industrial Source Complex (ISC2) Dispersion Models, Volumes 1, 2, and 3. EPA Publication Nos. EPA–450/4–92–008a–c. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB 92–232461, PB 92–232453, and PB 92–232479, respectively)

Availability

The model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also from the National Technical Information Service (see page A–1).

Abstract

The ISC2 model is a steady-state Gaussian plume model which can be used to assess pollutant concentrations from a wide variety of sources associated with an industrial source complex. This model can account for the following: Settling and dry deposition of particles; downwash; area, line and volume sources; plume rise as a function of downwind distance; separation of point sources; and limited terrain adjustment. It operates in both long-term and short-term modes.

a. *Recommendations for Regulatory Use*

ISC2 is appropriate for the following applications:

- Industrial source complexes;
- Rural or urban areas;
- Flat or rolling terrain;
- Transport distances less than 50 kilometers;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

The following options should be selected for regulatory applications:

For short term or long term modeling, set the regulatory "default option"; i.e., use the keyword *DFAULT*, which automatically selects stack tip downwash, final plume rise, buoyancy induced dispersion (BID), the vertical potential temperature gradient, a treatment for calms, the appropriate wind profile exponents, the appropriate value for pollutant half-life, and a revised building wake effects algorithm; set the "rural option" (use the keyword *RURAL*) or "urban option" (use the keyword *URBAN*); and set the "concentration option" (use the keyword *CONC*).

b. *Input Requirements*

Source data: Location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter, and stack gas temperature. Optional inputs include source elevation, building dimensions, particle size distribution with corresponding settling velocities, and surface reflection coefficients.

Meteorological data: ISCST2 requires hourly surface weather data from the preprocessor program RAMMET, which provides hourly stability class, wind direction, wind speed, temperature, and mixing height. For ISCLT2, input includes stability wind rose (STAR deck), average afternoon mixing height, average morning mixing height, and average air temperature.

Receptor data: coordinates and optional ground elevation for each receptor.

c. *Output*

Printed output options include:

- Program control parameters, source data, and receptor data;
- Tables of hourly meteorological data for each specified day;
- "N"-day average concentration or total deposition calculated at each receptor for any desired source combinations;
- Concentration or deposition values calculated for any desired source combinations at all receptors for any specified day or time period within the day;
- Tables of highest and second highest concentration or deposition values calculated at each receptor for each specified time period during a(n) "N"-day period for any desired source combinations, and tables of the maximum 50 concentration or deposition values calculated for any desired source combinations for each specified time period.

d. *Type of Model*

ISC2 is a Gaussian plume model.

e. *Pollutant Types*

ISC2 may be used to model primary pollutants and continuous releases of toxic and hazardous waste pollutants. Settling and deposition are treated.

f. *Source-Receptor Relationships*

ISC2 applies user-specified locations for point, line, area and volume sources, and user-specified receptor locations or receptor rings.

User input topographic evaluation for each receptor is used. Elevations above stack top are reduced to the stack top elevation, i.e., "terrain chopping".

User input height above ground level may be used when necessary to simulate impact at elevated or "flag pole" receptors, e.g., on buildings.

Actual separation between each source-receptor pair is used.

g. *Plume Behavior*

ISC2 uses Briggs (1969, 1971, 1975) plume rise equations for final rise.

Stack tip downwash equation from Briggs (1974) is used.

Revised building wake effects algorithm is used. For stacks higher than building height plus one-half the lesser of the building height or building width, the building wake algorithm of Huber and Snyder (1976) is used. For lower stacks, the building wake algorithm of Schulman and Scire (Schulman and Hanna, 1986) is used, but stack tip downwash and BID are not used.

For rolling terrain (terrain not above stack height), plume conterline is horizontal at height of final rise above source.

Fumigation is not treated.

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for each hour.

Straight line plume transport is assumed to all downwind distances.

Separate wind speed profile exponents (EPA, 1980) for both rural and urban cases are used.

An optional treatment for calm winds is included for short term modeling.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness or averaging time.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

Perfect reflection is assumed at the ground.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Time constant is input by the user.

m. *Physical Removal*

Settling and dry deposition of particulates are treated.

n. *Evaluation Studies*

Bowers, J. F., and A. J. Anderson, 1981. An Evaluation Study for the Industrial Source Complex (ISC) Dispersion Model, EPA Publication No. EPA–450/4–81–002. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Bowers, J. F., A. J. Anderson, and W. R. Hargraves, 1982. Tests of the Industrial Source Complex (ISC) Dispersion Model at the Armco Middletown, Ohio Steel Mill, EPA Publication No. EPA–450/4–82–006. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Scire, J. S., and L. L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. Air Pollution Control Association Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

Schulman, L. L., and S. R. Hanna, 1986. Evaluation of Downwash Modification to the Industrial Source Complex Model. Journal of the Air Pollution Control Association, 36: 258–264.

A.6 Multiple Point Gaussian Dispersion Algorithm With Terrain Adjustment (MPTER)

Reference

Pierce, Thomas D. and D. Bruce Turner, 1980. User's Guide for MPTER. EPA Publication No. EPA–600/8–80–016. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 80–197361)

Chico, T. and J. A. Catalano, 1986. Addendum to the User's Guide for MPTER. U.S. Environmental Protection Agency. Research Triangle Park, NC 27711. (Distributed as part of UNAMAP. Version 6, Documentation)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

MPTER is a Multiple Point Source Algorithm. This algorithm is useful for estimating air quality concentrations of relatively non-reactive pollutants. Hourly estimates are made using the Gaussian steady state model.

a. *Recommendations for Regulatory Use*

MPTER is appropriate for the following applications:

Point sources;

Rural or urban areas;

Flat or rolling terrain (no terrain above stack height);

Transport distances less than 50 kilometers; and

One hour to one year averaging times.

The following options should be selected for regulatory applications:

Set the regulatory "default option" (IOPT(25)=1) to automatically select stack tip downwash, final plume rise, buoyancy-induced dispersion (BID), the new treatment for calms, and the appropriate wind profile exponents, and the appropriate value for pollutant half-life.

b. *Input Requirements*

Source data: Location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter, stack gas temperature, and optional ground level elevation.

Meteorological data: hourly surface weather data from the preprocessor program RAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is also required.

Receptor data: coordinates and optional ground elevation for each receptor.

c. *Output*

Printed output includes:

One to 24-hour and annual average concentrations at each receptor;

Highest through fifth highest concentrations at each receptor for period, with the highest and high, second-high values flagged; and

Limited source contribution table.

d. *Type of Model*

MPTER is a Gaussian plume model.

e. *Pollutant Types*

MPTER may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

MPTER applies user-specified locations of point sources and receptors.

User input stack height and source characteristics for each source are used.

User input topographic elevation for each receptor is used.

g. *Plume Behavior*

MPTER uses Briggs (1969, 1971, 1975) plume rise equations for final rise. Stack tip downwash equation from Briggs (1974) is used.

For rolling terrain (terrain not above stack height), plume centerline is horizontal at height of final rise above the source.

Fumigation and building downwash are not treated.

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

Separate wind speed profile exponents (EPA, 1980) for both rural and urban cases are used.

i. *Vertical Wind Speed*

Vertical speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used with no adjustments made for variations in surface roughness or averaging times.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used. Buoyancy-induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used, with no adjustments made for variations in surface roughness.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy-induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

Perfect reflection is assumed at the ground.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is not explicitly treated.

n. *Evaluation Studies*

No specific studies for MPTER because regulatory editions of CRSTER and MPTER are equivalent. Studies for CRSTER are relevant to MPTER as well (See page A–32).

A.7 Single Source (CRSTER) Model

Reference

Environmental Protection Agency, 1977. User's Manual for Single Source (CRSTER) Model. EPA Publication No. EPA–450/277–013. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 271360)

Catalano, J.A., 1986. Single Source (CRSTER) Model. Addendum to the User's Manual. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. (Distributed as part of UNAMAP, Version 6, Documentation)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

CRSTER is a steady state, Gaussian dispersion model designed to calculate concentrations from point sources at a single location in either a rural or urban setting. Highest and high-second high concentrations are calculated at each receptor for 1-hour, 3-hour, 24-hour, and annual averaging time.

a. *Recommendations for Regulatory Use*

CRSTER is appropriate for the following applications:

Single point sources;

Rural or urban areas;

Transport distances less than 50 kilometers; and

Flat or rolling terrain (no terrain above stack height).

The following options should be selected for regulatory applications:

Set the regulatory "default option" which automatically selects stack tip downwash, final plume rise, buoyancy-induced dispersion (BID), the new treatment for calms, and the appropriate wind profile exponents, and the appropriate value for pollutant half-life.

b. *Input Requirements*

Source data: Emission rate, physical stack height, stack gas exit velocity, stack inside diameter, and stack gas temperature.

Meteorological data: Hourly surface weather data from the preprocessor program RAMMET. Preprocessor output includes hourly stability class wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is also required.

Receptor data: Require distance of each of the five receptor rings.

c. *Output*

Printed output includes:

Highest and second highest concentrations for the year at each receptor for averaging times of 1-, 3-, and 24 hours, plus a user-selected averaging time which may be 2, 4, 6, 8, or 12 hours;

Annual arithmetic average at each receptor;

For each day, the highest 1-hour and 24-hour concentrations over the receptor field; and

Option for source contributions to concentrations at selected receptors.

d. *Type of Model*

CRSTER is a Gaussian plume model.

e. *Pollutant Types*

CRSTER may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

CRSTER treats up to 19 point sources, no area sources.

All point sources are assumed collocated.

User input stack height is used for each source.

User input topographic elevation is used for each receptor, but must be below top of stack or program will terminate execution.

Receptors are assumed at ground level.

g. *Plume Behavior*

CRSTER uses Briggs (1969, 1971, 1972) plume rise equations for final rise.

Stack tip downwash equation from Briggs (1974) is used.

For rolling terrain (terrain not above stack height), plume centerline is horizontal at height of final rise above the source.

Fumigation and building downwash are not treated.

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

Separate set of wind speed profile exponents (EPA, 1980) for both rural and urban cases are used.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used in CRSTER with no adjustments made for variations in surface roughness or averaging times.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used. Buoyancy-induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used with no adjustments made for surface roughness.

Urban dispersion coefficients from Briggs (Gifford, 1975) are used. Buoyancy-induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform mixing is assumed beyond that point.

Perfect reflection is assumed at the ground.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is not explicitly treated.

n. *Evaluation Studies*

Klug, W., 1974. Dispersion from Tall Stacks. Fifth NATO/CCMS International Technical Meeting on Air Pollution Modeling, Denmark.

Londergan, R. J., N. E. Bowne, D. R. Murray, H. Borenstein, and J. Mangano, 1980. An Evaluation of Short-Term Air Quality Models Using Tracer Study Data, Report No. 4333. American Petroleum Institute, Washington, DC.

VOL 58 ISS 137 JL 20 1993 UMI

Mills, M. T., R. Caiazza, D. D. Hergert, and D. A. Lynn, 1981. Evaluation of Point Source Dispersion Models. EPA Publication No. EPA–450/4–81–032. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Mills, M. T., and F. A. Record, 1975. Comprehensive Analysis of Time Concentration Relationships and the Validation of a Single Source Dispersion Model. EPA Publication No. EPA–450/3–75–083. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Mills, M. T., and R. W. Stern, 1975. Model Validation and Time-Concentration Analysis of Three Power Plants. EPA Publication No. EPA–450/376–002. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Londergan, R., D. Minott, D. Wackter, T. Kincaid, and B. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–033. U.S. Environmental Protection Agency, Research Triangle Park, NC.

TRC-Environmental Consultants, Inc., 1983. Overview, Results, and Conclusions for the EPRI Plume Model Validation and Development Project: Plains Site, EPRI EA–3074. Electric Power Research Institute, Palo Alto, CA.

A.8 Urban Airshed Model (UAM)

References

Environmental Protection Agency, 1990. User's Guide for the Urban Airshed Model, Volumes I–VIII. EPA Publication Nos. EPA–450/4–90–007a–c, d(R), e–g: EPA–454/B–93–004, respectively. U.S. Environmental Protection Agency, Research Triangle Park, NC (NTIS Nos. PB 91–131227, PB 91–131235, PB 91–131243, PB 93–122380, PB 91–131268, PB 92–145382, and PB 92–224849, respectively, for Vols. I–VII).

Availability

The model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also from the National Technical Information Service (see page A–1).

Abstract

UAM is an urban scale, three dimensional, grid type numerical simulation model. The model incorporates a condensed photochemical kinetics mechanism for urban atmospheres. The UAM is designed for computing ozone (O_3) concentrations under short-term, episodic conditions lasting one or two days resulting from emissions of oxides of nitrogen (NO_X), volatile organic compounds (VOC), and carbon monoxide (CO). The model treats urban VOC emissions as their carbon-bond surrogates.

a. *Recommendations for Regulatory Use*

UAM is appropriate for the following applications: Urban areas having significant ozone attainment problems and one hour averaging times.

UAM has many options but no specific recommendations can be made at this time on all options. The reviewing agency should be consulted on selection of options to be used in regulatory applications.

b. *Input Requirements*

Source data: Gridded, hourly emissions of PAR, OLE, ETH, XYL, TOL, ALD2, FORM, ISOR, ETOTH, MEOH, CO, NO, and NO_2 for low-level sources. For major elevated point sources, hourly emissions, stack height, stack diameter, exit velocity, and exit temperature.

Meteorological data: Hourly, gridded, divergence free, u and v wind components for each vertical level; hourly gridded mixing heights and surface temperatures; hourly exposure class; hourly vertical potential temperature gradient above and below the mixing height; hourly surface atmospheric pressure; hourly water mixing ratio; and gridded surface roughness lengths.

Air quality data: Concentration of all carbon bond 4 species at the beginning of the simulation for each grid cell; and hourly concentrations of each pollutant at each level along the inflow boundaries and top boundary of the modeling region.

Other data requirements are: Hourly mixed layer average, NO_2 photolysis rates; and ozone surface uptake resistance along with associated gridded vegetation (scaling) factors.

c. *Output*

Printed output includes:

- Gridded instantaneous concentration fields at user-specified time intervals for user-specified pollutants and grid levels;
- Gridded time-average concentration fields for user-specified time intervals, pollutants, and grid levels.

d. *Type of Model*

UAM is a three dimensional, numerical, photochemical grid model.

e. *Pollutant Types*

UAM may be used to model ozone (O_3) formation from oxides of nitrogen (NO_x) and volatile organic compound (VOC) emissions.

f. *Source-Receptor Relationship*

Low-level area and point source emissions are specified within each surface grid cell. Emissions from major point sources are placed within cells aloft in accordance with calculated effective plume heights.

Hourly average concentrations of each pollutant are calculated for all grid cells at each vertical level.

g. *Plume Behavior*

Plume rise is calculated for major point sources using relationships recommended by Briggs (1971).

h. *Horizontal Winds*

See Input Requirements.

i. *Vertical Wind Speed*

Calculated at each vertical grid cell interface from the mass continuity relationship using the input gridded horizontal wind field.

j. *Horizontal Dispersion*

Horizontal eddy diffusivity is set to a user specified constant value (nominally 50 m^2/s).

k. *Vertical Dispersion*

Vertical eddy diffusivities for unstable and neutral conditions calculated using relationships of Lamb et al. (1977); for stable conditions, the relationship of Businger and Arya (1974) is employed. Stability class, friction velocity, and Monin-Obukhov length determined using procedure of Liu et al. (1976).

l. *Chemical Transformation*

UAM employs a simplified version of the Carbon-Bond IV Mechanism (CBM-IV) developed by Gery et al. (1988) employing various steady state approximations.

m. *Physical Removal*

Dry deposition of ozone and other pollutant species are calculated. Vegetation (scaling) factors are applied to the reference surface uptake resistance of each species depending on land use type.

n. *Evaluation Studies*

Builtjes, P.J.H., K.D. van der Hurt, and S.D. Reynolds, 1982. Evaluation of the Performance of a Photochemical Dispersion Model in Practical Applications, 13th International Technical Meeting on Air Pollution Modeling and Its Application, Ile des Embiez, France.

Cole, H.S., D.E. Layland, G.K. Moss, and C.F. Newberry, 1983. The St. Louis Ozone Modeling Project. EPA Publication No. EPA–450/4–83–019. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Dennis, R.L., M.W. Downton, and R.S. Keil, 1983. Evaluation of Performance Measures for an Urban Photochemical Model. EPA Publication No. EPA–450/4–83–021. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Haney, J.L. and T.N. Braverman, 1985. Evaluation and Application of the Urban Airshed Model in the Philadelphia Air Quality Control Region. EPA Publication No. EPA–450/4–85–003. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Layland, D.E. and H.S. Cole, 1983. A Review of Recent Applications of the SAI Urban Airshed Model. EPA Publication No. EPA–450/4–84–004. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Layland, D.E., S.D. Reynolds, H. Hogo and W.R. Oliver, 1983. Demonstration of Photochemical Grid Model Usage for Ozone Control Assessment. 76th Annual Meeting of the Air Pollution Control Association, Atlanta, GA.

Morris, R.E. et al., 1990. Urban Airshed Model Study of Five Cities. EPA Publication No. EPA–450/4–90–006a–g. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Reynolds, S.D., H. Hogo, W.R. Oliver, L.E. Reid, 1982. Application of the SAI Airshed Model to the Tulsa Metropolitan Area, SAI No. 82004. Systems Applications, Inc., San Rafael, CA.

Schere, K.L. and J.H. Shreffler, 1982. Final Evaluation of Urban-Scale Photochemical Air Quality Simulation Models. EPA Publication No. EPA–600/3–82–094. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Seigneur C., T.W. Tesche, C.E. Reid, P.M. Roth, W.R. Oliver, and J.C. Cassmassi, 1981. The Sensitivity of Complex Photochemical Model Estimates to Detail In Input

Information, Appendix A—A Compilation of Simulation Results. EPA Publication No. EPA–450/4–81–031b. U.S. Environmental Protection Agency, Research Triangle Park, NC.

South Coast Air Quality Management District, 1989. Air Quality Management Plan—Appendix V-R (Urban Airshed Model Performance Evaluation). El Monte, CA.

Stern, R. and B. Scherer, 1982. Simulation of a Photochemical Smog Episode in the Rhine-Ruhr Area with a Three Dimensional Grid Model. 13th International Technical Meeting on Air Pollution Modeling and Its Application, Ile des Embiez, France.

Tesche, T. W., C. Seigneur, L. E. Reid, P. M. Roth, W. R. Oliver, and J. C. Cassmassi, 1981. The Sensitivity of Complex Photochemical Model Estimates to Detail in Input Information. EPA Publication No. EPA–450/4–81–031a. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Tesche, T. W., W. R. Oliver, H. Hogo, P. Saxeena and J. L. Haney, 1983. Volume IV—Assessment of NO_x Emission Control Requirements in the South Coast Air Basin—Appendix A. Performance Evaluation of the Systems Applications Airshed Model for the 26–27 June 1974 O_3 Episode in the South Coast Air Basin, SYSAPP 83/037. Systems Applications, Inc., San Rafael, CA.

Tesche, T. W., W. R. Oliver, H. Hogo, P. Saxeena and J. L. Haney, 1983. Volume IV—Assessment of NO_x Emission Control Requirements in the South Coast Air Basin—Appendix B. Performance Evaluation of the Systems Applications Airshed Model for the 7–8 November 1978 NO_2 Episode in the South Coast Air Basin, SYSAPP 83/038. Systems Applications, Inc., San Rafael, CA.

Tesche, T. W, 1988. Accuracy of Ozone Air Quality Models. Journal of Environmental Engineering, 114(4): 739–752.

A.9 Offshore and Coastal Dispersion Model (OCD)

Reference

DiCristofaro, D. C. and S. R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93–144384 and PB 93–144392)

Availability

This model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also from the National Technical Information Service (see page A–1).

Technical

Contact: Minerals Management Service, Attn: Mr. Dirk Herkoff, Parkway Atrium Building, 381 Elden Street, Herndon, VA 22070–4817, Phone: (703) 787–1735.

Abstract

OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. *Recommendations for Regulatory Use*

OCD has been recommended for use by the Minerals Management Service for emissions located on the Outer Continental Shelf (50 FR 12248; 28 March 1985). OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the EPA Regional Office.

b. *Input Requirements*

Source data: Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

Meteorological data (over water): Wind direction, wind speed, mixing height, relative humidity, air temperature, water surface temperature, vertical wind direction shear (optional), vertical temperature gradient (optional), turbulence intensities (optional).

Meteorological data (over land): Wind direction, wind speed, temperature, stability class, mixing height.

Receptor data: Location, height above local ground-level, ground-level elevation above the water surface.

c. *Output*

All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

Concentration files written to disk or tape can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. *Type of Model*

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. *Pollutant Types*

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

Receptors and sources are allowed at any location.

The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. *Plume Behavior*

As in MPTER, the basic plume rise algorithms are based on Briggs' recommendations.

Momentum rise includes consideration of the stack angle from the vertical.

The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. *Horizontal Winds*

Constant, uniform wind is assumed for each hour.

Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

Wind speed profiles are estimated using similarity theory (Businger 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. *Vertical Dispersion*

Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. *Physical Removal*

Physical removal is also treated using exponential decay.

n. *Evaluation Studies*

DiCristofaro, D. C. and S. R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

Hanna, S. R. and D. C. DiCristofaro, 1988. Development and Evaluation of the OCD/API Model. Final Report, API Pub. 4461, American Petroleum Institute, Washington, DC.

Hanna, S. R., L. L. Schulman, R. J. Paine and J. E. Pleim, 1984. The Offshore and Coastal Dispersion (OCD) Model User's Guide, Revised. OCS Study, MMS 84–0069. Environmental Research & Technology, Inc., Concord, MA. (NTIS No. PB 86–159803)

Hanna, S. R., L. L. Schulman, R. J. Paine, J. E. Pleim and M. Baer, 1985. Development and Evaluation of the Offshore and Coastal Dispersion (OCD) Model. Journal of the Air Pollution Control Association, 35: 1039–1047.

A.10 EMISSIONS AND DISPERSION MODELING SYSTEM (EDMS)

Reference

Segal, H. M., 1991. "EDMS—Microcomputer Pollution Model for Civilian Airports and Air Force Bases: User's Guide." FAA Report No. FAA–EE–91–3; USAF Report No. ESL–TR–91–31, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. (NTIS No. ADA 240528)

Segal, H. M., and Hamilton, P. L., 1988. "A Microcomputer Pollution Model for Civilian Airports and Air Force Bases—Model Description." FAA Report No. FAA–EE–88–4; USAF Report No. ESL–TR–88–53, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. (NTIS No. ADA 199003)

Segal, H. M., 1988. "A Microcomputer Pollution Model for Civilian Airports and Air Force Bases—Model Application and Background." FAA Report No. FAA–EE–88–5; USAF Report No. ESL–TR–88–55, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. (NTIS No. ADA 199794)

Availability

EDMS is available for $40 from the address listed below: Federal Aviation Administration, Attn: Mr. Howard Segal, AEE–120, 800 Independence Avenue, SW., Washington, DC 20591, Phone: (202) 267–3494.

Abstract

EDMS is a combined emissions/dispersion model for assessing pollution at civilian airports and military air bases. This model, which was jointly developed by the Federal Aviation Administration (FAA) and the United States Air Force (USAF), produces an emission inventory of all airport sources and calculates concentrations produced by these sources at specified receptors. The system stores emission factors for fixed sources such as fuel storage tanks and incinerators and also for mobile sources such as automobiles or aircraft. EDMS incorporates an emissions model to calculate an emission inventory for each airport source and a dispersion model, the Graphical Input Microcomputer Model (GIMM), (Segal, 1983) to calculate pollutant concentrations produced by these sources at specified receptors. The GIMM, which processes point, area, and line sources, also incorporates a special meteorological preprocessor for processing up to one year of National Climatic Data Center (NCDC) hourly data. The model operates in both a screening and refined mode, accepting up to 170 sources and 10 receptors.

a. *Recommendations for Regulatory Use*

EDMS is appropriate for the following applications:

- Cumulative effect of changes in aircraft operations, point source and mobile source emissions at airports or air bases;
- simple terrain;
- transport distances less than 50 kilometers; and
- 1-hour to annual averaging times.

b. *Input Requirements*

All data are entered through a "runtime" version of the Condor data base which is an integral part of EDMS. Typical entry items are source and receptor coordinates, percent cold starts, vehicles per hour, etc. Some point sources, such as heating plants, require stack height, stack diameter, and effluent temperature inputs.

Wind speed, wind direction, hourly temperature, and Pasquill-Gifford stability category (P–G) are the meteorological inputs. They can be entered manually through the EDMS data entry screens or automatically through the processing of previously loaded NCDC hourly data.

c. *Output*

Printed outputs consist of:

- A monthly and yearly emission inventory report for each source entered; and
- A concentration summing report for up to 8760 hours (one year) of data.

d. *Type of Model*

For its emissions inventory calculations, EDMS uses algorithms consistent with the EPA Compilation of Air Pollutant Emission Factors, AP–42. For its dispersion calculations, EDMS uses the GIMM model which is described in reports FAA–EE–88–4 and FAA–EE–88–5, referenced above. GIMM uses a Gaussian plume algorithm.

e. *Pollutant Types*

EDMS inventories and calculates the dispersion of carbon monoxide, nitrogen oxides, sulphur oxides, hydrocarbons, and suspended particles.

f. *Source-Receptor Relationship*

Up to 170 sources and 10 receptors can be treated simultaneously. Area sources are treated as a series of lines that are positioned perpendicular to the wind.

Line sources (roadways, runways) are modeled as a series of points. Terrain elevation differences between sources and receptors are neglected.

Receptors are assumed to be at ground level.

g. *Plume Behavior*

Plume rise is calculated for all point sources (heating plants, incinerators, etc.) using Briggs plume rise equations (Catalano, 1986; Briggs, 1969; Briggs, 1971; Briggs, 1972).

Building and stack tip downwash effects are not treated.

Roadway dispersion employs a modification to the Gaussian plume algorithms as suggested by Rao and Keenan (1980) to account for close-in vehicle-induced turbulence.

h. *Horizontal Winds*

Steady state winds are assumed for each hour. Winds are assumed to be constant with altitude.

Winds are entered manually by the user or automatically by reading previously loaded NCC annual data files.

i. *Vertical Wind Speed*

Vertical wind speed is assumed to be zero.

j. *Horizontal Dispersion*

Four stability classes are used (P–G classes B through E).

Horizontal dispersion coefficients are computed using a table lookup and linear interpolation scheme. Coefficients are based on Pasquill (1976) as adapted by Petersen (1980).

A modified coefficient table is used to account for traffic-enhanced turbulence near roadways. Coefficients are based upon data included in Rao and Keenan (1980).

k. *Vertical Dispersion*

Four stability classes are used (P-G classes B through E).

Vertical dispersion coefficients are computed using a table lookup and linear interpolation scheme. Coefficients are based on Pasquill (1976) as adapted by Petersen (1980).

A modified coefficient table is used to account for traffic-enhanced turbulence near roadways. Coefficients are based upon data from Rao and Keenan (1980).

l. *Chemical Transformation*

Chemical transformations are not accounted for.

m. *Physical Removal*

Deposition is not treated.

n. *Evaluation Studies*

Segal, H. M. and P. L. Hamilton, 1988. A Microcomputer Pollution Model for Civilian Airports and Air Force Bases—Model Description. FAA Report No. FAA–EE–88–4; USAF Report No. ESL–TR–88–53, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Segal, H. M., 1988. A Microcomputer Pollution Model for Civilian Airports and Air Force Bases—Model Application and Background. FAA Report No. FAA–EE–88–5; USAF Report No. ESL–TR–88–55, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

A.11 Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS)

Reference

Perry, S. G., D. J. Burns, L. H. Adams, R. J. Paine, M. G. Dennis, M. T. Mills, D. G. Strimaitis, R. J. Yamartino and E. M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA–600/8–89–041. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89–181424)

Paine, R. J., D. G. Strimaitis, M. G. Dennis, R. J. Yamartino, M. T. Mills and E. M. Insley, 1987. User's Guide to the Complex Terrain Dispersion Model, Volume 1. EPA Publication No. EPA–600/8–87–058a. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 88–162169)

Availability

This model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also from the National Technical Information Service (See page A–1).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. It contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. *Recommendation for Regulatory Use*

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- One hour to annual averaging times when used with a post-processor program such as CHAVG.

b. *Input Requirements*

Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

Meteorological data: The user must supply hourly averaged values of wind, temperature and turbulence data for creation of the basic meteorological data file ("PROFILE"). Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

Receptor data: Receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

Terrain data: User inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. *Output*

When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, i.e.,

- Input meteorological data from "SURFACE" and "PROFILE"
- Stack data for each source
- Terrain information
- Receptor information
- Source-receptor location (line printer map).

In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height
- Geometrical relationships between the source and the hill
- Plume characteristics at each receptor, i.e.,

→ distance in along-flow and cross flow direction.

→ effective plume-receptor height difference.

→ effective σ_y & σ_z values, both flat terrain and hill induced (the difference shows the effect of the hill).

→ concentration components due to WRAP, LIFT and FLAT.

If the user selects the TOPN option, a summary table of the top 4 concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

A separate disk file of predicted (1-hour only) concentrations ("CONC") is written if the user chooses this option. Three forms of output are possible:

(1) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(2) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(3) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. *Type of Model*

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. *Pollutant Types*

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. *Source-Receptor Relationship*

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Bouissinesq flow are applicable. Receptors upwind of the impingement point, or those associated with any of the hills in the modeling domain, require separate treatment.

g. *Plume Behavior*

As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c, and the Froude number above H_c.

h. *Horizontal Winds*

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. *Vertical Wind Speed*

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); see "Plume Behavior".

j. *Horizontal Dispersion*

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σ_v, for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. *Vertical Dispersion*

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, e.g., σ_w (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (PDF) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. *Chemical Transformation*

Chemical transformation is not treated by CTDMPLUS.

m. *Physical Removal*

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. *Evaluation Studies*

Burns, D. J., L. H. Adams and S. G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J. O., S. G. Perry and D. J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J. O., S. G. Perry and D. J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. Journal of Applied Meteorology, 31(7): 646–660.

A. REF References

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Bjorklund, J. R., and J. F. Bowers, 1982. User's Instructions for the SHORTZ and LONGZ Computer Programs. EPA Publication No. EPA–903/9–82–004a and b. U.S. Environmental Protection Agency, Region III, Philadelphia, PA.

Businger, J. A., and S. P. Arya, 1974. Height of the Mixed Layer in the Stably Stratified Planetary Boundary Layer. Advances in Geophysics, Vol. 18A, F. N. Frankiel and R. E. Munn (Eds.), Academic Press, New York, NY.

Environmental Protection Agency, 1980. Recommendations on Modeling (October 1980 Meetings). Appendix G to: Summary of Comments and Responses on the October 1980 Proposed Revisions to the Guideline on Air Quality Models. Meteorology and Assessment Division, Office of Research and Development, Research Triangle Park, NC.

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Huber, A. H. and W. H. Snyder, 1976. Building Wake Effects on Short Stack Effluents. Third Symposium on Atmospheric Turbulence, Diffusion and Air Quality, American Meteorological Society, Boston, MA.

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Petersen, W. B., 1980. User's Guide for HIWAY–2 A Highway Air Pollution Model. EPA Publication No. EPA–600/8–80–018. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS PB 80–227556)

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Appendix B to Appendix W of Part 51—Summaries of Alternative Air Quality Models

Table of Contents

B.0 Introduction and Availability
B.1 Air Quality Display Model (AQDM)
B.2 Air Resources Regional Pollution Assessment (ARRPA) Model
B.3 APRAC–3
B.4 COMPTER
B.5 ERT Air Quality Model (ERTAQ)—Deleted
B.6 ERT Visibility Model
B.7 Hiway–2
B.8 Integrated Model for Plumes and Atmospheric Chemistry in Complex Terrain (Impact)
B.9 LONGZ
B.10 M (PPSP)
B.11 M
B.12 M Deposi (MTDI
B.13 M
B.14 M
B.15 M (MPSI
B.16 M
B.17 Pe
B.18 PI Model
B.19 PI
B.20 Po (PAL–
B.21 Ra Disper
B.22 Re
B.23 Re
B.24 SI
B.25 Si
B.26 Te
B.27 Te
B.28 A
B.29 SI
B.30 W
B.31 D (DEGA
B.REF

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B.10 Maryland Power Plant Siting Program (PPSP) Model
B.11 Mesoscale Puff Model (Mesopuff II)
B.12 Mesosale Transport Diffusion and Deposition Model for Industrial Sources (MTDDIS)
B.13 Models 3141 and 4141
B.14 MULTIMAX
B.15 Multiple Point Source Diffusion Model (MPSDM)—Deleted
B.16 Multi-Source (SCSTER) Model
B.17 Pacific Gas and Electric Plumes Model
B.18 PLMSTAR Air Quality Simulation Model
B.19 Plume Visibility Model (PLUVUE II)
B.20 Point, Area, Line Source Algorithm (PAL–DS)
B.21 Random Walk Advection and Dispersion Model (RADM)
B.22 Reactive Plume Model (RPM–II)
B.23 Regional Transport Model (RTM–II)
B.24 SHORTZ
B.25 Simple Line-Source Model (GMLINE)
B.26 Texas Climatological Model (TCM–2)
B.27 Texas Episodic Model (TEM–8)
B.28 AVACTA II
B.29 Shoreline Dispersion Model (SDM)
B.30 WYNDvalley Model
B.31 Dense Gas Dispersion Model (DEGADIS)
B.REF References

B.0 Introduction and Availability

This appendix summarizes key features of refined air quality models that may be considered on a case-by-case basis for individual regulatory applications. For each model, information is provided on availability, approximate cost in 1990, regulatory use, data input, output format and options, simulation of atmospheric physics and accuracy. The models are listed by name in alphabetical order.

There are three separate conditions under which these models will normally be approved for use: First, if a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model (e.g., the maximum or high, second-high concentration is within 2% of the estimate using the comparable preferred model); second, if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the model in Appendix B performs better for the application than a comparable model in Appendix A; and third, if there is no preferred model for the specific application but a refined model is needed to satisfy regulatory requirements. Any one of these three separate conditions may warrant use of these models. See section 3.2, Use of Alternative Models, for additional details.

Many of these models have been subject to a performance evaluation by comparison with observed air quality data. A summary of such comparisons for models contained in this appendix is included in "A Survey of Statistical Measures of Model Performance and Accuracy for Several Air Quality Models", EPA–450/4–83–001. Where possible, several of the models contained herein have been subjected to rigorous evaluation exercises, including (1) statistical performance measures recommended by the American Meteorological Society and (2) peer scientific reviews.

Any availability statement for models in this appendix that refers to the User's Network for Applied Modeling of Air Pollution (UNAMAP) should be ignored since the UNAMAP is no longer operational. However, a source for some of these models and user's documentation is: Computer Products, National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

A number of the model codes and selected, abridged user's guides are also available from the Support Center for Regulatory Air Models Bulletin Board System [19] (SCRAM BBS), Telephone (919) 541–5742. The SCRAM BBS is an electronic bulletin board system designed to be user friendly and accessible from anywhere in the country. Model users with personal computers are encouraged to use the SCRAM BBS to download current model codes and text files.

B.1 Air Quality Display Model (AQDM)

Reference

TRW Systems Group, 1969. Air Quality Display Model. Prepared for National Air Pollution Control Administration, DHEW. U.S. Public Health Service, Washington, DC (NTIS No. PB 189194)

Availability

The above User's Guide is available from NTIS at a cost of $16.95. This model is available at no cost in the form of a punched card deck from: Library Services, MD–35, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn: Ann Ingram.

Abstract

AQDM is a climatological steady state Gaussian plume model that estimates annual arithmetic average sulfur dioxide and particulate concentrations at ground level in urban areas. A statistical model based on Larsen (1971) is used to transform the average concentration data from a limited number of receptors into expected geometric mean and maximum concentration values for several different averaging times.

a. *Recommendations for Regulatory Use*

AQDM can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. AQDM must be executed in the equivalent mode.

AQDM can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that AQDM is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Average emissions rates and heights of emissions for point and area sources; stack gas temperature, stack gas exit velocity, and stack inside diameter for plume rise calculations for point sources.

Meteorological data requirements are: Stability wind rose (STAR deck), average afternoon mixing height, average morning mixing height, and average air temperature.

Receptor data requirements are: number and locations of receptors. If the Larsen transform option is to be used to estimate short averaging time concentrations, measured standard geometric deviation of concentrations is required.

c. *Output*

Printed output includes:

One month to one year average concentrations (arithmetic mean only) at each receptor;

Optional arbitrary averaging time by Larsen (1971) procedure (typically 1–24 hr); and

Optional individual point, area source culpability list for each receptor.

d. *Type of Model*

AQDM is a Gaussian plume model.

e. *Pollutant Types*

AQDM may be used to model non-reactive pollutants. Settling and deposition are not treated.

f. *Source Receptor Relationship*

AQDM applies user-specified locations and stack height for each point source.

AQDM uses any location and size for each area source.

Up to 225 receptors may be located on uniform rectangular grid.

Up to 12 user-specified receptor locations are permitted.

Unique release height is used for each point and area source. Receptors are assumed to be at ground level.

No terrain differences between source and receptor are treated.

g. *Plume Behavior*

AQDM uses Briggs (1969) plume rise formulas.

No plume rise is calculated for area sources.

Fumigation and downwash are not treated.

Zero concentration is assumed when plume height is greater than mixing height.

h. *Horizontal Winds*

Wind data are input as stability wind rose (joint frequency distribution) of 16 wind directions, six wind speed classes, and five stability classes.

No variation in wind speed with height is assumed.

Constant, uniform (steady-state) wind is assumed.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Pollutants are assumed evenly distributed across a 22.5 degree sector.

Frequency of occurrence of a meteorological state is interpolated between sector center lines.

Averaging times from 1 month to 1 year or longer are treated.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used.

Five stability classes are as defined by Turner (1964). Stability classes E and F are combined, and assigned dispersion values equivalent to stability class D.

Neutral stability is split internally into 60% day, 40% night, with the two differing only in the treatment of mixing height.

Mixing height is a function of a single input afternoon mixing height, a single input morning mixing height, modified by the stability class.

l. *Chemical Transformations*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

McNidar, R.R., 1977. Variability Analysis of Long-term Dispersion Models. Joint Conference on Applications of Air Pollution Meteorology, American Meteorology Society, 29 November–2 December, 1977, Salt Lake City, UT.

Turner, D.B., J.R. Zimmerman, and A.D. Busse, 1973. An Evaluation of Some Climatological Dispersion Models. In Appendix E, User's Guide to the Climatological Dispersion Model, EPA Publication No. EPA–R4–73–024, Environmental Protection Agency, Research Triangle Park, NC.

Londergan, R.J., D.H. Minott, D.J. Wachter and R.R. Fizz, 1983. Evaluation of Urban Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–020. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.2 Air Resources Regional Pollution Assessment (ARRPA) Model

Reference

Mueller, S.F., R.J. Valente, T.L. Crawford, A.L. Sparks, and L.L. Gautney, Jr., 1983. Description of the Air Resources Regional Pollution Assessment (ARRPA) Model. TVA/ONR/AQB–83/14. Tennessee Valley Authority, Muscle Shoals, AL.

Availability

The computer code and sample input for this model on magnetic tape and a copy of the User's Guide are available from: Computer Services Development Branch, Office of Natural Resources and Economic Development, Tennessee Valley Authority, OSWHA, Muscle Shoals, AL 35660, Phone: (205) 386–2985.

A hard copy of the model output corresponding with the sample input is also available. The cost of copying model information to a buyer-supplied 2400-ft, high density tape is estimated to be about $100. The User's Guide is free of charge.

Abstract

The ARRPA model is a medium/long-range segmented-plume model. It is designed to compute air concentrations and surface dry mass deposition of sulfur dioxide and sulfate. A unique feature of the model is its use of prognostic meteorological output from the National Weather Service Boundary Layer Model (BLM). Boundary layer conditions are computed by the BLM on a grid with a spatial resolution of 80km, and are archived in intervals of 3 hours. BLM output used by this model includes three dimensional wind field components and potential temperature at 10 height levels from the surface through 2000m above the surface.

a. *Recommendations for Regulatory Use*

Use of the model for transport distances of less than 10km is not recommended. For 10km to beyond 50km, there is no specific recommendation at the present time. The model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements: Location (latitude and longitude), stack height, stack diameter, stack gas exit velocity, stack gas temperature, SO_2 emission rate, $SO_4^=$ emission rate, stack base elevation.

Meteorological data requirements: Hourly wind field components (u,v,w), potential temperature (Θ), Pasquill-Gifford stability class and mixing height. These data are obtained as output from the BLM output preprocessing program called MDPP (Mueller and Valente, 1983). Required input to MDPP is BLM output (in three-hour intervals) of u, v, w, and Θ, surface layer friction velocity (u_*) and surface layer values of the inverse Monin-Obukhov length (L^{-1}).

Receptor data requirements: Gridded receptor array coordinates (x and y) and receptor heights (z) from a receptor preprocessing program called HEIGHT. HEIGHT produces a user-designed array of points which may be skewed up to ±90 degrees relative to the model x axis. The elevation of each receptor is adjusted to give height above smoothed model terrain. Non-gridded receptors can be specified using latitude/longitude coordinates.

c. *Output*

Printed output includes:

Listings of input parameters (except for meteorological data);

Listing of hours processed and flags for missing data periods.

Disk output: Parameters for controlling analysis and printout options in the postprocessing program called ANALYSIS; hourly SO_2 and $SO_4^=$ air concentrations and dry deposition amounts at each receptor.

Optional printed output: Two programs are available for displaying model output—DISPLAY and ANALYSIS; DISPLAY prints out hourly gridded concentration and/or deposition fields for user-specified time periods; ANALYSIS prints out (1) the five highest concentrations of SO_2 and/or $SO_4^=$ at each receptor for 1-hour, 3-hour (optional) and 24-hour (optional) averaging periods, (2) average SO_2 and/or SO_4 concentrations at each receptor for the entire analysis period and (3) gridded SO_2 and/or $SO_4^=$ dry deposition amounts for the day having the greatest dry deposition and for the entire analysis period.

d. *Type of Model*

The ARRPA model is a Gaussian segmented-plume model.

e. *Pollutant Types*

SO_2 and $SO_4^=$ are treated.

f. *Source-Receptor Relationship*

One source is treated per model run, though results from several sources may be superimposed.

Either constant or variable emission rates may be used.

Receptors (up to 100) in gridded network may have different elevations. Height of receptors above ground is variable.

g. *Plume Behavior*

Plume rise is computed in a piecewise-continuous manner through discrete model layers (Mueller, et al., 1983).

Plume can be isolated from the ground (lofting).

Plume height varies in time and space.

h. *Horizontal Winds*

Hourly horizontal wind components, specified at 80km intervals across the model grid, are spatially interpolated and vertically averaged through the plume depth to get plume transport vectors. A model option is available that uses the wind vector near the vertical plume center instead of computing a vertically-averaged vector.

i. *Vertical Wind Speed*

The mass-conserving BLM wind field used in this model provides vertical wind components that vary horizontally and vertically, and are used to adjust plume height.

j. *Horizontal Dispersion*

Plume half-width (σ_y) growth goes through four stages:

(1) Growth follows Turner curves for $\sigma_y < 1000$m;

(2) A transition in growth behavior from Turner curves to dynamical-statistical (Langevin) theory occurs for $1000\text{m} \leq \sigma_y < 6000$m;

(3) Growth is based on dynamical-statistical theory for $\sigma_y > 6000$m; eddy diffusivity computed from Pasquill-Gifford stability class;

(4) Growth approaches that described by Taylor's statistical theory (limit of dynamical-statistical theory for time much larger than the Lagrangian time correlation) for $\sigma_y > 10{,}000$m.

k. *Vertical Dispersion*

Plume half-depth (σ_z) growth is based on combination of Brookhaven curves for elevated plumes and Turner curves for near-ground plumes.

Vertical plume structure is Gaussian, with superimposed reflection terms, until σ_z becomes sufficiently large that a vertically uniform plume assumption is appropriate.

Maximum depth of a plume is 2000m.

l. *Chemical Transformation*

SO_2 oxidation to $SO_4^=$ is treated using a first-order chemical reaction rate constant which is parameterized to vary hourly following diurnal and seasonal cycles.

m. *Physical Removal*

Dry deposition is computed using the source depletion equation. Dry deposition velocities vary according to the stability of the surface layer.

n. *Evaluation Studies*

Muller, S. F. and L. W. Reisinger, 1986. Evaluation of the Air Resources Regional Pollution Assessment (ARRPA) Model. (Report in Progress).

B.3 APRAC–3

Reference

Simmon, P. B., R. M. Patterson, F. L. Ludwig, and L. B. Jones, 1981. The APRAC–3/Mobile 1 Emissions and Diffusion Modeling Package. EPA Publication No. EPA–909/9–81–002. U.S. Environmental Protection Agency, Region IX, San Francisco, CA. (NTIS No. PB 82–103763)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

APRAC–3 is a model which computes hourly average carbon monoxide concentrations for any urban location. The model calculates contributions from dispersion on various scales: extraurban, mainly from sources upwind of the city of interest; intraurban, from freeway, arterial, and feeder street sources; and local, from dispersion within a street canyon. APRAC–3 requires an extensive traffic inventory for the city of interest. APRAC–3, as it exists on UNAMAP (Version 6), has been updated with Mobile 2 emission factors.

a. *Recommendations for Regulatory Use*

APRAC–3 can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. APRAC–3 must be executed in the equivalent mode.

APRAC–3 can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated using the criteria in Section 3.2, that APRAC–3 is more appropriate for the specific application. In this case the model options/mode which are most appropriate for the application should be used.

Although the user's manual for APRAC–3 contains Mobile 1 emission factors, it is recommended that those emission factors be updated with the latest version of Mobile (Mobile Source Emissions Model) for use in regulatory applications.

b. *Input Requirements*

Source data requirements are: Line source (traffic link) end points, road type and daily traffic volume.

Meteorological data requirements are: Hourly wind direction (nearest 10 degrees), hourly wind speed, and hourly cloud cover for stability calculations.

Receptor data requirements are: Coordinates for up to 10 receptors for any single day and up to 8 receptors for the intersection submodel.

c. *Output*

Printed ouput includes:

Hourly calculations at each receptor.

d. *Type of Model*

APRAC–3 is a Gaussian plume model.

e. *Pollutant Types*

APRAC–3 may be used to model primary pollutants.

f. *Source-Receptor Relationship*

Traffic links may have arbitrary length and orientation. Off-link traffic is allocated to two-mile square grids. Link traffic emissions are aggregated into a receptor oriented area source array.

The boundaries of the area sources actually treated are (1) arcs at radial distances from the receptor which increase in geometric progression, (2) the sides of a 22.5° sector oriented upwind for distances greater than 1000m, and (3) the sides of a 45° sector oriented upwind for distances less than 1000m.

A similar area source array is established for each receptor.

Sources are assumed to be at ground level.

Up to 10 receptors are accepted for any single day.

Up to 625 receptors are accepted for a single-hour.

Up to 8 receptors are accepted for the intersection submodel.

Receptors are at ground level.

Receptor locations are arbitrary.

Four internally defined receptor locations on each user-designated street are used in a special street canyon sub-model.

A box model is used to estimate contribution from upwind sources beyond 32km based on wind speed, mixing height, annual fuel consumption.

In street canyon sub-model, contribution from other streets is included in background.

g. *Plume Behavior*

Plume rise is not treated.

Fumigation and downwash are not treated except in street canyon sub-model. In street canyon sub-model, a helical circulation pattern is assumed.

h. *Horizontal Winds*

User input hourly wind speed and direction in tens of degrees are used.

No variation of wind speed or direction with height is assumed.

Constant, uniform (steady-state) wind is assumed within each hour.

The model can interpolate winds at receptors if more than one wind is provided.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero except in street canyon sub-model. Helical circulation assumed by street canyon sub-model.

j. *Horizontal Dispersion*

Sector averaging is used with uniform distribution within sectors. Sector size is 22.5 degrees beyond 1km and 45.0 degrees within 1km.

k. *Vertical Dispersion*

Six stability classes are used. Stability class is determined internally from user-supplied meteorological data modified from Turner (1964).

Dispersion coefficients are adapted from McElroy and Pooler (1968). No adjustments are made for variations in surface roughness.

Downwind distance variation of σ_z is assumed to be ax^b for purposes of doing analytical integration.

In street canyon sub-model, an empirical function of wind speed and street width and direction is used.

Perfect reflection at the surface is assumed.

Mixing height is ignored until concentration equals that calculated using box model. A box model (uniform vertical distribution) is used beyond that distance.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Ludwig, F. L. and W. F. Dabberdt, 1972. Evaluation of the APRAC-1A Urban Dispersion Model for Carbon Dioxide, SRI Project 8563. Stanford Research Institute, Menlo Park, CA.

B.4 COMPTER

Reference

State of Alabama, 1980. COMPTER Model Users Guide. Alabama Department of Environmental Management, Air Division, Montgomery, AL.

Availability

This model is available to users for tape and reproduction charges. If a tape is sent, the reproduction is free. Send tape and desired format and specifications to: Mr. Richard E. Grusnick, Chief, Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, AL 36109.

Abstract

COMPTER is based on the Gaussian steady-state technique applicable to both urban and rural areas. The model contains the following attributes: (a) Determines maximum 24-hour, 3-hour, 1-hour and variable hour concentrations for both block and running averages; (b) elevated terrain considered with the standard plume-chopping technique or stability dependent plume path trajectory; (c) uses annual hourly meteorological data in the CRSTER preprocessor format; (d) uses Pasquill-Gifford stability curves; (e) allows for stability class substitution in the stable categories. Typical model use is in rural areas with moderate to low terrain features.

a. *Recommendations for Regulatory Use*

COMPTER can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. COMPTER must be executed in the equivalent mode.

COMPTER can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that COMPTER is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Annual or hourly values of emission rate, exit velocity,

stack gas temperature, stack height, and stack diameter.

Meteorological data requirements are: Hourly surface weather data from the EPA meteorological preprocessor program. Preprocessor output includes hourly stability class wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is optional.

Receptor data requirements are: Individual receptor coordinates; or a location and distance from the center of five rings of receptors; or a combination of individual receptors and either the rectangular grid or the rings of receptors. Elevations of all receptors may be input.

c. *Output*

Printed output includes:

Highest and second highest concentrations for the year at each receptor for averaging times of 1, 3 and 24-hours, a user-selected averaging time which may be 2–12 hours (variable hourly), and a 50 high table for 1, 3, variable hourly, and 24-hours;

Annual arithmetic average at each receptor; and the highest 1-hour and 24-hour concentrations over the receptor field for each day considered.

Computer readable output includes:

Hourly, 3-hourly, variable hourly, and 24-hourly concentrations for each receptor on magnetic storage device.

d. *Type of Model*

COMPTER is a Gaussian plume model.

e. *Pollutant Types*

COMPTER may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

A maximum 50 sources and 200 receptors are treated.

COMPTER applies user-specified locations of sources and receptors.

User input stack height and source characteristics for each source are applied.

User input topographic elevation for each receptor is applied.

Receptors are assumed to be at ground level.

g. *Plume Behavior*

Briggs' (1969, 1971, 1972) plume rise equations with limited mixing are used.

Plume height is adjustable according to stability with use of plume path coefficient.

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

Power law wind profile exponents used are 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30, for stability classes A through F, respectively. Anemometer height is assumed to be 10 meters.

i. *Vertical Wind Speed*

Vertical wind speeds are assumed equal to zero.

j. *Horizontal Dispersion*

Dispersion coefficients are from Turner (1969), with no further adjustments made for variations in surface roughness or averaging time.

Optionally, stability class 7 may be treated as Class 6.

Other options for stable class substitution include changing stabilities F and G to E, and reducing E, F, and G to D, E, and F, respectively.

k. *Vertical Dispersion*

Dispersion coefficients are from Turner (1969), with no further adjustments made for variations in surface roughness.

Optionally, by source, buoyancy induced dispersion ($\Delta H^2/10$) is included.

Optionally, stability class 7 may be treated as class 6.

Other options for stable class substitution include changing stabilities F and G to E; and reducing E, F, and G to D, E, and F, respectively.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Londergan, R., D. Minott, D. Wackter, T. Kincaid and D. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–003. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.5 ERT Air Quality Model (ERTAQ)—[Deleted]

B.6 ERT Visibility Model

Reference:

ENSR Consulting and Engineering, 1990. ERT Visibility Model: Version 4; Technical Description and User's Guide. Document M2020–003. ENSR Consulting and Engineering, 35 Nagog Park, Acton, MA 01720.

Availability

The user's guide and model code are available from the National Technical Information Service (see page B–1).

Abstract:

The ERT Visibility Model is a Gaussian dispersion model designed to estimate visibility impairment for arbitrary lines of sight due to isolated point source emissions by simulating gas-to-particle conversion, dry deposition, NO to NO_2 conversion and linear radiative transfer.

a. *Recommendations for Regulatory Use*

There is no specific recommendation at the present time. The ERT Visibility Model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: Stack height, stack temperature, emissions of SO_2, NO_x, TSP, fraction of NO_x as NO_2, fraction of TSP which is carbonaceous, exit velocity, and exit radius.

Meteorological data requirements are: Hourly ambient temperature, mixing depth, wind speed at stack height, stability class, potential temperature gradient, and wind direction.

Receptor data requirements are: Observer coordinates with respect to source, latitude, longitude, time zone, date, time of day, elevation, relative humidity, background visual range, line-of-sight azimuth and elevation angle, inclination angle of the observed object, distance from observer to object, object and surface reflectivity, number and spacing of integral receptor points along line of sight.

Other data requirements are: Ambient concentrations of O_3 and NO_x, deposition velocity of TSP, sulfate, nitrate, SO_2 and NO_x, first-order transformation rate for sulfate and nitrate.

c. *Output*

Printed output includes both summary and detailed results as follows: Summary output: Page 1—site, observer and object parameters; page 2—optical pollutants and associated extinction coefficients; page 3—plume model input parameters; page 4—total calculated visual range reduction, and each pollutant's contribution; page 5—calculated plume contrast, object contrast and object contrast degradation at the 550nm wavelength; page 6—calculated blue/red ratio and ΔE ($U^*V^*W^*$) values for both sky and object discoloration.

Detailed output: Phase functions for each pollutant in four wavelengths (400, 450, 550, 650nm), concentrations for each pollutant along sight path, solar geometry, contrast parameters at all wavelengths, intensities, tristimulus values and chromaticity coordinates for views of the object, sun, background sky and plume.

d. *Type of Model*

ERT Visibility model is a Gaussian plume model for estimating visibility impairment.

e. *Pollutant Types*

Optical activity of sulfate, nitrate (derived from SO_2 and NOx emissions), primary TSP and NO_2 is simulated.

f. *Source Receptor Relationship*

Single source and hour is simulated. Unlimited number of lines-of-sight (receptors) is permitted per model run.

g. *Plume Behavior*

Briggs (1971) plume rise equations for final rise are used.

h. *Horizontal Wind Field*

A single wind speed and direction is specified for each case study. The wind is assumed to be spatially uniform.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used. Mixing height is accounted for with multiple reflection handled by summation of series near the source, and Fourier representation farther downwind.

l. *Chemical Transformation*

First order transformations of sulfates and nitrates are used.

m. *Physical Removal*

Dry deposition is treated by the source depletion method.

n. *Evaluation Studies*

Seigneur, C., R. W. Bergstrom, and A. B. Hudischewskyj, 1982. Evaluation of the EPA PLUVUE Model and the ERT Visibility Model Based on the 1979 VISTTA Data Base, EPA Publication No. EPA–450/4–82–008. U.S. Environmental Protection Agency, Research Triangle Park, NC.

White, W. H., C. Seigneur, D. W. Heinold, M. W. Eltgroth, L. W. Richards, P. T. Roberts, P. S. Bhardwaja, W. D. Conner and W. E. Wilson, Jr., 1985. Predicting the Visibility of Chimney Plumes: An Inter-comparison of Four Models with Observations at a Well-Controlled Power Plant. Atmospheric Environment, 19: 515–528.

B.7 HIWAY–2

Reference

Petersen, W.B., 1980. User's Guide for HIWAY–2. EPA Publication No. EPA–600/8–80–018. U.S. Environmental Protection Agency, ESRL, Research Triangle Park, NC. (NTIS No. PB 80–227556)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

HIWAY–2 can be used to estimate the concentrations of non-reactive pollutants from highway traffic. This steady-state Gaussian model can be applied to determine air pollution concentrations at receptor locations downwind of "at-grade" and "cut section" highways located in relatively uncomplicated terrain. The model is applicable for any wind direction, highway orientation, and receptor location. The model was developed for situations where horizontal wind flow dominates. The model cannot consider complex terrain or large obstructions to the flow such as buildings or large trees.

a. *Recommendations for Regulatory Use*

HIWAY–2 can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. HIWAY–2 must be executed in the equivalent mode.

HIWAY–2 can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in Section 3.2, that HIWAY–2 is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: A uniform emission rate by lane, roadway end points; height of emission; length, width, and number of lanes; and width of center strip.

Meteorological data requirements are: One set at a time of hourly averages of wind speed, wind direction, and mixing height and the Pasquill-Gifford stability class. Wind speed and direction are preferred to be at 2 meters above ground.

Receptor data requirements are: Coordinates of each receptor.

c. *Output*

Printed output includes:

One hourly average concentration at each specified receptor location.

d. *Type of Model*

HIWAY–2 is a Gaussian plume model.

e. *Pollutant Types*

HIWAY–2 may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

HIWAY–2 applies user-specified end points for a single roadway segment, and user-specified receptor locations.

Plume impact on receptor is calculated by finite difference integration of a point source along each lane of the roadway.

g. *Plume Behavior*

HIWAY–2 does not treat plume rise.

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

An aerodynamic drag factor is applied when winds are parallel to the roadway and speeds are less than 2 m/sec.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

The total horizontal dispersion is that due to ambient turbulence plus the turbulence generated by the vehicles on the roadway.

Beyond 300m downwind total turbulence is considered to be dominated by atmospheric turbulence, with plume dispersion as described by Turner (1969).

Three stability classes are considered: Unstable, neutral and stable.

k. *Vertical Dispersion*

The total horizontal dispersion is that due to ambient turbulence plus the turbulence generated by the vehicles on the roadway.

Beyond 300m downwind total turbulence is considered to be dominated by atmospheric turbulence, with plume dispersion as described by Turner (1969).

Mixing height is accounted for with multiple reflections until the vertical plume size equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

Three stability classes are considered: Unstable, neutral and stable.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Rao, S.T., and J.R. Visalli, 1981. On the Comparative Assessment of the Performance of Air Quality Models. *Journal of Air Pollution Control Association*, 31: 851–860.

B.8 Integrated Model for Plumes and Atmospheric Chemistry in Complex Terrain (IMPACT)

Reference

Fabrick, Allan J. and Peter J. Haas, 1980. User Guide to IMPACT: An Integrated Model for Plumes and Atmospheric Chemistry in Complex Terrain. DCN 80–241–403–01. Radian Corporation, 8501 Mo-Pac Blvd., Austin, TX.

Availability

A magnetic tape containing the IMPACT model, a set of test data and a copy of the IMPACT User's Guide are available for a cost of $500 from: Howard Balentine, Senior Meteorologist, Radian Corporation, Post Office Box 9948, Austin, TX 78766.

Abstract

IMPACT is an Eulerian, three-dimensional, finite difference grid model designed to calculate the impact of pollutants, either inert or reactive, in simple or complex terrain, emitted from either point or area sources. It automatically treats single or multiple point or area sources, the effects of vertical temperature stratifications on the wind and diffusion fields, shear flows caused by the atmospheric boundary layer or by terrain effects, and chemical transformations.

a. *Recommendations for Regulatory Use*

IMPACT can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. IMPACT must be executed in the equivalent mode.

IMPACT can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that IMPACT is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

There is no specific recommendation concerning the use of IMPACT for photochemical applications. IMPACT may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: For point sources—location (I, J), stack height, exit temperature, volume flow rate or stack diameter and exit velocity, hourly emission rates for all pollutants; for area sources location of corners, and hourly emission rates for each pollutant.

Meteorological data requirements are: Hourly wind speed and direction, surface and elevated, from meteorological stations within and surrounding the modeling area, temperature, pressure, humidity and insolation (the three last variables are optional).

Receptor data requirements are: None since concentrations are output for cells in the computational grid.

Air quality data (optional): One or more vertical concentration profiles for each pollutant.

Other data: 2–D array of terrain heights, 2–D array of surface roughness values (optional).

c. *Output*

Printed output options include:

Surface and elevated horizontal cross sections of pollutant concentrations (instantaneous, or averages over N hours where N=1, 2, 3, . . .);

Horizontal cross sections of diffusivities and wind velocities; and

Arbitrary vertical and horizontal cross sections of pollutant concentrations and diffusivities, and CALCOMP wind field vector plots are generated by the POST post-processor program.

Computer readable output includes:

Concentration, wind field and diffusivity data for each hour.

d. *Type of Model*

IMPACT is an Eulerian finite difference model.

e. *Pollutant Types*

IMPACT may be used to model any inert pollutant.

IMPACT may be used to model SO_2, $SO_4^=$, NO_x, NO_2, O_3, hydrocarbons (depends upon chemistry mechanism selected).

f. *Source-Receptor Relationship*

Up to 20 point sources and 20 area sources may be treated (greater number of sources may be treated by increasing common block storage allocation).

Concentrations are calculated at the center of each cell in the grid.

g. *Plume Behavior*

Briggs (1975) formulation for plume rise is used.

Elevated inversions are considered.

h. *Horizontal Winds*

A three dimensional stability and terrain dependent nondivergent wind field is interpolated from single or multiple wind data measurements using a Poisson technique.

i. *Vertical Wind Speed*

Vertical wind speed is treated at each wind site, user specified or extrapolated from surface data. Interpolated is accomplished as part of the three dimensional wind field interpolation.

j. *Horizontal Dispersion*

A three dimensional diffusivity field is calculated using either the technique of Myrup/Ranzieri or the DEPICT method (see User Guide, Fabrick and Haas, 1980).

k. *Vertical Dispersion*

A three dimensional diffusivity field is calculated using either the technique of Myrup/Ranzieri or the DEPICT method (see User Guide, Fabrick and Haas, 1980).

l. *Chemical Transformation*

Either 3-, 6-, 8- or 15-species mechanisms are currently available (see User Guide). Calculations are also performed for inert pollutants.

m. *Physical Removal*

Physical removal is treated using exponential decay. Half-life is input by the user.

n. *Evaluation Studies*

Fabrick, A. J., R. Sklarew, and J. Wilson, 1977. Point Source Model Evaluation and Development Study. Report prepared for the California Air Resources Board.

Fabrick, A. J., and P. J. Haas, 1980. Analysis of Dispersion Models used for Complex Terrain Simulation. Presented at the Symposium on Intermediate Range Transport Processes and Technology Assessment, Gatlinburg, TN.

Sklarew, R., and V. Mirabella, 1979. Experience in IMPACT Modeling of Complex Terrain Fourth Symposium on Turbulence, Diffusion and Air Pollution, Reno, NV.

Sklarew, R., J. Wilson, A. J. Fabrick and V. Mirabella, 1976. Rough Terrain Modeling. Presented at Geothermal Environmental Seminar '76, Clear Lake, CA.

Sklarew, R., and K. Tran, 1978. The NEWEST Wind Field Model with Applications to Thermally Driven Drainage Wind in Mountainous Terrain. Presented at the AMS Meeting, Lake Tahoe, NV.

Wackter, D., and R. Londergan, 1984. Evaluation of Complex Terrain Air Quality Simulation Models. EPA Publication No. EPA–450/4–84–017. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.9 LONGZ

Reference

Bjorklund, J. R., and J. F. Bowers, 1982. User's Instructions for the SHORTZ and LONGZ Computer Programs, Volumes I and II, EPA Publication No. EPA–903/9–82–004. U.S. Environmental Protection Agency, Region III, Philadelphia, PA.

Availability

The model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

LONGZ utilizes the steady-state univariate Gaussian plume formulation for both urban and rural areas in flat or complex terrain to calculate long-term (seasonal and/or annual) ground-level ambient air concentrations attributable to emissions from up to 14,000 arbitrarily placed sources (stacks, buildings and area sources). The output consists of the total concentration at each receptor due to emissions from each user-specified source or group of sources, including all sources. An option which considers losses due to deposition (see the description of SHORTZ) is deemed inappropriate by the authors for complex terrain, and is not discussed here.

a. *Recommendations for Regulatory Use*

LONGZ can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. LONGZ must be executed in the equivalent mode.

LONGZ can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that LONGZ is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: For point, building or area sources, location, elevation, total emission rate (optionally classified by gravitational settling velocity) and decay coefficient; for stack sources, stack height, effluent temperature, effluent exit velocity, stack radius (inner), emission rate, and ground elevation (optional);

For building sources, height, length and width, and orientation; for area sources, characteristic vertical dimension, and length, width and orientation.

Meteorological data requirements are: Wind speed and measurement height, wind profile exponents, wind direction standard deviations (turbulent intensities), mixing height, air temperature, vertical potential temperature gradient.

Receptor data requirements are: coordinates, ground elevation.

c. *Output*

Printed output includes:

Total concentration due to emissions from user-specified source groups, including the combined emissions from all sources (with optional allowance for depletion by deposition).

d. *Type of Model*

LONGZ is a climatological Gaussian plume model.

e. *Pollutant Types*

LONGZ may be used to model primary pollutants. Settling and deposition are treated.

f. *Source-Receptor Relationships*

LONGZ applies user specified locations for sources and receptors. Receptors are assumed to be at ground level.

g. *Plume Behavior*

Plume rise equations of Bjorklund and Bowers (1982) are used.

Stack tip downwash (Bjorklund and Bowers, 1982) is included.

All plumes move horizontally and will fully intercept elevated terrain.

Plumes above mixing height are ignored.

Perfect reflection at mixing height is assumed for plumes below the mixing height.

Plume rise is limited when the mean wind at stack height approaches or exceeds stack exit velocity.

Perfect reflection at ground is assumed for pollutants with no settling velocity.

Zero reflection at ground is assumed for pollutants with finite settling velocity.

LONGZ does not simulate fumigation.

Tilted plume is used for pollutants with settling velocity specified.

Buoyancy-induced dispersion is treated (Briggs, 1972).

h. *Horizontal Winds*

Wind field is homogeneous and steady-state.

Wind speed profile exponents are functions of both stability class and wind speed. Default values are specified in Bjorklund and Bowers (1982).

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Pollutants are initially uniformly distributed within each wind direction sector. A smoothing function is then used to remove discontinuities at sector boundaries.

k. *Vertical Dispersion*

Vertical dispersion is derived from input vertical turbulent intensities using adjustments to plume height and rate of plume growth with downwind distance specified in Bjorklund and Bowers (1982).

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Time constant is input by the user.

m. *Physical Removal*

Gravitational settling and dry deposition of particulates are treated.

n. *Evaluation Studies*

Bjorklund, J. R., and J. F. Bowers, 1982. User's Instructions for the SHORTZ and LONGZ Computer Programs, Volume I and II. EPA Publication No. EPA–903/9–82–004. U.S. Environmental Protection Agency, Region III, Philadelphia, PA.

B.10 Maryland Power Plant Siting Program (PPSP) Model

References

Brower, R., 1982. The Maryland Power Plant Siting Program (PPSP) Air Quality Model User's Guide. Ref. No. PPSP–MP–38. Prepared for Maryland Department of Natural Resources, by Environmental Center, Martin Marietta Corporation, Baltimore, MD. (NTIS No. PB 82–238387)

Weil, J.C. and R.P. Brower, 1982. The Maryland PPSP Dispersion Model for Tall Stacks. Ref. No. PPSP–MP–36. Prepared for Maryland Department of Natural Resources, by Environmental Center, Martin Marietta Corporation, Baltimore, MD. (NTIS No. PB 82–219155)

Availability

Two reports referenced above are available from NTIS. The model code and test data are available on MDgnetic tape for a cost of $210 from:

Power Plant Siting Program, Department of Natural Resources, Tawes State Office Building, Annapolis, MD 21401, Attn: Dr. Michael Hirshfield

Abstract

PPSP is a Gaussian dispersion model applicable to tall stacks in either rural or urban areas, but in terrain that is essentially flat (on a scale large compared to the ground roughness elements). The PPSP model follows the same general formulation and computer coding as CRSTER, also a Gaussian model, but it differs in four MDjor ways. The differences are in the scientific formulation of specific ingredients or "sub-models" to the Gaussian model, and are based on recent theoretical improvements as well as supporting experimental data. The differences are: (1) Stability during daytime is based on convective scaling instead of the Turner criteria; (2) Briggs' dispersion curves for elevated sources are used; (3) Briggs plume rise formulas for convective conditions are included; and (4) plume penetration of elevated stable layers is given by Briggs' (1984) model.

a. *Recommendations for Regulatory Use*

PPSP can be used if it can be demonstrated to estiMDte concentrations equivalent to those provided by the preferred model for a given application. PPSP must be executed in the equivalent mode.

PPSP can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that PPSP is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Emission rate (monthly rates optional), physical stack height, stack gas exit velocity, stack inside diameter, stack gas temperature.

Meteorological data requirements are: Hourly surface weather data from the EPA meteorological preprocessor program. Preprocessor output includes hourly stability class, wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is also required. Wind speed profile exponents (one for each stability class) are required if on-site data are input.

Receptor data requirements are: Distance of each of the five receptor rings.

c. *Output*

Printed output includes:

Highest and second highest concentrations for the year at each receptor for averaging times of 1, 3, and 24-hours, plus a user-selected averaging time which MDy be 2, 4, 6, 8, or 12 hours;

Annual arithmetic average at each receptor; and

For each day, the highest 1-hour and 24-hour concentrations over the receptor field.

d. *Type of Model*

PPSP is a Gaussian plume model.

e. *Pollutant Types*

PPSP may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

Up to 19 point sources are treated.

All point sources are assumed at the same location.

Unique stack height and stack exit conditions are applied for each source.

Receptor locations are restricted to 36 azimuths (every 10 degrees) and five user-specified radial distances.

g. *Plume Behavior*

Briggs (1975) final rise formulas for buoyant plumes are used. Momentum rise is not considered.

Transitional or distance-dependent plume rise is not modeled.

Penetration (complete, partial, or zero) of elevated inversions is treated with Briggs (1984) model; ground-level concentrations are dependent on degree of plume penetration.

h. *Horizontal Winds*

Wind speeds are corrected for release height based on power law variation, with different exponents for different stability classes and variable reference height (7 meters is default). Wind speed power law exponents are 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 for stability classes A through F, respectively.

Constant, uniform (steady-state) wind assumed within each hour.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion parameters are Briggs (Gifford, 1975), with stability class defined by u/w* during daytime, and by the method of Turner (1964) at night.

Urban dispersion is treated by changing all stable cases to stability class D.

Buoyancy-induced dispersion (Pasquill, 1976) is included (using ΔH/3.5).

k. *Vertical Dispersion*

Rural dispersion parameters are Briggs (Gifford, 1975), with stability class defined by u/w* during daytime, and by the method of Turner (1964).

Urban dispersion is treated by changing all stable cases to stability class D.

Buoyancy-induced dispersion (Pasquill, 1976) is included (using ΔH/3.5).

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Weil, J.C. and R.P. Brower, 1982. The Maryland PPSP dispersion model for tall stacks. Ref. No. PPSP MP–36. Prepared for Maryland Department of Natural Resources. Prepared by Environmental Center, Martin Marietta Corporation, Baltimore, Maryland, (NTIS No. PB 82–219155)

Londergan, R., D. Minott, D. Wackter, T. Kincaid, and D. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models, Appendix G: Statistical Tables for PPSP EPA Publication No. EPA–450/4–83–003, Environmental Protection Agency, Research Triangle Park, NC.

B.11 Mesoscale Puff Model (MESOPUFF II)

Reference

Scire, J.S., F.W. Lurmann, A. Bass, S.R. Hanna, 1984. User's Guide to the Mesopuff II Model and Related Processor Programs. EPA Publication No. EPA–600/8–84–013. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 84–181775)

A Modeling Protocol for Applying MESOPUFF II to Long Range Transport Problems, 1992. EPA Publication No. EPA–454/R–92–021. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Availability

This model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also from the National Technical Information Service (see page B–1).

Abstract

MESOPUFF II is a short term, regional scale puff model designed to calculate concentrations of up to 5 pollutant species (SO_2, SO_4, NO_X, HNO_3, NO_3). Transport, puff growth, chemical transformation, and wet and dry deposition are accounted for in the model.

a. *Recommendations for Regulatory Use*

There is no specific recommendation at the present time. The model may be used on a case-by-case basis.

b. *Input Requirements*

Required input data include four types: (1) Input control parameters and selected technical options, (2) hourly surface meteorological data and twice daily upper air measurements, hourly precipitation data are optional, (3) surface land use classification information, (4) source and emissions data.

Data from up to 25 surface National Weather Service stations and up to 10 upper air stations may be considered. Spatially variable fields at hour intervals of winds, mixing height, stability class, and relevant turbulence parameters are derived by MESOPAC II, the meteorological preprocessor program described in the User Guide.

Source and emission data for up to 25 point sources and/or up to 5 area sources can be included. Required information are: location in grid coordinates, stack height, exit velocity and temperature, and emission rates for the pollutant to be modeled.

Receptor data requirements: Up to a 40 X 40 grid may be used and non-gridded receptor locations may be considered.

c. *Output*

Line printer output includes: All input parameters, optionally selected arrays of ground-level concentrations of pollutant species at specified time intervals.

Line printer contour plots output from MESOFILE II post-processor program. Computer readable output of concentration array to disk/tape for each hour.

d. *Type of Model*

MESOPUFF II is a Gaussian puff superposition model.

e. *Pollutant types modeled*

Up to five pollutant species may be modeled simultaneously and include: SO_2, SO_4, NO_x, HNO_3, NO_3.

f. *Source-Receptor Relationship*

Up to 25 point sources and/or up to 5 area sources are permitted.

g. *Plume Behavior*

Briggs (1975) plume rise equations are used, including plume penetration with buoyancy flux computed in the model.

Fumigation of puffs is considered and may produce immediate mixing or multiple reflection calculations at user option.

h. *Horizontal Winds*

Gridded wind fields are computed for 2 layers; boundary layer and above the mixed layer. Upper air rawinsonde data and hourly surface winds are used to obtain spatially variable u,v component fields at hourly intervals. The gridded fields are computed by interpolation between stations in the MESOPAC II preprocessor.

i. *Vertical Wind Speed*

Vertical winds are assumed to be zero.

j. *Horizontal Dispersion*

Incremental puff growth is computed over discrete time steps with horizontal growth parameters determined from power law equations fit to sigma y curves of Turner out to 100km. At distances greater than 100km, puff growth is determined by the rate given by Heffter (1965).

Puff growth is a function of stability class and changes in stability are treated. Optionally, user input plume growth coefficients may be considered.

k. *Vertical Dispersion*

For puffs emitted at an effective stack height which is less than the mixing height, uniform mixing of the pollutant within the mixed layer is performed. For puffs centered above the mixing height, no effect at the ground occurs.

l. *Chemical Transformation*

Hourly chemical rate constants are computed from empirical expressions derived from photochemical model simulations.

m. *Physical Removal*

Dry deposition is treated with a resistance method.

Wet removal may be considered if hourly precipitation data are input.

n. *Evaluation Studies*

Results of tests for some model parameters are discussed in:

Scire, J. S., F. W. Lurmann, A. Bass, S. R. Hanna, 1984. Development of the MESOPUFF II Dispersion Model. EPA Publication No. EPA–600/3–84–057. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.12 Mesoscale Transport Diffusion and Deposition Model for Industrial Sources (MTDDIS)

Reference

Wang, I.T. and T.L. Waldron, 1980. User's Guide for MTDDIS Mesoscale Transport, Diffusion, and Deposition Model for Industrial Sources. EMSC6062.1UR(R2). Combustion Engineering, Newbury Park, CA.

Availability

A magnetic tape copy of the FORTRAN coding and the user's guide are available for a cost of $100 from: Dr. I.T. Wang, Combustion Engineering, Environmental Monitoring and Services, Inc., 2421 West Hillcrest Drive, Newbury Park, CA 19320.

Abstract

MTDDIS is a variable-trajectory Gaussian puff model applicable to long-range transport of point source emissions over level or rolling terrain. It can be used to determine 3-hour maximum and 24-hour average concentrations of relatively nonreactive pollutants from up to 10 separate stacks.

a. *Recommendations for Regulatory Use*

There is no specific recommendation at the present time. The MTDDIS Model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: Emission rate, physical stack height, stack gas exit velocity, stack inside diameter, stack gas temperature, and location.

Meteorological data requirements are: Hourly surface weather data, from up to 10 stations, including cloud ceiling, wind direction, wind speed, temperature, opaque cloud cover and precipitation. For long-range applications, user-analyzed daily mixing heights are recommended. If these are not available, the NWS daily mixing heights will be used by the program. A single upper air sounding station for the region is assumed. For each model run, air trajectories are generated for a 48-hour period, and therefore, the afternoon mixing height of the day before and the mixing heights of the day after are also required by the model as input, in order to generate hourly mixing heights for the modeled period.

Receptor data requirements are: Up to three user-specified rectangular grids.

c. *Output*

Printed output includes:

Tabulations of hourly meteorological parameters include both input surface observations and calculated hourly stability classes and mixing heights for each station;

Printed air trajectories for the two consecutive 24-hour periods for air parcels generated 4 hours apart starting at 0000 LST; and

3-hour maximum and 24-hour average grid concentrations over user-specified rectangular grids are output for the second 24-hour period.

d. *Type of Model*

MTDDIS is a Gaussian puff model.

e. *Pollutant Types*

MTDDIS can be used to model primary pollutants. Dry deposition is treated. Exponential decay can account for some reactions.

f. *Source-Receptor Relationship*

MTDDIS treats up to 10 point sources.

Up to three rectangular receptor grids may be specified by the user.

g. *Plume Behavior*

Briggs (1971, 1972) plume rise formulas are used.

If plume height exceeds mixing height, ground level concentration is assumed zero.

Fumigation and downwash are not treated.

h. *Horizontal Winds*

Wind speeds and wind directions at each station are first corrected for release height. Speed conversions are based on power law variation and direction conversions are based on linear height dependence as recommended by Irwin (1979).

Converted wind speeds and wind directions are then weighted according to the

algorithms of Heffter (1980) to calculate the effective transport wind speed and direction.

i. *Vertical Wind Field*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Transport-time-dependent dispersion coefficients from Heffter (1980) are used.

k. *Vertical Dispersion*

Transport-time-dependent dispersion coefficients from Heffter (1980) are used.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Dry deposition is treated. User input deposition velocity is required.

Wet deposition is treated. User input hourly precipitation rate and precipitation layer depth or cloud ceiling height are required.

n. *Evaluation Studies*

None cited.

B.13 Models 3141 and 4141

Reference

Enviroplan, Inc, 1981. User's Manual for Enviroplan's Model 3141 and Model 4141. Enviroplan, Inc., West Orange, NJ.

Availability

A magnetic tape copy of the FORTRAN coding and the user's guide are available for a cost of $1,900 from: Environplan, Inc., 59 Main Street, West Orange, NJ 07052.

Abstract

Models 3141 and 4141 are modifications of CRSTER (UNAMAP VERSION 3) and are applicable to complex terrain particularly where receptor elevation approximately equals or exceeds the stack top elevation. The model utilizes intermediate ground displacement procedures and dispersion enhancements developed from an aerial tracer study and ground level concentrations measured for a power plant located in complex terrain.

a. *Recommendations for Regulatory Use*

3141 or 4141 can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. 3141 or 4141 must be executed in the equivalent mode.

3141 or 4141 can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in Section 3.2, that 3141 or 4141 is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Emission rate, physical stack height, stack gas exit velocity, stack inside diameter, stack gas exit temperature.

Meteorological data requirements are: Hourly surface weather data from the EPA meteorological preprocessor program. Preprocessor output includes hourly stability class, wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is also required. Wind speed profile exponents (one for each stability class) are required if on-site data are input.

Receptor data requirements are: Distance of each of five receptor rings, and receptor elevation.

c. *Output*

Printed output includes:

Highest and second highest concentrations for the year at each receptor for averaging times of 1, 3, and 24 hours, plus a user-selected averaging time which may be 2, 4, 6, 8, or 12 hours.

Annual arithmetic average at each receptor.

For each day, the highest 1-hour and 24-hour concentrations over the receptor field.

d. *Type of Model*

3141 and 4141 are Gaussian plume models.

e. *Pollutant Types*

3141 and 4141 may be used to model non-reactive pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

Up to 19 point sources are treated.

No area sources are treated.

All point sources are assumed to be collocated.

Unique stack height is used for each source.

Receptor locations are restricted to 36 azimuths (every 10 degrees) and 5 user-specified radial distances.

Unique topographic elevation is used for each receptor.

g. *Plume Behavior*

Briggs (1969, 1971, 1972) final plume rise formulas are used.

If plume height exceeds mixing height at a receptor location after terrain adjustment, concentration is assumed equal to zero.

h. *Horizontal Winds*

Wind speeds are corrected for release height based on power law variation exponents from DeMarrais (1959), different exponents for different stability classes, reference height=7 meters. Exponents used are 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 for stability classes A through F, respectively.

Constant, uniform (steady-state) wind is assumed within each hour.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Dispersion coefficients are Pasquill-Gifford coefficients from Turner (1969).

Dispersion is adjusted to 60 minute averaging time by one-fifth power rule (Gifford, 1975).

Buoyancy-induced dispersion (Briggs, 1975) is included.

k. *Vertical Dispersion*

Dispersion coefficients are Pasquill-Gifford coefficients from Turner (1969).

Buoyancy-induced dispersion (Briggs, 1975) is included.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Ellis, H.M., P.C. Liu, and C. Runyon, 1979. "Comparison of Predicted and Measured Concentrations for 54 Alternative Models of Plume Transport in Complex Terrain, Presented in APCA Annual Conference, Cincinnati, OH.

Ellis, H.M., P.C. Liu, and C. Runyon, 1980. Comparison of Predicted and Measured Concentrations for 58 Alternative Models of Plume Transport in Complex Terrain. *Journal of the Air Pollution Control Association*, 30(6): 670–675.

Londergan, R., D. Minott, D. Wachter, T. Kincaid and D. Bonitata. Evaluation of Rural Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–003, Environmental Protection Agency, Research Triangle Park, NC.

Wackter, D., and R. Londergan, 1984. Evaluation of Complex Terrain Air Quality Simulation Models. EPA Publication No. EPA–450/4–84–017. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.14 MULTIMAX

Reference

Moser, J.H., 1979. MULTIMAX: An Air Dispersion Modeling Program for Multiple Sources, Receptors, and Concentration Averages. Shell Development Company, Westhollow Research Center, P.O. Box 1380, Houston, TX. (NTIS No. PB 80–170178).

Availability

The above report is available from NTIS ($16.95 for paper copy; $5.95 on microfiche). The accession number for the computer tape for MULTIMAX is PB 80–170160, and the cost is $370.00. Requests should be sent to: Computer Products, National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Phone: (703) 487–4650.

Abstract

MULTIMAX is a Gaussian plume model applicable to both urban and rural areas. It can be used to calculate highest and second-highest concentrations, for each of several averaging times due to up to 100 sources arbitrarily located.

a. *Recommendations for Regulatory Use*

MULTIMAX can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. MULTIMAX must be executed in the equivalent mode.

MULTIMAX can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that MULTIMAX is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

VOL 58 ISS 137 JL 20 1993 UMI

b. *Input Requirements*

Source data requirements are: Emission rate, physical stack height, stack gas exit velocity, stack inside diameter, and stack gas temperature.

Meteorological data requirements are: Hourly surface weather data from the EPA meteorological preprocessor program. Preprocessor output includes hourly stability class, wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is also required. Wind speed profile exponents (one for each stability class) are required if on-site data are input.

Receptor requirements are: Individual receptor points, arcs and circles of receptors, or lines of receptors may be input, with receptor point locations, receptor line end points, and receptor circle center and radius defined in either cartesian or polar coordinates.

c. *Output*

Printed output includes: Highest and second-highest concentrations for the year at each receptor for averaging time of 1, 3, and 24 hours. Annual arithmetic average at each receptor.

Computer readable output includes: Input data and results.

d. *Type of Model*

MULTIMAX is a Gaussian plume model.

e. *Pollutant Types*

MULTIMAX may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

Up to 100 point sources at any location may be input.

Area sources are not treated.

Point sources may be at any location.

Unique stack height is used for each source.

Unique topographic elevation is used for each receptor; must be below top of stack.

Receptors can be defined individually, or along lines or arcs.

g. *Plume Behavior*

MULTIMAX uses Briggs (1969, 1971, 1972) final plume rise formulas.

If plume height exceeds mixing height, concentrations downwind are assumed equal to zero.

h. *Horizontal Winds*

Wind speeds are corrected for release height based on power law variation exponents from DeMarrais (1959), different exponents for different stability classes, reference height=10 meters. The exponents are 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 for stability classes A through F, respectively.

Constant, uniform (steady-state) wind is assumed within each hour.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used in MULTIMAX with no adjustments made for variations in surface roughness.

Six stability classes are used, with Turner class 7 treated as Class 6. Averaging time adjustment is optional.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used in MULTIMAX with no adjustments made for variations in surface roughness.

Six stability classes are used, with Turner class 7 treated as Class 6.

Perfect reflection at the ground is assumed.

Mixing height is accounted for with multiple reflections until the vertical plume size equals 1.6 times the mixing height; uniform mixing is assumed beyond that point.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Londergan, R., D. Minott, D. Wackter, T. Kincaid, and D. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–003. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.15 Multiple Point Source Diffusion Model (MPSDM—[Deleted]

B.16 Multi-Source (SCSTER) Model

Reference

Malik, M.H. and B. Baldwin, 1980. Program Documentation for Multi-Source (SCSTER) Model. Program Documentation EN7408SS. Southern Company Services, Inc., Technical Engineering Systems, 64 Perimeter Center East, Atlanta, GA.

Availability

The SCSTER model and user's manual are available at no charge to a limited number of persons through Southern Company Services. A magnetic tape must be provided by those desiring the model. Requests should be directed to: Mr. Bryan Baldwin, Research Program Supervisor, Air Quality Program, Southern Company Services, Post Office Box 2625, Birmingham, AL 35202.

Abstract

SCSTER is a modified version of the EPA CRSTER model. The primary distinctions of SCSTER are its capability to consider multiple sources that are not necessarily collocated, its enhanced receptor specifications, its variable plume height terrain adjustment procedures and plume distortion from directional wind shear.

a. *Recommendations for Regulatory Use*

SCSTER can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. SCSTER must be executed in the equivalent mode.

SCSTER can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that SCSTER is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Emission rate, stack gas exit velocity, stack gas temperature, stack exit diameter, physical stack height, elevation of stack base, and coordinates of stack location. The variable emission data can be monthly or annual averages.

Meteorological data requirements are: Hourly surface weather data from the EPA meteorological preprocessor program. Preprocessor output includes hourly stability class wind direction, wind speed, temperature, and mixing height. Actual anemometer height (a single value) is optional. Wind speed profile exponents (one for each stability class) are optional.

Receptor data requirements are: Cartesian coordinates and elevations of individual receptors; distances of receptor rings, with elevation of each receptor; receptor grid networks, with elevation of each receptor.

Any combination of the three receptor input types may be used to consider up to 600 receptor locations.

c. *Output*

Printed output includes:

Highest and second highest concentrations for the year at each receptor for averaging times of 1-, 3-, and 24-hours, a user-selected averaging time which may be 2–12 hours, and a 50 high table for 1-, 3-, and 24-hours.

Annual arithmetic average at each receptor; and the highest 1-hour and 24-hour concentrations over the receptor field for each day considered.

Optional tables of source contributions of individual point sources at up to 20 receptor locations for each averaging period.

Optional magnetic tape output in either binary or fixed block format includes: All 1-hour concentrations.

Optional card/disk output includes for each receptor: Receptor coordinates; receptor elevation; highest and highest, second-highest, 1-, 3-, and 24-hour concentrations; and annual average concentration.

d. *Type of Model*

SCSTER is a Gaussian plume model.

e. *Pollutant Types*

SCSTER may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

SCSTER can handle up to 60 separate stacks at varying locations and up to 600 receptors, including up to 15 receptor rings.

User input topographic elevation for each receptor is used.

g. *Plume Behavior*

SCSTER uses Briggs (1969, 1971, 1972) final plume rise formulas. Transitional plume rise is optional.

SCSTER contains options to incorporate wind directional shear with a plume distortion method described in Appendix A of the User's Guide.

SCSTER provides four terrain adjustments including the CRSTER full terrain height adjustment and a user-input, stability-dependent plume path coefficient adjustment for receptors above stack height.

h. *Horizontal Winds*

Wind speeds are corrected for release height based on power law exponents from DeMarrais (1959), different exponents for different stability classes; default reference height of 7m. Default exponents are 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 for stability classes A through F, respectively.

Steady-state wind is assumed within a given hour.

Optional consideration of plume distortion due to user-input, stability-dependent wind-direction shear gradients.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used.

Six stability classes are used.

k. *Vertical Dispersion*

Rural dispersion coefficients from Turner (1969) are used.

Six stability classes are used.

An optional test for plume height above mixing height before terrain adjustment is included.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is treated using exponential decay. Half-life is input by the user.

n. *Evaluation Studies*

Londergan, R., D. Minott, D. Wackter, T. Kincaid and D. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–003. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.17 Pacific Gas and Electric Plume5 Model

Reference

User's Manual for Pacific Gas and Electric PLUME5 Model, 1981. Pacific Gas and Electric Company, San Francisco, CA.

Availability

The User's Manual will be supplied for cost of reproduction. An IBM version of the model can be obtained on a user supplied tape free of charge from: Mr. Robert N. Swanson, Pacific Gas and Electric Company, 245 Market Street, Rm. 451, San Francisco, CA 94106.

Abstract

PLUME5 is a steady-state Gaussian plume model applicable to both rural and urban areas in uneven terrain. Pollutant concentrations at 500 receptors from up to 10 sources with up to 15 stacks each can be calculated using up to 5 meteorological inputs. The model in its "basic" mode is similar to CRSTER and MPTER. Several options are available that allow better simulation of atmospheric conditions and improved model outputs. These options allow plume rise into or through a stable layer and crosswind spread of the plume by wind directional shear with height, initial plume expansion, mean (advective) wind speed, terrain considerations, and chemical transformation of pollutants.

Differences that exist between PLUME5 and CRSTER are in the following areas: Stability class determination, hourly mixing height schemes, hourly stable layer data, randomization of wind direction, extent of data set required for preprocessing meteorological data inputs.

a. *Recommendations for Regulatory Use*

PLUME5 can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. PLUME5 must be executed in the equivalent mode.

PLUME5 can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that PLUME5 is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Cartesian or polar coordinates of each source with stack height, diameter, gas temperature, and exit velocity for each stack.

Meteorological data requirements are: Surface data—hourly meteorological data including wind direction, wind speed, temperature, and either ceiling height and total sky cover or sigma A or Delta T depending on how stability is computed; stable layer data—either NCC data or site specific user supplied data.

Receptor data requirements are: Cartesian or polar coordinates of each receptor.

c. *Output*

Printed output includes:

Highest and second highest concentrations for the year printed out at each receptor for averaging times of 1, 3, and 24-hours, plus a user-selected averaging time which may be 2, 4, 6, 8, or 12 hours.

Annual arithmetic average at each receptor.

For each day, the highest 1-hour and 24-hour concentrations over the receptor field are printed.

Hourly effective stack height and effective stack height distributions.

Vertical profiles of maximum pollutant concentrations above a designated height (Z_o) for the data period processed.

Cumulative number of exceedances of 1 hour and 24-hour specified values for all receptors during the entire meteorological data period. These specified values will normally be National and State Ambient Air Quality Standards.

Computer readable output includes:

Hourly concentrations for each receptor on magnetic tape.

Computer file for input to plotting routine. The file stores the highest 1-hour (or other specified time period) concentration at each receptor for the entire meteorological data period for input into a user supplied plotting routine.

d. *Type of Model*

PLUME5 is a Gaussian plume model.

e. *Pollutant Types*

PLUME5 may be used to model primary pollutants. Chemical transformations of pollutants are treated by exponential decay and/or ozone limiting procedures.

f. *Source-Receptor Relationship*

Can input up to 10 separate sources with up to 15 stacks per source.

Unique stack height for each source. Rectangular or circular receptor locations (up to 500) can be either model generated or user input.

Terrain considerations:

When plume rise, H, is above the stable layer top concentration estimates will only be calculated for receptors at or above the stable layer top. If the receptor is below the stable layer top, then the concentration is zero.

When plume rise falls within the stable layer, concerntration estimates will be only caluclated for receptors located within this region. If the receptor height is above or below the stable top, then the concentration is zero.

When plume rise falls below the stable layer and the receptor height is above the stable layer base, then the concentration is zero. If the receptor height is below the stable layer base, the receptor height is redefined.

g. *Plume Behavior*

PLUME5 uses Briggs (1975) final plume rise formulas.

Expansion of plumes within and above a stable layer is treated.

h. *Horizontal Winds*

User-supplied hourly wind directions are read to nearest 1, 5, 10, and 22.5 degrees. (The 5, 10 and 22.5 degree values are randomly modified to nearest whole degree within the intervals).

PLUME5 employs the extrapolated mean wind speed at stack height when the effective stack height is equal to or less than the height of the inversion base above ground. If the plume rises into a stable layer, a separate algorithm is used.

Constant, uniform (steady state) wind assumed within each hour.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

Six stability classes are defined by either radiation index and wind speed (STAR), wind direction fluctuation, or temperature lapse rate.

Nighttime stability class is based on wind direction fluctuations or temperature lapse rate and may be modified according to the method of Mitchell and Timbre (1979).

Dispersion curves are from Turner (1969)

k. *Vertical Dispersion*

Six stability classes are defined by either radiation index and wind speed (STAR), wind direction fluctuations, or temperature lapse rate.

Nighttime stability class is based on wind direction fluctuations or temperature laspe rate and modified according to the method of Mitchell-Timbre (1979).

Dispersion curves are from Turner (1969)

VOL 58 ISS 137 JL 20 1993 UMI

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay and/or ozone limiting procedures.

m. *Physical Removal*

Physical removal is treated using exponential decay. Half-life is input by the user.

n. *Evaluation Studies*

Londergan, R., D. Minott, D. Wackter, T. Kincaid and B. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–003. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Wackter, D., and R. Londergan, 1984. Evaluation of Complex Terrain Air Quality Simulation Models. EPA Publication No. EPA–450/4–84–017. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.18 PLMSTAR Air Quality Simulation Model

Reference

Lurmann, F. W., D. A. Godden, and H. Collins, 1985. User's Guide to the PLMSTAR Air Quality Simulation Model. ERT Document No. M–2206–100, Environmental Research & Technology, Inc., Newbury Park, CA.

Availability

The above report and a computer tape are available from: Computer Products, National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Phone: (703) 487–4650.

Abstract:

PLMSTAR is a mesoscale Lagrangian photochemical model designed to predict atmospheric concentrations of O_3, NO_2, HNO_3, PAN, SO_2, and SO_4= from reactive hydrocarbons, NO_X and SO_X emissions. PLMSTAR is intended to simulate the behavior of pollutants in chemically reactive plumes resulting from major point source emissions. The model's Lagrangian air parcel is subdivided into a 5 layer/9 column domain of computational cells. The approach allows for realistic simulation of the combined effects of atmospheric chemical reactions and pollutant dispersion in the horizontal and vertical directions. Other key features of the model include: the capability for generation of trajectories at any level of a three-dimensional, divergence-free wind field; the capability for calculating and utilizing the time and space varying surface deposition of pollutants; an up-to-date O_3/RHC/NO_X/SO_X chemical mechanism that utilizes eight classes of reactive hydrocarbons; the capability for simultaneously handling both point and area source emissions; and the capability to simulate overwater conditions and land/water transitions.

a. *Recommendation for Regulatory Use*

There is no specific recommendation at the present time. The PLMSTAR Model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: Emission rates, stack parameters, diurnal emission profiles, and RHC, NO_X, and SO_X partitioning profiles.

Meteorological data requirements are: Station location, grid geometry, surface winds, surface roughness, surface temperature, temperature profiles, mixing heights (optional), cloud cover, solar radiation, and winds aloft.

Receptor data requirements are: Receptor locations and topography.

c. *Output*

Printed output includes: Computed concentrations at specified times and receptors along the trajectory.

d. *Type of Model*

PLMSTAR is a Lagrangian photochemical model.

e. *Pollutant Types*

The key chemical species included in the model are O_3, NO, NO_2, HNO_3, PAN, SO_2, SO_4=, CO, and eight classes of reactive hydrocarbons. Twenty additional intermediate species are included in the chemical mechanism.

f. *Source-Receptor Relationships*

Source-receptor relationships for individual sources are calculated using a differencing technique. That is, simulations are made with and without an individual source (or group of collocated sources) in addition to the RHC/NO_X/SO_X emissions from all other sources in the region. The emission processors allow for up to 250 point sources and an unlimited number of area sources (allocated to a grid of 36 x 36 squares) to be included in the simulation.

g. *Plume Behavior*

Plume rise calculations are based on Briggs (1975).

h. *Horizontal Winds*

Gridded hourly multi-level horizontal wind fields are generated using techniques similar to those reported by Goodin et al. (1979). These involve wind data interpolation, divergence minimization, and terrain adjustment. Trajectory path segments are then generated by interpolation from the gridded horizontal wind fields in 15 minute steps at the user selected vertical level. Either source or receptor oriented trajectory may be generated.

i. *Vertical Wind speed*

Vertical speed is produced by WINDMOD, but is not utilized in the trajectory calculation or the pollutant advection algorithm.

j. *Vertical Dispersion*

Vertical eddy diffusivities (Kz) over land are calculated as a function of wind speed, stability, surface roughness, and boundary layer height. Over water, wind speed, air-to-sea temperature difference, humidity, and boundary layer height are the key parameters.

The effects of vertical dispersion on pollutant concentrations are calculated by numerically integrating finite difference approximations to the diffusion equation.

Mixing heights can be internally calculated or externally specified.

k. *Horizontal Dispersion*

Horizontal eddy diffusivities (K_y) are calculated either as a function of K_z and stability class or as a function of σ_y. The effects of horizontal dispersion on pollutant concentrations are calculated by numerically integrating finite difference approximations to the diffusion equation.

l. *Chemical Transformation*

PLMSTAR incorporates a slightly condensed version of the Atkinson et al. (1982) photochemical mechanism for O_3/RHC/NO_x/SO_x/air mixtures. The mechanism contains 62 reactions involving 38 species, including 8 classes of organic precursors. The effects of chemical transformations on pollutant concentrations are computed by numerically integrating the nonlinear kinetic rate equations.

m. *Physical Removal*

Dry deposition of O_3, NO_2, HNO_3, PAN, SO_2, and SO_4= is based on the model of Wesely and Hicks (1977).

n. *Evaluation Studies*

Lurmann, F. W., D. A. Godden and A. C. Lloyd, 1982. The Development and Selected Sensitivity, Tests of the PLMSTAR Reactive Plume Model, Presented at the Third Joint Conference on Applications of Air Pollution Meteorology, San Antonio, TX.

Godden, D. and F. Lurmann, 1983. Development of the PLMSTAR Model and its Application to Ozone Episode Conditions in the South Coast Air Basin, ERT Document No. P–A702–200, Environmental Research & Technology, Inc., Newbury Park, CA.

Blumenthal, D. L., T. B. Smith, D. E. Lehrman, N. L. Alexander, F. Lurman, and D. Godden, 1985. Analysis of Aerometric and Meteorological Data for the Ventura County Region, Ref. #90094–511–FR. Sonoma Technology, Inc., and Environmental Research and Technology, Inc., for the Western Oil and Gas Association, Los Angeles, CA.

B.19 Plume Visibility Model (PLUVUE II)

Reference

Environmental Protection Agency, 1992. User's Manual for the Plume Visibility Model, PLUVUE II (Revised). EPA Publication No. EPA–454/B–92–008. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Availability

This model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also from the National Technical Information Service (see page B–1).

Abstract

The Plume Visibility Model (PLUVUE II) is a computerized model used for estimating visual range reduction and atmospheric discoloration caused by plumes resulting from the emissions of particles, nitrogen oxides and sulfur oxides from a single emission source. PLUVUE II predicts the transport, dispersion, chemical reactions,

optical effects and surface deposition of point or area source emissions. Addenda to the User's Manual were prepared in February 1985 to allow execution of PLUVUE II and the test cases on the UNIVAC computer.

a. *Recommendations for Regulatory Use*

The Plume Visibility Model (PLUVUE II) may be used on a case-by-case basis. When applying PLUVUE II to assess the visual impact of a plume, the following precautions should be taken to avoid the possibility of error:

1. Treat the optical effects of NO_2 and particles separately as well as together to avoid cancellation of NO_2 absorption with particle scattering.

2. Examine the visual impact of the plume in 0.1 (or 0), 0.5, and 1.0 times the expected level of particulate matter in the backgroumd air.

3. Examine the visual impact of the plume over the full range of obser-ver - plume - sun angles.

b. *Input Requirements*

Source data requirements are: Location and elevation; emission rates of SO_2, NO_x, and particulates; flue gas flow rate, exit velocity, and exit temperature; flue gas oxygen content; properties (including density, mass median and standard geometric deviation of radius) of the emitted aerosols in the accumulation (0.1–1.0 μm) and coarse (1.0–10 μm) size modes; and deposition velocities for SO_2, NO_x, coarse mode aerosol, and accumulations mode aerosol.

Meteorological data requirements are: Stability class, wind direction (for an observer-based run), wind speed, lapse rate, air temperature, relative humidity, and mixing height.

Other data requirements are: Ambient background concentrations of NO_x, NO_2, O_3, and SO_2, background visual range or sulfate and nitrate concentrations.

Receptor (observer) data requirements are: Location, elevation, terrain which will be observed through the plume (for observer based run with white, gray, and black viewing backgrounds).

c. *Output*

Printed output includes: Plume concentrations and visual effects at specified downwind distances for calculated or specified lines of sight.

d. *Type of Model*

PLUVUE is a Gaussian plume model.

e. *Pollutant Types*

PLUVUE II treats NO, NO_2, SO_2, H_2SO_4, HNO_3, O_3, primary and secondary particles to calculate effects on visibility.

f. *Source Receptor Relationship*

PLUVUE treats a single point or area source.

Predicted concentrations and visual effects are obtained at user specified downwind distances.

g. *Plume Behavior*

PLUVUE uses Briggs (1969, 1971, 1972) final plume rise equations.

h. *Horizontal Winds*

User-specified wind speed (and direction for an observer-based run) are assumed constant for the calculation.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Horizontal Dispersion*

User specified plume widths, or widths computed from either Pasquill-Gifford-Turner curves (Turner, 1969) or TVA curves (Carpenter, et al., 1971) are used in PLUVUE.

k. *Vertical Dispersion*

User specified plume depths, or computer from Pasquill-Gifford-Turner curves (Turner, 1969) or TVA curves (Carpenter, et al., 1971) are used in PLUVUE.

l. *Chemical Transformation*

PLUVUE II treats the chemistry of NO, NO_2, O_3, OH, $O(^1D)$, SO_2, HNO_3, and H_2SO_4, by means of nine reactions. Steady state approximations are used for radicals and for the $NO/NO_2/O_3$ reactions.

m. *Physical Removal*

Dry deposition of gaseous and particulate pollutants is treated using deposition velocities.

n. *Evaluation Studies*

Bergstrom, R. W., C. Seigneur, B. L. Babson, H. Y. Holman and M. A. Wojcik, 1981. Comparison of the Observed and Predicted Visual Effects Caused by Power Plant Plumes. Atmospheric Environment, 15: 2135–2150.

Bergstrom, R. W., Seigneur, C. D. Johnson, and L. W. Richards, 1984. Measurements and Simulations of the Visual Effects of Particulate Plumes. Atmospheric Environment, 18(10): 2231–2244.

Seigneur, C., R. W. Bergstrom, and A. B. Hudischewskyj, 1982. Evaluation of the EPA PLUVUE Model and the ERT Visibility Model Based on the 1979 VISTTA Data Base. EPA Publication No. EPA–450/4–82–008. U.S. Environmental Protection Agency, Research Triangle Park, NC.

White, W. H., C. Seigneur, D. W. Heinold, M. W. Eltgroth, L. W. Richards, P. T. Roberts, P. S. Bhardwaja, W. D. Conner and W. E. Wilson, Jr, 1985. Predicting the Visibility of Chimney Plumes: An Inter-comparison of Four Models with Observations at a Well-Controlled Power Plant. Atmospheric Environment, 19: 515–528.

B.20 Point, Area, Line Source Algorithm (PAL–DS)

Reference

Petersen, W. B, 1978. User's Guide for PAL—A Gaussian-Plume Algorithm for Point, Area, and Line Sources. EPA Publication No. EPA–600/4–78–013. Office of Research and Development, Research Triangle Park, NC. (NTIS No. PB 281306)

Rao, K. S. and H. F. Snodgrass, 1982. PAL–DS Model: The PAL Model Including Deposition and Sedimentation. EPA Publication No. EPA–600/8–82–023. Office of Research and Development, Research Triangle Park, NC. (NTIS No. PB 83–117739)

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. Phone: (703) 487–4650

Abstract

PAL–DS is an acronym for this point, area, and line source algorithm and is a method of estimating short-term dispersion using Gaussian-plume steady-state assumptions. The algorithm can be used for estimating concentrations of non-reactive pollutants at 99 receptors for averaging times of 1 to 24 hours, and for a limited number of point, area, and line sources (99 of each type). This algorithm is not intended for application to entire urban areas but is intended, rather, to assess the impact on air quality, on scales of tens to hundreds of meters, of portions of urban areas such as shopping centers, large parking areas, and airports. Level terrain is assumed. The Gaussian point source equation estimates concentrations from point sources after determining the effective height of emission and the upwind and crosswind distance of the source from the receptor. Numerical integration of the Gaussian point source equation is used to determine concentrations from the four types of line sources. Subroutines are included that estimate concentrations for multiple lane line and curved path sources, special line sources (line sources with endpoints at different heights above ground), and special curved path sources. Integration over the area source, which includes edge effects from the source region, is done by considering finite line sources perpendicular to the wind at intervals upwind from the receptor. The crosswind integration is done analytically; integration upwind is done numerically by successive approximations.

The PAL–DS model utilizes Gaussian plume-type diffusion-deposition algorithms based on analytical solutions of a gradient-transfer model. The PAL–DS model can treat deposition of both gaseous and suspended particulate pollutants in the plume since gravitational settling and dry deposition of the particles are explicitly accounted for. The analytical diffusion-deposition expressions listed in this report in the limit when pollutant settling and deposition velocities are zero, they reduce to the usual Gaussian plume diffusion algorithms in the PAL model.

a. *Recommendations for Regulatory Use*

PAL–DS can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. PAL–DS must be executed in the equivalent mode.

PAL–DS can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that PAL–DS is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

VOL 58 ISS 137 JL 20 1993 UMI

b. *Input Requirements*

Source data: Point-sources—emission rate, physical stack height, stack gas temperature, stack gas velocity, stack diameter, stack gas volume flow, coordinates of stack, initial σ_y and σ_z; area sources—source strength, size of area source, coordinates of S.W. corner, and height of area source; and line sources—source strength, number of lanes, height of source, coordinates of end points, initial σ_y and σ_z, width of line source, and width of median. Diurnal variations in emissions are permitted. When applicable, the settling velocity and deposition velocity are also permitted.

Meteorological data: Wind profile exponents, anemometer height, wind direction and speed, stability class, mixing height, air temperature, and hourly variations in emission rate.

Receptor data: Receptor coordinates.

c. *Output*

Printed output includes:

Hourly concentration and deposition flux for each source type at each receptor; and

Average concentration for up to 24 hrs for each source type at each receptor.

d. *Type of Model*

PAL–DS is a Gaussian plume model.

e. *Pollutant Types*

PAL–DS may be used to model non-reactive pollutants.

f. *Source-Receptor Relationships*

Up to 99 sources of each of 6 source types: Point, area, and 4 types of line sources.

Source and receptor coordinates are uniquely defined.

Unique stack height for each source.

Coordinates of receptor locations are user defined.

g. *Plume Behavior*

Briggs final plume rise equations are used.

Fumigation and downwash are not treated.

If plume height exceeds mixing height, concentrations are assumed equal to zero.

Surface concentrations are set to zero when the plume centerline exceeds mixing height.

h. *Horizontal Winds*

User-supplied hourly wind data are used.

Constant, uniform (steady-state) wind is assumed within each hour. Wind is assumed to increase with height.

i. *Vertical Wind Speeds*

Assumed equal to zero.

j. *Horizontal Dispersion*

Rural dispersion coefficients from Turner (1969) are used with no adjustments made for surface roughness.

Six stability classes are used.

Dispersion coefficients (Pasquill-Gifford) are assumed based on a 3 cm roughness height.

k. *Vertical Dispersion*

Six stability classes are used.

Rural dispersion coefficients from Turner (1969) are used; no further ajustments are made for variation in surface roughness, transport or averaging time.

Multiple reflection is handled by summation of series until the vertical standard deviation equals 1.6 times mixing height. Uniform vertical mixing is assumed thereafter.

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

PAL–DS can treat deposition of both gaseous and suspended particulates in the plume since gravitational settling and dry deposition of the particles are explicitly accounted for.

n. *Evaluation Studies*

None.

B.21 Random-Walk Advection and Dispersion Model (RADM)

References

Austin, D. I., A. W. Bealer, and W. R. Goodin, 1981. RandomWalk Advection and Dispersion Model (RADM), User's Manual. Dames & Moore, Los Angeles, CA.

Runchal, A. K., W. R. Goodin, A. W. Bealer, D. I. Austin, 1981. Technical Description of the Random-Walk Advection and Dispersion Model (RADM). Dames & Moore, Los Angeles, CA.

Availability

A magnetic tape of the computer code and the user's manual are available for a cost of $440.00 from: Mr. C. James Olsten, Dames & Moore, 445 South Figueroa Street, Suite 3500, Los Angeles, CA 90071–1665.

Abstract

RADM is a Lagrangian dispersion model which uses the randomwalk method to simulate atmospheric dispersion. The technical procedure involves tracking tracer particles having a given mass through advection by the mean wind and diffusion by the random motions of atmospheric turbulence. Turbulent movement is calculated by determining the probability distribution of particle movement for a user-defined time step. A random number between 0 and 1 is then computed to determine the distance of particle movement according to the probability distribution. A large number of particles is used to statistically represent the distribution of pollutant mass. Concentrations are calculated by summing the mass in a volume around the receptor of interest and dividing the total mass by the volume. Concentrations can be calculated for any averaging time. RADM is applicable to point and area sources.

a. *Recommendations for Regulatory Use*

There is no specific recommendation at the present time. The RADM model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: Emission rate, physical stack height, stack gas exit velocity, stack inside diameter, stack gas temperature. Hourly rates may be specified.

Meteorological data requirements are: Gridded wind field including wind speed, wind direction, stability class, temperature and mixing height.

Receptor data requirements are: coordinates, ground elevation, and receptor cell dimensions.

c. *Output*

Printed output includes:

Average concentration by receptor for user-specified averaging time (concentrations are printed for each block of n hours).

Average concentrations for the entire period of the run.

d. *Type of Model*

RADM is a random-walk Lagrangian dispersion model.

e. *Pollutant Types*

RADM may be used to model inert gases and particles, and pollutants with exponential decay or formation rates.

f. *Source-Receptor Relationship*

Multiple point and area sources may be specified at independent locations.

Unique stack characteristics are used for each source.

No restriction is placed on receptor locations.

Perfect reflection at the surface is assumed for the portion not removed by dry deposition.

Particles leaving the gridded area are removed from simulation.

g. *Plume Behavior*

Briggs (1975) final plume rise equations are used.

Inversion penetration by the plume is allowed.

Fumigation may occur as mixing height rises above a plume which has penetrated an inversion.

h. *Horizontal Winds*

Wind speed, wind direction, stability class, temperature and mixing height are supplied on a gridded array.

Any wind field may be used as long as output is in correct format for RADM input.

Wind field is updated at user-specified intervals, which may be less than one hour if data are available.

Vertical wind speed profile is used based on surface roughness and stability using Monin-Obukhov length.

i. *Vertical Wind Speed*

Assumed equal to zero.

j. *Horizontal Dispersion*

Dispersion is based on diffusivity values calculated from surface roughness, stability class and Monin-Obukhov length.

Diffusivity is a function of height.

k. *Vertical Dispersion*

Dispersion is based on diffusivity values calculated from surface roughness, stability class and Monin-Obukhov length.

Diffusivity is a function of height.

l. *Chemical Transformations*

Simple exponential decay or formation is used.

m. *Physical Removal*

Dry deposition is treated.

n. *Evaluation Studies*

Runchal, A. K., A. W. Bealer, and G. S. Segal, 1978. A Completely Lagrangian Random-Walk Model for Atmospheric Dispersion. Proceedings of the Thirteenth International Colloquium on Atmospheric

Pollution, National Institute for Applications of Chemical Research, Paris; pp. 137–142.

Goodin, W. R., A. K. Runchal and G. Y. Lou, 1980. Evaluation and Application of the Random-Walk Advection and Dispersion Model (RADM). Symposium on Intermediate Range Atmospheric Transport Processes and Technology Assessment, DOE/NOAA/ORNL, Gatlinburg, TN.

Goodin, W. R., D. I. Austin and A. K. Runchal, 1980. A Model Verification and Prediction Study of $SO_2/SO_4^=$ Concentrations in the San Francisco Bay Area. Second Joint Conference on Applications of Air Pollution Meteorology, AMS/APCA, New Orleans, LA.

B.22 Reactive Plume Model (RPM–II)

Reference

D. Stewart, M. Yocke, and M–K Liu, 1981. Reactive Plume Model—RPM–II, User's Guide, EPA Publication No. EPA–600/8–81–021. U.S. Environmental Protection Agency, ESRL, Research Triangle Park, NC. (NTIS No. PB 82–230723)

Availability

The above report is available from NTIS ($16.95 for paper copy; $5.95 on microfiche). The accession number for the computer tape for RPM–II is PB83–154898, and the cost is $460.00. Requests should be sent to: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. Phone: (703) 487–4650.

Abstract

The Reactive Plume Model, RPM-II, is a computerized model used for estimating short-term concentrations of primary and secondary pollutants resulting from point or area source emissions. The model is capable of simulating the complex interaction of plume dispersion and non-linear photochemistry. Two main features of the model are: (1) The horizontal resolution within the plume, which offers a more realistic treatment of the entrainment process, and (2) its flexibility with regard to choices of chemical kinetic mechanisms.

a. *Recommendations for Regulatory Use*

There is no specific recommendation at the present time. The RPM–II Model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: Emission rates, name, and molecular weight of each species of pollutant emitted; ambient pressure, ambient temperature, stack height, stack diameter, stack exit velocity, stack gas temperature, and location.

Meteorological data requirements are: Wind speeds, plume widths or stability classes, photolytic rate constants, and plume depths or stability classes.

Receptor data requirements are: Downwind distances or travel times at which calculations are to be made.

Initial concentration of all species is required, and the specification of downwind ambient concentrations to be entrained by the plume is optional.

c. *Output*

Short-term concentrations of primary and secondary pollutants at either user specified time increments, or user specified downwind distances.

d. *Type of Model*

Reactive plume model.

e. *Pollutant Types*

Currently, using the Carbon Bond Mechanism (CBM–II), 35 species are simulated (68 reactions), including NO, NO_2, O_3, SO_2, $SO_4^=$, five categories of reactive hydrocarbons, secondary nitrogen compounds, organic aerosols, and radical species.

f. *Source-Receptor Relationships*

Single point source.

Single area or volume source.

Multiple sources can be simulated if they are lined up along the wind trajectory.

Predicted concentrations are obtained at a user specified time increment, or at user specified downwind distances.

g. *Plume Behavior*

Briggs (1971) plume rise equations are used.

h. *Horizontal Winds*

User specifies wind speeds as a function of time.

i. *Vertical Wind Speed*

Not treated.

j. *Horizontal Dispersion*

User specified plume widths, or user may specify stability and widths will be computed using Turner (1969).

k. *Vertical Dispersion*

User specified plume depths, or user may specify stability in which case depths will be calculated using Turner (1969). Note that vertical uniformity in plume concentration is assumed.

l. *Chemical Transformation*

The RPM–II has the flexibility of using any user input chemical kinetic mechanism. Currently it is run using the chemistry of the Carbon Bond Mechanism, CBM–II (Whitten, Killus, and Hogo, 1980). The CBM–II, as incorporated in the RPM–II, contains 35 species and 68 reactions focusing primarily on hydrocarbon-nitrogen oxides-ozone photochemistry.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Stewart, D. A. and M–K Liu, 1981. Development and Application of a Reactive Plume Model. Atmospheric Environment, 15: 2377–2393.

B.23 Regional Transport Model (RTM–II)

Reference

Morris, R. E., D. A. Stewart, and M–K Liu, 1982. Revised User's Guide to the Regional Transport Model—Version II. Publication No. SYSAPP–83/022, Systems Applications Inc., San Rafael, CA.

Availability

The computer code is available on magnetic tape for a cost of $100 (which includes the User's Manual) from: Systems Applications, Inc., 101 Lucas Valley Road, San Raphael, CA 94903.

Abstract

The Regional Transport Model (RTM–II) is a computer based air quality grid model whose primary use is estimating the distribution of air pollution from multiple point sources and area sources at large distances (on the scale of several hundred to a thousand kilometers). RTM–II offers significant advantages over other long-range transport models because it is a quasi-three dimensional hybrid (grid plus Lagrangian puff) approach to the solution of the advectiondiffusion equation. Furthermore, its formulation allows the treatment of spatially and temporally varying wind, mixing depths, diffusivity, and transformation rate fields. It is also capable of treating spatially varying surface depletion processes. While the modeling concept is capable of predicting concentration distributions of many pollutant species (e.g., NO_X, CO, TSP, etc.), the most notable applications of the model to date focus on the long-range transport and transformation of SO_2 and sulfates.

a. *Recommendations for Regulatory Use*

There is no specific recommendation at the present time. The RTM Model may be used on a case-by-case basis.

b. *Input Requirements*

Source data requirements are: Major point source SO_2 and primary sulfate emissions, including stack height, diameter, exit velocity, exit temperature, and hourly emission factors; area source SO_2 and primary $SO_4^=$ emissions in gridded format.

Meteorological data requirements are: Gridded u, v wind fields at user specified update interval (model configured for separate wind fields in each of two layers), derived from twice daily radiosonde data, time variation linear between a maximum convectively driven boundary layer and a minimum mechanically driven boundary layer, spatial interpolation by an inverse distance weighted objective scheme; gridded hourly precipitation fields determined either by averaging precipitation rate of all stations in grid (if high density), or by inverse distance weighted interpolation (if low density).

Other data requirements are: Parameter file, containing region definition, starting time, output and averaging time intervals, region top specifications, and various operational flags; horizontal diffusivity fields calculated from wind fields; land use type file; deposition velocities and roughness length determined internally from tabulated values associated with land use types; initial conditions and boundary conditions for both layers (boundary conditions may be time varying).

c. *Output*

Printed output includes:

Diagnostic information.

Instantaneous SO_2 and sulfate concentration fields for lower and upper layers at pre-specified time intervals.

Average SO_2 and sulfate concentration fields for upper and lower layer, over pre-specified time intervals. Accumulated dry

VOL 58 ISS 137 JL 20 1993 UMI

and wet deposition for each species over pre-selected time intervals.

d. *Type of Model*

RTM–II is a hybrid Eulerian grid and Lagrangian puff model.

e. *Pollutant Types*

RTM–II is configured for SO_2 and sulfate only. Primary sulfate emissions may be included.

f. *Source Receptor Relationships*

Area sources and minor point sources are specified at each grid within the modeling domain.

Up to 500 major point sources (modeled with the Gaussian puff submodel) are allowed.

Grid average concentration and deposition totals are provided at each grid within the modeling domain (dry deposition for lower layer grid only). All lower grid average concentration values are assumed to be representative of ground-level receptors.

g. *Plume Behavior*

Plume rise (Briggs, 1971) is calculated for all major point sources regardless of whether they are treated in the Gaussian puff submodel.

h. *Horizontal Winds*

Gridded u, v wind fields are used at a user specified update interval for each layer.

Gaussian puff submodel tracks puff centroids horizontally at user specified time intervals.

i. *Vertical Wind Speed*

Considered implicitly if convergent or divergent winds are provided.

j. *Horizontal Dispersion*

Plume dispersion is based on σ_y differentials derived from a power law fit to Turner (1969) dispersion curves. Variable stabilities within adjacent cells are considered.

Horizontal eddy diffusivities are proportional to the wind field deformation and are calculated from the gridded wind fields as ancilliary input. Maximum and minimum constraints are imposed on the magnitude of the diffusivities.

k. *Vertical Dispersion*

Plume dispersion is based on σ_z differentials derived from a power law fit to Turner (1969) dispersion curves. Variable stabilities within adjacent cells are considered.

Vertical dispersion across the mixed layer-surface layer interface is considered when calculating pollutant deposition.

l. *Chemical Transformation*

Linear SO_2 oxidation is treated. Rate constant is diurnally and latitudinally variable. A minimum oxidation rate constant is specified to account for heterogeneous oxidation during the nighttime.

m. *Physical Removal*

Dry deposition of SO_2 and sulfate is treated. Precipitation scavenging of SO_2 (reversible) and sulfate (irreversible) is treated.

n. *Evaluation Studies*

Stewart, D. A., R. E. Morris, M-K Liu, and D. Henderson, 1983. Evaluation of an Episodic Regional Transport Model for a Multiple Day Episode. *Atmospheric Environment*, 17: 1225–1252.

B.24 SHORTZ

Reference

Bjorklund, J. R., and J. F. Bowers, 1982. User's Instructions for the SHORTZ and LONGZ Computer Programs, Volumes I and II. EPA Publication No. EPA–903/9–82–004a and b. U.S. Environmental Protection Agency, Region III, Philadelphia, PA.

Availability

This model is available as part of UNAMAP (Version 6). The computer code is available on magnetic tape from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. Phone: (703) 487–4650.

Abstract

SHORTZ utilizes the steady state bivariate Gaussian plume formulation for both urban and rural areas in flat or complex terrain to calculate ground-level ambient air concentrations. It can calculate 1-hour, 2-hour, 3-hour etc. average concentrations due to emissions from stacks, buildings and area sources for up to 300 arbitrarily placed sources. The output consists of total concentration at each receptor due to emissions from each userspecified source or group of sources, including all sources. If the option for gravitational settling is invoked, analysis cannot be accomplished in complex terrain without violating mass continuity.

a. *Recommendations for Regulatory Use*

SHORTZ can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. SHORTZ must be executed in the equivalent mode.

SHORTZ can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that SHORTZ is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: For point, building or area sources, location, elevation, total emission rate (optionally classified by gravitational settling velocity) and decay coefficient; for stack sources, stack height, effluent temperature, effluent exit velocity, stack radius (inner), actual volumetric flow rate, and ground elevation (optional); for building sources, height, length and width, and orientation; for area sources, characteristic vertical dimension, and length, width and orientation.

Meteorological data requirements are: Wind speed and measurement height, wind profile exponents, wind direction, standard deviations of vertical and horizontal wind directions, (i.e., vertical and lateral turbulent intensities), mixing height, air temperature, and vertical potential temperature gradient.

Receptor data requirements are: coordinates, ground elevation.

c. *Output*

Printed output includes: Total concentration due to emissions from user-specified source groups, including the combined emissions from all sources (with optional allowance for depletion by deposition).

d. *Type of Model*

SHORTZ is a Gaussian plume model.

e. *Pollutant Types*

SHORTZ may be used to model primary pollutants. Settling and deposition of particulates are treated.

f. *Source-Receptor Relationships*

User specified locations for sources and receptors are used.

Receptors are assumed to be at ground level.

g. *Plume Behavior*

Plume rise equations of Bjorklund and Bowers (1982) are used.

Stack tip downwash (Bjorklund and Bowers, 1982) is included.

All plumes move horizontally and will fully intercept elevated terrain.

Plumes above mixing height are ignored.

Perfect reflection at mixing height is assumed for plumes below the mixing height.

Plume rise is limited when the mean wind at stack height approaches or exceeds stack exit velocity.

Perfect reflection at ground is assumed for pollutants with no settling velocity.

Zero reflection at ground is assumed for pollutants with finite settling velocity.

Tilted plume is used for pollutants with settling velocity specified. Buoyancy-induced dispersion (Briggs, 1972) is included.

h. *Horizontal Winds*

Winds are assumed homogeneous and steady-state.

Wind speed profile exponents are functions of both stability class and wind speed. Default values are specified in Bjorklund and Bowers (1982).

i. *Vertical Wind Speed*

Vertical winds are assumed equal to zero.

j. *Horizontal Dispersion*

Horizontal plume size is derived from input lateral turbulent intensities using adjustments to plume height, and rate of plume growth with downwind distance specified in Bjorklund and Bowers (1982).

k. *Vertical Dispersion*

Vertical plume size is derived from input vertical turbulent intensities using adjustments to plume height and rate of plume growth with downwind distance specified in Bjorklund and Bowers (1982).

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Time constant is input by the user.

m. *Physical Removal*

Settling and deposition of particulates are treated.

n. *Evaluation Studies*

Bjorklund, J. R., and J. F. Bowers, 1982. User's Instructions for the SHORTZ and LONGZ Computer Programs. EPA Publication No. EPA–903/9–82004. EPA Environmental Protection Agency, Region III, Philadelphia, PA.

Wackter, D., and R. Londergan, 1984. Evaluation of Complex Terrain Air Quality Simulation Models. EPA Publication No. EPA–450/4–84–017. U.S. Environmental Protection Agency, Research Triangle Park, NC.

B.25 Simple Line-Source Model (GMLINE)

Reference

Chock, D. P., 1980. User's Guide for the Simple Line-Source Model for Vehicle Exhaust Dispersion Near a Road, Environmental Science Department, General Motors Research Laboratories, Warren, MI.

Availability

Copies of the above reference are available without charge from: Dr. D. P. Chock, Environmental Science Department, General Motors Research Laboratories, General Motors Technical Center, Warren, MI 48090.

The User's Guide contains the short algorithm of the model.

Abstract

GMLINE is a simple steady-state Gaussian plume model which can be used to determine hourly (or half-hourly) averages of exhaust concentrations within 100m from a roadway on a relatively flat terrain. The model allows for plume rise due to the heated exhaust, which can be important when the crossroad wind is very low. It also utilizes a new set of vertical dispersion parameters which reflects the influence of traffic-induced turbulence.

a. *Recommendations for Regulatory Use*

GMLINE can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. GMLINE must be executed in the equivalent mode.

GMLINE can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in Section 3.2, that GMLINE is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Emission rate per unit length per lane, the number of lanes on each road, distances from lane centers to the receptor, source and receptor heights.

Meteorological data requirements are: Buoyancy flux, ambient stability condition, ambient wind and its direction relative to the road.

Receptor data requirements are: Distance and height above ground.

c. *Output*

Printed output includes: Hourly or (half-hourly) concentrations at the receptor due to exhaust emission from a road (or a system of roads by summing the results from repeated model applications).

d. *Type of Model*

GMLINE is a Gaussian plume model.

e. *Pollutant Types*

GMLINE can be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

GMLINE treats arbitrary location of line sources and receptors.

g. *Plume Behavior*

Plume-rise formula adequate for a heated line source is used.

h. *Horizontal Winds*

GMLINE uses user-supplied hourly (or half-hourly) ambient wind speed and direction. The wind measurements are from a height of 5 to 10m.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

j. *Dispersion Parameters*

Horizontal dispersion parameter is not used.

k. *Vertical Dispersion*

A vertical dispersion parameter is used which is a function of stability and wind-road angle. Three stability classes are used: unstable, neutral and stable. The parameters take into account the effect of traffic-generated turbulence (Chock, 1980).

l. *Chemical Transformation*

Not treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Chock, D. P., 1978. A Simple Line-Source Model for Dispersion Near Roadways. *Atmospheric Environment*, 12: 823–829.

Sistla, G., P. Samson, M. Keenan, and S. T. Ras, 1979. A Study of Pollutant Dispersion Near Highways. *Atmospheric Environment*, 13: 669–685.

B.26 Texas Climatological Model (TCM–2)

Reference

Staff of the Texas Air Control Board, 1980. User's Guide to the TEXAS CLIMATOLOGICAL MODEL (TCM). Texas Air Control Board, Permits Section, 6330 Highway 290 East, Austin, TX.

Availability

The TCM–2 model is available from the Texas Air Control Board at the following cost:

User's Manual only—$20.00
User's Manual and Model (Magnetic Tape)—$80.00

Requests should be directed to: Data Processing Division, Texas Air Control Board, 6330 Highway 290 East, Austin, TX 78723.

Abstract

TCM is a climatological steady-state Gaussian plume model for determining long-term (seasonal or annual arithmetic) average pollutant concentrations of non-reactive pollutants.

a. *Recommendations for Regulatory Use*

TCM can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. TCM must be executed in the equivalent mode.

TCM can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that TCM is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Point source coordinates emission rates (by pollutant), stack height, stack diameter, stack gas exit velocity, stack gas temperature; area source coordinates (southwest corner), size, emission rate.

Meteorological data requirements are: Stability wind rose and average temperature.

Receptor data requirements are: Size and spacing of the rectangular receptor grid.

c. *Output*

Printed output includes:

Period average concentrations listed, displayed in map format, or punched on cards at the user's option.

Culpability list option provides the contributions of the five highest contributors at each receptor.

Maximum concentration option provides the maximum concentration for each scenario (run).

d. *Type of Model*

TCM is a Gaussian plume model.

e. *Pollutant Types*

TCM may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

Arbitrary location of point sources and area sources are treated.

Arbitrary location and spacing of rectangular grid of receptors are used. (Area source grid is best defined in terms of the receptor grid, so that the receptors fall in the center of the area source).

Receptors located in simple terrain may be modeled.

g. *Plume Behavior*

Briggs (1975) plume rise equations, including momentum rise, are used for point sources.

Two-thirds power law is used when transitional rise option is selected. Flares are treated.

h. *Horizontal Winds*

Characteristic wind speed is calculated for each direction-stability class combination.

This characteristic speed is the inverse of the average inverse speed for the stability-wind direction combination.

Wind speed is adjusted to stack height by a power law using exponents of 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 for stabilities A through F, respectively.

i. *Vertical Wind Speed*

Vertical wind speed is assumed to be zero.

j. *Horizontal Dispersion*

Uniform distribution within each 22.5 degree sector is assumed.

k. *Vertical Dispersion*

Dispersion parameters for point sources are fit to Turner (1969); for area sources in the urban mode the fit is to Gifford and Hanna (1970).

Seven stability classes are used.

Pasquill A through F are treated, with daytime "D" and nighttime "D" given separately.

In the urban mode, E and F stability classes are treated as D-night. Perfect reflection at the ground is assumed.

l. *Chemical Transformation*

Chemical transformations are treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is treated using exponential decay. Half-life is input by the user.

n. *Evaluation Studies*

Londergan, R. J., D. H. Minott, D. J. Wachter and R. R. Fizz, 1983. Evaluation of Urban Air Quality Simulation Models. EPA Publication No. EPA–450/4–83–020. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Durrenberger, C. S., B. A. Braberg, and K. Zimmermann, 1983. Development of a Protocol to be Used for Dispersion Model Comparison Studies. Presented at the 76th Annual Meeting of the Air Pollution Control Association, Atlanta, GA.

B.27 Texas Episodic Model (TEM–8)

Reference

Staff of the Texas Air Control Board, 1979. User's Guide to the TEXAS EPISODIC MODEL. Texas Air Control Board, Permits Section, 6330 Highway 290 East, Austin, TX.

Availibility

The TEM–8 model is available from the Texas Air Control Board at the following costs:

User's Manual only—$20.00
User's Manual and Model (Magnetic Tape)—$80.00

Requests should be directed to: Data Processing Division, Texas Air Control Board, 6330 Highway 290 East, Austin, TX 78723.

Abstract

TEM is a short-term, steady-state Gaussian plume model for determining short-term concentrations of non-reactive pollutants.

a. *Recommendations for Regulatory Use*

TEM can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. TEM must be executed in the equivalent mode.

TEM can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that TEM is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements*

Source data requirements are: Locations, average emission rates and heights of emissions for both point and area sources; stack gas temperature, stack gas exit velocity, and stack inside diameter for point sources for plume rise calculations.

Meteorological data requirements are: Hourly surface weather data from the EPA meteorological preprocessor program. Preprocessor output includes hourly stability class, wind direction, wind speed, temperature, and mixing height. Any combination of hourly meteorological data up to 24 hours may be used, (e.g., 1, 3, 5, 8, 24 hours).

Receptor requirements are: Size, spacing and location of rectangular grid of receptors.

c. *Output*

Printed output includes: concentration list;
Spatial array (concentrations displayed as on a map);
Punched cards of the concentration list;
Culpability list (percent contributions) of the five highest contributors to each receptor;
Maximum concentration; and
Point source list.

d. *Type of Model*

TEM is a Gaussian plume model.

e. *Pollutant Types*

TEM can be used to model non-reactive pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationship*

Arbitrary locations of point sources and area sources are treated.

Arbitrary location and spacing of rectangular grid of receptors is treated. Area source grid is best defined in terms of the receptor grid so that the receptors fall in the centers of the area sources.

Receptors located in simple terrain may be modeled.

g. *Plume Behavior*

Briggs (1975) plume rise equations are used, including momentum rise, for point sources.

Transitional rise is calculated.

Stack-tip downwash may be evaluated.

h. *Horizontal Winds*

Wind speeds are adjusted to release height by power law formula, using exponents of 0.10, 0.15, 0.20, 0.25, 0.30 and 0.35 for stabilities A through F, respectively.

Steady-state wind is assumed.

i. *Vertical Wind Speed*

Vertical wind is assumed equal to zero.

j. *Horizontal Dispersion*

Gaussian plume coefficients are fitted to Turner (1969). The Turner curves are treated as 10-minute averages and the coefficients are adjusted to represent 30-minute or hourly as appropriate.

In the urban mode, stable cases are shifted to neutral nighttime (D-night) conditions and urban mixing heights are used.

k. *Vertical Dispersion*

Dispersion parameters for point sources are fit to Turner (1969); for area sources, in the urban mode, the fit is to Gifford and Hanna (1970).

Total reflection of the plume at the ground is assumed.

In the urban mode, E and F stability classes are treated as D-nighttime.

l. *Chemical Transformation*

Chemical transformation is treated using exponential decay. Half-life is input by the user.

m. *Physical Removal*

Physical removal is treated using exponential decay. Half-life is input by the user.

n. *Evaluation Studies*

Londergan, R., D. Minott, D. Wachter, T. Kincaid and D. Bonitata, 1983. Evaluation of Rural Air Quality Simulation Models. EPA–450/4–83–003, Environmental Protection Agency, Research Triangle Park, NC.

Durrenberger, C. J., B. A. Broberg, and K. Zimmermann, 1983. Development of a Protocol to be Used for Dispersion Model Comparison Studies. Presented at the 76th Annual Meeting of the Air Pollution Control Association, Atlanta, GA.

B.28 AVACTA II

Reference

Zannetti, P., G. Carboni and R. Lewis, 1985. AVACTA II User's Guide (Release 3). AeroVironment, Inc., Technical Report AV–OM–85/520.

Availability

A magnetic tape copy of the FORTRAN coding and the user's guide are available at a cost of $2,500 (non-profit organization) or $3,500 (other organizations) from: AeroVironment, Inc., 825 Myrtle Avenue, Monrovia, CA 91016. Phone: (818) 357–9983.

Abstract

The AVACTA II model is a Gaussian model in which atmospheric dispersion phenomena are described by the evolution of plume elements, either segments or puffs. The model can be applied for short time (e.g., one day) simulations in both transport and calm conditions.

The user is given flexibility in defining the computational domain, the three-dimensional meteorological and emission input, the receptor locations, the plume rise formulas, the sigma formulas, etc. Without explicit user's specifications, standard default values are assumed.

AVACTA II provides both concentration fields on the user specified receptor points, and dry/wet deposition patterns throughout the domain. The model is particularly oriented to the simulation of the dynamics and transformation of sulfur species (SO_2 and SO_4=), but can handle virtually any pair of primary-secondary pollutants.

a. *Recommendations for Regulatory Use*

AVACTA II can be used if it can be demonstrated to estimate concentrations equivalent to those provided by the preferred model for a given application. AVACTA II must be executed in the equivalent mode.

AVACTA II can be used on a case-by-case basis in lieu of a preferred model if it can be demonstrated, using the criteria in section 3.2, that AVACTA II is more appropriate for the specific application. In this case the model options/modes which are most appropriate for the application should be used.

b. *Input Requirements* (all time-varying)

A time-varying input is required at each computational step. Only those data which have changed need to be input by the user.

Source data requirements are: Coordinates, emission rates of primary and secondary pollutants, initial plume sigmas (for non-point sources), exit temperature, exit velocity, stack inside diameter.

Meteorological data requirements are: Surface wind measurements, wind profiles (if available), atmospheric stability profiles, mixing heights.

Receptor data requirements are: Receptor coordinates.

Other data requirements: Coordinates of the computational domain, grid cell specification, terrain elevations, user's computational and printing options.

c. *Output*

The model's outpout is provided according to user's printing flags. Hourly, 3-hour and 24-hour concentration averages are computed, together with highest and highest-second-highest concentration values. Both partial and total concentrations are provided.

d. *Type of Model*

AVACTA II is Gaussian segment/puff model.

e. *Pollutant Types*

AVACTA II can handle any couple of primary-secondary pollutants (e.g., SO_2 and SO_4=).

f. *Source Receptor Relationship*

The AVACTA II approach maintains the basic Gaussian formulation, but allows a numerical simulation of both nonstationary and nonhomogeneous meteorological conditions. The emitted pollutant material is divided into a sequence of "elements," either segments or puffs, which are connected together but whose dynamics are a function of the local meteorological conditions. Since the meteorological parameters vary with time and space, each element evolves according to the different meteorological conditions encountered along its trajectory.

AVACTA II calculates the partial contribution of each source in each receptor during each interval. The partial concentration is the sum of the contribution of all existing puffs, plus that of the closest segment.

g. *Plume Behavior*

The user can select the following plume rise formulas:

Briggs (1969, 1971, 1972)
CONCAWE (Briggs, 1975)
Lucas-Moore (Briggs, 1975)
User's function, i.e., a subroutine supplied by the user

With cold plumes, the program uses a special routine for the computation of the jet plume rise. The user can also select several computational options that control plume behavior in complex terrain and its total/partial reflections.

h. *Horizontal Winds*

A 3D mass-consistent wind field is optionally generated.

i. *Vertical Wind Speed*

A 3D mass-consistent wind field is optionally generated.

j. *Horizontal Dispersion*

During each step, the sigmas of each element are increased. The user can select the following sigma functions:

Pasquill-Gifford-Turner (in the functional form specified by Green et al., 1980)
Brookhaven (Gifford, 1975)
Briggs, open country (Gifford, 1975)
Briggs, urban, i.e., McElory-Pooler, (Gifford, 1975)
Irwin (1979)
LO–LOCAT (MacCready et al., 1974)
User-specified function, by points
User-specified function, with a user's subroutine

The virtual distance/age concept is used for incrementing the sigmas at each time step.

k. *Vertical Dispersion*

During each step, the sigmas of each element are increased. The user can select the following sigma functions:

Pasquill-Gifford-Turner (in the functional form specified by Green et al., 1980)
Brookhaven (Gifford, 1975)
Briggs, open country (Gifford, 1975)
Briggs, urban, i.e., McElroy-Pooler, (Gifford, 1975)
LO–LOCAT (MacCready et al., 1974)
User-specified function, with a user's subroutine

The virtual distance/age concept is used for incrementing the sigmas at each time step.

l. *Chemical Transformation*

First order chemical reactions (primary-to-secondary pollutant).

m. *Physical Removal*

First order dry and wet deposition schemes.

n. *Evaluation Studies*

Zannetti P., G. Carboni and A. Ceriani, 1985. AVACTA II Model Simulations of Worst-Case Air Pollution Scenarios in Northern Italy. 15th International Technical Meeting on Air Pollution Modeling and Its Application, St. Louis, Missouri, April 15–19.

B.29 Shoreline Dispersion Model (SDM)

Reference

PEI Associates, 1988. User's Guide to SDM—A Shoreline Dispersion Model. EPA Publication No. EPA–450/4–88–017. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89–164305)

Availability

The user's guide is available from the National Technical Information Service. The model code is available on the Support Center for Regulatory Air Models Bulletin Board System (see page B–1).

Abstract

SDM is a hybrid multipoint Gaussian dispersion model that calculates source impact for those hours during the year when fumigation events are expected using a special fumigation algorithm and the MPTER regulatory model for the remaining hours (see Appendix A).

a. *Recommendations for Regulatory Use*

SDM may be used on a case-by-case basis for the following applications:

- Tall stationary point sources located at a shoreline of any large body of water;
- Rural or urban areas;
- Flat terrain;
- Transport distances less than 50 km;
- 1-hour to 1-year averaging times.

b. *Input Requirements*

Source data: Location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter, stack gas temperature and shoreline coordinates.

Meteorological data: Hourly values of mean wind speed within the Thermal Internal Boundary Layer (TIBL) and at stack height; mean potential temperature over land and over water; over water lapse rate; and surface sensible heat flux. In addition to these meteorological data, SDM access standard NWS surface and upper air meteorological data through the RAMMET preprocessor.

Receptor data: coordinates for each receptor.

c. *Output*

Printed output includes the MPTER model output as well as: special shoreline fumigation applicability report for each day and source; high-five tables on the standard output with "F" designation next to the concentration if that averaging period includes a fumigation event.

d. *Type of Model*

SDM is hybrid Gaussian model.

e. *Pollutant Types*

SDM may be used to model primary pollutants. Settling and deposition are not treated.

f. *Source-Receptor Relationships*

SDM applies user-specified locations of stationary point sources and receptors. User input stack height, shoreline orientation and source characteristics for each source. No topographic elevation is input; flat terrain is assumed.

g. *Plume Behavior*

SDM uses Briggs (1975) plume rise for final rise. SDM does not treat stack tip or building downwash.

h. *Horizontal Winds*

Constant, uniform (steady-state) wind is assumed for an hour. Straight line plume transport is assumed to all downwind distances. Separate wind speed profile exponents (EPA, 1980) for both rural and urban cases are assumed.

i. *Vertical Wind Speed*

Vertical wind speed is assumed equal to zero.

VOL 58 ISS 137 JL 20 1993 UMI

j. *Horizontal Dispersion*

For the fumigation algorithm coefficients based on Misra (1980) and Misra and McMillan (1980) are used for plume transport in stable air above TIBL and based on Lamb (1978) for transport in the unstable air below the TIBL. An effective horizontal dispersion coefficient based on Misra and Onlock (1982) is used. For nonfumigation periods, algorithms contained in the MPTER model are used (see Appendix A).

k. *Vertical Dispersion*

For the fumigation algorithm, coefficients based on Misra (1980) and Misra and McMillan (1980) are used.

l. *Chemical Transformation*

Chemical transformation is not included in the fumigation algorithm.

m. *Physical Removal*

Physical removal is not explicitly treated.

n. *Evaluation Studies*

Environmental Protection Agency, 1987. Analysis and Evaluation of Statistical Coastal Fumigation Models. EPA Publication No. EPA–450/4–87–002. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS PB 87–175519)

B.30 WYNDvalley Model

Reference

Harrison, Halstead, 1992. "A User's Guide to WYNDvalley 3.11, an Eulerian-Grid Air-Quality Dispersion Model with Versatile Boundaries, Sources, and Winds," WYNDsoft Inc., Mercer Island, WA.

Availability

Copies of the user's guide and the executable model computer codes are available at a cost of $295.00 from: WYNDsoft, Incorporated, 6333 77th Avenue SE., Mercer Island, WA 98040. Phone: (206) 232–1619.

Abstract

WYNDvalley 3.11 is a multi-layer (up to five vertical layers) Eulerian grid dispersion model that permits users flexibility in defining borders around the areas to be modeled, the boundary conditions at these borders, the intensities and locations of emissions sources, and the winds and diffusivities that affect the dispersion of atmospheric pollutants. The model's output includes gridded contour plots of pollutant concentrations for the highest brief episodes (during any single time step), the highest and second-highest 24-hour averages, averaged dry and wet deposition fluxes, and a colored "movie" showing evolving dispersal of pollutant concentrations, together with temporal plots of the concentrations at specified receptor sites and statistical inference of the probabilities that standards will be exceeded at those sites. WYNDvalley is implemented on IBM® compatible microcomputers, with interactive data input and color graphics display.

a. *Recommendations for Regulatory Use*

WYNDvalley may be used on a case-by-case basis to estimate concentrations during valley stagnation periods of 24 hours or longer. Recommended inputs are listed below.

Variable Recommended Value

Horizontal cell dimension 250 to 500 meters
Vertical layers 3 to 5
Layer depth 50 to 100 meters
Background (internal to model)
Zero (background should be added externally to model estimates)
Lateral meander velocity default
Diffusivities default
Ventilation parameter (upper default boundary condition)
Dry deposition velocity zero (site-specific)
Washout ratio zero (site-specific)

b. *Input Requirements*

Input data, including model options, modeling domain boundaries, boundary conditions, receptor locations, source locations, and emission rates, may be entered interactively, or through existing template files from a previous run. Meteorological data, including wind speeds, wind directions, rain rates (optionally, for wet deposition calculations), and time of day and year, may be of arbitrary time increment (usually an hour) and are entered into the model through an external meteorological data file. Optionally, users may specify diffusivities and upper boundary conditions for each time increment. Source emission rates may be constant or modulated on a daily, weekly, and/or seasonal basis.

c. *Output*

Output from WYNDvalley includes gridded contour maps of the highest pollutant concentrations at each time step and the highest and second-highest 24-hour average concentrations. Output also includes the deposition patterns for wet, dry, and total fluxes of the pollutants to the surface, integrated over the simulation period. A running "movie" of the concentration patterns is displayed on the screen (with optional printout) as they evolve during the simulation. Output files include tables of daily-averaged pollutant concentrations at every modeled grid cell, and of hourly concentrations at up to eight specified receptors. Statistical analyses are performed on the hourly and daily data to estimate the probabilities that specified levels will be exceeded more than once during an arbitrary number of days with similar weather.

d. *Type of Model*

WYNDvalley is a three dimensional Eulerian grid model.

e. *Pollutant Types*

WYNDvalley may be used to model any inert pollutant.

f. *Source-Receptor Relationships*

Source and receptors may be located anywhere within the user-defined modeling domain. All point and area sources, or portions of an area source, within a given grid cell are summed to define a representative emission rate for that cell. Concentrations are calculated for each and every grid cell in the modeling domain. Up to eight grid cells may be selected as receptors, for which time histories of concentration and deposition fluxes are determined, and probabilities of exceedance are calculated.

g. *Plume Behavior*

Emissions for buoyant point sources are placed by the user in a grid cell which best reflects the expected effective plume height during stagnation conditions. Five vertical layers are available to the user.

h. *Horizontal Winds*

During each time step in the model, the winds are assumed to be uniform throughout the modeling domain. Numerical diffusion is minimized in the advection algorithm. To account for terrain effects on winds and dispersion, an ad hoc algorithm is employed in the model to distribute concentrations near boundaries.

i. *Vertical Wind Speed*

Winds are assumed to be constant with height.

j. *Horizontal Dispersion*

Horizontal eddy diffusion coefficients may be entered explicitly by the user at every time step. Alternatively, a default algorithm may be invoked to estimate these coefficients from the wind velocities and their variances.

k. *Vertical Dispersion*

Vertical eddy diffusion coefficients and a top-of-model boundary condition may be entered explicitly by the user at every time step. Alternatively, a default algorithm may be invoked to estimate these coefficients from the horizontal wind velocities and their variances, and from an empirical time-of-day correction derived from temperature gradient measurements and Monin-Obukhov similarities.

l. *Chemical Transformation*

Chemical transformation is not explicitly treated by WYNDvalley.

m. *Physical Removal*

WYNDvalley optionally simulates both wet and dry deposition. Dry deposition is proportional to concentration in the lowest layer, while wet deposition is proportional to rain rate and concentration in each layer. Appropriate coefficients (deposition velocities and washout ratios) are input by the user.

n. *Evaluation Studies*

Harrison, H., G. Pade, C. Bowman and R. Wilson, 1990. Air Quality During Stagnations: A Comparison of RAM and WYNDvalley with PM–10 Measurements at Five Sites. *Journal of the Air & Waste Management Association*, 40: 47–52.

Yoshida, C., 1990. A Comparison of WYNDvalley Versions 2.12 and 3.0 with PM–10 Measurements in Six Cities in the Pacific Northwest, Lane Regional Air Pollution Authority, Springfield, OR.

Maykut, N. et al., 1990. Evaluation of the Atmospheric Deposition of Toxic Contaminants to Puget Sound, State of Washington, Puget Sound Water Quality Authority, Seattle, WA.

B.31 Dense Gas Dispersion Model (DEGADIS)

Reference

Environmental Protection Agency, 1989. User's Guide for the DEGADIS 2.1—Dense Gas Dispersion Model. EPA Publication No. EPA–450/4–89–019. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. (NTIS No. PB 90–213893)

Availability

The model code is only available on the Support Center for Regulatory Air Models Bulletin Board System (see page B–1).

Abstract

DEGADIS 2.1 is a mathematical dispersion model that can be used to model the transport of toxic chemical releases into the atmosphere. Its range of applicability includes continuous, instantaneous, finite duration, and time-variant releases; negatively-buoyant and neutrally-buoyant releases; ground-level, low-momentum area releases; ground-level or elevated upwardly-directed stack releases of gases or aerosols. The model simulates only one set of meteorological conditions, and therefore should not be considered applicable over time periods much longer than 1 or 2 hours. The simulations are carried out over flat, level, unobstructed terrain for which the characteristic surface roughness is not a significant fraction of the depth of the dispersion layer. The model does not characterize the density of aerosol-type releases; rather, the user must assess that independently prior to the simulation.

a. *Recommendations for Regulatory Use*

DEGADIS can be used as a refined modeling approach to estimate short-term ambient concentrations (1-hour or less averaging times) and the expected area of exposure to concentrations above specified threshold values for toxic chemical releases. It is especially useful in situations where density effects are suspected to be important and where screening estimates of ambient concentrations are above levels of concern.

b. *Input Requirements*

Data may be input directly from an external input file or via keyboard using an interactive program module. The model is not set up to accept real-time meteorological data or convert units of input values. Chemical property data must be input by the user. Such data for a few selected species are available within the model. Additional data may be added to this data base by the user.

Source data requirements are: Emission rate and release duration; emission chemical and physical properties (molecular weight, density vs. concentration profile in the case of aerosol releases, and contaminant heat capacity in the case of a nonisothermal gas release; stack parameters (i.e., diameter, elevation above ground level, temperature at release point).

Meteorological data requirements are: Wind speed at designated height above ground, ambient temperature and pressure, surface roughness, relative humidity, and ground surface temperature (which in most cases can be adequately approximated by the ambient temperature).

Receptor data requirements are: Averaging time of interest, above-ground height of receptors, and maximum distance between receptors (since the model computes downwind receptor distances to optimize model performance, this parameter is used only for nominal control of the output listing, and is of secondary importance). No indoor concentrations are calculated by the model.

c. *Output*

Printed output includes in tabular form:

- Listing of model input data;
- Plume centerline elevation, mole fraction, concentration, density, and temperature at each downwind distance;
- σ_y and σ_z values at each downwind distance;
- Off-centerline distances to 2 specified concentration values at a specified receptor height at each downwind distance (these values can be used to draw concentration isopleths after model execution);
- Concentration vs. time histories for finite-duration releases (if specified by user).

The output print file is automatically saved and must be sent to the appropriate printer by the user after program execution.

No graphical output is generated by the current version of this program.

d. *Type of Model*

DEGADIS estimates plume rise and dispersion for vertically-upward jet releases using mass and momentum balances with air entrainment based on laboratory and field-scale data. These balances assume Gaussian similarity profiles for velocity, density, and concentration within the jet. Ground-level denser-than-air phenomena is treated using a power law concentration distribution profile in the vertical and a hybrid top hat-Gaussian concentration distribution profile in the horizontal. A power law specification is used for the vertical wind profile. Ground-level cloud slumping phenomena and air entrainment are based on laboratory measurements and field-scale observations.

e. *Pollutant Types*

Neutrally- or negatively-buoyant gases and aerosols. Pollutants are assumed to be non-reactive and non-depositing.

f. *Source-Receptor Relationships*

Only one source can be modeled at a time.

There is no limitation to the number of receptors; the downwind receptor distances are internally-calculated by the model. The DEGADIS calculation is carried out until the plume centerline concentration is 50% below the lowest concentration level specified by the user.

The model contains no modules for source calculations or release characterization.

g. *Plume Behavior*

Jet/plume trajectory is estimated from mass and momentum balance equations. Surrounding terrain is assumed to be flat, and stack tip downwash, building wake effects, and fumigation are not treated.

h. *Horizontal Winds*

Constant logarithmic velocity profile which accounts for stability and surface roughness is used.

The wind speed profile exponent is determined from a least squares fit of the logarithmic profile from ground level to the wind speed reference height. Calm winds can be simulated for ground-level low-momentum releases.

Along-wind dispersion of transient releases is treated using the methods of Colenbrander (1980) and Beals (1971).

i. *Vertical Wind Speed*

Not treated.

j. *Horizontal Dispersion*

When the plume centerline is above ground level, horizontal dispersion coefficients are based upon Turner (1969) and Slade (1968) with adjustments made for averaging time and plume density.

When the plume centerline is at ground level, horizontal dispersion also accounts for entrainment due to gravity currents as parameterized from laboratory experiments.

k. *Vertical Dispersion*

When the plume centerline is above ground level, vertical dispersion coefficients are based upon Turner (1969) and Slade (1968). Perfect ground reflection is applied.

In the ground-level dense-gas regime, vertical dispersion is also based upon results from laboratory experiments in density-stratified fluids.

l. *Chemical Transformation*

Not specifically treated.

m. *Physical Removal*

Not treated.

n. *Evaluation Studies*

Spicer, T. O. and J. A. Havens, 1986. Development of Vapor Dispersion Models for Nonneutrally Buoyant Gas Mixtures—Analysis of USAF/N_2O_4 Test Data. USAF Engineering and Services Laboratory, Final Report ESL–TR–86–24.

Spicer, T.O. and J.A. Havens, 1988. Development of Vapor Dispersion Models for Nonneutrally Buoyant Gas Mixtures—Analysis of TFI/NH_3 Test Data. USAF Engineering and Services Laboratory, Final Report.

o. *Operating Information*

The model requires either a VAX computer or an IBM®—compatible PC for its execution.

The model currently does not require supporting software. A FORTRAN compiler is required to generate program executables in the VAX computing environment. PC executables are provided within the source code; however, a PC FORTRAN compiler may be used to tailor a PC executable to the user's PC environment.

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Appendix C to Appendix W of Part 51—Example Air Quality Analysis Checklist

C.0 Introduction

This checklist recommends a standardized set of data and a standard basic level of analysis needed for PSD applications and SIP revisions. The checklist implies a level of detail required to assess both PSD increments and the NAAQS. Individual cases may require more or less information and the Regional Meteorologist should be consulted at an early stage in the development of a data base for a modeling analysis.

At pre-application meetings between source owner and reviewing authority, this checklist should prove useful in developing a concensus on the data base, modeling techniques and overall technical approach prior to the actual analyses. Such agreement will help avoid misunderstandings concerning the final results and may reduce the later need for additional analyses.

Example Air Quality Analysis Checklist [1]

1. Source location map(s) showing location with respect to:
- Urban areas.[2]
- PSD Class I areas
- Nonattainment areas [2]
- Topographic features (terrain, lakes, river valleys, etc.)[2]
- Other major existing sources [2]
- Other major sources subject to PSD requirements
- NWS meteorological observations (surface and upper air)
- On-site/local meteorological observations (surface and upper air)
- State/local/on-site air quality monitoring locations.[2]
- Plant layout on a topographic map covering a 1km radius of the source with information sufficient to determine GEP stack heights.

2. Information on urban/rural characteristics:
- Land use within 3km of source classified according to Auer (1978): Correlation of land use and cover with meteorological anomalies. Journal of Applied Meteorology, 17: 636–643.
- Population.

—>total
—>density
- Based on current guidance determination of whether the area should be addressed using urban or rural modeling methodology.

3. Emission inventory and operating/design parameters for major sources within region of significant impact of proposed site (same as required for applicant)
- Actual and allowable annual emission rates (g/s) and operating rates.[3]
- Maximum design load short-term emission rate (g/s).[3]
- Associated emissions/stack characteristics as a function of load for maximum, average, and nominal operating conditions if stack height is less than GEP or located in complex terrain. Screening analyses as footnoted on page 1 or detailed analyses, if necessary, must be employed to determine the constraining load condition (e.g., 50%, 75%, or 100% load) to be relied upon in the short-term modeling analysis.

—Location, Universal Transverse Mercators (UTM's)
—Height of stack (m) and grade level above Mean Sea Level (MSL)
—Stack exit diameter (m)
—Exit velocity (m/s)
—Exit temperature (°K)
- Area source emissions (rates, size of area, height of area source).[3]
- Location and dimensions of buildings (plant layout drawing).

—To determine GEP stack height
—To determine potential building downwash considerations for stack heights less than GEP
- Associated parameters.

—Boiler size (megawatts, pounds/hr. steam, fuel consumption, etc.)
—Boiler parameters (% excess air, boiler type, type of firing, etc.)
—Operating conditions (pollutant content in fuel, hours of operation, capacity factor, % load for winter, summer, etc.)
—Pollutant control equipment parameters (design efficiency, operation record, e.g., can it be bypassed?, etc.)
- Anticipated growth changes.

4. Air quality monitoring data:
- Summary of existing observations for latest five years (including any additional quality assured measured data which can be obtained from any state or local agency or company).[4]
- Comparison with standards.
- Discussion of background due to uninventoried sources and contributions from outside the inventoried area and description of the method used for determination of background (should be consistent with the Guideline on Air Quality Models).

5. Meteorological data:
- Five consecutive years of the most recent representative sequential hourly National Weather Service (NWS) data, or one or more years of hourly sequential on-site data.
- Discussion of meteorological conditions observed (as applied or modified for the site-specific area, i.e., identify possible variations due to difference between the monitoring site and the specific site of the source).
- Discussion of topographic/land use influences.

6. Air quality modeling analyses:
- Model each individual year for which data are available with a recommended model or model demonstrated to be acceptable on a case-by-case basis.

—Urban dispersion coefficients for urban areas
—Rural dispersion coefficients for rural areas
- Evaluate downwash if stack height is less than GEP.
- Define worst case meteorology.
- Determine background and document method.

—Long-term
—Short-term
- Provide topographic map(s) of receptor network with respect to location of all sources.
- Follow current guidance on selection of receptor sites for refined analyses.
- Include receptor terrain heights (if applicable) used in analyses.
- Compare model estimates with measurements considering the upper ends of the frequency distribution.
- Determine extent of significant impact; provide maps.
- Define areas of maximum and highest, second-highest impacts due to applicant source (refer to format suggested in Air Quality Summary Tables).

—>long-term
—>short-term

7. Comparison with acceptable air quality levels:
- NAAQS.
- PSD increments.
- Emission offset impacts if nonattainment.

8. Documentation and guidelines for modeling methodology:
- Follow guidance documents.

—>"Guideline on Air Quality Models, Revised" (EPA–450/2–78–027R)
—>"Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised" (EPA–450/R–92–019), 1992
—>"Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations)" (EPA–450/4–80–023R), 1985
—>"Ambient Monitoring Guidelines for PSD" (EPA–450/4–87–007), 1987
—>"Requirements for Preparation, Adoption and Submittal of Implementation Plans: Approval and Promulgation of Implementation Plans", 40 CFR Parts 40 and 51 (Prevention of Significant Deterioration), 1982

[1] The "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992 (EPA–450/R–92–019), should be used as a screening tool to determine whether modeling analyses are required. Screening procedures should be refined by the user to be site/problem specific. (Available from NTIS as document EPA–450/R–92–019. NTIS number to be provided).

[2] Within 50km or distance to which source has a significant impact, whichever is less.

[3] Particulate emissions should be specified as a function of particulate diameter and density ranges.

[4] See footnote 2 of this checklist.

AIR QUALITY SUMMARY—FOR NEW SOURCE ALONE

[Pollutant: _____[1] _____[2] _____[2]]

	Highest	Highest 2nd high	Highest	Highest 2nd high	Annual
Concentration Due to Modeled Source (μg/m³)					
Background Concentration (μg/m³)					
Total Concentration (μg/m³)					
Receptor Distance (km) (or UTM Easting)					
Receptor Direction (°) (or UTM Northing)					
Receptor Elevation (m)					
Wind Speed (m/s)					
Wind Direction (°)					

[1] Use separate sheet for each pollutant (SO_2, TSP, CO, NO_x, HC, Pb, Hg, Asbestos, etc.)
[2] List all appropriate averaging periods (1-hr, 3-hr, 8-hr, 24-hr, 30-day, 90-day, etc.) for which an air quality standard exists.

Mixing Depth (m)
Temperature (°K)
Stability
Day/Month/Year of Occurrence

Surface Air Data From _____
Surface Station Elevation (m) _____
Anemometer Height Above Local Ground Level (m) _____

Upper Air Data From _____
Period of Record Analyzed _____
Model Used _____
Recommended Model _____

AIR QUALITY SUMMARY—FOR ALL NEW SOURCES

[Pollutant: _____[1] _____[2] _____[2]]

	Highest	Highest 2nd High	Highest	Highest 2nd High	Annual
Concentration Due to Modeled Source (μg/m³)					
Background Concentration (μg/m³)					
Total Concentration (μg/m³)					
Receptor Distance (km) (or UTM Easting)					
Receptor Direction (°) (or UTM Northing)					
ptor Elevation (m)					
Wind Speed (m/s)					
Wind Direction (°)					

[1] Use separate sheet for each pollutant (SO_2, TSP, CO, NO_x, HC, Pb, Hg, Asbestos, etc.)
[2] List all appropriate averaging periods (1-hr, 3-hr, 8-hr, 24-hr, 30-day, 90-day, etc.) for which an air quality standard exists.

Mixing Depth (m)
Temperature (°K)
Stability
Day/Month/Year of Occurrence

Surface Air Data From _____
Surface Station Elevation (m) _____
Anemometer Height Above Local Ground Level (m) _____

Upper Air Data From _____
Period of Record Analyzed _____
Model Used _____
Recommended Model

AIR QUALITY SUMMARY—FOR ALL SOURCES

Pollutant: [_____[1] _____[2] _____[2]]

	Highest	Highest 2nd high	Highest	Highest 2nd high	Annual
Concentration Due to Modeled Source (μg/m³)					
Background Concentration (μg/m³)					
Total Concentration (μg/m³)					
Receptor Distance (km) (or UTM Easting)					
Receptor Direction (°) (or UTM Northing)					
Receptor Elevation (m)					
Wind Speed (m/s)					
Wind Direction (°)					

[1] Use separate sheet for each pollutant (SO_2, TSP, CO, NO_x, HC, Pb, Hg, Asbestos, etc.)
[2] List all appropriate averaging periods (1-hr, 3-hr, 8-hr, 24-hr, 30-day, 90-day, etc.) for which an air quality standard exists.

Mixing Depth (m)
Temperature (°K)
Stability
Day/Month/Year of Occurrence

Surface Air Data From _____
Surface Station Elevation (m) _____
Anemometer Height Above Local Ground Level (m) _____
Upper Air Data From _____

Period of Record Analyzed _____
Model Used _____
Recommended Model _____

VOL 58 ISS 137 JL 20 1993 UMI

STACK PARAMETERS FOR ANNUAL MODELING

Stack (m) No. length	Serving emission rate for each pollutant (g/s)	Stack exit diameter (m)	Stack exit velocity (m/s)	Stack exit temperture (°K)	Physical stack height (m)	GEP stack ht. (m)	Stack base elevation (m)	Building dimensions	
								Height	Width

STACK PARAMETERS FOR SHORT-TERM MODELING[1]

Stack (m) No. length	Serving emission rate for each pollutant (g/s)	Stack exit diameter (m)	Stack exit velocity (m/s)	Stack exit temperture (°K)	Physical stack height (m)	GEP stack ht. (m)	Stack base elevation (m)	Building dimensions	
								Height	Width

[1] Separate tables for 50%, 75%, 100% of full operating condition (and any other operating conditions as determined by screening or detailed modeling analyses to represent constraining operating conditions) should be provided.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is revised to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.21 [Amended]

2. In § 52.21, paragraph (l)(1) is revised to read as follows; paragraph (l)(2) is amended by revising "the 'Guideline on Air Quality Models (Revised)' (1986) and Supplementary A (1987)" to read "appendix W of part 51 of this chapter ('Guideline on Air Quality Models (Revised)' (1986), supplement A (1987) and supplement B (1993))".

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in appendix W of part 51 of this chapter ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993)). The Guideline and its supplements (EPA Publication No. 450/2–78–027R) are also for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, VA, 22161.

* * * * *

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM, GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 260.11 [Amended]

2. Section 260.11 is amended by revising the last reference in paragraph (a) to read as follows:

§ 260.11 References.

* * * * *

"Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA–450/R–92–019, Environmental Protection Agency, Research Triangle Park, NC.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Appendix X—[Removed]

2. Part 266 is amended by removing appendix X.

3. Section 266.104 is amended by revising paragraph (e)(3) to read as follows:

§ 266.104 Standards to control organic emissions.

* * * * *

(e) * * *

(3) Conduct dispersion modeling using methods recommended in appendix W of part 51 of this chapter ("Guideline on Air Quality Models (Revised)" (1986) and its supplements), the "Hazardous Waste Combustion Air Quality Screening Procedure", provided in appendix IX of this part, or in Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised (incorporated by reference in § 260.11) to predict the maximum annual average off-site ground level concentration of 2,3,7,8–TCDD equivalents determined under paragraph (e)(2) of this section. The maximum annual average concentration must be used when a person resides on-site; and

* * * * *

4. Section 266.106 is amended by revising paragraph (h) to read as follows:

§ 266.106 Standards to control metals emissions.

* * * * *

(h) *Dispersion Modeling.* Dispersion modeling required under this section shall be conducted according to methods recommended in appendix W of part 51 of this chapter ("Guideline on Air Quality Models (Revised)" (1986) and its supplements), the "Hazardous Waste Combustion Air Quality Screening Procedure", provided in appendix IX of this part, or in Screening Procedures for Estimating the Air

Quality Impact of Stationary Sources, Revised (incorporated by reference in § 260.11) to predict the maximum annual average off-site ground level concentration. However, on-site concentrations must be considered when a person resides on-site.

* * * * *

[FR Doc. 93–16867 Filed 7–19–93; 8:45 am]
BILLING CODE 6560–50–P

VOL 58 ISS 137 JL 20 1993 UMI

federal register

Tuesday
July 20, 1993

Part III

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' FY 1993 Family Support Center and Gateway Demonstration Programs; Notice

VOL
58
ISS
137
JL
20
1993
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. OCS–93–04]

Request for Applications Under the Office of Community Services' FY 1993 Family Support Center and Gateway Demonstration Programs

AGENCY: Administration for Children and Families, OCS, ACF, DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' FY 1993 Family Support Center and Gateway Demonstration Programs.

INTRODUCTION: This announcement contains information relating to two distinct programs that address the issue of family homelessness: The Family Support Center Demonstration Program and the Gateway Demonstration Program.

The intent of the Family Support Center Demonstration Program is to support projects designed to ensure the provision of intensive and comprehensive supportive services that will enhance the physical, social and educational development of low-income individuals and families, especially those individuals in very low-income families who were previously homeless and who are currently residing in governmentally subsidized housing or who are at risk of becoming homeless. (Families at risk of homelessness include those living in precarious housing situations, e.g., doubled up with another family; in unstable or inadequate housing; or those facing eviction or loss of housing.) The intent of the Gateway Demonstration Program is to support demonstration grants to local education agencies to provide on site education and training and necessary support services to economically disadvantaged residents of public housing in an effort to promote increases in literacy levels and basic employment skills. Both programs seek to assist low and very low income families in achieving progress toward increased potential for independence and self-sufficiency.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for Family Support Center and Gateway Demonstration projects authorized by the Stewart B. McKinney Homeless Assistance Act, as amended (Pub. L. 101–645). (See 42 U.S.C. 11481–11489.)

Under the Family Support Center Program, the Office of Community Services will make grants to eligible entities in urban and non urban areas to pay for the cost of demonstration programs designed to ensure the provision of intensive and comprehensive supportive services to previously homeless families residing in subsidized public housing or those at risk of homelessness. Services to infants, children and youths shall be designed to enhance their physical, social and educational development and include an array of appropriate services that address the causes and deleterious effects of homelessness. Services to parents and other family members shall be designed to contribute to their child(ren)'s healthy development and to the achievement of skills and objectives that move the family toward self-sufficiency. All services provided shall be coordinated through the auspices of a case management program and include necessary and appropriate services that address the economic and housing needs of the "low-income and very low-income" client families.

Under the Gateway Demonstration Program, grants will be provided to local education agencies to provide on-site education, training and necessary support services to economically disadvantaged residents of public housing. Grantees, in consultation with the local public housing authorities and private industry councils, will design such demonstration programs to increase literacy levels and basic employment skills among residents of public housing developments.

Eligible applicant entities for the Family Support Center Demonstration Program include a variety of public and private community based organizations capable of administering and delivering a comprehensive program providing required assistance as outlined in section E.

Eligible applicant entities for the Gateway Demonstration Program include local education agencies in concert with public housing authorities and private industry councils.

Availability of Funds and Grant Amounts

Approximately $6,674,560 is available to support first year grant awards under this program announcement and to provide second year/continuation funding to organizations who received funding in the FY 1992 Homeless Families Support Services Demonstration Program. We estimate that a minimum of 3 new Family Support Center grants will be awarded at a maximum of $200,000 per year for a period of two years. We also expect to fund 5 Gateway demonstration grants at a maximum of $125,000 per year for a period of two years.

CLOSING DATE: The closing date for submission of applications is August 19, 1993.

ADDRESSES: Address applications to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–93–04/ZC:ZG) 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Office of Community Services, Division of Community Demonstration Programs, (202) 401–2333.

SUPPLEMENTARY INFORMATION:

Part I: General Information—Family Support Center Demonstrations

A. Program Purpose

The Family Support Center Demonstration Program is an integral part of an HHS/HUD initiative to encourage and test integrated approaches to reducing homelessness among families with children. The purpose of this demonstration is to develop and operate Family Support Centers that administer and provide comprehensive and intensive supportive services that enhance the physical, social and educational development of low and very low-income individuals and families, especially those individuals in very low-income families who were previously homeless currently residing in governmentally subsidized housing or those are at risk of becoming homeless. (Families at risk of homelessness include those living in precarious housing situations, e.g., doubled up with another family; in unstable or inadequate housing; or those facing eviction or loss of housing.) The program also endeavors to support the Family Support Center's efforts to coordinate and integrate its activities with State and local public and private agencies in providing assistance to the target populations. This program funds a wide array of services to children and adult family members in an effort to combat the effects of episodes of homelessness and also to prevent initial occurrences of homelessness among at risk families. The program advocates a coordinating case management approach and seeks to assist agencies that include this as an integral form of service delivery.

B. Program Services

The project awards will primarily allow for the design, development and

establishment of a family support center that can arrange for and/or provide an array of comprehensive and intensive case-managed social services to previously homeless families residing in subsidized public housing or those at risk of homelessness. Services to infants, children and youths shall be designed to enhance the physical, social and educational development and include an array of appropriate services that address the causes and deleterious effects of homelessness. Services to parents and other family members shall be designed to contribute to their child(ren)'s healthy development and to the achievement of skills and objectives that move the family toward self-sufficiency. All services provided shall be coordinated through the auspices of a family case management program and include necessary and appropriate services that address the economic and housing needs of the "low-income and very low-income" client families.

In the case of services provided to infants, children and youth, such services shall be designed to enhance the physical, social and educational development that include, where appropriate, the following:

—Nutritional services
—Screening and referral services
—Child care services
—Early childhood development programs
—Early intervention services for children with, or at risk of developmental delays
—Dropout prevention services
—After school activities
—Job readiness and job training services
—Education (including basic skills and literacy services)
—Emergency services including special outreach services targeted to homeless and runaway youth
—Crisis intervention and counseling services
—Other services as necessary and appropriate.

In the case of services provided to parents and other family members, services shall be designed to better enable parents and other family members to contribute to their child's healthy development and shall include, where appropriate, the following:

—Substance abuse education
—Counseling
—Referral for treatment
—Crisis intervention
—Employment counseling and training
—Life-skills training, including personal financial counseling
—Education, including basic skills and literacy services
—Parenting classes
—Consumer homemaking
—Other services as necessary and appropriate

In the case of services provided by family case managers, the following shall be included:

—Needs assessment
—Support in accessing and maintaining appropriate public assistance and social services
—Referral and followup for substance abuse counseling and treatment
—Counseling and crisis intervention
—Family advocacy services
—Housing assistance activities
—Housing counseling
—Eviction or foreclosure prevention assistance
—Referral to sources of emergency rental or mortgage assistance payment
—Support in accessing home energy assistance
—Other services as appropriate

Approaches are sought that emphasize a coordinated effort by a range of community-oriented entities that consolidate resources to a targeted population in need.

Centers may be a homeless family component of an existing family oriented program for low and very low income, at risk families or a center organized specifically to provide services targeted at serving the previously homeless and/or at risk families in an identified community.

C. Program Beneficiaries

Projects proposed for funding under this announcement must directly benefit previously homeless low-income and very low-income homeless individuals and families residing in governmentally subsidized housing or who are at-risk of becoming homeless. The term "low-income" when applied to families or individuals means a family or individual income that does not exceed 80% of the median income for an individual or family in the area, as determined by the Secretary of Housing and Urban Development, subject to his discretion to establish different ceilings based on area variations. The term "very low-income" when applies to families or individuals means a family or individual income that does not exceed 50% of the median income for an individual or family in the area, as determined by the Secretary of Housing and Urban Development, subject to his discretion to establish different ceilings based on area variations. (See Attachment A.)

D. Eligible Applicants

Eligible entities are State and local government agencies, Head Start agencies and any community-based organization of demonstrated effectiveness such as a Community Action Agency designated under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790), public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6)), State Housing Finance Agencies, local education agencies, an institution of higher education, a public hospital, a community development corporation, a private industry council as defined under section 102(a) of the Job Training Partnership Act (JTPA) (29 U.S.C. 1512(a)), a community health center, and any other public or private nonprofit organizations specializing in the provision of social services.

More than one eligible entity in a State may apply, but separate applications must be submitted.

E. Project Period

This announcement is soliciting applications for project periods of up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the two-year project period, will be entertained in the next fiscal year on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government.

Part II: Description of the Family Support Center Demonstration Program

A. Grantee Responsibilities

The Family Support Center Demonstration Program is intended to prevent the occurrence of homelessness by providing an intensive and comprehensive array of supportive and other services to a client population in order to prevent further homelessness. The Center will create a centralized point for the provision of intensive and comprehensive supportive services and for access to various service providers. The center will provide active family case management and assist clients in maintaining a stable household and assist them in achieving self-sufficiency Further, the center will assist in joining the case management functions offered by other service providers to provide for coordinated family case management. The Center will tie together service providers and organize a means to reduce duplication of effort in response to their potentially or previously homeless clientele; and, to reduce the

VOL 58 ISS 137 JL 20 1993 UMI

administrative and programmatic burden that often is placed upon the client population.

To accomplish these goals, grantees are expected to have, in addition to the provision of a core of essential services, the capacity to coordinate, link and otherwise organize a cadre of existing providers. A Family Support Center Demonstration program should also include coordination with existing Federally sponsored social services and housing programs such as the Community Services Block Grant (CSBG), AFDC/JOBS program and the varied Department of Housing and Urban Development programs.

Each Family Support Center Grantee is required to exhibit the following:

—The capacity to administer a comprehensive support services program directed toward an identified target population;
—The geographic proximity of facility to the families to be served or the ability to provide mobile or offsite services;
—The ability to coordinate and integrate its activities with State and local public agencies (such as agencies responsible for education, employment and training, health and mental health services, substance abuse services, social services, child care, nutrition, income assistance, housing and energy assistance, and other relevant services), with public or private non-profit agencies and organizations that have a demonstrated record of effectiveness in providing assistance to homeless and at risk families and with appropriate non-profit private organizations involved in the delivery of eligible support services;
—The fiscal and administrative capacities to conduct a complex, comprehensive and intensive service delivery program;
—The involvement of project participants and community representatives in the planning and operation of the program;
—The utilization and proximity of available comparable Community Action Agency services, unless the applicant is the CAA and intends to expand its existing services;
—The provision of coordinated family case management services which direct all respective case management activities through a team approach;
—The program may not use more than 7 percent of their grant to improve the retention and effectiveness of staff and volunteers;
—The participation in an ongoing evaluation mechanism to address process and outcome issues as they relate to the efficacy and efficiency of the demonstration program; and,
—The program must establish and provide necessary staff support for an advisory body representing the community, providers and target population. The advisory council must include a participant of the program as an active member.

This announcement prescribes no single model for program organization, staffing or service delivery. Instead, it invites applicants to propose structures and mechanisms for delivering services that are unique to the community and the clientele that it serves.

The operating and organizational structure of the program should include a range of agreements with community services providers that responds to the assessed needs of the client populations. These agreements are most essential to the success of the project. The program seeks to attract prospective grantees with written agreements either in place at the time of application or able to be in place within 60 days of the grant award. This is to assure an accelerated provision of services to the clients. In those cases where additional services are to be added to existing service patterns, the grantee will provide timetables for the inclusion of these added services. Prospective grantees will have a combination of existing and potential agreements and affiliations for services. It is recommended that the program include affiliations with entities that support and enlarge its service providing role. This may include affiliations with the academic community, such as schools of social work, that may provide a source of staff resources, student/intern placements and a site for scholastic investigation and research.

Most importantly, applicants must be closely identified with and located within circumscribed geographical boundaries that coincide with the location and residences of the target population. This catchment area concept should be reflected in the physical location of the project which should be readily accessible to the target population. This in no way limits the possible configurations for project locus. Instead, it permits a range of possibilities that is consistent with the residential pattern of the target population. While the project is most likely to be physically located in or near the place(s) where its target population lives, it is conceivable that its administrative functions may be off-site or co-located with parent agencies.

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced.

A percentage of non-Federal share, either in cash and/or in-kind contributions, secured from non-Federal sources is not required. The lack of a requirement is not intended in any way to discourage the use of applicant or third party financial and resource support. Although there is not a specific non-Federal percentage requirement for grants awarded under this announcement, the amount pledged will be given additional weight during the evaluation process. Therefore, the applicant should ensure any amount proposed as match prior to inclusion in its budget. If the non-Federal share pledged is not met by the funded project, a disallowance can be taken of unmatched Federal dollars. Further, it should be noted that as the project matures over the project life, there is an implicit encouragement of the assumption of costs of the project by the applicant and the constituent community participants.

In addition to the responsibilities listed above, the applicant is required by statute to provide within their application the following:

1. Assurances that grant funds will be used to create new services only to the extent that no other funds can be obtained to fulfill the purpose, as required by 42 U.S.C. 11482(e)(2)(F);
2. A description of the program's relationship to various State and local agencies, as required by 42 U.S.C. 11482(e)(2)(G);
3. An explanation of the methods which the grantee will employ to ensure that no more than 7% of the grant funds awarded will be used to improve the retention and effectiveness of staff and volunteers, as required by 42 U.S.C. 11482(e)(2)(I);
4. Assurances that the grantee will establish an advisory council group to provide policy and programming guidance which will meet the representational requirements of 42 U.S.C. 11482(e)(2)(J);
5. Assurances that any fees assessed by the grantee for program services will be nominal in relation to the financial situation of the recipient of such services, as required by 42 U.S.C. 11482(e)(2)(M); and,
6. Assurance that grant funds will not be used to supplant Federal, State and local funds currently expended to provide program services, as required by 42 U.S.C. 11482(e)(2)(N).

B. Grantee Objectives

The objectives of the grantees are expected to be: the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the reduction in the rate of repeated incidence of homelessness among center clientele and a decrease in the incidence of first time homelessness among community participants.

C. Evaluation

The Department expects to contract for an independent evaluation of the programs and entities that receive assistance under this program. The anticipated evaluation shall examine at a minimum, with respect to the fulfillment of program objectives for children and families served, the following:

1. The enhancement of the living conditions of low and very low income families in housing and in neighborhoods;

2. The improvement of the physical, social and educational development;

3. The achievement of progress towards increased potential for independence and self-sufficiency; and,

4. The degree to which the provision of services is affected by caseload size.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve periodically furnishing needed process and outcome oriented data as required by the contractors and allowing them access to information that has not otherwise been provided by the grantee.

Grantees are expected to maintain sufficient resources to fulfill required data obligations and to respond to demands for information that is to be complied for national evaluation and reporting.

D. Grant Proposals

To ensure that applicants with the most potential for demonstrating innovative ways to accomplish the goals of the program and establishing new, or expanding existing mechanisms for providing services to the target populations, applicants for grants shall develop their proposals in accordance with the factors described below:

Need and Understanding of Program Purposes

Identify the population and geographic location to be served by the project and how previously homeless and at risk families will be chosen for enrollment. Provide assurances in the form of demographic data that there are sufficient number of eligible families residing in the designated area to be served and that a sufficient number of these families will be enrolled in the program.

Provide assurances and describe how core and other services to be provided are closely related to the assessed needs of the target populations and that the needs to be addressed are consistent with the objectives of this program.

Project Approach

Identify and describe where and how the project will provide directly or arrange for intensive and comprehensive services. Furnish information on which services are to be provided on site and those which are to be provided in off site locations. Applicant should clearly differentiate between those services which will be provided through the use of Federal funds and those services which have been committed to the project by other sources.

Identify referral providers, agencies and organizations with which the applicant agency will coordinate in order to carry out the objectives of the grant. This necessarily includes those services which are committed to the project without cost to the grant.

Furnish relevant agreements and letters of commitment indicating which services and the level of effort (cost) that will be provided to project participants by those providers agencies and/or organizations. Applications should describe current or previous relationships with these agencies and/or organizations.

Coordination and Linkages

Describe the extent to which the applicant, through its project, will coordinate and create linkages to existing service providers or new mechanisms for maximizing these organizational and service ties. This refers to the amounts of funds and activities including direct client services which are generated through the grant mechanism, but not necessarily paid for by grant funds.

Cost Effectiveness and Organizational Capacity

Identify how the project will be administered and managed including the organizational location of this project in relationship to the chief executive of the administering agency. Submit a detailed first year timetable for implementing activities and enrolling families as well as a more general timetable for year 2. Provide a description of the applicant's previous program, administrative and fiscal experience in accomplishing goals and objectives similar to those outlined in this program. Provide information on experience in coordinating activities with State and local public or non-profit agencies and organizations. Provide resumes detailing the relevant education, training and experience of the key project staff, their responsibilities in connection with and the time they will be committing to this project. Applicants should furnish any information which illustrates their skills and capacity to accomplish the project goals and objectives in a timely manner. Every effort should be made to include on staff persons who are homeless or previously homeless.

Identify and describe in detail the proposed first year budget for the project and the second year projection and assure that the proposed costs are reasonable in view of the activities to be pursued.

Outcomes and Expected Results

Identify, in measurable terms, expected outcomes for participating families.

Reports, Monitoring and Evaluation

Provide in descriptive terms, the manner in which required reports are to be assembled along with the identification of data sources. The application will identify and describe the mechanisms that will be instituted and the commitment of specific resources that will address the requisite evaluation activities, including commitment to commensurate information requirements. This would necessarily include the reliance on a useful information management system that was capable of producing program outcome data and responding to need of a national evaluation study.

Part III: Description of the Gateway Demonstration Program

A. Program Purpose

This demonstration program will provide grant funds to local education agencies, in consultation with the local public housing authority and private industry council, to provide on-site education, training and necessary support services to economically disadvantaged residents of public housing.

B. Program Services and Requirements

The project awards will primarily allow for the design, development and establishment of an education, training and support services program, at a minimum, consisting of the following mandatory services:

—Outreach and information services designed to make eligible individuals aware of available services;
—Literacy and bilingual education services, where appropriate;
—Remedial education and basic skills training;
—Employment training and personal management skill development or referrals for such services; and,
—Child care or dependent care for dependents of eligible individuals during those times, including afternoons and evenings, when training services are being provided. (To the extent practicable, child care services shall be designed to employ public housing residents after appropriate training.)

Program may provide the following optional services:

—Pre-employment skills training;
—Employment counseling and application assistance;
—Job development services;
—Federal employment-related activity services;
—Completion of high school or GED program services;
—Transitional assistance, including child care for up to 6 months to enable such individual to successfully secure unsubsidized employment;
—Substance abuse prevention and education; and,
—Other appropriate support services.

C. Program Beneficiaries

Projects proposed for funding under this portion of the announcement must directly target participation in the training and services to individuals who reside in public housing; are economically disadvantaged; and, have encountered barriers to employment because of basic skills deficiency including not having a high school diploma, GED, or the equivalent. The grantee shall give priority to single heads of households with young dependent children.

D. Evaluation

The Department expects to contract for an independent evaluation of the programs and entities that receive assistance under this program. The anticipated evaluation shall examine at a minimum, with respect to the fulfillment of program objectives for children and families residing in public housing, the ability of the Gateway Program to promote increase in literacy levels and basic employment skills.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve periodically furnishing needed process and outcome oriented data as required by the contractors and allowing them access to information that has not otherwise been provided by the grantee.

Grantees are expected to maintain sufficient resources to fulfill required data obligations and to respond to demands for information that is to be compiled for national evaluation and reporting.

E. Eligible Applicants

Eligible entities are local education agencies.

F. Project Period

This announcement is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the two-year project period, will be entertained in the next fiscal year on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government.

G. Grantee Responsibilities

The grantee shall demonstrate that training and ancillary support services will be accessed through existing program providers to the extent that they are located in the immediate vicinity of the public housing development, or they will contract with such providers for on-site service delivery. The grantee shall warrant that funds provided under this program will be utilized to purchase such service only to the extent that no other funds can be obtained to fulfill the purpose of this demonstration.

The local public housing agency shall agree to make available suitable facilities in the public housing development for the provision of education, training and support services.

The grantee shall demonstrate that the recipients of services have been recruited with the assistance of the public housing authority and are eligible individuals.

The grantee shall demonstrate the ability to coordinate the services provided with other services provided, with the public housing development and private industry council as well as with other public and private agencies and organizations of demonstrated effectiveness providing similar and ancillary services to the target population.

The grantee, to the fullest extent practicable, shall demonstrate that they have attempted to employ residents of the public housing development whenever qualified residents are available.

Part IV: Criteria for Review and Evaluation of Applications

Applications for both programs will be reviewed and evaluated to assess the applicant's ability to carry out the projects described under part II and III of this announcement, against the following criteria:

1. *Need (10 points)*

A. Understanding of Program Purposes (5 points)

The extent to which the application reflects a good understanding of the purpose(s) of the program, including the problems, barriers and impediments that prevent the efficient and effective delivery of an array of intensive and comprehensive services to stabilize homeless and at-risk families and prevent them experiencing initial or recurring episodes of homelessness.

B. Client, Community and Service System Needs (5 points)

The degree to which the application presents the appropriate and pertinent demographic, social and personal data describing the needs of the client populations to be served.

Community data should reflect the resources and the lack of services or programs to address the target population needs. Service system needs should reveal the extent to which there is potential for short to intermediate range solutions to organizational and systemic problems that affect the target populations.

2. *Project Plan (40 points)*

A. Goals and Objectives (5 points)

The enumeration of clearly articulated goals and corresponding objectives addressing the problems. These should be listed in a sequential and integrated fashion tied to program purposes and client needs.

B. Approach (10 points)

The soundness and feasibility of the methods and organization of the project

to respond to specified goals and objectives and client, community and system needs.

The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished; gives acceptable reasons for taking this approach as opposed to others;

C. Activities Planned, Outcomes and Expected Results (10 points)

Application lists the activities along with anticipated steps to be carried out in a programmatic and chronological order. Applications includes a feasible schedule of target dates and accomplishments, in sufficient detail for the first year and more generally for the second year.

Application identifies measurable expected results for participating children and families.

D. Cost Effectiveness (5 points)

The extent to which the project's financial costs are reasonable in view of the activities to be carried out and their forecasted outcomes. Applications should address cost expenditures *vis a vis* anticipated project benefits.

E. Innovation (10 points)

Application should articulate creative and otherwise original approaches and ways to achieve project objectives especially as they relate to program purposes; application describes unique features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary client and community involvements.

The application uses original and enterprising means to identify, target, reach and serve children and families using creative and unique configurations of mainstream and other programs in the community.

3. *Capacity (20 points)*

A. Staff—Background and Experience (5 points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) demonstrate the ability to effectively and efficiently administer and/or operate within a project of this size, complexity and scope. Staff background and experience should also exhibit clearly the ability of proposed staff to use and coordinate activities with other agencies for the delivery of intensive and comprehensive support services. In the event that new hires or positions are involved, application should demonstrate mechanisms to access available human resources and the ability to bring resources quickly on line with the project.

B. Organization (15 points)

Organizational resources that can be utilized within this project, including applicant facilities and physical resources such as existing office and client services space. The resources capacity of the organization may also include the attributes of the applicant entity to attract cooperating community and other agency resources such as outside means, properties and assets to participate in the program. Application also includes information confirming the organization's administrative and management capabilities and its appropriate location within the organizational structure to support the successful operation of this project.

4. *Coordination (15 points)*

A. Consortia or Project Partnerships (5 points)

Application demonstrates breadth and depth in the strength of the consortia involved in the project. Application describes project coordination and linkages with organizations, agencies, and key groups as well as the activities and nature of their effort or contribution. Partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

B. Committed Resources (5 points)

Application identifies current and/or anticipated commitments indicating kinds of service along with specific level of efforts from cooperating service-providing organizations or agencies.

C. Linkages (5 points)

Confirmation of linkages established with other local systems-oriented or integration initiatives.

5. *Monitoring and Evaluation (15 points)*

A. Reports and Monitoring (5 points)

Application should include information reflecting the entity's ability to conform to required schedule of program and administrative reports and to maintain controls through an organized monitoring effort.

B. Evaluation Activities (10 points)

Application should contain information outlining the entity's ability and willingness to participate in ongoing evaluation mechanisms and the capacity to provide required process and outcome oriented data. These data requirements will support identification and evaluation of grantee objectives, namely, the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the reduction in the rate of repeated incidence of homelessness among center clientele and a decrease in the incidence of first time homelessness among community participants.

Part V: Application Procedures

A. Availability of Forms

This announcement with attachments contains standard forms necessary to apply for awards under this program. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of the announcement. (See Attachments B and C.)

Agencies and organizations interested in applying for demonstration grant funds should submit an application on the Standard Form 424, 424A and 424B included in this announcement.

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached applications package.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

B. Application Submission

Applications must be submitted to ACF by the closing date. Refer to "**CLOSING DATE**" at the beginning of this document for the specific date.

1. *Deadlines.* Applications should be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Department of Health and

Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–93–04/ ZC:ZG) 370 L'Enfant Promenade, SW., Washington, DC 20447; or,

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 901 D Street, SW., 6th Floor, Washington, DC during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday.

3. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. *Extension of Deadline.* The ACF Office of Community Services may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the OCS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies should be submitted.

C. Application Consideration

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Applications meeting the above screening requirements will be reviewed competitively and scored against the criteria outlined in Part IV of this announcement. The review will be conducted in Washington, DC. Such applications will be referred to reviewers knowledgeable about programs dealing with housing, community action and supportive services. Reviewers will provide a numerical score and explanatory comments based solely on responsiveness to program requirements and evaluation criteria published in this announcement. Reviewers' scores will weigh heavily in funding decisions but may not be the only factor considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding as other factors are considered, including: Comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

The results of the competitive review will assist the Director of the Office of Community Services, in considering competing applications. Consideration will be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

Successful applicants will be notified through a Notice of Grant Award. The award will state the amount of Federal funds awarded, the terms and conditions of the grant award, the effective date of the grant, the total project period and the budget period.

D. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Pennsylvania, Oklahoma, Oregon, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). (See Attachment G) Applicants from these fifteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application announcement date to comment on proposed new or competing continuation awards. However, because applications are due 30 days from the date of the announcement and grants are to be awarded in September, there is not sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from July 20, 1993 (August 19, 1993).

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–93–04/ ZC:ZG), 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

Part VI: Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062 date of expiration 09–30–93.)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement. It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be

related or relevant to the assistance requested, write "NA" for "Not Applicable". If your submission on an item needs further explanation or is not directly responsive to the item requested, please explain or provide commentary in Item Number 23. This item may be extended by use of an additional sheet of paper, appropriately identified.

Prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

A. SF–414—"Application for Federal Assistance" (see Attachment B)

Item 1. For the purpose of this announcement, all projects are considered "Applications"; there are no "Pre-Applications" and no Construction projects. Accordingly, check the "Non-Construction" box.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date received by State"—N/A

Item 4. "Date received by Federal Agency"—Leave blank

Item 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

Item 7: Mark the appropriate box. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "other". Proof of non-profit status, such as IRS determination, Articles of Incorporation, or By-Laws, must be included as an appendix to the project narrative.

Item 8. "Type of Application"—Please indicate the type of application.

Item 9. "Name of Federal Agency"—Enter DHHS–ACF/OCS

Item 10. The Catalog of Federal Domestic Assistance Number for OCS programs covered under this announcement is 93.578. The title is "Family Support Center and Gateway Demonstration Program".

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title (a brief descriptive title) and the following letter designations must be used:

ZC—Family Support Center
ZG—Gateway Demonstration

Item 12. "Areas Affected by Project"—List only the largest unit or units affected, such as State, county or city.

Item 13. "Proposed Project"—Enter the desirable starting date for the project and the proposed completion date. Projects may not exceed the maximum duration specified.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional district(s) where the project will be located.

Item 15a. This amount should be no greater that the amount specified under the Section on *Availability of Funds and Grant Amounts.*

B. SF–424A—"Budget Information-Non-Construction Programs"

(See Attachment C.)

See Instructions accompanying this form as well as the instructions set forth below:

Sections A, B, C, and D should reflect budget estimates for the first year of the project. Section E should present the estimates for Federal assistance for the second year of the project. Grant awardees will be required to submit a "continuation application" for the second year of the project.

In completing these sections, the "Federal Funds" Budget entries should separately identify all Federal funds involved in the project. "Non-Federal" will include mobilized funds from all other sources—applicant, State, and other.

Section A—Budget Summary

Line 1: Column (a): Enter "Family Support Center/Gateway Demonstration Program"; Column (b): Enter 93.578; Columns (c) and (d); Not Applicable for new applications; Columns (e), (f) and (g): enter the appropriate amounts needed to support the project for the first budget period (Maximum $200,000 for Family Support Center; $125,000 for Gateway).

Lines 2–4: Enter same information as above for any other Federal funds proposed to be used in the project.- (Please explain status of funds; e.g., approved or requested, etc.)

Section B—Budget Categories

Allocability of costs are governed by applicable cost principles set forth in OMB Circular A–122 and 45 CFR Part 74 (non-governmental) and OMB Circular A–87 and 45 CFR Part 92 (governmental). Budget estimates for all costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculations to be duplicated. For any additional object class categories included under the object class "other" identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travels; new positions; major equipment purchases and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included, as indicated below.

Personnel—Line 6a. Enter the estimated total costs of salaries and wages.

Justification

Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the estimated total cost of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel—Line 6c: Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Travel costs to attend one national workshop in Washington, D.C. by the project director should be included.

Equipment—Line 6d: Enter the estimated total costs of all non-expendable personal property to be acquired by the project.

VOL 58 ISS 137 JL 20 1993 UMI

"Non-expendable personal property" means tangible personal property having an acquisition cost per unit of $500 or more for non-profit organizations and $5,000 or more for public organizations and have a useful life of one year.

Justification

Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined above. (See Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Justification

Specify general categories of supplies and their costs.

Contractual—Line 6f: Enter the total costs of all contracts: (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegated agencies and specific project(s) or businesses to be financed by the applicant.

Justification

If available at the time of application, attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Subgrants and Pass-through Activity: Whenever the applicant/grantee intends to delegate part of the program to another agency, thus entering into an interagency agreement, the applicant/grantee must submit Sections A and B of this Form SF–424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instruction. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR part 74, appendix H. Free and open competition is encouraged for any procurement activities planned using ACF grant funds. Applicants who anticipate procurements that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

(Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

For successful applicants, the Financial Assistance Award may cite under Remarks, item 26, approval of this action. Also include any contracts with organizations for the provision of technical assistance.

Construction—Line 6g: New construction costs are not permitted under this program. This line may be used for renovation costs.

Other—Line 6h: Enter the estimated total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), space and equipment rentals, printing and publication, computer use, training costs including tuition, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. Thisline generally should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agency. With the exception of local governments, applicants should enclose a copy of a current rate agreement negotiated with a Federal agency including the Department of Health and Human Services. If the applicant organization is renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter total amounts of lines 6i and 6j.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, and whether it is cash or third-party in-kind. The firm commitment of these funds should be documented and submitted with the application in order to be given full credit in the review criteria.

Justification

Describe all non-Federal resources including third-party, cash and/or in-kind contributions. Except in unusual situations, this documentation should be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Grant Program—Line 8. Grant Program.

Column (a): Enter the project title.

Column (b): Enter the amount of cash or donations to be made by the applicant.

Column (c): Enter the other contribution.

Column (d): Enter the amount of cash and third-party, in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program—Lines 9, 10, and 11 should be left blank.

Grant Program—Line 12. Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal—Line 13. Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12-month budget period.

Non-Federal—Line 14. Enter the amount of cash from all other sources needed by quarter during the first year.

Total—Line 15. Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Applicants for two year projects will complete line 16, (a), (b) and (c).

Column (a) refers respectively to the second year of the project.

Section F—Other Budget Information

Direct Charges—Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges—Line 22. Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks—Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B—"Assurances-Non-Construction"

All applicants must fill out, sign, date and return the "Assurances" (see Attachment D) with the application.

Part VII—Contents of Application and Receipt Process

A. Contents of Application

Each application submission should include a signed original and two additional copies of the application. Each application should include the following in the order presented:

1. Table of Contents;
2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally. [Note: the original SF–424 must bear the original signature of the authorizing representative of the applicant organization]
3. "Budget Information-Non-Construction Programs" (SF–424A);
4. A narrative budget justification for each object class category required under Section B, SF–424A;
5. Filled out, signed, and dated "Assurances-Non-Construction Programs" (SF–424B);
6. The applicant should sign Attachment E. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachment E and F.
7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.
8. An Executive Summary—not to exceed one page.
9. Appendices, including (where applicable) proof of non-profit status; proof that the organization is a community development corporation, commitments from service providing organizations, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.

The total number of pages for the entire application package, excluding Appendices, should not exceed 50 pages. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF–424 as Page #1.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½×11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

B. Acknowledgement of Receipt

All applicants who meet the initial screening criteria outlined in Part V, Section C will receive an acknowledgement notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to the acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9234.

Part VIII: Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for any dissemination effort conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92 and OMB Circular A–133.

Attachment I indicates the regulations which apply to all applicants/grantees under the Family Support Center and Gateway Demonstration Programs.

VOL
58
ISS
137
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Dated: June 9, 1993.

Jacqueline G. Lemire,

Acting Director, Office of Community Services.

ATTACHMENT A.—1993 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,970
2	9,430
3	11,890
4	14,350
5	16,810
6	19,270
7	21,730
8[1]	24,190
Poverty Income Guidelines for Alaska:	
1	$8,700

ATTACHMENT A.—1993 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA—Continued

Size of family unit	Poverty guideline
2	11,780
3	14,860
4	17,940
5	21,020
6	24,100
7	27,180
8[2]	30,260
Poverty Income Guidelines for Hawaii:	
1	$8,040
2	10,860
3	13,680
4	16,500
5	19,320
6	22,140

ATTACHMENT A.—1993 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA—Continued

Size of family unit	Poverty guideline
7	24,960
8[3]	27,780

[1] For family units with more than 8 members, add $3,080 for each additional member.

[2] For family units with more than 8 members, add $2,460 for each additional member.

[3] For family units with more than 8 members, add $2,820 for each additional member.

BILLING CODE 4184-01-M

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Authorized for Local Reproduction

Instructions for the SF–424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

VOL 58 ISS 137 JL 20 1993 UMI

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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1993
JL 20
ISS 137
VOL 58

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10				
11				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions of activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column (a)* and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)—*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6 a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in kind contributions to be made from all other sources.

Columb (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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VOL
58
ISS
137
JL
20
1993
UMI

Attachment D

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

VOL 58 ISS 137 JL 20 1993 UMI

Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Arizona

Mrs. Janice Dunn
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone (602) 280–1315

Arkansas

Mr. Joseph Gillesbie
Manager, State Clearinghouse
Office of Intergovernmental Service
Department of Finance and Administration
P.O. Box 3278
Little Rock, Arkansas 72203
Telephone (501) 371–1074

California

Glenn Stober
Grants Coordinator
Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814
Telephone (916) 323–7480

Colorado

State Single Point of Contact
State Clearinghouse
Division of Local Government
1313 Sherman Street, Room 520
Denver, Colorado 80203
Telephone (303) 866–2156

Connecticut

Under Secretary
ATTN: Intergovernmental Review Coordinator
Comprehensive Planning Division
Office of Policy and Management
80 Washington Street
Hartford, Connecticut 06106–4459
Telephone (203) 566–3410

Delaware

Ms. Francine Booth
State Single Point of Contact
Executive Department
Thomas Collins Building
Dover, Delaware 19903
Telephone (302) 736–3326

District of Columbia

Ms. Lovetta Davis
State Single Point of Contact
Executive Office of the Mayor
Office of Intergovernmental Relations
Room 416, District Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone (202) 727–9111

Florida

Ms. Karen McFarland
Director, Florida State Clearinghouse
Executive Office of the Governor
Office of Planning and Budgeting
The Capitol
Tallahassee, Florida 32399–0001
Telephone (904) 488–8114

Georgia

Mr. Charles H. Badger
Administrator
Georgia State Clearinghouse
270 Washington Street, S.W.
Atlanta, Georgia 30334
Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto
Acting Director
Office of State Planning
Department of Planning and Economic Development
Office of the Governor
State Capitol—Room 406
Honolulu, Hawaii 96813
Telephone (808) 548–5893
FAX (808) 548–8172

Illinois

Mr. Tom Berkshire
State Single Point of Contact
Office of the Governor
State of Illinois
Springfield, Illinois 62706
Telephone (217) 782–8639

Indiana

Mr. Frank Sullivan
Budget Director
State Budget Agency
212 State House
Indianapolis, Indiana 46204
Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann
Division of Community Progress
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone (515) 281–3725

Kentucky

Ms. Debbie Anglin
State Single Point of Contact
Kentucky State Clearinghouse
2nd Floor, Capital Plaza Tower
Frankfort, Kentucky 40601
Telephone (502) 564–2382

Maine

State Single Point of Contact
ATTN: Ms. Joyce Benson
State Planning Office
State House Station #38
Augusta, Maine 04333
Telephone (207) 289–3261

Maryland

Ms. Mary Abrams
Chief, Maryland State Clearinghouse
Department of State Planning
301 West Preston Street
Baltimore, Maryland 21201–2365

Telephone (301) 225–4490

Massachusetts

State Single Point of Contact
ATTN: Ms. Beverly Boyle
Executive Office of Communities and Development
100 Cambridge Street, Room 1803
Boston, Massachusetts 02202
Telephone (617) 727–7001

Michigan

Mr. Milton O. Waters
Director of Operations
Michigan Neighborhood Builders Alliance
Michigan Department of Commerce
Lansing, Michigan 48909
Telephone (517) 373–7111

Please direct correspondence to:
Manager, Federal Project Review
Michigan Department of Commerce
Michigan Neighborhood Builders Alliance
P.O. Box 30242
Lansing, Michigan 48909
Telephone (517) 373–6223

Mississippi

Ms. Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
Office of Policy Development
421 West Pascagoula Street
Jackson, Mississippi 39203
Telephone (601) 960–4280

Missouri

Ms. Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
Division of General Services
P.O. Box 809
Room 430, Truman Building
Jefferson City, Missouri 65102
Telephone (314) 751–4834

Nevada

Department of Administration
State Clearinghouse
Capitol Complex
Carson City, Nevada 89710
Attn: Mr. John B. Walker
Clearinghouse Coordinator
Telephone (702) 687–4420

New Hampshire

Mr. Jeffrey H. Taylor
Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process/ James E. Bieber
2½ Beacon Street
Concord, New Hampshire 03301
Telephone (603) 271–2155

New Jersey

Mr. Barry Skokowski
Director
Division of Local Government Services
Department of Community Affairs, CN 803
Trenton, New Jersey 08625–0803
Telephone (609) 292–6613

Please direct correspondence and questions to:
Nelson S. Silver, State Review Process
Division of Local Government Services, CN 803
Trenton, New Jersey 08625–0803
Telephone (609) 292–9025

New Mexico

Aurelia M. Sandoval
State Budget Division
Department of Finance & Administration
Room 190, Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone (505) 827–3640
Fax (505) 827–3006

New York

New York State Clearinghouse
Division of the Budget
State Capitol
Albany, New York 12224
Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director
Intergovernmental Relations
N.C. Department of Administration
116 W. Jones Street
Raleigh, North Carolina 27611
Telephone (919) 733–0499

North Dakota

Mr. William Robinson
State Single Point of Contact
Office of Intergovernmental Affairs
Office of Management and Budget
14th Floor, State Capitol
Bismarck, North Dakota 58505
Telephone (701) 224–2094

Ohio

Mr. Larry Weaver
State Single Point of Contact
State/Federal Funds Coordinator
State Clearinghouse
Office of Budget and Management
30 East Broad Street, 34th Floor
Columbus, Ohio 43266–0411
Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director
Statewide Planning Program
Department of Administration
Division of Planning
265 Melrose Street
Providence, Rhode Island 02907
Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Mr. Danny L. Cromer
State Single Point of Contact
Grant Services, Office of the Governor
1205 Pendleton Street, Room 477
Columbia, South Carolina 29201
Telephone (803) 734–0493

South Dakota

Ms. Susan Comer
State Clearinghouse Coordinator
Office of the Governor
500 East Capitol
Pierre, South Dakota 57501
Telephone (605) 773–3212

Tennessee

Mr. Charles Brown
State Single Point of Contact
State Planning Office
500 Charlotte Avenue
309 John Sevier Building
Nashville, Tennessee 37219
Telephone (615) 741–1676

Texas

Mr. Thomas Adams
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone (512) 463–1778

Utah

Utah State Clearinghouse
Office of Planning and Budget
ATTN: Ms. Carolyn Wright
Room 116 State Capitol
Salt Lake City, Utah 84114
Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director
Office of Policy Research & Coordination
Pavilion Office Building, 109 State Street
Montpelier, Vermont 05602
Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director
Community Development Division
Governor's Office of Community and Industrial Development
Building #6, Room 553
Charleston, West Virginia 25305
Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey
Federal/State Relations, IGA Relations
101 South Webster Street
P.O. Box 7864
Milwaukee, Wisconsin 53707
Telephone (608) 266–1741

Please direct correspondence and question to: Mr. William C. Carey, Section Chief, Federal-State Relations Office
Wisconsin Department of Administration
Telephone (608) 266–0267

Wyoming

Ms. Ann Redman, State Single Point of Contact
Wyoming State Clearinghouse
State Planning Coordinator's Office
Capitol Building
Cheyenne, Wyoming 82002
Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact
Planning and Budget Office
Office of the Governor
Saipan, CM
Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero
Chairman/Director
Puerto Rico Planning Board

VOL 58 ISS 137 JL 20 1993 UMI

Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940–9985
Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director
Office of Management and Budget
No. 32 & 33 Kongens Gade
Charlotte Amalie, V.I. 00802
Telephone (809) 774–0750

Attachment H—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District**, *if known:*	**Congressional District**, *if known:*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	**9. Award Amount**, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	**13. Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
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VOL
58
ISS
137
JL
20
1993
UMI

Attachment I

The following DHHS regulations apply to all applicants/grantees under the Family Support Center and Gateway Demonstration Programs:

Title 45 of the Code of Federal Regulations

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections
74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance; Subpart F—Drug Free Workplace Requirements

Sections
Part 80—Non-discrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Certification Regarding Maintenance of Effort

The undersigned certifies that:

(1) activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

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Reader

INFORMATIO

Federal Regist
Index, finding
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Laws
Public Laws U
Additional Inf

Presidential D
Executive orde
Public Papers
Weekly Compi

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Other Service
Data base and
Guide to Reco
Legal staff
Privacy Act Co
Public Laws U
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ELECTRONIC
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Law numbers,
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FEDERAL RE

35357–35840....
35841–36116....
36117–36300....
36301–36588....
36589–36852....
36853–37412....
37413–37630....
37631–37846....
37847–38044....
38045–38262....
38263–38508....
38509–38660....
38661–38910....

Reader Aids

Federal Register

Vol. 58, No. 137

Tuesday, July 20, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12
37631–37846.....13
37847–38044.....14
38045–38262.....15
38263–38508.....16
38509–38660.....19
38661–38910.....20

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587
6546 (Revoked by PLO 6989 of July 6).....38083

Administrative Orders:
Presidential Determinations:
93–28 of June 25, 1993.....37631
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839
6580.....38659

5 CFR

230.....36119
250.....36119
532.....38263
581.....35845
890.....38661
1201.....36345
1209.....36345

7 CFR

2.....35359
226.....37847
246.....37633
301.....36589, 36590, 36591
319.....38263
354.....38269
400.....36592
723.....36853, 36857
906.....37635
910.....38271
922.....38272
923.....38272
924.....38272
945.....38274
967.....38276, 38277
981.....37636
987.....37638
1097.....34359
1098.....35361
1099.....34362
1106.....36859
1211.....38278
1421.....38509, 38663
1464.....36857, 36861
1435.....36120
1755.....36252

Proposed Rules:
55.....37872, 38602
56.....37872, 38602
59.....37872, 38602
70.....37872, 38602
330.....38308
400.....37874
1421.....38311
1468.....37876

8 CFR

100.....38045
212.....38045
245.....35832

Proposed Rules:
209.....38312
236.....38312
242.....38312

9 CFR

78.....36593
91.....37639
92.....37641, 37642, 38282
94.....36593, 36594
98.....37642
317.....38046
381.....38046

Proposed Rules:
78.....37685
85.....37666
91.....37667
92.....37878
94.....36624, 38308, 38314, 38316
95.....37669
98.....36625
113.....37670
381.....38090

10 CFR

9.....38685
170.....38666
171.....38666

Proposed Rules:
50.....37884
60.....36902

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

264b.....38702

710.....35363

Proposed Rules:

7.....38474
24.....38474
563.....38730
614.....38091

14 CFR

21.....38702, 38703
23.....38634
25.....36345, 36348, 36350, 36352
29.....38702, 38703
39.....35860, 36130, 36131, 36863, 36865, 38283, 38285, 38510, 36511, 38513, 38516
71.....36596
72.....36298
73.....38287
97.....38288, 38518
108.....36802

Proposed Rules:

Ch. I.....36626
1.....36736
23.....38028
25.....36116, 36738, 38642
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627, 38321, 38540, 38701, 38702
71.....36157, 36158, 36628, 38322, 38734
73.....38323
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353
806.....38289
921.....38214

Proposed Rules:

806.....38324

16 CFR

1145.....37554
1210.....37557

Proposed Rules:

244.....35414
412.....35907

17 CFR

1.....37644
204.....38519
239.....35367
240.....36866, 37413, 37655
249.....35367

Proposed Rules:

240.....37445, 38092
270.....38095

18 CFR

2.....38290, 38524
157.....38524
260.....38524
271.....38528
284.....38524
385.....38524

Proposed Rules:

35.....36172
284.....37447
341.....37671
342.....37671
343.....37671
344.....37671
345.....37671
347.....37671
352.....37671
360.....37671
361.....37671
375.....35415, 37671

19 CFR

148.....35862, 38167
151.....37853

Proposed Rules:

12.....37884
24.....37884
133.....37884
178.....37884

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
178.....37854
291.....38704
510.....36134, 37855
520.....36134

Proposed Rules:

350.....38541
870.....36290
876.....35416

22 CFR

126.....35864

23 CFR

625.....38293

24 CFR

203.....35369
236.....37802
241.....37802
248.....37802
250.....38530
572.....36518, 36546

Proposed Rules:

16.....37598
202.....37885
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:

31.....35419

27 CFR

9.....35865, 35877

Proposed Rules:

4.....35908
5.....35908, 36516
7.....38542, 38543

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371

Proposed Rules:

36.....37052

29 CFR

18.....38498
1400.....35377
1915.....35512
2606.....35377, 37991
2610.....38049
2612.....35377
2615.....35377
2616.....35377
2619.....38050
2622.....35377, 37991, 38049
2623.....35377, 37991
2644.....38051
2676.....38052

30 CFR

202.....37420
206.....37420
904.....38532
920.....36135
938.....36139

Proposed Rules:

913.....38543
914.....38543
916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

Proposed Rules:

501.....37770
552.....37774

33 CFR

100.....36355, 38053, 38054, 38055, 38298, 38299, 38300, 38301
110.....36356
117.....36357, 38056
164.....36141
165.....36357, 36597, 36868, 38056, 38302
334.....37606, 37889

Proposed Rules:

110.....38100, 38101
117.....36629, 38102
334.....37889

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
608.....36869
609.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36869
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

Proposed Rules:

361.....36869
631.....36869
632.....36869
633.....36869
634.....36869
635.....36869
650.....36869
692.....36869

36 CFR

51.....36869

Proposed Rules:

1191.....36869

471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
608.....38711
609.....38711
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869

Proposed Rules:
361.....38482
631.....38504
632.....38504
633.....38504
634.....38504
635.....38504
650.....37890
692.....36110

36 CFR

51.....36598

Proposed Rules:
1191.....37052, 38204

37 CFR

1.....38719

38 CFR

3.....37856
21.....38057
36.....37857

Proposed Rules:
3.....38104, 38106
21.....38106

39 CFR

233.....36598

40 CFR

51.....38816
52.....37421, 37423, 37426, 37658, 38058, 38060, 38816
82.....36516
85.....36871
131.....36141
180.....36358, 36359, 37861
185.....36358, 37862
186.....37867
228.....35884
260.....38816
266.....38816
414.....36872

Proposed Rules:
Ch. I.....37450, 37991, 38546
52.....36905, 37450, 37453, 38108, 38326
63.....37778
81.....36908, 37453, 38108, 38331
82.....38735
88.....35420
180.....36366, 37893
186.....36366
261.....36367
300.....37693
372.....36180

42 CFR

405.....37994
414.....37994
417.....38062

Proposed Rules:
417.....38170

43 CFR

3730.....38186
3820.....38186
3830.....38186
3850.....38186

Public Land Orders:
6983.....38602
6986.....35408
6988.....35409
6989.....38083

44 CFR

65.....38303, 38305
67.....38083
354.....35770

Proposed Rules:
67.....38333

45 CFR

Proposed Rules:
1602.....36910

46 CFR

170.....36601
502.....38648

Proposed Rules:
15.....36914
171.....36374

47 CFR

1.....36142, 37867, 38534
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145, 38536
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431, 38087, 38088, 38534, 38536
76.....36604, 38088
90.....36362, 38537

Proposed Rules:
Ch. I.....36630
61.....37894
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455, 37696, 38111, 38547, 38548
90.....38549

48 CFR

2.....37868
904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
935.....37868
937.....36149
952.....36149, 36363
970.....36149, 36363

Proposed Rules:
909.....38340
917.....36918
952.....38340
970.....38340
1823.....37697
1852.....37697

49 CFR

37.....38204
218.....36605
229.....36605
541.....36376
571.....36152, 36615
604.....36894

Proposed Rules:
37.....37052
171.....36920, 37612, 38111
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
390.....37895
392.....37900
393.....37900
543.....35422
571.....38346

50 CFR

17.....35887, 37432
227.....38537
85.....38619
285.....36154
611.....38167
625.....35891
630.....37443
646.....35895, 36155, 38813
658.....35897
662.....38726
671.....36900, 38727
672.....35897, 37660, 37870, 37871, 38167
675.....35897, 37660

Proposed Rules:
17.....36184, 36378, 36387, 36924, 37699, 38549, 38552, 38553, 38736
20.....37828
23.....38112
24.....36925
226.....38553
227.....38554
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 8, 1993

VOL
58
ISS
137
JL
20
1993
UMI

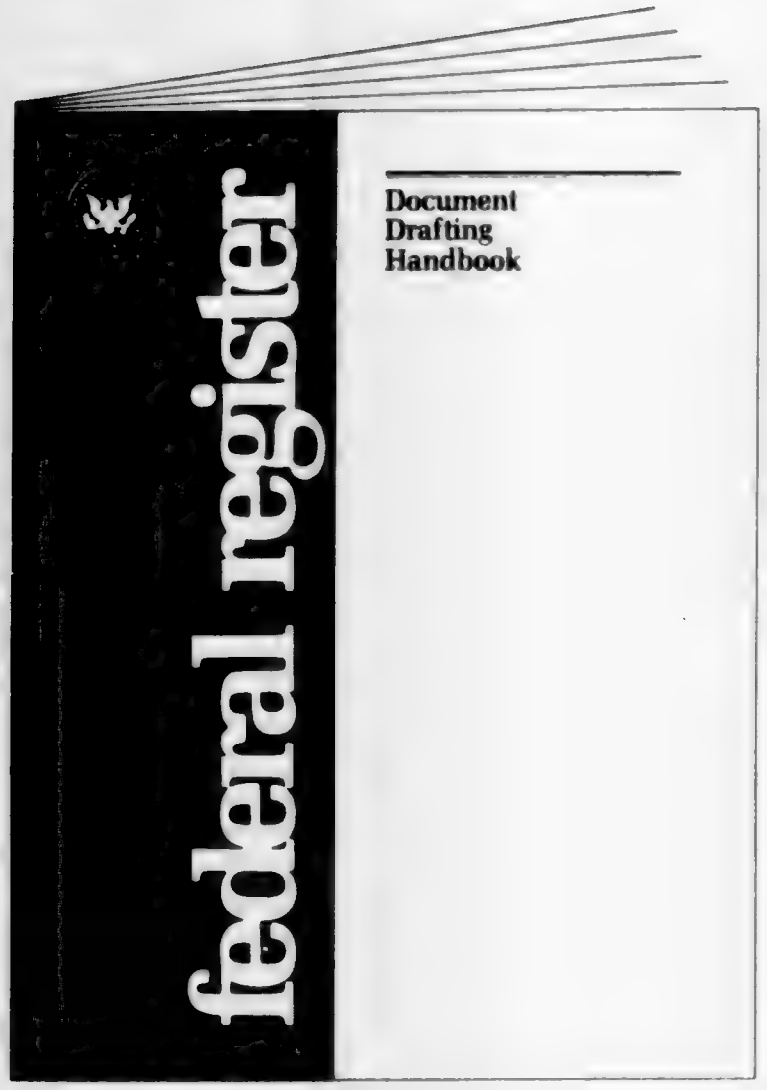

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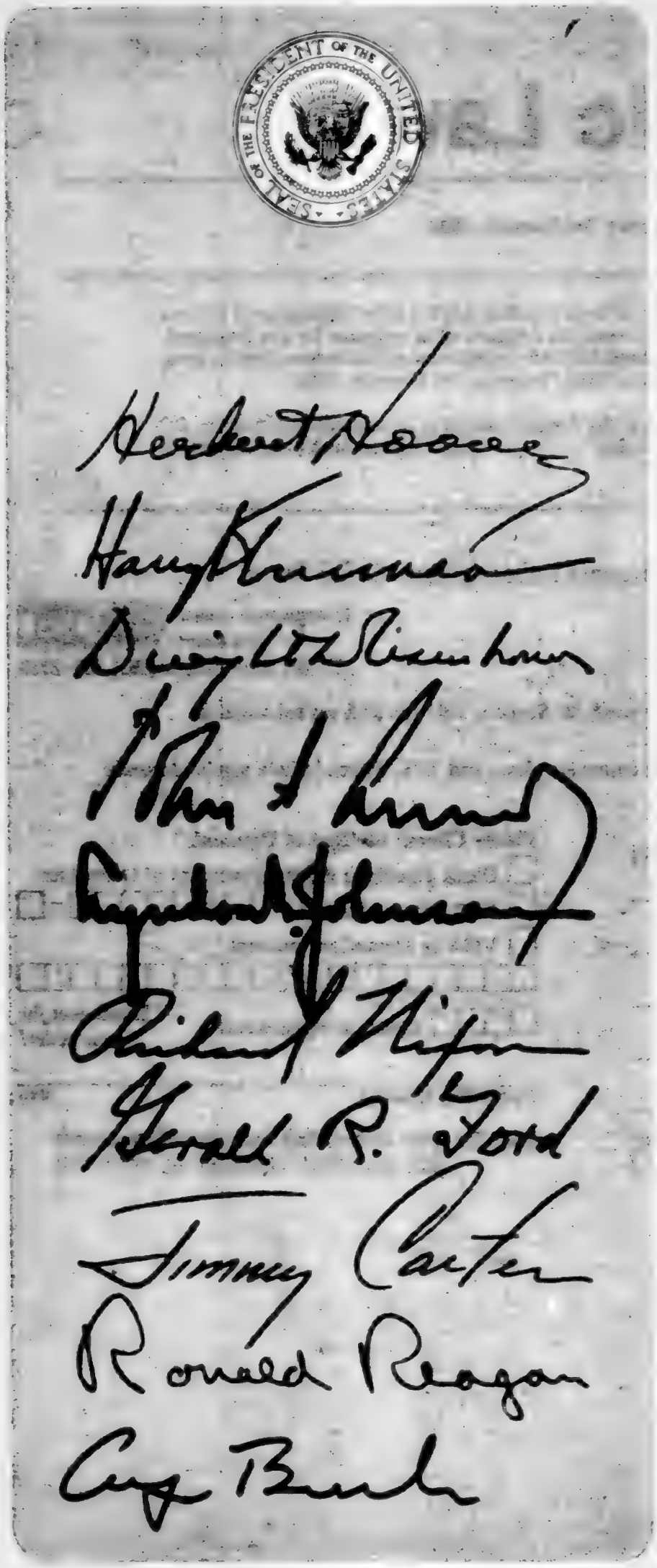

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VOL
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1
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7
JL
20
1993
UMI

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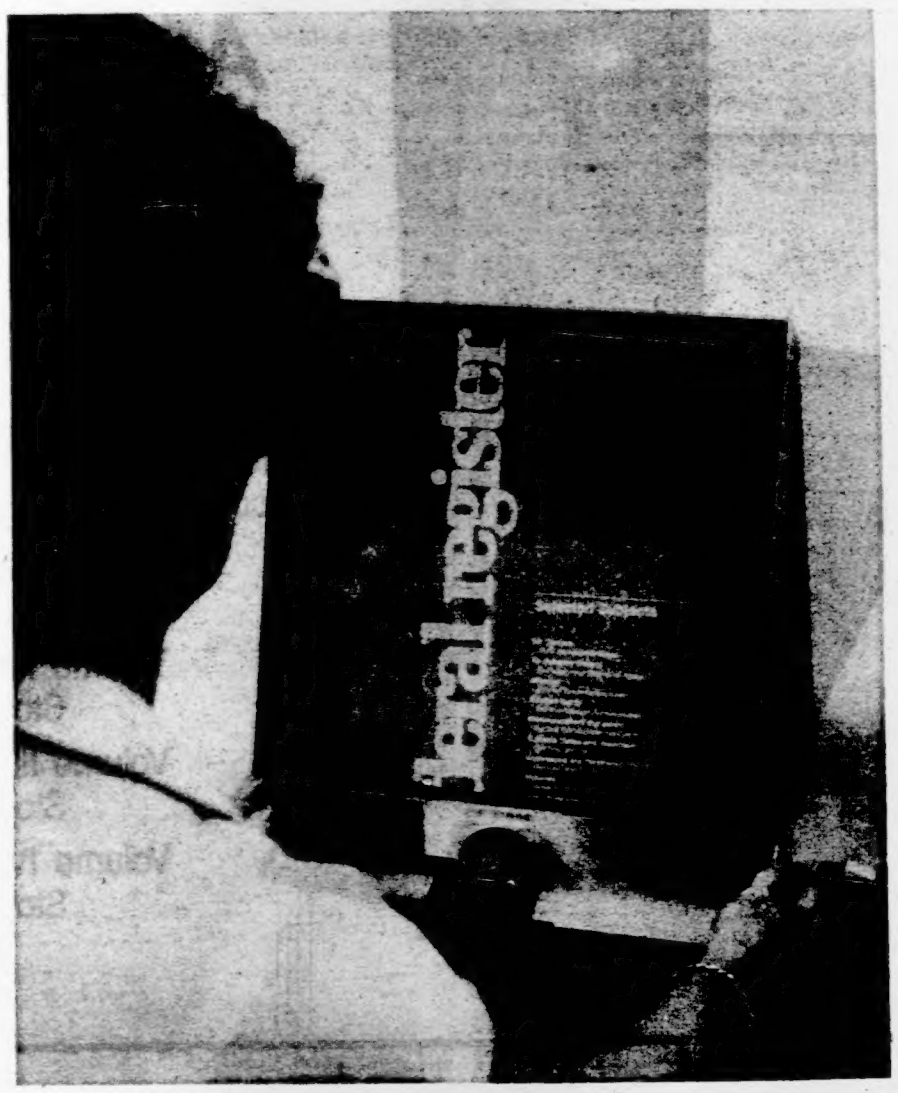

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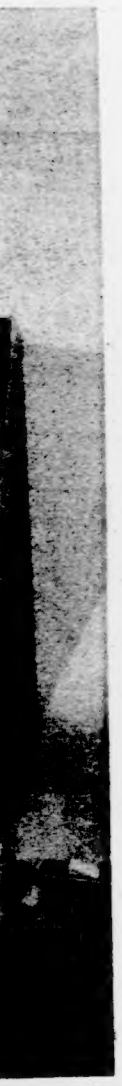

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